Becoming a Sex Offender: A Study of Constitution at the Intersection of the Mental Health and Legal Systems

Jessica Callanan

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BECOMING A SEX OFFENDER: A STUDY OF CONSTITUTION
AT THE INTERSECTION OF THE MENTAL HEALTH AND LEGAL SYSTEMS

A Dissertation
Submitted to the McAnulty School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Doctor of Philosophy

By
Jessica Callanan, MA

December 2014
BECOMING A SEX OFFENDER: A STUDY OF CONSTITUTION
AT THE INTERSECTION OF THE MENTAL HEALTH AND LEGAL SYSTEMS

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ABSTRACT

BECOMING A SEX OFFENDER: A STUDY OF CONSTITUTION
AT THE INTERSECTION OF THE MENTAL HEALTH AND LEGAL SYSTEMS

By
Jessica Callanan, MA

December 2014

Dissertation supervised by Martin Packer, Ph.D

This research conceptualizes “sex offender” as an institutional category. The purpose of this research is to show how people become constituted as sex offenders in the context of the two systems that make demands of them: the mental health and legal systems. These systems view sex offenders in ways that contradict, in that they are viewed as sick by the mental health system and as criminal or bad by the legal system. As a result, the demands these systems make contradict and at times impose double binds on the people who have to navigate them. The data I collected demonstrate how these contractions and double binds occur, creating practices that are impractical (they do not do what they intend to) and unethical (they do more harm than good). There are three methods of data collection: field work, two focus groups, and interviews. In most
research the voice of the sex offender is silenced, but this research makes a point to emphasize the voices of those participants known as “sex offender.”
DEDICATION

To All Who Participated in This Research
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>iv</td>
</tr>
<tr>
<td>Dedication</td>
<td>vi</td>
</tr>
<tr>
<td>Chapter 1: The Research Question and Overview of Thesis</td>
<td>1</td>
</tr>
<tr>
<td>Organization of the Thesis</td>
<td>4</td>
</tr>
<tr>
<td>Chapter 2: Methods:</td>
<td>11</td>
</tr>
<tr>
<td>Fieldwork</td>
<td>11</td>
</tr>
<tr>
<td>The Participants</td>
<td>18</td>
</tr>
<tr>
<td>Focus Groups</td>
<td>22</td>
</tr>
<tr>
<td>Interviews</td>
<td>26</td>
</tr>
<tr>
<td>Conducting the Interviews</td>
<td>27</td>
</tr>
<tr>
<td>Creative Non-Fiction</td>
<td>29</td>
</tr>
<tr>
<td>Data Analysis</td>
<td>30</td>
</tr>
<tr>
<td>Combining Field Work, Interaction, and Interview Data</td>
<td>32</td>
</tr>
<tr>
<td>Methods for Interpretation and Analysis</td>
<td>34</td>
</tr>
<tr>
<td>The Hermeneutic Method</td>
<td>41</td>
</tr>
<tr>
<td>Constitution</td>
<td>44</td>
</tr>
<tr>
<td>Chapter 3: Introducing the Legal and Mental Health Systems</td>
<td>48</td>
</tr>
<tr>
<td>Vignette I: A Cyber Chat</td>
<td>50</td>
</tr>
<tr>
<td>Vignette II: Frank</td>
<td>58</td>
</tr>
<tr>
<td>Overview of the Mental Health System</td>
<td>70</td>
</tr>
<tr>
<td>Tests, Evaluations, and Assessment</td>
<td>72</td>
</tr>
</tbody>
</table>
Chapter 1

The Research Question & Overview of Thesis

In the year 2010, Miami Dade County of Florida ordered a group of over one hundred and fifty men to live under a bridge along the Julia Tuttle Causeway. Cable Network News (CNN) reported that these men were required to be in the camp from 6:00 in the evening to 7:00 in the morning. According to the Miami Herald newspaper, the encampment was a "shantytown." According to Wikipedia, "There were tents, improvised wood, and cardboard structures. Some had plumbing and cooking capacities while other residents of the colony shared portable generators for electricity to recharge their cell phones and tracking devices. As the number of residents grew from 2006-2010, The City of Miami and the State of Florida disagreed over who was ultimately responsible for the people living under the bridge" (Sex Offender Colony, 2010, para 4). The story of the Julia Tuttle Causeway and the men who were forced to live there attracted international attention, for it seemed to be a case of forcing people into homelessness. When the lobbyist who wrote the ordinance laws that forced these men to live under the Causeway was also placed in charge of finding them housing, he was met with much resistance from local neighborhoods. No one wanted to live next door to these people, and there was nowhere else for them to go.

Who were the people mandated by ordinance law in Dade County, Miami, to live under a bridge, and in such circumstances? They are the people who have committed crimes we deem so reprehensible that after serving time in prison, on probation, and undergoing various other forms of punishment, we continue to police them. These are the people who have been labeled "sex offenders."
What is a sex offender and how does a person become one? This research project is a study of how people become constituted as sex offenders, through an investigation of the way people (mainly men) encounter the two great social institutions that define them and dictate what, as sex offenders, they must do. These two institutions are the mental health system and the legal system. My profession has caused me to experience these two systems first hand and at close quarters, though it is in the mental health system that I was trained and continue to work. The forensic psychology practice where I trained as a psychotherapist, in a city located in the Mid-Atlantic region, is the starting place from which I began this research. I found myself working with accused or convicted sex offenders, and aspects of their behavior while in treatment struck me as odd and interesting.

Based on my first-person experience as a mental health professional, augmented with interviews, fieldwork, and focus groups with offenders, I conducted this research for four years. This research grew from the fact that I was a therapist in training in the mental health system, so I already knew something about how sex offenders moved through the mental health and legal systems, but I decided I wanted to explore this more explicitly. In order to answer the question of how people become constituted as sex offenders, it seemed to me that it was necessary to explore in detail how sex offenders move through the mental health and legal systems, paying special attention to the places where these two systems intersect. In the chapters of this thesis I will propose that the two systems clash and place the 'offender' in impossible situations, in double binds.

"Sex offender” is not a natural category; it is an institutional category. In fact, sex offender is both a mental health classification and a legal system category. As I shall
describe, these two ways of defining a sex offender often clash. In clashing, the two systems demand very different things from the sex offender and make it at times impossible for him to find his way out. The result is that these clashing demands create double binds, contradictory and impossible demands, and set the sex offender up to fail, in one system or in both. As a sex offender moves through these two systems, they are forced to navigate them in particular ways.

While it might seem that the most valuable form of research on sex offenders would be efficacy studies of treatment or focused on decreasing recidivism, the method I have used does have implications for the efficacy of treatment, while at the same time it speaks directly to the issue of the problems and difficulties that sex offenders have to deal with after they have been convicted and are in treatment. The question I set out to answer was not how therapy can help offenders, but rather what therapy does to constitute someone as a sex offender, and what legal system management does to constitute someone as a sex offender. And, most importantly, what happens when these two systems intersect to create contradictory demands that the sex offender must navigate?

In the following chapters I will spell out in some detail the organization of the mental health and legal systems, at least as far as sex offenders are concerned, and what these systems force them to do. The consequences for the sex offenders who must of necessity navigate these two systems are multiple and extraordinary, as the systems produce practices that I will argue are both impractical and unethical.

If constitution at the intersection of these two systems has negative consequences for the offender (double binds, impractical and unethical practices), what impact might
this have on the clinical work of mental health professionals, and on the way the offender will participate in this clinical work? What is the likely impact on legal workers and how they are able to manage offenders? If both mental health and legal professionals are asking the sex offender to engage in contradictory behaviors in order to "succeed," what are the consequences of these expectations? The interviews and focus groups that I conducted provide the answers to these questions, exposing the unethical and impractical practices of mental health and probationary workers, within the context of the systems at large, and other demands these two very powerful systems make to people constituted as sexual offenders.

Organization of the Thesis

This introductory chapter provides an overview of the research project as a whole, introducing both the systems and the experts that work within them: both the therapists who treat the offenders and the probation officers who manage them. However, the primary voice represented in this research is the voice of the offender himself, who has in most research been ignored or silenced. As we learn what a sex offender is and how this categorization has evolved over time and continues to evolve, we learn what someone must do to navigate the demands made by both the mental health and legal systems.

My participants consisted of eight male sex offenders, each of whom I interviewed for one hour individually. These men also participated in two separate focus groups held one month apart, each for 1.5 hours. All participants are identified by pseudonyms (Greg, Frank, Steve, Alex, Bubble, Bob, Louis, and Ronald). The men's ages ranged from 25 to 55. Other people who contributed to the study included two mental health professionals (their pseudonyms are Dr. Smith and Dr. Oscar), two state
probation officers (Agent Jim & Agent Joe), and one probation officer who is also a mental health counselor (the "county probation officer"). One criminal defense attorney was interviewed (Attorney Ryan or "Mr. Ryan"), and one polygrapher (Dan) volunteered to be interviewed. "Dan" was the polygrapher that Dr. Smith contracted to administer all polygraph exams at the mental health practice. I attempted to interview Case Managers and the director of the Halfway House that is described in Chapter 6, emailing a request for participation and including consent forms that explained that participation was confidential. However, I was denied access and told that I was not welcome to interview the employees of this Halfway house. I also sent a letter to the federal probation office, explaining the purpose of the research and inviting participants, but here too I was told that the officers were not allowed to speak to me, though the reason why was never made clear.

Chapter 2 provides a description of the design of the research study and the methods used to collect data, which are fieldwork, interviews, and focus groups. My fieldwork was conducted at the office of Dr. Smith and the places where his office extended to the legal system. I wrote detailed electronic and handwritten notes, which were organized in such a way as to define the order in which topics appear in this thesis. The interviews and focus groups were arranged by typing and distributing an advertisement to all five group therapies at the office of Dr. Smith, inviting people to participate. I sat in those groups and explained the research once the advertisement was handed out. It was during the time I sat in these groups that I was confronted with resistance and distrust about what it might mean to talk with me. Some of the men wanted to know, "for what purpose would this information be used and how do we know
to trust you?" One particular man, who ended up not participating, stated, "nothing is confidential, not when it comes to us," a provocative statement that became extremely relevant to this project and is further explored in Chapter 7, under the subheading "Confidentiality." The men who wanted to talk to me were asked to phone the secretary of the psychology department. I phoned them back to set up an appointment to meet, in the office of Dr. Smith because this was usually most convenient for the participants. I scheduled appointments to meet with participants for interviews either before or after their own therapy appointments. Chapter 2 further describes the research philosophy and purpose, how data was collected, organized, and analyzed.

Chapter 3 begins with a vignette that illustrates how a person can becomes a sex offender in the process of "cyber chatting." The vignette raises the question: who is the offender and who is the law enforcer? Chapter 3 further investigates how the internet has created a whole new class of criminals and the lengths to which the professionals in the legal system are pledged to seek out and hunt them down.

Furthermore, this chapter introduces the mental health system through a second vignette, that of Frank, and provides an introduction to how the mental health system functions and what treatment does to constitute someone as a sex offender. Frank's case exemplifies mental health system practices and shows some important aspects of the linkages between the legal system and the mental health system.

Chapter 4 describes the expectations of the mental health system for a sex offender moving through it. "Confession" is something expected in both the legal and the mental health systems, but it is treated very differently in the two. A sex offender is rewarded for confessing in the mental health system, but punished for the same
confession in the legal system. This is one important example of contradictory demands that trip up many sex offenders.

The case of Greg provides an illustration of an offender's pathway through the two systems. Greg's pathway illustrates how someone can become a sex offender by viewing online pornography. It raises questions about how someone becomes defined as an offender through use of technology, which enables both his crime and later his punishment in the sense that his photograph and private identifying information were registered publicly on a state-run website for public viewing. It also raises the issue of how illegal pornography is defined, and why viewing it is a crime. Greg was himself a lawyer, but despite his legal expertise he, like many other offenders, could still follow all the rules (passing polygraph exams, for example) and yet still get stuck in the combined systems.

Chapter 4 also explores how sex offenders become involved in the mental health system and the legal system at the same time. I take the reader on a tour through some of the landscape of these two systems, starting from the forensic practice where I trained and worked. I will show how the tangled pathway through these two systems defines demands that can become incompatible. I also show why it is so difficult for offenders to get out of either one or both of these systems.

Chapter 5 demonstrates the variety of types of offender and how they are defined by the mental health system's categorizations of "paraphilia" and the legal system's "Tier classifications." There are times when these labels fit, and times when they clash. Typically, sex offenders are labeled in the mental health system with a particular paraphilia, and they are then punished by the legal system's Tier classification. The
mental health system expects sex offenders to change, and aims to stop offenders from committing new crimes. However, as a consequence of the current sex offender laws and the trend toward harsher legislation, the legal system conceives of and treats sex offenders as criminals who will continue to commit crimes for the rest of their lives. These different kinds of classification lead to contradictions and define double binds.

Chapter 6 explores the ways treatment and punishment both are and are not combined, by identifying and exploring the demands of the two systems and the double binds forced upon the offenders. The chapter opens with the case of Steve who, like the other participants, did not attend treatment while he was in the prison system, but was expected to toe the line when he was released to outpatient treatment.

The chapter also provides a chorus of participant voices as they tell their stories in the focus groups that I arranged, stories about the contradictory demands the systems place upon them and the double binds they are forced to navigate. The excerpts in this chapter illustrate sex offenders’ fears and frustrations. In their individual interviews, the participants spoke of the struggle required to manage the two systems, and their dawning recognition that they were ultimately set up to fail. This chapter illuminates the problematic nature of the intersection of the two systems.

Chapter 7 distinguishes and defines two different treatment approaches that are practiced within the mental health system: treatment-as-management and treatment-as-rehabilitation. I show how the legal system aligns with only the first of these. The egregious consequences of management approaches are traced here, and I show how sex offenders are forced into homelessness, joblessness, and may become the victims of vigilante violence. Treatment-as-management approaches have proven to be unethical
and impractical. They violate the constitutional and human rights of the offenders. Management practices do this because they are intended to protect the community from sex offenders who will commit more crimes. In reality, management laws do not stop offenders from reoffending, but they do violate the rights of the offenders. Treatment-as-rehabilitation is explored in this chapter as an alternative method for treating sex offenders, but it too has its problems. While treatment-as-rehabilitation may foster an alliance between the sex offender and therapist, it creates tension between the therapist and probation officer. In comparison, treatment-as-management generally creates alignment between therapist and probation officer but it alienates the sex offender. Either approach creates a dynamic split within the triad.

In addition, this chapter investigates where the systems fit and where they clash. Because of the impractical and unethical practices I propose a call for action that aligns with what is known as the philosophy of therapeutic jurisprudence. In other words, sex offenders should be able to exercise their right to autonomy and choose whether to participate in treatment in the mental health system. An exception would be for "high-risk" offenders, but the burden should be on the State to prove that an offender meets the criteria that define high-risk status.

Chapter 8 concludes with a summary of the main points in each chapter and draws some overall conclusions about the ways that people become constituted as sex offenders. This chapter also addresses the possibilities for moving forward, with a suggestion about what a call for action might concretely look like, and some proposals about what might remedy the impractical and unethical practices of the two systems. The chapter ends with
suggestions about how to improve the work that mental health and legal professionals do with sex offenders, by prioritizing both community safety and sex offender rights.
Chapter 2:

Methods

In this chapter I will outline the design of the research, the methods used for data collection, the participants, and the methods of analysis. The research was designed to answer the question: how do people become constituted as sex offenders at the intersection of the mental health and legal systems. There are three methods in which I collected data for this project. The first was the collection of field notes, the second was two focus groups I conducted with the sex offender participants one month apart, and the third method was the interviews I conducted with sex offender participants and the professional members of both systems. All forms of data were analyzed in the service of answering the research question. The analysis section of this chapter consists of four separate subsections, which includes my explanation of how I utilized a phenomenological and hermeneutic method with a focus on constitution. The following chapter contains 11 parts: the Fieldwork, the Participants, the Focus Groups, the Interviews, Conducting the Interviews, Creative Non-Fiction, the Analyses, Combining of all three methods, The Hermeneutic Method, and Constitution.

Fieldwork

I trained as a therapist at the private mental health practice of Dr. Smith from 2009-2012. I began my research at the private practice of Dr. Smith in 2011. It was at this mental health practice that I had already trained as a therapist with sex offenders, so my clinical training informed my data selection for this dissertation in ways that became apparent through the process of analysis.
It was in 2011 that I officially became a researcher at the practice of Dr. Smith and my first task was to collect field notes. Dr. Smith's practice was one such place where the fieldwork I conducted took place; his practice was the beginning of what then led me to travel to other locations that also made up "the field." My field notes were collected through writings in a notebook and at times observations that were typed on my personal laptop. I recorded these observations of the ongoing practices, the average everydayness of what occurred at the office. What I observed was already informed by my training as a therapist there. Only now as researcher, I was able to make explicit the problems I observed sex offenders and mental health workers encountering. Both the offenders and the therapists talked frequently with and about members of another system, namely, the legal system, a system that was foreign to me at first, but I had become progressively familiar with it by being a therapist in the mental health system and more explicitly familiar with it as researcher. I observed and documented how it was that therapists saw their roles in the practice and the dailyness of the work they did as much as possible. One very critical part of my fieldwork took place after group therapy sessions. It was a regular practice for my co-therapist and I to "debrief," after a 1.5 hour group therapy session, only our discussions had begun to become considerably more concerning to me, in that it seemed the work we were trying to accomplish was at times at odds with the goals of the probation officers and legal system as a whole regarding the way laws were written and enforced. Although my co-therapist and I had been meeting after group therapy for a couple years prior to my research, it was in 2011 that I began to document the issues that we spoke about. One of the field notes I documented was our disbelief after a group regarding what is known as public registration, a requirement of most sex
offenders who are managed by the legal system. Two of our clients (sex offenders) at the
time had brought letters into group stating that they were going to be registered for life on
a public registration site known as Megan's List, under Megan's Law. This law is
described in detail in Chapter 4. Both sex offenders had originally been registered for 10
years and now they were receiving information via a generic letter that their registration
period was being increased to their lifetime. This was as confusing to me as it was to the
men whose life this amendment impacted. All the men who sat in our group had already
served time in prison, a half way house, and were being monitored by a probation officer.
So I wondered what the purpose of Megan's Law actually is. Was it setting out to do
what it aimed to? I did not yet know the answer to these questions that I documented as
field notes. I asked my co-therapist who had been working in the mental health system
for many years before me "Can our client’s time on Megan’s Law be extended at this
point? Can their lives be turned upside down so arbitrarily, without explanation, and what
does this mean for our work with them?" It was at that time, we were working with the
men to try to help them lead healthier, offense free lives that were typically the goal of
treatment. The therapeutic group setting provided peer support and interaction and ways
of being challenged by others who had to walk the same path or make a similar journey.
Many of the men had wagered their ability to achieve the above mentioned therapy goals
once they were to come off of Megan's list and several of them had less than five years
left, but this new letter threatened to alter their lives in drastic ways.

Field notes also documented the binds offenders found themselves in, which later
helped to form interview questions. For example, it was not uncommon for offenders to
become tearful, angry, frustrated, paranoid, and hopeless about their personal
relationships in this group setting. One of the rules offenders had to follow was that they were under no circumstance allowed to be alone around minors (anyone under 18) without court appointed supervision, at the very least. I learned this and documented through field notes some of these rules or "probation stipulations," as the men disclosed them. I then confirmed these set of rules with the state probation officers I eventually interviewed. Two sex offenders in particular talked about how their probation officer said they could no longer date their current girlfriend because she had a child. One of our offenders revealed he had to sneak out during lunch break to the mall to see his girlfriend at the crowded food court, at the risk of violating his probation, but she grew tired of that and wanted to end the relationship. Another member, whose crime was strictly internet related, was restricted from seeing his own children without a court appointed supervisor. In many cases, this seemed like an appropriate safeguard, but in others whose offenses were internet related or were never hands-on offenses, in other words, they never touched a child, I wondered how practical these stipulations actually were. It seemed the rules were blanketed and did not apply to offenders on a case-by-case basis.

These field notes were an ongoing process of documenting observations as they naturally occurred at the practice of Dr. Smith and locations his practice led me to investigate. One of the things that struck me most was when offenders talked about difficulty finding a place to live. This problem became more apparent in the interview process, but disclosed itself as a problem during the fieldwork. One member in my therapy group talked about living in a local community, "where the state sends all the sex offenders that don't have anywhere else to go, when no one will take them, when their
family has turned their backs, and when the local community won't rent to scumbags like us!"

I heard two therapists talking in the hallway of Dr. Smith's practice about their offenders having problems finding a place to live. It seemed that this was becoming what the offender talked about in treatment. One therapist jokingly stated, "Well, he can always go to Riverbridge (pseudonym)." The offenders would sometimes say the same in group therapy. "Why don't you come to Riverbridge; everybody in Riverbridge is a sex offender!" Through field notes I became aware that there was a place in town where sex offenders were being sent to live. Field notes helped me to learn the scope of the field, the places where it extended beyond Dr. Smith's office, and as a result, I spent a full day in the town of Riverbridge.

Riverbridge is a small income neighborhood, outside the main city. I went with a co-worker and we explored the location, the apartment buildings that the sex offenders were renting. It was not yet clear how or why they all went to live there, who sent them,, but it was clear the offenders who did live there were living in slum conditions. I soon discovered that although they were not living under a bridge like the Julia Tuttle Causeway in Miami Dade County, the conditions in which they were living was not much of an upgrade. This particular location and its story are further explored in Chapter 7 combined with interview data from an offender who lived there at the time of the interview.

Another critical part of conducting fieldwork was when I accompanied Dr. Smith around the practice to observe his everyday role in the practice. He communicated with attorneys about offenders, probation officers about offenders who were both doing well,
and those he had concerns about. I also witnessed him not returning calls to other probation officers. It seemed he decided what they needed to know. He scheduled meetings with polygraphers and reviewed cases with him. I asked Dr. Smith what he felt his role was, what our role was in treating sex offenders. He stated that "we can't stop them from reoffending, but we can try to slow them down." Dr. Smith and I also talked about what seemed like an increase in internet sex offenses over the past several years.

During my field data collection, I had read several cyber chat transcripts that belonged to the men's mental health file, and we also discussed the content of these chats in the group therapy sessions. The first vignette that appears in Chapter 3 is a composite sketch of the multiple chats I read and/or discussed in group therapy, while conducting field notes.

My fieldwork continued throughout the interviews I conducted, as I traveled to the offices of state parole/probation, a criminal defense attorney’s offices downtown, a polygrapher's office, and a county probation office down by the university and across from the old county jail. I conducted interviews there but also continued to document my observations of the ongoing practices of these places. I documented any naturally occurring event, such as telephone calls they received, at the probation office -- what took place outside the interview, how they interacted with each other etc. The fieldwork was an ongoing process of documentating how things showed up in naturally occurring order. I visited a conference in the same state the research was conducted, only four hours from the office of Dr. Smith and took vigorous notes about the research being conducted there by Dr. Jill Levenson from Lynn University in Florida, regarding the collateral consequences of public registration and residency restrictions further discussed in Chapter 4.
The fieldwork extended even further beyond the places I physically visited, in that just as the crimes of sex offenders have a virtual component, so too does the field where I collected data. I gathered and documented information from the internet. I "visited," Megan's Law website, in the state where I collected data, a place where offenders identifying information, photograph, and addresses are listed for public display. I visited the official website of Parents for Megan's Law (PFML), a group I learned about from the conference I attended. PFML is a non-profit organization run by Laura Ahern, a concerned parent, dedicated to tracking sex offenders in communities nationwide. I also visited news sites and online newspaper articles to retrieve information about the Julia Tuttle Causeway and other places where sex offenders are or were living that are considered "homeless," dwellings, like Miracle Village in Florida. I set a Google alert for any information related to public registration laws, as my research was being conducted during a time in which laws were changing to become more restrictive.

There were also places I tried to go and was rejected from entering, such as the Half Way house where some of my participants had lived. After emailing a copy of my announcement for participants and consent forms, I was told by the case manager there that he was directed "from above," not to participate in my research, but it was never made clear why. I also contacted the local Federal probation office because so many of my participants were on federal supervised release or probation and emailed the announcement and consent forms of my research. I was told by one of the federal probation officers that supervised some of the offenders I worked with that neither she nor any of the federal officers were allowed to participate in the research project. The state probation office did grant me permission through their central office to interview
their probation officers, who expressed interest in talking. However I was told that if this project was ever published, it had to be reviewed by the state parole’s central office in the state where my data was collected. In the end, the parole/probation officers did speak freely to me, but under the agreement that I show them the finished document if I ever chose to publish it. After the state parole office reviewed it, I agreed to modify any interview data they expressed concern with. During my interview with one state parole/probation agent/officer--he commented at times that he needed to be careful about what he said, regarding "what they are supposed to do and what they actually do." These comments too became part of the fieldwork.

The Participants

The interview participants began with eight sex offenders who volunteered. Because I already knew as a therapist that it would be ideal for answering the research question to get participants who were at various stops along their journey through both systems, the three main vignettes chosen represent different stops along the journey, different convictions in the legal system, and different diagnoses in the mental health system. The 8 male offenders are all identified by pseudonyms.

"Greg" is a male in his 50s, a certified attorney, and someone who shortly after our interview, managed his way out of the mental health system. However, Greg remained in the legal system, serving time in the federal system on supervised release status (probation), and registered for 10 years under Megan's Law at the time this data was collected in 2011. As of December 2012, he is considered a Tier I offender under the federal crime code US045 "Possession of Material Depicting the Sexual Exploitation of a Minor," under the Adam Walsh Act, which is the latest amendment to Megan's Law,
which means he will now serve 15 years publically registered. Greg was first arrested but before he was charged and convicted, he began to see Dr. Smith for treatment voluntarily. After he was officially convicted with possession of child pornography, he continued treatment, which was mandated at that point. He is categorized by the mental health system as someone without a diagnosis or a deferred diagnosis, which means that at the time of evaluation, it was unclear if and/or what diagnostic criteria matched Greg. Yet despite not meeting criteria for a diagnosis, he was mandated to treatment.

"Frank," is a male in his 40s, who was newly entered into the mental health system. After serving nine years in federal prison, he was facing several more years on federal supervised release. When I met Frank, the end of his mental health treatment was nowhere in sight. He was convicted with possession of child pornography, and corruption of minors. He is categorized by the mental health system as "Pedophilia, non-exclusive type," and he was registered as a 10-year registrant with Megan's Law, he now is classified by the legal system as a Tier II offender, which amounts to 25 years of public registration.

"Steve," is a male in his early 40s, who had spent decades in the mental health system, even before he was charged with a sex crime. When I met Steve he was attending treatment at Dr. Smith's office voluntarily, which is not very common post legal supervision. However, unlike all of my other participants, he had found his way out of the legal system, in part due to the fact that when he was convicted of his crime, he was not registered with Megan's Law. "Steve" has been categorized by the mental health system as an "exhibitionist," and although he was convicted multiple times with "disorderly conduct," he does not have a legal classification.
These participants are the main three represented throughout this dissertation. However, the voices of several others play a key role in exemplifying not only the various station stops along their journey through both systems, but the contradictory practices of the two systems as they navigate their way through them.

"Bob" is a male in his 30s. He was someone who struggled to secure a job when I met him and talked about the ways in which he navigated this serious problem. Bob was facing several more years on supervised release by the federal system and was also being supervised by the state system for six months, due to his failing to report to the state that he lost his job, because Megan's Law was being handled by the state at that time. Bob spent one year in the mental health system when I met him, categorized him "Mild Adjustment Disorder with Mixed Emotional Features, Negativistic and Avoidant personality traits with Dependent and Depressive features, and later diagnosed with Pedophilia non exclusive type," and the legal system classified him under Megan's Law as a 10 year registrant, but currently a Tier II offender under Adam Walsh, serving 15.

"Louis," is a male in his 20s, who had served time in federal prison for up to five years and on supervised release in the federal system. He was convicted of possession of child pornography, a 10 year Megan's registrant, now currently a Tier I offender. When I met Louis he had nowhere to live and ended up in the town where offenders go when there's nowhere else. Louis was unaware of his mental health diagnosis.

"Bubble," is a male in his early 30s, living in the half way house at the time I met him for interview. He was allowed out to Dr. Smith's office for treatment and given permission by his caseworker to spend extra time meeting with me for interview. There was concern by Dr. Smith and "Bubble's" therapist that he may take advantage of the
extra time and I should be cautious about setting boundaries with him about the time he
had to talk with me. We met for 1 hour like the other participants for interview. Bubble
also participated in a focus group for 1.5 hours. Bubble was newly entered into the
mental health and legal system. He had served a couple years in prison and had been in
the half way house for several months. He was convicted for possession of child
pornography. I am unaware of how he was categorized by the mental health system. He
was classified as a 10 year Megan's Law registrant, and a Tier I offender under Adam
Walsh, to serve 15.

"Alex," is a male in his late 50s who had spent up to five years in federal prison
and had been in the mental health system for at least one and a half year. He was serving
one year on supervised release under the federal system. He was convicted with
"Activities Relating to the Material involving the Sexual Exploitation of Minors." He was
categorized by mental health system as Depressive Disorder NOS, "Pedophilia, non
exclusive type, and Alcohol Abuse in a Remitted State" and classified by the legal system
as a Tier III offender, which means that Alex is to be registered for his lifetime. Alex
was considered a "provocateur" and "litigious" by therapists at the practice in that he
challenged both systems in their contradictory practices and made himself known.

"Ronald," is a male in his 30s who had spent up to five years in the federal
system. He was convicted with possession of child pornography, which earned him 10
years on Megan's and now as a Tier I under Adam Walsh, he serves 15. He had been in
mental health treatment for at least four years and the legal system for up to ten years.
Ronald was the member of a sex offender peer group with its own website called Reform
Sex Offender Laws or (RSOL). They dedicated their time to building a website that
listed updates and ongoing information about the changes in sex offender laws and when offender laws are violating constitutional rights. Ronald was the only participant that was an active contributor to this group and none of the other offenders knew about it.

The rest of my interview participants consisted of three mental health professionals and one who was also a county probation officer, from the practice of Dr. Smith, two state parole/probation officers, a defense attorney, and a polygrapher.

While the sex offenders represented different station stops along the way of their journey through the systems, the mental health and legal professionals represented the systems and how they take up their roles in them and reproduce their ongoing practices.

Focus Groups

A focus group is a form of qualitative research meant to get people talking about a particular topic(s). It is a group that I facilitated with the aim of encouraging the participants to talk about their experiences to one another about being a sex offender in the context of the two systems. The focus groups organized around trying to figure out how these systems work but also to get a first person account of what it's like to be in these systems and also to see how these people interacted together. I knew that I could not study them in therapy but that I could create these groups to access the experience of my participants. The structure of the focus groups were in fact guided by my own experience as a therapist in training at the time, in that I already knew from running group therapies that people who sexually offend had to answer to the demands of both systems, but I did not yet know explicitly in what ways they negotiated these demands. I also from being a therapist how to organize the room, set a 1.5 hour time limit, and facilitate the group by asking questions relevant to the research question. I facilitated a
focus group that encouraged the participants to interact with one another and speak as they had already been accustomed to in a group setting but with a different context for understanding their experience. The topics that became the focus of the group would be determined by the participants.

I selected my participants by first circulating an announcement at the mental health practice of Dr. Smith, for participants to volunteer. I typed up this announcement explaining briefly what the research was about and that I sought volunteers for semi-structured focus groups. I distributed the announcement seeking sex offender volunteers at the beginning or end of each already organized weekly group therapy session (there were five) at Dr. Smith's practice. For those who were interested and inevitably did volunteer, they contacted the University Psychology Department and spoke with the department secretary, giving their first name and call back number. Prior to conducting the focus groups with sex offenders and all other participants, a consent form was thoroughly read and signed by each participant, giving them a chance to ask questions. The consent form made clear the purpose of the research, how collected focus group data would be used, that all identifying information would be anonymized, and that if at any point during the research, the participants wanted to back out or retract any information they provided, I would eliminate their participation in the study. It is also important to note that the consent form made explicit that in no way would their participation affect their treatment or legal status, for better or for worse. The informed consents also explicitly stated that all focus group audio recordings and transcripts would be destroyed once the project finished.
All focus groups with sex offenders were conducted at the office of Dr. Smith in the group room where therapy normally occurred. We organized at a specific time that everyone agreed upon. Seven out of the 8 sex offender participants that volunteered to be interviewed individually (Frank, Steve, Bob, Ronald, Louis, Greg, Bubble) participated in two groups. For the first group Frank, Louis, Bob, and Ronald participated and for the second group, Bob, Greg, Steve, and Bubble participated. The groups met for one and a half hours like a regular group therapy session. An audio recorder was placed on a table with a lamp behind me. We sat in a circle and I began the group. I explained to the four participants each time that I would begin and that I wanted them to talk with one another about what topics naturally showed up as we went along. I further explained that my role would be to ask follow up questions with the purpose of gaining further understanding toward answering my research question, in other words, I explained that I was not in a therapeutic role. It is important to note here that none of the members of these focus groups or any of the focus group or interview data I collected were from the sex offenders I had seen in treatment as a therapist. Because some of the men were meeting for the first time and did not already share a treatment group, they already had different ideas about how therapy should be run. I explained that this was an open forum to talk about what's on your mind. My aim was to facilitate an interaction and get the participants talking to one another. I began by asking everyone to go around, introduce himself and say a little about their offense. After all the men were introduced, I asked for a volunteer to begin by talking about how they got to Dr. Smith's office, what was happening in their lives, how did they see themselves moving toward the future, and what was in the way of that if anything? While I initiated the questions and facilitated this
group, the topics that arose were of a wide variety. They included the places where the offenders felt they were stuck, where they were struggling and everyone felt that there was some point that this happened to them, be it now or in the past, or in anticipation of the near future. Other topics that arose were Megan's Law, the upcoming changes to Megan's Law with the Adam Walsh Act on the horizon, the Polygraph, Fears of community retaliation, views on treatment and therapy in general, what was helpful and what they felt was harmful, trouble finding work, a place to live, and in general forming healthy relationships. These particular topics became relevant in answering the research question--learning how offenders traveled through the system, the points where the systems intersected, at times forming contradictory demands and what became known to me as double binds, and the places where offenders managed to negotiate their way out. All of these components worked toward answering the question -- how they become constituted as offenders.

During one focus group, the members talked about difficulty finding work and what they all did as a last resort. There was a place the half way house was referring people to work downtown. This became part of my data and is further explored in Chapter 6.

It is important to note that the purpose of the focus group was to learn how the offenders interacted with one another, as they normally would in a group context. During one focus group excerpt included in this project, the offenders discuss the polygraph exam. Some of them share similar views while another offender is challenged for being what they perceive to be naive or misinformed. This interaction reveals a pivotal time
each of them must face at the intersection of both systems--taking the polygraph exam and the possible consequences if the offenders do not pass.

**Interviews**

The narratives of sex offenders are consistently left out of both mental health literature and more commonly left out of criminal justice literature. By having interviewed the offenders, their words literally became part of the discourse that for the most part silences them, but asserts what may be best for managing and treating these people.

Similar to an interaction, as described in the focus groups, I tried to select interviewees who were at different station stops along their journey through these two systems. The notion of selecting people to represent these different stops was based on what I already knew as a therapist so they were not selected randomly. The same sex offenders that volunteered to interact in the focus groups were also the ones that volunteered to be interviewed individually.

My approach for soliciting participants was the same as the focus groups. I passed out announcements and sat in the groups. When we met at Dr. Smith's office to review the consent form prior to the interview, it was at that time the volunteers also expressed interest in participating in the focus group and signed the consent form for it. For the actual interviews, I met with the sex offender for 1.0 hour in a private session room at the office of Dr. Smith with a sound screen on outside the door to ensure privacy.

Announcements were also circulated for mental health and legal professionals to volunteer. These announcements briefly explained that I was interested in volunteers for interviews. For mental health professionals, I personally handed to all therapists at the
practice the announcement and for legal professionals, I emailed the announcements. Interviews with legal professionals took place in their offices (office of state and county probation), the polygrapher's office, and the office of one criminal defense attorney. Interviews with therapists took place in their professional environment as well, the practice of Dr. Smith.

Conducting the Interviews

The interviews I conducted were semi-structured and therefore allowed the participants and me to explore the significant issues that arose. Having conducted the individual interviews with members at different stages, the pathways themselves became clearer as well as how they took up their position at that particular stop along their journey, what they were doing to navigate their way toward the future, and how they felt about themselves.

The order of questions were not prescribed before the interview, only the first question was clearly relevant to the research question and open ended. I began by asking the sex offenders questions related to immediate circumstances. In some cases I asked where they had just come from, where they were planning to go when they left the practice, and what their day or week had been like. For many I asked what were some of the main concerns they were dealing with. I asked how they saw themselves moving toward the future and what might be standing in the way. The more current and in vivo responses offered, the more immediate the access to the everydayness of being a sex offender in the context of the two systems. I asked questions by saying, "Tell me about what led to you being a client at Dr. Smith's office, how did you get here, and what's next?" These questions provided more open-ended responses as opposed to questions
that elicited a yes/no reply. At this stage of the data collection, I was also interested in the question of self-constitution. In other words, how has the offender become an active agent in constituting himself as an offender? How does he take up his participation in the mental health and legal systems as we sit and talk. So I asked questions such as: Can you start by talking about how you got to Dr. Smith's office, what are some of the issues you are facing right now, and how do you see yourself moving forward toward the future?"

For the interviews conducted with mental health and legal professionals, we met for one hour. The aim of these interview questions were also designed to answer how people become constituted as sex offenders, but from a very different angle--by talking to those who are responsible for managing and treating them. Interview strategies with the professionals were also semi-structured. When I interviewed the mental health professionals, I began by asking them to talk concretely about particular cases without identifying the person. With Dr. Smith, I asked him to talk about what happens when sex offenders first enter his office? How do they show up at his office to begin with, which refers them there? I then asked him to talk about particular cases that represented times when he evaluated someone in the mental health system, what steps he took to get there, what he did, and what was the outcome. I asked him to talk about times when he has had to disclose information to the legal system and how he handled that. I asked other therapists to talk about their cases, what they did in treatment with sex offenders, as well and under what circumstances they needed to communicate with probation officers. At times, therapists disclosed some of their frustrations and the challenges of working with sex offenders in the mental health system. For legal professionals, I asked them (state parole/probation) to do the same--how do people show up at his office, become released
from prison and under supervision. I asked the probation officers to ground their responses in particular case examples as I did with the mental health professions. I asked them to talk about their relationship with the mental health system and the therapists who treat the offenders they manage. I asked the probation officers to talk about the typical cases they see and manage and what they actually do to manage them? I asked them to talk about what challenges they encounter? When I met with the Polygrapher, I asked him to talk about how and when he gets involved with testing the sex offender, under what circumstances does this happen, and how does he see his role in the context of the two systems that treat and manage the offenders?

Interviews of sex offenders and professionals aimed to answer the research question. For the fieldwork, my aim was to discover--where do I need to go to find the answers, what is the field and where does it extend. For the interaction, my aim was to explicitly investigate--what happens when sex offenders interact with one another, what is there to learn about the research question in the group context. And for the interviews, my aim was to understand how do the offenders play an active role in becoming who they are in context, what is their participation in all of this.

**Creative Nonfiction**

This research project is written in the form of creative nonfiction, a literary genre dedicated to presenting accurate facts but fictionalizing details that threaten to expose the identity of the participants. For example, the description of the fieldwork was used to portray a story that was journalistic in nature, as I went out into the field to investigate phenomena and followed the story where it led, but these descriptions had fictional components. The name of the actual town (Riverbridge) and the place where participants
worked (Chocolate Paradise) were anonymized, as were the names of the people I interviewed. The vignettes demonstrated a factually accurate portrayal of the participant’s experiences, but their names were fictionalized, as were some of the details involved in their stories when those details would have revealed a participant’s identity. A primary example of this was the first vignette of the cyber chat, which represented a composite of information I gathered from listening to stories clients in treatment revealed and from the transcripts of cyber chats I read at the practice of Dr. Smith. All information was anonymized and the chat itself was presented in order to protect identifying information. Overall, the method of creative non-fiction best served my aim to appeal to a general readership, through a hybrid of investigative journalism and psychological research methodology. I came to recognize that the method for writing this project was best suited by creative nonfiction in that it gave me the freedom to portray the story of people’s real life experience in context, while fictionalizing details in order to adhere to research ethics.

Data Analysis

The analysis of the field notes was in the writing of them. The field notes helped to identify what the field actually is, where it extended, where I needed to go to document naturally occurring interactions, and it also laid the groundwork for the questions I later came to ask in my interviews and focus groups.

Before the focus groups were analyzed, I first transcribed them from the audio recorder I kept. From there, I picked out certain statements that seemed particularly relevant to answering the research question, paying particular attention to moments when the member's interaction became intensified by their convictions, emotions, and strong
statements about their position as a person who must answer to the demands of both the legal and mental health systems. The focus group data allowed me to compare the offenders, in terms of where they were at different stops along their journey. I compared people, their statements, and paid close attention to what they had to say about their struggles. I was able to use the data to develop the vignettes for this project and other significant excerpts that appear in Chapters 6 and 7. I selected these things as they seemed particularly exemplary of the offender's stage in their journey, and I also became aware of the variety of combination of stages that one can take through these systems, during this interview process. The contradictions of the two systems began to show themselves in these interactions as well, as did what later became defined as the "double binds" the sex offenders were forced to manage.

The interviews were also transcribed, only the interviews were not about a group interaction but how they talked with me about their position in the mental health and legal systems and more specifically how they too played a role in constituting themselves as sexual offenders in context. After the interviews were transcribed, I picked out particular statements, phrases, and excerpts to make up what I believe to be illustrative and exemplary points that I came to identify as central. These particular interviews also helped me to see how the offenders took up their role in the two systems, the things they did to navigate their way through double binds and contradictory practices, for example how they found work and a place to live against all odds. These interviews helped to articulate the things I already knew from encountering the hundreds of people that came through Dr. Smith's practice and the twenty-five plus that I had worked with over the course of three years as a therapist in training. Although, I began in a professional role in
the mental health system, I soon realized these systems address each other regularly and that there are places where they intersect in their ordinary practices. Therefore, I am a member in both systems, and it was not until I became a researcher that I explicitly began to recognize that like the people we call sex offenders, I too am caught in these two powerful systems.

The interview analysis also included first the transcriptions of the mental health and legal professionals and then the analysis of what was typed from my audio recordings with them. As I did with the sex offender's interviews, I also chose particular statements, phrases that I felt were exemplary of the role they played to reproduce the practices of both systems. When my participant known as "Agent Jim," explicitly talked about the offenders as "cretins," and that he saw his job as gaining as much information from mental health therapists as possible because most offenders are manipulative and lie, his position became very clear, quite obvious in fact. Because Agent Jim is someone in charge of managing sex offenders, he plays a role in reproducing the practices of one of these powerful systems. Dr. Smith's interview provided similar data when he talked about how he comes to decide whether to assign someone to a treatment group, in other words whether they become part of the mental health system or not. Overall, the interviews played a critical role in choosing what data would eventually be chosen for the data represented throughout the chapters of this project.

**Combining Fieldwork, Interaction, and Interview Data**

Fieldwork is an essential tool for studying how things and people show up in context, who the participants are, and the key informants or authorities as they come into being. But the knowledge that becomes available is how things and people show up in
context when two (or more) separate entities come into contact with one another, in this case myself and the practice of Dr. Smith. The reflexive position of the researcher is therefore critical for discovering everything about the question of constitution, because it is the researcher that is recording data while involved in the field. Fieldwork allows the researcher to be immersed in the field. I do not step outside or inside of the field in order to study the participants, I became a part of the field I studied and therefore tell a story of constitution from within. Packer emphasizes that fieldwork should be accountable to the form of life I study; it should be available to the people I work with, perhaps written with these people, "the message a negotiated one" (Packer, 2011, p. 445). While fieldwork helped to see how the field is assembled, its parameters, its limits, and how far it extends, and interaction are that which produces and reproduces its practices. Studying naturally occurring interactions of sex offenders in context by studying their speech acts is one such way to answer the question of how they become constituted in context. Fieldwork and interaction overlap and work to inform one another.

These interviews provided varying perspectives on how members travel through the mental health and legal systems and the stages they encounter along the pathway. Interviewing helped me not only to see how different participants take up their position at various stops along the journey they travel, but also how they begin to self-constitute or order themselves as subjects of inquiry. Fieldwork shows us the limits and boundaries of the two systems, and the people involved, while interaction helps us to see the ways in which the 2 systems are ordered as well as the relations of power that produce its order. Interviewing allows us to investigate how the participants and those in charge are also constituted. All three data tools assisted toward answering the research question of how
people become sex offenders in the context of these two powerful systems. These data tools are ways of accessing and analyzing the practice of Dr. Smith, only one place offenders encounter the legal and mental health systems, but arguably one that is rich with participants who represent various stops in the journey they take through this practice.

**Methods for Interpretation and Analysis**

In order to interpret and analyze the data, I drew from methods that catalogue the history of my own education in existential-phenomenological psychology and qualitative research. My method is experiential in that when I sat with my participants during interviews and the focus groups, I utilized forms of empathy to access their experience. What was communicated during the interviews and focus groups was accessed not only through what was said but what was revealed in the way it was said—my access to my participant’s experience occurred while paying attention to and being reflective of that which was co-created in the interviews. The methodological framework for which I analyzed incorporates, the phenomenological and the hermeneutic with an emphasis on constitution.

My approach to analyze the research data began when looking back to what was actually happening with my research participants when I sat with them and engaged their experience in the room. My role as a therapist in training played an undeniable role not only through the collection of my data but its analysis. An example of this is on page 52, the first Vignette, I stated that the two people chatting over the period of many months had reached a point when they anticipated seeing one another. The way this data was both collected and interpreted was greatly informed by my experience working with people
who sexually offend in therapy, talking with them about cyber chatting, and staying with what revealed itself. I did not have to engage in a cyber chat room myself to gain access to the experience of someone who had. Through reading multiple accounts and more informatively sitting with people who had engaged with them, I was able to access their experience by listening to what they said and what they revealed about themselves in doing so. Not every one who sexually offends has the same experience of cyber chatting or getting caught. When I reflected back to times I had sat with people who had been arrested, charged, and convicted for sexually offending by way of a chat, I intuited their sense of being compelled to seek out or take the next step to meet the person they had fantasized was real. It was necessary to portray their experience in this way to show that when people did travel with anticipation, the experience of being caught was typically taken up as feeling tricked, deceived and sometimes relieved. (Greg talked explicitly about this relief when the feds came into his office to arrest and seize his computer.) In order to make the leap from presenting a chat to being able to say on page 52, “ThckOne couldn’t help but anticipate meeting “Bemyval13,” I did what a phenomenological researcher would do to interpret this data, which was to empathize and “co-perform” (Dilthey) the other’s lived experience, and present it in writing in such a way that reflects that person’s experience in context.

Dr. Scott Churchill, psychologist and qualitative research methodologist, writes about practicing a phenomenological method from a second person perspective and I followed this research methodology to interpret my data and form my analysis. “In remaining faithful to Husserl, we shall talk about doing phenomenology from within the intersubjective relation. Although we cannot claim to gain direct access to the
consciousness of the research participant, we can acknowledge our aptitude for actively engaging the experience of the other person so as to come to understand the meanings of their experience” (Churchill, 2010, p. 84). While I do not claim to know what it is like to be someone charged or convicted of a sexual crime, I was able to engage this experience when sitting with all the participants during interviews and when reflecting on what they said and how they said it while reading the interview and focus group transcriptions.

The semi-structured interviews I conducted consisted of questions that encompassed what is regarded as Husserl’s notion of intentionality; he asserted that consciousness is always consciousness of something. “Experience must be grasped holistically as a relationship in which the subject relates to an object through its meaning. In perceiving, a perceiver relates to the perceived; for example water is presented to the thirsty person as a drink and to the dish washing person as a cleaner” (Churchill & Wertz, 2001, p. 249). Alfred Schutz (1962) took this notion of intentionality into the social realm by demonstrating how human beings always have an “in-order-to motive”, which refers to how their orientation toward the future informs their present. “Where they are coming from” as they move toward what’s next turns out to be more a matter of the “pulls” than the “pushes” of life: the “because” motives that lie in the past are not so determinative of our choices as our “projects” that carry us into the future. When I asked my participants during their individual interviews and focus groups to describe how they had arrived to Dr. Smith’s office, at what stage along this pathway through the systems they existed, and how they saw themselves moving toward the future, I was able to access their intentionality. It was in paying attention to that which was co-created during interviews that I gained access to how the people who sexually offend were oriented toward their
future—what was standing in their way and how they emotionally engaged this experience within the context of the two systems. I understood the motivational context of their experience to consist most essentially of these intentions that brought my participants in relation to their imagined future. Attending to these “motivational contexts” was then a part of my approach as a researcher (see Churchill, Lowery, McNally, & Rao, 1998 for further discussion.)

My experience as a therapist in training engaging people who sexually offend, informed how I was able to “cultivate a sensitivity to meaning” (Churchill, p. 84). As Churchill states, “In cultivating a sensitivity to meaning, the phenomenologist brings himself or herself to the encounter with the phenomenon in the mode of patiently “listening to” and “staying with” the self-disclosure revealed in the expression of others. In slowing down and dwelling one becomes even more open to what is being communicated” (Churchill, p 84). Being a therapist with people who sexually offend before being a researcher played itself out in that I brought this context with me to inform the data analysis and attain my findings. For example, there were many times during the interview or focus groups that I engaged with the participants in their sense of confusion and disbelief. These two emotions were reflected in my own sense that at times I too had reached the limits of what I could grasp, sort through, and negotiate with the participants at the time. I listened to them tell their stories about what they already did to try to find work and at times the progress they made only to be turned away from a job or lose one before having started. When I sat with Alex and he talked about having lied to his employer about his crime, feeling guilty about it, and later confessing that he had done wrong by lying, I engaged his sense of feeling caught in what I eventually labeled as a
double bind. The same feeling of being caught or stuck emerged when I engaged Steve’s experience of taking the polygraph exam. He passed the exam, but was punished for lying prior to it and as a result he was returned to jail. During these interviews, and before I named it a contradictory demand, I experienced it with the participants. As I struggled to understand these experiences as researcher, I was thrown back to times when I as a therapist in training was also caught in the two systems. I struggled to understand my own role as therapist when required to address the other system (legal system), when speaking with a probation officer on the phone or a polygrapher. What could I answer about the person I was treating, how would the information I provided be used, and what of confidentiality—how was I to manage the anger of a person who was making good treatment progress but was not comfortable with their probation officer knowing something that might incriminate them, yet I was compelled to disclose to the probation officer. These were times when the relationship with my client had to be negotiated. My experience of being a therapist was always implicit throughout his research project but became explicit in the analysis of the data.

When I sat with Frank at the beginning of his journey through the mental health system, he began as guarded, arms crossed, with a sense of anticipation but also dread about what was to come next. He had heard from others about failing polygraphs and being sent back to jail or kicked out of treatment. When I asked him about how he saw his movement toward the future, he remained guarded and at times the tone of his voice changed to reflect anger. He admitted to feeling angry at times. In the focus group he said he would return to jail if he did not pass it—the anticipation of the test for him was present in the edge in his voice or the anger he expressed about the possibility of
returning to prison. Frank’s anticipation of the future led me to reflect on what was next for me throughout this research journey. How was I going to be tested and by whom or what? Would I find myself in any of the same binds or contradictory demands?

When I engaged the participant’s experience of being confused or stuck or having to negotiate their way through these systems, I reflected my own experience at that time as researcher negotiating my way through data collection. When told by the state’s central office that the only way the agents would speak to me is if I agreed to show them my final document if I intended to publish it, this became a point that I had to negotiate, how was I going to go about collecting, analyzing, and presenting this data.

Further reflection on being a mental health professional became relevant at times when I listened to and stayed with the experience of the offenders talking about confidentiality or in Alex’s case—his discomfort signing an informed consent and a polygraph waiver of his rights. There were times when the lines of what is confidential were unclear—what kind of conversation should I be having with a probation officer that is integrous to my treatment with this person but also within the bounds of the law and forensic profession that compel me to do so. My reflexive position during these times was disclosed when I interviewed other mental health professionals (Dr. Oscar and Dr. Smith) and the offenders themselves. As a therapist I had worked with people who talked openly about their struggles to stop offending and worked hard in treatment to be reflective, mindful, and accountable for their behavior. The movement toward the future was positive. During these times, laws were changing and these same people who were moving toward reintegration had been told that they would be registered with Megan’s Law longer than what they had been told upon discharge from prison. These were times
when treatment became about discussing these legal changes and as a result of them feeling stuck. Thus the way I wrote what I did was reflective of this experience of feeling as if there was no way out of being a sex offender.

What Husserl (1952) referred to as “trading places,” Dilthey referred to with the German word *Nachleben*, which means “re-experiencing, co-performing, or re-enacting” another’s expressions in order to understand them (Churchill, p. 85). I not only “co-performed” my participants’ experiences in my imagination, but I also “re-experienced” being a therapist when I sat with offenders who talked about their experience of treatment in the mental health and legal systems.

“Husserl preferred the term *Einfuehlen:* he writes ‘…’ in empathy I participate in one’s positing” (1952/1989, p. 177). As mentioned above, Husserl also described this as ‘trading places’” (Churchill, 2010, p. 85). Churchill goes on to explain that there can be many distortions from conducting this type of analysis, such as the psychoanalytic forms of projection, over identification, or sympathy (p. 85). But this is why the talent of the phenomenological researcher is being able to move from what the participant says of their experience to what is revealed in the telling (Churchill, p. 85). The face-to-face interviews and the interactive facing of focus groups are rich with access to these “tellings.”

When I sat in the focus group with the participants and they began to address the fudge shop where they all worked at some point, before they began to really articulate their experience working there, there was a lot of non-verbal communication being exchanged. Most of the men shook their heads, looked down, sighed, made eye rolling gestures, and I at the beginning experienced curiosity at this shared experience. I recall at
times shaking my head while looking at them so as to mimic their gestures to one another. When I reenacted it, I caught a sense of what was happening. They were re-enacting and co-performing each other’s experience as I bore witness, a valuable piece of data that allowed me to access their experience.

If the phenomenological approach to data collection and analysis is in the intersubjective encounter with the participants—engaging their experience through a felt sense of knowledge through empathy or reflecting my own experience, through trading places or feeling the same sense of being stuck or confused, or anticipating what to come next, the hermeneutic approach to data collection and analysis offers an understanding of the context in which I was already informed by my experience as a therapist working at the practice of Dr. Smith and addressing the legal system daily and as a graduate student having read literature on the mental health and legal systems as pertaining to people who sexually offend.

**The Hermeneutic Method**

According to Churchill (1998), “the actual moments or “steps” of an existential-phenomenological psychologist’s reflection upon protocol or (self-report data) have been described by various authors most notably the initial formulators of this ‘family’ of methods, including (Colaizzi, 1973/1978), Fischer (1974, 1978, 1985), Giorgi (1975, 1985), Van Kaam (1966), and Von Eckartsberg (1971,1986). In addition, one can find elaborations of the empirical phenomenological methods in Churchill and Wertz (1985), Moustakas (1994), Polkinghorne (1989), and Wertz (1983a,b 1985)” (Churchill et.al., 1998, p. 65). Churchill states that what is not often enough described is the ‘form and content’ of phenomenological analysis, which varies according to the context from which
the reader is coming in intersubjectively engaging the data. For me, the “content” was understanding the experience of people who sexually offend, in the context of the two systems in which they existed. I was not a “tabula rasa” or blank slate, coming into this project. This meant that I had to be reflexively aware and reflective at the same time about my role as researcher informed by my previous participation at Dr. Smith’s practice as a therapist in training.

What I already knew was guided by what Heidegger (1972/1962) called “fore having,” or what Husserl (1952/1973) called “anticipation” (originally cited in Churchill, 1998, p. 65). Each moment I sat with my participants and the transcripts, I was guided by what I already knew and was reflective about my own context that I brought to the data. I knew that people who sexually offended had to meet the demands of both systems and as a therapist I was aware that this was not always possible. What was already implicit in my knowledge became explicit in the data analysis. The moments where this became most apparent or magnified was when I felt stuck or trapped or confused as researcher, be it what was to come next, how to understand the complexity, to navigate my own way through what became more apparent as a contradictory maze of events and demands that did not always make sense to me or to the participants about their experience, and in trading places, not knowing how I was going to find my way through to the end of the data.

I recalled the times I felt blindsided or there was a demand on me. I helped someone to make progress toward their future goals, only to find out that the demands of the legal system had come into direct conflict with these goals. There were times when I sat engaged in my patient’s frustration, reflective of my own position. This led me to
explore more about Megan’s Law and how it manifested into the Adam Walsh Act. The topic of Riverbridge became a maze of mystery and darkness that I felt needed to be illuminated. What I had experienced from talking with the participants was that they had no choice but to move to Riverbridge if they wanted out of the half way house. But what I did not know was why people who sexually offended lived there and were continuing to do so, and how were they getting there? Because the people who lived there were not clear about these connections, the story of Riverbridge seemed to be clouded in mystery. Where the participants went to work (Chocolate Paradise) revealed itself to be as equally mysterious. No one seemed to know the whole story, the whole context, until I began asking questions of different participants from both systems to reveal the larger parts of the story which helped me to tell it as a whole.

Another example of times when the participants’ shared experience of feeling caught in the systems was reflected in my own, was when I struggled to explain to my dissertation director how these two systems worked or the way in which they demanded certain things from these people—it seemed to be constantly shifting and changing over the 3-4 years I was immersed in the two systems myself. The fieldwork was critical in allowing me to be able to write clearly what I saw and heard as it showed up. If I could not explain what these two systems were about to my director, to myself, how was it for someone actually trying to navigate his or her way through these two powerful entities?

For example, during my interviews Greg was listed as a 10 year Megan’s Law registrant, but by the time the Adam Walsh Act passed, I had finished collecting my data but had not yet interpreted or analyzed it. The law had changed and even though Greg had not committed any new crimes, his time on the registry increased. I was confused
about how this was possible and at the same time I was compelled to maintain integrity, presenting facts and experience accurately when the facts were not at all clear and the systems at that point became difficult to navigate through as researcher. This had been the experience of the participants. We traded places.

The method is thus both phenomenological and hermeneutic in its approach: it is “phenomenological” in the sense that I paid attention to the participant’s experience by reflecting on my own during the interview”; and it was “hermeneutic” in the sense that what I brought with me to the data was a whole context for interpretation. Dilthey and Heidegger called this context a “Zusammenhang” – a “hanging together” of a multiplicity of meaning contexts. There were my own meaning contexts, as well as the meaning contexts of the participants. Following Packer’s (2011) influence, I also went a step further to consider the meaning contexts belonging to the “systems” or social structures that “framed” my participants’ experiences and indeed constituted a good part of them, still relying on hermeneutics to understand and interpret what the systems do to constitute someone as a sex offender.

**Constitution**

“The term constitution is rarely defined, but it can be traced back to Aristotle’s recognition, more than 2,000 years ago, that there is relationship of mutual constitution between human beings and our forms of life” (Packer, 2011, p. 10). For this research, I interpreted and analyzed the data to show how people become constituted as sex offenders within the context in which they exist. Packer states, “Communities ‘constitute’ the people who live in them. Constitution then, is this relationship of mutual formation between people and their forms of life” (Packer, 2011, p. 10). In order to know anything
about how people become sex offenders it was necessary for me as the researcher to gain access to and understand the larger systems that constitute them.

This last part of the research methodology is what allowed me to provide a systemic, social, and institutional perspective of what a sex offender is. I relied on Dr. Packer’s method when borrowing what ethnographers do when they conduct fieldwork. I conceptualized what I was doing as not entering into a new culture but rather negotiating membership over and over again each time I sat down with someone new. Each time I explained I was a mental health professional who had developed a research interest based on what I had learned from group therapies and individual sessions, I wanted to learn more. I wanted to know where I worked.

Rather then try to describe structures behind everyday life, they need to focus on the order that has been constituted in a form of life; the regional ontology, how people and things “show up,” and this is not a matter of mere description; ethnographers write accounts to have an effect on their readers, inviting new way to see the world. Malinowski was surely right to see fieldwork as a way of understanding other people in order to better know ourselves and grow a little in our wisdom. (Packer, 2011 p. 11)

Phenomenological and hermeneutic frameworks for understanding experience were brought together to perform an interpretation of the data and its analysis. The meaning of one’s experience is accessed through their life world, which extends to a broadened context of the institution. Understanding both individual experience in this institutional context was an integral method used to understand what a sex offender is as an institutional category.
The following 6 chapters to come represent the methodology that I organized in such a way that best serves to answer the research question. Chapters 3, 4, and 6 all begin with vignettes that were the product of both field notes and interviews. They showcase the main three participants of this research, "Greg," "Frank," and "Steve." These three cases represent different stops along the journey made through both systems. Their crimes and convictions vary, as do their mental health diagnoses. At the time of the data collection in 2011, they were at very different stops in both systems.

Chapter 3 is largely the result of fieldwork and interviews combined. Chapter 3 introduces both systems with the first composite vignette of the cyber chat—one way a person enters the legal system. Then we shift gears to introduce the mental health system through the vignette of Frank who illustrates someone freshly encountering the mental health system, after a 9-year history of federal incarceration. The result of the fieldwork and interviews is demonstrated as Chapter 3 unfolds to show the reader what the mental health system actually does to constitute someone as a sex offender. Chapter 4 begins with the story of "Greg," which was the product of my interview with him, and plunges into the depths of the legal system. While the fieldwork that produced the vignette in Chapter 3 introduces us to the legal system, Chapter 4 is a return to this system, in the way that shows the various stops the offenders make along their journeys, as they intertwine with the mental health system. One such stop is public registration under Megan’s Law, which is defined, investigated, and challenged. The presentation of Megan's Law was a product of all three methods for data collection: fieldwork, interviews, and focus groups. Chapter 5 is primarily based on field notes and interviews, which directed me to the places that I felt required further investigation. This chapter
provides a historical context for how the sexual offender is both classified and categorized by the legal and mental health systems, rendering the sex offender both criminal and sick. The fieldwork conducted at the ATSA (Association for the Treatment of Sexual Abusers) conference which featured Dr. Jill Levenson is presented as a way of making explicit the impractical practices of both systems, namely the collateral damages of things like Megan’s List and residency restrictions in some states. Chapter 6 uncovers through various interview and focus group excerpts the double binds sex offenders are made to navigate. This chapter opens with the case of Steve, which was largely based on my interview with him. We see these two systems intersect when the polygraph is explored, as well as some impractical and at times, unethical practices that are produced by these two systems. The two different approaches to mental health treatment and its consequences are explored—this chapter is in large part due to fieldwork, traveling to Riverbridge, visiting on line sites such as PFML, newspaper online articles, and reading articles from journals. While Chapter 7 already sets up the problem, that these two systems ask very different things of the offender and in doing so creates double binds and contradictory demands, Chapter 8 is a call for action with concrete assertions for what this action might look like in practice.
Chapter 3

Introducing the Legal and Mental Health Systems

A composite vignette from a cyber chat on the internet begins this chapter. The cyber chat is one way a sex offender enters the legal system. While the chat itself does not belong to any one of the participants in this research or any particular sex offender I encountered while at the office of Dr. Smith, it is based on the fieldwork, in that it is a composite of multiple chats I read over the course of three years while training at Dr. Smith's office as a therapist. The vignette provides an introduction to one way many people are now becoming sex offenders: by cyber chatting. The vignette complicates the notion of who the sex offender is. It might seem that the person who is committing a sex crime is the middle-aged man who pretends to be an underage girl, but in fact this is the police officer!

The internet has created a whole new type and class of criminal, and this raises ethical questions, such as when does chatting become a crime, and when does an interaction such as this become entrapment? The vignette and the following extracts from an interview I conducted with a criminal defense attorney illustrate the point in the chat at which the legal system decides a crime has been committed. They also show the extent to which legal professionals are pledged to seek out and hunt down internet sex crimes, and perhaps even create them?

After this introduction to the legal system, I will introduce the mental health system through another vignette, this one concerning Frank. This data I draw upon to construct the vignette was collected through an individual interview with Frank, in which he talked about his entry and current position in the mental health system, the stop he was
at along the pathway through the two systems. What is most interesting here is how Frank described his experience and how he described his role in the two systems. It became clear that Frank feels he is stuck in the process. This vignette was chosen because of the words Frank used to illustrate his location at the start of the mental health system, in particular the way he talked about his offense. Like many, if not most, of the participants in this research, Frank is someone who served time in prison, and was now faced with toeing the line in the mental health system. (Frank, though, had served the longest sentence of all the participants). His case illustrates how the legal system contacts the mental health system in the first place, and it shows the difficulty in managing the demands of both. Excerpts from my interview with Dr. Oscar, a therapist who works at Dr. Smith's practice, explains why Frank was mandated to treatment in the first place, and makes explicit what happens when someone encounters treatment for the first time after they have already served their time in prison.

Frank's case also helps to illustrate the basics of what the mental health system does. It tests, it assess, it diagnoses, it treats, and it tests again, thereby objectifying the offender as an object of study by making him talk more, confess his sexual behavior, and eventually to do so under the constraint of a polygraph exam.

I will argue here are inherent flaws in the approaches to mental health treatment of sex offenders. What Frank's case illustrates cannot be fully understood without first understanding why the legal system bothers to contract the mental health system to begin with. Why not just punish Frank rather than treat him?

One of the flaws in mental health treatment that Frank's vignette exemplifies can be seen in the difficulty Frank has building an alliance with his therapists. After nine
years in prison, he is used to being managed by the legal system, but now he is asked to talk about his offense in a very different way than he did before. He does not trust this process, which he does not understand. The flaw here is that the mental health providers may recognize his distrust but label it as ‘defensive’ or ‘resistant to treatment.’ However, Frank is right to be suspicious: if he talks about his offense he is not protected against self-incrimination, which could then lead to being further punished by the legal system. This situation, in and of itself, makes building a treatment alliance an impossible task.

**Vignette 1: A Cyber Chat**

Chat rooms are very common these days, a place where people go to "meet" and "chat" with people they may never meet in person. Chat rooms take place over the internet, so you don't have to leave the comforts of your living room or office space to join one and you can walk away from a chat or join a new one whenever you want. I once heard a chat room described as a "virtual cocktail party," where strangers gather to flirt, argue about sports and politics, or share hobbies and common interests. For many people it's a hassle free way to communicate and meet new people rather than going to a bar or social event. You have the instant ability to chat with someone across the world and you can walk away whenever you want. There are many reasons why people choose to meet others online or join a chat room.

Chat rooms have themes; they range from topics like chess club, teens interested in *Harry Potter* or *Twilight*, sports, news, role-playing games, and literature. There are also themes that are more risqué such as chat rooms for any type of sexual fantasy, including but not limited to role-playing, sado-masochistic interests, and exhibitionism. There are chat rooms available for as many things as you can imagine. Anyone can start
a chat room at anytime and anyone can join a chat room if they are curious. A chat room is a virtual space where people can go and speak with one another through a kind of instant messaging, not dissimilar to texting. All you need is a computer or a cell phone with internet access and a keyboard. The chat rooms that are for adults are marked with a disclaimer "adults only."

The two people you are about to meet have been chatting in the same room at approximately the same time during the evening for the past eleven months, with increasing frequency between days. They have never met in person, and neither of them has seen the other's face. They have chosen to keep it that way, at least for now. Their screen names are "Bemyval13" and "ThckOne."

From the beginning of their online relationship, "Bemyval13" has known where to find "ThckOne," as he is loyal to the one chat room he visits daily on "AOL," America Online, which was one of the first sites for chatting and used to be a very popular site for many people looking to chat about many different topics. It is promoted as a place where you and your family can play on line.

"Bemyval13," and "ThckOne," chat with one another from their computers, so both of them have to be logged on to the same chat room at the same time. Chatting is as simple as typing a phrase on your keyboard, hitting enter, and the message instantly becomes available to your recipient. People "talk" differently in a chat room than they do when speaking face to face. I've heard quite a few people say that sitting behind a computer screen provides them with anonymity that they would not have sitting face-to-face with someone. Anonymity allows a person to be less inhibited than they otherwise might be.
When "Bemyval13" and "ThckOne" first met online their chats included talk about likes and dislikes, how old they were, and what they were looking for. "Bemyval13" talked about liking school and playing music. "ThckOne," is a businessman, a financer with a prestigious job in a large metropolitan city in the northeast, but for fun he likes playing football at the park. The chat room they met in was a place where singles gather, presumably looking to chat with other singles. In recent months, "ThckOne," has been pursuing "bemyval13" by asking more risqué questions. "ThckOne," notices "bemyval13" online because the screen name always appears on the list of chat room members when he logs on.

ThckOne: How is my lil valentine?
Bemyval13: Where have you been and what have you been up 2?
ThckOne: football game cancelled cuz of rain the park, so I'm looking for some other physical activity :]
Bemyval13: what do you have in mind? Lol
ThckOne: Do you want to see how I got my name, lol?
ThckOne: do you want to see it?
Bemyval13: you have my email address

In the past "ThckOne" has invited "bemyval13" to masturbate for him, but "bemyval13" replied that his computer does not have a web camera. "ThckOne" says he has been very patient with "bemyval13" and wonders if "bemyval13" maybe timid or unsure of taking their relationship outside of their chats. As time goes on, and the chat continues, "ThckOne" can't help but anticipate meeting "bemyval13."
After eleven months of visiting the same chat room, with increasingly frequent visits, by request, "ThckOne" emails a photo of his genitals to "bemyval13," to entice "bemyval13" to take their relationship to the next level. Upon seeing the photo, "bemyval13" responds: "I got your pic, blushing, lol." "ThckOne" finally musters up the courage to ask "bemyval13" to meet him at the local park. "Bemyval13" seems interested and types a message that reads: "I know that park cuz I walk pst it evrydy on my way home." "ThckOne" seems excited because this is the most receptive "bemyval13" has been to his invitations over the past eleven months and he senses some anticipation on "bemyval13"s part.

They agree on a day and time to meet. "Bemyval13" verifies the location. "ThckOne" asks "Bemyval13" for some discretion and indicates why. A couple years ago, "ThckOne" stopped chatting on line because something bad happened to a friend of his. "ThckOne" explained that his friend went to meet a lady he was chatting with and ended up getting arrested. "ThckOne" never saw his friend again and was pretty pissed that this happened to his good friend. He just wants to make sure "Bemyval13" is legit because he realizes he is taking a risk. "Bmyval13" reassures him. "Bemyval13" says, "Don't worry, I'll be there."

Before "bemyval1," left to meet "ThckOne," at the park, "bemyval13" prepared for the long awaited encounter with "ThckOne" for hours prior to the meeting time. "Bemyval13" had to assemble a team, brief its members, and fasten his gun to his holster. But before he leaves for the meeting, "bemyval13" telephones his wife of twenty years to tell her he won't be home for dinner; he asks his wife to tuck his two daughters into bed and not to forget to kiss them goodnight on his behalf. "Bemyval13" has a daughter in the
6th grade, 13 years old, and one in the 1st grade, 6 years old. Before the fifty-five year old man was "bemyval13" he had been "pinksippers13" for several years and before that "sadlilgirl9," when he first earned his badge as a young detective, some 15 years ago before he joined the computer crimes unit of the police department.

Before "ThckOne" stepped out of his home to meet bemyval13 he had a plan--to arrive at least twenty minutes early and bring a box of "bemyval13’s" favorite cookies. "ThckOne" found a bench to sit on directly across from the location where he expected to lay eyes upon "Bemyval13" for the very first time. In one hand he held his cell phone, anxiously awaiting the call that "Bemyval13" was on the way.

Although the vignette above is a composite account based on fieldwork, it is not unlike the narratives I have heard people share in group therapy when they tell their stories of what led to their arrests, multiple charges, and convictions. The conversation between "ThckOne" and "BeMyVal13" is a composite of transcripts submitted by law enforcement to Dr. Smith's office. The vignette illustrates a conversation between a man and a police officer that is playing the role of a 13-year-old girl. At what point does this kind of "chat" become a crime, and what are the charges? To answer these questions, we must first understand how the police became aware of "ThckOne". After all, it is not illegal to join an adult chat room like AOL.com or to chat with someone, whatever their age.

The police were not looking specifically for ThckOne when they put out bait on line. In some cases the police initiate the chat, while in other cases, the civilian does. The term "baiting" is used colloquially to describe what police do to hook people into engaging in an online chat. As one Colorado newspaper writer states, "To fish, you need
a pond and good bait. Police in Jefferson, Gilpin, Adams, and Denver County Colorado are looking to hook you. Their pond is *Yahoo Romance Chat*, and their bait is police officers posing as fourteen year old girls" (O'Malley, 2013, para 1). "ThckOne" was hooked by "BeMyVal13" in the pond of AOL.com.

In this case, "ThckOne" initiated chat with "BeMyVal13." Before doing so, ThckOne is just another username on *AOL.com*. Once "ThckOne and "BeMyVal13" talk of meeting at a specific location, the cops prepare to arrest "ThckOne" for what is not yet a crime but is an example of someone moving toward committing a crime. This crime is known as "Criminal attempt to solicit sex with a minor." Once "ThckOne" agrees to travel, the police prepare for what is known as a "sting operation." A "sting operation" is defined as,

…A deceptive operation designed to catch a person committing a crime. A typical sting will have a law-enforcement officer or cooperative member of the public play a role as criminal partner or potential victim and go along with a suspect's actions to gather evidence of the suspect's wrongdoing. Sting operations are common in many countries including the United States, but not allowed in other countries such as Sweden. (Sting Operation, 2013,para 1)

There are many ethical dilemmas related to sting operations, such as the controversy that it is a form of entrapment.

As "ThckOne" gets into his car and drives toward the location he agreed to meet "BeMyVal13," the police begin their travel to this same location. Once both parties arrive, the police arrest "ThckOne." Among his charges will be "intent to have sex with a minor" because he traveled. Other charges he will face are based on the content of the
chat transcript that police will submit to the court as evidence. "ThckOne," could be charged with solicitation of a minor, corruption of a minor, distribution and manufacturing of obscene material. Solicitation of a minor is inferred from "ThckOne's" intent to engage in a sexual act, and the fact that he agreed to meet the person he thought was a thirteen-year-old girl. ThckOne may also be charged with "Corruption of the morals of a minor," evidenced by his talk about masturbation and requesting that "BeMyVal13" masturbate for him via webcam. He is also likely to be charged with "Criminal attempt," since he traveled with the presumed intention of having sex with a 13 year old girl. Lastly, he maybe charged with "Distribution of obscene material." Although the police officer posing as a thirteen year old girl requested them, it is a crime to send pictures of ones genitals.

During my interview with Attorney Ryan, a state and federal defense attorney who represents many of these cases in court, he explained how someone like "ThckOne" starts out chatting with a police officer and ends up getting arrest, charged, and later convicted of a very serious cyber crime.

On sting ops they [the police] get enough info that they arrest the person. Like a guy will go into a chat room and he'll start talking dirty to a girl and he'll ask how old you are and she'll say 15 or 14 and they'll go out of a chat room and they'll start doing instant messages and he'll talk about the blow job or whatever else he decides to talk about and uh, and they'll arrange a meeting and he'll show up and she'll say you know you bring the condoms and maybe some booze. There are always things said so that he'll be worse [legally], or all right I'll go to the hotel room, so you know when they bust him, he has condoms, booze, and a hotel room key. And it's the same hotel they agreed to meet at. Usually it's just an arrest and when they search you upon arrest, which they can do without a warrant, they find the booze in your car, the condom in your pocket, and the key in your jacket, you're fucked.

But what happens a lot they suggest all these things; I mean look! These cops who act like a 14 year old girl say shit that no 14 year girl would ever say in order to ... I'm not trying to stick up for these guys, but I've had cases where guys want to back out and they [the cops] just go berserk trying to convince them not to back out and they just do all sorts of things. No 14 year old girl or 15 year old girl would ever think of this shit, but
some sophisticated cop who has been through this a million times posing as a girl ... 'oh don't worry, nothing will happen, you know, I've done this before whatever it takes ...' These guys make it sound so easy, and then my guys [clients] are the ones who get arrested. You know I've got a lot of problems with it. It's sort of like the same kind of problems I have when these undercover cops say or do anything to get some guy to sell them dope; now you're under arrest [he smacked his hands together]. You can always raise entrapment, but that's very difficult with sex cases. As soon as the jury hears 'I wanted to have sex with a 13 year old,' it's over. The majority of every kind of cases winds up with a plea of guilty, but the numbers are higher in sex cases. Although there are some exceptions, date rape cases go to juries a lot and there are a lot of acquittals. They are difficult to prove. And then in the ones where there are the fake girls, there is always something you can say about that too. I remember a case I had a guy was charged with trying to have sex with a 10-year-old girl. There was no 10-year-old girl. It was the FBI. To make a long story short, the guy was a particularly nice guy and he even backed out of it, he said 'uh nuh nuh nuh nuh, I don't want to do this.' And they said, 'at least wait til we get there, so we can talk about it. We've driven all the way there from such and such a place,' and he said finally 'alright, but I don't want to do it' and finally, he shows up and they arrest them. (Interview, Mr. Ryan, May 2012)

Whenever there is a chat with a person presumed to be a minor, there are grounds for arrest, even if the person did NOT travel. For example, what would have happened if "ThckOne" did not travel or backed out of meeting "ByMyVal13"? Could he have still been arrested and charged for committing a crime? The answer is yes, he could have been charged with what is known as an "inchoate crime." Since 1979, inchoate crimes have been referred to as "state of mind crimes." Inchoate crimes are those where there is the intention and attempt to commit a crime, even if the crime was not successfully carried out but there is an identifiable act of furtherance toward committing the crime. The challenge with charging someone with an inchoate crime is having to prove it in court. The police have to be very careful and aware of what they say during an internet chat because they will be asked to produce a recorded transcript of their entire conversation. In the state of Pennsylvania inchoate crimes are categorized as "Criminal attempt, criminal solicitation, and criminal conspiracy," (state public registration website).
Based on fieldwork observation in group therapy and my time spent at the practice of Dr. Smith, I learned there are many cases similar to "ThckOne" and "BeMyVal13." In fact, they seem to be multiplying. Mr. Ryan he offered his viewpoint on the issue of crimes committed using the internet.

"You know, the internet has created a whole new class of criminal out of people who would have never in a million years have broken the law, but for the convenience, anonymity, accessibility, and convenience of the internet."

This vignette shows the length to which the professionals in this system are pledged to seek out and hunt down sex crimes, and the resources made available to them to do so. It is an introduction to what I will describe as moral panic. Before going into more detail on the legal system, let me introduce the mental health system.

**Vignette II: Frank**

I conducted an interview with Frank in Spring 2012, Frank is at the first stop in his journey through the mental health system. His case represents how a person first enters into the system and some of the struggles they must face. Frank is resistant, confused, and angry. Frank soon learns that if he does not start answering questions and talking about his sexuality, his treatment providers may consider him resistant to treatment or in denial about his sexual offense. This would mean remaining in treatment longer. Frank spent thirteen months in county jail and then his case was turned over to federal supervision. He then spent nine years and forty-five days in federal prison, 6 months at the half way house, followed by 2 years of supervised release, 10 years of Megan's Law, which was then increased (in December 2012) to a lifetime of being registered. He was originally charged with possession of illegal pornography, exploitation
of a minor, and possession of obscene material. During his time in prison he was not mandated to receive mental health treatment, but after his release to the halfway house and for the length of his supervised release under the federal system, he is expected to meet the demands of the mental health system.

Frank learns that if he does not participate by talking and telling the "truth," he could face many years in therapy on supervised release with no foreseeable way out, in addition to the possibility of returning to prison. Frank does not want to return to prison, but Frank tells me he rather do so than be forced to participate in group therapy. One bind that Frank faces is that when he says he does not agree with his treatment diagnosis or his psychiatric evaluation, he has judged as having difficulty forming alliance with his therapist. When he remains quiet in group therapy he is seen as not “making progress" toward his release.

Mental Health professionals David Prescott and Robin Wilson (2012) published a journal article that addresses the inherently paradoxical elements of treatment with people who sexually offend like the participants of this research.

The high-stakes nature of treatment programmes lends itself to unclear, and even paradoxical, double-binding demands on clients. In effect, clients can find themselves unable to meet one requirement without violating another. A paradox often occurs early in treatment when therapists fail to recognize whether their clients are on the behavioral change continuum, particularly expecting them to be more ready for change than they actually are. (Prescott & Wilson, 2012, p. 233)
Prescott and Wilson go on to assert that these failures to recognize treatment readiness puts clients at risk, leading them to “mistrust their providers and therapists to give up on their patients” (p. 234).

Dr. Oscar (a pseudonym) is a mental health professional with twenty-six years experience working in the prison system and seventeen years working as a licensed psychologist. He has worked with sex offenders both inside and outside prison in a therapeutic context. He described to me what it means for sex offenders to encounter the mental health system for the first time, and what challenges this presents to treatment providers who label them as "in denial."

When a person initially encounters a new therapy setting, there is a self-negotiating process they go through. Many sex offenders struggle with disclosure and what they are able to tell. If a sex offender omits information, he is often viewed as being "in denial," or resistant to treatment [and this is documented in their file]. However, sex offenders entering mental health treatment for the first time must try and negotiate not only with the system but also with themselves on what is safe to disclose. They struggle with questions like: how much is okay to tell? If I tell more or less will I get into even more trouble? (Interview, Dr. Oscar, 5/2012)

Dr. Oscar explained that when sex offenders are in prison, they do not always receive treatment. In the federal system treatment is optional. A federal prison sentence is a "flat" sentence – with good time, meaning offenders are released early for good behavior. In the federal system treatment is optional except for a high risk offender, who committed multiple hands-on crimes. None of my participants were high risk offenders. In general, the federal system has far fewer resources for treatment than the state system. Dr. Oscar told me, "Federal prison policy encourages treatment in prison but it does not adjust the offender's time. It jeopardizes his opportunity to appeal his case, and it's shaming. Where's the pay off?"
State prison sentences have a minimum-maximum date. If an offender is sentenced to 2-5 years, he will be eligible for early release if he complies with his treatment plan. If it is determined that he needs treatment as a sex offender, he will be enrolled in the program and complete it before his maximum time is up. If he completes all programs by the minimum date, he is far more likely to be released on that date. However, as Dr. Oscar explained,

"There is however no guarantee here either--I've known offenders who did treatment but had to serve their maximum anyway because prison counselors were not satisfied with his participation, aka, he was not admitting his guilt!"

Dr. Oscar elaborated,

Treatment can help cut your time in half, but you have to admit guilt. Offenders enter treatment feeling coerced because it's a way for them to get out of the state system early. What looks like flexibility in the state system, is actually coercion. This issue cannot be looked at fairly without the attorney's role, and this applies to both the federal and state systems. If a sex offender wants to appeal his case in prison, he is told by his attorney, 'If you admit your guilt we will not be able to effectively appeal your case.' Yet in treatment (both in prison and out) you are expected to admit your guilt as a condition for discharge! In prison, you typically get thrown out of a treatment program for saying 'I'm not guilty,' but that's what your lawyer told you to do! In outpatient treatment [Outside of prison, like Dr. Smith's practice] you get stuck in the mental health system unless you admit to being guilty! Most of the conditions for state prison programs is to admit your guilt if you want out early. This is an existential problem with treatment with someone coming out of prison and entering the mental health system for the first time saying, 'I didn't do it. I'm not guilty,' because they have to say that if they want to appeal, but then they get stuck in treatment.' If they are not crazy when they entered system they will be by the time they get out! (Interview, Dr. Oscar, 5/2012)

Frank's case shows how one must navigate the double binds the two systems create. Frank has to face the consequences of serving an extended time on supervised release and staying stuck in treatment for the duration of this process.

At the beginning of treatment, the way Frank talks limits the scope of what mental health and legal experts can know about him. Frank tells the mental health system what
he was charged with, and at times he admits guilt, but he says nothing beyond what he was convicted for, although he implies there were other charges. He is very cautious about saying that he "did" anything. It is very common way for sex offenders to talk in this way when they first enter the mental health system. Prescott and Wilson (2012) propose that people proceed through five stages of change: precontemplation, contemplation, preparation, action and maintenance of change. People who sexually offend vary in their readiness and willingness to change throughout the treatment process (p. 235). The following excerpt is what Frank had to say about entering treatment for the first time — keeping in mind that he had already served nine years of prison without any treatment.

He's (therapist) doing me more harm making me come here every week and feeling uncomfortable and then he put me on the spot and then he says I'm squirmy or slippery because I don't answer the question directly. That's me; that's my personality. (Frank became quiet)

I asked Frank what he was told about treatment before he started.

I guess they do that with all sex offenders. I found out everybody does have to do it, and you'll be doin it until you're off probation. Two years. In July I will have one year and I heard after that you can apply to the courts to have it dismissed. I'll have a year after July 25. (Interview, Frank, 5/2012)

I asked Frank what he did that led to being arrested, he said, "I was charged with engaging in a sex act with a minor over the computer." Frank was sitting in his living room with a female child, belonging to his girlfriend. At some point, he entered a chat room via the internet and turned on his web camera. While Frank chatted with the woman he met in the chat room, he engaged in a sex act with the minor as the woman in the chat room watched through her webcam. I asked Frank how he came to meet the woman on line to begin with. Frank said, "She was just some regular lady I met in an adult chat
room." Frank stated he doesn't know what happened after that. And even after serving nine years in federal prison, he is still unclear about how he got caught. There is some discrepancy in his story though. The woman who viewed Frank engaging in a sexual act via her webcam stated on the record that Frank gave her his phone number, but Frank said he never did. Frank said that the woman he was chatting with was an adult, sitting in front of her living room computer in the Midwest. According to police records, the woman who viewed Frank engaging in the sex act via her webcam, called police and reported the incident after she witnessed them. These reports also stated that police came to her home, dismantled her computer and was able to make a copy of her hard drive to view Frank's screen name and the webcam video that was displayed. Frank's story:

Frank thinks the cops somehow retrieved the IP address from the computer remotely and was able to view the contents of his computer this way, but no one explained to him how he got caught. It was one week after the woman from the Midwest made the telephone call to police that the high crime unit came to seize Frank's computer at his home. And it was later that night that they returned and arrested him. He sat in county jail from February through December. The state dropped the case and the feds picked it up. Sometimes the state will confiscate the computers and then turn the case over the feds. It is common with internet cases because when the internet is involved there are no travel barriers. What makes the difference between a case remaining at the state level and becoming federal is if there was communication that crossed state lines. Most internet cases involve interstate communication. Of his charges, Frank stated:
"In the Federal system, I don't know, the only charge it says is sexual exploitation of a minor, possession of child pornography, oh, and receiving obscenity … Because they found something on my computer,"

Frank goes on to blame his girlfriend who he was living with for getting into trouble. He insinuated that if she had not had an affair with a person she was living with and if she had not been looking at incest pornography, something called "sister, sister," he would not have been held accountable for the pornography she downloaded onto the computer.

If I had went to trial, I was told I could get 20 years, and if I plead out I was told the most they could give me was 135 months. So, I changed my plea from not guilty to guilty, wound up getting 130 months, served 9 years 45 days on that, cuz I got all my good time, went to 4 different federal prisons in 9 years. I got out and went to the half way house. When I got to the half way house they told me that I had to go register as a sex offender to the municipal building; I did that. (Interview, Frank, 5/2012)

It is important to note that Frank took what is known as a plea bargain, meaning that he was charged with multiple offenses, but he did not plead guilty to all of them. There may be other charges that Frank was legitimately charged with, but he was not held accountable for those as part of the plea bargain. After release from prison, Frank went to the half way house for six months and at that time was mandated to treatment. He was also required to register with Megan's Law with the local state police. Instead of trying to find work, Frank was trying to apply for disability for Tourette's syndrome.

When I met Frank he was currently fighting two battles, trying to retrieve his mental health records from the therapist's office and petitioning the court to have his supervised release time downgraded. If he could somehow get his supervised release time downgraded, he would then stand a much better chance of ending treatment early.
Most sex offenders are not mandated by the court to attend therapy beyond the duration of their time on supervised release, and one way out of the mental health system is by getting off supervised release or probation early, but this is rare. This has to also be accompanied by the offender taking and passing polygraph exams.

When Frank arrived at the half way house, he knew he was expected to follow some rules, that he had to attend both individual and group therapy every week and pass polygraph tests. Of treatment, Frank's view was skeptical and confused. Although Frank eventually decided to change his plea from not guilty to guilty, he had never had treatment prior to meeting his therapist at Dr. Smith's practice.

My case manager at the half way house told me that I had to go here to meet with a psychologist and I met with Dr. Jones (psychiatrist on staff) first and he came up with some crazy diagnosis; I know because I saw the records. I don't know how you could determine all that meeting someone for an hour. And I went over with my therapist, over some of the things I didn't agree with on there. You know I met him (Psychiatrist) for an hour; I couldn't fill out two sentences on what I thought of him in an hour let alone his personal life and everything about him... But he had a lot to say about me. (Interview, Frank, 5/2012)

Many if not most, programmes approach such clients as if they are in the preparation stage of change, despite the fact that they are very often in the precontemplation or contemplation stages (Mann, 2009; Marshall et al., 2008, cited in Prescott & Wilson, 2012, p. 235). This can create challenging and paradoxical situation for clients, who feel that they cannot progress meaningfully in treatment without first becoming ready, willing and able. At the same time circumstances often make dropping out of treatment equally untenable (e.g. in some jurisdictions, dropping out results in additional prison time) (p. 235).

Frank was considered to be resistant to treatment and a difficult client because he made demands. He was quiet in group therapy and challenging in individual therapy. He
insisted that treatment was not for him. Frank ran into some trouble when he asked for
the file that contained the records and notes of the psychiatrist and psychologist that saw
him. When Frank retrieved his records from disability, he disagreed with the
psychiatrist's assessment of him.

I've showed this file to four other people, two of my friends, my mother, and my
ex-wife. That I'm passive aggressive, that a lot of things have happened to me in my life,
that I'm upset over what I'm accused of, what I didn't do, and that anybody that would
meet me would think that I was sullen and, I forget the other word that he used, like
angry or somethin. (Frank seemed angry about this report.) Which is not true (Interview,
Frank, 5/2012)

Of being required to go to therapy, Frank was candid during interview.

It gets me upset, it gets me anxiety attacks. I mean some people like it. I don't. I
have family that if I have a problem I can talk to. I have a very understanding mother
who I can talk to. She's pretty smart and has a couple degrees. I talk to her about
problems and I think (my therapist) thinks that's weird. But, we have a tight family and I
don't need psychologists. I sit in that group I try not to say anything because my
problems are none of their damn business. You know I did what I did; I made a mistake.
Why I did it; we'll never know. Cuz I don't know why I did it. I was, I was, I didn't tell
you that part of it. My girlfriend at the time brought this to me. Was starting this stuff;
she was doing with her daughter, got me enticed in it, but like my therapist said
somewhere along the line there I did it on my own there without her consent or being
there, you know. But I'll never know why I did it, I think he's trying to figure it out, but
I'll never know why. People make mistakes in their lives, some are bigger than others.
You don't need 3 years of psychology to figure out why. I don't know why I did it; how
is X going to figure out why I did it? You know (laughs!) I don't care how good you are;
you're not gonna... (Interview, Frank, 5/2012)

While Frank did admit to doing "stuff," with his girlfriend's daughter, he was not
able to articulate what that stuff was. He became angry when talking, looked away from
me, and it was clear that he just did not want to say things he did out loud, not after 9.5
years. Frank talked about his crime in legal terms, and that's where he seemed most
comfortable at his stage in the mental health system. "I engaged in a sex act with a
minor. I did things I don't understand."
Being unable to say more or know more, Frank experiences treatment as a frustrating demand he is forced to have to participate.

You know if I had to come here and pay for it and I couldn't afford it; they'd have no say in it; they couldn't make me come. You know? I don't understand why there are guys in that group that actually pay to come here out of their own pocket. What do they get out of it? I know it's against what you believe going for what you're going for, but I don't believe in psychology. (Interview, Frank, 5/2012)

Frank talked about what he sees as getting in the way of his future, of moving forward through the system.

Well, if you ask me I'd say it's fine; it couldn't be better. If you ask [therapist] it's not right because I am still living at home with my mother. My mother is 83 she doesn't get around good anymore. My dad died in 09; she needs someone to take care of her and stuff around the house. You know I'm trying to get disability so I haven't been looking for a job yet, cuz I don't know if I can handle it. My symptoms aren't real bad today; I have good days and bad days. They are pretty good today. But you know he [therapist] thinks it's not a good environment to be living at home; you know it's strange and he's wrong. (Interview, Frank, 5/2012)

Prescott and Wilson (2012) point out several double bind communications that occur in the context of treatment. Some of these messages apply to Frank’s case directly. “Please be honest and straightforward with us; evidence that you do not agree with us will be understood as resistance” (p. 238). Prescott and Wilson explain that “…in treatment for people with sexual behavior problems, disagreeing with one’s therapist often comes with considerable costs. Therapists, like others, do not like being contradicted. Therapists can be at their best when they view client disagreement as an opportunity for exploration of the issues and clarification of values” (p. 238). One of the challenges that Frank was anticipating when I met with him was his upcoming polygraph exam. One of the messages Prescott and Wilson propose as paradoxical and a double bind communication involves the polygraph specifically. “You must discuss your
complete sexual history with little regard for the possible legal consequences of disclosure” (p. 241).

Frank was due to take a polygraph exam, most popularly known as a lie detector test. First he's expected to take one to talk about his sexual history, and any prior crimes he may have committed and then he is expected to take a monitoring or maintenance polygraph to access information about his current sexual behavior. This polygraph exam was scheduled just a week or two after our interview. He said if he failed he would ask to be sent back to prison, that somehow that would be more tolerable than being forced to stay in treatment and talk about the things he did not believe in. The polygraph represents a pivotal stage for Frank--either he will pass and move forward or he will fail and continue treatment, at best.

One question that begs exploration, is why does Frank need treatment at all, after serving nine years in prison? Why does the legal system contract the mental health system to begin with? In the case of Frank it's to get him to talk more, so the two systems can know more. What the mental health system gathers from a polygraph exam, they will share with the legal professionals who monitor the offenders and the offenders know that quite well. Chapter 7 explores the polygraph in depth and the function it plays as an instrument that straddles both systems.

Dan, the polygrapher, said, "We have to give immunity from prosecution in order to get an honest poly," but this doesn't happen in actual practice. The double bind is clear. “In some cases protecting one’s rights (including declining a polygraph examination) may be grounds for termination from treatment. Given that in some situations termination can result in a return to prison, this is a challenging situation
indeed, particularly in the absence of research demonstrating that full disclosure is necessary for successful treatment” (p. 241).

I do not know if Frank passed the polygraph and I do not know if he continues to remain in treatment or if he was able to petition out of the system by way of being granted a reduction of his supervised release time. I do know that as of December 2012, Frank’s time on Megan's Law was amended, and he is now publically registered for his lifetime under the federal crime code for the sexual assault of a minor.

What have we learned from Frank? Frank’s case represents one stop along the journey sex offenders take through the systems. He occupies an early stop compared to the rest of the offenders whose voices and stories are represented in this project. He illustrates the way an offender talks at the beginning and the resistances that one has at the start of the process. The conception that many mental health professionals seem to have is that offenders do not want to participate in treatment because they are resistant to it or they are in denial about the behavior they engaged in that led to committing sexual crimes. While this may be very true and accurate, the reasons why they are resistant or remain in denial are too often overlooked. Resistance to treatment and denial about sexual behavior that leads to crime is often the result of having had to meet the demands of the legal system. Because Frank took the plea bargain, which allowed him to plead guilty to some but not all crimes he was charged with, he developed a relationship of guilt to those crimes in which he plead guilty. For people like Frank who enter the mental health system for the first time already having spent over nine years in the legal system, his relationship to his offense and to himself has been shaped by that experience
and the demands of that system. His resistance and denial to meeting the demands of the second system, should be understood in light of that experience.

**Overview of Mental Health System**

While Frank's vignette is already an introduction to the mental health system, the following represents an overview of the journey offenders take through this system, what they encounter, and what they are forced to do to meet its demands. The following is the result of field notes taken at the practice of Dr. Smith as well as the interviews I conducted with Dr. Smith, and my own knowledge as a mental health professional in this practice. In that it represents an overview of mental health practices as they apply to the people we call sex offenders.

When I encountered the participants for interview, they had all completed prison sentences and had been in treatment for varying lengths of time. They had been on supervised release or probation and were currently serving them--some further along in the system than others and some who had newly entered the mental health system after having served 9 years in prison, like Frank. The place where I met the offenders was at the office of Dr. Smith where sex offenders come to be evaluated, assessed, tested, and treated. When I sat down with Dr. Smith, I asked him how he sees his role as someone who evaluates and treats sex offenders. "The goal is not to stop them offending or reoffending, but to slow them down. That's the best we can do."

One offender I interviewed expressed his confusion upon arrival to Dr. Smith's office. During his interview, he said that looking back he remembers thinking, that having served 5 years in prison, he asked himself and his therapist, "What am I doing
here as a mental patient? Why do I have to come here to talk about my sexual life to you? Is there something mentally wrong with me? I already did my time! I don't get it."

If an offender first encounters the mental health system outside of his time served in prison, he sometimes sees treatment as an extension of that process, as a punishment, in that he is aware the therapist may at time relay information to his probation officer. He does not trust the therapist because he does not yet know his therapist. Some of my participants spoke candidly, in retrospect, about not trusting their therapist or the whole process because they believed that anything that they said would be incriminating. In some cases this is true.

When an offender first enters treatment at the practice of Dr. Smith, as is common throughout the profession, he is handed a piece of paper which explains that therapy is only confidential on a limited basis. In other words, if the therapist wants to tell the probation officer something, he or she will at his or her own discretion. It would make sense then that most sex offenders are very careful about what they reveal about themselves, especially if they have criminal charges pending against them, but even if they do not, and they have already been convicted and served time for certain crimes, it is possible that their histories contain more "sexual offenses" that the legal system does not know about because they were not caught. For example, one of my participants who had been in treatment for many years (Steve) had talked about how he had been offending for years, since he was a teenager, long before the legal system knew about it or he was convicted of any crime. If offenders have already been caught and sentenced to prison time, probation, and Megan's Law, they will try to limit to scope of knowledge the
therapist can have so as to stay out of further trouble. Why risk any further self-incrimination at this point?

Once offenders enter the mental health system, they speak to the mental health professional without legal representation and they are expected to speak openly and honestly. At this point, the offender encounters a contradictory demand in the very definition of confession. The mental health system expects the offender to speak openly and tell the truth. For this, he is rewarded and deemed to be making progress and receives a pass to move forward through the system, to the next station stop. But at the same time the legal system has a very different way of dealing with confession, which may be taken up as self-incrimination. This leads to punishment. The offender finds himself stuck having to negotiate this contradiction in demand. The offender learns that to confess means moving forward in one system while it might mean getting stuck or moving backward in another.

**Tests, Evaluations, and Assessment**

From the beginning, sex offenders are given a psychiatric evaluation under these conditions as resistant or apprehensive participants. This is sometimes labeled by mental health professionals as "resistant" or not "amenable" to therapy. An evaluation will result in a psychiatric diagnosis that will inevitably inform the course of treatment. Even if a sex offender does not agree with the results of his evaluation, he must submit to the treatment the experts feel is best for him.

Sex offenders are also asked to take several tests, to sit in a session room with a pencil and questionnaire. Standard tests will assess their level of risk, such as the Static-99, a test designed to measure how dangerous someone is and the likelihood that they
will offend again. They are also asked to fill out a personality inventory, known as the Minnesota Multiphasic Personality Inventory-2-Restructured Form which consists of 338 true or false questions, used for a forensic population, to assess a person’s personality dynamics, such as how they handle stress, how they are likely to interact with others, and if they have indicated any evidence of mental illness or personality pathology. This personality inventory also produces diagnostic scales that many mental health professionals use to assist them in formulating an accurate diagnosis. The test takes into account if people lie or try to portray themselves in a positive light—in other words, the test has a deception indicator that determines if someone is being trying to look good or look bad. Sex offenders are also expected to complete a psychosexual history. These questionnaires tend to be invasive, asking how many times someone masturbates, what they fantasize about, how old they were when they lost their virginity or had their first sexual experiences. The offender will also be expected to sit in front of a computer monitor and view sexually provocative images of bondage, voyeurism, men, women, children, and animals and rate their level of arousal on a scale of 1-7. This is called the Abel Test designed by Dr. Gene Abel, further discussed in the vignette of Steve. These images are meant to coincide with the paraphilia listed in the DSM-IV (Diagnostic and Statistical Manual published by the American Psychiatric Association) to help the mental health professional formulate a proper diagnosis. However the images are decades old and outdated, at least in comparison to what is being viewed on pornographic websites over the past five years.
Mental health testing material is used to aid and inform mental health professionals about the offender's risk level, diagnosis, and treatment the sex offender will undergo as he moves through the mental health system.

Offenders may not be honest yet with themselves and do not know yet how to negotiate the process with themself of answering these questions. Take Frank as an example, he still blamed his girlfriend for his crime and was resistant to his therapist's assertion that at some point, without his girlfriend's consent, he engaged in criminal behaviors on his own. These are some of the thoughts the participants shared as they entered into the process.

After the offender is evaluated, assessed, and diagnosed, he must be treated. Offenders may or may not be told their diagnosis and some do not understand them or disagree, but the diagnosis remains on paper and becomes a part of their official mental health/medical records that will continue to inform his treatment.

**Treatment**

Offenders sit for 1.5 hours in a group setting among other offenders and talk about their offense, their crime, share the details of their lives that led up to the offense. The more open and talkative a person is, the more credit he gets or positive evaluation the doctor writes. Coming in to speak with a therapist for the first time is an anxiety provoking experience, for anyone. If the offender is entering for the first time it is likely that he will remain guarded. Often lawyers tell offenders what they can and cannot say in treatment. After charges are settled and prison time served, offenders still remain on guard, as they are likely to be on probation.
Through my experience as therapist and researcher conducting fieldwork, I have come to notice when a shift occurs, from sex offenders remaining on guard and holding up their defenses, which is always a part of the process, to sex offenders beginning to speak spontaneously, in the context of group therapy. One such place this turn occurs is when one offender witnesses another sharing personal information and realizes that as a result, no one has gone back to prison or had his probation revoked. No one has been tricked into disclosing information such that they end up being arrested that day. As a reflex, gradually the group becomes more disclosive and honest with one another. For the men who sit and say they don't know why they are here or "this doesn't apply to me," the offender is seen or viewed as resistant, noncompliant or in denial, and while this may be part of the case, the larger part may be the distrust in the therapeutic process and the contradictory demands the two systems create for him. It seems unrealistic to expect someone to come to mental health treatment for the first time, especially in a group setting, to begin openly talking about his intimate life, especially when the consequence may be a loss of judicial freedom.

After six months in treatment, sex offenders are made to take a polygraph exam, to see if they have been telling the truth all along. While they are told it is a tool for treatment, to help them push through the blocks of denial, some sex offenders and therapists say, it has at times been used to send people back to jail or revoke probation privileges. The Polygraph then becomes a truth barometer, a way of measuring if what the offender has been telling his therapist is truthful. The results of this exam can radically change the course of his pathway moving forward throughout both the mental
health and legal systems. The Polygraph will be discussed in further detail in Chapter 6, as it represents one such place where the two systems intersect.

**Navigating Therapy**

There are flaws inherent in treatment which cannot be understand without first considering the context of the legal system, that denial cannot be fully understood without taking into consideration its role. Offenders do not enter treatment arriving from nowhere--they come already configured from an already specific set of demands that they had to navigate for years and in this process, they have formed a relationship with their crimes. Then they are thrust into a new system, the mental health system, which demands a whole new set of rules for understanding one's crime and behavior. I have heard offenders struggle with questions such what kind of person they are--are they a monster or "scumbag," as one participant put it, or are they a person who made terrible choices that hurt other people? One inherent flaw in two systems is that they are asked to talk with no protection against self-incrimination. There is only limited confidentiality in treatment and no confidentiality when they take a lie detector test. The results are shared directly with probation officers. Another inherent flaw in the system is what Prescott and Wilson (2012) referred to as “No-cure” language. Research in the field of behavior indicates that behavioral change is possible and sex offending is a behavior. When people who sexually offend enter treatment, some do so while being told by therapists that change is possible. “On the other hand clients learn that they cannot be cured.” (Prescott 2012, p. 242). This is a message most often communicated by the legal system—that they are lifelong criminals that need continued supervision. Also, the role of the two systems inherent paradoxes and double bind communications stand in the way of change. So how
do sex offenders navigate their way through treatment under such circumstances? Frank already decided that if he failed his lie detector test, he would ask to go back to jail. The vignettes that follow and excerpts presented in future chapters also demonstrate what offenders do to manage these demands.

**Conclusion**

The legal system has resources and dedication to creating offenders through entrapment. The legal system contracts the mental health system and needs it as another way of monitoring the offenders. But most significantly, the legal system needs the mental health system because it is the system that gets the offender to talk, to confess for 50 minutes in individual sessions and 90 minutes in group sessions every week. The mental health system is focused on extracting information in a "therapeutic" space, in that the mental health professional contracts a relationship with the offender to get him to talk. But he must not simply talk, because in 6 months time, the polygraph exam shows up to test what he has been talking about, to test if the talk is truthful. This information is then fed back to the legal system. This is why the legal system hands offenders over to the mental health system and why they are not only locked up as criminals.

**Chapter 4**

**Return to the Legal System**

Chapter 4 begins with a third Vignette, this one of Greg, a certified lawyer who committed an internet crime. This chapter provides an overview of the legal system and the stops that people make along their journey through the two systems, and explores the
various combinations of stops and ways people enter and move through the systems. This chapter also introduces the polygraph test and a polygrapher named "Dan.” The polygraph is a unique instrument that straddles the two systems and it makes an important and contradictory demand on sex offenders at this point of intersection. By passing the polygraph, Greg got out of the mental health system, but he remained stranded in the legal system.

It might seem that if anyone could make their way out of the legal system, it should be Greg, the certified lawyer, but even he made mistakes. Furthermore, this chapter shows how Greg, like many sex offenders, ends up stuck in the legal system by being registered on a website known as a state public registration list, under Megan's Law and its latest amendment, the Adam Walsh Act. This chapter further explores what Megan's Law does to sex offenders.

**Introduction to Greg's Vignette**

The third vignette is that of "Greg," a white male in his 50s who is a lawyer. Greg was convicted of possession of child pornography and he was diagnosed by mental health professionals as Axis I: Deferred, meaning that he did not meet criteria for any mental health diagnosis or Paraphilia as listed in the DSM-IV-TR. This vignette is the product of a one hour semi-structured interview conducted with Greg.

Despite taking many precautions, including installing privacy settings on his office computers, Greg found himself charged and then convicted of a cybercrime. He was quickly propelled into the legal system and, shortly thereafter, the mental health system. Greg's case raises several questions: what is pornography and at what point does
viewing it become a crime? Is there such a thing as internet privacy? His case illustrates how a person can become a sex offender using the internet.

From Greg’s story, we learn how he navigated the legal system and the various strategies he used to make this journey. The most problematic experience a sex offender has is when he encounters the place where the mental health and legal systems intersect, because this is where double binds exist.

Double bind theory was first described by anthropologist Gregory Bateson in the 1950s.

The most useful way to phrase double bind description is not in terms of a binder and a victim but in terms of people caught up in an ongoing system which produces conflicting definitions of the relationship and consequent subjective distress. (Bateson, 1963, p. 157)

One of my central findings was that the sex offenders who are caught up in the legal and mental health systems are trapped in double binds. In this chapter and those that follow I will describe the conflicting definitions of their relationship to the twin systems, and I shall give evidence of the subjective distress that they experience as a consequence.

Greg used a very significant navigational tool to move through the two systems--his prior legal knowledge allowed him to exercise some autonomy. Because he was an expert in the field of law before he became a sex offender, Greg used his expertise to try and leverage his position as a criminal. At times, Greg admitted that he didn’t know exactly what he was doing, but he used his "old lawyer's trick, to look like you know even if you don't have a clue." This case illustrates how little Greg's legal expertise
actually helped him, and illuminates the way that the two systems are configured to set Greg up to fail.

**Vignette III: Greg**

Parked on the street outside an ordinary-looking office building is an anonymous car in which two men are sitting, intent on their laptop computers. The car stays there for hours, even days; presumably they leave and come back again. The building they are outside is a regular office building with various businesses and people inside. These two men, sitting in their car, have the resources and skills to hack into the computers of the people who work in the building, so long as they have active Wi-Fi. They are parked here in order to identify the contents of the computer of one man who works in the building. With coffee in the car's cup holders and newspapers dropped on the floor, remnants of breaks during a long day's work, they want to be sure they hack into the right computer at the right time. When they have gained access to the man's computer and are able to see what he has downloaded, they become interested enough to leave their vehicle, enter the building, and walk directly into the man's business office.

When I first met Greg, he had just arrived in front of the sliding glass check-in window at Dr. Smith's office. He was carrying a leather briefcase. He announced himself and made mention of his clothing. "I'm here and I dressed professionally so you can't take advantage of me." He wore a knitted wool blazer with fine thread, a dress shirt and a pair of dress slacks and dress shoes. He looked like a lawyer prepared for court. He told me later that this was an old lawyer's trick – "look like you know what you're doing even if you don't." We walked back to one of the open session rooms and sat down, he on one side of the desk and me on the other.
Greg has told me on numerous occasions that he doesn't trust anyone. While practicing as an insurance and investment lawyer who specialized in estate and retirement planning, he began to see the darker side of life and defended people who probably didn't make the best decisions. Greg was never the type of guy to use a computer; in fact he avoided them until he couldn't anymore. "I hate computers. I used to hire others to do computer work for me but then clients started wondering why I didn't have my own, lost trust for not being part of the modern age, so I got some and didn't know what I was doing with them. But it's how you play the game. Kind of like how I'm dressed today!"

Over time, I came to know Greg well. He was one of three siblings. He described himself as the quiet one when they were children, the one who kept to himself and did not share much. When he had a problem, he chose to work it out on his own. He chalked this up simply to his personality. Whereas his brother and sister were outgoing and talked a lot, he was quiet and introverted. He was also responsible; Greg was the kind of person who did everything he was supposed to.

For 47 years I was the poster child for every parent who wanted a kid. I graduated high school, was the first to go to college and graduate, earned a Masters, Ph.D, and graduate from law school. Mom and dad were proud. I never did anything wrong, and uh... and then I do the most HORRENDOUS thing in the world in people's eyes. What I find the most shocking was that all 47 years of exemplary behavior I had, didn't give me any credit for the 20 minutes where I made an error in judgment. And I'm not perfect, I've made mistakes, but I always dragged myself back up, dusted myself off, and got back up. (Interview, Greg, 5/2012)

Greg was married, and while happily raising four children he ran his own business, as a practicing attorney. His business became steadily busier, and by the time his fourth son was born he had not one business but two, and he ran them with only as much help as he felt he needed. Greg was no stranger to working hard and handling stress, even though he had more on his plate than he had been used to. It was around this
time that he started having marital problems. Intimacy waned with his wife and he was at home less and less attending to business matters. He admitted to ignoring the problems with his wife for a long time and telling himself things would get better. By 2005, Greg's businesses were running hard and he was juggling work life with raising his children. Greg explained to me that he was never the drinking type nor did he use drugs, other than what was prescribed to him for seizures. It was around this time, however, that he started looking at pornography on the internet.

Greg stated, “I never knew how file sharing programs worked or else I would have never used them.” Greg did not realize that every time he highlighted files to be viewed, they were downloaded onto his computer. Two of the most popular file sharing computer tools are LimeWire and Gnutella's networks. Gnutella is a network for peer-to-peer file sharing. LimeWire is a program that displays the files that are available for sharing, and that enables a user to download whichever file they select. Greg used LimeWire to view pornography. Neither of these networks has a central database where files are stored. Instead, they provide one person with access to files that may be on a dozen other people's computers: these people are the "peers." The software handles the transfer, not of whole files but of bits and pieces, assembling the complete file on the user's machine. In other words, if you wanted to view a file or image that someone else identified as having, you would simply download the LimeWire or the Gnutella program onto your computer and then put out inquires or searches for files you are looking for. Anyone who is also file sharing on LimeWire or Gnutella's network will indicate that they possess that file and share it with you. When you view it, it has been downloaded to your own computer, so that you are in possession of it.
Greg wasn't looking for any particular image the day he downloaded a file called "Vicky." He told me, "On at least two occasions that I was told of, I don't really remember, the investigator told me that I viewed the illegal stuff which was very minor compared to the 100s of thousands of other images I viewed. I actually kind of stumbled across it cuz there was a file called Vicky when I was looking at regular porn and I just thought it was other porn and saw some girl named Vicky, and it turned out to be child stuff, and uh (pause) and uh, then all of this other stuff started coming up and uh, I thought I closed out of it, I didn't understand how shared files worked."

During our interview Greg reflected on the irony of his situation, that while he was a person who took many precautions with electronic data and communications, here he was talking to me because he was accused of a cyber crime. The nature of Greg's work involved dotting the i's and crossing the t's, thinking ahead for his clients and planning how to best protect and represent their rights and their own stories. He also knew that the investment information he collected from his clients was protected by client-attorney privilege.

When I said to you before we started recording that I find it amazing that I'm in this situation it's for that reason, cuz I never liked using the internet or computers. I like using mail, overnight mail, and old fashioned stuff that I knew that if the government was going to try to do something, or any other agency was going to try and do something, they had to go through some hoops to get at it and when there's hoops to go through sometimes you can find out about it, but when they can just sit out in a car across the street and open up a wireless whatever and pull stuff out of thin air, virtually you don't have that, and uh...(Interview, Greg, 5/2012)

Greg sat in silence for a long time.

The two men who sat outside of Greg's office in the anonymous vehicle with their coffee cups and newspapers were federal agents. How did they come to identify Greg, and how did they have access to the contents of his office computer? After all, viewing
pornography is not a crime, so how did law enforcement come to know that Greg had what they were looking for, illegal images of pornography on his computer?

I asked him (FBI agent) how did you catch me? And um, he said we put a tracer on that file and we follow it where it leads. So, they are basically a distributor of this stuff. No one's offended by that? I'm offended by that! In drug deals, the government doesn't put drugs out into the system; they put money out into the system, but no drugs. When they go and do a drug buy; they bring cash and buy the drugs. The theory is we are taking offending stuff OUT of the system; we're catching the people that do the distributing. But in this case, the government is doing the EXACT opposite; they are distributing the stuff. (Interview, Greg, 5/2012)

Several weeks after I first met with Greg, I telephoned one of the local law offices with the hope of speaking to an attorney who knew something about internet crimes and how people like Greg end up getting into trouble. Mr. Ryan, who has been practicing as a state and federal defense attorney for more than twenty years, agreed to speak to me.

I met Mr. Ryan in his law office downtown; it happened to be the night of the Jerry Sandusky trial. Jerry Sandusky was the former assistant football coach of Penn State University. He was indicted on 52 counts of sexual crimes against minors. His trial started on June 2012, and he was found guilty on 45 counts of sexual abuse. Attorney Ryan’s office colleague was one of the defense attorneys representing one of Penn State's former athletic directors (Mr. Tim Curly). There was talk spinning around about whether Mr. Sandusky should take a plea agreement or go to trial. Mr. Ryan explained to me that Mr. Sandusky had no choice but to go to trial; there was no court on the planet that was going to offer him a plea deal that would give him less than the rest of his life in prison. On October 9, 2012, Sandusky was sentenced to a minimum of 30 years and maximum of 60 years in Pennsylvania state prison. This scandal was recognized internationally and had far reaching consequences. It was in reaction to his high-profile case in December
2012, that the state of Pennsylvania adopted the Adam Walsh Act after having resisted it as unconstitutional for many years.

Mr. Ryan spent an hour and a half talking with me about the cases he had worked and how someone like Greg ends up in trouble for a sexual crime committed using a computer or other form of technology. He also talked about how these internet cases seem to be increasing or at least coming across his desk more frequently. By legal standards, these cases lead to harsher punishments. The focus on punishing internet sex crimes may have to do with how easy it is to convict people.

Mr. Ryan explained how internet crimes work and how someone who views images or pictures on a computer can end up going to prison for a longer amount of time than someone who has physically molested or violently raped a child. Mr. Ryan goes to court with people who are charged not only with internet crimes but also with seemingly much more serious drug, homicide, and sexual crimes.

It's relatively easy to bust these people with child porn. The two most common ways people get arrested are they [the cops] somehow get lucky and bust the website and get their subscriber's list. And they [law enforcement] have everybody's IP #. Everybody has one. From the IP # you can tell who the server is. Such as, 'Oh, that's a Comcast or a Cablevision IP #, that's an AOL IP#.' And they [the cops] go to the court and say we need the address and name of the subscriber with this IP#. And if they know that computer has been used to access this website then they'll get a search warrant and they'll seize the computer.

The second most common way people get arrested is peer-to-peer sharing stuff, you know about that? Lime Wire and Gnutella? The police just go on the internet; they have the software to get into this stuff and they simply put in the name of a known child porn video or picture and it will show up all the IP #s that has it!(Interview, Mr. Ryan, 6/2012).

Mr. Ryan provided an example of how the police can track and IP number.

Let's say, I want the song 'I can't get no satisfaction,' and I would go put that into Napster and it would show, you know, ten computers that would have it with their IP number. Say I was downloading it from somebody's computer. It's not like all these
songs are from cyberspace. They were actually on somebody else's computer. So, I'd get it on my computer. So, what the cops do is they put it in to a search list, you know, "daddy plays with his little girl," and they know that's a known child porn video and it shows up where it is! And they see, 'oh it's a known IP address, that's in X town,' and they download it and they say, 'this is the real deal!' Now, we know this guy has it on his computer. So, they do an affidavit of probable cause, go to a magistrate, get a search warrant, and the affidavit says all THIS, (written by the cops) 'there is this thing called peer to peer networks, this is how they work, we put this thing in, it came back with this video, we saw this video is on such and such computer, we went to the Cable company, they said it's Joe Blow at 123 Elm Street. We want a warrant for Joe Blow's computer,' so they go seize the computer and there's that video and 300 others.

Next thing you know the guy is telling you 'oh, I didn't know this was wrong or I didn't really like it or I quit doing it,' or you know they all talk; I mean very few of them have the brains to say I'm not making any statements. So, you have the porn, you have the warrant, you have the probable cause, you have the porn on the guy's computer, so you clearly have the crime, you have his admission, that it was his so the cops are insulated from any argument, and the guy's fucked. And then there are all these things that determine how high or low the sentencing is, like the number of images, whether there is pre-pubescence, whether there is sado-masochism, or violence depicted, and that determines where you stand in the guidelines. So sometimes the bargaining is about well, we'll reduce the number of images and we'll agree to this. I just had one where they could have been going away for 7-8 years and we agreed on a range of 3 years. (Interview, Mr. Ryan, 6/2012)

The two federal agents who were sitting outside Greg's office building presumably had the software needed to access Lime Wire or a similar file sharing program, and had searched for "Vicky," the image Greg possessed. Although Greg stated during his interview that he took all necessary precautions when setting up his internet service and did not believe he had wireless capability, nonetheless, the federal agents told him that they caught him by accessing his files on his office computer through WiFi; this is why they were sitting outside. He told me what happened when they entered his office.

That's exactly how they got me! In fact, when I put in my internet I paid extra money to have a dedicated DSL line installed so that I wouldn't have wireless, I mean I had a copper wire run from the poll, to my office, at my expense. I actually had an off company, not one of the major phone companies, but it was like an off company who did it for me, and uh, for that reason cuz that was a dedicated line, nothing but DSL came over it, it wasn't on a cable, it wasn't the TV, that was the only thing that line did, and uh, but it still didn't give you the protection, but it wasn't wireless either. And every
computer in the office was hard wired, and no computers talked to each other. I mean, I was a maniac, for the first three months I drove the phone company nuts. Every time I heard a click I was calling them up. They thought I was crazy, but um, so, that's why when, if I think about this stuff too much I go nuts. I think how could you be so paranoid about this kind of stuff and end up in this kind of situation, but, be it as it may, I did it. That's how I ended up here. I don't know why I looked at it. I was relieved that they came in; it forced me to deal with a problem I was having with pornography in general, not child porn. I'm not a big fan of pornography in general. My wife was in the office the day they came in. (Interview, Greg, 5/2012)

When the federal agents arrived to Greg's office to seize his computer, this was his first contact with the legal system. His journey would continue through the legal system and become more entrenched as the years go on.

When the federal agents arrived, they took Greg's computer knowing what was on it. "They came in, they looked, they took my computer, one disk of my tax returns and another disk; I'm not sure why. I was in kind of a daze when they came in. It's kind of funny to say but it was 'like a relief,' because I finally had the uh, the impetus I needed to get help which I couldn't do on my own."

It was over a year before charges were brought against Greg and he was finally arrested. Greg was charged with "possession of child pornography." When Greg was using LimeWire, he downloaded the image of Vicky as well as at least 600 other images of illegal pornography onto his computer. Everything that someone has on their hard drive is technically "possessed" by them. Furthermore, if someone simply views the images but doesn't download them, they're still accessible through the browser cache of the computer and those viewing sessions can be reconstructed by the forensic software used by law enforcement. The viewing of these images also constitutes "possession" of illegal pornography and this has led to many convictions in the US. For example, in 2009, the same year Greg was convicted, a man in California named Michael James
Tecklenburg was charged, arrested, and convicted of possessing illegal images on his computer despite his argument that he was unaware of the files' existence. Whenever a computer accesses a website on the internet, it automatically saves the viewing material in a temporary internet file or TIF. According to California news writer Rhett Pardon (2009) of California Fire News,

Files deleted from a computer are not actually erased from that computer's hard drive, but remain in unallocated space until they are overwritten, and the examiner testified at trial that although there is often no way to determine the original source, the TIF's demonstrated that at some point the images were on Tecklenburg's computer screen. (Lodi Fire Captain, para 4).

Recently, there was a case in New York in which it was determined that one has to "willingly and knowingly possess" such material in order to be convicted of possession. This decision was based on the case of a college professor who was arrested and charged with possession of child pornography. The federal agents found hundreds of illegal images of child pornography in his browser cache. A college professor of public administration stated that he had no knowledge of these images. The New York court rendered a decision that a person has to "knowingly and willingly" view the material in order to be convicted of possessing the material. This knowledge has to be proven by evidence that supports the interpretation that a person intended to possess the illegal images such as "printing, saving, downloading etc," stated Senior Judge Carmen Beauchamp Ciprack of New York State in an article from nbcnews.com.

The decision rests on whether accessing and viewing something on the Internet is the same as possessing it, and whether possessing it means you had to procure it.
In essence, the court said no to the first question and yes to the second. (Viewing Child Porn on the Web, 2012, para 4)

However, this statute is applicable only in New York State.

The Department of Justice is the source of the federal definition of child pornography:

Prior to the enactment of the Act, Chapter 110 of Title 18, did not use the term "child pornography," but defined such material as the visual depiction of a child engaging in or assisting another person to engage in the sexually explicit conduct." The term "child pornography," was only a lay term and not a term of art. The Act, however, amends section 2256 and uses the term "child pornography," defining it to include the following:

1. visual depictions where minors are depicted engaging in sexually explicit conduct;
2. visual depiction which are, or appears to be, of a minor engaging in sexually explicit conduct;
3. visual depictions which have been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
4. visual depictions which are advertised, promoted, presented, described or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct. (New Definition of Child Pornography, 2014, para 4)

Greg possessed at least 600 images of persons under the age of 18.

During the year when Greg was waiting to hear about the charges against him, he shut his law practice down because there were no computers with which to work and moved his practice into his home, where he continued to live with his wife and children. It was during this time that Greg sought a defense attorney and entered voluntary mental
health treatment at Dr. Smith's practice. Greg said that he recognized he had a problem and wanted to talk with someone about it. Although Greg did not say he was recommended to begin mental health treatment before his arrest and eventual conviction, many people who are facing the possibility of being charged with a sex crime are often recommended to attend therapy as a pre-emptive measure to help build their defense in court.

At the time when Greg was finally arrested and faced trial, Mary Beth Buchanan was the residing US attorney and she pushed for harsher sentencing laws for sexual offenders. Unknowingly, Greg was at the cross hairs of her political aim. Prior to her taking office, the mandatory minimum sentence for the type of crime Greg had committed was less than five years.

As Greg found out, however, Buchanan was able to change the sentencing guidelines. He told me,

...You know I never did criminal law and um, when I finally got a chance to look at the statute I was shocked because there's four sections to the statute, three of them are mandatory minimum sections where there is a five year mandatory minimum and uh, the fourth section is zero to ten. The government gets to choose what section to prosecute you under, and they can pretty much decide to prosecute you under any of the four, and so you are kind of at their mercy and so if you push back a little bit they'll kind of just go under a mandatory minimum section and even if the judge likes you and thinks you're a nice guy, he has to give you a minimum of five years. (Interview, Greg, 5/2012)

Although Greg moved his practice into his home from 2007-2009, he eventually lost the securities license required to run his type of business.

Under the regimen of Mary Beth Buchanan, Greg was facing a mandatory minimum of five years imprisonment. Under MB Buchanan a person had to be in possession of 600 illegal images to meet this requirement.
Throughout my conversation with Greg, he repeatedly said that he recognized he made a mistake. He also said that he was glad the investigators caught him because if they had not, he did not believe he would have been able to stop viewing pornography on his own. What he felt was wrong was the inflexibility of the punishment and the long road ahead that he faced, the number of hoops he would now have to jump through, and the fight to make it through all of the requirements.

I made a mistake, I'll never deny what I did was wrong; that's why I could put up a fight. I could have put up all kinds of roadblocks. I could have requested an attorney be there before they touched any of my protected computer files in order to protect client-attorney privilege; I could have delayed, I could have stalled, I could have done all kinds of things, to make investigator's lives miserable. I didn't do any of that. I knew I did wrong. I figured time to accept responsibility. I did something wrong. But I had no idea. I was a lawyer, I figured no priors, no offenses, and I had no idea. I didn't realize the inflexibility of the punishment, that even judges didn't have flexibility in the punishment. I didn't pay attention to that area of the law; it wasn't my area. (Interview, Greg, 5/2012)

Over one year after the federal agents came to seize Greg's computer, and after being arrested and charged with the possession of illegal pornography, Greg was convicted in federal court of possession of illegal pornography. During this time, he continued to work from his home and to attend individual and group therapy at Dr. Smith's office, until he received notice by mail to report to the state of Kentucky to serve federal prison time. Greg did not talk much about prison during our interview, but he did talk about what happened once he was released. He was eventually released after serving twenty-four of the thirty months he was sentenced to, which was half of the mandatory minimum at that time, but on the condition that he serve eight years of supervised release under the federal probation office, in addition to ten years of public registry known as Megan's Law. About his sentencing, Greg stated, "At that time, that was a good deal."
And the thing is they haven't proved I'm dangerous, they only proved I looked at some free pictures. They haven't even proved what kind of pictures I looked at or what the pictures contained, they just proved that I looked at pictures and that some of those pictures to their knowledge contained people of a certain age, so they could work their numbers under the federal guidelines to get their magic number 600, 60 months.... that was their goal. (Interview, Greg, 5/2012)

From his early federal prison release, Greg would go to serve 91 days at a half way house, a program set up to assist sex offender with reintegrating into the community. Most sex offenders stay at the half way house for between three and six months, until they secure a job and place to live, which is a requirement of the program. Greg was in an exceptional position, in that he already had a job, although his license was suspended. According to Greg, there were times when the manager of the half way house tried to force him to find work, but Greg stood his ground. He filed for disability for his seizure disorder and received it; this exempted him from the program's requirement that he must find a job. "They can't make you get a job. They tried to do that to me; I told X (the half way house director) that I'd go up and see the judge and then he backed off and even at the group meeting when he did that he backed off and said 'well it doesn't apply to you Greg.' I said I know it doesn't. (Greg, Interview, 5/2012)

Greg also had a place to live after discharge. He was planning on returning to the home that he owned and worked toward getting his business license back. For Greg, his time at the half way house was spent attending therapy sessions with Dr. Smith at his downtown office and taking long walks when he received his hourly passes. Most sex offenders are given passes to the computer lab or to go on job interviews or in their attempts to find housing, meeting with landlords, leasing agents etc. Because these needs didn't apply to Greg, he spent his passes at the CVS downtown, just to get out and get some air.
After 91 days, Greg was discharged from the half way house to his home. He was subject to federal supervision or supervised release of a probation officer for the next eight years. By the time I met Greg he had already served the first of those eight years on supervised release and was petitioning to reduce his probationary sentence. After one year, every sex offender has a right to petition the court for a reduction in their supervised release sentence. Greg's plan was to show progress by having followed all the rules of his supervised release, passing his polygraph exams, and being successfully discharged from his psychotherapy treatment with Dr. Smith.

**Greg's Treatment**

People arrive at Dr. Smith's office door for a variety of reasons. Some are referred by judges, defense attorneys, district attorneys, parole and probation officers, and some come on their own volition, though that is very rare.

Greg saw Dr. Smith weekly in his office for 50 minutes each session. Although he did not talk about his experience at first, he did later talk about how he managed to form a relationship with Dr. Smith he could trust and rely upon. Dr. Smith invited him to sit in on a therapy group. In the group, Greg was quiet at first and began to witness men at various stages of the process. Some were waiting to be tried and sentenced, some were waiting for their date to report to prison at various locations across the country, while others had already been through the prison process and were contending with probation and living at the half-way house downtown.

...before I went away, I stayed with them and talked and I saw how different I was from them. Some had real issues, been victimized when young, had hands on offenses. I felt real empathy for some of them. I remember one guy; he wasn't able to see his grandkids anymore. You could see pain in his eyes from it. I could understand his son's
viewpoint, it's just a hard situation, but uh, you know, much different group than now. (Interview, Greg, 5/2012)

After thirteen months of seeing Dr. Smith, Greg received notice with a date to report to federal prison in the state of Kentucky, where he served two years. Greg told me that during the time he was in prison, he never received any help. He was distrusting of the process. "I never got help in prison because counselors work for BOP (Bureau of Prisons); their job is to keep you there longer, not to help you. It's an evil system. It's a self-perpetuating system --- no inmates, no work."

When he had left prison for the half way house Greg returned to treatment with Dr. Smith. At the time I met Greg, he had been seeing Dr. Smith for over three years.

It took a while to gain trust through this process. The first person he wanted me to do group with I didn't do because I didn't trust that person so I asked to be put back into Dr. Smith's group. I had done a group with him prior so I was familiar. And I did individual with him so I had a relationship with him that I could depend on. ... You're looking at a guy who doesn't have a lot of empathy for the field you're going into. Over the years I've probably abused psychiatrists and psychologist, to say what I needed them to say in cases...I always thought it was hokum. But it's like anything else, like lawyers and doctors, necessary evils, when you need them you go to them. I never regret going to see Dr. D and never regret his recommendation to see Dr. Smith. I think it helped me a great deal...I think I was very much in control of the way it was handled. I managed things differently than other guys. (Interview, Greg, 5/2012)

Greg’s treatment in group therapy became much do to with the problems he encountered with the legal system. Greg talked about how he navigated his way through his supervised release during that first year under the monitoring of his probation officer.

"You always have a right to question their judgment; you never have a right to question their authority. But they are two separate issues. Their authority is one thing; how they exercise it, which is their judgment is a whole other ballgame. So, you tell her, if she tells you something you don't like, this has nothing to do with your authority, I think your
judgment is wrong. And then if you tell her you want to go to a judge she'll probably back down. Twice we got to that point; twice she backed down."

Having a legal background and familiarizing himself with the law gave Greg a leg up that most other sex offenders did not have. During the interview, Greg expressed his frustration that other sex offenders he knew and participated in group therapy with did not stand up for their rights and that some did not even bother to read their orders and did what their parole or probation officer told them to do. But not Greg, he read every detail; he knew exactly what his orders said and sometimes even informed his probation officer of what was written in legalese, that maybe even they had forgotten or misunderstood.

I'm telling you all the things I told the people in my therapy group because they're (probation) not allowed to bully you. In fact under the orders the only reason they're allowed to search your house is if they have reasonable cause or suspicion, which means they have to go down to court, get a court order for a warrant to justify their reasonable cause. They walk through your house or your apartment but uh, they are not allowed to open doors; they're not allowed to do anything. (Interview, Greg, 5/2012)

Greg went on to explain that a lot of offenders who do not read their orders end up feeling violated or beaten down by the system. Several years into my time at Dr. Smith's office, men were coming to groups talking to one another about increased monitoring, more frequent visits, and more invasive practices by their parole and probation officers. The men had realized that everyone was experiencing the same thing, but no one knew why and know one knew how to handle it without getting into further trouble.

Greg talked about the resources he has used for navigating the legal system, much of which has to do with reading the law and understanding his orders, which is not easy for a layperson to grasp, or someone who didn't already graduate from law school and trained in the language of legalese. In some regard, Greg continued to use his old
Greg still has a long way to go, a long fight ahead. He has 10 years of registration on the state website. When I asked Greg what he sees as keeping him from moving toward the future now, he talked about frustration with being publicly registered on the state's website, otherwise known as Megan's Law.

Although Greg's charges and eventual convictions did not affect him as much professionally as it did rob him of his time to practice and suspend his license while he served time in federal prison, he did have many obstacles to face as the result of his crime being posted for the public to view and to judge.

I have all the licenses you need to open up a security business. When it hit the paper, X called me up from the security broker and the dealers supervisors called me; they started in about how terrible I was and stuff. I told them that they were full of shit and I would take them to court if they were going to give me a hard time ... even if it meant I lost. (Interview, Greg, 5/2012)

When I left Greg and eventually Dr. Smith's practice, Greg had successfully completed treatment, obtained his security license back, and was preparing to petition the court for a reduction in his supervised release sentence. He said that if he could somehow get himself out of the public eye, and registered privately as some states do, "that would be a victory" for him.

Despite all the precautions Greg did take such as entering into the mental health system voluntarily before he had to, leaving the half way house on time because he had a place to live and he was on disability at the time, it did not help him get out of the legal system. Despite the fact that Greg was a lawyer, a person with expertise in the legal system, he remains stuck in this system. He navigated a series of station stops in the
legal system, in that he was first charged, arrested, and then convicted for possession of illegal pornography. Furthermore, he served his time in federal prison, the half way house, and now probation and Megan’s Law. On December 21, 2012, the state in which Greg was convicted and where I interviewed him, adopted the new amendment to Megan's Law, and Greg would now be facing the possibility of an extended period of time on Megan's Law, moving from 10 years of registration to 15 years.

The Polygraph

"I think some of them at least need to have some sort of hammer over their head."

--Polygrapher, "Dan," retired homicide detective

One of the main reasons Greg navigated his way out of the mental health system is because he managed to pass three polygraph exams, which is generally the number Dr. Smith requires before terminating someone's treatment. The polygraph exam is a pivotal moment for most sex offenders, and therefore the role of the polygrapher is relevant to this project. I felt it was important to know how the polygrapher saw his own role in the context of the two systems--what did he do and what was his view on the significance of the test?

Dr. Smith's contract is with "Dan," (pseudonym), a retired homicide detective. He was kind enough to invite me to his office one weekday morning, where we sat and I interviewed him for one hour. Among many things, I wondered how he took up his role as a polygrapher when he encountered people like Greg and my other participants convicted of sexual crimes. The first thing he told me, with a smile, is that everyone is always nervous to talk with a polygrapher.
Nervousness is something that is always taken into consideration and does not impact the results of the exam. Taking into account a person's nervousness, the polygrapher aims to get a baseline heart rate before asking any questions for the records. In doing so he will ask the offender to state his name and then ask him a question to which he must lie to establish baseline results. For example the polygrapher might ask the offender to answer “yes” to questions that he already knows are untrue such as: Is your name John Doe? Do you live at 123 Fake Street? Then the polygrapher will ask the offender to answer “yes” to questions that are true to the offender’s reality. Once a baseline is established, the polygrapher asks questions that specifically relate to the offender's sexual history and current sexual behavior and all questions are to be answered as yes or no.

Dan sees the function of the polygraph in one particular way because he is the person complicit with its role in the treatment process. Through Dan’s interview, we learn when the polygraph is used, why it’s used, and how Dan views this instrument as a critical part of the mental health treatment process for sex offenders.

I began by asking Dan what the role of the polygraph exam is and how he in particular saw the function of this exam.

Well, it's decided by the treatment provider, um, it's uh, it is a recognized best practice by various organizations: ATSA, and um, not sure which others. … Ideally, the first type of polygraph that we do is called an "instant offense." And that has to do with any denials of the offense that they are convicted of, um, and we have two sort of levels of that, one is where the individual says, 'you know, I was convicted but I had nothing to do with this; I'm absolutely wrongly convicted.' So, we polygraph on that to see where that stands. The other is the individual says, 'yeah it happened, but it didn't happen like that. There was no, um, there was no penetration, there was just touching,' so there is a discrepancy, then we polygraph on that. Now, that, that should be the first polygraph we do, um then once we get through that polygraph, then the next polygraph is what we call a history polygraph which again can be broken down looking at sexual behaviors, other offenses, uh, undisclosed victims, other paraphilia, a lot of that is disclosed or discovered
um, through the history polygraph; it's very beneficial. And then subsequent, we do a monitoring or a maintenance, a monitoring dealing with sexual behaviors uh, and unreported during a particular time, for instance while they're on probation, or the maintenance uh which has to do with which can delve into more um, uh, probation related issues, for instance, you're not allowed to be out past 11:00. So, when I come in, it should be right at the beginning, and if there is an instant offense and then I'll follow that line. However that doesn't always happen um, so sometimes uh, there is no instance offense, sometimes there isn't a history. They have a guy he's been with them a while, and they're concerned about his current behaviors so you kind of jump and you do the monitoring. So, uh, ideally, I would come in right at the beginning after they've been through some evaluation and so forth, but sometimes I come in even later. Uh, eh uh, I believe that uh, any of the clinicians that I work with would agree that no matter where the polygraph comes in, it's rare when the polygraph is NOT helpful in some means; it generally is a very helpful useful tool. (Interview, Dan, 6/2012)

When I asked Dan how the polygraph was helpful, in what ways, he elaborated.

Uh, I see it as helpful, I guess in various ways. One way for sure is um, I see consistently guys that are denying, eh, uh, particular behaviors or denying other victims or things in their past, and after failing the polygraph uh, a lot of times that day or even after work with their therapist, a lot more information is disclosed. And, you know, obviously unraveling those layers of the onion are very important to the clinical treatment process and the polygraph is really useful there. I do some work at a facility for juveniles and uh, just countless times I've gotten there and they've said "you know, we think there is more but this kid you know, we've worked with him for months, 9 months; we can't get anything, and the polygraph is the vehicle that moves that kid to find out oh, there were six more victims, oh, he also did this, this, and this and you know, I see the clinicians just say "wow, that was so helpful; so I know, it is so helpful in that regard. It's also helpful, I think, because these guys that are the sex offenders that are out there walking among us everyday, um, I think some of them at least need to have some sort of hammer over their head, and probation there are mechanisms in place, however um, the polygraph knowing that it's there, and knowing they have to participate, and knowing that in the next 3 months and the next 6 months I have to go in and they're going to ask me did I do anything, you know, I think its helpful in that regard as well. (Interview, Dan, 6/2012)

The Polygraph exam is required of all sex offenders at some point in the mental health system and usually a requirement for him to pass several times before given allowance to leave the system. It is a time when the offender is expected to confess the truth. Sex offenders are the only population of criminal required to take this exam as part of their required stay in the mental health system. The polygraph places the offender in
perhaps the most extreme of double binds--the offender is forced to confess to the mental health system, without legal protection against self-incrimination.

Of the problem with the fear of self incrimination, Dan stated "In order to get an honest poly, we have to give immunity against prosecution," but that is an ethical ideal, rather than an actual practice when asking offenders to take the exams as part of the treatment program. In the case of Commonwealth v. Knoble which concluded in March 2012, the legal ethics of the polygraph exam were challenged. After serving his prison sentence, Knoble was placed on probation. It is stated in online legal publications that Knobles agreed to the conditions of his probation which inevitably included regularly polygraph monitoring. On online legal source states, “he agreed to abide by the special probation conditions imposed by the court and supervising probation staff. These conditions included the successful completion of a sex offender outpatient program. Termination from or unsuccessful completion of the program would constitute a probation violation” (Eakin, 2012, para 3). After Knobles began attending a high risk weekly therapy group, he was terminated from the program for dishonesty during his sexual history therapeutic polygraph tests and was arrested for violating his probation. And although he later admitted he had been dishonest, he said so because he did not want to incriminate himself any more than he had already been. “Knoble contended that the polygraph examinations were per se unconstituitional because the questions sought information about uncharged criminal conduct and because he was compelled to answer otherwise his probation would be revoked” (Eakin, 2012, para 9).

If we think back to Prescott and Wilson’s assertion that when people who sexually offend first enter treatment, therapists make the mistake of thinking they are at
the preparation stage of readiness and willingness to be treated, when most the time they are still in the contemplation stages. The polygraph demands a very particular readiness to disclose and own up to the offenses one committed and in order to do that one must be willing to risk incriminating themselves further, especially when asked about their history. Except, the court did not see it that way.

“The court found that Knoble was not “compelled” to answer within the meaning of the Fifth Amendment, when he knew the terms of his probation, was aware of his ability to challenge the terms prior to beginning his treatment and failed to raise any such challenge either before or during questioning” (Eakin, 2012, para 10). The double bind communication here is that like most of the research participants, Knoble could not challenge the so called terms of his probation or terms of his treatment without severe consequences that would result in the further loss of his freedom. What this legal article does not state explicitly is the double bind communication which is fail to agree to the conditions of your probation and treatment and remain incarcerated. There is no choice for someone who values their freedom and wants to move toward the future. To say that Knoble failed to challenge the conditions of his probation is a statement of convenience that would leave him to face the severe consequences of such a challenge.

Furthermore the court argued that Knoble was not expelled from his treatment program because he failed the polygraph, but that he was dismissed because of his continued dishonesty. Again, the double bind here is that there is no way to win because there is no fair challenge. More importantly, is that the double binds that are inherent in the mental health and legal systems make it impossible to do right by one, because you are doing wrong by another. In other words, if Knoble had not been dishonest and openly
incriminated himself with new crimes that happened in the past, the mental health system may see this has information to use in treatment as a tool, but the legal system takes this information to punish him.

During my interview with the polygrapher Dan, I asked how the sex offenders viewed the polygraph and what some of the challenges he faced in his everyday practice.

We have some guys, in particular there is one guy who comes to mind, we can call him Tom Jones, but Tom Jones and his attorney are just bent on the fact that he is being forced to take polygraphs as part of his treatment. In my opinion, and I believe the court has also addressed this, I know Dr. Smith has the same opinion, no one is forcing him to do this. You committed an offense, the consequences are jail for X amount of time, however, if you would like to be released early you can do that but there are certain things you need to do, you need to be in your house by 11:00, you need to live in this area, you need to participate in a prescribed sex offender treatment program, and part of that program is a polygraph. So, you know it's sort of a domino effect, they like to say, 'oh, you're forcing me to take that;' he shouldn't have to take that. Well, if he doesn't want to take that, he should be revoked because that is not complying with the program. (Interview, Dan, 6/2012)

Taking and passing polygraph exams is a demand made by the mental health system, that all offenders must follow in order to move from one station stop to the next on their journey through both systems. The polygraph is therefore a unique instrument that straddles both the mental health and legal system, whereas it is a tool for extracting information for treatment providers that is passed on to probation officers. However, if offenders fail the exams or reveal information to Dan that incriminates them, they are punished by the legal system. This is one of the binds that offenders face at a place where the two systems intersect. Dan saw the function of the polygraph as a necessary "hammer hanging over their heads," meaning that the polygraph is always there as a fear factor or deterrent for engaging in criminal behaviors--they know that although they can lie to their therapists and probation officers, they cannot lie to polygrapher Dan.
The polygraph plays a critical role for all participants and is later discussed in Chapter 6 as a source of one of the double binds that are imposed on sex offenders. The double bind is that information disclosed during a polygraph exam is used to reward the offender in the mental health system, but punish him in the legal system, a dilemma that causes significant distress, and one he cannot win.

Return to The Legal System: An Overview

The following is based on fieldwork beginning at the practice of Dr. Smith. The legal system is made up of components, which include police departments, the courts, the jails and prisons, half way houses, and parole and probation departments, polygraph exams, and public registration. A sex offender's journey through the legal system is like a person's travel from one station to the next on a subway map along his journey. The offender meets different people along the way, as he becomes stalled, derailed, or stuck, and even moves backward.

People are first caught by the legal system and then they are contracted into the mental health system. I will provide a general description of the journey people take through these systems simultaneously, describing each station stop in the legal system and how it can be paired with stops in the mental health system. It is important to note, that this is a general overview of these stops and there are always exceptions from one case to the next. People are first charged with a crime(s) and then they are arraigned. A police officer writes out a report and then lists all the applicable charges (charges are plentiful and will be addressed in some detail in Chapter 5 under the section that explains the legal classifications.). The arraignment is when people charged go before a magistrate or some official body and the magistrate will talk about what charges will stick based on
the contents of the police report. There are typically one or more conferences or meetings scheduled between the defense attorney and prosecution at court where they exchange information, possible outcomes, and this is where a plea agreement comes into play (see Attorney Ryan’s example above regarding a plea agreement in the case of Greg). What will happen often is an attorney might suggest his client get into treatment before he goes to trial because it looks good for court, and then there are individuals who are truly moved to get into treatment on their own accord at that point. Greg is someone who went to therapy on his own, but he also knew, as a lawyer, it made him look good in court. It is probably more common that attorneys dissuade clients from going to treatment voluntarily for at least three reasons: the notes that the mental health provider takes may be subpoenaed into evidence, because most programs require an admission of guilt (this rules out the possibility of legal appeal), and because a polygraph is part of the mental health record, more often than not. All of those things can be used against the accused. There are two types of pleas, which is important to mention. One plea is called a plea bargain. If someone is charged with 10-12 sex offenses, they bargain down to one or more serious offenses and maybe one or two of the lesser offenses. The second type of plea is an open plea, when a person pleads guilty and essentially throws himself at the mercy of the judge. In either case, a plea requires he sign a form saying that he understands the conditions of the plea and that he is willing to accept guilt. Typically the bargain is too good to pass up and there are certainly cases where innocent men will take a guilty plea to avoid incarceration. If a person takes a plea, the papers are signed and the person waits to be sentenced—a plea is equivalent to being convicted. If a person chooses not to take a plea, he can wait to go to trial, which is a much longer process.
point, he is either found guilty and convicted of his crime, or he is acquitted and therefore
does not become a sex offender—nor does he have to participate in mental health
treatment. For a sex offender, if the judge elects a do so, he will request an evaluation
from the sex offender assessment board to determine if a person is a sexually violent
predator—between conviction and sentencing. So, far the station stops I have mapped out
here are true for both state and federal sex offenders.

The next station stop is sentencing, and that is typically some months after the
conviction. It varies greatly from one case to the next. If you have a plea agreement, it
moves a little faster. The prosecution, defense attorney judge, and the offender are all
present. The judge talks about why he or she has chosen the sentence and will ask if
anyone objects. He or she writes a sentencing order. Typically in state system the
offender immediately goes to prison and in the federal system, sometimes the offender
waits. Many offenders in the federal system are given a self-report date. They are given a
date they must plan to arrive, often with a family member driving them. They knock on
the prison door and from there they get processed into the prison.

It is important to emphasize that how a person moves through these systems is
largely contingent upon his access to an attorney. If a person has a paid attorney who they
meet with for several days prior to their plea or trial, chances are the attorney will be
invested in their particular case. However, most people, such as those represented by my
participants, could not afford an attorney and accepted what was awarded to them by the
state—a public defender. Most people only get a chance to meet with their public
defender for a limited amount of time. Public defenders are people with enormous case
loads that have very little time to devote to an individual’s case. A paid attorney will obviously have an area of specialization and provide a more rigorous defense.

In federal prison, treatment is optional and in some cases it is not offered at all. The majority of people do not participate in treatment. In state prison, people serve a minimum and maximum time in prison. Treatment is offered as one way of shortening prison sentences so that offenders only have to serve their minimum time—but the person has to complete the treatment programs, which are prescribed by the prison’s treatment staff. The benchmark to completing sex offender treatment is first and foremost that person has to admit guilt for the crimes they were convicted of. If he does not, he does not successfully complete treatment and will serve his maximum sentence. From a sex offender's point of the view, the differences between being on probation, parole, or supervised release are simply the terminology. One offender said that the feds call it “supervised release” instead of federal probation to minimize the negative connotation that implies there is punishment involved, but most sex offenders do not experience the difference.

After release from prison, many offenders are sent to live in a half way house—while this was the case with most of my participants it is not the case of all sex offenders. The half way house is part of the federal system and most of my participants were federal cases. Typically in the legal system, a half way house placement is seen as preferred to going directly home because it gives the offender an opportunity to readjust to life in the community. After the half way house, offenders are released to the community on probation or supervised release and are mandated at this point to treatment which includes taking polygraph exams as required by the treatment program. While they are on
probation and supervised release, receiving treatment, taking polygraphs, they are also publicly registered on Megan’s Law. Offenders are immediately registered with Megan’s Law as soon as they hit the half way house. Megan’s Law will be further explored during this chapter.

Once a person enters the legal system, he is contracted to the mental health system. From there he is tested and made to confront one obstacle after another. People become constituted as sex offenders by making this journey and negotiating their way through both systems at the same time, especially the places where they contradict.

Looking back on his travel along the pathway through the system and the stops that he made along the way, one offender named “Alex,” said, ”At some point, you get deep enough into the system that people start making decisions for you. Those decisions get passed down from one person to the next. What you have to say doesn't matter anymore” (Interview, Alex, 5/2012).

**Half Way To Where?**

In this section I will explore the half way house, a place where sex offenders with federal, state, and county offenses are sent after prison. They all wind up in the half way house so they all have that common experience, and when they come to treatment they bring that experience with them. They have all been treated in similar ways. Dr. Oscar referred to the half way house as “the great equalizer,” in that somebody could be doing one and a half years in prison for possessing illegal pictures and someone else could be doing 10-20 years for raping a child; they all arrive to meet there at the half way house. They all have to start over in the community at the same time, and the half way house is the point where years of prison time culminates.
The half way house is quite literally a half way point between incarceration and reintegration. Most sex offenders did not know they would have to stay at the half way house until they neared the end of their prison sentence. As long as a person is kept there, he must agree to receive treatment. Many sex offenders have talked about how the half way house made moving forward to their next stop, finding a place to live and work, so difficult that they felt they would have been better off in prison. The following is based on interviews and focus groups with the offenders.

At the half way house, sex offenders are supervised by a case worker who they report to directly. This person is responsible for managing the offender and making sure he follows the rules. One sex offender named "Bob," described the half way house in dramatic terms—"Auschwitz."

When offenders first arrive to the half way house they are forced to give up their clothing and belongings, place them into a brown bag, and hand them over to the people in charge. They put on a blue jumpsuit and this is their wardrobe until the people in charge decide they can have their regular clothing back. The sex offenders become the same. The half way house is multi leveled, but early on the offenders learn that they are restricted to walk on one floor only. This is the floor where they sleep, shower, and use the restroom. They live together and share public facilities. This house is located in the downtown area of the city where I collected the data for this research. They must follow the house rules, which allow them to make phone calls during certain times and exercise when the gym is open. Most offenders say that for the duration of their stay, the exercise room was always locked and the equipment was often broken, the machines falling apart. One offender stated that they were restricted to make telephone calls during certain hours.
only. Local calls were 50 cents and long distance $1.50. If the person you call does not answer the phone, the machine takes your money anyway. Some describe the half way house like a dormitory style set up. Sex offenders unlucky enough to be housed there in the summertime report the air conditioning does not work and there are feeble fans that run periodically.

When I asked the focus group to tell me about their experiences of the half way house, there was silence followed by anger and some resentment for the question being asked. One offender talked about his time in federal prison, awaiting release to the half way house. It had been presented to him as a possibility for being well behaved in prison, working hard, and doing as he was told. Bob had already spent several years in federal prison and was negotiating how he would move half-way toward freedom. The offenders talked about the half way house as a "promise," toward freedom. "They'll help you find a job, place to live, and get on with your lives," is what one focus group participant was told. "Bob" remembers being told:

If you don't go to the half way house, you're going to the hole, and you lose your good time. If I chose not to go; it's refusing an order; they write you up and put you in the hole; you lose your good time. It was 21 days of good time, you lose.

It's just ... how ... people are treated down there. The only good thing about it was that the chefs down there were willing to work with my food allergy. I have an allergy to onions. So, they actually worked with me and I got to eat. (I didn't get to eat when I went out to put applications in, but that's beside the point.) But, just overall in general, you were locked in on one floor of the building unless you had a job. It was worse than prison. It was worse. I (pause) I keep having flash backs every time I see someone wearing a blue shirt. I start thinking is that a half way house guy, is that a half way house guy? (Interview, Bob, 5/2012)

Offenders are expected to achieve three major goals while residing there, which is to find a place to live and work in the community while attending weekly therapy. After
they have established some time, they are given day passes to travel no more than several
blocks in the surrounding area. They travel in a blue jump suit, which identifies them as a
new half way house resident to the community.

Offenders talked about the half way house being more restrictive than prison,
while others talked about the difficulty living there. One man I encountered had served
27 or more years in state prison and was living at the half way house. Our conversations
were anonymously documented as field notes. He talked about something that several
other people had mentioned. "It's worse than prison because it's almost freedom." They
were given 48-72 hour passes, which they earned after several months of following all
the rules there. The worst part was not the travel on the passes to visit family and friends,
look for work, or a place to live, but to have to return after those 72 hours. Many men
talked about the taste of freedom as tortuous in that, "you always had to come back. It
was a reminder of what wrong you did," as one sex offender put it.

The goals of half way house living is to maximize the offender's ability to
reintegrate into the community after prison release by helping offenders to find work and
a place to live if they lost their homes throughout the legal process.

At first, sex offenders are given small amounts of time to leave and return. So
long as they continue to follow the rules they gradually earn privileges. This means more
time outside and eventually the opportunity to earn their own clothing back.
Caseworkers are the people in charge of allotting them time to go out into the community
to look for work or go to treatment. They are the monitors of the offender’s movement
outside. They enforce where he can go, when, and for how long. During the focus group,
I asked the offenders where they are allowed to go? In the beginning they are only
allowed to go out and find work and to Dr. Smith’s office for therapy. There is one job coordinator assigned to help all of the sex offender residents find work. As one offender said of "Jada,"

Oh, Jada I called her two weeks ago and she still hasn't gotten back to me. I've been at the halfway house for six months and they are keeping me here until I find work. Well the employers take one look at my application and see I'm a registered sex offender; they say 'yeah, we'll be in touch.' Now, they are threatening to send me back for failure to adhere to program rules. (Interview, Bubble, 6/2012)

Of living at the halfway house another offender said, “It's the number two mistake I made this whole way through, #1 was committing my offense, #2 was coming here” (Interview, Bob, 5/2012).

Some offenders stayed longer because they had trouble finding housing. Family did not feel comfortable taking in a person who is registered publicly on the internet and most friends are unable to be reached or at least, "they don't pick up the phone."

It is not easy to get out of the halfway house--in order to do so you must have a job and place to live that the state or federal probation officer approves. The approval is dependent upon the residency restrictions enforced by the state or local city ordinances and is typically known as no less than 2,500 from places where children congregate. Because of these restrictions, many sex offenders are turned away from jobs and turned down for housing and end up living in one neighborhood, in the same apartment building, again, sharing bathroom and kitchen facilities.

Although the halfway house is considered a halfway point between the prison they left and the community they are supposed to move toward being part of, the rules that sex offenders must follow in order to succeed in the community make meeting the goal of reintegration impossible. While the halfway house is a stop that most of my
participants made, most if not all of them regretted their time there and expressed feelings that it was the most dehumanizing of all the stops they had to encounter through their journey.

The offender's journey through the legal system is an extensive one. Although there is some variation of how offenders enter the system, most if not all offenders must find their way through it while simultaneously navigating the mental health system. The people who become sex offenders have the unique opportunity to continue to pay for his crime long after he has been charged, convicted, imprisoned, resided at a half way house, legally supervised on probation, and registered publically under Megan's Law. It is the journey of the offender that discloses, along the way, the labyrinth of stops that he is forced to make in order to move forward. His journey discloses what the system is made of, the laws in place, the people who enforce these laws, and the places where these laws originate, shift, and grow.

**Megan's Law**

Megan’s Law will be introduced in this section. It is one such law that demonstrates the contradictory practices sex offenders must face. Megan’s Law is one that prevents sex offenders from meeting treatment goals and this section introduces this dilemma. The following section is based on a combination of fieldwork, interviews, and focus groups. Megan's Law is one stop along the journey most sex offenders and all but one my participants encountered. Megan's Law continually surfaced as topic of discussion in all my semi-structured interviews and the first focus group that was held. When I organized the data from these interviews and the focus group, I noticed that it’s a law that had made meeting goals in both the legal and mental health impossible. And
even more concerning, is that this law was already in the process of being amended
toward becoming more restrictive in its application.

What I was hearing from the participants about the law encouraged me to do some
further research in order to investigate what Megan's Law was supposed to be doing and
how the conditions the offenders described were made possible. According to offenders,
Megan's Law created obstacles for finding a place to live and to work. It also prevented
them from gaining access to family and relationships. The more I talked with the
offenders the more explicitly I recognized that it was preventing them from meeting both
treatment goals and the goals set forward by the legal system, therefore keeping them
stuck in both these systems.

With changes to Megan's Law already on the horizon, it was beginning to look
like there was no way out of the legal system for these men. They were being set up as
criminals for longer periods of time and some for their lifetime.

Megan's Law was originally passed in the state of New Jersey in 1994 and since
then most states have followed. As the result of Megan's Law, the adopted states in the
US, adopted a public registration website that lists all of the convicted sex offenders who
were required to register their identifying information as part of their legal sentencing.
Whether an offender is to be publically registered is decided by a judge at the time the
sex offender is sentenced for the crime he is convicted or during the plea agreement he
negotiates with his attorney.

The history of Megan's Law is extensive and it is a large part of why offenders are
kept from moving forward in both systems. It was created to promote public awareness of
who is living in your neighborhood with the hope that this awareness would reduce sex offender's access to children and from the opportunity to commit new crimes.

**Sex Offender Registration: What it is and What it Does**

Megan's Law is an amendment to Jacob Wetterling's Act of 1989. Jacob Wetterling was an eleven year old boy kidnapped on October 1989 in the state of California. As a result of this high profile case, each state in the US was required to adopt a stringent registration system by 1997, where sex offenders who committed specific sex offenses were required to register their demographic information with law enforcement.

Five years after Jacob Wetterling went missing, seven year old Megan Kanka vanished from her suburban home in Hamilton, New Jersey. Megan Kanka was alleged to have been lured by a man living in her neighborhood. He was walking his puppy one day and Megan asked if she could pet it. As a result, the man lured the child back to his home, asphyxiated and raped her. "The case sparked outrage and intense media attention, as the public felt helpless to prevent sexual victimization of children. Megan's mother was reported as saying, 'We knew nothing about him. If we had been aware of his record, my daughter would be alive today' (Human Rights Watch 2007: 47, cited in Zilney, 2009 p. 86). By 1997, all states were required to adopt what was known as Megan's Law, a stringent registration system for offenders.

Megan's Law is a system of public registration that includes 10 years and lifetime, and this is based on the sex offender's conviction. Each offense corresponds to a number of years an offender will be registered with the state.

Once listed on Megan's Law, there is always room for movement from 10 years to lifetime, but the movement is always upward, from bad to worse. For example, if you are
someone who committed an offense such as possessing child pornography, you are likely to be sentenced to 10 years of Megan's Law, but there is always room for you to move toward lifetime. If you commit a second offense, say, distribution of that same pornography that you downloaded and thereby possessed, you will easily move from being a 10 year registrant to potentially lifetime registrant depending on how much porn you decided to distribute to your friends via the internet.

The state where this data was collected is not representative of every state's registration system in the United States. Some states register their offenders under different criteria. For comparison purposes, the state of Texas registers their offenders solely on a risk-based assessment rather than an offense based system. The state of Texas believes that offenders should be registered based on the likelihood that they will reoffend and not based on crimes they have already committed in the past. California represents yet another way of registering offenders, some have the option of registering themselves with the local police but are not required to have their information accessible to the public.

There are many inconsistencies across states regarding how Megan's Law is actually implemented. Along with these inconsistencies are the ripple effects Megan's Law has had on the offender and the offender's families.

Having worked with sex offenders for several years in a treatment setting, and while conducting research, I have come to recognize the impact Megan's Law has had on the lives of offenders and innocent victims (family members). Through research the impact of Megan's Law has been made explicit, in that what Megan's Law set out to do is not being accomplished, but rather there have been more consequences than positive
outcomes. Overall, there are many discrepancies and contradictions between what the purpose of the law is and what it actually does. Many legal professionals, psychologists, criminologists, and public policy writers have been voicing their concern about the negative impact of Megan's Law on sex offenders, and therefore society, since the early 1990s. As a consequence, the law has put our society at greater risk.

Although these types of laws may empower community members, they may also produce a perpetual sense of fear in the public. As for the offender, such laws decrease the possibility of community reintegration; label offenders, making it difficult to secure housing, employment, and other opportunities and undermine rehabilitative efforts. (Zilney and Zilney, 2009, p. 88)

Through the interviews with sex offenders, as well as the focus groups I conducted and the field notes collected, I came to discover the so called practical implications of Megan's Law--what this law was really doing, what was actually being prevented by these men being registered on a public website.

While working as a therapist at Dr. Smith's practice, I documented sex offenders talking about their difficulty finding work because at times job applications asked if they were explicitly registered on Megan's Law. Other participants talked about being turned down from leasing apartments when they disclosed they were registered, and many offenders, such as "Louis," whose story is told in Chapter 7, discloses his difficulty finding a place to live because his family members did not want a registered sex offender living in their home. As a result of these stories, sex offenders are kept from finding housing which increases their stay in half way houses or worse conditions, such as homelessness, and they remain unemployed for longer periods of time. Louis was kept
longer at the half way house. Of trying to find work while being publically registered under Megan's Law, "Bob," shared his frustration.

Since January 5, 2011, I left the half way house and I cannot find employment. Two-hundred and seventy-nine applications I put in. I've got seventeen interviews. Most people won't hire you because they don't want you there as a liability for their insurance. The insurance people won't let you hire felons or registered sex offenders. Prior to my incarceration, I was working at a cemetery and I loved the job! It was peaceful, serene. I can't go back there because they are a criminal free enterprise; they don't even hire misdemeanors. The only way I figure I'm gonna get employment is if I employ myself. (Interview, Bob, 5/2012)

The day of the focus group, offenders shared their concerns about being publically registered on Megan's Law and what that meant for their time in the legal and mental health systems.

There are really only two issues I have over this whole thing and that is (pause) why don't they put murderers on some kind of list like Megan's law? Wouldn't you want to know who a murderer is that you're living next to. … It's like we get singled out. I have a problem with our safety. They put our address on there and everything. There have been cases where innocent people have been shot. Somebody goes to your house and wants to shoot you and they kill the wrong person (family member) thinking that's the one that's listed, you know? … There is one in Sarasota, Florida where that happened. The guy's brother answered the door and they wanted his brother and they shot him instead. You know, I mean ... there are several cases where things like this happen. (Interview, Frank, 5/2012)

(In the background) There was one in St. Louis just last week.

Yeah there was one in Philly a few years ago, um, they had posters up and a mob formed and they found the guy. He was the one. They lynched him, hospitalized him, and realized, oh shit, this isn't the right guy! So, they went on to find the right guy, beat him up and actually were given awards by the police for their participation and some monetary rewards. This was about three years ago now. (Interview, Ronald, 5/2012)

Bob covers his face with hands. Louis shakes his head and stares at the floor. Frank shakes his head, arms crossed. The group sits in silence.

This excerpt represents the offenders responding to society's fear and paranoia with their own. They fear being "murdered, lynched, and hospitalized," or innocent
family members being harmed as collateral damage. Their paranoia is reflective of our
own in society. In this regard, our response of moral panic or emotionally motivated
legislation is just as primitive as the offender's fears of opening their front door to the
citizen who decides to take matters into his or her own hands.

As the result of sex offenders being displayed publically on Megan's List, society
struggles with what to do with his information and how to use it. As a result of public
registration, the fears of sex offenders come true or their fears are reflected in society's
response to public registration. Non-profit organizations and peer groups have assembled
and despite having good intentions, they have at times created more problems for society
than any good. They have at times arguably increased risk to society's safety rather than
offered a protective factor. Here is one such example of a non-profit group called "The
Trackers," employees of another larger non-profit group called Parents for Megan's Law.

**Outsourcing the Monitoring of Sex Offenders to Civilians.**

As recent as August 2013, a group formed known as "the trackers." In an npr.org
online article published by Charles Lane in August 2013 entitled, "N.Y. County
Outsources the Job of Monitoring Sex Offenders," Lane tells the story of a suburban
county’s novel approach to monitoring sexual offenders in that county. This county has
without reservation given the job to a victim's advocacy group. According to Lane,

"The measure was approved unanimously earlier this year; lawmakers call it a
cost-effective way to keep citizens safe. But a local lawyer calls it a 'vigilante exercise,'
and convicted sex offenders are organizing to challenge the legislation" (Lane, 2013, p. 1).
Community monitoring is typically done by law enforcement officers. However, this New York county decided to take matters into their own hands because it is cost effective, and this practice has been supported by local legislators. “The Trackers are civilian employees of Parents of Megan's Law, a nonprofit organization getting close to $1 million a year to implement the law. Their role is to enforce what County Executive Steve Bellone calls 'the toughest sex offender monitoring' law in the country" (Lane, 2013).

Troy Wallace is one sex offender who objects to the methods the people called "trackers" use. Wallace, is a 42 year old convicted sex offender living in New York. He was convicted of sexual abuse more than two decades ago and is now married with two children. Wallace describes how one day last spring, he encountered the trackers.

I went and got coffee, and they pull up. It was a grey sedan, probably a Crown Victoria. They weren't law enforcement. But they had like a computer in the car,' he says" … After the two men in the car began questioning him, Wallace stated, ‘I refused to give my name.’ (Lane, p.1)

Mr. Wallace knows the law, that he did not have to disclose his identity to strangers. He said he crossed the street and waited--and so did the two men. "And then they left. So I made a couple calls and said, 'Yeah, I believe I was encountered by the trackers' ... just putting other people on alert,' he says” (Lane, p.1).

Although this bill was approved unanimously in February 2013, most citizens of the county are unaware of the tradition of sex offender monitoring laws and the outcome studies addressing the impact of public monitoring and registration.
Some like, Democrat Kate Browning, even joked about the law's desired outcome for sex offenders: 'And if they don't like it, then they know where they can go.' Someone else answered, 'Another county.’ … Lawmakers aimed the bill at what they called 'predators,' people who do bad things to vulnerable people. But Wallace says he, and many others, aren't bad people. In 1992, when he was 21, he was convicted of the sexual abuse of a 15-year-old-girl. Wallace agreed to a plea deal in the case. But he claims the sex was consensual and that he thought the girl was 18 (Lane, p.1).

Wallace and many other sex offenders have come together to file lawsuit against the County for essentially deputizing a group of parents who support Megan's Law and formed this advocacy group to 'harass' sex offenders in public. (Lane, 2013). So, how does Parents for Megan's Law and the people known as the Trackers in this County actually go about monitoring sex offenders? Well, Charles Lane asked this question to their executive director named Laura Ahern. She "refuses to explain how they work for fear of revealing 'tactical' information about monitoring" (Lane, p.1).

**Megan's Law Is Impractical**

Despite the substantial costs it takes to run public registries and maintain Megan's Law, "little research has been conducted to examine whether such laws enhance community protection (Cucolo, Nov 2008). "Most recently, Zgoba, Witt, Dalessandro, and Veysey (2008) thoroughly examined the efficacy and cost of Megan's law by tracking 550 randomly selected sex offenders released between 1990-2000 and comparing 10 years before and 10 years after the law was enacted. The authors found no reduction in reoffending, no reduction in the number of victims, and an exponentially increasing cost of US$3.9 million per year by 2007. In response to the study, Megan's
mother (Maureen Kanka) informed the Star Ledger that the 'purpose of the law was to provide an awareness to parents ... five million people have gone to the state website. It's doing what it's supposed to do ... we never said it would stop them from re-offending or force them to move to another town"' (Cruz, cited in Birgden and Cucolo, 2011, p. 301).

Despite what the original purpose of Megan's Law was, to increase community awareness of sex offenders living in your neighborhood, what it actually has been doing and continues to do in practice is prevent sex offenders from reintegrating into the community after release from prison and halfway houses. Being registered as a sex offender on a public website for everyone to view raises the level of awareness as it does ongoing harassment. This prevents offenders from moving forward with their lives. It prevents offenders from finding and securing work, a place to live, and pursuing social relationships, therefore limiting their basic human needs and rights. As a consequence of the latter, Megan's Law in effect is counterproductive to rehabilitate sex offenders and support them through treatment goals such as helping to foster autonomy and create possibility for change and healthy relationships.

After Birgden and Cucolo's article was published (2011), citing research studies that actually prove Megan's Law does nothing to protect the community or to reduce risk of reoffending, the trend to increase public awareness on the internet through registration websites has become federal in some states, in other words, sex offenders are being forced to register for longer periods of time, ranging from 15 years to lifetime, depending on the type of offense(s).

What allowed these laws to become more restrictive was an approved amendment to Megan's Law, known as The Adam Walsh Act (AWA). The state in which this data
was collected, as with many states, put off adopting the new amendment because of ongoing concerns that it implemented practices that were unconstitutional, such as forcing offenders who were not registered to register for the first time and re-registering offenders retroactively who had already served their time in prison, probation, and on Megan's List. In some cases, offenders had already spent decades in the system and found a way out, only to be pulled back in under this new law. Once the AWA act also known as SORNA or Sex Offender Registration and Notification Act, was adopted, some states followed suit by retroactively forcing offenders on public websites, including those who had already come off or who had committed crimes before 2006, when George W. Bush first signed the bill. The state of Ohio deemed unconstitutional this retroactivity, fought it in court, and won. Birgden and Cucolo's conclusion is that "The Justice Policy Institute (2008) warned that "coupled with lack of evidence that registries and notification make communities safer, states should think carefully before committing to comply with SORNA" (no page number) The state where this data was collected complied with and adopted SORNA, the AWA on December 21, 2012. The problem is that states are faced with threats to their crime budgets if they did not adopt the law. Many states saw that if they did not adopt the federal registration, they would end up losing more than half their budget for fighting crime.

According to Robert Freeman Longo (2000) as of date, 50 states have adopted some registration law. As of 2012 it is unclear of those states how many states have and will continue to adopt the federal registration law (SORNA) or Adam Walsh Act, but one thing is clear, the US continues to move in the direction of harsher and more restrictive registration laws, with longer amounts of time spent publically available.
The Adam Walsh Act will be investigated in the next chapter (5), in further detail. It is important to conclude that there is no empirical data that exists to support that Megan's Law has any practical value for keeping society or communities safe--but rather the opposite. Thus far we can conclude that Megan's Law in fact increases risk factors for society in that it raises levels of paranoia, fear, and moral panic. As a result, sex offenders are blocked from finding employment, a place to live, and from being alienated from family members. It undermines rehabilitation efforts in that offenders are unable to successfully reintegrate into society under such circumstances.

**What do Sex Offender Registration Laws Do For Us?**

Bill Clinton summed up the purpose of Megan's Law in his presidential radio address on August 24, 1996: 'Nothing is more threatening to our families and communities and more destructive of our basic values than sex offenders who victimize children and families. Study after study tells us that they often repeat the same crimes. That's why we have to stop sex offenders before they commit their next crime, to make our children safe and give their parents piece of mind.'


High risk offenders are those who have committed multiple hands on crimes and they represent only a small percentage of the population of registered sex offenders. In Robert Freeman Longo's (mental health professional and author) article, "Revisiting Megan's Law and Sex Offender Registration, Prevention or Problem, 2000," he argues that sex offender registration laws are largely the result of our emotional responses to horrific crimes in our society rather than to logic or science. ... Megan's Law is one example of what I call 'feel good legislation' that has led to worse conditions rather than
the betterment of our society's safety" (Longo, 2000, p. 1). By feel good legislation, Longo refers to our emotional responses to horrific events, rather than our logical responses. The trend we have adopted of moving toward more and more restrictive and punitive legislation is the result of largely sensationalized cases mismanaging our emotions. Similar to Longo's assertion is what Zilney (2009) meant when she referred to "moral panic," resulting from sensationalized crimes that become highly publicized. As a result they have the effect of heightening our fears. New laws are created reactively rather than proactively and new amendments to our old laws become more restrictive, more punitive, and in some cases impractical and unethical.
Table 1: Number of Sentence for Offenses Falling Under Current Megan’s Law: Pennsylvania 2010

<table>
<thead>
<tr>
<th>Offense Description</th>
<th>Number</th>
<th>Offense Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 §2901 Kidnapping (minor victim)</td>
<td>1</td>
<td>18 §3121 Rape</td>
<td>126</td>
</tr>
<tr>
<td>18 §2910 Luring child</td>
<td>16</td>
<td>18 §3123 IDSI</td>
<td>132</td>
</tr>
<tr>
<td>18 §3124.2 Institutional sexual assault</td>
<td>4</td>
<td>18 §3124.1 Sexual assault</td>
<td>57</td>
</tr>
<tr>
<td>18 §3125 Indecent assault (&gt;M1)</td>
<td>188</td>
<td>18 §3125 Aggravated Indecent assault</td>
<td>124</td>
</tr>
<tr>
<td>18 §4302 Incest (victim &gt;12 and &lt;18 years)</td>
<td>2</td>
<td>18 §4302 Incest (victim &lt;12 years)</td>
<td>0</td>
</tr>
<tr>
<td>18 §5902(b) or (b.1) Promoting prostitution of minor</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 §5903(a)(3)(4)(5)(6) Obscene materials/performances</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(minor victim)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 §6312 Sexual abuse of children</td>
<td>186</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 §6318 Unlawful contact with minor</td>
<td>119</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 §6320 Sexual exploitation of child</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>528</td>
<td>Total</td>
<td>439</td>
</tr>
</tbody>
</table>

Grand Total = 967


Conclusion

I have now provided the reader with a simple map of each of the two systems, showing where they come into contact. I have used several vignettes to illustrate movement through the systems, and emphasized the difficulty of ever actually leaving. The consequence of this difficulty is that sex offenders are set up to fail at the goals the legal and mental health system create for them. At times they become homeless, jobless, without social support, and at risk for being targeted by community harassment.

However, there are still things to learn. In the following chapter I will explain how psychology (through the Diagnostic and Statistical Manual of Mental Disorders) categorizes sex offenders, and the historical changes in this categorization. In
comparison, I will also describe how the legal system classifies sexual offenders under its current Tier System, and where these two forms of labeling both fit and clash.
i. According to a news article published on May 27, 2010, in the *Billings Gazette*, the movies and photographs of "Vicky" (a pseudonym) are among the most widely circulated in the US. "Vicky's" father is alleged to have taken photographs of her and posted them via the internet when she was just ten years old. "Vicky" is now a woman in her early twenties and she is among the first of those depicted in child pornography to fight for restitution. "Restitution is an emerging issue in federal child pornography cases as victims are identified and are starting to submit claims. Judges across the country are grappling with how much restitution, if any, to order from those convicted of possessing or receiving the material but not creating it" (Billings Gazette, May 27, 2010). Images of "Vicky" have been identified by the National Center for Missing and Exploited Children in over 8,000 cases nationwide and have led to many of those convictions, including Greg's.

ii. A legal statute can have separate sections. Here Greg is referring to the sentencing statute, or a system of codified law. Greg uses the term "section" generically to indicate that there are four different parts to the statute, relating to the four possibilities of how he could have been sentenced. The judge decides, based on the offense, how much time a person should receive for their crime. This is based on the number of images that was stored on Greg's computer.
Chapter 5

Types of Offenders

This chapter introduces the types of sexual offenders defined by the mental health system and the legal system, and how these types are understood and treated. My argument is that people are constituted as sex offenders by the way they are categorized by the mental health system and classified by the legal system. This chapter defines how each system labels and organizes sex offenders in order to treat and punish them, and lastly where the system's categorizations and classifications fit and clash with one another. Additionally, this chapter explores how our knowledge of a sex offender is shaped and defined by historic and contemporary thinkers who have contributed to what we know of sex and perversion, and therefore what we know about what a sex offender is. The data used to write this chapter was a combination of fieldwork, notes taken at the practice of Dr. Smith, and interviews I conducted with the offenders, Attorney Ryan, and Dr. Oscar, to better understand how they were labeled diagnostically as well as how they were classified by the public registration system and the consequences involved in this process.

When people are charged and or convicted with sexual crimes in the legal system, they are first tested and assessed in the mental health system. Before or after the individual has completed tests, the psychologist will interview the individual and from there he or she makes a summary assessment and assigns him a diagnostic label. The offender has been categorized in terms of one or more types of "paraphilia."

In the legal system, when the person is convicted of a crime, one of two categories – 10 years on public registration or lifetime registration are applied. The
conviction will be used to classify the offender as a 10-year registrant or a lifetime registrant under Megan's Law. In December 2012, Megan's Law was amended and sex offenders are now classified under a Tier system that includes three separate time frames, 15, 25 years, and a lifetime

**When Did Sex Offender become a Legal Category?**

In the 1930s it was believed that "sexual offenders" were sick individuals who should be offered treatment in mental health facilities as opposed to incarceration in traditional prison settings (Zilney and Zilney, 2009). The term "sexual psychopath" arose in the 1930s beginning with the case of Albert Fish and followed by many other sexually violent and homicidal cases within a ten year period. Albert Fish was someone alleged to have sexually assaulted, killed, and cannibalized a twelve-year-old boy prior to his apprehension in 1934 (Zilney, et. al., 2009). Although he was not charged, it was believed he violated hundreds of other children before he was caught and executed in 1934. Albert Fish's case was tried in New York State and captured the attention of the public and media. His case created a media sensitivity that was easily evoked the next time a crime was committed. There were a series of brutal crimes involving rape and murder between the 1930s-1942. The term "sexual psychopath," is what is known today as a "sexually violent offender." According to Zilney & Zilney, the language of this legislation in the 1930s varied from state to state, was very vague, and may have more accurately reflected the moral views of the time than the predatory or violent tendencies of the offender" (Zilney, et.al., 2009, p. 71). Sexual psychopath is someone who is considered "mentally abnormal" and despite imprisonment, continues to desire to
reoffend or does reoffend. The psychopath is someone who is considered "uncontrollable."

In the 1930s, states attempted to identify sexual offenders who also might be in need of specialized treatment. These statutes were named, "Mentally Disordered Sexual Offender" or "MDSO" statutes. These Statutes were intended to identify the most mentally disturbed sexual offenders and divert them from the prison system into a treatment program (Schlank, 2006, p. 46, originally cited by Held, 1999). “There they would be kept until they no longer presented a risk for committing future offenses" (Schlank, 2006, p. 46). According to Schlank (2006), the problem with these statutes is that they faced the challenge of unconstitutional arguments. An MDSO was sometimes deemed "non-amenable" for treatment, while other facilities that MDSO offenders were sent to, did not provide sex offender appropriate treatment, but rather a general mental health program. "There were incidents in which offenders attempted to present themselves as more mentally disordered than they were, in hopes of getting more humane treatment than in prison" (Schlank, p. 46). According to Schlank, it was both the violation of civil liberties and concerns about inadequate mental health treatment that built a strong enough case for repealing these statutes.

Other states also enacted laws, often called Sexually Violent predator statutes. These laws differed substantially from MDSO statutes. Instead of intending to divert sexual offenders in need of treatment from prison, they sought to incapacitate the highest risk offenders following the end of their prison sentence until such time as they could be adequately treated to reduce their risk for reoffending. (Schlank, p. 46)
A sexually violent predator is defined as a person convicted of a sexual offense and likely to engage in predatory sexually violent offenses due to a "mental abnormality" or "personality disorder" (Schmedlen, 2006). Although an SVP is a designated legal term that is defined under Megan's Law II, a psychologist who is a member of the State Sexual Offender Assessment Board is asked to perform an SVP assessment to determine if someone is or is not an SVP. They do this by giving the offender a battery of tests and sometimes testifying in court as an "Expert Witness," as to the mental health or illness of the sexual offender.

What the 1930s referred to as "the sexual psychopath," we call today the sexually violent "predator." Mr. Earl Shriner was a man who lived and offended in the 1930s in Washington State. He has a history of repeated sex crimes against children and served his full sentence in the state of Washington in the 1930s. Before release, Mr. Shriner expressed a desire to continue raping and torturing children. Attempts were made to involuntarily commit Mr. Shriner but were unsuccessful. Upon his release from prison, Mr. Shriner committed another sexual offense which included the rape and murder of a child. The public was fiercely up in arms and outraged. Within six months, the state of Washington passed a legislation known as "special commitment laws" or "sexually violent predator laws." Based on this case, similar laws have been passed in most states which require that all offenders undergo a psychiatric evaluation to determine recidivism or their potential to reoffend. It is believed that the "experts" can determine if the person will reoffend. If this is the case, the person is transitioned to a mental health institution until they are "treated" and the "expert," determines when they can be released.
The term "sex offender," has become a generic phrase that encompasses both violent and nonviolent crimes. Although all sexual offenses are considered "violent," not every offender is deemed by legal standards a sexually violent predator. There are specific criteria and a court hearing that determines if someone is an SVP as opposed to a Non-SVP. A SVP is someone who has committed a violent sexual act such as rape and sexual homicide and has been convicted of more than one offense. Throughout the literature discussed in this proposal, the term "sex offender" is one that is often, and I would say almost always, taken for granted. Somehow when the term "sex offender" is used in the media or report writing, we assume we know what one is. This research is interested in recontextualizing what we mean when we use the term "sex offender."

As Zilney & Zilney (2009) ask us to consider, it is challenging to understand how certain behaviors come to be defined as sex crimes in our society and others do not. Recently, people have been meeting strangers on line and "hooking up" for a romp in the park or a public place. Many people boast about being members of the mile high club, which is also essentially sex in a public space. Most of these "crimes" do not result in charges or convictions because they are somehow excused? How is meeting someone online and getting together for sex in public or a hotel room different than picking up a sex worker? Most of us at some point or another have committed a behavior that is considered a sexual crime and illegal. “The difference between us and them is that we have not been caught. Urinating in public, exposing your breasts at a party (Mardi Gras), dating someone five or six years our junior or senior, staring at someone while they changed in a change room, having oral sex--all of these are or have been defined as sexually based crimes" (Zilney et. Al., 2009, p.xiv.) What we deem a sexually based
crime or a criminal (sex offender) has changed from its beginnings to now. In the 1930s, "perverts" were those who could not control their impulses and caused increasingly violent behavior.

It was at this point that the legal and medical fields began to merge; the result was the medicalization of sex crimes. It was believed that indefinite confinement in a psychiatric facility was the only way to deal with sexual offenders, as their mental or personality disorders predisposed them to sexual crimes of violence. Although legal regulation of sexual behavior can be traced to the earliest civilizations, it is important to recognize that as the social, moral, and political landscape of society changes, so too does the definition of a sexual offense, and a sexual offender (Zilney, et. al., 2009 p. 67).

Sex offenders can cross over categories--both diagnostically and legally. They can be diagnosed with pedophilia and exhibitionism at the same time, and they can be convicted of multiple offenses which could raise them from 10 to 25 years or a lifetime on a public registration website. If an offender has more than one diagnoses, that is a paraphilia, he has a greater risk of being classified by the legal system as Sexually Violent Predator. The sex offender assessment board, made up of both mental health and legal professionals, mentioned earlier, decides whether an offender becomes an SVP. In essence, the SOAB is one such place where the two systems intersect to create the notion of what a sex offender is and can become.

The legal system classifies sex offenders by the type of crime(s) they have committed that corresponds to the number of years spent on public registration. While there are a multitude of charges and convictions sex offenders may be faced with, but I cannot list and describe all of them as I will with the Diagnostic categories, because there
are far too many. But I will list two from each Tier category as they are the ones some of my participants were charged and convicted with, as well as several others I have seen in my time working as a therapist at Dr. Smith’s practice and I am therefore familiar with.

The Tier corresponds to the amount of time served under the Adam Walsh Act and the statute number that follows corresponds to the state of Pennsylvania’s crime codes, under which there is a full length description of each sexual crime.

Tier I: Sexual Abuse of Children (18 Pa. C.S. § 6312(d)) (Viewing or Possessing of Child Pornography)

Tier I: Sexual Exploitation of Children (18 Pa. C.S. § 6320)

Tier II: Statutory Sexual Assault (18 Pa. C.S. § 3122.1(a)) (where the offender is eight years older but less than eleven years older than the victim)

Tier II: Sexual Abuse of Children: (18 Pa. C.S. § 6312(c) (Photographing, Videotaping, Disseminating of Child Pornography) with multiple offenses

Tier III: Rape (18 Pa. C.S. § 3121)

Tier III: Statutory Sexual Assault (18 Pa. C.S. § 3122.1 (b)) where the offender is eleven or more years older than the victim

On the Megan’s Law public website in the state of Pennsylvania (2014), Sexual Abuse of Children (Viewing or Possessing of Child Pornography) is defined as “any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photography, film, videotape, computer depiction, or other material depicting a child under the age of 18 engaging in a prohibited sexual act or in the simulation of such acts commits an offense”(Minors, para 2). Sexual Exploitation of Children is defined as “A person commits the offense of sexual exploitation of children if
he procures for another person a child under 18 years of age for the purpose of sexual exploitation” (Minors, para 18).

Tier II: “Statutory Sexual Assault “is a Tier II crime when “a person engage[s] in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 and that person is eight years older but less than 11 years older than the complainant (Sexual Offenses, para 5, 6,). Sexual Abuse of Children is defined as ( “Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act … Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act… ”)(Minors, para 3). These are two examples of Tier II offenses.

Tier III Rape: “A person engages in sexual intercourse with a complainant by forcible compulsion, by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution. Where the person is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring (Sexual Offenses, para 1,2). Statutory Sexual Assault is described the same as the Tier I offense, only it becomes a Tier III offense, when the victim is under 16 and offender 11 or more years older (Sexual Offenses, para 7).

These are the descriptions of statutes within one state (Pennsylvania) and will vary from state to state, with the exception for those crime codes that are federal due to the Adam Walsh Act. When the AWA was adopted by the state of PA in 2012, the state still maintained the public registration website, however they incorporated federal crime codes, in addition to the state’s statutes.
Table 2: A List of Adam Walsh Law Offenses

Tier I Offenses

1. Unlawful Restraint of a Minor where Offender is not Victim’s Parent – 18 Pa.C.S. § 2902(B)
2. False Imprisonment of a Minor where Offender is not Victim’s Parent – 18 Pa.C.S. § 2903(B)
5. Institutional Sexual Assault where the Victim is an Adult 18 Pa.C.S. § 3124.2(A)
6. Indecent Assault without the Victim’s consent 18 Pa.C.S. § 3126(A)(1)
9. Invasion of Privacy – 18 Pa.C.S. § 7507.1
   b. Federal Offense of Transportation of Minors – 18 U.S.C. § 2423(B)(C)

d. Federal Offense of Interstate Facilities to transmit Information about a Minor – 18 U.S.C. § 2425

e. A comparable military offense or similar offense under the laws of another jurisdiction or foreign country or under a former law of this Commonwealth.

f. A conviction for a sexual offense in another jurisdiction or foreign country that is not similar to an Adam Walsh crime, but nevertheless requires registration under a sexual offender statute in the jurisdiction or foreign country.

g. An attempt, conspiracy or solicitation to commit any of the above-mentioned crimes.

Tier II Offenses

1. Statutory Sexual Assault where the offender is eight years older but less than eleven years older than the victim 18 Pa.C.S. § 3122.1(A)(2)

2. Institutional Sexual Assault by a volunteer, employee of a school or a child care worker 18 Pa.C.S. § 3124.2(A.2) and (A.3)

3. Indecent Assault by forcible compulsion, threat of forcible compulsion, of an unconscious victim, of a substantially impaired victim, of a mentally disabled victim, or the victim is less than sixteen and the offender is four or more years older. 18 Pa.C.S. § 3126 (A)(2), (3), (4), (5), (6), or (8).

4. Promoting Prostitution of a Minor – 18 Pa.C.S. § 5902(B.1)


6. Sexual Abuse of Children (Photographing, Videotaping, Disseminating of Child Pornography) – 18 Pa.C.S. § 6312(B), (C)


11. Federal Offense of Abusive Contact where the victim is Thirteen Years of age or older but under 18 years of age. – 18 U.S.C. § 2244


13. Federal Offense of Selling or Buying of Children – 18 U.S.C. § 2251A


19. a comparable military offense or similar offense under the laws of another jurisdiction or foreign country, or under a former law of this Commonwealth.

20. an attempt, conspiracy or solicitation to commit one of the above-mentioned crimes.

**Tier III Offenses**

1. Kidnapping of a Minor – 18 Pa.C.S. § 2901 (A.1)

2. Rape – 18 Pa.C.S. § 3121

3. Statutory Sexual Assault where the offender is eleven or more years older than the victim – 18 Pa.C.S. § 3122.1(B)

5. Sexual Assault – 18 Pa.C.S. § 3124.1
6. Institutional Sexual Assault of a Minor – 18 Pa.C.S. § 3124.2
9. Incest of a Minor – 18 Pa.C.S. § 4302(B)
13. a comparable military offense or similar offense under the laws of another jurisdiction or foreign country, or under a former law of this Commonwealth.
14. an attempt, conspiracy or solicitation to commit one of the above-mentioned crimes.
15. two or more convictions of offenses listed as Tier I or Tier II sexual offenses.

Note: Reprinted from The Pennsylvania Sexual Offender Assessment Board, (2014) link to The Adam Walsh Act List of Offenses.

It is important to note that sex offenders are not always convicted of all the charges that are given to them by the police. It is up to the attorney to negotiate what charges stick or do not, usually based on evidence. Once convicted of charges, the offender is then publically registered. The table illustrates an anticipated comparison of what Megan's Law offenders will look like once the Adam Walsh Act is in effect. The basic differences between Megan's Law and Adam Walsh, is that offenders will shift from 10 years to lifetime under Megan's to 15, 25, and life under Adam Walsh. The
AWA is a federal database for public registration, which means that it is meant to be uniform requirements for registration across the nation as opposed to different standards, crime codes for each particular state. Although each individual state is still responsible for managing the people that are registered within their state, as they are responsible for tracking those who travel out of state, if allowed. The purpose of the AWA was to close the gap on the possibilities of losing offenders who cross state lines.

The first tier is considered the lowest risk offender, meaning that he is the least likely to reoffend, the second is a moderate risk offender, and the third is the highest risk offender. Sexually Violent Predators become mixed in with Tier III offenders, rather than having their own classification. The Tiers are listed as a state crime code, based on the state in which in the offender was convicted, and then as a federal code (US) with the implementation of the AWA.

**Adam Walsh Act: Why Wasn't Megan's Law Good Enough?**

The Adam Walsh Act was in large part designed to close the so called gap of missing offenders who traveled out of their convicted state and dropped off the registration system due to administrative error or states simply not having the resources to track them as they moved in and out of a given state. It is meant to create a uniform system.

One year before the State of Pennsylvania's senator Jane Orie was sentenced to 2.5 to 10 years in state prison for public corruption and forgery, she signed a Senate Bill (1182) allowing the state of Pennsylvania to adopt the "Adam Walsh Child Protection and Safety Act of 2006." She signed this bill on June 28, 2011. During this same year (2011), a two-year investigation of Jerry Sandusky came to a head. Prior to the case of
Jerry Sandusky, the state of Pennsylvania, like the majority of US states, rejected the Adam Walsh Act for many reasons, the two primary reasons being that it was unconstitutional in its requirements for juvenile sex offenders and retroactive mandates that would require sex offenders to reregister or register for the first time after serving many years in prison and/or probation. Despite this resistance, the State of Pennsylvania adopted the new and much harsher sexual offender registration and notification act.

The Adam Walsh Act is extensive. And just like Megan's Law was the amendment to the Jacob Wetterling Act in 1994, The Adam Walsh Act is an amendment to Megan's Law. Similar to the adoption of Megan's Law, US states were again threatened with substantial monetary cuts to their annual crime budgets if they did not adopt the Adam Walsh Act, but despite these negotiations, many states have chosen to take the cut and not adopt the amendment because of the unconstitutional mandates.

The Adam Walsh Act has added many new requirements for most offenders while requiring some offenders who did not have to register prior to December 20, 2012, do so now. The Adam Walsh act also requires offenders to register more information than they had to with Megan's Law, and make three more visits to their local state police office per year than they were originally required to do. Among all of the various criminals in the US, sex offenders are the only criminals that are required to register their names, faces, addresses, place of work, the car they drive, fingers, palm prints, and a DNA sample to name a few, on a website available to the whole world or anyone who has access to a computer with the internet.

One mental health therapist, cited in Robert Freeman Longo's article spoke about her view of new public registration law.
One clinician treating sexual abusers in Michigan states, "Many of the adult clients -- adult sex offenders -- have stated that they are afraid of the 'witch-hunt' that is occurring. At first (about 5 years ago), I passed it off as displacement and projection. When I hear about the registration and notification laws, and the new punitive laws being passed, I wonder if sex offender therapy will even achieve its ultimate goal" (Rosenberg, 2000, originally cited in Longo, 2000, p. 11)

This excerpt reminded me of the excerpt from a focus group that was presented in the last chapter--when the group members discussed their panic and paranoia about being lynched, hospitalized, and other violent acts of vigilantism. The truth is, that it is very difficult for offender's to focus on the goals set for them by the legal and mental health system--those goals that serve to help them move forward, reintegrate into community life, and find work, residence, and relationships with others. When I collected my field notes, interviewed the offenders, and held the focus groups, the Adam Walsh Act had not yet been implemented, but was hovering around the corner and offenders were already experiencing it seeping into their lives. Two offenders in a treatment group I ran came in one day with letters from the state informing them that they had gone from being registered on Megan's for 10 years and was now going to be registered for lifetime. This left these two offenders devastated and wanting to quit treatment, give up, and return to prison.

Since the implementation of this relatively new law, there has been much criticism and push back from many US states that continue to spend millions of dollars to resist the implementation of this new amendment. The state of Ohio spent millions and succeeded in their aim of undoing one part of the law that prohibits states from
retroactively forcing sex offenders whose crimes occurred before the act was implemented to have to register or in some cases re-register. Jason Burkos, paralegal, described his view of the Adam Walsh Act.

The AWA was the next phase in a variety of increasingly draconian sex offender laws, always in response to a high profile case. The stated goal is to protect children by publicly identifying and monitoring convicted sex offenders. However, considering that these laws focus on convicted offenders who have a national recidivism rate of 3.5% (US Department of Justice Bureau of Justice Statistics report), how does focusing on convicted offenders protect the victims of 97% of cases – assaults by parents, babysitters, and other individuals who have never been convicted of any crime? The focus, clearly, is on the wrong targets. This law was enacted to give the public the perception rather than the reality of safety (Burkos, WordPress, para 4, accessed on October 10, 2013).

Indeed, the vast majority of sex offenders in the United States are those who live inside the home, while only a small percentage are those who are considered to be strangers. According to Jason Burkos and other legal experts, the AWA act was passed expeditiously.

"Very few politicians took the time to review the data collected by the Department of Justice. Nor did they consider the alternative measures developed after major studies (often government sponsored) by private NGOs. Congress enacted the most punitive measures: they did not enact the best practices recommendations" (Burkos, 2013).

In Volume 17, Issue 1, the Monitor (for professionals working in criminal justice profession) published an article entitled "Walsh Act Signed Into Law," focusing on how
professionals may begin to anticipate the shift from Megan's Law to Adam Walsh once sex offenders in the state of Pennsylvania were registered. The Monitor collected data from the Megan's Law website in 2010 and compared it to what that same list would look like once Adam Walsh had been enacted. The list of offenders nearly doubled from 439 to 1,724 registered offenders. Table 2 illustrates this reality.

Ironically, the two key individuals associated with the AWA were both involved in questionable sexual activities. Congressman Mark Foley (R-FL), the primary sponsor of the bill, resigned from Congress when it was discovered that he was sending inappropriate sexual messages to 16 year old boys in the Congressional Page Program. Not surprisingly, Congressman Foley was allowed to resign without charges being filed against him, and he now enjoys a lucrative career as a real estate broker in Palm Beach, FL. John Walsh, host of America's Most Wanted, became an advocate for sex offender laws after the brutal murder of his son. However, Mr. Walsh takes his advocacy beyond supervision of sex offenders, and uses his television status to push for laws that on the surface sound effective, but in reality put communities in further danger. Ironically, Mr. Walsh admitted that he had a continuing and willfully illegal relationship with an underage girl. Again, no surprise, he never faced charges. …So, the AWA was advocated by a statutory rapist and sponsored by a Congressman who was caught in predatory activity against teenage boys. So, who watches the watchers? (Burkos, 2013).

Megan's Law and the Adam Walsh Act are an example of how our legal system manages sex offenders throughout the latter part of the 1990s - today. The trend is to increase punishment, punitive measures, and keep sex offenders in the legal system for
longer periods of time. Megan's Law and Adam Walsh are just one part of the system, a tracking tool used to continue to monitor and punish offenders for their crimes. However, these legal trends have resounding consequences for sex offenders as they enter into a second system that expects the offender to meet its own demands. The mental health system expects that sex offenders will find ways through treatment to resolve the problems that lead them to offend. Sex offenders are continually given the mixed message to resolve on their own. While the legal system tells them they are lifelong predators who will continue to offend so long as they shall live, the mental health system, at best, sends a very different message. The mental health system asks that offenders find a way to identify and meet their goals in life so as to reduce their number of offenses or live an offense free life.
Table 3: Number of Sentence for Offenses That Will Fall Under Walsh: Pennsylvania, 2010

| Number of Sentences for Offenses That Will Fall Under Walsh: Pennsylvania, 2010 (Based on Most Serious Offense Per Offender) |
|---|---|
| Tier 1 (42 Pa.C.S. §9799.14(b)) | Number |
| 18 Pa.C.S. §2902(b) Unlawful restraint of minor by non parent (data assuming non-parent) | 5 |
| 18 Pa.C.S. §2903(b) False imprisonment of minor by non parent (data assuming non-parent) | 1 |
| 18 Pa.C.S. §2904 Interfere with custody of minor by non parent (data assuming non-parent) | 23 |
| 18 Pa.C.S. §2910 Luring | 16 |
| 18 Pa.C.S. §3124.2(a) Institutional sexual assault (adult victim)* | 4 |
| 18 Pa.C.S. §3128(a)(1) Indecent assault | 166 |
| 18 Pa.C.S. §6301(a)(1)(ii) Corruption of minors | 290 |
| 18 Pa.C.S. §6312(d) Sexual abuse of children | 126 |
| 18 Pa.C.S. §7507.1 Invasion of privacy | 13 |
| Total | 644 |
| Tier 2 (42 Pa.C. §9799.14(c)) | |
| 18 §3121.1(a)(2) Statutory sexual assault** | 112 |
| 18 §3124.2(a)(1) Institutional sexual assault* | 0 |
| 18 §3126(a)(2)(3)(4)(5)(6)(8) Indecent assault | 89 |
| 18 §5902(b) Promote prostitution of minor | 2 |
| 18 §5903(a)(3)(5)(6) Obscene materials (minor) | 10 |
| 18 §6312(b)(c) Sexual abuse of children | 60 |
| 18 §6318 Unlawful contact with minor | 119 |
| 18 §6320 Sexual exploitation of children | 0 |
| Total | 392 |
| Tier 3 (42 Pa.C.S. §9799.14(d)) | |
| 18 Pa.C.S. §2901(a.1) Kidnapping (minor victim) | 1 |
| 18 Pa.C.S. §3121 Rape | 126 |
| 18 Pa.C.S. §3122.1(b) Statutory sexual assault (victim <16 & offender >11 years older)** | 111 |
| 18 Pa.C.S. §3123 IDSI | 132 |
| 18 Pa.C.S. §3124.1 Sexual assault | 57 |
| 18 Pa.C.S. §3124.2(a.1) Institutional sexual assault (victim <18 years)* | 0 |
| 18 Pa.C.S. §3125 Aggravated indecent assault | 124 |
| 18 Pa.C.S. §3126(a)(7) Indecent assault | 137 |
| 18 Pa.C.S. §49302(b) Incest (victim <13 years) | 0 |
| Total | 688 |
| Grand Total | 1,724 |

*Assumed all adult victims. PCS data currently does not differentiate
**Victims younger than age 16 years. Assumed half offenders were 11 or more years older than victims and half were not. Total N=223


Consequences of Public Registration

Public Registration has stirred great public interest and has proven to be problematic in its implementation. The reason this is relevant to my research is because
public registration is a demand made by the legal system, in that sex offenders must be
publically listed on this website for as long as is deemed necessary. Time on this list has
caused many problems for sex offenders--in that it has prevented them from meeting the
demands of both systems.

One of the primary reasons AWA was implemented was because of concern that
sex offenders were falling through the cracks when they left their state of registration to
enter into another. They were fallen off lists and at times went "missing."

The AWA act was implemented as a consequence of those gone missing, only it
has caused more problems than it has resolved. It is important that the public be aware of
where laws like this come from and the what actually happens when they are applied! Dr.
Jill Levenson conducted extensive research on what led to the generation of the AWA.

One of the great problems that arose since 2003, is that sex offenders were
"missing" from these public notification websites and this caused great panic among the
public. As a result, there was a great deal of monetary and legal resources that went into
searching for these missing sex offenders who were not registered as they were supposed
to be.

On April 6, 2012, I attended a workshop on Treatment Issues and Consumer
Perceptions, given by Jill Levenson, Ph.D. Dr. Levenson is a professor of public policy
and psychology at Lynn University in Florida and has been active as a public policy
writer for laws that specifically impact sexual offenders. She also has a private practice in
Florida where she treats sexual offenders mandated to therapy by the courts. The
audience at the workshop was varied, mostly mental health professionals, but some
probation officers, judges, and law enforcement in general. She talked about the
information that informs our public policy and as a result, the laws that are made with the intention of managing sex offenders. She shared with the audience research she completed on sex offenders missing from public websites and talked about the media's influence in perpetuating discourse that has worked to inform harsher restrictions and more punitive laws involving restrictions of residence, work, and public registration and as a consequence, psychotherapeutic treatment that aligns with managing sex offenders.

Levenson conducted research regarding the "100,000 missing sex offenders," that was generating new laws, task forces to hunt down sex offenders, and political platforming by opportunistic politicians. She wondered where this number came from, if it was accurate, and so she followed the number to its origins. Levenson recognized that our government spent over $75 million to assemble and implement a large task force by the US Marshals called "Operation Falcon." It turns out this task force was based on the belief that 100,000 sexual offenders were missing in the United States. By "missing" the media was saying over and over again that they were unaccounted for, had absconded, or failed to register as a sex offender with their local police.

Since early 2003, this attention grabbing statistic has occupied a prominent place in the discourse over our nation's sex offender policy. This figure (100,000) (or in recent cases, an upwardly adjusted variant of it) has appeared in dozens of news articles, testimony from advocates and public officials, Congressional and government agency reports, press releases, and federal appropriations bills. The number is often cited without attribution as an unassailable fact--a self-evident fixture in the dialogue over how best to protect society from dangerous sexual predators. (Levenson & Harris, 2011, July, p. 2)
During her research Levenson traced the number back to its original source and the results were horrifying. This number, 100,000 missing was being used by the US Marshall's publications and the Department of Justice. Levenson discovered that through news archives, the original source, originated from a grass roots organization called "Parents for Megan's Law." PFML is a group of mothers who organized a website and campaign against sex offenders, inspired by Megan's Law.

PFML initiated a survey of state registries in 2003 and reported that, "on average," states were unable to account for 24% of sex offenders required to register. Their websites claim that they 'found nearly 25% of the nations' [sic] registered sex offenders were not complying with the state registries across the country," (Parents for Megan's Law, 2010) but this number was merely an irresponsible estimate based on state databases that were never audited. Like dormitory gossip or the childhood game Whisper Down the Lane, this statement galvanized the urban legend that over years of telling took on a life of its own. (Levenson and Harris, 2011, p. 3)

The consequence of this has been harsher restrictions for sex offenders and the AWA. One of the participants in the focus group "Bob" shared that when he quit his job, he did not know he had to contact local police to get his former work address off the registry. He was sent a letter for failure to comply because he did not act within 48 hours. He received a felony charge and six months state probation on top of his already serving five years of federal probation.

Levenson and her colleagues put in a lot of effort to reach PFML and at the workshop she talked about her frustration that no one responded. In the end she
discovered something quite disturbing--the numbers of missing sex offenders "were
based on the 'word' of officials in each state; no raw data were provided to PFML for
analyses" (p. 3)

"A 2003 Story by Associated Press reported Kim Curtis, however revealed that
although registry managers in all states responded to PFML telephone survey, only 32
were able to provide failure-register rates (Curtis, 2003s, cited in Levenson and Harris,
2011, p.3). According to Levenson, "many registry officials said they had never audited
their sex offender registries and could provide only rough estimates of their accuracy" (p.
3).

Levenson and her colleague Harris also reported that many states including CA,
MA, TN had the highest rates of noncompliance, all around 50%, while OK's correction
department spokesman Brian Johnson said the figure was just his best guess. "I don't have
any specific actual information in terms of the level of compliance, he told the Associated
Press" (Levenson et al., 2011) Of all states, Levenson found that CA admitted to serious
systemic problems with their state's registry.

In many cases sex offenders may be deemed "missing" because of administrative
noncompliance like failing to update an address, that they got a new job or left an old
one, or new vehicle information. And in many cases, Levenson found that those sex
offenders who are truly missing or absconded are a very small percentage of the nation's
sex offender population. Most of the offenders deemed missing are because of
Administrative Error at the level of those responsible for managing the registries. As the
number of registered offenders increase, the more responsibility is placed on the local law
enforcement offices responsible for maintaining registry databases. The real problem is
that the number of offenders to register and the amount of work put into doing so and updating a state's registry is a large task where mistakes are often made. The definition of Missing is ambiguous because it can mean so many things. Levenson's research reveals that it means administrative failure and not evil predators evading the system's registry. These are some of the misconceptions that cause harsher restrictions and more punitive laws for managing sexual offenders and pervade the country's discourse. One of the many consequences of more punitive laws is that treatment approaches can become more about managing sex offenders than helping them lower risk for reoffending.

As Megan's Law was being considered, and after it was passed, several clinicians, researchers, legal scholars, and others addressed this federal mandate and the potential problems with enacting this law (Brooks, Pallone & Steinbock, 1995; Freeman-Longo & Blanchard, 1998; Freeman-Longo, 1996a; Freeman-Longo, 1996b; Prentky, 1996; Miller, 1996; Matson & Lieb, 1996). One of the greatest concerns of some of these authors was the potential of Megan's Law to result in harm to, and/or victimization of, innocent persons who are not sexual abusers as well as harm to, and victimization of, sex offenders identified under the law (Longo, 2000, p. 2).

Dr. Levenson talked about myths that were perpetuated by media and politicians. Assemblmen Bill Hoge of Pasadena, sponsor of a proposed castration bill, told the New York Times in 1996,

"What we're up against is the kind of criminal who, just as soon as he gets out of jail, will immediately commit this crime against at least 90 percent of the time ... that percentage is one of the sad givens of this kind of illegal activity," (New York Times, 1996, cited by Levenson, 2012). In November 2006, "California's Proposition 83, passed
by 70% of voters. The myth that sex offenders have a dramatically higher recidivism rates than any other criminal is part of the discourse that gets repeated over and over again and arguably is what influences the creation of new laws, despite data to dispute this.

Further research by Levenson cited Sample & Kadlec (2008) described the following: "78% of politicians opined that sex criminals will almost surely reoffend. They expressed pessimism about treatment effectiveness. They often spoke of rape and murder simultaneously, indicating that these were the types of events they hoped to avert by enacting legislation. All acknowledged that the media was by far their primary source of information about sex offenders" (ATSA workshop, Levenson, 2012).

Megan's Law was in large part amended because of inaccurate information and political rhetoric that influenced our nation--causing more fear and moral panic than any actual scientifically supported solution. AWA has forced offenders on registration sites for longer periods of time keeping them monitored by the federal system even longer, so that there really is no way out of the legal system. As for rehabilitation efforts, by the mental health system, to treat a paraphilia diagnosis--this progress is just not possible when sex offenders need to be concerned first about their safety, and meeting basic needs such as safe shelter, a place to work, and a community to integrate with. AWA has made that even more difficult, if not impossible--and the most devastating part is the law was created to help seal the gap of those missing--who were not really missing at all--based on emotionally driven fear.

Consequences: Greg is facing a 10-year registry to 15 year; Frank is a lifetime registrant, and Steve (not required to register). Many offenders I worked with in
treatment as a therapist moved from no registration to 25 years or 10 years to lifetime (1 of those cases was internet pornography use and the other was for the sexual abuse of a minor).

**The New Sex Offender**

These offenders are considered the new species of sexual offenders because they did not exist before the internet was widely used. More and more forensic practices that treat sex offenders are seeing internet cases. These are sexual offenders who have been charged or convicted with downloading, possessing, or creating illegal sexual material, namely child pornography from the internet. According to the Cambridge handbook of Forensic Psychology, "Internet offenders can be broadly categorized into four groups (Beech, 2010, originally cited by Lanning 2001; Krone 2004): those who

1. Access abusive images sporadically, impulsively and/or out of curiosity;
2. Access/trade abusive images to fuel their sexual interest in children;
3. Use the internet as part of a pattern of offline contact offending, including
4. Using the internet as a tool for locating and/or grooming contact victims,
5. Using the internet to disseminate images that they have produced;
6. Access abusive images for seemingly non-sexual reasons (e.g. for financial profit).

This list is a hierarchy beginning with that which evokes the least punishment by law to the highest punishment. As discussed in Greg's vignette, the definition of pornography is problematic and unclear. Mental health and legal professionals Carnes, Delmonico, and Griffin define pornography as "photographs of models posing in bathing suits or lingerie to young children being sexually abused. It can be in various forms,
including photos and audio video, and text stories" (Carnes, et. al., 2001, p. 10). These authors are widely published and cited in the field of "cybersex addiction" and pornography, another term that is a catchall phrase for any sexual behavior that takes place on line. Their work is also used in group therapy settings all over the country and the one group I ran as a therapist at Dr. Smith's practice for internet sexual offenders.

What mental health professionals find perplexing about this type of offender is that he is someone who often does not have any prior history of sexual crime, yet he is punished at times more severely than those offenders who have committed hands on offenses. During an interview with Dr. Oscar, he stated that his view about treating sex offenders who were convicted with possession of illegal pornography shifted after one group therapy session in particular. During our interview he recalled one man in the group talking about this phenomenon in a way he had not heard before. It was "Greg," who said that the legal system and society's discomfort with internet crimes was because it was a crime that was unfinished--it is a crime that mental health professionals see as being on the way to committing a worse offense. Rape is a crime that is complete--however the idea of viewing pornography on line is often misconstrued by the intent to commit a hands on offense with a minor. Most of the offenders who were treated at Dr. Smith's practice, did not go on to commit hands on offenses, nor had there been any evidence of such behavior in their past. To the best of my knowledge, there has been no scientific research that correlates the viewing of illegal pornographic images to actually committing hands on sexual crimes.

Because of the seriousness of possessing and trading child pornography, one who possess these files on line is liable and can face up to twenty-five years in prison. This is
a blatant inequality found and often voiced among offenders when someone who has a hands-on offense, has molested a child, for example, is subject to less than five-seven years, compared to the 5-10 years one faces for an internet crime.

The highest number of juvenile offenders falls under this new category of offender. They are the internet generation and are using peer-to-peer networks to download and trade porn. Often when pornography is downloaded peer-to-peer (the most common way to get caught) it's because the downloader does not know exactly what he is getting until he opens the files. Downloading five hundred files at a time of pornography leaves the possibility that enough of them may be "illegal," or tracked files by the FBI.

Most internet offenders are allowed to own and access a computer after they are convicted, so long as it is monitored by the federal government's software. However, the restrictions on internet offenders, especially those imposed by the state, can at times be debilitating. One offender was told by his probation officer that he was not allowed to own or use a computer that had the capacity to connect to the internet. Because he had already lost his job as a computer analyst, he needed to find another, however his post-incarceration requirements, prevented him from utilizing a computer. He went in person to apply for jobs, from one job to the next, but was told he needed to apply on line because that's just how things are done now. One of the binds this particular offender faced was being required to secure employment as a condition of his probation, but he was unable to apply for one without computer access. As a former well educate computer analyst with a Masters Degree and above average paying salary for a US citizen, he found himself begging for work, at gas stations, convenient stores, and any place that he could walk in and ask for hire. However, even gas stations were computer based, so he was
unable to work there. The message he received was get a job, but we will make it near impossible for you to apply for one. He was violated six months for failure to obtain employment; his probation time was extended as a result.

There are no federal controls on internet sex and it is illegal to prevent someone from having an internet connection. However, once offenders are caught with possession of child porn, their computers are monitored by the federal government and they are at times forbidden from owning or utilizing a computer as a stipulation of their probation.

Attorney Ryan commented during interview about defending porn cases. He reflected how many times, he has been called to judge's chambers, with the prosecutor, the judge, and himself all staring at the evidence, the same photographs that the defendant was guilty of viewing. He stated, "Here we are standing there, me, the judge, and the prosecutor, viewing child pornography. Aren't we also committing the same crime?"
(Interview Attorney Ryan, 2012).

How we define internet crimes, viewing or possessing pornography as criminal act, possession of it, a victim, and the offender who views such images is problematic. Is it fair to continue to criminalize these people through public registration and overly punitive restrictions after prison, for a "crime," that is not clearly defined?

Now we have learned what the legal categories are, but there is more to learn, we must learn how people become constituted as sex offenders by the way they are labeled and categorized by the mental health system.

**History of “Paraphilia”**
Sex offenders are typically diagnosed with mental disorders that fall under the diagnostic category paraphilia. This section defines the term paraphilia and provides an account of the terms' etiology.

The term paraphilia did not enter the English language until 1913, when Friedrich Salomon Krauss, a correspondent of Sigmund Freud, ethnologist and folklorist, introduced it to American Psychiatry. The term paraphilia made its way into American psychiatric discourse shortly after Krauss coined the term.

“In the late 20th century, psychiatrists and psychologists began to categorize various paraphilias as they wanted a more descriptive system than the legal and religious constructs of sodomy and perversion” (Paraphilia, 2014, para 6). The DSM description of what constitutes paraphilia has expanded across the different DSM editions. In DSM-I (1952), the term paraphilia had not yet been adopted, but instead the term “sociopathic personality disturbance,” was utilized (meaning that all forms of sexual deviation meant the person was personality disordered), in addition to the use of supplemental terms or categories: homosexuality, transvestism, pedophilia, fetishism and sexual sadism (including rape, sexual assault, and mutilation) (1st ed.; DSM-I; American Psychiatric Association, 1952, cited in Laws & Donahue, 2008, p.385). So in the DSM-I a diagnosis would look like “sociopathic personality disturbance—sexual deviation: (pedophilia) “In DSM-II (American Psychiatric Association, 1968) the term ‘sexual deviations ‘continued to be used. Sexual deviations however were not longer described as a sub-type of sociopathic personality disturbance. Although sexual deviations were still appeared under a ‘catch-all’ category called “personality disorders and certain other non-psychotic mental disorders, “sexual deviations were listed as a category separate from personality
disorders. The sexual deviations category described individuals who were sexual
interests were ‘directly primarily toward objects other than people of the opposite sex,
toward sexual acts not usually associated with coitus, or as coitus performed under
bizarre circumstances …(2nd ed.; DSM-II; American Psychiatric Association, 1968, p. 44
psychiatric category until the Diagnostic and Statistical Manual of Mental Disorders
Volume III Revised, (DSM-III-R) was published in 1987.

During the time of the DSM-I and DSM-II's establishment, it is clear that
psychoanalysis and its practitioners played an important role in the constituting of sexual
deviation. Their research, which was primarily based on the work they did with their own
patients, during a particular time and place, with specific cultural and societal notions
about sexuality, translated and shaped psychoanalytic research and definitions of
sexuality and deviance. For Sigmund Freud it was 20th century Vienna, the Victorian era,
when he practiced and wrote about his patients. This was when he wrote what he
observed, based on the cultural in which he was situated. He believed that sexual
deviance was defined as any sexual climax outside of intercourse that was preferred over
intercourse. As our social and moral values change, so does the notion of what a sex
offender is and how a person is constituted as one by the mental health system.

Freud (1905/1953) defined sexual activity as perverse according to several
criteria: 1) it focused on nongenital regions of the body; 2) rather than coexisting with the
standard practice of genital intercourse with an opposite-sex partner, it superseded and
replaced such practice; and 3) it tended to be the exclusive sexual practice of the
individual. Freud noted that traces of perversion could be found in virtually anyone whose unconscious was subject to psychoanalytic exploration (Gabbard, 2005, p. 313).

Homosexuality has been part of the DSM-I since 1952, where it was listed as a sociopathic personality disturbance, but after the gay rights’ movement in the early 1970s, the DSM-III committee members removed homosexuality as a disorder in 1974. It was replaced by a diagnosis called “sexual orientation disturbance, renamed to recognize homosexuality as a problem only if the person who was considered homosexual thought so. The shift over time with regard to homosexuality was a movement toward thinking that homosexuality was only a mental disorder if it inflicted distress or substantially impacted the life of the person who was considered homosexual. This is an example of how what we consider to be sexually deviant is always linked to the cultural and society morals and values we subscribe to. Diagnostic criterion does not, by design, happen in a vacuum, it is shaped by the cultural values of the time that criteria is written.

The DSM-IV (1994) kept a sexual disorders classification for which paraphilia remained as subset categories. The same paraphilia were retained, as I have said, in DSM-III-R. In today's DSM-IV-TR (2000) paraphilia are defined as, “recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving: (1.) Nonhuman objects, (2.) The suffering or humiliation of oneself or one's partner, or (3.) children or other non consenting persons that occur over a period of six months (4th ed.; text rev.; DSM-IV-TR, 2000, American Psychiatric Association, 2000, p. 566). All of the above must "cause clinically significant distress or impairment in social, occupational, or other important areas of functioning" (4th ed.; text rev.; DSM-IV-TR, 2000, p. 566). The
paraphilic types are broken down to nine specific disorders, which I will provide later in this chapter.

I have just given a very brief sketch of what is a very extensive history of the revision of what is now the DSM-IV-TR with regard to its definition of paraphilia—the diagnostic category sex offenders are assigned to after they are evaluated and assessed by mental health professionals. There are many different types of paraphilia, and which ones to add and which ones to take out to the DSM has been a source of controversy over decades of revisions. Although the DSM-V (2013) is currently published and being used by mental health professionals, my research used the DSM-IV-TR published in 2000, because it was in effect during the time I collected the data for this project. The DSM-IV-TR was used during the time people were first psychiatrically evaluated and assessed at Dr. Smith’s practice. We brought people in to the office for what we call “intake” appointments. During this time, we would administer them tests like the MMPI-RF-2, which renders a diagnosis at the end of the testing report based on the answers people give to the test. During the intake, people also sat for an oral interview and were asked many questions about their sexual history, all of which goes into determining diagnosis. It is fair to say that what crimes sex offenders are convicted with also play a role in their diagnosis, especially if they admit guilt and there is sufficient evidence that he did commit the crime. For example, if a person molested a child under 13 and has a history for doing so, it is more than likely he will be diagnosed with one of the two types of pedophilia, but there should be more evidence to support this, such as his testing results and oral interview.
**When did Sex Offender become a Psychiatric Category**

What follows is a list and description of all the types of Paraphilia, as defined by the DSM-IV-TR. I listed all of them in their full description for the reader who may not be aware of what these diagnoses are. I provided a great deal of detail for better understanding of what makes these paraphilic types different from one another. Each number that is listed prior to the named type of paraphilia corresponds to a billing code used by the therapists to submit bills to insurance companies. Therapists can be paid for using one or more of these diagnoses to treat patients. According to the DSM-IV-TR (2000), The following are the actual paraphilia people are diagnosed with when they become labeled as sick in the mental health system.


An individual can meet criteria for more than one paraphilia. Also, it is important to note that in the history of the DSM and many mental illnesses, the DSM utilizes descriptions that informs the mental health professional’s choice to assign or not to assign a mental disorder to the offender. In order for an offender to be diagnosed, he must experience a certain degree of subjective distress related to the behavior he is engaging in. Distress is often determined by the impact on social, occupational, and cognitive functioning. In other words, most people get depressed at some point in their lives, but if the depression impacts their ability to spend time with friends and family, get up and go
to work everyday, and make important decisions, for a period of time, it is likely that they would be considered clinically depressed. The types of paraphilia are defined below.

Exhibitionism: exposure of one's genital's toward strangers. "Sometimes the individual masturbates while exposing himself (or while fantasizing about exposing himself). If a person acts on these urges there is generally no attempt at further sexual activity with the stranger. In some cases, the individual is aware of a desire to surprise or shock the observer. In other cases, the individual has the sexually arousing fantasy that the observer will become sexually aroused. The onset usually occurs before age 18 years, although it can begin at a later age. Few arrests are made in the older age groups, which may suggest that the condition becomes less severe after age 40 years" (4th ed.; text rev.; DSM-IV-TR, American Psychiatric Association, 2000, p. 569) Some exhibitionists will describe the behavior as a substitute for more typical and socially appropriate courting behavior. Or, as in the case of Steve who exposed himself to strangers, as a way of gaining acceptance from others.

Fetishism: Fetishists become sexually aroused when holding or wearing fetishized objects, nonliving objects. "The person with Fetishism frequently masturbates while holding, rubbing, or smelling the fetish object or may ask the sexual partner to wear the object during their sexual encounters. Usually the fetish is required or strongly preferred for sexual excitement, and in its absence there may be erectile dysfunction in males" (American Psychiatric Association pp. 569-570). However fetishism is in itself considered to be a mental illness if it is engaged in to the exclusion of other sexual activities.
Frotteurism: This paraphilia commonly involves touching or rubbing up against someone against their will. "The behavior usually occurs in crowded places from which the individual can more easily escape arrest. He rubs his genitals against the victim's thighs and buttocks or fondles her genitalia or breasts with his hands. While doing this he usually fantasizes an exclusive caring relationship with the victim. Most acts occur when the person is ages 15-25 years, after which there is a gradual decline in frequency" (American Psychiatric Association, 2000, p. 570).

Pedophilia: This is the "type" of sex offender most commonly confused with the others. The term sex offender and pedophile are often used synonymously, but this is largely inaccurate. There are many types of offenders who are not pedophilic. The definition of a pedophile is someone who is sexually aroused by children under the age of 13, pre-pubescent. There are two types of pedophiles defined by the DSM-IV-TR: exclusive and non-exclusive pedophilia. Exclusive pedophilia is very rare. An exclusive pedophile is attracted only to children and not to adults. The second type is the non-exclusive type: an individual who is attracted to both children and adults. In order to be categorized as a pedophile, a person must be at least sixteen years old and at least five years older than the child. Some pedophiles are attracted to both males and females, while some have a preference for one gender. According to the DSM-IV-TR, "Those attracted to females usually prefer 8-10 year olds, whereas those attracted to males usually prefer slightly older children" (American Psychiatric Association, p. 571). Those who are sexually attracted to persons 14-17 years of age, and engage sexually with them, are still committing a serious crime, but the person would not be categorized as a pedophile by the DSM criteria.
Sexual Masochism: Sexual Masochists are individuals involved in activities that include being beaten, bound, and otherwise made to suffer. Some people feel conflicted about having masochistic fantasies and do not act on them, but merely keep them in mind. Others act on them either by themselves or with partners. Masochistic fantasies vary as much as do people, however there are some common fantasies among sexual masochists cited by the DSM-IV-TR 2000. These include but are not limited to: "physical bondage, blindfolding (sensory bondage), paddling, spanking, whipping, beating, electrical shocks, cutting, "pinning and piercing," (infibulation), and humiliation (being urinated or defecated on, being forced to crawl and bark like a dog, or being subjected to verbal abuse" (American Psychiatric Association, 2000, p. 572).

Sexual Sadism: A sexual sadist is someone who engages in activity that causes suffering of someone else. The sexual sadist achieves pleasure from someone else's suffering. Similar to the masochist, some individuals are conflicted by these fantasies and choose not to act on them while others do. For those sexual sadists who have consenting partners, usually a masochist, they engage in activities that inflict psychological and physical pain and torture on them. Some sexual sadists however will engage in this activity with a victim who is non-consenting, be it a child or adult.

Transvestic Fetishism: According to the DSM-IV-TR, "the paraphilic focus of Transvestic Fetishism involves cross-dressing by a male in women's attire" (DSM-IV-TR, 2000, p. 574). The DSM-IV-TR further explains that in most cases, the individual becomes aroused by thoughts and images of themselves as a female. This individual is identified as a heterosexual male. "These images can range from being a woman with female genitalia to that of a view of the self fully dressed as a woman with no real
attention to genitalia. Women's garments are arousing primarily as symbols of the individual's femininity, not as fetishes with specific objective properties" (American Psychiatric Association, p. 574).

Voyeurism: The DSM-IV-TR defines an individual voyeur as someone who engages in acts of "observing unsuspecting individuals, usually strangers, who are naked, in the process of disrobing, or engaging in sexual activity. The term "peeping" as in "Peeping Tom," is derived from this specific paraphilia. The peeper or voyeur achieves sexual arousal, often when masturbating while viewing the unsuspecting stranger. Typically, a voyeur does not seek out sexual encounters with the persons they observe.

Paraphilia NOS: Sometimes individuals with paraphilia or the various types of sexual offenders that exist do not discretely fit in one diagnostic category, but demonstrate an even further deviation from the norm, even further beyond the types of categories I just described. Paraphilia NOS includes the following types: "scatologia (obscene phone calls), necrophilia (corpses), partialism (exclusive focus on part of the body), zoophilia (animals), coprophilia (feces), klismaphilia (enemas), and urophilia (urine)" (American Psychiatric Association, p. 576). Although these paraphilia exist, they are rare or documented much less often.

The term "Sexually Violent Predator" or SVP is not a diagnostic category, but a legal term that appears under Megan's Law and the Tier System classification of its latest amendment. However, it is the sex offender assessment board (SOAB) that determines whether someone meets criteria for SVP status. The SOAB is a board of professionals in some states that are responsible for evaluating sex offenders that are considered high risk. SOAB consists of both mental health and legal professionals. The classification is
reserved for a very small percentage of sex offenders known as sexually violent predators or SVPs. They are defined by the psychiatric and legal community consensus as someone who repeatedly offends, more than one offense and has a mental defect or abnormality and/ personality disorder. The personality disorders as outlined in the DSM-IV-TR 2000 are broken down into clusters A-C. The Cluster Categories are not paraphilia but rather defined as personality dysfunctions that can apply to anyone in the general population, not just sexual offenders. However, if a person is both a sexual offender by legal definition, has a paraphilia by diagnostic criterion, and one of the cluster A-B personality disorders, he is considered for an SOAB evaluation to be labeled SVP. Many SVPs fall under Cluster B personality disorders such as Antisocial Personality Disorder, Borderline Personality Disorder, and Narcissistic Personality Disorder. Individuals with these personality disorders are often "dramatic, emotional, or erratic," and could seemingly be labeled as dangerous and without good emotional control or a sense of appropriate boundaries.

It is also important to mention that once labeled with a mental illness, it is difficult to undo this label. The diagnosis of a pedophile or exhibitionist for example is not one that is taken away, however diagnoses can be added on and sex offender are often times labeled in the mental health system from bad to worse. They can meet criteria for a non-violent offender one day and move toward violent offender status the next, but movement almost never goes from worse to better. At best, the DSM prefers to use the term "in remission," to describe mental illness that is no longer actively symptomatic.

When we medicalize or pathologize sexuality to be listed in a diagnostic manual, we define that which is normal versus abnormal in our society, by what is chosen to be
categorized and that which is left out of the manual. Sex offenders are categorized mentally ill by way of one or more of these paraphilia--this impacts the course and length of their treatment. As times change and our cultural and social values change too--so too so the definition of what constitutes a sex offender. As I was collecting my data, it was becoming more evident that people were entering into the mental health system at Dr. Smith's practice for treatment because of legal convictions pertaining to possession of illegal pornography and being diagnosed with one or more paraphilia by the mental health system. Greg is an example of the majority of cases that were coming into the practice in order to receive treatment. I refer to him as "the new sex offender," as he is someone that in more recent times is being labeled criminal and assigned a diagnosis.

Conclusion

Mental health and legal categorizations of offenders fit and clash. While the legal system categorizes him by tier, he is taught that sex offenders are not treated equal. Viewing pictures of child pornography constitutes the same amount of time on public registration as luring a child into a motor vehicle or structure, falsely imprisoning a child if not the child's parent, and unlawfully restraining a child. They are all Tier I offenses, comparable to 15 years listed on the public registration website. The mental health system regards the offender as equal in that all if not most paraphilia are amenable to treatment. A paraphilia needs to be treated, and although there are different ways of doing this, no one paraphilia is considered more or less treatable than another, just constituted by different behaviors, desires, and realities. Although the treatment modality or approach may differ, most if not all offenders are required to participate in therapy and expected to make progress. One exception would be for an offender who has been
classified by the SOAB, a sexually violent predator. Both the legal and mental health systems recognize that he should both be punished and treated for life. For those who are classified in Tier III level of offenses under the Adam Walsh Act, such as someone who committed rape, those offenders are mandated to be registered for their lifetime, but not necessarily receive treatment for life, unless they have the aforementioned classification of a violent predator.

It is important to note, that a sex offender is not required to attend treatment until he comes to the attention of the legal system, so here is one place where the two systems meet to form the notion of what a sex offender is. Once he enters the legal system, he will begin to attend treatment as a legal strategy to defend himself as suffering a paraphilia to the courts. If he is convicted of one of the three Tiered crimes, then he will be mandated by the court of law that convicts him to enter a second system, namely mental health. Here is where the offender then must negotiate being both a convicted sex offender, categorized under one of three tiers and classified by one or more of the paraphilia.

An offender learns that he is both bad and sick at the intersection of these two systems. The legal system's definition teaches him that he is potentially a lifelong criminal, while the mental health system teaches that he can be rehabilitated or learn how to stop from offending, unless he is already deemed a violent predator. These contradictions, represented by the two systems, leave the offender to negotiate the contradictory practices along his pathway through both systems. These contradictions lead to many double bind situations, creating more distress and limitations for the offender, where he is set up to lose. In the next chapter I will describe and illustrate
through case examples (interviews and focus group data) what the double binds and contradictions are that sex offenders are forced to manage.
Chapter 6: Contradictions & Double Binds

In previous chapters I have described how the legal and mental health systems categorize a person as a sex offender of one type or another, and I have described the pathways of entering and moving through the two systems. I have emphasized how ‘sex offender’ is both a legal and a psychiatric category, so that a person who has been charged and found guilty of a sexual crime has to negotiate these two systems at the same time. In this chapter, I will describe some of the consequences of this dual existence: points where the two systems are in contradiction, and how people classified as sex offenders try to handle the contradictions.

As sex offenders move through the mental health and legal systems they encounter places where the expectations of these systems impose contradictory demands and create double binds. A contradictory demand is one where the legal or mental health system requires something of the offender in order for him to move forward, but one system's expectation contradicts the expectation of the other system. In addition, I have discovered that at times the system that creates the expectation can be the same system that creates the obstacle to meeting the expectation. Double binds (Bateson, 1963) are imposed upon the offender when he receives conflicting messages during his participation in these ongoing systems and is prevented from being able to resolve them. In order to demonstrate these contradictions and double binds, I will present excerpts from my interview with Steve, along with shorter excerpts from individual interviews with other offenders and an excerpt from the first focus group.
Steve’s case illustrates the way treatment and punishment both are and are not combined. As I explained in the third chapter, sometimes sex offenders go to jail or prison, where treatment is optional, and sometimes offenders go to prison or jail and then once they get out they have to go for treatment. Steve entered the mental health system voluntarily long before he was even convicted of a sexual crime, but once in jail, he received no treatment until he was released, and at that point treatment was required. When treatment did not go well for Steve, he was sent back to jail.

The other participants whose voices are represented in this chapter speak of their experience with the polygraph. They also identify another demand imposed by the two systems, which is to find work. The legal system requires offenders to find work, while the mental health system regards finding work as one way of meeting treatment goals of reintegration into society. However, together the two systems make meeting this demand an impossible task.

When the demands of the legal system made it impossible for Steve and the other participants to meet the demands of the mental health system and vice versa, I would argue that it become clear how the systems' practices are impractical, and even unethical. I will show what sex offenders need to do to navigate their way through these contradictions and the double binds imposed upon them, and who they become in the process.

**Vignette IV: Steve**

The following vignette illustrates Steve's struggles getting through the legal system and his "choice" to remain in the mental health system. As with many offenders, it took Steve over twenty years before he found his way out of the legal system.
There are three instances where Steve's case exposes the contradictory expectations of the systems, exposing their practices to be impractical and unethical practices. By “impractical practices” I mean those that contradict the purpose they are meant to serve. By “unethical practices” I mean those that violate human rights and prevent people from satisfying basic human needs, and that ultimately cause more harm than good.

1. Like all offenders, Steve is required to take the polygraph exam as a condition of his treatment and probation. If he refuses, he will be punished. Steve's case shows a particular double bind that offenders encounter – Refuse to tell the truth and be punished and sent back to jail; or tell the truth and thereby incriminate yourself and be sent back to jail. Steve did "tell the truth" and pass the polygraph, thereby meeting the demands of the mental health system. However, while the mental health system expects that truth be told, it does not protect against self-incrimination. When Steve passed the polygraph exam, he was sent back to jail because of what he disclosed.

The way a polygraph is sometimes used is unethical, if its use is to punish under the disguise of treatment. I will describe how Steve encountered this particular double bind not once but twice.

2. When not only is confidentiality compromised but indiscriminate disclosures between therapist and probation officers violate traditional ethical principles of mental health practice. The limited confidentiality that exists and that the mental health and the legal field accept best practice not only violates traditional mental health ethics, but also illustrates impractical practices. Steve became stuck in the mental health and legal
system, moving back and forth between treatment and jail over the course of more than twenty years.

3. The mental health system aims for sex offenders to live a healthy productive life. In order to do this, they must have a chance at reintegrating into the community by finding a job, a place to live, and sense of community with social relationships. However, the demands of the legal system prevented Steve from finding a place to work. (Several other cases illustrate this double bind as well.) Throughout Steve’s case, we see important decisions about his passed from one person to the next and at times shuttled between the two systems. Steve's case exposes how people become constituted as sex offenders at the intersection of these two systems. Steve finally acquiesces to the power of the systems that had control of his life.

**Mental Health System**

When we first started talking over the phone about meeting in person for an interview, Steve deferred to me to decide what the best time would be. We eventually decided to meet a couple hours before his group therapy with Dr. Smith. Steve and I sat and spoke for about an hour and a half. He was at first concerned about confidentiality and asked for some reassurance that I would erase the audio recording of the interview after I was done with it. When I asked him what he was concerned about, he was unable to identify anything in particular; only that he was not yet sure how much he would reveal. When I met Steve for the interview, he sat on the couch in Dr. Smith's office. In fact, Steve was very forthcoming he taught me a lot about who he is and what he did to navigate his way through treatment and the restrictions placed upon him. Steve is diagnosed as an exhibitionist. Although he was convicted of multiple crimes, he was
never publically registered under Megan's Law and at the time of writing is not registered under the AWA.

Steve had only recently moved out of his parents' home, where he now resides alone in his own apartment. He was someone who remains close to his family, especially his thirteen-year-old niece, who he bragged about. He smiled; "In fact, every father's day she always gets me a card along with my brother, cuz I'm always there. I'm always helping her with her homework, taking her places, movies. We're real close to her." As for a career, Steve helps to run the family restaurant and bar business. His father has him pretty much running the whole kitchen, doing all the ordering, and making sure the new employees do what they are supposed to. Before Steve worked for his father's restaurant, he had, for several years, taught part-time as a certified school teacher, grades 7-12. Steve loved his job and wanted me to know that despite what happened, he was a good teacher.

I had gotten awards; I got letters written from parents, that went to the superintendent, to the principal about the good job I did and then here, I did this. In fact, I still have as reminders of (pause) ... cuz, it's just one part of me that's bad. But deep down I know that I could be a better person and I am a good person, but I do have a problem, and I identify with that. I still have a couple letters; I think I brought in to show Doc and the group, written from a parent that went to me and to the principal and the superintendent of the schools. You know I keep that just as a reminder of how I did good, you know? But I just wish I had that chance now and well, not in this country, but you know? (Interview, Steve, 6/2012)

Despite the professional accolades awarded to Steve, he had difficulty getting promoted to teach full time, and although no one ever told him why, he suspected it may have had do to with what happened as far back as when he was a junior high school student himself.
Growing up as a child, Steve described himself as "shy" and lacked assertiveness. This seemed to be something he came to understand as a problem and his shyness played a large role in his personal and professional life as an adult.

All throughout my life, I've always had a problem with being assertive um, showing, being assertive with friends, getting to know somebody I'm interested in or attracted to. I still get nervous. I'm still very uptight over it at times but he's (Dr. Smith) teaching me how to be assertive in all aspects of my life, work, how to be a boss, stand up on my own two feet, um, he's uh, uh, he's really helped me open up and see who I am on the inside. (Interview, Steve, 6/2012)

When I asked Steve what led him to Dr. Smith's office to begin with, he wasn't sure where to begin. Steve sat before me, now a grown man in his mid-forties. He told the following story as if it happened yesterday.

In the neighborhood where he grew up, a city suburb in the Mid-Atlantic region, Steve would often stand in his yard, near his house, and watch neighbors or strangers pass on by. He also liked to stand outside his local schoolyard in the evening, typically after sundown, and watch as people walked to the parking lot. When an attractive woman or female his own age passed by, he would drop his pants and undergarments and expose his penis in their view. The first time Steve exposed his penis to someone in the schoolyard he was ten years old. He never told anyone about this and he continued to expose his penis to strangers for five more years until someone called the police. Steve is someone who admittedly exposed himself over hundreds of times before he was arrested and charged with any crime. He exposed himself over 1,000 times before ever being charged and convicted with a sexual crime.

Steve was at home living with his parents, going to high school, and living an otherwise typical life as a teenager, when one unsuspecting day, the police came to his
parent's door and announced that he needed to come down to the local police station. One of the neighbors had reported to the police that Steve exposed his penis in the schoolyard. Because he was still a minor, the police told his parents the news directly. When I asked Steve who had reported him, he was not sure, in part because it was over twenty years ago, and in part because by this time, he had exposed himself over a hundred times to different attractive strangers. When Steve drove with the police to the local station, his parents following behind, Steve did not know what was going to happen to him. He was fifteen years old at the time.

Steve was not just given a warning this time, but he was charged by police, based on the neighbor's statement with a misdemeanor crime called "disorderly conduct." Disorderly conduct is defined as a crime that causes "inconvenience." A person is guilty of disorderly conduct if he behaves in such a way that is considered a public annoyance or nuisance. Although the charge of disorderly conduct was Steve's first official encounter with the legal system, he would continue to expose his genitals many more times throughout high school and his college years, receiving many citations or misdemeanor crimes, such as disorderly conduct.

During his high school and college years, Steve's parents were concerned. But they happened to have a friend who happened to be a lawyer and a good one. Steve and his father asked the family friend's advice and recommended Steve take some time off and see a local psychologist. Steve did not remember much about the doctor, only that he worked with him for several years on and off. Steve always did what his therapist told him to do. He continued to attend weekly therapy, but despite his sessions, he continued to expose his penis to strangers.
Today as I sat with Steve, it has been thirty years since the first time he exposed himself in his local neighborhood, which happens to be not so far away from the office where we sit and talk. Unlike most people that walk through Dr. Smith's door for treatment, Steve does not have to be here. In other words, he served his time in jail and completed his probation requirements. He is in no way legally obligated to attend group therapy at Dr. Smith's office. Most people who I have met at Dr. Smith's could not wait to leave or expressed resentment toward the fact that they had to come to therapy at all, but Steve was different.

Steve was not always fond of therapy, in fact, it took over twenty-five years of treatment on and off before he chose to remain where he was, on his own accord. Today, in group therapy, Steve was going to talk about his progress over the past few weeks. He was proud to say that he had not offended in a long time and although he may continue to fantasize about exposing himself, he has found a couple ways to control his desire to do so. One therapy group member recently gave him the suggestion to post a sign behind his door that says "Stop and Think." Steve has been using this strategy over the past few weeks. Today he wants to tell the group that it seems to be working, but every once in a while he struggles with temptation.

...Occasionally if I'm sittin there sometimes, my mind will go and wonder about something, like ew, what if I could just go and open that hallway door and go out. Even if I don't hear anybody, it's just the fact that you're alone down there and you walk outside with just undershorts on or whatever. (Interview, Steve, 6/2012)

Steve also came up with a creative idea of posting a photo of his niece near the sign that says "Stop and Think." The purpose of which he says is to deter him from
exposing himself which could lead to him going back to jail if he got caught. This would hurt his family and perhaps his niece the most.

In 1993, Steve graduated college and decided to stay in the college town where he resided instead of returning to live with his parents. He was dating a girl at the time for about six months. During this six month period, Steve had exposed his genitals many times and received more charges for disorderly conduct. One day the police called his parents’ house looking for him, because witnesses had stated that they saw Steve exposing himself. His father called a friend who was a lawyer. Looking back, Steve said that he did what the lawyer and his parents thought was best. "My parents said there was police on the phone and they wanted me to come back to X and talk to them; I had to get a lawyer. I was mandated, well not mandated, my parents were really truly concerned, well, through a family member, they found a doctor down in Georgia."

In 1993, Steve's father drove him from the Northeast to the state of Georgia for treatment. Steve described the program as one that specialized in sex offender treatment, even though he was not yet by legal definition a sexual offender, because he had not been convicted of any sexual crime.

At the clinic in Georgia, Steve heard the term "exhibitionism" for the first time and began to use it to refer to himself. Dr. Gene Abel, the man who ran the treatment clinic, introduced him to the term. Dr. Gene Abel is a psychiatrist with professional ties to Columbia University's School of Medicine and several other top universities in the United States. He has traveled the world presenting his research on sexual deviance. He is an important figure, because many people like Steve, Greg, and Frank have encountered Dr. Abel's screening test before beginning therapy with Dr. Smith and in one
way or another, the testing results have informed their treatment and diagnosis, for better
or for worse. In short, Dr. Abel's screening test (Abel, 1995) is used by mental health
professionals to determine what type of perversion a person entertains and how much of a
risk people are for committing sexual crimes. However, some scientists argue that Dr.
Abel's clinical screening tools for measuring arousal and deviant sexual interests are not
"objective" ways of measuring a person's sexual arousal. In an Amicus brief published
by the Texas Innocence Project, legal professionals cite a case where the Abel
Assessment was presented in court as an instrument that one mental health professional
cited as “85 percent accurate,” despite there being no evidence of research to support this
number. In fact, the doctor’s testimony cost him a 20 year prison sentence for false
statement and because he admitted to making up the percentage of accuracy. “Scholars
and courts have launched numerous criticisms against the Abel Assessment” (Tex. Ct.
App 2011, p. 5). Criticism includes, “Insufficient testing, (testing is limited in scope and
substance) High error rate, (Dr. Abel himself has shown that distinguishing between
pedophiles and non pedophiles is 21 to 32 percent) Secret formulas, (for business reasons
Dr. Abel does not disclose his formulas for analyzing the computer-data” [and more]
(Amicus Brief, pp. 3-4). After some skepticism arose during a second trial involving a
sex offender who had repeatedly committed crimes, one Texas court stated, “‘For all we
know, [Dr. Abel’s formulas] and their components could be mathematically based,
founded upon indisputable empirical research, or simply the magic of young Harry
Potter’s mixing of potions at the Hogwarts School of Witchcraft and Wizardry’” (Tex. Ct.
App. 2011).
The Abel Assessment for Sexual Interest involves a slide show of images, some pictures are of scantily clothed men and women, some of children in provocative positions, and some sado-masochistic imagery. At Dr. Smith’s office, the person is usually invited into a dimly lit and quiet room, to sit in front of a laptop computer, and to listen to the examiner (psychologist) for instructions. The person will first be told that the Abel Test measures his sexual interest. The person is instructed to “think sexually “while viewing 160 slides. He will view them twice—the first time measures reaction time. Reaction time is measured by how long a person views the image. For example, if you view an image of a woman dressing through a window for longer than Dr. Abel thinks you should be viewing it, then you may be labeled a “voyeur or pervert.” The second time around, the person views the images and clicks on a number, rating his or her level of both arousal and disgust on a scale of 1-7. If the person is remarkably sexually excited by the image, he or she should rate the image high, a 6-7, and if the person is disgusted by the image, he should then rate it a 1 or 2. Psychologists and psychiatrists use the Abel test to determine if someone has deviant sexual interests and to what extent they are deviant. Dr. Smith uses Dr. Abel's assessment as part of his initial psychological evaluation when a sex offender first comes to him for treatment.

In 1993, Steve spent five week in Dr. Abel's clinic . Two of these he spent in an inpatient facility, the other three weeks as an outpatient in a nearby motel.

Steve learned to label his thoughts and fantasies about exposing himself as "deviant" and "negative." At the clinic Steve was asked to essentially make himself ill each time he had a deviant thought by breaking a putrid smelling capsule under his nose. The idea is that he should become disgusted by his own deviant fantasies.
Steve told me,

I learned a lot of strategies. There was a thing called 'the ammonia aversive treatment' where you take a little ammonia capsule; you can buy them in some pharmacies. I guess they're used to bring people out of fainting spells. And, if you find yourself having a 'deviant negative thought,' you break it and its repulsive smell is supposed to be associated with the bad thought. ... That didn't really work for me that well. (Interview, Steve, 6/2012)

During those five weeks, Steve was also asked to try something else:

Steve: There was a thing called satiation. You ever hear of it? ... I think it was called masturbatory satiation therapy, where, uh, you, basically uh, like when I was in that hospital setting you had to, for forty-five minutes, see how I got, ... it never really worked for me all that well. I think it was ... you had to have a deviant fantasy for like forty minutes, as you're masturbating, but then, right at the end ... you know where you have that part, right before, you were to, like, have an orgasm, ejaculate, you were supposed to switch your thought over to having uh, (pause) fantasies of appropriate sexual intercourse, (Pause) whether with a female, or with another adult ... male, whatever ... adult male, you're supposed to switch over to thinking of something appropriate. (Pause) I asked Steve if that technique worked for him and he responded by looking up at the ceiling with a grimace. He then said, “That really didn't work.”

Despite always doing as he was told by the doctors who he believed knew best, nothing really seemed to work to stop Steve exposing his penis. On the other hand, Steve was discharged from Dr. Abel's clinic in 1994, and he did not expose his genitals again until after 1999. I asked Steve what had happened during this time.

While under the care of Dr. Abel, Steve was put on a medication called Depo Provera, which is commonly used today as a form of birth control for women. Depo
Provera is one kind of chemical castration and is typically given as an injection every three months. Depo Provera lowers sex drive in men by significantly decreasing testosterone. Since 1966, it has been prescribed to men for the purpose of controlling and managing deviant sexual fantasies and compulsive sexual rituals, although it has never been approved by the Federal Drug Administration. Steve was prescribed Depo Provera shots from 1994 to 2000.

During these years a lot happened in Steve’s career, and in his romantic relationships. He worked full time as a waiter and taught part-time; teaching continued to be his passion. He had also begun dating men and his social life had unexpectedly improved. Perhaps it was the Depo Provera, but a lot of other things may have led to Steve's abstinence from exposing his genitals for six full years.

... In fact I fooled myself in the late 90s. Because from 1994 to 1999, uh, I did not offend or engage in any kind of exposing, now I was involved in some relationships, same sex relationships with some people that I met through work. I was working as a waiter over here for a while and then subbing during the day, going out. I remember not offending, but then I went down to X and I got hired as a full time teacher for two years down there. (Interview, Steve, 6/2012)

Things were going well in Steve's life, and he had finally been granted the opportunity to teach full time. However, Steve saw a doctor around 2000 who inquired why he was taking Depo Provera and was suspicious of this medication because of the side effects it has been known to cause including an increase of body fat which would lead to a higher risk for cardiovascular disease. Steve explained that he was on it to lower his testosterone. Steve told me during our interview that he felt guilty for having not been honest with the doctor.
Between 2000 and 2002 Steve began to reoffend. He eventually told his doctor that he had been medicated to prevent his exhibitionism, and his doctor was angry with him for not telling him in the first place. It was shortly after this time that Steve was arrested and charged with his first sex crime.

Because he was working as a school teacher, a respected member of society, his arrest attracted attention. According to one of the local news articles published in 2001, a 34 year old woman told police she noticed a man watching her while she was vacuuming her car. The woman said the man was wearing only a t-shirt and underpants, with his shorts dropped down to his ankles. The woman told police that she screamed, and the man quickly drove off in his car. She got into her own car and followed him, while telephoning the police on her cell phone. When the police tracked Steve down they held him until detectives arrived. He was arrested and charged with a misdemeanor crime. He was released on bail later that night.

Steve described this arrest during our interview:

My first arrest I think there were two witnesses, I had two charges, misdemeanors, and then it was all over the news cuz I was a teacher. It was all over the place down there in X beach, and then I was asked to resign or they allowed me to resign. So, I lost my job there, but I was eventually gonna be fired. And uh, and then, uh what happened from there was I plead, but what the lawyers were originally going to do, or the defense attorney was going to let me do was, the judge gave me what they call a "withhold adjudication or withhold evidence," or no, withhold adjudication is saying that if you go over the next year without reoffending and you do real well over the next year, they'll drop the charges. Or drop the convictions. (Interview, Steve, 6/2012)

By this time, Steve had incurred many misdemeanor charges for disorderly conduct in his hometown, but this was first crime committed out of state. Despite the testimony of two witnesses, he was not yet charged with a sexual offense. Steve was given a break by his judge, who told him that if he did well over the next year, the
charges would be dropped. Because his arrest had gone public, and because his story was all over the local news every hour, and in the newspapers, Steve lost both his full time teaching job and his friends. And Steve just could not stop exhibitionism.

I kind of gave up. I figured I lost the teaching job, so what's the use? I reoffended again so those withhold adjudications became guilty again. Before they would have been dropped. And then I had another arrest. After that, so the state law was that if you get arrested three or more times for the same offense, the third charge automatically becomes a felony. So, my last one was a felony, Punishable for up to five years. (Interview, Steve, 6/2012)

Steve only served a total of 13 months in jail, and most of that time was out of state, where he had committed his last crime. He also spent some time in jail in his home state (where this data was collected) after he was transported from out to state to his home state. When he was released from jail, he immediately began to serve his probation time.

**Forensic Practices**

Steve met with his probation officer and was given an appointment to attend therapy for sexual offenders at a place called Forensic Practices [a pseudonym], close to his hometown. Forensic Practices treats people who have been mandated by the court for mental health treatment, primarily sexual offenders.

Many of the sex offenders I worked with and several of those I interviewed went for treatment at Forensic Practices before they came to Dr. Smith's office. Offenders who are supervised by the state (like Steve) are almost always mandated to Forensic Practices for treatment by the state parole and probation office. Federally supervised offenders like Greg and Frank do not go through Forensic Practices, but instead go straight to a provider under federal contract, Dr. Smith being one of these.
Some offenders talked about Forensic Practices as the place that taught them that they would never stop offending, and some said it was the place that taught them to lie in order to avoid self incrimination. Some offenders worked with a therapist who simply presumed that they would never get better.

Steve recalled the time he spent at Forensic Practices:

I remember they made a comment like, 'well, if you get out' ... they doubted I would ever get out, but they said, 'If you do get out again, then you go to whoever you want to go see, we're not going to make you go to Forensic Practices', but I wish they would have done that at first. (Interview, Steve, 6/2012)

Steve felt as if he was being treated by a therapist who essentially had no hope that he would ever stop offending, which is more typically aligned with a probation officer’s approach. He stated that as a result of this, he wished that he would have been allowed to see a therapist who he wanted to see, on his own volition.

When I interviewed Steve a year had passed since he was required to obtain treatment at Forensic Practices and meet with his probation officer. As part of the rules of his supervision, Steve was required to take a polygraph exam between six months and a year into his treatment. Although Steve could not remember the exact wording of the polygraph questions he was asked, the questions were geared toward his specific offending behavior, asking him whether he had exposed himself during his time in treatment. Therapists typically sit with the offender weeks prior to a polygraph exam to review the questions that will be asked, so they know what to expect. The goal of preparing and reviewing the questions in advance is to help the offender pass the polygraph.
About a week before the exam, Steve confessed to his therapist and his therapy group that he continued to struggle with the urge to expose himself and had done so at least fifty times over the previous year. Steve sat for the polygraph exam and passed it; this came as a relief to him. Steve told me that in part he was relieved that he had finally come clean and told his therapist everything, and that he had been afraid to do so for fear of getting into trouble, and in part he was relieved because he did not want to admit to himself that he was reoffending.

However, around this time, his treatment provider and probation officer decided to meet to discuss Steve's case, the results of the polygraph exam, and what he had revealed the previous day. They decided to recommend that Steve be punished for having withheld this information from both of them during the year. Although the preparation for the polygraph facilitated the disclosure, and although Steve confessed the truth and passed the exam, he was expelled from the treatment program for withholding information or, as they told him, because he had lied by omission during treatment. Because he was expelled from treatment, he was violated by state probation, meaning that he committed a new crime in the eyes of probation by reoffending and expediently sent back to serve jail time out of state, where his arresting crime had originally been committed. When he was discharged from jail, he was sent directly back to his home state to serve probation time again with the clock reset on his status in treatment, meaning that he would begin again with a therapist and face another polygraph test in several months. Although Steve asked if he could go to another therapist or treatment provider, the state probation office forbade this and forced him to return.
This time Steve was fearful and disappointed in himself, his family was also disappointed, and his friends seemed to shy away. Steve decided to work hard, to do as he was told, and to tell the truth, no matter what. He was too scared to do anything but tell the truth. While preparing for the second polygraph exam at Forensic Practices, Steve remembered the disappointment of what happened the last time, being sent backwards to jail in the state where his crime occurred. He didn't want to disappoint family, friends, nor did he want to disappoint his therapist and fellow group members. This time, Steve knew what NOT to do. He was forthcoming. He did not "lie by omission," which had got him into trouble the first time. This time he told his therapist the truth, that he had not offended since the last polygraph. He said he was proud of himself—even if his motivation was purely fear of the consequences: of returning to jail and having to see his mother's face if he had to return. In an earnest effort to be honest, he told his therapist at Forensic Practices that he did have some thoughts since the last polygraph; he had some fantasies about exposing himself. Steve even sometimes put himself in risky situations, like driving his car alone at night past a place he where he had previously exposed himself, but he refrained from offending and turned the car around. Steve told me he felt relief after making this disclosure, and that he felt proud that he had been honest and admitted to his struggles.

However, because he had disclosed thoughts about exposing himself, and because he had admitted risky behavior, Steve was again sent back to jail out of state where the crime was committed. This time when he returned to his home state for treatment, Forensic Practices did not see him. He began treatment with Dr. Smith, who he developed a trustworthy relationship with. Although Steve worked well with Dr. Smith,
passed polygraph exams, and in essence completed his mandated treatment when he completed his probation sentence, he decided to stay, a decision made by both him and Dr. Smith. He decided to stay because Steve felt that he did not have as much control over offending as he would like to have before he was on his own without any treatment. Steve attended group and individual therapy voluntarily and stated that it not only helped him, but he found that he played a role in helping others who were much earlier in the treatment and legal process, at much earlier station stops along their journey than Steve.

Of Forensic Practice’s handling of the polygraph testing in treatment, Dr. Oscar told me what he thought about this approach:

It is unethical to abandon someone at that critical point when new disclosures are made, that's a critical time to work with someone clinically. There are too many real life pay offs to NOT disclosing the whole truth. Number one is that you avoid self-incrimination, which could mean further punishment or certain privileges being taken away, such as use of the internet, a computer, or in extreme cases, revocation of probation or parole. (Interview, Dr. Oscar, 5/2012)

Without some protection from self-incrimination, or a real life pay off to telling the truth, the polygraph serves as a set up for offenders to be punished and ultimately a place where the offender receives a double message--tell the truth and be rewarded, move forward in the mental health system, but you may be punished by the legal system for it, such as the case of Steve.

"The most useful way to phrase double bind description is not in terms of a binder and a victim but in terms of people caught up in an ongoing system which produces conflicting definitions of the relationship and consequent subjective distress" (Bateson, 1963, p. 157). In the case of my research project, the ongoing systems that produce conflicting definitions of the relationship are the mental health and legal systems. When
the results of these demands are contradictory -- the double bind is that you are damned if you do, and damned if you don’t.

Steve worked for several years with Dr. Smith, and by the time I interviewed him he had completed his probation sentence. Unlike most sex offenders, Steve decided to stay in the mental health system to work with Dr. Smith. He had been offense free for several years and believed his treatment with Dr. Smith was helpful. He identified with his diagnosis of exhibitionism, but he no longer had a criminal label or status. Although he said that he believes he'll always be an exhibitionist, he thinks he will know when it's time to leave the mental health system, and it will be on his and Dr. Smith's terms.

Steve is not the only offender that had trouble at polygraph exam time. While the polygrapher was already introduced in Chapter 4, the exam itself will be further explained. It is one such place where many offenders struggle and a stop along their journey that evokes many emotions, as reflected in the focus group. We will first hear from Alex and then some juxtaposing views about the provocative instrument, by polygrapher Dan, and four sex offenders who converse about their experience with it during one of the two focus groups held.

Preparing for the exam (Alex)

At Dr. Smith's office, Polygrapher Dan asks all sex offenders to sign a waiver of consent. In other words, he asks them to agree to waive their rights should anything go wrong with the polygraph exam. By signing the consent waiver, a sex offender would have no recourse to fight the results or any incurred damages or consequences that may occur as the result of taking the test.
Alex took a plea agreement, went to federal prison, and then to the half way house before he was granted supervised release or probation under the federal supervision. Alex is a Megan's Law registrant, employed, with housing, but it took him a while to find a place to work. Alex described himself as someone who hurt other people and that he was determined never to do that again. He also said that in turn he did not allow people to hurt him either. In federal prison, Alex described himself as a "jailhouse lawyer," meaning that he did his research and helped people fight for their rights. At Dr. Smith's office, he is someone who has been described as "litigious and a provocateur," because "I'm not afraid to stand up for my rights." He commented on his disbelief that many other offenders that he knew, that sat in group therapy with him, did not fight for their rights but instead "got knocked around by the system," and Alex had difficulty comprehending this.

When I met Alex he was currently fighting against Dr. Smith's mental health practice for requiring him to waive the polygrapher's liability. Alex is not refusing to take the polygraph exam; he is refusing to sign a waiver of liability. As a result, Alex is being threatened with a supervised release violation for "refusal to take the polygraph exam." If his supervised release was revoked, Alex would return to jail – back to square one.

Because every sex offender signs a treatment agreement prior to being given probation status or supervised release status under the federal system, they also agree to take regular polygraph exams. However at the time they sign the treatment agreement and enter into a treatment contract with the mental health provider, they are unaware that before taking the polygraph exam they are also required to waive their rights to any liability that should come as the result of taking the polygraph. This is not necessarily
standard practice across the profession, but it was in fact the requirement of the polygrapher hired by Dr. Smith at the time.

For Alex and all sex offenders, the double bind placed on them is to sign the waiver, take the polygraph, or go back to jail. If he fails to sign the waiver of liability, he will have his probation or supervised release revoked and returns to jail. If he does sign the waiver and fails the polygraph, he faces the possibility of consequences that are unknown to him. This is one double bind that sex offenders face concerning this stage along the pathway through the systems. As a way of navigating this demand, Alex got a lawyer.

I showed it [waiver] to my public defender. He said, 'They are out of their mind.' I wrote a notice to Dr. Smith and my probation officer. I said I do not refuse to take the polygraph but I refuse to sign the form. They said, 'Well, we can't give you a polygraph then because our polygraph has to have it signed.' So I said, 'get another polygrapher.' I went head to head. ... (Pause and visibly distressed) Next, I get a letter from probation threatening revocation of my supervised release saying I refused to take the polygraph. She misled me. I signed it and there is no question that I signed it under duress. I have proof though. Under the threat of having to go back to prison. Or the REAL consequence of having to appear in court! ... If you fight for your rights, you have to appear in court which means disclosing to a job that more time has to be spent away from work. You risk losing anonymity that way. (Interview, Alex, 5/2012)

By signing the consent waiver, Alex would give up his rights to any recourse should the results of the test yield results with which, he disagreed. Alex stated that Dr. Smith "wore me down," before he signed it. On the polygraph, Alex's results were "inconclusive," meaning that there was no deception indicated, but no indication that he was being truthful either. He took it a second time and again the results of his test were "inconclusive." Of his experience Alex said,

I've been called a 'provocateur.' My mantra is I'll never hurt anyone again, relationship wise, criminally, but I don't want anyone to hurt me and I consider being made to sign something I don't want to is hurting me, but at the same time I do see the
benefit of treatment, it has helped me and got me where I am now. I have a better understanding of who I am, of myself. They can't cure me but they can help me learn control. (Interview, Alex, 5/2012)

At first, Alex was resistant to treatment. When I asked when things changed, he was not sure, only that he developed a good relationship with his therapist over time. Alex state that he never really had problems with therapy and talking about his life, but he did have problems with the frequency in which he was expected to come to treatment at Dr. Smith's office. Of his treatment experience, Alex said, "At first I was resistant to it, uh, and then I became more accepting and then I questioned the frequency of it and what is the diminishing return from the amount of time that I devoted here ... still think I am being over treated for the amount of hours I spend here."

Alex is aware that he will have to face several more polygraph exams to monitor his sexual behavior while he is in treatment. In the meantime, Alex asked for a letter detailing the expectations of his treatment and what goals he is required to meet in order to be discharged. Alex was told he must meet the following criteria in order to be released from treatment: (In his own words) "Social integration into the community, familial ties, successful polygraphs, and those kind of things." At the time of the interview, Alex was scheduled to take his first monitoring polygraph, in the past he had taken a polygraph of his history of sexual behavior, with the hope of passing and being "downsized," from treatment. I asked Alex how he would know if he met those requirements. He said,

Well, I'm still with a woman, sadly she had a stroke. She has aphasia. I bring her up to my house when she can come, so I have a relationship there. Family ties are as strong as they've ever been. Work ethic is great. I think I have met everything now...if it's only a question of passage of time then it becomes a different issue. I don't think they can quantify the amount of rehab that I've soaked up ... (Pause) I guess I should say that
the offense took 7 years of my life. Unlike the state system, you serve day for day. Coming to treatment did not give me time off my sentence. I was not told this when I negotiated a plea agreement, nor by the judge, nor at sentencing was I told I would have to go to treatment so often...that may have caused me to rethink my plea or have it tailored. Once you enter system you get passed down and others make decisions for you. (Interview, Alex, 5/2012)

The more I listened to Alex and spoke with him, the more I came to recognize that what he struggled most with was coming to terms with giving up his control and as he said, allowing others to make decisions for him. He fought against that and stood up for what he believed was his legal right to choose not to sign a consent waiver before taking the polygraph exam.

Alex represents what many offenders struggle with, navigating his way through both systems, by trying to meet their demands. The polygraph is one place at the intersection where offenders feel most vulnerable, because it determines whether they continue on toward the next station stop in this journey or whether they remain stuck, move backward or forward in both systems.

Focus Group Interaction

In May 2012, I sat down with four people for our first of two focus group discussions. Bob, Ronald, and Louis were all convicted of possession of child pornography, and Frank who was convicted of corruption of minors. We were sitting in a circle of chairs in Dr. Smith's office, which is also used as the group therapy room. In this focus group meeting, the men began to talk about one of the most difficult demands they felt they all had to face at one point or another in their treatment. The question posed to the men was open ended. I asked them to talk about how they saw themselves moving toward the future and what if anything was standing in the way of that
movement. What we learned from this interaction is how the men relate to the polygraph, their experience from being in both systems at the same time, and as a consequence, their resistance to it. This interaction also teaches that the polygraph is one stop along the offender's journey they identified as challenging in that it determines if they are allowed to move forward and eventually leave the mental health system. When the participants spoke about the polygraph, I noticed they expressed emotions such as anger, frustration, some sadness, and at times hopelessness and disappointment.

Ronald: The polygraph is used to delay ... for example if you're petitioning for something to be sped up or um, let's say your treatment is going really well and you're asking for an early termination of it, if you fail that next scheduled polygraph, they can extend the period and just immediately deny. The polygraph in such a case as a trial, it is totally inadmissible, but in the case of maintenance and things like that, it is considered a tool, and it's not perfect and they admit it's not perfect, but depending on the judge you get....if you get a judge that just wants the points, he will use it against you. If you have a fair judge then they will usually request another polygraph, but how often do you run across a fair judge?

Bob: (Looking down and nodding his head), You don't. Not when you're a sex offender.

Frank: Well, they are saying that they are using it as a tool for treatment to see the scope of the problem, but I don't know. I don't agree with that. That's ... (raised voice) I was arrested for one thing and that's what I think should be dealt with. You know, don't accuse me of other things! If I'm having a bad day and those polygraphs are real touchy and I failed a question I knew I told the truth on...I have no faith in that ...So, why they use it I have no idea. They got to know that with all these inconsistencies there are a lot of people they should just stop using it

During this discussion I jumped in and asked what the consequences were if they failed the polygraph? It was Frank who first responded.

Frank: Overall, it's just the way it makes you feel, (pause) ... like you're lying to your counselor and he doesn't, you know they think there is more to your situation than there really is, like you're trying to hide something. And that's not the case, you know? ... (Pause) The first one they give you is a history. You know before your offense and you have to pass that and they give you the monitoring one which is, are you complying with
your probation? Now I know, I have not done anything against my probation so if I fail one of these I think I'm going to tell them look, put me back in jail because I'm not going to continue with treatment

    Louis: Yeah, but they can't put you back in jail though for failing it.

    Bob and Frank (simultaneously) They do!

    Louis: Yeah, but they are not supposed to. I just signed a consent form about that saying that they can't put me back in jail if I fail it

    Frank and Bob continued to reiterated that they do. They will put you back in jail. 

    Frank: The probation officer goes to the judge, says 'hey he failed a polygraph test,' judge says, 'stick em back in.' They tell you here in treatment they are not trying to find ....

    Louis (interrupting) Yeah, but they still need proof to, to send you back.

    Frank: They are using the polygraph as proof and that's where I have a problem with that.

    Louis: Nah.

    I asked the group for clarification that the polygraph is not admissible in court, and that is something we have heard for a while and is often public knowledge, but yet it was being used as leverage to send people back to jail/prison.

    Bob: Yes

    Frank: It is, uh huh

    Ronald: absolutely.

    After this focus group, I did some research to learn what the ethical guidelines for treating sex offenders had to say about the use of polygraph exams. According to ATSA,
"Polygraph charts are not the only means of monitoring offenders behavior and are not to be the sole basis for significant case decisions" (ATSA standards, p. 45 Appendix C).

I also asked Dan the polygrapher and he said,

But just failing the test you know I don't think is reason, it can be part of the reason um, but it should not be the sole reason. Just like if a polygraph were admitted in trial which it is sometimes, some states, again, you would not, and I'm obviously a polygraph examiner, and I'm Pro-Polygraph, but I would never want to convict someone solely on a polygraph, you know I mean, most evidence you wouldn't want to convict solely on...(Interview, Dan, 6/2012)

Although, it is not common practice to make important legal decisions based on polygraph exams, we know that in Steve’s case, it was not what his polygraph exam revealed, but the information he had to disclose in order to pass the exam. This raises an interesting dilemma for sex offenders, if they do tell the truth and pass the polygraph, they may still return to prison, but if they lie and as a result fail the exam, they may still face punishment by being mandated to treatment for longer periods of time or kicked out of treatment all together.

As I mentioned before, sex offenders are the only class of criminal made to take polygraphs as a condition of their mental health treatment. However, the polygraph exam is not the only test that sex offenders are forced to have to pass in order to move forward in both systems. They are continually tested over and over again.

Another requirement or test that both the legal and mental health system set up is for him to find a job. The legal system expects the offender to find work before he is allowed to leave the half way house and the mental health system expects him to find a job as part of his treatment goals toward reintegrating into the community toward a healthy lifestyle.
However, sex offenders are turned down for work for a variety of reasons: The stigma and liability that comes from Megan’s Law, Internet offenses (computers need monitoring), insurance liability. Sex offenders navigate this problem in various ways: some disclose their crimes up front to employers, some lie; some admit they went to prison but for various other crimes (financial crimes such as tax evasion or wire fraud are popular covers that the participants used). The result is that some offenders find work but many do not.

Finding Work

This topic deserves attention because with few exceptions, it is consistently a challenge for anyone who has been convicted of a sexual crime to get a job and another challenge to hold onto one. There are many complicating factors that make it difficult for people convicted of sexual crimes to find work and consequences placed upon them if they fail to find work. Sex offenders are relentlessly met with mixed messages—one being, you must find a job if you want out of the half way house or off probation, but we’re going to create many obstacles for you to succeed. And when offenders cannot find work, they suffer depression, hopelessness, feel ostracized from the community, and are blocked from reintegrating—this directly undermines the rehabilitative efforts of mental health professionals, and is a primary example of how the demands and obstacles created by one system contradicts the other.

Alex

Before Alex became a sex offender, he was a funeral director of his families' run business.
At the halfway house, I was waiting to be placed. The job coordinator, an older man by the name of Donnelly (pseudonym), he knew I was a sex offender, and I was having trouble finding a job while I was at the halfway house. Two positions opened up for cutting grass at the cemetery, right up my alley, you know the thing with cemeteries. And uh, it paid $7.75 an hour. (Pause, smile) I was never so happy to work. But me and this black fellow went out for the interview with this Catholic cemeteries guy, he and uh, he asked us the nature of the crime together. ... (Pause) I lied, I said I was uh, bank fraud, mail fraud, and tax evasion. And, uh, I had put that down on the form. I left it blank and at the time he said, 'no, put it down on the form.' And uh, so we were hired. I went back to my counselor at the halfway house and I said, 'I don't like lying, and I lied.' And he says, 'ehh, that's tough; I'm not going to tell you what to do.' I went to the job counselor that sent me there. You see, I already thought that he knew of the charges; I was surprised that he asked that. So, Donnelly says, 'don't worry about it!' ... Well, I did worry about it. I wrote a letter and sent it, that weekend. I said, 'I apologize for lying but, I am a sex offender.' They got the letter and came out and fired me. Yeah, so uh, oh before he fired me.... Even though he was under the impression that I had a monetary crime, he offered me a position being a financial counselor, selling premium funerals. He was under the impression that I did tax evasion, mail and bank fraud, and he was ready to put me in meeting with families signing contracts! I told my immediate boss, the one I was going to work for, and he said, 'well, I don't know how that's gonna sit.' I said you know me working, you got to know me, he said 'i wish you a lot of luck pal, but I don't think it's gonna fly,' and it didn't. (Interview, Alex, 5/2012)

Alex eventually got a job working as an usher in a local theater house.

Bob

Since January 5, 2011, I left the halfway house and I cannot find employment. Two-hundred and seventy-nine applications I put in. I've got seventeen interviews. Most people won't hire you because they don't want you there as a liability for their insurance. The insurance people won't let you hire felons or specific sex offenders. Prior to my incarceration, I was working at a cemetery and I loved the job! It was peaceful, serene. I can't go back there because they are a criminal free enterprise; they don't even hire misdemeanors. The only way I figure I'm gonna get employment is if I employ myself. (Interview, Bob, 5/2012)

Bob is someone who grew up with several occupational hobbies. One particular skill he had developed was fixing vacuum cleaners. If you ask Bob, he can name for you the anatomy of a vacuum cleaner, its model, year, and serial number, and the part needed to repair a vacuum in order to restore it to full functioning. While living at home with his mother, Bob spent some time collecting old vacuum pieces that were of no use to
somebody. He recycled those pieces and in some cases, repaired vacuums or built some of his own from the bottom up. After Bob resurrected vacuums from the parts he had found, he posted them on Craig's List for a reasonable selling price. Although Bob's handy work served him well and he was able to generate some income, he was unable to make a living from recycling vacuums alone. Bob had a knack for bringing things back to life.

"I've been doing handyman work, car repairs, cutting grass, um, I've been doing everything under the sun to try and gain employment."

Bob also started working independently driving to auto repair shops, picking up old tires, and recycling them. He sold these tires on line as well and used some of them for his own vehicles. Most recently, Bob went downtown to pursue a lead he heard about from one of the sex offenders in his group therapy. The job is downing coppers at the local coke plant. The guys in the group said it's a good paying job.

“I tried getting in there but they won't work with me. They say 'oh, we'll work with you; we'll get you employed' ... yeah right, sure."

The coke plant required Bob to work the swing shift. Because Bob is obligated to attend group therapies on Wednesday afternoon, he was unable to fully commit to working this swing shift which would require him to leave work early on Wednesdays. His prospective boss did not like the sound of that. Bob stated that he has had difficulty finding an employer that will work with his mandated therapy appointments as well as those that require him to meet with his probation officer.

Like I said, previously, there is treatment, and my restriction on what kind of job I can get. If I get a job where I have to work on a computer, they (federal probation) have to put monitoring software on it and what company is gonna consent to that? They don't
want to air their dirty little secrets. And then I have to come down to treatment on
Thursdays, I have to leave my house at 3:00 to come down here at 5:00. It'd be ok if it
was closer, but I have to travel all the way from X up to here. And I can't live around here
cuz of the residency restrictions. ... I came up with the brilliant idea--I started my own.
My business starts officially on July 1st. Used tire sales. (Interview, Bob, 5/2012)

Bob was charged with a felony for failure to register with Megan's Law because
he did not report to local police that he was fired from a job. He was sentenced to 6
months of state probation in addition to his already running federal supervised release
time. This means that Bob now has a curfew and cannot be outside his home passed
11:00pm.

Bubble

Before Bubble became a sex offender registered with the state via Megan's law,
he held a management position in the restaurant business. He was in charge of hiring and
firing people.

See what happens is you go to the job interview. Everything is going great and
they're like 'oh yeah yeah yeah yeah, you sound great for this,' and then they ask, 'what'd
you go to prison for?' And then they're like, 'oh, don't call us we'll call you--we got lots of
qualified applicants--we'll be in touch.' And right now the half way house is threatening
to send me back (to prison) because I can't find a job." ... 'Under the conditions that I am
not 'adhering to program rules'...it's a hard job market right now. It's like why are we
gonna hire you which could cause us problems when I got 100 other applications that
there is no baggage with? You know what I mean? I used to manage a bar and restaurant,
actually two of em. If I walked in there I'd say, 'sorry man, I just don't want to deal with
the baggage.' I wouldn't hire me. Not if I had a stack of other people that were qualified.

You can't work, obviously anywhere where there is a computer. You can't work
obviously anywhere around minors, you uh, what else is there? There are many other
restrictions. I mean how do they expect us to get a job?!

There is no real room for growth. You can't find decent jobs. Okay, I mean, they
are going to put your picture in there [Megan's Law website] with your address, where
you work and stuff. If I were the boss why would I hire you? I mean at some point, I'm
probably gonna have, at some point, you know ... loss of sales. You know just like that
Chocolate Paradise place that used to hire sex offenders and then they decided it was bad
publicity. Which, it is! (Interview, Bubble, 6/2012)
Chocolate Paradise

During the first focus group, most of them men brought up a place where all of them had worked at some point in time. "Chocolate Paradise" is a pseudonym for the place that not only hired felons, but hired sexual offenders sent to them by the case workers of the half way house. This was not the first time I heard of Chocolate Paradise, in fact some of the men in the group therapies I ran as a therapist had also worked there.

The morning of the focus group everyone talked about the trouble they had or were currently having finding employment. One of the men mentioned the job he took when living at the half way house and the other members started to snicker and shake their heads in disbelief. When I commented that everyone seemed to know something about Chocolate Paradise, including myself, because everyone in the room was having some reaction to it. I asked them to talk about Chocolate Paradise, what it was, and what their experiences had been. Looking at each other, Bob and Louis together rolled their eyes and stated, "It's a fudge packing plant." Bob continued, "They contract it through the half way house. They were head hunters, cheap labor, assholes, anyway, pardon my French." The rest of the group shook their heads. Bob worked at Chocolate Paradise in order to get out of the half way house, until he quit and eventually became self-employed.

Chocolate Paradise is in fact a fudge packing factory that has been open since 1983. It is located in the heart of the market district, where many locals and out of towners go to buy local groceries and souvenirs. Their fudge has a reputation for being "the best in the X." There was little information about Chocolate Paradise to be obtained on the internet. I found some news articles and commentary about contractors writing to
voice their complaints about selling their fudge and never seeing a penny for it. But aside from this, there is no publishable information on the relationship between Chocolate Paradise employees and the halfway house where sex offenders live.

Most of the people I spoke with who had worked there were not visible to the public. In other words, they worked in the back of the fudge plant, out of site, stirring the chocolate in large barrels. I was told by some of the offenders that Chocolate Paradise will hire sexual offenders, but they will not hire sexually violent predators.

I worked there for a day and a half and then they fired me. Never paid me. They fired me because of my offense; they found out what my offense was. Um, I got a job in November working at a compliance warehouse. Right now I'm taking compressors out of refrigerators and recycling them among other things. I'm basically recycling things. (Interview, Louis, 5/2012)

I went to Chocolate Paradise one day. It was a small quiet shop along a busy street. There was one employee there, a young college student who was in charge of the register and cashier. The shop displayed trays of fudge behind glass, mugs, chocolate, and some hot coffee. If anyone else was working at the shop, they were not visible to customers or me.

The topic of finding work was significant to the lives of the offenders because in most cases finding work was equivalent to moving toward the future by way of getting out of an incarcerated situation and being able to survive as they once had. This topic continually surfaced in group and individual therapy to the point that until it was resolved, no further therapeutic work was able to occur. If a person does not have the basic needs to survive which include a job, a place to live, and other people to interact with (such as friends and family members) he is considered to be deprived of his basic needs and of community resources, which are the same needs that are considered
necessary for community reintegration. When restrictions like public registration (Megan's Law), no Internet access, and no contact with minors are enforced without discretion or indiscriminately, rehabilitative efforts are undermined. It is impractical to set up demands for offenders (to find work) only to create obstacles that make that impossible.

Conclusions

There are many contradictions and double binds a sex offender encounters along his journey through the mental health and legal systems, and this chapter has explored two, the polygraph exam and finding work.

If these systems continue to form contradictory practices that impose double binds, creating distress for sex offenders, efforts to reintegrate them into the community and to have access to resources fail. There is no scientific evidence to prove that the system's practices, as they now stand, work to decrease the offender's risk of recidivism. In this regard, the practices of the two systems when combined to treat and manage the offender are impractical and at times unethical because they cause harm to the offender. The system's practices are impractical because offenders are not being rehabilitated, which does not help them or society. The system's practices are unethical because sex offenders are being harmed when cut off from community resources, such as finding a job, long after they have served their time in prison. As the practices stand now, sex offenders are held in the systems longer, reminding them that they are lifelong criminals and mentally disordered.

There are different approaches to treatment in the mental health system, and two of them will be explored in the next chapter. I will also identify and describe the legal
system's approach to managing offenders, which aligns well with one of these treatment approaches. Both of the system’s approaches for rehabilitating offenders have their limitations, but by investigating them the two system's practices will be more clearly exposed, making it possible to discover where change is necessary.

Chapter 7:

Two Approaches to Treatment

The mental health system employs two distinct ways of conceptualizing offender treatment, and this is the topic of this chapter. The two distinct ways are that treatment is management and treatment is rehabilitation. While these two treatment approaches may
subscribe to the same therapeutic techniques, they do so guided by very different frameworks. The approaches to treatment are introduced and explained in this chapter, but the term approach should be taken broadly—as it refers to how the mental health professional approaches treatment and the framework in which this approach to treatment is guided. The first half of this chapter will explore treatment as management, its intended purpose, and its anti-therapeutic consequences. The second half of this chapter will explore what is treatment as rehabilitation, its intended purpose, and the framework for which it is practiced, called the “Good Lives Model. “I have chosen to discuss this framework because I believe it is an ethical approach to practicing treatment with sex offenders that aims to protect the community while also supporting the rights of the offender. In addition, the topic of confidentiality is raised in this chapter because it continues to be a controversial topic for mental health and legal professionals working with sexual offenders and confidentiality is part of both treatment approaches. In the end, I will show how these approaches to treatment both fit and clash.

Treatment as management means that therapy with sex offenders is guided by what Australian mental health professionals, Drs. Astrid Birgden and Heather Cucolo (2011) call a combination of incapacitation and treatment strategies. They recognize that treatment in a management approach is treatment that is coerced, in that the offender is not given a choice to participate—the courts mandate it. Treatment strategies include cognitive behavioral approaches that focus on preventing relapse (identifying, controlling, and managing impulses and deviant thoughts), and a variety of approaches that depend on the ‘deviance’ of the person being treated. In the past these treatments have included chemical castration (Depro Provera), aversion therapy (ammonia
capsules), masturbatory satiation (changing one's fantasies), and a range of other cognitive behavioral techniques. These techniques were the ones Steve was exposed to at the Abel Clinic and Forensic Practices, and it is these treatment techniques that are geared toward controlling behavior rather than modifying them. These techniques are typically geared for high-risk offenders, but they are used throughout the profession with all types of offenders.

The framework in which treatment is guided is in support of the legal system’s priority for managing risk to the community. So, the second component of treatment as management is incapacitation, which Birgden and Cucolo (2011) define as sex offender public registries and residency restrictions, to name a couple. Therapists who subscribe to this treatment as management approach support treatment that aims to control behavior and impulses while prioritizing community safety over the rights of the offender.

The view that treatment is management should be understood in terms of ongoing public policy decisions, the trends towards harsher legislative action, and the cultural climate of what we think we know about sex offenders. Treatment as management is aligned with the view of the legal system, "once a sex offender always a sex offender." While sex offenders navigate their way through the systems, we already know that they are faced with practices that contradict and impose double binds and practices that are impractical and unethical. To follow is an example of how the approach we call treatment as management violates ethical principles of mental health treatment and is yet one other way that these systems violate practices that are ethical.

**Treatment as Management: Violating Ethical Principles**
Dr. Bill Glaser is an honorary senior lecturer in the department of psychiatry at University of Melbourne in Australia. Australian and New Zealand mental health professionals have been progressive in researching and asserting the need for reformation in public policy regarding sex offender laws and how they ultimately inform and affect treatment. He published a paper (Glaser, 2003) that demonstrated how treatment-as-management approaches undermine traditional ways of practicing mental health treatment. Glaser demonstrated how emphasis on community protection outweighing offender rights violates mental health treatment ethics.

Glaser warned that placing too much weight on community interests might breach the treatment rules of various ethical codes concerning beneficence (benefiting the client), nonmalificence (do no harm), and autonomy (respecting self-determination). The Human Rights Watch (HRW), a non-profit, nongovernmental, international organization that works to uphold human rights world wide, indicated, “These laws cause great harm to the people subject to them . . . Proponents of these laws are not able to point to convincing evidence of public safety gains from them” (Human Rights Watch, 2007, p. 3, originally cited in Birgden & Cucolo, 2011, p. 296) and Glaser pointed out that the United States “is the only country in the world that has such a panoply of measures governing the lives of former sex offenders” (Glaser, 2003, p. 10, cited in Birgden & Cucolo, 2011, p. 296). More recently, Prescott and Wilson (2012) addressed a serious question, perhaps directed toward mental health and legal professionals, “The broader question at the front lines of treatment, however, may be that if professionals cannot agree on the apparent “two masters,” paradox [legal and mental health systems] what
must our clients make of this?” (Prescott and Wilson, 2012, p. 234). Because right now we are expecting that the people we refer to as the offenders figure it out on their own.

Sex offender legislation continues to violate ethical codes in various ways when mental health professionals support treatment as management approaches. The connection between the laws and the mental health treatment is such that practitioners of mental health practice techniques to control behavior, as mentioned above, and they also implicitly or explicitly support the legal system’s management practices.

The Center for Sex Offender Management, is a technical assistance center that supports state and local jurisdictions in managing sex offenders according to the best practices. CSOM defined rehabilitation as “providing treatment and other interventions that are designed to address the underlying factors that are linked to sex offending and other problem behaviors, with a goal of increasing public safety through risk reduction” (CSOM, November 2008, p. 2, cited in Birdgen & Cucolo, 2011 p. 299). To this end, treatment-as-management emphasizes risk management on a continuum from treatment (cognitive behavioral treatment to manage risk) to incapacitation (sex offender registers, community notification, residence restrictions, and civil commitment) (Birdgen & Cucolo, 2011, p. 299).

Treatment as management approaches are used with all types of sex offenders, from the most violent of repeat rapists to the now very common internet offender. The latter are typically not the high risk offenders that statistically re-offend, yet the same practices are used to manage these offenders.

Mental health professionals who prioritize community safety over sex offender rights support management practices that work to contain and deter offenders. The
following data provided in this section demonstrates examples of the egregious consequences of these management practices.

One consequence of supporting and practicing a treatment as management approach are “Residency Restrictions” rules, which is represented by the 2,500 foot rule. Residency Restrictions determine where sex offenders can and cannot live. According to Birgden and Cucolo (2011) 30 states have residency laws in place. In many US states, sex offenders are legally forbidden to live 2,500 feet from places where children congregate such as schools, playgrounds, day care centers, and churches.

As I have shown, however, residency restrictions prevent offenders from finding affordable and reasonable places to live, with egregious consequences for their stability in the community. This is important because residency restrictions are one way that treatment as management is implemented as it represents an incapacitation approach.

Despite 30 states having adopted residency restrictions, there is no scientific evidence to date (2011) to support that this way of managing offenders actually keeps them from committing new crimes. Not a surprising result, considering that 93% of sex offenses are committed by individuals known to the victim (ATSA, 2010a, cited in Birgden and Cucolo, p 302). The impact of residence restrictions on reoffending remains largely unknown. Zandbergen, Levenson, and Hart (2010) compared matched samples of 330 recidivist and nonrecidivist sex offenders in Florida and found no significant difference between the two groups regarding proximity to schools and daycare centers. The Minnesota Department of Corrections (2007) analyzed data on 224 recidivists released between 1990 and 2002 who were imprisoned again for a sex offense prior to
2006 and concluded that not one of these people would have been deterred by the residence restriction law (Birgden & Cucolo, 2011, p. 302).

Residence restrictions can be so incapacitating that they cause homelessness or clustering, where offenders are forced to live close to one another and even share living facilities. This is an example of the deterrence-based laws that "rush to confine or restrict sex offenders, overriding human and constitutional rights and ignores the anti-therapeutic consequences" (Birgden and Cucolo, 2011, p. 304). It is because of management practices like residence restrictions that sex offenders living in Miami-Dade County in Florida were forced to live under bridges and the same with those offenders living in Riverbridge. The absurdity of these management practices are that they had to report there under the watch of the state (their parole/probation officers) who would check to make sure they were present in their tents between their curfew hours of 6pm-6am. During the day they were allowed to roam around the community, and even have contact with children, but after dark they were forced into homelessness under the bridge.

Another clustering of sex offenders happened in another location in Florida, Miracle Village, where sex offenders were living in a utopic environment in small grass huts among the locals on a former plantation. The locals reported that the offenders didn't bother anybody but that the down side to having them there is that they missed having kids around. As I explored what was happening in the community where I collected my data, I was led to a small clustered community of offenders known as Riverbridge (pseudonym) where a strip of run down apartment buildings was rented to State sex offenders. They were sharing bathroom and kitchen facilities. Riverbridge was well known to the offenders I interviewed, as well as to the parole and probation officers and
the therapists. It is regarded as a way to find offenders a place to live when the community has no other place for them.

The American Convention of Human Rights (1969) includes freedom from ex post facto laws preventing the imposition of a heavier penalty than what was applicable at the time of offense (Article 9) and postulates that any restriction of movement and residence can only be done to prevent crime or protect the freedom and rights of others (Article 22) (Birgden & Cucolo, p. 298).

Despite all of the efforts made by the muscle of punitive legislation to keep sex offenders out of town research shows (Birdgen and Cucolo, 2011) that these methods of containment and incapacitation, the management of sex offenders, does not prevent them from re-offending.

Birgden and Cucolo (2011), examined articles in the Journal Sexual Abuse: A Journal of Research and Treatment, between the years of 1995-2003, where they found that there were only three published articles citing concern about the violation of offender autonomy in the treatment as management approach (Freeman-Longo, 1996; Laws, 1999; Marshall, 1996, cited in Birgden and Cucolo, 2011) suggesting that these threats to autonomy are virtually ignored by practitioners working with sexual offenders. A later review of the same journal, conducted in 2007-2010, revealed only three articles that explicitly addressed human rights and one of those acknowledged that "Birgden (2004) had opened Andrews' eyes to our inattention to respect personal autonomy as a basic value underlying our psychology of criminal conduct and the RNR approach (and) making part of a mode of rehabilitation a very attractive idea" (Andrews & Dowden, 2009, p. 119, cited by Birgden and Cucolo, p. 297).
While the view that treatment is management is fraught with problems that create impractical and unethical practices, it is a treatment approach that has been implicitly if not explicitly supported by most mental health professionals in the United States who work to treat sex offenders, at the expense of compromising the very ethical principles that define what mental health practice is supposed to be.

The following description is based on field work I conducted when I visited the neighborhood of Riverbridge, the place where sex offenders were forced to live, in the same city where I collected research data. The story was also based on interview data with two probation officers, a news article from a local newspaper, and an interview with Louis, a sex offender living in this town.

Living in "Riverbridge"

"If offenders are excluded from the moral community or given a marginal status then it becomes permissible to treat them in ways that would ordinarily be evaluated as deeply unethical" (Ward & Styverson, 2009, p. 95, cited in Birgden & Cucolo, 2011, p. 298).

In the state where this data was collected sex offender residency restrictions used to vary from city to city, depending upon the ordinances of each location. Over the past several years, the state changed their laws; there is currently no statute that indicates the amount of feet sex offenders are required to live from places where children congregate. County and State probation officers refer to their own "administrative guidelines" to determine the appropriate distances sex offenders shall live from places where children congregate.
The town of Riverbridge is located several miles outside a major city. While sex offenders live everywhere in this state the proportion of registered offenders living in Riverbridge far outweigh the offenders living in other parts of the state. There are 276 residents to every 1 sex offender in Riverbridge as compared to 4,245 residents to 1 sex offender in a nearby township. According to the state's sex offender registration website, the majority of these sex offenders live on River Ave or nearby buildings. When I searched the state registration site, I noticed that at several of the addresses or buildings there contained up to eight units, all housing registered offenders. I began to wonder why these people had come to Riverbridge and who was sending them there.

On November 12, 2007, WTAE news, Channel 4, published a report about complaints of too many sex offenders living in Riverbridge, on River Ave. Parents were concerned about their children standing at school bus stops along River Ave, since so many offenders could be lurking around the corner. Channel 4 reported that children were indeed standing and waiting for the bus in front of the homes of registered sex offenders, "placing children directly in the path of convicted child molesters" (WTAE, 2007).

Tim and Barbara Sampson are among the building owners of the Island Ave apartments and others in Riverbridge and the part of "the River" known as "River Edge." River Edge is the part of Riverbridge at the bottom of a bridge, where the adjacent state's river and valley meet. In 2007, a local reporter asked Tim and Barbara Sampson how they came to have so many sex offenders as their tenants. According to the state registry's website, the Sampson's own 924 & 926 River Ave apartments, where over seven
offenders live. When interviewed by WTAE news, Mr. Sampson refused to answer questions, but Mrs. Sampson stated the following:

Barbara: "I don't have nothing to do with that, sir."

Parsons: "Well, yes you do. You own the property, and all these sex offenders are living there."

Barbara: "I said I don't have nothing to do with that. OK?"

Parsons: "But they live right in front of a school bus stop with little children."

Barbara: "Yeah, I have children, too."

Parsons: "Well, what about the kids in Riverbridge who have to stand in front of a school bus stop?"

Barbara: "Why don't you talk to the government? They are the ones who send them to us" (WTAE, 2007).

Unlike the offenders who were forced to reside under the Julia Tuttle Causeway in Miami Dade County because they had previously lived in the county before doing jail time, the offenders who go to reside in Riverbridge come from counties all over the state. So, what or who brings these offenders to Riverbridge? What did Barbara Sampson mean when she told the news reporter that the government sends sex offenders to Riverbridge? I asked these questions to some people I thought might be able to provide some clarity. They included two state parole/probation officers, a county probation officer, and a sex offender who was currently living in Riverbridge. Several sex offenders at Dr. Smith's office have stated that their state parole/probation officers referred them to Riverbridge because they had nowhere else to go.
The county probation officer I spoke with admitted, with some embarrassment, that she had Tim Sampson's cell phone number on speed dial. "When one of my guys is released from jail and has nowhere to go, I call the Sampsons." This same county probation officer told me she talks to Tim and not his wife Barbara because Barbara is from Brazil and doesn't seem to understand how the system works. When I asked the county probation officer why the Sampsons were so willing to house offenders at the risk of jeopardizing their reputation in the community, she wasn't sure, but she reiterated that many sex offenders have nowhere else to go and the Sampson’s offer them a place that is affordable and far away from any playgrounds, school yards, or day care centers. The county probation officer also told me that a lot of times people will sit in jail for a long time waiting for a place to live before they can be released. Earlier this week she received an urgent call from a judge giving her an official order to find housing for one of her people. She said this person had been sitting in jail far too long and the judge was ordering her to place him in the community. Having Tim Sampson's number on speed dial came in handy during times like this.

The state parole and probation office was kind enough to allow me to visit their location. Three state parole agents volunteered to speak with me, but only after I was asked by to provide details of the research I was conducting and fill out the forms they provided me. I was asked to inform them of my intentions in conducting these interviews and the purpose of my research. After some time jumping through many shifting hoops, I was given approval by the state’s central office to speak with any agents who were willing to talk with me. I met with three state parole and probation agents. I told all of
them that I was aware there were a lot of sex offenders living in Riverbridge. I asked “Agent Jim” if he knew anything about why they went to live there.

Cuz the landlord approves it. It's how it happens. It meets the old protocol about being 1,000 feet from schools and daycare. I mean, the landlord is definitely a businessman; I mean more power to him! But he tries to assist us as much as possible. In the same respect, at the end of the day, he doesn't want SVPs [sexually violent predators] down there. You don't want guys who are like... [Agent Jim laughs) scared of sex offenders themselves. The cretins of the cretins so to speak.ii At the end of the day he has to keep the peace with the local police, the town, so if something is going hairy or haywire he contacts us, on a regular basis, you know, but that's how that works. (Interview, Agent Jim, 6/2012)

I asked Agent Jim if Mr. Sampson did any work for the state? I wondered if he might be another set of eyes on the sex offenders, or he in some other way helped state parole or probation officers.

I'll be honest with you, that location itself... we get more problems from the regular civilians, than we do from the actual parolees and probationers, because the parolees and probationers know what we're capable of when we arrest them for violations and stuff. The general civilian can go drink and use drugs unless the police catch them and arrest them for that stuff. There is nothing we can do about it. ... You got to understand, these offenders keep to themselves. They've been out long enough. The number one deterrent that I've found than these other civilians, especially the state offenders, is that they do NOT want to go back upstate. So, they will be highly compliant. Now granted some of them are criminals, and they will just be criminals no matter what you try to do. (Interview, Agent Jim, 6/2012)

Mental health professionals they told me stories about sex offenders they were seeing out of state prison, who were searching for a place to live while facing discrimination from landlords and leasing agents. Mental health professionals at Dr. Smith's office talked about why convicted sex offenders ended up in "River Edge." Dr. Oscar said it was because state and county probation could keep "a closer eye and a tighter leash on their guys. It's a one-stop shop. Probation officers make one trip out and
complete their compliance checks for twenty guys at once; it's about efficiency (Interview, Dr. Oscar, 5/2012).

In 2007, residents had expressed anger toward authorities for allowing so many offenders to live on River Ave and neighboring streets in Riverbridge. A father of a school aged child told news reporters, "Don't dump them in the [River Edge] and then expect us to protect all of our children" (WTAE, 2007).

We are about to learn of what I observed traveling to Riverbridge. That right here under my nose, in the city where I was collecting data, sex offender clustering was happening. Excerpts from my interview with Louis, who was a resident of Riverbridge will share his experience of living there.

I decided to go to Riverbridge to see the situation for myself. I spent a few hours on River Ave and drove over the bridge into the section known as "River Edge." I was struck by the slum conditions of the apartments on River Ave. Some were renovated storefronts, anonymous, and looked like abandoned businesses; others looked like warehouses. Further down the avenue, I came upon more of the Johnson's buildings which were clearly marked apartments with several units. From the outside, the buildings were run down, with broken wooden doors and mailboxes falling off their hinges. On the corners of Island Ave were small businesses that were closed. Among the open businesses were gas stations, Pierogie restaurants, and two Gentlemen's Clubs.

Of all the interviews I conducted with sex offenders, parole officers, and mental health professionals, and one criminal defense attorney, everyone knew of Riverbridge. One offender who I call "Louis" stated that he is currently living there and told me the story of how he ended up in the Rocks. Louis's story:
I wasn't sent to be there, but the case worker in the half way house, really, that was the only place she would help me with. She's like 'oh, I found a place for you to stay, and I called about it and people told me the guy that owns it has a thing with the State to house sex offenders there.' And she was like, 'well take it or leave it I'm not helping you with anything else, you can find stuff on your own.' So, I took that to get out and that's where I still am right now and I'm trying to find a car and another place to stay. I'm not sure which I want more honestly at the moment. I just looked at an apartment and I have to tell the guy that I'm a sex offender, which I have not yet and that's one of my major concerns is that every job and every place I have to look for a job or for rent is that I have to tell the person I am a sex offender. This causes a lot more trouble, the more people that know, I don't want anyone to know in the first place. (Interview, Louis, 5/2012)

Before he moved to Riverbridge, Louis lived in a small house in the mountains. He paid his own rent, he was going to school, and he was working as a machine operator for a small company. Louis and his girlfriend were living with his mother at the time. They had a child together and Louis's mother was helping to raise the baby. When Louis spoke to me he did so slowly with lengthy pauses. He looked down a lot and lost his train of thought. The day we met was the weekend before Mother's Day. Louis's mother had passed away unexpectedly just before he went to prison.

According to Louis, he downloaded adult pornography through file sharing programs and found some illegal pictures. At first he said he was repulsed by the illegal images he saw, but then he admitted that there were times when he went looking for images of girls under 18. At the time his girlfriend was also downloading a lot of illegal images onto the computer they shared. Louis told me that his girlfriend's mother found the images stored and confronted his girlfriend. One day while Louis was at work, his girlfriend and her mother called the police and invited them to the house to view the computer's hard drive. While the police reviewed the images of underage girls, Louis' girlfriend called him to ask what time he was due to arrive home from work, but she did
not tell him why and he did not suspect a thing. Louis was arrested and his computer
confiscated.

Louis was convicted of possession of child pornography. When Louis was facing
7-10 years of incarceration, some of his grandmother's friends wrote letters to the judge
stating that Louis was a "nice, quiet person, who liked to help people, especially his
grandmother." Louis ended up going to prison for 28 out of the 36 months he was
sentenced. He spent his time in a low security federal prison. His release from prison was
contingent upon his completing time at the half way house which Louis and most sex
offenders say is much worse than prison, but no one knows that until they get there and
see it for themselves.

During his time at the half way house, Louis was restricted to one floor and could
make phone calls that cost 50 cents for local calls and $2.00 long distance. If no one
picked up the phone, the machine took the money anyway. Despite many phone calls to
his aunt, she did not pick up the phone. Louis was terribly worried about his grandmother
and had not heard from her or any family members for some time while he was at the half
way house. Finally, he learned from his uncle that his aunt had packed his belongings and
put them into storage while he was in prison. Louis would soon learn that although his
grandmother loved him very much, she did not want him to live with her because he was
a publically registered sex offender, which means her friends and neighbors could find
out that her grandson was a sex offender by viewing his picture, address, and other
personal information over the internet. If not for the public registration, Louis's
grandmother told him she would have been okay with him staying with her.
Louis was anxious to get out of the half way house, so he took the next best thing and his only option at the time. He moved to an apartment on River Ave. Louis described his apartment as one room with a refrigerator, bed, stove, dresser, and a closet. He shares his bathroom facilities with other sex offenders who live in the apartment building.

Sometimes when I get off the bus, I hear people saying "child molester" or something like that, or else I'm thinking it, I don't know. I don't know if it's paranoia or if someone is actually saying it. I know I've heard at least two people say it. But after those two people, I think I still hear people saying it (Interview, Louis, 5/2012).

Once you move to Riverbridge it's hard to get out. Louis said that he had been searching for places to live. By law he is required to tell his landlord that he is a registered sexual offender. Landlords don't like to hear this, and Louis continues to be turned down.

**Association for the Treatment of Sexual Abusers (ATSA)**

Now that we have an idea of how treatment as management approaches create impractical and unethical practices, such as forcing sex offenders into homelessness and clustered communities, let’s look at how confidentiality is taken up by this approach. This section will define what confidentiality is in a treatment as management approach with sex offenders, compared to how it is traditionally practiced in treatment with the general population. The issue in this section is confidentiality and what happens to it when applied to treatment with sexual offenders.

Confidentiality is one of the main ethical concerns of the American Psychological Association (APA), by which all mental health practitioners are expected to adhere. In order to understand the two treatment approaches, we must understand one of the main
ethical principles that define treatment practice. Treatment approaches with sex offenders force therapists to continually breach confidentiality as traditionally defined by the APA.

Therapy has historically and traditionally been a place where people go to talk to an unfamiliar person trained in human psychology. What they say to their therapist is confidential, meaning that it does not leave the sanctity of the session room. Most people would not go to a therapist and reveal their darkest secrets if they knew those secrets would be shared. Confidentiality has traditionally been considered one of the ethical principles that defines the practice of psychotherapy.

Under the Ethical Principles of Psychologists' Code of Conduct (Ethical Principles, 2014) there is a list of standards defining how mental health professionals are expected to behave when working with patients. Standard 4.02 “Discussing the Limits of Confidentiality” states,

"(a) Psychologists discuss with persons and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities" (Ethical Principles: Standard 4, 2014, para, 2).

Informed consent is something a patient or client must provide in writing to the mental health professional or institution where they are receiving treatment. When a patient or client signs an informed consent, he or she is waiving his or her right to confidentiality. People who are treated in therapy under court order are always given an informed consent to sign.

There are certain exceptions to confidentiality, occasions when informed consent is not required, such as when a client is a threat to him- or herself or to other people.
Psychologists then have the obligation to inform law enforcement and if the identity of a person who is the target of harm is known, psychologists have a duty to warn that person.

When it comes to treatment of sex offenders, however, confidentiality is considered "limited" and governed by different standards, those of the Association for the Treatment of Sexual Abusers (ATSA). ATSA is a separate governing body from the American Psychological Association (APA), and their ethical principles specifically address the treatment of sexual offenders. ATSA addresses the issue of limited confidentiality for treatment providers who work specifically with sexual abusers and address the parole/probation departments regularly. ATSA's standards are applied across US nations.

“Members regularly exchange information with probation/ parole officers regarding clients who are under supervision. This is done with the client's knowledge and consent unless otherwise specified by law” (ATSA standards, 2014, p. 29-30).

In order for therapists to be allowed to speak with probation about what is said in a therapy session, sex offenders must give their permission by signing an informed consent which allows breach of what may be thought of as confidentiality in the traditional sense. Clients have a right to know what information is being exchanged before they engage in the treatment process.

In 2003, Dr. Bill Glaser published a paper entitled "Therapeutic Jurisprudence: an Ethical Paradigm for Therapists in Sex Offender Treatment Programs," where he asserts that sex offender treatment violates the traditional ethical principles of mental health treatment because confidentiality is something that is continually breached. He also
believes that mental health providers working with sex offenders are more strongly pulled toward compromising traditional ethical codes.

"The therapist may not only be allowed but is often required to breach ethical codes of good mental health practice, the justification being that such breaches are the only way that treatment can be made effective" (Glaser, 2003, p. 144). Glaser also points out that the burden is on the clinician’s responsibility in sex offender treatment programs to resolve the ethical dilemmas on their own that arise in their work, by breaching the traditional mental health ethical principles such as maintaining confidentiality and promoting patient autonomy (Glaser, 2003, p. 1).

From the beginning of probation and treatment, sex offenders are not asked but told to sign an "informed consent," so that information said in therapy may flow back and forth between treatment provider and probation officer. If they refuse to sign the consent, there are consequences. Levenson and D’Amora (2005) offer a counter argument to Glaser by asserting that confidentiality is not breached in sex offender treatment so long as the offenders sign informed consent and agree to the exchange of information. Levenson (2005) points out,

As Glaser accurately noted, it is routine for sex offender therapists to offer limited confidentiality. However, we believe that this practice does not constitute a breach unless the client is denied informed consent. If the client signs a release form allowing the exchange of information and explaining its purpose, then confidentiality is not compromised. (Levenson & D'Amora, 2005, p. 147)

What Levenson says is in fact true, but she does not explain what happens if a person does not sign or agree to the informed consent. If he does not sign this consent
allowing his therapist to exchange information with parole or probation, he is withheld
the privilege of parole or probationary status to begin with and may remain incarcerated
or receive violations for failure to comply. It is a condition for sex offenders to sign these
informed consents as part of the agreement to participate in treatment. Treatment is used
as a dangling carrot to get out of prison, so many offenders sign their confidentiality
rights away in order to get out of jail and see the therapeutic expert. Treatment
requirements and informed consent are signed and agreed to, yes, but by way of an
ultimatum -- Sign this or stay in prison. Don't cooperate in treatment and go back to
prison. Levenson reminds us that it is not the treatment provider that implements these
consequences, but the courts. This therapeutic environment with these ethical principles
creates an adversarial relationship between therapist and client and continues to be a
reality in the treatment relationship.

When I interviewed Dr. Smith, he talked about the challenges of conducting a
first time psychological evaluation of a sex offender who was not yet convicted of the
crimes he was charged with and who had never participated in a mental health
relationship before. "What happens is you get guys not wanting to talk because they are
worried that what they say will get them into more trouble. That's a valid concern"
(Interview, Dr. Smith, 4/2012).

One case that illustrates the problematic issue of a limited confidentiality in
treatment is Alex. One of the first things Alex said to me during interview was that he
had a contention with this office, meaning Dr. Smith's mental health practice. Further he
stated that him and his lawyer were fighting together against having to sign an informed
consent. Alex stated he was not comfortable waiving his right to confidentiality over to
his federal probation officer. Alex argued that it was a violation of HIPAA, which is a federal law designed to protect patients from their medical information being disclosed to third parties without the written consent of the patient. Alex did not want to sign the informed consent and waive his rights to the federal government who was paying for his treatment. The courts required Alex to attend treatment upon his release from prison, and based on that agreement, Alex would be told to waive his rights to confidentiality, to the federal probation office. Alex talked about the irony of being given the ultimatum to sign the release or face the revocation of his supervised release status or probation in the federal system. The irony is that HIPAA is a federal law and Alex was being forced by the federal probation office to waive these rights or potentially face moving backward and returning to federal prison.

I have a contention with this office and it has come to a head. I was threatened with a supervised released revocation to go back to jail. It's in direct contention with the APA Code of Ethics and it is also a HIPAA violation. 'Though shall not diminish a client's civil or legal rights.' When I waived HIPAA to the guarantor federal government that pays them, there is something wrong there. I questioned Dr. Smith on that. (Pause) I sent a letter invoking my HIPAA rights. His response was 'well it's done throughout the profession.' Well custom and usage does not trump the law. ... He wore me down, he used his power of influence and I signed it reluctantly...my voluntariness was compromised, same with taking the polygraph; that was a big thing and a whole other story. (Interview, Alex, 5/2012)

Had Alex not signed the informed consent document waiving his right to confidentiality in treatment, he would have been facing return to court and the potential of returning to federal prison.

Sharing of information should, of course, always be done in accordance with prevailing ethical principles and statutory requirements. A non-voluntary client can have a therapeutic experience if safeguards are in place for the sharing of
information. In the United States, sex offender treatment is bound by federal HIPAA regulation which specifies the limitations of disclosures to any outside parties unless approved by the client. (Levenson & D'Amora, p. 148)

Levenson & D'Amora's statements are correct, however what is written as the ethical principles that define the practice may be an ideal ethic, because there is often times a great disparity between what we hold as ethical ideal in the mental health field and what is actually practiced.

When I met with a state probation officer, he talked about the relationship the state parole office had with the main treatment provider they use which I will generically call Forensic Practices. Forensic Practices is contracted by the state to treat state paroled sexual offenders. The state probation officers I interviewed told me how they go to the office of Forensic Practices and meet with their therapists once a week in their conference room and review cases. It is standard practice for therapists and parole/probation officers to communicate about the offender they are working with in the interest of community safety, but how it should be done is supposed to be guided by the ethical principles of ATSA, which may be taken up liberally by different providers.

State parole/probation officer Agent Jim spoke to me candidly during interview about the relationship between state parole and Forensic Practices. When I met Agent Jim, I went to visit his office, down the back of an alley way in a lower income area of the city. In order to get to Agent Jim, I was buzzed in through a narrow door way and sat in a small lobby with medal detectors and a tinted bullet proof glass window. A loud voice came over the intercom asking me to identify myself. I hadn't realized until that
moment that there was a state employee sitting behind the window and I was supposed to check in with her. I stated my name and she asked what agent I was there to see. When Agent Jim came to greet me, he stood tall 6’4 dark t-shirt and cargo pants with his firearm holstered on his hip. I went through the medal detector after a bag search and he took me back to a series of cubicles where the agents sit and work. The supervisor allowed us to conduct the interview in his office. I asked Agent Jim to tell me about state parole's relationship with Forensic Practices.

Now obviously we do have a thing like, treatment will tell us stuff and they will point blank say, 'we don't want the offender to know we told you,' so we'll just have to do the leg work and investigate on our end, but at least we know what direction to look, cuz that helps us a lot, because like I said, these guys are highly manipulative and very sneaky. (Interview, Agent Jim, 6/2012)

I asked Agent Jim how he sees the difference between his role and the therapist’s role working with sexual offenders.

Like I said, we go down each offender and pretty much talk open conference about what's going on with these guys. It's kind of, ... we're not circumventing confidentiality so to speak, because we need to know what they know and they need to know what we know. Because these guys ... I'm sure you've seen ... are very highly manipulative; they'll tell treatment one thing and tell us something totally different. So, we are the eyes on the street and treatment is the one working with them to see whether they're working with the program or not working with the program. (Interview, Agent Jim, 6/2012)

Sometimes, therapists call parole if they feel suspicious that the offender who just left their office may be up to no good.

They [therapist] just told us he was dating someone, but they kind of had suspicions the way he was talkin and presenting, that there was more going on there. So, we decided to do leg work, meaning leg work, is we honestly kind of had to follow him from his apartment, his approved place, indiscreetly and track down where he went. It was pretty much a 2-3 month process until you can narrow it down. Now there have been other occasions like we get reports a guy has been drinking, which is also a big no no, and that one we just go out and do a urinanalys; we do that anyway, on a random basis, we give them random urines constantly, but you do have a sense of which ones are using
As mentioned earlier, ATSA specifically states that confidentiality should only be breached with the client's knowledge. This statement represents an ethical ideal rather than a realistic practice in some mental health offices.

There are other ways too that state parole/probation officers get involved in sex offender treatment or communicate with the therapists. During my interview with Agent Jim, he told me that at times him and his colleagues will sit in on group therapy sessions at Forensic Practices. ATSA spells out what the rules are for this type of arrangement as follows.

38. Members exercise caution if allowing probation/parole officers to observe treatment sessions. Many therapists allow probation/parole officers to attend treatment sessions as observers. This can help educate probation/parole officers about individuals who sexually offend, appropriate treatment, and enhance the ability of probation/parole officers to supervise their clients.

Allowing observers to attend treatment sessions can also cause difficulties, such as eliminating client confidentiality and inhibiting treatment participation. When probation/parole officers attend treatment sessions as observers, members ensure that the following issues are addressed:

- Appropriate informed consent is obtained from each client in a group when anyone other than the treatment provider and clients attend a group
treatment session. Election not to participate in such a group should not impact the treatment a client receives.

- The role of probation/parole officers as agents of the criminal justice system is made clear to clients.
- Members address the purpose and possible impact of having probation/parole officers present in group (ATSA standards, 2014, p. 30).

While conducting a group therapy group I co-ran with Dr. Oscar, we asked our group if they would like to have a member of law enforcement come join us with the intention of asking questions about how new laws such as Adam Walsh Act will impact their lives. The answer from our group was an anonymous vote of no. The reasons were that they felt the group was one such place where they could come and talk about their frustrations and lives without fear of being penalized. The group decided as a whole that it would change the dynamic between them in a way that may not be helpful and change the way they talked. The other issue is that if offenders are encouraged by therapists to allow parole officers to join groups, they are asked to sign informed consent. Many sex offenders will do so as to not be viewed as difficult or treatment resistant, which makes it difficult for one group member to object. This is also true of human subjects research and why I was not allowed to ask an already formed and ongoing therapy group if I could join them to collect data with the purpose of educating myself about individuals who sexually offend. The issue of coercion is always a concern. It is always easier to opt in than to opt out.

Glaser (2003) rightly notes that an important distinction exists between punishment (an authority's infliction of a penalty) and treatment (an intervention
aimed at relieving the patient's distress). The boundaries can potentially become blurred when treatment is a component of a criminal sentence, such as in cases where offenders are required to attend treatment while on probation. However, treatment and probation are not mutually exclusive, nor are court ordered interventions necessarily coercive. It is important to remember that courts are requiring therapy, not programs. Treatment programs merely provide the mechanism for change if the client chooses to comply with the order of the court. Ultimately, clients always have a choice about whether or not to enroll or participate in treatment, and the court, not the treatment program, imposes the consequences of those choices. (Levenson & D'Amora, 2005, p.146)

If an offender chooses not to participate in a treatment program, sometimes the penalty is so great, that it would mean the revocation of probation or supervised release and could then mean the return to prison. This does not leave the offenders with much choice if they want to move forward and work toward a life where they are able to manage their sexual offending behaviors or desire to do so. While treatment programs provide the mechanisms for change if the client chooses to comply with the order of the court, as Levenson and D'Amora state, the problem is that when they enter treatment they learn that at times they are set up to have to navigate double bind demands. There is disparity between what is stated as ethical ideal (ATSA, APA) and what actually happens in practice when these two systems intersect. Confidentiality should be limited and therapists and probation officers should speak to one another, but it should be done in such a way that the sex offender is aware that this exchange is happening and why it is
happening. It should not be a clandestine operation, positioning a therapist as the probation officer's informant or vice versa.

**Treatment as Rehabilitation**

Now that we have reviewed what is treatment as management, its purpose, and its anti-therapeutic consequences, this section reviews that which is treatment as rehabilitation. Treatment as rehabilitation includes a holistic approach to treating the offender—meaning that not just one treatment technique is used. It subscribes to the philosophy of therapeutic jurisprudence as well as the Good Lives Model, which will both be defined in this chapter.

The GLM is a strength-based model that provides a framework for working with offenders in treatment. GLM is a framework for a rehabilitation approach, with the goal of balancing offender rights with community safety. This is one way in which it differs from management approaches—it respects and values the facts that sex offenders are both human rights violators and human right’s holders (Birgden and Cucolo, 2011), and therefore it is important to balance community safety with the offender’s rights, and not to prioritize one over the other. Both treatment as management and rehabilitation approaches may use the same therapeutic techniques, such as the cognitive behavior methods previously described, but these methods are not used solely for the purpose of controlling behavior but for the purpose of changing behavior for the better—for the offender and for the community.

The Good Lives Model (GLM), was created by Tony Ward, Ph.D of University of Victoria in Australia and has since been adopted by his colleagues. It supports an integrative approach to treatment, in that therapists may work to control destructive and
criminal behavior and impulses, but they also aim to integrate these practices with other methods that aim to support the human rights of the sex offender. “We need to build capabilities and strengths in people, in order to reduce their risk of reoffending” (Good Lives Model, 2014, para 2). The GLM believes that building strengths and capabilities also means having access to community resources once incarceration is over.

The treatment as rehabilitation approach encourages therapists to sit and talk differently with offenders than treatment as management approaches. The therapist is expected to situate himself as related to the offender as a fellow human being.

"What this means in practice is that therapists ought to try and identify what practical identities and associated goods and strategies have been associated with individuals' offending, and what aspirations they have for the future. This analysis is both backward (examining the offense and associated history and circumstance) and forward looking (what does the person want in the future?). The expectations is that therapists relate to the offender as fellow agents and engage them in a dialogue about what kind of things are important to them and how such values are related to criminal actions" (Laws and Ward, 2011, p. 198).

The Good Life Model (GLM) asserts that there is a direct relationship between understanding how one achieves his primary and secondary needs or goods and their likelihood of offending. The therapist's job is to assist the offender in achieving goods in adaptive ways that do not involve offending or violating the human rights of others and this in turn will function to eliminate or at least reduce the need for offending. For example, if an offender is looking to achieve a primary need or good such as relatedness because it is important for him as it is for all of us in the social world, he may seek out a
relationship with another person. If the person chooses to achieve his primary goal of relatedness by coercing children into sexual play or exposing oneself than the means by which he chooses to meet his goal of relatedness is severely problematic. He violates the rights of an innocent child or adult. But he still has the right to seek relatedness in the world, with an age appropriate consenting partner. The therapist is expected to help the offender identify the goal he is seeking (relatedness, intimacy) and establish other ways of achieving this goal.

First offenders should have a right to choose treatment or refuse it, as this in itself supports autonomy. It is the attitude of the therapist toward the offender and the way he or she situates him or her self in relation to the offender that will determine the type of treatment approach that is inevitably adopted. GLM expects that a therapist adopt a humanistic and constructive approach to treating offenders. The attitude of the therapist will ultimately determine how effective a GLM can be. In the GLM, "The fact that the offender is viewed as someone attempting to live a meaningful worthwhile life in the best way he can in the specific circumstances confronting him reminds correctional workers that their clients are not moral strangers" (Laws and Ward, p. 199). Therapists are expected to know the same thing.

"A critical therapeutic task involves managing the balance between the approach goal of promoting personal goods and the avoidance goal of reducing risk. Erring on the side of either goal can result in disastrous social and personal consequences for the therapist and client. Simply seeking to increase the well-being of a prisoner, parolee, or probationer without regard for his or her level of risk may result in a happy but dangerous individual. Alternatively, attempting to manage an individual's risk without concern for
goods promotion or well-being could lead to punitive practices and a defiant or disengaged client (Laws and Ward, 2011, p. 199).

The Good Lives Model, as a rehabilitation approach to treatment expects the therapist successfully balance the goal of protecting the community from risk, but also promote the human rights and primary goods achievements of the offenders we work with.

**What is expected of the Probation Officer?**

As demonstrated through the participant interviews of this research, probation officers relate and position themselves in a particular way toward offenders. This is because it is their job that dictates a certain attitude toward offenders, influenced by the restrictive laws and legislation continuing to grow in the US and arguably the larger cultural attitude and lean toward all sex offenders as predators. So, it is the probation officer's job to stop the offenders from reoffending.

Agent Jim told said that he is held accountable for any offender who offended "on his watch." Sex offenders are positioned as "different than me," "the cretins" as Agent Jim stated during interview. They are an adversary to the officers that are in charge of policing them, hence creating a position of power and influence. Probation officers then have little choice but to favor, by professional expectation, a treatment as management approach, because it is best aligned and suited with their relatedness to the offender.

While the GLM provides a framework for treating offenders, it too has its flaws. In order for a treatment as rehabilitation approach (GLM) to work, the assumption is that the offender must be willing to engage in a collaborative relationship with the therapist.
This is not an easy transition for an offender who is used to or has already been exposed for many years to a management approach. Although it may be more practical and ethical with its aim to prevent recidivism, it is not a miracle cure. There were several offenders I interviewed who presented as so traumatized by the system (legal and treatment as management approaches) that they were unable to trust enough to collaborate and establish a constructive or humanistic relationship. This reality was demonstrated or evidenced by the way they spoke in treatment. The case of Frank is an example. He remained guarded and fearful of disclosing any information that could be perceived as incriminating because in the past that had led to punishment. Therapeutic talk becomes restricted in nature and the offender is set up to lie (Steve) because that's what he feels comfortable and safest to do. It is difficult to talk authentically about experience.

As Agent Jim pointed out, the treatment as rehabilitation approach utilized by mental health professionals can create tension with the legal system because it threatens that relationship. Agent Jim made it known that he was frustrated with Dr. Smith's practice because he does not return calls or liberally disclose information about offenders in treatment, in the way the mental health professionals at Forensic Practices had disclosed information. Agent Jim expressed a preference for that type of relationship with therapists because he felt it helped him to be “a better cat” than the offenders are mice.

**Therapeutic Jurisprudence**

Now that the two different approaches to treatment have been explored and what they require of the mental health and legal professionals, we need a framework by the rehabilitative approach to treatment can be guided. The Good Lives Model is one such
framework which includes a holistic approach to treating the offenders, the GLM model is guided by a philosophy of Therapeutic Jurisprudence or "TJ." This section will define this philosophy and explain its necessity in the treatment of sex offenders.

TJ is the study of how legal systems affect the emotions, behaviors and mental health of people. It is a relatively new multidisciplinary field taking its name from jurisprudence, the study of law, and therapeutic, the power to cure or heal. It examines how the law and those who enact it may be helpful or harmful to people's wellbeing and mental health, and what alternatives there might be, including in specialist courts for particular problems. Therapeutic Jurisprudence or "TJ" was first used by Professor David Wexler, of the University of Arizona Rogers College of Law and University of Puerto Rico School of Law in a paper he delivered to the National Institute of Mental Health in 1987. (Therapeutic Jurisprudence, 2014, para 1-2)

Legal scholars followed suit throughout the 1990s and began to use the term when speaking of mental health and criminal law. "TJ" is relevant to this research project, first cited here by Bill Glaser (2003), because the term allows mental health and legal professionals to confront the problems inherent in these two systems, working with sexual offenders. Dr. Astrid Birgden from Australia published an article in the Journal of Sexual Abuse entitled "Therapeutic Jurisprudence and Offender Rights: A Normative Stance is Required," in 2009. In it, she brings to attention the fact that very little has been written or published on the inevitable intersection of sex offender autonomy and human rights. She states,
"From a therapeutic jurisprudence standpoint, the law should promote offender autonomy as a human right. That is, the right of the offender to reject treatment cannot be trumped by community rights unless it can be rationally justified by the State for serious, high risk offenders" (Birgden, 2009, p. 56).

The problem is that sex offender treatment mandated by the courts in the US applies to ALL types of offenders, no matter how high or low the risk of reoffending. Some treatment programs tailor treatment goals and length of time based on their offense or likelihood of reoffending, but most offenders are subject to anti-therapeutic consequences as the result of management approaches. If mental health practitioners are engaged in a human rights framework, where autonomy is recognized, then the intensity of treatment should matter and be recognized in implementing treatment goals.

Birgden (2009) argues offenders should be able to exercise their right to autonomy by refusing treatment as rehabilitation if they don't want it. The exception being, that high risk offenders may be persuaded with rational State evidence supported by social science research to support the reasoning why. It should be proven that the offender who is mandated to intense treatment, beyond his sentencing guidelines on probation should meet criteria for high risk offending, meaning that he is someone highly likely to reoffend. Birgden argues that "the seriousness of an offense is an aggravating factor at the time of sentencing, it is often conflated with the likelihood of reoffending" (Birgden, p. 44). A distinction should be made here regarding the offender's treatment requirements.

Most importantly, treatment should be guided by a human rights framework with the philosophy of TJ included. If treatment clinical and forensic staff continues to support
management approaches that violate the offender's basic human rights, and the rights applicable in a treatment setting, they are by default supporting an anti-therapeutic climate. A therapeutic alliance will not be made possible and consequently, their ultimate aim of reducing the risk of new sex offenses from occurring is the only thing that will be deterred.

**Conclusion: Where the Two Approaches Fit and Clash**

The two approaches to treatment fit and clash. They fit together in that they are both invested in maintaining the safety of the community, but they clash in that only one, the rehabilitation approach, is invested in protecting the rights of the offender. It is partly through the protection of the offender's rights, that rehabilitative approaches protect the community. It is also important to note here, that the management practices supported by the systems, have not proven to be practical, in that they do not reduce sex offenders from reoffending--therefore legal and mental health workers should think twice before implicitly or even explicitly supporting and enforcing practices that do not work and most disturbingly, do more harm to the people they affect than good.

Each approach to treatment has its limitations. The treatment as management approach creates and alignment between therapist and probation officer, alienating the sex offender. Whereas the treatment as rehabilitation approach has been known to create tension and dissatisfaction between the therapist treating the offender and the probation officer managing him, if the probation officer feels he or she must know what is happening with the offender all the time in the context of treatment. The same goes for the therapist, if he or she feels a need to contact probation more regularly than may be
necessary, as we saw in the case of Forensic Practices and Agent Jim. In both scenarios, the offender is caught in a dysfunctional triad, where there is a split one way or the other.

Both systems are powerful in the contributions they make toward constituting how offenders become who they are in both systems. The main distinction between the treatment as management and treatment as rehabilitation approaches are its emphasis. While treatment as management’s emphasis is to protect the safety of the community, it does so at the expense of violating the offender’s rights. While it may not intend to do so, this is often the consequence of a strong emphasis in one direction. The treatment as rehabilitation approach works to strike a balance to protect community safety while also protecting the offender’s rights. In terms of how these two approaches play out in treatment practice—they do so in ways that vary from one treatment practice to another and even within these treatment practices, from one therapist to another. As Prescott and Wilson (2012) point out, the purpose of acknowledging that double binds exist in treatment, … “is not to condemn clinicians, [or probation officers] but rather to highlight the often untenable situations in which they find themselves with their clients” (Prescott et. al, 2012, p. 238). While change is ultimately the responsibility of the client, as he is responsible for his behavior, there is something more that can be done as therapists and probation officers. It is too often that therapists and probation officers are aware these double binds or paradoxical communications occur but they do not explicitly acknowledge them with their clients in order to validate their sense of reality. When these double binds are made explicit, it is a way of negotiating a collaborative model for treatment—where both probation officer and therapist can work well together with the sexual offender. This does happen in treatment practice, but does not seem to happen
often enough. Theoretically, these treatment approaches are distinct in their emphases. As a result, this distinction can also play out in actual treatment practice. As Prescott and Wilson (2012) point out, “Given the stakes involved, it is crucial that our field turns a critical eye to the nature of its communication with our clients, with ourselves and with other stakeholders in the community safety endeavor” (Prescott et. al. 2012, p. 244).

Next, I will conclude with a call for action and walk through some possible alternatives for moving forward in the treatment and management of sexual offenders.
Chapter 8: Conclusions:

Unethical & Impractical Practices

The location from which this project began was from one private forensic practice, where I worked as a therapist in training. Throughout the research project, my background as a mental health professional continued to inform the data I collected, analyzed, and organized. There are three forms of data collection, which includes fieldwork, focus groups, and interviews. The fieldwork provided the tour and view of the vast landscape that was constructed through this research as the mental health and legal systems. The focus groups provided a glimpse of what an interaction among offenders looks like. What they said was reflective of who they became in the system and how they traveled through them. The interviews provided a sense of how each sex offender took up their roles in the system, as did the interviews with the therapists, probation officers, defense attorney, and polygrapher.

The systems have been disclosed by those who operate with complicity within them as key informants, such as Dr. Smith and Dr. Oscar who work with sex offenders in the mental health system on a daily basis, the polygrapher who straddles both systems, the attorney who negotiates entry way into the legal system, and the probation officer who monitors the offenders daily. The sex offenders are those participants who had to navigate their way through the places where these two systems intersect, the places where they formed impractical and unethical practices.

The vignettes of Frank, Greg, and Steve allow us to witness three separate offender's journeys through the legal and mental health systems. These vignettes represent the various stops offenders encountered through their journey, the challenges at
these stops, and overall, what the systems actually did from the point of the view of the sex offender. All of the participant's narratives demonstrated what it means to navigate the two systems as someone who is conceived as both bad (a criminal) and sick (patient).

Being both bad and sick creates contradictory expectations for the offender and forces him into double binds. He is made to speak, to tell the truth, to confess to both systems, rewarded in one and punished in the other for confessing the same information. He is as an object of knowledge for both systems that force him to speak. The polygraph exam and the case of Steve was one poignant example of this intersection and bind.

The two approaches to treating sex offenders in the mental health system were investigated, only to discover that the more popularly used treatment as management approach, supported by the legal system and used to support legislation, violates the traditional ethical principles that define the mental health system, by which practitioners in the field are supposed to adhere. One such example is the breach of confidentiality. Both treatment approaches have their own inherent flaws. Management creates alignment between therapist and probation officer but alienates and creates an adversarial position with the sex offender, whereas the rehabilitation approach may create an alliance between offender and therapist, but tension between therapist and probation officer, a split either way. The treatment as management approach also violates the constitutional and basic human rights of the sex offender, restricting him from community reintegration and access to resources.

The voices of the participants who were brave enough to step forward and speak to their own experience of traveling through both systems sheds light on the actuality of these practices. Their stories are both fascinating in that they demonstrate the possibilities
of what each system does in actual practice rather than ethical ideal, and disturbing in that the consequences of these practices prove to be unethical and at times egregious.

**Findings: Is Change Possible?**

In summary, social science evidence indicates that treatment-as-management is not effective in reducing reoffending. Bonnar-Kidd (2010) stated that “segregating a class of citizens on the basis of emotionally driven laws is risky considering that the empirical evidence supporting their effectiveness is sparse. There is also evidence that these laws could be doing more harm than good' (p. 417, cited in Birgden and Cucolo, 2011, p. 303).

Treatment-as-management can be described as the 'politics of vengeance' repackaged as community protection on the grounds of risk management (Kemshall & Wood, 2007, cited in Birgden and Cucolo, 2011, p. 303).

When the people we call sex offender are forced to live under bridges, become homeless, or cluster in communities, there is an indefensible problem that exists not only for our communities but for those people. When these same people are caught in two systems at the same time, expected to find a job and a place to live or face punishment, when the two tasks required to reintegrate are nearly impossible, there is again a problem for the whole society.

What is clear from my research is that the mental health and legal systems have a common goal, which is to reduce the likelihood of reoffending or violating the rights of others. However, the way the systems have gone about reducing recidivism has violated the human rights of the offenders. By placing them in double bind scenarios over and
over again, we as a society actually increase the offender's subjective distress making it impossible for him to reintegrate into communities.

"Management" approaches such as monitoring offenders through public registration (Megan's Law and the Adam Walsh Act) and residency restrictions (laws that require a 2, 500 foot distance from places where children congregate) are two impractical practices imposed by the legal system and supported by mental health providers. They are impractical because what they actually do is not what they are intended to do--while they may raise community awareness, they do not reduce rates of recidivism, but rather create moral panic and outrage, blocking the offender from reintegration. These management approaches are considered anti-therapeutic because they prevent him from moving forward in the mental health system. They are also unethical because these practices result in more harm than good. As they now stand, they fail to be guided by a philosophy of therapeutic jurisprudence as defined in Chapter 7.

In therapy an offender is expected to become aware of what led to his offenses to begin with. If he is deprived of basic human needs and community access, such as shelter and work, he cannot realistically explore in any meaningful capacity the deeper underpinnings of his offense behavior, or build skills that will help him to resist temptation the next time. Treatment should be offered in the form of rehabilitation and according to the ethical guidelines of clinical practice. In other words, the offender should exercise his autonomous right to refuse treatment if he does not feel it useful. An exception to this assertion, would be if the offender is already classified high-risk by the state, meaning that he has already committed multiple hands on acts of violence against victim(s) and meets criteria for sexually violent predator status.
The fieldwork, interviews, and interactions that formed the core data for this research project revealed the double binds and contradictory practices of the two systems that sex offenders must learn to navigate. As a result of the research, the two systems are disclosed to us in a way that illuminates how people become constituted as sex offenders in the context of both systems, placing them in scenarios where they are made to confess differently in one than they do in the other, only to be set up to lose in the face of contradictory demands and double binds. They are reminded that they are both bad and sick--a confusing message to navigate.

My hope is that the findings of this research have served to make explicit what the two systems are and what their practices actually do, and not just what they ideally propose to do. When mental health professionals practice a treatment approach, my hope is that this will be done with open eyes to what these practices actually do and at the same time what they have failed to do. Moving forward, my hope is that mental health and legal professionals will practice treatment and enforce laws guided by a strong ethic--a balance of community safety with sex offender rights, and not prioritizing community safety while ignoring that offender's rights are violated.

I want to end with a call for action, perhaps a legislative document that allows for one thing in particular, a reevaluation and modification of existing management approaches. If not supported by actual evidence based research to support their intended purpose, which was to initially reduce sex offenders from creating new crimes, then these laws should be amended. A second legislative document that prohibits the implementation of reactive new laws to be implemented without evidence based research to support its rational purpose. This research should then be used to inform law
enforcement and mental health professionals and the communicative relationship they have with one another. The goal is not to segregate mental health and legal professionals from talking to one another, but to provide them with an ethical guidance as to what they should be discussing, regarding the offender, with common goals in mind. The goal of reducing rates of recidivism is not the problem or a goal that need be revised, but it is how these two systems go about practicing these laws that is in desperate need of change. Like Birgden and the researchers cited in 2009, I support the idea that a therapeutic jurisprudence philosophy should be adhered to in both legal and clinical practice--perhaps this can be the bridge that unites the two systems and informs dialogue between them.

Research should be supported by both mental health and legal systems, the two entities that work to treat and manage the sex offender. These practices should by all means support community rights but also support the rights of the sex offender equitably. The Good Lives Model should be recognized and some research should be done regarding the effectiveness of this model and how much it actually works to reduce recidivism! The GLM is currently the most integrative approach available, yet it is not yet the one practiced widely in the United States. GLM respects the philosophy of therapeutic jurisprudence, while honoring that sex offenders AND the community have rights. Treatment programs for sex offenders should be carefully tailored to meet the offender's needs and collaboratively produced by both therapist and offender. High risk offenders may be an exception to treatment that is mandated for a reasonable length of time.
With the exception of high risk offenders, those labeled sexually violent predators, sex offenders should also have a choice about when to engage treatment and a choice about when to leave--this minimizes if not eliminates the double binds imposed upon him at the intersection of the two systems. The goal should be to eliminate contradictory practices--so the offender can succeed not fail.
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