

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 27 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-13
)	
DAVID L. TITUS)	FRN No. 0002074797
)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	

To: Richard L. Sippel
Chief Administrative Law Judge

Enforcement Bureau's
Proposed Findings of Fact And Conclusions of Law

Judy Lancaster
Attorney, Investigations and Hearings Division

William Knowles-Kellett
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street S.W., Room 4C-330
Washington, D.C. 20554
(202) 418-1420

February 27, 2009

No. of Copies rec'd 0+6
List ABCDE

Summary

The evidence in this case demonstrates that the Commission should revoke the amateur radio license of David L. Titus because of his history of violent sexual crimes against children. While Mr. Titus has the superficial appearance of being a congenial individual and while there is some evidence of a predictive nature suggesting that he may be less inclined now than in the past to sexually harm children, his continued participation in the youth-friendly hobby of amateur radio presents an unacceptable risk to youngsters who are involved in and drawn to amateur radio. Consequently, the Commission must balance Mr. Titus's personal interest in pursuing his hobby against the elevated risk posed to children involved in amateur, aka "ham," radio. Because the potential harm to children is so profound, a proper balancing of the interests in this case tilts heavily against permitting Mr. Titus to engage in activities that place him in close proximity to youngsters and therefore against permitting him to retain his amateur radio license.

The evidence demonstrates that on multiple occasions Mr. Titus preyed sexually on children as young as four years old. During one incarceration, he received a substantial punishment for repeatedly molesting a developmentally disabled youth who was housed in his building. Mr. Titus's treatment records reveal that while incarcerated he masturbated many times each day while fantasizing about raping small boys. Mr. Titus remains sexually preoccupied, and he admits having had sex with more than one thousand partners. Although Mr. Titus claims that in recent years he has chosen to only have consensual sex with partners over the age of consent, he admits that he remains attracted to some minors.

The Seattle Police Department, after reviewing his record of offenses and his record of participation in sex offender treatment programs, classified Mr. Titus as a Level 3 sex offender. This official classification signifies that Mr. Titus presents a high risk to re-offend. He is required by state law to register as a sex offender wherever he resides, and community bulletins alert the community where he resides of his history of sex offenses. Mr. Titus's recent run-ins with the police and his sexual preoccupation reinforce the conclusion that he presents a risk to re-offend. That he frequently disputes police descriptions of his activities and statements calls into question Mr. Titus's veracity.

Police Detective Robert Shilling, an expert in the area of convicted sex offenders and the officer in charge of classifying sex offenders for the Seattle Police Department, was instrumental in raising Mr. Titus from Level 2 to a Level 3 Sex Offender status because Level 3 more accurately reflects his actual risk to re-offend. Detective Shilling testified that pedophiles, like Mr. Titus, should not engage in activities in which they may come into contact with children outside of the presence of a responsible adult. Engaging in amateur radio activities has the potential to allow Mr. Titus to come into unsupervised contact with minors and presents an unreasonable risk to such youngsters.

Dr. Douglas Allmon, a psychologist who treats sex offenders, testified as an expert witness for Mr. Titus. After a two hour interview and giving Mr. Titus several routine tests (paid for by Mr. Titus), Dr. Allmon concluded that Mr. Titus presents a low risk to re-offend. Nevertheless, Dr. Allmon stated that it would not be prudent for Mr. Titus to work in a position where he came in unsupervised contact with children. Dr. Allmon did not think engaging in amateur radio activities would be a problem for Mr. Titus, although he conceded he has very little familiarity with ham radio. Dr. Allmon

also concluded that Mr. Titus is resentful of authority and has difficulty conforming to societal norms.

John Schurman, President of the Lake Washington Ham Club (an amateur radio club near Seattle that helps youngsters obtain amateur radio licenses) and an experienced amateur radio operator, described amateur radio as an interest-based hobby where older or more experienced persons, like Mr. Titus, frequently mentor or, in ham parlance, “elmer” younger hams, teaching them various facets of the hobby. Indeed, Mr. Titus claims in his written testimony to have engaged in mentoring individuals. Mr. Schurman testified further that amateur radio involves semi-anonymous on-air chatting and getting together at events, such as so-called “hamfests,” “ham-ventions” and field days. Such social environments create a troubling possibility that an individual with a history and tendency to molest children could “groom” a potential victim using ham radio’s structure and built in atmosphere of trust. Mr. Schurman testified that the officers of his amateur radio club were disturbed to learn that Mr. Titus, a pedophilic sex offender whom the police had characterized as having a high risk to re-offend, would be permitted by the FCC to continue operating. In a letter to United States Senator Maria Cantwell, they explained that ham radio normally provides a very safe environment for children. They expressed their concern about a convicted pedophile’s involvement in local amateur radio. This same concern gave rise to the instant hearing.

In this case, the public interest requires that the Commission protect the interests of children, as it does, for example in the areas of indecent and obscene programming. While revoking Mr. Titus’s amateur radio license will not absolutely prevent him from coming in contact with youngsters, the FCC should not allow a known sex offender with

a substantial risk to re-offend and a recent pattern of aggressive and erratic behavior to hold a license which authorizes him to engage in an activity which is known to be attractive to children.

Table of Contents

	<u>Page</u>
Summary	ii
Table of Contents	vi
Table of Authorities	vii
I. Preliminary Statement	1
II. Proposed Findings of Fact	2
A. David L. Titus	2
B. Detective Robert Shilling	13
C. Dr. Douglas Allmon	18
D. John Schurman	21
E. Popularity of Amateur Radio Among Children	23
F. Character Witnesses	24
III. Conclusions of Law	26
IV. Conclusions	37

Table of Authorities

	<u>Page</u>
Federal Court Cases	
<i>Schoenbohm v. FCC</i> , 204 F.3d 243, 246-49 (D.C. Cir. 2000)	26
Commission Decisions	
<i>Lonnie L. Keeney</i> , Order of Revocation, EB Docket No. 07-264, DA 09-456 (Enf. Bur. released February 25, 2009)	27
<i>Robert D. Landis</i> , Order of Revocation, 22 FCC Rcd 19979 (Enf. Bur. 2007)	27
<i>David L. Titus</i> , Order to Show Cause, EB Dkt. 07-13, 22 FCC Rcd 1638 (Enf. Bur. 2007)	27
<i>Jack R. Sharples</i> , Order of Dismissal and Termination, FCC 07M-27 (Chief ALJ Sippel 2007)	27
<i>George E. Rodgers</i> , Order, FCC 94M-121 (ALJ Gonzales 1995)	28
<i>George E. Rodgers</i> , Hearing Designation Order, 10 FCC Rcd 3978 (WTB 1995)	27
<i>Thomas M. Haynie</i> , Order to Show Cause and Suspension Order, 7 FCC Rcd 4994 (Field Op. Bur. 1992), <i>affirmed and licenses revoked</i> , 7 FCC Rcd 7291 (PRB 1992)	27
<i>Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications</i> , Policy Statement and Order, 5 FCC Rcd 3252 (1990), <i>recon. on other grounds</i> , 6 FCC Rcd 3448 (1991), <i>modified on other grounds</i> , 7 FCC Rcd 6564 (1992)	26
<i>Jerry E. Gastil</i> , Order to Show Cause, 4 FCC Rcd 3977 (Priv. Rad. Bur., Field Op. Bur. 1989)	27

Statutes

47 U.S.C § 308(b)

26

I. Preliminary Statement

1. By *David L. Titus*, Order to Show Cause, 22 FCC Rcd 1638 (Enf. Bur. 2007) ("OSC"), the Federal Communications Commission commenced a proceeding to determine, ultimately, whether the amateur radio license for Station KB7ILD, held by David L. Titus, should be revoked. Specifically, the OSC, at paragraph 6, designated the following issues:

(a) to determine the effect of David L. Titus's felony conviction(s) on his qualifications to be and to remain a Commission licensee; and

(b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether David L. Titus is qualified to be and to remain a Commission licensee; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the license of David L. Titus for Amateur Radio Station KB7ILD should be revoked.

2. The OSC, at paragraph 9, placed the burden of proceeding with the introduction of evidence and the burden of proof on the Enforcement Bureau.

3. A hearing on all issues was held in Washington, D.C. on July 14, 15, and 16, 2008. Four witnesses testified orally: John Schurman (Tr. 402-503); David L. Titus (Tr. 504-698, 1054-1118); Detective Robert Shilling (Tr. 698-951); and Dr. Douglas Allmon (Tr. 952-1052). The Enforcement Bureau presented written testimony from two other witnesses: Christopher Imlay, General Counsel for the American Radio Relay League, (EB Ex. 9); and Sarah Walker, Records Coordinator for the Boy Scouts of America. (EB Ex. 12). Mr. Titus testified on his own behalf at the hearing and by written testimony, and presented written testimony from ten character witnesses. (Titus Ex.. 3-13) .

II. Proposed Findings of Fact

A. David L. Titus

4. David Lee Titus is the licensee of Amateur Radio Station KB7ILD (EB Ex. 1; Tr. 506), the license term for which expires on June 8, 2009. (EB Ex 1; Tr. 506-7) Mr. Titus lives in the Seattle, Washington area (Titus Ex. 1, p. 2; Ex. 2, p. 4; Tr. 504) and, at the time of the hearing, was unemployed. (Tr. 505) He operates and monitors a radio repeater on frequency 444.375 MHz (Tr. 661-66, 450-51) which provides wide coverage in the Seattle area. (Tr. 491) The repeater could play a role in providing emergency service communications. (EB Ex. 8; p. 1) Mr. Titus is a convicted sex offender who is required to register as a sex offender with his local law enforcement agency. (EB Ex. 2, pp. 2-4; Ex. 5; *see also* Tr. 670) He is classified by the Seattle Police Department as having a high risk to re-offend. (EB Ex. 5; EB; EB Ex. 2, pp. 4-5, 7-9) It is his status as a sex offender that most concerns the amateur radio community who know about the crimes he has committed. (Tr. 453-55)

5. Mr. Titus was born on August 15, 1974. (EB Ex. 4, p. 1, 3, 5, 6, 11; Tr. 511) By the time he was 11 years old, he had already had 52 sex partners (Tr. 1081) who, he claims, were minors normally within "a year or two" of his age and who consented to having sex with him. (Tr. 517-18) After the age of 11, all of Mr. Titus's sexual partners were male. (Tr. 524) By the age of 16, Mr. Titus claims to have had 150 sexual partners and, by age 18, that number had grown to more than 350 partners. (Tr. 524)

6. Not all of the individuals with whom Mr. Titus had sex were close to his age or consenting. When Mr. Titus was 10-years-old, he was charged with Indecent Liberties for groping and anally raping a 6-year-old boy after promising the boy candy and

threatening to harm him if he told anyone about the incident. (EB Ex. 4, pp. 17; Tr. 518-519) This charge was dismissed by the court with the understanding that Mr. Titus would enter counseling. (EB Ex. 4, p. 17; Tr. 520) As a result, Mr. Titus attended eight counseling sessions in or about June 1985. (EB Ex. 4, p. 17) Approximately one month later, Mr. Titus was charged with Simple Assault for spraying mace in a boy's face. (EB Ex. 4, p. 15) He completed a Court Diversion agreement and paid a small fine as punishment for that charge. (EB Ex. 4, p. 15)

7. In November 1985, approximately three months after his counseling ended, Mr. Titus, then 11 years old, assaulted and anally raped an 8-year-old who was visiting his brother. Mr. Titus refused to stop the rape when told to stop by the victim. (EB Ex. 4, pp. 14, 17) Mr. Titus claims that he participated in too many sexual encounters to remember the details of that assault. (Tr. 525-28) Mr. Titus admitted to counselors that he molested the boy on several occasions and threatened to beat him up if he didn't comply (EB Ex. 14, 17), but testified at the Commission's hearing that, "as far as he recalls," all of his sex partners were willing ones. (Tr. 517, 524-25) Mr. Titus was eventually charged with taking Indecent Liberties against the victim (EB Ex. pp. 14, 17; Tr. 525) and, in April 1986, he pled guilty to the charge in Benton County Juvenile Court and was sentenced to the maximum confinement ("Manifest Injustice") of 65 weeks at Echo Glen Children's Center ("Echo Glen"), located in Snoqualmie, Washington, and 24 months of parole after his release. (EB Ex. 4, pp. 14, 17; Tr. 525)

8. While at Echo Glen, Mr. Titus received sex offender treatment but, despite intervention by the staff, continued to be sexually involved with other youths incarcerated there. (EB Ex. 4, p. 18) In June 1987, Mr. Titus was moved from Echo Glen to Twin

Peaks Group Home in Yakima, Washington ("Twin Peaks). (EB Ex.4, p. 18; Tr. 528) Mr. Titus participated in sex offender counseling while at Twin Peaks (EB Ex. 4, p.18; Tr. 528-29) and, in May 1988, when his counselor felt that Mr. Titus was a low risk to re-offend with children,¹ he was released from Twin Peaks. (EB Ex. 4, p. 18) In June 1989, Mr. Titus and his family began family counseling with Lilly Harper, a counselor with Sunderland Family Counseling. (EB Ex. 4, p. 18) Mr. Titus recalls Ms. Harper but does not now recall specifics about his treatment sessions or when he attended counseling with her. (Tr. 530-31) The counseling ended in October 1989 when Ms. Harper confronted Mr. Titus and his mother about Mr. Titus's lack of progress. (EB Ex. 4, p. 18) Mr. Titus later admitted that he didn't really believe in counseling. (EB Ex. 4, p. 18)

9. Two months later, in December 1989, when Mr. Titus was 15 years old, he fondled a 12-year-old boy's penis and threatened to hurt the boy if he did not also touch Mr. Titus's penis. (EB Ex. 4, p. 14; Tr. 536-38) Mr. Titus claims not to recall threatening the victim, but does recall that there were two such attacks. (Tr. 536-38) The first attack occurred on the floor of a school bathroom. (EB Ex. 4, p. 14; Tr. 536, 538) As a result of the first attack Mr. Titus was charged with and, on February 14, 1990, pled guilty in the Franklin County Juvenile Court to, the charge of Indecent Liberties. (EB Ex. 4, p. 14) He was, again, sentenced to "Manifest Injustice" of 65 weeks confinement at Echo Glen. (EB Ex. 4, p. 14) In April 1990, Mr. Titus was also charged with Indecent Liberties for physically assaulting and fondling the same victim in the bathroom of a Taco Bell restaurant where Mr. Titus then worked. (EB Ex. 4, p. 14; Tr. 537-38) Because the victim was unable to testify, the charge was ultimately dismissed. (EB Ex. 4, p. 14) Despite

¹ Mr. Titus, however, remained "at high risk to become involved sexually with older males." (EB Ex. 4, p. 18)

pleading guilty to the 1989 charge, Mr. Titus testified at the Commission hearing that the victim consented to having sex with him in both incidents. (Tr. 538-539)

10. Mr. Titus was paroled in July 1991. (EB Ex. 4, p. 32) Soon after being released from confinement to live with his mother and father, 16-year-old Mr. Titus moved in with Dennis Cresswell, a 51-year old homosexual male and "family friend" with whom the much younger Mr. Titus had previously had a sexual relationship. (EB Ex. 4, p. 32; Tr. 541-42, 546) While on parole and living with the much older Mr. Cresswell, Mr. Titus did not participate in any local sexual offender treatment program because he was deemed inappropriate for group therapy and was resistant to individual therapy. (EB Ex. 4, p. 33) He did, however, sporadically attend counseling with Reverend Richard Nordgren. (EB Ex. 4, p. 33). Also during the time he lived with Mr. Cresswell, Mr. Titus enrolled under a false name -- Levi Cresswell -- at a local public school. He did so in order to avoid detection as a convicted sex offender. (EB Ex. 4, p. 33; Titus Ex. 1, p. 5; Tr. 543-44) He was suspended, however, when school officials were notified of his offender status. (EB Ex. 4, p. 33; Tr. 544) Thereafter, he obtained a GED diploma. (EB Ex. 4, p. 33; Tr. 543)

11. Mr. Titus was discharged from juvenile parole on February 13, 1992, approximately six months shy of his 18th birthday. (EB Ex. 4, p. 16) At that time he continued to be attracted to small children and was assessed by the Tri-Cities Sexual Offender Review Committee to be at a very high risk to re-offend. (EB Ex. 4, p. 32, 34)

12. Less than a year later, in December 1992, while still living with Mr. Cresswell, 18-year-old Mr. Titus committed yet another sex-related felony when, while working in a gym, he approached an 11-year-old boy, persisted in having sexual conversations with him about penis sizes, and asked the youngster to measure his own

*flaccid and erect penis and to show his penis to Mr. Titus.*² (EB Ex. 4, pp. 3-10; Tr. 547-51) Mr. Titus may have offered to show the boy his penis. (Tr. 548-50) He did offer to take the boy for a ride in his car, but the boy refused to go. (EB Ex. 4, p. 4) When the boy subsequently stayed away from the gym for a few days, Mr. Titus telephoned him at home and asked when he planned to return. (EB Ex. 4, p. 4) As a result of these acts, on March 12, 1993, Mr. Titus was charged with, and subsequently pled guilty to, felony Communication With A Minor for Immoral Purposes. (Ex. 4, pp. 5-10; Tr. 555) He was sentenced to 25 months confinement, with credit for the time already served. (EB Ex. 4, pp. 3-10; Tr. 555) When questioned at the hearing about the details of his contacts with this boy, Mr. Titus testified that he has "tried to block a lot of that out of my mind" (Tr. 551) but has no reason to dispute the description of his encounters with the boy contained in the charging documents. (Tr. 549-50)

13. While imprisoned, Mr. Titus received infractions for fighting and a "major infraction" for "having oral and anal intercourse with a developmentally disabled inmate housed in the same unit on four to five occasions over a four-month period." (EB Ex. 4, p. 25; Tr. 579, 591, 596-97) For this infraction Mr. Titus lost 60 days of earned early release time. (EB Ex. 4, p.25; Tr. 596-97) When questioned about this event at the hearing Mr. Titus testified, "I don't know that I was necessarily aware that he was developmentally disabled." (Tr. 591)

14. Mr. Titus received sex offender treatment during this incarceration, including sex offender treatment classes (Tr. 559-60), but continued to knowingly violate

² Mr. Titus denies observing the victim's penis and claims not to recall other significant details about his interactions with the youngster. (Tr. 550)

the rules by having sex with other inmates. (Tr. 580) His performance in the sex offender treatment program was poor. (EB Ex. 4, p. 28) For example, even though he passed several college classes while incarcerated, Mr. Titus failed two relapse prevention classes as well as his Critical Thinking Workshop. (EB Ex. 4, p.27; Tr. 560) Mr. Titus initially states that he does not recall whether he passed the courses he took in prison (Tr. 546), but admits that he struggled with the sex offender treatment program due to his stubbornness. (Titus Ex. 1, p. 5)

15. At this time Mr. Titus was masturbating 10 to 15 times per day and having fantasies about raping young boys. (EB Ex. 4, p. 28) Although Mr. Titus requested Depo-Provera medical treatment, and such treatment improved his demeanor and helped control his frequent masturbation and rape fantasies, following three such injections, Mr. Titus refused further treatment. (EB Ex.4, p. 28; Tr. 565) Within a month the dreams and fantasies of raping young boys had returned. (EB Ex. 4, p. 28) Mr. Titus claims he does not now recall the excessive masturbation, the rape fantasies or the effectiveness of the Depo-Provera treatment (Tr. 561)

16. Mr. Titus's offender Treatment Summary notes that his risk factors increase when he demonstrates cyclic behaviors such as "physical aggression" and "verbal assaultiveness." (EB Ex. 4, p. 25) Because of his "10-year history of actively offending, his repeated failures in treatment, and his history of violence" he was assessed as being at high risk to re-offend. (EB Ex. 4, pp. 28-29) In his Discharge Summary, Mr. Titus was given a poor prognosis for rehabilitation in the community. (EB Ex. 4, p. 29) After his release from prison on January 1, 1995, Mr. Titus was placed on parole for 24 months and was prohibited, among other things, from direct or indirect contact with

children under the age of 16, and from viewing explicit sexual materials. (EB Ex. 4, p. 8; Tr. 556) He was also ordered to participate in crime-related counseling, and to submit to both polygraph and plethysmograph examinations. (EB Ex. 4, p. 8; Tr. 556) Nevertheless, Mr. Titus admitted at the hearing that, while on parole, he refused to answer two questions regarding his sexual behavior during a required polygraph examination, and that he received an infraction for viewing pornographic materials. (EB Ex. 4, p.43; Tr. 573, 559, 630)

17. In documents filed with the Benton County Superior Court in August 1996, Mr. Titus's parole supervisors expressed justifiable concern about Mr. Titus's continued secretive behaviors, and stated that Mr. Titus's adjustment to supervision continued to be extremely poor. (EB Ex. 4, p. 44) They reported that Mr. Titus continued to demonstrate a continued pattern of lying by omission; that he had gained little from his sex offender treatment; that he lacked remorse and insight into the damage he caused to his victims; and that he continued to engage in a continuous deviancy cycle that presented a risk to re-offend. (EB Ex. 4, p. 44)

18. In recent years, Mr. Titus has also been involved in incidents involving erratic or violent behavior (EB Ex. 4, pp. 35-40) and which appear to play out a childhood fantasy of being a police officer (Titus Ex. 1, p. 4; EB Ex. 4, p.19; Tr. 1086) and having power over other individuals.

19. On January 6, 2002, Mr. Titus was involved in an otherwise relatively minor fender-bender when his vehicle struck another driven by a Ms. Victoria Halligan. (EB Ex. 4, pp. 35-37; Tr. 593) At the scene of the mishap, Mr. Titus suddenly turned verbally abusive and he physically assaulted Ms. Halligan, injuring her hand and wrist,

and frightening her to such an extent that she left the scene in order to report the accident and confrontation from the safety of her home. (EB Ex. 4, pp. 35-37; Tr. 593-94) The police report documents Ms. Halligan's emotional distress and injuries, and Mr. Titus's admission to the officer that he "grabbed her wrist and twisted it." (EB Ex. 4, pp. 35-37) The police report reflects that Mr. Titus used a hold on Ms. Halligan commonly taught to and used by police officers to restrain suspects. (EB Ex. 4, p. 35) The report also quotes Mr. Titus's comments during the confrontation which led Ms. Halligan and the officers to believe that Mr. Titus was impersonating a law enforcement officer. (EB Ex.4. pp. 36-37)

20. Mr. Titus admitted at the hearing that, although Ms. Halligan had not touched him, he nonetheless "grabbed her hand and twisted it down and moved away from her." (Tr. 593) Further, he acknowledged that Ms. Halligan asked him if he was a police officer, and he refused to answer her one way or the other. (Tr. 611-12)

21. Mr. Titus proudly testified that he is frequently asked whether he is a law enforcement officer and that "everybody" in his neighborhood, especially the "bad" people in the neighborhood, think he's a "cop." (Tr. 612-13) He thinks that people assume that he is a cop because of the radio antennas on his vehicle. (Tr. 613-14) His vehicle is equipped with a whip antenna, like those on police vehicles. (Tr. 609-10) Additionally, Mr. Titus sometimes puts a sheriff's cap on the dashboard of his vehicle. (Tr. 613)

22. In another incident, on July 7, 2004, at 3 a.m., Mr. Titus was discovered by a Mercer Island, Washington, police officer acting suspiciously in a darkened public restroom of a closed park. (EB Ex. 4, p. 39; Tr. 598-600) Mr. Titus was wearing a police

badge necklace that he said was given to him by his "girlfriend," a "King County cop named Angie." (EB Ex. 4, p. 30; Tr. 607-08) He refused to further identify "Angie." (EB Ex. 4, p. 39; Tr. 608) Mr. Titus told the police that his father was also a police officer. (EB Ex. 4, p.39) The police report notes that "[d]uring the entire contact, Mr. Titus was very nervous and defensive." (EB Ex. 4, p. 40)

23. The police asked Mr. Titus if he lived on Mercer Island, near Seattle. (EB Ex. 4, p. 39) According to the police report on the incident, Mr. Titus initially told police he was there to visit a friend named "Charles" who was involved in ham radio with him (EB Ex. 4, p. 39), although at the hearing Mr. Titus denied telling the officers that "Charles" was a ham radio colleague. (Tr. 644-45) Mr. Titus told the officers that he didn't know "Charles's" last name or address and that they were supposed to meet on a street corner. (EB Ex. 4, p. 39) After further questioning by the police, Mr. Titus admitted that he'd lied to them about "Charles." (EB Ex. 4, p.39) He then stated that he was there because he'd met "Charles" over an internet chat room and had set up a meeting with him. (EB Ex. 4, pp.39-40)

24. Mr. Titus testified at the hearing that he knew "Charles's" full name and address, but told the police that this information was none of their business and he wasn't going to provide it to them. (Tr. 602, 605) According to Mr. Titus, "Charles" was a 19-year-old college student who lived with his parents, and that Mr. Titus had previously had sex with him. (Tr. 605-06) Mr. Titus believed "Charles" to be a 19 years old college student because that was what "Charles" had told him. (Tr. 606) During the incident, Mr. Titus refused to cooperate with the police by refusing to let an officer photograph him (EB Ex. 4, p. 40), but he did allow the officers to look inside his truck. (EB Ex. 4, p.

40; Tr. 608) In Mr. Titus's truck the police found the previously-mentioned sheriff's cap that Mr. Titus said was given to him by his "girlfriend," a police "Mag-Lite" flashlight of the sort carried by police officers, and a ham radio. (EB Ex. 4, p.40; Tr. 608-10) Mr. Titus testified that although he has put the sheriff's cap on his dash board where it could be easily seen, it was not visible from outside the vehicle that night. (Tr. 609, 613)

25. Mr. Titus frequently finds fault with various details of events contained in official reports about his behavior, including reports of crimes to which he has pled guilty. Thus, while Mr. Titus admits to have committing various crimes (EB Ex. 4, pp. 3-15, 21, 25; Tr. 519, 525, 536-37), and engaged in other activities (Tr. 517, 540), he disputes some element of each of the crimes for which he was charged. (Tr. 519-20, 526, 538-39) He consistently offered exculpatory explanations about his crimes (Tr. 517, 519-20, 531-32, 538-39, 548-50, 559-60, 591), but was frequently unable to answer questions regarding the inculpatory evidence about those crimes. (Tr. 519-20, 526)

26. When refusing or failing to respond to a question about his crimes, Mr. Titus frequently stated that he could not recall the requested information. For example, he could not recall if he had promised his 6-year-old victim candy, or if he had threatened to beat him up, or whether he had had sex with the victim more than once, or going to court for this crime. (Tr. 519-20) At one point, he could not recall the sexual encounters with his 12-year-old victim or that he continued to rape the boy even though the boy told him to stop. (Tr. 526, 539) At another point, he recalled the 1989 incident with the 12-year-old (Tr. 536) but stated that he was unable to recall the specifics of it. (Tr. 536) Then, he testified that he did recall that he twice molested the 12-year-old. (Tr. 537-38) but was unable to recall threatening to hurt the victim if he refused to also touch him.

(Tr. 536-37) Later, he denied that he and the victim were on the floor during the incident, as stated in the charging documents of the offense to which he pled guilty. (Tr. 586-87) Mr. Titus recalled his adult conviction involving the 11-year-old victim but could not recall having multiple conversations with him (Tr. 548-49) or asking him to measure his penis (Tr. 550-51), both elements of the crime. He clearly recalled, however, that he did not see the victim's penis. (Tr. 550)

27. Mr. Titus alternately excused his refusal or inability to answer questions about his crimes by stating that he "tried to block a lot of that out of my mind" (Tr. 551, 667), that he "has put it out of his memory" because he doesn't want to remember it (Tr. 536), or that he "has moved on with different parts of [his] life." (Tr. 551). But when pressed about responses in which he initially denied or didn't recall a particular event, he often ultimately did not dispute the descriptions of the event contained in his treatment records. (Tr. 548-49, 556, 559)

28. Mr. Titus had similar memory lapses when questioned about his actions during incarceration and sex offender treatment. Although he recognized some of the names of some of his sex offender treatment providers, he usually recalled little information about the treatment he received or the progress he made. (Tr. 521) For example, he remembers Lilly Harper's name but does not recall that she ended the family counseling he attended because he was not cooperative. (Tr. 530-31) He does not recall receiving sex offender treatment at Echo Glenn or the report from his counselor there that he was uncooperative (Tr. 527, 532-33) but remembers his treatment counselor at Twin Peaks, the group home where he lived immediately following his confinement at Echo Glenn. (EB Ex. 4, p. 18; Tr. 528-29) He recalls taking classes as part of his offender

treatment while incarcerated as an adult, but does not recall failing those classes. (EB Ex. 4, p. 27; Tr. 545-46, 560) He recalls taking Depo Provera while incarcerated and recalls refusing to continue that treatment but does not recall having fantasies about raping young boys, masturbating 10 or 15 times per day or that the Depo Provera treatment effectively resolved those problems. (EB Ex. 4, p. 28; Tr. 561-65) He admitted knowing that it was against the rules for inmates to have sex but did it anyway and repeatedly had sex with a mentally disabled youth. (Tr. 540, 580, 591) Mr. Titus testified that he did not “necessarily” know that the inmate was mentally disabled. (Tr. 591)

B. Detective Robert Shilling

29. Police Detective Robert Shilling is the lead detective in the Seattle Police Department’s Sexual Assault and Child Abuse Unit/Sex and Kidnapping Offender Detail. (EB Ex. 2, p. 1) He has served with the Seattle Police Department for more than 28 years. (EB Ex. 2, p. 1) He has worked exclusively with sex offenders at the Seattle Police Department since 1990. (EB Ex. 2, p. 1) He has also actively participated in the development of community notification in education programs to protect communities from the re-offense of sex offenders on a local, state, national, and international level. (EB Ex. 2, p. 1)

30. Detective Shilling is the Seattle Police Department’s designated expert for assessing the risk posed to the community by sex offenders who reside in his jurisdiction. (EB Ex. 2, p. 2) He conducts classes to help sex offenders transition back into society and monitors the offenders residing in Seattle. (EB Ex. 2, p. 1) Additionally, he is the only American municipal law enforcement officer who is a member of the INTERPOL

Specialists Group on Crimes Against Children where he serves as chair of the Sex Offender Management Theme Group. (EB Ex. 2, pp. 1-2) Detective Shilling is on the board of directors of the Association for the Treatment of Sexual Abusers (ATSA), and is the Chair of its membership committee. (Tr. 845) ATSA is an international organization with approximately 2,800 members. (Tr. 846-47) ATSA holds a conference each year where there are various presentations regarding the latest developments in sex offender research. (Tr. 851) Detective Shilling has also personally assessed Mr. Titus's risk of re-offense on three separate occasions. (EB Ex. 2, p. 5) Detective Shilling drafted Mr. Titus's Sex or Kidnapping Offender Information Bulletin Level 3 Notification of Release. (EB Ex. 2, p. 4; EB Ex. 5)

31. Detective Shilling has the responsibility to review the risk assessments for all of the sex offenders residing in the Seattle area as the need arises. (EB Ex. 2, p. 7) Further, he is the only person in the Seattle Police Department who has the authority to modify a risk assessment ranking and he is the only person who has the authority to depart from an assessment performed by the End of Sentence Review Committee. (EB Ex. 2, p. 7) He is assisted by his staff in performing the review, but he always personally makes the ultimate decision. (EB Ex. 2 p. 7) Detective Shilling is an expert in community notification, community education, sex offender registration, and the management of sex offenders in the community. (Tr. 911-12) Detective Shilling is also an expert in using the Washington Sex Offender Risk Level Classification tool, also known as the WASOST. (Tr. 911-12)

32. Detective Shilling first performed a risk assessment of Mr. Titus in January 1994, following his release from prison. (Tr. 701-02) At that time, Detective

Shilling was chairperson of the committee reviewing the records of sex offenders being released from prison. (EB Ex. 2, p. 5) The committee initially assessed Mr. Titus as having a Level 2, or moderate, risk to re-offend.³ (EB Ex. 2, p. 5) This assessment was based on the subjective determination of the reviewers considering the available information. (Tr. 702-03) The Committee considered Mr. Titus's three convictions, the record of two other offenses where charges were dismissed, and his poor treatment record. (Tr. 707-09) Detective Shilling believes that Mr. Titus could have been classified as a Level 3 offender at that time. (Tr. 709) Later, in 1997, Washington State moved from using a subjective test to using the WASOST. (EB Ex. 2, p. 6; Tr. 704-05)

33. In 2004, Detective Shilling assessed Mr. Titus a second time after his encounter with the police on Mercer Island. (EB Ex. 2, p. 7) At that time, Mr. Titus was raised to a Level 3 ranking, which indicates a high risk to re-offend. (EB Ex. 2, p. 7) That elevated rating was based on the Mercer Island incident as well as the earlier automobile incident with Victoria Halligan. (Tr. 864) This assessment was performed taking into consideration the factors used by the WASOST. (Tr. 884-85) This assessment was not documented in writing, nor was it required to be, because Mr. Titus was released from prison before 1997, the year the End of Sentence Review Committee was created and the WASOST was adopted by the State of Washington. (Tr. 881-86, 930) Mr. Titus was classified as a Level 3 due to Mr. Titus's sex offenses involving children, the nature of his offenses, his limited participation in treatment, and the concern that the recent incident at Mercer Island indicated that he could possibly be in his offense

³ According to Detective Shilling, Mr. Titus qualified as a Level 3 Sex Offender at the time, but was given the benefit of the doubt by the assessors because the assessment procedure was new and, because of its public notification requirement, a Level 3 assessment would have resulted in significantly more public scrutiny of the offender. (Tr. 707-710)

cycle. (EB Ex. 2, p. 7) In preparation for this hearing, Detective Shilling assessed Mr. Titus a third time using the WASOST to score Mr. Titus. Detective Shilling scored Mr. Titus "solidly" as a Level 3 offender. (EB Ex. 2, p. 8, EB Ex. 14)

34. Detective Shilling explained that although he was among those who helped select the WASOST in 1997 as the tool used by the State of Washington to classify sex offenders (Tr. 800-801), the WASOST is no longer the best model available because it is designed to assess the risk of re-offense at the time of a felon's release from confinement and does not take into account the passage of time that a felon has resided in a community without re-offense. (Tr. 814-16) He advocates changing the tool that Washington State uses to a newer actuarial model. (Tr. 814) Examples of newer models include the so-called Static-99, the Stable-2007, and the Acute-2007. (Tr. 814)

35. Detective Shilling believes that time in the community without re-offense is among the factors that should be analyzed in assessing the risk for re-offense. (Tr. 821) While the WASOST does not take into consideration this factor, Seattle is among the jurisdictions that may nonetheless consider time within the community without re-offense, if a convicted sex offender asks them to do so. (Tr. 818-20) While Mr. Titus has been in the community for 16 years without a further conviction (Tr. 810), this factor alone is not determinative; to assess an individual's risk of re-offense, one must examine carefully the totality of the circumstances to get a comprehensive picture. (Tr. 843-44)

36. Detective Shilling recognizes that the WASOST has been criticized and he agrees with the conclusions of a 2006 study finding that "The [WASOST's] risk assessment has little or no accuracy in predicting sex offender recidivism. Some elements of the WASOST do, however, predict felony sex recidivism with moderate

accuracy.” (EB Ex. 17; Tr. 940-41) The WASOST is made up of multiple parts. One such part of the WASOST is the Rapid Risk Assessment for Sexual Offense Recidivism also known as the RRASOR, which has shown that individuals, like Mr. Titus, who score a five on this test have a 73% chance of recidivism after 10 years. (Tr. 843-44) Detective Shilling believes that the WASOST is but one of many tools used to predict sex offender recidivism. (Tr. 942) Based on “the totality of the circumstances” which includes the pattern of sex offenses, the pattern of violence, the sex offender treatment summary, Detective Shilling’s years of experience and the available results of predictive tests, Detective Shilling firmly believes that Mr. Titus presents a risk to children and is at a high risk to re-offend. (Tr. 941-44)

37. Specific examples of the factors considered by Detective Shilling in determining Mr. Titus’s risk level include Mr. Titus’s multiple sex offenses involving young children; (EB Ex. 2, p. 4) that Mr. Titus’s record indicates that he might seek out young children; (EB Ex. 2, p. 4) Mr. Titus’s repeatedly poor treatment history; (EB Ex. 2, p. 5) and Mr. Titus’s documented history for violence. (EB Ex. 2, pp. 8-9)

38. Detective Shilling believes that the community should provide the tools necessary for sex offenders to be successfully reintroduced back into the community. (Tr. 748) In doing so, however, the risk they pose to the community must be minimized. (Tr. 769-70) That means that the activities in which they engage should not include those involving the supervision of, or close contact with, children. (Tr. 768-69) For example, a sex offender against minors should not be a teacher, drive a school bus, run a church youth group or baby sit. (Tr. 750, 767, 769)