

**HIGH SECURE SERVICES**

Our ref: ES/sb  
Your ref:  
Date: 12<sup>th</sup> January 2010

Ashworth Hospital  
Brontë House  
Parkbourn  
Maghull  
L31 1HW

Ms C Watts  
Court Clerk  
The Crown Court at Cardiff  
Law Courts  
Cathays Park  
Cardiff  
CF10 3PG

Telephone number: 0151 473 0303

Dear Ms Watts

**Re: MAURICE KIRK – D.o.B.:12.03.1945  
HMP Cardiff**

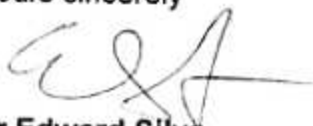
Please find enclosed a letter I received from Mr Kirk today. He indicates that he is now eager to cooperate with an interview with me. Does the Court wish me to proceed and produce an addendum report, including my findings at interview? If so, are there any additional instructions? Alternatively if the Court does not want me to proceed I note Mr Kirk's suggestion that he instructs me. Are there any observations in relation to this?

Having first been instructed by the Court I am writing to highlight Mr Kirk's letter.

Obviously my report would be no different whether instructed by the Court or by Mr Kirk himself.

Mr Kirk has requested a signed copy of my report which I have sent to him.

Yours sincerely



**Dr Edward Silva**  
**Consultant Forensic Psychiatrist**

✓Cc Mr M Kirk, HMP Cardiff

Mersey Care NHS Trust is a smoke free NHS Trust and operates a smoke free policy.  
Please note that smoking is not permitted on any of our sites including buildings, grounds, and car parks.  
Smoking is not permitted at the entrances or exits of buildings and sites.

Chairman: Beatrice Fraenkel

Chief Executive: Alan Yates



C.L.T

**PSYCHIATRIC COURT REPORT**

**Name:** Maurice Kirk

**Date of Birth:** 12.03.1945

**Present location:** HMP Cardiff

**Date of Assessment:** 03<sup>rd</sup> November 2009

**Date of Report:** 25<sup>th</sup> November 2009

**Report Prepared by:** Dr Edward Silva  
Consultant Forensic Psychiatrist  
BSc(HONS) MBChB LLM MRCPsych

## **INTRODUCTION**

### **Author Note**

I am Dr Edward Silva. I am employed by Mersey Care NHS Trust as a Consultant Forensic Psychiatrist at Ashworth High Secure Hospital. I hold Bachelor Degrees in Science (Molecular Biology) and Medicine and Surgery. I am a Member of the Royal College of Psychiatrists. I hold a Masters Degree in Mental Health Law and am Approved under Section 12(2) of the Mental Health Act 1983 as having special experience in the diagnosis and treatment of mental disorders. I have worked as a Consultant Forensic Psychiatrist since 2001 and have extensive experience in the assessment and treatment of mentally disordered offenders. I regularly perform assessments for patients referred for admission to Ashworth Hospital from my colleagues in the prison service, other secure psychiatric settings and by the Courts. I prepare medico-legal reports on a regular basis and have attended Court to give oral evidence on many occasions.

### **Instructions**

This report has been requested by Cardiff Crown Court in order to establish Fitness to Plead. I have been asked to indicate:

- a) Whether the defendant suffers from any mental disorder, and if so:
- b) Whether he is in need or capable of gaining benefit from treatment, and in particular in the case of a psychopathic disorder or mental impairment whether treatment is likely to alleviate or prevent a deterioration of his condition and, if so:
- c) Whether it should be as an inpatient or outpatient, and
- d) Where and by whom this treatment can be given and:
- e) Prognosis where possible, and
- f) Whether, to protect the public from serious harm, a Restriction Order (i.e. an Order restricting the defendant's discharge) should be imposed.

## Sources:

In order to prepare this report I have reviewed the following:

Papers provided by the Court relating to this allegation

1. Letter of instruction
2. Letter by Dr Tayyeb Tahir in relation to a failed attempt to prepare a report on Mr Kirk, dated 21<sup>st</sup> October 2009.
3. Interim Psychiatric Report, prepared by Dr Williams, dated 2<sup>nd</sup> September 2009.
4. The final report of Dr Williams, dated 19<sup>th</sup> October 2009.
5. Bundle of papers handwritten by Mr Kirk – 6<sup>th</sup> July 2009, 10<sup>th</sup> July 2009.
6. Legal Application from Dolman's Solicitors of 22<sup>nd</sup> June 2009 with Mr Kirk's annotations.
7. Handwritten document to John Smith MP from Mr Kirk of July 2009.
8. Indictment.
9. CPS Summary.
10. Witness Statements.
11. Transcripts of Police Interviews with Mr Kirk.
12. Transcripts of Court Proceedings of 25<sup>th</sup> June 2009, 26<sup>th</sup> July 2009, and 1<sup>st</sup> October 2009.

## Caswell Clinic

1. Psychiatric Report of Dr Williams, dated 3<sup>rd</sup> August 2009.
2. Psychiatric Report of Dr Williams, dated 2<sup>nd</sup> September 2009.
3. Psychiatric Report of Dr Williams of 30<sup>th</sup> September 2009.
4. Risk Assessment (Draft) of 21<sup>st</sup> September 2009.
5. List of previous convictions.
6. In-patient Notes.

7. Minutes of Peer Review.
8. Nursing Reports.
9. Social Work Reports.
10. Case Conference Reports and presentations.
11. Extracts from Mr Kirk's Website.
12. Results of special investigations including blood tests and results of neuro imaging (MRI, EEG and SPECT Scan).
13. Letter from Professor Woods.

#### Fixated Threat Assessment Centre

1. Log from the Fixated Threat Assessment Centre in relation to Mr Kirk's approach to George W Bush's ranch in Texas in 2008 and to the Prince of Wales' residence at High Grove in 2009.

#### Reports of previous cases involving Mr Kirk

1. Privy Council Decision of 17<sup>th</sup> June 2003.

#### Mr Kirk's writings and Website

1. Documents, entitled Maurice Kirk v South Wales Police, prepared by Mr Kirk, dated 19<sup>th</sup> June 2009.
2. E-mail to Mr Kirk from a psychiatrist in Chicago.
3. An e-mail sent by Norman Scarth, dated 29<sup>th</sup> September 2009, in relation to Mr Kirk.
4. Letter from Mr Kirk to me of 14<sup>th</sup> November 2009.
5. Various documents from Mr Kirk's Website which I have perused extensively.

## Legal cases considered

When forming my opinion regarding Fitness to Plead and stand trial I have considered the following cases:

1. R v Pritchard (1836)
2. R v Robertson (1968)
3. R v John M (2003)
4. R v Erskine (2009)

I have discussed Mr Kirk's case with Dr Jones, Consultant Forensic Psychiatrist of the Caswell Clinic on a number of occasions. I have also liaised with psychiatrists who have been involved in the care and treatment of others who have contacted the Caswell Clinic and Ashworth on Mr Kirk's behalf in an attempt to determine the sort of risks, if any, presented by others.

I attended HMP Cardiff on 3<sup>rd</sup> November 2009 in an attempt to see Mr Kirk. I was able to speak with Mr Kirk for approximately one and a half hours at the door of his cell. However, he declined a full interview with me at that point, telling me that he had not had adequate notice, but that he would consent to a formal interview with adequate notice, a witness present and providing that the interview was recorded with him to receive a copy. Since then I have been informed by the Court that Mr Kirk has indicated that he will not cooperate with any further psychiatric assessments. When I saw Mr Kirk on 3<sup>rd</sup> November 2009 he was clear that he did not, at that point, consent to a formal interview.

Notwithstanding the difficulties I experienced on 3<sup>rd</sup> November in my attempts to assess Mr Kirk, I think that in all the circumstances, with the bundle of information available to me and with the reports of Mr Kirk's mental state available from multiple other sources, I am able to comment on at least some of the questions posed by the Court.

## **SUBSTANCE OF THE FACTS ON WHICH OPINIONS ARE BASED**

### **Alleged Offences**

Mr Kirk faces three charges:

1. Possession of a prohibited weapon contrary to Section 5(1) a of the Firearms Act 1968
2. Selling or transferring a prohibited weapon contrary to the same section, and
3. Possessing criminal property contrary to the Proceeds of Crime Act

The offences are alleged to have occurred between January 2008 and June 2009.

It is alleged that Mr Kirk had in his possession a Lewis Machine Gun, a World War I era Light Machine Gun, invented in 1911, that this was a prohibited firearm, he possessed it, sold it and then had possession of the money from the sale.

There appears to have been some disagreement as regards the exact nature of the gun and whether it could indeed fire more than one round for each application of pressure to the trigger.

The CPS summary includes the background that Mr Kirk is bringing civil actions against the South Wales Police, making over 70 separate claims against the Chief Constable, Barbara Wilding. He had offered £10,000 reward for information relating to the prosecution of her and others including employees of the CPS as well as current and retired police officers, requesting via his website their personal details including home addresses, vehicle registrations, details of their families, children's schools, and friends and acquaintances.

In August 2008 Mr Kirk offered a variety of items for sale on his website including aeroplanes and parts, motor vehicles, houses and the gun in question, together

with ammunition. On 2<sup>nd</sup> April 2009 he posted a photograph of himself on his website showing him holding the machine gun. In May he posted the same photographs with captions "*dressed for Cardiff Crown Court and a level playing field*" and another "*the final solution*", another read "*Vengeance is mine. Crooked lawyer shooting*". Mr Kirk has also apparently posted video clips of himself on his website providing further evidence of possession of a machine gun. At the end of May 2009 a covert police officer rang Mr Kirk, asking to buy the Lewis Machine Gun, but it was no longer for sale. A discussion as to whether or not the gun was de-activated followed. He told her "*Oh I see, no, no, this one worked*".

In the summer of 2008 Mr Kirk sold a De Havilland Airco DH2, a World War I plane. The Lewis Gun was of the type used in that aircraft. Mr Cooper bought the plane and then the gun which was collected by Mr Cooper's wife. Mr Cooper was told the gun was de-activated. No complaint was made. The arrest followed police scrutiny of Mr Kirk's website.

Mr Kirk was arrested and interviewed by the police on 22<sup>nd</sup> and 23<sup>rd</sup> June 2009. An appropriate adult was present. He was not legally represented. He made no comment answers to most of the questions asked. On 23<sup>rd</sup> June Mr Kirk explained that it was his understanding that the gun had been decommissioned when he presented it to an armourer at RAF Lyneham.

I note Mr Kirk's view that the timing of his arrest coincided with other legal proceedings which he himself had issued against the South Wales police.

**Personal history- based on a variety of sources including the Caswell Clinic notes and Mr Kirks own published accounts**

He is one of several siblings born to a professional Somerset family and privately educated. There does not appear to be an established family history of mental illness although a number of close relatives have been described as reclusive. It is reported that Mr Kirk himself has always had a great sense of adventure and as a school boy built a canoe and crossed the channel. He trained, like his father



before him, as a vet. At University he flew, and on qualification flew professionally, perhaps in stunts for films for a period.

He has married twice and has five children aged between their mid thirties and late childhood. He parachuted to his first wedding. His second wife is a vet. She considers that he has been persecuted by the police and has herself complained that the police, when searching their home following her husband's most recent arrest, behaved improperly in not giving her details of items removed (which included firearms, legally held and which were returned), and that the police encouraged her to say that she had separated from her husband, so that he could be denied bail. It appears that his adult children support him and at least some of them regard his difficulties as being the result of persecution.

In the early 1970s it was alleged that he stole a police inspector's pocket book from a desk drawer in a police station. He was charged, but acquitted. He dates what he says is prolonged persecution by various police forces to this incident. Since then, he says, he has been arrested, charged and prosecuted in relation to more than one hundred charges which have subsequently failed to produce convictions. His view is that this indicates that the police are corrupt, persecutory and incompetent. He has, over many years, undertaken various protests against this and again over many years has himself initiated legal action against those he regards as his persecutors. This has led to his being classed as a vexatious litigant. He has supported and been supported by others who share his views.

Until his registration was removed by the Royal College of Veterinary Surgeons, in relation to criminal convictions unrelated to his care of animals, he was a successful vet, establishing one of four small animal hospitals in Wales. He has repeatedly appealed his removal, including to the Privy Council where the judgement was delivered by Lord Hoffman. He continues to attempt to regain his registration and, as with his actions against the police, it appears that, if he is not successful or withdraws, he will stand to lose huge amounts in legal costs against him. As a vet he stood for election to the RCVS council and polled over 1000 votes, within three hundred of gaining a place.

He has had a longstanding interest in flying and has owned many aircraft including the one relating to these charges. Having successfully flown in an air race from London to Sydney in a WWII era plane, he then attempted to fly, in several stages, around the world. He has had at least two notable crashes, in a Japanese city and then in the Caribbean. There are no clear records as to whether either resulted in loss of consciousness. After each he was interviewed by local television stations and a video clip of one interview in the Turks and Caicos islands is available on YouTube. Mr Kirk's demeanour in this is not noticeably different to that in earlier clips. Having crashed, the aircraft were repaired and replaced, and he flew through the US passing through Texas. Having been rescued by a US coastguard helicopter, he decided to pin a letter of thanks to the gate of President Bush's Ranch, landing outside the prohibited airspace surrounding the site. He was arrested, initially thought to be drunk although subsequent tests refuted this, assessed in a psychiatric hospital, released and deported. It is reported that his habits when flying depart from expected norms with regard to navigation, the use of maps and safety.

It appears that he has a variety of other interests including riding, hunting, trout fishing and socialising. His web site contains at least one image of him and the late actor Oliver Reed, a former resident in the Channel Islands where Mr Kirk once lived and worked, and complained of corruption, reportedly setting up a legal aid scheme.

In January 2009, when attending an air show in Gloucestershire, he walked to the front gate of Price Charles' residence, asked the policeman if he could hand deliver a letter, gave his personal details including examination of his passport, but was directed away. He later enquired at a tourist information centre if another entrance might be available. Following this contact The Fixated Threat Assessment Centre, a collaboration between the Metropolitan police and a London Mental Health Trust, considered Mr Kirk's presentation. He was not thought to be a threat rather to be querulous.

Between 1978 and 2001 Mr Kirk was convicted of a variety of offences including driving offences, criminal damage and a number of assaults against the police and others. A variety of sentences have been imposed. Mr Kirk has appealed many of his convictions, representing himself, resulting in reduced sentences on many occasions. It is also reported that he has successfully defended himself against over 100 charges. I note newspaper reports from his website suggesting that in the 1990's he was arrested for the possession of an offensive weapon, said to be a garrotte found in a vehicle after being stopped for another matter. He was imprisoned, but then released when the wire was found to be used for dehorning cattle as part of his work as a vet.

### **Information from the Caswell Clinic including Dr Williams' reports**

Mr Kirk was assessed at the Caswell Clinic between early August and late October 2009, having been detained under Section 35 of the Mental Health Act 1983.

His initial detention followed concerns about his mental health at HMP Cardiff. There he had been on hunger strike complaining of persecution by the Courts, solicitors and the South Wales Police. In HMP Cardiff he had been seen by Dr Williams. Mr Kirk had questioned Dr Williams asking if he was a Freemason and, when Dr Williams neither confirmed nor denied any aspect of his private life, Mr Kirk interpreted his lack of response as evidence of Masonic involvement.

As set out in Dr Williams' final report Mr Kirk was assessed at the Caswell Clinic and interviewed by numerous professionals including: nursing staff; social workers; psychologists; various psychiatrists including a number of forensic psychiatrists; Professor Roger Wood, a Consultant Neuropsychologist, and by Dr Godfrey, a Clinical Psychologist. A number of special investigations were performed including blood tests, EEG (brain wave tracing), a MRI (Magnetic Resonance Imaging Scan) of the brain, and a SPECT Scan (specialist brain imaging used to show blood flow).

As well as interviews with Mr Kirk staff from the Caswell Clinic obtained corroborative history from Mr Kirk's relatives including his wife and elder children. The contents of his website were also reviewed and contact was made with The Fixated Threat Assessment Centre in London.

Whilst most of the clinicians involved in his care considered that Mr Kirk's mental state was abnormal and pathological, there was some disagreement regarding the extent to which his thoughts departed from the norm and the extent to which they were delusional. Mr Kirk appeared highly preoccupied by his various legal concerns, namely that the police and judiciary were conspiring against him and his legal action against the South Wales Police. At times some of his comments appeared bizarre. On at least one occasion he feared that his room might be bugged, although it appears that he was able to be reassured about this. At other times he mentioned genetic research and the CIA, although it is unclear to what extent these were fixed (when I saw Mr Kirk in November 2009 he was anxious to tell me that these comments had been made by some of his supporters on the internet and were not his own beliefs). There appeared to be some diversity of opinion amongst the clinicians involved as to the nature of the exact symptoms exhibited by Mr Kirk, with some concluding that the beliefs he held were of delusional intensity, that is paranoid persecutory delusional beliefs (which would be consistent with a delusional disorder – a psychotic illness), and others concluding that the extent of his concerns amounted to over-valued ideas. All agreed that his overall personality functioning was highly unusual and had been for many years. The majority view was that, whatever the exact nature of his difficulties, it would not be appropriate to enforce antipsychotic medication on him or detain him further within the Mental Health Act.

The results of specialist investigations, psychological and neuropsychological examination were as follows. An EEG in August 2009 showed no specific abnormality. A SPECT Scan, performed on 28<sup>th</sup> August 2009, was initially reported by Dr Tudor as showing a diffuse reduction in cerebral perfusion, slightly more prominent on the left, but this being non specific. A memo from Dr Gaynor Jones to Dr Tegwyn Williams reports that on review Dr Tudor expressed the view

that when the SPECT was examined closely it looked as if there were multiple focal areas of hypoperfusion, with him questioning whether or not there was a vascular ischaemic pattern. However, in contrast to this an MRI was not particularly remarkable, identifying some signal abnormality in the frontal part of one of the temporal lobes, so if the SPECT Scan indicated an early sign of dementia, then the MRI did not support that. Dr Tudor went on to comment that the findings could be the start of an early manifestation of vascular dementia, but could also represent a chronic change due to sustained alcohol abuse. Other opinion regarding the scan included the possibility of age related changes due to normal aging.

Specialist neuropsychological examination concluded that Mr Kirk's IQ and his general level of intellectual functioning was very superior, his full scale IQ being recorded as 133, superior to approximately 99 per cent of the general population. His verbal IQ was superior to his performance IQ (136, 121). The discrepancy between his verbal and performance IQ was thought to be statistically significant, but was noted by the psychologist to be not unusual amongst highly educated individuals. Tests of his frontal lobe or executive functioning were performed including the Hayling and Brixton Tests. The psychologist concluding that Mr Kirk had slight difficulty with response suppression, rule detection and rule following tasks, and that this may indicate a degree of impulsivity, but that the findings were not to a degree that would indicate significant frontal lobe dysfunction. Tests of his immediate, delayed and total memory function were also performed. These were slightly below what might have been expected for a man of his high IQ, but were still at least average.

The view of a Professor of Neuropsychiatry was obtained. He queried the presence of brain injury, possibly as a consequence of deceleration injuries during Mr Kirk's aeroplane crashes in the context of an abnormal premorbid personality and pre-existing mild difficulties with handwriting and spelling. He thought that there may be damage to specific regions of the frontal lobes although the neuropsychological testing carried out to that point had been

normal. It was thought that psychological treatments were unlikely to be effective.

Difficulties at the Caswell Clinic included Mr Kirk's communication with the outside world. A number of media organisations contacted the unit asking for Mr Kirk's repeatedly. Clinicians, in particular Dr Williams, received what they perceived to be threatening and abusive messages from some of Mr Kirk's supporters.

Mr Kirk, himself, however, was not involved in any violence or threats of violence. Staff found him intimidating, given that he would post copies of clinical documents relating to his care on his web site and as he told them that his next legal actions would be against them regarding his detention.

#### **ATTEMPTED INTERVIEW AND MENTAL STATE EXAMINATION WITH MR KIRK AT HMP CARDIFF – 3<sup>RD</sup> NOVEMBER 2009**

I attended HMP Cardiff on 3<sup>rd</sup> November 2009 in an attempt to see Mr Kirk. The visit had initially been booked through legal visits and, on my arrival at the visits hall, I was informed by prison officers that Mr Kirk refused to see me. When they had gone to collect him, he had appeared agitated and demanded that he have notice of an interview and that, should any interview take place, he would need to have some sort of witness there.

I contacted the prison health centre, and the health care manager very kindly facilitated a visit to Mr Kirk's cell on normal prison location, F Wing.

In all I saw Mr Kirk for approximately one and a half hours. He remained in his cell throughout and I stood in the open doorway. He refused to let me enter his cell or sit down. He explicitly stated that he did not consent to an interview or examination.

On initially meeting Mr Kirk he gave me a note he had written that morning which I inadvertently left in his cell. This was to the effect that he was not refusing to see me, rather he would not see me then, alone, without a witness, prior warning or preparation. He went on to explain that, if he were to be formally interviewed by me, he would want the interview to be recorded and for him to have a copy.

I tried to explain the nature of the referral, that I had been asked to see him by the Courts in order to assess his fitness to plead, whether or not he suffered from a mental disorder and whether or not detention in hospital was appropriate. He, quite reasonably, asked for a copy of the papers sent to me from Court. I explained that I would need to ask the Court's permission, but that I would, if the Court were agreeable, send him a copy.

Mr Kirk asked me a number of questions at the beginning of the meeting and then later. He asked if I was Welsh, if I lived in Wales and if I was in any part of Welsh decent. I explained that I wasn't. He asked my name and qualifications, whether or not I was Section 12 Approved and where I worked. I provided those details. At one point he suggested that he may have some information about me previously, possibly from his website. I explained that I thought this was unlikely. Much later in the interview he asked who from Ashworth had "*sent me*", making reference to other psychiatrists who had been asked to see him but who had not. I explained that, rather than being sent, I had been asked if I would like to see him, that I had given this some consideration, and that I had decided to see him, had had the option of passing the referral to another, but that I had come of my own choice, in part "*out of curiosity*" about the unusual circumstances. At this he smiled quite warmly and said words to the effect that he thought as much.

I tried to explain the nature and purpose of the interview, in particular that I had been asked to see him regarding fitness to plead and stand trial. We discussed Dr Williams' report in which Dr Williams expresses the opinion that Mr Kirk was fit to plead and stand trial, if legally represented, but may not be, should he decline legal representation. Mr Kirk's view was that he was being held to ransom so to speak and asked me if I had ever heard of such an opinion before regarding

fitness to plead and stand trial – I had not, and told Mr Kirk this. On hearing this, he made a note in a book, open on his desk, at which he wrote intermittently throughout our meeting. I explained that I would try and determine his fitness to plead and stand trial with reference to the cases of Pritchard, Robertson, John M and Erskine. Since I had copies of Robertson and John M I gave them to him. He appeared grateful and suggested that they would be very shortly posted up on his website by the webmaster.

I asked him about his successes with the justice system. He had he said successfully defended himself, without legal representation, against a hundred or more charges. I tried to ask for details of these, but he gave only one, namely that in the early 1970's he had been charged with stealing a police inspector's notebook, but had defended himself and been acquitted. There had followed multiple attempts by the police to secure convictions against him, the vast majority of which he had, without representation, successfully defended. He gave me however a 64 page typed document, dated 19<sup>th</sup> June 2009, which he said would set out his predicament. He had not, he told me, defended himself successfully since he had been struck off the veterinary register in 2002 as this had coincided with the cessation of police charges.

I tried to explain to Mr Kirk that my understanding of the law in relation to fitness to plead and stand trial was as set out in R v John M ,and that the law required that a defendant be able to 1) understand the charges, 2) decide whether to plead guilty or not, 3) exercise his right to challenge jurors, 4) instruct solicitors and counsel, 5) follow the course of the proceedings, and 6) give evidence in his own defence. I went on to explain that my understanding was that, as set out in the same case, it was not necessary that a defendant's account of himself was helpful or appeared to be in his best interests (these points are set out in the case of John M at paragraphs 20-24).

I went on to enquire as to his reasons for declining legal representation. Mr Kirk became somewhat agitated. He was adamant that he had not declined legal representation and that I was mistaken. Rather, he said, his daughter had been



strenuously looking for a lawyer to represent him, specifically that she had approached 20 or 30 solicitors who had declined to take his case. He did not want to have a lawyer imposed upon him, particularly not one from South Wales or Wales as a whole since he regarded the criminal lawyers in that area as corrupt. His family had, he said, approached lawyers who had represented him in other, non criminal matters. When asked, he told me that he was currently instructing various lawyers in matters relating to his family, business interests and his own civil litigation against the police. He wanted a lawyer he could trust and thought competent.

In relation to the charges I did not have sufficient time, nor did the nature of the interview allow me, to get a full account from Mr Kirk of his understanding of the charges against him. He did remark angrily at the nature of his arrest and contrasted this to that which he expected any other man in possession of an antique firearm might experience. He went on to say that he thought it was highly significant that he had not been charged with possessing a prohibited firearm with intent. This would, he said, allow disposal by way of an IPP sentence (by implication, something he thought the police would be delighted with) and, in his view, it was, therefore, clear that no intent to do harm could possibly be implied. He went on to say that he was sure that the intention of bringing charges against him was to have him detained under the Mental Health Act, possibly with a restriction order, and that this was, following his stay at the Caswell Clinic, something that he feared greatly. He spoke of what he believed to be the abuses of psychiatry, showing me a book in his room by the respected, psychiatric ethicist, Sidney Bloch, on the topic of the political abuse of psychiatry in the former Soviet Union; he suggested that he was the victim of a similar practice. He went on to say that he was fearful that psychiatry would be used in this way for him. He thought that many of the patients at the Caswell clinic were being detained unreasonably, having interviewed many of them at length himself. His told met that his adult children, who are employed in the media, are making a film about his plight and psychiatry in general, and that his detention would, in turn, become a focus for his legal action in the future - he was confident that Ashworth was full of vexatious litigants. I explained that, to the contrary, to my

knowledge, there were no patients detained solely on the basis of vexatious litigation.

I tried to explain to Mr Kirk that it would be potentially very helpful for him to try and cooperate with an assessment, that I was independent minded and would try to be fair. He referred to my having earlier provided him with copies of two court reports in relation to fitness to plead with words to the effect that "*That's what they teach you first day on the job, Starsky and Hutch technique, give him a bowl of sugar – a sweetener, a cigarette... Have you got any cigarettes?*".

I tried to ask him about threats issued to staff at the Caswell Clinic and how it was that clinicians' names had been posted on his website, the fear being that they in turn would be threatened. Mr Kirk made a number of points. Firstly, he was not putting articles on his website directly. They were being put there by a webmaster. He had asked the webmaster to remove the name of at least one of the psychiatrists, as well as the psychologist and psychiatric junior he had spoken to at the Caswell Clinic. If they had appeared on his website, he was sorry and that was an error; he had wanted their names to be removed out of respect to them as individuals. However, he did not want the name of Dr Williams removed from his website, as he believed there to be at least 20 factual errors in Dr Williams' most recent report, citing specifically his conviction history as recorded on page 5 of Dr Williams' report of 19<sup>th</sup> October, which records a conviction for actual bodily harm in 1980 – he was sure that this conviction did not exist and that his PNC record contained factual errors.

Mr Kirk went on to speak of what he regarded as Dr Williams' unusual opinion regarding fitness to plead and stand trial. I explained that my understanding was that, following a finding of being unfit to plead or to stand trial, there were a number of options including detention under the CP(I)A, as if detained under a Section 37/41, a Supervision Order or Discharge. It was clear that Mr Kirk was very fearful regarding the prospect of further detention in hospital and spoke of the taunts that his 10 year old daughter had received at school following his detention at the Caswell Clinic, saying how "*they always go for the underbelly*".

I asked about threats made to the individuals named on his website. He told me he had thought about this. He personally had made no threats to any of the clinicians involved in his care of physical harm (although he has said that he may pursue litigation). He thought that threats to staff at the Caswell clinic, and posted on websites, could have come from four people. Firstly, an individual he knew as Oakes who he had never met, secondly from Norman Scarth, who he had met once, thirdly from Patrick Cullinane, who he described as a crazy Irishman who he had met a lot and who attended all his court cases, and fourthly another man whose name he said he couldn't remember. Amongst the his files of papers in his cell he found a copy of a fax from Norman Scarth to the Caswell Clinic and Cardiff Crown Court, attached to other documents, which appeared to be posted on his website with notes of support. He thought that the fax from Norman Scarth was not threatening, it only including the sentence "A word of warning" followed by a quote from Lord Denning, reference to the plight of Nazi doctors and then the line "beware the fury of a patient nation", ending "release Maurice Kirk and cease criminal activities? If not, I fear for the future – and you should too!"

I tried to explain to Mr Kirk that concerns in relation to these aspects of his case had resulted in the referral to high security. He thought it was unreasonable that he should be detained at a high level of security, because of fears that his medical records, which he thought he had full right to see, might be posted in a public domain, or because of third parties making vaguely threatening comments. The prospect of this appeared to reinforce his belief that the system was conspiring to silence him in response to the threat of his exposing the games played by the system.

I tried to ask Mr Kirk about violent thoughts or the expression of violent thoughts. Whilst he understood that I had to ask these sought of questions, he responded by saying that asking this kind of question was "like asking when did you stop beating your wife!" He told me he had played rugby, at Twickenham, and that he might have had violent thoughts and committed violent acts then. I tried to

explain that obviously, as with any question, the understanding and the answer depended on the exact context. It was at this point that he spoke of not having been charged with possession of a prohibited weapon with intent – because there was none.

I tried, gently, to enquire as to his mental health. I asked if he was distressed. He made a remark to the effect "wouldn't you be?" He went on to say "I'm banging my head against a brick wall – that doesn't mean I'm mad". He then quoted John Dryden, "There is a pleasure sure in being mad, which none but mad men know!"

I asked him about a specific posting on his website from 25<sup>th</sup> October 2009. "Over the last few months, with no animals or aeroplanes to care for, I have had time to reflect. When children learn to string a few words together, among the first are "It's not fair!" we tell them "Life isn't fair!".

*For the most of my life I've been obsessed with animals. Nothing wrong with that: it was bred in me. I was also obsessed with aeroplanes.*

*Obsessions can be good or bad. Hitler was obsessed with world domination. Churchill was obsessed with stopping Hitler; Mother Theresa is obsessed with helping the poor in Calcutta.*

*In recent years I suffered from what I perceived to be injustices, & must confess that I have become obsessed with seeking remedies. On reflection I see this obsession has clouded my judgement.*

*The cloud has now lifted, & I see that these injustices (whether real or perceived), were comparatively minor, but I have allowed them to take over my life.*

*I now feel that, even if the injustices were real, it is time to put them behind me, to resolve my equally minor disagreements with the Royal College of Veterinary*

Surgeons & get on with that which I am good at – caring for sick and injured animals.

Possibly, if time, energy & the air authorities allow, to also indulge my passion for aeroplanes". Although I explained that this was important, Mr Kirk did not give me a clear answer as to whether or not he was the author of this. He did say that he had agreed for it to be posted and went on to say that there hadn't been a day over the last 30 years that he hadn't had thoughts like that. I explained that I thought that the sentiments and the website entry were important, because they appear to be extremely reflective of his predicament.

I was unable to assess formally Mr Kirk's mental state. He asked me many questions. He told me that I was there so that he could gain information and said that I had provided far more than he had expected. He was clear that he did not consent to a formal interview with me. He did not want me to regard this as one.

Mr Kirk is currently located on F Wing, normal location in HMP Cardiff. When I saw him, he was in a single cell. He had, he said, been described as "high risk", which he thought was ridiculous. Compared to many prison cells his was untidy, but not pathologically so. There were no bizarre artefacts or markings. His bunk was covered with what appeared to be orderly files and papers relating to his predicament. His desk contained a ledger in which he wrote throughout our meeting. Apart from the usual toiletries there was a set of what I took to be French language DVDs, a book by Sidney Bloch, the Oxford Book of Quotations and a television.

Mr Kirk presented as a tall gentleman in his sixties with slightly unkempt, grey hair. I noted that his fingernails appeared abnormally lengthy, although I did not have the opportunity to enquire as to any reasons for this. His clothes, a fleece and what appeared to be brown moleskin jeans, were slightly unkempt. Mr Kirk shook my hand on meeting and departure. We were able to establish eye contact, he smiled at times but, on many occasions during the interview, he appeared animated and slightly aroused. At no point was he hostile, threatening

or abusive to me, nor did he make any overtly threatening remarks; at no point did I feel threatened or intimidated. He did remark that he or his supporters would look me up on the internet and that the details of our meeting would be posted on his website. He asked for a copy of any correspondence generated from it, again stating that that would be uploaded. There was no bizarre behaviour, unusual movements or mannerisms. There was no evidence of him responding to abnormal stimuli. There was no psychomotor retardation or excitement. His speech was mostly of a normal rate, rhythm and volume, although at times he spoke loudly. He appeared euthymic. At times his affect was slightly angry, but this was not directed at me. I found his train of thought easily understandable. I did not consider that he was thought disordered.

Mr Kirk told me in effect that he believed that he had been unreasonably persecuted by the South Wales Police, but that he had vigorously defended himself, possibly to a self defeating extent. He felt compelled to pursue his case for the sake of justice and truth, notwithstanding the cost to himself. To my mind he quite unambiguously implied that he had on a daily basis questioned himself as to whether or not this had been worthwhile for the last 30 years. When discussing his success in defending himself against charges brought against him by the police, he stated that his current predicament was the price he had paid for this success – that, having successfully defended himself against over a hundred charges, the police had gone to extraordinary lengths to attack him, culminating in his current predicament. At no point did he refer to the Freemasons, the CIA, genetic research or any other completely impossible scenario. Since he did not permit a formal mental state examination, I was not able to ask him about his mood, the presence or absence of hallucinations in any modality, delusional mood, ideas of reference, nor was I able to explore formally any unusual beliefs. I was not able to assess his cognition formally, although he was clearly able to recall numerous details of his legal cases past and present. He clearly recognised that he was distressed, but he felt unable to pursue any option other than his current course. It was evident that he was frightened at the prospect of further detention in hospital and/or the use of psychiatric drugs. My

impression was that he saw these as ways of discrediting him, destroying his life, his family life and silencing him.

Mr Kirk gave me a number of documents –

- 1 A 64 page document, dated 19<sup>th</sup> June 2009, titled "*Maurice Kirk, the South Wales Police*"
- 2 A print out of an e-mail from a psychiatrist in Chicago "*Chris, this report could be funny if it was not so tragic: according to the author, one of the symptoms of Mr Kirk's "mental illness" is his "poor writing". It is sad to see that a presumably free, highly educated person such as Dr Tegwyn Williams, writes such a long, incoherent piece to be read in a Court of Law in Wales. The doctor constructs a "brain damage" hypothetical and then the doctor transubstantiates the hypothesis into a fact that "causes Mr Kirk's false beliefs"*".
- 3 A bundle of documents from his website from supporters commenting on Dr Williams and Dr Williams' reports.
- 4 A document, possible a minute from the Treasury Solicitors, titled by Mr Kirk "*Leaked – minute from Treasury Solicitors conspiring to discredit Maurice Kirk, dated 23<sup>rd</sup> July 2003*" which Mr Kirk interprets as suggesting that the authorities have long wished to silence him.

## OPINION

My ability to give a full opinion is limited by Mr Kirk having declined a full interview when I went to see him. I have been told by the court that he declines further psychiatric assessment.

## **Fitness to Plead and Stand Trial**

Mr Kirk has an IQ superior to 99% of the general population. Tests of his memory and frontal lobe function, whilst inferior to what might be expected, have not revealed serious deficits. He has apparently successfully defended himself against over 100 criminal charges and has represented himself at various appeal hearings including at the Privy Council. He has appeared highly preoccupied at times with details of his other legal actions and there is concern that without legal representation he may not present his case, in what may be a highly technical area, very well and may become preoccupied with other matters. He has, he says, been able to instruct counsel in non-criminal matters very recently. It is my understanding that the cases of Pritchard (1836), Robertson (1968), John M (2003), and Erskine (2009) set a very low threshold for competency to stand trial and I am unaware of any other tests to consider when assessing a litigant in person. I note in particular R v Erskine [2009] EWCA Crim 1425 at 85-88.

*"The issue of a defendant's fitness to plead is concerned with his mental state not at the moment of the killing, but at the time of the trial. The process is now governed by the Criminal Procedure (Insanity) Act 1964, as amended in 1991 and 2004. However the principles for determining whether he was fit to plead are those of the common law, set out in 1835 in R v Pritchard 7 Car and P 304 by Alderson B. These principles were said in R v Podola [1960] 1 QB 325 to be "firmly embodied in our law". Ignoring for present purposes problems which may arise where the defendant is "mute of malice" or physically incapable of pleading to the indictment, the question is whether:*

*"He is of sufficient intellect to comprehend the course of proceedings on the trial, so as to make a proper defence – to know that he might challenge (the jurors) to whom he may object – and to comprehend the details of the evidence, which in a case of this nature must constitute a minute investigation, upon this issue, therefore, if you think that there is no certain mode of communicating details of the trial to the prisoner, so that he can clearly understand them, and be able properly to make his defence to the charge; you ought to find that he is not of*



sane mind."

*In Podola further assistance was given about the meaning of "make a proper defence" and "comprehend" in the context in which Alderson B. was using them. Lord Parker CJ explained:*

*"As to the word "comprehend", we do not think that this word goes further in meaning than the word "understand". In our judgment the direction...is not intended to cover and does not cover a case where the prisoner can plead to the indictment and has the physical and mental capacity to know that he has the right of challenge and to understand the case as it proceeds."*

*The issue may be raised by either the prosecution or the defence, and, to ensure that a weak prosecution case may be examined and if appropriate dismissed, the court can postpone consideration of the question at any time up to and including the close of the prosecution's case. In 1988 when Erskine was tried, the consequences for a defendant successfully raising the issue were twofold. First it meant that the defendant would be unable to advance a defence of his own, and second, he was to be detained in hospital, indefinitely. In practice this issue is still rarely raised, although the number of cases rose after the statutory amendments made in 1991: see Continued upturn in unfitness to plead- more disability in relation to the trial under the 1991 Act [2007] Crim LR 530.*

*It is obviously desirable, and in accordance with principle, not least the operation of the defendant's personal autonomy, that if it is humanly possible, the defendant should tender his own plea and advance such defence as he wishes to advance, and that he should not be shut out from doing so on the grounds of unfitness. Provided the defendant can understand the proceedings, he will be deemed fit to plead. It is clear from the authorities that the test for fitness to plead is very different from the test applied to determine a defendant's mental responsibility for his actions at the time of the killing. The test applies even if the defendant may act against what appears to others to be his own best interest. (R v Robertson (1968) 52 Cr App R 690.) and, even if he is "highly abnormal" at the*

*time of trial, it does not follow that he was incapable of "following a trial or giving evidence or instructing counsel and so on". (R v Berry (1970) 66 Cr App R 156). In other words, a defendant is not to be deemed unfit to plead merely because he will not accept what appears to be eminently sensible advice from his legal advisers. It is therefore for him, not his legal advisers or the court, to decide at the time of the trial whether to advance a plea of guilty to manslaughter on the grounds of diminished responsibility."*

Given the threshold set, it appears that Mr Kirk easily meets criteria to be fit to plead and stand trial regardless as to whether or not he might act in what others might see as in his own best interests or become diverted. This opinion is based on my own observations, in particular Mr Kirk's accounts of employing solicitors in other matters and on my assessment of his mental state in HMP Cardiff although this was limited, on the reports of his presentation at the Caswell Clinic, on the reports of the psychological testing, and on my understanding of the law. A view on fitness to plead is not dependent on a specific diagnosis.

Ultimately it is for the Court to decide whether or not Mr Kirk is fit to plead and stand trial, but, if asked for my opinion, I would say that he was fit.

### **Diagnosis, Prognosis, Treatment and the Use of the Mental Health Act**

Not having had the opportunity to examine Mr Kirk fully myself, it is more difficult to give an opinion on these matters. Having had sight of the materials above and having read Dr Williams' reports, I agree with Dr Williams that Mr Kirk does not currently appear to be suffering from a mental disorder of a nature or degree that would make detention in hospital appropriate.



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**Approved under Section 12(2) Of the Mental Health Act 1983**

ES/sb  
25<sup>th</sup> November 2009