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**Oct. 2021 – In need of a new strategy**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries by CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 Co. Rd. 400, Tobias NE 68453. Our focus is SO laws; I don’t advise or assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding. DO NOT reply to this email; use separate email when asking me questions.

**LEGAL ROUNDUP**

*State of Kansas v. N.R.,* No. 119,796 (KS Sup Ct, 9/17/21): Mandatory lifetime post-release registration under the Kansas Offender Registration Act, K.S.A. 2020 Supp. 22-4901 et seq., as applied to the juvenile in this case, does not constitute punishment for purposes of applying provisions of the Ex Post Facto Clause or the Eighth Amendment of the US Constitution and section 9 of the Kansas Constitution Bill of Rights, and does not infringe on the constitutional rights guaranteed under sections 1 and 18 of the Kansas Constitution Bill of Rights (Due Process & Right to Remedy).\*

\*I don’t usually cover dissents, but KA Sup Ct Justice Eric Rosen’s dissent is very scathing, “For more than 15 years I have been a proud member of a court that has historically taken an unyielding stand against the degradation of rights guaranteed by our Constitution… Today, I feel none of that pride. Today, the court eschews the United States Constitution and the citizens it stands to protect for reasons I cannot comprehend. Today, I dissent… I do not suggest that N.R.'s offense was inconsequential or should be overlooked. But I do suggest that we must follow our constitutional imperatives. N.R. is—very clearly—being punished by the Legislature's "civil scheme." The majority's refusal to acknowledge this is inexplicable. To put it plainly, in the words of my recently retired colleague, the majority's holding is "wrong-headed and utterly ridiculous. . . . [I]n the real world where citizens reside, registration is unequivocally punishment." State v. Perez-Medina, 310 Kan. 525, 540-41, 448 P.3d 446 (2019) (Johnson, J., dissenting). Consequently, I would hold that N.R.'s lifetime registration requirement violates the Ex Post Facto Clause because it was enacted and imposed after N.R. committed the actions that led to his adjudication.” (The entire dissent is a worthy read but it is too long to share in this article.)

*State of Kansas v. Davidson,* No. 119,759 (KS Sup Ct, 9/17/21): Mandatory lifetime post-release registration under the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., does not constitute punishment for purposes of applying provisions of the Ex Post Facto Clause. Justice Rosen dissented, adding, “I opine in N.R, and emphasize it here, that it is time for this court to join the ranks of the many other courts that have rightfully recognized the punitive nature of registration requirements. Slip op. at 38 (citing *Does #1-5 v. Snyder*, 834 F.3d 696, 705 [6th Cir. 2016]; *People v. Betts,* No. 148981, 2021 WL 3161828, at \*12 [Mich. 2021]; *Starkey v. Oklahoma Dep't of Corr.,* 305 P.3d 1004 [Okla. 2013]; *Doe v. Dep't of Pub. Safety & Corr. Servs.,* 430 Md. 535, 568, 62 A.3d 123 [2013]; *Wallace v. State*, 905 N.E.2d 371, 379-84 [Ind. 2009]).”

**IN NEED OF A NEW STRATEGY**

If you’re a college football fan, you probably don’t have ambivalent feelings about Alabama Crimson Tide head coach Nick Saban. You either love his success or loathe it. Perhaps you even tire of seeing the Tide stay in the championship hunt year in and year out. He’s not invincible. The Tide has lost games under Saban (23 times in fact) although most were in the first year as head coach. There are other great coaches, and some have even beaten Saban and went on to win a football championship. But the Tide has been the gold standard for college football for well over a decade with little signs of slowing down.

One of Saban’s biggest keys to continued success is changing his strategy. His first championship team at Bama relied on powerful running backs and a stifling defense, but the same was changing to flashier styles of play that emphasized speed over power. A speedier receiver can simply outrun a defender, get behind the slow defense and score. So Saban, long known as a defense guru, hired coaches that could develop this same offensive heavy style of play at run-first Alabama. Saban didn’t wait until the Tide had a few mediocre seasons. Saban’s teams never lost more than two games a year in the past decade, save the 2010 team that went 10-3. It has been said if Saban had his way, the game would go back to the way it was, but he has adapted.

The University of Alabama also had to adapt. It already had a legendary coach in Paul “Bear” Bryant, winner of 6 national championships in the 1960s and 1970s, and for the most part, the school was stuck in that era, and slumped to the status of bottomfeeders of the SEC, with three losing seasons, a coaching scandal, and NCAA sanctions all a part of the team. How times have changed!

Like Bama football in the 2000s, this movement to reform (or abolish) post-release sanctions like the registry is seriously in need of a new strategy. It is easy to get comfortable and do something that got us a nominal amount of success even if subsequent results are lacking. In 2007-2008, this movement I like to call an “Anti-Registry Movement” formed into the structure that remains today because people were tired of the status quo. In 2007 there was a single group called “SOHopeful” and they were conservative, content with merely grumbling on online forums and sending an occasional letter to the editor. People who wanted more action decided to hold a public outdoor rally at the Ohio Statehouse to protest Ohio’s decision to be the first state to adopt the federal Adam Walsh Act rules. The conservative brass at SOHopeful condemned the rally, and most SOHopeful members left the group because they saw SOHopeful as a sinking ship. The former members joined SOSEN and RSOL (which later became NARSOL).

Over the next few years this movement has gotten more organized and had a few early successes, but now I feel we have not changed strategies. The current leaders of this cause are just as conservative as the defunct SOHopeful group. The movement decided to stop taking chances on new and innovative strategies, preferring to perform “easy” or “safe” actions like closed conferences and online petitions. The biggest two groups – NARSOL and ACSOL—no longer openly advocate abolishing the registry. ACSOL boasts of helping California adopt the three tiered registry scheme!

This movement does not agree on anything, even an endgame. Are we trying to abolish these laws are merely “reforming” them, and if so, who must be sacrificed to achieve that goal? I asked Janice Bellucci, head of ACSOL, this question back in 2016, and did not get a straight answer. I believe my answer is in the 2020 book “The Feminist and the Sex Offender” by Judith Levine and Erica Meiners, where the authors had a very negative—and very accurate—view of the current movement:

“Unfortunately, these groups’ lobbying efforts sometimes scrape the sharp edges of the worst proposals, making them collateral enough to gain wider support among lawmakers – yet still bad for people with sex-related convictions. For example, California’s ACSOL was a key factor in the 2017 amendment to the state SORA that established three tiers of registrants based on the conviction and risk assessment, affecting the length and conditions of registration. At first glance this legislation looks like a win: it replaces a system that required, essentially, lifetime registration for the approximately 100,000 people on CA’s public registry. Yet the terms are still severe: 10 years registration for tier, 20 for tier 2 and lifetime registration for tier 3. The legislation also plays everyone convicted of child pornography offenses on tier 3 and required a judge and the district attorney to authorize each removal from the registry. Most critically, the campaign left in place the assumptions underlying the registry, namely that some people do deserve to be on the list – just a smaller number, for less time.”

“As the most visible face of the movement, NARSOL is studiously moderate. It wants to ‘reform civil commitment processes’ – not abolish civil commitment. It supports ‘removal of residency and proximity restrictions against registrants after their court imposed sentence is satisfied’ – but not complete repeal of restrictions that have no positive effect on public safety yet render thousands of registrants homeless. In fact, an activist in one local group told Judith that ‘everyone is against the registry and civil commitment,’ but ‘making those positions public would get us laughed off the map.’”

Whatever you want to call this strategy (namby-pamby, i.e., “lacking energy, strength, or courage; feeble or effeminate in behavior or expression,” is my choice of words), it just is not very effective these days. There is a lot of room for improvement. We need a better strategy than the status quo, but the big groups are resistant to change. You must start by looking at what has worked well and not-so-well, and educate yourself.

If I had a dollar for every ICoN subscriber told me to preach low recidivism rates or that they have the case to end the registry, I’d never have to fundraise. Lawsuits require attorneys who won’t work for free, and attorneys tend not to listen to their clients. The political climate in the courts is not the same as they were in the civil rights era; SCOTUS is arguably the most conservative it has ever been.

Legislators, the media, and the courts are all aware of the fact recidivism rates are low. For the most part, they just don’t care. In 2007, North Dakota Sen. Tim Mathern told NPR, "Sometimes what happens is lawmakers don't want to know the facts, or the facts don't make any difference. There really are two things that affect public policy. One is the facts. The other is the feelings and political pressure. There are legislators who will say, 'Don't confuse me with the facts. I've made up my mind.'" Mathern was the rare exception—he changed his mind after doing the research. KS Sup Ct Justice Eric Rosen has been a rare exception in the courts, standing alone in condemning lifetime registration. (This is more impressive since KS justices are elected officials & Rosen has been reelected despite his stance on the registry.) Criminal justice committee panels in a few states like KS & OH have called for sweeping reforms to the registry, but legislators fail to act on them.

Sadly, this “anti-registry” movement has hindered more than helped at times. The strategy of our cause over the years is to throw new (untrained) activists into the pool with little-to-no instruction. For my part, I’ve taken part in efforts to create a handbook for those wanting to become an activist, but ACSOL and NARSOL chose not to help. (Both groups also chose not to take part in the July 2021 anti-civil commitment rally.) Both NARSOL and ACSOL have largely sold people on the lame primary strategy of “send us money for lawsuits and do little else.” The effort to get accurate and helpful information into your hands is done in spite of these two groups, not because of them. We can’t wait for these groups to get with the times.

We are at a crossroads in efforts to abolish the registry. WE can’t be afraid to take chances if we want real change. The more successful movements of the past few decades have taken chances, and they didn’t all wait for the equivalent of a Coach Nick Saban to turn the tide in their favor. The facts are on our side but are largely ignored, so we must look at what works and what has not worked, and plan a strategy around that. Start by educating yourself and your loved ones.

**YOUR LIFE ON THE LIST 2ND EDITION UPDATE**

While I’m on the subject of educating yourself, I have sent “Your Life on The List” in for final editing. I said this once before but I must say it again. I will send out a notice when the 2nd edition is available for sale and/or download on my website. I do NOT know when it will be available and I do NOT know how much it will cost, and will NOT know until it comes out. I expect it will be more than $12.95 cost of the 1st Ed. because the book is about 20% larger than the 1st Ed. So please be patient and wait for the announcement.