

# VOICES FROM THE GULAG

HOSPRISON NEWSLETTER, ISSUE #1, 2/10/00

Donald W. Plyler, Editor

Voices From The Gulag is a newsletter for persons being held prisoner at Atascadero State Hosprison pursuant to the Sexually Violent Predators Act. Each issue of the newsletter will discuss practical issues of relevance to SVP prisoners.

This editor will focus primarily on legal issues regarding commitment and recommitment. Other topics will include conditions of confinement, prisoner evaluations of individual staff members, fraudulent hosprison practices, and other issues that may pop into this editor's mind from time to time.

You are invited to submit articles, letters, and information relevant to the SVP population. (This editor does not wish to receive poems, religious material, or testimonials from teary-eyed crybabies claiming "This is the best thing that has ever happened to me.") Psychiatrist jokes are most welcome, however.

## LIBRARY COPY MACHINE

So have you read the proposal to move the law library copy machine to Graphic Arts? It's an asinine proposal. This institution seems hell-bent on slowing down the SVP legal Beagles. However, from a legal perspective, these people seem to shoot themselves in the foot every time they turn around. The proposal is posted in the law library - as if the boob who wrote it is proud of it. Go figure!

## IMPORTANT LEGAL INFORMATION

Since the advent of mental hosprisons, oppression has been the name of the game. Hosprisoners quickly learn that staff will use and misuse the prisoner's charts to keep the prisoner subser vient, punish a prisoner not liked, and attempt to insure the prisoner remains committed even if unjustified. It also insures the continued employment of hosprison staff! The overwhelming amount of SVP chart entries concern claimed non-sexual misconduct (i.e., violating ward rules, etc.) Since SVP's are committed for sexual misconduct, those chart entries are essentially irrelevant or recommitment purposes.

Send your attorney the following case, and ask your attorney to make a motion in limine to preclude introduction by the State of evidence of non-sexual misconduct:

IN RECOMMITMENT PROCEEDINGS, TRIAL COURT HAS DUTY "TO DISTINGUISH BETWEEN SEXUAL AND NONSEXUAL MISCONDUCT AS A JUSTIFICATION FOR COMMITMENT."

In Millard v. Harris (1968) 406 F.2d 964, Mr. Millard (an alleged exhibitionist) appealed via habeas his continued confinement to a mental hospital as a Sexual Psychopath. A Sexual Psychopath was defined (similarly to an SVP) as "not insane, but by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons." (Id @ 970-971)

While the State psychiatrists admitted that Mr. Millard had not engaged in improper sexual conduct while incarcerated in the hospital, those psychiatrists offered testimony drawn from the mental hospital records concerning "various aggressive acts of a non-sexual nature allegedly committed by the appellant." (Id @ 974-975) To wit, appellant allegedly threw lye at a used car salesman, struck a window screen salesman, and slapped his sister-in-law. While at the mental hospital, appellant allegedly "slapped a considerably smaller patient" and "violated ward rules." (Id @ 975)

The Federal Circuit Court stated, however: "But since the petitioner has been committed as a sexual psychopath, our sole concern is the likelihood that he would if released be dangerous to others because of sexual misconduct." (Id @ 975, original emphasis) The Court further stated: "Because the trial court failed to distinguish between sexual and non-sexual misconduct as a justification for commitment ...we must reverse its decision." (Id @ 977)

The Federal Circuit Court obviously didn't buy the State psychiatrists' psychobabble claim that because Mr. Millard committed nonsexual misconduct he was therefore "likely" to commit sexual misconduct if released.

Nevertheless, your attorney should reinforce the motion in limine by citing to California Evidence Code §350 which provides that only relevant evidence is admissible. Evidence is "relevant" only if it has a "tendency in reason to prove or disprove [a] disputed fact that is of consequence to the determination of the action." (Evid. Code §210) Nowhere does the Sexually Violent Predators Act place in issue the question of whether the defendant is likely or unlikely to commit any other kind of offense, serious or minor, violent or non-violent. Accordingly, evidence regarding the likelihood that the defendant has or will commit any other kind of misconduct other than sexually violent predatory offenses is irrelevant and should be excluded under Evidence Code §350. Even if the likelihood that the defendant would commit nonsexual offenses were found to have some marginal relevance, the probative value of such evidence would be vastly outweighed by its prejudicial effect and thus not admissible under Evid. Code §352.

#### LONG DISTANCE PHONE CRAWL

About 7:30 on the evening of January 24, in Unit 22 of this hosprison, prisoner George Burrell repeatedly asked staff to bring him his wheelchair so he could telephone his mother. Staff refused, thereby forcing Mr. Burrell to crawl the 90 feet from his cell to the telephone in the dayroom. Staff stood in the glass-enclosed office and watched in amusement as Mr. Burrell made his agonizing and humiliating crawl to telephone his mother. This editor cannot give further details of this incident due to multiple pending litigation. One thing is clear, however;

the staff seems to have shot themselves in the foot again!

#### PRISONER EVALUATIONS OF STAFF

Please send this editor your opinions of Mike Groom (Social Worker on Unit 23), and of Dee Dee (Psych Tech working at library). Results of this survey will be published in a later newsletter.

#### PUBLISHED SVP CASES

1. PEOPLE v. SUPERIOR COURT (Cain)(1st Dist. 1996) 49 C.A.4th 1151, 57 Cal.Rptr.2d 296
2. GARCETTI v. SUPERIOR-COURT (2nd Dist. 1996) 49 C.A.4th 1533, 57 Cal.Rptr.2d 420
3. HUBBART v. SUPERIOR COURT (6th Dist. 1996) 50 C.A.4th 1090, 58 Cal.Rptr.2d 268
4. PEOPLE v. HEDGE [and six other cases](4th Dist. 1997) 56 C.A.4th 712, 65 Cal.Rptr.2d 693
5. PEOPLE v. PUTNEY (1st Dist. 1997) 57 C.A.4th 619, 67 Cal.Rptr.2d 283
6. IN RE PARKER (4th Dist. 1998) 60 C.A.4th 1453, 71 Cal.Rptr.2d 167
7. TERHUNE v. SUPERIOR COURT (Whitley)(1st Dist. 1998) 65 C.A.4th 864, 76 Cal.Rptr.2d 841
8. PEOPLE v. HERRERA (2nd Dist. 1998) 66 C.A.4th 1149, 78 Cal.Rptr.2d 531
9. PEOPLE v. HATFIELD (1st Dist. 1998) 68 C.A.4th 594, 80 Cal.Rptr.2d 268
10. PEOPLE v. BUTLER (6th Dist. 1998) 68 C.A.4th 421, 80 Cal.Rptr.2d 357
11. GARCETTI v. SUPERIOR COURT (2nd Dist. 1998) 68 C.A.4th 1105, 80 Cal.Rptr.2d 724
12. PEOPLE v. SUPERIOR COURT (Whitley)(1st Dist. 1999) 68 C.A.4th 1383, 81 Cal.Rptr.2d 189
13. HUBBART v. SUPERIOR COURT (1999) 19 C.4th 1138, 81 Cal.Rptr.2d 492
14. PEOPLE v. MOORE (1st Dist. 1999) 69 C.A.4th 626, 81 Cal.Rptr.2d 658
15. PEOPLE v. SUPERIOR COURT (Donelson)(4th Dist. 1999) C.A.4th , 81 Cal.Rptr.2d 785
16. PEOPLE v. SUPERIOR COURT (Howard)(6th Dist. 1999) 70 C.A.4th 136, 82 Cal.Rptr.2d 481
17. PEOPLE v. WEST (5th Dist. 1999) 70 C.A.4th 248, 82 Cal.Rptr.2d 549
18. PEOPLE v. MERCER (4th -Dist. 1999) 70 C.A.4th 463, 82 Cal.Rptr.2d 723
19. PEOPLE v. SUPERIOR COURT (Johannes)(2nd Dist. 1999) 70 C.A.4th 558, 82 Cal.Rptr.2d 852

20. PEOPLE v. SUPERIOR COURT (Ramirez)(1st Dist. 1999) 70 C.A.4th 1384, 83 Cal.Rptr.2d 402
21. PEOPLE v. WARD (4th Dist. 1999) 71 C.A.4th 368, 83 Cal.Rptr.2d 828
22. PEOPLE v. TORRES (3rd Dist. 1999) 71 C.A.4th 704, 84 Cal.Rptr.2d 96
23. PEOPLE v. HEDGE (4th Dist. 1999) 72 C.A.4th 1466, 86 Cal.Rptr.2d 52
24. PEOPLE v. HURTADO (4th Dist. 1999) 73 C.A.4th 1243, 88 Cal.Rptr.2d 389
25. PEOPLE v. POE (1st Dist. 1999) 74 C.A.4th 826, 88 Cal.Rptr.2d 437
26. PEOPLE v. CHAMBLESS (4th Dist. 1999) 74 C.A.4th 773, 88 Cal.Rptr.2d 444
27. PEOPLE v. HUNT (3rd Dist. 1999) 74 C.A.4th 939, 88 Cal.Rptr.2d 524
28. IN RE KIRK (1st Dist. 1999) 74 C.A.4th 1066, 88 Cal.Rptr.2d 648 29. PEOPLE v. BUFFINGTON (3rd Dist. 1999) 74 C.A.4th 1149, 88 Cal.Rptr.2d 696
30. PEOPLE v. CHEEK (6th Dist. 1999) 75 C.A.4th 282, 89 Cal.Rptr.2d 125
31. PEOPLE v. SUPERIOR COURT (Perez)(2nd Dist. 1999) 75 C.A.4th 394, 89 Cal.Rptr.2d 326
32. PEOPLE v. RAINS (5th Dist. 1999) 75 C.A.4th 1165,89 Cal.Rptr.2d 737
33. PEOPLE v. IBANEZ (4th Dist. 1999) 76 C.A.4th 537, 90 Cal.Rptr.2d 536
34. GARCETTI v. SUPERIOR COURT (Pierre)(2nd Dist. 1999) 76 C.A.4th 685, 90 Cal.Rptr.2d 581
35. PEOPLE v. DACAYANA (2nd Dist. 1999) 76 C.A.4th 1334, 91 Cal.Rptr.2d 121

This list of published SVP cases was compiled by this editor for your own legal research. It is up to date as to what is available in the Atascadero State hosprison law library on 2/10/00. A few of the cases are actually helpful to us.