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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

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6 In Re the Detention of:)
7 ELMER CAMPBELL.) NO. 02-2-07982-2
8) SEA
9)

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11 Deposition Upon Oral Examination Of
12 DENNIS M. DOREN, Ph.D.
13 Volume 1

13

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15

16 April 25, 2002
17 Seattle, Washington

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21 REPORTED BY: CONNIE FARANDA, CCR, RPR

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EXAMINATION INDEX

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4 EXAMINATION BY:

PAGE NO.

5 Mr. Hirsch

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EXHIBIT INDEX

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10 EXHIBIT NO. DESCRIPTION

PAGE NO.

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12 (No exhibits marked for identification.)

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1 BE IT REMEMBERED that on Thursday,
2 April 25, 2002, at 810 Third Avenue, 7th Floor,
3 Seattle, Washington, at 9:30 a.m., before Connie
4 Faranda, CCR, RPR, Notary Public in and for the State
5 of Washington, appeared DENNIS M. DOREN, Ph.D., the
6 witness herein;

7 WHEREUPON, the following
8 proceedings were had, to wit:

9

10 <<<<<< >>>>>>

11

12 MR. HIRSCH: This is the case of in
13 re Elmer Campbell, new cause number 02-2-07982-2 SEA in
14 King County Superior Court. We're here today for the
15 deposition of Dr. Dennis Doren.

16 My name is David Hirsch. I'm attorney for
17 Mr. Campbell.

18 Starting with Ms. Smith, can everybody here
19 identify themselves?

20 MS. SMITH: Laura Smith on behalf
21 of Elmer Campbell.

22 MS. PORT: Cindi Port for the
23 State.

24 MR. HACKETT: David Hackett for the
25 State.

1 THE WITNESS: Dennis Doren.

2 MR. HIRSCH: And Dr. Doren, I'm
3 sure you've been subject to depositions many times
4 before, correct?

5 THE WITNESS: I have.

6 MR. HIRSCH: And you know the
7 general drill, right?

8 THE WITNESS: I think I do.

9 MR. HIRSCH: And that means that
10 I'm going to ask you questions. Ms. Port or
11 Mr. Hackett may have objections. But unless they
12 specifically claim some sort of privilege or problem
13 with the question and ask you not to answer, it's your
14 duty to answer regardless of the objection. You
15 understand that, right?

16 THE WITNESS: I understand how it
17 works.

18 MR. HIRSCH: Okay. And you
19 understand that you have a continuing obligation with
20 regard to questions I ask you at this deposition. In
21 other words, should you later remember or discover
22 materials you hadn't thought of today that would give
23 you an answer or a completed answer to a question I
24 asked you today, it's your responsibility to tell me
25 about it further if --

1 MR. HACKETT: I'm going to object
2 to that. There is no continuing obligation on behalf
3 of the witness to call up Mr. Hirsch and correct his
4 answers in the deposition.

5 MR. HIRSCH: Well, I would have no
6 objection to your providing any such information to the
7 prosecutors, as long as it's with direction to get it
8 to me. That goes as well for new information you
9 receive that would provide further or different answers
10 to the questions I ask you.

11 MR. HACKETT: And I'll object to
12 that, as well. The prosecutor's obligation will be to
13 provide updates in discovery in accord with the rule
14 regarding interrogatories, which Mr. Hirsch roughly
15 states. But Dr. Doren has no role in insisting that I
16 get anything to Mr. Hirsch.

17

18

19 DENNIS M. DOREN, Ph.D., having been first duly sworn
20 by the Notary, deposed and
21 testified as follows:

22

23 MR. HIRSCH: Before we go any
24 further, which of the two of you will be defending the
25 deposition? David, will that --

1 MR. HACKETT: The fellow that's
2 been talking.

3 MR. HIRSCH: I figured. I just
4 wanted to check.

5

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EXAMINATION

8 BY MR. HIRSCH:

9 Q Dr. Doren, could you please state your name,
10 profession, and place of business?

11 A Name is Dennis Doren, last name is D-O-R-E-N. I'm a
12 psychologist licensed in Wisconsin and Iowa with a
13 permit to practice in Washington. I work both for the
14 State of Wisconsin and in private practice.

15 Q And what do you do for the State of Wisconsin?

16 A My title is the evaluation director for Sand Ridge
17 Secure Treatment Center, which is a State of Wisconsin
18 forensic hospital specifically for the detained or
19 committed and/or committed sex offenders.

20 Q And is that under a law roughly analogous to our RCW
21 71.09, the sexually bound predator act here in
22 Washington?

23 A Some of the words are different, but the concepts and
24 what evaluators need to assess are very much alike.

25 Q Okay. And for the record, could you just give us your

1 work address?

2 A 301 Troy, T-R-O-Y, Drive, Madison, Wisconsin, 53704.

3 Q Dr. Doren, you provided a report, an evaluation of
4 Mr. Campbell to the prosecutor on August 31st, 2001,
5 correct?

6 A Yes.

7 Q And I am sure you've had an opportunity to review
8 additional material since then?

9 A Yes.

10 Q Let's see. Would that include all additional discovery
11 provided by the State since then?

12 A I have no way --

13 Q Let me withdraw that question. That was a silly one.

14 MR. HIRSCH: Stop laughing, David.

15 Q (By Mr. Hirsch) Would that include updates of
16 Mr. Campbell's progress at the Special Commitment
17 Center?

18 A I did see such reports.

19 Q Did that include both evaluations and progress notes
20 filled out by staff?

21 A I did see such reports.

22 Q Okay. Do you know if you've seen all of the materials
23 provided to the State by the Special Commitment Center?

24 A I don't know if I have a way of knowing that.

25 Q Okay. I imagine you've had a chance to look at the

1 evaluation provided by Dr. Randy Otto?

2 A No, I've not seen that.

3 Q You have not seen Dr. Otto's report?

4 A No, I have not.

5 Q Okay. And have you had a chance to look at

6 Mr. Campbell's deposition from last week?

7 A Yes.

8 Q And I gather you've not yet seen the deposition of

9 Dr. Otto.

10 A That's correct.

11 Q Neither have I.

12 Given all the materials you've -- well, are there
13 any other specific materials you've reviewed during the
14 past year since filling out this report that you think
15 have had any impact on your conclusions or testimony or
16 beliefs about this case?

17 A I don't know about impact. But just to be a bit more
18 complete, there were some copies of e-mail exchanges
19 between Ms. Smith and Dr. Kishur or Kershur -- I'm not
20 sure how to --

21 Q Kishur.

22 A Kishur. K-I-S-H-U-R.

23 -- that I reviewed, that I saw.

24 I was literally just given a report that I had not
25 seen previously.

1 Q That's Alissa Hansen's plethysmograph report concerning
2 Mr. Campbell?

3 A Yes.

4 Q After reviewing all of these materials, do you have any
5 changes you'd make to your report from August 31st,
6 either in conclusions, in actuarial scores and
7 observations?

8 A None of the actuarial scores changed. The PCL-R score
9 did not change. The description of information in my
10 report would not be altered. My bottom-line opinions
11 did not change.

12 What potentially would be in addition to anything
13 in my report from August 31st, 2001, would simply be
14 updated information about the process of assessing
15 someone's treatment benefit. There are other methods
16 besides the one I used that, if I were to write a
17 report today, I would probably include. Would not
18 ultimately change any opinion. It would simply be
19 other ways of looking at it.

20 Q And what are those other ways?

21 A There is the -- well, the full picture is in a recent
22 report, what I found was that I was looking at four
23 different potential ways of describing someone's
24 treatment benefit. And one of those is purely based on
25 whether someone has completed a reasonable program

1 versus not.

2 In Mr. Campbell's situation, he would be in the
3 category as not having completed. I don't personally
4 think that that approach is the best approach, but
5 there are people who use it. And he would --
6 Mr. Campbell -- the effect for Mr. Campbell would be to
7 discount any potential benefit he may have gotten by
8 partially completing a program.

9 Q Now, is this approach based on any particular published
10 articles or instruments or guidelines?

11 A Yes. It's based on an interpretation of what is
12 referred to as the ATSA Collaborative Treatment Outcome
13 Study, what has recently been published by Dr. Hanson
14 and a large set of other people.

15 Q Under Marquis and Otto -- no. Marquis and Gordon and
16 Quincy among them?

17 A Yes. And I was not. You were mentioning my name. I'm
18 not on that list.

19 Q I know. I...

20 A And the bottom-line finding, that people who complete a
21 program show lower recidivism rates, sexual recidivism
22 rates of relevance compared to people who either do not
23 start a program or who drop out of a program once they
24 start. And so there are a few people around who will
25 take that result and say, therefore, if someone

1 completes a program, they get full credit for the
2 treatment progress. And if they have yet to complete,
3 they don't get any credit.

4 Q And why do you think that's not a good approach or not
5 the best approach, as you put it?

6 A I think the first part of it is accurate to the point
7 in terms of that there are -- there's benefit on
8 average from treatment completion. There are
9 exceptions to that that I'll come back to when I talk
10 about a second approach in a moment. But treatment
11 completion is a substitute measure for something else
12 that's more psychologically and criminologically
13 meaningful. And it doesn't all happen in a day, that
14 somebody has no benefit and then has complete benefit
15 by officially being considered having completed.

16 There's also research indicating that people go
17 through psychological changes in the middle of
18 treatment.

19 So it seems incomplete to me to say that a person
20 does not have any benefit until they complete the whole
21 program and then they have full benefit.

22 Q Before you go onto the further approaches, you said
23 there are studies that people go through changes in the
24 midst of treatment.

25 A Yes.

1 Q Could you name what any of those studies are?

2 A Specific to sex offenders?

3 Q If you know them. Or if not, the others.

4 A I'm thinking of one in particular, not published, but
5 presented a few different times by David Thornton that
6 is -- he was exploring the issue of why it is that we
7 find that people who start a sex offender treatment
8 program and then either drop out or are terminated by
9 staff from the program, why their recidivism rates end
10 up being higher than people who never even start a
11 program. There are two different, quick

12 interpretations that people had as possibilities. One
13 was that it was just a self-selection process, those
14 who were already higher risk and really didn't want to
15 change, were trying to fake it in some way, found they
16 couldn't fake it, and would drop out. It was just a
17 self-selection process. The treatment had no effect.

18 The other hypothesis was that there was something
19 that was occurring in the middle of treatment that if
20 people dropped out or were terminated in the middle, it
21 actually increased their risk.

22 David Thornton did some research that found -- with
23 psychological testing information, that found that in
24 the process of treatment, people's self-esteem would
25 initially become worse, that their anxiety and

1 depression would typically go up. And then that was
2 worked through in the process of treatment, and they
3 ended up completing treatment where their self-esteem
4 was improved compared to the beginning, and they had
5 less in the way of -- let me just say uncomfortable or
6 distressful feelings.

7 Q So in other words, this would be a gradual breaking
8 down of defenses through the rise in self-esteem, among
9 other things?

10 A That would be one interpretation that's reasonable.
11 David's explanation of it, Dr. Thornton's explanation
12 of it is more directly in terms of what we ask of sex
13 offenders to do during treatment; that initially we put
14 them quite typically in groups, and maybe individual
15 therapy is part of a process, but typically they're in
16 group settings with other people that they have little
17 relationship with to start, and we ask them to talk
18 about things that are difficult for them to acknowledge
19 to people who they're even close with, assuming they're
20 not psychopaths and not close with anyone. I mean,
21 people who are not psychopaths. And that process of
22 disclosure is clearly something that all treaters know
23 is difficult for individuals to go through. But yet,
24 it is quite typically required as part of a process for
25 ultimately the relapse prevention plan.

1 And so Dr. Thornton's interpretation is that in the
2 process of the required set of tasks, they, to use your
3 words, have their defenses broken down. And then
4 there's a rebuilding process. This is actually not
5 dissimilar at all to what has been found with typical
6 psychotherapy procedures. People typically feel worse
7 before they feel better.

8 Q Okay.

9 A And so if they leave in the middle of that process,
10 when they're feeling worse, that apparently raises
11 their risk.

12 Q And what does that say about the eventual increase or
13 reduction of the risk after a lengthier period of time?

14 A Putting together both, that dropouts or the terminated
15 individuals have higher risk but that completion of
16 treatment shows a lower risk compared to people who
17 never start, then clearly there's a process that's
18 going on that -- again, I am fine with your concept --
19 to help them rebuild the individual's defenses in a
20 more healthy way and lowers their risk from that point
21 on if they stay in treatment.

22 Q Okay. So I'm a little confused. What you had told me
23 before was that it sounded like you were saying that
24 people go through positive changes in the midst of
25 treatment as opposed to just at the -- upon completion

1 of treatment. Did I misunderstand you there?

2 A Let me clarify. What I'm saying is that clearly people
3 go through changes. It's not a straight line. You
4 don't just start where -- at some point and then go
5 straight to the positive direction until you complete
6 treatment. Apparently it's more of a process where a
7 person's risk actually increases for a period and then
8 would be decreased as the person moves in a more
9 positive direction.

10 But all of that was in the context that it did not
11 seem reasonable to me to say that either a person's
12 completed treatment or he hasn't. And completion of
13 treatment is a lowering of recidivism, and
14 noncompletion is nothing. That doesn't make sense to
15 me.

16 Q You talked about the self-selection process, people who
17 were -- who never wanted to change, who entered
18 treatment with the purpose of trying to fake it.

19 A Yes.

20 Q Would that apply mostly to psychopaths?

21 A No. Psychopaths would probably be about half of that
22 group.

23 Q Okay.

24 A And I'm approximating because there are two basic types
25 of people that I know who would fall into that group.

1 One are the highly psychopathic individuals who are
2 trying to fake it because that's what they do.

3 Q Right.

4 A And the other is the type of sex offender who actually
5 enjoys what he's doing -- I'm going to say "he," just
6 to make it easier -- who enjoys what he's doing in
7 offending and does not often, typically, at least, see
8 it as offending. He knows it's illegal but doesn't see
9 something wrong with it.

10 Q So those two subcategories, the psychopaths and the
11 people who enjoy the offending and see nothing wrong
12 with it, would those two groups tend to increase the
13 recidivism rates for treatment dropouts?

14 A There's reason to believe that that would be true as
15 well, yes.

16 Q After speaking generalities, I'm going to ask you
17 specifically about Elmer Campbell.

18 A Certainly.

19 Q Would you put him in either of those two groups, based
20 on your knowledge of him?

21 A At the time that he dropped out of treatment in '95, I
22 believe it was, he would have been a treatment dropout
23 technically in terms of the research literature's
24 definition. In terms of his stated reasons, his stated
25 reasons would fit into neither of the two categories of

1 your question. The fact that he is now back in
2 treatment is -- it would depend on which piece of
3 research one even looks at to see how he would be
4 categorized. Is he still considered a dropout who's
5 now back in treatment or is he no longer even a
6 dropout?

7 Q Which pieces of research would we have to look at to
8 make that determination?

9 A The application of the Minnesota Sex Offenders
10 Screening Tool-Revised, the MnSOST-Revised, is a --
11 MnSOST-R. Question number 15 on sex offender
12 treatment, the scoring rules indicate that once someone
13 drops out of treatment, they are considered a dropout
14 until they are a different category, which in this case
15 would be a treatment completer. Outside of that
16 research, however, I'm not aware of others that would
17 quite use that same definition.

18 Q In terms of the --

19 A By the way, I didn't finish answering your question you
20 had earlier, just to let you know --

21 Q Okay. We'll get back to that in a minute.

22 A Okay.

23 Q With the MnSOST-R categorization, once you've dropped
24 out, you remain a dropout until you're a completer,
25 what research was that based on?

1 A The developmental research for that instrument.

2 Q And can you say anything to us about what led
3 Dr. Epperson and his fellow developers of the MnSOST-R
4 to come up with that conclusion on their test?

5 A Yes. And it actually has to do with how they run the
6 treatment program in Minnesota Corrections. In the
7 Minnesota Department of Corrections Sex Offender
8 Treatment Program, which I'll just now abbreviate SOTP
9 so we don't have to keep saying that all day, they have
10 a treatment philosophy among the staff, quite the --
11 the policy, not just philosophy, but to try to solicit
12 people back into a program where they have dropped out.
13 And it's actually quite rare that they terminate
14 people. They expect people to do various acting out,
15 and they don't terminate people because they've done
16 such. They consider that part of the treatment
17 process, to -- I mean, there will be consequences
18 within the correctional system, but they don't drop
19 them from the program. And people who are looking to
20 drop out, they directly have conversations with them,
21 trying to keep them in the program. And if they do
22 drop out, they then send them invitations -- I don't
23 know if they meet with them personally or not, but at
24 least send them invitations, trying to get them back
25 into the program again.

1 Within that model, people who drop out and stay out
2 end up showing themselves to be clearly at higher risk.
3 In a sense, in an important sense, there was a process
4 of solicitation by staff to Mr. Campbell to get him
5 back into the program. He eventually went back into
6 it. So as I think about it, technically, actually, he
7 would be listed now as in the program and not yet time
8 to complete, as I think about it. He would not be
9 considered a dropout.

10 Q It would take me a few minutes now to find your
11 MnSOST-R scores. How did you score him on that point?

12 A I believe that's a zero, and I believe that's how I
13 scored him. I know I didn't score him as a dropout.

14 Q Okay. Let's go back to the question of the two kinds
15 of people --

16 A Right.

17 Q -- you talked about who drop out. The fakers and those
18 who enjoy their deviance, I guess would be the two
19 categories, correct?

20 A Yes.

21 Q Would you expect persons who fit into neither of those
22 categories to have increased risk of recidivism
23 relative to the population of sex offenders based on
24 their dropping out or not completing treatment?

25 A If they dropped out and stayed out, I would still have

1 to say yes.

2 Q If they're not part of those two groups, why would you
3 say yes?

4 A The recidivism rate research doesn't break it down for
5 those people who drop out of treatment into those
6 groups, being the particularly high-risk set. People
7 have found that of those people who drop out, there are
8 at least those two types of individuals. But there's
9 not separate research in that regard. And the research
10 for my view is quite consistent, not absolutely
11 consistent, that people who drop out of treatment once
12 they began it have higher recidivism rates.

13 Q Would the absence of research breaking down dropouts
14 among fakers, those who enjoy deviance, and others, in
15 any way tend to make you doubt the validity of that
16 research concerning dropouts as regards somebody who is
17 not one of the two groups?

18 Was that an impossibly convoluted question?

19 A I understand the question.

20 Q Okay.

21 A And at this point in time, I would absolutely be quite
22 interested in seeing any research that would look at
23 things further. But more directly to answer your
24 question, no, I would not have any significant doubts
25 in applying it because of the research such as I cited

1 from Dr. Thornton, that in general, people dropping out
2 show these problems -- show this increase in
3 depression, anxiety, low self-esteem, and that's
4 irrelevant to who they were.

5 Q Does the research indicate any differentials,
6 variables, in dropout rates with regard to the quality
7 of the program?

8 A I don't know how to measure quality of program. If
9 your question is, are there different dropout rates in
10 different programs, very much so.

11 Q Okay. Would you be aware of any research -- is there
12 any research showing dropout rates at the Special
13 Commitment Center at McNeil Island compared to other
14 similar programs?

15 A I'm not aware of specific -- certainly not published
16 research in that regard. I have had conversations --
17 I'm trying to -- you're going to ask me with whom, and
18 I'm trying to remember now. I don't recall. I can
19 only make guesses. But I do remember asking about that
20 information. And my understanding is that the
21 completion rate -- you asked the SCC?

22 Q Yes.

23 A Oh, I don't know about the SCC. I'm sorry. I was
24 thinking Twin Rivers.

25 Q Okay.

1 A No, I don't know about the SCC.

2 Q Okay. You had said earlier there are several
3 approaches you might -- different approaches you might
4 take, other than the one that Hanson and company just
5 came up with.

6 A Yes. Well, the application of that research. They
7 don't recommend that interpretation.

8 Q Okay. Thanks for correcting me on that. Have you
9 completed those, or is there another one you were going
10 to mention?

11 A No, I have not completed it.

12 Q Okay. Please.

13 A A second approach is for people who look at the PCL-R
14 findings for the individual and if a person is above a
15 certain threshold, then it is presumed that the person
16 will not show significant treatment benefits no matter
17 how good the program. And there are different
18 thresholds used by different people. Clearly 30 or
19 higher on that instrument fits for all people's
20 application. Depending on some considerations, people
21 will go as low as 25.

22 Q And whose research is that for the various different
23 scores? Whose findings on that?

24 A The generic issue of 30+ comes from a summary by
25 Dr. David Thornton of other people's research.

1 Q Do you know what the article is called or --

2 A It's not an article. He summarized 15 different pieces
3 of research. He has written about it. I believe it's
4 in the introduction of his latest article published in
5 Sexual Abuse.

6 Q In the Journal --

7 A In the Journal of Sexual Abuse that just came out. I
8 think he makes summary statement in there, if I
9 remember correctly.

10 The 25+ would come from different places. An
11 example would be a presentation from conference, the
12 ATSA conference this past November, by Marquis --

13 Q Janice Marquis?

14 A No. I think his first name is Peter.

15 Q Peter?

16 A Correct. I don't think there's a relationship.

17 -- Abracen, A-B-R-A-C-E-N -- I'm not sure if I'm
18 pronouncing that correctly -- Looman, L-O-O-M-A-N, and
19 Serin, S-E-R-I-N. They were looking at the
20 effectiveness of treatment, to some degree. That
21 wasn't the purpose of the study, though. They were
22 actually looking at the accuracy of treatment staff
23 ratings for treatment outcome. And they divided their
24 subjects up into those who were psychopaths, in their
25 definitions, versus not. They had a split at PCL-R 25.

1 And they were, in effect, trying to see if they would
2 be replicating or not the published findings by Seto,
3 S-E-T-O, and Barbaree, B-A-R-B-A-R-E-E, published in
4 '99.

5 Bottom line is that the psychopathic individuals
6 showed very little treatment effect during the initial
7 follow-up period, which was somewhere between two and
8 four years. I forget.

9 Q Okay. And --

10 A Whereas the nonpsychopathic people did.

11 Q Marquis and company, they presented this where?

12 A At the ATSA conference.

13 Q This past --

14 A This past November.

15 Q Okay. Now, how does that relate to whether people
16 complete or drop out of treatment?

17 A A great question. I don't know that.

18 Should I finish answering the issue about the
19 application to Mr. Campbell in this regard? You asked
20 me that earlier.

21 Q Well, I haven't asked that yet.

22 A Oh, I thought you did.

23 Q Do you want to answer that one now?

24 A I'll be glad to answer that.

25 Q Please.

1 A The score I had for Mr. Campbell was a prorated 24.4.
2 That's why I came up with -- I had two items I omitted
3 because his history did not seem to make the items
4 applicable. And if I use the threshold of 30+, he
5 clearly was not there. If I use the threshold of 25,
6 it could be argued -- as I put in my report, it could
7 be argued that he would meet that threshold. It could
8 also be argued that he didn't because there's a plus or
9 minus type of scorer error, rater error, for the
10 instrument. And I went with the technical 24.4,
11 doesn't round to 25. So I did not see him as meeting
12 that, though it's arguable that he could.

13 Q Given the standard error, what would be the range of
14 actual PCL-R score that you might derive for
15 Mr. Campbell based on the score you came up with of
16 24.4?

17 A A standard error measurement for the PCL-R is about
18 3.5. So it would range from 21 to 28. And what that
19 would mean is that at least 85 percent of the time, a
20 trained rater should fall in that range. I'll point
21 out that some others did.

22 Q Right. Now, you talked about whether the person
23 completed a reasonable program. How do you decide
24 what's a reasonable program?

25 A The research that I was talking about is from the ATSA

1 study, the Hanson, et al., study.

2 Q Yeah.

3 A And they did not take research that looked simply at if
4 somebody was in a single group, meeting once a week for
5 a while, and that was that. It had to have multiple
6 components to it. So it had to be more of a program,
7 not just a group.

8 Q Right.

9 A And some other characteristics along those lines in
10 terms of what types of -- what types of different
11 modules were offered. That's what I'm using as the
12 same definition.

13 Q Did they -- I've glanced at the article. I haven't
14 read it completely yet. Did they distinguish not only
15 among the kinds of things offered, modules offered and
16 the like, but between effective and ineffective
17 programs?

18 A I'm not following your question.

19 Q Okay. Am I right in saying that Hanson and his
20 colleagues said nothing in this latest article about
21 correlating treatment completion or dropping out to the
22 quality of the program itself, whether the actual
23 treatment delivered matched the descriptions in terms
24 of modules and the like?

25 A Let me see if I'm understanding. Did they look at:

1 Did the description of the program actually get
2 implemented in the way it was described?

3 Q Let me put it this way. Let me give you an analogy.
4 Harvard and the University of Podunk might offer the
5 same course catalog. We will assume for the moment
6 that Harvard is state of the art, and let's assume for
7 right now that the University of Podunk is an utterly
8 abysmal university. Did they do that kind of judging
9 in their study to see whether there were different
10 dropout rates for the good programs as opposed to the
11 bad programs?

12 A They had a certain defined threshold for inclusion in
13 terms of what the program description was.

14 Q Right.

15 A I'm not aware that they did a quality study beyond
16 that.

17 Q Okay. We were talking about other approaches. Are
18 there any other besides those two you have mentioned,
19 besides the --

20 A Yes. In my report, I actually put two things together,
21 which is fine. Not even today I would not see it as
22 bad at all, but some people would separate them out, is
23 all. One is to use the Structured Risk Assessment, the
24 SRA, which I used. The other is the use of an
25 interview technique called the Relapse Prevention

1 Interview, which I also used. I used the information I
2 got from the RPI, Relapse Prevention Interview,
3 incorporated in my assessments within the SRA
4 structure. Some people would separate those out.

5 Finally, there is --

6 Q Did you try separating those out afterwards?

7 A No, I've not looked at that.

8 Q Okay. Is that something you intend to do?

9 A No.

10 Q Why do some people think you should do it separately?

11 A I'm making a supposition here. When you ask me why, I
12 don't know the answer to that question directly. My
13 supposition is that the SRA -- the research supporting
14 the SRA is not based on that type of -- the RPI kind of
15 information. It's based on treatment records and, in
16 some situations, psychological testing. So different
17 data sources might affect the results. That would be
18 the concept.

19 I personally don't, for that example, buy into
20 that.

21 Q Can you mention anybody who has suggested or stated
22 that the two should be separated?

23 A No.

24 Q Okay.

25 A These are -- even the use of the RPI is not that common

1 at this point. It's something I recommended in a book
2 I just had published, but I don't know that people will
3 pick up on that.

4 Q Congratulations.

5 A Thank you.

6 Finally there's one other thing that I have not
7 looked at, but just to be complete in answering your
8 question, are there other methods, there is a method of
9 assessing treatment benefit derived by Steve Wong,
10 W-O-N-G, and colleagues out of the Regional Psychiatric
11 Center in Saskatoon. And they actually came up with
12 this in the development of an instrument called the
13 Violence Risk Scale:Sex Offenders, or the VRSSO. And
14 what they did in that development is they used a
15 measure of historical risk -- it happened to be the
16 Static-99 -- but then had 20 different dynamic or
17 changeable kinds of considerations. And they had
18 people who were trained to do the ratings who were also
19 treaters make those other 20 assessments, and they
20 found that that process was useful in the model they
21 were testing, predictions of reoffending in the future.

22 Q Is this new tool available anywhere?

23 A Well, certainly from the developers. I'm trying to --
24 I know their intention was to publish something. I'm
25 not aware that anything has been published as of yet.

1 Q Okay. Do you know what sample they based their
2 construction of it on?

3 A It was a set of sex offenders who went through their
4 treatment program at the Regional Psychiatric Center.
5 So these would be Canadian adult male inmates who
6 either self-referred or referred for treatment in the
7 western side of Canada.

8 Q And obviously at this point there have been no gross
9 validation studies of it?

10 A Not that I'm aware.

11 Q Okay. So you haven't looked at this one yet. Is that
12 what you're saying?

13 A I've not looked at it in terms of Mr. Campbell. I've
14 not applied it in any case so far. But I am looking at
15 it as having potential.

16 Q At this point do you think it does have potential?

17 A It has potential, yes.

18 Q Okay. Do you see any major flaws with it at this time?

19 A The major issue is not the structure itself but the
20 very issue you raised, was that it hasn't been
21 replicated anywhere.

22 Q I think I'll go to my actual outline now. I gather you
23 finished your answer about other approaches other than
24 those.

25 A To the best of my knowledge.

1 Q Okay. Great.

2 You reviewed the 2000 annual review report of
3 Mr. Campbell by Patricia Hyatt, cosigned by Daniel
4 Yanisch.

5 A Yes. That was 2001 or 2000? Which --

6 Q The 2000 one is by Hyatt.

7 A Okay.

8 MR. HACKETT: 2000 or 2001?

9 MR. HIRSCH: I'm pretty sure that
10 the Hyatt one is 2000.

11 MS. PORT: I believe the Yanisch is
12 2001.

13 MR. HIRSCH: Exactly.

14 THE WITNESS: I reviewed all of
15 those, so I'm presuming I saw that.

16 Q (By Mr. Hirsch) Now, on Page 1 of your report, you
17 wrote that there were some professional vitae
18 information about these two authors attached to the
19 ten-page report, though that information was not
20 considered relevant to this examiner for the purpose of
21 this evaluation.

22 A That is accurate. That's what I wrote.

23 Q Why not?

24 A I have no way of comparing one person's vitae versus
25 another's. There are no standards for that. There

1 are -- I'm well aware of people with very long vitae
2 that I wouldn't trust their judgment and people with
3 very short vitae that I think have great judgment. So
4 I don't make an assessment of that.

5 Q Do you think experience has any bearing on someone's
6 qualifications to do this kind of assessment?

7 A Could you define what you mean by "experience"? If
8 you're talking about simply years of working with sex
9 offenders, my answer would be no. It has no bearing.
10 And I base that on a piece of research. If we're
11 talking about time spent learning the state of the art,
12 then yes.

13 Q How about time spent applying the state of the art?

14 A As long it's the state of the art. Then that would, of
15 course, keep changing as time went on. And my answer
16 would be yes.

17 Q Okay. Do you consider Dr. Hyatt an expert?

18 A I don't know Dr. Hyatt one way or another.

19 Q Okay. Do you know whether she's qualified to make the
20 judgment she made in her report?

21 A I could make a supposition that because she was
22 apparently given the task or allowed to take the task
23 of doing it, that someone thought so. But I'm in no
24 position to make a judgment.

25 Q And I gather you'd say the same thing about

1 Drs. Yanisch and Gollogly?

2 A I have a little bit of knowledge about each of those
3 individuals from other work that they've done. I have
4 met Dr. Gollogly on a couple occasions. And I have a
5 phone message and have had a phone conversation
6 previously with Dr. Yanisch.

7 Putting all that together, my answer probably for
8 anybody that you would come up with here is, what I
9 look at is how they did the assessment. I don't really
10 try to make an assessment of the individual as some
11 global concept of expert or not. If the person did
12 procedures that I consider state of the art, then I
13 would consider it a fine report, no matter what the
14 conclusion would be.

15 Q Okay. Do you consider the possibility of bias on the
16 part of anyone doing one of these evaluations, even if
17 the person did use the proper procedures?

18 A That's always a possibility. Do I consider that
19 possibility? That's for anything I read. There's
20 always that possibility.

21 Q Would knowledge about Drs. Hyatt, Gollogly, or Yanisch
22 tend to give you any improved -- a better way of
23 determining whether they are biased?

24 A Potentially so. But to clarify, when I read reports, I
25 rarely pay much attention to their conclusions. My

1 process of doing an assessment is not simply just
2 gathering up other people's conclusions like I was
3 taking a vote. What I need to find are their stated
4 facts and their stated test findings and things that
5 are of the objective sort. Even when I come upon their
6 diagnoses, I will potentially find it interesting if I
7 end up agreeing with them, but I don't -- I don't do a
8 process of seeing what's common and therefore fall in
9 line with that.

10 Q Right, of course. But --

11 A So in terms of the bias issue, I have no trouble
12 acknowledging that anybody can have a bias.

13 Q You talked about objective things. Would you consider
14 the facts stated in their reports to be objective?

15 A More so than opinions. And verification is always a
16 good thing.

17 Q Okay. For instance, in Dr. Hyatt's report, she talked
18 about Mr. Campbell's alleged refusal to cooperate with
19 the interview process, right?

20 A If I remember correctly.

21 Q Do you trust her claimed facts as to what went on with
22 that?

23 A My immediate reaction to that phrase is an interview
24 didn't happen. I don't really need to figure out why
25 that didn't happen. What I know is that the

1 information that gets summarized later did not include
2 an interview. And I don't think there's dispute about
3 that.

4 Q You talked about test scores. I imagine you're talking
5 about actuarial assessment scores, among other things?

6 A I was not including that, but I can include that now.
7 What I was including were things -- if psychological
8 tests were used, such as testing of intelligence or
9 personality and the like.

10 Q Including dealing with the actuarial tests, we have
11 research on just about all of them at this point,
12 showing what the interrater reliability would be for,
13 say, the MnSOST-R, the Static-99, the RRASOR. Those
14 interrater reliability tests are all based on work done
15 by -- assessments done by people with no stake in the
16 outcome, correct? In other words, people who are not
17 hired in any given case. Rather, they were distributed
18 among other qualified raters to be done on a pretty
19 much anonymous basis, right?

20 A To the best of my knowledge, that's true.

21 Q Would one expect a lower interrater reliability once
22 one gets into real clinical practice and includes
23 people that were hired for one side or the other?

24 A I can see an argument in that regard. I don't know
25 that that's true.

1 Q Okay. There's plenty of room for subjectivity on the
2 various actuarial tests, isn't there?

3 A I would disagree with that.

4 Q Well, the creators themselves talk about coming up with
5 one's best judgment about whether to score an item one
6 way or another way, correct?

7 A There can, in our items where subjectivity does enter
8 into the process. Your original statement was that the
9 tests have considerable subjectivity, and I would
10 disagree with that.

11 Q Take one off the top of our heads: The MnSOST-R. Of
12 the -- I don't remember. How many items are there in
13 that one?

14 A Sixteen.

15 Q Of the 16, how many would you say involve a
16 considerable amount of subjectivity?

17 A First of all, I'll point out that you picked one of the
18 more common ones -- of the common instruments, you
19 picked the one where there's the greatest amount of
20 subjectivity.

21 In answer to your question -- I'm thinking through
22 the items.

23 Q If we want to stop for a minute, I can get you a list.

24 A I have that, but I can think through them, as well.

25 Numbers 10, 11, 12 are particularly so. And there

1 can be application problems -- I'm not sure it's quite
2 what I call subjectivity, but application problems for
3 items 14 and 15.

4 Q What do you mean, "application problems"? I don't
5 understand.

6 A Well, it quite specifically applies in my home state of
7 Wisconsin. For item number 15, for instance, sex
8 offender treatment program, in Wisconsin, the main SOTP
9 in Wisconsin's Corrections is designed as a three-year
10 program, unlike Minnesota's approximately one to
11 one-and-a-half-year program. It has a completion rate
12 in Wisconsin of about 20 percent, as opposed to
13 Minnesota's completion rate of about 80 percent. It
14 has a very different philosophy or policy. It does not
15 try to keep people in the program. If they're going to
16 drop out or they do something bad, they get terminated.
17 They drop them out all the time.

18 Q I'm sorry. Which one is this, again?

19 A Wisconsin. I am not happy with Wisconsin's program.

20 The bottom line is that when looking at the issue
21 of dropping out of that kind of program, it has a very
22 different meaning statistically as well as conceptually
23 than the dropping out and staying dropped out of the
24 Minnesota program. So the application of those
25 numbers, those different weights, those different

1 scores under number 15 to Wisconsin is very
2 problematic.

3 Q And there was one other you said there were application
4 problems?

5 A 14, chemical abuse treatment. It's the same issue.

6 Q Okay. One question while I have the page open.
7 Question number 12, employment history, for the
8 MnSOST-R. Do Dr. Epperson and his colleagues provide
9 any guidelines for how to score people who have
10 maintained, say, prison or other institutional
11 employment?

12 A The idea of item number 12 was employment during the
13 situation. The person is living in the community for a
14 period up to one year prior to the most recent reason
15 the person is incarcerated, what that instrument refers
16 to as the instance offense. And more accurately, the
17 arrest for the instant offense. The application of
18 that item to people who have been incarcerated for most
19 of their life and not had such a time period is not
20 specifically described in the write-up by Epperson.

21 Q As far as you know there's no research on that?

22 A For that instrument, that's correct.

23 Q Okay. You don't consider the individual's refusal to
24 be interviewed, correct?

25 A In my assessment of the --

1 Q Yes.

2 A In terms of a diagnosis or risk, that's correct.

3 Q And why is that?

4 A If for no other reason, because many times the decision
5 is based significantly on legal advice. I don't think
6 it's appropriate to make a psychological interpretation
7 of legal advice.

8 Q Do you think it's ethically required that you not
9 consider the person's willingness or refusal to be
10 interviewed?

11 A Under typical circumstances, I would feel it to be
12 ethically questionable to make an interpretation under
13 these specific kinds of circumstances. I'm not quite
14 willing to say the word you were using, ethically bad,
15 but --

16 Q I think you've answered my question.

17 A But it does range into the, "It doesn't seem right to
18 me."

19 Q Okay. Do you know if the various psychologists at SCC,
20 such as Drs. Hyatt, Yanisch, or Gollogly, consider the
21 individual's refusal to be interviewed when they come
22 to their judgments?

23 A I don't recall specifically anything about those two
24 individuals or three individuals you named. I do know
25 that I have, from time to time, come upon assessments

1 where clearly there was an interpretation made.

2 Frankly, I don't recall if that occurred in this case
3 or not.

4 Q Okay. We talked before about --

5 A Just to be clear, I think that there can be
6 circumstances where an interpretation is appropriate.
7 I was specifically saying under these kinds of
8 circumstances.

9 Q We had talked before about qualifications of various
10 SCC psychologists. Would you be interested in seeing a
11 transcript indicating Dr. Gollogly's understanding of
12 actuarial principles?

13 A I don't know that that matters a great deal to me. I
14 did see a report that he authored, the 2001 annual
15 review, where there are actuarial scores, and I found
16 them at least either the same as mine or in a way that
17 I would anticipate the difference. I don't -- beyond
18 that, it doesn't really matter to me.

19 Q Okay.

20 MR. HACKETT: Could I object here
21 just for a second? Were you guys talking about
22 Gollogly or Yanisch?

23 MR. HIRSCH: I was talking about
24 Gollogly.

25 THE WITNESS: Gollogly.

1 MR. HIRSCH: And the 2001 report is
2 by Yanisch, right?

3 MS. PORT: Correct.

4 THE WITNESS: Okay. Then I'm
5 confused on that one.

6 Q (By Mr. Hirsch) I think it was the 1999 report by
7 Gollogly.

8 A Then I mixed up that. Thank you. From the 2001
9 report, I was saying I looked at the actuarial. I
10 don't recall seeing actuarial numbers from the earlier
11 ones. They may have been there. I don't recall that.

12 Q Under those circumstances, would you like to see a
13 transcript in which Dr. Gollogly discusses his
14 understanding or lack thereof of actuarial principles?

15 A Relative to my assessment of Mr. Campbell, I don't
16 think it would make a difference.

17 Q Okay. At Page 4 of your report concerning the RRASOR,
18 you said that there's an issue in the scoring rules,
19 however, about the inclusion of sexually related prison
20 rule violations on one of the items in this scale. If
21 so, you said the score would be 3. I didn't understand
22 that. Can you explain that to me?

23 A I would be glad to do so. Item number one on the
24 RRASOR, prior section offenses. The official coding
25 rules or scoring rules by Hanson and colleagues state

1 in the coding rules that if the person has an
2 institutional rule violation -- typically prison, but
3 it doesn't have to be, it can be in a hospital, for
4 instance -- institutional rule violation of a sexual
5 nature that involved behavior that would, within the
6 jurisdiction, be considered illegal but it gets handled
7 internally without formal prosecution and the person
8 receives a consequence, with all those qualifiers, then
9 that should be considered as either the new index
10 offense or as a prior, depending on the chronology for
11 the individual. It counts as a charge. But it counts
12 as the index offense if it's the most recent "sexual
13 offense."

14 Q Right.

15 A I had quotes. I didn't realize that wasn't in the
16 record.

17 This idea was put into the coding rules after the
18 original coding rules were derived. It was put there
19 by Dr. Hanson after discussion with Dr. Thornton. I'm
20 not certain, but I believe Dr. Phenix, P-H-E-N-I-X, was
21 also part of that, but I'm not positive, because their
22 belief, which may be accurate, that the concept being
23 assessed here is the person's having already
24 demonstrated recidivist sexual offending and how many
25 times that's occurred. And the official response,

1 whether it goes to a prosecutor or not, really is not
2 the point because in a variety of circumstances, the
3 church, the prison system handled things differently.
4 Conceptually, this may be absolutely correct. I don't
5 know that. But it does make sense. But as an
6 actuarial instrument application, I'm interested in
7 what data there are to support the concept. That
8 concept has never been tested. It is not part of the
9 original database, the development of the RRASOR or the
10 Static-99, for that matter, either one. Same issue for
11 both instruments.

12 Q So is it fair to say that that was an assumption drawn
13 by Hanson, Thornton, and Phenix without the data to
14 support it?

15 A It was -- you might call it assumption. I'll say it
16 was a conclusion. And again, I'm not positive
17 Dr. Phenix was part of that.

18 Q Okay. But you are saying that as far as you know,
19 there's no data to support it.

20 A What I do know is that none of the developmental
21 samples had that characteristic. And I've also done
22 follow-up with numerous people who have done
23 replication work, and it was included literally in one
24 study, and they had only one person to whom it was
25 applicable. It's not been tested. And so my 4 would

1 be by the coding rules as they are written. But a 3 is
2 negating that institutional rule violation issue and
3 going by the type of information that was researched.
4 With the interpretation of a 3, then there would have
5 to be acknowledgment in the interpretation overall that
6 there was also this other event that did not get
7 included.

8 Q So one way or another, you end up with an asterisk,
9 right?

10 A Yes.

11 Q Four, you list the 5-, 10-, and 15-year likelihoods for
12 the RRASOR at a score of 4. You only list the 5- and
13 10-year risk levels at a score of 3. Why was that?

14 A Carelessness. It's actually -- I say 15 more -- it's
15 rounded. 16.6 years is the research. And a score of 3
16 comes out to 48 percent.

17 Q Okay. Thank you.

18 At your notes, Doren notes, at Page 18 --

19 A Oh, I have a whole new set of things. You'll have to
20 tell me where you're at.

21 Q I may be able to give you an extra copy.

22 A These are my notes now.

23 Q Your discussion of the RRASOR.

24 A Okay. I'm there.

25 Q You talk about something called the CR. What's a --

1 A Conduct report.

2 Q Conduct report. That's what you were just talking
3 about?

4 A Yes.

5 Q Okay. Thanks.

6 Now, for question two on the RRASOR, age at
7 release, (current page), you'll notice that you point
8 out you get a score of a 1 on the RRASOR if you're
9 between 18 and 24.99 years old and a score of 0 if
10 you're 25 and up, right?

11 A Yes.

12 Q And that would assume, then, that there's no
13 demonstrable difference in risk for somebody who's 25
14 and somebody who's -- let's make it ridiculous for the
15 moment -- 80?

16 A The RRASOR as it stands does not make a difference, if
17 that's what you're asking.

18 Q Yeah. And that could lead to significant
19 overestimation on the RRASOR, couldn't it?
20 Overestimation of risk.

21 A That is an empirical question that is not clearly
22 answered to me yet. That is a -- I wouldn't say -- you
23 used a modifier there of "significant" difference. I'm
24 not sure that would always be true. But there is the
25 possibility that that would be true in some

1 circumstances.

2 Q And the older the person were, the greater the
3 possibility of overestimation based on that coding
4 rule, right?

5 A Based on that specific item, there is that potential to
6 be true.

7 Q But again, the older the person gets, the greater the
8 potential is for overestimation based on that item,
9 right?

10 A No, because they are only 1 point here. So at best, it
11 could go back down to 0 point.

12 Q And this is a test in which the highest score is 7, is
13 it?

14 A 6.

15 Q 6. So it could make a pretty major difference in
16 somebody's likelihood of risk.

17 A We're mixing apples and oranges.

18 Q I think I see what you mean here.

19 A Let me see if I can clarify here. What the instrument
20 already takes into consideration on item number two is
21 the general finding that people who are at their 25th
22 birthday or older on average are lower risks than the
23 people who are younger than that as adult.

24 Q Right.

25 A And your question is, but what about people who are

1 much older than their 25th birthday? Doesn't that make
2 a difference?

3 There is some reason to believe that could be true.
4 At least on average.

5 Q Okay.

6 A And if that were to be incorporated into the RRASOR
7 scoring system as it exists, then the person who was,
8 whatever it means, substantially older than 25th
9 birthday would have to get a minus score, something
10 that the instrument doesn't currently have.

11 Q But which, with further research, might turn out to be
12 necessary to improving the instrument, right?

13 A That would be a possibility. And the research that's
14 along those same lines, though not specific to the
15 RRASOR, is something that Karl Hanson is doing.

16 Q Right. We'll get to Dr. Hanson's work.

17 Similarly, the failure to account for increased
18 risk beyond the age of 25 might have impact on the
19 validity of the 16.6-year risk analyses one gets from
20 the RRASOR, correct? Let me explain myself. Such that
21 there might be a significant difference in increased
22 risk over 15 years between somebody who's released at
23 age 26 and somebody who's released at 45, right?

24 A My generic answer to that kind of question, since it's
25 not been looked at in quite that way in research, is

1 that's an empirical question. There is a possibility
2 that there is a difference.

3 Q Would you expect there to be a difference?

4 A My answer for that is, it depends.

5 Q Based on, say, Hanson's recent article on age -- I
6 believe you were talking about that before -- would you
7 expect on the average that there would be -- that
8 15-year or 16.6-year predictions would vary in accuracy
9 for people who -- between people who are at least at 25
10 and people who are at least at 45?

11 A It would depend. Even in that research, looking at
12 things just on average, as you qualified, then it would
13 depend on whether we're talking about extra-familial
14 child molesters who show a relatively constant rate of
15 recidivism of age, approximately, 55, give or take, in
16 the 50s. Whereas rapists show a far quicker decline in
17 recidivism rate in that study, starting at a peak of 25
18 years old.

19 Q Right.

20 A And incest offenders are relatively constant
21 throughout. So it would depend which kind of offender
22 we were talking about, even on average.

23 Q Going back to the specifics, Mr. Campbell had the
24 attacks on children when he was what, 15 years old --

25 A Yes.

1 Q -- am I right?

2 Which group would one place him in, or would you
3 place him in both, or do you not know?

4 A In most research of which I'm aware, he would be
5 considered in the category of mixed.

6 Q And what research would support that?

7 A Rice and Harris 1997.

8 Q Any other research besides that that you can lead us
9 to?

10 A Most research would exclude people if they wanted --
11 with his history if they wanted to make statements
12 specific to rapists or child molesters.

13 Q Is there any research you know of published or
14 unpublished that would take the opposite view or a
15 different view from -- was that Rice and Harris and
16 Quincy you just said?

17 A Rice, Harris, '97.

18 Q Rice and Harris, '97.

19 A Of seeing him other than mixed?

20 Q Yes, based on his age at the time of the crimes or any
21 other factor.

22 A Yeah, I understand your question. No specific research
23 comes to mind. I imagine that if there were a study of
24 a category of people called juvenile sex offenders, and
25 he could be part of a sample for whatever information

1 applied when he was 15. Those studies often do not
2 break down the age of the victim as being that
3 significant. Sometimes they will talk about if the
4 victim is significantly older and adult as a category
5 versus same age or younger. But they don't -- for the
6 juvenile sex offender studies that I'm aware of, they
7 don't pay attention to the age of the victim as a
8 category, at least as frequently.

9 Q Do you know any studies that do?

10 A That do separate it out?

11 Q Yes.

12 A I'm not certain.

13 MR. HIRSCH: By the way, one thing
14 I forget to mention at the beginning for you,
15 Dr. Doren, and for you, Mr. Hackett, and for you, Madam
16 Reporter, if anybody wants a break at anytime, please
17 just mention it, and we'll accommodate.

18 THE WITNESS: Actually, I would
19 like a real quick break.

20 (Recess.)

21
22 MR. HIRSCH: We're back on the
23 record and I believe Dr. Doren has something to add.

24 THE WITNESS: As we took the break,
25 I thought of one other example of how at least one

1 piece of research would take Mr. Campbell's history and
2 see him in a way that's different from classifying him
3 as a mixed offender. There are occasional pieces of
4 research that will define sex offenders based solely on
5 their most recent crime for which they were convicted.
6 There are lots of problems in doing that, but there are
7 such pieces of research. In that situation, he would
8 be labeled as a rapist.

9 Q (By Mr. Hirsch) And what studies are those, if you
10 know?

11 A And I was trying to remember that. I just know that
12 I've seen some. Let me see if I can remember.

13 I believe that the most recent publication by
14 Beech, B-E-E-C-H, and colleagues, Friendship, Erickson
15 and Hanson, that's published in Sexual Abuse, the most
16 recent issue, defines child molesters, which was their
17 total sample, in that way. I'm not certain that they
18 truly excluded people who had ever victimized an adult.
19 I think they simply looked at the most recent crime for
20 which the person was convicted.

21 Q So according to them, if the person's most recent crime
22 is against an adult, that person is not categorized as
23 a child molester.

24 A In their study.

25 Q And what was their reason for that?

1 A I don't know that.

2 Q Okay. You've written an article for Sex Offenders
3 called "Low screening tool scores do not mean low
4 risk." And I don't have the last few words.

5 A I've written something like that.

6 Q Okay. Was that ever published?

7 A No, not in that format.

8 Q Was it published in some other format?

9 A I have put the same type of description of the issues
10 in my book.

11 Q One that's newly coming out?

12 A The one that just came out.

13 Q That just came out?

14 A Yes.

15 Q What's the publication title of the book?

16 A Evaluating Sex Offenders: A Manual for Civil
17 Commitments and Beyond.

18 Q And that's through Sage Publications?

19 A Correct.

20 Q Well, since I haven't looked at that one, let me ask
21 you about this previous article.

22 A Yes.

23 Q You wrote that in what year?

24 A The book or the article?

25 Q The article.

1 A I don't know. Two, three years ago. I'm guessing. I
2 don't recall.

3 Q I'm trying to find it here. I believe I have it, but
4 I'm not sure.

5 At Page 16 of that article, you wrote: "For the
6 RRASOR, the threshold for a high score would be 4,"
7 Hanson 1997. "In other words," and I'm leaving out
8 some portion here, "scores of 3 to 6 on the RRASOR
9 represent interpretable high risk." Do you remember
10 writing that?

11 A No.

12 Q Based on our conversations today, are you able to
13 interpret that remark?

14 A I would like to see the context. I expect I wrote it
15 within a context.

16 Q We'll wait until later on, then. Let me circle that,
17 and we'll come back to it.

18 What cross-validation studies are there for the
19 RRASOR? I'm familiar with Barbaree, Seto, Langton,
20 Peacock, and Firestone. Are there any others?

21 A Yes.

22 Q Can you tell me those?

23 A Oh, goodness. There are -- as of last June when I was
24 keeping track of that, there were 17, besides the
25 developmental research. So I will tell you what I

1 remember.

2 Q Please do.

3 A There is a -- okay. You mentioned Barbaree, Seto,
4 Langton, L-A-N-G-T-O-N, and Peacock. The original
5 research that just got recently published has Beech,
6 Friendship, Erickson, and Hanson. In that research,
7 they used the Static-99. But in conversation -- in
8 exchange of e-mails with me a while ago, Beech did a
9 process of looking at the RRASOR and found the RRASOR
10 also was substantiated with that same sample.

11 There was a publication by Hudson, somebody,
12 somebody, and Ward --

13 Q Know them well.

14 A -- that substantiated it.

15 Q Do you know where that was published?

16 A Yes. I believe it was in a recent issue of Sexual
17 Abuse. Not the most recent one but I think a
18 relatively recent one. That's a study out of
19 New Zealand. There is the publication -- I will
20 pronounce it and then spell it. Sjostedt and
21 Langstrom, S-J-O-S-T-E-D-T and Langstrom,
22 L-A-N-G-S-T-R-O-M, which was a study of 1,400 people
23 out of Sweden. That supported the RRASOR. That's also
24 published -- I've forgotten where -- recently.

25 Q Okay. I'm impressed you can pronounce what I thought

1 was "shostedt."

2 Am I right in thinking that in the Firestone study,
3 the RRASOR didn't come off too well?

4 A You may be accurate for -- if you were referring to
5 their initial process. But when they fixed errors,
6 that's no longer accurate. RRASOR came off fine.

7 Q When they fixed their own errors?

8 A Fixed their own errors.

9 Q And has that subsequent change or retraction or
10 modified article been published or issued in any way?

11 A I don't know that. I'm not sure.

12 Q How do you know about the changes?

13 A From Karl Hanson.

14 Q Okay. So just in conversation, in other words?

15 A It was an e-mail exchange.

16 Q Is the RRASOR published in anything other than -- the
17 RRASOR itself published in anything other than Canadian
18 government publications?

19 A When you say "the RRASOR itself," you mean the
20 developmental study and what the items are or a study
21 of the RRASOR's replicability?

22 Q The former.

23 A I'm not aware of it being published anywhere else.

24 Q Okay. And the replicability, that's the articles we
25 were just talking about, right?

1 A Among others, yes.

2 Q Among others, yes.

3 And the studies of -- Sex Abuse is, I gather, a
4 peer-review journal?

5 A Yes.

6 Q Is there a formal test manual, publication manual?

7 A I laugh because of the debate over what it means to
8 have a formal test manual, which I presume is the basis
9 for your question.

10 Q Yes.

11 A If you're asking me is the information available to
12 anyone who wishes to get it that describes the
13 development of the instrument, what the instrument
14 consists of, and how to use the instrument, my answer
15 is yes.

16 Q Is that all published information?

17 A It's all available on the Net.

18 Q How much of it is published other than on the net?

19 A If you mean in hard copy, I'm not aware of it being
20 published in a hard-copy form.

21 Q Okay. You point out in your notes at Page 19, "With
22 many substantive caveats in his article, Hanson offers
23 the following screening assessment of sexual recidivism
24 using the RRASOR set of four items."

25 What are some of the caveats, other than your fact

1 that it's only four items?

2 A Some had to do with the sample information, that these
3 were all applied to -- all tested with adult males who
4 were incarcerated for a sex offense. And application
5 to people outside of that -- the initial caveat was
6 application to people outside of that set of
7 individuals is open to question. That as in any other
8 piece of research -- I believe he said something to the
9 effect of as in any other piece of research, it would
10 be useful for other people to replicate this, for it
11 simply to be assumed to be of highest validity. He
12 also acknowledged what he considers, and still does,
13 shortcomings of the instrument and that it is clearly
14 not inclusive of everything that we believe to be
15 potentially of relevance in assessing someone's risk.

16 Q I noted here at Page 20 of your notes where you have
17 Appendix 1, chart for coding rules for Static-99, for
18 prior sex offenses you scored Mr. Campbell 3. Then you
19 wrote next to it "2 [or 3], but 3 means 0 for index
20 violence. So same score either way."

21 Huh?

22 A My score on that -- first of all, the item that you're
23 reading from is prior sex offenses, which is exactly
24 the same item as item number one on the RRASOR. The
25 issue of the two different scores on the RRASOR was the

1 institutional rule violations.

2 Q Right.

3 A That same issue is brought here. I could go by the
4 coding rules and say the official coding rules for the
5 Static-99 and say the score is a 3. If I did that,
6 then when I got down to the item index nonsexual
7 violence, his index offense it would have been one of
8 those institutional rule violations.

9 Q Right, okay.

10 A And the score on that other item would therefore be 0.
11 So between the two, there's a 3 and a 0. Or I don't
12 count the institutional rule violations for item number
13 one, and I get a score of 2. Then the index offense is
14 his original -- the most recent crime for which he was
15 convicted, in which case the index nonsexual violence
16 item would have a score of 1. Either way, it comes to
17 a score of 3. That's what I was designating.

18 Q I'm thoroughly confused by 3 being 0 for index offense.

19 A The index nonsexual violence would be a score of 0. In
20 other words, if I said 3 for item number one, I would
21 be scoring a 3 based on the index offense being an
22 institutional rule violation.

23 Q Now I understand.

24 A Okay.

25 Q Okay.

1 A So in that instrument, the issue becomes moot. He
2 comes up with the same total score no matter how I
3 count that institutional rule violation.

4 Q Later in your notes on that page, you talk about "Any
5 convictions for noncontact sex offenses? Yes, arguably
6 lewd and lascivious." Could you tell me what you mean
7 by that?

8 A First of all, to be clear, I scored a 0. So I did not
9 score him as a "yes."

10 Q Okay.

11 A This was a notation to myself that I understand a
12 scoring of a 1 for that item, but I disagreed with it.
13 I went with a 0.

14 First, it has to do with person's official list of
15 convictions, nothing else, and for what are referred to
16 as noncontact sex offenses. In the original research
17 that was done on this instrument, Hanson and Thornton,
18 T-H-O-R-N-T-O-N, did not go back to the criminal
19 complaints or something like that to score this item.
20 They looked at the names of the charges. The name on
21 the charge, lewd and lascivious, can sound like a
22 noncontact sex offense. So they may have scored
23 Mr. Campbell, if he were part of the original research,
24 with a 1. On the other hand, I know the underlying
25 behavior involved contact.

1 Q So you would include it in prior sex offenses?

2 A I'm confused by your question. All this is explaining
3 is therefore I scored him a 0 on that item because I
4 know it actually was a contact offense.

5 Q But does that contact offense then go into item number
6 one, prior sex offenses?

7 A Whether it was contact or noncontact, it's included in
8 number one.

9 Q I see.

10 A That doesn't matter for item number one.

11 Q I see. Okay. "Prior nonsexual offense battery," you
12 wrote. Which battery are you talking about there?

13 A From 8/10/81, I believe.

14 Q And that was an attack on whom?

15 A Janice Withnell, W-I-T-H-N-E-L-L.

16 Q Wasn't that the -- was that the incident where he
17 grabbed the woman by the breast and buttock?

18 A Yes.

19 Q And that's considered nonsexual violence?

20 A The crime of battery I don't know to be specifically
21 sexual.

22 Q Okay. In other words, we're talking once again about
23 the name of the crime rather than the underlying
24 conduct in scoring this item?

25 A For this item, the -- actually, for the index nonsexual

1 violence and for the prior nonsexual violence, the name
2 of the name does matter. It can involve -- even by the
3 coding rules it specifies this. It can involve sexual
4 behavior. If the crime is listed in a nonsexual title,
5 it counts. It actually counts for both.

6 Q Okay. Page 5 of your report, you wrote, "For instance,
7 one two-factor sign of high risk is the combination" --

8 A Can you tell me where you're reading, please?

9 Q Once I find it.

10 Bottom paragraph, second full sentence.

11 A Okay.

12 Q "For instance, one two-factor sign of high risk is the
13 combination of a deviant sexual arousal (as exemplified
14 by the diagnosis of paraphilia NOS nonconsent) with a
15 high degree of psychopathy." And is your source for
16 that Rice, Harris, and Quincy 1990?

17 A That's one of two sources.

18 Q What's the other source?

19 A Harris, Rice, Quincy, Lalumiere, L-A-L-U-M-I-E-R-E,
20 Boer, B-O-E-R, and Lang.

21 Q And that's what year, where?

22 A Submitted for publication.

23 Q Submitted for publication.

24 A I don't know that it's been accepted yet. It's been
25 under review for a long time.

1 Q Do you have a copy of that one?

2 A Not with me.

3 Q Okay. Since it's unpublished, I am going to make a
4 request that we be provided with a copy of that one.
5 We're not going to be able to get it otherwise. Thank
6 you.

7 (Discussion off the
8 record.)

9

10 Q (By Mr. Hirsch) Now, let's move on to the MnSOST-R.
11 You're aware of the flurry of recent articles saying
12 bad things about the MnSOST-R, right?

13 A I'm aware of there being some articles that make
14 criticisms.

15 Q You've read the Terrence Campbell article?

16 A Which article?

17 Q I was only aware of one published article he had saying
18 bad things about the MnSOST-R.

19 A Specifically to the MnSOST-R.

20 Q Does he have more?

21 A Well, first, I'm not aware that he has any article
22 that's specific to the MnSOST-R. So you'll have to
23 clarify for me.

24 Q That's another one we'll bring up after lunch, then.

25 You've read Barbaree, Seto, Langton, and Peacock's

1 comparison of various actuarial tools.

2 A Yes.

3 Q You've read Dr. Wollert's recent article on the
4 MnSOST-R as an exemplar of problems with actuarial
5 tools?

6 A Yes. That's W-O-L-L-E-R-T.

7 Q And you've read Lloyd and Grove's article on the
8 MnSOST-R, right?

9 A Yes, I have.

10 MR. HACKETT: I'm going to object
11 as to vague. What article are we talking about? Just
12 what article are we talking about here?

13 MR. HIRSCH: Okay. I will get
14 specific titles, again, after lunch.

15 Q (By Mr. Hirsch) With the exception of Dr. Campbell's
16 article, you are aware of the things I'm talking about,
17 right?

18 A I may even be aware of a Campbell article. I'm just
19 not aware he's written one specific to the MnSOST-R.

20 Q Okay. Has Lloyd and Grove been published at this point
21 or --

22 A Not to my knowledge.

23 Q -- has it been accepted for publication?

24 A Not to my knowledge.

25 Q Okay. Starting with Barbaree, Seto, Langton, and

1 Peacock, they found in their study that their
2 replication, their cross-validation study of the
3 MnSOST-R, it did not reach generally accepted levels of
4 statistical significance, correct?

5 A That was their conclusion based on the tests that they
6 ran.

7 Q Right. And based on your smile, I am going to guess
8 that you have some criticism or answer to their
9 findings.

10 A I have some responses.

11 Q Please.

12 A There are three different issues with their conclusion.

13 Q Okay.

14 A The first two have to do with the manner by which the
15 instrument was tested, and the third has to do with the
16 statistical test that they used.

17 The first two relate to the fact that they used a
18 smaller sample size, notably smaller sample size for
19 testing the MnSOST-Revised compared to what they used
20 for the other instruments. They moved from
21 approximately 210, 212, something like that down to
22 150. Their reason for doing so is perfectly
23 understandable. They excluded incest offenders because
24 the instrument is not appropriate for those types of
25 offenders. But what it means is that the ability for

1 the statistical test to reach significance gets
2 depressed by that process.

3 Q In what way?

4 A The formal words are, it loses power. The fewer people
5 you have in testing something, the harder it is to show
6 a significant difference. That's for almost any
7 statistical test.

8 The second issue is that for the MnSOST-Revised,
9 they had more pieces of missing data, more unknown
10 scores for items than they had for any of the other
11 instruments. Both in absolute terms and in relative to
12 the sample size terms. That process also tends to
13 diminish one's ability to reach significance
14 statistically because what you're doing is giving
15 everybody the same score, so you're negating potential
16 differences that would have been there had you had the
17 real scores.

18 Q What was the reason for their having more unanswered
19 questions than they had for the other tests?

20 A I could make suppositions. I expect I would be able to
21 make an accurate guess, but it's a guess.

22 Q Let's have it.

23 A That it's simply more items, and some of them are less
24 likely to be the type of information kept in records
25 than the RRASOR or Static set of items, for instance.

1 Q So in other words, that's a problem one would expect
2 across the board with the MnSOST-R, not just with the
3 Barbaree and colleague's replication study of it,
4 right?

5 A That would come down to potentially its ability to be
6 applied. It does not negate at all the accuracy of the
7 instrument when you do have the data, however. The
8 issue of statistical test that you were citing is
9 whether or not the instrument is sufficiently accurate.

10 Q And is it fair to say that in any attempt to
11 cross-validate the MnSOST-R, the rarity of information
12 for those missing items would lead to questions about
13 the tester's ability to do a complete cross-validation?

14 A I think what you're asking is, is it likely that people
15 thinking about doing research on the instrument would
16 have to consider whether or not they have the database.
17 Yes, they would.

18 Q So that's going to be a problem in cross-validations of
19 the MnSOST-R as it goes along, right?

20 A To me it's one of the main reasons why there have been
21 far fewer numbers of studies of the MnSOST-Revised than
22 there have been of the other instruments.

23 Q Off the top of my head -- oh, back with Barbaree, Seto.
24 You talked about why they had a smaller size sample and
25 more unanswered questions. Does that lead you to

1 invalidate their conclusions that the MnSOST-R lacks
2 statistical significance?

3 A The instrument showed a significance at a level of .10.
4 It did not reach the traditional threshold for
5 psychological research conclusions of a .05, the chance
6 likelihood.

7 Q Now, when you use these figures, what do they mean?

8 A Let me put it into different terms, then. They found
9 the likelihood of the results by chance to be at a ten
10 percent level. The usual traditional threshold for
11 psychological research drawing conclusion that
12 something is different from chance is that it could
13 have occurred by chance at only a five percent level.

14 Q Okay.

15 A Given that the ten percent is not five percent, no one
16 argues that. At the same time, ten percent is not that
17 far away from five percent. And when you already have
18 two reasons to believe that inherent in the process
19 they use, they in effect built in two reasons, that you
20 can assume there was a depression of the ultimate
21 result that would have occurred without it, without
22 those depression effects, then my conclusion is they
23 did not make a good test. It's close. It doesn't tell
24 us enough, based on those two pieces of information.

25 Q They also found a lower what's called area under the

1 curve for the MnSOST-R than for the other instruments,
2 right?

3 A In absolute value, I'm not certain that's true. In
4 degree of significance, by the tests that they used,
5 that is accurate.

6 Q What do you mean, "by the tests that they used"?

7 A They ended up using a statistical test for significance
8 that did not compare the difference from chance finding
9 but compared a difference in a -- from chance or from
10 high degree of significance in the fact. It was a
11 two-directional test.

12 There is argument that can be made, which at this
13 point I will say I believe to be accurate, that a more
14 proper test would have been a unidirectional test as
15 different from the .50 finding for the ROC, a chance
16 finding. If they had done a unidirectional test, it
17 would have been reaching significance in the
18 traditional sense.

19 Q Who in the published literature would agree with you
20 that doing the bi-directional test is a less
21 appropriate way of testing?

22 A I'm not aware that it's been published at this point.

23 Q Okay. In nonpublished literature?

24 A I have had a -- I would not say that it's in the
25 literature in that sense at all at this point, to my

1 knowledge.

2 Q What's your source for saying it's --

3 A Conversation.

4 Q With?

5 A Charles Lund, L-U-N-D.

6 Q Okay.

7 A And to my knowledge, he had conversation with people
8 whom I don't know.

9 Q Okay. Why do you believe the bi-directional approach
10 is a less appropriate?

11 A Under that circumstance, not necessarily in general.
12 The circumstance specifically being for the ROC.

13 Q Why do you believe it's less appropriate for the ROC?

14 A What we want to know by a significance test is whether
15 the findings are sufficiently different from what we'd
16 expect by chance. The way the ROC statistic works is
17 chance is at a .50 level. And while you can get scores
18 less than that, they, in effect, are just mirror images
19 of scores above that. You just change variables
20 around. There's nothing meaningful below that. And so
21 what you are really looking at is, is it significantly
22 different from .50 in the direction of going up.
23 That's unidirectional.

24 Q So Barbaree and his colleagues also looked at whether
25 it was worse than chance? Is that what you're saying?

1 A Yes, that is exactly what I'm saying.

2 Q I'm impressed. And why should not one determine
3 whether it's worse than chance?

4 A Because the ROC statistic, that ultimately really
5 doesn't have much meaning. Let me see if I can explain
6 that. What an ROC statistic tells us is the likelihood
7 that we can -- I don't want to go into all these
8 numbers. The ROC potential that's less than .50 simply
9 reflects that -- I have to find a good way to say this.
10 If I had an ROC of .35, all I would need to do is
11 change my two categories of people, recidivists and
12 nonrecidivists, or whatever else, change them in terms
13 of what I'm trying to select for and select for the
14 other. And a .35, which is 15 below 50, would become
15 .65. It's the same thing. It's just a mirror image.

16 Q Let me give you an analogy once again to see if I'm
17 understanding this. We have an office NCAA basketball
18 pool. One would think that given my utter ignorance of
19 basketball, I would end up with an area under the curve
20 for my predictions of .50, given that I'm going by no
21 information whatsoever. Yet, I consistently manage to
22 be, out of about 80 entrants, in the bottom 5 with my
23 predictions. So we can assume for the moment that my
24 area under the curve is somewhere in the area of .20 or
25 lower.

1 A Right.

2 Q Does that mean that we can take David Hirsch's stupid
3 predictions for the NCAAs, switch them around, say,
4 "Just look at what Hirsch says will not happen," and
5 have a test that's going to be accurate 80 percent of
6 the time?

7 A Yes.

8 Q I mean, that test is going to have a --

9 A An errancy of .8, yes.

10 (Discussion off the
11 record.)

12

13 THE WITNESS: To take it to the
14 extreme -- to follow your metaphor, though -- if you
15 were wrong every time in your predictions, then
16 somebody -- you would just take the opposite of your
17 thing, or you would learn, "Here's what I would
18 normally do. I'd say this." Therefore, go always
19 against what you'd say, and you'd have an errancy of
20 1.0.

21 Q (By Mr. Hirsch) In order to come up with that
22 conclusion, wouldn't you need to have some knowledge
23 about my methodology for coming up with my results? In
24 other words --

25 A No.

1 Q -- for five consecutive years, I used the "I want to go
2 with the underdog" technique, "I like the name of the
3 school" technique, "they're from Alabama, so I don't
4 like them" technique, et cetera. Would you need to
5 consider each of those separate techniques to determine
6 whether my tendency to be completely off the mark can
7 be switched around so that one could disagree with me
8 and therefore come up with an accurate test?

9 A You've moved away from my original comment. What
10 you're describing now is the consistency of your area
11 under the curve over different years. And sure, if I
12 were, you know, going to use that literally to try to
13 bet, you know, or whatever, or to generalize to some
14 other group of people, then yes, I would want to know
15 how consistent your results are, whichever way you're
16 consistent.

17 If we're talking about simply what kind of test we
18 would want to use to see are you significantly
19 different from chance, we'd need only one directional
20 test.

21 Q What if, as is often the case, I have no technique? I
22 use all of these various methods I've talked about
23 individually as to each score, deciding McNeese State
24 should be in the Final 4 because I think it would be
25 really cool for McNeese State to be in the Final 4,

1 deciding that Alabama should not be in it because I
2 just don't like Alabama, et cetera, deciding that I
3 really like the name of some other school or that I
4 dislike somebody who went to a different school. If I
5 use all these techniques in my one score sheet, in my
6 one set of predictions for the NCAAs, can we still
7 validly say that doing whatever Hirsch says not to do
8 will create a good test?

9 A First of all, we'd want to find out what your accuracy
10 was for what you just described. If it's not
11 significantly different from chance, the answer would
12 be no, no matter how you got there.

13 Q I think I -- assume I used this test, this collection
14 of methods this year, and I still came up among the
15 five worst predictions.

16 A Five worst doesn't tell me significantly worse from
17 chance.

18 Q Let's assume for the moment that it was .25 or lower.

19 A Okay. Then your question is, can we assume next year's
20 result will be the same.

21 Q Right.

22 A That's a generalization question from one finding to
23 another situation. That's not a significance test.

24 Q Okay. Is it --

25 A We're mixing apples and oranges in the question.

1 The answer to your question, you know, I would --
2 you know, if I'm going to try to generalize, I want to
3 have cross-validation studies or replication studies or
4 any of those kind of things.

5 Q Okay. So what we have here is Barbaree's trust
6 validation study. Is it fair to say, I find that this
7 thing is worse than chance, therefore I can just flip
8 it around and find that it's better than chance?

9 A That's not what the study said. So do you want me to
10 answer the question? I can. But not within the
11 context of Barbaree at all.

12 Q Okay. So what were you saying with their inclusion of
13 the bi-directional, then? How did that affect their
14 results?

15 A That ultimately the issue is whether or not the
16 instrument was better than chance. That is the
17 question. The question is not it is worse than chance.
18 If we ever found something that was worse than chance
19 consistently, all we'd do is invert the scores, and
20 we're better than chance. But we don't have things
21 like that.

22 Q So how does their inclusion -- well, they did not find
23 that the MnSOST-R was worse than chance, did they?

24 A Their conclusion was they found that it was not
25 significantly -- different using traditional levels,

1 significantly different from chance.

2 Q So how did their use of the bi-directional method
3 affect that result?

4 A In using the statistic they used in a bi-directional
5 way, that also decreases the likelihood of finding a
6 significant difference that was unidirectional. When
7 you use the -- what I consider to be more proper
8 unidirectional statistic, it would have come up as
9 significantly different at traditional levels.

10 Q Can you tell me why?

11 A Conceptually? I presume you don't want the statistical
12 explanation.

13 Q The comprehensible explanation --

14 A I'll do my best.

15 Q -- to the best of your ability, understanding that some
16 of it I'm not going to get.

17 A Yeah. Let me try this. In statistical testing, there
18 are some assumptions that are made, standard
19 assumptions. One has to do with -- well, let me just
20 generically call it the distribution of scores. When
21 you think of IQ scores, there's a distribution --
22 what's called a normal distribution. Most people are
23 around that 100 -- between 90 and 110, and it gets
24 rarer and rarer as you go out. If we want to know is
25 someone's IQ significantly different from average, then

1 we have to look at whether the person is significantly
2 higher and the possibility is the person significantly
3 lower than chance. And if we say chance is a priority
4 decided at five percent that we say is -- the
5 difference from chance is no -- that it couldn't have
6 been by chance by more than five percent, and we're
7 looking at two directions, then we have to split that
8 five percent into two and a half percent on the high
9 end and two and a half percent on the low end. That's
10 the way in which a statistical test works. That's
11 bi-directional.

12 And so you have a lot more of the overall potential
13 scores -- a lot more gets included in what you call
14 chance, or average, because you only have two and a
15 half percent on each end.

16 On the other hand, if we just want to know, is
17 someone significantly higher than average, just this
18 direction, we're still using five percent. So we have
19 just this side of things, but instead of just two and a
20 half percent being what's left over as not chance,
21 there's five percent left over as not chance. So
22 there's a larger area, larger set of people, larger set
23 of scores, whatever it is, that would fall into the
24 conclusion it is not significant -- excuse me, it is
25 not a chance finding, if we looked at it that way.

1 Q I understand. Okay. You're talking about a bell
2 curve, pretty much.

3 A Which is the assumption of a lot of the statistics,
4 yes.

5 Q Yeah. But --

6 A And the issue is whether you're testing in two
7 directions or in one direction.

8 Q In determining the statistical validity of the
9 MnSOST-R, Barbaree and his colleagues weren't looking
10 at anything like a bell curve, were they? I mean, in
11 terms of --

12 A An assumption to the test that they ran does include
13 the assumption of normal distribution of scores.
14 That's an assumption of the statistic they used, which
15 is the -- I'm not faulting them for that. That's a
16 very common assumption. That's part of those tests.

17 Q I may have more questions on that later. Let's move on
18 here.

19 Dr. Wollert, I don't have the article in front of
20 me right now. I don't remember what his articles --
21 Mr. Hackett has --

22 A I know this article well.

23 Q Okay. Can you tell me what your disagreements with
24 Dr. Wollert are, assuming you have them?

25 A Yes, I do.

1 Q Please.

2 A I'll stay with those of substance. He uses various --
3 just to clarify what I mean by that, he uses various
4 language, which is inappropriate terms, such as
5 "defendant," and he talks about legal standards of high
6 likelihood. There are no such statutes like that. I
7 don't know where he has that language from.

8 Putting those kind of picky details aside, in
9 substance, what he does is a comparison of the 35
10 percent base rate developmental sample results for the
11 MnSOST-Revised as compared to the sample size of 95
12 cross-validation study that was a naturalistic base
13 rate. It was not an artificially inflated base rate.
14 And he finds that there is shrinkage in the associated
15 risk interpretive percentages for the risk categories.

16 Q The naturalistic base rate was the 21 percent?

17 A Yes. Approximately that, yes.

18 There is a set of problems with that. One is that
19 the proper comparison would be to look at the
20 comparable base rates. Just as I was talking about
21 before about assumptions of distributions, if you
22 change significantly the underlying distribution of any
23 sample, of any comparison, you will change scores. So
24 he proved something to me that I consider the obvious,
25 that if you change the -- if you look at a comparison

1 of the 35 percent base rate to a 21 percent base rate,
2 you're going to find differences, and the numbers will
3 go down. This to me falls within the realm of the
4 obvious. He's correct in the conclusion, but it has no
5 meaning in testing the MnSOST-Revised.

6 The more proper comparison would have been to look
7 at the developmental sample with the 21 percent base
8 rate -- those numbers exist -- compared to the
9 cross-validation study. In addition to the error I was
10 just describing, he also used in the cross-validation
11 study a sample size of 95. This was actually a very
12 preliminary set of data. The actual example size is
13 220. If you do the comparison to the full sample size
14 of the developmental sample with the 21 percent base
15 rate and the cross-validation sample, which, by the
16 way, had a 20 percent base rate for the 220
17 individuals, you find that there's no shrinkage
18 whatsoever in any of the risk categories.

19 Q Okay. First of all, concerning the sample size he used
20 of 95, that was the first published cross-validation --
21 the first issue -- cross-validation study issued by
22 Dr. Epperson, right?

23 A That was something he presented in March of 2000 in a
24 risk symposium in Madison, Wisconsin. And
25 approximately -- well, in November or October of that

1 year, he presented the 220 sample size.

2 Q The 220 sample size wasn't generally distributed until
3 late 2001, was it?

4 A I don't know what you're saying when you say it was
5 "generally distributed." What I'm saying is that it
6 was presented --

7 Q When was it presented on his website?

8 A -- at the ATSA conference.

9 I don't know the answer to that question.

10 Q Okay. Is it fair to say that Dr. Wollert was basing
11 his conclusions on the best information available at
12 the time?

13 A He does state in his report, in the article, that he
14 was not able to get the full sample set. I grant you
15 that.

16 Q Okay.

17 A But you asked me the question of --

18 Q Right.

19 A -- the meaning of the test.

20 Q Now, you talked about how the full sample of 220 had
21 the 20 percent recidivism rate, correct?

22 A Yes.

23 Q And that's a naturalistic rate --

24 A That's what it was, yes.

25 Q -- as opposed to --

1 A With one tiny caveat to that, but that's -- of the
2 sample of 220, that is correct. There were six other
3 individuals -- and I have this from personal
4 communication with Dr. Epperson. There were six other
5 individuals that would have been part of that sample,
6 but they ended up being not released at the time of
7 everyone else's release and ended up being civilly
8 committed. So they were never -- they could not be
9 part of the sample. They didn't have a chance to
10 recidivate.

11 Q Okay. And that doesn't have any effect on the results
12 that Epperson and his colleagues came up with. Am I
13 right?

14 A Arguably, all of those people were 13+. They were in
15 that category.

16 Q I see.

17 A So one could argue that that number in the
18 cross-validation study was depressed by -- or at least
19 affected by these six individuals who did not go out
20 and have their opportunity to do whatever they were
21 going to do.

22 Q When you use the MnSOST-R, do you use the numbers that
23 Dr. Epperson -- well, before I get to that question,
24 initially Dr. Epperson's development sample used an
25 enhanced sample with extra added recidivists so he

1 could come up with robust results, right?

2 A Not exactly stated correctly, but your concept of the
3 inflated base rate is yes. He didn't actually add
4 recidivists. He subtracted nonrecidivists, just to be
5 clear. But yes, there's an artificial process of
6 increasing the base rate.

7 Q So when you apply that MnSOST-R, do you use the numbers
8 that Dr. Epperson generated for the 35 percent base
9 rate or the numbers he used for generating the 21
10 percent --

11 A 21 --

12 Q The numbers that he used for the 21 percent base rate?

13 A 21 percent base rate.

14 Q And those were the ones you used for Mr. Campbell here?

15 A Yes. In my report, I referred to -- that there's a --
16 for the interpretation of some numbers, for instance, I
17 talk about a 54 percent-70 percent. The 54 percent is
18 the 21 base rate, 21 percent base rate. I'm on Page 5
19 of my report. The 70 percent would have been the 35
20 percent base rate. I clearly say the examiner believes
21 the risk figure of 54 percent is a clearly more
22 conservative and appropriate interpretation for these
23 respondents' --

24 Q Okay. Thank you. Lloyd and Grove, you're familiar
25 with their article.

1 A I am indeed.

2 Q Without my presenting you any specifics, can you
3 respond to their criticisms, or would you rather wait
4 until I have a copy of it for you and can read specific
5 things from it?

6 A Well, I don't know. I may be able to shortcut things
7 by just talking generically.

8 Q Why don't you talk generically, and maybe I'll bring it
9 back up later.

10 A The bottom line to me is they make a few different
11 assumptions, none of which are accurate.

12 Q That's simple. What are those assumptions, and why are
13 they not accurate?

14 A One of those assumptions is that the proper
15 interpretation of all of the countries -- what they
16 refer to as SVP laws -- I qualify because not all the
17 countries' sex offender civil commitment laws use those
18 initials --

19 Q Right.

20 A That all of them should be interpreted as meaning
21 recidivism potential within five years and that all of
22 the recidivism that we should even be thinking about
23 should only be that which we measure by reconviction.
24 That is not anybody's working interpretation in the
25 business that I'm aware of, whether prosecution or

1 defense lawyer or court-appointed. I don't know anyone
2 who uses that. So that would be an improper
3 assumption.

4 The second way in which they apply that then makes
5 another improper conclusion -- I guess it wouldn't be
6 in the assumption range -- that a reasonable base rate
7 to compare against -- the concept of -- let me
8 backtrack. The concept of comparing the effectiveness
9 of the instrument against a base rate is fine. I have
10 no trouble with that. The issue is what's the proper
11 base rate to make that comparison. Since they are
12 using this concept of five-year reconviction, then they
13 borrow from the Hanson and Bussiere, B-U-S-S-I-E-R-E,
14 study that found, over lots and lots of studies, 61
15 studies, 29,000 subjects, an average sexual recidivism
16 rate of about 13 and a half percent for between a 4- to
17 5-year period. They borrow the 13 and a half percent
18 straightforwardly, as this is our comparison.

19 I published a study in 1998 -- I presume you're
20 aware of -- that talks about the issue of base rate in
21 some detail. And there's lots of reasons to believe
22 that while Hanson and Bussiere found a figure that
23 absolutely gets replicated elsewhere, is good for only
24 that time period, kind of follow up, and within the
25 kind of measures people were typically using, mostly

1 reconvicition.

2 Within the context of the sex offender civil
3 commitment world, however, that does not appear to be
4 the working interpretation either by evaluators or, to
5 the best of my knowledge, by the courts. They then
6 compare the accuracy as they assess it for the
7 MnSOST-Revised to this 13.5 percent or 13.4, more
8 accurately, percent recidivism rate. And -- I'm trying
9 to remember. There was one other assumption they made
10 right there that also wasn't right. I can't recall.

11 Q I can hand you a copy before we break for -- when we
12 break for lunch. Okay?

13 A Okay.

14 MR. HACKETT: Blackstone, is that
15 the other assumption you were thinking of, or is
16 that -- R equals 10?

17 THE WITNESS: Oh, yeah, it was
18 something along those lines. I'm not even certain.
19 I'd have to look at it.

20 Q (By Mr. Hirsch) You talked about the problem with
21 their using five-year statistics. I don't quite
22 understand what you mean.

23 A Well, their assumption that the proper interpretation
24 of the sex offender civil commitment laws for
25 recidivism risk is that it is that they should not be

1 interpreted as meaning anything beyond five-year
2 reconviction numbers, that evaluators should not be
3 thinking of these things as beyond five years in
4 reconviction, and that the judiciary would accept that
5 concept.

6 Q Okay. We'll get back to some of that later.

7 Who has successfully cross-validated the MnSOST-R?

8 A Doug Epperson with colleagues in Minnesota, in contrast
9 to Wollert's findings. And to me, when making the
10 proper comparison for the outcomes, there is every
11 degree of support for the cross-validation study to
12 have replicated the original results. The --

13 Q Can you explain what you mean in contrast to the
14 Wollert --

15 A Wollert says that the cross-validation study failed to
16 replicate --

17 Q Oh, I see.

18 A And I'm saying no, that's not accurate.

19 Q Anybody else?

20 A The reinterpretation of the Barbaree, Seto, Langton,
21 and Peacock in the unidirectional approach to the
22 statistic. Even with the issue of smaller sample size
23 and missing data, that it actually replicated --
24 cross-validated the result.

25 Q Whose reinterpretation was this?

1 A I'm saying with the -- if you do the statistic, that
2 would be mine.

3 Q Oh, yours.

4 A You're asking me.

5 Q Okay. Are there any other successful cross-validations
6 of the MnSOST-R?

7 A There's a "maybe" in that category. There was a study
8 out of California, and bottom line is that other people
9 have gotten back to me saying that there was a question
10 about the accuracy of the scoring procedure. So I
11 don't really know what to make of that at this point.

12 Q Do you know whose study that was?

13 A Yeah. It's not published. The original researchers
14 were Greg Schiller, S-C-H-I-L-L-E-R, and Mark Watnik,
15 W-A-T-N-I-K. Janice Marquis got back to me later,
16 saying that they have reason to be concerned that the
17 original scoring was improper. Janice Marquis was Greg
18 Schiller's supervisor while he was there.

19 Q Am I right in thinking that the State of California has
20 stopped using the MnSOST-R in SVP cases?

21 A They never used the MnSOST-R in SVP cases.

22 Q Was that partly because of this study you're talking
23 about?

24 A No, it had nothing to do with that.

25 Q What did it have to do with?

1 A This study was done way after that decision. And
2 they're open to considering the use of it. They were
3 originally using the -- let me backtrack. The way the
4 department is structured there for doing SVP
5 assessments is that they have a centralized office, and
6 then they contract out with about 50 different
7 evaluators. And in the process of that contract, they
8 basically come to agreement about what they believe to
9 be the proper state-of-the-art procedures. They
10 adopted the actuarial very early on as an element of
11 their procedures. They're not purely actuarial, but
12 they use actuarial instruments. And they were using
13 the RRASOR. They also used the PCL-R.

14 When the Static-99 came around and Karl Hanson made
15 the statement, for which I expect you'll probably ask
16 me about later -- most people do, so I say that -- --
17 that the Static-99 should now be used in replacing the
18 RRASOR, Amy Phenix was the person who was at that time,
19 in effect, the decision maker, and she adopted that.
20 So the California procedure moved from the RRASOR and
21 the PCL-R to the Static-99 and the PCL-R. To my
22 knowledge, they collectively are open to changing
23 procedures again, depending on what research would
24 indicate to them to be sufficient to do so.

25 Q So have they decided that the research is not

1 sufficient to use the MnSOST-R?

2 A They have not started to use the MnSOST-R. Therefore,
3 I presume they decided it was not yet sufficient.

4 Q Okay. Did Schiller and -- was it Watnik write an
5 article supporting their claims?

6 A There were two articles that they wrote that were not
7 yet submitted for publication that were not directly on
8 the point that you're asking. What they were was a
9 look at the relative effectiveness of one of their own
10 instruments, the CARAT-R, pronounced CARAT-Revised.
11 Stands for California Actuarial Risk Assessment
12 Tables - Revised. And Greg Schiller is the one who
13 devised that instrument to start with, and he was
14 continuing research in that regard and had gotten to a
15 revised form. And he was looking at comparing the
16 effectiveness of that instrument to the RRASOR, the
17 Static, and the MnSOST-Revised. But in his research,
18 he did not just use the RRASOR, the Static and the
19 MnSOST-Revised. He used a statistical extrapolation of
20 each of those, called a multiple regression. So in
21 other words, he went beyond the instruments but used
22 the instruments' data to develop something he thought
23 would be an improved form even upon the instrument. No
24 one else has ever done that, to my knowledge.

25 Q But in the course of doing so in these two -- at least

1 one of these two articles, he did have something to say
2 about the effectiveness of -- or the validity of the
3 MnSOST-R itself?

4 A Not -- yes and no. I'll answer everything here so you
5 don't feel like you're probing here. I wasn't trying
6 to hide something here. It's just that it's a long
7 story.

8 What he wrote about did not make specific
9 statements about the RRASOR, the Static-99, the
10 MnSOST-Revised in their typical form. It only made
11 statements based on his statistically changed form for
12 each of those instruments and relative to the
13 statistical effects of the -- effectiveness of the
14 CARAT-Revised.

15 He sent me those draft articles for comment. He
16 sent them to numerous people. I don't know who else.
17 I just know he sent them to numerous people. I got
18 back to him about, "Gee, it would be interesting to me,
19 given the work that I do, what did you find about the
20 instruments in their original form? Because no one's
21 using them in the way you're talking about it." He had
22 those data. He had not run the typical tests. He
23 could end up running those in order to find a
24 correlation, but he did not have an ROC statistical
25 program. I do. More accurately, I had a contract to

1 use one. So we agreed he would send me the data and I
2 would run it through, which I did. And they came up
3 statistically supported, all three of them.

4 Q So what was the problem that you said Dr. Marquis had
5 discovered in their first go-around with this?

6 A I don't know the story at all. All I know is from
7 Dr. Marquis, that she would ask me to delete the
8 listing of this research as something relevant to any
9 of the instruments because they had serious concerns
10 about the accuracy of the scores.

11 Q Of the --

12 A The MnSOST-Revised, the Static and the RRASOR, all of
13 it.

14 Q Of their own scores or --

15 A Of the ones that Greg Schiller ultimately had. I don't
16 know if he did the scoring or not.

17 Q And did those scores cast doubt on the reliability of
18 the accuracy of the instruments?

19 A The accuracy was supported with the scores that I had
20 that I ran through the ROC program. Statistical tests.
21 All three came up statistically significantly different
22 from chance. They were supported. On the other hand,
23 to the extent that there was inaccuracy in those
24 scores, that raises doubt as to the interpretability.
25 Period.

1 Q So we may just have wasted ten minutes here.

2 A As I said right at the beginning, this is a
3 questionable utility, but I was trying to be complete
4 in answering your question.

5 Q Okay.

6 A One other -- to be complete. I have heard of a
7 statistical testing of the MnSOST-Revised from -- I
8 believe it's Arizona, but I have not seen that yet.

9 Q Okay. If you get a copy -- who's doing that one in
10 Arizona?

11 A I heard of it from Steven Gray, G-R-A-Y, but he's not
12 the researcher, so I don't know. I think I heard from
13 him.

14 Q If you receive it, can you send it to Mr. Hackett so he
15 can send it to me?

16 A Sure, if it's mine to send. It may be that it's not to
17 be forwarded.

18 Q I understand. It's my understanding, in Epperson's --
19 at least the first version of Epperson's
20 cross-validation sample, he excluded all those persons
21 who were removed from the community during the length
22 of the follow-up period for reasons other than sexual
23 reoffense, right?

24 A No.

25 Q It's my understanding that if somebody, say, was

1 incarcerated for a nonsexual offense or put in a mental
2 hospital for a nonsexual reason or hospitalized for
3 whatever reason for the next four years, that person
4 was excluded from the results, right?

5 A Let me clarify something. You're talking about the
6 developmental research --

7 Q I'm talking about --

8 A -- or the cross-validation?

9 Q -- cross-validation.

10 A He ran the cross-validation study both ways, including
11 those people and excluding those people.

12 Q Right.

13 A He did it both ways.

14 Q And the AUC, the value came up far higher when he
15 excluded those people, right?

16 A Yes, which to me is an absolute expected result.

17 Q And less meaningful, would you say, than the AUC when
18 you included those people?

19 A Depends on the application of the instrument. When
20 it's being applied to the SVP situation, to use the
21 generic phrase, then I would consider the data found
22 from including the people in the sample to be more
23 relevant because the issue is not, does somebody
24 recidivate. As you well know, it's specifically a
25 sexual recidivism. So if this person was highly likely

1 to do a nonsexual violent offense and do the rest of
2 his years in prison, he's not an SVP candidate. But it
3 depends on the application. There are situations where
4 the other would be more appropriate.

5 Q You've prepared some sort of document, including --
6 well, documenting all the attempts of cross-validation
7 of the standard actuarial tests; is that right?

8 A Through June 25th of 2001. I haven't updated it.

9 Q Okay. Have you published any articles?

10 A No.

11 Q Can I get a copy of this?

12 A Sure.

13 Q Thanks.

14 A It will still have on it the Schiller and Watnik study
15 because I've not done any deleting because I've not
16 done any updating.

17 Q Understood.

18 A It will also be -- to be clear, there will be things
19 that are listed as in press that have since been
20 published, some things that -- I mean, the status of
21 them will be different.

22 Q Right. Also, you mentioned in one deposition of yours
23 I read that as of January 2001, there were three
24 interrater reliability studies on the RRASOR, three on
25 the Static-99, and three on the MnSOST-Revised,

1 correct?

2 A I'm not sure if it was by January '01. It certainly
3 was by June '01.

4 Q Okay. Are there more now?

5 A I've stopped watching for that. I'm not aware
6 specifically of that issue. There may be in that there
7 have been more publications of the instruments, and it
8 may very well be that some of those did interrater
9 reliability studies because that's not uncommon. In
10 order to get something published, you have to
11 demonstrate that. But I'm not aware.

12 Q Barbaree, Seto, et cetera, came up with a .80
13 interrater liability for the MnSOST-R, as you know.
14 Has anybody come up with a higher interrater
15 reliability for that instrument in any of these
16 articles?

17 A There are two other figures. There's a .80 as well and
18 a .86. Those are the three figures --

19 Q I was talking about the .80.

20 A There's a .80, a .80, and a .86. Those are the three
21 research results of which I'm aware.

22 Q Okay. Who came up with the .86?

23 A I believe that was a study that is done -- was done
24 by -- if I remember her last name correctly, I think
25 it's Bakker, B-A-K-K-E-R, who is a graduate student who

1 is doing this work under Doug Epperson's supervision.
2 But I believe she's down in Florida. And it was a
3 study of case material that was given to the -- a large
4 set, virtually all -- I don't know if it was all,
5 however. It was about 30 raters. These are the people
6 who do what -- let me just generically say the SVP
7 assessments in Florida and that are department
8 appointed. So the study was done with the people
9 actually doing it at work. And I believe that came up
10 to a .86.

11 Q And were these people just the ones who were on the
12 list run by Dr. Ted Shaw down there or did it include
13 people off that list, as well? Do you know what I'm
14 talking --

15 A Yes, I do know what you're talking about. The research
16 was done literally after Doug Epperson had done a --
17 what I believe was one-day training. But the timing of
18 it, I think, is before Dr. Shaw had that contract. So
19 it would be a lot of same people. I don't know if
20 there were others, as well.

21 Q Would it be only those who are hired either directly or
22 through contract by the State of Florida?

23 A That is correct, yes. These are the people who were
24 designated by department hired, department appointed,
25 yes.

1 Q Okay. So it would continue to exclude those people
2 generally relied upon by the defense. Is that fair?

3 A You know as well as I. I don't know in Florida how the
4 defense hires people, who they hire from. I know in
5 Wisconsin, a lot of people that are state appointed are
6 also hired privately.

7 Q Who else -- I'm sorry.

8 A So I don't know.

9 Q Who was the other person who came up with the .80
10 interrater reliability?

11 Let me put it this way --

12 A I'm trying to remember. I can look that up. I don't
13 recall.

14 Q Do you have a list of the interrater reliability
15 studies for the various tasks?

16 A Yes. That's on that same reference list that you've
17 already asked for.

18 Q Great.

19 A And they're labeled as such.

20 Q Okay. Have any of the actuarial tests themselves been
21 published in a peer-review journal?

22 A Yes.

23 Q Which ones?

24 A If I understand your question correctly, then the
25 Static-99 was published in the -- by Hanson and

1 Thornton in the year 2000.

2 Q In?

3 A I believe it was Law and Human Behavior.

4 Q We can find that. And how about the MnSOST-R?

5 A Has not been published in that form.

6 Q Why not?

7 A Why not?

8 Q Why not?

9 A Because Dr. Epperson never wrote up something in that
10 form to be published.

11 Q Well, Epperson's been trying to get it published,
12 hasn't he?

13 A No, not to my knowledge. I don't believe he's actually
14 written something and submitted it. And if he has, it
15 would be very recent because he stated to me the
16 intention to do so.

17 Q In his response to criticisms that the MnSOST-R had not
18 been published in a peer-review journal, he did say,
19 "Well, this is a problem that will be remedied
20 shortly," right?

21 A I don't know if he said that or not. But that would
22 fit with my understanding that he was in the process of
23 writing something up to be submitted for publication.

24 Q Why hasn't he done it up until now?

25 A His statement to me in that regard was that he usually

0100

1 thought it was better to wait for them to be able to
2 cross-validate it first.

3 Q Okay.

4 A Which actually, empirical -- a scientific method
5 actually makes sense. But people didn't wait for that.

6 Q We talked about Dr. Shaw's group, organization,
7 whatever it's called, down in Florida. The contract he
8 uses for -- subcontracting out his evaluations,
9 requires the use of the Static-99, right?

10 A I do not know that it specifically mentions any
11 individual actuarial instrument. I am under the
12 impression that it mandates that the person will
13 include the use of actuarial instruments for any case
14 with which it would be likely to be applicable. But I
15 am not aware that it specifically says you have to use
16 one instrument versus another. It could be that that's
17 true. I'm not aware that that's true.

18 Q Okay. I got confused between several statistical
19 terms: Standard deviation, standard error of
20 measurement. So let's just talk about standard error,
21 error of a measurement. What does that mean?

22 A What is it?

23 Q What's it mean, yeah.

24 A Do you want a statistical answer or a conceptual
25 answer? I'm serious. I mean, how do you want me to

1 answer that question?

2 Q I can't --

3 A Do you want me to make sense of it for you?

4 Q I want you to make sense of it for me.

5 A It is a measure of the degree to which multiple raters
6 would give consistent scores for the same individual.

7 Q How does that differ from interrater reliability?

8 A It is based on interrater reliability. Interrater
9 reliability is an overall statistic that runs from 0 to
10 100 or 0 to 1.0 that gives you the relative type of
11 consistency measure.

12 The standard error of measure, however, or
13 measurement, basically extrapolates that into the
14 scoring range for the instrument itself. So for
15 instance, on the PCL-R, it doesn't talk about an
16 interrater reliability of .85 to .90, which is what is
17 typically found for that instrument, sometimes better
18 than .90. But it instead takes that and puts it into
19 that 0 to 40 scoring process and tells you that SEM --
20 standard error of measure, SEM is a 3 and a half.

21 Q So has anybody determined the standard measurement for
22 the MnSOST-R?

23 A Yes.

24 Q Who has done that?

25 A Douglas Epperson, it's in his website.

1 Q And what is it?

2 A Approximately 2.5. More exactly, it's like 2.54 or
3 something like that. Two and a half.

4 Q Has anybody done it besides Epperson?

5 A I have, in effect, replicated that by looking at both
6 the research upon which he computed that and added a
7 couple pieces, and it didn't change the score in a
8 significant way. I was like a 2.3 or something like
9 that. And no, that's not published. That was
10 presented but not published.

11 Q Can I get that presentation, your notes from that
12 presentation?

13 A It is a PowerPoint presentation. I'll be glad to pass
14 it on to you. It is rather lengthy. Can you take that
15 in e-mail, or do you need that --

16 Q E-mail would be great.

17 (Discussion off the
18 record.)

19 (Recess.)

20
21 THE WITNESS: You were asking
22 whether or not there was a -- whether or not the
23 MnSOST-Revised standard error of measurement was
24 published anywhere. What did not come to mind for me
25 is I may have included that in my own book, but I'm not

1 certain I did.

2 Q (By Mr. Hirsch) Where is your new book available? At
3 fine bookstores everywhere?

4 A I expect it could be ordered at fine book stores
5 everywhere. Right now it's from the publisher.

6 Q Just from Sage?

7 A Yes.

8 Q Do you know how long the turnaround is in ordering from
9 them?

10 A I don't have a clue. I can tell you that I've not even
11 seen the hardcover yet. I'm not sure the hardcover is
12 available. I have received my complimentary copies of
13 the paperback.

14 Q Would you be able to loan us a paperback?

15 A I don't have it with me.

16 Q No, not right now. I mean ship it up to us?

17 A Why would I do this?

18 MR. HACKETT: He wants to sell
19 books.

20 Q (By Mr. Hirsch) I know you want to sell books, but I
21 don't know if we can get this thing in time for the
22 trial.

23 A Oh, that's what you're talking about, a loan until that
24 point. I was wondering why you would even want to
25 borrow it. I'm presuming that you can get it from

1 Sage.

2 Q I'll try to get it from Sage, and I'll talk to
3 Mr. Hackett if we can't.

4 (Discussion off the
5 record.)

6

7 Q (By Mr. Hirsch) We were talking about standard error
8 of measurement. Is that known for the RRASOR?

9 A I computed that in that same presentation and -- and
10 gave it in the same presentation. So yes.

11 Q And you found it to be what?

12 A Approximately just over half a point.

13 Q And has anybody else done that?

14 A Not to my knowledge.

15 Q Your determination was based on what sample?

16 A Combination, if I remember correctly -- and I'm going
17 to be a little fuzzy at this point because I used
18 different samples. I used what samples I could have
19 made available to me, asked different people to send me
20 their data. I think for the RRASOR, I had four
21 different samples that would have -- to be more
22 accurate, four different sets of samples. That would
23 include the original developmental sample, would have
24 included the Beech -- Tony Beech's sample that was
25 ultimately the sample that was used for the recent

1 publication. It included, if I remember correctly, the
2 Sjostedt and Langstrom study. I believe that Gabrielle
3 Sjostedt sent me her data. And it may have been -- Bob
4 McGrath may have sent me his, as well, out of Vermont.

5 Q Approximately how many raters were involved?

6 A The scores were already given to me. That's not how I
7 computed it.

8 Q To do an interrater reliability, don't you have to know
9 how many raters were involved?

10 A I did not do an interrater reliability study. What I
11 did is I took other people's research and interrater
12 reliability figure that I had from research --

13 Q I see.

14 A -- and applied that to theirs.

15 Q Okay. Is there an interrater reliability -- wrong. Is
16 there a standard error of measurement figuring for the
17 Static-99?

18 A Yes. Again, of the same type as with the RRASOR, I
19 computed it based on other people's data.

20 Q And yours is the only one you know of?

21 A Yes. And I presented it at the same place. You'll get
22 that in the same presentation material.

23 Q Okay. And what did you find it was in that one?

24 A Approximately one point. It could be less. It
25 depended on which interrater reliability figure I used.

1 Q We were talking before -- you were talking about Lloyd
2 and Grove and their mistake in limiting predictions to
3 five years. Are you convinced beyond a reasonable
4 doubt that Elmer Campbell is more likely than not to
5 commit a new crime of sexual violence within five
6 years?

7 MR. HACKETT: I'm going to object;
8 calls for a legal conclusion.

9 THE WITNESS: What you're asking me
10 for --

11 Q (By Mr. Hirsch) Are you convinced --

12 A What you're asking me for is a prediction that he will
13 recommit a certain offense, certain type of offense
14 within a certain time period.

15 Q Okay. Let me put it --

16 A My response is, I did not make a prediction about him.
17 Period.

18 Q Let me put it this way: Is he more likely than not to
19 commit a new crime of sexual violence within five
20 years?

21 A I'd have to look at the data I have on him. I don't
22 have an immediate answer for you.

23 Q Will you be able to give me an answer to that?

24 MR. HACKETT: I'm going to object
25 as vague, since you haven't described the circumstances

1 on which Dr. Doren is being asked. Are you asking if
2 he's unconditionally released, if he's conditionally
3 released.

4 MR. HIRSCH: Okay. I'll clarify
5 that.

6 Q (By Mr. Hirsch) Let's start with unconditionally
7 released within five years. Is he more likely than not
8 to reoffend in a sexually violent way?

9 A I expect that -- if I were to look at everything, I
10 expect I would come to the opinion to a reasonable
11 professional certainty that the answer is yes.

12 Q Based on what?

13 A Well, it's a number of -- the same kind of
14 considerations I already have in my report. So for
15 instance, if I'm looking at starting with the actuarial
16 information, then what I have is a five-year figure of
17 somewhere -- for the RRASOR, five-year figure,
18 depending on whether I use the 3 or the 4, of somewhere
19 between 25 and 33 percent. Let me call it 30 just to
20 make it an average number there. From the Static-99, a
21 five-year figure of about 39 percent. Both of those
22 are essentially reconviction figures. So I have
23 reconviction figures for five years somewhere between
24 the 30 and 39 percent range. Reconviction on average
25 translates to rearrest by adding again another quarter

1 to a half. The source for that is my publication in
2 '98. And so the 30 to 39 percent and the five-year for
3 reconviction is going to translate to, if I add just a
4 quarter again rather than the half again, so to be on
5 the more conservative side, would come to somewhere
6 around 37, 38 as a bottom up to about 50 percent for
7 rearrest within five years. That in itself -- and if I
8 went to the 50 percent increase, it would clearly go
9 over the 50 percent range for the more likely than not.

10 If I then -- and my personal perspective is
11 rearrest is closer to reoffense rate than is
12 reconviction rate closer to reoffense rate.

13 Q And of course, that does assume that all those who were
14 arrested and not convicted were guilty, right?

15 A Actually, not exactly. But let me finish my original
16 answer.

17 Q Please.

18 A Then even on the more conservative side, though, it is
19 not quite at the range of more likely than not within
20 five years. But then I need to look at the other kinds
21 of considerations that I always look at anyway that
22 generically we put into the dynamic factors. One of
23 those is -- or the -- I shouldn't say that yet. The
24 first thing I'd look at, then, beyond the actuarials is
25 the issue of the PCL-R and sexual deviance combination.

1 And as I put in my report, he is on the threshold of
2 that and technically, I would say, does not make it to
3 that high-risk category but again is close to it. And
4 the way in which that is of relevance to me is then
5 looking at his personal offense pattern, which is when
6 we start getting into dynamic considerations, and any
7 assessment of his treatment progress. And my
8 assessment of his treatment progress is the main issue
9 I have with saying -- the main point I have and all of
10 the details is that he hasn't addressed sexual deviancy
11 issues. And the way in which he's expressed that
12 historically has been very quick. Whether he's under
13 supervision or not, the circumstance you're giving me
14 is clearly he would not be under supervision.

15 With that relative degree of psychopathy, I don't
16 have a reason to believe that that quickness would have
17 gone away. And so putting those different things
18 together that just have a little bit to tip it over,
19 even from the conservative perspective, I would say
20 yes, he would still meet -- probably. I mean,
21 that's -- I said this before, that I'd have to look at
22 the details here, but that was my quick analysis.

23 Q When you say "probably," in what way do you mean the
24 word "probably" here?

25 A In the same way I was just -- what I just said. My

1 initial statement was I would likely come to that
2 perspective, to a reasonable degree of professional
3 certainty. And I tentatively was doing so in answer to
4 your question. I would want to look at details more
5 than I just did.

6 Q Do you intend to do so?

7 A No.

8 Q Okay. That leads to --

9 A By the way, what I just described, I didn't get into
10 the MnSOST-Revised, which is already at over 50 percent
11 rearrest within the six-year period.

12 Q Right. And we'll get back to that later.

13 A So that would help push in that direction.

14 Q We had talked before about Rice, Harris, and Quincy,
15 the 1990 article where they talked about the
16 two-factors sign of high risk being a combination of
17 deviant sexual arousal with a high degree of
18 psychopathy.

19 A I don't think you mean the citation you just gave me.
20 We talked Rice and Harris '97, not Rice, Harris, Quincy
21 '90.

22 Q Okay. Rice and Harris '97. I think I'm looking at a
23 different one. Rice and Harris '97 article, didn't
24 they find that the two factors -- didn't they judge the
25 two factors by -- well, didn't they judge deviant

1 sexual arousal purely by plethysmographical results?

2 A Yes, they did. We can call it PPG. We'll make it
3 easy.

4 Q Right. And in your -- Page 5, you talked about deviant
5 sexual arousal as exemplified by the diagnosis of
6 paraphilia NOS nonconsent, correct?

7 A Yes, correct.

8 Q So am I fair to say you're deviating from the actual
9 standards that Rice and Harris are suggesting?

10 A That argument could get made.

11 Q What?

12 A I said that argument could get made.

13 Q Well, in fact, you're not doing it the way they say to
14 do it, right?

15 A They don't say how to do it one way or another. They
16 did not do it that way, is correct.

17 Q And they found the correlation based on their
18 definition of sexual deviance as something that's
19 measured by PPG results.

20 A Correct.

21 Q Not as something that's measured by a diagnosis,
22 correct?

23 A Correct.

24 Q Okay. Now, we get back to a question we've kind of
25 been flirting with, which is what one does with

1 adjusting actuarial score. Is there any literature,
2 published or unpublished, which would demonstrate that
3 adjusted actuarial risk assessment works? I know that
4 various people such as Hanson have suggested using it.
5 But is there any demonstration by anybody that it
6 works?

7 A Depending how you mean that, up to eight pieces of
8 research.

9 Q What do you mean, depending on how I mean that?

10 A If you mean, is there research for taking a set of
11 people that -- then raters come, do their assessment,
12 including the clinical adjustments to actuarial. Those
13 people go out, and we see what happens based on the
14 relative, in the model you're talking about,
15 predictions, not risk assessment here --

16 Q Right.

17 A -- in the predictions. To see how accurate those are,
18 I know of no such study.

19 Q Okay. What are the eight studies you're talking about?

20 A The eight studies I'm talking about are studies that
21 have demonstrated that there is useful information in
22 terms of increasing predictive accuracy beyond specific
23 actuarial instruments.

24 Q Could you explain?

25 A Yes. An example is the publication by Hudson, et al.,

1 I mentioned earlier, out of New Zealand. They looked
2 at people, first, controlling for their -- or assessing
3 their degree of risk using the RRASOR. And they had
4 two different samples, then, of people who had gone
5 through a treatment process versus not but of equal
6 risk in terms of their scores on the RRASORs were
7 matched and they selected accordingly.

8 Then they looked at the effectiveness of certain
9 changes over time in a treatment program and found that
10 in the way they were measuring those changes over time,
11 that that had additive predictive utility compared to
12 the RRASOR, though they found the RRASOR worked. So it
13 was validation study of the RRASOR, but this added
14 information increased the accuracy.

15 Q This was, in other words, a retrospective study.

16 A No. It was postdictive.

17 Q Postdictive. What's the difference between those two
18 terms?

19 A Retrospective is where you start with the result and
20 look back in a fishing-expedition approach of what may
21 have been related to this thing.

22 Q I see.

23 A Whereas postdictive is you start in the past, using
24 only information you had at that point in time, and
25 look forward, just as you would a predictive design.

1 But instead of it's all occurring into the future, it's
2 the exact same thing but all in the past. We already
3 know the result, but we don't gather our data knowing
4 the result.

5 Q There's been a lot of criticism of the use of
6 postdictive studies in risk prediction, right?

7 A I would not say there's a lot. There is -- Steven Hart
8 talks about it a great deal, and Randy Otto, who's
9 talked about it on occasion. I'm not aware of other
10 people who bring up the point very much.

11 Q And since I can't, off the top of my head, tell you why
12 they say they're right, can you tell me why they're
13 wrong?

14 A I'm not sure "right" or "wrong" is the right way to
15 think about it. The argument that gets made is --
16 well, okay. I will put it into the category of wrong.
17 If you're talking about the argument at least that I
18 heard from Steven Hart -- I'm not certain how Randy
19 Otto would phrase it at this point. Randy's moved over
20 time. The way in which I heard Steven Hart talk about
21 it is that the only true predictive validity study
22 would be to start today, make assessments, make your
23 predictions, let those people out, see what happens,
24 see how accurate you were.

25 Q Right.

1 A And he talks about that the postdictive process
2 therefore is not as meaningful. And I believe he
3 follows up with that by saying because things could
4 have changed between now and then, as they're crucial.

5 I consider that a technically arguable point but
6 ultimately a relatively meaningless point.

7 Q Why?

8 A I was about to explain.

9 Q That's all right. I'm a lawyer. That's why I do it.

10 A And I answer questions.

11 The issue ultimately for any design is not really
12 the question of how good the design is but whether or
13 not it will ultimately be replicated and found useful
14 to generalize to the general place in which it can be
15 found. And the process of taking a predictive -- as
16 Steven Hart talks about it, a predictive process, by
17 the time you're done, it's all historical, as well. If
18 you try to apply it to the people at the time the study
19 is now done, you could also look back and say, "But
20 that's historical. Something else could have changed."
21 There's no way to get around that argument.

22 Q When you say "something else could have changed,"
23 something else in society, in the person? In what?

24 A In how had the -- something that would affect the
25 measurement device.

1 Q Let me ask you this: Would it be fair to say the more
2 recent the evidence, the less open it is to the claim
3 that something is changed?

4 A Under some circumstances, that's a reasonable argument.
5 A different perspective, however, would be what Karl
6 Hanson has done. When he was developing the Static-99,
7 he quite deliberately tested on a very old sample, a
8 mid-range sample, and a relative new one and included
9 in that a correctional setting and a forensic hospital
10 setting and different kinds of follow-up periods and
11 found that it showed exactly the same effect for all of
12 those distributions, suggesting that time didn't
13 matter.

14 Q Did he do that for the Static-99, or did he just do
15 that in the --

16 A That was specific to the development of the Static-99.

17 So to finish answering the question, the argument
18 that just in the past something could have changed
19 basically makes it that we'll never know anything
20 because by the time we finish knowing something, we can
21 always say "But that's in the past."

22 Q Is Dr. Hart a well-recognized expert in the field of
23 risk prediction for sex offenders?

24 A He is well published, and he clearly knows a great
25 deal.

1 Q And he's well published in reputable peer-review
2 journals, right?

3 A Certainly includes that, at least.

4 Q How about Randy Otto?

5 A Randy is also -- I have not seen his vitae, but I know
6 he's published a good deal. Not specifically in this
7 area. I think this is a little bit newer for him in
8 the area. He certainly holds, just as Steven Hart
9 does, positions of prominence in certain organizations.

10 Q I'll ask you a really nasty question. If one were to
11 talk about experts in the field of sex offender risk
12 prediction, would it be fair to include the names
13 Steven Hart and Randy Otto in the same category as
14 Dennis Doren among those who are recognized as experts?

15 A I have two ways of answering that question. One is I
16 don't have the perspective that it's appropriate for me
17 to label myself as expert. I think that's how people
18 label others. Second is that "expert" to my
19 knowledge -- I don't know for certain in Washington,
20 but in Wisconsin, "expert" is actually a legal term,
21 and I'm not prepared to answer that question.

22 Q In that case, we'll use the nonlegal term, of a person
23 with expertise.

24 A If you're asking me, does Steven Hart have expertise in
25 terms of -- and I'll define that term as having a good

1 deal of knowledge in the area? Yes, he does.

2 Q Same with Randy Otto.

3 A At least a good deal. I don't know if it's as much or
4 not. Again, to my knowledge, it's a newer area for
5 him.

6 Q Okay. Let's go on to the Relapse Prevention Interview.
7 This one is a new one for me. How do you determine
8 risk from the score on the Relapse Prevention
9 Interview?

10 A Do you have an assumption it's not accurate? I don't
11 come up with a score.

12 Q Okay. How do you determine risk from the results of
13 the Relapse Prevention Interview?

14 A Okay. The Relapse Prevention Interview was designed to
15 assess the degree to which the person has knowledge
16 about his pattern of offending and potential
17 interventions to that pattern. And the Relapse
18 Prevention Interview, to the extent that it is
19 effective in measuring what we think it should be
20 measuring, then can be used to tell me if the person
21 has sufficient knowledge in his head of both of those
22 things. If the person does not have -- let me put it
23 this way: If the person has significant gaps in that
24 knowledge, then I know the person has problems in
25 applying a meaningful relapse prevention plan. If the

1 person does not show significant gaps in that
2 knowledge, then I know he at least has the knowledge.
3 I do not know, to use a term that psychologists use,
4 and I'll put it out there, if the person has
5 internalized it. What I mean by that is I don't know
6 if the person really believes any of it or yet has any
7 desire to apply it. So it's not a bottom line, if the
8 person can pass these questions as a test, we would
9 suggest that this means the person is all set and ready
10 to go.

11 On the other hand, if the person does not have this
12 knowledge, then there's less reason to believe that
13 sufficient has changed.

14 Q I'm reading here from your notes on the Relapse
15 Prevention Interview. For the record, it's in your
16 discovery at -- the State's discovery at 1656. Basic
17 principles of scoring. Each response is scored from 0
18 to 2, according to whether the offender's response
19 meets certain conditions. So you don't accumulate the
20 scores for each item's score?

21 A I copied the complete Relapse Prevention Interview as
22 it was originally developed in my notes, feeling that
23 appropriate when I was given permission to copy it at
24 all. On the other hand, I do not use that scoring
25 system in a way that has any numeric meaning. I have,

1 on occasion, though I don't think I did in this case --
2 no, I did not. I have on occasion put the numbers 0,
3 1, or 2 in those little boxes after each question as a
4 shorthand way of describing to myself the quality of
5 the answer. But I have never added up the numbers in
6 the way that would be suggested by that very last set
7 of boxes.

8 Q Okay. How come you didn't put in the numbers for
9 Mr. Campbell?

10 A I didn't take the time to do that. I don't know. I
11 sometimes do it, and I sometimes don't. I don't know
12 if there's any particular rhyme or reason on that.

13 Q Okay. As we sit here, can we work that out?

14 A The numbers?

15 Q Yes.

16 A Okay.

17 Q First question, 1A: "What feelings or moods would put
18 you at risk of sexual offending again? Describe at
19 least two moods that would put you at risk."

20 Answer: "Depression or hopelessness."

21 I won't read the entirety of the little box score
22 they give us there.

23 Based on what it says there, which number would you
24 give him?

25 A It would be between a 1 and a 2.

1 Q Okay. 1B: "How will you cope with such feelings or
2 moods in the future" --

3 A Let me just be clear about something. Since we're
4 doing this, I'm now making notes of what I'm responding
5 to. I've not gone through in this way before.

6 Q Right.

7 A So now when you get copies of my notes, you will now
8 see something that wasn't there before.

9 Q Okay.

10 A So just to be clear.

11 Q A 1 or 2?

12 A It depends on whether or not I see hopelessness and
13 depression as very similar constructs, in which case it
14 would be a 1.

15 Q 1B: "How will you cope with such feelings or moods in
16 the future? Describe at least two ways of coping with
17 them that you could use to reduce the risk of you
18 reoffending."

19 Answer: "First would be talking about to family
20 members and letting people know where I am and bring it
21 to the attention of given, talk to my family" -- is
22 this next --

23 A Make them aware.

24 Q "Make them aware. Therapywise, dealing in it with
25 group or one-on-one, whatever means I can find to deal

1 with it. Not internalizing" -- it looks like a
2 combination of internalizing and minimizing here.

3 A Probably meant internalizing.

4 Q Okay.

5 -- "but feeling, dealing with them."

6 How would you score that?

7 A I'd lean towards a 2, but it doesn't quite qualify for
8 that either. So it would be a 1 or a 2.

9 Q Why doesn't it quite qualify?

10 A Because neither of these strategies mentioned is the
11 cognitive strategy.

12 Q Could you explain what you mean?

13 A The scoring criteria, to use the scores themselves,
14 talks about, for number 2, person identified more than
15 one strategy, et cetera, et cetera, et cetera, at least
16 one of which should be a cognitive strategy.

17 Q I know. But what does a cognitive strategy mean?

18 A That the person is able to think something out. And
19 his approach is to talk with people either in therapy
20 or to family members.

21 Q So a cognitive approach would be I tell myself this,
22 and then I respond that, and --

23 A "When I am feeling angry, I have learned in the past
24 that anger typically is a cover for some other kind of
25 feeling. And so the first thing I need to look at is

1 what's really going on with me and then deal with that
2 one."

3 Q I understand.

4 2A: "What thoughts, including sexual thoughts or
5 fantasies, would put you at risk of sexual offending?
6 Describe at least two different thoughts."

7 Answer: "The main -- one of the main -- I have
8 identified as hopelessness that puts me at high risk.
9 When I start thinking about women as nothing more than
10 sex objects."

11 How do you score him?

12 A If you go to the technical side of things, I would
13 score it a 1.

14 Q What do you mean, "technical side of things"?

15 A The issue is, I could assume that there are certain
16 thoughts that go along with hopelessness. But my
17 understanding of the scoring system is I am not to
18 assume anything. Therefore, he ends up describing one
19 distinct high-risk thought: Women are sex objects. So
20 that would be a 1.

21 Q Okay. Next, 2B: "How could you cope with such
22 thoughts in the future? Describe at least two
23 different ways of coping with such things that you
24 could use to reduce the risk of their leading to a
25 sexual offense."

1 "First off, identify them, that that is what is
2 going on. Making whoever is available [sic] of the
3 process I am going through. I am feeling helpless and
4 hopeless. Seeking help."

5 Am I correct in thinking that your notes there are
6 not exact, in terms of being an exact quote?

7 A It would be very close. I don't claim that I am able
8 to type with exact quote. But usually when I miss
9 words, I put three dots. So this was as best I could
10 hear it.

11 Q Okay. And how would you score him on that?

12 Would it be a good idea, rather than having you do
13 this work right now, for you to look it over during
14 lunch so we can --

15 A It would probably be less waste of time.

16 (Discussion off the
17 record.)

18 (Deposition recessed from
19 1:00 p.m. to 2:30 p.m.)

20

21 <<<<<< >>>>>>

22

23

24

25 /////

1 MR. HIRSCH: We're back on the
2 record in re Campbell, and we're back with Dr. Doren.
3 Just for the record, David Hackett isn't here this
4 afternoon, and Cindi Port is going to be defending the
5 deposition. Is that correct?

6 MS. PORT: Yes.

7

8

9 EXAMINATION (Continued)

10 BY MR. HIRSCH:

11 Q Okay. Dr. Doren, you just told us that you read the
12 new PPG report from Alissa Hansen. That's spelled
13 A-L-Y-S-S-A. Is Hansen with an A or an O?

14 THE WITNESS: A-L-I --

15 MS. PORT: No. A-L-I-S-S-A.

16 MR. HIRSCH: Never mind. Connie
17 has the spelling.

18 THE WITNESS: Correct.

19 Q (By Mr. Hirsch) And after reading that, does that in
20 any way impact your impressions of this case?

21 A The first thing that comes to mind is the potential
22 application of the Rice and Harris 1997 study results
23 that we mentioned earlier about the combination of
24 PCL-R and sexual deviance. And if I were to use the
25 findings here, then while Mr. Campbell would come close

1 to the definition of sexual deviance that was used in
2 that study, he would not have technically made it. And
3 so it would not be applicable.

4 Q Remind me what the definition of "deviance" was in that
5 study.

6 A They talk about a concept that they refer to as
7 "preference." If you look at the way in which they've
8 measured it, it, in effect, comes down to what was the
9 highest -- what was the category, deviant or
10 nondeviant, for the item with the highest response,
11 greatest response. And that would be under the column
12 of number of units here. They actually figured a ratio
13 and all that, but it really comes down to ultimately
14 what was the highest point. And he has a difference
15 there of -- the 52 here would go down to the highest in
16 terms of what would be listed as deviant in that sense
17 is number 10 and the other number would be 42.

18 Q Now, it shows 52 units of what we would call an
19 engorgement to adult female consenting sex, right?

20 A Yes.

21 Q And 42 to adult female rape, right.

22 A Those are the numbers.

23 Q And 48 to adult male mutual fellatio, right?

24 A Yes.

25 Q Okay. Now, have you looked at Note 10 at the bottom?

1 A Yes, I have.

2 Q And that says that the client stated that the beginning
3 of the scenario was concerning adult female rape. "The
4 client stated that the beginning of the scenario was
5 arousing until the force of rape occurred. As I viewed
6 the plethysmograph, I noticed what the client stated to
7 be true. He peaked at 42 units quickly but then
8 quickly came back closer to baseline."

9 What does that mean to you?

10 A Well, I don't agree with the interpretation. That's
11 the problem. I can tell you what I understand the
12 words to mean, if that's what you're asking me.

13 Q Okay. Well, what do you not agree about the
14 interpretation?

15 A The second part of that, quickly came back closer to
16 baseline, that goes to the last column that is listed
17 as "DETUM," having to do with detumescence. And in
18 fact, it was one of the longer times to detumesce, to
19 go back to baseline. For instance, to look at the top
20 number that we talked about before, 52 units with item
21 number one, adult female consenting, his detumescence
22 was 49 seconds. Whereas for the adult female rape, he
23 took longer to detumesce, at a minute five, which was
24 his third longest time.

25 Q Now, I notice that as the number of tapes continued

1 from one through eleven, it seems that whenever there
2 was significant arousal, detumescence took longer as
3 the whole range of tapes went through. Am I making
4 myself clear?

5 Let me restate that. That at first, he was
6 detumescing quickly, but in the later tests, including
7 mutual fellatio, adult female rape, and adult female
8 consenting, number eleven, the detumescence seems to
9 have taken far longer than it took for the first
10 couple, right?

11 A Technically you're accurate. The easy explanation is
12 that for a lot of the earlier ones, items number two
13 through seven having to do with child partners, he
14 didn't react very much at all. And so it doesn't take
15 very long to detumesce from very little reaction.

16 Q Okay. I'm talking more about looking at one, eight,
17 ten, and eleven. One being adult female consenting,
18 eight being adult male mutual fellatio, adult female
19 rape, and adult female consenting. Those are the four
20 for which he showed really significant detumescence,
21 right?

22 A That's fair, yes.

23 Q And there seems to be little correlation between the
24 units of engorgement and the time of detumescence among
25 these four, correct?

- 1 A You're looking just at those four.
- 2 Q Yes.
- 3 A That's a fair statement --
- 4 Q And --
- 5 A -- for those four items and the way that you're
- 6 describing them.
- 7 Q Is there something that would suggest that as someone
- 8 is exposed to more stimuli, detumescence is going to
- 9 take longer?
- 10 A I'm sorry? As someone is --
- 11 Q Is there any reason you can think of that would suggest
- 12 why detumescence would take longer as number of stimuli
- 13 increased?
- 14 A No. It may be related to the order in which they're
- 15 presented but not necessarily.
- 16 Q Okay. For instance, the initial adult female
- 17 consenting, he had 52 units and detumesced in 49
- 18 seconds, it appears, correct?
- 19 A Yes.
- 20 Q And then number eleven, the second adult female
- 21 consenting, he had 50 units of engorgement but took two
- 22 minutes and eight seconds to detumesce, correct?
- 23 A Yes.
- 24 Q What does that tell you? How do you interpret that?
- 25 A There are a number of different possibilities. I don't

1 have one possibility.

2 Q In terms of -- part of this would have to do with how
3 long the particular tape is, right, how long the
4 detumescence period is?

5 A Your question had two different parts to it.

6 Q Okay. We're talking about detumescence from the peak,
7 right?

8 A No, detumescence from the time the stimulus was
9 removed.

10 Q Okay. Are you quite sure of that?

11 A That's what it says.

12 Q And --

13 A So to the extent I believe what it says, I am certain
14 of that.

15 Q Okay. Well, I think that's a reasonable ground for
16 certainty.

17 At what point, though, did Mr. Campbell -- is it do
18 you disagree with or do you find impossible
19 Ms. Hansen's claim that he started declining in
20 tumescence at the point that the force of rape
21 occurred?

22 A Here's what I'm thinking. If that were the case, then
23 he was already detumescing from his peak during the
24 time the stimulus was still being presented because of
25 the presentation of the rape part of the tape. And

1 yet, after the stimulus was then taken away, it still
2 took him longer to detumesce than it did in the initial
3 process of listening to a consenting tape for which he
4 reacted more.

5 Q And half as much as it took him to detumesce from the
6 second --

7 A Which can be for a variety of reasons.

8 Q From the next adult female consenting, right?

9 A Which can be for a variety of reasons.

10 Q Am I right, though?

11 A Yes.

12 Q Okay. Now, you'll notice for the adult female
13 consenting, the second one, the peak was at a minute
14 and 49 seconds, correct?

15 A That's what it says.

16 Q And for the adult female rape, the peak was at 47
17 seconds, correct?

18 A Yes.

19 Q Does that give you any reason to credit Ms. Hansen's
20 claim that that tape didn't involve force until -- let
21 me scratch that question and ask another one.

22 Does the fact that he reached peak at 47 seconds as
23 opposed to the minute and 49 for adult female
24 consenting give you any reason to believe that he may
25 have reached peak before there was force involved on

1 the rape one?

2 A Does it give me what concerning that?

3 Q Reason to credit his claim and Ms. Hansen's claim that
4 his arousal came before force was used and then went
5 down?

6 MS. PORT: I'm going to object to
7 that question because Ms. Hansen does not state in her
8 note that that occurred prior to the tape showing any
9 indication of rape.

10 Q (By Mr. Hirsch) Just answer the question.

11 A If you're asking, is there a possibility that is true,
12 there is a possibility that is true. If you're asking,
13 is that my interpretation, no, I have trouble with
14 that.

15 Q Would you like to speak to Ms. Hansen about that?

16 A I potentially could. It depends on what her data would
17 ultimately be. The issue of what she stays isn't clear
18 enough.

19 Q Would you like to talk to her about that?

20 A I'm quite willing to do that.

21 Q Would it be helpful, do you think, to talk to her about
22 that?

23 A It potentially would, to clarify this issue of the
24 detumescence, as well.

25 Q Okay. How long were each of these tapes? Does it say

1 here?

2 A I don't think so.

3 Q Do you know how long -- it says she uses ATSA tape
4 numbers. I gather these are standardized
5 plethysmograph tapes?

6 A These are the ones that ATSA has put out there in an
7 attempt to standardize.

8 Q Okay. Do you have any idea how long they are?

9 A Not specifically.

10 Q You looked at the previous plethysmograph results from
11 Rick Minnich's report from 1995, right?

12 A I don't recall actually seeing the report. That was my
13 problem.

14 Q Okay. Would you like to see the report in that one?

15 A Sure.

16 Q We will give you a copy of that.

17 A I saw a lot of people's summaries of the report, and
18 none of those were clear enough for me to know exactly
19 what was what.

20 Q Thank you. We will provide you with that.

21 Let's go on to the SRA, Structured Risk Assessment.
22 You talked about that at Pages 7 and 8 of your report.
23 First of all, just for my own edification, what's the
24 next between the SRA and the Static-99?

25 A In its original design and current -- I mean, in the

1 way in which the SRA is designed, there are three
2 different sections to it. The first is the assessment
3 of historically based risk. And the instrument was
4 designed with the idea of using the Static-99 as that
5 first part of the assessment. So it is an instrument
6 that, by its specific design, is an adjusted actuarial
7 approach.

8 Q And who designed the SRA?

9 A David Thornton.

10 Q Have there been any validation or cross-validation
11 studies of the SRA?

12 A If you're asking of the instrument as a whole as it was
13 originally designed, the answer is no. If you're
14 asking about some of the sections of the -- some of the
15 parts of the dynamic portion, then the most recent
16 Sexual Abuse journal has a publication by David
17 Thornton in which that's exactly what he does in there.

18 Q Okay.

19 A And what is of greater importance to me is not -- let
20 me backtrack. David Thornton originally designed this
21 to even have a numerical system within the dynamic
22 portion. So it would be the use of numbers 1
23 through -- 0 through 2 again but different ways of
24 doing it. And ultimately you add numbers up, and you
25 either bump up or bump down in the type of risk

1 category a person is relative to the Static. There is
2 no research that looks at that system as he originally
3 designed it. His recent publication is a study, a
4 small sample size, three-year follow-up that uses three
5 of the four categories in the dynamic portion and tests
6 that idea of moving up or down relative to the
7 Static-99 and finds support for it.

8 Q Why did he only use three of the four?

9 A The fourth one he didn't use was sexual deviance,
10 preoccupation category. And I'm not positive in
11 answering your question, but I think the answer to your
12 question is that the sample he was working with, he
13 didn't have either diagnoses or PPG measures on them.
14 So he didn't have something to measure that with.

15 Q Okay.

16 A I'm not positive of that, though.

17 Q Okay. Now --

18 A Oh, one other thing I was going to say. In terms of
19 what is most relevant to me is not the way in which
20 David has designed this but that each of the four
21 categories -- there used to be five, by the way.
22 Anyway, each of those categories has a good deal of
23 individual pieces of research that support that that
24 item is of relevance to sexual recidivism. So in a
25 sense, this is a -- to me and the way that I use it is

1 a way of organizing groups of pieces of information
2 from the literature into a nice structure.

3 Q So that's kind of like guided clinical assessment,
4 right?

5 A This portion is very much along those lines, yes.

6 Q If I remember correctly, I think it was in your 1998
7 article, you talked about promising results for -- or
8 at least potential for Hanson and Harris's dynamic
9 factors scale.

10 A I don't believe I ever wrote that. I know what scale
11 you're referring to, however.

12 Q Which one am I referring to?

13 A The Sonar, S-O-N-A-R.

14 Q Isn't that Hanson and Harris?

15 A Oh, yes. I don't believe I ever wrote about it,
16 however.

17 Q Okay. Did you write about another Hanson --

18 A Except in my book a little bit, but --

19 Q Did you write about another Hanson attempt at that, at
20 that dynamic factor?

21 A I don't know of any other.

22 Q Okay. Page 7 in your deviance assessment -- I guess we
23 already have the answer. You talked about how the
24 6/11/95 physiological test, PPG, of the patient's
25 sexual arousal pattern found that he was aroused by

1 forceful and violent contact with females and what was
2 described as young girls, along with sexual contact
3 with consenting adults. I gather from what you told me
4 before, you don't know how young the young girls were.

5 A That's accurate. I've seen the phrase repeated in
6 various records about young girls. And in typical PPG
7 tests, the stimuli, even if not the ATSA set of
8 stimuli, will use clearly prepubescent kids as the
9 children, whether described in audiotapes or in
10 pictures.

11 Q You don't know whether Mr. Minnich, though, used the --

12 A I don't know what he used.

13 MR. HIRSCH: By the way, do you
14 remember how Minnich is spelled? Is it C-H or C-K?

15 MS. PORT: C-H.

16 THE WITNESS: M-I-N-N-I- --

17 MR. HIRSCH: M-I-N-N-I-C-H.

18 Q (By Mr. Hirsch) And on Page 8, the second question
19 regarding the SRA deviance assessment, you point out
20 that it was on 6/14/96, in the annual review, they
21 described him participating in a group treatment
22 assignment by reporting a fantasy to which he had
23 masturbated that very much resembled his 5/8/85 sexual
24 assault, with the exception that in the fantasy did
25 not -- she did not escape being raped, that he

1 continued the fantasy --

2 A Right.

3 Q -- including beating her and -- beating her unconscious
4 and raping her. Do you know why he had that fantasy?

5 A Why he described it in the group or why he had the
6 fantasy?

7 Q Was he directed to fantasize about completing the
8 attempted rape in 1985?

9 A In his statement in his deposition, that is his
10 statement.

11 Q Do you know if that's correct?

12 A I don't know for certain one way or another.

13 Q Do you doubt his statement?

14 A I leave that in the category of one of many things that
15 differed from previous reports. And where I draw a
16 conclusion in this particular regard is based on the
17 other part of the report -- not his report. The cited
18 report, where, in effect -- these aren't the words --
19 but in effect, the feedback to him was "how awful," and
20 he didn't seem to understand that. It is possible --
21 I'm trying to be clear on my answer. It is possible he
22 was directed to complete what would have happened. And
23 it is also possible that he wasn't. Both of those are
24 distinct possibilities in terms of what I know how
25 those kind of groups are run. I don't have a strong

1 conclusion on that one specific issue. What I do
2 conclude is that he didn't seem to understand the
3 reaction to what he said.

4 Q Did he not understand that people were horrified by
5 raping and beating this woman unconscious, or did he
6 not understand what he may have perceived as censure
7 from the group because of it?

8 A I don't know that I'm specifically talking about that.
9 Apparently what was part of his statement was what was
10 of particular interest to him was the beating. And in
11 the report, it was -- again, the cited report, not his
12 report -- was that the group found that -- maybe your
13 word is correct -- horrible or horrific, some word like
14 that.

15 Q Number four, further down the same page, still with
16 SRA, sexual deviancy assessment, it talks about his
17 videotape collection of scenes from TV movies. How
18 many tapes were there? Not talking about segments on a
19 tape. How many videotapes were there?

20 A In terms of that were involved taping from TV? My
21 understanding was one.

22 Q And what did the writers consider sexually vulnerable
23 circumstances, other than, of course, the one involving
24 somebody being tied up?

25 A That was the example given. I don't know that there

1 were other examples.

2 Q Okay. That one scene, was that from -- well, put it
3 this way. Most of this tape consisted of short
4 segments from various TV shows, right?

5 A That would fit with my understanding of what I read.

6 Q How about the one involving the woman being tied up;
7 was that from a segment or was that from a whole TV
8 program?

9 A I don't have specific knowledge in that regard.

10 Q Okay. Do you know whether he ever saw either the
11 original broadcast or the tape, including the tying up
12 of the woman?

13 A If I go by the information in this report, then
14 Mr. Campbell "admitted that he had viewed the tape to
15 fuel his masturbation fantasies," meaning he saw at
16 least some of it.

17 Q Okay. Number six here, he said he didn't want to use
18 the PPG because he found the process humiliating. Is
19 the process of undergoing a PPG humiliating?

20 A Not necessarily, but some people experience it that
21 way.

22 Q Now we're talking about a gauge being attached to
23 someone's penis, right?

24 A Yes.

25 Q And that person is then required to watch various

1 sexual stimuli, right, or listen to various sexual
2 stimuli, right?

3 A Some of the stimuli being sexual, some not.

4 Q There are some control groups involved, right?

5 A And there are some things that some people find to be
6 sexual that most of us don't.

7 Q Right. And it also, in the case of someone like
8 Mr. Campbell, necessarily involves viewing things like
9 we were just talking about from the recent
10 plethysmograph, rape scenes, homosexual sex scenes,
11 child molestation scenes, right?

12 A He was required, in the testing, to listen to those
13 things, yes.

14 Q Listen to them, I'm sorry. Do you think the average
15 person would find that humiliating, having to do that?

16 A I don't have a way to answer that question. I know
17 from my experience in doing testing, some people find
18 it humiliating, some people don't.

19 Q Do you think an average person off the street who is
20 not a sex offender would find this humiliating?

21 A I take that as very similar to the question you just
22 asked me, and I don't know the answer to that.

23 Q Okay.

24 A If you're -- in a sense, implied in your question are
25 two different considerations, at least one of which

1 would have to be humiliating, one is being subjected to
2 various sexual things. A lot of people seek things out
3 that are sexual. So it's hard for me to assume that
4 because they're being subjected to it, that therefore
5 it's humiliating. The other part is that they're being
6 required to put something on their penis in a room --
7 typically the testing is in a room where no one else
8 is. The tester is in the next room. That's a typical
9 format. I don't know the setting in which it was done
10 for Mr. Campbell. But they are alone typically, the
11 blanket then covering themselves. It's unusual. The
12 good testing procedure is to help a person understand
13 what it's about and help talk through the anxiety
14 before they start.

15 I have no idea again how Mr. Campbell's testing was
16 done in either of these circumstances.

17 If done improperly, I could easily see how it would
18 feel intrusive. But if done properly, I don't have a
19 reason to assume that it would be.

20 Q Well, let me put it --

21 A Believe me, there are things that happen in a doctor's
22 office with the doctor that I would find a lot more
23 humiliating and do.

24 Q If someone were recording your sexual responses, your
25 erectile responses to various stimuli, would you find

1 it humiliating?

2 MS. PORT: I'm going to object to
3 that.

4 THE WITNESS: I might find it
5 curious.

6 Q (By Mr. Hirsch) Would you find it humiliating?

7 A I don't know that I would.

8 Q Okay. Number seven, same page, said he denied ever
9 having a sexual fantasy involving raping, except once
10 in '88 or in '89. And you said that this was in
11 contrast to what he reported in group therapy as
12 described in number two above. Do you see that as
13 necessarily an inconsistency? In other words, was he
14 responding in terms of spontaneous or -- let's not use
15 the word "spontaneous." In terms of self-directed,
16 self-chosen sexual fantasies as opposed to required
17 sexual fantasies?

18 A I do see them as contrast. In particular, to add as
19 well something that became knowledgeable to me after
20 this report was from his deposition, where, in a sense,
21 in an important way, there's a third different -- a
22 type of report.

23 Q What was that?

24 A That there were -- I have to look through my notes to
25 find the quote. But that in the past, he did have

1 thoughts to which he masturbated concerning rape. And
2 that was multiple occasions as opposed to what he
3 reported to me as a once occurrence. And that was
4 different from what he was reporting occurred in '96.
5 So those are three different stories to me.

6 Q Did Mr. Hackett or Ms. Port give you a copy of the
7 transcript we provided of your interviews with Elmer?

8 A Give me a copy of that? No.

9 (Discussion off the
10 record.)

11
12 Q (By Mr. Hirsch) The questions I was asking about how
13 old the young girls were, whether the test was properly
14 administered, what was the assignment for that fantasy
15 in which he completed the rape scenario, do those
16 questions matter?

17 A I'm sorry. I am not following the context. The
18 questions that you were asking?

19 Q Yes, concerning qualifications -- we can put it to the
20 points you listed on the sexual deviancy part,
21 assessment part of the SRA -- to the questions I asked
22 about whether he taped the whole program, whether he
23 viewed the program, how old the girls were on the PPG.
24 Do those questions matters?

25 A To my assessment on the SRA?

1 Q Yes.

2 A Oh, okay. To a point, sure. In terms of a bottom
3 line, what I was listing here was a set of information
4 that led me to the conclusion that I came to. It
5 appears to me, based on the information that I have,
6 including now even beyond that, from the deposition at
7 least, and actually also Dr. Yanisch's interview, that
8 Mr. Campbell has, in different ways, acknowledged a
9 history of being sexually aroused to the idea of
10 raping.

11 Q Okay. I'm sorry. Did I cut you off there?

12 A I could end there.

13 Q Okay. Also on Page 8 of your report, during the
14 evaluation interview, Mr. Campbell acknowledged that
15 there are times he views women as nothing more than sex
16 objects. "That acknowledgment interpreted by this
17 examiner is relevant in this section but also a sign of
18 willingness to face important treatment issues,"
19 correct?

20 A Yes.

21 Q Would it be fair to say that normal men are often
22 guilty of looking at women as nothing more than sex
23 objects?

24 A There'd be some reason to believe that to at least a
25 degree, that is true. If, by "normal," you mean not

1 offending, then yes.

2 Q Okay. In other words -- who's a current movie star?

3 In other words, the average man, upon seeing a nude
4 scene involving Cameron Diaz, is not thinking much of
5 Cameron Diaz's personality, correct?

6 A Being technical -- I don't have scientific knowledge in
7 that regard, but I would expect that you're correct.

8 Q Okay.

9 A Assuming we're talking about heterosexual men.

10 Q Thank you for the qualification.

11 Let's see. Is it possible for a sex offender to
12 reform without treatment?

13 A What does "reform" mean?

14 Q To rehabilitate himself to such an extent that he is no
15 longer likely to reoffend.

16 A To my knowledge, most sex offenders, or at least a very
17 close to majority, are not known to reoffend,
18 especially if we're talking about people that we would
19 technically assess as low risk or first-timers or
20 something along those lines. So there is clearly a
21 process that happens besides treatment that ultimately
22 leads to a lack of offending, as far as we know.

23 Q Okay. Let's take people who are medium or high-risk.

24 Is it possible for such persons to lower their risk
25 without treatment?

1 A Again, even when we're talking about high-risk people,
2 there is no study that has demonstrated that all of
3 them go on to reoffend. So clearly there are some
4 kinds of procedures that -- whether it's situations in
5 which they find themselves or personal changes or some
6 combination or something else, there is some process
7 that ultimately leads, as far as we know, to their not
8 offending. That is not exactly the same thing as you
9 asked in terms of lowering their risk. I'm pointing
10 out that as far as we know, some of them don't go on to
11 offend.

12 Q And what are the characteristics of high-risk people
13 who don't go on to reoffend?

14 A I don't have great information in that regard. I have
15 little pieces of information only.

16 Q What kind of little pieces could you give me?

17 A One of those is the potential for age, simple aging.
18 And I say "potential" because that's not clear, but it
19 is a possibility. The simple fact of aging
20 sufficiently, whatever that means. One of the -- a
21 number of pieces of research would suggest that
22 somebody being placed on a -- let me generically call
23 it high-risk supervision, at least on average can make
24 a difference while they're on it. Then there are
25 anecdotal stories.

1 Q How about change in previously antisocial attitudes?

2 A Can they do that on their own, you're asking me?

3 Q No. Can such change be a character- -- would such
4 change be characteristic of high-risk people who do not
5 reoffend?

6 A That would make sense to me. I know no research in
7 that regard.

8 Q I guess in terms of that making sense --

9 A I shouldn't say that. Actually, I do know studies that
10 would show that the change in attitudes from promoting
11 offending to being against offending, that that does
12 make a difference in sexual recidivism likelihood.

13 Q I guess that's from the Hanson/Bussiere Meta-analysis
14 or elsewhere?

15 A No.

16 Q What would that be from?

17 A Four different studies, all of which -- each one is
18 problematic by itself. But it's a trend.

19 Q What are the -- can you tell me what the studies are?

20 A Yes, I can.

21 Q Thanks.

22 A One of those is the Beech, et al., study that I
23 mentioned earlier. The second one is the Thornton
24 study that I mentioned earlier that's -- both of those
25 in the current issue of Sexual Abuse. The third one

1 being Hanson and Harris, Sonar research that you were
2 citing.

3 Q Yeah.

4 A And the fourth one is a very tiny, in terms of sample
5 size, study by Jayne, J-A-Y-N-E, Allam, A-L-L-A-M. It
6 was in --

7 Q I'm sorry. Spell it again.

8 A A-L-L-A-M.

9 It was her dissertation research.

10 Q Aside from the tininess of, I guess Dr. Allam's study,
11 what are the concerns you have about them?

12 A Oh, three of the four studies are the smallness of the
13 sample. The Thornton study, there were seven
14 recidivists out of like 113 people or something like
15 that. But basically what he was doing was figuring out
16 how to differentiate between those seven people and all
17 the rest. But that takes advantage of a lot of chance
18 potential.

19 The Beech study had a total of 53 people in the
20 sexual recidivism portion of the study. There were
21 larger numbers elsewhere. They also had an
22 artificially inflated recidivism rate, 25 percent out
23 of that 53. Even so, the numbers are still pretty
24 small.

25 The Allam study had, in different categories,

1 numbers that range from 0 to 6 -- and we're talking
2 really tiny numbers to compare against -- as did David
3 Thornton's, where you're talking about like 1 person
4 out of 5 is 20 percent. But we're talking 1 out of 5.

5 The Hanson/Harris issue is not so much sample size
6 by the retrospective, and I do mean that, versus
7 postdictive design of the research. They gathered
8 information from supervising agents after the agents
9 were aware of whether or not the person recidivated.
10 So the agents already knew the outcome.

11 Q And that is a problem why? Please tell me.

12 A The issue of bias in how they remember things. I don't
13 mean deliberate lying or anything like that.

14 Q I understand.

15 A But the bias -- I mean, to be very clear on that and to
16 be fair to the researchers, Dr. Hanson and Mr. Harris
17 are in the process of -- a very large-scale process of
18 redoing that in a predictive design. Retrospective is
19 an exploratory process. And now they're looking to
20 replicate that they found something meaningful.

21 Q I got it.

22 A But in the meanwhile, that's what we have.

23 Q I gather no results yet from the --

24 A Not that I'm aware of. In fact, my understanding is it
25 would be a couple of years.

1 So each of those pieces of research has some
2 problem with it. But they're consistently showing
3 attitude seemed to matter.

4 Q I guess you were looking at it from a common-sense
5 point before we started talking about the research on
6 it, the one determinate of whether a change in social
7 attitudes could lead a high-risk person not to offend.
8 One variable would be whether the person was primarily
9 motivated by antisociology or psychopathy, on the one
10 hand, or paraphilia on the other, right?

11 A There are different types of attitudes that are
12 problematic for each of those different types. So it's
13 not a question of one of those two types you're talking
14 about has attitude problems and the other doesn't.
15 They both do, given the person has acted on those
16 sexual desires.

17 Q Okay. Let me be more specific, then. You've read
18 Mr. Campbell's statements that he wanted to make the
19 rest of the world hurt the way he had hurt, right?

20 A Yes.

21 Q Do you credit those statements?

22 A Well, I believe that that was accurate. He has said
23 that numerous times, and that fits with my
24 understanding of what is relatively common for a
25 certain set of people.

1 Q Would you consider that more reflective of antisocial
2 attitudes or of paraphilia?

3 A Antisocial attitudes.

4 Q Okay. So assuming that that was a main motivator for
5 his crimes, would a change in that attitude -- would
6 you expect that a change in that attitude would have a
7 change on his likelihood to reoffend?

8 A Yes, to a degree.

9 Q To what degree?

10 A I don't have a number. For none of the dynamic
11 considerations will I have a number.

12 Q So in any of these studies where there have been false
13 positives or, for that matter, false negatives, there's
14 been no research as to what caused the false positives
15 or the false negatives to be false, right?

16 Was that coherent?

17 A I believe I understood the question. I was just
18 thinking.

19 In the way I believe you mean the question, your
20 statement is correct. I'm hesitant because I'm not
21 sure research has really been done the way you were
22 just describing. When the dynamic considerations have
23 been part of an assessment, they've all gone into
24 the -- what you're referring to basically as the
25 predictive process.

1 Q Yes.

2 A In that sense, what they were looking at was trying to
3 improve upon the historically based assessment. And
4 when they find improvement in the predictive process,
5 they are, in effect, helping to answer the question of
6 how the Static alone was in error on some cases because
7 they then improved by taking these things into
8 consideration, the dynamic. So in a sense, they start
9 to answer some of the questions, but that's not how
10 they're designed.

11 Q But nobody's taking, say, an actuarial test in which --
12 I'll make up the numbers right now -- you have a, say,
13 28 percent false positive rate at some particular score
14 and try to figure out what makes this 28 percent
15 different from the 72 percent.

16 A I don't know that I can say anything different than
17 what I just said. In the way in which you're
18 describing it, no, no researcher has done it that way.

19 Q At Page 9 of your report, let me quote, that under
20 sub-number one, "From his interview, he made the
21 statement: 'I am in control like I have never been in
22 the past,' a statement viewed by this examiner as
23 essentially accurate."

24 What did you mean by that, "as essentially
25 accurate"?

1 A That I believe he ends up controlling behavior -- his
2 behavior more now than he used to.

3 Q To what degree is he more able to control it than he
4 used to?

5 A I'll be descriptive. I can't give you any kind of
6 proportion. What I'm looking at are things like in the
7 prison system, he had something like 35 different
8 conduct reports for a whole variety of things ranging
9 from exposing himself to fighting to theft. And his
10 own description, I believe most recently in his
11 deposition, but to some degree even in my interview
12 with him, he was acknowledging that back then -- I'll
13 paraphrase, this is not a quote -- anger got the best
14 of him. And some of those things weren't all anger
15 related, I would note, but that would be the way he was
16 describing it.

17 And then at the -- since the time he's been
18 committed or detained and then committed, there have
19 been far fewer incidents and decreasing over time.

20 Q And since 1989, in fact, he's done no sexual acting
21 out, right?

22 A To my knowledge, that's correct.

23 Q How significant is that?

24 A To use your phrase, the acting out that he had done
25 while in an institutional setting has been solely the

1 process of exposing himself. He stopped doing that --
2 '89 may be correct. I have '90 in mind, but they're
3 all in that same time frame, was the last time that he
4 had done -- was recorded to have done that.

5 I'm not sure how to go from there. So if I were
6 asked about his ability to control that, it certainly
7 would seem that he controls it far better now than he
8 ever did because he started that, by his own report, at
9 age 14.

10 Q Would you say the same with his ability to control
11 fighting behavior?

12 A That would be clear at this point.

13 Q By the way, you said before that some of this behavior
14 that he described as the product of being unable to
15 control his anger really wasn't anger related. Am I
16 paraphrasing you correctly?

17 A I don't know that I asked him, and I probably did not,
18 about each and every one of those things being anger
19 related. I'm thinking things like theft may not have
20 been.

21 Q Are you thinking maybe in terms of what we talked about
22 before with wanting to hurt the world, that there may
23 be a difference between sudden anger causing something
24 and long-term anger perhaps underlying the bulk of
25 these incidents?

1 Is that a clear question?

2 A I have no problem in seeing that a chronic anger
3 condition has a relatively stable effect. Whereas an
4 acute situation, it could push him over in certain ways
5 he otherwise might not go.

6 Just to be clear, in another part of my answer from
7 the last question, I don't see his exposing incidents
8 as anger related.

9 Q Okay. You don't credit his claim that that's part of
10 his anger at the world and getting even with his
11 mother, things like that?

12 A He seemed to come up with that first during the
13 deposition in response to some questions posed to him.
14 I had not seen or heard him come up with that
15 previously. His statement always had been that he
16 thought that the woman would get turned on and that he
17 had potential for sex. That doesn't sound like
18 something coming out of anger.

19 Q Okay. Assuming the latter is true, that he did it
20 because he thought the woman would want sex after
21 seeing him expose himself, do you see a change then in
22 attitudes which one might associate with paraphilia?

23 A I'm not following.

24 Q You talked both about people primarily motivated by
25 antisociality and people motivated primarily by

1 paraphilia would have attitudes that needed to be
2 changed if they were going to get out of the pattern,
3 right?

4 A Yes.

5 Q And a belief that women would want to sleep with you if
6 you exposed yourself would clearly be a cognitive
7 distortion related to paraphilia, right?

8 A I agree.

9 Q And does it seem like he's gotten rid of that cognitive
10 distortion?

11 A I don't really know the answer to your question. What
12 I would say is that he has at least added another
13 attitude based on what appeared to be new knowledge for
14 him, according to his report in 19- -- I think it was
15 '90, that the process of exposing himself was actually
16 hurtful. And since his motive for exposing himself was
17 not to hurt, that that was not a good thing to do.

18 Q So does it seem that he's gotten rid of the cognitive
19 distortion?

20 A I don't know if he still believes that women can get
21 turned on by that process. But he also seems to
22 believe that it hurts them. So he at least has a
23 conflictual attitude. I say "at least" because I don't
24 know otherwise.

25 Q Well, put it this way. He at least acknowledges that

1 that old attitude was wrong, right, was incorrect?

2 A Well, I don't recall seeing or hearing that directly.

3 Q We're now getting into the very strange area of

4 volitional control. What does it mean?

5 A You're asking me to define the legal term?

6 Q I'm asking you to define the term "volitional control."

7 A Well, my understanding as an evaluator -- because I
8 have to qualify anything that's of a legal term within
9 that concept. I'm certainly not going to attempt to
10 give a legal definition. My understanding, based at
11 least on the U.S. Supreme Court's ruling in the Crane
12 case out of Kansas, is that a meaningful phrase
13 relative to the interpretation of volitional control is
14 that the person shows serious difficulty in controlling
15 behavior.

16 Q Okay. What does it mean to have a serious difficulty
17 in controlling behavior? How does one determine
18 whether it's difficulty in controlling or a choice not
19 to control?

20 A Well, there are numerous people with whom I've
21 consulted about that, all evaluators. Not had any
22 conversation I can think of with an attorney concerning
23 this and certainly not with a judge. So I again can
24 only give you my working interpretation.

25 Q Please.

1 A In which case, my answer is detailed but, I acknowledge
2 right up front, may not ultimately be what any court
3 agrees with.

4 Q Right. Okay.

5 A My understanding is that -- first, look at the words
6 out of the Crane decision. And there are a few
7 different phrases that I'm going to have to
8 paraphrase -- I don't have them in memory -- that help
9 me understand some of the parameters. One is that it
10 doesn't mean a total inability or utter lack of control
11 or some phrase like that. The other side to that is
12 that there is something beyond zero difficulty, which
13 really so far in that analysis doesn't define a lot.

14 What I also picked up from the words in the Crane
15 decision is that there was what I consider to be a
16 gratuitous phrase -- gratuitous example, I should say,
17 by the writers of the majority opinion that pedophilia
18 is something that would -- again, paraphrasing -- meet
19 the layperson's understanding of serious difficulty of
20 controlling behavior. This to me is a relatively low
21 threshold, given that the words in the decision did not
22 say pedophilia, given the person acts out on it.

23 There are numerous anecdotal cases of people who
24 are pedophilic who do not act on it at all, as far as
25 we know. And yet, by the literal understanding I could

1 have out of the Crane decision, serious difficulty in
2 controlling behavior could already be met just by the
3 diagnosis itself.

4 Q Okay. The judge -- and neither of us is going to
5 determine the legal meaning for this case, but I'm more
6 interested right now in your understanding as a
7 professional of how one determines whether someone can
8 control himself or as opposed to -- whether someone's
9 behavior is the product of loss of control, lack of
10 control, or choice.

11 A The way in which you ask the question automatically
12 makes it difficult. Let me see if I can instead try to
13 answer your question in a different way.

14 Q Thank you.

15 A When I look at the issue of serious difficulty in
16 controlling behavior, the reason I gave that whole
17 introduction is that it appears to me that what the
18 Supreme Court was apparently trying to say is that if
19 you have a paraphilic condition that is clearly related
20 to -- if acted out, clearly related to a sexually
21 violent act, that that virtually is prima facia
22 evidence of serious difficulty in controlling behavior.
23 On the other hand, that there was, in the whole
24 discussion about antisocial personality disorder, very
25 clearly, in my interpretation, something more needed to

1 be demonstrated. It was not automatic by the
2 diagnosis, given somebody acted out in a sexual way.

3 And so then what I look at is issues such as a
4 person's -- specific to the issue of serious difficulty
5 in controlling behavior, a person's impulsivity and a
6 person's irresponsibility, a person's statements that
7 are basically acknowledgments that he has difficulty
8 controlling his behavior specifically relative to
9 sexual offending. And I look at the -- if it's related
10 to a personality disorder, then I look at the pattern
11 the person has demonstrated that constitutes that
12 personality disorder.

13 Q Would you agree that all these considerations you're
14 talking about right now are kind of tautological? In
15 other words --

16 A No.

17 Q Okay. You talked about the pattern of whether a
18 person's acted out -- how a person's acted out in the
19 past --

20 A How they've acted out, yes.

21 Q Does the pattern of how a person's acted out tell you
22 whether the person could have acted differently had the
23 person chosen to?

24 A Your question sort of went around what I was talking
25 about. Let me give you a different example maybe to

1 answer your question.

2 Q Well, answer mine first.

3 A Then I didn't follow.

4 Q Okay. Does the fact that a person has acted out in a
5 certain way tell you -- in a certain pattern tell you
6 whether that acting out was a matter of choice or lack
7 of -- or inability to control?

8 A The choice isn't a question -- in answer to your
9 question, you gave me two things that neither are on
10 target. It's not a question of choice or inability to
11 control. It's a difficulty to control, some degree of
12 impairment. But it's neither the full choice issue or
13 the inability.

14 Q Okay. Let's use the term the Supreme Court used:
15 Serious and significant difficulty.

16 A Serious difficulty. There's no "and significant"
17 there.

18 Q There is "and significant" there.

19 A That is not my memory of that.

20 Q Doesn't matter. Use either one.

21 A Okay.

22 Q Serious difficulty controlling. Does it tell you
23 whether it was a matter of choice or whether there was
24 a volitional impairment, that pattern of --

25 A It would be -- one piece of information is not

1 necessarily going to tell me.

2 Q Okay. Another assumption. Just to be nice and
3 ecumenical here, I'm -- let's say I am sexually
4 attracted to adult males and females. I find all three
5 of you in this room just as sexy as can be.

6 A Thank you.

7 Q I can choose whether to offend against any of you,
8 correct?

9 A That would be true whether you found us attractive or
10 not.

11 Q And the same is true of the pedophile who finds
12 children attractive. That pedophile can choose, right?

13 A It depends. If you're asking, does a person make a
14 choice, then I will ultimately say that virtually and
15 under all circumstances, everyone makes a choice. That
16 is not to me ultimately the same question as serious
17 difficulty in controlling behavior.

18 Q Okay. Explain the difference.

19 A The best example of that is from research relative to
20 the person who's a psychopath. There are various
21 pieces of research. I would cite Joan Newman's work,
22 N-E-W-M-A-N. I'd also cite Ray Knight's work,
23 K-N-I-G-H-T. That has found that what seems to be the
24 process for psychopaths is that they actively choose
25 what they want. So in terms of the usual question of

1 moral choice -- moral responsible for choice or
2 something, they decide, "I want X." And what is
3 different about the psychopath compared to
4 nonpsychopathic, and particularly noncriminal
5 nonpsychopathic individuals, is that, assuming we're
6 all of that latter category, we end up looking at "we
7 may want X, but," and then we take all these other
8 things into consideration, whether or not there's a
9 right way to do that, whether or not it's legal,
10 whether or not it's going to hurt somebody. Any of
11 those kind of things come into play in our process.
12 Whereas what happens with the psychopath is they can
13 make a choice and be, in that sense, very goal
14 directed. And then once they start an action towards
15 that, they have very great difficulty stopping them
16 from just going forward without a very salient
17 interference to that.

18 Q Let's --

19 A And so when they -- they make a choice but then have
20 great difficulty controlling what happens thereafter.

21 Q Let's take --

22 A So that's why I have to separate these concepts.

23 Q Let's take an example. I'm going to get literary here
24 with you. Have you ever hear of Crime and Punishment,
25 Dostoyevsky?

1 A No, I have not.

2 Q Read it. The point --

3 A Is that a requirement for this?

4 Q No, it is a not.

5 Crime and Punishment was meant as an answer to
6 Nietzsche, with his ideas of the Ubermensch, who would
7 not be -- U-B-E-R-M-E-N-S-C-H, the Superman who would
8 not be bound by conventional ideas of morality because
9 he would be better able to determine what was good than
10 the conventional person. He therefore has his
11 Nietzschean scholar decide to kill an old lady because
12 it would be better for society to take this woman's
13 money and distribute it among more worthy persons.

14 Say I'm a Nietzschean -- in fact, two famous
15 Nietzscheans were Leopold and Lobe. You know about
16 that case, right?

17 A Go ahead.

18 Q You know about Leopold and Lobe?

19 A Only somewhat.

20 Q Okay. They were Nietzscheans when they decided to kill
21 this young boy. Say I'm a Nietzschean and because of
22 my Nietzscheanism, I decide I am entitled to commit
23 crimes. Does my Nietzscheanism have any effect on my
24 ability to control myself?

25 A I cannot tell based on what you're telling me at this

1 point in time. The process of having that philosophy
2 can be a bunch of rationalizations for a psychopathic
3 way of being, or it can be a -- potentially a set of
4 perspectives that are different from the usual ethics
5 but by a person who otherwise is quite ethical.

6 Q Well, we're getting into something different here.
7 Whether the person is ethical, that's not the issue
8 we're talking about, is it?

9 A What I'm talking about is nonpsychopathic. You're not
10 telling me enough -- just by that category, it doesn't
11 tell me enough.

12 Q Let's go into some other things. We are now in the
13 Intifada or the Israeli response thereto, or we're in
14 Rwanda or any other -- God knows how many other places
15 on earth where what would usually be considered
16 horrible crimes become normative, even the subject of
17 praise, like becoming a suicide bomber or even being a
18 Crip or a Blood, where all the other kids in the
19 neighborhood are Crips or Bloods. Under those
20 circumstances, does the person who commits what would
21 normally be committed -- well, considered a series of
22 crimes lack volitional control?

23 A If you're asking me, is it an automatic definition that
24 a person who commits a series of crimes therefore has
25 serious difficulty in controlling behavior, I would not

1 call it automatic.

2 Q Okay. So how do you distinguish?

3 A I answered that question right at the beginning.

4 Q Okay. Let's say Elmer Campbell has decided, "I'm not
5 going to have anymore victims. I am not going to
6 commit any other acts of sexual violence." Assuming
7 this is his true desire, assuming this is really his
8 desire, his choice, can he avoid having future victims?

9 A The decision is of relevance, but he wouldn't -- but he
10 would not necessarily ultimately avoid having victims.

11 Q I'm not asking if it would necessarily have that
12 effect. Does he have the ability to follow through on
13 that resolution?

14 A You're asking specifically my assessment of him now?
15 We're not talking generic anymore.

16 Q We're talking Elmer now.

17 MS. PORT: We're assuming you're
18 talking if he's released?

19 MR. HIRSCH: Thank you. If he's
20 released.

21 MS. PORT: And conditionally or
22 unconditionally?

23 MR. HIRSCH: I'll ask the questions
24 here.

25 Q (By Mr. Hirsch) Let's assume he's just released.

1 MR. HIRSCH: I'm sorry. That was
2 rude, Cindy.

3 THE WITNESS: I already have the
4 perspective that Mr. Campbell would rather not offend
5 again in the future. So in that sense, this isn't a
6 hypothetical for me.

7 Q (By Mr. Hirsch) Right.

8 A I do not have the perspective that he is someone who
9 enjoys offending and wants to continue it and is just
10 playing a game for that reason. He's not somebody --
11 to go back to a question we talked about this morning,
12 I don't find him to be of that type. At the same time,
13 my view of him is that he has a great deal of emotional
14 difficulty reconciling having these sexual urges,
15 fantasies, history even, that he would rather not have.

16 Q Now I'm confused. When we're talking about people who
17 have paraphilias, we're talking about sexual
18 preferences, right?

19 A Not necessarily. Not a preference. Not the way I mean
20 "preference." "Preference" would be someone who has
21 that desire over other types of sexual desires. A
22 paraphilia does not necessarily mean the person has
23 that preference. It means the person has that set of
24 fantasies, urges, or behaviors to the point of it's
25 causing problems in their life.

1 Q Okay. That's fine. If someone is a pedophile, that by
2 definition means that that person enjoys sex with
3 children, right?

4 A Depends what you mean by "enjoy." They can also feel
5 guilty.

6 Q But the act itself is enjoyable, right?

7 A They are interested and they are sexually aroused by
8 it. If that's what you mean by "enjoy," the answer
9 would be yes.

10 Q And sexual arousal is ego-syntonic, right?

11 A Not necessarily. That is not necessarily true at all.
12 People can be sexually aroused by things that they are
13 very uncomfortable about. The case that we hear about
14 in the media most often is the homosexual coming out of
15 the closet. It may be that that person is not at all
16 comfortable with being gay.

17 Q Well, we're talking about two different things here, I
18 think.

19 A Sexual interest is all I was trying to make into my
20 metaphor.

21 Q I still -- let me clarify this --

22 A A paraphilia does not have to be syntonic. In fact --

23 Q When the --

24 A -- many times, is not.

25 Q When the closet homosexual --

1 A To be clear, that's a metaphor for me. I was not
2 labeling that as a sexual disorder.

3 Q I understand that. When the closet homosexual engages
4 in closet homosexual sex, there may be tremendous guilt
5 surrounding that. But that person enjoys the act
6 itself, right?

7 A If you're asking me, do they enjoy the orgasm, then
8 very likely true. They may in their head still distort
9 the picture of who they're with. It may be that much
10 of an ego-dystonic process.

11 This is not a hypothetical to me in that I just
12 recently was assessing someone for a second time. And
13 it was a very long discussion about this very issue.
14 He had homosexual anonymous sex multiple times a day
15 for years, secretive in terms of he never came forward
16 to anyone in his significant life about any of that.
17 And if you talk with him about it, it was something
18 that was very uncomfortable for him, but he felt
19 driven.

20 Q So the repercussions were uncomfortable, right?

21 A No. He felt driven about the sexual contact but didn't
22 even want to acknowledge to himself that he was
23 homosexual.

24 Q So the repercussions of that which he enjoyed were
25 uncomfortable, right?

1 A No. By saying "repercussions," you're going to the
2 aftermath, the follow-up. I'm saying he was
3 uncomfortable psychologically with being gay, even
4 though he did it -- did acts multiple times every day.

5 Q So --

6 A It was, for quite a while, ego-dystonic. Part of his
7 treatment was to make it ego-syntonic so it stopped
8 being psychologically pressuring for him.

9 Q So can we distinguish between the enjoyment of the act
10 and the ego-dystonic feelings associated with knowing
11 he enjoys the act?

12 A Okay, if you want that differentiation.

13 Q Okay. Did Elmer enjoy his sexual offenses?

14 A Different pieces of information that I'm considering in
15 trying to answer your question. One is that it is not
16 recorded that he reached ejaculation in any of them and
17 even in one claim that he did not reach an erection.
18 On the other hand, he also describes wanting to take
19 his hurt and put it onto other people or make them hurt
20 as much as he did, words along those effects. And it
21 sounded to me -- and not that I can think of a quote in
22 this regard -- that that process was enjoyable.

23 He also describes when he was 15, with the young
24 girls, that that process involved -- he was attracted,
25 he wanted sex, and he went for it. Neither of those

1 experiences -- by "neither," I'm talking about the
2 four-year-old girl and the Mexican girl. Neither of
3 those experiences went the way he wanted it to. But
4 I'm not clear what was enjoyable and what wasn't.

5 I'm actually having difficulty answering your
6 question.

7 Q We were talking before about whether he can choose to
8 reoffend. Let's say things are going really badly for
9 Elmer. All the danger signs are up. At that point,
10 can he choose to go see his counselor rather than
11 committing a sexual crime? Can he successfully choose
12 that, that is?

13 A At least on occasion I expect he would.

14 Q Can he choose to commit some other kind of antisocial
15 activity instead?

16 A I expect on occasion he would, as well.

17 Q Okay. What would distinguish those times when he could
18 not make that choice successfully?

19 A I don't know that I can give you a comprehensive list.
20 There are a couple of things -- at least some things
21 that would come to mind for me that would be of
22 potential relevance. But I think that you're asking me
23 a question that goes beyond my ability to know anyone,
24 but I'll give you some -- "anyone," Mr. Campbell
25 included -- but some examples of the kinds of things

1 that I expect would be of relevance. One is the
2 immediacy of an alternative being available. The
3 person to talk to, whoever that would be that he would
4 trust, is like next-door or available by phone the
5 first time he calls, that's going to be easier than if
6 the person's just not there right now or he'd have to
7 go across town or something that would just be more
8 effort, take longer.

9 A different kind of consideration would be, in the
10 process of considering what he wants to do, if he, by
11 circumstance or design, finds himself in a situation
12 where there is a female who is vulnerable because they
13 are basically relatively alone. And I'm not saying
14 that he would consciously design such a situation,
15 though I'm not denying that he could. But that would
16 be of relevance, as well. So for instance, if he were
17 trying to go to a group but he decided he wanted to
18 cross a park first and, in the process of doing that,
19 found a female jogger alone who he found attractive,
20 that would be a very high-risk situation.

21 Q Right.

22 A So some of what I'm talking about is situational. It's
23 not just him. But it has to do with his interactions
24 with situations, what I call high-risk situations.
25 Some of it as well could also be the degree to which he

1 is having this distress you're talking about.

2 Q You were talking before about, say, the person to
3 confide in being next-door. On Page 10 under
4 subheading four, you talked about Mr. Campbell having
5 some knowledge of relapse prevention issues with some
6 useful ideas, though there were also some stated ideas
7 considered rather unrealistic. E.g., an answer to a
8 question about how he would cope if he found himself
9 someplace he probably should not be. He stated two
10 reasonable answers and then added, "...and if
11 necessary, go to the security people and let them know
12 what my thought process is. And they need to be aware
13 of me wherever I am at." Why did you consider that
14 unrealistic?

15 A I have known numerous sex offenders who have gone
16 through treatment or not -- both, as I'm thinking about
17 it -- who will make statements like, "I'll go to the
18 police. I will turn myself in," those kinds of things.
19 And yet, in practice, I have rarely heard of anyone
20 ever doing that.

21 Q Isn't that one of the goals of treatment, to get the
22 person to that point where he will do that, or he'll
23 call the therapist or whoever?

24 A In any given situation, I think for any given
25 individual, that might be something that a treater

1 would see to be of use. My personal perspective is
2 that this is not something people typically follow
3 through with.

4 I would not call it a "goal of therapy," to use
5 your words. The goal of the therapy would be that the
6 person has numerous ways of intervening.

7 Q Okay. Well, the various ways that Elmer has of
8 intervening, we've talked about some of them, positive
9 or negative, choosing some nonsexual antisocial
10 activity, going to the counselor, chopping wood, making
11 one of his clocks, whatever. To what extent will they
12 ameliorate his risk?

13 A I cannot quantify that. The answer would be: To a
14 point. To any --

15 Q To a point to which his risk of reoffense would go
16 below 50 percent, more likely than that?

17 A My conclusion in that regard was obviously no.

18 Q Based on --

19 A My thinking on that was that there is one major area
20 that I think will -- the way in which I think about it
21 will surprise him. And to put it in different terms, I
22 considered him unprepared.

23 I think that he has -- as I believe I state in my
24 report, I think he has made progress in attitudes. He
25 clearly has made behavioral change relative to fighting

1 and those kinds of aggressive acts, physically
2 aggressive acts. His aggression at this point is far
3 more verbal and kind of caustic remarks rather than
4 something far worse. And I think that he has
5 accomplished that both through treatment and through
6 his own process. I think they are both of relevance.

7 In terms of changing attitudes relative to the
8 antisocial acting, as well as his deciding he doesn't
9 want to be locked up anymore -- which, frankly, is not
10 a big factor for most people, even though a lot of
11 people talk about it. But in his case, I believe it
12 was, to some degree, accurate.

13 There are two considerations, however that are very
14 much related and some call it one consideration, that
15 he has consistently in recent years -- no. He has
16 consistently denied and in recent years has
17 acknowledged it only in the past, and that has to do
18 with the whole sexual area. And in important ways --
19 I'm not even talking about just the sexual deviancy or
20 sexual disorder area. I have the strong impression
21 that he is far more comfortable talking about and
22 working on issues that are generically emotional but
23 not sexual. So anger, frustration, depression,
24 anxiety, fear even to a point. That's the one where
25 I'm less certain.

1 Those somehow or another fit his self-image of
2 things that are okay to work on, to acknowledge and to
3 work on. And I believe he's been doing that both in
4 treatment and not.

5 On the other hand, when it comes to his sexual
6 life, he has given different reports about masturbating
7 about what -- even to things that are not illegal,
8 things that are not deviant if you look at what people
9 really do out there. You even commented just -- not to
10 pick on you here, but the comment about the PPG that
11 was -- the report I just saw that he acknowledged
12 having sexual attraction to men. That's not been
13 invariable in his history.

14 At this point, it's -- I mean, it has absolutely no
15 meaning to me in terms of deviance or anything like
16 that. And I doubt any other evaluator in my
17 circumstance would think much about that.

18 Q Does it say something about increased willingness to
19 confront himself on sexual issues?

20 A It has the potential of that. The point I was trying
21 to get at is that my view of Mr. Campbell is that he,
22 in a sense, for good reasons but -- well, let me just
23 make the statement first. That he has difficulties --
24 if not directly, I'll just call it fears of seeing
25 himself as having these sexual problems. He just has

1 difficulty accepting that even his exposing to people
2 is a sexual issue and wasn't something else.

3 Q Now --

4 A And I believe that has its own energy, and that will
5 surprise him when he gets out there.

6 Q What has its own energy?

7 A The sexual urges, the whole sexual part of him that he
8 has trouble acknowledging. I think he's unprepared to
9 deal with that.

10 I would want to make one other statement in that
11 regard, by the way, that this -- there was actually a
12 statement to you. Last year when I assessed him -- you
13 obviously know what my conclusion was --

14 Q Yes.

15 A -- through last August. But I had a lot of hope that
16 by now he would have made the change that he needed to.
17 And I was disappointed and surprised that he had not.

18 Q You mean in terms of acknowledging the sexual --

19 A In terms of dealing with the sexual deviance issues.

20 Q And you gained that conclusion through what?

21 A The more recent reports. The deposition in particular.
22 And that told me a number of things, not the least of
23 which was the degree to which this is scary for him. I
24 don't see him as somebody who is just denying it
25 because he's psychopathic or something like that.

1 That's not who I see. But at the same time, there's
2 this big issue that is hanging over him.

3 Q We all know that one of the basic principles of any
4 kind of therapy is you have to acknowledge the problem.
5 We all assume that anyway.

6 A To some degree anyway.

7 Q Yeah.

8 A I don't know if that helps, but that answers where I
9 was coming from.

10 Q Well, is there support in the literature for the claim
11 that acknowledgment of specifically sexual problems is
12 a necessary component of reducing recidivism risk or
13 reducing recidivism, either one?

14 A Indirectly, not directly, what comes to mind for me.
15 Indirectly would be the studies that are on sex
16 offender treatment, is it currently done, which is
17 basically cognitive behavioral in its approach with an
18 emphasis on relapse prevention. Relapse prevention and
19 a number of the different components of cognitive
20 behavioral treatment as it's currently typically done
21 means the person has to acknowledge some degree of
22 offending, not necessarily all of it, but some degree
23 of offending in order to build a meaningful enough
24 relapse prevention plan.

25 Q And Elmer has acknowledged quite a bit of offending,

1 hasn't he?

2 A He's caught with six victims, which he discounted to
3 five quickly.

4 Q Which one did he discount; do you know?

5 A The person that -- the 19-year-old that he
6 propositioned. She said no and -- or I'm not sure.

7 Q I think you're getting your incidents mixed up.

8 A Yeah, I think I am. There was one person that he
9 propositioned, she said no, and he walked away. And
10 yet, he initially in his deposition counted that case.

11 Q Should he have counted that case?

12 A The person -- oh, I think it was a 12-year-old.

13 Q Oh, okay.

14 A So propositioning a 12-year-old, yeah, potentially -- I
15 mean, that's a crime. It's not necessarily a sexually
16 violent crime, but it's a crime.

17 (Recess.)

18

19 Q (By Mr. Hirsch) We had been talking about Elmer
20 dealing with his sexual problems as opposed to just
21 depression and anger and things like that. You've
22 talked about the research involving treatment effect
23 where the treatment required admission of sexual
24 offending, right?

25 A As part of it, yes.

1 Q And is there any empirical data -- is there any
2 research showing that acknowledgment of a present
3 sexual -- current sexual deviancy problem is necessary
4 to prevent recidivism or even has a role in reducing
5 recidivism?

6 A Probably not directly that I'm -- at least not that I'm
7 aware of. Not directly as you ask the question. It
8 would be pieces of information that are considered
9 relevant but not directly in answering your question.

10 Q What kind of pieces?

11 A That the -- a number of different pieces that -- again,
12 I don't wish to portray this collection, answering your
13 question, just as relevant. That the cognitive
14 behavioral problems typically done with sex offenders
15 include a component having to do with -- they use
16 different words. This program used sexual arousal
17 modification. It's that concept. So that's a common
18 component of the programs that seem to be effective.
19 In the Hanson and Bussiere Meta-analysis, the highest
20 correlate with sexual recidivism was PPG-measured
21 sexual arousal towards children, so a sexual-arousal
22 issue, suggesting that that is something that -- if
23 it's one of the higher correlates, it's something
24 that's more likely to need to be addressed.

25 I'm trying to think of the authors. There's work

1 on -- I think it's Bill Marshall.

2 Q Bill Marshall did you say?

3 A Bill Marshall, I think, but I can't say for sure. I
4 believe some research both looking at the effectiveness
5 of the treatment program he developed in Canada and
6 some components of it, and that included addressing
7 people's sexual deviancy.

8 Q Okay.

9 A And I can remember the research had to do -- well,
10 okay. I answered your question.

11 Q You don't know what article that would be or anything
12 like that?

13 A I can't think of a citation on that, no.

14 Q If you remember it, please inform Ms. Port or
15 Mr. Hackett so they can inform me.

16 You talked about how, according to Hanson and
17 Bussiere, physiological arousal to children was the
18 highest correlate to reoffending.

19 A In that study.

20 Q Yes. And how obviously that needs to be addressed,
21 right?

22 A That it would suggest that that would be an issue that
23 would need to be addressed, yes.

24 Q And sexual arousal modification is a way in which
25 programs try to address it, right?

1 A That's one name. I was giving that as a -- that's one
2 of the local names.

3 Q Is there research that shows that sexual arousal
4 modification as it's defined here, using the local term
5 for it, works?

6 A If you're asking to lower the degree of the person
7 experiencing the unwanted fantasies and urges, then I
8 believe there's research indicating that specifically
9 covert sensitization or desensitization, depending on
10 how it's being done, covert sensitization is a
11 procedure that does lower either the frequency and/or
12 intensity of the unwanted types of sexual fantasies and
13 urges.

14 Q Over how long a period? In other words, does it extend
15 beyond, say, two weeks after the covert sensitization
16 or desensitization?

17 A My memory clearly would be beyond two weeks, but I
18 don't know that the research goes beyond six months to
19 a year. I don't recall that.

20 Q Do you know who's done this research?

21 A I know Gene Abbal, A-B-B-A-L, did work on masturbatory
22 conditioning. And it would not at all surprise me if
23 he did work on covert sensitization, as well. Those
24 are two different techniques, both with the same goal
25 in mind.

1 Q With the covert sensitization --

2 A If not him, then it may have been Bill Marshall. I am
3 not certain.

4 Q The covert sensitization or desensitization, would that
5 involve such things as aversive conditioning?

6 A It has that format to it in terms of -- the covert side
7 of it is that the person's doing it all in his
8 thoughts. But yes, they are conditioning the unwanted
9 fantasy or urge with something that is quite aversive
10 to them.

11 Q Like sniffing ammonia or the like?

12 A That is one technique that is used. That's not just
13 the overt -- no, that's no longer just the covert
14 process. The purely covert process -- it follows the
15 same model.

16 Q Okay. And another method would be, say, satiation
17 therapy? Have you heard of that one?

18 A Do you mean masturbatory satiation --

19 Q Yes.

20 A Yes. That's not covert, but it's another technique.
21 That's the one that I know Gene Abbal did. I was
22 trying to remember who did most of the work on covert
23 sensitization.

24 Q Should be easy to find if we have those names.

25 Let me change direction here. You obviously

1 believe that Elmer Campbell is likely to reoffend in a
2 sexually valid manner if not confined to a secure
3 facility. When is he likely to reoffend? Within what
4 time frame?

5 A My assessment would be within the context of the rest
6 of his life, if -- I don't have a way of being more
7 particular about a timing effect because what you're
8 asking me in that situation is not just a risk
9 assessment but when is he actually going to do the act,
10 which includes a prediction and when. I can't do that.

11 Q Well, we're talking risk assessment, which --

12 A My risk assessment was within the context of the rest
13 of his life.

14 Q And you can't narrow it down more than that.

15 A You asked me earlier to narrow it down within the
16 five-year period. And it may be that if I looked at
17 things in more detail, that I would be able to say even
18 within five years I would come to that opinion.

19 Q Okay. We talked about how Mr. Campbell has, to the
20 best of our knowledge, not acted out sexually since
21 1989 or 1990. How has he managed to control himself
22 over that period of time? Excuse me if I'm beating a
23 dead horse, but...

24 A Oh, I understand the purpose of your question. At
25 least I think I do.

1 His statement in that regard, I believe, from his
2 deposition was -- no, I believe it was from my
3 interview, actually, was that the initial year was
4 difficult, and then it became -- over time it became
5 easier. That sounds reasonable in terms of my
6 expectations.

7 In terms of how he did that, I don't know that I
8 have information in that regard.

9 Q He said it was --

10 A The initial --

11 Q -- difficult to stop exposing for the first year and
12 then easier. Do you think that would be the same kind
13 of pattern he might be expected to find in regard to
14 all sexual or sexually violent offending if he were
15 released, difficult for the first year and then easier?

16 A Not in the context of current reality. One of the
17 major points was that he absolutely acknowledged that
18 he was exposing, that this was something that he was
19 doing on a repetitive basis for his own purposes, and
20 then he came to the conclusion that his behavior
21 ultimately had results that he didn't want. Then he
22 made apparently a decision and ongoing decisions to do
23 something about that.

24 If he had done all of that early step -- that first
25 set of steps I just described with his other sexual

1 issues, then I could see it happening exactly as you're
2 describing it. In fact, that's one of the things I
3 anticipated would have been occurring this past year.
4 But it didn't occur. And no, I don't think that he
5 would follow through in the same way if he were
6 released at this point in time, in finding it difficult
7 during the first year and then easier, because as I
8 say, I think he's going to be more surprised about the
9 strength and immediacy at which some of these feelings
10 are going to come.

11 Q I'm confused now. How has his acknowledgment of his
12 exposing been different from his acknowledgment of his
13 other kinds of sexual offending?

14 A It was current and ongoing. He acknowledged he was
15 doing it right then, and he continued doing it. He has
16 not been saying that about his sexual offending.

17 Q Well, to the best of our knowledge, he has not been
18 doing it, right?

19 A No. I don't mean offending, per se. I mean about the
20 ultimate paraphilic conditions that I diagnosed, saying
21 that about paraphilia NOS nonconsent type of drive.

22 Q Did he admit that he was -- that his offending was
23 paraphilic? Excuse me, that his --

24 A That his --

25 Q -- exposing was paraphilic?

1 A No. He has not said that it was paraphilic in terms of
2 his being driven for it. What he did acknowledge,
3 however, most importantly to himself, was that his --
4 this was something that he was doing on an ongoing
5 basis, that it was not just a misinterpretation or
6 authorities doing something to him or a nonsexual
7 assaultive process. It wasn't from anger. He didn't
8 end up coloring it in all those wrong ways.

9 Q Did he --

10 A He saw it as ultimately he was making sexual overtures
11 in a very inappropriate way that was hurtful, and he
12 came to accept that that's what he was doing. And then
13 I think he could address it far better.

14 Q Did he accept that was what he was doing with the woman
15 in the restroom in Yakima in 1985?

16 A The process of exposing?

17 Q No. The attack in the restroom.

18 A Yeah, I know. That he was doing what?

19 Q Did he acknowledge that he was doing inappropriate
20 sexual things with the intent of getting sex from this
21 woman?

22 A Yes, all out of anger.

23 Q Did he acknowledge --

24 A Not out of sexual desire.

25 Q Did he acknowledge that there was sexual desire behind

1 his approaches to the little girls when he was 15?

2 A Yes. Out of his having been hurt and wanting to hurt
3 others. I'm making those qualifiers because he
4 acknowledges the desire for sex, but it's all out of --
5 his acting on his desires is all out of this issue of
6 anger and nonsexual components. And I think he's
7 blinding himself with that.

8 Q And is the -- was the exposing -- does he also claim
9 that the exposing behavior -- that the sexual component
10 to that arose out of anger, as well?

11 A No. And my point is that that is exactly what I'm
12 saying, is that that is apparently, in my view, one
13 reason that he was able to make that change because he
14 saw it more realistically.

15 Q Do you believe that anger at the world and the desire
16 to get back at authority had something to do with his
17 exposing?

18 A Oh, it may very well have been a component. I don't
19 know that I could separate it out.

20 Q Has the supervision he's been under in prison and in
21 the Special Commitment Center had something to do with
22 his not committing new sexual acting-out behaviors
23 since 1990?

24 A Certainly to a point.

25 Q Is the degree of supervision he's under a determining

1 factor in whether he will or will not reoffend?

2 A In important ways, of course. That's one reason why
3 people are in confinement, is to limit victim access --
4 that's a type of control -- and to make potential
5 victim access more difficult and also make it more
6 likely that somebody is going to get caught for
7 whatever they do. And so there's the deterrent issue
8 as well as the incapacitation issue.

9 Q Also that somebody is more likely to get caught on the
10 step in a cycle before he does the ultimate crime,
11 correct?

12 A For some individuals, that would be true. Other people
13 don't have any build-up process. It goes from fine to
14 bad.

15 Q Do you know what it is with Elmer?

16 A In an important way, he has a very short grooming
17 period, grooming in terms of making a victim available.

18 Q Yes.

19 A In that he -- his past victimizing has basically been
20 to take advantage of situations that he comes upon and,
21 to a little bit of degree, helps create -- in terms of
22 putting himself in a situation waiting for somebody
23 else to be there, for instance.

24 Q Does he have what you can identify as an offense cycle?

25 A To a point. I mean, I don't -- outside of things that

1 either he's talked about or -- well, or clearly
2 described from behavior, I'm not going to know what
3 else is in his head.

4 Q What would you describe as an offense cycle for Elmer,
5 to the best of your understanding of it?

6 A You're asking me to talk about a whole offense cycle?
7 Really? I mean, that's a very long, detailed process.

8 Q To the best of your ability, then.

9 A Oh, my goodness. Okay. I've never had someone ask me
10 to do that before.

11 Q I may not know what I've gotten myself into, but I'm
12 going to stick with it.

13 A Let me describe for you the concept of a full offense
14 cycle description. And keep in mind my qualifier: I'm
15 only going to know either what he's told me or what has
16 been recorded.

17 A full offense cycle a going to look at the
18 person's thoughts, then separately their feelings,
19 separately the situations, and separately the
20 behaviors. So four different components related to a
21 series of precursor times leading up to an offense.

22 Q Right.

23 A If the person has more than one type of cycle, then
24 each one is done separately because people can have
25 more than one pattern.

1 It's probably true that -- Mr. Campbell, in my
2 view, would probably have at least two.

3 Q Can we just start out by giving titles to those two?

4 A Title one is the anger-laden, violent attack. And it's
5 been typically, in recorded history, on adults. And
6 the other is the "I see, I want, I'm going to take,"
7 sexual. That would be with the kids.

8 Q How would you characterize the one with the young woman
9 in the restroom in Yakima?

10 A More violent process. There was a -- these are going
11 to overlap. And clearly "he saw, he wanted" was a
12 component in all of them except potentially -- and it's
13 debatable, depending on what you believe of what he
14 said -- with the very last victim, Louise.

15 Q Do you know whether that last offense, the one in
16 Lincoln Park, by the way, was sexually motivated or
17 not?

18 A Do I know? If you're asking my opinion, my opinion is
19 yes.

20 Q Based on?

21 A It fits his pattern, the words that he was using in
22 terms of looking to get the woman into the bushes. If
23 he's just beating up on somebody, I'm not sure why he
24 needed to take the person into the bushes.

25 Q Would that be to avoid detection?

1 A There is always a possibility. But he started beating
2 up on her way before that. So a different
3 interpretation is beating up on somebody and
4 threatening the person's life in order to get the
5 person to succumb to something else.

6 Q What kind of supervision is necessary to keep
7 Mr. Campbell from reoffending?

8 I'll make things a little easier for you. Say
9 house arrest with electronic home monitoring, how much
10 would that help?

11 A The electronic monitoring has very little meaning to me
12 in regards to someone who has a very short grooming
13 period. The reason for that is that he could be -- if
14 looked at alone, he could be coming and going to work,
15 be where he's supposed to be, and come upon a situation
16 where there's a woman alone who's vulnerable and decide
17 to do what he wants to do. And he could be right where
18 he's supposed to be.

19 So electric monitoring by itself is not a
20 particularly effective tool, from my view, for people
21 with a short grooming period.

22 Q Are you saying --

23 A I need to know what you mean by "house arrest,"
24 however, before I answer the rest.

25 Q Oh, okay. Let's say for a certain period of time, for

1 however long is necessary, he's not allowed out of the
2 house except at certain agreed times, being chaperoned
3 by an approved adult monitor.

4 A When you say not allowed out of the house, does he
5 really have access to leave when he wants, but he's
6 told "Don't go or you're in trouble," or is it truly he
7 can't leave?

8 Q It's the electronic home monitoring that would say
9 immediately --

10 A That he's in the wrong place.

11 Q Yeah.

12 A There are a few different considerations that I'm
13 thinking about in trying to answer your question. It's
14 always difficult for me to answer these in isolation,
15 but I'll give you my thinking.

16 Q Yeah.

17 A When someone is on electric monitoring as the basis for
18 keeping them in a location, there are two overlapping
19 considerations relative to that potential
20 effectiveness, even with absolute supervision, escorted
21 supervision, if the person's not in that location. One
22 is that there are people who are either easily angered
23 and irritated enough or impulsive enough that they'll
24 cut loose -- literally cut themselves out of it and
25 just take off.

1 Q Is Elmer such a person?

2 A The overlapping process is psychotic enough. Excuse
3 me. Psychopathic. That's what I mean. Long day, I
4 guess. Psychopathic enough to do that.

5 Is Elmer that kind of person? He has a history of
6 impulsivity relative to his crimes, by his own
7 statements. His eloping or escaping history, to my
8 knowledge, is solely related to one runaway incident
9 when he was a kid, which I would not put anywhere near
10 in the same category. He tends to be acting impulsive
11 when he is most frustrated. "Angry," "irritable" are
12 other words, but I think "frustrated" covers the bases.

13 So I'm reinterpreting your question in terms of
14 would he reach the point of being frustrated enough to
15 do that? Not under most circumstances, would be my
16 easy answer. I'm not sure I can get any more specific
17 than that.

18 Q I may be getting my reports mixed up, but I seem to
19 recollect that you wrote in your report that his crimes
20 weren't as impulsive as he makes them out to be.

21 A In my assessment, they were more of what I would -- I
22 see a phrase, closer to planned spontaneity. They were
23 impulsive in the sense that he did not have a plan in
24 mind in terms of what he wanted to do when with whom.
25 The victims I think were victims of circumstance, of

1 opportunity. I don't have particular doubt about that.

2 At the same time, it seems to me that he's even
3 acknowledged that there were times that he was stalking
4 for a victim. I'm not saying that it was a conscious
5 process that he wanted to go out and rape, but he was
6 primed and ready, and when that opportunity came, he
7 found that impulse and went for it.

8 I don't really disagree with his experience of that
9 as being impulsive. But in my view, there's more
10 behind it. That's again the same issue of his sexual
11 desire that he's not quite understanding.

12 Q So I'm confused. You talked about his impulsiveness
13 when he gets frustrated. How much does that figure
14 into things or not?

15 A There are -- it does. And specifically to the issue of
16 his potential for cutting a bracelet and running off,
17 it's not a direct relationship there.

18 The issue to me is it's safer for him to see
19 himself as impulsive and anger driven, which both of
20 those have accuracy to them but are not the full story
21 in an important way when it comes to his sexual
22 offending.

23 Q I understand.

24 A So I'm saying he has that capacity, but I also am
25 saying that when it came to sexual offending, he's

1 missing a certain component.

2 Q So in terms of whether he's going to be able to succeed
3 under electronic home monitoring as we've been talking
4 about, how much does or doesn't impulsiveness have to
5 do with that?

6 A Part of the consideration that comes to mind as well is
7 that he has shown a growing degree of improvement in
8 that regard in terms of his behavior within an
9 institution. And I've given some examples already.
10 And I expect that, again, at least to a degree, would
11 follow through into wherever his future is. I don't
12 have reason to believe that he would significantly
13 backtrack on a long-term basis in that way. He may
14 have his moments but not in a long-term basis. I do
15 see that as a change that he's made.

16 And so to that degree, his likelihood for cutting
17 himself out and running is lessened.

18 Q And also, of course, you do acknowledge the likelihood
19 that if he cut and ran, he'd be apprehended pretty darn
20 quickly probably, right?

21 A I don't know that I could acknowledge that, especially
22 if he were to cross the state boundary. I'm not sure
23 what the laws are about bringing him back if he's not
24 under a criminal code. I don't know the Washington law
25 in that regard, but in Wisconsin there is no way to

1 bring somebody back under a civil commitment, not
2 mandatorily.

3 That's assuming, by the way, just to be clear, that
4 all of this plan is still within Washington. If the
5 plan is out of state, then this is a whole other world
6 anyway.

7 Q And? Why did you bring that up?

8 A I'm not sure that if he violates something, there's a
9 way to do anything about it, short of a new offense.
10 Again, I don't know the law in that regard.

11 Q As my last question before we go, you mentioned two
12 cycles. And I'm going to have to ask you to choose
13 your cycle. Let's take the second cycle because it's
14 the more recent, the anger-driven attacks on the
15 adults.

16 A Okay.

17 Q Could you please -- is this going to take us past 5:10,
18 say?

19 A I'll do what I can to stay within that. How about if I
20 give you a basic structure?

21 Q Give me the basic structure.

22 A Okay. If we were to describe a relapse prevention plan
23 relative to -- or more accurately, an offense cycle
24 relative to that aspect of what I labeled of his sexual
25 offending, then he would -- there are two different

1 sets of things to be looking at. One is those four
2 components: Thoughts, feelings, behaviors, and
3 situations. And the other is to -- and it's done in
4 different ways, but to either start with the event and
5 go backwards in time -- or events and go backwards in
6 time to look at each of these four components in terms
7 of what the chain of events is. The other is to start
8 with something that happened to be in existence for all
9 of his relevant defending of that cycle, but he sees no
10 connection between it, and try to draw the connection.
11 That would be in the process of building it. I'll give
12 you my picture.

13 Q Please.

14 A And keep in mind, I'm constructing this as I go because
15 this is not something I answered for myself in making
16 the assessment.

17 Q All right. Let me ask you this before you get to that.
18 Would this be a better question, then, for me to ask
19 you when we reconvene so that you could give it more
20 thought?

21 A Let me try it now.

22 Q Okay.

23 A The way in which he's described things so far relative
24 to that is that he has an interest in having contact,
25 communication, emotional contact with an individual.

1 That individual is important to him because of his
2 wants, not necessarily because of any prior
3 relationship. But it can involve a family member, it
4 can be involved with a stranger, anybody else. That
5 person does something that he ends up experiencing as
6 rejecting. That is the phrase he has used. The
7 rejection is something that he takes as a -- this is
8 now me talking, not his statements. That rejection is
9 something he takes as a shaming event, as something
10 that is a description of who he is as opposed to what
11 he has experienced, which is the same thing as saying a
12 shaming event.

13 In response to that, he has a history that feeds a
14 very quick and intense response to that that involves
15 various cognitions and feelings. The feelings are
16 about anger in terms of what he experiences. I would
17 expect, however, that if he were to look at that anger
18 in other detail, he would experience far more in the
19 way of hurt, which he sort of talks about but not quite
20 in that way, experiences a lot of fear, which he does
21 not talk about directly much at all, and that the
22 cognitions are, "I am worthless, I can't satisfy my
23 needs," that "It doesn't matter what I do, that the
24 people who should be doing things for me aren't, and
25 I'll show them," as well as various rationalizations

1 for if he hurts, so should other people. He can talk
2 about that general statement, but I don't think he's
3 fully explored all the rest.

4 Tied in with that, and particularly the part that I
5 think he does not yet understand, is that he will tend
6 to take that pain and that anger and that fear and
7 sexualize it. By that, I'm talking about that he will
8 experience this whole process in an arousing way. And
9 I don't mean he'll get an erection. What I mean is
10 that there's an emotional rush, and that emotional rush
11 he labels as anger. And I don't doubt that that's the
12 way he experiences that. But in his life experience,
13 potentially because of the abuse that he reports having
14 experienced -- I don't have verification, but that may
15 very well have occurred -- potentially, for any variety
16 of other reasons, some of which I would not know, he
17 has learned to associate that rush with sexual
18 expression. And so that when he has -- how do I say
19 this? In the process, then, of feeling these sets of
20 feelings, he then goes one other step that he has not
21 talked about yet of building in a set of thoughts that
22 are excuses or rationalizations for why it's okay for
23 him to take his pain, his anger, his fear, and
24 specifically hurt other people.

25 Now, he has talked about it to the extent that he

1 talks about that it is okay to -- or in those
2 situations, he wants other people to feel his hurt.
3 But he has not talked about it in terms of, "And I want
4 my pleasure, too," because the fact is that he's not,
5 at some of those times, just beating up on people.
6 He's also -- such as in the mall, he is taking the
7 situation specifically for his sexual pleasure. And
8 that's a component that I think he keeps ignoring. And
9 I think it's because it's too scary to him, just to be
10 fair.

11 So let me see now if I can put that constellation
12 together here. In terms of his thoughts, he will
13 initially start out with something that seems
14 absolutely benign and in some important way is
15 appropriate. He wants to have emotional contact with
16 somebody, whether it's out of loneliness, out of
17 general intimacy desires, whatever. It is a human
18 desire. And during the course of expressing that,
19 there are different things he even does back then.
20 Sometimes he will protect himself from what he is
21 afraid could result, that sense of rejection,
22 et cetera, and will isolate. Those are to me a
23 reflection of a lot of the notes in the records about
24 how he would tend to be by himself, et cetera. A
25 self-protective process.

1 There are other times, however, where he will make
2 overtures. I don't believe for a moment that they are
3 all negative outcomes. But he pays attention -- mainly
4 again because of an abusive history. He pays attention
5 disproportionally to the negative outcomes and feels
6 those very sensitively. So that's a set of feelings
7 there, the feeling processes, the initial human desire,
8 but then this increased sensitivity to what he
9 perceives as rejection.

10 I would point out that one of the things that he
11 stated in his deposition he perceived as rejection was
12 that woman walking by him that he had no contact with
13 whatsoever. So it's a very high sense of sensitivity
14 at that point.

15 Q Which woman walking by him?

16 A The very last, Louise Jennings.

17 Q But isn't that after the perceived rejection by the
18 other woman?

19 A But he was also asked the question, concerning her,
20 "Was her walking by you experienced by you as
21 rejection?"

22 "Yes." So I'm going with that.

23 Q You mean Louise Jennings walking by?

24 A Yes, Louise Jennings, yes.

25 Anyway, do you want me to continue?

1 Q I want you to go on, yes.

2 A This is an interesting process. I haven't done this
3 for somebody else like this. Not in this detail.

4 Got to think where I was. Oh, in the rejection
5 sensitivity. What I don't know right there are the
6 thoughts that go along with that degree of sensitivity.
7 But in my way of understanding humanity, that when you
8 are that sensitive about something, that there are a
9 bunch of thoughts that are triggered and very quickly
10 to build that sensitivity. I don't know what they are.
11 To make guesses -- but these may be absolutely wrong in
12 Mr. Campbell's case. To make guesses, they could be
13 things like "That person's telling me I'm a horrible
14 person." But again, I've put them into the general
15 category as experienced as shaming as opposed to
16 disappointing in terms of rejection.

17 To me, that is where the buildup of emotion occurs,
18 because of that, those cognitions that he is not, I
19 don't think, fully aware of. Whereas, the emotions are
20 building in terms of that frustration, anger. Going
21 from rejection to anger is where I also believe that he
22 experiences that emotional rush that includes a
23 sexualization.

24 Q Okay.

25 A And again, he talks about the anger side of it, but he

1 doesn't talk about the sexualization at all. People
2 have asked him numerous, numerous times that I've read
3 that -- a lot of people get very angry, and they will
4 even do fights, but they don't go out and rape and they
5 don't go out looking for sex that you're going to take
6 in a nonconsenting way. What's different? And he
7 doesn't ever have an answer for that.

8 Q Didn't he acknowledge -- at least in the Yakima
9 incident in the restroom at the mall, didn't he
10 acknowledge that his initial interest -- was that
11 Janice Withnell, I think?

12 A No, Janice Withnell was the one in the street that he
13 grabbed.

14 Q Okay. That woman in Yakima, the young woman in --

15 A Yes.

16 Q Did he acknowledge that the original interest was
17 sexual?

18 A Yes.

19 Q How do you --

20 A That his original -- yes and no. What he said was --
21 and this could be a different pattern. What he said
22 was that he was in the mall looking at clothes, he saw
23 her, found her attractive, and made a decision to go
24 have sex with her and went into the bathroom. And she
25 came out of the stall, he already had the knife in his

1 hand and proceeded to attempt to rape her.

2 Q So might there have been a buildup similar to the cycle
3 we were talking about before that?

4 A He has stated as well, if I remember correctly, that
5 while what I just said is his story, that he was
6 already in an angry state.

7 Q Okay.

8 A So --

9 Q So in that way --

10 A -- I'm not positive that I'm describing, in what I just
11 did, exactly what occurred in that event.

12 Q In that way, does he acknowledge the connection, at
13 least in that incident, between anger and sexual
14 desire?

15 A Oh, I don't know that he does. I think that he was
16 acknowledging that anger is related to his ultimate
17 willingness to be violent and that in that situation,
18 he was interested in sex. I don't know if he sees
19 these as going together.

20 Q I'm going to ask you one other question, and then we're
21 going to stop for today. Another really easy one. On
22 a scale of one to five, how honest would you say Elmer
23 has been with you? Five being the most honest, one
24 being the least.

25 A I'm not looking to play games here, but I need to

1 qualify my answer before I can even give you an answer
2 before in terms of "honest." If you're asking me, do I
3 think that he is someone who is intentionally lying and
4 knowing that he was telling stories, et cetera, there
5 was some of that. There wasn't a lot of that.

6 And there's a different kind of honesty, though,
7 that he had more difficulty with, and that is being
8 able to see events in an honest way to himself. I
9 think he had more difficulty with that.

10 Q With that --

11 A My examples of that would include the -- I mean, I
12 could go into some examples, but the concept is that
13 his story changed with different people at different
14 times. They can't all be accurate.

15 Q With those qualifications, can you answer the question
16 twice, then, in terms of deliberate dishonesty you
17 mentioned first and the other --

18 A There were times when he was deliberately dishonest.
19 And on average, he was more honest than not in terms of
20 telling me what he believed to be accurate.

21 Q Right.

22 A And in terms of the ability to be honest with himself,
23 he had more difficulty than that.

24 Q And on the one-to-five scale, how would you place him
25 in that?

0208

1 A I'm not sure how to scale that.

2 Q Okay.

3 MR. HIRSCH: I think we're done for
4 today.

5 (Signature reserved.)

6 (Deposition adjourned at

7 5:10 p.m.)

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1 STATE OF WASHINGTON) I, Connie Faranda, RPR,
) ss CCR FA-RA-NC-*400B7, a
 2 County of Pierce) duly authorized Notary
 Public in and for the
 3 State of Washington
 residing at University
 4 Place, do hereby certify:

5

6 I, the undersigned Officer of the Court, under
 my commission as a Notary Public in and for the State
 7 of Washington, hereby certify that the foregoing
 deposition upon oral examination of the witness named
 8 herein was taken stenographically before me and
 thereafter transcribed under my direction;

9

10 That the witness, before examination, was first duly
 sworn by me to testify truthfully;

11

12 That the transcript of the deposition is a full,
 true, and correct transcript of the testimony,
 13 including questions and answers and all objections,
 motions, and exceptions of counsel made and taken at
 14 the time of the foregoing examination;

15 That I am neither attorney for, nor a relative or
 employee of any of the parties to this action; further,
 16 that I am not a relative or employee of any attorney or
 counsel employed by the parties hereto, nor financially
 17 interested in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set my hand
 and affixed my official seal this day of
 19 , 2002.

20

21

22

23 Connie Faranda, CCR, RPR
 Notary Public in and for the State
 of Washington, residing at University
 24 Place.

25