

1 Q And when he was released from  
2 confinement, I guess it was 14 years ago, you  
3 helped classify him as a level-two sex  
4 offender?

5 A Yes, sir.

6 Q And a level-three sex offender is  
7 supposed to be the most likely to re-offend?

8 A The highest risk to re-offend.

9 Q The highest risk. And your  
10 classification of Mr. Titus was based on the  
11 Washington Sex Offender Risk Level  
12 Classification Tool?

13 A Yes, it is.

14 Q Can we call that the WASOST --

15 A Yes, you can.

16 Q -- for short in the future?

17 JUDGE SIPPEL: Can we give that a,  
18 can you spell those letters that you --

19 MR. LYON: Is that W-A-S-O-S-T?

20 THE WITNESS: Yes, sir, it is.

21 JUDGE SIPPEL: W-A-S-O-S-T. And  
22 that again stands for?

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1 MR. LYON: Washington Sex Offender  
2 Risk Level Classification Tool?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: But it's W-A-S-O-S-  
5 T?

6 THE WITNESS: Yes, your Honor.

7 JUDGE SIPPEL: Thank you. Okay.

8 BY MR. LYON:

9 Q And that tool is based on a  
10 combination of the Minnesota Sex Offender  
11 Screening Tool and the Rapid Risk Assessment  
12 for Sexual Offense Recidivism Tool?

13 A Yes, sir.

14 Q Okay. And the Minnesota Sex  
15 Offender Screening Tool is known as the MSOST?

16 A Yes, it is.

17 Q M-S-O-S-T?

18 A That's correct.

19 JUDGE SIPPEL: Now, what is that  
20 tool used for? Well, I'm not going to try to  
21 say that word. What is it used for?

22 MR. LYON: Actually, we'll get

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1 into that, your Honor.

2 JUDGE SIPPEL: All right.

3 MR. LYON: I'm just trying to get  
4 the terms down.

5 JUDGE SIPPEL: Go ahead.

6 BY MR. LYON:

7 Q The Rapid Risk Assessment for  
8 Sexual Offense Recidivism is known as the  
9 RRASOR?

10 A Yes, sir.

11 Q And that's R-R-A-S-O-R?

12 A Yes, it is.

13 Q Okay. Now, the Washington tool  
14 places offenders in -- I'm sorry. The WASOST  
15 places offenders into one of three  
16 notification levels by combining a risk  
17 assessment score and a notifications  
18 consideration score?

19 A Yes.

20 Q Okay. And it is the MSOST that  
21 gives the risk assessment score?

22 A Yes.

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1 Q Okay. And there are also  
2 notification considerations -- I'm sorry. The  
3 RRASOR sets forth the notification  
4 considerations?

5 A No. The RRASOR is one of the  
6 notification considerations.

7 Q Okay. So there are four  
8 notification considerations?

9 A Either four or five notification  
10 considerations.

11 Q Okay. One of them is whether the  
12 victim is a non-familial, whether the victim  
13 was non-familial?

14 A Yes, sir.

15 Q Okay. And if the victim was a  
16 family member, that's not a notification  
17 consideration, correct?

18 A That's correct.

19 Q Okay. And another notification  
20 consideration is whether the sexual offense  
21 was of a predatory nature?

22 A That's correct.

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1 Q Okay. For example, the offender  
2 used a position of community trust?

3 A Yes.

4 Q Such as a coach?

5 A That's correct.

6 Q A teacher?

7 A Right.

8 Q Group leader?

9 A Yes.

10 Q Police officer?

11 A Yes.

12 Q Or professional relationship, such  
13 as doctor or psychiatrist or lawyer, to  
14 facilitate the non-familial offense?

15 A Yes.

16 JUDGE SIPPEL: Are you taking  
17 these questions, are you framing these  
18 questions rather from his written testimony?

19 MR. LYON: They are drawn from a  
20 study of the official tools or his testimony.

21 JUDGE SIPPEL: All right.

22 MR. LYON: I mean, if I have a

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1 question wrong if I've assumed a fact that is  
2 wrong, you will correct me, won't you?

3 THE WITNESS: If you want me to, I  
4 will.

5 MR. LYON: Absolutely I want you  
6 to. I want the record to be accurate.

7 BY MR. LYON:

8 Q Another notification consideration  
9 is whether the offender continued to act out  
10 sexual deviancy during confinement?

11 A Yes, sir.

12 Q And another notification  
13 consideration is whether the offender is an  
14 adult male with a RRASOR score of four to six?

15 A Yes.

16 Q Okay. Now, you helped formulate  
17 the WASOST, right?

18 A I was one of the -- I didn't  
19 formulate it. I was one of the people who  
20 made the decision on our use of the WASOST.

21 Q Who formulated it?

22 A It was the committee of people

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1 that -- I know that I participated in some of  
2 the meetings. I wouldn't say that I  
3 formulated it.

4 Q Okay. But you endorsed the use of  
5 the WASOST?

6 A At the time, yes.

7 Q Okay. You don't now?

8 A I haven't for quite a while. I've  
9 been very vocal about that.

10 Q But you, nevertheless, use the  
11 WASOST?

12 A Because state law requires me to.

13 Q I see. You're not a psychiatrist,  
14 right?

15 A I'm not.

16 Q Or a psychologist?

17 A No.

18 Q And don't have a Ph.D. in any  
19 social science?

20 A No.

21 Q You're not a statistician?

22 A No.

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1 Q And you're not a researcher into  
2 sexual deviance?

3 A I am not.

4 Q Do you know the meaning of peer  
5 review journal?

6 A Yes.

7 Q Okay. What is it?

8 A It's where the person submits a  
9 study for peer review. In other words, other  
10 persons of, you know, that are highly educated  
11 that deal in research of a particular type  
12 review the information, try to replicate it  
13 and find any problems with it.

14 Q Okay. You mentioned yesterday in  
15 your direct testimony the use of science.

16 A Yes.

17 Q And correct me if I'm wrong, but  
18 what I got out of your testimony yesterday was  
19 that you favored the use of actuarials over  
20 subjective judgment because it was more  
21 scientific. Did I understand your intent  
22 correctly?

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1 A Yes, you did.

2 Q Okay. So you would, so it would  
3 be fair to say that you favor a scientific  
4 basis for an evaluation of sex offenders as  
5 opposed to subjective judgment?

6 A I favor a combination of both. I  
7 favor the use of scientific evidence,  
8 actuarial information. At the same time, I  
9 also realize that there's no, I realize that  
10 clinical expertise can play a lot into it, as  
11 well. I wouldn't necessarily say that  
12 experience, whether clinical or whether, you  
13 know, for someone like myself who has years of  
14 experience in that, should be just thrown out  
15 and only in actuarial use. I think a  
16 combination of both are necessary.

17 Q You would want someone who is  
18 subjectively evaluating a sex offender to have  
19 adequate training?

20 A Yes.

21 Q Okay. Such as a psychiatrist or  
22 psychologist?

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1 A Such as, yes.

2 Q Or a sex offender researcher?

3 A Yes.

4 Q Do you know what a confidence  
5 level is?

6 A Yes.

7 Q Do you know what a confidence  
8 level of 0.05 means?

9 A No.

10 Q Have you ever had a paper  
11 published in a peer review journal on the  
12 subject of sexual deviance?

13 A No.

14 Q On any subject?

15 A I'm in the process of writing one.

16 Q What subject?

17 A On attachment for the Journal of  
18 Attachment in the UK.

19 JUDGE SIPPEL: Can we get a little  
20 clarification on that? What is attachment,  
21 and how does it relate to, does it relate to  
22 the issue here of sexual deviance or sexual .

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1 . . .

2 THE WITNESS: Last October, I gave  
3 a speech before the Association of Chief  
4 Police Officers in the UK and Ireland and  
5 Wales. And after that, the publisher of the  
6 Journal of Attachment asked me to write an  
7 article on what I had talked about, which was  
8 community education of the public regarding  
9 sex offenders because they don't do that in  
10 the UK right now. They do no public education  
11 or community notification in the UK. And he  
12 thought that what I had talked about was  
13 interesting enough that they wanted me to  
14 write an article for this journal.

15 JUDGE SIPPEL: Is there any  
16 significance to the attachment? I mean, a  
17 police journal? What kind of a --

18 THE WITNESS: Well, it's mostly  
19 for psychologists and psychiatrists.

20 JUDGE SIPPEL: Okay.

21 THE WITNESS: But it has to do  
22 with the public attaching to the offender and

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1 being invested in the offender's success and  
2 helping them succeed.

3 JUDGE SIPPEL: So is that, I mean,  
4 attachment, is that a one issue journal, or  
5 will they continue to publish the same journal  
6 under the name Attachment?

7 THE WITNESS: It's called the  
8 Journal of Attachment.

9 JUDGE SIPPEL: Okay, thank you.

10 BY MR. LYON:

11 Q And is the subject of your  
12 article, does it relate to what we talked  
13 about about social support?

14 A Yes.

15 Q And appropriate relationships?

16 A Yes.

17 Q Now, the WASOST is principally  
18 based on the MSOST, correct?

19 A Yes.

20 Q And the MSOST is one of a number  
21 of actuarial tools?

22 A Yes.

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1 Q Okay. Are you familiar with a  
2 tool called a BRAG?

3 A Yes.

4 Q That's B-R-A-G. That's another  
5 actuarial tool?

6 A Yes. It doesn't assess sex  
7 offender risk. It assesses violence.

8 Q Okay. And Washington doesn't use  
9 that as part of the WASOST?

10 A No.

11 Q Okay. And so the committee that  
12 chose the MSOST as the actuarial tool for the  
13 WASOST thought that the MSOST was a better  
14 tool than the BRAG?

15 A Well, we were trying to assess sex  
16 offenders, not just levels or risk of  
17 violence, which is what the BRAG looks at.  
18 And at that point in time, in 1997, the MSOST  
19 was really the only tool at that point that we  
20 felt assessed the risk of sex offenders.

21 Q Okay. The SORAG is another  
22 actuarial tool, isn't it?

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1 A It is.

2 Q And the SORAG does assess the risk  
3 of sex offense?

4 A I believe it does, yes.

5 Q Okay. But Washington State  
6 doesn't use that?

7 A They do not.

8 Q Okay. Are you familiar with the  
9 Static-99?

10 A I am.

11 Q That's another actuarial tool,  
12 isn't it?

13 A It is.

14 Q But Washington State doesn't use  
15 that?

16 A The Static-99 wasn't available in  
17 1997 when the State decided to do the MSOST.

18 Q Okay. But it is available now?

19 A It is, yes.

20 Q Are you familiar with the PCL-R  
21 developed by Dr. Hare?

22 A The psychopathy checklist.

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1 Q Okay. And that's another  
2 actuarial tool for criminal behavior?

3 A It is.

4 Q But Washington State doesn't use  
5 that?

6 A No.

7 Q You're familiar with Phallometric  
8 testing?

9 A I am.

10 Q But Washington State doesn't use  
11 that to classify sex offenders?

12 A They use it in sex offender  
13 program to assess sexual deviancy, but it's  
14 not used as part of the risk assessment for  
15 classification purposes.

16 Q And just so the record is clear,  
17 that's a measure of sexual arousal resulting  
18 from various visual stimuli?

19 A Or auditory stimuli, as well.

20 Q Okay. I stand corrected. Now,  
21 the MSOST was created by a team headed by Dr.  
22 Epperson at the University of Iowa?

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1 A Yes.

2 Q And you're aware, are you not,  
3 that for the purposes of that tool the  
4 Epperson team determined that six years free  
5 of re-offense was sufficient to label a  
6 subject as a non-recidivist?

7 A No, I'm not familiar with that.

8 Q You are familiar with the fact  
9 that Mr. Titus has gone 16 years without being  
10 arrested or convicted of another offense?

11 A Yes.

12 Q Now, the fact is that there are a  
13 number of problems with the MSOST.

14 A Yes.

15 Q Let's take the easy one. Epperson  
16 himself recommends against using it to  
17 classify sex offenders, doesn't he?

18 MR. KNOWLES-KELLETT: Your Honor,  
19 objection based on facts not in evidence.

20 MR. LYON: Your Honor, I'm trying  
21 to put them in evidence by asking the witness.

22 JUDGE SIPPEL: This is cross

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1 examination. The questions are certainly in  
2 the field that Detective Shilling feels very  
3 comfortable with. If it's not a, if he  
4 doesn't establish, if the record turns out not  
5 to be reliable in certain areas of his  
6 questioning of the witness, then that's all  
7 well and good. But I don't see where the  
8 government is prejudiced by this. It's your  
9 witness.

10 MS. LANCASTER: He can ask him if  
11 he's aware of it, your Honor; but he can't  
12 testify during his questioning.

13 MR. LYON: I'm asking him the  
14 simple question Epperson himself recommends  
15 against using the MSOST to classify sex  
16 offenders. Is that not right?

17 MS. LANCASTER: You can ask him if  
18 he's aware of that --

19 MR. KNOWLES-KELLETT: Say are you  
20 aware --

21 MS. LANCASTER: -- do you agree or  
22 not agree, but there's no facts that Epperson

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1 --

2 JUDGE SIPPEL: We've got two  
3 people talking.

4 MS. LANCASTER: Sorry.

5 MR. LYON: Your Honor, I think my  
6 question is perfectly fine cross examination.

7 JUDGE SIPPEL: All right. I'm  
8 going to overrule the objection.

9 THE WITNESS: I have read Dr.  
10 Epperson does not believe that it's a reliable  
11 tool anymore.

12 BY MR. LYON:

13 Q And it's also true, is it not,  
14 that the MSOST is not actively supported?

15 A That's correct.

16 Q And it's also true there was never  
17 even manual developed for it?

18 A That's not true.

19 Q There is a manual for it?

20 A For the Washington State Sex  
21 Offender Screening Tool with the MSOST as part  
22 of it?

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1 Q I'm asking only about the MSOST at  
2 this point.

3 A Oh, I don't know.

4 Q But I will ask a question about  
5 the WASOST. There is a manual for it?

6 A Yes.

7 Q Do you have such a manual in your  
8 possession today?

9 A No.

10 JUDGE SIPPEL: Well, maybe you can  
11 ask him to explain what he knows to be in the  
12 manual. This is a manual that you have made  
13 use of?

14 THE WITNESS: This is one that  
15 Washington State put together for persons who  
16 do the scoring on the WASOST based on all of  
17 the questions that are asked in the actuarial,  
18 the static actuarial part of the WASOST, which  
19 is the MSOST. And it goes question-by-  
20 question and says you score this if, you score  
21 this if, you score this if something else is  
22 there.

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1 JUDGE SIPPEL: And do you  
2 personally use that manual, what you're  
3 describing, that aspect of it?

4 THE WITNESS: Yes, your Honor.  
5 We're required to do it by state law.

6 JUDGE SIPPEL: Do you feel it's  
7 reliable? Personally, do you think it's  
8 reliable?

9 THE WITNESS: The MSOST or the  
10 WASOST --

11 JUDGE SIPPEL: Well, what you just  
12 described. What you just described.

13 THE WITNESS: I'm not in favor of  
14 using the tool that we use now, but I'm  
15 required to by law. I think there are much  
16 better tools to be used. And for years I have  
17 argued that the science has gone beyond the  
18 MSOST, that we should be using the Static-99,  
19 the Stable-2007, the Acute-2007. And the  
20 State of Washington is attempting to move in  
21 that direction, but, unfortunately, the wheels  
22 of government turn very slow.

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1 JUDGE SIPPEL: All right. So my  
2 conclusion here is that the tool that you have  
3 identified, I'll call it that, is something  
4 that you use because you're required to use  
5 it. And then you have projected your opinion  
6 with respect to whether it's, your opinion  
7 being really that there's better things to do  
8 to get to the same result. That's basically  
9 what you're saying, I think. That's what I'm  
10 hearing.

11 THE WITNESS: Yes, your Honor.

12 JUDGE SIPPEL: Now, what about the  
13 use of that which you do not, that you find to  
14 be a lesser tool, is it still, in your  
15 opinion, is it still predictable? Does it  
16 have a value to it?

17 THE WITNESS: Yes, we believe it  
18 does have a value.

19 JUDGE SIPPEL: I'll let you follow  
20 this, counsel -- I'm talking to the Bureau  
21 counsel now, Ms. Lancaster and Mr. Knowles-  
22 Kellett -- in redirect if you care to.

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1 MR. KNOWLES-KELLETT: Thank you,  
2 your Honor.

3 BY MR. LYON:

4 Q Detective, it's true, is it not,  
5 that tools like the MSOST are designed to  
6 assess a sex offender at the time that they  
7 are released and whether they will re-offend -  
8 -

9 A That's correct.

10 Q -- not years later?

11 A That's right.

12 Q And it's also true that these  
13 tools, such as the MSOST, measure static  
14 variables?

15 A That's correct.

16 Q Thus, they cannot evaluate the  
17 effect on recidivism of the passage of time?

18 A That's correct.

19 Q Okay. Or other intervening  
20 events?

21 A The Static-99 can based on time in  
22 the community. The MSOST can not.

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1 Q But in evaluating Mr. Titus, you  
2 didn't use the Static-99?

3 A No. The State of Washington  
4 requires that we use the Washington State Sex  
5 Offender Screening Tool.

6 Q Okay. And for example, the WASOST  
7 can't evaluate the effect of AA or other  
8 therapies pursued after release?

9 A There are questions regarding  
10 alcohol treatment or alcohol or drug treatment  
11 or sex offender treatment, and you get a score  
12 based on completion, non-completion, refusal.  
13 But it doesn't take a look at how well  
14 somebody did in that treatment.

15 Q Okay. And the WASOST can't  
16 evaluate the effect of marriage or other  
17 significant social relationships after  
18 release?

19 A That is one of the questions on  
20 the WASOST, but you're right. After release,  
21 I mean, it doesn't look at that. It looks at  
22 the time of release.

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1 Q And in fact, if a sex offender is  
2 hit by a car and rendered inoperable  
3 paraplegic unable to walk or move, much less  
4 get an erection, under the MSOST if the  
5 offender is classified as a level three he  
6 stays a level three, right?

7 A Not necessarily.

8 Q Okay. Explain that one for me.

9 A Under Washington State law, we  
10 have the right to, law enforcement has the  
11 right to mitigate or aggravate somebody's risk  
12 depending on whatever factors we deem are  
13 appropriate. So in the case of somebody, and  
14 we do have them, somebody who is in a  
15 vegetative state, somebody who gets hit by a  
16 car and is unable to walk anymore or things  
17 like that, we do have the ability to mitigate  
18 that risk. There are two cities in the State  
19 of Washington who actually look at sex  
20 offender risk over time and consider  
21 mitigating that risk, and that's the city of  
22 Seattle and the city of Spokane.

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1 Q What's the criteria that city of  
2 Seattle uses in terms of mitigating risk over  
3 time?

4 A We take a look at convictions,  
5 numbers of convictions. We require a  
6 polygraph. Pretty much any changes, positive  
7 changes, that they've made in the community  
8 we'll take a look at reducing their risk. It  
9 doesn't mean that it's going to happen, but it  
10 means that we'll take a look at it.

11 Q Do you pursue such mitigation  
12 evaluation proactively?

13 A We do it on request.

14 Q So if Mr. Titus requested you to  
15 evaluate him, to re-evaluate him, you would do  
16 so?

17 A We would do so.

18 Q Is this information formally  
19 communicated to sex offenders in Seattle, that  
20 you can re-assess their risk?

21 A I teach two classes out of Twin  
22 Rivers Correctional Center out at the Sex

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