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Friend of the People It Serves

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Preventive detention wrong-headed

By KENNETH ELLMAN

WE ARE ANGRY. One of our children, Megan Kanka, was raped and murdered by a previously convicted child sex offender.

Clamor for a remedy is voiced whenever such heinous crimes occur. And they always continue to occur. However, this time the clamor is leading us in the wrong direction.

There is a call for something to be done even if it means we should not release citizens after they have served their punishment. It is argued we should keep abusers imprisoned without any accusation of an additional crime. The man is bad. Why should we wait for him to commit another crime? Let's punish him before the crime occurs.

The screech of the community is not just about crime, it is about the unspeakable crimes. The wellspring of feeling overwhelms us and we say: "This is not supposed to happen." "We will not allow it to happen."

The government must be compelled to act. This outcry forces our elected officials to tell the people that they are doing something or will do something, anything.

What are the unspeakable crimes and what must we do about them? Is it really that much easier to live with the pain and torment, because your adult wife was murdered after a rape/torture instead of your 8-year-old child?

What about your 66-year-old mother who is attacked alone in her home, raped, tortured, and murdered? What about your 20-year-old daughter, who is raped, tortured, and murdered?

I call these all unspeakable crimes. Unspeakable because you do not wish to speak about the horror (like a simple burglary or armed robbery)

but instead obtain vengeance for the victim's family and for the community. You don't wish to speak, you wish to do. You can feel it in your blood and sinew.

Perhaps it is because in your mind you ask: "Who heard her last screams?" And the answer is not acceptable. Perhaps these are crimes against the mind as much as crimes against the body.

But how are these crimes the fault of the law? They are not. Should any of the men who committed the aforementioned crimes be imprisoned before the crime occurs?

Think carefully. Do you want preventive detention? Do you want a psychiatrist to be a jury? Do you want a citizen imprisoned because of a guess that he might become a criminal again? Do you want the innocent imprisoned with the guilty?

Our sex crimes statutes, like all criminal laws, have a range of penalty that must be imposed by the court upon conviction. The court is directed by your elected Legislature to impose a sentence within the penalties of the statute.

You the people have the power to control this, for the penalty can be as serious or as easy as you demand the law to be. You give a judge the power to impose a range of penalty. You can also take away from a judge such discretion and demand a specific sentence after conviction, no matter how severe. The only limitation upon the right of the people to impose punishment for crime is that of the Constitution that such punishment not be cruel and unusual.

The utter nonsense that a crime was permitted to occur because the law allowed a criminal to "max out" his sentence is an insult to every one of us and the belief in penal punishment.

We through our legislators put a value on crime. The term of imprisonment we demand is what the crime is worth to us. Our laws state aggravated sexual assault is a crime of the first degree, demanding a sentence of as little as 10 years and as much as 20 years at the discretion of the judge and parole authority.

We must satisfy our need for justice, vengeance, protection, and deterrence. Those who commit unspeakable crimes should not be imprisoned for an unspeakable period of time. If the penalty is not presently sufficient, increase it. But do it as our law allows. Do not delegate authority for imprisonment outside of our penal laws. When the sentence is served, the punishment must end. Law is much better at punishing a crime after it has occurred than guessing how to stop it.

Our law does not allow a criminal to be retained in custody because he may commit a crime in the future or because he is a bad man. May and bad are not enough. We should not give continued support to this and other methods of preventive imprisonment, even if under the guise of therapy. It is leading us down the wrong path.

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