

Presentation Regarding Criterion C of WIC 6600

Dr. Mihordin: But first we'll deal with the easier parts of Criterion C and that is the three basic questions that need to be answered in Criterion C listed here. And we'll take them out of order so we can get back to the first question: Is likely to engage? As we mentioned - or I mentioned - or others mentioned earlier, is the person's future sexually violent criminal behavior likely to be predatory? That's Criterion C now and is the person - and that's the definition. Had questions, we can discuss those at the end but I think I've commented on that. I regard that language as pretty straightforward but allows or demands that evaluators make sense of it in the context of the given case. They'll of course frequently say they're striving to understand the words of the law in their plain English meanings and that's what I think our challenge is here. Here's a true predator. Can you read that? "Is it not true that you did not actually love the victim as you claim but to establish the relationship with this goldfish for the primary purpose of gratifying your predatory appetite?" On to the next section. "What is the weight of factors relevant to the possibility of voluntary outpatient treatment?" If that sounds like a ponderous statement, it's because I'm quoting from the language of Ghilotti where they introduced this invitation or direction and we respond to outpatient issues - outpatient inability, suitability, etc. - in our report and it falls in the Criterion C section because it relates to the issue of likely to reoffend. So the court said we must weigh the possibility of voluntary treatment with requisite care and caution. So we must evaluate - I think we've taken that to mean we must answer the questions they pose but actually they pose these questions as common sense suggests that the factor should include these. So they're not saying that this was exhaustive and they're not saying it's mandatory but I think you guys and gals are right that you cite the questions and answer them. Those of you who are not answering them, that's not so right but cite them and the questions are availability, effectiveness, and safety of community treatment for the particular disorder the person harbors, whether the person's mental disorder leaves him with volitional power to pursue such treatment, collateral effects of the treatment - are they such that we would reasonably expect him to voluntarily pursue it, the person's progress... mandatory SVP treatment especially if you're evaluating somebody whose in - when it works when the person is in or has the opportunity to refuse or participate in a treatment program unless they're at Coalinga State Hospital versus expressed intent if any to seek out and submit to necessary treatment, whatever its effects, and finally any other indicia of signs vary on credibility and sincerity of such express intent. This slide - this situation, the minister says, "Do you promise to love him in sickness and in health, for richer and poorer?" and she responds, "In sickness and richer, yes." She's not responding to all the questions and we need to respond to all those questions. Obviously in some context we don't have the answers. Well, and you say that but there should be a matching of the

question to some kind of response from you. Sometimes they don't apply but then you say that. The troublesome responses, not everybody - if the shoe doesn't fit, don't worry - is like they answer some other - people answer some other question, a generic comment about outpatient something. Those are the questions that should be answered and specifically and each one in turn if you can. And if you can't, explain why you can't. Now we get to the big enchilada. "The person is likely to engage in sexually violent criminal behavior if released without conditions." That comes from the Penal Code (sic) 6600(a)(1), first part of it and it defines what a sexually violent predator is. That's the last part of that paragraph and Ghilotti is a case that looked as an appellate case, what the phrase "likely to engage in sexually violent criminal behavior" means. Okay so here we go with our first question which is select your demographics. You guys do that real good. I think I figured out how to make the software work without going out of it and coming into it. I hope I have. This gentleman up here, Shawn Sterling, the master of problem-solving - he'll be a very good SVP evaluator, I'm sure. Okay, so we pretty much know that. Okay, here's a question for you. How old were you when you first began to do psychological assessment of dangerousness? Older than 50, 40 to 49, 30 to 39, 20 to 29, 10 to 19, 1 to 9.

Dr. Mihordin: If there were scores to be given, he'd have given one. And that's the point I want to make here. Not to denigrate the kind of risk assessment we do but to point out that really we've been doing psychological - in recess on the playground, we've been doing psychological assessment in the home, on the playground, at Christmas holiday when we see that Uncle Bill gets drunk and gets nasty and we give him wide berth or there's a boy on the playground. Certainly we do it professionally. Certainly we do it in special ways but risk assessment in the generic is something we've been doing and people who were on the jury have been doing since they were little boys and girl. I think in some ways some of our activities have taken us too far away from the basic days when we were doing it that way than the way we're doing now. I think there's a point for some integration here. Okay. Here's another question. Here's the neighbor from hell and here's his rap sheet: Disturbing the Peace, five arrests, three - and I'm reading it because I'm going to presume you guys in the back can't see it. Is that fair enough? Because otherwise I wouldn't read it. Disturbing the Peace, five arrests, three convictions; Drunk and Disorderly Conduct, seven arrests, four convictions; police called to the house on complaints of noise three out of four weekends monthly; cruelty to animal, one conviction; shot the neighbor's cat; evicted from the last three properties he rented. So the question is: Is the neighbor from hell likely to engage in drunk and disorderly conduct or disturbing the peace? Wow. So that's a pretty good consensus. Now I presume all those people who said yes had a risk assessment tool that you had on your iPod and if you can solve it you come up with that answer or did you come up with that answer looking at the biography, the behavior, and the nature of the question? "Is he likely

to reoffend in ways that he has demonstrated a pattern of offending?" Here's the breakdown. Everybody knows how to do it. It's - the analysis you did is probably like the analysis you need to do with an alligator. You know the nature of the beast. "You idiot, of course I represent a serious and well-founded risk for violent predatory behavior. I'm an alligator!" Okay here's another warm-up question. The Widget Company of America. Imagine you are applying for a job at The Widget Company of America - and you don't have to memorize these things but you should get a sense of it - imagine that you have 2 years of experience in the widget industry, you have more than 13 years of formal education, you have had more than two different jobs in the last 5 years, you've had a traffic ticket in the last 10 years, and you're unmarried. Now let's also say that the widget industry has accurately determined that people with your characteristics fall within a group of individuals in which only 20 percent will remain on the kind of job you're applying for for more than 3 months. This finding has been incorporated into a personnel assessment tool, the PAT, used throughout the widget industry. All the people at WCA who interview and decide 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 percent chance of remaining on the job for more than 3 months. Here's the question: The WCA interviewer's interview of you and his decision about hiring you will be fully based on who you are as an individual. Take the question (at) the top. Strongly disagree, whatever. This question I think you can see right through me - you're so perceptive - is an attempt to put us on the other side of risk assessment and put ourselves in a role of how an actuarial tool which this industry is using is selecting you for that job. Now maybe we could have - we could have a longer discussion of how different people chose those answers for slightly different reasons, structure the question different, but I think that a pretty strong recognition that that's not something you'd want to be on the receiving end of. Also to make the case that we don't have a corner on the market in risk assessment - we have the corner on the market of our kind of risk assessment - but it's ubiquitous out there. Here's the armed services - all the branches of service use this risk management system. I took out the other slides. They've got a risk assessment matrix There's definitions for all the levels of risk. What's interesting is it's all qualitative. I learned about this from my chemical engineer son who was a nuclear submarine officer and instructor at the school in Groton, Connecticut and he says to me, "Oh, we don't do any of that quantitative stuff. We only do the qualitative stuff." When the military is making decisions about life and death, their equipment, their lives, and the success of the mission, their risk assessment is all qualitative...

Dr. Mihordin: ... risk assessment is ubiquitous. Just up the road in Roseville those tracks that are very close to us now on the Union Pacific at the yard in Roseville, when I was visiting there last month, this was a sign posted on the wall to the employees, people who work on the railroad: "Have you done your

risk assessment today?" Obviously they're not talking about the kind of risk assessment we do but they are talking about intelligently making some decisions, evaluating their situation, evaluating their environment, and making a judgment about safety and danger. So we are not alone. Here's the next question: In the context of SVP, we practice the phrase a serious and well-founded risk is numerically equivalent to greater than 51 percent, greater than 41 percent, greater than 31 percent, greater than 21 percent, greater than 11 percent, no numerical equivalent. Like magic: No numerical equivalent. Very good. That's good. That's what we consider the correct answer and now we're going to belabor the point. It's really interesting that those who say greater than 50 percent are really new to the arena and that specifically, that particular level of risk given in numerical values was rejected in the Ghilotti case. That's the other part of the Ghilotti case. Okay, so there's no numerical equivalent to this phrase "serious and well-founded risk." The question - and we're going to go from Ghilotti to "actuarial land." Is Shoba here today? Sreenivasan? I tip my hat to her and Al Frances who coined the phrase - I believe they coined the phrase - "actuarial land" in their article they wrote, critical article they wrote, not about risk assessment in the abstract but in the position it has eked out in the practice of forensic psychiatry and psychology. The question is: Does the subject's diagnosed mental disorder make the subject a danger to the health and safety of others in that it is likely he will engage in sexually violent behavior. You guys can recite it better than I can. The clarification of this language comes in Ghilotti in which the person they explain to us and everyone else - the person is likely to reoffend if the person presents a substantial danger - so this is a dangerousness assessment - and that is if it's a serious and well-founded risk that he will commit such crimes. So that's the standard. Likely means serious and well-founded risk. You've already bought into the concept there's no numerical equivalent.... Ghilotti - and this is their phrase as they were looking at likely, they said in their dialogue with the reader, what is the meaning of the phrase upon which evaluators opine? What they did on discussing and sharing what they're thinking is went to resources. But look at the resources they went to. They went to - and this is out of the section they're talking about how they're cogitating, thinking about this decision and analyzing how they're going to portray to us what likely is. The reference is in those 250 pages and 28 paragraphs, 34 references to things they refer to, things they considered. Twenty, 19 case law, 7 statutes, 4 lay dictionary, 2 law dictionary, 2 law thesaurus, no turning to psychiatric/psychological literature, no turning to actuarial or statistical literature. Theirs was a semantic analysis about what that phrase meant and their answer to it what it meant was a semantic word analysis not a numerical analysis. What do those words mean?... Serious means grave, bad, critical, worrying, dangerous, extreme, grievous, severe, alarming, important, urgent, enough. It's something serious. That there's no numerical conversion that's necessary for that and in a sense go back to "totalogyland" if I could, what crimes and what behaviors have our guys

and gals engaged in that are serious? Isn't this kind of given in terms of the kind of risk we're looking at? Risk for raping, child molestation, sadistic sexual behavior? I think we got that one without advancing much proof. Then then well-founded, sound, based on sound reasoning or evidence, justifiable, reasonable, warranted, legitimate, credible, tenable, capable of being maintained in the argument, and rationally defensible. No numbers. Semantic descriptions of what well-founded means. Something that you have some basis in fact and evidence for asserting the foundation of your opinion, maybe kind of like we did when we determined what the risk of the neighbor from hell had for reoffending in the way he's been reoffending. There was a reference to mathematics in Ghilotti but it was not a very strong reference that would suggest, "Well, that's what they're looking for." They point out that words "likely" in the statute must be (considered in light of) difficulties inherent in predicting human behavior, particularly in mathematical concepts. Now this doesn't sound like they're touting and expecting and looking for mathematical analysis, particularly so in response to the requirements of Section 6601 which is the screening stage. In response to this, when the Ghilotti case came down, in the Los Angeles Times there appeared an interview with Robert R. Anderson. Does anybody know Robert R. Anderson? I know he's probably retired by now as we all should be but not. He said in response to Ghilotti, "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. Misguided. If you have a cell phone, I was going to suggest if anybody knew him, you could call him up and say, "Boy, are you disappointed." What's the Ghilotti reality after Ghilotti... rejected the unitary level of risk assessment expressed in percentage terms as 50%. I would suggest to you it's been replaced by evaluator's choice and this is the don't ask tell concept. I would suggest what's going on since Ghilotti is evaluator looks at actuarial risk assessment for the group risk percents and then evaluator equates that group risk with the risk of the person that's being evaluated and then consciously or unconsciously decides whether the risk he's attributed to the subject, admittedly with some adjustments up and down, meets the evaluator's personal percent threshold of likely. I'm suggesting that probably what many of us are doing in our minds is looking for a percentage being anchored in the risk assessment percentage and just converting that at the end of the evaluation to the semantic phrase, not entertaining the challenge of doing the analysis as Ghilotti would allow but does not necessarily forbid any form of assessment. So the "don't ask" part is we're not asked what's the percentage threshold? Is it more than 50 percent, more than 30 percent? And we don't tell. In the end of our things, we - we may not be doing that. But if we are doing it, we don't tell that in the end of our reports. I've often wondered what do they mean when the exception proves the rule. I think this is an example of an exception proving the rule because I think many of you say, "No, no, no, you're trying to read our minds and we don't do this." Here this doctor in this non-published case

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that I have come across explained that he was doing I think just that. That is, he explained to qualify as an SVP - this is in a court... - he must pose a serious and well-founded risk of reoffending. So far, so good and then he reported the doctor's opinion, "This risk need not be 51 percent." So far, so good, but rather just the chance of around 30 percent. So I think this guy's got the percentage and he's doing that but this is that "don't ask, don't tell" and he just outed himself. Before Ghilotti, we'd do the mathematical, statistical stuff and then we'd say "more likely than not." So what's changed? Well I think we're doing the same stuff but at the end we say "serious and well-founded risk." Forgive me for - you've got me in other things I don't know - but what's the male character here in Peanuts? Is that Peanuts itself or is that Charlie Brown? Charlie Brown. Okay. Here's Lucy and Charlie Brown and Lucy says, "Since there are inherent difficulties in predicting in mathematical terms, just tell me whether he represents a serious and well-founded risk?" And Charlie says, "So what you want is a highly precise mathematically-based answer tangential to the question you asked?" and Lucy says, "Argh! Did you hear a word I said?" Lucy's giving us - posing the Ghilotti question and who is Charlie Brown? Okay. How'd we get on the road to Actuarial land? Well, there's a media outcry for these kind of people and something to do with them, doing it in a way that's constitutional, effective, and based on hopefully science. Political legislative response gave us law and then I would suggest that persons who commit sex offenses are kind of real low in the public's sense of respectable people and maybe like pariahs and so whatever we might do or whatever we might choose to process these guys, there's not going to be a groundswell of any critical, excepting the defense bar, of what we're doing and how we're doing it. And the least of their worries is that we're assessing them actuarially. And there was a methodology in waiting. The research was out there, the tools were out there, and here there's an opportunity to use those tools and psychologists in some cases had the opportunity to become tool-makers rather than just being a psychologist or psychiatrist where you sit in your office where you get a fee for service or you get a fee for evaluation. Now you can create a tool and you can market that tool and you can license that tool and you can have trainings on that tool and workshops on that tool and you now command income with your products that you wouldn't otherwise have. So some ways though I would suggest that are - move to Actuarial land has been as much a marketing breakthrough as it has been a scientific breakthrough. Some people - I wasn't there for the session but some people in meeting this activity for the first time somewhat cynically - I mean, in a snarky way said, "This sounds like a cottage industry." Well, this is mean. I would say maybe he should've said "like a psychological industrial complex" and having said that, to the man who has a hammer, everything looks like a nail. We have the hammer. We had an actuarial assessment. But a funny thing happened on the way to Actuarial land. Apparently no one bothered to learn the principals of actuary science. So now what we're going to do is try to cut through the confused reasoning

about actuarial prediction. I'm going to try to do it - though I haven't actually written this book - breaking down the basic actuarial concepts and compare them to how we tend to talk about them and how we present them and we promise from them to the public in light of actuarial concept in most simplest form. Now I'm not an actuary but I don't think you guys are either so we're kind of on equal footing in that except I've read some actuarial literature and you're going to hear about that. The other thing is if I in some ways seem like a Frankenstein, that guy over there, Bill Knowlton, is Dr. Frankenstein because several years ago he put me on the course of starting doing a series of lectures and looking at actuarial assessment in the abstract and in detail. I'll have to say I'm not what you call a quick study. It's taken several years and a number of iterations of seeing what's going on here to come up with what I'm going to share with you today but an interesting thing about it is there was a clue staring us all in the face and that is the word *actuarial*. What is actuarial? What is the actuary? What is the actuary size? What is the actuary practice? That's where the clue is to what we may be miscommunicating or holding out to the public as something more than actuary science can deliver. So at principals of actuarial science from actuarial literature and guidelines. In actuary, people that are actuaries like for insurance companies and health plans - the risk is the subject. The person we call the patient, the individual - that's the risk. For your auto insurance company, for USAA, I'm their risk. That is, the risk is a person who is in a context where they can experience the event. I am a risk for a car accident (and I've proved that a few times) but having said that, that's what risk means in actuarial terms. Actuarial risk is the phenomenon, the risk of car accident, the risk of death, the risk of hospitalization, the risk of major surgery, and subject to actuarial risk variables but unlike our rather limited actuarial assessment, actuaries, these guys integrate occurrence not just will or won't have an accident but timing and severity and package up assessments that predict all that. Risk identification is the process of determining whether the subject is a risk subject for a given actuarial risk. It'll be stated better later. So a set of classes, a set of groups, a set of characteristics, and a set of rules for assigning people to those groups in such a way that principal 4.1 is affected - and we'll talk about that next - is called a risk classification system. I think all our actuarial tools have the makings of a risk classification system. Now the elements use different terms. These classes are called risk classes, groups, and the rules for assigning risk to the various risk classes are called underwriting rules. This isn't the same kind of underwriting we see on PBS channel, "This program was underwritten by the local law firm." That's support. In the actuarial practice, underwriting rules are what we would probably call coding rules, those rules we use to score off the Static-99. Those are the risk variables that we're scoring on. That's underwriting in actuary science. And so risk classification for a group of risks associated with a given actuarial class, it's possible to identify characteristics of the risks and establish sets of risk classes based on these characteristics. So far, so

good. Each risk is assigned to one and only one class and the probabilities of occurrence may be associated... you can have a predictable probability with some degree of accuracy relative to observed results and that's the experimental group that you use to develop your actuarial instrument for each class and potentially for every class. But notice what the actuaries are offering here: a prediction of a class outcome, prediction of the ability to accurately predict with risk classes and behaviors of risk classes, i.e., group. But that's what actuaries imply. Focusing on that line, the process is identifying characteristic of the risks to do what? To establish a set of classes based on these characteristics. So the endpoint for actuarial risk assessment standard, not actual risk assessment NOS, is to determine which risk class, which group to assign the person to. Here's Actuary Man and he points out that's the end of the work for the actuary. Using underwriting rules I've assigned each risk to a risk class. My work here is done. That's as far as actuaries go. Here's a picture. This is a photograph out of Fortune magazine from the 30s for Metropolitan Life Insurance where in-house actuaries would be trained several hours... a week. Here's their instructors. These are student actuaries and these are my captions or call outs but this is what the actuary would say to the students. The three principals of insurance underwriting are place the customer in the right risk group, charge the customer the premium for his risk group, and then forget about him. Unlike what the ads say, "You're in good hands with Allstate" and whatever and I'm not saying they don't give service. But actuarially speaking, there's no interest individual. There's no claim of interest or assessment of the individual. So actuarial practice, the standard actuarial practice - reference groups, research, study their population, using other studies, governmental studies to figure out risk for these groups with certain characteristics.

Dr. Mihordin: ... So there's the application groups and for the insurance company it is application of putting the people into groups. Non-standard actuarial practice is what I suggest we attempt to do is reference groups, yeah, so far, so good. Validation groups. Yeah, so far, so good. Good science, good peer review, good whatever but then we go to individuals and portray ourselves as being able to somehow use actuarial risk assessment in single-case individual cases. Okay, what are the differences in unspoken but foundational prognostic premises in various forms of prediction or assessment. I think many of you just said in addition to whatever else you've done and probably in some courtrooms the predictor of future behavior is past behavior. Okay, generic. The best predictor of individual's future behavior is that individual's past behavior. That's the risk assessment of sports scouting. See that pitcher, he's on a streak. Let's hire him. His ERA is coming up, going down. That's his record of his conduct and his behavior to predict his future behavior. Not completely, not precisely, but that's the principle and - or actuarial science, standard actuarial science, the premise is the best predictor of future group

behavior is past group behavior. The best predictor of an individual's future behavior is his group's past behavior is actual risk assessment NOS. It's where we are. Actuary science is tied to group - for the group, by the group, of the group. Arthur Conan Doyle, the fellow that wrote "Sherlock Holmes" and incidentally a physician trained in pathology - maybe that's how he understood what he said in the words of his character, "While the individual man is an insoluble puzzle, in the aggregate he becomes a mathematical certainty." And that principle is where actuary science resides and works. Okay. Actuarial means groups. Without a reference to a group there's no way to develop a valid actuarial tool. We gotta' have a group! Without reference to a group, there's no way to prove the accuracy. We gotta' have a group!... There's a Nobel prize waiting for somebody who can validate an actuarial instrument based on an n of one. For those who are not in scientific research, an n means number of subjects, the number of people in the study. With one you can't do it. And here's the Sparky the Actuary Dog and he says "group, group, group." The principals of actuarial science forward and backwards. In actuary risk assessment, the individual is assessed for assignment. That's what he's being assessed for, assessed for assignment not assessed for determining what he's going to do. It's assess for assignment based on limited number of attributes. I'm using underwriting rules, coding rules, placed in a risk category comprised of individuals with similar actuarial attributes, a limited number assume but that's the joy. That's the strength of actuary assessment... With a few variables, you can create groups that are predictable at a level you can do economic decisions on for the group, with limited variables, without having to know a lot about the individual. If we're doing actuarial assessment again, we're playing to the weakness of the tool. That's not the strength of the tool. In any risk class, individuals who experience and those who will not experience risk... have the same actuarial (score). That's why they're in that group. So in that group of that risk, that percentage risk is associated with a group, that percentage of individuals, they all have the same possibility of doing one of two things: experiencing the risk or not experiencing the risk. In the risk class one can predict the number of individuals but not which individuals in the group will and will not experience the event of interest. Actuarial assessment provides no basis for doing the reverse, using predicted risk outcomes - class outcomes - to predict the outcome expectation for an individual in the risk class. Actuary science summarized: Predictable actuarial risk class from individuals with shared characteristics - doable. Predictable individual risk... class affiliation not doable. Now that's not to say we can't predict, judge, answer questions. What I'm suggesting to you - we can't do it with actuary science. It doesn't work that way. It doesn't give that result so down the left side, can do. Individual characteristics, actuary class, whatever, risk class to predictable outcomes. You can't go the other direction. Here's a case of a 47-year-old male actuary in a hospital bed. He has mutism. He's not speaking and the doctor turns to his colleagues and says, "Why isn't he speaking? Do we have any lab studies?" and the

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answer is, "Yes. He's not speaking because he only has an n of 1." He has nothing to say and here's the actuary class and here's Billy Clark, secure in his identity as the actuary class idiot when he says, "Since we know the actuarial risk, could we make more money if we only insure the people who are not going to have an accident?" That's not the way it works. They don't know or care about individuals. Let's look at our SVP context. All the individuals in each risk group have equivalent actuarial characteristics. Not that they're all equivalent, they're all the same. But actuarially they are. That's why they're in that risk group. In every risk group - now obviously within in a risk group there's 100 percent risk or 0 percent risk. This would work but we don't generally deal with those kind of risk groups. In every risk group there are individuals who are likely to offend. In every risk group there are individuals who are not likely to offend. Risk group affiliation does not establish and individual's likelihood of reoffending... I hope you can generalize and the principles are the same. We have group risk affiliation that we may learn by actuarial assessment. In each case the task of the SVP evaluator is to determine whether that persons or make a decision or make a statement or give an opinion as to whether the person is likely to reoffend. In the footnote it gives us the Ghilotti submatic description of what that means. So no matter what group you're in, if you're in a high-risk group but you're likely to reoffend, you should be positive. And if you're in a medium-risk group, if you're likely to reoffend, you should be positive. If you're in a low-risk group and you're likely to reoffend, you should be positive. So the risk group really doesn't take you to - the risk group becomes kind of irrelevant if you're answering the Ghilotti question. Here the fisherman says, "In this part of the lake, 8 out of 10 fish caught are large mouth bass but I've caught large mouth bass in all parts of the lake." So you can't tell what kind of fish you're going to catch or what kind of fish you've caught by knowing what part of the lake you're fishing in. Certainly in probability terms better to fish for large mouth bass in part of the lake where they're doing it this morning but the part of the lake the bass is swimming in doesn't tell you what kind of bass he is. Then let's do this. Whose risk is it? The risk that we know about. The probability we know about it. In these boxes there are 30 percent of the caps are green. Green caps... Seventy percent of the hats in these boxes are black hats. The probability of Dr. X will chose a box with a green cap is 30 percent. That's his risk of choosing - so we can say his risk, the selector's risk, knowing the probability, his risk, his chance, is 30 percent. Okay, here's your question: What is each hat's risk of being green? The cap's risk. Wow. That is the correct answer. The cap's risk is either 0, 100 percent. It's really - I'm impressed because it comes at you rather quickly. So whose risk is it? And you got the right answer because we see 30 percent, that means 3 out of 10 boxes on average should contain the green hats but this cap's risk of being green are 0 percent. This cap's risk of being green is 100 percent. And no cap's risk has a 30 percent chance, a 30 percent risk of green. Whose risk is it? When we talk about the probability, the probabilistic meaning of actuarial

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assessment. The person who comes to that group and may pick people out of the group if he has enough choices or is it inherent in the person in that group. I know there's been some discourse that says, well, this is - they do it in health, we do it in whatever and that's true. I would suggest to you that we have a phenomenon of common accepted misconceptions and we get by with them and they work for us and there's no harm in it. We can have Starbuck's kind of conversation versus technical discourse. In Starbuck's conversation, "Hey, I read in the paper that guys like me who do such and such, we have a 30 percent risk." No harm done if that helps you steer your course and what do you have to lose if you stop smoking? What do you have to lose if you cut down on your substance abuse? It's a personal choice and it works great for public health initiatives. It is true that the group has those risks and if you can assess for yourself whether you want to adopt those and apply to yourself. That's a different kind of risk/benefit calculation and a different person doing the risk/benefit calculation in the context in which we work or if I decide to with what they told me about red wine, have red wine every night because I want to lower my risk for heart attack. What harm is there in that? But we're dealing with issues on one hand, public safety on the other hand, with freedom of individuals to walk the street as free citizens. Also in terms of medicine, approaching a patient that is novel to you, is new to you, there's no history of how he or she is going to do on a given drug. Sure. Pick the drug that works best on those people. But if you know something about the patient, if you know another drug worked in the past, the drug of a similar category worked in the past, their family members have responded to that, then you have some individual data that may make your initial choice one that can be shaped with individual characteristics of that individual. We tend to use the best treatment first but after that all bets are off. We look to research to inform us as how to make our next decision, irrevocable decision. In terms of miscommunications as to how we talk about this stuff, especially guidelines touched upon that reports to testimony should provoke understanding and avoid deception, and should not involve misrepresentation. I'm talking miscommunication. A fellow by the name of Devarenza (sp?) a German who wrote a text or a book on calculating risk and how to know when numbers are deceiving you said some things. Communicating risk in language is critical. He's not looking at the internal workings of the statistics. He's looking at how we communicate what we have, what we've created, what we've done. He says miscommunication of risk is often the rule rather than the exception and it can be difficult to detect. Statement of probabilities, statements like you have a 30 percent, 50 percent of developing a sexual problem... are fertile ground for miscommunication so we're in an area where there's fertile ground for miscommunication. Talking about risk and percentage leaves too much to the imagination. Thirty percent chance of rain tomorrow may be understood as it will rain 30 percent of the time. Maybe it will rain in 30 percent of the area or maybe understood as it will rain on 30 percent of the days that are like tomorrow and that is the correct answer to what the

assessment 30 percent chance. Not tomorrow is going to be that but there's a 30 percent change on days like tomorrow. How fractions deceive. A fraction - we know what a fraction is. Four parts of an inch is call a fourth of an inch. A fraction is composed of a numerator and a denominator. It seems like pretty simple stuff? Yeah, but. Numerator is the part of the fraction above the line, denominator below the line. A fraction, numerator, denominator. I think we lose sight, in our language lose sight, a percentage is a fraction. A fraction has been decimalized and multiple by 100. One over five, that fraction is .20 times 100, that's 20 percent. What happens here is the numerator and denominator disappear from view and that allows great mischief because we don't think to ask the question in a risk assessment statement, "20-what out of what?" Twenty events out of 100 events? Twenty people out of 100 events? Twenty times out of a - it's not stated and in some ways I will point out how it's not translatable. You have to have the same numerators and denominators. When you say there's a 20 percent risk for reoffense, 20 people out of 100? Twenty chances out of 100 chances that the person is presented with those offenses? Twenty offenses out of 100 days at risk? Twenty out of 100 days at risk? What's the numerator? What's the denominator? Let's look at other aspects of risk. There's the population-based risk which is what actuarial risk is, the risk of reoffense, where it's the number of individuals we learn that fail by our research out of 100. That's the numerator and denominator there. But the primary example of individual risk assessment that's pretty ubiquitous and you know some people don't like sports analogies but it's like the individual risk of getting on base as a baseball player. That is the risk. It's a frequency risk. It's based on that individual's behavior. Times of success, times on base, versus times at bat. That's personal to that person. That's a great way to predict what he's going to do. Not a perfect way to predict what he's going to do but probably a better way to predict what he's going to do than looking at the batting average of the National Baseball League last year. Look at his average and look at that frequency thing. The equivalency comparability illusion - we got that one but what is when we say an individual's risk is 20 percent and we've gotten that from a group risk assessment. Even if we're just going to use that to build further. Twenty-what of what? What's the numerator? What is that twenty people? How does an individual express that? How does an individual express that? How does an individual confirm that? Is it a clone risk? Is that a risk to be saying this is the clone risk the person has that his clone risk 20 percent is that 20 individuals will reoffend out of this individual and 100 of his clones. That's kind of fanciful. That's as close as you can get to translating and having equivalency and comparability to a group. Look at the fraction. What's the numerator? What's the denominator to taking that to an individual context? Back in the 20s, the innovators in the field of risk assessment were not psychologists. They were sociologists at the University of Chicago. Now I don't know the complete history but in doing some research we found out the University of Chicago in their connection with the Statesville Prison in Joliet, Illinois,

they were doing some risk assessment, developing some risk assessment tools and here's their risk assessment scoring sheet. There's the score at the bottom and then they've translated as you can see here highlighting that. This is how they communicated their risk on their risk assessment. The inmate is in a class in which 3 percent may be expected to violate parole agreement. Two percent of the persons in this class may be expected to commit serious offenses and so forth. Interesting those poor humble beginners didn't take the giant leap and start talking about individual risk when all they had an actuarial basis for was talking about group risk. Yet we advance and here are some guidelines or some language from more recently in 2003 in which we hear the individuals with these characteristics on average reoffend. The rate for violent recidivism for individuals and they leave out the group. Now sometimes I see people say, "Oh we don't talk percentage." Well it looks like these people are talking percentage of risk when they're talking about individuals. Then they use this phrase "on average." What's that all about? On average the individual, on average the individuals in the group. Let's look at the no preg love study, fictional, 50 people, on no preg for a year, all women because only women are at risk for pregnancy to use the actuarial terms. During that period of study, 5 people got pregnant so there was a pregnancy rate of 10 percent. So here are the people in that study and 5 of those ladies got pregnant even though they were on no preg. The risk of pregnancy for the individuals in no preg study was not known. Everyone in the study was at risk. They could remain 100 percent. They could remain 0 percent pregnant or get 100 percent pregnant, like the green hats and the black hats. That was their risk. No one in the study became 10 percent pregnant. For individual no preg users as we advance, the risk is unknown for individuals. For the group of no preg users, it's valid to say on average the actual risk is going to be 10 percent. On average for what? For the group. Not a bad term. Here's a reasoned approach to how we talk about - how some people talk about actuarial assessment from Hanson. You've probably seen this documented and spent more time with it than I have. I just used it to make a few little slides to make a point and it starts out with explaining risk assessment. Over the past 15 years, research studies have identified different personal characteristic factors that most strongly relate to adult males who reoffend. The little man - this isn't Dr. X. This is a wise little man or a critical little man or a skeptical little man, says so far so good, yeah. You've done that. We got that. We have the research. We know risk factors. With increased understanding of these characteristics research and evidence based on actuary risk assessment instruments. Okay. So far, so good. Keep goin'. The little man says you left something out. These tools estimate the likelihood of sexual reoffense based on not any ... individual but they left out groups and that's a significant missing element here. All those needs risk assessment tools do not predict whether an individual will commit a new sexual offense. Little man says you got that right. But then this of course goes back to leaving out that group part in talking about

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identifying adults with particular characteristics. Hey, you left the group part out again. Here's examples from cases where people talk, leave out the group part. Score to provide a general base rate of sexual reoffense for sex offenders, for groups of sex offenders. These instruments predict whether an offender (singular) will be charged with a new sexual offense. Wrong, the little man says. They predict how many people out of a group will be charged with a new offense. In this case they give a percentage and the little man says 12 what's out of what? Is this a clone risk? How will an individual prove us right or wrong on that individual based on what a group he's affiliated (with) could be expected to do? Reports frequently say that we're not determining risk of reoffense. We're not determining whether the person's going to offend or not. We're assessing risk and I think that's the distinction which for the public and our consumers is probably a distinction without a difference. There is a distinction as to whether it's group applicable or individual applicable and I think that is a distinction with a difference and here the profession says although you may think of this as prediction, in my profession we call it the risk assessment. And the consumer says actually I don't care what you call it. All I want to know is that my fortune or is it the group's fortune? We can say, I think we would say, well we don't say that stuff. We don't miscommunicate. Well apparently then courts are mishearing a lot of cases because these are court cases in which they're quoting us as saying the person had a 52 percent likelihood of reoffending. Singular. His. The risk that he would engage in sex- was at 48 percent. The defendant was likely at a 32.7 percent. And with all those percentages what's the numerator and what's the denominator? Here's the courts hear also in ... case, this was a published case. It's for other purposes that I'm using but they start out like ... in that publication. Risks, Static-99, actuarial- allows the evaluator to place sexual offenders in different risk categories. Great, we can do that. We've got the power. We've got the tools based on historical factors. So far, so good. After identifying a particular offender the Static-99 assigns a numeric score to them and yep, you got it. The total score of the test is a percentage chance of the defendant's likelihood of being convicted of a future offense. Whoa. Percent of what? Numerator. Denominator. Clone risk. Once the courts hear this evaluation in the process of determining likelihood of defendant's ... risk and the little man says baseline fallacy, false surrogate, it just keeps gettin' worse. Because we're magic we'll perform two illusions at once - equivalency and comparability that there is a way to translate directly group risk to individual risk even when you say you're going to massage that data further. The strategy both uses and enhances the illusion that there is some kind of equivalency and comparability but it's a false assumption. It's an illusion that the individual's risk is equivalent to the risk of his assigned risk class or that the outcome expectation of the risk class can be used as a surrogate, adjusted up and down by clinical judgment or dynamic factors or maybe evaluator idiosyncrasy. Actuarial risk class percentage is a false surrogate for the risk of an individual. Adjusting the

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false surrogate as a risk class in an effort to determine the individual's risk is akin to the practice of voodoo. Strong language but what I'm suggesting there is we're putting pins in the risk assessment tool and that group data and that has nothing directly to do with that individual, any more than poking pins in a doll has anything to do with the individual we're trying to Departure from valid underwriting rules with adjustments really jeopardizes the validity of the basis risk assessment. You don't do ad hoc adjustments of the risk. It does offer a patina of actuarial numerical precision to assessments that may be significantly influence by clinical judgment and evaluator's idiosyncrasies. It allows us to sail under false colors and there's another process of inherent anchoring that knowing a number has for us as we go on with other judgments. We'll come back to that ... predominant. It's in the psychological literature. Perhaps you've heard it more frequently. Then there's precision of fallacy. Actuarial precision is more precise and accurate than clinical Okay, whoa. That's too ambiguous. That statement is a little bit too ambiguous. Actuarial prediction of group outcomes are more precise and accurate than reliable clinical predictions of group out-. The little man says you got one there. But then when you say actuarial outcomes are more accurate than clinical predictions, actuarial predictions of individual outcomes better than individual predictions of outcomes, little man says actuarial predictions of outcome? That's an oxymoron. Actuarial doesn't predict outcomes of individuals. Let's go on the next thing. Actuarial prediction of group outcomes are more precise or reliable than clinical predictions of individual outcomes. Is that a clone risk? What's the numerator? What's the denominator? Precision and accuracy and reliability are irrelevant parameters if the tool you're using isn't doing the job you're saying you're doing. Dr. X. is in court and he says, "If it would please the court, I want to present this X-ray as the basis for the opinion the person has a fractured skull." You're not doctors but that X-ray ain't gonna' get us to whether the person has a fractured skull. Not that X-rays aren't scientific and reliable. It's the wrong X-ray to measure fractured skulls. The precision fallacy obfuscates. It takes us to the step beyond basic conceptual error, inherent structural defects of what the tools can't possibly do and has us talking and being cross-examined on precision and whatever of something that is the wrong tool for the job. Mental health professionals are rarely called to assess group risk. There's exceptions. There was - it's still an active case which some big issues are riding on it unfortunately in terms of the indeterminate sexual offenders' commitment. But in this case, the judge was trying to get some scientific support for why this one class of people, SVPs, should be treated differently by the law than another class of people, the MDOs. What an ideal wonderful place to use your actuarial studies to be able to tell the court what this group does versus what that group does. On the other hand, the judge in this case seemed to get it when he understood the Static-99 is used to determine what percentage of offenders with similar score have reoffended. His score is not intended to show a specific likelihood of sexual reoffense for a particular individual. In

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a case that's - a federal case, not our jurisdiction but three evaluators, three experts agreed in the testimony that based on their empirical use of actuarial tools that no psychological test or actuarial instrument has been developed to prove with certainty an individual's risk of future offending. I'd say it's more than with certainty, in any direct way. And the court said actuary instruments provide only group prediction rates on the risk of These instruments do not provide individual rates of reoffending. To talk about precision in this context by saying my iPod's more precise and accurate than your lawnmower. Or my refrigerator is more precise than your table saw. There's a little bit of a bait and switch here. We're being asked - we're given one case at a time and we're being asked to assess that person and we're responding to that in good part with group assessment, group risk, when our task is given to us one patient at a time. Here's a new display of an old joke you've probably heard. What are you doing? I lost my car keys down the street. Why are you looking for them here? Because the light's better. The accuracy isn't there. The accuracy is there in actuarial prediction than individual prediction but you're probably not going to find your keys there. And then we have the waiter saying we don't have that item with individual risk but as an alternative may I suggest the dish our Chef Hanson prepares with group risk? Most customers can't tell the difference. Well that should be disclosed. Here at the entrance to Hades the people are talking and one says to the other, "I never thought my actuary risk assessment testimony would be considered 'bearing false witness.'" Having said that I'm not a religious person, not a member of In a presentation I did down at ASH, someone who fits that category said, "You know, I never thought about that. I think you've got a point there." Is that bearing false witness? To psychologists? Or your colleagues? Okay here's a model disclosure statement which I'll leave but go through quickly because I've got a lot of things I want to throw at you still yet. One of your colleagues at one time I think he shifted the way he displays it, wanted this to be known to his reader, that they can only predict the percentage of people who offend. They cannot identify individuals and comments how sometimes people misunderstand that and like people are likely to do this, so this fellow supposes that. He goes on to do some risk assessment but he discloses to his reader the limitations in what this stuff. He goes on to say actuarial risk instruments and even necessary sufficiency established conditions for commitment and I guess he's gotten that Ghilotti phrase in his mind as a semantic term. Okay, there's another risk assessment. I think in some ways we've got a conflict where we may have a personal standard of practice. You know what that is: unethical disclosure. Here's to say the actuarial risk assessment is most useful when you know the least about the person. In screening, I will continue to use actuarial risk assessment in screening in our clinical screenings that we do before we pass them on to you. It's a great way to support your decision to pass on to evaluation or not. But it becomes less valuable when you know more about the person. When you know more about the person, you're out of the area of risk assessment actuarially.

You do risk assessment by knowledge of the person, you have maximal individual post-examination, it loses effectiveness. This is a relative scale. This isn't quantitative. This is qualitative. Actuarial assessment a good tool when you don't know much. I don't mean in an insulting way but when we have yet to collect a lot of data on the person, a great screening tool to determine who we should learn more about and that's what screening is and what a great way to use actuarial tool appropriately for screening to include that. Actuarial ... - there are other ways to do it. In the Ward case, People v. Ward, the appellate court recognized there were more ways to do actuarial assessment. They didn't pick one. They didn't say actuarials - we pick actuarial-. They said either one's okay. Either one will work for us. Both have a place. And we've done actuarial assessments. Maybe some of you have done these without actuarial risk assessment. We've done 95 evaluations. That's a small fraction and those were all women but we didn't have them but how come we didn't say, "We can't do anything"? We reverted back to clinical analysis of the history, the pattern, kind of the way Jeff Neirney did when he was growing up in his family and the way we all did when we determined whether the neighbor from hell was going to reoffend. Statement out of Psychiatric Times: "Risk assessment are individually about individuals." Yeah, that's how we get assigned, one at a time. Incidents-based performance of groups can inform us in the individual assessment but they should - they also have the capacity to obfuscate. What can go wrong with using actuarial assessment? Here's some unintended consequences. I think it has resulted in some people in disuse atrophy of analytic skills to be able to take the raw data and make sense of it in a common sense kind of way in addition to being Blindness and tunnel vision - we're only looking at what the instruments tell us. Institutional ... - why our trust in that initial number, our field of vision is narrowing. There's a process of anchoring that we'll talk about in the next slide. It can all end up in parroting and plagiarizing which we talked about earlier as a great way to in some way assuage our fear of being held accountable. "Hey, I'm just using the tool folks. Don't look at me. This is what we're supposed to be doing." Tversky and Kahneman in science learned about a phenomenon, described a phenomenon in which people in ... were just given a random number, a number with no relationship to the assessment they were asked to make or the guess they were allowed to make. They found just being assigned a number, if you were assigned a low number the average responses tend to be lower than a person who just heard a high number. Wouldn't that anchoring process in terms of controlling our range of intellectual freedom even more if we think that number that we're anchoring on is a meaningful number? Do we really think it has something to do with that person's individual assessment? I mean if you look at the line-up and number two has a sign that says "Static-99 Score 44," doesn't that kind of shape what goes after that? Here's some paralysis of analysis, how I think actuarial can separate person from just common sense analysis. Here in this case, Paul ..., age 32, subject's charged with 42, convicted of 11, 4 qualifying SVP crimes,

drugee, rapee, five different women over 18 months, documented in videotapes, repeatedly slapped and struck one of his victims when she wasn't fully capacitated. We got a qualifying crime. Qualifying disorder, it continues, he was arrested on parole for having pornographic material of the same sort and he's currently - so we've got qualifying crimes. Let's go on to risk assessment. Static-99 score Other risk assessment, 17 factors. 14 significantly positive, 7 moderately positive, protective risk factors none. These are in the words of the evaluators themselves. Probability of risk being even higher, that boilerplate thing that appears every time, whatever we're saying, think more because it's underreported. Future sex events are likely to be predatory and the answer is: Not a serious and well-founded risk. And notice how on the right side, I've expanded the Likely To bar to cover all that data. The Likely To bar isn't confined to the actuarial dynamic factors. It's to include all those factors in asking that question. Here's what the guy said. "He engaged in sadistic behavior by trying to place the hood over their - he has a diagnosis of Sexual Sadism. Despite the troubling diagnosis, a risk assessment does not reveal a high level of dangerousness. He simply does not pose a substantial and well-founded risk of dangerousness." My translation with a little bit of snark is, "My mother - I mean her actuarial risk assessment wouldn't let me do it, wouldn't let me say it's a serious well-founded risk." I think it was anchored in the two.

(Question from the floor; possibly "How old is he?")

Dr. Mihordin: We'll come back to that. The reasonable juror won't mistake that the Static-99 is a source of infallible truth and then we'll answer what about a reasonable evaluator? The second one said, "In this case the overall Static-99 blah blah was low to moderate risk. Therefore, I opine he does not meet the likely standard as specified." Once again, thinking's ... so I got actuarials. Once again he says he could envision the possibility of bumping up the risk given the extenuating circumstances like his history and his disorder but could not support raising it to the ... high because the actuary data in conjunction with the dynamic risk factors did not support it. Once again, I think we have a mathematical assessment of the risk tools not a psychological assessment of a person. Actuarial wouldn't do it. So this guy says, "Risk assessment, no problem. I just used the Static-99R app on my iPod," and in some ways that in effect is how people are relying on an otherwise valid actuarial instrument. In this assessment, the person said, "I saw him earlier and I said he had a well-founded risk but since that time norms have changed and now Mr. Wilson has Static-99 score that's dropped 1 point and he's in a different risk category. Therefore, I can no longer say that he's a serious and well-founded risk." Compare that with the slide that shows in every risk category you have to determine if he's likely or not likely to reoffend and the little man says, "Has the person changed." And this cartoon I think people have found somewhat ... The first prisoner says, "Hey, I just got word yesterday I'm less dangerous,"

and the other prisoner says, "Sounds like that therapy's working." "No, just new norms." The individuals aren't affected by our sticking pins in the doll away from the real life, real psychological, structural, making of the individual. Here's lost in Actuaryland and lost in Actuaryland is this person's - the person we're dealing with abducted two girls who were strangers on separate occasions and sexually assaulted them in a brutal manner. That's not exactly a dispassionate way to describe what he did and it could be described in a way we'd all say, "That was pretty brutal" but we don't have to use the adjective. He was ... until after the second offense. Oh wow. So there's only one index sentencing here. So based on the overall actuarial instruments, I opine they do not meet the likely standard. Here in Alice's land, Alice hasn't distinguished between Actuaryland and real life. In Actuaryland two crimes are one crime. In Actuaryland the crimes that we see - the last crime is not a prior crime. In Actuaryland moderate risk was multiple dynamic factors for risk of reoffense do not amount to serious and well-founded risk. In Actuaryland Alice does a mathematical assessment of risk tools rather than a psychological assessment of risk tools of the person. I'll just go through before I take my break and we'll all settle up in the morning. After the break I'll give you a little bit more before the - and this is the answer to the last question. The last question was posed one time when I was at ASH and gave a similar earlier iteration of this presentation and someone says, "Why if it doesn't do what it seems or people misinterpret it, doing or at no risk or ... as doing something it does do, why does it flourish?" and my answer 2 years later was that actuarial is a good word. It connotes mathematical and scientific and precision. It's associated with things we trust. Insurance company. You're in good hands with Allstate. Actuary is a good word even if you don't know what actuary means. If you look at the phonemes, it's "act," action, activate, actual. A good-sounding word and it connotes - and using tools and instruments sounds good too. I connotes tangible, useful, scientific reality. Their data fields. Their checklists. Their questionnaires. Their inventory forms. But tools and instruments really sounds good. Mission Impossible. None of us would say we could predict the future and I know most of us say we're not but even when we predict risk assessment in the way we think we are, we say we are. It's impossible so we've got an impossible objective and just like in the Naughton case where we were to determine whether a person knew right from wrong, great standard but how do you look inside a person's mind? We stepped up and played as mental health professionals and psychiatrists and we answered the question and we're still answering the question. So the law creates a question for us that's impossible to answer but it's "let Mikey do it," and we're Mikey, the mental health professionals and we fill the gap. False confidence is probably better than no confidence at all when we're approaching this question. "How am I supposed to know if the guy's too old?" and by petting a cat, everybody's blood pressure is lowered. Studies have shown that if you pet a cat, the cat's blood pressure's lowered and your blood pressure's lowered and

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these tools I think lower blood pressure. Our blood pressure? Anxiety provoking area where we really don't have a firm grasp on how to answer the question. The judge's blood pressure probably goes down. Hmm...we've got a guy who brings us the answer. The attorney's blood pressure goes down and the jury's blood pressure goes down. Now the impossible seems possible, useful, comforting, illusion and it's like they're saying to us, "We like it when you talk actuary."

Dr. Mihordin: There's another aspect here in terms of numbers, rock, scissors, paper. Numbers are associated with physical side, an engineer, numbers don't lie. Numbers sell. "99 44/100% pure." I think you have to be pretty old when that was the Ivory soap slogan but it was. Numbers imply accuracy, precision, certainty, even when they're inaccurate, even when they're ambiguous, even when you don't know what the numerator and denominator is, and even when they measure the wrong thing. And then there's The Joy of Sex and that's clubs and ..., a shared common identity can be created around the actuarial practice, shared belief system and values, idealized leaders, parental figures, protectors. I was in meetings with one of the people in the group here, in San Francisco, a good meeting in which one other person, a person who I would otherwise respect, was introducing actuarial risk assessment and leaders in the field to a group of social workers and correctional people who weren't primarily psychologists and familiar with these things and he was explaining who Karl Hansen was. And these are quotes. "He's like the man!" "He's like a rock star." And then he said, "He's so smart you can only understand half of what he says." What kind of attribution is that? Whereas if he had a similar attribution that goes into fostering reports where you can only understand half of what we say. We might be as smart as Karl Hansen. They're role models and we've created work in part and a world of disciples and mini-me's. Dogma is established, belief, doctrine, and religion - or by extension in groups, heresy is a controversial, novel change in a system of beliefs with the established system. I'm going to end with sharing with you or reviewing for you the Andersen phenomenon and it's a phenomenon identified back in the 1800s by H.C. Andersen of Denmark for imposing and maintaining orthodoxy, fighting against heresy and the elements of the H.C. Andersen phenomenon that I think is afoot in explaining why is this so popular? Why is it working so good? Why does everybody believe? - is the H.C. Andersen phenomenon. And that is in the phenomenon, the protagonist, the promoter of the idea or the belief which may have falsehood or not completely true, people are recruited to believe that falsehood by being told that if you don't see it, if you don't believe it, then you are incompetent or unintelligent. That is, the phenomenon itself is such that if you say to the guy, "I don't see what you're talking about, that's not the way I see it," that will demonstrate you are the person who are unintelligent or unfit for your office or your profession. So that's how it's set up. Elements of the techniques, words and gestures the protagonist continuing to act as though the thing that is false is really true, and the

protagonist seeks to recruit more believers who will act as though its true, and the findings are that when believers are confronted with irrefutable sensory evidence that what they were recruited to believe, they will continue to believe it anyway. And here's how and why because on recognition of the false belief, their confront with "if I tell people I don't see it, if I tell people I don't believe, then people will think I'm not intelligent because that's been how its set up, or I'm incompetent. I don't want to reveal that so I've maintain the fiction so people won't question whether I'm competent because I believe what you're supposed to believe." For individuals, their negative assessment of - there's some individuals, their negative assessment of their incompetence is bolstered by "everybody else is believing so I must be the only person who's unfit for their office." Others upon recognition of false belief don't think they're unintelligent. I know this is not true but they don't reveal that either, those discoveries for others, because the world around them says, "People who don't believe this aren't intelligent and fit for their office." One of our colleagues said of us, "We can't give up actuarial. We don't want to be laughed at in court," and I think that's the power of the H.C. Andersen phenomenon, that the culture is now that if you don't believe in this, you're not intelligent or suited for office. Well, in the sense that I may have poked at some illusions, here's a cartoon that says, "Hey, Rat, I'd like you to meet my friend Foofie, the flying fish." And Foofie's flying along and the rat says, "Flying fish can't fly. They're called that because they leap out of the water giving the illusion of flight." And Foofie goes "plop" and the pig says, "Foofie didn't need to know that." So if I left you with a Foofie feeling, we'll come back and we'll see is there any hope for Foofie and then I will have my co-presenters follow up on that. So let's take a break. We've gotten off schedule and I want to give you the full shot. Let's come back at 4:00 and we'll go from 4:00 to 5:00 as we did yesterday. We'll go from 4:00.

(Break)

Dr. Mihordin: ...actuarially proven risk factors and don't get locked in to a narrowing of vision or letting that control our thinking... Dr. Michael Selby who is not a person who I can say personal things... but I was struck by the content and the remarkably helpful way that he presented in his reports due to language - I guess there's always evolution while taking advantage of the known risk factors that are associated with risk instruments, he didn't accept or foster the illusion of comparability and equivalency of a group risk percentage and an individual... Let's see if there's a way of integrating an approach that is respectful of actuarial knowledge and the risk factors that have made actuarial tools work for groups and doing individual assessment. I would suggest to you that risk factors are the underlying rules that we use to make risk assessment tools. But some people - I think some people on this podium - will share with you they've chosen to not go through the middle man of the risk assessment tool, not

the process risk factors but use them in their role and use the known risk factors that have been incorporated in actuarial instruments and use those in their assessment of the individual. Well the risk assessment, the risk factors can be incorporated in the risk assessment tool and then you can use them for a group. But in some ways, and you'll see this later slide, it's kind of like they've been bound up. They're not readily accessible for individual evaluation and I would - as you know, I just suggested it's probably not right to portray equivalency or direct causability but you could deconstruct the actuarial too. And I've seen people do that. I've seen some of the people in this room do that when they're talking to a different crowd, going back and talking about how they looked at the individuals and deconstruct the factors that Static-99, to talk to the person in this conference or in this meeting about how that's why you would say he had a high risk. And I know another of you in this room because I saw the transcript of his court appearance who after doing standard risk assessment in talking to the court essentially did the same thing: deconstructed the factors that are used for the tool and presented it in an individual way. So that's individual risk assessment using the known knowledge but deconstructed. As I said the risk assessment tool, those individual risk factors are bound up and I think we've confused ourselves with what that ultimate group risk means. It's like trying to use a hot dog as a salt shaker. There's salt in that hot dog but it's not in the form that you can use for individual risk assessment. So what's the alternative or what could one do? And once again we have told no one here to not use any risk assessment or which instrument to use or not use. We've talked about disclosure. We've talked about the way we talk about risk assessment, that part that ... talked about. We can leave people confused and misunderstanding. Mine was a presentation of how we talk about risk assessment not whether we do risk assessment or not. So I would suggest and I think my panel members would suggest there's a think that I would label "integrated bimodal risk assessment." Bimodal risk assessment would be - and here are the steps. Integrated bimodal is the person starts out with a psychosocial, historical formulation like we did with the neighbor from hell. We came up and we looked at him. He looked like a neighbor from hell. We used the data we had, limited data, and we came up with a psycho-historical formulation. In the one actuarial risk assessment, you start with a risk class assignment. Step one in the psycho-historical formulation, you can look at a whole bunch of things on an individual basis, the psychological history, the psychological diagnosis, the current mental status, personality - you've looked at them but in some ways they're not brought over and set out as "this is the foundation of where I start my formulation for Criterion C." Instead the formulation starts at a group risk assessment. I'm not saying you can't do that but I would invite you to think if you too could do a bimodal risk assessment. So those values there in scoring the static and underlying types, we should get a risk class assignment. That's what you can do with a risk assessment and if you think, "I can't do risk assessment," and I'm not telling you you have

to, without actuarial tools, would suggest you're probably the only person in the courtroom who thinks that because most people can do assessments without the tools. Step two is case formulation or case testing. We have the formulation, now we test that theory, that hypothesis. What do we use? Static risk factors like we know about from the Static-99, dynamic risk factors, direct risk factors that we know about the person, direct risk factors that maybe we have distracted from actuarial tools before they got to be put in the actuarial tools knowing he they were constructed, or deconstructed risk factors referring to those things as some of our colleagues have in court, in the conference, rather than just referring to the score. And then we can have case-specific risk factors. Dynamic risk factors aren't just what appears in an assessment tool for dynamic risk factors. Dynamic risk factors could be very unique including the stock market being a dynamic risk factor in the history of a given individual if we learned in that person's case that his sexual appetites wax and wane with what's in his wallet or it's a farfetched example but what I'm pointing out I think some of us have - once have been convinced that the tools that assess and categorize risk assessment or dynamic risk assessment - and boy it should be considered - are exhaustive and considers all the things that may be dynamic and risk in an individual's life that we can identify and use to judge. There we have class risk is a surrogate for the individual risk, surrogate risk is tested with alternate class assignment, dynamic risk factors. So in one case, the case formulation is tested. In the other case, the surrogate risk is tested. In both cases, there are conclusions. This is an evaluation that he says it's alright to tell you, I fear you guys will say it's pretty simple and I'll say, wow, this is pretty simple, in which Dr... many years ago give that initial formulation. He wasn't thinking about this seminar today but this is what he was he inclined to do in taking Criterion C to an individual Criterion C. He did that initial formulation telling us about the guy's history, how old he was, how long he's been molesting, his pattern of molesting, his orientation, his sexual arousal, and he says "combination of continued interest results in a significant and high risk for sexual offense." And then he says, "There are additional factors to contribute to his high risk. These risk factors emerge from recent analysis of characteristics of individuals who are sexual recidivists." And then he goes through and lists things that I think you could find, "Hey, that's like that part of Static-99" or "That risk factor has been incorporated." But he lays it out 1-2-3, simple, user-friendly, and both uses research and actuarial assessment but by deconstructing it, uses this bimodal approach. What are you to do or say? What is there to do or say? Well one thing to do, you could translate the risk assessment classes into a class of justifications for doing the evaluation. And there are good justifications, are a good way to sort and I hope in our screenings and our clinical screenings we do that, turn to actuarial to help us prioritize, not lose ... which group, what part of the lake to fish in will we most likely find people with these disorders. It's a way of sorting when you don't know much about the people and it's a way of acknowledging this person's risk,

puts him in a group that's useful for saying, "I think he was validly selected for the second phase evaluation." You could use evidence-based risk factors to test your individual psychosocial, historical formulation. That's the integrated, bimodal approach. You could use evidence-based factors to attest the class risk as a surrogate and you can do that but the only ... of all that stuff I went on and on about, the only rule there is try to present what you're doing, whatever you do, in a way that communicates limitations and doesn't call with the public with the notion that the ways essentially a group statistic is - and I really think - I don't think there's any great tide turning but when you can find cases where here and there judges in courts are saying, "We see this. This isn't an individual. It's a group." Maybe if you get out ahead of being a little more humble in what you're promising from your assessment, maybe it'll last longer. Here the first doctor says, "According to your professional judgment on a case-by-case basis, the department requires you to perform surgical procedures that have gained common acceptance. So you're supposed to use these procedures but on a case-by-case basis." The other surgeon says, "But only when surgery is the treatment of choice, right? When it's required, right?" And I think that's something we need to contemplate with our protocol, that it tells us to use those things and if we use them, use them right. It doesn't tell us to misrepresent what they do and what they don't do but maybe there's a place - well, I know there's a place - where might in this situation find that after they did their historical psychosocial risk formulation, they found that the risk of reoffense was so well-founded in his or her clinical judgment and mind, that the testing wouldn't add much and that they leave it at that. On the other hand, we know that can happen. I told you it can happen. It happens - that's what's done when he confront females. We do it without that. Not voluntarily or it's a choice. And then we know that because we have begun to experiment on a case-by-case basis and given permission to not do any assessment in Criterion C, when the person doesn't meet Criterion B. So that's another story coming later, that maybe there's room in the rhetoric of "you must use actuarial instruments," suggest on a case-by-case basis, maybe case-by-case includes saying case-by-case misses the neighbor from hell. I don't need to that assessment as you guys didn't need to do that. So I will now step down from the podium. Mike, you can use this or you can - you want to sit there? Okay. Mike is going to lead off and each of these people are going to present less than 15 minutes of where they're coming from and they're take on what's going on here and then there will be room hopefully for discussion afterwards and questions.

Dr. Selby: It's like being on the witness stand. Hi. Good afternoon. Thank you. I want to thank Dr. Mihordin for making all my points for me already. I think he did it much better than I would. But what I'd like to do is I think briefly is to share with you a little bit about some transitions that I found within the 5 years that I've been on the SVP panel and how that relates to what Dr. Mihordin has been talking about in regards to Criterion C. Let me first say

that I never changed my opinion based on an actuarial score. Never. About after the first year I was on the panel, I no longer relied at all on actuarial measures. And guess what? It was good. My experience has been really excellent. The problems that I had early on in the first year was when my initial training, they were telling me that the correlations for the Static-99 for sexual recidivism were around 0.4 if about 60 percent of the variance was accounted for and I raised my hand and asked that question and "oh, well we have receiver operating characteristics that take care of that problem." Being a new trainee, I said, "Oh, okay." Didn't really understand it that well in my first training but of course read some more about it and pretty well bought into that during the first year that I was writing reports. Until I got on the stand the first time. On the stand the first time, it was a probable cause hearing and the attorney said, "So you're telling me, Dr. Selby, that you are finding this person to be likely to commit another sexually-violent predatory offense based on information that you have on individuals that scored a particular score on an actuarial measure and that's all you know about those individuals?" You feel that based on that group data - which you know nothing about the individual characteristics associated with any of them other than they have the same score - that you feel this person meets the likely predatory -?" and I said, "Yes." When I left, I had to do some really serious thinking about where I was going with this. I had to really look at what's the referral question? What is the referral question that's being asked? This is a legal referral question on Criterion C that regards to whether the person has a diagnosed mental disorder, whether predatory. It is important. Whether the person - what the treatment issues, whether the person would go to treatment. How did any of that relate to actuarial measures? Probably the most important thing that I learned was in looking at the folks that we see that they don't look anything like the groups of individuals that were used to develop actuarial measures. If you look like a pyramid that you start with Criterion A that you're using clinical judgment as we talked about already today, having to make determinations about whether they meet the criteria for one reason or another, that after you're looking at that and you're also looking at lots of other aspects of Criterion A that might be related to Criterion B such as plea bargaining. They all - most of you know about plea bargaining. There's lots of cases out there that the person pleads to all kinds of things that they've done but that doesn't - that's not the kind of thing that ever comes up in actuarial data. So you're gathering a lot of information that may be related to your diagnosis on Criterion B and Criterion A. You move to Criterion B and you either find him to have a diagnosed mental illness at that point or not that meets Criterion B. Back to predisposition, volitional control, and then you arrive at Criterion C. By the time you arrive at Criterion C, you've got a very different population of individuals and what you would see in any of the samples that were used to create the various actuarial measures. You move from the base of that pyramid to a very small portion of that pyramid. You're looking at people now that you've identified as having a mental illness on Criterion B. You're

looking to see whether they meet the statutory definition of predatory. You're looking to see whether in fact they have any idea of whether they would even participate in treatment and as we know in the clinical evaluations that lots of people are saying, "No I don't have a mental illness. No I'll never go to treatment." That's not the kind of thing you're going to see in an actuarial measure. So by the time you get to making a decision on likelihood, where does actuarial data fit in? And that's the question I had to ask myself. What is it adding to my decision on Criterion C? And I could see that it did nothing. I didn't see it as having any impact on my clinical judgment. Folks, I have to say that I think that's why we get paid. We get paid for critical thinking and I guess that's the major take-home message that I would have it that I think it's very important that we as professionals use critical thinking in putting together the information we have from Criterion A, Criterion B, and Criterion C to make a decision on likelihood. If you, in my opinion, rely on actuarial measures, you're relying on something that was never designed for SVP criteria. Never. And as Dr. Mihordin has pointed out, you're looking at group data and you're not looking at the individual that you're evaluating. To me, that's not ethical. It's just not ethical. It doesn't - when we use psych assessment instruments to form an opinion about someone, we're required to use instruments that aren't related to the referral question. And the referral question here is not something that is addressed by actuarial measures. So what do I do? When I get on the stand, and this is always fun - just last week I was on the stand in Los Angeles for a probable cause hearing and the attorney got to Criterion C and they say, "Well, Dr. Selby, didn't this person get a 2 on the Static-99? And by the way, just to tell you that I do what I do with the actuarial measures is that I put them in an appendix in my report. And in my report I state, "I do not rely on actuarial measures." Why are they in the report? Because it's part of the protocol. If it were not part of this protocol, I wouldn't put them in. Now that in my mind is not - I mean that risk factors are not important and the way I deal with risk factors is similar to what Dr. Mihordin was just talking about is that I look at individual risk factors on an individual basis as they related to the person that I'm evaluating. Age, for example. What a confound. Age. The younger you are the more points you get and yet the more time goes by, the greater risk you are for reoffending. Which is it? That to me seems to be a confound. So what I do in terms of looking at age, for example, as a risk factor, I look at it in terms of that specific individual. I've had cases of people that are still molesting kids at age 60. So age in itself is not always what I would consider really a static risk factor for me even though they're going to get points on age based on their age. People are also going to get points lowered on their risk score if they stay in prison for a long enough time on a sexual offense. They've been down for 20 years, they're going to get lower points just for being in prison. In most cases, I'm not going to see age as being something that I can say is not something that's going to be relevant but tending that I'm going to lower my opinion as to whether this person meets the criteria or not depends on the individual and

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what I'm seeing in that particular case. If I was going to take something like relationship history, what would be important to me is if the guy's hooking up with women, they have kids, and he's molesting them. That would be important for me. So what I do is I go through each individual risk factor in my report and I describe how each of those individual risk factors are related to this person. Not a point but how specifically it's related to them. And I use risk factors from everything. I'll take stuff from the Mn-SOST. I'll take stuff from the Static-99 and I'll put them in there and I'll address them. So I'm using the risk factors but I'm using them specifically ... the individual just like we do with the dynamic factors. Dynamic factors, again, I think are extremely important because again we're using clinical judgment in formulating our opinion as to whether these appear to be risk factors for this individual. And particularly I would say - particularly to you folks that are just starting and won't get recommit or update evaluations for a while, that you want to think about the dynamic factors in particular when somebody has been hospitalized, for a year or 2 years or 3 years. These become very, very important. In fact, in my reports I say, "Static factors are not relevant here." At all. Because what's important is change. That's what I'm interested in. If he's in a hospital and he's receiving treatment, I want to know because what changes have occurred. Because if no changes have occurred, then he's still at risk. You can look at Criterion C in terms of the fact that mental illness is a key the whole time, which is not addressed really in the actuarial measures. "By reason of a mental disorder." If the person is saying to you, "I don't want treatment," if the person has never had treatment, we can say automatically, this person's mental illness is not in remission. It's not in remission. No treatment, not in remission. Not in remission, probably likely to recommit. I mean right there almost you've got everything you need. Predatory, addressing predatory, and then addressing treatment issues in terms of what the person be willing, does the person have a reliable Relapse Prevention Plan? And this is even more critical when we get to his - do we recommit him for evaluation? Does he go to the hospital? And if you read the hospital reports and ... "this guy's doing so well in the hospital and we can't believe it. He should - we're going to move him to Phase 3 next week." You get him in a clinical interview and he can't tell you jack about what's going on. He can't tell you anything about what he's learned... Okay. So that's basically the approach that I take. I think you'll find it very interesting. You get in the courtroom and you just tell them you don't rely on clinical measures, it just blows them away. It totally blows them away. They do not know how to deal with it.

... Other Presenters ...

Dr. Mihordin: ... I think that the goal is to somehow - the mantra is to focus on the individual cases. Sure, if you're relying on research, if you're relying on actuarial stuff... I'm suggesting doing it is to keep your eye on the prize and that is as much as possible look to the individual. As much as possible

tailor that to the individual assessment, and to an extent that you look to group things, expose that and set that out in the report. Once again, believe it not I don't think I have told anybody to not use actuarial instruments or whatever. I think the message that I would like to think is like the gentleman earlier who heard what I said and came up with a way to integrate leaner, meaner report in Maine by putting the stuff that was more tabulary and data in an appendix. I'm not saying that's the final solution but I like that kind of "let's see how we can" - it's not a - I don't expect that even if someone here was fully prepared to change their spots, they would change gradually. I think we as a department should be satisfied with change. Like with writing, we don't all have to be great writers. We all have to get better. All our reports don't have to be the same length or they all should be shorter and so it's not a matter of an absolute standard, it's a principle of balancing these things. There's a balance here and you're absolutely right. There's a conundrum there. "What do you mean, you're not using - ?" but you're using research. That's group data too.