SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 SEA STATE'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE PLEADINGS

INTRODUCTION

Respondent moves for summary judgment on a constitutional challenge to a statutory definition. In addition, nearly one year after the Respondent's initial complaints about the discovery process in this case, the Respondent, having not followed the applicable court rule, and within a month of the trial date, moves this court to strike pleadings as a sanction for a perceived failure to respond to discovery by the State. Neither motion has merit. Under Washington State law and court rules Respondent fails to demonstrate beyond a reasonable doubt that the statutory definition he challenges is unconstitutional. In addition, the State has complied with discovery requests, the Respondent has not sought the court's intervention for nearly a year, and, prior to bringing this motion, he failed to comply with CR 26 (i). For these

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reasons, the State asks this court to deny the defense motions.

ARGUMENT

The Respondent asks this court for summary judgment on a vagueness challenge to the definition of "recent overt act." RCW 71.09.020 (10). But summary judgment (CR 56) is not the appropriate vehicle for a constitutional challenge to a statutory definition. The State is unable to locate any case law that says constitutional issues are or should be decided on summary judgment, and Respondent cites none. Therefore, the State's response assumes the Respondent has brought a proper motion to dismiss based on a constitutional challenge to RCW 71.09.020 (10), which requires the defense to prove the statute is unconstitutional beyond a reasonable doubt. Because the constitutionality of the recent overt act statute is settled, the Respondent fails to meet his burden of proof; this court must deny the motion to dismiss.

A. THE MOTION FOR SUMMARY JUDGMENT MUST BE DENIED

A statute is presumed constitutional unless shown to be unconstitutional beyond a reasonable doubt. State v. Ayer, 109 Wash.2d 303, 306-07, 745 P.2d 479 (1987). In his challenge to the constitutionality of the statutory definition of "recent overt act," RCW 71.09.020(10), the Respondent cannot meet his burden of proof. In fact, the issue is a matter of settled law.

1. The Statutory Definition of "recent overt act" is not Unconstitutionally Vague.

The Respondent alleges RCW 71.09.020(10) is unconstitutionally vague both on its face and as applied in this case. But he appears to merge separate and distinct legal concepts into a legally unrecognized "facially overbroad" challenge.

(a) Overbreadth Challenge

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Washington Courts recognize an overbreadth challenge that is limited to government actions that impinge on First Amendment rights. For example, in City of Bremerton v Widell, 146 Wn.2d 561, 578, 51, P.3d 733 (2002), the appellant challenged a city ordinance as both overbroad and void for vagueness, and the court analyzed the challenges separately. Because the ordinance did not implicate speech, the court first disposed of the overbreadth challenge summarily, stating: "No First Amendment considerations exist under the facts of this case." Widell at 578.

Similarly, this case does not implicate speech. To the extent that the Respondent may be asserting a distinct overbreadth challenge to the recent overt act provision of the statute, this court should follow the Widell court and reject the challenge since "no First Amendment considerations exist under the facts of this case." Although under RCW 71.09.020(10) either an act or a threat may constitute a recent overt act, here the State is not alleging Lawless verbally threatened anyone. Rather, the State alleges that Mr. Lawless's *act* of having sex with a 14 year old girl, and his *acts* of assaulting women in the emergency room at Swedish Hospital satisfy the requirement. Since the State does not allege Lawless committed a recent overt act by making or uttering a threat, the Respondent has no First Amendment argument.

Respondent's overbreadth challenge fails; he cannot meet his burden of proving the statute is unconstitutional beyond a reasonable doubt. Aver, supra, at 306-307.

(b) Vagueness Challenge

The due process vagueness doctrine seeks to ensure that the public has adequate notice of what conduct is proscribed and to ensure that the public is protected from arbitrary ad hoc enforcement. Albrecht at 253, *citing* State v. Riles, 135 Wash.2d 326, 348, 957 P.2d 655 (1998). The vagueness doctrine is violated if the provision (1) fails to define the criminal offense so that

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ordinary people can understand what conduct is proscribed, and (2) fails to provide ascertainable standards of guilt to prevent arbitrary enforcement. Albrecht at 253-54, citing City of Spokane v. Douglass, 115 Wash.2d 171, 178, 795 P.2d 693 (1990).

Respondent's complaint that the recent overt act requirement is unconstitutionally vague has been rejected by Washington courts. In re Albrecht, 129 Wash.App. 243, 118 P.3d 909 (2005), analyzed the same statutory definition of recent overt act and held it was not unconstitutionally vague. In his brief, the Respondent somewhat misleadingly States that the Albrecht decision was not based upon a facial challenge; but a vagueness challenge not involving First Amendment rights is "to be evaluated under the particular facts of each case." State v. Lee, 135 Wn.2d 369, 393, 957 P.2d 741 (1998).

Albrecht, an SVP case, puts Lawless's argument to rest in the State's favor. Albrecht had a history of luring and molesting children; the State alleged he committed a recent overt act by offering a little boy 50 cents. Albrecht argued the term "recent overt act" was void for vagueness. The court rejected Albrecht's argument, stating, "[t]he term 'recent overt act' is defined with great specificity. The recent overt act requirement provides adequate standards and does not proscribe conduct in inherently subjective terms." Albrecht at 256.[1] The court also noted, "some degree of vagueness is inherent because language must be used to proscribe the conduct." State v. Riles, 135 Wn.2d 326, 348, 957 P.2d 655 (1998). Albrecht at 254. Moreover, the court, citing Riles at 348, Stated,

> 'Thus a vagueness challenge cannot succeed merely because a person cannot predict with certainty the exact point at which conduct would be prohibited. The party challenging the prohibition carries the burden of overcoming the presumption that the limitation is constitutional.'

[1] The First Amendment was not implicated and the court performed no overbreadth analysis.

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In another case, the court explained the issue this way:

> Mere uncertainty regarding the application of the statute to purportedly prohibited conduct does not establish vagueness State v. Watson, 160 Wash.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 Personal Restraint of Dyer, 189 P.3d 759 Wash., 2008.

Lawless's argument that the statute is vague "as applied" is based entirely on his apparent dissatisfaction with one of the State's discovery responses, which he somehow twists into a constitutional problem of statutory interpretation. Brief of Resp. at 9-10. Respondent clearly acknowledges that these motions were generated by discovery issues, not a constitutional challenge. When commenting on the State's answers to his discovery motions, he states: "The Petitioner's response, ultimately, was very disappointing." Declaration of counsel in support of motion to strike pleading at 5.

On January 22, 2008, the State received request for admissions from defense which included defense counsel's list of activities by the Respondent that counsel thought could be argued as recent overt acts. Respondent's exhibit 2, Declaration in Support of Summary Judgment. The interrogatory demanded that the State commit, while discovery was ongoing, to which acts it would argue at trial qualified as recent overt acts. Exhibit A. The State objected, explaining it was too early in the discovery process to make such a declaration. Exhibit B. The State did not want to make a definitive statement about its trial strategy only to decide on a different one in the future and have the Respondent cry foul. Nor could the State see why it should be discussing its work product with the Respondent. Ex.C , State's Declaration in Opposition to Motion for Summary Judgment and to Strike Pleadings. Now he asserts, on the

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basis of the State's answer, that because "even the Petitioner itself cannot determine what may or may not be its own allegations of recent overt act", *the court should consider the State's response to the interrogatory evidence that the ROA statute is unconstitutional.*

The absurdity of this statement is obvious. As the State pointed out in its 2007 Brief in Opposition to the Motion to Compel, the State did not want to give the defense a definitive statement about what it would argue as a recent overt act at that stage of the investigation only to change its strategy later and have the Respondent complain about that. The Respondent's assertion that the State couldn't figure out its discovery because the definition of ROA is vague is nonsense, and even if it had a shred of merit, disingenuous, because the respondent has been on notice of the possible recent overt acts since the petition was filed. The petition and summary clearly described Lawless's known concerning behaviors since he'd been released from prison, absconded, captured and released again, as did Dr. Lund's evaluations, the DOC documents and CHRONOS, and other documents in discovery. The State's refusal to commit to a specific trial strategy a year before trial hardly translates into a test of whether men of reasonable understanding have to guess at a statute's meaning.

The State fails to see how a discovery dispute between the parties creates an "ambiguity" relevant to a due process void for vagueness statutory challenge. The ambiguity has to be in the statute, not in the State or the defense's interpretation of the discovery.

2. Respondent's Sexual Intercourse With Florida Teen is Sufficiently Recent.

The Respondent also erroneously contends the Florida recent overt act is stale. According to his recitation of the facts, the Respondent was primarily in the community for 20 months after release from prison, and he wants this court to prohibit the State offering the Florida evidence as a recent overt act. A closer look at the Respondent's

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sanitized version of his behavior in the community demonstrates that his sexual contact in Florida in 2003-4 was part of a continuous pattern of acting out and offense cycle leading up to the Swedish Hospital assaults. Ex. E. Respondent's summary of his own offense cycle.

The Respondent was released from prison on 1/16/03. He was jailed from 6/20/03- 7/7/03. He fled Washington State 10/8/03 and was arrested in Florida 4/13/04. He was returned to Washington and incarcerated until 10/18/04. He was incarcerated again from 1/11/05 – 1/26/05, and again from 2/3/05 – 2/21/05. He was then terminated from sex offender treatment. Lawless went back to jail 3/20/05 – 3/29/05. He went back to jail again 5/17/05 – 8/4/05, and again from 9/15/05 – 9/6/06. At best Lawless was intermittently in the community a total of nine months in Seattle, when he was not on escape status (during which time he reoffended).

Moreover, Respondent's intermittent nine months in the community were fraught with violations that led to his multiple incarcerations - during that time he was violated for using drugs, drug possession, termination from sex offender treatment, failure to register as a sex offender, possession of weapons, having a secret, unapproved relationship with a 21 year old woman, and lying, to name a few. Clearly he was almost never in compliance with supervision, and can hardly be said to have been living successfully in the community without symptoms of his mental and sexual disorders when he presented a constant concern to the CCOs that he was in his offense cycle, an offense cycle the Respondent himself described in later treatment.[2]

[2] Ms. Miller will also testify that Lawless, *inter alia*, failed to tell her he was on escape status from Washington, a convicted sex offender, had contact with children, sold and used drugs.

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Application of the relevant case law to these facts demonstrates that Respondent's offending in Florida qualifies as a recent overt act. In re Robinson, 135 Wn.App. 772, 146 P.3rd 451 (2006). Robinson was released from prison in August 2001. His supervision was revoked in November 2001; he was released on supervision in January of 2002, and revoked again in November 2002, released July 2003, and rearrested four days later. The State filed its SVP petition at that time.

The State presented evidence of recent overt acts Robinson committed in the community between January – November 2002. On appeal, Robinson argued the State should have been limited to proving Robinson committed a recent overt act during his final four days in the community. The court disagreed, stating

> We conclude the State is correct because the language of the statute does not limit recentness to an offender's last release from confinement, and a previous case has interpreted 'recent overt act' to allow the court to consider the time span in the context of all the surrounding circumstances. Additionally, adopting Robinson's interpretation would allow absurd results, and the cases Robinson relies on do not limit recentness to an offender's last release from confinement. . . . under Pugh, [68 Wn.App. 687, 845 P.2d 1034 (1993] we must determine recentness by considering all the surrounding relevant circumstances. .
>
> Robinson's interpretation of 'recent' would allow for absurd results. Under Robinson's interpretation of 'recent overt act,' each time the State releases an individual from confinement, it loses ability to commit that individual based on events that occurred during previous time spent in the community. For example, a convicted sex offender could be released into the community and commit an overt act that goes unreported temporarily. The offender could quickly have his community supervision revoked for failing to report (or some other technical violation) and be returned to confinement. If the State subsequently releases the individual and later learns of the overt act, it cannot have him committed as a sexually violent predator based on that overt act. The State will have to wait for the individual to commit a new overt act. Due process does not require that the absurd be done before a compelling State interest can be vindicated. Young, 122 Wash. 2nd at 41-42, 857 P. 2nd 989.

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Robinson, at 454 – 456; In re Henrickson, 140 Wn.2nd 686, 2 P.3rd 473 (2000).

Robinson is directly on point. Review of the record demonstrates that Lawless, from the time he was released from prison to his final arrest by the CCO engaged in behavior markedly similar to the offense chain he later described as leading up to his sexual offenses in 1992. Ex. E. The Respondent offers no meaningful distinction between the facts of his case and Robinson and the court need not search for one. On that basis the court should follow the sound reasoning of Robinson and find the Respondent's trip to Florida and his activities there are recent enough to be presented to the jury as a recent overt act.

An incident alleged to be a recent overt act is to be evaluated from the perspective of "an objective person who knows of the history and mental condition of the person engaging in the act." RCW 71.09.020(10). At trial, the State will present evidence of expert psychologist Dr. Charles Lund who will educate the jury as to how the Respondent's history and mental condition are significant to his risk of sexual reoffense, and why these particular acts create a reasonable apprehension of harm of a sexually violent nature. Thus, for the purpose of deciding this motion, the Court should accept Dr. Lund's certified report as providing that perspective for analyzing whether the alleged recent overt acts should be presented to the jury. Ex.H.

3. There is Sufficient Evidence of the Florida Sexual Misconduct to Allow the Matter to be Determined by the Jury.

The Respondent moves this court to grant summary judgment on the basis of insufficient evidence of the Florida allegation. He claims the evidence is insufficient because he contests it. This is not a basis for summary judgment, wherein the material facts are agreed upon. Despite Respondent's emphatics statement to the contrary, the State has evidence, not a mere allegation as Lawless contends, that Lawless had sexual

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contact with a 14-year-old girl. The evidence that Respondent had sex with a 14 year old girl in Florida is sufficient to raise an issue of material fact, and his motion for summary judgment due to insufficient evidence fails.

The State alleges two separate incidents satisfy the legal criteria of a recent overt act: (1) The Respondent was charged in Seattle Municipal Court of Assault in the 4th Degree for assaulting three women, including grabbing the buttocks of the one who was pregnant, in Swedish Hospital emergency room on September 15, 2005, and (2) after absconding from Washington DOC supervision the Respondent (at age 33) had sexual intercourse with a 14 year old girl in Florida on or about March or April 2004. While Respondent concedes the Swedish Hospital incidents are arguably recent overt acts, he claims that any of Respondent's disturbing implied or overt sexual behavior prior to that is not recent enough to constitute recent overt acts.

Respondent claims there is no admissible evidence to prove he had sex with a 14 year old girl while in Florida on warrant status for absconding DOC supervision. The State will not limit its presentation of recent overt act testimony to the Swedish Hospital incidents alone. Because under Washington law, the Respondent's sexual behavior with a 14-year-old girl in Florida in 2003-2004 is recent enough to constitute a recent overt act, and the State will produce sufficient evidence of the incident Respondent's arguments have no merit.

The State's evidence will show the Respondent admitted having sex with a 14 year old girl while on abscond status in 2003-2004 to Stuart Frothingham, his Community Corrections Officer. Respondent's Ex. 6. In his Response to the State's Interrogatories, the Respondent admits having had sex with a person named Brittnie in Florida, but claims she was 21 years old. Ex. D. After much searching, the State found and has interviewed by telephone, and on tape, three Florida witnesses (Heather Johnson, Jonna Miller, and Scott Skeel) who have indicated

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Brittnie DePatie was a 14 year old girl who, along with Ms. Johnson, was picked up by the Respondent and Mr. Skeel. Ms. Miller will testify she told the Respondent the girls were underage. Mr. Skeel, who declined to cooperate as a witness until last week, will testify the Respondent initiated contact with the girls, he thought the girls were under 18, which was confirmed, and that he saw the Respondent and Brittnie nude, having sex on a couch in the house where Respondent lived with Ms. Miller.[3] [4] The Respondent contests this evidence.

It is important to note that any incident alleged to be a recent overt act is to be evaluated from the perspective of "an objective person who knows of the history and mental condition of the person engaging in the act." RCW 71.09.020(10). Viewing the evidence in the light most favorable to the State, there is sufficient evidence to proceed on the Florida allegation, there is a dispute regarding material facts, and summary judgment is inappropriate. The Respondent's argument fails.

The State will offer sufficient evidence to prove both of these incidents beyond a reasonable doubt through several witnesses, including eyewitnesses. The State will propose that the Court give the jury a modified Petrich instruction requiring jury unanimity as to which of the two incidents (or both of the incidents) satisfies the criteria for a recent overt act. Review of the State's evidence demonstrates the parties have a factual dispute that is not appropriate for summary judgment.

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[3] Respondent's counsel have deposed Ms. Miller and Mr. Frothingham, and they have been given all the witness statements. Defense met Ms. Miller and Mr. Skeel during an unannounced visit to their mother's home in Florida. Ms. DePatie has been located by telephone and apparently indicated verbally she does not remember Terry Lawless or recognize a 2005 photograph of him

[4] Skeel was interviewed by telephone after the Respondent filed these motions. The State is arranging preservation depositions for Skeel and Ms. Miller. Ms. Johnson's whereabouts are unknown at this time.

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4. The Respondent Concedes That the 2005 Assaults at Swedish Hospital Should be Presented to the Jury.

As an alternative to complete summary judgment, the Respondent asks this court to limit the State to presenting the Respondent's assaults on female strangers while he was waiting to be seen at the Swedish Hospital emergency department as the only recent overt acts. Respondent concedes that the Swedish Hospital incident satisfies the legal criteria for a recent overt act and should be allowed to go to the jury: "Petitioner must be limited to the Swedish Medical Center incident as the sole potential "recent overt act," as it is the impetus for this petition, and as it alone meets the "recentness" requirement." Brief of Resp. at 14. Also: "Mr. Lawless expects to show at trial that what occurred at the Swedish Medical Center is not a result of any sexually motivated behavior, but rather a result of meth intoxication. However, for the purpose of this motion, Mr. Lawless is not arguing that as a matter of law, this incident cannot be presented to the jury as the Petitioner's allegation of a 'recent overt act.'" Brief of Resp. at 17, footnote 2. Thus, although the Respondent has asked for complete summary judgment, since he has conceded the sufficiency of the evidence relating to the Swedish Hospital incident there is no basis for his requested relief.

B. RESPONDENT'S MOTION TO STRIKE PLEADINGS MUST BE DENIED.

The Respondent moves this court to strike the recent overt act allegation from the petition for civil commitment filed pursuant to RCW 71.09. In the alternative the Respondent requests that the Court strike any allegation of a recent overt act based on an assertion that the Respondent had sex with a 14-yera-old in Florida; or, also in the alternative, that the Court exclude any mention of transcripts of telephone conversations

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with Jonna Simmons and Heather Johnson. The respondent's motion to strike the pleading, an extraordinary remedy, should be denied.

As the basis for this motion, the respondent complains, a year later, that the State refused to appear at its own deposition. In addition, he attempts to reopen litigation over the discovery responses that were resolved, and raises an issue he could have pursued many months ago, that the State failed to properly respond to his request for admission (See paragraphs 5 through 16 of Mr. Chang's declaration in support of motion to strike pleading.) Before the Respondent propounded the request for admission the parties litigated a discovery dispute before Judge Dubuque arising from an earlier interrogatory relating to evidence of recent overt acts alleged by the State. After a hearing, the State complied with a court order and identified documents in discovery that responded to the interrogatory. The court did not require anything more, and a careful reading of the transcript of the hearing makes clear that counsel for Respondent asked for nothing more than to be directed to specific pages within the previously provided discovery. Ex. F.

After receiving the State's interrogatory response, the Respondent propounded the request for admission that, essentially, asked the State to admit its previous response to the interrogatory "contains the entirety of the potential allegations of recent overt act or acts." But the request for admission was propounded in January 2008, and the discovery period in this case continued to August 25, 2008. Because substantial discovery remained in the case, the State viewed the request for admission as a premature attempt by the Respondent to put a fence around the evidence that the State could use to prove a recent overt act at trial.[5] The State objected to the request.

[5] The interrogatory was a thinly veiled attempt to compel the State to answer the question of the Respondent's

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The Respondent's motion to strike pleading has no merit. Under Washington law, his procedural errors require his motion be dismissed. Even if he had followed the court rules, the respondent's complaints about the discovery process have no merit.

First, the Respondent failed to comply with CR 26 (i), which States "the court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred **with respect to the motion**. . ." (emphasis added). While counsel for both sides have met several times and exchanged multiple calls and emails regarding issues in the case, including recent overt acts and witnesses' contact information, and timing of depositions, there was no discovery conference relating to the State's response as required by CR 26(i). If the Respondent considered these meetings over coffee the conferences for CR 26 (i), no one said so. In addition, Mr. Chang's declaration in support of the motion to strike pleadings does not include the required certification that the conference requirements of CR 26(i) have been met. On this basis alone the Respondent's motion should be denied.

In addition, the Respondent failed to bring a motion to compel a response to the interrogatory, as allowed by the civil discovery rules. CR 37 (a)(2). If the Respondent believed he was legally entitled to some additional information or a clarified response, he should have filed that motion months ago. .Since the State filed its response to the request for admission, the attorneys for the State have not heard a single word of complaint from the Respondent regarding the answer to the request for admission. Nor did he bring a motion to strike the response to the interrogatory for untimeliness, which he complains about now. Respondent's failure to comply with the civil rules requires the motion be dismissed.

previous motion to compel, which Judge Dubuque ruled the State did not have to do. Perhaps that is why the Respondent did not bring another motion to compel.

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This meritless motion is the continuation, after a seven - plus month hiatus, of a discovery issue that started a year ago and the State thought was put to rest. First, David Hackett and opposing counsel resolved the Respondent's attempt to depose Jennifer Ritchie. Ex. G. In addition, the Respondent has known for quite some time that the State is alleging the two incidents discussed above as recent overt acts. The unknown was whether the State would find the witnesses necessary to present evidence of the Florida incident. Moreover, the State has produced contact information for the witnesses or facilitated contact with them. The State provided over 5000 pages of documents, sorted into categories, on CD-Rom. Even if the court considers an occasional delay in production of discovery a violation of the court rules, Respondent's request for such an extraordinary and unwarranted remedy is overkill and should be denied.

The Respondent also asks this court to refuse to allow the State to introduce evidence of Jonna Miller and Heather Johnson's recorded statements. Assumedly this refers to Dr. Lund's testimony regarding what he reviewed for this case and relied on for his opinion. Given that the Respondent has interviewed Ms. Miller by telephone, deposed her and met her in person, the State cannot fathom any reason Dr. Lund's testimony about the statement, if raised, would be inadmissible. As to Heather Johnson's Statement, the case law is clear that an expert can discuss whatever he or she relies on or ignores in forming an opinion. Dr. Lund can be cross-examined on the reliability of Ms. Johnson's Statement and how much weight, if any, he assigned to it.

CONCLUSION

For all the foregoing reasons, the State asks this court to deny Respondent's motions for summary judgment and to strike pleadings.

RESPECTFULLY SUBMITTED,

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This 8th day of September 2008.

DANIEL T. SATTERBERG
KING COUNTY PROSECUTING ATTORNEY

By: Robin E. Fox
Robin E. Fox, WSBA #18904

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Senior Deputy Prosecuting Attorneys
Attorneys for Plaintiff, State of Washington

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EXHIBIT A

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 SEA **RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSION**

TO: **State of Washington, Petitioner**

AND TO: **Robin Fox, Counsel for Petitioner**

Pursuant to Civil Rules 26 and 36, Respondent requests that you admit, deny or specifically object to the authenticity or truth of the following requests. The answer shall specifically identify the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substances of the requested admission, and when good faith requires a party to quality its answer or deny only a part of the matter of which an admission is requested, it shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or readily obtainable by its insufficient to enable it to admit or deny.

THE DEFENDER ASSOCIATION
810 THIRD AVENUE, SUITE 800
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TEL: 206-447-3900
FAX: 206-447-3956

Return the verified original of the completed Requests for Admission to Kenneth M. Chang, Counsel for Respondent, the Defender Association, 810 Third Ave. Suite 800, Seattle, WA, within 30 days after service of these requests.

REQUEST FOR ADMISSION NO. 1:

Please admit or deny that the **Attachment A** to this Request contains the entirety of the potential allegations of recent overt act or acts referenced by the State's Answer to Interrogatory No. 1 (a) of Respondent's Amended Second Set of Interrogatories and Requests for production, as listed by the attached State's Answer to Respondent's Amended Second Request for Production and Interrogatories, attached hereto as **Attachment B**.

RESPONSE:

REQUEST FOR ADMISSION NO. 2:

Please admit or deny that the **Attachment A** to this Request contains all the potential allegations of the recent overt act or acts that Petitioner alleged in this case.

RESPONSE:

DATED this 22nd day of January, 2008.

THE DEFENDER ASSOCIATION

Kenneth M. Chang, WSBA No. 26737
Attorney for Respondent

THE DEFENDER ASSOCIATION
810 THIRD AVENUE, SUITE 800
SEATTLE, WASHINGTON 98104
TEL: 206-447-3900
FAX: 206-447-3956

The undersigned states and affirms under oath that he/she is an authorized agent of Petitioner for the purpose of answering this Requests for Admission, and has read the Requests for Admission and the Responses thereto; and believes such responses to be true, complete and accurate to the best of my knowledge.

_____
Signature

_____
Name and Title

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

SUBSCRIBED AND SWORN to before me this ___day of _____, 2008

_____
(Printed Name)
NOTARY PUBLIC in and for the
State of Washington, residing
at
My commission expires

ATTORNEY'S CR 26(g) CERTIFICATION

The undersigned attorney certifies pursuant to Civil Rule 26(g) that he or she has read each response and objection to these requests for admission and that to the best of his or her knowledge, information, and belief formed after a reasonable inquiry, each is (1) consistent with the Civil Rules and warranted by existing law, (2) not interposed any improper litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of importance of the issues at stake in the litigation.

DATED this ___day of _____, 2008,

_____
Robin Fox, WSBA No. 18904
Counsel for Petitioner.

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CERTIFICATE OF SERVICE

I, Kenneth M. Chang, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for Respondent herein and that on 1/22/08 I caused to be served on the person listed below in the manner shown.

RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSION

Robin Fox
Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office
Sexually Violent Predator Unit
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Tel: 206-296-0430
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☐	United States Mail, First Class	
☒	By Legal Messenger	1/22/08
☐	By Facsimile	
☒	By Email Attachment	1/22/08

Dated this 22nd day of January, 2008

Kenneth M. Chang

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ATTACHMENT A

Attachment A to Respondent's First Request for Admision
Recent overt acts alleged by Petitioner

(This is a list of what Respondent believes are the entirety of the specifics of the Recent Overt Act allegations as answered by Petitioner in its answer to Terry's Interrogatory. This should not be construed as Terry's endorsement that *all* the following alleged instances in fact occurred).

A. Absconding to Florida on October, 2003 as shown by following records identified by the bates number: 1846, 1264.

B. His Failure to Register as sex offender as shown by the following convictions:

1. Case No. 04-09090-0 SEA from 11/2/03 to 12/10/03 and/or during the time Terry spend in Florida.
   Bates numbers: 1385, 455, 423, 1718, 1268, 1861.

2. Case No. 05-1-08356-1 SEA from 2/24/05 to 3/10/05
   Bates numbers: 398, 371, 96.

C. Assault 4 Conviction in Seattle Municipal Court Case on 9/15/05 and its underlying facts as shown by SPD incident report 05-395719.

D. Various Probation Violations Allegations as shown by below: (Bates numbers in parenthesis).

1. 6/19/03 failed to abide by curfew. (1717) (1255)

2. 6/19/03 had a Sexual Relationship with Jackie Tharp (who is allegedly known to be a crack addict) without CCO's permission. There is also an alleged incidents of domestic violence as shown by scratches on Terry's neck. (1255)(908)

3. 9/16/03 Lied to CCO about his employment situation. He has been working for a construction company not affiliated with Labor Ready. (1263)

4. 9/19/03 Failed to attend MRT without an excused absence. (1717) (1893)

5. 9/30/03 withheld information that he was ready to abscond and called Kathy Lopez about his plan to leave to Florida. (1264)

6. 10/7/03 Failed to report to probation. (1268) (1718)

7. 10/27/03 Failed to Report to Seattle Day Reporting Center on (816) (1861)

8. 10/8/03 Escaped from Community Custody (816) (1268) (1861)(1718) (this is duplicative of his absconding to Florida)

9. 11/1/03 Left the State of WA w/out permission (1268)

10. 10/8/03 Failed to participate in sexual deviancy treatment as a result of leaving to Florida. (816) (1268) (1718) (1861)

11. 10/8/03 Failed to work at an approved place of employment as a result of leaving to Florida. (1718)

12. 10/8/03 - 4/7/04 Failed to remain in the county of residence in King County as a result of leaving to Florida. (1718) (1268) (1861) (816)

13. 11/1/03 - 4/7/04 Failed to obtain a written approval from the supervising CCO before leaving the state of WA in order to go to Florida.(1718) (816) (1861)

14. 10/8/03 - 4/7/04 Failed to attend and successfully complete MRT while staying in Florida. (1718) (1268) (1861)

15. 10/8/03 - 4/7/04 Failed to obtain a mental health evaluation as a result of leaving to Florida. (1718) (1268) (1861)

16. 10/8/03 - 4/7/04 Had a contact or contacts with a minor between the dates of, in Volusia County, FL. (1861)(816) (1268) (1718)

17 10/8/03 - 4/7/04 Consumed alcohol during this period. (1718) (1268) (1861) (816)

18. 10/8/03 - 4/7/04 Consumed THC between the date of (1718) (1861) (816) (1268)

19. 10/2003 – 4/2004 Admits to sexual contact with 2 adult females while in Florida. (37)

20. 10/2003 – 04/2004 While in Florida (per DOC notification paper in 2006); moved in with an adult female and 18 months old daughter, and allegedly they all slept in the same room. (1266) (1267)

21. 5/13/04 Allegedly Terry cheated on the adult female that he was living with, and the person that he cheated with was believed to be under he age of 16 or 18. (1268)

22. 5/19/04 Allegedly Terry had sex with a known 14 year old female by the name of Brittany. (1269)

23. 8/25/04 – 9/12/04 failed to reside at a DOC approved residence (1718)

24. 8/25/04 - 9/12/04 failed to participate in sexual deviancy treatment since (1718)

25. 8/25/04 – 9/12/04 failed to obtain a mental health evaluation (1718)

26. 8/26/04 Failed to report after getting out of custody. (1271) (1718)

27. 8/25/04 – 9/12/04 failed to work. (1718)

28. 8/25/04 – 9/12/04 fail to attend MRT (1718)

29. 11/16/04 Failed to complete program as instructed by leaving work crew without permission (1279) (1718) (1816)

30. 11/26/04 having intimate relationship with Sarah Perry (DOB 12/12/83). admitted on 12/10/04 (1282) (1718) (1811)

31. 11/26/04 Consumed alcohol, a violation of SOTP conditions. (1811) (1282) (1718) (1046)

32. 11/30/04 admitted to ingesting cocaine (1718) (1282) (1046) (1811) (1815)

33. 2/2/04 Positive U.A. for Cocaine (1281) (1282)

34. 12/6/04? admitted to failing to attend the scheduled chemical dependency appointment (1718)

35. 12-6-04 Failed to attend scheduled CD appointment on at 10:30 AM. (1806)

36. 12/16/04 Possession of two knives (1284)

37. 1/10/05 admitted ingesting meth, admits that he has problems with drugs. (1718) (1794) (1290) (1046) (1288)

38. 1/10/05 Had unexcused absence from group SOTP (1718) (1794)

39. 1/11/05 Possessed directions written on paper to make meth. (1288)

40. 1/11/05 Had drug paraphernalia for making meth. (1288)

41 1/26/05 Failed to abide by the terms of previous Negotiated Sanction dated 1/26/05 by failing to maintain full compliance with programming requirements of SOTP following release from confinement (1773)

42. 1/31/05 failed to abide by SOTP programming requirements by failing to take mental health medication since (2/17/05: 1719)

43. 1/31/05 consumed controlled substances methamphetamines (1719) (1773) (1294) (1773) (1790)

44. 1/31/05 Failed to take medications as prescribed. (1773) (1294)

45. 2/1/05 Admitted consuming alcohol. (1292) (1294) (1773) (1719)

46. 2/3/05 Allegedly possessing porn, a comic of a man' and a woman having sex, Underworld business card, and an article entitle "Great Lovers are made not born " on or about, "Sex articles" sexual comic strip, and card for adult erotic store) located in backpack (1773) (1719) (1294)(1292)

47. 2/3/05 Allegedly possessing drug paraphernalia, brillo (Cooper wire and ear peice for glasses) eyeglass earpiece (push rod). (1773) (1292) (1294) (1719)

48. 9/9/05 Failed to report back after being released. (1299) (1719)

49. 9/12/05 Failed to receive approval for residence from the Supervising CCO; Jeffrey Brown (1719)

50. 9/12/05 – 9/22/05 Failed to enter into sexual deviancy treatment. (1719)

51. 9/12/05 – 9/22/05 Failed to make self available for drug testing (1719)

ATTACHMENT B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 SEA STATE'S ANSWERS TO RESPONDENT'S AMENDED SECOND REQUEST FOR PRODUCTION AND INTERROGATORIES

The State of Washington, through the Office of the King County Prosecuting Attorney, provides the following responses to Respondent's Amended Second Requests for Production and Interrogatories.

Interrogatory and Request for Production No. 1.

a. Requested information contained in Bates pages: 1846, 1664, 1385, 1243-1301, 455-458, 34-42, 1046-1047, 398-400, 388, 866-1044, 814-861, 679-777, 366-476, 29-133, 2150-2152, 2119-2149, 2112-2114, 2082-2111, 1698-1709, 1711-1712, 1717-1723, 1736-1749, 1752-1786, 1788, 1790, 1792-1800, 1805-1806, 1810-1811, 1813-1816, 1820-1822, 1825, 1827-1828, 1830-1833, 1835-1838, 1840-1842, 1847-1853, 1856-1891, 1893-1894, 1898-1899, 1901, 1905, 1921-1922, 1927-1939, 1942-1945, 1948-1962

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b. Requested information contained in Bates pages: 1846, 1664, 1385, 1243-1301, 455-458, 34-42, 1046-1047, 398-400, 388, 866-1044, 814-861, 679-777, 366-476, 29-133, 2150-2152, 2119-2149, 2112-2114, 2082-2111, 1698-1709, 1711-1712, 1717-1723, 1736-1749, 1752-1786, 1788, 1790, 1792-1800, 1805-1806, 1810-1811, 1813-1816, 1820-1822, 1825, 1827-1828, 1830-1833, 1835-1838, 1840-1842, 1847-1853, 1856-1891, 1893-1894, 1898-1899, 1901, 1905, 1921-1922, 1927-1939, 1942-1945, 1948-1962

e. Requested information contained in Bates pages: 1846, 1664, 1385, 1243-1301, 455-458, 34-42, 1046-1047, 398-400, 388, 866-1044, 814-861, 679-777, 366-476, 29-133, 2150-2152, 2119-2149, 2112-2114, 2082-2111, 1698-1709, 1711-1712, 1717-1723, 1736-1749, 1752-1786, 1788, 1790, 1792-1800, 1805-1806, 1810-1811, 1813-1816, 1820-1822, 1825, 1827-1828, 1830-1833, 1835-1838, 1840-1842, 1847-1853, 1856-1891, 1893-1894, 1898-1899, 1901, 1905, 1921-1922, 1927-1939, 1942-1945, 1948-1962

Victim contact information provided in separate manner by agreement of the parties.

f. Requested information contained in Bates pages: 1846, 1664, 1385, 1243-1301, 455-458, 34-42, 1046-1047, 398-400, 388, 866-1044, 814-861, 679-777, 366-476, 29-133, 2150-2152, 2119-2149, 2112-2114, 2082-2111, 1698-1709, 1711-1712, 1717-1723, 1736-1749, 1752-1786, 1788, 1790, 1792-1800, 1805-1806, 1810-1811, 1813-1816, 1820-1822, 1825, 1827-1828, 1830-1833, 1835-1838, 1840-1842, 1847-1853, 1856-1891, 1893-1894, 1898-1899, 1901, 1905, 1921-1922, 1927-1939, 1942-1945, 1948-1962

Victim contact information provided in separate manner by agreement of the parties.

g. Requested information contained in Bates pages: 1846, 1664, 1385, 1243-1301, 455-458, 34-42, 1046-1047, 398-400, 388, 866-1044, 814-861, 679-777, 366-476, 29-133, 2150-2152, 2119-2149, 2112-2114, 2082-2111, 1698-1709, 1711-1712, 1717-1723, 1736-1749, 1752-1786, 1788, 1790, 1792-1800, 1805-1806, 1810-1811, 1813-1816, 1820-1822, 1825, 1827-1828, 1830-1833, 1835-1838, 1840-1842, 1847-1853, 1856-1891, 1893-1894, 1898-1899, 1901, 1905, 1921-1922, 1927-1939, 1942-1945, 1948-1962

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CERTIFICATION:

The undersigned attorney for Petitioner, Jennifer Ritchie, has read the answers, responses and objections, if any, to Respondent's First Request for Production and Interrogatories and certifies that they are in compliance with CR 26 (g).

DATED this 9th day of October, 2007.

Respectfully submitted,

J. Ritchie

Jennifer G. Ritchie, WSBA #24046
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EXHIBIT B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LEE LAWLESS, Respondent.	No. 06-2-29166-2 SEA STATE'S DECLARATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE PLEADINGS

I , Robin Elizabeth Fox, declare under penalty of perjury pursuant to the laws of Washington State, that the following is true and correct to the best of my knowledge.

1. I was assigned to this case with Jennifer Ritchie some time in October – November 2006. The discovery issues the respondent brings to the court's attention were ongoing at the time.
2. As I understood the problem, the respondent wanted the state to choose and reveal exactly what it planned to argue as a recent overt act at trial the following year.
3. Discovery cutoff was not until August of 2008, and the investigation in the case has been ongoing. The state had virtually no details about the Florida allegation that Lawless had sex with a 14 year old in Florida other than his statement to Stuart Frothingham, CCO, that he did had done it.
4. The Department of Corrections had made a few telephone calls to the sheriff in Deland, FL, without results. To the best of my knowledge, DOC does not have the resources to further investigate out of state allegations against its supervisees.
5. The state declined to choose what it would argue at trial because the investigation was ongoing and we were missing information about Lawless's various activities in the community, particularly in Florida. Nor had the state interviewed civilian witnesses, none for whom we had current contact information.

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6. When the defense did not get a satisfactory answer to its discovery demand, he subpoenaed Jennifer Ritchie, state's trial counsel, to a deposition to discover her thinking about the case and what she considered a recent overt act; clearly work product. Respondent had no legal basis to subpoena assigned trial counsel. There is no precedent indicating the respondent can subpoena counsel for the petitioner to a deposition to inquire about trial strategy. Ms. Ritchie, after consultation with the SVP unit chair and others, declined to appear. The respondent knew the state would not appear and reached an agreement on the matter. Declaration of David Hackett and attached emails.
7. The respondent filed a motion to compel discovery of what the state intended to argue as a recent overt act. The state was ordered to parse out all the potential recent overt acts in the discovery for the respondent, and to direct counsel to the applicable pages of discovery. We did. The respondent filed a Request for Admissions in January 2008, asking again for the state to reveal its trial strategy.
8. It is important to note that the most obvious recent overt acts, the Swedish hospital assaults, were described at length in the state's 2006 petition, as were the Florida incident and the many DOC violations. I believe it was the Florida incident the defense was most anxious to know if the state would argue as a recent overt act, but, due to the holidays and work related intervening events, the state's investigation into that incident had barely begun.
9. Working from a discovery document (TLL1274 attached) (provided to defense in the first batch of discovery), attached, Chuck Pardee, the state's investigator, eventually located Jonna Miller's mother, Charla Simmons. Ms. Simmons agreed to pass on a message to her daughter if she spoke to her. She told Mr. Pardee she had not seen Jonna for a long time and did not know her whereabouts. She asked that she not be involved in the case 1) because she knew nothing about it and 2) she had ongoing problems unrelated to Jonna. Charla Simmons is not, nor has she been, endorsed as a witness by either side.
10. At some point, Ms. Simmons got a phone number for Heather Johnson and gave it to Mr. Pardee. He spoke to Heather and took a taped statement from her, which was transcribed and given to the defense along with a CD –Rom of the taped statement. Before giving the number to the defense I asked for time to call Heather and tell her I was producing it to the defense. I left messages at the number, and never received a call back. I gave the number to the defense. We do not have another phone number, or an address, for Heather Johnson and neither co-counsel nor I have ever spoken to her, nor do we know where she is. Having received no discovery from the defense related to Heather, I assume they have not found her either.
11. I learned from Charla Simmons via Mr. Pardee that Jonna Miller had been arrested in the Deland, FL area. Ms. Simmons again told Mr. Pardee she would pass the message on to Jonna if she saw her. I gave counsel this information. I did not know where she was incarcerated.
12. As I understand it, Ms. Miller went to a several month in-patient treatment program after her arrest. Neither Mr. Pardee nor I received calls from her.
13. Mr. Pardee finally reached Ms. Miller at her mother's home. He took a taped statement from her. She specifically asked that contact between her and the defense go through

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the King County Prosecutor's Office, which we arranged. She was interviewed by the defense on and deposed by telephone the day respondent filed these motions.

14. I asked Jonna for her brother Scott Skeel's contact information. She did not give it to me, but indicated he claimed not to remember anything about Lawless and a 14 year old. She indicated he wanted nothing to do with the case. I know of no mechanism by which I can force anyone in Florida to give me someone else's contact information. CR 37 (a) does not apply to a mere request for information.[1]
15. I did not give the defense Charla Simmons's or Jonna Miller's contact information at their request, but, as the KCPAO has done for many years in sexual assault, domestic violence and other sensitive cases where witnesses do not want their contact information produced, I facilitated the defense contact with Ms. Miller. During Ms. Miller's deposition, counsel related that she was looking at the Simmons's home on her computer. Perhaps Lawless provided the address, since he had been there.
16. Apparently within the last week to ten days, respondent's counsel and the TDA investigator appeared uninvited and unannounced at Charla Simmons's home in Deland, FL. There they spoke to Jonna Miller and Scott Skeel. The state has not received discovery from those interviews.
17. In the last week of August 2008, just before both state's counsel left on one week vacations, Mr. Pardee found a telephone number for Brittnie DePatie, the 14 year old. When he called her, her parents said she did not remember Terry Lawless. Brittnie stated she was friends with Heather Johnson in 2003-4, and could have had sex with Lawless. Her parents interrupted the call and hung up, indicating by email that if we wanted to contact Brittnie, to do it through the sheriff's department. I attempted to contact Brittnie again, but the line did not work. I gave the number to counsel, who called and spoke to Brittnie, who reportedly said that she did not remember Terry Lawless.
18. Counsels for both sides have met to discuss the case twice in person, and have exchanged numerous calls and emails regarding discovery and other issues. At both meetings the Swedish Hospital assaults and the Florida incident were discussed as recent overt acts. The question was whether the state would have the evidence to argue the Florida incident, not whether it would allege it. Respondent received notice of the Florida incident in the petition and supporting summary.
19. Sometimes there is a brief delay in production of discovery. For example, during this on-going investigation, I was preparing for four other upcoming trials, two of which were set in August and September respectively, and two of which were also set in October 2008. In April 2008, I was in trial for nearly a month, including Fridays. Co-counsel was also in trial for approximately a month. I went to Ohio for ten days to care for my parents, as did co-counsel visit his mother. Mr. Pardee was on FMLA for over a month and he is the investigator not just for the eight SVP unit attorneys but others. The paralegal staff does not send out every document the state receives in discovery without review and consulting the attorneys. The documents are then scanned, Bates stamped, and reproduced on a CD-Rom. Transcriptions of statements Mr. Pardee takes

[1] In her deposition, Jonna Miller declined to give Scott Skeel's contact information to defense counsel. The remedy for Ms. Miller's refusal to answer that question is CR 37(a). Counsel went to Florida, and to the best of the state's knowledge, did not move to compel the response in a local court.

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are not done on the SVP unit, and are not immediately available. Counsel complains about the rapidity with which they received information, but he can point to nothing to support his implication that the state was deliberately obstructing or that he is prejudiced.

20. Everyone involved in this case has worked diligently and worked within the rules. Clearly Terry Lawless knows more than the state does about the Florida incident and the witnesses involved, but we have not received any discovery from the defense to that effect.
21. The state has worked with the respondent's attorneys around counsel's unfortunate and unexpected family problem, and I am sure counsel is grateful for that.
22. I intend to continue to work cooperatively with opposing counsel and within the discovery rules, but I am shocked that this motion includes complaints about the deposition issue and the interrogatory, year old discovery issues the state believed were resolved, and which were not timely brought to Judge Dubuque's attention. At no time prior to filing this motion did counsel for the State for the purpose of a CR 26 (i) conference on these issues.
23. The state has provided timely discovery. It has withheld nothing from the defense. The defense may attach any suspicions it likes to the timing of production, but the fact remains, the state acted and acts in good faith. I was very surprised to see these motions after all this time, considering how well counsel and the state have worked together on this case.
24. In preparation for the response to Respondent's motions, I carefully reviewed the discovery related to the Respondent's post release time in the community. The Respondent was released from prison on 1/16/03. He was jailed from 6/20/03 – 7/7/03. He fled Washington State 10/8/03 and was arrested in Florida 4/13/04. He was returned to Washington and incarcerated until 10/18/04. He was incarcerated again from 1/11/05 – 1/26/05, and again from 2/3/05 – 2/21/05. He was then terminated from sex offender treatment. Lawless went back to jail 3/20/05 – 3/29/05. He went back to jail again 5/17/05 – 8/4/05, and again from 9/15/05 – 9/6/06. At best Lawless was intermittently in the community a total of nine months in Seattle, when he was not on escape status (during which time he reoffended).
25. Moreover, Respondent's intermittent nine months in the community were fraught with violations that led to his multiple incarcerations - during that time he was violated for using drugs, drug possession, termination from sex offender treatment, failure to register as a sex offender, possession of weapons, having a secret, unapproved relationship with a 21 year old woman, and lying, to name a few.

DATED this 7th day of September 2008.

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SPOKE WITH ROBERT STEELE , 386- 740- 9876, AND INFORMED P WAS ON ESCAPE STATUS. MR. STEELE IS THE SON OF SHARLA SIMMONS AND BROTHER TO JOHNNA SIMMONS. P WAS LIVING WITH MR. SIMMONS WHILE HE WAS ON ESCAPE STATUS IN FLORIDA. 'INFORMED HIM P MAY ATTEMPT TO ABSCOND BACK TO FLORIDA. MR. STEELE INFORMED ME HE WOULD PASS THE INFORMATION ON TO SHARLA, JOHNNA" AND OTHER FAMILY MEMBERS. 08/27/04 C SALATKA

08/2'7/04' TC 16 SPOKE WITH SHARLA SIMMONS, 386:- 84' 4887, ' AND INFORMED HER P WAS CONTACTED R.
SIMMONS AND INFORMED HIM P IS OUT OF CONFINEMENT. ALSO CONACTED SHARLA SIMMONS AND UPDATED HER ON STATUS. REQUESTED THEY CONTACT ME IMM SHOULD P ATTEMPT , TO CONTACT THEM AND/OR P SHOW UP THERE ' IN FL. SS STATED VAL COUNTY SHER CAME BY HER DAUGHTERS RES LOOKING FOR P. SUGGESTED SHE AND OTHERS INVOVLED LOOK INTO FILING ORDERS PROH CONTACT , CONTACT THE POLICE AND ME SHOULD P COME TO FLORIDA. 10/19/04 J BROWN / / HER PH# IS 352-589- 1657.

10/19/04 J BROWN

TLL001274

EXHIBIT C

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 SEA STATE'S RESPONSE TO MOTION TO COMPEL DISCOVERY

A. Introduction

On September 6, 2006, the state provided the defense with an Adobe formatted CD-ROM of the discovery in this case. In preparation for providing this discovery, the prosecutor's office legal staff spent a considerable amount of time organizing the discovery into specific categories, labeling them for ease of location, and removing duplicates. That organized information was downloaded into Adobe format with word and phrase search capacity and provided to the defense on compact disc (see attached declaration of Jennifer Nelson-Ritchie in Exhibit A). As new discovery comes in, the state timely provides updated and organized CD-Roms with cover letters to the defense.

On November 17, 2006, the state received the respondent's first Interrogatories and

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Requests for Production. They consisted of 16 individual questions, with a total of 65 subsections requiring separate answers, and 16 Requests for Production, demanding the state indicate the Bates page number for every document already provided in discovery. It was clear to the state that the discovery provided to the defense covered nearly every question and requested document. The state timely responded on February 2, 2007 to many of the interrogatories by referring the defense back to the extremely well-organized discovery. The state properly objected to interrogatories designed to elicit the attorneys' theory of the case, under the work product doctrine. The defense insistence that the state rewrite the discovery in accord with the interrogatories and requests for production, and identify documents by Bates number is unnecessary, cumulative, unduly burdensome, and outside the purpose of interrogatories, nor will it lead to the discovery of new evidence. Under Washington Rules of Discovery, the respondent's motion to compel should be denied.

B. Argument

CR 26 governs discovery in civil cases. The rule allows the parties to obtain discovery through interrogatories and requests for production, as well as other methods, including depositions. Under the rule, the court may limit discovery if it determines that "(A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome and less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive . . . " CR 26 (b)(1). Here Lawless is asking the state to parse the provided discovery line by line, and rewrite what he thinks is relevant information. Lawless asks this Court to compel the State to respond to 16 interrogatories with a total of 65 subparts, which is improper pursuant to *Zamora v. D'arrigo*

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Brothers Co. of Cal., 2006 U.S. Dist. Lexis 21208 (N.D. Cal. 2006), a case cited by the defense. While Washington courts have not placed a limit on the number of interrogatories a party may propound, it is clear in this case that the respondent is improperly using the interrogatory process in a burdensome manner. Lawless is not seeking information not yet provided in discovery, or asking questions designed to lead to more discovery, but asking instead for the state to point out line by line and page by page each bit of information provided in discovery.[1] Having to do so is unduly burdensome to the state, and a waste of time, particularly in light of the fact that Lawless knows more about his own offending than the state does, and the defense will no doubt also depose witnesses endorsed by the state. Rewriting the discovery is a useless, futile gesture, and what happens if we exclude something the defense thinks we should have noted? Will the defense then complain that the state's answers are incomplete or evasive?

The interrogatories are directed to Jennifer Ritchie. If the state is required to interpret the discovery line by line it would be forced to give up mental impressions; the civil rules are clear that attorneys' mental impressions are not discoverable:

> *Trial Preparation: Materials.* Subject to the provisions of subsection (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

CR 26(b) (4) (emphasis added).

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[1] The form of Lawless's 65 interrogatories is improper under CR 33 (a), which expressly indicates each question must be asked separately. Tegland, K. and Ende, D. Washington Practice, Handbook on Civil

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For example, Interrogatory No. 9 states, "Do you contend that the mental abnormality and/or personality disorder identified in the above Interrogatory No. 8 predisposes Respondent to commit criminal sexual acts? If so, state in particularity: a. each and every fact you contend supports the allegation that the above identified mental abnormality and/or personality disorder predisposes Respondent to commit criminal sexual acts; b. the nature of the sexual acts that you contend Respondent is predisposed to commit; c. the identity of all documents that you contend supports the allegation the above identified mental abnormality and/or personality disorder predisposes Respondent to commit criminal sexual acts. Asking the state's attorneys what they contend or allege is asking for mental impressions and theories, and is improper. CR 26 (b)(4). Here, the respondent's Interrogatories 4 – 11, directed to the prosecutors, ask what we allege or contend. Clearly, Lawless's interrogatories are designed to elicit a road map to the State's thinking about its case-in-chief, and the state's objections are proper.

In addition, the discovery in this case was picked apart and rewritten by two different people before the case was even filed. The primary witness in this case is a third-party expert witness (Charles Lund, Ph.D.) hired by the Joint Forensic Unit. Before the case was even referred to the King County Prosecuting Attorney's office, Dr. Lund evaluated Lawless and wrote a 30 page, single spaced report to support his opinion that Lawless meets criteria as an SVP. To file the case, the state relied on Dr. Lund's report outlining in detail the facts contained in discovery. (Appendix B). This report is organized by social, psychiatric/psychological, criminal, and medical history, as well as by clinical evaluation and psychological assessment, diagnosis, assessment of volitional control, and the interface of the mental disorder, lack of volitional control and likelihood of reoffense in a sexually violent manner by Lawless if not

Procedure, §48.5, vol. 15A (ed. 2007).

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confined to a secure facility. Each element at issue in this case, and the evidence supporting each element, is addressed clearly in Dr. Lund's' report. This report was provided to the defense when the case was filed over six months ago. In addition, the state also provided the defense with an 8-page single spaced petition and prosecutor's summary (attached as Exhibit C) which outlines Dr. Lund's report (as requested in interrogatories 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 15), the respondent's prior bad acts (as requested in interrogatory 14), the mental abnormality and personality disorder (as requested in interrogatories 5, 6 and 7) as well as the respondent's emotional and volitional capacity (as requested in interrogatory 8), his predisposition to commit acts of sexual violence (as requested in interrogatory 9) and prior treatment history. Interrogatory numbers 8 and 10 are basically requesting the same information provided in Dr. Lund's report and the state's summary. Interrogatories 9 and 11 are also basically the same request. Interrogatory 11(a) asks the expert and the state to predict with specificity the nature of the respondent's future predatory acts of sexual violence. It is likely even the respondent doesn't yet know the name, address and telephone number of his next victim nor what predatory act of sexual violence he will commit against this person.

The defense has the expert report requested in Interrogatory 15 (c), as well as the actuarial score sheets and Dr. Lund's CV, Interrogatory 15 (g). Why should the state rewrite Dr. Lund's letterhead from the report, Interrogatory 15 (a) (b), as well as all the information in it, Interrogatories 12 (a) (b) (c) (e) (f) (sic)(actuarial instruments) and 15 (d) (e) (f)? [2] Dr. Lund is not a CR 26 (b) (5) expert and the defense has equal access to him. The defense also will depose Dr. Lund and may call him at any time to ask questions, the obvious shorter route to information

[2] RE subsection i. of Interrogatory 15. The state does not have a list of cases in which Dr. Lund has testified by deposition or in court. Such lists are usually requested as part of a subpoena duces tecum along with the notice of deposition to the witness. Or the attorney may call him and ask for it.

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that is particular to Dr. Lund. The state should not be required, nor should Dr. Lund, to rewrite Dr. Lund's report.

The defense cites CR 33 (b) in support of its contention that the state is required to answer each interrogatory in full as requested. However, this reliance is misplaced: "CR 33 is intended to enable a party to ascertain the facts needed to prepare for trial, to narrow issues, and to reduce surprise." Tegland, K, Ende, D. Washington Practice, Washington Handbook on Civil Procedure, vol. 15 A § 48.1 (ed. 2007). The discovery as provided on the CD-Rom complies with these purposes. Moreover, "CR33 (c) allows a responding party the option of supplying 'business records' in lieu of a factual response to an interrogatory, often an attractive alternative in document intensive cases." *Id.* The documents supplied to the defense on the CD-Rom are primarily the business records of the police, DOC, the SCC, and treatment providers. Thus, under CR 33, the state has complied with the interrogatories to the best of its ability, and should not be required to restate the obvious in pleading form

An important inference may be drawn from the discovery rules, the case law and interpretation provided in Washington Practice Vol. 15A. The rules on discovery, and the purpose of interrogatories in particular, is to give information not readily available to the opposing party so it may conduct an investigation into further information, and to prevent counsel from dropping at opposing counsel's door, boxes full of thousands of pages of unexplained, unsorted, unfamiliar, and obscure documents, which may have unclear or no relevance to the case. This does not happen in Sexually Violent Predator cases in King County; the discovery comprises primarily police reports, DOC documents, treatment records and medical records, i.e. business records, which are summarized in a prosecutor's summary and

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explained in an expert report.[3]

Moreover, SVP discovery is familiar to opposing counsel in the specialized Sexual Offender Unit of The Defender Association, which is made up of a dozen or more experienced SVP attorneys, most of whom have past criminal defense experience, and at least one each SVP experienced paralegal and investigator. The respondent has the added benefit of an experienced Prosecutor's Office legal staff having sorted and categorized the discovery for all of us. Lawless is not entitled to a line by line interpretation of the discovery vis – a - vis the prosecutor's theory of the case, nor is the discovery process meant to be a pointless exercise of one party rewriting readily available information on pleading paper.

The court should please take note: The state is not refusing to answer the interrogatories propounded by Lawless. Our positions are 1) that we have already provided the answers to proper questions in discovery; and 2) that some of the questions are objectionable. The state has no information about the Lawless case that it has not given to the defense, and understands its ongoing duty to disclose discovery as received.

Given that an SVP case is a special proceeding with discreet issues addressed individually in a prefiling expert report, with discovery consisting of easily anticipatable and familiar documents, the defense motion to compel the state's attorneys to rewrite the discovery in interrogatory answer form should be denied, particularly after the KCPAO legal staff has gone to such lengths to make the discovery easily navigable and accessible to all. The defense request is unreasonably cumulative, duplicative and the information it requests is attainable from the discovery already provided in a more convenient, less burdensome and less expensive form, which they have had ample opportunity to review. The respondent's request is unduly

[3] Part of the discovery is police reports and conviction documents from Lawless's past crimes. He ought

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burdensome to the state, expensive and does not take into account the limitations on the party's resources and the efforts already expended by the state to ensure efficient access to all discovery in this case. CR 26 (b) (1).

Finally, if it would be helpful to the court to see a copy of the CD-ROM provided to the defense, the state will supply one for *in camera* review.

C. Conclusion

For all the foregoing reasons, the state asks this court to deny the defense motion to compel discovery.

Respectfully submitted this 16th day of March, 2007.

NORM MALENG,
King County Prosecuting Attorney

By: Robin E. Fox
Robin E. Fox, WSBA# 18904

JR/RF
Jennifer Ritchie, WSBA# 24046
Senior Deputy Prosecuting Attorneys
Attorneys for Petitioner

to be familiar with those.

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The Honorable Joan Dubuque
Without Oral Argument
9/18/07

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 SEA STATE'S VERIFIED RESPONSE TO RESPONDENT'S SECOND MOTION TO COMPEL THE STATE TO ANSWER INTERROGATORIES

I. Introduction

The respondent served the state with a second discovery request in written form. He characterizes the interrogatory with 7 (seven) subparts, each of which calls for an answer that has been previously provided or invades the mental impressions of the deputy prosecutors, as a "simple request."[1] The state objects, because, as with his first set of interrogatories, the respondent's question(s) calls for the state to recite the facts in the discovery line by line. In the state's eyes this request is a transparent attempt to obtain answers which invade the thinking and strategizing of the attorneys, which is protected work product. The court has already properly ruled that the state is not required to rewrite the discovery and then parse it from our perspective for the defense. The state is simply not going to tell the defense how it is planning to try this

[1] As noted in the state's response to the respondent's first motion to compel discovery, the form of Lawless' interrogatories is improper under CR 33 (a), which expressly indicates each question must be asked separately. Tegland, K. and Ende, D., Washington Practice, Handbook on Civil Procedure, §48.5,

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case beyond the fact that it will prove beyond a reasonable doubt each of the elements required by RCW 71.09, and that those elements will be proved by the facts provided in the discovery, which will be testified to by witnesses or admitted pursuant to some other legal means under the rules of evidence. The state's theories on how the facts satisfy the elements, and the manner in which the state will present its case and arguments based on those facts are work product under any theory.

II. Argument

The state asks that its response to the respondent's (first) motion to compel discovery dated March 16, 2007 and located at ECR 43, be incorporated by reference.

III. Response to Defense Argument

First, the respondent complains in his brief at page 5 that the state did not explain to him at the LR 37 (e) conference why the information he seeks is work product. Nothing in the rule requires that the state explain to and convince counsel of the merits of its argument at the conference, or that the parties agree on a result by the end of the conference. Nevertheless, the parties carried on, in counsel's words, "a spirited LR 37 conference. . ." as to the issues. See Respondent Exhibit 10. The respondent's actual problem with the state's response at the LR 37 conference appears to be that he did not like or agree with the state's explanation of why what he seeks is work product and that we are not changing our position on his request.

Second, the respondent wants to know what the prosecutors think. But in support of his argument, he cites *Harris v. Drake*, 152 Wn.2d 480, 486, ___P.2nd ___ (2004), which states that parties may discover documents and tangible things, but not "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning litigation."

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This case seems to apply to the state's position. As required by *Harris,* the state has turned over every document or tangible thing we have in our possession that is relevant to this case, and we do not intend to turn over our mental impressions, conclusions, opinions or legal theories. Nor do we intend to ask the defense for theirs.

As to respondent's argument that CR 26 (b) allows the opposing party to ask the opponent to apply the facts to the law, i.e. contention interrogatories, the state sees nothing in the rules, cases or learned treatises that requires in any civil or criminal case that the state send the respondent/defendant a memorandum in which it explains how each fact contained in the discovery applies to each element of each instruction to the jury. Respondent's second Interrogatory No. 1 asks the state to do exactly that, in addition to its request that the state rewrite the discovery. Moreover, the state's contentions that respondent meets criteria as an SVP were outlined at the filing of the case in its petition and prosecutor's summary, and the expert's report which describes in exquisite detail the respondent's mental disorder(s), offense (conviction and non-conviction) history, and a lengthy, chilling chronicle of the respondent's concerning behavior on which the expert bases his clinical conclusion that the respondent is more likely than not to reoffend in a sexually violent manner if not confined in a secure facility.

Finally, as to counsel's complaint that he might miss all the references to "recent overt act" in a search of the discovery because of misspellings and/ or the sheer volume of the discovery, the state would like to suggest, with all due respect, that counsel spend his time reading, thinking strategically, and talking to his client about the discovery and recent overt acts rather than bringing, repetitive meritless motions. In addition, the state suggests the respondent review the appellate cases on recent overt acts for answers to his questions about what courts consider recent over acts.

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The state will file a separate response to the defense demand to depose a representative of the prosecutor's office about this case under CR 30 (b) (6). See Resp. Exhibit 10. The state is in the process of discussing this issue, and the possibility of moving for sanctions against the respondent, with the Civil Division.

IV. Conclusion

For the foregoing reasons, and the reasons stated in the state's response to respondent's first motion to compel discovery, the state respectfully requests the court deny the respondent's second motion to compel responses to interrogatories.

DATED this _____day of August, 2007

NORM MALENG
King County Prosecuting Attorney

DANIEL T. SATTERBERG
Interim King County Prosecuting Attorney

By: _____
Robin E. Fox, WSBA #18904
Senior Deputy Prosecuting Attorney

_____
Jennifer G. Ritchie, WSBA #24046
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner

Certification.

My name is Robin E. Fox, and I am a senior deputy prosecuting attorney assigned to the above captioned case with Jennifer G. Ritchie, I hereby certify that the foregoing is true and correct to the best of my knowledge, under penalty of perjury pursuant to the laws of the State of Washington.

DATED this ___day of August 2007

_____
Robin E. Fox, WSBA #18904

Witness:

_____

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EXHIBIT D

Draft I
Date 06/20/2007

Offense Cycle without Interventions/Coping strategies

Draft 1

By Terry Lee Lawless

Submitted To: Dr. Christmas Covell

Date: 07/16/2007

This Offense Cycle without interventions is specific to my 1992 child molestation charge. The thoughts feelings and behaviors are indicative of what I was thinking or feeling in 1992 and do not reflect current beliefs or feelings.

Triggers
Rejection - Sister and aunt had not allowed me to live with them. (SABdrft2 pg 24 fn 27,28)
Abandonment - Mother, sister, stepfather, and grandmother had abandoned me to my own devices. (SABdrft2 pg 25 fn 33)
Rejection - Chuck and Marie disapproval of marijuana abuse. (SABdrft2 pg 25 fn 35)
Betrayal - Chuck and Marie letting their friend get away with molesting me. (SABdrft2 pg 26 fn 36)

Seemingly Unimportant Decision (SUD)
Chuck and Marie offered, so I moved in with them and their children. (SABdrft2 pg 25)
Staying at the house to watch the children while Chuck and Marie were out.
Found pornographic movie and watched it.

Dynamic Risk Factors (DRF's)
I felt scared and abandoned. (From my family leaving me)
I felt embarrassed and ashamed. (From being oral copulated by 35 year old man while I was asleep)
I felt a sense of helplessness and disappointment. (Lack of response by foster parents when I informed them about being molested)
At this point I felt betrayed by my foster parent's actions and confused. (Foster parents letting man get away with molesting me)
I felt alone and unsure about myself. (Thinking I had done something wrong by telling foster parents about man molesting me)
I felt insecure in my sexuality. (Because of my bodily responses to man oral copulating me)
I quickly turned the movie off when I saw her. I still had an erection in my pants as she sat in my lap. (Alone with underage female while sexually aroused)
Attitudes supportive of sexual assault "She can consent."

Maladaptive Coping Response - Low intensity (MCR-L)
Escapism -Increased use of marijuana.
Isolating - Smoking marijuana alone.
Self blame - Being molested by 35 year old man.
Sexualized Coping - Viewing pornographic movie to improve self perception, feel better about self.

Lapse
A couple of days later, when I was alone with Melissa and her brother, I remembered the feeling I had when she had sat on my lap.
Each time before I molested Melissa, I would let myself become aroused by thinking about how it felt the last time I had molested her.

Abstinence Violation Effect (AVE)
I have already done this once. Another time will not matter.

Maladaptive Coping Response - High Intensity (MCR-H)

I told myself at the time that if she did not want me to do what I was doing she would tell me to stop or not come around.
I continued to allow myself to be aroused and engage in the behaviors as I said to myself at the time that I was not hurting her.
I agreed to watch the children alone while Chuck and Marie went out.
Sexualized Coping - Thinking about having molested Melissa to feel pleasure/excitement.
Planning what I will do with Melissa next time I am with alone her.

Acting Out
Over the next 2 weeks when I was left alone with Chuck and Marie's children I molested Melissa 6 times.

Payoff
Pleasure, excitement from endorphin/adrenal rushes.
Not feeling down regarding my current life circumstance.

Despair
I felt guilty about my behavior, as I knew it was wrong.

Defenses
I buried that guilt the same way I was burying all my feelings. I smoked some more marijuana.
Minimize the impact of my actions:
"I only did this...Not this..."
"It's not as bad as..."
"I did not hurt her..."

Cover up False Remorse
Only tell family friends part of the story.
Minimize my actions.
Blame others.

False Resolve
I will never do that again.

Suppression
Do not think about it.
Do not talk about it.
Move on with my life.

Draft1
Date 06/20/2007

Offense Chain without Interventions/Coping strategies

Draft 1

By Terry Lee Lawless

Submitted To: Dr. Christmas Covell

Date: 07/16/2007

This Offense Chain without interventions is specific to my 1992 child molestation charge. The thoughts feelings and behaviors are indicative of what I was thinking or feeling in 1992 and do not reflect current beliefs or feelings.

Background: Monica and Alicia, 11 and 10 respectively, were two female children. I had known one of them from my dealings with her parents as well as through Carrie, 15, who babysat them frequently. Carrie was a 15 year old girl I had engaged in sexual intercourse with in the past.
My current life circumstance:
I have been engaging in Armed Robberies for which the police currently want me for questioning. . I can no longer work at Burger King because the police know that I work there. I have been engaging in sexualized coping to relieve my stresses and feel good. I actually engaged in this with my girlfriend the morning of this offense.
(Trigger) I believe that an associate of mine has betrayed me to the police for engaging in an armed robbery.
(SUD) Being alone at my apartment when I am in such a chaotic state mentally and emotionally.
(MCR-L) I have been selling marijuana to supplement my income from working at Burger King. I have engaged in sexualized coping (increased frequency of sexual activity with Renee and engaging in sexual activity with Carrie), marijuana use to "relax" and "get my mind off of things". I am avoiding individuals that would hold me accountable for my behaviors, (Police for the robberies, not telling Renee and my sister about having sex with Carrie).
(DRF's) I have antisocial associates, am overextended financially, using illegal activities to supplement income from jobs (Selling drugs, Armed Robberies), I am engaging in the use of marijuana and sexualized coping to "relax". I am engaged in secret keeping from those who would hold me accountable (I have not told family/significant other that I am on the run, that I have engaged Carrie in sexual intercourse). Living in the moment, just wanting to feel good, excited.
(Lapse) Thinking about being sexual with Carrie once again. Doing drugs.
(AVE) I am overwhelmed with the events that are occurring in my life. Thoughts of: "There is no point planning ahead." "I'll live life in the moment and let the future take care of itself." "All of these problems are bringing me down; I just want to feel good." I am catastrophizing ("my plans are beginning to fail"). Giving up "What the hell, one more thing will not matter." Minimizing "Compared to everything else, this is minor."

Monica and Alicia had come to my apartment to speak with me regarding the possibility that Carrie was pregnant.

DRF: Alone with underage female children.

Thought(s): "Why are these two girls at my apartment?" "If Carrie is pregnant, I do not have the money to take care of her and the child so I will have to get another job." "What am I going to do about this? The police are after me for my involvement in the armed robberies."

Feeling(s): (Puzzled, Curious,) (Surprised, Interested, Concerned,) (Stressed, Anxious, Disappointment (in myself))
Behavior(s): Open my door. Ask them what they wanted. Listen to what they have to say.

Because my live in girlfriend was not aware of my engaging in sexual relations with Carrie, I was concerned about Renee coming home and asking what the girls wanted and subsequently hearing about Carrie so, I told the girls to meet me at the apartment complex cabana.
Thought(s): "I want to know more but if Renee comes home right now, she will want to know what these girls want and then she may find out that I have been with the 15 year old." "What if my crime partner (armed robberies) has told the police about where I live and they show up here while I am at the front door, it will be difficult to pretend I am not here and slip out the back window." "I'll be safer at the cabana because I can see if the police are coming to the apartment and leave the area before they know where I am at."
Feeling(s): (Interested, Anxious,) (Stressed, Anxious, Panicky, Frightened, Excited) (Cautious, Anxious)
Behavior(s): Tell the girls to meet me at the apartment complex cabana. Go to the cabana after I put a shirt on.

While at the cabana, I then engaged Monica and Alicia in sexual conversation, switching the topic from the possibility of Carrie being pregnant to asking them if Carrie had spoken of our sexual relations.
DRF: Alone with underage female children and engaging them in sexualized conversation.
Thought(s): "Well there is nothing else that I can do about this right now." "I want to talk about something I can feel 'good' with." "I wonder what Carrie thinks about me in bed?" "If Carrie has spoken to them about maybe being pregnant, I wonder if she spoke to them about what she thinks about me in bed." "
Feeling(s): (Concerned yet optimistic) (Thoughtful, Curious) (Interested, Anxious)
Behavior(s): Engaged Monica and Alicia in sexual conversation, switching the topic from the possibility of Carrie being pregnant to asking them if Carrie had spoken of our sexual relations.

At that time, as I listened to their responses to my questions, I had allowed myself to become aroused to my sexual thoughts of Carrie.
DRF: Alone with underage female children while sexually aroused, continuing to engage them in sexualized conversation.
Thought(s): "Carrie thinks that I am a good lover." "She has bragged about me." Started replaying in my own mind when she and I had been together. Started thinking about the next time I could be with Carrie sexually. "I want to be sexual"
Feeling(s): (Pleased) (Confident, Reassured) (Excited, Aroused), (Anticipation)
Behavior(s): Continue conversation; encourage them to keep speaking about what Carrie had said about me sexually. Allow myself to stay in a sexually aroused state mentally.

After some time, approximately 20 minutes, I told myself that they were talking to me about sexual matters, so therefore they may be interested in engaging in sexual activities.
DRF: Aroused to underage female children, thinking about them in a sexual way.

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Date 06/20/2007

Lapse

Thought(s): "I wonder if they would be interested in being sexual with me."
Feeling(s): (Excitement, Curious, Interested, Anxious)
Behavior(s): Encourage them to continue to speak about sexual matters. Projecting my own sexual arousal onto Alicia and Monica.

I formed the desire and intent to offend them sexually at this point.

Thought(s): "It is not a good idea to do this (molest them) here at the cabana as they will not be 'comfortable' and someone may come in." "Where can I go to engage them in sexual activity?" "I do not want to go back to my apartment because Renee may come back and the police may arrive to pick me up for the armed robberies." "They would be willing to be sexual with me if we were in the proper environment. (Alone)"
Feeling(s): (Concerned) (Thoughtful, Anxious) (Cautious, Anxious)
Behavior(s): Suggest to the girls that we go see my new apartment.

Because the cabana was a public place, I did not think I could offend them there. Under the pretext of showing them the new apartment I had paid for, I suggested that we go to the new apartment that Renee and I would soon be moving into.

Thought(s): "I wonder what they have done sexually?"
Feeling(s): (Curious, Excited) (Aroused to thoughts of being sexual with Alicia and Monica)
Behavior(s): Continue to engage them in sexual oriented conversation while moving towards the new apartment.

On the way over to the apartment, I continued to engage Monica and Alicia in sexual conversation, changing the topic from Carrie and myself to Monica and Alicia's boyfriends. This allowed me to personalize the subject of sexual activity with Monica and Alicia specifically. It also allowed me to start focusing my arousal entirely towards Monica and Alicia.

Thought(s): "They seem to be willing to speak openly about sexual matters." "I need to ask them about themselves sexually to get them in the 'right' frame of mind." "If they continue to speak to me about their own sexual activity, they are interested in sexual activity and possibly with me."
Feeling(s): (Confident, Expectant) (Thoughtful) (Excited)
Behavior(s): Continue moving towards the new apartment while talking to them. Walk behind them and think about them in a sexual way (objectify them).

At the same time I had allowed myself to think sexually about both children and continue my earlier arousal. Now my arousal was entirely towards Monica and Alicia and not Carrie.

Thought(s):. "I wonder what they would be willing to do with me."
Feeling(s): (Excitement, Curious)
Behavior(s): Continue moving towards the new apartment while talking to them.

Upon arriving at the new apartment, I had told myself that I would not do anything to them that they did not a want me to. (Minimizing my actions)

Thought(s): "I am not going to do anything they are not willing to do."
Feeling(s): (Concerned, Thoughtful)
Behavior(s):
I had then asked Monica if I could kiss her. I kissed her and fondled her buttocks over her pants.
Thought(s): "If she did not desire to engage in sexual activity she would say no. ""She likes what I am doing to her."
Feeling(s): (Respectful, Conscientious, Pleased, Aroused)
Behavior(s): Continue molesting Monica.

After a couple of minutes, she asked me to stop. I did.
Thought(s): "I am not such a bad guy, I stopped when she told me to." "Monica asked me to stop because she was embarrassed to be doing this in front of Alicia." "I am still aroused and only Monica asked me to stop." "Maybe Alicia wants to be sexual with me."
Feeling(s): (Caring) (Disappointed) (Thoughtful) (Excited, Aroused)
Behavior(s):

As I had allowed myself to continue to be aroused to thoughts of both children and desire to be sexual with them, I asked Alicia to come into the other room with me.
Thought(s): "If Alicia says yes after she observed me doing this with Monica, then she is interested in being sexual with me."
Feeling(s): (Excitement, reasonable) (Aroused)
Behavior(s): Go into the other room with Alicia and molest her.

I engaged Alicia in conversation while I molested her. This was an attempt to distract her (and possibly myself) from what I was doing. (Normalize my behavior).
Thought(s): "I m not doing anything out of the ordinary here."
Feeling(s): (Excitement, reasonable) (Aroused)
Behavior(s): Continue molesting Alicia.

After a couple of minutes, Alicia asked me to stop.
Thought(s): "That was stupid of me. You should have known they did not want to do too much. What is the point? " "This was not really satisfying." "Renee should be coming back home real soon and then we can have intercourse." "I will call her and arrange to go pick her up."
Feeling(s): (Disappointment, Disgust with myself, No longer Aroused) (Anticipation)
Behavior(s): Start thinking about calling Renee.

We then went in to the other room and they indicated to me that they needed to get back to their apartment. I said okay and they left.
Thought(s): "I might get into trouble."
Feeling(s): (Fear, Resignation)
Behavior(s): Go back to my apartment.

Draft I
Date 06/20/2007

I locked up the new apartment returned to my apartment as they left. When I arrived at my apartment, Cammie (one of the girls mother) came to my apartment wanting to confront me about what had happened.

Thought(s): "Now you are in for it."

Feeling(s): (Fear)

Behavior(s): Go with Cammie, Monica and Alicia to their apartment, confess what I had done.

EXHIBIT E

Request for Production No. 7

Objection to the extent that it calls for protected work product and/or privileged attorney-client communication, and to the extent that it assumes facts not in evidence, and objection to the extent that it calls for an expert opinion, and vague, overbroad and unduly burdensome as to "others". Without waving the objection and subject to same:

See previously disclosed TLL RESP DX 0001-0104 and attached at Attachment A, TLL RESP DX 0105 – 0210.

Interrogatory No. 12

Full Name	Sara Peery		My age	34
Address	Unknown		Persons age	21
Phone	206 854-6763			
Nature of Contact	Relationship	2004-2005		
Description of Contact	Monogamous Relationship			
Duration of Contact	Throughout relationship			
Time Period	1 Year	2004-2005		
Current Status	Friends			

Full Name	Britney		My age	33
Address	Unknown		Persons age	21
Phone	Unknown			
Nature of Contact	Friend	2004		
Description of Contact	Intercourse			
Duration of Contact	One time			
Time Period	4 months	2004		
Current Status	No longer in contact			

Full Name	Jonna Miller Simmons	My age	32-33

THE DEFENDER ASSOCIATION
810 THIRD AVENUE, SUITE 800
SEATTLE, WASHINGTON 98104
TEL: 206-447-3900
FAX: 206-447-3956

EXHIBIT F

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent.	No. 06-2-29166-2 sea DECLARATION OF DAVID J.W. HACKETT

David J. W. Hackett declares as follows:

1. I make this declaration from my personal knowledge as noted herein. I am a King County Senior Deputy Prosecuting Attorney, working in the Sexually Violent Predator Unit. I have been the Chair of the SVP Unit since September 2001 and acting Chair during periods prior to 2001. In this capacity, I oversee prosecution of all King County RCW 71.09 civil commitments. I am familiar with aspects of the Terry Lawless case discussed herein.

2. In 2007, my office received a CR 30(b)(6) Notice of Deposition in the Lawless case from defense attorney Ken Chang. The CR 30(b)(6) Notice called for a deposition of the "representative of the state" and represented an unprecedented effort to obtain discovery through this mechanism. Jennifer Ritchie, the Deputy Prosecutor handling the case, asked me to help her

Norm Maleng, Prosecuting Attorney
SVP Unit
Administration Building
500 Fourth Avenue, 9th Floor
Seattle, Washington 98104
(206) 296-9000, FAX (206) 205-8170

address this issue. The defense deposition notice apparently came in response to a ruling by Judge Dubuque denying the defense further discovery via interrogatory.

3. As some point, Ms. Ritchie and I participated by phone in a discovery conference with Mr. Chang. We informed Mr. Chang that his discovery request was frivolous and asked him to withdraw it. We pointed out to him that SVP actions, like criminal actions, are brought by the people of the State of Washington. Under the Washington Constitution and applicable enabling statutes, the sole "representative" of the prosecutorial authority of the State of Washington is the local county Prosecutor and his/her duly appointed Deputy Prosecutors.

4. We asked Mr. Chang if he was intending to depose the King County Prosecutor, or DPA Ritchie. We asked him under what authority could he justify deposing the attorney for the opposing party, or a member of that attorney's "firm." We raised obvious questions regarding prosecutorial immunity and how it could operate with a system where the defense attorney could freely depose the prosecutor during a case. Mr. Chang indicated that it would not be his choice to depose the prosecutor or a deputy, but that it was "our choice" as to who to name as the "representative."

5. Given his representation that he did not wish to depose the prosecutor, we then asked him what other possible CR 30(b)(6) representatives there could be for prosecutorial authority of the "State of Washington." Despite being repeatedly pressed on this simple and practical point, Mr. Chang had no suggestions or guidance on a "representative" other than the deputy prosecutor that he claimed he did not want to depose.

6. It was clear that Mr. Chang was playing games and not basing his request on any good faith understanding of the law. We again asked Mr. Chang to desist with his misguided approach. We informed Mr. Chang that we would not be honoring his subpoena and that he would need to file a motion with the court if he persisted with his position. We further noted that if such a motion was filed, we would seek sanctions due to the entirely frivolous nature of the request. Mr. Chang indicated that he would give the matter some further thought.

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7. On August 20, 2007, I brought Mr. Chang's actions to the attention of his supervisors at the Defender Association. A copy of this e-mail is attached as exhibit 1. I received no response so on August 29, 2007, I sent a follow-up email to Mr. Chang's supervisors, which is attached as Exhibit 2.

8. The e-mails in attached Exhibit 3 represent further correspondence on this issue. The State understood Mr. Chang's e-mail of September 17, 2007 to mean that the deposition was being cancelled subject to a motion on the matter. No motion was ever filed. It was our assumption that more seasoned voices within the Defender Association had counseled Mr. Chang on the errors in his strategy.

9. In the year since last September, Mr. Chang has made some jokes about his previous attempt to depose the prosecutor; but there was no indication whatsoever that his deposition request was serious or still pending.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 8th day of September 2008 at Seattle, Washington

David J.W. Hackett, WSBA #21236

Norm Maleng, Prosecuting Attorney
SVP Unit
Administration Building
500 Fourth Avenue, 9th Floor
Seattle, Washington 98104
(206) 296-9000, FAX (206) 205-8170

Hackett, David

From: Hackett, David
Sent: Monday, August 20, 2007 11:04 AM
To: 'Dennis.Carroll@defender.org'; Leslie.Garrison
Subject: Lawless

Are you aware that Mr. Chang has filed a notice of deposition to depose Ms. Ritchie, or another agent of the King County Prosecuting Attorney's office, regarding the theories of prosecution in this case? Does this represent the kind of practice that you want associated with your firm? Please clarify if this is a purposeful and thought out move on your part, or if it is merely something additional that Mr. Chang has done without the approval of his supervisors. Thanks.

David J. W. Hackett
Unit Chair -- Sexually Violent Predator Unit
King County Prosecuting Attorney's Office
Voice: (206)205-0580 Fax:206-205-8170

Ex 1

Hackett, David

From: Hackett, David
Sent: Wednesday, August 29, 2007 1:16 PM
To: Leslie.Garrison
Subject: Mr. Chang's Request

Importance: High

I need to know if your firm is going to allow Mr. Chang to proceed with his "CR 30(b)(6)" deposition of a controlling representative of the State, i.e. the county prosecutor or a DPA. This has engendered some incredulous conversations within my office in both the criminal and civil divisions. I would like to be able to tell them that Mr. Chang was being overly exuberant and that TDA management thought better of it. Please let me know soon as we will need to file a motion for protective order otherwise. Thanks.

David J. W. Hackett
Unit Chair -- Sexually Violent Predator Unit
King County Prosecuting Attorney's Office
Voice: (206)205-0580 Fax:206-205-8170

Ex 2

Hackett, David

From: Hackett, David
Sent: Monday, September 17, 2007 3:55 PM
To: kchang@defender.org
Cc: 'Leslie.Garrison'; Fox, Robin; Ritchie, Jennifer; 'Anita Paulsen'; Hocraffer, David
Subject: RE: Lawless -- Notice of CR 30(b)(6) Deposition

That is fine, but you do not need to worry about an "agent" of the State showing up. Thanks.

From: Kenneth M. Chang [mailto:kchang@defender.org]
Sent: Mon 9/17/2007 12:19 PM
To: Hackett, David
Cc: 'Leslie.Garrison'; Fox, Robin; Ritchie, Jennifer; 'Anita Paulsen'; Hocraffer, David
Subject: RE: Lawless -- Notice of CR 30(b)(6) Deposition

Dear Mr. Hackett:

As long as the Petitioner is willing to stipulate that Mr. Lawless does not waive any arguments or objections by not having a court reporter present on the day of the noted deposition, I won't have to spend anyone's money. If, in fact, on the day of the noted deposition, a 30(b)(6) agent shows up, it will automatically be continued for us to hire a court reporter.

I believe this stipulation will satisfy both of our needs, wouldn't you say?

Please let me know.

Ken.

From: Hackett, David [mailto:David.Hackett@METROKC.GOV]
Sent: Monday, September 17, 2007 12:10 PM
To: kchang@defender.org
Cc: Leslie.Garrison; Fox, Robin; Ritchie, Jennifer; Anita Paulsen; Hocraffer, David
Subject: RE: Lawless -- Notice of CR 30(b)(6) Deposition

Ken --

You are on absolute notice that no one will be appearing for your CR 30(b)(6) deposition because it is not allowed by the rules. Your ability to make us do things is limited by those rules. You lack a good faith reading of the rule at this point as it does not allow a CR 30(b)(6) deposition of the State of Washington itself. We see no need to move to quash a deposition that is so far outside of what the rule permits any more than we would feel the need to bother the court if you had noted a deposition on the moon.

If you disagree with the language of the rule, you are welcome to go to the court yourself, but please don't play games with the tax payer money and incur expenses for a deposition that we have notified you will not occur.

I am cc'ing this motion to Mr. Hocraffer, the county public defender, so that he may exercise some supervisory authority over you in this matter since your own firm has apparently failed to intervene on this abuse of your role as a defense attorney.

David J. W. Hackett

Ex. 3

Unit Chair -- Sexually Violent Predator Unit
King County Prosecuting Attorney's Office
Voice: (206)205-0580 Fax:206-205-8170

From: Kenneth M. Chang [mailto:kchang@defender.org]
Sent: Monday, September 17, 2007 11:49 AM
To: Hackett, David
Cc: 'Leslie.Garrison'; Fox, Robin; Ritchie, Jennifer; Anita Paulsen
Subject: RE: Lawless -- Notice of CR 30(b)(6) Deposition

Dear Mr. Hackett.

It is unfortunate that this is how you chose to resolve this discovery dispute. In good faith attempt to resolve this dispute, I gave more than a reasonable advance notice of the 30(b)96) deposition with an understanding that if this is not resolved, the court will need to be involved. I assumed that in that case the Petitioner would move to strike the notice. If you choose to ignore the validely served notice of deposition, well then, it is your choice. The court reporter and I will be at the designed place of deposition on the day of the deposition. If the 30(b)(6) agent of Petioner fails to appear, we will then make our choice in asking for the remedy from the court.

Ken Chang.

From: Hackett, David [mailto:David.Hackett@METROKC.GOV]
Sent: Tuesday, September 11, 2007 11:02 AM
To: Ken Chang
Cc: Leslie.Garrison; Fox, Robin; Ritchie, Jennifer
Subject: Lawless -- Notice of CR 30(b)(6) Deposition

Mr. Chang,

We are in receipt of your August 17, 2007 "Notice of Deposition of Petitioner's [CR] 30(b)(6) Agent(s)." Because the petitioner in the case is the State of Washington, you direct your notice to the State of Washington itself and request to depose the "Agent(s)" of the State of Washington. You have copied us with your notice as we are the legal representative of the State of Washington in this matter.

The rule that you cite does not allow you to request a deposition with the "agent" of the State of Washington -- even if there were such a thing.

If you read the rule with particular attention to detail, you will note that a party may conduct a CR 30(b)(6) deposition only of "a public or private *corporation* or a *partnership* or *association* or governmental *agency*." The State of Washington is a sovereign being, not a corporation. Although John Locke might suggest that our state was once a loose partnership in the wilderness, or maybe even an association banded together in mutual aid, we surely surpassed that status with passage of the Organic Act and entry into the union.

The State of Washington is also not a "governmental agency" of the State of Washington. Simply put, the State of Washington is not an agency of the State of Washington, rather it *is* the State of Washington itself. Although in certain cases the State of Washington permits you to request a CR (30)(b)(6) deposition with its agencies (e.g. DOC, DSHS, etc.), you are not permitted to depose the State of Washington itself in all its inchoate grandeur.

The attorneys for the State of Washington will not be appearing for your CR 30(b)(6) deposition, nor do we see a need to move to quash the notice since the rule plainly does not apply.

David J. W. Hackett
Unit Chair -- Sexually Violent Predator Unit
King County Prosecuting Attorney's Office
Voice: (206)205-0580 Fax:206-205-8170

EXHIBIT G

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Detention of TERRY LAWLESS, Respondent,	No. 06-2-29166-2 SEA DECLARATION OF JENNIFER RITCHIE

I, Jennifer Ritchie, being over the age of eighteen years and competent to testify to the matters herein, do hereby declare and state as follows:

1. From February 2004 to January of 2008, I was an attorney in the Sexually Violent Predator Unit of the King County Prosecuting Attorney's Office. During that time it was my responsibility to handle the Sexually Violent Predator case involving Terry Lawless.

2. While an attorney in the Sexually Violent Predator Unit I received a letter from Ken Chang, the attorney for Mr. Lawless. The letter sent by Mr. Chang was a "Notice of Deposition of Petitioner's CR 30(b)(6) Agents(s)."

3. David Hackett, chair of the Sexually Violent Predator Unit, and the undersigned attorney held a conference call with Mr. Chang regarding the CR 30(b)(6) motion on June 26, 2007. Mr.

Dan Satterberg, Prosecuting Attorney
SVP Unit
King County Administration Building
500 Fourth Avenue, 9th Floor
Seattle, Washington 98104

Chang sent a letter to the State's counsel on June 27, 2007 regarding the CR 30(b)(6) motion, attached.

4. On September 11, 2007 and September 17, 2007, David Hackett and Mr. Chang exchanged numerous e-mails regarding the CR 30(b)(6) motion and informing Mr. Chang of the state's position.

5. The undersigned attorney, who retained the Lawless matter until January of 2008, does not recall hearing anything more on the matter other than occasional joke by both Mr. Chang and his colleagues about deposing the prosecutor on a case.

6. Since the e-mail exchanges on September 11th and 17th of 2007 between Mr. Hackett and Mr. Chang, undersigned counsel exchanged numerous telephone calls and approximately 45 e-mails with defense counsel for Mr. Lawless. Undersigned counsel has no record or recollection of any subsequent mention of the CR 30(b)(6) motion in any of the telephone calls, e-mail or subsequent in-person meetings.

7. On October 2, 2007, Mr. Chang asked the undersigned counsel to meet in-person for coffee (along with defense counsel Anita Paulsen) to go over a proposed scheduling order, prior to the scheduled status conference in front of Judge DuBuque on October 10, 2007. There was no mention of the CR 30(b)(6) motion during that in-person meeting. See attached e-mail dated October 2, 2007.

8. The parties ultimately agreed to strike the status conference on October 10, 2007 as the parties had agreed on a scheduling order. The parties contacted the Court by e-mail, attached. It is the recollection of the undersigned attorney that at no time during the discussion of the status conference or agreement to strike the status conference was the CR 30(b)(6) motion mentioned to the state or to the trial court.

Dan Satterberg, Prosecuting Attorney
SVP Unit
King County Administration Building
500 Fourth Avenue, 9th Floor
Seattle, Washington 98104

9. It was the understanding of the undersigned counsel that the CR 30(b)(6) motion had been abandoned by defense counsel after the e-mail exchanges referenced above.

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

SIGNED AND DATED at Seattle, Washington, this 8th day of September, 2008.

JENNIFER RITCHIE

Dan Satterberg, Prosecuting Attorney
SVP Unit
King County Administration Building
500 Fourth Avenue, 9th Floor
Seattle, Washington 98104

THE DEFENDER ASSOCIATION
810 THIRD AVENUE, SUITE 800
SEATTLE, WASHINGTON 98104
TEL: 206-447-3900
FAX: 206-447-3956

email: kchang@defender.org
Extension 717

June 27, 2007

David Hackett
Jennifer Ritchie
Robin Fox
Deputy Prosecuting Attorneys
King County Prosecuting Attorney's Office
Sexually Violent Predator Unit
500 Fourth Ave. #900
Seattle, WA 98104

RE: *In re the Detention of Terry Lawless*
Case No. 06-2-29166-2 SEA

Dear Counsel:

Thank you for the spirited LR 37 conference yesterday morning. This letter is to summarize my understanding of the morning's conference. There were two open issues: 1) my June 12, 2007 letter regarding designation of Petitioner's 30(b)(6) agent deposition; and 2) the issue of the State's answer to Respondent's Amended Second set of discovery requests.

1. CR 30(b)(6) Deposition:

If I understand it correctly, your initial position was that this was a deposition of Ms. Jennifer Ritchie, counsel for Petitioner. As I have clarified, this is not the case. CR 30(b)(6) specifically mandates that it is "the organization so named" that "shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf." It is the Petitioner who gets to pick. I do not. You also asked me who I would pick if I were in your position. I really cannot answer that question for you. But my inability to answer that question for you does not somehow suggest that Petitioner has no duty to designate an agent under that rule.

I understand that, ultimately, you believe that this rule does not apply in SVP proceedings. I have done my own research and I could not find any authority that says either way. The Civil Rule 30(b)(6) appears to be only authority in this, and my reading of the rule clearly allows for the deposition. In any civil litigation, I am at a loss to imagine under what situation the litigant the brought the lawsuit in the first place cannot be deposed under the discovery rule. You indicated that you as the prosecutor, exercising

the sovereign authority of the State of Washington, speaks for the Petitioner. Be that as it may, I do not see the sovereign authority exception to CR 30(b)(6).

You suggested that I consult with my supervisor, and I will certainly take that friendly advice. In fact, this letter will be copied to Ms. Leslie Garrison. However, at this time, I do not believe that my wish to defend my client and conduct what I believe is a necessarily discovery under the rules can be described as "outrageous" as you have done.

We have reached an impasse on this issue. I will note up the deposition formally, and you will move to strike the deposition. You indicated that you may or may not seek sanctions.

2. Petitioner's Response to Respondent's Second Set of Interrogatory.

As you know, the issue at hand was the Petitioner's response to the single interrogatory in the second set, seeking information about the Petitioner's allegation of the recent overt act.

You indicated that this interrogatory and your response is covered by the court's prior ruling. This interrogatory was not properly before the court during my last motion. In fact, the parties have intentionally kept it out of the motion to see if this can be resolved without the court's intervention.

In fact, Ms. Ritchie kindly brought to my attention that I might want to amend it or revise it considering the court's last ruling. I did so, apparently to no avail since I received the same response as before. It is your position that my interrogatories are essentially "contention" interrogatories, and therefore they are somehow improper. You believed that this is not a matter of "discovery," and more proper venue will be CR 12(e) motion for more definite statement.

I vaguely recall that some courts have disfavored the contention rogs. I do not believe that my Amended interrogatory can be classified as a contention rog. Regardless, I could not find any case law or authority that in Washington contention rogs are prohibited or improper. In fact, my cursory research of contention rogs revealed that they are generally accepted in the federal courts.

> "Contention" interrogatories are interrogatories that seek to clarify the basis for or scope of an adversary's legal claims. The general view is that contention interrogatories are a perfectly permissible form of discovery, to which a response ordinarily would be required. See, e.g., *Taylor v. FDIC*, 328 U.S. App. D.C. 52, 132 F.3d 753, 762 (D.C. Cir. 1997); *Vidimos, Inc. v. Laser Lab Ltd.*, 99 F.3d 217, 222 (7th Cir. 1997).

Starcher v. Correctional Med. Sys., Inc. 144 F.3d 418, 421 n.2 (6th Cir. 1998). In fact, the use of contention interrogatories were explicitly recommended by the 7th Circuit Court of Appeals in Pratt v. Tarr. 464 F.3d 730, 733 (7th Cir. 2007):

> If the defendants need more information concerning the plaintiff's claim, they can serve a contention interrogatory on the plaintiff, *Fed. R. Civ. P. 33(c)*; *Thomson v. Washington, supra, 362 F.3d at 971*; *Shah v. Inter-Continental Hotel Chicago Operating Corp., 314 F.3d 278, 282-83 (7th Cir. 2002)*; *Ryan v. Mary Immaculate Queen Center, supra, 188 F.3d at 860*, or file a motion for a more definite statement, *Fed. R. Civ. P. 12(e)*.

Id. Pratt court suggested contention rogs as a valid alternative to FRCP 12(e) motion. I do not believe that CR 12(e) motion is our exclusive remedy as you suggested.

3. Suggested Plan.

It appears that both sides may have a discovery motion each, and it may make sense for us to coordinate the date so that this can be heard by the court all at the same time. I am going to be out of the office on pre-scheduled vacation from June 28 to July 6. When I come back, I will send you an email regarding your availability for the purpose of scheduling the motion. I would like to request from the court an oral argument on these issues. Please let me know. I trust that if my above understanding of our conference is in error, you will kindly correct me.

Thank you.

Sincerely,

Kenneth M. Chang

CC: Anita Paulsen
Leslie Garrison
Client

Ritchie, Jennifer

From: Kenneth M. Chang [kchang@defender.org]
Sent: Tuesday, October 02, 2007 9:02 AM
To: Ritchie, Jennifer; 'Anita Paulsen'
Subject: RE: Lawless

Oooops. 10th. I got it in my calendar for 10th because for some reason I thought that has already been agreed. But how about pre-status conference status conference between lawyers over a cup of coffee?

Ken.

From: Ritchie, Jennifer [mailto:Jennifer.Ritchie@METROKC.GOV]
Sent: Tuesday, October 02, 2007 9:01 AM
To: kchang@defender.org; Anita Paulsen
Subject: RE: Lawless

I am still waiting to hear back from you about dates next week for a scheduling conference with Judge DuBuque. We were given dates of the 10th or 11th at 3:00.

From: Ritchie, Jennifer
Sent: Wednesday, September 26, 2007 1:26 PM
To: kchang@defender.org; 'Anita Paulsen'
Subject: Lawless

Here is a proposed scheduling order. Let me know if you'd like to change anything.

Thanks,
Jennifer

<< File: Scheduling Order 2.doc >>

Ritchie, Jennifer

From: Gilliam, Alice
Sent: Wednesday, October 10, 2007 3:26 PM
To: Ritchie, Jennifer
Cc: 'kchang@defender.org'; 'Anita Paulsen'
Subject: RE: Lawless: Tomorrow's Status Conference.

That would be fine with her.

From: Ritchie, Jennifer
Sent: Wednesday, October 10, 2007 3:10 PM
To: Gilliam, Alice
Cc: 'kchang@defender.org'; 'Anita Paulsen'
Subject: RE: Lawless: Tomorrow's Status Conference.

Hi Alice,

The parties were able to reach an agreement on the scheduling order that Mr. Chang sent to you yesterday. If the October dates are acceptable to the court, we are happy to strike the hearing unless Judge DuBuque has something she would like to discuss with us.

Thank you,
Jennifer Ritchie

From: Gilliam, Alice
Sent: Tuesday, October 09, 2007 11:37 AM
To: kchang@defender.org
Cc: Ritchie, Jennifer; Fox, Robin; Anita Paulsen; Becky Denny
Subject: RE: Lawless: Tomorrow's Status Conference.

I use our main line:

(206) 296-9255

Thank you.

From: Kenneth M. Chang [mailto:kchang@defender.org]
Sent: Tuesday, October 09, 2007 11:31 AM
To: Gilliam, Alice
Cc: Ritchie, Jennifer; Fox, Robin; Anita Paulsen; Becky Denny
Subject: Lawless: Tomorrow's Status Conference.

Dear Ms. Gillaim.

Mr. Lawless is in SCC and I am trying to arrange a phone connection so that Mr. Lawless can be present via phone. I spoke with Ms. Becky Denny from the SCC, and she indicates that since the hearing is at 4:00 p.m., SCC will need to call out.

Could you please let me know which number SCC will have to call tomorrow at 4:00 p.m.?

Thank you!

Kenneth M. Chang
Staff Attorney
The Defender Association
810 Third Avenue, Suite 800
Seattle, WA 98104
Tel: (206) 447-3900 ext. 717
Fax: (206) 447-2349
Email: kchang@defender.org
Web: http://www.defender.org

EXHIBIT H

Charles A. Lund, Ph.D.
Licensed Psychologist
P.O. Box 400
Silverdale, Washington 98383-0400
Phone: (206) 624-1715
Cellular: (206) 409-5388
Fax: call for instructions
E-mail: clund@ix.netcom.com

August 15, 2006

PSYCHOLOGICAL EVALUATION

Background and Referral Information

Terry Lawless is a 35 year old Caucasian male currently residing in the Regional Justice Center in King County as the result of violating conditions of community custody. Mr. Lawless has a juvenile conviction in California for Child Molestation and has adult criminal convictions in this state for Child Molestation in the First Degree and Attempted Child Molestation in the First Degree. He served a sentence in the Washington Department of Corrections and was released in January, 2003. He was involved in repeated violations of conditions of community custody throughout much of his release period, including numerous incidents of failure to register as a sex offender, use of prohibited substances, and escape from community custody by moving to another state, Florida. While residing in Florida, he lived with a woman who had a young child and there were allegations he had sexual contact there with a minor female. After his return to this state, he was involved in additional violations of community custody and an incident in which he was charged with assaulting three females in the Emergency Room of Swedish Hospital.

The case was referred through the Community Protection Unit of the Department of Corrections to assess whether Mr. Lawless appears to meet criteria for civil commitment as a Sexually Violent Predator and whether the pattern of behavior and specific incidents of conduct Mr. Lawless engaged in would appear to constitute recent overt acts as included in the Sexually Violent Predator Statute.

The Sexually Violent Predator Statute (RCW 71.09) allows individuals convicted of crimes of sexual violence to be confined in a secure facility if they suffer from a mental abnormality or personality disorder which makes them likely to engage in predatory acts of sexual violence unless confined in a secure facility. According to the statute, "mental abnormality" refers to a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such a person a menace to the health and safety of others. The term "predatory" refers to acts directed towards strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists. RCW 71.09 further allows filing a petition for civil commitment if a person who at any time previously has been convicted of a sexually violent offense, has since been released from total confinement, and has committed a recent overt act. Under these circumstances, if it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator"

and stating sufficient facts to support such allegation. The term "recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

Ms. Kim Acker of the Community Protection Unit requested my involvement in the case to provide an assessment to determine if Mr. Lawless appears to meet criteria for civil commitment as a sexually violent predator under RCW 71.09. This assessment specifically addresses whether or not he suffers from a mental abnormality or personality disorder which makes him more likely than not to engage in predatory acts of sexual violence if he is not confined in a secure facility. Given that Mr. Lawless had been previously released from total confinement, there was the additional request to provide an assessment of his pattern of conduct in the community and specific acts of conduct as to whether they would appear to meet criteria related to a recent overt act.

Methods of Evaluation

For purposes of my involvement in this case, I reviewed documents Bates stamped sequentially through page 2081, including the following specific documents and types of documents:

1. Discovery materials and arrest reports, including victim, witness, and suspect statements related to 1992 convictions for Child Molestation in the First Degree and Attempted Child Molestation in the First Degree.
2. Discovery materials and arrest reports, including victim, witness, and suspect statements related to 1992 convictions for Robbery in the First Degree while Armed with a Deadly Weapon, Robbery in the First Degree, and Attempted Robbery in the First Degree.
3. Seattle Police Department Incident Report related to Assault charges stemming from incident at Swedish Hospital Emergency Room.
4. Discovery materials related to 2003 and 2005 Failure to Register as a Sex Offender charges.
5. Court documents related to the above referenced charges and convictions.
6. DOC Presentence Investigation (9/6/05).
7. DOC Presentence Investigation (8/6/92).
8. Presentence Caseworker Report Upon Commitment to California Youth Authority (2/22/89).
9. DOC Notice of Violation Report (4/29/04).
10. DOC Report of Alleged Violation (2/14/05).
11. DOC Legal Face Sheet and Offender Chrono Report (6/16/06).
12. Psychological Evaluation by Paul Daley, Ph.D. (3/12/98).
13. Miscellaneous mental health records and notes from King County Jail and DOC.
14. Miscellaneous DOC Test Score Reports and test results.
15. Florida Court Records related to extradition.
16. Miscellaneous DOC Risk Assessment Reports and Summaries.
17. Miscellaneous DOC Community Notification Summaries.
18. PPG Assessment Summary (3/12/02).
19. SOTP Treatment Summary (12/5/02).
20. Miscellaneous SOTP Treatment Records and Progress Reports.
21. Discharge Summary from Community Treatment (2/10/05).
22. Miscellaneous results from drug testing.

23. Results from polygraph exams.

I requested the opportunity to meet with Mr. Lawless in custody at the Regional Justice Center and was advised that he was requesting that he have an attorney present at the time of the interview. He subsequently spoke with Leslie Garrison who advised him not to participate in an interview with me as part of this evaluation. The observations and information summarized in this report constitute the type of information and data sources relied on by experts in the field of sexual deviancy and are the type of records and data sources on which I have rendered an opinion in the past on the issue in question when individuals have declined to participate in an interview. The conclusions and opinions referenced in this report are based on the current data sources and could be subject to modification, depending on additional information which may potentially become available over time. Thus, additional information could potentially become available which would result in modification of conclusions regarding diagnoses, level of risk, or the significance of patterns of conduct or individual behavioral incidents, as summarized in a later portion of this report.

History of Sexual Convictions

Child Molestation in the First Degree and Attempted Child Molestation in the First Degree (King County Cause # 92-1-02640-2; date of conviction by plea of guilty – 7/16/92)

The Certification for Determination of Probable Cause noted that the Des Moines Police Department Report indicated Lawless moved into the Club Pacifica Apartments between 4/2/92 and 4/6/92. Two young girls A.C. age 10, and M.B. age 11, came into contact with him at the apartment cabana. He took the girls to an apartment he said he was moving into. He took M.B. into a bedroom and started kissing her and running his hand up her skirt. She told him to stop and he did. He took A.C. into the bedroom. He was kissing her, fondling her breasts, and sucking on her breasts. The girls then left out a window. The girls reported this to C.M. who called the police. When the police arrived they also spoke with a 15-year-old C.L.C. who reported that about one week earlier he had come into her apartment and wanted to have sex with her. She told him no, but he took her into the bedroom and had sex with her anyway. He was arrested and advised of his rights. He admitted to contact with A.C. and M.B. He admitted having intercourse with C.L.C. but claimed it was consensual and that she told him she was 16.

Court records indicated he was charged with Child Molestation in the 1st Degree related to allegation of sexual contact with A.C., Attempted Child Molestation in the 1st Degree related to attempted sexual contact with M.B., and Rape in the 3rd Degree related to sexual contact with C.L.C. He entered a plea of guilty to the crimes of Child Molestation in the 1st Degree and Attempted Child Molestation in the 1st Degree and admitted sexual contact with A.C. and Attempted Sexual Contact with M.B. He was sentenced on 8/14/92.

Juvenile Child Molestation Conviction

California Juvenile Court records indicate he was placed in foster care and had a number of different placements and ultimately ended up in one setting where he had resided for four days and then committed sexual acts with a 7-year-old girl who was his foster sister in that setting. The report indicated that the contact involved fondling her through her clothing, kissing her

breasts, and pulling down her pants and licking her vagina. After he was arrested he told authorities that he was wrestling with the victim and her younger brother and things got out of hand. When he was asked about the child molestation charge as part of the evaluation, he indicated that he was 14 and the victim was seven. He stated, "I didn't do anything physical or hard core to her." The victim was the daughter of the house parent and Lawless claimed that was the first and only time he'd ever done anything like that.

Other Charged Sexual Misconduct

A Seattle Police Department Incident Report (9/15/05) described the incident classified as assault and noted that the officers were detached to the emergency room at Swedish Medical Center to investigate an assault that had occurred. Upon arrival, the officers found that Lawless was being detained. Contact was then made with the victims and witnesses. The first victim reported that she was sitting in the waiting room when she saw the suspect glaring at her from one of the booths. She took a newspaper and placed it up in front of her face. She said that he was still looking in her direction so she moved to a location where he could not see her. The next thing she knew was that Lawless was sitting next to her, looking directly at her at a close distance. He then took his right arm and placed it around her shoulders and slid his arm down her back. She stated that his actions creeped her out so she moved again. She stated that his attention was directed towards the nurse who was listed as the second victim.

The second victim was a contracted nurse at Swedish Medical Center. She reported that she'd come out of the waiting room to call a patient to the back. When she called the patient she turned and walked back towards the treatment area. She said the suspect came up from behind her, grabbed on to her shoulders with his hands, and pulled her towards him. She pulled away and told him "don't ever touch me again." She then went back to the treatment area and a suspect took a seat near the third victim.

The third victim reported that the suspect took a seat near her. She'd gotten up to walk in the direction of the treatment room when she saw him get up. He got directly behind her and palmed her left buttocks, with his left hand. At that point the Swedish security officers contacted and detained him for the police. Lawless was arrested and transported to the East Precinct. At the precinct the officers did a routine check and discovered that he is a Level 3 sex offender with an Aurora Avenue motel as an address. He was asked if he still lived at the address and stated that he'd moved three weeks ago after he had violated. He did not go any further. He did state that he lived on the streets with no real address. He was booked into the King County Jail.

The Municipal Court of Seattle Docket 6/5/06 noted three charges of assault, with the first charge involving a suspended sentence, the second charge being dismissed with prejudice, and the third charge being dismissed with prejudice. On 9/29/05, a guilty finding was entered to the first charge.

History of Other Juvenile and Adult Offenses

Robbery in the First Degree (King County Cause # 92-C-03243-7; date of conviction by plea of guilty – 7/16/92)

Official records noted that he and an accomplice were charged with the crime of Robbery in the 1st Degree related to a robbery of Robert Brown on 2/12/92. The Certification for Determination of Probable Cause indicated that this robbery occurred at Burger King restaurant and the employee was restocking cups at the drive-in window when he glanced over and saw Lawless wearing a wolfman mask and gloves and carrying a blue or black western style revolver, with apparent wear around the end of the muzzle. Lawless pushed open the drive-thru window, pointed his gun at the employee and cocked it. He then reached through the window and opened the till taking about $350 in cash. He fled on foot to the waiting car being driven by his accomplice. The employee feared for his life and ran into the manager's office and called police. Lawless split the loot with the accomplice and the accomplice told his girlfriend about the robbery.

Lawless had been arrested on child molestation charges and mentioned his involvement in several robberies. A detective investigating the Burger King robbery was contacted and met Lawless. Lawless acknowledged that he had done the Burger King robbery and reported that he and his accomplice had tried to get the combination of the Burger King safe from the accomplice's girlfriend who had been employed there. Lawless had worked at the Burger King himself, but had quit his job. He indicated that on the night of the robbery, he and the accomplice drove to the area of the Burger King and parked on the road west of the restaurant. He put on a werewolf mask and took out the gun and went to the drive-in window. Once there he shoved the window up with his hand, reached inside, opened the cash register, grabbed the cash, and ran back to the car. He gave half the money to his accomplice. He later discussed the robbery with the accomplice's girlfriend who commented that Lawless and his accomplice were stupid. The accomplice's girlfriend was interviewed by police and described Lawless as remarking after the robbery about how scared the employee's face was. Lawless' girlfriend was also interviewed and she reported to the police that Lawless had described the robbery to her. The document noted that Lawless faced pending charges of Child Molestation in the 1st Degree, Attempted Child Molestation in the 1st Degree, and Rape in the 3rd Degree and was the subject of other pending robbery charges. He described his history in California and indicated that he had been in this area for about four months and had committed a number of other serious felonies, in addition to the crime represented by the charge in this case.

On 7/16/92, he entered a plea of Robbery in the 1st Degree and stated that he took money from Robert Brown on 2/12/92 by the threatened use of force while armed with a handgun.

Robbery in the First Degree While Armed with a Deadly Weapon (King County Cause # 92-1-02740-9; date of conviction by plea of guilty – 7/16/92).

Official records indicated that two individuals who were roommates were at home 3/3/92 watching television. Lawless knocked on the door and then when the door was answered Lawless was standing in the threshold wearing a wolfman mask and holding a .22 caliber revolver. He asked for the other individual who lived there and told the individual to go upstairs

and get him. The individual obeyed Lawless and went upstairs and knocked on the individual's door. When he opened the door Lawless asked if he had any money for him or anything that he could sell. At that point, the individual asked the other individual if he knew Lawless and the individual said he did not.

Both thought the whole thing was a joke and then Lawless interjected, "Let's go into the room," and the individual refused. Lawless directed them to go downstairs. He next asked if they had anything that he could sell for money and they said that they didn't. At that point, he instructed the two individuals to empty their pockets and they did as he said. He then walked over and looked at the individual's black leather bomber jacket, which was lying on the chair. In its pocket was his wallet which contained about $300 in cash, and Lawless grabbed the jacket. The individual asked the defendant to leave the jacket alone, but he said to get back and then the individual took hold of the gun. The two of them struggled for the gun traveling from the living room to the dining room and finally into the kitchen where they fell into the dishwasher door, bending it.

The individual called for help and his roommate grabbed Lawless' mask and removed it. The individual lost his grip on Lawless' gun and at that point feared for his life. Lawless stepped back into the dining room near the south wall sliding door and the telephone rang. The individual said that it was the cops and the manager coming, and the defendant picked up his mask and fired. He then fired another shot and fled taking the black leather jacket.

The next morning the officers came to the home of the individual who was Lawless' accomplice in another case, and this individual reported that Lawless had come to his home the previous night and said that he hit Chris Dickinson's house and was going to take off so he didn't put the other individual and his kids in danger. Lawless had a cut on his right ear. He said he'd gotten this from fighting one of the guys at Chris' house. He said something about expecting Chris and his friends to show up at his friend's house, and the friend asked Lawless if he had gotten anything out of the robbery. Lawless said that he'd taken a black leather jacket from the house.

Dickinson positively identified Lawless' picture on a photo montage, and the other individual who was the victim, picked Lawless' and a second person's picture from the montage and stated that one of the two had carried out the robbery. At the time, Lawless was being investigated for sexual assaults of children, and the investigating officers contacted his girlfriend, who allowed him into the apartment to look for him. He found an empty holster and .22 caliber ammunition. Lawless' girlfriend told the officers that Lawless would have the gun with him if it were not in the apartment. The investigating officers were unable to find the defendant and believed he had fled. They later learned that he had returned to the apartment and went to that location.

Lawless was arrested and in plain view on the couch was a black leather jacket covering the ammunition belt of .22 caliber ammunition. In Lawless' interview he made a partial confession of the sex offense charges and admitted to owning a handgun and admitted that he was in the house where the robbery occurred and that he'd pulled the gun and demanded money, although he claimed it was owed to him. When asked about shooting his gun, he commented, "At first I didn't want to shoot... especially a .22, those bullets will go forever." He explained that they were between him and the door and he said that he was hitting this one guy to get free of him. He said, "So I just pointed a gun at them and I was trying to cock it back and it went off. And

then the second time I was trying to pull it back again... and it goes off." Then, he ran. He also said that he took the black leather jacket. He later claimed that he sold it.

He entered a plea of guilty to Robbery in the 1st Degree while Armed with a Deadly Weapon on 7/16/92.

Attempted Robbery in the 1st Degree and Robbery in the First Degree while Armed with Deadly Weapon (King County Cause No. 92-1-03829-0; date of conviction by plea of guilty - 7/16/92)

Official records indicated that the Bargain Beverages Mini-mart was robbed at gunpoint by a man wearing a wolf mask and the gunman was first seen by Linda Bergstrom. She had just left the store when she saw him. He immediately put the mask on his head and covered his face. Then he pulled out a gun and ordered her to get back in the store, telling her "Get in here, or I'll shoot you." Instead, she ran next door and called the police. Meanwhile, he entered the store behind another customer. When the customer left he then donned his mask, pointed a gun at the store owner and said, "Give me the money." The store owner told him to wait and went to the back room where her husband was napping. 30 seconds later when she returned to the cash register she discovered the gunman had run from the store. The first woman who was still outside saw him run across the parking lot into an alley nearby. When the defendant was arrested in mid April under the charges and after being advised of his rights, he acknowledged his involvement in several robberies. He admitted to attempting to rob Bargain Beverages and had an accomplice by the name of Leon. The two of them agreed to perform another robbery. Leon actually waited in the car during the process, and Lawless said that he took his werewolf mask and handgun and entered the store. He said that when he told the lady behind the counter to get the money out of the register she started talking in a language he couldn't understand and started walking away. He was unable to open the register and then ran from the store to the car where Leon waited. Once in the car, he took off his werewolf mask and put it in his backpack, ducking down as Leon drove him away.

The defendant and Leon then went to another friend's apartment and told him of the attempted robbery.

With respect to the other count associated with this conviction, Pacific Foods was robbed by a man wearing a wolfman mask and carrying a handgun. The owner of the store stood behind the counter and the gunman entered, holding the gun beside his body. After entering, the gunman pointed the gun at the owner who feared that he would be shot. The man said he wanted the money and then walked behind the counter. The owner was frightened, opened the register and gave the robber the money. The man stuffed the money in his pockets and walked out and ran away across the parking lot.

Lawless admitted to investigating officers that he had been involved in this robbery and said that he instructed the guy to give him the money, and the guy didn't seem to understand. He went to the side and tried to pull the trigger back to scare the man and then the man responded by opening the register and Lawless took the money from it. He then returned to the getaway car and he and his accomplice, Leon, went back to the other individual's apartment. He was unhappy that he had not obtained more money from the robbery. The report noted that Lawless had been in the area for about four months during which time he had apparently committed five

major felonies in addition to the two crimes reported in the Certification for Determination of Probable Cause.

King County Superior Court Information noted that he was charged with Attempted Robbery in the 1st Degree related to an incident involving Eun Young Hong of Bargain Beverages Mini-mart and a crime of Robbery in the 1st Degree related to a crime on 2/17/92 involving Hyung D. Suh at Pacific Food Store.

He entered a plea of guilty on 7/16/92.

Prior Evaluations and Issues Associated with Sexual Deviancy and Sex Offender Treatment

SOTP Documents

The SOTP Interview summary on 9/10/92 noted that he was deemed to be amenable to sex offender treatment.

He entered treatment at Twin Rivers and completed a PPG Assessment for which the summary (3/12/02) noted that he showed his maximum arousal to an audio tape stimuli involving fondling a female child, next highest arousal to audio tape stimuli involving adult female consent, followed by compliant female child, followed by a second adult female consent tape. Based on the data collected during the session, the pre-assessment interview and in his SOTP treatment file, it seemed clear that Lawless has a deviant sexual arousal system. He reported that during the time period just prior to committing the instant offense, approximately 80 percent of his sexual fantasies were appropriate and 20 percent were deviant. The report noted that based on his self-report, it appeared that he was making some progress at changing the content of his sexual thoughts, however, his physiological responses suggest he is still primarily attracted to deviant themes.

The SOTP Treatment Summary (12/15/02) described his participation and treatment and history. The report noted an infraction history including a large number of infractions between 1993 and 1995. It noted an arousal assessment indicating the presence of deviant arousal and indicated that he engaged in covert sensitization. He had some difficulty developing aversive scenes and initially described the victim as approaching him and initiating sexual interest in him. It was necessary to process his distortion and blaming others. With some appearance of stress and difficulty he was able to correct scenes into acceptable and more accurate scenes reflective of his offending. He did listen to these covert sensitization scripts, which he put into an audiotape consistently, according to his self-report. He did not acknowledge arousal to females under the age of 14 when he started treatment. However, after completing the PPG he did acknowledge arousal to females from 7 to 18.

During treatment he reported masturbating to the thoughts of a former girlfriend and his ex-wife. Both were adults but they were still approximately ten years younger than him, which was a concern. Masturbation frequency was noted two times per week. The report summarized progress in the treatment as evidenced by psychological testing. It did indicate that he started out treatment appearing intellectually motivated, but his attitudes and behaviors indicated that he believed he made all the necessary changes. When challenged on any given behavior he tended

to shut down for a while and became defensive. He was highly dependent on having others see him in a positive manner and when challenged on a given behavior he tended to believe that others were thinking of him in a negative way. The report noted that he has a tendency to sugar-coat his past negative behaviors and this is related to the issue of image management. He further demonstrated some entitlement. With respect to his disclosure about his offending, he indicated that at the end of treatment his disclosure reported that he was, in fact, sexually aroused when the two female victims came over to his apartment and that he immediately had sexual arousal to them. At the end of treatment he further indicated that it was actually his choice to involve the 14-year-old in sexual activity with him and his girlfriend, and that eventually turned him into being sexual with her on his own.

He changed the way he viewed his cycle. In the beginning he had difficulty accepting responsibility for his actions and he tended to blame them on coincidence. By the end of treatment he did not try to focus on being the good nice robber or the good nice sex offender. He was more direct with what his specific behaviors were and used more "I" statements. His summary indicated that he started treatment appearing to believe that he had made all the necessary changes and when any of his behaviors were questioned he responded defensively. He did not seem to believe that his behavior should be questioned or changed. He appeared to gain some insight into how he uses sugar-coating of past behaviors, how he was, in fact, more anti-social than pro-social throughout his life, and that he tends to blow things out of proportion believing others are thinking of him in a negative way which leads him to catastrophizing the situation.

He appeared to make some positive changes in the way he viewed his cycle and, at the end of treatment, tended to take more direct responsibility for explaining his behaviors rather than the coincidences and the circumstances. He did have a very difficult time getting insight into the way he can be a social chameleon meaning that he can basically blend into whatever the group of people is that he's hanging around and appear to be pro-social with pro-social people, and appear anti-social with anti-social people. The report described a variety of issues related to relapse prevention and noted that the information suggested that it is difficult to say when he forms the intent to offend. It noted that the index offense involved 10- and 11-year-old victims the first time he was alone with them. It noted that after committing the sexual offense he would most likely have intense emotions of regret and feel sorry he did reoffend and start to be suspicious that he'd be caught and this would be the reason for his regret. It noted that when he starts to act out non-sexually it appears that the controls around sexual behavior also break down.

The report summarized a variety of results related to risk assessments and the results from the MnSOST-R, Static 99, and RRASOR are included in another section of this report. On the VRAG, he scored similarly to individuals who re-offend at a rate of 58%. The treatment team indicated that Lawless is at highest risk to re-offend if he absconds from supervision, feels unhappy or smothered in his lifestyle, believes expectations upon him are too much, and does not communicate about things that are bothering him. Other concerns are that he's been unable to maintain pro-social behavior in the community for a sustained period of time and seems to jump from relationship to relationship. He further tends to catastrophize situations because he's not doing a reality check.

The report noted that he did not have any solidified release plans at the time the report was

prepared. With respect to management strategies, it indicated that it would be important for him to maintain a social group who are prosocial. It further indicated that he is encouraged that he be consistently engaging in covert sensitization. It noted that during the treatment time period he appeared to be for the most part a prosocial individual. He started out in treatment with a lot of external focus in blaming regarding his offending. He described much of the offending as resulting from behaviors of the minor females he offended and his armed robberies as being coincidental that he even had the gun and that explained the timing as coincidental. At the end of treatment he was able to take responsibility for the crimes directly without blaming. He also came to acknowledge that he is chameleon-like and that he is when a prosocial group that he would behave prosocially and be convincing at that and when he's in an antisocial crowd he can be antisocial and emphasize that.

He indicated that he tends to sugar-coat and minimize these antisocial behaviors when he is in a group of people who are prosocial and he will tend to play up his antisocial behaviors when he's around antisocial people. While he does acknowledge his arousal to minors it appears he does not completely understand his arousal. He was completely surprised by the results of PPG. While he has made some progress, he does need to continue to work on maintaining these gains.

A review of many SOTP documents supported these summary observations about treatment issues and work on assignments, including issues associated with his cycle, such as deviant arousal and image management. These documents noted a variety of issues he worked on, including efforts to pretend that things were okay, identification of a variety of triggers, aspects of how he sets himself up to reoffend, how he deals with a variety of issues, running away and escaping, crossing boundaries, and grooming techniques. He identified 12 high risks and their interventions and described fairly elaborate strategies for each. He further identified a variety of goals including not offending again sexually or otherwise, maintaining a positive working relationship with his family, getting a steady job, continuing to educate himself, furthering job prospects through certification, fulfilling his legal obligations, and meeting with his support regularly.

Risk Assessment Procedures

MnSOST-R scoring (9/5/00) noted that he received a score of 7 on the MnSOST-R. On the RRASOR, he received a score of 2.

The Mn-SOST-R Score (5/26/04) noted that he received a score of 16 on this instrument. He also received a score of 4 on the Static 99, and a score of 1 on the RRASOR.

Prior Psychological and Psychiatric Evaluations

Mental Health Notes and Test Results (early 1990's)

King County Jail Mental Health MSE Flow Sheets (5/13/92) noted at the time of evaluations he presented as depressed. A further note elaborating on this assessment indicated that he reported he was raped by male tank mates and he briefly disclosed when and where. As of 6/14/92, he communicated that he was not sitting there constantly thinking of ways to kill himself.

Results from the Revised Beta Examination (8/28/92) noted a beta IQ of 115 and a percentile ranking of 84.

A DOC Test Score Report (8/31/92) summarized results on the MMPI which indicated K equal to 70, PD equal to 76, MF equal to 78, SC equal to 65, and MA equal to 65.

ANQ Results (9/10/92) noted he did not endorse symptoms of difficulty with respect to neuropsychological functioning.

Psychological Evaluation by Paul Daley, Ph.D (3/12/98)

This particular evaluation is a psychological report prepared while Lawless resided at Clallam Bay. The report described various aspects of his life history, including his juvenile offense history. In this particular evaluation, Lawless misrepresented aspects of his juvenile history to Dr. Daley and, in particular, tried to misrepresent his juvenile history involving a sex offense he committed when he was 14. He further attempted to misrepresent aspects of his other juvenile history, including an arrest for being in possession of PCP. The report described aspects of his criminal endeavors in this area and it noted that while involved in the robberies, he ultimately admitted that deep down he liked the adrenaline rush. The report noted that Lawless committed his sexual offenses here about a month after involvement in the robberies and, around the time of the sex offenses, had five different sexual partners, most of whom were older than 18, although one of them was a 14-year-old girl. He did indicate that he was distressed by the fact that he got a stiffer sentence for the robberies than he got for molesting the children, which he considered to reflect flawed priorities of the legal system. He further displayed some level of empathy toward victims. This report included various aspects of his sexual history and noted that at age 14 he kissed a 7-year-old girl's breast, fondled her through her clothing, and pulled down her panties and licked her vagina. Other aspects of his sexual history included at age 5, performing and having oral sex performed on him by his 8-year-old sister and her friends. In retrospect, he did not think it was right behavior but he does not feel he was victimized and he said it did not feel wrong then or now. He had discussed his history of sexual offending in this community and reported no other history of sexual contact with children, animals, dead people, voyeurism, frottage, cross-dressing, sadomasochism, or phone sex. In the prison setting, he was looking at pornographic magazines but emphasized that he could he not see any point in looking at them on the streets. He denied any history of viewing pornographic movies but then remembered a bachelor party he attended where a pornographic movie was shown. He commented that the film was amusing because the moaning seemed fake. He denied any history of voyeurism but when asked about indecent exposure described himself as an exhibitionist, referring to the fact that he likes to walk around the house, as does his wife, in the nude, but he does not expose himself in public.

Dr. Daley provided an elaborate account of risk factors related to violence and noted a history which included four armed robberies or attempted armed robberies, possessing weapons used in these offenses, possession of a friend's Chinese fighting sticks and knives, another friend's shotgun, having survivalist's knife, having exposure to weapons when he was young, having threatened to kill or injure others with a weapon, having been criminally charged with illegal use and possession of a weapon, having seen people get shot, being a product of a family where others owned weapons, believing that he is kind of decent aim with a handgun, associating with

friends who possess weapons, and being raised by a military veteran who kept weapons in the closet. He looked upon the handgun he used during his robberies as simply a tool that was more persuasive in getting victims to hand over money. He further described a history of exposure to domestic violence being victimized by gang-related drive-by shootings, and participating in beating up other rival gang members. He further noted that he was a product of a family that used violence as a method of discipline and associated with peer groups that endorsed random and senseless violence. He noted a poor history of job stability, significant history of drug and alcohol abuse, suffering from a personality disorder, and perhaps suffering from other mental disorders such as depression, cyclothymia, dysthymia, and bipolar type II disorder. It noted a very poor attachment history, a history of reinforcing results for violence, and a history of serious institutional misconduct. He noted that he denied any history of homicidal ideation and now recognized the harm he caused his sex offense victims as much more serious than any physical harm he could have inflicted during a fist fight. He did not display any evidence of paranoid ideation and does not appear to suffer psychopathic attachment pathology. He does not have any significant history of CNS trauma and did not reveal a pleasant affect when talking about his weapons and criminal history. He furthermore did not appear to accidentally reveal incriminating information and did not respond to questions about his violence or criminal history in a tangential or illogical manner and did not show evidence of narcissistic enhancement when responding to questions about his violence or criminal history. He did not reveal any evidence of manifest anger, emotional lability, or poor impulse control during the psychological evaluation. He did not reveal any hostile or assaultive feelings towards his parents and did not appear to be self-reinforcing or self-praising for aggression.

Dr. Daley went on to describe other potentially positive factors that would mitigate risk for violence. He did note a significant substance history, including early onset of marijuana smoking, early onset of alcohol consumption, and experimentation with PCP. The report noted a positive family history for depression, including his mother. The report described a variety of aspects of his developmental history and noted the dysfunctional and violent quality of the households in which he was raised. He further noted extremely aggressive and abusive physical discipline practices. The report described Lawless' approach to psychological testing and indicated that, with respect to personality testing, there was a defensive approach to responding, which tended to maximize favorable reports about personality and behavior. It noted California documentation that indicated that when his IQ was tested, he received a score of 142.

Dr. Daley concluded that the psychological picture that emerges is truly unbelievable, although his presentation of himself as a changed man is done in a very believable manner. His interpersonal style appears intense, direct, trusting, honest, thoughtful, remorseful, and generally motivated to do right from now on. However, this presentation is within the context of a young man adorned with tattoos, raised by an alcoholic and abusive mother and a drug dealing and abusive stepfather, having been literally abandoned by his family, having a history of drug abuse, repeated perpetration of child molestation and suffering repeated sexual victimization, having been essentially raised by the juvenile justice system, and having behaved so badly that his former foster and group home placements would get disrupted.

From such a background one would expect further evidence of drug abuse, episodes of sexual abuse, episodes of being victimized himself, episodes of abandonment, and further episodes of criminal acting out. Thus, one might want to believe Mr. Lawless (he does sound very genuine

in his remorse and motivation to do well, but he has sounded this way in the past without being able to implement the changes he portrays in himself) his history would generally not lead to the future he predicts for himself. The report noted that when Lawless is in trouble and his behavior is more closely monitored and controlled he becomes perhaps not immediately a model inmate who is insightful, thoughtful, self-controlled, motivated to do well, success-oriented, friendly, sociable, etc. However, he is privately plagued by the pain of being unwanted by one's own mother, a low grade but chronic loneliness/depression, and the drive/need for a blast of feeling good, as well as hampered by schemata of moral and appropriate behavior that was founded in the extreme dysfunctionality of his childhood. Free of the controlling influence of being in trouble, he has so far in life found himself very quickly gravitating towards the fringe/dysfunctional world of his familiarity and he is soon using drugs and seeking more thrills can swamp out the pain and feelings. He does not, after all, know anyone with the power to influence his emotions and behavioral stability in the mainstream world. He wants to do well in life and one wonders how he would have turned out if he had been born to a more nourishing environment. But he is so scarred that he cannot maintain the necessary persistence, stability, self-discipline, clear-thinking, and accurate perceiving once he is left to his own devices.

It noted that he is now in a position where he's difficult to treat. He appears so treatable yet he has not been able to make the transition from external to internal controls upon his discharge from trouble.

Later Test Results

SASSI Test Results (7/7/98) noted that the results indicate that the decision rules classify him as having a low probability of having a substance abuse disorder.

A test score summary (9/18/01) noted achievement test results with a Reading GE equal to 12.9, a Math GE equal to 12.9, a Language GE equal to 12.9, and a total battery GE equal to 12.9.

Later Mental Health Notes

A DOC Primary Encounter Report (4/28/04) included a mental health entry which noted that he was seen at intake and reported that he'd been prescribed Effexor while he'd been an inpatient in the Florida hospital for five days about three months earlier. He reported that the Effexor made the difference between being suicidal a few months ago and not feeling suicidal now. A mental status diagnostic impression around the same time noted a diagnosis of 296.53, Bipolar Disorder, severe. He was reporting that he had as many as six or seven depressive episodes in the past and was feeling about a 6 or 7 on a scale of 1 to 10 at present. He believed that he had manic episodes nearly as many times and stated that he has experienced them but never enjoyed them because he doesn't know what's coming next, meaning the next depression. He described trying to overdose on aspirin when he was about 14, cutting his wrists when he was about 15, and trying to hang himself around age 21. He reported that he cut his wrists again last November. He denied having suicidal thoughts at the current time. During the context of this assessment, he reported that he has used alcohol and marijuana but not to any significant degree although he reported smoking marijuana when he molested one of his victims.

A Department of Corrections Mental Health Note (9/28/04) indicated that he was receiving

Effexor. A similar note on 8/2/04 and 8/12/04 indicated he was receiving Effexor at that time. A note on 5/20/04 indicated he was receiving Tegretol along with Celexa. The Tegretol was for mood stabilization and the Celexa was for depression.

Institutional Adjustment and Infraction History

A DOC Face Sheet (6/16/06) summarized numerous infractions occurring while he was incarcerated between 5/25/93 and 8/30/95, including four general infractions, refusing to work, fighting, dangerous infraction, possessing money, refusing to work, four general infractions, dangerous infraction, attempted infraction, dangerous infraction, possessing unauthorized tools, refusing to work, dangerous infraction, and refusing to leave.

Community Adjustment Under Supervision

2004 Attempted Failure to Register as a Sex Offender Conviction

The SPD Certificate for Determination of Probable Cause (12/17/03) summarized facts associated with not having a registered address after moving out of the building where he was registered on 11/10/03. On 12/9/03 a failure to register case was initiated on Lawless. The building manager at the address indicated that Lawless had moved out of the apartment around 11/1/03. King County Court Information (Cause No. 04-1-09090-0 SEA) indicated he was charged with failure to register as a sex offender related to not having an address registered between 11/2/03 and 12/10/03.

Following an escape from community custody and travel to Florida, upon his return to this area, King County Amended Information (9/14/04) noted a charge was amended to Attempted Failure to Register as a Sex Offender for King County Cause No. 04-1-09090-0 SEA. In a Statement of Defendant on Plea of Guilty 9/14/04, he admitted to knowingly attempting to move and change his address without sending written notice of the address change to the King County Sheriff within 72 hours of moving. Sentencing for the conviction was on 9/24/04. The Defendant's Pre-Sentence Report indicated that he had pled guilty to one count of attempted failure to register as a sex offender and the charge arose out of an incident occurring between 11/2/03 and 12/10/03. The offense was a gross misdemeanor and he was subject to a sentencing range of 0-365 days. The defense recommended that the court impose 30 days with credit for the days he'd already served, because Lawless was currently almost an indigent. He asked that the court waive any non-mandatory fines, fees and assessments.

Escape from Community Custody

A 7th Judicial Circuit Charging Affidavit (April, 2004) noted that Lawless was contacted at the request of the Washington State Probation and Parole Department. A records check had found him to have an open warrant for an escape from community custody. At the time of his arrest he was residing in Florida. He waived the issuance of the extradition warrant and agreed to voluntarily return to the State of Washington.

DOC Violation Report

A DOC Notice of Violation (4/29/04) listed the following violations:

(1) Failure to report to on or about 10/7/03 at the Seattle Day Reporting Center
(2) Escape from Community Custody on or about 10/8/03
(3) Failure to work in a DOC-approved place of employment on or about 10/8/03
(4) Failure to participate in sexual deviancy treatment on or about 10/8/03
(5) Contacted a minor on or about between the dates of 10/8/03 and 4/7/04 in Volusia County, Florida
(6) Failure to register as a sex offender on or about between the dates of 10/8/03 and 10/31/03 in King County
(7) Consumption of an illegal substance, THC, on or about between the dates of 10/8/03 and 10/31/03 in King County
(8) Consumption of alcohol on or about between the dates of 10/8/03 and 10/31/03 in King County
(9) Failure to remain in the county of residence, King County, on or about between the dates of 11/1/03 and 4/7/04
(10) Failure to obtain written approval from supervising CCO before leaving the State of Washington on or about between the dates of 10/1/03 and 4/7/04
(11) Failure to attend and successfully complete MRT on or about between the dates of 10/8/03 and 4/7/04
(12) Failure to obtain a mental health evaluation on or about between the dates of 10/8/03 and 4/7/04.

The report went on to describe all the supporting evidence associated with these allegations. The report noted that his poor adjustment towards supervision poses many threats to the safety of the community. His pattern was viewed as demonstrative of a hard core pedophilic sexual predator. He searches for disenfranchised rebellious youth, or young women with children. He then proceeds to earn the trust of his chosen victim. Historically he continues to engage the minor sexually, or uses the victim to access other victims. The writer spoke with Lawless in the office after his last release and Lawless communicated his desire to seriously participate in SOTP and successfully complete DOC supervision. Lawless is unable to differentiate the truth from deception. The writer interpreted his behavior as like a hard core pedophilic sexual predator because he spent several months living with a young mother and her young daughter. The writer expressed little doubt that he established the relationship with the intent of accessing new victims. Lawless refused to modify his behaviors and did not make any attempt to incorporate anything he may have learned in sexual deviancy treatment into his activities of daily living. His reckless behavior was viewed as creating risk to the whole community.

Additional Violations

A urine drug screen noted positive test results for cocaine metabolites on 11/30/04. A Community Based Chemical Dependency Treatment Referral Form in Process on 1/25/05 noted that he tested positive for cocaine on 11/30/04 and has admitted use of alcohol. He tested positive for methamphetamine on 1/10/05. Another positive UA result for methamphetamine was reported on 1/31/05.

Discharge Summary from Community Treatment

A Discharge Summary from Community Treatment (2/10/05) noted that he was terminated from treatment on 2/7/05. Goals for treatment included reducing his tendency to be impulsive, reducing a tendency to catastrophize, and understanding co-dependent relationships with females. The multiple and ongoing violations provided little indication he made significant progress toward meeting the goal on impulsivity. He reported using a social support system to help him intervene with his tendency to catastrophize. He entered into a relationship with a 21-year-old female and her ability to confront him and intervene on his behaviors was unknown at the time. He engaged in violation behaviors involved with this individual. The report noted that he engaged in many problematic behaviors in the community since his January 2003 release from prison. Behaviors included accessing sexual materials on the internet, establishing an unapproved sexual relationship, failing to make progress in treatment, and failing to abide with curfew. In 10/03, he absconded from Washington and was finally apprehended in Florida. At his violation hearing upon his return, he was found guilty of failing to participate in sexual deviancy treatment, having unauthorized contact with a minor, failure to register as a sex offender, using a controlled substance, consuming alcohol, failure to remain in King County, failure to obtain and complete MRT, and failure to obtain a mental health evaluation. While absconding, he took the rental car to Florida without permission, but paid the rental fees while using the vehicle. He further established a live-in relationship with a mother with an infant child, then admittedly had sex with a 14-year-old girl, but was not prosecuted.

Upon his release from this violation in 10/04, his therapists and risk management specialists were changed. Funding was provided for his housing. He continued to engage in problematic behaviors including failure to report to his SOTP treatment group. He signed a stipulated agreement in 11/04 for failure to program as directed, as a result of leaving a work crew assignment. In 12/04, he submitted to a UA which tested positive for cocaine. He later signed a stipulated agreement regarding his behavior and for having unauthorized sexual contact. In 12/04, he also received a stipulated agreement for failure to report to a treatment evaluation appointment. In 1/05, he admitted to again using methamphetamines and missed another SOTP group. Upon his return to group in late 1/05, he was advised he needed to follow all the rules of the supervision and treatment teams or be terminated from treatment.

On 2/3/05 he was once again taken into custody for violating the rules of his supervision and treatment. He admitted to his CCO he'd consumed on 2/1/05. In addition, he was found in possession of sexually explicit materials, which had not been cleared through his therapist, and other items of significant concern. The report noted that Lawless has strong antisocial tendencies and a significant and lengthy history of engaging in deviant sexual acts. He clearly rejects a conventional lifestyle and should not be allowed any contact with minors. The recent alcohol and drug use indicated that he has unresolved chemical dependency issues and should not be allowed to consume either substance. The report noted that he has a history of using weapons in the robberies of businesses and residences. He self-reports believing he is paranoid, but does not have a supporting mental health diagnosis. He was taking anti-depressants during the portion of the time while he was on the case load but, again, no formal diagnosis has been made available.

The report noted that no successful management strategies have been identified by this or Lawless'

previous therapists. They had speculated that external management strategy would be the most successful approach in working with Lawless, as he was unable or unwilling to comply with his rules of supervision and treatment. His strong antisocial traits undermine the appropriate use of his intelligence. His internal interventions do not appear to be sufficient. The report noted that progress in treatment was indicated by the fact that he was an active participant in treatment when he was present, and with encouragement did make telephonic contact with at least one other group member on a couple of occasions. He did present some of these issues to group, but gave an incomplete picture by omitting the most significant issues. Criminogenic needs identified included antisocial attitudes and feelings, antisocial associates, self-control and problem solving skills, chemical dependency, and rewards for prosocial behavior.

With respect to unique facts that are reasonably associated with criminality, it was noted that he has a long history of engaging in deviant sexual behaviors and breaking the law. With both of these factors present, his risk of recidivism is very high. It further noted that he can recognize a risky situation and has concrete rehearsed plans to deal with them. This is a need area as Lawless has repeatedly demonstrated unwillingness to intervene on his own, or by utilizing the assistance of his support team. It was noted that, in fact, it appeared that he willingly re-offended in Florida, in 2004.

Violation Report and Associated Documents - 2005

A DOC Report of Alleged Violation (2/14/05) summarized previous action related to poor functioning in the community, and noted that the allegations in this violation report included the following:
1. Ingesting methamphetamine on or about 1/31/05.
2. Failing to abide by the terms of the stipulated agreement dated 2/8/05 by possessing drug paraphernalia (brillo and eyeglass earpiece) on or about 2/8/05.
3. Failing to abide by the terms of SOTP community treatment by failing to take medications as prescribed.
4. Failing to abide by SOTP community treatment by consuming alcohol on or about 2/1/05
5. Failing to abide by SOTP by possessing pornography involving a comic of a man and woman having sex, underworld business card, and an article entitled "Great Lovers are Made, Not Born." 6. Failing to abide by the terms of previous negotiated sanction by failing to maintain full compliance with programming requirements of SOTP following release from confinement.
7. Failing to abide by the terms of previous negotiated sanction dated 1/26/05, by failing to maintain full compliance with requirements of the reporting center by using controlled substances, methamphetamines on or about 1/31/05.
8. Failing to abide by the terms of SOTP community treatment by consuming controlled substances on or about 1/31/05.

The report went on to summarize the details of these allegations and indicated that it was also determined that directions were found on him for manufacturing methamphetamines.

King County Superior Court Clerk Minutes (5/17/05) noted a sentence violation hearing related to five alleged violations, including Failure to Report, Failure to Obtain CCO's Approval of Residence, Failure to Continue Sexual Deviancy Treatment, Failure to Register as a Sex Offender, and Failure to Be Available for Drug Testing. Defendant admitted to four violations, but moved for a continuance on the Failure to Register allegation. The Court found willful

violation and imposed jail time of 60 days on each violation, to run consecutively with credit for time served. The hearing on the Failure to Register violation was continued.

2005 Failure to Register as a Sex Offender Conviction

The SPD Case Report Face Sheet (6/9/05) noted that the date of the crime was 5/18/05, and the document noted a charge of failure to register. The follow up report indicated that Lawless was released from incarceration on 1/26/05, and had registered an address on Aurora. It noted that on 3/10/05, it was determined that he was gone and not living at the motel anymore, but had left his personal belongings there. As of 3/28/05, a computer check showed that he was incarcerated as of 3/20/05. The document indicated that his CCO received a telephone call from Lawless on 2/24/05, and Lawless told the CCO that he was no longer residing at the motel. The CCO told him to report to his office, but Lawless failed to report, and a warrant was later issued for his arrest. The CCO did not see or hear the suspect again until he was arrested on 3/20/05. The SPD Incident Report (6/9/05) noted that Lawless had failed to register properly with the Sheriff's office and, as of 5/31/05, when a search was made for sex offender registration files, the latest registration form that was located was for the address on Aurora, on 1/27/05. The SPD Certification for Determination of Probable Cause (6/9/05) summarized facts of the case and noted that Lawless registered a change of address on 1/27/05. As of 3/10/05, it was determined that he was not staying there anymore, but had all his belongings still at the motel room. His CCO had stated that Lawless telephoned him on 2/24/05 and admitted to not residing at the registered address any longer. The warrant was later issued for probation violations and Lawless was arrested and incarcerated on 3/20/05. As of 5/31/05, it was determined that he was still registered at the Aurora address and, as of 6/9/05, was still incarcerated and under DOC supervision.

King County Superior Court Information (Cause No. 05-1-08356-1 SEA) on 6/29/05 indicated that Lawless was charged with failure to register as a sex offender related to not registering during the time they were meeting between 2/24/05 and 3/10/05. In a Statement of Defendant on Plea of Guilty to Sex Offense (8/8/05) he indicated that without admitting guilt he is pleading guilty to the crime charged of failure to register as a sex offender.

Presentence Investigation Summary

The Pre-Sentence Investigation was completed and a report prepared which was dated 9/6/05 in relation to failure to register as a sex offender. The report noted that the current offense represented the seventh adult felony conviction. It described his history and indicated that while in prison from 8/26/92 to 1/15/03 he had 15 major infractions between 1993 and 1995. Since transferred to community custody supervision he had been found guilty of numerous violations including the following:

1. Failure to Make Reasonable Progress in Sex Offender Treatment.
2. Failure to Obey Curfew.
3. Failure to Attend Moral Reconation Therapy.
4. Failure to Report.
5. Escape.
6. Failure to Participate in Sex Offender Treatment.

7. Contact with a Minor.
8. Failure to Register as a Sex Offender.
9. Consumption of Alcohol and Marijuana.
10. Failure to Remain in King County.
11. Failure to Obtain Written Permission for a Leave in Washington.
12. Failure to Complete Moral Reconation Therapy.
13. Failure to Obtain a Mental Health Evaluation.
14. Failure to Obtain Approval for a Residence.
15. Failure to Enter Sex Deviancy Treatment.
16. Failure to Make Self Available for Drug Testing.

The report noted that he was currently serving time for violations and his adjustment to supervision had been poor. The report described the circumstance of not registering a change of address after he moved from an address in which he registered on 1/27/05.

The record indicated that the Department of Corrections actually paid his rent for the apartment on Aurora, to insure that he would have a stable residence after returning from confinement for violation sanctions in 10/04. He reported of complaining about the placement, which is located in a high crime neighborhood frequented by prostitutes and drug abusers, but later decided to remain in the building after developing a relationship with Ms. Perry. While living in that setting he was found guilty and sanctioned for numerous violations of community supervision and the violations during the time included possession of pornography, possession of drug paraphernalia, and possession of weapons. The report noted that he inconsistently participated in sexual deviancy programming since his release to the community after prison, and used his considerable unstructured time to consume methamphetamine and alcohol. The report notes that pornographic materials were found, along with instructions for manufacturing methamphetamine. Possession of pornographic materials was in direct contradiction to his sexual deviancy relapse prevention contract at the time and resulted in termination from the program in 2/05.

There are further notes that he was discovered with items associated with White Supremacist activities and the design of a drug trafficking ring, including roles, rankings, badges, and tattoos to signify different positions within the group. He reported methamphetamine use two weeks prior to his arrest in 1/05, and alcohol use three months in advance of that date. During his community supervision term he was found in possession of methamphetamine, drug paraphernalia, and directions and ingredients for manufacturing methamphetamine. He minimized the influence of his drug use and then said that all his problems adjusting to a pro-social lifestyle have been the result of becoming addicted to adrenaline. He claimed that since his arrest and confinement early in 2005, as a corrective measure, he's been drug free, allowing him to get a clear head to think about things. He self-reported that he's at highest risk to re-offend sexually when he's on drugs and depressed. The official record reflects both alcohol and marijuana involvement in his sexual offense behavior, and indicated that he sporadically tested positive for cocaine use.

The report further noted that he received medications for mood stabilization and to manage his sleep cycle during the current confinement. He described his experience with paranoid ideation and social withdrawal before and during confinement when in conjunction with chronic substance abuse and failure to maintain his medication regimen. He received medical assistance

for prescribed medications prior to entering jail and indicated that he intends to enroll at Seattle Mental Health upon release for sexual deviancy treatment and medication management. Lawless said he believes he'll make it and be successful on supervision and stated, "I need to get off this attitude of I deserve something." He further indicated that if he is a risky person he needs to be locked up and the community needs to be safe. He reported that he simply forgot to maintain the current registration status with law enforcement and said that he understands the obligation to register for life.

The report noted that he has no long-term success maintaining a prosocial lifestyle and has continually expressed a desire to live in a conventional manner and abide by the conditions of supervision, but recently resumed using alcohol and drugs, interrupted his medication and mental health treatment regimen, and failed to abide by conditions of sentence for accountability of the community through the registration process. As recently as 4/04 he was living with an adult female and her minor daughter after absconding to Florida, returning to Washington only after being apprehended through service of a warrant. The report noted that he demonstrated the capacity for sexual assaults of minor females and violence directed more globally when he believes it serves his interests.

Although he has a history of desiring to be seen in a positive light by others, he gravitates to antisocial activities such as drug dealing, robberies, and sexual acting out as he experiences pressure to live up to society's expectations. He has a history of seeking out others living on the fringes and becoming romantically involved with women who are primary caregivers to minor children. He may avoid active collaboration with law enforcement and supervision entities as he becomes more suspicious that he's being scrutinized and not trusted. The report noted that the risk assessment conducted during the pre-sentence investigation interview found him to present a high risk to re-offend.

Risk factors requiring attention to reduce risk include a current lack of residence and employment, financial indigence, substance abuse, and lack of any prosocial resources in the community sufficient to deter his preference for criminal behavior. It does not appear he has made significant progress in any form of sexual deviancy, mental health, or chemical dependency treatment, though he seems to recognize some benefit to counseling. He does not engage in any prosocial activities and appears to live in a somewhat isolated lifestyle. He expressed interest in developing the skills to repair computers; however, he used computers in the past to access pornography, so this current interest may be critically evaluated by his supervising officer during the period of community custody. The department will attempt to assist Lawless in obtaining appropriate housing upon his release, as his Level 3 status will limit his options.

Violation Hearing Outcome

Clerk's Minutes on 11/2/05 noted violations alleged at sentencing hearing for Failure to Report, Living at Unapproved Residence, Failure to Obtain Sexual Deviancy Treatment, and Failure to Make Himself Available for Drug Testing. The violations were admitted with explanation and the Court found willful violations and ordered 60 days on each violation for a total of 240 days.

Polygraph Monitoring

A Polygraph Examination by Richard Peregrin (2/25/03) noted that he was not attempting deception when he indicated that he had not lied about an unreported violation of supervision, had not lied about any unreported use of pornography, had not lied about unsupervised contact with a minor, and had not lied about any use of alcohol.

A Polygraph Examination by Dave McNeill (4/15/03) indicated he reported that he had not used physical force on any prior disclosed victims that he offended with sexually, had not withheld any information about sexual contact he had with them, and had not engage in sexual activity with anyone under the age of 18 that he had not disclosed, and had no engaged in sexual activity with anyone more than three years younger than him that he did not disclose. Results indicated he was not attempting deception in these reports.

A Polygraph Examination by Richard Peregrin (6/19/03) noted that he was attempting deception when he responded no to the question about whether he had lied about being mugged on June 7th or 8th, lied about being at Starbuck's this morning at 5:40, and lying about unreported occasions when he had been sexual with anyone after February 25th.

A Polygraph Examination by Dave McNeill (1/6/05) noted that he was not attempting deception when he said that he had not used any illegal drugs or alcohol that had been unreported, had not had unreported sexual contact, and had not been alone with anyone under the age of 17 since leaving Florida.

Other Sexual History

In the 1992 PSI, he reported that he had his first sexual encounter with a boy nine years old, and he said that he orally copulated the boy, and his sister and another boy were looking and laughed at them. He said his mother taught him how to French kiss when he was 12 years old, and that she French kissed him and that she used her tongue when kissing him on the mouth and after this he stated he had a hard time hugging his mother because he felt uncomfortable. The 1989 report to the California Youth Authority indicated that on being asked if he'd been sexually abused himself, he stated that he was in a foster home and a 35-year-old man sexually abused him. He reported that he did tell a psychiatrist about the incident. The 1992 PSI noted he reported that he masturbates about once a month and he thinks about girls with large buttocks, breasts, being in different sexual positions, and having oral sex performed on him. He never fantasized about raping a female because he realizes this is wrong and said his mother told him to always treat girls right. The report indicated that he denied voyeurism or peeking at people or being involved in exposure. He denied ever taking part in bestiality, cross-dressing, fetishes, bondage, or sex with a non-consenting partner or rape behaviors. He admitted to having utilized the services of a prostitute on a few occasions. He indicated he's only had sex with females and admits to no abhorrent fantasies involving sexual relations with other than females.

The 1992 PSI report indicated he had a prior child molestation charge in California, for which he served time in the California Youth Authority, and there is an indication that the victim was a 7-year-old girl. Reports indicate that he fondled the girl through her clothing and kissed her breasts. He also pulled down her pants and licked her vagina. He started dating at age 12, and

said he would take girls to movies, but there was no sex. He had his first sexual experience when he was 15, and living in a group home in Salinas. He cultivated a relationship with a girl and later had intercourse with her. Thereafter, he said he had sex with a girl who was also in her mid teens for about one and one-half weeks. He reported that he was sexually molested by a 35 year old man who orally copulated him when he was 14 or 15. When he was approximately 14 or 15, he stated that he felt he had a sexual problem and tried to kill himself by cutting his wrists. He said after this he was sent to a boy's ranch and requested an intervention program for sexual problems. He indicated that he recently married his wife and prior to his incarceration he stated he enjoyed normal and daily marital sexual relationship. He reported initiation of sexual desire was done on a 50/50 basis, meaning that they both equally initiate sexual desire, and he also says they are sexually compatible. Prior to marrying her, he stated that they lived common law for about two weeks. The report noted that on the day of the child molestation incidents, Lawless said that he had sex with his wife that morning. When asked if he still had sexual urges why he didn't go back to his wife, he could not offer a plausible answer, only that he did not know.

Other Relevant History

The 1989 report for the California Youth Authority described a fairly lengthy history of involvement with the correctional and social service system, and indicated that the first referral was the result of being a runaway in 1985. There were a variety of problems in his parents' home and he accused them of excessive or inappropriate corporal punishment. The report described his parents' separation and divorce and the family history reported indicated significant difficulties with his biological and step parents. It indicated involvement with a Mexican gang in the Los Angeles area. A compilation of history in the 1992 PSI described his family history and indicated multiple and severe areas of dysfunction. His mother and stepfather were drug dealers and he stated he would stay away from home a lot because of this. He noted that he had a history of gang involvement in California, with a Mexican gang. The report indicated that he was the younger of two children born to his biological parents, who separated when he was three years old. He lived alternately with his natural mother and father before settling in with his mother after her remarriage. He claimed that his mother and stepfather abused alcohol and drugs and both participated in physically abusing him and that his older sister sexually abused him when he was six years old.

The 2005 PSI report described file material indicating that Lawless progressed through conventional public schooling until he was confined in a juvenile setting where he was seen as functioning at a lower level in the classroom because he lacked motivation and would not apply himself. He later acquired a GED in 1990, and attended some college level vocational classes. He self-reported an interest in completing an AA Certification in the computer field. His employment history has been limited to short term and part-time unskilled jobs, none of which lasted longer than nine months. The official record describes his work experience to include fast food operations, construction, building maintenance, and computer repair. He self-reported he last held full-time employment as a cook for eight months while on escape in Florida, in 2004.

He previously reported he drinks about a 6-pack of beer every day because he feels very relaxed when he does this. He said he usually doesn't drink to the point of drunkenness and doesn't feel alcohol is a problem for him. He stated that his parents were drug dealers and he had access to drugs in his teens. He reported he started smoking marijuana when he was about nine or ten

years of age, and continued to smoke the drug. He reported that he also tried PCP when he was 16, and stated that he tried it about seven times. The Pre-Sentence Caseworker Report Upon Commitment to California Youth Authority 2/22/89 described a violation in which he was found to be in possession of two vials of PCP on 11/16/88. He indicated that he had left his placement because he had been told that he would be kept there until he was 18. He resided in the community for an extended period of time and was subsequently arrested when it was found that he was in possession of PCP while accompanied by a friend. He admitted using PCP on a daily basis for about a week, and was starting to get into it.

The report noted that at age 13 or 14 he began smoking marijuana regularly and became a heavy user of the substance while in one particular placement. Around the same time he tried to overdose on medicine that he found in the medicine cabinet. Not long after that, he experimented with cocaine briefly. He reported that he estimated using PCP about 20 times before the arrest in California. He reported that at a group home in Santa Cruz he cut his wrist with a razor blade because he was feeling confused while under the influence of drugs. He indicated that he cut his wrists again on another occasion, and indicated that when he last tried to kill himself that he got scared because it was painful and he couldn't do it too well with a toothbrush. He tried it before with a razor but was caught. The caseworker viewed Lawless as sensitive, depressed, somewhat introspective, polite, and courteous. He noted some anxiety and reported that Lawless rarely made eye contact. There was a certain resignation in his verbalization suggestion that he'd like his life circumstances to change, but he doesn't seem to really believe such changes will come about.

The 1992 PSI report noted he did not suffer from any current mental illness, although he was hospitalized in 1985 because he tried to kill himself by cutting his wrists with a razor. He had weekly sessions for about two years with a psychiatrist. He reported that he overdosed on some prescribed medication when he was 12 years old and again tried to kill himself when incarcerated in the CYA, when he was 17. In that suicide attempt he tried to hang himself but he thought better of it when the physical effects of hanging started.

The 2005 PSI indicated he said that he intended to reapply for public assistance when he returned to the community after completing the confining portion of his current sentence. According to file material he has not been legitimately employed since October 2004. He claimed that he was found eligible for public funding on the basis of mental disability related to post traumatic stress disorder and that he would pursue eligibility for financial and medical assistance through the ADTSA program.

The 2005 PSI also indicated he described having a relationship with a woman by the name of the Sara Perry, but, other records indicated that as of May 2005, she wished to have nothing to do with Lawless. The two of them were intimately acquainted at the time Lawless was using controlled substances in violation of community supervision. The 1992 PSI report noted that he married the mother of his two boys on 4/3/92 and said the ages of his two boys were 2 ½ years and nine months. The record indicates that Lawless had been married and divorced one time immediately prior to going in prison in 1992.

Diagnostic Impression

Axis I: 302.2 Pedophilia, Attracted to Females, non-exclusive type
305.70 Amphetamine Abuse, in remission in a controlled environment
296.90 Mood Disorder not Otherwise Specified

Axis II: 301.90 Personality Disorder not Otherwise Specified (with Antisocial and Narcissistic features)

Diagnostically, he meets criteria for Pedophilia, sexually attracted to females, based on his history of involvement in sexual contact with young females. His juvenile conviction involved sexual contact with a seven year old female in foster care and his 1992 conviction involved sexual contact with two prepubescent females who were virtual strangers. His pattern of involvement in sexual contacts with young females well exceeds the duration criterion of six months, and the age of victims meets the criterion which specifies that individuals targeted are generally age 13 years or younger. He meets other diagnostic criteria for Pedophilia, based on the fact that he was well over the age of 16 when he engaged in these contacts in 1992 and was much more than five years older than the individual who was the victim of his juvenile offense. In addition to the overt offense behavior associated with his convictions, he also self-admitted to deviant interests in young females, showed objective evidence of deviant interests in the context of phallometric testing, and rationalized behavior toward 1992 victims by perceiving them as initiators of sexual advances towards him. Pedophilia, by definition, is a mental abnormality which involves sexual interest in children, including fantasies, urges, and overt behaviors involving deviant interest and which predisposes the individual to engage in sexual contact with children. The primary targets for Lawless would be those individuals of the same gender and age range as past victims, and would include individuals with whom he might spend time with directly setting up an opportunity to offend or by befriending adult family members and ingratiating himself to those adults, or young children who are virtual strangers with whom he offends against in a short period of time.

He also would appear to meet criteria for Amphetamine Abuse, based on his apparent use of stimulants during his recent attempt at community custody. It is likely that he discontinued during the current incarceration, so the specifier, in remission in a controlled environment, has been added. His mental health history indicates the likely presence of some type of mood disorder with both manic and depressive features but not enough detailed information to permit a more precise specification, so the disorder Mood Disorder not Otherwise Specified would seem to best characterize the condition due to absence of more complete information. Neither the stimulant abuse nor the mood disorder would constitute mental abnormalities which predispose him to commit predatory sexual acts against children. Nevertheless, they would be seen as constituting risk factors due the likely impact of these conditions on judgment and self control, so that more basic paraphilic interests associated with children are more subject to lapses in control, based on these substance abuse and mood difficulties.

He also meets criteria for Personality Disorder Not Otherwise Specified (with Antisocial and Narcissistic features). According to DSM-IV-TR, the general diagnostic criteria for a personality disorder involve an enduring pattern of inner experience and behavior that deviates markedly from the expectation of the individual's culture. It is manifested in two or more of the

following areas:

1. Cognition (i.e., ways of perceiving and interpreting self, other people, and events)
2. Affectivity (i.e., the range, intensity, lability, and appropriateness of emotional response)
3. Interpersonal functioning
4. Impulse control.

Criteria further require that the enduring pattern be flexible and pervasive across a broad range of personal and social situations. The enduring pattern leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning. The pattern is stable and of long duration and its onset can be traced back at least to adolescence or early adulthood. The enduring pattern is not better accounted for as a manifestation or consequence of another mental disorder. Finally, the enduring pattern is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition (e.g., head trauma).

Lawless meets most of the criteria for Antisocial Personality Disorder, which is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15, as indicated by three (or more) of the following:

1. Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest.
2. Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure.
3. Impulsivity or failure to plan ahead.
4. Irritability or aggressiveness, as indicated by repeated physical fights or assaults.
5. Reckless disregard for the safety of self or others.
6. Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.
7. Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

In addition, the diagnosis of Antisocial Personality Disorder also requires that the individual be at least 18 years of age, that there be evidence of Conduct Disorder with onset before age 15, and that the occurrence of antisocial behavior not occur exclusively during the course of schizophrenia or a manic episode. Lawless meets most of the first seven criteria for Antisocial Personality Disorder, based on his involvement in criminal behavior, his history of irresponsibility, impulsivity, institutionalization in juvenile and adult correctional facilities, his adjustment within these facilities, and his adjustment under supervision. The limited amount of objective and reliable information about his early childhood and adolescent history limits information for determining if he met criteria for Conduct Disorder before 15. He definitely meets criteria for some form of Disruptive Behavior Disorder, but is not clear that he meets criteria for Conduct Disorder before age 15. Thus, he shows most of the essential features of Antisocial Personality Disorder but does not meet full criteria for the disorder.

Narcissistic Personality Disorder involves a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

1. Has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)

2. Is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love
3. Believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)
4. Requires excessive admiration
5. Has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations
6. Is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends
7. Lacks empathy: is unwilling to recognize or identify with the feelings and needs of others
8. Is often envious of others or believes that others are envious of him or her
9. Shows arrogant, haughty behaviors or attitudes

The history compiled in this report and his functioning in a number of settings suggests the presence of some features of Narcissistic Personality Disorder, particularly in the areas of entitlement, interpersonal exploitation, and lack of empathy, but not a sufficient number to meet full criteria for the specific personality disorder.

Personality Disorder Not Otherwise Specified (with Antisocial and Narcissistic features) does not in and of itself predispose him to commit predatory sexual acts but it does provide support for the beliefs and attitudes underlying behaviors which victimize others. This disorder would also account for the long-standing difficulties with compliance problems under supervision and highlight the intractability of problems in this area and add support to any conclusion that these problems are likely to persist despite any purported mental health approach to treatment or statements on his part that he intends to work to alter these patterns.

Risk Assessment

This report addresses his risk via multiple methodologies. The first involves a methodology which would be characterized as a clinical risk assessment incorporating empirically validated and/or clinically relevant risk factors. The second involves examining studies of long term recidivism rates for child molesters. The third involves three actuarial procedures, the Minnesota Sex Offender Screening Tool – Revised (MnSOST-R), Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), and the Static-99.

Empirically Validated/Clinically Relevant Risk Factors

Lawless has a history of involvement with sexual contact with prepubescent females with an onset in adolescence, in California, followed by involvement in an incident in this area shortly after his arrival in this state in 1992. The 1992 charges also included an incident in which he was charged with sexual contact with a 14-year-old female, in close temporal proximity to the offenses with the two prepubescent females. At the time of his adolescent offense, he was involved in an extended period of disruptive, oppositional, and noncompliant behavior which adversely impacted his ability to adjust in a satisfactory manner in a number of foster care placements. At the time of his 1992 offenses in this area, he was involved in violent and antisocial behavior, a series of armed robberies. Thus, at the time of both offenses, he was simultaneously exhibiting other behavior grossly at odds with social expectations related to

favorable adjustment to ongoing life demands. He initially showed evidence of poor adjustment and functioning in prison, receiving multiple infractions between 1993 and 1995. His later adjustment and functioning in prison were much more satisfactory. He entered sex offender treatment in prison and showed evidence of deviant interest as part of a PPG assessment early in treatment. He also showed initial evidence of presenting scenarios of sexual offending with young females in which he characterized the encounters as involving victims approaching him and initiating sexual interest in him. With some difficulty, he was able to characterize these encounters more accurately. Upon his initial entry into treatment, he did not admit to sexual arousal to females under the age of 14, but after concluding the PPG, he did acknowledge arousal to females between the ages of 7 and 18. In treatment, he completed a variety of treatment assignments related to his cycle, strategies for addressing risk issues, and approaches to self-managing behavior in community settings. The quality of some of his work suggested he derived benefit from treatment in terms of changes in verbal behavior in relation to offending and prevention of reoffense. These changes in verbal behavior failed to translate into meaningful changes in overt behavior in life situations outside of custody in a secure setting.

Despite the apparent progress in treatment, his adjustment upon his return to the community would be characterized as involving extreme noncompliance. He failed to comply with requirements related to sex offender registration, did not sustain involvement in employment, used illegal drugs, associated with antisocial peers, absconded from community custody, moved to another state and resided with a woman with a young child, and allegedly had sexual contact with a minor female while residing in that state. Upon his return to this state, upon release from custody, he again failed to meet his registration responsibilities, failed to make progress in community treatment, was terminated from community treatment, and subsequently was charged with assaulting three females in the emergency room at Swedish Hospital. Despite repeated contacts with mental health system resources at various times in his life, he has not sustained involvement in any form of mental health treatment or pharmacological management of mood difficulties which have been described in records. Under conditions of markedly elevated or depressed moods, he would be more vulnerable to underlying difficulties with deviant interests in children and the combination of the substance abuse and mood problems would constitute a dual problem requiring attention and which is related to self and external management of risk. During the period of time he was in community custody, he made no apparent progress in either area.

A variety of features of the case which relate to risk of sexual recidivism include the following:

1. Adolescent onset of sexual interest in prepubescent females and persistence of interest into adulthood, as evidenced by his conviction for sexual contact with prepubescent children in 1992.
2. Deviant results from a phallometric assessment.
3. Cognitive distortions regarding offenses indicating attitudes compatible with sexual offending with children.
4. A history of sexual irresponsibility around the time of offending, indicating sexual preoccupation and an attitude of sexual entitlement.
5. Violent non-sexual offenses involving armed robbery.
6. Repeated failure to comply with community supervision requirements involving severe noncompliance over many areas of functioning.

7. Noncompliance with system interventions and conditions persisting from early adolescence into his continuously noncompliant behavior during his recent attempt at community custody.
8. Allegedly engaging in sexual contact with a teenage girl while absconding from supervision.
9. Committing an assault involving three women while under community supervision.
10. An extensive history of infractions during a period of his incarceration.
11. Having an antisocial peer group while under community supervision and very limited prosocial supports.
12. Being terminated from community-based treatment.
13. Meeting criteria for a personality disorder involving major difficulties with antisocial, impulsive, and irresponsible behavior present over an extended period of time and across many life situations.
14. The presence of a substance abuse problem.
15. The presence of mood difficulties.

The particular combination of static or historical risk factors, along with dynamic or potentially changeable risk factors would indicate that he is at very high risk for sexual recidivism, based on methodology involving empirically-based and clinically relevant risk factors.

Long Term Recidivism of Child Molesters

The literature on long-term recidivism of child molesters emphasizes that risk of reoffending is generally higher for extrafamilial offenders, particularly those with more lengthy histories. One recent study reported sexual recidivism for child molesters to be at approximately 40 to 50% after 10 to 15 years based on official records, and another study estimated sexual recidivism rates for extrafamilial child molesters to be 52%, with a 25-year follow-up. These estimates based on official records reflect detected recidivism which understates true recidivism, based on both detected and undetected recidivism. Studies which have employed a variety of methodologies to examine differences between official measures of rates of sexual offending versus overall rates of sexual offending indicate that official measures significantly understate the true rates of recidivism. These observations are based on studies which have examined self-reported sex crimes of sex offenders, along with studies which have examined rates at which victims report sex offenses to legal authorities. Failure to report sex crimes would preclude the possibility of an official charge or conviction, so that the studies which have shown a low reporting rate for sex crimes add further support to the observation that official measures of recidivism significantly understate the true recidivism rate. Those studies which have examined recidivism in the context of treatment outcome would seem generally to indicate that recidivism rates are higher for individuals who are repeat offenders. Thus, the literature would support the conclusion that for individuals with histories similar to Mr. Lawless, risk of sexually reoffending would be high.

Actuarial Approaches

Although these arguments that Mr. Lawless is at high risk for sexual offending appear to be compelling, they do not permit a precise quantitative estimate of the risk of recidivism. Recent efforts in the area of actuarial prediction of sexual recidivism would indicate that there are three

methodologies which appear to have promise in providing a more objective method of anchoring predictions about levels of risk of sexual recidivism. On the Minnesota Sex Offender Screening Tool – Revised (MnSOST-R), Mr. Lawless received a score of 15. Using the original normative data for a cut score of 15, individuals with scores of 15 or higher had a probability of sexual recidivism of approximately .87 with a six-year follow-up. More recent normative data establish a 95% confidence interval which indicates that individuals who have scores of 13 or higher, the estimated probability of sexual recidivism is .88, with a 95% confidence interval between .60 and .98 based on a six-year follow-up. The ten-year sexual recidivism rate is .88, with a 95% confidence interval between .60 and .98. Results from an extended sample for those who scored greater than 13 yielded a probability of sexual recidivism of .70 for a full sample of 351, and a probability of sexual recidivism of .86 for a sample of 322. The full sample included 29 individuals who returned to prison for release violations for nonsexual offenses prior to the end of the six-year follow-up period. On the Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), he received a score of 3, which translates into a probability of sexual recidivism of .25 at 5 years and .37 at 10 years, based on the sexual recidivism rates of the original normative sample. On the Static-99, he received a score of 7, which places him in the high risk category, and translates into a probability of sexual recidivism of .39 at 5 years, .45 at 10 years, and .52 at 15 years, based on the original normative sample. None of these methodologies indicates that his risk for reoffending is low, although the MnSOST-R suggests that his risk is much higher as a strict quantitative estimate than either the RRASOR or Static-99. However, a score of 15 on the MnSOST-R would place him at approximately the 95th percentile, while a score of 3 on the RRASOR would place him at the 86th percentile, and a score of 7 on the Static-99 would place him at approximately the 94th percentile in terms of the distributions of scores of the total number of offenders in the original normative samples, respectively for these instruments. Thus, these percentile comparisons are relatively stable across the three instruments and indicate that his score falls toward the upper to extreme upper end of the distribution with all three instruments.

Self-Management of Dynamic Risk

An earlier section described numerous features of the behavior and functioning of Mr. Lawless while under supervision during community custody. His difficulties persisted and his overall noncompliance continued in spite of numerous sanctions and intervention attempts. There is little basis for inferring he would function in a different manner at this point. I would conclude that he exhibits a marked inability to self-manage dynamic risk or cooperate with external risk management procedures. Furthermore, this inability is evident from behavior over an extended period of time under supervision where there is virtually no evidence of even short term success. Thus, there would appear to be little basis for downward adjustment in risk level from estimates of risk based on clinical and empirical risk factors, long term recidivism of child molesters, or actuarial approaches. In fact, there would be more support for upward adjustment of risk. Recent literature on dynamic risk assessment clarifies the significance of antisocial behavior and compliance problems as significantly related to sexual recidivism in follow-up studies of sexual offenders. Outside of a structured environment, the same type of compliance problems observed in the past seem virtually inevitable, in light of his juvenile and adult history outside of confinement

Overall Conclusion Regarding Risk

Thus, from a variety of perspectives and using multiple methodologies, risk of sexual recidivism is very high.

Conclusion

Mr. Lawless has a conviction for Child Molestation in the First Degree. RCW 71.09.020 lists Child Molestation in the First Degree as a sexually violent offense. It is my professional opinion, to a reasonable degree of psychological certainty, that Mr. Lawless exhibits a mental abnormality, Pedophilia, as described in the earlier portion of this declaration. This disorder predisposes him to commit predatory acts of sexual violence against children who are strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists, unless he is confined in a secure facility. Furthermore, his risk of sexual violence towards these individuals is very high, indicating he is likely to commit predatory acts of sexual violence, unless he is confined in a secure facility. The nature of his mental abnormality and personality disorder and other factors affecting level of risk are such that a less restrictive, community based alternative to total confinement is not an appropriate alternative to total confinement. Thus, I would conclude that he appears to meet criteria for civil commitment as a Sexually Violent under RCW 71.09. Finally, it is my professional opinion that his overall pattern of behavior and specific incidents of conduct involving chronic noncompliance with conditions of release, and sustained access to and unsupervised contact with children during the period in which he absconded from community custody are alarming from a professional perspective, exceeding the threshold of reasonable apprehension of harm of a sexually violent nature.

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Charles A. Lund, Ph.D.
Licensed Psychologist #565
Sex Offender Treatment Provider #13

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, dated this 15th day of August, 2006, Port Ludlow, WA.

Charles A. Lund, Ph.D.

CURRICULUM VITAE

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Ph.D. 1973	Psychology, Utah State University, Logan, Utah
M.S. 1971	Psychology, Utah State University, Logan, Utah
B.A. 1969	Psychology, Gonzaga University, Spokane, WA
PROFESSIONAL LICENSE:	Washington license for the private practice of psychology
CERTIFICATION:	Washington sex offender treatment provider (full certification)
OTHER QUALIFICATIONS:	Developmental disabilities professional

PROFESSIONAL EXPERIENCE:

1980 - present	Private practice of psychology and consulting to human service agencies and programs
1995 - present	Consulting Psychologist, Special Commitment Center
1991 - 1995	Consulting Psychologist, Special Commitment Center Program for Developmentally Disabled Offenders
11/84 - 4/89	Consulting Psychologist, Rainier School
2/84 - 12/86	Consulting Psychologist, Ballard Community Hospital Care Unit Alcoholism Program
5/84 - 5/85	Consulting Psychologist, Choice Inc., out-patient alcoholism program
8/83 - 12/84	Consulting Psychologist, Care Unit Hospital of Kirkland
1/83 - 2/84	Staff Psychologist, Ballard Community Hospital Care Unit Alcoholism Program
1/82 - 7/84	Research Consultant, Child Development and Mental Retardation Center, University of Washington, Seattle

1976 - 1980	Research and Consulting Psychologist, State of Washington, Department of Social and Health Services
1975	Postdoctoral Fellow, National Council on Alcoholism, Department of Psychiatry and Behavioral Sciences, University of Washington, Seattle
1974	Instructor, Psychology Department, Rockhurst College, Kansas City, Missouri
	Instructor, Psychology Department, University of Missouri, Kansas City
	Postdoctoral Clinical Supervision, Center for Behavioral Development, Overland Park, Kansas, and Mid-Continent Psychiatric Hospital, Olathe, Kansas
1969 - 1972	NDEA Predoctoral Fellow, Utah State University, Department of Psychology, Logan, Utah

PROFESSIONAL AFFILIATIONS:

Member, American Psychological Association

Member, Association for the Advancement of Behavior Therapy

Member, Association for the Treatment of Sex Abusers

PUBLICATIONS:

Lund, C.A. (1976). A reliable, inexpensive device for recording head turning. Journal of Experimental Child Psychology, 21, 361-362.

Lund, C.A. (1976). Effects of variations in the temporal distribution of reinforcement on interval schedule performance. Journal of the Experimental Analysis of Behavior, 26, 155-164.

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Lund, C.A. (1992). Long-term treatment of sexual behavior problems in adolescent and adult developmentally disabled persons. Annals of Sex Research, 5, 5-31.

RECENT PAPER PRESENTATIONS:

Lund, C.A. Some useful principles in the assessment, management, and treatment of maladaptive, deviant, and illegal sexual behavior in retarded persons. (Paper presented at the 1989 meeting of the Association for the Behavioral Treatment of Sexual Abusers, October 5-8, Seattle, WA.)

Lund, C.A. Multicomponent treatment of deviant sexual behavior of retarded persons in an institutional setting. (Paper presented at the 1989 meeting of the Northwest Association for Behavior Analysis, October 27-29, Seattle, WA.)

Lund, C.A. Managing and treating serious sexual behavior problems of retarded persons. (Paper presented at the 1990 meeting of the American Psychological Association, August 10-14, Boston, MA.)

AREAS OF CLINICAL INTEREST AND EXPERTISE:

Deviant sexual behavior

Mental retardation and developmental disabilities

Maladaptive and deviant sexual behavior of developmentally disabled persons

Severe behavior problems of developmentally disabled persons

Sexually aggressive children and adolescents

Anger management

Alcoholism and drug abuse

Mood and anxiety disorders

Psychological evaluation and assessment

Cognitive behavior therapy

FORENSIC EXPERIENCE:

Sexual deviancy evaluations for developmentally disabled offenders

Competency, sanity, and dangerousness evaluations for developmentally disabled offenders (RCW 10.77)

Sexually violent predator civil commitment evaluations (RCW 71.09)

Community based treatment of a sexually violent predator under court ordered conditional release

Community based treatment under the Special Sex Offender Sentencing Alternative (SSOSA)

Community based treatment under the Special Sex Offender Dispositional Alternative (SSODA)

Psychological evaluations in CPS cases involving complex family dysfunction and child sexual abuse

Psychological evaluations involving sentencing in criminal cases

Psychological evaluations of impaired pharmacists and attorneys seeking license reinstatement

Expert witness in medical malpractice cases related to alcoholism/drug treatment