F.Supp.2d 942, 973–974, and nn. 17–18 (E.D.Tex.2000). The belief that meritless objections, undeterred the first time, will be deterred the second, surely suggests the triumph of hope over experience.[5] And as for the suggestion that the court of appeals can pass on these questions just as easily: Since when has it become a principle of our judicial administration that what *can* be left to the appellate level *should* be left to the appellate level? Quite the opposite is true. District judges, who issue their decrees in splendid isolation, can be multiplied *ad infinitum.* Courts of appeals cannot be staffed with too many judges without destroying their ability to maintain, through en banc rehearings, a predictable law of the circuit. In any event, the district court, being intimately familiar with the facts, *is* in a better position to rule initially upon such questions as whether the objections to the settlement were procedurally deficient, late filed, or simply inapposite to the case. If it denies interventions on such grounds, and if the denials are not appealed, the court of appeals will be spared the trouble of considering those objections altogether. And even when the denials are appealed, the court of appeals will have the benefit of the district court's opinion on these often fact-bound questions. (Typically, the only occasion the district court would have had to pass on these questions is in the course of considering the motion to intervene; when considering whether to approve the class settlement, district courts typically do not treat objections individually even on substance, let alone form. *E.g., id.,* at 973–974.) Finally, it is worth observing that the Court's assertions regarding the merits of allowing objectors to appeal a class settlement without intervening apply with equal force to the objectors who sought to appeal the class judgment in *Marino.* Yet there we concluded (no doubt for the reasons discussed above) that "the better practice" is to require objectors "to seek intervention for purposes of appeal." 484 U.S., at 304, 108 S.Ct. 586.

For these reasons, I would affirm the Court of Appeals.

5. The Court assures us that these appeals will be "few" because, like the objections on which they are based, they are "irrational." *Ante,* at 2012. To say that the substance of an objection (and of the corresponding appeal) is irrational is not to say that it is irrational to make the objection and file the appeal. See *Shaw,* 91 F.Supp.2d, at 973–974, and n. 18 (noting "'canned' objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protests"). The Court cites nothing to support its sunny surmise that the appeals will be few.

536 U.S. 24, 153 L.Ed.2d 47

David R. McKUNE, Warden, et al., Petitioners,

v.

Robert G. LILE.

No. 00–1187.

Argued Nov. 28, 2001.

Decided June 10, 2002.

State inmate brought § 1983 claim against prison officials, alleging that sexual abuse treatment program and corresponding regulations and policies violated his Fifth Amendment right against self-incrimination. The United States District Court for the District of Kansas, Dale E. Saffels, J., 24 F.Supp.2d 1152, granted summary judgment for inmate. The United States Court of Appeals for the Tenth Circuit, McKay, Circuit Judge, 224 F.3d 1175, affirmed, and certiorari was granted. The Supreme Court, Justice Kennedy, held that adverse consequences faced by state prisoner for refusing to make admissions required for participation in sexual abuse treatment program were not so se-

vere as to amount to compelled self-incrimination.

Reversed and remanded.

Justice O'Connor concurred in judgment and filed opinion.

Justice Stevens dissented and filed opinion in which Justices Souter, Ginsburg and Breyer joined.

1. Prisons ⚿17(2)

State's sexual abuse treatment program for prisoners served legitimate penological objective of rehabilitation; program lasted 18 months, involved substantial daily counseling, and helped inmates address sexual addiction, understand thoughts, feelings, and behavior dynamics that preceded their offenses, and develop relapse prevention skills.

2. Criminal Law ⚿42
Prisons ⚿17(2)

State's refusal to offer immunity from prosecution, based on admissions of responsibility required of state prisoners under sexual abuse treatment program, served legitimate state interests; potential for additional punishment aided rehabilitation by reinforcing gravity of participants' offenses, and state had valid interest in keeping open option to prosecute particularly dangerous sex offenders.

3. Criminal Law ⚿393(1)

Privilege against self-incrimination does not terminate at jailhouse door, but fact of valid conviction and ensuing restrictions on liberty are essential to Fifth Amendment analysis; broad range of choices that might infringe constitutional rights in free society fall within expected conditions of confinement of those who have suffered lawful conviction. U.S.C.A. Const.Amend. 5.

4. Criminal Law ⚿393(1)
Prisons ⚿17(2)

Prison clinical rehabilitation program, which is acknowledged to bear rational relation to legitimate penological objective, does not violate privilege against compelled self-incrimination if adverse consequences inmate faces for not participating are related to program objectives and do not constitute atypical and significant hardships in relation to ordinary incidents of prison life. (Per Justice Kennedy, with the Chief Justice and two Justices concurring, and one Justice concurring in judgment). U.S.C.A. Const.Amend. 5.

5. Criminal Law ⚿393(1)
Prisons ⚿17(2)

Adverse consequences faced by state prisoner for refusing to make admissions required for participation in sexual abuse treatment program were not so severe as to amount to compelled self-incrimination; refusal did not extend prisoner's prison term or affect his eligibility for good time credits or parole, but rather left him subject to reduction of privileges and transfer out of unit where program was being offered. U.S.C.A. Const.Amends. 5, 14.

6. Prisons ⚿13.3

Decision where to house inmates is at core of prison administrators' expertise.

7. Prisons ⚿13(1)

Essential tool of prison administration is authority to offer inmates various incentives to behave, and Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit.

8. Prisons ⚿13(4)

Determining what constitutes unconstitutional compulsion in prison context involves question of judgment; court must decide whether consequences of inmate's choice to remain silent are closer to physical torture against which Constitution clearly protects or de minimis harms against which it does not. U.S.C.A. Const. Amend. 5.

9. Criminal Law ⚿393(1)

Government does not have to make exercise of Fifth Amendment privilege

against self-incrimination cost free. U.S.C.A. Const.Amend. 5.

Syllabus *

Respondent was convicted of rape and related crimes. A few years before his scheduled release, Kansas prison officials ordered respondent to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they accept responsibility for the crimes for which they have been sentenced, and complete a sexual history form detailing all prior sexual activities, regardless of whether the activities constitute uncharged criminal offenses. The information obtained from SATP participants is not privileged, and might be used against them in future criminal proceedings. There is no evidence, however, that incriminating information has ever been disclosed under the SATP. Officials informed respondent that if he refused to participate in the SATP, his prison privileges would be reduced, resulting in the automatic curtailment of his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges. He also would be transferred to a potentially more dangerous maximum-security unit. Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against compelled self-incrimination. He brought this action for injunctive relief under 42 U.S.C. § 1983. The District Court granted him summary judgment. Affirming, the Tenth Circuit held that the compelled self-incrimination prohibited by the Fifth Amendment can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause; ruled that the automatic reduction in respondent's prison privileges and housing accommodations was such a penalty because of its substantial impact on him; declared that respondent's information would be sufficiently incriminating because an admission of culpability regarding his crime of conviction would create a risk of a perjury prosecution; and concluded that, although the SATP served Kansas' important interests in rehabilitating sex offenders and promoting public safety, those interests could be served without violating the Constitution by treating inmate admissions as privileged or by granting inmates use immunity.

Held: The judgment is reversed, and the case is remanded.

224 F.3d 1175, reversed and remanded.

[25] Justice KENNEDY, joined by THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS, concluded that the SATP serves a vital penological purpose, and that offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment. Pp. 2024–2032.

(a) The SATP is supported by the legitimate penological objective of rehabilitation. The SATP lasts 18 months; involves substantial daily counseling; and helps inmates address sexual addiction, understand the thoughts, feelings, and behavior dynamics that precede their offenses, and develop relapse prevention skills. Pp. 2024–2025.

(b) The mere fact that Kansas does not offer legal immunity from prosecution based on statements made in the course of the SATP does not render the program invalid. No inmate has ever been charged or prosecuted for any offense based on such information, and there is no contention that the program is a mere subterfuge

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

for the conduct of a criminal investigation. Rather, the refusal to offer use immunity serves two legitimate state interests: (1) The potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation; and (2) the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. P. 2025.

(c) The SATP, and the consequences for nonparticipation in it, do not combine to create a compulsion that encumbers the constitutional right not to incriminate oneself. Pp. 2025–2032.

(1) The prison context is important in weighing respondent's constitutional claim: A broad range of choices that might infringe constitutional rights in a free society fall within the expected conditions of confinement of those lawfully convicted. The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to officials to administer the prisons. See, *e.g., Turner v. Safley,* 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64. The Court's holding in *Sandin v. Conner,* 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418, that challenged prison conditions cannot give rise to a due process violation unless they constitute "atypical and significant hardship[s] on [inmates] in relation to the ordinary incidents of prison life," may not provide a precise parallel for determining whether there is compelled self-incrimination, but does provide useful instruction. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against compelled self-incrimination if the adverse consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life. Cf., *e.g., Baxter v. Palmigiano,* 425 U.S. 308, 319–320, 96 S.Ct. 1551, 47 L.Ed.2d 810. Pp. 2025–2027.

[26](2) Respondent's decision not to participate in the SATP did not extend his prison term or affect his eligibility for good-time credits or parole. He instead complains about his possible transfer from the medium-security unit where the program is conducted to a less desirable maximum-security unit. The transfer, however, is not intended to punish prisoners for exercising their Fifth Amendment rights. Rather, it is incidental to a legitimate penological reason: Due to limited space, inmates who do not participate in their respective programs must be moved out of the facility where the programs are held to make room for other inmates. The decision where to house inmates is at the core of prison administrators' expertise. See *Meachum v. Fano,* 427 U.S. 215, 225, 96 S.Ct. 2532, 49 L.Ed.2d 451. Respondent also complains that his privileges will be reduced. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. See *Hewitt v. Helms,* 459 U.S. 460, 467, n. 4, 103 S.Ct. 864, 74 L.Ed.2d 675. Respondent fails to cite a single case from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead, he relies on the so-called penalty cases, see, *e.g., Spevack v. Klein,* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574, which involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood, see, *e.g., id.,* at 516, 87 S.Ct. 625. Those cases did not involve legitimate rehabilitative programs conducted within prison walls, and they are not easily extended to the prison context, where inmates surrender their rights to pursue a livelihood and to contract freely with the State. Pp. 2027–2028.

(3) Determining what constitutes unconstitutional compulsion involves a question of judgment: Courts must decide

whether the consequences of an inmate's choice to remain silent are closer to the physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin* framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative necessities are so out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion. Pp. 2028–2029.

(d) Prison context or not, respondent's choice is marked less by compulsion than by choices the Court has held give no rise to a self-incrimination claim. The cost to respondent of exercising his Fifth Amendment privilege—denial of certain perquisites that make his life in prison more tolerable—is much less than that borne by the defendant in, *e.g., McGautha v. California*, 402 U.S. 183, 217, 91 S.Ct. 1454, 28 L.Ed.2d 711, where the Court upheld a procedure that allowed statements made by a criminal defendant[27] to mitigate his responsibility and avoid the death penalty to be used against him as evidence of his guilt. The hard choices faced by the defendants in, *e.g., Baxter v. Palmigiano, supra*, at 313, 96 S.Ct. 1551; *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 287–288, 118 S.Ct. 1244, 140 L.Ed.2d 387; and *Minnesota v. Murphy*, 465 U.S. 420, 422, 104 S.Ct. 1136, 79 L.Ed.2d 409, further illustrate that the consequences respondent faced did not amount to unconstitutional compulsion. Respondent's attempt to distinguish the latter cases on dual grounds—that (1) the penalty here followed automatically from his decision to remain silent, and (2) his participation in the SATP was involuntary—is unavailing. Neither distinction would justify departing from this Court's precedents. Pp. 2029–2031.

(e) Were respondent's position to prevail, there would be serious doubt about the constitutionality of the federal sex offender treatment program, which is comparable to the Kansas program. Respondent is mistaken as well to concentrate on a so-called reward/penalty distinction and an illusory baseline against which a change in prison conditions must be measured. Finally, respondent's analysis would call into question the constitutionality of an accepted feature of federal criminal law, the downward adjustment of a sentence for acceptance of criminal responsibility. Pp. 2031–2032.

Justice O'CONNOR acknowledged that the Court is divided on the appropriate standard for evaluating compulsion for purposes of the Fifth Amendment privilege against self-incrimination in a prison setting, but concluded that she need not resolve this dilemma because this case indisputably involves burdens rather than benefits, and because the penalties assessed against respondent as a result of his failure to participate in the Sexual Abuse Treatment Program (SATP) are not compulsive on any reasonable test. The Fifth Amendment's text does not prohibit all penalties levied in response to a person's refusal to incriminate himself or herself—it prohibits only the compulsion of such testimony. The Court's so-called "penalty cases" establish that the potential loss of one's livelihood through, *e.g.,* the loss of employment, *Uniformed Sanitation Men Ass'n, Inc. v. Commissioner of Sanitation of City of New York*, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089, and the loss of the right to participate in political associations and to hold public office, *Lefkowitz v. Cunningham*, 431 U.S. 801, 97 S.Ct. 2132, 53 L.Ed.2d 1, are capable of coercing incriminating testimony. Such penalties, however, are far more significant that those facing respondent: a reduction in incentive level and a corresponding transfer from medium to maximum security. In practical terms, these changes involve restrictions on respondent's prison privileges and living conditions that seem minor. Because the prison is responsible for caring for respondent's basic needs, his ability to support himself is not implicated[28] by the re-

duction of his prison wages. While his visitation is reduced, he still retains the ability to see his attorney, his family, and clergy. The limitation on his possession of personal items, as well as the amount he is allowed to spend at the canteen, may make his prison experience more unpleasant, but seems very unlikely to actually compel him to incriminate himself. Because it is his burden to prove compulsion, it may be assumed that the prison is capable of controlling its inmates so that respondent's personal safety is not jeopardized by being placed in maximum security, at least in the absence of proof to the contrary. Finally, the mere fact that the penalties facing respondent are the same as those imposed for prison disciplinary violations does not make them coercive. Thus, although the plurality's failure to set forth a comprehensive theory of the Fifth Amendment privilege against self-incrimination is troubling, its determination that the decision below should be reversed is correct. Pp. 2032–2035.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C.J., and SCALIA and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, *post,* p. 2032. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post,* p. 2035.

Stephen R. McAllister, for petitioners.

Gregory G. Garre, Washington, DC, for United States as amicus curiae, by special leave of the Court, supporting the petitioners.

Matthew J. Wiltanger, Overland Park, KS, for respondent.

For U.S. Supreme Court briefs, see:

2001 WL 799230 (Pet.Brief)

2001 WL 913852 (Resp.Brief)

2001 WL 1082480 (Reply.Brief)

[29] Justice KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join.

Respondent Robert G. Lile is a convicted sex offender in the custody of the Kansas Department of Corrections (Department). A few years before respondent was scheduled to reenter society, Department officials recommended that he enter a prison treatment program so that he would not rape again upon release. While there appears to be some difference of opinion among experts in the field, Kansas officials and officials who administer the United States prison system have made the determination that it is of considerable importance for the program participant to admit having committed the crime for which he is being treated and other past offenses. The first and in many ways most crucial step in the Kansas rehabilitation program thus requires the participant to confront his past crimes so that he can begin to understand his own motivations and weaknesses. As this initial step can be a most difficult one, Kansas offers sex offenders incentives to participate in the program.

Respondent contends this incentive system violates his Fifth Amendment privilege against self-incrimination. Kansas' rehabilitation program, however, serves a vital penological purpose, and offering inmates minimal incentives to participate does not amount to compelled self-incrimination prohibited by the Fifth Amendment.

I

In 1982, respondent lured a high school student into his car as she was returning home from school. At gunpoint, respondent forced the victim to perform oral sodomy on him [30] and then drove to a field where he raped her. After the sexual assault, the victim went to her school, where, crying and upset, she reported the crime. The police arrested respondent

and recovered on his person the weapon he used to facilitate the crime. *State v. Lile,* 237 Kan. 210, 211–212, 699 P.2d 456, 457–458 (1985). Although respondent maintained that the sexual intercourse was consensual, a jury convicted him of rape, aggravated sodomy, and aggravated kidnaping. Both the Kansas Supreme Court and a Federal District Court concluded that the evidence was sufficient to sustain respondent's conviction on all charges. See *id.,* at 211, 699 P.2d, at 458; 45 F.Supp.2d 1157, 1161 (Kan.1999).

In 1994, a few years before respondent was scheduled to be released, prison officials ordered him to participate in a Sexual Abuse Treatment Program (SATP). As part of the program, participating inmates are required to complete and sign an "Admission of Responsibility" form, in which they discuss and accept responsibility for the crime for which they have been sentenced. Participating inmates also are required to complete a sexual history form, which details all prior sexual activities, regardless of whether such activities constitute uncharged criminal offenses. A polygraph examination is used to verify the accuracy and completeness of the offender's sexual history.

While information obtained from participants advances the SATP's rehabilitative goals, the information is not privileged. Kansas leaves open the possibility that new evidence might be used against sex offenders in future criminal proceedings. In addition, Kansas law requires the SATP staff to report any uncharged sexual offenses involving minors to law enforcement authorities. Although there is no evidence that incriminating information has ever been disclosed under the SATP, the release of information is a possibility.

Department officials informed respondent that if he refused to participate in the SATP, his privilege status would be reduced from Level III to Level I. As part of this reduction,[31] respondent's visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges automatically would be curtailed. In addition, respondent would be transferred to a maximum-security unit, where his movement would be more limited, he would be moved from a two-person to a four-person cell, and he would be in a potentially more dangerous environment.

Respondent refused to participate in the SATP on the ground that the required disclosures of his criminal history would violate his Fifth Amendment privilege against self-incrimination. He brought this action under Rev. Stat. § 1979, 42 U.S.C. § 1983, against the warden and the secretary of the Department, seeking an injunction to prevent them from withdrawing his prison privileges and transferring him to a different housing unit.

After the parties completed discovery, the United States District Court for the District of Kansas entered summary judgment in respondent's favor. 24 F.Supp.2d 1152 (1998). The District Court noted that because respondent had testified at trial that his sexual intercourse with the victim was consensual, an acknowledgment of responsibility for the rape on the "Admission of Guilt" form would subject respondent to a possible charge of perjury. *Id.,* at 1157. After reviewing the specific loss of privileges and change in conditions of confinement that respondent would face for refusing to incriminate himself, the District Court concluded that these consequences constituted coercion in violation of the Fifth Amendment.

The Court of Appeals for the Tenth Circuit affirmed. 224 F.3d 1175 (2000). It held that the compulsion element of a Fifth Amendment claim can be established by penalties that do not constitute deprivations of protected liberty interests under the Due Process Clause. *Id.,* at 1183. It held that the reduction in prison privileges and housing accommodations was a penalty, both because of its substantial impact on the inmate[32] and because that impact was identical to the punishment imposed

by the Department for serious disciplinary infractions. In the Court of Appeals' view, the fact that the sanction was automatic, rather than conditional, supported the conclusion that it constituted compulsion. Moreover, because all SATP files are subject to disclosure by subpoena, and an admission of culpability regarding the crime of conviction would create a risk of a perjury prosecution, the court concluded that the information disclosed by respondent was sufficiently incriminating. *Id.*, at 1180. The Court of Appeals recognized that the Kansas policy served the State's important interests in rehabilitating sex offenders and promoting public safety. It concluded, however, that those interests could be served without violating the Constitution, either by treating the admissions of the inmates as privileged communications or by granting inmates use immunity. *Id.*, at 1192.

We granted the warden's petition for certiorari because the Court of Appeals has held that an important Kansas prison regulation violates the Federal Constitution. 532 U.S. 1018, 121 S.Ct. 1955, 149 L.Ed.2d 752 (2001).

II

Sex offenders are a serious threat in this Nation. In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1 (1997) (hereinafter Sex Offenses); U.S. Dept. of Justice, Federal Bureau of Investigation, Crime in the United States, 1999, Uniform Crime Reports 24 (2000). Between 1980 and 1994, the population of imprisoned sex offenders increased at a faster rate than for any other category of violent crime. See Sex Offenses 18. As in the present case, the victims of sexual assault are most often juveniles. In 1995, for instance, a majority of reported forcible sexual offenses were committed against persons under 18 years of age. University of New Hampshire, Crimes Against Children Research Center, Fact Sheet 5; Sex Offenses 24. Nearly 4 in 10 imprisoned violent [33]sex offenders said their victims were 12 or younger. *Id.*, at *iii*.

When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault. See *id.*, at 27; U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997). States thus have a vital interest in rehabilitating convicted sex offenders.

Therapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism. See U.S. Dept. of Justice, Nat. Institute of Corrections, A Practitioner's Guide to Treating the Incarcerated Male Sex Offender xiii (1988) ("[T]he rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15%," whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80%. "Even if both of these figures are exaggerated, there would still be a significant difference between treated and untreated individuals"). An important component of those rehabilitation programs requires participants to confront their past and accept responsibility for their misconduct. *Id.*, at 73. "Denial is generally regarded as a main impediment to successful therapy," and "[t]herapists depend on offenders' truthful descriptions of events leading to past offences in order to determine which behaviours need to be targeted in therapy." H. Barbaree, Denial and Minimization Among Sex Offenders: Assessment and Treatment Outcome, 3 Forum on Corrections Research, No. 4, p. 30 (1991). Research indicates that offenders who deny all allegations of sexual abuse are three times more likely to fail in treatment than those who admit even partial complicity. See B. Maletzky & K. McGovern, Treating the Sexual Offender 253–255 (1991).

The critical first step in the Kansas SATP, therefore, is acceptance of responsibility for past offenses. This gives inmates a basis to understand why they are being punished [34] and to identify the traits that cause such a frightening and high risk of recidivism. As part of this first step, Kansas requires each SATP participant to complete an "Admission of Responsibility" form, to fill out a sexual history form discussing their offending behavior, and to discuss their past behavior in individual and group counseling sessions.

[1] The District Court found that the Kansas SATP is a valid "clinical rehabilitative program," supported by a "legitimate penological objective" in rehabilitation. 24 F.Supp.2d, at 1163. The SATP lasts for 18 months and involves substantial daily counseling. It helps inmates address sexual addiction; understand the thoughts, feelings, and behavior dynamics that precede their offenses; and develop relapse prevention skills. Although inmates are assured of a significant level of confidentiality, Kansas does not offer legal immunity from prosecution based on any statements made in the course of the SATP. According to Kansas, however, no inmate has ever been charged or prosecuted for any offense based on information disclosed during treatment. Brief for Petitioners 4–5. There is no contention, then, that the program is a mere subterfuge for the conduct of a criminal investigation.

[2] As the parties explain, Kansas' decision not to offer immunity to every SATP participant serves two legitimate state interests. First, the professionals who design and conduct the program have concluded that for SATP participants to accept full responsibility for their past actions, they must accept the proposition that those actions carry consequences. Tr. of Oral Arg. 11. Although no program participant has ever been prosecuted or penalized based on information revealed during the SATP, the potential for additional punishment reinforces the gravity of the participants' offenses and thereby aids in their rehabilitation. If inmates know society will not punish them for their past offenses, they may be left with the false impression that society does not consider those crimes to be serious ones. The practical effect of guaranteed [35] immunity for SATP participants would be to absolve many sex offenders of any and all cost for their earlier crimes. This is the precise opposite of the rehabilitative objective.

Second, while Kansas as a rule does not prosecute inmates based upon information revealed in the course of the program, the State confirms its valid interest in deterrence by keeping open the option to prosecute a particularly dangerous sex offender. Brief for 18 States as *Amici Curiae* 11. Kansas is not alone in declining to offer blanket use immunity as a condition of participation in a treatment program. The Federal Bureau of Prisons and other States conduct similar sex offender programs and do not offer immunity to the participants. See, *e.g., Ainsworth v. Risley,* 244 F.3d 209, 214 (C.A.1 2001) (describing New Hampshire's program).

The mere fact that Kansas declines to grant inmates use immunity does not render the SATP invalid. Asking at the outset whether prison administrators can or should offer immunity skips the constitutional inquiry altogether. If the State of Kansas offered immunity, the self-incrimination privilege would not be implicated. See, *e.g., Kastigar v. United States,* 406 U.S. 441, 453, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972); *Brown v. Walker,* 161 U.S. 591, 610, 16 S.Ct. 644, 40 L.Ed. 819 (1896). The State, however, does not offer immunity. So the central question becomes whether the State's program, and the consequences for nonparticipation in it, combine to create a compulsion that encumbers the constitutional right. If there is compulsion, the State cannot continue the program in its present form; and the alternatives, as will be discussed, defeat the program's objectives.

The SATP does not compel prisoners to incriminate themselves in violation of the Constitution. The Fifth Amendment Self–Incrimination Clause, which applies to the States via the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), provides that no person "shall be compelled in any criminal case to be a witness against himself." The "Amendment speaks of compulsion," *United States v. Monia*, [36]317 U.S. 424, 427, 63 S.Ct. 409, 87 L.Ed. 376 (1943), and the Court has insisted that the "constitutional guarantee is only that the witness not be *compelled* to give self-incriminating testimony." *United States v. Washington*, 431 U.S. 181, 188, 97 S.Ct. 1814, 52 L.Ed.2d 238 (1977). The consequences in question here—a transfer to another prison where television sets are not placed in each inmate's cell, where exercise facilities are not readily available, and where work and wage opportunities are more limited—are not ones that compel a prisoner to speak about his past crimes despite a desire to remain silent. The fact that these consequences are imposed on prisoners, rather than ordinary citizens, moreover, is important in weighing respondent's constitutional claim.

[3] The privilege against self-incrimination does not terminate at the jailhouse door, but the fact of a valid conviction and the ensuing restrictions on liberty are essential to the Fifth Amendment analysis. *Sandin v. Conner*, 515 U.S. 472, 485, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) ("[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system" (citation and internal quotation marks omitted)). A broad range of choices that might infringe constitutional rights in a free society fall within the expected conditions of confinement of those who have suffered a lawful conviction.

The Court has instructed that rehabilitation is a legitimate penological interest that must be weighed against the exercise of an inmate's liberty. See, *e.g., O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348, 351, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987). Since "most offenders will eventually return to society, [a] paramount objective of the corrections system is the rehabilitation of those committed to its custody." *Pell v. Procunier*, 417 U.S. 817, 823, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974). Acceptance of responsibility in turn demonstrates that an offender "is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period [37]of time than might otherwise be necessary." *Brady v. United States*, 397 U.S. 742, 753, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970).

The limitation on prisoners' privileges and rights also follows from the need to grant necessary authority and capacity to federal and state officials to administer the prisons. See, *e.g., Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Id.*, at 84–85, 107 S.Ct. 2254. To respect these imperatives, courts must exercise restraint in supervising the minutiae of prison life. *Ibid.* Where, as here, a state penal system is involved, federal courts have "additional reason to accord deference to the appropriate prison authorities." *Ibid.*

[4] For these reasons, the Court in *Sandin* held that challenged prison conditions cannot give rise to a due process violation unless those conditions constitute "atypical and significant hardship[s] on [inmates] in relation to the ordinary incidents of prison life." See 515 U.S., at 484, 115 S.Ct. 2293. The determination under *Sandin* whether a prisoner's liberty interest has been curtailed may not provide a precise parallel for determining whether there is compelled self-incrimination, but it does

provide useful instruction for answering the latter inquiry. *Sandin* and its counterparts underscore the axiom that a convicted felon's life in prison differs from that of an ordinary citizen. In the context of a legitimate rehabilitation program for prisoners, those same considerations are relevant to our analysis. The compulsion inquiry must consider the significant restraints already inherent in prison life and the State's own vital interests in rehabilitation goals and procedures within the prison system. A prison clinical rehabilitation program, which is acknowledged to bear a rational relation to a legitimate penological objective, does not violate the privilege against self-incrimination if the adverse [38]consequences an inmate faces for not participating are related to the program objectives and do not constitute atypical and significant hardships in relation to the ordinary incidents of prison life.

Along these lines, this Court has recognized that lawful conviction and incarceration necessarily place limitations on the exercise of a defendant's privilege against self-incrimination. See, *e.g., Baxter v. Palmigiano,* 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). *Baxter* declined to extend to prison disciplinary proceedings the rule of *Griffin v. California,* 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), that the prosecution may not comment on a defendant's silence at trial. 425 U.S., at 319–320, 96 S.Ct. 1551. As the Court explained, "[d]isciplinary proceedings in state prisons ... involve the correctional process and important state interests other than conviction for crime." *Id.,* at 319, 96 S.Ct. 1551. The inmate in *Baxter* no doubt felt compelled to speak in one sense of the word. The Court, considering the level of compulsion in light of the prison setting and the State's interests in rehabilitation and orderly administration, nevertheless rejected the inmate's self-incrimination claim.

[5] In the present case, respondent's decision not to participate in the Kansas SATP did not extend his term of incarceration. Nor did his decision affect his eligibility for good-time credits or parole. 224 F.3d, at 1182. Respondent instead complains that if he remains silent about his past crimes, he will be transferred from the medium-security unit—where the program is conducted—to a less desirable maximum-security unit.

No one contends, however, that the transfer is intended to punish prisoners for exercising their Fifth Amendment rights. Rather, the limitation on these rights is incidental to Kansas' legitimate penological reason for the transfer: Due to limited space, inmates who do not participate in their respective programs will be moved out of the facility where the programs are held to make room for other inmates. As the Secretary of Corrections has explained, "it makes no [39]sense to have someone who's not participating in a program taking up a bed in a setting where someone else who may be willing to participate in a program could occupy that bed and participate in a program." App. 99.

[6] It is well settled that the decision where to house inmates is at the core of prison administrators' expertise. See *Meachum v. Fano,* 427 U.S. 215, 225, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976). For this reason the Court has not required administrators to conduct a hearing before transferring a prisoner to a bed in a different prison, even if "life in one prison is much more disagreeable than in another." *Ibid.* The Court has considered the proposition that a prisoner in a more comfortable facility might begin to feel entitled to remain there throughout his term of incarceration. The Court has concluded, nevertheless, that this expectation "is too ephemeral and insubstantial to trigger procedural due process protections as long as prison officials have discretion to transfer him for whatever reason or for no reason at all." *Id.,* at 228, 96 S.Ct. 2532. This logic has equal force in analyzing respondent's self-incrimination claim.

[7] Respondent also complains that he will be demoted from Level III to Level I status as a result of his decision not to participate. This demotion means the loss of his personal television; less access to prison organizations and the gym area; a reduction in certain pay opportunities and canteen privileges; and restricted visitation rights. App. 27–28. An essential tool of prison administration, however, is the authority to offer inmates various incentives to behave. The Constitution accords prison officials wide latitude to bestow or revoke these perquisites as they see fit. Accordingly, *Hewitt v. Helms,* 459 U.S. 460, 467, n. 4, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), held that an inmate's transfer to another facility did not in itself implicate a liberty interest, even though that transfer resulted in the loss of "access to vocational, educational, recreational, and rehabilitative programs." Respondent concedes that no liberty interest is implicated in this case. Tr. of Oral Arg. 45. To be sure, cases like *Meachum* and [40]*Hewitt* involved the Due Process Clause rather than the privilege against compelled self-incrimination. Those cases nevertheless underscore the axiom that, by virtue of their convictions, inmates must expect significant restrictions, inherent in prison life, on rights and privileges free citizens take for granted.

Respondent fails to cite a single case from this Court holding that the denial of discrete prison privileges for refusal to participate in a rehabilitation program amounts to unconstitutional compulsion. Instead, relying on the so-called penalty cases, respondent treats the fact of his incarceration as if it were irrelevant. See, *e.g., Garrity v. New Jersey,* 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967); *Spevack v. Klein,* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967). Those cases, however, involved free citizens given the choice between invoking the Fifth Amendment privilege and sustaining their economic livelihood. See, *e.g., id.,* at 516, 87 S.Ct. 625 ("[T]hreat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion"). Those principles are not easily extended to the prison context, where inmates surrender upon incarceration their rights to pursue a livelihood and to contract freely with the State, as well as many other basic freedoms. The persons who asserted rights in *Garrity* and *Spevack* had not been convicted of a crime. It would come as a surprise if *Spevack* stands for the proposition that when a lawyer has been disbarred by reason of a final criminal conviction, the court or agency considering reinstatement of the right to practice law could not consider that the disbarred attorney has admitted his guilt and expressed contrition. Indeed, this consideration is often given dispositive weight by this Court itself on routine motions for reinstatement. The current case is more complex, of course, in that respondent is also required to discuss other criminal acts for which he might still be liable for prosecution. On this point, however, there is still a critical distinction between the instant case and *Garrity* or *Spevack.* Unlike those cases, [41]respondent here is asked to discuss other past crimes as part of a legitimate rehabilitative program conducted within prison walls.

To reject out of hand these considerations would be to ignore the State's interests in offering rehabilitation programs and providing for the efficient administration of its prisons. There is no indication that the SATP is an elaborate attempt to avoid the protections offered by the privilege against compelled self-incrimination. Rather, the program serves an important social purpose. It would be bitter medicine to treat as irrelevant the State's legitimate interests and to invalidate the SATP on the ground that it incidentally burdens an inmate's right to remain silent.

[8] Determining what constitutes unconstitutional compulsion involves a question of judgment: Courts must decide whether the consequences of an inmate's choice to remain silent are closer to the

physical torture against which the Constitution clearly protects or the *de minimis* harms against which it does not. The *Sandin* framework provides a reasonable means of assessing whether the response of prison administrators to correctional and rehabilitative necessities are so out of the ordinary that one could sensibly say they rise to the level of unconstitutional compulsion.

[9] Prison context or not, respondent's choice is marked less by compulsion than by choices the Court has held give no rise to a self-incrimination claim. The "criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose." *McGautha v. California*, 402 U.S. 183, 213, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971) (citation and internal quotation marks omitted). It is well settled that the government need not make the exercise of the Fifth Amendment privilege cost free. See, *e.g., Jenkins v. Anderson*, 447 U.S. 231, 238, 100 S.Ct. 2124, 65 L.Ed.2d 86 [12](1980) (a criminal defendant's exercise of his Fifth Amendment privilege prior to arrest may be used to impeach his credibility at trial); *Williams v. Florida*, 399 U.S. 78, 84–85, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970) (a criminal defendant may be compelled to disclose the substance of an alibi defense prior to trial or be barred from asserting it).

The cost to respondent of exercising his Fifth Amendment privilege—denial of certain perquisites that make his life in prison more tolerable—is much less than that borne by the defendant in *McGautha*. There, the Court upheld a procedure that allowed statements, which were made by a criminal defendant to mitigate his responsibility and avoid the death penalty, to be used against him as evidence of his guilt. 402 U.S., at 217, 91 S.Ct. 1454. The Court likewise has held that plea bargaining does not violate the Fifth Amendment, even though criminal defendants may feel considerable pressure to admit guilt in order to obtain more lenient treatment. See, *e.g., Bordenkircher v. Hayes*, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978); *Brady*, 397 U.S., at 751, 90 S.Ct. 1463.

Nor does reducing an inmate's prison wage and taking away personal television and gym access pose the same hard choice faced by the defendants in *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976), *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998), and *Minnesota v. Murphy*, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). In *Baxter*, a state prisoner objected to the fact that his silence at a prison disciplinary hearing would be held against him. The Court acknowledged that *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), held that the Fifth Amendment prohibits courts from instructing a criminal jury that it may draw an inference of guilt from a defendant's failure to testify. The Court nevertheless refused to extend the *Griffin* rule to the context of state prison disciplinary hearings because those proceedings "involve the correctional process and important state interests other than conviction for crime." 425 U.S., at 319, 96 S.Ct. 1551. Whereas the inmate in the present case faces the loss of certain privileges, the prisoner in [13]*Baxter* faced 30 days in punitive segregation as well as the subsequent downgrade of his prison classification status. *Id.*, at 313, 96 S.Ct. 1551.

In *Murphy*, the defendant feared the possibility of additional jail time as a result of his decision to remain silent. The defendant's probation officer knew the defendant had committed a rape and murder unrelated to his probation. One of the terms of the defendant's probation required him to be truthful with the probation officer in all matters. Seizing upon this, the officer interviewed the defendant

about the rape and murder, and the defendant admitted his guilt. The Court found no Fifth Amendment violation, despite the defendant's fear of being returned to prison for 16 months if he remained silent. 465 U.S., at 422, 438, 104 S.Ct. 1136.

In *Woodard*, the plaintiff faced not loss of a personal television and gym access, but loss of life. In a unanimous opinion just four Terms ago, this Court held that a death row inmate could be made to choose between incriminating himself at his clemency interview and having adverse inferences drawn from his silence. The Court reasoned that it "is difficult to see how a voluntary interview could 'compel' respondent to speak. He merely faces a choice quite similar to the sorts of choices that a criminal defendant must make in the course of criminal proceedings, none of which has ever been held to violate the Fifth Amendment." 523 U.S., at 286, 118 S.Ct. 1244. As here, the inmate in *Woodard* claimed to face a Hobson's choice: He would damage his case for clemency no matter whether he spoke and incriminated himself, or remained silent and the clemency board construed that silence against him. Unlike here, the Court nevertheless concluded that the pressure the inmate felt to speak to improve his chances of clemency did not constitute unconstitutional compulsion. *Id.*, at 287–288, 118 S.Ct. 1244.

Woodard, *Murphy*, and *Baxter* illustrate that the consequences respondent faced here did not amount to unconstitutional compulsion. Respondent and the dissent attempt to distinguish *Baxter*, *Murphy*, and *Woodard* on the dual [44] grounds that (1) the penalty here followed automatically from respondent's decision to remain silent, and (2) respondent's participation in the SATP was involuntary. Neither distinction would justify departing from this Court's precedents, and the second is question begging in any event.

It is proper to consider the nexus between remaining silent and the consequences that follow. Plea bargains are not deemed to be compelled in part because a defendant who pleads not guilty still must be convicted. Cf. *Brady*, *supra*, at 751–752, 90 S.Ct. 1463. States may award good-time credits and early parole for inmates who accept responsibility because silence in these circumstances does not automatically mean the parole board, which considers other factors as well, will deny them parole. See *Baxter*, *supra*, at 317–318, 96 S.Ct. 1551. While the automatic nature of the consequence may be a necessary condition to finding unconstitutional compulsion, however, that is not a sufficient reason alone to ignore *Woodard*, *Murphy*, and *Baxter*. Even if a consequence follows directly from a person's silence, one cannot answer the question whether the person has been compelled to incriminate himself without first considering the severity of the consequences.

Nor can *Woodard* be distinguished on the alternative ground that respondent's choice to participate in the SATP was involuntary, whereas the death row inmate in *Woodard* chose to participate in clemency proceedings. This distinction assumes the answer to the compulsion inquiry. If respondent was not compelled to participate in the SATP, his participation was voluntary in the only sense necessary for our present inquiry. Kansas asks sex offenders to participate in SATP because, in light of the high rate of recidivism, it wants all, not just the few who volunteer, to receive treatment. Whether the inmates are being asked or ordered to participate depends entirely on the consequences of their decision not to do so. The parties in *Woodard*, *Murphy*, and *Baxter* all were faced with ramifications far worse than respondent faces here, and in each of those cases the Court [45] determined that their hard choice between silence and the consequences was not compelled. It is beyond doubt, of course, that respondent would prefer not to choose between losing prison privileges and accepting responsibility for his past crimes. It is a choice, nonetheless, that does not amount to com-

pulsion, and therefore one Kansas may require respondent to make.

The Federal Government has filed an *amicus* brief describing its sex offender treatment program. Were respondent's position to prevail, the constitutionality of the federal program would be cast into serious doubt. The fact that the offender in the federal program can choose to participate without being given a new prisoner classification is not determinative. For, as the Government explains, its program is conducted at a single, 112–bed facility that is more desirable than other federal prisons. Tr. of Oral Arg. 22. Inmates choose at the outset whether to enter the federal program. Once accepted, however, inmates must continue to discuss and accept responsibility for their crimes if they wish to maintain the status quo and remain in their more comfortable accommodations. Otherwise they will be expelled from the program and sent to a less desirable facility. *Id.*, at 27. Thus the federal program is different from Kansas' SATP only in that it does not require inmates to sacrifice privileges besides housing as a consequence of nonparticipation. The federal program is comparable to the Kansas program because it does not offer participants use immunity and because it conditions a desirable housing assignment on inmates' willingness to accept responsibility for past behavior. Respondent's theory cannot be confined in any meaningful way, and state and federal courts applying that view would have no principled means to determine whether these similarities are sufficient to render the federal program unconstitutional.

Respondent is mistaken as well to concentrate on the so-called reward/penalty distinction and the illusory baseline [46] against which a change in prison conditions must be measured. The answer to the question whether the government is extending a benefit or taking away a privilege rests entirely in the eye of the beholder. For this reason, emphasis of any baseline, while superficially appealing, would be an inartful addition to an already confused area of jurisprudence. The prison warden in this case stated that it is largely a matter of chance where in a prison an inmate is assigned. App. 59–63. Even if Inmates A and B are serving the same sentence for the same crime, Inmate A could end up in a medium-security unit and Inmate B in a maximum-security unit based solely on administrative factors beyond their control. Under respondent's view, however, the Constitution allows the State to offer Inmate B the opportunity to live in the medium-security unit conditioned on his participation in the SATP, but does not allow the State to offer Inmate A the opportunity to live in that same medium-security unit subject to the same conditions. The consequences for Inmates A and B are identical: They may participate and live in medium security or refuse and live in maximum security. Respondent, however, would have us say the Constitution puts Inmate A in a superior position to Inmate B solely by the accident of the initial assignment to a medium-security unit.

This reasoning is unsatisfactory. The Court has noted before that "[w]e doubt that a principled distinction may be drawn between 'enhancing' the punishment imposed upon the petitioner and denying him the 'leniency' he claims would be appropriate if he had cooperated." *Roberts v. United States*, 445 U.S. 552, 557, n. 4, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980). Respondent's reasoning would provide States with perverse incentives to assign all inmates convicted of sex offenses to maximum security prisons until near the time of release, when the rehabilitation program starts. The rule would work to the detriment of the entire class of sex offenders who might not otherwise be placed in maximum-security facilities. And prison administrators [47] would be forced, before making routine prison housing decisions, to identify each inmate's so-called baseline and determine whether an adverse effect, however marginal, will result from the ad-

ministrative decision. The easy alternatives that respondent predicts for prison administrators would turn out to be not so trouble free.

Respondent's analysis also would call into question the constitutionality of an accepted feature of federal criminal law: the downward adjustment for acceptance of criminal responsibility provided in § 3E1.1 of the United States Sentencing Commission Guidelines Manual (Nov.2002). If the Constitution does not permit the government to condition the use of a personal television on the acceptance of responsibility for past crimes, it is unclear how it could permit the government to reduce the length of a prisoner's term of incarceration based upon the same factor. By rejecting respondent's theory, we do not, in this case, call these policies into question.

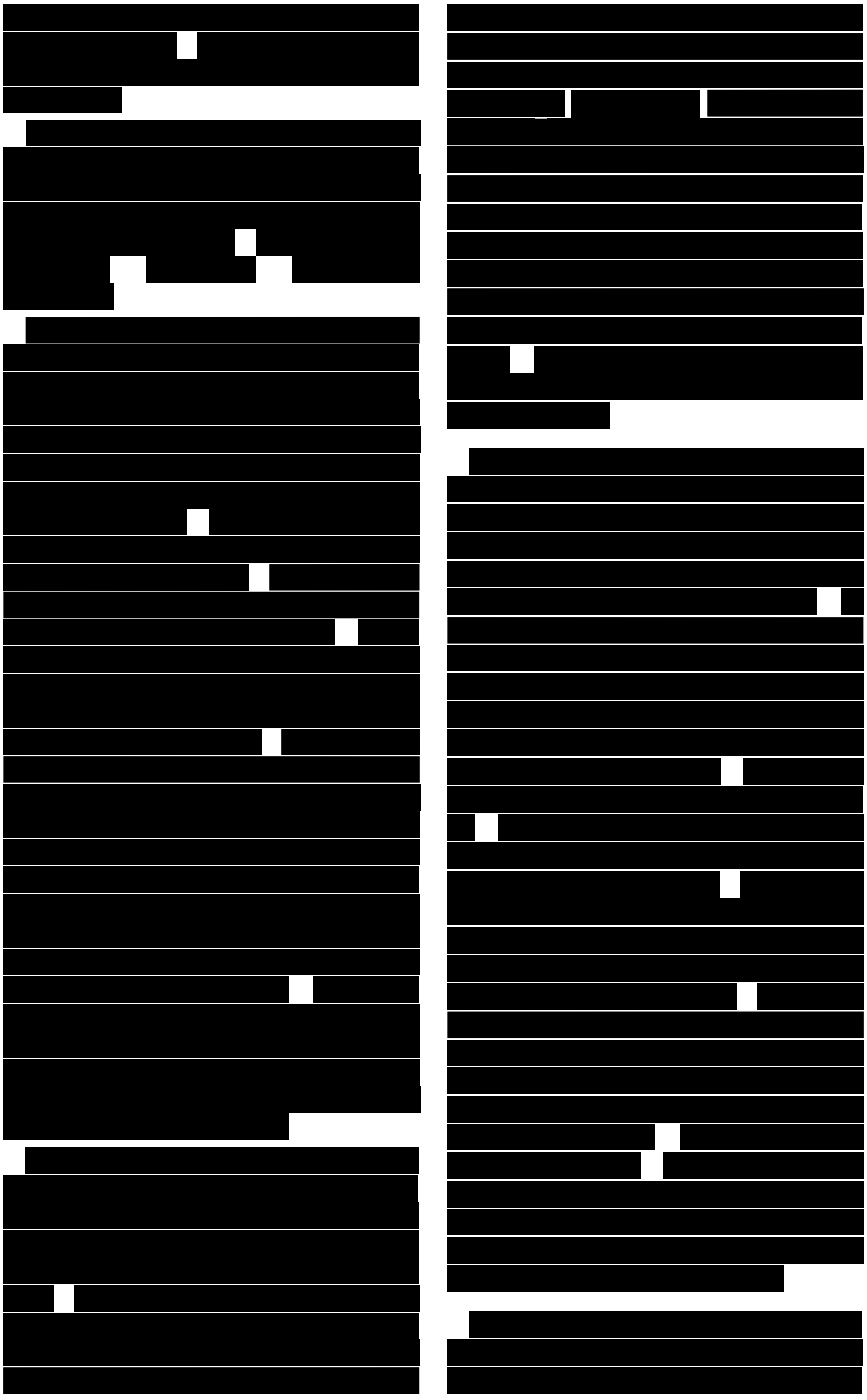
* * *

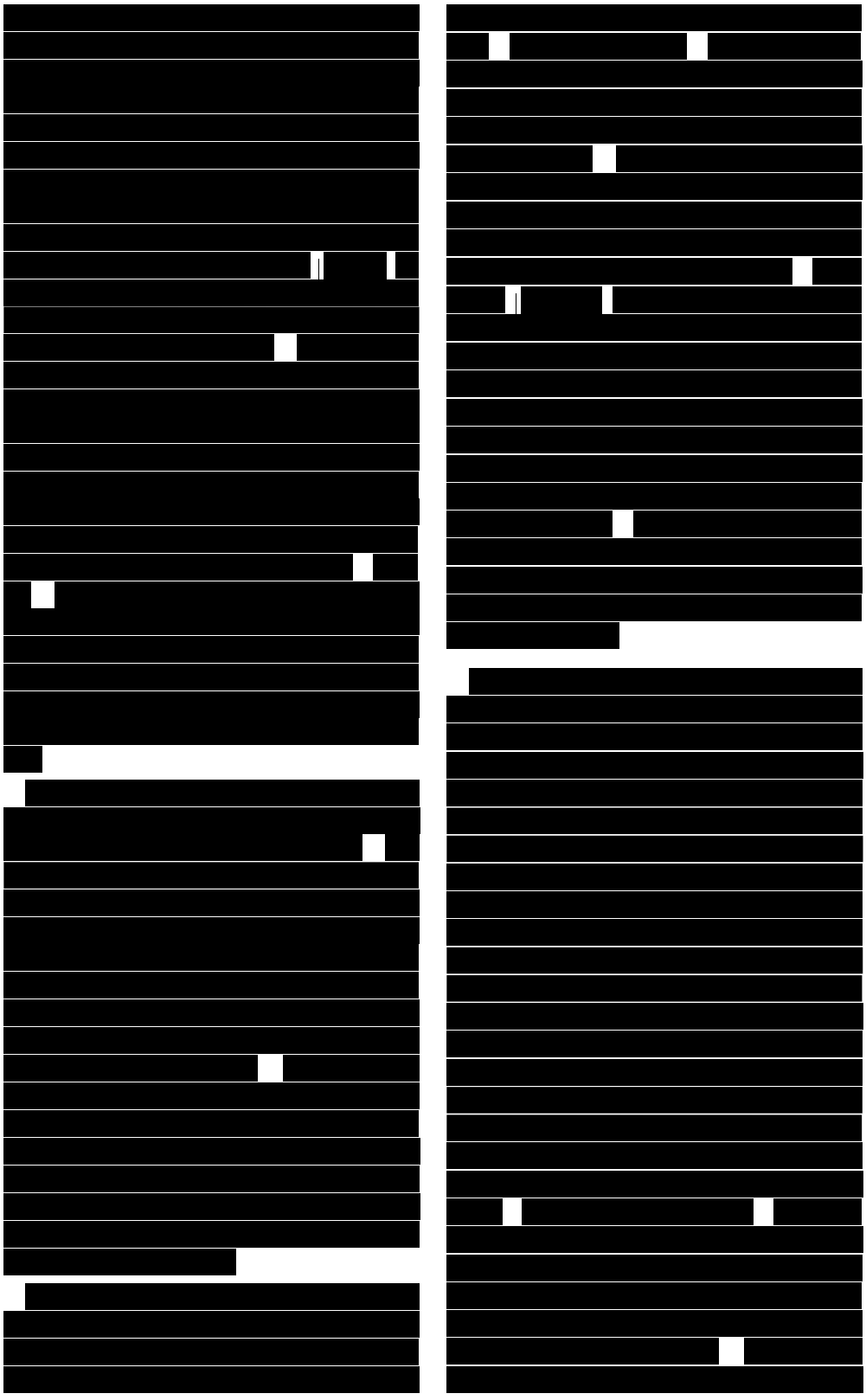
Acceptance of responsibility is the beginning of rehabilitation. And a recognition that there are rewards for those who attempt to reform is a vital and necessary step toward completion. The Court of Appeals' ruling would defeat these objectives. If the State sought to comply with the ruling by allowing respondent to enter the program while still insisting on his innocence, there would be little incentive for other SATP participants to confess and accept counseling; indeed, there is support for Kansas' view that the dynamics of the group therapy would be impaired. If the State had to offer immunity, the practical effect would be that serial offenders who are incarcerated for but one violation would be given a windfall for past bad conduct, a result potentially destructive of any public or state support for the program and quite at odds with the dominant goal of acceptance of responsibility. If the State found it was forced to graduate prisoners from its rehabilitation program without knowing [48] what other offenses they may have committed, the integrity of its program would be very much in doubt. If the State found it had to comply by allowing respondent the same perquisites as those who accept counseling, the result would be a dramatic illustration that obduracy has the same rewards as acceptance, and so the program itself would become self-defeating, even hypocritical, in the eyes of those whom it seeks to help. The Fifth Amendment does not require the State to suffer these programmatic disruptions when it seeks to rehabilitate those who are incarcerated for valid, final convictions.

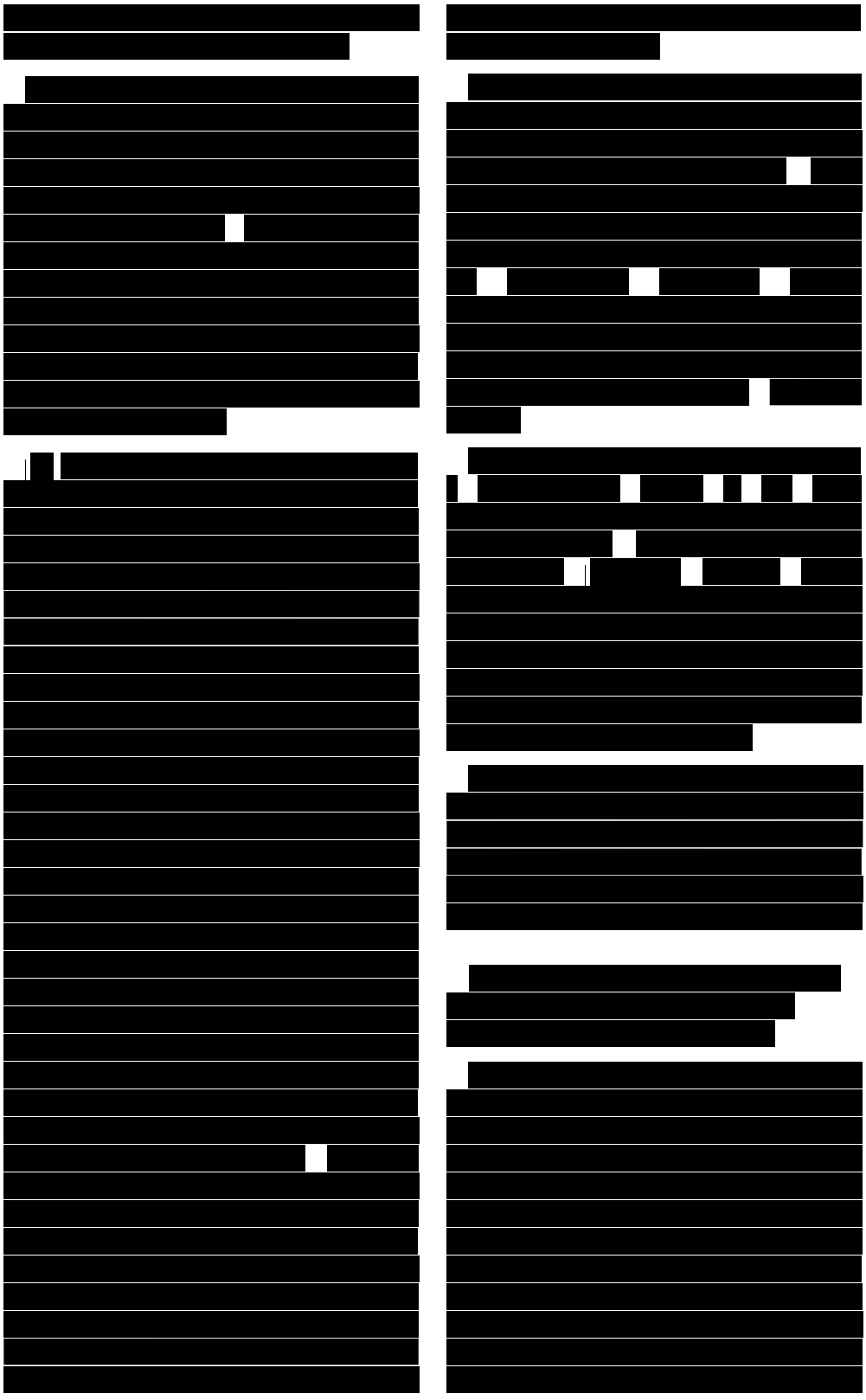
The Kansas SATP represents a sensible approach to reducing the serious danger that repeat sex offenders pose to many innocent persons, most often children. The State's interest in rehabilitation is undeniable. There is, furthermore, no indication that the SATP is merely an elaborate ruse to skirt the protections of the privilege against compelled self-incrimination. Rather, the program allows prison administrators to provide to those who need treatment the incentive to seek it.

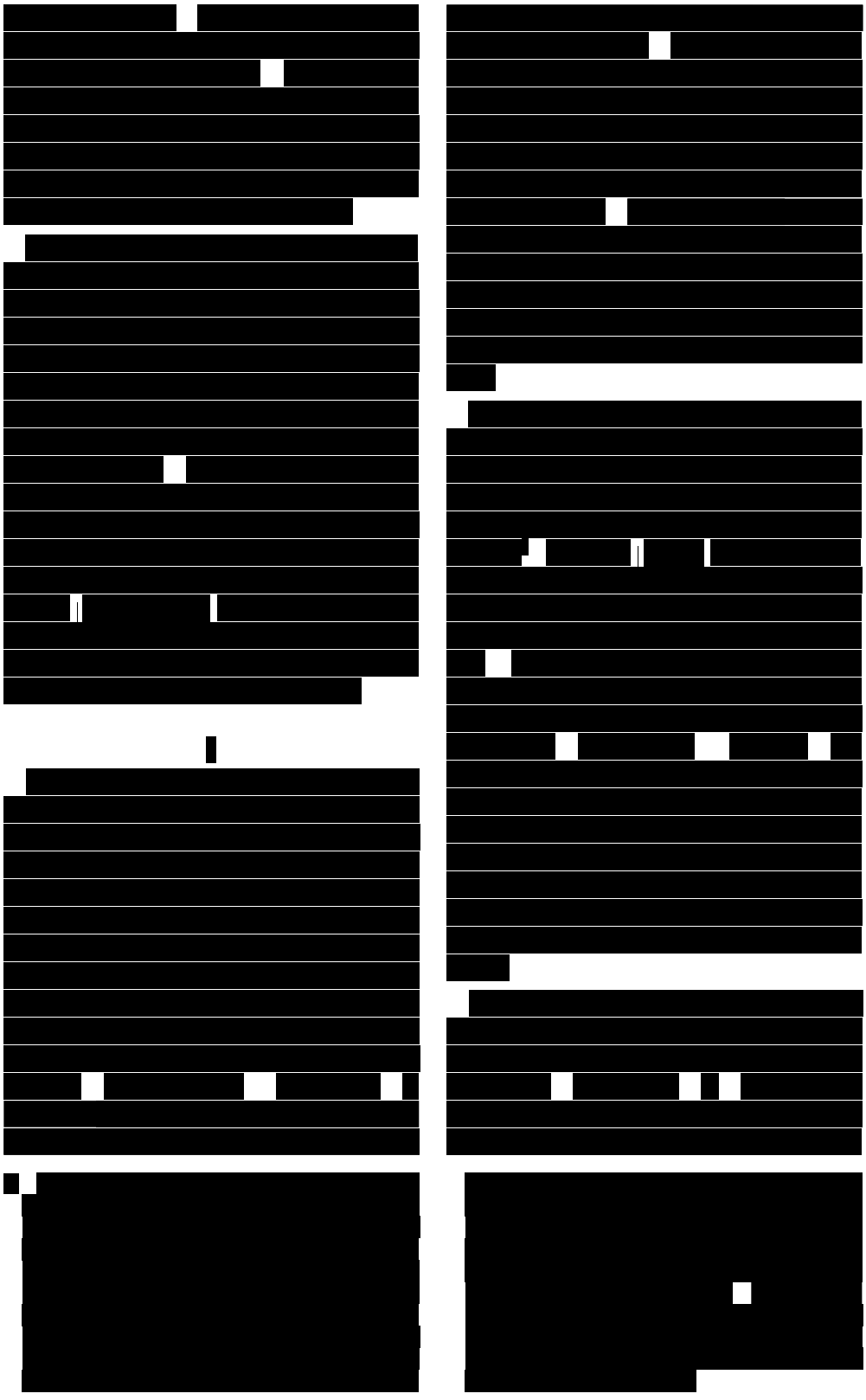
The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings.

It is so ordered.









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applies to the States through the Fourteenth Amendment, determined that the right to remain silent is itself a liberty interest protected by that Amendment. We explained that "[t]he Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement—the right of a person to remain silent unless he chooses to speak *in the unfettered exercise of his own will, and to suffer no penalty* ... [58]for such silence." *Id.,* at 8, 84 S.Ct. 1489 (emphasis added). Since *Malloy,* we have construed the text to prohibit not only direct orders to testify, but also indirect compulsion effected by comments on a defendant's refusal to take the stand, *Griffin v. California,* 380 U.S. 609, 613–614, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), and we have recognized that compulsion can be presumed from the circumstances surrounding custodial interrogation, see *Dickerson v. United States,* 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) ("[T]he coercion inherent in custodial interrogation blurs the line between volun-

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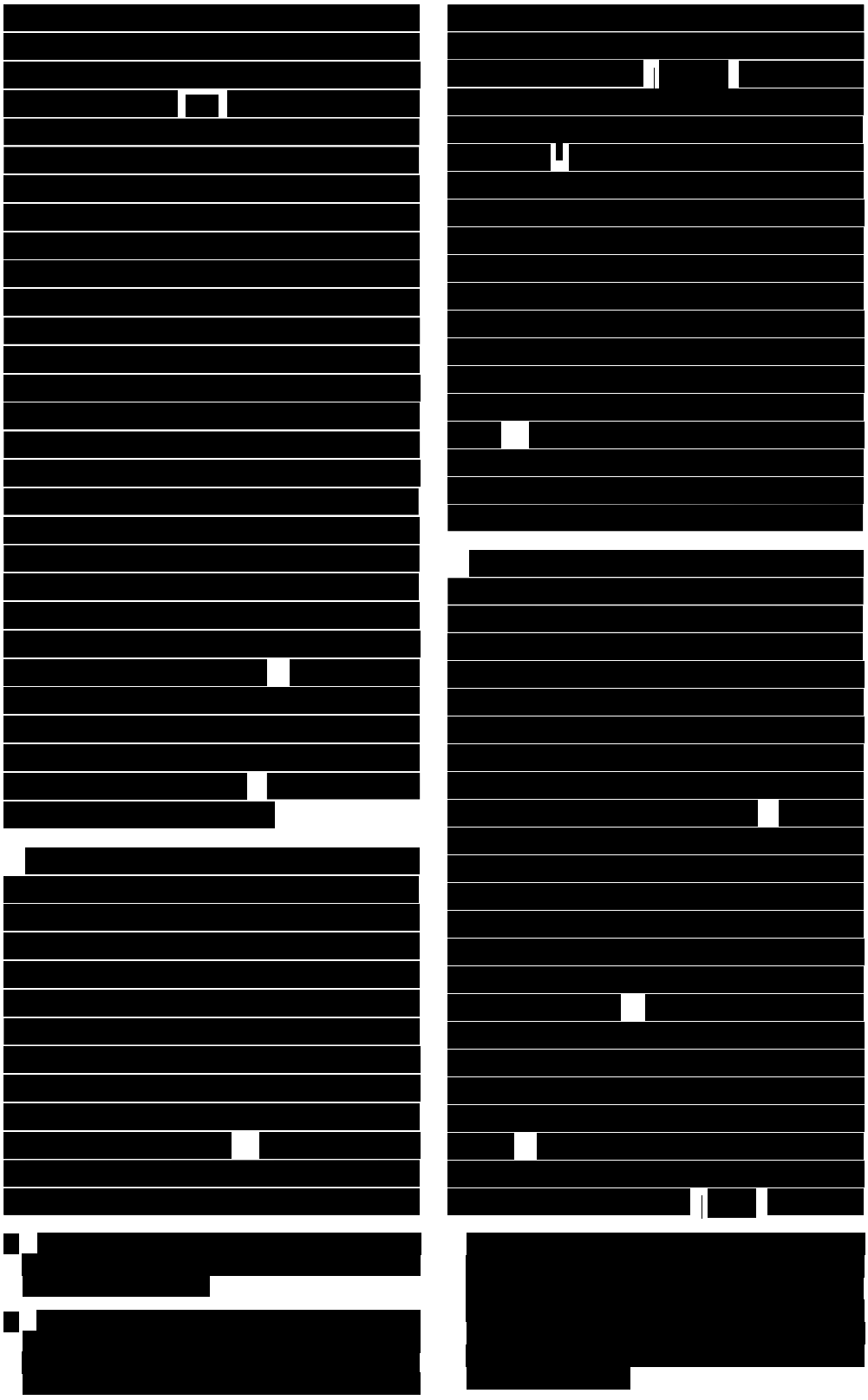

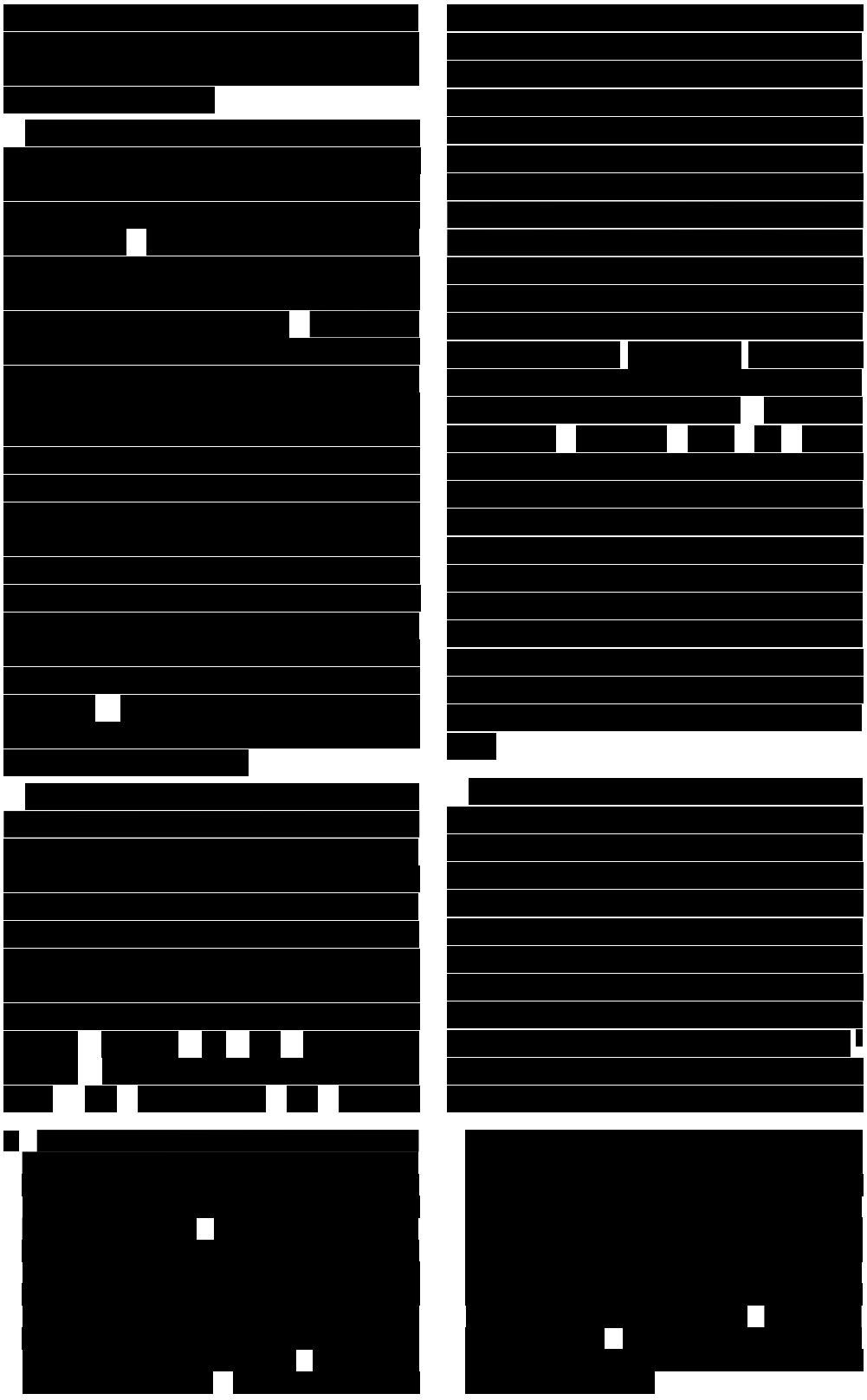

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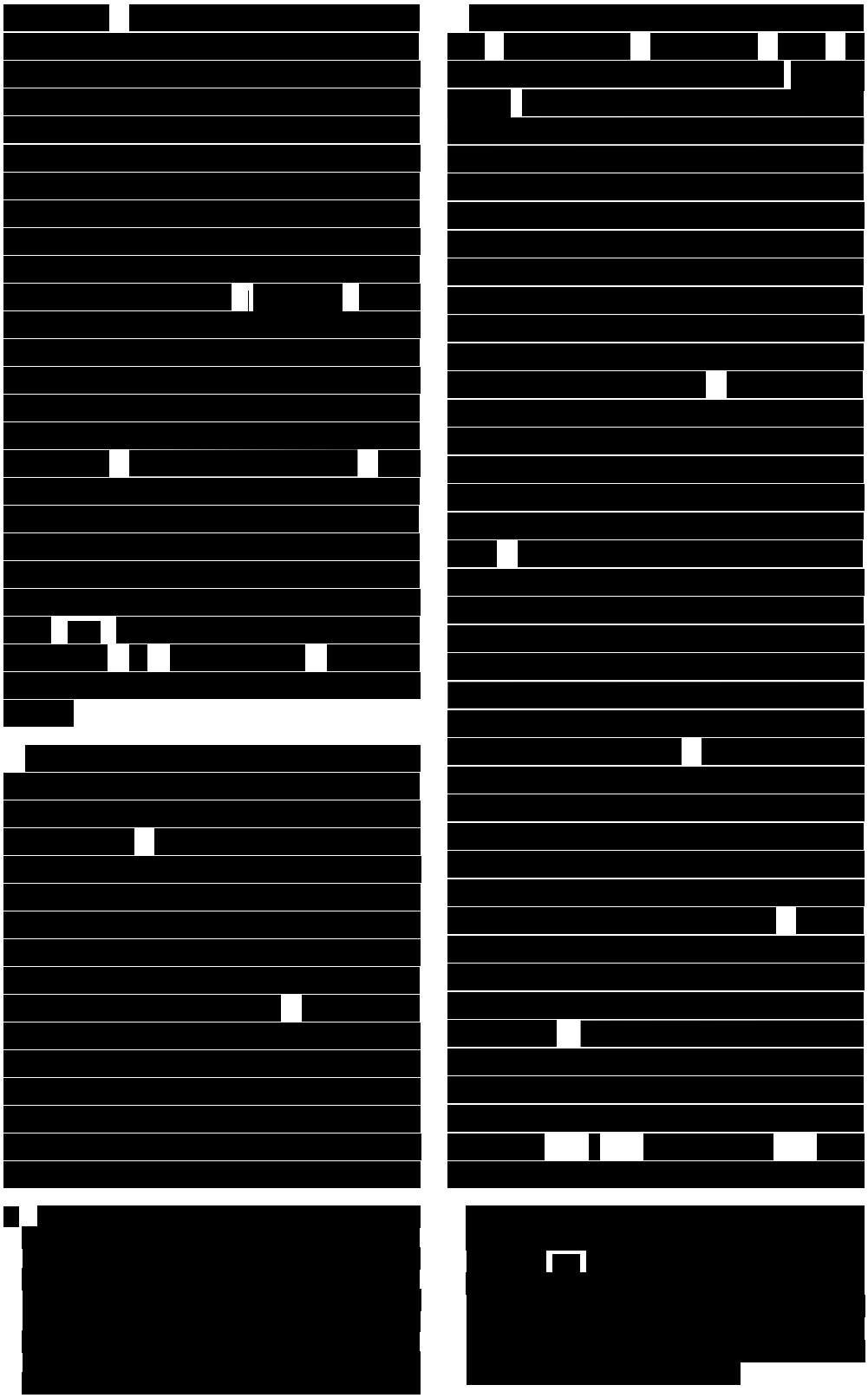

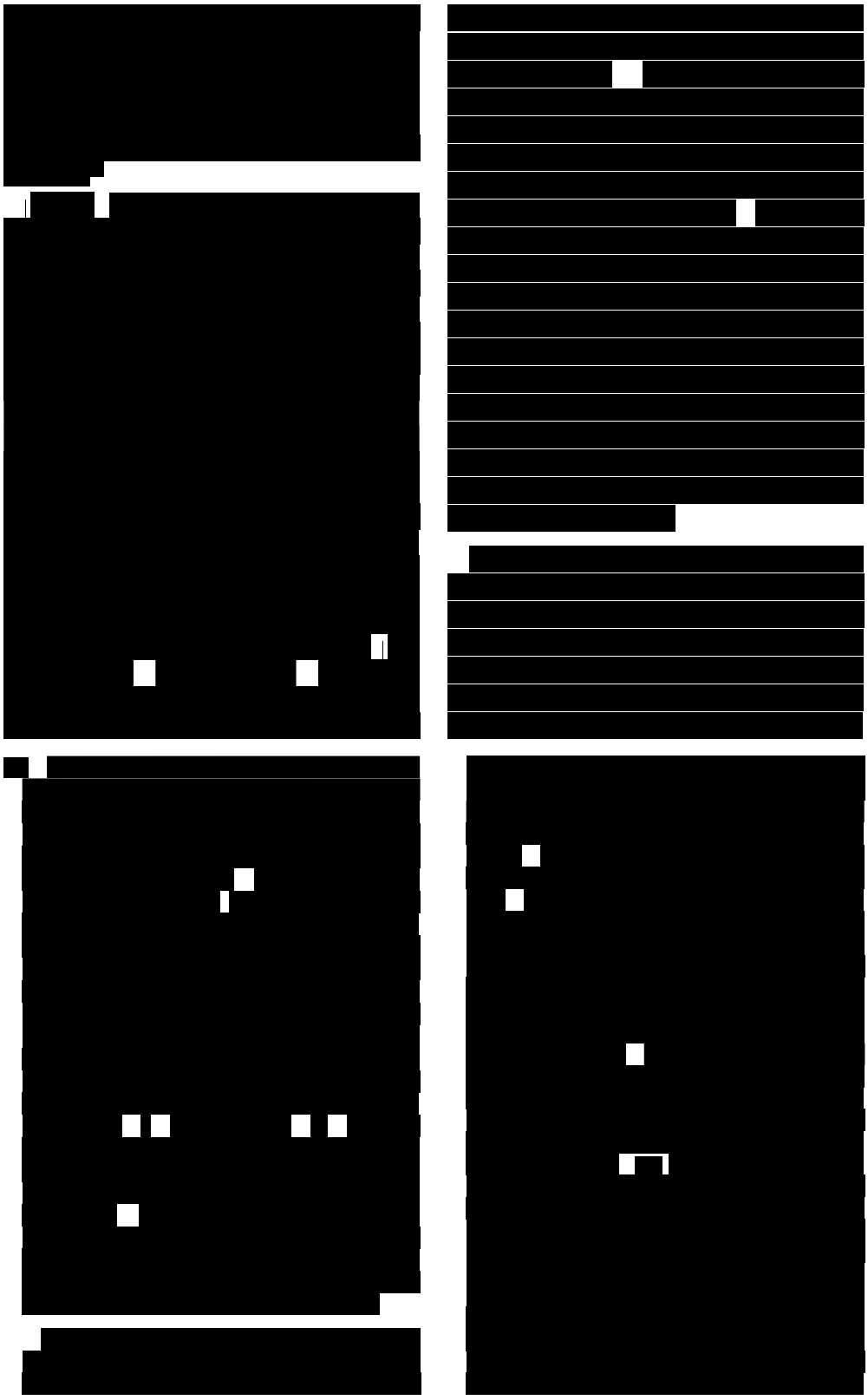

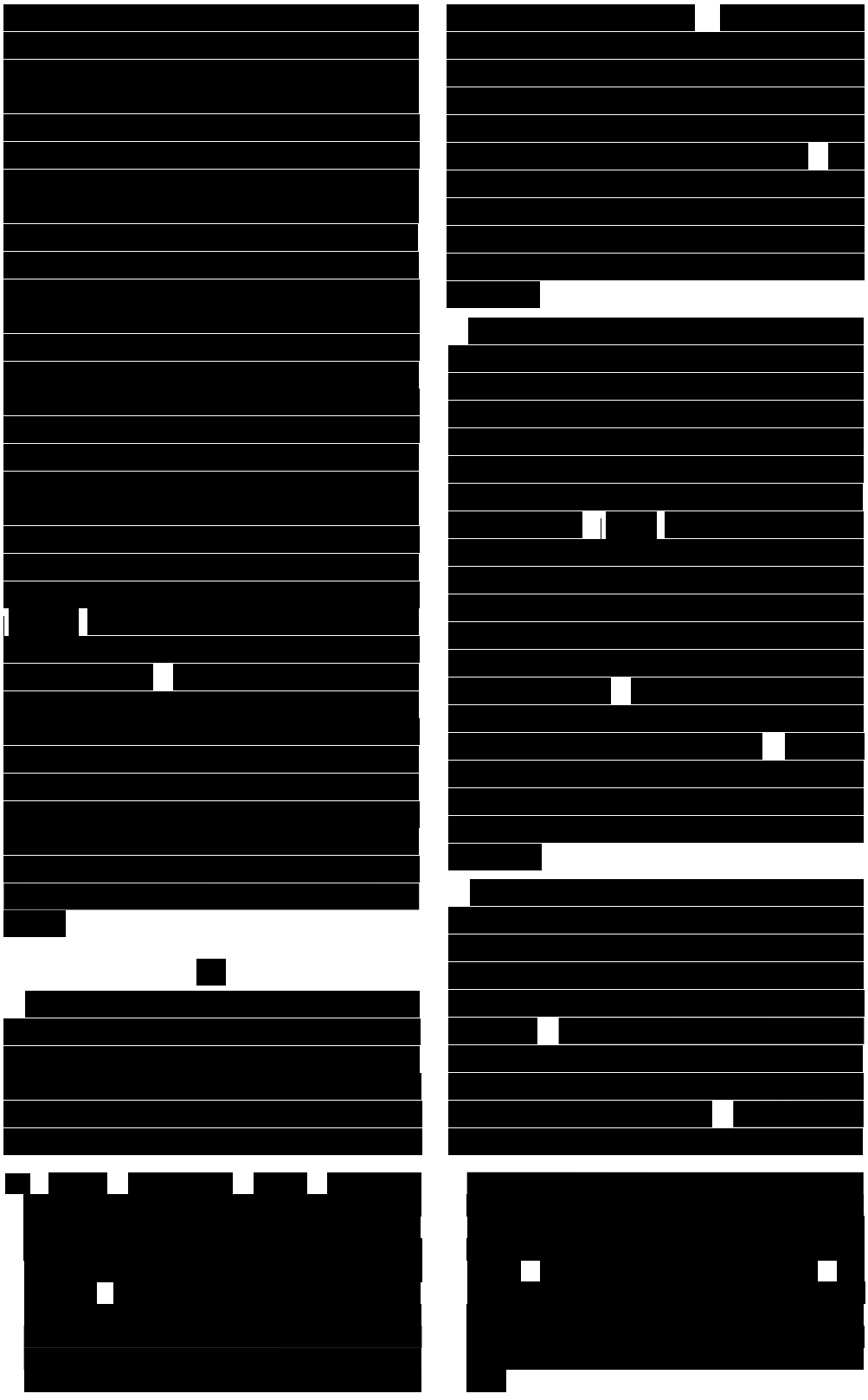

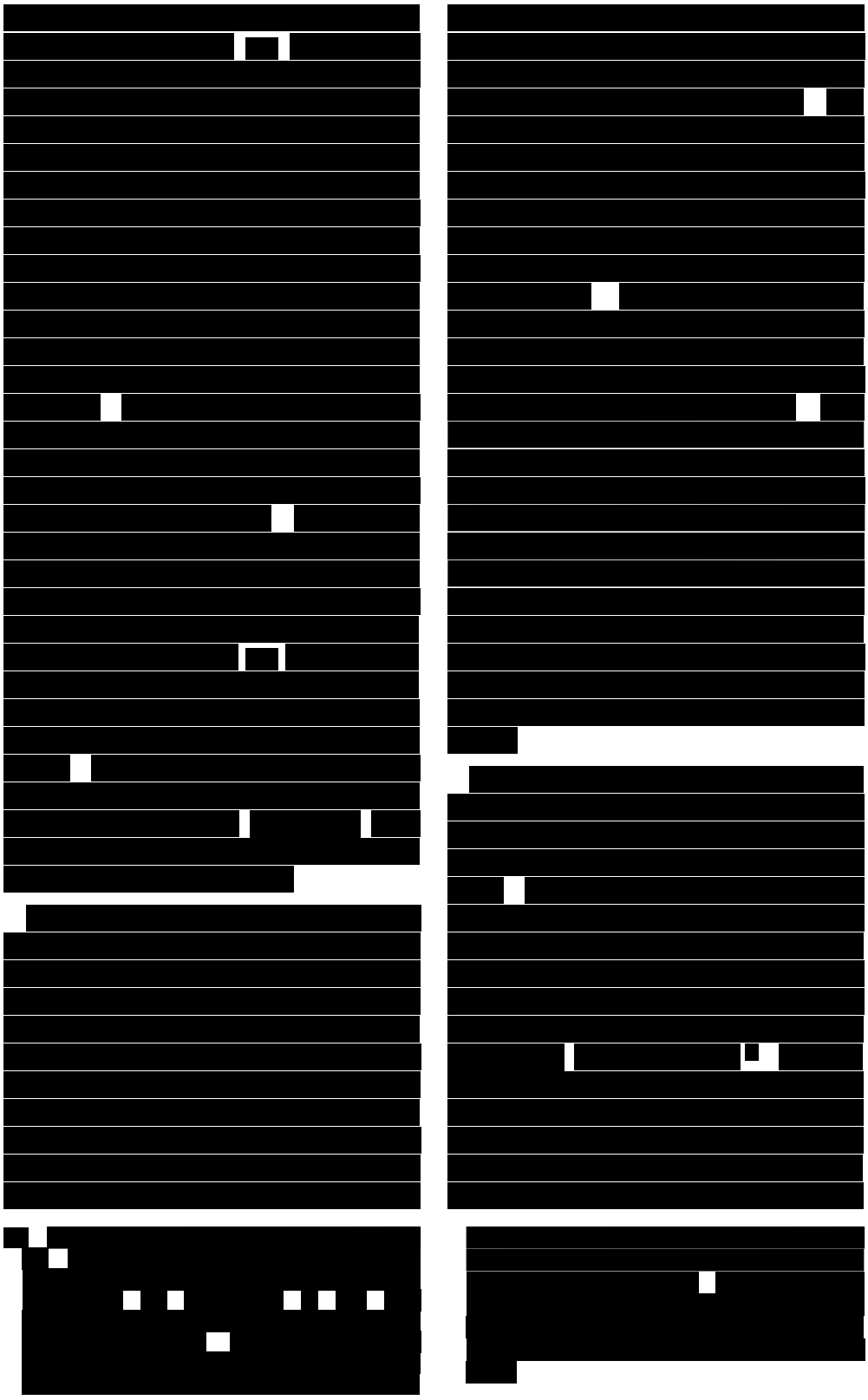

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