

Should States be allowed to Confine Sex Offenders to Mental Hospitals After They’ve Served Their Criminal Sentences?

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YES

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MARK NIX: I’m Mark Nix, the moderator of today’s debate. The title of our debate is “Should States Be Allowed to Confine Sex Offenders to Mental Hospitals After They’ve Served Their Criminal Sentences?” General Stovall, will you please begin by introducing yourself.

STOVALL: Good afternoon, I’m Attorney General Carla Stovall from the State of Kansas, and it was my privilege to argue the case before the United States Supreme Court that resulted in the recent decision from June in the *State of Kansas vs. Leroy Hendricks* that upheld the right of states to define the mental condition which exists in persons that pose a great risk of re-offending with sexual crimes in order to protect the public of our most vulnerable population, which is our children. Based upon that decision of the Supreme Court, Kansas now can civilly convict inmates who have been convicted of sex offenses when they are nearing release and they have a mental abnormality, a mental condition described in the statute, which predisposes them to commit sexually violent offenses. There are six states in the country now that have these laws, two enacted them after the Supreme Court decision came down, and I think more and more states will look to protecting their public in a similar way.

MODERATOR: Dr. Thomas Szasz, your introduction, please.

SZASZ: I am Thomas Szasz, Professor of Psychiatry Emeritus at the State University in Syracuse. My position is very briefly that, first of all, the victors' society, those in power, control the vocabulary, and that this whole procedure that we are discussing today is a gigantic hypocrisy based on the proposition that being confined in a building that is called a mental hospital is not imprisonment. If you are confined in a building you cannot leave by a judge, by a court, that is imprisonment, by any other name. Secondly, this is related to another fundamental issue in our society, namely, that certain behaviors which society at some point doesn't like, calls mental illness, which then justifies society to persecute those people. And you only have to think back 20 or 30 years; homosexuality was such a disease in this country. The Immigration and Naturalization Service was forced to keep people out because they were homosexuals. When I was in the Navy, about 30 years ago, one of the big jobs of psychiatrists was to persecute homosexuals. Now homosexuality is a civil right. Masturbation was also a mental illness. So a mental illness is a social fiction. In Russia if you wanted to leave the country, they prevented you from that because you were mentally ill. They put you in the Gulag. So this whole idea that the state is protecting a person's mental health by locking him up is a huge deception.

MODERATOR: General Stovall, will you please introduce your first teammate?

STOVALL: I am proud to introduce Joanne McCracken, who is a deputy district attorney in Santa Clara County, California, and she prosecutes sexual offenders.

MCCRACKEN: Thank you. Good afternoon, there is a small but very dangerous group of sexual assault offenders, and they are different from the whole class of sexual assault offenders, this smaller subgroup are called sexually violent predators. And, Dr. Szasz, when we choose to confine those individuals after they have served their prison sentence we're not only necessarily doing it to protect them, but very importantly, we're doing it to protect society. The reason that it's so important with this smaller subgroup is that we know this small subgroup, the group of sexually violent predators, are very likely to re-offend. I can tell you as a prosecutor that the effect on a sexual assault victim of such victimization is devastating. In many cases, sexual assault victims never recover. And in tragic cases, of course, they don't survive the sexual assault. The reason that we know these individuals will re-offend is because we know these individuals suffer from a mental illness, and I want to define mental illness, at least as I use it, because I know there will be some disagreement. Mental illness, as I use it, is some volitional or emotional infirmity that this person has and it affects their capacity in that they will re-offend, they are likely to re-commit these crimes. And those persons, once they serve their prison sentences, once they pay their debt to society and they've been punished, they need to be treated, because it would be irresponsible to turn them back into society when they themselves tell us that they think they will re-offend. It would be irresponsible to them, it would certainly be irresponsible to their prospective victims, and it's irresponsible as a society. They should be treated.

MODERATOR: Thank you, Dr. Szasz, will you please introduce your first teammate.

SZASZ: Before I do that, let me say, I did not come here to defend sexual predators. But your other points will be ably answered by my good friend, George Alexander, Professor of Law at Santa Clara University.

ALEXANDER: Thank you. Actually, let me be brief, the law that the Supreme Court approved is absurd. It was passed principally because the Supreme Court said you simply can't take people who have served their sentences and then lock them up some more, unless you call it a disease. So Kansas said, "Ok, we call it a disease", they made up a disease, they put people away. Now, they made it up with one definition, Ms. McCracken likes another definition, volitional infirmity, but that is the way it goes with mental health. What you don't like, you call mental illness, and you define it to make it suit you. That is as much as I want to say by way of introducing what I suspect I will say at greater length later. I just want to point out that this decision, the decision that Ms. McCracken uses, probably due to the skillful argument by Attorney General Stovall, comes very close to picking up Szaszian physicians. Two of them. It's sort of, I see it in students, they're almost there, just as Thomas is almost there, I can see he's about to get in an "ah-ha!" The argument is, this isn't a mental disease, the psychiatric profession doesn't recognize it, and Thomas responds, "well, it doesn't matter, there is a lot of disagreement about what is mental illness, but it's okay. Make it up as you go along, he sort of says. There is no mental illness, he almost says. That's the "ah-ha" he's going to have next time. And then he says, because the argument by the dissent is, because this is punishment, he says, "It's not punishment, if we were to say that locking up sexual predators were punishment, then we would have to say all of civil commitment for danger to others is punishment, almost an "ah-ha", there; Almost all civil commitment is punishment, as this is punishment, and Thomas is almost becoming Szaszian. They have to watch out!

MODERATOR: Thank you, General Stovall, your final teammate.

STOVALL: It is my pleasure to introduce Ernie Allen who is the Executive Director of the National Center for Missing and Exploited Children.

ALLEN: Thank you, General Stovall. Gentlemen there is something that is not Hippocratic, there is a fundamental reality about this issue, and that is, that there are sexual predators out there. The majority of their victims are kids, they are highly recidivistic in their behavior. And the reality is that every state needs comprehensive public policy to address this issue. It needs tougher sentencing, it needs meaningful prosecution, it needs community based follow up, but all sex offenders are not alike. And the reality is that there are a certain subset of those offenders who represent the highest level of risk, and that their behavior is not a lapse of judgment, it's a matter of compulsion. Professor Alexander mentioned that the psychiatric community doesn't agree with that. Well, many of your colleagues, Dr. Szasz, in the psychiatric community, in fact do agree, that this is compulsive behavior. Treatment is not a panacea, but important progress is being made by treatment, and we are being irresponsible to the

community and to the people that government represents, with its highest purpose being maintenance of public health and safety, if we don’t take these extra steps to keep a category of offenders who are going to offend at least a little while longer and address their fundamental issues.

MODERATOR: Thank you, Dr. Szasz, your final teammate.

SZASZ: My final teammate is Jeff Schaler, who I am sure also will not defend sexual predators.

SCHALER: Thank you, Tom. Well, I am sure that George Orwell would absolutely marvel at this spectacle of double speak in the *Kansas v Hendricks* decision. When is mental illness not mental illness? When we call it “mental abnormality.” And both are in fact forms of legal fiction. They are assertions allegedly true that are false and the courts will not allow to be disproved and they serve specific purposes. In this case, mental or abnormality as legal fiction serves the purpose of circumventing constitutional protections of due process and double jeopardy. Now, also, certainly we share your concern that society must be protected from sexual predators. But, let’s do it a much more efficient way. One, why not allow these people to receive longer sentences to protect society when we know that treatment—and you all have admitted treatment doesn’t work—give them stronger and longer sentence to protect society. And I also offer a couple of other options: One, life imprisonment. We could execute them. We could give them the option of committing suicide. Seems to me that this would serve the purpose and the interest in protecting society much more effectively than imprisoning them in the name of treating them.

MODERATOR: Thank you, we are now ready to begin the debate. Thomas Szasz, please stand up and prepare to be questioned by the other side.

STOVALL: Dr. Szasz, in your book, *Law, Liberty and Psychiatry*, you talk about the main function of society is to prevent violence, and you still agree with that, I assume?

SZASZ: Yes.

STOVALL: And do you believe then that sexual assaults are violent?

SZASZ: Yes.

STOVALL: And what would you say then that we’re to do to prevent those sexual assaults?

SZASZ: To punish the assaulter with the criminal justice system as we now punish with forty-year sentences people who don’t assault the public, who only take marijuana. We have extremely severe sentences for nonviolent offenders in this society.

STOVALL: But how do we get at stopping the behavior though other than just to punish?

SZASZ: I also point in that book and elsewhere that it is not the purpose of the criminal law to reform people. Because the criminal law is not a moral institution. Many illegal acts are not immoral, like sitting in front of a bus if you are black.

STOVALL: And so what do we do after a someone serves their ten-year sentence in prison and they are released, they molest again?

SZASZ: That is called a free society.

STOVALL: Free to molest children, Dr. Szasz?

SZASZ: Excuse me, free to assault adults and kill them?

MCCRACKEN: Dr. Szasz, I’d like to ask you, you say that there is no such thing as mental illness, and it’s a myth, and I’d like to ask you, there is an article written by a man named Michael Ross, who is on death row for having been convicted of raping and killing at least eight women, and he admits that he has raped and sexually assaulted and stalked many others. What he tells us, what he tells the psychiatric profession and the rest of us, and I’m quoting him, he said “What exactly is a paraphiliac mental disorder? Well, it’s hard to explain”. What he says is “I am plagued by repetitive thoughts, urges, and fantasies of the degradation, rape, and murder of women”. He says that they haunt him when he is awake, they haunt him in his sleep, he dreams about them, he can’t control them. He talks about receiving Deprovera, and once he received it, he said it’s like the bad roommate has moved down the hall, he’s still there but at least he’s not in my room. This is an individual who is speaking to us and telling us, and telling you Dr. Szasz, “mental illness is real, it torments me, and if you let me out into society, I’ll do it again.” How do you respond to him, Dr. Szasz?

SZASZ: Excuse me . . . what you are saying, he’s not saying . . . mental illness . . .

MCCRACKEN: Figuratively, he is saying that.

SZASZ: Not figuratively, he is saying I have certain kinds of sexual urges. Ask any adolescent and he will have the same expressions with except they are called “normal urges.”

MCCRACKEN: Dr. Szasz, he is an adult, he is not an adolescent, and he has sexual urges that he dreams about and thinks about compulsively.

SZASZ: I do not deny that there are behaviors which are socially dangerous and harmful. They are not illnesses.

ALLEN: Can I ask about your “free society” point? Are there no circumstances under which you would detain an offender? Your view is that basically the offender should be released, if he has to victimize two more or three people that’s a . . .

SZASZ: Evidently you know something of my views, but you confuse what I start to clarify, namely, that crime is not disease, disease is pneumonia! A crime is a crime!

MCCRACKEN: Why does Deprovera help this man? Why does chemotherapy help this man if it's not a disease?

SZASZ: Well, why does smoking help people?

MCCRACKEN: No, why does it help him control his mental compulsions?

SZASZ: Because it reduces his hormone level.

MCCRACKEN: Doesn't that suggest that there is some physiological basis that we don't completely understand?

SZASZ: No, we completely understand, man has a physiological basis for sex. Good Morning!

STOVALL: But not for sex with children, though!

MCCRACKEN: And some abnormality in that regard, Dr. Szasz, that Deprovera helps him, doesn't that suggest that there is a disease? If you take the physical . . .

SZASZ: If he wants to take Depo . . . Provera, let him. We are talking about incarcerating people by medical doctors. That is the argument here before us.

MCCRACKEN: You're saying he is not sick, but yet if chemotherapy helps him that suggests that there is some physiological basis for his illness.

SZASZ: Absolutely not, chemotherapy helps all the smokers. Nobody wants to hear that message! People smoke because it makes them feel better, people take heroin because it makes them feel better.

STOVALL: But is your thought that because there is no mental illness, the person that Joanne was describing is mentally healthy?

SZASZ: I am not, I am denying the utility of these categories except for legal purposes.

STOVALL: Well isn't the legal purpose to civilly commit someone?

SZASZ: The legal purpose of mental illness is to lock up innocent people!

STOVALL: It's to protect society and to get treatment.

SZASZ: No, no!

STOVALL: It absolutely is.

SZASZ: Mental hospitals are full of people who have not harmed anyone, who are depressed.

STOVALL: We're talking about violent sexual predators.

MCCRACKEN: We're talking about individuals in this context who have committed...

SZASZ: Well, then he should be locked up in a prison.

STOVALL: He was, but he got out at some point in time.

SZASZ: Well, the sentence should be longer, Dr. Schaler had the answer to that.

STOVALL: Leroy Hendricks, who was the one to challenge the constitution...

SZASZ: What you are arguing about is that a free democratic society like ours should have two kinds of prisons, one called prison, another one called mental hospital, is that your argument?

MCCRACKEN: Dr. Szasz, if the person wants treatment, is that acceptable to you?

SZASZ: Of course.

MCCRACKEN: So you're saying for the sexually violent predators who want treatment, that's okay, we can treat them. Those who don't want it, who may be even more violent and have less insight into their condition than those who want it, we have no right to hospitalize.

SZASZ: I am saying that because I'm saying that anyone in a free society who wants treatment should be entitled to a treatment, they should be able to read a book. Your question is misleading.

ALLEN: I want to probe the reality, though. Here, this offender, in Kansas, who served out his time, is about to be released, your view is that he should go. And if he re-offends, then we can, with the new victims, we can arrest him again and charge him again?

SZASZ: No, my view is that . . . No, my view is that the fact is that you are singling bad laws . . . bad cases with bad law. You are singling out a case to make me look as though I want to defend this man. You are pointing out the inadequacy of the sentencing and you are turning this into some kind of intellectual issue.

MODERATOR: Thanks, Dr. Szasz. Carla Stovall, your turn. First question on other side.

ALEXANDER: General Stovall, you argued in the Supreme Court, that Mr. Hendricks would get treatment. Justice Kennedy in his decision said that the treatment that was offered would be milieu therapy, is that treatment?

STOVALL: It's ward therapy. That's part of the treatment. The basis of the treatment, though, is cognitive behavioral based treatment, the offenders have thirty one and a half hours of that treatment.

ALEXANDER: So, you're not willing to defend milieu therapy as treatment either.

STOVALL: No.

ALEXANDER: Well, that's good because I wanted to tell you that I had them lock this room and you are being given milieu therapy right this minute.

STOVALL: I don't doubt that any one of us could benefit from some form of therapy.

ALEXANDER: Well, there you are.

SCHALER: Could I say something here? You seem to refer to a convicted sex predator as an authority on the existence of mental illness.

STOVALL: No, simply Joanne was pointing out the fact that someone who suffers, who has committed the crimes that he has...

SCHALER: That somehow he must know . . .

STOVALL: Well, he knows what's going on in his head.

SCHALER: Well, Mr. Hendricks in the Supreme Court opinion said that the only way he could be kept from sexually abusing children in the future was to die.

STOVALL: That was the only way to guarantee it, that's correct.

SCHALER: And he said that treatment, was "bullshit".

STOVALL: In his opinion.

SCHALER: Now, why not listen to what he is saying in his case and give him life imprisonment or the death penalty, or even the option, which I imagine many would take, to commit suicide? That seems to serve the best interest of society in terms of protecting us from sexual predators.

STOVALL: Because as Professor Alexander will tell you this, and I’m sure you know, you can’t go back and re-sentence a criminal defendant. Mr. Hendricks had a sentence of ten years, did every day, not one day of discretionary release, but he came to the end of his sentence. And so because the sentence wasn’t as long as perhaps you would say it should be, that the State of Kansas has to say “Gee, I’m sorry, we know he’s going to molest children because he tells us to”, but that’s all we can do as he goes out, and we watch as he goes out and molests more children.

SCHALER: Well it sounds like you concede then that mental hospitalization is in fact an extension of imprisonment and punishment.

STOVALL: Absolutely not, it’s a deterrent, it incapacitates him while he gets treatment, while it protect the public. We don’t have to have a black or white situation. The civil commitment after the incarceration will provide the opportunity for treatment.

SZASZ: Excuse me, it is black and white. If you were civilly committed, you would think it’s black and white. You can’t get out, and you can’t do what you want to do. This is entirely black and white. If you can’t leave a building, how much more black and white do you want?

STOVALL: I don’t argue with you that it’s involuntary civil commitment. But Mr. Hendricks could have gotten treatment while he was in prison for ten years and he chose not to.

SZASZ: Forget Mr. Hendricks. Why are you on record, and I don’t mean this personally, is Kansas’ legal community on record as demanding from the legislature longer sentences?

STOVALL: Absolutely, and we have longer sentences in Kansas, too.

SZASZ: How long?

STOVALL: It depends on what your criminal history is, it can be essentially for life.

SZASZ: Well, how are you going to prevent another Mr. Hendricks, who only goes to jail for eight years next year, and then wants to come out?

STOVALL: Long sentences are an answer, intensive supervision are answers, civil commitment and treatment as a piece of the puzzle, though.

SZASZ: How about other criminals, who have served their sentences, like carjackers, older people, from, you know, typical career criminals, should they be allowed to go out even though sociologically there is a whatever, 60 . . . 80 . . . 90% chance that they will re-offend within 12 months? Should they be left out?

STOVALL: They should be, because the kind of injury that we’re talking about is very different, to have your car stolen is absolutely not like having a child molested, and our legislature has said that we value the lives of our women and children...

SZASZ: And I don’t value the lives of children?

STOVALL: We are going to protect Leroy Hendricks, for forty years has molested, what else do we do?

ALEXANDER: It’s unfair to point out that this bad person harms children, lots of people harm children, how about armed robbers, how about burglars?

STOVALL: Sex offenders are very different and I think that we know that. Certainly those of us that deal with sex offenders on a regular basis understand that. The recidivism is so great and the injury is so unbelievable.

ALEXANDER: What is the recidivism rate for felons in general in your state?

STOVALL: I don’t know what it is for felons in general.

ALEXANDER: Well, go find out because you’ll find out that like sex offenders people who commit crimes tend to continue to commit crimes, this is a perfect solution then, right?

STOVALL: Sex offenders more than anything else, though, and the kind of injury that they inflict is what causes the harm.

ALEXANDER: No.

STOVALL: Absolutely!

ALEXANDER: Violent criminals perform exactly the same function. They harm people, sometimes they kill people, they maim people, sometimes they break into their house. But you have a perfect solution!

STOVALL: But the concern of the Kansas legislature is not to answer every concern but it is to say “We’re concerned about our children being molested by repeat sex offenders”. And that’s all Kansas has chosen to do. It doesn’t mean it couldn’t deal in this way with anything else.

ALEXANDER: I’m commending you. I’m saying you have solved the country’s problem. Our criminals are recidivists, and you have a solution for recidivists, stop calling them criminals, call them nuts! And then, you know, first they’re locked up for being criminals, then they’re locked up for being nuts!

STOVALL: You know, Professor, we have been able to lock up “nuts” who are prison inmates when they come out of prison and are found to be mentally ill. The US Supreme Court for the last thirty years since the *Baxstrom* decision has said that that’s perfectly okay, and nobody has ever objected to that. It’s the fact now that there is objection because we are focusing on sex offenders and people don’t think that we ought to be doing that.

ALEXANDER: Actually, Thomas comes close. By saying, you know, we have to say, all of that’s punishment. I think we do have to say it’s all punishment, because that is what you are doing.

STOVALL: We do not, absolutely do not. Civil commitment is not punishment. The courts in this country have never held that and they’re not holding that obviously now.

ALEXANDER: You mean locking up people...

STOVALL: For treatment, because they are dangerous to themselves or to others.

ALEXANDER: Even though the Supreme Court of your state found there was no treatment.

STOVALL; The Supreme Court, that’s right, they’re wrong. They relied on facts that were not in evidence.

ALEXANDER: There’s some Supreme Courts you like, some you don’t like as much.

STOVALL: Well, I don’t make any bonds about the fact. I disagree with my Kansas Supreme Court decision, and the majority on the US Supreme Court tended to agree with me and find that treatment was indeed available. Thirty one and a half hours of treatment is what Mr. Hendricks and the like get.

MODERATOR: I’m sorry, we’re out of time. George Alexander, it’s your turn, you can stand up. First question. Here’s your shot.

MCCRACKEN: Dr. Alexander, if I can ask you . . . let me ask you...

ALEXANDER: Let me make clear that at least I am not a physician.

MCCRACKEN: Yes, not a physician, but let me ask you about a physical disease. Suppose, for example, we had an individual who was . . . had a very serious physical illness, that that illness could cause death, and that the way this contagious illness would be transmitted was simply too be in the same room with the rest of us and simply breathing our air, and that person went from room to room . . .

ALEXANDER: Lock him up! Lock him up!

MCCRACKEN: . . . and wiped out people uniformly but didn't want to be committed.

ALEXANDER: Lock him up! Lock him up!

MCCRACKEN: And now is that person being punished when we lock him up?

ALEXANDER: Absolutely. Absolutely that person is being punished. Being locked up is being punished.

MCCRACKEN: That person is being punished because they are ill or are they being put in a position when our safety is protected . . .

ALEXANDER: You found that out as a child, didn't you? You get sent to your room, it's punishment.

MCCRACKEN: Dr. Alexander, let me just ask you this, if someone is locked up but has the ability to get out once they receive treatment and are no longer a risk, that's not punishment. Is that punishment? A prisoner doesn't have the right to get out when he feels like he's not a problem.

ALEXANDER: Doesn't change the fact that it's punishment. Of course it's punishment. But there are sometimes when it's appropriate to punish. And this person threatens us by breathing our air; we have no choice.

MCCRACKEN: Are we punishing them because they are a bad person or are we protecting ourselves and trying to treat them because they are sick, do you see the distinction?

ALEXANDER: Oh, I see the distinction, but I agree with the Supreme Court of Kansas, which saw the light on that and said there's not treatment going on here, and, contrary to what Dr. Stovall said, the majority of the US Supreme Court doesn't say there was treatment here, they say it's irrelevant.

MCCRACKEN: Is there any context in which we can involuntarily commit someone, whether for a physical disease or a mental illness, where you would say treatment is going on and it's not punishment? Any context in which you accept that?

ALEXANDER: Absolutely. Not in which . . . the treatment question would be central, the question would be the protection of society. I think society has every right to protect itself in certain ways. One of the ways, and I was of course being facetious when I said that the Kansas solution can now be adopted by everybody, we can provide life terms for all the people we don't like. The first part being criminals, the latter part being mental health commitment. What I'm really saying is that it's a role of criminal law, properly to adjust confinement for public safety, and if you're telling me, I don't think I agree, that these people are so heinous that they need life terms, then the answer is give them life terms, and if all you are saying, General Stovall, is that we couldn't do it in this case

because of the *Ex Post Facto* law, as far as Hendricks is concerned, well, then you're saying, sorry, we put this together because we know the solution and we can't apply it to the next person,, then there's nothing to debate about. I think that's a sloppy way of applying law, and it's unconstitutional, but at least I understand it. If you're saying that it makes sense, then I disagree.

STOVALL: We very much do say that it makes sense, because it applies to that narrow group of people that tend to be the worst of the worst when it comes to sex offenders. But I want to flip just back to civil commitment in general. Is it your position that the US Supreme Court has been wrong in its line of cases that allow states to civilly commit when someone is mentally ill and dangerous?

ALEXANDER: Yes, I think they are wrong, the significant point is not that they are wrong, the significant point is that until Justice Thomas began to flirt with it in this decision, they never realized it was punishment. Now, you know, there's a sense of punishment, and I've got to agree with you here, your parents don't punish you when they send you to your room, they train you. You know, I don't want to quibble about what is punishment and what is simply protecting society from harm. The point is, for the person locked up, it is a deprivation of their civil liberties.

STOVALL: And not balanced by the need to protect the public?

ALEXANDER: Of course that balance occurs, and it occurs best in criminal law, where there are appropriate protectors . . .

STOVALL: So back to the civil commitment idea, though, your disagreement then with being mentally ill and dangerous is not reason to civilly commit individuals, when they are dangerous to others.

ALEXANDER: Being dangerous is a reason to lock them up for being criminals.

STOVALL: But not civil commitment.

ALEXANDER: The reason civil commitment doesn't work is because the whole notion of mental illness, which underlies it, is so hopelessly vague it's as bad as the statute. To commit under this statute you have to get somebody to testify that this person beyond reasonable doubt will do something in the future.

STOVALL: Be likely to do something in the future.

ALEXANDER: Be likely to do something in the future. Now Yogi Berra had it right, prediction is a very dangerous business especially about the future. How can you possibly say anything beyond a reasonable doubt is going to occur in the future?

STOVALL: Ten times in Kansas a judge and jury believed that. The psychiatrist on the stand was making that prediction and believed it.

ALEXANDER: That's because the standard is un-understandable, and they make the best of it.

STOVALL: Well, I don't think it's understandable, I think you discredit the psychiatric profession in thinking that they can't understand what my Kansas legislature wrote. Certainly they can, just like they understand and comprehend the definition of insanity or incompetency to stand a trial. Mental health professionals are always on the stand testifying about . . .

ALEXANDER: A number of people came forward to say they don't understand and that it can't be done.

MODERATOR: Joanne McCracken it's your turn. Please stand up.

SCHALER: Ms. McCracken, by your own argument, well, you say that Mr. Hendricks is mentally ill, is that correct?

MCCRACKEN: Yes.

SCHALER: Ok, if he's mentally ill why did you hold him responsible and punish him in the first place?

MCCRACKEN: Well, there's different definitions of mental illness, and you know that mental illness for purposes of an insanity defense, for example, is not the same thing as mental illness for purposes of needing treatment. And someone who commits some other type of crime might have some other type of illness . . .

SCHALER: If he did not intend to commit the crime, if there was no *mens rea*, did that all of a sudden occur after his sentence?

MCCRACKEN: Dr. Schaler, no one ever said that Mr. Hendricks or any sexual predator didn't intend to commit his crime or didn't have the *mens rea*. If he didn't have the sufficiency [*s*]cienter, if he didn't have the [*s*]cienter, the [*s*]cienter requirement that you're referring to is the intention to commit the crime, if he didn't have that, then of course he wouldn't have been convicted in the first place.

SCHALER: But you said that he had an impairment of volition!

MCCRACKEN: He has a compulsion to commit these offenses.

SCHALER: And isn't that a choice? That's not a choice?

MCCRACKEN: That is not to say, Dr. Schaler, that is not to say he doesn't understand the nature of his act, doesn't understand what he's doing.

SCHALER: This is absolutely amazing to me.

SZASZ: But you yourself go to the gentleman who wants to take Deprovera, which is his way of saying, “I can’t control myself”. That’s the legal definition of uncontrollable impulses.

MCCRACKEN: We know about sexual predators. We know about sexual predators. And sexual predators have these irresistible, these very strong impulses to commit a crime. But legally, as far as whether or not that provides them a defense, it doesn’t provide them a defense, that’s not the definition.

SZASZ: I know all that, but you realize that this argument about irresistible impulse was ridiculed by Victorian attorneys . . . Victorian lawyers and jurors, an irresistible impulse is something an individual does not want to resist! Because he could always kill himself!

MCCRACKEN: The irresistible impulse does not give rise to an insanity defense, as you know, especially in California.

SZASZ: But an irresistible impulse is part of the idea of insanity, somehow you can’t control yourself.

MCCRACKEN: Dr. Szasz, you tell me why, why a man would want to rape an eighty . . . year old woman or an infant child because I’ve had both of those cases and if you tell me that’s something that the person is simply making a choice and that’s just like a sixteen . . . year old boy has hormones, then that’s his hormonal choice, to rape an elderly woman or an infant. Because that person has a mental illness, and what we’re talking about . . . we’re not talking about all sexual offenders, we’re talking about sexually violent predators who tell us and who we know will re-offend, they will re-offend again and again and again.

SZASZ: Can I say something? You keep saying this person has a mental illness. Well, we know, that the most famous politicians, people of the 20th century have killed tens of millions of their own countrymen, and did so months after months after months, and if they were still alive they will still do so. Now you tell me they were all mentally ill?

MCCRACKEN: We’re talking about something very different. The distinction . . .

SZASZ: Worse toto kill six million Jews?

MCCRACKEN: I’m not remotely trying to compare the two situations, Dr.Szasz!

SZASZ: But you are!

MCCRACKEN: And if I could lock up those people, I would, too! But, Dr. Szasz, what we’re talking about here, is we’re talking about individuals, sexual predators are different

from other types of criminals, the drug user steals to support his habit, the burglar steals because he is poor, that kind of thing.

SZASZ: They are no different.

MCCRACKEN: Why does someone rape an infant?

SZASZ: Because he wants to.

MCCRACKEN: No, Dr. Szasz, he does it because he wants to and because there’s something in his mind . . .

SZASZ: Of course there’s something in his mind . . .

MCCRACKEN: . . . that isn’t right. That isn’t right, Dr.Szasz.

SZASZ: And I’m saying it’s right?

MCCRACKEN: We as a society know there’s something wrong with that person, that individual knows there’s something wrong with him, and even though we can’t find the physical lesion, we can’t find the physical . . .

SZASZ: For how many hundreds of years, a little history here, for how many hundreds of years did people say that when there are another religion, there’s something wrong with them and what they need is forceful religious conversion. That was called religious conversion, finding the true faith. Tens of millions of Europeans were killed in the name of their ideas . . . that’s why people came to America.

MCCRACKEN: The problem of diverting the attention to things like . . . very archaic notions like homosexuality, the notions that the psychiatric profession thought twenty years ago, or religion . . .

ALEXANDER: ’70 . . . ’72.

SZASZ: 1970! Up until 1970 . . .

MCCRACKEN: As you point out Dr. Szasz, the point of talking about historical things. I would like to propose to you Dr. Szasz, that we will never have a society . . . Dr. Szasz, that we will never have a society that views the rape of an infant, or the rape of a child as something that’s ok, or that we’ll look back on and say, “Gee, weren’t we all so clueless before”.

SCHALER: That is a complete distortion! Absolute distortion! We’re not saying it’s okay at all!

MODERATOR: Dr. Schaler, will you please stand up? First question on the other side.

ALLEN: Dr. Schaler, I’d like to probe your policy initiative that you laid out for us, as an alternative to this, and I really want to focus on the reality of the situation. You had suggested as a matter of public policy we should expand the use of execution, we should create suicide parlours for these offenders within the public structure, that we should do life sentences for this category . . .

SCHALER: Let me just add . . .

ALLEN: Let me finish. My question is we are dealing with a reality here, we are dealing with offenders who pose a real risk who are about to come out, is that really responsive to what we face as a nation?

SCHALER: As my wife’s grandfather used to say, “an electric chair on every corner.” It certainly protects society from these dangerous persons. And I resent that you distort our position, we most certainly think that these people are dangerous and that society should be protected from them, let’s do it the most effective way. Because what you are ignoring and avoiding is how many other behaviors can be deemed mental abnormality/personality disorder, and then people can be deprived of their liberty in the process. There are some Supreme Court Justices that meet that criteria,

STOVALL: But that is not what we are arguing.

SCHALER: . . . there are plenty of politicians and lawyers that meet that criteria, there are plenty of psychiatrists that meet that criteria.

STOVALL: But not as sexually violent predators which is obviously what this commitment is about.

SCHALER: Well they could still be dangerous!

ALLEN: But can we return to my question about the policy relevance of the suggestions that you presented.

SCHALER: It seems most relevant, doesn’t it? The interest is in protecting society, then let’s do it.

MCCRACKEN: Don’t we have multiple interests?

SCHALER: Let’s give longer sentences, I personally don’t want to support somebody in life in prison, somebody so awful, so I think we should give them the option to commit suicide, that’ll protect it, that’ll protect society . . .

MCCRACKEN: Don’t we have multiple interests? Dr. Schaler, why are you so willing to throw the sexual offender away, when we know . . . ?

SCHALER: Because I think society should be protected from them.

MCCRACKEN: Speaking of misstating opinions, I think you, or physicians, you misstated initially in your opening statement, that we were of the mind that treatment doesn't work or that we admitted treatment doesn't work and I think none of us has that opinion.

SCHALER: You believe that treatment works?

MCCRACKEN: Treatment can be effective, treatment can be effective.

SCHALER: (Laughs).

MCCRACKEN: I'm not willing to throw away the sexual assault offender, why are you?

SCHALER: Because I want to protect society, I want to be protected from him. I think that's a proper role for government, I thought that was your position.

MCCRACKEN: Can't you balance the two interests?

SCHALER: Why should I feel sympathy for the sexual predator? You have more interest in the sexual predator, curing him of his illness, than protecting society?

MCCRACKEN: Isn't society better served if he's treated?

ALLEN: My sense is that we are talking about reality and policy as it relates to a segment of the population that is coming out of America's prisons.

SCHALER: If you want to talk about reality, then I suggest you abandon the legal fiction we refer to as mental abnormality and mental illness, because that is not reality, that is an invention. It is not a reality like tuberculosis, it is an invention in order to circumvent certain constitutional protections, and that is exactly what the Kansas Supreme Court ruled and that's exactly what's occurred here. Let's stick with reality, I prefer it!

ALLEN: The Supreme Court in the United States doesn't agree.

SCHALER: There is no such thing as mental illness and in this case there is a mental abnormality which is created, invented because mental illness was not good enough!

STOVALL: We understand that that's your position, there are obviously those in the psychiatric profession that disagree with you and they very vehemently believe that there is mental illness, and indeed, that the paraphilias, that the sexual predators suffer from are mental illnesses.

SCHALER: They benefit from that point.

STOVALL: I understand that that is your position. You've read studies that would indicate that after treatment sex predators have a reduced rate of recidivism, and you find that . . . ?

SCHALER: I don't believe that that's the case at all because I do not believe there's anything to treat!

STOVALL: I understand that, but you've read those studies, I assume, or you just discounted them without reading them.

SCHALER: I am not seeing this as effective at all. As a psychologist who has conducted tremendous amount of research in the alleged nature of mental illness, I see over and over again that there's no basis for this claim, there is no such thing.

STOVALL: Ok, if somebody came to you, and said, "I have been molesting children all my life, I can't stop it, I don't want to help children anymore, please help me stop molesting children". It's your thought that they suffer from nothing that is to be treated then?

SCHALER: That is true, that is correct.

STOVALL: And so you say, "sorry, can't help you, good . . . bye"?

SCHALER: I cannot treat this person for his imaginary illness, it can't be done.

STOVALL: What is it that causes him to molest children?

SCHALER: He chooses to, he is a moral agent . . .

STOVALL: And so there's nothing to treat?

SCHALER: There's nothing to treat!

STOVALL: Ok, so you say "Good-bye, I'm sorry, go molest children, go down the block and do it".

SCHALER: No, if he molests children, I think that is a criminal offense, and the criminal justice system is the appropriate ground to deal with this.

MODERATOR: Thank you. Ernie Allen, it's your turn, first question.

SZASZ: Several people on your panel seem to agree that Mr. Hendricks was competent, and that's why he was found criminally . . .

ALLEN: How Mr. Hendricks chose to plea or defend himself in this criminal trial . . .

SZASZ: Well, let me use that as the premise that he's competent.

ALLEN: Well, I think the judgment that we make is that Mr. Hendricks is mentally disordered, that Mr. Hendricks represents . . .

SZASZ: You have already said that a million times. Let me ask you a question. He is mentally disordered, that is not synonymous with total incompetence, he knows his name, he knows where he has breakfast and so he's not demented.

ALLEN: Dr. Szasz, you are the psychiatrist and I'm a lawyer, and I cannot make judgments . . .

SZASZ: But this is not a psychiatric matter, this is a common sense matter, this is a matter of honesty. Now let me ask my question.

ALLEN: Fine.

SZASZ: Let's assume he's competent. We were told he would receive thirty one hours of "treatment". Do you believe it's possible to treat someone, even for a physical illness, involuntarily, without the person experiencing that as punishment?

ALLEN: I do not think that involuntary treatment works . . .

SZASZ: No, that's not what I asked . . .

ALLEN: I think that treatment has to maximize its efficacy . . .

SZASZ: I asked how it is experienced by the subject.

ALLEN: And my response to that is, that there is successful treatment . . .

SZASZ: That's not what I asked . . .

ALLEN: Well, you haven't let me answer what you've asked! What I'm trying to say is that clearly, treatment, if it's to be successful, needs to be voluntary. With pedophiles, with this category of offenders, one of the key elements of treatment, is to address the denial, is to get the offender to recognize the state of his problem, and then treatment becomes more efficacious.

SZASZ: Well, may I make my statement, which I was sort of preparing, because virtually every public presentation I say this now. Hypocrisy is the grease that lubricates the engine of society. This is pure hypocrisy, involuntary treatment is an oxymoron, it's not treatment from the point of view of the subject, just like sending a child to his room, is from his point of view punishment, whether it's training, or sadism, or anything else.

ALLEN: Dr. Szasz, I think the hypocrisy is in pretending that because this individual has completed his term, and releasing him to the community, that society and government has no obligation to recognize the state of this particular offender, this particular person and the risk he represents, and not do what it can to prevent these acts . . .

SZASZ: But I don’t understand, isn’t our legal system based on the proposition that all you have to do is serve your time? Suppose this was the lady that sat in front of the bus. Does she then have to be examined about her ideas on integration?

ALLEN: General Stovall has just indicated that we have decades long precedent in this country for civil commitment . . .

SZASZ: But you have centuries of persecution, we have slavery! . . .

ALEXANDER: Why wasn’t he civilly committed? There is a civil commitment statute in Kansas, for dangerous people, why wasn’t he civilly committed?

ALLEN: Well, I think Kansas created a law that addresses this category of offenders.

ALEXANDER: Made it easier, but why wasn’t he civilly committed?

ALLEN: Well, I think one is we are just beginning to understand the nature of these offenders and the risk that they represent. This is brand . . . new law.

ALEXANDER: Exactly, this is the abnormality de jour, what I want to know is where does it stop? Can you draw a line between this and tomorrow’s findings which will say that people who are burglars have this insatiable need to break into people’s homes and therefore, and they are dangerous, and therefore we should lock them up and treat them.

ALLEN: Our view, the courts view, the compelling, the overwhelming position of the mental health community is that sex offenders are different. We supported, and there are now fifty states with sex offender registration laws, we would not suggest that and we don’t think it would pass constitutional muster for auto thieves, why? Because sex offenders as a category represent the most significant threat to the community, the majority of their victims are children, they create enormous psychological impact, and, contrary to what everybody said, that all evidence suggests they are at the highest risk of recidivism.

SCHALER: And why, Mr. Allen, don’t you want to impose heavier legal sanctions?

MODERATOR: We move on to the one-on-one debate now. General Stovall, you begin questioning first.

STOVALL: With the notion that there is no mental abnormality . . .

SZASZ: I didn't say that. Abnormality is a conventional thing. If you don't speak English you are abnormal in this country, of course there is mental abnormality. I speak abnormally, English.

STOVALL: And mental abnormality is treatable then?

SZASZ: Only disease, it is a question of what you mean by treatment, for treatment two conditions have to be obtained: one, that there has to be a real disease, not a behavior, and secondly, that the person has to be willing to be treated.

STOVALL: Ok, and so for mental abnormality, then, you're saying that that's not a condition which can be treated.

SZASZ: You can take voice lessons, if you want to change your impulses, you want to smoke, you can take smoking lessons, you can get hypnotized, you can do all kinds of things.

STOVALL: And so with the idea then of not wanting civil commitment, the involuntary civil commitment, would you then be surprised to know that the ten men who have been civilly commitment in Kansas as sexually violent predators . . .

SZASZ: Love it?

STOVALL: . . . said that they want to continue treatment, because they believe that it is changing them and their behaviors, and that . . .

SZASZ: I'm not surprised at all, I am not surprised at all . . .

STOVALL: Why not? Why can they be treated for something . . .

SZASZ: When the Russians use it it's called brainwashing.

STOVALL: So they're just being brainwashed.

SZASZ: Correct. This is a matter of principle.

STOVALL: I agree.

SZASZ: I do not believe that the medical profession should be debased to be serving as jailers. I believe that a doctor has a patient, he should not have any power over his movements.

STOVALL: I understand that that's your position, you would agree that the majority of the psychiatric profession does not agree with that, though.

SZASZ: Well, I am quite aware of that, after forty-five years of . . .

STOVALL: I’m sure you are, and that’s what is important, and what the US Supreme Court has said . . .

SZASZ: No!

STOVALL . . . when the psychiatric profession doesn’t agree on things, that’s when State Legislatures are free to step in and to answer that void . . .

SZASZ: But General Stovall, if you personalize this, look, my position has been, and I wrote a book with that title, that what we’ve got is psychiatric slavery, and you keep citing the Supreme Court as though it was God! The Supreme Court . . .

STOVALL: For a lawyer, it is God, it is the law of this land.

SZASZ: It is not God. The Supreme Court upheld slavery for longer than they upheld civil commitment!

STOVALL: That makes it the law of the land.

SZASZ: I know that, and I obey it, but I don’t respect it! And I can criticize it, so let’s keep our issues clear.

STOVALL: I understand that, ok. What would your suggestion have been for Leroy Hendricks, someone with a forty-year history of molesting children, little children, teenagers, boys, girls, family members, strangers, sometimes the abuse was just one incident, at other times it lasted for years. When he finished his sentence, and he did finish it, whether or not you like it, he finished his sentence . . .

MODERATOR: Dr. Szasz, you can now cross examine the Attorney General.

SZASZ: Do you believe in *ex post facto* laws as Professor Alexander asked the question? Because the State of Kansas has a responsibility for having passed the kind of laws it has, and now it says, “We’re going to make up for it, by committing him”. Why didn’t they in the first place? Sexual offenses are not a new invention I the world, it’s not AIDS, sexual offenses have been around since time immemorial.

STOVALL: Sexually violent predator laws have only been around since 1992, though, State of Washington was the first state to come up with this admittedly, it’s a very novel theory to civilly commit sexual offenders when they are finished with their sentence, but the states have the right to do that now.

SZASZ: The states have the right to do anything. The states have the right to put blacks in the back of the bus, or do anything they want.

STOVALL: No! Because we don't do that, do we? And that's not, you can't make the comparison between sex offenders and African-Americans.

SZASZ: When I came to this country blacks couldn't go to the same fountain in Kentucky.

STOVALL: This is 1997, though, we are not doing that now.

SZASZ: But what I am saying is that what we are doing is even worse!

STOVALL: I understand that that's what you believe.

SZASZ: Well, this is our argument.

STOVALL: Yeah.

SZASZ: You are willing to use the medical profession to deprive people of liberty, now under the flimsy pretext of mental illness, now fine, at least you are standing up to this position.

STOVALL: Well, it's been a precedent in this country, though, for decades and decades to be able to civilly commit based upon mental illness and danger, I have not created this new concept.

SZASZ: I am not criticizing you for creating it.

STOVALL: Well, I would like to take credit for it, but I can't, it's existed for decades.

SZASZ: But this is particular . . . this, to us is a particular egregious example of how psychiatry is used exactly as I had said forty-five years ago, it's a system of social control disguised as treatment and benevolence. It's exactly a medical duplication of forceable religious conversion. This is what people did to each other when they could up until the eighteenth century . . .

MODERATOR: Thank you very much, Joanne McCracken, please begin . . .

MCCRACKEN: Dr. Alexander, do you see any distinction between a person who commits a crime for a motive that we can understand, someone who steals to feed his family, for example, someone who uses drugs because he has a physical addiction to the drugs, or steals to supports that addiction or that habit.

ALEXANDER: But I don't believe in addiction.

MCCRACKEN: Do you see a distinction between someone who commits that type of offense and someone who as I pointed out earlier, rapes women, breaks into the homes of

strangers, and, in one case that we have now in Santa Clara county, forces these women to submit themselves to receiving enemas, being sodomized, and then forces them to orally copulate that individual.

ALEXANDER: On my scale of morality, one is much worse than the other.

MCCRACKEN: Not morality, do you see a difference in the motive? In what causes that person to do that?

ALEXANDER: It's morally much worse.

MCCRACKEN: Do you see, Dr. Alexander, that there is a difference that we recognize now, between criminals who commit certain types of offenses such as the ones I've described, and criminals who commit sexual assault offenses?

ALEXANDER: Yes, one is more heinous than the other, and should be more severely punished.

MCCRACKEN: Separate from that, are you aware, I assume you're aware with the recent enactment of Evidence Code Section 1108 in California, which is the evidence code that permits in one type of crime, sexual assault offenses, violent sexual assault offenses, the admission of prior acts of sexual assaults to prove disposition, unheard of in any area of the law, certainly not ever admitted before, but that has been recently upheld by the courts. The legislative history concerning Section 1108, says that the reason this kind of evidence is appropriate in these cases is that sexual assault offenders are different from others. Do you agree with that?

ALEXANDER: I agree with it to the same extent that I would agree on the basis of the change of laws in Germany in the '30s that there's really something wrong with Jews. Do you know many laws changed that said, well, Jews can't do this, Jews can't do that because Jews are different?

MCCRACKEN: Let's talk about today, 1997, and let's talk about people who rape infants or eighty-year-old women, let's talk about the reality.

ALEXANDER: The problem with talking about today, Ms. McCracken, is that it's easier to see absurdities when you can look back at them, homosexuality is an example . . .

MODERATOR: George, you can do your questioning now.

ALEXANDER: I noticed for the first time, I should have noticed before, that the issue that the three of you propose is supposed to be medical and you're all lawyers, I am too, of course, maybe that's where the problem lies. Tell me, would you agree there are other crimes as heinous as being a what you think of as a sexual predator?

MCCRACKEN: Certainly, of course there are. For example, you brought up murderer, perhaps your colleague brought up the example of murderer.

ALEXANDER: Except perhaps we do tend to dispose people for life for committing some degree of murder. How about somebody who breaks . . . well . . . it is some degree because for lower degrees we do tend to let people out . . . let's deal with that, a murderer who cops to second degree, and therefore, is likely to have a release date. Let's suppose that we find out while he's in prison that he really rather enjoyed the killing, it was, you know, he didn't plan it, he didn't plan it, but he enjoyed it, so then we pop him when he gets ready to get out, because we certainly don't another human being to be murdered, we should pop him into a mental institution.

MCCRACKEN: Well, that's a little different, we have our MDO statutes, if that person is ready to be released and that person has a mental illness that he is a substantial danger to society then he can be committed and he could have been committed with laws that have been on the books for decades.

ALEXANDER: Could you tell me why this person wasn't?

MCCRACKEN: Well, the civil commitment can happen after you serve your sentence, there's nothing wrong with that.

ALEXANDER: No, could you tell me why Hendricks wasn't civilly committed, if there was a civil commitment statute.

MCCRACKEN: Because as I understand it, of course I am not a lawyer in Kansas, but in California, but as I understand it, there was some, the way that the Kansas statute was drafted didn't cover, and perhaps General Stovall can cover this later, but the Kansas statute didn't cover him, his behavior wouldn't have been encompassed, just as in California, under the condition of the law . . .

ALEXANDER: So in the sloppy drafting of two laws, we have a remedy.

MCCRACKEN: Legislatures write new laws and amend statutes all the time because we have sloppy drafting.

MODERATOR: We need to move out of double jeopardy and back to over here, Ernie Allen, Dr. Schaler, Ernie Allen you can ask the first question.

ALLEN: Dr. Schaler, you don't believe there's any such thing as mental illness.

SCHALER: No.

ALLEN: What is pedophilia? Is that a condition?

SCHALER: That is a label that’s applied to people that sexually abuse and assault children.

ALLEN: Well, isn’t it true that pedophiles aren’t necessarily practitioners, they’re people who are sexually oriented, sexually attracted to children, they don’t necessarily do it, is that not a condition?

SCHALER: It’s not a condition, no, it’s a behavior. It’s a behavior that people engage in because they find meaning in it.

ALLEN: And this is not a product of who they are, this is not who they are, they choose to do this.

SCHALER: Absolutely they choose to do this, and let me mention this, since you are so stuck on this idea of whether it’s a disease or not, why isn’t pedophilia listed in a Standard Textbook of Pathology?

ALLEN: Well, it is listed

SCHALER: No, it’s not, it doesn’t meet the nosological criteria for disease classification.

ALLEN: Well, lots of your colleagues believe it is, and I think one of the challenges here is, we’ve heard all of the equating, we’ve talked about the enslaving of these offenders, and equating them with the Jews during WWII, and lots of others that which we share the anguish and pain about, why are we not more concerned about these kinds of offenders?

SCHALER: I think we should be more concerned, and I’m concerned that you’re not concerned enough! That you don’t seek to protect society from these individuals, that you somehow believe that these individuals have a disease and you want to give them treatment. I have no sympathy for these people, why do you have sympathy for them? Why are you more concerned about them than the people that they victimize?

ALLEN: But you would argue that government’s response to an individual like Mr. Hendricks, should be, at this point in time Mr. Hendricks has been sentenced, he has served his term, and others like him, should we let him go?

MODERATOR: Jeffrey Schaler, you can begin questioning now.

SCHALER: Thank you. No, I don’t think that they should let him go if there is a genuine belief and good reason to believe that he will commit crimes again, then the problem is in the sentencing! Then we should be changing the sentencing.

ALLEN: We’re beyond the sentencing, we have a fait a complete.

SCHALER: Then that is an error that the criminal justice system must take responsibility for, that is an error that the criminal justice system in government must take responsibility for. But don't blame psychiatrists and psychologists such as myself that believe there is no such thing as mental illness. You need to take responsibility for the mistakes that you've made. Now the problem, a second mistake is not to change the sentencing laws, and that's where I think you should be focusing your work, to protect society as you are allegedly are so concerned!

ALLEN: I agree. I agree.

SCHALER: You must change the sentences and protect society but that will not be done, and there are many dangers in committing people in the name of mental illness. There are many dangers because, what is a mental abnormality? Who doesn't meet the criteria of mentally abnormal? Who doesn't? And personality disorder!?

ALLEN: As I understand your question, it is basically that we should do more other than this, there should be other sanctions, and my response to that is agreement! We are working on sentencing, we are changing laws, Kansas has done that, this is not . . .

SCHALER: But what does medicine have to do with this? What does medicine have to do with this!!

ALLEN: You've made medicine the issue. This is . . .

SCHALER: Wait! You're the one who supports commitment into a mental hospital! You're the one who says that this behavior stems from an alleged "disease"!

ALLEN: This issue addresses a very narrow slice of offenders. This . . . the whole issue of civil commitment is at the end of a comprehensive system.

SCHALER: If this is such a narrow slice then you should have no trouble changing the law, change the law to impose greater sanctions. It shouldn't be such a big deal if it's such a small minority of the population.

ALLEN: Well, it is a segment of the population that is there, what you've yet to respond to, you've talked about the criminal justice system accepting the responsibility, what you've yet to respond to, is to tell me what you would do with Mr. Hendricks, and the people like him, your position is, because this is an inappropriate sanction . . .

MODERATOR: You have ten seconds to respond here.

SCHALER: The criminal justice system has made an error in not protecting society from people such as Mr. Hendricks and they must take responsibility for it.

MODERATOR: Thank you gentlemen, Dr. Thomas Szasz, please give your concluding statement.

SZASZ: To pick up on the last comment, Mr. Hendricks . . . his name was not in the title of this debate, thus, this debate is about whether or not this policy is a good one. And you, the three of you, are extremely cavalier about the fact that mental hospitalization is a way to protect society. All you have to do is open a paper virtually every day, *The New York Times*, or any city paper and you read about “escaped former mental patients killing other people”. Virtually every other day this is in the paper. Mental hospitals are not a system of protection. And I think your argument that somehow we are softer on sex criminals than you are, it’s totally unfair and you should try to get that out of your debate.

MODERATOR: Thank you very much. Carla Stovall, your panel.

STOVALL: When he talks about panel members being cavalier, that’s my concern because it certainly has seemed throughout the debate that our esteemed opponents are not taking very seriously the kind of injury that’s caused by sex predators, to suggest that we should have suicide parlors and we should encourage inmates to commit suicide is absolutely out of the question. Dr. Szasz in a book has said that to have involuntary civil commitment would be just as bad as constitutionally having life in hospitalization for people that are unemployed. There’s a tremendous difference between the kind of harm that’s presented there, and that’s my concern. We didn’t choose our panel, we would have loved to have a psychiatrist on the panel that would have been able to respond from a medical standpoint better than perhaps three lawyers could. In the case before the Supreme Court involving Mr. Hendricks, which is why we have this law, why we’re here now, is because of that decision . . . we had the treatment association who deals with sex offenders as well as Menninger’s, so there are many who are in the profession who do support this decision.

SCHALER: The American Psychiatric Association opposed you!

MODERATOR: That is this week’s television debate, but next week a new debate, but this debate continues not only after this show but on the website. We’re at www.debatesdebates.com, that’s www.debatesdebates.com. On the website you will be able to download free transcripts and live audio of all our programs. You will also be able to leave your comments his show as well as future debates. I look forward to reading your comments. Thank you for listening.