

**Negligent Supervision of Parolees: A Case Study**  
By Kevin Coluccio, Esq., and Paul W. Whelan, Esq.

Every day, newspapers contain stories about the victims of violent crimes. Most evening newscasts feature stories about crimes which have occurred throughout our communities. This is a story about a murder in the Pacific Northwest and a brutal attack in North Dakota. In many ways, these crimes were like the crimes that we read about or hear about on the evening news. But these crimes were different than many because they were so easily preventable. The death of a wonderful wife and mother and the brutal attack upon a devoted mother of three children resulted from the failures of the Washington State Department of Corrections.

On September 23, 1997, Alice Underdahl, a United Airlines flight attendant, had just returned from a cross-country flight. It was a sunny day, and Alice decided to go for a run along the Cedar River Trail in Kent, Washington. During the run, she was dragged off the trail, assaulted, and killed. Five days later, Julienne Schultz, a Burlington, North Dakota city councilwoman on her way home from a city government conference, was assaulted by a knife-wielding man who slit her throat and left her for dead at a highway rest stop in North Dakota. Ms. Schultz survived the attack and was able to identify her assailant, who was later apprehended at a police road block. The perpetrator shot and killed himself. He was Gary Wayne Puckett, a Washington State Department of Corrections parolee.

**The Parolee**

On February 19, 1980, Puckett robbed, brutally raped, and strangled an eighty-six-year-old woman, the grandmother of one of his friends. The woman suffered a stroke during the attack and Puckett, believing that he had killed her, left the scene.

Puckett confessed and was sentenced to life in prison. However, in the criminal justice system, the term "life" does not always carry its actual meaning.

A psychological report made at the time of his sentencing indicated that Puckett:

. . . suffers from primary sexual deviation, but in an unusual way this is further related to his basic anti-social personality disorder. . . . There is no question that in this young man's history he has acted upon most of the psychiatric classified sexual deviations.

\* \* \*

It is my opinion that Mr. Gary Puckett is unsafe to be at large due to the habitual and dangerous pattern of behavior that he has evidenced over these number of years. He reports that he is out of control with his sexual urges and this examination finds no basis that he should be released into the community under any circumstances.

In October of 1987, Puckett was paroled. Three months later, Puckett was arrested for making sexually obscene, violent, and threatening phone calls to women in the community. The community corrections officer (CCO) who was supervising Puckett conducted an investigation of the phone harassment, interviewing witnesses, and speaking extensively with law enforcement officers. He submitted a report to the Indeterminate Sentence Review Board (the Board) recommending revocation. The Board revoked Puckett's parole and he was returned to the prison system.

In 1992, Puckett began treatment with the Department of Corrections's Sexual Offender Treatment Program (SOTP). By early 1994, Puckett had completed two phases of the three-part treatment program.

In January of 1994, Department psychologists concluded that Puckett was "likely to re-offend against any female to whom he has access" and was "at risk to use violence in the future" until he completed the entire treatment program. However, in June of that same year, the Department's psychologists reversed their position and recommended that Puckett be released from prison if he completed Phase III of the Program after his release. The Department represented to the Board that Puckett's risk to re-offend would be reduced to "low" if his CCOs ensured that he remained drug and alcohol-free and participated in a twelve-step program. The Board followed the Department's recommendations and in October of 1994, granted Puckett his second parole.

In the State of Washington, as with many other states, the Board relies upon the Department of Corrections and its CCOs to formulate a supervision plan and to require that parolees follow the plan. The Board also relies upon CCOs to follow the Department's directives and guidelines, and to completely investigate and accurately report any potential violations by parolees. Because CCOs are supposed to have full knowledge of the parolees under their supervision, the Board usually follows their recommendations. For example, if the CCO recommends revocation, a Board warning, or the imposition of new terms or conditions of parole, the Board complies. Essentially, the CCOs are the "eyes and ears" of the Board.

Once Puckett's supervision plan was formulated, he was assigned to work release for a six-month transition term. Trouble started immediately after he began work release. During counseling sessions, Puckett continually complained that staff members were picking on him. He demanded to be dismissed from the Department's counseling program and transferred into a private program with his former counselor. He threatened a work release supervisor and was jailed for a period of time. In violation of the work release program rules, he was caught with pornography in his room and used the program phone to make personal calls. Following each of these violations, his CCO merely recommended warnings or additional time in work release.

After eight months, Puckett completed work release and was paroled into the community. He was classified as a 3A (maximum supervision) case. As such, his CCOs were required to conduct at least one office visit and two field visits every month to ensure that Puckett was complying with the conditions of his parole. They were also required to make periodic collateral contacts to ensure that he was not in relapse. During the twenty-seven months Puckett was in the community, his CCOs missed forty-five of fifty-one required field visits. In addition, they permitted Puckett to remain unemployed for more than a six-month period of time, and they made only a handful of collateral contacts.

In response to this course of conduct, Alice Underdahl's husband and daughter and Julienne Schultz and her family sued the State of Washington, alleging that its correctional officials negligently supervised Puckett. After they filed suit, the plaintiffs discovered additional patterns of failed supervision.

## The Law

In the State of Washington, the Supreme Court has set forth a standard which holds the State responsible for the failed supervision of parolees such as Puckett.

The origin of the duty to supervise dangerous parolees was articulated in the **Restatement (Second) of Torts** §319, which states that “[o]ne who takes charge of a third person whom he knows or should know to be likely to cause violent harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.”

In *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1993), the Washington Supreme Court adopted the **Restatement** as law. In describing the Department of Corrections’s duty, the court said:

The State can regulate a parolee’s movements within the state, require the parolee to report to a parole officer, impose special conditions such as refraining from using alcohol or undergoing drug rehabilitation or psychiatric treatment, and order the parolee not to possess firearms. The parole officer is the person through whom the state ensures that the parolee obeys the terms of his or her parole. Additionally, parole officers are, or should be, aware of the parolee’s criminal histories, and monitor, or should monitor, their parolee’s progress during parole. Because of these factors, we hold that parole officers have “taken charge” of the parolees they supervise for purposes of Sec. 319. When a parolee’s criminal history and progress during parole shows that the parolee is likely to cause bodily harm to others if not controlled, the parole officer is under a duty to exercise reasonable care to control the parolee and to prevent him or her from doing such harm.

*Taggart* at 220.

Appellate courts have continued to follow the *Taggart* ruling and trial courts have been reluctant to grant the State’s summary judgment motions which are routinely filed

in failed supervision cases. The Parole Board itself is completely immune from any liability.

### **The Plaintiffs' Case**

Plaintiffs' counsel undertook significant efforts to research probation and parole standards. Two correctional experts were retained: William Stough of Seattle and Alvin Cohn of Rockville, Maryland. Publications by various probation and parole associations were carefully researched and reviewed. During discovery, the Department of Corrections contended that there were no resource manuals utilized by them in their supervision of parolees such as Puckett. Plaintiffs' counsel discovered that the American Probation & Parole Association (the Association) has stated that proper supervision of sex offenders requires extensive monitoring, supervision, and treatment. A manual prepared by the Association outlines extensive procedures for the proper supervision of parolees, such as Puckett, with a sexual deviancy background.

The Association has also concluded that sex offenders often have a tendency to appear to be successfully completing their parole, when in fact, they are returning to their deviancy cycle. Consequently, every possible resource must be utilized in determining whether or not such offenders are in relapse. It was clear, from the facts of this case, that the CCOs failed to follow not only their own directives and guidelines, but also the guidelines set forth by national organizations.

Mr. Stough concluded that during the period from Puckett's release from prison in 1994 until the time that he murdered Alice Underdahl, he had committed numerous

parole violations which should have led to his return to the prison system. Mr. Cohn reached the same conclusion, and also was critical of the Department's procedures and failure to follow its own directives in its supervision of Puckett.

The plaintiffs retained psychological experts, Drs. Stephen Hart and Donald Dutton of Canada. Dr. Dutton addressed Puckett's personality disorders which had been identified throughout his treatment while under the control of the Department of Corrections. Dr. Hart addressed Puckett's sexual deviancy cycle and the risk factors which had been identified by the Department's own psychologists during Puckett's participation in the initial phases of SOTP.

Both experts concluded that Puckett had returned to a sexual deviancy cycle shortly after his release into the community, and that the Department of Corrections had failed to identify numerous risk factors and indicators establishing Puckett's return to his sexual deviancy cycle.

The Department of Corrections, throughout its existence, has formulated numerous directives with the help of experts which provide guidelines for the proper supervision of offenders on parole. In the Puckett case, as in many previous cases, the plaintiffs were able to establish that the Department's agents had failed to follow their own directives. They neglected field visits, failed to make sufficient collateral contacts, did not conduct proper investigations of parole violations, and ignored dangerous behavior.

In defending this case, the Washington State Attorney General claimed that the Department of Corrections officers had reported all potential violations to the Parole

Board, and that the Board had approved the recommendations that warnings be issued.

The State contended that the Board had the power to revoke Puckett's parole, and that it had chosen not to in light of the circumstances of Puckett's parole violations.

Through extensive investigation and thorough discovery, the plaintiffs established that the Parole Board had never been given a complete picture of the danger Puckett posed to the community. For example, in December of 1995, Puckett's parole officer was told by the Tukwila, Washington Police Department that Puckett had been engaging in stalking behavior and had been involved in an exposure incident at a local mall. At that same time, the parole officer learned that Puckett had followed and harassed teenage girls at the mall in August of 1995. Rather than investigate these clear parole violations, the officer simply accepted Puckett's story that mall security was picking on him and that it was a misunderstanding. Investigation by plaintiffs' counsel established that the incident was quite serious and that Puckett was in his sexual deviancy cycle. Given the nature of Puckett's original offense, his psychological make up, and his violent tendencies, the officer should have conducted a complete investigation of the incidents. In fact, the officer submitted an incomplete report, claiming that Puckett was successfully fulfilling his parole and recommended a board warning.

The State's attorneys also claimed that the failed field visits and collateral contacts did not matter, because Puckett had passed every urinalysis (UA) and polygraph performed by the Department of Corrections. On its face, this statement seemed true; however, the plaintiffs were prepared to defeat this contention at trial.



Plaintiffs' counsel located and identified numerous witnesses who testified that Puckett was using drugs and alcohol extensively during the spring and summer of 1997. Plaintiffs' counsel determined that all but one chain-of-custody document from his UAs were missing from Puckett's Department of Corrections file. The Department contended that after test results are received, the chain-of-custody documents are destroyed. Plaintiffs' corrections expert disputed that destruction of these documents was permitted. Secondly, tests to ensure that Puckett's urine samples were not contaminated had not been conducted at the time the UAs were obtained from Puckett. Third, most of the test results were not verified. Finally, the plaintiffs retained drug and alcohol expert Dr. Barry Wolborsky who testified that UAs are fifty percent accurate at best; that the defendants failed to conduct random UAs; and that the best method for obtaining accurate information regarding drug and alcohol use is through "eye witness testimony." Numerous people who had seen Puckett using drugs and alcohol were willing to testify to this fact at trial. Furthermore, Puckett had admitted to his wife and friends that he was able to beat UAs through various techniques.

Plaintiffs' counsel also retained polygraph expert, Dr. David Raskin. Dr. Raskin analyzed Puckett's polygraphs and determined that they had been improperly conducted and were inadequate. Moreover, the polygraphers had destroyed all of the polygraph tracings except one, which, according to Dr. Raskin, established that Puckett had been deceptive, contrary to the conclusion reached by the polygrapher. Following Dr. Raskin's deposition testimony, the polygrapher contended that he had produced the wrong tracing, but unfortunately, he had destroyed the relevant tracing within the week

before his deposition. The plaintiffs felt confident that this story would not be accepted by the jury. Moreover, the two polygraphers who performed the tests have had long-term contracts with the State and were ex-Washington State troopers who were receiving state pensions and earning a substantial amount of money conducting polygraphs on behalf of the Department of Corrections.

Generally, polygraphs are considered to be reliable. However, it is imperative with sex offenders that a polygraph program be initiated by the parole officer with the assistance of the offender's therapist. Puckett's supervising officer made no effort to prepare such a plan.

Testimony from Puckett's wife established that she left him in June of 1997 as a result of his deteriorating behavior. Although Puckett's wife was identified by the Department as his most critical support person, the corrections officers assigned to Puckett had had only four to six visits with her during the entire time that he was on parole and none after she left Puckett.

In August of 1997, Puckett was jailed for failing to register as a sex offender. He contended that it was a mix up resulting from his wife moving to Vancouver, Washington. He lied to his corrections officer stating that his wife had moved to be with her daughter who was pregnant. The corrections officer made no attempts to contact Puckett's wife to verify this story. Had he done so, he would have learned that there was no pregnant daughter and that she had left because of Puckett's mental collapse. Puckett was released after two days.

On September 3, 1997, the corrections officer responsible for supervising Puckett made his first visit to his home after reclassifying him to maximum supervision, a plan that required a minimum of two home visits per month. He found Puckett in bed with a woman other than his wife. When questioned about this woman, Puckett finally admitted that his wife had left him and that one of the causes for her leaving was this woman. The corrections officer made no attempt to question the woman. The officer subsequently went on vacation and did not enter this serious incident into the Department's reporting system until his return. Upon his return, the only thing he did was to advise Puckett that he would have to submit to a polygraph in October regarding the incident.

The officer also made no attempt to contact Puckett's employer for the purpose of determining his employment status. Contact with his employer would have established that Puckett was having difficulty at work, and that he had been suspended on several occasions. Puckett had also identified a roommate who was never contacted by the officer. The roommate would have confirmed Puckett's drug and alcohol use. Puckett was obviously in his sexual deviancy cycle and on a course to disaster.

Faced with this damning evidence, the State agreed to settle the case several weeks before trial by paying \$4.4 million to both the Underdahls and Julienne Schultz and her family.

Gary Wayne Puckett had a long criminal history and a sexual deviancy cycle. If the Washington State Department of Corrections had simply followed its own directives

and paid proper attention to Puckett's behavior, the brutal attacks on Alice Underdahl and Julienne Schultz would not have occurred.

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