

Sexual Predators: Mental Illness or Abnormality? A Psychiatrist's Perspective

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I. PSYCHIATRIC INTERPRETATION OF SEXUALLY VIOLENT PREDATORS

The absence of a psychiatrist on the Governor's Task Force on Community Protection, which formulated the Washington Sexually Violent Predators Act,¹ produced a profound misunderstanding regarding the diagnosis and treatment of sex offenders. To correct this situation, the Washington State Psychiatric Association (WSPA) has attempted to educate Washington legislators about deficiencies in the Act presented to them by the Task Force. The WSPA has testified at legislative hearings considering passage of the Sexually Violent Predators statute. Likewise, the WSPA has filed an amicus curiae brief in the *In re Young* case now pending before the Washington Supreme Court, which is considering the constitutionality of the statute.²

In drafting the statute, the Task Force created and defined a new mental disorder, "sexually violent predator," declaring it to be either a form of mental abnormality or a new type of personality disorder.³ The WSPA recognized that the American Psychiatric Association's *Diagnostic and Statistical Manual III-R*⁴ did not define any type of mental disorder called sexually violent predator. Thus, the WSPA assumed that the legislature was attempting to declare a class of criminals (i.e. sex offenders) as mentally ill. Because psychiatrists have tradi-

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1. WASH. REV. CODE ch. 71.09 (Supp. 1990-91).

2. Amicus Curiae Brief of Washington State Psychiatric Ass'n in Support of Petitioners, *In re Young* (Wash. filed Sept. 20, 1991) (No. 57837-1).

3. GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION, DEP'T OF SOCIAL AND HEALTH SERVICES, FINAL REPORT II-21 (1989).

4. AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, DSM-III-R (3d ed. rev. 1987).

tionally defined and treated mental illness, the WSPA was disturbed that a lay body, namely the Washington State Legislature, was being encouraged to legislate psychiatric diagnosis and treatment. Furthermore, if the legislature were successful in calling sex offenders mentally disordered, it might expand the definition to include other criminals, such as car thieves or bank robbers, claiming that they, too, had some mental abnormality or personality disorder that made them likely to steal cars or commit robberies.

The WSPA knew that there was no scientifically valid treatment for these sexually violent predators. Aside from the fact that this classification includes a heterogeneous group of child molesters, rapists, and violent criminals, the treatment of sex offenders had been declining in recent years because of the lack of success in curing their sexually aberrant behavior. Indeed, the Washington State Auditor, in 1985, suggested that sex offender programs in Washington be discontinued because they were expensive and no more effective than incarceration in changing offender behavior.⁵

The WSPA also recognized that a long-term prediction of dangerousness was scientifically impossible. The prediction of short-term dangerousness, however, was another matter. Previously, in civil commitment proceedings, the brief periods of commitment for the mentally ill, averaging seventeen days, and the clinical need for psychiatric hospitalization encouraged psychiatrists to err on the side of a liberal interpretation of short-term dangerousness. As a result, at those civil commitment hearings, psychiatrists generally testified that their patients were currently dangerous in order to satisfy the requirements of the law.

By declaring a particularly abhorrent class of criminals, namely sex offenders, to be mentally disordered, the WSPA believed the legislators were doing a disservice to those individuals who were truly mentally ill. The concern was stigma. Mental patients were already stigmatized by a commitment process that focused primarily on dangerous behavior as the legal justification for commitment, thereby emphasizing behavior that is often embarrassing, socially disruptive, and at times illegal (i.e. assaulting family members). Now the mental illness commitment process could be confused with that of con-

5. LEGISLATIVE BUDGET COMMITTEE REPORT NO. 85-16, SEX OFFENDER PROGRAMS AT WESTERN AND EASTERN STATE HOSPITALS 68, 72 (1985).

victed criminals being civilly committed as sexually violent predators.

The legislature carefully included a disclaimer in the Act's *Findings*, stating that commitment of sexually dangerous predators must not be mistaken for the commitment of mental patients in need of short-term civil commitment.⁶ The WSPA was concerned that the average citizen might not appreciate the subtle difference between those mentally ill persons being committed for hospital treatment and those predatory sex offenders being committed for control, care, and treatment.

A minor, though nagging, concern was economic. The legislature wanted the Department of Social and Health Services to spend three million dollars a year to care for eleven people locked up in the special commitment center, using funds that could be better spent treating the mentally ill at state hospitals and in the community.

II. PRESENTING THE PSYCHIATRIC PERSPECTIVE

In 1990, I testified on behalf of the WSPA before the Washington State Legislature to raise our concerns about the proposed Sexually Violent Predators statute. Testifying before house and senate legislative committees was an enlightening experience, both for me and, I believe, for committee members. My most memorable inquiry was from one member—also a prosecuting attorney in Eastern Washington—who asked, “Well, what shall we call them, and where shall we put them?” I naively responded, “Why not call them criminals and put them in prison?” “We already do that,” responded the legislator. “Then put them on parole for ten years,” I added.

My answer, though apparently unresponsive to the needs of the committee, did produce a pause in the proceedings that allowed me to make our final point: “Perhaps the criminal justice system should be responsible for the control and care of sex offenders, who are, after all, convicted criminals.”

Our efforts to enlighten the legislature regarding the diagnosis and treatment of mental disorders were futile. The Sexually Violent Predators Act passed unanimously.

6. “In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior.” WASH. REV. CODE § 71.09.010 (Supp. 1990-91).

III. ILLNESS VERSUS ABNORMALITY

Later, I began to realize that traditional psychiatric definitions of mental disorders were considered inapplicable and irrelevant to the needs of the Task Force and the legislature. A psychiatrist's definition of "mental disorder" includes the loss of contact with reality, confusion, loss of reason, or hallucinations. Prosecutors and psychologists were quick to point out that the Sexually Violent Predators Act had nothing to do with mental disorders. The disordered mind was not at issue here; what was at issue was *abnormal behavior*. Persons who have committed more than one sexual offense are *assumed* to be depraved, sick, or have some type of mental abnormality or personality disorder that makes them likely to reoffend.

Slowly, the logic of the law dawned on me. If you commit more than one sex offense, the likelihood of doing it again goes up; therefore, you *must* have a mental abnormality or personality disorder that makes you likely to commit these monstrous crimes.

IV. APPLYING THE LAW

The Law is new, and the procedures are still being defined; thus, I am unsure how violent sexual predators are chosen for commitment. The truly violent sex offenders, for example, Ted Bundy or Kevin Coe, are generally executed or given life imprisonment.⁷ It is the prosecutor's task to sort out those sex offenders who were not locked up long enough and are still considered dangerous. Approximately 5000 sex offenders have registered in Washington State.⁸ Who will decide which of these registered offenders need further control, care, and treatment?

Psychiatrists have not been helpful because we have had no clinical basis for testimony on "mental abnormality" or "personality disorders" that are likely to cause people to commit further sexual offenses. However, a coalition of prison officials, prosecuting attorneys, and psychologists has been formed that appears willing to step forward and select sexually violent predators for commitment. The Washington State Psychiatric Association will be watching closely to see how suc-

7. *Bundy v. State*, 471 So. 2d 9 (Fla. 1985), *cert. denied*, 479 U.S. 894 (1986); *State v. Coe*, 109 Wash. 2d 832, 750 P.2d 208 (1988).

8. See Richard Seven, *Sex Offender Guilty of Not Registering With Police—Hundreds Are Failing to Follow 1990 Law*, THE SEATTLE TIMES, Jan. 23, 1992, at A1.

cessful the coalition is in selecting those sex offenders who appear to require commitment for long-term care, control, and treatment—perhaps for life.