EXCERPTS FROM CROSS EXAMINATION OF DEFENSE EXPERT

REGARDING ASSESSMENT OF SEX OFFENDER

**By Prosecutor:**

**Q.** Doctor, in doing your evaluations of individuals who come to you either prior to conviction or for assessment, when you’re done with your assessment you prepare

some reports, is that correct?

**A.** Yes, generally.

**Q.** And in those reports you expect the Court to be able to rely upon them.

**A.** Well hopefully amplified with personal testimony.

**Q.** And if I understand in reviewing some of your reports, what you do is describe

within the appropriate part of your report your impressions of the things that you have

heard from the client.

**A.** Sometimes, I think. Sometimes not, maybe.

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**Q.** In the times that you find it necessary to do that the only way that we really know

what was said is if you are reporting things accurately, is that correct?

**A.** That’s correct.

**Q.** So if we are to rely upon what you tell us in these court documents, the accuracy

with which you report or the honesty with which you report is very important.

**A.** Yes.

**Q.** You prepared a report in this case and only one report and that was prepared on the 15th of June of …, is that correct?

**A.** Yes.

**Q.** You said you’re now handling sixty cases?

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**Q.** Where do these clients come from?

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**A.** Primarily defense attorneys. Maybe, like I say, voluntary.

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**Q.** Do you do polygraphs yourself?

**A.** No.

**Q.** Do you do plethysmographs yourself?

**A.** No.

**Q.** During the period of time that you were in Oregon you had not done as a primary focus of any of your jobs sexual deviancy treatment.

**A.** No. I took those cases on occasion, but it was not a primary focus.

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**Q.** When you worked for the Everett School Board, your position there did not

involve any type of sexual deviancy evaluations at all; you were just the school

psychologist?

**A.** That’s correct.

**Q.** And when you left there, you resigned in August of 1985.

**A.** Yes.

**Q.** And when you resigned from there August of 1985, up to that point in time you

had not done sexual deviancy evaluation work?

**A.** As I say, a little in Oregon. And for that purpose I teamed up with Dr. B., who

had more experience than I did in sexual deviancy. On the other hand, I had enough

experience in clinical psychology and work with victims that our combined skills enabled

us to put together, I think a pretty solid agency.

**Q.** But Dr. B. did not join you until January of 1987?

**A.** Correct.

**Q.** So from August of 1985 until January of 1987 you had not done very much sexual

deviancy treatment?

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**Q.** So from roughly January of ’87 through today is really the limit of the experience,

hands-on experience that you have in dealing with child abuse, sexual abuse.

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**Q.** Would this be an accurate description of the work that you did there? Just let me

know. “Supervision includes discussion of mental health clinic cases review of clinical

work and written materials, discussion of methods of improvement, consultation

concerning development of treatment programs and placements. Frequency and duration

of supervisory sessions varied depending upon the clinic’s consultation schedule.” Is that

an accurate description of the work you did there?

**A.** Not really.

**Q.** That’s the description that you gave to the State of Oregon when you applied for

licensure.

**A.** Yes.

**Q.** Would that be accurate?

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**Q.** I misunderstood. Okay. So at some point you went into practice, Mike O. was doing sexual deviancy work and he had an office near you?

**A.** Near us, yes.

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**Q.** Do you know a fellow named CD?

**A.** Yes, that’s correct.

**Q.** Who’s Mr. D?

**A.** The Diversion Unit coordinator.

**Q.** So that the record is accurate, the Diversion Unit is a unit within the prosecutor’s

office which affords sexual offenders an opportunity to go into treatment at a very

restrictive treatment modality and avoid prosecution; is that a very gross summary?

**A.** I guess. Sounds good.

**Q.** No one can get into a treatment program through the Diversion Unit without

being approved, without the therapist being approved by the Diversion Program is that

correct?

**A.** I think that’s correct. They pretty much attempt to pick the therapist and have some people that they are familiar working with and go that route, generally.

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**Q.** Okay. You in time went into practice with EF. and TC.

**A.** We shared office space and tried to remain our separate identities.

**Q.** At one point when you were in practice with them the first sexual deviancy case

that you even got to handle was one referred to you be Miss F., is that correct?

**A.** The first case that I handled was a man that EF did not want to handle I think for

various reasons, including he was fairly indigent, so I took the case on without expecting

a lot of payment for it since I was new in the area and just starting my business.

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**Q.** You’re no longer in practice with Miss F. and Mr. C. Why is that, sir?

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**Q.** There are a number of sexual deviancy treaters in the King County, Pierce

County, Snohomish County areas, would you agree?

**A.** Yes.

**Q.** Sometimes for a variety of reasons somebody gets into counseling with one of

those individuals and fails, is tossed out of that program for not abiding by the principles?

**A.** Um-hmm.

**Q.** Sometimes they go shopping for other therapists to try to get back into treatment?

**A.** Um-hmm.

**Q.** Could you give us an idea how many of those sixty clients you now have, have been rejected or flunked out of other treatment programs by other area provides?

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**Q.** So we have an idea of what’s involved in the treatment program, in the ordinary treatment program how often would you see a client?

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**A.** We have group treatment for nine hours per month. Initially we did that for eight

hours a month in four two-hour sessions, but recently we modified our group

confrontational meetings to three times a month for three hours because we feel we get a

lot more done in a longer setting. Actually, they’re getting an extra hour of treatment for

no extra fee on that.

**Q.** Nine hours a month. Anything else?

**A.** Yes, individual therapy in addition to group treatment, and that will range from

two times a month, generally, to four times a month. So we---

**Q.** If we just take two, that’s eleven hours a month these people come to see you?

**A.** Two hours, yes, approximately.

**Q.** You charge eighty dollars an hour currently?

**A.** Sixty for group and eighty for individual.

**Q.** So that each one of your clients is going to generate somewhere around eight

hundred dollars of income per month to your organization?

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**Q.** Sure. But the more people that you accept into your program the more money you make.

**A.** Yes; although I would assure you that’s not our entire aim.

**Q.** Well, let’s talk about that. When you left Oregon as recently as 1986 you said

that you were so broke you couldn’t afford a hundred dollars a year renter’s insurance

premium. That’s a long distance from being that broke four years ago to making twenty-

four thousand dollars a month.

**A.** Did I say that?

**Q.** Sure. I’ll show you your affidavit, sir. Is this an affidavit you filled out in your

divorce decree talking about your financial status?

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**Q.** “I’m having financial hardship supporting the child.”

**A.** That sounds about right, because at that time I had just got divorced and was

trying to support my child on a school district wage and had a lot of debts from that

divorce and, right, I was under some financial stress at that period of time, um-hmm.

**Q.** And I guess I raised that not to suggest that it’s bad to have some financial

problems, but you have an ability right now whether you accept people or not that

seriously affects your income, and not that long ago that was a major concern of yours.

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**Q.** Can you give us an idea as to the percentage of people who are referred to you

that you accept for treatment?

**A.** That’s a good question. I would say, I don’t know, half maybe. A lot of people

call and a lot of people don’t make it past the phone call that I have with them, because---

**Q.** Okay. Let’s narrow it down. Of folks that you do an evaluation of, full-blown

polygraphs, plethysmograph, the entire holistic treatment modality that you set up, how

many times have you said that you can’t treat somebody?

**A.** Quite frequently, quite frequently. So many of those evaluations don’t surface

because of that. You know, the defense attorney probably keeps those from the Court

and goes shopping elsewhere. So, I don’t know, half of the time, maybe more.

**Q.** Are you suggesting to us, sir, that the income that you generate from these reports

is of no factor in your determining whether-- in your coming to a conclusion as to

whether you should treat somebody or not?

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**A.** Thank you. Absolutely no determinant whatsoever. We try to take people that we feel are amenable to treatment. I think the proof is in the pudding if we have sixty men in treatment and nobody re-offending, or at least I don’t have anybody that I know that’s been convicted. Now, there might be a few violations along the way in fact I’m aware of those; but sixty men and nobody convicted of re-offense, I must be making some fairly good discriminations on who to take in and who not to take, and that’s expertise, I believe.

**Q.** Well, I think we need to talk about that. You have provided to us some letters

from individuals in the community, this Exhibit No. 1, and I’ll put it in front of you. You

say these are folks within this community who recognize your contributions, if you will.

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**Q.** I mean they’re all; they’re mostly addressed to whom it may concern. Do a lot of

people send you letters like that?

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**Q.** But these are the ones you chose, so this is what we’ve got. Now, the letter you

got from Ken P., he’s the corrections officer?

**A.** Yes.

**Q.** Was he a friend of yours?

**A.** K is a man that I didn’t know from Adam when I came to the county that after a

presentation at the corrections office we subsequently handled a few or several cases that

he referred over. Since then, you know, I don’t socialize with him. I feel he’s a friend. I

sent him a couple of my Seahawks tickets.

**Q.** That’s what I wanted to talk about. When you sent him Seahawks tickets, was

that before he wrote this letter for you or afterwards?

**A.** This letter was written on October the 26th, 1988 and I sent him Seahawks tickets

a couple weeks ago. So I think I sent him Seahawks tickets, what, a year later.

**Q.** You get referrals from the Department of Corrections. You told us that was a

primary source. You feel that there’s any conflict about sending Seahawk tickets to

members of the Department of Corrections you’ve just told us aren’t your friends? Do

you see anything improper with that, sir?

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**Q.** In your resume, or this CV, let me make sure this is accurate. You’ve told us this

is the correct address, so I’m assuming that’s the most recent one.  **(Handing** **papers to**

**the witness)**

**A.** Yes.

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**Q.** I found it curious that in that CV or any of the others that have been modified you

never list your position with the E. School Board you held for a year. Is there any reason

for that, sir, your first job in this state?

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**A.** I don’t know. It’s just that the thing is eight or nine pages long and I probably

thought that it didn’t really add, it didn’t really show anything about my clinical

expertise. You know, doing school psychology and tests for a school district is, you

know, in my mind not all that clinical. It was the first **. . .** You know, when you come up

to a new state you take whatever job that you can get, and basically that’s the best that I

could do at the time. So I didn’t necessarily think it reflected my clinical expertise so

that’s probably why I left it off.

**Q.** Well, you do list psychologist for the M. School District.

**A.** Um-hmm.

**Q.** You do list instructor in the psychology department in 1972, so you must think

that your educational, the education structure is important.

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**Q.** Let’s keep talking about your resume. One of the first things, and again I want to

make sure no one’s being misled. The first, second thing I think on the resume lists your

association with Harvard University.

**A.** I did some, a workshop in the continuing education department of the department of psychiatry at Harvard.

**Q.** On crisis intervention?

**A.** Yes.

**Q.** Nothing to do with sexual deviancy?

**A.** No.

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**Q.** Your did you master’s thesis on skin conductance and the heart rate responses to

neutral positive and negative visual imagery, correct?

**A.** Yes.

**Q.** Nothing to do with sexual deviancy?

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**Q.** No specific single course that you took at Auburn or Memphis State or even Notre

Dame that dealt specifically with sexual deviancy treatment?

**A.** I’ll be honest with you, sir, very few such courses are offered or were offered at

the time I got my training in sexual deviancy, so you don’t get to, no, I did not take

specific courses; but also perhaps that would have been similar for other people going to

school at my time. You have to acquire that by workshops and other, working with

people like Dr. B. who have had more experience.

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**Q.** You list in your CV a category on certifications, is that correct?

**A.** Yes.

**Q.** And there are a number of certifications that you list there, but the only one that

has anything to do with sexual deviancy treatment is you claim to be a certified sex

therapist, certified in the American Association of Sex Educators, Counselors and

Therapists out of Washington, D.C.

**A.** Well, I think that memberships in the American Psychological Association and

the Washington State Psychological Association are all pertinent to working with sexual

deviancy, they all have workshops and offerings on it and I can interface with

professionals there. I was certified by a---

**Q.** My question, sir, is the only one that is specific on your resume, the only one

that’s specific as to sex therapist is that one, is that correct?

**A.** That’s correct.

**Q.** When is it that you became certified?

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**A.** No. And the reason I am not current is I decided that I had basically . . . The

organization, if you understand it, is not specifically for the treatment of sexual deviancy.

**Q.** Then let me ask you a question. Would it be an accurate description that the

certification within this organization is intended to be evidence that the individual’s

credentials have been found to meet at least minimum qualifications, that this

professional community considers necessary for independent functioning as a practitioner

in sex related discipline? Would you agree that’s an accurate description of that

organization?

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**Q.** You have not been a member of that organization since at least 1987.

**A.** Yes.

**Q.** And yet you leave it on your resume so anyone looking at it would think you are.

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**A.** Maybe I should take it off. I mean I **. . .**

**Q.** You’re not a member anymore?

**A.** That’s probably true. I don’t know. It’s an oversight there.

**Q.** Okay. So that the only certification that you claim on your CV as being specific

to sexual treatment is really inaccurate and an oversight and you’re not a member of the

organization anymore?

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**Q.** Doctor, we were talking before the noon recess about some errors in your CV, the

fact that you’re not a certified sex therapist by this organization anymore and that’s

inaccurate and we talked about the fact that your employment in Everett is left off of

here. I want to pick up on that theme, inaccuracies. And maybe you can **. . .** Have you

had a chance to look through your resume again, your CV recently? I’ll give it to you.

**A.** Yeah.

**Q.** So maybe you can just save us all some time and tell us if there are other things in

there that in fact really aren’t accurate anymore. **(Handing CV to witness)**

**A.** I don’t know, I’ve been in so many organizations probably some of which I’ve

not continued to be in because they are not of use to me. So there might be a couple

other things that are not current, but I---

**Q.** Such as?

**A.** I’m really not sure, to tell you the truth. Well, let’s just point them out. We’ll

take them one by one, if there is any.

**Q.** So you’ll stand by that as being fully accurate?

**A.** Well, APA, WSPA, if I paid my dues last time around, correct. Association for

the Advancement of Psychology, I think I was in it for a short while, I made some

donations, but I don’t think I’m currently in it.

**Q.** So which one should we eliminate?

**A.** Association for the Advancement of Psychology. I don’t think it’s current.

Academy of Behavioral Medicine, geez, they just . . . You know, that was mainly for

certification. So I don’t belong to the agency, but they did certify me as a diplomat. In

fact, I think they just recently sent me an updated diploma. But I’m not, you know, I

don’t continue to function in the organization. American College of Forensic Psychology.

I’m not sure I went to the last conference, so I don’t know if I paid dues for this year.

But ABM is definitely not one that I’m doing now. I’m just not working with the

polygraph. I’ve got RC. doing that, so there’s no need.

**Q.** Okay. So there are, in the list here of professional memberships and certifications

there are some things that are outdated and no longer current?

**A.** Yes. It should be updated.

**Q.** So reliance upon these would really be inaccurate?

**A.** Probably. This should be updated.

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**Q.** Explain to us what is the difference in certification between a fellow and a

diplomat in one of these organizations?

**A.** Well, they’re pretty much, I guess, about the same. Diplomat, you know, was sort

of a standard designation, somebody that’s accomplished in a specific field.

**Q.** And a couple of years ago, it wasn’t all that long ago that you felt that it would be

appropriate to apply for diplomat status in that particular organization, is that correct?

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**Q.** Being a fellow or a diplomat means you meet some, first there’s an investigation

into your background and then they find that you meet some minimum standards?

**A.** No, meet no minimum standards, but meet some standards of excellence, that

meaning that of ACFP only I would say five or ten percent will ever reach fellow status.

It’s really hard to get.

**Q.** Sure. But there was an investigation done, at least begun to be done, and you did

not obtain that?

**A.** Exactly. Didn’t get the fellowship. Told to, you know, keep at it and reapply.

We’ll probably pursue that at a later date.

**Q.** You had submitted these packet of letters, **Exhibit 1**, beginning with the Luther

Child Center and whatnot and I assume that that was, as you explained to us, to tell us

that there were people in the community who would be able to speck of your professional

reputation. Is that grossly accurate?

**A.** It’s, you know, I guess that’s accurate. It’s a handful of people that we work with

that felt good about us. You know, there’s certainly others.

**Q.** In fact you wrote to the Department of Licensing in February of this year in

response to a complaint that “We,” referring to P. and Associates, “have a good

reputation with both the King County and Snohomish County courts, local work-release

facilities, corrections departments and other criminal justice professionals.” Can you tell

me, sir, who those professionals are?

**A.** Sure. I believe that I have a pretty good reputation with a number of corrections

officers who we work with, for example.

**Q.** Would they be the ones you sent the Seahawks tickets to?

**A.** No.

**Q.** Who would they be, sir?

**A.** Okay. My memory, recollection—kind of hard when you’re on the spot, but I’ll do my best.

**Q.** Okay.

**A.** The first was KP. I mentioned that we worked with. We worked extensively with

that Lynnwood office because we’re there. Now there are two other corrections officers

in the Lynnwood office. I’m blocking out their names right at the moment, but they

know us and have had cases with us.

**Q.** And so we are clear, P. is one of the fellows who you sent tickets to the ball game.

**A.** Yes.

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**Q.** Okay. Have you received other criticisms from other members of the community for being more concerned about the income you can generate from your referrals than the quality of work?

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**A.** I don’t know. You know, when we talk about us having sixty men in treatment,

that means about twenty persons each. I don’t think that’s too significantly different than

any other sex offender treater. I think most in the business have fifteen or twenty or

twenty-five clients each. So, you know, that must mean that there’s an awful lot of

other people out there making decent incomes doing this work.

**Q.** I don’t think, Doctor, that anyone’s besmirching your ability to earn as much money as you do as long as you do it responsibly….You’ve indicated you’ve written a letter to the state board saying you enjoy a good reputation in this community. Have you talked to other people in this community that you referred to, the criminal justice professionals, who have said to you that they are concerned about the fact that you seem more interested in accepting clients and making money than in the quality of work?

**A.** I haven’t heard that. I wish you’d give a for instance so that I can debate with it,

or bring the live bodies so we could hear them in person.

**Q.** Okay. Can you share with us your. . . In this list of those folks who you say in the community with whom you enjoy a good professional relationship would you include

other offender treaters?

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**A.** I’ve met Mr. ID. only on one occasion. I don’t work with him.

**Q.** Have you had an occasion to do a presentation where Dr. ID. was present and

approached you when your presentation was over to discuss with you the subject matter

of your presentation?

**A.** We did a presentation that Dr. ID. was at a professional meeting and had some

lively discussion over the controversial nature of your use of the polygraph with such

standards.

**Q.** In other words, he disagreed with some of the procedures that you were using.

**A.** I think so.

**Q.** Would you say that he would be included in this group of folks with whom you enjoy a good professional reputation?

**A.** No. I would say we have differences of opinion on treatment.

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**Q.** You would include, for instance, Dr. KVC.?

**A.** I can’t say that I’ve had too many cases in consort with KVC.. Again, I’ve met

him on one occasion and I don’t, we don’t work together per se.

**Q.** But you would include . . . Well, so the record is clear, you’re aware that Mr.

KVC. is a convicted felon who has attempted to do sexual deviancy work in this county

who has been found unacceptable?

**A.** I’m aware that Mr. VC. is a convicted felon that is not acceptable to do work in

this county. I guess he has some eighty or ninety offenders in treatment most of which

are through King County, but I don’t associate with the man particularly. It would be the

rarest case. I have had about as many case with Ken that I’ve had with MO. or D., which

is a few.

**Q.** You did have one case in common with him when you found an individual qualified for treatment who had been referred to you from Mr. KVC., correct?

**A.** I would say you could probably find a handful of cases that we’ve, you know, done some evaluation. I don’t remember doing that, myself. That might be Dr. B. again.

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**Q.** You raise an interesting point that you mentioned earlier this morning. You said

that no one to you knowledge had—

**A.** Reoffended.

**Q.** . . .reoffended, and I’m assuming you’re defining that as convictions.

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**Q.** In trying to determine recidivism rates and whatnot, I understand that what the definition of reoffense is, is an issue in your profession, so I’m looking for your definition, and I think your definition is conviction.

**A.** No. I believe reoffense is, I know, grooming a minor or attempting to solicit a minor. I don’t think that . . .You know, or an actual touching incident with a minor. I wouldn’t say that a reoffense is necessarily being in the company of a minor unauthorized. That’s a serious thing, it shouldn’t be taken lightly. The case you mention, the J. case, apparently a neighbor kid had come over to his house and he was taken to task for having unauthorized contact. Well, he came over to play with his kid and he apparently sent the child back home. Still, we make him go talk to that neighbor, write her a letter and say, “Don’t let your child come over here when the wife isn’t home and there isn’t a proper supervisor.” So, you know, on occasion men are going to reoffend but not sexually reoffend, but we want to nip as many of those in the bud as we can so that we don’t get a sexual reoffense. That’s the name of the game.

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**Q.** There have been people who have been in your program who have been terminated from the program or revoked to your knowledge for other violations, not to say reoffense. You’d agree with that?

**A.** Right. I believe so. We’ve had to toss a few people out that just don’t make the grade so they end up in jail.

**Q.** Sure. Do you have the ability to determine the occurrence of a past act?

**A.** That’s a difficult question. I think the answer is that we can make some sort of

probabilistic statement whether an act may or may not have occurred after deriving

data the same way a social worker can or a CPS worker may say I think that this child

was abused. We can say I think this child was abused. We can say I think this child

was abused or I think this child was not abused. I think after doing the proper investi-

gation, one is entitled to have an opinion about the probability of an abuse occurrence

but that would be the best way to state that, rather than you know, to say that, you know

the way you put it is a little different.

**Q.** In fact, under some of the organizations that you’ve told us you were a member it would be unethical for you to say, to offer an opinion as to whether an event did or did not occur, correct?

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**Q.** Let me give you a hypothetical question. Would it be to your under-standing of the rules of ethics of the organizations of which you are a member for you to do an evaluation and say defendant did not abuse child, period?

**A.** I don’t think it’s, you know, against the rules of ethics of an organization, at least I haven’t seen anything printed to that effect. I think one has to try to err on the side of

caution, talk in terms of probabilities rather than did it or did not do it.

**Q.** Is there anything about your training, experience, skills, education, reading that gives you the ability to determine if something happened or not?

**A.** No. I mean, nobody has a crystal ball. I think we only offer data which say, the

data seem to indicate that this thing probably occurred or the data seem to think this thing

did not occur, and that’s the best way to answer that.

**Q.** And yet that limitation has not stopped you from making those conclusions in reportsthat you filed with the county in these courts, has it?

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**Q.** You treated a fellow by the name of Rocky T.?

**A.** Um-hmm.

**Q.** You wrote a report that states, quote, “The evidence simply is overwhelming that

Rocky T. did not abuse his daughter,” period, unquote, signed by you, sir. Is that correct?

**A.** Um-hmm.

**Q.** You’ve just told us you don’t have the ability to do that. How did you do it?

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**A.** Okay. I’m going to try to answer that question

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**Q.** (By Prosecutor) In the articles that you’ve written you talk about the need for a vigorous interrogation.

**A.** Um-hmm.

**Q.** In fact, you have, I think, on other occasions taken somewhat of pride in the fact of how you can get confessions from somebody and be a fearsome interrogator, correct?

**A.** I think we do a good job of investigating the cases, try to.

**Q.** Sure. My question is…when you get in your interrogation mode and you start doing an investigation, don’t you exceed the bounds of psychology when you determine if something did happen or didn’t happen, as you did with Mr. T.?

**A.** I guess… .

**Q.** This isn’t some isolated case, though. You haven’t limited your opinion that something flatly didn’t happen simply to the one incident of Mr. T.. You’ve done that with other clients.

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**A** I think if I have, you have every single one of them in your file and I think if I made opinions about people’s guilt or innocence or the probability of that, that you’re aware of it. And there are probably a handful of cases outside of the multitude of cases that I’ve seen when I did take a position that I thought that the man was innocent.

**Q.** Sure. So you have on prior occasions, and you’ve only been doing this for a couple of years, you have on prior occasions, you say on more than one occasion determined through your skills that the incident simply couldn’t have happened, the child was not abused by this individual.

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**Q.** How strong an opinion is it when you write, and I’ll give you the name of the case

afterwards, “I have at this point concluded that there is no solid evidence that Mr. P.

molested his daughter”? You feel comfortable saying that you can do an evaluation to

determine that?

**A.** I personally think that’s a better and a more accurate statement than in the T.

matter. I think it’s fair game to say that I don’t think there’s any solid evidence that

somebody molested his daughter. At least from my data gathering I think that’s a proper

way to formulate that opinion.

**Q.** You have done, you have spent more of your professional career, if I understand what you have said, dealing with children than dealing with sex offenders.

**A.** Well, I don’t think that’s true. I think it’s pretty much evenly divided.

**Q.** As of a year ago you’d only been in this practice for a year and a half, you’d already spent many years working in schools, chief psychologist down in Oregon, E.

school for a year?

**A.** I think if you see my career, you’ll see the mental health, the first third of it dealing with a lot of abuse cases. I think if you look at the second half of it you’ll see a lot of school psychology and child psychology, and in the third half you’ll see me working back with offenders again. So I think I, like a lot of professionals, have developed my specialty and taken some time to do it.

**Q.** In the course of doing that you found the opinion and articulated it in the courtroom, “I believe children don’t lie in this situation. If you take the time to listen to the child you can find out what’s going on.” Do you recall saying that, sir?

**A.** I’ll tell you I think that, yes, I think that about ninety-eight percent of all cases or

better children do not. Mostly when children say they’ve been abused, they have been

abused. Generally the offender or alleged offender that you’re evaluating is deceptive.

You can almost count on the probability that he probably has abused the child if the

allegation is there.

**Q.** Sure.

**A.** I mean, you can start from that framework. Children generally don’t lie. There

are some cases where they’re confused or they’re too young to testify.

**Q.** I guess my question is in the two and a half, two and three-quarter years that you have been doing this full time you have developed the skills to get above the fact that children don’t lie and determine whether someone really did the offense or whether they didn’t. Is that what you’re telling us?

**A.** No. I think in some incidents if the child is three or three and a half and the method at which the allegation came about is, the methodology is incorrect, if props were used to elicit the thing or I’ve had cases where mothers were in the room coaching the kid during the abuse disclosure, you know, I would say those cases become a little bit suspect. So, you know, there are fewer and far between. Of the multitude of cases we do there’s probably, you know, five or six cases where we take, we’ve taken the position that somebody was probably innocent on the basis of looking at the disclosure in the child interview and our data and said there’s no solid evidence that this person committed this act. But that’s far and few between, I think, considering we’ve done hundreds of these cases.

**Q.** You also told us that it was a very, very rare occasion where you yourself had

actually interviewed the victim.

**A.** True, but, for example, the W. case we’re looking at a tape of somebody interviewing the victim and use that instead.

**Q.** Well, as long as you talked about it, the information . . . You wrote a report on

June 15th, right?

……………….…………….

**Q.** You prepared for me some notes of your interviews with Mr. W. Do you have

those with you?

**A.** I think so.

……………………………

**Q.** Okay. Take a look at the entry you have for June 10th, if you would.

……………………………..

**Q.** My question is you wrote your report before you ever looked at it?

**A.** Oh, that’s correct.

**Q.** You just told us that you could make a decision as to whether somebody did do the abuse or didn’t based upon how the interviews were done, and if you had a tape of the child that would be so helpful, and yet you didn’t have that information with Mr. W. and yet that didn’t prevent you from offering some opinion.

**A.** That’s a good point. And what I did was to attempt to look at the CPS notes and the disclosure and try to analyze the child interview by the notes that I could obtain because the tape was not provided to me.

* …………………………………..

**Q.** Sure. But you still wrote a report without having information that you just told us you needed to make these types of conclusions?

**A.** I don’t think . . .I think that information is helpful. If you think you need to scrutinize the child interview, if you have a videotape or an audiotape. You’re well aware those things are not always available to us.

* ………………………………..

**Q.** Okay. So let’s go back to the articles you write about how it is that these examinations should be done. You wrote an article on state of the art technology and how evaluations should be done. Do you have that in front of you?

* ……………………………….

**Q.** You talk about the multi-factor physiological examination?

**A.** Correct.

**Q.** How it is you should do an exam. Day one: Collection of collateral information. You should have a statement of formal charges, victim, witness and police reports, suspect’s statement to police and other significant data.

**A.** If you can get them and if the discovery’s available, you get as much of that as you can. Sometimes you’re limited to a CPS interview with notes there and so on.

**Q.** Show us, if you would, from your file, the information that you had at hand, other than things that came from the Defendant, upon which you based your opinion.

**A.** I don’t have my file here, but I’m certain I had the CPS report, because I critiqued it and analyzed that a bit in my written report.

**Q.** That was a two-and-a-half-page long report, right?

**A.** Right.

**Q.** So you made your entire conclusion based on a two-and-a-half page report written by a CPS worker?

**A.** No, I think that’s incorrect.

**Q.** And the testing that you did. That was the only source of information?

**A.** Interviewing, testing, CPS reports, and at this point I’m not sure if I had reports from the sheriff’s office or any interviews done there, but I’d have to look at my report, which somebody has there.

……………………………

**Q.** Sure. You’ve testified that “Our approach,” meaning the way that you conduct your investigation, “is one,” quoting here, “is one of trying to do the most thorough

investigation that we can do when we get a case like this. Try to look under every rock

and stone to get toward full disclosure.”

**A.** I think that’s accurate. We try to do our best to get as much data as possible. You can write SO. a letter, but if you don’t get the tape back, you don’t get to have it. Fortunately we did get that prior to this.

**Q.** But before you did any of that you didn’t turn over a whole lot of rocks and

stones. You got this one report, wanted more information, but didn’t wait until you got it

before you drew some conclusions?

**Q.** I agree with that. I think we’ve made the point. Can you tell if somebody’s going to reoffend?

* ……………………………………..

**A.** I can give you a professional opinion about somebody’s likelihood of reoffense; but, you know, I can’t, I don’t have a crystal ball. I can give you my very best opinion.

………………………………..

**THE COURT:** Besides feeling, Doctor, what basis do you develop that theme, conclusion?

* ………………………………..

**A.** Well, based upon my practicing for fifteen some years, or twelve or fifteen years, and based upon, you know, my early experience with offenders and then my extensive

experience in the last three to four years.

**Q.** You say you rely upon a polygraph.

**A.** We use it as one tool, also not to be taken out of context.

**Q.** And so we don’t take it out of context, it would be fair to say, would it not, that you should not rely exclusively on a polygraph?

**A.** Well, I think that’s fair to say.

* ………………………………….

**Q.** You would agree with the statement “It is not an infallible too”?

**A.** Correct.

**Q.** Plethysmograph. You would rely upon results of a plethysmograph test?

**A.** Correct.

**Q.** The plethysmograph that Dr. B. used, do you know the name of the, company that

makes it?

……………………………..

**Q.** Would you agree with B Farrall when I read a statement he made and ask if you

agree with this, “The plethysmograph, penile plethysmograph is not a sexual lie detector.

It is my opinion that information obtained from the plethysmograph is not valid proof a

person has or has not participated in any kind of sexual activity, deviant or nondeviant.”

Would you agree with that?

………………………………….

**A.** Okay

**Q.** “I do believe that there is an ethical use of the equipment in the criminal justice

system after the offender has been convicted, but only to assist the judge in sentencing.”

Do you agree with that?

**A.** I agree that it is a, not a sexual lie detector, but I think the data that’s derived from

the plethysmograph can be useful even in the initial evaluation of the offender, and I can

give you some references of other people that, professional people that have published

that agree to this….So I agree it is not a sexual lie detector, it shouldn’t be used to

determine as a singular instrument whether somebody did a crime or not.

…………………………………

**Q.** Do you know SJ.?

**A.** I know a SJ., Portland area.

**Q.** That’s the J. I’m talking about. Are you familiar with his reputation in the area of

treating sexual offenders?

**A.** I think he has a good reputation. I don’t know the person.

**Q.** Would you agree or disagree with this opinion that . . . If I were to tell you that his

opinion is that a plethysmograph cannot tell whether somebody committed an offense

or not, would you agree with that or not?

**A.** I would agree with that. That instrument alone can’t tell you whether somebody

committed an offense; it can only tell you whether they get aroused by seeing slides of

little children or video tapes of little children.

**Q.** And that’s all it can tell you, isn’t it?

**A.** Yeah. It’s a good piece of evidence.

**Q.** Now, in Mr. W.’s case the victim in the case was, the alleged victim in the case, if

you’re right, was his daughter, is that right?

**A.** Correct.

**Q.** Which means that he would be an incestuous offender.

**A.** Correct.

**Q.** What is the state of the literature, if you know, about the use of a plethysmograph

in an evaluation of an incestuous offender? Is it different than a non-family member?

**A.** Well, I think the problem with pulling articles out of the literature of

plethysmograph is you’ve got tremendous controversy in the field over plethysmograph.

There’s pros and there’s cons---

………………………………

**A.** Well, I’m sure that there’s some that have made comments that it’s less, perhaps

less fruitful in the incestuous area.

**Q.** Let’s stick with the first comment you made. You said there’s a lot of

controversy in the community about the use of plethysmographs?

**A.** I think so.

**Q.** So you would be of the opinion there is not general acceptance in this community of the use of plethysmographs in the means that you want to use it in this case?

**A.** I would say that there is controversy in the field. There’s not widespread

acceptance of the use. I’d say the field is split. There’s some people that feel strongly

that, you know, it’s a good tool in initial assessments and others that think that it should

be used in sentencing values only.

**Q.** There is not wide acceptance?

**A.** I would say there’s a lot of acceptance in some circles. It depends where I go. Dr. B. went to the International Conference of Sexual Deviancy this past year and found a very strong acceptance there as well as the national ABTSA convention. So it really depends where you go. You have the same controversy with colposcope examinations, too.

**Q.** Are you an expert in that area?

**A.** No.

**Q.** Have you ever done a colposcope examination?

**A.** No.

**Q.** Have you ever seen a colposcope examination?

**A.** No; but I read enough controversy about it.

**Q.** “Incestuous offenders,” would you agree . . . This is a statement by Dr. Bill Murphy in an article that he has written—And I offer Dr. Murphy, which, by the way, I have been in touch with the doctor, so Your Honor knows. He is available to be a State’s witness if need be. I have consulted with him, reviewed these statements with him. I make that by way of offer of proof. If he would make a statement, “Further results. . . “ Do you know a fellow named Quinsey who’s done research in this area?

**A.** Yes.

**Q.** Dr. Murphy refers to that research and says, “Further results from Quinsey’s research indicate that although non-familial child molesters showed more responding to child stimuli than non-offenders, this was not true of incestuous offenders, who showed similar patterns to normals.” In other words, my first question is, make sure we understand that, his conclusion was that the plethysmograph print out, if you would, for an incestual offender would be similar to somebody who was not an offender at all. Is that what that line says?

**A.** That’s what he’s asserting, that it has lesser validity in an incestuous offender, and

that’s probably true.

* …………………………………….

**Q.** In other words, there are a number of articles, to your knowledge, that would say that the plethysmograph results for an incestuous offender would be more similar to a non-offender, or would be similar to a non-offender, is that correct?

**A.** I think there’s a slight distortion from the way they’ve said it to what you’re making there. I think they’re saying that this has a lesser validity when you use it in an incest case.

…………………………..………

**Q.** On the lower right-hand side of that photograph is what’s called a strain gauge?

**A.** Correct.

**Q.** That is affixed to the subject’s penis?

**A.** Correct. Either the strain gauge or the Barlow gauge.

**Q.** He is seated in a comfortable chair? I think you use a La-Z-Boy in your office?

**A.** Yes.

**Q.** And across from him similarly from where you are to about where I am there’s a

television set or a screen or whatever?

**A.** Right.

**Q.** The room is private, correct?

**A.** Correct.

**Q.** The lights are off, and he is allowed to, he’s instructed to sit there and just watch the ---

**A.** Stimuli.

**Q.** Stimuli. In your facility right behind where he’s seated is a separate room with a

projector?

**A.** Correct.

**Q.** And slides come on, films come on and I think even Dr. B. does some voice-over

stuff, is that right, some sounds?

**A.** Not really. No voice-over. He has tapes that he plays.

**Q.** Tapes. Okay. When different pictures are shown, slides perhaps of a naked three-year-old, slides from a Playboy centerfold, whatever, and if the offender gets aroused by that, that is measurable through the strain gauge measuring the measurements from the penis, correct?

* …………………………………..

**Q.** Then from there this leads into the machine and out of the machine comes a printout similar to what we’ve all just recently seen as a seismograph. In essence, you’re looking at---

**A.** Correct.

**Q.** And that is the plethysmograph tape.

**A.** Correct.

**Q.** That tape, there’s really no . . . In a seismograph you can say the thing goes up here and therefore it’s a 6.9 earthquake.

**A.** Um-hmm.

**Q.** You don’t have the same kind of measuring scale on the plethysmograph, do you?

**A.** He looks at the tape and then takes those measurements off the tape and quantifies it in terms of percentage of arousal.

**Q.** Exactly. So it’s the difference . . . It’s the way it is measured. It’s the difference between what does arouse somebody and what doesn’t. For instance, if somebody is aroused by absolutely everything they see, they’re aroused when they sit down in a chair, that doesn’t mean the tape is ineffective, it just means you’re going to look for further deviations, is that correct?

**A.** Well, right. You’re going to look to see if they’re more aroused to kids or if they’re more aroused to adults and then make some kind of measurement there.

**Q.** And there are other individuals who could take a look at this tape and offer a variety of opinions about the tape.

**A.** Well, you know, I think if the operator just records the percentages and prepares a report certainly somebody else can look at those percentages and make a, you know, give another opinion, I suppose.

**Q.** There’s a controversy in the literature, is there not, about whether arousal or non

arousal can be faked, is that correct?

**A.** Sure. It’s just like the polygraph, the same controversy: Can somebody fake this

test, you know, and basically it’s up to the operator and the operator’s skills to you know,

to do the test properly so that he minimizes that.

**Q.** And in fact the operator, it’s really, again, it’s not like a seismograph. A

seismograph you can look at something and it’s pretty objective scales. A clock is a

pretty objective scale. Everyone looks at it it’s going to tell the same time.

**A.** Um-hmm.

**Q.** Plethysmograph is much more subjective.

* …………………………………..

**A.** Well, it’s certainly an attempt at objectivity. If somebody has a ninety percent erection to a slide of a male child, you know, that’s pretty good evidence that there’s sexual arousal to male children. So, you know, it’s objective in that standard. That would be better than my armchair opinion or somebody else’s armchair opinion that the person is a pedophile or isn’t aroused to kids. Not knowing that data, so there’s an objectivity to it, but---

**Q.** The stimuli, the stimuli are the slides, tapes, that type of thing?

**A.** Um-hmm.

**Q.** Farrall, the people who make this equipment put out to your knowledge a set of stimuli that they recommended to be used is that correct?

**A.** Right.

**Q.** You don’t use that.

**A.** I don’t know that Farrall recommends a set of stimuli. We have Farrall’s stimuli

because we consult with Mr. Farrall and we’ve also shared ideas and traded ideas. We

think that the stimuli’s a little bit tame, his, so mostly ours come from confiscation

material that we got from police departments and places like that. So we tend to want to

use a stimulus that’s a bit more arousing in order to make every possible attempt at

getting arousal if it’s there.

**Q.** So you have in essence created your own set.

**A.** Yes, and a number of people have.

**Q.** In fact, one of the problems with the plethysmograph, as you indicated, that lead to its lack of acceptance is the fact that there is no agreed one set of stimuli.

**A.** There is certainly a lot of discussion in the field. That was one of the things Dr.

B. went to Mr. Farrall to talk about, involvement in standardizing the stimuli. Now, I’ll

admit that Dr. B. does use the Farrall stimuli on occasion, but in this case---

**THE COURT:** In the field is there a standard stimuli?

**THE WITNESS:** Not really. There’s an attempt to get it standardized.

**Q.** (By Prosecutor) So then Dr. Murphy, and again this is somewhat in the way of an offer of proof, if he were to . . . He has written, “It should be recognized that at the current time there is no one accepted standard by experts in the field nor is there any one set of standard stimuli material that is used.” You would agree with that?

**A.** That’s correct.

**Q.** When the plethysmograph is used, you place somebody in the chair because you want a comfortable environment for them to be in, is that right?

**A.** Pretty much.

**Q.** And the idea is they should be in as relaxed a state as possible.

**A.** Well, as relaxed as you can get being in an assessment like that.

**Q.** Sure. When you administered the plethysmograph to, or when Dr. B. administered the plethysmograph to Mr. W. in this case, that was, according to your notes, after you had already done an extensive interview with him that day about the nature of these allegations?

**A.** Well, you have to do that.

**Q.** Yes or no?

**A.** That’s correct.

**Q.** So you would have already interrogated him, because you say you interrogate

people, you would have interrogated him for quite some time before you put him on the

plethysmograph.

* …………………………………….

**Q.** How many times did you interview Mr. W.?

**A.** Well, seems like we had about four interview sessions and I think since this case

for me was about a year old we’ve had maybe, oh, over a year old, we’ve had a recent

interview. So, five total; but four during the major portion of the evaluation. Now Dr. B.

has also interviewed him recently to prepare his testimony.

…………………………………

**Q.** You write in your article talking about the way you should do it, the proper way to do an evaluation, “The specific elements relating to the procedural steps are discussed below with an indication of the order and timing of the process.” Did you follow your own procedures in this case?

**A.** Well, again not to take it out of context, we’re talking about a multi-factor examination that includes a number of components. It does not have to follow a specific order.

**Q.** Okay. So when you say that---

**A.** It’s suggested that this is a good way to proceed. You know, again, if you don’t have a piece of collateral information, you might have to reschedule something.

**Q.** Okay. So when you say that the order and timing of this process, you really don’t

mean that. You can do it sort of in a different order.

**A.** You can do it in a different order. I mean it’s subject to the vagaries of real life.

**Q.** In Mr. W.’s case did you follow the order as set out here or did you deviate from it?

**A.** Well, I’m sure there’s some deviations from it. It’s a, you know, it’s suggested that these are components that should be in an evaluation and I don’t believe they have to be done in any specific order. It’s really not crucial. It’s more crucial that you, in my mind, that you use the relevant tests, or some of them. You know, it’s meant to say here are the most important factors in evaluation.

**Q.** Okay. Well, then, let’s talk about the tests. You used five tests, I think you said.

You still have the report in front of you?

**A.** Yes.

**Q.** Okay. What objective tests? You used the plethysmograph, you used the polygraph. What else did you use? You only had the CPS records. What other information did you use?

**A.** Shipley Institute of Living scale, which is an IQ measure.

……………………………………………

**Q.** In the course of your training you also took a variety of courses, you told us,

training programs.

**A.** Correct.

**Q.** And these are, some of them are reported to the licensing boards so that you can keep your license current, is that right?

**A.** That’s correct. Every---

………………………………

**Q.** I want to ask you questions about your reporting of some of these programs and I want to make it clear it’s not I’m suggesting that you don’t have sufficient hours, it’s just I’m concerned about the accuracy of your reporting.

**A.** Okay.

**Q.** For instance, you told us that, you told the State of Oregon that for the year 1987 you attended a program and I think you even make a presentation called The Use of

Polygraph Monitoring in the Supervision of Sex Offenders, and I show you the form

you filled out. (**Handing papers to the witness**)

**A.** Correct.

**Q.** Now, the very, very first thing you told us in cross-examination was the whole

issue of your, the Court’s ability to rely upon what you say is the honesty of your

reporting. And that’s really what I’m talking about here. You say you went to that

seminar and you took credit for eight hours of training.

**A.** Well, we’re allowed to put down seminars on here that we go to, and I went to that seminar, I did some presentation as well as was a participant, so . . .

**Q.** I have a videotape of that seminar. It is three hours long.

**A.** Uh-huh.

**Q.** You reported eight hours. Why is that, sir?

* ……………………………………..

**Q.** But the reporting may not be accurate?

* …….………………………………..

**Q.** You are of the opinion, I gather, that there is a set profile of child abusers?

**A.** Again, it's a difficult position to defend, but I think that there are some things that jut out continuously with child molesters. A number of people will take a patent out-and-out objection to that and disagree with it, but there are others that will say that certain factors seem to come about over and over in the profiles.

**Q.** Such as what, sir?

**A.** Well, for example, with an MMPI you may, Minnesota Multiphasic Personality

Inventory, you may find a tendency toward criminality on that test.

**Q.** Would that be true with incestuous offenders as well?

**A.** Not necessarily. You may find some tendency to act out on that test. Let's say the

person had molested a boy. You may find some gender confusion or problems in gender

orientation, look at the masculinity-femininity school.

* ……………………………….

**THE COURT:** Just a moment, Counsel. Is it your opinion there is a set profile of a child molester?

**THE WITNESS:** It's my opinion that there are a number of . . . I think I’m probably, when I said it in my report, set profile, I'm unfair. There's maybe not a specific set profile; but there are a number of factors that keep cropping up in molesters.

**THE COURT:** But did I discern from that there is in your opinion no set profile for a child molester?

……………………………………

**THE WITNESS:** Okay. I would say, I would say no. And if I ever alluded to that, I'm a little bit on shaky ground and I should qualify that with explanation.

**THE COURT:** You're free to do so.

**THE WITNESS:** Because I think I've alluded to that in my report.

**Q.** (By Prosecutor) Would you agree, then, that based upon our review of the

literature there is not within the field of those who regularly treat sex offenders an

agreed-upon set profile of child abusers?

**A.** There is not an agreed-upon set profile. There are things that keep cropping up which make us think, you know, that, for example, the Western State's study where they studied several molesters and certain things occurred more frequently than others, and that's really what I refer to in that.

**Q.** Okay. I have a copy of that here. Let's just talk specifically about incestuous offenders of their daughters, men who abuse their daughters. What factors would you look for?

**A.** Well, I would tend to look for, I would tend to look at sociopathy, for one.

**Q.** Would you expect there to be?

**A.** Sometimes, yes, I would, and sometimes no. I would tend to look for character disorder.

**Q.** Let's do one at a time. Sociopathy.

**A.** Sociopathy.

**Q.** Is that an important factor, if it's there or is not?

**A.** To me it's an important factor.

**Q.** Which? It is or it's not?

**A.** It's important to note if somebody has a criminal orientation. Secondly deception,

whether they tend to lie on the test or make a valid profile or invalid profile,

whether they’re generally fairly honest when doing the test or not.

**Q.** Okay.

**A.** Or whether they have a propensity to be deceptive, to fake good or fake bad.

**Q.** What else?

**A.** Elements of character disorder besides sociopathy. Are they exceedingly

narcissistic or are they, you know, let’s look at alcohol and drugs, for example---

**Q.** Let's stick with narcissism for a moment. If I understand, you said you would

expect in the scenario I gave you the profile would be someone who is narcissistic.

**A.** Narcissism in and of itself wouldn't say that somebody molested a kid, but it's one

of the things you might look at. Like extreme dependency would be another one.

* …………………………………….

**Q.**  How about histrionics, somebody gets hysterical?

**A.** Histrionics, you're going to look at that too, you know, the hysterical features, sure. Not to be taken out of context. Looking at the whole profile.

**Q.** Sure. Let's talk of what does the phrase situational offender mean in the literature

in your field?

**A.** Well, situational offender is somebody who may molest on one occasion, for example. That is not necessarily a fixated pedophile that will have a series of repeat offenses. It's actions that are more situational, as the term goes, than not.

**Q.** If you were to do an evaluation of someone who in reality, hypothetically assume a situational offender of his daughter, would you expect to find a socipathic tendency as coming through when tested?

**A.** Well, it could. It's important to rule that in or rule that out.

**Q.** So it's not a factor, necessarily?

**A.** No, I think it could be a factor.

**Q.** How about aggression, high or low?

**A.** High or low?

**Q.** What would you expect in this profile of yours?

…………………………………

**A.** Many people that molest are not high on aggression scales.

**Q.** So, low aggression is perfectly consistent with molesters, your experience, your profile?

**A.** It could be; but certainly if it were high, it's a tip off that there's something wrong with this man's character if the aggression's too high. So it's a question of presence or absence.

**Q.** You in doing your evaluation I think told us there were five tests that you did.

**A.** Right.

**Q.** Your first one of which you started to talk about was the Shipley test, which is simply an IQ test.

**A.** Basically.

**Q.** Has nothing to do with sexual deviancy at all?

**A.** No, just to sort out IQ and whether the guy's intellectually sound or not.

**Q.** Second test that you gave is called the CAP test I think, C-A-P?

**A.** Child Abuse Potential Inventory.

**Q.** That deals with physical abuse of children, has nothing to do with sex abuse, is that right?

**A.** Primarily physical abuse and not sexual abuse, although some of the normative studies were on sexual abuse.

**Q.** The third test you gave was the Pacifico-Brown Sex Inventory or Sex History, something like that, is that correct?

**A.** Correct.

**Q.** That's basically a self-reporting, these are my sexual preferences?

**A.** It's a sexual history that goes into as many aspects, something we devised, as many aspects of sexual history as we could get down on eight pages.

**Q.** When you did the IQ test for Mr. W., you found him to be a very intelligent

individual?

**A.** Well, again you've got my only copy of the report. I think he was average or slightly above average, but within the high average range, we'll say. I don't remember the

actual IQ.

**Q.** I think it was 115. I think that's the number.

**A.** So that would fall in the high average range.

**Q.** And this history that is self-reported which you base your opinion on, somebody

of reasonable intelligence would be able to figure out what, quote “appropriate” or “non-

appropriate” answers would be to most, of these questions. Would you agree with that?

**A.** Sure.

**Q.** Because you're asking questions like "Have you ever cross-dressed?" That's one of the questions?

**A.** Correct.

**Q.** Okay. And you ask about . . . Okay. So anyone of some reasonable intelligence could probably give you appropriate answers to these questions.

**A.** Sure.

**Q.** Okay. And you use a polygraph and you don't, these questions aren't answered

under any kind of polygraph supervision?

**A.** The polygraph we'll take and make a more specific question, because you certainly can't ask eight pages worth. It wouldn’t be a valid test.

**Q.** Well, there are only two . . . You did a polygraph in this test of Mr. W., only two

questions asked of him?

**A.** Usually in a polygraph battery there's a couple of relevant questions, two or three relevant, and then other irrelevant or controlled questions to get a baseline. So there were probably more questions asked of him, but they generally report in the reports just the relevant ones.

**Q.** You administered five tests, three of them don't have a lot to do with objectively

determining sexual deviance, and that would be CAP and the IQ test and the self-report

questionnaire.

**A.** Well, no. Again, maybe in some respects yes, some respects no. I think taking

sexual history is important.

* …………………………………..

**Q.** Okay. In the rest of the reports your conclusion I think you told us were these

factors: A situational incestuous offender, may well have low aggression to fit the profile

of being an offender, may be narcissistic, maybe dependent, and may be histrionic.

Would that be correct, those would be factors consistent with being an offender?

**A.** Sure. We'll say that those factors could come up, and there are certainly other factors.

**Q.** Now, you concluded that Mr. W. here did not meet your profile of being a sex offender. That was what was in your report of June 15th, right?

**A.** That's correct.

**Q.** And yet in your report you wrote that the subject is somewhat dependent, histrionic, has high narcissism, low aggression, all the factors you just said are consistent with being an offender?

**A.** It's a question of how high they were and whether they were high, seriously high in the clinical range or whether there's some tendencies in that direction.

**Q.** Everything you told us as being consistent with this profile meets what you told

us with Mr. W.

**A.** Let's present the MMPI into evidence and everything fell below the norm, the cut

off for the abnormal range. Everything was within the normal range, for example, on the

MMPI. Looking at the Millon, there were some tendencies in those directions and I

pointed them out in the report but concluded they weren't severe enough to be considered

in the abnormal range.

**Q.** Let me see if I understand the full context of what you told us today.

**A.** Um-hmm.

**Q.** You administered an evaluation to Mr. W.

**A.** Correct.

**Q.** In the course of that evaluation the only materials that you had in your possession

to form your opinion was a two- or three-page summary of material from Child

Protective Services.

**A.** I’m not sure at this point whether I had a police report. I’d have to check my file.

I wasn’t prepared to do this today, but I’m happy to.

…………………………………..

**Q.** I wanted to go through them one at a time. The documents that you had, and you

told us on earlier occasions how you like to, you do an investigation; you turn over rock

and stone. The only thing that you had, not what you wanted but what you had, was

according to your report, a two- or three-page report from CPS. You did one

plethysmograph, correct?

………………………………

**Q.** You used a polygraph, again only one polygraph in this case.

**A.** Um-hmm.

**Q.** Other evaluations you've done, you've done multiple polygraphs. Yes or no?

**A.** Correct.

**Q.** Okay.

**A.** Generally if there's a faux pas on the first polygraph or some question, we'll repeat it.

**Q.** And you've told us and you've testified before that the polygraphs should not be relied upon exclusively.

**A.** Correct.

**Q.** And it's not an infallible instrument?

**A.** Correct.

**Q.** And you relied upon the MMPI scores, correct?

…………………………………

**Q.** There is no special criteria about sex offenders on the MMPI?

**A.** No.

**Q.** So an MMPI if properly scored and evaluated doesn’t say . . . It shows you personality issues, but it doesn’t say he’s a sex offender?

**A.** That’s correct. It’s an inference that you try to make.

**Q.** And in your office the MMPI is actually scored by your secretary?

**A.** It’s an easy matter of scoring using templates.

**Q.** Okay. Based upon all of that you’re able to draw a conclusion that this incident

most likely just didn’t happen.

**A.** Based again on interviewing, observation, the testing, the polygraph and the

plethysmograph, all five of the above, it was my opinion that it’s unlikely that this man

molested his child. It’s an opinion.

**Q.** Based upon a profile.

**A.** Based upon the fact that he performed well on some of these tests, and when I get

a chance I’ll tell you what he did well on.

**Q.** Thank You.