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JUVENILE OFFENDERS ARE INELIGIBLE FOR CIVIL COMMITMENT AS SEXUAL PREDATORS

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Symposium Components

- A paper (see pp. 3 to 7, & 13 to 15 re CE questions)
- This Power Point presentation (references on a slide are either cited completely on the slide or in the paper)
 - The paper and Power Point are on the Chair's web site. Panelists also have these materials and some have supplementary slides. The last slide gives contact information.
- Introduction of the panel members
- Remarks of the panel members
- Interactions between the panel and the audience
- Closing remarks



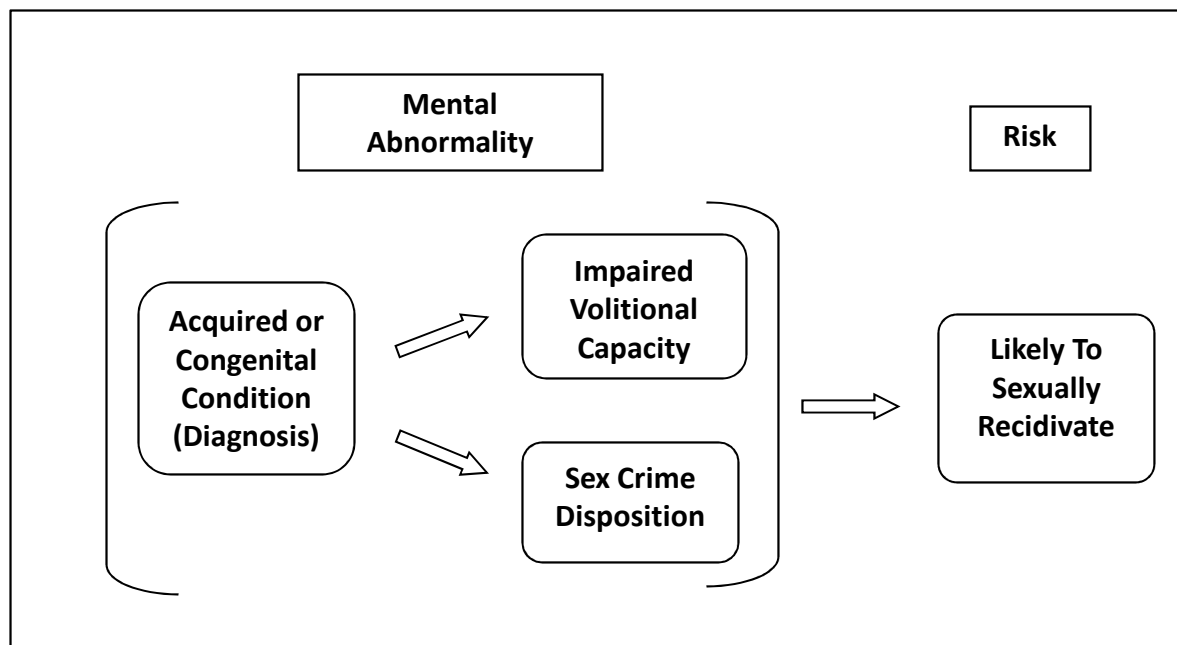


Progression of Topics

- Interventions targeting adult sex offenders (ASOs)
- The sexually violent predator (SVP) construct
- Juvenile only sex offenders (JOSOs)
- The consensus that juvenile offenders differ from adults
 - Behavioral differences
 - Developmental (psychosocial and neurological) differences
- SVP implications of a developmental view of JOSOs
- The unconfirmed status of hypotheses about JOSOs based on SVP theory



The following illustrates the conjoint elements (represented by boxes) and causal mechanisms (represented by arrows) that reflect the complexity of the “SVP Construct” (Wollert, 2007, p. 169).





What is a “Juvenile Only Sex Offender?”

- Committed one or more sex crimes before he reached 18 years of age
- Confined throughout adolescence and adulthood
- No history of additional sex crimes
- Evaluated as a possible SVP
- A different category than ASOs





Documents Reflecting a Consensus

- American Psychological Assn (APA) 2004 amicus brief in *Roper v. Simmons*
- American Medical Assn (AMA) 2004 brief in *Roper*
- U.S. Supreme Court 2005 decision in *Roper*
- APA 2009 brief in *Graham v. Florida*
- AMA 2009 brief in *Graham v. Florida*
- Supreme Court 2010 decision in *Graham v. Florida*
- Research papers referenced in these documents





The Immaturity of Juvenile Judgment is Evident in the Extent to Which Juveniles Engage in Reckless, Criminal, and Sensation-Seeking Behavior

- Are more likely to drink and drive than adults
- Have the highest rate of use of every kind of illegal drug
- Have the highest rates of violent and non-violent crimes.
- 1 in 5 male adolescents has been sexually assaultive
- Recklessness is considered “normative” for juveniles, and “participation in delinquency appears to be a normal part of teen life.”

(Arnett, 1992; Arnett, 1999; Caldwell et al., 2008; Spear, 2000)





Most Juveniles Have Behavioral Problems, Then “Grow Out” of Them

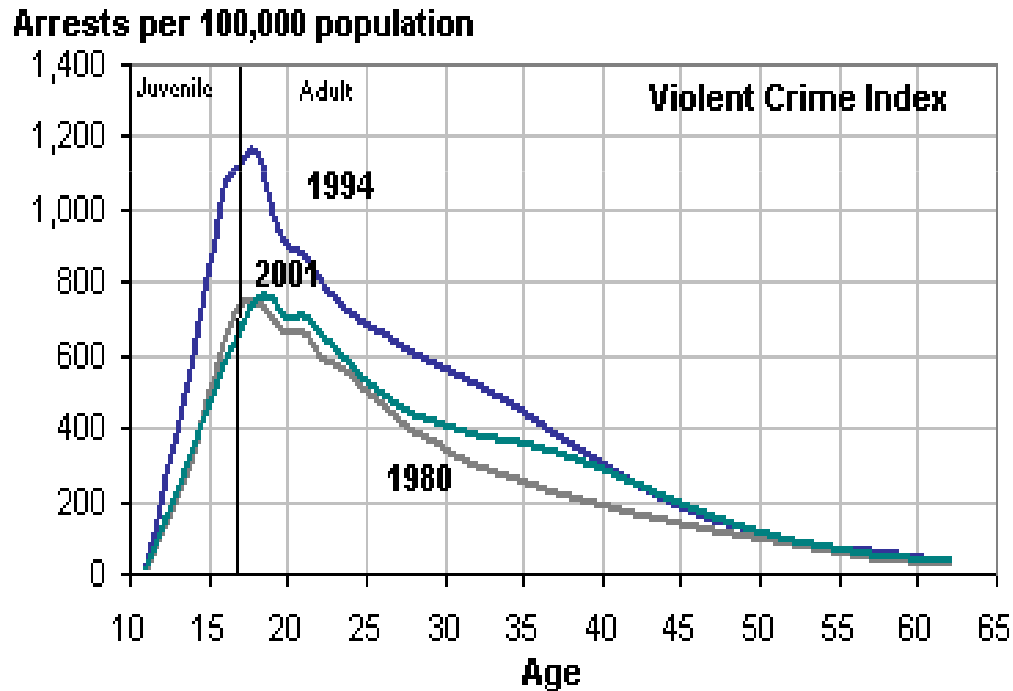
- Quinsey and colleagues discuss this pattern as it applies to “adolescent-limited” offenders in their book, *Violent Offenders* (APA, 1998):
“If one examines the number of male offenders convicted each year as a function of age, the curve...(rises) steeply with puberty and (declines)...with age...the large majority of offenders...start offending in their teenage years and desist before their mid-twenties...this pattern...represents...part of what Wilson & Daley (1985, 1993) referred to as the *young male syndrome* of risk taking and violence” (p. 194).





Cross-Sectional Research Shows How Violent and Sexually Violent Crime Decreases with Age

(U.S. Office of Justice and Delinquency Prevention, August 2004)





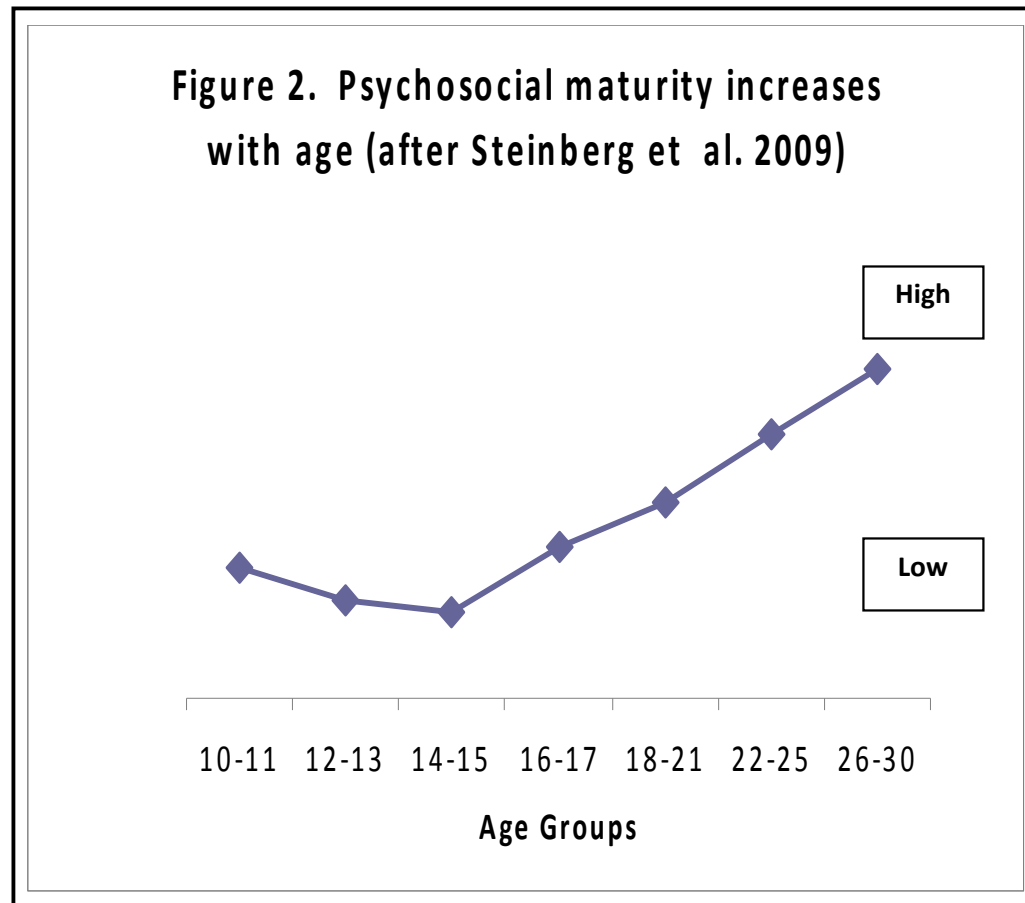
Research on Psychosocial Immaturity (PIM) Indicates that Juveniles, and thus JOSOs, are Characterized by Several Vulnerabilities

- Limited sense of responsibility
- Enhanced sensitivity to immediate rewards
- Limited ability to control impulsive behavior
- Enhanced susceptibility to the influence of peers





Psychological Tests Were Combined to Track Changes in PIM in the MacArthur Juvenile Capacity Study





Brain Research Over the Last 15 Years Strongly Suggests PIM Has a Neurological Component

- “Older adolescents do not have adult levels of judgment, impulse control, or ability to assess risks” (AMA, 2004, p. 4).
- “The very regions of their brains involved in governing these behavior-control capacities are anatomically immature” (AMA, 2004, p. 4).
- “High resolution structural and functional magnetic resonance imaging (‘MRI’) and other technologies (AMA, 2004, p. 10) have identified these immaturities.





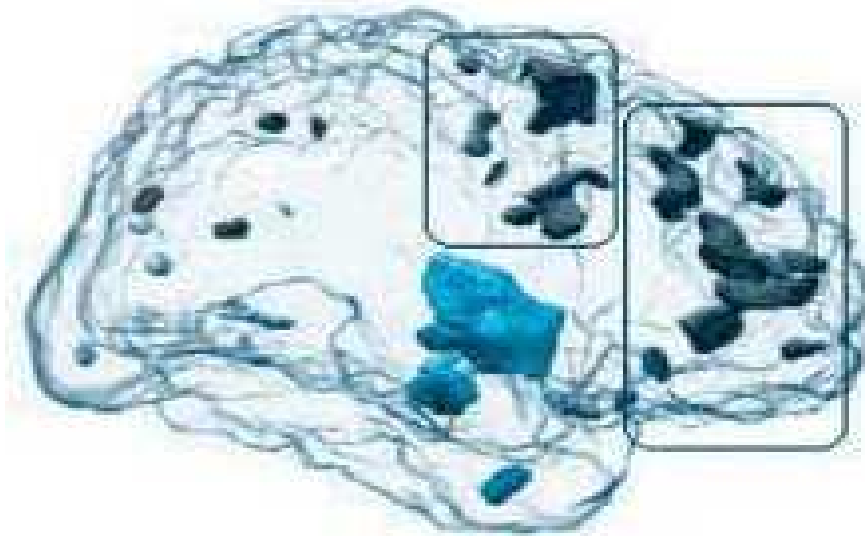
The Adolescent Brain Develops Into The Adult Brain Via Several Processes

- Pruning (Beckman, 2004; Giedd et al., 1999)
- Myelination (Gogtay et al., 2004)
- Differential development of neurological networks (Steinberg, 2008)
- Changes in the way that specific regions of the brain respond to the environment (Galvan, 2006).





Gray matter (in the boxes) is pruned from the frontal lobes of the brain between adolescence to adulthood. The larger box surrounds the prefrontal lobe, which controls judgment (American Bar Assn., 2004, adapted from *Nature Neuroscience*; also see Sowell, 1999).





Three Conclusions Are Apparent From The Foregoing Review

- Adolescents have a normative vulnerability to engage in impulsive, risky, and hedonistic misconduct.
- Adolescents are psychosocially and neurologically less mature than adults.
- The time courses for the resolution of these immaturities are depicted in various growth curves (see the last three figures and Figure 3 of Gogtay et al., 2004).





These Facts Indicate the Sexual Misconduct of JOSOs Reflects a Developmental Component

- A developmental perspective holds serious implications for applying the SVP criteria to JOSOs
 - A developmental condition is temporary and not an acquired or congenital condition.
 - JOSOs do not have impaired capacities because they were immature when they misconducted themselves.
 - JOSOs are a “moving population,” and tests do not reliably measure characteristics in moving populations.





SVP Evaluations of JOSOs Are Therefore Likely To Be Seriously Flawed

- Evaluators are also unable to accurately assess JOSOs in SVP cases because hypotheses about JOSOs based on the SVP theory have not been confirmed.
- Six such hypotheses are set forth in the next set of presentations.
- Three hypotheses focus on recidivism and three have more to do with diagnostic issues.





1. Juvenile Sex Offenders (JSOs) Should Have a High Sexual Recidivism Rate. They Don't.

- Caldwell (2009) calculated that the five year sexual recidivism rate for 11,219 juvenile sex offenders from 63 different data sets was 7%.





The Low Rate of Recidivism Among JOSOs is Accepted by the Professional Community.

- The 18 member Board of Directors from the Association for the Treatment of Sex Abuse (ATSA) alluded to this conclusion in a letter to the Chairs of the Judiciary Committees for the U.S Senate and House, stating that
 - “the vast majority of these youth remain free of sexual offense recidivism ... low recidivism rates are a consistent finding across over five decades of follow-up research comprising over 30 follow-up studies.”





2. The Sexual Recidivism Rate for JSOs Should Exceed the Sex Offense Rate for Juveniles with Nonsexual Offenses. It Doesn't.

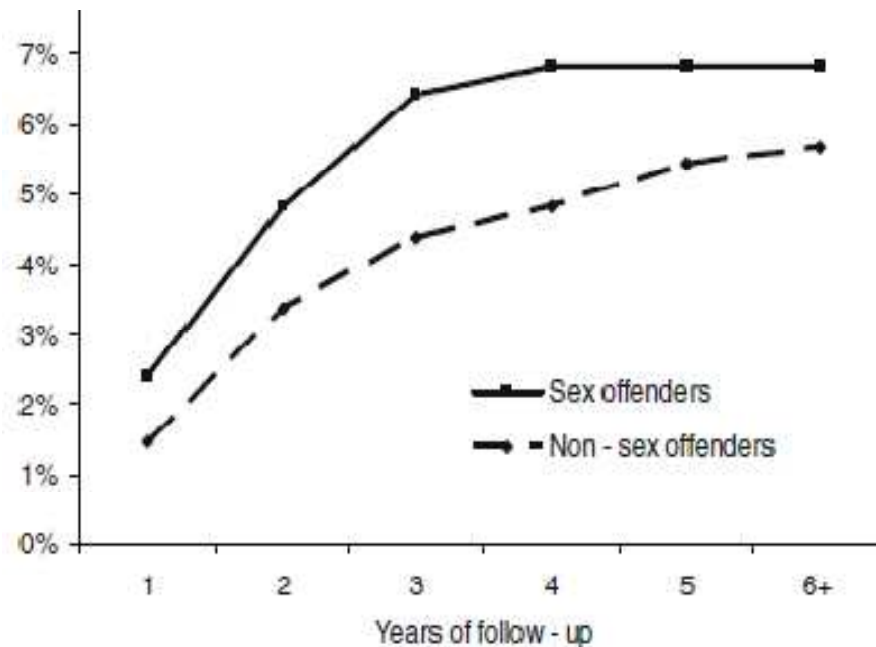
- Caldwell (2007) compared the sex offense rates of 249 JSOs from secure facilities with the rates of 1,780 other juveniles offenders from such facilities.
- 7% of the JSOs were charged with a new sex offense during a 5 year period while this was the case for 6% of the nonsexual offenders.
- The rates are not significantly different. The next slide shows the recidivism curve for each group.





JSOs Do Not Commit More Sex Offenses Than Juveniles Convicted of Violent Nonsexual Offenses.

(Caldwell, 2007)





3. Factors That Predict Sexual Recidivism by Adults Should Predict JSO Recidivism. They Don't.

- Researchers have correlated recidivism with risk factors for JSOs. This has also been done for ASOs.
 - Column 1 of the next slide lists factors that account for a significant % of the variance in recidivism among adults.
 - Column 2 reports the proportions (i.e., squared correlations).
 - Column 3 reports the proportions for JSOs.
- None of the adult factors predict JSO recidivism.
- Our paper cites the sources from which the proportions in the slide were calculated.





Factors That Predict Sexual Recidivism For Adults Do Not Predict Recidivism for JSOs

Risk Factor	Adult %	Juvenile %
Stable factors (e.g., actuarial tests)	.09	non-significant
Impulsive-reckless	.05	non-significant
Antisocial Personality Disorder	.02	non-significant
Penile plethysmograph	.02 - .10	non-significant
Number of prior sex crimes	.04	non-significant
Victimized a stranger	.02	non-significant
Victimized a male	.01	non-significant
Psychopathy Checklist – Revised Version	.02	?





4. Juveniles Who Are Assigned Personality Disorders Should Be Assigned the Same Personality Disorders When They Become Adults. This Is Unlikely.

- Although personality disorders are assumed to be stable over time for adults, this assumption has not been made for juveniles.
- “The personality traits of juveniles are more transitory” and “less fixed” (*Roper* decision, 2005, p. 16).
- “Making predictions about the development of relatively more permanent and enduring traits on the basis of patterns of risky behavior observed in adolescence is an uncertain business” (Steinberg & Scott, 2003, p. 1014).





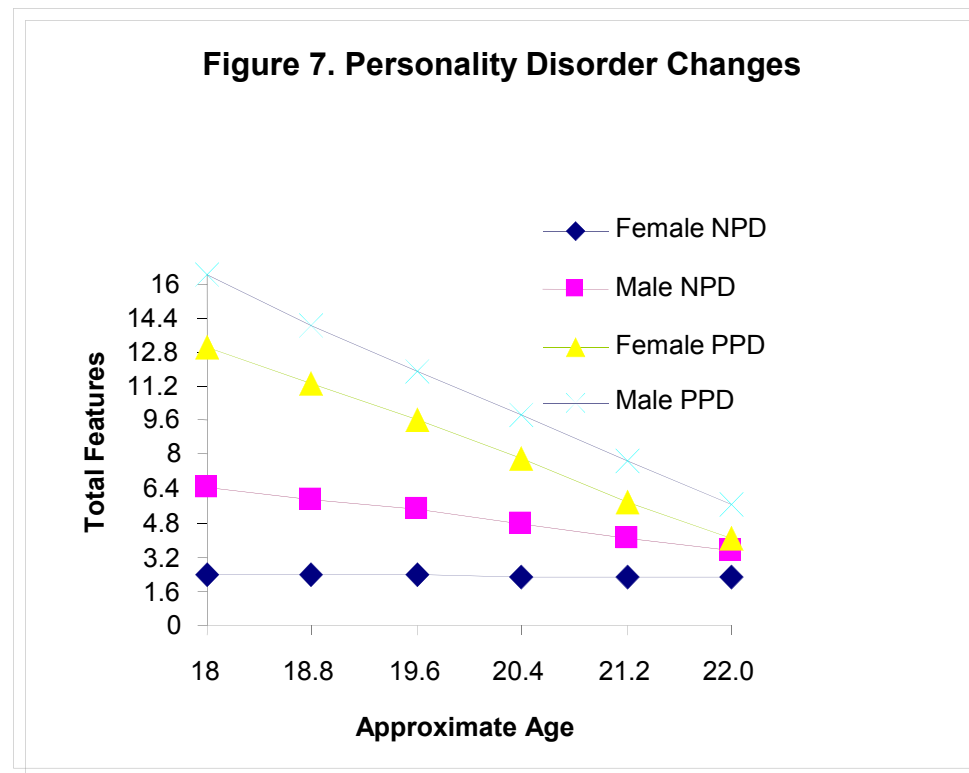
Data Collected As Part of the Longitudinal Study of Personality Disorders Project Support the Plasticity Hypothesis.

- Personality disorder (PD) features were assessed when a cohort of students were freshman, sophomore, and seniors (Lenzenweger et al., 2004).
- “Clear evidence of statistically significant individual change was observed for nearly all PD dimensions ... and this change was ... uniformly in the direction of decreasing features over time” (2004, p. 1021).
- The next slide depicts the average decrease in PD features that occurred in the four year study period.





PD Features Abate from 18 to 22. They Must Abate Even More As Juveniles Become Adults (adapted from Lenzenweger et al., 2004).





5. Juveniles Who Are Assigned Paraphilic Disorders Should Be Assigned the Same Disorders When They Become Adults. This Is Unlikely.

- A test/retest study of this issue has not been conducted.
- Adolescent sex offending has not been found to carry over into adulthood (Caldwell, 2009; Zimring et al., 2007; Doshay, 1943).
- Children and adolescents display less variation in their sexual behaviors as they age (Friedrich et al., 1998; Gagnon & Simon, 1971; Kinsey et al., 1948).
- JSOs display fewer problem sexual behaviors as they age (Doshay, 1943).





6. It Should Be Possible to Enhance Sexual Recidivism Prediction by Combining Measures of Criminality and Sexual Deviance. This Has Not Been Successful.

- Number of police contacts as a juvenile for sex offences did “nothing to predict ... adult sex offending ... beyond the frequency of offending” more generally (Zimring et al., 2007, p. 526).
- Gretton et al. (2001) scored JOSOs on the PCL:YV and gave them the PPG.
 - The criminality predictor (PCL:YV) was uncorrelated with the deviance predictor (PPG), but the deviance predictor did not enhance the power of the criminality predictor for identifying sexual recidivists.





Conclusions

- A consensus exists that juvenile offenders are less mature than adult offenders.
- Juvenile sex offending does not predispose a youth to adult sex offending.
- It is beyond the reach of science to identify which JOSOs are likely to sexually recidivate as adults.
- Personality characteristics and sexual behaviors are likely to change in prosocial directions among JOSOs.
- Neither personality nor paraphilic disorders can be assigned to JOSOs with reasonable certainty.





Implications

- The SVP construct does not apply to late adolescent and juvenile only sex offenders.
- JOSOs do not suffer from the sexual sicknesses that afflict true SVPs or possess other SVP elements.
- JOSOs are ineligible for civil commitment in the same sense that other juvenile offenders are not eligible for the death penalty.
 - They are not the “worst of the worst.”





Recommendations

- Practitioners who evaluate JSOs and who conduct SVP evaluations in JOSO cases must be thoroughly conversant with current research on adolescent development and JSOs.
- When the judiciary considers the applicability of SVP statutes to JOSOs, members of the APA should encourage the association to take an objective stand such as the one it took in *Roper* and *Graham*.





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Thank You

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