

PROSECUTORIAL MISCONDUCT - SEX CRIMES VS NON-CRIMES

N.G. PARKER is a 1964 graduate of the University of Texas with combined Majors in Psychology and Social Work and a graduate of Tulane University in 1966 with a Masters in Social Work. The purpose of this article is to present empirical evidence of PROSECUTORIAL MISCONDUCT in alleged intergenerational transactional crimes and to challenge the PROSECUTOR to assume responsibility, integrity and common sense rather than obfuscation pursuing political gain thru unnecessary or irresponsible incarceration. This article is not intended in any way to exonerate the author or to promote non-normative sexuality. A more expansive exploration of the breadth of human sexuality and the exonerative components of the author's unjust criminal convictions are more extensively expounded in a book currently under construction. Co-authors/contributors are welcome.

Texas, and the rest of the U.S. have pulled an Ostrich manuver as actual innocence findings have made it impossible to ignore that Texas Criminal Justice System has murdered men who were actually innocent. The elephant in the room is the destroying of lives and the murder of families that occurs without a death penalty when prosecutors despotically prosecute with underlying political motivation any accusation of alleged sexual misconduct between and adult and any person under 18 yrs. of age. Any Judge who actually rules against a prosecutor's prejudicial intent in such cases, relying rather on fact and circumstances, is roasted in the media and by peers. The any and all inclusive determinate of guilt and inflexibility of sentence speaks not of justice but absence of balance and aura of intolerance beyond reason. The absurdity of such defective justice has been compared to the brief but social disgrace of the Salem Witch Trials of American History. That time can be compared with our current seemingly abhorrence with intergenerational sex even if transactional.

This author approaches such misapplications of power of office and failure of true justice from two distinct but related empirical sources:

1. Established tho almost long forgotten psychological, sociological and psychiatric explanations of human behavior; and,

2. A limited sample of prosecutions that point to fundamental change needed in legal definitions of child sexual abuse and a calling to accountability of prosecutors who use prejudicial methods and overly zealous current social mores to obtain convictions that are feathers in their cap but more destructive than constructive.

The current violent opposition to any sexual or quasi-sexual interaction between a person 21/18 or over with a person under 18 produces social and judicial abuses. This occurs in broad terms on three distinctive categories.

Laws have long been on the books that address violent rape where guns, knives, physical strength are used to require one person to submit to sexual penetration by another person and need not be subject of or to arbitrary age differentiation. The introduction of "inequity" into the equation is a slippery slope grossly abused to avoid questions of actual consent and are usually arbitrary and capricious. We have so sanctified birth to ill-defined adulthood that what we merely see, touch or think can be proven criminal by a zealous prosecutor with superior verbal skills in the presence of a jury vulnerable to imprecation and implication of wrong doing. Two brief examples. Joey W. is a 21 y/o male, IQ of 73. He had sexual intercourse when Joey was 19 on separate occasions with two female friends, age 13 and 14. Joey received a 15 yr. sentence for one and 20 year sentence for the other, stacked. The sexual interaction occurred when Joey was 19 but his mental age of 12. He states the intercourse was the girls idea. His sentence was a plea bargain. His family could not afford an attorney. 35 years total. The prosecutor saw no reason to reveal to the court that Joey had lost the function of one kidney at age 12, was rapidly losing function of the other and would require dialysis (no kidney transplants in TDCJ) and it would be unlikely he would live 15 years. Joey seldom fully understands completely what goes on around him. He recently was transferred to a community hospital for re-insertion of his dialysis port. After two days of being shackled hand

and foot, Joey panicked and wanted to go back to the unit where dialysis was being provided. The Officer guarding him became confrontive, Joey panicked (like a cornered dog would do) and all 110 lbs of Joey was badly beaten (allegedly for striking out) and thrown into a psych cell. Oh, let's not mention that 110 lb Joey, when in County Jail was knocked out and anally raped by an inmate of another race who was over 100 lbs. larger than him. That's how it is with "rapists." Don't forget the two girls actually seduced Joey - far, far from rape but so determined by current law. Daily at his unit, Joey is psychologically abused by Officers because he's young, unintelligent and stands out with his marginal social skills. He doesn't know how to be a 'good inmate.'

Larry D. is a mid 30s white male with a psychiatric history of schizophrenia, including recurring hallucinations and ever present thought disorders and cognitive deficits. He has a life sentence and more and will receive no psychiatric care except for medications because he has higher social skills which shade his psychiatric base. His crime was that he tried to vaginally penetrate a 2 yr. old girl with his adult penis. There is some question whether he was hallucinating at the time. The effort failed because it was a physical impossibility that Larry finally recognized. He ceased his efforts and did not try again. The 2 yr old was not physically harmed. He likely could have responded to reasonably skilled psychotherapy in conjunction with intense psychiatric management of his schizophrenia and possibly a sheltered living environment. His prosecutor rather chose to describe him to the jury ²³ and a hopeless defective and asked for and obtained a life sentence. Other similar intrusions into the destruction of human lives, whether referred to as perpetrator or victim are described in "The Mysterious Story of Gitano Cervantez..." by Finbar Manghan.

These two examples are types and shadows of the spectrum of the use of "sexual" as an adjective that has an ending in a sentence that will culminate in the death of the "criminal" Joey perhaps in the next few months, Larry at a time ordained by

his creator. There are many, many other less dramatic but no less injustices. The media amplified the case of the 13 y/o consensual oral sex on a 17 yr. old friend, now a forever registered sex offender.

Where have we lost sight of what we once heard from our "fathers" of modern Psychiatry and illuminators of human (sexual) growth and development- Sigmund Freud, Eric Erickson and others? Sexuality and propensity exists from birth to death. An encyclopedia of laws and definitions of limitations will not change that. Every attentive mother will attest to that. To "JUST SAY NO" to sex at any age never has and never will restrain or prohibit sexuality any more than "WAR ON DRUGS" is/was effective. One Legislator in Texas even went so far as to attempt to impose the death penalty on sex crimes. The current laws are already doing that without the famous three drug cocktail. And who would dare to speak out against such over-kill? The zeal for convictions at the expense of reason and fact must be restrained and refocused on objective truth, just, equal and fundamental fairness. There were thorough objective studies by Psychologists in the 1990s that reviewed numerous studies of the effect of intergenerational sexual acts/intimacies. There were no findings that justified today's usually exceedingly long sentences that extinguish the possibility of rehabilitation. No one has adequately explored the impact of Role Discord (father/daughter, priest/acolyte) being the primary dynamic rather than shades of sexuality thus introducing role disparity counseling.

More examples where restraint was abandoned. The book "The Mysterious Story of Gitano Cervantez..." by Finbar Manghan was written with characters personally known to this author. One character known as Ben Higgins in the book is a 70 something black male whose granddaughters became crack addicts and prostitutes. They falsely accused "Higgins" of molesting their daughter 'by touch' - there was no evidence of sexual penetration. The great granddaughter continued with intact hymen. This was done to take possession of "Higgins" house to use as a crack house.

"Higgins" received a life sentence.

Texas Monthly published an article by Skip Hollingsworth about an eccentric from Amarillo who engaged in transactional sex with teenage male prostitutes (old time term was "hustlers" current international reference to "transactional sex.") The eccentric was portrayed as a threat to society and a pervert who needed to be locked up. Hollingsworth didn't dare tell the whole story. His readers would have tarred and feathered him and cancelled their subscription. Every major city in the U.S. and in fact, in the world, has always had identified locations - parks, bus stations, arcades where adolescent males can make contact with older men for "transactional sex." One bar in a large Texas City was called "Q.T." which stood for Quick Trick referring to readily available sex between "Tricks" (the man who paid) and the youth seeking the encounter and the money. Historically, very few, if any of those seeking the money (acting out per Freud) become lifelong homosexuals. No credence was given to the important fact that the youths were removed from such "transactional sex" that would repeatedly expose them to the real risk of contracting HIV or Hepatitis C or other life altering/ending diseases. Freud and Erickson's descriptions of these behaviors as "sexual acting out" and transitory are far more accurate than prosecutors who call them "life-long-damaged" in order to secure longer convictions and larger monetary settlements in Civil Action.

The author has listened to a number of men who have been permanently incarcerated when mother/daughter/wife used the legal system to arrange separation from a mate. How many cases were presented with NO physical evidence of sexual abuse? By perjured testimony? By false accusations? One individual reported he and his girlfriend were cavorting naked during an alcohol/drug party and the girlfriends 13 y/o sister got high, got naked and jumped in bed with them. They were seen and reported. The man was given a 30 yr sentence - the 13 yr. old remained a virgin. (Sex Offenders

do not make parole.) And in prison, the male was attacked and castrated before Officers could intercede. Only in his 30s, Vogel later died/was killed at the Estelle Unit.

The United States judiciary must be isolated from "public opinion." We need only to be reminded of the horrible injustices that occurred when mores about black Americans permitted hangings, vigilante abuses and yes, even the Salem witch hunt. In Germany, Hitler extinguished not only Jews but Gays and others in disfavor. And, America fought judiciously against the rights of Gays, Lesbians, Bi-sexual and Transsexual persons. Many countries consider the U.S.A.'s sexual prudence an abuse of human rights. The author is not defending violent rapists who beat and disfigure women in acts that can only vaguely be described as sexual lust. J.P admitted to peers he could not achieve erection but his violence against women were called acts of rape. He admitted to forcing men to perform oral sex on him and would then beat them. That's so very different from the 75 yr. old Essene Priest given a life sentence for touching the genital area of a 6 yr. old. Both received life sentences. The way you link one to the other is the prosecutorial tendency to describe every charged act as "the worst sexual abuse I've ever seen," or another "this man is broken and can't be fixed." Another case, J.M. was observed by mother sleeping in front of the T.V. with her son and daughter sleeping against him. The 8 y/o son appeared to be rubbing himself against J.M. in what the mother thought was a sexually provocative manner. Vigorous, highly questionable recorded confession while J.M. was in shock, coached confession of the son, ended up prosecuted as a full-blown homosexual affair between a 28 yr. old man and an 8 yr. old boy. Again, no medical or physical verification of sexual activity or penetration. The boy was so scared and intimidated and in shock, he would have confessed to Hiroshima. Likewise, J.M. who had no history of sex crimes - 65 years.

The challenge to today's Criminal Justice System is to completely reconfigure the way sex crimes are defined by law. Child sex allegations are among the few that are not required to meet the Biblical standards of "two or more witness" who are credible

and other fact based standards. In many sex cases, so called "experts" will testify there was no physical evidence found and then proceed to testify that the absence of evidence is not relevant. Sex is not a crime just because it occurs outside age defined boundries. Sex crimes should involve bona-fide sexual activity, not imaginary intent. Confirming physical evidence is not even required and its' absence explained away. The current system of age differentiation is inclusive in any/all interactions that can conceivably be construed as sexual. That is nothing less than a society/state that would like to pretend sexuality and any conceived contact that could remotely be defined as sexual can somehow be prosecuted as sexual abuse. Are not 'consensual' and 'abuse' oxymoronic? A State, Federal or any other legislative body cannot "stamp out" sexual behavior by passing laws. Incarceration should not be imposed unless it is the only means of protecting persons or society and that there is actually pending harm possible. Passing such laws will garner ultra conservative, fundamental christian and remnant puritan votes. That voting bloc believes it follows Biblical mandates when the only reference to age differentiation issues is in the Song of Songs reference to brothers building a fence around their sister until she developes breasts (Chapter 8, verses 8-10) and married off because she becomes child bearing age.

Whether there needs to be any additional governance of pubescent/adolescent experimental homosexual behavior or contacts should be reconsidered. The exception is where some actual form of force or coercion is utilized to cause an individual to unwillingly submit to another. The argument over the inequity of age, old vs young, is as meaningless as male vs female, rich vs poor, white vs black. We only permit that reasoning in intergenerational sexual behaviors. If that same 'youth' enters willingly into a sexual relationship with a person over 18, he/she is considered a 'victim.' This is irregardless of intent - for example money or passion. That 'youth' is culpable as a gang member, or any other association, if he robs or kills. The 13 y/o engaged in oral sex with her 17 y/o boyfriend as an act of passion was hardly "abused/

raped when she consented. Can the 10 yr. old who murders and is sent to juvenile detention (yes, it's happened, especially if "black") be culpable for murder, robbery, assault, but suddenly "abused/raped" if consensually engagin in any sex. It is absurd to assert culpability for other behavior while insisting that "LEGALLY" a human is incapable of culpability because the issue is about sexuality. Courts do not have the flexibility (or courage) to decide that. And a career minded prosecutor would not even publicly address the inconsistency. Votes - you know! In the author's case, street hustlers who were drug users/sellers from families of drug users/sellers were provided the only sanctuary available or that they would accept rather than continue] to expose themelves repeatedly to the rampant HIV and Hep C. epidemic.

This article contains true stories of incidents leading to incarceration that may or may not have been necessary. The societal cost always is far more than just the annualized cost of incarceration. It is an unpleasant task to calculate lost tax revenue, cost of disruption of family, impaired ability to contribute when released from prison and tagged a lifetime "sex offender" rather than a once upon a time offender.

Prosecutors who use the "sex is shameful" card should be abhorred for climbing the success ladder on sex case convictions that created more problems than they solve. Legislators should commit to passing necessary laws and ridding the ones that do not really enhance society. Judges with courage to rule based on evidence rather than misguided societal standards should be rewarded and the critics silenced. Our racial history is sufficient evidence for that. Publishers/authors who convict human beings a second or third time should be required to rewrite what is falsely and selectively disregarded and reported. Skip Hollingsworth's story about the Amarillo eccentric who allegedly had sex with teenage boys (all fully consenting) failed to point out they were "Hustlers" with drug addictions who were not made that way by the eccentric. Ask the old owners of Q.T. bar about the eccentric and the way many like him were customers in the '90s. Is Hollingsworth guilty of a 'second conviction' of Charles Albright who

who has now been referred for Actual Innocence examination because of junk science that convicted him? Charley at 82 is very close to death so his conviction was obviously a death penalty. Prosecutors who use the 'child sex card' are riding in the same car with mainstream media who benefit from their portrayal of criminals who may not factually be criminals. And the hustlers who became intimately involved with the Amarillo eccentric likely made it through their adolescence without contracting a permanent, if not life ending sexually transmitted disease. Wonder how many of those young men used ^{he} ~~to~~ one million civil settlement to progress themselves into oblivion or death from long term drug abuse? Who needs the death chamber at TDCJ and the three drug cocktail. Criminal injustice has been accomplished without it while riding the wind of imaginary sin. Meanwhile, voters promote the prosecutors to District Attorney, Judges or Legislators.

EPILOGUE

TDCJ reports between 140,000 and 160,000 prisoners, depending on the day and method of calculation. Depending on the source, estimates are that 40% +/- 5% of prisoners are "sex offenders." The average sentence length of time varies but is higher than even prisoners convicted of murder. Statistics on exoneration reflect a 40% exoneration rate of sex offenders. It is estimated that as few as 5% of actual sex offenses reflect non-consent or forced sexual assault. The plethora of sex convictions reflect the vote seeking zeal of legislators to garner votes and prosecutors to obtain conviction at any cost. Who's policing the police? The author's 3 life sentences were for conviction of transactional sex with biologically sexually mature youths that was resoundly consensual. Prosecutors influenced the trial by holding a transactional sex charge against the author's attorney and offering trial witnesses early prison release for testifying about manipulated dates and circumstances of the "crime." There is similarity to the extenuating circumstances of J.M., Joey, the 19 y/o "forever sex offender and others this article presents. Are there 53,000 more in TDCJ? *Attested to and signed:*

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