

COPY

STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

In re the Detention of:

NO.

06205263-8

SHAWN D. BOTNER,  
aka SHAWN BOWER

CERTIFICATION FOR  
DETERMINATION OF  
PROBABLE CAUSE

Respondent.

I, JANA R. FRANKLIN, Assistant Attorney General for the State of Washington, am familiar with the investigation conducted by the Washington State Department of Corrections and various law enforcement agencies relating to Respondent, SHAWN D. BOTNER, aka SHAWN BOWER.

Pursuant to RCW 71.09.030, the Attorney General for the State of Washington is filing this Petition at the request of the Spokane County Prosecuting Attorney, STEVEN J. TUCKER.

Petitioner, State of Washington, sets forth the following in support of its Motion for the Determination of Probable Cause that Respondent, SHAWN D. BOTNER, aka SHAWN BOWER, is a sexually violent predator pursuant to chapter 71.09 RCW.

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1 I. SEXUALLY VIOLENT OFFENSE

2 Respondent, SHAWN D. BOTNER, aka SHAWN BOWER, was born on  
3 May 11, 1973, and is now 33 years old. He has been convicted of one sexually violent  
4 offense as that term is defined in RCW 71.09.020(15).

5 1. Attempted Rape in the First Degree, Spokane County Superior Court  
6 (No. 92-1-00401-2), July 23, 1992

7 On February 6, 1992, 18-year-old Shawn D. Botner attempted to have sexual contact  
8 with C.W., a woman to whom he was not related. At approximately 8:20 p.m. that evening, C.W.  
9 was leaving the women's restroom of the Adult Education Center in Spokane. She noticed a young  
10 man with long blond hair (later identified as Mr. Botner) at the drinking fountain when she entered the  
11 restroom, and she saw that he was still there when she came out. As C.W. walked by Mr. Botner, he  
12 grabbed her from behind and put an electrical cord around her neck. Mr. Botner dragged C.W.  
13 backward into the women's restroom and into a rear stall. As a result of the strangulation, C.W. lost  
14 consciousness. When she awoke, C.W. was alone. Her throat was so swollen she could barely speak,  
15 her pants and underwear were around her ankles, and she felt that she had been anally or vaginally  
16 penetrated although she was not sure. She was eventually able to make enough of a sound to attract  
17 the attention of passing students and professors. C.W. was transported to Deaconess Hospital. The  
18 attending physician told C.W. that she was lucky to be alive, as she had be strangled so severely that  
19 there was severe petechiae around her orbital lobes and on the tops of her eyelids. The physician also  
20 noted that C.W. had bruises on her right inner-forearm and her right upper shoulder, a broken nose,  
21 and had bitten off the tip of her own tongue while she was being choked.

22 Fingerprints taken from a drinking fountain, a left palm print on the inside of the bathroom  
23 stall, and a right thumb print on the inside of the stall door all matched Mr. Botner. Mr. Botner also  
24 matched the description given by C.W. of her assailant. He was arrested on February 10, 1992. When  
25 confronted with the physical evidence against him, Mr. Botner began to cry and admitted that he had  
26 strangled C.W. with the intention of raping her. Mr. Botner told police that he had been on his way to a

1 friend's house and had stopped to get a drink of water. He stated that he saw C.W. walk out of the  
2 restroom and felt he wanted to rape her so he wrapped the cord he had with him around her neck and  
3 dragged her into the bathroom. Mr. Botner stated that after C.W. lost consciousness he pulled her pants  
4 and underwear down but could not bring himself to rape her so he ran out of the bathroom and went  
5 home. Later, however, Mr. Botner admitted to a prison psychologist that on the night of the assault he  
6 had specifically went out looking for a woman to rape and beat. Mr. Botner has also admitted that he  
7 rehearsed his rape fantasy and obtained the electrical cord he used to choke C.W. several months before  
8 the attack.

9 Mr. Botner pleaded guilty to Attempted Rape in the First Degree on June 23, 1992. He was  
10 sentenced to 110.25 months (the upper limit of the sentencing range) on July 29, 1992.

## 11 II. OTHER SEXUAL OFFENSES

12 In addition to the above sexually violent offense, Mr. Botner has also been convicted  
13 of other sexual crimes.

### 14 1. Indecent Liberties (two counts), Spokane County Superior Court 15 (No. 88-8-00841-4), November 14, 1988.

16 From approximately September through December 1987, 14-year-old Shawn D. Botner  
17 had sexual contact with H.B., his nine-year-old female cousin. On June 23, 1988, Child  
18 Protective Services worker Mary Muntoon reported the suspected sexual abuse of H.B. by  
19 Mr. Botner. Police interviewed H.B. on June 29, 1988. H.B. was very frightened and had  
20 difficulty relating details but she was able to tell police that between the time she started school  
21 in the fall and Christmas, her cousin, Mr. Botner, touched her in a way she did not like. H.B.  
22 recounted one occasion when she was asleep on a rug in her room and awoke to find  
23 Mr. Botner lying next to her, touching her privates. H.B. told police that she was not sure if he  
24 was touching her over or under her clothes, but was unable to maintain eye contact when she  
25 said this. She said that Mr. Botner had touched her anus. In addition, H.B. said that she told  
26 her mother about the incident and that she had been taken to a doctor for an exam.

1 When asked if this had ever happened again, H.B. stated that Mr. Botner had touched  
2 her in a way she did not like (but could not recall exactly how), when she was left alone with  
3 him in her aunt's basement. The detective conducting the interview noted that H.B. again  
4 refused to make eye contact when she said she could not remember how Mr. Botner touched  
5 her. When pressed, H.B. said that Mr. Botner hurt her, but could not recall if it was her anus or  
6 vagina that was hurt. H.B. said that she had not told anyone about this attack. She denied that  
7 Mr. Botner had not told her not to tell anyone.

8 H.B.'s mother, Candy B., was also interviewed on June 29, 1988. Candy B. said that  
9 H.B. first reported the abuse around January 1, 1988. Candy B. said that Mr. Botner had  
10 stayed at her house for a period of about two months during the course of the school year, as  
11 well as at numerous other times. She had found him sleeping in H.B.'s room on several  
12 occasions and had told him not to, but he had persisted. Soon after finding Mr. Botner in  
13 H.B.'s room, Candy B. noted a dramatic personality change in H.B. H.B. also began urinating  
14 in her clothes both at home and at school.

15 Dr. Vicki Volz examined H.B. and reported that there was a high likelihood that she  
16 had suffered some form of sexual abuse, although there was no physical evidence of the  
17 specific form of abuse.

18 Mr. Botner was arrested on November 2, 1988 for two counts of Indecent Liberties. He  
19 was convicted on November 14, 1988 and was sentenced that day to 28 weeks in Juvenile  
20 Detention.

21 **2. Unlawful Imprisonment, Spokane County Superior Court**  
22 **(No. 91-1-01437-1), September 12, 1991.**

23 On May 31, 1991, 18-year-old Shawn D. Botner assaulted G.P., a woman to whom he  
24 was not related.

25 On May 31, 1991, G.P. was taking her lunch break on a bench in Riverfront Park in  
26 Spokane when she noticed a young man (later identified as Mr. Botner) sitting on the grass

1 nearby. G.P. went into the women's public restroom, and when she came out from the stall  
2 Mr. Botner grabbed her from behind, placed his hands around her throat, and began to choke  
3 her. G.P. held her purse out to Mr. Botner, hoping that he only wanted to rob her, but he  
4 ignored the purse and continued to choke her. She kept trying to break away, but Mr. Botner  
5 told her to "shut up" and tried to put his hand over her mouth. G.P. was able to scream at least  
6 once. Mr. Botner dragged her through the doorway of the restroom, but when he noticed  
7 witnesses in the area, he released G.P. and fled.

8       Following identification in a photo line-up, Mr. Botner was arrested on July 18, 1991.  
9 He pleaded guilty to Unlawful Imprisonment on September 12, 1991, and was sentenced to six  
10 months in Spokane County Jail. While at the time of the offense Mr. Botner claimed that his  
11 motivation was robbery, he later disclosed to his Sex Offender Treatment therapist that the  
12 crime was sexually motivated.

### 13                                   **III. SEX OFFENDER TREATMENT**

14       On March 29, 2001, Mr. Botner completed seventeen months of Sex Offender  
15 Treatment group therapy at the Monroe Correctional Complex – Twin Rivers Unit Sex  
16 Offender Treatment Program (SOTP).

17       Throughout the program, Mr. Botner's therapists noted that he tends to maintain a  
18 dominance-oriented pattern of thinking and often looks to blame others for his problems. They  
19 described his behavior in his sexual and dating relationships as "pushy". Mr. Botner's sexually  
20 assaultive thinking is triggered by boredom, anger, resentment, and jealousy. Throughout  
21 treatment, he continually misperceived and overlooked cues. Ultimately, the therapists found  
22 that while Mr. Botner improved his ability to deal with others, such improvements remained  
23 untested in an unstructured environment.

24       Based on his the observations of his SOTP therapists, it appears that Mr. Botner's  
25 offense cycle functions as follows: Over a short period of time Mr. Botner becomes bored with  
26 his lifestyle and resents that he has to work so hard for what he perceives as very little. He

1 begins to look for "shortcuts" to get money, which brings on criminal behavior. He will then  
2 begin spending more time with antisocial peer groups, destroying any support from family and  
3 counselor. As he drives people away he will seek control and begin to experience aggressive  
4 sexual fantasies. Finally, these fantasies will escalate to buying paraphernalia that he will use  
5 in his rape acting out his violent sexual fantasies.

6 The treatment team felt that Mr. Botner could control his re-offense risk if he continued  
7 in treatment and worked to manage his impulsivity, criminality, and arousal. Following release  
8 from incarceration, Mr. Botner was enrolled in a community SOTP program. Mr. Botner  
9 completed the SOTP program on March 29, 2001. He was released from prison three days  
10 later.

#### 11 IV. RECENT OVERT ACT

12 Mr. Botner is currently incarcerated for his failure to register his address following an  
13 investigation into threats of rape he made around the Gonzaga University campus.

14 On July 7, 2006, Spokane police responded to a call from Gonzaga University campus  
15 security. Security had found a duffle bag labeled "Shawn B" on campus, stashed along the  
16 Centennial Trail. The bag contained women's clothing, pornography, wigs, sex toys, and an  
17 envelope addressed to Shawn Bower. Police also found a black notebook in the duffle bag  
18 describing a planned kidnap, rape, murder, and dismemberment of a female clerk of an adult  
19 store. In addition, campus security stated that there had been reports of someone hiding in the  
20 bushes along the Trail and masturbating at people as they walked by, possibly ejaculating into  
21 a milk jug.

22 Following the report by campus security, Mr. Botner was identified as a person of  
23 interest by Spokane police. On July 11, 2006, Mr. Botner's Community Corrections Officer  
24 was notified that Mr. Botner was suspected of leaving notes along the Centennial Trail  
25 detailing the above described offense against the female adult store clerk.

1 At two o'clock a.m. on July 30, 2006, Spokane police stopped Mr. Botner while he was  
2 riding a bicycle with no headlight or rear reflector. As the police approached him, they saw  
3 that Mr. Botner was wearing a bra stuffed to give the appearance that he had breasts. He also  
4 had a stockinette over his hair. Police took possession of a backpack Mr. Botner was carrying  
5 with him. Inside police found an unopened package containing a dildo, a black and white  
6 French maid costume, new and used women's underwear, a blond wig, and a folder of  
7 pornographic pictures. There was also a glass case containing a rope, rubber gloves, and  
8 condoms. As police inspected the rubber gloves, Mr. Botner commented that he had been tied  
9 to his previous crime by his fingerprints.

10 Mr. Botner's Community Corrections Officer discovered that Mr. Botner had moved  
11 out of his registered address on July 28, 2005, and obtained a warrant for his arrest for failure  
12 to register his address. Mr. Botner was arrested on August 11, 2006.

#### 13 V. SEXUALLY VIOLENT PREDATOR EVALUATION

14 Dr. Harry Hoberman, Ph.D., completed a Sexually Violent Predator Evaluation of  
15 Mr. Botner on or about November 27, 2006. It should be noted that Dr. Hoberman's report is  
16 based solely upon review of records as Mr. Botner declined to participate in the evaluation.

17 Dr. Hoberman summarized the material he considered and his opinions concerning  
18 Mr. Botner in a written opinion dated November 27, 2006. A copy of Dr. Hoberman's report  
19 is appended to this Certification as Exhibit A and is incorporated herein. A copy of  
20 Dr. Hoberman's curriculum vitae is appended to this Certification as Exhibit B.

21 Dr. Hoberman used numerous actuarial tools, including the Static 99, the Minnesota  
22 Sex Offender Screening Tool, Revised (MnSOST-R), the Sex Offender Risk Appraisal Guide  
23 (SORAG) and the Psychopathy Checklist Revised (PCL-R), to assess Mr. Botner's recidivistic  
24 potential. According to these tools, Mr. Botner has a calculated risk of 52% for being  
25 reconvicted of a new sexual offense over within 15 years, as measured by the Static 99. As  
26 measured by the MnSOST-R, Mr. Botner has a calculated risk of 72% for being re-arrested for

1 a new sexual offense over within 6 years of release from incarceration. According to the  
2 SORAG, Mr. Botner's risk of violently reoffending, regardless of the sexual nature of the  
3 offense, is statistically associated with a 76% probability of reoffending within 5 years, a 100%  
4 probability of violently reoffending within 7 years and a 100% probability of violently  
5 reoffending within 10 years. Finally, Mr. Botner's score on the PCL-R indicates an extremely  
6 elevated risk of violent recidivism.

7 After reviewing Mr. Botner's actuarial scores, police records, prison records and  
8 treatment records, Dr. Hoberman diagnosed Mr. Botner with the following, relevant mental  
9 disorders:

- 10 Axis I Sexual Sadism, Pedophilia  
11 Axis II Personality Disorder, Not Otherwise Specified with Antisocial and  
12 Narcissistic features, and/or  
13 Dissocial Personality Disorder, and/or  
Psychopathy

14 Given Mr. Botner's history of violent sexual offenses, combined with his current  
15 mental health status, Dr. Hoberman concluded that Mr. Botner does meet the criteria for civil  
16 commitment as a sexually violent predator as described in RCW 71.09. Specifically,  
17 Dr. Hoberman opines to a reasonable degree of psychological certainty that Mr. Botner's mental  
18 abnormalities and personality disorder cause him serious difficulty in controlling his behavior,  
19 such that he is likely to engage in predatory acts of sexual violence if not confined to a secure  
20 facility.

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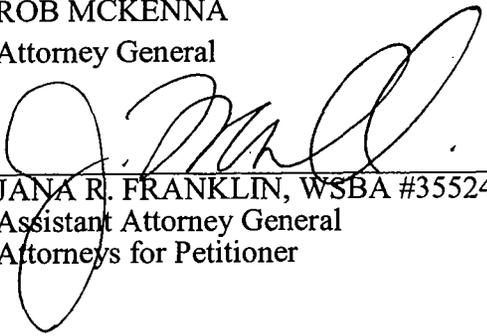
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1 Respondent is scheduled to be released to the community on December 8, 2006.

2 Under penalty of perjury under the laws of the State of Washington, I certify that the  
3 foregoing is true and correct to the best of my knowledge.

4 RESPECTFULLY SUBMITTED this 4 day of December, 2006.

5 ROB MCKENNA  
6 Attorney General

7   
8 JANA R. FRANKLIN, WSBA #35524  
9 Assistant Attorney General  
10 Attorneys for Petitioner

**EXHIBIT A**

**HARRY M. HOBERMAN, Ph.D., L.P.**

**Forensic & Clinical Psychology**

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## **INDEPENDENT FORENSIC PSYCHOLOGICAL EVALUATION:**

### **Basis for Referral and Methods of Data Collection:**

I was assigned by the Washington Department of Corrections to provide a report, from a psychological-psychiatric perspective, for the purpose of offering an opinion as to whether Shawn D. Botner (DOB: 5/11/73; also known as Shawn Bower) is characterized by the elements described by Washington Ch. 71.09 RCW as constituting a sexually violent predator.

Initially, I reviewed records provided by the Washington Department of Corrections (WDOC) from various evaluators, facilities and agencies pertaining to Mr. Botner: These records were from the following facilities and agencies: the Washington Department of Corrections (DOC) records; District Court and Law Enforcement files from Spokane County. The original discovery material was received from the Washington Attorney Generals Office (AGO) and Bates stamped 0001 to 1529.

At the time of the request for this report, I was informed that Mr. Botner was currently placed in the Spokane County jail. This evaluator requested to conduct a direct evaluation with Mr. Botner. It is my understanding that he was provided with a copy of my consent form to conduct a direct evaluation. On 8/29/06, I was faxed a copy of that form, signed by Mr. Botner, which indicated that he declined to participate in an evaluation with me at that time.

### **Statutory Definition of Sexually Violent Predator:**

Chapter Ch. 71.09 RCW defines a "Sexually Violent Predator" as "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not

confined in a secure facility." Mentally abnormality means "a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to the commission of criminal sexual acts in a degree constituting such a person a menace to the health and safety of others." "Likely to engage in predatory acts of sexual violence" means that the person "more probably than not" will engage in such acts if released unconditionally from detention on a sexually violent predator petition. "Predatory" means acts directed towards: a) strangers; b) individuals with whom a relationship has been established or promoted for the primary purposes of victimization; or c) persons of causal acquaintance with whom no substantial personal relationship exists. A "recent overt act" is any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

#### **SYNOPSIS:**

Mr. Botner has been charged with a number of sexual offenses or sexually related offenses over a period of several years; he has been convicted of several sexual offenses. Mr. Botner's sex offense arrests and convictions: include: two arrests (6/88) and two convictions (11/88) for Indecent Liberties in 12/84; a charge (7/91) and a conviction (9/91) for Unlawful Imprisonment in 10/85 (acknowledged as an attempted rape); a charge of Rape (2/92) and a conviction for Attempted Rape (6/92). Mr. Botner is a person who has been charged with and convicted of crimes of sexual violence. It is my opinion, to a reasonable degree of psychological certainty, that Mr. Botner is characterized by a "mental abnormality" and a personality disorder. It is this evaluator's opinion that the available evidence indicates that Mr. Botner's "mental abnormalities" include **Sexual Sadism** and **Pedophilia**. He is also characterized by a **Personality Disorder NOS/Mixed Personality Disorder** (primarily Antisocial and Narcissistic traits) or **Dissocial Personality Disorder** and/or **Psychopathy**. These are congenital or acquired conditions affecting the volitional or volitional capacity of Mr. Botner; these conditions are associated with serious difficulty in controlling his behavior and predispose him to the commission of criminal sexual acts in a degree constituting him a menace to the health and safety of others. Further, it is this evaluator's opinion that Mr. Botner's

mental abnormality makes him "more probably than not" to engage in predatory acts of sexual violence if not confined in a secure facility.

Three actuarial risk measures (scored based upon characteristics of Mr. Botner) indicate that Mr. Botner is a person who more probably than not will engage in such acts if released unconditionally from detention. Further, other risk assessment measures indicate that Mr. Botner is a person who "more probably than not" will engage in such acts if released unconditionally from detention. While Mr. Botner completed sex offender treatment while in the WDOC and subsequent aftercare, such treatment does not reduce his risk, in particular given his sex offending history and his behavior while on conditional release. His age (in the context of his historical risk) does not suggest a likely decline in sex offense recidivism. Further, he has had numerous violations of his conditional release such that he has experienced frequent periods of incarceration since his initial release from the WDOC. Thus, there are few factors that would suggest a decrease in relative risk of sexual offending for Mr. Botner. Consequently, Mr. Botner continues to have characteristics of a person who "more probably than not" will engage in predatory acts of sexual violence if released unconditionally from detention.

It is this evaluator's opinion that Mr. Botner has engaged in "recent overt acts" per Chapter Ch. 71.09 RCW; Mr. Botner's most recent alleged violations of conditional release and his behavior relative to a potential sexual assault constitute "a recent overt act," as they consist of acts or threats that create a reasonable apprehension of harm of a sexually violent nature in the mind of an objective person who knows of the history and mental condition of the person engaging in the act. In this case, the recent overt acts include several elements. First, law enforcement officers discovered rape kits belonging to Mr. Botner on two different dates in 7/06. In addition, on the first occasion, a note was found describing a plan for a sexual assault of an adult female and the murder and dismemberment of that victim. Materials that could be used in such an assault including potential disguises, rubber gloves and condoms were discovered with the note; the note was in a bag with Mr. Botner's name and alias on it. On the second and subsequent occasion, Mr. Botner was discovered riding his bike in the middle of the night. He had a hammer, was wearing a stocking mask, had a woman's costume and wig in his backpack, and also was in possession of pornographic pictures, rope, rubber gloves and condoms. Second, Mr. Botner has had repeated episodes of anger, drug and alcohol abuse,

instability in housing and relationships, and failure to comply with supervision. These have all been previously identified as components of his sex offending cycle and as "risk factors" for him for sexual reoffending. He has shown little "effect" of his repeated treatment experiences. Such conditions related to his offending cycle are ones that would increase the likelihood that Mr. Botner would act on his deviant sexual arousal and deviant sexual preoccupations. Despite incarcerations, inpatient and outpatient sex offending treatment, Mr. Botner has continued to engage in behavior indicative of his sex offending cycle (including multiple dynamic stable and acute risk factors associated with acting out in a sexual manner). Consequently, given Mr. Botner's sexual offending history and his psychological/psychiatric conditions, these are acts or threats that create a reasonable apprehension of sexual offending.

#### **Personal History:**

Mr. Botner was born and raised in Spokane (D.O.B.: 5/11/73). He has reported that his father had a criminal history. He had no contact with his biological father until he was an adult and incarcerated in prison; they met while both were in the WDOC. He was raised by his mother and stepfather (Doug); apparently, his mother married this first step-father when Mr. Botner was a "toddler." He has one half-brother who is approximately three years younger.

Mr. Botner's mother and first stepfather divorced when he was approximately 11 years old. Mr. Botner's mother remarried when he was approximately eleven years old. Mr. Botner reports his relationship with his new stepfather (Tim) was primarily positive. Mr. Botner's mother later divorced Tim. Currently, Mr. Botner maintains regular contact with his brother and grandfather. He has had some limited contact with his mother over the past several months after being estranged from her for the last several years. He reports that he simply did not care what his parents or anyone else said. After leaving his mother's home, between brief periods of jail/detention, he worked a couple jobs for short time periods also. Per a 1/00 evaluation, "After the seventh grade he primarily lived on the streets, started drug dealing and stealing, and 'except for the times he was held in juvenile detention, was continuously criminally involved. 'I was in juvenile detention a few times. The first time for 13 days, the second time for five months, the third time for two months, and the fourth time for about ten days.' "

Per a 1/00 Psychological Evaluation, "Despite defending his mother, he does not hear from her. 'I got no contact with mom. Not no more. She divorced my second step dad, and lust kind of she needs some time by herself.' "

Mr. Botner states that he liked and disliked school about as much as the average kid until he got to grade seven. Before grade seven, he says, he did quite well in school. In a 1/00 evaluation, "In grade school I got A's and B's. I got along with teachers until seventh grade, when I started messing 'up.' " Mr. Botner dropped out of formal school after the seventh grade. By grade seven Mr. Botner lost all interest in school and reports skipping frequently, messing around in classes and getting suspended. He reportedly started 8<sup>th</sup> grade but quit after a couple of days and "never went back."

In a 1/00 evaluation, he reported: "When I went to seventh grade I just said, 'the hell with everything' and didn't do nothing. I just goofed off." As a result, "I (only) completed the 'sixth grade. They passed me in seventh grade, but I don't know how. After about the eighth grade, I just dropped out and never went back except for a few months in the ninth grade when I was in juvenile detention. "Previously, he had some behavioral problems, suspension and expulsion on more than one occasion. He was disciplined for class room disruption as well as fighting with school peers and staff~ Overall, Mr. Botner has indicated that he was in trouble at school more than once a month. While he was incarcerated in the WDOC, Mr. Botner completed his GED.

Mr. Botner has a very limited employment history. Between brief periods of jail/detention he worked several jobs for short time periods. [He has also reported that he continued to commit crimes and lived day to day, irresponsibly, coming home to sleep most of the time.] Pre-incarceration as an adult, Mr. Botner's had held few jobs. In a 1/00 Psychological Evaluation, it was noted, "he has had only brief work experiences...The only real work I've done is in the sawmill. I've worked three different sawmills. Two (of the jobs) were under the table, and the one that wasn't I only worked about a week and a half." He explained "I just didn't want to work, and I said 'the hell with it.' The boss was kind of a jerk and he throws three of us on a machine that at least five guys should be working at, (so) I quit." He explained that "the first one (1ob) was about a month, the second one would have been for about three weeks, and then the guy shut it down." His last job in the community was approximately three weeks at a lumber mill in

1991.

While incarcerated, Mr. Botner worked or was in school on a consistent basis. At his original release from the WDOC in 2001, he stated he wanted employment but made no concrete plans. After that release, he worked as a telemarketer for brief periods of time and as a dishwasher. He has also been unemployed for periods of time.

Mr. Botner has never been married, nor has he engaged in a long-term intimate relationship. He reports that he has had approximately 25 sexual partners. He very rarely engaged in sexual relationships with the same person more than once.

During his life, Mr. Botner's most significant relationships have been with his younger brother and various anti-social acquaintances. In his Pre-Sentence Investigation from 1992, "In reviewing the police reports, Mr. Botner has been arrested with friends on several different occasions. He is not a highly motivated individual, and he associates with other individuals who are likewise." Later, it was noted "His previous friends have all had legal problems, and have failed to maintain contact with him since his incarceration."

Mr. Botner has a history of substance abuse. He began using drugs and alcohol around the time that he dropped out of school (e.g. the beginning of 8<sup>th</sup> grade). He was reportedly mandated to chemical dependency as a juvenile at some point; however, he reported that he continued to use both alcohol and drugs while in that treatment. He also continued marijuana use as an adult while incarcerated. Mr. Botner acknowledges that his history of marijuana was problematic for him in the past; per a note in 3/00 (81), he identified cannabis as his "drug of choice." He does not think that his drinking was problematic.

In a 1/00 evaluation, when asked about his drug use he replied that he used "mainly pot, and I took LSD about 100 times, and I started drinking too. At first not very much, (but) toward the end I could polish off a case of beer by myself. At first it (the drinking) was maybe once a month, and then it got to be twice a week." As a result he was required to participate in drug and alcohol treatment while in juvenile detention. Despite his history of extensive drug and alcohol use, he believed he would not have a problem staying clean and sober in the future. "I never wanted to stay clean and sober

(before). If I set my mind to do something I can do it. If I want to stay clean and sober I can."

In his Pre-Sentence Investigation from 1992, Mr. Botner reported that he had "attempted suicide in the past."

Regarding his health, in a 1/00 Psychological Evaluation, it was noted: "Mr. Botner reported frequent head injuries. During this evaluation Mr. Botner did not refer to any childhood injuries, but acknowledged other assaults or injuries: "I've been hit in the head with 2 x 4's (at a party), and been hit every place on my head. I've been in quite a few fights, and had bottles busted over my head. I've been knocked out once that I can remember long enough for them to carry me into the house -when a beer bottle smashed over my head. It knocked me out." He was also in "a car crash or two, but I was never hurt." (375)

Mr. Botner has self-reported that his stepfather was physically, and emotionally abusive to both Mr. Botner and his mother. He was also sexually abusive towards Mr. Botner. Mr. Botner has reported that he recalls the sexual abuse beginning at approximately age five and continuing until his age of 11 or 12. The abuse consisted of fondling genitals and oral sex. Mr. Botner also reports that his stepfather had a "girlfriend" who was approximately 13 or 14 years old and his stepfather would coerce Mr. Botner into being sexual with her. It is of note, that despite this alleged pattern of abuse, Mr. Botner spent some time living with his stepfather for about a year at approximately age eleven (which was apparently Mr. Botner's 5<sup>th</sup> grade year). The abuse reportedly continued and Mr. Botner eventually returned to live with his mother.

#### **Nature of Sexual Offense Arrests, Charges and/or Convictions:**

Mr. Botner has one sexual offence conviction as a juvenile. In 6/88, he was arrested and charged with two counts of Indecent Liberties involving his female cousin, H.B. (from her ages 7-9, from 1987-1988). When she was interviewed by the police, H.B. could recall sexual abuse by Mr. Botner which occurred on at least two occasions during a two-year period of time. On one occasion, the victim awoke to find Mr. Botner fondling her vagina, both outside and inside of her clothing. At the time of the investigation, she told officers that between the time she started second grade and right after

Christmas in 1987, he had touched her in a way she did not like. She stated that she was asleep on the rug in her bedroom and awakened to find Mr. Botner in her room, lying on the same rug. He began touching her on her vagina, reaching between her legs; she indicated that he put his hand around "in front," touching her with his whole hand. She stated that he had also touched her on her bottom, indicating her anus. On another occasion and at another place, she reported that he had touched her "in a way that he shouldn't." Per some reports, Mr. Botner reportedly told the victim not to tell anyone because it was "their little secret." In addition, H.B.'s mother reported finding Mr. Botner sleeping next to her daughter on a number of other occasions. (184-193) H.B. had great difficulty discussing the particulars of the sexual abuse with police.

When Mr. Botner was originally questioned by the police about this alleged sexual abuse, he refused to speak with them.

On 11/4/88, Botner was convicted of two counts of Indecent Liberties. Mr. Botner was sentenced to a Juvenile Rehabilitation Administration (JRA) term of 28 weeks. He has reported that he was just "given several weeks of juvenile detention."

Approximately nine months before committing his index sex offence Mr. Botner (having just turned 18) assaulted another adult female, G.P., who was a stranger to him. On 5/31/91, he attacked this unknown woman. The victim, who was taking a break from work, was sitting on a park bench at the Riverfront Park in Spokane. She noticed a male (who she later identified as Mr. Botner) sitting across from her on the grass. She got up and entered a nearby restroom, and after exiting a bathroom stall, she began to walk over to the sink to wash her hands. G.P. was suddenly grabbed from behind, by a man who was later identified as Mr. Botner. Mr. Botner placed his hands around her throat and began to choke her. G.P. reported that she held her purse out, thinking that he intended to rob her, but he only continued to choke her harder. She made several attempts to break away from him, but Mr. Botner told her to "Shut up," and tried to place his hands over her mouth. The victim was able to scream before he began dragging her out of the restroom. At that time, Mr. Botner apparently noticed people (e.g. witnesses) in the area, released the victim, and fled the scene. The victim suffered a lacerated lip and blood was on her face when police officers arrived. G.P. was shown a photo lineup, which included Mr. Botner and

pointed to Mr. Botner's picture stating, "This looks like him." (282)

Mr. Botner was charged with Unlawful Imprisonment in 7/91. He was convicted of Unlawful Imprisonment in 9/91; he pleaded guilty to this offense and was sentenced to 6-months in the County Jail, 12 months of community supervision and 10 years of financial monitoring.

At the time of his sentence and well into his initial incarceration, he denied that this assault was sexually motivated. Rather, he claimed for nearly ten years that his intent was simply to rob G.P..

However, per an 8/99 Psychological Evaluation, it was noted: "This crime is so similar to the Attempted Rape that although it was not legally determined to be sexually motivated, one cannot help but suspect their similar intent. However, Mr. Botner disagrees, fairly convincingly, asserting that robbery alone was his motivation for the Unlawful Imprisonment crime. He stated that he didn't notice the struggling victim hold up her purse. Bypassing the specifics of his assertion, it nevertheless leaves us looking at two crimes whose elements are so nearly identical as to defy not comparing them. If Mr. Botner's own conscious thought for this Unlawful Imprisonment crime really was robbery, I cannot help but shift to the supposition that unconsciously, if not consciously, this crime was probably a precursor or practice for his rape eight months hence."

Similarly, per a 1/00 Psychological Evaluation, Mr. Botner explained that "I tried to steal a purse and I grabbed a hold of her and that's what that was about." By his estimation, the whole event lasted "30 seconds."

However, while in sex offender treatment in approximately 2000, Mr. Botner ultimately admitted the assault was sexually motivated. Per his Treatment Summary, Mr. Botner's disclosure at the beginning of treatment was consistent with the official version of all offences; thus, he continued to report that the Unlawful Imprisonment offence was not sexually motivated. After approximately 14 months of treatment, Mr. Botner did acknowledge that this offence was an attempted rape and that this offence was sexually motivated. (477)

Less than six months later (shortly after he was released from jail), on 2/6/92, around 8 p.m., Mr. Botner (then age 18) committed his most recent known sex offense. He was initially charged with Rape-1<sup>st</sup> Degree and Assault-1<sup>st</sup> Degree. This crime also took place in a public setting at the Spokane Adult Education Center. The victim, C.W., was attending a class and went to use the bathroom. She noticed a male, later identified as Mr. Botner, standing in the hallway next to the drinking fountain. She exited the bathroom approximately one minute later, noting that the male was still standing by the drinking fountain. As C.W. passed by him, Mr. Botner placed an electrical cord around her neck and began to choke her from behind. He dragged her back into the bathroom by the neck and took her to the rear stall. He choked C.W. with such force that she blacked out. When she regained consciousness, her pants and underwear were pulled down around her ankles. She reported that she felt as though she had either been vaginally or anally penetrated. C.W. couldn't speak because her neck was so swollen. She ran out into the hallway with her pants and underwear still around her ankles, which attracted the attention of other people in the hallway. Upon a medical evaluation, the examining doctor concluded that the victim was "lucky to be alive" because the amount of force used during the choking caused her to suffer severe petechia around her orbital lobes and the tops of her eyelids. The victim's nose was broken, causing severe bruising and swelling, and she bit the end of her tongue off while being choked. There was also bruising on her right inner-forearm and upper shoulder. (279) A witness reported to police that C.W. "looked terrible with blood on her gray-blue shirt and blood stains down her legs. [She stated] that the victim was talking rapidly, saying that she had been raped and strangled." (279)

Mr. Botner's fingerprints were found on the drinking fountain and on the inside of the of the bathroom stall tile where the rape assault had occurred and his right thumb print was on the inside of the bathroom stall door. (279)

After his apprehension, Mr. Botner told the officers that he had, in fact, strangled the woman with a piece of electrical cord and intended to rape her. (280) In the Pre-Sentence Investigation (PSI), Mr. Botner provided the following account of the assault: "After she passed out, he took her underwear and pants down to her ankles and was going to rape her, but couldn't bring himself to do it. He ran out of the bathroom and to his house. Later, he rode his bicycle over to his friend's house. Three days later, he was arrested. As to why he did it, he cannot say. He can say that when he goes to

prison, he will get the help that he needs and nothing like this will ever happen again if they offer him the counseling he needs in prison. Mr. Botner claims that something like this is out of the ordinary and promised it wouldn't happen again. He states that he didn't plan on doing it." (280)

In 6/92, apparently as part of a plea bargain, Mr. Botner pleaded guilty to Attempted Rape-1st Degree. In 7/92, he was sentenced to a 110 months in prison. In addition, he was also sentenced to two years of community placement and assigned certain financial obligations.

During an evaluation in 8/99, Mr. Botner admitted "there was times when I had thought about it (rape), and went out to do it, and had opportunities to do it, and never did it. I'd like to believe that common sense stopped me, but it may just have been being a chicken shit. The only thing that changed on this one was I took it a little further. I choked her out. I did stop. I stopped it. I don't know why. I don't even know how. I just didn't do it." (370) In addition, "He further acknowledges that, contrary to what was reported to the pre-sentence investigator, this crime was planned. He told me that he went out specifically looking for a woman to rape and beat, not the woman he did attack specifically, just any appropriate appearing woman." (363)

Mr. Botner later informed one evaluator, "he went out specifically looking for a woman to rape and beat, not the woman he did attack specifically, just any appropriate appearing woman."

### **Other Inappropriate or Problematic Sexual Behavior:**

There is evidence that Mr. Botner has a more extensive history of sexual offending than is reflected in his official criminal history.

In a 1/00 Psychological Evaluation, it was noted: "More recently, his SOTP therapist Floyd noted Mr. Botner admitted to frequently engaging in behavior that approximated the rape. She reported 'he's done that a lot. He's mentioned going into women's rooms and grabbing their purses. He talked about how he did that a lot. I asked him 'Did you ever think about raping them?' and he looked at me and said, 'I'm not going to answer that.' Thus, while he has one rape conviction and one unlawful imprisonment conviction, both crimes appear similar, and may have occurred more frequently than his

criminal record would reveal. This, in combination with his admitted fantasies of raping and beating women, suggests his criminal history may reflect only the tip of the iceberg.” (374-5)

Mr. Botner has also reported that, prior to his known instances of offending, he engaged in an escalation of behaviors oriented to rehearse his offending. For example, he was targeting victims by cruising through neighborhoods and parks looking for women and imagining raping them. (477)

Also, from his Sex Offender Treatment Summary in 2001: “Mr. Botner reports that in his peer relationships he tended to have a pattern of very usury sexual behaviour. At times he ignored his partners request to use birth control and his behaviours extended to include pressuring and/or manipulative peers into sexual activity. Mr. Botner acknowledges that his behaviour has sometimes been coercive, however, he tends to avoid the idea that his behaviour was assaultive.” (476) It was noted: “Mr. Botner acknowledges engaging in coercive sexual relationships win which he would pressure young women to engage in sexual relations.” (474) Thus, Mr. Botner has reported a history of engaging in coercive sexual behaviours in "dating-type" heterosocial situations.

#### **Other Criminal Offenses or Anti-Social Behavior:**

Before grade seven, Mr. Botner has reported that he did get into “occasional mischief in the community.” He established his formal criminal record when he was age 9; it is notable that in a 1/00 Psychological Evaluation, he stated: “In fact, he said, “I’ve never been off probation.”

In 3/83, Mr. Botner’s official Juvenile Criminal Record began with an arrest, at age 9. Mr. Botner had been standing on an overpass, and threw a rock through a windshield. The victim reported to police that “the rock hit the windshield directly in front of the right passenger seat. The rock nearly penetrated the windshield and had smashed it badly. Glass splinters were all over the font seat and the surrounding area. Fortunately, no one else was in the vehicle at the time.” He was convicted of Malicious Mischief-3<sup>rd</sup> Degree in 4/83.

Once he dropped out of school and left home in 8<sup>th</sup> grade, Mr. Botner has reported that he made most of his money selling drugs and stealing. He has

stated that he continued to commit crimes and lived day to day, irresponsibly, coming home to sleep most of the time. Per a 1/00 Evaluation, "He described how he spent most of his adolescent years: 'Hanging out on the streets, selling drugs, scamming. I've done just about all of them (scams) - stealing things like bikes, purses, anything I can get money for.'"

In 11/85, Mr. Botner was arrested for and convicted of Third Degree Theft.

In 1/87, Mr. Botner was arrested for and later convicted of Third Degree Theft and Third Degree Malicious Mischief.

In 2/87, Mr. Botner was arrested and charged with Third Degree Malicious Mischief. Mr. Botner threw rocks at a Spokane Transit System bus and broke a side window. He then ran away. When confronted by the bus driver, Mr. Botner said the rock hit the bus "accidentally" as he was throwing it at someone who had "flipped him off" In 11/87, he pleaded guilty to Second Degree (Reckless) Endangerment and the original charge was dismissed.

That same month, he was arrested for Resisting Arrest; he pleaded guilty to this count in 6/88.

In 3/89, Mr. Botner was serving his sentence relative to the Indecent Liberties charge, but was reportedly "allowed to go to school and home." He failed to return to the Juvenile Detention Center. He was arrested and convicted in 8/89 of Second Degree Escape (Felony).

In 12/90, Mr. Botner was charged with three counts (and pleaded guilty to two) of Vehicle Prowling. In his conviction agreement, he acknowledged breaking into three different cars.

Per a 1/00 Psychological Evaluation, Mr. Botner acknowledged that he had committed a number of thefts during his adolescence. While little detail is available about them in the files, he reported in treatment in the WDOC, that he had a bicycle ring "with several people who would steal bicycles with him." During group therapy sessions with her he also talked "about stealing car stereos and stuff." (370)

As an adult, in addition to his sex offenses, Mr. Botner continued his pattern of criminal behavior. In 1/92, he pleaded guilty to Attempted Theft and

additional Malicious Mischief charges were dismissed at that time. He has subsequently described this arrest as being for "petty theft, 3rd degree, as an adult. I stole a bike, or I attempted to, and they caught me."

(Later, the next month, Mr. Botner was arrested for his Attempted Rape-1<sup>st</sup> Degree and subsequently jailed and incarcerated.)

In 2003, Mr. Botner was found guilty of Failure to Register as a Sex Offender.

Most recently, on 11/14/03, Mr. Botner stole \$1299.00 from his place of employment, The Classy Rack, in Spokane. He ran. When chased and confronted by his supervisor, he pulled a knife on him. When police arrived, Mr. Botner had fled the area. He was initially charged with Robbery. However, charges were amended and he pleaded guilty to both Assault-3<sup>rd</sup> Degree and Theft-3<sup>rd</sup> Degree. He was sentenced to prison for a year and one day with 9-18 months of community supervision.

#### **Treatment and Correctional History:**

In his PSI from 1992, Mr. Botner stated "that at the age of 12, he was seeing a mental health counselor at the Mental Health Center in Hillyard. He saw this individual for six months."

Per a Psychological Evaluation in 1/00, it was noted: "Mr. Botner had spent varying lengths of time in juvenile detention prior to his incarceration as an adult. He did not appear to have had sex offender treatment as a juvenile, but records from that time were not available during this evaluation. His Risk Level III Notification document indicates that it was unknown if Botner ever participated in any sexual deviancy treatment while incarcerated as a juvenile." However, the report indicated that "generally incarcerated youths are required to participate in offense specific treatment programs while housed in JRA facilities."

In his PSI from 1992, Mr. Botner reported that he had received drug and alcohol treatment as a juvenile. However, he has also reported that he continued to abuse substances even while in treatment. "They made me take "Daybreak." I was using then too. I was in juvenile and they never UA'd me.

One third of the program was inside juvie, then the next third you got out from the program, then the last third you were on the streets but you had to come back once a week to spend the night.”

As an adult, his WDOC sentence start date was 8/13/92. He was eventually released from prison on 4/2/01. During his incarceration in the WDOC, he received several infractions, including ingesting drugs (Marijuana) and fighting. He worked in other institutions and attended school, obtaining his GED.

He started his incarceration at Clallam Bay Correctional Center. In 1993, Mr. Botner was placed in Administrative Segregation; he claimed that he had testified against another inmate who received the death penalty. In 1/94, he was transferred to McNeil Island Correctional Center. In 1995, he was involved in a fight with another inmate and hit one of the correctional staff with a glancing blow. In 5/97, Mr. Botner was apparently found guilty of drug trafficking, placed in Administrative Segregation. Consequently, in 6/97, he transferred to Washington State Penitentiary for close custody and in 7/97 he was placed in protective custody due to his claim of threats culminating from inmates. He remained in protective custody. As of 8/99, he had taken no “augmentive programs and state[d] he is not trying to participate in chemical dependency counseling despite that program being recommended.” He transferred to Twin Rivers Correctional Center (TRCC) in 9/99 and he began orientation for the Sex Offender Treatment Program (SOTP). By 5/00, he had completed the intensive outpatient chemical dependency treatment. Mr. Botner eventually completed approximately 17 months of sexual deviancy treatment at the SOTP. He entered the program on 11/9/99 and finished the program on 3/29/01.

Per a 1/00 Psychological Evaluation (which occurred while he was in the SOTP), “he believed he was doing well, was participating in group and volunteering information. ‘My therapist is Mary Floyd. She commented on my work the other day. She said in group that I have started to open up, cuz when I first started group I wasn’t volunteering to say nothing, now I participate and ask a lot of questions. I think that going through treatment, with the skills that they will give me, I will be able to intervene before I get to that level where I would act out on that.’ ” (371-2)

His SOTP Treatment Summary indicated: "Treatment goals for Mr. Botner included emotional regulation skills, restructuring offence related cognitive distortions, understanding the factors that contributed to his sexual offence behaviours and develop a pattern of interrupting his offence cycle. Mr. Botner has demonstrated an intellectual understanding of emotion regulation skills. He is most consistent in using these skills when he has the opportunity to plan for difficult situations. When he experiences unanticipated problems, he does better when he is coached about what skills to use. The emotions he has the most difficulty managing include anger, frustration, rejection and fear. Mr. Botner has demonstrated an improved ability to recognize his antisocial attitudes and resulting behaviours. He has demonstrated the ability to change his antisocial attitudes into more prosocial attitudes, as with his other skills, he is somewhat inconsistent when he is emotionally dysregulated. Mr. Botner has some difficulty recognizing the early stages of his offence cycle. As with his emotion regulation skills, he is best able to outline and anticipate his offence cycle when he is given external structure. At times, he benefits from help with problem solving and prioritizing his problems. He tends to be impulsive and looks for short cuts to meet his goals...In summary, Mr. Botner has participated well in treatment. He has demonstrated an increase in skill level in all goal areas. It is important to note however, that Mr. Botner's ability to generalize these skills in a new environment with unfamiliar people is untested. He needs rehearsal of these skill areas on an ongoing basis when he is in the community especially during the early stages of his transition...He has participated well in treatment. He has demonstrated an improvement in the targeted areas however, needs ongoing rehearsal of these skills...Throughout treatment, attention, has primarily focused on Mr. Botner's offenses against his adult victim. (478-9)"

However, the Treatment Summary also indicated: "It is important to note however, that Mr. Botner's ability to generalize these skills in a new environment with unfamiliar people is untested." (479) The summary also pointed out that the dynamics of Mr. Botner's sexual offending cycle remained unclear and that, in particular, he professed to be unclear as to the triggers of his rape fantasies.

It is noteworthy to review some of the risks for future sexual offending identified for Mr. Botner in his Treatment Summary from SOTP. These included: isolating himself from establishing a prosocial peer group; making impulsive decisions based on how he is feeling without assessing

consequences or options for actions and sacrificing long-term pay offs for immediate gratification; using drugs or alcohol; pushing boundaries regarding his supervision, work expectations or in relationships; engaging in any criminal behavior; rigid thinking (specifically seeing only the extremes of situations, not seeing perspectives other than his own; and/or using aggression to solve problems by [being] passive aggressive, threatening or physically aggressive.

His SOTP therapist noted that "although he has a history of multiple substance abuse, he denied having a problem with substances and has refused opportunities for treatment in the institutional setting."

As noted, Mr. Botner received seven major infractions during his initial incarceration (e.g. 1992-2001). His infractions included failing to perform, fighting, a dangerous infraction, an assault, possession of controlled substances and possessing an item greater than \$10 that doesn't belong to him. Mr. Botner remained major infraction free from 11/97 until his release.

Mr. Botner was released from his initial incarceration in the WDOC on 4/2/01.

#### **Relevant Behavior in the Community after Incarceration:**

Upon his release from WDOC, Mr. Botner met with B. Woods, his Community Corrections Office (CCO), and reviewed his conditions of probation/supervision. He was housed at the New Washington Apartments (NWA) and was required to actively seek and obtain work. He started the Community SOTP Relapse Prevention (SOTP RP) Treatment Group lead by J. Bradford on 4/12/01; at some point, he became involved in individual meetings with Mr. Bradford as well. In 5/01 (81), "When asked about his crime and How he felt about it, P said it was wrong. P did not show any concern for what he did nor did he for the victim. P felt that what he got for his crime was fair."

By the end of 4/01, his group had noted that he was doing "a very poor job of job searching" and that "He doesn't appear to be a fast learner or a person who can adapt easily." He eventually found a telemarketing job but within a month, "the telemarketing job did not work out" and Mr. Botner was again unemployed.

An early issue for Mr. Botner was related to what constituted "pornography" for him. He requested access to "soft pornography" to "help him" in his arousal when he "chooses to masturbate." A discussion between his CCO and Mr. Bradford followed; per the Chronos, "He was in agreement as well that P should avoid the porn shops and could find something appropriately sexually stimulating at Hastings/Suncoast videos, etc." (87) Typically, during this period, Mr. Botner's reports to his CCO read "...related no other deviancy concerns, high risk situations or problems with his relapse prevention plan." Shortly, after this, he reported that he "masterbates (sic) several times a week, *but usually not daily.*" (88; emphasis added) He found another telemarketing job but quit that to take a job as a dishwasher at a restaurant. In 7/01, per Mr. Bradford in the chronos, "Did receive a call later at home on my cellphone indicating that he had been pulled over by police several blocks from CJC and accused of loitering around a warehouse in the area. P states that he told the officers that they were wrong and that he had been in group during that time." Thus, there was some early evidence that he might be engaging in "cycle" behaviors.

Mr. Botner was scheduled for a polygraph which he took on 7/23/01. Deception was indicated on the question "Have you committed any criminal sexual acts with anyone of any age or gender since 4-2-01?" The Chronos indicated: "During the polygraph interview he disclosed that he had been sexual with a 28 year old woman and had not disclosed to group or his CCO. P continued to deny in group that he had had sex with anyone other than this woman. He was questioned re: spanking and hitting this woman on the buttocks. P Stated that his was playful, no anger was involved and they were playing with each other, not fighting or attacking in any way and that this was pleasurable to her. He also took issue with the polygrapher who indicated that P was excited and aggressive in his sexual behaviors. P related to group that he was aware of how anger can be dangerous for him. And that the polygrapher had misquoted his statements, that P was not aggressive towards her. The issue of criminal sexual acts was discussed and P denies any and stated that he does not know why that showed up as deceptive. The fact that he had not disclosed to the CCO and group prior to having sex with the woman may have played a part." (90) Thus, there were early signs of possible deception on Mr. Botner's part in relationship to sexual behavior.

In 9/01, his former therapist at TRCC contacted Mr. Bradford regarding: "An inmate at the twin rivers institution reported today that he had information that Shawn bother 964089 was making comments to others that

he was tired or following rules and living under restrictions, that he was associating with an antisocial peer group and that he was drinking. Then information came from an offender in the community to another at Twin Rivers." (91) A few days later, Mr. Botner had the first of what would be a number of drug/alcohol violations. He appeared at his residence "smelling of alcohol and was told that he could not spend the night...P disclosed to the group that he recently got drunk with an old friend and also smoked pot...P did not feel he violated anything until he smoked pot. Also was unable, or unwilling, to verbalize the buildup to the drinking/pot use." At this time, he received a warning that further violations of that type would lead to a formal violation. (92)

On 10/17/01, "P reported as instr for random UA. He admitted to using the last Fri.10/12/01 and to breaking his curfew on 10/13/01- stayed out late with his brother. P was arrested for viols. He tested pos. for THC on 09/17/01 and violating curfew on that date he signed a stip agreement, whereby he admitted to the viols and agreed to comply with the curfew and to no longer use a non-prescribed controlled sub. He again used THC and violated the stip. agreement, as well as not complying with sex off. tx. --by using THC and alc." (93) Mr. Botner admitted to the violations and agreed to serve 60 days jail. He served 40 days in jail. In 1/02, he was evaluated and recommended for CD relapse treatment; "P was not excited about that, but said he would do it if he needed to." Around this time, LSI scores indicated that he was at moderate to medium/high to high risk to reoffend. (94)

At the end of 1/02, Mr. Botner participated in another polygraph. He was "non-deceptive" to at least three questions. However, the evaluation indicated "that P has entered one particular sex shop on a weekly basis, has used the video booths and has purchased pornographic materials. He advised the polygrapher that he had no restrictions on use of porn." Mr. Botner disputed this reported self-admission and claimed that polygrapher "misunderstood" and that he had not gone to a porn shop. (95) Subsequently, he failed to attend SOTP RP group on two consecutive weeks.

H resumed attending treatment. By 5/02, he had apparently completed some type of treatment program. However, in 7/02, he missed two consecutive SOTP RP groups and then was late for a third. Per the chronos: "...occasionally you could see the he was still hanging onto old negative process and or ideas. He tried to defend what he called his best friend, who

was recently placed in jail. The group encouraged him to move on if the friend didn't want to improve himself. We encouraged him to move upward in life and to go with others who are moving in the same direction. I saw a lot of the old drug life style in him and the fact he will defend it to the end... He needs to make a lot of changes and accept that he needs to move in different directions. He hasn't fully cleared the slate." (98) That month he passed a polygraph. However, there was a mention in the report of "hardcore pornography."

In 8/02, "P also indicated that he had a physical altercation (fight) with another male employee at work whom he said was badgering him. P. states he actually grabbed the man, slammed him into the wall and hit him once with his fist. They had a meeting with the main manager who warned both of them to not be involved in fighting behavior at work with threat of losing their jobs. P indicated he normally handled his anger appropriately at work but on this occasion didn't." (98) This was the first instance noted of Mr. Botner losing his temper and engaging in assaultive behavior.

In 9/02, "P indicated he had been dropped from the CD class at CJC for missing too many groups. P admitted missing groups but stated it was always for work and work came first." (99) However, that month, he disclosed that he used THC last Sat. He submitted UA sample and signed stip. agreement, whereby he agreed to attend 10 AA/NA mtngs per week, not miss any sex offender tx groups and moved curfew to 8:00 p.m." He also claimed that he had mistakenly consumed crack cocaine in tea and "chose to take MJ in order to mellow out from the crack." Mr. Botner claimed to understand how illicit substances were part of his offending cycle but "Discussed with group that he planned to smoke pot when off supervision recreationally. Group confronted this and the fact that P indicated he was not smoking pot to avoid feelings, which he really is doing. He did express a good deal of anger..." (99) The next week, his CCO discovered that Mr. Botner no longer worked at his previous job site. He was missing for approximately one week before he was arrested for probation violation. (100) "...he said he had a bad day at work on 09/13/02 and felt there were too many rules to follow--curfew/AA/NA meetings etc...So he decided to take a break. He claims that he stayed with a few friends and acknowledged using THC and consuming alcohol. I met with him in the SCJ and reviewed the viols. He admitted to the viols and agreed to serve 150 days jail." (101)

In short, within the first 18 months that he had been out of prison, Mr. Botner had four drug/alcohol violations and had been sentenced to two jail terms for probation violations. He was deceptive and had skipped treatment programs on several occasions.

Mr. Botner was released from jail in 12/02. Mr. House was now his assigned CCO; Mr. Botner was reportedly not happy to have a change in CCOs. Within one month, per the chronos, "Received call from P's employer, she states P appears under influence of Meth and has bragged to others he has been using and has a way to hide his consumption of alcohol and drugs from DOC. Went to Frankie Doodles, instructed P he was being taken to Fisher's for a polygraph for using drugs and alcohol. P admitted to using one time both meth and alcohol. After poly p admitted to using meth at least 4 times with friends smoking meth all night on one occasion, using alcohol with friends, would not disclose where or with who he was using...Received call from employer, p was seen throwing a meth pipe in the garbage while leaving Frankie Doodles. Went back and retrieved pipe from mgr. Went to P's room did room search found several porn magazines." (102) Mr. Botner was apparently jailed in the SCJ from 1/03 to 5/17/03. However, after his release, he delayed reporting to his CCO and provided false information about who/where he was staying. He failed to attend SOTP RP several times and failed to register as a sex offender. He was not arrested until 6/17/03; thus, he was a fugitive for approximately one month. "A search of his property subsequent to his arrest produced a white crystalline substance which tested positive for meth. P also admitted to using meth the last 2 days and as recently as today. P has strong attachments to the people at the house...There were several children in the home as well." (103) It was noted that Mr. Botner had ended "SOTP aftercare;" his program end was due to attendance completion, meaning he attended, but *did not successfully complete all objectives.*" (103; emphasis added) Mr. Botner was found guilty of Failure to Register as a Sex Offender.

Mr. Botner was jailed in the SCJ for approximately two months. This constituted his fourth jail term since his release from AHCC.

Within two weeks, per the chronos, "P said he needed to report he just provided CJC a dirty UA for meth. P said he used meth over the labor day weekend and ended either Monday night or Tuesday morning, but it kept him up all day and night. P then started rambling on about not wanting to do

work crew at CJC and I might as well violate him now. P was taken into custody for poss/consume methamphetamine on or about 09/01/03." (105) "P pled guilty to using meth. P agreed to 30 days conf, enter and complete 120 day CJC, complete CD eval and rec tx." (105) When he was released from confinement in prison at Airway Heights Correctional Center (AHCC), "Asked P if he planned on using drugs again, and he stated he could of used meth right after being released from AHCC today, thinks he may be using as early as tonight. Told P he needed to obtain a CD eval and recommended tx, P said it would do no good because he's done it all before and he will continue to use drugs." (105) Mr. Botner failed his CD evaluation and went "missing," failing to report since 9/25/03. He was not apprehended until 1/04 (e.g., he was a fugitive for at least three months).

Mr. Botner pleaded guilty to probation violations; at this time, he also pleaded guilty to the charges of Assault and Robbery noted previously. When he committed these new violent offenses, he was also violated for failing to report to the Department of Corrections as directed and failing to make minimum monthly payments towards his financial obligation.

Mr. Botner was apparently returned to AHCC. He was not assessed for sexual deviancy treatment during this period of incarceration. At this time, his file material reflected a long history of abusing controlled substances and alcohol. He admitted that he was drinking alcohol and smoking marijuana prior to his incarceration. He was also using methamphetamines. A chemical dependency assessment completed during this period of incarceration indicated that he was chemically dependent and in need of substance abuse treatment. He was subsequently placed on a waiting list.

In 7/04, he was again reviewed by the ESRC and re-determined to be a Level 3 sex offender. (107)

During this period at AHCC, Mr. Botner committed one major infraction during this period of incarceration for failing to perform in 8/04.

In 10/04, in anticipation of his release from AHCC, a meeting of various individuals was held. "P states that he has no plan and states that he is not really amenable to any treatment. P is honest about his feeling towards supervision... While in prison he has done virtually nothing to better himself. He has worked but did not participate in CD counseling, which would have addressed his serious drug and alcohol problem. He initially stated that he

would not participate in CD at AHCC but following our meeting he indicated to his counselor that he would. Attempts will be made to get him into the approx. 3 month long program... He initially appeared to team as resistive to efforts to develop a structured plan but later gave some indication that he would consider a plan which included CD counseling. If he follows through with this it will be an indication that he internalized the intent of the team.” (108) It was also noted by his new CCO (Mr. Bromps): “P had a very poor attitude and stated he hadn’t done anything during his incarceration time. P also indicated that he wasn’t going to do CD TX and that he would rather do violation time then do CD TX in the community. Advised P that he would be expected to do CD Tx if it wasn’t done while in custody and that he needs to have a better plan then just doing time and having a possible address...” (109)

In 10/04, Mr. Botner was admitted to the WDOC intensive inpatient treatment. He completed the WDOC intensive in-patient substance abuse program in 12/04.

Upon his release from AHCC in 1/05, Mr. Botner was to be supervised on Community Custody for a standard range of 9 to 18 months; he also had some remaining supervision for his Failure to Register. His CCO was now R. Bromps, also based in the Spokane DOC Office.

Mr. Botner was released from AHCC on 1/31/05 and did not report to Mr. Bromps for several days. At that time, his UA was positive for methamphetamine. (110) He was refusing approved housing; it was noted, “P definitely has some anger issues and becomes challenging when he hears things he doesn’t want to hear.” A warrant was requested within a few days for failure to report and failure to report current address. However, Mr. Botner remained a fugitive from 2/05 until 4/11/05. At that time, he was arrested by the fugitive task force. He was living with another former inmate also on supervision. No one would tell police how long Mr. Botner had resided at that residence. The inmate’s “mother told us that P had been staying at their residence for the last 3 months. She showed me his room in the back of the house. There were 4 long kitchen knives and a club hidden in P’s bed. In a backpack next to his bed was a pair of bolt cutters and a plastic bag full of rubber gloves. I also found glasswear commonly used to smoke crack or Meth. It was in a small box on the shelf next to P’s bed. There was also a few pornographic pictures located in a folder on the floor next to where P slept.” (111) Mr. Botner was put in contact with Mr. Bromps and

told the CCO that his failing to report for the intake was the fault of the CCO for "not doing my job." (111)

Mr. Botner did plead guilty to violations and accepted the ordered sanctions, including 60 days of confinement. (112) He was released again in 5/05. Within a month, he had been kicked out of his approved residence for not completing work duties; he also reported that he had used THC and Meth. This was addressed via stipulation. Mr. Botner remained homeless after this, reportedly camping by the Spokane River. In 6/05, he again tested positive for substance use (THC). By 7/05, he had failed to report and later that month provided a diluted UA, positive for Meth. (115) He was terminated from the CJC for failure to report; he had failed to attend his cooking/nutrition and stress/anger management classes. (116)

Mr. Botner was a fugitive/absconder from 7/05 to 11/14/05. He was arrested by the SPD; he had a large knife on his person.

On 12/01/05, a Hearing was held at the Benton County Jail (BCJ). Mr. Botner was found guilty of: 1) Failure to Report on 7/5/05; 2) Failure to be available for polygraph exams since 7/5/05; 3) Failure to be available for UA testing as of 7/5/05; 4) Failure to Report to WDOC his current address location as of 7/15/05; 5) Failure to Cooperate with the stipulated agreement dated 6/10/05, as of 7/5/05. He was sanctioned to up to 98 days at the BCJ. When released, he failed to report until the following day. He had reportedly completed CD treatment while in the Violator's Program. By 2/06, he had failed to report to attend open booking for CD. One month after his release from BCJ, he reported that he had relapsed and used methamphetamine. He was not disciplined apparently and some time after this he began attending weekly outpatient CD treatment. (121) However, by 4/06, it was noted that he appeared to be making little effort to find or obtain full time employment.

On 5/1/06, he presented for a polygraphy examination. Per the Chronos, "P admitted to Dr. Orr during the pre-test interview that he had consumed alcohol approximately a month ago (whiskey), and had purchased alcohol for 18 year olds. Additionally, P reported that he had stolen bikes, computers, and other items in that past 1.5 years. P refused to tell Orr any details. I then interviewed P, who revealed that 1 month prior to his arrest on 11-18-05, he had broken into homes and stole 2 computers which he sold to buy methamphetamine and marijuana. P refused to provide me any details

about the crimes, and said he would rather be violated by DOC, than to send himself to prison for admitting to new crimes." Mr. Botner was arrested and detained at the Spokane County Jail for 1) failing to obey all laws by committing theft 2) consuming alcohol. (122)

Later in 5/06, a hearing was held at the BCJ. Mr. Botner was found guilty of: 1) Failure to Obey All Laws by committing a theft 10/05 (discovered during Polygraph and 2) Consuming Alcohol 4/1/06. He received a sanction of 60 days. He was released approximately one month later in 6/06. (123)

On 7/7/06, the Spokane police received a report that Mr. Botner might be stalking an employee of an Adult entertainment shop and planned to "ravage her." Per a Field Interview Report from the SPD, a variety of items were found on Centennial Trail "just west of the Gonzaga Law School," including "Misc. woman's clothing, pornography, Wigs and sex toys he found in the bushes...[an officer] found a black notebook with a threatening message hand written inside. The message was talking about dressing up as a woman going into a porn store and assaulted a clerk and then kidnapping her, sexually assaulting her and then killing her and dismembering her body...There were a lot of nude pictures and lubrications as well as a handmade dildo." (1454) The threatening note was inside a duffle bag with the name Shawn B. on the side of it; inside the duffle bag was an envelope with the name Shawn Bower on it: "Shawn Bower is an AKA for (S1) Shawn Botner." The handwritten message stated:

"Go in dressed up as a woman, get all the items you wish, smash clerk in head with blackjack and lock the door, tie clerck (sic) up and tape mouth shut. Get all money and novelty items that you desire. Get clerk's keys and load all items into car. Load clerk last. Take car and go to park and have your way with the whore. Mags, Novelties, Sexy Clothing, Whole Maniquin (sic), Take clerk to river and continue to have way with take car to remote area and completely house (sic) inside with gas and set on fire, wipe down outside of car for fingerprints. Dismember body with saw, go buy cheap saw." (1456)

The report also noted that "who ever has been staying in the bushes along the centennial trail has been hiding in bushes masturbating at people walking along the trail...Mathews showed me at least 5 places the suspect had either sat down or stood up and masturbated by the trail." In addition, "Mathews showed me a milk jug which had been cut open. It appeared the suspect

possibly Botner had been masturbating and ejaculating in the milk jug.” (1454)

Three weeks later, Mr. Botner was stopped by the SPD. Per the Field Contact from 7/31/06, Mr. Botner “was riding a bike and threw a hammer. He was wearing a bra. He had a dildo, French maid’s costume, blond wig, porno pictures...Had condoms, rubber gloves, rope.” (1463) Per a Field Interview Report, he was noted to have an unopened dildo, a bag full of pre-worn women’s panties, and “a folder of pornographic pictures of adult women having intercourse (penetration of the vagina). All photographs focused on the vaginal area of the females involving an extremely large penis.” (1452) He commented to the officer who had stopped him “that he got caught last time by his fingerprints, as we looked at his rubber gloves. Bower told me that I would be surprised at what can be traced back to you, referencing forensic evidence.” (1452) His CCO, Mr. Bromps, “Received voice mail message from SPD advising me that they were out with P in the area of W. Gordan and N. Washington at 2:25 am. They advised P was in possession of what they believed to be a rape kit and that P had advised them he was a violent sex offender and the only way he was caught in the past was through finger prints. P had rope, rubber gloves, sex toys, and other materials. P was not arrested.” (124)

After this Mr. Botner did not return to his residence except to pick some belongings; he failed to report to DOC as required. Mr. Bromps attempted to secure an arrest warrant and contacted the Washington AGO and the DOC regarding a possible ROAR process. (124-5) In early 8/06, Mr. Bromps “Went to SPD and met with Det. Kendall and Toni with Crime analysis regarding officer contacts on 07/07/06 and 07/31/06. Obtained field interview Rpt from 07/07/06 with outlines P’s personal propt. Located on the centennial trail. Located was pornographic materials, sex toys, female under garments, and a note which outlines a plan to assault a female worker at an adult entertainment store, restrain her, rob the business for money and various sexually explicit materials, kidnap the clerk/worker, take her to an unspecified location, sexually assault her again, and then dismember her with a saw.” (125) Mr. Bromps “determined that I would make contact with as many of the adult entertainment businesses as possible and advise them of the possible threat and plan P has allegedly planned. Met with SPD officers who work the plaza and the STA security officer regarding P’s warrant, history of violence, and alleged threats to accost and sexually assault a female worker at an adult entertainment establishment.” (125-6)

Mr. Botner stopped into a shelter on 8/11/06; he was advised that there was a warrant for his arrest and he immediately left the establishment. Later that day, Mr. Botner was observed in Riverfront Park by a couple of his co-workers and that they contacted the SPD and Mr. Botner was subsequently arrested on the outstanding warrant. It is notable that he was arrested (at the carousel) at Riverfront Park, a site of his previous sexual assault, and was on a bike at the time. (126)

A Community Custody Hearing was held on 8/23/06 at Spokane Community Justice Center/Benton County Jail teleconference, regarding the alleged violations of the conditions of supervision for Mr. Botner. The Department of Corrections alleged that the following violations were committed: 1)Failing to report as directed since or about 7/25/06; 2) Failing to obtain prior approval for living arrangements/residence location since or about 07-28-06; 3)Failing to obey all laws by failing to register a change of address with law enforcement since or about 07-28-06; 4) Frequenting areas where minors are known to congregate on or about 08-11-06 (he was found to be frequenting Riverfront Park near the carousel on 08-11-06, which is an area of the park where young people and children congregate) and 5) Failing to make payments toward Court ordered legal financial obligations since or about 6-09-06. Per the non-contested hearing, Mr. Botner pleaded guilty to all 5 counts and the hearing officer found him guilty of each count. (1522-1526)

The Community Custody Hearing Report stated:

“CCO Chimienti reported that Mr. Botner is an RMA/Level III sex offender who has demonstrated a high propensity for violence with little or no regard, remorse, or empathy for his victims or those he victimizes. He has made little if any effort to reduce his risk to the community by taking advantage of sex offender treatment. His criminal behavior began at age nine and he has been incarcerated, on supervision, or on abscond status ever since...According to CCO Bromps, Mr. Botner’s likelihood to re-offend is great.

Department of Corrections has exhausted all available resources in providing options and alternatives to assist Mr. Botner in redirection and reintegration into the community. He has been provided housing, food vouchers, bus passes, countless treatment opportunities, and has

managed to take full advantage of community resources without making any personal changes in his lifestyle or conduct. He lacks pro-social skills and manipulates the system in order to avoid accountability, which emphasizes the concern for his behavior.

Of great concern, with regard to Mr. Botner's adjustment and the safety of the community, is detailed in Spokane Police Report # 06-201829, which documents the following information: On 07-07-06 a Gonzaga University Security Officer located a black duffle bag along the Centennial Trail. The bag contained women's clothing, pornography, wigs, sex toys, a homemade dildo, nude pictures, and lubricants. Also found was a black notebook with a threatening, hand written message, detailing a plan for an assault and murder. The document talked about dressing up like a woman and going into a pornography store, assaulting the female clerk, kidnapping her, sexually assaulting her, killing her, and dismembering her body. The duffle bag had the name Shawn B. on it and inside it contained an envelope with the name of Shawn Bower which is an AKA used by Shawn Botner.

The Gonzaga University security officer, who located the above mentioned black duffel bag, showed police at least five places along the trail where an individual had been staying in the bushes and masturbating while people walked by. The individual had either sat down or stood up while masturbating into a cut off milk jug which was also located and contained ejaculate.

Another incident occurred on 07-30-06, which is detailed in Spokane Police Report #06-229171. It states Mr. Botner was riding his bicycle at 2:00 AM and was stopped by officers because he did not have a headlight or rear reflector. When police contacted him Mr. Botner disposed of the hammer he was holding between two parked cars. Officers observed Mr. Botner to have 'a bra and breasts' and he was wearing a stocking over his head. In his backpack officers located a black French maid's costume, a blonde wig, photos of adult women having intercourse penetration) and woman's underwear. Also in the backpack were a black glass case, rope, rubber gloves, and condoms. Mr. Botner said he was on his way to his Grandfather's house.

Mr. Botner made the statement to officers that he got caught the last

time because of his fingerprints, thus the rubber gloves.”

Per the Hearing officer, “Mr. Botner said that in the last year he has made significant improvements...He said that the Department of Corrections has helped him a lot and he now has his drug issues under control. He said he needs mental health counseling as he suffers from depression and suicidal thoughts...Mr. Botner spoke directly to the threatening writings that had been located in his backpack. He said that they were appropriate and something he learned to do while in prison in sex offender treatment. He said that he was taught to write out his fantasies on paper...Community Corrections Specialist Jack Bradford, who facilitates a community based sex offender treatment group, was asked to speak at the hearing with regard to Mr. Botner’s claim that these types of writings are appropriate for someone such as himself. CCS Bradford countered that these types of writings are very inappropriate for someone such as Mr. Botner who resides in the community. He said that the document did not include any intervention strategies which are necessary for someone like Mr. Botner. He remains a great threat to the community.” (1524-5)

The Hearing Officer concluded: “I did not find Mr. Botner’s explanation regarding the appropriateness of the threatening writings to be credible.” He wrote: “Mr. Botner is a Level III sex offender who is clearly acting out in deviant ways. The items located in his backpack and on his person by police, in conjunction with the threatening writings, appear to me and other professionals to be those of a person who is preparing to put thought into action. The details in the police reports lead me to strongly believe that Mr. Botner remains a grave threat to the community.” (1526-7)

It was also noted in the hearing report that Mr. Botner could not return to the sex offender class conducted by Mr. Bradford after his release from incarceration: “CCS Bradford said that Mr. Botner is not an appropriate candidate for the program.”

The Hearing Officer noted that Mr. Botner indicated “his acknowledgement that the items located in his backpack, to include the disturbing writings, belonged to him.” Mr. Botner was sanctioned to 180 days confinement with credit from 8/11/06.

### **Past Psychological and Psychiatric Evaluations:**

In his PSI from 1992, it was noted that Mr. Botner appeared deceitful. In addition, "His actions were completely impulsive and obviously very violent...Mr. Botner is 19 years old. He now has four felony convictions. His criminal behavior began at the age of nine when he threw a rock off an overpass, which struck the windshield of a passing vehicle. Mr. Botner is extremely fortunate that at the age of nine he was not looking at some type of homicide conviction. Mr. Botner continued his rock throwing ways at the age of 13 when he threw a rock at a passing bus....He appears poorly motivated, immature, and has shown he can be very impulsive and violent. His victims are often selected randomly. Mr. Botner has many hurdles to overcome before his release from incarceration." (283)

An MMPI-2 was administered to Mr. Botner by the WDOC in 8/92. (690) The MMPI-2 provides a general measure of dimensions of personality, psychiatric symptomatology and information about validity and impression management. Since no computerized interpretation was available for the 1992 MMPI-2, Mr. Botner's MMPI-2 available scales were also entered into the MMPI-2 Adult Interpretive System, a computerized interpretive program developed by the R. Greene, Ph.D. and Psychological Assessment Resources (PAR), to obtain an additional interpretation of his responses to the test. A particular value of this scoring program is that it "deconstructs" the computerized interpretation typically provided by reports such as that of Pearson/NCS; this allows an evaluator to determine the basis for the interpretive statements typically offered by other reports.

Per the PAR interpretation, from a validity perspective Mr. Botner was identified as "admitting personal and emotional problems, requesting help with these problems, and is unsure of his own resources for dealing with them." There was some possibility that he had some motivation to over-report psychopathology.

Clinically, Mr. Botner was particularly elevated on the so-called Psychopathic Deviate (Scale 4) scale; his score was approximately 2 standard deviations above the mean. The interpretation for this specific clinical scale elevation indicates, "He is characterized as angry, belligerent, rebellious, resentful of rules and regulations, and hostile toward authority figures. He is likely to be impulsive, unreliable, egocentric, and

irresponsible. He often has little regard for social standards. He often shows poor judgment and seems to have difficulty planning ahead and benefiting from his previous experiences. He makes a good first impression, but long-term relationships tend to be rather superficial and unsatisfying..." Mr. Botner is likely to experience little significant worry or social anxiety; he is not easily influenced by social standards and customs. He feels misunderstood, alienated, isolated, and estranged from others. He is lonely, unhappy, and uninvolved. He blames others for his own problems and shortcomings. He is often insensitive and inconsiderate in relationships and later will verbalize regret and remorse for his actions. This lack of concern for others or anxiety about the opinions or beliefs of others appears to drive his antisocial tendencies. In addition, "He is typically self-centered, dissatisfied, demanding of attention, complaining, and generally negative and pessimistic. He may use his somatic complaints to control and manipulate others. The prognosis for either psychological or medical intervention is guarded...He is highly skilled at frustrating and sabotaging the help of others and will often try to 'shop' for physicians and/or therapists." Further, "He is suspicious and hostile. He feels as if he is being mistreated, or he is hypersensitive to the reactions of others. He often blames others for his difficulties...He may be experiencing serious psychopathology that includes confused thinking, distorted perceptions, and other psychotic processes. Difficulties in logic and concentration, impaired judgment, and the presence of a thought disorder should be evaluated." Finally, "He is likely to abuse alcohol and other substances. Behaviorally, he is extroverted, exhibitionistic, and impulsive. He has a tendency to seek out excitement and take risks... He perceives others as selfish, dishonest, and opportunistic, and consequently he feels justified in behaving in similar ways himself... He tends to have an unrealistic self-appraisal of his own abilities and self-worth. He resents demands being made of him."

Per the PAR interpretation, on Axis I, Mr. Botner's responses were seen as those of a person characterized by a serious mental illness such as Bipolar or Schizophrenic Disorder. His responses were ones indicative of Alcohol, Cannabis, and Amphetamine Abuse. On Axis II, his responses were seen as reflecting the presence of two predominant types of maladaptive personality traits including those associated with a Schizotypal and/or Avoidant and/or Borderline Personality Disorder.

Regarding treatment, persons who respond to the MMPI-2 as Mr. Botner are viewed as follows: "Prognosis for psychological intervention is usually

guarded...His prognosis is generally poor given the characterologic nature of his problems and his diminished motivation to work. Establishing a therapeutic alliance is very challenging because of the serious character pathology that is present.”

It is also notable that his Megargee classification (e.g. a classification of criminal offender subtypes by MMPI profiles) was that of Group Charlie. (690) Megargee has written that Group Charlie's 8/6/4 MMPI profile, with the means on all the clinical scales generally exceeding 60, suggests an antisocial misanthropic individual, bitter, hostile, sensitive to perceived insults, who readily lashes out at others. He found that Group Charlie was among the groups having the most extensive prior criminal records. They described themselves as the group most likely to resort to violence, and with the greatest amount of substance abuse. The data on specific drugs suggest a multiple-drug-use pattern, with Charlie ranking first or second in the use of alcohol, LSD, barbiturates, amphetamines, and cocaine, and third in the use of narcotics. Consistent with their misanthropic image, they were also assessed as being very socially withdrawn and as one of the most aggressive groups. Members of this group appeared to be composed of hostile loners. Group Charlie has a deviant, unconventional world-view and, although rigid, dogmatic, and constricted in thought, has failed to internalize -much less live in accord with- ordinary social values. In short, the CPI indicates considerable psycho logical and social pathology, along with minimal resources available for positive growth and improvement. Group Charlie had a relatively high rate of reincarcerations (30%). The most likely explanation for this pattern is that these men, given their backgrounds, were under close parole supervision and were sent back to the institution primarily for parole violations rather than new offenses. Megargee noted: “Those working with Group Charlie will be met with a suspicious, hostile attitude which is a reflection of the deep-seated anger and disturbance which in some cases leads to violent, antisocial acts. Programs for men in Group Charlie require a great deal of structure, with explicit consistent rules that are openly, firmly, and fairly administered to cope with their extreme sensitivity to insult or perceived injustice. Workers in such programs will have to persevere in the face of extreme initial resistance and lack of cooperation and interest. People in Group Charlie need to learn to cope with the stresses of community life without resorting to drug abuse or acting out. Although the prognosis for change is poor, the need for extensive personality reconstruction is great, a process that would require an extensive period of mental health treatment.”

According to the Substance Abuse Subtle Screening Inventory (SASSI) results from 3/96, his responses were "characteristic of individuals with a high risk of relapse." Further evidence to suggest problems with drug and alcohol abuse are that since his incarceration in adult prison he has been infracted for "ingesting drugs (Marijuana)."

G. Stoolant, a Psychologist 3, conducted a Psychological Evaluation of Mr. Botner in 8/99 at WSP: "He appeared to genuinely have no idea why he wants to rape or hurt women. In response to direct questioning, he stated that he did not rape his victim at the Adult Education Center on 2/6/92. He said that he had no idea why he stopped other than that he may have lust 'come to his senses.' He also appears to have some interest in looking into the causes and wherefores of these perverted wishes, but that interest appears closer to the intellectual, academic kind than to involve detectable personal/heartfelt desire to better understand and improve himself."

Mr. Botner refused Mr. Stoolant's request to take the Multiphasic Sex Inventory (MSI) designed to assess a wide range of psychosexual characteristics of the offender.

As part of his evaluation, Mr. Stoolant rated Mr. Botner on various risk assessment tools. The results:

"Minnesota Sex Offender Screening Tool-Revised (MSOST-R): This instrument based primarily upon static variables gleaned from file materials and a brief clinical interview produced a total score of +18 with a +2 on the RRASOR. The score +18 is unusually high and has prompted this psychological report. Of particular note are the predatory nature of his latest sex offense, the violence and the age range of his victims.

Level of Services Inventory-Revised: By way of information gleaned from the file and a brief interview this instrument attempts to bring together risk and needs information important for assigning levels of freedom and supervision to offenders and to offender treatment planning. According to this assessment Mr. Botner's score falls in the medium/high range for general criminal recidivism and needs to be addressed after placement in the community. His criminal history is poor education/vocational involvement, his interactions with authority figures, and his drug and alcohol involvement are noted problem areas here." (365)

Relative to his evaluation of Mr. Botner, Mr. Stoolant concluded: "At age seventeen he began having fantasies of raping and physically hurting women. In response to these fantasies, he committed his current crime, which included attempted rape and beating the victim unconscious, leaving her with a swollen, bruised neck and a broken nose. His violent sex fantasies continue to this date by his own report. Mr. Botner may very likely be correct when he claims not to understand what compels him to have these violent sexual fantasies and why he wants to hurt and rape women. He is in very serious need of substantial, reliable therapy. He also appears to be a very dangerous sexual predator at this point. *Maybe something short of continued lock up of some kind and intensive substantial therapy could help him not hurt anyone else, but I do not know what that would be.*" (emphasis added) (365)

In 9/99, at TRCC, P. Victor conducted a risk assessment interview and file review of Mr. Botner: "During his interview he stated that he experienced very violent fantasies and obsessions regarding the use of force and sexual activity with women when he was on the streets. He denied fantasizing or thinking about killing women." (391) Mr. Victor rated Mr. Botner a "3" on the RRASOR and a +17 on the MnSOST-R. (390)

Prior to his participation in the SOTP, Mr. Botner apparently completed psychological testing. Most of this testing did not appear to be in the available records. Per the available records, in 10/99, he completed the Personality Assessment Inventory (PAI). His responses to questions on that test were considered "reasonably forthright," suggesting results could be considered valid. He obtained elevations in a number of categories, with a clinical configuration of "a person who is anxious, tense, and ruminative, combined with impulsivity and the potential for acting out behaviors. The respondent likely fluctuates between these seemingly disparate personality elements, with periods of impulsive acts followed by worry and rumination regarding the consequences of his behavior. He may view himself as incapable of controlling his reactions to stressful circumstances. However, this pattern of impulsivity will tend to recur and may lead others to view him as hostile, and doubt the sincerity of his concern and desire to alter his behavior." (376)

In 1/00, C. van Dam, Ph.D. conducted a Psychological Evaluation of Mr. Botner at the request of the End of Sentence Review Committee (ESRC) to determine whether he met the statutory definition of a sexually violent predator. Dr. van Dam administered a number of psychological tests. "Mr. Botner cooperated on all testing and results' were considered valid. He obtained WAIS-III IQ scores in the average range, with a full scale IQ of 94, and some subtest scatter. For instance, he did extremely well on Arithmetic (12). The arithmetic problems are presented orally, responses are timed, and are expected to be calculated without benefit of paper or pencil. He would have obtained an even higher score had he both listened better, and not been so hasty in his responses... Both the WAIS-III and the WRAT 3 scores reflected an operational style of hasty scanning and incorrect perceptions that was consistent with his history, as well as with personality test results... this difficulty with correctly scanning for relevant cues seemed to be reflected or' personality testing and seemingly paralleled his social and legal difficulties..." She also administered the "The Rorschach Inkblot Test was administered, and results were consistent with his history, and with some of the responses noted on other tests. He tended to hastily, and frequently incorrectly, scan and understand the stimulus cards, suggesting a tendency to miss-important information despite trying...He tended to view things in ways that were not readily apparent or shared by others, suggesting a tendency to misperceive events...Test results also indicated a tendency to hastily jump to conclusions, with the subsequent responses being quite inappropriate. In combination with his poor impulse control, such a response style could result in behaviors that might at times be inappropriate...People who respond to the Rorschach cards as he did, often tend to misperceive events and to form mistaken impressions of people and what their actions signify. This is a serious adaptive liability for him that is likely to result in his frequently failing to anticipate the consequences of his actions and misconstruing what constitutes appropriate behavior. To the extent that inaccurate perceptions of people and events lead him to erroneous conclusions and ill-advised actions, faulty judgment is likely to undermine the adequacy of his adjustment. This confusion in separating reality from fantasy and the appropriate behaviors to which it can lead, appear to constitute a chronic and pervasive source of adjustment difficulties in his life. The extent to which he distorts reality is, in fact, likely to prevent him from maintaining adequate adjustment for any extended period of time in most situations. Most people with the degree of impaired reality testing he displays have difficulty managing basic psychological aspects of everyday living without assistance or supervision, and many will meet unusual criteria

for a psychotic degree of disturbance.” (375-377)

On the Hare PCL-R, Dr. van Dam gave Mr. Botner a rating score of 23, which suggested “some psychopathic traits.”

Per Dr. van Dam: “He did, however, endorse some homicidal ideation to “women. No one person (or) individual.” He admitted that these thoughts still occur approximately three or four times per month.” In addition, it was noted by the evaluator: “Mr. Botner demonstrated little evidence of empathy. He believed his former girlfriends would describe him as “a good guy” with a “good heart.” While he admitted pressuring women into having sex with him, and acknowledged ignoring their requests to use protection, he viewed their desires as inconsequential. He planned to change this pattern because of the risk to him of HIV. Other evidence existed demonstrating his lack of empathy for the plight of others. For instance, he described his relatives’ legal problems as “stupid stuff like drinking and driving.” He was concerned about his future, but expressed no remorse for the harm he has caused others.

In this evaluation, it was noted that “Despite this history of extensive drug and alcohol use, he believed he would not have a problem staying clean and sober in the future. ‘I never wanted to stay clean and sober before. If I set my mind to do something I can do it if I want to stay clean and sober I can.’” Dr. van Dam offered a Diagnostic Assessment of Mr. Botner, identifying the presence of a number of psychiatric conditions: (378)

“AXIS I:

Paraphilia NOS: Mr. Botner’s criminal history, and admissions of continued (albeit less frequent) rape fantasies are consistent with this diagnosis.

Sexual Sadism: Based on his behavioral history, he would appear to meet the criteria for’ this diagnosis. He continues to experience thoughts of hurting women, which parallel his instant offense and suggest these thoughts occur in a sexually violent context.

Drug and Alcohol Dependence in temporary remission in a controlled setting: Mr. Botner has provided different reports regarding his prior use and/or dependence on various substances; By all accounts,

consistent with SASSI test scores, he was heavily involved in substance use prior to his incarceration. Further attesting to this dependence is his apparent continued drug use after his incarceration.

AXIS II:

Antisocial Personality Disorder: Mr. Botner has an extensive childhood history of behavior that fails to conform to societal norms. He has continued to show a disregard for others, behaved impulsively, and demonstrated little remorse. He meets criteria for this diagnosis.

Personality Disorder NOS: Mr. Botner meets the criteria to be diagnosed as having a personality disorder with borderline features.

As part of her risk assessment relative to Mr. Botner and his potential for sexual reoffending, Dr. van Dam reported RRASOR and SORAG scores; this latter score indicated that Mr. Botner had a high risk of violent interpersonal behavior. Dr. van Dam also identified that she would score Mr. Botner higher (relative to Mr. Stoolant's rating) on the MnSOST-R. She also noted: "A number of other items should be examined to better understand the potential risk Mr. Botner presents. He began acting out criminally at an extremely young age, which is directly associated with a greater likelihood of subsequent violence...Mr. Botner's frequent mental rehearsals of rape, numerous similar attacks he referred to as purse snatchings, and two identified crimes suggest a pattern with increasing intensity and danger. Such past behavior cannot be ignored~ when trying to predict future behavior...His difficulty in correctly understanding information would be exacerbated by the use of substances, which he naively believed to no longer be a problem simply because he wishes to stop...Mr. Botner endorsed experiencing homicidal ideation towards women, and ongoing rape fantasies. He described managing conflict with violence and/or extortion. Mr. Botner has only recently begun the Sex Offender Treatment Program. While he reports being highly motivated to succeed in the program, his sexual deviancy and violence, in combination with his perceptual difficulties, *appear too deeply entrenched to rapidly benefit from therapy.* (emphasis added) Ongoing extensive treatment, with efficacy measured by plethysmograph data as well as extensive psychological testing and clinical interviews by those not treating him, would help at some later date to better determine whether any change has

occurred in risk he might present to the community. At this point, however, he would be unlikely to manage safely in a less restrictive environment.” (380)

Dr. Van Dam concluded her evaluation by stating: “Based on the information available for this file review, it would appear that Mr. Botner meets criteria to be considered for civil commitment.” (380)

Per the SOTP Treatment Summary, “This report consists of several risk assessment instruments designed for prediction of sexual recidivism with a sex offender population. They include Quinsey’s Violence Risk Assessment Guide (VRAG), Epperson” Minnesota Sex Offender Screening Tool-Revised (SOST-R) and Hanson and Thornton’s STATIC 99. While all of these risk assessments have undergone some degree of scientific development and validation, at this time, none of them should be viewed as conclusive. None of them have been specifically validated with a Washington state population. These risk assessment tools are primarily based on static factors. Andrews and Bonta’s Level of Supervision Inventory-Revised is included to address dynamic risk factors and criminogenic needs....The VRAG provides an assessment of the probability of violent recidivism over a period of 10 years. In 1988, Quinsey and colleagues introduced the use of an alternative scoring procedure for the VRAG. Rather than using the Psychopathy Checklist-Revised (Hare), they developed the Childhood and Adolescent Taxon Scale (CATS) as a statistical substitute. On this assessment (the VRAG with CATS), of offenders scoring similarly, approximately 82% reoffended in the 10 year follow-up period...The SOST-R includes both static and dynamic variables related to sexual recidivism. Sexual recidivism is defined as a new arrest for a sexual offence within six years of release from prison. The SOST-R was defined with a group of offenders comprised of rapists and extrafamilial child offenders. As defined by the SOST-R, Mr. Botner’s risk is assessed as *very high*...The STATIC-99 gives estimates for both sexual and violent recidivism. The outcome criterion for this measure is reconviction for a new sexual or violent offence in a 15-year follow-up period. According to this measure, 52% of offenders with similar scores to Mr. Botner sexually reoffended. Approximately 59% reoffended violently. This is *high risk*.” (emphasis added) (482)

In 10/00, R. L. Packard, Ph.D., L.P. completed an evaluation of Mr. Botner to determine whether he met the criteria of a Sexually Violent Predator as defined by RCW 71.09. He met with Mr. Botner on that month to conduct interviews and to update testing. [Dr. Packard was contacted at my request to obtain his interview notes and his testing results. He reported that the computer that had this information stored had "crashed" and, consequently, his opinion source material and rating scales were no longer available.]

Dr. Packard wrote: "From the records and interview data, it is my professional psychological opinion that Mr. Botner meets the diagnostic criteria for the following mental disorders...Sexual sadism, Posttraumatic Stress Disorder, chronic...Alcohol abuse, in a controlled environment... Hallucinogen abuse [and] Personality Disorder NOS, with Antisocial features." (384)

Dr. Packard noted: "During the interviews, Mr. Botner was remarkably open and disclosing about the characteristics of his sexual problems...He described the onset of sexually sadistic fantasies beginning when he was about 16 and continuing up to the time he has been in treatment at SOTP... He described how he took advantage of other adolescent females during the period, basically offering them access to food and shelter with the expectation that they would give him sex. During our interviews, Mr. Botner related that he now considers such behavior as coercive and wrong, even if not technically illegal." (384)

Per Dr. Packard's report: "Mr. Botner has continued to be troubled by deviant sexual fantasies, however he appears to have been taking advantage of his treatment opportunity to learn how to lower and manage them. As an indication of his commitment to this process, Mr. Botner related that it was his intention to remain in SO Tx and prison until his 'max date', even though he could probably have pushed for an earlier release. His treatment plan at this point presumes that he will be able to remain in SO Tx until his max date in April 2001." (385)

Regarding the issue of Mr. Botner's likelihood to commit future acts of sexual violence, Dr. Packard rated him on three of risk assessment measures, "specifically the Minnesota Sex Offender Screening Tool -Revised, and the Static 99, and the Violence Risk Appraisal Guide. *Mr. Botner's scores on these risk tools are all in the 'high' range, with over a 50% probability, and indicate that he is at substantial risk for future reoffense...* An additional

factor regarding future risk of reoffense is that Mr. Botner is still relatively young.” (emphasis added) (385)

Nonetheless, at that time, Dr. Packard noted Mr. Botner’s participation in sex offender treatment, writing: “I also think that there are factors that ameliorate this risk. As discussed above, Mr. Botner appears to be applying himself very well in his treatment program. He has a community treatment program through DOG and has been court ordered to participate in continuing sex offender treatment during his time in Community Placement. Furthermore, he is a willing participant in the ‘triage’ and community treatment process with DOC... Developmentally, he is taking advantage of the opportunity for treatment at a time in his life when it is possible that significant change, if mastered and reinforced in the community, can have a lasting impact...While it not possible to statistically estimate how these factors effect his actuarial risk for reoffense, it is nonetheless my clinical opinion that Mr. Botner has at least a reasonable chance for lowering and managing his risk’ so long as he uses the resources available to him and assertively acts to incorporate what he is learning. Given this, I cannot say to a reasonable degree of psychological certainty that Mr. Botner is more likely than not to engage in future predatory acts of sexual violence.” (386)

However, Dr. Packard concluded his opinion with the following statement: “However, if Mr. Botner should take steps that are consistent with his offense cycle as described by SOTP and include such behaviors as: substance abuse, unmonitored and unaccountable time, associating with antisocial associates, deviant sexual fantasies/masturbation outside of the context of an assigned and monitored treatment regimen, ‘cruising’ public areas, contact with children, lying or otherwise being deceptive with therapists, family members, or corrections personnel, these may be indications of an active offense cycle and should result in immediate reassessment of Mr. Botner in light of RCW 71.09 as an overt act.” (386)

#### **Evidence of Deviant Sexual Arousal:**

Per his self-report, at approximately age 17, Mr. Botner began fantasizing and planning rapes. At an early stage in SOTP, he acknowledged that during the time of his adult offending (approximately one year), he engaged in an escalating pattern of masturbatory rape fantasies. He “engaged in an escalation of behaviours oriented to rehearse his offending. For example, he

was targeting victims by cruising through neighborhoods and parks looking for women and imagining raping them.”

Per his evaluation with Mr. Stoolant in 8/99: “At around age seventeen, he states, he began having recurring thoughts of raping and physically hurting women. These fantasies increased in frequency over the following two years, he says”. (363) Further, “Mr. Botner’s fantasies of beating and raping women continued at a high frequency, he states, even for a couple of years after his current imprisonment. He states that these fantasies have lessened considerably at this stage but have not stopped altogether.” (363)

While participating in the SOTP, “Mr. Botner participated in two plethysmograph assessments during treatment. During the initial assessment (11/22/00), Mr. Botner was exposed to slide stimuli depicting males and females in non-sexual poses. Following the slide presentation Mr. Botner was exposed to audiotapes describing sexual scenarios with adult males and females. The stories varied the degree of force or compliance depicted. During the slide portion of the assessment, he demonstrated stronger arousal towards females between the ages of 10 - 17 than to the adult females. Mr. Botner’s overall response to the audio stimuli was higher than his response to the slide stimuli. The audio assessment results indicated that Mr. Botner demonstrated much higher levels of arousal for the forced sex audio stimuli as compared to the consensual stimuli. This pattern was apparent in scenarios including adult and minor females and, to a lesser degree, with minor age males. Mr. Botner demonstrated higher arousal to females as compared to males.

During the second assessment, Mr. Botner was asked to try to control his arousal to six slides and four audiotape scenarios. Based on the differences in his no control and controlled responses, it appears that in a laboratory setting, he has the ability to control his arousal. Mr. Botner was successful in reducing his arousal for each of the ten categories. He demonstrated a better use of control techniques during the slide presentation as compared to the audio presentation. During the assessment, Mr. Botner reported using a combination of thought-switching (i.e., distraction), empathy and aversive scenarios to decrease his arousal. Re would benefit from continued work with this in the community. Emphasis should be placed on his use of aversive and empathy interventions.” (476)

In the SOTP Treatment Summary, it was noted that Mr. Botner's sexual interests were definitely related to his sexual offending: "He acknowledged a pattern of engaging in masturbatory rape fantasies since the age of approximately 17. This is about two years before he offended. He also engaged in numerous rehearsals of the offending wherein he would go out and target women in the community while he fantasized about raping. He obtained the electrical cord that he used in his index offence several months prior to committing the offence. Mr. Botner denies ever using the cord as a prop during masturbation. As noted earlier, Mr. Botner also reports engaging in coercive behaviours with peers to gain sexual favors. While incarcerated Mr. Botner reported that he engaged in masturbatory rape fantasies until he entered treatment. While in the SOTP, he reported that he had successfully intervened on rape fantasies since that time."

Per the SOTP: "Based on his offence history, Mr. Botner's offence cycle will escalate quite quickly. It would appear that there was approximately one year from the time that he identified having rape fantasies to the point where he committed his index offence. However, once the sexual fantasies began it appears that soon after beginning to have rape fantasies, he began walking through neighborhoods and parks targeting victims and rehearsing his offence. It is unclear as to what triggers the escalation in his behaviour (from targeting the victim to actual offending)." (480)

In addition, the note found with Mr. Botner's possessions in 7/06 also indicated plans to beat, repeatedly rape and sexually hurt and humiliate, kidnap, murder and dismember a female employee of a porn store.

### **Relevant Sexual History:**

Per Mr. Botner's reports, he was a victim of sexual abuse by his step-father as child for several years; he has claimed that he was forced to engage in sexual acts with his step-father's teen-age "girlfriend."

As Mr. Botner told Dr. Packard, "he became sexually active at a young age."

Per a 1/00 Psychological evaluation, he estimated he had been sexually active with 20 to 25 partners. He indicated that none of these women would be regarded as "girlfriends." "There was women, but I don't think I'd call them girlfriends. A girlfriend would be someone you see, and you don't see

any one else. That's not what I ever did. I've had sex with one girl maybe ten times at the most - but also with other girls during that time. He went to state: 'When asked if they would believe he forced himself on them he responded: 'Are you meaning like pressured into it? I suppose there are some women that would say that. I'd tell 'em things they wanted to hear. I was trying to change their mind by saying 'come on, come on. I manipulated them.'" He described the relationships as ending 'when I got what I wanted. That was the end of it until I wanted it again... They all knew I was a pig and stuff. I wanted a lot of sex. I enjoyed different women. When I was messing around with one, I'd be trying to get her friend or her sister, or someone totally out of the picture. A lot of them knew that. They were doing the same thing...I guess I kind of led some of them to believe that they were girlfriends, but I was young. I didn't want one girl, I wanted two or three.'" (374-5)

In other records, Mr. Botner indicated that while in the community prior to his first incarceration, he would find young females and manipulate them for sexual relations with offers of drugs or shelter.

It seems notable that after his initial report to his after care group (SOTP RP) that he had had a sexual encounter with a woman, there is no further indication that Mr. Botner had any sexual or romantic relations with any male or female during the subsequent four years.

### **Evaluator's Conclusion:**

It should be noted that psychological conclusions are conditional on the limitations of past and present clinical assessments, measurement error in past and present psychological testing, and the relative reliability of self-report and third party reports. The methodology of forensic and clinical mental health data sources and procedures do not allow findings, inferences or predictions drawn from these sources or procedures to be made with absolute certainty. Consequently, the validity of the conclusions drawn in this report is subject to the limitations of scientific procedures and psychological descriptions, and the impossibility of absolute predictions. When dealing with reports based on risk assessments, the reader needs to bear in mind that the imperfect validity and reliability of the risk assessment

means that they sometimes err, both in falsely indicating conditions that are not present and in failing to indicate conditions that in fact exist. All opinions and conclusions offered in this report are with a reasonable degree of psychological certainty customary within the professional forensic psychology field.

In particular, it should be noted that this opinion is offered based solely on a review of the available records. Mr. Botner elected not to be interviewed by this evaluator. This circumstance provides some limited qualification on the opinions offered in this report. Interview data could have provided information that was either more or less supportive of the psychological/psychiatric conditions that appear to characterize Mr. Botner. Typically, scores on certain rating scales increase with the opportunity to interview an individual. He did not have an opportunity to provide his perspective on the information contained in the records or on his current perception of his treatment needs and his estimate of his relative risk of sexual reoffending. Obviously, the information that he might have provided relative to these areas could have influenced opinions that he was more or less characterized by certain psychological/psychiatric conditions or that he possessed characteristics that are more or less associated with relative risk to commit some sexual offense during his remaining lifetime.

Thus, the available records consist largely of a combination of self-report and professional judgment.

In general, Meloy (1989) has suggested that as a result of the universal coercive context of a forensic interview (e.g., always occurring within an adversarial setting) conscious distortion of information provided during the interview is almost always present. Among other distortions, Meloy speaks to dissimulation or the concealment or minimization of symptoms and information. Such dissembling is indicated by the "suspicion index," most prominently evidenced by a marked discrepancy between experiences reported relative to those apparent in the records or other objective findings. In general, dissimulation -lying- is a highly common, if not, endemic characteristic of both alleged and convicted sex offenders, particularly when queried about their sexual offense history (e.g. Beckett, 1994). As one writer put it "...sexual aggressors have a marked propensity to lie about, deny, and minimize information concerning their deviant sexual behavior." (McGrath, 1990, p. 507) Earls (1992) has noted: "The reticence on the part of the offender is different from most clinical situations...it also poses

difficulties when attempting to determine the nature and magnitude of the problem.” (p. 233) It must be emphasized that there is no empirical literature that indicates that a clinical interview with a sex offender necessarily provides reliable and valid information (e.g. Becker & Quinsey, 1993). Thus, as Earls (1992) concluded in discussing the assessment of sex offenders: “there is surprisingly little empirical research concerning the reliability and validity of the information obtained in a clinical interview (p. 234)...we can expect the validity of data obtained in the initial interview is fairly low.” (p. 235) Sewell and Salekin (1997) provide a good summary of understanding and detecting dissimulation in sex offenders in general. Gudjonsson (1990) showed that “other-deception” or impression-management was particularly characteristic of violent and sex offenders in a forensic evaluation, indicating that they underreported undesirable personality characteristics and psychopathology; he speculated that such persons attempted to give the impression that they were basically considerate people irrespective of what their alleged offenses suggested.

#### **Presence of Mental Abnormality or Personality Disorder-Diagnostic Assessment and Clinical Ratings:**

Regarding the presence of a mental abnormality, based upon a review of the records, I would conclude that Mr. Botner meets criteria for psychiatric disorders on both Axis I and II of the DSM-IV multi-axial classification system (APA, 2000).

There is clear information to indicate that Mr. Botner meets the diagnostic criteria for a **Paraphilia**, classified on Axis I as a type of sexual disorder. The essential features of a Paraphilia are recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving: 1) non-human objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other non-consenting persons that occur over a period of at least 6 months. In addition, for most Paraphilias, a diagnosis is made if the behavior, sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. The paraphiliac fantasies or stimuli can be obligatory for arousal and always present in sexual activity. In other cases, the paraphilic preferences occur only episodically (e.g. perhaps during periods of stress), whereas at other times the person is able to function sexually without paraphilic fantasies or

stimuli. In addition, there are periods of time when the frequency of fantasies and intensity of urges may vary substantially.

Mr. Botner has two convictions within a one year period for what he acknowledges were attempted rapes. These rapes both involved a significant degree of violence to the victim (e.g. choking). He has self-reported that before these rapes and after his incarceration, he regularly engaged in sexual fantasizing about coerced sexual behavior. In addition, he has reported that many of his other sexual encounters in the community with females involved coercion and/or manipulation. His PPG in the WDOC indicated a preferential arousal to non-consensual sex. The note found with his possessions also involved an apparent plan for a series of acts related to physically and sexually assaulting a female and then murdering her. Regarding classification, it should be noted that rape per se is not currently identified as a specific paraphilia. Rapists are often characterized as having a Paraphilia Not Otherwise Specified (NOS), where the deviant sexual interest/behavior centers on a partner's non-consent. In addition, persons who commit rapes may be classified as having Sexual Sadism (which involves acts in which the perpetrator derives sexual excitement from the psychological or physical suffering from the victim). Clearly, Mr. Botner's arousal to the visual and audio stimuli of the PPG are indicative of his arousal to the pairing of physical violence and sexual relations: "The audio assessment results indicated that Mr. Botner demonstrated much higher levels of arousal for the forced sex audio stimuli as compared to the consensual stimuli. This pattern was apparent in scenarios including adult... females." Further, his known rapes have been particularly violent ones, with both detected victims having received significant physical injury. Consequently, there is evidence to suggest that the combination of sexual behavior and physical domination indicative of Sexual Sadism characterized Mr. Botner. Based upon the pattern of behavior (coerced sexual assaults, including more than necessary physical violence against females), it seems more appropriate to classify Mr. Botner as characterized by **Sexual Sadism**, where the focus of arousal/urges and sexual behavior involves acts in which the perpetrator derives sexual excitement from the psychological or physical suffering from the victim, as well as the coerced sexuality.

Mr. Botner also appears to meet criteria for **Pedophilia**, which include:

- A) Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B) The person has acted on these sexual urges or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C) The person is at least 16 years of age and at least five years older than the child or children.

His **Pedophilia** would be described as sexual attraction to female children and of a non-exclusive type, since he has reported that he has had sexual contacts with peer/adult females. Thus, as a teenager, Mr. Botner sexually abused his pre-pubertal, 7 year-old cousin on at least several occasions. This course of sexual abuse occurred over approximately a two year period. More recently, in 2001, Mr. Botner's PPG indicated ongoing sexual arousal to minor females. In fact, "During the slide portion of the assessment, he demonstrated stronger arousal towards females between the ages of 10 - 17 than to the adult females." He also showed elevated arousal to forced sex with minor females. His arrests and convictions for Indecent Liberties are exemplars of the type and degree of impairment that Mr. Botner has experienced as a function of this sexual disorder or paraphilia.

It should also be noted that Mr. Botner is characterized by evidence for other Paraphilias. His possession of "used" women's underwear suggests **Fetishism** (e.g. sexual arousal to objects, such as undergarments). In addition, his apparent possession of wigs and female clothing would indicate the possibility of Transvestic Fetishism (e.g. sexual arousal to dressing in the clothes of a member of the opposite gender).

Mr. Botner clearly has a substantial chemical dependency history. He has reported an early onset of alcohol and cannabis use; during his adolescence, he reportedly supported himself dealing drugs. Earlier in his life, he reported that Marijuana was his "drug of choice." After his initial release from prison, Mr. Botner has had repeated violations for his use of alcohol, Cannabis products, and Methamphetamine. Most recently, it appears that Methamphetamine has been his "drug of choice." He has continued to use such substances despite his experiencing significant consequences and receiving multiple "doses" of chemical dependency treatment; despite these consequences, he has repeatedly indicated that he would continue to use alcohol and illicit drugs once he was no longer under WDOC supervision.

In reviewing all the available evidence, it seems reasonable to indicate that Mr. Botner is characterized by **Polysubstance Dependence**, including Alcohol Dependence, Cannabis Dependence and Methamphetamine Dependence.

In addition, the evidence would suggest that Mr. Botner appears to be a relatively hypersexual individual or as the condition is sometimes referred to, "sexually compulsive." He has indicated significant sexual activity beginning as a young person and then extensive sexual "preoccupation" involving extensive fantasy and sexual activity as an adolescent and as a young adult. After release from incarceration as an adult, a priority for him was to obtain access to pornography. Further, he reported that he "usually" didn't masturbate daily. Towards the end of his time in the community in 2005-06, he was repeatedly found in possession of vivid pornography.

In addition, on Axis II, based upon all available information, it continues to be this evaluator's opinion that Mr. Botner has and continues to be characterized by features of several Personality Disorders. A personality disorder is defined as an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture. This pattern is manifested in two or more of the following areas: 1) cognition; 2) affectivity; 3) interpersonal functioning; or 4) impulse control. The enduring pattern is inflexible and pervasive across a broad range of personal and social situations and leads to clinically significant distress or impairment in important areas of functioning. Based upon multiple sources within the available archival materials, in my opinion, Mr. Botner manifests characteristics associated with several personality disorders.

•**Anti-Social Personality Disorder (ASPD)**: ASPD is defined as a pervasive pattern of disregard for and violations of the rights of others occurring since age 15 years. Based upon the available records and his self-report, Mr. Botner appears to have met 7/7 criteria for the adult criteria for this disorder, including: failure to conform to social norms with respect to lawful behaviors (as indicated by repeatedly performing behaviors that are grounds for arrest); deceitfulness or conning others for personal profit or pleasure; impulsivity or failure to plan ahead; irritability or aggressiveness, as indicated by repeated assaults; reckless disregard for the safety of others;

consistent irresponsibility; and a lack of remorse, as indicated by being indifferent to or rationalizing having hurt another.

Clearly, Mr. Botner showed evidence of a Conduct Disorder as a youth, given his first arrest was at age 9 and he continued with criminal behavior into his adolescence.

In addition, the records suggested that Mr. Botner also has a number of prominent characteristics of another Cluster B Personality Disorder.

•**Narcissistic Personality Disorder (NPD)**: NPD is defined by a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy. Mr. Botner appears to meet at least 4/9 criteria for this disorder, including: has a sense of entitlement; is interpersonally exploitative; lacks empathy; and shows arrogant, haughty behavior or attitudes.

Overall, Mr. Botner may be best described as having either a **Personality Disorder NOS** or a **Mixed Personality Disorder**, with prominent Antisocial and Narcissistic elements or traits.

In addition to conceptualizing dysfunctional personality as one or more categories, characteristic personality styles can also be evaluated in terms of dimensions. A relevant personality dimension to be considered with regard to Mr. Botner is that of psychopathy. Psychopathy is defined by a characteristic pattern of interpersonal, affective, and behavioral symptoms which has an early onset and which characterizes an individual's long-term functioning, resulting in social and interpersonal dysfunction. It overlaps with but is not identical to the DSM-IV category of Anti-Social Personality Disorder (ASPD). This construct can be measured via a clinical rating scale, the Hare Psychopathy Checklist-Revised (PCL-R; Hare, 1991; 2003)), which consists of two independent factors; factor one measures interpersonal and affective characteristics such as egocentricity, lack of remorse, callousness etc. and a second factor which reflects aspects of personality related to an impulsive, anti-social, and unstable lifestyle. Based upon the available archival materials, I rated Mr. Botner on the PCL-R. He achieved a total score of 34 on this instrument. This is four points above one specific research cutoff for the scale in defining an individual as a psychopath (e.g. 30 +/-3) and above the range (28-32) also used to identify an individual as a psychopath. It is substantially above the cut-off for ratings based on solely

archival material (e.g. 25). This score places him in the upper 4% of adult North American criminal offenders. Salekin et al. (1996) have reviewed the literature on the PCL-R via a meta-analysis of 18 studies; they found adequate reliability, moderate to strong effect sizes and concluded that the PCL-R represents a good predictor of violence and general recidivism.

Alternatively, Mr. Botner may be best understood as being classified with **Dissocial Personality Disorder** (ICD, 1992). This personality disorder is defined as one which comes to attention because of "a gross disparity between behavior and the prevailing social norms." Mr. Botner would appear to meet all of the following criteria for this disorder: callous lack of concern for the feelings of others; gross and persistent attitude of irresponsibility and disregard for social norms, rules, and obligations; incapacity to maintain enduring relationships; very low tolerance for frustration and a low threshold for the discharge of aggression, including violence; incapacity to experience guilty and to profit from experience, particularly punishment; and marked proneness to blame others, or to offer plausible rationalizations, for the behavior that has brought the person into conflict with society. Dissocial Personality Disorder, because it integrates elements of Antisocial, Narcissistic and Psychopathic personalities would appear to be a particularly appropriate diagnosis for Mr. Botner.

Based upon the available records, it is my opinion, to a reasonable degree of psychological certainty, that Mr. Botner is characterized by at least one "mental abnormality" (**Sexual Sadism**) and another one (**Pedophilia**) as well, and a **Personality Disorder NOS** or **Mixed Personality Disorder** (with prominent Narcissistic and Anti-Social traits) and/or **Psychopathy**. It is my opinion that these disorders that characterize Mr. Botner are conditions that affect his emotional or volitional capacity and create serious difficulty in controlling his behavior; Sexual Sadism, Pedophilia, and a Personality Disorder NOS predispose Mr. Botner to commit crimes of sexual violence.

Considering the most recent decision by the U.S. Court of Appeals for the 8<sup>th</sup> Circuit in *Linehan v. Milczark* (2003), it seems apparent that Mr. Botner by virtue of his psychiatric conditions and/or psychological characteristics, has not exercised adequate control over his violent behavior; the available information would indicate that Mr. Botner is characterized by a "volitional impairment" which is connected to his sexually assaultive behavior and therefore is related to his dangerousness. The nature of Mr. Botner's

paraphilias and personality disorder(s) represent conditions that do not allow him to adequately control his sexual impulses. Mr. Botner has admitted to and demonstrated multiple instances of impulsive criminal behavior, including since he was first released from the WDOC in 2001. Since that time, he has incurred multiple violations of conditional release, committed new crimes and engaged in high risk behaviors of various types.

As I currently understand the recent U.S. Supreme Court decision in *Kansas v. Crane* (2002), the assessment of mental abnormality needs to include an assessment of whether or not the respondent has a "serious difficulty in controlling behavior." Based upon the available records, it is my opinion, to a reasonable degree of psychological certainty, that Mr. Botner is characterized by both mental abnormalities and a personality disorder.

First, Mr. Botner is characterized by both Sexual Sadism and Pedophilia. In the first disorder, the perpetrator derives sexual excitement from the psychological or physical suffering from the victim; in the second disorder, the person experiences recurrent sexual arousal, fantasies, sexual urges or behavior involving sexual activity with a child or children. Per *Kansas v. Crane*, persons who commit sexual offenses as the result of such Paraphilias demonstrate serious difficulty in controlling behavior (e.g. "...a mental abnormality that critically involves what a lay person might describe as a lack of control.") (p. 7). Mr. Botner's admissions and his criminal behavior related to his sexual ideation, urges and arousal targeted at female youth and adults and his failure to control his sexual arousal/urges relative to coercing (typically in a violent manner) sexual relations with females—all of these characteristics appear to clearly demonstrate serious difficulty controlling his behavior. Further, it seems clear from Mr. Botner's admissions that when he has had "opportunities" to engage in inappropriate sexual contact with various females he typically showed a lack of control. Moreover, while many sex offenders take advantage of opportunity and permissive circumstances, Mr. Botner has acted on his sexual arousal in relatively public settings such as parks and/or public buildings.

In addition, Mr. Botner is diagnosed with a (Mixed) Personality Disorder NOS, with primary traits of Narcissistic and Anti-Social Personality Disorders (or per ICD-10, Dissocial Personality Disorder). Among the criteria for these disorders, the Narcissistic traits involve a sense of entitlement, interpersonal exploitation and a lack of empathy; the first trait

speaks to volitional impairment while the second two speak to problems in emotional capacity. Mr. Botner's history of sexual offending appears to have been driven to a significant degree by his sense of entitlement, willingness to exploit others and his lack of empathy. In addition, his Antisocial traits include a lack of remorse, a reckless disregard for the safety of others and impulsivity; the available evidence suggests that Mr. Botner is characterized by these traits, particularly as they relate to his sexual offending. Lack of remorse and disregard for the safety of others speak to problems in emotional capacity, which directly relates to the concept of serious difficulty in controlling behavior; impulsivity also directly relates to serious difficulty in controlling his behavior.

Further, the combination of a personality disorder such as a Personality Disorder NOS (with prominent Narcissistic and Anti-Social traits) and/or Psychopathy and two Paraphilias has even greater implications for a finding of a serious difficulty in controlling behavior. The presence of behavior based on atypical or deviant sexual arousal in a person with deficits in emotional and volitional control creates a particularly serious difficulty in controlling behavior and an even greater predisposition to commit crimes of sexual violence. This combination of conditions has been described as the "dynamic duo" of sexual reoffending. In conclusion, it is my opinion to a reasonable degree of professional certainty that Mr. Botner is characterized by two mental abnormalities and a multi-faceted personality disorder that causes him to experience "serious difficulty in controlling his behavior."

Mr. Botner's history of sexual offending behavior appears to be a function of the convergence of his multiple psychological/psychiatric impairments: his Sexual Sadism and Pedophilia, his Personality Disorder(s) (with multiple maladaptive personality traits) and his extreme psychopathy. His repetitive sexual offenses are partially accounted for by personality characteristics reflecting a lack of internal affective controls (e.g. empathy, guilt), deficits in certain internal cognitive controls (e.g. the belief that violent and/or forced sexual contact with females is acceptable as well as the inability or unwillingness to inhibit his impulses) as well as an indifference to external controls (e.g. the belief that he will not be caught or will not receive significant consequences for sexual acting-out). Overall, Mr. Botner appears to be an inadequate, immature and self-centered individual, with a diminished or absent conscience, who has opportunistically sexually offended various females that he had created access to or "found" opportunistically.

In short, the archival materials indicate that Mr. Botner appears to be described by the elements of the second prong of the SVP statute, in that he satisfies the diagnostic criteria for conditions that would appear to constitute several mental abnormalities and as well as a multi-faceted Personality Disorder. Specifically, Mr. Botner has been characterized as suffering from two "mental abnormalities," namely **Sexual Sadism** and **Pedophilia**, and a **Personality Disorder NOS** and/or **Psychopathy**. These are primary congenital or acquired conditions affecting emotional or volitional capacity, both of which create serious difficulty controlling behavior and which would predispose Mr. Botner to commit crimes of sexual violence.

**Likelihood of Engaging in Predatory Acts of Sexual Violence- Risk of Recidivism of Violent Sexual Behavior:**

A final prong of the SVP statute concerns the likelihood that a person with characteristics similar to a particular respondent is highly likely to commit another sex offense during their remaining lifetime, detected or undetected. Given the nature of these laws, the likelihood of reoffending or the degree of risk posed by a sex offender does not necessarily involve a person's being legally processed for a new sex offense or even caught for a new offense (e.g. not simply an arrest or conviction) but *rather reoffending per se* (almost all of which is most likely to be undetected).

Quantifying this likelihood is problematic for several reasons. Current research measures future reoffenses via re-arrest or re-conviction rates which greatly underestimate the true rate (detected + undetected) of sexual offenses. In addition, follow-up studies range from estimates for 15-year and 25 year periods, not lifetimes.

Regarding sexual offense recidivism, it is worth noting that determining the true rate of actual offenses committed by sexual offenders is obviously problematic; to be forthright and honest about the actual number of such offenses places the offender at risk of more extensive incarceration and other negative consequences. Abel and Rouleau (1990) reported on a unique study where sexual offenders voluntarily sought assessment for their paraphilias and where a Federal Certificate of Confidentiality protected their anonymity; they pointed out that in the criminal justice system, offenders report only 5% of the sex crimes they admit to within the mental health system (also,

Kaplan et al. 1990). Marshall and Barbaree (1989) noted that relying on the self-report of sex offenders regarding later offenses is unwise because such reports are so unreliable; they reported that official police records of charges indicated a rate of reoffending 42% *less* than that obtained via unofficial records (e.g. reports to child protection or the police). Similarly, in another study, just reviewing parole office records produced a 33% increase in estimates of the number of serious crimes committed by sex offenders (Marques et al., 1994). Most recently, Falshaw et al. (2004) found that collecting evidence of any follow-up/recidivism for offense-related sexual behavior from multi-agency information increased the identification of any sex offense by fivefold relative to just a reconviction rate; the implication of this study was that convictions represent perhaps half of the sex offenses perpetrated by particular sex offenders. Most recently, Falshaw et al. (2004) found that collecting evidence of any follow-up/recidivism for offense-related sexual behavior from multi-agency information increased the identification of any sex offense by fivefold relative to just a reconviction rate; the implication of this study was that convictions represent perhaps half of the sex offenses perpetrated by sex offenders.

Abel and Osborn (1992) reported that in a controlled study that 62% of paraphilics confronted with their physiologic measurements admitted to paraphilic diagnoses that they had previously denied or not revealed. Overall, recent reviews have provided perspective on the degree to which "official" records of arrests and convictions underestimate the rate of true sexual offending. Bonta and Hanson (1994) found that only 10% of sex crime victims reported their sexual assault to the authorities. Thus, most sex offenses (particularly those against children) go unreported and undetected; official records of rearrests and reconvictions significantly underreport the actual frequency of sex offending. A recent Department of Justice study (2003) found that approximately 2/3 of all rapes are not even reported to the police and thus do not contribute to reoffense rates as measured by rearrests or reconvictions. Similarly, Abel et al. (1987) concluded that the probability of a child molester being arrested for a hands-on sex offense was approximately 3%. Thus, most sex offenses (particularly those against children) go unreported and undetected; official records of rearrests and reconvictions significantly underreport the actual frequency of sex offending.

A number of approaches have been developed to provide estimates of the probability of sex offense recidivism for persons with particular characteristics. These approaches include: base rates; actuarial measures; individual risk factors; and structured clinical judgment. Each of these approaches has particular utility relative to providing estimates of the likelihood of sex offense recidivism. Meyer et al. (2001) reviewed the literature on psychological testing and assessment. They concluded that the "optimal methodology...consists of combining data from multiple methods and multiple operational definitions...the quality of idiographic assessment can be enhanced by clinicians who integrate data from multiple methods of assessment." (p. 150)

The base rate refers to the percentage of individuals in a group with a certain characteristic. Regarding sex offender recidivism, the base rate refers to the percentage of sex offenders who reoffend over some particular period of time.

Doren (1998), in a discussion of base rates for sex offense recidivism, provided a review of a number of existing studies and factors relative to determining the base rates for recidivism in sex offenders. He noted that recidivism studies typically relied upon *re-arrests* or *re-convictions* as measures of sex offense recidivism. Doren stated that either of these outcomes measures would *significantly* underestimate the rate of actual recidivism, since most sex offenses go undetected or unreported.

Doren concluded: "The overall conservative approximation for the long-term sexual recidivism base rates for child molesters and rapists were 52% and 39%, respectively." (p. 108) On this basis, he concluded that these base rates demonstrated that sexual violence is not a rare event but rather that sexual offense recidivism falls in the mid-range of probability. Further, Doren pointed out that a high degree of selectivity already exists among state screening systems for referring repeat sex offenders for consideration for civil commitment (e.g. 1-12%). Given that the base rates for sexual reoffending noted in general are so much greater than the referral rates for potential civil commitments, Doren argued that many actual sexual recidivists (true positives) will be inaccurately predicted as non-recidivists: "In this scenario, the over-prediction of recidivism would equal zero while the under-prediction of recidivism would be very great...there is a very significant under-prediction of sexual predation when it comes to the

commitment of sexual offenders within the sexual predator laws as they are currently implemented.” (p. 109-110)

Doren’s (2002) most recent review of the research literature would also indicate that the base rate for a future sex offense committed by a child molester, as measured by simply rearrest and/or reconviction (e.g. an underestimate) would be approximately 50% over at least a 25 year period of follow-up.

A new analysis of multiple samples has also examined the rates of sex offense recidivism in samples of sex offenders (Harris & Hanson, 2004). These authors studied predominantly subsequent sex offense convictions in 10 follow-up studies of adult male sex offenders (combined sample of 4,724). The mean years of follow-up were less than 11 years for 8 of the ten samples. However, the authors utilized the two remaining samples and particular statistical analyses to calculate likely recidivism rates for future sex offenses. For rapists, the estimated rate of sexual recidivism was 24% for an estimated 15-year follow up. However, sex offenders with previous sex offense convictions had approximately double the rate of offenders without an official history of sex offenses. Compared to the Doren analyses which identified higher rates of recidivism, the Harris and Hanson study relied primarily on sex offense convictions as their measure of recidivism; in addition, they did not provide specific estimates of recidivism for time periods longer than 15 years. Finally, the Harris and Hanson study followed a more diverse sample “including many low risk offenders serving community sentences” (p. 11) as well as first-time and incest offenders.

A unique study provides some particular perspective on higher risk sex offenders of the type considered for civil commitment. Milloy (2003) conducted a study of released sex offenders recommended for civil commitment in the state of Washington but where no petition for such commitment was filed. Approximately 29% committed a new felony sex offense that resulted in a criminal conviction during an average follow-up period of just six years. Thus, even using a restrictive measure of sex offense recidivism (e.g., reconviction), Milloy found that a relatively large percentage of presumably higher risk of sex offenders committed some sexual offense at an elevated rate during a relatively short follow-up period.

Thus, the base rate for sexual recidivism for child molesters over approximately a 25 year period, by itself, would suggest that Mr. Botner’s

likelihood of sexual reoffending is relatively high; the available data suggest that as many as half of rapists and/or child molesters will be rearrested for another sex offense over a 25 year period of time after release from incarceration.

As Meyer et al. (2001) demonstrated the available data indicate that "validity coefficients for many psychological tests are indistinguishable from those observed for many medical tests...what is salient for our purpose is the difficulty one has in distinguishing psychological test validity from medical test validity." (p. 135)

Several actuarial instruments have been developed to provide estimates of the risk of sex offense recidivism. These measures utilize statistical combinations of a limited number of variables and their association with rearrests or reconvictions.

The Static-99 is an instrument for measuring sex offender recidivism developed by Hanson and Thornton (2000). The variables in the Static-99 can be grouped across five dimensions: sexual deviance, range of available victims, persistence or lack of deterrence, anti-social behavior patterns, and age. Using the indicated point assignment for this rating tool, Mr. Botner score is associated statistically with about a 52% likelihood of being *reconvicted* for a new sexual offense over a fifteen-year period post-release from incarceration, with some degree of error surrounding this approximation.

As Hanson and Thornton have noted, two primary limitations of the Static-99 is that it does not directly measure deviant sexual preference (which was the strongest recidivism predictors in Hanson and Bussiere's meta-analysis) and that recidivism is defined primarily by reconviction. Based upon this second limitation, Hanson and Thornton acknowledge that scores on the Static-99 are likely to significantly *underestimate* an individual's true likelihood of sexual reoffending, particularly for time periods longer than 15 years). Thornton (2003) has provided ranges of estimates of actual (detected + undetected) sexual offending for persons with particular scores on the Static-99. For a person scoring in the "high" category, per Thornton, the range of estimates for sex offense recidivism would be from 66-95% over 15 years.

Mr. Botner was also scored on the MnSOST-R (Epperson et al., 1999), a revised version of the Minnesota Sex Offender Screening Tool. On this instrument, Mr. Botner received a score that is associated statistically with at least a 72% likelihood of being *re-arrested* for a new sexual offense over just a six year period post-release from incarceration, with some degree of error surrounding these approximations and depending on an assumption of what is called the base rate for sexual recidivism of this type.

Quinsey and his associates (1998) published the Sex Offender Risk Appraisal Guide (SORAG). The SORAG is also an actuarial instrument developed to predict rearrest for a new violent/interpersonal offense (inclusive of sexual offense). When Mr. Botner is scored according to the criteria for this instrument, his score is statistically associated with a 100% probability of violent reoffending within seven years and a 100% probability of violent reoffending within ten years (Quinsey et al., 1998). More recently, Harris et al. (2003) found that the observed rate of reoffending among a sample of sex offenders for persons with Mr. Botner's characteristics was found to be 76% after an average of five years of opportunity. [However, as a result of Canadian law, it should be noted that in all of these studies by Rice, Harris and Quinsey, those persons with perhaps the greatest risk of reoffending were not released into the community, thus decreasing the likely base rate of reoffense and the resultant predictive accuracy. Consequently, these figures are conservative and represent an underestimate of the likely true rate of recidivism.]

The SORAG has now been demonstrated to possess predictive accuracy specifically to sex offenses recidivism (e.g. Langton, 2002; Harris et al., 2003). However, the authors continue to advocate providing percentages for violent offenses as the best or optimal measure of sex offense recidivism. Quinsey et al (1998) have opined: "Although overinclusive, violent recidivism is likely to capture significantly more sexual reoffenses than the more commonly used sexual recidivism definition...we have found that many offenses that appeared to be nonsexual violent offenses are actually ones that have a sexual component or sexual motivation...We conclude, therefore, that the outcome of greatest relevance for the risk among sex offenders is violent recidivism. Even if one is interested only in new sexually violent offenses, it may be argued that violent recidivism is a more valid outcome measure for evaluating predictive accuracy than sexual

recidivism as currently defined.” (p. 129-130). Given that most of Mr. Botner’s acts of interpersonal violence have been sex offenses to date, it is reasonable to assume that future acts of interpersonal violence are likely to be sexual as well.

Further, Rice et al. (2006) recently demonstrated that a substantial percentage of sex offenders’ historical acts of “violence” were actually sexual in nature. They concluded that counting only “rapsheet sexual” charges and convictions misses *half* of recorded offenses that are probably or clearly hands-on sexual offenses; counting the total history of violent offenses approximates the true number of hands-on sexual offenses and does not miss the most serious offenses. This suggests that the measure of violent offenses in the future provides a particularly appropriate measure of likely *detected* acts of sex offense in the future.

Applying the actuarial measures of future sexual offending (scored based upon the available information) produces very convergent estimates of his likelihood of reoffending. All three of the actuarial instruments converge in identifying a risk of sexual reoffending that is beyond the legal threshold of “more likely than not” in Mr. Botner’s remaining lifetime. At the same time, the results of actuarial measures are considered to represent a significant underestimate of sexual recidivism because they are all based upon rearrests and reconvictions for sex offenses, both of which are considered to be significant underestimates of actual sexual reoffending and because they only measure recidivism for discrete periods of time (e.g. these figures do not represent lifetime risk of sexual recidivism).

Another method of assessing relative risk for recidivism involves the value of considering individual risk factors identified by research investigations to be associated with sexual offense recidivism relates to a limitation of the actuarial measures. Actuarial measures use multivariate research techniques; they necessarily “collapse” or “combine” statistically related variables into one another to reduce the number of variables considered to a smaller number of such variables. In addition, they do not necessarily include variables that are difficult to measure, were not measured by studies or are idiosyncratically associated with sexual offending. Overall, actuarial measures do not provide comprehensive coverage of risk factors for sex offending. Consequently, given potential limitations of the actuarial tools, a consideration of the larger research literature on individual variables related

to sexual reoffending continues to offers a valuable perspective relative to the risk of an individual committing future acts of sexual recidivism.

Rice et al. (1990; 1991) found that subjects convicted of a new sex offense had previously committed more sex offenses, had been admitted to correctional institutions more frequently, were more likely to have been diagnosed as personality disordered, had higher psychopathy scores, and had shown more inappropriate sexual preferences. Using largely the same sample followed for a longer period of time (mean of 50 months), Quinsey et al. (1995) found that sexual recidivists were significantly differentiated by their previous record of sexual offenses, previous general criminal history, non-married status, PCL-R score, and phallometric deviance index. Rice and Harris (1997) showed that sexual recidivism rates for sex offenders were substantially higher among identified psychopaths.

Further, Quinsey et al. (1995) identified a number of variables that were associated with an increased risk of sexual recidivism. Of these, Mr. Botner, is characterized by the following: never married; deviant sexual arousal; psychopathy; prior conviction for a sex offense; prior convictions for other offenses; prior non-sexual violent convictions previous admissions to corrections; previous youth victim; a previous adult victim; and previous female victim,. He is not characterized by a previous male victim or a number of male victims. In short, Mr. Botner is described by many of the specific variables that Quinsey et al. found to be associated with a higher likelihood of sexual reconviction.

Hanson and Bussiere (1998) conducted a meta-analysis of sexual offense recidivism studies to identify factors associated with such recidivism as defined by subsequent arrest or conviction. Their analyses demonstrated that sexual offense recidivism was best predicted by sexual deviancy variables (deviant sexual interests and victim choices such as boys or strangers, prior sexual offenses), general criminological factors (younger age, total prior offenses) and failure to complete treatment. Personality disorders were also related to sexual recidivism, particularly Antisocial Personality Disorder. Most of these factors characterize Mr. Botner, who did manage to complete SOTP (albeit still engaged in high risk behavior relative to sexual offending)

The most recent meta-analysis of risk factors by Hanson and Morton-Bourgon (2004) would indicate that Mr. Botner would be identified as having issues in the following domains associated with greater sexual reoffending: deviant sexual arousal; antisocial orientation; personality disorder(s); indices of rule violations; and absence/conflicts in intimate relationships.

In short, Mr. Botner appears to be characterized by a number of individual risk factors identified by the extant research literature as associated with a greater risk of sex offense recidivism.

Still another method for assessing risk for sex offender recidivism is the use of structured clinical judgment or structured professional judgment. The PCL-R is the most researched clinical rating scale in the area of violent prediction. Both Salekin et al. (1996) and Hemphill et al. (1998a; 1998b) have reviewed the literature on the PCL-R via meta-analysis of individual studies; they found adequate reliability, moderate to strong effect sizes and concluded that the PCL-R represents a good predictor of violence and general recidivism. Hemphill et al (1998a; b) found that both PCL-R factors contributed equally to the prediction of violent recidivism and that the PCL-R routinely added incremental validity to predictions of recidivism (e.g. making a significant contribution above and beyond other variables studied such as criminal history and personality disorder diagnoses).

On its own, Mr. Botner's extremely elevated score on the PCL-R (substantially greater than the cut-off for a "categorical" demarcation of the definition of a psychopath) would indicate an increased relative risk for violent recidivism. The mean PCL-R score for any prisoner in a state correctional facility is approximately 22 while that for the general population of males is 6 (Hare, 1991). Prentky and Knight (1988, cited in Hare, 1991) used the PCL-R with a sample of rapists and child molesters; they found a mean score for the pooled sample of 29. The association between dimensional scores on the PCL-R and criminal and violent outcomes is, for the most part, linear; this means that a higher score on the PCL-R is associated with a higher likelihood of future criminal or violent behavior (Hart & Hare, 1997). Using the cutoff of 30 has yielded highly significant differences between those groups of individuals classified as psychopaths and those who scored under the cutoff. In the most recent meta-analyses of the PCL-R and its relationship to recidivism was studied across

multiple individual studies (Hemphill et al., 1998a; Hemphill et al., 1998b). Results demonstrated that the PCL-R was consistently among the best predictors of recidivism, whether utilized as a continuous or categorical measure. In fact, surprisingly, survival analyses for "medium" and "high" PCL-R groups were not clearly differentiated from one another; both of these groups showed similar recidivism rates and patterns. The PCL-R score was typically the strongest (or one of the strongest predictors) of violent and sexual recidivism. Further, these meta-analyses showed that in the first year of release from prison, psychopaths were three times more likely to reoffend in general and four times more likely to reoffend in a violent manner. Similarly, Serin and Amos (1995) also found that psychopaths re-offended significantly sooner upon release from incarceration and were substantially more likely to recidivate in a violent manner.

The most recent meta-analysis of risk factors by Hanson and Morton-Bourgon (2004) found that PCL-R scores were associated with an increased risk of sex offense recidivism. In a study of rapists and child molesters, Quinsey et al. (1995) found that within 6 years of release from prison, more than 80% of psychopaths (versus 20% of non-psychopaths) had violently recidivated and that many of their offenses were sexual in nature. Rice and Harris (1997) found that violent recidivism rates for five years after release were 85% for persons classified as psychopaths by record review (e.g. *cutoff score of 25*) based upon survival analysis; this rate was approximately 50% above that of non-psychopaths.

One instrument specifically developed for providing a structured professional risk assessment for sexually violent recidivism is the Sexual Violence Risk-20 (SVR-20; Boer et al., 1997). This instrument provides a list of twenty variables believed to be associated with a higher risk of sex offense recidivism. Of these 20 listed risk factors, Mr. Botner is characterized by 14 factors: 1) deviant sexual arousal; 2) victim of child abuse; 3) psychopathy; 4) major mental illness; 5) substance abuse problems; 6) suicidal or homicidal ideation; 7) relationship problems; 8) employment problems; 9) past non-violent offenses; 10) past non-sexual violent offenses; 11) past supervision failures; 12) high density offenses; 13) multiple sex offense types; 14) physical harm to victims in sex offenses; 15) use of weapons or death threats in sex offenses; 16) an escalation in frequency or severity of sex offenses; 17) evidence of attitudes that support sexual offending; 18) a negative attitude toward intervention; and 19) a lack

of realistic future plans. He no longer appears to be characterized by extreme minimization or denial of sex offenses. There do not appear to be significant or relevant changes in any of these conditions in recent time frames. Overall, the application of this rating scale would indicate that Mr. Botner is characterized by an extremely high likelihood of sexual recidivism.

Both the consideration of the individual risk factors and the results of the structured clinical judgment identify a risk of sexual reoffending that is beyond the legal threshold of "highly likely" for sexual reoffending in Mr. Botner's remaining lifetime.

In short, in considering the variety of potential approaches to gauging future risk of sexual recidivism including base rates, the combined results of the actuarial measures, individual risk factors, and structured clinical or professional judgment, it is this evaluator's opinion that they converge in indicating that Mr. Botner's risk of sexual reoffending is beyond the legal threshold of "more probably than not" to engage in predatory acts constituting sexually violent offenses" over his remaining lifetime.

Further, there are several individual or situational factors that have been empirically demonstrated to be associated with relative likelihood of sexual reoffending for sex offenders that should be considered relative to adjusting an individual's assessed level of risk for sexual recidivism.

First, the joint presence of deviant sexual arousal (DSA) and relative psychopathy has been identified as conferring a particular risk of sexual reoffending to sex offenders. Rice and Harris (1997) found the combination of higher PCL-R scores and deviant sexual arousal resulted in substantially faster and higher rates of sexual reoffending; sexual recidivism per survival analysis was approximately 60% for this group. More recently, this research group again confirmed this finding [Harris et al. (2003)]. In addition, other investigators (e.g. Serin et al., 2001; Doren, 2003; Hildebrand et al, 2004) have demonstrated that this "dynamic duo" of increased psychopathy and deviant sexual arousal is also associated with higher rates of sexual offending Mr. Botner appears to be characterized by extremely elevated psychopathy and several dimensions of deviant sexual arousal.

Second, Mr. Botner's age merits consideration of his relative risk of reoffending. In general, the risk of sexual offending appears to decline over time as individuals' age. Hanson (2001) and Barbaree (2003) reported that both rapists and child molesters showed relative and linear decreases in recidivism with increased age (respectively). However, Thornton (2006) examined recidivism for sex offenders as an interaction with level of risk (as defined by previous court sentences for sex offense charges). He found that for offenders between the ages of 25 and 59 with at least three previous sexual sentences or sanctions there was no decline in sexual recidivism between ages 25 and 59. Thus, this research suggests that at age 33, there would be no simple expected decrease in Mr. Botner's estimated sex offense recidivism as a function of the interaction of increasing age *and* past sexual offending history. Thornton and Knight (2006) also found that age at release had essentially no relation to sexual recidivism after controlling for actuarial scores of relative risk. In addition, Doren (2006) reported on several additional sources of information that indicated that risk of sexual offending did not appear to decline with age for "higher risk" sex offenders. Finally, Harris and Rice (2005) found that age at first offense instead of age at release (versus age at release) in actuarial instruments improved the prediction of sexual recidivism. Relative to this finding, Mr. Botner would be regarded as a sex offender with a particularly young or early age of first sex offense. Thus, at age 33, there would be no expected decrease in Mr. Botner's estimated risk for sex offense recidivism as a function of the interaction of increasing age and his particular past sexual offending history.

Third, treatment is a dynamic factor with some association to the possibility of reducing certain risk factors related to sex offense recidivism. Hanson et al. (2002) and Losel and Schmucker (2005) conducted meta-analyses of more recent treatment studies involving sex offenders; they found that persons who completed treatment showed lower rates of sex offense recidivism follow-up periods. In contrast, Rice and Harris (2003) have offered a critique of the Hanson et al study and concluded that there is no scientific basis for concluding that the effectiveness for psychosocial treatments remains to be demonstrated. They re-emphasized that there is only one significant study where sex offenders who expressed a desire for treatment were randomly assigned to comprehensive, cognitive-behavioral treatment program with a major emphasis on cognitive-behavior therapy (including relapse-prevention) as well as extensive aftercare [e.g., Marques et al. (1994; 1999; 2005)]. As Marques (2005) concluded, the research identified no treatment effect for either rapists or child molesters. Thus,

there is, at best, equivocal evidence for the relative effectiveness of sex offender treatment for the "average" sex offender as typically delivered either within institutions or in the community. Nonetheless, sex offender treatment may make a difference for some sex offenders.

In contrast, there is increasing evidence that higher risk sex offenders, in particular, may not show significant response to sex offender treatment. Friendship et al. (2002) found that high risk offenders (per a modified Static-99 measure) who received sex offender treatment had higher rates of sex offense reconviction over a two year follow-up period; further, there appeared to be no difference in recidivism rates between high risk offenders who received treatment and those who did not. Similarly, even Hanson et al. (2002) found that sex "Offenders referred to treatment based on perceived need had significantly higher sexual recidivism rates than other offenders considered not to need treatment." Stirpe et al. (2001) found that higher risk sex offenders who received treatment did not maintain motivation over time in the community. Given Mr. Botner's scores on various risk measures, it may be or is likely that his completion of sex offender treatment per se (e.g. given the particular type of sex offender treatment he has received) may not be associated with a significant decrease in his likelihood of recidivism.

It must be noted that since his adolescence, Mr. Botner has participated in multiple chemical dependency treatments and then quickly resumed illicit drug use. More to the point, it must be remembered that Mr. Botner has previously participated in sex offender treatment and prolonged aftercare, yet subsequently engaged in high risk behaviors related to deviant sexual arousal/interests. Both his past and recent violation behaviors are reflective of a person who has elected to ignore repeated instructions to prevent him from entering his apparent sex offense cycle and to place himself in high-risk situations. This is particularly bad prognostic sign for someone who has been exposed to sex offender treatment previously.

In addition, there is evidence that individuals who are characterized as relatively psychopathic (per the PCL-R, using cutoff scores as low as 15 and as high as 25) and who have been exposed to treatment, may actually show higher rates of sex offense recidivism (Rice, 1997; Looman et al., 2004). For a significant number of psychopathic sex offenders, the conclusion appears to be that exposure to treatment may enhance their ability to victimize. Thus, Mr. Botner's exposure to treatment may actually have increased his risk of recidivism.

There is also limited evidence that for sex offenders who reside in the community without being detected for further violent or sexual offenses, rates for sexual reoffending may decline (Harris et al, 2003; Harris & Hanson, 2004). Harris and Hanson found that examining across the multiple studies (of the types described above) that the longer that sex offenders remain offense-free in the community the less likely they are to sexually recidivate. Thus, offenders who are not detected for a new sexual or otherwise violent offense were found to have decreased reoffending rates. However, a more careful analysis by Harris et al. (2003) of a sample of sex offenders (stratified by Static-99 scores) leads to a somewhat different conclusion. Specifically, Harris et al. concluded, "substantial amounts of jail time would invalidate the total time at risk." After being released from his initial period incarceration in 2/01, Mr. Botner has been in the community per se for relatively short periods of time. Within six months of his initial release, he was jailed for violations, despite previous warnings/stipulations. From 2001 to 2003, he was jailed approximately five times. He was a fugitive for five months from 2003-04. He spent the year of 2004 in prison at AHCC. Subsequently, he was incarcerated again and became a fugitive; he was jailed several more times and was a fugitive again in 2005-2006. Consequently, these "substantial amounts of jail time would invalidate the total time at risk" and it would be inappropriate to reduce Mr. Botner's Static-99 score specifically or to reduce his likely risk of recidivism. He simply did not have sufficient time in the community to demonstrate a meaningful length of time without a detected sexual or violent offense.

Finally, dynamic factors (potentially changeable dimensions) relative to Mr. Botner's intermittent time in the community over the past three years need to be considered. Hanson and Harris (2001) developed a structured instrument [Sex Offender Need Assessment Rating (SONAR)] to assess five relatively stable factors and four acute factors. The scale based on these dimensions showed moderate predictive accuracy in differentiating sexual recidivists and non-recidivists in a relatively small sample of sex offenders in the community; the sample was studied after it was known who had reoffended and who had not. During each of the times that Mr. Botner has been in the community following incarceration (e.g. JRA, prison or jail), he continued to show problems in the areas of both stable and acute risk factors; he demonstrated problems with intimacy deficits, attitudes, sexual self-regulation, and general self-regulation. In addition, he has demonstrated repeated problems with substance abuse, negative mood, anger/hostility and

placing himself in opportunities for victim access. Moreover, Mr. Botner has repeatedly demonstrated broad and consistent disregard for rules and conditions of conviction and conditional release despite repeated sanctions. Mr. Botner's score on the SONAR is associated with a recidivism rate higher than the base rate of 50% (e.g., .66 or 66%).

Hanson and Harris (2002a) are currently conducting the Dynamic Supervision Project that is an extension of their earlier study. They are following over 1000 sex offenders over 3.5 years of study; each offender receives repeated assessments. Stable Dynamic Factors (e.g. those that change slowly) as well as Acute Dynamic Factors (e.g. those that change more rapidly) are being assessed. Applying the coding guides (Hanson & Harris, 2002b), per the Stable Tally sheet, Mr. Botner obtains a "high" score for Stable Dynamic Factors; he has issues in the areas of social influences, intimacy deficits, sexual self-regulation, attitudes supportive of sexual assault, cooperation with supervision and general self-regulation. His most recent behavior in the community suggests problems in several areas of Acute Dynamic Factors including victim access, emotional collapse, collapse of social supports, hostility, substance abuse, sexual preoccupations and rejection of supervision. Thus, per these two similar approaches to capturing dynamic factors related to risk of future sexual reoffending, Mr. Botner appears to have relatively high scores that would suggest a higher risk of sexual recidivism.

In summary, in reviewing these various situational areas or potential risk "modifiers", it would appear that Mr. Botner's risk of sex offense recidivism would not be substantially reduced from those rates of sexual reoffending identified by the various measures of risk for future sexual reoffending.

In conclusion, it continues to be my opinion, with a reasonable degree of professional certainty, that Mr. Botner is characterized by at least two primary mental abnormalities, **Sexual Sadism** and **Pedophilia**. In addition, he is also characterized by a **Personality Disorder NOS/Mixed Personality Disorder** (with prominent Antisocial and Narcissistic traits) and/or **Dissocial Personality Disorder** and/or **Psychopathy**, all of which are acquired or congenital conditions. Both the mental abnormalities and the personality disorder affect Mr. Botner's emotional or volitional capacities. Mr. Botner has clearly demonstrated a serious difficulty controlling his behavior, most specifically, in the realm of sexual behavior. These conditions and characteristics, in turn, predispose him to commit sexually

violent offenses in a degree constituting such person a menace to the health and safety of others. These conditions make Mr. Botner more probably than not to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility, all as defined Washington Ch. 71.09 RCW.

**Recent Overt Act:**

Finally, it is this evaluator's opinion that Mr. Botner has engaged in "recent overt acts" as defined by Chapter Ch. 71.09 RCW. Per the Chronos/DOC Reports of alleged violations and the Hearings related to those reported violations, it has been established that Mr. Botner has violated the conditions of his supervision in numerous ways since being released from incarceration towards the end of 2002. In this case, the recent overt acts have included the discovery of at least two rape kits belonging to Mr. Botner on two different dates in 7/06. On the first occasion, a note was also found describing a plan for a violent sexual assault and the murder and dismemberment of the victim. Materials that could be used in such an assault including potential disguises, rubber gloves and condoms were discovered with the note which was in a bag with Mr. Botner's name and alias on it. On the second occasion, Mr. Botner was discovered riding his bike in the middle of the night. He had a hammer, was wearing a stocking mask, had a woman's costume and wig in his backpack, and also was in possession of pornographic pictures, rope, rubber gloves and condoms. Mr. Botner went so far as to advise the policemen who stopped him that "he was a violent sex offender and the only way he was caught in the past was through finger prints." (124) These behaviors appear to represent an escalation (e.g. greater sophistication) of Mr. Botner's previous acts of sexual assault and demonstrate a continuity with his previous behaviors preceding a sexual assault. Based upon this information, it seems clear that the types of acts alleged on the part of Mr. Botner are similar to acts which, in the past, have accompanied his deviant sexual arousal and preceded his previous sexual acting out. Consequently, these various affirmative behaviors and/or failed actions constitute acts or threats that create a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

The currently available information indicates that Mr. Botner continues to present a danger to others in terms of future sexual offenses against females

if he were to reside outside a secure facility and does not receive intensive, long term general and continued sex offender specific treatment. Without intensive sex offender and more general psychological treatment, Mr. Botner is likely to be characterized by the same risk factors and/or psychological characteristics that provided the basis for his criminal sexual behavior in the past. It is my opinion that Mr. Botner should be provided with additional, intensive, and residential (inpatient) sex offender treatment program to offer some hope of reducing his apparent risk of sexual recidivism. Further, he will benefit from a comprehensive and secure treatment program, given his continued pattern of behavior in the community even after previous adjudications as a sex offender and his "successful completion" of sex offender treatment in the WDOC.

In short, it is my opinion that Mr. Botner meets the criteria as a sexually violent predator as described in RCW 71.09.

Respectfully Submitted,

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November 27, 2006

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**EXHIBIT B**



## **CERTIFICATION & LICENSURE**

Minnesota Board of Psychology: Licensed Psychologist (LP): License #1787 (1986)

National Registry of Health Service Providers in Psychology (#44666, 1998)

## **MEMBERSHIP IN PROFESSIONAL SOCIETIES**

- American Psychological Association (APA)
  - Division 12: Clinical Psychology
  - Division 41: Psychology-Law & Society
  - Division 29: Psychotherapy
  - Division 30: Hypnosis
  - Division 37: Child, Youth & Family Services
  - Division 42: Independent Practice
  - Division 18: Psychologists in Public Service
- Association for the Treatment of Sexual Abusers (ATSA)
  - Public Policy Committee: 2001-Present
  - Executive Board: Elected (Term: 2007-2009)
- Association for Behavioral and Cognitive Therapy (ABCT)
- American Professional Society on the Abuse of Children (APSAC)
- American College of Forensic Examiners (ACFE)
- American College of Forensic Medicine (ACFM)
- American Psychotherapy Association (APA)

## CONTINUING EDUCATION EXPERIENCES

### FORENSIC:

#### Psychopathy:

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Adkerson, D. L. **Clinical Assessment Of Sexual Offenders.** Association for the Treatment of Sexual Abusers. Chicago: November 13, 1996.

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- Innovations In Structured Approaches To Risk Assessment With Sex Offenders.** Association for the Treatment of Sexual Abusers, Orlando, FL: September 22, 1999.
- Actuarial Risk For Sexual Reoffending.** Association for the Treatment of Sexual Abusers, Orlando, FL: September 22, 1999.
- Minnesota Department of Corrections. **The Civil Commitment Of Sexual Offenders: The Referral & Commitment Process.** St. Paul, September 29, 1999.
- Saunders, B. E. **Family Resolution Therapy In Cases Of Intra-Familial Sexual Abuse.** Association for the Treatment of Sexual Abusers, San Diego, CA: November 1, 2000.
- Psychopathic Sex Offenders: Symposium.** Association for the Treatment of Sexual Abusers, San Diego, CA: November 2, 2000.
- Structured Professional Guidelines For Assessing Risk In Sexual Offenders: Symposium.** Association for the Treatment of Sexual Abusers, San Diego, CA: November 3, 2000.
- Berlin, F. **Actuarials: A Critique Of Their Use In Civil Commitments.** Association for The Treatment of Sexual Abusers. San Diego, CA: November 3, 2000.
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- Stern, P. & Wheeler, J.R.: **Actuarial Risk Assessment: Preparation And Presentation Of Effective And Ethical Testimony.** Association for the Treatment of Sexual Abusers, Montreal, Canada: October 2, 2002.
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- Harris, A. **High Risk Offenders: Canadian Legislative Options.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 28, 2004.
- Hucker, S. J. **Assisting The Court In Dispositional Decisions For High-Risk Sexual Offenders: Long Term Offenders And Dangerous Offender Assessments.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 28, 2004.
- Ellerby, L. **Risk Management Strategies For High-Risk Offenders On Judicial Restrain Orders.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 28, 2004.
- Rice, M. **Developing Actuarial Tools To Predict Sexual Recidivism: What Is The Best Criminal Record Outcome Measure?** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 28, 2004.
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2006.

**Knight, R., Thornton, D., & Schatzel-Murphy, E. Comparative Accuracy of Simple Actuarial Instruments in Predicting Sexual Recidivism.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 28, 2006.

**Thornton, D. & Knight, R. Testing Age Adjustment of Simple Actuarial Instruments.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 28, 2006.

**Doren, D. M. & Yates, P. M. Treating Psychopathic Sex Offenders: How Effective Is it? Should it be Done?** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 30, 2006.

**Looman, J. & Abracen, J. Psychopathy Subtypes, Treatment Performance and Recidivism.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 30, 2006.

**Wakeling, H. & Mann, R. The Validity and Reliability of Different Psychometric Indicators of Psychological Risk Factors.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 29, 2006.

**Mann, R. & Wakeling, H. How Inter-rater Reliability of SARN Ratings is Affected by Specialized Training and Work with Sex Offenders.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 29, 2006.

**Thornton, D. & Knight, R. Combining Offense-history, PPG and Polygraph Examinations in Assessing the Sexual Interest Domain.** Paper Presented at the Annual Meeting of the Association for the Treatment of Sexual Abusers, Chicago, September 29, 2006.

#### **Juvenile Sex Offenders:**

**Predicting Adolescent Recidivism.** Association for the Treatment of Sexual Abusers, Orlando, FL: September 22, 1999.

**Friedrich, W.N. & Chaffin, M. Developmental-Systemic Perspectives On Children With Sexual Behavior Problems.** Association for the Treatment of Sexual Abusers, San Diego, CA: November 4, 2000.

**Hunter, J. Youth Sexual Aggression: Subtypes And Trajectories.** Association for the Treatment of Sexual Abusers, St. Louis, MO: October 10, 2003.

**Chaffin, M. A Research Agenda For Evidence-Based Practice With Adolescent Sex Offenders.** Association for the Treatment of Sexual Abusers, St. Louis, MO: October

10, 2003.

Letourneau, F. **Effectiveness Trial: MST With Juvenile Sex Offenders.** Association for the Treatment of Sexual Abusers, St. Louis, MO: October 10, 2003.

Miner, M.H. **Understanding The Adolescent Sex Offender: Attachment Style & Social Isolation.** Association for the Treatment of Sexual Abusers, St. Louis, MO: October 10, 2003.

Hicks, S.J. & Becker, J.V. **Policy Recommendations For Addressing Juvenile Sex Offending.** Association for the Treatment of Sexual Abusers, St. Louis, MO: October 10, 2003.

Prescott, D.S. **Juvenile Risk Assessment: Current Practice And Future Directions.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 27, 2004

LaLumiere, M.L. & Seto, M.C. **The Role Of Antisociality In Juvenile Sex Offending.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 29, 2004.

Seto, M.C. & LaLumiere, M.L. **Social And Clinical Functioning Of Juvenile Sexual And Nonsexual Offenders.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 29, 2004.

Epperson, D., Ralston, C. & Fowers, D. **Juvenile Sexual Recidivism Into Adulthood: A Long-Term Study Of Characteristics And Predictors.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 29, 2004.

Prentky, R., Pimental, A. & Cavanaugh, D. **Risky Behaviors In Sexually Reactive Children And Adolescents: Base Rates Across Four Developmental Epochs.** Association for the Treatment of Sexual Abusers, Albuquerque, NM: October 9, 2004.

#### **Assessing Violence:**

Meloy, J. Reid. **Assessing the Potential for Violence.** Specialized Training Service. Minneapolis, MN. February, 1994.

Alberg, T. & Austin, J. **Assessing Violent Behavior.** Minnesota Psychological Association, St. Paul, MN, April, 1996

Meloy, J. Reid. **Stalking: The State of the Science.** American Academy of Forensic Psychology. San Juan, Puerto Rico, June 9, 2006.

#### **Child Custody & Allegations of Child Sexual Abuse:**

Greenberg, S. **Child Custody Evaluation.** American Academy of Forensic Psychology. Portland, OR, June 20-22, 1996.

Sparta, S. **Comprehensive Child Custody Evaluations.** American Academy of Forensic Psychology. Toronto, Canada, March 26, 1999.

Kirkpatrick, H.D. **Forensic Assessment of Child Sex Abuse Allegations.** American Academy of Forensic Psychology. Toronto, Canada, March 27, 1999.

Kelly, J. **Update on The Determination of Child Custody.** Minnesota Psychological Association & the Minnesota Chapter of the American Academy of Matrimonial Lawyers. Minneapolis, MN May 7, 1999.

Minnesota Institute of Legal Education. **Family Law: Custody 2000.** Minneapolis, MN December 2, 1999.

Minnesota State Bar Association: **Annual Family Law Institute.** St. Paul, MN. March 2000.

Stahl, P. **The Combat Zone of High-Conflict Divorce.** Minnesota Interdisciplinary Committee on Divorce. Brooklyn Park, MN. April 27-28, 2000.

Waldron, K. H. & Joanis, D. E. **Truth and Consequences in High Conflict Divorce.** Minnesota Interdisciplinary Committee on Divorce. Brooklyn Center, MN. April 20, 2001.

Johnston, J.R. **High Conflict Divorce.** Minnesota Interdisciplinary Committee on Divorce. St. Paul, MN. April 19, 2002.

Ahrons, C. **Divorce and Remarriage: The Children Speak Out.** Colonial Counseling Center. Edina, MN. May 31, 2002.

Kelly, J. **Using Divorce & Child Development Research to Develop Beneficial Parenting Plans for Children.** Minnesota Interdisciplinary Committee on Divorce. St. Paul, MN. April 7, 2006.

Kelly, J. **Understanding & Sustaining Father Involvement After Separation & Divorce.** Minnesota Interdisciplinary Committee on Divorce. St. Paul, MN. April 7, 2006.

Kuehnle, K. **Critical Issues in Child Sexual Abuse Evaluations.** American Academy of Forensic Psychology. San Juan, Puerto Rico, June 11, 2006..

**Personal Injury & Employment Discrimination:**

Weissman, H. **Personal Injury Evaluation.** American Academy of Forensic Psychology. Portland, OR, June 17-19, 1996.

Greenberg, S. **Personal Injury Evaluations.** American Academy of Forensic Psychology. January 16-17, 1997. New Orleans.

Foote, W. **Forensic Psychology in Employment Discrimination.** American Academy of

Forensic Psychology. March 2, 1997. Kansas City, MO.

Vore, D. **Personal Injury Evaluations: Ethics, Case Law, & Practice.** American Academy of Forensic Psychology. Toronto, Canada, March 25, 1999.

**Sexual Harassment as Sexual Abuse: Current Research, Treatment and Issues.** Association for the Treatment of Sexual Abusers, Orlando, FL: September 22, 1999.

Foote, W. **Psychological Evaluation & Testimony in Cases of Clergy or Teacher Sexual Abuse.** American Academy of Forensic Psychology. San Juan, Puerto Rico, June 12, 2006..

**Criminal Evaluations for Adults & Juveniles:**

Grisso, T. **Assessment of Juvenile Offenders.** American Academy of Forensic Psychology. February 27, 1996. Kansas City, MO.

Shapiro, D. **Criminal Forensic Psychology.** June 16-18, 1997. American Academy of Forensic Psychology. Portland, OR.

Minnesota Attorney General's Office. **Update on Juvenile Justice Issues.** St. Paul, MN. June 18, 1999.

Slobogin, C. **Psycholegal Issues in Criminal Cases.** American Academy of Forensic Psychology. San Diego, CA. March 3, 2005.

Packard, R.L. & Stern, P. **Dissociative Identity Disorder in the Courtroom.** Association for the Treatment of Sexual Abusers, Salt Lake City, UT: November 18, 2005.

Cauffman, E. **Adolescents As Adults In Court.** American Academy of Forensic Psychology. San Juan, Puerto Rico, June 8, 2006..

**Fitness for Duty/Workplace Violence & Risk:**

Inwald, R. **Introduction to Psychological Screening for High-Risk Occupations.** March 20, 1998. American Academy of Forensic Psychology. Milwaukee, WI.

Hargrave, G. **Assessment of Workplace Violence.** American Academy of Forensic Psychology. Toronto, Canada, March 28, 1999.

**General Forensic Issues and Methods:**

Meyers, R. **Intermediate and Advanced Forensics.** American Academy of Forensic Psychology. February 28, 1997. Kansas City, MO.

Rogers, R. **Advanced Topics in Assessment and Diagnosis.** June 20-21, 1997. American Academy of Forensic Psychology. Portland, OR.

Bognacki, D. **Developmental Disabilities and the Law.** March 19, 1998. American Academy of Forensic Psychology. Milwaukee, WI.

Otto, R.K. **Assessment of Response Style in Forensic Contexts.** American Academy of Forensic Psychology. San Diego, CA. March 5, 2005.

**CLINICAL:**

Hoyt, M. **Brief Therapy and Managed Care.** New England Educational Institute. August 7-11, 1995. Eastham, Mass.

Berman, A.L. et al. **Assessment and Treatment with Suicidal Adolescents/Adults.** American Association of Sociology. July 22-27, 1995. Santa Fe, New Mexico.

Koocher, G. **Preparing for the American Board of Professional Psychology Diplomate Examination.** American Academy of Forensic Psychology. Portland, OR: June, 1996.

Swenson, C. **Dialectical Behavior Therapy for Borderline Personality Disorders.** American Continuing Education. Minneapolis: October 30, 1996.

Schoener, G. R. **Professionals at Risk: Ethical, Legal and Boundary Issues.** National Association of Social Workers. St. Paul: September 18, 1997.

Franz, J.P. **Creative Consequences for Juvenile Offenders.** Hennepin County Children's Mental Health Collaborative. Minneapolis, MN: September 29, 998.

Berman, A.L. **Clinical Suicidology.** Minnesota Coalition for Death Education, and Support. St. Paul, MN: October 2, 1998.

Hicks, M.D. & Peterson, D.B. **The Art and Practice of Executive Coaching.** Minnesota Psychological Association. November 6, 1998.

O'Hanlon, B. **Keeping Your Soul Alive: Spiritual, Personal and Professional Renewal.** Marco Island, FL: February 18-22, 2002.

## CONSULTING EXPERIENCES

- 1999-Present      Consultant, Sexually Violent Predator Integrated Group Network (SIGN)(Iowa/Minnesota Representative)
- 1999-2000      Consultant/Trainer, Minnesota Department of Children, Learning & Families. Forensic Investigation of Children Alleged to be Victims of Abuse & Neglect in School Settings
- 1994-1997      Psychotherapy Consultant & Supervisor, McKnight Multi-Center Study on Relapse Prevention in Bulimia and Anorexia Nervosa
- 1993-1995      NIMH: Child & Adolescent Psychosocial Interventions Research Consortium (CAPIRC): Vice-Chairman
- 1993-1995      Consultant Psychologist, Society for Adolescent Medicine (SAM), Practice Parameters for Treatment of Adolescents with Eating Disorders
- 1988-1992      Psychological Consultant, Outpatient Eating Disorders Program, Counseling Clinics, Golden Valley Health Center
- 1990-1991      Psychological Consultant, Inpatient Eating Disorders Unit, Golden Valley Health Center
- 1988 - 1989      Consultant on Adolescent Development, Target Interactive Video Project on HIV Prevention for Adolescents
- 1985 - 1986      Consulting Psychologist, Comprehensive Clinic for Abused & Traumatized Children (CCATCH), University of Minnesota Medical School
- 1985 - 1989      Instructor, American Healthcare Institute, Continuing Education Workshops:  
1. Short-Term Treatments for Children, Adolescents and Families  
2. Eating and Weight Disorders in Children and Adolescents  
3. Depression and Suicidal Behavior in Youth
- 1985 - 1987      Behavioral Scientist, Diabetes Control and Complications Trial (DCCT)
- 1984 - 1986      Consultant, Family Court, Scott County, Minnesota, regarding: childhood sexual abuse.

## AWARDS

- 1986 Minnesota Extension Service Director's Award for Outstanding Service:  
(Teens in Distress: for High Risk Youth)
- 1990 U.S. Department of Agriculture: Distinguished Service Award

## GRANTS (SELECTED)

- Variety Club: Distinguishing Characteristics of Youthful Suicide Attempters (\$21,600)
- National Institute of Mental Health: Depression: Awareness, Recognition, and Treatment:  
DART for Youth (\$294,693)
- National Institute of Mental Health: Psychiatric Disorders Among Native American  
Adolescents (\$1,122,167)
- McKnight Foundation: Treatments for Anorexia and Bulimia Nervosa

## OTHER PROFESSIONAL ACTIVITIES

### Ad-Hoc Journal Reviewer:

Journal of Clinical and Consulting Psychology  
Issues in Law and Medicine  
International Journal of Eating Disorders  
Child Development  
Journal of Mental Health Administration  
Health Psychology  
Cognitive Therapy and Research  
Developmental Psychology  
Psychological Bulletin  
Psychology Review

## PUBLICATIONS

Lewinsohn, P.M. and Hoberman, H.M. (1981). Behavioral and cognitive approaches to treatment. In E.S. Paykel (Ed.), **Handbook of Affective Disorders**. Edinburgh: Churchill Livingstone.

Lewinsohn, P.M. and Hoberman, H.M. (1982). Depression. In A.S. Bellack, M. Hersen and A.E. Kazdin (Eds.), **International Handbook of Behavior Modification and Therapy**. New York: Plenum Press, p.397-431.

Lewinsohn, P.M., Ten, L. and Hoberman, H.M. (1982). Depression: A perspective on etiology, treatment and life-span issues. In M. Rosenbaum and C. Franks (Eds.), **Perspectives on Behavior Therapy in the Eighties**. New York: Springer, p.155-183.

Cohen, S. and Hoberman, H.M. (1983). Positive events and social supports as buffers of life change stress: Maximizing the prediction of health outcomes. **Journal of Applied Social Psychology**, 13, p. 99-125.

Cohen, S., Mermelstein, R., Kamarek, T. and Hoberman, H.M. (1984). Measuring the functional components of social support. In I. Sarason and B.R. Sarason (Eds.), **Social Support: Theory, Research and Applications**. Boston: Nijhoff.

Lewinsohn, P.M., Hoberman, H.M., Ten, L. and Hautzinger, M. (1985). Toward an integrative theory of unipolar depression. In S. Reiss and R.R. Bootzin (Eds.), **Theoretical Issues in Behavior Therapy**. New York: Academic Press.

Hoberman, H.M. and Lewinsohn, P.M. (1985). Behavioral approaches to the treatment of unipolar depression. In E.E. Beckham and W.R. Leber (Eds.), **Handbook of Depression: Treatment, Assessment and Research**. Homewood, Illinois: Dorsey.

Sonis, W.A., Yellin, A.M., Garfinkel, B.D. and Hoberman, H.M. (1987). The antidepressant effect of light in seasonal affective disorder of childhood and adolescence. **Psychopharmacology Bulletin**, 23, p.360-363.

Hoberman, H.M., Lewinsohn, P.M. and Tilson, M. (1988). Group treatment of depression: Individual predictors of outcome. **Journal of Consulting and Clinical Psychology**, 56, p.393-398.

Hoberman, H.M. and Garfinkel, B.D. (1988). Completed suicide in youth. **Canadian Journal of Psychiatry**, 33, p.494-502.

Hoberman, H.M. and Garfinkel, B.D. (1988). Completed suicide in children and adolescents. **Journal of the American Academy of Child & Adolescent Psychiatry**, 27, p 689-695. (Also selected for publication in S. Chess & M.E. Hartzig (eds.), **Annual Progress in Child Psychiatry and Child Development**, 1989. New York: Brunner/Mazel.)

Lewinsohn, P.M., Hoberman, H.M. and Rosenbaum, M. (1988). Risk factors for unipolar depression. **Journal of Abnormal Psychology**, 22, p.251-264.

Hoberman, H.M. (1988). The impact of sanctioned assisted suicide on adolescents. **Issues in Law and Medicine**, 4, p.191-205.

Hoberman, H.M. (1988). Adolescent psychopathology: An attempt at an integrated perspective. Book review of "Attack on the self: Adolescent behavioral disturbances and their treatment." By Derek Miller in **Contemporary Psychology**, 33, p.624-625.

Hoberman, H.M. and Lewinsohn, P.M. (1989). Behavioral treatment of unipolar depression. In T.B. Karasau (Ed.), **Treatment of Psychiatric Disorders. A Task Force Report of the American Psychiatric Association**, Washington, D.C.: APA, p. 1846-1862.

Hoberman, H.M. and Garfinkel, B.D. (1989). Completed suicide in youth: A survey of medical examiner's records. In C.R. Pfeffer (Ed.) **New Biopsychosocial Perspectives on Youth Suicide**. Washington, D.C.: American Psychiatric Press p. 21-40 [adaptation of **Canadian Journal of Psychiatry** article].

Hoberman, H.M. and Peterson, C.B. (1989). Multidimensional psychotherapy for children and adolescents. In B.D. Garfinkel, E. Weller and G.A. Carlson (Eds.) **The Medical Basis of Child Psychiatry**, Philadelphia: W.B. Saunders, p.503-546.

Bernstein, G., Garfinkel, B.D. and Hoberman, H.M. (1989). Self-reported anxiety in adolescents. **American Journal of Psychiatry**, 146, p. 384-386.

Hoberman, H.M. (1989). Completed suicide in children and adolescents: A review. **Residential Treatment for Children and Youth**, I, 61-88 [also appeared in B.D. Garfinkel and G. Northrup (Eds.), **Adolescent Suicide: Recognition, Treatment, and Prevention**. New York: Haworth, p. 61-88.]

Lewinsohn, P.M., Hoberman, H.M. and Clarke, G.N. (1989). The Coping with Depression Course: Review and future direction. **Canadian Journal of Behavioral Sciences** 21 p. 470-93.

Mitchell, J.E., Hoberman, H.M. and Pyle, R. (1989). The treatment of bulimia nervosa: A review. **Psychiatric Medicine**, 7, 317-322.

Hoberman, H.M. (1990). Impact of television violence on adolescents. **Journal of Adolescent Health Care**, 11, p. 45-49.

Hoberman, H.M. (1990). Behavioral treatment for unipolar depression. In B. Wolman and G. Stricker (Eds.), **Affective Disorders: Facts, Theories, and Treatment Methods**. New York: Wiley.

Hoberman, H.M. (1991). Behavior therapy. In B. Wolman (Ed.), **The Book of Mental Health**. New York: Simon and Schuster.

Hoberman, H.M. and Clarke, G.N. (1992). Major depression in adults. In R.T. Ammerman and M. Hersen (Eds.), **Handbook of Behavior Therapy with Children and Adults: A Longitudinal Perspective**. New York: Pergamon.

Hoberman, H.M. and Kroll-Mensing, D. (1991). Eating disorders in adolescents. **Current Opinion in Psychiatry** 4 542-548.

Hoberman, H.M. and Bergmann, P.E.. (1992). Suicidal behavior in adolescence. **Current Opinion in Psychiatry** 5 508-517.

Hoberman, H.M. and Kroll-Mensing, D. (1992). Adolescent eating disorders. **Current Opinion in Psychiatry**, 5, 523-534.

Hoberman, H.M. (1993). Ethnic minority status and adolescent mental health service utilization. **Journal of Mental Health Administration**, 19, 246-267. (Invited Paper)

Hoberman, H.M., Clarke, G.N. and Saunders, S.M. (1996). Psychosocial treatments of depressive episodes in adolescence. In M. Hersen, R.M. Eisler, and P.M. Miller (Eds.) **Progress in Behavior Modification**. 30, Pacific Grove, CA: Brooks Cole, 25-73.

Hoberman, H.M. (1994). Psychiatric and psychosocial characteristics of adolescents with eating disorders. **Journal of Adolescent Health Care**. (Invited Paper)

Saunders, S.M., Resnick, M.D., Hoberman, H.M., Blum, R.W. (1994). Explaining formal help-seeking behavior among adolescents identifying themselves as having mental health problems. **Journal of the American Academy of Child and Adolescent Psychiatry**. 33, 718-728.

Mitchell, J.E., Hoberman, H.M., Peterson, C.B., Mussell, M.P., & Pyle, R.L. (1996). Research on the psychotherapy of bulimia nervosa: Half empty or half full? **International Journal of Eating Disorders**. 20, 219-229.

Mussell, M.P., Mitchell, J.E., Fenna, C.J., Crosby, R.D., Miller, J.P., & Hoberman, H.M. (1997). A Comparison of onset of binge eating versus dieting in the development of Bulimia Nervosa. **International Journal of Eating Disorders**. 21,353-360.

Robiner, W.N., Saltzman, S.R., Hoberman, H.M., & Schirvar, J.A. (1997). Psychology supervisors' training, experiences, supervisory evaluation, and self-rated competence. **The Clinical Supervisor**, 16 (1), 117-144.

Robiner, W.N., Saltzman, S.R., Hoberman, H.M., Semrud-Clikeman, M., & Schirvar, J.A. (1998). Psychology supervisors' bias in evaluations and letters of recommendation. **The Clinical Supervisor**, 16 (2), 49-72.

Hoberman, H.M. (1999). The forensic evaluation of sex offenders in civil commitment proceedings. In A. Schlank & F. Cohen (Eds.): **The Sexual Predator**. (Volume I). Kingston, N.J.: Civic Research Institute, (7)1-41.

Hoberman, H.M. (1999). Expert witness testimony in sexual predator civil commitment proceedings. In A. Schlank & F. Cohen (Eds.): **The Sexual Predator**. (Volume I). Kingston, N.J.: Civic Research Institute, (9)1-47.

Hoberman, H.M. (1999). Sample Assessment Report. In A. Schlank & F. Cohen (Eds.): **The Sexual Predator**. (Volume I). Kingston, N.J.: Civic Research Institute, (A) 65-102.

Mussell, M.P., Mitchell, J.E., Crosby, R.D., Fulkerson, J. A., Hoberman, H.M. & Romano, J. L. (2000). Commitment to treatment goals in prediction of group cognitive-behavioral therapy treatment outcome for women with Bulimia Nervosa **Journal of Consulting and Clinical Psychology**, 68, 432-437.

Hoberman, H.M. (2001). Dangerousness and risk assessment for future sexual offenses: Current issues and advances. In A. Schlank (Ed.): **The Sexual Predator**. (Volume II). Kingston, N.J.: Civic Research Institute

Hoberman, H. M. (2002). Towards a new generation of child custody evaluations: The forensic psychological perspective. **Family Law Forum**. Winter 2000-2002, 20-29.

### PRESENTATIONS

Hoberman, H.M., Lewinsohn, P.M. and Ten, L. (1981). **Loss of a parent during childhood and adult depression**. Paper presented at the Western Psychological Association, Los Angeles, California.

Lewinsohn, P.M., Hoberman, H.M. and Ten, L. (1981). **Risk factors for unipolar depression**. Paper presented at the American Psychological Association, Los Angeles.

Lewinsohn, P.M. and Hoberman, H.M. (1982). **Stress, moderator variables, and depression: A prospective perspective**. Paper presented at the Western Psychological Association, Sacramento, California.

Cohen, S. and Hoberman, H.M. (1982). **What kinds of social supports function as stress buffers?** Paper presented at the American Psychological Association, Washington, D.C.

Lewinsohn, P.M., Hoberman, H.M. and Hautzinger, M. (1982). **Cognitive distortion: Consequence rather than cause of depression**. Paper presented at the Association for Advancement of Behavior Therapy, Los Angeles, California.

Hoberman, H.M., Clarke, G.N. and Lewinsohn, P.M. (1983). **Childhood depression: Empirical findings and clinical applications**. Paper presented at the Oregon Psychological Association Biannual Meeting, Newport, Oregon.

Hoberman, H.M., Clarke, G.N. and Lewinsohn, P.M. (1983). **Distinguishing characteristics of a community sample of depressed children**. Paper presented at the American Psychological Association, Anaheim, California.

Hoberman, H.M., Lewinsohn, P.M. and Tilson, M. (1985). **Group treatment of depression: Individual predictors of outcome**. Paper presented at the American Psychological Association, Los Angeles, California.

Hoberman, H.M., Clarke, G.N. and Lewinsohn, P.M. (1985). **Are there distinguishing characteristics of depressed children?** Paper presented at the American Academy of Child Psychiatry, San Antonio, Texas.

Hoberman, H.M., Garfinkel, B.D., Parsons, J. and Walker, J. (1986). **Epidemiology of depression in a sample of high school students.** Paper presented at the American Academy of Child Psychiatry, Los Angeles, California.

Hoberman, H.M. and Garfinkel, B.D. (1986). **Characteristics of youthful suicide completers.** Paper presented at the American Academy of Child Psychiatry, Los Angeles, California.

Garfinkel, B.D., Hoberman, H.M., Walker, J. and Parsons, J. (1986). **Suicide attempts in a community sample of adolescents.** Paper presented at the American Academy of Child Psychiatry, Los Angeles, California.

Hoberman, H.M. (1987). **The impact of sanctioned assisted suicide on adolescents.** Paper presented at the Conference on Assisted Suicide, April, 1987, Palo Alto, California.

Renken, B., Hoberman, H.M. and August, G. (1987). **Aspects of family functioning in ADD and Conduct Disorder.** Paper presented at the American Psychological Association, New York, New York.

Hoberman, H.M., Mitchell, J.E., Early, M. and Peterson, C.B. (1989). **Psychosocial Characteristics of Children of Mothers Treated for Bulimia Nervosa.** Paper presented at the American Academy of Child and Adolescent Psychiatry, New York.

Hoberman, H.M., Opland, F., Garfinkel, B.D. and Sauer, J. (1990). **Psychosocial Characteristics of Adolescents with Self-Reported Eating Disorders.** Paper presented at the American Academy of Child and Adolescent Psychiatry, Chicago, October.

Hoberman, H.M., Garfinkel, B.D. and Sulik, L.R. (1991). **Clinical Characteristics of Depressed Youth in the Community.** Paper presented at the American Academy of Child and Adolescent Psychiatry, San Francisco, CA, October.

Hoberman, H.M., Garfinkel, B.D. and Sulik, L.R. (1991). **Comorbidity of Psychiatric Symptomatology in a Community Sample of Adolescents.** Paper presented at the American Academy of Child and Adolescent Psychiatry, San Francisco, CA, October.

Hoberman, H.M. (1992). **Chair, Risk Factors for Depressive Disorders in Adolescence.** Symposium: American Academy of Child and Adolescent Psychiatry, Washington, D.C. October.

Hoberman, H.M., Garfinkel, B.D., Nugent, S. and Kangas, J. (1992). **Antecedents of Depression In Two Community Samples Of Adolescents.** Paper presented at the American Academy of Child and Adolescent Psychiatry, Washington, D.C. October.

Saunders, S. M. and Hoberman, H.M. (1992). **Mental Health Help-Seeking Among Early Adolescents.** Paper presented at the American Academy of Child and Adolescent Psychiatry, Washington, D.C. October.

Hoberman, H.M. and Nugent, S. (1993). **Suicidal Behavior In Community Samples of Native American Adolescents.** Paper presented at the Society for Research in Child and Adolescent Psychopathology, Santa Fe, New Mexico, February.

Hoberman, H.M. and Mitchell, J.E. (1993). **Psychosocial treatments for adolescents with bulimia nervosa: Advantages and disadvantages of cognitive-behavioral interventions.** Paper presented at the Society for Psychotherapy Research, Pittsburgh, PA, June.

Hoberman, H.M., Nugent, S., and Taylor, B. (1993). **Prevalence of psychiatric disorders among Native American adolescents.** Paper presented at the American Academy of Child and Adolescent Psychiatry, San Antonio, Texas, October.

Hoberman, H.M. Valentiner, D.P., Garfinkel, B.D., and Sulik, L.R. (1993). **The adaptive significance of adolescent coping behaviors in response to different types of negative life events.** Paper presented at the Association for Advancement of Behavior Therapy, Atlanta, November,

Valentiner, D.P., Hoberman, H.M., Garfinkel, B.D., and Sulik, L.R. (1993). **Changes in coping dispositions during adolescence: The evaluative function of depression.** Paper presented at the Association for Advancement of Behavior Therapy, Atlanta, November.

Huston, L., Hoberman, H.M., and Nugent, S. (1994). **Alcohol use and abuse in Native American adolescents: Distinctions between early and later onset.** Paper presented at the Society for Research in Adolescence. San Diego, February.

Hoberman, H.M. and Nugent, S. (1994). **Depressive conditions in early adolescence: Psychiatric and psychosocial correlates.** Paper presented at the American Academy of Child and Adolescent Psychiatry, New York, October.

Hoberman, H.M. and Nugent, S. (1994). **Depressive disorders in a community sample of Native American adolescents: Psychiatric and psychosocial correlates.** Paper presented at the American Academy of Child and Adolescent Psychiatry, New York, October.

Hoberman, H.M. and Nugent, S. (1994). **The development of a measure of adolescent competence.** Paper presented at the American Academy of Child and Adolescent Psychiatry, New York, October.

Hoberman, H.M. (1995). **Sexual offending: Its nature and implications for interventions.** Minnesota Institute of Legal Education, Minneapolis, MN, September.

Hoberman, H.M. (1997). **Distinguishing characteristics of depressed & suicidal youth: Implications for psychosocial treatment.** Grand Rounds, Child Study Center, New York University, November.

Hoberman, H.M. (1998). **Psychiatric and psychological issues regarding sexual predators: Implications for treatment.** Paper presented at the Minnesota Institute for Legal Education, Minneapolis, MN, August.

Hoberman, H.M. (1999). **The role of the forensic psychologist in child custody evaluations.** Paper presented at the Minnesota Institute of Legal Education on Family Law. Minneapolis, MN, December 2.

Hoberman, H.M. (2000). **Forensic psychological assessment in family court matters.** Paper presented at the Minnesota Family Law Institute. St. Paul, MN, March 27.

Hoberman, H.M. & Kenning, M. (2000). **Assessment of dangerousness.** Century College. Workshop. St. Paul, June 14.

Hoberman, H.M. (2000). **Assessment and management of dangerousness in the workplace.** Minnesota Department of Transportation Training. St. Cloud, MN, September 7.

Hoberman, H.M. & Koehler, D. J. (2000). **Bipolar Affective Disorders in children and adolescents.** Century College. Workshop. St. Paul, November 30.

Hoberman, H.M. (2002) **Risk assessment for sex offense recidivism: An update.** Sexual Psychopathic Personalities and Sexually Dangerous Persons: Update. Minnesota Institute of Legal Education. Minneapolis, Mn.

Hoberman, H.M. (2004) **Practices and issues in conducting forensic evaluations and preparing reports for persons petitioned for civil commitment as sexual predators.** Hennepin County Court Psychological Services. Minneapolis, Mn.

Alsdurf, J. & Hoberman, H.M. (2006) **Evaluation of sex offenders: Forensic and scientific influences.** Minnesota Association for the Treatment of Sexual Abusers, Minneapolis, MN.

October 2006