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Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ELIZABETH DIANE DOWNS,	)	
	)	CV No. 96-900 HA
Petitioner,	)	
	)	AFFIDAVIT OF
vs.	)	POLLY JAMISON
	)	
SONYA HOYT, Superintendent,	)	
Oregon Women's Correctional Center,	)	
	)	
Respondent.	)	
	)	
STATE OF OREGON	)	
	)	ss.
County of Lane	)	

I, Polly Jamison, treated Elizabeth Diane Downs in individual psychotherapy from August 5, 1983, to February 7, 1984. I was hired by Ms. Downs via a recommendation by her attorney, James Jagger, to provide therapy, not a forensic evaluation of Ms. Downs. The purpose of the therapy was to help Ms. Downs cope with the stress of the shooting and the following investigation. Ms. Downs, through her medical insurance, paid for the sessions.

In 1983, I was a newly licensed psychologist who had no significant forensic psychology experience. I believe that I was referred to Jim Jagger by Robin Daws, head of the University of Oregon Psychology Department where I had recently received my doctorate.

At no time did Mr. Jagger or Ms. Downs indicate to me that I might be called as a witness for the defense. The only purpose of Ms. Downs' therapy was clinical. I did not administer any tests, including the MMPI, for any purpose other than for clinical therapy. I routinely gave all my patients MMPIs at the time I administered the MMPI to Ms. Downs.

After Ms. Downs was indicted, I was served a subpoena *duces tecum* by the government to provide my notes and diagnosis. I refused to do so without Ms. Downs' permission citing the psychologist/patient privilege. She did not give such permission. I had, however, earlier provided Mr. Jagger with my notes believing that the attorney/client privilege would protect Ms. Downs. I did not give my notes or MMPI test results to the government. I do not recall sending Mr. Jagger the MMPI tests results; and it is standard professional practice not to send MMPI tests to people not specifically trained to read them. I did, however, send the MMPI profile (at Mr. Jagger's request and with Ms. Downs' permission) to Dr. Peterson, the psychologist who was treating one of Ms. Downs' children. He is an individual trained and competent to interpret MMPI charts.

When Ms. Downs took the MMPI, she spontaneously circled a number of items and volunteered to me that her answers to those items would have been in the opposite direction prior to the shooting. For this reason, on January 3, 1994, I called an MMPI expert with whom I had worked during the internship for my doctorate. My notes regarding this phone conversation state, "Phone consult with Lowell Storms. He feels it's very appropriate to assume elevations in

MMPI number one are due to incident since she spontaneously told me items would be reversed prior to shooting." Following this telephone consultation, I then rescored Ms. Downs' MMPI profile with the items in question reversed. In the resulting new profile, all scores fell within the normal range of functioning per my comparison group. Ms. Downs' score on scale 4 was still her highest score, but it was at the high end of normal rather than clearly elevated as it had been on the original test scoring.

I never diagnosed Ms. Downs as a "deviant sociopath," for there is and was no such diagnosis per DSM-III, which is the official psychiatric diagnostic manual. As noted above, although her initial scoring in the MMPI scale 4 ("psychopathic deviate") was significantly elevated, the readministered score placed her high within the normal range. I did diagnose Ms. Downs as suffering from cyclothymic disorder, and treated her accordingly.

When I learned that the government had apparently used my notes in Court and implied that I had diagnosed Ms. Downs as a "deviant sociopath," I immediately sent a hand-written note to District Attorney Fred Hugi, with copies to Judge Foote and Mr. Jagger, to correct this serious error. My letter to Mr. Hugi stated:

I understand from the newspaper (R-G) and from people in the courtroom that you asked Diane, "Are you aware that your psychologist has diagnosed you as a deviant sociopath?" This has not, as far as I know, been cleared up in front of the jury -- Is that true?

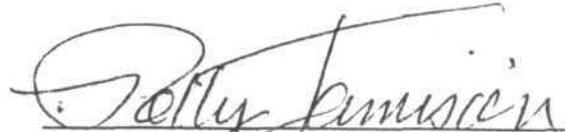
<sup>PJ</sup>  
I want you to know that I did not diagnose Diane with that diagnosis -- In fact, 'deviant sociopathy' is not even a psychiatric diagnosis at all in the official DSM III -- Plus -- Diane's score on the Pd scale (scale #4) is within normal limits. Nobody would use just that to put such a diagnosis on a client.

I need to register a protest regrading this issue -- I am very unhappy with the jury being left w/ the impression that I gave that diagnosis to Diane --

Why didn't you let me testify to explain my notes & tests to you.

Polly Jamison.

Although I would have been willing (with Ms. Downs' permission) to act as a witness at that point, I was never called to rebut the reported misrepresentation.

  
POLLY JAMISON

SUBSCRIBED AND SWORN TO BEFORE ME this 12 day of September  
1997.



  
Notary Public for Oregon 12-19-2000