**California Department of Mental Health**

# Sexually Violent Predator Evaluations

## An Introduction – A reintroduction

**Ronald J. Mihordin, M.D., J.D., M.S.P.**
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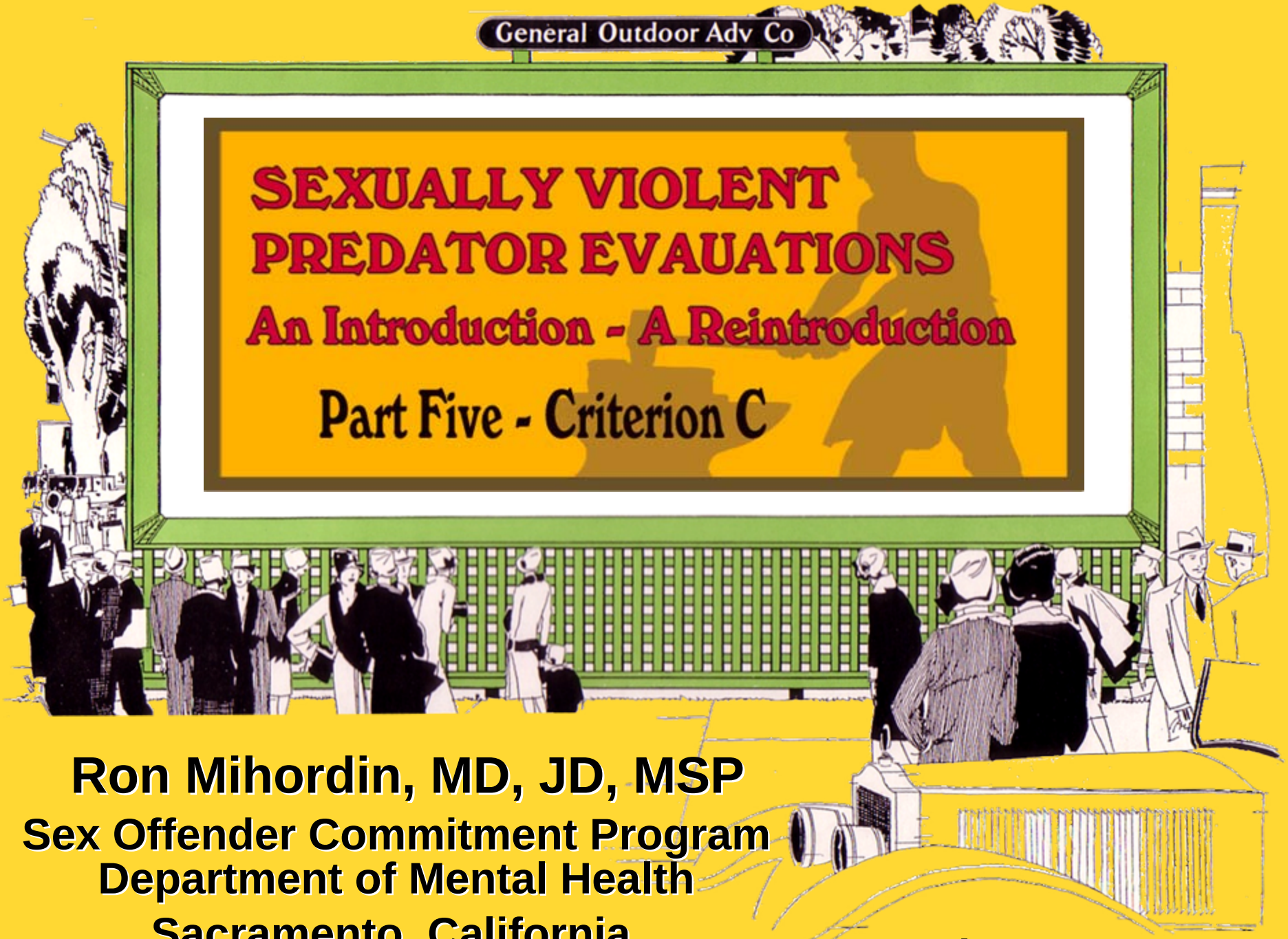
**Sex Offender Commitment Program**

**Sacramento, California**
**September 7-9, 2011**




# SEXUALLY VIOLENT PREDATOR EVAUATIONS

## An Introduction - A Reintroduction

## Part Five - Criterion C

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**Sex Offender Commitment Program**
**Department of Mental Health**
**Sacramento, California**

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# Criterion C – WIC Section 6600 (a)

1. Is the person likely to engage in sexually violent criminal behavior if released without conditions?

   WIC Section 6600 (a) (1), *People v. Ghilotti*

2. Is the person's future sexually violent criminal behavior likely to be predatory?

   WIC Section 6600 (e), *People v. Hurtado*

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

   WIC Section 6601 (d), *People v. Ghilotti*

# Criterion C – WIC Section 6600 (a)

2. Is the person's future sexually violent criminal behavior likely to be predatory?

WIC Section 6600 (e), *People v. Hurtado*

"Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

# Criterion C – WIC Section 6600 (a)

1. Is the person likely to engage in sexually violent criminal behavior if released without conditions?

   WIC Section 6600 (a) (1), *People v. Ghilotti*

2. Is the person's future sexually violent criminal behavior likely to be predatory?

   WIC Section 6600 (e), *People v. Hurtado*

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

   WIC Section 6601 (d), *People v. Ghilotti*

# Criterion C – WIC Section 6600 (a)

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

WIC Section 6601 (d), *People v. Ghilotti*

a. Court: *"Evaluator's must weigh the possibility of voluntary treatment with requisite care and caution."*

b. Court: *"Common sense suggests that the pertinent factors should include:"*

# Criterion C – WIC Section 6600 (a)

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

WIC Section 6601 (d), *People v. Ghilotti*

(1) The availability, effectiveness, safety, and practicality of community treatment for the particular disorder the person harbors;

(2) Whether the person's mental disorder leaves him or her with volitional power to pursue such treatment voluntarily;

# Criterion C – WIC Section 6600 (a)

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

WIC Section 6601 (d), *People v. Ghilotti*

(3) The intended and collateral effects of such treatment, and the influence of such effects on a reasonable expectation that one would voluntarily pursue it;

(4) The person's progress, if any, in any mandatory SVP treatment program he or she has already undergone;

# Criterion C – WIC Section 6600 (a)

3. What is the weight of factors relevant to the possibility of voluntary (outpatient) treatment.

WIC Section 6601 (d), *People v. Ghilotti*

(5) The person's expressed intent, if any, to seek out and submit to any necessary treatment, whatever its effects; and

(6) Any other indicia bearing on the credibility and sincerity of such an expression of intent.

# Criterion C – WIC Section 6600 (a)

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   WIC Section 6600 (a) (1), *People v. Ghilotti*

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# Widget Company of America

Imagine that you are applying for a job at the Widget Company of America (WCA).

Also, imagine that you:

- Have less than 2 years of experience in the widget industry,
- Have more than 13 years of formal education,
- Have had more than 2 different jobs in the last 5 years,
- Have had a traffic ticket in the last 10 years, and
- Are unmarried.

# Widget Company of America

And, let's say that the widget industry has *accurately* has found that people with the characteristics that we just listed—your characteristics—fall within a group of individuals in which only 20% of those individuals remain on the kind of job you are seeking for more than 3 months. This finding has been incorporated in a personnel assessment tool (PAT) used throughout the widget industry.

All the people at WCA who interview and decide whom to hire have been instructed to assess each job applicant using the PAT. In effect, your interviewer will presume that you only have a 20% chance of remaining on the job for more than 3 months.

# Criterion C – From Ghilotti to Actuaryland

## The Question:

"Does the subject's diagnosed mental disorder make the subject a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior."

## The Clarification:

"The person is "likely" to reoffend if . . . the person presents a substantial danger, that is, a serious and well-founded risk, that he or she will commit such crimes if free in the community."

*People v. Superior Court(Ghilotti)* (2002), 27 Cal.App.4th 888

# Criterion C – From Ghilotti to Actuaryland

## Ghilotti — Parsed

What is the meaning of the phrase upon which evaluators are to opine, i.e., whether "the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence . . .?"

*People v. Superior Court(Ghilotti)* (2002), 27 Cal.App.4th 888

# Criterion C – From Ghilotti to Actuaryland

## Ghilotti — Parsed

(250 lines – 28 Paragraphs)

| | |
|---|---|
| Total References: | 34 |
| Case Law: | 19 |
| Statute/Code: | 7 |
| Dictionary (lay): | 4 |
| Dictionary (law): | 2 |
| Thesaurus (law): | 2 |
| Psych. Literature: | 0 |
| Actuary/Statistics: | 0 |

# Criterion C – From Ghilotti to Actuaryland

*Serious* (adjective):

1. Grave, bad, critical, worrying, dangerous, acute, alarming, severe, extreme, grievous.

2. Important, crucial, urgent, pressing, difficult, worrying, deep, significant, grim, far-reaching, momentous, fateful, weighty, no laughing matter, of moment or consequence.

Collins Thesaurus of the English Language
Complete and Unabridged 2nd Edition.
2002 © HarperCollins Publishers 1995, 2002

ADJECTIVES ON OFF

- concerned with work or important matters rather than play or trivialities
- of great consequence
- causing fear or anxiety by threatening great harm
- appealing to the mind
- completely lacking in playfulness
- requiring effort or concentration; complex and not easy to answer or solve
- characterized by a firm and humorless belief in the validity of your opinions
- of great significance or value

ADJECTIVES ON OFF

- not easy; requiring great physical or mental effort to accomplish or comprehend or endure
- dignified and somber in manner or character and committed to keeping promises
- excessively serious
- not to be taken lightly
- acting with or showing thought and good sense
- tending to make sober or more serious
- of a substantial character and not frivolous or superficial

*Serious* www.visualthesaurus.com

# Criterion C – From Ghilotti to Actuaryland

*Well-founded* (adjective):

1. Based on sound reasoning or evidence.

www.visualthesaurus.com

*Well-founded* (adjective):

1. Justifiable, justified, reasonable, valid, warranted, legitimate, credible, plausible, well grounded, supportable, tenable.

Collins Thesaurus of the English Language

*Tenable* (adjective):

1. Capable of being maintained in argument, rationally defensible.

The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company.

# Criterion C – From Ghilotti to Actuaryland

## Ghilotti — Parsed

### Reference to mathematics?

The word "likely" as used in the statute, also must be construed in light of the "difficulties inherent in predicting human behavior," particularly in mathematical terms. This is particularly so with respect to the requirements of Section 6601, which represents only the *initial screening stage* of the SVPA process.

*People v. Superior Court(Ghilotti)* (2002), 27 Cal.App.4th 888

# Criterion C – From Ghilotti to Actuaryland

## The hope? Qualitative Assessment?

In response to the *Ghilotti* decision, Chief Assistant Attorney General Robert R. Anderson said, “I think it will allow evaluators to make a more reasoned assessment without being misguided by some type of belief that a mathematical evaluation is required.”

*Los Angeles Times*, April 26, 2002.

# Ghilotti — The Reality

## "Don't ask, don't tell."

1. The rejected unitary standard of greater than 50% has been replaced an "Evaluator's Choice" standard.
2. First, the evaluator looks to "actuarial" risk assessment for group risk percents.
3. Next, the evaluator equates the group risk percent with the risk of the person being evaluated.

# Ghilotti — The Reality

## “Don’t ask, don’t tell.”

4. Either consciously or unconsciously, the evaluator decides whether the risk he or she has attributed to the subject meets the evaluator’s personal percent threshold for “likely.”

# Ghilotti — The Reality

## “Don’t ask, don’t tell.”

5. “Don’t ask.” – The evaluator will not be asked to disclose the threshold percent used to decide “*likely* to engage in acts of sexual violence . . .”

6. “Don’t tell.” – The evaluator will not voluntarily disclose the threshold percent used to decide “*likely* to engage in acts of sexual violence . . .”

# Ghilotti — The Reality

## "Don't ask, don't tell."

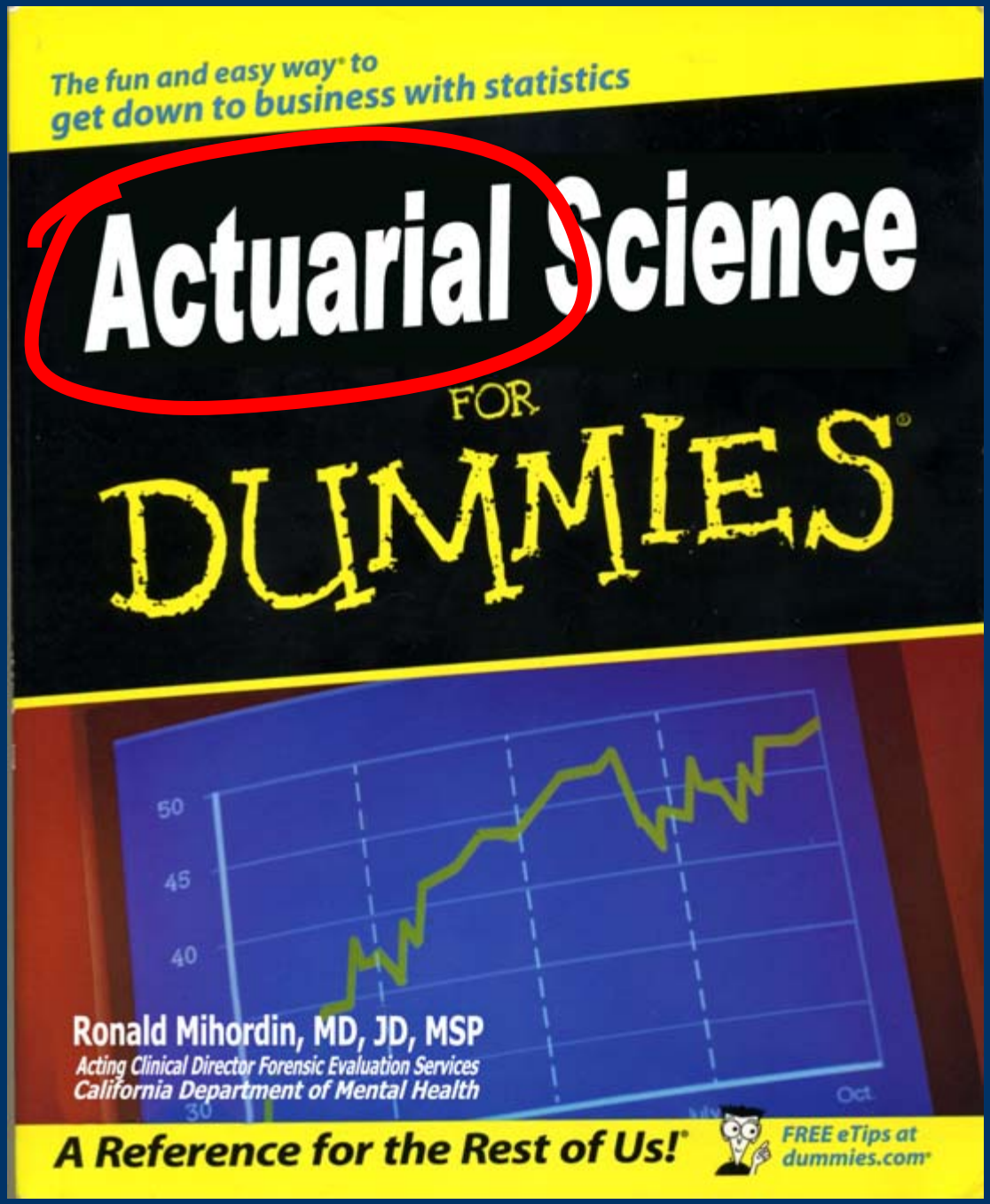
An Exception that Proves the Rule.

"[Doctor] explained that to qualify as an SVP, and offender must pose a serious and well-founded risk of reoffending. In [doctor's] opinion, this risk need not be 51 percent or higher, but rather just a good chance or around 30 percent."

*People v. Seja*, Cal. Court of Appeal, 5th Dist., July 2011, Unpublished

# Cutting through the

**C**onfused
**R**easoning
**A**bout
**A**ctuarial
**P**rediction


The fun and easy way® to
get down to business with statistics
Actuarial Science
FOR
DUMMIES®
Ronald Mihordin, MD, JD, MSP
Acting Clinical Director Forensic Evaluation Services
California Department of Mental Health
A Reference for the Rest of Us!®
FREE eTips at
dummies.com®

# PRINCIPLES OF ACTUARIAL SCIENCE

## Definitions

Risk (risk subject): A person . . . involved in an event associated with an actuarial risk.

Actuarial risk: A phenomenon that has economic consequences and that is subject to uncertainty with respect to one or more of the actuarial risk variables: occurrence, timing and severity.

Risk identification: A process for determining whether a given person . . . is a risk subject for a given actuarial risk.

# PRINCIPLES OF ACTUARIAL SCIENCE

## Principle 4.1 - Definitions

A set of classes, a set of characteristics and a set of rules for using the characteristics to assign each risk to a class in such a way that the conditions of Principle 4.1 are satisfied with respect to a given group of risks is called a risk classification system.

These classes are called risk classes.

The rules used for assigning risks to risk classes are called underwriting rules.

# PRINCIPLES OF ACTUARIAL SCIENCE

## Principle 4.1 – Risk Classification

For a group of risks associated with a given actuarial risk, it is possible to identify characteristics of the risks and to establish a set of classes based on these characteristics so that:

a. each risk is assigned to one and only one class; and

b. probabilities of occurrence . . . May be associated with each class in a way that results in an actuarial model which, for some degree of accuracy, is:

   1. valid relative to observed results for each class or group of classes having sufficient available data, and

   2. potentially valid for every class.

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   2. potentially valid for every class.

## Standard Actuarial Practice

Reference Group(s) → Validation Group(s) → Application Group(s)

## Non-standard Actuarial Practice

Reference Group(s) → Validation Group(s) → Individual(s)

# Prognostic Premises

The best predictor of future behavior is past behavior. (Generic)

The best predictor of an individual's future behavior is that individual's past behavior. (Scouting, Handicapping, Clinical)

The best predictor of future group behavior is past group behavior. (Actuarial Science)

The best predictor of an individual's future behavior is "his" group's past behavior. (Actuarial Risk Assessment-NOS)

# Actuarial Means Group

"Winwood Reade is good upon the subject," said Holmes. "He remarks that, while the individual man is an insoluble puzzle, in the aggregate he becomes a mathematical certainty."

Arthur Conan Doyle,
*The Sign of the Four* (1890)

# Actuarial Means Group

1. Without reference to a group there is no way to develop or validate a actuarial tool.
2. Without reference to a group there is no way to prove accuracy of an actuarial tool in practice.
3. Accuracy of an actuarial tool can not be established in the context of a single case or a single event.
4. A Nobel Prize awaits the person who produces an actuarial instrument validated with an “n” of one.

# PRINCIPLES OF ACTUARIAL SCIENCE

## Forward and Backward

1. In actuarial risk assessment the individual is assessed for assignment to an actuarial risk class.

   a. A limited number of known attributes of the individual is matched against attributes set out as underwriting rules.

   b. The individual is placed in a risk class comprised of individuals whose individual attributes match the same underwriting rules.

   c. In any risk class, individuals who will experience and those who will not experience the event in question have the same actuarial characteristics.

# PRINCIPLES OF ACTUARIAL SCIENCE

## Forward and Backward

2. For the risk class, one can predict the number of individuals, but not which individuals, in the group who will and who will not experience the event of interest.

3. Actuarial risk assessment provides no basis for doing to do the reverse, i.e., using predicted risk class outcomes to predict the outcome expectations for individual's in the risk class.

4. Actuarial Science Summarized:

   a. Predictable actuarial risk classes of individuals with shared underwriting characteristics - Doable

   b. Predictable individual risk from actuarial risk class affiliation – Not Doable

# PRINCIPLES OF ACTUARIAL SCIENCE

## Forward and Backward

### CAN DO

**Individual Characteristics-Underwriting Rule Matching**

↓

**Actuarial Risk Class Assignment**

↓

**Risk Class with Predictable Group Outcome Expectations**

### CAN'T DO

**Predictable Outcome Expectations for Individuals**

↑

**Selection of Individuals from Actuarial Risk Class**

↑

**Risk Class with Predictable Group Outcome Expectations**

# Actuarial Risk Groups — SVP Findings

1. All the individuals within each Risk Group have equivalent actuarial characteristics.

2. In every Risk Group there are individuals that are likely to reoffend.

3. In every Risk Group there are individuals who are not likely reoffend.

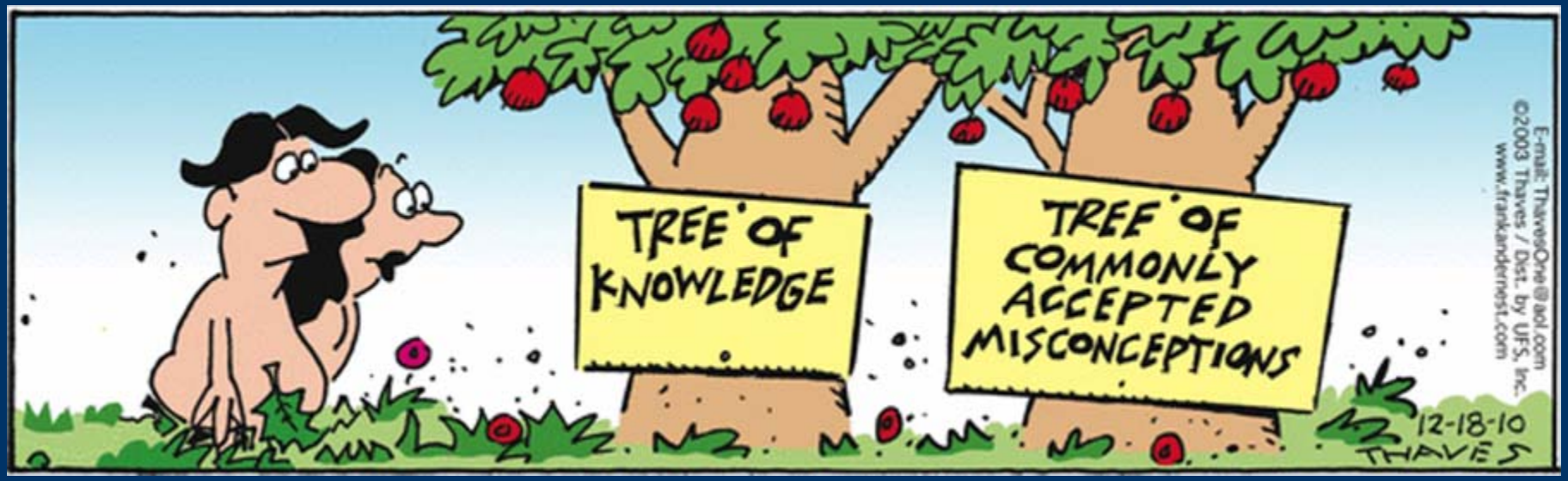
4. Risk Group affiliation does not establish an individual's likelihood of reoffending.

# Actuarial Risk Group — SVP Findings

| Group Affiliation | Individual Identity | Necessary SVP Finding |
|---|---|---|
| High Risk Group | Likely to Reoffend* | Positive |
| | Not Likely to Reoffend* | Negative |
| Medium Risk Group | Likely to Reoffend* | Positive |
| | Not Likely to Reoffend* | Negative |
| Low Risk Group | Likely to Reoffend* | Positive |
| | Not Likely to Reoffend* | Negative |

*Serious and well-founded risk.

# Common Accepted Misconceptions (CAMs)




1. Starbucks talk versus technical discourse.
2. Personal choice and public health initiatives.
3. Risk/benefit calculation in different contexts. “How could it hurt.”
4. Tentative revocable choices versus permanent or irretrievable.

# Miscommunication

## 11.01 Accuracy, Fairness, and Avoidance of Deception

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception.

*Specialty Guidelines for Forensic Psychology*,
APA Council of Representatives,
Adopted August 3, 2011

# Miscommunication

## 11.01 Accuracy, Fairness, and Avoidance of Deception

When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence . . .

*Specialty Guidelines for Forensic Psychology*,
APA Council of Representatives,
Adopted August 3, 2011

# Risk Miscommunication

1. In communicating risk, language is critical.
2. “Miscommunication of risk is often the rule rather than the exception and can be difficult to detect . . .”
3. “Statements about the probabilities of single events—such as ‘you have a 30 to 50 percent chance of developing a sexual problem’ are fertile ground for miscommunication.”

Gigerenzer, G., *Calculated Risks-How to Know When Numbers Decieve You* (2002)

# Risk Miscommunication

4. Communicating risk in percent often leaves too much to the imagination.

5. “A 30 percent chance of rain tomorrow” may be understood as:

   a. It will rain 30 percent of the time?

   b. It will rain in 30 percent of the area?

   c. It will rain on 30 percent of the days that are like tomorrow?

Gigerenzer, G., *Calculated Risks-How to Know When Numbers Decieve You* (2002)

# Risk Miscommunication

6. Communicating risk in percent is ambiguous and leads to misunderstanding.

7. Opportunity for misunderstanding is reduced when risk statements use whole numbers and identify what the numbers refer to.

8. For example, *"Mr. X is affiliated with a risk class in which 20 out of 100 (20 percent) individuals can be expected to reoffend in 5 years."*

# How Percents Deceive

1. A fraction is a number used to express portion of a whole. For example:
   - 1 of 4 parts of a inch, i.e., ¼ inch.
   - 1 of 2 parts of a pizza, i.e., ½ of a pizza.
   - 3 people of a group 4, i.e., ¾ of the people.
2. A fraction is composed of a numerator and a denominator.
3. The numerator is the part of fraction above the line that denotes a certain number of equal portions of the whole.

# How Percents Deceive

4. The denominator is the part of fraction below the line that denotes the number of equal portions that comprise the whole.

**FRACTION:** $\dfrac{\text{NUMERATOR}}{\text{DENOMINATOR}}$

5. A percent is a fraction that has been decimalized and multiplied by 100.

$$\frac{1}{5}\ \begin{matrix}\text{(numerator)}\\ \text{(denominator)}\end{matrix} = 0.20 \times 100 = 20\ \%$$

**Numerator and denominator "disappear."**

# How Percents Deceive

4. Without disclosure of the numerator, denominator and their source, risk statements in percent are, at best, ambiguous and, at worst, meaningless.
5. Basis for a “20 percent” risk of reoffense?
   - 20 people out of 100 people reoffended?
   - 20 offenses out of 100 chances to offend?
   - Offenses on 20 out of 100 days at risk?

**What is the numerator based on?**

**What is the denominator based on?**

# RISK ($R_p$) and RISK ($R_f$)

1. Population-derived Risk
   a. Actuarial (group) risk.
   b. Group performance, e.g., reoffence.
   c. The formula: $\frac{N_f \text{ (Individuals Failed)}}{N_e \text{ (Individuals Exposed)}} = R_p$
2. Frequency-derived Risk
   a. Individual risk.
   b. Individual performance, e.g., batting average.
   c. The formula: $\frac{T_f \text{ (Times Success)}}{T_e \text{ (Times Exposed)}} = R_f$

# Equivalency-Comparability Illusion

Population-derived Actuarial Risk (Group)

$$R_p = \frac{20 \text{ (people reoffend)}}{100 \text{ (people at risk)}} = 20\% \text{ group risk}$$

Population-derived Actuarial Risk (Individual)?

$$20\% \text{ individual risk} = \frac{20 \text{ what?}}{100 \text{ what?}} = \frac{\text{Numerator?}}{\text{Denominator?}}$$

$$20\% \text{ individual risk} = \frac{20 \text{ (people reoffend)}}{100 \text{ (people at risk)}} \quad ?$$

A clone risk?

# Equivalency-Comparability Illusion

An Individual's Population-based Actuarial Risk?

## A Clone Risk?

The reoffense risk of an individual expressed as the percent of individuals who will reoffend from a group comprised of the individual and 99 of his clones.

$$\text{20\% Clone Risk} = \frac{\text{20 (individuals reoffend)}}{\text{Individual + 99 clones}}$$

STATE OF ILLINOIS

DIVISION OF CORRECTION

# PREDICTION REPORT OF THE SOCIOLOGIST-ACTUARY

ILLINOIS STATE PENITENTIARY SYSTEM

JOLIET-STATEVILLE DIVISION

Number 00000 Name B_____ J_____ Docket May, 1942

| Factor | Item | Score |
|---|---|---|
| 1. Type of offense | *Murder* | 1 |
| 2. Sentence | *Life* | 1 |
| 3. Type of offender | *First* | 1 |
| 4. Home status | *Average* | 0 |
| 5. Family interest | *Very active* | 1 |
| 6. Social type | *Socially inadequate* | 1 |
| 7. Work record | *Irregular* | 0 |
| 8. Community | *Urban* | 0 |
| 9. Parole job | *Adequate* | 0 |
| 10. Number of associates | *Two* | 0 |
| 11. Personality rating | *Inadequate* | 0 |
| 12. Psychiatric prognosis | *Problematic* | 0 |
| | Total score | 5 |

This inmate is in a class in which 3 per cent may be expected to violate the parole agreement; 2 per cent of the persons in this class may be expected to commit serious or repeated infractions of the parole rules; and 1 per cent may be expected to commit new offenses on parole.

SAMPLE PREDICTION FACE SHEET

# Risk Miscommunication?

"This inmate is in a class in which 3 per cent may be expected to violate the parole agreement; 2 per cent of the persons in this class may be expected to commit serious or repeated infractions of the parole rules: and 1 per cent may be expected to commit new offenses on parole."

Illinois State Penitentiary System (1942)

# Risk Miscommunication?

"Mr. X scored a [number] on this risk assessment instrument. [Groups of] Individuals with these characteristics, on average, sexually reoffend at [number]% over five years and at [number]% over ten years. The rate for any violent recidivism (including sexual) for [groups of] individuals with these characteristics is . . . ."

Harris, Phenix, Hanson, & Thorton (2003)

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"Mr. X scored a [number] on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at [number]% over five years and at [number]% over ten years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is . . . . "

Harris, Phenix, Hanson, & Thorton (2003)

Association for the Treatment of Sexual Abusers

ATSA
Making Society Safer

# A REASONED APPROACH:

## RESHAPING SEX OFFENDER POLICY TO PREVENT CHILD SEXUAL ABUSE

Joan Tabachnick

Alisa Klein

# Risk Miscommunication

## Understanding Risk Assessment

*Over the past 15 years, research studies have identified different personal characteristics and factors most strongly related to adult males who re-offend sexually.*

*"So far, so good."*

Tabachnick and Klein, *A Reasoned Approach*, ATSA, 2011

# Risk Miscommunication

## Understanding Risk Assessment

*With an increased understanding of these characteristics and factors, researchers have developed evidence-based actuarial risk assessment instruments (ARAIs) for adults.*

*"OK, keep going."*

Tabachnick and Klein, *A Reasoned Approach*, ATSA, 2011

# Risk Miscommunication

## Understanding Risk Assessment

*These tools estimate the likelihood of sexual re-offense [for groups] based on a combination of risk factors associated with different risk.*

*"Hey, you left out the group part."*

Tabachnick and Klein, *A Reasoned Approach*, ATSA, 2011

# Risk Miscommunication

## Understanding Risk Assessment

*Although these risk assessment tools do not predict whether a specific individual will commit a new sexual offense . . .*

*"Well, you got that part right."*

Tabachnick and Klein, *A Reasoned Approach*, ATSA, 2011

# Risk Miscommunication

## Understanding Risk Assessment

*. . . they are currently the most reliable method of identifying [groups of] adults with particular characteristic that may lead to a higher risk of being re-arrested or reconvicted . . .*

*"Hey, you left out that group part again."*

Tabachnick and Klein, *A Reasoned Approach*, ATSA, 2011

# Risk Miscommunication

## For Example

*In order to assess [subject's] risk of sexual re-offense he was scored on five actuarial instruments that provide general base rates of sexual re-offense for [groups of] sex offenders.*

*"Look, this guy also left out that group part."*

Case No.: 062711-1

# Risk Miscommunication

## For Example

*[Subject] scored in the Moderate-High range of risk of sexual re-offense on the Static-99R, Static-2002R, MnSOST-R, SORAG, and the SRA-FV. Each of these instruments predicts whether an offender will be charged with a new sexual offense.*

*"Wrong! They predict how many out of a group will be charged with a new offense*

Case No.: 062711-1

# Risk Miscommunication

## Comparing the Uncomparable

*[Subject] scored a 3 on the Static-99R. [Groups of] offenders with the same score . . . have been found to sexually reoffend at a rate of 11.9 percent in five years . . .*

*"OK, about 12 out of a group of 100 will reoffend. So what's the subject's risk? 12 out of 100 whats?*

Case No.: 062711-2

# Risk Miscommunication

- In reports, evaluators typically state that determining risk of reoffense is different from predicting reoffense and that they are doing the former. (A distinction without a difference?)

- What is apparently not effectively communicated is the fact that actuarially determined risk is a prediction about the proportional expected outcome for a risk class, not a prediction about any individual in the risk class. (A distinction with a difference.)

# Risk Miscommunication

## What the Courts Hear

- "Three psychologists reported that, according to Whitlock's score on the STATIC 99 test, there was a 52% likelihood of his re-offending within the next 15 years."

  *People v. Whitlock* (2003)

- "Dr. M and Dr. F calculated a score of 4 on the RRASOR scale applied to appellant, which . . . meant that the risk that he would engage in sexually violent behavior over the next 10 years was 48.6%."

  *People v. Poe* (1999)

- "Defendant's score of 4 on the RRASOR, a clinical tool for evaluating the probability of a sexual offender's reoffending, indicated a 32.7 percent likelihood that the defendant would commit another violent sexual offense with five years . . . .

  *People v. Roberge* (2003)

# Risk Miscommunication

## What the Courts Hear

"The Static-99 is an actuarial instrument that allows and evaluator to place sexual offenders in different risk categories based on historical (static) factors such as age, marital status, the number of prior offenses, the relationship of the offender to the victims and the gender of the victims."

*"So far, so good."*

*People v. Therrian* (2003)
113 Cal App.4th 609

# Risk Miscommunication

What the Courts Hear

"After identifying the particular characteristics of the offender, the Static-99 test assigns a numeric score to them."

*"OK, keep going."*

*People v. Therrian* (2003)
113 Cal App.4th 609

# Risk Miscommunication

What the Courts Hear

"The total score of the test is a percentage chance of the defendant's likelihood of being convicted for a future sexual offense."

*"Whoa! Percent of what? Numerator? Denominator? Clone Risk?*

*People v. Therrian* (2003)
113 Cal App.4th 609

# Risk Miscommunication

What the Courts Hear

"In this evaluation the process of determining the likelihood of defendant reoffending requires adjusting the actuarial risk assessment."

*"The baseline fallacy. The false surrogate. It just keeps getting worse."*

*People v. Therrian* (2003)
113 Cal App.4th 609

# The “Baseline” Fallacy

1. A strategy that both uses and enhances the illusion of equivalency and comparability.

2. With the false assumption (illusion) that the individual’s risk is equivalent to the risk of his or her assigned risk class, the outcome expectation of the risk class is used as a surrogate for individual risk and “adjusted” upward or downward based on alternate sample norms, “dynamic factors,” “clinical judgment,” and/or evaluator idiosyncrasy. “Compounding the Problem.”

# The “Baseline” Fallacy

3. A strategy with compound flaws:

   a. The actuarial (class) risk percent is a false surrogate for the risk of any individual.

   b. “Adjusting” the false surrogate risk in an effort to determine an individual’s risk is akin to the practice of voodoo.

   c. Departure from the validated underwriting and scoring rules of a risk assessment system results in an *ad hoc* assessment system of unknown validity.

# The “Baseline” Fallacy

3. A strategy with compound flaws:

   d. Offers a “patina” of actuarial, numerical precision to assessments that are significantly influenced by “clinical judgment” and evaluator idiosyncrasy. “Sailing under false colors.”

   e. Inherent anchoring and floor effect bias.

# The Precision Fallacy

- Actuarial prediction is more precise, accurate, or reliable than clinical prediction.

*"Whoa! This is way too ambiguous."*

- Actuarial prediction of group outcomes are more precise, accurate, or reliable than clinical predictions of group outcomes.

*"OK. That's right."*

# The Precision Fallacy

- Actuarial prediction of individual outcomes are more precise, accurate, or reliable than clinical predictions of individual outcomes.

*"Actuarial prediction of an individual outcome? That's an oxymoron. Next.*

# The Precision Fallacy

- Actuarial prediction of group outcomes are more precise, accurate, or reliable than clinical predictions of individual outcomes.

*"Clone risk? What's the numerator. What's the denominator. Remember— a percent is a fraction.*

1. The precision, accuracy, or reliability of a tool are irrelevant parameters when the tool is the wrong tool for the job.

# The Precision Fallacy

2. The precision, accuracy, and reliability debate side steps (obfuscates) foundational questions:
   - The basic conceptual error.
   - The inherent structural defect in the "instruments."
3. Mental health professional are rarely called on to assess group risks.
4. Exception: *People v. McKee (2010) 47 Cal.4th 1172, on remand to San Diego Superior Ct. (2011).*

# *People v. Richard McKee*

- San Diego Superior Court opinion. (April 2011)
- The issue: Equal Protection. (Group risk)
- Judge Michael D. Wellington "gets it."

*[The Static-99] score is then correlated with the scores of a larger population of sexual offenders whose re-offense record is known to determine what percentage of offenders with a similar score have reoffended within a particular time period . . . The score is not intended to show the specific likelihood of sexual recidivism for a particular individual.*

# *U.S. v. Walter Wooden*

- U.S District Court for Eastern District of North Carolina, Western Division order filed August 31, 2011.

- The issue:  Sexual Dangerous Predator as defined in the Adam Walsh Act.

- *All three experts in this case conducted a risk analysis based on empirical tools and actuarial instruments to evaluate, quantify, and support their dangerousness determination.*

# *U.S. v. Walter Wooden*

- *All experts agree that no psychological tests or actuarial instrument have been developed that predict with certainty an individual's risk of future sexual offending behavior.*

- *The actuarial instruments (Static-99R, Static 2002R) provide only group prediction rates on risk of re-offending. These instruments do not provide individual rates of re-offending.*

- Does the court see a problem of "certainty" (accuracy) or a problem of unsuitability and fundamental conceptual error?

# The Precision Fallacy

5. “My iPod’s more precise and accurate than your table saw.”
6. “My refrigerator is more precise and accurate than your lawn mower.”
7. A form of “bait and switch.”
   - The bait: Assessment of individuals.
   - The switch: Actuarial (group) assessment.
8. Tools that accurately and precisely provide the public with something other than what it is looking for.

# Model Disclosure Statement - 1

Because actuarial measures are based on group data, instruments such as the Static-99 and Static-2002 and their progeny can only predict the percentage of people in the group who will offend.

They cannot identify which individuals in the group will be among those who do or do not re-offend.

This type of research is very valuable in discovering what factors are shared by sexual offenders, and they provide valuable tools for communities and law enforcement when trying to determine where to put resources.

# Model Disclosure Statement - 1

Unfortunately, when they are presented to lay people in court, they are sometimes misunderstood as having the ability to predict individual likelihood to re-offend. There are many reasons why they cannot . . . .

. . . While the offender's history that contributes to each [risk] factor is definitely relevant to a determination of risk, I would agree with the opinion that the actuarial assessment instruments are neither necessary nor sufficient to establish the conditions for commitment under WIC 6600.

# Model Disclosure Statement - 2

The risk percent associated with any individual derived from a score determined by an actuarial risk assessment tool represents the number of individuals out of a group of 100 individuals with the same risk assessment tool score who will experience the event or exhibit the behavior in question. *Translated from the Latin—percent literally means "per one hundred."*

For example, if a risk assessment tool score of 5 is associated with a risk of 25%, this means that it is reasonable to expect that, in a group of 100 individuals with a score of 5, twenty-five will experience the event or exhibit the behavior in question.

# Model Disclosure Statement - 2

For every risk percent for an event or behavior to occur there is a reciprocal risk percent that the event or behavior will not occur. The reciprocal risk is the calculated by subtracting the risk percent from 100.

For example, if a risk assessment tool score of 5 is associated with a risk of 25%, the reciprocal risk that the experience or event will not occur is 75% (100 – 25 = 75). This means that it is reasonable to expect that, in a group of 100 individuals with a score of 5, seventy-five will not experience the event or exhibit the behavior in question.

# Model Disclosure Statement - 2

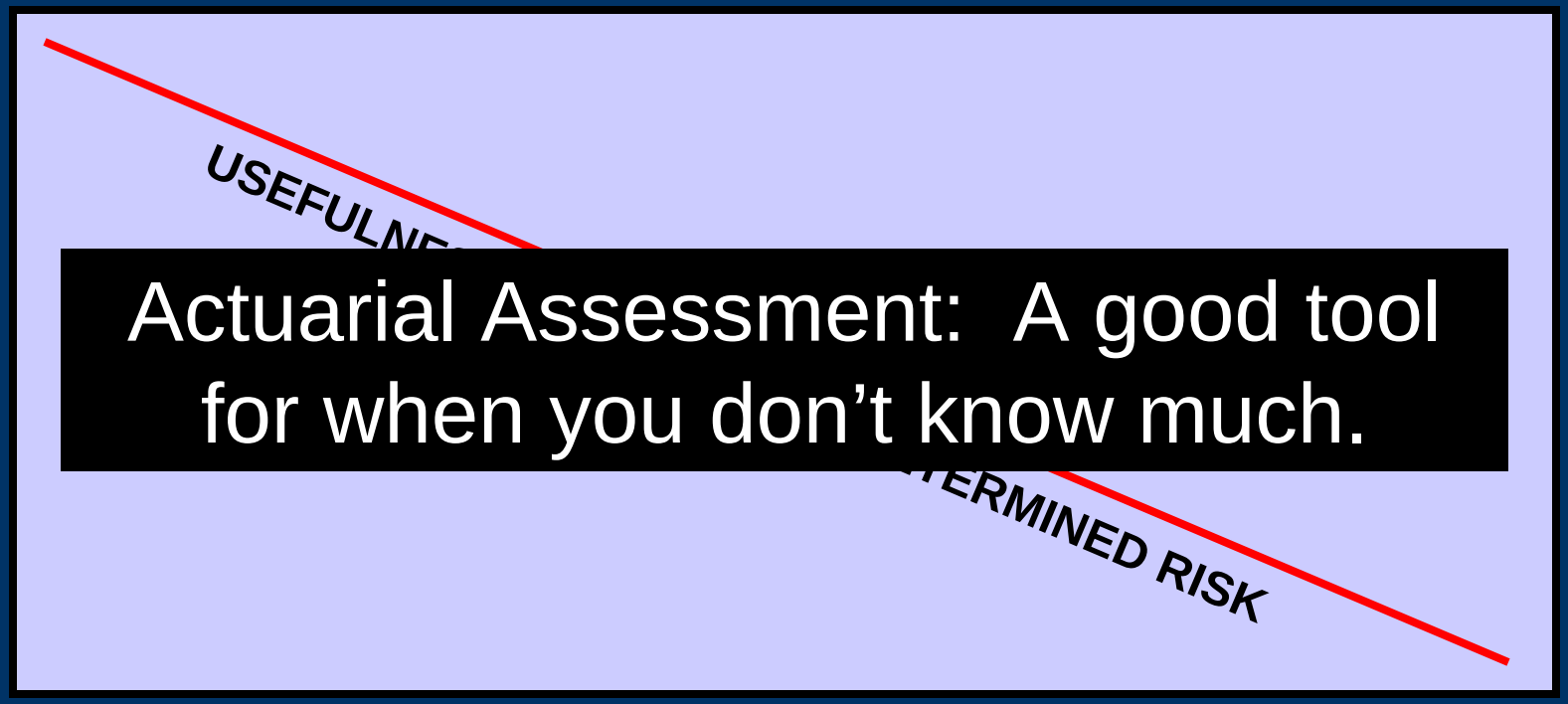
In summary, actuarial (group-derived) risk assessment can tell us how many individuals out of a group of 100 individuals with the same assigned risk we can reasonably expect to experience an event or exhibit a behavior and how many individuals out of a group of 100 individuals with the same assigned risk will not experience that event or exhibit that behavior.

**Actuarial risk assessment does not and cannot tell us which of the two outcome groups associated with each level of risk any individual will fall within.**

# Actuarial Risk Assessment Relative Utility

**Most Useful**

**Least Useful**




Actuarial Assessment: A good tool for when you don't know much.

**Screening/Triage**

**Minimal Individual Data**

**Pre-examination**

**Goal: Group Risk/Prognosis**

**Diagnosis**

**Maximal Individual Data**

**Post-examination**

**Goal: Individual Risk/Prognosis**

# Criterion C – From Ghilotti to Actuaryland

## Actuarial *Über Alles?*

1. Both doctors had extensive experience in psychological and psychiatric evaluation.
2. Their expertise in diagnosis and treatment was closely related to their opinions.
3. Whether they used clinical or actuarial models . . . are not reasons to exclude their testimony.
4. The expert were not restricted to one methodology or another.

People v. Ward (1999)

# Criterion C – From Ghilotti to Actuaryland

## Evaluations without "Actuarial" Risk Assessment?

- ✓ 95 total evaluations.
- ✓ 46 different subjects.
- ✓ 23 different evaluators.

# Actuarial Risk Assessment (NOS)

## Unintended Consequences

*Risk assessments are invariably about individuals. Incidence based on the performance of groups can inform the individual assessment, but they also have the capacity to obfuscate a decision . . .*

Webster, Bloom, and Augimeri (2011)
www.psychiatrictimes.com

# Actuarial Risk Assessment (NOS)

## Unintended Consequences

1. Disuse atrophy of analytic/ thinking skills?
2. Blindness, myopia or tunnel vision?
3. Institutionalized prejudice/bias?
4. Anchoring?  Floor effect?
5. Parroting?  Plagiarizing?
6. Avoidance of accountability?

# Actuarial Risk Assessment (NOS)

## Anchoring

1. Tversky and Kahneman; *Science*, 1974
2. Anchoring occurred with random and unrelated numbers.
3. “Super-anchoring” with “meaningful” numbers?

*We use reference points . . . and start building beliefs around them because less mental effort is need to compare an idea to a reference point that to evaluate it in the absolute.*

Taleb, N., *The Black Swan* (2010)

# "Actuarial" Paralysis of Analysis

QUALIFYING CRIMES

At age 32, subject charged with 42 and convicted of 11 sexual offenses (4 SVP-qualifying). His drugging and raping of 5 different women over 18 months was documented in his own video-tapes of the crimes. He repeatedly slapped and struck one of his drugged but not fully incapacitated victims.

+

At age 46, after less than one year on parole, returned to prison on parole violation for possession of poster graphics depicting women "bound, tied, staked or restrained against their will." Currently 46 years old.

+

- Static-99R score: 2 (Low-Moderate risk category)
- VRS-SO 17 factors: 4 significant, 7 moderately related to sexual recidivism.
- Protective risk factors: none.
- Probability of reoffense even higher (under-reporting).
- Future sex offense likely to be predatory.

II

**Not a serious and well founded risk to reoffend.**

QUALIFYING DISORDER

LIKELY TO . . .

No. 00107 No. 00108

# “Actuarial” Paralysis of Analysis

In 1994, engaged in sadistic acts by drugging women and then videotaping them while he engaged in deviant acts. He placed a hood over their heads, bound and gagged some of them, and used toxic substances to keep them unconscious. It appears that some of the women would have had consensual sexual intercourse with him, and possibly even did so before these offenses, suggesting that it was their incapacitation and domination which he found to be more arousing. With this history, it is not surprising that he is diagnosed with sexual sadism.

Despite that troubling diagnosis, a risk assessment does not reveal a high level of dangerousness. As a first-time sex offender with little criminal history, simply does not pose a substantial and well-founded level of dangerousness that would justify a civil commitment.

Possible translation: ~~My mother~~ The “actuarial” risk assessment wouldn’t let me do it, i.e., say he is a serious and well found risk to sexually reoffend.

No. 00107

# “Actuarial” Paralysis of Analysis

“We are satisfied that no reasonable juror would mistake . . . use of the Static-99 test as a source of infallible truth on the issue of defendant’s reoffending.

*“So what about the reasonable evaluator?”*

*People v. Therrian* (2003)
113 Cal App.4th 609

# "Actuarial" Paralysis of Analysis

In this case, an overall review of the Static-99R, Static-2002R and external dynamic factors places Mr. at Low to Low-Moderate risk for sexual reoffense. Therefore, I opine that Mr. does not meet the likely standard as specified within WIC 6600.

- Translation?: "Thinking's for sissies – I got actuarials."

having a current interest in sexual sadism. Given that Mr. has a life-long interest in sexual sadism, this evaluator could envision the possibility of bumping the risk for future sexual offense to the moderate level, given the extenuating circumstances, but could not support raising the risk to the moderate-high or high level. The actuarial data in conjunction with the dynamic risk factors do not support that Mr. is a substantial danger or serious and well-founded risk for a future sexual offense.

- A mathematical assessment of the assessment tools rather than a psychological assessment of the person.
- ~~My mother~~ The "actuarial" risk assessment wouldn't let me do it, i.e., say he is a serious and well found risk to sexually reoffend.

No. 00108

# Assessing of the Assessment Tool

"In my SVP report of 03/05/08 I opinion [*sic*] that he was a serious and well-founded risk. Since that time there has been a revised version of the Static-99 (Static-99R). This updated instrument better accounts for the effects of age on sexual recidivism. Thus, Mr. Wilson's score on the Static-99R dropped one point to the Low-Moderate range of risk. The Static –99R's recidivism rates are lower than in the Static-99. This reflects the fact that sexual recidivism has decreased in more contemporary samples. These factors have led me to conclude that he is not a serious and well-founded risk to commit sexually violent behavior."

*"And, how has the person changed?*

No. 00119

# Lost in Actuaryland

Although it is of concern that Mr. [redacted] abducted two young girls who were strangers on separate occasions and sexually assaulted them in a brutal manner, the actuarial instruments indicate that he is most similar to those with low-moderate to moderate likelihood of sexual reoffense. His age and lack of general criminality lowered his scores on the actuarials. Also, he was not detected until after his second sex offense and the two offenses were combined which resulted in the single, index sex offense. An absence of prior sex offenses also lowered his actuarial risk for reoffense. Mr. [redacted] has some but not all of the dynamic factors associated with sexual reoffense. Based on an overview of the actuarial instruments, I opine that Mr. [redacted] does not meet the likely standard as specified within WIC 6600.

No. 00109

# Lost in Actuaryland

1. Alice cannot distinguish between Actuaryland and the real world.
2. In Actuaryland, two crimes are one crime.
3. In Actuaryland, a crime that precedes the last crime is not a prior crime.
4. In Actuaryland, moderate risk plus multiple dynamic factors for reoffense does not amount to a serious and well-founded risk.
5. In Actuaryland, Alice does a mathematical assessment of the assessment tools rather than a psychological assessment of the person.

# The Answer to the Last Question

1. *Actuarial* is a good word.
   a. For those most familiar with the word, it denotes a methodology which is scientific, mathematical, and precise.
   b. For those less familiar with the word, through its associations with insurance and insurance advertising, it connotes professional, conservative, reliable, respectable, trustworthy, solid.
      - “You’re in good hand with Allstate.”
      - Prudential—Strong as the Rock of Gibraltar

# The Answer to the Last Question

1. *Actuarial* is a good word.

   c. For those unfamiliar with the word, it is naturally attractive based on the initial phonemes it has in common with a group of strong positive words.

      - Act, action, activism, activity, activate.
      - Actual, active, actually, actively.

2. *Tools* and *Instruments* sound good too.

   a. Connote tangible, useful, scientific

   b. Reality: A set of data fields, a check list, a questionnaire, and an inventory form.

# The Answer to the Last Question

3. Mission Impossible

   a. The phenomenological impossibility of objective analysis or discourse about the future.

   b. *Déjà vu* McNaughten

      - Sound policy, but . . .
      - Humanly imperceptible.
      - Objectively/scientifically unmeasurable.

   c. “Let Mikey do it.” – Psychiatrist/psychologists to the rescue.

# The Answer to the Last Question

3. Mission Impossible
   d. False confidence is better than no confidence at all.
   e. Like petting a cat – Everyone's BP is lowered.
      - Mental health expert.
      - The judge.
      - The attorney.
      - The jury.
   e. Now the impossible seems possible.
      - A useful, comforting fiction/illusion.
      - "We like it when you talk ~~dirty~~ actuary."

# The Answer to the Last Question

4. Numbers-Rock-Scissors-Paper
   a. Numbers are associated with physical sciences, engineering and finance.
   b. “Numbers don’t lie.”
   c. Numbers sell – “99 and 44/100 % pure.”
   d. Numbers imply accuracy, precision, and certainty, even when:
      - They are inaccurate, or
      - They are ambiguous, or
      - They are meaningless, or
      - They measure the wrong thing.

# The Answer to the Last Question

5. The joy of sects (clubs, cliques)
   a. A shared common identity.
   b. Shared belief system and values.
   c. Idolized leaders, parental figures, protectors.
      - “Karl, he’s the man.”
      - “He’s like a rock star.”
      - “He’s so smart you can only understand half of what he says.”
   d. Role models.
   e. A world of disciples and Mini-Mes.

**Dogma** is the established belief or doctrine held by a religion, or by extension by some other group or organization. It is authoritative and not to be disputed, doubted, or diverged from, by the practitioners or believers.

**Heresy** is a controversial or novel change to a system of beliefs, especially a religion, that conflicts with established **dogma**.

www.en.wikipedia.org

# The Answer to the Last Question

6. The Andersen Phenomenon

   a. Imposing and maintaining an orthodoxy.

   b. Preemptive defense against heresy.

   c. H. C. Andersen, Denmark (1805-1875)

   d. The elements of the technique:

      - Protagonist(s) propose(s) a falsehood in self-interest.

      - People recruited to believe the falsehood are told that only people who are incompetent or unintelligent will not believe the falsehood.

# The Answer to the Last Question

6. The Andersen Phenomenon

   d. The elements of the technique:

      - In words and gestures, the protagonist(s) continually act(s) as if the falsehood were true.
      - The protagonist(s) seek(s) to recruit believers in positions of authority and power.

   e. Findings:

      - When believers are confronted with irrefutable sensory evidence that what they have been told to believe is not true, they continue to behave as though the falsehood were true.

# The Answer to the Last Question

6. The Andersen Phenomenon

   f. Why and how:

      - Upon recognition of the falsity of the belief, some think that they must be unintelligent or incompetent, but do not wish to reveal that to others. They maintain the fiction.

      - For these individuals, their negative assessment of their intelligence or competence is bolstered by the apparent unquestioned belief of those around them.

# The Answer to the Last Question

6. The Andersen Phenomenon

   e. Findings:

   - Others, upon recognition of the falsity of the belief, do not think that they are unintelligent or incompetent, but do not wish to reveal their discovery to others who will think they are unintelligent or incompetent. They maintain the fiction.

   - "[They can't give up 'actuarial' instruments], they don't want to be laughed at in court."

SVP Evaluator (2010)

# The Answer to the Last Question

6. The Surrogate Mastery Effect
   a. Surrogate mastery engenders self-confidence.
   b. Mastery of a surrogate task or challenge can be generalized to engender confidence in the face of more difficult or unmasterable tasks.
   c. Mastery of a special vocabulary may engender confidence without actual mastery of task.
   d. Certificates, medals, plaques, trophies may give tangible (sensory) “proof” of mastery.
      - Military boot camp.
      - Vocabulary of the stock market, investing.
      - The scarecrow in the *Wizard of Oz*.

# The Answer to the Last Question

6. The Surrogate Mastery Effect

   e. Mastery of Assessment of Dangerousness

   - A respected trainer (or a drill sergeant).
   - A retreat (or camp) away from home.
   - The tasks or surrogate tasks can be mastered by most within the allotted time.
   - Conceptual training, indoctrination.
   - Introduction to tasks and tools (weapons)?
   - Development of a sense group identity. Fellow seminarians, cadets, all soon to be ordained or commissioned.

# The Answer to the Last Question

6. The Surrogate Mastery Effect

   e. Mastery of Assessment of Dangerousness

      - Mastering the tools and task by simulated exercises—scoring assessment tool with sample data (obstacle course, firing range).
      - Simulation may encourage forming small groups or choosing partners.
      - In risk assessment training, the leader(s) circulate as personal trainers
      - A an atmosphere of sports-like competition often develops between work groups.

# The Answer to the Last Question

6. The Surrogate Mastery Effect

   e. Mastery of Assessment of Dangerousness

   - Individual's and work groups get caught up in the game, bent on mastery and success at the surrogate task. Games are fun.
   - The tenuous relationship between the task, scoring assessment tools, and the ability to assess the future behavior of an individual is seldom, if ever, mentioned. Never emphasized.
   - Toward the end the leader/trainer polls the audience for their scores. The participants check and match their score sheets like players in a bingo parlor.

# The Answer to the Last Question

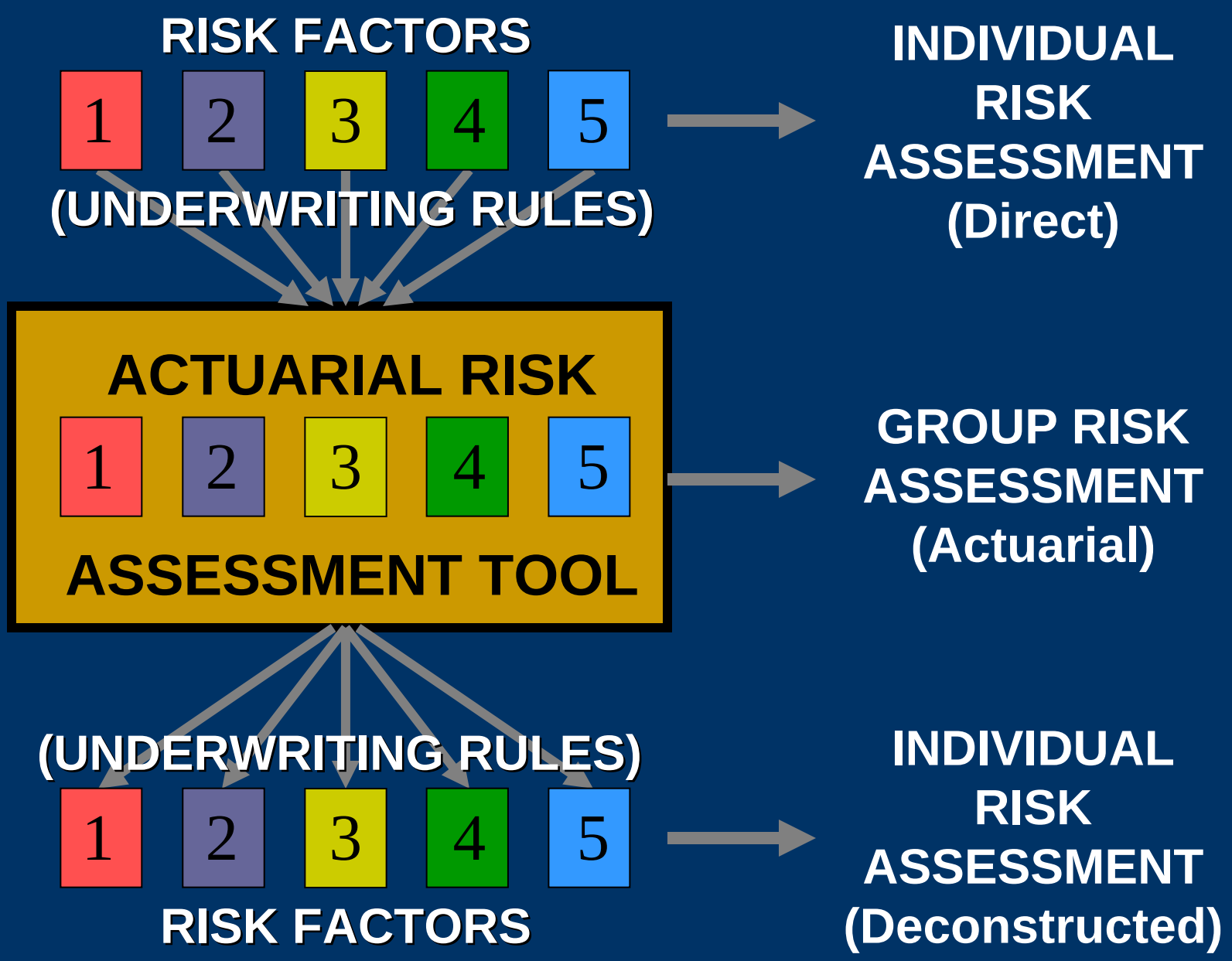
## 6. The Surrogate Mastery Effect

### e. Mastery of Assessment of Dangerousness

- In the end, no one fails. Like soldiers successfully out of boot camp, most have a new sense of confidence, or reduced anxiety about what they face—evaluations and court (actual combat).

- Most have mastered scoring a new "instrument," mastered a new vocabulary, and may have received tangible evidence of mastery—a certificate of completion.

# RISK ASSESSMENT PATHWAYS



| Integrated Bimodal Risk Assessment | | Unimodal Risk Assessment |
|---|---|---|
| **Psychosocial Historical Risk Formulation** | Step 1 | **Actuarial Risk Class Assignment** |
| + | | ↓ |
| **Integration of evidence-based knowledge** | Step 2 | **Class Risk "adjusted" as surrogate for individual risk** |
| ↓ | | ↓ |
| **Conclusion** | Step 3 | **Conclusion** |

# Integrated Bimodal Risk Assessment

# Unimodal Risk Assessment

## Step 1

### Psychosocial Historical Risk Formulation

- Psychological History*
- Criminal History*
- Psychological Diagnosis*
- Current Mental State*
- Personality*
- Behavioral Patterns, Trends*
- Expressed intent*

### Actuarial Risk Class Assignment

- Scoring Static Risk Factors (underwriting)*
- Risk class assignment*

* Protocol consistent

# Integrated Bimodal Risk Assessment

# Unimodal Risk Assessment

**Integration of evidence-based knowledge**

Step 2

**Class Risk "adjusted" as surrogate for individual risk**

- Case formulation "testing"*
- Static Risk Factors*
- Dynamic Risk Factors*
- Direct Risk Factors*
- Deconstructed Risk Factors*
- Case-specific Risk Factors

- Class risk is surrogate for individual risk
- Surrogate risk "testing"
- Alternate risk class assignment*
- Dynamic Risk Factors*

* Protocol consistent

| Integrated Bimodal Risk Assessment | | Unimodal Risk Assessment |
|---|---|---|
| **Conclusion** | **Step 3** | **Conclusion** |
| The qualitative Ghilotti question of “serious and well-founded risk” is answered based on qualitative analysis of individual risk.* | | The qualitative Ghilotti question of “serious and well-founded risk” is answered based on quantitative analysis of group risk. |
| CASE-SPECIFIC | ⟷ | “THESE PEOPLE” |

* Protocol consistent

| Integrated Bimodal Risk Assessment | | Unimodal Risk Assessment |
|---|---|---|
| **Psychosocial Historical Risk Formulation** | Step 1 | **Actuarial Risk Class Assignment** |
| + | | ↓ |
| **Integration of evidence-based knowledge** | Step 2 | **Class Risk "adjusted" as surrogate for individual risk** |
| ↓ | | ↓ |
| **Conclusion** | Step 3 | **Conclusion** |

# Integrated Bimodal Risk Assessment

**C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his diagnosed mental disorder? YES.**

This inmate's diagnosable mental disorders of Pedophilia and Antisocial Personality Disorder make him more likely than not to engage in sexually violent predatory behavior. For over 40 years, between the ages of 15 and 57, this inmate has engaged in a persistent and relentless pattern of sexually victimizing prepubescent children, primarily females. In spite of his attempt to minimize his sexual orientation, his comments continue to reveal a sexual arousal pattern toward young girls. Moreover, in spite of his age, he acknowledges a continuing sexual appetite. The combination of continued sexual interest, along with his orientation toward prepubescent girls, results in a significant and high risk for sexual reoffense.

to reoffend:

(1) An individual is considered a lower risk for sexual reoffense if the number of prior arrests is

There are additional factors that contribute to this inmate's high risk for sexual reoffense. These risk factors emerge from recent analyses of characteristics of individuals who are sexual recidivists.

at first offense the higher the risk). This inmate's first known offense occurred when he was 15 or 16.

# Integrated Bimodal Risk Assessment

(3) An individual is considered a lower risk for sexual reoffense if the age of first arrest for a sex offense is 35, and a higher risk for sexual reoffense if the age at first arrest for a sex offense is 21. This inmate was first arrested for a sex offense at the age of 22 while he was in the United States Army.

(4) An individual is considered a low risk for sexual offense if the number of prior arrests for sexual offenses is no greater than two. They are considered a higher risk for sexual reoffense if they have five prior arrests for sex offenses. This inmate has five prior arrests for sex offenses.

(5) An individual is a lower risk of sexual reoffense if they have only one child molestation arrest. They are a higher risk for sexual reoffense if they have two child molestation arrests. This defendant has had five child molestation arrests.

(6) An individual is considered a higher risk for sexual reoffense if their child victims are both male and female. This inmate has victimized both male and female children.

(7) An individual is a higher risk for sexual reoffense if they have a documented juvenile offense record. This inmate was arrested for a sex offense and spent time in juvenile hall (one document indicates a "reform school" in San Francisco County).

(8) An individual is considered a higher risk for sexual reoffense if they have been diagnosed with an Antisocial Personality Disorder. This examination finds that this inmate meets the essential features of an Antisocial Personality Disorder.

(9) An individual is considered a higher risk for sexual reoffense if they have ever been committed as a Mentally Disordered Sex Offender. This inmate was found to be a Mentally Disordered Sex Offender in the late 1960's and mid- 1970's.

In conclusion, this inmate displays a number of high risk characteristics that make him more likely than not to sexually reoffend. He meets Criteria C.

**III. CONCLUSION**

Based on the above information, in my opinion, the inmate **does** meet the criteria of a sexually violent predator as described in Section 6600(a) of the California Welfare & Institutions Code.

# DUTY TO INFORM

FORENSIC
MENTAL HEALTH
ACTUARIAL
RISK
ASSESSMENT

**HIGH**
CASE APPLICATION
Liberty at Issue

**MEDIUM**
CASE APPLICATION
Liberty Not at Issue

**LOW**
GROUP APPLICATION

# What is there to say or do?

1. Translate ARAI risk classes into “Actuarial justification for selection” of the subject for evaluation:

| **Risk Category** | **Selection Justification** |
|---|---|
| *High* | *High* |
| *Moderately-High* | *Moderately-High* |
| *Moderately-Low* | *Moderately-Low* |
| *Low* | *Low* |

# What is there to say or do?

2. Use evidence-based risk factors (direct or deconstructed) to “test” your individualized psychosocial-historical risk formulation (Integrated Bimodal Risk Assessment)

3. Use evidence-based risk factors to “test” class risk as a surrogate for subject’s risk. Calls for disclosure and care to not foster the illusion of equivalency or comparability. (Unimodal Risk Assessment)

# What is there to say or do?

4. Consider whether SAP language “according to his or her professional judgment, shall apply tests or instruments . . .” supports not using “instruments” when the evaluator’s psychosocial-historical risk formulation is so “well-founded” that the evaluator’s professional judgment is that “testing” that formulation would be of no added value.

5. Is Criterion C analysis and reporting necessary in cases in which Criterion B is negative?

# Contact Information

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CURRENT
NEW
OTHER
Grammatical...
33%
33%
33%
Conceptuall...
33%
33%
33%
OK, as is.
33%
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