



CALIFORNIA DEPARTMENT OF

Mental Health

Coalinga State Hospital

*invites ALL CLINICAL STAFF to attend the
following presentation provided by:*

Camelia Hermine Mesrobian
Deputy District Attorney, San Bernardino County

Preparation and Testimony as an Expert in Sexually Violent Predator Trials

DATE: January 13, 2009

TIME: 9:00 – 4:00

PLACE: Grand Meeting Room (VM-101)

[6.0 MCEP Credit Hours - pending approval]

*All staff planning to attend should acquire prior approval
from their supervisor in order to address all coverage issues.*

Please contact Monica Ayala at ext. 3108 for questions re: this event.

| | |
|----|--|
| 1 | Direct Examination Skills Presentation |
| 2 | RM Background |
| 3 | RM Timeline |
| 4 | DMH Expert Direct – Trial Questions |
| 5 | Annual Evaluation (2001) |
| 6 | Annual Evaluation Update (2006) |
| 7 | Curriculum Vitae for Amy Phenix, Ph.D. |
| 8 | Annual Evaluation (2008) |
| 9 | |
| 10 | |

Camelia Mesrobian
Deputy District Attorney
San Bernardino County District
Attorney's Office
Sexually Violent Predator Unit
cmesrobian@da.sbcounty.gov
(909) 891-3556



Direct Examination Skills

COALINGA STATE
HOSPITAL

JANUARY 13, 2009

SVP = 12 jurors to agree

WHAT IS DIRECT EXAMINATION?

Essentially, direct examination is the initial portion of the testimony by a witness, expert or otherwise. This stage of the testimony is usually a relatively straightforward and non-combative process, where you are examined by the attorney who is calling you as a witness in the case.

A successful direct examination (that is, one that proceeds smoothly and conveys your opinions clearly and persuasively) begins long before you actually take the witness stand.

It begins when you are writing your court report, be it the patient's annual evaluation, physician notes, treatment progress notes as well as any court-ordered evaluation.

The goal of the Expert Witness is to have his/her opinion and conclusions accepted by judge or jury that are based on:

(1) Facts contained in the patient's documentation, as well as personal familiarity with the patient,

AND

(2) You are able to specifically refer to the source of your information

Your Credibility will be Enhanced!

This, in turn, requires that you do two things as part of your process of getting ready to testify:

(1) Make note of the location in the source material as to specific items you will be relying on for your opinions, and

(2) Make a copy (or copies) to bring to court to refer to as needed. In some cases it helps to do a trial notebook.

Notification of Court Proceedings

DA Subpoena
PD Subpoena

Once you get the subpoena, the first thing you should do is contact the party subpoenaing you, typically the DA.

If you are not available on the date subpoenaed, the sooner that is known the better.

You should also use this opportunity to inquire of the DA concerning records they may have that could be important to your testimony, and compare notes on what you have and may need

The following records may be in the DA's file or available to him or her, and may be helpful in supporting your testimony:

- ✓ Police reports (not only from commitment offense; other relevant incidents as well;
- ✓ Probation reports from the commitment and other offenses;
- ✓ Other doctors reports (opposing as well as historical.)

★
§ 5th Amendment
privilege!

The DA is also a good source of information regarding the patient's criminal history.

"Patient's "rapsheet"
(or automated criminal history print-out)

Access is restricted by law.

DA can certainly have them summarize it in writing or over the phone.

DA can share
this info with you

OR

After training
to get access
to Rapsheets

KEEP IN CONTACT !

It is certainly part of the DA's job to keep in contact with you. He or she probably won't (if past behavior is the best predictor)

You, however, still want your day (or days) in court to go relatively easily. At the very least, after your initial contact and information, call the DA about 1-2 weeks before the court date.

The DA will not have a clear idea, usually, before 1-2 weeks prior to the date set as to whether it is actually going to go to trial as set.

This is for a number of reasons, other court cases where the def't won't waive time at the last minute, other cases come up, etc.

Calling also puts the DA on the spot to accommodate your schedule.

THE DAY OF COURT

Dress professionally and conservatively;

Get exact directions where you're to be;

Be punctual, and consider getting there early just in case you need to review;

Inquire of the DA where to meet beforehand to go over last minute details if necessary.

→ *Parking spaces*

THE DAY OF COURT

If you have not already provided it, bring 3+ copies of a current CV with you.

Bring any patient interview notes you have, or be able to explain what happened to them if they are unavailable.

TRY TO RELAX YOUR MIND

Granted that it is not easy to do, give serious consideration to how you prepare mentally before taking the witness stand.

Jurors are likely to make their minds up as much on the basis of your manner as on your substance.

Calm, confident and prepared (all of which go hand in hand) go a long way with the jury, as well as the judge.

PREPARATION & RELAXATION

If you are not clear on what to say, or how you are going to support your position, your performance suffers measurably.

Likely to ad-lib, speculate and shoot from the hip in ways that either simply fail to state your position clearly and persuasively, or opens you up to attack, because you haven't thought things through adequately.

PREPARATION & RELAXATION

On the other hand, if your preparation is complete, you listen to the questions carefully, respond calmly and clearly within the area of your expertise things should go well.

According to Evidence Code § 720(a)

"A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates."

EXPERT QUALIFICATIONS

Typically, the first questions you will respond to on direct examination relate to your qualifications.

Always listen to the question and respond completely yet succinctly. For example, if the question asks broadly about your education, go through it briefly yet completely.

Try to agree beforehand with the DA as to depth in this area.

EXPERT QUALIFICATIONS

Avoid at all cost coming off as arrogant, especially dangerous in this area. This is why you want to keep things succinct.

The DA will be arguing your credentials and why the jury should value your opinion at the end of the case.

Use this time to relax further, get used to being on the stand, and make *brief eye* contact with the jury.

EXPERT QUALIFICATIONS

Experienced attorneys will tell you that it is *very, very* rare that an expert does not qualify to testify.

Some newer doctors are concerned that, if they are not licensed, they will not qualify because of this. Not True.

THERE IS NO REQUIREMENT THAT AN
INDIVIDUAL BE LICENSED IN A
PARTICULAR FIELD BEFORE ONE MAY
TESTIFY AS AN EXPERT IN THAT FIELD.

Expert opinion testimony is inadmissible unless:

- (1) the witness is qualified to testify as an expert about the matter that is the subject of the opinion;
- (2) the opinion relates to a matter that is a proper subject for expert opinion testimony; and
- (3) the opinion is based on matter that constitutes a permissible basis for expert opinion testimony under the applicable statutory rules.

(Evid. Code §§ 720(a), 801.)

CROSS EXAMINATION OF EXPERT WITNESS

In determining an *Expert's* credibility, an
expert may be examined as to:

- (1) His or her qualifications;
- (2) The subject to which his or her expert
testimony relates;
- (3) The matter upon which his or her opinion is
based.

(Evidence Code Section 721)

BOOKS, TREATISES & OTHER PUBLICATIONS

An expert may not be examined regarding a
scientific text, treatise, journal or other professional
publication unless:

- (1) the witness referred to, considered, or relied upon
the publication in forming his or her opinion;
- (2) the publication has been admitted into evidence;
- (3) the publication has been established as a reliable
authority by the testimony or admission of the witness
or by other expert testimony or by judicial notice.

(Evidence Code Section 721(b).)



What is the subject matter of your testimony ???

- Convicted of a sexually violent offense against one victim
- Diagnosed mental disorder
- Likely to reoffend in a sexually violent predatory manner
- Necessary to keep him in custody in a secure facility

SVP Law 1996 →

Adic 1999?

Adic 2002

50/50 not reliable



LISTENING TO THE QUESTION

This skill, though simple, is hard to master. The strong tendency, even when you're prepared, is to rush to get your information before the jury.

There is an equally strong tendency to anticipating the call of the question.

Both of these tendencies, when not managed appropriately, result in answers that are rambling, choppy or even unresponsive to the question posed.



LISTENING TO THE QUESTION

As you're on the witness stand, *actively* listen to the question,

Then, answer that question. If it calls for a "yes" or "no", respond accordingly. If you can't ... then say why it can't be answered with a "yes or no."

Remember, this is Direct. If you and the attorney are both clear on what you're testimony is, he or she will get there.

One of the most significant ways that expert testimony differs from other types of testimony is that the examining party, be it the attorney calling you as a witness, or the other side, may ask you "leading questions."

These are questions that suggest the area they want you to focus on, and may even strongly suggest the answer that they expect.

- after lunch -

You're the Assistant

During Direct Examination, you should:

- (1) Stay within your area of expertise and training;
- (2) Refer to specific factual bases for your opinions;
- (3) Maintain a calm and confident demeanor (on direct and cross, and
- (4) Communicate clearly in language the jury can understand.



Most Impt

By way of example, you could be asked the question :

You concluded, Doctor, that Mr. X at this time represents a substantial danger of physical harm to others, correct?

As opposed to "Did you form an opinion as to Mr. X's risk, Doctor?"

When you *are* asked an open-ended question by your attorney (e.g. "On what particular facts and circumstances did you base your diagnosis of Schizoaffective Disorder, Doctor?") you should feel free to give as extensive an answer as you feel the question requires.

If the other side objects to the "narrative", your attorney will simply come back with a follow-up question that enables you to complete your answer.

Opposing counsel will oftentimes make objections simply in an attempt to rattle you and cause you to lose your train of thought.

One way of dealing with this is to make a note to yourself on a pad while the attorneys and judge are arguing the point.

It gives you chance to collect your thoughts, note where you were in the testimony, and pick up exactly where you left off.

→ ★
*Bring whatever info
you need - Crib notes ★*

You're the Assistant

Nothing turns a jury off faster than an egotistical, arrogant "expert."

Many jurors believe (i.e. who does He think he is ? Better than us ?)

However, you as an "expert" are there to impart special knowledge beyond that of most people's training and experience.

How do you strike a balance?

In determining credibility, the court or jury may consider any matter that has a tendency in reason to prove or disprove the truthfulness of his testimony, including but not limited to:

- (a) His demeanor in testifying and the manner in which he testifies;
- (b) The character of his testimony;
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies;
- (d) The extent of his opportunity to perceive any matter about which he testifies;
- (e) His character for honesty or veracity, or their opposites;

↓ cont

- (f) The existence or nonexistence of a bias, interest, or other motive;
- (g) A statement previously made by him that is consistent with his testimony at the hearing. *
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing. *
- (i) The existence or nonexistence of any fact testified to by him;
- (j) His attitude toward the action in which he testifies or toward the giving of testimony.

(Evidence Code Section 780)

"Diagnosed Mental Disorder" In Evaluation.

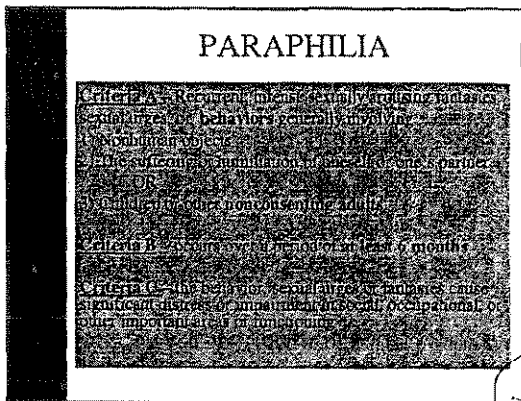
B. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)

Axis I: Pedophilia = Child Molester
Paraphilia NOS = Rapist
Sexual Sadism = Rapist
Exhibitionism
Voyeurism

Axis II: Antisocial Personality Disorder

↑ Imp +
↓
goes toward dangerousness

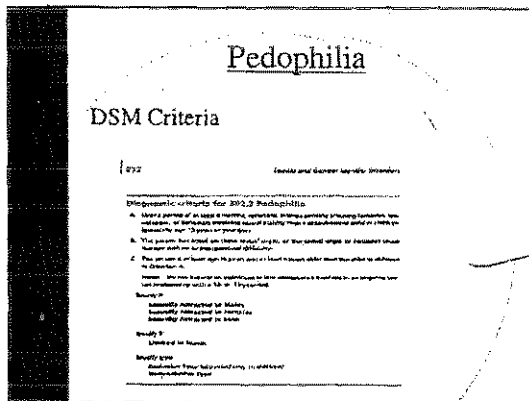
other paraphilias
Zoophilia
Coprophilia



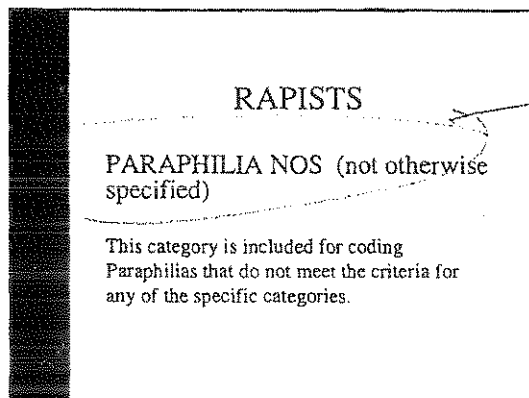
generally involving

| | |
|--|--------------------------------|
| A recurrent intense sexually arousing fantasies | 1) Non human objects |
| sexual urges | 2) Suffering or humiliation of |
| or | oneself/partner |
| or | children or other |
| or | non consenting |
| B At least 6 MOS | adults |

C Fantasies, urges or behaviors cause significant distress / impairment in social, occupational or other areas of functioning



Criteria need review



She'll give us the legal citation in this judged appropriate for rapists

[D M D]

(1) Congenital (at birth)
OR

Acquired condition,
Affecting person's

(2) emotional
OR

volitional capacity

(3) predisposing that person
to commit sexual
acts (4) which make him
a menace to health &
safety of others

Expert Opinion

Diagnosed Mental Disorder is a congenital or acquired condition affecting a person's emotional or volitional capacity and predisposing that person to commit criminal sexual acts to an extent that makes him a menace to the health and safety of others.

DIAGNOSED MENTAL DISORDER

(1) Congenital = born with

Acquired = developed over time

(2) Emotional capacity = our feelings, the way we perceive the world

Volitional capacity = free will

(3) Predisposes = makes it difficult for person to control behavior

(4) menace to health &
safety of others

HIGHLY CONTESTED ISSUES FOR CROSS EXAMINATION

Current diagnosis of Pedophilia or Paraphilia: established by fact the disorder cannot be cured—therefore always 'current' *

Current effect on volitional or emotional capacity—difficult to assess since victim pool not accessible *

Expert Opinion

Risk assessment, as to sex offenders, has made substantial progress in the last fifteen years

Rather than base the assessment on subjective clinical impression, it is based on research-based actuarial factors with a statistical correlation to risk of reoffense.

Use of the actuarial instruments gives you a baseline for assessing his risk, before looking at additional actuarially based static and dynamic factors.

actuarial instruments?
actuarially based static and dynamic factors

Sex Offender Risk Assessment Types of Risk Factors

- * Static: historical, unchangeable
- * Dynamic: pertain to attitudes, behavior patterns and support systems that can change over time.
- * Protective: factors that serve a protective function that would reduce the risk of recidivism

Static 99 / AGING
Static 2002 / > Conclusions

10 items
which speak of
to risk of Reoffend

Sex Offender Commitment Program

Five Phases:

- I. Treatment Readiness
- II. Skills Acquisition
- III. Skills Application
- IV. Discharge Readiness/Release Planning
- V. Conditional Release Program

"CON REP"

Description of the phases

- State of the Art Treatment For Sex Offenders
- There is no cure for disorder only Behavior Modification
- SVP's participation in treatment modalities
- Does this reduce his risk of reoffense if released from custodial treatment?
- Basis of Opinion

Finally, have in your mind a statement summing up the essential parts of your overall opinion

A concise summary of your opinion on the 3 criteria met: Sexually Violent Offense against one victim, Diagnosed Mental Disorder, and Likely to Reoffend in a Sexually Violent Predatory manner in the future without in custody treatment.

↓
Statutory
(Legal)
Definition

3 criteria & opinion & summary
of same

1) SVP (1 victim)

2) DMD

3) Reoffense potential w/o
in custody tx

DMH EXPERT
DIRECT

Dr. _____, you are a
(Licensed) (Psychologist/Psychiatrist) in California ?

Would you please describe your Educ. bkgrd, degrees, including
undergrad. degree(s)

*(as applicable, add'l mental health professional experience while
prior to doctorate.)*

After obtaining your (Ph.D/MD/DO), what has been the nature of
your practice?

*(as applicable, Publications, presentations, Board Certifications,
professional associations...)*

Specifically, what is your training and experience in evaluating,
diagnosing, (and treating) (case category: SVP, NGI, MDO, etc.)? ?

Approximately what % of your duties there involved sex offenders?
(evaluation, diagnosis, treatment....)

What is your current position?

Would you please describe your duties in that position?

What is the Department of Mental Health, commonly referred to as DMH?

What is your relationship to DMH ?

How long have you been a SVP evaluator for DMH ?

How much of your practice consists of forensic evaluations? SVP evaluations?

Have you received training through DMH that is specific to conducting SVP evaluations? Describe.

How many SVP evaluations have you conducted?

If you know, as to this type of commitment, what % do you find meet the commitment criteria, as opposed to those that don't meet one or more of the criteria?

Have you previously qualified in court as a expert witness as to this type of evaluation? How many times? In what jurisdictions?

(Have you conducted forensic evaluations at the defense request? Testified for the defense? Approximately how many times?)

How is it that you requested to conduct an evaluation of Mr. _____ in this case

What documentation did you review in this case regarding Mr. _____ ?

Did you do a face-to-face interview Mr. _____ as part of your evaluation?

A Where did the interview take place?

How long did the interview last?

>OR<

B Why couldn't you conduct a face-to-face interview?

I assume having a face-to-face interview is preferable (Yes)
Where you can't conduct such an interview, does that mean
that you can't complete the evaluation? Why not?

Does it affect your evaluation? How so?

With that as background, let me ask you specifically about the opinions
and conclusions you reached in this case

* * * *

CRITERION #1 - QUALIFYING OFFENSES

Based on your evaluation, did you arrive at (a)(one or more) diagnosis(es) ?

What diagnosis(es) ?

As a psychologist / psychiatrist, how do you go about reaching a diagnosis as to a particular person?

Let me discuss each one individually with you, and then see how they relate to the statutory criteria.

Diagnosis # 1: (and as to each additional diagnosis)

What are the diagnostic criteria for that diagnosis?

What facts and factors do you rely on in making this diagnosis?

As to (each of) the diagnos(es) you've discussed, is it your opinion that, the a reasonable degree of psychological / medical certainty, that it currently applies to Mr. _____?

Let's get back to the ^{statutory definition} (legal definition) <Chart> Does Mr. _____'s diagnosis (or do the diagnoses) as you see them manifested in him relate to the legal definition we see here?

How so?

(It's been a number of years since Mr. _____ has sexually assaulted someone, true? Given that, how do you conclude that he is still a (pedophile / paraphiliac rapist)

CRITERION #3: LIKELY TO REOFFEND

In California, we use a standard of "likely to reoffend", True?

And the reoffending we're talking about is "sexually violent criminal predatory acts," correct?

Generally, Dr., how would you describe the approach you take in evaluating a person's such as Mr. _____'s risk of reoffending ?

There has been some discussion of "actuarial instruments" in this case. What are they?

Did you use any in evaluating Mr. _____ ?

Static-99 - Why did you use this particular instrument?

Is it commonly used in assessing risk of reoffense in evaluation and treatment settings?

You are familiar with the term "cross-validation" ? Please explain.

Has the Static-99 been cross-validated? In approx. how many separate studies ?

<Chart> This instrument consists of 10 static factors that have been shown by statistical research to be risk factors for reoffense, Correct?

What do they mean by the term static factor?

Please describe to us the manner in which you go about using this instrument. <10 factors, scoring descrip., %'s at 5-10-15>

Would you describe the Static-99 as a moderate predictor of risk?

After you got the results, is that the end of your evaluation?

Rather, do those results essentially give you a baseline to continue your evaluation as to his risk?

What other Static Factors do you consider?

How do you incorporate these add'l factors into your overall analysis ?

Then do you look at what are referred to as Dynamic Factors? <Chart>

(this section to be updated after transition to the STABLE 2007)

* * * * *

If released now, and he reoffended, what type of crime would you expect him to commit?

Mr. _____ is currently _____ years old, Correct?

Did you consider his current age as part of your overall evaluation?

Specifically with respect to the question of risk of reoffense, how does his current age affect your opinion, if at all?

Has Mr. _____ been involved in sex offender treatment?

Is treatment participation a consideration in your evaluation of his risk?

How so?

Has Mr. _____ expressed any plans he has should he be released into the community?

Does he have any plans in place to obtain sex offender treatment in the community?

Do you think it is appropriate for him to be placed in outpatient treatment in the community as things stand now?

Why not?

Department of Mental Health
I declare that this is a true and correct copy
of the original document.

Amy Phenix, Ph.D.
Clinical Psychologist
CA Lic. No. PSY12730

Signature and Date

Ben Parisi 9/17/01

**SEX OFFENDER COMMITMENT PROGRAM
CLINICAL EVALUATION PROTOCOL**

Evaluation Date: 08-14-01

I. IDENTIFYING INFORMATION:

NAME: [REDACTED]
CDC No.: [REDACTED] Past CDC No. [REDACTED]
CII No.: [REDACTED]
DOB: 09-24-40
EPRD: 10-02-01
Facility: Avenal State Prison (ASP)
County of Commitment: San Bernardino
Date of Evaluation: 08-14-01

Mr. [REDACTED] was interviewed by Amy Phenix, Ph.D., at Avenal State Prison for approximately 3 hours and 15 minutes on August 14, 2001. He was informed of the nature and purpose of the evaluation, which is to determine whether he qualifies as a Sexually Violent Predator (SVP) under the Welfare & Institutions Code (W&I), Section 6600. Issues of confidentiality and mandated reporting were explained to Mr. [REDACTED]. He read aloud and signed a form entitled "Notice of Evaluation as a Sexually Violent Predator" which provides information regarding the evaluation and commitment procedures. He was also offered a copy of this form. Mr. [REDACTED] by observation and self-statement, was familiar with the W&I 6600 statute, having participated in previous W&I 6600 proceedings which resulted in his release to the community. He agreed to participate in a clinical interview for the purpose of this evaluation.

II. SOURCES OF INFORMATION:

In preparation for this report, the following sources were reviewed:

1. Sexually Violent Predator Evaluation by Patricia Kirkish, Ph.D., (5-10-96).
2. Sexually Violent Predator Evaluation by Jatinder K. Singh, Ph.D., (5-6-96).
3. Department of Mental Health (DMH) Record Review Summary Report, (07-21-01).
4. DMH Sex Offender Commitment Program Evaluation Assessment Form.
5. DMH Qualifying Criteria, (7-2-01).
6. Board of Prison Terms (BPT) Sexually Violent Predator Screening, (3-13-01).

7. Abstract of Judgment-Prison Commitment, Case No. [REDACTED] County of San Bernardino.
8. Felony Complaint, County of San Bernardino, Case No. [REDACTED]
9. Ontario Police Department Report, Case No. [REDACTED] (2-20-00).
10. California Department of Corrections (CDC), California Correctional Institute, Reception Center (CCI/RC) Institutional Staff Recommendations Summary, (4-21-00).
11. Abstract of Judgment-Prison Commitment, County of San Bernardino, Case No. FWV02026.
12. Felony Information, Case No. [REDACTED] County of San Bernardino.
13. Probation Officer's Report (POR), County of San Bernardino, Case No. [REDACTED]
14. Institutional Staff Recommendation Summary, California Institute for Men Reception Center (RCC/CIM), (2-17-94).
15. Mentally Disordered Sex Offender Commitment Records from Atascadero State Hospital (ASH).
16. Mentally Disordered Sex Offender Evaluation by C. L. Tartalia, M.D., (2-20-74).
17. Mentally Disordered Sex Offender Evaluation by Ernest P. Tiangco, M.D., (2-26-74).
18. Records from Atascadero State Hospital:
 - Admission Psychiatric Evaluation, (5-13-96).
 - Recommended Continuing Care Plan/Discharge Summary (RCCP), (6-20-96).
 - Psychiatric Evaluation – Revised Diagnosis, (6-20-96).
 - Admission Psychiatric Evaluation, (9-19-97).
 - Psychiatric Evaluation – Revised Diagnosis, (6-15-98).
 - RCCP, (6-15-98).
 - RCCP, (12-30-98).
19. CLETS Database Response, (2-21-00 and 3-14-01).
20. Bureau of Criminal Identification Criminal Record.
21. CDC Rules Violation Report, (11-05-00).
22. CDC Academic Achievement Test, (3-20-00 and 8-29-00).
23. CDC Psychiatric Screen, (3-16-00).

Psychological Testing: Hare Psychopathy Checklist-Revised (PCL-R).

III. FINDINGS:

A: Has the Inmate been convicted of a sexually violent predatory criminal offense against two or more victims: YES

FIRST QUALIFYING OFFENSE:

An Information, County of San Bernardino, Case No. ██████████ filed on October 7, 1993, indicates that Mr. ██████████ was charged with the following offenses:

| COUNT | CHARGE | DATE | VICTIM |
|---------|------------------------------------|--------------------------------|------------|
| Count 1 | PC 288(a) Lewd Act Upon A Child | 9-11-93 | Jessica A. |
| Count 2 | PC 288(a) Lewd Act Upon A Child | Between 9-1-92 and 12-12-92 | Laura A. |
| Count 3 | PC 288(a) Lewd Act Upon A Child | Between 1-1-92 and 12-31-92 | Jordan C. |

On December 10, 1993, Mr. ██████████ was convicted by plea of all three counts of PC 288(a), Lewd Act Upon a Child and sentenced to five years in state prison. A San Bernardino County POR, (Case No. ██████████) indicates that, according to an Ontario Police Department Report on September 11, 1993, **Jessica A., 10 years of age**, reported that she had been fondled by Mr. ██████████ while she was playing with other children in the swimming pool area of the apartment complex in which they lived. He reportedly grabbed her buttocks on the outside of her bathing suit and pushed his fingers up into her rectum, causing significant discomfort. She immediately left the pool area and crying, told her mother about it. Her mother called the police, and they immediately took him into custody.

The arresting officer interviewed Mr. ██████████, and he essentially admitted the offenses, saying that he "liked playing with children and spends time with them, primarily because they do not get attention from their parents." He admitted that he had been having sexual problems with his wife, he had been drinking excessively, and that things at the pool got a little "rowdy" causing him to behave this way. He admitted, during the interview, that he had "a little problem" as far as being around young children. To the undersigned, he reported that he had no idea why he made these statements to the probation officer at the time of the offense in 1994. He minimized the offense indicating that the victim had reported to police that he had just held underneath her legs and the center of her chest so that she could float in the pool.

Force, Violence, Menace, Duress and Fear/Substantial Sexual Conduct:

Substantial sexual conduct is defined in W&I 6600 as "the penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either by the victim or the offender."

██████████
August 14, 2001

Page 4

In the case of Jessica A., it was reported that Mr. █████ pushed his fingers into the victim's rectum, indicating the presence of substantial sexual conduct. Additionally, he caused force and violence as a result of the significant discomfort which the victim experienced when he penetrated her rectum with his fingers. As a result of the discomfort she left the pool area crying to seek out her mother. There is also evidence of duress in that there was a significant discrepancy between the age and size of the adult male perpetrator and the ten-year-old victim.

Predatory:

Predatory is defined in W&I 6600 as "an act directed towards a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization." To the undersigned Mr. █████ acknowledged that he had seen the victim around the apartment complex for approximately three years. He stated that he knew Jessica's parents but did not know their names. He said that he saw the parents of the victim about once a month at a barbecue where they would eat and drink. He reported not having babysat the child or having participated in any activities with the child independent of her being in her parent's presence on occasional meetings. He said that he would "see her going in and out of the apartment." Apparently Mr. █████ was familiar with the child, but his relationship with her could best be termed casual as he spent limited time in the presence of the victim and even less time in any type of interpersonal relationship with her. Consequently, the predatory criteria is met.

The second victim, **Laura A., nine years of age**, reported that approximately one week prior to September 11, she was playing in the same swimming pool as Jessica A. when the defendant started tickling her and moving his hands towards her vaginal area. She said that he touched her in her vaginal area and rubbed back and forth on top of her bathing suit.

Force, Violence, Menace, Duress and Fear/Substantial Sexual Conduct:

Substantial sexual conduct was present in the case of Laura A. in that Mr. █████ masturbated the victim by rubbing her vaginal area back and forth. There is also evidence of duress in that there was a significant discrepancy between the age and size of the adult male perpetrator and the nine-year-old victim.

Predatory:

As in the case of Jessica A., Mr. █████ reported that he had a casual relationship with Laura A. He stated that he did not know the child's name when he played with her in the swimming pool and that he had not participated in babysitting the child or other activities independent of occasional barbecues with

██████████
August 14, 2001

Page 5

her parents. This would indicate that Mr. ██████ had a casual relationship with Laura A., meeting the criteria of a predatory relationship.

The third victim was **eight-year-old Jordan C.**, who reported that approximately a year prior to the interview with the police officer, she was playing in the pool and observed Mr. ██████ to be "really drunk as usual" as he was playing with kids around the pool. He started to chase her around the pool and in close proximity he "played with her vaginal area with his foot."

Force, Violence, Menace, Duress and Fear/Substantial Sexual Conduct:

Mr. ██████ behavior of "playing" with the victim's vaginal area with his foot would constitute masturbation resulting in substantial sexual conduct. Additionally, duress is present in that Mr. ██████ was significantly larger in size and older than the eight-year-old victim.

Predatory:

The relationship with Jordan C. constituted a casual relationship in that Mr. ██████ reported that he did not participate in babysitting activities or other activities away from occasional contact with the parents of the child. He also noted that he did not know the victim's name. He said he had only known Jordan for one week prior to the perpetration of the conviction offense.

As to all three victims, Mr. ██████ denied to the undersigned committing any deviant sexual acts. He reported that he just "hit" Jessica A.'s "butt" while scolding her while she was running. He projected blame onto the victim's parents by accusing the parents of the victims of using drugs and alcohol. He thought the parents might have been "into coke." He said the children were ignored and mistreated by the parents, and that the parents had perpetrated child abuse on both children. He alleged that the victims' mother was in a lesbian relationship which he viewed as detrimental to their well-being. As to Jordan C., he said that he only carried on only conversations with the child, but that he did not touch her. He recalled she was "curious and came around with her friends." He said that he did not touch her sexually, and he took "the bad way out" when he pled no contest for all the crimes and thinks that he "should have fought them."

SECOND QUALIFYING OFFENSE:

A First Amended Complaint, (Case No. ██████) indicated that Mr. ██████ was charged with the following counts on November 7, 1973:

██████████
August 14, 2001

Page 6

| COUNT | CHARGE | DATE | VICTIM |
|---------|----------------------------------|----------|--------------|
| Count 1 | PC 647A, Annoy or Molest a Child | 07-20-73 | Elizabeth H. |
| Count 2 | PC 647A, Annoy or Molest a Child | 07-20-73 | Tracy H. |
| Count 3 | PC 647A, Annoy or Molest a Child | 07-20-73 | Lori H. |

The court found Mr. ████████ to be a Mentally Disordered Sex Offender, and he was committed to Atascadero State Hospital for an indeterminate period on February 27, 1974. He was discharged from ASH under W&I Section 6425(a) on January 15, 1976.

Circumstances of the commitment offense were contained in a Ventura County POR, (Case No. ████████). On the afternoon of July 20, 1973, Elizabeth H., 11 years of age, 9-year-old Tracy H. and 6-year-old Lori H. (Lori and Tracy were sisters) were playing at a construction site in the Simi Valley area. The children reported that Mr. ████████, the driver of a water truck at the construction site, approached them and told them that he was going to dump some water in a trench a short distance away, and when he did that, numerous frogs would come out of the ground. According to the children, he then asked them if they wanted to see the frogs, and they all replied in the affirmative. They followed him to where he was emptying his water truck. Once at that location, he offered to show the children, one at a time, how to drive the big truck and shift gears. As the children expressed interest, he had them sit on his lap one at a time and play with the gear shift while he bounce them on his lap telling them, "Pretend this is a bumpy road." The oldest victim, Elizabeth H., told officers that while he was bouncing her on his lap, she could feel what she believed to be his penis push against her buttocks.

According to the police report, he repeated these acts several times with the children, and on the last occasion, the 11-year-old entered the truck and he pulled up her short skirt and said "I'm going to pull up your skirt, okay?" On this occasion, the victim stated that she could feel his penis between her legs, but states that it was not against her skin nor did it enter her person. It is noted that while he had each victim in his cab with him, he had two other children looking toward the main construction site watching for the "inspector." He also allegedly told the children to "hide behind the truck, don't let the inspector see you." As a result of the described activities, a complaint was filed charging him with the offenses outlined above.

When interviewed in the county jail, he was asked why he failed to appear at the Probation Department and subsequently in court. He stated he did not appear before the probation officer because he was not sure he wanted probation. He stated he failed to appear in court because he had no transportation and

██████████
August 14, 2001

Page 7

because he guessed he did not take it seriously. He claimed he had turned himself in at the Camarillo Courthouse in an effort to get things straightened out. With respect to the present offense, he denied molesting the children and stated that he only touched their hands while helping them into the truck. He admits having them sit on his knee while he bounced it simulating the truck riding over rough ground. He denied having an erection while bouncing the children and denied pulling up any of the girl's skirts. He stated he was merely playing with the children because he was in a good mood. In the course of the interview, he indicated that he had been pretty mixed up for quite a while and feels that he needs help. He would like to be placed on probation with the condition that he see a psychiatrist. He stated that probation and psychiatric services have helped him in the past. When he was confronted with the fact that his problem persisted despite prior outpatient treatment and probation supervision, he admitted that they were not very effective.

The officer explained to Mr. ██████ the Mentally Disordered Sex Offender proceedings and the facilities at Atascadero. When informed that the probation officer was recommending Mentally Disordered Offender proceedings, Mr. ██████ seemed somewhat relieved and indicated that he would like to get his life straightened out and he was willing to go along with this if it would help. It was noted in the POR, "At the age of 33, the defendant has amassed better than six pages of rap sheet and has been arrested many times for indecent exposure and sex related crimes. He has been tried on probation with outpatient treatment and this has failed. He has been confined and incarcerated and that has failed. It is the feeling of the probation officer that unless some decisive intervention occurs in the immediate future, he will continue to be involved in sex offenses and will, in all likelihood, eventually seriously harm children."

Force, Violence, Menace, Duress and Fear/Substantial Sexual Conduct:

This sexual assault contained elements of duress. Mr. ██████ pulled the victim's skirt up and placed his penis between her legs, an act that the victim would not have engaged in had Mr. ██████ not taken advantage of her young age and size making the victim particularly vulnerable to actions by an adult male.

Predatory:

Records indicate that Mr. ██████ met Elizabeth H. at a construction site in Simi Valley area where she had a child-like interest in the activities of construction workers who were present. He had relatively brief contact with the victims, putting them on his lap and playing with them, and ultimately sexually molesting Elizabeth H. Elizabeth was a stranger to Mr. ██████ who had not had contact with the child previously.

██████████
August 14, 2001

Page 8

In summary, Mr. ██████ has been convicted of three sexually violent predatory offenses against four female victims between the ages of 8 and 11 years. Each of the offenses was predatory in nature and contained either force and violence, duress or substantial sexual conduct.

B: Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts: YES

A diagnosed mental disorder is defined in WIC 6600 as a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others."

In order to determine if Mr. ██████ has a diagnosed mental disorder, a Psychosocial History was obtained from the inmate. It should be noted that the following information was based primarily upon the self-report of the inmate, and because he has a history of providing inconsistent information, this should be viewed cautiously.

Developmental History:

Mr. ██████ reported that he was born and raised in East Los Angeles, and as an adult, he lived in Ventura County where he was employed. He reported his parents are surviving and have been married 50 to 60 years. His father worked as a supervisor for a rubber company, and his mother was primarily a housewife and also worked in a warehouse. He reported talking with his parents every three weeks and exchanging letters weekly. He has one biological brother, 45 years of age, who is a probation officer in Bell, California. His brother has also worked as a security officer. He has a sister, 62 years of age, who is a schoolteacher in Santa Paula, California. He reported exchanging letters with his siblings. He reported the atmosphere in his family of origin was "okay, normal." He said that they were "not well off," and said that they had "nothing extra" but were content with life. An ASH report (12-16-75) however, indicates that contrary to the patient's statements, he had a turbulent early history his home disrupted by marital combat, violence and drinking.

He denied a family history of abuse of drugs or alcohol, mental disorders, criminality or physical or sexual child abuse. He described himself as an adventurous child. He used to find "enjoyment in life" and had lots of friends. In junior high, he reported being picked up by police for violation of curfew. He reported belonging to a group which he described as a gang although he stated that they did not call themselves a gang. He stated that at 16 years of age, he engaged in a gang fight and was picked up by police and placed in juvenile hall for 18 months, indicating it was a relatively serious offense. He reported he was charged with gang activity and said that a gun was involved although no one was

██████████
August 14, 2001

Page 9

shot. He reported staying out late at age 13 or 14 with children in the neighborhood which ultimately led to his association with those in the gang. A Mentally disordered Offender report by Dr. Ernest Tianco, M.D., indicated that Mr. ██████████ reported that he began to have legal trouble at age 14 in the "streets." He said that at 14, he began drinking, being picked up for being drunk, loitering and staying out after curfew.

Education and School Adjustment:

He reported attending elementary school in Los Angeles, and said that he did not study much because "my mind was not into it." He attended junior high school at Hollenback Junior High School and said that his grades were low and barely passing. Regardless, he continued on at Roosevelt High School but dropped out in the 10th grade so that he could work and help his parents out financially. He stated that he attended special education services and the reading is still difficult for him. In school, he said his "mind was not into it and that he had a learning capacity problem." He said that teachers were not helpful to his needs and that he found it boring. He reported some upgrading and technical work in woodcraft and furniture building. He has had some training in repair of refrigerators. He reported being raised a Catholic and going to church with his family. As an adult, he says he goes to church "a lot" including Thursdays and Saturdays.

Employment History:

Mr. ██████████ reported selling newspapers in 10th grade. He delivered furniture for approximately five years out of high school, and continued to change jobs as a result of better pay. He worked at Oscar Mayer as a meat packer for seven years in Los Angeles and then at his primary occupation as a forklift operator for 18 years in Ontario, California, until 1985 when he was arrested on the commitment offense. He reported being laid off a few times and receiving unemployment for approximately six months on three occasions. He reported that he and his wife were convicted of welfare fraud, whereas his wife would receive Aid to Dependent Children and he would live with his wife and receive welfare. His rationalization was "Everybody got into it." Vocationally he has worked in the prison in cabinetmaking. He denied serving in the military.

Marital and Relationship History:

An ASH report dated 12-16-75 indicated that Mr. ██████████ reported he was first married at age 17 his first child was born while he was in a correctional camp and he felt obliged to marry. The marriage lasted 10 years (other records say 15 years) and produced four children. Mr. ██████████ reported being married to ██████████ for approximately 30 years, significantly longer than previous reports by the inmate. He stated they were married when they both turned 18. His criminal record is replete with domestic violence, which Mr. ██████████ attributed to alcohol

use. He reported being separated for two and a half years; however, records indicated their separation occurred after approximately 15 years of marriage. He reported marital problems due to his drinking and his wanting to move to a different location than his wife. He reported meeting her in the neighborhood and said that his sister was her best friend. He described her as kind and understanding and fun to be around. He said they separated in 1967 for three years, but got back together. He clarified that the relationship has been sporadic and that they have separated and "jumped back and forth." He was vague about exactly the times that they have lived together over the years.

A second relationship (he denies he married or lived with the woman) resulted in his two youngest children. His children from both marriages include Richard R., 40 years of age, who works at a body shop; Debbie, 39 years of age, who is a housewife; Kathy, 38 years of age, who is a part-time housewife; Johnny, 37 years of age, who is a cabinet millmaker; Anthony and Daniel who are in their 20s and Christina, of unknown age. He reports speaking on the telephone with his children and seeing them three times monthly in the community. He stated he has 22 grandchildren and that he has seen all but the two youngest babies. He reported paying child support for all his children, but he did not remember the amount. Off the top of his head, he thought it might be \$200 a month. He was candid in realizing that he has not been the most adequate father. He said that he had to help their mother keep her strength up, and that his incarceration has "affected all my children." He realized that "they needed a father around." His rational was that "Satan has taken a big toll on me."

Psychiatric History:

After being found guilty of Indecent Exposure he was referred to outpatient treatment, which apparently proved unsuccessful. After his first child molest offense he was hospitalized at ASH in 1967 as a Mentally Disordered Sex Offender and he volunteered "I got a lot out of it." He recalled that he drank alcohol to forget responsibilities, and his drinking affected his decisions. He stated he participated in individual therapy and group therapy. He recalled that people came into the hospital to answer questions about "things." He also recounted participating in a "marathon" group and attended AA.

Mr. ████████ received two Mentally Disordered Offender Evaluations, both finding him a Mentally Disordered Sex Offender. An evaluation by C. L. Tartalia, M.D., (2-20-74) indicated a psychiatric diagnosis of "inadequate personality, and immature personality, and a pedophile." It is noted that he was sexually aroused by same sex and opposite sex partners as well as children. A second Mentally Disordered Sex Offender evaluation was completed by Ernest Tianco, M.D., (2-26-74) although no psychiatric diagnosis was offered.

[REDACTED]
August 14, 2001

Page 11

Records indicate that Mr. [REDACTED] was admitted to the hospital on March 12, 1974. At the time, he was described as a "sexually preoccupied and defensive individual who projects blame of a situation and who is overly concerned with impression he is making on others. Psychological testing indicated him to be a suspicious individual and he has a great deal of overt-controlled hostility. He did, and still does, minimize his offense and does not see himself as a man with sexual problems." His diagnosis was sexual deviation, female pedophilia.

Initially he was seen as adjusting well to the hospital setting and becoming involved in a number of treatment activities including school, Alcoholics Anonymous (AA) and sex education classes. He appeared highly motivated toward treatment and was able to reveal more of himself in therapy. Despite his gains, however, the staff felt that the patient required continued treatment including targeting areas of improved self-image, decreased dependence and a greater insight in areas of sexual awareness.

Psychological testing was administered on April 2, 1974, by Dorian Rose, Ph.D., Staff Psychologist. He was seen to be of average intelligence and multilingual, in Spanish and English. He did not, at the time, consider himself an alcoholic and appeared to underachieve on achievement tests. Longstanding reading difficulties were documented. He appeared to be somewhat paranoid and guarded, not unusual for people entering a psychiatric hospital from the community. He was seen as possibly having brain damage, which I believe has been ruled out since.

On admission, he was seen as "angry, depressed, frustrated individual who felt isolated from and rejected by others, and he was markedly lacking in self-esteem and self-confidence. He tended to be passive and ineffectual. He was defensive in treatment and projected blame for his problems and avoided and minimized his problems. He was termed a "slow starter" in treatment and required a good deal of staff support although he was seen as progressing well and reaching maximum benefit from hospitalization. He attended individual counseling, Alcoholics Anonymous, assertiveness training, and sex education. As a result of these involvements, he was seen as becoming "responsible and well functioning as an adult." The patient was open, direct and relaxed and no longer showed suspiciousness and fearfulness of others. His self-concept was seen as greatly improved and he has increased self-confidence. ASH recommended that he be placed on probation, as he was "no longer a danger to young girls." Although he was noted to make good progress at ASH, a report dated March 13, 1974, quoted him reporting he was committed to ASH for molesting a 14-year-old, when in fact, the victim was 11 years of age. After 21 months of treatment, Mr. [REDACTED] planned to leave the hospital and join his wife and two small children. He was diagnosed with sexual deviation, pedophilia, females.

██████████
August 14, 2001

Page 12

Mr. ██████ was readmitted to ASH on May 13, 1996, pursuant to W&I 6601.3 pending proceedings as a Sexually Violent Predator. He was found to meet the criteria by two evaluators and was sent to the hospital pending legal proceedings. His admitting diagnosis was pedophilia, sexually attracted to females, nonexclusive type and alcohol abuse. He was seen as pleasant and cooperative at the hospital and during treatment activities. He showed adequate socialization and verbalization skills in his interactions with peers and staff. He tended to keep a low profile and was generally quiet on the unit. George Ablin, Jr., M.D., revised his psychiatric diagnosis on June 20, 1996, to pedophilia, sexually attracted to females, nonexclusive type; and alcohol dependence in a controlled environment. Medically, he was diagnosed with Hepatitis C. His diagnosis was revised a third time on June 15, 1998, to pedophilia, sexually attracted to females, nonexclusive type; polysubstance abuse/dependence in institutional remission; and antisocial personality disorder.

On May 20, 1998 the patient was prescribed the antidepressant Prozac, however, by May 26, 1998 he refused to take the medication because it made him dizzy and made him feel drunk. On December 30, 1998, it was noted that his disclosure at the state hospital was minimal on the advice of his attorney. He attended Alcoholics Anonymous and Narcotics Anonymous (NA) while at the hospital but generally stopped going to those in the last few months prior to release in 1998. He did not appear to gain any insight into his issues as a sex offender. On or about December 30, 1998, he was released to the community by the court as not meeting the criteria of W&I 6600.

Medical History:

Mr. ██████ has Hepatitis C, he believes as a result of the use of IV drugs over the years. He has never incurred seizures although he has incurred a fractured skull in three separate car accidents when he was in his 30s. He reported being in a coma for a few minutes after at least one of the car accidents.

Substance Abuse History:

Mr. ██████ reported using alcohol beginning at age 15, although he said it was not heavy and used it primarily on the weekends. He reported participating in court-ordered substance abuse treatment in Ontario, California, and said that in the community he has abstained from drinking alcohol for periods of time up to seven months, having problems and returning to the use of alcohol when "the weather gets hot." His relapse prevention plan included not buying any alcohol and getting involved in the church. He denied experiencing tolerance or withdrawal to the substance but admitted taking it in larger amounts for a longer period of time than he intended. He reported unsuccessful attempts to cut down on his use, but stated, "I decided to start again." He reported conflict with his

August 14, 2001

Page 13

wife as a result of his alcohol use, and problems with his health as a result of alcohol use and its effect on his Hepatitis C medical condition.

Criminal History:

Mr. [REDACTED] reported being involved in gang activity resulting in an 18-month term at juvenile hall. He has no other known juvenile criminal history. As an adult, he has incurred the following charges and convictions:

- On 12-17-58, in Ventura County he was charged with Indecent Exposure. He was convicted on 1-2-59 and sentenced to 36 months' probation. To the undersigned he reported that he would expose himself in his car to adult women in order to get away from "bad feelings about money and my job." *Prob*
- On 3-29-60, in Los Angeles he was charged with PC 311.1, Indecent Exposure. He was sentenced to 24 months' probation. *prob*
- On 4-3-60, in Los Angeles, California, he was charged with PC 273D, currently termed Paying or Receiving Money to Parent for Placement for Adoption. The disposition is unknown. *Foster situation*
- On 8-9-60, in Los Angeles, California, he was charged with PC 311.1, Indecent Exposure. He was found not guilty on 11-3-60. *Not Guilty*
- On 12-8-60, in Los Angeles, California a misdemeanor warrant for PC 242, Battery, and PC 415, Disturbing the Peace was issued. On 1-12-61, the proceedings were suspended, and he received one year summary probation on the Battery charge. *Prob*
- On 3-7-61, in Los Angeles he was charged with PC 211, Robbery. He was released on 3-9-61, and no disposition was noted.
- On 3-9-61, in Los Angeles, California he was arrested on a warrant, and he was sentenced on 4-27-61 to 10 days in jail. *10d jail*
- On 4-27-61, in Los Angeles, California he was charged with a Probation Violation and PC 311.1, Indecent Exposure. No disposition was noted.
- On 5-4-61, in Los Angeles, California a warrant for Vehicle Code violations was issued. No disposition is noted.
- On 5-16-61, in Ventura County, California he was charged with PC 311.1, Indecent Exposure. No disposition is noted.

- On 9-10-61, in Los Angeles, California a warrant for Vehicle Code violations was issued. No disposition is noted.
- On 3-29-62, in Los Angeles, California he was charged with Contempt of Court, and no disposition is noted. Four months later, on 7-6-62, he was charged a second time for Contempt of Court and no disposition is noted.
- On 4-28-63, in Los Angeles, California he was charged with PC 273, Wife Beating. On 4-29-63, the felony was dismissed when the victim refused to prosecute.
- On 8-11-63, in Los Angeles, California he was charged with PC 647.5, a penal code that is no longer used. It is likely that the charge was either Disorderly Conduct or Annoy and Molest a Child. No disposition was noted.
- In an unknown month in 1964, he was charged in Los Angeles, California with PC 245, Assault With a Deadly Weapon, and no disposition was noted.
- On 2-11-64, in Los Angeles, California he was charged with PC 242, Battery and PC 415, Disturbing the Peace. On 3-26-64, he was convicted of PC 415 and sentenced to jail. *jail*
- On 3-26-64, in Los Angeles, California he was charged with Battery resulting in a fine. *fine*
- On 7-9-65, in Los Angeles, California and charged with PC 273D, Wife Beating. No disposition was noted.
- On 1-12-65, in Los Angeles, California on a warrant for PC 242, Battery, and PC 415, Disturbing the Peace, and sentenced on 1-13-65 to some type of commitment. PC 415 was dismissed.
- On 1-15-65, in Los Angeles, California he was charged with Battery and fined. *fine*
- On 2-25-65, in Los Angeles, California he was charged with Battery and sentenced to 45 days in jail. *45 d jail*
- On 9-22-65, in Los Angeles, California and charged with PC 245, Assault With a Deadly Weapon, and a misdemeanor warrant appeared still active for PC 242, Battery, and PC 415, Disturbing the Peace. On 9-23-65, he was convicted of PC 242 and sentenced to 100 days in jail and 12 months' summary probation. *100 d jail*
12 mo prob

- In an unknown month in 1965, in Los Angeles, California he was charged with Battery, which resulted in incarceration. *jail?*
- On 7-31-66, in Los Angeles, California he was charged with PC 314, now termed "Punishment" which appears to equal Indecent Exposure. On 1-25-67, he was sentenced to two years' probation and fined \$250. *prob fine*
- On an unknown date in 1966 in Los Angeles, California he was charged with Keeping a Residence In-house of Ill-fame and Indecent Exposure. No disposition was noted.
- On 12-28-66, in Los Angeles, California he was charged with Indecent Exposure. No disposition was noted.
- On 1-9-68, in Los Angeles, California a warrant was issued for his arrest for a variety of Vehicle Code violations, and ultimately he was arrested for the offenses and released on 1-16-68.
- On 1-20-68, in Los Angeles, California he was charged with misdemeanor Drunk Driving, and on 3-21-68, he received 30 days in county jail and a year of summary probation. *30 d jail
1 yr prob*
- On 5-17-68, there appears to be a charge in Los Angeles, California for Unemployment Insurance.
- On 10-7-68, in Oxnard he was charged with Drunk Driving, and no disposition is noted.
- On 11-27-68, in Los Angeles, California he was charged with Violation of Probation and a warrant was issued.
- On 11-29-68, in Ventura, California he was charged with Violation of Probation, and on 12-19-68, he received 6 months' summary probation and a fine. *6 mos prob
fine*
- On 5-10-71, in Santa Paula, California he was charged with Reckless Driving and Resisting Arrest and Battery. He received 80 days in jail which was suspended for one year probation and a fine. *prob
fine*
- On 3-17-73, a warrant was issued in Los Angeles, California.
- On 1-18-74, in Ventura, California he was charged with PC 647, Child Molest, as noted in Criteria A. On 2-27-74, he was remanded to the Mentally

AsH
74-76

Disordered Sex Offender Program at Atascadero State Hospital. On 1-15-76, he was discharged to Ventura County.

- On 4-16-78, he was charged with Drunk Driving, Vandalism and Resisting Arrest. On 5-23-78, he was given a fine and probation. *fine prob*
- On 6-3-78, he was charged with Drunk Driving and Malicious Mischief. On 6-3-78, he was sentenced to 10 days in jail. *10d jail*
- On 4-13-91, in San Bernardino, California he was charged with PC 273.5, Injuring a Spouse or Cohabitant, and PC 417, Brandishing a Weapon. On 4-23-91, he was sentenced to 24 months' summary probation and jail time was suspended. Probation was revoked and he spent 270 days in jail. *24mo prob
270 days jail*
- On 8-25-91, he was charged with PC 245A, Assault With a Deadly Weapon, and the case was dismissed for lack of sufficient evidence.
- On 1-20-92, in San Bernardino, California he was charged with PC 273.5, Inflicting Corporal Injury on a Spouse. On 1-30-92, he was convicted of Battery, a misdemeanor, a sentenced to 36 months' probation and 20 days in jail. *36 mo prob
20d jail*
- On 9-11-93, in San Bernardino, California he was charged with PC 288(a), Lewd and Lascivious Act With a Child Under 14. On 1-7-94, he was convicted of two counts of PC 288(a), Lewd and Lascivious Act With a Child, and sentenced to five years in state prison. This constituted the second qualifying offense detailed in Criteria A. *5 yrs
state prison*
- On 2-21-00, he was charged with PC 273.5, Inflicting Corporal Injury on a Spouse, and PC 422, Threaten Crime With Intent to Terrorize. He was convicted of Inflicting Corporal Injury on a Spouse and sentenced to three years in state prison. *3 yrs
state p*

It is notable that Mr. [REDACTED] received a Rules Violation in CDC on November 5, 2000, for masturbating toward staff. The following was noted in the CDC 115 Rules Violation Report: "At approximately 0630 hours on Sunday, November 5, 2000, while performing my duties as Housing Unit Number 3304 Officer and issuing brooms to the inmates, from supply closets on the second tier, I noticed inmate [REDACTED] lying on his bunk with a sheet over his body and had what appeared to be a full erection. [REDACTED] was looking directly at me as he stroked his groin area. I said nothing to [REDACTED] at that time, in order not to draw attention to what I observed, since there were about 10 other inmates in the area. After I was done issuing the brooms, I returned to the staff office and informed my partner, Correctional Officer D. Rocha, of what I observed. I notified Facility III

Lieutenant J. D. Soto, of the situation and requested he review ██████████ C-File to determine if he had any prior documentation for sexual misconduct. Later this morning, at approximately 1030 hours as I walked by the dorm to again retrieve equipment from the supply closet, I noticed ██████████ lift the front of his pants and start to insert his hands inside them, while looking directly at me. When I looked at ██████████, he stopped. At this time, Officer Rocha had walked up to Dorm 17 and noticed ██████████ placing his hands inside his pants and stroke his groin area, while looking at me as I walked toward the supply closet. Officer Rocha ordered ██████████ to report to the office area where he conducted a clothed body search. I then placed ██████████ in handcuffs and he was escorted to the Facility III Clinic without further incident."

Sexual History:

Mr. ██████████ reports that he was first aware of his sexuality at 15 years of age when he had a sexual relationship with a neighbor woman in her late 20s. He reported that she "came on" to him. He reported that they had sexual intercourse for four months and he said it was a "good" experience. He said that she would also allow him to drink alcohol, which he enjoyed. He reported beginning to masturbate at age 15, learning it from friends. He said his friends always talked about sex. He said when he was younger, he masturbated three times a week, but now he has stopped masturbating. He reported masturbating approximately six times while incarcerated and said he was "caught", so he discontinued the activity. When asked about receiving a CDC 115 for repeatedly masturbating in front of female custody officer he stated that he "did not do it deliberately."

He reported that he does not have any sexual fantasies, and when he was younger, he had sexual fantasies about having "sex with different women." He denied the use of pornography in the form of videos, magazines or sex telephone lines. He denied an interest in children for sexual activity or the use of pornographic material having to do with children. He admitted a total of six female sexual partners in his life, with two of those being one-night stands.

He reported a past pattern of exhibitionism and stated that he was always intoxicated when he would cruise in his car looking for adult women to view while he masturbated. He denied actually intentionally exposing himself to women, but stated the police would drive by and see him engaged in masturbating in the car. When asked if he still engaged in public masturbation, he stated that "You get to a certain age, the urges don't come across me." He denied a history of voyeurism, bestiality, sadistic sexual activity and masochistic sexual activity. He denied a history of cross-dressing or arousal to female lingerie. He reported having an affair twice while married. He denied soliciting sex from prostitutes, placing obscene phone calls, or participating in sex with more than one partner. He denied an interest in sexual activity with males. He has no history of zoophilia, klismophilia, coprophilia, urophilia or necrophilia.

MENTAL STATUS EXAMINATION:

The inmate presented as a five-foot, three, 175-pound male with graying hair and appearing his stated age of 61. He was alert and well oriented to person, place, time and situation. He demonstrated adequate attention and concentration abilities on serial 7s and digits forward and backward. His immediate recall, short and long-term memory were intact. He was able to abstract the meaning of proverbs. He had poor simple calculation skills. His speech was normal, and his answers were typically relevant and coherent. He demonstrated average language fluency, repetition, comprehension, naming, writing, reading and quality. His thought content was negative for suicidal or homicidal ideation. There was no evidence of delusional thinking. His thought process appeared normal. He denied auditory or visual hallucinations or other unusual perceptions. His mood was euthymic save for some discomfort with the SVP evaluation process. He denied symptoms of depression or other symptoms of a mood disorder. His simple social judgment was intact.

The results of this evaluation indicate that Mr. [REDACTED] has the following diagnosed mental disorders:

| | | | |
|---------|-------|---|--|
| Axis I | 302.2 | | Pedophilia, sexually attracted to females, nonexclusive type |
| | 302.4 | 2 | Exhibitionism |
| | 303.9 | 3 | Alcohol Dependence |
| Axis II | 301.7 | 4 | Antisocial Personality Disorder |

The above listed diagnoses are contained in the Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition – Text Revision (DSM-IV-TR). Pedophilia is defined in the DSM-IV-TR as over a period of a least six months, recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors involving sexual activities with a pre-pubescent child or children, generally age 13 years or younger. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty. Mr. [REDACTED] molested an 11-year-old female in 1974, and he molested three females between ages six and ten in 1994. This would indicate a 20-year span of deviant interest in sexual activity with female children involving fondling the vaginal area of the children and in one instance, penetrating the rectum of the victim. Additionally, Mr. [REDACTED] has admitted in the past that he had "a little problem" as far as being around young children.

Exhibitionism is defined as over a period of at least six months, recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors involving the exposure of one's genitals to an unsuspecting stranger. The person has acted on these urges or the sexual urges or fantasies cause marked distress or

██████████
August 14, 2001

Page 19

interpersonal difficulties. Between 1958 and 1989, Mr. ██████ sustained convictions on four separate incidents of indecent exposure. He described masturbating in cars while observing adult women. Additionally, more recently, on November 10, 2000, he received a CDC 115 for exhibitionism and masturbation in front of a female custody officer, indicating the continued presence of deviant interests in exhibitionism.

Regarding the diagnosis of alcohol dependence, it is noted that in order to make this diagnosis at least three of the following seven symptoms of alcohol dependence need to have been present during the same period of time. These include tolerance, symptoms of withdrawal, taking a substance in larger amounts or over a longer period of time than intended, a persistent desire and/or unsuccessful effort to cut down on the use of the substances, a great deal of time spent in activities necessary to obtain the substances, giving up important social occupational/recreational activities in favor of using the substance, and continuing to use the substances despite knowledge of having a persistent and recurrent physical or psychological problem that has either been caused or exacerbated by the substance.

Mr. ██████ has an extensive history of alcoholism beginning at age 15 that has been decidedly linked with his sexual offending. The three victims of the 1994 child molest reported him as being "drunk as usual." Additionally, Mr. ██████ reported that he has taken the substance in larger amounts over longer periods of time and he has been unsuccessful in cutting down in the use of substances. His alcohol intake has affected his social and interpersonal relationships (his marriage) and has negatively effected his health.

Mr. ██████ has an antisocial personality disorder. Antisocial personality disorder is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15. ██████ has demonstrated a failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest. He has been deceitful and indicated by repeated lying and rationalization and he has exhibited impulsivity and failure to plan ahead. He has shown irritability and aggressiveness and indicated by repeated physical fights or assaults including those perpetrated against women. He has shown a reckless disregard for the safety of himself and others. He has shown a measure of irresponsibility as indicated by fraudently receiving welfare funds from the state rather than exhibiting consistent work behavior. He has shown a lack of remorse as indicated by being indifferent to or rationalizing having hurt, mistreated or stolen from others.

Confirming this diagnosis and adding an aggravating element to Mr. ██████ diagnostic profile was his results on the HARE Psychopathy Check List-Revised (PCL-R). Mr. ██████ was administered the Hare Psychopathy Checklist-Revised (PCL-R) that consists of a review of relevant collateral information and

Hare

Have
PCL &

a focused clinical interview. The purpose for administration of this test is to determine the individual's overall level of psychopathy. High scores on the PCL-R have been implicated in a poor prognosis for parole adjustment and sexual and violent offending. On this administration of the PCL-R, Mr. ██████ received a total score of 31 that places him within the high-range of psychopathy. The PCL-R contains two factors, the first related to personality variables which measure a selfish, callous, and remorseless use of others. The second factor is based primarily on historical information and describes an individual with a chronic, unstable, antisocial lifestyle. Mr. ██████ scored well above the mean for male prison inmates on Factor One (76% percentile) and Factor Two 71% percentile). Overall, the PCL-R suggests that Mr. ██████ has present psychopathic characteristics that place him at increased risk for future criminality, non-sexually violent and sexually violent behavior.

Collectively, these four mental disorders constitute diagnosed mental disorders according to W&I 6600. A diagnosed mental disorder is defined in W&I 6600 as a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others."

In this case, Mr. ██████ has been unable to contain his deviant sexual interest in exposing himself and fondling female children. He does not display the normal emotional response that would usually prevent someone from intentionally hurting or harming children as a result of his propensity to violate others. His volitional capacity is affected in that his drive to engage in exhibitionism and child molest overcame obvious barriers such as a history of being detected and incarcerated for such behavior in the past.

In summary, it is evident that Mr. ██████ mental condition affects his emotional and volitional capacity to such a degree that he is predisposed to the commission of criminal sexual acts to a degree constituting him a menace to the health and safety of others.

WIC 6600 Criteria C: Is the inmate likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody? YES

First, in order to establish a baseline level of risk that Mr. ██████ will commit another sexually violent offense, he was scored on the Static-99 (Hanson and Thorton, 2000), which is an actuarial measure of risk for sexual offense recidivism. This instrument has been shown to be a moderate predictor of sexual reoffense, which was defined on this instrument as being convicted of a new sexual offense. On the Static-99, Mr. ██████ received a total score of 8, which placed him in the high-risk category for being convicted of another sexual offense. Specifically, Mr. ██████ received a score of 3 on prior sex offenses, a 1

Static
99

on prior sentencing dates, 1 on any convictions for non-contact sex offenses, a 0 on index non-sexual violence, a 1 on prior non-sexual violence, a 1 on any related victims, a 1 on any stranger victims, a 0 on any male victims, 0 on young age and a 0 on single. When compared to sexual offenders from the Static-99 sample group who also scored in the high-risk category, it is noted that after 5 years, 39 percent sexually reoffended; after 10 years, 45 percent sexually reoffended; and after 15 years, 52 percent sexually reoffended.

While the Static-99 provides a reasonable base line for sexual reoffense potential, it does not include a complete evaluation of risk factors known to be associated with sexual offense recidivism. Therefore, the following empirical derived static and dynamic risk factors, not accounted for by the use of the Static-99 alone, were also considered:

A static risk factor for sexual reoffense refers to a variable associated with sexual recidivism that usually does not change over time. The following are some static risk factors that are not entirely scored on the Static-99, but have been shown to be significantly related, through research, to sexual recidivism. It should be noted that those variables most likely to have a high degree of intercorrelation have been grouped together in clusters. These variables are as follows:

- Sexual Deviance Variables
 - Phallometric assessment
 - Sexually deviant preference/paraphilias,
 - Wide range of potential victims (male and female and/or children and adults)
 - Early onset of offending
- Treatment
 - Dropping out of sex offender specific treatment
 - Participation in sex offender treatment program
- Criminologic Variables
 - Antisocial personality disorder or other moderately severe to severe personality disorder
 - Psychopathy
- Developmental Factors
 - Separation from parents prior to age 16
 - Negative relationship with mother during childhood
- Protective Factors
 - Having been in the community sex offense free for 5 years
 - Having been in the community sex offense free for 10 years

- o Less than 15 years left in the offender's time at risk due to age or poor health

The cluster of sexual deviance variables, listed above, tends to be the group of variables that are most associated with sexual recidivism. Research in this area indicates that those offenders with a significant level of sexual deviance are, as a group, more likely to sexually reoffend than those offenders without a significant degree of sexual deviance. Mr. ██████ suffers from two separate paraphilias indicating an interest in exposing himself to females as well as molesting children. Increased risk is associated with the presence of multiple paraphilias. He has deviant interests in both female children and adults indicating a greater degree of sexual deviance due to a wider victim pool. Additionally, the onset of his known sexual deviance occurred at age 18, when he was first convicted of Indecent Exposure. This relatively early onset of sexually deviant behavior is associated with increased risk.

Although Mr. ██████ has participated in sex offender treatment in the Mentally Disordered Sex Offender Program in 1974, it appears that his treatment was inadequate to prevent him from sexual reoffense. Insightfully, he stated that while he "got a lot out of it he chose to forget responsibilities and that drinking affected his decisions." Consequently, Mr. ██████ continues to remain high risk for reoffense due to inadequate sex offender treatment.

Mr. ██████ is at increased risk because of the severity of his antisocial personality disorder. While the Static-99 accounts for a measure of criminal and violent behavior, Mr. ██████ has constantly been in trouble with the law since 1958. His criminality is versatile in that he has incurred sexual offenses, property offenses, substance related offenses, vehicle code violations and violent and assaultive offenses. It is notable that he has repeatedly been incarcerated for domestic violence on his spouse indicating strong and persistent hostility toward females. Further his psychopathy score in the high range.

Mr. ██████ does not have present the protective factors of remaining offense free in the community for at least five years. He has continued to violate the law relatively quickly on each release to the community.

In regard to protective factors, Mr. ██████ did not incur a separation from his parents prior to age 16, as he was not sent to juvenile hall for gang activity until he was 16 years of age. Additionally, he did not report a negative relationship with his mother during childhood.

There are a number of stable dynamic risk factors that have been identified in the research that may contribute to the sexual reoffense. (Hanson and Harris, 2001). These risk factors are amenable to change but without intervention, tend to

he has become less impulsive, holding down a job when not serving jail time and remaining in a turbulent marital relationship for 15 years. Mr. ██████ can be considered at risk for impulsive behavior secondary to his substance abuse. However, he appears less impulsive when he is sober. Mr. ██████ does not seem to have adequate cognitive problem solving skills. When asked what he plans to do after release, he stated that he will live with his wife in an apartment. It is notable that assaulting his wife was the reason for his most recent prison commitment making this plan both unrealistic and unsafe. Reportedly, he has a job when he is released where he has worked previously. He plans to be around his family and his grandchildren when he is released, however, parole stipulations will undoubtedly prohibit him from being in the presence of minor children.

He has no money saved, and he reported that he left his wife with "bad credit on credit cards" when he was put in prison recently. In five years, he plans to be working, have a "better house to live in," to be closer to his older children and have them confide in him. Unrealistically, he plans to be a counselor and thinks he will be "a person with insight." He does not see a need for treatment once released to the community, and he has no viable relapse prevention plan for substance abuse upon release. It appears that Mr. ██████ has not been able to develop realistic release plans that can provide him with a successful release to the community. Positively, Mr. ██████ does not exhibit excessive negative emotionality or hostility.

In summary, Mr. ██████ received a Static-99 score of 8 which indicates he belongs to a group of individuals with at least a 39 percent risk of sexual reoffending over 5 years, a 45 percent chance over 10 years and at least a 52 percent chance over 15 years. As noted previously, the Static-99 only helps to establish a baseline risk, and does not take into consideration the many other static and dynamic risk factors explained above. It should also be noted that there is no formal system of adding these variables to the Static-99 score because of an unknown amount of intercorrelation among the variables. Therefore, in order to determine an individual's risk of sexual recidivism, it is best to begin with the Static-99 and then to adjust up or down depending on the relative presence or absence and severity of these other variables.

In the case of Mr. ██████ an overall review of these variables indicates his actual risk for reoffense is higher than the Static-99 estimate alone. This is based upon his being positive for most of the static risk factors described above and the lack of static protective factors. An overall review of the stable dynamic factors also indicate that they may aggravate his risk for sexual reoffense. A potential protective consideration for Mr. ██████ is his advanced age. He is now 61 years of age, and age is associated with a decrease in testosterone and in sexual reoffending, in general. However, in November of 2000, Mr. ██████ intentionally and repeatedly masturbated in front of a female custody officer indicating the

ongoing presence of deviant sexual interest. Further, he has not demonstrated an ability to stop drinking alcohol despite the interpersonal legal problems it has caused him. Because his deviant sexual interests remain present and are likely to be further disinhibited by his alcohol intake, I opine that he is likely to commit a sexually violent predatory offense in the future.

V. CONCLUSIONS:

Based on the above information it is my opinion that Mr. [REDACTED] does meet the criteria as a sexually violent predator as described in Section 6600(a) of the Welfare and Institutions Code, and an extension of commitment is recommended.

Respectfully submitted,

A. Phenix Ph.D.

Amy Phenix, Ph.D.
Clinical Psychologist,
CA Lic. No. PSY12730

STATIC-99 SCoring WORKSHEET

Inmate Name:

[Redacted]

Richard Daniel

CDC Number:

[Redacted]

Reviewer Name

Evaluator Name

A. Pheix PhD

| Risk Factor (Same rules as in RRASOR) | Codes | Charges | Convictions | Score | Comments |
|--|--|------------------------|------------------|-------|---------------------------|
| 1 Prior Sex Offences | None 1-2 3-5 6+ | None 1 2-3 4+ | 0 1 2 3 | | |
| 2 Prior sentencing dates (excluding index) | 3 or less 4 or more | | 0 1 2 3 | | |
| 3 Any convictions for non-contact sex offences | No Yes | | 0 1 | | <i>Index age</i> |
| 4 Index non-sexual violence | No Yes | | 0 1 | | |
| 5 Prior non-sexual violence | No Yes | | 0 1 | | <i>multiple batteries</i> |
| 6 Any Unrelated Victims | No Yes | | 0 1 | | |
| 7 Any Stranger Victims | No Yes | | 0 1 | | |
| 8 Any Male Victims | No Yes | | 0 1 | | |
| 9 Young | Aged 25 or older Aged 18 - 24, 99 | | 0 1 | | |
| 10 Single | Ever lived with lover for at least two years? Yes No | | 0 1 | | |
| TOTAL SCORE | Add up scores from individual risk factors | | | 8 | |

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

| Static-99 score | Label for Risk Category | Sexual recidivism | | |
|-----------------|-------------------------|-------------------|----------|----------|
| | | 5 years | 10 years | 15 years |
| 0 | Low | .05 | .11 | .13 |
| 1 | Low | .06 | .07 | .07 |
| 2 | Medium-Low | .09 | .13 | .16 |
| 3 | Medium-Low | .12 | .14 | .19 |
| 4 | Medium-High | .26 | .31 | .36 |
| 5 | Medium-High | .33 | | .40 |
| 6 | High | .39 | .45 | .52 |

NOTICE OF EVALUATION AS A SEXUALLY VIOLENT PREDATOR


Because of your past convictions for sexual crimes, you are being evaluated as a possible Sexually Violent Predator under the law (Section 6600 of the California Welfare and Institutions Code). The purpose of the evaluation is to decide if you have a mental condition that makes you likely to commit sexual crimes in the future. If you qualify under the law, you could be sent to court for trial. If the court finds you to be a Sexually Violent Predator, you could be sent to a treatment program at a state mental hospital. This would be an involuntary commitment to a treatment program run by the California Department of Mental Health.

This evaluation includes a review of your records and interviews with you by at least two doctors (psychologists or psychiatrists). The doctors will write reports on your case, and may later testify if your case goes to court. Any information you provide during the interviews may be used in the reports and court testimony.

If you give any new information about abuse of children or elders that has not been reported, the doctors are legally required to report this information to the authorities.

The interviews are voluntary, and you must give consent for the interview to proceed. If you don't consent to the interview, the evaluation will be completed using your records and other sources of information.

I have been informed about my evaluation as a Sexually Violent Predator and I have been offered a copy of this notification.

 I agree to be interviewed by Dr. Phenix
for the purpose of evaluating me as a Sexually Violent Predator.

 I disagree to be interviewed by Dr. Phenix
for the purpose of evaluating me as a Sexually Violent Predator.

8-14-01
Date


Inmate's Signature

8-14-01
Date

Phenix PhD
Evaluator's Signature