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## NEUROPSYCHOLOGICAL EXAMINATION

<b>Defendant:</b>	Richard Albert Leavitt
<b>Date of Birth:</b>	11-12-58
<b>Date of Examination:</b>	03-20-06 and 03-21-06
<b>Date of Report:</b>	04-10-06
<b>Case:</b>	State of Idaho vs. Richard A. Leavitt

### Purpose of Examination:

Richard Leavitt is a 47-year-old right-handed male who is currently incarcerated at the Idaho State Maximum Security Institute outside Boise, Idaho. He is currently under Federal Review regarding the sentencing in his first-degree murder conviction of Danette Jean Elg on or about 07-17-84. At this time, I was asked to review records and to conduct an examination of Mr. Leavitt. I examined psychological and neurological issues that may have relevance in this matter. This examination was requested by Mr. Leavitt's current attorneys, Andrew Parnes and David Nevin.

### Qualifications of the Examiner:

Presently, I am a licensed psychologist in the State of Idaho. I hold a Ph.D. in Clinical Psychology from Miami University of Ohio. I also hold Diplomate status in the area of Clinical Neuropsychology, the study of brain behavior relationships, by the American Board of Profession Psychology. I am employed in private practice and I am also the Director of neuropsychological services for Idaho Elks Rehabilitation Hospital in Boise, Idaho. I have extensive training in both psychological and neuropsychological issues considered in criminal matters. I have been qualified as an expert witness with regard to these issues in multiple states and federal jurisdictions. Please see the attached curriculum vitae and case log regarding my qualifications and experience.

### Procedures Administered:

Qualitatively, I had the opportunity to interview Rick Leavitt on 03-20-06. Additionally, I reviewed multiple records related to his case. This included prior psychological records, presentence reports related to the prior sentencing, prior psychiatric records, prior medical records, multiple academic and court testimony presented at various legal proceedings related to Mr. Leavitt's status, correctional records, and other miscellaneous information. Additionally, I did consult with Dr. James Missett, psychiatrist, who recently examined Mr. Leavitt and I reviewed his report.

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Additionally, I had previously conducted an examination of Richard Leavitt in November and December 1995 and January 1996.

Quantitatively, at this time, Mr. Leavitt underwent neuropsychometric test battery that included the following:

- Grooved Pegboard Test
- Wechsler Test of Adult Reading
- Controlled Oral Word Fluency Test
- Rey Auditory Verbal Learning Test
- Stroop Test
- Rey Auditory Verbal Learning Test
- Rey 15 Item Memory Test
- Consonant Trigram Test
- Trail Making Test
- Wechsler Memory Skills-III
- Halstead-Reitan Neuropsychological Test Battery including
  - Category Test
  - Finger Tapping Test
  - Speech Sounds Perceptions Test
  - Tactile Performance Test
  - Seashore Rhythm Test
- Selected subtests from the Delis-Kaplan Executive Function System
- Wechsler Adult Intelligence
- Wisconsin Card Sorting Test
- Victoria Symptom validity Test
- Category Test
- Hare Psychopathic Checklist-Revised, Second Edition

These tests were conducted on 03-20-06 and 03-21-06. Standardized administration and scoring methods were utilized.

**Clinical Summary:**

1. Neuropsychometric testing conducted on Richard Leavitt on 03-20-06 and 03-21-06 found no significant cognitive deficits. The tests were completed in a cooperative, straightforward manner without evidence of exaggeration or defensiveness.
2. Richard Leavitt has a prior psychiatric history. This is first noted in a psychological evaluation dated 12-31-76, by Dr. David Hildebrandt (psychologist). Mr. Leavitt had subsequent psychological evaluations. The next was on 05-11-77 by Dean Ackley, MD, who noted Mr. Leavitt had an "Explosive Personality". Later, Mr. Leavitt underwent

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psychological examination by Dr. James Gordon, psychologist, with a report dated 05-30-84 in which he also noted Mr. Leavitt had an "Intermittent Explosive Disorder." Finally, Mr. Leavitt underwent psychological evaluation related to his sentencing, in the current matter before the court, conducted by Dr. David Groberg, psychologist. The report is dated 12-06-85. In that examination, Dr. Groberg also noted Mr. Leavitt suffered from an Intermittent Explosive Disorder. In my examination of Mr. Leavitt, he displays elements that would meet the diagnostic criteria, utilizing the DSM-IV (TR) for Intermittent Explosive Disorder (312.34). This denotes an individual that has had several discreet episodes of failure to resist aggressive impulses, resulting in serious assaultive acts or destruction of property. The degree of aggressiveness expressed in these episodes is grossly out of proportion to precipitating psychosocial stressors, but the criteria excludes this diagnosis if the aggressive episodes are better accounted for by another mental disorder. The disorder is also not due to a direct physiological effect (i.e., drug intoxication) or general medical condition (i.e., brain damage).

3. Mr. Leavitt's psychiatric diagnosis of Intermittent Explosive Disorder is likely not applicable given concern organic factors play a significant role with his behaviors. As noted in the DSM-IV TR, abnormal EEG findings, as well as other abnormal neurological tests and other "soft" neurological findings are common with this type of behavior. In fact, Mr. Leavitt had been examined by Dr. Clark Jaynes, neurologist. In his report dated 12-16-85, Dr. Jaynes raised concern about possible organic factors involved with Mr. Leavitt's behavior. Dr. Jaynes noted abnormal findings on a head CT scan indicating neurological damage that would affect Mr. Leavitt's behavior. Therefore, I would recommend further behavioral/neurological examination.
4. Mr. Leavitt was described as suffering from Intermittent Explosive Disorder at the time of his prior sentencing. However, information related to the implications of this type of behavior and the degree of willful control an individual is able to exhibit was not discussed. By the very nature of this behavior, organically or psychiatrically caused, an individual is unable to resist their aggressive impulses despite potentially being able to recognize the wrongfulness or inappropriateness of their action. Clearly, individuals suffering from this condition have diminished capacity to control their actions and behaviors at times.
5. There is substantial literature indicating individuals with these behavioral dyscontrols can be successfully treated to substantially reduce or eliminate the occurrence of violent episodes. There are many psychopharmacological interventions currently available and were available at and around the time of Mr. Leavitt's sentencing. Environmental changes can also be made to lessen the likelihood or frequency of these aggressive episodes. The extent of these treatment modalities and their specific effectiveness in

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managing these behaviors was not discussed or presented to the court at his prior sentencing. This led to the impression it was an untreatable condition, which is false.

6. Finally, specifically, in the psychological evaluation report presented by Dr. David Groberg dated 12-06-85, Mr. Leavitt was also diagnosed as having an Antisocial Personality Disorder. Additionally, Dr. Groberg went on to note, citing both his Intermittent Explosive Disorder and his Antisocial Personality Disorder, Mr. Leavitt essentially represents a significant danger or risk to others. There are several flaws in Dr. Groberg's analysis. His opinions are not consistent with what is known in the clinical literature and our post hoc observations of Richard Leavitt for the past 20 years.

Dr. Groberg cites Mr. Leavitt as having an Antisocial Personality Disorder and by the nature of that personality disorder is at higher risk for presenting a danger to the public and is a poor candidate for rehabilitation. This conclusion is misleading.

At the time the examination was done, there was a body of literature and assessment techniques related to psychopathy, which is commonly equated with Antisocial Personality Disorder. Specifically, the work by Hare is noted. Much of the research that predicts significant increased risk of future violence and poor rehabilitation potential is based upon a definition of psychopathy utilized by Hare and assessed by the Hare Psychopathic Checklist, which has been available since the mid 1980s. While often equated, Antisocial Personality Disorder is not the same clinical beast as a psychopath referred to in the literature on assessment of future dangerousness and rehabilitation potential. In fact, research has argued the concept of Antisocial Personality Disorder as defined by the DSM-III and DSM-IV has limited predictive value, particularly in comparison to the concept and the research on psychopathy. Mr. Leavitt was administered the Hare Psychopathic Checklist Revised, 2<sup>nd</sup> Edition at the time of my examination. He obtained a score of 21, which is below the critical criteria established by Hare for indicating a true psychopath. Therefore, many of the analysis and conclusions presented by Dr. Groberg regarding Mr. Leavitt's risk to others based on a diagnosis of Antisocial Personality Disorder were wrong and not based on available research at the time.

In fact, these concerns are borne out by review of Richard Leavitt's behavior and disciplinary records from the Idaho State Maximum Security Institute outside of Boise where he has resided for the last 20 years. Mr. Leavitt has had very few behavioral incidents. He has no history of violence or presenting as a significant danger to others while in the correctional facility. While, because of the crime of which he was convicted he still remains in the maximum-security institute, he has been given the status of an inmate worker and has been allowed to move about the various tiers doing janitorial work

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without incident. This history is in direct contradiction to the expectations articulated by Dr. Groberg in his 1985 report.



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