Washington State Supreme Court No. 85091-7

IN THE WASHINGTON STATE SUPREME COURT

In Re The Personal Restraint Of;

Richard James Dyer

Petitioner Pro Se

PERSONAL RESTRAINT PETITION WITH ARGUEMENTS
AUTHORITIES AND EXHIBITS

Richard James Dyer
Petitioner Pro Se
D.O.C.# 281744/C-126-1
McNeil Island Corrections Center
P.O. BOX# 88-1000
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OFFICIAL

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1. The Board abused its discretion in finding Mr. Dyer not parolable, as its decision relies upon speculation and conjecture; erroneous evidence; and, outdated recommendations.
Further, the addition of an additional 60 Months to Mr. Dyer's already exasperating minimum term is not based upon sufficient written reasons.

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2. The ISRB's decision violates the 'Doctrine of Unconstitutional Conditions' as Mr. Dyer is being forced into a position to forego a constitutional right in order to gain the favor of his government.

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3. The ISRB violated the terms of a mutual agreement to provide "all relief requested" in a PRP filed by Mr. Dyer in 1986, in violation of the Contract Clause of the State and Federal Constitution.

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NOTE: Appendix 1 contains Volume III's portions of the cited record.
Appendix 2 Contains Volume IV's portions of the cited record.
Appendix 3 Contains Volumes V's portions of the cited records.

I. STATUS OF PETITIONER/PROCEDURAL HISTORY

Richard James Dyer, Petitioner Pro Se applies for relief from confinement at the McNeil Island Corrections Center in Steilacoom, Washington. Mr. Dyer is in custody serving a sentence upon conviction of a crime.

1. Mr. Dyer was sentenced in the Kitsap County Superior Court. Exhibit - A

2. Mr. Dyer was initially convicted of three counts of Rape in the First Degree, one count of Unlawful Imprisonment, and one count of Burglary in the First Degree. On direct appeal, the Court of Appeals set aside the convictions for Unlawful Imprisonment, Burglary in the First Degree and one of the Rape convictions, leaving the other two Rape convictions intact. Exhibit - B.

3. The Judge who originally imposed the sentence following trial was the Honorable Robert J. Bryan. On remand after appeal, the Honorable Karen B. Conoley entered and signed the amended judgment and sentence. Exhibit - A.

4. Mr. Dyer's lawyers at trial and during the original sentencing were Anthony Savage and James L. Reese of Seattle, Washington. Mr. Dyer's lawyer during his resentencing hearing was Zenon Olbertz of Tacoma, Washington.

5. Mr. Dyer appealed from the decision of the trial court to the Washington State Court of Appeals, Division II, represented by Anthony Savage of Seattle, Washington. The

decision of the appellate court was unpublished: State v. Dyer, No. 6162-7-II (August 14, 1934). Exhibit - B. As noted above, the Court of Appeals reversed three of the five counts of conviction. The Supreme Court denied Mr. Dyer's petition for review. Since Mr. Dyer's conviction, he has asked a court for relief from his sentence in the following proceedings:

On July 3, 1986, Mr. Dyer filed a Personal Restraint Petition in the Washington Court of Appeals, Division II, No. 10055-0-II, to require the Board of Prison Terms and Paroles to re-set his minimum term in view of the reversal of three of his convictions; in a manner consistent with the Sentencing Reform Act; and, to immediately release Mr. Dyer if that minimum had been met. Mr. Dyer was represented by attorney James K. Sells of Bremerton, Washington. The Board, represented by the Washington State Attorney Generals Office, agreed to grant all relief requested by Petitioner. Exhibit C and D.

On October 28, 1986, Mr. Dyer filed an "amended personal restraint petition" challenging the new exceptional minimum term set by the Board. The Chief Judge issued an order dismissing the petition on May 15, 1987, in cause number 10584-5-II. The Supreme Court issued a Ruling Denying the Motion for Discretionary Review on September 2, 1987, in cause number 53969-3.

In 1990, Mr. Dyer filed a habeas petition in the United States District Court, Western District of Washington,

challenging his conviction and amended minimum term. He was represented by James K. Sells. On January 22, 1991, the Honorable Carolyn R. Dimmick dismissed the petition with prejudice. Cause Number C90-809D. The Ninth Circuit Court of Appeals denied Mr. Dyer's pro se appeal in an unpublished opinion, Dyer v. Ducharme, No. 91-35211 (9th Cir., March 18, 1992).

In December of 1996, Mr. Dyer through attorney David Horton of Silverdale, Washington petitioned the Washington State Supreme Court for a writ of mandamus. Therein, Mr. Dyer asked the Court to compel the Department of Corrections to allow him to participate in extended family visits. The case was transferred to the Court of Appeals as a personal restraint petition, which was denied on January 13, 1999. The Supreme Court accepted review and affirmed in a published decision. In re Dyer, 143 Wn.2d 384, 20 P.3d 907 (2001) ("Dyer I")

On January 13, 1998, Mr. Dyer filed a pro se personal restraint Petition challenging the Board's failure to release him after a parole hearing in 1995. The Chief Judge of the Court of Appeals, Division II, issued an Order Dismissing the Petition. In Re Dyer, No. 22841-6-II (July 20, 1998). The Supreme Court denied Mr. Dyer's motion for Discretionary Review.

On January 24, 2003, Mr. Dyer filed a Personal Restraint Petition challenging the Board's failure to release him after a parole hearing in 2002. The Washington State Supreme Court

reversed the Board's decision, holding that 1) "(t)he ISRB ignored favorable evidence from psychological evaluations"; 2) "The ISRB cannot ignore the evidence presented at the hearing nor rely on mere conjecture in making its decisions; and, 3) That, "... a review of the evidence and testimony presented at the parolability hearing suggests that Mr. Dyer met his burden to have the conditions of release on parole established, ...", in Personal Restraint of Dyer, 157 Wn.2d 358, 139 P.3d 320 (2006) ("Dyer II"). Exhibit - E.

On March 2, 2007 Mr. Dyer filed a personal restraint petition once again challenging the Board's failure to release him after a parole hearing held in December of 2006. On July 15, 2009 this court dismissed Mr. Dyer's petition. In The Matter of the Personal Restraint Petition Of Richard J. Dyer, __ Wn. 2d __ (2010) ("Dyer III"). Exhibit - F.

This petition challenges the subsequent Board decision denying parole and increasing Mr. Dyer's minimum term another 60 Months for a total Minimum term of 560 Months.

Mr. Dyer is not seeking to proceed at public expense.

II. OVERVIEW OF BOARD DECISIONS

a) Admission Hearing

On May 10, 1932 the Board of Prison Terms and Paroles, (now the 'Indeterminate Sentence Review Board' (ISRB)) issued

its decision in Mr. Dyer's admission hearing and therein set Mr. Dyer's minimum term at 600 Months. Exhibit - G.

b) September 1986 Obert Myer Redetermination

On September 15, 1986 Mr. Dyer appeared before the ISRB for a redetermination hearing following a Personal Restraint Petition filed under COA No. 10053-0-II, in which the ISRB conceeded. Exhibits - C & D. During this hearing the Board reduced Mr. Dyer's minimum term from 600 Months to 240 Months. Exhibit - H.

c) February 1994 Board Hearing

On February 24, 1994 Mr. Dyer appeared before the Board for a parole eligibility hearing. Mr. Dyer was found not parolable, no time was added to him minimum term. Exhibit - I.

d) March 1995 Board Hearing

On March 8, 1995 Mr. Dyer appeared before the Board for another parole eligibility hearing. Mr. Dyer was found not parolable, and 60 Months was added to his minimum term. Exhibit - J.

e) August 1998 Board Hearing

On August 11, 1998 Mr. Dyer appeared before the Board once again for a parole eligibility hearing. Mr. Dyer was

found not parolable once again, and another 60 Months was added to his minimum term. Exhibit - K.

f) January 2002 Board Hearing

On January 30, 2002 Mr. Dyer appeared before the Board for yet another parole eligibility hearing. Mr. Dyer was once again found not parolable and another 60 Months was added to his minimum term. Exhibit - L.

g) December 2006 Board Hearing

On December 5, 2006 Mr. Dyer appeared before the Board on remand by the Supreme Court for a new parole eligibility hearing. Mr. Dyer was subsequently denied parole again and an addition 30 Months was added to his already staggering minimum term. Exhibit - M.

h) March 2010 Board Hearing

Most recently, on March 15, 2010 Mr. Dyer appeared before the Board once again for yet another parole eligibility hearing. Mr. Dyer was yet again denied parole and his minimum term was increased by yet another 60 Months, making his total minimum sentence, thus far, 560 Months: that is 482 Months beyond the SRA guideline ranges. Exhibit - N.

This decision is the basis for this Personal Restraint Petition, and is included in full herein below:

DECISION AND REASONS

NAME:	DYER, RICHARD
NUMBER:	281744
INSTITUTION:	McNeil Island Corrections Center (MICC)
TYPE OF MEETING:	.100
PANEL MEMBERS:	BH, TS, LD, & DT
FINAL DECISION DATE:	March 15, 2010

This matter came before Besty Hollingsworth, Thomas Sahlberg, Lynne Delano and Dennis Thaut, who are members of the Indeterminate Sentence Review Board (ISRB or the Board), on the above date for a release hearing in accordance with the provisions of RCW 9.95.100. Mr. Dyer appeared in person and was represented by attorney David Zuckerman. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Houston Wimberly and Mr. Dyer. Others present at the hearing were ISRB staff.

BOARD DECISION:

This was a Deferred Decision. Based on the requirements of RCW 9.95.009(3) and RCW 9.95.100 and the totality of evidence and information considered by the Board, the Board finds that Mr. Dyer is not parolable and adds 60 Months to his minimum term. Ft. 1

NEXT ACTION:

Schedule .100 hearing for Mr. Dyer 120 days prior to his next Parole Eligibility Date (PERD).

JURISDICTION:

Mr. Dyer is under the jurisdiction of Board on a February 12, 1982 conviction in Kitsap County Cause Number 81-1-00398-1

Ft. 1 This was a full panel Board decision which enlarged Mr. Dyer's total minimum term to an exasperating 560 Months.

for two counts of Rape in the First Degree (Counts II and IV). The time start is February 19, 1982. The standard SRA range is 63 to 88 months. The maximum term is Life. In 1982, Mr. Dyer's minimum term was set by the Board at 600 months; this was 18 months outside the Sentencing Reform Act (SRA) guideline range. Ft. 2 Under requirement to conduct an Obert Meyers Redetermination hearing, on November 14, 1986, the full Board re-determined his minimum term at 240 months. Ft. 3 The Board justified an aggravated minimum term based on the recommendations of the sentencing judge, who recommended that Mr. Dyer "should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life," and the prosecutor, who recommended that Mr. Dyer serve 50 years. Ft. 4 Mr. Dyer has served approximately 259 Months in prison. Ft. 5 His current PERD is November 30, 2009. This hearing is being held past his current PERD due to requests for continuance by Mr. Dyer's counsel.

NATURE OF OFFENSE(S):

File materials describe the index convictions as separate

Ft. 2 While the Board indicates that 600 Months is only 18 Months beyond the SRA guideline ranges, we see it is actually 512 Months beyond that range.

Ft. 3 This hearing was based upon a mutual agreement which was the result of a PRP filed by Mr. Dyer. See Exhibit C & D.

Ft. 4 Both the recommendations made by the Sentencing Judge and the Prosecutor relied upon by the Board in its decision were made prior to the Court of Appeals reversing three of the five counts originally lodged against Mr. Dyer. Thus, these recommendations are based upon past facts no longer against Mr. Dyer and therefore, should no longer be used.

Ft. 5 The Boards calculation here is incorrect. Mr. Dyer has currently served 336 Months in total confinement since Mr. Dyer's commitment date of February 19, 1982.

attacks on two different women who did not know Mr. Dyer. One occurred on January 27th, 1980. The 22 year old victim reported to the police that she had been raped and assaulted by two men. Officers noted that she had numerous bruises on her jaw, right check, and forehead. There were rope burns on her wrists and some cotton residue on her face from being blindfolded; her mouth was bloody with a large laceration inside the right cheek and large quantities of dried blood on the from of her jacket. Ft. 6 The victim reported that two men offered her a ride at about 2:30 a.m. in downtown Bremerton. She identified the driver as the defendant, Mr. Dyer. Ft. 7 She was seated between the two men on the front seat of the vehicle.

The victim reported that when they did not drop her off at her requested destination and instead headed out of town, she recognized something was amiss and she grabbed the steering wheel and attempted to jam on the brakes of the vehicle. The driver, later identified as Mr. Dyer, elbowed her in the face,

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Ft. 6 This victim testified that her clothes were washed. See Board decision at page 3, attached at Exhibit - N.

Ft. 7 See VRP III P. 608 L. 21 through P. 609 L. 11, where detective Ticehurst acknowledged that Ms. Jones the victim to this attack, was shown a photograph which contained a photo of Mr. Dyer prior to her identification. See also VRP III P. 521 L. 1 through 4, where Ms. Jones replied, "Yes I would" after being asked by Mr. Savage, "If I was to inform you that Mr. Dyer stands over five foot seven inches tall, would you still insist he was the man?" Following her testimony that her attacker was five foot two or three inches tall.

See also, VRP IV P. 805 L. 16 through 17, where Mr. Bigelow testified that to his recollection, Mr. Dyer always had a mustache; as well as VRP IV P. 822 L. 9 through P. 823 L. 3, where Mr. Noldan also testified that in January of 1980 he was absolutely sure that Mr. Dyer had a full mustache. However, in Ms. Jones' testimony she describes her attacker as not having a mustache.

cutting open her cheek inside the mouth. He then stopped the vehicle, threw her into the back seat, jumped into the back seat with her and started punching her with his fist. The second man then started driving. Mr. Dyer held the woman down on the back floor board.

She was driven to an isolated location. Mr. Dyer removed all her clothing in the backseat and offered her to the other suspect. The second man reportedly appeared to be very frightened and refused to rape the victim. Mr. Dyer then raped her and after the initial rape, she was tied with orange-red nylon rope and left naked. Ft. 8 She was shoved back down into the rear floorboard while the second man drove the car again.

After about 15 minutes, they arrived at what the victim later believed was Mr. Dyer's residence. Ft. 9 She described the outside of the residence and identified some road signs in her police statement. Ft. 10 Mr. Dyer reportedly put a coat over her head and removed her from the car. He escorted her

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FT. 8 See VRP V P. 859 L. 20 through P. 860 L. 13, where Mr. Write positively I.D.'s the line introduced at court as line he gave to Mr. Dyer on or after May 9, 1980, approximately four months after the attack on Ms. Jones.

Ft. 9 See VRP III P. 480 L. 23 through P. 482 L. 11, Where Ms. Jones describes a gravel road leading to the house where her attack took place. See also VRP IV P. 799 L. 3 through 10, Where Mr. Write states with certainty that the only gravel at the Dyer residence was a small patch only large enough to park a car on. Mr. Bigelow confirms this at VRP IV P. 813 L. 8 through 9.

Additionally, Ms. Jones testified that there was a bar type wall between the living room and kitchen in the house her attack took place in. VRP III P. 491 L. 6 through 17. However, at VRP III P. 604 L. 17 through 22, Detective Ticerurst testified and confirmed that there was not such bar type wall in the Dyer residence. This is also confirmed at VRP IV P. 786 L. 11 through 12 by Mr. Wright and at VRP IV P. 824 L. 20 through 21 by Mr. Noldan.

to a bedroom and tied her on her back to the bed. The victim reported that she was in fear for her life and began screaming loudly. She was then gagged with cotton and they taped cotton over her eyes. File materials indicate that Mr. Dyer told the other man to go ahead with her, and the victim reported that shortly after penetration, the second man got off and left the room. Her impression was that he left the residence as she did not see or hear him again. Mr. Dyer then raped her vaginally, fell asleep, awoke and raped her again, then fell asleep; she reported that this cycle occurred approximately eight times.

Twice during the night, the victim was untied and forced to bathe. Ft. 11 After each bath she was again tied to the bed and raped. During the daylight hours, Mr. Dyer washed the victim's clothes and then dressed her. Her hands were tied behind her back again and the tape was pulled off her face. More cotton was put over her eyes, held in place by a stocking cap. Through the stocking cap, the victim was able to identify the vehicle she was placed in when leaving the residence and some other details about the location.

After driving about ten to fifteen minutes, Mr. Dyer stopped the vehicle and took her into the woods, where he untied her and

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Ft. 10 See VRP III P. 485 L. 6 through 25, Where Ms. Jones states that she remembers walking up two wooden steps as she entered the house where her attack took place. See also VRP IV P. 807 L. 11 through 18, Where Mr. Bigelow testified that the only step at the Dyer residence is one concrete step.

Ft. 11 Ms. Jones testified that the bathtub she was forced to bathe in was beige or tan in color. See VRP III P. 492 L. 8 through 23. While the bathtub in Mr. Dyer's residence is and always was white. See VRP V P. 899 L. 11 through 17.

Ft. 12 See VRP III P. 499 L. 20 through 22, Where Ms. Jones stated that she knew it was a Comet, as she remembered actually reading the word "COMET" on the back of the car.

uncovered her eyes. She was told to wait, and she managed to make it out to the road in time to see the car, a white Comet, speeding off into the distance. Ft. 12 She walked to a nearby residence and called police. The victim positively identified Mr. Dyer in a photo lineup and clothing that she described Mr. Dyer wearing at the time of the crime was retrieved from Mr. Dyer's personal belongings. Ft. 13 The investigation also confirmed that Mr. Dyer owned a Comet, and she positively identified the vehicle. Ft. 14

The second Rape First Degree conviction resulted from a crime that occurred on August 23, 1980. When the victim was interviewed by police after reporting the rape, they noted that she was limping and favoring her right leg. Scratches were noted on her arms and the left side of her head. File materials indicate that she reported that she had been walking her dog at about 11:00 p.m. She walked to the downtown area where she met some friends and shortly thereafter was walking alone when a car containing two white males pulled up and offered her a ride. She declined and the vehicle left.

She reported that a few moments later the vehicle returned

Ft. 13 At VRP III P. 518 L. 7 through 18, Ms. Jones stated that the coat that was recovered from Mr. Dyer's residence should have blood all over it, but this one did not.

Ft. 14 At VRP III P. 499 L. 3 through 4, Ms. Jones acknowledges that Mr. Dyer's car was not a Comet, but, rather, a Meteor. See also, VRP III P. 535 L. 11 through 14, where Mr. Hill states that when officers came to photograph Mr. Dyer's old Meteor, they stated, this is not the car, we are looking for a White Comet, not a Tan Meteor. Also, VRP III P. 536 L. 17 through 20, where again, Mr. Hill states with certainty, this can't be the car as it is a Beige Meteor, not a White Comet.

It is unclear where the Board was able to conclude that Mr. Dyer owned a White Comet, as the record clearly establishes he did not.

and she was forced into the car. She was driven to the south end of the county and at some point in the ride was blindfolded. She reported that the vehicle became stuck on two occassions and she had to help free the vehicle. During freeing the vehicle the car rolled into her leg, injuring her leg. She was taken to a residence. Ft. 15 She was tied to the bed with a rope that was taped to prevent rope burns. The rapiest, whom she later identified as Mr. Dyer removed all of her clothing and raped her vaginally. Ft. 16 He then required her to take a shower with him. She was again tied to the bed, and Mr. Dyer went to sleep. The victim managed to get loose, getting only as far as the bedroom door before a dog awakened Mr. Dyer. She was recaptured and retied to the bed. About an hour later, she was able to again free herself. Again the dog awoke Mr. Dyer before she got to the bedroom door. Finally, she was awakened at about 5:30 a.m. and was told to take a bath. Ft. 17 While she was bathing, Mr. Dyer washed her clothes. He transported her to a park and let her go.

Ft. 15 At VRP IV P. 742 L. 2, Ms. Fails states that the man who abducted her warned her about two or three steps while entering the home where the attacks took place. While at VRP IV. P. 807 L. 11 - 12, it was testified that Mr. Dyer's residence only had one step.

Ft. 16 At VRP IV P. 709 L. 3 through 21, Detective Wheeler, testified that Ms. Fails was unable to give any description of her attacker whatsoever. See also VRP IV P. 710 L. 11 through 14, Where Mrs. Fails testified that she would not be able to identify the suspect.

Ft. 17 At VRP IV P. 752 L. 2 through 18, Mrs. Fails stated that she told the investigating officer that she was bathing as her abductor was washing her clothes. Then at VRP IV P. 745 L. 15 through 25, Mrs. Fails states that she lied to the investigating officer when she initially stated that her and her abductor bathed together.

At VRP IV P. 768 L. 20 through 22 Detective Wheeler confirms that Mrs. Fails initially claimed that her and her abductor showered together.

He told her he would meet her at the Inn and Out Cafe the following Friday. He said he had been drunk, and he was very sorry about everything. File materials show that at some point that morning Mr. Dyer gave this victim a watch that was later positively identified as having been lost by the first victim during her abduction and rape. Ft. 18 The second victim identified the abductor's vehicle as a Mercury Capri, and the investigation revealed that Mr. Dyer had purchased such a car in May of 1980.

OTHER CRIMINAL CONDUCT

When Mr. Dyer was received at the DOC under Board jurisdiction February 19, 1982, he also had been convicted of the following counts: Count V, Unlawful Imprisonment (5 years); Count VI, First Degree Burglary (Life); Count VII, First Degree Rape (Life). All sentences were to run concurrent.

On August 14th, 1984, Mr. Dyer's convictions were reversed on Counts V, VI, & VII; Counts II and IV, both First Degree Rapes, were affirmed. File materials show, and Mr. Dyer confirmed in his hearing, that the convictions that were reversed related to two incidents involving his former wife. In reversing the three counts on direct appeal, the Court of Appeals held that the trial court abused its discretion by denying Mr. Dyer's motion to sever the counts involving the two separate victims in Counts II and IV from the other counts that involved his former wife. The Court of Appeals found

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Ft. 18 At VRP III P. 509 L. 1 through 20 we see that Ms. Jones indeed claimed that the watch given to Mrs. Fails was her watch. But interestingly, there was nothing ever said about the watch until trial. See VRP P. 512 L. 8 through 15, where Ms. Jones admits that she informed the officer's about her rings, but never mentioned the watch.

that his former wife did not consent to sex; Ft. 19, however, the Court held that evidence from the incidents involving his former wife was admissible to help identify Mr. Dyer as the rapist in the other two rape counts.

The prosecutor chose not to re-try Mr. Dyer on the counts involving his former wife. Because these convictions were overturned on a technicality, he was not exonerated of them. Ft. 20 The Board notes that there are file materials that indicate that in 1982, Mr. Dyer admitted to his prison classification counselor that he had "only victimized his wife" and not the other two rape victims. He has since continued to deny that he victimized his ex-wife. Ft. 21

It appears that the reason these cases were originally tied with the charges of the alleged crimes against his wife was because of similarities in the use of bondage, repeated rapes while she was tied to the bed, the allegations that she had been abducted and driven to a place in the woods, the allegation that she was forced to shower after being raped, and the timing of the first reports made by his wife on October 25th, 1980, and then again on September 2nd, 1981. File materials indicate

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Ft. 19 A review of the Court of Appeals decision fails to confirm the claim of the Board that the COA found that Mr. Dyer's former wife did not consent to sex; rather, the Court's decision was speaking generally of the facts and their admissibility regarding each other.

Ft. 20 This statement of the Board makes clear that they are continuing to hold Mr. Dyer accountable for crimes which were legally overturned. Conduct, the Board stated in a prior hearing it would not consider against Mr. Dyer. See 2001 Board Hearing Transcripts at Page(s) 8 and 9, attached hereto as Exhibit - O.

Ft. 21 There is no evidence regarding the context or the nature of this alleged admission, and as such, its use is improper.

that Mr. Dyer alleged the sexual intercourse with his former wife was consensual and that she made up the rest of the "story." Ft. 22

HISTORY/COMMENTS

Mr. Dyer has appeared before the Board on six previous occasions. Each time the Board had found him not parolable and added time this his minimum term. Ft. 23 His last hearing was held on October 18, 2006.

Mr. Dyer continues to work for the Recreation Department, and he has received superior evaluation in all categories. He has received no infractions since his last hearing. He has participated in numerous offender change programs over the years, as outlined in previous Board Decisions; however, he has not programmed since his last hearing. Ft. 24

Another psychological evaluation was performed by Dr. Patricia Pereira in June of 2009. Our previous Decision and Reasons from October, 2006 provides an extensive review of Mr. Dyer's history within the institution and the results of his previous psychological evaluations. We include this by reference.

Ft. 22 This statement further compounds the Boards improper use of this evidence against Mr. Dyer contrary to its earlier promise to not use said evidence as the convictions were overturned; in the words of Mr. Austin; "The prosecutor is not entitled to a second bite." 2001 Board Hearing Transcript at page 9. Attached as Exhibit - O.

Ft. 23 Contrary to the Boards assertion, there was no time added following Mr. Dyer's 1994 Board Hearing.

Ft. 24 The Board must be referring to Mr. Dyer not taking any further offender help programs, as the record is clear that Mr. Dyer has programmed full time throughout the period between this Board Hearing and the last. It is noteworthy however, that there are no further offender help programs that Mr. Dyer is eligible for.

EVIDENCE CONSIDERED:

In preparation for Mr. Dyer's hearing and its decision in this case, the Board completed a review of Mr. Dyer's Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-sentence Investigation Report; the most recent psychological evaluation prepared by Patricia Pereira, PhD; previous psychological evaluations; previous Board Decisions; and materials provided by Mr. Dyer and his counsel. The Board also considered the testimony of the witnesses listed above.

REASONS:

Little has changed since the Board last saw Mr. Dyer. While he initially demonstrated significant behavior problems during his incarceration, he has remained infraction free over 10 years.

Mr. Dyer continues to deny his offenses, both adjudicated and unadjudicated. As indicated in our previous Decision, however, Mr. Dyer stands before the Board as a convicted sex offender whose crimes involve considerable violence and cruelty toward his victims. The record provides considerable evidence to support his convictions. Ft. 25 To date he remains an

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Ft. 25 As shown throughout this duplication of the Boards most recent decision, there is actually a plethora of evidence which would lend to the innocence of Mr. Dyer.

It is noted that the Board is not in a position, nor has the authority to re-adjudicate a case; but, based upon their speculation to the weight of the evidence against Mr. Dyer, it was necessary to point out the insufficiencies of the case. As this shows the Boards failure to conduct a full and meaningful determination of Mr. Dyer's parolability.

untreated sex offender. Ft. 26

Dr. Pereira's evaluation reports that individuals with Mr. Dyer's profile "may act out in a sexual or aggressive manner with little apparent attention to or understanding of what they are doing." She further states that "When confronted with the realities of their behavior, they may act surprised and feel resentful and persecuted." She reports that the MMPI-2 indicates that underneath a veneer of control is a suppressed anger and resentment that with the right trigger could cause an explosion "into a highly rationalized outburst." She scores Mr. Dyer as high on the psychopathy scale and assesses him as a high risk for violence and re-offending.[1] (1 Mr. Zuckerman calls her scoring "unconscionable;" however, he provided no new alternative scoring to counter her assessment. We do note, however, that she places his age at the top of her report at 51 rather than his actual age of 61) Ft. 27

We recognize that Dr. Pereira's scoring on some scales is at odds with previous evaluations. We cannot, however, ignore

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Ft. 26 While it is true that Mr. Dyer remains an untreated sex offender, this is not due to his refusal to enroll; rather, it is due to him not being excepted for treatment due to his unwillingness to confess to a crime he claims he is innocent of. Further, recent research shows that offenders, like Mr. Dyer who are willing to participate, but are denied involvement, are at a lower risk to re-offend than even those prisoners who participate successfully in the program.

As argued herein below, this violates the doctrine of unconstitutional conditions.

Ft. 27 While the Board claims that they were not furnished with new alternative scoring to counter Dr. Pereira's assesment, we find at Exhibit 19 of the packet provided to the Board by Mr. Dyer's counsel, a report by Dr. Townbridge where he went over all of Dr. Pereira's scoring sheets and found that her scoring was indeed erroneous.

the results of this most recent evaluation. Ft. 28 In addition, on his 2005 evaluation, the Board notes that Mr. Dyer reportedly scored on one test in a manner characteristic of prisoners who might be referred to as "psychopathic manipulators." (Emphasis added). His 1994 evaluation indicated impulsivity, poor judgment, aggression and blaming. This report also stated that his risk to re-offend remained high and that the depth of sexual deviancy could not truly be assessed with an uncooperative client.

As we have pointed out in the past, the Board is statutorily required to give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. (RCW 9.95.009 (3)) Additionally, the Board is statutorily directed to not release a prisoner before the expiration of their maximum term, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release. (RCW 9.95.100) In this case, the nature of Mr. Dyer's offenses coupled with his lack of treatment and indications of high psychopathy create considerable concerns about public safety should he be released. Ft. 29

In finding Mr. Dyer not parolable once again, we are cognizant of variations in his scores on a number of psychological testing scales over the years. The Board has not been furnished with the scoring tools utilized in these various evaluations.

Ft. 28 It should be noted that the Board was faced recently with another botched psychological evaluation from Dr. Pereira. See Exhibit - P, attached hereto.

Ft. 29 As noted above and argued below, the 'indications of high psychopathy' are unfounded and based upon faulty scoring.

Ft. 30 Prior to his next .100 hearing, the Board would request that he receive a forensic psychological evaluation to determine whether he meets the criteria for civil commitment under Chapter 71.05 RCW.. Such an evaluation would be extremely helpful in determining whether Mr. Dyer continues to present a danger to the community. We would further request that the actual scoring for Mr. Dyer on the various risk assessment tools be included with the evaluation report so that the Board and counsel can review them.

III. SUMMARY OF ISSUES FOR REVIEW

Mr. Dyer contends that the Board abused its discretion in once again finding him not parolable, where it based its decision upon 1) speculation and cenjecture; 2) an erroneous psychological evaluation; 3) inadmissible evidence; and, 4) improper recommendations from both the original sentencing judge and prosecuting attorney. Mr. Dyer further claims that the enlargement of his minimum term is in violation of RCW 9.95.090 (2), which states that "the Board and its successors shall give adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges adopted pursuant to RCW 9.94A.850.

Secondly, Mr. Dyer contends that in consistently denying him parole on the basis of his failure to have participated in a Sex Offender Treatment Program, which would require Mr.

Ft. 30 See Exhibit - Q, the packet sent to the Board by Mr. Zuckerman, attorney for Mr. Dyer, where all the scoring sheets and tools were included for the Boards consideration.

Dyer to confess, is in violation of the 'Doctrine of Unconstitutional Conditions.'

Next, Mr. Dyer argues that the Indeterminate Sentencing Review Board violated his Constitutionally protected due process rights under the 14th Amendment to the Constitution of the United States, where it based its decision to deny parole on an unreasonable determination of the facts in light of the evidence.

And lastly, Mr. Dyer argues that the Board violated a mutual agreement/promise made prior to the Obert-Meyers hearing, where the ISRB agreed to release Mr. Dyer when his minimum term expired, in violation of the Contract Clause of the Washington State and U.S. Constitutions.

IV. GROUNDS FOR RELIEF - ARGUMENT

1. The Board abused its discretion in finding Mr. Dyer not parolable, as its decision relies upon speculation; conjecture; erroneous evidence; and archaic recommendations of both the Prosecuting Attorney and Sentencing Judge.
Further, the addition of an additional 60 Months to Mr. Dyers already excessive minimum term is not based upon sufficient written reasons.

Courts review parole eligibility decisions to ensure the ISRB exercises its discretion in accordance with the applicable statutes and rules. The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts. In re Pers. Restraint of Addleman,

151 Wn.2d 769, 776-77, 92 P.3d 221 (2004).

The legislature requires the ISRB to "attempt to make decisions reasonably consistent with [the SRA] ranges, standards, purposes, and recommendations [of the sentencing judge and prosecuting attorney]" and "give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole." RCW 9.95.009 (2), (3). In making its decision on an inmate's parolability, the ISRB is guided by WAC 381-60-160, which provides:

> The board panel shall render a decision of either parolable or not parolable on each case heard under this chapter....
>
> Examples of adequate reasons for a finding of nonparolability include, but are not limited to:
>
> (1) Active refusal to participate in available program or resources designed to assist an offender to reduce the risk of reoffense (e.g., anger management, substance abuse treatment).
> (2) Serious and repetitive disciplinary infractions during incarceration.
> (3) Evidence of an inmate's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, continued use of illegal substances).
> (4) Statements or declarations by the inmate that he or she intends to re-offend or does not intend to comply with conditions of parole.
> (5) Evidence that an inmate presents a substantial danger to the community if released.

Although this list of reasons that may support an ISRB finding of nonparolability is not exhaustive, the list should guide the ISRB's decisions. In addition, ISRB 2.050 also

lists five "[f]actor's considered in setting a new minimum term:" (1) The length of time previously incarcerated for the offense of conviction: (2) The SRA ranges of the original offense of conviction: (2) The original recommendation of the committing Judge and Prosecuting Attorney: (4) Whether the parole violation resulted in an SRA conviction and any jail time as a result of that conviction; (Not applicable to Mr. Dyer's case), and (5) The nature of ... the original offense of conviction..."

These are not just factors which may be considered by the Board at its discretion. Rather, they are "factors considered" by the ISRB when setting a new minimum term. The phrase "factors considered" indicates that the Board itself recognizes a mandatory statutory duty to consider these factors when setting a new minimum term. ISRB rule 2.041 thus reinforces the conclusion that the ISRB must consider these factors in its written decision when it sets an exceptional minimum term.

In the present case, the record from the 2010 Parole Eligibility Hearing does not encompass any of these factors in its decision to deny Mr. Dyer parole.

As already recognized and pointed out by this Court, Mr. Dyer does not actively refuse to participate in available programs or resources designed to assist him in reducing his risk of reoffense. Rather, [Mr.] Dyer participated in several

offender change programs. He does not actively refuse to participate in the sex offender treatment program; rather, he is ineligible for treatment in that program because he denies guilt. The record does not reflect that Mr. Dyer has serious and repetitive disciplinary infractions but instead shows that he maintains good behavior in prison. He does not engage in criminal conduct in prison and sates that he will maintain lawful behavior in released." See Pers. Restraint of Dyer, 157 Wn.2d 358, 364; (Dyer II).

In the Board's latest decision denying Mr. Dyer parole, the Boards concedes "little has changed" since the Board last saw Mr. Dyer. But then concludes that, the nature of Mr. Dyer's offense coupled with his lack of treatment and indications of high psychopathy create considerable concerns about public safety should he be released." See Board Decision at Page 14, attached as Exhibit - N.

As it is apparent in reading through the decision issued by the Board this decision was the result of what can only be described as less than meaningful consideration; and, was based upon mere speculation and conjecture.

For example, the Board is required based upon its own rules to consider the length of time previously incarcerated for the offense of conviction. As we see at page 2 of the Boards decision, it is stated that "Mr. Dyer has served approximately 259 months in prison." This is incorrect.

Mr. Dyer was committed to the Department of Corrections, under Board Jurisdiction on February 19, 1982, and without going into a comprehensive calculation, we can easily conclude that from February 1982 to February 2010 is twenty eight years, or 336 Months. This only goes to show the level of review actually conducted by the Board in this matter.

Further, the Board relied upon recommendations of both the original sentencing judge and prosecuting attorney. Both recommendations being made at Mr. Dyer's original sentencing, when Mr. Dyer stood convicted of three (3) counts of First Degree Rape; one (1) count of Unlawful Imprisonment; and, one (1) count of First Degree Burglary. Subsequently, the Court of Appeals in an unpublished decision dismissed three of the five counts of conviction, leaving Mr. Dyer convicted of two (2) counts of Rape in the First degree. It is thus clear, that the recommendations made by the sentencing judge and prosecuting attorney, and used in the Boards consideration are based upon facts and circumstances not presently lodged against Mr. Dyer. Thus they should have been disregarded.

Also, in the Board's review of the facts regarding the two remaining First Degree Rape convictions, they comment that there is considerable evidence to support his convictions. They quote at great length the evidence they feel is "considerable". However, as shown herein above the Board based this on a erroneous reading of the facts as contained

in the record of this case. (See footnotes at pages 7 through 20 of this brief) (e.g., At page 12 the Board states: "The investigation also confirmed that Mr. Dyer owned a Comet," when in actuality the record concluded that Mr. Dyer did not own a Comet).

This discussion by the Board however was unnecessary as this Court has already ruled in Dyer II; "The decision turns on a 'discretionary assessment of a multiplicity of imponderables, entailing primarily what a man is and what he may become rather than simply what he has done. See Pers. Restraint of Dyer, 157 Wn.2d 358, 363 (2006). However, the entire Board decision is based upon the Boards thoughts on what Mr. Dyer allegedly did, rather than what he has become through his incarceration and what he could become should he be given the opportunity.

Furthermore, during Mr. Dyer's December 4, 2001 Board Hearing, Mr. Dyer was assured by the Board that it would not consider the overturned convictions in its determination of parole.

> LAHTINEN: "First off, I wanted to take care of a few matters here. Last time I objected to the prosecutor, the Kitsap county prosecutor's office recommendation. I wanted also to renew that objection to that and also wanted to at least flesh it out a bit more. It seems to me, in reviewing Mr. Dyer's record, there has been consistently both with the prosecutor's office here and also different hearings and various psychological reports, taken the assumption that the crimes overturned on appeal, they have been assumed to be convictions. I wanted to object or put that on the record that I object to consideration of those facts to be assumed..."

AUSTIN: "Your objection is well taken, Counsel. We try not to sign on what we - obviously, police agencies and prosecutors make applications to us. We consider the source and generally that the view that they had their chance to prove this to the jury, and we don't regard ourselves as a second -- we are not a Board of Clemency and Pardons so that we overrule courts and by the same token, we try not to get in a position where we are the second bite for the prosecutor."

LAHTINEN: "... I just don't want there to be any reference or any consideration of a crime that he had not been convicted of."

AUSTIN: We try to be very careful about that, for the reasons I've indicated. The prosecutor is not entitled to a second bite."

Yet as we clearly see at pages 5 and 6, the Board entertains in its opinion why the three counts were overturned, concluding that, "Because these convictions were overturned on a technicality, he was not exonerated of them." Then the Board goes on to state that, "... file materials ... indicate that in 1982, Mr. Dyer admitted to his prison classification counselor that he had "only victimized his wife" and not the other two rape victims." Both of these statements made by the Board clearly show their reliance upon the three overturned counts. Reliance which is not only improper, but unlawful.

Mr. Dyer has consistently maintained his innocence of all charged crimes. This is the very reason the Board consistently states as to why Mr. Dyer is not eligible for the sex offender treatment program. Furthermore, the Board provides absolutely no basis for the context or frame work surrounding this alleged admission. It's as if the Board

pulls it from thin air in an attempt to bolster their unsupported denial of Mr. Dyer's parole.

In any event, since the Board is consistently bringing this alleged admission into Mr. Dyer's parole eligibility hearings, Mr. Dyer argues that even if one were to take the position that something was said; it's not admissible. The Board claims that this statement was made to a Prison Classification Counselor. It is noteworthy that Prisoners are not afforded counsel during classification hearings.

This Court has previously ruled;

> "The Sixth Amendment guarantee of assistance of counsel attaches when the State initiates adversarial proceedings against a defendant. (Citing Brewer v. Williams, 430 U.S. 387, 401 S.Ct. 1232, 51 L.Ed.2d 424 (1977)). After the right has attached, a government agent, [DOC Official] may not interrogate a defendant and use incriminating statements the defendant made in the absence of or without waiver of counsel. The accused need not make an affirmative request for assistance of counsel. (Citing Id. at 401 - 404).

State v. Everybodytalksabout, 161 Wn.2d 702, 166 P.3d 693, 707 (2007).

This Court went on to hold that;

"The right to assistance of counsel is specific to a particular offense and protects the accused throughout a criminal prosecution and following conviction. (Citing McNeil v. Wisconsin, 501 U.S. 171, 175, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991).

Everybodytalksabout, supra.

The Sixth Amendment provides a right to counsel ... even when there is no interrogation and no Fith Amendment applicability. Fallers v. United States, 540 U.S. 519, 524,

124 S.Ct. 1019, 157 L.Ed.2d 1016 (2004).

Thus, it is clear that the inclusion and consideration of this alleged blanket confession, without some form of basis regarding its conception and context is improper and should have been disregarded by the Board.

Anther critical piece of evidence relied upon by the Board is the most recent psychological evaluation performed on Mr. Dyer by Dr. Patricia Pereira, wherein Dr. Pereira assesses Mr. Dyer as a high risk for violence and re-offending.

Interestingly however, the last two DOC psychologists to evaluate Mr. Dyer found him to be a low risk to reoffend. See Exhibits - V and W respectfully. Both Dr. Carter and Dr. Monson gave Mr. Dyer extremely low scores of 5 and 3, respectfully, on the PCL-R, while Dr. Pereira came up with a score of 27! She also came up with a score of 6 on the Static-99 (which was not used by Carter or Monson), seemingly confirming a high risk of re-offense. Dr. Pereira's 11 page report is attached hereto as Exhibit - U. Her scoring sheets are located at Exhibit - Q, @ Ex. 20.

Because of the huge discrepancy between the new psychological report and the last two, Mr. Dyer retained psychologist Brett Trowbridge to review all three reports and the scoring sheets of the evaluations. Dr. Trowbridge was also provided with various objective information about Mr. Dyer's case, primarily from court records. See

Exhibit - Q, @ Ex. 19.

As Dr. Trowbridge explains, Dr. Pereira's scoring in the Static-99 is simply wrong. Attached are relevant portions of the manual, as revised in 2003. [This is the version used by Dr. Pereira since it was current up until October, 2009. As Dr. Trowbridge notes, Dr. Pereira did not use the "revised" version that came out in October.] See Exhibit - Q, @ Ex. 21. The scoring is based on verifiable, objective criteria, not on any subjective evaluation of the subject. For example, item number four is "Prior Non-Sexual Violence." According to the manual at page 27, there must be a separate non-sexual violent conviction to score this item. On page 28, the manual specifically explains that convictions overturned on appeal do not count and arrests/charges do not count. Mr. Dyer's only convictions are for two counts of rape in the first degree against two different victims, for which he his currently serving time. Nevertheless, Dr. Pereira somehow gave Mr. Dyer a 1 on this item. As Trowbridge explains, the correct score is 0. See Exhibit - Q, @ Ex. 19(a). Dr. Pereira made additional mistakes on items four and five, ultimately resulting in a score of 6, rather than the correct score of 2. Even on the 2003 version of the Static-99, a score of 2 results in only a "Medium-Low" risk of re-offense, which corresponds to 9% after five years and 13% after ten years. A score of 6 or above, however, places the prisoner in the

"High" risk catagory.

Dr. Pereira should not be faulted for using the version of the Static-99 that was still in effect as of the date of her report. As Dr. Trowbridge notes, however, the manual was revised as of October, 2009. Exhibit - Q, @ 19(a). It now takes into account "the fact that research consistently shows that elderly offenders (including sex offenders and especially rapists) are much less likely to re-offend if released than their younger counterparts. Id. Dr. Trowbridge himself wrote an article in 2004 concerning some of this research. Exhibit - Q, @ Ex. 19(b). On the older version, the offender received a score of 1 if he was younger than 25 and 0 if he was older. On the new version, the scores become negative after the age of forty, reaching -3 at age 60. Dr. Trowbridge therefore gives Mr. Dyer a score of -1 on the revised Static-99, which is essentially off the scale since no norms are provided for negative scores. Even of Mr. Dyer had a higher score of 0, however, he would be a very low risk to reoffend.

Also, Dr. Pereira's scoring on the PCL-R is baffling. As Dr. Trowbridge explains, the scores on many of the items cannot be reconciled with the verified facts concerning Mr. Dyer. See Exhibit - Q, @ Ex. 19 (a) 3-4. Where Dr. Trowbridge states: "In my view the high scores she [Dr. Pereira] assigns on these factors suggest she is either not

well-versed in how the instrument is supposed to be scored, or that she is not familiar with Mr. Dyer's history and background." Id.

A few examples should suffice to demonstrate the absurdity of Dr. Pereira's scoring. Relevant portions of the manual are attached as Exhibit - Q, @ Ex. 22. On Item #12 (early behavioral problems) Dr. Pereira scored a 2. The manual says that this applies to problems from ages 12 and below. There is nothing mentioned in Dr. Pereira's report or in any file information that suggests any problems in that age range. On Item #13 (lack of realistic long-term goals) Dr. Pereira scored a 2. The PCL-R says that this "describes an individual who demonstrates an inability or unwillingness to formulate and carry out realistic, long-term plans and goals. He tends to live day to day and to change his plans frequently. He does not give serious thought to the future nor does he worry about it very much." Manual at p.42. This could not possibly apply to Mr. Dyer who has pursued long term legal, financial, and family projects. On factor #14 (impulsivity) Dr. Pereira scored a 2. There is absolutely nothing in Mr. Dyer's background, in the free world or in prison, that even hints at impulsivity. On factor # 15 (irresponsibility) Dr. Pereira scored a 2. This item "describes an individual who habitually fails to fulfill or honor obligations and commitments to others. He has little or no sense of duty or loyalty to

family, friends, employers, society, ideas, or causes." Manual at P.43. It is quite insulting to suggst that this factor applies to Mr. Dyr when he loyally served his country in Vietnam, held a steady job at the Naval Shipyard until the time of his arrest, and has managed to support his family for decades from within the confines of prison.

While some of these scores are inexplicable, it appears that some are based on Dr. Pereira's assuption that Mr. Dyer was lying about nearly everything he said during the interview. That could explain the scores of 1 on Factor #1 (glibness/superficial charm), 2 on Factor #2 (grandious sense of self-worth), and 2 on Factor #4 (pathological lying). In fact, as acknowledged by this Court in Dyer II, Mr. Dyer has had many accomplishments both before and during his incarceration.

Mr. Dyer has provided a separate statement in which he attempts to explain how some of Dr. Pereira's misunderstandings may have come about. See Exhibit - Q, @ Ex. 23. He attempted to provide Dr. Pereira with documentation to verify his claims, but she refused to review them. It is puzzling why Dr. Pereira would jump to the most negative conclusions in the absence of a careful review. Had she merely read the two previous DOC psychological reports, she would have seen accurate summaries of Mr. Dyers hystory.

In addition to being unfamiliar with Mr. Dyer's file

materials, Dr. Pereira clearly did not understand some of the things he was trying to explain. She believed, for example, that Mr. Dyer contradicted himself by claiming his wife supports him and also that she initiated the charges against him. See Exhibit - U, at page 4. In fact, Mr. Dyer does have the support of his current wife, Renetta, and it is his ex-wife, Ethal Accord, who first initiated any criminal charges against Mr. Dyer. To some extent, Mr. Dyer was misquoted in the report, or his responses are presented in such a jumbled way that they appear to be nonsensical. See Exhibit - Q, @ Ex. 23.

In addition, in support of Mr. Dyer's claim that Dr. Pereira conducted an erroneous evaluation, Mr. Dyer obtained and included herein an equally erroneous evaluation conducted by Dr. Pereira. See Exhibit - P. This evaluation was also corrected by Dr. Trowbridge. It is clear based on this that Dr. Pereira has a pattern of performing incorrect assessments.

As such, the Board should have considered the report of Dr. Trowbridge, provided to the Board by Mr. Dyer's counsel showing the extreme disparity between Pereira's report, the past psychological reports, and the manuals, which should have been enough for any rational person to deduce the problems with Dr. Pereira's report.

As the Legislative intent if clear, that once an inmate serving a life sentence serves the discretionary minimum term

set by the Indeterminate Sentence Review Board, the inmate must be 'considered' for parole at the expiration of that time. Powell v. Ducharme, 998 F.2d 710, Certiorari denied 116 S.Ct. 91, 516 U.S. 825, 133 L.Ed.2d 47 (C.A.9 (Wash.) 1993); Mr. Dyer should be granted relief as the reasons relied upon by the "full panel" of the Board to find Mr. Dyer not parolable were either; 1) erroneous; 2) inadmissible; or, 3) improper. As such, the basis for the Board's decision was based upon mere speculation, and conjecture without any meaningful consideration of parole, in violation of well established Legislative intent, and Due Process protections.

The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts. In re Pers. Restraint of Addleman, 151 Wn.2d 769, 776-77, 92 P.3d 221 (2004). That is exactly what happened once again in this case. As Such, this Court is being requested to either 1) Order the parole of Mr. Dyer; or, 2) Remand back to the Parole Board with directions to immediately release Mr. Dyer.

The Board Failed to Comply with RCW 9.95.009(2) in violation of Mr. Dyer's Due Process Rights as protected by both the State and Federal Constitutions.

When setting minimum terms the ISRB's decision must be

"reasonably consistent with the ranges, standards, [and] purposes" of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A. RCW, "and the minimum term recommendations of the sentencing judge and the prosecuting attorney ..." RCW 9.95.013; see also RCW 9.95.009 (2). The ISRB "shall not, however, until his or her minimum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release." RCW 9.95.100. "[B]etween a statutory requirement that a prisoner is not to be released until rehabilitation is complete and a duty to attempt consistency with the SRA, the statutory requirement trumps the duty to attempt. The two duties, however, are not mutually exclusive but can be exercised in harmony with each other." In re Pers. Restraint of Addleman, 151 Wn.2d 769, 775, 92 P.3d 221 (2004).

Though the ISRB is not bound to the duty of consistency, the legislature nevertheless bound the ISRB to the duty of providing "adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges adopted" under the SRA. R.C.W. 9.95.009 (2). The ISRB's "reasons for an exceptional sentence must be apparent from the record and not chosen 'out of thin air'" In re Pers. Restraint of Locklear, 118 Wn.2d 409, 417, 823 P.2d 1078 (1992) (quoting In re Pers. Restraint of Robles, 63 Wn. App. 208, 218, 817 P.2d 419 (1991)); see also In re

Pers. Restraint of Myers, 105 Wn.2d 257, 266, 714 P.2d 303 (1986) (Holding "imposition of a 48-Month (exceptional) sentence in the absence of adequate reasons constituted an abuse of discretion.")

In other words, "absent exceptional circumstances and written reasons justifying departure, the Board's minimum term decisions under section .009 (2) must conform to the SRA." In re Pers. Restraint of Powell, 117 Wn.2d 175, 187, 814 P.2d 635 (1991) (citing Addelman v. Board of Prison Terms & Paroles, 107 Wn.2d 503, 511, 730 P.2d 1327 (1986)). Furthermore, the length of the exceptional sentence must be proportionate to the reasons given by the ISRB. Locklear, 118 Wn.2d at 417. These requirements ensure sufficient oversight of ISRB decisions. Id. at 418; Myers, 105 Wn.2d at 262 (observing the clear limitation imposed on the Board's discretion by RCW 9.95.009 (2)").

To comply with RCW 9.95.009 (2) the ISRB must provide adequate reasons to justify imposing an exceptional minimum term sentence, and the departure from the standard sentence must be proportionate to its reasoning. Even though the ISRB may not release a prisoner until in its opinion the prisoner is rehabilitated, its opinion is not sacrosanct, and the more the minimum sentence departs from the SRA standard the more justification is required.

In this case, the reasons for denying parole remain the

same, while the already immense term faced by Mr. Dyer continues to grow. This cannot be justified nor allowed in a system, such as ours, with Constitutional protections.

The Ninth Circuit Court of Appeals agreed with this reasoning in Cooke v. Solis, ___ F.3d ___, Case No. 06-15444. Holding that the California "some evidence" requirement created a liberty interest in parole. (Slip Opinion attached at Exhibit X).

In that case:

> Mr. "Cooke was convicted of attempted first degree murder. He was sentenced to seven years to life in prison with the possibility of parole, plus a four year enhancement for using a firearm. In November 2002, the California Board of Prison Terms held a hearing to determine whether Cooke was suitable for parole. At the conclusion of the hearing, the Board denied him parole." "The Board based this determination on the following findings:
>
> "Firstly, the commitment offense was carried out in an especially cruel and callous manner. It was carried out in a premeditated manner. It was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. .... Institutionally, [the inmate] has not yet fully participated in beneficial self-help and/or therapy programming. He has not yet developed a marketable skill that can be put to use upon release. He's had two [disciplinary violations] ... One ... for ... possession, trafficking marijuana.... [A]nother ... for disobeying rules and regulations. The psych report dated 2/14/2000 is ... favorable. But it lacks credibility with myself and with the Panel.... [T]he prisoner does need self-help and/or therapy programming in order to face, discuss, understand, and cope with stress in a nondestructive manner. And to face, discuss, and understand the causative factors that led to the life crime. Until progress is made, he continues to be unpredictable and a threat to others. ....He needs to complete a vocation."

The Ninth Circuit Court of Appeals went on to recognize that "State parole systems "may create liberty interests in

parole release that are entitled to protection under the Due Process Clause." Bd of Pardons v. Allen, 482 U.S. 369, 371, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987) (citing Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 12, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979)); Holding California's "some evidence" requirement is a component of the liberty interest created by the parole system of that state.

After holding that the "some evidence" regulation created a liberty interest, the Ninth Circuit Court of Appeals summarized that, "each of the Board's findings (other than those regarding the circumstances of the commitment offense) lacked any evidentiary basis. ... Accordingly, [the Circuit Court held] that the ... decision was " 'based upon an unreasonable determination of the facts in light of the evidence.' "

The Washington Parole system is bound by a very similar statutory requirement, albeit, called by a different title. In Washington the standard is coded under RCW 9.95.009 (2) Which requires the ISRB to provide adequate written reasons to justify imposing an exceptional minimum sentence, and that departures from the standard range sentence must be proportionate to its reasoning. In short, like California, the Washington system has to have some factual basis other than the facts of the crime of incarceration to justify consistently denying parole. Further, the more the minimum

term departs from the SRA guidelines; the more justification is required.

Justice Sanders seemingly agreed with this reasoning, where in his decent in Dyer II he stated:

> "Implicit in this statutory scheme is the rehabilitative nature of punishment and parole as the next step in a prisoner's reentry into free society. We should never lose sight of the fact that Dyer, like all prisoners, is not a monster but "human [] like us and .. capable of myraid courses of action, honorable and dishonorable,...they will act honorably, given a real choice. This means that we provide them with the resources to achieve self-determination, dignity, and self respect." John Irwin, Prisons in Turmoil 248 (1980). In other words, a man is "more than the sum of [his] worst acts." Marie Deans, Working Against the Death Penalty, in Writing for Their Lives: Death Row U.S.A. 59, 62 (Marie Mulvey-Roberts ed 2007).

Here, forgetting the above, the ISRB added another 60 months to Mr. Dyer's already excessive minimum sentence, bringing his total minimum sentence to Five Hundred and Sixty (560) Months. The standard range sentence under the SRA for the crimes Mr. Dyer is currently serving time for is 63 to 88 Months. Mr. Dyer's current minimum sentence in therefore Four Hundred and Fifty-Two (452) Months, or Thirty Seven (37) Years beyond the 'high end' of the SRA standard range. As shown throughout this petition and summarized below, the Board has not provided adequate written reasons for an exceptional sentence of this magnitude.

In essence, as in past decisions, the ISRB commended Mr. Dyer for his self improvement, admitted that little has changed; but, ultimately concluded that until Mr. Dyer

participates in a Sex Offender Treatment Program, he remains at rist to repeat those behaviors in the community.

As discussed in previous PRP's and acknowledged by Justice(s) Sanders; Alexander' C. Johnson; and, Chambers; nothing in the record links Mr. Dyer's refusal to admit guilt to a higher risk of re-offending. To the contrary, however, both studies conducted by the Washington State Institute for Public Policy support the clonclusion that Mr. Dyer fits in the category of those offenders who present a lower risk of re-offending, than even those offenders who admit guilt, and successfully participate in the Sex Offender Treatment Program.

While it is true that the Board did rely heavily on the most recent psychological evaluation conducted on Mr. Dyer, which concluded that Mr. Dyer was at a high risk to re-offend; it is clear based upon the facts presented both to this Court, as well as the Board prior to Mr. Dyer's parolability hearing that that psychological evaluation was unreliable.

The Decision of the Board Shocks the Judicial Conscious.

Simply put, one could easily conclude that the decision of the Board in this case goes as far as to even shock the judicial conscious. The test for whether a particular action shocks the judicial conscience must be appropriately tailored to the factual context at hand and "must be determined by balancing ... liberty interests against the relevant state

interests. Yongberg v. Romeo, 457 U.S. 307, 321, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982). In order to preserve, "constitutional proportions of substantive due process," a court must undertake "an excat analysis of circumstances before any abuse of power is condemned as conscience shocking."" County of Sacramento v. Lewis, 523 U.S. 833, 850, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

In this case, the ISRB demands that Mr. Dyer admit guilt and undergo sex offender treatment before it will consider granting parole. Not only is the Board's demand not judicially justified, see Ecklund, 139 Wn.2d at 177, ("the Board may not demand that Ecklund confess ... in order to obtain parole."); but its enforcement violates the doctrine of unconstitutional conditions; conduct which can only be described as shocking to the judicial conscience.

The ISRB's reasoning presents an admitted catch-22: as a factually innocent person would be forced to admit to a crime not committed in order to gain favor from his government; which in turn would foreclose any opportunity the factually innocent prisoner would ever have of clearing his or her name. In Mr. Dyer's case this factor in conjunction with his well documented rehabilitation, low recidivism risk, model prison behavior, and continued maintenance of his responsibilities; both financially and emotionally to his wife and children: only enhances the shocking nature of the Boards conduct.

See Exhibit - R.

For the reasons above this Court is asked to find that the Board abused its discretion, violating Mr. Dyer's Due Process rights, by entering a decision which is shocking to the judicial conscience. Thus this Court is asked to enter its decision granting Mr. Dyer's parole/release.

1. The ISRB's decision violates the 'Doctrine of Unconstitutional Conditions' as Mr. Dyer is being placed in a position where he must waive a constitutional right in order to gain the favor of his government.

Under the Doctrine of Unconstitutional Conditions, the government cannot condition the receipt of its benefit upon the non-assertion of a constitutional right, even if the benefit is merely a privilege. As articulated by the United States Supreme Court:

> "[T]he power of the state in that [ability to deny a privilege or benefit altogther] is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the Untied States may thus be manipulated out of existence."

Frost & Frost Trucking Co. v. R.R. Comm'n of Cal., 271 U.S. 583, 593-94, 46 S.Ct. 605, 70 L.Ed. 1101 (1926); see also Speiser v. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958) (stating, a state may not indirectly "produce a result which the State could not command directly");

Sherbert v. Verner, 374 U.S. 398, 404 n.6 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (citing cases "for examples of conditions and qualifications upon governmental privileges and benefits which have been invalidated because of their tendency to inhabit constitutionally protective activity.")

It must be remembered that the absence of a protected liberty interest is not dispositive of the question whether that state may constitutionally condition the privilege of parole on selfincrimination. See State v. Imlay, 249 Mont. 82, 813 P.2d 979 (1991).

The question presented in Imlay is remarkably similar to the one here: Whether an inmate could be compelled, as a prerequisite to admission in a sexual therapy program, to admit guilt where completion of such a program was required in order to allow him to keep his suspended sentence. Id. at 83. The Montana Supreme Court found that compelling the inmate to do so would cause a Fifth Amendment violation, absent any grant of immunity. Id. at 91. So finding, the Montana Supreme Court reasoned:

> "Even though the defendant has already been convicted of the crime that he denies, our system still provides, as noted in the Thomas [v. United States, 368 F.2d 941 (5th Cir. 1966]) decision, for opportunities to challenge that conviction. For example, the defendant still had the right to challenge his conviction, based on newly discovered evidence, or by collateral attack. These are important rights guaranteed to every defendant under our criminal justice system, but would be rendered meaningless if the defendant could be compelled to admit guilt as a condition of his continued freedome."

Similarly here, even though Mr. Dyer has already been convicted of the crimes he denies, he still has the right to challenge those convictions based on newly discovered evidence or some other collateral attack. See RCW 10.73.100.

It should be noted, that like the Montana Supreme Court, this Court also recognizes Fifth Amendment Violations regarding the granting of parole. See again Ecklund, 139 Wn.2d at 173 ("'[t]he State may validly insist on answers to incriminating questions and properly administer its probation system so long as the State recognized that the answers may not be used in a subsequent criminal proceeding.'" (quoting State v. King, 130 Wn.2d 517, 529, 925 P.2d 606 (1996)).

As such, should Mr. Dyer confess in an attempt to gain the favor of the Board, he would destroy any hope he has of eventually clearing his name. Further, any such compelled confession would also devastate any defenses Mr. Dyer would have during a Civil Commitment hearing. An intent the Board made all too clear in its latest decision. See Exhibit - N at page 9, where it states:

> "Prior to his next .100 hearing, the Board would request that he receive a forensic psychological evaluation to determine whether he meets the criteria for civil commitment under Chapter 71.05 RCW."

Mr. Dyer has meet the burdens to have his parole granted regardless of whether the Department of Corrections allows him to attend sex offender treatment. This couldn't have been expressed more clearly than by Justice Sanders in Dyer I:

"His documented rehabilitation, low recidivism risk, model prisoner behavior, and Herculean efforts to maintain his responsibilities as husband and father establish his parolability."

Moreover, the ISRB provides inadequate reasons to impose an exceptional sentence, exponentially disproportionate to that which would be imposed under the SRA.

Thus, this Court is requested to find that the parole board abused its discretion; holding that the Boards decision is in violation of the doctrine of unconstitutional conditions, and as such is requested to order the release of Mr. Dyer.

3. The ISRB violated the terms of a mutual agreement to provide "all relief requested" in a PRP filed by Mr. Dyer in 1986, in violation of the Contract clause of the State and Federal Constitutions.

On June 30, 1986, Mr. Dyer through counsel James Sells of Bremerton, Washington filed a Personal Restraint Petition under COA case No. 10053-0-II, wherein Mr. Dyer requested that the Court grant the following relief:

"The Court should order a Board hearing in which the Board is directed to set a minimum term consistent with the reduced number of convictions, and reasonably consistent with the provisions of the SRA. If Petitioner has served sufficient time to meet that minimum, he should be release immediately.
In the alternative, Petitioner should be re-sentenced by the sentencing court on the basis of the reduced number of convictions. That sentencing should be done in accordance with the SRA."

See Exhibit - C at page 11. (Emphasis added)

Following the filing of said PRP, the ISRB through its attorneys in the AG's Office, conceded error and agreed to the following relief:

"Based upon the above, as **respondent will provide all relief requested by petitioner**, respondent respectfully requests petitioner's personal restraint petition to be dismissed with prejudice as petitioner's petition is moot."

See Exhibit - D (Emphasis Added)

Following the agreed upon settlement, the ISRB re-determined Mr. Dyer's minimum term and re-set it at 240 Months from the original 600 Months. See Exhibits G & H.

As Mr. Dyer had not yet served enough time to be released, based upon the 240 Month minimum, he remained in prison. However, based upon the Board's promise to grant "all releif", Mr. Dyer should have been released immediately upon completion of the 240 Month minimum term, short constitutionally guaranteed good time credits.

The year of this writing is 2010 and the Board has yet to fulfill its promise made back in 1986. Twentyfour years ago.

A promise, is defined under the Contract Clause of both the State and Federal Constitutions as a manifestation of an intention to act or to refrain from acting in a specified way, so made as to justify a promise in understanding that a commitment has been made. Swanson v. Liquid Air Corp., 118 Wn.2d 512, 826 P.2d 664 (1992); Brady v. Daily World, 105 Wn.2d 770, 718 P.2d 785 (1986).

A promise is an undertaking, however expressed, either that something shall happen, (the release of Mr. Dyer upon completion of the initial 240 Month minimum term set by the

Board), or that something shall not happen in the future. Plumbing Shop Inc. v. Pitts, 67 Wn.2d 514, 408 P.2d 382 (1965). A promise, in the sense of commitment, must be distinguished from a description of a future event. Hansen v. Virginia Mason Medical Center, 113 Wash. App. 199, 53 P.3d 60 (2002). The law of contracts has developed so that rules now exist which bind parties to their promises, giving effect to the words used and imposing obligations on the promisors. Multicare Medical Center v. State Dept. of Social and Health Services, 114 Wn.2d 572, 790 P.2d 124 (1990).

While a promise is a necessary element in almost every contract, frequently the promise is coupled with other elements such as physical acts, recitals of fact, and the immediate transfer of property. Thus, a contract is not the promise standing by itself, but instead the entire complex of these elements. Corbit v. J.I. Case Co., 70 Wn.2d 522, 424 P.2d 290 (1967); Calamari & Perillo, Contracts, ss 1-1 at 2 (5th Ed. 2003).

In this case, the contract is simple. Mr. Dyer waived his right to a judicial determination of his PRP, in exchange for the promised relief of a re-determination of his minimum term and, immediate release following the completion of that term. This was both the understanding of Mr. Dyer, see Exhibit - S, and that of his attorney Mr. Sells, see Exhibit - T.

It is clear based upon the record that Mr. Dyer fulfilled his end of the agreement, the Board did not. This promise was a valid promise and both parties were, and still are required to comply with their end of the bargain.

To be valid, a promise must set forth an express undertaking that is both specific in purpose and with a definable result. A promise is considered illusory if it is so indefinite that it cannot be enforced, or if its performance is optional or discretionary on the part of the claimed promisor. Cascade Auto Glass, Inc v. Progressive Cas. Ins. Co., 135 Wash. App. 760, 145 P.3d 1253 (2006). An illusory promise creates no obligation on the promisor. Lane v. Wahl, 101 Wash. App. 878, 6 P.3d 621 (2000). Thus, a promise must be precise and, when coupled with other elements of a contract, must be identifiable so it is specific enough to enforce. Goodpaster v. Pfizer, Inc., 35 Wash. App. 100, 665 P.2d 414 (1983).

In the matter before this Court, the promise was as specific as it could be: "**respondent will provide all relief requested by petitioner**".

Thus, this Court is asked to order the Board to comply with its 1986 promise and immediately release Mr. Dyer from confinement.

IV. CONCLUSION

THE ISRB or Board abused its discretion in once again finding Mr. Dyer not parolable. This abuse of discretion violated Mr. Dyer's rights to Due Process as that decision was not based upon sufficent written reasons and was based upon an erroneous and inaccurate understanding of the facts. Further, the addition of an additional 60 Months was in violation of RCW 9.95.009 (2).

Furthermore, the requirement that Mr. Dyer enroll in Sex Offender Treatment Program, with the requirement that he confess first, is in violation of the Doctrine of Unconstitutional Conditions, and should be found to shock the conscience of this judicial branch. Also, the Board violated its promise to release Mr. Dyer after the completion of the 240 Month minimum term set in 1986.

As such, this Court is being asked to order the immediate release of Mr. Dyer; or, in the alternative remand back to the ISRB with explicit directions to release Mr. Dyer immediately.

Respectfully Submitted on this 18 day of July, 2010

Richard James Dyer
Petitioner Pro Se

Exhibit - U

Dr. Pereira's Evaluation of Mr. Dyer

DISCLOSABLE

PSYCHOLOGICAL EVALUATION

MCNEIL ISLAND CORRECTIONS CENTER
STEILACOOM, WASHINGTON

NAME: DYER, Richard **DOC #: 281744**

DATE OF BIRTH: 12/20/1948 **AGE: 51**

EVALUATOR: P. PEREIRA, PH.D **REPORT: 06/11/09**

REASON FOR REFERRAL

Mr. Dyer was referred for an instrument supported psychological evaluation as part of a .100 Hearing for the Indeterminate Sentence Review Board. Mr. Dyer consented to and cooperated with the evaluation. In March 2009, medical records indicated that a psychological evaluation report was not required at that time, however, might be required at a later date.

The purpose of this report is to provide a psychological evaluation for Classification Staff, the Indeterminate Sentence Review Board, Community Corrections Officers, Risk Management Specialists, and care providers within the Department of Corrections who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70. 02 and Department of Corrections Policy 640.020. It shall not be released to individuals outside DOC without the individual's consent or unless otherwise authorized by law. Mr. Dyer was advised of the purpose of the evaluation, departmental policy regarding information practices, and of the limits of confidentiality.

The health care information is expected to be used by classification and other staff who have a legitimate need to know in order to effectively manage the inmate within the Department of Corrections. This record is replicated in Mr. Dyer's health record.

Disclosable: Mr. Dyer may request a copy of this report. Before receiving a copy of the report, Mr. Dyer must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee.

ALERTS TO CORRECTIONAL STAFF

None

SOURCES OF INFORMATION

Clinical Interview, Medical Records, Mental Health Records, Central File

CRIMINAL HISTORY/OFFENSE BEHAVIOR

Official Version of the Current Offense: Available reports indicated that Mr. Dyer was convicted of Rape First Degree. The Indeterminate Sentence Review Board originally set a minimum term of 600 months which was reduced to 240 months as a result of a 1986 Obert-Meyers Review.

According to the reports, on January 27, 1980, a woman accepted a ride from Mr. Dyer and his crime partner. When she realized they would not let her out, she attempted to stop the vehicle. She was apparently struck by Mr. Dyer, thrown in the back seat, struck again, and held down until the car stopped on a dirt road. Her clothes were removed and she was raped by Mr. Dyer. She was tied with a rope, driven to a residence, taken to the bedroom, and tied to the bed. When she began screaming she was gagged and cotton taped over her eyes. The crime partner had intercourse with her followed by Mr. Dyer. Reports indicated that the victim was forced to have intercourse on approximately eight instances while at the residence, that, in the morning, she was driven from the residence, and left untied in a wooded area. She apparently suffered numerous bruises on the face, jaw, neck, right wrist, left knee, right rib area, and had a laceration on the inside corner of her mouth that required thirteen stitches.

According to the reports, in another incident in August 1980, another victim refused to accept a ride from two strangers. The car apparently returned and Mr. Dyer and his crime partner forced the victim into the car. She was blindfolded and driven to a residence. Reports indicated that, at the residence, her clothes were removed, she was tied to the bed, and raped by Dyer and his crime partner. After that she was required to take a shower with Mr. Dyer. She spent the night tied to the bed. The next morning Mr. Dyer transported the victim to Forest Ridge Park and let her go.

In a third incident, in October 1980, Mr. Dyer's ex-wife contacted the County Sheriff's office and reported that she returned home to relinquish custody of the couple's son, when Mr. Dyer grabbed her, dragged her into the bedroom, tied her to the bed, and raped her twice placing a pillow over her head to muffle her screaming. She was kept against her will all night. Mr. Dyer apparently raped her a third time before untying her.

In a fourth incident, in September 1981, Mr. Dyer's ex-wife reported being raped by her ex-husband one morning. According to the reports, the ex-wife reported that she was asleep in her bed at home, when she was awakened by Mr. Dyer. He apparently taped her hands, raped her, and then dressed her. He drove her into the woods with her hands and ankles bound, took a shovel and blanket into the woods, and complained about the money she was requesting as a result of the divorce. She pleaded with him and eventually convinced him to take her home. At home, he apparently raped her again and told her to take a shower. He gave her $80.00 child support payment for which she gave him a receipt, and he left.

In a Victim Statement, dated November 14, 2006, the ex-wife indicated that Mr. Dyer is crazy, should be in a mental hospital, that he lives in a different world, does not live in the real world, and does not care who he hurts. The ex-wife indicated that Mr. Dyer stole her car "to do all the

evil things," that he would lie, con, and play games without caring about who he hurts. The ex-wife indicated that Mr. Dyer was married x 3, that he had children, and that he did not care about the children. The ex-wife narrated how Mr. Dyer locked their baby in their truck, and how their baby gasped for air when she managed to get her son out of the truck the next morning. The ex-wife wondered why he did not get Life.

In a report from December 2006, the ISRB indicated that Mr. Dyer has continued to deny any involvement in these crimes from the very beginning. The Board indicated that the difficulty with Mr. Dyer's continual denial is that it makes him not amenable to treatment. The Board noted that they were impressed with the self improvement work Mr. Dyer has completed while incarcerated, however, were also of the opinion, that without an exploration and understanding of the behaviors that directly resulted in his incarceration, Mr. Dyer remained at risk to repeat those behaviors in the community. The Board expressed the opinion that Mr. Dyer had not sufficiently demonstrated that he is completely rehabilitated and fit for release.

Offender's Version of the Current Offense: Mr. Dyer stated: "I was convicted of two rapes in 1982. It happened 2 years 18 months before my conviction. I was remanded back for retrial. The prosecutor chose not to prosecute. First off, I'm not guilty. I fought that from the very beginning. Innocence Project from University of Washington had taken that up. They were looking for someone 5'1. I was charged with three counts of Rape, Unlawful Confinement, Burglary. I was thirty-years old when charged. I am 60 now. I thought it would all get straightened out. My ex-wife is on my visiting list. She just got on the list. She wants to recant. She's scared. We have children together. My lawyers tell me you cannot visit her. They say I cannot have that impropriety."

When asked if he thought his sentence was fair, Mr. Dyer responded: "No, not fair." When asked what he thought about the legal system, Mr. Dyer stated: "I don't think it works in my case." When asked if he thought his lawyers did a good job, Mr. Dyer replied: "Yes, I think they did. We argue a lot about what they didn't do. The police have said it's not the car, it's not the house. I'm not the only one."

Prior Adult Arrests: Mr. Dyer reported: "There were no other arrests in my life. I had three speeding tickets. I didn't have any for twenty years before." This was confirmed by a check of the records. When asked if he felt he ever lost control while committing a crime, Mr. Dyer stated: "In Vietnam, all of 1968, 1971, 1973. I was with Special Operations. In war, taking another human being's life. I wrote a report for my daughter. It's been published in many veteran magazines."

Prior Juvenile Arrests: There are no records suggesting a history of juvenile offenses.

Violence: According to available reports, the offenses were forcefully completed and resulted in multiple physical injuries. Officers noted that the victim of the January 1980 assault had numerous bruises on her jaw, right cheek, and forehead. There were rope burns on her wrists and some cotton and tape residue on her face from being blindfolded. Her mouth was bloody with a large laceration inside the right cheek and large quantities of dried blood on the front of her jacket. The victim reported that Mr. Dyer elbowed her in the face when she attempted to jam on

the brakes of the vehicle, and that this cut open her cheek inside her mouth. The victim indicated that Mr. Dyer threw her in the back seat, jumped into the back seat with her, and started punching her with his fist. After the initial rape, she was tied with nylon rope, left naked, and shoved back down into the rear floorboard while the second man drove the car again. According to the report, the reason the cases were originally tied with the charges of the alleged crimes against his wife was because of similarities in the use of bondage, repeated rapes, while she was tied to the bed, the allegations that she had been abducted and driven to a place in the woods, the allegations that she was forced to shower after being raped.

LSI-R: Mr. Dyer obtained a score of 21 on the LSI-R which suggested a low/moderate risk of re-offending.

RELEVANT PERSONAL HISTORY

Family of Origin: Mr. Dyer reported: "My Mom owned several restaurants. I worked in all the restaurants. I was kind of slave labor for them. She would pay dental for her employees. My grandfather was my father role model My Dad was in California. My parents got divorced when I was a baby. I met him in the military. He was in the Navy. My grandfather too. I have one sister and three brothers. One brother is dead. I was in Washington State, Bremerton. My brothers were raised by my Dad. My sister and I were raised by my Mom. I worked to keep busy. I had paper routes, never got into trouble."

Nuclear Family: Mr. Dyer provided the following account: "I knew my first wife from seventh grade. I sent her divorce papers while I was in combat in Vietnam. Janet's moved on. Ethel, my second wife put charges on me. We were together for eight years. We were financially stable. I owned five acres and five homes. She'd take off. Through the divorce, they gave me custody of the two boys together. We remodeled homes. We have a computer company. Then I got married to Renata. She put the charges on me. (Interestingly in a previous psychological report, Mr. Dyer indicated that he has the support of his wife Renata who resides in Oklahoma). I'm a family man. I have three grandchildren. I support them. My son is in Montana now doing very good business. Right now we are trying to buy houses, ten at a time. I do very well in stocks. My Ford shares are doing very well. I'm doing a lot in stocks. I got into Google, Microsoft early on. My son does stocks from six in the morning until noon. My life goes on. I have lawyers that work for me, help me financially. My son, attorney, and I work together. I was a good father and a good husband for 28+ years. I was a good provider. I had contact with my kids and wife every day in Montana. I have a daughter who produces movies in Hollywood. I have a 28 year old son who lives in Seattle on Lake Washington. He does very well. My son Marc is in the army. He's very disciplined works all the time. I wish he could have gone to college. My daughter is 21. She's buying her wedding dress today. I'm paying for the wedding and all the frills. She's legally blind. She's stunning. She's been a model. My wife enjoys this as much as she does. I have six children. I support every one of them. The children have a trust fund. They went to private schools."

School History: Mr. Dyer stated: "I didn't finish school. My first wife got pregnant when I was in 11th grade. I joined the Army. I got my High School Diploma in Alaska. I went to basketball

games. I still have contact with some. They are on my visiting list. My strengths at school were with the Bremerton wrestling team. I struggled with reading, writing, arithmetic. It was just hard for me. I have a tendency to turn my words and numbers around. For some reason, I start with the last number. It still is a challenge for me. I tell people I have a problem. I find I read the same thing over and over. My mind wanders. I have dyslexia. I knew about it. I was told in a college class."

Health History: Mr. Dyer indicated the following medical problems and history: "I got hit with a rig near my nose. It took out my teeth. I have cardiac shunts. I had herniated discs. I have a fusion in my neck. I have carpal tunnel in both hands. I have a deviated septum. I'm blind in the right eye. I have an extensive medical history. I have not used alcohol, no drugs."

Mental Health History: Mr. Dyer reported: "I had mental health services at Airway Heights. I saw a doctor at the Reformatory. Other doctors did evals on me for EFVs, the parole board. I saw a health nurse on a weekly basis at Airway Heights for PTSD. The last eval was with Dr. Monson, before that with Dr. Carter."

Programming: Mr. Dyer stated: "I took lots of classes. I'm really active. I did the Leonard Shaw seminars. I did PTSD classes with Dr. Richardson. I did Toastmasters. I have no loss of good time. I'm a tier rep. I attended Kairos' two day retreat. They are very supportive. I donated lots of money to Kairos. I raised thousands of dollars for veterans. I taught a class on that. It's a book. I read a daily study, Science of the Mind, to get focused every day.

Infractions: Mr. Dyer acknowledged: "I've been in fights. Guys attacked me. I defended myself. Nothing in fifteen years, not even a minor. Most of the time I get beat up. I learn to weave between problems."

Work/Vocational History: Mr. Dyer described the following work history: "I spent nine years in the military, seven years as a Sergeant. I was a General's aide. I was decorated with 19 medals. I was decorated by W. Moreland himself several times. I worked for nine years in the army. I got a diploma while in the army. I started as a laborer in Puget Sound Naval Yard. I was a tank cleaner, a boatwater operator, a rigger. I took a course in rigging at Olympic College. I became a foreman in charge of hazardous materials. I did it for six years. I was an overachiever. I was in Spain, Africa, Hawaii. I was being groomed for a very high position in the Federal Government. I traveled all over the world. I was the trouble shooter. I was in charge of hazardous materials for Puget shipyard. I was very active in the community. I was a drug counselor in Vietnam. I had 17 guys on heroin who worked for me in Vietnam. I'm an ordained minister. I don't have papers."

Long-Term Goals and Plans for the Future: Mr. Dyer stated: "I would like to get out of the correctional system. I would like to build things. I have taken classes in building maintenance. I'm real detail oriented. I like to know about electrical shifts. I learn in the library. I have umpteen catalogues, books. I would like to cook for my family. I like gardening. I had a beautiful garden in the Reformatory. I have a garden here with irises, frogs, bees. I had holly over 100 trees. The geese ate them all. I don't think it will be any different in the community. Financially, I'm really stable. I own homes, more than one. I had three marriages. I don't think

I'll be one in trouble. I would like to build me a home and do some gardening. I'd do some PTSD with the military. I became a therapy junkie here. Leonard Shaw from the Netherlands, he and I have done a lot of things today. He teaches Gestalt therapy. Myself, having PTSD from combat. I was very active here, like helping here. I brought in marriage counseling with Leonard Shaw here. We had two seminars. I was actively involved in fundraising here. The logistics to arrange this was very difficult. It keeps you from having idle time."

REVIEW OF MEDICAL/FACILITY RECORDS

Psychiatric/Psychology Consults: In a psychological evaluation report from 1998, an assessment of general intellectual abilities indicated a Beta IQ within the average range (39th%ile relative to the performance of healthy aged peers). Results of the California Achievement Test indicated that reading comprehension was equivalent to a Grade 6 level, arithmetic was equivalent to a Grade 7 level, and that language usage and structure were significantly below average and equivalent to a Grade 4 level. The psychologist indicated that the results supported Mr. Dyer's reports of difficulty in school and suggested that language skills reflected a cognitive deficit.

The psychologist noted that the validity profile of the MMPI indicated that Mr. Dyer may have attempted to present himself as an exceptionally well adjusted individual by denying personal problems most people readily acknowledge in their daily lives. The clinical profile indicated that individuals with the profile may express aggressive or hostile feelings, passive/aggressive reactions, may have little awareness of their hostile feelings, and may demonstrate a lack of insight into either the origins or the manifestations of their behavior. The clinical profile suggested that individuals with this profile may have marked fears of failure and may engage in worrisome, negative thinking which may interfere with their ability to concentrate and /or their ability to perceive their environment in logical, rational ways. They may feel alienated or set apart from others, may feel that they are somehow lacking in characteristics important to successful interpersonal relationships, and may feel shy, fearful and inadequate.

The psychologist indicated that the diagnosis of Posttraumatic Stress Disorder may apply to Mr. Dyer in as much as he reported experiencing intense fear, recurrent distressing dreams of the trauma, and extreme distress if exposed to internal and external cues that symbolize or resemble some aspect of the traumatic event.

In a psychological evaluation from March 1993, the psychologist noted that Mr. Dyer was able to define the word remorse as feeling bad or sorry for something one had done. He stated that he had tremendous remorse for the people he had harmed and referred mainly to his activities as a foreman in which he would fire individuals from their jobs unnecessarily. He also expressed remorse about killing individuals in Vietnam in situations where he felt it may not have been absolutely necessary. He stated that, in the past, he had an explosive temper and described this as knives on his tongues, was self-centred, and had low self-esteem. He stated that, through Leonard Shaw workshops, he learned empathy.

On the LSI-R, the classification counselor noted that Mr. Dyer described his drinking habits as social drinking, and that there were reports that he was drunk at the time of the second offense. The counselor indicated that Mr. Dyer acknowledged growing his own crop of marijuana for experimental and personal consumption reasons.

Infractions: There is a history of multiple infractions between 1984-1995. These were described as: Destroying Property, Setting Fire, Fighting x 3, Escape/Attempt. In a report from the ISRB, dated November 2006, Mr. Dyer was commended for significantly reducing his infraction behavior.

Programming: File materials indicated that Mr. Dyer participated in multiple programs over the years. Some of these included: Family Dynamics, Restorative Retelling Story Group, Non-Violent Conflict Resolution, Anger/Stress Management, Victim Awareness, Moral Reconation Therapy, Love and Forgiveness Couples Seminar.

CLINICAL INTERVIEW/BEHAVIORAL OBSERVATIONS

Observations: I saw Mr. Dyer for an interview for approximately an hour. In addition, Mr. Dyer completed the MMPI-2. Mr. Dyer was alert and communicative. Speech was fluent. Affect was somewhat constricted. Mood was not depressed or anxious. Mr. Dyer reported an active lifestyle within the prison system. It was not clear to what extent the descriptions of financial success corresponded with reality. There was no objective evidence to corroborate the declarations of financial success, trust funds, etc. Cooperation and effort were good. Mr. Dyer put forth his best effort. Briefly, the test results were not influenced by a mood or thought disorder, and may therefore be considered a valid representation of Mr. Dyer's current mental status.

PSYCHOMETRIC TESTS

Minnesota Multiphasic Personality Inventory – Second Edition (MMPI-2), Hare Psychopathy Checklist-Second Edition (PCL-R, 2nd Edition), Static-99

PSYCHOMETRIC TEST RESULTS

Note: Caution is indicated in generalizing from the information provided in this report. Psychological test data alone have not been found adequate as predictors of an individual's behavior in a setting different from the testing situation. Moreover, interpretations by unqualified individuals may lead to bias, distortions, or misinterpretations.

The data enclosed is part of a psychological evaluation/assessment performed for diagnostic and treatment purposes and is intended to be used by persons specifically trained in psychological assessment techniques including but not limited to psychological interviews, psychological test instruments, psychological raw test data interpretation,

meaningfulness of raw test data, and validity and reliability measures. These data are considered confidential under DOC policy 640.020 and are part of the medical/mental health record with access controlled by the health authority. These data may not be released to others without the written consent of the offender, or in response to a court order, other appropriate legal action, law, or statute. When required by court order or in response to other appropriate legal action, law, or statute to release raw test data, DOC and its employees shall not be held responsible, nor civilly or professionally liable for information released to or used by any other agency, entity, group, or individual not trained or qualified to use such data.

MMPI-2: The validity profile of the MMPI-2 suggested that individuals with this profile may be cautious, defensive individuals, may not have been frank in answering items on the inventory, and may be trying to create a favorable impression of themselves. The profile suggested that individuals with this profile may be in no particular distress at the time of testing, and may report no unusual thoughts, beliefs, or behaviors. According to the validity profile, individuals with this profile may minimize or deny problems, may systematically avoid admitting to distressing or unusual feelings or thoughts, may resist psychological insights, and may show emotional constriction. The validity profile suggested that individuals with this profile may be trying to maintain an appearance of adequacy, control, and effectiveness. They may lack self-insight and self-understanding, may be quite disturbed psychologically, but may have little awareness of it.

The clinical profile of the MMPI-2 suggested that individuals with this profile may react to stress with physical symptoms. They may expect considerable attention and affection from others and may use indirect and devious means to get attention and affection. When others do not respond appropriately, they may become hostile and resentful, however, may deny these feelings which may not be expressed openly or directly. According to the clinical profile, individuals with this profile may be friendly, talkative, enthusiastic, however, their interpersonal relationships may be superficial, and their interest in people may be based on what they can get from them rather than on a sincere interest in others. According to the profile, individuals with this profile may act out in a sexual or aggressive manner with little apparent attention to or understanding of what they are doing. They may have difficulties with emotional intimacy and intimate sexuality. When confronted with the realities of their behavior, they may act surprised and feel resentful and persecuted.

According to the clinical profile, individuals with this profile may be extremely sensitive to anything that can be construed as a criticism and may be extremely self-conscious about their social role. They may want approval and their controlled demeanor and presentation may reflect this. Underneath a veneer of almost exquisite correctness, there may be an individual who is distrustful, tense, and even suspicious. Their feelings however may be ego-syntonic and denied. Underneath a surface of cooperation and conformity, these individual harbor many longstanding feelings of resentment. They may go through life denying their anger so that it accumulates into rationalized resentments, then a small trigger can lead them to explode into a highly rationalized outburst. Their anger may be rationalized and justified and may be seen as self-protective.

Hare PCL-R: Total score (27) suggested high levels of psychopathy and was related to Interpersonal, Affective, and Lifestyle factors.

STATIC-99: Total score (6) suggested a high risk of re-offending. Factors that contributed to total score included: index non-sexual violence, prior non-sexual violence, prior sex offenses, unrelated and stranger victims. According to risk estimates, the probability of sexual recidivism is 39% within five years, 45% within ten years, and 52% within 15 years.

CLINICAL IMPRESSIONS

Mr. Dyer was referred for a psychological evaluation as part of a .100 Hearing for the Indeterminate Sentence Review Board. The current assessment disclosed:

- a history of multiple sexual offenses
- a history of violence associated with sexual offenses
- a history of sexual offenses against multiple stranger victims
- a history of sexual offenses against related victims

Psychometric testing disclosed that individuals with this profile:

- may be cautious, defensive individuals
- may minimize or deny problems
- may systematically avoid admitting to distressing or unusual feelings or thoughts
- may show emotional constriction
- may be trying to maintain an appearance of adequacy, control, and effectiveness
- may use indirect and devious means to get attention and affection
- may act out in a sexual or aggressive manner
- may have difficulties with emotional intimacy and intimate sexuality
- may feel resentful and persecuted
- may be extremely self-conscious about their social role
- may harbor longstanding feelings of resentment
- may present with a controlled demeanor

The profile suggested that individuals with this profile may have been in no particular distress at the time of testing and may report no unusual thoughts, beliefs, or behaviors. They may present with a veneer of cooperation, conformity, and correctness, may be quite disturbed psychologically, however, may have little awareness of this.

RISK/CASE MANAGEMENT RECOMMENDATIONS

Note on Future Dangerousness: Assessing an individual's risk for engaging in future violent and/or sexually predatory behavior is an inherently difficult task as the scientific literature attests. This is particularly the case when the information is either incomplete or deliberately concealed. Mental health professionals can make use of a long number of a sizable and growing empirical literature for identifying risk-elevating factors. To date,

there has been insufficient research on the identification of risk-reducing factors (at least for adults) which tend to cause offenders to be portrayed in a mostly negative light, casting them as being at greater risk than is perhaps actually the case. In addition, because the dynamic risk factors change over time, with or without interventions, risk-assessment updates are necessary to ensure accuracy and guard against decision making based on outdated information.

Recidivism/Violence Potential: The current psychological evaluation suggested high levels of psychopathy, a high risk for violence, and of re-offending.

Treatment/Interventions: In light of the history, Mr. Dyer may benefit from a residential Sexual Offender Treatment Program.

Thank You for the referral. If there are any questions, please do not hesitate to contact me.

Patricia Pereira, Ph.D.,
Licensed Psychologist

TEST RESULTS – BRIEF SUMMARY

MMPI-2

Scales	Raw Scores
?	0
L	4
F	1
K	21
Hs	2
D	21
Hy	27
Pd	13
Mf	26
Pa	13
Pt	8
Sc	8
Ma	18
Si	23

HARE PCL-R 2ND Edition

Facet 1	6
Facet 2	7
Facet 3	8
Facet 4	4
Factor 1	13
Factor 2	12
Total	27

Exhibit - V

Dr. Carter's Evaluation of Mr. Dyer

ISRB
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Sex Offender Psychological Report

Dyer, Richard # 281744
Date of Birth: 12/20/48
Age: 52

Evaluator: Carson E. Carter, Licensed Mental Health Counselor
Evaluation Date: September, 21, 2001
Report Date: September 26, 2001
ERD: 02/19/2002

Sources of Information

Clinical Interview 09/19/2001
MMPI-2 09/21/2001
Criminal History Summary 01/08/90
Level of Service Inventory-Revised 07/19/2001,
Hare Psychopathy Checklist-Revised 09/19/2001
Minnesota Sex Offender Screening Tool-Revised 09/21/2001
Rapid Risk Assessment for Sexual Offense Recidivism 09/21/2001
Psychological Report: Gary J. Lauby, Ph.D., 06/16/98
Psychological Report: Helmut Riedel, Ph.D., 03/05/93
Presentence Investigation Report: 02/16/82
Offender Based Tracking System
Medical & Central Files
Indeterminate Sentence Review Board, 02/24/94

Purpose of Report

The intent of this report is to provide a comprehensive overview of Mr. Dyer to the End of Sentence Review Committee.

This is a psychological report providing information for DOC classification staff, community corrections officers, the Indeterminate Sentence Review Board, the End of Sentence Review Committee, and care providers within DOC who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's consent or unless otherwise authorized by law. The inmate was advised of the purpose of the evaluation and department policy regarding information practices. The inmate has signed a release sheet to release all relevant psychological material to any DOC personnel who have a need to make decisions concerning his disposition. The psychological scores that are included in this report can only be properly interpreted by a person who has been trained in the use of these instruments.

The inmate may request a copy of this report. An interpretative appointment will be scheduled upon request.

This health care information is expected to be used by classification and other staff who have a legitimate need to know it to effectively manage the inmate within the DOC. This report is replicated in the inmate health record.

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Alerts to Correctional Unit Staff

None.

Alerts to Community Corrections Staff

This person should attend groups at a Veteran's Hospital to continue addressing his PTSD issues and he will require continued general practitioner follow-up to assist him with his physical problems.

Criminal Behavior

Instant Offense: Mr. Dyer is presently incarcerated, after appeals, on two counts of rape in the first degree; the inmate received life for those offenses.

Criminal History: According to the files, Mr. Dyer has no criminal history prior to the offenses for which he has been serving time.

Social History

Family: Richard J. Dyer has three brothers and 1 sister; he is the youngest. His father left the family when Mr. Dyer was very young. The accounts of the family dynamics vary considerably between siblings, some describing the mother a very hard working alcoholic, while Richard Dyer always perceived her as very hard working and loving to him. He did spend a great deal of his time at neighbor's homes; he remembers it was more entertaining there. The sister of Mr. Dyer reports that her mother was not abusive and that alcoholism was not an issue with her mother. She goes on to say that when Mr. Dyer was young he had a good adjustment to the world in which he lived, as opposed to his brothers who were oft times in trouble. Two of the brothers were incarcerated in the DOC. Mr. Dyer's father and mother have now passed away. This individual is presently married and he has children at home with whom he communicates. Interest in a more detailed family history will be gratified by previous reports.

School/Work/Vocational: School was not easy for Richard J. Dyer, he reports having great difficulty learning, yet he reports enjoying the experience of school itself. He was sent to a special school for persons with learning disabilities when he was in the 6th grade. He reports getting along well with the teachers and the students, but never quite understanding how to learn the material. Mr. Dyer quit school in the 11th grade, got married, and joined the Army. He later obtained a GED while in the Army. Mr. Dyer had a distinguished career in the army, spending 9 years in that service until he was honorably discharged in 1976. During his 2 tours in Vietnam he was awarded 2 Bronze Star Medals with Citations to the Bronze Star by direction of the President of the United States, Republic of Vietnam Cross of Gallantry (with Palm), Army Commendation Medal for Heroism with " V ", The Air Medal for Heroism – 5 special awards for heroism and 5 separate award with " V ", Citations to the 5 Air Medals by The President of The United States, The Purple Heart (wounded in battle), Vietnam Campaign Medal, National Service Medal, and a Certification of Appreciation from the United States Army signed by General Westmoreland.
After Richard J. Dyer was discharged, he began work in the Puget Sound Naval Shipyard. He rose quickly to supervisory level, completing many USN supervisory courses. He was awarded with a Superior Accomplishment Award from the naval shipyard. After incarceration, this person worked at Redwood-Outdoors, Inc. as an inspector of textile products. He presently works on the yard crew, a job he enjoys. This individual has programmed extensively in a highly successful manner. He earned the Training in Nonviolence Certificate in 1991, Stress and Anger Management 1986-1996, Breaking Barriers 1992, Work Ethics Certification 1995, Victims Awareness 1996, Moral Reconation Therapy 1997, KAIROS participant and volunteer 1992-1994, Toastmasters International President of the Year Award 1992, Breaking Barriers Registered Facilitator 1993-1994. Presently Mr. Dyer operates a profitable home refurbishing business from prison with the assistance of several attorneys and the contract workers who are responsible for the construction on the projects. He apparently has the desire to continue grow as a person and be prosocial in the prison environment.

Substance Abuse: Mr. Dyer had no substance abuse issues prior to or during incarceration according to the records and his report.

Mental and Physical Health: There are several health issues that the medical department address with Mr. Dyer regarding blood pressure, arthritis, residual pain from surgery on his spinal column and occasional gastric distress. He does take an extensive list of medications and there is some concern that he may be developing a cancerous growth on his ear. Mr. Dyer suffers from no serious mental illness, but he does suffer the lingering effects of PTSD, much like many war veterans.

Past Treatment for Sexual Deviance: Mr. Dyer has not had treatment from SOTP nor any other standardized program, contending, as he has for twenty years, that he is not guilty of the rapes for which he has been sentenced.

Conduct Under Supervision: This person has not been under supervision prior to incarceration.

Current Behavior/Functioning

Support System: Mr. Dyer currently works, as an inmate on the yard crew for the DOC and he runs a profitable home refurbishing business from prison. He reportedly has investments and is financially in a comfortable position. His present wife and children visit him on a regular basis and he has many associates whom he enjoys writing.

Infractions: Richard J. Dyer has 12 major infractions in the files, extending from 1984 to 1999.

Interpersonal Relationships: Mr. Dyer enjoys writing and talking to his children and they also write him. He reports loving his wife and enjoying her letters in addition to her visits. Inmates and staff know him as a congenial person. Mr. Dyer is gregarious and from his conversation, has compassion for others with whom he interacts.

Sexual Behavior

According to the files, this inmate was 31 years old when these crimes of rape occurred. The crimes occurred to 2 adult women. The offending pattern was very much the same in regards to kidnapping, using duct tape, perpetrating physically violent measures to control the victims, and the extended timeframe of being held captive. No risk factors are explicitly apparent other than a hypothesized buildup of tension from the frustration of non-complementary relationships. People who are not as motivated or invested to perform life's tasks in a very exacting manner baffle this person . During this sentence, the inmate has displayed no apparent unacceptable sexual behavior.

Clinical Interview

Behavioral Observations: Mr. Dyer presented himself for the interview with exceptionally good hygiene and he was neatly groomed. He was cooperative, appropriately animated, and made good eye contact. His rate of speech was normal and he did not appear to be distressed. He was not defensive in posture or in content, nor was he boastful or arrogant. None of the behaviors observed were intimidating and even though some of the subject matter in the conversation could have given him an opportunity to vent in an unproductive manner, he did not. Mr. Dyer did not appear to be overly controlled nor did he appear glib or deceptive; he was articulate in a simple, modest manner.

Mental Status Exam: Mr. Dyer was alert, lucid, and oriented to time, place, person, and situation. He gave a self-report that was well organized and consistent. His memory appeared to be intact both short term and long term. His level of intelligence seemed to be average, and there was no evidence of any thought disorder. His mood was normal and his affect was appropriate. His insight and judgment did not appear to be impaired, even though he contends he is an innocent man.

Psychological Testing

On both the Minnesota Sex Offender Screening Tool-Revised (MSOST) and the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) Mr. Dyer received low scores. **His scores are typical of sex offenders who present a low risk to reoffend.**

The MMPI-2 indicates an L that is consistent with clergy or persons who have conforming and conventional attitudes; he is certified to be a clergyman as well as a registered counselor. His F is indicative of a conventional, moderate, dependable, person who minimizes psychological difficulties, much as a person taking the test in a job setting would. Mr. Dyer's K indicates a person who is independent, enterprising, and resourceful, much like a person who is not incarcerated would score if they felt in control of their faculties. This person has health concerns that are real, his body appearing to be a source of pain for him. Together the validation profile indicates a person

who, in a non-clinical setting, is reporting to be in good mental condition. The clinical scales indicate there is a difference between how he perceives himself and how he is feeling. According to the clinical scale 2, he is feeling depressed at a level that would feel mildly dissatisfying, but he would deny this and try to work through it by occupying his mind with other activities (the " don't worry about me, I am just doing fine " attitude that is asserted by the Protestant ethic). The hypothesis about the 2 is that he has not lived up to his own expectations or that of others. His 4 is indicative of a sociable, assertive, enterprising, independent individual who becomes irritable when others don't " lead, follow, or get out of the way ". His **1-3-6** profile is that of a tense, hypersensitive person who is highly competitive, and is suspicious about other's motives. This is a combination of " type A" personality and PTSD features. He has taken several courses to moderate this profile and he is aware of how this type of profile can create a condition where others become secondary to a job or a goal.

On the Hare Psychopathy Checklist - Revised (PCL-R) Mr. Dyer received a **very low score** indicating a **low risk** of committing another violent offense within six months after his release from custody. His score was 5, which is the lowest score this psychologist has ever interpreted on this test. He does not come close to psychopathic status.

On the Level of Service Inventory - Revised Mr. Dyer scored in the **low Risk/Needs range**, according to his counselor, suggesting an approximately 11.7% chance of recidivism. It must be noted that the LSI-R is designed to be used with offenders while they are living in the community, not while they are incarcerated, so the validity of these results is questionable. It must also be noted that the LSI-R is designed to measure current risk and needs, and its ability to predict future risk and needs has not yet been validated. The authors of the LSI-R have stated that it is not valid for use with sex offenders.

Diagnosis:

Axis I	309.81	Post Traumatic Stress Disorder
	309.0	Adjustment Disorder with depressed mood
Axis II	799.9	Diagnosis Deferred on Axis II with obsessive compulsive personality features
Axis III		Several physical maladies that necessitate medication on a daily basis
Axis IV		No significant psychosocial problems
Axis V	GAF = 90	

Summary and Conclusions

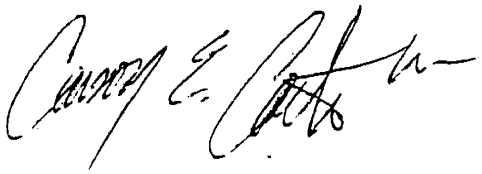
Mr. Richard Dyer has served approximately 20 years in the Department of Corrections for the Rape of 2 adult females, rapes that were violent and traumatizing. He denies guilt in the commission of these offenses. His institutional adjustment has been less than stellar, with extended periods of positive reports concerning his work ethic and his character. His testing indicates he has a profile similar to what we find in the general population of society, with the exception of his PTSD diagnosis. Richard Dyer has not allowed himself to become assimilated into the " convict " culture, a test of character for any inmate. The instruments that typically predict recidivism indicate he is a low risk to reoffend, yet he has not admitted guilt nor has he engaged in a sex offender program. Mr. Dyer has a legitimate home address, realistic plans for the future, and employable skills; he is prepared to take his place in society as a productive citizen. If we are gauging risk, he has met the criterion for a less restrictive environment. According to the file data, interview and tests, this person could be considered for community supervision with less concern for the community than many of the offenders who are released into society.

Management Recommendations

This individual should be managed by community supervision and placement, as stated by the DOC; he should also attend PTSD treatment until the professionals involved decide treatment measures are no longer necessary. He has no history of substance abuse, nor does he have any type of thought disorder that would cause him to be dysfunctional. Law enforcement officials, as well as his victims, should be alerted to his presence in the community.

Working is a very valuable and necessary activity for this person, so he should be allowed to pursue his business interests.

Carson E. Carter, M.S., Licensed Mental Health Counselor



D. Memorandum to ISRB from David Monson, Ph.D., November 9, 2001

STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

McNEIL ISLAND CORRECTIONS CENTER

P.O. Box 88900 • Steilacoom, Washington 98388-0900

November 9, 2001

TO: Indeterminate Sentence Review Board

FROM: David Monson, Ph.D., FPPR, FACAPP
Psychologist 5

SUBJECT: Sex Offender Psychological Report dated 9/26/01 on Richard Dyer 281744

Carson Carter, the author of the report on Mr. Dyer, is a Psychologist 3 employed by the Washington State Department of Corrections. In addition to his position as a Psychologist 3 he is licensed by the State of Washington as a Mental Health Counselor. It is common practice in this state for Psychologist 3's to also be licensed as Mental Health Counselors. Mr. Carter has been doing risk assessments and psychological evaluations in prisons for thirteen years and has become very expert in his field. He consulted with me, as his supervisor, on the evaluation he did on Mr. Dyer and I completely support his conclusions and recommendations.

recycled paper

Exhibit - W

Dr. Monson's Evaluation of Mr. Dyer

E. Sex Offender Psychological Evaluation by David Monson, Ph.D., February 9, 2005

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Sex Offender Psychological Evaluation

DYER, Richard – 281744
Date of Birth: December 20, 1948
Age: 56

Evaluator: David Monson, Ph.D., FPPR, FACAPP
Evaluation Date: January 26, 2005
Report Date: February 9, 2005
ERD: June 20, 2005

Sources of Information

Clinical Interview 1/26/05
MMPI-2 1/26/05
MCMI-III 1/26/05
Kinetic House-Tree-Person Test 1/26/05
Hare Psychopathy Checklist-Revised 1/26/05
Rapid Risk Assessment for Sexual Offense Recidivism 1/26/05
Minnesota Sex Offender Screening Tool-Revised 1/26/05
Psychological Report: Carson Carter 9/26/01
Offender Based Tracking System
Medical & Central Files

Purpose of Report

The intent of this report is to provide the Indeterminate Sentence Review Board with an overview of Mr. Dyer's level of risk.

This is a psychological report providing information for DOC classification staff, community corrections officers, the Indeterminate Sentence Review Board, the End of Sentence Review Committee, and care providers within DOC who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's consent or unless otherwise authorized by law. The inmate was advised of the purpose of the evaluation and department policy regarding information practices.

The inmate may request a copy of this report. An interpretative appointment will be scheduled upon request.

This health care information is expected to be used by classification and other staff who have a legitimate need to know it to effectively manage the inmate within the DOC. This report is replicated in the inmate health record.

Alerts to Correctional Unit Staff

No alerts at this time.

Alerts to Community Corrections Staff

No alerts at this time.

Criminal History/Offense Behavior

Instant Offense: Mr. Dyer is incarcerated on two counts of Rape in the First Degree, for which he is serving a life sentence. He claims that his convictions are the result of false charges by his ex-wife. He has pursued several legal appeals and continues to do so.

Criminal History: Mr. Dyer has no criminal history aside from the Instant Offenses.

Substance Abuse: Mr. Dyer has no history of substance abuse.

Relevant Personal History

Family: Mr. Dyer is the youngest of five children, having three brothers and one sister. His parents separated when Mr. Dyer was very young and he was raised by his mother with help form the neighbors. His mother was an alcoholic, but very hard working and loving to him. Though his older brothers were often in trouble as children, Mr. Dyer was not and feels he had a good childhood. As an adult he has been divorced and remarried. He reports his wife and six children stand by him and remain in contact with him. He reports that three of his children are in college, one in high school, and one in Jr. high school.

School/Work/Vocational: Mr. Dyer experienced difficulty in school and was in a special school for children with disabilities. He dropped out of the 11th grade and joined the Army. While in the Army he earned his GED. He served nine years in the Army, including two tours in Vietnam, and was repeatedly decorated for gallantry and heroism. He received an honorable discharge in 1976. Following his military career, Mr. Dyer worked in the Puget Sound Naval Shipyards as a nuclear foreman. After being incarcerated he started a housing construction company that he runs from inside the prison. In addition Mr. Dyer works on the yard crew maintaining and improving the yard facilities at MICC.

Mental and Physical Health: Mr. Dyer suffers from Posttraumatic Stress Disorder secondary to his experiences in Vietnam.

Current Behavior/Functioning

Programming: In addition to his work on the yard crew and running his own outside business, Mr. Dyer has taken classes in Stress and Anger Management, Alternatives to Violence, Breaking Barriers, Work Maturity Training, Victim Awareness, Moral Reconation Training, Restorative Retelling Group, and Family Dynamics.

Infractions: Mr. Dyer has committed eleven major infractions since he was incarcerated on February 19, 1982. Four of the infractions were violence related. None were related to substance abuse. Ten of the infractions occurred prior to 1989. His most recent infraction was for fighting on April 13, 1995.

Support System: Mr. Dyer maintains close contact with his wife and children, who are his primary support system. He has daily telephone contact with his family and has achieved the extraordinary feat of supporting his family financially throughout his incarceration through his outside business. He states that it is important for him to keep his focus outside of prison so as to not become institutionalized.

Goals and Plans for the Future: Mr. Dyer's primary goals relate to winning his legal appeals and a release from prison. However, regardless of his appeal, he plans to continue to provide for his family and to maintain close contact so that he can be an integral part of their lives.

Clinical Interview

Behavioral Observations: Mr. Dyer presented himself for the interview neatly groomed. I explained the reasons for the evaluation and he agreed to participate fully. He was cooperative, appropriately animated, and made good eye contact. His rate of speech was normal and he did not appear to be distressed.

Mental Status Exam: Mr. Dyer was alert, lucid, and oriented to time, place, person, and situation. He gave a self-report that was well organized and consistent. His memory appeared to be intact both short term and long term. His level of intelligence seemed to be above average, and there was no evidence of any thought disorder. His mood was normal and his affect was appropriate. His insight and judgement appeared to be good.

Psychological Testing

The following data are part of a psychological evaluation/assessment performed for diagnostic and treatment purposes and is intended to be used by persons specifically trained in psychological assessment techniques including but not limited to psychological interviews, psychological test instruments, psychological raw test data interpretation, meaningfulness of raw test data, and validity and reliability measures. These data are considered confidential under DOC policy 640.020 and are part of the medical/mental health record with access controlled by the health authority. These data may not be released to others without the written consent of the offender, or in response to a court order, other appropriate legal action, law, or statute. When required by court order or in response to other appropriate legal action, law, or statute to release raw test data, DOC and its employees shall not be held responsible nor civilly or professionally liable for information released to or used by any other agency, entity, group, or individual not trained or qualified to use such data.

On the MMPI-2 Mr. Dyer obtained a Welsh code of 3'6+1-478 25/90:K-L/:F#. This is a valid profile with no elevated validity scales. On the clinical scales he obtained a 3-6 code type. His clinical profile corresponds to a Megargee Type E profile. This is characteristic of prisoners who might be referred to as "psychopathic manipulators." Individuals in this subgroup tend to be brighter than most offenders but lack achievement drive. Research supports the view that Type E inmates are more likely to be diagnosed as psychopathic than psychotic. They are generally from nondisturbed backgrounds that may have offered them some advantages in life, and they tend to impress other people favorably with their social skills. In spite of their opportunities, however, they have not been able to achieve success in society. They are somewhat prone to engage in larceny and drug offenses, and their crimes tend to be on the "milder" end of the spectrum. Their illegal acts are more likely to be deliberate than impulsive. Such individuals may be less prone to change than some other offenders because they feel little anxiety about their behavior. However, there is some research support for the view that Type E individuals may develop positive work performance in prison and may adjust to the prison environment.

On the MacAndrew Alcoholism scale from the MMPI-2 Mr. Dyer obtained a normal *t*-score of 46 indicating no greater tendency than normal to become addicted to addictive substances.

On the MCMI-III Mr. Dyer obtained a valid personality code of - ** 4 * 7 5 + - " 3 6A 1 6B 8A 2A 2B 8B ' ' // - ** - * // and a syndrome code of A ** - * // - ** - * //. This profile suggests a well-functioning individual with no major personality disturbances; however, he currently may be undergoing psychological stressors and therefore may exhibit troublesome symptoms that are largely situational and transient in nature. Most such individuals are concerned with appearances, that is, with being seen by others as composed, virtuous, and conventional in their behavior. Many attempt to downplay any distressing emotions and try to deny troublesome relationships with others, especially in their family or personal life. There is a strong inclination on the part of this offender to behave in an accommodating and compliant manner, to follow rules and regulations faithfully, and to try to be a model prisoner. There is little evidence that he is escape prone. This offender is characteristically diligent and responsible and is not disposed to malinger. Indications are that this inmate has a moderate need for mental health intervention, low need for substance abuse treatment, and low need for anger management services.

The Kinetic House-Tree-Person test indicates that, despite a mild tendency to be defensive, Mr. Dyer is emotionally open to others and willing to disclose his thoughts and feelings. He is well grounded with a strong character. There is evidence of a good level of self-acceptance and strong indications of optimism and hope for the future.

On the Hare Psychopathy Checklist-Revised (PCL-R) Mr. Dyer received a score of 3, placing him at the 0.9 percentile, indicating a less than fifty-percent risk of committing another violent offense within four years after his release from custody. He scored 2 on Factor 1, placing him at the 5.4 percentile for callous use of other. He scored 0 on Factor 2, placing him at the 0.4 percentile for social deviance. It should be noted that the PCL-R only measures risk of recidivism due to psychopathy and not risk due to other factors such as mental illness of substance abuse.

On the Minnesota Sex Offender Screening Tool-Revised (MSOST) Mr. Dyer received a score of -5. On the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) he received a score of 0. These scores are typical of sex offenders who present a low risk to reoffend.

Summary and Conclusions

For the past sixteen years Mr. Dyer has been a model inmate, with only one infraction nine years ago, maintaining a stellar work history, programming through all the classes available to him and, extraordinarily, financially supporting his family. He has good community support and a good intact plan. In addition, the psychological testing indicates a low risk to reoffend. Mr. Dyer appears to be an appropriate risk for community placement.

David Monson, Ph.D., FPPR, FACAPP
Psychologist 5

Exhibit - X

Slip Opinion of Cooke v. Solis, (C.A.9) No. 06-15444

Westlaw®

--- F.3d ----, 2010 WL 2330283 (C.A.9 (Cal.)), 10 Cal. Daily Op. Serv. 6994
(Cite as: 2010 WL 2330283 (C.A.9 (Cal.)))

C

United States Court of Appeals,
Ninth Circuit.
Damon **COOKE**, Petitioner-Appellant,
v.
Jose **SOLIS**, Warden, California Training Facility-Central; Board of Prison Terms; A. Kane, Respondents-Appellees.
No. 06-15444.

Argued and Submitted April 16, 2007.
Submission Vacated Aug. 7, 2007.
Resubmitted May 28, 2010.
Filed June 4, 2010.

Background: Following denial of his state court petitions for habeas relief from decision which denied him parole, inmate petitioned in federal court for writ of habeas corpus. The United States District Court for the Northern District of California, Martin J. Jenkins, J., denied the petition, and inmate appealed.

Holdings: The Court of Appeals, Reinhardt, Circuit Judge, held that:
(1) Court would grant a certificate of appealability (COA) sua sponte, and
(2) state court's decision to deny inmate's petition for habeas relief was based on an unreasonable determination of the facts in light of the evidence.

Reversed and remanded with instructions.

West Headnotes

[1] Habeas Corpus 197 **842**

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(D) Review
197III(D)2 Scope and Standards of Review
197k842 k. Review de novo. Most Cited Cases
Court of Appeals reviews de novo a district court's decision to deny a petition for habeas corpus.

[2] Habeas Corpus 197 **818**

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(D) Review
197III(D)1 In General
197k817 Requisites and Proceedings for Transfer of Cause
197k818 k. Certificate of probable cause. Most Cited Cases
Court of Appeals would grant a certificate of appealability (COA) sua sponte where habeas petitioner's failure to obtain a COA when appealing the denial of his petition was in accordance with prior decisions and he made a substantial showing of the denial of a constitutional right. 28 U.S.C.A. § 2253(c).

[3] Habeas Corpus 197 **450.1**

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(A) Ground and Nature of Restraint
197k450 Federal Review of State or Territorial Cases
197k450.1 k. In general. Most Cited Cases

Habeas Corpus 197 **452**

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(A) Ground and Nature of Restraint
197k450 Federal Review of State or Terri-

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torial Cases

197k452 k. Federal or constitutional questions. Most Cited Cases

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), Court of Appeals may not grant relief in a habeas proceeding unless the state court's adjudication of the petitioner's claim resulted in a decision that was either (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C.A. § 2254(d)(1, 2).

[4] Constitutional Law 92 **4838**

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)12 Other Particular Issues and Applications
92k4838 k. Parole. Most Cited Cases

State parole systems may create liberty interests in parole release that are entitled to protection under the Due Process Clause. U.S.C.A. Const.Amend. 14.

[5] Pardon and Parole 284 **49**

284 Pardon and Parole
284II Parole
284k48 Eligibility for Parole or Parole Consideration
284k49 k. Factors governing decision, in general. Most Cited Cases

Pardon and Parole 284 **61**

284 Pardon and Parole
284II Parole
284k57 Proceedings
284k61 k. Reasons for decision. Most Cited Cases

Under California law, paramount consideration for both the Board and the Governor in a parole proceeding must be whether the inmate currently poses a threat to public safety and thus may not be released on parole, and the facts relied upon by the Board or the Governor must support the ultimate decision that the inmate remains a threat to public safety.

[6] Pardon and Parole 284 **62**

284 Pardon and Parole
284II Parole
284k57 Proceedings
284k62 k. Review. Most Cited Cases

A court reviewing a decision in a California parole proceeding must consider whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before the Board or the Governor.

[7] Habeas Corpus 197 **516.1**

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(B) Particular Defects and Authority for Detention in General
197k516 Pardon and Parole
197k516.1 k. In general. Most Cited Cases

State court's decision to deny inmate's petition for habeas relief from denial of parole, on basis that some evidence supported the California parole Board's decision, was based on an unreasonable determination of the facts in light of the evidence; Board's current dangerousness finding was based on improper consideration of a psychological evaluation which it had found unreliable, a disciplinary infraction which had been dismissed as unsubstantiated, and two minor and non-violent disciplinary infractions, and no evidence supported its finding that inmate needed further programming to become non-dangerous and that he needed certification in a trade to make himself marketable after his release. 28 U.S.C.A. § 2254(d)(2).

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Oakland, CA, for the respondents-appellees.

Appeal from the United States District Court for the Northern District of California, Martin J. Jenkins, District Judge, Presiding. D.C. No. CV-04-04439-MJJ.

Before: STEPHEN REINHARDT, KIM McLANE WARDLAW and MILAN D. SMITH, JR., Circuit Judges.

REINHARDT, Circuit Judge:

***1** In 1991, Damon Cooke was convicted of attempted first degree murder. He was sentenced to seven years to life in prison with the possibility of parole, plus a four-year enhancement for using a firearm. In November 2002, the California Board of Prison Terms [FN1] held a hearing to determine whether Cooke was suitable for parole. At the conclusion of the hearing, the Board denied him parole, relying primarily on the circumstances of the commitment offense.

Cooke sought a writ of habeas corpus in state court, asserting that the Board's decision violated his right to due process. Finding that the Board's decision was supported by "some evidence" of unsuitability, the state courts denied the petition. Cooke then sought a writ of habeas corpus in federal court. The district court denied the petition, and Cooke timely filed a notice of appeal on October 14, 2005.

We now conclude that, under the standard announced in *Hayward v. Marshall*, 603 F.3d 546 (9th Cir.2010) (en banc),[FN2] Cooke is entitled to federal habeas relief. Accordingly, we reverse the decision of the district court and remand with instructions to grant the writ.

I.

A.

On February 12, 1991, Cooke's friend Padriac Ryan came to visit him at his apartment in Los Angeles. After Ryan returned to his own home in Berkeley, Cooke noticed that a necklace was missing from the apartment.[FN3]

That night, Cooke traveled from Los Angeles to Berkeley with his cousin LeAndre and his friends Alexander Bush and Steve Huynh. When Cooke and his companions confronted Ryan about the theft of the necklace, Ryan denied responsibility, and an argument ensued. LeAndre pulled out a .38 caliber pistol, which Cooke took from him. Cooke then fired a single shot, which struck Ryan on the right side of the head. Ryan fell to the ground and pretended to be dead, and Cooke, LeAndre, Bush, and Huynh fled the scene.

The shooting was not fatal.[FN4] After the four men had fled, Ryan got up, locked his door, and called 911. The police stopped Cooke and his companions a few blocks away. Cooke was subsequently arrested and charged with attempted first-degree murder.

On October 2, 1991, Cooke was convicted of attempted first-degree murder with an enhancement for use of a firearm. On December 18, 1991, he was sentenced to seven years to life in prison with the possibility of parole for the attempted murder conviction, plus four additional years for the firearm enhancement.

B.

On November 19, 2002, the California Board of Prison Terms held a hearing to evaluate Cooke's suitability for parole. During the hearing, the Board heard evidence regarding Cooke's life history, his commitment offense, his behavior and achievements while incarcerated, his mental health, and his post-release plans.

With respect to Cooke's background, the Board learned that Cooke had never been arrested prior to the commitment offense. He did not drink or use drugs, and he had never been involved in gang activity. He has close and stable relationships with his mother, who is a financial consultant, and his stepfather, who is a retired Los Angeles County Probation Officer.

***2** Cooke attended El Dorado High School in Placentia, California and graduated with a 3.5 GPA. He then enrolled in an ROTC program, through which he attended the New Mexico Military Institute. Thereafter he pursued a degree in finance at the University of New Mexico. During his final year of college, his

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mother had bypass surgery, and he left school in order to care for her. He later passed the National Association of Securities Dealers exam and began work as a financial consultant.

During his time in prison, Cooke has been both well-behaved and extremely industrious. He successfully completed numerous voluntary self-help and educational programs, including a thirteen-week IMPACT program ("a self-help group designed to provide an opportunity for education and awareness as to the profound negative impact of crime on its victims") and numerous anger and stress management classes. Because only limited self-help and therapeutic programming was offered in the prisons in which he was incarcerated, he took it upon himself to read and write reports about various self-help books. He also participated in various Christian and Buddhist groups, and became an ordained minister. At the time of the hearing, he was in the process of acquiring college credits via correspondence from Coastline Community College, with the hope that the University of New Mexico would accept the credits toward completion of his bachelor's degree in finance.

Cooke has held numerous jobs while in prison, including teacher's aide, education clerk, and personnel clerk. His supervisors have raved about his job performance, extolling his "exceptional[ ] diligen[ce]," "positive working attitude," "university level writing ability," "astounding ability under duress," "excellent people skills," and "exceptional work" product. They have also noted that he "contributes above and beyond expectations," is a "positive influence on others," "always remains in control of himself," and "shows a great deal of respect towards his peers, and staff alike." A teacher under whom Cooke worked as an aide for almost two years stated that

> His contribution towards the overall success of my academic class ... was both monumental and unselfish.... [He] was an asset to my program because of his ability to retain a positive attitude in the face of adversity. This attribute was and continues to be a rare and seldom attained commodity in the working environment of my chosen profession. His social skills and patience when working with both free staff and inmates was impeccable.

Various corrections officials have noted that Cooke has consistently "go[ne] above and beyond to help his fellow inmates." For several years Cooke has helped to facilitate the prison's literacy and stress management courses. The corrections officer who supervised him in this role noted that Cooke's efforts resulted in a "drastic increase in other inmates' willingness to work and become productive individuals." Cooke also participated in the making of an educational video for juvenile offenders regarding the consequences of criminal activity. The corrections officer who supervised this effort stated that Cooke's "knowledge, insight, and professional demeanor reflects the epitome of the program." Furthermore, "using his skills in the area of computers, [Cooke] was able to establish a self-help curriculum that provided inmates the opportunity to receive basic computer training, and ultimately, receive their General Education Diplomas (GED's)." Cooke has also helped to organize an annual festival for the children of the inmates at Soledad State Prison, "has been an advisor in various anger management groups, ... works closely with ministry groups ... [and] has been utilized to quell conflicts that have arisen between staff and inmates."

***3** In addition to commending his work performance, volunteer efforts, and impeccable conduct, numerous corrections officers placed notations in Cooke's file expressing their belief that the Board should find him suitable for parole. For example, corrections officers made the following statements:

> "I can honestly say that Inmate Cooke is one of the best mentors and positive Inmate Advisors I have ever experienced in my fifteen (15) year tenure with the California Department of Corrections. I highly recommend Inmate Cooke for any parole consideration he may be eligible for...."

> "Any consideration you may give with regards to inmate Cooke's parole considerations comes with the endorsement of the undersigned."

> "It has come to my attention that Inmate Cooke is scheduled for a parole board hearing for consideration of a parole date. I completely recommend Cooke be given the opportunity to reenter society as a fully productive citizen."

> "I fully recommend that Inmate Cooke be given strong consideration for parole. I expect and anticipate that he will continue his helpful deeds and be-

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> come a positive asset to the community."
>
> "Any consideration given regarding Inmate Cooke's release ... would be a great service to society."
>
> "I sincerely believe that if given the opportunity he would be a productive citizen. I fully recommend his consideration for parole and release."

In addition, a Correctional Lieutenant stated, "during my five year working relationship with him ... Cooke has exemplified the epitome of a rehabilitated inmate."

Cooke stated at the hearing that if he were released, he planned to live with his wife in the home they own in Ontario, California. Several employers had offered to hire him upon his release. The offers included a "guaranteed job placement" with the Clair Foundation, a part-time position as a computer assistant for a general contractor, and a full-time telemarketing position with Prudential Realty. The Board also reviewed letters from several of Cooke's relatives who stated that they would assist him both financially and emotionally upon his release from prison. In total, twenty-nine of Cooke's family members and close friends wrote letters to the Board requesting that he be granted parole. The Board received no letter or other statement of opposition to parole from the district attorney's office or any law enforcement agency.

The Board also reviewed two psychological evaluations prepared by prison psychologists, both of which stated that Cooke suffers no mental health problems. The first evaluation, dated October 9, 1996, described Cooke as a "self-motivated person" who "can be counted on to maintain or improve the gains made while he has been incarcerated." The second evaluation, dated February 14, 2000, and specifically prepared for Cooke's November 2002 hearing, described Cooke as "an exemplary inmate" and stated that Cooke would "not present a problem to society" if released. The evaluation contained some inaccurate information with respect to Cooke's ethnicity and family background.[FN5] Because there were "so many inconsistent and erroneous statements" in the second report, the Board determined that it "lack[ed] credibility," and thus said that it would order another report.

***4** The Board also reviewed Cooke's disciplinary record. Cooke had received only two written disciplinary infractions; they were issued within five months of each other and both were issued during the first year and a half of his incarceration. In September of 1992, he was issued a disciplinary citation for not following orders when a corrections officer told him to remove food from another prisoner's tray.[FN6] In February of 1993, he was issued a second citation for refusing to clean up another inmate's feces when asked to do so by a corrections officer. Cooke accepted responsibility for both violations.

The Board also discussed a third disciplinary infraction that appeared in Cooke's file, for possession and trafficking of marijuana. Cooke's attorney informed the Board that because prison officials had found that the charge was unfounded, it had been dismissed, and therefore it should not have been in Cooke's file. The Board said that it would look into the issue further, but nonetheless considered this alleged infraction in deeming Cooke unsuitable for parole. The record reflects that the charge was, in fact, dismissed and thus should not have been considered by the Board.

Finally, the Board reviewed Cooke's 2002 Life Prisoner Evaluation, which had been prepared by Cooke's corrections counselor and was based on the information before the Board as well as his own experience supervising Cooke. In the report, the counselor concluded that

> [c]onsidering the commitment offense, prior record and prison adjustment, the writer believes the prisoner would probably pose a low degree of threat to the public at this time, if released from prison. This belief is based on Inmate Cooke not having any prior record of criminal conduct ... and the circumstances of the instant offense. He does not appear to be criminally minded and has a good insight into himself. Inmate Cooke has been able to maintain himself relatively disciplinary free during the 11 years of incarceration. Inmate Cooke has shown marked progress toward maintaining an overall positive program and attitude.

After reviewing the foregoing evidence, the Board determined that Cooke was unsuitable for parole because he "would pose an unreasonable risk to society if released from prison." The Board based this determination on the following findings:

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> Firstly, the commitment offense was carried out in an especially cruel and callous manner. It was carried out in a premeditated manner. It was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. .... Institutionally, [the inmate] has not yet fully participated in beneficial self-help and/or therapy programming. He has not yet developed a marketable skill that can be put to use upon release. He's had two [disciplinary violations] ... One ... for ... possession, trafficking marijuana.... [A]nother ... for disobeying rules and regulations. The psych report dated 2/14/2000 is ... favorable. But it lacks credibility with myself and with the Panel.... [T]he prisoner does need self-help and/or therapy programming in order to face, discuss, understand, and cope with stress in a nondestructive manner. And to face, discuss, and understand the causative factors that led to the life crime. Until progress is made, he continues to be unpredictable and a threat to others. .... He needs to complete a vocation.

***5** After the Board orally stated these findings, Cooke asked for advice about what he could do "in order to be found suitable." The Board explained that he needed to complete a vocation because "it not only shows that you ... can grow as a person[, it also] ... shows that you can set goals and complete goals and get something done."

C.

On December 19, 2003, Cooke filed a petition for a writ of habeas corpus in Alameda County Superior Court. Three days later, on December 22, 2003, the court denied the petition. In its entirety, the order denying the petition reads as follows:

> The Court having reviewed the defendant's Ex Parte Petition for Writ of Habeas Corpus, filed on December 19, 2003, orders said motion be DENIED.
>
> The Petition fails to state a prima facie case for relief sought. The record submitted by Petitioner does not support the Petitioner's claims that his Constitutional and statutory rights were violated by the [Board of Prison Terms]. The record indicates that there was some evidence, including but certainly not limited to the life offense, to support the board's denial of Petitioner's parole.

Cooke filed a habeas petition with the California Court of Appeal, and subsequently a petition for review with the California Supreme Court. Both were summarily denied.

On October 18, 2004, Cooke filed a habeas corpus petition in federal court. The district court denied the petition and entered judgment on October 6, 2005. On October 14, 2005, Cooke timely filed a notice of appeal.

II.

[1] "We review de novo a district court's decision to deny a petition for habeas corpus." *Bailey v. Hill*, 599 F.3d 976, 978 (9th Cir.2010).

[2] The State contends that we lack jurisdiction over this appeal because Cooke has not obtained a certificate of appealability, as required under 28 U.S.C. § 2253(c). Cooke originally applied for a certificate of appealability in the district court, but withdrew his application in light of our decision in *Rosas v. Nielsen*, 428 F.3d 1229, 1232 (9th Cir.2005), which held that a federal habeas petitioner challenging the denial of parole was not required to obtain a certificate of appealability. In *Hayward v. Marshall*, 603 F.3d 546 (9th Cir.2010) (en banc), however, we overruled *Rosas* and held that a federal habeas petitioner must obtain a certificate of appealability to invoke appellate jurisdiction over this type of claim. "We may issue such a certificate *sua sponte*," *id.* at 554, and we do so here. Like the petitioner in *Hayward*, Cooke "had followed our prior decisions when he proceeded without a certificate, and he has 'made a substantial showing of the denial of a constitutional right.' " *Id.* at 554-55 (quoting 28 U.S.C. § 2253(c)(2)). We therefore certify for appeal the issue whether Cooke was denied parole in the absence of "some evidence" of current dangerousness, and thus in violation of his federal right to due process.[FN7]

[3] Because Cooke filed his habeas petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), we may not grant relief unless the state court's adjudication of his claim "resulted in a decision that was either (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the

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Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Doody v. Schriro*, 596 F.3d 620, 634 (9th Cir.2010) (en banc) (citation omitted).

***6** The State contends that the constraints imposed by AEDPA preclude federal habeas relief on Cooke's claim. This argument is foreclosed by our recent decision in *Hayward v. Marshall*. *See also Pearson v. Muntz*, 606 F.3d 606 (9th Cir.2010). In *Hayward*, we held that due process challenges to California courts' application of the "some evidence" requirement are cognizable on federal habeas review under AEDPA. *Hayward*, 603 F.3d at 561-64. Under the standard announced in *Hayward* for California parole cases, federal habeas courts must accord due deference to the state court decision and thus must determine "whether the California judicial decision approving the governor's [or the Board's] decision rejecting parole was an 'unreasonable application' of the California 'some evidence' requirement, or was 'based on an unreasonable determination of the facts in light of the evidence.' " *Id.* at 563 (quoting 28 U.S.C. § 2254(d)(1)-(2)). It is to that question we now turn.

III.

As we have noted, the last reasoned state court decision addressing Cooke's claim stated that the record contained "some evidence, including but certainly not limited to the life offense, to support the board's denial of [Cooke's] parole." To determine whether this decision "was an 'unreasonable application' of the California 'some evidence' requirement, or was 'based on an unreasonable determination of the facts in light of the evidence,' " *id.* (quoting 28 U.S.C. § 2254(d)(1)-(2)), we must examine the nature and scope of the federally enforceable liberty interest created by California's "some evidence" requirement.

A.

[4] State parole systems "may create liberty interests in parole release that are entitled to protection under the Due Process Clause." *Bd. of Pardons v. Allen*, 482 U.S. 369, 371, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987) (citing *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979)). California's "some evidence" requirement is a component of the liberty interest created by the parole system of that state. In *Greenholtz*, the Supreme Court lamented that the absence of litigation of the issue in state court had "denied [it] the benefit of the Nebraska courts' interpretation of the scope of the interest, if any, the [Nebraska parole] statute was intended to afford to inmates." 442 U.S. at 12, 99 S.Ct. 2100. Here, in determining whether the decision of the Alameda County Superior Court was an unreasonable application of California's "some evidence" requirement, we have the benefit of extensive guidance from the California Supreme Court as to the scope of the liberty interest at issue.

The California Supreme Court has explained that the "some evidence" requirement is mandated by the state regulatory, statutory, and constitutional provisions that govern parole decisions in California. *In re Rosenkrantz*, 29 Cal.4th 616, 128 Cal.Rptr.2d 104, 59 P.3d 174, 201-03 (2002). The requirement imposes substantive rather than purely procedural constraints on state officials' discretion to grant or deny parole: "a reviewing court ... is not bound to affirm a parole decision merely because the Board or the Governor has adhered to all procedural safeguards." *In re Lawrence*, 44 Cal.4th 1181, 82 Cal.Rptr.3d 169, 190 P.3d 535, 552 (2008). Rather, the court must ensure that the decision to deny parole is "supported by some *evidence*, not merely by a hunch or intuition." *Id.* at 554.

***7** [5] Under California law, "the paramount consideration for both the Board and the Governor" must be "whether the inmate currently poses a threat to public safety and thus may not be released on parole," *id.* at 552, and "the facts relied upon by the Board or the Governor [must] support the ultimate decision that the inmate remains a threat to public safety." *Id.* at 554. Accordingly, for a reviewing court "the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety." *Id.* at 553; *see also Hayward*, 603 F.3d at 562 (noting that " 'some evidence' of future dangerousness is indeed a state *sine qua non* for denial of parole in California") (citing *Lawrence*, 82 Cal.Rptr.3d 169, 190 P.3d at 549; *In re Shaputis*, 44 Cal.4th 1241, 82 Cal.Rptr.3d 213, 190 P.3d 573, 582 (2008)).

[6] The California Supreme Court has expressly rejected the argument "that the aggravated circum-

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stances of a commitment offense inherently establish current dangerousness." *Lawrence*, 82 Cal.Rptr.3d 169, 190 P.3d at 554. Although the Board or the Governor may consider the circumstances of the commitment offense when making a decision to grant or deny parole,

> the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety.

Id. at 555 (cited in *Hayward*, 603 F.3d at 562). In sum, a reviewing court must consider "whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record before the Board or the Governor." *Id.* at 560. Thus, there must be more than the crime or its circumstances alone to justify the Board's or the Governor's finding of current dangerousness.[FN8]

B.

Bearing in mind the foregoing considerations as to the scope of the federally enforceable liberty interest created by California's "some evidence" requirement, we turn now to the state court decision upholding Cooke's denial of parole. As we have noted, the state court found that the Board's decision was supported by some evidence "including but certainly not limited to the life offense." Because the state court's decision does not reveal which of the Board's findings it believes supported the denial of parole, other than "the life offense," and which, if any, did not, we will examine each of the Board's other stated reasons for denying parole.

One of the bases upon which the Board deemed Cooke unsuitable for parole was the finding that the February 14, 2000 psychological evaluation prepared for the hearing was unreliable. The record supports the Board's finding that the evaluation contained numerous errors and inconsistencies, and the Board was clearly justified in disregarding it in its entirety. A properly disregarded piece of favorable evidence, however, cannot possibly constitute evidence of current dangerousness; that proposition is illogical on its face. Evidence that is excluded is not probative of anything.

***8** The Board also relied on the disciplinary infractions contained in Cooke's file: one for trafficking marijuana, and two for disobeying prison rules and regulations. As noted *supra*, the marijuana trafficking charge had been dismissed as unsubstantiated, and thus should not have been considered by the Board. The other two offenses occurred within the first year and a half of Cooke's imprisonment; one was based on Cooke's refusal to clean up another's man's feces, and the other on his refusal to take food off another man's tray. These two minor and non-violent occurrences, which occurred in 1992 and 1993, cannot reasonably be viewed as evidence that Cooke posed an unreasonable risk to public safety in 2002, especially as he had been discipline-free for nearly a decade. Accordingly, Cooke's disciplinary record does not provide evidence of current dangerousness.

Next, the Board found that Cooke "has not yet fully participated in beneficial self-help and/or therapy programming," and that he needed more of such programming to "cope with stress in a nondestructive manner" and to "face, discuss, [and] understand the causative factors that led to the life crime." The Board, however, failed to identify any evidence that supports such a conclusion. Cooke has received numerous accolades for his extensive participation in self-help groups and programming; indeed, he has designed such programming and is now leading such groups. Nothing in the record so much as hints at the possibility that Cooke might need further programming in order to become non-dangerous, or even that he suffered from stress of any kind while in prison. Accordingly, the Board's bare assertion that Cooke needs additional programming cannot reasonably be viewed as providing evidence that supports a finding of current dangerousness.

Similarly, the Board found that Cooke needed to obtain certification in a trade to make himself marketable after his release and to demonstrate that he "can grow as a person ... can set goals, ... complete goals and get something done." This finding, again, is wholly without evidentiary support. The record before the Board demonstrates that Cooke has a strong educational background-he graduated from high

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school with a high grade point average, attended the University of New Mexico, and was close to completing a bachelor's degree in finance-and possesses many marketable skills. Nothing in the record suggests that Cooke would have any difficulty obtaining employment upon release; to the contrary, the Board recognized that he had several standing job offers in a range of fields, from counseling to information technology to real estate. Moreover, the record was full of praise for Cooke's ability to grow as a person, to set goals for himself, and to complete tasks. Indeed, the record was replete with glowing praise from Cooke's supervisors regarding his exceptional diligence, positive attitude, and strong work ethic. No evidence suggests that Cooke's certification in a trade would have any benefit, let alone that such certification is necessary to render him non-dangerous. Accordingly, the Board's wholly unsupported *sua sponte* finding with regard to Cooke's failure to obtain certification in a trade does not provide evidence of current dangerousness.

***9** The remaining findings the Board deemed supportive of a denial of parole all relate to the circumstances of Cooke's commitment offense. We need not decide whether these findings are themselves supported by the record, however, because they cannot, standing alone, constitute the requisite evidence of current dangerousness. As the California Supreme Court has held, the circumstances of a commitment offense cannot constitute evidentiary support for the denial of parole "unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." *Lawrence,* 82 Cal.Rptr.3d 169, 190 P.3d at 555. Cooke had no pre-incarceration history suggesting dangerousness; no history during his time in prison that would support such a finding; no testimony, report, or other evidence regarding a hostile demeanor; and no indication of a disturbed mental state or a mental state that would otherwise suggest current dangerousness. Accordingly, assuming the validity of the Board's findings as to the circumstances of the commitment offense, there is no other evidence that would, as required by *Lawrence,* reasonably support the finding of "some evidence" of current dangerousness.

[7] In sum, each of the Board's findings (other than those regarding the circumstances of the commitment offense) [FN9] lacked any evidentiary basis. Nothing in the record supports the state court's finding that there was "some evidence" in addition to the circumstances of the commitment offense to support the Board's denial of Petitioner's parole. The Parole Board's findings were individually and *in toto* unreasonable because they were without evidentiary support. When habeas courts review the "some evidence" requirement in California parole cases, both the subsidiary findings and the ultimate finding of some evidence constitute factual findings. Here, there was no evidence that reasonably supports either the necessary subsidiary findings or the ultimate "some evidence" finding. Accordingly, we hold that the state court decision was " 'based on an unreasonable determination of the facts in light of the evidence.' " *Hayward,* 603 F.3d at 563 (quoting 28 U.S.C. § 2254(d)(2)). Cooke is entitled to a writ of habeas corpus.

IV.

For the foregoing reasons, we reverse the district court and remand with instructions to grant the writ.

REVERSED and REMANDED.

FN1. On July 1, 2005, the California Board of Parole Hearings replaced the Board of Prison Terms. Cal.Penal Code § 5075(a).

FN2. *Hayward,* 603 F.3d at 561-63 (holding that federal habeas courts reviewing a due process challenge to the denial of parole in California must determine "whether the California judicial decision approving the [Board's] decision rejecting parole was an 'unreasonable application' of the California 'some evidence' requirement, or was 'based on an unreasonable determination of the facts in light of the evidence.' ") (quoting 28 U.S.C. 2254(d)(1)-(2)). We note that the district court did not have the benefit of our en banc decision in *Hayward* when it decided Cooke's petition.

FN3. This description of the offense is drawn primarily from the California Court

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of Appeals' opinion affirming Cooke's conviction. *People v. Cooke*, 16 Cal.App.4th 1361, 1364-67, 1375, 20 Cal.Rptr.2d 506 (1993). The opinion states that the missing item was a $10,000 necklace. *Id.* Before the Board, Cooke stated that, in fact, $10,000 in cash *and* a necklace were missing from his apartment.

FN4. Ryan suffered a fractured cheekbone and partial hearing loss in one ear as a result of the shooting.

FN5. Specifically, the report stated that Cooke is Polynesian, when in fact he is of mixed African American and Polynesian descent; identified Cooke's family's religious affiliation as Mormon, when in fact they are "nondenominational"; and stated that Cooke's parents divorced when he was twelve years old, when in fact they divorced when he was five. In addition, although a later section of the report contained accurate information about Cooke's marital status, the first page of the report described him as "single married."

FN6. When asked about this disciplinary infraction, Cooke explained to the Board that "there's a thing with prisoners that another prisoner shouldn't touch another man's food. And so what happened was my supervisor said, there is four hot dogs on this tray. Take two off. And I just told him I really-I said, honestly, I can't do that. I can't take food off another man's tray."

FN7. Because we resolve this issue in Cooke's favor, we need not reach the other issues that he raises on appeal.

FN8. In *Hayward*, we used "current dangerousness" and "future dangerousness" interchangeably when referring to the finding for which there must be "some evidence." There is no meaningful distinction between the two terms.

FN9. As we have explained, we need not and do not decide whether the Board's findings with regard to the circumstances of the commitment offense are supported by the record. We simply assume, for purposes of this opinion, that they are.

C.A.9 (Cal.),2010.
Cooke v. Solis
--- F.3d ----, 2010 WL 2330283 (C.A.9 (Cal.)), 10 Cal. Daily Op. Serv. 6994

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EXHIBIT - A
Amended Judgment and Sentence
VRP Of Resentencing Hearing

FILED
IN OPEN COURT
DEC 9 1986
ROBERT L. FREUDENSTEIN, Clerk
By _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON, Plaintiff, -vs- RICHARD JAMES DYER Defendant.	NO. 81-1-00398-1 AMENDED JUDGMENT AND SENTENCE

THIS MATTER coming on before the undersigned Judge of the above-entitled Court for entry of an Amended Judgment and Sentence and Warrant of Commitment the defendant having been found guilty by verdicts of the crimes of (1) FIRST DEGREE RAPE - Count II (RCW 9A.44.040), (2) FIRST DEGREE RAPE - Count IV (RCW 9A.44.040), (3) UNLAWFUL IMPRISONMENT - Count V (RCW 9A.40.040), (4) FIRST DEGREE BURGLARY - Count VI (RCW 9A.52.020), (5) FIRST DEGREE RAPE - Count VII (RCW 9A.44.040), [Count I - KIDNAPPING having merged into Count II - FIRST DEGREE RAPE; Count III - KIDNAPPING having merged into Count IV - FIRST DEGREE RAPE], on January 28, 1982; the defendant having been originally sentenced on February 19, 1982 for the above convictions at which the original sentencing hearing the defendant was present in person and was represented by his attorneys, ANTHONY SAVAGE and JAMES L. REESE, the State of Washington being represented by C. DANNY CLEM, Prosecuting Attorney and KENNETH G. BELL, Deputy

EXHIBIT 2

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

Prosecuting Attorney for Kitsap County; the defendant being asked at the original sentencing if there was any legal cause why judgment should not be pronounced and no legal cause was shown at which time the Court entered a judgment of guilty to the crimes of (1) Count II - FIRST DEGREE RAPE, (2) Count IV - FIRST DEGREE RAPE, (3) Count V - UNLAWFUL IMPRISONMENT, (4) Count VI - FIRST DEGREE BURGLARY, and (5) Count VII - FIRST DEGREE RAPE; and it appearing that at said sentencing hearing the Court ordered the defendant sentenced as follows;

The defendant is sentenced to a maximum term of:

Life for the crime of: Count II - FIRST DEGREE RAPE

Life for the crime of: Count IV - FIRST DEGREE RAPE

Five (5) years for the crime of: Count V - UNLAWFUL IMPRISONMENT

Life for the crime of: Count VI - FIRST DEGREE BURGLARY

Life for the crime of: Count VII - FIRST DEGREE RAPE

In such facility as the Department of Corrections shall deem appropriate;

The Court further ordered the sentences to run concurrently and that the defendant pay costs in the amount of $3,111.90 and that the defendant pay an additional assessment to the crime victim's fund of $25.00 and the defendant was ordered remanded into the custody of the Sheriff of Kitsap County to be detained and delivered to the custody of the proper officers for transportation to and

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
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confinement in the appropriate facility. Said original Judgment and Sentence was entered by the HONORABLE ROBERT J. BRYAN on February 19, 1982.

After said sentence the defendant appealed and an opinion was filed on August 14, 1984, which reversed the convictions of Count V - UNLAWFUL IMPRISONMENT, Count VI - FIRST DEGREE BURGLARY, and Count VII - FIRST DEGREE RAPE, but affirmed the convictions for FIRST DEGREE RAPE entered in Counts II and IV. It appears that the defendant was never retried on Counts V, VI, and VII; and that it appears that an Amended Judgment and Sentence should be entered clarifying the defendant's present statutus and it appears that Judge Robert J. Bryan is no longer a Judge for Kitsap County but that Judge Karen Conoley is now the Judge of the same department and that it would be in the interest of justice to have an Amended Judgment and Sentence entered reflecting valid convictions only as to Counts II and IV in order that the defendant's minimum time properly can be set by the parole board and that the appellant costs can properly be taxed in this Amended Judgement and Sentence; it is therefore,

ORDERED, ADJUDGED, AND DECREED that the defendant is guilty of Count II - FIRST DEGREE RAPE and Count IV - FIRST DEGREE RAPE, and that the defendant has been asked if there was any legal cause why judgment should not be now pronounced and no legal cause was shown; it is hereby

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ORDERED, ADJUDGED, AND DECREED that the defendant is guilty of Counts II and IV, FIRST DEGREE RAPE and that the defendant is sentenced to life imprisonment for the crime charged in Count II - FIRST DEGREE RAPE (RCW 9A.44.040) and Life for the crime charged in Count IV - FIRST DEGREE RAPE (RCW 9A.44.040); and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall serve said sentences concurrently; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall pay costs in this matter of $3,111.90; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall also pay an assessment to the crime victim's fund in the amount of $25.00; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall pay costs on appeal as taxed by mandate from the Court of Appeals in the amount of $113.08; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant is given credit for time served of 1850 days as of December 9, 1986.

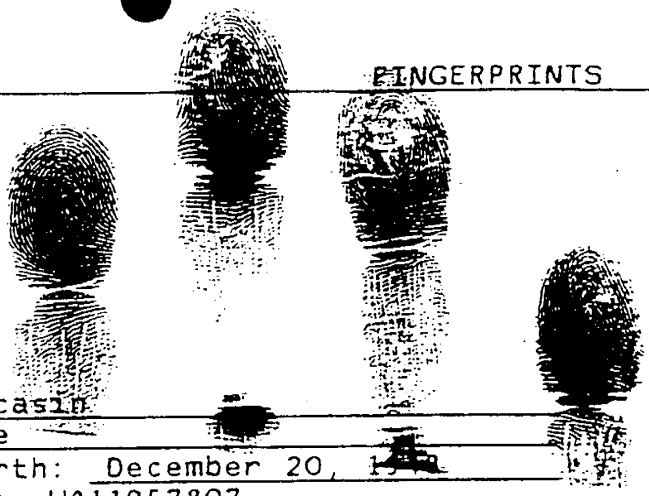
The defendant is remanded into the custody of the Sheriff of Kitsap County to be detained and delivered back into the custody of the proper officers for transportation to and confinement in the appropriate facility.

DATED THIS 9th day of December, 1986.

KAREN B. CONOLEY, JUDGE

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

FINGERPRINTS



Race: Caucasin
Sex: Male
Date of Birth: December 20, 19[illegible]
SID Number: WA11957807

DATED this _____ day of December, 1986.

FINGERPRINTS ATTESTED BY:

ROBERT L. FREUDENSTEIN
CLERK

By: Mary Dodeward
DEPUTY CLERK

PRESENTED BY:

C. DANNY CLEM
Prosecuting Attorney

APPROVED FOR ENTRY

~~JAMES K. SELLS~~ L. R. OLBERTZ
Attorney for Defendant

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE
SAME HAVING BEEN FILED Dec. 9, 1986
ATTEST 12-9 19 86

ROBERT L. FREUDENSTEIN
COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF KITSAP
BY Gloria Masters D.C.

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.) No. 81-1-00398-1
)
RICHARD DYER,)
)
Defendant.) ORIGINAL

VERBATIM REPORT OF PROCEEDINGS

December 9, 1986
Before the Honorable Karen B. Conoley

APPEARANCES:

For the Plaintiff: Mr. C. Danny Clem
Prosecuting Attorney

For the Defendant: Mr. Zenon P. Olbertz
Attorney at Law

GAYLE WAKEFIELD, CCR, RPR, CRR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
614 DIVISION STREET
PORT ORCHARD, WA. 98366
(360)337-7140

EXHIBIT A

December 9, 1986

THE COURT: State vs. Dyer. This is Cause No. 81-1-00398-1.

MR. CLEM: Your Honor, this comes on for just the reimposition of the sentence. I'll pass up to the court proposed amended judgment and sentence.

The defendant was originally found guilty of five counts of various a sundry felonies on January 28. He was sentenced on February 19, all with counsel, Mr. Savage and James Reid. Thereafter he appealed; three counts were reversed, basis being they shouldn't have been tried at the same time. There was a further hearing sometime about should the costs be reduced. Judge Kruse denied that.

Then the Department of Corrections contacted me and said that it's very difficult for them to set a minimum unless the judgment and sentence is drafted to reflect what happened after the Court of Appeals, and that's the reason it's here. It's just to eliminate Counts V, VI and VII, which he's never been retried on, and so if you'd turn to page 4 the original costs are there, $3,111.90, crime victims of $25.

The only thing different is the $113, which was included in the mandate from the court of appeals taxed

in favor of the respondent State of Washington against the defendant.

Credit for time served we figured it out as 1,850 days as of today. That's it.

THE COURT: Mr. Olbertz.

MR. OLBERTZ: Your Honor, I have a question and I'm not sure how to deal with it. Under the new statute that just went into effect under 9.95.011, entitled "minimum terms," it indicates "When the court commits a convicted person to the Department of Corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall at the time of sentencing or revocation of probation fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense."

It goes on, "The court shall attempt to set the minimum term reasonably consistent with the sentencing ranges under the SRA." I discussed this matter with Mr. Clem. He does not feel that this statute is applicable in this situation, but I'm not so sure that -- I've never dealt with it before, and I'm not sure that any of us have dealt with this particular section of the statute, and it would appear to me that the court is committing Mr. Dyer at this time to the Department of Corrections for an offense committed

before July 1, 1984, and if that is the case then the court shall at the time of sentencing fix a minimum term.

THE COURT: I understand your position and I don't agree with you. This is a deletion of counts as a result of an appellate decision not a resentencing on counts for which he were retried. If as a result of the appeal court's action, for example, it had been a retrial, and then I were sentencing him, I would agree with you, but at this point he's not -- he was originally committed on the same counts plus some.

I'm not committing him on any new counts. I'm not committing him on any new convictions, simply amending the judgment and sentence to delete those counts which the appeals court threw out and so, analytically, I don't think it is a recommitment. It's an amendment to delete rather than a recommitment.

If it had come back on a retrial then I think that section would be applicable, or if the state had chosen to retry him on the other counts, but he has been committed on the counts on which he is serving and will serve that commitment. That commitment continues. The only amendment is a deletion rather than an addition so it seems to me, analytically, it would not be applicable.

I presume that you're objecting and that --

MR. OLBERTZ: That is an objection, for the record.

MR. CLEM: For the record, the state's position in this, Your Honor, is we're not trying to create a new right for this defendant. If he insists on litigating some new right, we'd just as soon the court just send him back to prison the way it is, but we were doing this in good faith. My understanding is that it was -- inured to his benefit. If he doesn't want the benefit requested by the Department of Corrections staff, it's fine with us.

THE COURT: I guess I don't see it your way either. I think that the Department of Corrections has to have an amendment of judgment and sentence in order for them to validly hold him, but I don't think he has any right to be sentenced under the SRA, so I'm going to enter the amended judgment and sentence.

MR. OLBERTZ: The only --

THE COURT: And add the only addition is the costs.

MR. OLBERTZ: I would also make a request under the -- on page 4 it's ordered "As adjudged and decreed" that this is as far as the 3,111 that "The defendant shall pay the costs in the sum of." Mr. Dyer

has been making payments on these costs. We're not completely clear as to what the balance is. I would request some wording be placed in this order indicating he should be given credit for all payments made to date.

MR. CLEM: I don't think that's even necessary. We have no -- there is no dispute. My understanding is he is making payments and that will naturally be assessed against this. We're not changing the figures at all.

MR. OLBERTZ: I think we all agree on what the situation is. I'm just concerned.

THE COURT: I'm going to put in the language "With credit for payments he's already made -- properly made."

MR. CLEM: What line is that?

THE COURT: Page 4, after the semi-colon, "With credit for payments previously ordered and made." I think that's consistent with giving him credit for the time served, otherwise the credit for the time served would have been the credit at the time of the entry, so I think it is consistent.

MR. CLEM: I've passed also up a warrant of commitment.

THE COURT: I've signed that.

MR. CLEM: Mr. Olbertz should have an opportunity to sign that also.

MR. OLBERTZ: I think I signed that.

THE COURT: I guess, by further comments by Mr. Olbertz, the minimum term that has already been set for the time he was sentenced.

MR. OLBERTZ: There is a PRP pending with regard to the minimum terms.

MR. CLEM: Thank you, Your Honor.

(The hearing concluded.)

C E R T I F I C A T E

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP)

I, Gayle Wakefield, an official court reporter for Kitsap County Superior Court, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me in the above-entitled matter.

DATED:_____

_____
GAYLE WAKEFIELD, CCR, RPR
OFFICIAL COURT REPORTER
CCR# WAKEFGA499P9

March 29, 2001

THE COURT: This is State of Washington vs. Charles Berry, 00-1-01607-5.

This comes on for ruling pursuant to the defense motion to dismiss pursuant to Criminal Rule 4.3(a), the mandatory joinder, and really the distinction came down to whether or not it made a difference if the felony action was filed before or after the misdemeanor action.

Now, the parties argued -- or appeared to agree, I guess, under the State vs. Lee rule, that the charges at issue were based upon the same conduct and absent

some contrary -- some contrary showing it would be subject to mandatory joinder under 4.3(a).

I'm satisfied that the case should be dismissed. Any appeal will be on the record, and my findings would not be of any assistance, but my analysis under the rule is that Peterson requires a joinder.

These are successive prosecutions based upon essentially the same criminal conduct, and that's what the rule was designed to avoid. I don't find that there's been a strong response as to why -- if the motion were granted, the ends of justice would be defeated, so the motion is granted.

Thank you, counsel.

MR. WEAVER: I guess, Your Honor, the one question I have is should we put this on for entry of an order?

THE COURT: I think you probably ought to prepare an order for dismissal.

MR. WEAVER: This is set for trial on Monday. I would suggest that we keep that hearing scheduled as is with the anticipation that there will be an order of dismissal entered at that time.

(The hearing concluded.)

C E R T I F I C A T E

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP)

I, Gayle Wakefield, an official court reporter for Kitsap County Superior Court, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me in the above-entitled matter.

DATED: 10/23/01

Gayle Wakefield

GAYLE WAKEFIELD, CCR, RPR
OFFICIAL COURT REPORTER
CCR# WAKEFGA499P9

EXHIBIT - B
Court of Appeals Decision on Direct Appeal
COA No. 6162-7-II

the offenses involving Ms. W from those involving Ms. A and Ms. B. The State cross-appeals, contending the court erred by instructing the jury that if it found Dyer guilty of the first degree rapes of Ms. A and Ms. B, it was not to find him guilty of their first degree kidnappings as separately charged. We affirm in part and reverse in part.

On January 27, 1980, after accepting a ride from two men at 2:30 a.m. in Bremerton, Ms. A was kidnapped and raped. The men drove her somewhere near a pond where the driver undressed and raped her the first time. He then made her lie naked on the floorboards as they drove to a house. Before leaving the car to go into the house he put a coat over her head so that she could see very little. In the house she was tied hands and feet to a bed with ropes that were already there. The driver replaced the coat over her head with cotton balls and taped them over her eyes. Ms. A was able to see little of the rapist or her surroundings for the rest of the night. When the other man left, the driver undressed, applied contraceptive foam to Ms. A, and raped her a second time. The sexual assaults continued throughout the night. At one point the driver untied her, turned her from her back to her stomach, and raped her in the new position. In the morning he gave her a bath and dressed her in her clothes which had been washed and dried. Ms. A was then driven to a rural area and released.

Dyer was charged by a seven-count amended information with, inter alia, first degree rape and first degree kidnapping of Ms. A. His defense was misidentification. In addition to describing a car and a house which were similar to Dyer's, Ms. A identified some rope, a blue shirt with horizontal red

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,	)	NO. 6162-7-II
Respondent,	)	Division Two
v.	)	Unpublished Opinion
RICHARD J. DYER,	)	
Appellant.	)	Filed August 14, 1984

REED, J. -- Richard J. Dyer was convicted by a jury of first degree rape of Ms. A, first degree rape of Ms. B, and first degree rape of his ex-wife Ms. W, as well as unlawful imprisonment of Ms. W and first degree burglary of her apartment. He appeals, challenging the validity of a search warrant, the denial of his motion to suppress Ms. B's in-court identification, and the denial of his repeated motions to sever

stripes, and a blue jacket as being similar to items used or glimpsed during her ordeal. These items had been taken from Dyer's house pursuant to a search warrant.

The second of the three rape victims was Ms. B. Late at night on August 23, 1980, Ms. B was walking alone in downtown Bremerton. After twice refusing an offer of a ride from two men, she was forced into their car and driven to a dump area. The car got stuck and, after trying unsuccessfully to escape, Ms. B helped the driver get it free. The three then drove back to the main road where the driver stopped and put cotton balls secured with tape over Ms. B's eyes. She remained blindfolded throughout the night. Ms. B was then taken to a house, undressed by the driver and tied hands and feet to a bed. When the other man left, the driver applied contraceptive foam to her and raped her repeatedly as she lay on her back and then on her stomach. The next morning the driver washed and dried her clothes, gave her a bath and dressed her. Ms. B was released in a park.

The charges against Dyer for first degree rape and first degree kidnapping of Ms. B were joined with those involving Ms. A. Dyer's defense again was misidentification. In addition to describing the rapist's car and house, both similar to Dyer's, Ms. B identified a Timex watch that the rapist had given her. Ms. A testified that the watch was hers and had been lost during her struggles in the back seat. Unlike Ms. A, Ms. B was not asked before trial to make a lineup identification of Dyer. While sitting in the hall before testifying, Ms. B saw Dyer in handcuffs being led into court by police. Dyer's objection to the in-court identification of Dyer by Ms. B was overruled, and Ms. B pointed to Dyer as the rapist.

The third rape victim was Ms. W. Until April 1, 1981, she was married to Richard J. Dyer. On October 24, 1980, at a time when they were separated, Ms. W was held overnight at Dyer's house in Bremerton against her will. Dyer grabbed her when she arrived to pick up their child and pulled her into the back bedroom. He undressed her and tied her hands to the bed using ropes that were already there. He had sexual intercourse with her repeatedly through the night, changing her position from back to stomach. He released Ms. W in the morning.

Another incident involving Dyer and Ms. W occurred on September 2, 1981 when they had been divorced for several months and Ms. W was living in her own apartment. Ms. W awoke that morning to find Dyer at the foot of her bed. Dyer bound her hands together with silver duct tape which he had brought with him in a paper bag and raped her. He then drove her into the country, bound her ankles with a cloth army belt after taking her out of the car, and disappeared with a shovel. When he returned, Ms. W persuaded him to take her home. At the apartment Dyer followed her in and raped her again. Afterward, he forced her to take a shower. Then he left.

By the same seven-count information, Dyer was charged with unlawful imprisonment of Ms. W for the October 24, 1980 incident[1] and first degree rape and first degree burglary for the September 2, 1981 incident. Dyer defended by claiming that Ms. W consented. Before trial and twice at appropriate times

---

[1] In 1983 the Legislature amended the first degree rape statute, RCW 9A.44.040, by deleting "not married to the perpetrator." Laws of 1983, ch. 118 § 1. Until that time, it was not a crime for one spouse to rape the other.

during trial, Dyer moved to sever the Ms. W offenses from the Ms. A and Ms. B offenses. The motion was denied each time. Ms. W identified at trial some duct tape and a shovel which had been seized from Dyer's house pursuant to the search warrant.

After hearing the testimony of the three victims as well as numerous corroborative witnesses, the jury found Dyer guilty as charged of all but the first degree kidnappings of Ms. A and Ms. B. The court gave a jury instruction which effectively merged the two kidnappings into the rapes of Ms. A and Ms. B. Dyer received concurrent sentences on all convictions.

First, Dyer contends that the prosecutor's complaint for search warrant dated September 5, 1981 does not establish probable cause to believe that the items to be seized as evidence of the January 1980, August 1980, and September 2, 1981 rapes were then in either Dyer's residence or car. The information in the complaint, he claims, was stale. We do not agree.

An affidavit supporting a search warrant must be sufficiently comprehensive to provide the issuing magistrate with facts from which he can conclude that there is probable cause to believe the items sought are at the location to be searched. State v. Spencer, 9 Wn.App. 95, 510 P.2d 833 (1973). The facts must be current, not remote, and sufficient to justify a conclusion that the items are at the place to be searched at the time the warrant is issued. State v. Spencer, 9 Wn.App. at 97. Probable cause is a common sense, practical question to be tested under the totality of the circumstances. Illinois v. Gates, U.S. , 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983).

Dyer's staleness claim must fail. The complaint for search warrant requested seizure of such things as specifically described articles of clothing, duct tape, rope and a shovel. Because of the nature of these things, each was likely to be retained for some time. None was incriminating in itself and, therefore, it was unlikely that it would be disposed of immediately following the crime. See 1 W. LaFave, Search and Seizure § 3.7 (1978). Having determined that probable cause existed at the time the warrant was issued for the search and seizure of these items, there is no basis for application of the exclusionary rule here.

Second, Dyer claims that the court erred by refusing to suppress Ms. B's in-court identification. Her confrontation with him as he was led into the courtroom handcuffed and in police custody was, Dyer argues, so suggestive and conducive to irreparable mistaken identification that he was denied due process of law. Again we do not agree.

An identification should be excluded only if the identification procedure is so impermissibly suggestive as to create a very substantial likelihood of irreparable misidentification. Neil v. Biggers, 409 U.S. 188, 34 L. Ed. 2d 401, 93 S. Ct. 375 (1972); Simmons v. United States, 390 U.S. 377, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1968); State v. Bockman, 37 Wn.App. 474, P.2d (1984); State v. Cook, 31 Wn.App. 165, 639 P.2d 863 (1982). Paramount in assessing the likelihood of misidentification is the reliability of the witness' identification under the totality of the circumstances. Manson v. Brathwaite, 432 U.S. 98, 53 L. Ed. 2d 140, 97 S. Ct. 2243 (1977); State v. Bockman, supra. The

United States Supreme Court has identified five factors to determine whether an identification is reliable: (1) the opportunity of the victim to observe the subject at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description, (4) the level of certainty at the confrontation, and (5) the length of time between the crime and the confrontation. Neil v. Biggers, 409 U.S. at 199-200.

Under the totality of the circumstances, Ms. B's identification was sufficiently reliable. Ms. B was in the rapist's presence for a considerable period of time before she was blindfolded. The men in the car stopped and twice offered her a ride. The first time she talked with them for 5 to 10 minutes. The second time, about 30 minutes later, she talked with them for about 10 minutes before the passenger grabbed her and threw her into the back seat. The car's dome light lit up when the door opened, and there were street lights on in the area. At the dump site the rapist let her in and out of the car several times as they tried to get the car unstuck. In addition, she had a good look at his face when he helped her up after she was grazed by the car when it became suddenly unstuck. Regarding her prior description, the physical description she gave of the rapist resembled Dyer; her description of the car, a brown two-door Capri with a sunroof, matched the car Dyer owned at that time. At the hearing held outside the presence of the jury, Ms. B was very certain Dyer was the rapist, saying on cross-examination "I never forgot his face. I never forgot the way he looked that night." The fact that Ms. B told the police when she reported the incident that

she would not be able to identify the rapist is for the jury to consider in weighing this evidence. Although a year and a half separated the crime from the identification, elapsed time in itself is not enough to mandate exclusion. Considering these indicia of reliability, there was no error in allowing Ms. B to identify Dyer in court.

Finally, Dyer claims that the court abused its discretion by refusing to grant his timely motions to sever the Ms. W offenses from the Ms. A and Ms. B offenses. Severance is a matter within the discretion of the trial court whose determination is reversible only for an abuse of discretion. State v. Thompson, 88 Wn.2d 518, 564 P.2d 315 (1977); State v. Weddel, 29 Wn.App. 461, 629 P.2d 912 (1981); see CrR 4.4(b). Several factors have been identified as mitigating the prejudice arising from trying multiple counts together. These factors are:

> (1) the strength of the State's case in each count, (2) clarity of defenses to each count, (3) the court properly instructs the jury to consider evidence of the crime, and (4) the admissibility of the evidence of the other crimes even if they had been tried separately or never charged or joined.

State v. Smith, 74 Wn.2d 744, 446 P.2d 571 (1968), vacated in part, 408 U.S. 934 (1972); State v. Harris, 36 Wn. App. 746, 677 P.2d 202 (1984).

The only troublesome factor in this case is the fourth: cross-admissibility of the crimes. We consider first whether the Ms. W offenses would be admissible in a separate trial of the Ms. A and Ms. B offenses.

The issue in the Ms. A and Ms. B cases was identity. Evidence of acts other than those charged is admissible to

establish the identity of an accused as the perpetrator when the method employed in the commission of both the other crime and the crime charged is so unique that mere proof that an accused committed the other crime creates a high probability that he also committed the act charged. State v. Coe, 101 Wn.2d 772, P.2d (1984); State v. Fernandez, 28 Wn.App. 944, 628 P.2d 818, 640 P.2d 731 (1980); State v. Irving, 24 Wn.App. 370, 601 P.2d 954 (1979), review denied, 93 Wn.2d 1007 (1980). This is the handiwork or modus operandi exception to the rule of evidence which usually prohibits the admission of other acts by the accused. See ER 404(b). Because of the distinctive nature of Dyer's sexual assaults of Ms. W on October 24, 1980 and September 2, 1981, these other acts would have been admissible if the Ms. A and Ms. B offenses had been tried separately.

The method employed by Dyer during his sexual assaults of Ms. W contains these unique features: The sexual assault on October 24 occurred in a bedroom of Dyer's own house. Dyer himself undressed the victim, Ms. W. She was laid on her back and tied to the bed. The ropes were already there. Dyer had sexual intercourse with Ms. W repeatedly throughout the night. At some point, he changed her position from her back to her stomach and had intercourse in the new position. During the September 2 incident that occurred in Ms. W's apartment Dyer bound Ms. W's wrists before raping her and before taking her out to the car. He drove her to a rural area. When they returned to the apartment and Dyer had raped her the second time, Dyer ordered her to bathe. He voluntarily released Ms. W at the end of both incidents. Because these features are so

unique and yet so strikingly similar in detail to the rapes of Ms. A and Ms. B, the Ms. W offenses would have been admissible in the Ms. A and Ms. B rape cases on the issue of identity.

However, regarding the admissibility of the Ms. A and Ms. B offenses in a separate trial of the Ms. W offenses, we reach the opposite conclusion. The Ms. A and Ms. B offenses would not have been admissible in a separate trial of the Ms. W offenses.

The issue in the Ms. W rape case was consent. Dyer admitted the fact of sexual intercourse. Our Supreme Court has held that forcible rapes of other victims by the defendant are not admissible to prove that the victim of the crime charged did not consent. State v. Saltarelli, 98 Wn.2d 358, 655 P.2d 697 (1982). Therefore, in a separate trial of the Ms. W offenses, the forcible rapes of Ms. A and Ms. B would not be admissible to prove nonconsent of Ms. W. The Ms. W offenses should not have been tried together with the Ms. A and Ms. B offenses. The court's exercise of discretion in the denial of Dyer's motions to sever was, to this extent, abused.

Having concluded that Dyer was prejudiced by the joinder of offenses only as to the Ms. W offenses, we affirm Dyer's convictions of first degree rape of Ms. A and first degree rape of Ms. B, but reverse his convictions for the Ms. W offenses -- unlawful imprisonment, first degree burglary and first degree rape -- and remand for a new trial as to these charges.

We now turn to the merger issue raised by the State's cross-appeal. The State claims that the court erred by instructing the jury that if it found him guilty of the first degree rapes of Ms. A and Ms. B, it should not render a verdict

on the two kidnapping charges. The State argues that whether or not the kidnappings of Ms. A and Ms. B were separate and distinct from their rapes was a question of fact for the jury and should not have been decided by the court as a matter of law.

We assume, without deciding, that double jeopardy would not bar a retrial on the kidnapping charges and, therefore, that the State has the right to appeal pursuant to RAP 2.2(b)(1).[2]

Under the case law and the evidence, the court's instruction to the jury with reference to the merger of the kidnapping charges into the rape charges was correct. In State v. Johnson, 92 Wn.2d 671, 600 P.2d 1249 (1979), the court held that a separate conviction for the crime aggravating rape to first degree cannot be allowed to stand unless that crime involves some injury to the person or property of the victim or others which is separate and distinct from and not merely incidental to, the crime of which it forms an element. The court suggested that ". . . the jury should be instructed that if it finds the defendant guilty of a greater offense [first degree rape], it cannot find him guilty of a lesser offense [assault or kidnapping] which is included in the greater." Johnson, 92 Wn.2d at 680. In the instant case, the court did nothing more than follow the clear suggestion of our Supreme Court. In addition, the only possible conclusion from the evidence is that the sole purpose of Dyer's kidnappings of Ms. A and Ms. B was to rape them. The kidnappings and rapes were not distinct crimes on these facts. The jury was properly instructed.

---

[2] Defendant did not challenge the State's right to appeal. The issue was not briefed and so is not addressed.

We reverse Dyer's convictions for the crimes involving Ms. W -- unlawful imprisonment, first degree rape, and first degree burglary -- and remand for a new trial. His convictions for first degree rape of Ms. A and first degree rape of Ms. B are affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

WE CONCUR:

Worswick, A.C.J.

Petrie, J.

EXHIBIT - C
Personal Restraint Petition of Dyer
Filed in 1986 under COA No. 10053-0-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF THE PERSONAL RESTRAINT OF: RICHARD J. DYER, Petitioner.	NO. PERSONAL RESTRAINT PETITION

1. STATUS OF PETITIONER:

(a) Petitioner was convicted in the Kitsap County Superior Court (81 1 00398 1) on January 28, 1982 of three counts of first degree rape, one count of unlawful imprisonment, and one count of first degree burglary. On February 19, 1982, he was sentenced to a term of life imprisonment and a concurrent term of five years. On July 7, 1982, the Board of Prison Terms And Paroles set his minimum term at six hundred (600) months. On August 14, 1984, Division II of the Court of Appeals, in an unpublished opinion (No. 6162-7-II) reversed three of the five convictions, specifically, the unlawful imprisonment, the first degree burglary, and one of the first degree rapes. The charges were not refiled by the Prosecuting Attorney.

(b) Petitioner currently is a resident of the Washington State Reformatory, Monroe. (No. 281744).

(c) No previous Personal Restraint Petitions have been filed by Petitioner.

2. GROUNDS FOR RELIEF: See Memorandum In Support Of Personal Restraint Petition attached hereto.

3. STATEMENT OF FINANCES: Petitioner will pay the filing fees. Counsel is retained.

McCLUSKEY, SELLS, RYAN, OLBERTZ & HABERLY
Attorneys at Law
Suite 300
510 Washington Avenue

4. REQUEST FOR RELIEF: Petitioner seeks an order directing the Board of Prison Terms And Paroles to re-set his minimum term based upon only the convictions remaining, and in a manner reasonably consistent with the standards and ranges contained in the Sentencing Reform Act of 1981 (RCW 9.94A)

DATED this 30 day of June, 1986.

McCLUSKEY, SELLS, RYAN, OLBERTZ & HABERLY

JAMES K. SELLS
Attorney for Petitioner

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

After being first duly sworn on oath, I depose and say: That I am the attorney for the Petitioner, that I have read the Petition, know its contents, and I believe the Petition is true.

JAMES K. SELLS

SUBSCRIBED AND SWORN to before me this 30th day of June, 1986.

Peggy A. Bishop
Notary Public in and for the State of Washington residing at Bremerton.

McCLUSKEY, SELLS, RYAN, OLBERTZ & HABERLY
Attorneys at Law
Suite 300
510 Washington Avenue

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF THE PERSONAL RESTRAINT OF RICHARD J. DYER, Petitioner.	)	NO. PERSONAL RESTRAINT PETITION

PETITIONER'S MEMORANDUM
IN SUPPORT OF
PERSONAL RESTRAINT PETITION

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I. GROUNDS FOR RELIEF

Petitioner is presently incarcerated at Monroe pursuant to sentencing by the Kitsap County Superior Court, per Judge Robert Bryan on February 19, 1982. He was convicted of three counts of first degree rape, one count of first degree burglary and one count of unlawful imprisonment. He was sentenced to a term of life imprisonment, with a concurrent term of five years.

On May 10, 1982, the Board of Prison Terms And Paroles held its initial admissions meeting regarding Petitioner. The Board found a "guideline range" of one hundred fourteen (114) to one hundred forty four (144) months, with a "guideline term" of one hundred twenty nine (129) months. This was based upon an offense severity of one hundred twenty nine (129) months and a prior record severity of zero months. However, his minimum term was set by the Board at six hundred (600) months. (See Appendix).

In the meantime, the convictions were appealed to Division II of the Court of Appeals. On August 14, 1984, the Court issued an unpublished opinion

which reversed three of five convictions, specifically, the unlawful imprisonment, the first degree burglary and one of the first degree rapes. This left him convicted of two first degree rapes. Although the three reversals were remanded for a new trial, no action was taken by the Prosecuting Attorney.

Beginning with the issuance of the above referenced opinion, Petitioner repeatedly sought a Board hearing for the purpose of review of his minimum term, the objective being a reduction of term by reason of the fewer convictions. In addition, he sought a hearing for the purpose of consideration of the SRA guidelines pursuant to RCW 9.95.009(2). Petitioner's contention was, and is, that because of the reduction of the number of convictions, his minimum term should be reduced either under the "old" guidelines; or upon consideration of the SRA guidelines.

On February 5, 1986, the Board held a review hearing. No action whatever was taken regarding Petitioner's requests, and his minimum term was left at six hundred (600) months.

Petitioner seeks a hearing before the Board, the purpose of which would be:

First, to recalculate his minimum term, based upon the reduction in the number of convictions, and

Secondly, to set a new minimum term "reasonably consistent" with the SRA guidelines.

This Petition is based upon the Equal Protection guarantees of the Fourteenth Amendment to the U.S. Constitution, and Article 1, Section 12 of the Washington Constitution; the Due Process guarantees of the Fourteenth Amendment to the U.S. Constitution, and Article 1, Section 3 of the Washington Constitution; and the arbitrary and capricious nature of the actions of the Board.

II. STATEMENT OF THE CASE

The refusal of the Board to reconsider Petitioner's minimum term and re-set same in accordance, first with the lesser number of convictions; and secondly, with the requirements of RCW 9.95.009(2), is violative of Petitioner's Due Process and Equal Protection rights. In addition,

the Board's actions are arbitrary and capricious.

Petitioner seeks a hearing wherein the Board will be directed by this Court to set a minimum term in accordance with the convictions remainining, and after giving proper consideration to the Sentencing Reform Act as directed by RCW 9.95.009(2).

III. ARGUMENT

(1) Equal Protection: Petitioner is in a class which may be unique to him. He was sentenced February 19, 1982 and was incarcerated immediately. Thus, he is not within the class created by In Re Meyers, 105 Wn.2d 257 (1986). That is, he was not sentenced initially after July 1, 1984 for a crime committed prior to that time. However, that does not end the inquiry for two reasons:

First, since three of Petitioner's five convictions were reversed, and were not refiled, he essentially must now be re-sentenced. The Board's apparent position that the minimum term for two convictions should remain the same as for five

is not only arbitrary and capricious, but totally inconsistent with any concept of fairness. Petitioner's term should be reset in accordance with the applicable guidelines. Since Petitioner will, in effect, receive a re-sentence, which obviously is after July 1, 1984, he comes with the Meyers, supra, class by reason of the resetting of his minimum term. Therefore, the Board "must consider and attempt to impose sentences reasonably consistent with the ranges and standards under the SRA." Meyers, supra, at 262.

Secondly, even if there were no reversal of convictions, the Board should have, at the very least, reconsidered Petitioner's minimum at its February review hearing. The SRA clearly is not retroactive. In Re Blair, 38 Wn.App. 670 (1984). However, it is equally clear that the Board is directed to consider the SRA ranges for those persons incarcerated for crimes committed prior to the effective date of the Act. Specifically, RCW 9.95.009(2) provides:

> Prior to its expiration and after July 1, 1984, the board shall continue its functions with respect to persons

> incarcerated for crimes committed prior to July 1, 1984. The board shall consider the standard ranges and standards adopted pursuant to RCW 9.94A.040 and shall attempt to make decisions reasonably consistent with those standards and ranges.

There is no language within the Act that would limit the Board's application of "those standards and ranges" at a regular review hearing, such as that held for Petitioner in February. The statute is clear on its face. Any decisions made by the Board after the effective date of the Act must conform with the Act; i.e., the decision shall be "reasonably consistent" with the Act. The word "shall" does not imply any discretion. State v. Q.D., 102 Wn.2d 19 (1984).

If the Board does not consider the SRA standards, on either of the above two bases, the violation of Equal Protection guarantees is clear and irrefutable. Equal Protection simply means that persons who are similarly situated receive like treatment at the hands of the state. Harman v. McNutt, 91 Wn.2d 126 (1978). Petitioner faces a six hundred (600) month minimum term, apparently

based upon the initial five convictions. Application of the SRA to the two remaining convictions would result in a range of sixty seven (67) to eighty nine (89) months with a seventy eight (78) month mid-range; a difference of as much as five hundred thirty three (533) months, or forty four (44) years.

Thus, conceivably, a person incarcerated after July 1, 1984 for exactly the same offenses as Petitioner, with exactly the same profile as Petitioner, would face a minimum term of some forty (40) years less than Petitioner. Petitioner has now served fifty two (52) months, and faces forty five (45) more years. The hypothetical person sentenced under the SRA on July 2, 1984 will conceivably be released in 1989; at a time when Petitioner still will face over forty (40) years.

This situation would appear to be the essence of Equal Protection. When one of two equally situated persons serve a minimum term ten times greater than the other, the constitutional guarantees have somehow been lost.

Recent decisions have generated some confusion

as to the nature of the right of individual liberty, which must be determined first in order to apply the appropriate standard of review. State v. Smith, 93 Wn.2d 329 (1980). In a 1982 decision involving the incarceration of a juvenile, the State Supreme Court called the right to liberty a "fundamental right" thereby requiring a "strict scrutiny" equal protection test. State v. Rice, 98 Wn.2d 384 (1982). The Smith, supra, decision, however, had applied the lesser "rational relationship" test.

Noting the confusion, the Court, in State v. Phelan, 100 Wn.2d 508 (1983) created an intermediate classification by calling the right to liberty a "basic right." It apparently does not now rise to the strata of a "fundamental right," but is something more than a "rational relationship" test. The test apparently is whether the classification can be "fairly viewed as furthering a substantial interest of the state." Phelan, supra, citing Phyler v. Doe, 457 U.S. 202 (1982).

The application of this statute to Petitioner

cannot possibly further a substantial state interest. Petitioner is in a class with all others who are similarly situated; i.e., those who have been incarcerated of like crimes, either before or after July 1, 1984. He is being treated differently than those sentenced before that date becuase he is serving a minimum term based upon three convictions that no longer exist. He is being treated differently than those sentenced after that date, because he must be re-sentenced in accordance with the SRA and he has not.

There is no rational, reasonable, or legitimate state interest in this unequal treatment. There simply is no reason why all involved cannot be treated the same. The only possible argument which the State could advance would be administrative convenience. See In Re Blair, 38 Wn.App. 670, 674 (1984). However, the Board reviewed Petitioner's minimum at a regularly scheduled hearing in February, 1986. There is absolutely no reason why the simple mathematical calculations necessary to revise Petitioner's minimum term based upon reasonable consistency with

the SRA. A "basic" human right should not be sacrificed in favor of bureaucratic convenience.

(2) Due Process: The records of the Board contain no reference whatever to consideration of either the reduction in the number of convictions, or to the SRA. Any administrative agency which applies the exercise of discretion must provide written reasons for its discretionary actions. Harris v. Kastama, 98 Wn.2d 765 (1983); State v. Pain, 94 Wn.2d 387 (1980). By means of a letter from counsel to the Board dated January 30, 1986, Petitioner requested the Board to reset his minimum at his Februrary review based upon the fewer convictions and/or application of the SRA. The Board did neither, and provided no explanation for its actions. See also In Re Meyers, 105 Wn.2d 257 (1986); In Re Sinka, 92 Wn.2d 555 (1979). Failure to do so is a violation of Petitioner's Due Process guarantees, and also is an abuse of discretion. Meyers, supra. A prisoner retains some constitutional protections, including Due Process. Sinka, supra.

IV. REQUEST FOR RELIEF/CONCLUSION

The Court should order a Board hearing in which the Board is directed to set a minimum term consistent with the reduced number of convictions, and reasonably consistent with the provisions of the SRA. If Petitioner has served sufficient time to meet that minimum, he should be released immediately.

In the alternative, Petitioner should be re-sentenced by the sentencing Court on the basis of the reduced number of convictions. That sentencing should be done in accordance with the SRA.

V. APPENDIX

A-1 Notification of Admission Meeting Action

A-2 SRA Worksheet

Respectfully submitted,

JAMES K. SELLS
Attorney for Petitioner

EXHIBIT - D
Response of the ISRB re: PRP of Dyer 1986
Under COA No. 10053-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In Re the Personal Restraint Petition of:	)	No. 10055-0-II
RICHARD J. DYER,	)	RESPONSE OF THE INDETERMINATE SENTENCE REVIEW BOARD
Petitioner,	)	

COMES NOW the respondent, the Indeterminate Sentence Review Board, by and through its attorneys, KENNETH O. EIKENBERRY, Attorney General, and AARON K. OWADA, Assistant Attorney General, and respond to petitioner's personal restraint petition as follows.

I. BASIS FOR CUSTODY

Petitioner is presently incarcerated in a Washington Institution for two convictions of Rape in the First Degree under Kitsap County cause number 81-1-00398-1. See Exhibit 1. Although petitioner was also found guilty of committing the crime of Unlawful Imprisonment, First Degree Burglary, and another count of First Degree Rape, three of the convictions were reversed by the Court of Appeals, Division II, on August 14, 1984. See Exhibit 2.

On July 6, 1982, the Washington State Board of Prison Terms and Paroles set petitioner's minimum duration of confinement for counts 1, 4, 6, and 7 at 600

months, and 60 months for count 5, all to run concurrently. See Exhibit 3. As indicated by Exhibit 4, the Parole Board guideline range for act number 1 resulted in a severity score of 129 months. With a guideline variation of 15, petitioner's guideline range was from 114 to 144 months. As a panel of two board members recommended setting petitioner's minimum duration of confinement at 600 months, this decision was referred to the full board for ratification of the panel decision. As indicated by Exhibit 5, all seven board members ratified the proposed minimum duration of confinement of 600 months prior to the reversal of three convictions by Division II of the Court of Appeals under cause number 6162-7-II (Exhibit 2).

II. ISSUES RAISED BY PETITIONER

Petitioner essentially argues that his minimum duration of confinement must be remanded to the Parole Board to take into consideration the reversal of three convictions under Kitsap County cause number 81-1-00398-1 and also the Sentencing Reform Act of 1981 as a redetermination is necessary after July 1, 1984.

III. RESPONSE

Although respondent does not agree with petitioner's equal protection and due process arguments,

the Board believes it is appropriate to rescore petitioner's minimum duration of confinement in view of the purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.040 and the minimum term recommendations of the sentencing judge and prosecuting attorney, and will attempt to make a decision reasonably consistent therewith.

IV. CONCLUSION

Based on the above, as respondent will provide all relief requested by petitioner, respondent respectfully requests petitioner's personal restraint petition to be dismissed with prejudice as petitioner's petition is moot.

Dated this 24th day of July, 1986.

KENNETH O. EIKENBERRY
Attorney General

Aaron K. Owada

AARON K. OWADA
Assistant Attorney General
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P.O. Box 9699
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EXHIBIT - E

Decision of the Supreme Court
Cause No. 73730-1

[No. 76730-1. En Banc.]
Argued November 10, 2005. Decided July 27, 2006.

In the Matter of the Personal Restraint of RICHARD J. DYER, *Petitioner.*

[1] **Criminal Law — Punishment — Sentence — Parole Board — Parole Eligibility — Review — Standard of Review.** A parole eligibility decision by the Indeterminate Sentence Review Board is reviewed to ensure that the board exercised its discretion in accordance with the applicable statutes and rules. The board abuses its discretion if it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts.

[2] **Criminal Law — Punishment — Sentence — Parole Board — Parole Eligibility — Determination — Administrative Rule — Factors — Consideration.** Although the list of reasons set forth in WAC 381-60-160 for denying parole to a convicted offender is not exhaustive, the list should guide the Indeterminate Sentence Review Board when it makes a parolability decision.

[3] **Criminal Law — Punishment — Sentence — Parole Board — Parole Eligibility — Determination — Reliance on Prior Evaluations — Exclusion of Current Evaluations — Effect.** The Indeterminate Sentence Review Board fails to follow the procedures outlined in chapter 381-60 WAC for conducting parole eligibility hearings when it disregards current psychological reports and evaluations and gives significant weight only to previous evaluations that support a finding that a convicted offender is not parolable without making findings to support that approach.

[4] **Criminal Law — Punishment — Sentence — Parole Board — Parole Eligibility — Determination — Basis in Record — Necessity.** The Indeterminate Sentence Review Board's broad discretion in deciding the parolability of a convicted offender does not enable the board to disregard the evidence presented at a parole eligibility hearing and to base its decision not to parole an offender on speculation and conjecture unsupported by evidence in the record.

FAIRHURST, MADSEN, BRIDGE, and OWENS, JJ., dissent by separate opinion.

Nature of Action: An offender convicted of two counts of first degree rape and sentenced under the indeterminate sentencing system sought relief from personal restraint on a claim that the Indeterminate Sentence Review Board improperly determined that he was not parolable.

Supreme Court: Holding that the Indeterminate Sentence Review Board's decision that the petitioner was not parolable was unsupported by the record and constituted an abuse of discretion, the court *grants* the petition, *reverses* the decision of the board, and *remands* the case to the board for further proceedings.

David Zuckerman, for petitioner.

Robert M. McKenna, Attorney General, William B. Collins, Senior Assistant, and *Gregory J. Rosen, Assistant*, for respondent.

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2006 Wash. LEXIS 603

¶1 C. JOHNSON, J. — This case requires the court to determine whether the Indeterminate Sentence Review Board (ISRB) abused its discretion when it determined that Richard J. Dyer was not parolable. The ISRB has broad discretion in making parolability decisions, but this discretion does not enable the ISRB to disregard the evidence presented at the hearing and base a decision on speculation and conjecture unsupported by evidence in the record. We hold the ISRB abused its discretion in determining that Dyer was not parolable and therefore do not reach Dyer's claims that the ISRB violated his constitutional rights. We reverse the decision of the ISRB and remand to the ISRB.

FACTS

¶2 Dyer was convicted by a jury of first degree rape of two individuals. Resp. of ISRB, Ex. (hereinafter ISRB Ex.) 2, at 1. On February 19, 1982, the sentencing court imposed a maximum term of life imprisonment for each count, with the sentences running concurrently.[1] Under the indetermi-

[1] Because Dyer committed the acts underlying his convictions before July 1, 1984, the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, did not apply

nate sentence system, the ISRB makes the decision regarding the duration of confinement. In making this decision, the ISRB must "consider the purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.850 [the Sentencing Reform Act of 1981 (SRA)] and the minimum term recommendations of the sentencing judge and prosecuting attorney . . . ." RCW 9.95.009(2).

¶3 The SRA directs that "[w]hen making decisions on duration of confinement, . . . the board shall . . . attempt to make decisions reasonably consistent with [the SRA] ranges, standards, purposes, and recommendations." RCW 9.95.009(2). With the exception of sentence enhancements, the SRA ranges do not increase or decrease based on the nature of a particular offense. In establishing standard range sentences, the SRA takes into account the uniform seriousness level of the current offense and the defendant's offender score. RCW 9.94A.530(1). Consistent with SRA guidelines and directives, the ISRB imposed an exceptional minimum term of 240 months on September 15, 1986, departing from the SRA guidelines of 66-88 months because "the commission of the offense manifested deliberate cruelty . . . ."[2] ISRB Ex. 4, at 1.

¶4 The ISRB considered Dyer for parole under RCW 9.95.100 in 1995, 1998, and 2002. On each occasion, the ISRB denied parole and extended Dyer's minimum term by 24 months. The record shows that during his prison term, Dyer has participated in the following offender change programs: anger/stress management, victim awareness, nonviolent conflict resolution, moral reconation therapy, and industrial safety. Opening Br. of Pet'r, App. (hereinafter Pet'r App.) F at 1. However, Dyer has not been permitted to

to his sentence and he remains under Washington's former indeterminate sentencing system. *See* RCW 9.94A.905.

[2] The dissent focuses heavily on the nature of the offenses. We recognize the details of the crimes may be relevant to the ISRB's establishment of the offender's minimum term and parolability under the indeterminate sentencing system. But the dissent's emphasis on the facts of Dyer's crimes disregards the legislature's mandate that an offender's confinement under the indeterminate system and the SRA remain reasonably consistent.

enter the sex offender therapy program because he denies committing the rapes for which he was convicted.

¶5 The challenge in this case concerns the ISRB's hearing in 2001 and decision on January 30, 2002. In preparation for the ISRB's 2001 hearing to evaluate Dyer's parolability, Carson E. Carter, a Washington State Department of Corrections (DOC) licensed mental health counselor, conducted a psychological evaluation of Dyer at the ISRB's request. Carter has substantial experience administering tests relating to risk, and evaluating and counseling persons committed as sexually violent predators. Pet'r App. I at 1. Carter evaluated Dyer's criminal behavior, social history, current behavior and functioning, and sexual behavior, and conducted a clinical interview and administered several psychological tests.[3] In his evaluation, Carter reported that "[h]is scores are typical of sex offenders who present a low risk to reoffend," and concluded, "[i]f we are gauging risk, he has met the criterion for a less restrictive environment." Pet'r App. E at 3-4.

¶6 During the hearing on December 4, 2001, Dyer's parolability was again evaluated. Pet'r App. H. Carter was not present, but John Austin, the chair of the ISRB, repeatedly assured Dyer and his attorney that the ISRB accepted Carter's credentials, and the evaluation was admitted as evidence. Pet'r App. H at 2, 3, 10. Dyer's counselor, Larry Cook, testified that Dyer worked as a recreational assistant and received exemplary work reports from all the recreation supervisors. He noted that "everything about his attitude and behavior in the unit has been exemplary" and confirmed Dyer's family support. Cook reported that Dyer "completed all the available offender change programs that are available here at McNeil Island" and that to his knowledge, Dyer had never refused any counseling offered to him. Pet'r App. H at 5-7.

¶7 In addition to Dyer's testimony and his attorney's arguments, the members of the ISRB discussed their per-

[3] The dissent disregards that this professional evaluator considered Dyer's complete file and record of crimes.

ceptions of Dyer's situation. Austin stated he would not hold Dyer's denial of guilt against him,

> I'm not going to hold somebody just because they deny it, because every [sic] I read about sexual offenders is denial is not what's called a risk factor, it's not used in these various instruments that your counselor has mentioned. Denial per se is not itself a risk factor so I don't use it to hold it against somebody . . . . I don't hold his denial against him, and I don't consider him manipulative. I accept your sincerity, Mr. Dyer.

Pet'r App. H at 14, 22. Instead, Austin was concerned with Dyer's good behavior in prison, which he viewed as consistent with "the calculating nature of the behavior" during the rapes. Pet'r App. H at 15. He said, "I expect you to exhibit that controlled behavior, because that's what's shown in the rapes," but also acknowledged, "[i]t's a catch-22 irony. Because a person who is innocent and has been dealt a bad hand is going to try to figure a way to play the best he can, and it's quite obvious that you made an accommodation for prison life." Pet'r App. H at 15-16. The ISRB issued its report and decision denying parole to Dyer on January 30, 2002. The ISRB stated, "[a] central difficulty for the Board is that Mr. Dyer remains an untreated sex offender." ISRB Ex. 11, at 3. The ISRB continued, "[m]ore serious and significant to the Board is that these particular types of rape appear to be in reaction to stress." ISRB Ex. 11, at 3. He "shows that he is an orderly person, careful in his work and is able to maintain himself within the institution . . . , precisely the behavior demonstrated in the crimes." ISRB Ex. 11, at 3. The ISRB concluded, "[t]hus Mr. Dyer, for the Board, is an untreated sex offender with behaviors that are apparently motivated when he is in a period of stress." ISRB Ex. 11, at 3. The ISRB conceded Dyer's risk of reoffense "[a]ppears to have been ameliorated in current psychological tests," but stated "[o]f concern to the Board is the ability to learn how to take psychological tests." ISRB Ex. 11, at 4.

¶8 The ISRB concluded that Dyer was not parolable and extended his minimum term by 60 months. In reaching this conclusion, the ISRB stated that it considered the materials in Dyer's file, including previous ISRB decisions, file materials of the DOC, and earlier psychological evaluations, which provided the basis for denying parole in Dyer's prior hearings.

ANALYSIS

[1] ¶9 The decision of whether to parole a prisoner "may be made 'for a variety of reasons and often involve[s] no more than informed predictions as to what would best serve [correctional purposes] or the safety and welfare of the inmate.' *Meachum v. Fano*, 427 US.[215], 225[, 96 S. Ct. 2532, 49 L. Ed 2d 451 (1976).] The decision turns on a 'discretionary assessment of a multiplicity of imponderables, entailing primarily what a man is and what he may become rather than simply what he has done.' (quoting [Sanford H.]Kadish, *The Advocate and the Expert - Counsel in the Peno-Correctional Process*, 45 Minn. L. Rev. 803, 813 (1961)." *Greenholtz v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 10, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) (alterations in original). We review parole eligibility decisions to ensure the ISRB exercises its discretion in accordance with the applicable statutes and rules. The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts. *In re Pers. Restraint of Addleman*, 151 Wn.2d 769, 776-77, 92 P.3d 221 (2004).

[2-4] ¶10 The legislature requires the ISRB to "attempt to make decisions reasonably consistent with [the SRA] ranges, standards, purposes, and recommendations [of the sentencing judge and prosecuting attorney]" and "give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole." RCW 9.95.009(2), (3). In making its decision on an inmate's parolability, the ISRB is guided by WAC 381-60-160, which provides:

The board panel shall render a decision of either parolable or not parolable on each case heard under this chapter . . . .

Examples of adequate reasons for a finding of nonparolability include, but are not limited to:

(1) Active refusal to participate in available program or resources designed to assist an offender to reduce the risk of reoffense (e.g., anger management, substance abuse treatment).

(2) Serious and repetitive disciplinary infractions during incarceration.

(3) Evidence of an inmate's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, continued use of illegal substances).

(4) Statements or declarations by the inmate that he or she intends to re-offend or does not intend to comply with conditions of parole.

(5) Evidence that an inmate presents a substantial danger to the community if released.

¶11 Although this list of reasons that may support an ISRB finding of nonparolability is not exhaustive, the list should guide the ISRB's decisions. In the present case, the record from the hearing does not support any of these factors.[4] Dyer does not actively refuse to participate in available programs or resources designed to assist him reduce his risk of reoffense. Rather, Dyer participated in several offender change programs. He does not actively refuse to participate in the sex offender treatment programs; rather he is rendered ineligible for treatment in that program because he denies his guilt. The record does not reflect that Dyer has serious and repetitive disciplinary infractions but instead shows that he maintains good behavior in prison. He does not engage in criminal conduct in prison and states that he will maintain lawful behavior if

[4] While the reasons listed in the WAC that support a finding of nonparolability do not, by their absence, mandate parole, some objective evidence presented at the hearing must support a finding of nonparolability.

released. Previous psychological evaluations indicating he posed a risk of reoffending do not constitute evidence that he currently presents a substantial danger to the community if released. His current psychological report shows that he poses little danger to the community if paroled.

¶12 The inmate bears the burden of establishing his parolability. In turn, the ISRB must base its decision on the evidence presented at the hearing. In this case, in reaching its conclusion that Dyer is not parolable, the 0ISRB disregarded the evidence presented, including his most recent psychological evaluation. The ISRB stated that it relied on objective evidence, including "previous Board dictations, file materials of the Department of Corrections and the ISRB, the interview with Dyer, and arguments of his counsel." ISRB Ex. 11, at 4. Though the ISRB states that it considered this material, the ISRB's decision gives no indication that the evidence in the file supported its decision or that the evidence was used to refute any new evidence presented at the hearing. Instead, the ISRB's decision is primarily supported by speculation and conjecture suggesting that Dyer is manipulative, poses a high risk to reoffend, and had the ability to learn how to take psychological tests. The ISRB also relied on the unchangeable circumstances of Dyer's crimes, the same facts that justified the imposition of Dyer's original exceptional sentence.

¶13 Though the regulations do not explicitly require the ISRB to consider psychological evaluations, the ISRB consistently obtains the reports and relies on them for its decisions on prisoners' parolability. For example, the ISRB has relied on psychological screening and tests in other cases to find a prisoner not parolable because he "presents too great a risk to be released to the community at this time." *In re Addleman*, 151 Wn.2d at 778 ("Those tests and the psychologist suggest that Addleman presents a high risk of committing another violent offense within six months after release.").

¶14 When the ISRB disregards current psychological reports and evaluations and gives significant weight only to previous evaluations that support a finding that an inmate is not parolable without making findings to support that approach, the ISRB fails to follow the procedures outlined by the WAC regulations. Here, the ISRB relied substantially on evaluations in each of its prior parole decisions regarding Dyer. In its 2002 decision at issue in this case, the ISRB stated that "psychological data in the file from the early 1990s indicated a relatively high reoffense risk," but acknowledged that "[t]his risk appears to have been ameliorated in current psychological tests." ISRB Ex. 11, at 4. The ISRB nonetheless concluded Dyer is an untreated sex offender and denied him parole. ISRB Ex. 11, at 1.

¶15 The evidence presented to the ISRB supports the argument that Dyer currently poses a low risk of reoffending. Dyer's December 2001 psychological evaluation contradicts the ISRB's conclusion that Dyer is not rehabilitated and poses a high risk to reoffend. In his evaluation, Carter reported that "the instruments that typically predict recidivism indicate [Dyer] is a low risk to reoffend . . . ."[5] Pet'r App. E at 4. He found that Dyer "is prepared to take his place in society as a productive citizen" because he has "a legitimate home address, realistic plans for the future, and employable skills." ISRB Ex. E at 4. Carter concluded that Dyer "could be considered for community supervision with less concern for the community than many of the offenders who are released into society." Pet'r App. E at 4.

¶16 With respect to Dyer's earlier evaluation of PTSD, Carter reported, "Mr. Dyer suffers from no serious mental illness, but he does suffer the lingering effects of PTSD, much like many war veterans." Pet'r App. E at 2. The ISRB questioned Dyer about his PTSD diagnosis during his parolability hearing, and Dyer responded openly about his enduring nightmares of his service in Vietnam, where 9 of his 12 unit members were killed. He acknowledged that he may have anxiety attacks and that "something will trigger it, like the helicopters going over," but explained, "I've learned that I've got it." Pet'r App. G at 19. Dyer reported that after he was diagnosed with PTSD, he participated in programs relating to victim awareness, alternatives to violence, and moral reconation therapy and worked as a facilitator for stress anger management "for most of [the programs]." Pet'r App. G at 11. He stated he had contacted several programs, "clinics in house and out of house" in Seattle, Spokane, and Oklahoma (where his family resides) and prepared paperwork to enter the programs in case he was paroled. He also indicated he started a group at the reformatory for combat veterans suffering from PTSD. Pet'r App. G at 19.

[5] This evaluation took into account that Dyer did not admit guilt or participate in a sex offender treatment program. Pet'r App. E at 4.

¶17 Despite the evidence that Dyer has a low risk of reoffending and an ability to adequately readjust to life outside prison, the ISRB's decision evidently ignored Dyer's evidence and rejected the value of Carter's evaluation because of the ISRB's concern with Dyer's "ability to learn how to take psychological tests." ISRB Ex. 11, at 4. Nothing in the record supports a conclusion that Dyer has learned how to manipulate tests.[6] Since the record provides no support for this concern, the ISRB relied on the nature of Dyer's underlying criminal behavior, which it contended evidenced a "high level of manipulation and sophistication." ISRB Ex. 11, at 4. Evidently, the ISRB believed the manipulation and sophistication were illustrated by the facts which supported his convictions. ISRB Ex. 11, at 3. Objectively, nothing exists in the record to support this conclusion, other than conjecture. The nature of his crimes does not necessarily support the ISRB's conclusion that Dyer recently learned how to take psychological evaluations. The record reflects the psychological tests are administered by

[6] Dyer participated in the majority of his offender change and treatment programs in 1996, 1997, 1998, and 1999. The 1993 and 1994 psychological evaluations rated his risk of reoffense as high, but the 1998 evaluation rated his risk as low to medium, and the 2001 evaluation rated his risk of reoffense as low. ISRB Ex. 10, at 2-3; Pet'r App. E at 3.

Washington State DOC psychologists and licensed mental health counselors, based on objective factors, and specifically designed to prevent manipulation by the offender. Neither the record nor the nature of Dyer's crimes supports the ISRB's suggestion that Dyer could have manipulated Carter's psychological evaluation.

¶18 In addition to disregarding the favorable psychological evidence, the ISRB focused substantially on the unchangeable circumstances of Dyer's crimes, which occurred in 1980. Despite its statutory mandate to consider whether a prisoner demonstrates his rehabilitation is complete, the ISRB dismissed evidence of Dyer's rehabilitation in prison evidently based on the facts of his underlying crimes. The ISRB disregarded the fact that Dyer participated in offender change programming and assumed his good behavior in prison is motivated by manipulation, again with nothing in the record to support this conclusion. The ISRB also suggested that if Dyer were released, he "[w]ould encounter far more stresses than he may now, having accommodated to his life in the institution." ISRB Ex. 11, at 3-4. The ISRB stated that "[i]t's the potential reaction to that stress that is of significant concern to the Board as a trigger to more attacks." ISRB Ex. 11, at 4. Again, this statement is unsupported by the evidence in the record and is undermined by Dyer's participation in offender change programming and commitment to obtaining PTSD treatment outside of prison. The ISRB's reliance on the nature of Dyer's crimes and disregard of evidence of Dyer's rehabilitation conflicts with its statutory responsibility to consider the evidence presented in determining whether a prisoner has established he is rehabilitated.

CONCLUSION

¶19 The ISRB ignored favorable evidence from psychological evaluations; though the ISRB is not required to consider them, the ISRB consistently relies on these evaluations in making parolability decisions. The ISRB based its decision on unsupported notions that Dyer manipulated the psychological evaluations and poses a high risk of reoffense because of his good behavior in prison and the nature of his crimes. The ISRB possesses broad discretion in determining parolability, but this discretion is not without limits. The ISRB cannot ignore the evidence presented at the hearing nor rely on mere conjecture in making its decisions. Where the ISRB disregards the evidence presented and supports its decision with speculation and conjecture, it abuses its discretion.

¶20 In his personal restraint petition, Dyer requests that the court order the ISRB to find him parolable, or at least conditionally parolable to a mutual agreement program. In the alternative, Dyer asks the court to remand with instructions to hold a new parole hearing.

¶21 While a review of the evidence and testimony presented at the parolability hearing suggests Dyer met his burden to have conditions of release on parole established, we cannot make this decision in the first instance. We instead remand to the ISRB for a new parolability hearing during which the ISRB must make its determination based on the evidence and testimony presented, and not on speculation and conjecture.

ALEXANDER, C.J., and SANDERS, CHAMBERS, and J.M. JOHNSON, JJ., concur.

¶22 FAIRHURST, J. (dissenting) — Today this court takes the unprecedented step of substituting its discretion for the authority of the Indeterminate Sentence Review Board (ISRB) and ordering the ISRB to reconsider evidence that it already considered. The legislature directs the ISRB to release a prisoner only when he has been "rehabilitated." The ISRB complied with this directive and determined it could not release Richard J. Dyer because he was an untreated sex offender and, thus, was not rehabilitated. Because the majority's decision would allow any prisoner to challenge the ISRB's factual determinations without any

EXHIBIT - F
Supreme Court Decision
Case No. 79872-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of	)	No. 79872-9
	)	EN BANC
RICHARD J. DYER,	)	
Petitioner.	)	Filed August 7, 2008

FAIRHURST, J. — In 2006, this court directed the Indeterminate Sentence Review Board (ISRB) to redetermine the parolability of Richard J. Dyer after we concluded the ISRB supported its previous decision with speculation and conjecture. We ordered the ISRB to support its decision with objective facts. After the rehearing, the ISRB again determined Dyer was unparolable because he remained an untreated sex offender. We now consider Dyer's personal restraint petition (PRP) alleging the ISRB again abused its discretion and violated his

constitutional rights. We hold the ISRB based its decision upon the objective fact that Dyer is an untreated sex offender and therefore did not abuse its discretion nor violate Dyer's constitutional rights. We affirm the ISRB.

I. FACTUAL AND PROCEDURAL HISTORY

A jury convicted Dyer on two counts of first degree rape against two women, *Ms. A* and *Ms. B*. On January 27, 1980, *Ms. A* accepted a ride from two men in downtown Bremerton at 2:30 a.m. *Ms. A* sat in the front seat between the driver, who she later identified as Dyer, and a second man. When she realized Dyer was not driving to the designated destination, she attempted to grab the wheel and stomp on the brakes. Dyer forced her into the backseat where he subdued her with punches to the stomach. The second man drove the car to a remote location where Dyer undressed *Ms. A*. After the second man declined, Dyer raped *Ms. A*. Dyer then bound *Ms. A* with rope and held her to the rear floorboard while she was still naked.

The second man drove to a residence. Once inside, Dyer led *Ms. A* to a bedroom where he tied her to a bed on her back. Dyer gagged her with cotton. The men also taped cotton over her eyes. The second man quickly raped *Ms. A* and was not seen or heard by her thereafter. Dyer applied contraceptive foam to

Ms. A and proceeded to rape her eight times throughout the night. At one point, Dyer flipped her from her back to her stomach and raped her in the new position. Twice she was untied and forced to bathe. In the morning, Dyer washed *Ms. A*'s clothes, bathed, and dressed her. After rebinding her, Dyer drove *Ms. A* into the woods and released her.

Later that year, two men offered a ride to another woman, *Ms. B*, in downtown Bremerton around 11:00 p.m. *Ms. B* twice refused the offer while walking her dog. The car left but shortly reappeared and *Ms. B* was forced inside. En route to their destination, the driver who *Ms. B* later identified as Dyer paused to tape cotton balls over *Ms. B*'s eyes.

The two men took *Ms. B* to a residence. Once inside, *Ms. B* was undressed and tied to a bed. After the second man left, Dyer applied contraceptive foam to *Ms. B* and raped her repeatedly. At one point, Dyer flipped her from her back to her stomach and raped her in the new position. Dyer forced *Ms. B* to shower with him. In the morning, he washed *Ms. B*'s clothes, bathed, and dressed her. He then drove *Ms. B* to a park and released her. Prior to leaving, Dyer gave *Ms. B* a wristwatch that was later identified as the wristwatch *Ms. A* lost during her struggle in Dyer's car.

Based on these incidents, Dyer was convicted of two counts of first degree rape. In 1982, the court sentenced Dyer to two maximum terms of life imprisonment to run concurrently. By letter, the sentencing judge recommended Dyer "'should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life.'" App. to PRP, App. P at 1. The prosecuting attorney recommended a 50 year sentence. The ISRB designated Dyer's original minimum term at 600 months. However, in light of the adoption of the Sentencing Reform Act of 1981 (SRA) guidelines, chapter 9.94A RCW, the ISRB reduced Dyer's minimum sentence to 240 months. This adjusted minimum exceeded the standard range of 63 to 88 months. However, the ISRB justified its deviation with the recommendations of the sentencing judge and the prosecuting attorney and the deliberate cruelty manifest in the underlying crimes.

Since his incarceration, the ISRB has determined Dyer not parolable five times. In 1994, the ISRB found Dyer not parolable based, in part, on a 1993 psychological evaluation that found Dyer's risk of reoffense was "very high" and his depth of sexual deviancy was "high." Resp. of the ISRB to PRP, App. 5, at 3. In 1995, the ISRB found Dyer not parolable and added 60 months to his minimum term. The ISRB based its decision in part on a 1994 psychological evaluation

diagnosing Dyer with posttraumatic stress disorder (PTSD) and sexual sadism. It concluded, "without treatment, the risk of reoffense remains high." *Id.* App. 6, at 3. The ISRB noted that "Mr. Dyer is an untreated, convicted rapist who denies his culpability and is therefore not amenable or receptive to treatment." *Id.* In 1998, the ISRB again found Dyer not parolable and added 60 months to his minimum term.

Prior to Dyer's 2002 parole hearing, licensed mental health counselor Carson Carter conducted a new psychological evaluation of Dyer. On both the Minnesota Sex Offender Screening Tool - Revised and the Rapid Risk Assessment for Sexual Offense Recidivism, Dyer received low scores, which Carter described as "typical of sex offenders who present a low risk to reoffend." App. to PRP, App. C at 3. On the Hare Psychopath Checklist – Revised, Dyer received a very low score, indicating a low risk of committing another violent offense within six months after release from custody. Carter concluded that Dyer "could be considered for community supervision with less concern for the community than many of the offenders who are released into society." *Id.* at 4. Dyer's 2001 Department of Corrections (DOC) classification referral states that he completed several offender change programs, including anger/stress management, victim awareness, and

nonviolent conflict resolution.

In 2002, the ISRB again found Dyer not parolable and added 60 months to his minimum term. The ISRB stated, "[a] central difficulty for the Board is that Mr. Dyer remains an untreated sex offender." Resp. of the ISRB to PRP, App. 11, at 3. The ISRB noted that DOC's sex offender treatment program (SOTP) requires "full candor" and Dyer was not eligible for SOTP because he continued to maintain his innocence. *Id.*

However, the ISRB identified Dyer's potential to react poorly to stress the more "serious and significant" factor in its decision. *Id.* at 3. The ISRB considered evidence that Dyer was "an orderly person, careful in his work" but also acknowledged that "calculation" was "precisely the behavior demonstrated in the crimes." *Id.* The ISRB anticipated that, upon release, Dyer would face stress leading to a "potential reaction" acting as a "trigger to more attacks." *Id.* at 3-4. The ISRB also recognized that the risk of reoffense "appears to have been ameliorated in current psychological tests" but cited a concern that Dyer might have learned how to take psychological tests. *Id.* at 4. Based upon these concerns, the ISRB found that Dyer was "not rehabilitated" and therefore not parolable. *Id.*

Following the 2002 decision, Dyer filed a PRP that we transferred to the

Court of Appeals. The Court of Appeals dismissed it, determining the ISRB had not abused its discretion nor violated Dyer's constitutional rights. Dyer filed a motion for discretionary review in this court, which the commissioner denied in an order dated April 13, 2005. Dyer filed a motion to modify the commissioner's ruling, and we subsequently granted that motion and Dyer's motion for discretionary review.

We determined the ISRB abused its discretion by supporting its parolability decision with "speculation and conjecture." *In re Pers. Restraint of Dyer*, 157 Wn.2d 358, 369, 139 P.3d 320 (2006) (*Dyer* I). We found the ISRB ignored the evidence favoring parole and "based its decision on unsupported notions that Dyer manipulated the psychological evaluations and poses a high risk of reoffense because of his good behavior in prison and the nature of his crimes." *Id.* at 368-69. We remanded the matter back to the ISRB with the mandate to make a decision based upon the "evidence and testimony" presented at the hearing. *Id.* at 369.

In October 2006, the ISRB conducted a new parolability hearing. Dyer reported that, as a result of therapy, many of his PTSD symptoms had diminished. The ISRB reviewed Dyer's psychological evaluations dating back to 1993. It highlighted the most recent evaluation dated February 2005 that assessed Dyer as a

"low risk to reoffend sexually." App. to PRP, App. P at 10. However, the ISRB also observed that "the scoring tools utilized were not provided" with the psychological report. *Id.* The ISRB also considered two policy papers by the Washington State Institute for Public Policy. The first policy paper showed that the SOTP did not reduce participants' recidivism rates. The second policy paper showed that offenders who willingly participate in the program have lower recidivism rates than those who unwillingly participate in the program. The ISRB found that these reports had little applicability to Dyer since his "decision to not admit guilt necessarily results in an inability to participate in the SOTP." *Id.* at 11.

Based upon the evidence before it, the ISRB found Dyer unparolable because he is an untreated sex offender. "[W]ithout an exploration and understanding of the behaviors that directly resulted in his incarceration, he remains at risk to repeat those behaviors in the community." *Id.* at 12. The ISRB added 80 months to his minimum sentence raising it to 500 months.[1]

In March 2007, Dyer filed a PRP alleging the ISRB abused its discretion and violated his constitutional rights. We granted Dyer's motion to retain the PRP.

II. ISSUES

[1]In its decision, the ISRB noted that the 80 month increase to Dyer's minimum sentence was the functional equivalent to adding 60 months given that the hearing was deferred from April 2005 to October 2006.

A. Whether the ISRB abused its discretion by finding Dyer not parolable.

B. Whether the ISRB decision violated Dyer's constitutional rights.

III. ANALYSIS

A petitioner must show he is under unlawful restraint to succeed on a PRP challenge of an ISRB decision. RAP 16.4(b), (c); *In re Pers. Restraint of Addleman*, 151 Wn.2d 769, 774, 92 P.3d 221 (2004) (citing *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994)). Dyer argues the ISRB's abuse of discretion and constitutional violations create unlawful restraints.

A. Whether the ISRB abused its discretion by finding Dyer not parolable

The burden rests with the petitioner to prove the ISRB abused its discretion. *Addleman*, 151 Wn.2d at 776. Dyer alleges the ISRB abused its discretion in three ways.

1. *Whether the ISRB may deny parole due to failure to complete the SOTP*

The ISRB abuses its discretion when it "fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts." *Dyer* I, 157 Wn.2d at 363 (citing *Addleman*, 151 Wn.2d at 776-77). Reliance upon "speculation and conjecture" with disregard of the evidence also constitutes an abuse of discretion. *Id.* at 369. We must find the ISRB acted willfully and unreasonably to support a determination that the parolability decision is arbitrary and capricious. *Ben-Neth v. Indeterminate Sentence Review Bd.*, 49

Wn. App. 39, 42, 740 P.2d 855 (1987) (citing *In re Buffelen Lumber & Mfg. Co.*, 32 Wn.2d 205, 209, 201 P.2d 194 (1948)), *overruled on other grounds by Shoreline Cmty. Coll. Dist. No. 7 v. Employment Sec. Dep't*, 120 Wn.2d 394, 842 P.2d 938 (1992).

Dyer argues the ISRB abused its discretion by basing its decision upon the fact that Dyer has not completed the SOTP. Participation in the SOTP requires an inmate to admit his or her guilt in order to participate. However, Dyer is unable to participate because he maintains he is innocent of the crimes for which he was convicted. Dyer claims this court prohibited the ISRB from basing its decision upon his lack of treatment. This is an inaccurate statement of our holding in *Dyer* I.

In *Dyer* I, we faulted the ISRB for justifying its decision with "speculation and conjecture."[2] 157 Wn.2d at 369. Specifically, we assigned error to the ISRB's

[2]The dissent misstates our previous holding from *Dyer* I to reach its unprecedented position that this court should substitute its judgment for the ISRB's and release an untreated sex offender. Dissent at 1, 17. Contrary to the dissent's assertion, the court did not reverse the ISRB ruling in *Dyer* I based on a finding that Dyer met his burden to prove his rehabilitation. Dissent at 1. Rather, the court reversed the ISRB's decision because it was improperly supported by speculation and conjecture. *Dyer* I, 157 Wn.2d at 369 ("We instead remand to the ISRB for a new parolability hearing during which the ISRB must make its determination based on the evidence and testimony presented, and not on speculation and conjecture."). Even if the evidence suggested Dyer had met his burden of proving his rehabilitation, *Dyer* I did not restrict the ISRB from exercising its own judgment in rendering its parolability decision. *Id.* The dissent's erroneous understanding of *Dyer* I, however, naturally compels it to disregard the abuse of discretion standard of review and usurp the role of the ISRB.

reliance upon "unsupported notions that Dyer manipulated the psychological evaluations and poses a high risk of reoffense because of his good behavior in prison and the nature of his crimes." *Id.* We ordered the ISRB to conduct a new parolability hearing and base its decision on the evidence and testimony presented. We did not preclude the ISRB from considering the fact that Dyer has not gone through the SOTP.

The question remaining from *Dyer* I is whether the ISRB supported its decision with objective facts and in consideration of the evidence before it. *Id.* The ISRB decision shows it considered Dyer's psychological evaluations including the most recent 2005 evaluation that assessed Dyer as a "low risk to reoffend sexually." App. to PRP, App. P at 10. However, the ISRB noted the evaluation did not provide the "scoring tools utilized." *Id.* The ISRB also considered policy papers[3] showing that participation in the SOTP was not correlated to lower rates of recidivism. The ISRB discounted the applicability of these findings given that Dyer's "decision to not admit guilt necessarily results in an inability to participate in the SOTP." *Id.* at 11.

[3]The dissent asserts the ISRB relied on the policy papers to reach its determination. Dissent at 6-7. This is not true. The ISRB concluded the findings from the policy papers had little applicability to Dyer's factual circumstances. App. to PRP, App. P at 11.

In short, the ISRB was "faced with an inmate who has been convicted of multiple violent sexual assaults, who is an untreated sex offender who has not demonstrated any insight into the criminal behavior that resulted in his convictions." *Id.* at 8. The ISRB commended Dyer for his "self-improvement work" but stated, "without an exploration and understanding of the behaviors that directly resulted in his incarceration, he remains at risk to repeat those behaviors in the community." *Id.* at 12. Therefore, in consideration of all the evidence presented, the ISRB based its parolability decision upon the objective fact that Dyer is an untreated sex offender.

Furthermore, settled law establishes that the ISRB may consider the offender's failure to obtain treatment. Lack of rehabilitation is a permissible reason to impose a minimum sentence considered exceptional under the SRA guidelines. *In re Pers. Restraint of Ecklund*, 139 Wn.2d 166, 176, 985 P.2d 342 (1999). By statute, the ISRB must deny parole if the inmate is unrehabilitated or otherwise unfit for release. RCW 9.95.100. We have adopted the position that "the first step toward rehabilitation is 'the offender's recognition that he was at fault.'" *Ecklund*, 139 Wn.2d at 176 (quoting *Gollaher v. United States*, 419 F.2d 520, 530 (9th Cir. 1969)). Accordingly, the ISRB may base its decision to deny parole, in part, upon

the fact that the offender refuses treatment that requires him or her to take responsibility for criminal behavior.[4] *Id.* at 177. Similarly here, Dyer has not taken responsibility for his crimes which prevents him from obtaining the treatment the ISRB deems necessary for his full rehabilitation. Therefore the ISRB acted within its discretion to deny Dyer parole.

2. *Whether Dyer's sentence was excessive*

Dyer next argues the ISRB abused its discretion by failing to make his sentence reasonably consistent with the standard ranges set forth in the SRA. The ISRB may abuse its discretion if it fails to consider the sentencing ranges delineated in the SRA. *Addleman*, 151 Wn.2d at 776-77 (citing *In re Pers. Restraint of Locklear*, 118 Wn.2d 409, 418, 823 P.2d 1078 (1992)). However, the expiration of an inmate's minimum term does not compel his release but, rather, designates a date certain whereby the ISRB will reevaluate the inmate's parolability. *Cashaw*, 123

[4]Contrary to the dissent's assertion (dissent at 7 n.8), the facts under which this court decided *Ecklund* are similar to the facts at present. Like Dyer, the petitioner in *Ecklund* exhibited exemplary behavior in prison and did not take responsibility for his crimes. 139 Wn.2d at 183. Justice Sanders voiced the dissenting view arguing the ISRB abused its discretion by basing its parolability decision, in part, on whether Ecklund confessed to his crimes. *Id.*; *cf.* dissent at 8. Notwithstanding these considerations, the court held the ISRB did not abuse its discretion by imposing an exceptional minimum term where Ecklund refused to admit his guilt because it prevented him from obtaining the necessary, rehabilitative treatment. 139 Wn.2d at 177. Dyer, like Ecklund, refuses to admit his guilt, which also prevents him from obtaining the necessary, rehabilitative treatment. Under *Ecklund*, the ISRB acted within its discretion to extend Dyer's minimum term.

Wn.2d at 143 (citing *In re Pers. Restraint of Powell*, 117 Wn.2d 175, 186 n.1, 814 P.2d 635 (1991)); WAC 381-40-100.

Dyer claims that the ISRB's actions contradict this court's construction of RCW 9.95.009(2) in *Addleman*. RCW 9.95.009(2) provides the ISRB must "consider the purposes, standards, and sentencing ranges" outlined in the SRA as well as the "minimum term recommendations of the sentencing judge and prosecuting attorney." The ISRB must also "attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations" and provide an adequate written explanation when it deviates from the SRA guidelines. *Id.*

RCW 9.95.100, however, also requires the ISRB to not release a prisoner until he or she is fully rehabilitated. The ISRB "shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release." *Id.* Weighing the import of these statutory provisions, the *Addleman* court determined the ISRB's duty to not release an unrehabilitated prisoner "trumps" its duty to attempt reasonable consistency with the SRA. 151 Wn.2d at 775.

The ISRB noted in its recent decision it was "statutorily required to *give*

public safety considerations the highest priority." App. to PRP, App. P at 7 (citing RCW 9.95.009(3)).[5] Consonant with *Addleman*, the ISRB stated it was not allowed to release a prisoner "before the expiration of their maximum term, *unless in its opinion his or her rehabilitation has been complete.*" *Id.* (citing RCW 9.95.100). As discussed earlier, the ISRB concluded Dyer failed to demonstrate complete rehabilitation as he remained an untreated sex offender. Based on these facts, we hold the ISRB followed its statutory mandate to consider public safety and properly declined to release Dyer.

The ISRB must also make its minimum sentences reasonably consistent with the recommendations of the sentencing judge and prosecuting attorney. RCW 9.95.009(2). As noted in the ISRB decision, the sentencing judge recommended Dyer "should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life" while the prosecuting attorney recommended a 50 year (600 month) minimum sentence. App. to PRP, App. P at 1-2 (internal quotation marks omitted). In 2006, the ISRB added 80 months to Dyer's sentence raising his minimum term to a total of 500 months.[6] While this term is

[5]"Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole." RCW 9.95.009(3).

[6]Dyer's minimum sentence was set by the ISRB at 240 months. The ISRB denied Dyer

significantly above the SRA standard range for first degree rape, it does fall within the ranges recommended by the sentencing judge and prosecuting attorney.

Given that the ISRB deviated from the SRA, the court must determine whether the ISRB supplied "adequate written reasons." RCW 9.95.009(2). "Adequate written reasons" implies the ISRB first consulted the SRA standard ranges, found them inappropriate, and recorded its reasoning. *Locklear*, 118 Wn.2d at 419. In *Locklear*, the court found the ISRB did not provide adequate written reasons to support its denial of parole where it made no indication it consulted the SRA ranges or the recommendation from the sentencing judge but only referred to the prosecuting attorney's recommendation. *Id.* In *Ecklund*, the court found the ISRB provided adequate written reasons to support its imposition of what would be considered an exceptional minimum term under the SRA when it considered and articulated factors for why Ecklund was not rehabilitated. 139 Wn.2d at 177 n.10. Specifically, the court approved of the ISRB's consideration of Ecklund's failure to admit his guilt given that it prevented him from obtaining appropriate rehabilitative treatment. *Id.* at 177.

Here, the ISRB referenced the SRA standard range sentence for first degree

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parole in 1994, 1998, and 2002, adding 60 months to his minimum term each time. In 2006, the ISRB increased his minimum sentence by 80 months for a total of 500 months.

rape as well as the recommendations of the sentencing judge and prosecuting attorney. The ISRB also observed that Dyer maintains his innocence which prevents him from participating in the SOTP. Consequently, the ISRB found Dyer was not rehabilitated because "without an exploration and understanding of the behaviors that directly resulted in his incarceration, he remains at risk to repeat those behaviors in the community." App. to PRP, App. P at 12. Under both *Locklear* and *Ecklund*, the ISRB provided adequate written reasons to support its imposition of an exceptional minimum sentence.

3. *Whether the ISRB improperly considered Dyer's convictions*

Dyer argues that the ISRB abused its discretion by considering the facts underlying his convictions. In *Dyer* I, the ISRB erroneously relied upon the nature of Dyer's crimes to assess his recidivism risk. 157 Wn.2d at 368 ("[T]he ISRB dismissed evidence of Dyer's rehabilitation in prison evidently based on the facts of his underlying crimes."). Here, the ISRB did not base its parolability decision on the nature of Dyer's crimes. Rather, it discussed the fact that Dyer was convicted to explain why it cannot use his denial of culpability to establish parolability. "Despite Mr. Dyer's protestations of innocence, however, it is not within this Board's jurisdiction to retry cases or to adjudicate guilt or innocence of those offenders

under its jurisdiction." App. to PRP, App. P at 7. Unlike its previous decision, the ISRB did not inappropriately consider the facts underlying his convictions to predict his likelihood to reoffend.

4. *Remedy*

Dyer argues that, if this court were to find the ISRB abused its discretion, the court should reverse the ISRB's decision and order his parole. However, we do not find that the ISRB abused its discretion and therefore we do not reach this issue.

B. Whether the ISRB violated Dyer's constitutional rights

Dyer claims the ISRB violated his federal constitutional rights under the ex post facto clause, equal protection clause, due process clause, and Eighth Amendment's prohibition against cruel and unusual punishment. To succeed on these challenges, Dyer must demonstrate that constitutional error caused him actual harm by a preponderance of the evidence. *In re Pers. Restraint of Stanphill*, 134 Wn.2d 165, 169, 949 P.2d 365 (1998) (citing *Powell* 117 Wn.2d at 184).

1. *Ex post facto*

Dyer claims that the ISRB's reliance upon RCW 9.95.009(2) and (3) violates the ex post facto clause of the United States Constitution. This clause prohibits the State from enacting laws that retroactively increase the punishment associated with

a crime after its commission. *State v. Pillatos*, 159 Wn.2d 459, 475, 150 P.3d 1130 (2007); U.S. Const. art. I, § 10, cl. 1. The ex post facto clause is rooted in the individual's right to fair notice, not a right to less punishment. *Pillatos*, 159 Wn.2d at 475 (citing *Powell*, 117 Wn.2d at 184-85 (citing *Weaver v. Graham*, 450 U.S. 24, 30, 1001 S. Ct. 960, 67 L. Ed. 2d 17 (1981))).

That new procedures could result in a higher sentence for a prisoner does not establish an ex post facto violation. *Id.* at 476 (citing *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499, 505, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995)). Instead, the court assesses whether the new law "'(1) is substantive [or] merely procedural; (2) is retrospective (applies to events which occurred before its enactment); and (3) disadvantages the person affected by it.'" *Id.* (alteration in original) (quoting *Powell*, 117 Wn.2d at 185). In the criminal context, "'disadvantage'" means "'the statute alters the standard of punishment which existed under the prior law.'" *Id.* (quoting *State v. Schmidt*, 143 Wn.2d 658, 673, 23 P.3d 462 (2001)). Dyer contends he is disadvantaged by the ISRB's application of RCW 9.95.009(2) and (3).

Dyer asserts, "[i]f the Board is permitted to repeatedly deny parole based on the facts of the crime, however, then RCW 9.95.009(2) works only to the detriment

of prisoners." PRP at 46. However, on balance, RCW 9.95.009(2) works to the advantage of offenders by guaranteeing a parole hearing upon the expiration of his or her minimum term. *Powell*, 117 Wn.2d at 191. In addition, the statute worked to the advantage of Dyer when the ISRB adjusted his original minimum term from 600 months to 240 months.

Furthermore, a petitioner must definitively show that the change in law resulted in a harsher sentence. *Stanphill*, 134 Wn.2d at 173. Speculative assertions do not satisfy the petitioner's burden. *Id.* Dyer fails to show with any certainty that RCW 9.95.009(2) led to a harsher sentence, and we reject his ex post facto argument regarding RCW 9.95.009(2).

Dyer next argues the ISRB's reliance upon RCW 9.95.009(3) is an ex post facto violation. He claims the statute increased the weight assigned to public safety considerations which created a substantial risk that offenders will serve longer sentences. He urges the court to reject *In re Personal Restraint of Haynes*, 100 Wn. App. 366, 996 P.2d 637 (2000), which held RCW 9.95.009(3) was not an ex post facto law as applied to Haynes. *Id.* at 378. The Court of Appeals reasoned under previous law, RCW 9.95.100, the ISRB was allowed to emphasize public safety considerations in its decision making. *Id.* We agree.

The purpose of the ex post facto clause is to provide fair warning. *Pillatos*, 159 Wn.2d at 475. RCW 9.95.009(3) is not an ex post facto law since public safety considerations have always constrained the ISRB's parolability determinations. Dyer had fair notice of this parolability factor, and therefore his ex post facto argument fails.

2. *Equal protection*

Dyer next argues the ISRB violated the federal equal protection clause in two respects. First, he claims the ISRB's failure to make his sentence reasonably consistent with the SRA under RCW 9.95.009(2) constitutes unlawful discrimination as a pre-SRA offender. However, it is well settled "[t]here is no denial of equal protection in having persons sentenced under one system for crimes committed before July 1, 1984 and another class of prisoners sentenced under a different system." *Foster v. Wash. State Bd. of Prison Terms & Parole*, 878 F.2d 1233, 1235 (9th Cir. 1989); *Addleman*, 151 Wn.2d at 774. Furthermore, as previously discussed, we find the ISRB fully complied with RCW 9.95.009(2), and therefore Dyer's argument fails.

Second, Dyer asserts the ISRB denied him equal treatment by conditioning his parolability upon a factor beyond his control--his eligibility to participate in the SOTP.[7] He cites *Ohlinger v. Watson*, 652 F.2d 775 (9th Cir. 1980), for the

[7]The dissent reaches its conclusion that the ISRB denied Dyer equal protection by completely reformulating Dyer's argument. Dissent at 12. Dyer argues the ISRB denied him equal protection by conditioning parole on an unavailable program. PRP at 45 ("Here, the Board has acknowledged that it will not release Dyer unless he completes the SOTP program, yet that program is not available to Dyer."). The dissent, however, constructs its equal protection argument around the inadequacy of the SOTP as an effective form of treatment. The dissent concludes, "[c]lassifying Dyer as unrehabilitated based on the fulfillment of treatment whose participants have a projected *higher* recidivism rate than those who are willing but unable to participate is not rationally related to the legitimate state objective of requiring rehabilitation." Dissent at 14. In addition, the dissent relies on the policy papers the ISRB determined to have

proposition that the ISRB may not deny parole based on programs the inmate cannot obtain. Dyer's circumstances are factually distinguishable from *Ohlinger*.

Ohlinger held persons given indeterminate sentences "on the basis of a *mental illness*" have a constitutional right to adequate treatment for their mental infirmity. 652 F.2d at 777 n.5 (emphasis added). Dyer, however, was not incarcerated due to a mental illness and the SOTP is available to Dyer if he takes responsibility for his crimes. Dyer's equal protection argument fails.

3. *Void for vagueness*

Dyer next argues that RCW 9.95.009(2) as applied to him is void for vagueness because his sentence is not reasonably consistent with the SRA standard range. Mere uncertainty regarding the application of the statute to purportedly prohibited conduct does not establish vagueness. *State v. Watson*, 160 Wn.2d 1, 7, 154 P.3d 909 (2007). Rather, "[t]he test is whether men of reasonable understanding are required to guess at the meaning of the statute." *In re Pers. Restraint of Myers*, 105 Wn.2d 257, 267, 714 P.2d 303 (1986) (citing *City of Seattle v. Rice*, 93 Wn.2d 728, 731, 612 P.2d 792 (1980)).

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little applicability to Dyer's factual circumstances to reach its conclusion. *Id.*; PRP App. P at 11. Accordingly, the dissent's novel equal protection argument lacks foundation and, therefore, fails.

The dissent also argues the ISRB violated Dyer's constitutional rights under the doctrine of unconstitutional conditions. Dissent at 15. Only the dissent raises this novel constitutional argument. It was not briefed or argued by the parties. The issue is not properly before the court.

Dyer acknowledges this court has already rejected a vagueness challenge regarding RCW 9.95.009(2). In *Myers* we found "[t]he Legislature intended that the Board consider and impose sentences reasonably consistent with the SRA. Reasonable persons need not guess at the meaning of the challenged provision." 105 Wn.2d at 268. Accordingly, we held RCW 9.95.009(2) was not void for vagueness. *Id.*

Furthermore, we assess vagueness in light of other statutes, which are "'[p]resumptively available to all citizens'." *Watson*, 160 Wn.2d at 8 (alteration in original) (internal quotation marks omitted) (quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 180, 795 P.2d 693 (1990)). RCW 9.95.009(3) and .100 make it clear the ISRB may not release an inmate unless it finds him or her completely rehabilitated notwithstanding its obligations under RCW 9.95.009(2).[8] The ISRB determined Dyer is not rehabilitated and, therefore, in accord with its statutory mandate, denied Dyer parole. As applied to Dyer, RCW 9.95.009(2) is not unconstitutionally vague.

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[8]"Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole." RCW 9.95.009(3).

"The Board shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release." RCW 9.95.100.

4. *Substantive due process*

Executive action that shocks the court's conscience violates substantive due process. *Braam v. State*, 150 Wn.2d 689, 700, 81 P.3d 851 (2003). Dyer contends that the ISRB's repeated denials of parole "shock the conscience" in violation of substantive due process under the federal constitution. PRP at 47 (citing *Hunterson v. DiSabato*, 308 F.3d 236, 248 (3d Cir. 2002)). He asserts "there is absolutely nothing he can do to be paroled." PRP at 48. The ISRB decision does not support Dyer's contention. The ISRB did not indicate Dyer was powerless to gain release but rather declined to release an untreated sex offender. This reasoning does not shock the conscience, and therefore we reject Dyer's substantive due process argument.

5. *Cruel and unusual punishment*

Dyer claims it is cruel and unusual punishment under the Eighth Amendment to the United States Constitution and under article I, section 14 of the state constitution to give him false hope of parole every five years when the ISRB intends to deny his parole every time. The record does not support Dyer's assessment. The ISRB did not state it intended to hold Dyer indefinitely, and we are not in a position to predict the ISRB's future decisions. We decline to review this issue where the

evidence in the record does not support Dyer's conclusory argument. *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 364, 759 P.2d 436 (1988) (holding that petitioner's constitutional arguments failed where they are not grounded in facts and are merely conclusory allegations).

IV. CONCLUSION

The burden rests with the inmate to prove he is a fit subject for release. We hold Dyer failed to demonstrate his complete rehabilitation, and the ISRB did not abuse its discretion by adding 80 months to his minimum term. We also hold the ISRB properly adhered to its statutory mandate to make public safety its paramount consideration and did not violate Dyer's constitutional rights.

We affirm the decision of the ISRB.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:

Justice Susan Owens

Justice Barbara A. Madsen

Justice James M. Johnson

Bobbe J. Bridge, Justice Pro Tem.

No. 79872-9

SANDERS, J. (dissenting)—In *In re the Personal Restraint of Dyer,* 157 Wn.2d 358, 139 P.3d 320 (2006), we reversed the Indeterminate Sentence Review Board's (ISRB) 2002 denial of parole because "a review of the evidence and testimony presented at the parolability hearing suggests Dyer met his burden to have conditions of release on parole established . . . ." *Id.* at 369. On remand the ISRB was ordered to "make its determination based on the evidence and testimony presented, and not on speculation and conjecture." *Id.* But today's new majority ignores the prior considered judgment of the court to hold the ISRB may justify denial of Richard Dyer's parole simply because he is an untreated sex offender. Majority at 12 ("[T]he ISRB based its parolability decision upon the objective fact that Dyer is an untreated sex offender.").

In other words a majority of this court previously held Dyer met his burden to have conditions of parole established notwithstanding his status as an untreated sex offender, but now the new majority ignores our prior case (without overruling it), claiming Dyer's status as an untreated sex offender is an "objective fact" (as it was equally so before). *Id.*; *see also Dyer*, 157 Wn.2d at 386 (Fairhurst, J., dissenting) (arguing "[t]he ISRB did not abuse its discretion

when it determined that Dyer was not parolable because he was an untreated violent sex offender").

Certainly that Dyer is not allowed to participate in sex offender treatment only because he maintains his innocence is also an objective fact. To require Dyer to admit guilt as a precondition to parole violates equal protection, substantive due process, and the doctrine of unconstitutional conditions.

Although the factual circumstances of the original charged offense are generally irrelevant to a principled and reasoned analysis of the legal issue regarding parolability, *see Dyer,* 157 Wn.2d at 368; the majority and the ISRB apparently detail the factual circumstances of Dyer's offense to bolster their case against parole. *See* majority at 2-3; App. P to Pers. Restraint Pet. (Pers. Restraint Pet. App.) at 3-6. Some additional facts follow.

Dyer was convicted of the 1980 rape of two women. Dyer became a suspect a year after the rapes were committed and after Dyer's ex-wife reported to police Dyer raped her in a similar manner a year earlier. Dyer was tried and convicted of all three rapes; however, Dyer's conviction for the alleged rape of his ex-wife was reversed by the Court of Appeals. Although he was never retried for allegedly raping his ex-wife, the ISRB apparently still treats this reversed conviction as additional grounds to deny parole. Pers. Restraint Pet.

App. P at 3 (ISRB's announcement of decision and reasons stating, "[b]ecause these convictions were overturned on a technicality, he was not found innocent of them.").[1]

At trial doctors testified they found semen in the two raped women. However, no DNA (deoxyribonucleic acid) test was performed on the semen to see whether it came from Dyer. When in 2001 Dyer requested DNA testing he was told the samples had been destroyed.

Dyer was convicted largely on the testimony of the two alleged victims.[2] The first victim testified the rapist was five feet, two or three inches tall, no mustache, lived on a gravel road, and drove a Mercury Comet. Dyer, however, is five feet seven inches tall, wore a mustache, lived in a house with an asphalt paved drive, and drove a Mercury Meteor. The second victim originally told police she would be unable to identify her rapist, but at trial 16 months later she identified Dyer after seeing him led into the courtroom in handcuffs between two policemen.

Although a jury found Dyer guilty of rape, Dyer has consistently

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[1] The ISRB's knowledge of the criminal justice system, i.e., that anyone can be "found innocent" of anything, appears challenged.

[2] *But see* Jacqueline McMurtrie, *The Role of the Social Sciences in Preventing Wrongful Convictions,* 42 Am. Crim. L. Rev. 1271, 1275 (2005) ("Mistaken eyewitness identification has long been recognized as a leading cause of wrongful convictions.").

maintained his innocence. With the destruction of all the DNA evidence, the question of Dyer's innocence will likely never be reexamined; yet we should not ignore the possibility. *See Baze v. Rees,* 553 U.S. __, 128 S. Ct. 1520, 1551, 170 L. Ed. 2d 420 (2008) (Stevens, J., concurring) ("[A]bundant evidence accumulated in recent years has resulted in the exoneration of an unacceptable number of defendants found guilty of capital offenses." (citing Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55 (2008); D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 J. Crim. L. & Criminology 761 (2007))).

This is not to suggest the ISRB may readjudicate the guilt of each prisoner before it, but it *is* to suggest knee-jerk denial of parole based on claims of innocence is inappropriate for reasons including the distinct possibility the prisoner is factually innocent.[3] Daniel S. Medwed, *The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings*, 93 Iowa L. Rev. 491 (2008) (analyzing the fault of requiring admission of guilt as a predicate to parole). Despite Dyer's claim of innocence, or perhaps because of

[3] The concern here is two-fold. First, we should not require a factually innocent prisoner to lie to garner favor with the ISRB. Second, we should not reward a factually guilty prisoner's insincere expression of guilt and remorse. Distinguishing between these two groups requires a more nuanced approach than the ISRB has shown, especially in light of the overwhelming evidence of Dyer's parolability.

it, he has been a role model for other prisoners.

Throughout his incarceration Dyer has maintained his role as husband, father, and financial provider to his family. Dyer's wife credits him with encouraging her move from public assistance to a career as a registered obstetrical nurse. Dyer's children credit their father for providing a united and supporting environment despite the obvious hardships. Dyer provides financially for his family by running a real estate business from prison.

Dyer's prison work history is exemplary. He has not committed a serious prison infraction since 1995, and his last infraction of any kind was in 1999. Moreover, Dyer is a facilitator for Alternatives to Violence, a mediation/resolution program, and assists inmates with posttraumatic stress disorder issues.

To date Dyer has completed the following rehabilitation programs: Anger/Stress Management, Victim Awareness, Non-Violent Conflict Resolution, Moral Reconation Therapy, Industrial Therapy, Restorative Retelling Story Group, Family Dynamics, and Love and Forgiveness Couples Seminar. Dyer requested enrollment in sex offender treatment, personally writing a letter to the program, but his request was denied because he maintains his innocence.[4]

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[4] *But see* Randy Green, *Comprehensive Treatment Planning for Sex Offenders, in* 1 The Sex Offender: Corrections, Treatment and Legal Practice 10-1, 10-4

Lastly, every psychological evaluation of Dyer since 2001 indicates he is an appropriate candidate for parole. Yet the ISRB denies Dyer parole.

A. The ISRB abused its discretion by denying parole based on unsupported reasoning

An ISRB decision is reviewed under an abuse of discretion standard. *See e.g., Dyer*, 157 Wn.2d at 363. The ISRB abuses its discretion when it fails to consider or disregards the facts and evidence presented. *Id.* at 369.

To reach its decision the ISRB cited two recent studies by the Washington State Institute for Public Policy to support denial of Dyer's application of parole as an untreated sex offender.[5] These studies do indeed highlight the relevancy of Dyer's participation in sex offender treatment.[6]

The first study demonstrates sex offenders who participate in sex

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(Barbara K. Schwartz & Henry R. Cellini eds., 1995) (recognizing refusal to admit guilt does not preclude the therapeutic benefits of sex offender treatment).

[5] Robert Barnoski, *Sex Offender Sentencing in Washington State: Does Prison Treatment Program Reduce Recidivism?* (Wash. State Inst. for Pub. Policy June 2006), *available at* http://www.wsipp.wa.gov/pubauth.asp; Robert Barnoski, *Sex Offender Sentencing in Washington State: Who Participates in the Prison Treatment Program?* (Wash. State Inst. for Pub. Policy June 2006), *available at* http://www.wsipp.wa.gov/pubauth.asp.

[6] According to the majority the ISRB did not rely on these studies to reach its decision. Majority at 12 n.3. Yet, according to the ISRB's statement of decision and reasons the ISRB relied on one study to interpret the findings of the study submitted by Dyer; the ISRB admits it relied upon these studies. *See* Pers. Restraint Pet. App. P at 12.

offender treatment programs have a *higher* recidivism rate than those offenders who were willing, but unable, to participate. The second study demonstrates recidivism rates for sex offenders who were not willing to participate in sex offender treatment were significantly higher than those who were willing to participate.

The ISRB claims Dyer's refusal to admit guilt demonstrates his unwillingness to participate in the program. However, this court has already recognized Dyer's willingness to participate in *any* program available to him. *Dyer*, 157 Wn.2d at 364. Moreover, the methodology of both reports places Dyer squarely in the category of willing to participate but rejected by the program.[7] Therefore, according to the very studies relied upon by the ISRB, Dyer has a lower projected recidivism rate than a sex offender who actually undertakes sex offender treatment.[8]

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[7] "The comparison group includes all incarcerated sex offenders who indicated a willingness to participate but did not (willing, applied, declined, and rejected)." R. Barnoski, *Does Prison Treatment Program Reduce Recidivism?*, *supra*, at 2 n.6; *see also* R. Barnoski, *Who Participates in the Prison Treatment Program?*, *supra*, at 4 n.6 ("This group includes all incarcerated sex offenders who indicated a willingness to participate but did not (willing, applied, declined, and rejected.")).

[8] By requiring an admission of guilt as a predicate to enrollment, the program may be populated with prisoners whose sincerity and willingness to rehabilitate is questionable. *See* Green, *Comprehensive Treatment Planning for Sex Offenders*, *supra*, at 10-6 ("Offenders frequently acknowledge the deed but blame alcohol, drugs, provocative victim behavior, or other outside factors.").

A refusal to admit guilt may be relevant to the question of rehabilitation; however, it cannot be the sole basis to deny parole. *In re Pers. Restraint of Ecklund,* 139 Wn.2d 166, 176-77, 985 P.2d 342 (1999).[9] Nor can the ISRB lawfully withhold parole because Dyer has not confessed. *Id.* at 177 ("[T]he Board may not demand that Ecklund confess to the murder in order to obtain parole . . . ."). Yet that is exactly what the ISRB, and the majority, require of Dyer. The only way for Dyer to be eligible for sex offender treatment, and therefore parole, is to confess.

Yet no objective evidence links Dyer's claim of innocence to lack of rehabilitation. To the contrary, "[t]he evidence presented to the ISRB supports the argument that Dyer currently poses a low risk of reoffending." *Dyer,* 157 Wn.2d at 366.

Since our decision in *Dyer* the new information presented to the ISRB was entirely favorable to Dyer. Moreover, considering the obvious disincentive to claim innocence, logic dictates Dyer's repeated assertions of innocence exemplify his personal integrity, not his lack of rehabilitation.[10]

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[9] In *Ecklund* petitioner's failure to admit his guilt was not the only basis on which the ISRB denied parole. *Ecklund,* 139 Wn.2d at 176. In *Ecklund* the petitioner "minimized his problems with alcohol" and refused to acknowledge the possibility he committed murder during an alcoholic blackout. *Id.* at 176-77. These circumstances were critical to our holding that the ISRB did not abuse its discretion. Similar circumstances are not present here.

[10] "Generally speaking, an incentive exists for all prisoners facing parole boards

Dyer's rehabilitation is proved. The ISRB's decision is contrary to the evidence presented and an abuse of its discretion. *Id.* at 369.

B. The ISRB abused its discretion by imposing an exceptional minimum sentence without adequate reasons

When setting minimum terms the ISRB's decision must be "reasonably consistent with the ranges, standards, purposes" of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, "and the minimum term recommendations of the sentencing judge and the prosecuting attorney . . . ." RCW 9.95.013; *see also* RCW 9.95.009(2). The ISRB "shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release." RCW 9.95.100. "[B]etween a statutory requirement that a prisoner is not to be released until rehabilitation is complete and a duty to attempt consistency with the SRA, the statutory requirement trumps the duty to attempt. The two duties, however, are not mutually exclusive but can be exercised in harmony with each other." *In re Pers. Restraint of Addleman*, 151 Wn.2d 769, 775, 92 P.3d 221 (2004).

Though the ISRB is not bound to the duty of consistency, the legislature

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to admit guilt and apologize for the crime in order to maximize their chances for release, irrespective of their true feelings and culpability." Daniel S. Medwed, *The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings*, 93 Iowa L. Rev. 491, 516 (2008).

nevertheless bound the ISRB to the duty of providing "adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges adopted" under the SRA. RCW 9.95.009(2). The ISRB's "reasons for an exceptional sentence must be apparent from the record and not chosen 'out of thin air.'" *In re Pers. Restraint of Locklear*, 118 Wn.2d 409, 417, 823 P.2d 1078 (1992) (quoting *In re Pers. Restraint of Robles*, 63 Wn. App. 208, 218, 817 P.2d 419 (1991)); *see also In re Pers. Restraint of Myers*, 105 Wn.2d 257, 266, 714 P.2d 303 (1986) (holding "imposition of a 48-month [exceptional] sentence in the absence of adequate reasons constituted an abuse of discretion.").

"Absent *exceptional circumstances* and written reasons justifying departure, the Board's minimum term decisions under section .009(2) *must* conform to the SRA." *In re Pers. Restraint of Powell*, 117 Wn.2d 175, 187, 814 P.2d 635 (1991) (emphasis added) (citing *Addleman v. Board of Prison Terms & Paroles*, 107 Wn.2d 503, 511, 730 P.2d 1327 (1986)). The length of the exceptional sentence must be proportionate to the reasons given by the ISRB. *Locklear,* 118 Wn.2d at 417. These requirements ensure sufficient oversight of ISRB decisions. *Id.* at 418; *Myers*, 105 Wn.2d at 262 (observing "the clear limitation imposed on the Board's discretion by RCW 9.95.009(2)").

To comply with RCW 9.95.009(2) the ISRB must provide adequate

reasons to justify imposing an exceptional minimum term sentence, and the departure from the standard sentence must be proportionate to its reasoning. Even though the ISRB may not release a prisoner until in its opinion the prisoner is rehabilitated, its opinion is not sacrosanct, and the more the minimum sentence departs from the SRA standard range the more justification is required.[11]

Here the ISRB added another 80 months to Dyer's continually enhanced minimum sentence, bringing his minimum sentence to 500 months. The standard range sentence under the SRA for Dyer's crimes is 63 to 88 months. Dyer's minimum sentence is therefore 412 months in excess of the top of the SRA standard range. The ISRB has not provided adequate reasons for this exceptional sentence.

The ISRB commended Dyer on his self-improvement but stated that until Dyer admits his guilt "'he remains at risk to repeat those behaviors in the

[11] Implicit in this statutory scheme is the rehabilitative nature of punishment and parole as the next step in a prisoner's reentry into free society. We should never lose sight of the fact that Dyer, like all prisoners, is not a monster but "human[] like us and . . . capable of myriad courses of action, honorable and dishonorable, . . . they will act honorably, given a real choice. This means that we provide them with the resources to achieve self-determination, dignity, and self-respect." John Irwin, Prisons in Turmoil 248 (1980). In other words, a man is "more than the sum of [his] worst acts." Marie Deans, *Working Against the Death Penalty*, *in* Writing for Their Lives: Death Row U.S.A. 59, 62 (Marie Mulvey-Roberts ed., 2007).

community.'" Majority at 12 (quoting Pers. Restraint Pet. App. P at 10). In other words, until Dyer confesses he will not be released.

As discussed above, nothing in the record links Dyer's refusal to admit guilt to a higher risk of reoffending. To the contrary, both studies by the Washington State Institute for Public Policy support the conclusion of Dyer's presenting a lower risk of reoffending than sex offenders who have admitted guilt and undertaken the program the ISRB demands of them.

Moreover, Dyer's recent psychological evaluations show he poses a low recidivism risk.[12] Since the record fails to demonstrate *any* connection between Dyer's refusal to admit his guilt and an increased recidivism risk, the ISRB has provided inadequate reasons to justify the imposition of an exceptional sentence exponentially beyond the SRA standard range.

C. The ISRB violated Dyer's constitutional rights

"'There is no iron curtain drawn between the Constitution and the prisons of this country.'" *State v. Hartzog*, 96 Wn.2d 383, 391, 635 P.2d 694 (1981) (quoting *Wolff v. McDonnell,* 418 U.S. 539, 555-56, 94 S. Ct. 2963, 41

[12] To deny parole in 1994, 1995, and 1998, the ISRB relied on psychological reports stating Dyer's recidivism risk was high. Apparently, the ISRB follows a psychological report when it is predictive of high recidivism but disapproves the psychological report when it is predictive of low recidivism. *See* majority at 7. *But see Dyer,* 157 Wn.2d at 366 (observing an abuse of discretion when the ISRB disregards current, favorable psychological reports).

L. Ed. 2d 935 (1974)).

1. ISRB violated Dyer's equal protection rights

The majority inadequately analyzes Dyer's equal protection argument. The essence of Dyer's argument is the ISRB denied him equal treatment when it classified him as unrehabilitated simply because he has not been allowed to participate in sex offender treatment.

> "The equal protection clauses of the Fourteenth Amendment to the United States Constitution and Const. art. I, § 12 'require that "'persons similarly situated with respect to the legitimate purpose of the law receive like treatment."'" *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987) (quoting *State v. Phelan*, 100 Wn.2d 508, 512, 671 P.2d 1212 (1983) (quoting *Harmon v. McNutt*, 91 Wn.2d 126, 130, 587 P.2d 537 (1978))). One of three tests may be used to determine whether this clause has been violated. First, the strict scrutiny test applies when a classification affects a suspect class or a fundamental right. *Schaaf*, at 17 . . . . Second, the intermediate scrutiny test may apply 'in limited circumstances': the Supreme Court has applied this test for gender-based classifications; this court has applied intermediate scrutiny to classifications affecting 'both an important right (the right to liberty) and a semi-suspect class not accountable for its status (the poor).' *Schaaf*, at 18 . . . . Third, under the rational relationship test, 'a law is subjected to minimal scrutiny and will be upheld "'unless it rests on grounds wholly irrelevant to the achievement of a legitimate state objective."'" *Schaaf*, at 17 (quoting *Phelan*, at 512 (quoting *Nielsen v. Washington State Bar Ass'n*, 90 Wn.2d 818, 820, 585 P.2d 1191 (1978)))."

State v. Heiskell, 129 Wn.2d 113, 123-24, 916 P.2d 366 (1996) (alterations in original) (quoting *Westerman v. Cary*, 125 Wn.2d 277, 294-95, 892 P.2d 1067 (1994)).

Prisoners are neither a suspect nor a semisuspect classification, so the rational basis test applies.

> "Under the rational basis test, a statute is constitutional if (1) the legislation applies alike to all persons within a designated class; (2) reasonable grounds exist for distinguishing between those who fall within the class and those who do not; and (3) the classification has a rational relationship to the purpose of the legislation. The classification must be 'purely arbitrary' to overcome the strong presumption of constitutionality applicable here."

Westerman, 125 Wn.2d at 295 (quoting *State v. Smith*, 117 Wn.2d 263, 279, 814 P.2d 652 (1991)).

The ISRB classified Dyer as unrehabilitated because he has not participated in sex offender treatment. Classifying Dyer as unrehabilitated based on the fulfillment of treatment whose participants have a projected *higher* recidivism rate than those who are willing but unable to participate is not rationally related to the legitimate state objective of requiring rehabilitation prior to parole, especially in light of Dyer's documented rehabilitation, low recidivism risk, and model prisoner behavior.

2. ISRB's decision shocks the judicial conscious

> The test for whether a particular action shocks the conscience must be appropriately tailored to the factual context at hand and "must be determined by balancing . . . liberty interests against the relevant state interests." *Youngberg* [*v. Romeo*], 457 U.S. [307,] 321[, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982)]. In order to preserve "constitutional proportions of substantive due process," a court must undertake "an exact analysis of circumstances before

> any abuse of power is condemned as conscience shocking." [*County of Sacramento v.*] *Lewis*, 523 U.S. [833,] 850[, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)].

Braam ex rel. Braam v. State, 150 Wn.2d 689, 704, 81 P.3d 851 (2003).

The ISRB demands Dyer admit guilt to undergo sex offender treatment before it will consider granting him parole. Not only is the ISRB's demand not statutorily justified, *see Ecklund*, 139 Wn.2d at 177 (stating, "the Board may not demand that Ecklund confess to the murder in order to obtain parole"), but it shocks the judicial conscience.

The ISRB's reasoning presents a catch-22: a factually innocent person must admit to being a criminal in order to reenter free society; yet admitting to the crime forecloses any opportunity the factually innocent prisoner may have to clear his name. This shocks the judicial conscience in light of Dyer's documented rehabilitation, low recidivism risk, model prisoner behavior, and continued maintenance of his responsibilities to his wife and children.

3. The ISRB's decision violates the doctrine of unconstitutional conditions

Under the doctrine of unconstitutional conditions, the government cannot condition the receipt of its benefits upon the nonassertion of a constitutional right, even if the benefit is merely a privilege.[13] As articulated by the United

[13] The majority unjustifiably limits appellate review of whether Dyer's constitutional right to equal protection has been violated by the ISRB's conditioning of parole on completion of sex offender treatment program. The

States Supreme Court:

> [T]he power of the state in that [ability to deny a privilege or benefit altogether] is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.

Frost & Frost Trucking Co. v. R.R. Comm'n of Cal. 271 U.S. 583, 593-94, 46 S. Ct. 605, 70 L. Ed. 1101 (1926); *see also Speiser v. Randall*, 357 U.S. 513, 526, 78 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958) (stating a state may not indirectly "produce a result which the State could not command directly"); *Sherbert v. Verner*, 374 U.S. 398, 404 n.6, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) (citing cases "for examples of conditions and qualifications upon governmental privileges and benefits which have been invalidated because of their tendency to inhibit constitutionally protected activity").

Dyer does not have a protected liberty interest in early release. *See, e.g., In re Pers. Restraint of Ayers*, 105 Wn.2d 161, 164-66, 713 P.2d 88 (1986). However, the absence of a protected liberty interest is not dispositive of the question whether the state may constitutionally condition the privilege of parole on self-incrimination. *See State v. Imlay*, 249 Mont. 82, 813 P.2d 979 (1991).

---

majority elevates form over substance by requiring Dyer to articulate the exact phrase "doctrine of unconstitutional conditions" before it will even entertain the argument.

The question presented in *Imlay* was remarkably similar to the one here: Whether an inmate could be compelled, as a prerequisite to admission in a sexual therapy program, to admit guilt where completion of such a program was required in order to allow him to keep his suspended sentence. *Id.* at 83. The Montana Supreme Court found that compelling the inmate to do so would cause a Fifth Amendment violation, absent any grant of immunity. *Id.* at 91.[14] So finding, the Montana Supreme Court reasoned:

> Even though the defendant has already been convicted of the crime that he denies, our system still provides, as noted in the *Thomas* [*v. United States*, 368 F.2d 941 (5th Cir. 1966)] decision, for opportunities to challenge that conviction. For example, the defendant still had the right to challenge his conviction, based on newly discovered evidence, or by collateral attack. These are important rights guaranteed to every defendant under our criminal justice system, but would be rendered meaningless if the defendant could be compelled to admit guilt as a condition to his continued freedom.

Id. at 90-91.

Similarly here, even though Dyer has already been convicted of the crimes he denies, he still has the right to challenge those convictions based on newly discovered evidence or some other collateral attack. *See*

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[14] This court also recognizes the Fifth Amendment violation. *See Ecklund,* 139 Wn.2d at 173 (stating, "'[t]he State may validly insist on answers to incriminating questions and properly administer its probation system so long as the State recognizes that the answers may not be used in a subsequent criminal proceeding'" (quoting *State v. King*, 130 Wn.2d 517, 529, 925 P.2d 606 (1996))).

RCW 10.73.100. Dyer's confession could also hinder his defense should the State seek to civilly commit him under chapter 71.09 RCW.

Dyer has met his burden to have conditions of parole established regardless of whether the Department of Corrections allows him to receive sex offender treatment. His documented rehabilitation, low recidivism risk, model prisoner behavior, and Herculean efforts to maintain his responsibilities as husband and father establish his parolability.

Moreover, the ISRB provides inadequate reasons to impose an exceptional sentence, exponentially disproportionate to that which would be imposed under the SRA.

The ISRB has abused its discretion. Dyer should be paroled.

I dissent.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR:
Chief Justice Gerry L. Alexander

Justice Charles W. Johnson

Justice Tom Chambers

EXHIBIT - G
5/10/1982 Board Admission Hearing

PB 302-468

STATE OF WASHINGTON
BOARD OF PRISON TERMS AND PAROLES

9 Date 7-6-82

To: Superintendent
Washington State Penitentiary

Attention: Associate Superintendent
Classification and Treatment

Subject: BOARD DECISION ON DOCKET CASE

Re: DYER, Richard J.
281744

The decision of the Board in regard to the 5-10-82 (date)
Admission (type) *hearing for the above-named individual is as follows has been revised as follows:*

Previously: DD

Now: MT 600 months on Cts. I, IV, VI & VII, 60 months on Ct. V, all CC.
NXt Mtg to be scheduled.

CSW

BOARD OF PRISON TERMS AND PAROLES

APPENDIX 3

EXHIBIT - H
9/15/1986 Board Decision

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD

OLYMPIA, WASHINGTON

DYER, RICHARD	:NAME	
281744	:NUMBER	
WSR	:INSTITUTION	DECISIONS
OBERT MYER REDETERMINATION	:TYPE OF MEETING	AND
9/15/86	:DATE	REASONS
GJ & PM	:PANEL MEMBERS	
31	:DOCKET NUMBER	

BOARD DECISION:

WE SET THE MT AT 240 MONTHS AND WE HAVE DECIDED TO DEPART FROM THE SRA GUIDELINE FOR THE FOLLOWING REASONS:

REASONS:

THE COMMISSION OF THE OFFENSE MANIFESTED DELIBERATE AND CRUETLY TO THE VICTIM. SHE WAS TIED BY THE HANDS AND FEET TO THE BED WITH ROPE, HER EYES WERE TAPED WITH COTTON BALLS AND WHILE THEY CONTINUED TO RAPE HER THROUGHOUT THE NIGHT AT ONE POINT THEY TURNED HER OVER ON HER STOMACH AND AGAIN RAPED HER IN THAT NEW POSITION.

MR. DYER DIDN'T JUST DO IT TO ONE INDIVIDUAL BUT DID IT TO THE SECOND INDIVIDUAL USING THE SAME TYPE OF METHOD OF OPERATION WITH THE TAPE AND THE COVERING OF THE EYES.

IN GIVING THIS SETTING WE TOOK INTO ACCOUNT THAT THE SRA GUIDELINES RANGE IS 63-88 FOR RAPE 1ST COUNTS 1 AND 63-85 FOR RAPE 1ST COUNT 4. WITH AN ADJUSTED GUIDELINE IT APPEARS THAT MR. DYER NEEDS TO SERVE MORE TIME THAN THAT.

ANOTHER REASON WHY WE DEPARTED FROM THE SRA GUIDELINE IS BECAUSE THE P.A. RECOMMENDATION WAS 50 YEARS AND THE JUDGE'S RECOMMENDATION IS LIFE. AND I READ A QUOTE FROM HIS LETTER DATED FEBRUARY 20, 1982 WHERE HE INDICATES THAT "MR. DYER IS A DANGEROUS OFFENDER. I DENIED HIM A RELEASE PENDING APPEAL ON THE GROUNDS THAT HE IS A DANGER TO BE AT LARGE. THERE ARE SOME DISCUSSIONS ABOUT WHETHER HIS SENTENCE SHOULD BE CONCURRENT AS OPPOSED TO CONSECUTIVE IN VIEW OF THE DANGER TO THE PUBLIC THAT HE POSES.

(CONTINUED ON NEXT PAGE)

CC: INSTITUTION
RESIDENT
FILE

EXHIBIT 4

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD

OLYMPIA, WASHINGTON

DYER, RICHARD	:NAME	
281744	:NUMBER	
WSR	:INSTITUTION	DECISIONS
OBERT MYER REDETERMINATION	:TYPE OF MEETING	AND
9/15/86	:DATE	REASONS
GJ & PM	:PANEL MEMBERS	
31	:DOCKET NUMBER	

BOARD DECISION:

PAGE 2 (CONTINUED FROM PREVIOUS PAGE)

REASONS:

I ADVISED THE LAWYERS AND I WANT TO ADVISE THE PAROLE BOARD THAT IT HAS NOT ALWAYS BEEN MY PHILOSOPHY THAT I SHOULD PLAY GAMES WITH THE BOARD IN TRYING TO GUESS WHAT THEY WILL DO IN MINIMUM TERM SETTING. MR. DYER CAN NOT RECEIVE MORE THAN A LIFE SENTENCE AND A LIFE SENTENCE CANNOT BE EXTENDED BY MAKING MORE THAN ONE LIFE SENTENCE CONCURRENT WITH ANOTHER. MR. DYER, IN MY JUDGEMENT, SHOULD BE HELD IN CUSTODY UNTIL THE PAROLE BOARD IS ABSOLUTELY SURE THAT HE WILL NOT REOFFEND OR UNTIL THE END OF HIS NATURAL LIFE WHICHEVER SHOULD FIRST OCCUR. A LENGTHLY MINIMUM IS APPROPRIATE."

TODAY MR. DYER PRESENTED HIMSELF TO THE BOARD STILL WITH THE DENIAL STAGE. HE CLAIMS THAT HE DID NOT COMMITT ANY OF THE CRIMES AND THAT THE CHARGES 5, 6, & 7 WERE DROPPED. WE ADVISED HIM THAT THE REASON THAT THEY WERE DROPPED IS BECAUSE THE COUNTY ELECTED NOT TO RETRY THOSE CHARGES. THOSE CHARGES OF RAPE WERE INVOLVING HIS WIFE.

NEXT ACTION IS TO SCHEDULE A 2/88 ADMINISTRATIVE PROGRESS HEARING. WE ADVISED MR. DYER TO TAKE ADVANTAGE OF ANY TREATMENT AVAILABLE FOR HIM WITHIN THE INSTITUTION IN REFERENCE TO PSYCHOLOGICAL TREATMENT THROUGH THE INSTITUTION IF THERE IS SOME AVAILABLE. ALSO TO TAKE ADVANTAGE OF ANY ANGER STRESS MANAGEMENT CLASS THAT'S AVAILABLE FOR HIM SO THAT WHEN HE DOES COME UP FOR CONSIDERATION FOR ANY TYPE OF PAROLE HE SHOULD BE PREPARED TO SUCCEED ON PAROLE. WHEN THE TIME COMES FOR PAROLE A

(CONTINUED ON NEXT PAGE)

CC: INSTITUTION
RESIDENT
FILE

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD

OLYMPIA, WASHINGTON

DYER, RICHARD	:NAME	DECISIONS AND REASONS
281744	:NUMBER	
WSR	:INSTITUTION	
OBERT MYER REDETERMINATION	:TYPE OF MEETING	
9/15/86	:DATE	
GJ & PM	:PANEL MEMBERS	
31	:DOCKET NUMBER	

BOARD DECISION:

PAGE 3 (CONTINUED FROM PREVIOUS PAGE)

REASONS:

PSYCHOLOGICAL EVALUATION SHOULD BE COMPLETED THAT DEALS WITH SEXUAL DEVIANCY BEHAVIOR AND RECOMMENDATIONS MADE BY THAT EVALUATION BE PART OF A PAROLE PLAN.

HIS CONTINUAL DENIAL OF THIS RAPE CERTAINLY MAKES IT DIFFICULT FOR ANY TREATMENT TO BE AFFECTIVE.

PM/LFG
9/25/86

CC: INSTITUTION
RESIDENT
FILE

PB 213

EXHIBIT - I
2/24/1994 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. • P.O. Box 40907 • Olympia, Washington 98504-0907 • (206) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	DYER, Richard J.
NUMBER:	281744
INSTITUTION:	WSR
TYPE OF MEETING:	.100
DATE:	February 24, 1994
PANEL MEMBERS:	KB & GJ

BOARD DECISION:

The Board finds Mr. Dyer not parolable at this time.

NEXT ACTION:

Schedule .100 hearing 90 days prior to his PERD (parole eligibility review date). The Board specifically requests an updated 530X and an .052 recommendation from the Superintendent which is current at the time of the hearing. The Board also requests a psych evaluation which is no more than two years old at the time of the hearing.

HISTORY/COMMENTS:

Mr. Dyer is in custody for a Kitsap County cause for two counts of Rape in the First Degree, Ct II and Count IV. Mr. Dyer was originally sentenced on three counts of Rape in the First Degree, Unlawful Imprisonment and First Degree Burglary. His convictions were later amended after successful appeal, and his convictions were reduced to Rape in the First Degree Count II, and Rape in the First Degree Count IV. At the Obert Myer Review the Board reduced the minimum term on those two counts to 240 months having previously imposed longer sentences. The Sentencing Reform Act (SRA) range for both counts of Rape in the First Degree were 67 to 89 months prior to the application of Phelan. The prosecutor's recommendation was 50 years. The judge's recommendation was not to release Mr. Dyer until the Parole Board could verify that he was not longer a threat to the community. Mr. Dyer's first conviction for Rape involved an incident in 1980 when he and an unknown accomplice picked up the victim as she was walking

CONTINUED (NEXT PAGE)

EXHIBIT 5

EXHIBIT - J
3/8/1995 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. • P.O. Box 40907 • Olympia, Washington 98504-0907 • (206) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	DYER, Richard
NUMBER:	281744
INSTITUTION:	Washington State Reformatory
TYPE OF MEETING:	.100 Hearing
DATE:	March 8, 1995
PANEL MEMBERS:	GWJ & JG

BOARD DECISION:

The decision of the full Board is to find Mr. Dyer not parolable and to add 60 months to his minimum term.

NEXT ACTION:

Schedule a March 1997 Administrative Progress Review.

HISTORY AND COMMENTS:

Mr. Dyer has now served 157 months on two counts of Rape in the First Degree, each count with a Life sentence maximum. The sentencing Judge recommended "do not parole until the ISRB can verify that he is no longer a threat to the community" and the prosecuting attorney recommended 50 years or 600 months on each count. They run concurrent. The SRA (Sentencing Reform Act) ranges on each count are 67 to 89 months, adjusted for Phelan credits to 63 to 85 months on each count. There is a 36 month non-waivable mandatory with each count.

Mr. Dyer was originally sentenced to prison on three counts of Rape in the First Degree, Unlawful Imprisonment, and Burglary in the First Degree. On a successful appeal, the sentence was amended to two counts of Rape in the First Degree, Counts II and IV. The conviction for Rape, Count II,

(continued on next page)

OBTS UPDATED
4/11/95 jgo

EXHIBIT 6

involved an incident on January 27, 1980, when Mr. Dyer and an unknown accomplice picked up the victim as she was walking along the side of the road after offering her a ride. After a short distance she realized that they were not going to let her out. She grabbed the wheel and hit the brakes, and Mr. Dyer hit her severely in the mouth with his elbow, causing a laceration which later required 13 stitches. Mr. Dyer then stopped the car, threw her in the back seat, jumped in the back seat with her and began beating her with his fists. The unknown accomplice continued to drive the car. Mr. Dyer continued to hit the victim and kept her on the floorboard of the car. They stopped on a deserted road near a pond, where Mr. Dyer pulled off the victim's clothes and offered her to the driver. The driver declined, and Mr. Dyer raped her vaginally. He then tied her up with a rope and pushed her back onto the floor of the automobile. After driving some distance, they took her to his home, tied her to the bed, taped her eyes shut, stuffed her mouth with cotton, and the second subject then raped her. Mr. Dyer then raped her again and then he would go to sleep, wake up and rape her again, and this occurred approximately eight times throughout the evening until the next afternoon. On two occasions he made her get up and take a bath prior to raping her. He would use spermicidal foam and cream on her, made her wash her clothes before he would allow her to redress, and then took her to a deserted area before he released her.

The second Rape incident occurred on August 24, 1980, when the victim was out walking her dog and went downtown, where she met some friends. Upon returning home, a vehicle offered her a ride and she declined. The two men in the vehicle then returned and she was forced into their car. The two men then drove out in the country where their car became stuck twice. She was forced to help free the car, and the car rolled onto her, injuring her leg. She was taken to Mr. Dyer's home where she was then tied to the bed, and the rope was taped to prevent burns to her arms and legs. Mr. Dyer then undressed her and raped her. He made her get up, take a shower, tied her up again, and he went to sleep. While he was asleep the victim was able to get loose, but a dog awakened Mr. Dyer. She

(continued on next page)

was recaptured and retied to the bed. He fell asleep again. She was again able to get loose and again the dog awakened Mr. Dyer. She was again retied, and was later awaked and forced to take a bath. She was allowed to wash her clothes, redress, and then she was permitted to be released into a forested area in the county. Upon letting her go Mr. Dyer apologized, said he was drunk, and gave her a wristwatch. It should be noted that this wristwatch belonged to the first rape victim in the incident in January 1980.

In September of 1981 two similar kinds of behaviors were done to Mr. Dyer's wife, and this is how the police were able to identify him as the rapist in the two incidents noted above. The tying to the bed, forcing to shower, rewashing the clothes, and the use of spermicidal foam all convinced the jury and led the police to believe that Mr. Dyer was the one who had committed the prior rapes. Victim number one was able to identify Mr. Dyer, whereas victim number two was never able to get a clear picture of the rapist because her eyes were taped closed. In all of the rape incidents, the victims were totally convinced that they were going to die and made mental preparations for death. Mr. Dyer was gainfully employed at the Bremerton Naval Shipyard at the time that the offenses occurred, prior to that he had been in the military for nine years and was given an honorable discharge. He served two tours in Vietnam and received a considerable number of awards for heroism during these tours.

REASONS:

Mr. Dyer is an untreated, convicted rapist who denies his culpability and is therefore not amenable or receptive to treatment. Dr. Jones, in his December 1994 psychological evaluation, diagnoses him as Post Traumatic Stress Disorder and sexual sadism. Dr. Jones states further that without treatment, the risk of reoffense remains high; that the depth of Mr. Dyer's sexual deviancy cannot be assessed because he is uncooperative in that area. We note the sentencing Judge recommended that he not

(continued on next page)

be released until he is no longer a threat to the community. The threat continues to exist, absent treatment. The Board takes into consideration a prior psychological report from March of 1993 authored by Dr. Helmut Riedel, which provides documentation of Mr. Dyer's tendency toward denial and relates that although he denies the physical abuse of women, the record clearly shows that his first wife had a restraining order issued against him and accused him of physical violence. It is believed that until he effectively starts dealing with the conviction behavior, even if it may have been an offshoot of Post Traumatic Stress Disorder, it would be difficult to release this man back into the community.

On the positive side, he has had no infractions since 1988, has been gainfully employed with Redwood Industries, and is not a management problem. He is a leader/facilitator for the Alternatives to Violence program inside of the prison. He is married. His wife and three children reside in Oklahoma, where he intends to reside upon parole.

FACTS RELIED UPON:

The .052 prognosis from the Superintendent is poor. This is based on his lack of remorse for the victims, his denial of the crime, the seriousness of the offenses, the very negative tone of all psychological evaluations available to the Board at this time, and the fact that he is still an untreated predatory rapist, who from all indications has not taken advantage of available resources to address these issues.

GWJ:jas
March 27, 1995

CC: INSTITUTION
RESIDENT
FILE

EXHIBIT - K
8/11/1998 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. • P.O. Box 40907 • Olympia, Washington 98504-0907 • (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	Richard DYER
NUMBER:	281744
INSTITUTION:	Airway Heights Correction Center
TYPE OF MEETING:	.100
DATE:	August 11, 1998
PANEL MEMBERS:	JG & JA

BOARD DECISION:

The full Board finds Mr. Dyer not parolable and adds 60 months to his minimum term.

NEXT ACTION:

Schedule an August, 2000 Administrative Progress Review.

HISTORY AND COMMENTS:

Mr. Dyer is under the Board's jurisdiction for two counts of Rape 1st Degree. The time start was February 19, 1982, with a maximum of life. The Sentence Reform Act (SRA) guideline range is 67 – 89 months, with an adjusted range of 63 – 85 months. The judge made no recommendation and the prosecutor recommended 600 months. As of today's date Mr. Dyer has served approximately 197 months.

File materials describe the underlying convictions as two separate attacks on two different women approximately 7 months apart. The first rape occurred in January of 1980 when Mr. Dyer and a co-defendant picked up the victim hitchhiking. The assault lasted over the course of time from the evening of one day into the afternoon of the next day. The victim was raped multiple times by Mr. Dyer, beaten severely, causing 13 stitches in her mouth. He bathed

EXHIBIT 10

her, washed her clothes, and then abandoned her in a deserted area. The second rape occurred in August of 1980 when the victim was forced into the car occupied by Mr. Dyer and a co-defendant. File materials describe the rape as occurring at Mr. Dyer's home, where the victim was tied and again her clothes were washed. She was forced to bathe and was released early the next morning. File materials also note that before releasing the second victim Mr. Dyer gave her a wristwatch that belonged to the first victim.

REASONS:

The Board last saw Mr. Dyer in March of 1995. At that time it was noted that he was in denial of the underlying crimes, as he is today. It also should be noted that Mr. Dyer was eventually arrested when he committed a similar crime against his wife, which was reported to the police. This led to his arrest and conviction.

There is a current psychological from Dr. Lauby dated June of 1998, which rates his risk of re-offense, based on results of the Level of Service Inventory-Revised (LSI-R) and Hare Psychopathy Checklist-Revised (PCL-R), as low to medium. He notes that Mr. Dyer has a moderate likelihood of sexual deviancy based on the Risk Level Classification (RLC).

On the Multiphasic Sex Inventory (MSI) testing, Dr. Lauby noted he failed to acknowledge even normal sexual desires and interests. His replies indicated very little, if any, motivation for treatment. He considered that Mr. Dyer's knowledge of human sexuality is borderline and his general performance may be considered fairly dishonest.

Mr. Dyer has received an infraction in April of 1995 for fighting. It was testified to at the .100 hearing that in March of 1998 there was another incident that involved Mr. Dyer fighting on the unit, which did not result in an infraction but he was transferred to a different unit. His current and past counselor both testified that Mr. Dyer is manipulative and

controlling on the unit and has threatened legal action if he is not satisfied with the response he receives from staff. There is a current investigation ongoing with respect to Mr. Dyer dealing with a phone scam at Airway Heights, which apparently is currently under investigation. No additional information was available besides the original incident report dated June of 1998. This investigation was noted, but not considered in today's .100 hearing.

Mr. Dyer is under the Board's jurisdiction for two violent and predatory sex crimes. As previously noted, he is in denial of these crimes, as well as the offense against his wife which led to his arrest. In reviewing Mr. Dyer's file, the psychological from March, 1993 by Dr. Riedel and the December, 1994 psych by Dr. Jones was reviewed. Both of these psychologicals rated Mr. Dyer's risk of re-offense to be high. Dr. Reidel rated his risk of sexual deviancy to be high, while Dr. Jones noted that without the benefit of special treatment for sexual deviancy the risk of re-offense remains high. A review of the underlying criminal behavior reflected a high level of manipulation and sophistication. A review of Mr. Dyer's institutional adjustment and behavior with staff seems to indicate additional manipulation and control. After a careful review of all available file materials, it is the Board's conclusion that the only responsible decision is to continue to find Mr. Dyer not parolable.

FACTS RELIED UPON:

The panel relied upon previous Board dictations; the current psychological by Dr. Lauby; a review of the ISRB and DOC files; as well as the face to face interview with Mr. Dyer today. It is noted that subsequent to today's .100 hearing a number of letters of support were submitted on Mr. Dyer's behalf. These were a letter from his attorney Cindy Jordan with attachments; a letter from Leonard Shaw with attachments; and letters from Rennetta Dyer,

EXHIBIT - L
1/30/2002 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. • P.O. Box 40907 • Olympia, Washington 98504-0907 • (360) 493-9266
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	DYER, Richard J.
NUMBER:	281744
INSTITUTION:	McNeil Island Corrections Center
TYPE OF MEETING:	.100 Hearing
DATE:	December 4, 2001
PANEL MEMBERS:	JA & MM
FINAL DECISION DATE:	January 30, 2002

BOARD DECISION:

This was a Deferred Decision. The full Board finds Mr. Dyer not parolable and adds 60 months to his minimum term.

NEXT ACTION:

Schedule a December 2003 Administrative Progress Review.

HISTORY/COMMENTS:

Mr. Dyer is under the Board's jurisdiction for two counts of Rape in the First Degree. The time start was February 19, 1982, with a maximum expiration date of Life. The Sentencing Reform Act (SRA) guideline range is 67 to 89 months, adjusted to 63 to 85 months. The Judge made no recommendation and the prosecutor recommended 600 months. As of today's date Mr. Dyer has served approximately 235 months.

File materials describe the underlying convictions as two separate attacks on two different women. One in January of 1980 where the victim stumbled into the police department exhibiting bruises on her jaw, right cheek, and forehead. There were rope burns on her wrists

(continued on next page)

EXHIBIT 11

and some cotton and tape residue on her face. She indicated that two suspects about 2:30 in the morning in downtown Bremerton had given her a ride. The driver she identified as the defendant. She was driven to an isolated location, stripped, raped, and tied. She was offered to the codefendant, who appeared too frightened. She was then taken to a residence, tied to a bed, and gagged. The codefendant started to attack, but again backed out. The defendant ended up raping the victim about eight times. Twice she was forced to bathe, using foam and cream applied to the vaginal area. Her clothes were washed. She was released the next afternoon outside of Bremerton.

On August 24th, 1980, a second female victim was found at approximately 10:30 in the morning limping, with scratches on her arms and the left side of her head. She indicated that about 11:00 p.m. on the 23rd of August, the night before, she had been walking her dog. She declined a ride, but then the car returned and she was forced into the car. She said she was taken to a residence and tied to a bed with rope, the rope being taped to prevent burns. She indicated the defendant stripped her and then she was raped. She attempted escape when the defendant went to sleep, but the dog wakened and she was retied when she was caught. She also was bathed and the defendant washed her clothes and as she was released she was given a watch, the defendant apologizing and claiming he was drunk. The first victim of the January rape was beaten severely and received 13 stitches in her mouth. Mr. Dyer was tried and convicted by a jury and throughout he maintains his innocence of the charges.

REASONS:

The Board last saw Mr. Dyer in August of 1998. Mr. Dyer's psychological reports consistently indicate low to medium risk. His behavior in the institution is quite good, his

(continued on next page)

last infraction was in 1994. He maintains some contact with his wife and children, who now reside in Oklahoma, and with siblings that live in the area. Mr. Dyer has a veteran's disability for Post Traumatic Stress Disorder. He's had carpal tunnel syndrome and gastric distress. He presently works as a gardener in the institution with excellent marks. He is not considered a management problem in the institution.

A central difficulty for the Board is that Mr. Dyer remains an untreated sex offender. The matter of this being a sort of "Catch 22" was extensively discussed with Mr. Dyer and his counsel today. Completion of a sex offender treatment course generally requires what is called full candor by the treating authorities, and Mr. Dyer continues to maintain his innocence. More serious and significant to the Board is that these particular types of rape appear to be in reaction to stress. There is extensive file material concerning Mr. Dyer's childhood, the multiple boyfriends of his mother, and difficulties in the marriage also involving this kind of behavior, which apparently led to the discovery and eventual prosecution in Bremerton. Mr. Dyer shows that he is an orderly person, careful in his work and is able to maintain himself within the institution. The central difficulty for the Board, as discussed with Mr. Dyer and his counsel today, is that's precisely the behavior demonstrated in the crimes. The calculation, the laundering and washing to remove clues and not resorting to deadly force, but releasing the victims, are all consistent with the typology that this particular crime exhibits. In making a decision about Mr. Dyer's rehabilitation and fitness to be released, we consider the crime as proven in a court of law and the appeal process exhausted. Thus Mr. Dyer, for the Board, is an untreated sex offender with behaviors that are apparently motivated when he is in a period of stress. The Board would anticipate that upon release, even at the age of 52, Mr. Dyer would encounter far more stresses than he may

(continued on next page)

now, having accommodated to his life in the institution. It's the potential reaction to that stress that is of significant concern to the Board as a trigger to more attacks.

Psychological data in the file from the early 1990s indicated a relatively high reoffense risk. As indicated, this risk appears to have been ameliorated in current psychological tests. Of concern to the Board is the ability to learn how to take psychological tests. As indicated, the underlying criminal behavior reflects a high level of manipulation and sophistication. After full review of all available file materials it is the Board's conclusion the only responsible decision is to continue to incapacitate Mr. Dyer as not rehabilitated and fit to be released.

FACTS RELIED UPON:
The panel relied upon previous Board dictations, file materials of the Department of Corrections and the ISRB, the interview with Mr. Dyer, and arguments of his counsel.

JA:jas
December 17, 2001/February 6, 2002

CC: INSTITUTION
RESIDENT
FILE

EXHIBIT - M
12/5/2006 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

*4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266*

(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	DYER, Richard J.
NUMBER:	281744
INSTITUTION:	McNeil Island Corrections Center
TYPE OF MEETING:	.100 Hearing
DATE:	October 18, 2006
PANEL MEMBERS:	JC & DT
FINAL DECISION DATE:	December 5, 2006

BOARD DECISION:

This was a Deferred Decision. The full Board finds Mr. Dyer not parolable and adds 80 months to his minimum term.

(Note: Mr. Dyer's PERD is currently 04-08-05; thus adding 80 months is the equivalent of adding 60 months from the date of his hearing. Based on 1/3rd good time calculations that means we will see him in person again in about 3 ½ years.)

NEXT ACTION:

Schedule an October 2008 Administrative Progress Review.

HISTORY/COMMENTS:

Mr. Dyer is currently under the Board's jurisdiction for two counts of Rape First Degree, with a time start of February 19, 1982. The Rape First, Count II, carries a Life maximum and the Rape First, Count IV, also carries a Life maximum. File materials show that the sentencing Judge recommended that Dyer "should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life," and the prosecutor recommended that Mr. Dyer serve 50

years (600 months). In 1982, Mr. Dyer's minimum term was set by the Board at 600 months; this was 18 months outside the Sentencing Reform Act (SRA) guideline range. Under requirement to conduct an Obert Meyers Redetermination hearing, on November 14th, 1986, the full Board redetermined his minimum term to 240 months. The SRA guideline range for Rape First Degree is 63 to 88 months. The Board justified an aggravated minimum term based on the recommendations of the sentencing Judge and the prosecuting attorney and because the crimes manifested deliberate cruelty. Mr. Dyer has been seen by the Board for in-person parole eligibility hearings four times since then, not including today's hearing. Each time he was found not parolable and additional time was added to his minimum term. In July 2006, the Washington Supreme Court remanded Mr. Dyer's case to the ISRB for a new parolability hearing.

Mr. Dyer was already scheduled to have a .100 parolability hearing on March 22nd, 2005; however, his attorney requested in writing that the hearing be postponed until a decision was issued by the Washington Supreme Court. As a result, Mr. Dyer is past his PERD (Parole Eligibility Review Date). Mr. Dyer's attorney, Mr. Zuckerman, requested in writing that at the current hearing, the Board consider a brief he submitted to the Board on October 10th, 2006, as well as additional materials that included information from a 2005 psychological evaluation and a 2005 letter from a DOC program unit supervisor.

As of today's date, Mr. Dyer has served approximately 296 months. When Mr. Dyer was received at the DOC under Board jurisdiction February 19th, 1982, he also had been convicted of the following counts: Count V, Unlawful Imprisonment (5 years); Count VI, First Degree Burglary (Life), Count VII, First Degree Rape (Life). All sentences were to run concurrent. On August 14th, 1984, Mr. Dyer's convictions

were reversed on Counts V, VI & VII; Counts II and IV, both First Degree Rapes, were affirmed. File materials show, and Mr. Dyer confirmed in his hearing, that the convictions that were reversed related to two incidents involving his former wife. In reversing the three counts on direct appeal, the Court of Appeals held that the trial court abused its discretion by denying Dyer's motion to sever the counts involving the two separate victims in Counts II and IV from the other counts that involved his former wife. The Court of Appeals found that evidence that Dyer forcibly raped the other victims was not admissible to prove that his former wife did not consent to sex; however, the Court held that evidence from the incidents involving his former wife was admissible to help identify Dyer as the rapist in the other two rape counts. The prosecutor never retried Dyer on the counts involving his former wife. Because these convictions were overturned on a technicality, he was not found innocent of them. The Board notes that there are file materials that indicate that in 1982, Dyer admitted to his prison classification counselor that he had "only victimized his wife" and not the two other rape victims. He has since continued to deny that he victimized his ex-wife.

File materials describe the two remaining convictions as two separate attacks on two different women who did not know Mr. Dyer. One occurred on January 27th, 1980. The 22 year old victim reported to the police that she had been raped and assaulted by two men. Officers noted that she had numerous bruises on her jaw, right cheek, and forehead. There were rope burns on her wrists and some cotton and tape residue on her face from being blindfolded; her mouth was bloody with a large laceration inside the right cheek and large quantities of dried blood on the front of her jacket. The victim reported that two men offered her a ride at about 2:30 a.m. in downtown Bremerton. She identified the driver as the defendant, Mr. Dyer. She was seated between the two men on the front seat of the vehicle. The victim

reported that when they did not drop her off at her requested destination and instead headed out of town, she recognized something was amiss and she grabbed the steering wheel and attempted to jam on the brakes of the vehicle. She reported that the driver, later identified as Mr. Dyer, elbowed her in the face, cutting open her cheek inside the mouth. He then stopped the vehicle, threw her into the back seat, jumped into the back seat with her and started punching her with his fist. The second man then started driving. Dyer held her down on the back floorboard. She was driven to an isolated location; Dyer removed all her clothing in the backseat and offered her to the other suspect. The second man reportedly appeared to be very frightened and refused to rape the victim. Dyer then raped her and after the initial rape, she was tied with orange-red nylon rope and left naked. She was shoved back down into the rear floorboard while the second man drove the car again. After about 15 minutes, they arrived at what the victim later believed was Dyer's residence. She described the outside of the residence and then identified some road signs in her police statement. Dyer reportedly put a coat over her head and removed her from the car. He escorted her to a bedroom and tied her on her back to the bed. The victim reported that she was in fear for her life and began screaming loudly. She was then gagged with cotton and they taped cotton over her eyes. File materials indicate that Dyer told the other man to go ahead with her and that the victim reported that shortly after penetration, the second man got off and left the room. Her impression was that he left the residence as she did not see or hear him again. Dyer then raped her vaginally, fell asleep, awoke and raped her again, fell asleep; she reported that this occurred approximately eight times. Twice during the night, the victim was untied and forced to bathe. After each bath she was again tied to the bed and raped. During the daylight hours, Dyer washed the victim's clothes and then he dressed her. Her hands were tied behind her back again and the tape was pulled off her face. More cotton was put over her eyes, held in place

by a stocking cap. Through the stocking cap, the victim was able to identify the vehicle she was placed in when leaving the residence and some other details about the location. After driving about ten to fifteen minutes, Dyer stopped the vehicle, and took her into the woods where he untied her and uncovered her eyes. She was told to wait and she managed to make it out to the road in time to see the car, a white Comet, speeding off into the distance. She walked to a nearby residence and called police. The victim required 13 sutures for her wounds. The victim positively identified Dyer in a photo lineup and clothing that she described Dyer wearing at the time of the crime was retrieved from Dyer's personal belongings. The investigation also confirmed that Dyer owned a Comet and she positively identified the vehicle.

The second Rape First Degree conviction resulted from a crime that occurred on August 23rd, 1980. When the victim was interviewed by police after reporting the rape, they noted that she was limping and favoring her right leg. Scratches were noted on her arms and the left side of her head. File materials indicate that she reported that she had been walking her dog at about 11:00 p.m. She walked to the downtown area where she met some friends and shortly thereafter she was walking alone when a car containing two white males pulled up and offered her a ride. She declined and the vehicle left. She reported that a few moments later the vehicle returned and she was forced into the car. She was driven to the south end of the county and at some point in the ride was blindfolded. She reported that the vehicle became stuck on two occasions and she had to help free the vehicle. During freeing the vehicle the car rolled into her, injuring her leg. She was then taken to a residence. She was tied to the bed with a rope that was taped to prevent rope burns. The rapist, who she later identified as Dyer, removed all of her clothing and raped her vaginally. He then required her to take a shower with him. She was again tied to the bed and Dyer went to sleep. The victim managed to get loose,

getting only as far as the bedroom door before a dog awakened Dyer. She was recaptured and retied to the bed. About an hour later she was able to again free herself, but again the dog awoke Dyer before she got to the bedroom door. Finally she was awakened at about 5:30 a.m. and was told to take a bath. While she was bathing, Dyer washed her clothes. He transported her to a park and let her go. He told her he would meet her at the Inn and Out Café the following Friday and he said he had been drunk and he was sorry about everything. File materials show that at some point that morning he gave her a watch that was later positively identified as having been lost by the first victim during her abduction and rape. The second victim identified the abductor's vehicle as a Mercury Capri and the investigation revealed that Dyer had purchased such a car in May of 1980.

It appears that the reason these cases were originally tied with the charges of the alleged crimes against his wife was because of similarities in the use of bondage, repeated rapes while she was tied to the bed, the allegations that she had been abducted and driven to a place in the woods, the allegation that she was forced to shower after being raped, and the timing of the first reports made by his wife on October 25th, 1980, and then again on September 2nd, 1981. File materials indicate that Dyer alleged the sexual intercourse with his former wife was consensual and that she made up the rest of the "story."

File materials indicate some incest and sexual deviancy among his siblings, but Mr. Dyer has no other sexual offense charges or convictions, other than those noted previously. Mr. Dyer has no other known criminal convictions. File materials describe two divorces that alleged physical violence perpetrated by Dyer against his spouses, but no resulting arrests or convictions are noted, only a 1972 restraining order in which his wife alleged that her husband had been physically violent toward

her. He married his current wife on August 1st, 1981, and she has continued to remain supportive of him throughout his incarceration.

REASONS:

The Board is statutorily required to *give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole.* (RCW 9.95.009 (3)) Additionally, the Board is statutorily directed to not release a prisoner before the expiration of their maximum term, *unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release.* (RCW 9.95.100)

The Board has the duty to thoroughly inform itself as to the facts of the person's crime; therefore all available information is reviewed in consideration of an offender's rehabilitation and risk. In carrying out its statutory duties, the Board conducts a complete review of an inmate's file; reviews all past materials and any newly available psychological evaluations and reports from the DOC, and conducts an in-person hearing with the inmate. The Board notes that Mr. Dyer was represented by legal counsel in the person of David B. Zuckerman at his hearing today.

At this .100 parole eligibility hearing, Mr. Dyer continued to deny any involvement in the crimes for which he was convicted. He has continued to deny these crimes from the very beginning. Despite Mr. Dyer's continued protestations of innocence, however, it is not within this Board's jurisdiction to retry cases or to adjudicate guilt or innocence of those offenders under its jurisdiction. Rather, as set out in RCW 9.95.100, the Board's function is to determine, based upon an amalgam of different factors, whether an offender's rehabilitation is complete and that he or she is a fit

subject for release. Mr. Dyer has been convicted of these crimes by a court and his convictions for these two counts under our jurisdiction were reaffirmed by a court. RCW 9.95.100 unequivocally places the burden of proof regarding rehabilitation on the inmate.

File materials indicate that Mr. Dyer had jury convictions involving three rapes, he has had several failed appeals, all three victims identified him as the perpetrator, investigators were able to confirm he owned the vehicles identified by the two stranger victims, and there was similarity of method in all of the rapes. The behaviors demonstrated in the rapes are consistent with Mr. Dyer's personality profile as identified in varying degrees in all of the psychological reports conducted on him. The Board is therefore faced with an inmate who has been convicted of multiple violent sexual assaults, who is an untreated sex offender who has not demonstrated any insight into the criminal behavior that resulted in his convictions.

File materials also indicate that Mr. Dyer has participated in the following programs during his incarceration: Family Dynamics; Restorative Retelling Story Group; Non-Violent Conflict Resolution; Anger/Stress Management; Victim Awareness; Moral Reconation Therapy; and Love and Forgiveness Couples Seminar. There was a chemical dependency evaluation conducted on November 16th, 2000, that indicated no specific problems. He was interviewed for the Sex Offender Treatment Program (SOTP) in January 1993 and found not amenable for treatment due to his denial of guilt. Mr. Dyer is not enrolled in a vocational program, but does work as a Recreational Assistant and receives class three compensation. Additionally, he runs an outside business which supports his family.

Mr. Dyer's early incarceration history consisted of a number of infractions involving physical violence and one suspected escape attempt in 1987. In recent years, he

has demonstrated more control of his behavior. His last institutional infraction was in 1999 and his last serious infraction was in 1995.

At the behest of his attorney, Mr. Dyer discussed with the Board today his diagnosis of Post Traumatic Stress Disorder (PTSD). This diagnosis was made after he was incarcerated and was tied to his two tours of duty in Viet Nam. He reports that some of the symptoms were nightmares, inability to sweat, inability to have empathy for other people's reactions. He reported that he was having these nightmares before he was arrested and convicted of the underlying offenses. He reports that he has gone through Gestalt therapy to address and understand his PTSD; he reports that he now perspires, was able to gain empathy for other people's experiences, and has utilized Toastmasters as a way to talk about and work through his military experiences.

While the Board does not base any decision of rehabilitation and assessment of risk solely on psychological evaluations, we none-the-less do consider them in our decision making process. In fact, the Board considers all available information in its deliberations. The Board's file materials in Mr. Dyer's case include psychological evaluations dating from 1993.

- The 1993 psychological evaluation assessed him at high risk for reoffense based on the assumption that the jury convictions were accurate and that Mr. Dyer was currently in a state of denial. The depth of sexual deviancy was also estimated to be high based on the same assumption and that any sexual deviancy had remained essentially untreated. This 1993 report also stated that he continued to demonstrate PTSD symptoms.

- A 1994 report found that his PK scale was at an average elevation, which did not corroborate his claimed PTSD symptoms. This 1994 report indicated impulsivity, poor judgment, aggression and blaming. This report also states that his risk of reoffense remained high and that the depth of sexual deviancy could not truly be assessed with an uncooperative client.

- The next psychological report in the file is from 1998 and it is more extensive than past reports, consisting of 13 pages. This report indicates that Mr. Dyer was diagnosed with PTSD and Sexual Sadism, as well as Personality Disorder with compulsive, dependent, histrionic, and anti-social features; however, it also notes that his risk of reoffense in the community appears to be low to moderate with a moderate potential for a violent reoffense in the community. Of special interest is this psychological evaluation's notation that Mr. Dyer presented himself as an individual *with an asexual image, failing to acknowledge even normal sexual desires and interests. It further noted that Mr. Dyer's knowledge of human sexuality is borderline and his general performance may be considered frankly dishonest.*
  Mr. Dyer's scores on a personal preference inventory appear to have been high on the need for order, planning and organization in detail; the need to receive encouragement from others and to have others behave kindly and sympathetically to him; the need to work hard at a task or puzzle until it is solved; and the need to be able to do things better than others. This report summarized his higher scores on the inventory as suggesting the presence of a strong compulsive tendency, while the lower scores suggested low needs to express himself to others in aggressive ways.

- The next psychological report was completed in 2001 and is five pages in length with supporting testing materials included. This report indicates a number of health issues that should be addressed by the medical department. This report utilized some risk assessment instruments and rated him to be low risk for reoffense. However, it is noted that when scoring the MNSOST-R, under length of sexual reoffending history the reviewer scored him as having a sex offending history of less than one year. The personality inventory in this report is substantially shorter than in the 1998 report, but is not markedly different. Notably, the 1998 psychological report identified him as scoring remarkably low on the psychopathy scale.

- The most recent psychological evaluation conducted on Mr. Dyer was completed in February of 2005 by Dr. Monson, who had reviewed and concurred in the 2001 report. Dr. Monson scored Mr. Dyer as a low risk to reoffend sexually; the scoring tools utilized were not provided with this report. On the other hand, Mr. Dyer reportedly scored on one test in a manner characteristic of prisoners who might be referred to as "*psychopathic manipulators*" and the report noted that individuals in this group tend to be brighter than most offenders but lack achievement drive. It further notes that inmates who score as Mr. Dyer did are more likely to be

diagnosed as psychopathic rather than psychotic. Dr. Monson notes that Mr. Dyer has a strong inclination to behave in an accommodating and compliant manner, to follow rules and regulations faithfully, and to try to be a model prisoner. However, Mr. Dyer's score on the psychopathy checklist appears to be even lower in this report than in the 2001 report.

Mr. Dyer's attorney requested that the Board consider a June 2006 Washington State Institute for Public Policy (WSIPP) paper that compared the five year recidivism rate for 432 participants in the Department of Corrections' Sex Offender Treatment Program (SOTP) and 432 sex offenders who were willing to, but did not, participate in the SOTP. That report concluded that the SOTP does not reduce the recidivism rates of participants; it found a .8 percentage point difference in the felony sex recidivism rate between the two study groups. This paper is one of a whole series of reports on sex offenders done by the WSIPP.

The Board notes that another paper by the WSIPP in June 2006 found that those offenders not willing to participate are significantly different than those willing to participate in the SOTP. They report that some of the largest differences are related to risk for reoffending. *The 340 sex offenders not willing to participate in SOTP have much higher recidivism rates than those willing to participate: 63 percent recidivated with a felony offense, 30 percent with a violent felony, and almost 13 percent with a felony sex offense.*

The key findings in that report are:

- *Offenders who were unwilling to participate in SOTP differ significantly from those who volunteer to participate.*
- *The criminal histories, risk scores, and demographic characteristics are much higher for those who are unwilling to participate.*

Mr. Dyer's decision to not admit guilt necessarily results in an inability to participate in the SOTP; therefore, the paper that Mr. Zuckerman asked us to consider has little applicability to Mr. Dyer.

The difficulty the Board has with Mr. Dyer's continual denial is that it makes him not amenable to treatment. We do not view sex offender treatment as a cure; what sex offender treatment can do is assist the offender in identifying their sexually deviant beliefs that contribute to their behaviors; it may enable them to identify their offense patterns and provide them with the opportunity to develop tools and skills to intervene in an offense cycle. Amenability to and application of treatment are entirely up to the offender. The result of such treatment, one hopes, is that the offender will not reoffend.

Mr. Dyer is to be commended for the self improvement work he has completed while incarcerated and for demonstrating an ability to significantly reduce his infraction behavior. However, without an exploration and understanding of the behaviors that directly resulted in his incarceration, he remains at risk to repeat those behaviors in the community. Therefore, the Board does not find that Mr. Dyer has sufficiently demonstrated that he is completely rehabilitated and a fit subject for release.

FACTS RELIED UPON:
The Board relied upon prior Board dictations, a review of the ISRB and DOC files, and the face-to-face interview with Mr. Dyer and his attorney, as well as several written documents submitted by both Mr. Dyer and his attorney.

JC:jas
November 21, 2006

CC: INSTITUTION
RESIDENT
FILE

EXHIBIT - N
3/15/2010 Board Decision

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

*4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266*
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

NAME:	DYER, Richard
NUMBER:	281744
INSTITUTION:	McNeil Island Corrections Center (MICC)
TYPE OF MEETING:	.100 Hearing
DATE:	January 13, 2010
PANEL MEMBERS:	BH, TS, LD & DT
FINAL DECISION DATE:	March 15, 2010

This matter came before Betsy Hollingsworth, Thomas Sahlberg, Lynne DeLano and Dennis Thaut, who are members of the Indeterminate Sentence Review Board (ISRB or the Board), on the above date for a release hearing in accordance with the provisions of RCW 9.95.100. Mr. Dyer appeared in person and was represented by attorney David Zuckerman. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Houston Wimberly and Mr. Dyer. Others present at the hearing were: ISRB staff.

BOARD DECISION:

This was a Deferred Decision. Based on the requirements of RCW 9.95.009(3) and RCW 9.95.100 and the totality of evidence and information considered by the Board, the Board finds that Mr. Dyer is not parolable and adds 60 months to his minimum term.

NEXT ACTION:

Schedule .100 hearing for Mr. Dyer 120 days prior to his next Parole Eligibility Date (PERD).

JURISDICTION:

Richard Dyer is under the jurisdiction of the Board on a February 12, 1982 conviction in Kitsap County Cause Number #81-1-00398-1 for two counts of Rape in the First Degree (Counts II & IV). The time start is February 19, 1982. The standard SRA range is 63 to 88 months. The maximum term is Life. In 1982, Mr. Dyer's minimum term was set by the Board at 600 months; this was 18 months outside the Sentencing Reform Act (SRA) guideline range. Under requirement to conduct an *Obert Meyers* Redetermination hearing, on November 14th, 1986, the full Board re-determined his minimum term at 240 months. The Board justified an aggravated minimum term based on the recommendations of the sentencing Judge, who recommended that Dyer "should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life," and the prosecutor, who recommended that Mr. Dyer serve 50 years. Mr. Dyer has served approximately 259 months in prison. His current PERD is November 30, 2009. This hearing is being held past his current PERD due to requests for continuance by Mr. Dyer's counsel.

NATURE OF INDEX OFFENSE(S):

File materials describe the index convictions as separate attacks on two different women who did not know Mr. Dyer. One occurred on January 27th, 1980. The 22 year old victim reported to the police that she had been raped and assaulted by two men. Officers noted that she had numerous bruises on her jaw, right cheek, and forehead. There were rope burns on her wrists and some cotton and tape residue on her face from being blindfolded; her mouth was bloody with a large laceration inside the right cheek and large quantities of dried blood on the front of her jacket. The victim reported that two men offered her a ride at about 2:30 a.m. in downtown Bremerton. She identified the driver as the defendant, Mr. Dyer. She was seated between the two men on the front seat of the vehicle.

The victim reported that when they did not drop her off at her requested destination and instead headed out of town, she recognized something was amiss and she grabbed the

steering wheel and attempted to jam on the brakes of the vehicle. The driver, later identified as Mr. Dyer, elbowed her in the face, cutting open her cheek inside the mouth. He then stopped the vehicle, threw her into the back seat, jumped into the back seat with her and started punching her with his fist. The second man then started driving. Dyer held the woman down on the back floorboard.

She was driven to an isolated location. Mr. Dyer removed all her clothing in the backseat and offered her to the other suspect. The second man reportedly appeared to be very frightened and refused to rape the victim. Mr. Dyer then raped her and after the initial rape, she was tied with orange-red nylon rope and left naked. She was shoved back down into the rear floorboard while the second man drove the car again.

After about 15 minutes, they arrived at what the victim later believed was Mr. Dyer's residence. She described the outside of the residence and then identified some road signs in her police statement. Mr. Dyer reportedly put a coat over her head and removed her from the car. He escorted her to a bedroom and tied her on her back to the bed. The victim reported that she was in fear for her life and began screaming loudly. She was then gagged with cotton and they taped cotton over her eyes. File materials indicate that Mr. Dyer told the other man to go ahead with her, and the victim reported that shortly after penetration, the second man got off and left the room. Her impression was that he left the residence as she did not see or hear him again. Mr. Dyer then raped her vaginally, fell asleep, awoke and raped her again, then fell asleep; she reported that this cycle occurred approximately eight times.

Twice during the night, the victim was untied and forced to bathe. After each bath she was again tied to the bed and raped. During the daylight hours, Mr. Dyer washed the victim's clothes and then he dressed her. Her hands were tied behind her back again and the tape was pulled off her face. More cotton was put over her eyes, held in place by a stocking

cap. Through the stocking cap, the victim was able to identify the vehicle she was placed in when leaving the residence and some other details about the location.

After driving about ten to fifteen minutes, Mr. Dyer stopped the vehicle and took her into the woods, where he untied her and uncovered her eyes. She was told to wait, and she managed to make it out to the road in time to see the car, a white Comet, speeding off into the distance. She walked to a nearby residence and called police. The victim required 13 sutures for her wounds. The victim positively identified Mr. Dyer in a photo lineup and clothing that she described Mr. Dyer wearing at the time of the crime was retrieved from Dyer's personal belongings. The investigation also confirmed that Mr. Dyer owned a Comet, and she positively identified the vehicle.

The second Rape First Degree conviction resulted from a crime that occurred on August 23rd, 1980. When the victim was interviewed by police after reporting the rape, they noted that she was limping and favoring her right leg. Scratches were noted on her arms and the left side of her head. File materials indicate that she reported that she had been walking her dog at about 11:00 p.m. She walked to the downtown area where she met some friends and shortly thereafter she was walking alone when a car containing two white males pulled up and offered her a ride. She declined and the vehicle left.

She reported that a few moments later the vehicle returned and she was forced into the car. She was driven to the south end of the county and at some point in the ride was blindfolded. She reported that the vehicle became stuck on two occasions and she had to help free the vehicle. During freeing the vehicle the car rolled into her, injuring her leg. She was then taken to a residence. She was tied to the bed with a rope that was taped to prevent rope burns. The rapist, whom she later identified as Mr. Dyer, removed all of her clothing and raped her vaginally. He then required her to take a shower with him. She was again tied to the bed, and Mr. Dyer went to sleep. The victim managed to get loose,

getting only as far as the bedroom door before a dog awakened Mr. Dyer. She was recaptured and retied to the bed. About an hour later, she was able to again free herself. Again the dog awoke Mr. Dyer before she got to the bedroom door. Finally, she was awakened at about 5:30 a.m. and was told to take a bath. While she was bathing, Mr. Dyer washed her clothes. He transported her to a park and let her go. He told her he would meet her at the Inn and Out Café the following Friday. He said he had been drunk, and he was sorry about everything. File materials show that at some point that morning Mr. Dyer gave this victim a watch that was later positively identified as having been lost by the first victim during her abduction and rape. The second victim identified the abductor's vehicle as a Mercury Capri, and the investigation revealed that Dyer had purchased such a car in May of 1980.

OTHER CRIMINAL CONDUCT:

When Mr. Dyer was received at the DOC under Board jurisdiction February 19th, 1982, he also had been convicted of the following counts: Count V, Unlawful Imprisonment (5 years); Count VI, First Degree Burglary (Life), Count VII, First Degree Rape (Life). All sentences were to run concurrent.

On August 14th, 1984, Mr. Dyer's convictions were reversed on Counts V, VI & VII; Counts II and IV, both First Degree Rapes, were affirmed. File materials show, and Mr. Dyer confirmed in his hearing, that the convictions that were reversed related to two incidents involving his former wife. In reversing the three counts on direct appeal, the Court of Appeals held that the trial court abused its discretion by denying Dyer's motion to sever the counts involving the two separate victims in Counts II and IV from the other counts that involved his former wife. The Court of Appeals found that evidence that Dyer forcibly raped the other victims was not admissible to prove that his former wife did not consent to sex; however, the Court held that evidence from the incidents involving his former wife was admissible to help identify Dyer as the rapist in the other two rape counts.

The prosecutor chose not to re-try Mr. Dyer on the counts involving his former wife. Because these convictions were overturned on a technicality, he was not exonerated of them. The Board notes that there are file materials that indicate that in 1982, Dyer admitted to his prison classification counselor that he had "only victimized his wife" and not the two other rape victims. He has since continued to deny that he victimized his ex-wife.

It appears that the reason these cases were originally tied with the charges of the alleged crimes against his wife was because of similarities in the use of bondage, repeated rapes while she was tied to the bed, the allegations that she had been abducted and driven to a place in the woods, the allegation that she was forced to shower after being raped, and the timing of the first reports made by his wife on October 25th, 1980, and then again on September 2nd, 1981. File materials indicate that Dyer alleged the sexual intercourse with his former wife was consensual and that she made up the rest of the "story."

HISTORY/COMMENTS:

Mr. Dyer has appeared before the Board on six previous occasions. Each time the Board has found him not parolable and added time to his minimum term. His last hearing was held on October 18, 2006.

Mr. Dyer continues to work for the Recreation Department, and he has received superior evaluations in all categories. He has received no infractions since his last hearing. He has participated in numerous offender change programs over the years, as outlined in previous Board Decisions; however, he has not programmed since his last hearing.

Another psychological evaluation was performed by Dr. Patricia Pereira in June of 2009. Our previous Decision and Reasons from October, 2006 provides an extensive review of

Mr. Dyer's history within the institution and the results of his previous psychological evaluations. We include this by reference.

EVIDENCE CONSIDERED:

In preparation for Mr. Dyer's hearing and its decision in this case, the Board completed a review of Mr. Dyer's Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-Sentence Investigation report; the most recent psychological evaluation prepared by Patricia Pereira, PhD; previous psychological evaluations; previous Board Decisions; and materials provided by Mr. Dyer and his counsel. The Board also considered the testimony of the witnesses listed above.

REASONS:

Little has changed since the Board last saw Mr. Dyer. While he initially demonstrated significant behavior problems during his incarceration, he has remained infraction free for over 10 years.

Mr. Dyer continues to deny his offenses, both adjudicated and unadjudicated. As indicated in our previous Decision, however, Mr. Dyer stands before the Board as a convicted sex offender whose crimes involve considerable violence and cruelty toward his victims. The record provides considerable evidence to support his convictions. To date he remains an untreated sex offender.

Dr. Pereira's evaluation reports that individuals with Mr. Dyer's profile "may act out in a sexual or aggressive manner with little apparent attention to or understanding of what they are doing." She further states that "When confronted with the realities of their

behavior, they may act surprised and feel resentful and persecuted." She reports that the MMPI-2 indicates that underneath a veneer of control is a suppressed anger and resentment that with the right trigger could cause an explosion "into a highly rationalized outburst." She scores Mr. Dyer as high on the psychopathy scale and assesses him as a high risk for violence and re-offending.1

We recognize that Dr. Pereira's scoring on some scales is at odds with previous evaluations. We cannot, however, ignore the results of this most recent evaluation. In addition, on his 2005 evaluation, the Board notes that Mr. Dyer reportedly scored on one test in a manner characteristic of prisoners who might be referred to as *"psychopathic manipulators."* [Emphasis added.] His 1994 evaluation indicated impulsivity, poor judgment, aggression and blaming. This report also stated that his risk of re-offense remained high and that the depth of sexual deviancy could not truly be assessed with an uncooperative client.

As we have pointed out in the past, the Board is statutorily required to give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. (RCW 9.95.009 (3)) Additionally, the Board is statutorily directed to not release a prisoner before the expiration of their maximum term, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release. (RCW 9.95.100) In this case, the nature of Mr. Dyer's offenses coupled with his lack of treatment and indications of high psychopathy create considerable concerns about public safety should he be released.

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1 Mr. Zuckerman calls her scoring "unconscionable;" however, he provided no new alternative scoring to counter her assessment. We do note, however, that she places his age at the top of her report at 51 rather than his actual age of 61.

In finding Mr. Dyer not parolable once again, we are cognizant of variations in his scores on a number of psychological testing scales over the years. The Board has not been furnished with the scoring tools utilized in these various evaluations. Prior to his next .100 hearing, the Board would request that he receive a forensic psychological evaluation to determine to determine whether he meets the criteria for civil commitment under Chapter 71.05 RCW. Such an evaluation would be extremely helpful in determining whether Mr. Dyer continues to present a danger to the community. We would further request that the actual scoring for Mr. Dyer on the various risk assessment tools be included with the evaluation report so that the Board and counsel can review them.

BH:

CC: Institution
Richard Dyer
File
Attorney for Mr. Dyer

DYER, RICHARD

Washington Department of Corrections
Indeterminate Sentence Review Board
Transcript of .100 Hearing

January 13, 2010

THAUT: Right, we're on the record then in the matter of Richard Dyer, DOC number is 281744. This is a .100 hearing. Good morning Mr. Dyer, we've met before. My name is Dennis Thaut. To my left is Lynn DeLano, she's our new chair. To her left is Tom Sahlberg and to his left is Betsy Hollingsworth. You have the full Board before you today. And even though the full Board's here we'll probably in all likelihood take a deferred decision so that we have more time to spend deliberating on your case. Even though conceivably we could make a decision today, it's unlikely that we'll do that. That said, we'll probably able to publish a decision in about four to six weeks and both you and your attorney will get a copy. Also present in the room is your counselor, Houston Wimberly, and you're represented by your attorney, Mr. Zuckerman.

So, last time we saw you was October of 2006, it was on the 10th. And the Board at that time added quite a bit of time although in reality it only amounted to about three and a half years. You've gone that far past your date. So this is an appropriate time for us to come and see you again and see if anything has changed. Basically this is your hearing so we're gonna be anxious to hear from you.

Are there any preliminary matters before we get started from Mr. Zuckerman?

ZUCKERMAN: Well, I guess the only preliminary things is I always want to make sure that my materials made their way through all the cyberspace to the Board and I hope I did the right thing by doing the scanning myself and trying to put it all in a single folder. So the Board should have received a memorandum with 28 exhibits, then about two weeks later I sent in a second supplement, which is just my cover letter and letters of support from Mr. Dyer's son, Mark, and also from his wife, Renetta.

THAUT: I believe—I appreciate your checking after last time we came back to a lot of material.

ZUCKERMAN: Right, and I found in the past sometimes it just sort of gets scattered within the computer file. So that's great, I would perhaps just reserve my comments more for towards the end of the hearing if that's all right.

THAUT: Yeah, I was just curious about anything of a preliminary nature, so unless there's anything else the way the hearing will be conducted, as we've done in the past, we're going to record the hearing and we'll maintain a copy of the recording in our office for about six months, so should you or your attorney decide that you want a copy, simply send us a written request and we'll provide you with a CD of the hearing. Now, those are public documents and disclosable, so if someone else should request a copy we would provide that, but we would redact anything of a confidential or medical nature from that before disclosing it. If you request it you'll get the full hearing. We generally don't get into that, but just in case we did. Okay?

DYER: Okay.

THAUT: So, in a moment I'm gonna swear both you and your counselor in. We'll first take testimony from Mr. Wimberly with respect to what's been going on with you since we saw you in 2006. We may have questions for him and after that we'll allow your attorney to ask questions if you have any. And then, as I indicated earlier, then we're gonna turn to you and your attorney and it's really your opportunity to present to the Board and we will likely have questions as well, but we want to hear what you have to say. Okay, any questions about anything I've gone over?

DYER: (Nuh uh)

THAUT: If I can get the two of you to raise your hand to be sworn. Do you both swear to tell the truth in your testimony today?

WIMBERLY: I do.

DYER: I do.

THAUT: Okay, and so I can get a voice recognition starting with you, Mr. Dyer. Could you state your full name please?

DYER: Richard James Dyer.

THAUT: Mr. Zuckerman, could you do the same?

ZUCKERMAN: David Zuckerman.

THAUT: Thank you. And Mr. Wimberly?

WIMBERLY: Houston Wimberly.

THAUT: Okay, thank you Mr. Wimberly. You've been his counselor since October of 2006.

WIMBERLY: I have.

THAUT: I think you have. Okay, can you bring us up to date about what's been going on with him?

WIMBERLY: He's uh, Dyer's uh, what you might call one of those people that you don't hear too much about as far as behavior issues, as far as negative behavior. He's maintained himself well with no major infractions…

THAUT: Since '95?

WIMBERLY: Yeah. Did you get any minors? I'm trying to remember…not even a minor, so he's really done well in that capacity. Any kind of jobs he's held he's done very well, getting good reports from his employers, supervisors. His latest, I mean his current job, is recreation assistant and he's been doing that for what, three or four years?

DYER: Three years.

WIMBERLY: Three years, so I haven't heard any negative responses from his supervisors as far as his work capacity and his functioning in the unit, in C-Unit, has been

very well maintained. In fact he's part of the tier rep and he gets involved with different activities or support groups for offenders.

THAUT: Okay. So basically things are going well.

WIMBERLY: Yeah, basically he's very normal.

THAUT: Questions from anybody in the panel?

HOLLINGSWORTH: Any programming since we last saw him in 2006?

WIMBERLY: None of the offender change programs per se, he's been involved with just basic stuff as far as supporting inside the institution and offenders type of things. Do you have anything that you've done recently? I don't remember anything.

DYER: Yeah, I put together a fundraiser [unintelligible] to do all that.

WIMBERLY: Those kinds of things, those kinds of pro-social kind of things.

DYER: [unintelligible], fundraisers

THAUT: **And is "chias"? Is that the same as kiros? Yeah?**

WIMBERLY: Yeah, I think I misspelled that.

THAUT: Well, I thought that was a new one. Thank you for clarifying.

HOLLINGSWORTH: I'm assuming no additional offender change programs primarily because he's taken most of all of them that have been available on here.

WIMBERLY: Exactly.

THAUT: Okay. Zuckerman, do you questions?

ZUCKERMAN: Maybe just to clarify just one point. He hasn't turned down any programs that have been offered to him.

WIMBERLY: No, he's perfectly willing to do anything that...

HOLLINGSWORTH: I understand that there's just not really anything available right now.

WIMBERLY: Right, exactly.

DYER: I do have a class starting .... Well, like somebody gets hurt, and then clean it up, any body fluids.

WIMBERLY: We had a certification for that, don't you?

DYER: Yes.

THAUT: So, then we'll turn to you, Mr. Zuckerman.

ZUCKERMAN: Well I appreciate it. This—the [unintelligible] of this case is perhaps a bit unusual. Obviously we recognize the crimes of conviction are serious ones. Mr. Dyer denies committing them. I've reviewed his case in great depth myself and I believe he's innocent myself, but I understand that the Board must accept the convictions as they stand. In any event, Mr. Dyer obviously has made the most of his time in prison. He has exceptionally strong family ties for a prisoner and they've lasted the entire time that he's been in prison. He's been able to support his family financially and of course he's been denied admission to the SOTP, although, because he doesn't admit committing the offense, but he has done quite a bit of work on various self-improvement. I think perhaps, and you have many materials about that, but perhaps most importantly regarding his PTSD, which is the most serious problem I think he came into prison with, not unusual in view of the extensive combat that he saw in Vietnam. He was actually instrumental in getting Monroe's PTSD program going and facilitating that.

We do have in addition to all the positive info, there are two items of negative information that maybe I'll touch on briefly. First, it seems we have perhaps a total of four letters or statements that the Board tends to identify just as from a concerned citizen. It became apparent based on what I received from DOC that one very lengthy statement was from his ex-wife, Ethel Acord. I have...and that at least some of the materials the Board received, based on the summaries, seemed pretty clearly to be from the same person. My best response, I think, to Ethel Acord's comments was to

present the statements from her sons indicating just how unstable her mental status seems to be. If in fact, though, and the Board knows whether or not I'm making the right assumptions, if in fact there is some other person who is also submitting negative information I feel at a complete loss to effectively rebut that, because I wouldn't have the first idea of how to go about determining -- contradicting what that person is saying. So I would ask that I at least be notified if there is some second person beside her who is making comments.

THAUT: While I understand your concern, basically the Board is obligated to, in the case where we believe there'd be a potential threat to anybody who would provide input would be to protect the identity to the extent that we can, and so I guess the only way I can respond to your concern is with that comment. And I think your review of the material is the Board has consistently addressed that in the same manner so that doesn't give you any more information, but that's the way we would respond to that concern.

SAHLBERG: And we did, as the newer Board members, we did help your request in the past and recently. And it is the practice that you'll get notification in a summary form of all the information, so that -- and that's not necessarily been the case in the past, but it is the practice now. And you'll get a summary of all that information to consider.

ZUCKERMAN: And I appreciate that. At times, you know, in this case at first I was very concerned that perhaps I wasn't getting enough details to where I could effective rebut. In any event, in terms...you know, we're well aware, since we have one of the statements from DOC, we're well aware that at least some of the information is coming from Ethel Acord, and I think, you know, my best rebuttal was just to show that there's nothing in the Court record that verifies anything that she's...any of these very

negative things she's saying, at least as far as anything that's specific enough to respond to. And her own sons have submitted letters to the Board somewhat reluctantly, but saying she clearly suffers from some serious mental problems at this point.

SAHLBERG: I can just respond—What you warned us against is that any of the material that we received contains extremely damaging allegations against your client, and that if any of these statements are seriously considered by the Board they greatly prejudice Mr. Dyer's chance for parole and our response is the same as Mr. Thaut had said. We take all of the information that we received as statutorily we must, and consider it whether or not, and what weight we put on it, and that is an individual thing for each one of us.

THAUT: If I might though, in some ways this is a complicated case because we've seen him so many times, he has such a long history with us and there's been issues in terms of our decisions. But in some other ways it's not that complicated, I think, from the Board's perspective. And that's because one Board member, I think the Board has been consistent. The elements of the crimes of conviction have been largely what we focused on in terms of the degree of risk that his behavior—his convicted behavior—would indicate he presents. And he's not the only sex offender that we see. In fact most offenders we have, by far, are sex offenders, so it's not like we don't have experience with dealing with sex offenders. And the difficulty is that he's denying his offense. And so in some ways it's kind of a catch-22 for him, because the Board feels that the facts have been compelling and our reluctance has been…our reluctance to release him has been clearly stated throughout is that we would be releasing an untreated sex offender who presents too great a risk to the community. I think that's still where we are and so, where I can appreciate that, you know, that some of the information that has

come in subsequent to that might be argued in terms of whether you think that person is who we say it is or it might be somebody else, that's not been the focus of the Board.

The Board has been clearly focused on the convicted offense behavior and what possibly could be done to mitigate that. And so, I'm not saying the Board would never release a person that denies their offense, okay? But we have to take it all into whether what we would consider is, based on what we know, when all the information we know, that we think this person at this given time is safe to return to the community. And what's difficult as a Board member is when we come back every three years or five years is what's changed, and that's difficult for us, it's difficult for Mr. Dyer too, because there's not a lot of significant things he can do to address our specific risk concern other than sex offender treatment, which is what most guys do. So, you know, I was curious as to whether his feelings about his offense, his convicted offense behavior, have changed in any way, either substantially or otherwise since the last time we met with him? And I guess that's a question I have for you and your client.

ZUCKERMAN: And I, Mr. Thaut, I do appreciate your being straightforward with us with the Board's concerns. I think what I would say is what's changed is science. I fully understand where the Board is coming from with the idea, with the concern about releasing an offender who doesn't admit guilt. I think it's something that's very ingrained, well it's been the case throughout the history of parole boards, the idea that if someone doesn't admit guilt how can they become rehabilitated? I think it goes back through thousands of years of culture that if, you know, repent, you know, confession and repentance are essential....

SAHLBERG: However, we know, new Board members as well as old, that there's no scientific validity to whether or not a person admits, whether or not there's

remorse or the other things, we're not...and I think Mr. Thaut stated very clearly, that's not...it's the elements of the crime that we focus on.

THAUT: But let's follow up though, because you used term science, so I'm curious...

SAHLBERG: I probably interrupted you [unintelligible].

ZUCKERMAN: Mr. Sahlberg always anticipates my argument. In the last couple decades there has been a considerable amount of empirical research on what factors truly do correlate with recidivism. And that's why we have these actuarial tests—they're based on actual scientific studies. No study has shown—to my knowledge—has shown that whether or not an offender confesses guilt or admits his guilt correlates with his risk when released.

THAUT: Okay, if we're going to have a little interaction here...

ZUCKERMAN: I'm happy for it.

THAUT: Okay, because the fact that he either admits or doesn't to his offense is only significant to us because it doesn't allow him to do treatment, okay? And we've indicated that we would like to see him do treatment based on what we perceive as his risks. So that, you know, the guilt issue becomes more of a factor of whether he's eligible for treatment and so I'm not personally hung up on that issue as much as I would be in terms of whether or not he's admitting to the offense behavior and he can identify the offense behavior and he can identify ways to mitigate the risk that that presents. That's where I am with it, not the mere fact that it's a legal question of whether he admits or not.

ZUCKERMAN: And I understand what you're saying there too. But again, we don't have empirical evidence that going through the sex offender treatment program is necessary to become a low-risk for release. In fact the validated tools, such as the

STATIC-99, the V-RAG, do not count that against an offender and in fact we actually have a very careful study of Washington's Sex Offender Treatment Program by the Washington State Institute for Public Policy. It did not confirm any positive benefit of going through the SOTP. At the same...and it specifically compared offenders who went through the program with those like Mr. Dyer, willing to enter but refused entry. There was no positive correlation with going through the program. I'm not suggesting that that means the Board could never find that for some particular prisoner who went through the program he did benefit in some way, but clearly the studies do not show that failing to go through the program means you're at risk. In fact, what the study showed was that both groups had a very low risk of reoffense—both the ones that went through it and the ones that didn't.

If I could continue, though, as far as science, there is one factor that has become the overwhelmingly—according to the scientists—is now the overwhelmingly best predictor of reoffense, particularly with the crime of rape. And that factor is age. I mean the studies are irrefutable that it correlates enormously with the age of the offender to the extent that in the STATIC-99, I mean they now knock three points off the score for somebody who is over 60. The chance of somebody over 60 committing an offense—and particularly rape—is extremely low. I can appreciate that must be very unsatisfying to some prison officials, the idea that it's not anything they've done, you know, that have reduced that risk, but the science is indisputable. And at this point, by any fair assessment of his risk based on empirical factors, Mr. Dyer's is extremely low risk.

It might be different if he were acting up in prison, you know, or if he were saying things to indicate he were going to commit offense or any of the other things that, you know, that might give rise to concern, but we don't have that.

SAHLBERG: That's a lot of argument. You mentioned the STATIC-99. Are there other actuarial tools that you're prepared to show us the correlation of age to when they start to reduce the numbers as they score those tools?

ZUCKERMAN: I have presented a summary of other studies that have shown that...that's in my materials regarding...that Dr. Trowbridge submitted.

SAHLBERG: Yes.

ZUCKERMAN: He himself wrote a report summarizing a lot of these studies showing that negative correlation and then I've submitted a portion of the STATIC-99. I guess it's in their manual, explaining, you know, how the study...citing the studies that led them to change it.

SAHLBERG: Okay. Thank you.

ZUCKERMAN: I don't know that I'm personally familiar with all of the different actuarial tests.

SAHLBERG: And...what we're looking for in the science part of it is a meta-analysis that starts to really address this. And we all have been trained to understand it.

HOLLINGSWORTH: Yeah, I'm aware of the studies.

THAUT: These studies are something we pay attention to as well.

SAHLBERG: And we discuss. So we appreciate that.

THAUT: It's not like we're unaware of that as a consideration.

ZUCKERMAN: Well I appreciate that. The other point, which I don't know whether or not I need to address it further at this point, is the new report by Dr. Pereira. I don't normally use language this strong, but I think the report is unconscionable. She came up with scores that are simply contrary to reality. That's confirmed by Dr. Trowbridge and I actually...and this may be unnecessary with the Board, with the current Board, but I actually submitted pages from the manual.

SAHLBERG: We do want you to address the psychological --

ZUCKERMAN: But as I've shown we had two DOC psychologists before her who came up, for example, with scores of five and then three on the PCL-R. She comes up with a 27.

SAHLBERG: Uh huh.

ZUCKERMAN: Giving points on things like...two points for "irresponsible lifestyle," you know, where the manual says well this describes someone who has no commitment to causes or values, no concern for his family, can't stay with a job. And here we have someone who served his country for nine years in the Army, then holds a consistent steady job at the Bremerton Naval Works for what was it?

DYER: Shipyard.

ZUCKERMAN: Shipyard, sorry. For many, many years until his conviction. And then has maintained all his family ties and supported his family while in prison. It defies belief that this person could fit the description of irresponsible lifestyle on the PCL-R. Dr. Pereira actually refused to accept the documentation that Mr. Dyer tried to present her and we have the kites to verify this. She wouldn't take it when she met with him. He kept asking to present it; she wouldn't look at it. And then she says in he report something like "well, I have no way of knowing whether he's telling me the truth about all these things," like that he supports his family, or that, you know, or the things he's...and that he got medals in the Army. "Why should I believe that?" essentially is what she's saying.

I'm sorry, but I just feel that's very irresponsible given the weight—or the importance—of this report that she's doing. It doesn't look like she even read the previous...

THAUT: You dealt with the one issue of psychopathy, do you have concerns about the high risk of violence and high risk of overall reoffense as well based on the past...you said that you did give us some argument that in the past there were much lower scores. I mean, off-the-chart low scores for psychopathy. This one is in the concern area. Do you have any argument on the other?

ZUCKERMAN: Well both Carson Carter, psychologist Carson Carter and Dr. Monson came up overall with recommendations of a low risk of reoffense based on the...not only on the various tests they did but on the tools they used. It looks like this is the first time the STATIC-99 shows up in the psychological report. But again, Dr. Pereira's scoring is simply wrong. It's an objective scoring. You either have a prior conviction for non-sexual violence or you don't. And he doesn't! So how she could give him a point for that is beyond understanding.

THAUT: Have you considered...in the time have you considered having your own psychological evaluation conducted other than...?

ZUCKERMAN: It's something I considered. My feeling was that it seemed unnecessary in view of the fact that two prior DOC psychologists had given very positive analyses and that we could so easily show that Dr. Pereira's assessment was just based on a misunderstanding of the facts. But certainly if the Board found it would be helpful, you know, we could have Dr. Trowbridge actually come in and do a full assessment.

THAUT: No, I don't think the board's asking for that. I mean the issue of psychological evaluations has been of concern in this case before. We recognize that there are differences in psychological evaluations. We look at all of them as one piece of information but not giving it any specific weight over the other one. These are clinical impressions for the most part by a variety of different people that have looked at this

case. And from my perspective to get too far down that road might take us in a direction that would give it more weight than it deserves in terms of our actual decision making.

SAHLBERG: Well, and the only reason I would say is that the argument is more convincing is...as we did in the last hearing is more convincing coming from a psychologist here than it is from somebody who is outside of that field. We all have our expertise in armchair psychology, however, I would certainly as one Board member consider an appreciate alternative...especially with the range of differences that we have in these...in these, it makes it more difficult to place much value on those psychological evaluations and I think that's a mistake. I think that they have to be considered along with all materials.

ZUCKERMAN: And just to be sure we're clear: Dr. Trowbridge did review the scoring and has unequivocally stated that Dr. Pereira's scoring is incorrect. You know, what could be added...he can't do his own scoring, though, on every... He can do his own scoring on the STATIC-99, because that's completely based on objective court records. You can't do your own scoring on a PCL-R, because...without an interview, because some of the items at least require an evaluation of how the person is relating to you.

THAUT: Okay. Well we've sort of interrupted you. I don't want you to miss an opportunity to...

ZUCKERMAN: Well, and really truly that was, you know, going to be my concluding point that I'm simply urging the Board to make the decision based on empirical evidence. The empirical evidence is that Mr. Dyer does not present a significant risk of reoffense and there simply is no empirical basis for believing that his lack of...that his inability to go through the SOTP is causing him to be dangerous to be released.

As far as hearing from Mr. Dyer, obviously it's not useful for him to discuss the circumstances of the crime with you, because all he can tell you is these are horrible crimes and he wishes they caught the person who did it. He would be certainly—would be happy to talk to you about such things as his family involvement and other programs he's done.

THAUT: Well, I probably don't have questions for him in that respect. I don't think there's any argument about his institutional record or the input we've had from the family and we recognize that. I'd be more than happy to discuss the offense with him if there were something to discuss but he's denied the offense consistently and so I don't see—unless he was to change his mind on that—where that would bear much fruit. So I guess I'll turn to my colleagues to see if any of them have any interest in discussing with Mr. Dyer anything outside of the crime with him.

HOLLINGSWORTH: I don't have any questions at this time.

THAUT: Okay. An interesting discussion.

SAHLBERG: I'd like to hear a little bit from Mr. Dyer. Just his own voice in this. Since this is the first time that I've had a chance to meet with you I'm taking file material. And I hate just reading file material without hearing it from the offender, so is there anything you want to tell us today?

DYER: Well, yes.

SAHLBERG: Please.

DYER: I have a lot—this is a lot of fog to me that you guys were talking about.

SAHLBERG: Well we talk about you and now you get to talk.

DYER: Yeah, okay. One of the things is that I would just like the opportunity to get out there and be with my family. And I've come before you many a

times and it's... Because you really don't know me is that I have a great family, I've got three grandchildren and I'd like to have the opportunity to be out there and be with them. I enjoy them over the phone; I talk every day to some of them. I do the best I can do to be an active member as a father and a grandfather now. I've got three grandchildren: Savannah, which is Mark's child, and Lisa has Hailey, and I have Matthew, who right now is in Afghanistan in his fifth week. And he has Briley and my wife baby sits for two of them all the time. She makes sure that she baby sits [unintelligible] and I hear them over the phone. And I hear them interacting over Christmas and stuff and I'd like to be out there too, with them.

I really am a good father and husband to my wife. She's—My wife is steadfast and she not only took EFVS from this guy that did that crime in Clallam Bay, they took mine along with it. And I did apply and they turned my down again and made reference to this.

THAUT: That was because of the timing of your marriage?

DYER: No, I was married before I came in. It was just that they found a 1972 restraining order from my first wife that I never got served; I was in Vietnam.

SAHLBERG: Is that the one in Janet?

DYER: In Janet? Yes.

SAHLBERG: And it's Renatta right now?

DYER: Renetta. And they keep saying that Renetta was my victim and she's not. Anyway, Renetta and I have been together for this time and we're very close. And my boys and I interact all the time and we do houses. And it's not the financial part that makes you wealthy, it's just having your family. And that's...interacting with my boys is a big thing to me. And my girls...I couldn't have...I have a family that most people dream of. And it's hard to maintain that this 28 years that I've been down. And

we have had ups and downs but nothing to speak of any more than other people. But I think that if you give me the opportunity I'll surely not get into trouble. I wasn't in trouble when I was on the streets.

SAHLBERG: Without asking you to admit to things, what guarantees can you give us that something like this would never happen again?

DYER: Well, I've always—I'm a man that shakes his hand and it means something. It's not very often that happens. You will not find one person that I've ever reneged on a deal. And let it be for a house or a car or a top ramen, I don't renege on – my word is my bond. You know, I'm not willing to commit crimes. I like to be a part of society and the structure within. I've always been fair and consistent as a supervisor and that's the kind of world I like to live in.

SAHLBERG: Have you ever committed any rape?

DYER: Never.

SAHLBERG: Have you ever committed any other crimes then?

DYER: No. I never have.

SAHLBERG: Okay.

DYER: I didn't as a juvenile. I never even have taken anything. And I tell my children, I says if there's anything that you ever might need call me or wait for me to call and I will buy it for you. Because there's nothing out there that you need to steal or take away from anybody else, because when you don't have an invested interest in something you don't expect it anyway. So.

SAHLBERG: Okay, thank you.

THAUT: That will conclude the hearing and thank you all for coming.

ZUCKERMAN: Thank you.

I, Steven Plastrik, legal assistant to attorney David Zuckerman, do hereby certify that the foregoing is a true, complete, and accurate transcript of an audio recording received from ISRB records, to the best of my ability.

DATED this 27th day of April, 2010.

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Steven Plastrik, Legal Assistant

EXHIBIT - O
Transcript of 2001 Board Hearing

INDETERMINATE SENTENCE REVIEW BOARD

.100 HEARING: DYER, RICHARD #281744

MCNEIL ISLAND CORRECTION CENTER

DECEMBER 4, 2001

AUSTIN: Good morning Mr. Dyer, my name is John Austin, I'm Chair of the Indeterminate Sentence Review Board and I'll be presiding of this morning's panel discussion of your parolability or .100 hearing. You've been through these hearings before, we have the microphone on the table in front of you and we're tape recording these proceedings. We keep a copy of the tape in our office for about six months before we recycle it. If during that six month period you or your attorney want a copy for any reason, all you have to do is let us know in writing, send a blank ninety minute tape and one will be made available to you. In a moment I'll swear you and your classification counselor in. I'll ask the classification counselor to give a summary update of your performance and behavior in the institution. He's a fact witness, the ultimate opinion about your parolability is with the Board: myself, Ms. Martinez is on your panel this morning, and Ms. Garrett back in the office. All of our decisions are deferred and the reason for that is because the third member has some participation in the decision all three members confer before making a decision. It's not done to torture you; it does take about four to six weeks to get the decision made. As I indicated your classification counselor is a fact witness, he's here to give observations and reports and not ultimate opinions about your parolability and so on. He'll be sworn in with you, your attorney can ask him some questions and Ms. Martinez and I may have some questions. These are semi-formal proceedings so you and your attorney can make any presentation that you care to. Do you have any questions before I go any further and swear you in?

DYER: No.

AUSTIN: Okay, are there any preliminary matters, Mr. Lahtinen, and I don't see Mr. Carter here, and I think when Ms. Garrett and I were here a couple of months ago that was one of the points, you wanted to talk to Mr. Carter?

LAHTINEN: Right. --- [unintelligible]

AUSTIN: Is it Mr. Cook?

COOK: He was informed, sir.

AUSTIN: Okay --

COOK: And I went through his supervisor, CPM Walls, who's in charge of Mental Health Unit –

UNINTELLIGIBLE

AUSTIN: I think, was your question just about his credentials? Because --

LAHTINEN: Well --

AUSTIN: the hearing officers mentioned something. We accept his credentials

LAHTINEN: Well I understand you accept his credentials - -

AUSTIN: They just haven't seen that title before, I think.

LAHTINEN: Yeah, well the question would be is also I would want to lay the framework for background for his report.

AUSTIN: His CV and everything?

LAHTINEN: Yeah. Since it was an issue in the report. I understand the Board has put on record that they accept the credentials, but I think, you know, given the –

AUSTIN: Should we pause and see if Mr. Cook can send a call up there and see if [unintelligible] get him in motion?

LAHTINEN: Yes, I would --

AUSTIN: Okay, we're paused, and thank you for your courtesy.

PAUSE IN TAPE

AUSTIN: Okay, we took a brief recess while Mr. Cook kindly called to the psychology department to see about Mr. Carter, who did the psychological work up on this one to be available. If I'm correct, and correct me if I'm wrong Mr. Lahtinen, you had asked that Mr. Carter be present because there apparently was some question about his background --

LAHTINEN: Yes --

AUSTIN: There was previously, when the last hearing was set, one of the hearing officers of the Board expressed some concern about the title. Apparently that was because they had not seen that title of Mr. Carter's credentials before. The Board accepts the credentials of Mr. Carter. But, you had some reason that you wanted Mr. Carter to be present to go into his curriculum vitae.

LAHTINEN: Yes, I wanted to go into his background to establish his experience in giving the tests.

AUSTIN: An alternative that I might suggest just to keep Mr. Dyer from having to sit on the tenterhooks is to ask him to give it to you in writing and then submit it to the Board after the hearing if you like.

LAHTINEN: We could do that, although –

AUSTIN: I don't want to box you into a corner—

LAHTINEN: I just want to put on the record that I would prefer to have him here to be able to explain his experience because I think there is a difference in his report and previous reports. I wanted to be able to have him explain the difference and the testings specifically about that and his training in testing. Not having him here puts us in a disadvantage when discussing it. I understand the Board does –

AUSTIN: You could make an offer of proof. We don't take these things as gospel one way or the other --

LAHTINEN: Right –

AUSTIN: From the various psychologists, so you can make an offer of proof of argument as you would - wish. We could consider that.

LAHTINEN: I guess it's what we'll probably have to do, if he's refusing to—

AUSTIN: Confer with Mr. Dyer?

LAHTINEN: If I could.

AUSTIN: Sure, we'll pause.

PAUSE IN TAPE

AUSTIN: Back on the record, Mr. Lahtinen had an opportunity to confer with his client. Alright, what we're going to do is proceed at this point and leave any other issues about his background to be submitted in writing to the Board.

[UNINTELLIGIBLE]

AUSTIN: Okay, will the two of you please raise your right hand and be sworn. Do each of you swear or affirm the testimony you're about to give in this proceeding to be the whole truth and nothing to but the truth?

COOK: I do.

DYER: I do.

AUSTIN: For the record, please state your name.

DYER: Richard Dyer.

AUSTIN: Thank you.

COOK: Larry Cook.

AUSTIN: Mr. Cook, I have a 530 dated September 28, 2001. Is that the most current one? [unintelligible]

COOK: This is dated and signed 10-2-2001.

AUSTIN: [unintelligible] I probably just read the wrong date. Go ahead, could you give us a summary update of that report for purposes of the record?

COOK: Mr. Dyer's been on my caseload for the past year since he was transferred from B Unit. From that period of time he's been assigned as Recreational Assistant, primarily working in the inmate yard and through reports and even visual context, the yard has never looked as well since he's been assigned to that position. And he receives exemplary work reports from all the recreation supervisors. Mr. Dyer, - - I just talked to the unit sergeant prior to coming over within the last twenty minutes, and the unit sergeant said he's never had a problem with Mr. Dyer since he's been in the unit. Never received any on-site adjustment reports, room, you know, everything about his attitude and behavior in the unit has been exemplary. Mr. Dyer has completed all the available offender change programs that are available here at McNeil Island.

AUSTIN: I saw that since we saw him, I think Ms. Garrett and I saw him in August of '98, he completed a non-violent conflict resolution [unintelligible]. That goes way back. Industrial safety in '99 and previously he completed MRT, Victim Awareness, Anger-Stress, those courses prior to 1998. Has he done any other courses since '98?

COOK: Not that I'm aware of, sir.

AUSTIN: Okay. Non-management problem, no exemplary work performance?

COOK: Yes sir.

AUSTIN: Okay.

COOK: No problems as far as infractions, you know, he's following the rules and gets along well with everyone in the unit and on the job. Any contact I've had with him I've never had any attitude or behavior, y'know or had to talk to him about anything as far as that's concerned.

AUSTIN: What sort of business does he have from outside? I've got a list of I think four siblings, Dale, William, Dawn [phonetic] and Carol?

DYER: Right.

AUSTIN: Is he able to have any contact with them? –

COOK: He does—he has put in for some special visits when they come up here from Oklahoma, and he's allowed to visit all available visiting days when they do arrive.

AUSTIN: Do you know if they're all in Oklahoma?

COOK: To my knowledge, yes.

DYER: My son's in Seattle.

AUSTIN: What about the medical problems? I noted when I was reviewing the file, extensive medications for gastric distress. Are you aware of any other medical problems – I didn't note his PULHES score, but are there any medical concerns that you're aware of, Mr. Cook?

COOK: Just that he's reported that, you know, he had that carpal tunnel surgery, back problems, and asthma.

AUSTIN: And he apparently gets along with fellow inmates?

COOK: Yes, sir.

AUSTIN: Okay. Thank you Mr. Cook. Ms. Martinez, any questions?

MARTINEZ: Yeah, just a couple. Is it Mr. Dyer's position that he does not need to attend SOTP, or did you have any conversation with him about that?

COOK: We haven't had any contact about that.

MARTINEZ: No conversation?

COOK: No conversation.

MARTINEZ: In terms of his community support, the names that Mr. Austin had mentioned, does that also include his wife, in Oklahoma?

COOK: Yes.

MARTINEZ: Okay, and does she still continue to be a support for him?

COOK: Yes.

MARTINEZ: And, the business that he has, is that still doing well, is it on-going?

COOK: As far as I know, it's on-going, but I'm not aware of it and, or what, you know, what is on-going. I guess that's all handled through him and through the mail and his attorneys.

MARTINEZ: No further questions.

AUSTIN: Thank you. Counsel, do you have any questions for Mr. Cook?

LAHTINEN: To your knowledge, Mr. Cook, has Mr. Dyer ever refused any kind of crime-related counseling or anything crime related?

COOK: Not since I've known him.

LAHTINEN: Are you familiar with the record previous to you being his counselor?

COOK: Fairly familiar.

LAHTINEN: Did Mr. Dyer ever apply to go to the SOTP program?

COOK: As far as I know he has, but the SOTP the way they're set up, they won't accept you until you're found parolable within your last eighteen to two years of your sentence. We've had problems with that with those referrals in the past. We send a referral over and they're saying that well, he's not found parolable, they won't consider it.

AUSTIN: What we're doing now, Mr. Cook, is if a person wants to give it a try, the Board will confer after a hearing like this and decide whether to give him a low, medium, or high priority so that the SOTP at least has an inkling of the fact that we're looking on that - - is supposed to alleviate the problem a little bit. I believe that Mr. Dyer maintains his denial and

that may be a difficulty with the SOTP since it's a cognitive behavioral course and they require what they call candor before they'll have somebody in there.

LAHTINEN: That's all the questions I have.

AUSTIN: Thank you Mr. Cook. Counsel?

LAHTINEN: First off, I wanted to take care of a few matters here. Last time I objected to the prosecutor, the Kitsap county prosecutor's office recommendation. I wanted also renew that objection to that and also wanted to at least flesh it out a little bit more. It seems to me, in reviewing Mr. Dyer's record, there has been consistently both with the prosecutor's office here and also different hearings and various psychological reports, taken the assumption that the crimes that were overturned on appeal, they have been assumed to be convictions. I wanted to object or put that on the record that I object to consideration of those as facts to be assumed. It seems to be me there has never been - - other than in the trial itself - - there has never been an evidentiary hearing of the magnitude that due process would require to show that he did commit those crimes. I understand the Board can take any kind of material to determine whether somebody is rehabilitated or a danger to the community, and they make that determination based on preponderance of evidence. But there hasn't been any determination or any facts presented for or against any witnesses given to actually have Mr. - - this assumed to be true.

AUSTIN: Your objection is well taken, Counsel. We try not to sign on what we - - obviously, police agencies and prosecutors make applications to us. We consider the source and generally take the view that they had their chance to prove this to the jury, and we don't regard ourselves as a second - - we are not a Board of Clemency and Pardons so that we overrule courts and by the same token, we try not to get in a position where we are the second bite for the prosecutor. We're generally obligated to consider what's submitted to us and get a chance to look at that, but what we're concerned with is our own opinion about Mr. Dyer's rehabilitation and fitness to be at large. Not necessarily a prosecutor's objections to it. We also, as you know,

sometimes consider victim input, I'm not sure there is any at this point. We try to measure that and not simply let this be a holding contest about who doesn't like somebody. Our charge is clear in the statute. We're supposed to look at the inmate, behavior of the crime, the details of the behavior in the institution and make a current opinion about their rehabilitation and fitness to be at large. It does not include silent beefing.

LAHTINEN: I agree with that. My objection just stems from the material that is in the - - the - - his records that is in front of the Board. And I - - if anything is to be done, I mean, we have to assume the two convictions, at least the Board has to assume those two convictions are valid unless they are told otherwise. I just don't want there to be any reference or any consideration of a crime that he has not been convicted of.

AUSTIN: We try to be very careful about that, for the reasons I've indicated. The prosecutor is not entitled to a second bite.

LAHTINEN: In that sense, also, looking at the transcripts before and Mr. Dyer's previous hearing, there were a lot of questions put to him about that – those overturned convictions. I just wanted to be stated on the record – the Board is free to ask him any questions he wants. I know that. But, as far as assuming that what he is saying does not reflect with the fact record, there is no fact record to compare that with. So that's - - that's the objection that I would like to bet put on the record.

AUSTIN: We got you. This is an imprecise enough area as it is without adding more imprecisions to it. Sometimes we may use that as a framework to see if we can discern a thought process but that's - - about the size of it.

LAHTINEN: Mr. Dyer's case, of course, is something that I think was characterized last time as hitting a brick wall, in the sense that Mr. Dyer has denied guilt throughout his incarceration and afterwards. And I guess probably one of the things we'll probably be discussing here is that brick wall. One thing, as Mr. Austin has noted, I think what

the Board should consider is whether he's rehabilitated in the sense and - - that he would not commit the crime again, and also whether he is a danger to the community.

AUSTIN: There you have it in a nutshell. That is what we're trying to do, is to make sure he doesn't attack my neighbor or his neighbor.

LAHTINEN: And - - Mr. Dyer's record within the institution, while there has been a few infractions, most of the time he has had a stellar record within the institution. His current psychological report has a number of tests that were taken to show the risk that he would be to the community. If I may note this for the record - - in the psychological testing.

AUSTIN: He has a low score on the PCLR. The psychopathy checklist. He has a low score on the Minnesota Sex Offender Screening Tool and the Rapid Risk Assessment for Sex Offenders. And the LSIR, which is not found even by its makers to be particularly applicable to sexual offenders or people in the institution also indicates a relatively low score.

LAHTINEN: We acknowledge those - which shows that Mr. Dyer at least as far as the testing is concerned, is not a risk to the community, not a risk to reoffend. In that sense, this new report differs a little bit from previous reports. I wish I had the opportunity to ask Mr. Carter about his testing methods and his determination which would differ somewhat from the previous reports, but it does seem as though there has been a progression and - - with Mr. Dyer he has recognized some needs that he has and has taken steps to correct or to receive counseling about those needs.

AUSTIN: As we indicated, we accept Mr. Carter's credentials. We also accept that the psychological process itself as imprecise. The law wants a fairly certain questions and we know that the psychological process is partially imprecise in a prison setting.

LAHTINEN: That is up to the Board's discretion. What I want to present here is - - is kind of a picture of Mr. Dyer as he is today, not necessarily as was stated in the presentence

report and records. First off, I want to ask Mr. Dyer a few things. Mr. Dyer, as start of the record here, do you believe forcible intercourse to be wrong?

DYER: Yeah.

LAHTINEN: Okay. Is there any circumstance where that kind of action would be justified?

DYER: No.

LAHTINEN: Is there any reason that a woman should be touched against her consent?

DYER: No.

LAHTINEN: And if somebody were to engage with that, do you believe that they should be punished for that by law?

DYER: Yes.

LAHTINEN: Since you have been incarcerated, it's been put on the record that you have taken a number of different crime related counseling. It's also part of the record that you have had - - been diagnosed with post traumatic stress syndrome. Now what steps have you taken or what kind of programs have you taken to address those concerns?

DYER: I've taken victim awareness, alternative to violence, MRT, I was a facilitator for stress anger management and - - [unintelligible] - - I've done them so many years. I was a facilitator for most of them. - - [unintelligible]

MARTINEZ: Mr. Austin, may I ask a question? Can we back up here a little bit? We haven't met before, but I would just like to hear for the record how do you explain these two convictions that we have in front of us?

DYER: I can't second guess it. I've tried to figure it out myself.

MARTINEZ: What do you think happened to you?

DYER: I was convicted for rape is what I was convicted for.

MARTINEZ: Okay, what is your story?

DYER: Well, I'm not guilty.

MARTINEZ: Okay, why do you say you're not guilty?

DYER: Because I'm not guilty. I didn't do these crimes.

MARTINEZ: Okay, so how was it that you came into the position of being tried for these two crimes?

DYER: The police come, and it was with my ex-wife, and she accused me of raping her [unintelligible]. And the other two charges were put on me when I got to the county. The police officer [unintelligible]

MARTINEZ: Okay. Why do you feel that you are no longer a danger to the community?

DYER: I'm not a threat to the community because I don't even think like a criminal [laughs]. That's a nervous laugh I got here, but - - it's just - - I don't feel - - I just want to get on with life. And - - I try to do that already. I try to keep a life going from within the - - a lot of people say when I get out, I got to do something. And, I don't do that, I say I got - - this is my life right now. I earn an income, I support my family. I think I'm an active member of society as best as I can be behind these chain link fences. I don't think criminal thoughts, I don't like to walk the yard with people that have criminal thoughts. I try to get away from them when they do that. I'm worried about putting a septic tank put in over here. I'm not worried about what they're going to do or they reminisce of the crimes they have done. I haven't done any crime, so I can't communicate with a lot of these guys in here on that level.

AUSTIN: Let me interject if I may, Mr. Dyer, just to see that I've got the correct summary of the file. I believe that your wife at the time was Ethel?

DYER: Right

AUSTIN: Okay. Now she apparently reported in October of 1980 a - - what she claimed was a rape and declined to press charges at that point. And this was in October of 1980.

DYER: Yeah, I never even heard about that- -

AUSTIN: Okay, and in September of 1981, she contacted the detectives and indicating again that you had raped her. Is that correct?

DYER: I'm not sure of the dates - -

AUSTIN: Don't worry - -

DYER: Yeah.

AUSTIN: Alright. Now, the two charges that we have, one is January of 1980 a Colby Jones. And so apparently, this was not pursued until after the September 1981, report almost two years later. Is that a correct repeating of the timeline?

DYER: Yeah.

AUSTIN: And then there was an August of 1980 rape which would have been eight months after that January rape. And that too, was not - - that was apparently a part of the prosecution which was initiated some time after September of 1981. Is that correct?

DYER: I'm not sure of the date. I just know that one of them was like two years before they charged me with these crimes, and one of them was like eighteen months or something like - -

AUSTIN: Okay so somewhere in - - I guess Bremerton police files, was - - Ethel's report in 1980. And then her return in September of 1981, and reading the file it looked like then the detectives went back to these two rapes in 19 - - earlier 1981 - -

DYER: Right - -

AUSTIN: One about a year before in September of '81 but in August, and one nearly two years before. Now you had Mr. Savage defended you in trial - -

DYER: Yes.

AUSTIN: You had a jury trial.

DYER: And Jim Reese. [phonetic]

AUSTIN: Okay. Did you testify in that trial? - -

DYER: Yes - -

AUSTIN: And again, I want to be careful because we do not get involved in retrying cases - -

DYER: And I would send you any transcripts that you want to see - -

AUSTIN: No, that's alright, because I don't want - - we try to stay away from injecting ourselves in court proceedings. Do you remember if the primary evidence against you was identification?

DYER: It was.

AUSTIN: Okay, do you remember if there was any other - - like any kind of fingerprints or scientific evidence at all?

DYER: No. I - - there was at the time, and I tried to get the DNA tested on me on this new federal law that just came in, the State got $500,000. I filed right away on it and - - to get the DNA on it, and they've - - at first they didn't have any evidence. And then they had - - they found a box of evidence. So then our hopes got built up.

AUSTIN: I read somewhere that apparently it's not available.

DYER: Right. And they're saying now that they haven't got it, and - -

AUSTIN: Alright, here's the problem that you got with me. I'm not going to hold somebody just because they deny it, because every I read about sexual offenders is denial is not what's called a risk factor, it's not used in these various instruments that your counselor has mentioned. Denial per se is not itself a risk factor so I don't use it and hold it against somebody. The difficulty that you got is a rapist of this type, taking the efforts to have the victims clean themselves up and so on. I would expect to have this kind of behavior in the institution, and

that's a pretty weird catch-22 situation to be in. An innocent man is going to make the best of the bad hand that he's been dealt and try to get by in the institution. A reasonable plus factor is that all the studies seem to indicate people age out of this by about fifty-five. You look to be in fairly robust health that's why I ask about your medical concerns.

DYER: I've had lots of operations since I've been down - -

AUSTIN: What I'm trying to do is to place a bet with somebody else's life that you'll leave them alone, is what it really boils down to. So I have to - - instead of going by the seat of my pants, I have to look at what the social scientist tells us. The various risk factors and so on as I indicated to your counselor that is a imprecise area. I do look at them and they have some significance, but it is considerably an imprecise area that will vary, even the same test scores will vary from examiner to examiner. I think that is what Mr. Lahtinen is worried about with Mr. Carter. But those are the primary areas that I'm concerned about. I understand you maintain your denial, you maintained your denial when Ms. Garrett and I saw you before, and I don't consider that a risk factor. Everything I read says it's not a risk factor. But the behavior. The calculating nature of the behavior – the showers, the prolonged period, even the apology, puts you in a particular category of rapist, just looking at the file, which I'm bound to. So your behavior in the institution has a tendency to match that. That's a difficulty.

DYER: Well, my behavior has - - I don't see - -

AUSTIN: Well, I expect you - - I expect you to exhibit that controlled behavior, because that's what's shown in the rapes. Do you follow me? I'm saying this partly to your attorney because he's going to be able to make a closing argument for you in a minute. But, somebody who is not an impulsive rapist, but a calculating, almost ritualistic rapist would be expected to take steps to protect themselves: such as the showers, the washing, making sure that the women would clean themselves up and so on, this sort of behavior. And the patrolling at night to pick up potentially likely victims. Women of the night, for example. All of those are

factors that you would expect in a rapist that would then make an accommodation within the institution. Is that clear?

DYER: I don't know - -

[unintelligible]

DYER: I never had no sex with deviants in prison.

AUSTIN: No, no, that's not what I'm talking about. I'm talking about the controlled behavior that you showed in the army, that you show, according to the file material in the rapes, is the kind of behavior I'd expect from an inmate with your crimes in the institution. And that's what I'm talking about when I say it's a catch-22 irony. Because a person who is innocent and has been dealt a bad hand is going to try to figure a way to play the best he can, and it's quite obvious that you made an accommodation for prison life. Do you follow me?

DYER: I - -

AUSTIN: I'm not trying to accuse you of any deviance in the institution.

DYER: Right, I - -

LAHTINEN: What basically he's saying, maybe if I could put it -

AUSTIN: Go ahead.

LAHTINEN: In some other terms... what he's saying is the kind of orderliness that you did - - that was part of the conviction of the crime. Is the same kind of orderliness that you would do within the institution by being a very good boy. Doing everything you were told to do. That you exhibit an orderly behavior, just as in the crime the perpetrator exhibited an orderly behavior: cleaning something up, and doing something in a certain way. That behavior, if you did that crime in the institution you would be orderly in doing something a certain way which is what I think Mr. Austin is getting to. So it's a catch-22 in their mind that if you were innocent of the crime, you would still be doing probably the same things if you were guilty of the crime. You would still be trying to be a very good person within the institution by following the

rules and regulations because somebody who does a ritualistic crime would do those things. So, that's basically what - -

[unintelligible]

AUSTIN: I mentioned that out of respect so that it can be responded to. It's a difficult problem for me, I don't want to keep somebody in prison who shouldn't be kept in prison, Mr. Dyer.

DYER: Yeah. I don't know what I could have done any different - -

AUSTIN: And that's where the catch-22 applies- -

DYER: If I've been out here - - being crazy, you know, I try to take all the programs, because the alternative is insanity. And so I take every program I can take. Not so much for you guys, but because when I'm doing that, idle hands are mischievous. I mean, you could get in trouble here for handing a guy a Top Ramen.

BOARD: I know.

AUSTIN: And I understand that, and as I say - - one of the reasons I mentioned that is because it's a difficult problem for me, and you're the one that bears the consequences, and I'm not sure I have the answer to that. We're told in studies of rapists that we have the impulsive type, they may have - - just be angry at women generally, or they may be drunked up and they'll jump on somebody, that's one that a lot of people are simply afraid of. And then, there's the so-called ritualistic rapist, who because they're depressed, feel like they're being cast off, rejected by people around them or something like that, want that power. And they, they will plan and carry out this and often follow up their rape with apologies to the victim. They really don't want to hurt them. What they want is to assert their power. I'm not a psychologist, all I can go on is what I read and study, and that's the situation I mentioned, that this kind of behavior in the rapes: the careful selection of the victims, the prolonged period, the cleaning up, and the almost apology afterwards is the kind of behavior that I expect from somebody who react to

depression or stress by attacking somebody to - - What they call them is the power assertive or power reassurance rapist. Is that clear to you? Those are the things I'm having to work with.

DYER: Yeah, I understand what you got to work with here. And - - I'm - - I'm not guilty so I don't know these things. And - - but - -

AUSTIN: I know, I'm just telling you what my thought process is because I'd sure like to find out some answers.

DYER: I'm just - - at my age I just want to have a garden, you know. You know? I don't know how to even respond to this. Because it's like if I did that, you'd use that, but because I'm doing good - -

AUSTIN: I know.

DYER: I'm doing bad because I'm doing good.

AUSTIN: Right. Regardless of what the ultimate decision is, it's clear that you've been - - you played a bad hand pretty well while you've been in the institution, you are to be commended for that. Like I said, the central problem comes down for Mr. Lahtinen to solve the problem that I have and deciding how to resolve this. Ms. Martinez, do you have some questions?

MARTINEZ: No. It's just other than – it's just a brick wall.

AUSTIN: Mr. Lahtinen?

LAHTINEN: Well - - maybe if I could ask Mr. Dyer a few questions.

DYER: Can I present these to you guys here?

[Unintelligible]

AUSTIN: It's a statement of the November 13 letter.

DYER: Yeah, well, I didn't change the dates.

AUSTIN: That's all right. It will become part of the file, and we'll certainly consider it.

LAHTINEN: Mr. Dyer, when were you diagnosed with post traumatic stress syndrome?

DYER: 19 - - Dr. Noshland [phonetic] so - - 1986, I think.

LAHTINEN: That was the first indication. I noticed that you have had a few other sessions I believe with Ms. Gowan [phonetic] about this particular problem. And, how did it first exhibit itself in your memory?

DYER: Well, nightmares of Vietnam. I had a lot of nightmares. Still, to this day.

AUSTIN: What was your occupational specialty when you were in the army?

DYER: I was 11-B-40P – long range recon [unintelligible] the first time I was in Vietnam. And the second time, I was the platoon sergeant for the slicks [phonetic] door gunners.

LAHTINEN: And when you found out this diagnosis, what did you do about it?

DYER: I contacted both Seattle and Dr. Lauby [phonetic] also contacted Spokane PTSD, and also in Oklahoma. Both the clinics in house and out of house to find out if they had the programs, and if I was eligible. Dr. Lauby over at Airway Heights got me all the paperwork to fill out and send in, in case I was paroled at that time. And then, they have a twenty-one day in-house thing here at the veterans center here. And also, I started a group at the reformatory for PTSD. We used to meet with Dr. Noshland on people for combat veterans. And so the veterans' meeting [unintelligible]

LAHTINEN: Now what have you learned about how to deal with this?

DYER: Well, sometimes I - - you have anxiety attacks, you know, you'll just be sitting there. And something will trigger it, like the helicopters going over. Vietnam's a hard thing for me. You know, I just - - I don't know - - if you weren't there, it's kind of like talking to somebody - - I've learned - - I try not to wear it like a coat, but I try to learn from the experiences. I've learned that I've got it. You know - - Vietnam was a tragic thing for me. A lot of people dying around me. I went over with twelve and nine got killed.

MARTINEZ: How old were you when you were over there?

DYER: 19 the first time. And then nine of them got killed and all of us got wounded real bad.

AUSTIN: Mr. Lahtinen, would you like to summarize? I think, what I want to make sure is that we're clear on the facts, and so on. As I say, a reaction to stress would be one of the behaviors we would expect in this, like I said there's a catch-22 and brick walls and double ironies on all this, Mr. Dyer. You know, we're trying to be fair to you and everything, but you're the one that bears the consequences, and I'd love to have some clear way to make a decision on this case. Mr. Lahtinen, why don't you give us an answer?

LAHTINEN: Okay, that's a lot to ask about giving an answer, a clear answer in a situation like this. While I think it's true that the Board has to assume that the two crimes were committed, Mr. Dyer's adamant that he did not commit the crime, there hence is the brick wall. Behavior within the institution can only be one of the factors that the Board should consider. Mr. Dyer's behavior within the institution has been fairly good, there have been infractions here and there. He has adjusted, he has - -the reason why I asked him about the post traumatic stress syndrome is that it's something he recognizes as a problem that he was suffering from, and has taken steps to address those problems. In the same sense, everything he has done within the institution has been to try to address the problems that he sees. When it was said that he should take crime-related counseling, he has attempted to do that. He has attempted, I believe, on at least two occasions to enter the SOTP program, probably knowing full well that he would not be accepted because of his denial of guilt, but he has attempted to do what he is supposed to do in this institution.

AUSTIN: Have you been able to take an orientation course – I think they have some preliminary orientation courses, I don't know if they have one out here.

DYER: I don't even know what that is, Mr. Austin.

AUSTIN: I think they sit around and give you kind of a rough idea of what to expect, it's generally, primarily based on group participation and it can get pretty rough because you'll be talking to people like yourself, and they'll say you're conning us and all this other kind of stuff.

DYER: I did MRT. I also started the program with the reformatory [unintelligible]. And Leonard Shaw, I, I really - - he's, he's a wonderful guy, I don't know if you've heard of Leonard Shaw at the reformatory, he gives free seminars there for the last twelve, fifteen years.

AUSTIN: I'm not sure it's any comfort to you, but there's probably about a half a dozen guys who are in a very similar situation. They're all extremely difficult to deal with. There's no percentage in keeping somebody that should not be in prison any longer than they serve a proportionate sentence, but it really does come down to make a call on it. Go ahead Mr. Lahtinen.

LAHTINEN: One of the things I guess it really comes down to right now is the denial of guilt.. He has, in all other respects, shown that he is not a risk to the community as far as what can be shown. The testing shows that he is a low risk. As you noted, that that doesn't necessarily take into consideration prior history. One of the things that I think may be different for Mr. Dyer than other cases is that Mr. Dyer is in a stable relationship with his wife, he has maintained that relationship throughout the time he's been in the institution. I would think that somebody who has been convicted of a sex offense, as Mr. Dyer had, may not have been able to maintain a relationship to the extent that he has with his wife. There is still a supportive family atmosphere he maintains. There has been some questions in the past on something that he has tried to maintain, he was denied access to family leave program, - - forgetting the name of it.

DYER: EFV.

LAHTINEN: Extended family visits. And throughout this, Mr. Dyer has maintained, tried to maintain, a good family relationship and a supportive atmosphere. There has been, in the past, some talk about Mr. Dyer being manipulative. I don't think there is very much evidence of that in him at this point. He's been able to address problems he has had within the institution and then able to adjust to that. Mr. Dyer has also gone to extensive - - he has tried extensively to address his crimes of conviction of, as you just said, that his most recent attempt has been to get DNA evidence to be able to exonerate himself. Unfortunately, that DNA evidence is not available. One would question somebody who would be manipulative if they knew that the Board would probably find him parolable or at least give him a better chance to be found parolable if he admitted the guilt of the crime and then went through an SOTP program - -

AUSTIN: We personally, and each board member makes its own mind - - I don't hold his denial against him, and I don't consider him manipulative. I accept your sincerity, Mr. Dyer. My concern is how he reacts to stress when he's in the community. It's probably a vast oversimplification to say okay, there are some stresses in prison, but it's really tough to give freedom and people's reaction to stress within in the community is what I'm concerned about.

MARTINEZ: I'd also like to add it - - I'm looking at how I can ascertain his risk - - at this point in time.

LAHTINEN: And that's always a very, very difficult question because a lot of it has to be done. The only way you can tell whether somebody would make it into a community is to actually be in the community. There are - - like I said before, there's not an exact science about...somebody can't give you a test and you fill it out and you say this person is absolutely no risk to the community. The only thing that can be done is to be able to give him more and more freedom and be able to show that he can take the incremental stress of being out and getting more freedom, and acting in an appropriate way. I mean, that's an unanswerable question in that sense of whether, you know, there is no guarantee that anybody would be a risk, would not be a

risk in the community. Mr. Dyer has tried to show within the bounds that he's given that he is not a risk. He has done everything possible that he could do, given his situation. What it comes down to is the only difference between him and somebody else is his denial of the guilt, because there's always that doubt in the back of anybody's mind that if he did do these crimes, what's stopping him from doing them again?

AUSTIN: Okay, I'm not holding him because of his denial of guilt. My concern is the nature of the offenses.

LAHTINEN: And that's what I'm trying to get at. The nature of the offenses, if you assume that they're correct, - -

AUSTIN: Which we have to - -

LAHTINEN: Always makes him a risk, because he's done it before, there's some statistics showing that he might do it again. If you assume that he's done it. I'm not - - Mr. Dyer, looked at me.

AUSTIN: He's not conceding anything. It's arguendo.

LAHTINEN: And there's nothing I can say that would guarantee to the Board that he is not a risk to the community. The only thing I can say - -

MARTINEZ: What is the actual language? No longer poses - -

MARTINEZ & LAHTINEN: A reasonable risk.

LAHTINEN: The only thing he has to show for is his - - what he has done in the institution. The only other way he can show it is to be given a, maybe on some kind of conditional parolability, or at least lower levels of custody, that he is able to handle the increased freedom.

AUSTIN: Now, he's got a present calculated OBTS PERD of March 11, 2002. Are you proposing a MAP?

LAHTINEN: I would think that if the Board thinks that that's appropriate. Of course, Mr. Dyer would want to be found parolable and get his freedom as soon as possible. But if we're talking about - -

AUSTIN: Well, it's something to consider - -

[Unintelligible]

AUSTIN: We got him down for 235 months that he's served so far.

LAHTINEN: And that's the thing, that he has, given the fact that, well, there's nothing more that I can add other than what I've already said - -

AUSTIN: I think we've covered the file. As I indicated, whatever the decision is, it's obvious that you're making the best of a bad hand, [unintelligible] prison and so on. The call has to be the Board's. It's a difficult one. As I say, it's not much comfort to you, but there's about a half dozen cases like yours where we are kind of caught between a rock and a hard place. We have to leave it to the Board to try to resolve it in someway that at least approaches justice. The decision takes about four to six weeks to get back to you. It shows up on the DT54 screen and we try to move them along as quickly as possible, but practically speaking, we have a couple of part time Board members, it just takes that long to process and get the thing ready for publication, Mr. Dyer. If that's all for everybody, that will conclude this morning's hearing.

LAHTINEN: I would also like to add that at least for the record, that this going to try to get something from Mr. Carter to produce - -

AUSTIN: Sure. We'll be watching for it and [unintelligible] I'll do what I can.

LAHTINEN: Okay.

AUSTIN: That's an on-going, but you may get it resolved, this is the only institution - - [unintelligible]

LAHTINEN: -- This is kind of a different issue - - [unintelligible]

AUSTIN: Exactly. Thank you all. END TAPE.

EXHIBIT - P
A Separate But Equally Erroneous Psychological
Evaluation Performed By Dr. Pereira

4) PSYCHOLOGICAL REPORTS AND CORRESPONDENCE

DISCLOSABLE

PSYCHOLOGICAL EVALUATION

MCNEIL ISLAND CORRECTIONS CENTER
STEILACOOM, WASHINGTON

NAME: [redacted], Michael DOC #: [redacted]

DATE OF BIRTH: 09/07/1960 AGE: 48

EVALUATOR: P. PEREIRA, PH.D REPORT: 01/07/09

REASON FOR REFERRAL

Mr. [redacted] was referred for a psychological evaluation in preparation for a .100 Hearing for the Indeterminate Sentence Review Board. The Board requested an instrument supported psychological evaluation including personal/criminal history, behavioral observations, risk for violence, and case management recommendations. Mr. [redacted] is currently a resident at McNeil Island Corrections Center.

The purpose of this report is to provide a psychological evaluation of the subject for Classification Staff, the Indeterminate Sentence Review Board, Community Corrections Officers, Risk Management Specialists, and care providers within the Department of Corrections who have a need to know. Disclosure and dissemination of this report shall be in accordance with RCW 70. 02 and Department of Corrections Policy 640.020. It shall not be released to individuals outside DOC without the inmate's consent or unless otherwise authorized by law. The inmate was advised of the purpose of the evaluation and departmental policy regarding information practices. Mr. [redacted] was advised of the limits of confidentiality.

The health care information is expected to be used by classification and other staff who have a legitimate need to know in order to effectively manage the inmate within the Department of Corrections. This record is replicated in the inmate's health record.

Disclosable: The inmate may request a copy of this report. Before receiving a copy of the report the inmate must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee.

ALERTS TO CORRECTIONAL STAFF

None

SOURCES OF INFORMATION

Central File, Clinical Interview, Medical Records, Mental Health Records, Psychometric Testing Instruments

CRIMINAL HISTORY/OFFENSE BEHAVIOR

Official Version of the Current Offense: According to available reports, in June 1978, Mr. [redacted] was convicted of Murder, Second Degree. Witness reports indicated that Mr. [redacted] beat the victim on the head with a blackjack while a friend stabbed the victim with a long blade knife repeatedly in the throat, head, and abdomen. The witnesses indicated that Mr. [redacted] and his friend buried the body in a shallow grave, that they urinated on the victim, and continued to kick the victim's body while disposing of the body. Available reports suggested that the judge and prosecutor recommended a sentence of Life in Prison.

Offender's Version of the Current Offense: Mr. [redacted] reported: "I was convicted of Second Degree Murder, and Second Degree Assault in 1978. Regarding the murder I got hanging around with this guy. They didn't like my friend. They decided to kill him. I agreed, poor decision. I feel guilty. I was seventeen years old at that time."

When asked what he was thinking and feeling during the commission of the crime, Mr. [redacted] stated: "I was scared, never been around something like that, made me afraid. I didn't want to be next, just afraid. It was not something I did out of anger. He hadn't done anything to me. Alcohol and drugs were not involved. My associates started it. I was a kid, they were grown-ups. It was too late to back off. I hadn't been around stuff like that. I couldn't control the situation. This guy was losing control. I couldn't stop it."

When asked if he thought his lawyers did a good job, Mr. [redacted] stated: "For the most part – yes. They did the best they could. It's not the lawyer's fault I'm here. You did it you have to pay for it." When asked if he thought his sentence was fair, Mr. [redacted] replied: "It was a little bit harsh when I see what others serve. I got Life. I played the bad guy, I got a bad guy's sentence. I am to blame. I made poor decisions. I was a weak man. No one should lose their life because someone was stupid."

Prior Arrests: According to reports, Mr. [redacted] and another inmate was charged with Assault Second Degree for severely beating a jail inmate in October 1978. The reports indicated that, in April 1981, Mr. Erickson was charged with Assault First Degree with Habitual Criminal Findings. According to other reports, on another occasion, Mr. [redacted] and another inmate brutally attacked and assaulted a corrections officer. The reports stated that Mr. [redacted] was the prime mover who planned the assault and that his sole motive was that he disliked the officer. According to the reports, the officer had not done anything to provoke the attack.

Mr. [redacted] provided the following history: "This guy in jail kept talking bad to me. I beat him up. It was wrong. You don't beat people because they say things you don't want to hear. When I was in Monroe, this guard was calling me names. I stabbed him. I should not have done that

He was not hurt severely. He had two stab wounds that required eight stitches. I'm not minimizing the incident. They keep trying to say it was worse. No, it's a medical fact."

When asked what effect his criminal behaviors may have had on his victims, Mr. [redacted] replied: "One victim died. It had a horrible effect on the family. His mother and father loved him. The one in jail, I don't know. The guard probably did not feel safe in prison. He probably carries a lot of baggage because of me. I'm ashamed of all this. I learned from all that. I don't let people talk me into something you don't want to do. I tell people, I don't do that. I don't get into that anymore." When asked what he would like to say to his victims, Mr. [redacted] stated: "I'm sorry."

Prior Juvenile Arrests: Reports indicated that Mr. [redacted] was known to juvenile authorities in Louisiana due to frequently running away from home. There were some reports of an auto theft in Texas that was later dismissed.

Mr. [redacted] reported: "I got picked up for taking a car as a kid. I was twelve or something. I used to run away from home. The police would take me back to my parents. I was eleven or twelve at that time. There were no other incidents. They sent me to mental institutions. They said I was crazy for running away from home. I was in the institution until age fourteen."

LSI-R: An assessment with the LSI-R indicated a score of 29 that suggested a moderate risk of re-offending.

RELEVANT PERSONAL HISTORY

Residential History: Mr. [redacted] stated: "I was born in Oaklahoma, grew up in Louisiana."

Family of Origin: Mr. [redacted] recalled the following details: "My father and mother divorced when I was three. I was raised by my father. He married when I was five. I didn't get along with my stepmother.. I caused her a lot of problems. I would act up with her. Looking back I'm amazed she put up with me. My grandparents from both sides were good to me. I had no brothers or sisters. My father later divorced my stepmother. My father is in Oaklahoma. He's pretty ill. My folks are from the mid-West, penny pinchers, never had a lot of money."

Nuclear Family: Mr. [redacted] reported: "I have a wife, three children - stepchildren, some grandchildren,. I got married at age twenty-nine. I was in prison at that time. I met my wife through letters. She got into a car wreck, broke her back, and is on disability. She lives in Spokane. I saw her a couple of years ago. I have not seen her much lately. We used to do conjugal visits. There was some strain on the relationship. I didn't put her down for visits. She couldn't come in for visits. Her life is hard enough."

School History: Mr. [redacted] stated: "I went to school in Louisiana. I was a mediocore student. I got into a lot of trouble in school. I was the clown. In the fifth grade they took me out of school and put me in a mental institution in New Orleans. The place was set up for people who

were older. At the groups they were talking about stuff I couldn't comprehend. They would let you out in the yard for an hour in the day. I had no school until I was fourteen."

Work/Vocational History: Mr. [redacted] provided the following history: "I got my GED in prison. I have 432 college credits. I finished welding school at McNeil. I finished autobody courses at Walla Walla. I worked for the recreation department in the yard, picking up trash. I worked at a welding job here for six years. I worked at the autobody shop in Walla Walla for eleven years. I have been a plumber. I did construction work at Airway Heights. I ran heavy equipment. I sorted laundry. I've done all the kitchen jobs you could think of. I've worked in the kitchen etc. In the community, I drove a dump truck for somebody. I was good at that stuff. I already have job offers to work in a truck repair shop in Wenatchee from this friend of mine. His father owns the company."

Health History: Regarding his health, Mr. [redacted] stated: "I have no health problems. I have Hepatitis C. I could have got it from tattoos. I injected heroin four or five times. I didn't like it. The treatment didn't work. They can't believe I'm in such good shape."

Mental Health History: Mr. [redacted] noted: "I have not seen anyone in mental health in prison. I saw psychologists from the time I was six. They diagnosed me as paranoid schizophrenia. I don't hear voices. I don't see things. They were making a lot of money. I got out of there when the insurance was out."

Substance Abuse History: Mr. [redacted] stated: "I used to smoke weed when real young, when I was fifteen or sixteen years old. I used to drink with buddies. I got high. I tried some speed, heroin, that's about it. I don't like being intoxicated. It makes me uncomfortable. It's not something I enjoy. Years ago I tried more drugs in prison than outside of prison. The last time was in the eighties."

Relationships: When asked if he could go back and change things where he would start, Mr. [redacted] replied: "I would start when I was about five years old. That's when I started acting up, not before that. I chose to hang out with my friends. I wound up being a nice guy. People seem to like me. People like me in general. I like being nice to people. For some reason many seek my advice."

Long-Term Goals and Plans for the Future: Mr. [redacted] reported: "It would be real hard for me in the community to find employment because of my history. I don't think it is something that will go away. I would like to buy a house. I would like to have a productive life, pay bills. I would like to have a life so I'm not a burden on anybody. I've saved money. Financially, I'm pretty conservative. I'm not in debt all the time. I'm sick and tired of prison. Most people are younger. I don't want to come back to prison. I would like to do something for my wife and children. My personal belief is everyone knows what's right or wrong. People choose to do right or wrong. I don't steal. I don't take drugs. I don't gamble. I don't assault people. I don't ever drink coffee. I don't have a bad temper. I don't get angry easily. I don't have all the problems others talk about. I have made a real effort to change my attitude. A large part is just getting older. I notice people mellow out as they grow older."

REVIEW OF MEDICAL /FACILITY REPORTS

Medical Consults: A Medical Progress Note, dated May 10, 2008, noted that Mr. [redacted] suffered from chronic Hepatitis C which was described as the most difficult to treat genotype and moderate fibrosis. The consulting physician noted that Mr. [redacted] was two months into treatment and that he seemed to be tolerating it fairly well. Other medical reports indicated a history of chronic bronchitis and that Mr. [redacted] was allergic to codeine.

Psychological Reports: A Psychological Report from May 1987 indicated that Mr. [redacted] was psychologically maladjusted since early childhood and that his behavior has been marked by hostility, assaultiveness, and other types of acting out behaviors. A more recent psychological evaluation in 2005 indicated that Mr. [redacted]s criminal behavior may be due to a socially deviant lifestsyle and that the overall risk profile suggested a high risk of reoffending.

Programming: Available reports indicated that Mr. [redacted] worked as a Teacher's Aide for the welding program from January 2000- February 2003. The reports noted that he had completed Basic Skills, Industrial Safety, Anger/Stress Management, Victim Awareness. There were reports that Mr. Erickson obtained his GED and had made notable improvements in his work history.

Infractions: A Classification Report from May 2003 indicated that Mr. [redacted]had received twenty-nine infractions since his incarceration. The infractions were described as: throwing objects, assault, destruction of property, inciting riot, possession of narcotics, possession of a weapon, theft, unauthorized possession of money, stamps, or negotiable instruments, and staff interference.

CLINICAL INTERVIEW

Admonition/Location/Time: I saw Mr. [redacted] for a psychological evaluation for approximately two hours. Mr. [redacted] spent an additional hour and a half completing the MMPI-2.

Observations: Mr. [redacted] was alert. Affect was somewhat constricted. Mood was not depressed or anxious. Thought processes did not disclose delusions or hallucinations. Briefly, the test results were not influenced by a mood or thought disturbance.

PSYCHOMETRIC TESTING INSTRUMENTS

Minnesota Multiphasic Inventory –2 (MMPI-2), Hare Psychopathy Checklist- Second Edition (Hare PCL-R), Violent Risk Appraisal Guide (VRAG).

PSYCHOMETRIC TEST RESULTS

Note: Caution is indicated in generalizing from the information provided in this report. Psychological test data alone have not been found adequate as predictors of an individual's behavior in a setting different from the testing situation. Moreover, interpretations by unqualified individuals may lead to bias, distortions, or misinterpretations.

The data enclosed is part of a psychological evaluation/assessment performed for diagnostic and treatment purposes and is intended to be used by persons specifically trained in psychological assessment techniques including but not limited to psychological interviews, psychological test instruments, psychological raw test data interpretation, meaningfulness of raw test data, and validity and reliability measures. These data are considered confidential under DOC policy 640.020 and are part of the medical/mental health record with access controlled by the health authority. These data may not be released to others without the written consent of the offender, or in response to a court order, other appropriate legal action, law, or statute. When required by court order or in response to other appropriate legal action, law, or statute to release raw test data, DOC and its employees shall not be held responsible, nor civilly or professionally liable for information released to or used by any other agency, entity, group, or individual not trained or qualified to use such data.

MMPI-2: The validity profile of the MMPI-2 suggested that individuals with this profile may be motivated to present a favorable impression. The clinical profile suggested that the person's difficulties may stem from deep chronic feelings of hostility. According to the profile, individuals with this profile may be sensitive to rejections and may become hostile when criticized. There may be brief episodes of aggressive acting out behaviors which may be associated with histories of assaultive, violent crimes. According to the clinical profile, individuals with this profile may be quiet or withdrawn for extended periods of time. They may have needs for approval, closeness, and validation. The clinical profile suggested that individuals with this profile may act without considering the consequences of their actions, their behaviors may involve poor judgment, considerable risk taking, and they may find themselves in the same difficulties repeatedly.

Hare PCL-R: On the Hare PCL-R, total score (24) suggested moderate levels of psychopathy. The history of social deviance including the history of juvenile delinquency, early behavioral problems, poor behavioral controls contributed to total score.

VRAG: Total score (17) on the VRAG suggested a high risk of re-offending. Items that contributed to the score included childhood and adolescent history, age at index offense, history of personality disorder.

CLINICAL IMPRESSIONS

Mr. [redacted] was referred for a psychological evaluation in preparation for the .100 Hearing for the ISRB. Mr. [redacted] was sentenced to Life In Prison at age seventeen for the murder of a friend. The current assessment disclosed:

- a history of a conduct disorder
- a history of being involved in a murder at age seventeen
- a history of multiple infractions
- a history of substance abuse within prison

Psychometric testing disclosed:

- individuals with this profile may be motivated to present a favorable impression
- that the person's difficulties may stem from deep chronic feelings of hostility
- individuals with this profile may be sensitive to rejections
- individuals with this profile may become hostile when criticized
- individuals with this profile may display episodes of aggressive acting out behaviors.
- individuals with this profile may be associated with histories of assaultive, violent crimes
- individuals with this profile may be quiet or withdrawn for extended periods of time
- individuals with this profile may have needs for approval, closeness, and validation
- individuals with this profile may act without considering the consequences of their actions
- the behaviors may involve poor judgment, considerable risk taking

The current assessment disclosed that the acting out behaviors may not be associated with major psychological distress or psychiatric problems.

RISK/CASE MANAGEMENT RECOMMENDATIONS

Note on Future Dangerousness: Assessing an individual's risk for engaging in future violent and/or sexually predatory behavior is an inherently difficult task as the scientific literature attests. This is particularly the case when the information is either incomplete or deliberately concealed. Mental health professionals can make use of a long number of a sizable and growing empirical literature for identifying risk-elevating factors. To date, there has been insufficient research on the identification of risk-reducing factors (at least for adults) which tend to cause offenders to be portrayed in a mostly negative light, casting them as being at greater risk than is perhaps actually the case. In addition, because the dynamic risk factors change over time, with or without interventions, risk-assessment updates are necessary to ensure accuracy and guard against decision making based on outdated information.

Recidivism/Violence Potential: The current psychological evaluation suggests moderate levels of psychopathy, high risk for violence, and a moderate-high risk of re-offending.

Treatment/Interventions: It is likely Mr. [redacted] may benefit from supervised environments that foster accountability and responsibility in daily situations.

Thank You for the referral. If there are any questions, please do not hesitate to contact me.

Patricia Pereira, Ph.D.,
Licensed Psychologist

TEST RESULTS – BRIEF SUMMARY

MMPI-2

Scales	Raw Scores
?	0
L	5
F	3
K	21
Hs	16
D	22
Hy	28
Pd	31
Mf	21
Pa	12
Pt	27
Sc	25
Ma	20
Si	19

HARE PCL-R 2ND Edition

Facet 1	4
Facet 2	5
Facet 3	7
Facet 4	7
Factor 1	9
Factor 2	14
Total	24

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: [redacted]N, MICHAEL
(Name, DOC#, DOB)

PRIMARY ENCOUNTER REPORT

DATE	TIME	FACILITY	UNIT	ALLERGIES
01/15/2009	09:30	MICC	E	

Narrative:

The following test protocols and practice advisory-release of records were faxed to Mr. [redacted] lawyer, Mr. David Zuckerman:

- HARE PCL-R: 2nd Edition – Response Form, Scoring Grid, Profile Form (3 pages)

- Violence Risk Appraisal Guide (VRAG): Childhood & Adolescent Taxon Scale, VRAG Items, Cormier-Lang Criminal History Scores for Nonviolent Offenses, VRAG Score/Category of Risk (6 pages)

- MMPI-2 Profile for Basic Scores (1 page)

Plan/Rx:

Name and Title of Staff Performing Encounter:
PATRICIA PEREIRA, PH.D.
LICENSED PSYCHOLOGIST

Signature: Pereira Ph.D.

State law (RCW 70.02; RCW 70.24.105; RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

PRACTICE ADVISORY – RELEASE OF RECORDS

The practice records are released with the following understanding:

- Psychological practice records are of a highly confidential nature
- All practice records are to be returned or confirmed as destroyed at the conclusion of the legal proceedings and any appeals thereof
- Raw test data can be easily misinterpreted and needs to be discussed with individuals who are competent to use or analyse the raw test data
- The contractual obligations of the test purchaser require that attempts be made to protect the integrity of test material
- Practice records or test material will not be further copied except as strictly necessary for the purpose of the legal or other formal proceedings
- Access to test material and the testimony regarding test material will be restricted to the most limited audience possible
- That test material or any portion of such test material that are disclosed in pleadings, testimony, or other documents, will be sealed and/or removed from the court record in order to safeguard the integrity of the test material

Patricia Pereira, Ph.D.
Licensed Psychologist

Clinical Edition

Hare PCL-R: 2nd Edition

Robert D. Hare, Ph.D.

Name: [redacted] HICKS

Age: _____ Gender: (M) F

Rater: _____

Date: 11/06/09 (mm dd yyyy)

Ratings should be made while reviewing the criteria found in the PCL-R: 2nd Edition Rating Booklet or Technical Manual. Circle the appropriate rating to the left of each item. For items 17–20, refer to the notes provided below. Step-by-step instructions to complete this form can be found in chapter 2 of the PCL-R: 2nd Edition Technical Manual.

No.	Maybe	Yes	Omit		
0	(1)	2	X	1.	Glibness/Superficial Charm
0	(1)	2	X	2.	Grandiose Sense of Self-Worth
0	1	(2)	X	3.	Need for Stimulation/Proneness to Boredom
0	(1)	2	X	4.	Pathological Lying
0	(1)	2	X	5.	Conning/Manipulative
0	(1)	2	X	6.	Lack of Remorse or Guilt
0	1	(2)	X	7.	Shallow Affect
0	(1)	2	X	8.	Callous/Lack of Empathy
0	(1)	2	X	9.	Parasitic Lifestyle
0	1	(2)	X	10.	Poor Behavioral Controls
(0)	1	2	X	11.	Promiscuous Sexual Behavior
0	1	(2)	X	12.	Early Behavioral Problems
0	(1)	2	X	13.	Lack of Realistic, Long-Term Goals
0	1	(2)	X	14.	Impulsivity
0	(1)	2	X	15.	Irresponsibility
0	(1)	2	X	16.	Failure to Accept Responsibility for Own Actions
0	(1)	2	X	17.	Many Short-Term Marital Relationships
0	1	(2)	X	18.	Juvenile Delinquency**
(0)	1	2	X	19.	Revocation of Conditional Release**
0	(1)	2	X	20.	Criminal Versatility***

* If age is under 30 years: 0 = 0–1, 1 = 2, 2 = 3 or more, X = Omit.
If age is 30 years or over: 0 = 0–2, 1 = 3, 2 = 4 or more, X = Omit.

** 0 = no offenses; 1 = minor offense; 2 = major offense; X = Omit.

*** 0 = 0–3, 1 = 4–5, 2 = 6 or more, X = Omit.

Hare PCL–R: 2nd Edition
Robert D. Hare, Ph.D.

Scoring Grid

Name: [redacted] MICHAEL

Age: _____ Gender: (M) F

Rater: _____

Date: 07 / 06 / 09
mm dd yyyy

Ensure that all responses have transferred over to this page. For each item, copy the circled response into the unshaded box in the corresponding row. Add the numbers in each column and write each sum in the Totals row near the bottom of the page. Add the number of omitted items for each column and write the sum in the Number of Omitted Items row (refer to the attached tables for adjusted sums). Refer to attached profiles for *T*-scores and comparison tables.

Item	No	Maybe	Yes	Omit	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
1	0	(1)	2	X	1						1
2	0	(1)	2	X	1						1
3	0	1	(2)	X			2				2
4	0	(1)	2	X	1						1
5	0	(1)	2	X	1						1
6	0	(1)	2	X		1					1
7	0	1	(2)	X		2					2
8	0	(1)	2	X		1					1
9	0	(1)	2	X			1				1
10	0	1	(2)	X				2			2
11	(0)	1	2	X							0
12	0	1	(2)	X				2			2
13	0	(1)	2	X			1				1
14	0	1	(2)	X			2				2
15	0	(1)	2	X			1				1
16	0	(1)	2	X		1					1
17	0	(1)	2	X							1
18	0	1	(2)	X				2			2
19	(0)	1	2	X				0			0
20	0	(1)	2	X				1			1
Totals					Facet 1	Facet 2	Facet 3	Facet 4	Sum Facets 1&2	Sum Facets 3&4	Total Score
Number of Omitted Items					4	5	7	7	9	14	24
Adjusted Scores					AS	AS	AS	AS	AS	AS	AS

Factor 1 = Interpersonal/Affective
Factor 2 = Social Deviance

Facet 1 = Interpersonal
Facet 2 = Affective

Facet 3 = Lifestyle
Facet 4 = Antisocial

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[redacted] HEALTH RECORDS [redacted]

Hare PCL–R: 2nd Edition
Robert D. Hare, Ph.D.

Profile Forms

Name: [redacted] MICHAEL

Age: ____ Gender: (M) F

Rater: ____

Date: 01 / 06 / 09
mm dd yyyy

Profile for Male Offenders

T-Score	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
80							
79							
78							
77							
76							
75							
74							
73							
72							
71							
70							
69							
68							
67							
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14							
13							
12							
11							
10							
9							
8							
7							
6							
5							
4							
3							
2							
1							
0							

Profile For Female Offenders

T-Score	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
80							
79							
78							
77							
76							
75							
74							
73							
72							
71							
70							
69							
68							
67							
66							
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12							
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10							
9							
8							
7							
6							
5							
4							
3							
2							
1							
0							

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In Canada, 3770 Victoria Park Ave., Toronto, ON M2H 3M6, 1-800-268-6011. Internationally, +1-416-492-2627. Fax, +1-416-492-3343 or 1-888-540-4484

Violence Risk Appraisal Guide (VRAG)
Sex Offender Risk Appraisal Guide (SORAG)

(to be completed within 60 days of admission and updated if additional information is obtained)

Service Recipient's Name: [redacted] M.

Date of Admission: _____ Legal Status _____

Charges: _____

Date of Assessment: 01/06/09 Location: _____

Assessor/s Name/s: _____

_____

_____

Instructions*:

Use the attached sheets to document the scores for each item in the VRAG/SORAG assessment for this service recipient. Please refer to the supplementary scoring guidelines for select items (elementary school maladjustment, index offense, separation from parents before age 16, and failure on conditional release). Be sure and include a brief description of the data source for each item in the area marked "Evidence" on the form. Also include a brief description of the adequacy of your data base used to score the VRAG/SORAG. Use the "Summary of Results" section to document the results of the VRAG/SORAG assessment. Do NOT separate these pages.

If the service recipient does not have a sexual offense history, do NOT score the SORAG. If there is a history of sexual offending or if the committing index offense is a sex offense, score BOTH the VRAG and the SORAG or score the VRAG and an alternative actuarial sex offense risk assessment instrument in place of the SORAG– (e.g., the Static-99 is recommended). In either event, the VRAG must be filled out as a measure of risk for general violent recidivism for all cases. Raters will also complete a sex offender risk assessment instrument for sex offenders.

If there are inconsistent data for one or more items, score the instrument using a range. Fill in the HIGHEST score in the Raw Score blank and the LOWEST score in parentheses.

(Check the appropriate response)

1. Does this service recipient have a sexual offense history or index sexual offense? ____ Yes ____ No

2. Did you interview this service recipient to gather data for this assessment? ____ Yes ____ No

Comments about completeness/accuracy of information used to score the VRAG/SORAG:

_____

_____

_____

_____

_____

_____

* NOTE: Please refer to "Violent Offenders. Appraising and Managing Risk" (1998) by Quinsey, Harris, Rice, and Cormier for additional information on the VRAG and SORAG.

Service Recipient's Name: _____ Date: _____

Summary of Results

VRAG Results			SORAG Results
Raw Score (Lowest)	_____		_____
Items Scored as "0" Due to Lack of Information	_____	(fill in item numbers)	_____
Items Scored as a Range	_____	(fill in item numbers)	_____
*Risk Category (Low, Medium, High) based on VRAG/SORAG scores alone	_____		_____

* Do NOT specify a risk category for females. Simply indicate N/A in the space provided. Research on the VRAG with women has not supported its predictive validity in this population [See Harris, Rice, & Cormier, 2002, Law and Human Behavior 26 (4)]

Childhood & Adolescent Taxon Scale

1. Elementary School Maladjustment
   - No Problems 0
   - Slight (Minor discipline or attendance) or Moderate Problems 0
   - Severe Problems (Frequent disruptive behavior and/or attendance or behavior resulting in expulsion or serious suspensions) 1
   - Evidence:

2. Teenage Alcohol Problem:
   - No 0
   - Yes 1
   - Evidence:

3. Childhood Aggression Rating:
   - No Evidence of Aggression 0
   - Occasional Moderate Aggression 0
   - Occasional or Frequent Extreme Aggression 1
   - Evidence:

4. More than 3 DSM Conduct Disorder symptoms circled:
   - No 0
   - Yes 1

5. Ever suspended or expelled from school:
   - No 0
   - Yes 1
   - Evidence:

6. Arrested under the age of 16:
   - No 0
   - Yes 1
   - Evidence:

7. Parent alcoholism:
   - No 0
   - Yes 1
   - Evidence:

8. Lived with both biological parents to age 16 (except for death of parents):
   - Yes 0
   - No 1
   - Evidence:

TOTAL CATS SCORE: (Sum of Circled Scores 1 - 8) _____ 7

CONDUCT DISORDER SYMPTOMS (Unless otherwise noted, circle any item that the person did before the age of 18):

1. Often bullied, threatened or intimidated others
2. Often initiated physical fights
3. Used a weapon that could cause serious physical harm to others (e.g., a bat, brick, broken bottle, knife, gun)
4. Was physically cruel to people
5. Was physically cruel to animals
6. Stolen while confronting a victim (e.g., mugging, purse snatching, extortion, robbery)
7. Forced someone into sexual activity
8. Deliberately engaged in fire setting with the intention of causing serious damage
9. Deliberately destroyed others' property (other than by fire setting)
10. Broken into someone else's house, car, or building
11. Often lied to obtain goods or favors or to avoid obligations (i.e., "cons" others)
12. Stolen items of nontrivial value without confronting a victim (like shoplifting, theft, or forgery)
13. Before 13, stayed out late at night, despite parental prohibitions
14. Ran away from home overnight (or longer) at least twice while living in parental or parental surrogate home (or once without returning for a lengthy period)
15. Before 13, was often truant from school

Violence Risk Appraisal Guide (VRAG) Items:

1. Lived with both biological parents to age 16 (except for death of parent):
   - Yes ..... -2
   - No ..... +3
   - Evidence:

2. Elementary School Maladjustment:
   - No Problems ..... -1
   - Slight (Minor discipline or attendance) or Moderate Problems ..... +2
   - Severe Problems (Frequent disruptive behavior and/or attendance or behavior resulting in expulsion or serious suspensions) ..... +5
   - (Same as CATS Item)

3. History of alcohol problems (Check if present):
   - Parental Alcoholism
   - ✓ Teenage Alcohol Problem
   - ✓ Adult Alcohol Problem
   - Alcohol involved in prior offense
   - Alcohol involved in index offense
   - No boxes checked ..... -1
   - 1 or 2 boxes checked 0
   - 3 boxes checked ..... +1
   - 4 or 5 boxes checked ..... +2
   - Evidence:

4. Marital status (at the time of or prior to index offense):
   - Ever married (or lived common law in the same home for at least six months) ..... -2
   - Never married ..... +1
   - Evidence:

5. Criminal history score for nonviolent offenses prior to the index offense
   - Score 0 ..... -2
   - Score 1 or 2 0
   - Score 3 or above ..... +3
   - (from the Cormier-Lang system, see below)

6. Failure on prior conditional release (includes parole or probation violation or revocation, failure to comply, bail violation, and any new arrest while on conditional release):
   - No 0
   - Yes ..... +3
   - Evidence:

7. Age at index offense
   - Enter Date of Index Offense: ___/___/_____
   - Enter Date of Birth: ___/___/_____
   - Subtract to get Age:
     - 39 or over ..... -5
     - 34 - 38 ..... -2
     - 28 - 33 ..... -1
     - 27 0
     - 26 or less ..... +2

8. Victim Injury (for index offense; the most serious is scored):
   - Death ..... -2
   - Hospitalized 0
   - Treated and released ..... +1
   - None or slight (includes no victim) ..... +2
   - Note: admission for the gathering of forensic evidence only is NOT considered as either treated or hospitalized; ratings should be made based on the degree of injury.
   - Evidence:

9. Any female victim (for index offense)
   - Yes ..... -1
   - No (includes no victim) ..... +1
   - Evidence:

10. Meets DSM criteria for any personality disorder (must be made by appropriately licensed or certified professional)
    - No ..... -2
    - Yes ..... +3
    - Evidence:

11. Meets DSM criteria for schizophrenia (must be made by appropriately licensed or certified professional)

Yes ..... +3
No ..... +1
Evidence:

12. a. Psychopathy Checklist score (if available, otherwise use item 12.b. CATS score).....

4 or under ..... -3
5 – 9 ..... -3
10-14 ..... -1
15-24 0
25-34 ..... +4
35 or higher ..... +12

Note: If there are two or more PCL scores, average the scores.
Evidence:

12. b. CATS score (from the CATS worksheet)

0 or 1 ..... -3
2 or 3 0
4 ..... +2
5 or higher ..... +3

12. WEIGHT (Use the highest circled weight from 12 a. or 12 b.) ..... ____ +3

TOTAL VRAG SCORE (SUM CIRCLED SCORES FOR ITEMS 1 – 11 PLUS THE WEIGHT FOR ITEM 12): ____ 17

CORMIER – LANG CRIMINAL HISTORY SCORES FOR NONVIOLENT OFFENSES[1]

Instructions: Include ALL ARRESTS for ALL COUNTS for the following criminal offenses, including juvenile offenses. Write down the number of times the offender has been arrested (or the number of separate counts charged, which ever is highest) for each type of offense. Multiply that number by the weight in the column on the right and write that number in the blank. Total all of the resulting scores to obtain the total Cormier-Lang Criminal History Score.

Offense	Arrests/Charges	Weight	Score
Robbery (bank, store)		X 7 =	
Robbery (purse snatching)		X 3 =	
Arson and fire setting (church, house, barn)		X 5 =	
Arson and fire setting (garbage can)		X 1 =	
Threatening with a weapon		X 3 =	
Threatening (uttering threats)		X 2 =	
Theft over * (includes car theft and possession stolen prop)		X 5 =	
Mischief to public or private property over *		X 5 =	
Break and enter and commit indictable offense (burglary)	1	X 2 =	2
Theft under *(includes possession stolen goods under)	1	X 1 =	1
Mischief to public or private property under * (also public)		X 1 =	
Break and enter (includes break and enter with intent)		X 1 =	
Fraud (extortion, embezzlement)		X 5 =	
Fraud (forged check, impersonation)		X 1 =	
Possession of a prohibited or restricted weapon		X 1 =	
Procuring a person for, or living on the avails of prostitution		X 1 =	
Trafficking in narcotics		X 1 =	
Dangerous driving, impaired driving (including DWI)		X 1 =	
Obstructing peace officer (including resisting arrest)		X 1 =	
Causing a disturbance		X 1 =	
Wearing a disguise with the intent to commit an offense		X 1 =	
Indecent exposure		X2 =	

TOTAL CORMIER – LANG NONVIOLENT SCORE 3

* Roughly equivalent to larceny versus grand larceny, based on the value of the stolen property. In 1997, the critical value was $1000.

[1] Please see attached scoring guide for additional information about the Cormier-Lang System

VRAG

VRAG Score	Category or Risk
-24	Low
-23	Low
-22	Low
-20	Low
-19	Low
-18	Low
-17	Low
-16	Low
-15	Low
-14	Low
-13	Low
-12	Low
-11	Low
-10	Low
-9	Low
-8	Low
-7	Medium
-6	Medium
-5	Medium
-4	Medium
-3	Medium
-2	Medium
-1	Medium
0	Medium
1	Medium
2	Medium
3	Medium
4	Medium
5	Medium
6	Medium
7	Medium
8	Medium
9	Medium
10	Medium
11	Medium
12	Medium
13	Medium
14	High
15	High
16	High
17	High
18	High
19	High
20	High
21	High
22	High
23	High
24	High
25	High
26	High
28	High
32	High

MMPI-2

S.R. Hathaway and J.C. McKinley
Minnesota Multiphasic Personality Inventory-2™

Profile for Basic Scales

Minnesota Multiphasic Personality Inventory-2
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"MMPI-2" and "Minnesota Multiphasic Personality Inventory-2" are trademarks owned by
The University of Minnesota. Printed in the United States of America.

Name _____

Address _____

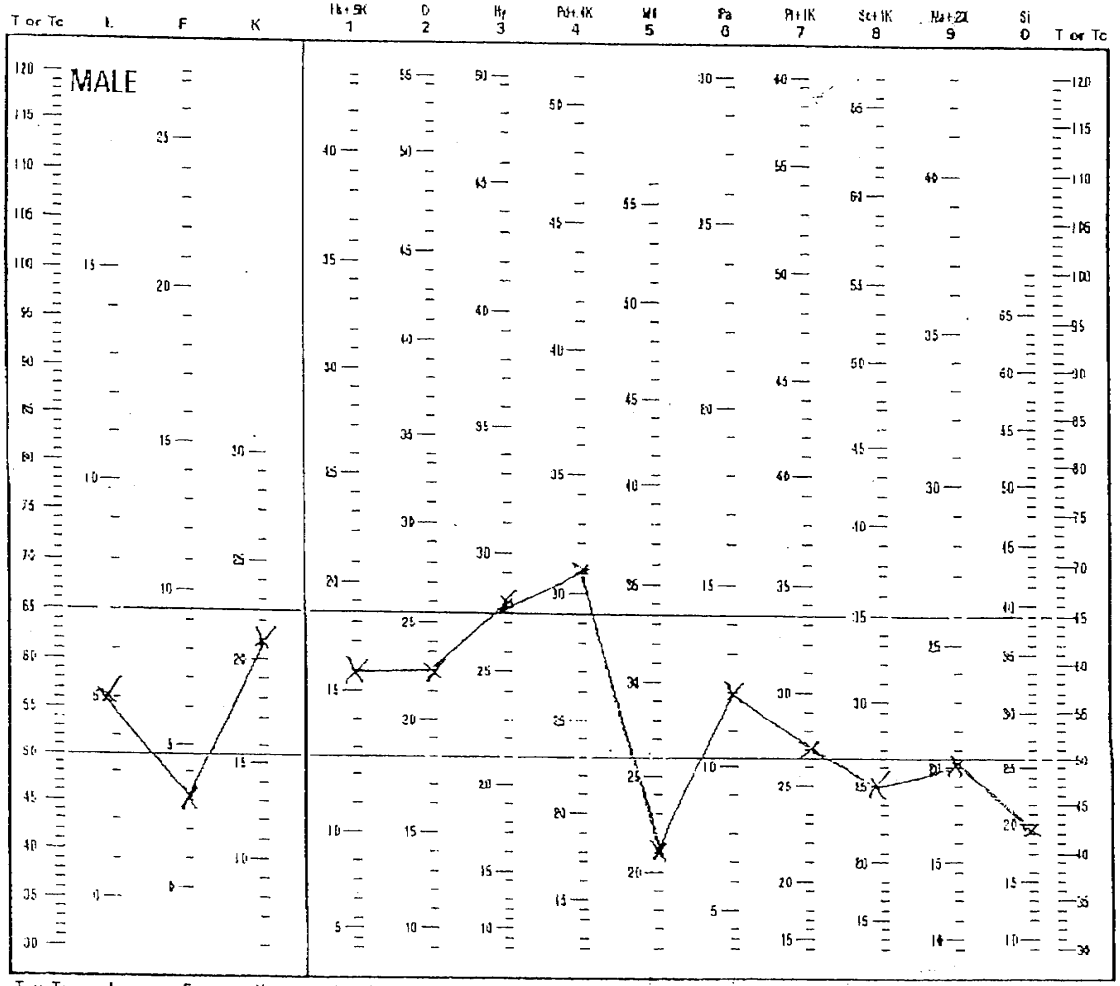
Occupation _____ Date Tested 01/07/09

Education _____ Age _____ Marital Status _____

Referred By _____

MMPI-2 Code _____

Scorer's Initials _____



Fanning of K

K	.5	.4	.2
30	15	12	6
29	15	12	6
28	14	11	6
27	14	11	5
26	13	10	5
25	13	10	5
24	12	10	5
23	12	9	5
22	11	9	4
21	11	8	4
20	10	8	4
19	10	8	4
18	9	7	4
17	9	7	3
16	8	6	3
15	8	6	3
14	7	6	3
13	7	5	3
12	6	5	2
11	6	4	2
10	5	4	2
9	5	4	2
8	4	3	2
7	4	3	1
6	3	2	1
5	3	2	1
4	2	2	1
3	2	1	1
2	1	1	0
1	1	0	0
0	0	0	0

	L	F	K	Hs+.5K 1	D 2	Hy 3	Pd+.4K 4	Mf 5	Pa 6	Pt+1K 7	Sc+1K 8	Ma+.2K 9	Si 0
Raw Score	5	3	21	5	22	28	23	21	12	6	4	16	19
? Raw Score	0												
K to be Added	11						8			21	21	4	
Raw Score with K	16						31			27	25	20	

NATIONAL COMPUTER SYSTEMS

24001

EXHIBIT 4c

LAW OFFICE OF
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SEATTLE, WASHINGTON 98104

TELEPHONE
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Feburary 10, 2009

Dr. Patricia Pereira
McNeil Island Corrections Center
Mental Health Program
P.O. Box 88900
Steilacoom, WA 98388-0900
Fax: (253) 512-5281

VIA FAX AND MAIL

Re: Michael E. [redacted]
DOC #[redacted]

Dear Mr. Pereira:

Thank you for forwarding to me your psychological evaluation and scoring sheets concerning Mr. [redacted]. I have some questions about the scoring and the ultimate conclusions. I am hoping you can answer these questions for me before Mr. [redacted]'s .420 hearing, which is currently scheduled for March 11, 2009. I am hoping to send in my packet to the ISRB by February 24.

HARE PCL-R

1. Glibness/Superficial Charm: I am wondering why you scored this as a 1 rather than a 0. According to the PCL-R technical manual at p. 35, a person fitting this description "is able to tell unlikely but convincing stories that place him in a good light." He also "appears to have knowledge in many areas, and may causally use technical terms and jargon effectively enough to impress most people. Careful questioning will usually reveal that his knowledge is only superficial." I did not notice anything in the ISRB file materials or in your interview of Mr. [redacted] that seemed to fit that description.

2. Grandiose Sense of Self Worth: Again, I am wondering why you scored this as a 1 rather than a 0. According to the manual, this item "describes an individual with a grossly inflated view of his abilities and self-worth. . . . His inflated ego and exaggerated regard for his own abilities are remarkable, given the facts of his life. . . . He is convinced that his present circumstances are the result of bad luck, unfaithful friends or an unfair and incompetent criminal justice system. He may see himself as the real victim of the 'alleged' crime because of the time he is forced to spend in jail." Further, "[h]e does not

see his future as being adversely affected by his contacts with the law" and "[h]e feels that the skilled trades taught in prison are worthless or beneath him."

Your interview with Mr. [redacted] does not seem to support this finding. It does not appear that Mr. [redacted] ever overstated his abilities. He did not blame his incarceration on others but rather said that his lawyers did the best they could, acknowledged that he was guilty, and said "you did it, you have to pay for it." 1/7/09 Psychological Report at 2. He acknowledged that it would be difficult for him to find work because of his criminal history. Id. at 4. Nevertheless, he noted that he had worked hard to learn skilled trades in prison and hoped to use those skills by working in a truck repair shop. Id. It would appear that Mr. [redacted]'s answers were the opposite in every regard of those described in the manual.

3. Need for Stimulation/Proneness to Boredom: The manual characterizes this as "living life in the fast lane" and "doing things that are "exciting, risky, or challenging." Technical Manual at 36. I can understand why this factor could apply to Mr. [redacted] as a youth, and perhaps during the early part of his incarceration.

I am not aware of any behavior in the last 20 years or so, however, that would fit this description. According to the Technical Manual at 20, when rating items such as this one "it would be reasonable to take into account *persistent and convincing* changes in behavior that have occurred over the last 5 or 6 years." (emphasis in original). Here, the changes have persisted for much longer than that.

4. Pathological Lying: "Item 4 characterizes an individual for whom lying and deceit are a characteristic part of his interactions with others." He fabricates "elaborate accounts of his past even though he knows that his story can easily be checked. . . . He may freely discuss and take pride and pleasure in his ability to lie." Technical Manual at 37.

It is not clear to me why you found this factor to be present. I did not see anything in your psychological report suggesting that Mr. [redacted] made false statements to you, or that lying and deceit have been "characteristic" of his interactions with others. If you believe any of Mr. [redacted]'s statements to you were false I would like an opportunity to present documentation to the contrary.

5. Conning/Manipulation: This item is "concerned with the use of deceit and deception to cheat, bilk, defraud, or manipulate others." Technical Manual at 37. Again, it is not clear to me what behavior you are relying on. If you could point me to the evidence you are relying on, I might be able to correct any erroneous information.

15. Irresponsibility: This item "describes an individual who habitually fails to fulfill or honor obligations and commitments to others." Technical Manual at 43. It is not clear to me what obligations or commitments you feel that Mr. [redacted] has not fulfilled. I have enclosed some letters from his family members confirming that he has shown his

commitment to them as best he can while incarcerated. His work record in prison also demonstrates a sense of obligation and commitment.

17. Many Short-Term Marital Relationships: I do not understand how Mr. [redacted] could have scored anything besides a 0 on this item. As your psychological report indicates, he has been married only once, and has remained married to the same woman for nearly 20 years.

If these items were all scored differently, Mr. [redacted]s score would decrease from 24 to 16.

VRAG

5. Criminal History Score for Nonviolent Offense Prior to Index Offense: You have listed two offenses -- burglary and theft. I am not aware of any allegation of burglary. If there is only one offense, the Cormier-Lang score would be 1, and the scoring on item 5 would therefore be 0 rather than +3.

10. Meets DSM Criteria for Any Personality Disorder: What personality disorder did you rely on? How did you determine that Mr. [redacted]n met the criteria? If Mr. [redacted] does not have a personality disorder, his score on this factor would reduce from +3 to -2.

If the scoring on items 5 and 10 were adjusted as I have indicated, the total score would be reduced from 17 to 9. That would place Mr. [redacted]in the "medium" rather than the "high" range.

Thank you very much for your consideration.

Sincerely,

/s/

David B. Zuckerman
Attorney for Michael[redacted]n

EXHIBIT 4d

Brett C. Trowbridge, Ph.D., J.D.
1102 State Ave. S.E., Suite 4
Licensed Psychologist #541, Attorney at Law #12433
Olympia, WA. 98506
(360) 754-3372
February 11, 2009

David Zuckerman, Attorney at Law
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

RE: Michael [redacted] DOB 9-07-'60 age: 48
Department of Corrections no. 261347

Dear Mr. Zuckerman,

At your request I evaluated your client, Michael [redacted] on April 21, 2008, at the McNeil Island Correctional Center (MICC), and I wrote you a report of my findings in a letter dated April 30, 2008. At that time I also reported the scores I had assigned to Mr. Erickson on the Hare Psychopathy Check-list – Revised (PCL-R) – I arrived at an overall PCL-R score of 16. Please consider this letter to be an addendum to that April 30, 2008, report.

I have now reviewed the report done by Dr. Patricia Pareira, a psychologist at MICC, who found that Mr. [redacted]'s score on the PCL-R was 24, and using that PCL-R score she scored Mr. [redacted] on the Variable Risk Appraisal Guide (VRAG), and concluded that he has a high risk of re-offending. You have now asked me to score Mr. Erickson on the VRAG. The following is my scoring:

1.) Lived with both biological parents until age 16. No. score is +3
2.) Elementary school maladjustment. Severe. Score is +5
3.) History of alcohol problems. one or two Score is 0
4.) Marital status at time of index offense. not married at that time Score is +1
5.) Criminal history score. One or two Score is 0
6.) Failure on prior conditional release. No Score is 0
7.) Age at index offense . age was seventeen Score is +2
8.) Victim injury. Death Score is -2
9.) Any female victim. No Score is -2
10.) Meets DSM-III criteria for a personality disorder. Debatable if yes, score is +3, if no, score is -2
11.) Meets DSM-III criteria for schizophrenia. No Score is +1
12.) Hare Psychopathy Check-list –Revised score. Sixteen Score is 0

Thus, the total VRAG score is 14 (if you assign Mr. [redacted] as having a personality disorder), and the total VRAG score is only 9 if he is not assigned a personality disorder. With a score of 14 Mr. [redacted] falls in the seventh VRAG category, and his probability of violent re-offending based on that VRAG score would be 55 percent if released for seven years, and 64 percent if released for ten years. If the score is 9, then Mr. [redacted] falls in the sixth VRAG category, with a 44 percent violent re-offense rate in seven years and a 58 percent violent re-offense rate over ten years of release. Either way Mr. [redacted]'s score (as I calculate it) does not fall into the "high" risk category, the cut-off for which is a score of 19.

However, the VRAG does not take into account that Mr. [redacted] is now 48 years old. Clearly his likelihood of re-offending is considerable lower than those VRAG outcomes, since violent offenses upon release are much reduced by the time an individual is in his late forties. In my view the VRAG was not designed to be used many years after the incident (Mr. [redacted] was seventeen when he committed his crime, over thirty years ago) in order to reach a risk assessment, as his scores on this instrument are the same now that they were thirty years ago, and do not take into account anything that has happened in Mr. [redacted]'s life since that time.

Thank you again for this interesting referral.

Sincerely yours,

Brett C. Trowbridge, Ph.D., J.D.

EXHIBIT 4e

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
MCNEIL ISLAND CORRECTIONS CENTER
P.O. Box 88900 • Steilacoom, Washington 98388-0900 • (253) 588-5281

February 12, 2009

Mr. David Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104

Dear Mr. Zuckerman,

Thank You for the fax dated February 11, 2009. When the test scores were requested you mentioned that you have a Psychologist who would be reviewing the information. In the fax, I do not see the name of any Licensed Psychologist or any report from a Licensed Psychologist who might have reviewed the test scores, the psychological evaluation report, and all other relevant information required for scoring and interpretation of the tests. The three page report I received asking why items received certain scores was signed by David Zuckerman, Attorney.

In the Practice Advisory attached to the test materials and faxed to you on January 15, 2009, it was stated: *Raw test data can be easily misinterpreted and needs to be discussed with individuals who are competent to use or analyse the raw test data.* Psychological test manuals caution users against using the manual in a cookbook fashion. The PCL-R Technical Manual discusses the qualifications required for clinical use and interpretation of the checklist, the construct of psychopathy, the limitations of ratings based on file reviews only, the clinical knowledge, training, and experience required for a psychological assessment and evaluation.

I was expecting a report from a Licensed Psychologist who had reviewed all the background information required for a psychological evaluation and who had the requisite training and clinical experience required for detailed psychological assessments. I look forward to reviewing a report written by a Licensed Psychologist who has reviewed the psychological evaluation report, the background information required for any psychological evaluation report, who has the clinical training, background, and experience required for such evaluations, and who is aware of the limitations of diagnoses based on file reviews only.

I apologize for the inconvenience. I hope you understand I am abiding by and adhering to professional standards. In future, I would forward additional test data only to individuals who have the requisite qualifications.

Thanking You,

Sincerely,

Patricia Pereira, Ph.D.,
Licensed Psychologist

EXHIBIT 4f

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February 13, 2009

Dr. Patricia Pereira
McNeil Island Corrections Center
Mental Health Program
P.O. Box 88900
Steilacoom, WA 98388-0900
Fax: (253) 512-6547

VIA FAX AND MAIL

Re: Michael E. [redacted]
DOC # [redacted]

Dear Dr. Pereira:

Thank you for getting back to me so quickly. My purpose in sending you my letter of February 11, 2009 was to see whether there might have been any factual errors in the materials you reviewed for your assessment. Obviously, I do not consider myself qualified to score any psychological test, but I do have some familiarity with Mr. [redacted]s background and with the facts and circumstances of his criminal convictions.

As we've discussed, I do have a licensed psychologist assisting me with this case as well. His name is Brett Trowbridge. Dr. Trowbridge initially reviewed Dr. Monson's report (which was at that time the most recent one) and prepared a report of his own. He has just completed a brief addendum after reviewing your report and scoring materials. I have enclosed both documents from Dr. Trowbridge for your review.

Thank you again for your assistance.

Sincerely,

David B. Zuckerman
Attorney for Michael [redacted]

Enclosures
DBZ:ek

EXHIBIT 4a

Brett C. Trowbridge, Ph.D., J.D.
Licensed Psychologist #541
Attorney at Law #12433
1102 State Ave. N.E., Suite 4
Olympia, Wa. 98506
(360) 754-3372

April 30, 2008

David Zuckerman, Attorney at Law
1300 Hoge Building
705 Second Ave.
Seattle, WA 98104

RE: Michael Erickson DOB 9-07-'60 AGE 47
Department of Corrections No. 261347

Dear Mr. Zuckerman,

At your request I evaluated your client, Michael [redacted], on April 21, 2008, at the McNeil Island Correctional Center (MICC). Mr. [redacted] is a pre-SRA (Sentence Reform Act) prisoner with a life maximum, so he is under the jurisdiction of the Indeterminate Sentence Review Board (ISRB). His last psychological evaluation, dated August 25, 2005, and written by David Monson, Ph.D., concludes, "He has many risk factors that mediate against him living successfully in the community. I believe Mr. [redacted] presents too great a risk to reoffend." However, a Hare Psychopathy Check List -- Revised (PCL-R) undertaken and scored at that time by Dr. Monson resulted in a score of 24, "indicating a low risk of committing another violent offense within four years after his release from custody." Dr. Monson apparently based his opinion of high risk to reoffend on the HCR-20 instrument, which is, of course, not an actual actuarial instrument, as it is subjectively scored based on clinical impressions.

On October 19, 2005, the ISRB held a .100 hearing, at which time they interviewed Mr. [redacted], who was requesting the opportunity to participate in a Mutually Agreed Plan (MAP). In their final decision, dated January 9, 2006, they stated, "Based on a review of all available materials and the interview with Mr. [redacted], the Board believes he is too great a risk to release at this time." However, they noted, "Mr. Erickson has programmed

successfully since 1988, having incurred only one major infraction, and that was for possession of tobacco while he was in a tobacco free facility. He has not had any assaultive behavior since that time and has completed virtually all programming available."

You asked me to evaluate your client, and to give my opinion as to the likelihood of his reoffending if he were released. Pursuant to my evaluation I traveled to MICC, where I evaluated and tested Mr. [redacted] on April 21, 2008. I took a history of his life, and discussed each of his prior criminal offenses with him. I administered five psychological tests. I scored Mr. [redacted] on the PCL-R.

I also reviewed three ISRB decisions (January 9, 2006; December 5, 1994; April 11, 1979), reviewed seven psychological/social assessments (August 26, 2005, evaluation by Dr. Monson; August 23, 2005, LSI-R Assessment; January 21, 2005, evaluation by Julie Manson-Lynn; September 13, 1995, evaluation by Dr. Page; March 21, 1994, evaluation by Jane Snyder; May 12, 1987, evaluation by Dr. Page; October 24, 1978, Pre-Sentence Report), reviewed various Department of Corrections (DOC) documents (August 24, 2005, Classification Referral; July 28, 1994, Classification Referral; August 3, 1993, Classification Referral; November 17, 1981, Infraction for Assaulting an Officer; October 22, 1981, Officer's Report Re: Assault; June 24, 1980, Report Re: Stabbing an Officer), reviewed a letter dated March 5, 2007, from Bruce Erickson, Mr. [redacted]'s father, reviewed various Certificates of Completion, and reviewed the Prosecutor's Statement to Board Re: Assault 1 Case.

My scoring of Mr. [redacted] on the PCL-R resulted in a much lower score than that obtained by Dr. Monson, as according to my scoring his total score was sixteen, which is not in the psychopathic range. Results of the Shipley Institute of Living Scale showed average intelligence. Mr. Erickson obtained a perfect score of thirty correct out of a possible thirty on the Mini Mental Status Exam (MMSE), a test of concentration, memory, and orientation. Results of the Beck Depression Inventory -- II (BDI-II) showed that Mr. [redacted] is somewhat depressed at present, and results of the Beck Anxiety Inventory (BAI) showed mild anxiety. Results of the Millon Clinical Multi-axial Inventory -- II (MCMI-II) were considered to be valid, although some possible exaggeration of symptoms was possible. Results showed depression and anxiety, as well as passive-aggressive personality characteristics.

Mr. [redacted]'s current job is that he works as recreation

assistant in the hobby shop. He suffers from Hepatitis C, and takes interferon and ribivarin to deal with that condition. Except for some heartburn he has no other physical problems.

Mr. [redacted] was born in Oklahoma, but his parents divorced when he was three years old, at which time he moved with his father to Morgan City, Louisiana, on the Gulf coast. His father worked there at a refinery. When Mr. [redacted] was about five years old his father re-married, and his step-mother lived with them from then until when Mr. [redacted] was eleven years old, at which time his father and step-mother divorced. Mr. [redacted] was raised as an only child. Mr. [redacted] told me that his father and step-mother had old-fashioned moral ideas, but he told me he feels his upbringing was generally a good one. He did not get along well with his step-mother, and he acknowledges that much of the problem had to do with his misbehavior and attitude problems, which made it difficult for her to handle him. He told me he remembers only one time when her physical punishment of him was disproportionate to the situation. He is not sure why his step-mother and father divorced.

Mr. [redacted] told me he regularly misbehaved in school. Because of his family's frequent moves he was often behind in school, and he repeated the first grade. He attended a Catholic school (although the family was not Catholic) from first grade through fifth grade. He told me, "I didn't want to be at school.", adding, "I liked to be the clown, and school really didn't interest me."

When he was eleven years old Mr. [redacted] was sent to a residential treatment center in New Orleans called River Oaks. His mother and step-father separated about the time he was sent there, and divorced while he was there. Mr. [redacted] stayed in that facility for a little over a year. He told me he was the youngest child in the facility, and thus had difficulty forming friendships there, especially as he was "extremely overweight". He was not placed on any medications. He frequently attempted to run away from the facility. There was no school program, so he did not attend school while he was there.

When he was released from River Oaks Mr. [redacted] had just turned thirteen. By that time his father had moved to New Orleans, where he had obtained a job working at a refinery. Mr. Erickson attended junior high school for about two weeks, but "I was so far behind in school, and I acted so unconventionally, and by then I had no discipline

whatsoever!" Mr. [redacted] simply quit attending school, and mostly stayed home at his father's residence, watching television. At times he did do some odd jobs.

When he was fifteen years old Mr. [redacted] was sent to Devereaux Schools in Victoria, Texas; he was sent there under the legal umbrella of being "incorrigible". According to Mr. [redacted], "I started trouble there to cover my own deficiencies, so they kicked me out of school and out of their program." Mr. [redacted] reports that while he was at Devereaux he took a teacher's vehicle and drove it away a short distance before he was apprehended; he was never charged with that crime. Thus, Mr. [redacted] did not have any criminal record at the time of the homicide that occurred when he was seventeen years old in Benton County, Washington.

By the time he was asked to leave Devereaux his father had moved back to Oklahoma, and Mr. [redacted] decided he did not wish to live there, so instead he returned to New Orleans, where he was homeless, and lived in a van with a friend. He had no means of supporting himself financially, so "I lost massive amounts of weight because I was too scared to steal!" Eventually the police in Louisiana sent him to live with his paternal grandparents in Oklahoma City; his father was living there too at that time. Mr. [redacted] worked in a factory that manufactured socks for about a year and a half, the longest job he has ever held. Mr. Erickson managed to save up a small amount of money.

Mr. [redacted] met a twenty-four year old woman through some friends at the sock factory. He and she decided they wanted to marry, and decided they wanted to leave Oklahoma and travel. They left her child with her parents in Oklahoma and set out in Mr. [redacted]'s car for California, with the idea that after they had traveled through California they were going to travel to Alaska. According to Mr. [redacted] at that time he had little idea what he was doing, as, "I wasn't well-founded in reality. I could only read real basic stuff -- I couldn't add or subtract above ten!" He decided to send his fiance home shortly after they arrived in Washington State-- she was pregnant at the time with his child.

Mr. [redacted] traded his old car for another even older car. He met some people in a migrant camp, all of whom were older than he was, and he had only known them a short time at the time of the homicide. One of them, who was thirty-four years old, told Mr. [redacted] he suspected the victim (age twenty-three) of being a police informer. As

they were riding in the back seat of the car the thirty-four year old stabbed the victim while Mr. [redacted] hit him with a club. The body was buried in a shallow grave, but one of the other men in the car immediately contacted the police, reportedly as he was afraid he himself might be killed. Mr. Erickson was caught within about an hour of burying the victim. Mr. [redacted] remembers telling the authorities he thought the victim was an informant. Mr. [redacted] told me he became angry at the authorities, and at the trial Mr. [redacted] said he alone had done the killing, causing the thirty-four year old to be acquitted. Mr. [redacted] was sentenced to life for the second degree murder. While he was in the Benton County Jail Mr. [redacted] assaulted another inmate, punching him in the face four times; this happened on the same day Mr. [redacted] was sentenced on the murder. Mr. [redacted] told me punched the man because he had told Mr. [redacted] he was going to be raped in prison. He pled guilty to the second degree assault and an arson charge (for setting fire to a mattress in the jail) was dismissed.

Mr. [redacted] ended up in the Washington State Reformatory in Monroe. In 1980 Mr. [redacted] stabbed a guard. According to Mr. Erickson he did so because the guard repeatedly called him names, and Mr. [redacted] felt he needed to prove to the other inmates that he would not tolerate insults. The guard had eight stitches to close the wound in his abdomen. When discussing this stabbing incident, Mr. [redacted] told me, "He surely didn't deserve it!" He was convicted of assault in the first degree, and was transferred to the Washington State Penitentiary in Walla Walla.

Mr. [redacted] was at Walla Walla from 1980 until 1995. At first he was violent, and had numerous infractions, but since the mid-1980's Mr. [redacted]'s institutional adjustment has been good. In 1995 he was sent to Airway Heights for one year, but he decided he wanted to return to the body shop at Walla Walla where he had been working while there, and he was back at Walla Walla from 1996 until 2000, at which time he was sent to McNeil Island, where he has remained since that time.

Mr. [redacted] married in 1989 to a woman who is now 47 years old. She lives in Spokane, and is disabled due to a serious automobile accident; her disability makes it very difficult for her to travel. Although they are still married, at this point Mr. [redacted] does not view their relationship as being a romantic one, although, "I care about her!". During his incarceration Mr. [redacted] has had only limited contact with his father.

As mentioned above, Mr. [redacted] told me he hopes to be released through a MAP. He said he hopes to perhaps be released initially through a half-way house, where he can be gradually re-integrated back into society.

It is well known that most crimes are perpetrated by people who are adolescents or are in early adulthood. It is also well known that experts using mere clinical prediction tend to over-estimate the likelihood that a person will reoffend if released. Researchers had an opportunity to record data from a natural experiment which demonstrated clinical over-prediction of violence when the U.S. Supreme Court, in Baxtrom v. Herald, 383 U.S. 107 (1966), set in motion the release of some 967 offenders from a maximum security hospital in New York state who had been detained longer than their maximum sentence. These offenders, none of whom had been acquitted by reason of insanity, were released to local hospitals, and for the most part were eventually released to the streets. The follow-up studies demonstrated a low rate of post-release violent behavior; after 4.5 years only two men had been re-incarcerated for committing a violent crime, yet all of the released men had been retained past their release dates because hospital staff thought they were still dangerous. See Steadman, H.J. & Concozza, J.J. (1974). Careers of the criminally insane: excessive control of deviance.

This over-predictive effect is especially true for older offenders. The actual recidivism rate for serious offenders who are released after the age of fifty (about five percent reoffend within five years of release) is so low that an argument can be made that for the group of older offenders the age of the offender at the time of release is the very best predictor, out-weighing other variables. See Porter, S.; Burt, A.R.; & Boer, D.P. (2001). Investigation of the criminal and conditional release profiles of Canadian federal offenders as a function of psychopathy and age, 25 Law and Human Behavior, 647-661

By the time Mr. [redacted] has his next .100 hearing he will be at least forty-eight years old. If the ISRB were to grant him approval for a MAP at that time he would still be incarcerated for a significant period of time after that, as he would be gradually released into the community. Thus, by the time he was released without substantial supervision he would be over fifty years old, an age at which his statistical chance of re-offending is quite low. Furthermore, all agree that his PCL-R score is not within the psychopathic range. In my opinion the ISRB

should take into account Mr. [redacted]s increasing age as well as his relatively low PCL-R score when deciding whether he can safely be gradually released back into the community.

Thank you very much for this interesting referral.

Sincerely yours,

Brett C. Trowbridge, Ph.D., J.D.

Brett C. Trowbridge, Ph.D., J.D.
Licensed Psychologist #541, Attorney at Law #12433
1102 State Ave. N.E., Suite 4
Olympia, Washington 98506
(360) 754-3372
April 30, 2008

David Zuckerman, Attorney at Law
1300 Hoge Building
705 Second Ave.
Seattle, WA 98104

RE: Michael [redacted] DOB: 9-07-'60 AGE: 47
Department of Corrections No. 261347

Dear Mr. Zuckerman,

My scoring of Mr. [redacted] on the PCL-R factors is as follows:

1.)	Glibness, superficial charm	0
2.)	Grandiose sense of self-worth	0
3.)	Need for stimulation/proneness to boredom	1
4.)	Pathological lying	0
5.)	Conning/manipulative	0
6,)	Lack of remorse or guilt	1
7.)	Shallow affect	1
8.)	Callous/lack of empathy	1
9.)	Parasitic lifestyle	1
10.)	Poor behavioral controls	2
11.)	Promiscuous sexual behavior	0
12.)	Early behavior problems	2
13.)	Lack of realistic long-term plans	2
14.)	Impulsivity	2
15.)	Irresponsibility	0
16.)	Failure to accept responsibility for actions	1
17.)	Many short-term marital relationships	0
18.)	Juvenile delinquency	2
19.)	Revocation of conditional release	0
20.)	Criminal versatility	0
	TOTAL:	16

THE TROWBRIDGE FOUNDATION

Trowbridge is Executive Director of the Trowbridge ıdation, a non-profit established in 1999 to ninate information about forensic psychology. He ıublished the following additional articles in the *ıridge Report*, a quarterly publication, and they are able to download in their entirety at the ⁄bridge Foundation website:

www.trowbridgefoundation.org.

ıgering Exposed (with Philip Frank, Ph.D.):
ssion Law in Washington, and the Psychologist's Role essing the Validity of Confessions.

Supreme Court Finds Execution of the Mentally Re- d "Cruel and Unusual"; You Have to Pass a Test Before Can Be Put to Death?

cating Incompetent Defendants Against Their Will to re Competency: Sell vs. United States Changes Current ice

r. Brett C. Trowbridge, Ph.D., J.D.
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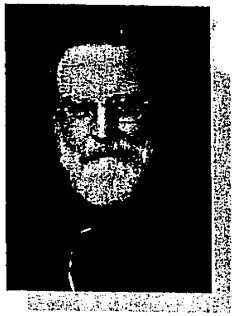
BCT Brett C. Trowbridge, Ph.D., J.D. *Forensic Psychology*

A Forensic Psychologist providing evaluations and legal consultation in cases involving:



- Competency to stand trial
- Insanity
- Diminished capacity
- Sentencing issues
- Risk assessment
- Decline
- Childhood incapacity defense
- Validity of Miranda rights waivers
- Voluntariness of confessions
- Suggestibility and leading questions
- Mental retardation in potential death penalty cases
- Sexual predator evaluations
- Competency and reliability of child witnesses
- Self defense as a mental defense
- PTSD and battered women syndrome
- Eyewitness evidence
- Competency of child witnesses
- Suggestible line-ups & photo-spreads
- Competency of testators

EXHIBIT 46

Disclaimer

Releasing

Psychological Test Data/Raw Scores
By
Washington State Department of Corrections

The data enclosed is part of a psychological evaluation/assessment performed for diagnostic and treatment purposes and is intended to be used by persons specifically trained in psychological assessment techniques including but not limited to psychological interviews, psychological test instruments, psychological raw test data interpretation, meaningfulness of raw test data, and validity and reliability measures. These data are considered confidential under DOC policy 640.020 and are part of the medical/mental health record with access controlled by the health authority. These data may not be released to others without the written consent of the offender, or in response to a court order, other appropriate legal action, law, or statute. When required by court order or in response to other appropriate legal action, law, or statute to release raw test data, DOC and its employees shall not be held responsible nor civilly or professionally liable for information released to or used by any other agency, entity, group, or individual not trained or qualified to use such data.

August 27, 2001

EXHIBIT - Q
Memorandum of Prisoner For
Mr. Dyer's 2010 Parole Hearing

Parolability (.100) Hearing
January 13, 2010
McNeil Island

INDETERMINATE SENTENCE REVIEW BOARD
STATE OF WASHINGTON

In the Matter of: RICHARD J. DYER, DOC # 281744	PRISONER'S MEMORANDUM RE: .100 HEARING

I.
INTRODUCTION

Mr. Dyer returns to the ISRB for a new parolability (.100) hearing following remand from the Washington Supreme Court in Personal Restraint of Dyer, 164 Wn.2d 274, 189 P.3d 759 (2008) ("Dyer III"). He asks the Board to find him parolable and to authorize transfer of parole to Oklahoma, where his wife lives. If he cannot be released to Oklahoma, he can make alternative arrangements locally.

Mr. Dyer's case is quite unusual. Despite glowing evaluations from DOC staff, strong family ties, and positive psychological evaluations, he has been repeatedly denied parole because he maintains his innocence and therefore is not eligible for the Sex Offender Treatment Program (SOTP). The Washington Supreme Court has taken his case three times, once finding that the ISRB abused its discretion in denying parole. Currently, the Innocence Project Northwest is investigating his case. As of the hearing date, Mr. Dyer will have served a sentence of over 500 months for offenses carrying a standard range of 85 under the SRA.

Unless otherwise noted, all documents discussed in this brief can be found in the Board's file. Undersigned counsel has verified that the Board members generally view the file electronically. He will therefore cite to the folder and document name as in the electronic file.

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Any new documents are enclosed as exhibits. I have provided the ISRB with a scanned copy of the entire defense packet, using folders and sub-folders for organization.

II.
STATEMENT OF THE CASE

A. MR. DYER'S BACKGROUND

Mr. Dyer was born on December 20, 1948 in Bremerton, Washington, and has three brothers (one of whom has died) and one sister. His father, who had attended college and worked for both the U.S. Marines and U.S. Navy, died in 1969. His mother died in 1980. Dyer earned his high school diploma and has taken enough college courses over the years to finish approximately one year of college.

Mr. Dyer married Janet Cutting in 1967 and joined the Army the same year. Dyer served in heavy combat during the Vietnam War for two years, earning 19 medals, including two Bronze Stars and one Purple Heart. See Ex. 1. He and Cutting divorced in 1972. In 1976, Mr. Dyer moved back to Bremerton. He worked in the naval shipyards as a laborer, a tank cleaner, a boat motor operator and ultimately a foreman in charge of hazardous waste disposal.

Mr. Dyer married Ethel Acord in 1978 and they had two sons, Richard Jr. and Mark, before divorcing in 1980. Mr. Dyer met his third wife Renetta when she was pregnant and they married on August 1, 1981. Although he did not formally adopt Renetta's daughter, Stephanie, she was given his last name, they have always had a father-daughter relationship. Mr. and Mrs. Dyer went on to have two children together, Matthew and Lisa.

During his incarceration, Mr. Dyer has managed to thrive financially. In the early 1980s, Dyer worked hard in Class I industries. At the Washington State Reformatory, he was a floor manager for Redwood Industries, producing clothing for various retailers including Eddie Bauer. Through Prudential Securities, he invested his money wisely in such companies as Microsoft and AOL. He later diversified into real estate with the help of his son, Richard, Jr. Mr. Dyer also

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receives monthly disability payments from the U.S. Department of Defense due to PTSD and various wounds. The monthly payments from the government and from real estate are sent to a trust account at the law firm of Ryan, Sells and Uptegraft. Office Administrator Terre Skelly disburses payments according to Dyer's directions. Ex. 2. See also June 30, 1998 letter from attorney James Sells, detailing Dyer's fiscal responsibility, integrity, and devotion to his family. (Misc. Letters\Misc. Letters 3-31-1982 to 10-28-1998, p. 106-07).

Mr. Dyer has maintained close contact with his family throughout his incarceration, and has helped to support them financially. For over 10 years, Mr. and Mrs. Dyer participated in DOC's Extended Family Visit program. Matthew and Lisa were conceived during these visits. In later years, the entire family stayed together in the trailer. When DOC denied further trailer visits in 1995, a young Lisa Dyer wrote:

> Trailer viest mean more to me because I can talk to my dad without outh peple there It makes me fell like a real family. So I can give my dad a huge and a kiss when ever I want to. So we can be like a normal family. We can play games whithout outher people there. We are a faimily but not with out him
>
> You friend
>
> Lisa

See In re Dyer, 143 Wn.2d 384, 403, 20 P.3d 907 (2001) (dissenting opinion of Justice Sanders).

Although the family can no longer have trailer visits, Dyer maintains constant contact with them through letters, telephone calls, and visits in the visiting room. The ISRB's files are filled with letters of support from Dyer's family throughout his long years in prison. This includes his sons from his marriage to Ethel Acord, Richard and Mark. Recently, Lisa brought her toddler daughter Hailey to visit Grandfather Dyer. Ex. 3. Lisa Dyer's latest letter to the Board includes the following:

> Throughout my life, my dad has taken care of me and my mother and siblings. Because he could not be there for us at home, he not only made sure we were provided for, but also, has always given us many gifts. Cars on our 16th

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> birthdays, trampolines, vacations to Disney World, etc. He even fought to get his Veteran's Benefits so that his children could go to college for free. . . . He calls home several times a week, pays for us to come visit him and never forgets a birthday. Now that he is a grandfather, he tires to be a part of his granddaughters' lives to the best of his ability. I was not able to have my dad in my life while I was growing up and I hope and pray that he will be home soon to enjoy his grandchildren.
>
> My dad has a home and family to return to. There are still birthdays and family vacations to be had. on behlf of myself, my daughter and family, I ask that you please let him come home.

Ex. 4. Matthew and Stephanie add similar sentiments. Exs. 5 and 6. Richard Jr. explains how his father has been a constructive force in his life ever since they were reunited about 15 years ago. Ex. 7. See also, Letter from Renetta Dyer (Misc Letters\Support Letter and Response – 9-11-2006).

In addition to supporting his family, Mr. Dyer has worked hard to improve himself and other prisoners. Numerous DOC staff, work supervisors, and therapists have written letters of support over the years. At Monroe, Dyer was instrumental in starting the Course in Miracles study group and was president of the Toastmasters Club. January 7, 1986 letter from Pastor Jonathan Nelson (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 172-173); February 22, 1994 letter from therapist Thomas H. Harvey (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 135-136); February 27, 1994 letter from Dr. Greg Shipp (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 130-131). Dyer demonstrated a "strong commitment to treatment" for his PTSD. July 8, 1998, letter from therapist Kristie Gow (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pg. 78). Psychotherapist Leonard Shaw noted Dyer's "positive force in prison" in letters to the Board dated January 17, 1994 (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 138-139), July 27, 1998 (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 79-81), and September 16, 2006 (Misc Letters\Atty. Briefings for 10-06 Hearing – 10-13-2006, pg. 49). Dyer "contributed to the continuity and success" of the Moral

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Reconation program, first as a participant and then as an inmate facilitator. July 30, 1998 letter from Counselor Rozell. (Misc. Letters\Misc. Letters 3-31-1982 to – 10-28-1998, p. 28).

Mr. Dyer's work habits have been exemplary. He has consistently received superior Inmate Performance Evaluations. Ex. 8. Several DOC staff have gone out of their way to write separate letters or memos praising Dyer's work. See June 17, 1983 letter from Tana Wood associate superintendent of WSP (Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pg. 92); September 1, 2004 memo from Dan Zoolkoski; January 27, 2005 letter from Greg Benjamin. Exs. 9 and 10.

The Board's file contains numerous commendations, certificates and scholastic records. (CD & Program Information\E-mail re no CD-Program Info – 8-23-2006, pp. 5-8; Misc Letters\Misc Letters 3-31-1982 to – 10-28-1998, pp. 29-33, 66-72, 73-75, 93-101, 126). Attached as exhibits are Dyer's counselor's license and certificate as an ordained minister. Exs. 11 and 12.

Dyer's latest Facility Plan is dated September 14, 2009. His job performance is once again "superior in all categories." "In addition, inmate Dyer volunteers for numerous community activities such as the Heart Drive, Veterans Fundraisers, Kios Religious Retreat, and continues to be involved as a C-Unit Tier Rep." (530s & ISRB Reports\Facility Plan – 9-19-2009 added 10-09)

Mr. Dyer will be 61 by the time of his hearing. His health has deteriorated over the years. His facial wounds from shrapnel have led to cataracts in his right eye. DOC will not permit Dyer to undergo surgery because he can still see out of his left eye. In recent years, Dyer developed coronary artery disease. He has had several cardiac stents inserted. He suffers from heart palpitations, bradycardia (periods of abnormally slow heartbeat) and syncope (fainting due to lack of blood flow to the brain). He has a cervical spine injury and lumbar disk disease, and has required surgery for carpal tunnel syndrome. See Ex. 13 (2/6/09 report of Dr. Karen Forbes).

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B. CRIMES OF CONVICTION

Dyer's only criminal convictions are two counts of rape in the first degree following a trial in Kitsap County Superior Court in 1982.

In the ISRB's most recent Decision and Reasons in Dyer's case, it stated that the sentencing judge recommended Dyer "should be held in custody until the Parole Board is absolutely sure that he will not reoffend or until the end of his natural life" while the prosecuting attorney recommended a 50 year (600 month) minimum sentence. Those recommendations were made, however, when Dyer stood convicted of an additional three counts of conviction against his ex-wife Ethel Acord: unlawful imprisonment, first degree burglary, and first degree rape. Those convictions were overturned on appeal. See State v. Dyer, No. 6162-7-II (August 14, 1984) (Sentencing & Legal Information\APPEALS COURT Decisions and Sentencing Documents up to – 7-2, pp. 33-44). On remand, a different judge struck the three reversed convictions from the judgment and sentence, but nobody made a revised recommendation. Ex. 14. While the statutory maximum sentence remains life, the Board cannot assume that the sentencing recommendation for five convictions would be the same as for two. See generally, Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948); United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L. Ed. 2d 592 (1972); State v. Parker, 132 Wn.2d 182, 937 P.2d 575 (1997).

As the Board is well aware, Dyer has always maintained his innocence of the crimes. Dyer understands that the ISRB cannot disregard the jury's verdict. Nevertheless, it may be helpful to set out some of the facts so that the Board can see why Dyer's claim of innocence is not incredible.

Dyer stands convicted of the rape of two strangers. Both counts turned on the victims' eyewitness identification testimony, with no confirming DNA, blood-typing, or fingerprint analysis. The Court of Appeals described the first rape as follows:

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> On January 27, 1980, after accepting a ride from two men at 2:30 a.m. in Bremerton, Ms. A was kidnapped and raped. The men drove her somewhere near a pond where the driver undressed and raped her the first time. He then made her lie naked on the floorboards as they drove to a house. Before leaving the car to go into the house he put a coat over her head so that she could see very little. In the house she was tied hands and feet to a bed with ropes that were already there. The driver replaced the coat over her head with cotton balls and taped them over her eyes. Ms. A was able to see little of the rapist or her surroundings for the rest of the night. When the other man left, the driver undressed, applied contraceptive foam to Ms. A, and raped her a second time. The sexual assaults continued throughout the night. At one point the driver untied her, turned her from her back to her stomach, and raped her in the new position. In the morning he gave her a bath and dressed her in her clothes which had been washed and dried. Ms. A was then driven to a rural area and released.

State v. Dyer, No. 6162-7-II (August 14, 1984), Unpublished Opinion at 2.

The Court described the second rape as follows:

> Late at night on August 23, 1980, Ms. B was walking alone in downtown Bremerton. After twice refusing an offer of a ride from two men, she was forced into their car and driven to a dump area. The car got stuck and, after trying unsuccessfully to escape, Ms. B helped the driver get it free. The three then drove back to the main road where the driver stopped and put cotton balls secured with tape over Ms. B's eyes. She remained blindfolded throughout the night. Ms. B was then taken to a house, undressed by the driver and tied hands and feet to a bed. When the other man left, the driver applied contraceptive foam to her and raped her repeatedly as she lay on her back and then on her stomach. The next morning the driver washed and dried her clothes, gave her a bath and dressed her. Ms. B was released in a park.

Id. at 3.

Dyer testified at trial and denied any involvement in these crimes. (RP 1043). His defense was misidentification.

On the day that the rapist released her, Ms. A gave the following descriptions:

1. The perpetrator was five-two or five-three, with no mustache (RP 475).
2. The rapist's house was approached on a gravel road (RP 480-81); it had two wooden steps outside the front door (RP 485); it was new, had no yard and had only gravel around the house (RP 488); the outside of the house was tan or yellow (RP 602); one turned right from

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the hallway of the house to go into the bedroom (RP 486); and there was a counter arrangement between the kitchen and living room. (RP 491).

3. The rapist drove a Comet. Ms. A knew this because she saw the word "Comet" on the back as it drove away. (RP 498-99).

Defendant presented the following evidence:

1. He was five foot seven inches tall (RP 1038) and had worn a mustache since his days in military service. (RP 1041-42).
2. His house had an asphalt driveway (RP 1057); it did not have a tan or yellow exterior (Exs. 12, 114); one turned left from the hall into the bedroom (RP 1053); and there was no bar or counter between the kitchen and living room. (RP 1055).
3. In January of 1980, he owned a Mercury Meteor. (Trial Ex. 102).

The day after the incident, the police drove Ms. A through Dyer's neighborhood in an attempt to locate the house, and she did not recognize it. (RP 609-10). When shown Dyer's house on September 25, 1981, (after Dyer was charged) she could not positively identify it. (RP 602).

When Ms. B. was interviewed by the Kitsap County Sheriff's office on August 24, 1980, she said that she would be unable to identify her assailant. (RP 648). Her initial description of him to the Sheriff (Trial Ex. 112) was only that the man was white with a mustache and short hair.

Dyer was not considered a suspect in these crimes until September, 1981, when his second wife, Ethel Acord, reported to the police that Dyer had raped her. As the three-Justice dissent explained in In re Dyer, 143 Wn.2d 384, 20 P.3d 907 (2001) ("Dyer I"):

> Dyer's conviction for the alleged rape of his second wife was reversed by the Court of Appeals which found it to be tainted by impermissible evidence. There is also substantial evidence undermining the veracity of Dyer's second wife and her allegations. For example, in dissolution proceedings her claims that he had not paid child support since the divorce were directly contradicted by receipts, court pleadings, and her own subsequent testimony. A number of factual inconsistencies existed in her testimony as well regarding the alleged rape itself,

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> which she failed to report for a year, and then only after he announced his intention to wed Rennetta [Dyer].

Id., 143 Wn.2d at 409.

In January, 1982, Ms. B. traveled from Texas, where she then lived, to testify at Dyer's trial. (RP 641). In the interim, she made no further efforts to identify her assailant. The detectives never offered her a photographic montage or line-up to determine whether she would identify Dyer. (RP 652). On January 22, 1982, Ms. B. was seated in the hall outside the courtroom ready to testify when she saw the defendant, in handcuffs, being led into the courtroom by two policemen. (RP 639). Based on this episode, defendant moved to suppress her in-court identification. (RP 555-558). The court denied the motion. (RP 665). Ms. B then testified that she recognized Dyer as the man who raped her. (RP 705).

At trial, doctors testified that they found sperm in vaginal samples from Ms. A and Ms. B. RP 239; 245-46. The sperm was not tested to see whether it could have come from Dyer. In 2001, in view of Substitute Senate Bill 5896, Dyer requested DNA testing to prove that he was not the perpetrator. Unfortunately, any evidence that could have contained genetic material had been destroyed by that time.[1] Exs. 15–17.

After reviewing the latest Supreme Court decision in Dyer's case, the Innocence Project Northwest contacted undersigned counsel and offered to begin their own investigation. Unfortunately, they have so far had no more luck than I did in obtaining evidence that could be tested.

[1] The Sheriff's Office had destroyed all evidence in its possession, and the clerk's office did not maintain the vaginal swabs, or any clothing of the victims, as exhibits.

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C. PROCEDURAL HISTORY BEFORE THE ISRB

1986 through 2000

On September 15, 1986, the ISRB set Mr. Dyer's minimum term at 240 months. It recognized that the SRA standard range was only 63-88 months. The ISRB imposed an exceptional sentence based on the aggravating factor of "deliberate cruelty" and on the prosecutor's and judge's original sentencing recommendations.

In 1995 and 1998, the ISRB considered Mr. Dyer for parole under RCW 9.95.100. Both times he was found not parolable and his minimum term was extended by 60 months.

2001 .100 hearing

On September 26, 2001, DOC psychologist Carson E. Carter prepared a report at the Board's request. (Psych & Medical Information\Psych Eval – 9-26-2001) He noted that "Mr. Dyer had a distinguished career in the army, spending 9 years in that service until he was honorably discharged in 1976." Id. at 2. During his two tours of duty in Vietnam he received numerous medals and awards. Id. He then began a successful career as a supervisor at the Puget Sound Naval Shipyard. In prison, Mr. Dyer "has programmed extensively in a highly successful manner." Id. "Mr. Dyer suffers from no serious mental illness, but he does suffer the lingering effects of PTSD, much like many war veterans." Id. In the clinical interview, Mr. Dyer "did not appear to be overly controlled nor did he appear glib or deceptive; he was articulate in a simple, modest manner." Id. at 3.

Carson Carter administered several psychological tests. "On both the Minnesota Sex Offender Screening Tool-Revised (MSOST) and the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) Mr. Dyer received low scores. **His scores are typical of sex offenders who present a low risk to reoffend.**" Id. at 3 (bold type in original).

> On the Hare Psychopathy Checklist-Revised (PCL-R) Mr. Dyer received a **very low score** indicating a **low risk** of committing another violent offense within six months after his release from custody. His score was 5, which is the lowest score this psychologist has ever interpreted on this test.

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Id. at 4 (bold type in original). Carter's "Summary and Conclusions" end as follows:

> Mr. Dyer has a legitimate home address, realistic plans for the future, and employable skills; he is prepared to take his place in society as a productive citizen. If we are gauging risk, he has met the criterion for a less restrictive environment. According to the file data, interview and tests, this person could be considered for community supervision with less concern for the community than many of the offenders who are released into society.

Id.

Apparently in response to questions from Hearing Officer Richard LaRosa concerning Carson Carter's credentials, Psychologist David Monson prepared a memo to the ISRB dated November 9, 2001. (Psych & Medical Information\Psych Eval – 9-26-2001, pg. 1) It includes the following:

> Mr. Carter has been doing risk assessments and psychological evaluations in prisons for thirteen years and has become very expert in his field. He consulted with me, as his supervisor on the evaluation he did on Mr. Dyer and I completely support his conclusions and recommendations.

On October 1, 2001, the Department of Corrections prepared a Classification Referral, which was "presented as a .100 progress hearing report." (530s & ISRB Reports\Classification Referrals up to – 10-2-2001, pp. 1-2.) It indicates that Dyer completed the following offender change programming: Anger/Stress Management, Victim Awareness, Non-Violent Conflict Resolution, Moral Reconation Therapy, and Industrial Safety. "A SSASI evaluation conducted on 11-16-00 indicated no specific problems in chemical dependency." "A LSI-R reassessment conducted on 09-28-01 indicates a score of 12 low risk level with 11.7% likelihood to re-offend."

On December 4, 2001, Mr. Dyer attended a .100 hearing. The transcript is attached to the 2006 defense parole memorandum. (Misc Letters\Atty. Briefings for 10-06 Hearing, pp. 24-48). Dyer's counselor Larry Cook testified that Mr. Dyer worked as a recreation assistant and that he "receives exemplary work reports from all the recreation supervisors." Id. at 5. In fact, "everything about his attitude and behavior in the unit has been exemplary." Id. Mr. Cook

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confirmed Mr. Dyer's family support. Id. at 6-7. He was aware that Mr. Dyer runs a business outside the prison with the help of attorneys. Id. at 7. "Mr. Dyer has completed all the available offender change programs that are available here at McNeil Island." Id. To Cook's knowledge, Dyer had never refused any counseling offered to him. Id. at 7.

On January 30, 2002, the Board issued a Decision and Reasons. It found Mr. Dyer not parolable and added 60 months to his minimum term. Id. at 1. The Board noted that Mr. Dyer's adjusted standard range was 63 to 85 months, and that he had now spent 235 months in prison. The Board conceded that "Mr. Dyer's psychological reports consistently indicate low to medium risk," and "[h]is behavior in the institution is quite good." Id. at 2. The "central difficulty" was that "Mr. Dyer remains an untreated sex offender." Id. at 3. The Board characterized this as a "Catch-22" because "[c]ompletion of a sex offender treatment course generally requires what is called full candor by the treating authorities, and Mr. Dyer continues to maintain his innocence." Id.

2006 Supreme Court Ruling

Dyer filed a personal restraint petition challenging the ISRB's decision. In Personal Restraint of Dyer, 157 Wn.2d 358, 139 P.3d 320 (2006) ("Dyer II"), the Court found that the ISRB abused its discretion in denying parole in 2002. The Court noted that the Board has set out factors that can support a finding of nonparolability:

> 1. Active refusal to participate in available program or resources designed to assist an offender to reduce the risk of reoffense (e.g., anger management, substance abuse treatment).
>
> 2. Serious and repetitive disciplinary infractions during incarceration.
>
> 3. Evidence of an inmate's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, continued use of illegal substances).
>
> 4. Statements or declarations by the inmate that he or she intends to re-offend or does not intend to comply with conditions of parole.

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5. Evidence that an inmate presents a substantial danger to the community if released.

Personal Restraint of Dyer at 364, quoting WAC 381-60-160. "Although this list of reasons that may support an ISRB finding of nonparolability is not exhaustive, the list should guide the ISRB's decisions." Id. "In the present case, the record from the hearing does not support any of these factors." In particular, older psychological evaluations indicating that Dyer posed a risk to the community could not satisfy factor 5 when Dyer's "current psychological report shows that he poses little danger to the community if paroled." Id. at 365.

The Supreme Court found no other factors that could weigh against parole. The ISRB could not rely on "the unchangeable circumstances of Dyer's crimes, the same facts that justified the imposition of Dyer's original exceptional sentence." Id. at 365, 367-8. See also id. at 360 n.2 ("[T]he dissent's emphasis on the facts of Dyer's crimes disregards the legislature's mandate that an offender's confinement under the indeterminate system and the SRA remain reasonably consistent.")

Although the Supreme Court did not directly order the ISRB to release Dyer, it concluded that "a review of the evidence and testimony presented at the parolability hearing suggests Dyer met his burden to have conditions of release on parole established." Id. at 369.

2006 .100 Hearing

As noted above, Dr. David Monson concurred in Carson Carter's 2001 psychological report. Dr. Monson performed his own evaluation in 2005 and prepared a new report for the Board. (Psych & Medical Information\Psych Eval – 2-9-2005) He noted that Dyer "served nine years in the Army, including two tours in Vietnam, and was repeatedly decorated for gallantry and heroism." The report details Dyer's extensive programming. Id. at p. 2. Dyer has had no infractions since 1995. Mr. Dyer "maintains close contact with his wife and children . . . and has achieved the extraordinary feat of supporting his family financially throughout his incarceration through his outside business." Id. at p. 3. The various psychological tests indicated a low risk of

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reoffense. Id. at p. 3-5. For example, Dr. Monson scored Dyer as a "3" on the PCL-R, an even lower score than Mr. Carter gave him. Dr. Monson concluded as follows:

> For the past sixteen years Mr. Dyer has been a model inmate, with only one infraction nine years ago, maintaining a stellar work history, programming through all the classes available to him and, extraordinarily, financially supporting his family. He has good community support and a good intact plan. In addition, the psychological testing indicates a low risk to reoffend. Mr. Dyer appears to be an appropriate risk for community placement.

Id. at p. 5.

Mr. Dyer's June 15, 2006 Facility Plan noted that he had completed two new programs since his last .100 hearing: Restorative Retelling Story Group, and Family Dynamics. Mr. Dyer maintained his good behavior and continued to score as "minimum custody." (530 & ISRB Reports\Facility Plan - - 5-30-2006)

Psychotherapist Leonard Shaw submitted a letter dated September 16, 2006. (Misc Letters\Atty. Briefings for 10-06 Hearing, pg. 49) Mr. Shaw, who has extensive experience working with prisoners, has been involved with Mr. Dyer for many years.

> Since my July 1998 letter to the board, Richard and I have continued to have monthly phone consultations and he has been moved to MICC. I have twice conducted my Love and Forgiveness Seminar at McNeil and Richard and his wife Renetta attended both times.
>
> Richard continues to be a positive force in the prison with staff and inmates. He continues to support his family financially and emotionally. All of his children are in college or planning to go. Richard has developed into one of the most remarkable, altruistic, caring human beings I have ever known.

In the 1998 letter, Mr. Shaw explained how Mr. Dyer had not only worked on his own issues, but had encouraged many other prisoners to deal with their problems.

The Board received letters from Dyer's wife and children supporting his release. In his own letter, Dyer explained in detail how he has maintained his family ties while in prison, and how important it is for the family for Richard to be released to them. (Misc. Letters\ Atty. Briefings for 10-06 Hearing – 10-13-2006, pp. 56-58). He has done more to support his family

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– emotionally and financially – than many fathers who are not incarcerated. He concluded as follows:

> My family is my first priority and I work hard to maintain an active, positive role within it. Upon my release I plan to continue this. If I had the chance I would take long walks with my wife, have family dinners, walk my daughters down the aisle on their wedding day and watch my grandchildren grow. On behalf of myself and my family, I am asking you for that chance.

Id. at p. 3.

On December 5, 2006 the ISRB issued its decision. (Face Sheet\D&R MICC – 12-5-2006) It denied parole and extended Dyer's minimum term by 80 months. This brought up Dyer's minimum term to an even 500 months.[2] The central reason for this decision was identical to the one proffered the last time: Dyer is an untreated sex offender and is therefore unsafe to be released.

> The difficulty the Board has with Mr. Dyer's continual denial is that it makes him not amenable to treatment. . . . Amenability to and application of treatment are entirely up to the offender. The result of such treatment, one hopes, is that the offender will not reoffend.

Id. at 12.

2008 Supreme Court Decision

In Personal Restraint of Dyer, 164 Wn.2d 274, 189 P.3d 759 (2008) ("Dyer III"), a shifting majority voted 5-4 to affirm the ISRB. The majority found that the Board was within its discretion to deny parole because Dyer was an untreated sex offender. Nothing in the majority opinion suggests, of course, that it would have been improper for the Board to parole Dyer.

The dissent found it disturbing that Dyer's profession of innocence prevented his release, when the State had destroyed the biological evidence that could permit Dyer to prove his

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[2] As discussed above, Dyer's minimum term was set at 240 months in 1986. 60 months were added in each of 1995, 1998, and 2002, and then another 80 months in 2006.

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innocence. Id. at 299-300. It noted that the conviction was based on questionable eyewitness identification.

> The first victim testified the rapist was five feet, two or three inches tall, no mustache, lived on a gravel, road, and drove a Mercury Comet.[3] Dyer, however, is five feet, seven inches tall, wore a mustache, lived in a house with an asphalt paved drive, and drove a Mercury Meteor. The second victim originally told police she would be unable to identify her rapist, but at trial 16 months later she identified Dyer after seeing him led into the courtroom in handcuffs between two policemen.

Id. at 299. "With the destruction of all the DNA evidence, the question of Dyer's innocence will likely never be reexamined; yet we should not ignore the possibility." Id. at 299. Further, the four dissenting justices found it unreasonable for the ISRB to condition release on completion of the SOTP when objective studies have shown that prisoners who, like Dyer, are willing but unable to enter the program actually have a *lower* risk of recidivism than those who complete the program. Id. at 301-02.

III.
REASONS FOR GRANTING PAROLE

A. DYER HAS DEMONSTRATED THAT HE IS REHABILITATED AND SAFE TO BE RELEASED.

None of the factors set out in WAC 381-60-160 apply here. As discussed above, Dyer's behavior in prison has been exemplary. There is little more that he could do to demonstrate that he is safe to be released. In his letter of December 7, 2009, Dyer notes that in the last three years, he has continued on the same course. Ex. 18. Further, all credible psychological evaluations in recent years have found him to pose a low risk of re-offense.

The findings of Carson Carter and David Monson are reinforced by the recent report of psychologist Brett Trowbridge. Ex. 19 (a) Dr. Trowbridge is a former deputy prosecuting attorney, a former criminal defense lawyer, and the former director of the Mentally Ill Offender

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Program at Western State Hospital (1977-1983). He is currently in private practice and regularly testifies for the defense and prosecution in criminal cases. A synopsis of some of his presentations and articles is set out at Ex. 19 (c).

Dr. Trowbridge notes that the STATIC-99 assessment tool has recently be revised to take into account the latest research. The major difference is that it has now been demonstrated that age is a much more important factor than previously believed. Dyer's score on the Static-99 revised is in Dr. Trowbridge's view a -1, although he acknowledges that an argument could be made for a score of 0. Even with the higher score, Dyer's risk of re-offending in 10 years is between 1.8% and 13.0%. No norms are given for a score of -1, but the risk would presumably be even lower. See Ex. 19(a) at pg. 3. Dr. Trowbridge has attached an article he wrote several years ago reviewing the literature regarding age and recidivism. He notes, for example, that a study of sex offender re-incarceration rates in Washington State found that *none* of the 465 rapists released were re-incarcerated after age 55. "Age and Recidivism: How Accurate are Our Predictions?" at p. 4. Ex. 19(b).

Dr. Pereira's recent negative evaluation was apparently based on a misunderstanding of Dyer's criminal record and personal history. See section IV(A), below.

In the past, the ISRB has denied parole because Dyer denies guilt and therefore has been denied admission into the SOTP. As discussed above, the latest word from five members[4] of the Washington Supreme Court is that the ISRB did not abuse its discretion in that regard. Regardless, the ISRB should not continue to rely on that factor when there is no evidence that the SOTP is the *only* means of rehabilitation. All credible psychological reports find Dyer safe to be at large in the absence of SOTP treatment.

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[3] As noted above, she knew the car was a Comet because she saw that word spelled out on the back of the car.

[4] Justice Bridge, who voted with the dissent in Dyer II and the majority in Dyer III, is no longer on the Court. Therefore it is not clear how a majority of the Court would rule today.

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Further, objective evidence shows that the SOTP does not decrease recidivism. A 2006 study by the Washington State Institute for Public Policy (WSIPP) found that SOTP participants had a *higher* rate of recidivism than prisoners who – like Dyer – were willing to participate but did not. (Misc Letters\Atty. Briefings for 10-06 Hearing, pp. 60-63]. ("Sex Offender Sentencing in Washington State: Does the Prison Treatment Program Reduce Recidivism?") As the four-Justice dissent argued in Dyer III, it is irrational for the ISRB to deny parole for failure to participate in the SOTP when the treatment does not make a prisoner safer.[5]

The Supreme Court has previously held that denial of guilt – in itself – cannot be a basis for denying release; there must be some connection between the denial of guilt and the prisoner's "threat to community safety." See In re Ecklund, 139 Wn.2d 166, 176, 985 P.2d 342 (1999).

B. EXTENDING DYER'S MINIMUM TERM WOULD NOT BE "REASONABLY CONSISTENT" WITH THE SRA.

RCW 9.95.009(2) requires the Board to make decisions "reasonably consistent" with the sentencing ranges of the SRA. By the Board's own calculations, the high end of Mr. Dyer's standard range is 85 months. He is currently serving a 500-month minimum term, or about *six*

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[5] The majority mistakenly stated that a second policy paper "showed that offenders who willingly participate in the program have lower recidivism rates than those who unwillingly participate in the program." In fact, there is no such thing as unwilling participation in the SOTP. The majority apparently misread a paper entitled: "Sex Offender Sentencing in Washington Sate: Who Participates in the Prison Treatment Program?" Ex. 28. In it, WSIPP makes a clear distinction between willingness to participate in the SOTP and ability to be accepted into the SOTP. The paper sets out a flow chart entitled "SOTP participation process." Id. at p. 2. The first step is to determine the offender's willingness to participate. DOC then records whether the offender has applied for the program. Next, "SOTP may reject applicants because they are appealing a conviction or deny the offense" (emphasis altered). Thus, the WSIPP study accounts for prisoners like Dyer who assert their willingness to participate but are denied entry because they do not admit guilt. It is only the "not willing" group that has a higher degree of recidivism. Id. at p. 6.

The "willing" and "not willing" groups differed in a variety of offender characteristics in addition to recidivism rates. Because of that, WSIPP concluded that the "not willing" prisoners would make a poor control sample for evaluating the efficacy of the SOTP. Instead, "[t]he comparison group will be derived from those with similar custody levels who were recorded as willing to participate in SOTP but never entered the program." Id. A separate paper, discussed above, then sets out the results of that comparison. Ex. 28. According to actuarial measures, the SOTP group should have a lower risk to reoffend even if the treatment itself had no effect. Id. at p. 2. In fact, however, the SOTP group had a somewhat higher rate of committing new sexual offenses. Id. at p. 4.

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times the SRA range. To put this in perspective, had Mr. Dyer been sentenced on two counts of first-degree murder in 1986, his standard range would have been only 271-361 months. RCW 9.94A.310, 360(10), .400 (1986). "Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life." Coker v. Georgia, 433 U.S. 584, 598, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (1977). Any further extension of Mr. Dyer's minimum term would exacerbate the inconsistency with the SRA.

IV.
THE BOARD SHOULD DISREGARD CERTAIN NEW ADVERSE INFORMATION

A. THE BOARD SHOULD DISREGARD THE NEW PSYCHOLOGICAL EVALUATION BY DR. PEREIRA

As noted above, the last two DOC psychologists to evaluate Dyer found him to be a low risk to reoffend. Recently, a new DOC psychologist, Dr. Patricia Pereira, met with Dyer and came up with radically different conclusions. For example, while Mr. Carter and Dr. Monson gave Dyer extremely low scores of 5 and 3, respectively, on the PCL-R, Dr. Pereira came up with a score of 27! She also came up with a score of 6 on the Static-99 (which was not used by Carter or Monson), seemingly confirming a high risk of re-offense. Dr. Pereira's 11-page report is in the Board's file. (Pysch & Medical Information\Psych Eval – 6-11-2009 added 10-09). Her scoring sheets are attached as Ex. 20. Because of the huge discrepancy between the new psychological report and the last two, Dyer retained psychologist Brett Trowbridge to review all three reports and the scoring sheets of the evaluators. Dr. Trowbridge was also provided with various objective information about Dyer's case, primarily from court records. See Ex. 19(a).

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As Dr. Trowbridge explains, Dr. Pereira's scoring of the Static-99 is simply wrong. Attached are relevant portions of the manual, as revised in 2003.[6] Ex. 21. The scoring is based on verifiable, objective criteria, not on any subjective evaluation of the subject. For example, item number four is "Prior Non-Sexual Violence." According to the manual at page 27, there must be a separate non-sexual violence conviction to score this item. On page 28, the manual specifically explains that convictions overturned on appeal do not count and arrests/charges do not count. Mr. Dyer's only convictions are for two counts of rape in the first degree against two different victims, for which he is currently serving time. Nevertheless, Dr. Pereira somehow gave Mr. Dyer a 1 on this item. As Dr. Trowbridge explains, the correct score is 0. Ex. 19(a) at 2. Dr. Pereira made additional mistakes on items four and five, ultimately resulting in a score of 6, rather than the correct score of 2. Even on the 2003 version of the Static-99, a score of 2 results in only a "Medium-Low" risk of reoffense, which corresponds to 9% after five years and 13% after 10 years. A score of 6 or above, however, places the offender in the "High" risk category.

Dr. Pereira should not be faulted for using the version of the Static-99 that was still in effect as of the date of her report. As Dr. Trowbridge notes, however, the manual was revised as of October, 2009. Ex. 19(a) at p.3. It now takes into account "the fact that research consistently shows that elderly offenders (including sex offenders and especially rapists) are much less likely to re-offend if released than their younger counterparts." Id. Dr. Trowbridge himself wrote an article in 2004 concerning some of this research. Ex. 19(b). On the older version, the offender received a score of 1 if he was younger than 25 and 0 if he was older. On the new version, the scores become negative after the age of forty, reaching -3 at age 60. Dr. Trowbridge therefore gives Mr. Dyer a score of -1 on the revised Static-99, which is essentially off the scale since no

[6] This is the version used by Dr. Pereira since it was current up until October, 2009. As Dr. Trowbridge notes, Dr. Pereira did not use the "revised" version that came out in October.

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norms are provided for negative scores. Even if Dyer had a higher score of 0, however, he would be a very low risk to re-offend. Ex. 19(a) at 3.

Dr. Pereira's scoring on the PCL-R is baffling. As Dr. Trowbridge explains, the scores on many of the items cannot be reconciled with the verified facts of concerning Mr. Dyer. Ex. 19(a) at 3-4. "In my view the high scores she assigns on these factors suggest she is either not well-versed in how the instrument is supposed to be scored, or that she is not familiar with Mr. Dyer's history and background." Id.

A few examples should suffice to demonstrate the absurdity of Dr. Pereira's scoring. Relevant portions of the manual are attached as Ex. 22. On Item #12 (early behavioral problems) Dr. Pereira scored a 2. The manual says that this applies to problems from ages 12 and below. There is nothing mentioned in Dr. Pereira's report or in any file information that suggests any problems in that age range. On Item #13 (lack of realistic long-term goals) Dr. Pereira scored a 2. The PCL-R says that this "describes an individual who demonstrates an inability or unwillingness to formulate and carry out realistic, long-term plans and goals. He tends to live day to day and to change his plans frequently. He does not give serious thought to the future nor does he worry about it very much." Manual at p. 42. This could not possibly apply to Mr. Dyer, who has pursued long-term legal, financial, and family projects. On Factor #14 (impulsivity) Dr. Pereira scored a 2. There is absolutely nothing in Dyer's background, in the free world or in prison, that even hints at impulsivity. Even the crimes of conviction – as described by the Washington Court of Appeals – were not committed by an impulsive perpetrator but rather one who carefully planned the abductions and rapes. On Factor #15 (irresponsibility) Dr. Pereira scored a 2. This item "describes an individual who habitually fails to fulfill or honor obligations and commitments to others. He has little or no sense of duty or loyalty to family, friends, employers, society, ideas, or causes." Manual at p. 43. It is quite insulting to suggest that this factor applies to Mr. Dyer when he loyally served his country in

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Vietnam, held a steady job at the Naval Shipyards until the time of his arrest, and has managed to support his family for decades from within the confines of prison.

While some of these scores are inexplicable, it appears that some are based on Dr. Pereira's assumption that Mr. Dyer was lying about nearly everything he said during the interview. That could explain the scores of 1 on Factor #1 (glibness/superficial charm), 2 on Factor #2 (grandiose sense of self-worth), and 2 on Factor #4 (pathological lying). In fact, as discussed above in section II(A), Dyer truly has many accomplishments both before and during his incarceration. Mr. Dyer has provided a separate statement in which he attempts to explain how some of Dr. Pereira's misunderstandings may have come about. Ex. 23. He attempted to provide her with documentation but she refused to review it. It is puzzling why Dr. Pereira would jump to the most negative conclusions in the absence of a careful review. Had she merely read the two previous DOC psychological reports, she would have seen accurate summaries of Dyer's history.

In addition to being unfamiliar with Mr. Dyer's file materials, Dr. Pereira clearly did not understand some of the things he was trying to explain. She believed, for example, that Dyer contradicted himself by claiming his wife supports him and also that she initiated the charges against him. Pereira Report at 4. In fact, Dyer does have the support of his current wife, Renetta, and it is his ex-wife, Ethel Acord, who first initiated any criminal charges against Dyer. To some extent, Mr. Dyer was misquoted in the report, or his responses are presented in such a jumbled way that they appear to be nonsensical. See Ex. 23.

It may be that Dr. Pereira based some of her scoring and conclusions on a 2006 statement from his ex-wife Ethel Acord. See Pereira report at 2-3. As discussed below, Ms. Acord is not a reliable source of information.

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B. THE BOARD SHOULD DISREGARD THE LETTER(S) FROM ETHEL ACORD

In anticipation of this .100 hearing, the ISRB provided Mr. Dyer with a Summary of Information Received dated March 10, 2009. (Misc Letters\Memo to Attorney w- Summary of Info. Rcvd – 3-12-2009) It includes characterizations of Dyer as a "crazed animal," and a "mental monster." "Statements made by your family in court during the trial and the judge needing to clear the courtroom are cited." "There are allegations that there was a gang rape upon a 'Filipino' girl while you were a sergeant in the military and may have instructed your men to do it." Undersigned counsel wrote the Board seeking additional information so that I could rebut these allegations. (Misc. Letters\Atty. Letter & Response 7-30-2009). Robin Riley responded that the Board had received not only a letter dated March 1, 2009 but also one dated October 2, 2006. "Disclosure of these two letters would reveal the identify of the author." (Misc. Letters\Letter to Attorney - 8-10 -2009).

In the mean time, Dr. Pereira prepared a report dated June 11, 2009 in which she refers to a "Victim Statement, dated November 14, 2006," prepared by Dyer's "ex-wife." I received identical copies of that statement from two sources: by requesting it from Dr. Pereira and by making a public disclosure request to DOC request. It is obviously written by Ethel Acord. Ex. 24. I also received an electronic copy of the ISRB's file, which contains a copy of the "Summary of Information" indicated above. The file name is "Victim Statements\Summary of Information Received – E. Acord – 3-10-2009." The electronic file also contains an October 17, 2006 memo from Ellen Hanegan-Cruse describing a telephone conversation with someone. Most of the text is redacted, but it appears that the caller described Dyer as "manipulative, sneaky, and dangerous."

I have expressed my concern to the Attorney General's office about the impossibility of rebutting negative information when the ISRB has provided insufficient details. Ex. 25. At this

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point, Dyer has received *no* information concerning the October 2, 2006 letter.[7] The matter may be largely moot, however, if the source of all four submissions is Ethel Acord, as appears to be the case. (The allegations in the November 14, 2006 letter, for example, seem to track those in the summary of the 2009 letter.) If I am mistaken about that, I would ask the Board to correct me and to provide further information, particularly about the October 2, 2006 letter.

For now, Dyer will proceed on the assumption that all the redacted information was provided by Ethel Dyer and that it is all similar to the lengthy letter of November 14, 2006. In that case, the Board may have already determined to give the submissions little credence. The November 14 letter is bizarre on its face. For example, Ms. Acord repeats at least three times and for no apparent reason that Richard Dyer's brother "loves men," with those two words circled and followed with exclamation points. In perhaps an excess of caution, however, I will respond to some portions of the letter, and will address Ms. Acord's general credibility.

Richard Dyer, Jr., Ethel Acord's son, describes at some length his mother's peculiar personality and life history. Ex. 7. She currently appears to be mentally disabled.

> I still maintain contact with my mother. She gets some sort of disability checks but I don't know her diagnosis. She doesn't seem to be all there. She'll isolate herself in her apartment watching TV. Sometimes she'll disconnect the phone for days. She finds it hard to be around other people or to deal with anything that's confusing to her. For example, one time I went to the bank with her to help her make a deposit. She got confused about how to fill out the deposit slip and starting screaming and making a big scene in the bank. Another time she exploded at someone on a bus because she thought he was blocking her way to the door.

Ex. 7 at p. 2. Ms. Acord's feelings about Richard Dyer, Sr. are apparently quite changeable.

> I was a bit surprised to see that my mother had written such a nasty letter about my father in 2006. About six or seven years ago, my mother was over at my place for Christmas. While she was there, my father called me. After speaking to him for awhile, I asked my mother if she would like to speak with

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[7] This is particularly troubling since the letter apparently reached the Board prior to the last .100 hearing, yet Dyer knew nothing about it.

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him and she said yes. They had a friendly talk. It ended with my mother saying "I love you."

Ex. 7 at p. 3. Mr. Dyer, Sr., has also noted that Ms. Acord arranged to be on his visitor's list at one point. Ex. 26. (A prisoner has no ability to place a name on his list.)

As for the specific allegations Ms. Acord now makes, Mr. Dyer can say only that this is the first he has heard of them. Ex. 18. For example, Ms. Acord claims that Dyer engaged in a gang rape in Vietnam. His military record, however, reflects nothing but meritorious conduct. Ex. 1. It is hard to imagine how Ms. Acord could have inside information about anything that took place in Vietnam. Further, Ms. Acord was given wide leeway at Mr. Dyer's trial to bring up any misconduct on his part. She said nothing about a gang rape. Nor did she mention anything about Dyer locking his infant son in the car, stealing her car, or driving around with a body in the trunk. See Declaration of David Zuckerman Regarding Trial Transcript. Ex. 27. James Reese, Dyer's attorney at the time of his divorce from Ms. Acord, has submitted a statement detailing Ms. Acord's lack of credibility. (Misc Letters\Misc Letters 3-31-1982 to -10-28-1998, pp. 186-187). As discussed above in section II(B), three Justices of the Washington Supreme Court questioned Ms. Acord's credibility in Dyer I.

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V.
CONCLUSION

The Board should find Mr. Dyer parolable and permit him to transfer parole to Oklahoma, where his family resides. The Board should give DOC a reasonable time to arrange the transfer through the Interstate Compact process.

DATED this 11th day of December, 2009.

Respectfully submitted:

David B. Zuckerman, WSBA #18221
Attorney for Richard J. Dyer

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DECLARATION OF
MICHELE L. VICKERY

I make the following statements under penalty of perjury:

I am of the age of majority and am competent to make the following statements.

I am a National Service Officer for the Disabled American Veterans. My office is located in the DVA, Henry Jackson Building, 915 Second Avenue, Room 1058, Seattle, Washington. My telephone number is 206-220-6225.

In my capacity as a National Service Officer, I have been assisting Richard J. Dyer (Social Security No. 536-50-2278; Service No. RA18979230) in matters unrelated to the matter for which I am making this Declaration. In this capacity, I have access to and/or am in possession of Mr. Dyer's military records.

I have provided verification to Ms. Leta J. Schattauer, Attorney At Law, that the copy of the veteran's discharge that she provided us contains the same information that is in his Official VA Records. Ms. Schattauer's records and the VA records showed the same following information.

EXHIBIT 1

DEPARTMENT OF THE ARMY
HEADQUARTERS, 25TH INFANTRY DIVISION
APO San Francisco 96225

GENERAL ORDERS
NUMBER 3214

26 April 1968

AWARD OF THE ARMY COMMENDATION MEDAL FOR HEROISM

1. TC 320. The following AWARD is announced.

DYER, RICHARD RA18979230 (SSAN: 551-33-0841) PFC E3
Co B, 1st Bn, 27th Inf, 25th Inf Div
Awarded: Army Commendation Medal with "V" Device
Date action: 14 March 1968
Theater: Republic of Vietnam
Reason: For heroism in connection with military operations against a hostile force: Private First Class Dyer distinguished himself by heroic actions on 14 March 1968, while serving as a rifleman with Company B, 1st Battalion, 27th Infantry on a combat operation in the Republic of Vietnam. When his unit came into contact with the enemy Private Dyer's alertness in employing his weapon resulted in the death of three Viet Cong soldiers and the capture of two enemy weapons. Private Dyer's personal bravery and devotion to duty are in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, the 25th Infantry Division, and the United States Army.
Authority: By direction of the Secretary of the Army under the provisions of AR 672-5-1, and USARV message 16695, dated 1 July 1966.

FOR THE COMMANDER:

OFFICIAL:

B. F. HOOD
Colonel, GS
Chief of Staff

CLARENCE A. RISER
LTC, AGC
Adjutant General

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 25TH INFANTRY DIVISION
APO San Francisco 96225

GENERAL ORDERS
NUMBER 6848

28 September 1968

SECTION I

AWARD OF THE PURPLE HEART

1. TC 320. The following AWARDS are announced.

DAVIDSON, ROBERT L. US54508954 (SSAN: 462-60-6029) SP5 E5
HHC, 2d Bn, 34th Armor, 25th Inf Div 7 May 1968
WATKINSON, GENE P. US52855250 (SSAN: 168-40-5054) SP4 E4
C Btry, 7th Bn, 11th Arty, 25th Inf Div 26 September 1968
DYER, RICHARD RA18979230 (SSAN: NVAL) PFC E3
Co B, 1st Bn, 27th Inf, 25th Inf Div 10 February 1968
Awarded: Purple Heart
Date Action: As Indicated in Standard Name Line
Theater: Republic of Vietnam
Reason: For wounds received in connection with military operations against a hostile force.
Authority: By direction of the President under the provisions of AR 672-5-1.

SECTION II

AWARD OF THE PURPLE HEART
FIRST OAK LEAF CLUSTER

1. TC 320. The following AWARDS are announced.

CANNON, RICHARD E. RA16441926 (SSAN: 392-30-3781) SSG E6
HHC, 2d Bn, 34th Armor, 25th Inf Div 18 February 1968
KING, CHARLES JR. RA53536144 (SSAN: 262-52-9060) SP5 E5
Co A, 65th Engr Bn, 25th Inf Div 26 September 1968
Awarded: Purple Heart (First Oak Leaf Cluster)
Date Action: As Indicated in Standard Name Line
Theater: Republic of Vietnam
Reason: For wounds received in connection with military operations against a hostile force.
Authority: By direction of the President under the provisions of AR 672-5-1.

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE
APO San Francisco 96309

GENERAL ORDERS NUMBER 203 "NGUY HIEM" 17 January 1973

AWARD OF THE AIR MEDAL FOR HEROISM

3/7

TC 439. The following AWARD is announced.

[redacted], RICHARD I, 536-50-2678 SGT 11B40 F Trp, 4th Air Cav (WGMAA A) APO 96308

Awarded: Air Medal Fifth Award with "V" Device
Date of service: 30 June 1972
Theater: Republic of Vietnam
Authority: By direction of the President under the provisions of Executive Order 9158, 11 May 1942, as amended by Executive Order 9242-A, 11 September 1942, AR 672-5-1 and USARV Supplement 1 to AR 672-5-1 Dated 10 August 1970.
Reason: For heroism while engaged in aerial flight in connection with military operations against a hostile force: Sergeant Dyer distinguished himself by exceptionally valorous actions while serving as platoon member of the aero rifle platoon on a search and rescue mission in Military Region I. Sergeant Dyer volunteered to support the search and rescue efforts for an American Air Force pilot shot down by an SA-7 strella missile. The downed pilot was seen hiding in a tree line, next to a rice paddy, less than 50 meters from a large enemy bunker complex. As Sergeant Dyer's aircraft came to a hover over the rice paddy Sergeant Dyer exposed himself and began to place suppressive fire on the enemy positions so the injured pilot could be helped aboard the aircraft. As the two aircraft departed the area Sergeant Dyer continued to place fire with his rifle into enemy positions. Sergeant Dyer's actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

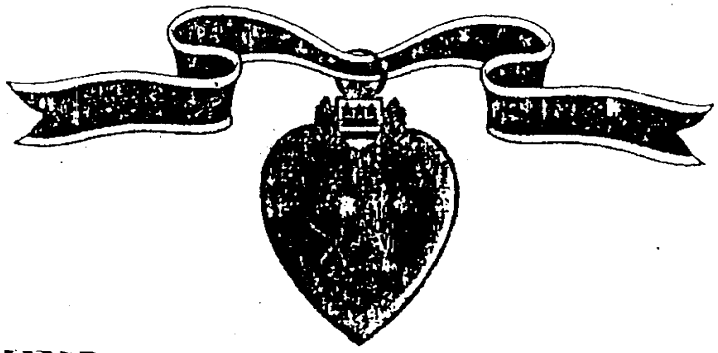
FOR THE COMMANDER:

JAMES T. McQUEEN
Lieutenant Colonel, GS
Chief of Staff

OFFICIAL:

Richard I. Lane

RICHARD I. LANE
1LT, AGC
Asst AG



THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
HAS AWARDED THE

PURPLE HEART

ESTABLISHED BY GENERAL GEORGE WASHINGTON
AT NEWBURGH, NEW YORK, AUGUST 7, 1782
TO

PRIVATE FIRST CLASS RICHARD DYER, RA18979230, UNITED STATES ARMY

FOR WOUNDS RECEIVED
IN ACTION
10 FEBRUARY 1968, REPUBLIC OF VIETNAM
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS TWENTY EIGHTH DAY OF SEPTEMBER 1968

ELLIS W. WILLIAMSON
Major General, USA
Commanding

Stanley R. Resor
SECRETARY OF THE ARMY

THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
AUTHORIZED BY EXECUTIVE ORDER, 24 AUGUST 1962
HAS AWARDED

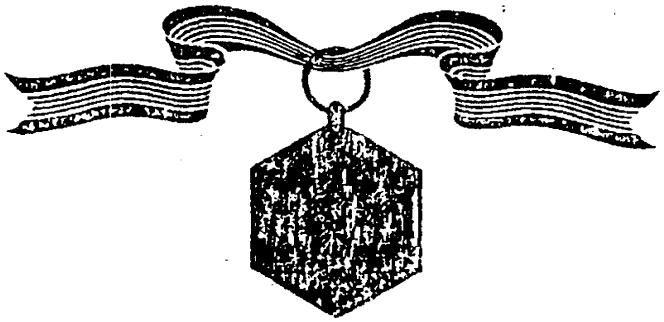
THE BRONZE STAR MEDAL

(FIRST OAK LEAF CLUSTER)
TO
SERGEANT RICHARD J. DYER 536-50-2678

FOR
MERITORIOUS ACHIEVEMENT
IN GROUND OPERATIONS AGAINST HOSTILE FORCES
IN THE REPUBLIC OF VIETNAM DURING THE PERIOD 12 SEPTEMBER 1971 TO 16 JANUARY 1972
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS THIRTEENTH DAY OF SEPTEMBER 1972

Jack V. Mackmull
JACK V. MACKMULL
Brigadier General, USA
Commanding-1st Aviation Brigade

Robert D. Brooks
SECRETARY OF THE ARMY



DEPARTMENT OF THE ARMY

THIS IS TO CERTIFY THAT
THE SECRETARY OF THE ARMY HAS AWARDED

THE ARMY COMMENDATION MEDAL

TO

SERGEANT RICHARD L. DYER 536-50-2678

FOR

HEROISM

IN THE REPUBLIC OF VIETNAM ON 23 MAY 1972
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS SEVENTEENTH DAY OF AUGUST 19 72

JACK V. MACKMULL
Brigadier General, USA
Commanding-1st Aviation Brigade

Robert F. Froehlke
SECRETARY OF THE ARMY

DEPARTMENT OF THE ARMY
HEADQUARTERS, 25TH INFANTRY DIVISION
APO San Francisco 96225

GENERAL ORDERS
NUMBER 3214

26 April 1968

AWARD OF THE ARMY COMMENDATION MEDAL FOR HEROISM

1. TC 320. The following AWARD is announced.

DYER, RICHARD RA18979230 (SSAN: 551-33-0841) PFC E3
Co B, 1st Bn, 27th Inf, 25th Inf Div
Awarded: Army Commendation Medal with "V" Device
Date action: 14 March 1968
Theater: Republic of Vietnam
Reason: For heroism in connection with military operations against a hostile force: Private First Class Dyer distinguished himself by heroic actions on 14 March 1968, while serving as a rifleman with Company B, 1st Battalion, 27th Infantry on a combat operation in the Republic of Vietnam. When his unit came into contact with the enemy Private Dyer's alertness in employing his weapon resulted in the death of three Viet Cong soldiers and the capture of two enemy weapons. Private Dyer's personal bravery and devotion to duty are in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, the 25th Infantry Division, and the United States Army.
Authority: By direction of the Secretary of the Army under the provisions of AR 672-5-1, and USARV message 16695, dated 1 July 1966.

FOR THE COMMANDER:

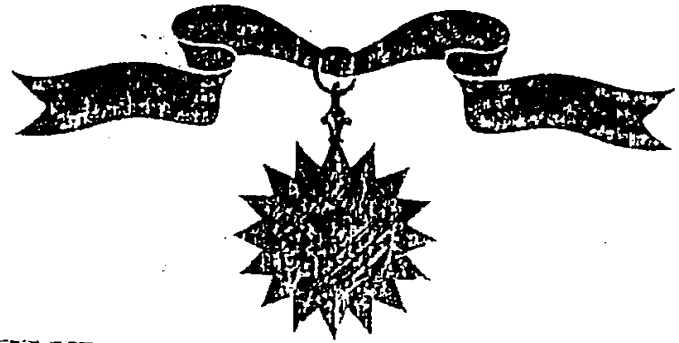
OFFICIAL:

B. F. HOOD
Colonel, GS
Chief of Staff

CLARENCE A. RISER
LTC, AGC
Adjutant General

DISTRIBUTION:
D (Modified) Plus
2-CO, 2d Bde, 25th Inf Div
3-CO, 1st Bn, 27th Inf
10-Act Br
1-Rec Br
1-Mgt Br
1-Div SGM
4-Indiv conc
2-CG, USARV ATTN: AVHAG-PD

SPECIAL DISTRIBUTION:
1-TAGO ATTN: AGPE-F



THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
AUTHORIZED BY EXECUTIVE ORDER, MAY 11, 1942
HAS AWARDED

THE AIR MEDAL

FIFTH AWARD

TO

SERGEANT RICHARD L. DYER 536-50-2678

FOR HEROISM
WHILE PARTICIPATING IN AERIAL FLIGHT
IN THE REPUBLIC OF VIETNAM ON 30 JUNE 1972
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS 17th DAY OF JANUARY 19 73

Jack V. Mackmull
JACK V. MACKMULL
Brigadier General, USA
Commanding - 1st Aviation Brigade

Robert F. Froehlke
SECRETARY OF THE ARMY

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE
APO San Francisco 96309

GENERAL ORDERS
NUMBER 203

"NGUY HIEM"

17 January 1973

AWARD OF THE AIR MEDAL FOR HEROISM

TC 439. The following AWARD is announced.

DYER, RICHARD L. 536-50-2678 SGT 11B40 F Trp, 4th Air Cav (WGMJAA A)
APO 96308

Awarded: Air Medal Fifth Award with "V" Device
Date of service: 30 June 1972
Theater: Republic of Vietnam
Authority: By direction of the President under the provisions of Executive Order 9158, 11 May 1942, as amended by Executive Order 9242-A, 11 September 1942, AR 672-5-1 and USARV Supplement 1 to AR 672-5-1 Dated 10 August 1970.
Reason: For heroism while engaged in aerial flight in connection with military operations against a hostile force: Sergeant Dyer distinguished himself by exceptionally valorous actions while serving as platoon member of the aero rifle platoon on a search and rescue mission in Military Region I. Sergeant Dyer volunteered to support the search and rescue efforts for an American Air Force pilot shot down by an SA-7 strella missile. The downed pilot was seen hiding in a tree line, next to a rice paddy, less than 50 meters from a large enemy bunker complex. As Sergeant Dyer's aircraft came to a hover over the rice paddy Sergeant Dyer exposed himself and began to place suppressive fire on the enemy positions so the injured pilot could be helped aboard the aircraft. As the two aircraft departed the area Sergeant Dyer continued to place fire with his rifle into enemy positions. Sergeant Dyer's actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

FOR THE COMMANDER:

JAMES T. McQUEEN
Lieutenant Colonel, GS
Chief of Staff

OFFICIAL:

Richard L. Lane
RICHARD L. LANE
1LT, AGC
Asst AG

THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
AUTHORIZED BY EXECUTIVE ORDER, MAY 11, 1942
HAS AWARDED

THE AIR MEDAL

SECOND THRU FOURTH AWARD
TO

SERGEANT RICHARD L. DYER 536-50-2678

FOR MERITORIOUS ACHIEVEMENT
WHILE PARTICIPATING IN AERIAL FLIGHT

IN THE REPUBLIC OF VIETNAM DURING THE PERIOD 17 DECEMBER 1971 TO 20 AUGUST 1972
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS ELEVENTH DAY OF DECEMBER 19 72

Jack V. Mackmull

JACK V. MACKMULL
Brigadier General, USA
Commanding - 1st Aviation Brigade

Robert F. Froehlke
SECRETARY OF THE ARMY

Citation

BY DIRECTION OF THE PRESIDENT

THE AIR MEDAL

SECOND THRU FOURTH AWARD
IS PRESENTED TO

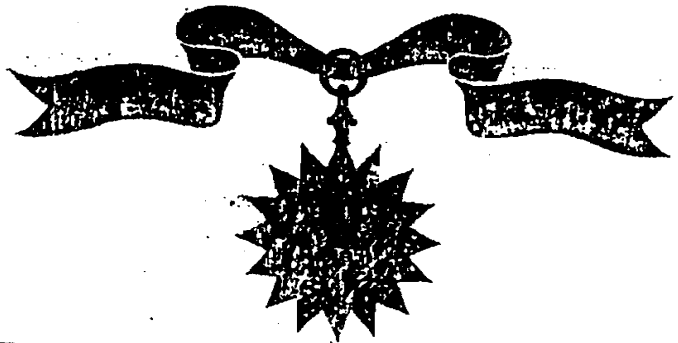
SERGEANT RICHARD L. DYER 536-50-2678

who distinguished himself by meritorious achievement, while participating in sustained aerial flight, in support of combat ground forces in the Republic of Vietnam. During the period

17 DECEMBER 1971 TO 20 AUGUST 1972

he actively participated in more than twenty-five aerial missions over hostile territory in support of operations against communist aggression. During all of these flights, he displayed the highest order of air discipline and acted in accordance with the best traditions of the service. By his determination to accomplish his mission, in spite of the hazards inherent in repeated aerial flights over hostile territory, and by his outstanding degree of professionalism and devotion to duty, he has brought credit upon himself, his organization, and the United States Army.

FPC-Japan



THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

THIS IS TO CERTIFY THAT
THE PRESIDENT OF THE UNITED STATES OF AMERICA
AUTHORIZED BY EXECUTIVE ORDER, MAY 11, 1942
HAS AWARDED

THE AIR MEDAL

TO

SERGEANT RICHARD J. DYER 536-50-2278

FOR MERITORIOUS ACHIEVEMENT
WHILE PARTICIPATING IN AERIAL FLIGHT
IN THE REPUBLIC OF VIETNAM DURING THE PERIOD 19 NOVEMBER 1971 TO 15 DECEMBER 1971

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS SEVENTH DAY OF JANUARY 1972

Robert N. MacKinnon

ROBERT N. MACKINNON
BRIGADIER GENERAL, USA
COMMANDING - 1ST AVIATION BRIGADE

Robert J. Brooks

SECRETARY OF THE ARMY

Citation

BY DIRECTION OF THE PRESIDENT

THE AIR MEDAL

IS PRESENTED TO

SERGEANT RICHARD J. DYER 536-50-2278

who distinguished himself by meritorious achievement, while participating in sustained aerial flight, in support of combat ground forces in the Republic of Vietnam. During the period

19 NOVEMBER 1971 TO 15 DECEMBER 1971

he actively participated in more than twenty-five aerial missions over hostile territory in support of operations against communist aggression. During all of these flights, he displayed the highest order of air discipline and acted in accordance with the best traditions of the service. By his determination to accomplish his mission, in spite of the hazards inherent in repeated aerial flights over hostile territory, and by his outstanding degree of professionalism and devotion to duty, he has brought credit upon himself, his organization, and the United States Army.

FTC-Japan

DEPARTMENT OF THE ARMY

CERTIFICATE OF APPRECIATION

In recognition of the active service of

RICHARD JAMES DYER 536-50-2278 SGT

The United States Army presents this testimonial
of esteem and gratitude for
Faithful Performance
of duty

24 May 1970
DATE

W. C. WESTMORELAND
General, United States Army
Chief of Staff

Honorable Discharge

from the Armed Forces of the United States of America

This is to certify that

RICHARD JAMES DYER 536-50-2278 SERGEANT REGULAR ARMY

was Honorably Discharged from the

United States Army

on the 24TH day of MAY 1976 This certificate is awarded as a testimonial of Honesty and Faithful Service

Robert J Ahsens III

ROBERT J. AHSENS 111, 1LT, AGC
ASST ADJUTANT GENERAL

DD FORM NO. 256A 1 MAY 50

Law Offices of

RYAN SELLS UPTEGRAFT, INC. P.S.

9657 Levin Road N.W., Suite 240, Silverdale, WA 98383

Phone (360) 307-8860 • Fax (360) 307-8865 • Toll Free 1-800-481-8861

JAMES E. RYAN
JAMES K. SELLS
DARRELL D. UPTEGRAFT, JR.
ANNE M. MONTGOMERY

CHERYL K. RIFE
CHERRY L. DAVIS
MARY P. SPAUN

GORDON L. WALGREN, Of Counsel

December 8, 2009

Indeterminate Sentence Review Board

RE: *Richard J. Dyer*

To Whom It May Concern:

I am the Office Administrator for the law firm of Ryan, Sells and Uptegraft. Since 1996, I have assisted prisoner Richard Dyer with his finances. Mr. Dyer receives monthly disability payments from the Veteran's Administration and monthly payments from the sale of real estate. The payments are made directly to his trust account held by our firm.

Each month, I make disbursements from the trust account pursuant to Mr. Dyer's directions. This always includes payments to some or all of his immediate family (his wife, Renetta, and his five children). All of the family members have received substantial support over the years. He has helped his children with their expenses from college tuition to car repairs to helping his children with necessities. When his grandchild was born, Mr. Dyer sent his son and daughter-in-law money to help them purchase the items they needed for a new baby. Mr. Dyer also sends gifts for their birthdays, Christmas and other special occasions. Every year at Christmas, he sends me a list with an order for presents for his family and I prepare a check from his trust account and send out the order on his behalf. Mr. Dyer has always paid all of his attorney fees to our office and I have sent payments to other attorneys who have represented Mr. Dyer over the years.

I have also taken responsibility for renewing Mr. Dyer's Washington Counselor's License each year since 1998. I have not handled Mr. Dyer's investments in stocks and bonds, which are managed through a brokerage firm.

I hope this information is helpful.

Very truly yours,

RYAN SELLS UPTEGRAFT, INC. P.S.

Terre M. Skelly, Office Administrator

TMS:hs

EXHIBIT 2

Pending 6/5/09 SAL

Please return this questionnaire directly to (For facility address)
DO NOT RETURN TO OFFENDER

Favor de devolver este cuestionario directamente a la institución (dirección institucional)
NO LO DEVUELVA AL INTERNO O INTERNA

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

VISITOR'S QUESTIONNAIRE / *CUESTIONARIO DEL VISITANTE*

OFFENDER NAME / *NOMBRE DEL INTERNO O INTERNA*	DOC NUMBER / *NUM. DEL DOC*	FACILITY *INSTITUCION*	UNIT / *UNIDAD*
Richard James Dyer	281744	MICC	C-1264

The above named offender has asked that you be placed on his/her approved visitor list. If you wish to visit this offender, please complete this questionnaire completely and return it to _____.

_____ at _____.

El interno (interna) nombrado en lo anterior ha pedido que se ponga el nombre de usted en su lista de visitantes. Si usted desea visitar a este interno, llene este cuestionario completamente y devuélvalo a: _____

_____ *en* _____.

You will be notified by the offender if and when you are approved to visit. If you are approved for visits, you should be aware that specific dress standards apply. Please check with the offender or facility prior to your first visit to ensure compliance with the dress code.

El interno (interna) le avisará si y cuando usted está aprobado para visitar. Si está autorizado, usted debe estar enterado del código de vestir requerido. Favor de preguntar al interno o personal institucional antes de su primera visita para asegurar su cumplimiento con este código.

If you do not return this questionnaire within 30 days, we will assume you do not wish to visit.

Si usted no devuelve este cuestionario dentro de treinta (30) días, daremos por sentado que usted no desea visitar.

READ CAREFULLY: All questions MUST be answered. Any omission or falsification of this questionnaire will be sufficient reason to deny or cancel visiting privileges. If you are under the age of 18, you must have notarized written consent from your parent or legal guardian to visit. Minors must be accompanied during the visit by a parent or legal guardian. Please return your questionnaire by ____/____/____, or we will assume you do not wish to visit.

LEA CON CUIDADO: Es necesario contestar TODAS las preguntas. Cualquier dato omitido o falso en este cuestionario será razón suficiente para denegar o cancelar su privilegio de visitar. Si usted es menor de 18 años, necesita el consentimiento con sello de notario de su madre/padre/tutor legal para visitar. Los menores tienen que estar acompañados en todo momento por esta persona. Favor de devolver su cuestionario para la fecha del ____/____/____ o daremos por sentado que usted no desea visitar.

Name (First) / *Nombre*	(Middle) / *(Segundo nombre)*	(Last) / *(Apellido)*	Date of Birth / *Fecha de nacimiento*	Place of Birth / *Lugar de nacimiento*
Hailey	Kay	McKinney	1/10/08	Fort Smith

Address (Street) / *Dirección (Calle)*	(City) / *(Ciudad)*	(State) / *(Edo.)*	(Zip code) / *(Código postal)*
21313 Highline rd	Spiro	OK	74959

Telephone Number / *Número de teléfono*	Social Security Number* / *Número de seguro social*	ID Type / *Clase de identificación*	ID Number / *Número de identificación*
918 774-4856 ( )	[redacted]	NA	NA

Maiden Name / *Apellido de soltera*	Previous Married Names / *Apellidos de casada anteriores*	Driver's License Number / *Núm. de licencia de manejar*
		NA

Height / *Estatura*	Weight / *Peso*	Eyes / *Ojos*	Hair / *Cabello*	Gender/*Genero*	Race / *Raza*	Hispanic? ☐ Yes ☒ No / *¿Hispano?* ☐ *Si* ☒ *No*
	221bs	green	Sandy blonde	Female	White	

Relationship to Offender: (e.g., mother, wife, friend, attorney, etc.) Granddaughter
Relación al interno/interna (madre, esposa, amigo, abogado, etc.)

Visiting Rules Received? ☒ Yes ☐ No
¿Reglas de las visitas recibidas? ☐ *Si* ☐ *No*

EXHIBIT 3

Have you ever been involved in illegal or criminal activity with the above named offender? ☐ Yes ☒ No. If "yes," when and where?

¿Usted estaba involucrado alguna vez en una actividad ilegal o criminosa con el interno/interna nombrado? ☐ *Si* ☐ *No*
Si "sí," ¿cuándo y dónde?

Are you presently under active supervision by any state or local criminal justice entity? ☐ Yes ☒ No

If "yes", you must be an immediate family member and submit with this questionnaire written permission to visit from your supervising authority.

¿Usted está bajo supervisión activa en la actualidad por una dependencia estatal o local de justicia penal? ☐ *Si* ☐ *No*
Si "sí," usted tiene que ser un miembro de la familia inmediata y entregar con este cuestionario un permiso para visitar del oficial que le supervisa.

Have you ever been or are you presently approved to visit any other offender? ☐ Yes ☒ No. If "yes", please list name, date, DOC number, relationship, and location:

¿Usted he sido aprobado anteriormente o en la actualidad para visitar a otro interno o interna?
☐ *Si* ☐ *No Si "si," favor de apuntar el nombre, número del DOC, relación y lugar.*

NOTE: You may not visit offenders at more than one institution unless you have the approval of the superintendent's of the appeable institutions.
NOTA: Usted no puede visitar a internos en más de una institución a menos que tenga la aprobación de los superintendentes de las instituciones correspondientes.

Are you now or have you ever been employed by the Washington Department of Corrections? ☐ Yes ☐ No
If "yes," where did you work and when?

¿Es usted empleado actual o antes fue empleado del Departamento Correccional de Washington? ☐ *Si* ☐ *No*
Si "sí," ¿dónde trabajó usted y cuándo?

*Your Social Security Number is requested under the authority granted to a Superintendent pursuant to RCW 72.02.045 and will be used to perform a background check to ensure that you meet the criteria and eligibility for entering an adult correctional facility. Disclosure of your Social Security Number is mandatory if you wish to be granted visitation privileges. Information received may be shared with other law enforcement agencies when appropriate.

**Se pide su número de seguro social bajo la autoridad otorgada al superintendente de acuerdo con RCW 72.02.045 y será usado para revisar sus antecedentes penales y asegurar que usted cumpla con los criterios para entrar en una institución correccional para adultos. Se tiene que revelar su número de seguro social para que se le otorgue el privilegio de visitar. Se puede compartir la información recibida con otras agencias del orden público cuando sea indicado.*

Have you ever been convicted of a felony? ☐ Yes ☒ No
If "yes," when and where?

¿Usted alguna vez fue declarado culpable de un delito grave?
☐ *Si* ☐ *No Si "sí," ¿cuándo y dónde?*

U. S. Citizen? ☒ Yes ☐ No. If "no," alien identification type and number

¿Ciudadano de los EE.UU.? ☐ *Si* ☐ *No Si "no," clase de identificación y número*

Country of citizenship U.S.A.
País de ciudadanía:

Have you ever been incarcerated in the Department of Corrections? ☐ Yes ☒ No.

¿Usted alguna vez fue encarcelado usted por el Departamento Correccional? ☐ *Si* ☐ *No*

Release Date ___/___/___
Fecha de libertad: ___/___/___

Number of months you have known offender

¿Desde hace cuánto tiempo (en meses) conoce usted al interno o interna?

Have you ever been denied visiting privileges at a Department of Corrections facility? ☐ Yes ☐ No. If "yes," when and where?

¿Alguna vez le denegaron el privilegio de visitar una institución del Departamento Correccional? ☐ *Si* ☐ *No Si "sí," ¿cuándo y dónde?*

IN CASE OF EMERGENCY CALL:
EN CASO DE UNA EMERGENCIA, LLAME A:
NAME / *NOMBRE*
TELEPHONE NUMBER / *NUM. DE TELEFONO*
MEDICAL INFORMATION (OPTIONAL) / *INFORMACIÓN MEDICA (OPCIONAL)*

I understand that a background check will be conducted, including arrests and convictions. I understand that untruthful or misleading answers or deliberate omissions will be cause for rejection of my application, removal of my name from eligible visitor lists, or termination of my visiting privileges, if approved.

Entiendo que se llevará a cabo una investigación de mis antecedentes penales, incluyendo arrestos y fallos de culpable. Entiendo que respuestas falsas o engañosas o hechos omitidos resultarán en el rechazo de mi solicitud, que se quitará mi nombre de la lista de visitantes o que terminarán mis privilegios de visitar.

SEARCH OF VISITORS: To prevent possible delivery of weapons, controlled substances, or contraband to offenders, all visitors are subject to pat, strip, electronic, locker, vehicle, and canine searches and inspections of any purses, packages, briefcases, or similar containers which are brought onto the premises or the facility grounds.

REGISTRO DE VISITANTES: Para prevenir toda posibilidad de la entrega de armas, sustancias reguladas o contrabando a los internos, todos los visitantes estarán sujetos a cacheos, registros al desnudo, registros electrónicos, registros de su armario o vehículo, registros con canes e inspecciones de bolsas, paquetes, estuches o cosas parecidas que traen a los recintos institucionales.

REFUSAL TO BE SEARCHED: A visitor has the option of refusing to be searched, but may then be removed from the facility and denied visiting rights or entrance to the facility for a period not to exceed 90 days. If a visitor refuses to be searched on more than one instance, their visiting rights may be denied permanently.

NEGATIVA DE SOMETERSE AL REGISTRO: Todo visitante tiene el derecho de rehusar someterse al registro pero se puede hacer que salga de la institución y se puede negar su derecho de visitar o entrar a la institución por un plazo que no excede de noventa (90) días. Si un visitante rehúsa someterse al registro más de una vez, se puede quitar su derecho de visitar permanentemente.

I, the undersigned, understand the search procedures written above and hereby grant authority to the facility to search my person or property in compliance with these procedures.

Yo, el suscrito, entiendo los procedimientos del registro descritos en lo anterior y por el presente doy mi consentimiento a la institución para registrar mi persona o propiedad en cumplimiento con estos procedimientos.

SIGNATURE / *FIRMA* DATE / *FECHA*

PARENT/LEGAL GUARDIAN CONSENT / CONSENTIMIENTO DEL PADRE/MADRE/TUTOR LEGAL

Notarized, written permission from a non-incarcerated parent or legal guardian is required before a minor (i.e., under the age of 18) may visit an offender. I understand that the visits may be contact visits. A certified copy of the minor's birth certificate and, if appropriate, a copy of the filed court order establishing legal guardianship must accompany this form.

Se requiere el permiso escrito y con sello de notario del padre/madre/tutor no encarcelado antes de permitir que un menor de 18 años visite a un interno o interna. Entiendo que estas visitas pueden ser de contacto físico. Adjunto a este formulario esté el acta de nacimiento certificado del menor, y si es indicado, una copia de la orden de divorcio que establece la tutela.

I/Yo, Lisa Faye Dyer (PRINT FULL NAME / *NOMBRE COMPLETO EN LETRA DE MOLDE*) Lisa Dyer (SIGNATURE / *FIRMA*) hereby give my consent as / *por el presente doy mi consentimiento como*

legal guardian or parent, for the above named person to visit offender

padre/madre/tutor legal de la persona nombrada para que visite al interno o interna Richard Dyer (OFFENDER NAME / *NOMBRE DEL INTERNO O INTERNA*)

881744 (DOC NUMBER / *NUM. DEL DOC*) residing at / *recluido en* Mc Neil Island (FACILITY / *INSTITUCION*)

SUBSCRIBED AND SWORN TO BEFORE ME THIS / *SUBSCRITO Y JURADO ANTE MI ESTE* 13 (DAY / *DIA*) DAY OF April, 2009 (MONTH, YEAR / *MES, AÑO*)

SEAL / *SELLO*

Rita Reames
(Signature) / *(Firma)*
NOTARY PUBLIC in and for the state of Washington / *NOTARIO PUBLICO en y para el estado de Washington*

Notary Public Sebastian County, Arkansas
Title / *Título*

DOC 20-060 ES (Rev. 12/23/08) DOC 450.300

Rita Ramos
Printed Name / Nombre en letra de molde

September 20, 2014
My Commission Expires / Expira mi commission en

DO NOT WRITE BELOW THIS LINE / NO ESCRIBA DEBAJO DE ESTE RENGLÓN

OMNI Quick Search (Optional)
Búsqueda rápida de OMNI (Opcional)

DATE / FECHA

NCIC

6-5-09
DATE / FECHA

☑ APPROVED ☐ DENIED
☐ *APROBADO* ☐ *DENEGADO*

6-5-09
DATE / FECHA

Reason / *Razón*:

Entered into PAS / *Entrado en PAS*
By / *Por* D.S. Burton
DATE / *FECHA* 6-6-09

SIGNATURE / *FIRMA*
D. Burton, SCoT

6-5-09
DATE / FECHA

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STATE OF ARKANSAS

ARKANSAS DEPARTMENT OF HEALTH
Division of Vital Records

09 000600

CERTIFICATE OF LIVE BIRTH - 103

TYPE/PRINT IN PERMANENT BLACK INK FOR INSTRUCTIONS SEE HANDBOOK

CHILD

1. CHILD'S NAME (First, Middle, Last)			2. DATE OF BIRTH (Month, Day, Year)	3. TIME OF BIRTH
HAILEY	KAY	MCKINNEY	January 10, 2008	4:32 PM

4. SEX	5. CITY, TOWN, OR LOCATION OF BIRTH	6. COUNTY OF BIRTH
Female	Ft Smith	Sebastian

7. PLACE OF BIRTH	8. FACILITY NAME (If not institution, give street and number)
Hospital	SPARKS REGIONAL MEDICAL CENTER

CERTIFIED ATTENDANT

9. I certify that this child was born alive at the place and time and on the date stated. Signature: Carla Wagner	10. DATE SIGNED (Month, Day, Year)	11. ATTENDANT'S NAME AND TITLE (If other than certifier) (Type/Print)
	1/14/08	JEANMARIE HOUSEHOLDER M.D.

12. CERTIFIER'S NAME AND TITLE (Type/Print)	13. ATTENDANT'S MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code)
CARLA WAGNER BIRTH CERT COORD	1500 DODSON AVE Ft Smith, AR 72901

14. DATE FILED BY REGISTRAR (Month, Day, Year)	15. REGISTRAR'S SIGNATURE
JAN 15 2008	Michael Adams

MOTHER

16a. MOTHER'S NAME (First, Middle, Last)			16b. MAIDEN SURNAME	17. MOTHER'S DATE OF BIRTH (Month, Day, Year)
LISA	FAYE	DYER	DYER	July 8, 1986

18. BIRTHPLACE (State or Foreign Country)	18a. RESIDENCE - STATE	19b. COUNTY	19c. CITY OR TOWN, AND ZIP CODE
WASHINGTON	ARKANSAS	Sebastian	Ft Smith 72903

19d. STREET AND NUMBER OR RURAL ROUTE	19e. INSIDE CITY LIMITS?	20. MOTHER'S MAILING ADDRESS (If different from residence address, enter Street or Box Number, City, State, and Zip Code)
7500 JENNY LIND # 1214	Yes	

FATHER

21. FATHER'S NAME (First, Middle, Last)			22. DATE OF BIRTH (Month, Day, Year)	23. BIRTHPLACE (State or Foreign Country)
KRISTOPHER	KYLE	MCKINNEY	August 6, 1986	OKLAHOMA

INFORMANT

24a. I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. (Signature of Parent or Other Informant)	24b Do you want a social security number for your child?
	Yes

INFORMATION FOR MEDICAL AND HEALTH USE ONLY

25. OF HISPANIC ORIGIN?	26. RACE - American Indian,	27. EDUCATION	28. OCCUPATION AND BUSINESS / INDUSTRY

ARKANSAS DEPARTMENT OF HEALTH SEAL LITTLE ROCK, ARK

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE CERTIFICATE ON FILE IN THE ARKANSAS DEPARTMENT OF HEALTH.

APR 29 09

Director & State Registrar

1994410

WARNING: A REPRODUCTION OF THIS DOCUMENT RENDERS IT VOID AND INVALID. DO NOT ACCEPT UNLESS EMBOSSED SEAL OF THE ARKANSAS DEPARTMENT OF HEALTH IS PRESENT. IT IS ILLEGAL TO ALTER OR COUNTERFEIT THIS DOCUMENT.

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER. THIS IS AN ALTERNATIVE PAPER. DO NOT ACCEPT DOCUMENTS ON PLAIN PAPER.

11/1/09

To Whom it May Concern:

Hello my name is Lisa Dyer and I am writing to you about my father, Richard Dyer. Me and my siblings have grown up with our dad in prison our entire lives. I am now 23 years old with a daughter of my own. Throughout my life, my dad has taken care of me and my mother and siblings. Because he could not be there for us at home, he not only made sure we were provided for, but also, has always given us many gifts. Cars on our 16th birthdays, trampolines, vacations to Disney World, etc. He even fought to get his Veteran's Benefits so that his children could go to college for free. I ask that you please consider the fact that he has done better than most in while being incarcerated. He is veteran of our country, active in organizations and a financially stable person who provides for his family.

My dad has always been there for me in every way that he possibly can. He calls home several times a week, pays for us to come visit him and never forgets a birthday. Now that he is a grandfather, he tries to be a part of his granddaughters' lives to the best of his ability. I was not able to have my dad in my life while I was growing up and I hope and pray that he will be home soon to enjoy his grandchildren.

My dad has a home and family to return to. There are still birthdays and family vacations to be had. On behalf of myself, my daughter and family, I ask that you please let him come home.

Sincerely,

Lisa Dyer

Lisa Dyer

EXHIBIT 4

November 3, 2009

Dear Sir or Madam:

My name is Matthew Dyer and I writing to you concerning my father, Richard Dyer. He is up for parole, once again, and I am requesting that he be released this time around. Despite his circumstances, my dad has been a role model for me throughout my life. I have watched him be a loving and supportive husband to my mother and an understanding and wise father to me and my siblings. His children have always been taken care of with no need or want for anything. We have all grown into well rounded, intelligent and conscientious people that admire and love our father and family.

I am now a grown man serving in the United States Army and taking care of a daughter of my own. My dad has raised me to believe that "family is first" and I now understand the pain he feels, as a father, being apart from us all. My father is a good man and if you need proof of that, look to the many friends and family that love and respect him and wish him finally home for good. Thank you for your time and consideration.

Sincerely,

Private First Class
Matthew Dyer

Matthew Dyer

EXHIBIT 5

November 4, 2009

To Whom it May Concern:

My name is Stephanie Dyer and I am tired of writing letters asking strangers to please release my father from prison. You don't know my father. You read files and documents. You interpret numbers and "expert opinions." You know of a man that simply, to you, exists on paper. This person, this human being, who is held in the mercy of your judgment, is my dad.

Richard Dyer is mine and my siblings' father and my mother's husband. He is a grandfather, my uncle's friend and a source of strength that our family thrives upon. He has successfully, if not miraculously, raised children both emotionally and financially while being contained in prison. We have never needed of anything. He has purchased vehicles for all of his children, sent us to college and helped us in times of need. He also ensures his grandchildren are well taken care of and calls home most every day. Though not physically, he is a presence in all our lives and we share his pain in being apart.

My dad, Richard Dyer, is a good, loving man with a hopeful family that eagerly awaits his return. You will never know that, but I hope that you will see him as I do: an old man with a big heart that still has life to live and more importantly, many people who to long to share that life with him.

Sincerely,

Stephanie Dyer

Stephanie Dyer

EXHIBIT 6

December 4, 2009

To: The Indeterminate Sentence Review Board

My name is Richard Dyer, Jr. I'd like to give you some information about my father and my relationship with him. I'd also like to give you some information about my mother, Ethel Acord. I understand that you've received some negative input from her.

I was born on May 23, 1975 in Anchorage, Alaska. My father was still in the Army at the time. We moved to Bremerton, Washington when I was very young. Both my parents worked at the Puget Sound Naval Shipyard in Bremerton.

I remember spending happy times with my father in Bremerton. He got me into a nice private school for kindergarten and first grade. He was very involved with the school. Everyone seemed to know him and like him.

My father also bought a very small farm in Port Orchard, about a mile from our house. It was just a little barn sitting on about five acres of land. We used it to raise a few animals. We would stop by there regularly to take care of the horse, cow and chickens. In the summer, I would help out a little with things like fixing the fence. I think the farm was mainly for my benefit. I really enjoyed being around the farm animals.

My father never abused me physically or verbally, and I never saw or heard him abuse my mother. I never heard of him doing anything bad to me when I was a baby. When I was six, I became aware that my parents were splitting up. After awhile, I wasn't able to see my father at all. My mother told me that he had left us. I didn't know anything about criminal charges or a trial.

When I was about six or seven, my mother took me and my younger brother Mark to El Paso, Texas, which is where most of her family lived. I later learned that my mother wanted to leave town because she was caught stealing supplies from the shipyard. I think she also wanted to avoid a court order for me to have visits with my father.

We lived for short periods with several different relatives and also spent time in at least three women's shelters. My mother's pattern was to just drop in on someone and flop there. She wouldn't work and she wouldn't help out a whole lot around the house. She's not a good communicator and she has an explosive temper. Nobody could take living with her for very long.

We continued to move around Texas for a few years. My mother's only income was welfare and whatever her relatives would give her. We never stayed in one place for more than a year. She tried going to college for a little while but dropped out.

EXHIBIT 7

In 1987 we moved to Connecticut to live with some relatives but that lasted only a couple of months. We then took a bus to Washington to live with an uncle. He got her a job at Bangor that lasted three years but then she was let go because of her poor attitude.

When my mother got remarried to William Wood she wanted to move in with him. I was sixteen by this time and tired of switching schools. I moved in with a friend and stayed at my high school until I graduated. Not too long after that, my mother left William Wood and moved to Tacoma with my brother. She moved all over the place after that. In 1997 or so, I was working at Snowbird Ski Area near Salt Lake City, Utah. My mother just showed up one day with her things, expecting to move in with me. I was living in a small apartment with three roommates. After a couple of weeks, I had to take her to a shelter.

When I was about 20 or 21, I learned that my mother had been married to someone before she married Richard Dyer, and she had three kids from that marriage. As a child, I knew nothing about that and I don't think my father did either. As far as I know, my mother had no contact with her other children during the time that I was growing up.

Around the same time, I learned my father was in prison. I went to meet with him and he was really happy to see me. Right away, he started helping me get on a better track. He worked things out so that the VA paid for me to go to college. I was able to get an A.A. degree at Seattle Central. My father also bought me a car so that I could get around on my own. After awhile, I was able to help him out by working on property he owned so that he could sell it.

My relationship with my father has been very constructive. We stay in touch a few times a week by phone. I also visit him periodically at McNeil Island, but I don't really like going there because it's depressing. He just doesn't seem to belong with the kind of people he's living with.

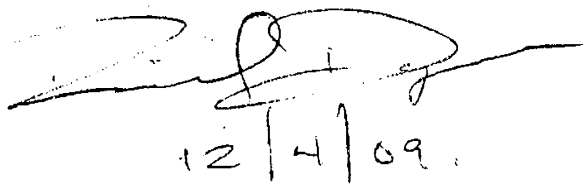
My father has always encouraged me to make the most of my life. I now have a good position as an area manager with American Income Life. At the moment, I'm responsible for starting up a new branch office in Memphis, Tennessee. A copy of my business card is attached.

I still maintain contact with my mother. She gets some sort of disability checks but I don't know her diagnosis. She doesn't seem to be all there. She'll isolate herself in her apartment watching TV. Sometimes she'll disconnect the phone for days. She finds it hard to be around other people or to deal with anything that's confusing to her. For example, one time I went to the bank with her to help her make a deposit. She got confused about how to fill out the deposit slip and starting screaming and making a big scene in the bank. Another time she exploded at someone on a bus because she thought he was blocking her way to the door.

I was a bit surprised to see that my mother had written such a nasty letter about my father in 2006. About six or seven years ago, my mother was over at my place for Christmas. While she was there, my father called me. After speaking to him for awhile, I asked my mother if she would like to speak with him and she said yes. They had a friendly talk. It ended with my mother saying "I love you."

I hope you'll let my father out of prison. He's worked really hard to make the best of things while he's locked up, but he deserves a chance to live a normal life.

Sincerely,



Richard Dyer, Jr.

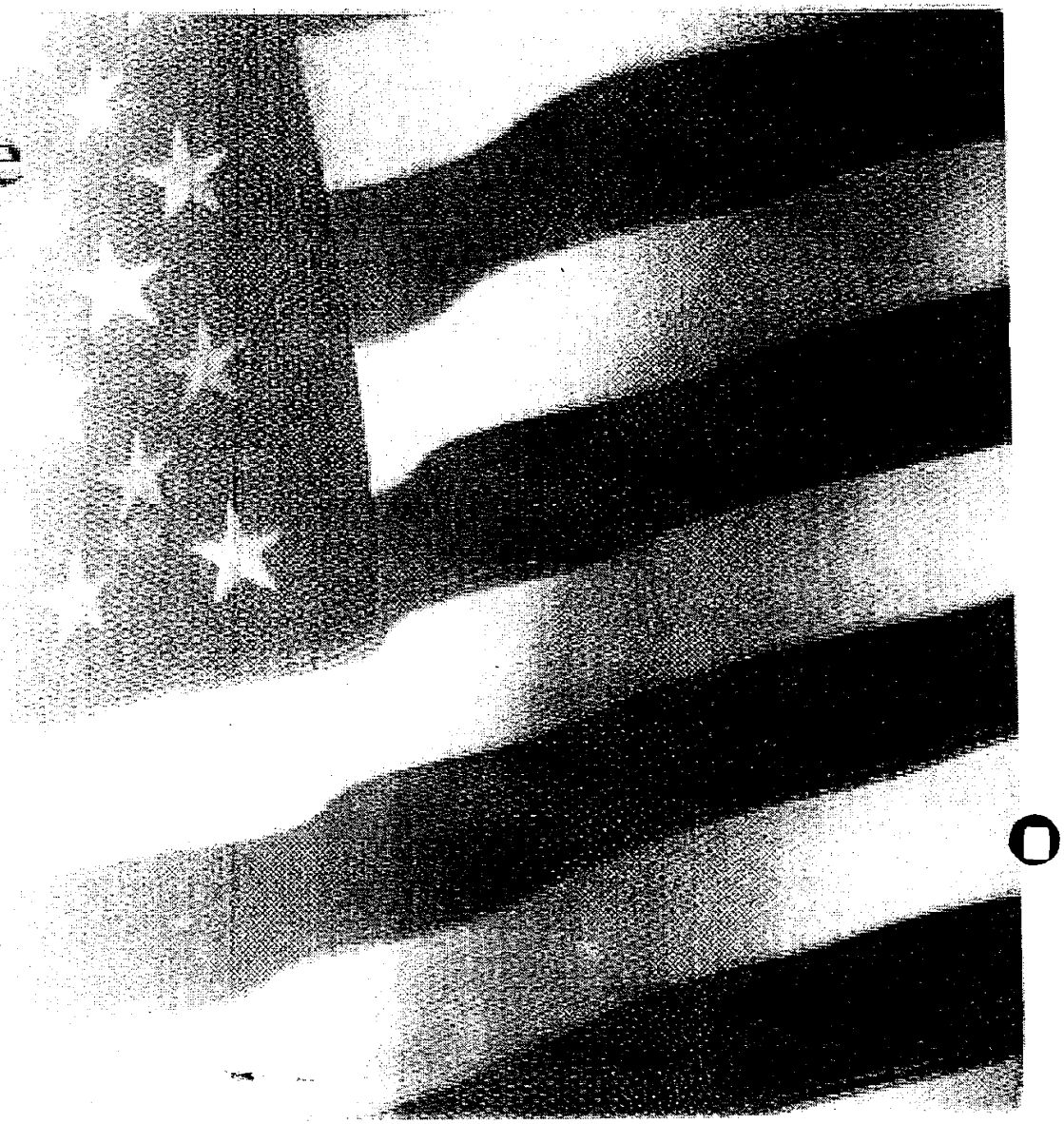
American Income Life

Serving the working family

Richard Dyer

Area Manager

1717 Kirby Parkway Suite 202
Memphis, TN 38120-4331
1-800-433-3405 customer service
1-901-755-5610 Office
901-755-6780 Fax
richarddyer@altig.com
ailife.com



Serving the working family
ailife.com

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER PERFORMANCE EVALUATION

1. EVALUATION PERIOD	2. PROGRAM TITLE/JOB DESCRIPTION TITLE	
FROM 11/4/04 TO 2/4/06	CI Design Drafter	
3. FACILITY	4. ENROLLMENT /HIRE DATE	5. MAXIMUM POSSIBLE HOURS THIS EVALUATION PERIOD
McNeil Island Corrections Center	Nov. 2004	
6. ACTUAL HOURS WORKED THIS EVALUATION PERIOD	7. HOURS EXCUSED ABSENCE THIS EVALUATION PERIOD	8. HOURS UNEXCUSED

9. PERFORMANCE FOR THIS EVALUATION PERIOD

PERFORMANCE DIMENSIONS	OVERALL RATING (CHECK ONLY ONE)				
A. Accomplishment of Requirements	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
B. Knowledge & Competence	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
C. Reliability	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
D. Personal Relations	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
E. Communications Skills	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
F. OVERALL PERFORMANCE	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor

10. STAFF COMMENTS AND RECOMMENDATIONS

Mr. Richard Dyre DOC # 281744 has performed above my expections. He has worked both as a drafter and has also help to keep the design department presentable and clean. His personal relation skills is exceptional. His postitive attutude make the office a great place for his co-workers to come and work. He's always willing to do what ever staff request of him without questions. During the most stressful times his great since of humor and timing are always helpful at bring relevance to the situation. It's been great having him as part of the team.

11. OFFENDER COMMENTS

This report is based upon my best judgement of the offender program performance.

EVALUATING SUPERVISOR

12. PRINT NAME	SUPERVISOR'S SIGNATURE	DATE
Mark Stokeberry		2/5/06

REVIEWER SIGNATURE

13. PRINT NAME	REVIEWER'S SIGNATURE	DATE
Shawn Knight		2/5/06

I have received a copy of this evaluation and it has been discussed with me.

OFFENDER SIGNATURE

14. OFFENDER SIGNATURE	DATE
Richard J Dyre	2-6-06

15. OFFENDER (PRINT) LAST, FIRST, MIDDLE	DOC NUMBER
Dyre, Richard, J	281744

EXHIBIT 8

Distribution **Original** – CI Offender File **Copy**- Facility CI Liaison, DOC RPM staff, Offender

Correctional Industries
Department of Corrections
PO Box 41115
Olympia, WA 98504-1115
Customer Service
1.800.628.4738

OFFENDER PERFORMANCE EVALUATION
Correctional Industries Incentive Program

1. EVALUATION PERIOD	2. PROGRAM TITLE / JOB DESCRIPTION TITLE	
FROM 4/1/06 TO 6/20/06	CI DESIGN – janitor	
3. FACILITY MICC	4. ENROLLMENT / HIRE DATE 06/06/04	5. MAXIMUM POSSIBLE HOURS THIS EVALUATION PERIOD
6. ACTUAL HOURS WORKED THIS EVALUATIION	7. HOURS EXCUSED ABSENCE THIS EVALUATION PERIOD	8. HOURS UNEXCUSED 0

9. PERFORMANCE FOR THIS VALUATION PERIOD

PERFORMANCE DIMENSIONS	OVERALL RATING (CHECK ONLY ONE)				
A. Accomplishment of Requirements • Initiative - When finished, proactive to move to next level. • 100% Attendance	☒ Superior (10)	☐ Above Average (8)	☐ Average (6)	☐ Below Average (4)	☐ Poor (2)
B. Knowledge & Competence • Technical Skills	☒ Superior (10)	☐ Above Average (8)	☐ Average (6)	☐ Below Average (4)	☐ Poor (2)
C. Reliability • Cooperative • Hard Worker • High Productivity Level	☒ Superior (10)	☐ Above Average (8)	☐ Average (6)	☐ Below Average (4)	☐ Poor (2)
D. Personal Relations • Positive Attitude - Communication to staff & peers. • Teamwork/Effort	☒ Superior (10)	☐ Above Average (8)	☐ Average (6)	☐ Below Average (4)	☐ Poor (2)
E. Communications Skills • Receptive to instruction	☒ Superior (10)	☐ Above Average (8)	☐ Average (6)	☐ Below Average (4)	☐ Poor (2)
F. Team Score (Scored by Site Manager)	☐ Superior (25)	☐ Above Average (20)	☐ Average (15)	☐ Below Average (10)	☐ Poor (5)
G. **Overall Performance Total Score**	95	75 Points Possible			

10. STAFF COMMENTS AND RECOMMENDATIONS

He has performed above my expectations. He's been a pleasure working with him.

11. OFFENDER COMMENTS

This report is based upon my best judgement of the offender program performance.

EVALUATING SUPERVISOR

12. PRINT NAME	SUPERVISOR'S SIGNATURE	DATE
Shawn Knight		6/28/06

REVIEWER SIGNATURE

13. PRINT NAME	SUPERVISOR'S SIGNATURE	DATE
Shawn Knight		6/28/06

I have received a copy of this evaluation and it has been discussed with me.

OFFENDER SIGNATURE

14. OFFENDER SIGNATURE		DATE
		6/28/06
15. OFFENDER NAME (PRINT)	LAST, FIRST, MIDDLE DYER, RICHARD, JAMES	DOC NUMBER 281744

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

INMATE PERFORMANCE EVALUATION

1. EVALUATION PERIOD	2. PROGRAM TITLE/JOB DESCRIPTION TITLE:
FROM 9/19/00 TO 1/3/01	Recreation Assistant

3. FACILITY:	4. ENROLLMENT/HIRE DATE:	5. MAXIMUM POSSIBLE HOURS THIS EVALUATION PERIOD:
MICC	9/19/00	480

6. ACTUAL HOURS WORKED THIS EVALUATION PERIOD:	7. HOURS EXCUSED ABSENCE THIS EVALUATION PERIOD:	8. HOURS UNEXCUSED:
396	0	0

9. PERFORMANCE FOR THIS EVALUATION PERIOD

PERFORMANCE DIMENSIONS	OVERALL RATING (Check only ONE)				
A. Accomplishment of Requirements	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
B. Knowledge & Competence	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
C. Reliability	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
D. Personal Relations	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
E. Communication Skills	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
F. OVERALL PERFORMANCE:	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR

10. STAFF COMMENTS AND RECOMMENDATIONS

E/m Dyer is an excellent addition to the recreation program. He does alot of independent work in the yard and has improved the area, such as new drainage and improving track boundaries.

Recommend move to Step B

11. INMATE COMMENTS

12. THIS REPORT IS BASED UPON MY BEST JUDGEMENT OF THIS INMATE'S PROGRAM PERFORMANCE.

EVALUATING SUPERVISOR: Ken Lasse (PRINT OR TYPE NAME) — Ken Lasse (SIGNATURE) — 1/3/01 (DATE)

13. REVIEWER: _____ (PRINT OR TYPE NAME) _____ (SIGNATURE) _____ (DATE)

14. I HAVE RECEIVED A COPY OF THIS EVALUATION AND IT HAS BEEN DISCUSSED WITH ME.

INMATE'S SIGNATURE: _____ DATE: _____

15. NUMBER:	NAME: LAST	FIRST	MIDDLE
281744	Dyer	Richard	J

DOC 21-149 m (5/91)

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

INMATE PERFORMANCE EVALUATION

1. EVALUATION PERIOD	2. PROGRAM TITLE/JOB DESCRIPTION TITLE:
FROM 1/4/01 TO 5/30/01	Recreation Assistant

3. FACILITY:	4. ENROLLMENT/HIRE DATE:	5. MAXIMUM POSSIBLE HOURS THIS EVALUATION PERIOD:
MICC	9/19/00	Poot

6. ACTUAL HOURS WORKED THIS EVALUATION PERIOD:	7. HOURS EXCUSED ABSENCE THIS EVALUATION PERIOD:	8. HOURS UNEXCUSED:
510	Ø	Ø

9. PERFORMANCE FOR THIS EVALUATION PERIOD

PERFORMANCE DIMENSIONS	OVERALL RATING (Check only ONE)				
A. Accomplishment of Requirements	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
B. Knowledge & Competence	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
C. Reliability	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
D. Personal Relations	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
E. Communication Skills	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR
F. OVERALL PERFORMANCE:	[X] SUPERIOR	[ ] ABOVE AVERAGE	[ ] AVERAGE	[ ] BELOW AVERAGE	[ ] POOR

10. STAFF COMMENTS AND RECOMMENDATIONS

Richard is an excellent addition to the recreation program. He takes initiative and completes all tasks.

Recommend movement to Step C ($35^{\$}$ per hour)

11. INMATE COMMENTS

12. THIS REPORT IS BASED UPON MY BEST JUDGEMENT OF THIS INMATE'S PROGRAM PERFORMANCE.

EVALUATING SUPERVISOR: Ken Lasse (PRINT OR TYPE NAME) — Ken Lasse (SIGNATURE) — 5/30/01 (DATE)

13. REVIEWER: _____ (PRINT OR TYPE NAME) — CC2 L Poole (SIGNATURE) — _____ (DATE)

14. I HAVE RECEIVED A COPY OF THIS EVALUATION AND IT HAS BEEN DISCUSSED WITH ME.

INMATE'S SIGNATURE: _____ DATE: _____

15. NUMBER:	NAME: LAST	FIRST	MIDDLE
281744	Dyer	Richard	

DOC 21-149 m (5/91)

September 1, 2004

To: Mr. Tanguileg
From: Dan Zoolkoski – Recreation Specialist 3
Re: Richard Dyer 281744 ***JOB STATUS REVIEW AND REPORT***

Mr. Tanguileg,

This is in regards to Mr. Dyer who has worked for me the past 3 ½ years in the Recreation Department. I wanted you to know and those that have Mr. Dyer's interest in mind know ~~that he will~~ be hard to be replaced. Mr. Dyer has many abilities and qualities that I have seen first hand in the recreation Dept. Mr. Dyer has only needed minimal supervision and works well with staff and inmates. He has never failed to do his job or task that was asked of him. He does jobs outside his job description to best further the recreation area that is safe and enjoyable to look at.

He is highly qualified to do tasks around the gym and yard as he keeps updates on all aspects of his job, which in turn keeps me updated in the office and field. He has done landscaping, track repair and maintains the yard in all seasons. He does tasks that he sees fit without being asked. He always seems to be one step ahead.

Mr. Dyer has painted, pulled weeds, moved dirt, repaired the basketball and handball courts when needed. He has done health and physical therapy charts to help out his fellow inmates.

Mr. Dyer has done an excellent job while working for me and the recreation staff. He is very stable and has been at work every day. He is very stable and has been at work every day and he has always been counted on to even do the not so pleasant job or task that came up.

All of us in the recreation department appreciate all Mr. Dyer has done.

Sincerely,

Dan Zoolkoski – Recreation Spec. 3 – Ext. 1273

EXHIBIT 9

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER PERFORMANCE EVALUATION

1. EVALUATION PERIOD	2. PROGRAM TITLE/JOB DESCRIPTION TITLE	
FROM 27 Aug 2004 TO 30 Sep 2004	CI SBO Janitor	
3. FACILITY	4. ENROLLMENT /HIRE DATE	5. MAXIMUM POSSIBLE HOURS THIS EVALUATION PERIOD
McNeil Island Corrections Center	27 August 2004	
6. ACTUAL HOURS WORKED THIS EVALUATION PERIOD	7. HOURS EXCUSED ABSENCE THIS EVALUATION PERIOD	8. HOURS UNEXCUSED

9. PERFORMANCE FOR THIS EVALUATION PERIOD

PERFORMANCE DIMENSIONS	OVERALL RATING (CHECK ONLY ONE)				
A. Accomplishment of Requirements	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
B. Knowledge & Competence	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
C. Reliability	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
D. Personal Relations	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
E. Communications Skills	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor
F. OVERALL PERFORMANCE	☒ Superior	☐ Above average	☐ Average	☐ Below Average	☐ Poor

10. STAFF COMMENTS AND RECOMMENDATIONS

Mr. Dyre, Richard DOC# 281744, has performed above his expected standards. He has improved the appearance of SIte Business Office and surrounding areas. He is assists whenever needed in other areas. His personal relations with others has made it a good place to work and gets along with his co-workers. I believe he has earned his promotion in pay to 55 Cents per hour retroactive to 1 sep 2004.

11. OFFENDER COMMENTS

This report is based upon my best judgement of the offender program performance.

EVALUATING SUPERVISOR

12. PRINT NAME	SUPERVISOR'S SIGNATURE	DATE
STEPHEN JUDY	Stephen Judy	6 OCT 04

REVIEWER SIGNATURE

13. PRINT NAME	REVIEWER'S SIGNATURE	DATE
GERALD BUCHANAN	[signature]	6/oct/04

I have received a copy of this evaluation and it has been discussed with me.

OFFENDER SIGNATURE

14. OFFENDER SIGNATURE	DATE
Richard J Dyer	10-6-04

15. OFFENDER (PRINT) LAST, FIRST, MIDDLE	DOC NUMBER
Dyer Richard James	281744

January 27, 2005

Greg Benjamin
Program Unit Supervisor
McNeil Island Correction Center
P.O Box 88900
Steilacoom, Washington 98388

REF: Mr. Richard Dyer
Letter of Reference

To Whom It May Concern:

This letter of reference in regards to Mr. Dyer is based on his work performance within the MICC recreation department as an inmate worker.

As a supervisor, during the time that he has worked for the department, I have found Mr. Dyer to be a great add-on to our department. He is an employee who is eager to learn and has quickly obtained a sound understanding of the goals of the department. In working with him, I have found that he is a team player and one who not only has the ability to produce results, but is also able to effectively inner act with others in their activities. Mr. Dyer is an individual who has always demonstrated the highest degree of commitment and his efforts have established himself as being an employee who is dedicated to the department.

Mr. Dyer has never been afraid of hard work and continues to address problems or potential problems in a professional manner. Please feel free to contact me with additional questions or concerns.

Respectfully,

Greg Benjamin
Program Unit Supervisor

EXHIBIT 10

Washington State Department of Health

By the authority of RCW 18.19.030 this person

RICHARD J DYER

is granted a

Counselor Registration

Secretary

Status
ACTIVE

Credential Number
RC 00024959

Effective Date
11/14/2008

Initial Issuance
07/28/1994

Expiration Date
12/20/2009

Personal Copy of Your Credential

Washington State Department of Health

By the authority of RCW 18.19.030 this person

RICHARD J DYER

is granted a

Counselor Registration

Status
ACTIVE

Credential Number
RC 00024959

Secretary

Expiration Date
12/20/2009

EXHIBIT 11

STATE OF WASHINGTON

HEALTH PROFESSIONS QUALITY ASSURANCE DIVISION

THIS CERTIFIES THAT THE PERSON OR ESTABLISHMENT NAMED HEREON IS AUTHORIZED AS PROVIDED BY LAW AS A

REGISTERED COUNSELOR

ACTIVE

DYER, RICHARD J.
PO BOX 1809
281744
AIRWAY HEIGHTS WA 99001-1809

SECRETARY

NUMBER		DATE ISSUED	EXPIRATION DATE
020701	RC00024959	07-28-94	12-20-00

PERSONAL COPY OF YOUR LICENSE

STATE OF WASHINGTON
HEALTH PROFESSIONS QUALITY ASSURANCE DIVISION

REGISTERED COUNSELOR

ACTIVE
DYER, RICHARD J.
PO BOX 1809
281744
AIRWAY HEIGHTS WA 99001-1809

SECRETARY

NUMBER		Expiration Date
020701	RC00024959	12-20-00

Universal Life Church

HEADQUARTERS: 601 3RD ST., MODESTO, CALIF. 95351 (209) 527-[illegible]

This is to certify that the bearer hereof

Richard James Dyer

has been ordained this day May 22, 2001

and has all rights and privileges to perform all duties of the Ministry.

UNIVERSAL LIFE CHURCH INCORPORATED MAY 2, 1962 MODESTO, CALIFORNIA

CREDENTIALS OF MINISTRY

Kirby J. Hensley, Founder
President 1959-1999

Andre J. Hensley, President

Lida G. Hensley, D.D.
President 1999-2006

[illegible]
Office Clerk

EXHIBIT 12

McNeil Island Corrections Center
PO Box 88900
Steilacoom, WA 98388
253-588-5281

Patient Name: DYER, RICHARD	**DOC#**: 281744
DOB: 12/20/1948	**ERD**:
Date of Visit: 02/06/2009	**Unit**: C126

Progress Note

Reason For Visit: Followup up of coronary artery disease, complaint of urinary frequency, recurrent sinusitis.

Problem List:
1. Coronary artery disease with stent in 2005. Last cardiac catheterization was in October 2007. Left ventricular ejection fraction normal. Stents patent.
2. Asthma.
3. Allergies.
4. Chronic sinusitis, status post sinus surgery.
5. Obesity.
6. Shrapnel wounds to face.
7. Right cataract.
8. Dehydration.
9. Hemorrhoids.
10. History of bright red blood per rectum. Negative colonoscopy in July 2007.
11. Cervical spine injury.
12. Lumbar disk disease.
13. Bilateral carpal tunnel repair.

Medications:
1. Saline nasal spray as needed.
2. Triamcinolone 0.1% cream topically as needed.
3. Tamsulosin 0.4 mg p.o. at bedtime.
4. Omeprazole 20 mg one to two p.o. daily.
5. Atrovent HFA 2 puffs inhaled q.i.d.
6. Albuterol HFA 2 puffs inhaled q.i.d. p.r.n.
7. Atenolol 25 mg one-half tablet p.o. daily.
8. Acetaminophen 500 one p.o. q.i.d. p.r.n.
9. Simvastatin 20 mg one p.o. at bedtime.
10. Aspirin 81 mg p.o. daily.
11. Ranitidine 150 mg one p.o. b.i.d.
12. Fluticasone nasal spray 2 sprays to each nostril daily.
13. Furosemide 40 mg one p.o. at bedtime.
14. Loratadine 10 mg one p.o. daily.

Allergies: No known drug allergies.

EXHIBIT 13

Subjective: Mr. Dyer in passing mentioned to me that he has been getting heart palpitations but felt his more urgent problem was his difficulty urinating. As far as his heart palpitations are concerned, he states that he has had them for a few weeks. They only last 1-2 seconds. It feels like his heart is racing. He has had no substernal chest pain, pressure, nausea, vomiting, near syncope, or diaphoresis with these sensations. He gets them maybe once a day. He just wanted to mention them in passing. He says they are not bothering him. Other history related to this which does bother me is the fact that he has developed syncope with laughing over the last couple of months. He states now he is very careful when he laughs. He has had no further episodes since seeing Dr. Longano for this in September 2008. Of note, he had a cardiac catheterization, as mentioned above, in 2007 which showed a normal left ventricular ejection fraction. His coronary arteries were normal, and no other abnormalities were mentioned at that time.

He has had some symptoms of benign prostatic hypertrophy in the past and was started on tamsulosin by Perry Bartram. He states that recently this has become much worse. He has difficulty urinating. He cannot give a urine specimen on command. He has a low strain. It is very hard to get started. Sometimes, he feels like he empties his bladder and sometimes not, but when he goes back to his room frequently he has to go back to the bathroom again and try again but not much urine comes out. He does not have significant nocturia. He has not had any burning, fevers, chills, back pain, blood in his urine, or other symptoms.

He is complaining today about his right eye cataract which was traumatic that he got during the Army. He states that the VA will pay for his cataract surgery, and the ophthalmologist is recommending that he have that done. He feels that he has completely lost his vision in that eye.

Objective: General: He is in no apparent distress today. He appears a little tired. Vital Signs: Blood pressure is 112/68 and pulse is 46. On my retake, his pulse was in the 40s ying down and in the 60s sitting up. Respiratory rate 20, temperature 97.8 degrees. Weight is 243 pounds, which is up 3 pounds since last July. Oxygen saturation is 96% on room air. Skin: Depigmentation of his scalp, parts of the dorsal aspects of his hands. He has a lesion on his left arm and also in his scrotum and in the perianal area. Skin exam on chest, back and face is otherwise as noted. Neck: Supple without thyromegaly or adenopathy. Negative costovertebral angle tenderness bilaterally.

Lungs: Clear to auscultation bilaterally. Normal I:E ratio. No wheezes, rales, or rhonchi. No E:A changes. Good aeration. Cardiovascular: Distant heart sounds. Normal S1 and S2. No murmur, rub or gallop appreciated. Point of maximum impulse is not displaced. Negative jugular venous distention and no carotid bruits. No adenopathy in the anterior cervical chain, axillary region, or groin. Breasts: Normal. Abdomen: Obese. Positive bowel sounds. No organomegaly. Abdominal aorta is not able to be palpated secondary to obesity. No femoral bruits. Femoral pulses are 2+.Genitourinary: Normal circumcised male. Skin exam is as above. Testicles are approximately 5 cm x 4 cm bilaterally, left slightly larger. No hard lesions noted. Normal in size and consistency. Mobile. Epididymis is normal. Shaft of penis is normal. Skin exam is completely normal. No discharge from the urethra. Rectal: Perianal area is as noted above. Good tone. Prostate is slightly normal in size, firm and symmetric. Extremities: Trace edema. Neurological: Grossly intact.

Data: Review of laboratory work today includes a CBC that is normal, except for slightly decreased red cell count. Lipid panel shows total cholesterol 140, HDL 43, and LDL 75. The CMP and magnesium are normal. Minimal glucose elevation at 102. Creatinine is 0.9. Prostatic specific antigen is normal at 0.7.

Assessment/Plan:

1. Urinary frequency. Urinalysis today had minimal changes on it and has been sent to the lab for evaluation but no definitive signs of infection. I am increasing his tamsulosin to 0.8 mg a day. He has been cautioned about lightheadedness and drop in his blood pressure. If these should occur, he needs to go back to the original dose of medication and notify someone. Prostatic specific antigen is normal and no nodularity on his prostate exam. If this does not work, we consider putting him on some finasteride to see if that helps. Also can consider lowering his Lasix dose to counteract the lowering of the blood pressure from his tamsulosin, if necessary. I will follow up with him in 6-8 weeks to see if this is any better.
2. History of syncope, currently not an active problem.
3. Heart palpitations. This bothers me a little bit. His atenolol has been decreased, but he is bradycardic on exam today and I do not feel that I can increase it. If it persists, we will need to get a Holter monitor and EKG on him.
4. Coronary artery disease, currently stable.
5. Lipid panel is within limits for his heart disease.
6. Chronic sinusitis, stable.
7. Right cataract. I am putting in a request with a patient care conference to see if we can arrange for him to have his cataract out with the VA.
8. Obesity. The patient has been counseled repeatedly on losing weight and starting to exercise. Needs to be monitored regularly for development of diabetes. Fasting glucose today was 102.

Karen D. Forbes, MD

Karen Forbes, MD

MLS: 97145
D: Fri Feb 06 17:58:45 2009
T: Sat Feb 07 09:32:19 2009 14257541
cc:

FILED
IN OPEN COURT
DEC 9 1988
ROBERT L. BRENDENSTEIN, Clerk
By _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON, Plaintiff,	NO. 81-1-00398-1
-vs-	
RICHARD JAMES DYER Defendant.	AMENDED JUDGMENT AND SENTENCE

THIS MATTER coming on before the undersigned Judge of the above-entitled Court for entry of an Amended Judgment and Sentence and Warrant of Commitment the defendant having been found guilty by verdicts of the crimes of (1) FIRST DEGREE RAPE - Count II (RCW 9A.44.040), (2) FIRST DEGREE RAPE - Count IV (RCW 9A.44.040), (3) UNLAWFUL IMPRISONMENT - Count V (RCW 9A.40.040), (4) FIRST DEGREE BURGLARY - Count VI (RCW 9A.52.020), (5) FIRST DEGREE RAPE - Count VII (RCW 9A.44.040), [Count I - KIDNAPPING having merged into Count II - FIRST DEGREE RAPE; Count III - KIDNAPPING having merged into Count IV - FIRST DEGREE RAPE], on January 28, 1982; the defendant having been originally sentenced on February 19, 1982 for the above convictions at which the original sentencing hearing the defendant was present in person and was represented by his attorneys, ANTHONY SAVAGE and JAMES L. REESE, the State of Washington being represented by C. DANNY CLEM, Prosecuting Attorney and KENNETH G. BELL, Deputy

EXHIBIT 14

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

APPENDIX 1

Prosecuting Attorney for Kitsap County; the defendant being asked at the original sentencing if there was any legal cause why judgment should not be pronounced and no legal cause was shown at which time the Court entered a judgment of guilty to the crimes of (1) Count II - FIRST DEGREE RAPE, (2) Count IV - FIRST DEGREE RAPE, (3) Count V - UNLAWFUL IMPRISONMENT, (4) Count VI - FIRST DEGREE BURGLARY, and (5) Count VII - FIRST DEGREE RAPE; and it appearing that at said sentencing hearing the Court ordered the defendant sentenced as follows;

The defendant is sentenced to a maximum term of:

Life for the crime of: Count II - FIRST DEGREE RAPE

Life for the crime of: Count IV - FIRST DEGREE RAPE

Five (5) years for the crime of: Count V - UNLAWFUL IMPRISONMENT

Life for the crime of: Count VI - FIRST DEGREE BURGLARY

Life for the crime of: Count VII - FIRST DEGREE RAPE

In such facility as the Department of Corrections shall deem appropriate;

The Court further ordered the sentences to run concurrently and that the defendant pay costs in the amount of $3,111.90 and that the defendant pay an additional assessment to the crime victim's fund of $25.00 and the defendant was ordered remanded into the custody of the Sheriff of Kitsap County to be detained and delivered to the custody of the proper officers for transportation to and

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876-7174

confinement in the appropriate facility. Said original Judgment and Sentence was entered by the HONORABLE ROBERT J. BRYAN on February 19, 1982.

After said sentence the defendant appealed and an opinion was filed on August 14, 1984, which reversed the convictions of Count V - UNLAWFUL IMPRISONMENT, Count VI - FIRST DEGREE BURGLARY, and Count VII - FIRST DEGREE RAPE, but affirmed the convictions for FIRST DEGREE RAPE entered in Counts II and IV. It appears that the defendant was never retried on Counts V, VI, and VII; and that it appears that an Amended Judgment and Sentence should be entered clarifying the defendant's present statutus and it appears that Judge Robert J. Bryan is no longer a Judge for Kitsap County, but that Judge Karen Conoley is now the Judge of the same department and that it would be in the interest of justice to have an Amended Judgment and Sentence entered reflecting valid convictions only as to Counts II and IV in order that the defendant's minimum time properly can be set by the parole board and that the appellant costs can properly be taxed in this Amended Judgement and Sentence; it is therefore,

ORDERED, ADJUDGED, AND DECREED that the defendant is guilty of Count II - FIRST DEGREE RAPE and Count IV - FIRST DEGREE RAPE, and that the defendant has been asked if there was any legal cause why judgment should not be now pronounced and no legal cause was shown; it is hereby

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

ORDERED, ADJUDGED, AND DECREED that the defendant is guilty of Counts II and IV, FIRST DEGREE RAPE and that the defendant is sentenced to life imprisonment for the crime charged in Count II - FIRST DEGREE RAPE (RCW 9A.44.040) and Life for the crime charged in Count IV - FIRST DEGREE RAPE (RCW 9A.44.040); and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall serve said sentences concurrently; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall pay costs in this matter of $3,111.90; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall also pay an assessment to the crime victim's fund in the amount of $25.00; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant shall pay costs on appeal as taxed by mandate from the Court of Appeals in the amount of $113.08; and is further

ORDERED, ADJUDGED, AND DECREED that the defendant is given credit for time served of 1850 days as of December 9, 1986.

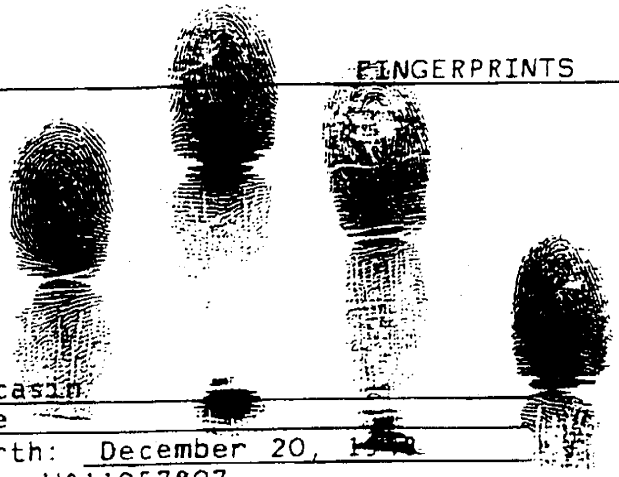
The defendant is remanded into the custody of the Sheriff of Kitsap County to be detained and delivered back into the custody of the proper officers for transportation to and confinement in the appropriate facility.

DATED THIS 9th day of December, 1986.

KAREN B. CONOLEY, JUDGE

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876-7174

FINGERPRINTS



Race: Caucasian
Sex: Male
Date of Birth: December 20, [redacted]
SID Number: WA11957807

DATED this ____ day of December, 1986.

FINGERPRINTS ATTESTED BY:

ROBERT L. FREUDENSTEIN
CLERK

By: Mary Dodeward
DEPUTY CLERK

PRESENTED BY:

C. DANNY CLEM
Prosecuting Attorney

APPROVED FOR ENTRY

~~JAMES K. SELLS~~ Z. P. OLBERTZ
Attorney for Defendant

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE

SAME HAVING BEEN FILED ..... Dec. 9, 1986

ATTEST ..... 12-9 ..... 19 86

ROBERT L. FREUDENSTEIN

COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF KITSAP

BY Gloria Masters D.

C. DANNY CLEM
Prosecuting Attorney
Kitsap County
614 Division Street
Port Orchard, WA. 98366
876 - 7174

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. RICHARD DYER, Defendant.	No. 81-1-00398-1

ORIGINAL

VERBATIM REPORT OF PROCEEDINGS

December 9, 1986
Before the Honorable Karen B. Conoley

APPEARANCES:

For the Plaintiff: Mr. C. Danny Clem
Prosecuting Attorney

For the Defendant: Mr. Zenon P. Olbertz
Attorney at Law

GAYLE WAKEFIELD, CCR, RPR, CRR
OFFICIAL COURT REPORTER
KITSAP COUNTY SUPERIOR COURT
614 DIVISION STREET
PORT ORCHARD, WA. 98366
(360)337-7140

EXHIBIT A

December 9, 1986

THE COURT: State vs. Dyer. This is Cause No. 81-1-00398-1.

MR. CLEM: Your Honor, this comes on for just the reimposition of the sentence. I'll pass up to the court proposed amended judgment and sentence.

The defendant was originally found guilty of five counts of various a sundry felonies on January 28. He was sentenced on February 19, all with counsel, Mr. Savage and James Reid. Thereafter he appealed; three counts were reversed, basis being they shouldn't have been tried at the same time. There was a further hearing sometime about should the costs be reduced. Judge Kruse denied that.

Then the Department of Corrections contacted me and said that it's very difficult for them to set a minimum unless the judgment and sentence is drafted to reflect what happened after the Court of Appeals, and that's the reason it's here. It's just to eliminate Counts V, VI and VII, which he's never been retried on, and so if you'd turn to page 4 the original costs are there, $3,111.90, crime victims of $25.

The only thing different is the $113, which was included in the mandate from the court of appeals taxed

in favor of the respondent State of Washington against the defendant.

Credit for time served we figured it out as 1,850 days as of today. That's it.

THE COURT: Mr. Olbertz.

MR. OLBERTZ: Your Honor, I have a question and I'm not sure how to deal with it. Under the new statute that just went into effect under 9.95.011, entitled "minimum terms," it indicates "When the court commits a convicted person to the Department of Corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall at the time of sentencing or revocation of probation fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense."

It goes on, "The court shall attempt to set the minimum term reasonably consistent with the sentencing ranges under the SRA." I discussed this matter with Mr. Clem. He does not feel that this statute is applicable in this situation, but I'm not so sure that -- I've never dealt with it before, and I'm not sure that any of us have dealt with this particular section of the statute, and it would appear to me that the court is committing Mr. Dyer at this time to the Department of Corrections for an offense committed

before July 1, 1984, and if that is the case then the court shall at the time of sentencing fix a minimum term.

THE COURT: I understand your position and I don't agree with you. This is a deletion of counts as a result of an appellate decision not a resentencing on counts for which he were retried. If as a result of the appeal court's action, for example, it had been a retrial, and then I were sentencing him, I would agree with you, but at this point he's not -- he was originally committed on the same counts plus some.

I'm not committing him on any new counts. I'm not committing him on any new convictions, simply amending the judgment and sentence to delete those counts which the appeals court threw out and so, analytically, I don't think it is a recommitment. It's an amendment to delete rather than a recommitment.

If it had come back on a retrial then I think that section would be applicable, or if the state had chosen to retry him on the other counts, but he has been committed on the counts on which he is serving and will serve that commitment. That commitment continues. The only amendment is a deletion rather than an addition so it seems to me, analytically, it would not be applicable.

I presume that you're objecting and that --

MR. OLBERTZ: That is an objection, for the record.

MR. CLEM: For the record, the state's position in this, Your Honor, is we're not trying to create a new right for this defendant. If he insists on litigating some new right, we'd just as soon the court just send him back to prison the way it is, but we were doing this in good faith. My understanding is that it was -- inured to his benefit. If he doesn't want the benefit requested by the Department of Corrections staff, it's fine with us.

THE COURT: I guess I don't see it your way either. I think that the Department of Corrections has to have an amendment of judgment and sentence in order for them to validly hold him, but I don't think he has any right to be sentenced under the SRA, so I'm going to enter the amended judgment and sentence.

MR. OLBERTZ: The only --

THE COURT: And add the only addition is the costs.

MR. OLBERTZ: I would also make a request under the -- on page 4 it's ordered "As adjudged and decreed" that this is as far as the 3,111 that "The defendant shall pay the costs in the sum of." Mr. Dyer

has been making payments on these costs. We're not completely clear as to what the balance is. I would request some wording be placed in this order indicating he should be given credit for all payments made to date.

MR. CLEM: I don't think that's even necessary. We have no -- there is no dispute. My understanding is he is making payments and that will naturally be assessed against this. We're not changing the figures at all.

MR. OLBERTZ: I think we all agree on what the situation is. I'm just concerned.

THE COURT: I'm going to put in the language "With credit for payments he's already made -- properly made."

MR. CLEM: What line is that?

THE COURT: Page 4, after the semi-colon, "With credit for payments previously ordered and made." I think that's consistent with giving him credit for the time served, otherwise the credit for the time served would have been the credit at the time of the entry, so I think it is consistent.

MR. CLEM: I've passed also up a warrant of commitment.

THE COURT: I've signed that.

MR. CLEM: Mr. Olbertz should have an opportunity to sign that also.

MR. OLBERTZ: I think I signed that.

THE COURT: I guess, by further comments by Mr. Olbertz, the minimum term that has already been set for the time he was sentenced.

MR. OLBERTZ: There is a PRP pending with regard to the minimum terms.

MR. CLEM: Thank you, Your Honor.

(The hearing concluded.)

C E R T I F I C A T E

STATE OF WASHINGTON)
)ss.
COUNTY OF KITSAP)

I, Gayle Wakefield, an official court reporter for Kitsap County Superior Court, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me in the above-entitled matter.

DATED:_____

_____
GAYLE WAKEFIELD, CCR, RPR
OFFICIAL COURT REPORTER
CCR# WAKEFGA499P9

March 29, 2001

THE COURT: This is State of Washington vs. Charles Berry, 00-1-01607-5.

This comes on for ruling pursuant to the defense motion to dismiss pursuant to Criminal Rule 4.3(a), the mandatory joinder, and really the distinction came down to whether or not it made a difference if the felony action was filed before or after the misdemeanor action.

Now, the parties argued -- or appeared to agree, I guess, under the State vs. Lee rule, that the charges at issue were based upon the same conduct and absent

some contrary -- some contrary showing it would be subject to mandatory joinder under 4.3(a).

I'm satisfied that the case should be dismissed. Any appeal will be on the record, and my findings would not be of any assistance, but my analysis under the rule is that Peterson requires a joinder.

These are successive prosecutions based upon essentially the same criminal conduct, and that's what the rule was designed to avoid. I don't find that there's been a strong response as to why -- if the motion were granted, the ends of justice would be defeated, so the motion is granted.

Thank you, counsel.

MR. WEAVER: I guess, Your Honor, the one question I have is should we put this on for entry of an order?

THE COURT: I think you probably ought to prepare an order for dismissal.

MR. WEAVER: This is set for trial on Monday. I would suggest that we keep that hearing scheduled as is with the anticipation that there will be an order of dismissal entered at that time.

(The hearing concluded.)

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, Gayle Wakefield, an official court reporter for Kitsap County Superior Court, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me in the above-entitled matter.

DATED: 10/23/01

Gayle Wakefield
GAYLE WAKEFIELD, CCR, RPR
OFFICIAL COURT REPORTER
CCR# WAKEFGA499P9

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE
(206) 623-1595

FAX
(206) 623-2186

May 3, 2001

Mr. John Dolese
Deputy Prosecuting Attorney – Civil Division
614 Division Street, MS 35A
Port Orchard, WA 98366
Fax: (360) 337-7083

VIA FACSIMILE AND FIRST CLASS MAIL

Re: Public Disclosure Request of Richard J. Dyer
Kitsap County Cause #81-1-00398-1

Dear Mr. Dolese:

Thank you for speaking with me on the telephone today. You have confirmed for me that the Sheriff's office no longer maintains any physical evidence concerning Mr. Dyer's case. You also confirmed that at this point, the Sheriff's office has no records concerning the destruction of the evidence. You believe that the records would have been destroyed in the Summer of 2000.

You also mentioned that there was some possibility that the court clerk might still maintain some evidence in Mr. Dyer's case. You offered to check on that for me.

Thank you for your assistance.

Sincerely,

David B. Zuckerman
Attorney for Richard J. Dyer

cc:
Richard J. Dyer

EXHIBIT 15

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE
(206) 623-1595

FAX
(206) 623-2186

August 24, 2001

Mr. Russell Hauge
Kitsap County Prosecuting Attorney
MSC 35
614 Division St.
Port Orchard, WA 98366-4614

VIA CERTIFIED MAIL

Re: Request for DNA testing under SSB 5896
State v. Richard J. Dyer #81-1-00398-1

Dear Mr. Hauge:

My client, Richard J. Dyer, hereby requests DNA testing under Substitute Senate Bill 5896. Mr. Dyer was convicted of raping Colby Jones and Beverly Cordar. The sole issue at trial was identification. Both victims were blindfolded during much of the incidents, and their descriptions of the perpetrator and his home were in many ways inconsistent with the appearance of Mr. Dyer and his home. Dr. Paul Tice testified at trial that he identified sperm in a vaginal sample from Miss Cordar. See VRP 245-46. Dr. Anita Shaffer testified that she identified sperm in a vaginal sample from Colby Jones. See VRP 239. It may be that other items of evidence, such as the victims' clothing, would also contain DNA evidence from the perpetrator.

Mr. Dyer has consistently maintained his innocence of these crimes. As far as I know, DNA tests were not possible at the time of his trial. He requests that his DNA now be compared with that of the perpetrator.

In response to Mr. Dyer's earlier public disclosure request, the sheriff's office responded that all physical evidence in this case had been destroyed. When I spoke with Mr. Dolese of your office, however, he suggested that it was possible that some of the physical evidence might still be in possession of the court clerk. I request that your office make a thorough and exhaustive search for any physical evidence that might be subject to DNA testing, and inform me of the results of that search.

Thank you for your assistance.

EXHIBIT 16

Sincerely,

David B. Zuckerman
Attorney for Richard J. Dyer

cc: Mr. John Dolese
Mr. Richard J. Dyer

Kitsap County Prosecuting Attorney's Office

Russell D. Hauge
Prosecuting Attorney

Carol I. Maves
Office Administrator

Christian C. Casad
Case Management
Division Chief

Michael B. Savage
Trial
Division Chief

Jeffrey J. Jahns
District/Municipal
Division Chief

Greg R. Hubbard
Juvenile
Division Chief

ue A. Tanner
.il/Child Support
Division Chief

September 5, 2001 Please reply to: **Adult Criminal & Administrative Divisions**

David B. Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

Re: *Richard Dyer*
Kitsap County Superior Court Cause No. 81-1-00398-1

Dear Mr. Zuckerman:

As you know, I have received your letter of August 24, 2001 requesting DNA testing on Exhibits in the Richard Dyer case. I have obtained the exhibit list from the Clerk's Office. As you know, I have sent that list to you by facsimile. However, you have called me on the telephone and requested that I send a photocopy list to you.

I am enclosing a photocopied list of the Clerk's Exhibit list which I have in my possession. As I told you earlier, my list was printed from microfilm copies of the court file. Therefore, the quality of the list I have obtained is not wonderful. However, I do believe that the photocopy which I am sending to you is legible.

I understand that you will review this list and communicate with me concerning any potential DNA testing in the case of Richard Dyer.

Sincerely yours,

RUSSELL D. HAUGE
Prosecuting Attorney

CHRISTIAN C. CASAD
Chief Deputy Prosecuting Attorney

Enclosure

EXHIBIT 17

To: The Indeterminate Sentence Review Board

From: Richard Dyer

I wrote a letter to the Board in 2006 before my last parole hearing. (Copy attached). I don't have a lot to add to that. My family continues to be my main priority. My kids are old enough now that they don't need me to speak for them.

I try to keep my focus on things outside of prison, mostly my family and my outside business interests. I don't want to get caught up in the prison mentality that I sometimes see around me.

I was recently provided a copy of a letter my ex-wife Ethel Acord sent to the Board in 2006. It's hard for me to know how to respond to it. She makes some allegations that I've never heard before. For example, she says I locked my son in the car in Alaska, and that I stole her car. Those things never happened. She also talks about someone claiming to be driving around Texas with a body in the trunk of the car. I'm not sure whether she's saying that was me or my brother. In either case, this is the first I've heard about this and it's certainly not anything I was ever involved in.

Sincerely,

Richard J Dyer

Richard Dyer

12-7-09

Date

EXHIBIT 18

Brett C. Trowbridge, Ph.D., J.D.
Licensed Psychologist #541; Member of the Washington Bar #12433
1102 State Avenue N.E., #4
Olympia, Washington 98506
Phone: (360) 754-3372 Fax: (360) 352-8410

October 21, 2009

David Zuckerman, Attorney at Law
Law Office of David Zuckerman
1300 Hoge Building
705 Second Ave.
Seattle, WA 98104

RE: Richard Dyer DOB: 12-20-'48 AGE: 60
DOC # 281744

Dear Mr. Zuckerman,

You sent me three psychological evaluations done on Mr. Dyer, all done by Department of Corrections personnel to be used by the Indeterminate Sentence Review Board (ISRB) in determining whether to release Mr. Dyer. In one, written by Carson Carter, M.A. (and supervised by David Monson, Ph.D.), dated September 26, 2001, Mr. Carson finds Mr. Dyer to be a low risk for re-offense if released, concluding, "If we are gauging risk, Mr. Dyer has met the criterion for a less restrictive environment. According to the file data, interview and tests, this person could be considered for community supervision with less concern for the community than many of the offenders who are released into society." Mr. Carter scored Mr. Dyer on the Hare Psychopathy Checklist – Revised (PCL-R), and came up with a score of 5, which Mr. Carter stated was "the lowest score this psychologist has ever interpreted on this test." Likewise, on the Minnesota Sex Offender Screening Tool – Revised (MSOST) and on the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) Mr. Carter came up with low scores, indicative of low risk of re-offense. Similarly, Mr. Carter scored Mr. Dyer as low risk on the Level of Service Inventory.

David Monson, Ph.D. authored the next psychological report on Mr. Dyer himself, which was dated February 9, 2005. Again, his conclusion was, "In addition, the psychological testing indicates a low risk to re-offend. Mr. Dyer appears to be an appropriate risk for community placement." Dr. Monson scored the PCL-R and obtained a score of 3 for Mr. Dyer, which Dr. Monson said places him "at the 0.9 percentile". On the MSOST and RRASOR Dr. Monson obtained very low scores for Mr. Dyer, indicative of very low risk to reoffend.

However, the most recent psychological report, written by Patricia Pereira, Ph.D. and dated June 11, 2009, came to a much different conclusion, as she wrote, "The current psychological evaluation suggested high levels of psychopathy, a high risk for violence, and of re-offending." Her scoring of Mr.

EXHIBIT 19(A)

Dyer on the PCL-R resulted in a score of 27, a score indicating significant psychopathy. On the Static-99 her scoring of Mr. Dyer resulted in a score of 6 which would suggest a high risk of re-offending.

In your referral phone call to me you asked me to determine whether I thought it was likely that such different conclusions and such different actuarial scores could be properly reached on the same individual, whose situation in prison has apparently not measurably changed, except that he has gotten older. You also provided me with Dr. Pereira's scoring sheets, which show how she arrived at the scores she reported. You also sent me a copy of an August 14, 1984 Court of Appeals (Division II) case involving Mr. Dyer, in which the Court of Appeals had reversed some of Mr. Dyer's original convictions in this case. The case gives both "Ms A's" and "Ms B's" description of what happened to them when they were raped (on separate occasions in 1981 about eight months apart) by Mr. Dyer and an accomplice. Mr. Dyer's wife had also alleged than he had raped her on two other later occasions after they had separated. In one trial involving all four of the cases Mr. Dyer was convicted of all four rapes. On appeal Mr. Dyer argued, among other things, that the cases involving his wife should have been severed from the cases involving Ms A and Ms B, and the Court unanimously agreed, reversing Mr. Dyer's convictions for the alleged crimes involving his wife. The first degree rape convictions for rape of Ms A and for the rape of Ms B were affirmed. Mr. Dyer has always maintained that he is innocent of the two rape convictions. You provided me with a copy of an Amended Judgment and Sentence dated December 9, 1986, which indicates Mr. Dyer was sentenced to two maximum terms of life imprisonment, to run concurrently.

You also provided me with two Washington Supreme Court decisions regarding Mr. Dyer, decided on July 27, 2006, and on August 7, 2008, both of which also give descriptions of what happened during the two crimes, and both of which discuss Mr. Carter's and Dr. Monson's reports mentioned above, and discuss much of Mr. Dyer's personal history. In the 2006 decision the Supreme Court remanded the case to the ISRB for a new parolability hearing, as "While a review of the evidence and testimony presented at the parolability hearing suggests Dyer met his burden to have conditions of release on parole established, we cannot make this decision in the first instance." However, in the 2008 decision the Supreme Court held that Mr. Dyer had "failed to demonstrate his complete rehabilitation", and upheld the decision of the ISRB not to parole him.

I have not personally evaluated Mr. Dyer, and therefore I am not in a position to make any diagnostic statements about him. However, I can discuss Dr. Pereira's report, and can compare it to the previous reports done by Mr. Carter and Dr. Monson, and I can determine whether, in my opinion, the Static-99 scoring was done correctly.

In reviewing Dr. Pereira's scoring sheet for the Static-99 it appears to me that she has incorrectly scored three of the ten items. On Item number three, "Index Non-sexual Violence", Dr. Pereira scored Mr. Dyer as a "1", but in my view the correct score would be "0". Based on the descriptions of the two rapes which resulted in the convictions for first degree rape found in the psychological reports, the Court of Appeals decision, and the two Supreme Court decisions, Mr. Dyer used force to overcome his victims, but it does not appear to me that he used more force than was required to subdue them and accomplish the rapes. On item number four, "Prior Non-sexual Violence", Dr. Pereira scored Mr. Dyer at a "1", but that item requires prior convictions for non-sexual violence, and Mr. Dyer has no prior convictions of any type, so in my view the correct score should be a "0". Mr. Dyer has no other convictions, as those against his wife were overturned on appeal, and in any case, the behavior leading to those allegations occurred after the two rapes. On item number 5, "Prior Sex Offenses", Mr. Dyer has no prior sex offenses. The two rapes for which he was convicted happened at separate times, but were adjudicated

as part of the same case (or "intervention" in the terminology used with the Stastic-99). Thus, in my view his score would be a "0"; if I am incorrect, and the earlier of the two rape convictions can be considered as a "prior" rape, then the correct score would be "1", not the "2" that Dr. Pereira assigned. Based on that analysis I conclude that the proper Static-99 score is "2" (or "3" if the first rape can be used as a "prior" for the second one).

Very recently (about two weeks ago) the Static-99 was replaced by the Static-99—Revised (Static-99R), in order to take into account the fact that research consistently shows that elderly offenders (including sex offenders and especially rapists) are much less likely to re-offend if released than their younger counterparts. I enclose with this letter an article I wrote outlining the research showing that elderly offenders are much less likely to re-offend. The Static-99 was heavily criticized for not taking this age factor into account, so on the new Static-99R item one has been changed, while all other items remain the same as on the Static-99. On the Static-99 a score of "1" was assigned if the individual was younger than twenty-five years old, and a "0" was assigned if the individual was older than twenty-five years old. However, on the new Static-99R a "1" is assigned if the individual is less than thirty-five years old, a "0" is assigned between the ages of thirty-five and forty, a "-1" is assigned between the ages of forty and sixty, and a "-3" is assigned if the individual is sixty or older. I enclose with this letter a copy of the new scoring rules for the Static-99R. Thus, Mr. Dyer's score on the new instrument would be either -1 or 0, both very low risk scores. To further complicate matters, new norms for the Static-99 were issued about a year ago to reflect the fact that research now shows that offenders in general (including sex offenders) are re-offending at much lower rates than they were when the Static-99 first was published. Those new norms are supposed to be used with the new Static-99R as well. The scorer is supposed to determine whether the offender falls in the "high risk" or "low risk" group for re-offense, but no clear guidelines have been published explaining how to make that determination. Under the new norms a "low risk" individual with a score of "0" would have a 1.8% chance or re-offending in ten years after he was released, and a "high risk" individual with a score of "0" would have a 13.0% probability of re-offending during ten years of release. No norms are provided for an individual with a "-1" score on the Static-99R, but clearly those probabilities of re-offense would be even lower.

I cannot score Mr. Dyer myself on the PCL-R without personally examining him, but in my opinion the huge discrepancy between the low scores assigned by Mr. Carter and Dr. Monson and the high score assigned by Dr. Periera suggests that Dr. Periera's scoring is faulty. On the PCL-R the lowest possible score is "0" and the highest possible score is "40", as on each of twenty factors the individual can be assigned a "0", a "1", or a "2". The cut-off for substantial psychopathy is generally accepted to be at twenty. Mr. Dyer's history is that he was in the Armed Forces starting right after high school for nine years, that he received many commendations, and that he received an honorable discharge. Then he worked steadily at the Puget Sound Naval Shipyard steadily until his arrest in his early thirties, working his way up to a supervisory position. He has worked steadily since being in prison, and has even managed to run his own business from prison with which he has been able to substantially support members of his family on the outside. Nonetheless, Dr. Pereira has scored him as a "2" on item 2, "Grandiose sense of self-worth", as a "2" on item 3 , "Need for Stimulation/Proneness to Boredom" (which involves frequent job changes and inability to tolerate routine activities), as a "2" on Item 4, "Pathological Lying" (which involves the use of aliases and fabricating accounts of one's past), as a "2" on item 7, "Shallow Affect" (which involves little or no attempt to communicate with family), as a "2" on item 11, "Promiscuous Sexual Behavior" (which involves indiscriminate selection of sexual partners, frequent infidelities and prostitution), as a "2" on item 13, "Lack of Realistic, Long-Term Plans, as a "2" on item 14, "Impulsivity" (which involves changing plans and quitting jobs suddenly, and frequent moves from place to place), and as a "2" on item 15, "Irresponsibility". In my view the high scores she assigns

to these factors suggest she is either not well-versed in how the instrument is supposed to be scored, or that she is not familiar with Mr. Dyer's history and background..

Please feel free to contact me if you need further information from me.

Sincerely yours,

Brett C. Trowbridge, Ph.D., J.D.

Static-99R Age Item Coding Rules

Replaces Age Item in Official Static-99 Coding Rules (Harris, Phenix, Hanson, & Thornton, 2003)

1. Age at Release

The Basic Principle: The rates of almost all crimes decrease as people age (Hirschi & Gottfredson, 1983; Sampson & Laub, 2003). Sexual offending does not appear to be an exception. Most studies have found that older sexual offenders are lower risk to reoffend than younger sexual offenders (Barbaree & Blanchard, 2008; Hanson, 2002, 2006). Research has found that the original Static-99 did not fully account for age at release and that a new age weighting had greater predictive accuracy (Helmus, 2009). With the new age weighting (used in this item), age at release no longer significantly contributed to the prediction of sexual recidivism. Similar results were found in subgroups of rapists and child molesters.

Information Required to Score This Item: To complete this item the evaluator should confirm the offender's birth date from official records if possible or have other knowledge of the offender's age through collateral report or offender self-report.

The Basic Rule: Score -3 to 1 point depending on the age of the offender, referencing the table below.

AGE	SCORE
18 to 34.9	1
35 to 39.9	0
40 to 59.9	-1
60 or older	-3

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific time in the future. Static-99R may be scored months before the offender's release to the community and the offender may advance an age scoring category by the time he is released. For assessing risk in the future consider what his age will be on the date of release. In this case, you calculate risk based upon age at exposure to risk.

Sometimes the offender's release date may be uncertain. For example, he may be eligible for parole but does not qualify for release due to an inadequate release plan. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change with a delayed release date.

Static-99R Coding Form

Question Number	Risk Factor	Codes	Score
1	Young	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older	1 0 -1 -3
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions	No Yes	0 1
4	Prior non-sexual violence - Any Convictions	No Yes	0 1
5	Prior Sex Offences	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences	No Yes	0 1
8	Any Unrelated Victims	No Yes	0 1
9	Any Stranger Victims	No Yes	0 1
10	Any Male Victims	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

Translating Static-99R scores into risk categories

Score		Label for Risk Category
-3 through 1	=	Low
2, 3	=	Low-Moderate
4, 5	=	Moderate-High
6 plus	=	High

References

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THE TROWBRIDGE FOUNDATION
REPORT

Volume V, Issue IV
Fall 2004

Age and Recidivism:
How Accurate are Our Predictions?

- Brett C. Trowbridge, Ph.D., J.D.

The Trowbridge Foundation advances social justice by expanding the awareness and understanding of the interface between psychology and law.

We are a private, non-profit operating foundation conducting and fostering research, disseminating information, and advocating for responsible public policy, in order to improve standards of practice and ameliorate social problems.

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Psychopathy and Age

Most crime is perpetrated by males in their late adolescence and early adulthood. After that most offenders commit fewer crimes or stop offending altogether. Many have argued that although most offenders "burn out" and quit offending as they get older, especially violent psychopaths would not "burn out", but instead would continue to re-offend. The best-accepted measure of psychopathy is the Psychopathy Checklist-Revised (PCL-R),[1] on which a score of 30 or above (out of a possible 40) is recommended as the appropriate cut-off for diagnostic purposes.

Victim Issues Key to Effective Sex Offender Treatment
See article on page 4

Using the PCL-R, the complete criminal career and community release profiles of 317 Canadian federal offenders (224 low scorers and 93 scoring within the psychopathic range) were compiled.[2] Crimes were coded according to age at commission, and were coded as either violent, non-violent, or non-sexually violent. Results showed that offenders scoring within the psychopathic range consistently committed more violent and non-violent crimes than the low-scorers starting in adolescence and continuing into their late-40's, after which the re-conviction rate of high scorers decreased substantially relative to low-scorers. For non-violent crimes, the two groups both virtually ceased re-offending by their late 40's. Similarly, for non-sexual violent crimes, the two groups both virtually ceased re-offending by their late 40's, with the high scorers actually committing fewer offenses than the low scorers. This effect was even more pronounced for violent crimes, with the high scorers committing fewer offenses than the low-scorers after their early 40's.

These results indicate that even most psychopaths "burn-out" in mid-life. Reasons may include lack of opportunity, lack of physical strength, ill health, and scrutiny by law and justice agencies, as well as lack of continued criminal propensities. Even though psychopathic offenders offend very little after age 50, current "three strikes" (even "two strikes" in some states) laws, which cause an individual to receive a life sentence upon conviction of his third major felony, are causing prisons to fill up with even more elderly inmates, who would actually be very unlikely to re-offend if released. Not only is the cost of incarcerating them considerable, but most of them are being deprived of their liberty unnecessarily. The apparent reasons for incarcerating these inmates beyond age 60 would be retribution and punishment, as they do not appear on average to be dangerous.

Clinical Judgment and Over-Prediction of Violence

An argument can be made that it should be possible to screen out those who are very likely to re-offend violently. Crime statistics show that violent behavior is actually a low-frequency event in the general population, so accurate prediction is a difficult, if no impossible feat. For example, if on average only one of 100 persons were actually later violent (base rate of 1 percent), the prediction that none of them would be violent in the future would be 99 percent

accurate. There would be only one "false-negative"—i.e., only one person falsely identified as non-violent who, later became violent. As it happens, in the real world far fewer than one in 100 men randomly chosen from the street will actually commit violent crimes in the future. Currently, there is no predictive method powerful or sensitive enough to predict violence with more accuracy than chance among individuals in the general population.

The situation is different, however, among populations with higher base-rates of future violence (such as those who have already offended) if the base rate for future violence for that population is factored into the prediction.

Studies in which offenders are followed from five to ten years after release usually show base rates of violent recidivism considerably lower than most people believe, generally under 20 percent.[5]

Researchers had an opportunity to record data from a natural experiment when the U.S. Supreme Court, in Baxstrom v. Herald[6] set in motion the release of some 967 offenders from a maximum security hospital in New York state who had been detained longer than their maximum sentence. These offenders, none of whom had been acquitted by reason of insanity, were released to local hospitals, and for the most part, eventually to the streets. The follow-up studies demonstrated a very low base-rate of post-release violent behavior. After 4.5 years, only two men had been re-incarcerated for committing a violent crime.[7] Yet all of the released men had been retained past their release dates because hospital staff thought they were still dangerous.

As of 1970 there were no psychological tests or instruments that had been shown to be useful in the prediction of violence.[8] Instead, clinicians would simply use "clinical judgment" in predicting violence, and they tended to over-predict future incidents of violence. This occurred in part because people over-estimate the rate at which violence occurs. In one study,[9] members of a maximum-security hospital staff were asked, "If 100 men were randomly chosen from this maximum security hospital and released, how many would commit an offense causing bodily harm to another person within one year?" All made estimates that were much too high. Medically trained staff actually made higher estimates than non-medically trained staff.

In another study,[10] psychiatrists were unable to demonstrate prediction expertise superior to that of lay persons. Today forensic psychologists familiar with the research will readily acknowledge that clinical judgments, without more, must be regarded with considerable caution.[11]

Actuarial Methods of Predicting Dangerousness

By the late 1990s predictive procedures validated by statistical or actuarial techniques, usually referred to as "actuarial" risk assessment instruments, had been developed. These "actuarial" devices have been shown to be easy and reliable to score, and they have been validated, meaning actual recidivism matches predicted recidivism significantly better than chance. Although false prediction is certainly still occur, the accuracy of these instruments far exceeds chance prediction from base-rate information alone.

Researchers, using mathematical modeling, have been able to design actuarial prediction methods of future violence with accuracy rates around .70 or .75. The Variable Risk Appraisal Guide (VRAG)[12] (which incorporates the PCL-R as its highest weighted factor) has achieved accuracy scores of up to .74, and other methods have achieved similar results.[13] However, as we shall see, accuracy rates of .70 to .75 may produce unacceptable rates of false-positive errors when attempting to predict re-offending among the elderly, because the base-rate of re-offending is so low among the elderly.

Age and Prediction of Sexual Violence

In "three strikes" cases the trial court must sentence the individual to life. However, the new sexual predator civil commitment statutes have created a situation in which upon the expiration of the prison sentence of a repeat sexual offender a decision must be made whether to civilly commit the individual, based on an assessment of his future dangerousness. In these cases, retribution and/or punishment should not be a consideration, as the individual has already served his prison sentence.

The best data on sexual offender re-offense rates, Hanson and Bussiere's 1998 meta-analysis, shows that sexual offenders' five year re-offense rate is on average only 13.4 percent, much lower than most lay people would predict, and less than the re-offense rate for criminals generally.[14] Since this meta-analysis contained data on 23,393 offenders, it is probably a relatively reliable estimate of the true sex-offender recidivism rate. Other studies show similar sex offender recidivism rates. For example, an Ohio Department of Corrections study followed 879 sex offenders over a ten-year period after their release from prison, and found that the sexual recidivism rate was only 11 percent.[15]

The public is justifiably concerned about the recidivism risk posed by sex offenders, but is there some age after which the likelihood of re-offending is greatly reduced? Hanson and Bussiere's above-mentioned 1998 review of 21 follow-up studies found an overall negative relationship between age and risk for sexual recidivism (average $r = -.13$).[16]

In another meta-analysis published by Hanson in 2002[17] involving 10 follow-up studies ($n = 4673$) the offenders were divided into those who sexually victimized adult women (rapists, $n = 1133$), child molesters who victimized any unrelated children (extra-familial child molesters, $n = 1411$), and child offenders who victimized only related children (incest offenders, $n = 1207$). Rapists (mean age = 32.1, SD = 8.9) were on average younger than extra-familial child molesters (m = 37.1, SD = 11.5) and incest offenders (m = 38.9, SD = 9.9). The sexual recidivism rate for the total sample was 7.5 percent, and for the total sample, the recidivism rate declined steadily with age. The recidivism rate for rapists was highest at age 18, and then steadily decreased with age. The highest risk age period for extra-familial child molesters was between the ages of 25 and 35, showing relatively little decline until after age 50, when it declined markedly. Incest offenders committed their crimes most often in the eighteen to twenty-four age group. Overall, there were very few recidivists among the sexual offenders released after age 60 (3.8 percent). None of the incest offenders ($n = 39$) or rapists ($n = 10$) released after age 60 recidivated. There were very few sexual offenders of any type in the advanced age category (11 percent of the total sample was older than 50) and their recidivism rates were generally low (less than 10 percent). Hanson discusses a number of possible reasons for this apparently low rate of recidivism among older sexual offenders, such as poor health, a decline in sex drive, and fewer opportunities to offend.

Barbaree followed up 477 adult sex offenders[18] for an average of 5.9 years. For the entire sample of 477 offenders, the sexual recidivism rate was 11.5 percent. The sample was divided into four age-at-risk groups: 21-30, 31-40, 41-50, and 51+ years of age. In the 51+ group only 5.7 percent re-offended.

Sexual offenders' likelihood of re-offending is now usually assessed using "actuarial" methods. As discussed above scientific research has consistently shown that actuarial methods of risk assessment are more accurate than clinical judgments alone in predicting future violence and sexual assault among

individuals released into the community.[1] The most commonly used actuarial instruments for predicting the likelihood of sexual recidivism are the Sex Offender Risk Appraisal Guide (SORAG),[2] the Rapid Risk Assessment of Sexual Offense Recidivism (RRASOR),[3] and the Static-99.[4] These instruments use only historical "risk" factors, such as gender of victim, number of prior offenses, early school maladjustment, etc., so generally speaking an individual's level of risk as measured by these instruments cannot go down even if the person acquires "protective" factors which might mitigate the risk, such as successfully completing treatment. Thus, these instruments focus on "ruling in" future dangerousness, not "ruling out" future dangerousness, and therefore are systematically biased towards "ruling in" dangerousness.[5]

Each of these instruments includes an item for "age", with younger age contributing to higher estimates of risk. In the RRASOR and the Static 99 subjects are coded as either younger or older than 25. On the SORAG, age-at index-offense is coded using a five factor coding system (age less than 26, 27-28-33, 34-38, and greater than 38 years of age). These instruments were derived using samples of mostly younger offenders, and because of that, they do not assign proper weight for reducing risk estimates for subjects older than age 50. Indeed, an argument can be made that for subjects age 50 and above the age of the subject is the best predictor of recidivism, out-weighting other variables.[6] Janus and Meehl have pointed out that actuarial risk assessment instruments have less predictive power when base-rates are low, as is the case for recidivism among older sex offenders.[7] If the actuarial instrument was validated using a sample with a high base-rate of recidivism, it will not be valid for a population with a low base-rate of recidivism. Janus & Meehl[8] have questioned whether the RRASOR is even applicable to sexual predator hearings. They reported that the base-rate for Hanson's group of offenders was 41 percent, and stated that sexual predator evaluations attempt to assess risk for groups in which the base-rate of recidivism may be substantially lower.

Since the base-rate for recidivism among elderly offenders is so low (around 5 percent),[9] actuarial approaches may produce too many false-positives (predictions of high probability of re-offense but the subject turns out to not re-offend), even when the actuarial test is highly sensitive.[10] The low rate of recidivism among those over the age of 60 may result in a situation in which actuarial scores are actually poor estimates of a persons' likelihood of re-offending.

Decreased sexual offending with increasing age is probably related to a natural decline in sexual behavior in general with age. Sexual dysfunction, decreased sexual performance, reduced testosterone, and reduced libido are associated with increasing age.[11]

Base-Rate Issues

What proportion of nonviolent persons will be erroneously classified as "dangerous"? When there is a low base-rate for violence, even predictive methods that are highly valid will generate large numbers of false positive errors. Assume for a moment a population of 1000 persons, 15 percent (or 150) of whom will commit another violent act if released and 85 percent (850) of whom will not. Assume a scientifically derived actuarial procedure that is so sophisticated that it has only a 10 percent error rate, meaning the evaluator can accurately classify 90 percent of each group. The actuarial procedure will accurately label as violent 135 (.90 x 150) truly violent persons, but will also falsely label as violent 85 (.10x 850) persons who will not commit another violent crime if released. Out of the total number of 220 labeled as "violent", only 135, or about 61 percent, truly will re-offend if released. If everyone were incarcerated that the test identified as violent, 85 out of the 220, or 39 percent, would not need to be locked up, as they would not re-offend if released.[12]

As we can see with this example there will be an objectionably large number of people unnecessarily deprived of their liberty, even though the psychological procedure used is highly accurate, because the base-rate of the violent behavior is so low, i.e. 15 percent. But, what if the base-rate for violent re-offending were even lower, say only 5 percent. Using the same accuracy rate of 90 percent, the procedure would correctly identify 45 out of the 50 people out of a group of 1000 that would re-offend, but would incorrectly label 95 (.10x950) of those who would not have re-offended as "violent." Thus, out of 140 persons identified, only 45 would be truly violent, and an alarming 95 would be falsely incarcerated, for an unacceptable false-incarceration rate of 68 percent. Two thirds of them would not need to be incarcerated.[13]

In the real world, however, even the best actuarial instruments only have an accuracy rate of about 75 percent, which is considered to be the ceiling for accuracy of the selection process.[14]

Janus and Meehl[15] applied the 75 percent accuracy rate to a base-rate of re-offending of 20 percent, as their review of the literature shows that a 20 percent base rate for sexual recidivism is roughly correct. See Frequency Table 1. Out of 1000 sex offenders 200 will re-offend at the 20 percent base-rate, and out of that 200, the test will correctly identify 150 (.75x200). 800 of the 1000 will not recidivate, but the test will falsely label 200 (.25x800) of them as violent. Thus out of the 350 people identified as violent, less than half (43 percent or 150) are truly violent, and more than half (57 percent or 200) will be falsely incarcerated.[16] Janus and Meehl go on to calculate that a "good selection process (with an accuracy rate of 70 percent) would produce a group of people identified as violent when only 25 percent to 50 percent of them truly were violent, depending on whether the base-rate of recidivism is 20 percent or 45 percent. A 50 percent probability that the individual identified is truly violent will not occur unless unrealistic assumptions are made about either the base-rates of re-offending or the accuracy of the prediction method."[17]

Frequency Table 1.

1,000 Youthful Sexual Offenders

20% Base-Rate of Re-Offense; 75% Prediction Accuracy Rate

	Correctly Classified	Falsely Classified	Result
Incarcerated	150 (75%)	200 (80%)	350 Classified as violent and locked up
Released	50 (6%)	750 (94%)	800 Classified as non-violent and released

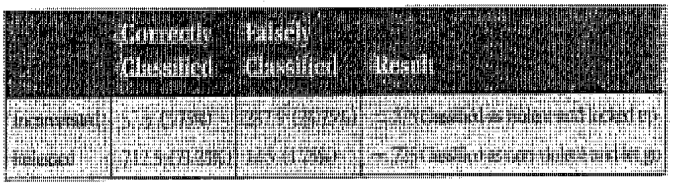
Out of 350 incarcerated, 200, or 57.1% falsely locked up.

What if the accuracy of the selection procedure remains 75 percent, but the recidivism rate is only 5 percent? See Frequency Table 2. Then out of 1000 people, 50 will re-offend, and the test will correctly identify 75 percent, or 37.5 of them. However, out of the remaining 950 people the test will incorrectly identify 25 percent of them or 237.5. Thus, out of a total of 275 people selected by the procedure for incarceration (237 + 38), 237.5 of them, or 86.4 percent would be "false-positives" and would not truly be violent if released.

Frequency Table 2.

1,000 Elderly Sexual Offenders

5% Base-Rate of Re-Offense, 75% Prediction Accuracy Rate



	Correctly Classified	Falsely Classified	Result
Incarcerated	50 (18%)	225 (82%)	275 Committed as likely to re-offend
Released	712.5 (89.3%)	85.5 (10.7%)	725 Released as not likely to re-offend

Out of 275 incarcerated, 225, or 86.4% falsely locked up

We have seen that if the base rate of recidivism is as low among elderly sex offenders as the Hanson study suggests (less than 5 percent), then the actuarial measures currently in use will probably generate too many incorrect classifications of high-risk (false positives) for them to be useful. The Hanson study is not the only study showing such low rates of recidivism for elderly sex offenders. A study of sex offender re-incarceration rates in Washington State found that none of the 465 rapists released were re-incarcerated after age 55, whereas roughly 5 percent of the 796 child molesters released were re-incarcerated for a sexual offense after age 55.[5]

Civil Commitment and Sex Offenders

Now that we have seen some of the problems with making predictions of risk about offenders, particularly older offenders, let us examine the laws that authorize civil commitment of repeat sexual offenders. Such sex offender commitments require a three-part formula to commit an individual. The government must prove: (1) that the individual has engaged in harmful sexual offending in the past; (2) that the individual currently suffers from a mental disorder; and (3) that because of the mental disorder the individual will likely engage in future acts of harmful sexual re-offending.[6] The U.S. Supreme Court has arguably created a further requirement of serious difficulty controlling behavior in Kansas v. Crane.[7] These civil commitment schemes for sexual offenders have generally been upheld by the courts even though these same courts acknowledge the problematic nature of dangerousness predictions. For example, In re Young[8] acknowledged that "prediction of dangerousness has its attendant problems" but held prediction testimony "sufficiently accurate and reliable" to be admissible. However, the Young case required a relatively high level of probability of future violence before an individual could be committed as a sexually violent predator.

As mentioned above, the Washington statute requires "evidence beyond a reasonable doubt" that a sex offender is "likely" to engage in future sexual violence.[9] In Young, the Washington Supreme Court has interpreted this standard to mean that "the likelihood of re-offense is extremely high."[10] In Young the Washington Supreme Court quoted a prominent sex offender expert, Dr. Vernon Quinsey, as stating "that the predictive accuracy of sexual recidivism 'can realistically be expected to be in the 80 percent range'", and used that quote to support its claim that for those selected using a prediction procedure with 80 percent accuracy the "likelihood of re-offense is extremely high". (As we have already seen, 80 percent accuracy is a very high estimate, with 70 percent to 75 percent being more realistic accuracy rates.) The Washington Supreme Court has a fundamental misunderstanding of risk assessment, as it seems to conclude that an 80 percent accuracy rate would result in an 80 percent rate of selecting for commitment those who are truly dangerous. As we have seen, it is necessary to factor in the base rates of re-offending, and if those base rates are low, the frequency of false-positives will be objectionably high. As we have already discussed, if the base rate of re-offending among elderly sex offenders is only about 5 percent even an accuracy rate of 80 percent (probably currently unachievable) will result in many false positives. Out of 1000 individuals, 5 percent, or 50, will re-offend and the 80 percent accurate procedure will identify 40 of them (.80x50). However out of the remaining 950 people who will not re-offend, the 80 percent accurate test will identify 190 of them (.20x950) as likely to re-offend even though if released they would actually not re-offend. Thus, the test would identify 230 offenders (40 + 190) as likely to re-offend, but only 40 of those, or about 17 percent, truly would re-offend if released whereas 83 percent would not. How could any court which understood these base-rate issues conclude that an 83 percent false positive rate shows that the individual is "likely" to re-offend, much less "the likelihood of re-offense is extremely high?" Indeed, under these circumstances, what expert could ethically testify that the person was "likely" or "highly likely" to re-offend? If a jury truly understood these concepts, could it rationally find by "evidence beyond a reasonable doubt" that the individual was "likely" or "highly likely" to re-offend?

Nonetheless, Washington's Supreme Court has recently held that both clinical and actuarial prediction methods are admissible (they meet the Frye test of being "generally accepted in the relevant scientific community") in sex offender commitment proceedings.[11] Defense attorneys should enlist the services of expert witnesses who can explain to the jury why such predictions may not be very accurate in low base-rate situations, such as the re-offense rates of elderly sex offenders. If a person who has been committed as a sexually violent predator requests it, the court must appoint him a qualified expert and authorize funds to pay that expert's fee at each annual review.[12] Such an expert could explain to the jury or judge why age may not be appropriately factored in with actuarial instruments when the individual is considerably older than the mean of those people used in the validation studies for the instrument.[13]

The consequences of inaccurate predictions of dangerousness are obviously quite severe. Predictions that someone is not going to re-offend when he truly is going to re-offend lead to sexual violence. On the other hand, predictions that someone is going to re-offend when in fact they would not re-offend if they were released lead to unwarranted prolonged deprivations of liberty. Society must decide which type of error is preferable. It does so by deciding how many sex offenders to commit under the sex offender civil commitment statutes. If it commits many of the sex offenders being released from prison, most of the errors will take the form of unwarranted deprivations of liberty. If it commits only a few of the sex offenders released from prison, namely those considered to be the absolutely most likely to re-offend, most of the errors will take the form of sexual violence. Similarly, we can conclude based on the discussion above, that if society commits large percentages of older sexual offenders (even if they have long records of sexual offending), most of the errors will take the form of unwarranted deprivations of liberty, because it is the younger offenders who are most likely to re-offend.

The Civil Commitment Program at Atascadero State Hospital (ASH) in California currently has a mean age among its committees of 50.9 years.[14] This relatively high age suggests that society may be making a large number of errors in the direction of unwarranted prolonged deprivations of liberty.

Assume that it is true, as we have discussed, that out of 1000 elderly repeat sex offenders only 5 percent will violently re-offend. Suppose for this example that instead of using some predictive instrument we simply predict that none of them will re-offend. We will incorrectly predict that 50 will not re-offend when they will (false-negatives), but there will be no false positives, so our overall accuracy rate would be 95 percent. This approach would also save money, since society would not have to pay for maximum-security sexual predator civil commitment hospitals.

In this example, 50 elderly offenders will be released who will re-offend. But remember that when we used the actuarial method with 75 percent accuracy with

the 5 percent base-rate of re-offending, out of 1000 elderly sex offenders released our instrument would only correctly identify 37.5 of them, leaving 12.5 who would be released who will re-offend. See Frequency Table 1. So by using the actuarial scheme we would prevent 37.5 offenders who will re-offend from being released by civilly committing them. However we will also incorrectly commit one quarter of the 950 elderly sex-offenders who will not re-offend, or 237.5 false positives and our accuracy rate for those we incarcerate is only 13.6 percent. Our civil commitment hospital will have 237.5+37.5= 275 committees in it, 86.4 percent of whom would not re-offend if we released them. To prevent 37.5 true re-offenders from being released we will have falsely incarcerated 237.5 who would not re-offend if released.

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Victim Issues Key To Effective Sex Offender Treatment

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The expanding literature on the long-term sequelae of childhood abuse can help us to treat sex offenders more effectively. Clinicians who treat sex offenders often experience strong counter-transference reactions when their clients present themselves as victims.

This usually takes the form of blaming "the system" for treating them unfairly and/or blaming their victims for causing them to have sex. However inappropriate such blame may be, the feeling of being a victim is real and stems from early childhood experiences.

Virtually all the sex offenders I have worked with in the past 25 years have had some history of sexual and/or physical abuse. Hanson (1999) reports that "in file reviews of 409 sexual offenders, we found that 75% had been victims of some form of child abuse, physical, sexual, or neglect." These findings are not incongruent with other researchers.

For example, Gratham (1996) found, in a sample of 286 sex offenders in treatment, that 70% reported having been sexually abused as children and 50% reported a history of physical abuse. Lisak, et al. (1996) found that more than 80% of a group of men who sexually abused children had themselves been abused.

Moreover, there is ample evidence in the literature on adult survivors of child abuse to suggest that these may actually be under-estimates. Courtois (1988) estimates that 50% of female incest victims in therapy do not initially reveal their abuse history, and both she and Sgroi (1989) have explicated a variety of reasons why clients do not report a history of sexual abuse. In addition, it is probable that men in our society are even less likely than women to report a history of sexual abuse, for a variety of reasons, including shame and sexual identity confusion (Vasington, 1989). The persistent evidence in the abuse survivor literature of client denial or omission of abuse history raises serious question regarding the accuracy of Hanson and Bussiere's (1998) findings that a history of childhood sexual abuse was unrelated to sexual re-offense risk. In contrast, another study (Hanson and Harris, 1998), used official records of physical, sexual or emotional abuse and whether the offender had ever been taken into the care of child protective services, rather than self-report. This study found that the early backgrounds of sexual recidivists were significantly worse that those of non-recidivists in terms of abuse, neglect, and placement.

In a recent article, Hanson (1999) puts forth some suggestions for improving sex offender treatment that "start with the assumption that the same basic rules that govern the behavior of you and I also govern the behavior of sexual offenders" (p.83). Indeed, it is the thesis of this paper that sex offenders can best be understood as a sub-group of individuals who have been abused as children, and who have reacted in a manner not unlike other child abuse survivors. Hanson (1999) suggests that a history of abuse may result in a schema or "core belief" among sex offenders that "given all his hard luck, the world owes him something" (p.83). While possibly true in part, this is only one aspect of the complex relationship between childhood victimization and later sex offender behavior. Hanson and Harris (1998) have identified a number of stable dynamic factors that appear to offer promise to therapists interested in changing sex offender behavior.

These factors include intimacy deficits, negative peer influences, attitudes tolerant of sexual offending, problems with emotional/sexual self-regulation, and general self-regulation. It is no coincidence that many of these factors have been well documented in the literature as long-term effects of child abuse.

Difficulty in forming and maintaining intimate relationships is perhaps the hallmark symptom of a history of child abuse. Briere (1992) has described adult abuse survivors as displaying ambivalence and fear regarding attachment and vulnerability, impaired ability to trust, increased anxiety as closeness increases, expectations of re-victimization, and a need to push others away and sabotage relationships. Virtually every writer in the field cites adult intimacy problems as common among adults abused as children (see, for example, Courtois, 1988; Jehu, 1989; Gil, 1988; Lew, 1988; et al.). Closely related is the need for control cited by numerous writers (McCann et al., 1988; Sgroi, 1989; Evans and Sullivan, 1995; Briere, 1996) as a pre-occupation of many survivors of child abuse. The control dynamics of both rape and child abuse have been widely explored in the sex offender literature. Hanson (1999) notes, "For some sexual offenders, the act of forcing, controlling and degrading the victim is perceived as more rewarding than any of the sexual elements of the offense" (p.86). For some offenders, fear of adults and fear of loss of control may be as prominent in their offending behavior as deviant arousal. These factors need to be assessed carefully and their origins processed at an emotional level in sex offender treatment.

Societal attitudes tolerant of rape have been well researched by Malamuth (1981, 1986).

In addition to societal attitudes, most of the rapists I have encountered in my forensic clinical practice have been sexually abused by women, which may also contribute significantly to their later attitudes regarding women. But society is generally far less tolerant of the sexual abuse of children. So where do child molesters acquire attitudes that support their deviant behavior? The answer may be that their own histories of sexual abuse also lay the groundwork for attitudes tolerant of molesting children. At the heart of this is the common victim conviction that he or she is to blame for the abuse, or somehow deserved it (Courtois, 1988). Individuals of both genders whose childhood sexual violation has gone untreated often express self-damning sentiments such as "I must have been seductive and provocative when I was young" and "I did not physically resist, so I must have wanted to have sex" (Jehu, 1989). Self-blame may involve belief in what Lerner (1980) called the "just world" hypothesis. As Briere (1996) puts it, "The victim may choose to believe that 'I got what I deserved' as opposed to the potentially more frightening notion that violence is random and unjust, and that one cannot do things to avoid being victimized" (p.15).

Elsewhere, Briere (1992) has used the term "abuse dichotomy" to describe how a young child with primitive, concrete cognitive processes tries to understand the behavior of a parent who is hurting him. The child is forced to choose between the conclusion that either he is bad or his parent is bad. He has been taught that adults are always right, that they do things "for your own good," and that they should be obeyed. It is far too threatening for a child victim to believe that his parent is wrong or bad, and his childish egocentric way of thinking also mitigates against such a conclusion. It is not uncommon, moreover, for victims to be given direct, overt messages by perpetrators that they are responsible for their own abuse. Therefore, the child who is being sexually abused by someone close to him concludes, "I am as bad as whatever is done to me. I am bad because I am being punished. I am being punished because I am bad" (Briere, 1992). Sgroi (1989) has noted that many sexual abuse survivors in

treatment go through a secondary phase of denial which is designed to reduce their feeling that they are "damaged goods". "Having acknowledged the reality of the abuse in the first stage of recovery, the survivor now attempts to minimize the significance of the abuse in order to shield herself or himself from experiencing the emotional pain..." (p.120). This is perfectly consistent with the view often expressed by child molesters that having sex with children "doesn't really hurt them." It is the offender's own self-blame, self-loathing, and denial of harm stemming from his own unresolved sexual victimization history which both allows and drives him to create more sexual victims. Again, this is a connection that must be made conscious in treatment and extensively worked through. Hanson and Harris (1998) further cite "problems with emotional/sexual self-regulation and general self-regulation" as important stable dynamic risk factors. Van der kolk et al. (1996) have contended that the intrusive and numbing symptoms which define PTSD in DSM-IV are really only a part of the clinical picture of the lasting effects of trauma.

Their research has found that "the occurrence of pure PTSD is the exception rather than the rule; the majority of people who respond to a trauma with persistent intrusive and avoidant symptoms also develop a complex set of other interrelated problems" (p.89), which often persist for many years after the person no longer meets the criteria for PTSD. "The combination of chronic dissociation, physical problems for which no medical cause can be found, and a lack of adequate self-regulatory processes is likely to have a profound impact on personality development" (p.86). These effects were more pronounced in subjects who had experienced trauma before the age of 14. Van der Kolk et al. conclude: "This study supports and amplifies the existing body of research that has demonstrated an intimate association between the diagnoses of PTSD, dissociation, somatization, and a variety of problems with affect regulation, including difficulties with modulating anger and sexual involvement, as well as aggression against the self and others" (p.89).

Hanson (1999) notes that "Deviant sexual schema gain their power from their sense of urgency" (p.86). Evidence is now accumulating that this sense of urgency may, in the cases of those who were sexually abused early and severely, be based in neurobiology, as a result of how the young child's brain processes, and is affected by, trauma (Schore, 1997; Siegal, 1999). This rapidly growing body of literature has important implications for sex offender treatment. An offender who suffers from extreme emotional lability, whose emotions are experienced more intensely, or who interprets emotional arousal in terms of past rather than current events is very likely to become overwhelmed when in the throes of strong negative emotions. Such a person will certainly have difficulty applying a set of complex cognitive strategies, no matter how well he may have learned Relapse Prevention or how motivated he may be to change his behavior. For some sex offenders, specifically those who have suffered significant early abuse, more treatment time may be required in which to correct affect dysregulation, possibly by using some of the techniques which Linehan (1993) has applied so successfully to borderline personality disorders.

Finally, what are we to make of Hanson and Bussiere's (1998) finding that "A negative clinical presentation (e.g., low remorse, denial, low victim empathy) was unrelated to sexual recidivism" (p.357)? Victim empathy has long been considered an important dynamic variable in sex offender treatment, and consequently, most treatment programs have modules designed to increase victim empathy. Shall we now conclude that it is completely irrelevant to sexual re-offending? The answer is very likely "No." Most "victim empathy" treatment modules are primarily cognitive and therefore result in offenders learning "appropriate" verbal responses that have little to do with change at an emotional level. This may explain the finding that "empathy" as it is currently taught is unrelated to sexual re-offending. It does not, however, rule out true empathy as a critical variable in change. Lisak (1997) examined the relationship between empathy for the self and empathy for others and reached some conclusions that have potential significance for sex offender treatment. He notes: "A number of studies lend support to the link between people's capacity to tolerate their own distressful emotions and their capacity to empathize with distress in others...These findings suggest that there is a relationship between a person's capacity to experience and express their own painful emotions and the capacity to respond sympathetically to the emotional pain of another person" (p.166-167). He then goes on to explore the hypothesis that masculine socialization in our society may be a kind of "mediator variable" that increases the likelihood that males, more than females, will be unable to process their abuse and therefore become perpetrators (pp. 167-171). This line of reasoning has an interesting parallel in the field of attachment research. Main (1997, 2000) and others, using the Adult Attachment Interview (George, Kaplan, and Main, 1984,1985, 1996), have found that parents with histories of childhood trauma could nevertheless form secure attachment bonds with their infants if, and only if, they could discuss their own traumas in a realistic, coherent, and emotionally connected manner. In order to form such a bond, a caretaker must be exquisitely attuned to the infant's feelings and responses, i.e., capable of enormous empathy.

It has not been my clinical experience that sex offenders in treatment try to use their own victimization as an excuse for their deviant behavior. On the contrary, one of the most difficult parts of therapy is breaking down their denial that they were abused or that the abuse damaged them in any way. Studies of abused former delinquents "suggest, if anything, a tendency to minimize, forgive, and forget previously documented abuse."

(Swica, Lewis and Lewis, 1996, p.431). Sex offenders are often deeply affected by processing their own abuse and then seeing the connections with their offenses. I have also had clients report that the compulsivity of their deviant fantasies was greatly reduced by such processing. At this point, however, this is purely anecdotal. With few exceptions (Lisak, 1997; Friedrich (1995), there appears to be little interest in the field of sex offender research and treatment in applying knowledge gained from trauma theory, despite ample evidence that most sex offenders are in fact trauma survivors. It is my strong belief, based on 25 years of sex offender treatment, that the vast majority of what Hanson (1999) refers to as "deviant schema" grow out of childhood abuse experiences. Hanson concludes his paper with a discussion of compassion. The most compassionate thing we could do for sex offenders and for their potential future victims is to compel them to address their own childhood trauma histories as a major part of sex offender therapy. More than anything else, the field of sex offender treatment needs more research on the relationships between early victimization and later sexual offending.

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Research for these articles was supported by The Trowbridge Foundation.

- Brett C. Trowbridge, Ph.D., J.D.
Executive Director

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Presentations:

* **"Self Defense as a Mental Defense"**, Brett Trowbridge, American College of Forensic Psychology, April 7, 2000; Washington Institute, November 3, 2000, November 16, 2001, October 18, 2002, and October 17, 2003.

* **"The Expert's Role in Self-Defense as a Mental Defense"**, Brett Trowbridge, Ph.D., J.D., American College of Forensic Psychology Conference, San Diego, California, April, 2000.

* **"Capacity, Competency, Mental Health Issues & Resources"**, Brett Trowbridge, Ph.D., J.D., Washington Association of Prosecuting Attorneys Juvenile Training Program, Leavenworth, Washington, September, 2000.

* **"Informed Consent for Psychologists in Washington"**, Brett Trowbridge, Ph.D., J.D., Washington State Psychological Association Fall Conference, Lynnwood, Washington, October, 2000.

* **"Confession Law, and the Psychologist's Role in Assessing the Validity of Confessions"**, Brett Trowbridge, Ph.D., J.D., American College of Forensic Examiners Fall Conference, October, 2000.

* **"Malingering Exposed"**, Brett Trowbridge, Ph.D., J.D., 1st Australian Forensic Psychology Conference, February 7, 2001; American Lake VA Hospital, May 23, 2001; Washington State Psychological Association, February 22, 2002; Annual Conference of the European Society of Psychology and Law, September 19, 2002, Leuven, Belgium.

EXHIBIT 19(C)

* **"Diminished Capacity"**, Brett Trowbridge, Ph.D., J.D., Washington State Psychological Association, March 2001; Clallam/Jefferson Public Defeners, March 26, 2001; Washington Association of Criminal Defense Lawyers, April 19-20, 2001; Western State Hospital, March 28, 2003.

* **"Admissibility of Expert Testimony Concerning Eyewitness Evidence in Washington"**, Brett Trowbridge, Ph.D., J.D., American College of Forensic Examiners, April 26, 2001

* **"The Psychologist's Role in Evaluating Child Witness"**, Brett Trowbridge, Ph.D., J.D., Thurston County Family and Juvenile Court and Fireside Forensic Services, February 26, 2002; American College of Forensic Psychology, 18th Annual Symposium, April 21, 2002, Toronto.

* **"Do You Have to Pass a Test Before You can Be Executed?"**, Brett Trowbridge, Ph.D., J.D., American College of Forensic Psychology, 19th Annual Symposium, April 10-13, 2003, San Francisco.

* **"Interrogative Suggestibility"**, Richard Pollard, Ph.D., Brett Trowbridge, Ph.D., J.D., International Psychology and Law Conference, July 9, 2003, Edinburgh, Scotland.

* **"False Identifications and False confessions: How can psychologists present testimony to assist courts with avoiding false convictions?"**, Brett Trowbridge, Washington State Psychological Association, Fall 2003 Convention, November 7, 2003, Seattle.

* **"The Admissibility of Expert Testimony in Washington on Post Traumatic Stress Disorder and Related Trauma Syndromes: Avoiding the Battle of the Experts by Restoring the Use of Objective Psychological Testimony in the Courtroom,"** Brett C. Trowbridge, Ph.D., J.D., AP-LS, March 2004, Scottsdale, AZ; and ACFP, April 2004, San Francisco, CA.

* **"Choosing Between Possible Mental Defenses: Insanity, Diminished Capacity, and Self-Defense,"** Brett C. Trowbridge, Ph.D., J.D., Washington Association of Criminal Defense Lawyers, 2003 Year in Review, December 5, 2003, Seattle.

* **"Expert Testimony Used to Prove Criminal Conduct Based on PTSD-Related Trauma Syndromes: Rape Trauma Syndrome, Child Abuse Syndromes, and Battered Person Syndrome,"** Brett C. Trowbridge, Ph.D., J.D., American Psychology-Law Society, 2004 Annual Conference, Scottsdale, AZ, March 2004; American College of Forensic Psychology, 20th Annual Symposium, San Francisco, CA, April 2004.

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* **"Competency and Criminal Responsibility in Washington"**, Brett Trowbridge, Ph.D., J.D., Gonzaga Law Review, 1985/86, Volume 21.

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* **"Child Incapacity Defense in Washington"**, Brett Trowbridge, Ph.D., J.D., Washington State Bar News, Vol. 54, Issue 6, June 2000.

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* **"Psychologists' Roles in Evaluating Child Witnesses"**, Brett C. Trowbridge, Ph.D., J.D., American Journal of Forensic Psychology, 2003, Volume 21, Issue 3.

* **"Mentally Ill Defendants"**, Brett Trowbridge, Ph.D., J.D., Washington Criminal Defense, May 2003, Vol. 17, No. 2.

* **"Medicating Incompetent Defendants"**, Brett Trowbridge, Ph.D., J.D., Washington Criminal Defense, November 2003, vol. 18, no. 4.

* **"The Admissibility of Expert Testimony in Washington on Post Traumatic Stress Disorder and Related Trauma Syndromes: Avoiding the Battle of the Experts by Restoring the Use of Objective Psychological Testimony in the Courtroom,"** Brett C. Trowbridge, Ph.D., J.D., Seattle University Law Review, Vol 27, 453, 2003.

* **"Interrogative Suggestibility in a U.S. Context: Some Preliminary Data on Normal and FAS/FAE Subjects,"** R Pollard, B Trowbridge, PD Slade, AP Streissguth, A Laktonen, and BD Townes (2004). 37 Personality and Individual Differences, 5, 1101-1108.

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by Brett C. Trowbridge, Ph.D., J.D.
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September 22, 2009

David Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle

Re. Richard Dyer, DOC # 281744

Dear Mr. Zuckerman,

Attached is the information requested by your office. I apologize for the delay. I was away for a few days a couple of times in the last few weeks.

Patricia Pereira, Ph.D.,
Licensed Psychologist
McNeil Island Corrections Center

EXHIBIT 20

EXHIBIT Q-I
STATIS-99 SCORING WORKSHEET

Inmate Name: AYER. CDC No. _____ Evaluator: _____ Date: 6/11/09

	Risk Factor	Codes	Score	Comments
1	Young	Aged 25 or older Aged 18 – 24.99	(0) 1	
2	Single	Ever lived with lover for at least two years? Yes No	 (0) 1	
3	Index Non-sexual violence	No Yes	0 (1)	✓
4	Prior non-sexual violence	No Yes	0 (1)	✓
5	Prior Sex Offenses (Same rules as in RRASOR)	Charges Convictions None None 1-2 1 3-5 2–3 6+ 4+	 0 1 (2) 3	✓
6	Prior sentencing dates (excluding index)	3 or less 4 or more	(0) 1	
7	Any convictions for non-contact sex offenses	No Yes	(0) 1	
8	Any Unrelated Victims	No Yes	0 (1)	✓
9	Any Stranger Victims	No Yes	0 (1)	✓
10	Any Male Victims	No Yes	(0) 1	
	TOTAL SCORE			

TRANSLATING STATIC-99 SCORES INTO RISK CATEGORIES

STATIC-99 SCORE	Label for Risk Category	Sexual recidivism		
		5 years	10 years	15 years
0	Low	.05	.11	.13
1	Low	.06	.07	07
2	Medium-Low	.09	.13	.16
3	Medium Low	.12	.14	.19
4	Medium-High	.26	.31	.36
5	Medium-High	.33	.38	.40
6 +	High	.39	.45	.52

(Revised 11/13/02)

MICC HEALTH RECORDS

Hare PCL-R 2nd Edition

Robert D. Hare, Ph.D

Client ID: MYER Age: ____ Gender: (M) F

Rater: ____ Date: 3 / 9 / 09 (mm / dd / yyyy)

Ratings should be made while reviewing the criteria found in the PCL-R 2nd Edition Rating Booklet or Technical Manual. Circle the appropriate rating to the left of each item. For items 17–20, refer to the notes provided below. **Step-by-step instructions to complete this form can be found in chapter 2 of the PCL-R 2nd Edition Technical Manual.**

No	Maybe	Yes	Omit		
0	(1)	2	X	1	Glibness/Superficial Charm*
0	1	(2)	X	2	Grandiose Sense of Self Worth
0	(1)	2	X	3	Need for Stimulation/Proneness to Boredom
0	1	(2)	X	4	Pathological Lying
(0)	1	2	X	5	Conning/Manipulative
0	1	(2)	X	6	Lack of Remorse or Guilt
0	1	(2)	X	7	Shallow Affect
0	(1)	2	X	8	Callous/Lack of Empathy
(0)	1	2	X	9	Parasitic Lifestyle*
0	1	(2)	X	10	Poor Behavioral Controls
0	1	(2)	X	11	Promiscuous Sexual Behavior
0	1	(2)	X	12	Early Behavioral Problems
0	1	(2)	X	13	Lack of Realistic, Long-Term Goals*
0	1	(2)	X	14	Impulsivity
0	1	(2)	X	15	Irresponsibility
0	1	(2)	X	16	Failure to Accept Responsibility for Own Actions
(0)	1	2	X	17	Many Short-Term Marital Relationships*
(0)	1	2	X	18	Juvenile Delinquency**
(0)	1	2	X	19	Revocation of Conditional Release
(0)	1	2	X	20	Criminal Versatility***

* If age is under 30 years: 0 = 0–1, 1 = 2, 2 = 3 or more, X = Omit.
If age is 30 years or over: 0 = 0–2, 1 = 3, 2 = 4 or more, X = Omit.

** 0 = no offenses, 1 = minor offense, 2 = major offense, X = Omit.

*** 0 = 0–3, 1 = 4–5, 2 = 6 or more, X = Omit.

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Hare PCL-R: 2nd Edition
Robert D. Hare, Ph.D.

Scoring Grid

Name: _____

Client ID: DYER

Age: _____ Gender: M F

Rater: _____

Date: 8 / 9 / 09 (mm / dd / yyyy)

Ensure that all responses have transferred over to this page. For each item, copy the circled response into the unshaded box in the corresponding row. Add the numbers in each column and write each sum in the Totals row near the bottom of the page. Add the number of omitted items for each column and write the sum in the Number of Omitted Items row (refer to the attached tables for adjusted sums). Refer to attached profiles for *T*-scores and comparison tables.

Item	No	Maybe	Yes	Omit	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
1	0	1	2	X	1						1
2	0	1	2	X	2						2
3	0	1	2	X			2				2
4	0	1	2	X	2						2
5	0	1	2	X	1						1
6	0	1	2	X		2					2
7	0	1	2	X		2					2
8	0	1	2	X		1					1
9	0	1	2	X			0				0
10	0	1	2	X				2			2
11	0	1	2	X							2
12	0	1	2	X				2			2
13	0	1	2	X			2				2
14	0	1	2	X			2				2
15	0	1	2	X			2				2
16	0	1	2	X		2					2
17	0	1	2	X							0
18	0	1	2	X				0			0
19	0	1	2	X				0			0
20	0	1	2	X				0			0
				Totals	Facet 1	Facet 2	Facet 3	Facet 4	Sum Facets 1&2	Sum Facets 3&4	Total Score
				Number of Omitted Items	6	7	8	4	13	12	27
				Adjusted Scores	AS	AS	AS	AS	AS	AS	AS

Factor 1 = Interpersonal/Affective
Factor 2 = Social Deviance
Facet 1 = Interpersonal
Facet 2 = Affective
Facet 3 = Lifestyle
Facet 4 = Antisocial

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Hare PCL–R: 2nd Edition
Robert D. Hare, Ph.D.

Profile Forms

Name: _____

Client ID: 0167

Age: _____ Gender: M F

Rater _____

Date: ___/___/___ (mm dd yyyy)

Profile for Male Offenders

T-Score	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
80							
79							
78							
77							
76							
75							
74							
73							40
72							
71							39
70							38
69							37
68							36
67							
66							35
65							34
64							33
63							
62							32
61	5	6	9	6	13		31
60							30
59							29
58							
57							28
56							27
55							26
54							25
53							24
52							23
51				6			22
50							21
49							
48							20
47							19
46							18
45				12			17
44							16
43							15
42							14
41							13
40							12
39							11
38							10
37							
36							9
35	0						8
34							7
33							6
32							
31							5
30							4
29							3
28							2
27							1
26							0
25							
24							
23							
22							
21							

Profile for Female Offenders

T-Score	Facet 1	Facet 2	Facet 3	Facet 4	Factor 1	Factor 2	Total Score
80							
79							
78							40
77							39
76							
75							38
74							37
73							36
72							
71							35
70							34
69							33
68							
67							32
66							31
65							30
64							
63							29
62							28
61							27
60							26
59							25
58							24
57							
56							23
55							22
54							21
53							
52							20
51							19
50							18
49							
48							17
47							16
46							15
45							
44							14
43							13
42							12
41							
40							11
39							10
38							9
37							
36							8
35	0						7
34							6
33							
32							5
31							4
30							3
29							2
28							1
27							0
26							
25							
24							
23							
22							
21							

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S.R. Hathaway and J.C. McKinley
Minnesota Multiphasic Personality Inventory-2™

Address _____

Occupation _____ Date Tested 3/9/09

Education _____ Age _____ Marital Status _____

Referred By _____

MMPI-2 Code _____

Scorer's Initials _____

Profile for Basic Scales

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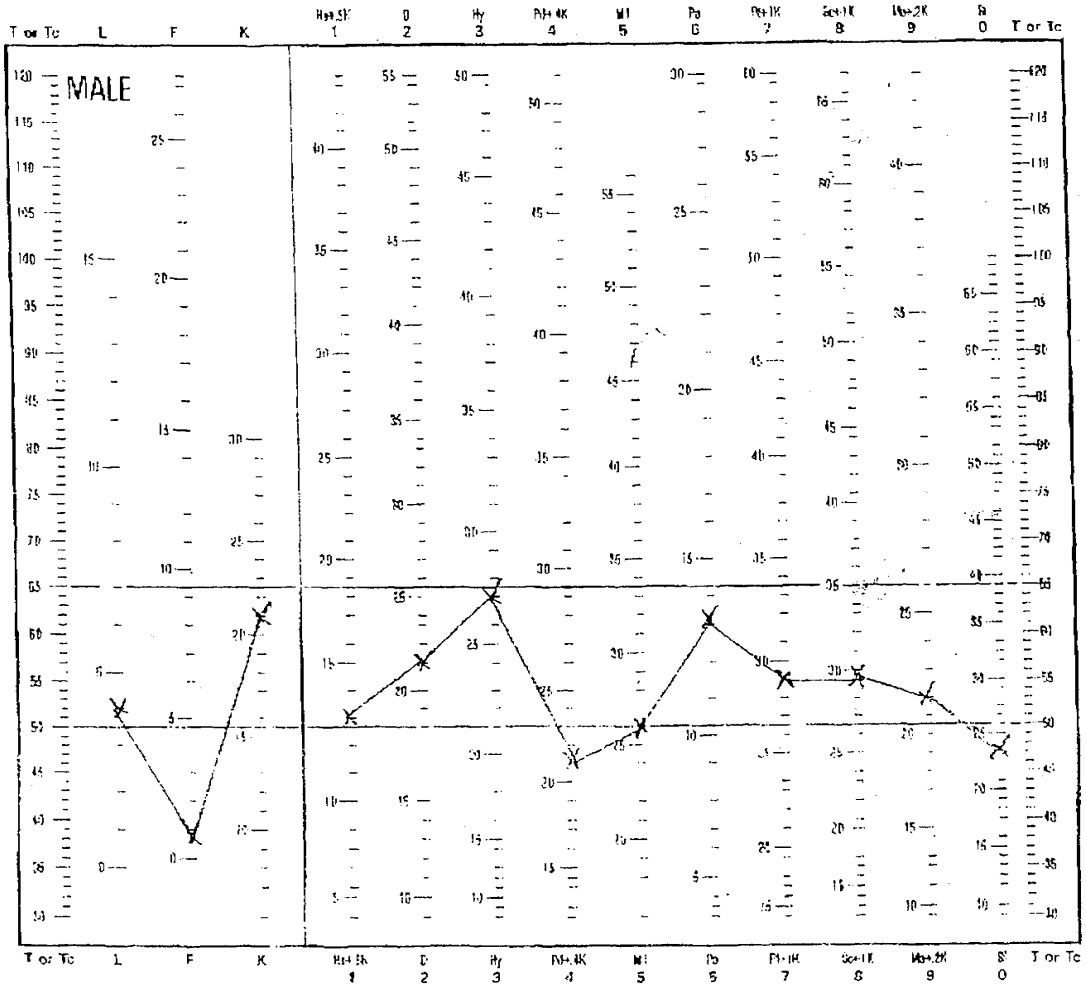

LEGEND

L	Lie
F	Infrequency
K	Correction
Hs	Hypochondriasis
D	Depression
Hy	Conversion Hysteria
Pd	Psychopathic Deviate
Mf	Masculinity-Femininity
Pa	Paranoia
Pt	Psychasthenia
Sc	Schizophrenia
Ma	Hypomania
Si	Social Introversion

Fractions of K

K	.5	.4	.2
30	15	12	6
29	15	12	6
28	14	11	6
27	14	11	5
26	13	10	5
25	13	10	5
24	12	10	5
23	12	9	5
22	11	9	4
21	11	8	4
20	10	8	4
19	10	8	4
18	9	7	4
17	9	7	3
16	8	6	3
15	8	6	3
14	7	6	3
13	7	5	3
12	6	5	2
11	6	4	2
10	5	4	2
9	5	4	2
8	4	3	2
7	4	3	1
6	3	2	1
5	3	2	1
4	2	2	1
3	2	1	1
2	1	1	0
1	1	0	0
0	0	0	0

	L	F	K	Hs 1	D 2	Hy 3	Pd 4	Mf 5	Pa 6	Pt 7	Sc 8	Ma 9	Si 0
Raw Score	4	1	21	2	21	27	13	26	13	8	8	18	23
? Raw Score	0												
K to be Added	11						8			21	21	4	
Raw Score with K	13						21			29	29	22	

MICC HEALTH RECORDS

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NCS ORDER #
24001

STATIC-99 Coding Rules

Revised - 2003

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STATIQUE-99 Règles de codage révisées – 2003

EXHIBIT 21

Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a "home" or "placement", this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection "Coding Crime Sprees" in section "Item #5 – Prior Sex Offences".

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

> If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

> **For Example:** An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".
>
> However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

> **For Example:** Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward' and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Prior Sex Offences".

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple "0" or "1" dichotomy. From the offender's official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as "charges".

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Whichever column, charges or convictions, gives the offender the "higher" final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, "counts count". If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a "6" under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges or more are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack			
Date	**Charges**	**Convictions**	**Sanction**
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

> **For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.
>
> **For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Hare Psychopathy Checklist–Revised (PCL–R): 2nd Edition

Technical Manual

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MHS

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EXHIBIT 22

Chapter 3
Item Descriptions

The following sections contain the PCL–R items. Each item is described in detail, and suggestions about the sources of information needed to score the item are provided. These item descriptions should be reviewed when ratings are made. A careful review of the scoring criteria by even the most experienced raters will serve to ensure that the diagnostic criteria remain stable from one use to the next.

The item descriptions are the same as those in the 1991 edition of the manual. The use of the pronouns he and him in the Technical Manual, Rating Booklet, Interview Guide, and QuikScore Forms reflects the early research focus on male offenders. There now exists extensive data from female offenders. However, the masculine terminology is retained in this edition to maintain consistency with the 1991 edition of the PCL–R.

Item 1: Glibness/Superficial Charm

Description:

Item 1 describes a glib, voluble, verbally facile individual who exudes an insincere and superficial sort of charm. He is often an amusing and entertaining conversationalist, is always ready with a quick and clever comeback, and is able to tell unlikely but convincing stories that place him in a good light. He may succeed in presenting himself well and may even be quite likeable. However, he generally seems too slick and smooth to be entirely believable. He appears to have knowledge in many areas, and may casually use technical terms and jargon effectively enough to impress most people. Careful questioning will usually reveal that his knowledge is only superficial.

Sources of Information:

Ratings for this item should be based wherever possible, on interviews with the individual in addition to file information. In interviews, assess his interpersonal style. He may appear to be friendly, straightforward, and cooperative, but may actually provide very little useful information. He frequently starts out answering a question but ends up talking about a completely different subject, leaving the impression that he has answered the question, whereas he actually may have said nothing of substance. He appears very much at ease throughout the interview, showing few signs of anxiety, embarrassment, or discomfort. During the interview, it will often be difficult to determine who is in control. When given the opportunity to answer questions about his past (e.g., childhood, schooling, travel), he may ramble and tell stories that seem unlikely in light of what is known about him. His approach will generally have a pseudo-intellectual flavor. Some typical areas with which he may attempt to appear familiar are sociology, psychiatry, medicine, psychology, philosophy, poetry, literature, art, and law. He may be over-concerned with the interviewer's impression of him; he often asks direct questions ("How am I doing so far?") and may try to read the interviewer's notes. On occasion, it is useful to let him stray from the topic; some of the characteristics described above are much more obvious in unstructured than in highly structured interactions.

In institutional files, look for comments that he has a reputation for smooth talking, "the gift of gab," and so forth. Conflicting impressions in files should alert the rater to the possibility that she or he may have obtained a biased impression of the individual.

Some raters have difficulty scoring individuals who present as extremely superficial but who are not at all charming. For example, some inmates put on a consistent but transparent "macho" or "tough guy" image. Typically, we rate such individuals as a 1. People who present as sincere and straightforward, shy and reserved, or immature and inadequate are typically scored as a 0.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 2: Grandiose Sense of Self Worth

Description:

Item 2 describes an individual with a grossly inflated view of his abilities and self-worth. He may impress as a braggart. He often appears self-assured, opinionated, and cocky during the interview, perhaps giving the impression that he is performing or giving a press conference. His inflated ego and exaggerated regard for his own abilities are remarkable, given the facts of his life.

He is not embarrassed about, or sensitive to, his current legal problems; he is convinced that his present circumstances are the result of bad luck, unfaithful friends, or an unfair and incompetent criminal justice system. He may also see himself as the real victim of the "alleged" crime because of the time he is forced to spend in jail. He does not see his future as being adversely affected by his contacts with the law. He feels that the skilled trades taught in prison are worthless or beneath him; he expresses an intention to pursue a career with status.

Sources of Information:

Interviews are particularly helpful in rating this item. The individual may try to control the interview or act as if he is holding a press conference. He may even use expressions such as "no comment" and "I'm not prepared to answer that question at this time." He may talk like a "jailhouse lawyer"—he may even have acted as his own defense counsel during his trial. If so, get him to discuss his reasons for doing so and his views on how well he performed. His reactions to questions regarding others (e.g., "Do you find others stupid? dull? boring? smart? interesting?") will often reveal an attitude of superiority. It is useful to explore his self-perceptions and self-image. He may claim that others respect him, fear him, envy him, dislike him, and so forth. Someone scoring high on this item is usually happy to talk about his status and reputation (whether deserved or not) in prison. He may try to "overpower" the interviewer with nonverbal behaviors such as direct eye contact, flamboyant gestures, and intrusions on the interviewer's personal space.

Files may contain comments and impressions about the individual's self-image consistent with the above description. In particular, files give the rater a chance to see how the individual is perceived by a number of other people (including staff, other inmates, parole board officials, psychologists, and friends or relatives).

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 3: Need for Stimulation/ Proneness to Boredom

Description:

Item 3 describes an individual who demonstrates a chronic and excessive need for novel and exciting stimulation, and an unusual proneness to boredom. He will usually express a strong interest in taking chances, "living life in the fast lane" or "on the edge," being "where the action is," and in doing things that are exciting, risky, or challenging. He may try and use many types of drugs. He frequently complains that school, work, and long-term relationships are boring and tedious. He may comment that he has itchy feet, needs to be on the go, and can't imaging working at the same job for any length of time. He will often refuse to attempt, or will readily quit, any task that he finds routine, monotonous, or uninteresting.

Sources of Information:

In the interview detailed questioning will reveal a pattern of constantly starting and stopping new activities—such as school, jobs, relationships—that cannot be accounted for by economic conditions, illness, and so forth.

Files may contain collateral information relevant to the scoring of this item (e.g., employment history, work habits, school records, etc.). Disagreements between file and interview information should prompt the rater to reassess the validity of the interview information.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 4: Pathological Lying

Description:

Item 4 describes an individual for whom lying and deceit are a characteristic part of his interactions with others. He is capable of fabricating elaborate accounts of his past even though he knows that his story can easily be checked. His readiness to lie, and the apparent ease with which he carries it off (even with people who know him well), can be quite remarkable. When caught in a lie or when challenged with the truth, he seldom appears perplexed or embarrassed: He simply changes his story or attempts to rework the facts so that they appear to be consistent with what he has said. He has an explanation or excuse for everything. Moreover, even after repeatedly breaking his promises and commitments to someone, he still finds it easy to make new ones on "his word of honor." He often lies for obvious reasons, but deceiving others also appears to have some intrinsic value for him. He may freely discuss and take pride and pleasure in his ability to lie.

Sources of Information:

In the interview, the individual may give conflicting accounts of his marital status, family background, previous occupations, education, crimes, and so forth; this is particularly apparent in long interviews. On occasion, it is useful to challenge him concerning these inconsistencies to see how he responds. Any challenges should be gentle at first; if the interviewer feels secure, he or she can become more pressing and persistent.

Discrepancies between interview and file information, or within the files, are particularly telling; the individual may have a number of completely divergent and fictitious "life histories." People who score a 2 on this item frequently use aliases and false identities. Files also contain comments made by institutional staff concerning the individual's reputation for insincerity.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 5: Conning/Manipulative

Description:

Although similar in some respects to Item 4 (Pathological Lying), Item 5 is more concerned with the use of deceit and deception to cheat, bilk, defraud, or manipulate others. The use of schemes and scams, motivated by a desire for personal gain (money, sex, status, power, etc.) and carried out with no concern for their effects on victims, warrants a score of 2. Some of these operations are elaborate and well thought out, whereas others are quite simple; in each case, they are carried off in a cool, self-assured, or brazen manner. Conning and manipulative behaviors include criminal activities, such as collecting social assistance under several different names, passing bad checks, and setting up phony businesses. However, they also include noncriminal activities. Sometimes the individual will describe how he "uses" family members for their money, or how—unknown to his partners—he is involved in two or three intimate relationships at the same time. He may also show a predilection for using a variety of dishonest and unethical practices that are of dubious legality or that make use of loopholes in the law.

Sources of Information:

In the interview, he may willingly describe himself as a "con man," "hustler," or "fraud artist." His manipulativeness is evident in many different areas (crime, relationships, etc.). His statements may reveal a belief that the world is made up of "givers and takers" and "predators and prey," or that it would be foolish not to exploit weaknesses in others. He may be very astute at determining what these weaknesses are, and at using them to his benefit. He may say he is willing to do almost anything for money. He may even attempt to manipulate the interviewer to do him a favor (generally something illegal or against institutional rules).

In files, look for a record of criminal charges or convictions for fraud, embezzlement, impersonation, promoting phony stocks and worthless property, and swindles of all sorts, both large and small. Files may contain reports of his ability to manipulate staff, other inmates, and the system. For example, he may have attempted (perhaps successfully) to get a member of the staff to obtain a special benefit for him, to smuggle something in or out of the prison, or to do something for him on the outside. Parole applications and reports are particularly useful in scoring this item. They may show that he tends to use the facilities and programs that give the appearance of a sincere concern for rehabilitation, including educational upgrading, drug and alcohol programs, religious and quasi-religious organizations, and whatever self-improvement fad happens to be currently in favor. In many cases he will join organizations for the sole purpose of enlisting community support for parole applications.

Evaluate conflicting opinions regarding the individual carefully; they may reflect his ability to successfully manipulate others.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 6: Lack of Remorse or Guilt

Description:

Item 6 describes an individual who shows a general lack of concern for the negative consequences that his actions, both criminal and noncriminal, have on others. He is more concerned with the effects that his actions have upon himself than he is about any suffering experienced by his victims or damage done to society. He may be completely forthright about the matter, calmly stating that he has no sense of guilt, that he is not sorry for the things he has done, and that there is no reason why he should be concerned now that the matter is finished. On the other hand, he may verbalize some remorse, but his actions do not confirm his words. Lack of remorse may be indicated by a failure to appreciate the seriousness of his actions (e.g., feeling that his criminal sentences were too severe or that he was judged unfairly, etc.); by arguing that his victims, others, society, or extenuating circumstances were really to blame; or by repeatedly engaging in activities that are clearly harmful to others. For example, he may blame the criminal justice system or the media for damaging his reputation and for preventing him from realizing his potential.

Sources of Information:

In the interview, be aware that there is a difference between what the individual feels and what he thinks the interviewer wants to hear. A standard question in correctional interviews is, "Do you feel remorse for what you have done?" and he probably has rehearsed answers to this question. Therefore, indirect assessment of his perceptions concerning the seriousness or consequences of his behavior for himself and others may prove more revealing. Finally, look for evidence of a capacity for remorse in various situations involving other people (e.g., concern over past behavior in intimate relationships, employment, etc.).

Files may contain reports of interviews, parole hearings, etc., in which previous expressions of remorse and guilt were not followed by any noticeable change in behavior.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 7: Shallow Affect

Description:

Item 7 describes an individual who appears unable to experience a normal range and depth of emotion. At times, he may impress as cold and unemotional. Displays of emotion generally are dramatic, shallow, short-lived; they leave careful observers with the impression that he is playacting and that little of real significance is going on below the surface. He may admit that he is unemotional or that he shams emotions.

Sometimes the individual claims to experience strong emotions, yet he seems unable to describe the subtleties of various affective states. He may equate love with sexual arousal, sadness with frustration, and anger with irritability. Also, his emotions may not be consistent with his actions or with his situation.

Sources of Information:

In the interview, look for inconsistencies between verbal expressions of emotion and behavior. For example, if the individual expresses love for family or friends, can he provide details about their current whereabouts, health, financial condition, and general well-being? If a family member or friend has become seriously ill or has died, what effect did this have on him? Did he visit the hospital or attend the funeral? Are strong verbal expressions of emotion accompanied by nonverbal behaviors consistent with that emotion? (Try to take into account the fact that incarceration may have an effect on the individual's general level of emotional expression and on his willingness to reveal his feelings to those whom he thinks may be associated with the institution.)

File information should be used to assess the validity of reports made during the interview. For example, the individual may state that he is close to his family, whereas his files indicate that he does not write or phone them and has had no visits from them. Also, files may contain interviews with friends and relatives indicating that his behavior towards them has usually been incompatible with his verbal expressions of affection.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 8: Callous/Lack of Empathy

Description:

Item 8 describes an individual whose attitudes and behavior indicate a profound lack of empathy and a callous disregard for the feelings, rights, and welfare of others. He is only concerned with "Number 1," and views others as objects to be manipulated. He is cynical and selfish. Any appreciation of the pain, anguish, or discomfort of others is merely abstract and intellectual. He has no hesitation in mocking other people, including those who have experienced misfortune or who suffer from a mental and/or physical handicap. His contempt and lack of concern for others may lead him to describe himself as a "loner by choice." He views emotionality as a sign of weakness.

Sources of Information:

During the interview, the individual's descriptions of his crimes and victims will often be strangely casual and matter-of-fact. Comments like "very unfortunate," "they got what they deserved," "I can't worry about it; I've got problems of my own," and "I really haven't thought about it," are not uncommon. He may say that his attitude towards oth-

ers is prompted by a desire to survive in a hostile world. He may be unconcerned about the reactions of friends or family to his incarcerations. Often, those who score a 2 on this item can steal from family or friends as easily as from strangers.

The files may contain reports of callous and sadistic treatment of others. This behavior may be criminal or non-criminal in nature, ranging from emotional or physical abuse of family members to cold-blooded murder. It may start at an early age with activities such as mistreatment of animals. During the commission of crimes, the individual may engage in excessive violence towards people or property, for no apparent reason: For example, during a break-in, he may "trash" the house, or during an armed robbery, he may assault the victim.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 9: Parasitic Lifestyle

Description:

Item 9 describes an individual for whom financial dependence on others is an intentional part of his lifestyle. Although able-bodied, he avoids steady, gainful employment; instead, he continually relies on family, relatives, friends, or social assistance. He obtains what he wants by presenting himself as helpless or as deserving of sympathy and support, by using threats or coercion, or by exploiting his victim's weaknesses. His use of others in this way is not simply the result of temporary circumstances that prevent him from working or from supporting himself. Rather, it reflects a persistent pattern of behavior in which others are called upon to support him and to cater to his needs, no matter what the economic and emotional cost to them.

Sources of Information:

In the interview, the individual may spontaneously admit that he does not like to work, and would rather let others do the work for him. If he does not have a stable employment record, or if he appears to be living beyond his means, ask him how he supports himself. Parole and probation reports are a particularly good source of information about the individual's typical means of self-support when not in jail. Look for evidence of excessive reliance on family, spouses, or social assistance for economic support; as well, pimping is strong evidence for a high score on this item. Merely supporting himself through crime, or having no visible means of support when not in jail, warrants a score of 1.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 10: Poor Behavioral Controls

Description:

Item 10 describes an individual with inadequate behavioral controls. He may be described as short-tempered or hot-headed. He tends to respond to frustration, failure, discipline, and criticism with violent behavior or with threats and verbal abuse. He takes offense easily and becomes angry and aggressive over trivialities; these behaviors will often seem inappropriate, given the context in which they occur. They are often short-lived, and the individual may

quickly act as if nothing out of the ordinary has happened. His behavioral controls, ordinarily not very strong, appear to be further weakened by alcohol.

Sources of Information:

Files typically provide better evidence for scoring this item than does the interview. Psychiatric and psychological reports will usually contain relevant information about behavioral controls. Examine institutional reports for entries about reprimands and punishments for violent and aggressive outbursts, including sudden assaults and heated verbal attacks on staff and other inmates. His criminal record may include charges and convictions for offenses involving spontaneous and unprovoked violence.

In the interview, the individual may show signs of sudden irritability, annoyance, or impatience. If asked, he will often admit that he has a bad temper or that he loses his head easily. Ask him to describe the conditions under which this happens.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 11: Promiscuous Sexual Behavior

Description:

Item 11 describes an individual whose sexual relations with others are impersonal, casual, or trivial. This may be reflected in frequent casual liaisons (e.g., "one-night stands"), indiscriminate selection of sexual partners, maintenance of several sexual relationships at the same time, frequent infidelities, prostitution, or a willingness to participate in a wide variety of sexual activities. In addition, the individual may coerce others into sexual activity with him, and may have charges or convictions for sexual assault.

Sources of Information:

The interview is particularly useful in obtaining information about sexual behavior that is not necessarily illegal. Ask about his views on sex, his attitude toward sexual partners, the number and nature of sexual relationships he has had, and so forth. He may take great pride in discussing his sexual exploits.

Files may confirm reports of sexual behavior given during the interview. As well, screen the files for sex-related offenses both inside and outside the institution; these offenses are rarely discussed by the individual during the interview.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 12: Early Behavioral Problems

Description:

Item 12 describes an individual who had serious behavioral problems as a child (i.e., age 12 and below). These problems may include persistent lying, cheating, theft, robbery, fire-setting, truancy, disruption of classroom activities, substance abuse (including alcohol and glue sniffing), vandalism, violence, bullying, running away from home, and precocious sexual activities. These behaviors are more serious than those exhibited by most children, and they often result in complaints by other people, sus-

pension or expulsion from school, or contacts with the police.

Sources of Information:

In the interview, try to elicit frank descriptions of the individual's early behavior problems; he will often spontaneously describe himself as the "black sheep of the family," "hyperactive," or "unmanageable." The rater should be satisfied that the behavior problems were not due solely to subcultural or familial factors (e.g., living in a violent neighborhood or abusive family); the individual's problem history appears excessive, even when compared with those of his siblings and friends.

Use files to confirm interview data. Look for consistent reports—from social workers, probation officers, and so forth—of delinquency and disruptive behavior at home and in school. Early psychiatric and psychological reports, presentence reports, school records, and reports of interviews with parents or others who knew him as a child are also very useful.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 13: Lack of Realistic, Long-Term Goals

Description:

Item 13 describes an individual who demonstrates an inability or unwillingness to formulate and carry out realistic, long-term plans and goals. He tends to live day to day and to change his plans frequently. He does not give serious thought to the future nor does he worry about it very much. He is seldom disturbed by the knowledge that he has done little with his life so far and that he is going nowhere. He may say that he is not interested in having a steady job or that he has not really thought about it much. He may lead a nomadic existence and describe himself as a drifter.

Sometimes, the individual claims to have specific goals. For example, he may state that he is thinking of becoming a lawyer, writer, brain surgeon, social worker, psychologist, airline pilot, and so forth, but is unaware of the qualifications required for these professions. Also, he wants to make it to "easy street," and is interested in "get-rich-quick" schemes. However, in such cases, questioning reveals that he has no idea of how to achieve these goals, and the goals appear unrealistic given his education and employment record.

Sources of Information:

In the interview ask the individual about his future. What does he plan to do after his release? How will he attain his goals? Where would he like to be in ten years? Compare his plans for the future with his qualifications and employment or release records to determine whether or not they are realistic.

Pre-release plans contained in previous and current applications for parole and conditional release are particularly useful for determining how well-thought out and realistic his goals are. As well, they reveal the consistency of his goals and plans over time, and how often he follows through on them.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 14: Impulsivity

Description:

Item 14 describes an individual whose behavior is generally impulsive, unpremeditated, and lacking in reflection or forethought. He usually does things on the "spur of the moment" because he "feels like it" or because an opportunity presents itself. He is unlikely to spend much time weighing the pros and cons of a course of action, or in considering the possible consequences of his actions to himself or to others. He will often break off relationships, quit jobs, change plans suddenly, or move from place to place, on little more than a whim and without bothering to inform others.

Sources of Information:

In the interview ask the individual whether he generally thinks before acting, and have him describe the circumstances leading up to his offenses. Also elicit his views on the importance of planning and spontaneity in his lifestyle. Look for evidence of impulsivity in crimes, employment, and relationships.

There may be file evidence that many of his offenses were spontaneous. Parole reports may indicate that he frequently changes jobs and addresses. Look for a pattern of offenses in which little planning was apparent.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 15: Irresponsibility

Description:

Item 15 describes an individual who habitually fails to fulfill or honor obligations and commitments to others. He has little or no sense of duty or loyalty to family, friends, employers, society, ideas, or causes. His irresponsibility is evident in a variety of areas including financial dealings (a poor credit rating, defaulting on loans, failure to discharge debts, etc.); behavior that puts others at risk (drunk driving, recurrent speeding, etc.); work behavior (frequently late or absent, careless or sloppy performance not attributable to lack of ability, etc.); business relationships (violating contractual arrangements, not paying bills, etc.); and relationships with family and friends (failure to provide financial support for spouse or children, causing them unnecessary hardship, etc.).

Sources of information:

Look for evidence that the individual freely makes promises and obligations or enters into agreements, yet fails to fulfill his part of the bargain. If he is married or has children, be sure to ask how his family is being supported, and if he supports them when he is not in prison. In general, an unwillingness to take on responsibilities, so long as others are not adversely affected, warrants a score of 1.

In the files, parole supervision and probation reports are particularly useful because of their employment records, criminal charges, financial dealings, general activities, and family support provided when the individual is not in prison.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 16: Failure to Accept Responsibility for Own Actions

Description:

Item 16 describes an individual who is unable or unwilling to accept personal responsibility for his own actions (both criminal and noncriminal) or for the consequences of his actions. He usually has some excuse for his behavior, including rationalization and placing the blame on others (society, his family, accomplices, victims, the system, etc.). In extreme cases, he may deny accusations made against him, despite overwhelming evidence. For example, he may claim that he is being "framed" by others or that he has memory loss for the events in question. More frequently, though, he will accept responsibility for his actions in a superficial manner, and then will greatly minimize or even deny the consequences of his actions. Examples here include admitting to assaults, but claiming the victims lied about physical injuries; or, admitting to thefts, but claiming that because the victims were insured, nobody really suffered.

Sources of Information:

In the interview, explore the circumstances surrounding his offenses and his reasons for committing them. Popular excuses include psychological disorders such as amnesia, black-outs, multiple personality, or temporary insanity; however, when asked to describe the symptoms, he will often give responses that are vague, medically implausible, or have a rote textbook quality. He may also blame his offenses on excessive use of alcohol or drugs, but at the same time will refuse to accept responsibility for changing his pattern of abuse. Also, be sure to question the individual about noncriminal matters; he may show the same pattern of denial and minimization as he does with criminal activities.

The files may contain information about the reasons given to the police and courts for his crimes, as well as explanations for institutional offenses.

Scoring:

2 The item applies to the individual; a reasonably good match in most essential respects; behavior is generally consistent with the flavor and intent of the item.

1 The item applies to a certain extent but not to the degree required for a score of 2; a match in some respects but with too many exceptions or doubts to warrant a score of 2; uncertain about whether or not the item applies; conflicts between interview and file information that cannot be resolved in favor of a score of 2 or 0.

0 The item does not apply to the individual; does not exhibit the trait or behavior in question, or exhibits characteristics that are the opposite of, or inconsistent with, the intent of the item.

In brief: 2 = Yes
1 = Maybe/in some respects
0 = No

Item 17: Many Short-Term Marital Relationships

Description:

Item 17 describes an individual who has had many marital relationships. We define a marital relationship as live-in relationship that involves some degree of commitment from one or both partners. Such relationships include formal and common-law marriages, and both heterosexual and homosexual partnerships.

It may be better to omit this item if he is very young or has spent much of his adult life in prison or out of effective contact with a pool of potential partners (unless, or course, he still manages to have many relationships, in which case a score of 2 can safely be given).

Sources of Information:

During the interview, ask him how many relationships he has had. Files may contain a list of visitors and correspondents (including those designated as "spouse," common-law wife, etc.) for past and present incarcerations. Parole and probation reports contain information concerning relationships while on the street.

This item should be scored on the basis of the individual's current age, using the guidelines below.

Scoring:

Score	Number of Relationships: Under age 30	Number of Relationships: Age 30 and over
2	3 or more	4 or more
1	2	3
0	1, or has never had a relationship	2 or fewer

Item 18: Juvenile Delinquency

Description:

Item 18 describes an individual who has a history of serious antisocial behavior as an adolescent, aged 17 and below. This includes both charges and convictions for criminal and statutory offenses.

Sources of Information:

In scoring this item, we count only formal contacts with the criminal justice system. We do not score offenses for which the individual was not arrested, such as instances where he was driven home by police or held at the station until his parents picked him up. The vast majority of offenses scored for this item are handled in juvenile courts. However, we also score offenses handled in adult court, so long as the individual was aged 17 or below.

In the interview, ask the individual how old he was when he first got arrested for, charged with, or convicted of, a criminal or statutory offense. Next, ask him to detail his contacts with the criminal justice system since that time, and any punishments he may have received as a result.

Files are the principal source of information in scoring this item. Official arrest records, pre-sentence reports, parole files, and case-history reports may contain this information.

There are occasional conflicts between interview and file information. In general, inmates tend to minimize (underreport) their offense history. Therefore, if the individual admits to more offenses than are contained in the files, or if there are no files, we accept the interview information as valid. If he admits to fewer offenses in the interview than the files indicate, we accept the files as valid. If he denies any juvenile offenses and there is no collateral file information, we omit the item.

Scoring:

2 Has a history of serious offenses as an adolescent, including murder, attempted murder, manslaughter, rape, serious assault, robbery, auto theft, or other major theft, kidnapping, arson, fraud, trafficking in drugs, major driving violations (e.g., drive while intoxicated, hit and run, dangerous driving), escape, and so forth.

1 Has a history of minor offenses as an adolescent, including possession of drugs, minor theft, possession of stolen property, simple assault, mischief, causing a disturbance, minor driving violations (e.g., driving without a license), breach of probation, and so forth.

0 Has no history of arrests for antisocial behavior as an adolescent.

Item 19: Revocation of Conditional Release

Description:

Item 19 describes an individual who, as an adult (aged 18 or older), has violated a conditional release or escaped from an institution. Violations of conditional release include technical but noncriminal breaches (i.e., drinking alcohol while on parole), or new charges or convictions while on parole, mandatory supervision, probation, bail, or restraining orders. Escapes from institutions include jail-breaking and violation of temporary absences. In serious cases, these violations result in automatic re-incarceration; in less serious cases, the individual may face a disciplinary hearing or new charges, but may be released back into the community.

This item is omitted for individuals who have had no formal contact with the criminal justice system as an adult prior to the current offense.

Sources of Information:

Information about the number, types, and outcomes of any conditional releases the individual may have been granted should be collected from files and interviews.

Conflicts between file and interview information are as follows: If the individual admits to more offenses than are contained in the files, or if there are no files, accept the interview information as valid. If he admits to fewer offenses in the interview than the files indicate, accept the files as valid. If he denies any violations or escapes and no collateral file information is available, omit the item.

Scoring:

2 Has had major violations or escapes including revocation of parole or mandatory supervision, breach of bail, escape, and so forth.

1 Has had minor violations only, including suspension of parole or mandatory supervision, charges or convictions for fail to appear or breach of court order, and so forth.

0 Has had no violations or escapes.

Item 20: Criminal Versatility

Description:

Item 20 describes an individual whose adult criminal record involves charges or convictions for many different types of offenses.

Sources of Information:

Information for scoring this item should be collected from both files and interviews. Conflicts between files and interviews are resolved as follows: If the individual admits to more offenses than are contained in the files, or if there are no files, accept the interview information as valid. If he admits to fewer offenses in the interview than the files indicate, accept the files as valid. If he denies any other offenses and no collateral file information is available, omit the item.

In scoring this item, we count all offenses appearing on the individual's adult criminal record, even if he was not an adult (i.e., younger than age 18) when the offense occurred. We divide criminal offenses into the following categories:

1. Theft, break and enter, possession of housebreaking tools, possession of stolen property, loitering at night, etc.
2. Robbery, armed robbery, robbery with violence, extortion, etc.
3. Drug offenses (possession, trafficking)
4. Assault, assault causing bodily harm, threatening, etc.
5. Murder, attempted murder, manslaughter, etc.
6. Possession of weapons, explosives
7. Sexual offenses
8. Criminal negligence, including major driving offenses (e.g., drive while intoxicated, hit and run, dangerous driving)
9. Fraud, forgery, false pretenses, impersonation, uttering, etc.
10. Escape, unlawfully at large, jumping bail, failing to appear, breach of recognizance
11. Kidnapping, unlawful confinement, forcible seizure, hijacking
12. Arson
13. Obstruction of justice, perjury, assaulting a police officer, etc.
14. Crimes against the state, including treason, espionage, smuggling, evasion of income tax, etc.
15. Miscellaneous minor charges, including vandalism, causing a disturbance, mischief, willful damage, minor driving offenses, etc.

The following offenses are coded under two categories: assault with a weapon is coded under both "assault" and "weapon" categories; sexual assault with a weapon is coded under both "sex" and "weapon" categories.

Scoring:

2 Has committed 6 or more types of offenses.
1 Has committed 4 or 5 types of offenses.
0 Has committed 3 or fewer types of offenses.

Item 20 is scored on the basis of "criminal versatility;" that is, the variety of offenses committed by the person, rather than the severity of the offenses. Unfortunately, it is difficult to develop a truly comprehensive scoring system for coding this item, because there is a staggering variety of offenses and because the Criminal Code is constantly being revised. Below is an extensive list of crimes and categories; however, it is still not exhaustive. As well, researchers working outside Canada may have to develop a new coding system that is consonant with their own country's criminal code.

Theft

Theft
Break and Enter with intent (to commit an indictable offense)
Possession of housebreaking tools
Possession of stolen property
Possession of items obtained by crime
Loitering at night
Possession of stolen credit card
Retaining stolen property
Shopbreaking
Shoplifting
Auto theft
Unlawfully dwelling in house
Theft by wrongful possession

Robbery

Robbery
Armed robbery
Robbery with violence
Extortion

Drug Offenses

Possession of narcotics
Trafficking in a narcotic
Importing narcotics
Possession for the purpose of trafficking
Cultivation of a narcotic

Assault

Assault causing bodily harm
Threatening
Common assault
Aggravated assault
Grievous bodily harm
Wounding

Murder

First degree murder
Second degree murder
Manslaughter
Causing bodily harm with intent to endanger life
Discharging a firearm with intent to endanger life
Wounding with intent

Possession of Weapon

Possession of a weapon
Possession of explosives
Carrying a concealed weapon
Dangerous use of firearm
Pointing a firearm
Using a firearm (during commission of an indictable offense)

Sex Offenses

Indecent assault
Rape
Incest
Buggery
Bestiality
Carnal knowledge
Committing an indecent act (in public)
Indecent exposure
Gross indecency
Prostitution

Major Driving Offenses

Criminal negligence
Driving while intoxicated
Hit and run
Dangerous driving
Careless driving
Driving while ability impaired
Driving with more than 80 mgs. of alcohol in blood
Failure to provide a breath sample
Failure to remain at scene of accident
Failure to stop (at scene of an accident)

Fraud

Fraud
Forgery
False pretenses
Personation
Uttering (a forged document)
Dealing with a forged document
Failure to give name and address (with intent)
Fraudulently obtaining food or lodging
Making a false statement
Obtaining food by fraud
Using stolen credit cards

Escape

Escape (lawful custody)
Unlawfully at large
Breaking out of prison
Failure to appear
Failure to attend court
Breach of recognizance
Breach of bail
Failure to comply (with probation order)
Breach of probation

Kidnapping

Unlawful confinement
Forcible seize
Hijacking
Abduction

Arson

Arson

Obstruction of Justice

Perjury
Assaulting a police officer
Obstructing a peace officer
Resisting arrest
Contempt of court

Crimes Against the State

Treason
Espionage

Smuggling
Evasion of income tax

Miscellaneous

Vandalism
Causing a disturbance
Mischief
Willful damage
Driving while disqualified
Driving while license suspended
Driving while prohibited
Vagrancy
Living off the avails of prostitution
Violation of immigration laws
Bookmaking
Disguised with intent

Coding Inchoate and Ambiguous Crimes

Include inchoate crimes—those charges that start with "Attempted..." or "Conspiracy to commit..."—under the category of the offense specified in the latter part of the charge. For example, "Attempted B&E" is coded the same as "B&E" under Theft. If no offense is specified, check the file and interview information; it is sometimes possible to determine the actual nature of the offense from these sources. For example, parole files may reveal that a charge appearing on the individual's criminal record as "Conspiracy" is actually "Conspiracy to traffic in narcotics." If no further details concerning the charge can be found, code attempts and conspiracies under Miscellaneous.

Similarly, the coding of ambiguous crimes can often be resolved by referring to file or interview information. For example, the charge "Disguise with intent to commit an indictable offense" may be the result of, among other offenses, attempted fraud or attempted robbery. If the nature of the charge can be determined, it can be coded under a specific category (e.g., Robbery or Fraud).

DYER'S RESPONSE TO DR. PEREIRA'S REPORT

I have read the psychological report of Dr. Pereira dated June 11, 2009. The report contains many inaccuracies. I would like to correct the facts, and to explain the circumstances of how this report was prepared.

When I was placed on the call-out for a mental health evaluation I gathered up a stack of documentation concerning my background, including verification of my family relationships, miltiary history, employment history and finances, awards, and letters from DOC staff concerning my conduct in prison from every institution in which I have been housed. In the past, DOC psychologists have asked me to provide that sort of information.

When I was escorted into Dr. Pereira's office, she told me she did not have much time but she had already read my file. She said she would look at the materials I had brought later. At the end of our meeting, I asked her again if she wanted to see the paper work I had. She said she would call me back up there to review the stuff. I sent her several kites (attached) reminding her that she had not reviewed my information, but she never called me out again.

When she asked me to take the MMPI test, I told her I usually take the test by listening to a tape, because my dyslexia makes it difficult for me to read the questions quickly and accurately. She said they no longer had the tape so I would have to take the test on paper.

In her report, Dr. Pereira has taken many things I said out of context, or has simply mixed things up.

On the first page, she lists my age as 51. I am actually 60.

On the second page, the "Offender's Version of the Current Offense" does list some things I said. I had not been planning to explain how I was wrongly convicted, but Dr. Pereira kept asking for more details. She seems to have taken various things I said and put them out of order. It doesn't make much sense the way she has it.

It is true that my ex-wife Ethel Acord placed herself on my visiting list at one point. (I have attached a copy of the list. Her last name is now Wood.) I was surprised when that happened. I heard that she did that because she wanted to recant the allegations she made against me. I learned after reading Dr. Pereira's report, though, that Ethel wrote a very nasty letter about me in 2006. I can't explain her behavior.

In the section on "Prior Adult Arrests" on page 3, Dr. Pereira does correctly state that I have no arrests other than the one that led to my conviction. But for some reason, she put some comments I made about Vietnam into this section as well. I did talk at some point about how hard it was for me to take the lives of enemy soldiers. I also mentioned that I wrote up some of my war experiences for my daughter Stephanie and she turned it into an article that was published in some veteran's magazines.

EXHIBIT 23

In the section labeled "Family of Origin" on page 4, I was just joking when I said I was "slave labor" when I worked in my mother's restaurants. I approve of a family working together.

In the section labeled "Nuclear Family" on page 4, there are several errors. I did not divorce my first wife, Janet Cutting – she divorced me. I was served with papers while I was in Vietnam. Dr. Pereira then confuses my second wife, Ethel Acord, with my third wife, Renetta Dyer. Dr. Pereira mistakenly says that I named Renetta as the one who put charges on me. She then suggests that I contradicted myself in a previous psychological evaluation when I said that I had Renetta's support. In fact, Ethel is the one who went to the police in 1981 and claimed I raped her. That led the police to suspect me of two stranger rapes that happened much earlier. Ethel made the accusations against me after I divorced her and married Renetta. I have always had a good relationship with Renetta.

The rest of the quotations in this section are more or less accurate, but they are so jumbled together that they don't seem to make sense. This is my family history: Renetta was pregnant with her daughter Stephanie when I first met her. I have always treated Stephanie as my daughter. Renetta and I had two additional children together – Matthew and Lisa -- after I went to prison. After my conviction, Ethel would not let me have contact with my sons Richard Jr. and Mark even though a judge ruled that contact with me would be in their best interest. They got in touch with me when they were older and we now have close relationships.

It's true that I've helped to support my family financially while I've been in prison. I've done that through my VA benefits, stock investments, and some real estate transactions with the help of my son Richard. I have never claimed to be able to fully support my family, but I give them whatever I can. I did not claim to have the resources to buy 10 full-priced houses at once. Dr. Pereira asked me what dreams I had for the future financially and I mentioned I had heard about 10 foreclosed houses that were being auctioned off for $500 each.

I did not say that I had "contact with my wife and kids every day in Montana." I do have very frequent contact with my wife and kids, but the only one who spent time in Montana is my son Richard.

In the section on "Infractions" at page 5, Dr. Pereira correctly quotes me as saying that I used to get into fights defending myself, but that hadn't happened in about 15 years. I've attached an old infraction report that gives a sense of what used to go on. People would attack me because I was in for a sex offense. It was a serious infraction to fight back, even if the officers understood that it was in self-defense. I did not say to Dr. Pereira that "most of the time I get beat up." I just made a joking comment that, if I were to get in a fight these days, I would get beat up. In fact, I've managed to stay out of trouble for a long time.

Under the section labeled "Work/Vocational History" it looks like I'm bragging. I only gave all these details because Dr. Pereira kept pressing me for them. It is true that I have a certificate acknowledging me as a "minister." I received that after taking a course in prison.

Under the "Long Term Goals" section, Dr. Pereira quotes me as saying "I like to know about electrical shifts." That doesn't make any sense. I might have mentioned that I would like to learn about electrical circuits. I never said I had 100 holly trees. I had one little tree when I was working in the garden. I don't remember saying anything about the geese eating trees. At one point, I was trying to explain that I would like to start a PTSD clinic at McNeil like I did at Monroe.

Under the "Observations" section at page 6 Dr. Pereira states: " It was not clear to what extent the descriptions of financial success corresponded with reality. There was no objective evidence to corroborate the declarations of financial success, trust funds, etc." I tried to give her the documentation but she would not take it.

12-4-09
DATE

Richard Dyer

DEPARTMENT OF CORRECTIONS
DIVISION OF PRISONS

FORM A

INITIAL SERIOUS INFRACTION REPORT

DATE OF INFRACTION	INMATE NAME (LAST, FIRST)	DOC NUMBER	HOUSING ASSIGNMENT
03-04-98	Dyer, Richard	281744	L430L

RULE VIOLATION #(S): -505-

TIME OCCURRED:	PLACE OF INCIDENT (BE SPECIFIC):	DATE OCCURRED:
12:25pm	A-Dining	03-04-98

WITNESS(ES)			
NAME (1) Parkhurst	DAYS OFF (1) Inter.	NAME (3)	DAYS OFF (3)
NAME (2)	DAYS OFF (2)	NAME (4)	DAYS OFF (4)

NARRATIVE: (STATE A CONCISE DESCRIPTION OF THE DETAILS OF THE RULE VIOLATIONS, COVERING ALL ELEMENTS AND ANSWERING THE QUESTIONS OF: WHEN? WHERE? WHO? WHAT? WHY? AND HOW?; DESCRIBE ANY INJURIES, PROPERTY DAMAGE, USE OF FORCE, ETC.; ATTACH ALL RELATED REPORTS).

On above date approximate Time inmate Dyer was hit on the right side of his face by inmate Galloway #220813. Inmate Dyer, after being hit by inmate Galloway started towards him swinging with closed fist. Both inmates were given a direct order to stop fighting. Back up arrived. Inmates were placed in restraints. Dyer was taken to Infirmary for further evaluation

REPORTING STAFF: PRINT NAME (LAST, FIRST)	SHIFT	DAYS OFF
Bradley R.	2nd	Mon AND Tue

EVIDENCE TAKEN?	EVIDENCE CASE NUMBER	EVIDENCE LOCKER NUMBER	PHOTO SUBMITTED?
☐ YES ☐ NO			☐ YES ☐ NO

DISPOSITION OF EVIDENCE IF NOT PLACED IN LOCKER:

PLACED IN PRE-HEARING CONFINEMENT? ☒ YES ☐ NO

RELATED REPORTS ATTACHED:
SUPPLEMENTAL ☒ BACKGROUND MEMOS ☐ STAFF WITNESS STATEMENTS ☐ MEDICAL ☐ TELEINCIDENT ☐ USE OF FORCE ☐ OTHER (SPECIFY) ☐

REPORTING STAFF SIGNATURE: R Bradley

INFRACTION REVIEW OFFICER SIGNATURE: [signature]

DOC 20-52A (REV. 10/91) NCR-1

State Of Washington
Department Of Corrections

Inmate - Approved Visitors

As of 4/22/2007 4:56:43 PM

Name: DYER, RICHARD J (281744)
Location: MICC-I01 (MCNEIL ISLAND) (C-UNIT)(MCUC1261)
Counselor: WIMBERLY, HOUSTON

Name
ACORD-WOOD, ETHEL P
ACORD, MARK B
ACORD, SAVANNAH NICOLE
BERNIER, PETER
CAVINS, PATIENCE MARIE
DYER JR., RICHARD
DYER, DALE E
DYER, LISA F
DYER, MATTHEW A
DYER, PHYLLIS A
DYER, RENNETTA
HERR, ROBERT D
LUEBKE, CAROLYN L
MATHESON, BETTY R
MATHESON, GARY " BUD "
REDMAN, CAROL
SHOUP-DYER, STEPHANIE A
WAPLES, TRACI

Visitor Count: 18

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

HEALTH SERVICES KITE

PLEASE PRINT — ***SUBMISSION OF HEALTH SERVICES REQUEST MAY RESULT IN A CO-PAY***

LAST NAME	FIRST NAME			
Dyer	Richard			
DOC NUMBER	FACILITY	UNIT/CELL	DATE	TIME
281744	MCC	C 126-1	Oct. 20, 09	
JOB/PROGRAM	JOB/PROGRAM HOURS	DAYS OFF		
Education Library				

If you feel you have an actual medical emergency, alert the staff and do not use this form.

TYPE OF REQUEST (check only one box per form)

- ☐ MEDICAL
- ☐ DENTAL
- ☐ OPTOMETRY
- ☒ MENTAL HEALTH
- ☐ MEDICATION REFILL (list medication/s or place sticker below)
- ☐ OTHER: Dr. Pereira

REASON FOR REQUEST (list problem or medications needing refill)

Received I received a copy of your evaluation I'm upset because I expected on the basis of our last meeting that you would write me a letter requesting that I be released to the community. I would like to know what I can do to get out of here. I am not a violent person. I have been in prison for 20 years and have never had a violent incident. I am not a danger to myself or others. I am willing to do whatever it takes to get out of here. Please let me know what I can do to get out of here. Thank you. Richard Dyer

OFFENDER SIGNATURE

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, requests for copies/record reviews, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

☐ Schedule within ____ days/weeks/months ☐ Next available sick call ☐ No visit required

I will be out of office for the next few days. I appreciate you on the call-out when I return next week. Please note that it is not customary to address the issue equal before the hearing

RESPONDER signature and stamp (all copies) — DATE and TIME

J.R. Pereira — 9/10/09

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435, PRIMARY ENCOUNTER REPORT (PER)

Distribution: **WHITE/YELLOW** – Responder, **PINK** – Offender keeps
Distribution upon completion: **WHITE** – Health Record, **YELLOW** – Return to Offender with Response

State law (RCW 70.02; RCW 70.24.105; RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

HEALTH SERVICES KITE

PLEASE PRINT — ***SUBMISSION OF HEALTH SERVICES REQUEST MAY RESULT IN A CO-PAY***

LAST NAME	FIRST NAME			
Dye	Richard			
DOC NUMBER	FACILITY	UNIT/CELL	DATE	TIME
281744	WSP	C-136-L	Oct. 10, 09	8:20
JOB/PROGRAM	JOB/PROGRAM HOURS	DAYS OFF		
Recreation Department				

If you feel you have an actual medical emergency, alert the staff and do not use this form.

TYPE OF REQUEST (check only one box per form)

- ☐ MEDICAL
- ☐ DENTAL
- ☐ OPTOMETRY
- ☒ MENTAL HEALTH
- ☐ MEDICATION REFILL (list medication/s or place sticker below)
- ☐ OTHER: Dr Person

REASON FOR REQUEST (list problem or medications needing refill)

I sent you a kite 2 while back requesting you to place me on the call out so that we can go over the psych evaluation you conducted on me. To date, I have not received any response. During your evaluation you told me that you would call me up to go over this, including the fact you stated you wanted to go over the DSM-IV. I have neither has happened. Please place me on the call out. This is my third kite requesting this, still receive no response.

Richard Dye
OFFENDER SIGNATURE

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, requests for copies/record reviews, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

☐ Schedule within ____ days/weeks/months ☐ Next available sick call ☐ No visit required

RESPONDER signature and stamp (all copies)	DATE and TIME

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435, PRIMARY ENCOUNTER REPORT (PER)

Distribution: **WHITE/YELLOW** – Responder, **PINK** – Offender keeps
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RICHARD DYER
281744

RECEIVED
NOV 16 2006
INDETERMINATE SENTENCE REVIEW BOARD

NOVEMBER 14th
TUESDAY

TO THE BOARD MEMBERS -

I AM STILL UNCLEAR CONCERNING THIS PERSON - HE HAD TWO COUNTS OF RAPE - 1ST DEGREE - NO MENTION THE ATTACK OF (ME) - BROKE IN MY HOUSE - BURGLARY - INTENT WITH BODILY HARM WHEN HE SAID, "IF YOU SCREAM I WILL HIT YOU HARD IN THE CHEST - BREAK YOUR COLLAR BONE !!!" THAT'S INTENT WITH BODILY HARM, BURGLARY, KIDNAPING, POSSIBLE MURDER OF MY INFANT SON WHEN HIS MOTHER IS NOT COMING HOME!

EXHIBIT 24

I DO NOT UNDERSTAND THE SYSTEM.
HE HAD A START DATE IN 1982 -
MAXIMUM LIFE - WHY DID HE ONLY
GET TWO YEARS.
I WAS NOT MARRIED TO THIS MAN
WHEN HE ATTACKED ME.
I DIVORCED THIS MAN - HE IS CRAZY -
LIVES SEVERAL DIFFERANT TIMES IN
HIS LIFE - HE TOLD ME REPEATEDLY
HE WISHED HE LIVED IN THE PAST -
"COWBOY-SHOOT EM-UP" - MAYBE HE
SHOULD BE IN A MENTAL HOSPITAL
ALSO. HE IS LIVING IN A DIFFENT

WORLD - HE IS MEAN - EVIL - DOES NOT CARE WHO HE HURTS - BODILY - MENTALLY - HE IS A TERRIBLE, AWFUL CREEP. - HARM - ME, THOSE GIRLS. HE IS FROM WASHINGTON STATE - IF DETECTIVES REALLY SEARCHED - DO YOU THINK THIS INSTANCE - 1982 - IS THE ONLY ONE - THIS IS WHAT HE DOES! HE IS LIVING IN A DIFFENT TIME LINE - HE DOES NOT LIVE IN THE REAL WORLD - HE CAN'T GET CAUGHT - "HE KNOWS THIS!" THAT IS WHAT IS IN HIS MIND - HOW DO YOU THINK HE DID ALL THOSE

TERRIBLE THINGS - AND NOT GET CAUGHT. ALL THE YEARS - TEXAS, ALASKA, WASHINGTON, VIETNAM. THE GANG RAPE IN VIENAM - WHEN I WAS WITH HIM IN TEXAS - DALLAS - I WAS INTRADUCED TO AN ELDERLY WOMAN (HIS BROTHER LIVED IN DALLAS) WE WERE IN A SMALL TOWN CLOSE TO AN ARMY BASE - HIS BROTHER LIVED IN DALLAS - HE IS A TERRIBLE PERSON ALSO - LOVES MEN! WHY WOULD HE BE INVOLVED WITH THIS WOMAN - HE LOVES MEN!!

HIS BROTHER WAS IN TWO PRISONS
I THINK ONE CHARGE MANUFACTURING
LSD. THAT IS THE BROTHER THAT
ALWAYS GAVE ME CHILLS - FAT, TERRIBLE
GRIN, DISGUSTING - YOU KNOW HE IS UP
TO NO GOOD!
THIS TIME I MET THE LADY - MAYBE
SHE HAD MONEY! THE BROTHER LOVES MEN.
DYER WAS ALWAYS TRAVELING TO
DALLAS - HE WAS AN ARMY CUP - LIMITED
FUNKS! HE TOLD ME & MY SISTER &
BROTHER HE HAD A BODY IN THE
TRUNK OF HIS CAR

WITH THE TWO OF THEM - HIM - ALL THE THINGS HE DID & HIS BROTHER IN TWO PRISONS - THERE IN DALLAS - WHAT THEY MITE HAVE DONE TO GET ALL THIS MONEY. THIS IS THE TIME FRAME - THE BODY IN THE TRUNK - MAYBE THE LADY! THERE IS GOT TO BE LOTS MORE THEY DID IN DALLAS - THOSE TWO EVIL BROTHERS TOGETHER!! THAT IS WHY I DIVORCED HIM - I WANTED TO DIVORCE THE ALL CRAZY FAMILY! IN THE TRIAL - WHEN I WAS ON THE STAND - TO TELL MY TESTIMONY - I WAS

WAS WALKING OUT OF OF WITNESS BOX AND OUT OF THE COURT ROOM, HIS SISTER CAROL, GOT OUT OF HER SEAT AND SCREAMED AT ME "LOOK WHAT YOU'LL HAVE DONE!!!" SHE SCREAMED MY NAME, "WHAT I HAVE DONE" HE DID NOTHING? HE STOLE MY CAR TO DO ALL THE EVIL THINGS - THAT IS WHY PROBABLY RIGHT AWAY THE DETECTIVES TOOK A PIECE OF MY HAIR / MY SISTER FROM TEXAS, MY BROTHER HERE IN WA, A MAN FROM THE PHONE CO. WERE ON THE STAND AS WITNESSES.

I CALLED MY SISTER RIGHT AWAY AFTER OVER ATTACKED ME. MY SISTER & I ARE REALLY CLOSE. THE MAN FROM PHONE CO BROUGHT THE TAPE OF MY CALL. TIME & DATE OF ATTACK. MY BROTHER WENT WITH ME TO THE POLICE - I WAS SO AFRAID MENTALLY ALSO - I COULD NOT THINK I WAS SO SCARED. MY BROTHER & SISTER REALLY HELPED ME AT THAT TERRIBLE TIME - I STILL, AFTER ALL THIS TIME KNOCK HOG I HAD THE STRENGTH TO TELL WHAT HAPPED - I WAS WITHIN A LONG TIME ABUSE!!

HE HIT ME HARD BY THE SIDE THE HED, MY EAR. HE USE TO PUT A PILLOW OVER MY HEAD UNTILL I SCREAMED, GASPED FOR AIR. HE WOULD LAUGHS, THINK IT WAS FUNNY. THAT'S HOW CRAZY HE IS!

WHEN I LEFT THE SHIPYARD-P.S.N.S (NAVY) I WENT TO TEXAS, LIVED WITH MY BROTHER IN HOUSTON, MY ELDERLY AUNT - I LOVED SINCE CHILDHOOD - I WANTED MY LAST PAYCHECK I NEEDED SOMEONE TO SEND TO - I GAVE MY AUNTS ADDRESS. X DYER TOLD MY AUNT (LYING) THAT HE

WAS FROM THE SHIPYARD & WANTED KNOW WHERE I WAS & TO GIVE ME THE PAYCHECK. I MY AUNT DID NOT KNOW WHAT HE WAS, WHAT HE LOOKED LIKE, SHE WAS CONCERNED FOR ME, DID NOT KNOW SHE WAS DEALING WITH SUCH A CRAZY, EVIL, MANIPULATIVE ANIMAL SHE WOULD LIE, AND CON & PLAY HIS GAMES, WITHOUT A CARE WHO HE HURT - ME, MY SISTER/BROTHER-IN-LAW, WITH THE STOLEN VOW. MY AUNT, MY OTHER BROTHER & SISTER IN LAW I WAS STAYING AT THE TIME.

THE SISTER IN LAW OF THE BROTHER I WAS STAYING WITH - DID NOT KNOW DYER - AND STILL TOLD ME "PEACE DO NOT GO WITH HIM - HE IS GOING TO KILL YOU!!"

DYER HAD APPARENTLY SEVEN CHILDREN.

I WAS HIS SECOND WIFE. HE HAD A FIRST, PROBABLY FROM WA, SINCE DYER IS. HE IS MARRIED (I GUESS?) TO THE THIRD WIFE. I ~~HAD~~ HAD TWO CHILDREN BY HIM. THE THIRD WIFE HAD A CHILD ONE MONTH BEFORE MY SECOND CHILD WAS BORN. SHE HAD SEXUAL RELATIONS AT THE PRISON - TWO CHILDREN - THE

FIRST WIFE HAD ONE CHILD BY HIM.
HE DOES NOT CARE ABOUT ALL THESE
CHILDREN - LOCKED MY FIRST SON IN THE
TRUCK. WHILE WE WERE CAMPING IN A
VERY WILD, RURAL IN THE MOUNTAINS OF
ALASKA. HE LOCKED THE BABY - HE WAS
A BABY - JUST BECAUSE HE DID NOT WANT
TO HEAR HIM CRY. HE BEAT ME, I WAS
ALONE. I DO N KNOW HOW MY BABE I
SURVIVED THAT TERRBLE TIME.
IN THE MORNING I GOT MY SON OUT THAT
TRUCK; HE WAS GASPING FOR AIR - ALMOST
DIED. THE ANGELS WERE WATCHING.

SO FAMILY VISIT HIM - THEY DON'T KNOW THE EXTENT OF HIS EVIL. I LIVED. I KNOW WHAT HE IS.

PLEASE DON'T LET HIM OUT - THAT EVIL THING

HE HAD ANOTHER BROTHER - DON - HIS WIFE ABUSED THEIR CHILDREN - THE WIFE OF DON GOT SENT TO WA STATE MENTAL HOSPITAL. I AM NOT SURE WHAT HAPPENED TO DON. THE POLICE FOUND PICTURES OF THEIR CHILDREN IN SEXUAL POSES!!!!!

THE WHOLE FAMILY IS CRAZY!

I AM GLAD FINALLY GOT OUT!

LIKE I MENTIONED - WHY DID HE NOT
GET THE LIFE TERM?
WHY WAS MY M ATTACK, BURGLARY,
INTENT WITH BODILY HARM, KIDNAPPING,
POSSIBLE MURDER OF MY INFANT SON -
COULD OF CHOKED IN HIS BLANKET;
SINCE HIS MOTHER WAS GONE. THIS IS
OVER'S SON - HE DOES NOT CARE IF
HE DOES WHEN HE KIDNAPS ME
SO THIS SON - COULD DIE. WASHINGTON
THE FIRST COULD DIE IN ALASKA

15

I RECEIVED A LETTER FROM MR. STEVEN J. ECKSTROM, MANAGER OF THE VICTIM SERVICES PROGRAM. IN HIS LETTER HE MENTIONS MOST OFFENDERS GOOD BEHAVIOR, ADJUST RELEASE DATE IMPOSED BY JUDGE. HE ALSO STATES THE BOARD WILL REVIEW THE CASE 11/27/06

IN YOUR LETTER YOU MENTIONED 120 DAYS - THAT'S FOUR MONTHES WHY SO SOON - 11-27-06

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 HOGE BUILDING
705 SECOND AVENUE
SEATTLE, WASHINGTON 98104

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FAX: (206) 623-2186

August 26, 2009

Mr. Gregory Rosen
Assistant Attorney General
Criminal Justice Division
PO Box 40116
Olympia, Washington 98504-0116

Re: Richard Dyer, DOC #281744

Dear Mr. Rosen:

Thanks a lot for discussing this case with me on the phone today. I understand that my issue may ultimately be dealt with by Donna Mullen rather than you, but I thought I might as well send you the information to get things rolling.

In anticipation of Dyer's next parole hearing, which is currently scheduled for November 17, 2009, the ISRB sent me the enclosed Information Summary. As you'll see, the information is quite negative and, if believed by the Board, would probably make a hearing pointless. Also enclosed is my letter to the Board dated July 23, 2009. As I explain in that letter, it is impossible to rebut the information summary without having much more detail about the allegations and how it is that the person or persons claim to have such knowledge.

Robin Riley responded to me on August 10, 2009 (copy of letter enclosed). The only new piece of information provided is that the Board received two letters: one on October 2, 2006 and the other on March 1, 2009. She refers to "the author", which seems to indicate that both letters were written by the same person, but I don't know that I can be sure of that.

Ms. Riley believes that she cannot provide me with any more information in view of RCW 42.56.240(2). I'm not sure that that provision would apply to a public disclosure request because there is no reason to believe that disclosure would endanger anybody. In any event, I am not making this request as a member of the public; I am making it as the representative of a prisoner whose liberty is at stake in an upcoming hearing. As you know, the Washington Supreme Court recognized in In re Sinka that the prisoners have a due process right to rebut adverse information under these circumstances. By analogy, criminal defendants at trial must be

EXHIBIT 25

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FAX: (206) 623-2186

given all sorts of information that could not be disclosed to the public under the Public Records Act.

I would, of course, be willing to work out some arrangement that gives the defense access to the information while prohibiting unnecessary disclosures. As you know, I worked out something similar in Mr. Dyer's case with John Austin when he was the chair of the ISRB. At that time, Mr. Austin permitted me to review two letters received by the Board on the condition that I would not reveal to my client or anyone else any information that would disclose the identities of the writers. After viewing those letters, and discussing the matter further with Mr. Austin, we both agreed that the information was not credible and that it should not be considered by the Board.

There are a couple of other twists to the current situation. First, in her recent psychological evaluation of Dyer, Dr. Pereira discusses a "victim statement dated November 14, 2006" from Dyer's "ex-wife." Dr. Pereira then details the highly negative information provided by this woman (relevant pages of report enclosed). This would appear to be a third piece of negative information before the Board.

The dates of these letters raise concerns about the prior .100 hearing. That hearing took place on October 18, 2006, and the decision issued on December 5, 2006. Because Ms. Riley gives the date of one of the secret letters as October 2, 2006, it would appear that the Board had that information prior to the hearing. The statement of the ex-wife would seem to have come to the attention of the Board in between the date of the hearing and the date that it issued its decision. I do not recall being informed of either of those letters at the time. That would seem to raise a new basis for setting aside the ruling from the last .100 hearing.

Thanks a lot for looking into this.

Sincerely,

David B. Zuckerman
Attorney for Richard Dyer

Enclosures
DBZ: sp

State Of Washington
Department Of Corrections

Inmate - Approved Visitors

As of 4/22/2007 4:56:43 PM

Name: DYER, RICHARD J (281744)
Location: MICC-I01 (MCNEIL ISLAND) (C-UNIT)(MCUC1261)
Counselor: WIMBERLY, HOUSTON

Name
ACORD-WOOD, ETHEL P
ACORD, MARK B
ACORD, SAVANNAH NICOLE
BERNIER, PETER
CAVINS, PATIENCE MARIE
DYER JR., RICHARD
DYER, DALE E
DYER, LISA F
DYER, MATTHEW A
DYER, PHYLLIS A
DYER, RENNETTA
HERR, ROBERT D
LUEBKE, CAROLYN L
MATHESON, BETTY R
MATHESON, GARY " BUD "
REDMAN, CAROL
SHOUP-DYER, STEPHANIE A
WAPLES, TRACI

Visitor Count: 18

EXHIBIT 26

Parolability (.100) Hearing
January 13, 2010
McNeil Island

INDETERMINATE SENTENCE REVIEW BOARD
STATE OF WASHINGTON

In the Matter of: RICHARD J. DYER, DOC # 281744	DECLARATION OF DAVID ZUCKERMAN RE: TRIAL TRANSCRIPT

David B. Zuckerman declares as follows:

1) I am the attorney representing Mr. Dyer before the ISRB.

2) I have reviewed the entire trial testimony of Mr. Dyer's ex-wife, Ethel Acord. Her testimony takes up approximately 200 pages. I would be happy to provide the Board with a complete copy of her testimony upon request.

3) In her testimony, Ms. Acord went through her entire relationship with Mr. Dyer, beginning when they met in 1973 in Killeen, Texas. She described their time in Anchorage, Alaska and their move to Washington. She was given wide latitude to testify about Mr. Dyer's alleged poor treatment of her during the course of their relationship, whether or not it was directly related to the crimes for which he was charged.

4) Ms. Acord's testimony does not include any of the following points:

   a) that Mr. Dyer committed any misconduct while in the Army, such as a gang rape;

   b) that Dyer and/or his brother were driving around Texas with a dead body in the car;

   c) that Dyer locked their son into a car while the family was in Anchorage and kept him there overnight;

   d) that Dyer stole her car.

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

EXHIBIT 27

5) At no time during Ms. Acord's testimony did the trial judge "clear the courtroom." At one point the judge did send the jury out of the courtroom briefly because Ms. Acord was insisting that the prosecutor change his position while questioning her so that she would not have to look at Mr. Dyer's brother. The problem was quickly solved when the brother volunteered to sit elsewhere.

6) The citations to the trial record in section II(B) of the defense parole memorandum are accurate. I can provide the entire trial transcript to the Board upon request.

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

12/11/09 Seattle, WA
Date and Place

David B. Zuckerman

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

Washington State
Institute for
Public Policy

110 Fifth Avenue Southeast, Suite 214 • PO Box 40999 • Olympia, WA 98504-0999 • (360) 586-2677 • FAX (360) 586-2793 • www.wsipp.wa.gov

June 2006

SEX OFFENDER SENTENCING IN WASHINGTON STATE:
WHO PARTICIPATES IN THE PRISON TREATMENT PROGRAM?

The 2004 Legislature directed the Washington State Institute for Public Policy (Institute) to conduct a comprehensive evaluation of the impact and effectiveness of current sex offender sentencing policies.[1] Because this is an extensive topic, we are publishing a series of reports.

The Washington State Department of Corrections (DOC) has operated a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center since 1988. The program has undergone a series of changes since its inception. Since 1996, the program has used a combination of treatment techniques including group therapy, psycho-educational classes, behavioral treatment, and family involvement. The length of treatment has decreased from two years in 1996 to approximately one year currently. Since 2000, sex offenders assessed as having a high likelihood to reoffend, based on their criminal history, are prioritized for program entry.[2]

Offenders selected for the treatment program must meet the following five requirements:

- Sex offense conviction
- Voluntary participation
- Admission of guilt
- One year minimum remaining in prison
- Medium or lower custody classification

Because SOTP accepts only offenders who admit their guilt and voluntarily request treatment, significant differences may exist between those who participate in the program and those who do not. In addition, participation is dependent on the sex offender's custody level, which introduces additional systematic differences between participants and non-participants.

These differences can affect the ability to conduct an outcome evaluation of the program. A valid outcome evaluation must identify a comparison group of sex offenders similar to SOTP participants who did not participate in the program. Once this group is identified, we can examine whether the program reduces the recidivism rates of participants.

SUMMARY

The Washington State Department of Corrections (DOC) has operated a prison-based Sex Offender Treatment Program (SOTP) at the Twin Rivers Corrections Center since 1988.

This report examines trends in SOTP participation as a first step in identifying a valid comparison group to evaluate the impact of this program on participants' recidivism. We compare the characteristics of SOTP participants with sex offenders who did not participate in the program.

Since the program's content and format was significantly changed in 1996, we looked at sex offenders released from Washington prisons since that time. Decision patterns have changed in this 10-year period. Following are the key findings:

- Offenders who were unwilling to participate in SOTP differ significantly from those who volunteered to participate.
- The criminal histories, risk scores, and demographic characteristics are much higher for those who were unwilling to participate.

The Institute's next paper will analyze SOTP's effect on recidivism. The comparison group will include only sex offenders who indicated a willingness to participate in the program at some point, but did not.

This report examines trends in SOTP participation as a first step in identifying a valid comparison group needed to evaluate the impact of SOTP on recidivism.

The study sample consists of all sex offenders released from prison between 1996 and 2005 after serving at least one year.

EXHIBIT 28

[1] ESHB 2400, Chapter 176, Laws of 2004.
[2] The SOTP uses three risk for sexual reoffense assessments: MnSOST-R, RRASOR, and Static 99.

Exhibit 1 shows the process sex offenders follow to participate in SOTP.

- When sex offenders with sentences of less than five years are going through classification at the Washington Corrections Center (WCC), they are asked whether they are *willing* to participate in SOTP. (Offenders with sentences longer than five years may apply at a later date.)
- During the sex offender's stay in prison, DOC records when the offender *applies* to participate in the program.
- SOTP may *reject* applicants because they are appealing a conviction or deny the offense.
- A sex offender can *decline* to participate in SOTP at any time.
- In this analysis, all sex offenders who enter SOTP are *participants* regardless of their program completion. Participants can be voluntarily or involuntarily terminated.
- After release from prison, participants can continue with DOC-sponsored treatment groups.

Since 2000, SOTP has prioritized volunteers based on their risk to reoffend with sex crimes.[3]

Exhibit 2 displays the last SOTP-related event for sex offenders released from prison since 1996 after serving at least one year.[4] The number of sex offenders released from prison has grown from 445 in 1996 to 583 in 2005. The number of SOTP participants who stayed in the program and were released from prison peaked at 192 in 2000; 131 SOTP participants were released in 2005.

Exhibit 1
SOTP Participation Process

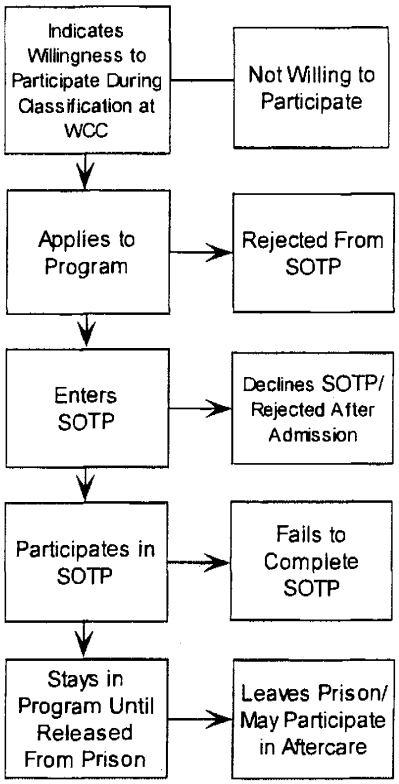


Exhibit 2
Last Recorded Event in SOTP Process for Sex Offenders Released From Prison Since 1996

Prison Release Year	Total Sex Offenders	Not Willing	Willing But Not SOTP Participant				SOTP Participant		
			Willing	Applied	Later Declined	Rejected	Terminated		Stayed in Program
							Involuntary	Voluntary	
1996	445	81	32	2	181	20	15	30	84
1997	470	70	39	3	172	34	7	15	130
1998	521	87	16	6	158	81	13	8	152
1999	537	102	22	3	149	65	8	11	177
2000	644	105	21	12	178	117	10	9	192
2001	557	108	18	22	113	149	8	4	135
2002	586	107	35	19	107	180	6	8	124
2003	606	140	25	24	108	183	6	5	115
2004	565	110	45	24	101	171	7	2	105
2005	583	125	20	6	116	174	7	4	131

[3] The SOTP uses three risk for sexual reoffense assessments: MnSOST-R, RRASOR, and Static 99.
[4] Data for this study are from DOC's Offender Based Tracking System, which began tracking progression in the STOP process in 1993. Offenders in the "willing" and "applied" groups did not have subsequent records indicating whether they "declined" or were "rejected."

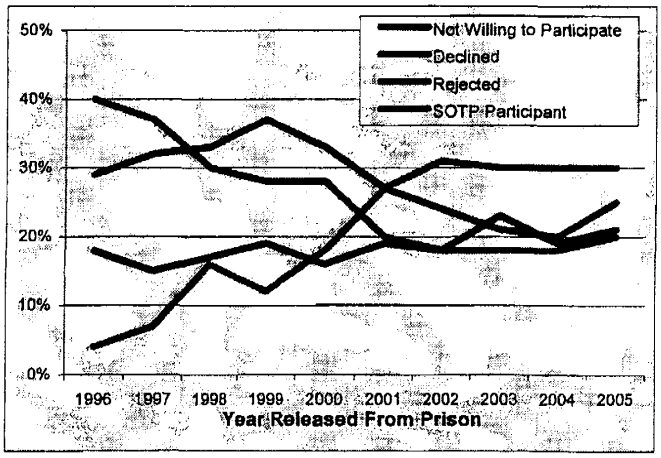
Exhibit 3 displays the percentage of sex offenders released each year by the following groups: (1) not willing to participate in SOTP, (2) declined to participate, (3) rejected by SOTP, and (4) SOTP participant.[5] These percentages have changed considerably in 10 years.

- In 1996, 40 percent declined to participate, 30 percent participated, 18 percent were not willing to participate, and less than 5 percent were rejected.
- In 2005, 20 percent declined to participate, 25 percent participated, 20 percent were not willing, and 30 percent were rejected.

These participation patterns may be influenced by changes in laws and policies regarding sex offenders. For example, the full implementation of community notification laws (public release of information related to sex offenders leaving prison) may cause more sex offenders to seek treatment and, thus, potentially decrease their notification level. On the other hand, the law authorizing civil commitment of sexually violent offenders (RCW 79.09) could motivate some sex offenders to decline participation because revelations during their treatment about additional victims or violence could later be used as reasons for the state to file a Sexually Violent Predator petition.

We next examine whether the characteristics of the sex offenders in these groups have also changed over time.

Exhibit 3
Trends in SOTP Participation for Sex Offenders Released From Prison Since 1996



Summary of Trends for Sex Offenders Released From Prison and SOTP Participation

- The number of sex offenders released from prison has grown from 445 in 1996 to 583 in 2005.
- The number of SOTP participants released from prison peaked at 192 in 2000; 131 SOTP participants were released in 2005.

[5] The percentages for each year add to approximately 90 percent, not 100 percent, because approximately 10 percent of the offenders are in the "willing" and "applied" groups, which are excluded from the exhibit for simplicity.

Exhibit 4 displays trends in the characteristics of three groups of incarcerated sex offenders: those not willing to participate in SOTP, those willing but not participating,[6] and those participating.

We first examine risk-for-reoffense scores. These scores measure an offender's propensity to recidivate with a felony or violent felony offense—a higher score indicates a greater likelihood of reoffending. The risk scores are calculated using an actuarially based static risk assessment tool being developed by the Institute for DOC.[7]

Felony and Violent Static Risk Scores. Those not willing to participate in SOTP consistently have higher felony and violent felony risk scores, and these scores have been increasing. The felony and violent felony risk scores for the other two groups are nearly identical and have not increased since 1996. That is, sex offenders who were willing but did not participate in SOTP have the same level of risk as those who participated in the program.

Exhibit 4
Trends in Static Risk Scores

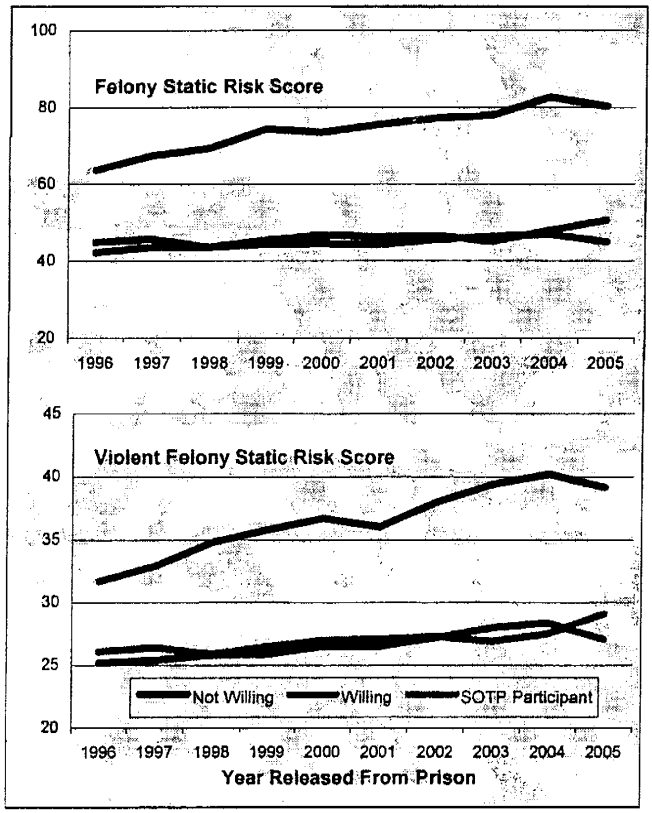


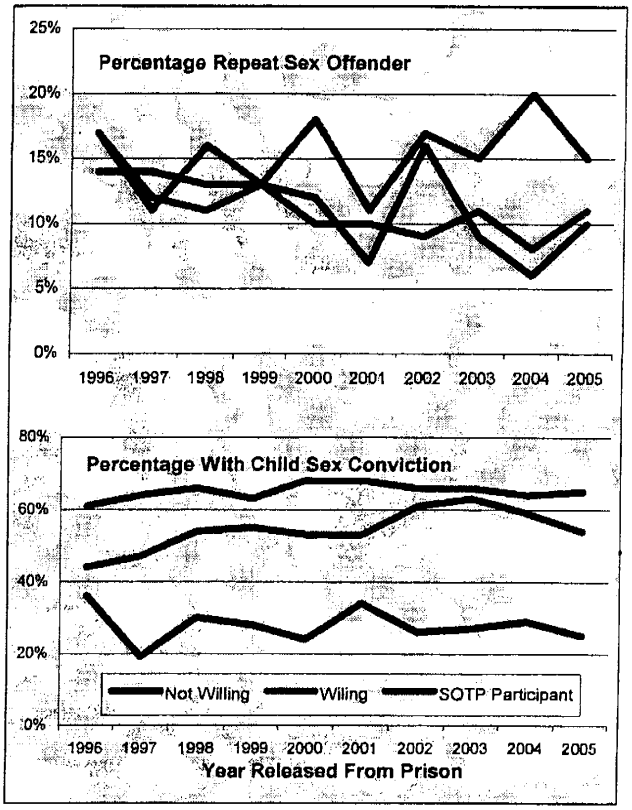
Exhibit 5 displays the trends for two key offender characteristics.

Repeat Sex Offenders. The SOTP group includes a higher percentage of sex offenders with more than one sentence involving a felony sex conviction, that is, repeat sex offenders. This pattern is especially true since 2000. Nearly 15 percent of SOTP participants released in 2005 are repeat sex offenders.

The percentage of repeat sex offenders in the other two groups has been gradually declining. About 10 percent of the offenders released in 2005 have a prior sex offense conviction.

Child Sex Conviction. SOTP participants consistently have the highest percentage of prior convictions for child sex offenses among the three groups throughout the 10-year period. Slightly more than 60 percent of SOTP participants have been convicted of a child sex offense. The percentages for those willing but not participating have increased from about 40 percent to as high as 60 percent. The percentage for those not willing to participate has remained near 25 percent.

Exhibit 5
Prior Sex Offense Convictions



[6] This group includes all incarcerated sex offenders who indicated a willingness to participate but did not (willing, applied, declined, and rejected).

[7] There is no static risk score for felony sexual reoffending because criminal history alone does not adequately predict sexual reoffending.

Exhibit 6 displays two additional trends: the average years sex offenders spend in prison and their average age at release.

Average Years in Prison. Compared to those not willing to participate, SOTP participants and those willing but not participating consistently served longer prison terms, and their average years in prison have been increasing. Those not willing to participate have the shortest prison stays; their years in prison are declining slightly.

Age at Release. Those willing but not participating are the same average age at release as SOTP participants. Those not willing to participate are the youngest group. On average, those not willing to participate are about two years younger than SOTP participants; however, their average age is increasing.

Exhibit 6
Trends in Sex Offender Characteristics

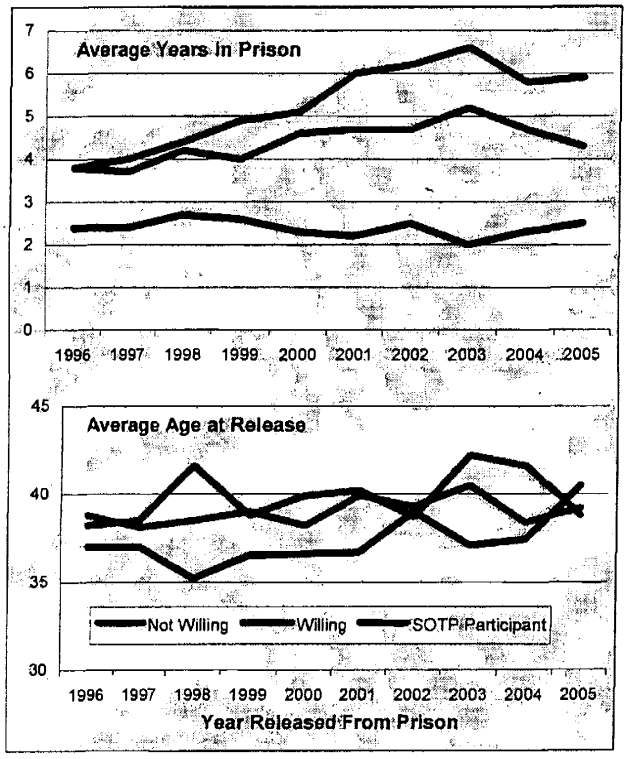
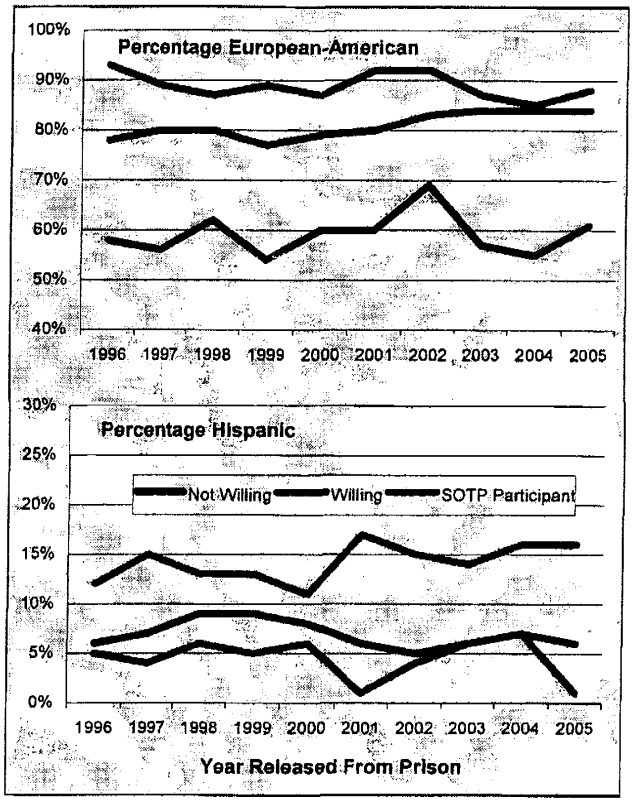


Exhibit 7 displays sex offender race and ethnicity characteristics between 1996 and 2005.

European-American. This chart simplifies the description of the ethnic/racial identity by displaying the percentage of European-American sex offenders.[8] Approximately 90 percent of SOTP participants are European-American; slightly more than 80 percent of those willing but not participating in 2005 are European-American. About 60 percent of sex offenders not willing to participate are European-American.

Hispanic. Hispanics comprise only 5 percent of the participants, between 5 and 10 percent of those not willing to participate, and 15 percent of those willing but not participating in SOTP.

Exhibit 7
Trends in Race and Ethnicity Characteristics



Summary of Trends in Characteristics of the Three Groups of Sex Offenders

- The trends of those willing, but not participating in SOTP, are similar to the program's participants.
- Those not willing to participate in SOTP are most dissimilar from the other groups: increasingly higher risk for reoffense, fewer child sex convictions, shorter prison terms, and fewer European-Americans.

[8] The four ethnic groups recorded by DOC include European, African, Asian, and Native American.

Exhibit 8 summarizes the characteristics of the three groups of sex offenders released between 1996 and 1999. This time period was selected because it corresponds to the study period that will be used in the SOTP recidivism outcome evaluation. The exhibit supports the previous conclusion that those offenders not willing to participate are significantly different than those willing to participate in SOTP. Some of the largest differences are related to risk for reoffending. The five-year recidivism rates displayed in the next exhibit reinforce this perspective.

Exhibit 8
Characteristics of Sex Offenders Released From Prison Between 1996 and 1999

Sex Offender Characteristic	Not Willing	Willing	SOTP
Percentage Distribution	17.0%	50.0%	33.0%
Average Felony Risk Score	69.0	44.8	43.5
Average Violent Felony Risk Score	33.9	26.2	25.6
Percentage With Two or More Felony Sex Sentences	13.2%	12.9%	14.0%
Percentage With Child Sex Conviction	28.5%	50.3%	63.8%
Average Years in Prison	2.5	3.9	4.3
Average Age at Release	38.4	40.5	39.6
Race/Ethnicity:			
European-American	57.4%	78.8%	89.2%
African-American	39.1%	13.8%	7.9%
Native-American	2.9%	3.4%	2.1%
Asian-American	0.3%	3.1%	0.8%
Hispanic Origin	7.9%	13.1%	5.0%

Exhibit 9 presents the five-year recidivism rates for the three groups of sex offenders released between 1996 and 1999. The 340 sex offenders not willing to participate in SOTP have much higher recidivism rates than those willing to participate: 63 percent recidivated with a felony offense, 30 percent with a violent felony, and almost 13 percent with a felony sex offense.

Exhibit 9
Five-Year Felony Recidivism Rates

SOTP Final Status	Number of Sex Offenders	Five-Year Recidivism		
		Any Felony	Violent Felony	Felony Sex
Not Willing	340	63.2%	30.0%	12.6%
Willing	984	15.3%	5.7%	0.6%
Participant	655	12.5%	6.0%	1.8%
Total	1,979	22.6%	10.0%	3.1%

Conclusion

Based on the differences in offender characteristics and recidivism rates, the SOTP evaluation must exclude those offenders who were not willing to participate in the program. The comparison group will be derived from those with similar custody levels who were recorded as willing to participate in SOTP but never entered the program.

The Institute's next report will evaluate SOTP outcomes.

For further information, contact Robert Barnoski at
(360) 586-2744 or barney@wsipp.wa.gov

Document No. 06-06-1204

Washington State Institute for Public Policy

The Washington State Legislature created the Washington State Institute for Public Policy in 1983. A Board of Directors—representing the legislature, the governor, and public universities—governs the Institute and guides the development of all activities. The Institute's mission is to carry out practical research, at legislative direction, on issues of importance to Washington State.

EXHIBIT - R
Letter's in Support of Mr. Dyer

Leonard M. Shaw MSW, ASCW
702 11th Avenue East
Seattle, WA 98102-4620
(206) 322-5785

September 16, 2006

Indeterminate Sentence Review Board

Re: Richard J. Dyer

Dear Board Members,

I have been practicing psychotherapy for 43 years. I also teach a Love and Forgiveness Intensive (lasting 2 to 5 days). I have led this intensive in Germany, Poland, Austria, Denmark, and Canada as well as in five prisons in the state of Washington. Therapists, business people, and corrections personnel have come from throughout the world to attend these seminars. (I have led these prison groups at least 4 times per year for the last 19 years.)

Both of my graduate school internships (9 months each for 2 days per week) were in Corrections (one was at McNeil Island Federal Prison) and I also worked 3 ½ years in a juvenile corrections setting. Early in my career I was a consultant on a Federal Offenders Research Project for 22 months. I have had direct contact of an intense and extensive nature with thousands of offenders. I would be totally grateful to have Richard Dyer as my next door neighbor. I have never felt that confident about any other offender I have known.

Please see my enclosed letter on Richard from July 27, 1998.

Since my July 1998 letter to the board, Richard and I have continued to have monthly phone consultations and he has been moved to MICC. I have twice conducted my Love and Forgiveness Seminar at McNeil and Richard and his wife Renetta attended both times.

Richard continues to be a positive force in the prison with staff and inmates. He continues to support his family financially and emotionally. All of his children are in college or planning to go. Richard has developed into one of the most remarkable, altruistic, caring human beings I have ever known.

Feel free to contact me for any questions or if you would like me to attend his hearing. I would be pleased to do so.

Sincerely,

Leonard Shaw

Encl: letter of 7.27.98 and Leonard's vita

Curriculum Vitae

LEONARD MELVIN SHAW, MSW, ACSW
702 - 11th Avenue East
Seattle, WA 98102
(206) 322-5785

EDUCATION:

University of Washington: B.A. Degree, 1959; M.S.W. Degree, 1963. { 9 mos Juv. Parole; 9 mos McNeil Isl. Fed. Pen (Graduate School Intern)

PUBLICATIONS:

"Love and Forgiveness," A Workbook For Self Healing and Healing Relationships, 1989
"A Guy Called Society," in Family Affairs, Fall, 1963.
"A Study of Counselor, Supervisor, Administrator Attitudes," in Case Recordings, IRS, Washington D.C., May, 1963, Macdonald and Shaw.
"Who Actually Reads Case Records," in Case Recordings, IRS, Washington D.C., May, 1963, Macdonald, R.W., and Shaw, L.M.
"CINDY," in VOICES: The Art and Science of Psychotherapy, Vol. 7, No. 4, 1972.

PROFESSIONAL:

Dec. 1965 - Present	Private Practice: Individual, Group, Family Psychotherapy. Business Consultant. Seminar Leader.
Oct. 1982 - Present	Consultant, Nordsjaellands Gestalt Institute, Copenhagen, Denmark.
Feb. 1981 - Present	Consultant, Gestalt Institute of Frankfurt, Germany.
Sept. 1979 - Present	Consultant, Warren Robinson and Associates, Toronto, Ontario, Canada.
→ May 1987 - Present	Sponsor - Volunteer Leader, three-day Love and Forgiveness Seminars at Monroe State Prison.
1976 - 1979	Instructor, Experimental College, University of Washington • Taught Self-Healing in Coping with Cancer and Other Illnesses.
April 1969 - June 1970	Visiting Lecturer, Department of Architecture, University of Washington • Experientially taught classes on sensory awareness and contact with one's creativity.
Jan. 1969 - April 1969	Co-Leader of Psychodrama group at University of Washington Hospital.
Dec. 1968 - April 1969	Consultant, Staff Development Group. Psychiatric Ward, King County Hospital.
Sept. 1967 - Mar. 1969	Consultant, Staff Development Groups. Western State Hospital.
→ Mar. 1967 - Jan. 1969	Consultant, Federal Offenders Rehabilitation. Research Project.
Jan. 1967 - Jan. 1969	Instructor, Free University of Seattle. • An Experimental Introduction to Group and Individual Dynamics.
June 1964 - June 1967	Group co-therapy in private practice with Frank Hammer, Ph.D.
Jan. 1966 - Mar. 1967	Assistant Director of Research. Rehabilitation Research Institute. • In charge of Family Therapy Project.
Oct. 1966 - Nov. 1966	Neighborhood House, Seattle, WA. • Training sessions for Community Aides.

PROFESSIONAL EXPERIENCE (cont.):

Jan. 1964 - Mar. 1966	Instructor, Shoreline Community College, Seattle, WA. • Sociology, Child Development, and Deviant Behavior.
June 1963 - Jan. 1966	Caseworker, Family Counseling Service, Seattle, WA.
Oct. 1962 - June 1963	Project Assistant, Vocational Rehabilitation, Seattle, WA.
May 1961 - Oct. 1962	Night Supervisor, Seattle Children's Home.
June 1958 - Sept. 1958	Psychiatric Aide, Pinel Foundation Hospital, Seattle, WA.
→ May 1957 - May 1961	Admissions Officer, Group Supervisor, Caseworker, King County Juvenile Court, Seattle, WA.

I have also led sensitivity and encounter groups of a racially mixed nature for Headstart, PTA groups, and Central Area schools, and have been the Field Faculty person for two masters candidates in Psychology through Goddard College, Plainfield, Vermont.

MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS:

- National Association of Social Workers (A.C.S.W.)
- → Board Member, Family House, 1968 - 1978. (DRUG REHAB)
- Advisory Board, Advanced Human Studies Institute, Coral Gables, Florida, 1981 - 1982.

PERSONAL:

Date of Birth: August 23, 1935
Marital Status: Married

REFERENCES:

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Larkspur, CA 94939

Joe Goodman, Ph.D.
39 Laureleaf Road
Thornhill, Ontario, Canada L3T 2X6

Thomas Bungardt, President
Gestalt Institute of Frankfurt
Herderstrasse 36
6000 Frankfurt A.M.1

Niels Hoffmeyer, Ph.D.
Nordsjaellands Gestalt Institute
GL Mollevej 1
DK 3000 Frederiksvarle
Denmark

Leonard M. Shaw, M.S.W., A.C.S.W.
702 - 11th Avenue East
Seattle, WA 98102
(206) 322-5785

27 July 1998

Indeterminate Sentence Review Board

Re: Richard J. Dyer

Dear Board Members:

I have been in the practice of psychotherapy for thirty-five years and for the past fifteen years, I have been teaching at training centers for therapists in Europe and Canada.

For over ten years now, I have been teaching the same three-day Love and Forgiveness seminar (that I teach in Europe and Canada) at Monroe Prison. We have thirty to sixty people, consisting of inmates, their families, a few other volunteers, and therapists from Europe and Canada. These are very intense seminars that deeply probe the areas, issues, and dynamics of childhood abuse, criminal addictions, P.T.S.D., as well as marital, interpersonal, and prison issues. Many people are profoundly affected by the intense healing and love that evolves in this work. The men sometimes comment that "this is the loving family I never had as a child." All of this does not come easily, however. A lot of pain comes with the healing and insights of this work as people re-live the trauma of their childhood abuse (and their crimes), first as themselves and then as the perpetrator or victim.

Before his transfer to Airway Heights, Richard for many years attended all my W.S.R. seminars. He became intensely involved. He took the "hot seat;" he studied my materials relentlessly. He started support groups to keep men focused on their growth and healing between seminars. (I was doing six or eight seminars per year.) He became a great source of wisdom, inspiration, and teaching for other inmates. At first, men would come to two or three seminars before they took the "hot seat" (me working with one person in front of the entire group). Now, men I have never met come to the seminar and take the "hot seat" immediately. I am sure that Richard's efforts and coaching have a lot to do with this factor.

There are other healthy, esteem-building programs in the prison that Richard has initiated and/or within which he has taken leadership roles. Wherever he goes, whatever he does, Richard is always looking for ways to improve things and encourage people. He is also very intelligent, resourceful, and committed. He goes to great lengths to facilitate and support my seminars being successful. I even used to ask him to present some of my Friday night introductory didactic material.

Now that Richard is at Airway Heights, he is missed very much by people. I am always asked, "Do you hear from Richard? How is he doing?" His heart and inspiration is still very much a part of our healing process even though physically he is on the other side of the state.

Richard has grown tremendously since I have known him. the depth of compassion and caring that he has developed is very rewarding for all of us and, of course, very healing for Richard. For him to discover that he has such intense love and commitment for his fellow brothers and sisters on the planet and for him to find so many ways to demonstrate this love, has given Richard an entirely new experience of life, relationships, and events. He now has such a heart connection with people and such compassion and insight regarding people's negative and conflictive behaviors, that I know he will be a powerful healing agent wherever he goes.

Numerous inmates have related to me during informal "breaks" in the seminars how Richard has helped them. They were in conflict with their wives or families, or they were on the verge of doing something illegal, violent, and/or self-defeating. Richard is brilliant and insightful at saying just enough and just the right thing, without being overbearing or preaching, to give the troubled inmate a new option on the situation or help him discover a healthier feeling or way of behaving.

After "hot seat" work in the seminars, we often give the person feedback on how we feel about them. Sometimes the person is still stuck in their "garbage" and did not achieve the breakthrough for which they had hoped. Often the person giving the feedback gets a bit self-indulgent and wordy. I was always impressed by how much restraint Richard exercised in this area. He would not talk a lot, but when he did, his comments were very efficient, insightful, and showed great caring, commitment, and concentration on the true needs of the people involved. Rarely did Richard's ego take precedence over other people's well-being. Now, who among us can claim that about themselves? He has truly become a very loving, serving human being.

I know A.H.C.C. is a frustrating experience for Richard, because there are few pathways for his desire to grow and to contribute to other peoples growth. I always teach "the bigger the disaster, the bigger the benefits" and Richard works very hard to make his time at A.H.C.C. a growth experience for himself and others.

Richard consults with me monthly by phone. He has re-connected with his two older sons, and is developing a loving, fatherly relationship with them. And I have a therapy appointment scheduled this week with Richard's sons. Richard is totally dedicated to be the best husband and father he can possible be under the circumstances. He is also a great source of support, encouragement and inspiration for anyone with a genuine desire to grow.

Please feel free to contact me if you have any questions or wish further comments.

Sincerely,

Leonard M Shaw MSW ACSW

Leonard M. Shaw, MSW, ACSW

August 29, 2006

To: Indeterminate Sentence Review Board
4317 Sixth Ave., S.E.
P.O. Box 40907
Olympia, WA 98504-0907

From: Richard Dyer 281744 C-126-1
McNeil Island Corrections
P.O. Box 881000
Steilacoom, WA 98388

To Whom it May Concern,

My name is Richard Dyer and I have been incarcerated for 25 years. I am seeking your decision to find me eligible for parole. Despite my incarceration, I have successfully maintained my role as husband, father and financial provider to my family.

On August 1 of this year my wife, Rennetta, and I celebrated 25 years of marriage. We have remained a loving couple that has been supportive of one another through life's circumstances. We have grown together and actually have better communication than most couples. We have worked hard to maintain our relationship through daily phone calls(which I pay for), annual marriage seminars and E.F.V.'s, through which two of our children were conceived.

In need of family support and to pursue a career as a Registered Nurse, my wife moved, with our children, to Oklahoma in 1989. Unfortunately, our E.F.V.'s, due to a change in policy, were taken away but through the daily conversations and an annual week of visits, our family has remained closely connected. Rennetta has also traveled to Washington on numerous occasions to

attend, with me, marriage seminars for incarcerated couples. She and I love each other very much and I believe our ability to remain married and raise a healthy, stable family despite our circumstances, is a testament to that.

It's amazing how stable and well adjusted our children are. Statistics show that most children with incarcerated fathers don't pursue higher education and live lifestyles that could lead to their own imprisonment.

My oldest daughter, Stephanie, has received her bachelor's degree and is working toward another. She has said on several different occasions that through her educational experience she has met many people from different backgrounds and she is grateful that her parents are not only still married, but seem to be the most supportive and stable among her peers. Stephanie is very compassionate and in 2002, she took her leadership skills overseas to for a month to serve in South African orphanages, hospitals and schools.

Lisa has just finished her first year of college and is now renting her own home. She is very independent, financially stable and is pursuing a career in the field of radiology. My youngest, Matthew, is now a Junior in high school and is beginning to make decisions concerning college. He has good grades and is very active in wrestling. He's very resourceful and sensitive to the needs of others. Whatever path he chooses, he will make an impact on the lives of those around him.

I also have two sons, Richard and Mark, from my previous marriage. Richard is my oldest child and lives in Seattle where he owns and operates his own computer business. He has also pursued a college degree and has profited from his recent real estate endeavors.

When Mark was a teenager he had been living with his mother's sister. He had been abandoned and was going nowhere fast. My wife and I decided it would be best for him to move

in with her. We bought him a vehicle and helped him finish his education after which he joined the Army. He now lives and works in Seattle and is expecting his first child in November. I am proud to say that I have been a father to my children. Though not there in physical form, I have worked hard to establish myself as a strong, reliable presence in their lives. Though only active in their daily lives through the phone, I act as disciplinarian, provider and confidant.

I have not let my incarceration stop my from faithfully providing for my family. I have done this through my investments in stocks, mutual funds, real estate and my Veteran's benefits. I have provided the essential needs such as medical and dental visits, clothing and tuition. I have also funded many extracurricular activities: cheerleading, annual girl scout and summer camps, overseas volunteer work, family vacations to Disney World, graduation and birthdays. I have also given all of my children $5000 on their sixteenth birthday for their first car, presents and Christmas gifts. My family lives well.

My family is my first priority and I work hard to maintain an active, positive role within it. Upon my release I plan to continue this. If I had the chance I would take long walks with my wife, have family dinners, walk my daughters down the aisle on their wedding day and watch my grandchildren grow. On behalf of myself and my family, I am asking you for that chance.

Sincerely,
Richard Dyer

State of Washington
Department of Corrections

Custody Review
Offender Version

Printed By: Wimberly, Houston S
Print Date: 05/25/2010

Assigned Counselor: Wimberly, Houston S

Inmate: DYER, Richard J (281744)

Gender: Male DOB: 12/20/1948 Age: 61

Category: Regular Inmate

Body Status: Active Inmate

RLC: LOW

Custody Level: Minimum 3 - Long Term Minimum

Location: MICC — MCU / C1261

ERD: 03/31/2013

CC/CCO: Wimberly, Houston S

Purpose of Review

Purpose Of Review	Date Initiated
Regular Review	05/20/2010
Indeterminate Sentence Review Board(ISRB)	05/20/2010

Program Needs

Education

GED/HSD:	Date Obtained:	Location:	Verified?
DIPLOMA	01/01/1976		Y

Grade Point Equivalency

Math:	Reading:

Dependency

Chemical Dependency: N

Level Of Care: 1

Offender Needs (Needs Assessment Tool)

Alcohol/Drug Use

Offender's Willingness to Participate

Chemical Dependency Program: No

Cognitive/Mental Health Programs: No

Family/Community Support: Yes

Education/Employment Needs

Education/Employment Need

Has Work Skills Needed For Community Employment

Has Specific Work Skills For Prison Work Or Correctional Industries

Narrative:

Inmate Dyer Job Performance Has Been Noted As Superior In All Categories And Copy Of His Job Evaluation Form Was Placed In The Central File. He Continues To Work For The Recreation Department. In Addition, Inmate Dyer Volunteers For Numerous Community Activities Such As The Heart Drive, Veterans Fundraisers And Other Fundraisers, Kios Religious Retreat, And Continues To Be Involved As A C-Unit Tier Rep.

Programs

Custody Score

Current Custody

Current Custody Score: 10

Minimum 3 - Long Term Minimum

Infraction Behavior

Infraction Behavior Score: 20

Program Behavior

Program Behavior Score: 12

Month	Year	Points	Non-Award Reason
December	2009	2	
January	2010	2	
February	2010	2	
March	2010	2	
April	2010	2	
May	2010	2	

Detainers

Detainer Score: 10

	Felony	ICE
Current	No	No
Potential	No	No

Escape History

Escape History Score: 15

Calculated Custody

Custody Score: 67

Calculated Custody: Minimum

Expectations

Condition

Expectation	Frequency	Due Date	Complete
STANDARDIZED STRESS/ANGER MANG	As Available	12/10/2020	Yes
Program Participation (See Narrative) Complete Offender Change Classes As Recommended By Counselor Or FRMT, When Made Available.	As Available	12/10/2020	No
Complete Offender Change/Transitional Classes (18 Months To ERD) Or When Directed To Do So.	As Required	12/10/2020	No
Maintain A Full-Time Programming Assignment, Such As Work Or Education, As Approved By Counselor Or FRMT.	As Required	12/10/2020	No
Monitoring (PREA): Based On Documented Behavior Or Other Indicators You Will Report To Your Assigned Counselor Quarterly. Report PREA Related Incident To The Confidential Hot Line, To Any DOC Employee, Or Submit A Written Complaint Per DOC 490.800.	As Required	12/10/2020	No
Receive No Serious Infractions That Would Demote Current Minimum Custody.	As Required	12/10/2020	No
Referrals For Transitional Classes Will Be Made At A Review Closer To The ERD.	As Required	12/10/2020	No
Submit A Viable Release Address To You Counselor Once The ISRB Finds You Parolable.	As Required	12/10/2020	No
(See Narrative) Receive No Serious Infractions That Would Demote Current Minimum Custody.	On-Going	12/10/2020	No
Compliance W/Court Ordered Conditions (Including No Victim Contact).	On-Going	12/10/2020	No
Program Participation (See Narrative) Maintain A Full-Time Programming Assignment, Such As Work Or Education, As Approved By Counselor Or FRMT.	On-Going	12/10/2020	No
Transition Plan Development (Continue To Maintain Community Support So That As You Near The Period Of Beginning Transition Planning, You Can Submit Your Release Address/Plan To Your Assigned Counselor.	On-Going	12/10/2020	No

LFO (Legal Financial Obligations)

Cause	Amount
	Total: $0.00

Targeted Custody

Targeted Date	Targeted Custody	Targeted Placement	Inmate Preferred Location

Comments/Recommendations

Submit/Review Date	Name	Comments	Concur
05/24/2010	Wimberly, Houston S	(Offender) P STATED HE UNDERSTOOD THE RECOMMENDATIONS AND WAIVED FRMT BY SIGNING DOC FORM 05-794. PRESENT WERE CUS COSSETTE, CC3 COOK, CC2 WALSTON, AND CC2 WIMBERLY. (Counselor) Recommendations: Maintain MI3 Custody With A IND Override. No Level 2-Facility Placement Is Targeted Due To Being Found Not Parolable By The ISRB On 01/13/10 And They Added 60 Months To His Minimum Term. Minimum Facility Placement Will Be Addressed When The ISRB Sets Conditions For Parole Or A MRP. Next Action: Schedule .100 Hearing For Inmate Dyer 120 Days Prior To His Next Parole Eligibility Date (PERD). Complete Offender Change Programs As Appropriate And Recommended By The ISRB. Maintain Current Housing And Programming.	
05/24/2010	Cossette, Matthew J	FRMT: Maintain MI3 Custody With An IND Override; Attend 0.100 Hearing As Scheduled; Continue With Referrals And Assignments; Retain At MICC.	Yes

Assigned Custody

Calculated Custody:	Assigned Custody:	Override Reason:	Override Narrative:
Minimum	Minimum 3 - Long Term Minimum	Indeterminate Cause	ISRB Case Not Yet Found Parolable.
	Classification Status:	**Completion Date:**	**Custody Assigned By:**
	In-Effect	05/24/2010	Matthew Cossette, Correctional Unit Supervisor

DOC: 281744 **Name:** DYER, Richard J

PIERCE COUNTY VETS

Certificate of Appreciation

is hereby granted to

Richard Dyer

In recognition for his selfless contributions and outstanding customer support while assisting Veteran's throughout:

MCNEIL ISLAND CORRECTION CENTER

Awarded: 7 November 2008

Gordon Fowler, President

Certificate of Completion

This certifies that

Richard Dyer

Has successfully completed

Preparing For Release

Preparing You and Your Family for Transition Home

A Program Developed to Address the Emotional Impact of Release from Prison

Facilitator — Date: 2-7-09

Facilitator — Date: 2/7/09

Leonard M. Shaw, M.S.W., A.C.S.W.
702 - 11th Avenue East
Seattle, WA 98102
(206) 322-5785

27 July 1998

Indeterminate Sentence Review Board

Re: Richard J. Dyer

Dear Board Members:

I have been in the practice of psychotherapy for thirty-five years and for the past fifteen years, I have been teaching at training centers for therapists in Europe and Canada.

For over ten years now, I have been teaching the same three-day Love and Forgiveness seminar (that I teach in Europe and Canada) at Monroe Prison. We have thirty to sixty people, consisting of inmates, their families, a few other volunteers, and therapists from Europe and Canada. These are very intense seminars that deeply probe the areas, issues, and dynamics of childhood abuse, criminal addictions, P.T.S.D., as well as marital, interpersonal, and prison issues. Many people are profoundly affected by the intense healing and love that evolves in this work. The men sometimes comment that "this is the loving family I never had as a child." All of this does not come easily, however. A lot of pain comes with the healing and insights of this work as people re-live the trauma of their childhood abuse (and their crimes), first as themselves and then as the perpetrator or victim.

Before his transfer to Airway Heights, Richard for many years attended all my W.S.R. seminars. He became intensely involved. He took the "hot seat;" he studied my materials relentlessly. He started support groups to keep men focused on their growth and healing between seminars. (I was doing six or eight seminars per year.) He became a great source of wisdom, inspiration, and teaching for other inmates. At first, men would come to two or three seminars before they took the "hot seat" (me working with one person in front of the entire group). Now, men I have never met come to the seminar and take the "hot seat" immediately. I am sure that Richard's efforts and coaching have a lot to do with this factor.

There are other healthy, esteem-building programs in the prison that Richard has initiated and/or within which he has taken leadership roles. Wherever he goes, whatever he does, Richard is always looking for ways to improve things and encourage people. He is also very intelligent, resourceful, and committed. He goes to great lengths to facilitate and support my seminars being successful. I even used to ask him to present some of my Friday night introductory didactic material.

Now that Richard is at Airway Heights, he is missed very much by people. I am always asked, "Do you hear from Richard? How is he doing?" His heart and inspiration is still very much a part of our healing process even though physically he is on the other side of the state.

Richard has grown tremendously since I have known him. the depth of compassion and caring that he has developed is very rewarding for all of us and, of course, very healing for Richard. For him to discover that he has such intense love and commitment for his fellow brothers and sisters on the planet and for him to find so many ways to demonstrate this love, has given Richard an entirely new experience of life, relationships, and events. He now has such a heart connection with people and such compassion and insight regarding people's negative and conflictive behaviors, that I know he will be a powerful healing agent wherever he goes.

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I know A.H.C.C. is a frustrating experience for Richard, because there are few pathways for his desire to grow and to contribute to other peoples growth. I always teach "the bigger the disaster, the bigger the benefits" and Richard works very hard to make his time at A.H.C.C. a growth experience for himself and others.

Richard consults with me monthly by phone. He has re-connected with his two older sons, and is developing a loving, fatherly relationship with them. And I have a therapy appointment scheduled this week with Richard's sons. Richard is totally dedicated to be the best husband and father he can possible be under the circumstances. He is also a great source of support, encouragement and inspiration for anyone with a genuine desire to grow.

Please feel free to contact me if you have any questions or wish further comments.

Sincerely,

Leonard M Shaw MSW ACSW

Leonard M. Shaw, MSW, ACSW

January 27, 2005

Greg Benjamin
Program Unit Supervisor
McNeil Island Correction Center
P.O Box 88900
Steilacoom, Washington 98388

REF: Mr. Richard Dyer
Letter of Reference

To Whom It May Concern:

This letter of reference in regards to Mr. Dyer is based on his work performance within the MICC recreation department as an inmate worker.

As a supervisor, during the time that he has worked for the department, I have found Mr. Dyer to be a great add-on to our department. He is an employee who is eager to learn and has quickly obtained a sound understanding of the goals of the department. In working with him, I have found that he is a team player and one who not only has the ability to produce results, but is also able to effectively inner act with others in their activities. Mr. Dyer is an individual who has always demonstrated the highest degree of commitment and his efforts have established himself as being an employee who is dedicated to the department.

Mr. Dyer has never been afraid of hard work and continues to address problems or potential problems in a professional manner. Please feel free to contact me with additional questions or concerns.

Respectfully,

Greg Benjamin

Greg Benjamin
Program Unit Supervisor

August 29, 2006

I have enclosed this list of my awards, achievements and contributions both pre and post incarceration.

- Combat Infantryman Badge, January 1968
- Republic of Vietnam Cross of Gallantry with Palm, February 1968
- Army Commendation Medal for Heroism, April 1968
- National Service Medal, September 1968
- Order of the Purple Heart, September 1968
- Vietnam Campaign Medal, January 1969
- Bronze Star Medal: For RVN Service from January 1968-January 1969
- Army Commendation Medal for Heroism, August 1972
- Republic of Vietnam Service Medal, August 1972
- Bronze Star Medal with First Oak Leaf Cluster, September 1972
- Air Medal with Oak Leaf Cluster: 25 Air Missions, December 1972 [1st]
- Air Medal with Oak Leaf Cluster: 25 Air Missions, December 1972 [2nd]
- Air Medal with Oak Leaf Cluster: 25 Air Missions, December 1972 [3rd]
- Air Medal with Oak Leaf Cluster: 25 Air Missions, December 1972 [4th]
- Navy Award of Merit for Group Achievement, January 1979
- Puget Sound Naval Shipyard: Promoted to Nuclear Foreman Shop 72, 1979
- Puget Sound Naval Shipyard: Superior Accomplishment Award, June 1980
- Peace Between People: Training in Nonviolence Certificate, July 1991
- KAIROS: Participant and Volunteer Facilitator, 1992-1994
- Toastmaster Int'l "President of the Year Award," 1992
- Toastmaster Int'l "Best Speaker of the Year Award," 1992-1993
- Toastmaster Int'l "Spirit of Success Award," October 1993
- Toastmaster Int'l "Success Leadership Award" Completion Certificate, 1993
- Toastmaster Int'l "Management and Leadership" Program Facilitator, 1993-1994
- Gordon Graham & Associates: "Breaking Barriers" Registered Facilitator, 1993-1994
- Toastmasters Int'l "Competent Toastmaster Award," 1994
- Alternatives to Violence Project: Facilitator, 1994
- The Conflict Resolution Center: Mediator, 1994
- Aids Awareness, Washington State Nurses Association, 1994
- Work Ethics Certification, 1995
- Moral Reconation Therapy: Certificate of Completion, February 1997
- Restorative Retelling Support Group: Certificate of Participation, December 2002
- Family Dynamics: Integrated Course in Parenting & Relationships, June 2003
- Love & Forgiveness Couple's Seminar: Certificate of Completion, August 2006

HUMAN DEVELOPMENT EDUCATION

MORAL RECONUTION THERAPY

1997 M.R.T. - This is an extremely thought provoking program that helped me to increase my levels of awareness and understanding of myself and others. working the exercises up proved to shed new light on old issues. Also feed back during the presentations was much of the time enlightening. The goal planning steps were an exellent approach to systematically planning short and long range goals.

VICTIMS AWARENESS

1996 The information in this class highlighted the impact of crime on primary and secondary victims. The domino effect of how criminal behavior touches virtually everybody was an interesting revelation.

WORK ETHICS CERTIFICATION

1995 this class reinforced alot of my personal ideals with respect to job related activities. It highlights the importance of simple ideals such as "an honest days work for an honest days pay".

BREAKING BARRIERS

1992 This program helps to identify the self imposed barriers that block successful life. We studied several scenerios identifying problems with respect to perspectives, thought behaviors and behaviorisims and how to correct these behaviors. The growth I realized as a student and later a facilitor was enlighting and rewarding.

ALTERNATIVES TO VIOLENCE

1991 This class offered ideas and options to handle situations and problems in a non violent & civalized manner. Learning important things like there will be disagreements in relationships at times and how to deal with it.

STRESS / ANGER MANAGEMENT

1986-1996 This class offered exellent information I found quite valuable. Being able to identify stress within myself and how to deal with it is important. I learned to deal with situations as they come rather than bottling them up. By dealing with these situations on the spot, stressfull & irratating problems have no chance to escalate.

January 27, 2005

Greg Benjamin
Program Unit Supervisor
McNeil Island Correction Center
P.O Box 88900
Steilacoom, Washington 98388

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Letter of Reference

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Mr. Dyer has never been afraid of hard work and continues to address problems or potential problems in a professional manner. Please feel free to contact me with additional questions or concerns.

Respectfully,

Greg Benjamin

Greg Benjamin
Program Unit Supervisor

JAMES L. REESE, III
ATTORNEY AT LAW
P. O. BOX 307
612 SIDNEY
PORT ORCHARD, WASHINGTON 98366

TELEPHONE 876-1028

February 5, 1986

Board of Prison Terms and Paroles
700 Capitol Center Building
410 West 5th
FN-71
Olympia, Washington 98504

Dear Sirs:

I am writing to the Parole Board on behalf of Richard J. Dyer.

I was Richard's civil attorney beginning in 1978 before his problems with his ex-wife Ethel.

When the parties later filed for divorce, Richard was awarded temporary custody of their minor son, Richard J. Dyer, Jr., then age 4.

Richard was, and is, a very devoted, loving father. He and his son shared a special, caring relationship and they went everywhere together.

The problems that got Richard involved with criminal charges largly stemmed from his relationship with Ethel Dyer and primarily concerned their son.

I was also co-counsel with Anthony Savage of Seattle when we represented Richard in his defense in Kitsap County stemming from the underlying charges resulting in his incarceration.

II

Richard and his son have been to my home to visit my family on numerous occasions. Rich was always welcome. His son played with my two boys and one occasion Richard gave me a goat to raise.

My wife and I were shocked when we learned of Rich's difficulties involving his ex-wife and others. My wife, Julia, to this day does not believe that Richard was capable of doing what he was accused of.

During the criminal trial I got to know Richard extremely well.

How could a person of Richard's caliber have received so many citations, so many awards for valor in Vietnam and assume such responsibilities in the community and at Puget Sound Naval Shipyard and be capable of doing what he was charged with?

III

I have traveled to Walla Walla to visit Richard and my family and I have traveled to Monroe where I also visited Rich.

Richard's incarceration has changed him because I feel he appreciates the things in life that any free citizen enjoys and takes for granted. I would imagine that Richard's good characteristics which were evident while he lived in Kitsap County would show through and become apparent to those who have contact with him at Monroe REformatory. I know his friends, his wife, Renetta, and others are very supportive and they all respect Richard. Many of these friends are the same ones who testified on Richard's behalf at his trial.

IV

For myself and my family, we would encourage the Parole Board to give Richard's case serious consideration. Knowing the caliber of person that Rich is, how he views his responsibilities and what he considers his duties, Richard would find gainful employment if he were granted probation and would lead a productive life as worker, husband and father. Richard has a positive and constructive attitude. He has been offered jobs and employment if he were to be released. He is acutely aware of his family responsibilities and of his responsibility to society.

V

I cannot personally nor professionally believe the length of Richard Dyer's sentence. You read or hear about people who have committed murder, acts of terrorism, espionage and other heinous crimes who are sentenced to far less imprisonment than Richard.

Richard is a war hero, a hard worker, eager to learn and responsible. Why can't his case be considered under the new Superior Court sentencing guidelines?

VI

Finally, if Richard were released today, he would be welcome in my home as he was on numerous occasions in the past. I have trusted him with my children and he has trusted me. There are many people who know Richard and who hope and pray that someone will be lenient and give him an opportunity to start a new life.

James L. Reese, III

James L. Reese, III

Law Offices of
RYAN SELLS UPTEGRAFT, INC. P.S.
9657 Levin Road N.W., Suite 240, Silverdale, WA 98383
Phone (360) 307-8860 • Fax (360) 307-8865 • Toll Free 1-800-481-8861
E-mail: jimsells@rsulaw.com Website: rsulaw.com

JAMES E. RYAN
JAMES K. SELLS
DARRELL D. UPTEGRAFT, JR.
ANNE M. MONTGOMERY

CHERYL K. RIFE
PATRICIA M. STUART
GORDON L. WALGREN, Of Counsel

October 12, 2006

Certified Mail – Return Receipt Requested
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

RE: Richard Dyer, DOC #: 281744

Dear Gentlemen:

Please consider this letter as being on behalf of Richard J. Dyer, and in support of a grant of parole.

I first represented Mr. Dyer in 1983, while Mr. Dyer was incarcerated, in an effort to obtain visitation for him with his children. We were successful and visitation was granted by the Kitsap County Superior Court. However unfortunately his former spouse left the area and secreted his son, and the Court ordered visitation never took place. I should add that when his son turned 18 years of age, he immediately contacted his father and they have formed a close relationship.

Over the years my office has represented Mr. Dyer in numerous real estate matters, from an easement dispute to the eventual sale of property he owned here in Kitsap County. We have also handled some of his financial matters, i.e., regular payments to his wife and children, including educational expenses. He has been married since 1981 and fully supports his wife and three children. Frankly he has exhibited the kind of financial responsibility that we all hope we see in everyone (on the "outside") but frequently do not.

Richard is a family oriented person who simply cannot be criticized for any lack of responsibility or good citizenship during his incarceration. I sincerely believe he has more than proven himself worthy of your confidence and trust.

I understand that Mr. Dyer has adamantly insisted on his innocence over his many years of incarceration. I am also fully aware that this has been a major contributing factor in his failure to be paroled. I still have serious doubts concerning his guilt, and I say this as a former Parole Counselor and City Attorney. I am, however, well aware that such doubts are of little, if any, concern to the Board at this point, which is appropriate. Instead, what is appropriate is to closely and fairly review his record during years of incarceration; along with his

accomplishments as a caring and support husband and father under difficult, to say the least, circumstances.

If my staff or I can be of any assistance to you in making this most important decision feel free to contact us.

Very truly yours,

Ryan Sells Uptegraft, Inc. P.S.

James K. Sells

JKS:tms'
cc: Richard J. Dyer
Margaret McKinney, Exec. Dir. ISRB via e-mail
bcc: David Zuckerman

August 29, 2006

To: Indeterminate Sentence Review Board
4317 Sixth Ave., S.E.
P.O. Box 40907
Olympia, WA 98504-0907

From: Richard Dyer 281744 C-126-1
McNeil Island Corrections
P.O. Box 881000
Steilacoom, WA 98388

To Whom it May Concern,

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On August 1 of this year my wife, Rennetta, and I celebrated 25 years of marriage. We have remained a loving couple that has been supportive of one another through life's circumstances. We have grown together and actually have better communication than most couples. We have worked hard to maintain our relationship through daily phone calls(which I pay for), annual marriage seminars and E.F.V.'s, through which two of our children were conceived.

In need of family support and to pursue a career as a Registered Nurse, my wife moved, with our children, to Oklahoma in 1989. Unfortunately, our E.F.V.'s, due to a change in policy, were taken away but through the daily conversations and an annual week of visits, our family has remained closely connected. Rennetta has also traveled to Washington on numerous occasions to

attend, with me, marriage seminars for incarcerated couples. She and I love each other very much and I believe our ability to remain married and raise a healthy, stable family despite our circumstances, is a testament to that.

It's amazing how stable and well adjusted our children are. Statistics show that most children with incarcerated fathers don't pursue higher education and live lifestyles that could lead to their own imprisonment.

My oldest daughter, Stephanie, has received her bachelor's degree and is working toward another. She has said on several different occasions that through her educational experience she has met many people from different backgrounds and she is grateful that her parents are not only still married, but seem to be the most supportive and stable among her peers. Stephanie is very compassionate and in 2002, she took her leadership skills overseas to for a month to serve in South African orphanages, hospitals and schools.

Lisa has just finished her first year of college and is now renting her own home. She is very independent, financially stable and is pursuing a career in the field of radiology. My youngest, Matthew, is now a Junior in high school and is beginning to make decisions concerning college. He has good grades and is very active in wrestling. He's very resourceful and sensitive to the needs of others. Whatever path he chooses, he will make an impact on the lives of those around him.

I also have two sons, Richard and Mark, from my previous marriage. Richard is my oldest child and lives in Seattle where he owns and operates his own computer business. He has also pursued a college degree and has profited from his recent real estate endeavors.

When Mark was a teenager he had been living with his mother's sister. He had been abandoned and was going nowhere fast. My wife and I decided it would be best for him to move

in with her. We bought him a vehicle and helped him finish his education after which he joined the Army. He now lives and works in Seattle and is expecting his first child in November. I am proud to say that I have been a father to my children. Though not there in physical form, I have worked hard to establish myself as a strong, reliable presence in their lives. Though only active in their daily lives through the phone, I act as disciplinarian, provider and confidant.

I have not let my incarceration stop my from faithfully providing for my family. I have done this through my investments in stocks, mutual funds, real estate and my Veteran's benefits. I have provided the essential needs such as medical and dental visits, clothing and tuition. I have also funded many extracurricular activities: cheerleading, annual girl scout and summer camps, overseas volunteer work, family vacations to Disney World, graduation and birthdays. I have also given all of my children $5000 on their sixteenth birthday for their first car, presents and Christmas gifts. My family lives well.

My family is my first priority and I work hard to maintain an active, positive role within it. Upon my release I plan to continue this. If I had the chance I would take long walks with my wife, have family dinners, walk my daughters down the aisle on their wedding day and watch my grandchildren grow. On behalf of myself and my family, I am asking you for that chance.

Sincerely,

Richard Dyer

EXHIBIT - S
Affidavit of Richard Dyer

IN THE SUPREME COURT OF WASHINGTON

In Re The PRP Of;	)	
	)	S.C. No._____
Richard James Dyer,	)	
	)	Affidavit of Richard James
Petitioner Pro Se.	)	Dyer. Petitioner
	)	

I, Richard James Dyer am over the age of majority and am competent to make this declaration.

1. On June 30, 1986 I filed a Personal Restraint Petition through my Attorney James Sells in the Court of Appeals under Court of Appeals Cause No. 10053-0-II.

2. On July 29, 1986 the ISRB through its attorney's at the Attorney Generals Office conceded and in exchange for granting all the relief I requested asked to have my petition dismissed.

3. While I initially complained about the imposition of the 240 Month minimum term, it was and has always been my understanding that I was to be released immediately upon the completion of this term.

I, Richard James Dyer, swear under the penalty of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.

Richard James Dyer

Subscribed and signed BEFORE me a Notary public; on: 6-8-10.

Toni Wimberly

Records and Identification Office
Authorized Officer persuant to RCW 9.68.090

EXHIBIT - T
Affidavit of James Sells, Attorney

IN THE SUPREME COURT OF WASHINGTON

In Re the PRP of: RICHARD JAMES DYER, Petitioner Pro Se.	Case No.: DECLARATION OF JAMES K. SELLS

I am over the age of majority and make the following Declaration upon my personal knowledge and review of Mr. Dyer's files in my office, as well as from documents and orders provided by Mr. Dyer. I am an attorney and have been licensed to practice law in the State of Washington since 1975.

In the spring of 1986, my office was retained by Mr. Dyer for matters involving appeals of his criminal conviction in Kitsap County Superior Court, and for preparation of a Personal Restraint Petition. That Petition was filed under Cause No. 10053-0-II, late in June, 1986. The crux of the Petition involved revision of Mr. Dyer's minimum term in view of a Court of Appeals ruling which reversed three of the five convictions in Superior Court. *(Unpublished Opinion, 6162-7-11, Aug. 14, 1984).*

Mr. Dyer's minimum term had been set at 600 months, and the Petition sought to reduce that term to a sentence commensurate with the lesser number of convictions, and in accordance with the "Sentencing Reform Act of 1981" (then *RCW Chap. 9.9.4A*).

The Petition resulted in a modified "Board Decision" which reduced the minimum term to 240 months. Although we believed even that

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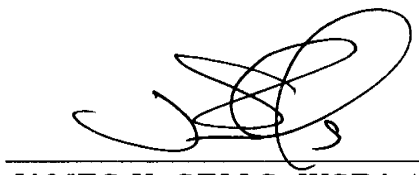
reduction to result in an unfair and unjustified departure from the SRA Guidelines, challenges to it have been unsuccessful.

At the time it certainly was Mr. Dyer's and my expectation that 240 months, if served without incident, and/or any further convictions, would result in release. In fact, Mr. Dyer has now served more than 240 months yet remains incarcerated, which, in view of his records of accomplishments while in custody (well documented in previous filings with this Court), seems, at best, to be legally and factually unsupportable.

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

SIGNED at Silverdale, Washington this 22 day of June, 2010.



JAMES K. SELLS, WSBA #6040

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APPENDIX - 1

Portion of VRP III, as cited

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. RICHARD J. DYER, Defendant.	NO. 81 1 00398 1

VERBATIM REPORT OF PROCEEDINGS

409 – 616

VOLUME III

C O P Y

JULAINE V. RYEN, RPR
OFFICIAL COURT REPORTER
KITSAP COUNTY COURTHOUSE

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

Q. All right. When you talked with the sheriff's officers the day you were picked up, you gave them a statement as to what had happened, is this correct?
A. Yes.
Q. All right. And then you came back the next day or the day after and gave them a more detailed statement?
A. Yes.
Q. And you were doing your best to give them a truthful version of what had happened?
A. Yes.
Q. And you did your best to go into detail about the events of that evening, is this correct?
A. Yes.
Q. Have you had a chance to review those statements?
A. Yes, I have.
Q. Okay. Well, first of all, I want to talk to you about the house that you say you went to. Now, after this episode at the pond or the lake, you were driven to the house. You had no clothes on and you were on the floorboard in the back, is this -- Don't let me put words in your mouth. Is this correct?
A. Yes.
Q. And I want you to think back on that night, as hard as it may be. As you approached the house for the last, say, five or ten minutes, what kind of a road were you driving

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

on? Now, think about it, please.

A. It was rough.

Q. Gravel?

A. It could have been gravel.

Q. All right. It wasn't concrete?

A. No.

Q. It wasn't asphalt?

A. It could have been asphalt with rocks over the top of it.

Q. Didn't you say to the sheriffs back when they were interviewing you in January of '80 that it was a gravel road on which you approached the house?

A. (The witness nods head.)

Q. Correct?

A. Yes.

Q. All right. And I would assume that you told them it was gravel because that was the impression you got in riding over it?

A. Yes.

Q. All right. And if you'd thought it was concrete or asphalt, you would have said so?

A. I thought it was gravel.

Q. Okay. And that was your honest impression, having ridden over it in the last 24 hours?

A. (The witness nods head.)

Q. Correct?

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

A. Yes.

Q. And as a matter of fact, when you left that house and were driving away from the house, it was your impression -- the next morning it was your impression that you were traveling on a gravel road?

A. Yes.

Q. All right. Now, for how long going up to the house in terms of minutes and how long in getting away from the house in terms of minutes was this gravel road evident to you before you got onto some other surface?

A. A minute or two.

Q. Okay. Now, when you got to the house, the car stopped and you were pulled from the back seat?

A. Yes.

Q. Now, there was a coat pulled over your head?

A. Yes.

Q. Now, did you get any kind of a view of the house before you went into it? We're keeping in mind it's dark and you have a coat over your head.

A. (The witness shakes head.)

Q. All right.

A. Nothing positively.

Q. Well, could you see anything? I mean, you have a coat over your head and it's three or four or two o'clock in the morning -- whatever it was.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

A. The only thing I could see was a house across the street.
Q. I'm talking about the night that you got there.
A. (The witness nods head.) That's what I'm talking about.
Q. Well, okay. If you're -- Was the coat put over your head before or after you got out of the car?
A. Before.
Q. Well, when was it that you saw the house across the street? Before you got out of the car or after?
A. When I was pulled out of the car it was put on my -- it was on my head.
Q. Um-hum.
A. Not fully.
Q. Um-hum.
A. Enough so when I was taken out of the car and moved around, I could see.
Q. All right. And you saw the house across the street?
A. Yes, I did.
Q. All right. Now, did you see the house that you went into?
A. No, I didn't.
Q. All right. Now, the house across the street, what did you see?
A. It was a blue house with white trim.
Q. Now, I don't -- excuse me. I don't mean to be critical, but if it's 2:00 o'clock in the morning, how could you tell it was blue?

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

A. It's -- I just seen it as blue.
Q. I know, but --
A. To me it was blue.
Q. Well, at 2:00 o'clock in the morning, can you tell whether the house is blue or dark green --
A. I could tell it was blue.
Q. -- or dark brown. Were there any lights there?
A. There was a porch light on.
Q. Where?
A. To the house where I was taken into.
Q. And you saw that the house across the street was blue from the porch light of the house that you were taken into?
A. There was enough light there for me to see.
Q. How far away would you say the house across the street was?
A. Twenty-five feet. Fifty feet.
Q. Twenty-five to fifty feet. All right. There's a porch light on the house that you were taken to. Correct?
A. (The witness nods head.)
Q. Now, you see the house across the street and you know there's a porch light on. What do you see about the house you're going into?
A. I was turned around and I was shoved over --
Q. Okay.
A. And I -- nothing.
Q. So you didn't get a glimpse of the house you were going into.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

You just had a sense that the porch light was on?
A. Yes.
Q. Okay. Now, what kind of surface are you on when you get out of the car? Gravel?
A. I don't -- I don't remember.
Q. All right. You are dragged to the house and you walk straight in or do you go up stairs?
A. There was steps.
Q. How many, if you remember?
A. Two.
Q. Two steps. More than one?
A. Yes.
Q. Were they wood or concrete?
A. I don't remember.
Q. Do you remember telling the sheriff, "There was one wooden step just outside the door -- no, there was two steps"? Do you remember saying that?
A. Yes.
Q. All right. Now, is that your memory, there were two wooden steps?
A. Right now, I'm not sure.
Q. Okay. But it was your memory then that there were two wooden steps?
A. If that was in the report.
Q. All right.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

A. And I went back into the bedroom.
Q. Okay. Now, would you tell the jury what you saw about the kitchen and the living room?
A. Everything was a -- basically green.
Q. All right.
A. It had in the area -- in the middle of the kitchen and away from the front room that was like a -- like a bar-type thing.
Q. Could you see the living room from the kitchen?
A. Yes.
Q. And the reason that you could see the living room from the kitchen is because there was some kind of an open space between them? A counter arrangement, isn't this correct?
A. Yes.
Q. There was not a solid wall in between the kitchen and the living room, isn't this correct?
A. As far as I can recollect, yes.
Q. Okay. Now, would you describe the walls for me in terms of texture?
A. (No answer.)
Q. Haven't you previously told the sheriff when you were being interviewed that they were sort of rough like sandpaper?
A. Yes.
Q. And that's the way you remember them?
A. Yes.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

Q. Do you remember them being smooth like the courthouse walls are here?
A. No.
Q. Okay. The bathroom. What can you remember about the bathroom color?
A. Beige.
Q. Beige.
A. Bathtub was beige.
Q. Now, by "beige" -- I'm not too hot on colors. By "beige" you mean white or do you mean tan or --
A. Tan.
Q. Tan. Tan like maybe the wood is in back of you?
A. No.
Q. Have you got an example, a better one? Tan like that man's coat that is on the first bench?
A. Lighter.
Q. Lighter tan. Okay. And the walls were the same color as the tub?
A. No.
Q. What color -- All right. When we're talking about a light tan, what are we talking about, the walls or the tub?
A. The tub.
Q. Okay.
A. I don't remember seeing the walls a whole lot.
Q. Okay. When you left the bedroom, how far down the hall did

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

white Comet automobile?
A. Yes, I did.
Q. Okay. And it turns out that this is a Meteor, correct?
A. Yes.
Q. All right. And Meteors, I guess, are kind of like Comets?
A. Almost exactly.
Q. All right. Now, when you say almost exactly, are you talking about the car or the stars?
A. I'm talking about the make of the car.
Q. The make of the car. All right. But also, I guess, most important, didn't you tell the sheriff that it was a white Comet because you saw the word "Comet" -- C-o-m-e-t -- spelled across the back of the car?
A. I don't -- It -- God, damn ---
Q. Could I show you a statement, please?
A. Sure.
Q. Do you recognize your signature? Is that your signature on that statement?
A. Yes, it is.
Q. And doesn't it say, "I noticed it was a white Comet. It said 'Comet' on the back"?
A. Yes, it does.
Q. All right. And this was a statement you gave to the detectives the day after this happened to you, isn't this correct?

PENGAO CO., BAYONNE, N.J. 07002 FORM 2094

Q Okay. On the matter of this watch, where was it that you lost the watch?
A. In the car.
Q And where was the watch the last time you saw it?
A. In the car. As far as I know.
Q Where in the car?
A. The back seat.
Q The back seat of the car. Would you agree with me that when you were interviewed by the sheriff, the day that they picked you up and took you to the hospital and the day afterward, you said absolutely nothing to them about missing a watch?
A. That's right. I did not.
Q Prior to coming to trial, how many times have you seen the Exhibit 65?
A. Once.
Q And then you saw it once yesterday?
A. Yes.
Q Or did you? All right. And you're sure that that's your watch?
A. Yes, I am.
Q All right. Now, will you tell me why you're sure it's your watch?
A. That watch -- I had broken one overseas in Holland. That I bought overseas before I came back to the states.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

Q. Well, can you tell by looking at that watch that it's an overseas watch?
A. It was bought from a military PX.
Q. Can you tell by looking at that that it was bought from a military PX?
A. No, you can't.
Q. Now, would you agree with me that the maker of that watch must turn out 10,000 of those kind of watches every month?
A. Yes.
Q. What is it that's peculiar about that watch out of hundreds of thousands of others that convinces you it's yours?
A. I know by the band. I know by the looks.
Q. What is unusual about the band on that watch?
A. When it's jiggled too much it comes right off.
Q. Anything else that's peculiar about the watch so you know it's yours?
A. There are scratches on the crystal.
Q. Well, would you agree with me that most watches have scratches on the crystal?
A. Not always.
Q. An awful lot of watches do, don't they?
A. Some, yes.
Q. Now, is there anything peculiar about the scratches on the crystal there?
A. I know how I got the scratches on those crystals.

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Q. Is there anything peculiar about those scratches or are they just scratches?
A. There's nothing peculiar about them.
Q. Would you describe the watch to me.
A. It's a Timex.
Q. What else?
A. It's not a small watch. It's not a -- what -- It's not a woman's watch.
Q. All right.
A. The band comes over and clips around on the other side of the band.
Q. Just standard band, standard clasp, isn't it?
A. Some watches have different kinds.
Q. Anything else about the watch?
A. No.
Q. Any colors on it?
A. Colors?
Q. Colors.
A. It's been a year since I've seen that watch, besides.
Q. You saw it yesterday?
A. Yes.
Q. All right. Any colors on it?
A. The face of it is white.
Q. Yeah.
A. There's nothing else I can remember at this time.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

Q It fastens like so (demonstranting). Is this correct?
A Um-hum.
Q Then what happens if you jiggle it real hard?
A It comes off.
Q Would that not be true of any watch with this kind of a fastener?
A I have no idea.
Q Is there some reason that you did not mention the loss of the watch to the sheriff when they were talking to you afterward?
A I didn't think of it. I wasn't thinking of my watch at the time.
Q But you were -- You did discuss your rings with the sheriff, didn't you?
A Yes, I did.
Q Did you discuss the matter of these fifty-cent pieces that this man gave you with the sheriff?
A Yes, I did.
Q Do you see that in your statement?
A Not that I can recall.
Q Did they ask you for them?
A No, they did not.
Q But these are pieces that you say the man who raped you handed directly to you?
A No, he did not hand them directly to me.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

MR. SAVAGE: Oh.

MR. CLEM: She's testifying about January 27th.

MR. SAVAGE: Oh, excuse me. Excuse me.

Q. (By Mr. Savage) January. He wore a coat like this in January?

A. As far as I know, yes.

Q. And did you not describe the coat to the sheriff as one that would have a lot of your blood on it?

A. It should have, yes.

Q. Quite a bit of your blood, you thought? Is that correct?

A. As far as I can remember, yes.

Q. Well, the reason you told them that it should have quite a bit of your blood on it was, I assume, because you saw blood on it?

A. No, I did not see blood on the coat.

Q. Why did you tell them that it should have quite a bit of your blood on it?

A. Because when I was hit by the elbow I was right next to him.

Q. And did he have the coat on when you were wrestling in the back seat?

A. I don't remember at this time.

Q. When you sat down with the sheriffs the day of the event or the day you were released and the day afterward, did you give them a description sufficient so that they had an artist come and draw a picture of the man or the men that

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

you thought abducted you?

A. We did composite sketching. He did not sketch it by hand, no.

Q. Okay. How long did that take?

A. I don't remember.

Q. Well, was it five minutes or half a day or --

A. I don't remember at this time.

(Defendant's Exhibits Nos. 100 and 101, composite sketches, were marked for identification.)

Q. (By Mr. Savage) Showing you what has been marked as Exhibit 100 and 101, are these the sketches that were drawn pursuant to your description?

A. Yes, they are.

MR. CLEM: I'll object and ask that the last question and answer be stricken. She's never testified -- She denied any sketches had been drawn.

THE COURT: Well, the motion to strike is denied. I think it's a matter for cross-examintion at this point.

Q. (By Mr. Savage) Well, are these the pictures that were composed pursuant to your description?

A. Yes, they are.

MR. SAVAGE: Offer 100 and 101.

MR. CLEM: No objections.

THE COURT: 100 and 101 may be admitted and are now in evidence.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

(Defendant's Exhibits Nos. 100 and 101 for identification, composite sketches, were admitted into evidence.)

Q (By Mr. Savage) Which one of these is supposed to be my client?

A. The one on the left.

Q This one (indicating)?

A. Yes.

Q Exhibit 101?

A. Yes.

Q And you have a feeling that that looks like Mr. Dyer?

A. With a little weight gain, yes.

Q How much weight gain?

A. Not a whole lot.

Q Do you feel that the chin is at all similar to his?

A. What I remember in my head, yes.

Q You are how tall in your stocking feet?

A. Five foot.

Q And you stated that the man who did this to you was not much taller than you were?

A. That's true, yes.

Q What, an inch or two?

A. Three.

Q Would he have been seven inches taller than you were?

A. No.

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Q. If I was to inform you that Mr. Dyer stands over five foot seven inches tall, would you still insist that he was the man?

A. Yes, I would.

MR. SAVAGE: That's all.

REDIRECT EXAMINATION

BY MR. CLEM:

Q. Ms. Jones, how many times did you get a clear look at the defendant actually standing?

A. One time.

Q. Now, would you explain to the jury how a composite -- how the composites were put together for you?

A. They're pieces of, of a clear paper with different types of hair and different face structures that are put together that make a face.

Q. So could you explain further; different parts of what?

A. Different (indicating), from here (indicating) down different, different (indicating), and from here. Different types of hair.

Q. Now, have you described the chin? When you were pointing, were you pointing to your chin? I want to get it on the record here.

A. Yes. There's parts of the chin they have.

Q. All right. And you pointed to the middle part of your face. What part is that?

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vehicle on State's Propsed 59, are there any major changes in the appearance of the vehicle since you received it from Mr. Dyer?

A. No.

MR. BELL: No other questions. Thank you, sir.

CROSS-EXAMINATION

BY MR. SAVAGE:

Q. Mr. Hill, it was the police or sheriffs that came out to take the pictures of the car?

A. Yes.

Q. Was there any discussion in your presence about the fact that this wasn't a Comet?

A. One of the officers said they were looking for a white Comet. And obviously, that is not a white Comet.

Q. And then after they discovered it wasn't a Comet, was there any more further discussion?

A. Not that I can remember, no.

Q. With regard to the tape, I understand that when you got the car, the car was -- part of it was -- seat was torn and the tape was off?

A. Um-hum.

Q. Was this the same tape or have you retaped it?

A. I have not retaped it. I have covered that with a car blanket.

Q. All right. So the area of tape is the same now as it was

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

when you got it?

A. Correct.

MR. SAVAGE: I think that's all I've got.

Q. (By Mr. Savage) It's a little hard to tell. Can you assist me here. I guess, looking at 58, that's the back view of the car?

A. Correct.

Q. Is there a shelf in back of the back seat?

A. Yes.

Q. Okay.

MR. SAVAGE: Thank you, sir. That's all I have.

REDIRECT EXAMINATION

BY MR. BELL:

Q. Was the shelf there at the time you acquired the vehicle from Mr. Dyer?

A. Yes.

Q. And you indicated that it is obviously not a white Comet?

A. Yes.

Q. Why did you say "obviously not a Comet"?

A. It's beige.

Q. Okay.

A. A Comet, I believe is a Ford product. This is a Mercury.

Q. Do you know whether Ford and Mercury are the same -- of the same parent corporation?

A. I believe so, yeah.

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

Well, that you read anything about the watch from Colby Jones before September 26th?

A. I don't recall.

Q. Well, wouldn't it be true, Mr. Ticehurst, that nowhere in your case files is there any reference to this watch by Colby Jones prior to September the 25th, 1980?

A. I'm not sure.

Q. Do you remember reading of it anyplace?

A. There's so much material there, I'm not sure right now.

Q. Is there anything in the reports of January the 27th and January the 28th, 1980, about a watch?

A. I would have to read them to refresh my memory.

Q. Will you be on duty next week?

A. I'm on emergency leave.

Q. All right. I think there's another way to get at it. I don't want to interfere with that.

Well, one other thing about the defendant. You understand that Ms. Jones selected the defendant out of a five-man lineup. Is that your understanding?

A. I was made aware of that, yes.

Q. One of these pictures, No. 39, that was shown to her on September 25th. Will you look at that and tell me if that isn't a picture of the defendant?

A. I'm sorry?

Q. Isn't that a picture of the defendant? Do you see a

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photograph of the defendant in that picture?

A. There is a photograph in the -- there's a picture of a photograph in this photograph, but in my opinion it's not clear enough to establish clear identity of Mr. Dyer, no.

MR. SAVAGE: Your Honor, may I circulate this?

THE COURT: Start with Mrs. Graham, No. 1 there, then the bailiff can pick it up when it goes around to Ms. Anderson.

MR. SAVAGE: May I direct the jury's attention to what I'm concerned about?

It's the wedding photograph down in the lower right-hand corner.

If you could just sit back up a little so the jury -- just back up.

Q (By Mr. Savage) On the 27th or 28th of January, 1980, did you take Ms. Jones -- Now, this would be the day after the rape. Did you take her out around Park View Terrace?

A. Yes, I did.

Q And did you ask her -- Did you drive up and down the streets?

A. Yes.

Q Did you go up and down Carter?

A. Yes. I can't -- I take that back. I can't positively say I went up and down Carter. We did go through the area of Park View Terrace.

Q Mr. Ticehurst, that area isn't all that big, is it?

A. Yes, sir, it's several streets of crisscross and back and

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APPENDIX - 2

Portion of VRP IV, as cited

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. RICHARD J. DYER, Defendant.	NO. 81 1 00398 1

VERBATIM REPORT OF PROCEEDINGS

617-842

VOLUME IV

C O P Y

JULAINE V. RYEN, RPR
OFFICIAL COURT REPORTER
KITSAP COUNTY COURTHOUSE

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disregard what they responded.

Q (By Mr. Clem) Ms. Cordar, how sure are you this is the person who raped you?

A Very positive.

MR. CLEM: No further questions.

CROSS-EXAMINATION

BY MR. SAVAGE:

Q Well, Ms. Cordar, first I want to talk to you about the identification of my client. Did you report to the sheriff's office that you had seen the man come out of the State Street Gate that was the man that had done this to you?

A No.

Q Some reason for that?

A I had cause to leave after that day. Prior to some personal business and some problems that I was having with my fiance. And I had left very shortly after that.

Q I mean, did you call them that afternoon and tell them that "The man that did this, these terrible things to me, is employed at the shipyard"?

A No, I did not.

Q How soon after that did you leave town?

A A day or so.

Q Now, isn't it true that when you were interviewed by the sheriff's office the day after this happened -- This

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happened to you on the 23rd, is this correct?
A. Yes.
Q. And you were interviewed by the sheriff's office on the 24th?
A. Yes.
Q. The very next day. Is this correct?
A. (The witness nods head.)
Q. And you told the sheriff's office that you had made some kind of arrangements to meet him at the In and Out Cafe at 7:30, is this correct?
A. Yes.
Q. And didn't you tell them that you didn't know if the man was going to arrive but if he did, you couldn't identify him anyway?
A. Yes, sir.
Q. Did you and the sheriff go to the In and Out Cafe the next Friday at 7:00 or 7:30 to see if this man showed up?
A. I was at the In and Out Cafe by myself. I had showed up very early.
Q. Okay.
A. Before 7:30.
Q. All right.
A. I had then placed a call to the Bremerton Police Department to have someone come down there. And there was a man and a woman that come down there in a police car.
Q. But now if the man had showed up, would you have recognized

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Q. All right.
A. He had said, "There's steps right here."
Q. All right.
A. Then that's when I stepped up. And the porch, from what I could gather, it was -- wasn't very big. It was somewhat like plywood because it was kind of -- I could tell that it was wood.
Q. Okay. Showing you Exhibit 12. Now, if I was to tell you that the defendant's driveway is straight in from the street and you're looking at it, and that's the front door of his house, it shows one concrete step. Would you agree with me that you were not in that house that night?
A. I don't know.
Q. Do you see any evidence of two or three wooden steps? Or a wooden, plywood porch?
A. No, I don't.
Q. Okay. Now, I want to ask you a couple of questions about what happened in the house, and I don't want to make it too hard on you, but you say you were led in and tied to the bed, is this correct?
A. Yes.
Q. Your hands were tied in front of you when you went in?
A. Yes.
Q. And was there a rope around your waist?
A. Yes.
Q. All right. You went back to the bedroom. Is this right?

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A. Never left the bedroom. Until we went in to take the bath.
Q. Okay. You went back to the bedroom and you were tied on the bed?
A. Um-hum.
Q. Now, were your hands tied together in front of you or like this (demonstrating)?
A. My hands were tied -- the rope was around my waist. My hands were tied like this (demonstrating).
Q. All right. Now, when you were tied to the bed, were you tied with your hands like this (demonstrating) in front of you?
A. No, he had taken and untied my hands from the rope around my waist and extended them out like this (demonstrating).
Q. All right.
A. Or more or less like this (demonstrating).
Q. All right. And then your feet were tied together?
A. Yes.
Q. Did your feet remain tied together all night long until you went and took the bath?
A. Until I had tried to escape several times.
Q. Were they tied tightly together?
A. Not at first, they weren't. But each time that I moved, the ropes just got tighter.
Q. Right at the very beginning, were your feet tied together, ankles together like this (demonstrating), like I'm showing

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you, parallel? Or like this (demonstrating)? Or were your feet crossed?

A. Whenever he first tied me up?

Q. Yes.

A. I was down on the ground on my stomach, flatly on my stomach --

Q. I'm sorry, I don't mean to confuse you. I'm in the house now.

A. Okay.

Q. I'm not back at the dump.

A. Okay.

Q. I'm in the house. And when you say he tied your feet together?

A. Yes.

Q. All right. Now, you're on the bed?

A. My feet were tied separately like this (demonstrating). There was a rope going from this foot (indicating) to this foot (indicating) and there was a rope in between wrapped around and then tied to the corner of the bed.

Q. Okay. And then every time that you had to shift position, why, he would untie your arms and legs?

A. Partially.

Q. Well, in order to turn you over, you had to -- you have to retie --

A. He didn't untie me completely.

Q. As I understand it --

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A. The way that he had it tied, he didn't have to untie me completely.
Q. All right. Then he had intercourse with you, as you've described, four, five times that evening?
A. Yes.
Q. How many times the next morning?
A. Once.
Q. Once. And you didn't leave the bedroom until you went and took the bath, just before you left?
A. Yes.
Q. Don't you remember telling the sheriff that in the middle of the night you -- the two of you got up and took a shower together?
A. Well, he had offered -- He asked me --
Q. My question was, don't you remember telling the sheriff that the two of you got up in the middle of the night and took a shower together?
A. Yes, but we didn't. He had asked me --
Q. No, wait just a second, please. On the 24th, didn't you say to the sheriff, "He tied me to the bed and had sex with me. After that he wanted me to take a shower with him and I did." didn't you say that?
A. Yes, I did.
Q. Is it true?
A. No, it's not.

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tied.

Q. I'm just interested in what you told the sheriff.

A. That's kind of hard to do.

Q. "While I was taking bath he washed my clothes."

MR. CLEM: I'll object. That' not even a question. I object to counsel testifying in this case.

THE COURT: Well, do you want to rephrase the question.

Q. (By Mr. Savage) Isn't that what you told the sheriff?

A. Please repeat the question.

Q. Didn't you tell the sheriff, "While I was taking bath he washed my clothes"?

A. Well, I'll put it like this --

Q. No, the question is --

A. While I --

Q. -- isn't that what you told the sheriff?

A. Yeah, that's what I told the sheriff, but that's not what I did. I sat in the bathtub because there's no way a person is going to give hisself a bath when he's tied up.

Q. Did you tell the sheriff anything about this matter of him putting foam on you or in you?

A. Not that I can recall.

Q. Were you fairly familiar with Bremerton at that time?

A. I was getting where I could know my way around without getting lost.

Q. Did the defendant take you to Forest Ridge Park or

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was to Park View Terrace, following her description that she gave to me.

Q. Do you know where the defendant lives?

A. No, I don't.

Q. But the last turn was to the left?

A. Yes.

Q. And then into a driveway?

A. Possibly. I'm not sure whether she said they went into the driveway or not, but they were at the residence after they turned in.

Q. Okay, they were at the residence after they turned left?

A. Yes.

Q. Have you viewed the watch -- Have you see the watch lately?

A. No, I have not.

Q. Do you see any gold on the watch?

A. No. I do not.

Q. Do you remember talking with her at about 1:30 in the afternoon on the 24th?

A. Yes.

Q. Do you remember whether or not she told you that she took a shower with the man who raped her?

A. Yes.

Q. Do you remember how many times that he -- she said that he had raped her?

A. As I recall, it was three times.

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A. The front room, I believe, has got green carpet and white walls. That's about all I can really say.
Q. How about the kitchen, could you describe that for the jury?
A. It's white. I think it's got orange counters in it. Cabinets along the walls.
Q. Could you describe these counters?
A. No, I can't.
Q. Okay. Is the kitchen separated from the living room in any way?
A. There's a wall there.
Q. Is there a kitchen-like counter bar?
A. No.
Q. Separating the living room from the --
A. No.
Q. -- kitchen. Okay. Have you ever -- or do you recall the texture of the walls in Mr. Dyer's house?
A. No, I don't
Q. Do you recall the color of the bathtub?
A. No.
Q. Do you know which side of the house the master bedroom is on?
A. Yeah, the left-hand side.
Q. Okay. Showing you what has been admitted as State's Exhibit No. 5, have you ever seen this before?
A. Yes, I have.

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Q. And what is immediately to the right of the paved driveway?
A. There's grass and a bunch of trees.
Q. Any other material on the ground immediately to the right of the paved driveway?
A. There might be some gravel, rock, something like that.
Q. How big an area is that?
A. It's about the same size as the driveway, maybe a little less.
Q. Big enough to park a car on?
A. Yeah.

THE CLERK: State's Proposed Exhibit No. 114 marked for identification.

(State's Exhibit No. 114, a photograph, was marked for identification.)

Q. (By Mr. Clem) Showing you State's Proposed Exhibit 114, isn't that the defendant's house?
A. Yes, it is.
Q. And is that gravel area that you've described in that picture?
A. Yes, there is.
Q. And there's a car parked on that gravel area, is there not?
A. Yes, there is.
Q. If one were to get out of the car, he would immediately step on the gravel, is that correct?
A. Yes.

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Q And if the car is over far enough, he could step on gravel getting out on either side of the car, couldn't he?
A Yes, he could.
Q And do you know what's stacked up in front of the house there? By the post.
A No, I don't know what -- Well, it looks like some kind of stepping stones, something like that.
Q Stepping stones. Have those ever been scattered out while you've been there so that you can actually walk on them?
A No.
Q Perhaps when it's been muddy?
A No. Uh-uh.
Q If somebody's testified earlier that those used to be spread out, would you object to that?

MR. REESE: I'm going to object to this type of question, Your Honor.

THE COURT: Objection sustained.

Q (By Mr. Clem) There's a kennel in this picture, is that correct?
A Yes, there is.
Q Does the defendant have a dog?
A I don't know.

MR. CLEM: I would offer 11[4] at this time.

MR. REESE: Your Honor, we don't have objections except we would prefer that the prosecutor establish the date these

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pictures were taken so we have some reference.

THE COURT: Well, that should be established.

Q. (By Mr. Clem) Mr. Wright, is this -- this picture of this house, does that accurately portray the scene as it exists today?

A. I couldn't tell you.

Q. Has the driveway changed?

A. I couldn't tell you.

Q. When was the last time you were there?

A. It's been quite awhile. I couldn't tell you a specific date.

Q. Showing you State's Exhibit No. 12, sir. Does that appear to be the same photograph as State's Proposed 114 except it does not include the whole driveway?

A. Yes, it does.

Q. The same Pinto station wagon is there?

A. Yes, it is.

Q. The same wrecked vehicle behind this Pinto station wagon?

A. Yes, it is.

Q. The same color?

A. Yes.

Q. And the only difference, 114 shows a larger area of the driveway, is that correct?

A. Yes.

Q. In all other aspects they appear to be identical, do they not?

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A. Yes, they do.
Q. Except in State's Exhibit No. 12 there's a dog, is that correct?
A. Yes.
Q. And 114 there is no dog?
A. Right.
Q. The stepping stones -- whatever is piled -- is still there, is that correct?
A. Yes.
Q. Both pictures.

MR. CLEM: I believe I've satisfied the objection and I would reoffer 114.

MR. REESE: We still have our same objection, Your Honor. We just need a date established so the jury knows when these pictures were taken. I don't think the prosecutor ever established when Exhibit 12 was taken. But if he can give us a date, we have no objection.

MR. CLEM: I'll give it through a witness in rebuttal then, Your Honor.

THE COURT: All right.

Q. (By Mr. Clem) Now, you came to my office so I could interview you, is that correct?
A. Yes.
Q. And you would not talk to me, is that correct?
A. Yes.

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MR. CLEM: No further questions.

REDIRECT EXAMINATION

BY MR. REESE:

Q. Mr. Wright, do you know how big the opening is between the living room and the kitchen in Mr. Dyer's house?

A. It's like a door.

Q. Do you know how big it is?

A. No, I don't.

Q. Okay. Since you've known the defendant, does he appear -- his appearance, is it the same as you've known him over the years or has it changed in any way?

MR. CLEM: Objection. It's been asked and answered.

THE COURT: Overruled.

A. The only difference is he looks skinnier.

Q. What about the hair style?

A. It looks a little longer. I don't know.

MR. REESE: No further questions. Thank you very much.

MR. CLEM: Wait a minute.

THE COURT: Just a minute.

RECROSS-EXAMINATION

BY MR. CLEM:

Q. His hair looks longer now than when?

A. Hum?

Q. His hair looks longer now than usual?

A. Than from the last time I seen him, yeah.

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Q He's had it shorter around his ears before?
A Well, when I see him at work, you know. But then he's wearing a hat and stuff, too.
Q Now, when did you start -- stop socializing with the defendant?
A Oh, probably two years ago.
Q 1980?
A No, it was before that.
Q Okay, 1979, you stopped socializing with him?
A Yeah, somewhere around there.
Q So you wouldn't know whether or not he changed his appearance during that time anyway, would you?
A Well, yeah, because I seen him at work a lot. Because, you know, there in the yard.

MR. CLEM: Nothing further.

MR. REESE: Nothing further, Your Honor.

THE COURT: You may be excused, Mr. Wright.

(The witness was excused.)

MR. REESE: Call Pat Bigelow.

PATRICK BIGELOW, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REESE:

Q Speak in a loud voice, Mr. Bigelow, please.

State your name and address for the record.

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A. My name is Patrick Bigelow. I live at 1160 Carter Avenue Southwest, Port Orchard, Washington.
Q. Where is that? What development is that known as?
A. Beg pardon?
Q. What development is that known as?
A. As Park View Terrace.
Q. How long have you lived there?
A. Oh, about seven years.
Q. Where do you live in relationship to Mr. Dyer?
A. Right across the street from him.
Q. Okay. How long have you known Mr. Dyer?
A. About four or five years.
Q. Does he appear the same to you here today as you've known him over this period of time?
A. Yes, sir.
Q. Okay. Has he always had a mustache?
A. Yes, sir.
Q. How well do you know him?
A. Well, I'm his neighbor. I know him reasonably well.
Q. How did you get to meet him?
A. After the first people moved out of there, Richard moved in, and he works at the shipyard and I seen him there several times. I didn't know him then but then when I got home we just got acquainted, I guess. He was out in the yard working just like me and I just said hi.

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Q. What was he working on in his yard?
A. Beg pardon?
Q. What was he working on in his yard?
A. He was raking his yard.
Q. What was he raking?
A. Limbs, grass, everything.
Q. How would you describe his front yard?
A. It's got grass on the front of the house, in front of it and around it. And basically that's about it.
Q. Any trees?
A. Yes, sir.
Q. How many?
A. One, two -- about maybe four.
Q. Okay. Would you describe -- When's the last time you've been to his house?
A. Oh, when all this happened, I guess.
Q. Pardon?
A. When all this happened.
Q. You've been over there recently?
A. Before this happened, yeah.
Q. How do you get from Carter Street to Mr. Dyer's house?
A. I don't understand what you mean.
Q. Well, would you explain to the jury, if a person were to come to Mr. Dyer's house, how do you get -- you park on Carter and you go into his house. How do you get into his

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house? Describe how you would get there to the front door?
A. Well, you just drive down -- You come down the road, kind of in a steep -- it's not a steep hill, but it's a hill, and you turn into the driveway and you just -- you can only go so far because the garage is there and you just stop and get out. Walk in.
Q. And then when you enter the house, how do you -- How do you enter -- How do you get into the house?
A. Well, you step up on -- like there's a little concrete slab. You just step on that and walk on in.
Q. How many steps are there?
A. Just one that I know of.
Q. Were you familiar with Mr. Dyer's house in August of 1980?
A. Yes, sir.
Q. Okay. And did you ever see a wooden porch on his house?
A. No, sir.
Q. Have you ever seen two wooden steps leading into his house?
A. No, sir.
Q. Are you familiar with the inside of the house?
A. Yes, sir.
Q. Describe for the jury what the living room looks like?
A. Well, as you walk in the front room, from the door, there's a couch sitting to the left, like a stereo stand here (indicating) and you look straight at this wall and there's glass. Like square glass. Like stuck up on the wall.

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Q What else do you see?
A Well, there's the TV -- there's a vinyl chair in there that matches the couch and then there's a TV in the corner.
Q Okay. Will you describe the separation between the kitchen and the living room, if any?
A Yes, sir.
Q How is that?
A There are two separate rooms, like -- you walk in, there's the front room, and then there's a wall and then near this wall is like a door; there's no door there, it's just like it was built in that way, and you just walk through there and into the kitchen.
Q I'm showing you State's Exhibit 41. Will you identify that?
A Yes, sir.
Q What is that?
A That's a picture of Richard's front room.
Q What does the picture show?
A There's a couch, and the TV.
Q I mean structurally?
A You mean -- The wall, you mean?
Q Yes.
A Yeah, there's a wall right there. It's the same wall.
Q Do you know how big the opening is? Into the living room.
A Not much wider than a regular door.
Q What, if any, kitchen-like counters have you seen in Mr.

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Dyer's house?

A. Well, there, like -- as you walk in, there's the cupboards and the drawers and that's the only kitchen counter I've seen.

Q. Have you ever seen a kitchen-type counter separating the living room from the kitchen in his house?

A. No.

Q. How often have you seen Ms. Acord and Richard together?

A. Beg pardon?

Q. How often have you seen Ms. Acord and Richard together?

MR. BELL: Objection. Specify time and place.

Q. (By Mr. Reese) During the time you lived in Park View Terrace, how often did you see Richard with Ethel Acord?

A. She'd get in the car and he'd get in the car and take off and come back home. That's about it.

Q. Have you ever seen any altercations between them?

A. No, sir.

Q. Have you ever seen Richard get upset?

A. No, sir.

Q. Have you ever seen him get mad?

A. The only time--The only time I seen him really upset was like when he was at work, if a guy wasn't doing his job or something, I'd see him a little discouraged or something, but not like you say, "get mad."

Q. How did he act when his workers weren't doing what they

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were supposed to?

MR. BELL: Objection.

MR. REESE: Excuse me.

THE COURT: The objection is sustained.

Q. (By Mr. Reese) How did Mr. Dyer react when you saw him get upset at work?

A. He was just irritated --

MR. BELL: Same objection.

A. -- a little --

THE COURT: Just a minute.

The objection is sustained.

MR. REESE: Well, I'm going to go into something else, then, other than that.

Q. (By Mr. Reese) Have you ever been in Mr. Dyer's bathroom?

A. Yes, sir.

Q. Could you describe that for the jury.

A. As you walk down the little hallway, you go in his front room and you walk just to the left -- or right, and you go down and then there's a bathroom on the left-hand side, and as you walk in, it's -- the bathtub is all in one unit. It's like the shower stall and the bathtub is all in one unit.

Q. Do you know what color it is?

A. It's like a tan color or kind of a white.

Q. How did you have occasion to be in his bathroom?

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A. Well, he put in some sliding glass doors, I guess you would call it, for the shower doors.
Q. Do you know when he put those in?
A. Oh, man. Oh, about a -- about a year ago. Less than that, maybe.
Q. Do you know what kind of -- How did you happen to know he put in sliding glass doors?
A. I was over there talking to him out in the road and he told me about them and he showed them to me.
Q. What was there before?
A. Before they were in there, there was just a curtain.
Q. Do you know how many doors move?
A. Just one, that I know of.
Q. Okay. Did you try the doors?
A. No, he showed me it slide, back and forth.
Q. Which one moved? As you face the tub?
A. As you face the tub, it would be this one here, the first one (indicating).
Q. Have you ever had occasion to feel the texture of the walls in Mr. Dyer's house?
A. Not really feel them. Just walk up and touch them, no. I've never done that.
Q. You haven't ever done that?
A. No.
Q. How would you describe them, then, without touching them?

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A. They're not rough, but they're not smooth. They're just mediocre.

Q. Do you know when the house was painted -- The house across from you, I guess would be to your left, do you know when that house was painted?

A. Oh, it's been there about -- maybe about -- that house has been there about -- about maybe four years. Three or four years.

Q. Showing you defendant's Exhibits No. 10 and 11. Can you identify those?

MR. BELL: Objection. Could I get the numbers again.

MR. REESE: 10 and 11.

MR. BELL: Are those State's Exhibits?

MR. REESE: State's Exhibits 10 and 11.

MR. BELL: Thank you.

Q. (By Mr. Reese) Do you recognize that house?

A. Yes, sir, I do.

Q. Who owns it, do you know?

A. Well, at one time before Mr. Johnson owned it. He's the -- I watched it being built. Mr. Johnson moved in with his wife and he had it for quite awhile.

Q. Could you describe -- How often do you see this when you drive past to your house?

A. Well, when they first built it, I saw it all the time being built, and then after Mr. Johnson had been there for a long

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time or quite awhile, as you say, it just got to be an everyday thing. You wouldn't really be looking at it that much.

Q. Would you pass that house every day?

A. Yes, sir I do.

Q. Could you describe the type of driveway it has?

A. It has an asphalt driveway.

Q. Have you ever seen it with a gravel driveway?

A. No.

Q. When did you -- You said you were there when it was being built?

A. Yes, I live next door to it.

Q. When was it built?

A. It was about, about three or four years ago. About. About three or four -- Yeah, about four years ago.

Q. Okay. Was the driveway put in then?

A. Yeah, they put it in right after they built the house. The house, this pavement company come out and put it right in there.

Q. You saw them do that?

A. Yeah, they did it to all of them.

Q. Now, do you -- Drawing your attention to January 27th, 1980, does this house look the same as it did in January of 1980, if you know?

A. Well, the guy who owned it sold it to these people and

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Q. Do you still see him socially?
A. When I can.
Q. Can you describe Richard's appearance when you first met him in '76?
A. Well, he had just gotten out of the Army, and he had a mustache at that time and he had -- he had, you know, black hair. It wasn't real long at that time. It was still, you know, fairly short.
Q. Do you know what Richard looked like in January of 1980?
A. Yes, I do.
Q. How do you know that?
A. Well, we were in the process of moving in January, 1980.
Q. Who is "we"?
A. My wife and myself.
Q. Okay.
A. And he had come over one night because we had to -- I wanted to show him something, you know, that we had down in the basement.
Q. You're sure it was January of 1980?
A. January of 1980.
Q. What did you show him in the basement?
A. Oh, it was a bed frame that was left down there by the people that moved out just before us. It was an old wooden-style bed frame.
Q. How long did you see him on this day?

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A. I don't know. He might have been there a couple hours.
Q. Okay. What did he look like then?
A. Well, he's stocky built, black hair, mustache. Full faced.
Q. Okay. Have you ever known Richard not to have a mustache?
A. No, sir, I haven't.
Q. Now, you lived in Park View Terrace at one time, didn't you?
A. Yes, I did.
Q. When did you live there?
A. Oh, from '7- -- about the middle of '77 to the end of '78.
Q. I'm showing you Defendant's Proposed Exhibit No. 86. Can you identify that? Tell us what it is?
A. Okay. That's the -- That's the style of the house that I did live in except the garage and everything is on the other side. It's a flip-flop over.
Q. So this would accurately represent the floor plan of your house?
A. Yes, if it was flopped.
Q. If it was flip-flop. Do you know, how does the style of Mr. Dyer's house compare to your house?
A. Well, the styles of the house are exactly the same except that he's got one door into the bathroom, I had two.
Q. Okay. Do you know what type of floor plan this is called?
A. No, I don't.
Q. Now, in your house, describe the structure between the

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living room and the kitchen.

A. Well, it was a solid wall with just a doorway going to the kitchen.

Q. Did you ever have any kitchen, kitchen-like counter separating your living room from the kitchen?

A. No, I didn't.

Q. Now, have you ever been in Richard's house?

A. Yes, I have.

Q. Will you describe the separation between the living room and the kitchen in Richard's house?

A. The same way as mine. It was a solid wall just with a doorway.

Q. Do you know how big the opening is?

A. About standard doorway; two and a half, three feet.

Q. I'm showing you State's Exhibit No. 41. Can you identify that?

A. Yes. That's the living room looking toward the kitchen.

Q. In whose house?

A. In Richard's house.

Q. Okay. What is between the kitchen and the living room?

A. There is a solid wall there.

Q. Have you ever seen a kitchen-like counter in Richard's house?

A. No.

Q. Bar-type?

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APPENDIX - 3

Portion of VRP V, as cited

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON, Plaintiff, vs. RICHARD J. DYER, Defendant.	NO. 81 1 00398 1

VERBATIM REPORT OF PROCEEDINGS

843 - 1064

VOLUME V

C O P Y

JULAINE V. RYEN, RPR
OFFICIAL COURT REPORTER
KITSAP COUNTY COURTHOUSE

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A. Seven and a half years.
Q. I'm showing you Defendant's Exhibit 113.
A. Yes.
Q. Can you identify that?
A. Yes. That's mine.
Q. What do you mean, that's yours?
A. It's a piece of line that comes from the -- that rope that I spliced. This is my tape.
Q. Where was this exhibit before it was admitted in court, do you know?
A. It was on a boat.
Q. How long has your boat been there?
A. We've had the boat about four years.
Q. Who spliced this, anyway?
A. I did.
Q. Do you know how to splice?
A. Yes.
Q. Do you know when you bought that rope?
A. No.
Q. I'm showing you State's Exhibit No. 5. Have you ever seen this before?
A. Yes.
Q. Where have you see that?
A. It was on my boat. It's a mooring line.
Q. How can you identify that?

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A. That's my splice.
Q. You did this one, too?
A. Yes.
Q. Okay. Did both of these exhibits come from the same reel?
A. It's the same line.
Q. It is, huh. Now, do you know how State's Exhibit No. 5 got in Mr. Dyer's possession?
A. Yes. It was given to him when he came to take my trash out when my husband was ill. Well, he was in an accident.
Q. Do you recall when that was?
A. 1980, May 9th. And I don't know when -- I can't tell you an exact date of when it was given to Mr. Dyer. But it was after the 9th of May.
Q. Well, how do you know that Mr. Wright was injured in May of 1980?
A. Because I -- I was called from Harrison Hospital.
Q. How long was Mr. Wright incapacitated?
A. Two months.
Q. And what happened during this two-months convalescence?
A. He was laid flat. He -- He had to be moved to go where I had to get him, and I didn't -- I was working all day. I didn't have anybody to help me, and Richard Dyer came out to take my trash to the dump.
Q. Would that have been after this May 10th incident?
A. Yes.

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Q. Which room is that in?
A. That is facing the garage from the living room.
Q. That's in the living room?
A. Right.

MR. REESE: I move to admit Defendant's Exhibit 109.

MR. CLEM: No objections.

THE COURT: Exhibit 109 may be admitted and is now in evidence.

(Defendant's Exhibit No. 109 for identification, a photograph, was admitted into evidence.)

Q. (By Mr. Reese) What color was the bathtub when you sold the house to Mr. Dyer?
A. White.
Q. Has anything been changed in the bathroom since you sold it to him?
A. The only thing that would be changed would be the shower retainer to keep the water from coming out.
Q. How was that changed?
A. It doesn't quite go all the way to the ceiling like the prior one and it opened by one door. Mine was three.
Q. Now, which side -- walking down the hallway, which side is the master bedroom on?
A. On the left-hand side.
Q. Walking out of the bedroom, standing in the hallway, what do you see looking straight ahead?

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