

**RECIDIVISM PREDICTION AND PAROLE DECISIONS:
A MEMORANDUM OPPOSING THE PAROLE OF SAM AND JOE
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Recidivism Prediction.

Recidivism prediction is an imprecise art but is slowly moving toward scientific rigor. New data have been generated over the last decade, and they point toward predictable benchmarks of recidivism. These should be employed in evaluating the propriety of paroling violent offenders.

National data from the Bureau of Justice Statistics demonstrate that 35.1% of the male prison population is incarcerated after conviction for violent crimes, running the gamut from homicide to assault. 62% of the violent offenders recidivate after release from incarceration. That is more than 1 out of every 2 released inmates convicted for violent crimes (Bureau of Justice Statistics, 1989). These odds bode ill for the victims of these violent offenders and for the general public.

Research suggests that criminal justice personnel can now engage in reasonably scientific recidivism prediction. To do so, they must first tighten prediction standards by eliminating false indicators of recidivism. There is a common misconception that model prison behavior is contra-indicative of recidivism. This is gravely incorrect (Carroll, et al., 1982). But beyond this, traditional guidelines for prediction -- that those offenders who use guns, are alcoholic, have prior arrests for drug crimes, have prior convictions for assaults, burglary, auto, robbery or stolen property are those most likely to recidivate -- are erroneous and must be eliminated from prediction guidelines (Chaiken & Chaiken, 1990). Instead, the latest research suggests that clusters of specific criminal conduct can reliably predict recidivism. One such cluster includes criminal conduct where there has been a prior history of forcible rape or murder, where the most recent charge involved three separate transactions, when a knife was used in the offense giving rise to the most recent prosecution, when the victim of the most recent crime was a female, and when the offense was committed in an outside, public location. The offender matching this profile should be recognized as a high-risk, dangerous offender who is likely to recidivate (Chaiken & Chaiken, 1990).

Sam and Joe fit this profile. Sam is commonly believed to have killed his first wife. He is also believed to have killed his brother-in-law. He battered his second wife who testified against him at the 1983 trial. During the course of their marriage, Sam raped Sarah, his third wife, weekly. He was convicted of attempted homicide, criminal conspiracy and aggravated assault in the sustained attack on Sarah for which he is presently incarcerated. The record reveals that a large portion of Sarah's scalp, about 4 or 5 inches, was cut from her head. Her throat was slashed. She was stabbed behind an ear resulting in the partial loss of hearing. Her face and hands were slashed. She lost almost her total volume of blood. A knife was the primary weapon used in this offense. The offenses were committed outside of the house in a public setting.

Sarah's description of the crimes precipitating this incarceration is as follows:

At 4:00 a.m. on June 8, 1983, Sam woke me up, faking an illness. He said he had to go to the hospital. He refused to go in an ambulance. He literally pushed me out the door. When I got to the garage, his brother, Joe was waiting. He started beating me with a billy club. Sam was holding me up. I fell on the ground. I knew they were trying to kill me, so I tried to fake unconsciousness. They put me in the trunk of the car, and Sam told his brother: "You finish her off," and he left to go back in the house. I managed to get out of the trunk and started running away. Joe started after me, slit my throat, and scalped me. I was saved because I was on a public street and passersby alerted the police.

Joe was charged with the same crimes as his brother but in addition was charged with possessing instruments of crime and prohibitive offensive weapons. He has a history of drug involvement and

scrapes with the law. He was apparently indebted to his older brother, Sam, who had helped him at the time of prior criminal involvement. Not only is Joe a contract killer, willing to commit homicidal assaults for those to whom he is indebted, but he is a sadistic killer. Men who kill (or who attempt to kill) intimates typically engage in multiple, highly brutal acts that could kill the victim many times over (Wolfgang, 1958; Casanave & Zahn, 1986). Joe squarely fits the above profile. Other research concludes that the best predictor of the post-incarceration dangerousness of offenders is a history of prior assaultive behavior (Monahan, 1981). One need not look to any history prior to the assault on Sarah to conclude that based on this measure of dangerousness, both Sam and Joe are at high risk for violent recidivism.

Data on Men Who Batter Intimates.

Violent crime is on the increase in the United States. Violent crime increased by 10% between 1989-1990. Murder was up 10%, rape was up 9% and aggravated assault was up 10% (FBI, 1991). Among white husbands, ex-husbands and boyfriends, there appears to be an increase in homicides of women partners (Browne and Williams, 1988). The precipitating event in male-perpetrated partner homicide is usually related to some type of perceived rejection on the part of the woman. In killing their wives or ex-wives, offenders believe they are responding to a previous "offense" against them -- intolerable desertion, rejection and abandonment in ending the relationship (Barnard, et al., 1982). One national study revealed an increase in almost 3/4 of the states in the killing of women partners after separation (The comparison of homicide rates was between the years 1976-1979 vs. the years 1980-1984.) (Browne and Flewelling, 1986).

Violence against battered women may be more likely to occur after a couple has separated or divorced than during the time of cohabitation (Hart, et al., 1990). As many as 3/4 of domestic assaults reported to law enforcement agencies are inflicted after separation of the couples (U.S. Dept. of Justice, 1983). One study revealed that 73% of the battered women seeking emergency medical services sustained injuries after separation from the batterer (Stark, et al., 1981). In one study of spousal homicide, over half of the male defendants were separated from their victims (Barnard, et al., 1982).

Men who batter their wives do not do so by accident, mistake or as a result of loss of control. Domestic battery is intentional violence directed at women partners in order to gain or maintain control over them. It is systematic and repetitious. It creates an atmosphere of extreme terror (BIS, 1991).

Most fatal violence against children by parents and step-parents occurs in the context of domestic violence. Fully 80% of these fatalities are perpetrated by fathers and step-fathers (Bergman, et al., 1986). There was a 36% increase in homicide of children in the family between 1985 and 1989 (Mitchel, 1989). Data suggest that fathers and step-fathers begin to target children with abuse only after they have established a pattern of abusing mothers (Stark & Flitcraft, 1988) and when they conclude that assaults on children will enable them to gain control over their wives/female partners or will provide a vehicle for retaliation against wives/mothers who have resisted the demands of perpetrators or who are seeking to terminate relationships with perpetrators.

Batterers are facile manipulators and can easily give the appearance of cooperation and rehabilitation. "The batterer's ability to charm and con selected important people . . . stands him in good stead in [legal proceedings] . . . The batterer [appears] . . . genuine and sincere" (Walker, 1987).*

Research on men who assault their wives/partners suggests high rates of recidivism. The landmark police study on police response in domestic violence cases showed that 59% of the suspects in misdemeanor domestic violence cases had prior criminal histories (Sherman & Berk, 1984). The leading study on prosecution of domestic violence crimes found that almost 30% of the defendants committed new acts of violence during the pre-disposition phase and that a substantial number recidivated within 6 months of disposition (Ford & Regoli, 1990).

Recidivism Across the Country.

Documented cases of batterer homicides, terrorism and recidivism across the country are powerful illustrations of batterer recidivism:

In April, 1991 Donell Young of Scranton, Pennsylvania, knifed his second wife in the chest and abdomen numerous times. She died. He was separated from her at the time that he killed her. He was free on bail for allegedly attempting to shoot her previously. He had been arrested in August, 1989 for firing two blasts from a sawed-off shotgun at the deceased and her daughter. At that time he was charged with two counts each of attempted murder, terroristic threats, simple and aggravated assault, and recklessly endangering another person. Furthermore, Donell Young had been incarcerated in the early 80's for aggravated and brutal assaults on his first wife. He had attacked her with a fishing line and grievously injured her. Mr. Young is known by the police as a person who has made numerous threats against several other women with whom he had been involved.

Susan Donahue left her battering husband many times. He tracked her down every time she attempted to make a new life for herself and their two children. He was arrested and convicted six times for threatening her, including incidents in which he held a knife to her head, threatened to shoot her with a shotgun and drove his car into hers while she was driving their two children. Susan Donahue has moved five times since separating from her husband. She now lives in the northeast U.S. As of October, 1990 her battering husband had found Susan four times and attempted to kill her each time. Susan fears that, unless the community protects her from her husband, she will be a homicide statistic if he finds her the fifth time. In May of 1990 Richard Shaw of Montgomery County, Pennsylvania, against whom a protection order had been entered in favor of his wife and children, killed his son and stepdaughter after kidnapping them and holding them hostage the day after he learned of his wife's intention to file for divorce. Shaw made repeated demands for his wife to come to his residence to pick up the kidnapped children. Police resisted this demand, recognizing that the woman would have been placed in grave danger had she gone to her estranged husband's home.

On March 25, 1990 Julio Gonzalez torched the Happy Land Social Club in the Bronx and killed 87 people. He had gone to the club to try to kill his former partner, Ms. Feliciano. When he was denied access to her, he set fire to the club. This may be the worst domestic violence-related mass murder. ; James Reed killed his wife in Lackawanna County, Pennsylvania in 1989. At the time of the homicide, he was on bail awaiting a hearing on charges of criminal and defiant trespass for entering the residence of his estranged wife. The couple had separated a year before the first incident.

; In a two week period immediately following Christmas of 1988, three Long Island women who had obtained court orders for protection from their estranged or former husbands were shot to death by those men.

; In 1988, Alfonse David shot and killed his ex-wife, Margot Melville, his daughter and her almost full-term unborn child. He then killed himself. His homicidal actions occurred two months after he was released from prison. He had spent those two months carefully stalking Margot, who, with her new husband, had gone into hiding in another part of Washington State. She was a pharmacist. He found her by watching virtually every pharmacy in the community. He had no prior record. The whole time he was in prison, he plotted her death. He received no counseling. Prison records show that he was an exemplary inmate.

; In spring of 1988 a battered woman sought refuge in a Minnesota shelter to protect her 16 year old son who had been beaten by his father. Five days after she went to shelter, the batterer kidnapped her at her place of employment, took her at gunpoint to his home and dragged her into the bedroom. He held her at gunpoint for three hours, pleading with her to come back to him. She convinced him she would return to the shelter to pack and then reconcile. She did not return to him. Two days later the batterer followed the son to the shelter. The mother got a protection order. Two days later the batterer came to the front door of

the shelter. Three days thereafter he took the battered woman and her son hostage. Her son managed to escape and went back to the shelter. Charges were filed against the batterer and the next morning he was released on \$10,000 bail. A week later he filed for divorce. Two days later he found her at work again, pulled out a sawed-off 30-30 rifle, shot her and committed suicide.

; In Indiana in 1988 Alan Matheney, who was serving time in prison for assaulting his ex-wife, Lisa Marie Bianco, was granted a short-term furlough during which he traveled 120 miles north from the prison to his ex-wife's home where he bludgeoned her to death with the butt of a shotgun.

; In California in 1973 Napoleon Johnson murdered his wife. In 1974 he was convicted of the crime and sentenced to prison. In August, 1985 he was released on parole. Johnson began a romantic relationship with Grace Morales and cohabited with her. In March, 1986 Morales moved out of Johnson's residence. He began a campaign of violence and harassment directed at her, which included forced sexual relations at knife-point, repeated death threats and false imprisonment. His parole officer told Grace Morales that she had nothing to fear because Johnson loved her. Subsequently he kidnapped her from in front of her house, shot and killed her.

Ruby Whyllly Powell was subpoenaed as a witness for a July 1981 hearing to determine whether her estranged husband, Jerome Whyllly, had violated his parole on an aggravated assault conviction by abusing the couple's six-month-old son. As she waited in the courthouse hallway, her husband approached and hustled her outside. When she resisted his demand for her not to testify, he doused her with gasoline and set her ablaze, causing second- and third-degree burns over nearly 50 percent of her body. Whyllly is now serving a 114-year sentence in Florida for attempted first-degree murder and witness tampering.

Rehabilitation and Recidivism.

Batterers quickly claim rehabilitation upon receiving treatment services. However, many, and perhaps most, men who have the benefit of participation in batterer treatment programs recidivate. One study which tracked batterers longest after treatment shows that 47% of the men recidivated within the four years after discharge from treatment (Tolman, et al., 1987). Another study showed that 48% of convicted batterers not in treatment recidivated within six months of conviction while 37% of batterers completing treatment were not using violence six months thereafter (Edelson & Grusznski, 1988). A third study found that 50% of the men who had participated in treatment acted with violence toward their partners within six weeks following treatment and that six months after treatment, virtually all participants were again using violence toward their wives/partners (Taylor, 1984). A more optimistic study showed that 30% of battering men who completed specialized treatment for batterers were using violence against their partners one year post-treatment (Shepard, 1987). Most of these evaluation studies are based on a population of batterers who are mandated into treatment pursuant to pre-trial diversion and misdemeanor convictions or pleas. Batterers successfully completing these specialized batterer treatment programs, thus, routinely recidivate. Their claims of rehabilitation are specious. There is no clinical reason to believe that men committing more serious, injurious, and life-imperiling assaults are more susceptible to successful treatment; to the contrary (BIS, 1991).

Parole Decision-Making and Recidivism.

Research on decision making in parole matters has revealed that prison personnel and parole interviewers appear to make subjective or intuitive predictions of post-incarceration violence based heavily on prison conduct as a predictor of parole performance. Prison conduct does not predict actual future violent crime and should not be the basis on which parole decisions are made. Rather, actuarial data are significantly better predictors of recidivism than are subjective data. Actuarial predictions are more accurate, equitable and consistent than intuitive judgments (Carroll, et al., 1982).

Parole Should Be Denied.

The information articulated in this memo offers actuarial and objective, not subjective, individual or personal, data that compel a conclusion that Sam and Joe are highly dangerous offenders who are at high-

risk for recidivating against Sarah and her daughters, Sandy and Jane, and any other past or present women partners of either man. For this reason, alone, Sam and Joe should not be paroled at this time. Sam and Joe should be held until their full terms have expired. Otherwise, Sarah and her daughters will have to go into hiding now, searching for some underground sanctuary where they can be free from the terror of being stalked and from the retaliatory violence almost certain to be sought by Sam and Joe. Releasing Sam and Joe at this time will surely jeopardize the fragile adjustment and well-being of Sarah and her daughters who have worked diligently to pull their lives back together since the near-fatal bludgeoning of Sarah by Sam and Joe. Immediately after the unsuccessful homicide attempt, Sarah and her daughters were emotionally paralyzed with fear and chronic, undifferentiated anxiety. It took 3 years for them to get to a place where they could manage night terrors and begin to re-invest in life in the community. However, these women live in constant, acute fear that Sarah will be killed by Sam (or a third party at his direction) because he has a reputation for killing those who cross him. Beyond this, Jane and Sandy live in terror that Sam or his agent will execute either or both of them to punish Sarah for cooperating in the prosecution that resulted in their incarceration. Relocation at the present time to avoid such a homicide would greatly disrupt their lives and might destroy the fragile thread that keeps these women moving through recovery from the impact of the mutilating and homicidal assaults of Sam and Joe.

Justice requires a balancing of the interests both of these victims and of the general public against the interests of these men in parole release. Incapacitation of these high-risk offenders should be the continuing mandate of the correctional system in Anywhere, USA until Joe and Sam can no longer be lawfully incarcerated.

The criminal justice system, as now embodied in the Parole Board, should not abandon Sarah. She has cooperated consistently and completely. She has left no stone unturned in attempting to achieve safety for herself and her children. If Sam and Joe are released at this time, it will send a message to Sarah and her daughters that even fully and diligently cooperative victims are not able to acquire the full measure of protection that the state can afford them. Beyond this private message to Sarah and her family, release of Sam and Joe before the expiration of their full sentence conveys a strong message to the general public that those people most vulnerable to criminal recidivism -- to retaliatory violence -- are expendable; that these victims are only deserving of an ounce of protection when the state could provide much more. Neither of these messages is acceptable in a society committed to ending violence against women and children in the family and holding perpetrators of domestic violence accountable.

For all of the above reasons, it is imperative that the Parole Board deny parole to Sam and Joe until the expiration of their full sentences.

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