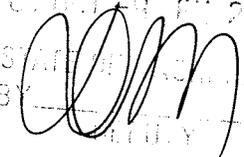


COURT OF APPEALS  
DIVISION II  
OCT 23 2:13  
STATE OF WASHINGTON  
BY 

No. 35242-7-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re Detention of:

JOEL S. REIMER

Appellant

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APPELLANT'S BRIEF

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ORIGINAL

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### **A. ASSIGNMENT OF ERROR**

Mr. Reimer seeks review of the trial court's decision denying an evidentiary hearing to determine if he currently meets the definition of a sexually violent predator.

### **B. ISSUES PRESENTED**

If a detainee presents *prima facie* evidence, at an annual review hearing, that he no longer suffers from a mental disorder does due process require that a trial on the merits be ordered?

### **C. STATEMENT OF THE CASE**

The Appellant has been incarcerated at the Special Commitment Center since 1992. CP 538. He has not been afforded an evidentiary hearing since 1992. As part of the annual review process, Dr. Lee Coleman provided an initial Psychiatrist report on February 25, 2003. CP 474. After a personal interview with Mr. Reimer, Dr. Coleman prepared and submitted a supplemental report on September 24, 2003. CP 555. A copy of the initial report is attached as Appendix A. A copy of the supplemental report is attached as Appendix B. It is Dr. Coleman's opinion that the Detainee does not suffer from any current mental disorder, a requirement for civil commitment under the definition of a sexually

violent predator. RCW 71.090.020 (16). In May of 2006, the Washington Legislature amended RCW 71.09.090. The amendments purport to overrule two Washington Court of Appeals decisions and limit the scope of evidence that may be presented by a Detainee at an Annual Review Show Cause hearing. In this case, the trial judge struck down Amended RCW 71.09.090 as unconstitutional in violation of due process, equal protection and the right to a jury trial. However, the trial judge denied Mr. Reimer's request for an evidentiary hearing.

#### **D. ARGUMENT**

- 1. Because Mr. Reimer Made a Prima Facie Showing that He does not Suffer from a Current Mental Disorder, an Evidentiary Hearing on the Issue should have been Ordered.**

Dr. Lee Coleman, a psychiatrist, concluded that Mr. Reimer does not currently suffer from any mental disorder. Appendix B, page 4. Thus, Mr. Reimer would be entitled to an unconditional release evidentiary hearing if the initial commitment criteria apply to Dr. Coleman's evidence. But, the trial court denied the request for an unconditional release trial.

Based upon Dr. Coleman's opinion, Mr. Reimer does not suffer from a current mental disorder. Therefore, he no longer meets the criteria for classification as a sexually violent predator. Consequently, under RCW 71.09.090, Mr. Reimer is entitled to an evidentiary hearing.

**2. Pursuant to *Kansas V. Hendricks* and *Foucha V. Louisiana*, the State is Required to Show Current Mental Illness and Dangerousness for Continued Incarceration of a Person as a Sexual Violent Predator.**

In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the United State Supreme Court stated as follows regarding the Kansas Sexually Violent Predator Legislation:

The challenged Act unambiguously requires a finding of dangerousness either to one's self or to others as a prerequisite to involuntary confinement. Commitment proceedings can be initiated only when a person "has been convicted of or charged with a sexually violent offense," and "suffers form a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence." Kan. Stat. Ann. Section(s) 59-29a02(a) (1994). The statute thus requires proof of more than a mere predisposition to violence; rather, it requires evidence of past sexually violent behavior and a present mental condition that creates a likelihood of such conduct in the future if the person is not incapacitated. As we have recognized, "[p]revious instances of violent behavior are an important indicator of future violent tendencies." *Heller v. Doe*, 509 U.S. 312, 323 (1993); see also *Schall v. Martin*, 467 U.S. 253, 278 (1984) (explaining that "from a

legal point of view there is nothing inherently unattainable about a predication of future criminal conduct"). A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary commitment. We have sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as "mental illness" or "mental abnormality." See, e.g., *Heller*, supra, 314-315 (Kentucky statute permitting commitment of "mentally retarded" or "mentally ill" and dangerous individual); *Allen v. Illinois*, 478 U.S. 364, 366 (1986) (Illinois statute permitting commitment of "mentally ill" and dangerous individual); *Minnesota ex rel. Person v. Probate Court of Ramsey Cty.*, U.S. 270, 271-272 (1940) (Minnesota statute permitting commitment of dangerous individual with "psychopathic personality". These added statutory requirements serve to limit involuntary civil confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control. The Kansas Act is plainly of a kind with these other civil commitment statutes: It requires a finding of future dangerousness, and then links that finding to the existence of a "mental abnormality" or "personality disorder" that makes it difficult, if not impossible, for the person to control his dangerous behavior, Kan. Stat. Ann. Section(s) 59-29a-02(b) (1994). The precommitment requirement of a "mental abnormality" or "personality disorder" is consistent with the requirements of these other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness. [emphasis added]

In *Foucha v. Louisiana*, 504 U.S. 71 (1992) the Supreme Court stated as follows:

We held, however, that "the committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," *id.*, at 368; i.e.

the acquittee may be held as long as he is both mentally ill and dangerous, but no longer. We relied on *O'Connor v. Donaldson* 422 U.S. 563 (1975), which held as matter of due process that it was unconstitutional for a State to continue to confine a harmless, mentally ill person. Even if the initial commitment was permissible, "it could not constitutionally continue after that basis no longer existed." *Id.*, at 575. In the summary of our holdings in our opinion we stated that "the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." *Jones*, 463 U.S., at 368, 370. \*fn5 The court below was in error in characterizing the above language from *Jones* as merely an interpretation of the pertinent statutory law in the District of Columbia and as having no constitutional significance. In this case, Louisiana does not contend that Foucha was mentally ill at the time of the trial court's hearing. Thus, the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. *O'Conner*, *supra*, at 574-575. The State, however, seeks to perpetuate Foucha's confinement at Feliciana on the basis of his antisocial personality which, as evidenced by his conduct at the facility, the court found rendered him a danger to himself or others. There are at least three difficulties with this position. First, even if his continued confinement were constitutionally permissible, keeping Foucha against his will in a mental institution is improper absent a determination in civil commitment proceedings of current mental illness and dangerousness. In *Vitek v. Jones*, 445 U.S. 480 (1980), we held that a convicted felon serving his sentence has a liberty interest, not extinguished by his confinement as a criminal, in not being transferred to a mental institution and hence classified as mentally ill without appropriate procedures to prove that he was mentally ill. "The loss of liberty produced by an

involuntary commitment is more than a loss of freedom from confinement.” *Id.* At 492. Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed. *Jones, supra*, at 368; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Here, according to the testimony given at the hearing in the trial court, Foucha is not suffering from a mental disease or illness. If he is to be held, he should not be held as a mentally ill person. See *Jones, supra*, at 368; *Jackson, supra*, at 738, *Cf. United States v. Salerno*, 481 U.S. 739, 747-748 (1987); *Schall v. Martin*, 467 U.S. 253, 270 (1984). [emphasis added]

Pursuant to *Hendricks* and *Foucha*, it is clear that the State must show both current mental illness and dangerousness in order to continue the civil commitment of a detainee. RCW 71.09.090, as amended, purports to severely restrict the circumstances under which a detainee can have an evidentiary hearing for the determination of whether he continues to meet the definition of sexually violent predatory. Germane to this case, there is a restriction that requires that the detainee be involved in sexual offender treatment before he will be allowed a hearing.

Amended RCW 71.09.090, is in direct conflict with the requirements of *Hendricks* and *Foucha*, i.e. a finding of current mental illness and dangerousness.

In the present case, Dr. Lee Coleman, has evaluated Mr. Reimer and has concluded that he does not suffer from a current

mental disorder. Because Mr. Reimer does not suffer from a current mental disorder, he does not meet the requirements of *Hendricks* and *Foucha* for continued commitment. Mr. Reimer should be afforded an evidentiary hearing because, Dr. Coleman, the psychiatrist appointed to evaluate him differs in opinion with the State's experts.

**3. Pursuant to the *Young* and the *Ward* Cases, the Detainee should be Entitled to an Evidentiary Hearing Because, According to Dr. Coleman, Mr. Reimer Does Not Currently Suffer from any Mental Disorder, and Therefore, No Longer Meets the Definition of a Sexually Violent Predator.**

Given the Trial Courts declaration that RCW 71.09.090, as amended, is unconstitutional, the *Peterson*, *Young*, and *Ward* cases control as precedent in determining whether or not the Detainee is entitled to an evidentiary hearing.

In *In Re Detention of Fox* \_\_\_\_\_ *Wn. App.* \_\_\_\_\_ (2007), this court upheld the constitutionality of amended RCW 71.09.090. However, the decision was not unanimous. One judge dissented. Presently, the *Fox* Court of Appeals decision is before the Washington State Supreme Court awaiting a decision on petitions for review.

In *In re Detention of Ambers*, \_\_\_\_\_  
W2d \_\_\_\_\_ (2007), the Washington Supreme Court provided  
clues on how it may decide the constitutionality issues regarding  
amended RCW 71.09.090. In footnote 4, the Supreme Court stated  
as follows:

Additionally, if we find that the “safe to be at large”  
provision requires a more stringent standard at an  
annual review hearing than is required for initial  
commitment, then the statute might be  
unconstitutional. See *O’Conner v. Donaldson*, 422  
U.S. 563, 574-75, 95 S. Ct. 2486, 45 L Ed. 2d 396  
(1975) (finding that once the original basis for the  
detainee’s commitment no longer existed, continuing  
confinement would be unconstitutional). “[W]here a  
statute is susceptible to an interpretation that may  
render it unconstitutional, courts should adopt, if  
possible, a construction that will uphold its  
constitutionality.” *In re Det. of C.W.*, 147 Wn.2d 259,  
277, 53 P. 3d 979 (2002).

*O’Conner v. Donaldson*, 422 U.S. 563, (1975) is cited with  
approval in *Foucha v. Louisiana*. It only makes sense that if it takes  
four legs of a table to prove initial civil commitment, that if one of  
the legs of the table ceases to exist, then civil commitment is no  
longer appropriate. Liberty is at issue in sexual predator cases.  
There is no reason to treat sexually violent predators like  
Guantanamo Bay detainees, disallowing all rights to evidentiary  
hearings. In the event that the Washington Supreme Court declares

Amended RCW 71.09.090 unconstitutional, then the *Young* and *Ward* decisions are still good law.

Specifically, the Court of Appeals in *In re: Detention of Ward*, 125 Wn. App. 381, 104 P. 3d 747 (2005), states in part as follows:

If a detainee provides new evidence establishing probable cause that he is not currently a sexually violent predator, due process requires a trial on the merits, regardless of whether his evidence could have also challenged the basis of his original commitment.

Further, the Court in *In re: Young*, 120 Wn. App. 753, 86 P.3d 810 (2004), states in part as follows:

The statute requires a periodic assessment of a person committed under RCW 71.09.090 to determine his/her continued dangerousness to the community and to ensure the person continues to meet the criteria for commitment. If current risk assessment techniques suggest Young is not now an SVP, the only adequate way of determining whether Young still meets the criteria for commitment in light of new diagnostic tools is to give him a new commitment hearing. 19 What new scientific studies do or do not show about Young's risk to reoffend in 1991 is not relevant to the ultimate question of whether he is an SVP today.

The *Ward* and *Young* decisions conclude that it is the Detainee's current condition that is most relevant in determining whether there should be an evidentiary hearing. Pursuant to Dr.

Coleman's evaluations, Mr. Reimer does not suffer from any current mental disorder. Therefore, Mr. Reimer does not currently meet the criteria necessary to be classified as a sexually violent predator. That classification requires a mental disorder.

If this Court were to accept the State's argument that there must be some change, in combination with the Detainee no longer meeting the criteria required to be labeled a sexually violent predator, then a SVP detainee that was wrongfully diagnosed in the beginning could never be released from confinement from the SCC. That is because a wrongfully diagnosed detainee would never experience change. The detainee was never a sexually violent predator to begin with. The wrongfully diagnosed Detainee could not prove change and would, therefore, be committed for life, without the possibility of an evidentiary hearing.

In the present case, Mr. Reimer, has been determined not to have a current mental disorder, by Dr. Coleman. Therefore, based upon the *Ward* and the *Young* cases, Mr. Reimer should be granted an evidentiary hearing because of the factual issue as to whether he currently meets the definition of a sexually violent predator.

///

**F. CONCLUSION**

The Trial Court denied the Detainee an evidentiary hearing, despite Dr. Coleman's conclusion that Mr. Reimer does not suffer from a current mental disorder.

The detainee requests that this Court reverse the Trial Court and grant an evidentiary hearing.

Dated: October 4, 2007

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Ammons', with a long horizontal flourish extending to the right.

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February 25, 2003

Judge Stephen Warning  
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Dear Judge Warning

The following report will address the question of whether Joel Reimer currently meets the definition of a sexually violent predator under RCW 71.09.060. I have not interviewed Mr. Reimer, so all the opinions expressed here are based on the extensive written legal and institutional materials I have studied.

Mr. Reimer's criminal history is thoroughly documented by his file and by previous evaluators, so there is no need to repeat it here. He was first evaluated for sexually violent predator (SVP) status in June of 1991, by Dr. Dreiblatt. Dr. Dreiblatt concluded that Mr. Reimer did indeed meet SVP criteria, and a look at the reasons given will be instructive.

First, Dr. Dreiblatt noted that the prior convictions met the statutory criteria. He next opined that such behavior was the result of a mental disorder, i.e. "paraphilia, sexual sadism." This label, it should be noted, is in no way a separate finding or an expert conclusion; it is simply a restatement of Mr. Reimer's crimes and as such should not be considered as support for SVP status. SVP status requires a finding that mental disorder was the cause of past crimes and the continuing presence of the mental disorder such that more such crimes will be committed, if release is granted, because the mental disorder deprives the individual of the ability to control behavior. Unfortunately, there is no such mental disorder, and an understanding of this fact will help in reviewing the opinions already given about Mr. Reimer.

Simply labeling past crimes as a mental disorder, as was done by Dr.

Dreiblatt. does nothing to actually establish that a mental disorder caused the crimes. The same is true of the second "diagnosis" offered, "antisocial personality disorder." Mr. Reimer's past behaviors were well documented, but this second label, like the first, adds nothing to the central question of whether he would likely repeat such behavior if released. It is a matter of consensus in the mental health community that diagnostic conclusions are not reliable predictive tools. The American Psychiatric Association (APA) is clearly on record as opposing the practice of trying to use diagnostic opinions to predict future dangerous, criminal, or sexually assaultive behavior. Simply making the crimes the evidence of the alleged mental disorder is without any support in the mental health community.

Instead of explaining what special skills were available to make the predictions required for SVP status, Dr. Dreiblatt stated, "This man appears to suffer mental disorders (Personality Disorder and Paraphilias) which combine to affect his volitional control over his sexual conduct. Because the psychiatric community, via the APA, is clearly on record that mental health professionals have no special insights into the issue of volitional control, I conclude that Dr. Dreiblatt's completely unsupported opinion on this matter is simply in the service of satisfying the legal requirement for SVP status.

On August 2, 1991, the Special Commitment Center Assessment Team also concluded that Mr. Reimer met SVP legal criteria. The evaluators, just like Dr. Dreiblatt, did not address how they were able to assess the issue of volitional control, or how they were able to determine that Mr. Reimer's past behavior was the *product* of mental disorder. Without such evidence, the requirements of the law cannot be met.

Dr. Trowbridge evaluated Mr. Reimer in October 1991, at the request of his attorney. He wrote, "It appears to me that Mr. Reimer does suffer from a personality disorder which makes him likely to engage in predatory acts of sexual violence." No information was given as to how this conclusion was reached with any special expertise. As before, a recitation of past behavior was the sole basis of this prediction.

Dr. Trowbridge made another prophecy that is worth noting. "...he will likely remain at the Special Commitment Center for an extremely long period of time, as it would be difficult to conceive the Special Commitment Center feeling that Mr. Reimer was safe to be released any time in the foreseeable future..." I believe this amounts to an admission by Dr. Trowbridge that staff recommendations about release are highly subjective, given that they are apparently are based on the "feeling" of the staff rather than reliable and objective indicators of future behavior.

The next evaluator was Dr. Nelson, who in December 1997 wrote that

“Mr. Reimer has refused to participate in sex offender treatment and frequently refuses to meet with his treatment team...rather than involve himself with treatment, Mr. Reimer has pursued litigation against SCC, taking every opportunity to testify against the program and to work with other residents to try to initiate new legal action against the program.” Beyond this, “Mr. Reimer has continued his involvement with the Native American religious activities on the unit. He regularly participates in the Sweat Lodge and other activities. This involvement appears largely to be a vehicle in which this man can carry out his political and legal agenda against SCC. Like Mr. Reimer, most of the other participants in the Native American activities also refuse to participate in sex offender treatment and are engaged in litigation against SCC. Also, like Mr. Reimer, many of them have little or no Native American ancestry, but became involved in Native American religious activities subsequent to their incarceration. Many of Mr. Reimer’s conflicts with SCC staff have revolved around his participation in the Native American activities...”

This information is important because it raises the question of whether the SCC staff is allowing these quarrels to influence their thinking on the only legally relevant issue—whether Mr. Reimer has a mental disorder that renders him likely to commit sexual violent acts if released. I would submit that the very fact that Dr. Nelson comments so extensively on these issues, along with Mr. Reimer’s role in disputes between residents and staff, is an indication that issues having no bearing on SVP status are indeed being allowed to cloud the picture.

In his conclusion, Dr. Nelson stated that Mr. Reimer suffered from “sexual sadism, alcohol abuse, polysubstance abuse, and antisocial personality disorder.” He then wrote that “These are chronic conditions that are resistant to change. In the absence of extensive involvement and progress in treatment, there is little reason to believe that they have changed significantly with the passage of time.” The problem with this conclusion is that there is no evidence that participation in institutional treatment regimes is correlated with recidivism in the community.

In the absence of any methodology that allows mental health professionals to reliably predict who will and who will not re-offend, it is perhaps not surprising that there is a temptation to simply rely on willingness to participate in treatment. The fact remains that activities easily labeled “treatment” have not been demonstrated to reliably predict adjustment in the community. Mr. Reimer may, in other words, be considered a poor inmate by the CSC staff, but that is not evidence that

he is a poor risk for release, or qualifies for continued incarceration under the law.

Dr. Gollogly reported the opinions of the annual review, which is a composite of impressions from treatment and custodial staff. He wrote that "These are the data sources that are typically relied upon in making forensic evaluations of dangerousness and risk to re-offend."

Significantly, no information is given as to the evidence that such sources are genuinely related to likelihood of re-offense. The fact that they are "typically relied upon" is, of course, not evidence for anything.

Dr. Gollogly maintained the same DSM-III-R labels as earlier evaluators, none of which were ever intended to address predictions of future behavior. He then added, "The mental abnormalities and personality disorder from which Mr. Reimer suffers are chronic in nature and resistant to change. These mental conditions are not likely to spontaneously remit with the passage of time." This, of course, is simply a way to say to Mr. Reimer, "As long as you refuse to participate in our treatment programs, we will never entertain the possibility that you might be ready for release."

The fact is that other things Mr. Reimer has been doing, such as taking a leading role in questioning SVP programs, could just as likely indicate significant personal reform. Why haven't any evaluators created a profile of an individual who engages in socially relevant advocacy, thereby increasing self-esteem while lowering the tendency to act-out in socially unacceptable ways? Is there any reason such advocacy might not amount to a sort of "treatment program?" Such possibilities are, of course, anathema to mental health professionals because their self-importance might be challenged, but this should not be reason to exclude such possibilities from the Court's analysis.

Given the fact that Mr. Reimer was not involved in the treatment programs, it was I believe a foregone conclusion that the treatment team would consider Mr. Reimer a continuing danger to society. Otherwise, how could the treatment team justify the entire program? The opinions of Dr. Gollogly and the treatment team are best understood as an ordinary human reaction to Mr. Reimer's rejecting their offers of help, rather than any kind of scientific or objective evaluation.

The following two years, Dr. Manley simply repeated Dr. Gollogly's report, naturally offering the same conclusions. In January of 2002 Dr. Saari once again simply repeated earlier evaluations, and repeated the same so-called "diagnoses." He also wrote that "Consistent diagnoses across time from a variety of doctoral-level clinicians are a strong indicator of diagnostic accuracy."

This statement is a total and utter misrepresentation of the nature of psychiatry, psychology and the process by which diagnostic labels are generated. The fact is that these labels are more often than not applied simply because an earlier evaluator applied them. The well know study by Dr. Rosenhan of Stanford University ("On Being Sane in Insane Places, *Science*, 179, January 19, 1973) is just one of countless examples indicating that treatment staff in institutions frequently repeat the same labels, year after year, simply because that's the easiest thing to do.

Finally, Dr. Saari made another statement which leaves absolutely no room for doubt that the staff intend to keep Mr. Reimer for the rest of his life, and to justify such a life-sentence on psychiatric grounds. He wrote that "There is little reason to believe that Mr. Reimer's paraphilic disorder has spontaneously remitted. *Even if it has remitted, he will remain at-risk for sexual deviance throughout his life since, like many other mental disorders, the course of paraphilic disorders is such that relapse rates are high.*" [my italics].

Dr. Saari's 2002 evaluation is much the same as his earlier one. I note also that he and the treatment staff are still trying to "rule out" pedophilia and sexual sadism, nine years after these labels were first entertained. This is another example of the deception inherent in these labels.

The phrase "rule out" is used in legitimate medicine when a possible diagnosis is being considered and a subsequent work-up will clarify the situation. A fasting glucose-tolerance test might rule-out or rule-in diabetes, for example, in a patient complaining of symptoms that could indicate diabetes. If after nine years the staff is still asking, "Is Mr. Reimer a pedophile, is he a sexual sadist?" then it is safe to assume that these labels are hardly useful tools to decide if he is likely to re-offend if released to the community.

In supposedly describing Mr. Reimer's "current mental condition," Dr. Saari relies almost exclusively on his past crimes. The so-called "diagnoses" are nothing more than a re-statement of his *crimes*. Dr. Saari is even willing to "diagnose" Mr. Reimer as suffering with the Axis I diagnosis of "Noncompliance with Treatment." This is a strange mental disorder indeed, since most SVP inmates are refusing treatment. Is the common belief among them that release decisions are based on political considerations, that even inmates participating in treatment are virtually never being recommended for release, and that outsiders can block release even should it be recommended—are these to be considered the "clinical characteristics" of the mental disorder "noncompliance with treatment"?

Dr. Saari devoted considerable space in his evaluation to arguing that Mr. Reimer lacked "emotional connectedness to others", lacked "empathy", and showed "grandiosity, superficial charm, manipulateness." I would suggest that such opinions, given the heated controversy about SVP laws including the American Psychiatric Association's condemnation of such laws, are more in the nature of an argument between treatment staff and inmates than a realistic assessment of Mr. Reimer's likelihood to re-offend in the community.

Similarly, Dr. Saari's reliance on the PCL-R is unsupported, since the score on the PCL-R is nothing more than the sum of many subjective opinions. I invite those considering Mr. Reimer's case to inquire into the general standing of the PCL-R in the community of those who use such methodologies. Little credence is given to this so-called "test," since it is nothing more than the evaluator's opinion about very subjective questions, such as whether the individual now feels empathy for victims, shows remorse, etc.

Dr. Saari also relies on actuarial risk assessment tools, despite his own admission that...

"the level of scientific study of these instruments is currently in the beginning stages...Given the number of studies currently available about these measures, my opinion is that the probability estimates cited above should be interpreted cautiously. These estimates should be considered tentative and less important than the particular characteristics of the individual assessed (e.g. paraphilic disorder diagnosis, personality disorder diagnosis, amenability to community to treatment and supervision)."

This is a profound admission, because the entire reason for the actuarial tools is because of the general recognition that the "particular characteristics of the individual assessed," i.e. the clinical assessment, has been known for decades to be highly unreliable. That unreliability is precisely why the actuarial tools were developed in an attempt to buttress clinical assessment. Dr. Saari has, perhaps unwittingly, given an indication that *neither clinical assessment nor actuarial assessment* is a reliable indicator of an individual's likelihood of recidivism.

Finally, on pages 19, 20, and 21 of his report, Dr. Saari resorts to yet another unreliable methodology. This is the description of a *profile of characteristics*, followed by the assertion that Mr. Reimer will fulfill the general characteristics described. Phrases like "Individuals with," "they use," "they experience," or "these individuals" are followed by allegedly typical patterns of behavior. Then it is alleged that Mr. Reimer, as a typical member of the profiled group, will follow in exactly these footsteps. This

is nothing more than yet another attempt to predict Mr. Reimer's future behavior. If this task were as straightforward as Dr. Saari's report would have us believe, traditional clinical assessments, which have used these methods for generations, would not have compiled such a miserable track record.

In conclusion, the methods used by prior evaluators all suffer from flaws that stem from the fact that they are searching for a mental disorder that doesn't exist, since it was invented by state legislators; trying to make predictions that are beyond the special skills of mental health professionals; and relying on tools that are flawed and misleading.

None of this changes the fact that a legal decision will be rendered by the trier-of-fact, using the laws of the State of Washington. As such, I believe that an in-person interview of Mr. Reimer, prior to trial, is a necessary part of my evaluation, since it will assist me in completing the task I have begun in this report—thoroughly analyzing the claims of other mental health professionals, and presenting to the trier-of-fact expert conclusions which will assist them in assigning what, if any, weight to be given to those opinions that claim to be able to determine that Mr. Reimer currently meets criteria for SVP status. If the State of Washington will be relying heavily on the fact that Mr. Reimer refuses to participate in the treatment programs, then Mr. Reimer's perspective on these issues is one that I need to hear in-person in order to complete my work.

Sincerely,

A handwritten signature in cursive script that reads "Lee Coleman".

Lee Coleman, MD

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Longview, WA 98632

Dear Mr. Ammons

The following supplementary report is an addendum to my previous reports in the case of Joel Reimer. I interviewed Mr. Reimer on July 13, 2003 for one and one half hours.

I reviewed with Mr. Reimer his history of antisocial behavior, going back to his early adolescence. He indicates that he was introduced to the idea of sex play between boys from watching a film owned by his step father. According to Mr. Reimer, this led to an interest in such activity, and he suggested it to another boy. He said that no force was involved, but later the other boy reported the activity and as a result Mr. Reimer was incarcerated in a juvenile facility until age fifteen.

Mr. Reimer states that during this incarceration he was exposed to an environment in which the toughest inmates had considerable power, and a lot of sexual activity was taking place. He says he became a part of this, engaging in sexual acting out and becoming assaultive towards the staff.

On his release, he was sent to a private school, and adopted a domineering and aggressive stance towards others, both young and old. He lived initially with his father, but later went with his mother. During an argument with another boy, he became physically assaultive and used threats to force the other boy to accept anal sex. Mr. Reimer claims this took place more to

humiliate the other boy than for the sexual activity *per se*. "What attracted me was dominating him," he said.

When this was publicized in the newspaper, Mr. Reimer made what he calls now a "suicide gesture, I was seeking attention." He was arrested and later sentenced to incarceration as a juvenile until age 21. For several years, he continued to maintain his aggressive stance. "I thought I was real tough; never looked at what I did. I staged a lot of violence." There were lots of fights with staff, and "I was proud of my toughness." Eventually he was transferred to an adult facility, spending a good deal of time in solitary confinement.

Released in September 1988, he immediately got in a fight in a bar and ultimately pled guilty to a 3<sup>rd</sup> degree assault. He was confined until he turned 21 and was again released.

Mr. Reimer's next incarceration resulted from a charge of child molestation. He asserts that while he did fondle and kiss the girl, he did not use force, and did not have intercourse. He claims the girl was mad at him for reporting her as a runaway. She was apparently pregnant at the time of the accusation. Mr. Reimer was charged with rape, and pled to a charge of child molestation.

Upon completion of this sentence, he was not released but instead became a part of the "sex offenders program." He says that Dr. Dreiblatt "was determined to keep me in," and "I was afraid I couldn't make it on the outside."

During his initial years at McNeil Island, Mr. Reimer readily admits that he was "trigger happy." He was involved in many disputes and fights with both staff and other inmates. Mr. Reimer states that he no longer feels the need to demonstrate his toughness by provoking others, and attributes this shift to his involvement in legal issues related to his SVP status and SVP programs in general. He also attributes the shift in his attitude to his relationship with a woman he met through this work, Denise Ashley. Since I also interviewed Ms. Ashley, I will comment further on this below.

I discussed with Mr. Reimer his opinions about the treatment programs. He obviously does not have a high opinion of the efficacy of the program, and states that almost all inmates feel the same way. He made it clear that he has no intention of participating in the program, and feels it would be

hypocritical and insincere of him to engage with the program as though he had changed his mind about this.

I also talked with Mr. Reimer about potential sources of support, should he be released. In addition to Ms. Ashley, whom he expects to someday become his most important source of emotional support, he states that he is close with Manuel Escobedo and his family. He also believes they can arrange employment for him as well as a place to live until he would be able to make his own living arrangements. While the possibility of eventual marriage to Ms. Ashley is something he contemplates, he states that he tries not plan so far ahead. He believes that she has helped him, through their mutual involvement in SVP issues, to acquire "a whole new level of capability."

Finally, I discussed with Mr. Reimer the often stated claim that he feels no empathy toward his past victims. He states that for a long time, until his civil commitment, he in fact did not think about the consequences to the victims of his crimes. He talked about how "people put on a persona of putting bad stuff in a closet and forgetting it..." He states that during his trial he observed the behavior of a victim, during testimony, and was shaken by the obvious trauma to the victim. He claims that this led to a hatred of what he had done, something that he had not previously confronted. He also claims that he now realizes that what other people feel about him is important.

In addition to interviewing Mr. Reimer, I also interviewed Denise Ashley. This was done at my request, since a previous letter from her had indicated that she was a major figure in Mr. Reimer's current situation. During my interview with Ms. Ashley, she stated that initially her relationship with Mr. Reimer was limited to phone consultations, related to their mutual interest in SVP programs. She states that he seemed to avoid face-to-face meetings for about six months, but eventually she began to visit him and now comes to see him once a week. The relationship has become much more personal, and she has thought about the possibility of marriage, but believes it is unwise to let such thoughts become prominent in her thinking at this time.

I asked her if she wasn't frightened of his past, and she responded that she is confident in what she perceives him to be at this time. "I see the remorse when he tells the story," she said.

Ms. Ashley is also friends with Manuel Escobedo and his family, and believes that all these people, including herself, could provide support to Mr. Reimer if he were released.

Mr. Reimer has obviously demonstrated strong anti-social tendencies in the past, and this can be labeled as "anti-social personality disorder." This "diagnosis," however, is simply a re-statement of his criminal past, and has absolutely no predictive value. That is, the use of this label tells us nothing about whether he will *continue* to act in an antisocial manner if released, and nothing about whether he would commit sexual crimes if released.

Furthermore, as I have repeatedly stated in my previous report, it is totally absurd to *label his past crimes as a mental disorder*. This makes a mockery of psychiatry and whatever value the diagnostic process might otherwise have.

There is no evidence that Mr. Reimer suffers from a current mental disorder, based on my interview with him, and the description of him by other observers in recent years. My interview made it very clear that Mr. Reimer is a highly articulate and intelligent person, and verbally very adroit. It is not difficult to imagine how the sparks must fly when he uses these skills to question the rationale of the SVP program. When he makes the point that it would be hypocritical and dishonest of him to participate in the treatment programs, and that he has no intention of doing so, this strikes me as a sincere and principled action on his part, rather than a virtual symptom of mental disorder, as so often stated previous evaluators.

No matter how fervently the treatment staff believes that his unwillingness to participate is a sign of continuing danger to society, *there is absolutely no basis for making such a link*. Karl Hanson of the Solicitor General's Office of Canada, the most influential researcher in this area, has demonstrated that participation in treatment is not a reliable indicator of future recidivism.

I have studied the SVP-related written material that is being produced by Mr. Reimer, Ms. Ashley, and others. It is the most detailed and useful compendium I have seen, and surely indicates that those who create such material are engaging in productive and necessary work. This, I maintain, is more likely to be a genuine indicator of personal reform than participation in SVP treatment programs. I have no doubt that the treatment program can help some inmates, but it is not for everyone, and lack of participation must

not be taken to indicate lack of personal reform and readiness for release.

Sincerely,

A handwritten signature in cursive script that reads "Lee Coleman". The signature is fluid and extends to the right with a long tail.

Lee Coleman, MD

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY: *[Signature]*  
DEPUTY

NO. 35242-7-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

In re the Detention of:  
  
JOEL S. REIMER,  
  
Appellant.

**DECLARATION OF SERVICE**

I, Terri L. Specht, declare as follows:

On Oct. 5, 2007, I sent by United States mail, first class  
postage prepaid a true and correct copy of the Appellant's Brief, to  
the address listed below:

Todd Richard Bowers  
Attorney General – CJD  
800 5<sup>th</sup> Ave, Suite 2000  
Seattle, WA 98104-3188

I declare under penalty of perjury under the laws of the State  
of Washington that the foregoing is true and correct.

DATED Oct. 5, 2007, at Longview, Washington.

*[Signature]*  
Terri L. Specht

**ORIGINAL**