

Court studies therapy vs. punishment

Serial rapist confined after sentence

By Frank J. Murray
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Supreme Court justices wrestled yesterday with how Washington state keeps serial rapist Andre Young locked up 10 years after completing his latest sentence, on grounds the "sexually violent predator" cannot control perverted fantasies.

The narrow issue the state appealed is whether a law providing post-sentence civil commitment to a secure treatment center violates constitutional protection against double jeopardy and ex post facto laws if the facility is punitive rather than therapeutic.

The nationwide scope of the decision, expected by spring, was underscored by the fact that one of two "friend of the court" briefs backing Young was filed by about 300 men confined as sexual predators at California's Atascadero State Hospital.

"Essentially what Mr. Young has is a civil rights claim that the conditions at the center are not what they ought to be," Washington's senior Assistant Attorney General Maureen A. Hart said, suggesting he sue in state court.

She conceded the state fell short

in treating what she called Young's uncontrolled fantasies of raping children, nonconsenting adults and "nonhuman objects." But Miss Hart argued state failures shouldn't set Young or others free from the Special Commitment Center.

Justice Antonin Scalia asked Miss Hart if treatment must be given to confine a compulsive ax murderer or quarantine someone with a communicable disease.

"This statute provides for treatment to protect the community from these individuals," Miss Hart replied, reminding justices that Young, 59, has a rape record dating to 1962 with convictions in six cases.

Young's lawyer, Robert C. Boruchowitz of Seattle, who opposed high court intervention in his victory at the U.S. 9th Circuit Court of Appeals, suggested that since the justices took up the case they should clarify larger issues affecting the spreading practice of confining sex offenders after sentences are served.

At one point, Chief Justice William H. Rehnquist was heard prompting Justice Scalia to re-

mind Mr. Boruchowitz that only the issues of double jeopardy and ex post facto laws were before the court.

"My client has been punished for 10 years under a so-called civil statute ... whose legislative history shows was intended to be punitive," Mr. Boruchowitz responded, saying a state psychologist found a 51 percent risk that Young posed a danger.

"He has been confined for 10 years after a five-year prison term, without having committed another crime and without having a fundamental mental disorder," Mr. Boruchowitz argued.

"For all intents and purposes, this is a prison. It looks like a prison. It feels like a prison," he said of the center, which is located inside McNeil Island state prison. "The actual implementation of treatment has turned out to be a sham."

Those last words were borrowed from Justice Anthony M. Kennedy's cautionary note on the court's 1997 *Kansas vs. Hendricks* opinion approving confinement, forever if need be, of sexually vio-

lent predators who remain dangerous after their prison sentences.

Justice Kennedy said then his vote for the 5-4 ruling would be lost if treatment became a cover for "retribution or general deterrence." The court's opinion in that case was written by Justice Clarence Thomas with the backing of Chief Justice Rehnquist and Justices Scalia and Sandra Day O'Connor in addition to Justice Kennedy.

Yesterday, Justice Kennedy joined Justices Ruth Bader Ginsburg and David H. Souter in grilling lawyers on the implications of not providing treatment and of placing Young in an institution that he claims is worse than prison.

Justice Stephen G. Breyer, who dissented in the *Hendricks* case, yesterday urged examination of a state's motives.

"This person is suffering criminal treatment?" Justice Breyer asked Mr. Boruchowitz.

"That is so," the lawyer replied. "Then he deserves a remedy," Justice Breyer said, lamenting at one point that lower courts are guided by the majority and not by dissents.

AMY STEPHENS

Sex education: Anything goes

A doctor friend of mine called last week. He shared with me that his day consisted of telling four women they had an incurable sexually transmitted disease. His next comment hit me: "I spend hours in surgery treating incurable STDs and they want me to throw a piece of latex at my 17-year-old and say it's safe?"

Ironically, on the same day, with fanfare and subsequent media fawning, the megabucks Kaiser Family Foundation released a report titled "Sex Education in America: A View from Inside the Nation's Classrooms." The report claims kids, parents and educators all want more sex education for teens — more contraceptive education, that is.

Buried among numbers not highlighted in Kaiser's press release or subsequent, uncritical media reports are some bothersome realities. When it comes to sex education, many parents don't know what is being taught in the classroom and many want their child to receive more than a latex condom

and an "anything goes" message.

A full 45 percent of parents in the Kaiser report said their schools still do not tell them what is actually being taught in their child's sex-education class. This stands to reason since 61 percent of schools don't even bother to have a parent night to discuss what they're teaching.

Ninety-four percent of parents want schools to address the pressure to have sex and the emotional consequences of becoming sexually active. Most parents also opt for some modesty, believing boys and girls should be taught sex ed separately. Many said they were not confident their values were being represented in sex-ed classes. They are right to suspect a subversion of their family's values. Consider Kaiser's sneaky survey questions: "Do you know that you can get birth control and emergency contraception without your

parent's permission or knowledge?"

The Kaiser survey also deliberately attempted to skew the contraceptives vs. abstinence debate. The survey described abstinence education as teaching teens sex was "something to fear and avoid," while contraceptive-based education portrayed sex as "normal and healthy." The question might have been answered differently if the choice was "cherished, respected and saved" vs. "take a condom and do as you please."

Unfortunately, the Kaiser survey isn't about what kids, parents or even educators want. It is about Kaiser and their social engineer friends measuring how well they have indoctrinated America's youth with a pro-condom message. What they're not measuring is their role in the tragic consequences: an epidemic of sexually

transmitted diseases, a trail of sexual exploitation and broken hearts, none of which any condom can stop.

If Kaiser really wants to help families, they would do better to repudiate the disastrous sexual revolution and help publicize the growing abstinence movement. In the past 15 years, the abstinence movement has seen more than 2.5 million teens make commitments to save sex for marriage and have seen a significant decrease in teen pregnancies, but if our culture keeps throwing latex at our kids, my doctor friend can count on delivering bad news to an ever-growing number of patients.

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