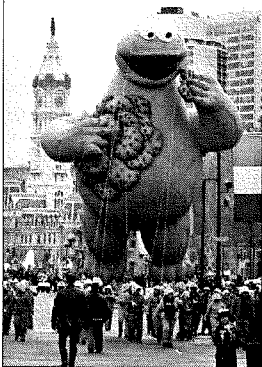


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Thanksgiving: So that's where all our cookies went!



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- ✓ 'Stranger Danger' Debunked
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- ✓ Colorado Sex Offender Registration Law Unconstitutional
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- ✓ Static-99R Flunked Texas-Wide Field Validity Study



Mr. Walz, Tear Down THIS Wall!

A Gay Man Is Committed as an "SVP" in Virginia. What Does This Mean to You?

***Can You Say,
The Endless Darkness Is Spreading?
Can You Hear
Trees Falling in the Forest?
Are You Listening?
It Matters. Here's Why:***

"A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." 9 Writings of James Madison 103 (G. Hunt ed. 1910).

By Cyrus Gladden

I write as a former lawyer and now as a 68-year-old under sex-offender commitment in Minnesota. In both my professional and personal capacities, I have for many years studied sex-offender commitment laws and practices under them and the science (and more often, the lack thereof) concerning the subject of their prime motivation: concern about sex-crime recidivism.

Through my research, I have become certain that, whatever justifications are claimed for this post-prison-sentence practice, the truth is that advocates' prime motivations for these laws are these mind-states: (1) hysterically unrealistic fears about such crimes and imagined 'monsters' who supposedly commit them; and (2) a lynch-mob mentality desiring post-prison additional lifetime incarceration of these ex-convicts thus demonized — superficially as further (claimed-but-unneeded) preventive detention, but more deeply emotionally as an act of further socio-legal retribution and deterrence. There is not space here to support these statements, although when all facts are known, each of them is clear and irrefutable.



Fears Lurk in the Mind

Instead, this article concerns a man with past criminal sexual conduct who has recently been committed in Virginia. (Truth-in-reporting disclosure: I know him through extensive correspondence and have worked with him in mutual advocacy against sex offender commitment. This article is not occasioned by that interaction. It is, however, printed with his express permission.) His commitment is noteworthy in that it so clearly exemplifies what is terribly wrong with such commitment.

Across our country, more than 7,000 people are currently being held in civil commitment solely for having past sex-crime records. Galen Baughman, a 34-year-old gay man raised in Arlington, Virginia, has just become one of them. This is Galen's story, but it is also a horror story of homophobia wielded by government officials through laws tailor-made for that misuse. It is the fire alarm in the dead of night for which we must all wake up and act.

At the age of 20, Galen pled guilty to two charges of illegal sexual misconduct. The first of these occurred in 1997, ten days after his 14th birthday. That crime consisted of giving sexual instruction to a younger boy. In Galen's case, this was a one-off interaction by a 14-year-old. For that offense, prosecutors declined to press delinquency charges at the time.

The second offense occurred in 2003 when he was 19. In that case, Galen had sexual liaisons with a willing 14-year-old male. When that relationship was exposed, the 14-year-old refused to cooperate with authorities. Only after the 2003 offense and that refusal to cooperate with the prosecution did prosecutors add the 1997 offense (charged as an adult offense) to that 2003 indictment.

Neither charge involved any violence or deception; neither of those minors participated in his prosecution. By a plea agreement he came to regret, Galen served 6.5 years in prison, much of the time in solitary confinement after officials claimed it was for his protection. Before Galen could begin his parole term, he detained for two-and-a-half more years pending a civil commitment trial as an alleged "sexually violent predator" ("SVP") under the Virginia Sexually Violent Predators Act (SVPA). After trial, the jury rejected that commitment attempt.

Virginia is not alone. In all, 20 states and the federal government, have an SVPA. Under these laws, people who have completed criminal sentences for any of numerous sex-related offenses can be indefinitely incarcerated in a high-security facility — until the state/the feds determine that they no longer present a risk of re-offense, or the individual dies. While statutory definitions and sex-offender commitment grounds vary from state to state, the terms of Virginia's SVPA are

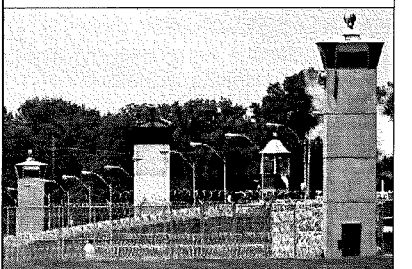
roughly equivalent to Minnesota's own analogous statute.

According to the US Supreme Court, beyond the terms of such statutes, authorities must also prove that the person lacks "volitional control" (that is, is driven by uncontrollable compulsion to commit sex crimes). Alarming, however, that requirement is mostly disregarded by lower court judges who see their job as simply being to permanently incarcerate anyone with a history of sex-related offenses beyond their expired prison term on the false view that such recidivism only happens through such compulsive reaction.

Civil libertarians have always objected to such practices. They smack of double jeopardy, of *ex post facto* punishment, and of a glaring form of Catch-22: the defendant is deemed mentally fit to stand trial but mentally unfit for release. The US Supreme Court has swatted aside such objections, ruling that civil commitment is not punitive as long as the state claims that the purpose of detention is psychiatric treatment.

Such claims are belied by actual practices at sex offender commitment facilities, where psychologists concede that there is no reasonably effective treatment for sex offenders to render them certain to never to reoffend later. Some states, such as Minnesota (by "waiver"), have thus administratively allowed their sex offender commitment programs to instead administer something called "cognitive behavioral therapy," which boils down to an attempt to brainwash sex offenders out of a wish to commit sex crimes, a process therapists admit takes many years, often double-decades. Yet no amount of brainwashing can eradicate an underlying sexual orientation, a fact that release boards commonly use to deny release to those committed. Catch-22.

The important facts, however, are these: (1) No sexual orientation, no matter how deviant, equates to commission of sex crimes at all, or to sex-crime recidivism. (2) The vast majority of convicted sex offenders cease committing sex crimes without any treatment at all, belying the claim of a necessity of decades of treatment to cause such desistance. (3) Among sex offenders who have desisted,

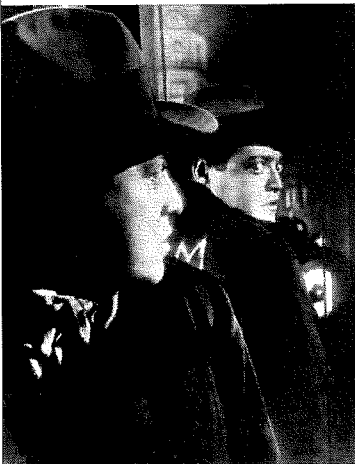


Prison, or Sex-Offender Commitment Facility?

(Continued from page 1)

only a minority who underwent treatment while incarcerated later attribute their desistance to their treatment experience.

Even if one is convinced of the necessity of treatment of sex offenders, Galen's ongoing parole could fulfill this role just as effectively as commitment for decades can. Further, Galen had been living crime-free in open society for four years after his release from his prison sentence, a fact proving that he was surely not driven by compulsion to commit any later sex crimes. Hence, neither 'need for treatment' nor such compulsion to reoffend is any real reason for commitment in his case.



Peter Lorre, in "M" (1931, dir.: Fritz Lang)

SVP laws and practices refer to 'mental abnormalities,' which sounds scientific. Yet the American Psychiatric Association has opposed such laws, citing their abuse of civil liberties and the use of unscientific 'disorders' as infliction of punishment. Common examples include "hebephilia" (attraction to teenagers, discussed below) and "unspecified paraphilic disorder – nonconsent" -- in other words, commission of rape, simply converted from a crime into a claimed disorder. These and other supposed emotional maladies have been rejected outright by the Diagnostic and Statistical Manual – Version 5 of that same professional association. In practice, designation as a sexually violent predator (SVP) is not based on any documented science, and the therapy received by detainees in commitment 'treatment facilities' is based more on junk-science fads than on careful scientific research. So strongly has the American Psychiatric Association concluded that sex-offender commitment is an abuse of the psychiatric concepts claimed to support them that it has forbidden member psychiatrists from taking part in any such commitment efforts.

Despite efforts by the Commonwealth Attorney General (then Republican Ken Cuccinelli) to paint Galen as a dangerous

sexual criminal, an Arlington County jury of his peers unanimously refused to find Galen an SVP. And so in 2012, he was finally released on parole.

Altogether by that time, Galen had served nine years of incarceration on those two offenses (his only convictions).

After his release, Galen became a professional advocate for himself and others victimized by SVP laws. He held a Soros Justice Fellowship, writing numerous articles and speaking on the topic in prestigious forums around the country and internationally.

In the course of his advocacy, Galen also worked with nationally-famed law firm Jenner Block on litigation challenging the civil commitment process. Galen's speeches during this period included ones at Harvard and Yale. Galen also gave a TED Talk on civil commitment and treatment of sex offenders. He discovered that SVP labels are inflicted disproportionately on gay men, and that the assessment tool used by 'expert' witnesses hired by prosecutors automatically deems an individual to be an SVP if the alleged 'victim' is a male and the alleged 'perpetrator' is under age 34.

Galen was not accused of any crime during that time. It mocks credibility that a person who has been at liberty for 4 years and 1 month without committing any sex crimes is "so likely to commit future acts of sexual violence that he constitutes a menace" to the health and safety of the community.

But the Commonwealth was not finished with him.

In August 2015, Galen attended a funeral in Minnesota – with his parole officer's permission. At the funeral, he met a male 16-year-old family acquaintance. The two began exchanging text messages and emails. This communication was nonsexual. The dialog was appropriate conversation between an adult and a teenaged family acquaintance. As required, Galen had already obtained his parole officer's permission for such communication with a minor. In any event, the teen was above the age of consent in Minnesota. The only person who complained of this communication was the young man's mother. Complain long and loud she did, however.

Back home, Galen was informed in December by his parole officer that the mother reported the digital correspondence between Galen and that teen. The parole officer did not arrest Galen or file a request that Galen's parole be revoked. However, the teen's mother was relentless in her complaints; two months later (February 2016), Galen was summoned to meet with his parole officer, where he was also met by two detectives. At their request, Galen turned over his telephone and computer. Police thoroughly

searched the data on each device, finding no objectionable material.

Nevertheless, Galen, then age 32, was arrested for violation of that parole condition barring unauthorized communications with minors. Galen was denied bond and was detained more than 8 months awaiting the parole violation hearing.

At the hearing on that violation, the State's attorney argued that Galen was "grooming" the teen for sex in the future.

Fred Berlin, a psychiatrist and internationally-recognized expert on sexual disorders, testified at the hearing that the messages did not constitute 'grooming' or manipulation. But Arlington Circuit Court Judge Daniel S. Fiore II took the opportunity to orate from the bench, insisting that the texts were evidence that Galen was trying to recruit the heterosexual youth into gay sex. Judge Fiore railed against Galen, ranting that a "tragedy for a minor" had narrowly been averted.

Because there was absolutely no sexual content in those texts and emails, the Virginia state's attorney was forced to fall back to an argument so speculative that it is tough to track: that the alleged 'grooming' could have been toward some sexual encounter at an unknown future time, and that it would then occur in Virginia, yet before the teen would turn 18 (after which, any sexual interaction between them would be legal).

However, even if the prosecution's "grooming" theory were true, there is no reason to believe that any later sex would occur while the teen was still under age 18, and even less reason to believe that, if sex before age 18 were the aim, the two would decide to engage in some sexual interaction in Virginia, where it would only be a misdemeanor, rather than in Minnesota, where it would not be a crime at all.

Judge Fiore ruled that these communications were only a technical violation of Galen's parole terms. This was not a new criminal charge. In making this finding, however, the judge described Galen's actions as an "attempted misdemeanor," even though no such criminal charge exists under Virginia law, a basic point of criminal law that the judge should have known. Such a minor technical violation normally would not result in jail time, especially as a first-time violation. Yet, Judge Fiore sentenced Galen to a year in jail (beyond that elapsed 8-month 'waiting period').

After the projected release from jail over that parole violation, Galen would remain on "lifetime" parole, barred from personal use of the Internet, subjected to permanent 24/7 computer monitoring and psychiatric treatment with all resulting reports and data available to parole authorities. Further, his parole agent would be barred from changing or waiving enforcement of any of his parole conditions.

Despite the tenuousness of its case, on Nov. 6, 2017 – after Galen served 20 months incarceration for that violation, and one day before Galen was to be released back onto his lifetime parole, Virginia seized on Galen's second incarceration – on a technical, not criminal, parole violation – to try a second time to commit Galen under the Virginia Civil Commitment of Sexually Violent Predators Act. Galen was forced to remain in Arlington County Detention Center during the entire pendency of this proceeding – almost exactly two more years.

This is when I was introduced to Galen, and ultimately joined his efforts long in progress by then on various projects providing advocacy via the Web urging repeal of all sex-offender commitment laws. I was impressed by Galen's sharp analytical abilities and his virtuosity in public relations, most especially his knowledge of the manner by which the fears and prejudices of the great masses and of specific political power groups can be dispelled. His work on this front was creative artistry in action.

Galen's dedication to this cause was so solid that he continued to carry on this campaign even while locked up in county jail. His reputation and nearly endless wellspring of allies and friendly contacts was such that he almost always could find someone in open society able and willing to maximize the reach of his words and his actions toward discrediting and ultimately destroying sex offender commitment laws.

As observed above, there was no credible reason to believe that Galen posed any threat to anyone in society if released. Hence, it is perfectly clear to me that his communication and persuasion skills and his pre-existing dedication to this cause was a large part of the motivation of Virginia to commit him. Simply put, his home state wanted to effectively discredit and muzzle him, so that he would no longer pose a threat to the status quo of lifetime punitive and preventive detention posing as sex offender commitment. What better way to accomplish this than to toss him into Virginia's own 'black hole' of such commitment, from which meaningful, extensive communication is all but impossible?

The Virginia Department of Behavioral Health and Developmental Services (DBHDS) hired psychologist Ilona Gravers to determine whether Galen was a sexual predator. After conducting a mental health assessment, Gravers found that Galen was not a predator and recommended his release.

Unsatisfied with this opinion by the state's own expert, Virginia's new Attorney General, Mark Herring, violated Virginia law by hiring a second psycholo-

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gist, Michelle Sjolinder, who was hand-picked by prosecutors outside of the statutory process. Replacement witness Sjolinder gave the state what they wanted: an assertion that Galen was an SVP in need of potentially lifelong commitment. She did not allege any change in Galen's mental health since his previous SVP trial in 2012; in short, she simply rejected the 2012 jury decision.

Sjolinder never met, much less interviewed Galen. She read paper records, diagnosing him with a "narcissistic personality disorder." Galen reports that "out of thousands [of his email/message texts between 2003 and 2015], Sjolinder selected a single sentence from only one of



Narcissus

them, claiming that it met two factors toward such a diagnosis ("boasting" and "lack of empathy." Anyone with common sense can see that only one instance from thousands of such messages/emails actually proves the converse, that is, that on a day-to-day basis, none of the factors toward that diagnosis were present in Galen's

communications. More significantly, the DSM-5, at pages 669-670 actually requires "A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of [nine listed elements]." There is nothing "pervasive" about one sentence amidst thousands of communications. This is not a "pattern ...present in a variety of contexts" by any stretch of fantasy. Sjolinder's claim of narcissism was either grossly incompetent or frankly fraudulent.

Narcissism is the most abused of all claims of personality disorders. No scientific test for narcissism exists. Even actual psychological interviewing of the person in question is based only on personal impressions — often by an obviously prejudiced examiner. Examiners tend to hold a preconception that sex offenders have deficient intellect.

When someone smart, like Galen, comes under scrutiny, to resolve the cognitive dissonance occurring in the examiner's mind between that preconception and the truth (a random distribution of intelligence among those who have committed sex crimes), the examiner often resorts to baseless slams like 'narcissism'. Most important of all is that narcissism has never been scientifically

linked at all to any tendency toward commission of sex crimes.

Sjolinder also "diagnosed" Galen with "Other Specified Paraphilia, adolescent males." This "diagnosis" is not recognized by the American Psychiatric Association in the DSM-5; to the contrary, it was specifically considered for inclusion but was rejected as "invalid." More concerning, this specific diagnostic label — more often called "hebephilia" — was created simply as a proxy for the crime of consensual sex with a teenager to serve as a pretext to justify civil commitment of people who are not mentally ill, but who simply committed that crime. But even more fundamentally, Sjolinder cherry-picked isolated statements, rearranging them in mixed-up order, attempting to cast Galen's aim as sexual, contrary to all actual facts.

The other main motivation on the part of Virginia's Attorney General to commit Galen was Galen's homosexuality. Galen was represented pro bono in this commitment case by KaiserDillon, PLLC, a small, but respected law firm in Washington, DC. His attorneys stated unequivocally that there was "no possibility that [Virginia's Attorney general] would be proceeding against Mr. Baughman were he not a gay man." Although gay rights were first stridently demanded in the Northeastern region of the US, quiet but recalcitrant homophobia still runs deep and resolute in the Southeastern seaboard.

Galen's second SVP jury trial, like his first, took place in Arlington County, Virginia, home to many workers in the federal government, located just across the Potomac River in Washington, DC. But, unlike the first trial, this second one became the scene of a heavy-handed morality play, with prosecutors seeking lifelong incarceration for a young gay man who has already paid an extraordinary price for youthful, nonviolent sexual indiscretions, and lastly, only for an exchange of utterly non-controversial emails and digital messages. In every meaningful sense of the term, this was homophobically motivated and personally directed infliction of double jeopardy and even a bill of attainder against one seen by prosecutors as a political enemy.

Even more troubling, this second trial was played out with almost none of the legal protections assured criminal defendants on trial. Judge Fiore (yes, the same judge who had railed against Galen for imagined "grooming" and who saw that parole revocation proceeding as a crusade to avert a "tragedy for a minor") barred Galen's attorneys from presenting the first psychologist (Gravers) as a witness, or from even merely introducing her report into evidence.

Nor under Judge Fiore's rulings could any mention be made at all of the first SVP trial or of that jury's findings. Psy-

chiatric evaluations by Fred Berlin and psychiatrist Richard Krueger at Columbia University (two of the most respected experts on sexual disorders), both of which found that Galen suffered no mental health problems, were also not allowed by Judge Fiore.

Galen has never been accused of a crime of violence. His only crimes occurred before his 20th birthday. If Galen's only adult offense, involving only noncoercive, nonviolent conduct with a willing teenage male, had instead involved a teenage female, it is unlikely that Virginia would have sought to commit him under SVP laws.

Subpoenaed by the prosecution, the young man exchanging emails and texts with Galen testified at his commitment trial. Galen's attorney asked him "a dozen different ways if ANYTHING happened — a kiss, a flirt, a sext, a solicitation, sex conversations, phone sex ...anything at all...did [Galen] even ever make you feel uncomfortable? Nothing. Then we asked him about his sexual orientation. No he isn't gay. He avowed his heterosexuality half a dozen times. No, Galen never made me question my sexual orientation. Galen didn't turn me gay." (Galen correspondence, Oct. 9, 2019, p. 2).

Among Galen's character witnesses were these: a senior researcher at Pew Charitable Trust, and a professor of Government & Law at Georgetown University who runs their Prisons & Justice Initiative.

The 'scientific' instrument Virginia uses to screen for future dangerousness, known as the Static-99, is simply a checklist of ten supposedly relevant factors, including the offender's lack of a long-term intimate relationship, and a male 'victim.' Because he has no 'significant other,' pleaded guilty to two offenses and is gay, Galen thus accumulated four points, which inherently labeled him as supposedly 'high-risk.' In sum, the so-called assessment tool used by law-enforcement so-called experts automatically deems an individual an SVP if the alleged "victim" is a male.

It is ridiculous to argue that Galen, who was free in the community for over 4 years without committing a crime is so volitionally impaired or dangerously impulsive that he must be preventively detained. It is impossible to call this 'scientific' or fair. Homophobic bias is built into the process.

Virginia's SVPA also vests extraordinary power in the courts and prosecutors to impose potential lifetime incarceration. Prosecutors unilaterally decide which few men among myriad individuals previously convicted and punished for sex-related offenses in that state will be later tried again for lifelong civil commitment.

And if a jury rejects the state's assessment, the process can be repeated under

a variety of pretexts a second time (and indeed repeatedly after that) until the state achieves its goal of commitment. And as seen in this case, prosecutors were free to shop (literally) for 'experts' whose paid assessments matched that goal.

On October 10, 2019, the jury returned a verdict ruling Galen to be an SVP. The very adjective "violent" and the noun "predator" defy all attempts at sensible application against a mild and thoughtful man as Galen Baughman. These are merely incendiary epithets invented as supposed justification for depriving individuals of their right to live a meaningful life, rather than being isolated in a gulag for the rest of their days.

These are just scary words, not true justifications based on any true threat of repetitive sex crimes, but only for the disgust in a few people who have made it their career to character assassinate others with such fearsome claims, and others who have been fed such hysteria and fictional claims of such supposed "probabilities," and then are told that, based on such imparted, unrealistic terror, it is their "duty" to permanently banish an accused from the realm of human society.

Many individuals committed as supposed SVPs to DBHDS are never released. Essentially, in Virginia and many other states, civil commitment as an SVP is a life sentence. Galen is now 36.

This is a horrible result not only for Galen but for all people accused of similar fake 'offenses' of being cast as scary, lathering sex maniacs. It is even a worse result for the scientific reputation of the field of forensic psychology and for respect for American law — especially the very meaning of the fields of criminal law and mental health law.

Most of all, it subjects the entire notion of the right to liberty except under punishment for crime to political plays upon the emotionality of the frightened, confused, and angry mob, by deliberately and falsely instilling unrealistic fears and uncalled-for hatreds in the hearts of the citizenry and specifically of those called upon to sit as jurors. It conjures up images of uncontrollable, compulsive monsters bent on relentless sexual assaults, and then pastes photos of the mug shots of individuals upon those images, disregarding the actual lives and rights of those selected scapegoats.

Even the thin veneer of scientific assessment, along with due process and common sense, have been discarded by prosecutors and the court in pursuit of such phantom monsters. In the pointing of merciless, icy fingers of accusation — not of crime but of claimed irresistible lusts — truly arises the deliberate propagation of a new era of witch-hunting.

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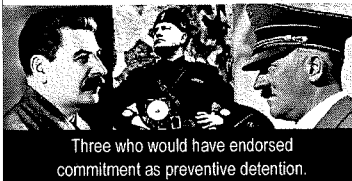
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Galen's case stretches legal practices and commonsensical definitions to their breaking points, but it is not altogether exceptional. Others who have never committed a violent crime and whose actual, non-violent crimes have long since faded into the distant (and often unrecalled) past have been civilly committed, as if currently presenting overwhelming danger. Minors have been subjected to indefinite detention, as have senior citizens in debilitated condition.

Indeed, the civil containment practices for sex offenders in the US are so extreme that high courts in the UK and Canada have deemed that they are in flagrant violation of international human rights standards and have blocked defendants' extradition back to the US.

Some states are rethinking their similar civil commitment statutes in the face of successful legal challenges to portions of their SVP laws and practices. Virginia, by contrast, is expanding its treatment facility by 258 beds at a cost of \$110 million. It expects to run out of beds (again) in 2022 as the state zealously expands SVP prosecutions.

Galen was not committed for any actual threat he posed to anyone. He was committed out of pure homophobia and for the threat he posed to the perpetuation of the evil of the entire sex-offender commitment regime, given his adroit skill at causing people to take off their blinders and behold that unmitigated evil as it truly is.



Three who would have endorsed commitment as preventive detention.

Any system masquerading as a mental health system whose true aims are suppression of homosexuality and the permanent gagging of political enemies in durance vile truly is the evil that can and may well spell the end of personal liberty in our country and an entree to limitless tyranny.

Galen's case is a prime example of why Virginia and other states should scrap SVP legislation: it corrupts science and the legal system. It normalizes prosecutorial vindictiveness. And it erodes citizens' basic rights and protections against punishment without a crime. Although not only, but for these reasons most of all, it cannot be tolerated and it must be brought to an immediate end.

"I'm no longer accepting the things I cannot change.... I'm changing the things I cannot accept." — Angela Davis

The following contributed facts and por-

tions of this article:

- *Philip Fornaci is a civil rights attorney based in Washington, DC.
- *Roger Lancaster is Professor of Anthropology and Cultural Studies at George Mason University and author of *Sex Panic and the Punitive State*.
- *Garnett Baughman-Robins is Galen Baughman's mother and a staunch advocate for abolition of sex-offender commitment laws.

Expert Wollert Proves Recidivism Prediction Fatally Flawed, Overlooking Low Re-offense Rate, Bayes Theorem, & Aging-Out

Editor's Note: Previous TLP editions have contained many references to the academic work of Richard Wollert, a psychologist practicing in Vancouver, WA and citations to the article now excerpted here. In this article, Wollert examined the statistics compiled by R. Karl Hanson *et al.* (who also created the Static-99 risk-assessment tool and its progeny).

In this study, Wollert first considered the error margin and the statistical "confidence interval" ("C.I."). He discovered that the error margin became vastly larger when the overall base rate of recidivism was low. This is of profound importance now that true average recidivism rates for sex crimes have been found to be less than 5%. At such rates, Wollert discovered, the error margin massively outstripped the actual recidivism rate, such that no scientific statement could be made about an expected recidivism rate for any given cohort of sex offenders.

R.K. Hanson *et al.* however, had compiled their statistics at a much earlier point in modern history when sex-crime recidivism rates were much higher on average. Even those rates only reached a high enough point where this error margin effect did not render any prediction of future recidivism impossible for offenders between ages 20 to 25.

Wollert then applied "Bayes Theorem," a long-recognized means to find a probability for a single future event (in this case, sex-crime recidivism — yes?/no?) to Hanson's rates, which treated recidivism as a multiple event (but with no definition of number of recidivist events). This correcting application of Bayes Theorem produced rates far below those incorrectly proclaimed by Hanson. In turn, this made any recidivism predictions using even Hanson's declared high

rates a scientific impossibility.

Lastly (and of greatest interest to us here), Wollert looked at the reduced recidivism rates in sex offenders as they gradually got older (all the way to age 70). In that seminal study, Wollert was the first to prove with certainty (even based on those obsolete Hanson figures of high average recidivism) that offenders at age 60 had recidivism rates no higher than about 3.4% (if even mathematically ascertainable at all).

Now, average rates of sex-crime recidivism for all ages have dropped to even lower rates than that figure. Hence, the current implications of Wollert's mathematical work are even more powerful: by age 60. For that age and above, that same calculation now shows recidivism rates (now even less ascertainable) are no higher than about 6 tenths of 1%!

In sum, Wollert has been the best and most unassailable lie-buster ever in the field of actuarial risk assessment of sex offender recidivism. Now for the first time in these pages, read for yourself how this was proved.

Richard Wollert, "Low Base Rates Limit Expert Certainty When Current Actuarials Are Used to Identify Sexually Violent Predators," 12 *Psychology, Public Policy and Law*, 56 (February 2006)

[Abstract:]

"The author applied Bayes theorem to age-wise sexual recidivism rates and the accuracy of high actuarial scores for predicting sexual recidivism in civil commitment cases. Recidivism rates consistently declined with age, paralleling the age-invariance pattern found for other offenders. Furthermore, actuarials were efficient for only the youngest group, were inaccurate for identifying recidivists, and misclassified many nonrecidivists as recidivists. [See table on page 6 and chart on page 7.] Opinions about the accuracy of actuarials are therefore often wrong, and actuarials need to be reformulated. Finally, actuarials are useless for identifying likely sexual recidivists from populations with recidivism base rates below .25. Recommendations include seeking new trials in cases that overlooked age, focusing attention on young offenders, limiting commitment periods, and shifting resources from commitment centers to impact all offenders released to the community."

[Keywords:] actuarial prediction, age and sexual recidivism, Bayes theorem, civil commitment, sexually violent predators, sexually dangerous persons.

[Text Excerpts:]

pp.56-7: "Decision making in SVP cases is fraught with uncertainty because SVP laws do not define all the terms they invoke and do not specify the time period that recidivism estimates should cover. ...[Forensic and actuarial] experts understand that ...they are essentially testing

the null hypothesis that the respondent in question does not differ from nonpredatory sex offenders who fall just below the commitment standard...."

p. 57: "When an expert uses an actuarial test to derive a single average risk estimate for an offender, the expert typically determines the number of points the offender is allocated on each item [this can be very subjective, depending on the test & the given item], totals the item scores to determine the bin in which the offender belongs, and consults the test's experience table to locate the recidivism rate, or risk, for those in the offender's bin. If the expert wishes to derive the interval between the offender's average risk estimate and lowest plausible estimate, the expert determines the offender's lowest plausible test score by subtracting the confidence interval. (Anastasi, 1988, Gulliksen, 1950) from the offender's obtained test score and then consults the experience table to locate the risk associated with the offender's lowest plausible score. To determine the interval between an offender's average risk estimate and highest plausible estimate, the expert determines the offender's highest plausible score by adding the confidence interval to the obtained score and uses the experience table to locate the risk associated with this score.

Among the tests that are sometimes used in the above manner are the following:

- Minnesota Sex Offender Screening Tool -- Revised...
- Rapid Risk Assessment for Sex Offender Recidivism (RRASOR)
- Sex Offender Risk Appraisal Guide (SORAG)
- Static-99
- Violence Risk Appraisal Guide (VRAG)"

...**A**ctuarials were efficient for only the youngest group, were inaccurate for identifying recidivists, and misclassified many nonrecidivists as recidivists.

p. 58: "...[A]n SVP evaluation requires the evaluator to determine whether the recidivism risk for a respondent is so high that the null hypothesis that the offender is unlikely to recidivate may be rejected to a reasonable degree of certainty. To use an actuarial for this purpose, an evaluator needs to select either a single test score or a range of test scores that he or she deems to be of critical importance for identifying likely recidivists. Because SVP predictions classify offenders into only two groups (will recidivate or will not recidivate), scores in the alternate test range below this critical test range are considered important for identifying likely

(Continued on page 5)

(Continued from page 4)

nonrecidivists. To be succinct, the letter C is used in the remainder of this article to refer to values in the critical test range, and the letter L is used to refer to values in the alternate test range."

Recommendations include seeking new trials in cases that overlooked age, focusing attention on young offenders, limiting commitment periods, and shifting resources from commitment centers to impact all offenders released to the community.

pp. 58-9: "Once an evaluator has selected the value of C he or she will use with an actuarial to select likely recidivists, he or she is able to compile a 2 x 2 table for the test's full experience table that shows how many recidivists versus nonrecidivists can be expected to have a score of C and how many recidivists versus nonrecidivists can be expected to have a score of L. Several measures may be calculated from this simple table that are useful for evaluating the test's performance in the sample on which it was developed and for estimating its performance in another group that has a different recidivism rate from the developmental sample. Among these measures are P (Meehl & Rosen, 1955), the samplewise recidivism base rate, which is the proportion of the entire developmental sample who are recidivists; Q (Meehl & Rosen, 1955), the samplewise nonrecidivism rate, which is equal to 1 minus P ; sensitivity (Baldessarini, Finkelstein, & Arana, 1983; Metz, 1978; Rice & Harris, 1995), the hit rate (Fergusson, Fifield, & Slater, 1977; Rice & Harris, 1995), the true-positive fraction (Metz, 1978; Rice & Harris, 1995; Zweig & Campbell, 1993), or I , which equals the proportion of recidivists the test identifies for scores covered by C; I -specificity (Rice & Harris, 1995; Zweig & Campbell, 1993), the false-alarm rate [A key figure!] (Fergusson et al. 1977; Rice & Harris, 1995), the false-positive fraction (Metz, 1978; Rice & Harris, 1995; Zweig & Campbell, 1993), or E , which equals the proportion of nonrecidivists whose scores are covered by C and are thus mistakenly identified as recidivists, and lastly, positive predictive power (Baldessarini et al., 1983; Rice & Harris, 1995), efficiency in detecting maladjustment (Metz, 1978; Meehl & Rosen, 1955), or E , which reflects the percentage of time that experts will be right in their predictions when they rely on a specific C. Inefficiency, or the percentage of time that experts will be wrong, is estimated by subtracting the efficiency index $[E]$ from 1.

[When an experience table for the Static-99, which] "was compiled from a sample of 1,086 sex offenders (Hanson &

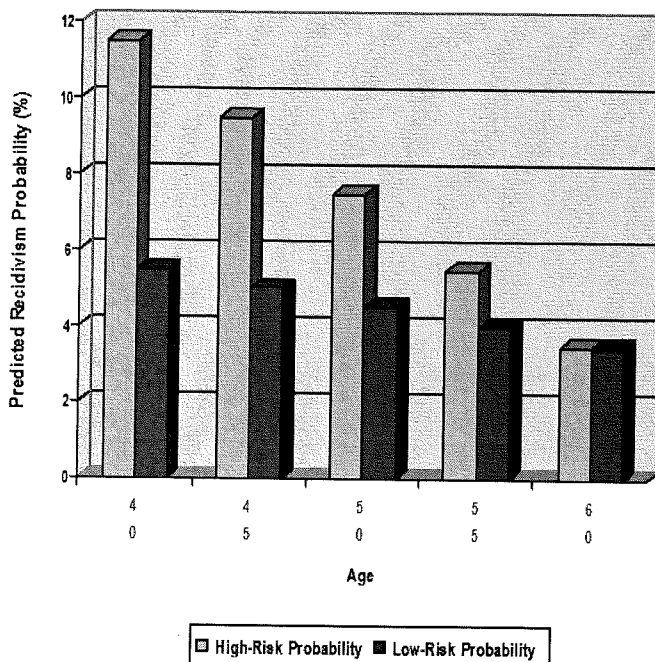
Thornton, 2000), because P was .25 and q was .75, the sample included 271 recidivists ($1,086 \times .25 = 271$) and 815 nonrecidivists ($1,086 \times .75 = 815$). For a C of 6 to 9, the test was correct in identifying 67 recidivists, but missed 204 other recidivists with scores below 6. Although it also correctly identified 753 nonrecidivists with L scores of 0 to 5, it mistakenly flagged 62 nonrecidivists as recidivists because they had scores of 6 to 9. The test is therefore accurate at $T = .25$ ($67/271 = 2.25$) and inaccurate at $F = .08$ ($62/815 = .08$). As a result, $E = .52$ ($67/[67 + 62] = 67/129 = .52$) [50% is pure chance, so this result is essentially just that].

pp. 61-2: "Although ATSRs [actuarial tests for the prediction of sexual recidivism] minimize prediction errors and enable experts to quantify the level of confidence attached to their opinions, research on the relationship between advancing age and sexual recidivism suggests that current actuarials may be of limited value for identifying older offenders who are likely to sexually recidivate (Saari & Saari, 2002). The reason for this is that recidivism rates decline as offenders get older. (Hanson (2002), for example, calculated recidivism rates for 4,763 sex offenders, 94% of whom had been incarcerated or confined. Finding that recidivism risk declined almost 4% per year as a function of age, he presented separate recidivism curves illustrating this decline for 3,751 rapists, molesters and incest offenders who were subdivided into nine age groups ranging from those who were very young to those who were very old. [Age as reducing sex offense recidivism sharply!] More recently, he has presented additional evidence that 'offenders older than age 50 at release' reoffended 'at half the rate of ...younger (less than 50) offenders (12% vs 26%, respectively, after 15 years)' (A.J.R. Harris & Hanson, 2004, p. 7). Parallel results for child molesters and rapists were reported by Nicholaichuk and Yates (2002).

Elaborating on Hanson's (2002) approach, Barbaree, Blanchard, and Langton (2003) found that age accounts for additional variance in recidivism rates after the effects of the RRASOR (Hanson, 1997) predecessor to the Static-99), an ATSR incorporating a dichotomous age variable (below 25 years old vs. above 24), have been controlled. Furthermore, in spite of this age variable, the rate of decline in recidivism was still found to be 3% per year (H.E. Barbaree, personal communication, June 6, 2004).

This second line of research indicates that sexual recidivism rates decline with age for those with the highest ATSR scores. A third body of data confirms this conclusion. Milloy (2003); C. Milloy, personal communication with B. Hampton, July 24, 2004), for example, undertook a follow-up study of released offend-

Example of Converging Diminishing Risk

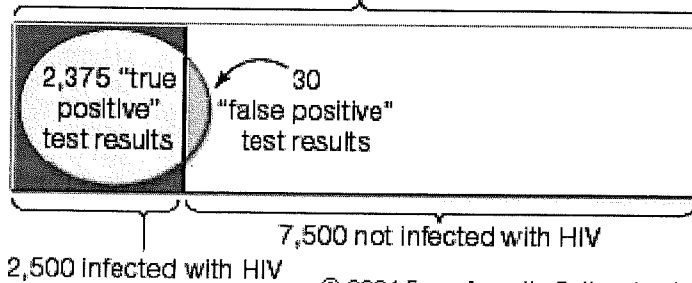


ers who met "the standards for civil commitment petitions, but for whom no petitions were filed' (Milloy, 2003, p. 1), and reported data indicating that a significantly larger proportion of those below the age of 50 (31% out of an n of 80) committed new felony sex offenses as compared with those over 50 (0% out of an n of 9). A few months later, Hanson circulated data for 1,997 sex offenders scored on Static-99 indicating that the 5-year sexual recidivism rates for those under 50 was .154 versus .088 for those 50 to 59 years old (Hanson 2004). Analyzing these data further, I determined not only that these proportions differed ($z > 1.96$), but that the expected recidivism rate for younger offenders with high Static-99 scores was .37, whereas it was .23 for middle-aged offenders with the same high scores. (Wollert, 2005).

A fourth stream of research on criminal behavior in general also indicates that the age-crime pattern reported by Hanson (2002) for sex offenders is virtually invari-

ant among more inclusive criminal populations. Hirshi and Gottfredson (1983), for example, summarized many cross-sectional studies showing that crime rates decreased with age for offender groups who live in different centuries, came from different countries, differed with respect to age and gender, and committed different types of crimes. Sampson and Laub (2003) published a 70-year longitudinal study of 475 'serious, persistent delinquents' (p. 302) that controlled for the effects of both death and incapacitation. They found not only that violent crimes, including sex crimes, were infrequently committed by older offenders, but also that the violent crime rate for offenders with high actuarial scores converged over time with the violent crime rate for low-scoring offenders. Because it may be assumed that these studies included many sex offenders, they strongly suggest that sexual

10,000 Intravenous drug users



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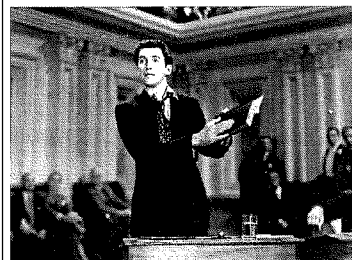
In using Bayes Theorem, you must always factor in inaccuracies and uncertainties, rather than simply ending at a probability based on 'gross' figures (here, the 2,500 infected). — See text below.

(Continued from page 5)

recidivism declines with age [(i.e., high scores reduce more drastically with age than low recidivism scores do)] and that this decline may best be conceptualized as simply extension of *Hirschi and Gottfredson's* (1983) age-invariance theory.

The limits of ATSRs for predicting sexual recidivism among older offenders hold significant implications for expert opinions in SVP cases in that a large percentage of respondents are older (*Washington State Senate Committee on Human Services and Corrections*, 2005). From my personal experience and consultations with colleagues and attorneys in a number of states, I am also aware of various unpublished and sealed proceedings in which fact finders have not civilly committed respondents on the basis of their age or have ordered new commitment trials because of evaluations stressing the importance of this factor. Furthermore, in at least one appellate proceeding, it was concluded that 'it is undisputed among sex offender experts that age is an important factor in determining risk of reoffense' (*In re Young*, 2004 [86 P.3d 810], p. 4)."

p. 62: In spite of these developments and the strength and consistency of the research on age and crime, some researchers (*Doren*, 2002b; *Thornton & Doren*, 2002), experts, and attorneys have continued to argue that older respondents with high scores on actuarial tests are about as likely to recidivate as younger candidates with similar scores. Fortunately, a clarifying evaluation of the validity of this position may be obtained by applying the method of analysis...known as Bayes's theorem, to recidivism data that are broken down by age. In general, Bayes's theorem (*Bayes*, 1764) is a tool for assessing the probability that a theory - for example, that a person with heart disease will die in 5 years - is true when considered in light of the diagnostic accuracy (*T* and *F*) of some piece of evidence, such as a test score, and what is known about the overall, or base rate, probability (*P*) (in this example, of death) for those most similar to the person. Estimates pertaining to the first informational category are typically called data or evidence of probabilities, whereas estimates of the second are referred to as prior probabilities (*Iversen*, 1984). [Bayes's theorem explained.]



p. 63: "When applied to sexual recidivism, Bayes's theorem enables an evaluator to determine an average estimate (*E*) of the rate with which a class of offenders with high actuarial scores - in particular, those classified as likely sexual recidivists - will reoffend (*Janus & Meehl*, 1997; *Meehl & Rosen*, 1955). Conversely, it enables an evaluator to determine how often he or she will be wrong when repeatedly using an actuarial for identifying likely recidivists because 1 minus the average estimate for likely recidivists equals the error rate. This type of analysis holds serious implications for opinions based on actuarial tests in that the credibility of using actuarials to predict recidivism in SVP cases is undermined by error rates above 50% (*Wollert*, 2002) and is demolished when they are far in excess of this standard.

Only three pieces of information are needed to apply Bayes's theorem when considering the effects of age on recidivism for a specific defendant. The first is *P* or *Q* in the parent population that covers the age interval (*A*) into which the defendant falls. The others are *T* and *F* for *C*. Efficiency of a test when a specific value of *C* is selected to identify the likely recidivists from age interval *A* for which *P* is already known may then be determined through the application of the following general formula:

$$E_{A \& C} = (P_A \times T_C) / [(P_A \times T_C) + (Q_A \times F_C)]$$

pp. 63-4: "This application of Bayes's theorem is simple to calculate. Bayes's theorem is also recognized by statisticians and philosophers of science as 'one of the most important developments in epistemology in the 20th century, and one of the most promising avenues for further progress...in the 21st'" (*Talbot*, 2001, p. 1). Finally, the theorem holds great practical significance for making weight-of-evidence determinations in court (*David*, 2002; *Jeffreys*, 2003). In SVP cases, for example, it would help all parties keep sight of the fact that the odds an offender with a high actuarial score will recidivate are not the same as the odds that a recidivist will have a high score (*E T*). This, in turn, would prompt recognition of the possibility that an offender with a high score is not always destined to be a recidivist."

p. 64: In spite of the clarifying power and very important implications of Bayes's theorem, evaluators often do not discuss their Bayesian level of certainty when they are examined in court. They are also not often asked about this topic when they are cross-examined....

The main obstacle to conducting a Bayesian analysis of recidivism data for different age groups is obtaining access to adequate age-wise recidivism estimates. Although a data set addressing this problem [is] not...in the public domain, one may be extrapolated from research published by *Hanson* (2002).

In SVP cases, for example, it would help all parties keep sight of the fact that the odds an offender with a high actuarial score will recidivate are not the same as the odds that a recidivist will have a high score (*E T*).

This research was based on a very large pool of incarcerated sex offenders that included more Americans than any of the samples that have been used to develop other actuarials. Because civil commitment laws are focused on incarcerated American sex offenders, this feature heightens the relevance of data extrapolated from *Hanson's* sample...."

pp. 64-65: "*Hanson's* (2002) database consisted of 10 follow-up studies that included 4,673 male offenders, all but 287 of whom were either incarcerated or hospitalized. Although most were Canadian or British citizens, 1,724 were from American jurisdictions. Agewise recidivism rates were presented for 3,751 offenders classified as rapists, molesters, or incest offenders who fell in nine different age groups (18-24 years old, 25-29, 30-34, 35-39, 40-44, 45-49, 50-59, 60-69, and 70 and over); 922 subjects, in other words, fell into an unclassifiable category. Age was measured at the time of institutional release for 4,086 subjects and at the time of sentencing for the remaining 587. On the average, offenders were 36 years old. In 5 studies, sexual recidivism was defined as being charged with a new offense and, in the other 5, as being convicted of a new offense. Because 820 of the 4,673 subjects recidivated, *P* for all 10 samples was 18%. The average follow-up period was 8 years.

Regarding data patterns for classifiable offenders, *Hanson* (2002) reported that 45% of all rapists were younger than 30 years old and that the recidivism rates for molesters, rapists, and incest offenders were 19%, 17%, and 8%, respectively. Regarding data patterns for both classifiable and unclassifiable subjects, he indicated that 5 of 131 offenders older than 60 committed new sex offenses, yielding a *P* of 3.8% for this group."

pp. 65-6:

"*Estimation of Prior Probabilities*

Agewise recidivism rates (*P*) for *Hanson's* (2002) classifiable offenders were determined by extrapolations from Figures 1 and 2 of his article. These results were then adjusted for the discrepancy in recidivism rates between classifiable and unclassifiable offenders (.152 vs. .271).

A colleague of mine who was unaware of the initial results also estimated age-wise recidivism rates using my procedures. Rater differences in estimates for specific age groups ranged from .001 to .007, with the average difference being .003. The correlation between ratings was .999 ($p < .001$), indicating that the results of the estimation procedure are

highly reliable."

pp. 65-6: "*Calculation of Bayes's Formula*

The calculation of Bayes's formula involves the completion of three steps. The first consists of compiling information required by the formula. The following operations achieve this step:

1. The test or procedure being evaluated is identified.
2. The target population to which the test or procedure is to be applied is specified.
3. The critical test range (*C*) used to identify likely recidivists is specified.
4. *P* for the target population is recorded.
5. *P* is subtracted from 1 to determine the nonrecidivism rate (*Q*) for the target population.
6. The test's true-positive fraction (the proportion of all recidivists it captures, referred to as *T*) for *C* is recorded.
7. The test's false positive fraction (the proportion of nonrecidivists it mistakenly flags as recidivists, referred to as *F*) for *C* is recorded.

The second step is directed toward estimating the proportion of subjects in the target population the test will correctly identify as likely recidivists. This step is achieved by performing the following operations:

8. *P* for the population is multiplied by *T* to discover the proportion of the population the test will correctly identify as likely recidivists; as a result of this operation, the area of a rectangle is obtained, with *P* being the length of one side and *T* being the length of the other.
9. *Q* for the population is multiplied by *F* to discover the proportion of the population the test will incorrectly identify as likely recidivists; the area of a second rectangle is obtained through the application of this operation, with *Q* being the length of one side and *F* being the length of the other.
10. The results of the two foregoing operations are added together to discover the overall proportion of the population that, both correctly and incorrectly, will be identified by the test as likely recidivists; this sum equals the total area of the two rectangles referenced above, *PT* and *QF*.

The third step is directed toward estimating what proportion of offenders identified by the test as likely recidivists will actually recidivate. This is done by dividing the area of the rectangle calculated in the eighth operation by the area of the two rectangles calculated in the 10th. The result (*E*) indicates not only the percentage of the time that experts who use *C* to identify recidivists will be right but also the recidivism rate for subjects with test scores falling in *C*. If this result is subtracted from 1, the percentage of the time that experts will be wrong when they use *C* to identify recidivists is obtained.

(Continued on page 7)

(Continued from page 6)

This figure also represents the nonrecidivism rate for subjects with test scores falling in C.

p. 68: [Example: Estimation of the Data Probabilities for MnSOST-R]

"MnSOST-R: When accuracy indicia were calculated from developmental data for the MnSOST-R over a 6-year period, it was found that $T = .44$ and $F = .10$ for a C of 8 and above. The MnSOST-R has been criticized by me (Wollert, 2002, 2003), however, because the original sample was small ($N=256$) and nonrepresentative in that about 18% of the 90 recidivists included came from outside sources, whereas 30% of all subjects were excluded because they were familial offenders. [Wow! Fraud! (Artificially packed with recidivists, and excluded low-recidivating incest offenders, to cast an appearance of accuracy through increasing the base rate!)] In Wollert (2002), I also reported cross-validated data for a cohort of 95 subjects that did not include an excessive number of recidivists, which suggested that $T = .64$ and $F = .21$. In a second cohort with 125 subjects, $T = .36$ and $F = .05$ (Doren, 2002a). In a third cohort with 150 subjects, a T of .39 and an F of .20 were obtained when (a) the percentage of subjects in each MnSOST-R risk group (Barbaree et al., 2001) was multiplied by the corresponding groupwise recidivism rate (Langton, 2003), (b) the percentage of subjects in each risk group was multiplied by the corresponding nonrecidivism rate, (c) the percentage of all subjects who were recidivists with scores falling in C was divided by the percentage of subjects who were recidivists, regardless of test scores, and (d) the percentage of subjects who were nonrecidivists, with scores falling in C was divided by the percentage of subjects who were recidivists, regardless of scores. Averaging the results of these cross-validation studies on samples that did not include an excessive number of recidivists, the estimates of T and F that were adopted for the MnSOST-R in the present study were .46 and .15, respectively." pp. 69-70

Crime rates decreased with age for offender groups who live in different countries, differed with respect to age and gender, and committed different types of crimes.

Results

Age-wise Recidivism Rates

Table 1 presents the recidivism rate for each age category based on the extrapolation procedures listed above. The standard error of the proportion for each

Age Group	Rapists		Molesters		Incesters		Classifieds		Initial %	Unclassifieds		All Subjects		Final %	SP
	N	F	n	F	n	F	n	F		n	F	n	F		
18-24	230	53	195	41	80	25	505	119	23.5	125	52	630	171	27.1	.018
25-29	290	58	225	58	130	12	645	129	20.0	160	57	805	186	23.1	.015
30-34	248	42	270	65	220	19	738	126	17.1	182	55	920	181	19.7	.013
35-39	170	19	215	43	283	20	668	82	12.3	165	36	833	118	14.2	.012
40-44	105	15	153	29	210	13	468	56	12.0	115	25	583	81	13.9	.014
45-49	50	6	130	22	132	6	312	34	10.9	77	15	389	49	12.6	.017
50-59	30	3	157	14	117	6	304	23	7.6	75	10	379	33	8.7	.014
60-69	14	1	49	2	80	0	93	0	0.0	23	1	116	4	3.4	.019
70+	1	0	5	0	0	0	5	0	0.0	2	0	7	0	0.0	.000
Total	1138	197	1389	274	1202	101	3739	570	15.3	924	251	4663	823	17.6	.006

rate (Gerstman, 2003), which suggests that the true rate is very close to the corresponding observed rate, is also included. The data patterns in Table 1 for classifiable subjects are comparable with those reported by Hanson (2002) and summarized in the Subjects section, above: Forty-six percent of all rapists were younger than 30 years old, and the recidivism rates for molesters, rapists, and incest offenders were 20%, 17%, and 8%, respectively. Comparability is also apparent in the data patterns for both classifiable and unclassified subjects: Four of the 116 offenders older than 60 were estimated to have committed new sex offenses, a recidivism rate of 3.4%. Furthermore, Hanson has confirmed that the 8.7% recidivism rate for those in the '50-59 year-old category is a reasonable reading.' (R.K. Hanson, personal communication with S. Sappington, October 17, 2004). Therefore, although the extrapolation at hand rests on a number of assumptions, it provides a good approximation of the data analyzed by Hanson (2002).

The entries for the pooled data in Table 1 show a consistent decline in recidivism as a function of age across all age categories, one that is even more orderly than the results broken down by Hanson (2002) for subtypes of offenders. No doubt exists as to the presence of a very strong effect of age on sexual recidivism as the correlation between these variables is $-.99$ ($df=7$, $p < .001$). A comparison of linear and logistic regression analyses also indicates that the linear model estimated the obtained data more accurately ($R^2 = .98$ ($f(1, 7) = 329$, $p < .001$), than any of the other models.

Test Efficiency and Recidivism Rates Across Age Groups for Offenders Classified as Likely Recidivists

Recidivism rates for each age group with high scores for each test were calculated according to Equation 1 and the calculation steps presented in Figure 3. Because the study included eight age groups and five tests, 40 calculations were performed.

As an example of one such calculation, the following version of Equation 1 was applied to determine the recidivism risk of offenders in the 18-24-year-old group when the accuracy indicia of Static-99 were considered:

$$E_{A:18-24 \& C:6+} = (P_{A:18-24} \times T_{C:6+}) / [(P_{A:18-24} \times T_{C:6+}) + (Q_{A:18-24} \times F_{C:6+})]$$

$$T_{C:6+} + (Q_{A:18-24} \times F_{C:6+})]$$

The specific values required for solving this formula are found in the second sentence of the subsection on Static-99 in the Method section, above, where it is indicated that $T = .25$ and $F = .08$ for a C of 6+ and in the second-to-last column of the first row of Table 1, where it is indicated that $P_{A:18-24} = .271$. Because $P_{A:18-24} = .271$, $Q_{A:18-24} = .729$ (i.e.: 1 minus .271 = .729).

Table 1: Recidivism and Age Among Rapists, Molesters, Incesters, and Unclassified Sex Offenders (Extrapolated from Hanson, 2002)

Note: P = recidivism rate; SP = SE of the proportion; n = number of offenders in sample; r = number of recidivists

*. Some cell inconsistencies are due to rounding error.

[Supplied Chart depicting data as a descending trend of recidivism across increasing ages appears on page 8.]

p. 71: "Inserting these values into Equation 2, the following solution is obtained: $E_{A:18-24 \& C:6+} = (.271 \times .25) / [(.271 \times .25) + (.729 \times .08)] = .068 / (.068 + .058) = .068 / .126 = .54$

Remarkably similar efficiency levels were obtained for all of the tests evaluated in this study. Setting the commitment standard at 50%, however, none of the tests was efficient for subjects over 24 years old. These results also indicate that experts who rely on actuarial tests for predicting likely recidivists for all but the youngest age group will be wrong most of the time. For a population similar to Hanson's (2002) sample, this error rate will vary from about 52% for offenders in the 25-29 age range to almost 90% for those in the 60-69 range. [Actuarial tests were wrong 9 out of 10 times when predicting recidivism for sex offenders over age 60!]

p. 72:

Major Findings

This article has reported the results of applying Bayes's theorem to (a) age-wise sexual recidivism rates and (b) accuracy indicia (T and F) for ATSR scores that are often used to identify civil commitment candidates as SVPs. Five major findings stand out. First, a great deal of variation exists in the recidivism rates for sex offenders from different age groups, ranging from .27 for those who are

youngest to .03 for those who are over 60 years old. Second, recidivism rates consistently decline with advancing age. Third, the pattern of the decline in sexual recidivism with age parallels the pattern reported for more diverse offender samples, indicating that the age-invariance theory (Hirschi & Gottfredson, 1983; Sampson & Laub, 2003) applies to sex offenders. Fourth, the ratio of F to T , which is critical for determining which actuarials are most efficient for making positive identifications regardless of the condition being identified (Biggerstaff, 2000), is about the same for all tests. Because of this, they attain similar levels of efficiency. Fifth, all tests appear to be somewhat efficient when applied to the youngest group, which is characterized by a relatively high recidivism rate, but lose this efficiency when they are applied to older groups with lower recidivism rates.

Actuarial Limitations and Implications for the Future Development of ATSRs

By indicating an error rate in excess of 50% for those older than the 18-24-year-old group, the results of the study at hand raise an important practice question – does test efficiency for current actuarials deteriorate so rapidly with age that they are useful only for the very youngest group of adult offenders?...

...[T]he results of the present study suggest that current actuarials are of limited value, at best, for SVP determinations. They may not even be useful at all....

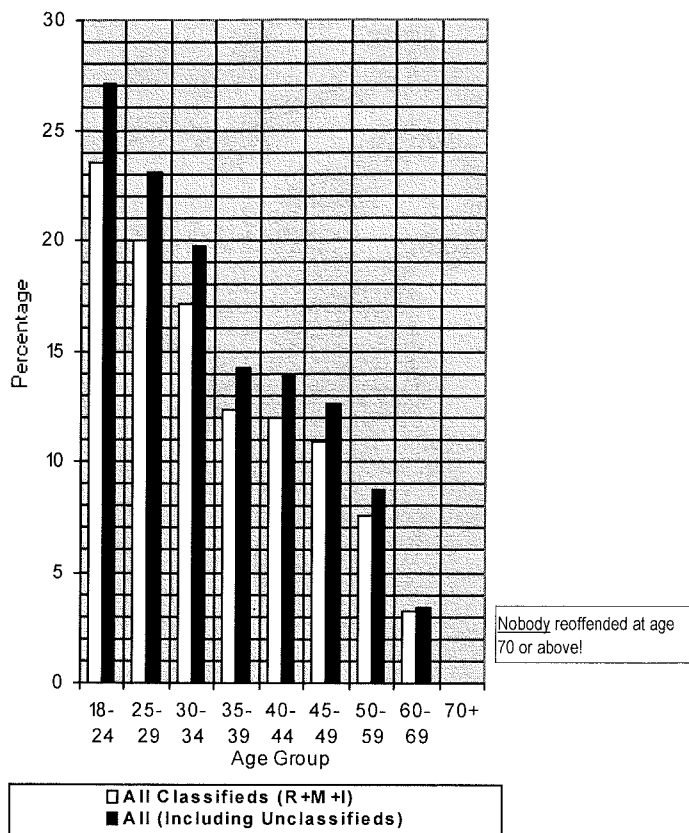
p. 75: "...ATSRs are useless for predicting likely sexual recidivists unless those who are evaluated are drawn from populations with recidivism rates greater than .25...."

pp. 76-9: "...I anticipate that a number of attorneys, researchers, and experts will respond to the[se] results by asserting that the practice of classifying older offenders as likely recidivists is justified in light of several arguments indicating that ATSRs underestimate sexual recidivism. These arguments, as well as sources that are sometimes cited in support of them, are listed below:

- The *prevalence discrepancy* argument asserts that the real recidivism rate for sex offenders exceeds the officially recorded rate that is factored into actuarial experience tables because more sex offenses are committed in society than are reported (Koss, Gidycz, & Wisniewski, 1987; Lisak & Miller, 2002). [How does one ascertain this or quantify it? What evidence points to older sex offenders as to unreported crimes?]

- The *systemic impact* argument asserts that the recidivism rate for sex offenders exceeds the officially recorded rate that is factored into actuarial experience tables because not all who are suspected of committing sex crimes are convicted of them due to acquittals, charg-

Descending Recidivism Over Ages



ing decisions, and plea bargains (G.T. Harris et al., 2003). [Consider: Most actuarial instruments include unconvicted/uncharged sex offenses. If not admitted, who decides which suspicions to count as offenses?]

•The *inadequate time frame* argument asserts that ATSRs underestimate lifetime recidivism risk, which should be of primary concern in SVP proceedings, because the longest risk-period ATSR's table spans only 15 years, whereas high rates of sexual recidivism have been reported for samples followed for 20 or more years (Doren, 1998; Hanson, Scott, & Steffy, 1995; Langevin et al., 2004; Prentky, Lee, Knight, & Cerce, 1997). [Consider the biased sources. As to 60+ age cohort, this erroneously ignores: (a) life-expectancy limit; (b) year-to-year recidivism rapidly shrinking to zero!]

•The *self-admission* argument asserts that ATSRs underestimate recidivism risk because sex offenders recidivate by committing undetected crimes, the occurrence of which is reflected in the fact that they consistently report engaging in more instances of sexual misconduct than the crimes listed on their records (Abel et al., 1987; Baker, Tabacoff, Tornusciolo, & Eisenstadt, 2001; Groth, Longo, & McFadin, 1982; Weinrott & Saylor, 1991; Zolondek, Abel, Northey, & Jordan, 2001) [So what are they saying? If no admissions, add

some offenses on anyway, because 'they must be there?']

•The *undetected recidivism* argument asserts that ATSRs underestimate recidivism risk because follow-up studies of sex offenders based on sources of information other than self-report or official records have indicated that released sex offenders commit sex crimes that are undetected in the sense of never having been adjudicated (Falshaw, Bates, Patel, Corbett, & Friendship, 2003; Langevin et al., 2004; Marshall & Barbaree, 1988). [This is just extrapolation of additional offenses from a few anecdotal accusations that never even got charged!] [See respective refutations in text below as to each of these arguments in sequence. All 5 of these arguments are based on conjectures & surmise & speculation. Also, all of them apply to all age groups, not older sex offenders specifically.]

If these arguments are correct, it would be reasonable to consider whether existing actuarial tables might be adjusted for underestimation effects and, if this were possible, to determine the range in test performance that could be expected under different assumptions about the magnitude of these effects. The feasibility of pursuing these options depends, however, on the validity of the underestimation hypothesis and the extent to which it is capable of unbiased quantifi-

cation.

If one analyzes each of the above arguments thoroughly, reviews the articles offered as evidence in their support, and considers other relevant documents, it is clear that the underestimation hypothesis does not satisfy either of the foregoing conditions. Regarding the prevalence discrepancy argument, for example, it is undeniable that more sex offenses are committed than reported. No evidence exists, however, that this discrepancy is attributable to sex offenders. On the contrary, the great majority of unreported sex crimes are probably committed by men who have never been convicted of a sex offense (Johnson, 1980; Koss et al., 1987; Lisak & Miller, 2002). Furthermore, the effect of this discrepancy on the accuracy of ATSRs has never been estimated in a peer reviewed publication so it is unclear as to how it might be used to adjust actuarial tables.

It is also undeniable that not all of those who are suspected of committing a sex crime are convicted of doing so. The impact of systemic factors associated with underestimation would seem to be countered to some extent, however, by the impact of other systemic factors that inflate recidivism rates. In particular, it has been shown that a large number of false allegations of sexual misconduct are made under some conditions (Kanin, 1994) and that a substantial number of defendants charged with sex offenses were falsely convicted prior to the advent of DNA identification testing (Gross, Jacoby, Matheson, Montgomery & Patil, 2005). In addition, it is the case that (a) the number of molestation cases and forcible rapes has dropped substantially (Koch, 2005; Washington State Sentencing Guidelines Commission, 2004), (b) recidivism rates for rapists have dropped (Beck & Shipley, 1989; Langan et al., 2003), and (c) the percentage of recidivists a test is capable of identifying (E) decreases when the rate of sexual recidivism decreases (Janus & Meehl, 1997; Saari & Saari, 2002). Taken together, these considerations raise the possibility that decreases in the reported number of victimizations and in the sexual recidivism rate may be so large that new actuarials that include both convictions for and suspicions of sexual misconduct as outcome measures would be irrelevant to SVP cases because the recidivism rate for even those with high test scores might not approach the commitment standard. A final reservation is that a formula for estimating the magnitude of systemic impacts has never been published in a peer reviewed source.

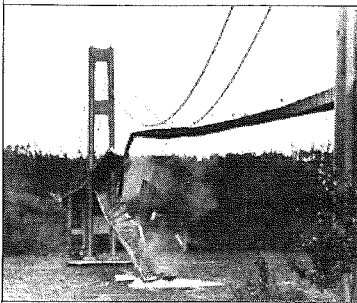
The results of the present study suggest that current actuarials are of limited value, at best, for SVP determinations. They may not even be useful at all.

With respect to evaluating the inadequate time frame argument, it is helpful to keep in mind that the studies cited in its support have some serious limitations. Two of them (Langevin, et al., 2004; Prentky et al., 1997) are of limited relevance for SVP hearings, for example, because they monitored subjects with 3 to 4 times as many convictions as the prison-release population to which SVP laws are applied (Janus & Meehl, 1997), 90% of whom have been convicted of only one sex crime (Song & Lieb, 1995). The third (Hanson et al., 1995) reported an inflated recidivism rate because data for older nonrecidivists were destroyed (Wollert, 2001). Regarding the issue of inflation, it is probably the case that the cited studies, and current actuarials as well, have been inflated to an unknown extent because they are based on old data that did not take into account such factors as (a) the increase in exonerations attributable to improved methods of investigation (Gross et al., 2005; Kanin, 1994), (b) apparent decreases in the sexual recidivism rate that have been reported in recent documents (Adkins et al., 2000; Barnoski, 2004; Bartosh et al., Beck & Shipley, 1989; Langan et al., 2003) and (c) the discrepancy between the rate of sexual recidivism in general, which is typically studied, versus the rate of predatory sexual recidivism, which has not been studied but is the predicted outcome with which most SVP laws are concerned (Janus & Prentky, 2003; Wollert, 2001). Finally, the cited studies all used small samples, ranging from 247 to 361 offenders, and selected offenders from a single source. Lower long-term recidivism rates have been reported for large samples drawn from many different sources. A.J.R. Harris and Hanson (2004), for example, performed a survival analysis on a pool of 4,724 offenders drawn from 10 different sources and reported a failure rate of 24% over a 20-year period. Even in this study, the actual recidivism rate could have been as low as 16% because the failure rate for a sample may be as much as one and a half times larger than the recidivism rate for the same sample (Prentky et al., 1997).

The self-admission argument derives much of its promise from the assumption that (a) it is possible to calculate the undetected sexual recidivism index (URI), which is the ratio of the number of detected and undetected recidivists to the number of detected recidivists; (b) the URI is large; and (c) it is possible to adjust actuarials on the basis of the URI once it has been estimated. The promise of this argument remains undetermined, however, because all studies cited in its support asked offenders how many crimes they committed in their past. Not one, in other words, asked about the number of sex offenses that were com-

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Including "undetected recidivism" in recidivism numbers without a known URI is like building a bridge without knowing the wind harmonics effect.

mitted after each conviction. As a result, none of these studies reported a URI or data that could be used to calculate a meaningful URI.

Like the self-admission argument, the status of the undetected recidivism argument turns on the calculation of the URI. It also runs afoul of the same problems besetting the self-admission argument in that none of the cited research reported URIs. Furthermore, no evidence exists that incidents of undetected recidivism can be identified at acceptable levels of unreliability. In contrast, a quantified analysis published in the journal at hand has argued that 'the unofficially measured re-offense rate may not be far off from the officially measured "reconviction" rate' (Janus & Meehl, 1997, p. 52). Finally, about the only recent data I have found that might be used for calculating a URI was in a study (Falshaw et al., 2003) in which 10 offenders were reportedly reconvicted of committing a new sex offense, whereas 12 were classified as having been involved in 'the perpetration of another illegal sexual act, whether caught or not' (p. 211). Taken together, these figures would suggest a URI of about 1.2 (i.e., $[10 + 2]/109 = 1.2$). The stability and generalizability of this estimate are open to question, however, because it was derived from a very small number of British subjects, and the reliability with which incidents of undetected recidivism could be identified by the researcher was not determined.

Perhaps the underestimation hypothesis will eventually be confirmed. Presently, however, a large number of considerations must be taken into account to insure estimation procedures that are not biased in favor of one side or the other. Furthermore, the size of the effect of almost all of these variables has never been quantified. As a result, it is virtually impossible to derive a defensible formula for adjusting actuarials for the effect of undetected recidivism or any other factor associated with the underestimation hypothesis. In the absence of such a formula, which is the cornerstone of the actuarial method (Dawes, Faust, & Meehl, 1989), the most accurate and unbiased approach for

experts, attorneys, and fact finders is to resist the temptation to speculate and to rely instead on actuarial formulas that are informed by solid empirical research. This would include the Bayesian formula that has been used above to adjust actuarials for the clearly defined impact of age on recidivism and that, as a result, constitutes actuarials for the clearly defined impact of age on recidivism and that, as a result, constitutes a meaningful addition to other scientific tools that inform the prediction of sexual recidivism.

Implications for Commitment Issues and Policies

Because the effects of age on recidivism have apparently been overlooked when many older sex offenders have been committed, it would be in the interests of justice to seek new trials for these individuals to determine whether they actually qualify as SVPs. A corollary of this position is that end-of-sentence review committees that refer prisoners for commitment consideration could 'do a more thorough of screening potential SVP cases' (La Fond, 2003, p. 296) by focusing their attention primarily on young adults who were fully competent at the time they offended and reducing the number of older offenders who are identified as probable SVPs.

The terms of commitment for members of this younger group of offenders should not be regarded as indefinite, however. The reason for this is that the best available risk-assessment method (i.e., actuarial testing) eventually points to the conclusion that the recidivism rate for each detainee – given the P for age group, test score, and the effect of measurement error (Anastasi, 1988; Gulliksen, 1950) – does not meet the commitment standard.

These policies, if adopted, might free up resources that could be allocated to other interventions to combat sexual recidivism, such as outpatient sex offender treatment, improved sex offender supervision, and education on sex offending issues for all offenders released from prison. The importance of a much broader allocation of societal resources, which has been recognized by other researchers (Janus, 2004; Janus & Prentky, 2003; La Fond, 2003), is underscored by a recent Justice Department report indicating that 517 of 9,691 sex offenders released from prison in 1994 committed new sex offenses in a 3-year period, compared with 3,328 sex offenses that were committed by 269,174 other released offenders (Langan, et al. 2003). If all sex offenders in this cohort had been screened as possible civil commitment cases using Static-99, a relatively small number of sex crimes would have been averted by the detention of 129 likely recidivists (Static-99 T of $.25 \times 517$ sexual recidivists = 129, whereas 734 offenders with high test scores would have been unjustly detained

(Static-99 F of $.08 \times 9,174$ nonrecidivists = 734). The Static-99 screen would have missed 388 ($517 - 129 = 388$) recidivists, however. All of the sex crimes committed by the other released offenders would also have been missed, setting the stage for the commission of 3,716 ($388 + 3,328 = 3,716$) sex crimes within a relatively brief span of time. Overall, only 3% ($129/[3,716 + 129] = 3\%$) of those who committed new sex crimes would have been incapacitated under these conditions.

From my perspective, a risk-management scheme that identifies 3% of all sexual recidivists is not cost-effective. Furthermore, in the above scenario, 388 recidivists would have been mistakenly released, whereas 734 nonrecidivists would have been unjustly detained. This means that the result of dividing the first quantity by the latter, also known as *R*, (Lloyd & Grove, 2001), approximates .5. In other words, only one dangerous respondent would have been mistakenly released for every two nondangerous respondents unjustly detained.

R is a useful measure for understanding trends in criminal justice policies because it reflects the restraint a society is willing to place on punishment, through its jurisprudence system, in the interest of protecting individual liberty. A large *R*, for example, indicates that the release of many potentially dangerous respondents is tolerated so that the limits of fairness are not breached by the unjust commitment of large numbers of nondangerous respondents. A small *R*, in contrast, is indicative of an emphasis on incarcerating as many potentially dangerous respondents as possible at the expense of incarcerating a large number of nondangerous respondents as well. Overall, it seems reasonable to assume that the value of *R* decreases as communities throughout a society become more punitive because of the spread of fear and frustration.

Volokh (1997) summarized and analyzed *R* values that have been espoused by jurists, legal theorists, biblical figures, teachers, American patriots, Mafiosi, talk-show hosts, politicians, Roman emperors, English kings, police commissioners, novelists, religious leaders, philosophers, and military commanders from different countries and different eras. Although wide variations were evident, almost all *R*s (except those attributed to Bismarck and Stalin) were greater than 1. Furthermore, the most widely endorsed value of *R* was equal to 10, a figure cited by the British jurist William Blackstone (1767/1979) that has come to be known as the Blackstone ratio.

Against this historical backdrop, the .5 *R* value associated with the use of actuarials in SVP cases flies in the face of both Anglo-American and international legal

traditions. In some SVP states, the true value of *R* may not be quite this low because of the additional requirement of proving the existence of a mental abnormality. In others, *R* would probably be even lower because of decisions that allow likely recidivism to be defined as less than a 50% level of risk (Commonwealth v. Boucher, 2002). Regardless of which estimates are most accurate, however, *R*s in the 0-1 range raise troubling questions about the implications of SVP commitment procedures for the status of individual liberty that citizens from all walks of society would do well to consider.

In light of these questions, legislators, policymakers, and opinion leaders are encouraged to study Bayes's theorem for three reasons. The first is that this can enhance their understanding of why it is very difficult to predict alarming but infrequent sex crimes with any degree of reasonable certainty, no matter how much money is spent on doing so. The second is that it can help them discharge their leadership duties by explaining this unpleasant reality to anxious constituents. The third is that it can emphasize the importance of evaluating every piece of proposed legislation directed at the goal of averting shocking but rarely predictable crimes in terms of the magnitude of the financial and liberty costs entailed by each option. Such advances might, in turn, increase their motivations to develop practical and nondraconian options for containing sexual violence while conceptualizing programs that impact many potential sex offenders rather than just a few."

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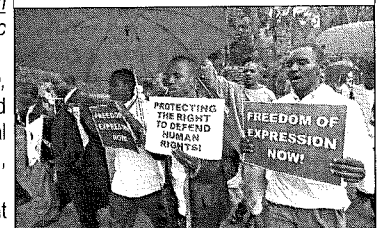
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Human rights lawyers marching in Harare, Zimbabwe. So then I thought: "Where are our human rights lawyers?" And then I thought: "Remember where you are."

