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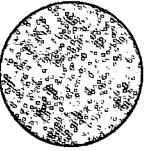
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*The American Prosecutors Research Institute  
1033 N. Fairfax Street, Suite 200  
Alexandria, VA 22314  
(703) 739 -0321*

Thursday



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# Resource Materials

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## Search Warrants in Child Abuse Cases

Presented by  
Susan Via, J.D.

SEXUAL EXPLOITATION OF CHILDREN:  
FEDERAL CASE LAW SUMMARY

Prepared by: Susan R. Via  
Assistant U.S. Attorney  
1107 U.S. Post Office and Courthouse  
Boston, MA 02109  
(617) 223-9400

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A. SEARCH AND SEIZURE

1. Anticipatory Warrant: valid if item to be seized is on a sure course to recipient. United States v. Hale, 784 F.2d 1465, 1468-1469 (9th Cir.), cert. denied, 479 U.S. 829 (1986); United States v. Dornhofer, 859 F.2d 1195, 1198 (4th Cir. 1988); United States v. Goodwin, 854 F.2d 33, 36 (4th Cir. 1988); United States v. Szymanski, 867 F.2d 610 (4th Cir. 1989) (per curiam unpublished opinion), No. 88-5059, slip op. at 3; United States v. Boffardi, 684 F. Supp. 1263, 1268 (S.D.N.Y. 1988), aff'd, 872 F.2d 1022 (2d Cir. 1989); United States v. Zygarowski, 724 F. Supp. 1052, 1058-1059 (D. Mass. 1989); contra United States v. Flippen, 674 F. Supp. 536, 540 (E.D. Va. 1987), aff'd without published opinion, 861 F.2d 266 (4th Cir. 1988).
2. Probable Cause: statements of experienced Postal Inspector that photos depicted "sexually explicit conduct" of three juveniles, together with pediatrician's opinion that girls were under 18 and two of the girls' statements that they had posed for defendant, held sufficient to establish probable cause. United States v. Smith, 795 F.2d 841, 847-849 (9th Cir. 1986), cert. denied, 481 U.S. 1032 (1987).
3. Specificity: "[v]arious books, magazines, photographs, negatives, films and/or video cassettes depicting minors engaging in sexually explicit conduct as defined in 18 U.S.C. §2256" sufficiently particular. Dornhofer, 859 F.2d at 1198; "films, photographs, videotapes, negatives or slides, depicting a person under the age of 18 years engaged in an act of sexual conduct" held adequate. United States v. Wiegand, 812 F.2d 1239, 1243 (9th Cir.), cert. denied, 108 S. Ct. 164 (1987); "materials depicting children under the age of 18 engaged in sexually explicit conduct" satisfactory. Accord, United States v. Peden, 891 F.2d 514, 517-518 (5th Cir. 1989); United States v. Rabe, 848 F.2d 994, 997-998 (5th Cir. 1988); United States v. Hurt, 795 F.2d 765, 772 (9th Cir. 1986), amended, 808 F.2d 707, 708 (9th Cir. 1987) ("The words used in the warrant to describe the materials sought need no expert training or experience to clarify and limit their meaning.

Any rational adult person can recognize sexually explicit conduct engaged in by children under the age of 16"); contra United States v. Diamond, 820 F.2d 10 (1st Cir. 1987)(en banc), upholding seizure of videotapes depicting sexually explicit conduct involving prepubescent children, but noting that seizure of films depicting sexual activity by "children under 18" is "close question" which court declines to decide, approving only the seizure of "prepubescent" depictions.

4. Staleness: two-year-old Customs child pornography seizures, coupled with recent undercover correspondence with Postal Inspector concerning child nudist collection and expert opinion as to target's pedophilia, not too stale to support probable cause that child pornography would be found in target's home. Rabe, 848 F.2d at 997. "Enduring utility" of a collector's child pornography will defeat staleness challenge. United States v. Rakowski, 714 F. Supp. 1324, 1331 (D. Vt. 1987).
5. Plain View: warrant describing items to be seized as "obscene, lewd, lascivious or indecent" too general, and plain view doctrine could not be used to support seizure of child pornography magazine. Hale, 784 F.2d at 1469. Adult pornography videotapes seized without warrant during child pornography search not subject to suppression because (a) reasonable to assume that they might contain child pornography at time of their seizure or (b) they corroborate defendant's predisposition to possess pornography. United States v. Musgrave, 726 F. Supp. 1027, 1035 (W.D.N.C. 1989).
6. Good Faith Exception: "other photographs, magazines, writings and documents which are evidence of violations of Title 18, U.S.C., Sections 1461 and 1462" too general, and seizure of child pornography magazines will not be upheld as within good faith exception to exclusionary rule. United States v. Nader, 621 F. Supp. 1076, 1085 (D.D.C. 1985), see also Hale, 784 F.2d at 1470 ("we have serious doubts whether material arguably protected by the First Amendment which is seized pursuant to an overbroad warrant can ever be admitted through the good faith exception"); contra Flippen, 674 F. Supp. at 540 (despite lack of probable cause for anticipatory search for and seizure of child pornography, magazines admissible under good faith exception).
7. What Constitutes "Search":
  - (a) examining sheet of photographic slides found in defendant's closet during arrest in his home and holding them up to the light to quickly view contents held to be impermissible warrantless search, requiring suppression of slides seized pursuant to warrant

obtained as a result of such viewing. United States v. Villard, 678 F. Supp. 483, 487 (D.N.J. 1988).

- (b) screening of films to determine their contents is a search subject to Fourth Amendment requirements. Walter v. United States, 447 U.S. 649, 657 (1980); United States v. Haes, 551 F.2d 767, 771 (8th Cir. 1977). But see United States v. Pryba, 502 F.2d 391, 401-402 (D.C. Cir. 1974) (FBI screening of films which previously had been viewed by private party does not implicate Fourth Amendment concerns), cert. denied, 419 U.S. 1127 (1975). Accord United States v. Harding, 475 F.2d 480, 484 (10th Cir.), vacated on other grounds, 414 U.S. 964 (1973); Gold v. United States, 378 F.2d 588, 590 (9th Cir. 1967); cf. United States v. Cangiano, 464 F.2d 320, 324 (2d Cir. 1972) (FBI provided projector to private party but did not participate in screening of film), vacated on other grounds, 413 U.S. 913 (1973).
- (c) photographs taken during search may be a seizure, but are valid because items photographed were in plain view. United States v. Espinoza, 641 F.2d 153, 167 (4th Cir. 1981).
8. Scope of the Search: Partial suppression of items seized pursuant to an overbroad warrant is appropriate remedy. United States v. Riggs, 690 F.2d 298, 301 (1st Cir. 1982).
9. Consent: Defendant's pointing out box containing child pornography and selecting child pornography videotape from large collection, coupled with Postal Inspectors non-threatening manner and their return of non-contraband to defendant at his request prior to leaving premises, renders consent search voluntary. Zygarowski, 724 F. Supp. at 1057.

## B. DETENTION

1. Dangerousness: mailing or receiving child pornography is not a crime of violence justifying detention under 18 U.S.C. §3142(f)(1)(A), and defendant may not be detained based on generalized finding of dangerousness to children or community. United States v. Friedman, 837 F.2d 48, 49 (2d Cir. 1988) (government conceded that §2252 charge not a "crime of violence"; evidence included numerous sexual assaults on young boys). Contra United States v. Yeaple, 605 F. Supp. 85, 87 (M.D. Pa. 1985); United States v. Cocco, 604 F. Supp. 1060, 1062 (M.D. Pa. 1985); cf. United States v. Ridinger, 623 F. Supp. 1386, 1402 n.14 (W.D. Mo. 1985).
2. Witness Intimidation: evidence of defendant's pedophilia and assaults on children or access to potential child witnesses may support detention in a §2251 case, United States v. Toler, 684 F. Supp. 436, 438-439 (S.D.W.Va.

1988), and in a \$2252 case. Cocco, 604 F. Supp. at 1063.

3. Bail Pending Appeal: Compulsive pedophile in need of immediate psychiatric care poses sufficient risk to deny bail pending appeal. Peden, 891 F.2d at 520.

#### C. AGE, AUTHENTICATION AND EXPERTS

1. Pediatrician's expert opinion that over 200 photographs contained in European child pornography magazines were in fact depictions of prepubertal children can satisfy prima facie authentication and foundation requirements. United States v. Nolan, 818 F.2d 1015, 1018 (1st Cir. 1987). See also United States v. Porter, 709 F. Supp. 770, 774 (E.D. Mich. 1989), aff'd on other grounds, Nos. 89-1339/1473 (7th Cir. 1990) (per curiam unpublished opinion); United States v. McCormick, 675 F. Supp. 223, 224 (M.D. Pa. 1987); United States v. Sabo, No. 86-3170 (3d Cir. Sept. 24, 1986) (unpublished opinion).
2. Defendant's description of girl as "young", braces on girl's teeth and diminutive bodily proportions may be considered in determining age of child depicted. United States v. O'Malley, 854 F.2d 1085, 1087 n.3 (8th Cir. 1988).
3. Informant/witness' opinion that boy in photograph was "approximately 14, 15 years old" insufficient to prove age. United States v. Villard, 700 F. Supp 803, 814-816 (D.N.J. 1988), aff'd on other grounds, 885 F.2d. 117, 126 (3d Cir. 1989) ("there is considerable question whether the district court's ruling [permitting informant to offer opinion as to age] was correct").
4. Experienced Postal Inspector's opinion that photographs in child pornography magazines depicted children under eighteen held proper under Fed. R. Evid. 701. United States v. Stanley, 896 F.2d 450, 451-452 (10th Cir. 1990).
5. Refusing to allow defense expert testimony concerning non-lascivious character of particular photographs and the purported use of similar photographs for educational purposes held to be proper exercise of discretion. United States v. Arvin, No. 87-1220, slip op. at 3686-3688 (9th Cir. April 12, 1990).

#### D. ENTRAPMENT

1. Entrapment is a complete defense where lack of predisposition is apparent from uncontroverted evidence. United States v. Kros, 296 F. Supp. 972, 978-979 (E.D. Pa. 1969). Targeting individual based on prior order of legal child erotica constitutes entrapment as a matter of law. United States v. Jacobson, 893 F.2d 999, 1001-1002 (8th



Cir. 1990)(five undercover operations over two and one-half years and no child pornography other than what was sold to defendant). Failure to respond to first four undercover solicitations and refusal to mail sample of child pornography presents "close question" as to absence of predisposition. United States v. Nelson, 847 F.2d 285, 287 (6th Cir. 1988). If predisposition is established, government involvement in offense does not necessarily preclude conviction. O'Malley, 854 F.2d at 1088; United States v. Johnson, 855 F.2d 299, 304 (6th Cir. 1988); United States v. Thoma, 726 F.2d 1191, 1199 (7th Cir.), cert. denied, 467 U.S. 1228 (1984).

2. Presence of defendant's name on child pornography distributor's mailing list establishes sufficient predisposition for reverse sting §2252(a)(2) receipt case. Porter, 709 F. Supp. at 775-777, aff'd, slip op. at 6-7.
3. Predisposition to violate 18 U.S.C §1461 established where evidence demonstrated defendant mailed photos after receiving only two undercover letters from Postal Inspector, defendant used mail to obtain Danish erotica, and defendant mailed erotic correspondence. United States v. Gantzer, 633 F. Supp. 174, 176 (W.D.N.Y. 1986), aff'd, 810 F.2d 349, 352 (2d Cir. 1987). Prior similar but noncriminal acts indicate predisposition. Boffardi, 684 F. Supp. at 1266 (receipt of child pornography prior to enactment of federal statute).
4. Evidence of defendant's sexual preference for teenage boys, admissions regarding sex with boys, completion of undercover "questionnaire" indicating interest in and prior mail orders of child pornography will defeat entrapment defense. United States v. Fletcher, 672 F. Supp. 1145, 1147-1148 (N.D. Iowa 1987).
5. Paperbacks seized during child pornography search which contain written descriptions of sexual activity with children are indicative of predisposition to purchase child pornography and are admissible at trial to rebut entrapment defense. Nelson, 847 F.2d at 287-288.

#### E. OUTRAGEOUS GOVERNMENT CONDUCT

1. Where government supplies contraband or injures innocent third parties, government conduct will be examined closely to determine whether it is outrageous. Thoma, 726 F.2d at 1199. Sending previously seized child pornography in a controlled delivery to predisposed individual not outrageous. United States v. Duncan, 896 F.2d 271, 275-277 (7th Cir. 1990).
2. Encouraging pedophile to take sexually explicit photographs and forwarding of pedophile's mail through

undercover Postal operation not outrageous government conduct in light of clandestine nature of crime; claim of indirect harm to minors depicted in photos speculative, particularly where defendants are predisposed to engage in sex with children and to photograph such acts. United States v. Esch, 832 F.2d 531, 538-539 (10th Cir. 1987), cert. denied, 108 S. Ct. 1084, 1299 (1988); cf. Johnson, 855 F.2d at 304-305.

3. "Sting" operation which targets persons interested in child pornography does not constitute outrageous conduct, even if target never used mails previously to trade child pornography. United States v. Driscoll, 852 F.2d 84, 86-87 (3d Cir. 1988) ("Project Looking Glass"); United States v. Davis, No. 85-3854 (6th Cir. Oct. 16, 1986) (per curiam unpublished opinion); United States v. Burkhart, No. 86-3224 (6th Cir. Dec. 23, 1986) (per curiam unpublished opinion).
4. Providing opportunity to child pornography consumer to purchase contraband as part of "Project Looking Glass" reverse sting does not violate due process particularly where, as here, care is taken to confirm subject's predisposition and there are no repeated inducements or hectoring to purchase child pornography. United States v. Goodwin, 674 F. Supp. 1211, 1218-1219 (E.D. Va. 1987), aff'd, 854 F.2d at 36-37; United States v. York, 867 F.2d 610 (4th Cir. 1989) (per curiam unpublished opinion), No. 88-5035, slip op. at 3-4; Szymanski, slip op. at 3-5 ("Project Looking-Glass" cases); Boffardi, 684 F. Supp. at 1265-1268. Accord, United States v. Musslyn, 865 F.2d 945, 947 (8th Cir. 1989); Porter, 709 F. Supp. at 779-781, aff'd, slip op. at 5-6; United States v. Kabala, 680 F. Supp. 1254, 1256-1258 (N.D. Ill. 1988) ("Operation Borderline" cases).
5. Government's initiation of contact with predisposed child pornography consumer, provision of contraband and choice of mails as conduit not outrageous, but misrepresenting that material is "legal" and that supplier is engaged in legitimate business may bar prosecution of one who relies on such misrepresentation, as a matter of due process. United States v. Swanger, 679 F. Supp. 542, 556 (W.D.N.C. 1988).

#### F. SENTENCING

1. Videotapes and photographs of defendant engaging in sex with teenage girls not admissible at trial, but may be considered at sentencing, despite argument that girls were above Indiana's age of consent and acts were legal under state law. United States v. Andersson, 803 F.2d 903, 907 (7th Cir. 1986), cert. denied, 479 U.S. 1069 (1987); see also United States v. Meyer, 802 F.2d 348, 351-352 (9th

Cir. 1986)(court may rely on evidence of pedophiles' behavior in formulating sentence).

2. Five-year sentence for conviction under §2252 under 1978 statute not unduly harsh. United States v. Ames, 743 F.2d 46 (1st Cir. 1984)(per curiam). Fifteen-year sentence for violation of §2252 under 1984 law not excessive. Meyer, 802 F.2d at 352.
3. Although average sentence under §§2251-2252 is 3.1 years, six-year sentence for §2251(a) violation not excessive, and lack of actual emotional or physical harm to particular victim carries little weight. Freeman, 663 F. Supp. 73, 75 (E.D. Ark.), aff'd, 808 F.2d 1290 (8th Cir.), cert. denied, 480 U.S. 922 (1987).
4. Denial of pretrial diversion to defendant charged with receiving child pornography from undercover program held not to be selective prosecution for defendant's claimed First Amendment right to possess the child pornography seized during search of his home. United States v. Richardson, 856 F.2d 644, 648 (4th Cir. 1988).
5. Sentence of 37 months despite Sentencing Guidelines range of 12 to 18 months justified by fact that defendant had molested numerous children and by his 1969 child molestation conviction which was not factored into computation of his criminal history. United States v. Spraggins, 868 F.2d 1541, 1543-1544 (11th Cir. 1989).

#### G. DEFINITIONS

##### 1. Lascivious:

- (a) not synonymous with "obscene"; may be something less than what constitutes a legally obscene display of genitalia or pubic areas. United States v. Reedy, 632 F. Supp. 1415, 1425 (W.D. Okla. 1986), aff'd, 845 F.2d 239, 241 (10th Cir. 1988); Arvin, slip op. at 3692 (NOTE: good discussion of appropriate jury instructions for "lascivious").
- (b) should be evaluated on case-by-case basis; factors include: (i) whether focal point of visual depiction is child's genitalia or pubic area; (ii) whether setting is sexually suggestive, i.e., place or pose generally associated with sexual activity; (iii) whether child is depicted in unnatural pose or inappropriate attire, considering child's age; (iv) whether child is fully or partially clothed, or nude; (v) whether depiction suggests sexual coyness or a willingness to engage in sexual activity; (vi) whether depiction is intended or designed to elicit a sexual response in the viewer. United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), aff'd sub nom. United

States v. Wiegand, 812 F.2d 1239 (9th Cir.), cert. denied, 108 S. Ct. 164 (1987); United States v. Rubio, 834 F.2d 442, 448 (5th Cir. 1987); see also Villard, 885 F.2d at 122; Nolan, 818 F.2d at 1019 n.5 (1984 statute); United States v. Nemuras, 567 F. Supp. 87 (D. Md. 1983)("lewd" exhibition of genitals under 1978 statute interpreted as including depictions of partially clothed children posed so as to suggest sexual coyness or willingness to engage in sex), aff'd, 740 F.2d 286 (4th Cir. 1984).

- (c) depiction of an erect penis can be "lewd" exhibition for purposes of 18 U.S.C. §§1461-1465. United States v. Various Articles of Merchandise, 625 F. Supp. 861, 863 (N.D. Ill. 1986)(finding "Wonderboy 48" and "Dreamboy 6" legally obscene). But see Villard, 885 F.2d at 124 n.8, holding that testimony describing photograph of nude adolescent lying on a bed with an exposed partial erection is insufficient to support conviction.
- (d) photograph of partially clothed, apparently asleep, five-year-old with genitals exposed is lascivious under Dost standards. United States v. Wolf, 890 F.2d 241, 243 (10th Cir. 1989).
- (e) videotape of sixteen-year-old girl wearing only see-through scarf, with close-up views of her genitals, was lascivious. Freeman, 808 F.2d at 1292. See also McCormick, 675 F. Supp. at 224.
- (f) "lascivious exhibition" does not require that a minor's genitals be displayed, as adult male's simulation of ejaculation into mouth of child suffices. O'Malley, 854 F.2d at 1087 n.3; accord, Villard, 700 F. Supp. at 811 n.2.

## 2. Visual Depiction:

- (a) undeveloped, unprocessed film is included. Smith, 795 F.2d at 847 (1984 statute); see also Spillman v. United States, 413 F.2d 527 (9th Cir. 1969)(18 U.S.C. §1461 prohibits mailing of undeveloped obscene film to photo processor); United States v. Peller, 170 F.2d 1006 (2d Cir. 1948)(same).
- (b) negatives are included. United States v. Langford, 688 F.2d 1088, 1097 (7th Cir. 1982), cert. denied, 461 U.S. 959 (1983)(interpreting 1978 statute).

## 3. Knowing Use of Mails:

- (a) controlled delivery of child pornography order via Postal Inspectors satisfies mailing element. Dornhofer, 859 F.2d at 1197-1198.
- (b) causing child pornography to be mailed satisfies the mailing element. United States v. Thomas, 893 F.2d 1066, 1071-1072 (9th Cir. 1990). Using mails to receive or order obscene material (depicting minors)

is proscribed. Johnson, 855 F.2d at 305-306; Hurt, 795 F.2d at 770; but see United States v. Kalinowski, 890 F.2d 870 (7th Cir. 1989), which discussed but did not decide for want of appellate jurisdiction the propriety of trial judge's postverdict dismissal of Section 2252(a)(1) count based on causing child pornography to be shipped in interstate/foreign commerce.

- (c) government can use child pornography and related items seized during search as evidence at trial in a mailing case to show lack of mistake or to prove knowledge of contents. United States v. Garot, 801 F.2d 1241, 1247 (10th Cir. 1986); cf. Esch, 832 F.2d at 536 (adult "swingers" magazines).
- (d) evidence of prior child pornography seizures relevant to prove intent to receive such materials in the mails. Rubio, 834 F.2d at 451; see also Johnson, 855 F.2d at 304 n.4.
- (e) child pornography and child erotica seized during search may be admissible to rebut defense of mistake, curiosity or entrapment. Nelson, 847 F.2d at 287-288; but see Flippen, 674 F. Supp. at 542 (child pornography but not child erotica admissible).

#### 4. Knowing Use of a Minor:

- (a) government must prove purposeful use of a minor in the production of the visual depiction charged under §2251(a), but need not prove defendant had knowledge of victim's age to satisfy §2251. United States v. Fenton, 654 F. Supp. 379, 380 (E.D. Pa. 1987); Reedy, 632 F. Supp. at 1422-1423; cf. Johnson, 855 F.2d at 30. But see United States v. Dist. Ct. for S.D. Cal. (Kantor), 858 F.2d 534, 543-544 (9th Cir. 1988), holding that First Amendment requires court to permit defense of reasonable mistake as to age in §2251 case if shown by clear and convincing evidence, vacating and remanding for further proceedings, 677 F. Supp. 1421, 1429 (C.D. Cal. 1987).
- (b) knowledge requirement under §2252 does not relate to age of child but to the knowing interstate transportation of the material. Thomas, 893 F.2d at 1070; United States v. Kleiner, 663 F. Supp. 43, 44 (S.D. Fla. 1987); United States v. Tolczeki, 614 F. Supp. 1424, 1429 (N.D. Ohio 1985) (knowledge of victim's age not required under §2252); contra United States v. Brown, 862 F.2d 1033, 1036 (3d Cir. 1988); and United States v. Sherin, No. 86-CR-480, slip op. at 24 (S.D.N.Y. Jan. 20, 1987) (knowledge that depictions are of minors is essential element under §2252).

5. Knowing Receipt:

- (a) conviction for knowing receipt of child pornography ordered from undercover program valid despite fact that defendant received different videotape than what he ordered. Brown, 862 F.2d at 1038.
- (b) defendant who mails child pornography to himself from overseas "receives" child pornography for purposes of §2252(a)(2). Stanley, 896 F.2d at 451.
- (c) retrieval of child pornography package from mailbox by defendant's daughter constitutes constructive possession by defendant. United States v. Walters, 867 F.2d 610 (4th Cir. 1989), No. 88-5037, slip op. at 3-4.

6. Production With Use of a Minor:

- (a) date photographs were transported/received and not date they were produced controls; thus photographs produced prior to enactment of federal child pornography statutes may form basis for §2252 prosecution. Porter, 709 F. Supp. at 774.

H. CONSTITUTIONAL ISSUES

1. Nonobscene, sexually explicit depictions of minors may be constitutionally proscribed as exploitive of children. New York v. Ferber, 458 U.S. 747 (1982), but "posing minor in a state of nudity" may be overbroad as applied. Massachusetts v. Oakes, 109 S. Ct. 2633, 2639 (1989).
2. Section 2252 of 1978 statute not void for vagueness. United States v. Fogarty, 663 F.2d 928, 930 (9th Cir. 1981).
3. Applying Section 2252 to private use of child pornography not unconstitutional. Arvin, slip op. at 3685-3686; United States v. Bevacqua, 864 F.2d 19, 20 (3d Cir. 1988); Andersson, 803 F.2d at 906-907; United States v. Marchant, 803 F.2d 174, 178 (5th Cir. 1986); Rubio, 834 F.2d at 452; Smith, 795 F.2d at 845-846; United States v. Miller, 776 F.2d 978, 980-981 (11th Cir. 1985), cert. denied, 475 U.S. 1129 (1986).
4. "Lascivious exhibition" is not an unconstitutionally vague term. Freeman, 808 F.2d at 1292. Accord Wolf, 890 F.2d at 246; Reedy, 845 F.2d at 241; cf. O'Malley, 854 F.2d at 1087 n.3.
5. Despite fact that state law defines minor as one under sixteen, no violation of equal protection to federally prosecute child pornography producers who used sixteen-year-old child in film. Freeman, 808 F.2d at 1293; see also Andersson, 803 F.2d at 907.

6. Simple possession of child pornography, even in the privacy of one's home, may be constitutionally criminalized. Osborne v. Ohio, 58 U.S.L.W. 4467, 44 (U.S. April 18, 1990)(No. 88-5986).
7. Pre-conviction civil and criminal forfeiture pursuant to child pornography/obscenity statutes held unconstitutional, but post-conviction criminal forfeiture may be valid on a case-by-case basis. American Library Ass'n v. Thornburgh, 713 F. Supp. 469, 485 (D.D.C. 1989).

#### I. JURISDICTION AND VENUE

1. Venue lies in district of receipt or of mailing, or in districts through which items are transported. Langford, 588 F.2d at 1096; United States v. Bagnell, 679 F.2d 826, 831 (11th Cir. 1982)(applying same principles under §§1462 and 1465), cert. denied, 460 U.S. 1047 (1983).
2. Creation of undercover testing program does provide conduit for interstate activity but does not defeat federal jurisdiction if defendant is predisposed to use interstate mails for transmission of sexually explicit materials. Esch, 832 F.2d at 539-540.
3. Creating "foreign" source or employing the mails for reverse sting operation is not manufacture of federal jurisdiction where it adds authenticity to undercover operation. Goodwin, 674 F. Supp. at 1216, aff'd, 854 F.2d at 36 n.3; Kabala, 680 F. Supp. at 1257-1258.
4. Mail fraud and child pornography production conspiracy prosecution subsequent to foreign court's dismissal of conspiracy charges neither violates extradition treaty nor defeats personal jurisdiction over defendant for conspiracy count. United States v. Diwan, 864 F.2d 715, 720-721 (11th Cir. 1989).
5. Mailing child pornography from foreign country is within criminal jurisdiction of United States. United States v. Moncini, 882 F.2d 401, 404 (9th Cir. 1989); see also Stanley, 896 F.2d at 451. Creating child pornography in foreign country that is actually, is intended to be, or reasonably may be expected to be transported into the United States is within federal jurisdiction. Thomas, 893 F.2d at 1069.

#### J. MULTIPLICITY AND DUPLICITY

1. Section 2251 indictment not multiplicitous because each photograph taken of a child constitutes a separate and distinct "use" of the child for purposes of the statute. Esch, 832 F.2d at 541-542.

2. Section 2252 indictment multiplicitous where each photograph charged as separate count despite single act of transportation/importation of binder containing the photographs. United States v. Meyer, 602 F. Supp. 1480, 1482 (S.D. Cal. 1985), aff'd on other grounds, 802 F.2d 348 (9th Cir. 1986).
3. May be multiplicitous to use §2252(a)(1) and §2252(a)(2) for single act of receipt of child pornography on a theory of aiding and abetting the "causing" of contraband to be transported. Kalinowski, 890 F.2d at 882. (NOTE: issue not decided because of lack of appealable final order).



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Assistant U.S. Attorney  
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October, 1989

A. SEARCH AND SEIZURE

1. Anticipatory Warrant: valid if item to be seized is on a sure course to recipient. United States v. Hale, 784 F.2d 1465, 1468-1469 (9th Cir.), cert. denied, 479 U.S. 829 (1986); United States v. Dornhofer, 859 F.2d 1195, 1198 (4th Cir. 1988); United States v. Goodwin, 854 F.2d 33, 36 (4th Cir. 1988); United States v. Boffardi, 684 F. Supp. 1263, 1268 (S.D.N.Y. 1988); contra United States v. Flippen, 674 F. Supp. 536, 540 (E.D. Va. 1987), aff'd without opinion, 861 F.2d 266 (4th Cir. 1988).
2. Probable Cause: statements of experienced Postal Inspector that photos depicted "sexually explicit conduct" of three juveniles, together with pediatrician's opinion that girls were under 18 and two of the girls' statements that they had posed for defendant, held sufficient to establish probable cause. United States v. Smith, 795 F.2d 841, 847-49 (9th Cir. 1986), cert. denied, 481 U.S. 1032 (1987).
3. Specificity: "[v]arious books, magazines, photographs, negatives, films and/or video cassettes depicting minors engaging in sexually explicit conduct as defined in 18 U.S.C. §2256" sufficiently particular. Dornhofer, 859 F.2d at 1198; "films, photographs, videotapes, negatives or slides, depicting a person under the age of 18 years engaged in an act of sexual conduct" held adequate. United States v. Wiegand, 812 F.2d 1239, 1243 (9th Cir.), cert. denied, 108 S. Ct. 164 (1987); "materials depicting children under the age of 18 engaged in sexually explicit conduct" satisfactory. United States v. Hurt, 795 F.2d 765, 772 (9th Cir. 1986), amended, 808 F.2d 707, 708 (9th Cir. 1987) ("The words used in the warrant to describe the materials sought need no expert training or experience to clarify and limit their meaning. Any rational adult person can recognize sexually explicit conduct engaged in by children under the age of 16"); contra United States v. Diamond, 820 F.2d 10 (1st Cir. 1987) (en banc), upholding seizure of videotapes depicting sexually explicit conduct involving prepubescent children, but noting that seizure of films depicting sexual activity by

"children under 18" is "close question" which court declines to decide, approving only the seizure of "prepubescent" depictions.

4. Staleness: two-year-old Customs child pornography seizures, coupled with recent undercover correspondence with Postal Inspector concerning child nudist collection and expert opinion as to target's pedophilia, not too stale to support probable cause that child pornography would be found in target's home. United States v. Rabe, 848 F.2d 994, 997 (9th Cir. 1988).
5. Plain View: warrant describing items to be seized as "obscene, lewd, lascivious or indecent" too general, and plain view doctrine could not be used to support seizure of child pornography magazine. Hale, 784 F.2d at 1469.
6. Good Faith Exception: "other photographs, magazines, writings and documents which are evidence of violations of Title 18, U.S.C., Sections 1461 and 1462" too general, and seizure of child pornography magazines will not be upheld as within good faith exception to exclusionary rule. United States v. Nader, 621 F. Supp. 1076, 1085 (D.D.C. 1985); see also Hale, 784 F.2d at 1470 ("we have serious doubts whether material arguably protected by the First Amendment which is seized pursuant to an overbroad warrant can ever be admitted through the good faith exception"); contra Flippen, 674 F. Supp. at 540 (despite lack of probable cause for anticipatory search for and seizure of child pornography, magazines admissible under good faith exception).
7. What Constitutes "Search":
  - (a) examining sheet of photographic slides found in defendant's closet during arrest in his home and holding them up to the light to quickly view contents held to be impermissible warrantless search, requiring suppression of slides seized pursuant to warrant obtained as a result of such viewing. United States v. Villard, 678 F. Supp. 483, 487 (D.N.J. 1988).
  - (b) screening of films to determine their contents is a search subject to Fourth Amendment requirements. Walter v. United States, 650 U.S. 649, 657 (1980); United States v. Haes, 551 F.2d 767, 771 (8th Cir. 1977). But see United States v. Pryba, 502 F.2d 391, 401-402 (D.C. Cir. 1974) (FBI screening of films which previously had been viewed by private party does not implicate Fourth Amendment concerns), cert. denied, 419 U.S. 1127 (1975). Accord United States v. Harding, 475 F.2d 480, 484 (10th Cir.), vacated on other grounds, 414 U.S. 964 (1973); Gold v. United

States, 378 F.2d 588, 590 (9th Cir. 1967); cf. United States v. Cangiano, 464 F.2d 320, 324 (2d Cir. 1972) (FBI provided projector to private party but did not participate in screening of film), vacated on other grounds, 413 U.S. 913 (1973).

B. DETENTION

1. Dangerousness: mailing or receiving child pornography is not a crime of violence justifying detention under 18 U.S.C. §3142(f)(1)(A), and defendant may not be detained based on generalized finding of dangerousness to children or community. United States v. Friedman, 837 F.2d 48, 49 (2d Cir. 1988) (government conceded that §2252 charge not a "crime of violence"; evidence included numerous sexual assaults on young boys). Contra United States v. Yeaple, 605 F. Supp. 85, 87 (M.D. Pa. 1985); United States v. Cocco, 604 F. Supp. 1060, 1062 (M.D. Pa. 1985); cf. United States v. Ridinger, 623 F. Supp. 1386, 1402 n.14 (W.D. Mo. 1985).
2. Witness Intimidation: evidence of defendant's pedophilia and assaults on children or access to potential child witnesses may support detention in a §2251 case, United States v. Toler, 684 F. Supp. 436, 438-439 (S.D. W.Va. 1988), and in a §2252 case. Cocco, 604 F. Supp. at 1063.

C. AGE, AUTHENTICATION AND EXPERTS

1. Pediatrician's expert opinion that over 200 photographs contained in European child pornography magazines were in fact depictions of prepubertal children can satisfy prima facie authentication and foundation requirements. United States v. Nolan, 818 F.2d 1015, 1018 (1st Cir. 1987). See also United States v. Porter, 709 F. Supp. 770, 774 (E.D. Mich. 1989); United States v. McCormick, 675 F. Supp. 223, 224 (M.D. Pa. 1987); United States v. Sabo, No. 86-3170 (3d Cir. 1986) (unpublished opinion) (upheld district court ruling regarding admissibility of child pornography photographs despite weak foundation, but criticized failure of government to use expert testimony as to integrity of photographs of children).
2. Defendant's description of girl as "young", braces on girl's teeth and diminutive bodily proportions may be considered in determining age of child depicted. United States v. O'Malley, 854 F.2d 1085, 1087 n.3 (8th Cir. 1988).

3. Informant/witness' opinion that boy in photograph was "approximately 14, 15 years old" insufficient to prove age. United States v. Villard, 700 F. Supp 803, 814-815 (D.N.J. 1988).

D. ENTRAPMENT

1. Entrapment is a complete defense where lack of predisposition is apparent from uncontroverted evidence. United States v. Kros, 296 F. Supp. 972, 978-79 (E.D. Pa. 1969). Failure to respond to first four undercover solicitations and refusal to mail sample of child pornography presents "close question" as to absence of predisposition. United States v. Nelson, 847 F.2d 285, 287 (6th Cir. 1988). If predisposition is established, government involvement in offense does not necessarily preclude conviction. O'Malley, 854 F.2d at 1088; United States v. Johnson, 855 F.2d 299, 304 (6th Cir. 1988). United States v. Thoma, 726 F.2d 1191, 1199 (7th Cir.), cert. denied, 467 U.S. 1228 (1984).
2. Presence of defendant's name on child pornography distributor's mailing list establishes sufficient predisposition for reverse sting §2252(a)(2) receipt case. Porter, 709 F. Supp. at 775-777.
3. Predisposition to violate 18 U.S.C §1461 established where evidence demonstrated defendant mailed photos after receiving only two undercover letters from Postal Inspector, defendant used mail to obtain Danish erotica, and defendant mailed erotic correspondence. United States v. Gantzer, 633 F. Supp. 174, 176 (W.D.N.Y. 1986), aff'd, 810 F.2d 349, 352 (2d Cir. 1987). Prior similar but noncriminal acts indicate predisposition. Boffardi, 684 F. Supp. at 1266 (receipt of child pornography prior to enactment of federal statute).
4. Evidence of defendant's sexual preference for teenage boys, admissions regarding sex with boys, completion of undercover "questionnaire" indicating interest in and prior mail orders of child pornography will defeat entrapment defense. United States v. Fletcher, 672 F. Supp. 1145, 1147-1148 (N.D. Iowa 1987).
5. Paperbacks seized during child pornography search which contain written descriptions of sexual activity with children are indicative of predisposition to purchase child pornography and are admissible at trial to rebut entrapment defense. Nelson, 847 F.2d at 287-288.

E. OUTRAGEOUS GOVERNMENT CONDUCT

1. Where government supplies contraband or injures innocent third parties, government conduct will be examined closely to determine whether it is outrageous. Thoma, 726 F.2d at 1199.
2. Encouraging pedophile to take sexually explicit photographs and forwarding of pedophile's mail through undercover Postal operation not outrageous government conduct in light of clandestine nature of crime; claim of indirect harm to minors depicted in photos speculative, particularly where defendants are predisposed to engage in sex with children and to photograph such acts. United States v. Esch, 832 F.2d 531, 538-539 (10th Cir. 1987), 108 S. Ct. 1299 (1988); cf. Johnson, 855 F.2d at 304-305.
3. "Sting" operation which targets persons interested in child pornography does not constitute outrageous conduct, even if target never used mails previously to trade child pornography. United States v. Driscoll, 852 F.2d 84, 86-87 (3d Cir. 1988) ("Project Looking Glass"); United States v. Davis, No. 85-3854 (6th Cir. 1986) (unpublished opinion); United States v. Burkhart, No. 86-3224 (6th Cir. 1986) (unpublished opinion).
4. Providing opportunity to child pornography consumer to purchase contraband as part of "Project Looking Glass" reverse sting does not violate due process particularly where, as here, care is taken to confirm subject's predisposition and there are no repeated inducements or hectoring to purchase child pornography. United States v. Goodwin, 674 F. Supp. 1211, 1218-1219 (E.D. Va. 1987), aff'd, 854 F.2d at 36-37; Boffardi, 684 F. Supp. at 1265-1268. Accord, United States v. Musslyn, 865 F.2d 945, 947 (8th Cir. 1989); Porter, 709 F. Supp. at 779-781; United States v. Kabala, 680 F. Supp. 1254, 1256-1258 (N.D. Ill. 1988) ("Operation Borderline" cases).
5. Government's initiation of contact with predisposed child pornography consumer, provision of contraband and choice of mails as conduit not outrageous, but misrepresenting that material is "legal" and that supplier is engaged in legitimate business may bar prosecution of one who relies on such misrepresentation, as a matter of due process. United States v. Swanger, 679 F. Supp. 542, 556 (W.D.N.C. 1988).

F. SENTENCING

1. Videotapes and photographs of defendant engaging in sex with teenage girls not admissible at trial, but may be considered at sentencing, despite argument that girls were above Indiana's age of consent and acts were legal under state law. United States v. Andersson, 803 F.2d 903, 907 (7th Cir. 1986), cert. denied, 479 U.S. 1069 (1987); see also United States v. Meyer, 802 F.2d 348, 351-352 (9th Cir. 1986) (court may rely on evidence of pedophiles' behavior in formulating sentence).
2. Five-year sentence for conviction under §2252 under 1978 statute not unduly harsh. United States v. Ames, 743 F.2d 46 (1st Cir. 1984) (per curiam). Fifteen-year sentence for violation of §2252 under 1984 law not excessive. Meyer, 802 F.2d at 352.
3. Although average sentence under §§2251-2252 is 3.1 years, six-year sentence for §2251(a) violation not excessive, and lack of actual emotional or physical harm to particular victim carries little weight. Freeman, 663 F. Supp. 73, 75 (E.D. Ark.), aff'd, 808 F.2d 1290 (8th Cir.), cert. denied, 480 U.S. 922 (1987).
4. Denial of pretrial diversion to defendant charged with receiving child pornography from undercover program held not to be selective prosecution for defendant's claimed First Amendment right to possess the child pornography seized during search of his home. United States v. Richardson, 856 F.2d 644, 648 (4th Cir. 1988).
5. Sentence of 37 months despite Sentencing Guideline range of 12 to 18 months justified by fact that defendant had molested numerous children and by his 1969 child molestation conviction which was not factored into computation of his criminal history. United States v. Spraggins, 868 F. 2d 1541, 1543-1544 (11th Cir. 1989).

G. DEFINITIONS

1. Lascivious

- (a) not synonymous with "obscene"; may be something less than what constitutes a legally obscene display of genitalia or pubic areas. United States v. Reedy, 632 F. Supp. 1415, 1425 (W.D. Okla. 1986), aff'd, 845 F.2d 239, 241 (10th Cir. 1988).
- (b) should be evaluated on case-by-case basis; factors include: (i) whether focal point of visual depiction is child's genitalia or pubic area; (ii) whether setting is sexually suggestive, i.e., place or pose

generally associated with sexual activity; (iii) whether child is depicted in unnatural pose or inappropriate attire, considering child's age; (iv) whether child is fully or partially clothed, or nude; (v) whether depiction suggests sexual coyness or a willingness to engage in sexual activity; (vi) whether depiction is intended or designed to elicit a sexual response in the viewer. United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), aff'd sub nom. United States v. Wiegand, 812 F.2d 1239 (9th Cir.), cert. denied, 108 S. Ct. 164 (1987); United States v. Rubio, 834 F.2d 442, 448 (5th Cir. 1987); see also United States v. Nemuras, 567 F. Supp. 87 (D. Md. 1983) ("lewd" exhibition of genitals under 1978 statute interpreted as including depictions of partially clothed children posed so as to suggest sexual coyness or willingness to engage in sex), aff'd, 740 F.2d 286 (4th Cir. 1984); Nolan, 818 F.2d at 1019 n.5 (1984 statute).

- (c) depiction of an erect penis can be "lewd" exhibition for purposes of 18 U.S.C. §§1461-1465. United States v. Various Articles of Merchandise, 625 F. Supp. 861, 863 (N.D. Ill. 1986) (finding "Wonderboy 48" and "Dreamboy 6" legally obscene). But see Villard, 700 F. Supp. at 812-813, holding that testimony describing photograph of nude adolescent lying on a bed with an exposed partial erection is insufficient to support conviction.
- (d) videotape of sixteen-year-old girl wearing only see-through scarf, with close-up views of her genitals, was lascivious. Freeman, 808 F.2d at 1292. See also McCormick, 675 F. Supp. at 224.
- (e) "lascivious exhibition" does not require that a minor's genitals be displayed, as adult male's simulation of ejaculation into mouth of child suffices. O'Malley, 854 F.2d at 1087 n.3; accord, Villard, 700 F. Supp. at 811 n.2.

## 2. Visual Depiction

- (a) undeveloped, unprocessed film is included. Smith, 795 F.2d at 847 (1984 statute); see also Spillman v. United States, 413 F.2d 527 (9th Cir. 1969) (18 U.S.C. §1461 prohibits mailing of undeveloped obscene film to photo processor); United States v. Peller, 170 F.2d 1006 (2d Cir. 1948) (same).
- (b) negatives are included. United States v. Langford, 688 F.2d 1088, 1097 (7th Cir. 1982), cert. denied, 461 U.S. 959 (1983) (interpreting 1978 statute).

3. Knowing Use of Mails

- (a) controlled delivery of child pornography order via Postal Inspectors satisfies mailing element. Dornhofer, 859 F.2d at 1197-1198.
- (b) using mails to receive or order obscene material (depicting minors) is proscribed. Johnson, 855 F.2d at 305-306; Hurt, 795 F.2d at 770.
- (c) government can use child pornography and related items seized during search as evidence at trial in a mailing case to show lack of mistake or to prove knowledge of contents. United States v. Garot, 801 F.2d 1241, 1247 (10th Cir. 1986); cf. Esch, 832 F.2d at 536 (adult "swingers" magazines).
- (d) evidence of prior child pornography seizures relevant to prove intent to receive such materials in the mails. Rubio, 834 F.2d at 451; see also Johnson, 855 F.2d at 304 n.4.
- (e) child pornography and child erotica seized during search may be admissible to rebut defense of mistake, curiosity or entrapment. Nelson, 847 F.2d at 287-288; but see Flippen, 674 F. Supp. at 542 (child pornography but not child erotica admissible).

4. Knowing Use of a Minor

- (a) government must prove purposeful use of a minor in the production of the visual depiction charged under §2251(a), but need not prove defendant had knowledge of victim's age to satisfy §2251. United States v. Fenton, 654 F. Supp. 379, 380 (E.D. Pa. 1987); Reedy, 632 F. Supp. at 1422-1423; cf. Johnson, 855 F.2d at 30. But see United States v. Dist. Ct. for S.D. Cal. (Kantor), 858 F.2d 534, 543-544 (9th Cir. 1988), holding that First Amendment requires court to permit defense of reasonable mistake as to age in §2251 case if shown by clear and convincing evidence, vacating and remanding for further proceedings, 677 F. Supp. 1421, 1429 (C.D. Cal. 1987).
- (b) knowledge requirement under §2252 does not relate to age of child but to the knowing interstate transportation of the material. United States v. Kleiner, 663 F. Supp. 43, 44 (S.D. Fla. 1987); United States v. Tolczeki, 614 F. Supp. 1424, 1429 (N.D. Ohio 1985) (knowledge of victim's age not required under §2252); contra United States v. Sherin, No. 86-CR-480, slip op. at 24 (S.D.N.Y. Jan. 20, 1987) (knowledge that depictions are of minors is essential element under §2252).



5. Knowing Receipt

(a) conviction for knowing receipt of child pornography ordered from undercover program valid despite fact that defendant received different videotape than what he ordered. United States v. Brown, 862 F.2d 1033, 1038 (3d Cir. 1988).

6. Production With Use of a Minor

(a) date photographs were transported/received and not date they were produced controls, thus photographs produced prior to enactment of federal child pornography statutes may form basis for §2252 prosecution. Porter, 709 F. Supp. at 774.

H. CONSTITUTIONAL ISSUES

1. Section 2252 of 1978 statute not void for vagueness. United States v. Fogarty, 663 F.2d 928, 930 (9th Cir. 1981).
2. Applying Section 2252 to private use of child pornography not unconstitutional. United States v. Bevacqua, 864 F.2d 19, 20 (3d Cir. 1988); Andersson, 803 F.2d at 906-907; United States v. Marchant, 803 F.2d 174, 178 (5th Cir. 1986); Rubio, 834 F.2d at 452; United States v. Miller, 776 F.2d 978, 980-981 (11th Cir. 1985), cert. denied, 475 U.S. 1129 (1986).
3. "Lascivious exhibition" is not an unconstitutionally vague term. Freeman, 808 F.2d at 1292. Accord, Reedy, 845 F.2d at 241; cf. O'Malley, 854 F.2d at 1087 n.3.
4. Despite fact that state law defines minor as one under sixteen, no violation of equal protection to federally prosecute child pornography producers who used sixteen-year-old child in film. Freeman, 808 F.2d at 1293; see also Andersson, 803 F.2d at 907.
5. Simple possession of child pornography, even in the privacy of one's home, may be constitutionally criminalized. People v. Geever, 122 Ill.2d 313, 522 N.E.2d 1200, 1207 (Ill. 1988); State v. Meadows, 28 Ohio St.3d 43, 49-50, 503 N.E.2d 697, 703-704 (1986) (distinguishing Stanley v. Georgia, 394 U.S. 557 (1969)), cert. denied, 480 U.S. 936 (1987). The federal courts' resolution of this issue remains open. Marchant, 803 F.2d at 177 ("We are unable to locate any post-Ferber cases that directly address whether the Stanley right applies to child pornography, as well as to obscenity"). Compare Boffardi, 684 F. Supp. at 1266-1268 (unclear whether First Amendment secures the right to possess

child pornography in the home); and Andersson, 803 F.2d at 907 n.3 (state's interests in regulating sexual abuse of children are compelling, and may extend to prohibiting possession of child pornography even in the privacy of the home); and United States v. Mercado, No. 86-1872 (6th Cir.1987) (unpublished opinion) ("It is unlikely that the right to private possession of obscene material recognized in Stanley extends to private possession of pedophilic materials"); with Hale, 784 F.2d at 1469 (child pornography possession afforded identical First and Fourth Amendment protection as possession of adult obscenity); and United States v. Diamond, 808 F.2d 922, 925, vacated on other grounds, 820 F.2d 10 (1st Cir. 1987). Cf. Smith, 795 F.2d at 848 n.7 (noting the distinction between constitutional requirements for child pornography and obscenity laws, and recognizing that child pornography statutes are child protection laws).

#### I. JURISDICTION AND VENUE

1. Venue lies in district of receipt or of mailing, or in districts through which items are transported. Langford, 588 F.2d at 1096; United States v. Bagnell, 679 F.2d 826, 831 (11th Cir. 1982) (applying same principles under §§1462 and 1465), cert. denied, 460 U.S. 1047 (1983).
2. Creation of undercover testing program does provide conduit for interstate activity but does not defeat federal jurisdiction if defendant is predisposed to use interstate mails for transmission of sexually explicit materials. Esch, 832 F.2d at 539-540.
3. Creating "foreign" source or employing the mails for reverse sting operation is not manufacture of federal jurisdiction where it adds authenticity to undercover operation. Goodwin, 674 F. Supp. at 1216, aff'd, 854 F.2d at 36 n.3; Kabala, 680 F. Supp. at 1257-1258.
4. Mail fraud and child pornography production conspiracy prosecution subsequent to foreign court's dismissal of conspiracy charges neither violates extradition treaty nor defeats personal jurisdiction over defendant for conspiracy count. United States v. Diwan, 864 F.2d 715, 720-721 (11th Cir. 1989).

#### J. MULTIPLICITY AND DUPLICITY

1. Section 2251 indictment not multiplicitous because each photograph taken of a child constitutes a separate and distinct "use" of the child for purposes of the statute. Esch, 832 F.2d at 541-542.

2. Section 2252 indictment multiplicitous where each photograph charged as separate count despite single act of transportation/importation of binder containing the photographs. United States v. Meyer, 602 F. Supp. 1480, 1482 (S.D. Cal. 1985), aff'd on other grounds, 802 F.2d 348 (9th Cir. 1986).

SEARCH WARRANT AFFIDAVIT CHECKLIST

Prepared by: Susan R. Via  
Assistant U.S. Attorney  
1107 U.S. Post Office & Courthouse  
Boston, MA 02109  
(617) 223-9400

1. Identity of affiant
  - # yrs
  - experience (general & specific to type of case)
  - specialized education/training
2. General basis of belief
  - summary of each offense's elements
  - list of other officers providing information to affiant
  - prior searches, arrests, confessions, convictions, pleas in related cases or investigations
3. Specific, particularized basis of belief
  - chronology of investigation
  - who provided what info
  - special rules for informant information
  - particular beliefs for this offense or offender (drug dealers have records; molesters have child porn; gun nuts retain guns; masked bank robber w/ masked priors will have mask; extortion notes from Joe always pink)
4. Identity of target
  - mv registration/drivers license
  - p.o. box/residence/employment
  - surveillance/habit, routine
  - undercover calls/meets/buys/letters
  - prior similar conduct
  - profile
  - i.d. by someone familiar with target
5. Premises/Person description
  - car (make, model, color, year, VIN, owner, reg. no.)
  - house/apt. (number, street location, color, size, style, construction, floor, town)
  - person (name, DOB, color, hgt, wgt, facial hair, scars, tatoos, sex, clothing)
  - outbuildings, garages, porches, sheds, breezeways, patios, yards, lawns
  - trunks, briefcases, boxes, letters, packages (size, shape, color, address, markings, postage, fasteners, tape)
  - safety deposit boxes, private/rented storage facilities (location, number, key location)

6. Items to be seized

- "P/C to believe X is in/on Y, and that X constitutes evidence/contraband/means/person to be seized"
- no general terms (fruits, evidence of crime)
- never "including but not limited to"
- be careful of "all", "every"

7. Special considerations

- if too difficult to describe, explain that fact and limit execution to affiant with specialized knowlege/info
- if "no-knock" necessary, set forth reason (destruction of evidence, danger from weapons, escape of fugitive)
- if nighttime search necessary, set forth reasonable cause (flight, evanescent evidence, public safety)

# United States District Court

DISTRICT OF Massachusetts

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

\*\*approximately 4 ft. by 3 ft. padlocked bin with a plywood front, with the number 38 on the front of the bin;

## SEARCH WARRANT

THE PREMISES KNOWN AS THE RESIDENCE OF UDO W. KLOEPPER, 271 CHELSEA STREET, #38, EVERETT, MA

CASE NUMBER: 89- 0871RC

TO: Inspector John G. Dunn, Jr.

~~United States District Court of the United States~~

Affidavit(s) having been made before me by John G. Dunn, Jr. who has reason to

Affiant

believe that  on the person of or  on the premises known as (name, description and/or location) the residence of Udo W. Kloemper, 271 Chelsea Street, apt. no. 38, Everett, MA, which is more particularly described as a three-story brick, multi-family dwelling, with the number "271" appearing on the Chelsea Street side of the building, with apt. 38 being located on the 2nd floor and being the last apartment on the right as you face the building from Chelsea Street, and overlooking Chelsea Street, with the number "38" appearing outside Kloemper's apartment; and the basement storage area for apt. 38, at these premises, which is an \*\*

in the District of Massachusetts there is now concealed a certain person or property, namely (describe the person or property)

See Attachment A, incorporated herein by reference;

which items constitute evidence of violations of 18 U.S.C. Sections 2, 2422 and 2423, including evidence of intent, motive, preparation, plan and design for such offenses.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before July 29, 1989

Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) ~~(or any other time if the person or property to be searched is a residence and the search is necessary for the purpose of preventing the destruction of evidence)~~ and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to U.S. Magistrate Robert B. Collings as required by law.

U.S. Judge or Magistrate

July 26, 1989 at 7:38 pm

Date and Time Issued

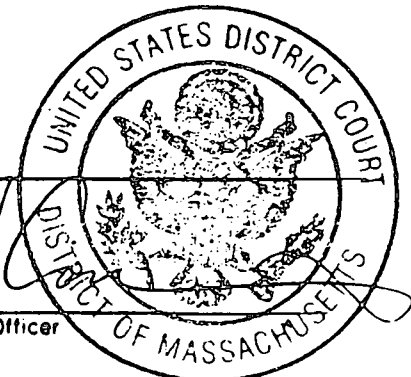
at

Boston, MA  
City and State

U.S. Magistrate Robert B. Collings

Name and Title of Judicial Officer

[Signature]  
Signature of Judicial Officer



**RETURN**

DATE WARRANT RECEIVED

DATE AND TIME WARRANT EXECUTED

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

INVENTORY MADE IN THE PRESENCE OF

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

**CERTIFICATION**

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

\_\_\_\_\_

Subscribed, sworn to, and returned before me this date.

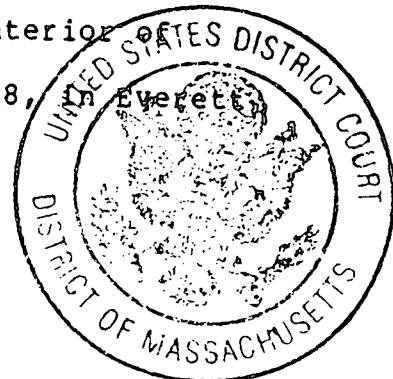
\_\_\_\_\_

U.S. Judge or Magistrate

\_\_\_\_\_

Date

- (a) one light-colored short-sleeved tee shirt, the front of which includes a design described as a wheel-shaped round object with spokes;
- (b) packages of unused Polaroid brand film;
- (c) empty Polaroid brand film packages;
- (d) correspondence, documents, receipts, notes and objects relating to travel between Germany and the United States;
- (e) records, documents, receipts, notes, correspondence and objects showing control of or residence at 271 Chelsea Street, #38, in Everett, MA by Udo W. Kloepper;
- (f) one boy's size pajama top, blue and white in color with a city skyline design on the front;
- (g) all exposed Polaroid color photographs bearing the number 07817310341-3 on the reverse;
- (h) one video camcorder camera and any film contained therein;
- (i) records, documents, correspondence, notes and objects showing rental of or access to Post Office box 1798 in Lynn, MA;
- (j) all photographs which depict Udo W. Kloepper and all photographs which were taken in the interior of 271 Chelsea Street, #38, Everett, MA;
- (k) I also request authority to search by viewing all of the videocassettes in Kloepper's apartment, and permission to seize those which depict any portion of the interior of Kloepper's apartment at 271 Chelsea Street, #38, Everett, MA, the interior of which is known to me.





# United States District Court

DISTRICT OF Massachusetts

## In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

THE PREMISES KNOWN AS THE RESIDENCE OF  
UDO W. KLOEPPER, 271 CHELSEA STREET,  
#38, EVERETT, MASSACHUSETTS

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 89-871-RC

I John G. Dunn, Jr., being duly sworn depose and say:

I am a(n) U.S. Postal Inspector and have reason to believe

Official Title

that  on the person of or  on the premises known as (name, description and/or location) the residence of Udo W. Kloepfer, 271 Chelsea Street, apartment Number 38, in Everett, MA, which is more particularly described as a three-story brick, multi-family dwelling, with the number "271" appearing on the Chelsea Street side of the building, with apt. 38 being located on the 2nd floor and being the last apartment on the right as you face the building from Chelsea Street, and overlooking Chelsea Street. The number "38" appears outside the apartment; and the basement storage area for apt. no. 38 at these premises\*\*

in the        District of Massachusetts

there is now concealed a certain person or property, namely (describe the person or property)

See attached affidavit of Inspector John G. Dunn, Jr. with Exhibits A & B, incorporated herein by reference;

which is (give logical grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

evidence of violations of federal criminal laws, including evidence of intent, motive, preparation, plan and design

in violation of Title 18 United States Code, Section(s) 2422, 2423, and 2

The facts to support the issuance of a Search Warrant are as follows:

See attached affidavit of Inspector John G. Dunn, Jr. with Exhibits A & B, incorporated herein by reference.

\*\* which is a approximately 4' by 3' padlocked bin with a plywood front, and the number 38 on the front of the bin;

Continued on the attached sheet and made a part hereof.

Yes     No

\_\_\_\_\_  
Signature of Affiant

Sworn to before me, and subscribed in my presence

July 26, 1989  
Date

at Boston, MA  
City and State

U.S. Magistrate Robert B. Collings  
Name and Title of Judicial Officer

\_\_\_\_\_  
Signature of Judicial Officer

AFFIDAVIT

I, John G. Dunn, Jr., being duly sworn, depose and state as follows:

1. I am a United States Postal Inspector and have been so employed for approximately seventeen years. A copy of a federal search warrant and supporting affidavit which I obtained on July 25, 1989 in Mag. No. 89-864-RC (D. Mass.) is attached and incorporated herein by reference as Exhibit A. An unexecuted copy of a criminal complaint and supporting affidavit upon which I obtained an arrest warrant for Udo W. Kloepper on July 26, 1989 in Mag. No. 89-865-RC (D. Mass.) is attached and incorporated herein by reference as Exhibit B.

2. On July 26, 1989, with the assistance of a German interpreter, I participated in an interview of the child who is described in Exhibit B as "T.E." after I obtained the complaint warrant which is part of Exhibit B. T.E. told me that on Thursday, July 20, 1989, Udo came into the room where T.E. was sleeping with his mother and woke him up. T.E. told me that Udo took him into the living room of Udo's apartment, and that Udo told T.E. that he wanted T.E. to suck him. Udo placed his erect penis into T.E.'s mouth, and instructed T.E. to lick

Udo's penis with his tongue, which T.E. did. T.E. also stated that he remembers four photographs being taken by Udo during this sexual contact. T.E. said the pictures came out of the camera with a noise as Udo pushed the button each time. T.E. told me that his mother continued to sleep while Udo had oral sex with him, but that T.E. told his mother about what Udo had done the following morning when she awoke. T.E. advised me that he does not know whether his mother spoke to Udo about what he had told her. T.E. also told me that he had visited the United States before with his mother, and that Udo did not molest him on any of those prior visits.

3 While inside Kloepper's apartment on July 25, 1989, I observed a light-colored tee shirt with short sleeves. The front of this tee shirt had a design described as a wheel-shaped round object with spokes, and it was located in Kloepper's bedroom. This shirt appears to me to be the same shirt worn by the adult male in one of the four photographs described in Exhibits A and B hereto. I also observed approximately 15-20 unused Polaroid brand film packages and used, empty Polaroid brand film packages.

4. I also observed a voluminous quantity of what appeared to me to be personal papers, business records, documents and other papers throughout the apartment. While still inside Kloepper's apartment, T.E.'s mother, M.E., identified a pajama

top to me as one belonging to her son T.E. and as the one depicted in one of the four photographs which I had shown to her. This top was located in the bedroom used by M.E. and T.E., and is blue and white in color with a city skyline design on the front of it.

5. I learned that several years ago, Udo W. Kloepper was the addressee on some incoming foreign mail which had been intercepted and examined by U.S. Customs pursuant to their border search authority. U.S. Customs determined that this mail, which contained films or videotapes which appeared to be noncommercial or amateur, was legally obscene and therefore subject to forfeiture to the United States as items illegal to import into the United States. The matter was referred to the United States Attorney's Office in the District of Massachusetts, which made a decision not to seek the civil forfeiture of the films or videotapes. I learned that Assistant U.S. Attorney Peter Gelhaar recalls personally meeting with Udo W. Kloepper at the U.S. Attorney's Office after Kloepper was advised of the Office's decision not to pursue civil forfeiture proceedings and the fact that Kloepper could retrieve the films or videotapes if he personally appeared at the Office to do so. AUSA Gelhaar related that he spoke with Kloepper for about one-half hour, and that he recalls him having a German accent. AUSA Gelhaar also

recounted that in reviewing the materials in order to determine whether to initiate forfeiture proceedings, he viewed one scene in which Udo Kloepper was having sexual intercourse with an adult woman and was speaking in German, in what appeared to be a bedroom and a bathroom. AUSA Gelhaar advised that the film or video, as he could not recall which it was, appeared to be homemade or amateur and not a professional production. He noted that there were a number of separate films or videotapes which had been seized and which were ultimately returned to Kloepper. He stated that after he spoke with Kloepper, he returned the films or videotapes to Kloepper, who left with them.

6. I also observed a video camcorder which appeared to have film in it located in Kloepper's bedroom on his bed. In addition, I saw approximately 40 videocassettes in Kloepper's living room, together with a variety of electronic equipment, including a videocassette recorder, facsimile machine, telephone answering machine, and two televisions. Based on my experience and training, as well as the information obtained from AUSA Gelhaar, I have probable cause to believe that Udo W. Kloepper videotaped himself in his apartment in Everett, and that among these videocassettes will be scenes depicting Kloepper in that apartment, showing his access to, control of and residence at that apartment.

7. Prior to leaving Kloepper's apartment on July 25, 1989, I spoke to Roman Bogus, the building manager. He told me that every tenant has a separate locked storage bin in the basement of the building. He took me into the basement and showed me the bins, each of which is 4' by 3' with a plywood door. One of the bins has the number "38" on the outside of it, and it is secured with a padlock. Mr. Bogus told me that all of the tenants have access to the basement area where the bins are located.

8. On July 25 and 26, 1989, I spoke with M.E., who is T.E.'s mother. Through an interpreter, she advised me that she and her son are German citizens, and that she is a friend of Udo Kloepper, whom she met in Germany and has known for thirteen to fourteen years. She advised me that Kloepper had spoken to her and had written to her asking her to visit him in Massachusetts with her son T.E. Kloepper told her that she and the boy could stay with him while in Massachusetts, so she was persuaded to visit him. She and T.E. flew from Germany to Boston, MA and arrived on July 17, 1989. Kloepper met M.E. and T.E. upon their arrival and moved them into his apartment in Everett, where they remained until after my interview of them on July 25, 1989. M.E. told me that Kloepper took approximately \$800.00, which was all of the money she had brought with her, and said that he would keep it and give money

to her as she needed it during her stay in the United States. Since July 17, 1989, M.E. stated that no other persons have lived at apartment 38 at 271 Chelsea Street in Everett except Kloepper, her son and herself.

9. M.E. also told me that on or about last Thursday, T.E. told her that Kloepper had touched him the night before, and had T.E. stroke Kloepper's penis and put it in T.E.'s mouth. She also said that T.E. advised her that Kloepper had taken photographs of T.E. during these activities. M.E. told me that later that day, she confronted Kloepper about what had happened between him and T.E., and that Kloepper did not deny it but stated that this was the only time, and that he would not do it again. She asked him for the photographs of T.E., to which he replied that it was none of her business and that he was going to keep them. he would not do it again. M.E. told me that she corresponded with Kloepper from Germany to a Post Office box in Lynn, MA.

10. On the reverse of the four Polaroid photographs of T.E. taken by Kloepper, the same typed number appears. This number is 07817310341-3. I know from experience and information I have received from Polaroid company representatives that this identifying number is placed on every roll of film manufactured by Polaroid, and that every photograph in each roll of film will have the same number on

each developed photograph, and that each roll of film has a unique number.

11. I have probable cause to believe that presently located within the above described premises are the following items, which items constitute evidence of a violation of Title 18, United States Code, Sections 2422, 2423 and 2, as set forth more fully above in this affidavit.

(a) one light-colored short-sleeved tee shirt, the front of which includes a design described as a wheel-shaped round object with spokes;

(b) packages of unused Polaroid brand film;

(c) empty Polaroid brand film packages;

(d) correspondence, documents, receipts, notes and objects relating to travel between Germany and the United States;

(e) records, documents, receipts, notes, correspondence and objects showing control of or residence at 271 Chelsea Street, #38, in Everett, MA by Udo W. Kloepper;

(f) one boy's size pajama top, blue and white in color with a city skyline design on the front;

(g) all exposed Polaroid color photographs bearing the number 07817310341-3 on the reverse;

(h) one video camcorder camera and any film contained therein;

(i) records, documents, correspondence, notes and objects



showing rental of or access to Post Office box 1798 in Lynn, MA;

(j) all photographs which depict Udo W. Kloepper and all photographs which were taken in the interior of 271 Chelsea Street, #38, Everett, MA;

(k) I also request authority to search by viewing all of the videocassettes in Kloepper's apartment, and permission to seize those which depict any portion of the interior of Kloepper's apartment at 271 Chelsea Street, #38, in Everett, MA, the interior of which is known to me.

---

JOHN G. DUNN, JR.  
U.S. Postal Inspector

Subscribed and sworn to before me this 26th day of July, 1989.

---

ROBERT B. COLLINGS  
U.S. Magistrate

# United States District Court

DISTRICT OF Massachusetts

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

THE PREMISES KNOWN AS THE RESIDENCE OF  
UDO W. KLOEPPER, 271 CHELSEA STREET,  
NO. 38, EVERETT, MASSACHUSETTS

SEARCH WARRANT

CASE NUMBER: 89- 089-0864RC

TO: Jc G. Dunn, Jr. and any Authorized Officer of the United States

Affidavit(s) having been made before me by John G. Dunn, Jr. who has reason to

Affiant

believe that  on the person of or  on the premises known as (name, description and/or location) the residence of  
Udo W. Kloemper, 271 Chelsea Street, apartment number 38, in Everett, Massachusetts, being  
more particularly described as the apartment at the end of the hall on the left-hand side  
of the second floor of a three-story, multi-family dwelling;

In the \_\_\_\_\_ District of Massachusetts there is now  
concealed a certain person or property, namely (describe the person or property)

See Attachment A, incorporated herein by reference; which items constitute evidence  
of a violation of 18 U.S.C. § 2(a) ).

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person  
or property so described is now concealed on the person or premises above described and establish grounds for  
the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before July 29, 1989

Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant  
and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) ~~(not to exceed 10 days)~~ and if the person or prop-  
erty be found there to seize same, leaving a copy  
of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or prop-  
erty seized and promptly return this warrant to U.S. Magistrate Robert E. Collins

U.S. Judge or Magistrate

July 25, 1989 at

Date and Time Issued

*R. E. Collins*

at

Boston, Massachusetts

City and State

U.S. Magistrate Robert E. Collins

Name and Title of Judicial Officer

*R. E. Collins*

Signature of Judicial Officer



DATE WARRANT RECEIVED

DATE AND TIME WARRANT EXECUTED

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

INVENTORY MADE IN THE PRESENCE OF

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

**CERTIFICATION**

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

\_\_\_\_\_  
Subscribed, sworn to, and returned before me this date.

\_\_\_\_\_  
J.S. Judge or Magistrate

\_\_\_\_\_  
Date

ATTACHMENT A

- (a) records, documents, receipts and objects showing rental of or access to Post Office box 1798, Lynn, MA;
- (b) records, documents, address books and objects reflecting contact with persons in Germany;
- (c) German passport in the name of Udo W. Kloepper;



# United States District Court

DISTRICT OF Massachusetts

JP

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

THE PREMISES KNOWN AS THE RESIDENCE OF  
UDO W. KLOEPPER, 271 CHELSEA STREET,  
NO. 38, EVERETT, MASSACHUSETTS

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 89- 86

I, Inspector John . Dunn, Jr., being duly sworn depose and say:

I am (n) U.S. Post Inspector Official Title and have reason to believe

that  on the person of or  on the premises known as name, description and location the residence of Udo W. Kloepper, 271 Chelsea Street, apartment number 38, in Everett, Massachusetts, which is more particularly described in the attached affidavit.

In the \_\_\_\_\_ District of Massachusetts

there is now concealed a certain person or property, namely (describe the person or property)

See attached affidavit.

which is (also alleged grounds for search and seizure under Rule 41(c) of the Federal Rules of Criminal Procedure)

evidence of a violation of federal criminal law

in violation of Title 18 United States Code, Section(s) 2252(a)(2)

The facts to support the issuance of a Search Warrant are as follows:

See attached affidavit.

Continued on the attached sheet and made a part hereof.

Yes  No

Signature of Affiant

Sworn to before me, and subscribed in my presence

July 25, 1989 at

at

Boston, MA

Date

City and State

U.S. Magistrate Robert B. Collings

Name and Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT

I, John G. Dunn, Jr., being duly sworn, do depose and state as follows:

1. I am employed by the U.S. Postal Inspection Service as a Postal Inspector and have been so employed for approximately 17 years. My duties include investigation of violation of federal criminal laws pertaining to the sexual exploitation of children including Title 18, U.S.C. Sections 2251-2256, occurring in Massachusetts, Rhode Island, Vermont, Maine and New Hampshire. I have been involved in approximately 300 child pornography and child sexual exploitation investigations, during which I have corresponded and personally met with pedophiles and child pornography producers and collectors in an undercover capacity. I have read and examined in excess of 1000 letters from and between pedophiles and child pornography collectors, and have personally examined thousands of photographs, slides, films and videotapes depicting children engaged in sexually explicit conduct. "Pedophile" is a psychiatric diagnostic term which describes persons who are sexually attracted to young children. These persons are also described by experts in behavioral psychology as "preferential child molesters". I have examined and read publications distributed from foreign countries and from the United States which describe in detail sexual activities between adults and children. I have also interviewed preferential child molesters and children who have been sexually exploited and abused as subjects of pornography. I have received extensive training and have read numerous publications dealing with the sexual abuse and exploitation of children, including psychological and behavioral studies of child sex offenders.

Since 1983 I have attended numerous seminars and courses throughout the United States both as a participant and as an instructor dealing with sexual exploitation/abuse of children and child pornography. I have lectured on child pornography, child sexual abuse investigative techniques and related topics for the Postal Inspection Service at both regional and national training seminars; the Federal Law Enforcement Training Center; the Department of Justice National Obscenity and Child Pornography Enforcement Unit; the Massachusetts Criminal Justice Training Council at courses for federal, state and local law enforcement officers; and various state and local law enforcement training programs in New York, New Jersey, Pennsylvania, Vermont, Maine, Massachusetts, Rhode Island and New Hampshire. In April 1988, I made a presentation on child pornography to the National Symposium on Child Victimization in Anaheim, California sponsored by the Children's Hospital National Medical Center and the National Center on Child Abuse and Neglect, and I testified before the Massachusetts Legislature's Joint Committee on Criminal Justice regarding legislation concerning Massachusetts child pornography laws. I have been qualified as an expert in child pornography investigations in Massachusetts Superior Court and U.S. District Court, District of Massachusetts.

2. I have also received training from and have consulted with several pediatricians and pediatric endocrinologists who are experts in determining the apparent age of a child based on the appearance of the child's body, including his/her genitalia, and the particular stage of the child's sexual development. I have had extensive experience working with and have received individualized training from these experts in examining photographs or other

visual depictions of children in order to ascertain the child's apparent stage of sexual development and to determine whether the child so depicted is, for example, prepubescent, pubescent or adult, according to recognized pediatric or medical standards for each of five defined stages of human sexual development. These standards are described and defined in something known as the Tanner Scale, with the fifth stage of sexual development being adult sexual development, which is generally reached by the age of 18. Persons who can be classified as being at Tanner stages one through four are, in the opinion of experts from whom I have received instruction, generally below the age of 18. For purposes of this affidavit, I will refer to any individual below the age of 18 as a child or minor, and will refer to any visual depiction of such a child or minor engaging in sexually explicit conduct as defined in 18 U.S.C. Section 2256(2) as "child pornography".

3. I have received extensive training and instruction relating to pedophilia, child pornography and child sexual abuse. I have personally been involved in the execution of at least 60 search warrants and consent searches relative to child sexual exploitation investigations in the Districts of Maine, New Hampshire, Rhode Island, Connecticut, Vermont and Massachusetts. Experts from whom I have received training have found and my own law enforcement experience has confirmed that preferential child molesters ("pedophiles") and child pornography collectors ("collectors") almost always maintain and possess their materials (pictures, films, videotapes, correspondence, source information) within a private and secure location such as their home or on their person. My training and experience with similar cases also indicates that pedophiles and collectors typically retain



their materials and related information for many years. In several of the searches I have personally supervised or participated in, law enforcement officers have discovered child pornography related materials, including correspondence, source information, and actual child pornography, which had been retained by the target of the search for as long as 20 years. Most pedophiles and collectors seek to increase the size of their collections, as do collectors of innocent items such as coins, stamps or rare books, so they retain these materials, including information regarding sources, often for their entire adult life. My training and experience with similar cases also indicates that pedophiles and collectors often correspond with one another, and will often meet with one another to share information and materials, including child pornography; that they rarely destroy correspondence from other pedophiles and collectors or distributors unless their activities are uncovered by law enforcement authorities or others; that they conceal their correspondence and records of orders and sources as they do their sexually explicit material; that they often maintain lists of names, addresses and telephone numbers of individuals and businesses with whom they have been in contact regarding their clandestine activities or who share their sexual interest in children and/or child pornography. This behavior has been documented by other Postal Inspectors and by other law enforcement officers involved in the investigation of child pornography and child sexual exploitation throughout the country.

My training and experience with similar cases also indicates that pedophiles and child pornography collectors often will use Post Office boxes to correspond with persons who share their interests and to obtain child pornography or material pertaining to adult/child sex. This behavior has been documented by Postal Inspectors and other law enforcement officers involved in the investigation of child sexual exploitation and child pornography throughout the country.

4. This affidavit is made in support of an application for a search warrant for the apartment of Udo W. Kloepper, 271 Chelsea Street, apartment number 38, in Everett, Massachusetts. These premises are more particularly described as the apartment at the end of the hall on the left-hand side of the second floor of a three-story, multi-family dwelling.

5. I have probable cause to believe that presently located within the premises described above in paragraph 4 are the following items which constitute evidence of a violation of 18 U.S.C. §2252(a)(2):

- (a) records, documents, receipts and objects showing rental of or access to Post Office box 1798, Lynn, MA;
- (b) records, documents, receipts and objects showing access to or residence at 1591 Broadway, Saugus, MA;
- (c) records, documents, receipts and objects showing access to or residence at 17 Webster Street, Everett, MA;
- (d) records, documents, receipts and objects showing access to or residence at 271 Chelsea Street, No. 38, Everett, MA;
- (e) records, documents, address books and objects reflecting contact with persons in Germany;
- (f) German passport in the name of Udo W. Kloepper;
- (g) records, documents, receipts and objects reflecting travel between the United States and Germany.

6. My belief that the items described above in paragraph 5 are presently located within the premises described above in paragraph 4 is based, inter alia, on the following:

- (a) 18 U.S.C. §2252 makes it a criminal offense for a person to mail a visual depiction produced with the use of a minor engaging in sexually explicit conduct and depicting such conduct, as well as to receive such material which has been mailed.
- (b) 18 U.S.C. §2256(1) defines "minor" for purposes of 18 U.S.C. §2252 as "any person under the age of 18 years". 18 U.S.C. §2256(2) defines "sexually explicit conduct" for purposes of 18 U.S.C. §2252 as "(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person".

7. I am personally familiar with all of the facts and circumstances surrounding this investigation, both from my own investigative activity and from information obtained from other law enforcement officers, including Detectives James Page, Paul Tucker, Mary Butler and Conrad Prosniewski of the Salem, MA Police; and Postal Inspector James Bachman, who have communicated the results of their investigative efforts to me.

8. On July 24, 1989, I arrested Udo W. Kloeppe for knowingly receiving four color Polaroid photographs in the mail from Germany via Post Office box 1798 in Lynn, MA, in violation of 18 U.S.C. §2252(a)(2). An unexecuted copy of the affidavit, based upon which U.S. Magistrate Robert B. Collings issued a criminal complaint against Kloeppe on July 24, 1989, is attached and incorporated herein by reference as Exhibit A.

9. At his initial appearance before Magistrate Collings on July 24, 1989, Udo W. Kloepper advised the Magistrate that his German passport was at his apartment, which he stated was 271 Chelsea Street in Everett, MA.
10. U.S. Postal Service records reveal that Post Office box 1798 in Lynn, MA was rented by Udo W. Kloepper on October 28, 1986, who provided a German passport as identification. The address of 1591 Broadway in Saugus, MA is listed on the box rental application. In addition, Udo W. Kloepper advised the Magistrate at his initial appearance on July 24, 1989 that his ex-wife currently resides at 1591 Broadway in Saugus, MA, and that he was divorced from her in January of 1989. Inquiry of the U.S. Postal Service at Saugus, MA disclosed that a change of address was filed effective February 1, 1989 for Udo W. Kloepper, from 1591 Broadway, Saugus, MA to P.O. Box 1798, Lynn, MA.
11. At the time of Udo W. Kloepper's arrest on July 22, 1989 by Salem, MA Police, he provided a residence address of 17 Webster Street, Everett, MA, and a telephone number of 389-8188. Inquiry of the New England Telephone Company by the Salem Police disclosed that telephone number 617-389-8188 is a non-published telephone number assigned to Udo Kloepper, 271 Chelsea Street, Everett, MA. Detective Mary Butler advised me that the Everett Police Department had confirmed that Udo Kloepper currently resides at 271 Chelsea Street, apartment 38, in Everett, MA. Inquiry of the U.S. Postal Service at Everett, MA confirmed that Udo Kloepper had moved from 17 Webster Street leaving no forwarding address approximately two years ago, and that he

AFFIDAVIT

I, John G. Dunn, Jr., being duly sworn, depose and state as follows:

1. I am a United States Postal Inspector and have been so employed for approximately seventeen years. My primary investigative duties include investigations of federal criminal laws pertaining to the sexual exploitation of children. I have personally been involved in several hundred of these investigations, and have been qualified as an expert witness in federal and state courts in the District of Massachusetts on child sexual exploitation and child pornography investigations. My experience and training includes working with pediatricians and pediatric endocrinologists in reviewing visual depictions in order to determine whether the persons depicted are persons under the age of eighteen.

2. On July 23, 1989, I was contacted by Salem Police, who told me that Salem Police had arrested a German national, Udo W. Kloepper, on July 22, 1989, for shoplifting in violation of Massachusetts state law. Incident to that arrest, Kloepper's person was searched, and Salem Police recovered four Polaroid color photographs.

3. I personally reviewed these photographs, and have determined based on my experience and training that they each depict the same prepubescent boy with an adult male's erect penis in the boy's mouth.

4. At the time of Kloepper's arrest, he was advised of his Miranda rights which he acknowledged and agreed to waive. After waiving his rights, Kloepper told Salem Police Detectives James Page and Paul Tucker that the four photographs had come to him in the mail to his Post Office box in Lynn, Massachusetts, from his native Germany sometime since November of 1988. Kloepper said that his most recent entry into the United States occurred approximately four months ago. Kloepper also told Salem Police that people in Germany were more open-minded about things like this than are people in the United States.

5. Based on the above, I have probable cause to believe that Udo W. Kloepper has committed a violation of Title 18, United States Code, Section 2252(a)(2), in that he knowingly received visual depictions produced with the use of a minor

engaging in sexually explicit conduct, specifically oral-genital intercourse, which photographs had been mailed, as set forth more fully above.

---

JOHN G. DUNN, JR.  
U.S. Postal Inspector

Subscribed and sworn to before me this 24th day of July,  
1989.

---

ROBERT B. COLLINGS  
U.S. Magistrate

# United States District Court

DISTRICT OF Massachusetts

# COPY

UNITED STATES OF AMERICA  
V.

CRIMINAL COMPLAINT

UDO W. KLOEPPER  
271 Chelsea Street, #38  
Everett, Massachusetts

CASE NUMBER: 89-

*Name and Address of Defendant*

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. From on or about July 17 <sup>^</sup> through 19, 1989, in Middlesex county, in the Massachusetts District of Massachusetts defendant(s) did, *(Please Specify Language of Offense)*

**COUNT ONE:** knowingly persuade, induce and entice T.E. to travel in foreign commerce between Germany and Massachusetts, in order that T.E. engage in sexual activity for which Udo W. Kloepper could be charged with a criminal offense, specifically unnatural sexual intercourse with a child under sixteen in violation of Mass. Gen. Laws ch. 265, §23; all in violation of 18 U.S.C. §2422. **COUNT TWO:** knowingly transport and aid and abet the transportation of (SEE ATTACHMENT, INCORPORATED HEREIN BY REFERENCE)

I further state that I am a(n) U.S. Postal Inspector Official Title and that this complaint is based on the following

facts:

SEE ATTACHED AFFIDAVIT, INCORPORATED HEREIN BY REFERENCE

Continued on the attached sheet and made a part hereof:  Yes  No

Signature of Complainant  
JOHN G. DUNN, JR.

Sworn to before me and subscribed in my presence,

July 26, 1989  
Date

at Boston, MA  
City and State

U.S. MAGISTRATE ROBERT B. COLLINGS  
Name & Title of Judicial Officer

Signature of Judicial Officer

ATTACHMENT

T.E., an individual under the age of eighteen years, in foreign commerce between Germany and the United States, with the intent that T.E. engage in sexual activity for which Udo W. Kloepper could be charged with a criminal offense, specifically having unnatural sexual intercourse with a child under the age of sixteen in violation of Mass. Gen. Laws ch. 265, §23; all in violation of 18 U.S.C. §2423 and §2.



AFFIDAVIT

I, John G. Dunn, Jr., being duly sworn, depose and state as follows:

1. I am a United States Postal Inspector and have been so employed for approximately seventeen years. My primary investigative duties include investigations of federal criminal laws pertaining to the sexual exploitation of children.

2. On July 25, 1989, I obtained a federal search warrant for the residence of Udo W. Kloeppe, 271 Chelsea Street, #38, in Everett, MA, from U.S. Magistrate Robert B. Collings. Kloeppe had been arrested by me for knowing receipt of child pornography in the mail in violation of 18 U.S.C. §2252(a)(2) on July 24, 1989.

3. Prior to executing the search warrant, I learned that since Kloeppe's initial appearance in federal court, a German woman and a young boy had been let into Kloeppe's apartment by the building manager. The wife of the building manager advised me by telephone that the woman and child spoke no English. I contacted Everett Police who obtained a German-speaking interpreter. Everett Police, the interpreter and I went to Kloeppe's residence on the afternoon of July 26, 1989 to execute the search warrant.

4. Upon arriving at Kloeppe's residence, I met a German woman and her ten-year old son, neither of whom spoke English. I recognized the boy as the same child who is depicted in the four sexually explicit photographs which Kloeppe claimed to have received in the mail from Germany. These photographs depict an adult male engaging in oral-genital sexual intercourse with a prepubescent boy, and are the photographs which form the predicate for the existing federal criminal complaint against Kloeppe, Mag. No. 89-863-RC (D. Mass.).

5. With the assistance of the German interpreter, I spoke with the woman, identified in this affidavit as M.E., and her son, identified in this affidavit as T.E., whom she advised me was ten years old. She told me that she resides in Germany with her son, and that Udo Kloeppe had asked her and her son to visit him in Massachusetts. She said that she and her boy had arrived in Boston on or about July 17, 1989. At Kloeppe's request, she gave all of her money to him, because he told her that he would provide money to her as she needed it during her visit. Prior to travelling to the United States from Germany, Kloeppe had advised the woman that she and her son could stay with him in Everett.

6. I also spoke to T.E., who told me that on or about July 19, 1989, while his mother was asleep at Kloepper's Everett apartment, Kloepper made him perform fellatio on him, and that Kloepper had used a camera to photograph the sexual activity.

7. Based on the above, I have probable cause to believe that Udo W. Kloepper has committed a violation of Title 18, United States Code, Section 2422, in that he knowingly persuaded, induced and enticed T.E. to travel in foreign commerce between Germany and Massachusetts, in order that T.E. engage in sexual activity for which Udo W. Kloepper could be charged with a criminal offense, specifically having unnatural sexual intercourse with a child under the age of sixteen in violation of Mass. Gen. Laws ch. 265, §23. In addition, I have probable cause to believe that Udo W. Kloepper has also committed a violation of 18 U.S.C. §§2423 and 2, in that he knowingly transported and aided and abetted the transportation of T.E., an individual under the age of eighteen years, in foreign commerce between Germany and Massachusetts, with intent that T.E. engage in sexual activity for which Udo W. Kloepper could be charged with a criminal offense, specifically having unnatural sexual intercourse with a child under the age of sixteen in violation of Mass. Gen. Laws ch. 265, §23.

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JOHN G. DUNN, JR.  
U.S. Postal Inspector

Subscribed and sworn to before me this 26th day of July, 1989.

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ROBERT B. COLLINGS  
U.S. Magistrate

# United States District Court

DISTRICT OF MASSACHUSETTS

COPY

## In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

The residence of Chester Clasby, 202 Parkerville Road, Southboro, MA 01722

## SEARCH WARRANT

CASE NUMBER:

TO: ~~Inspector John G. Dunn, Jr.~~ and any Authorized Officer of the United States

Affidavit(s) having been made before me by John G. Dunn, Jr. who has reason to

Affiant

believe that  on the person of or  on the premises known as (name, description and/or location) the residence of Chester Clasby, 202 Parkerville Road, Southboro, MA 01722, being more particularly described as a single family, white, wooden, split-level style house which is set back from the road approximately 150 to 200 feet and which is situated between 200 Parkerville Road in Southboro and a Massachusetts Turnpike overpass

in the xxx District of Massachusetts there is now concealed a certain person or property, namely (describe the person or property)

See attachment "A", incorporated herein by reference.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before February 5, 1987

Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) ~~at any time in the day or night as~~ and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Lawrence P. Cohen, U.S. Magistrate as required by law.

U.S. Judge or Magistrate

and Time Issued

at Boston, MA  
City and State

U.S. Magistrate Lawrence P. Cohen  
Name and Title of Judicial Officer

Signature of Judicial Officer

ATTACHMENT "A"

- (a) records, documents, keys or other objects showing rental or control of or access to Box 158 located at a private mail receiving agency with an address of 89 Massachusetts Ave., Boston, MA 02115, and to P.O. Box 389, Southboro, MA 01772;
- (b) records and documents reflecting names, addresses or other information, including notes, lists, address/telephone books, relating to individuals or entities who are sources for visual depictions of persons under the age of eighteen engaging in sexually explicit conduct as defined in 18 U.S.C. §2256(2);
- (c) correspondence, records, stationery, documents or objects showing the utilization of the identities: Bill, Bill Carney, Chester Clasby or Chet Clasby;
- (d) photographs of Chester Clasby;
- (e) photographs of Chester Clasby's daughters, Karen and Alison;
- (f) a white bedspread with a purple and blue flower print for a queen or king-size bed, and blue and white flower print wallpaper on the walls of the room in which this bedspread is located;

which are evidence of the commission of criminal offenses, and property designed and intended for use and which has been used as means of committing criminal offenses in violation of 18 U.S.C. Sections 2, 371, 1461, 2251 and 2252.

# United States District Court

DISTRICT OF MASSACHUSETTS

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

The residence of Chester Clasby, 202  
Parkerville Road, Southboro, MA 01772

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I, John G. Dunn, Jr. being duly sworn depose and say:

I am a(n) U.S. Postal Inspector Official Title and have reason to believe

that  on the person of or  on the premises known as (name, description and/or location) the residence of Chester Clasby, 202 Parkerville Road, Southboro, MA 01772, being more particularly described as a single family, white, wooden, split-level style house which is set back from the road approximately 150 to 200 feet and which is situated between 200 Parkerville Road in Southboro and a Massachusetts Turnpike overpass

in the \_\_\_\_\_ District of Massachusetts

there is now concealed a certain person or property, namely (describe the person or property)

See Paragraph Three of the affidavit of Inspector John G. Dunn, Jr., which is attached hereto and is incorporated herein by reference;

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure) evidence of the commission of criminal offenses, and property designed and intended for use and which has been used as means of committing criminal offenses as more fully set forth in the attached affidavit of John G. Dunn, Jr. in violation of Title 18 United States Code, Section(s) 2, 371, 1461, 2251, 2252

The facts to support the issuance of a Search Warrant are as follows:

See attached affidavit of U.S. Postal Inspector John G. Dunn, Jr., which is incorporated herein by reference.

Continued on the attached sheet and made a part hereof.

Yes  No

\_\_\_\_\_  
Signature of Affiant

Sworn to before me, and subscribed in my presence

\_\_\_\_\_ at Boston, MA  
City and State

U.S. Magistrate Lawrence P. Cohen  
Name and Title of Judicial Officer

\_\_\_\_\_  
Signature of Judicial Officer

AFFIDAVIT

I, John G. Dunn, Jr., being duly sworn do hereby depose and state as follows:

1. I am employed as a Postal Inspector with the United States Postal Inspection Service and am assigned to the Boston Division. I have been employed as a Postal Inspector for approximately 15 years. For the past two years my investigative duties have been focused primarily on investigations of violations of Title 18, U.S. Code, Section 1461 (Mailing Obscene Matter) and Sections 2251 through 2256 (Sexual Exploitation of Children) occurring in Maine, Vermont, Massachusetts, New Hampshire and Rhode Island. I have been involved in approximately 200 child pornography investigations during which I have corresponded with and personally met with pedophiles in an undercover capacity. I have read and examined in excess of 1,000 letters from and between pedophiles and have personally examined thousands of photographs, slides, films and videotapes depicting children engaged in sexually explicit activity. I have examined and read publications distributed from foreign countries and the United States which describe in detail sexual activities between adults and children. I have also interviewed several pedophiles and a number of children who have been sexually abused and exploited as subjects of pornography. I have received extensive training and have read numerous publications dealing with the sexual exploitation of children including psychological studies of child sex offenders. I have attended numerous seminars and courses both as a participant and as an instructor dealing with the sexual exploitation of children, child sexual abuse and child pornography. I have lectured for the Federal Law Enforcement Training Center in the Child Abuse and Exploitation Investigative Techniques Training Program, and for the past 18 months have taught a course in Child Pornography Investigative Techniques at the Massachusetts State Police Training Academy. For purposes of this affidavit I will refer to any visual depiction of a person under the age of eighteen years engaging in

sexually explicit conduct as defined in Title 18, U.S.C., Section 2256(2), as "child pornography."

2. This affidavit is made in support of an application for a search warrant to search the residence of Chester Clasby, 202 Parkerville Road, Southboro, MA 01772, which is more particularly described as a single family, white, wooden split-level style residence set back from the road approximately 150-200' and situated between 200 Parkerville Road and a Massachusetts Turnpike overpass. This affidavit is also made in support of an arrest warrant for Chester Clasby.

3. I have probable cause to believe that presently located within the above-described residence is evidence of violations of Title 18, United States Code, Sections 1461, 2251, 2252, 371 and 2, including:

- (a) records, documents, keys or other objects showing rental or control of or access to Box 158 located at a private mail receiving agency with an address of 89 Massachusetts Ave., Boston, MA 02115, and to P.O. Box 389, Southboro, MA 01772.
- (b) records and documents reflecting names, addresses or other information, including notes, lists, address/telephone books, relating to individuals or entities who are sources for child pornography materials;
- (c) correspondence, records, stationery, documents or objects showing the utilization of the identities: Bill, Bill Carney, Chester Clasby or Chet Clasby;
- (d) photographs of Chester Clasby;
- (e) photographs of Chester Clasby's daughters Karen and Alison;
- (f) a white bedspread with a purple and blue flower print for a queen or king-size bed, and blue and white flower print wallpaper on the walls of the room in which this bedspread is located.

4. My belief that the items described in paragraph 3 above are located within the premises described in paragraph 2 above is based inter alia, on the following:

- (a) Title 18, United States Code, Section 1461 makes it a criminal offense for any person to knowingly use the United

States mail for the mailing, carriage in the mails or delivery of any obscene, lewd, lascivious, indecent, filthy or vile matter;

- (b) Title 18, United States Code, Section 2251, makes it a criminal offense to employ, use, persuade, induce, entice or coerce a minor to engage in or to have a minor assist any other person to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, if the person knows or has reason to know that the visual depiction will be transported in interstate or foreign commerce or mailed, or if the visual depiction has actually been transported in interstate or foreign commerce or mailed.
- (c) Title 18, United States Code, Section 2252, makes it a criminal offense to knowingly transport or ship in interstate or foreign commerce or mail a visual depiction produced with the use of a minor engaging in sexually explicit conduct and depicting such conduct. This law also criminalizes the knowing receipt, distribution or reproduction of such visual depictions in interstate or foreign commerce or through use of the mail.
- (d) Title 18, United States Code, Section 371, makes it a criminal offense for two or more persons to conspire to commit any offense against the United States.
- (e) Title 18, United States Code, Section 2, makes it a criminal offense to aid, abet, counsel, command, induce or procure the commission of any offense against the United States.
- (f) Title 18, United States Code, Section 2256(1) defines "minor" for purposes of Title 18, United States Code, Sections 2251 and 2252 as "any person under the age of eighteen years." Title 18, United States Code, Section 2256 (2) defines "sexually explicit conduct" for purposes of Title 18, United States Code, Sections 2251 and 2252 as "(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person."
- (g) Title 18, United States Code, Section 2251(c)(1), makes it a criminal offense to knowingly make, print, publish or cause to be made, printed or published, any notice or advertisement seeking or offering to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction produced with the use of a minor engaging in sexually explicit conduct as defined in 18 United States Code, Section 2256, or any such notice or advertisement seeking or offering participation in any act of sexually explicit conduct by or with any minor for the purpose of providing a visual depiction of such conduct; if the actor knows or has reason



to know such notice or advertisement will be (or actually is) transported in interstate or foreign commerce or mailed. This section of the statute became effective on November 7, 1986, as P.L. 99-628.

5. I am personally familiar with all the facts and circumstances surrounding this investigation both from my own investigative activity and from information obtained by other law enforcement officers including former Postal Inspector James Burke, who has communicated results of his investigation to me.

6. I have received extensive training and instruction in the field of pedophilia and child pornography. I have personally been involved in the execution of 23 search warrants and consent searches relative to child pornography investigations conducted in the Districts of Massachusetts, New Hampshire, Vermont, Connecticut and Maine. The experts from whom I have received training have found and my own personal experiences confirm that pedophiles and child pornographers almost always maintain and possess their materials (pictures, films, correspondence, photographs) in the privacy and security of their own homes. My training and experience with similar cases also indicates that pedophiles and child pornographers typically retain their materials (pictures, films, correspondence, photographs) for many years. In addition, my training and experience with similar cases has shown that pedophiles and child pornographers often utilize post office boxes or private mailboxes to receive their mail and fictitious names when corresponding with others in an effort to conceal their true identity. My training and experience with similar cases also indicates that pedophiles and child pornographers often correspond and/or meet with each other to share information and materials; rarely destroy correspondence from other pedophiles and child pornographers, unless their activities are uncovered by law enforcement officials or others; conceal such correspondence as they do their sexually explicit material; and often maintain lists of names, addresses and telephone numbers of individuals with whom they have been in contact and who share the same interests in sexual contact with children and/or child pornography. This behavior has been documented by other Postal

Inspectors and by other law enforcement officers involved in the investigation of child pornography and child sexual abuse throughout this country.

7. On May 19, 1983 a Federal search warrant was executed at the residence of Patrick L. Long, 49 Canterbury Road, Waltham, MA, by Postal Inspector James Burke. The search resulted from an undercover investigation of Long that began in December, 1982 for suspected violations of Title 18, U.S. Code, Sections 1461 and 2251. Mr. Long, utilizing Post Office Box 26, Watertown, MA 02172, had mailed Polaroid photographs of himself engaged in sexually explicit conduct with prepubescent children (child pornography) to Inspector Burke, who was acting in an undercover capacity.

8. A handwritten three-page letter addressed to: Boxholder, Box 26, Watertown, MA 02172, postmarked and dated September 27, 1980, was found during the search of Long's residence. It is from a person purporting to be "Bill Carney," who provides a return address of Box 389, Southboro, MA 01772 in the letter. The writer describes himself as married, with two girls, ages 15 and 10 years. The letter states in part:

I am into all the sexual arts, French, Greek, Water sports, golden showers, light B&D, voyerism [sic], etc. and I enjoy pedophilia very much.

I am very open in front of my girls. I often go in my bra, and see through panties in front of them also I jerk off in some place in the house where I know they can see me and watch.

I am always looking through the hole in the bath room floor at my oldest girl when she takes a shower.

I have had many affairs with young boys 11-15 yrs. of age. There are not to [sic] many people into pedophilia, I have found, and I am very happy to see that their [sic] are others like

yourself and I hope that we can get together and talk. I have no pictures right now but I will be takeing [sic] some more pictures of my 10 yr. old girl and I very soon. How about yourself? Do you have children? Do you have pictures etc. of young boys and girls?

The letter was signed "A pedophilia friend," and the postscript read in part: "I just found a picture of my oldest girl in her bra & panties which I will send along. I hope you like it." Enclosed with this letter is a color Polaroid photograph of a young teenage girl in what appears to be a bedroom. She is packing clothes in a suitcase, and is unclothed except for a white bra and yellow panties. The author also provided a telephone number of 485-1584.

9. A five-page handwritten letter addressed to: Pat L. Long, P.O. Box 26, Watertown, MA 02172, dated October 29, 1980, bearing a return address of Box 389, Southboro, MA 01772, was found during the search of Long's residence. It is signed "Bill", and reads in part:

First I would like to say the pictures that you sent me are beautiful...The boy first, I would love to such his beautiful cock and make him cum in my mouth, for I know it would be so sweet. I then would love for him to fuck my ass and get him off that way. The girls are just beautiful, all 3 of them, I would give anything and everything to lick and such their little honey pots and asses. The girl with the hair on her pussy looks like one of my oldest girls friends.

Pat, I have a hole in the bathroom floor next to the tub, about the size of a half a dime and I keep it covered with a bath mat. When my oldest girl has her friends over to have a sleep over, I do get to peek through the hole and see there [sic] soft hairy cunts. One girl, who is now 15 was over for the night and went to the

bathroom to change into her nightgown when she had removed all her clothes she stood their [sic] for the longest time looking at herself in the mirror, finally she started to rub her tits and her belly and I almost fell of [sic] the table I was standing on down stairs.

The next morning my wife went to work and my daughter and friend were up and had just finished eating when my girl said she was going to shower. So I sliped [sic] down stairs jumped up on my table pulled my satin shorts down to my knees and started to rub my prick. I was getting a good shot of her ass and cunt and she steped [sic] into the tub. So I just stood their [sic] and jerked off waiting for her to step out again. I then noticed...my daughters girl friend watching me from outside.

I did not know what to do so I pretended not to know she was their [sic]. I got so hot and fired my load of cum all over the place, knowing she was watching.

The writer went on to describe another incident in which he masturbated and inserted a dildo in his anus while one of his daughter's girl friends watched. He then describes the photographs Long sent of himself urinating and ejaculating, and states "I have waited to [sic] long in returning your pictures and writting [sic] to you, so I will try to close and mail them out to you today." The writer then informs Long that both of his girls saw the pictures Long had mailed to him. The author tells Long that he "will send pictures of myself and soiled panties very soon." The postscript reads as follows: "Have you heard from the man from the orphanage yet? I hope you are getting it on with some young teens."

10. Also found during the search of Long's residence was an envelope addressed to: Pat L. Long, P.O. Box 26, Watertown, MA 02172, bearing a return address of Box 389, Southboro, MA 01772, postmarked November

21, 1980, with \$.75 in U.S. postage. No letter was found in this envelope.

11. Also recovered during the search of Long's residence was a three-page handwritten letter signed "Bill", dated March 19, 1981, contained in an envelope postmarked March 20, 1981. The writer expresses surprise at having heard from Long, and notes that it had been a long time since they last communicated. "Bill" states: "I did not know if you had the same Box number or not, so I was frighten [sic] and did not send any more pictures or letters." The writer goes on to describe performing fellatio and analingus on a seventeen year old boy at the writer's home, and states in part:

I still look through the hole in the bathroom floor at my oldest daughter and jerk my self off to a powerful and beautiful orgasm. I want to suck her pussy ass and tits so bad and I know this all sounds so very sick and crazy but I have to have her.

Pat, do you know of or have any knowledge of any pills or drugs that are harmless and will put a person to sleep or in a hypnotic state. I have been interested in this for a long time and I can not come up with any info. My oldest daughter is a wonderful and beautiful girl and very straight. I do anything to get at her pussy and beautiful ass and suck them ever so sweetly.

My youngest daughter and I are still doing very well together and she enjoys being licked now and then I do not want to spoil that.

I will enclose some pictures of her and me.

Write to me soon and send your pictures I am sure I will love them.

The postscript reads as follows: "Please save pictures and send them back after a while of use. Thanks."

12. During the search of Long's residence, Polaroid photographs of a prepubertal female child were recovered. I have since learned that the child depicted in these particular photographs is Karen Clasby, who is Chester Clasby's youngest daughter, now age fifteen or sixteen. The Polaroid film dating system enabled me to ascertain that the film upon which these photographic images appear was manufactured and sold sometime in 1980, when Karen Clasby was approximately nine or ten years old.

13. Polaroid photographs of Karen Clasby taken when she was approximately nine or ten years old were also mailed to and received by Inspector Burke from Patrick Long in February of 1983. One of them depicts an erect penis in Karen Clasby's mouth (#1). Another depicts her vagina, with an erect penis pushed up against it (#2). A different photograph of Karen Clasby depicts her nude, lying on her back on a bed, with her arms in an upraised position, and her legs spread apart, displaying her vagina and pubic area facing the camera (#3). Review of the child pornography photographs seized during the search of Long's residence reveals that identical copies or duplicates of the previously described photographs numbered 1 and 3, above, were recovered during this search.

14. Other Polaroid photographs of Karen Clasby taken when she was approximately nine or ten years old were recovered during the search of Long's residence. One depicts her sitting on a toilet, naked from the waist down, with her legs spread apart so that her pubic area is visible, while she pulls her sweater up to expose her body from the mid-chest downward (#4). Another photograph depicts Karen Clasby naked, standing near a partially opened closet, with her legs spread apart, hands on her hips and her pubic area exposed (#5). The last such photograph depicts Karen Clasby kneeling on a bed, wearing only socks. In this photograph, her buttocks and anus are aimed toward the camera, and her genital area is exposed (#6).

15. I have examined all six different poses in the photographs described above in paragraphs twelve through fourteen, and I have

probable cause to believe each, taken as a whole, depicts graphic and explicit sexual conduct in a patently offensive way, that is sexual contact with a prepubertal child or the lewd and lascivious display of a prepubertal child's vagina, anus, genitals or pubic area. I further have probable cause to believe that each photograph taken as a whole and applying contemporary community standards existing in the District of Massachusetts since at least 1980 through the present, would appeal to a prurient interest in sex, specifically that each would arouse sexual desire or lustful thoughts in a pedophile or a person who is sexually attracted to prepubertal children, and that this prurient interest is not a natural or normal interest in sex but one which is classified by psychiatrists as a mental disorder or type of paraphilia. I have probable cause to further believe that taking each photograph as a whole, applying the appropriate community standards as above-described, none has any serious scientific, literary, artistic or political merit. Based on the above, I have probable cause to believe that each of these photographs is legally obscene within the meaning of Miller v. California and the legal standards relating to obscenity. Each of these photographs, as well as the child pornography photographs of Patrick Long with the children described elsewhere in this affidavit, will be shown to the Magistrate as part of this application for a search warrant and arrest warrant, in order that he can review them to make a determination as to whether they are legally obscene for purposes of 18 U.S.C. Section 1461. After such review, they will be retained in the custody of U.S. Postal Inspector John G. Dunn, Jr., until further order of the court.

16. Also recovered during the search of Long's residence was a two-page handwritten letter dated June 2 and postmarked June 3, 1981, addressed to: Pat L. Long, P.O. Box 26, Watertown, MA 02172, and signed "Bill". The author thanks Long for the "beautiful panties and pictures, you always send me." The writer then states:

I did manage to have my young girl put them on for me, one Saturday morning when we were alone, and I felt her and

rubbed her to climax through the soft nylon.

Pat, I still have my fantasy of being with the three girls and boy (the pictures you sent me) and I jerk my self off all the time. Do you still have those pictures? Would you please send them to me so I could make other copys. I have lost or misplaced the copys I had made.

17. Also recovered during the search of Long's residence was a four-page handwritten letter dated June 5 and postmarked June 7, 1982, addressed to: Pat Long, P.O. Box 26, Watertown, MA 02172, signed "Bill". The writer states "It's been a long time since I have written, also I have not heard from you." He then writes:

I think it is about time that I serve up my young delicious appetizer to you. She is 13 now and her tits are developing and she has a beautiful triangular patch of blond hair around her pussy. I have tried to bring her up with our little secret well guarded and so far no one knows except you. I hope we can get together very soon and I want you to eat her beautiful cunt. I would like for you to take pictures of all three of us in action. My camera broke and I will not be able to send you any pictures of her at this time.

Did you ever write to that man who worked for the State that had contact with teenage children? Have you met or had any relations with teenagers or people like us?

The writer then goes on to describe meeting a fourteen year old boy at the Greyhound bus station in Boston, bringing him to his home for a weekend while his wife and daughters were away, and repeatedly engaging in oral sex with him, while dressing the boy up as a girl. The author then describes sexual activities he had engaged in with adult males and a woman, and closes the letter by stating: "I hope you will let me



suck it for you very soon also we will make arrangements for you to eat my little one." The writer also provides his name ("Bill Carney"), address and telephone number 485-1584.

18. On April 19, 1985, I mailed a letter to: B.C., P. O. Box 389, Southboro, MA 01772, utilizing an undercover identity. I advised "B.C." that I got his name from a friend who shared a "father-daughter interest," and told him I would enjoy watching or participating in "family fun", which I know to be a euphemism used by pedophiles and child pornography collectors to describe visual depictions of incest with young children. I never received a response to this letter, and discontinued use of this undercover identity when writing to Box 389 in Southboro, MA.

19. On or about April 18, 1985, I wrote to "Bill Carney" at P.O. Box 389, Southboro, MA, utilizing a different undercover identity in another state. In this letter, I pretended to be a divorced father, whose purpose in writing was to establish a relationship "with someone who shares my interest in things young and from which we may both benefit." I also indicated that I "had the good fortune of experiencing the pleasures of youth on a few occasions." Based on my experience and training, "things young" and "youth" means prepubertal or early teenage children to pedophiles and child pornography collectors.

20. I received a response to my letter described above at my undercover test address on April 23, 1985. The three-page handwritten letter was dated April 21 and was postmarked April 22, 1985, and was signed "Bill Carney." The author wrote: "Yes, we do have the same thing in common, and its a shame its not acceptable in our sick and ancient society." The writer went on to detail how the "mutual friend", from whom I pretended to get "Bill Carney's" name and address, got into trouble two years ago. This was a reference to Patrick Long, whom "Bill Carney" described as a banker from Waltham, MA, which is where Long lived and how he was employed.

It was very terrifying to me and I did not want to become involved in any way. So a friend of mine and myself, packed up my 20 years of prized possessions, they completely filled the back of his station wagon and we took them to a dumpster in the rear of his business on a Saturday afternoon and burned everything. Hundreds of books movies and scrapbooks filled to the brim of photo's of the beautiful thing we have in common interest.

"Bill Carney" went on to describe himself as a the father of two girls, one aged twenty and away at college and the other aged fourteen and a freshman in high school. He continues to describe a wide variety of sexual practices in which he likes to engage, including: giving and receiving enemas, drinking urine, cross-dressing, analingus, fellatio, cunnilingus, bondage and discipline, voyeurism, exhibitionism, public sex and toilet slavery. He further states "I love sex with the young and old and everything in between." "Bill Carney" provided me with telephone number (617) 485-1584, and asked me to write him, adding "maybe I can put together some things, such as address and photos for your viewing pleasures."

21. I wrote a letter responding to "Bill Carney" utilizing my undercover identity on May 16, 1985, telling him I was "essentially youth oriented in my sexual desires, wants and needs," and that "sex with the young is a passion for me that never erodes." I told him my "ex-wife" discovered my "relationship" with my twelve year old stepdaughter, and that she threw me out. I indicated that I would like to meet "Bill".

22. On June 4, 1985, a response to my May 16, 1985 letter to Clasby was received at my undercover address. It was dated June 1 and was postmarked June 2, 1985, and bore a return address of Box 158, 89 Mass. Ave., Boston, MA 02115. In this letter, the author told me that his real name was Chester Clasby, not Bill Carney, and he provided me a new

address at which to write him: Box 158, 89 Mass. Ave., Boston, MA 02115, as well as repeated his home telephone number. Clasby wrote:

I am delighted to hear that your passions for the young run along the same lines as mine. Your 12 year old step-daughter must have been a beautiful part of your entire life long desires and dream, as my 14 year old is with me.

My oldest girl, 20 was very close to her mother and taught all the things a young girl should know. My youngest girl was also taught by her mother, but she was very close to me so I also stepped in and played little games of show and tell, and we have been doing this ever since age eight until now. My wife does not know of our relationship and I hope she never does. I have had many, many relationships with the young and would love to tell you all about them, also I would like to share my loved one with you....

I am sure we can get together though at some very near and future date. I do not think it is wise for us to exchange photos through the mail - how do you feel?

Do you know of any young boys we might be able to explore together and also share my little one also. It would be a wonderful sight to watch and enjoy. How do you feel about it?

I would be very interested in finding couples who have children, and have sex with them and want to share with others. There is a couple in New York that I am trying to make contact with for such a relationship, they have 4 children. Boy 9 - girl 10 - boy 11 - girl 12 - what a beautiful & delightful pleasure that would be.

23. On June 11, 1985, I mailed a response to Chester Clasby's letter of June 1, 1985, at Box 158, 89 Mass. Ave., Boston, MA 02115, utilizing my undercover identity. I enclosed a book entitled "The Child Lovers -

A Study of Paedophiles in Society", which purports to be a "scientific" study supporting the so-called positive aspects of pedophilia. I asked Clasby if he had any photos of his younger daughter, or any "incest" books or pictures.

24. I did not receive a response to my June 11, 1985 letter to Chester Clasby, so I wrote him again on July 26, 1985, at Box 158, 89 Mass. Ave., Boston, MA 02115, utilizing my undercover identity. I inquired whether everything was O.K. and asked if he enjoyed the book which I had mailed to him. I received no response to this letter, so I wrote Clasby again at the same address on September 20, 1985, asking again about the book I mailed him, and saying if I did not hear from him, I would stop by his house personally to pick up the book.

25. I received a three-page handwritten letter at my undercover address from Chester Clasby dated October 13 and postmarked October 17, 1985, in which he returned the book, apologized for not returning it sooner and explained that his summer had been very busy. Clasby asks me to call him, and indicated that he wanted to meet at his place. Clasby discussed a nudist camp on the Cape where children also attend, and asked me if I'd join him there.

There are a lot of children there from ages 17 on down. The males are all well endowed with very long thick pricks and the females are very lovely.

There is a lot of sex going on at the site behind closed doors.

The children are beautiful and what a site [sic] to behold seeing all the boys & girls running and playing in the sun.

This letter also was accompanied by my original September 20, 1985 letter to Chester Clasby.

26. On February 10, 1986, a response from me to Clasby's October 13, 1985 letter was mailed, utilizing my undercover identity. It was addressed to Chet Clasby, Box 158, 89 Mass. Ave., Boston, MA 02115, and is dated February 7, 1986. I told Clasby that I wasn't interested in cross-dressing or "bi" (meaning bisexual) action, but that my strongest passions were for "young pre-teen + early teen smooth pussy." I also reiterated my request to see photos of his youngest daughter, Karen, and advised that I could send him "some material that I know you'd enjoy" in return.

27. On March 3, 1986, I received a four-page handwritten letter dated and postmarked February 28, 1986 from Chester Clasby at my undercover address. He acknowledged receiving my February 7, 1986 letter, and wrote in part:

Karen is growing up now and developing a lot of hair around her cunny area and even has some silky hairs growing in her ass crack. She is still very young innocent and beautiful as ever. I keep telling her to find a young boy of 12 or 13 who she can date and start a very discreet relationship with. Teach him all about sex and try to get him interested in X-dressing, because she enjoy seeing me and my friends X-dress. She still loves to watch my XXX movis [sic] and look at my pictures and dirty books.

I do not have any poto's [sic] of Karen at this time. When I take the photos of her and me, I always call this friend of mine who is like you and I and he takes them and protects them for me. He has a large selection of other photos also of both young boys and girls that are to be cherished.

Instead of me sending photos through the mail I would love to be able to get together with you and exchange photos together in person.

Clasby goes on to discuss my coming to his house to take photographs of Karen, and states that "we share a very uncommon desire and one that is

very very taboo in our society." He provided his home telephone number again, and said if I called to ask for "Bill". He asked "Do you like to eat pussy? ... I am sure I can fit you in for some fun and pleasure. Let's to it together! "

28. I responded to Clasby's February 28, 1986 letter on May 7, 1986, utilizing my undercover identity. I told him I'd made contact with a great source for photos of a ten-year-old girl in various positions on a bed, some giving an older friend "great head." I said I'd call him and try to arrange a get-together to exchange "items of interest." I also enclosed a photocopy of a photograph of Karen Clasby, described above in paragraph fourteen as photograph #6.

29. I did not receive any response to my May 7, 1986 letter to Clasby, so I wrote him again using my undercover identity on June 18, 1986. I asked him why I hadn't heard from him, gave him my "home" address, and provided him with an ad for cross-dressing clothing.

30. On June 25, 1986, I received a three-page handwritten letter from Chester Clasby at my undercover "home" address, dated June 20 and postmarked June 21, 1986. In it, Clasby said that he was "caught in the act" by his wife about three months earlier, and that he believed his mail was being opened up in Boston, and that he was suffering from fluid in his lungs. He state that "The one thing we were going to share is going away to private school to finish the last year and will be far away from me." He thanked me for my "little insert" and stated he'd be giving up everything "including the thing we have in common."

31. Based on my training and experience, I know that pornography collectors use euphemisms to describe sexually explicit conduct. The euphemisms and their meaning can be described as follows:

B & D: bondage and discipline  
golden showers: urination

French: oral sex (fellatio or cunnilingus)  
Greek: anal sex  
water sports: urination on other people  
honey pots: female genitals or pubic areas  
golden cocktails: urinating in a person's mouth

32. I have received training from pediatricians and pediatric endocrinologists on the various stages of child sexual development and the characteristics of puberty in boys and girls. I am familiar with the signs of puberty and of early and late pubescence in both boys and girls, and have spent hours discussing and examining photographs of children with experts regarding this matter. I am familiar with the Tanner scale, which is a scale commonly used by pediatricians to measure a child's growth and development, measuring both primary and secondary sex characteristics at each of several defined and described stages of development. I believe that I am competent to examine photographs of genitalia and to determine whether a prepubertal child is depicted therein. I have examined thousands of such photographs, as well as thousands of photographs of teenagers' genitals in child pornography films, movies, photographs and magazine reproductions.

33. Also recovered during the search of Long's residence were forty photographs depicting Long engaging in sexually explicit conduct with two prepubertal children. The conduct depicted includes oral-genital and genital-genital contact, fondling, masturbation, cunnilingus and Long ejaculating on one of the children. Five other photographs seized during this search depict one of the same prepubertal children with her vagina, anus and genitals exposed in lewd and a lascivious manner. Using the same standards previously described, I believe all of these photographs are legally obscene within the meaning of Malibu v. California and 18 U.S.C., Section 1461.

34. Patrick L. Long was arrested on May 19, 1983 and indicted May 25, 1983, on five counts of violating Title 18, United States Code, Section

i461 (Mailing Obscene Photographs). On June 6, 1983 Long and Joseph Lunnin of Stoughton, MA, were indicted by the State of Massachusetts on three counts each for the rape of a child. Lunnin was the father of two of the children whom Long was photographed with while Long was engaging in sexually explicit conduct with them. It was for the mailing of these photographs that Long was charged in the federal indictment. On August 9, 1983 Patrick Long entered a guilty plea to each of the five counts of the federal indictment. He was sentenced to serve three years on September 27, 1983. He subsequently entered a guilty plea to the state charges and received a 7-15 year state prison sentence, which was to be served concurrently with his federal sentence.

35. On April 1, 1986, I interviewed Patrick Long. He advised me that he recalled corresponding with a man identifying himself as "Bill Carney, P.O. Box 389, Southboro, MA" prior to the search of Long's residence and his arrest in May of 1983. He further advised me that the six (6) original Polaroid photographs of Karen Clasby described previously in paragraphs twelve through fourteen of this affidavit were in fact received by him through the mail from "Bill Carney" in Southboro, MA. Long stated he was not sure whether the four (4) duplicate polaroid photographs of Karen Clasby described above were received from "Bill Carney" or whether he, Long, had himself made the duplicates utilizing original polaroid photographs of Karen Clasby received from "Bill Carney." Long further stated that it was his belief that the prepubescent female depicted in these polaroids was in fact "Bill Carney's" daughter. Long additionally stated that he had also mailed on several occasions throughout his correspondence with "Carney" the original or duplicates of the original polaroid photographs of the two prepubertal children depicted in the forty-five photographs seized during the search of Long's residence and described above in paragraph thirty-three of this affidavit. Long also confirmed that he used P.O. Box 26, Watertown, MA 02172 to receive these letters



and photographs.

36. On January 29, 1986, I went to 202 Parkerville Road in Southboro, MA, carrying a concealed recording device and transmitter. I met with Chester Clasby using the undercover identity I had established through my correspondence with "Bill Carney" a/k/a Chester Clasby. I observed that his house was as I described it above in paragraph two of this affidavit. He introduced himself to me as "Chet," and stated that it would be difficult to talk because he had several business associates present in his house. I asked to use his bathroom, which he then led me to. I observed that this bathroom was identical to that pictured in the photograph of Karen Clasby previously described above in paragraph fourteen as photograph #4. After using the bathroom, I was able to observe the doorway into the master bedroom, and could see enough of the bed to recognize that it was the same bed covered by the same bedspread depicted in the photographs of Karen Clasby previously described above in paragraphs thirteen and fourteen as photographs #3 and #6. I was further able to observe that the flowered wallpaper in this bedroom was the same as that depicted in the photograph of Karen Clasby previously described above in paragraph fourteen as photograph #5.

37. During the undercover meeting with Clasby at his residence he stated that he was still utilizing his "Mass Ave" mailing address in Boston. He further stated that he believed mail he had been receiving through his Southboro P.O. Box was being opened by someone. He stated:

I went in and talked to the guy...some shit  
came in from Japan...and somebody grabbed  
it.

I asked him whether the material from Japan was "Child Stuff", "Kid Stuff" to which he responded:

Yea.

He further stated when questioned as to when this happened:

Back when I told you, last year.

In a further discussion of the safety of mailing to the Mass. Ave. mail receiving agency he stated:

I talked to the guy in there.

I advised Clasby that I had a set of polaroids and inquired as to his interest to which he responded.

Yeah, allright.

He further stated:

I'm trying to get away from that scene.

I stated to him "ya but you had it made here at home" to which he responded:

I did, but it was stupid.

I asked him whether it was over and he responded:

Oh yea, definitely.

Clasby stated when asked whether his wife ever found out about his involvement with their daughter he stated:

She just said you know...A few things, found out in this shit you know...because I had got caught before.

Clasby went on to advise me he had been involved with a child that had lived in their home for a year as a "ward of the state" and that his wife had found out. He advised that he had been convicted in State Court in 1969 for these actions and received five years probation.

He went on to state:

Then it came up again...I got caught with this other shit coming into Southboro.

When further questioned as to what his wife knew about his involvement with their daughter he stated:

She started finding out...Then she said this is enough of this shit...I though you were all over this shit.

Clasby confirmed that the young female I observed sitting in the living room was his daughter Karen.

When asked when he had last been with his daughter he responded:

Years ago.

He further stated:

I found out a couple of places ok, a place up in York that deals in this shit...you know you can meet a lot of contacts that way...I can get you the address...in other words you meet contacts...people that deal in it, you know that are into it, not deal in it, into it.

When asked whether he had any more pictures of Karen, he stated:

No, that's clean fresh out, all that shit...I got rid of it when he (Long) got busted...you wouldn't believe the shit we had...I'm not talking one or two things I'm talking hundreds of shit.

When asked whether he had received any of Long's pictures of "the little young kids, the eight year olds", he responded:

Yea, he sent me a lot of that shit.

I advised Clasby that I had been concerned because I was receiving pictures from Long right up until 1983 when he got in trouble and inquired as to whether Clasby was as well, to which he responded:

Yea...those were beautiful, those were great...All that shit he (Long) had, ok, wasn't from him, that was from out in, that was from out Midwest...because I saw others through other people I was tied up with, same fucking photos, all the same photos.

I asked Clasby whether he had any current names for me to which he responded:

I can, I can get you a hold of them if I can think of them again.

I advised Clasby that the photograph I sent him was received from Long to which he responded:

Yea.

He confirmed that he had received a photocopy from me, and not the original polaroid, and I asked what he had mailed Long to which he responded:

Just the pictures I was taking earlier.

When asked if these were pictures of his daughter Karen he responded:

Yea...Yea.

I inquired as to whether he had taken the pictures of Karen alone or if Long was with him to which he responded:

No, alone, no not with him, no way, shit no...but he got some of them.

I asked Clasby whether his wife knew he was taking pictures of Karen at home to which he responded:

No, not at then, but she found out later...last year.

When asked whether he had any pictures I might be interested in Clasby stated:

I don't have any pictures. I just got information you might be interested in.

I asked Clasby whether he was interested in seeing some "Lolita" 8 mm films of 8-9 year olds that I had on VCR tapes to which he responded:

Ya, Jesus, bring them down, let's look at them.

38. Inquiry of the Southboro, MA Post Office determined that P.O. Box 389 was opened on November 17, 1972 in the name of Chester F. Clasby, Jr. A residence address of 202 Parkerville Road, Southboro, MA and residence telephone number 485-1584 was provided. Inquiry of the New England Telephone Company disclosed that telephone number (617) 485-1584 is listed to Chester F. Clasby, 202 Parkerville Road, Southboro, MA. Inquiry of the Registry of Motor Vehicles disclosed that license number 017 28 6338 is assigned to Chester F. Clasby, date of birth May 22, 1937, 202 Parkerville Road, Southboro, MA. It was further determined that license number 012 62 8663 is assigned to Alison Clasby, age 21, of 202 Parkerville Road, Southboro, MA. Inquiry of the Southboro, MA Police Department disclosed that Alison Clasby is listed in the town directory as a college student residing at home. Clasby informed me during the undercover meet that his oldest daughter was a student at "Roger Williams College". Chester Clasby is listed as a Land Surveyor residing at 202 Parkerville Road. Inquiry of the Southboro school system determined that Karen Clasby is a student in the Algonquin Regional High School which serves Southboro.

39. Personal review of the letters and envelopes described in paragraphs 8, 9, 10, 11, 16, 17, 20, 22, 25, 27 and 30 of this affidavit disclosed similarities in the handwriting and printing appearing thereon.

40. I have probable cause to believe that the items sought to be seized as more particularly described above in paragraph three are property that constitutes evidence of the commission of criminal offenses, and property designed and intended for use and which has been used as means of committing criminal offenses, including evidence of intent, motive, plan, design, predisposition, absence of mistake,

knowledge, identity of co-conspirators, identity, identity of victims of criminal offenses and witnesses to criminal conduct, in violation of Title 18, U.S.C., Sections 2, 371, 1461, 2251 and 2252, by Chester Clasby and other individuals known and unknown.

41. While in Chester Clasby's Southboro residence, I observed Karen Clasby, his daughter, seated in the livingroom. She is the same person depicted in the previously described six poses as "Karen Clasby", although she now appears to be approximately fifteen or sixteen years old. Clasby stated to me that this was his daughter, Karen.

42. Based on the above, I have probable cause to believe that Chester Clasby has committed a violation of Title 18, U.S.C., Section 1461, in that he received obscene photographs of prepubertal children engaging in sexually explicit conduct with Patrick Long sometime in the late Spring of 1982, these photographs having been mailed by Patrick Long, as more particularly described above. I also have probable cause to believe that Chester Clasby has committed a violation of Title 18, U.S.C., Section 2252(a)(2)(Supp.II 1984), in that on or about May 8, 1986, he knowingly received a visual depiction of a minor engaging in sexually explicit conduct, that is a copy of a photograph of a person under the age of eighteen engaging in the lascivious exhibition of her genitals and pubic area, such depiction having been mailed to: Chet Clasby, 89 Mass. Ave., Box 158, Boston, MA 02115. This photograph is in fact a photograph of Karen Clasby, taken by Chester Clasby when Karen was approximately nine or ten years old. This same photograph had been previously mailed by Chester Clasby to Patrick Long as set forth more particularly above, and had then been seized during the

search of Patrick Long's residence in 1983.

---

John G. Dunn, Jr.  
U.S. Postal Inspector

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 1987.

---

Lawrence P. Cohen  
U.S. Magistrate

[Redacted]  
[Redacted]  
[Redacted]

# Resource Materials

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## Child Abuse Search Warrants in Texas

Presented by  
Becky McPherson, J.D.



AMERICAN PROSECUTORS RESEARCH INSTITUTE'S  
NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE  
BASIC TRAINING FOR CHILD ABUSE PROSECUTORS

CHILD ABUSE SEARCH WARRANTS  
IN TEXAS

Presented By:

BECKY MCPHERSON  
110th Judicial District Attorney  
Floyd County Courthouse  
Floydada, Texas 79235  
806-983-2197  
(Fax) 806-983-2400

# APPLICABLE TEXAS STATUTES ON CHILD ABUSE

## PENAL CODE

|                |  |
|----------------|--|
| Section 21.11  | Indecency with a Child                       |
| Section 22.011 | Sexual Assault                               |
| Section 22.021 | Aggravated Sexual Assault                    |
| Section 22.04  | Injury to a Child                            |
| Section 22.041 | Abandoning or Endangering a Child            |
| Section 22.10  | Leaving a Child in a Vehicle                 |
| Section 25.02  | Incest                                       |
| Section 25.06  | Solicitation of a Child                      |
| Section 43.25  | Sexual Performance by a Child                |
| Section 43.251 | Employment Harmful to Minors                 |
| Section 43.26  | Possession or Promotion of Child Pornography |

## CODE OF CRIMINAL PROCEDURE

|                 |  |
|-----------------|--|
| Chapter 18      | Search Warrants  |
| Article 12.01   | Statute of Limitations   |
| Article 17.41   | Conditions of Bond Where Child Alleged Victim                          |
| Article 24.011  | Subpoenas - Child Witnesses  |
| Article 27.072  | Abused Children's Counseling Account                                   |
| *Article 38.071 | Testimony of Child Who is Victim of Offense                            |
| Article 38.072  | Hearsay Statement of Child Abuse Victim                                |
| Article 42.12   | Probation  |
| Section 3g      | Aggravated Sexual Assault not Eligible for Probation<br>from the Judge |
| Section 11(f)   | Pay for Victim's Counseling  |
| Section 14      | Special Conditions for Child Abusers                                   |
| Article 42.151  | Fees for Abused Children's Counseling                                  |
| Article 57.02   | Confidentiality of Identifying Information of Sex<br>Offense Victims   |

## RULES OF CRIMINAL EVIDENCE

|              |  |
|--------------|--|
| Rule 404(b)  | Extraneous Offenses  |
| Rule 412     | Evidence of Previous Sexual Contact                                      |
| Rule 504     | Husband and Wife Privilege (no privilege with<br>child victim)           |
| Rule 601     | Competency of Witness to Testify   |
| Rule 902(10) | Business Records (use to file medical records for<br>doctor's testimony) |

\*Article 38.071 of the Code of Criminal Procedure has been held to be unconstitutional. Long v. State (Cr. App. 1987) 742 S.W.2d 302, certiorari denied 108 S.Ct.1301, 99 L.Ed.2d 511, Section 2 unconstitutional; Powell v. State (Cr. App. 1989) 765 S.W.2d 485, Sections 4 and 5 unconstitutional; Ex Parte Hemby (Cr. App. 1989) 765 S.W.2d 791, Long retroactive.

VOLUNTARY CONSENT TO SEARCH

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, 19\_\_

I, \_\_\_\_\_, after being duly warned by \_\_\_\_\_, a peace officer of \_\_\_\_\_ County, Texas, that I do not have to give consent to a search of \_\_\_\_\_, without a search warrant, and further that:

- (1) I have the right to remain silent and not make any statement at all and that any statement I make may be used against me at my trial;
- (2) Any statement I make may be used as evidence against me in Court;
- (3) I have the right to have a lawyer present to advise me prior to and during any questioning;
- (4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; and
- (5) I have the right to terminate the interview at any time,

do voluntarily give my consent to a search of \_\_\_\_\_, without a search warrant to the person(s) who gave me the warnings aforesaid.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

PERMISSION TO SEARCH

I, the undersigned, residing at \_\_\_\_\_  
\_\_\_\_\_ do hereby voluntarily authorize \_\_\_\_\_  
and other officers he may designate to assist him, to search my residence (or other real  
property) located at \_\_\_\_\_ and my motor  
vehicle, namely my \_\_\_\_\_ (year model and make)  
bearing license plate number \_\_\_\_\_ of the State of \_\_\_\_\_,  
presently parked or located at \_\_\_\_\_ and  
I further authorize said officers to remove from my residence, real estate and/or motor  
vehicle, whatever documents, or items of property whatsoever which they deem pertinent to  
their investigation, with the understanding that said officers will give me a receipt for  
whatever is removed.

I am giving this written permission to these officers knowingly, intelligently and  
voluntarily, without any threats or promises having been made, and after having been informed  
by said officer that I have a right to refuse this search and/or seizure.

\_\_\_\_\_  
Signature of Person Authorizing Search

Witness: \_\_\_\_\_  
(Person Who is Authorized to Search)

List of Property taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Witness: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorizing Search

\_\_\_\_\_  
Signature of Officer Receiving Property

VOLUNTARY CONSENT FOR TESTING

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, after being duly warned by \_\_\_\_\_, a peace officer of \_\_\_\_\_ County, Texas, that I may refuse to voluntarily provide

- (a) a sample of my saliva,
- (b) a sample consisting of approximately 5cc of my blood,
- (c) samples of hair from my head and body, and
- (d) samples of my pubic hair,

for the purpose of forensic testing, without a search warrant, and further that:

(1) I have the right to remain silent and not make any statement at all and that any statement I make may be used against me at my trial;

(2) Any statement I make may be used as evidence against me in Court;

(3) I have the right to have a lawyer present to advise me prior to and during any questioning;

(4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; and

(5) I have the right to terminate the interview at any time,

do voluntarily provide these samples without an order of the Court, and I knowingly, intelligently, and voluntarily agree to allow a qualified technician to obtain said samples from my body for the purpose of forensic testing and comparison.

I have been informed that \_\_\_\_\_ has made an allegation that I caused her to perform sexual acts with me against her will.

I understand that in signing this form of consent I am not making admission to any allegations which have or have not been made against me nor which may or may not be made at a later date.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

AFFIDAVIT FOR SEARCH AND ARREST WARRANT

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

The undersigned Affiant, being a Peace Officer under the laws of Texas and being duly sworn, on oath makes the following statements and accusations:

1. THERE IS IN \_\_\_\_\_ COUNTY, TEXAS, A SUSPECTED PLACE AND PREMISES DESCRIBED AND LOCATED AS FOLLOWS:

2. THERE IS AT SUSPECTED PLACE AND PREMISES PROPERTY CONCEALED AND KEPT IN VIOLATION OF THE LAWS OF TEXAS AND DESCRIBED AS FOLLOWS:

3. SAID SUSPECTED PLACE AND PREMISES ARE IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING PERSONS:

4. IT IS THE BELIEF OF AFFIANT AND HE HEREBY CHARGES AND ACCUSES, THAT:

5. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS:

WHEREFORE, Affiant asks for issuance of a warrant that will authorize him to search said suspected place and premises for said property and seize the same and to arrest each said described and accused person.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me by said Affiant on this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1990.

\_\_\_\_\_  
Magistrate, \_\_\_\_\_ County, Texas

SEARCH WARRANT

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

THE STATE OF TEXAS to the Sheriff or any Peace Officer of \_\_\_\_\_ County, Texas, or any Peace Officer of the State of Texas,

GREETINGS:

WHEREAS, the Affiant whose signature is affixed to the Affidavit appearing within hereto is a Peace Officer under the laws of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said affidavit is by this reference incorporated herein for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant:

NOW, THEREFORE, you are commanded to enter the suspected place and premises described in said Affidavit and to there search for the property and items described in said Affidavit and to seize the same and bring it before me. Herein fail not, but have you then and there this Warrant within three days exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

ISSUED AT \_\_\_\_\_ o'clock \_\_\_\_\_. M. on this the \_\_\_\_\_ day of \_\_\_\_\_, 1990, to certify which witness my hand this day.

Magistrate, \_\_\_\_\_ County, Texas

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

The undersigned Affiant, being a Peace Officer under the laws of Texas and being duly sworn, on oath certifies that the foregoing Warrant came to hand on the day it was issued and that it was executed on the \_\_\_\_\_ day of \_\_\_\_\_, 1990, by making the search directed herein and by arresting and placing in jail each of the following parties:



and by seizing during such search the following described property:

\_\_\_\_\_  
Affiant

SUBSCRIBED AND SWORN to before me, the undersigned authority,  
on this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1990.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

My commission expires: \_\_\_\_\_.

SEARCH WARRANT

THE STATE OF TEXAS  
COUNTY OF [REDACTED]

§  
§

THE STATE OF TEXAS to the Sheriff or any Peace Officer of [REDACTED] County, Texas, or any Peace Officer of the State of Texas,

GREETINGS:

WHEREAS, [REDACTED], a Peace Officer under the laws of Texas and did heretofore this day subscribe, swear to and present this Honorable Court with an Affidavit requesting authority to search for and seize property or items located at a suspected place and premises, that being:

A single story, single family residential structure located at [REDACTED] Avenue in [REDACTED], [REDACTED] County, Texas. Said residential structure is the fourth residence on the West side of the [REDACTED] block of [REDACTED] Avenue South from the intersection of [REDACTED] Street and [REDACTED] Avenue. The numerals [REDACTED] are painted on the curbing in front of the residence at the driveway. The structure is constructed with white brick. The roof is constructed using wooden shingles and the house is trimmed in a dark brown. The garage to the residence faces East onto [REDACTED] Avenue and the entrance to the residence is located through an ornamental iron gate located on the North side of the residence and that separates [REDACTED] from [REDACTED]. Together with any and all motor vehicles, including but not limited to a [REDACTED] automobile displaying Texas motor vehicle registration plates numbered [REDACTED], and a two tone gold colored [REDACTED] automobile with Texas motor vehicle registration plates numbered [REDACTED]. And, to further include any and all storage bins, storage places, garbage receptacles, and all places on said premises of said structures, all located in [REDACTED] County, Texas.

WHEREAS I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant:

NOW, THEREFORE, you are commanded to enter the suspected place and premises described herein above, and to there search for the property or items described in said Affidavit, those being:

- a) Camera equipment and accessories consistent with the types and styles of photographs located which explicitly depict children in sexually explicit positions

- b) Photographs depicting children in sexually explicit positions
- c) Negatives of photographs depicting children in sexually explicit positions
- d) Photographic slides depicting children in sexually explicit positions
- e) Reproduced images depicting children in sexually explicit positions
- f) Exposed but as of yet undeveloped or processed film
- g) Various correspondence and records of any kind reflecting the ordering, receipt, shipping, and payment for child pornography; which are the fruits, instrumentalities and evidence of the offenses of inter-state transportation and mailing of child pornography, and the unlawful importation of child pornography, in violation of 18 U.S.C. 2252 and 545, and 19 U.S.C. 1305, and 18 U.S.C. 1461 and 1462.
- h) The clothing depicted and worn by the children in the film images aforementioned.

and to seize the same and bring it before me.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

ISSUED AT \_\_\_\_\_ o'clock p.m., on this the \_\_\_\_\_th day of \_\_\_\_\_ A.D. 19\_\_\_\_, to certify which witness my hand this day.

\_\_\_\_\_  
JUDGE PRESIDING  
\_\_\_\_\_  
County, Texas

AFFIDAVIT FOR SEARCH AND ARREST WARRANT

THE STATE OF TEXAS  
COUNTY OF [REDACTED]

§  
§

The undersigned Affiant, being a Peace Officer under the laws of Texas, and being duly sworn, on oath makes the following statements and accusations:

1. THERE IS IN [REDACTED] COUNTY, TEXAS, A SUSPECTED PLACE AND PREMISES DESCRIBED AND LOCATED AS FOLLOWS:

A single story, single family residential structure located at [REDACTED] Avenue in [REDACTED], [REDACTED] County, Texas. Said residential structure is the fourth residence on the West side of the [REDACTED] block of [REDACTED] Avenue South from the intersection of [REDACTED] Street and [REDACTED] Avenue. The numerals [REDACTED] are painted on the curbing in front of the residence at the driveway. The structure is constructed with white brick. The roof is constructed using wooden shingles and the house is trimmed in a dark brown. The garage to the residence faces East onto [REDACTED] Avenue and the entrance to the residence is located through an ornamental iron gate located on the North side of the residence and that separates [REDACTED] from [REDACTED]. Together with any and all motor vehicles, including but not limited to a [REDACTED] automobile displaying Texas motor vehicle registration plates numbered [REDACTED], and a two tone gold colored [REDACTED] automobile with Texas motor vehicle registration plates numbered [REDACTED]. And, to further include any and all storage bins, storage places, garbage receptacles, and all places on said premises of said structures, all located in [REDACTED], [REDACTED] County, Texas.

2. THERE IS IN OR ON SAID SUSPECTED PLACE AND PREMISES PROPERTY OR ITEMS OF EVIDENTIARY VALUE CONCEALED, KEPT, AND DESCRIBED AS FOLLOWS:

- a) Camera equipment and accessories consistent with the types and styles of photographs located which explicitly depict children in sexually explicit positions
- b) Photographs depicting children in sexually explicit positions
- c) Negatives of photographs depicting children in sexually explicit positions
- d) Photographic slides depicting children in sexually explicit positions
- e) Reproduced images depicting children in sexually explicit positions

Page \_\_\_\_\_ of \_\_\_\_\_ attached hereto and is by this reference incorporated for all purposes.

- f) Exposed but as of yet undeveloped or processed film
- g) Various correspondence and records of any kind reflecting the ordering, receipt, shipping, and payment for child pornography; which are the fruits, instrumentalities and evidence of the offenses of inter-state transportation and mailing of child pornography, and the unlawful importation of child pornography, in violation of 18 U.S.C. 2252 and 545, and 19 U.S.C. 1305, and 18 U.S.C. 1461 and 1462.
- h) The clothing depicted and worn by the children in the film images aforementioned.

3. SAID SUSPECTED PLACE AND PREMISES IS IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING PERSONS:

a) \_\_\_\_\_

4. YOUR AFFIANT STATES THAT AN OFFENSE HAS BEEN COMMITTED, TO-WIT:

- a) Sexual Performance by a Child, a 2nd degree felony
- b) Indecency with a Child, a 2nd degree felony

5. YOUR AFFIANT STATES THAT THE SPECIFICALLY DESCRIBED PROPERTY OR ITEMS THAT ARE TO BE SEARCHED FOR OR SEIZED CONSTITUTE EVIDENCE THAT THE OFFENSE OF SEXUAL PERFORMANCE BY A CHILD AS ALLEGED WAS COMMITTED AND THAT THE SAID \_\_\_\_\_ COMMITTED THAT OFFENSE.

6. YOUR AFFIANT STATES THAT THE PROPERTY AND ITEMS CONSTITUTING EVIDENCE ARE LOCATED IN OR ON THE ABOVE DESCRIBED SUSPECTED PLACE AND PREMISES OR ON THE PERSON OF \_\_\_\_\_, THE PLACE AND PERSON TO BE SEARCHED.

7. IT IS THE BELIEF OF AFFIANT, AND HE HEREBY CHARGES AND ACCUSES THAT:

I.

That \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in \_\_\_\_\_ County, Texas, did then and there, knowing the character and content of the material, intentionally and knowingly induce \_\_\_\_\_, a child younger than seventeen (17) years of age to engage in a sexual performance, to-wit: a motion picture depicting the said \_\_\_\_\_ engaging in sexual intercourse.

II.

Further, that \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in \_\_\_\_\_ County, Texas, did then and there intentionally, with the intent to arouse and gratify the sexual desire of \_\_\_\_\_, engage in sexual

contact by touching the breast of [REDACTED], a child younger than 17 years and not the spouse of [REDACTED].

8. THE AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS:

a) Affiant, [REDACTED], is a peace officer under the laws of the State of Texas, and is employed with the [REDACTED] County Sheriff's Office.

b) On [REDACTED], 19[REDACTED], Affiant was contacted by [REDACTED] concerning her minor daughter having been sexually involved with [REDACTED]. During the course of that conversation, [REDACTED] stated in part as follows:

1. That she had heard that [REDACTED] had video taped her daughter, [REDACTED], performing sexual acts.

2. That [REDACTED] had started calling her on the phone this past weekend and that during one of their conversations she told him that she knew about him making the sexually explicit video tape involving [REDACTED].

3. That [REDACTED] admitted making the video tape of [REDACTED].

4. That [REDACTED], in a telephone conversation, told her that he wanted to meet and talk with her to explain to her what had happened and how he loved [REDACTED] and wanted to marry [REDACTED].

c) [REDACTED] informed Affiant that she had set up a meeting with [REDACTED] at 1:00 p.m. at a church located on the corner of [REDACTED] Street and [REDACTED]. Affiant met with [REDACTED] prior to that scheduled meeting and she was equipped with a transmitting wire. Affiant enlisted the assistance of fellow peace officers, who are known by Affiant to be credible and reliable, for the purpose of maintaining a surveillance of the meeting of [REDACTED] with [REDACTED]. The assisting peace officers and their duties included the following:

- [REDACTED] - visual surveillance and electronic monitoring of the conversation of [REDACTED] and [REDACTED]
- [REDACTED] - visual surveillance and electronic monitoring of the conversation of [REDACTED] and [REDACTED]
- [REDACTED] - visual surveillance

d) Affiant personally observed [redacted] meet with [redacted] in the parking area of the church located in the block of [redacted] at approximately 1:00 p.m. on [redacted], 19[redacted]. [redacted] was driving a blue [redacted] two door automobile. The meeting lasted approximately forty minutes. After the meeting, Affiant, [redacted], and the assisting peace officers met at the [redacted] offices of the Texas Department of Public Safety. During the course of that meeting, [redacted] and [redacted] informed Affiant that they were able to monitor the conversation between [redacted] and [redacted] by means of the transmitting wire. [redacted] was involved in the discussion and her statements concerning her conversation with [redacted] coincided with what was overheard by [redacted] and [redacted]. During the conversation with Affiant, [redacted] and [redacted] told Affiant that [redacted] had stated in part as follows:

1. That he had "had sex" with [redacted]
2. That he had video taped him "having sex" with [redacted]
3. That he had "had sex" with [redacted] on more than one occasion
4. That he got his excitement from video taping having sex
5. That in response to [redacted]'s inquiry he stated that he knew [redacted] was only fifteen years of age

e) On [redacted], 19[redacted], Affiant interviewed [redacted]. During the course of that interview, [redacted] stated in part as follows:

1. Approximately one month ago [redacted] asked if she wanted to work at [redacted] s.
2. That she went to work serving liquor at [redacted]'s and while there [redacted] asked [redacted] if she had any friends who would be interested in making any films.
3. That [redacted] specifically asked about ten or eleven year old girls.
4. That [redacted] called a friend of her's, [redacted] who she believed to be sixteen years old, and they met [redacted] at the [redacted]
5. That [redacted] and [redacted] went to [redacted]'s room and found that he had two cases of beer and a fifth of Crown Royal alcoholic beverage.

6. That [redacted] gave [redacted] and [redacted] the alcoholic beverages to drink.
7. That [redacted] brought up the subject of making films and told [redacted] and [redacted] that the films would be sent to Europe to be sold.
8. That [redacted] told them they would be paid \$3,300 at the time the film was made and \$30,000 after the films were sold.
9. That at first [redacted] and [redacted] lay on the bed with their swimming suits on and that [redacted] told them that there needed to be more action.
10. That [redacted] told [redacted] and [redacted] to take their tops off and fondle themselves.
11. That [redacted] left the room for about thirty minutes and when she came back she saw [redacted] undressed on the bed.
12. That [redacted] told [redacted] that [redacted] was trying to get her to go to bed with him and that she had gone to bed with [redacted] two times previously.
13. That [redacted] undressed and got into the bed with [redacted] and [redacted] asked [redacted] and [redacted] to play with themselves.
14. That [redacted] had a video camera he was filming them with.
15. That at this point [redacted] set the camera for continual operation, got undressed, and got into the bed with them.
16. That after [redacted] got into bed with them [redacted] asked [redacted] to "give him head" but that she refused.
17. That when he insisted she pretended to perform the sex act without his penis actually penetrating her mouth.
18. That [redacted] asked [redacted] to "screw him" and that they then had sex with [redacted] watching while the act was being video taped, and prior to having sex [redacted] had fondled her breast.
19. That the sex acts continued while they were being video taped.
20. That later [redacted] and [redacted] got dressed and left the [redacted].



21. That the next night [redacted] and [redacted] went to [redacted] s Club and saw [redacted] and that [redacted] told them that the man who was to buy the video tape was from [redacted] and that he had been arrested in [redacted].

22. That [redacted] and [redacted] continued to approach [redacted] about payment for making the video tape but he kept putting them off.

23. That when [redacted] and [redacted] asked [redacted] about payment, [redacted] threatened that he would make copies of the film and send it to their parents.

24. That [redacted] told [redacted] about how an eight year old girl they both knew was pretty and that he would like to "get hold of her" and how he wanted to make the eight year old a "whore for him" and how he wanted ten and eleven year old girls.

25. That [redacted] goes to [redacted] swimming pool trying to pick up young girls.

e) Affiant was informed by [redacted], a fellow peace officer, that he checked with the personnel of the [redacted] and found that [redacted] had checked into the [redacted] on the [redacted] day of [redacted], 19[redacted]. Further, that the [redacted] personnel stated that the vehicle [redacted] registered as driving was a [redacted] light brown or gold in color.

f) [redacted] provided Affiant a telephone number she said belonged to [redacted]. That telephone number was [redacted]. Affiant states [redacted] obtained a subpoena for the billing information for that telephone number, [redacted], and that the service for that telephone number was billed in the name of [redacted] at the address of [redacted] Avenue in [redacted], Texas.

g) Affiant checked the records of the [redacted] County Sheriff's Office and found that [redacted] was arrested and booked into the [redacted] County Jail on [redacted], 19[redacted]. Affiant states the records reflect that at that time [redacted] reported his residence address as being [redacted], [redacted], Texas.

h) [redacted] informed Affiant that he had checked with the Driver's License division of the Texas Department of Public Safety and found that [redacted] had reported his address on his driver's license as being [redacted], [redacted], Texas.

i) [redacted] and [redacted] informed Affiant that they had personally observed a blue [redacted] two door automobile with Texas motor vehicle registration plates numbered [redacted] parked in the driveway of [redacted] Avenue at approximately 4:30 p.m. on [redacted], 19[redacted].

Affiant states that this is the same automobile [redacted] had been driving at the time he met with [redacted] at approximately 1:00 p.m. [redacted] 19[redacted] as described herein above. Further, that a two tone gold colored [redacted] automobile was also parked at the residence. Affiant states that this automobile matches the description of the automobile [redacted] was reportedly driving when he checked into the [redacted] on [redacted], 19[redacted].

j) I have received training and instruction from experts in the field of child pornography and pedofilia in schools and seminars covering child pornography and pedofilia. These experts have found that child pornographers and pedofiles almost always maintain and possess their material, that being pictures, films, video tapes, magazines, negatives, photographs, correspondence, mailing lists, books, etc., in the privacy and security of their own homes. My training and experience also indicates that pedophiles and child pornographers typically retain these items for many years.

k) Further, Affiant conferred with [redacted], a peace officer employed by the Texas Department of Public Safety and assigned as an investigator with the Intelligence Division, and found that he has received extensive training and instruction from experts in the field of child pornography and pedofilia in schools and seminars covering child pornography and pedofilia. [redacted] stated that those experts informed him they have found child pornographers and pedofiles almost always maintain and possess their material, that being pictures, films, video tapes, magazines, negatives, photographs, correspondence, mailing lists, books, etc., in the privacy and security of their own homes. Further, that his training and experience also indicates that pedophiles and child pornographers typically retain these items for many years.

i) It is the belief of Affiant that locating the items enumerated as items a) through h) in paragraph two (2) would be of significant evidentiary value tending to substantiate the allegation that [redacted] committed the offense of Indecency with a Child and Sexual Performance by a Child and in support of that belief would submit the following:

1) § 43.25, Texas Penal Code, addressing the offense of Sexual Performance by a Child, states in part as follows:

(b) A person commits an offense if:

(1) knowing the character and content thereof, he employs, authorizes, or induces a child younger than 17 years of age to engage in sexual conduct or a sexual performance.

- 2) Photographs and other types of image reproduction are items commonly accepted as valid methodology in the recording and documentation of situations and events for future reference.
- 3) Photographs and other types of image reproduction are produced and reproduced using camera equipment and accessories.
- 4) Photographs and other types of image reproduction are the media on which child pornography is recorded and stored.
- 5) Pedophiles keep and maintain child pornography for the purpose of visual stimulation.
- 6) In the case at hand, the fifteen year old victim is competent enough to provide investigators with information concerning [redacted]'s methodology of recording the explicit sex acts described herein above. Her testimony would be enhanced by locating the recording equipment used by [redacted] to record those explicit sex acts. Further, the child's testimony would be corroborated even more effectively if the actual recordings made by [redacted] at the [redacted] on the [redacted] day of [redacted] 19[redacted], as alleged by [redacted] and confessed by [redacted] on [redacted], 19[redacted], were located and preserved as items of evidence.

WHEREFORE, Affiant asks for issuance of a warrant that will authorize him to search said suspected place and premises, motor vehicles and the person of [redacted] for the property or items described in paragraph two (2) above and seize the same.

[redacted], Affiant

SUBSCRIBED AND SWORN to before me by said Affiant on this the [redacted] day of [redacted], A.D. 19[redacted].

JUDGE PRESIDING  
[redacted] COUNTY, TEXAS

SEARCH WARRANT RETURN AND INVENTORY

THE STATE OF TEXAS  
COUNTY OF [REDACTED]

§  
§

The undersigned Affiant, being a Peace Officer under the laws of the State of Texas and being duly sworn, on oath certifies that the foregoing Warrant, authorizing the search for and seizure of property or items from a suspected place and premises, that being a residential structure located at [REDACTED] in [REDACTED] County, Texas, and a [REDACTED] automobile with Texas vehicle registration number [REDACTED], came to hand on the day it was issued and that it was executed on the [REDACTED] day of [REDACTED], A.D. 19[REDACTED], by making the search directed therein, and during such search the following described property was seized:

FROM [REDACTED] - - -

- a) Two (2) rolls of 110 Film in closet of NW bedroom - by [REDACTED]
- b) One (1) box of slides from drawer in NW bedroom - by [REDACTED]
- c) One (1) brown cardboard box w/miscellaneous papers
- d) One (1) handwritten letter from top right dresser drawer in SW bedroom - by [REDACTED]
- e) One (1) envelope and letter from Stockholm Sweden
- f) One (1) empty Crown Royal burbon bottle & sack from hall closed - by [REDACTED]
- g) Fifty-seven (57) pages of check stubs numbered 1001 through 1171 from the kitchen table - by [REDACTED]
- h) One (1) 1989 brown colored planner calendar from living room table - by [REDACTED]
- i) One (1) July 1989 Western National Bank statement of account from the kitchen table - by [REDACTED]
- j) One (1) owners manual for a G.E. video camera/recorder from top of dresser in garage - by [REDACTED]

FROM CHEVROLET BERETA - - -

- k) One (1) restraint type receipt with adding machine tape
- l) Two (2) 8 1/2 x 11 3/4 writing legal pad with writing

Page \_\_\_\_\_ of \_\_\_\_\_ attached hereto and is by this reference incorporated for all purposes.

- m) One (1) beer cooler with 14 Coors beer bottles
- n) One (1) black cloth bag containing the following items
  - 1) One (1) pair brown high heel shoes
  - 2) One (1) pair blue high heel shoes size 7M
  - 3) One (1) container Vaseline Intensive Care baby lotion
  - 4) One (1) container Vaseline Intensive Care baty lotion, clear
  - 5) Nine (9) adult magazines
  - 6) One (1) jar Vaesline petroleum jelly

\_\_\_\_\_, Affiant

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

SEARCH WARRANT

THE STATE OF TEXAS §

COUNTY OF [REDACTED] §

THE STATE OF TEXAS to the Sheriff or any Peace Officer of [REDACTED] County, Texas, or any Peace Officer of the State of Texas,

GREETINGS:

WHEREAS, [REDACTED], a Peace Officer under the laws of Texas and did heretofore this day subscribe, swear to, and present this Honorable Court with an Affidavit requesting authority to search for and seize property or items located at a suspected place and premises, that being:

A single story, single family residential structure located at [REDACTED] Avenue in [REDACTED], Texas. Said structure is located on the West side of the roadway in the [REDACTED] block of [REDACTED] Avenue and the front of the structure faces to the East. The structure is white in color with a bluish colored trim.

To be included are all garages, storehouses, storage bins, garbage receptacles, and all buildings and structures appurtenant to said described premises, and all places on said premises of said structures and automobiles, all located in [REDACTED], [REDACTED] County, Texas.

WHEREAS I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant:

NOW, THEREFORE, you are commanded to enter the suspected place and premises described herein above, and to there search for the property or items described in said Affidavit, those being:

a) A baby bed complete, which is constructed of wood and is brown in color; including the following:

1. Mattress
2. Bumper pads
3. Sheets
4. Blankets
5. Suspension play toys

and to seize the same and bring it before me.

Herein fail not, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

ISSUED AT \_\_\_\_\_ o'clock \_\_\_\_ .m., on this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_, to certify which witness my hand this day.

\_\_\_\_\_  
JUDGE PRESIDING  
\_\_\_\_\_ County, Texas

AFFIDAVIT FOR SEARCH WARRANT

THE STATE OF TEXAS

§

COUNTY OF \_\_\_\_\_

§

The undersigned Affiant, being a Peace Officer under the laws of Texas, and being duly sworn, on oath makes the following statements and accusations:

1. THERE IS IN \_\_\_\_\_ COUNTY, TEXAS, A SUSPECTED PLACE AND PREMISES DESCRIBED AND LOCATED AS FOLLOWS:

A single story, single family residential structure located at \_\_\_\_\_ in \_\_\_\_\_ Texas. Said structure is located on the West side of the roadway in the \_\_\_\_\_ block of \_\_\_\_\_ and the front of the structure faces to the East. The structure is white in color with a bluish colored trim.

To be included are all garages, storehouses, storage bins, garbage receptacles, and all buildings and structures appurtenant to said described premises, and all places on said premises of said structures and automobiles, all located in \_\_\_\_\_, \_\_\_\_\_ County, Texas.

2. THERE IS IN OR ON SAID SUSPECTED PLACE AND PREMISES PROPERTY OR ITEMS, BEING EVIDENTIARY IN NATURE, CONCEALED AND KEPT AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

a) A baby bed complete, which is constructed of wood and is brown in color; including the following:

1. Mattress
2. Bumper pads
3. Sheets
4. Blankets
5. Suspension play toys

3. SAID SUSPECTED PLACE AND PREMISES ARE IN THE CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING PERSONS:

a) \_\_\_\_\_ and \_\_\_\_\_

4. YOUR AFFIANT STATES THAT AN OFFENSE HAS BEEN COMMITTED, TO-WIT:

Injury to a Child, a First Degree Felony

Page \_\_\_\_\_ of \_\_\_\_\_ attached hereto and is by this reference incorporated for all purposes.



5. YOUR AFFIANT STATES THAT THE SPECIFICALLY DESCRIBED PROPERTY OR ITEMS THAT ARE TO BE SEARCHED FOR OR SEIZED CONSTITUTE EVIDENCE THAT THE OFFENSE OF INJURY TO A CHILD AS ALLEGED WAS COMMITTED AND THAT [REDACTED] COMMITTED THAT OFFENSE.

6. YOUR AFFIANT STATES THAT THE PROPERTY AND ITEMS CONSTITUTING EVIDENCE ARE LOCATED IN OR ON THE ABOVE DESCRIBED SUSPECTED PLACE AND PREMISES TO BE SEARCHED.

7. IT IS THE BELIEF OF AFFIANT, AND HE HEREBY ACCUSES THAT:

[REDACTED], on or about [REDACTED] day of [REDACTED] A.D. 19[REDACTED], in the County of [REDACTED] and State of Texas, did then and there intentionally and knowingly engage in conduct that caused serious bodily injury to [REDACTED] a child younger than fourteen (14) years of age by subjecting the said [REDACTED] to a blunt force trauma, the manner and means of which are presently unknown to Affiant.

8. THE AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS:

a) Affiant, [REDACTED], is a Peace Officer under the laws of the State of Texas and is employed in good standing as an investigator assigned to the Juvenile Section of the Detective Division of the City of [REDACTED] Police Department.

b) Affiant states that on the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant was assigned to investigate the death of an individual who was identified as [REDACTED]. Affiant states that on the same date, in the course of his investigation, Affiant personally interviewed Dr. [REDACTED] who informed Affiant in part as follows:

1) That she was the attending physician in the treatment of [REDACTED];

2) That there were some bruises on the back of [REDACTED] head where were not presently explainable;

3) That it appeared [REDACTED] was brain dead at the time but that they would have to perform more tests to be positive;

c) Affiant states that on the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant was informed by personnel of the Pediatrics Intensive Care Unit at [REDACTED] Hospital that [REDACTED] had expired.

d) Affiant states that on the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant personally attended an autopsy performed on the body of [REDACTED] by Dr. [REDACTED]. Affiant states

that Dr. [REDACTED], upon completion of the autopsy, informed Affiant of his findings which were in part as follows:

- 1) [REDACTED] had a lacerated vertebrate which was the result of blunt force trauma to the C1 vertebrate;
- 2) There was bruising to the area of the lower head, upper neck which was consistent with the child having been subjected to blunt force trauma;

e) Affiant states that on the [REDACTED] day of [REDACTED], 19[REDACTED] Affiant was present at a inquest pertaining to the death of [REDACTED] and conducted by [REDACTED], the presiding Justice of the Peace for Precinct One Place One of [REDACTED] County, Texas. Affiant states that during said inquest [REDACTED] testified in part as follows:

- 1) That between 9:00 and 9:15 a.m. on [REDACTED] 19[REDACTED], she put [REDACTED] down for a nap;
- 2) That about an hour and a half later, when she went in to check on [REDACTED] she found him on his back in the same position she had left him but, she found him to be completely covered;
- 3) That she pulled the blanket down to see [REDACTED] face;
- 4) That she observed [REDACTED] face was blue;
- 5) That she took [REDACTED] to the kitchen to call the Emergency Medical Services, (EMS) and placed [REDACTED] on the kitchen floor;
- 6) That she surmised that the injuries to [REDACTED] could have been caused by falling in the bed because;
  - aa) [REDACTED] was unattended at the time of the injury, and
  - bb) [REDACTED] was "happy, alert and doing fine" prior to [REDACTED] finding him not breathing;
- 7) That EMS personnel and her husband, [REDACTED], arrived and that while the EMS attendants treated [REDACTED] and prior to their transporting [REDACTED] to [REDACTED] Hospital, she and [REDACTED] left and went to [REDACTED] parent's residence.

f) Affiant states that on the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant met with Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] and that during the course of the meeting Dr. [REDACTED] stated in part as follows:

- 1) That the bruises to the back of the head could very well be connected to the injury to the vertebrate;
- 2) That due to the severity of the injury, the bruising pattern, and the mobility factor of a child the age of [redacted], the conjecture that the injury was due to the child falling in the bed was remote;
- 3) That if the child did fall in the baby bed and therefore sustained the injury to the C1 vertebrate, how was it that the child was found covered;

Affiant states that Dr. [redacted] stated in part as follows:

- 1) That it was possible but highly improbable that the injuries to [redacted] would be consistent with [redacted] falling in his bed; and
- 2) Further investigation would be necessary to make a more factual determination as to the manner and means by which the injuries were inflicted.

Affiant states that Dr. [redacted] stated in part as follows:

- 1) In her medical opinion, it would take greater force to produce the injuries sustained by [redacted] than that force normally experienced in the average fall of a child in a baby bed.

g) Affiant states that on the [redacted] day of [redacted], 19[redacted], Affiant obtained from [redacted] a consent to the search of her residence located at [redacted] in [redacted] County, Texas. Affiant states that the consent was executed by [redacted] in the presence of [redacted]'s legal representative. Affiant states that during the consensual search, Affiant obtained the following:

- 1) Measurements of [redacted]'s bed;
- 2) Photographs of the bed; and
- 3) As [redacted] explained the events of [redacted] as they pertained to the injuries to [redacted], Affiant and [redacted] reenacted those events and her observations leading up to and after her discovery of [redacted]'s condition.

Affiant states that [redacted]'s explanation on the [redacted] day of [redacted], 19[redacted], was inconsistent with her explanation given during the inquest described herein above in that during the inquest [redacted] stated that she found [redacted]'s body in essentially the same position as she had left him. And, on [redacted]th, [redacted], as Affiant reenacted the events at her

direction, stated that [redacted] was found in a completely different position.

h) Affiant states that on the [redacted] day of [redacted], 19[redacted], Affiant personally interviewed Dr. [redacted]. Affiant provided Dr. [redacted] with photographs of [redacted]'s baby bed and measurements of the bed for the purpose of reviewing and discovering plausible causes of [redacted]'s injuries.

Affiant states that after reviewing the photographs and measurements and considering their relationship to [redacted]'s account of the manner and means of [redacted]'s injury, it was Dr. [redacted]'s opinion, that from an investigative standpoint, it would be necessary to utilize [redacted]'s bed, all items that were in or on the bed, and a like size and weight model of [redacted] to conduct testing to assist medical and law enforcement investigative personnel in making a determination as to how [redacted] sustained the injuries observed by Doctors [redacted], [redacted] and [redacted].

Further, that it would be necessary to utilize the bed, bed furnishings and a model of like size and weight as [redacted] to determine the probability of those injuries having been sustained by a fall in the bed as theorized and alleged by [redacted], the child's [redacted].

i) Affiant states that Affiant on the [redacted] day of [redacted] 19[redacted], personally contacted [redacted] and that [redacted] stated that [redacted]'s bed was still at their residence, that being [redacted], and that [redacted], as requested by Affiant, agreed to leave the bed there until such time as Affiant could again inspect it.

j) It is the belief of Affiant that the bed and furnishings, as described in paragraph 2. herein above, possesses significant evidentiary value in the investigation into the death of [redacted]. In support of said belief, Affiant, in conjunction with offering this affidavit in its entirety, references the following:

- 1) The inconsistent statements made by [redacted];
- 2) The degree of injury sustained by [redacted];
- 3) Dr. [redacted]'s belief that a simple fall in a baby bed would not have sufficient force to cause the degree of injury observed in [redacted]'s case;
- 4) Dr. [redacted]'s autopsy finding that it was possible but highly improbable that the injuries to [redacted] would be consistent with [redacted]'s falling in his bed, and further investigation would be necessary to make a more factual

determination as to the manner and means by which the injuries were inflicted; and

- 5) Dr. [redacted]'s statements concerning the mobility factor of a child the age of [redacted], the belief that the injuries were not consistent with a "falling" theory as offered by [redacted], and his request for further medical/law enforcement investigations to make a reasonable determination as to how [redacted] sustained the injuries observed by Doctors [redacted], [redacted] and [redacted].

And further, Dr. [redacted]'s statement, that it would be necessary to utilize the bed, bed furnishings and a model of like size and weight as [redacted] to determine the probability of those injuries having been sustained by a fall in the bed as theorized and alleged by [redacted] the child's mother.

- k) Affiant states that the demonstrative testing would be of significant and probative evidentiary value tending to substantiate that the offense of Injury to a Child was committed and that [redacted] [redacted] committed that offense.

WHEREFORE, Affiant asks for issuance of a warrant that will authorize him to search said suspected place and premises described in paragraph one (1) above for the property or items described in paragraph two (2) above and to seize the same.

\_\_\_\_\_  
[redacted] Affiant

SUBSCRIBED AND SWORN to before me by said Affiant on this the \_\_\_\_\_ day of [redacted], A.D. 19[redacted].

\_\_\_\_\_  
JUDGE PRESIDING  
[redacted] COUNTY, TEXAS

Page \_\_\_\_\_ of \_\_\_\_\_ attached hereto and is by this reference incorporated for all purposes.

SEARCH WARRANT RETURN AND INVENTORY

THE STATE OF TEXAS §

COUNTY OF [redacted] §

The undersigned Affiant, being a Peace Officer under the laws of the State of Texas and being duly sworn, on oath certifies that the foregoing Warrant, authorizing the search for and seizure of property or items located at [redacted] [redacted] [redacted] In [redacted], [redacted] County, Texas, came to hand on the day it was issued and that it was executed on the [redacted] day of [redacted] A.D. 19[redacted], by making the search directed therein, and during such search the following described property was seized:

a) A baby bed complete, which was constructed of wood and is brown in color; including the following:

1. Mattress
2. Bumper pads
3. Sheets
4. Blankets
5. Suspension play toy

[redacted] Affiant

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the [redacted] day of [redacted] A.D. 19[redacted].

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

SEARCH WARRANT

THE STATE OF TEXAS §  
COUNTY OF [REDACTED] §

THE STATE OF TEXAS to the Sheriff or any Peace Officer of [REDACTED] County, Texas, or any Peace Officer of the State of Texas,

GREETINGS:

WHEREAS, [REDACTED] a Peace Officer under the laws of Texas and did heretofore this day subscribe, swear to, and present this Honorable Court with an Affidavit requesting authority to search for and seize property or items located in or on the body of [REDACTED] a person described and located as follows:

A [REDACTED] male with a date of birth of [REDACTED] who has also previously identified himself as [REDACTED] with a date of birth of [REDACTED]. [REDACTED] is currently confined in the custody of the [REDACTED] County Jail located in the [REDACTED] block of [REDACTED] Street in [REDACTED] County, Texas, and who is assigned [REDACTED] County Sheriff's Office identification number [REDACTED].

AND WHEREAS I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant:

NOW, THEREFORE, you are commanded to cause a physician or other qualified technician to obtain from the body of [REDACTED] property or items described in said affidavit, those being:

- a) Approximately 5 cc of blood;
- b) A sample of saliva;
- c) Fifteen to twenty samples each of:
  - 1) Head hairs,
  - 2) Body hairs, and
  - 3) Pubic hairs

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

ISSUED AT \_\_\_\_\_ o'clock \_\_\_\_ .m., on this the \_\_\_\_\_ day day of [REDACTED] A.D. 19[REDACTED], to certify which witness my hand this day.

\_\_\_\_\_  
JUDGE PRESIDING  
[REDACTED] County, Texas





AS ALLEGED WAS COMMITTED AND THAT THE SAID [REDACTED] COMMITTED THAT OFFENSE.

6. YOUR AFFIANT STATES THAT THE PROPERTY OR ITEMS CONSTITUTING EVIDENCE ARE LOCATED IN OR ON THE BODY OF [REDACTED], THE PERSON TO BE SEARCHED.

7. THE AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS:

a) Affiant, [REDACTED] is a Peace Officer under the laws of the State of Texas and is employed in good standing as an investigator assigned to the Juvenile Section of the Detective Division of the City of [REDACTED] Police Department.

b) On on the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant personally interviewed [REDACTED], and that during said interview Affiant learned in part as follows:

1) That [REDACTED] is six years old and a first grader at [REDACTED] Elementary School

2) That [REDACTED] demonstrated a good understanding between truthful and untruthful statements and the difference between a "good" and "bad" touch

3) That [REDACTED]'s terminology of body parts were as follows:

- aa) Breast = Titties
- bb) Vagina = Private
- cc) Penis = Private Part
- dd) Female Buttocks = Booty
- ee) Male Buttocks = Butt

4) That [REDACTED] knew [REDACTED] as [REDACTED] her aunt's husband

c) Affiant utilized anatomical drawings during the interview with [REDACTED].

When Affiant asked [REDACTED] to color the area of the female anatomical drawing where she received bad touches from [REDACTED], [REDACTED] colored the vagina and the buttocks.

When Affiant asked [REDACTED] to color the area of the male anatomical drawing that [REDACTED] used to give her the bad touches, [REDACTED] colored the penis.

[REDACTED] stated that [REDACTED] has given her bad touches of this nature on five different occasions when she was alone with [REDACTED] at her aunt's house.

d) During the course of the investigation, Affiant interviewed [REDACTED]. During that interview, [REDACTED] gave Affiant information in part as follows:

- 1) That she [REDACTED]'s mother
- 2) That [REDACTED] lives at [REDACTED] in [REDACTED], Texas
- 3) That early Sunday morning, the [REDACTED] day of [REDACTED], 19[REDACTED], she went to [REDACTED]'s home to pick [REDACTED] up
- 4) That when she walked to the door and started to go inside, she observed [REDACTED] in his underwear
- 5) That she also observed [REDACTED] pulling her pants up
- 6) That after she and [REDACTED] left she talked with [REDACTED] and learned that [REDACTED] had sexually contacted [REDACTED]
- 7) That [REDACTED] has been examined by a physician and that Rape Crisis had been involved

e) On the [REDACTED] day of [REDACTED], 19[REDACTED], Affiant personally interviewed [REDACTED]. During the course of the interview [REDACTED] stated in part as follows:

- 1) That on several occasions she and [REDACTED] have baby-sat [REDACTED] for [REDACTED], [REDACTED]'s sister
- 2) That [REDACTED] told her that he had sexually contacted [REDACTED] but that he had been drunk
- 3) That she has seen [REDACTED] when he was drunk but that he was not drunk during the time [REDACTED] sexually contacted [REDACTED] on the 13th

f) Affiant has reviewed a copy of the Rape Crisis report concerning the physical examination of [REDACTED]. From the report, Affiant learned in part as follows:

- 1) That Dr. [REDACTED] examined [REDACTED] at [REDACTED] Hospital on the [REDACTED] of [REDACTED], 19[REDACTED]
- 2) That he located what appeared to be black pubic hair around the vaginal and anal openings
- 3) That during his examination of [REDACTED], Dr. [REDACTED] obtained the following evidentiary items:
  - aa) Swabs of vaginal vault secretions
  - bb) Microscopic glass slides prepared from the vaginal smears

cc) The black hairs from the pubic area

4) That the swabs, slides and hairs were released at the hospital to [redacted], a Rape Crisis representative.

5) That Dr. [redacted] observed [redacted]'s hymen to be damaged

6) That Dr. [redacted] could not state for sure if [redacted] was penetrated, but that [redacted] stated that she was penetrated vaginally and rectally

j) Affiant states that Affiant has checked with the Texas Department of Public Safety laboratory and found that on the [redacted]th day of [redacted], 19[redacted], [redacted], a representative of the [redacted] Rape Crisis Center, submitted items of evidence for forensic testing and comparison. Affiant states that these items were obtained from [redacted] as a result of the medical rape examination conducted by Dr. [redacted]. Affiant states that the items of evidence submitted for testing included the following:

- 1) Two vials of vaginal swabs
- 2) Four slides of vaginal smear
- 3) One vial of hair samples

Affiant states that Affiant has been informed a representative of the Department of Public Safety [redacted] Regional Laboratory that those items listed above have been preserved for comparative forensic testing.

k) It is the belief of Affiant that a forensic analysis of saliva, blood, and hairs from the body of [redacted] is proper and would be of significant probative evidentiary value tending to substantiate the allegation that [redacted] sexually assaulted [redacted] as alleged herein above.

In support of said belief, Affiant submits:

1) That analysis of saliva is a common scientific test used to determine whether or not the donor is secretary; that is, if the donor's blood type characteristics may or may not be determined by analysis of other body fluids, in this instance, seminal fluids.

2) That analysis of blood is a common scientific test used to determine the enzyme characteristics of the donor's blood type. Further that it is used in forensic testing to determine if the donor's blood type and blood enzyme characteristics may or may not be determined by analysis of other body fluids, in this instance, seminal fluids.

3) That microscopic examination of head, body and pubic hairs from a known origin and the subsequent forensic comparison to hairs of foreign origin located on the body or clothing of a victim of a sexual assault by a qualified expert is a commonly accepted scientific test utilized to determine the scientific probability of those hairs having originated from a common source.

4) That because of the normal body to body contact evidenced in a sexual assault type offense, it is common for the sexual offender to unknowingly leave samples of his hairs on the body of his victim. In the case at hand, hairs were obtained from the pubic area of the body of [REDACTED] after she was sexually assaulted by [REDACTED]. Further, that [REDACTED] was not fully clothed immediately after the assault thus increasing the probability of his inadvertently leaving samples of his hairs on the body of [REDACTED].

5) That in the instant case, [REDACTED] was examined by a physician which resulted in the collection of evidentiary items as described herein above.

l) Affiant states that Affiant has checked with the records of the [REDACTED] County Justice of the Peace, Precinct 1 Place 2, and found that on the [REDACTED]th day of [REDACTED], A.D. 19[REDACTED], [REDACTED] was charged in cause number [REDACTED], for the sexual assault of [REDACTED] as alleged in paragraph four (4) above.

m) Affiant has checked with the [REDACTED] County Jail and found that [REDACTED] is presently incarcerated at that facility on the authority of the warrant arrest issued in cause number [REDACTED] described herein above.

WHEREFORE, Affiant asks for issuance of a warrant that will authorize him to cause a physician or qualified technician to obtain from the body of [REDACTED] approximately 5cc of blood, a sample of saliva and samples of head, body and pubic hairs as described in paragraph two (2) above for the purpose of forensic testing and comparison.

[REDACTED], Affiant

SUBSCRIBED AND SWORN to before me by said Affiant on this the [REDACTED] day of [REDACTED], A.D. 19[REDACTED].

JUDGE PRESIDING  
[REDACTED] COUNTY, TEXAS

Page \_\_\_\_\_ of \_\_\_\_\_ attached hereto and is by this reference incorporated for all purposes.

SEARCH WARRANT RETURN AND INVENTORY

THE STATE OF TEXAS            §  
COUNTY OF [redacted]            §

The undersigned Affiant, being a Peace Officer under the laws of the State of Texas, and being duly sworn, on oath certifies that the foregoing Warrant, authorizing a physician or qualified technician to obtain certain property or items, that being:

- a) Approximately 5 cc of blood,
- b) A sample of saliva, and
- c) Approximately 15 to 20 samples each of head, body and pubic hair

from the body of [redacted], came to hand on the day it was issued and that it was duly executed on the \_\_\_\_\_ day of [redacted], A.D. 19[redacted], by making the search directed therein.

Affiant states that during such search the following described property or items were seized:

- a) Approximately 5 cc of blood,
- b) A sample of saliva, and
- c) Approximately 15 to 20 samples each of head, body and pubic hair

\_\_\_\_\_  
[redacted] Affiant

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the \_\_\_\_\_ day of [redacted], A.D. 19[redacted].

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE  
OF TEXAS

**SETH DAWSON**  
SNOHOMISH COUNTY PROSECUTING ATTORNEY  
3000 Rockefeller Avenue, Everett Washington, 98201

**COURT SCHOOL MANUAL**

*helping young victims, witnesses, and their families through the prosecution process*

1 PREFACE  
Including a special note to prosecuting attorneys

2 I INTRODUCTION  
A. Purpose  
3 B. First Year Experience

5 II COURT SCHOOL COMPONENTS  
A. Introduction  
7 B. Classes for Children and Youth  
9 C. Classes for Parents  
10 D. Classes for Learning and Coping Styles

12 III ATTACHEMENTS  
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prepared by: Bill France, MSW  
contributors: Barbara Huffman, MSW  
Pearl Wollin, MSW  
special appreciation to child advocates:  
Vicki Shaff,  
Doris Sharp  
Thersea Pruett

Preparation of this manual funded by grant number 86-SD-CX-0002,  
Bureau of Justice, United States Department of Justice

**A. System**

1. Copy of 7.69A.030: Child Victims and Witnesses
  2. Rights of Victims and Witnesses
  3. The Prosecution Process: A Little Help With the Hard Parts.
  4. The Sexually Abused Child And the Law: What Happens in the Criminal Justice System.
  5. ABA Guidelines for the Fair Treatment of Child Witnesses in Cases where Child Abuse is Alleged
  6. In Court: Who Does What? Helpful Descriptions of the Roles
  7. Flow Chart
  8. The Prosecution Process; Some help with the hard parts
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**B. Resources**

- 1 Brief list of Resources,
  2. Long list of Resources
  3. Contact Record
- 
- 
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**C. Feelings**

1. "Helping Children Deal with Stress", France, reprint
2. "Patterns of Coping for Children", Brenner, excerpt
3. "Affirming (statements) Children's Attempts to Cope", Huffman
4. "When Your Child is a Witness: Helping Him or Her on Trial Day"
5. Holmes Stress Scale
6. Four Basic Feelings and What Helps

**D. Developmental**

1. Stages of Sex Play (reprint)
  2. Peer and Sibling Relationships and Parenting Plans, Drake
  3. The Importance of Continuity and Quality of the Child's Relationship with Both Parents in Post-Divorce Arrangements, Zerbe
- 
- 
- 

**E. Other Class Materials**

1. Outlines/checklists for Court School Classes.
  2. Learning and Coping Style Inventory
  3. Child Developmental Stages/ Like and Dislike
  4. Desirable and Undesirable Children's Traits
- 
- 
- 

**F. Bibliographies**

**G. Miscellaneous**

1. Towards a Definition of Successful Prosecution in Child Abuse Cases

## I Introduction

### A. Purpose:

The original and primary goals are to help young victims and witnesses, and their family members, to become as familiar as possible with the prosecution process, and to increase their ability to recognize and effectively respond to the demands and stresses of going through this system. We've learned that it can help to demystify the prosecution process, and, surprisingly, to normalize the experience to some degree. As unlikely as it sounds, our hope has been to create the possibility for a positive learning experience out of a potentially traumatic process. In the development of this part of the program, three facts stand out:

First, "The inability of young sex abuse victims to testify as effectively as adults and to confront their perpetrators, results in failure to provide justice for them in many cases. (Whitcomb, et. al., When the Victim is a Child)

Second, "Not all court appearances need to be traumatic or terribly stressful. They may be quite therapeutic when they allow a victim to feel like a person with rights that others defend. (Ginkowski "The Prosecutors Terrifying Nightmare").

Third, "Successful (prosecution) depends on the victim's willingness to tell her story, and that depends on the (court's) willingness to believe her, show respect and sympathy, and tolerate the intense emotions inevitably aroused. (Children) are exquisitely sensitive to the reactions of (adults) and will not disclose facts that they believe the (adults) cannot tolerate. As (adults) become more adept at listening, they can expect to hear about more atrocious abuse. Anyone who works with victims of incest (and other sexual assault) will need to cope with contagious post traumatic stress. (Herman, "How serious is Incest", Harvard Medical Newsletter)

**SETH DAWSON**  
PROSECUTING ATTORNEY OF SNOHOMISH COUNTY

MISSION BUILDING  
3000 ROCKEFELLER AVENUE  
EVERETT, WASHINGTON 98201

LARRY MCKEEMAN  
CHIEF CRIMINAL DEPUTY

DARRELL L. SYFERD  
CHIEF CIVIL DEPUTY

JEANNE LONG  
CHIEF DEPUTY ADMINISTRATOR

OFFICE: (206) • 388-3333  
(SCAN) • 649-3333  
CIVIL DIVISION • 388-6330  
FAMILY SUPPORT DIVISION • 388-3416  
PRE-PROSECUTION DIVERSION • 388-3427  
VICTIM/WITNESS ASSISTANCE UNIT • 388-3370  
JUVENILE UNIT • 259-0031

**AN INTERDISCIPLINARY APPROACH  
TO THE INVESTIGATION AND PROSECUTION  
OF CHILD ABUSE**

NOTE: This outline is based upon a book manuscript, now under review by Sage Publishing, entitled Improving Child Abuse Prosecutions: A Practical Guide for Building Constructive Relationships Between Lay Citizens, Victim Advocates, Police Officers and Other Concerned Professionals.

Copies of this second draft manuscript are available from the author at the above-stated address. The price is \$15.00 per copy for mailing and handling costs. Checks can be made payable to the Snohomish County Prosecutor's Office.

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I. Purpose: In all communities, there are non-prosecutors deeply interested in child abuse investigations and prosecutions. In terms of prosecutor offices and deputy prosecutors specifically assigned to child abuse cases, these people will tend to be either:

A. Counterproductive: A source of irritation and unconstructive criticisms; proponents of legislation which makes prosecution/investigation more difficult, not less; public speakers who undermine the community spirit needed for effective child abuse enforcement.

B. Uninvolved: Being concerned, or even supportive in spirit does us no good if such sentiment is not translated into effective action. We need our allies to be strong.

C. Supportive: 1) in terms of actual involvement in actual cases; 2) in terms of helping with the policy issues that go well beyond particular cases: The budget and legislation, e.g. Fully effective prosecution requires the active involvement of many non-prosecutors.

II. How to structure the interdisciplinary approach -- all of these basic approaches are needed:

A. Case teams: to review, discuss and act upon particular cases.



B. Ad Hoc Committies: to review and resolve specific procedural/policy kinds of issues (e.g., the need for joint interviews).

C. Advisory Boards: to help establish policy and procedure for all child abuse cases. (specific topics listed below).

III. What kinds of projects to undertake:

A. Performance measures:

B. The budget/resources:

C. Legislation:

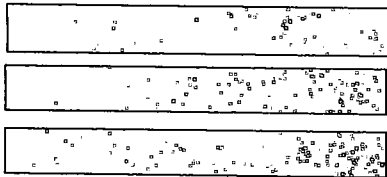
D. Charging and Disposition Standard:

E. Vertical/Horizontal Prosecution System:

F. Investigative Checklist:

G. Victim Support (e.g., natural parent offenders):

IV. Prosecutors need to be vocal advocates for child abuse prevention, not just effective enforcement.



## Resource Materials

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# Role of the District Attorney in Multi-Victim Cases

Presented by  
James M. Peters, J.D.

## GUIDELINES FOR RESPONDING TO MAJOR MULTI-VICTIM SEXUAL ABUSE CASES

1. Get involved at the onset of the investigation.
2. Consult with district attorneys, police officers and/or ritual abuse investigators. Learn from their successes and mistakes.
3. Define the roles of investigators, prosecutors, social workers, physicians and therapists before starting an investigation. Avoid muddying the roles.
4. Consider the consequences of actions before they are taken. For example, letters sent to parents of suspected victims may have the unintended result of alerting suspects and losing important evidence.
5. See that all information is documented at the time it is received.
6. Consider the pros and cons of electronically preserving interviews with victims and witnesses. Establish a policy and follow it without exception.
7. Ensure that all persons involved have received training in recognizing ritualized crime, child sexual abuse, exploitation and sex rings.
8. Maintain strict confidentiality until all suspects and victims have been identified.
9. Employ case-handling techniques similar to those in a criminal conspiracy. Approach the case as if all involved children may be victims and all adults are suspects until the scope of the investigation narrows.
10. Assign investigators to teams and allow them to work together throughout the investigation.
11. Appoint a liaison officer or victim advocate from within law enforcement to work directly with the victim's parents. The key points to impress upon parents are:
  - a. Keep children's lives as stable and routine as possible.
  - b. Deal with stress caused by the disclosures outside the presence of the children.
  - c. Refrain from interviewing children or otherwise investigating but listen and be alert for new disclosures. Immediately advise authorities when new information is revealed.
  - d. Protect the child from circumstances where sharing or stories may occur. This means avoiding group therapy with other suspected victims or discussing what one child has said without anyone other than the child's parents.
  - e. Explain why investigators must maintain strict confidentiality of information coming from other children (to avoid inadvertant "cross-germination.")

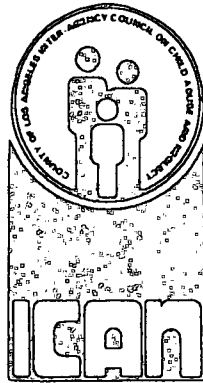
12. Select a media liaison who is not an investigative team member.
  - a. Ensure that the media liaison is familiar with the applicable rules of professional responsibility insofar as his/her statements to the press may later affect the lawyers prosecuting the case.
  - b. Avoid premature news releases or conclusions.
  - c. Stress that no one connected with the investigation other than the media liaison will be permitted to talk to the press during the investigation and trial.
13. With child witnesses, use only investigators specifically trained in criminal investigative interviews of children.
  - a. Ensure that children are interviewed separately, out of the presence of parents or other persons who might influence them.
  - b. Aids to interviewing such as anatomical dolls should be used only when there are convincing reasons for doing so and then only with great care to avoid improper suggestion or the appearance thereof.
  - c. Take swift action to verify or refute things witnesses say.
14. Conduct extensive background checks of all suspects, victims, and custodians of victims.
15. Look for patterns in the alleged perpetrator's behavior which might suggest intent, motive or opportunity to commit the alleged crimes.
16. Identify indicators in the alleged victim's behavior which might suggest something traumatic has occurred. Identify all possible stressors which could have caused the symptoms.
17. Consider the possibility of organized networks behind those you are directly investigating.
18. Separate actual accounts from those based upon realized, but illusory acts, i.e. were the "bodies" real or faked, alive or already dead, actual or suggested, etc.?
19. Be alert for and don't immediately discredit bizarre evidence. Keep an open mind. Anything is possible.
20. Avoid the temptation of reaching a premature conclusion. Interviewers may misunderstand what a child said. Children (like witnesses of any age) may misinterpret, exaggerate or embellish part of what they saw or experienced. Each alleged act may not have occurred, but that does not necessarily mean every act described by the child is a lie.
21. Serve search warrants as soon as possible to minimize destruction of evidence. The key to success is corroboration.
22. Utilize consensual monitoring, i.e. have the child or his/her mother telephone the suspect and confront him while the police listen (and electronically records if state law permits).

23. Obtain medical exams by physicians who have developed a speciality in examining child abuse victims.
24. When there is suspicion of drug use, order tests of the childrens' and suspects' urine quickly.
25. Focus the investigation on the elements of the crimes alleged. Evidence of cult symbols, paraphernalia and bizzare activity that is not criminal may be used to substantiate the crimes or corroborate the credibility of witnesses but should not become the prime focus of the investigation.
26. Form contingency plans now, before you are confronted with a case.

Compiled By:

James M. Peters  
Senior Attorney  
National Center for Prosecution of Child Abuse

LOS ANGELES COUNTY  
INTER-AGENCY COUNCIL ON  
CHILD ABUSE AND NEGLECT



PROTOCOLS

DEVELOPED BY

THE

MULTI-VICTIM, MULTI-SUSPECT

CHILD SEXUAL ABUSE SUBCOMMITTEE

NOVEMBER 1988

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## ACKNOWLEDGEMENTS

ICAN is grateful to the members of the Multi-Victim, Multi-Suspect Child Sexual Abuse Subcommittee who contributed to the development of these protocols.

We especially wish to recognize Sergeant Beth Dickinson and Detective Ron Waltman, Los Angeles County Sheriff's Department, Child Abuse Detail, who, following their work on a special task force investigating allegations of abuse in preschool settings, drafted the outline on which these protocols are based.

A particular thank you goes to the extraordinary efforts of Tammy Moya, Los Angeles County Sheriff's Department, Juvenile Investigations Bureau, for her editing and typing of the guidelines.

### MULTI-VICTIM, MULTI-SUSPECT CHILD SEXUAL ABUSE SUBCOMMITTEE

Sgt. Beth Dickinson, Los Angeles Sheriff's Department, Chairperson

Lt. Steve Day, Los Angeles Police Department

Lt. Chuck Long, Los Angeles Police Department

Pam Dubin, Department of Children's Services

Michael Durfee, M.D., Department of Health Services

Ada Jones, Department of Mental Health

Lindejo Goldstein, State of California, Department of Social Services

Det. Terry McWeeney, South Gate Police Department

Det. Kim Mitchell, Hermosa Beach Police Department

Stephanie Pearson, Ph.D., Child Sexual Abuse Crisis Center,

Harbor/UCLA Medical Center

Karen Saywitz, Ph.D., Harbor/UCLA School of Medicine

Paul Wolfe, Probation Department

Roland Summit, M.D., Department of Mental Health

Deanne Tilton, Director, Inter-Agency Council on Child Abuse and Neglect

Penny Weiss, Assistant Director, Inter-Agency Council on Child Abuse and Neglect.



## INTRODUCTION

The Los Angeles County Inter-Agency Council on Child Abuse and Neglect (ICAN) is a multi-disciplinary body committed to coordinating and improving services for the prevention, identification, and treatment of child abuse and neglect. ICAN has recognized that investigations of allegations of child abuse involving multiple victims and/or multiple suspects (MV/MS) present unique challenges for all agencies involved with these complicated cases.

Some of the common problems identified in MV/MS cases have included the insufficient allocation of resources to investigate the allegations in an expedient manner, inadequate training, confusion about who is in charge of the investigation, contamination of evidence, and the overwhelming magnitude of the investigation. Many of these cases become even more difficult if the allegations arise in a preschool setting and involve very young children.

Having identified these problem areas, ICAN members concluded that there was a critical need to develop guidelines for conducting MV/MS investigations. The importance of assuring that the confidentiality of the investigation was not compromised was a primary consideration. It was also clear that the rights of victims and the rights of the alleged suspects must be preserved while conducting the investigation in an expedient manner. These guidelines recommend a team approach to minimize the risk of contamination, provide for more comprehensive and humane interviews with the victims, and assure that the overall investigation is more effectively and efficiently carried out on behalf of the children and families involved in MV/MS cases.

ICAN PROTOCOL FOR INVESTIGATING  
MULTIPLE VICTIM, MULTIPLE SUSPECT CASES

PURPOSE

The purpose of this protocol is to establish guidelines for a multi-disciplinary task force approach to the investigation of child abuse involving multiple victims and/or multiple suspects. While this protocol can be used in any large-scale investigation involving child abuse, it is primarily designed for investigating allegations of child abuse in settings such as preschools and other out-of-home care facilities. The ICAN Protocol is further designed to ensure that investigations of suspected child abuse occurring in these settings be done in a timely manner, are complete, and are coordinated among the responsible agencies. These guidelines are to serve as an adjunct to the Title 11, California Administrative Code Sections 930-930.8 "Guidelines for Investigation of Child Abuse in Out-of-Home Care Facilities." The intent of this protocol is to encourage a high degree of cooperation and coordination among all of the agencies involved in the investigation, administration, and prosecution of these types of cases.

DEFINITIONS

**Multiple victim** cases are the types of child abuse allegations that arise in a setting where several children are at risk of being victimized by one or more offenders. Examples of this are schools, preschools, organized youth groups, and out-of-home facilities such as group homes. These would include both licensed and unlicensed facilities.

**Multiple suspect** cases are the types of child abuse allegations that arise where more than one suspect has been named by children as having participated in or been aware of the abuse against one or more child(ren). Examples of this would be sex ring participants, child pornographers, and other offenders who, with each other's knowledge, engage in abusing children.

**Investigative team** is a team of law enforcement investigators assigned to investigate criminal allegations of child abuse involving multiple victims and/or multiple suspects. The size of the investigative team would vary depending on the scope and size of the investigation.

**Voluntary inter-agency investigation team** is a voluntary association of law enforcement agencies, County welfare and/or probation departments, child placement agencies, and State or County licensing agencies established for the sharing of information and coordination of investigations of reports of child abuse occurring in out-of-home care facilities. This voluntary investigative team could also consist of one or more specialized medical practitioners and one or more licensed therapists. Also, part of the team may consist of specialized experts who would be used by the team for purposes of consultation.

### DUTIES AND RESPONSIBILITIES

The purpose of this section is to clarify each agency's duties and responsibilities and to improve agency coordination to reduce duplication of effort. By clarifying the duties and responsibilities, the goal is to lessen trauma to child victims, to minimize the number of interviewers and interviews, to prevent the abuse of other potential victims, to increase the effectiveness of prosecution, and to provide information to the involved agencies in a coordinated and efficient manner.

### LAW ENFORCEMENT

The primary responsibility for criminal investigations of serious abuse rests with law enforcement. They should be the agency in charge of the investigation until such time as the allegations are determined to be unsubstantiated, or the allegations have been investigated and presented to the District Attorney for review for prosecution. Law enforcement should also be the agency that coordinates the voluntary inter-agency investigation team, making sure that all children identified as victims are referred for therapy and assistance either through the child welfare agency or victim/witness agency and Los Angeles County Mental Health Department.

### DISTRICT ATTORNEY

The primary agency responsible for the prosecution of substantiated allegations of child abuse, the District Attorney's Office may also provide assistance to the investigative team throughout the tenure of the investigation by giving legal advice, helping to draft search warrants, observing interviews of potential witnesses, and any other assistance deemed appropriate.

### CHILD WELFARE AGENCY

The County department administering children's services may be a part of the investigative team in those instances where the circumstances of the case mandate their involvement, such as children being abused by their parent or caretaker. Its involvement would be to take the necessary measures to ensure the safety of children who may require protective custody, to make placement recommendations, and to coordinate the assessment and interviews of children and adults with the appropriate law enforcement and licensing agencies. The involvement of the child welfare agency in these types of multiple victim, multiple suspect investigations may involve being a part of the investigative team for only a portion of the investigation, or throughout the duration of the investigation.

### LICENSING AGENCY

The primary responsibility of the licensing agency is to investigate allegations of child abuse, including general neglect, in a licensed out-of-home care facility. The licensing agency shall coordinate its efforts with those of the law enforcement investigative team, as well as with the investigating child protective agency. The licensing agency shall provide back-up assistance when appropriate and requested by the investigating law enforcement agency. The licensing agency may be involved as a part of the investigative team during all or part of the duration of the investigation. The licensing agency is responsible for taking appropriate administrative action involving any licensed facility which would include revocation or suspension of the license of the out-of-home care facility and the investigation and prosecution of unlicensed activity (regardless of outcome of abuse allegations).

### VICTIM/WITNESS AGENCY

The victim/witness agency would be part of the investigative team in those instances where children were identified as having been a victim of child abuse. The victim/witness agency representative would work with law enforcement, be a member of the voluntary inter-agency investigative team, and make referrals for medical examinations, therapeutic evaluations and treatment, assist the family with processing applications for the Victim/Witness Assistance Fund, and work with the victim and family throughout the investigation and subsequent court process.

## MEDICAL PRACTITIONER

The duties and responsibilities of the medical practitioner(s) are to conduct the medical examinations of the victims or suspected victims in accordance with State guidelines and protocols for the examination of suspected child abuse victims. They are to fill out the appropriate State-mandated forms and provide assistance to the investigative team in the following manner: conduct medical exams, give expert opinion regarding the nature of abuse, coordinate examinations with the investigative team, and provide additional expertise to the team, as needed.

## LICENSED THERAPISTS

### **Pre-Identified Evaluators**

The duties of licensed therapists with experience and training in evaluating victims of child abuse will be to provide evaluations of suspected victims of abuse as requested by the investigative team. They provide the team with their findings in writing and fill out the mandated forms upon receiving any disclosures from children wherein abuse is suspected. Licensed therapists may be a part of the investigative team for a portion of or the entire duration of the investigation. They will take the necessary steps to prepare children for investigative interviews or conduct evaluations in conjunction with investigators, whichever is determined to be in the best interest of the children and the investigation.

### **Pre-Identified Therapists**

Licensed therapists with experience and training in treating victims of child abuse may become a part of the investigative team. Children may be referred to them by the investigative team for treatment due to having disclosed abuse or being suspected victims because of behavioral symptoms. Therapists' treatment of children is considered confidential and need only be revealed to the investigative team when and if victims disclose additional suspects or additional crimes.

Therapists who provide evaluations and/or treatment to victims and assist the investigative team shall do so in a manner that does not compromise the integrity of the investigation. (See attached sample letter to therapist.)

## INVESTIGATIVE GUIDELINES

The primary objective of the investigation is the protection of the child(ren). Investigative personnel have the responsibility to conduct an objective and unbiased investigation and to consider the rights of the victims as well as the rights of the accused.

**The law enforcement investigative team or voluntary inter-agency investigative team** investigating allegations of abuse in out-of-home care facilities shall follow the guidelines set forth in California Administrative Code Title 11, Sections 930 - 930.8.

In addition to following State guidelines, the ICAN Protocols established for Los Angeles County are designed to expand and enhance those guidelines by setting forth a model approach for conducting these investigations as a team. The ICAN Protocols set forth procedures for assessment, investigation, and prosecution of multiple victim, multiple suspect investigations of child abuse.

## PERSONNEL NEEDS

The lead investigative agency should make a timely assessment regarding the resources that should be assigned to a multiple victim, multiple suspect investigation. If the magnitude of the investigation indicates the involvement of numerous children, witnesses, and suspects, sufficient staff should be allocated to the investigation to assess the scope and magnitude of the problem. If one child is disclosing abuse in a setting where there is the potential for larger numbers of children to also be either victims or witnesses, many children must be interviewed in order to adequately assess the situation.

Putting together a **law enforcement investigative team** or a **volunteer inter-agency investigative team** to make this assessment is the appropriate way to approach these types of investigations in most cases. It is far more effective to gear up for a major investigation by allocating sufficient resources to expeditiously determine the magnitude of the problem, than to attempt to assess the situation with only one or two investigators. With proper resources, the risk assessment can be made in an expedient manner and, if the allegations prove to be either unsubstantiated or contained within only a small number of victims, the additional personnel can be returned to their

normal duties. If the allegations appear to be substantiated and involve large numbers of victims or suspects, the team would already be in place and set up to continue the investigation.

**Timeliness and Planning** - A team should be formed and strategies developed as soon as possible upon learning that there are allegations of child abuse involving the potential for multiple victims/multiple suspects. Team members should be brought together, briefed, and given initial assignments. Any indicated search warrants and surveillances should be done within the first 24 to 48 hours, if possible.

**Coordination of the investigation** - The most important aspect of a major investigation is to determine who is in charge of the investigation. That responsibility cannot be delegated. In a criminal investigation, the agency in charge should be the law enforcement agency in whose jurisdiction the crime occurred.

**Needs Assessment** - Phase I of the investigation would consist of assessing the risk to children currently in the care, custody, or control of the alleged offender(s). This assessment must receive highest priority to determine how many children have been victims of or witnesses to abuse, and to assess what evidence has been collected and what additional evidence is needed. If any of the children assessed in Phase I have been abused, then the investigation should progress to Phase II, where children who previously had exposure to the alleged suspect would be interviewed to determine the degree of victimization with those children. If the victims identified in Phase I are very young, it is especially important to determine if there are older victims who can corroborate the younger victims' testimony.

**System for communication with parents** - If the alleged crimes have occurred outside the home, the investigative team must address the concerns of the parents of the alleged victims.

- Parents should be interviewed regarding any behavioral indicators of possible abuse they observed.
- Parents should be interviewed regarding the history of their child's contact with the alleged offender(s).
- Parents should be advised of the nature of the investigation and their cooperation in the investigation should be sought.

- Parents should be made aware of the importance of keeping any information about their child's disclosures confidential, especially from the media.
- Parents should be kept informed of the status of the investigation. This can be done without giving out specific details about the disclosures of other victims.
- A liaison person should be selected to meet, as needed, with the parents to keep them informed. Failure to do so can result in inappropriate sharing of information, frustration because of the lack of information, lack of cooperation or participation in the investigative process and, in some cases, inappropriate attempts at investigation by the parents. (See attached sample definition of role of liaison person.)

**System for communication with the children** - Only investigators who have experience and training in child abuse and child interviews should be assigned the task of interviewing children. Further, these investigators should also have received the POST-approved sexual assault investigation training per Penal Code Section 13516(c) prior to being assigned to conduct these interviews.

The room where child interviews are conducted should ideally contain child size furniture, investigative interviewing aids such as drawing material, anatomically detailed drawings and/or dolls, and other material designed to make a child comfortable. This room could contain a one-way mirror with an adjacent room so that the interview could be monitored. The decision to use audio or video tapes to record these interviews should be made on a case by case basis by the investigative team, and in conjunction with consultation with the prosecutor's office.

The investigative team should be aware that it is more important to limit the amount of interviewers than to limit the number of interviews. However, how many times each child is interviewed and by whom will be an important issue should the case result in prosecution.

A therapeutic evaluation should not replace an investigative interview.



Child investigative interviewers should have received specialized training in child development issues. The team may want to consider retaining the assistance of a child development expert to assist and advise the interviewers on the special skills needed to interview very young children.

**System for communication with the medical community** - Medical professionals will generally not be involved in the everyday workings of the investigative team. When possible, not all of the children in any major case should be examined by the same medical evaluator. A medical evaluator should be assigned to each team and only evaluate children assigned to him/her by that specific team.

When more than one medical evaluator is used, they should be selected from different centers and should not consult with each other about their findings, especially in the very early stages of the investigation.

If at all possible, the investigator should attempt to obtain a child's previous medical history/records and provide them for the medical evaluator.

**System for liaison with the therapeutic community** - Therapists who assist or work with the investigative team should be selected from different programs and should be assigned to work with separate teams. The investigators should monitor the evaluator's methodology in assessing children for sexual abuse to determine if the techniques used are compatible with the investigation's needs. Likewise, evaluators should observe some investigative interviews in order to be informed regarding the techniques used in those interviews. (See attached sample letter to therapist.)

Therapists should share information regarding disclosures only with their investigative counterpart, especially during the early phases of the investigation.

**System for communication with the media** - Only the agency in charge of the investigation should be assigned the responsibility of issuing information to the media. Other agencies that are a part of the **voluntary inter-agency investigative team** should consult with the agency in charge before issuing any statements to the media.

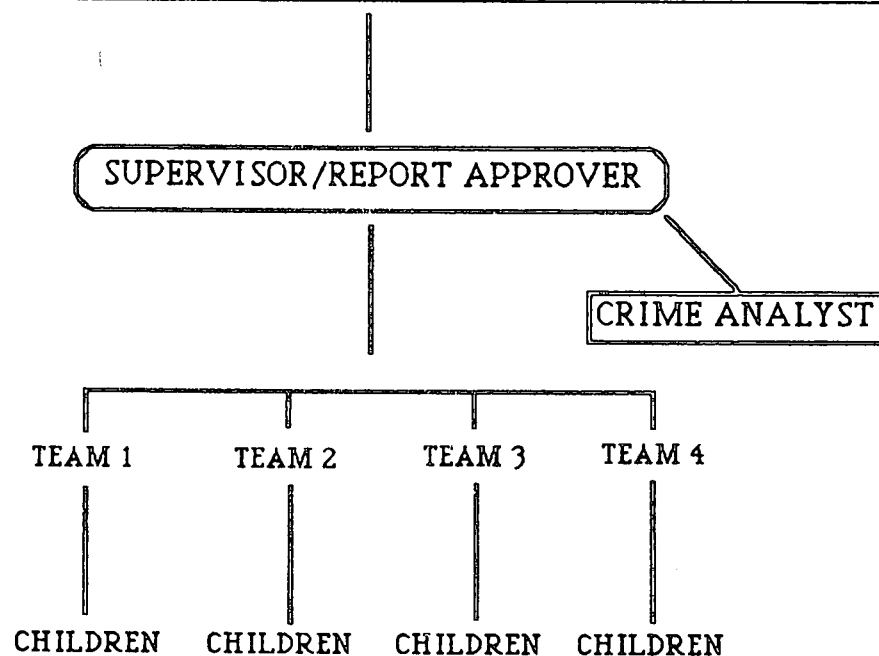
There should be a specific unit within the investigative agency, but not directly part of the investigative team, that has responsibility for issuing statements to the press.

### TASK FORCE APPROACH

The **investigative team** should include a supervisor/report approver whose duties consist of coordinating the investigation, assessing all of the information that comes from the individual interviews, and delegating additional investigative interviews to specific team members, as needed. The team may include a crime analyst to provide technical advice to the team. The team would have several investigators, some of whom would be designated as "child interviewers." If this is a **voluntary inter-agency investigative team**, then the investigators' counterparts, i.e., licensing investigator, therapist, medical evaluator, etc., would be assigned to separate investigators and each would become a separate team.

What follows is an example of the possible make-up of the investigative team:

### DISTRICT ATTORNEY---LAW ENFORCEMENT COMMANDING OFFICER



**Sharing of information** in the very early stages of the investigation - It is important that all parties involved should only share information regarding specific allegations from children within their own team and upward to the team supervisor. The team supervisor would review these specific allegations. If a child names other children as victims or witnesses, the responsibility for interviewing those other children should be delegated to another team who has received no information as to the allegations. The purpose of this is to minimize any contamination of information so that disclosures come from children in a spontaneous manner. By using this system, contamination of information or inadvertent leading questions will be minimized. If the allegations appear substantiated and the investigation continues, it then becomes important to share some information with all members of the investigative team, especially the law enforcement component. If the early disclosures were made in a manner free from contamination, the prosecutor can then argue that specific controls were used to eliminate that factor.

#### OTHER INVESTIGATIVE GUIDELINES

The investigative team should consider the use of charts, as well as the use of link analysis and Visual Investigative Analysis (V.I.A.) charting to assist them in recording pertinent information. The use of a computer programmed to accept and print out data in a relevant way should be utilized. Efficient clerical support should not be forgotten so that investigative reports can be prepared in a timely manner.

Each law enforcement agency should establish a list of experienced investigators and supervisors, both internally and externally, who can be called upon to assist in a major case investigation.

Each law enforcement agency should establish a list of qualified individuals within its community or surrounding communities who can be utilized to assist in a major case investigation. This would include qualified medical practitioners, pre-identified evaluators, and therapists.

Each law enforcement agency should consider the need to do cross training of its own personnel, as well as cross training with other potential members of a voluntary inter-agency investigative team. This training would consist of an explanation of each other's roles, an explanation of the task force approach, legal requirements and restrictions, confidentiality, and other specialized information deemed pertinent.

## SUMMARY

Cases of suspected child abuse in out-of-home care facilities constitute a critical and unprecedented challenge to effective investigation. Because some of these cases have been so spectacularly unusual and frightening, many such cases are now contaminated with prejudice and fear. An active lobby and criminal defense argument has sometimes attempted to blame agencies for creating false cases and abusing children with inappropriate investigative techniques. Without advance preparedness and clean protocols for investigation, these cases can turn into nightmares and haunt everyone involved.

A recent national survey regarding abuse in a preschool setting\* shows clearly the problems to be expected in such cases because of the radical difference between conventional sexual molestation and multi-suspect cases. Of 270 validated cases of sexual abuse in out-of-home care facilities, 83% involved a single suspect, usually male, with a typically pedophilic modus operandi. Those cases with more than one suspect, 17% of the sample, were almost entirely different, contradicting prior expectations and promoting disbelief, disagreement and protective denial among parents, investigators and public alike. Yet these radical differences were common among almost all of the multi-suspect cases, making that category the most uniform and predictable of all. There were five factors which were most predictable, each of which poses a threat to ordinary detection and investigation:

1. **Multiple victims.** Cases averaged about 14 victims each, sometimes in the hundreds. So many silent victims with variations in timing and scope of disclosure make for immense logistical problems to move quickly and document properly all investigative interviews before the case is hopelessly burdened by cross-germination and discovery conflicts. So many parents require organization and outreach to invite cooperation and confidentiality. The pressure to identify and protect the children immediately precludes the surveillance and intelligence procedures necessary for conspiracy prosecution.

\*Finkelhor, D., Williams, L. M., Burns, N. and Kalinowski, M., Sexual Abuse in Day Care: A National Study (Final Report), Durham, New Hampshire: University of N.H., Family Research Laboratory, March 1988

2. **Female suspects.** Although females are thought to comprise only 5% of child molesters in general, 40% of the perpetrators in day care cases were females. In multi-suspect cases, 91% implicated females, including 17% with no male suspects at all. Many authorities refuse to suspect females or to act on clues implicating women. Children shared this disbelief and are more likely to report (and their complaints are much more likely to be believed) abuse by males than by females, so their late reports of females compared to males focus suspicion on the examining techniques, as if children are being talked into fairy tales. Children are also more likely to retract complaints against females, so that charges tend to be dropped or acquitted. The women suspected in out-of-home settings were especially respectable and well educated and, therefore, effectively immune from suspicion, especially since the offenses alleged were more hurtful, more penetrating and often more bizarre than those expected from the typical male molester.
3. **Pornography.** While pornography was alleged in less than 5% of the single-suspect categories, 67% of multi-suspect cases described pornography production or viewing. Descriptions of pornography without confiscated material constitute "the fish that got away," tending to discredit witnesses and embarrass investigators.
4. **Ritual.** Allegations of bondage, sadism, strange games, administration of drugs, ingestion of excrement, mutilation of animals, and even ceremonial murders occurred in 54% of multi-suspect cases. These bizarre allegations inspire disbelief in most listeners, as well as a desperate urgency to validate grotesque allegations by those who come to believe they are true. The especial terrorism and threats in such cases left children unable to remember or speak clearly to the reality of their experience.
5. **Disbelief and interprofessional conflict.** Multi-suspect cases, for all the reasons above, seemed impossible to handle without distrust, foot dragging, scapegoating, and sabotage within and between agencies that had learned to work together effectively in conventional cases. Investi-

gations, already shaky for the overburden of only circumstantial evidence, collapsed for want of mutual support among allies in the face of incredulity and ridicule from adversaries.

### IMPLICATIONS FOR INVESTIGATION

Multi-victim, multi-suspect sexual abuse in out-of-home care is unique in its devastation to families, to public confidence, to child protective agencies, and to the basic effectiveness of all systems of justice. It has been painfully evident throughout the United States since 1984, yet most communities are now more divided and less prepared for effective, coordinated investigation than before such abuse was discovered.

Since material evidence is so crucial and so seldom obtained, and since most multi-suspect cases will proliferate into unexpected, unbelievable dimensions, and since all hope of foundation for a proper investigation may be lost as soon as such a case is publicized, everything depends on a pre-planned protocol and advanced teamwork, not only within each agency, but among the many agencies involved in these cases.

## SAMPLE

### Role Definition of Parents Liaison Person

The liaison person performs an informing role. Within the bounds established by the investigators, parents have a need and right to know the general status of the investigation. Only then can they make an appropriate assessment on participation and non-participation.

The liaison person performs a reassuring/supportive function. He/she provides a sounding board and a bridge with "the system" by providing a necessary outlet for ventilating criticism of the system and clearing up confusion and frustration.

The liaison person should make no attempt to persuade someone to enter the investigation or participate in any way in the multi-victim, multi-suspect investigation unless they want to do it.

The liaison person does not perform an investigative function. Avoiding specifics will protect against a predictable complaint that the parent liaison was a source of cross-germination of information.

The liaison person should avoid attempting to speculate about who the bad guys are and how things will go for them - just don't do it!



S A M P L E

Letter to Therapist

Dear \_\_\_\_\_:

Enclosed is a brief synopsis of the facts of the case under investigation involving \_\_\_\_\_.

(Victim)

Please note that the information you have been provided is intended for **therapeutic purposes only**. Please do not discuss the contents of this synopsis with the children, or other parents, other than to remind each individual child what that child has said to either me or the police officer who did the initial interviews. It is **absolutely essential** that you not tell one child what another child has told the police or you. It is important that before considering group therapy, the investigative team be consulted.

Prior to our leaving, we admonished the children about speaking to each other about what happened to them and what they have told their therapist, me, or the police. We urge you to reiterate that warning when you speak with them. We have encouraged them to speak with you about what happened to them as individuals. We have also told them that the reason they may want to speak with you is because it will make them feel better. We emphasize this to you as your contact with the children should be **strictly therapeutic** and not investigative.

We acknowledge and want to emphasize that your role is to help the children work through their feelings about what happened to them and to make them feel better about their unfortunate experiences.

At this time, we would also like to thank you for providing both a psychological and physical environment which allow the children to feel comfortable enough to speak with us. It is our belief that, without you and the rapport you have developed with those children, we would not be in a position to properly prosecute this case.

Please do not hesitate to call if you have any questions about the content of this letter or the information you have been provided.

Sincerely,

\_\_\_\_\_  
Investigator

S A M P L E

Therapist Questionnaire

(NAME OF AGENCY)

DATE & TIME \_\_\_\_\_

FILE # \_\_\_\_\_

THERAPIST INTERVIEWED: \_\_\_\_\_

SUBJECT: \_\_\_\_\_ PRESCHOOL

VICTIM: \_\_\_\_\_

1. How long have you been treating Victim? \_\_\_\_\_

2. What specific information is he/she disclosing regarding  
abuse? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Who has the victim named as perpetrator(s)? \_\_\_\_\_  
\_\_\_\_\_

4. In your opinion, would this child be able to testify in  
court? \_\_\_\_\_ Why?/Why not? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Additional Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAMPLE

**Parents Questionnaire**

DATE: \_\_\_\_\_ FILE # \_\_\_\_\_

SUBJECT FACILITY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PARENT NAME: \_\_\_\_\_ DOB: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

NAME OF CHILD: \_\_\_\_\_

1. Do you, as a parent, have any information regarding this case that you feel will be helpful? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2. Are you willing to have your child interviewed by a member of the Child Interviewing Team? \_\_\_\_\_

3. Would you confirm the time periods your child attended the \_\_\_\_\_ Preschool?

4. Is your child seeing a therapist? If so, what is the name of the therapist? \_\_\_\_\_

5. If your child is interviewed and gives the investigators information that can be used to prosecute suspects, how do you feel about your child testifying?

\_\_\_\_\_  
\_\_\_\_\_

6. Additional Information: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

7. Full name of you and your spouse, and dates of birth:

\_\_\_\_\_  
\_\_\_\_\_

8. Full names of your children, and their dates of birth:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Dates, days of week, and times in subject day care facility:

\_\_\_\_\_

Names of persons providing care:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. What is the day care facility's policy regarding visits by parents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Have you ever made unannounced visits to the day care facility? \_\_\_\_\_

What did you observe? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Do your children talk to you about their day care? \_\_\_\_\_

How do they feel about it? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Do you know of any injuries or accidents involving staff or children at the day care facility? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

14. Do you question any of the facility's policies or procedures?

\_\_\_\_\_

15. Have you ever registered a complaint regarding the care or supervision your child received while attending the subject

facility? \_\_\_\_\_ If yes, to whom? \_\_\_\_\_

Subject of complaint: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. What is your overall opinion of your child's day care?

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17. Have you been contacted by any other agency (law enforcement, children's services, etc) with regard to day care facilities?

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18. Have your children attended other day care facilities? \_\_\_\_\_

If yes, name of facility: \_\_\_\_\_

Dates, days of week, and times attended: \_\_\_\_\_

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Names of persons providing care: \_\_\_\_\_

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Do you wish to have an investigator contact you:

\_\_\_\_\_ Yes      \_\_\_\_\_ Prefer Not

Home phone (\_\_\_\_) \_\_\_\_\_

Work phone (\_\_\_\_) \_\_\_\_\_

S A M P L E

**Letter to Parents**

Dear Parents:

We are writing this letter to you in an effort to elicit your cooperation and support in the ongoing investigation into allegations of sexual abuse occurring at the \_\_\_\_\_ Preschool. We understand that you may have lots of concerns and fears and feel yourself placed in a difficult position regarding getting your family involved in this investigation. However, it is important that we work together to define the situation, to sort fact from rumor, and to bring some kind of closure to this investigation; to either exonerate or to make arrests and obtain criminal filings. To do so requires your help.

As you are probably aware, this investigation goes farther than just those who have been formally charged thus far. In some cases, it may only involve a few children; in others, such as the \_\_\_\_\_ Preschool, it appears to be more widespread and may include children who attended as far back as \_\_\_\_\_. In these cases, it is only by talking

to large numbers of children that we can begin to get a clearer picture of the scope of the alleged abuse.

You may have already questioned your child about any misconduct at his/her preschool and received a negative response.

Unfortunately, many children initially deny abuse to their parents. Some reasons for this phenomena are: 1) it's "parents" they were warned and threatened not to tell, 2) it's "parents" who have often warned them not to let anyone touch them and they may feel tremendous self-blame and guilt surrounding any touching. Additional questioning by the parent places the child in the position of continuing to lie or admitting they lied if they initially denied abuse to you.

Many times, trained professional interviewers, who can be more objective in their interviewing, can elicit disclosures about misconduct in such a way as to not traumatize the child and to unlock these secrets. Some children may disclose abuse in an initial interview; others may take a long time to disclose and require an established ongoing relationship of trust with an outside person, such as a therapist, or even several interviews with a trained law enforcement investigator.



The \_\_\_\_\_ would like to interview your  
(Name of Agency)  
child in an effort to determine if your child witnessed or was a  
victim of abuse at \_\_\_\_\_ Preschool. Our investi-  
gators are specialists in the area of child sexual abuse; they  
are highly trained and experienced. Most of them volunteered  
for this assignment due to their extreme concern over this  
problem.

Please be assured that cooperation in this ongoing investigation  
does not mean you and your family will become involved in the  
criminal justice system without your agreement. No team member  
will file charges on behalf of your child should he/she be deter-  
mined to be either a victim or a witness without your consent.

A list of therapists who have agreed to do evaluations on  
children who attended \_\_\_\_\_ Preschool will be  
provided upon request.

Please contact the \_\_\_\_\_ at \_\_\_\_\_  
(Name of Agency) (phone number)  
The team leader is \_\_\_\_\_, or if unavailable, ask  
for any member of the \_\_\_\_\_ Team.

S A M P L E

Information for Parents

MEDICAL EXAMINATIONS:

The dilemma of whether or not to have a child medically examined is one of the most difficult decisions parents may have to make.

It is our desire to work with each parent in assisting them with accurate information to aid them in facing this situation. The policy of the \_\_\_\_\_ regarding children  
(Agency Name)

having a medical sexual assault examination is based on specific information surrounding your child's particular disclosures, acts reported to have occurred, statements of other child witnesses, and the experience and opinion of the investigator assigned to assist your family. All medical examinations are conducted by qualified experts who have received specialized training and experience in this field. The examinations are non-traumatic and conducted with sensitivity, privacy, and are well-documented. If you feel the necessity to have your child seen by a physician prior to our recommendation to do so, please feel free to contact

\_\_\_\_\_ for a medical referral.  
(Name of Team Leader)

SAMPLE

Child Interview Report

Date      Time Started      Time Finished

Report Building \_\_\_\_\_

Interview \_\_\_\_\_

Location/Room \_\_\_\_\_

Persons Present/Location \_\_\_\_\_

Taped Y/N    Audio \_\_\_\_\_    Video \_\_\_\_\_

Media Used:

Dolls \_\_\_\_\_ Drawings \_\_\_\_\_ Puppets \_\_\_\_\_

Other \_\_\_\_\_

Report filed Y/N    Investigators report \_\_\_\_\_    Other \_\_\_\_\_

Miscellaneous: \_\_\_\_\_

## SATANIC, OCCULT, RITUALISTIC CRIME: A LAW ENFORCEMENT PERSPECTIVE

*Kenneth V. Lanning, M.S.*

National Center for the Analysis of Violent Crime  
FBI Academy  
Quantico, Virginia

### INTRODUCTION

The belief that there is a connection between satanism and crime is certainly not new. In fact, one of the oldest theories of crime causation is demonology. Concern about satanic or occult activity has peaked from time to time throughout history. Concern in the late 1970s focused primarily on "unexplained" deaths and mutilations of animals, and in recent years has focused on child sexual abuse and the human sacrifice of missing children. In 1999 it will probably focus on the impending "end of the world."

Today, satanism and a wide variety of other terms are used interchangeably in reference to certain crimes. This discussion will analyze the nature of "satanic, occult, ritualistic" crime and focus on appropriate LAW ENFORCEMENT responses to it.

Recently a flood of law enforcement seminars and conferences have dealt with satanic and ritualistic crime. These training conferences have various titles, such as "Occult in Crime," "Satanic Cults," "Ritualistic Crime Seminar," "Satanic Influences in Homicide," "Occult Crimes, Satanism and Teen Suicide," and "Ritualistic Abuse of Children."

The typical conference runs from one to three days and many of them include the same presenters and instructors. A wide variety of topics are usually discussed during this training either as individual presentations by different instructors or grouped together by one or more

instructors. Typical topics covered include the following:

1. Historical overview of satanism, witchcraft, and paganism from ancient to modern times.
2. Nature and influence of fantasy role-playing games, such as Dungeons and Dragons.
3. Lyrics, symbolism, and influence of rock and roll, Heavy Metal, and Black Metal music.
4. Teenage "stoner" gangs, their symbols, and their vandalism.
5. Teenage suicide by adolescents dabbling in the occult.
6. Crimes committed by self-styled satanic practitioners, including grave and church desecrations and robberies, animal mutilations, and even murders.
7. Ritualistic abuse of children as part of bizarre ceremonies and human sacrifices.
8. Organized, Traditional, or Multigenerational satanic groups involved in organized conspiracies, such as taking over day care centers, infiltrating police departments, and trafficking in human sacrifice victims.
9. The "Big Conspiracy" theory, which implies that satanists are responsible for such things as Adolph Hitler, World War II, abortion, pornography, Watergate, Iran-gate, and infiltration of the Department of Justice, the Pentagon and the White House.

During the conferences, these nine areas are linked together through the liberal use of the word "satanism" and some common symbolism (pentagrams, 666, demons, etc.). The implication often is that all are part of a continuum of behavior, a single problem or some common conspiracy. The information presented is a mixture of fact, theory, opinion, fantasy, and paranoia, and because some of it can be proven or corroborated (desecration of cemeteries, vandalism, etc.), the implication is that it is all true and documented. The distinctions among the different areas are blurred even if occasionally a presenter tries to make them. This is complicated by the fact that almost any discussion of satanism and witchcraft is interpreted in the light of the religious beliefs of those in the audience. Faith, not logic and reason, controls the religious beliefs of most people. As a result, some normally skeptical law enforcement officers accept the information disseminated at these conferences without critically evaluating it or questioning the sources. Nothing said at such conferences will change the religious beliefs of the attendees. Such conferences illustrate the ambiguity and wide variety of terms involved in this issue.

#### DEFINITIONS

The words satanic, occult, and ritualistic are often used interchangeably. It is difficult to precisely define Satanism (with a capital S), and no attempt will be made to do so here. However, it is important to realize how the word satanism (with a small s) is used by many people. Simply put, for some people, satanism is any religious belief system other than their own. The Ayatollah Khomeini referred to the United States as the "Great Satan." In the British Parliament, a Protestant leader called the Pope the anti-Christ. In a book titled *Prepare For War*, the author, Rebecca Brown, M.D., has a chapter entitled "Is Roman Catholicism Witchcraft?" Dr. Brown also lists among the "doorways" to satanic power and/or demon infestation the following: fortune tellers, horoscopes, fraternity oaths, vegetarianism, yoga, self-hypnosis, relaxation tapes, acupuncture, biofeedback, fantasy role-playing games, adultery, homosexuality, pornography, judo, karate, and rock music. Dr.

Brown states that rock music "was a carefully masterminded plan by none other than Satan himself." The ideas expressed in this book may seem extreme and even humorous. This book, however, has been recommended as a serious reference in law enforcement training material on this topic.

In books, lectures, handout material, and conversations, the author has heard all of the following referred to as satanism:

|                      |                    |
|----------------------|--------------------|
| Church of Satan      | Stoner Gangs       |
| Ordo Templi Orientis | Heavy Metal Music  |
| Temple of Set        | Rock Music         |
| Demonology           | KKK                |
| Witchcraft           | Nazis              |
| Paganism             | Scientology        |
| Santeria             | Unification Church |
| Voodoo               | The Way            |
| Rosicrucians         | Hare Krishna       |
| Freemasonry          | Rajneesh           |
| Knights Templar      | Religious Cults    |

New Age  
Astrology  
Channeling  
Transcendental Meditation  
Holistic Medicine  
Buddhism  
Hinduism  
Mormonism  
Islam  
Orthodox Church  
Roman Catholicism

At law enforcement training conferences, witchcraft, santeria, paganism, and the occult are frequently referred to as forms of satanism. It may be a matter of definition, but these things are not necessarily the same as traditional Satanism. The worship of lunar goddesses and nature and the practice of fertility rituals are not satanism. Santeria is a combination of 17th century Roman Catholicism and African paganism.

Occult means simply "hidden." All unreported or unsolved crimes might be regarded as occult, but in this context the term

refers to the action or influence of supernatural powers, some secret knowledge of them, or an interest in paranormal phenomena. Occult does not imply satanism, evil, wrongdoing, or crime. Indeed, historically the principle crimes deserving of consideration as "occult crimes" are the frauds perpetrated by fortune tellers and "psychics" who for a fee arrange visitations with dead loved ones and commit other financial crimes against the gullible.

Many individuals define satanism from a totally Christian perspective, using this word to describe the power of evil in the world. With this definition, any crimes, especially those which are particularly bizarre, repulsive, or cruel, can be viewed as satanic in nature. Yet, it is just as difficult to precisely define satanism as it is to precisely define Christianity or any complex spiritual belief system.

#### *What is Ritualistic Crime?*

The biggest confusion, however, is over the word *ritualistic*. During law enforcement training conferences on this topic, ritualistic almost always comes to mean satanic or at least spiritual. Ritual can refer to a prescribed religious ceremony, but in its broader meaning refers to any customarily repeated act or series of acts. The need to repeat these acts can be cultural, sexual, or psychological as well as spiritual.

Cultural rituals could include such things as what a family eats on Thanksgiving Day or when and how presents are opened at Christmas. The initiation ceremonies of fraternities, sororities, gangs, and other social clubs are other examples of cultural rituals.

Since 1972, the author has lectured about sexual ritualism, which is nothing more than repeatedly engaging in an act or series of acts in a certain manner because of a sexual need. In order to become aroused and/or gratified, a person must engage in the act in a certain way. This sexual ritualism can include such things as the physical characteristics, age, or gender of the victim, the particular sequence of acts, the

bringing or taking of specific objects, and the use of certain words or phrases. This is more than the concept of M.O. (Method of Operation) known to most police officers. M.O. is something done by an offender because it works. Sexual ritual is something done by an offender because of a need. Deviant acts, such as urinating on, defecating on, or even eviscerating a victim, are far more likely to be the result of sexual ritualism than religious or "satanic" ritualism.

From a criminal investigative perspective, two other forms of ritualism must be recognized. The *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)* defines Obsessive-Compulsive Disorder as "repetitive, purposeful, and intentional behaviors that are performed in response to an obsession, or according to certain rules or in a stereotyped fashion." Such compulsive behavior frequently involves rituals. Although such behavior usually involves noncriminal activity such as excessive hand washing or checking that doors are locked, occasionally compulsive ritualism can be part of criminal activity. Certain gamblers or firesetters, for example, are thought by some authorities to be motivated in part through such compulsions. Ritual can also stem from psychotic hallucinations and delusions. A crime can be committed in a precise manner because a voice told the offender to do it that way or because a divine mission required it.

To make this more confusing, cultural, religious, sexual, and psychological ritualism can overlap. Some psychotic people are preoccupied with religious delusions and hear the voice of God or Satan telling them to do things of a religious nature. Offenders who feel little, if any, guilt over their crimes may need little justification for their antisocial behavior. As human beings, however, they may have fears, concerns and anxiety over getting away with their criminal acts. It is difficult to pray to God for success in doing things that are against His Commandments. A negative spiritual belief system may fulfill their human need for assistance from and belief in a greater power or to deal with their superstitions. Compulsive ritualism (e.g., excessive cleanliness or fear of

disease) can be introduced into sexual behavior. Even many "normal" people have a need for order and predictability and therefore may engage in family or work rituals. Under stress or in times of change, this need for order and ritual may increase.

Ritualistic crime may fulfill the cultural, spiritual, sexual, and psychological needs of an offender. Crimes may be ritualistically motivated or may have ritualistic elements. The ritual behavior may also fulfill basic criminal needs to manipulate victims, get rid of rivals, send a message to enemies, and intimidate co-conspirators. The leaders of a group may want to play upon the beliefs and superstitions of those around them and try to convince accomplices and enemies that they, the leaders, have special or "supernatural" powers.

The important point for the criminal investigator is to realize that most ritualistic criminal behavior is not motivated simply by satanic or religious ceremonies. At some conferences, presenters have attempted to make an issue of distinguishing between "ritual," "ritualized," and "ritualistic" abuse of children. These subtle distinctions, however, seem to be of no significant value to the criminal investigator.

#### *What is Ritualistic Abuse of Children?*

It is not an easy question to answer. Most people today use the term to refer to abuse of children that is part of some evil spiritual belief system, which almost by definition must be satanic.

Dr. Lawrence Pazder, author of *Michelle Remembers*, defines ritualized abuse of children as "repeated physical, emotional, mental, and spiritual assaults combined with a systematic use of symbols and secret ceremonies designed to turn a child against itself, family, society, and God." He also states that "the sexual assault has ritualistic meaning and is not for sexual gratification."

This definition may have value for academics, sociologists, and therapists, but it creates potential problems for law enforcement. Certain acts engaged in with children (kissing, touching, appearing naked, etc.) may be criminal if performed for sexual gratification. If the ritualistic acts were in fact performed for spiritual indoctrination, potential prosecution can be jeopardized, particularly if the acts can be defended as constitutionally protected religious expression. The mutilation of a baby's genitals for sadistic sexual pleasure is a crime. The circumcision of a baby's genitals for religious reasons is most likely NOT a crime. The intent of the acts is important for criminal prosecution.

The author has been unable to precisely define ritualistic abuse and prefers not to use the term. It is confusing, misleading, and counter-productive. Certain observations, however, are important for investigative understanding.

Not all spiritually motivated ritualistic activity is satanic. Santeria, witchcraft, voodoo, and most religious cults are not satanism. In fact, most spiritually or religiously based abuse of children has nothing to do with satanism. Most child abuse that could be termed ritualistic by various definitions is more likely to be physical and psychological rather than sexual in nature. If a distinction needs to be made between satanic and nonsatanic child abuse, the indicators for that distinction must be related to specific satanic symbols, artifacts, or doctrine rather than the mere presence of any ritualistic element.

Not all such ritualistic activity with a child is a crime. Almost all parents with religious beliefs indoctrinate their children into that belief system. Is circumcision for religious reasons child abuse? Does having a child kneel on a hard floor reciting the rosary constitute child abuse? Does having a child chant a satanic prayer or attend a black mass constitute child abuse? Does a religious belief in corporal punishment constitute child abuse? Does group care of children in a commune or cult constitute child abuse? Does the fact that any acts in question were performed with parental permis-

sion affect the nature of the crime? Many ritualistic acts, whether satanic or not, are simply not crimes.

When a victim describes and investigation corroborates what sounds like ritualistic activity, several possibilities must be considered. The ritualistic activity may be part of the excessive religiosity of a mentally ill, psychotic offender. It may be a misunderstood part of sexual ritualism. The ritualistic activity may be incidental to any real abuse. The offender may be involved in ritualistic activity with a child and also may be abusing a child, but one may have little or nothing to do with the other.

The offender may be deliberately engaging in ritualistic activity with a child as part of child abuse. The motivation, however, may be not to indoctrinate the child into a belief system, but to lower the inhibitions of, to control and manipulate, and/or to confuse the child. In all the turmoil over this issue, it would be a very effective strategy for any child molester to deliberately introduce ritualistic elements to his crime to confuse the child and therefore the criminal justice system.

The ritualistic activity and the child abuse may be integral parts of some spiritual belief system. In that case, the greatest risk is to the children of the practitioners. But this is true of all cults, not just satanic cults. A high potential of abuse exists for any children raised in a group isolated from the mainstream of society, especially if the group has a charismatic leader whose orders are unquestioned and blindly obeyed by the members. Sex, money, and power are most often the main motivations of the leaders of such cults.

#### *What Makes a Crime Satanic, Occult, or Ritualistic?*

Some would answer that it is the offender's spiritual beliefs or membership in a cult or "church". If that is the criteria, why not label the crimes committed by Protestants, Catholics, and Jews in the same way? Are the atrocities of Jim Jones, in Guyana, Christian crimes?

Some would answer that it is the presence of certain symbols in the possession or home of the perpetrator. What does it mean then to find a crucifix, Bible, rosary, etc., in the possession or home of a bank robber, embezzler, child molester, or murderer? If different criminals possess the same symbols, are they necessarily part of one big conspiracy?

Others would answer that it is the presence of certain symbols such as pentagrams, inverted crosses, and 666 at the crime scene. What does it mean then to find a cross spray painted on a wall or carved into the body of a victim? What does it mean for a perpetrator to leave a Bible tied to his murder victim? What about the possibility that an offender deliberately left such symbols to make it look like a "satanic" crime?

Some would argue that it is the bizarreness or cruelty of the crime: body mutilation, amputation, drinking of blood, eating of flesh, use of urine or feces. Does this mean that all individuals involved in lust murder, sadism, vampirism, cannibalism, urophilia, and coprophilia are satanists or occult practitioners? What does this say about the bizarre crimes of psychotic killers such as Ed Gein or Richard Trenton Chase, both of whom mutilated their victims as part of their psychotic delusions?

A few might even answer that it is the fact that the crime was committed on a date with satanic or occult significance (Halloween, May Eve, etc.) or the fact that the perpetrator claims that Satan told him to commit the crime. What does this mean for crimes committed on Thanksgiving or Christmas? What does this say about crimes committed by perpetrators who claim that God or Jesus told them to do it? One note of interest is the fact that in handout and reference material collected by the author, the number of dates with satanic or occult significance ranges from 8 to 110. This is compounded by the fact that it is sometimes stated that satanists can celebrate these holidays on several days on either side of the official date or that the birthdays of practitioners can also be holidays. The exact names and exact dates of



the holidays and the meaning of symbols listed may also vary depending on who prepared the material. The handout material is often distributed without identifying the author or documenting the original source of the information. It is then frequently photocopied by attendees and passed on to other police officers with no one really knowing its validity or origin.

Most, however, would probably answer that what makes a crime satanic, occult, or ritualistic is the motivation for the crime. It is a crime that is spiritually motivated by a religious belief system. How then do we label the following true crimes?

- a. Parents defy a court order and send their children to an unlicensed Christian school.
- b. Parents refuse to send their children to any school because they are waiting for the second coming of Christ.
- c. Parents beat their child to death because he or she will not follow their Christian beliefs.
- d. Parents violate child labor laws because they believe the Bible requires such work.
- e. Individuals bomb an abortion clinic or kidnap the doctor because their religious belief system says abortion is murder.
- f. A child molester reads the Bible to his victims in order to justify his sex acts with them.
- g. Parents refuse life-saving medical treatment for a child because of their religious beliefs.
- h. Parents starve and beat their child to death because their minister said the child was possessed by demonic spirits.

Some people would argue that the Christians who committed the above crimes misunderstood and distorted their religion while satanists who commit crimes are following theirs. But who decides what constitutes a misinterpretation of a religious belief system? The individuals who committed the above-described crimes, however misguided, believed that they were following their religion as they understood

it. Religion was and is used to justify such social behavior as the Crusades, the Inquisition, Apartheid, segregation, violence in Northern Ireland, India, and Lebanon.

Who decides exactly what "satanists" believe? In this country, we cannot even agree on what Christians believe. At many law enforcement conferences *The Satanic Bible* is used for this, and it is often contrasted or compared with the Christian Bible. *The Satanic Bible* is, in essence, a 150-page paperback book written by one man in 1969. To compare it to a book written by over 30 authors over a period of thousands of years is ridiculous, even ignoring the possibility of Divine revelation in the Christian Bible. What satanists believe certainly isn't limited to other peoples' interpretation of a few books. More importantly, it is subject to some degree of interpretation by individual believers just as Christianity is.

The fact is that far more crime and child abuse has been committed by zealots in the name of God, Jesus, and Mohammed than has ever been committed in the name of Satan. Many people don't like that statement, but few can argue with it.

Although defining a crime as satanic, occult, or ritualistic would probably involve a combination of the criteria set forth above, the author has been unable to clearly define such a crime. Each potential definition presents a different set of problems when measured against an objective, rational, and constitutional perspective. Each offender in a group may have a different motivation for the crime. The author has discovered that the facts of so-called "satanic crimes" are often significantly different from what is described at law enforcement training conferences or in the media. The actual involvement of satanism or the occult in these cases usually turns out to be secondary, insignificant, or nonexistent.

## THE LAW ENFORCEMENT PERSPECTIVE

The perspective with which one looks at satanic, occult, or ritualistic crime is extremely important. Sociologists, therapists, religious leaders, parents, and just plain citizens each have their own valid concerns and views about this issue. This discussion, however, will deal ONLY with the law enforcement perspective.

The law enforcement perspective must focus on crime and clearly recognize that just because an activity is "satanic" does not necessarily mean it is a crime or that it is not a legitimate religious practice protected by the First Amendment. Within the personal religious belief system of a law enforcement officer, Christianity may be good and satanism evil. Under the Constitution, however, both are neutral.

This is an important, but difficult, concept for many law enforcement officers to accept. They are paid to uphold the Constitution and enforce the penal code, not the Ten Commandments. The apparent increasing numbers of teenagers and some adults dabbling in satanism and the occult may be cause for concern for parents, school officials, and society. What, however, law enforcement can or should do about it is another matter. Police interference with free exercise of constitutional rights potentially creates major problems and conflicts.

What is the justification for law enforcement officers giving presentations on satanism and the occult to citizen groups, PTA's or school assemblies? Is it public relations, a safety program, or crime prevention? If it is crime prevention, how much crime can be linked to satanic or occult activity and what do such presentations do to prevent the crime? Law enforcement agencies should carefully consider the legal implications and justification for such presentations. Is the fact that satanism or the occult is or can be a negative influence on some people enough justification for such law enforcement efforts?

When you combine an emotional issue such as the sexual abuse of children with an even more emotional issue such as people's religious beliefs, it is difficult to maintain objectivity and remember the law enforcement perspective. Some police officers may even feel that all crime is caused by evil, all evil is caused by Satan, and therefore, all crime is satanic crime. This may be a valid religious perspective, but it is of no relevance to the investigation of crime for purposes of prosecution.

Many of the police officers who lecture on satanic or occult crime do not even investigate such cases. Their presentations are more a reflection of their personal religious beliefs than documented investigative information. They are absolutely entitled to their beliefs, but introducing themselves as current or former police officers and then speaking as religious advocates causes confusion. As difficult as it might be, police officers must separate the religious and law enforcement perspectives when they are lecturing or investigating in their official capacities as law enforcement officers. Many law enforcement officers begin their presentations by stating that they are not addressing or judging anyone's religious beliefs, and then proceed to do exactly that.

Some police officers have resigned rather than curtail or limit their involvement in this issue as ordered by their departments. Perhaps such officers deserve credit for recognizing that they could no longer keep the perspectives separate.

Law enforcement officers who believe that the investigation of satanic/occult crime puts them in conflict with supernatural forces of evil should probably not be assigned to these cases. If, however, such officers must be or are assigned, they will need the power of their own spiritual belief system in order to deal with the superstition and religious implications of these cases. The religious beliefs of officers should provide spiritual strength and support for them, but not affect the objectivity and professionalism of the investigation.

The law enforcement perspective requires avoiding the paranoia that has crept into this issue and into some of the law enforcement training conferences. Paranoid belief systems are characterized by the gradual development of intricate, complex, and elaborate systems of thinking based on and often proceeding logically from misinterpretation of actual events. It typically involves hypervigilance over the perceived threat, the belief that danger is around every corner, and the willingness to take up the challenge and do something about it. Another very important aspect of this paranoia is the belief that those who do not recognize the threat are evil and corrupt. In this extreme view, you are either with them or against them. You are either part of the solution or part of the problem.

Concern over satanic crime and ritualistic abuse of children is highly polarizing. After one presentation on this topic, a student wrote in a critique that the author was obviously an "agnostic cultist." Some zealots even use the term "clean" to refer to law enforcement officers who have not been infiltrated by the satanists. If some police officers or military personnel practice satanism or paganism does that mean that law enforcement and the military have been infiltrated? The word "infiltrated" is only used when talking about an unpopular belief system. Protestants, Catholics, and Jews are no longer thought of as "infiltrating" the police and military, but not long ago Jews were thought by many to have done so.

Overzealousness and exaggeration motivated by the religious fervor of those involved in law enforcement training is more acceptable than that motivated by ego or profit. There are those who are deliberately distorting and hyping this issue for personal notoriety and profit. Satanic and occult crime has become a growth industry. Speaking fees, books, video and audio tapes, prevention material, television and radio appearances all bring egoistic and financial rewards.

Law enforcement officers must be objective fact finders. It is not their job to believe

children or other complainants. It is their job to listen. The law enforcement perspective cannot ignore the lack of physical evidence (no bodies or even hairs, fibers, or fluids left by violent murders); the difficulty in successfully committing a large-scale conspiracy crime (the more people involved in any crime conspiracy, the harder it is to get away with it); and human nature (intragroup conflicts resulting in individual self-serving disclosures would be bound to occur in any group involved in organized kidnapping, baby breeding and human sacrifice). If and when members of a destructive cult commit murders, they are bound to make mistakes, leave evidence, and eventually make admissions in order to brag about their crimes or to reduce their legal liability. The discovery of the murders in Matamoros, Mexico, in April, 1989, and the results of the subsequent investigation are good examples of these dynamics.

Bizarre crime and evil can occur without organized satanic activity. The law enforcement perspective requires that we distinguish between what we know and what we're not sure of.

The facts are:

- a. Some individuals believe in and are involved in satanism and the occult.
- b. Some of these individuals commit crime.
- c. Some groups of individuals share these beliefs and involvement in satanism and the occult.
- d. Some members of these groups commit crime together.

The unanswered questions are:

- a. What is the connection between the belief system and the crimes committed?
- b. Is there an organized conspiracy of satanic and occult believers responsible for inter-related serious crime (e.g., molestation, murder)?

After all the hype and hysteria is put aside, the realization sets in that most satanic/occult activity involves the commission

of NO crimes, and that which does, usually involves the commission of relatively minor crimes such as trespassing, vandalism, cruelty to animals, or petty thievery. The law enforcement problems most often linked to satanic or occult activity are:

1. Vandalism
2. Desecration of churches and cemeteries
3. Thefts from churches and cemeteries
4. Teenage gangs
5. Animal mutilations
6. Teenage suicide
7. Child abuse
8. Kidnapping
9. Murder and human sacrifice

Valid evidence shows some "connection" between satanism and the occult and the first six problems set forth above. The "connection" to the last three problems is far more uncertain.

Even where there seems to be a "connection," the nature of the connection needs to be explored. It is easy to blame involvement in satanism and the occult for behaviors that have complex motivations. A teenager's excessive involvement in satanism and the occult is usually a symptom of a problem and not the cause of a problem. Blaming satanism for a teenager's vandalism, theft, suicide, or even act of murder is like blaming a criminal's offenses on his tattoos: both are often signs of the same rebelliousness and lack of self esteem that contribute to the commission of crimes.

The law enforcement investigator must objectively evaluate the legal significance of any criminal's spiritual beliefs. In most cases, including those involving satanists, it will have little or no legal significance. If a crime is committed as part of a spiritual belief system, it should make no difference which belief system it is. The crime is the same whether a child is abused or murdered as part of a Christian, Hare Krishna, Moslem, or any other belief system. We generally don't label crimes with the name of the perpetrator's religion. Why then are the

crimes of child molesters, rapists, sadists, and murderers who happen to be involved in satanism and the occult labeled as satanic or occult crimes? If criminals use a spiritual belief system to rationalize and justify or to facilitate and enhance their criminal activity, should the focus of law enforcement be on the belief system or on the criminal activity?

Several documented murders have been committed by individuals involved in one way or another in satanism or the occult. In some of these murders, the perpetrator has even introduced elements of the occult (e.g., satanic symbols at crime scene). Does that automatically make these satanic murders? It is the author's opinion that the answer is no. Ritualistic murders committed by serial killers or sexual sadists are not necessarily satanic or occult murders. Ritualistic murders committed by psychotic killers who hear the voice of satan are no more satanic murders than murders committed by psychotic killers who hear the voice of Jesus are Christian murders.

Rather, a satanic murder can be defined as one committed by two or more individuals who rationally plan the crime and whose PRIMARY motivation is to fulfill a prescribed satanic ritual calling for the murder. By this definition, the author has been unable to identify even one documented satanic murder in the United States. Although such murders may have and can occur, they appear to be few in number. In addition, the commission of such killings would probably be the beginning of the end for such a group. It is highly unlikely that they could continue to kill several people, every year, year after year, and not be discovered.

A brief typology of satanic and occult practitioners is helpful in evaluating what relationship, if any, such practices have to crimes under investigation. The following typology is adapted from the investigative experience of Officer Sandi Gallant of the San Francisco Police Department, who began to study the criminal aspects of occult activity long before it became popular. No typology is perfect, but the author uses this typology because it is simple

and offers investigative insights. Most practitioners fall into one of three categories, any of which can be practiced alone or in groups.

1. *Youth Subculture* - Most teenagers involved in fantasy role-playing games, heavy metal music, or satanism and the occult are going through a stage of adolescent development and commit no significant crimes. The teenagers who have more serious problems are usually those from dysfunctional families or those who have poor communication within their families. These troubled teenagers turn to satanism and the occult to overcome a sense of alienation, to obtain power, or to justify their antisocial behavior. For these teenagers, it is the symbolism, not the spirituality, that is important. It is either the psychopathic or the oddball, loner teenager who is most likely to get into serious trouble. Extreme involvement in the occult is a symptom of a problem, not the cause. This is not to deny, however, that satanism and the occult are negative influences for a troubled teenager. But to hysterically warn teenagers to avoid this "mysterious, powerful and dangerous" thing called satanism will drive many teenagers right to it. Some rebellious teenagers will do whatever will most shock and outrage society in order to flaunt their rejection of adult norms.
2. *Dabblers (Self-styled)* - For these practitioners, there is little or no spiritual motivation. They mix satanism, witchcraft and paganism. Symbols mean whatever they want them to mean. Molesters, rapists, drug dealers and murderers may dabble in the occult and may commit their crimes in a ceremonial or ritualistic way. This category has the potential to be the most dangerous, and most of the "satanic" killers fall into this category. Their involvement in satanism and the occult is a symptom of a problem and a rationalization and justification of antisocial behavior. Satanic/occult practices (as well as those of other spiritual belief systems)

can be used as a mechanism to facilitate criminal objectives.

3. *Traditional (Orthodox, Multigenerational)* - These are the true believers. They are usually wary of outsiders. Because of this and constitutional issues, such groups are difficult for law enforcement to penetrate. Although there is much we don't know about these groups, as of now there is little or no hard evidence that they are involved in serious, organized criminal activity. In addition, instead of being self-perpetuating master crime conspirators, true believers probably have a similar problem with their teenagers rebelling against their belief system.

Many police officers ask what to look for during the search of the scene of suspected satanic activity. The answer is simple: look for evidence of a crime. A pentagram is no more criminally significant than a crucifix unless it corroborates a crime or a criminal conspiracy. If a victim's description of the location or the instruments of the crime includes a pentagram, then the pentagram would be evidence. But the same would be true if the description included a crucifix.

There is no way any one law enforcement officer can become knowledgeable about all the symbols and rituals of every spiritual belief system that might become part of a criminal investigation. The officer needs only to be trained to recognize the possible investigative significance of such signs, symbols, and rituals. Knowledgeable religious scholars, academics, and other true experts in the community can be consulted if a more detailed analysis is necessary. Any analysis, however, may have only limited application, especially to cases involving teenagers, dabblers, and other self-styled practitioners. The fact is, signs, symbols, and rituals can mean anything that practitioners want them to mean AND/OR anything that observers interpret them to mean. The meaning of symbols can also change over time, place, and circumstance. Is a swastika spray painted on a wall an ancient symbol of prosperity and good fortune, a recent

symbol of Naziism and anti-Semitism, or a current symbol of paranoia and adolescent defiance? The peace sign, which in the 1960s was a familiar antiwar symbol, is now supposed to be a satanic symbol.

In spite of what is sometimes said or suggested at law enforcement training conferences, police have no authority to seize any satanic or occult paraphernalia they might see during a search. A legally valid reason must exist for doing so. It is not the job of law enforcement to prevent satanists from engaging in noncriminal teaching, rituals, or other activities.

### CONCLUSIONS

There must be a middle ground in this issue. Concern about satanic or occult activity should not be a big joke limited to religious fanatics. On the other hand, law enforcement is not now locked in a life-and-death struggle against the supernatural forces of ancient evil. Law enforcement officers need to know something about satanism and the occult in order to properly evaluate their possible connections to and motivations for criminal activity. They must know when and how beliefs, symbols, and paraphernalia can be used to corroborate criminal activity. From a community relations perspective, they must also learn to respect spiritual beliefs that may be different or unpopular but that are not illegal. The focus must be on the objective investigation of violations of criminal statutes.

Until hard evidence is obtained and corroborated, the American people should not be frightened into believing that babies are being bred and eaten, that 50,000 missing children are being murdered in human sacrifices, or that satanists are taking over America's day care centers. No one can prove with absolute certainty that such activity has NOT occurred. The burden of proof, however, as it would be in a criminal prosecution, is on those who claim that it has occurred. As law enforcement agencies evaluate and decide what they can or should do about satanic and occult activity in their communities, they might want to also consider how

to deal with the hype and hysteria of the "anti-satanists." The overreaction to the problem can clearly be worse than the problem. An unjustified crusade against those perceived as satanists could result in wasted resources, unwarranted damage to reputations, and disruption of civil liberties.

In general, the law enforcement perspective can best be maintained by investigators repeatedly asking themselves what they would do if the acts in question were part of Protestant, Catholic or Jewish activity. If a law enforcement agency wants to evaluate the group spiritual framework within which a crime is committed, it is more appropriate, accurate, and objective to refer to such crimes as cult crimes rather than as satanic, occult, or ritualistic crimes. The "Sects, Cults and Deviant Movements" seminar put on by The Institute of Police Technology and Management at the University of North Florida in Jacksonville, Florida, is a good example of this more objective, broad-based approach. Satanic cults have no more law enforcement significance than many other potentially destructive cults that exist in this country.

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Presentation Paper

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# Scientific Approaches to Proving Child Abuse Cases

Presented by  
David Bigbee

*PHYSICAL EVIDENCE  
IN CHILD ABUSE CASES*

*By:*

*David Bigbee  
Special Agent  
Forensic Science Research and Training Center  
FBI Academy  
Quantico, Virginia 22135*



## *INTRODUCTION*

The successful conviction of a defendant in child abuse cases, or the exoneration of a person falsely accused of child abuse, often relies on the proper recognition, collection, preservation and examination of physical evidence.

Physical evidence cannot have memory lapses, cannot lie, and, if properly presented in a court of law, is not biased.

Physical evidence becomes even more critical in the successful prosecution of individuals if the victim is murdered and no witnesses are present, or when the victim is too young to testify against the assailant.

Physical evidence that is not properly collected, analyzed, and presented to a judge or jury is of no value. In addition, the majority of jurors, judges, and often prosecutors and defense lawyers do not fully understand the significance of physical evidence, especially when a highly technical or new technique such as DNA analysis is utilized. It is therefore incumbent upon all the members of the justice team to ensure that judges and jurors fully understand the significance, or lack of significance of physical evidence in child abuse cases.

In addition to police investigators and prosecutors, there is another source of physical evidence which is often overlooked with respect to the proper collection and preservation of evidence. This is the medical personnel who examine victims of child abuse, especially those involving sexual assaults.

This document will discuss some aspects of the proper

recognition, collection, preservation, and analysis of physical evidence in child abuse cases. It will also present the significance of the various types of evidence, and what a qualified forensic expert could or could not testify to concerning that evidence in a court of law. (For a more detailed description of crime scene searches, see the document Crime Scene Search as a Process by Special Agent Dale Moreau of the FBI Laboratory).

#### *THE CRIME SCENE*

The field of forensic science begins at the crime scene. In many cases of physical and sexual child abuse the crime scene consists of only the child. The most important and obvious purpose of a crime scene search is to obtain evidence. In the process of obtaining evidence, proper documentation of the scene, quality photographs, crime scene sketches, administrative logs, and crime scene integrity are absolutely essential.

Most law enforcement personnel, and occasionally prosecuting attorneys desire to have a personal inspection of a crime scene. Non-essential personnel, especially those not thoroughly trained in crime scene searches, can contaminate a crime scene and disrupt the integrity of the scene. This action could potentially cause physical evidence to be ruled inadmissible in a court of law. Therefore, the crime scene search should be conducted by trained professional investigators or crime scene

technicians and the number of people present kept to a minimum.

The nature of child abuse often produces emotional outrage in investigating officers upon finding a raped or beaten child. This sometimes allows emotions to interfere with their primary mission of solving the crime along with the proper processing of the crime scene. Emotions must be overcome because the proper processing of the crime scene is in the best interest of the victim and the prosecution of the defendant.

#### *EVIDENCE*

Physical evidence is categorized as either class type evidence or individual type evidence.

Class type evidence cannot be associated with one person or source to the exclusion of all other persons or things. Examples of class type evidence are hairs, fibers, blood, semen, saliva, and urine, (by conventional analyses).

Individual type evidence can be associated with one person or source to the exclusion of all others. Examples of individual type evidence are fingerprints, a bullet fired from a specific weapon, and theoretically, the DNA analysis of body fluids.

There is a misconception by some investigators and prosecutors that class type evidence such as fibers are so common in the environment that they are of no value in an investigation. In certain cases, such as an incest case in which a child is sexually assaulted in the home this type evidence may be a little

probative value. On the other hand, it may be critical to the solution of a crime and prosecution of a suspect.

An example of this was the Wayne Williams child murders in Atlanta. The "circumstantial" evidence the fibers consisted of individually were of little consequence alone but the preponderance of them, the number of different types that were recovered, and they were identical to those in the Williams home were sufficient to convince a jury he was guilty.

If a child is sexually assaulted and semen found in a vaginal swab from the victim originated from a secretor whose blood type was "A", it may appear to be of little consequence, since a large number of the population also has blood type "A". However, if the suspect in a case has blood type "B", he is easily eliminated and the investigation can proceed.

Individual type evidence is obviously superior to class type evidence. The latent fingerprint is a highly sought-after item of evidence in all crimes. Unfortunately, in child abuse cases, latent or patent fingerprints often are irrelevant if the child resides with the suspect. In addition, the predominant form of evidence found in the sexual assault of children involves body fluids, especially semen and saliva. Theoretically, the DNA analysis of these fluids may be individual evidence, or the percentage of the population with the same DNA type could be so astronomically high that a jury would in fact consider the evidence individual.

For example, the first successful sexual assault conviction

in the United States using DNA analysis was a serial rapist in Orlando, Florida. This individual was convicted on the victim's testimony and on the testimony of an expert witness who conducted DNA analysis on semen found in the vaginal vault of the victim. The expert testified that there was one chance in 10 billion that any other man taken at random from the population would have the same DNA patterns. Unfortunately, not all cases result in such a low percentage. The statistical data in many cases has been so sufficiently low that juries have been convinced the suspect was guilty. DNA analysis will be discussed in more detail in another section.

#### *EVIDENCE TRANSFER*

At the scene of a crime a person cannot be physically present without leaving something at the scene and taking something with him when he departs. This is the concept of evidence transfer. Most often, and to the benefit of the victim, this type evidence is called "trace evidence" and includes many things difficult to see or to locate such as hairs, fibers, small drops of blood, semen, or saliva.

Since most trace evidence, such as hair or fibers are generally transitory in nature, and are lost rapidly, they usually reflect the last environment in which the person was present. This type evidence is frequently overlooked by not only the suspect, but also by the crime scene investigator who has not

been properly trained and does not know how to properly collect such evidence.

Since most cases of physical child abuse involve sexual assaults, homicides, beatings, and other forms of physical abuse, these topics and the types of evidence will be discussed separately.

## *SEXUAL ASSAULTS*

The collection of evidence in sexual assaults of children begins at the scene. If possible, any clothing the child is wearing upon arrival of investigators should be collected at the scene. In cases where the child's life or well being is in jeopardy, the collection of evidence is secondary and the child should be transported to a hospital immediately.

Often paramedics, or other medical personnel may be on the scene. Their responsibility is to the victim's medical needs. However, in many cases evidence can be contaminated or lost by medical personnel unknowingly. Therefore, it is recommended that police agencies and prosecutors coordinate with hospital and ambulance officials in their jurisdiction for cross-training purposes.

If the clothing of the victim can be collected at the scene, the child should be undressed while standing or lying on a clean sheet, or a large piece of paper which should then be marked, folded, properly packaged and submitted to the crime laboratory. Foreign hairs, fibers, or other evidence may be present which could be dislodged while the child is undressing. If this is not possible at the scene, the same procedure should be used at the hospital.

Occasionally sympathetic officers, or the guardians of the child are so revolted by the sexual assault that they allow the child to bathe or wash after the assault. This should not be

allowed. Valuable evidence could be lost in the process.

Some medical personnel recommend that children and adult female sexual assault victims be administered either an anti-spermicide or antiseptic solution or both immediately to prevent pregnancy or the transmission of disease, especially HIV (the AIDS virus). These solutions may interfere with serological testing. In addition, in a recently conducted study at the University of Washington in Seattle, it was found that the risk of a rapist transmitting a disease to the victim was small but significant with many diseases. However, most of these are curable or treatable, and in their study, they found no evidence of the transmission of syphilis, herpes simplex virus, cytomegalovirus or the AIDS virus. This is an emotional issue, and one which should be decided by medical personnel and the victim or the victim's parents, and NOT BY LAW ENFORCEMENT PERSONNEL OR PROSECUTORS. It should be explained to the victim, however, that physical evidence could be lost in the process of using these solutions.

If the suspect is present, especially if he does not reside with the child, his clothing should also be obtained in the same manner. However, if the suspect resides with the victim, the probative value of hairs, fibers, latent fingerprints and other trace evidence may not exist.

Blood stains on the suspect or his clothing is critical and should be collected and forwarded to the forensic laboratory.

Once the victim has been undressed and transported to the



hospital for examination, the search for trace and other evidence begins according to standard procedures.

If the victim is kidnaped and assaulted in an automobile, a full and detailed search of the automobile must be conducted. Generally, this involves processing the car by quadrants for hairs, fibers, blood, semen, fingerprints and other trace evidence. A special vacuum cleaner with filters attached can be used for this purpose. Lasers, ultraviolet light, and alternate light sources are helpful in searching for body fluids, fibers, and fingerprints.

Many crime scene technicians utilize a substance called "luminol" in searching for virtually invisible traces of blood both in automobiles and in rooms. It should be kept in mind that luminol as well as other chemicals, can destroy body fluid evidence which will be analyzed by a serologist, especially for DNA analysis.

Once the victim has arrived at the hospital, medical personnel will then conduct a physical examination of the child and collect evidence from the victim. The examination of evidence by medical personnel should be done by using an approved Sexual Assault Kit that is either purchased commercially or prepared by competent medico-legal personnel. Special sexual assault kits for children are also manufactured. Medical personnel must be made aware that the evidence they are collecting be properly labeled, identified, and maintained in the chain of custody. The examination should follow the protocol

included in the sexual assault kit. As previously mentioned, if the clothing is to be removed at the hospital, a clean sheet or large piece of paper should be placed under the victim and preserved as evidence. **ALL CLOTHING SHOULD BE PACKAGED SEPARATELY IN PAPER, AND IF WET, ALLOWED TO AIR DRY OUTSIDE OF DIRECT SUNLIGHT PRIOR TO SUBMISSION TO THE LABORATORY.**

The physical examination of the child should also be conducted on a separate sheet of paper, often which is included in the sexual assault kit, and retained as evidence.

The victim should be visibly examined for trauma and properly photographed. One area which may be overlooked on victims are bite marks. These suspected marks should be photographed, swabbings taken for saliva stains, and preferably examined by a forensic odontologist either at the crime scene or the hospital. The use of ultra-violet filters is beneficial in the photography of bite marks.

Any possible body fluids present on the child, either wet or dried, should be collected and forwarded to the forensic laboratory. All hairs or fibers adhering to the child's body should be collected. An examination of the vaginal and rectal areas of the victim should be examined for any type lubricating substance and if found, collected and submitted to a forensic laboratory for analyses.

Combings of the child's head hair should be taken with the comb or brush provided before any known head hairs are removed. These combings should be taken on paper, sealed and submitted to

the laboratory. The FBI Laboratory recommends that a minimum of 20 head hairs, taken from representative areas of the scalp be taken in all cases. These known hairs, which will be used for comparison purposes, preferably should be pulled. If they are cut, they should be cut as close to the scalp as possible.

In prepubescent children, no pubic hair combings or known pubic hair specimens can be obtained. A thorough examination of the genital area of the child should be conducted for foreign pubic hairs. In adolescents, combings of pubic hairs should be taken and a minimum of 20 known pubic hairs obtained.

In female victims, vaginal, oral, and anal swabbings must be taken, even if the child denies that the suspect penetrated any of these organs. In male victims, oral and anal swabbings should be taken, and in cases of oral sodomy performed on the child, saliva swabbings of the child's penis or vaginal area for saliva should be taken.

As these swabbings are taken, the medical examiner should also prepare microscopic smears from each swab and properly label them.

Many sexual assault kits include penile swabs. In the author's opinion, these should only be used in very rare circumstances and generally, no probative evidence is obtained from them. However, if indicated by the examining physician, in such a case as possible blood stains in a suspect's urethra, they should be used.

If the victim is deceased or had contact with the suspect,

fingernail scrapings and clippings should also be obtained, especially if it appears the victim may have scratched the suspect.

Known blood, saliva, and hair samples should be collected from both the victim and suspect.

The blood should be collected in vacuum tubes. If possible, the blood samples should consist of three tubes. The first should be drawn in a tube which contains no preservatives or anticoagulants and is equipped with a red stopper.

The second tube, which will be used to analyze DNA should contain EDTA (ethylenediaminetetraacetic acid) and is equipped with a purple stopper. The EDTA chelates magnesium in the sample, which is one less step that a laboratory must perform.

In the event medical personnel insist upon drawing the blood for conventional analyses into a tube with a preservative, the alternate is ACD (acid citrate dextrose) and the tube is equipped with a yellow stopper. In addition, if the blood is to be analyzed for illicit drugs an additional tube of blood containing sodium fluoride which is equipped with a gray stopper should be collected.

ALL SAMPLES OF BLOOD SHOULD BE FORWARDED TO THE FORENSIC LABORATORY AS SOON AS POSSIBLE AFTER IT HAS BEEN DRAWN. IN THE EVENT IT MUST BE MAINTAINED FOR A SHORT PERIOD OF TIME IT SHOULD BE KEPT IN A FROST FREE REFRIGERATOR BUT NEVER FROZEN.

IN THE EVENT THE FORENSIC LABORATORY WILL LATER BE ANALYZING THE BLOOD FOR DNA IT SHOULD BE REMOVED FROM THE TUBE, THOROUGHLY

AIR DRIED ON WASHED COTTON SHEETING AND FROZEN IN A FROST FREE FREEZER. IF THIS IS NOT DONE, THE DNA IN THE SAMPLE MAY DETERIORATE AND CANNOT BE TYPED.

Blood specimens sent to a laboratory by mail need not be packed in ice and never in dry ice. They should be sent either by registered mail or by overnight delivery mail.

Saliva samples from both the suspect and victim will be used to determine secretor status. The saliva samples should be collected by having the person deposit saliva on the piece of filter paper provided in the sexual assault kit until the stain is at least 1 and 1/2 in diameter. Preferably, the person should not eat, drink, or smoke for one hour prior to the deposition. This sample should then be air dried prior to submission to the laboratory. The stained area of the filter paper should not be outlined by medical personnel with any type of ink.

Occasionally, medical personnel may obtain a vaginal aspirate or oral rinse from the victim, depending on the circumstances but this is not the usual practice.

If it appears the child may have been drugged, a urine specimen should be taken as well as blood samples for drug analyses.

Analyses of the Sexual Assault Kit Contents:

When the forensic laboratory receives the sexual assault kits and all the evidence, it will begin the examinations. Forensic science is one of comparisons. Without known specimens from both the victim and the suspect, the analyses means

virtually nothing.

Although the actual analyses of the evidence may be almost immediate by some laboratories, others are so backlogged with cases that the evidence will be properly secured and preserved until a later date.

The biological fluids will be analyzed by forensic serologists and chemists. The blood samples from both the victim and the suspect are generally analyzed for the "ABO" type, secretor status, genetic markers and DNA type. Whether or not all these examinations will be conducted depends on the laboratory. For example, if no DNA can be found or typed on the suspected stains, such as those found on vaginal swabs, there would be no reason for the laboratory to conduct the lengthy and expensive process of DNA analysis. The tube of blood containing sodium fluoride would be analyzed for drugs and toxicology if indicated.

The hairs and fibers collected, along with the submitted clothing items will be examined by a hairs and fibers specialist prior to any other examinations since trace materials could be lost. The clothing items are examined and scraped for extraneous hairs and fibers, soils, etc., which are then compared to the known specimens in the case. These items are then examined by a serologist who will determine if blood, semen, or saliva stains are present, and these stains will then be analyzed.

Hair examinations: A forensic laboratory can determine if hairs are either human or animal, whether it originated from a

Caucasoid, Negroid, or Mongoloid individual, color, method of removal, whether it has been artificially treated, what body area it originated from, if it has been damaged, and if foreign matter is present in the hair.

While hair (currently) is considered to be class type evidence, a forensic expert could testify that the hair was consistent with having come from one individual, or is not consistent with having come from the individual.

The DNA analysis of a single hair is not possible with current technology. However, there is a possibility if the root or sheath cells are attached to a hair, these cells can be analyzed. Research is being conducted by several laboratories on different methods of DNA analysis on single hairs.

Fiber examinations: Textile fibers are classified by a forensic laboratory as being of natural or synthetic origin. Natural fiber examples are cotton and wool, synthetic are nylon, rayon, plastics, etc. The specific kind of natural or synthetic fiber can be determined, and the color and other information pertaining to the manufacturer of the fiber may be established. It is not possible to state on the basis of forensic comparisons that a questioned fiber definitely came from a specific known garment to the exclusion of all others. However, the preponderance of this type evidence can be significant.

Blood examinations: The forensic serologist will analyze known blood, blood stains, and suspected blood by first determining if the substance is in fact blood. This involves

several steps. The serologist will use chemical and microchemical tests which if positive, will determine the substance is blood. He will then determine if the blood is human or animal, and if animal, will determine the family of animal from which it came. If human, and in sufficient quantity, the "ABO" type of the blood will be established. This will place the person as either having blood types "A", "B", "AB", or "O".

The serologist may then analyze the blood for several polymorphic enzymes and serum proteins commonly called "genetic markers." These markers are independent genetic substances and the percentage of the population with these markers can be multiplied together to arrive at a probability of a random match. For example, the serologist may testify that the percentage of the population with a particular set of genetic markers might be one in one hundred thousand. Even though these percentages may be highly incriminating, they cannot identify one person to the exclusion of all others.

Semen examination: Suspected seminal stains are located and the substance is tested for the possible presence of semen by using a substance called acid phosphatase, found in high concentrations in semen. If this test is positive, the serologist will determine microscopically if spermatozoa are present and test the substance for an antigen called p30, found only in humans and higher primates. The semen may then be "ABO" typed if the man depositing it was a secretor, and certain genetic markers may be analyzed for. In addition (see below)



semen may be subjected to DNA analysis.

Secretor status: Approximately 80% of the population of the world have the ability to secrete their "ABO" substances into body fluids other than blood, such as saliva, semen, perspiration, urine, vaginal and cervical secretions. The other 20% do not. Most often, the secretor status of an individual can be determined from a blood sample, however, there is a small group of individuals whose secretor status can only be determined from a saliva sample. That is the reason all sexual assault kits include filter paper for saliva samples and they must be provided to a laboratory.

Saliva: Although a forensic serologist cannot testify in court that the substance he or she has examined is saliva, he may state that the substance contains a large amount of amylase, a substance characteristically present in saliva. Saliva is a complex biochemical. The serologist will then attempt to "ABO" type the saliva and will be able to determine if the person is a secretor or not. This type examination is useful in envelope, stamps, cigarette butts, and occasionally on saliva stains left on a sexual assault victim's body.

Urine: Urine is also a complex chemical consisting mainly of water. A serologist would testify that the substance found contained urea, which is in high concentrations in urine. Rarely, can urine be typed for "ABO" groups. The "ABO" substances are present in such low concentrations in secretors that it is virtually impossible to type, even after the

substances have been concentrated by freeze drying.

Perspiration: For forensic purposes, perspiration is almost identical to urine.

DNA Analysis: What may very well be the most significant discovery in forensic science since the fingerprint is the recombinant DNA technology methods currently being used by a few laboratories. This technique is fairly new, and is being challenged around the country in Frye and pre-trial hearings. Generally, the technology is not being challenged, but the methods used to arrive at a conclusion. The Supreme Courts of the states of Virginia and Florida have ruled that DNA evidence is generally admissible. Other courts have ruled that it is not, based on population statistics, method of analyses, and controversy over the data. The author believes that eventually, the technique will be accepted by the courts without question just as latent fingerprints are throughout the world today.

DNA analysis of body fluids is a difficult concept to master for both attorneys, judges and juries. The process involves considerable understanding of the concepts of biochemistry, genetics, and recombinant DNA technology.

All human cellular material which contains a nucleus contains the genetic information stored in a molecule called DNA or deoxyribonucleic acid. This information is identical in every cell of the same human being, and is different in all human beings except identical twins. Because the DNA is different, these molecular differences can be exploited and "banding

patterns" determined.

DNA analysis of blood (from the white blood cells, not red) semen, in some instances saliva, vaginal and cervical secretions, and the root cells on hairs can be done. Again, it is not currently possible to DNA type a single hair without the root cells attached. Saliva contains no DNA, however, epithelial tissue and white blood cells present in saliva serve as a source of the DNA. Semen from a man who has been vasectomized does not contain spermatozoa and therefore no DNA. Again, cells from the male reproductive tract and white blood cells present provide the DNA in this body fluid. The FBI Laboratory currently has not been able to obtain DNA patterns from urine or perspiration.

When evidence arrives in the forensic laboratory for DNA analyses, the DNA is extracted from the body fluid stain or known blood sample. It is then cut into small pieces by restrictive enzymes, separated by electric current, and the double stranded molecule is separated chemically. A radioactive probe is then applied which is man made and the exact sequence of the molecules of DNA is known. These probes then "find" the same area on DNA which are complementary to them and re-bind with the short pieces of DNA. A sheet of x-ray film is placed over these pieces, and within hours to days, depending upon the amount of DNA present, the banding patterns will appear. They can be read and compared manually or by optical scanner, assigned a numerical value, and placed in a computer data bank.

One beneficial aspect of DNA analysis in sexual assault

cases is that it allows the serologist to distinguish between vaginal and cervical secretions and semen in a mixed sample. This was previously not possible with conventional analyses. For example, if a victim was sexually assaulted by a man who was an "A" secretor and the victim was also an "A" secretor, the expert witness could not testify from whom the "A" blood group substance originated. One defense in this case could be that the victim was raped by a man who was a non-secretor and the "A" substance originated only from the victim.

This new technique will allow the DNA from the victim and the DNA from the rapist to be separated in a mixed stain of vaginal secretions, blood, and semen.

This may not be required in prepubescent children who have been sexually assaulted.

In cases of anal sodomy, no DNA analysis can be conducted on fecal matter.

## *HOMICIDE*

Homicides of children generally can be classified in two categories. The first are those in which the child is a victim of "battered child syndrome" where the parent or guardian has killed the child intentionally or accidentally.

The other category is where a child is murdered after having been sexually assaulted to prevent them from notifying authorities. Regardless of the cause of death, physical evidence can be critical to the successful arrest and conviction of the suspect.

In the battered child syndrome, suspects often claim the child has suffered an accident, such as falling in the bathtub, down stairs, eaten poison, or taken prescription drugs.

The medical examiner who performs the autopsy on these children obviously plays a critical role. He or she will determine the cause and manner of death, and will also be able to testify to previous child abuse such as healed bones and old wounds. In addition, he will collect evidence in the form of tissue and body fluids to be analyzed by a forensic chemist.

If a child dies and it is determined that foul play may have occurred, the crime scene must be thoroughly searched and evidence properly collected, preserved, and analyzed by the forensic laboratory.

Quite often, blood stains will be present and the proper interpretation of the blood spatters may either confirm or refute the suspect's version of what occurred.

If the child is the only person bleeding at the scene, blood samples must still be taken from the body for toxicology and drug screening.

Even if it appears the child was not sexually assaulted, it is recommended that a sexual assault kit is utilized and any evidence collected for serological and/or hair and fiber analyses.

One area to be especially concerned with is a thorough examination of the hair of the murder victim for trace evidence, such as gypsum particles from sheetrock.

The child's clothing should be collected and sent to the laboratory in the same manner in which it was collected in sexual assault cases. IF THE CHILD'S BODY HAS BEEN PLACED IN A BODY BAG, THIS BAG MAY ALSO CONTAIN TRACE EVIDENCE AND SHOULD BE MAINTAINED IN THE CHAIN OF CUSTODY AND SUBMITTED TO THE LABORATORY FOR EXAMINATION.

Prior to removal of the child from the home or other area, the hands and feet should be bagged with paper bags to prevent trace elements from being lost. These bags should also be submitted to the laboratory.

The clothing of a suspect should also be seized and submitted to the laboratory for examination, especially if the murdered child was bleeding.

The forensic laboratory will conduct examinations the same as in a sexual assault, except that blood will be analyzed to a greater degree than is possible with semen (with the exception of

DNA analysis). A forensic serologist will determine if the stain is blood, if it is human, and, depending on the circumstances, the "ABO" type, secretor status, several genetic markers, and possibly DNA type.

In murder victims who has also been sexually assaulted, the forensic examinations will include blood, semen, possibly saliva, as well as hairs and fibers. The evidence, such as known blood and hair samples, should be collected in the same manner as detailed in the section on sexual assaults.

#### *CHEMICAL ANALYSES*

As previously mentioned, in sexual assault cases or homicides/sexual assault cases, the victim should be examined for the presence of lubricating materials in the vagina or rectum. These materials, which generally are either petroleum jelly, water based lubricants, or in some cases shortening, can be analyzed by a forensic chemist. Petroleum jellies in particular possess unique chemical formulae, which allows the chemist to distinguish between two different brands.

The forensic chemist will also examine blood and urine samples, and in some cases hair samples, for the presence of legal and illegal drugs, poisons, and other substances. It is important for the crime scene examiner to determine what types of prescription drugs, non-prescription drugs, and illicit drugs are present in the home when it is suspected the child has been

drugged. The same should be done with household poisons and this information should be given to the forensic chemist analyzing the evidence. In addition the pathologist will also remove certain tissue specimens which must be maintained in the chain of custody and forwarded to the laboratory.

A forensic chemist can determine what, and in what quantity a drug or poison is present in the body fluids from a victim. However, he or she cannot testify in court whether or not that level was sufficient to cause intoxication, death, or other medical manifestations. A forensic pathologist or other medical professional would be required for this type testimony.

In cases where the child's body is found and only skeletonized remains are present, a forensic odontologist, a forensic anthropologist and possibly forensic archaeologists should be consulted. The best form of evidence to determine the identity of the skeletal remains if the skull and jaw bones are present is x-ray film from the victim's dentist.

If the body is not skeletonized but found partially decomposed, a forensic entomologist should be consulted for study of the insects present, and possible time of death. Almost without fail, soil samples from the area, as well as from the different layers in a grave should be properly collected for comparison purposes in the event that soil particles are found on the suspect or in his vehicle.



## *CHILD PORNOGRAPHY CASES*

Often child abusers who deal in or manufacture child pornography will hide the faces of themselves, as well as the children. One means of identifying not only the suspect(s) but the children is by submission of the photographs to a forensic photographer. The photographer will use methods such as "portrait parle" to identify a suspect by body marks, blemishes, scars, etc., or to determine the location of the filming and distances by photogrammetry.

## *FIREARMS EVIDENCE*

Children who are sexually assaulted and murdered are usually killed by some means other than gunshot. However, these cases do occur and the crime scene search and submission to a laboratory should include any expended bullets, cartridge cases, shotgun wadding, and the weapon suspected of firing the shots. In addition, if relevant, gunshot residues should be taken from the suspected shooter for antimony and barium analysis. If garment to muzzle distance determinations or powder residues examinations are to be performed, all the clothing, the weapon, and the same type ammunition should also be submitted.

*DOCUMENT EVIDENCE*

Occasionally, a child who has been sexually assaulted, murdered, or even who commits suicide, will have written notes or kept a diary concerning the events. The child's possessions should be thoroughly searched for this type documentary evidence.

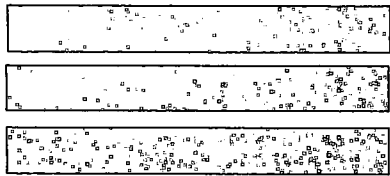


## Resource Materials

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# Physical Exams in Child Sex Abuse Cases

Presented by  
Dr. Carole Jenny



# Resource Materials

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## Pre-Trial Motions

Presented by  
James M. Peters, J.D.

FILE COPY

STATE OF VERMONT  
ORLEANS COUNTY. SS.

STATE OF VERMONT

VS.

DAVID GOMES

DISTRICT COURT OF VERMONT  
UNIT III. ORLEANS CIRCUIT  
DOCKET NO. 244-4-88 OScr

STATE'S MOTION FOR SPECIAL PROCEDURES DURING  
THE PRESENTATION OF THE TESTIMONY OF THE CHILD VICTIMS

NOW COMES the State in the above entitled cause and hereby requests that the following procedures and modifications in the courtroom be used during the child victims' testimony:

1. That the children's testimony be scheduled at 9:00 a.m. and ~~10:30 a.m. on three consecutive mornings~~ and replayed to the jury during the afternoon.
2. That each child be able to bring with them a transitional object such as a stuffed animal or a baseball glove.
3. That the Judge be dressed in a shirt and tie without his robe.
4. That each child be able to have crayons and paper on which to draw.
5. That the victim advocate and at least one parent be allowed to be present in the room and that the child be allowed to sit in the lap of the parent and/or the victim advocate.
6. That frequent breaks be taken as needed to allow the child to focus on the questioning.
7. That objections by any attorney be made by raising a hand and stating in a quiet tone of voice the general nature of

the objection (i.e., hearsay, relevancy, prejudicial, etc.) using less than ten words; if a lengthy discussion is necessary for the court to rule on the objection, the State would request that a break be taken to allow the child to leave the room during the discussion; otherwise, the State would ask that the court rule to either sustain or overrule the objection without explanation.

8. That to the extent necessary to develop the child's testimony, leading questions be allowed during direct examination.

9. That each child be allowed to utilize anatomically correct dolls as demonstrative evidence.

10. That J2 be allowed to dress in a paper bag "coat of armor" with a paper "helmet" and that J3 be allowed to wear a card board cut out suit.

11. That Don Stubbs be allowed to stand inside the door when J3 is testifying and outside the door when J2 is testifying.

MEMORANDUM IN SUPPORT OF THIS MOTION

A. Introduction:

Because of the special needs of young children the adult, formal, adversarial environment of a courtroom may be the very worst environment in which to elicit reliable information from child witnesses. The special procedures and protections requested above are designed to provide for the special needs of these children and obtain the most reliable information possible. As one judge has noted:

"To assure a fair trial, judges have special responsibility for child witnesses. The judge may

remove robes if a child associates them with witches. Judges should ask about a child's eating and napping schedule. Judges must remember that a child may be alert and communicative at 9:00 a.m., but sleepy and anxious a few hours later. Judges should appreciate that, for a child, even 15 or 20 minutes on a witness stand may be unmanageable.

"Some lawyers carelessly argue that such courtroom techniques take the side of the child. They fail to acknowledge that such techniques help a child communicate, but do not tell a child what to say. The techniques are analogous to providing a Spanish-speaking or hearing-impaired person with a translator, or allowing a disabled veteran to testify from a wheelchair. In fact, many lawyers enthusiastically endorse these evolving laws and techniques, realizing their potential value for child witnesses for the defense, or for plaintiffs in civil lawsuits. None of these techniques supports the substance of the child's testimony. All of these techniques, however, reduce discrimination that has denied judges and juries the chance to hear a child's testimony."

Judge Charles B. Schudson, Making Courts Safe for Children, 2 Journal of Interpersonal Violence 120, 121 (1987). The power of the court to provide for special procedures involving child witnesses is derived from V.R.E. 611(a) which states:

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation orderly and effective for the ascertainment of the truth, (2) avoid needless consumption of the time, and (3) protect witnesses from harassment or undue embarrassment.

B. The use of support persons.

Numerous courts have allowed support persons to be present and have allowed the child witnesses to sit in their laps, as long as the support person is carefully admonished not to do anything that might influence the child's answer to a particular

question. These Courts have recognized that support persons can reassure a child who is thrust into a difficult and strange situation and thereby enable them to better relate events to the court.

An appellate court found no error in a trial court's allowing a social worker to sit with a child during the competency hearing and at trial. State v. Daniels, 484 So.2d 941 (La.App. 1 Cir. 1986). The court noted that the child was in an unfamiliar setting and was exhibiting hyperactivity. The social worker's presence had subtle effects on the child's well-being and ability to concentrate. The child's ensuing composure may well have been buttressed by her presence. Additionally the court noted that the social worker neither interacted with nor communicated in any way with the child during his testimony. Id. at 945. The nature of the testimony coupled with the presence of the defendant may cause extreme anxiety on the part of the infant witness resulting in confused testimony. People v. Jones, 362 S.E.2d 330 (W.Va. 1987). The use of a support person may keep the child from being distracted. Id. at 333.

Pennsylvania, citing a court's broad discretion to conduct the trial, also allows the use of support persons. Commonwealth v. Pankraz, 554 A.2d 974 (Pa.Super. 1989) In allowing a four-year-old child to sit on her grandmother's lap during testimony the court observed that the child's testimony did not appear to be in any way influenced by her grandmother. Id. at 979. Neither the child or the grandmother spoke to each other during the



testimony.

A "control" rule, such as V.R.E. 611, in fact mandates the court to exercise reasonable control over the mode of interrogating the infant-witness with a view to making the interrogation and presentation effective for the ascertainment of truth while protecting the witness from undue embarrassment. State v. Johnson, 528 N.E. 567 (Ohio App. 1986). In Johnson, the court found no constitutional violation nor an abuse of discretion by the trial court in allowing the eight-year-old witness to sit on the lap of a relative during the presentation of testimony. Id. at 569.

In State v. Dompier, 764 P.2d 979 (Or.App. 1988), the court allowed the victim to sit on her foster mother's lap after repeatedly being unable to testify as to the specific details of the sexual abuse. While on her foster mother's lap the victim answered both the prosecutor's and defense attorney's questions and gave detailed testimony on the claimed sexual abuse. Id. at 980. See, also, Mosby v. State, 703 S.W.2d 714 (Tx.Ct.App. 1985); Cal.Penal Code 868.5 (1985) which also allow the support person to sit with the child.

Here the Court has already made detailed findings regarding the emotional difficulties these children are experiencing when asked to recall certain events. Having a trusted adult available for general comfort and support and to provide each child with a basic sense of safety may be necessary if the child is expected to be able to answer any questions at all. For the above

foregoing reasons the State requests that the victim advocate and at least one parent be allowed to be present during each child's testimony and, if the child wishes, that the child be allowed to sit in the lap of one of these adults while providing testimony.

The State would note that the parents will be called as witnesses prior to the child's testimony. Thus, the newly amended V.R.E. 615 does not act to bar their presence. That rule used to exclude any witnesses from the courtroom if any party requested sequestration of witnesses. The newly amended rule now provides:

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion; after a witness' testimony has been completed, however, the witness may remain in the courtroom, even if the witness subsequently may be called upon by the other party or recalled in rebuttal, unless a party shows good cause for the witness to be excluded. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

The amended rule strikes a balance between the rights of the victims and other witnesses. Little is accomplished by continuing to bar the witness from the courtroom after the witness has testified and been subject to cross-examination. Reporter's notes to 1989 amendment of V.R.E. 615. As long as the support person is carefully admonished not to attempt to influence the child's testimony in any way, the presence of such

a trusted adult can only enhance the ability of the child to communicate.

C. The use of leading questions on direct examination of the child witnesses.

V.R.E. 611(c) provides:

(c) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony.

Accordingly the decision to allow leading questions on direct is within the sound discretion of the trial court. Traditionally, leading questions have been allowed on direct examination of embarrassed, reluctant, fearful, or forgetful witnesses.

Leading questions may also be permitted, in the discretion of the court, where the witness is ignorant or forgetful. Youthful witnesses fall in this class, and leading questions find a special usefulness in the trials of sex offenders when young children must testify, the courts sometimes saying that leading questions are justified because of the embarrassing nature of the testimony, or because of the demands of modesty.

Underhill, H.C., Criminal Evidence, 1207-1208 (5th ed. ).

Numerous appellate courts have upheld trial judges' decisions allowing the use of leading questions of child witnesses in sexual abuse cases because of the sensitive nature of the subject and the understandable hesitancy, embarrassment, anxiety, and shame of the witnesses. See, e.g., State v. Hawthorne, 523 S.W.2d 322 (1975) (8 year old witness); Rotolo v. United States, 404 F.2d 316 (5th Cir. 1968) (15 year old child); State v. Chandler, 376 S.E.2d 728 (N.C. 1989) (2 to 5 year old

children); Altmeyer v. State, 519 N.E.2d 138 (Ind. 1988) (10 and 14 year old children); People v. Server, 499 N.E.2d 1019 (Ill.App.4th Dist. 1986) (9 year old child); People v. Kosters, 438 N.W.2d 651 (Mich.App. 1989) (5 year old child); Nash v. State, 519 A.2d 769 (Md.App. 1987) (13 year old child); Commonwealth v. Baran, 490 N.E.2d 479, 481 (Mass.App. 1986); Wright v. Blakeslee, 102 Conn. 162, 168 (1925); State v. Depastino, Superior Court, Judicial District of Hartford Docket No. 51962 (8/5/88).

D. Use of anatomically correct dolls.

The use of anatomically correct dolls as demonstrative evidence can assist young children to describe details of sexual abuse. A number of courts have recognized the value and appropriateness of permitting the use of this kind of demonstrative evidence. State v. Walker, \_\_\_ N.E.2d \_\_\_ (Oh.Ct.App. 1986); State v. Eggert, 358 N.W.2d 156 (Minn.Ct.App. 1984); Kehinde v. Commonwealth, 338 S.E.2d 356 (Va.App. 1986); State v. DePastino, supra.

E. The time, manner, scope, and duration of questioning.

The ability of children to provide meaningful testimony that is helpful to the ascertainment of the truth can be significantly affected and diminished unless this Court takes a proactive role in limiting the time, manner, scope and duration of the questioning. The State has asked the court to assure that the children will testify in the morning, that frequent breaks be taken, that objections be made in a quiet, non-threatening manner, that the duration of the questioning be limited and

focused, and that the scope of questioning be limited to areas which are essential.

V.R.E. 611(a) empowers the court to control the mode and manner in which witnesses will be questioned to (1) assure that such questioning is "effective for the ascertainment of the truth (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." This includes regulation of the manner in which objections are made, Commonwealth v. Amirault, 535 N.E.2d 193, 207 (Mass. 1989); the method and duration of cross-examination, People v. Conyers, 382 N.Y.S.2d 437, 441 (1976); and the length of questioning, Commonwealth v. Brusgulis, 496 N.E.2d 652, 656 (Mass. 1986). Where evidence has already been introduced through other witnesses, it is within the discretion of the court to prohibit questioning of children about relevant, but embarrassing matters. State v. Catsam, 148 Vt. 366, 378 (1987). There, the Court noted:

[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.

Id. at 378, quoting, Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986).

In Catsam, the Supreme Court ruled that the trial judge properly restricted cross examination of the child regarding other sexual activity (as a possible alternative source of PTSD).

It ruled that this information had already been elicited during the cross examination of the expert and the potential harm to the child of allowing such expansive cross examination outweighed the defendant's right to ask the witness about this incident given "the availability of alternative means for exploring the cause of the syndrome." Id. at 377.

In State v. Raymond, Vt.S.Ct.Docket No. 86-460 (11/25/87) the Supreme Court upheld the trial court's ruling allowing the defense to ask the victim about the existence of a theft investigation in order to establish a possible bias but prohibiting questions about the details of the investigation or the underlying incident.

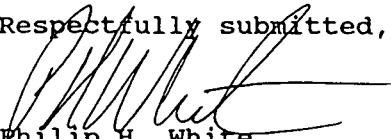
Even when the information is central to the defense, the United States Supreme Court has authorized some restrictions on the scope of a particular inquiry. In Davis v. Alaska, 415 U.S. 308 (1974) the Court ruled that the Defendant had a right to ask the State's principle witness about the limited fact that the witness had been adjudicated delinquent, that this involved a burglary, and that he was on juvenile probation at the time he provided information to the police. This was allowed to explore possible bias. However, cross-examination in this area was limited to just those facts and no more.

Thus there is ample authority to support the State's request not only that the Court regulate the mode and manner of examination of these child witnesses, but also that it regulate the substance of what may be asked, even though it may be

marginally relevant.

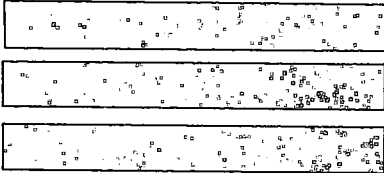
DATED at Montpelier, County of Washington and State of Vermont, this 10<sup>th</sup> day of July, 1989.

Respectfully submitted,



Philip H. White

cc: Gary McQuesten, Esq.



# Resource Materials

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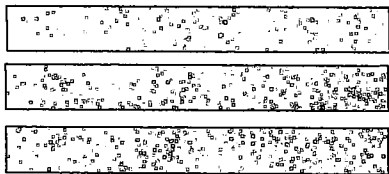
## State's Case-in-Chief and Demonstrative Evidence

Presented by  
Jill Hiatt, J.D.



Friday





# Resource Materials

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## Hearsay and Other Out-of-Court Statements

Presented by  
John E.B. Myers, J.D.

EXPERT TESTIMONY IN CHILD SEXUAL ABUSE LITIGATION  
CASE LAW UPDATE

John E.B. Myers  
University of the Pacific  
McGeorge School of Law

This case law update supplements material on expert testimony provided at the workshop on expert testimony. The cut off date for cases in this update is May 25, 1990.

United States v. Spotted War Bonnet, 882 F.2d 1360 (8th Cir. 1989). "[A]n expert witness may not give an opinion as to the believability or truthfulness of an alleged victim's story." *Id.* at 1362. However, the jury's role in evaluating credibility was not usurped when an expert said that she thought the child was truthful when she said she did not want to go to a foster home.

United States v. Provost, 875 F.2d 172 (8th Cir. 1989), cert. denied, 110 S. Ct. 170 (1989). An expert may not offer an opinion directly on the credibility of a child. However, a statement by an expert that falls short of an opinion on credibility, but which is an implied statement of the expert's belief that the child was truthful, is only harmless error.

Nelson v. State, 782 P.2d 290 (Alaska Ct. App. 1989). The state may not offer expert testimony describing behaviors

commonly observed in sexually abused children as substantive evidence that abuse occurred. However, testimony describing commonly observed behaviors is admissible to rebut the defense argument that a child's behavior is inconsistent with abuse. An expert may not offer an opinion on the truthfulness of the victim. Nor may an expert testify that a child's report of abuse is consistent with valid reports of abuse.

Bostic v. State, 772 P.2d 1089 (Alaska Ct. App. 1989). The Court of Appeals approves expert testimony regarding why some sexually abused children delay reporting their abuse, and why some children do not reveal all the details of sexual abuse at the first disclosure. The court holds that the Frye test for novel scientific testimony does not apply to such expert testimony.

Thompson v. State, 769 P.2d 997, 1003-04 (Alaska Ct. App. 1989). A school nurse who did not technically testify as an expert should not have been allowed to testify that she believed the child was truthful. Such testimony violated rule 608(a) of the rules of evidence.

Hilburn v. State, 765 P.2d 1382 (Alaska Ct. App. 1988). A physician with extensive experience working with native Eskimo women who had experienced trauma could testify as an expert that withdrawn behavior in an Eskimo woman was consistent with the

woman's having undergone a traumatic experience.

Thompson v. State, 769 P.2d 997 (Alaska Ct. App. 1989). An expert witness may not give a direct opinion on the truthfulness of a child.

Logan v. State, 299 Ark. 255, 773 S.W.2d 419 (1989). The Arkansas Supreme Court holds that an expert witness may not testify that a victim of sexual abuse was truthful in describing alleged abuse.

Marcum v. State, 299 Ark. 30, 771 S.W.2d 250 (1989). It was not error to admit testimony from a physician that the physical examination of the victim indicated "physical characteristics consistent with prolonged sexual activity". *Id.* at 253.

People v. Stoll, 49 Cal.3d 1136, 783 P.2d 698, 265 Cal. Rptr. 111 (1989). The court holds that a criminal defendant charged with child sexual abuse may introduce a psychologist's testimony, based on an interview of the defendant and professional interpretation of psychological tests, including the MMPI, that defendant does not display signs of deviance or abnormality. The expert testimony is admissible character evidence to prove that defendant did not commit the charged act. The court also holds that the psychologist's opinion is not subject to the Frye test applicable to novel scientific evidence.

People v. Ruiz, 1990 WL 65310 (Cal. Ct. App. 1990). Ruiz follows on the heels of Stoll, immediately above. At his trial, defendant offered expert testimony from a psychologist. The psychologist would have testified that defendant "did not share characteristics commonly associated with persons suffering from pedophilia." The expert would have testified that there are two primary types of pedophilia, "fixed" and "regressive." The expert would have testified that the defendant "did not 'fit the typical pattern of those people who are known and diagnosed and treated as pedophiles." The expert's testimony was essentially that defendant did not match the profile of a pedophile. The trial court excluded the expert testimony, and the Court of Appeal affirmed. The court wrote:

[Defendant] was entitled to have [the expert] state his opinion that [defendant] was not a sexual deviant, or was not a pedophile, or was not likely to have committed the charged acts.

[The expert] apparently had no intention of stating an opinion on any of these matters. Rather, he planned to testify that [defendant] did not have the psychological characteristics of a person suffering from pedophilia; i.e., that he did not match the profile of a pedophile.

The Court of Appeal noted that the expert testimony approved by the California Supreme Court in People v. Stoll was not profile evidence, whereas the testimony at issue in Ruiz was profile evidence. The Stoll court did not decide whether profile testimony is admissible. The Court of Appeal stated, however, that it could discern no meaningful distinction between "profile evidence" and the type of expert testimony approved in Stoll. Nevertheless, the Court of Appeal affirmed the trial judge's decision to exclude the defendant's expert "profile" evidence because there was no showing at trial that the expert based his opinion on scientifically reliable information. That is, there was no showing of the reliability of the primary types of pedophilia.

People v. Stark, 213 Cal. App.3d 107, 261 Cal. Rptr. 479 (1989). The victim had a learning disability that interfered with ability to sequence events. It was not error to admit expert testimony from a school psychologist who had tested the child. The psychologist's testimony was intended to explain the child's learning disability.

The court approves expert testimony describing the child sexual abuse accommodation syndrome to rehabilitate a child's credibility. Testimony regarding the syndrome was relevant to explain delay in reporting, concealment, and conflicts in the

child's testimony.

People v. Sanchez, 208 Cal. App.3d 721, 256 Cal. Rptr. 446 (1989), cert. denied, 110 S. Ct. 286 (1989). The trial court did not err in permitting an expert to describe the child sexual abuse accommodation syndrome during the state's case-in-chief. The expert testified following the victim, and the victim's credibility was impeached during cross-examination. The expert testimony was rehabilitative in nature. Even if the trial court erred in some respect, the error did not require reversal.

People v. Gaffney, 769 P.2d 1081 (Colo. 1989). Experts may not offer opinions on the credibility of witnesses. In this case, the trial court permitted the expert to testify that in her opinion, the history related to her by the child was "very believable." The Supreme Court wrote that "[s]ince the history that W.H. gave to Dr. Evans included a reference to the defendant as the perpetrator of the sexual crime, Dr. Evans' statement that '[t]his history is very believable' was clearly susceptible of being interpreted by the jury as an expert opinion that W.H. was telling the truth when, during the hospital examination on November 5, 1984, he named the defendant as the perpetrator of the sexual assault." Such an opinion was improper expert testimony.

People v. Woertman, 786 P.2d 443 (Colo. Ct. App. 1989),



appeal granted January 8, 1990. It was not error to admit expert testimony on the dynamics of child sexual assault. "The challenged testimony addressed a collection of behaviors which are typical of children who have been sexually abused. The fact that some of these behaviors were observed as occurring in the victim serves the proper purpose of corroborating the testimony of the victim and does not make such testimony inadmissible."

The court also permitted testimony related to credibility. The court wrote: "In sexual assault situations when the victim is a young child, opinion testimony as to the credibility of the child victim is admissible to assist the jury in evaluating the credibility of the testifying child if such testimony relates to general characteristics for truthfulness. However, a witness may not give opinion testimony as to whether a witness is telling the truth on a specific occasion." The court approved "testimony that children do not generally fabricate sexual assaults."

(Note: The Colorado Supreme Court granted further review in this case, and in light of decisions from the Colorado Supreme Court rejecting expert testimony on credibility, the Woertman decision is questionable).

State v. James, 211 Conn. 555, 560 A.2d 426 (1989). The defendant offered testimony from a developmental and clinical psychologist regarding the credibility of child witnesses in general. The trial judge excluded the testimony, and the Supreme

Court affirmed, noting the wide discretion reposed in the trial judge to rule on the qualifications of expert witnesses and the admissibility of their testimony.

State v. Person, 20 Conn. App. 115, 564 A.2d 626 (1989), certification granted in part, 568 A.2d 796 (1990). Defendant offered expert testimony that he did not fit the profile of a pedophile. The court rejected the testimony, indicating that such profile evidence should meet the Frye standard of general acceptance in the relevant scientific community.

Fuller v. State, 540 So.2d 182, 184 (Fla. Ct. App. 1989). "An expert witness may not directly vouch for the truthfulness of a witness."

Tingle v. State, 536 So.2d 202 (Fla. 1988). In rejecting expert testimony on credibility, the court writes:

[I]t was error for the state's witnesses to directly testify as to the truthfulness of the victim . . . . We agree with [United States v. Azure, 801 F.2d 336 (8th Cir. 1985)] that, in cases such as this, "some expert testimony may be helpful, but putting an impressively qualified expert's stamp of truthfulness on a witness' story goes too far." 801 F.2d at 340. As noted by the Eighth Circuit, an expert may properly aid a jury in assessing the veracity of a

victim of child sexual abuse without usurping their exclusive function by generally testifying about a child's ability to separate truth from fantasy, by summarizing the medical evidence and expressing his opinion as to whether it was consistent with [the victim's] story that she was sexually abused, or perhaps by discussing various patterns of consistency in the stories of child sexual abuse victims and comparing those patterns with patterns in [the victim's] story. We recognize that expert testimony such as this, by its very nature, to some degree will tend to either bolster or refute the credibility of the child victim; however, the ultimate conclusion as to the victim's credibility always will rest with the jury. The expert will merely be equipping the jury with the knowledge necessary to make this determination.

Id. at 205.

Glendening v. State, 536 So.2d 212 (Fla. 1988), cert. denied, 109 S. Ct. 3219 (1989). The court rules that "[a] qualified expert may express an opinion as to whether a child has been the victim of sexual abuse." Id. at 220. The court went on to rule that an expert may not offer an opinion that a particular person committed the abuse. Id. at 221.

Page v. Zordan, 1990 WL 60895 (Fla. Ct. App. 1990). This is

a civil damages action brought on behalf of a victim of alleged child sexual abuse against the alleged perpetrator. The court of appeals reversed a judgment in favor of the alleged victim. The court of appeal stated that "an expert witness may not 'directly' testify as to the truthfulness of the victim." The court noted the Florida rule that in child sexual abuse litigation, some expert testimony relating to credibility may be proper. See Tingle v. State, 536 So.2d 202 (Fla. 1988). In the instant case, however, the experts went too far. Although the experts did not state direct opinions on the truthfulness of the alleged victim, their testimony had the effect of opinions on credibility. The court of appeal also ruled that an expert may not offer an opinion on the identity of the perpetrator.

Martinez v. State, 549 So.2d 694 (Fla. Ct. App. 1989).

Approving use of DNA fingerprinting evidence.

Smith v. State, 259 Ga. 135, 377 S.E.2d 158 (1989), cert. denied, 110 S. Ct. 88 (1989). An expert witness may not offer an opinion on the truthfulness or credibility of the victim. The jury needs no expert help to assess credibility.

State v. Hester, 114 Idaho 668, 760 P.2d 27 (1988). The court ruled that "an expert can render an opinion that a child has been sexually abused if he is qualified by knowledge, skill, experience, training, or education." 760 P.2d at 31. The court

also held that the state could not offer expert testimony during its case-in-chief regarding the character traits of child abusers, and that defendant possessed such traits. Id. at 33. Finally, the court ruled that an expert may not offer an opinion on the identity of the perpetrator. Id. at 34.

People v. Ridgeway, 194 Ill. App.3d 881, 551 N.E.2d 790 (1990). The court held that evidence of a child's bizarre sexual acting out behavior was relevant to the issue of whether abuse occurred.

Ulrich v. State, 550 N.E.2d 114 (Ind. Ct. App. 1990). In this rape case the victim was a 25-year-old mildly mentally retarded woman. The court of appeals wrote that "It is permissible to receive expert testimony as to whether or not a witness with childlike capabilities can consistently remember a sexual occurrence." The court went on to state, however, that when an expert testifies that "the victim was reliable and credible," such testimony invades the province of the jury. An expert may not offer a direct opinion on the credibility of a victim.

The defense offered the testimony of a psychologist, who would have testified in response to a hypothetical question that based on defendant's performance on the MMPI and the psychologist's clinical interview of defendant, that defendant

probably did not commit the charged rape because such a crime was inconsistent with defendant's personality profile. The trial court did not permit the testimony, and the court of appeal affirmed, writing that defense counsel's question was improper because it was not based on facts in evidence. In a concurring opinion, Judge Garrard pointed out that the Frye test should be applied to the type of testimony offered by the defendant.

Brady v. State, 540 N.E.2d 59 (Ind. Ct. App. 1989). The Court of Appeal approves expert testimony describing behaviors commonly observed in sexually abused children as substantive evidence of abuse.

State v. Gettier, 438 N.W.2d 1 (Iowa 1989). The court approves admission in a rape trial of expert testimony on post traumatic stress disorder. Such evidence is appropriate when the expert eschews the term rape trauma syndrome and refrains from an opinion on whether the victim had been raped.

State v. Colwell, 1990 WL 42543 (Kan. 1990). An expert may not vouch for the credibility of a child. In this case, however, it was not error for the expert to testify that based on his extensive experience with the child, she could distinguish the truth from a lie. The expert did not testify that he believed the child was telling the truth.

State v. Clements, 244 Kan. 411, 770 P.2d 447 (1989). The court rejects expert testimony offered by the prosecution describing the "typical" characteristics of sex offenders. The court reasons that: (1) evidence which only describes the characteristics of the typical offender has no relevance to whether the defendant committed the crime in question, and (2) the only inference which can be drawn from such evidence, namely that a defendant who matches the profile must be guilty, is an impermissible one.

State v. Reser, 244 Kan. 306, 767 P.2d 1277 (1989). The court approves expert testimony describing traits and patterns common to victims of sexual abuse and that the victim exhibited some of those traits. The child's behavior subsequent to the reported assaults is relevant corroborating evidence of the assaults.

Mitchell v. Commonwealth, 777 S.W.2d 930 (Ky. 1989). The Kentucky Supreme Court rejected expert testimony on child sexual abuse accommodation syndrome offered to prove that abuse occurred. The court also disapproved testimony describing the percentage of children in the general population who are sexually abused. Finally, the court disapproved testimony "that child molesters often are not perverts but may times have slightly more money, will be a law abiding person, and may be slightly more religious than the average person." Id. at 933.

Cooke v. Naylor, 1990 WL 49821 (Me. 1990). This litigation concerns a protective order entered against the father of a little girl. The child's mother obtained the protective order to protect the child from the father's sexual abuse. The father objected to the testimony of three experts. Father objected that the experts based their testimony on indicators of child sexual abuse without any foundational showing that such testimony is sufficiently reliable. Father relied on State v. Black, 537 A.2d 1154 (Me. 1988), in which the Supreme Judicial Court questioned the scientific reliability of certain types of expert testimony offered in child sexual abuse cases. In Cooke, the Supreme Judicial Court rejected father's arguments. The court ruled that testimony from a physician was sufficiently reliable in large part because the physician's testimony was based on the results of a physical examination. Another expert testified in rebuttal after father's expert questioned the child's credibility because of the child's inconsistency. The court approved the rebuttal testimony, and, quoting from Black, wrote that "'the prosecution may introduce expert testimony to assist the trier of fact in understanding an inconsistency in the victim's conduct or testimony only to rebut an express or implied inference that such inconsistency makes it improbable that either a crime was committed or that this defendant committed the crime.'" Finally, father objected to expert testimony from the child's therapist that the child was diagnosed as suffering from post-



traumatic stress disorder. The court ruled that testimony regarding the child's diagnosis was not error.

The Supreme Judicial Court also ruled that the trial judge did not err in excluding evidence offered of the father's performance on a penile plethysmograph.

State v. Woodburn, 559 A.2d 343 (Me. 1989). The Supreme Judicial Court rules that the trial judge did not err in excluding defendant's expert witness, who was prepared to testify that child could not distinguish truth from falsehood.

Commonwealth v. Dockham, 405 Mass. 618, 542 N.E.2d 591 (1989). The court appears to approve expert testimony describing behaviors commonly observed in the class of sexually abused children.

People v. James, 182 Mich. App. 295, 451 N.W.2d 611 (1990). An expert testified that "she was reasonably certain that sexual abuse had occurred." The court of appeals did not disapprove this testimony. The court wrote:

As to the ultimate decision reserved for the factfinder, the expert gave her professional opinion as to whether sexual abuse had occurred but did not testify that the abuse took place at a specific time or

place. . . . Although a witness is not permitted "to lend his expert opinion testimony as to the crucial issue of whether or not (the victim) was actually (abused) at a specific time and place, . . . the expert may testify that he "saw nothing in complainant which was inconsistent with the profile of a . . . victim (of sexual abuse)."

State v. Erickson, 1990 WL 52648 (Minn. Ct. App. 1990). In this sexual abuse case, the Court of Appeals ruled that the trial court did not err in excluding portions of expert testimony offered by the defendant. The excluded testimony related to a Czechoslovakian study of unwanted children and testimony describing the difference between what the defense expert called "learned memory" and "memory of actual events." The decision contains useful discussion of the discretion of the trial court to exclude expert testimony.

State v. Williams, 451 N.W.2d 886 (Minn. Ct. App. 1990). In a physical abuse case, it was not error to admit expert testimony on behavioral characteristics of physically abused children.

Hosford v. State, 1990 WL 32485 (Miss. 1990). The court held that the trial court did not err when it permitted the state's expert to offer an opinion that the child victim probably did not confuse defendant with other individuals who had

victimized her. Such testimony was proper in this case because defendant argued strenuously that the victim misidentified him. The court went on to rule that the scientific community has yet to recognize the existence of a profile or syndrome descriptive of child sexual abuse, and that for that reason, profile and syndrome should not be admitted.

State v. J.C.E., 767 P.2d 309 (Mont. 1988). The court writes that as a general rule, expert testimony evaluating the credibility of a witness is inadmissible. In State v. Geyman, 729 P.2d 475 (Mont. 1986), the court adopted an exception to that rule for cases where the witness is a child victim of sexual assault. In J.C.E., the state's offer of proof indicated that an expert would testify as to the credibility of the child's statements. Such testimony would be improper under the general rule, and the exception established in Geyman would not apply because the child was not to testify. The court also ruled that an expert may not offer an opinion as to the identity of the perpetrator.

Shannon v. State, 783 P.2d 942 (Nev. 1989). An expert may testify that a child was sexually abused.

State v. Spann, 236 N.J. Super. 13, 563 A.2d 1145 (1989). HLA blood testing is admissible in a criminal trial, but the probability of paternity statistic is not admissible in a sex

offense case where it is alleged that the victim conceived a child as a result of the assault.

State v. Newman, 109 N.M. 263, 784 P.2d 1006 (Ct. App. 1989). The court approved expert testimony on general characteristics observed in sexually abused children to assist the jury to understand the child's behavior. See the excellent concurring opinion of Judge Hartz, which clarifies the proper uses of such testimony.

People v. Taylor, 75 N.Y.2d 277, 552 N.E.2d 131, 552 N.Y.S.2d 883 (1990). The New York Court of Appeals held that "under certain circumstances and subject to certain limitations evidence of rape trauma syndrome is both relevant and admissible." The court further observed that "the relevant scientific community has generally accepted that rape is a highly traumatic event that will in many women trigger the onset of certain identifiable symptoms." The court ruled that expert testimony on the syndrome may be admissible to explain certain behaviors in the victim that might appear to a lay jury to be inconsistent with allegations of rape. For example, an expert might be permitted to explain why a woman would appear calm following rape. An expert might be permitted to explain why a victim might be fearful of disclosing the name of her assailant. The court went on to hold that although rape trauma syndrome evidence can be admitted to "explain behavior that might appear

unusual to a lay juror not ordinarily familiar with the patterns of response exhibited by rape victims", testimony on the syndrome cannot be admitted to prove that a rape in fact occurred.

Matter of Nicole A., 551 N.Y.S.2d 749 (Fam. Ct. 1990). A person accused of abuse may have a right to have the alleged victim examined by an expert of the person's own choosing.

State v. Wise, 326 N.C. 421, 390 S.E.2d 142 (1990). In a rape case involving a twelve-year-old victim, the North Carolina Supreme Court held that an expert did not violate the rule against expert testimony concerning the credibility of a witness when the expert testified that the child appeared to be "genuine" when the youngster described her rape. The Supreme Court wrote that "The witness was not testifying that she believed what the victim told her was true, nor did she give her opinion as to the victim's character for truthfulness in general." The expert's testimony was simply her description of the child's emotional state during therapy sessions.

State v. Hall, 390 S.E.2d 169 (N.C. Ct. App. 1990). The court of appeals ruled that expert testimony regarding post traumatic stress disorder is admissible to prove that a rape occurred. The court also ruled that expert testimony describing symptoms and characteristics typically observed in sexually abused children is admissible. Finally, the court held that

expert testimony stating that the victim suffered from conversion disorder that was consistent with sexual abuse was admissible in this case.

State v. Aquallo, 322 N.C. 818, 370 S.E.2d 676 (1988). An experienced CPS social worker and police officer possessed the experience needed to describe the typical sexually abused child. A physician testified that her findings on physical examination were consistent with the sexual abuse the child described to the doctor. Defendant argued that the physician's testimony constituted an impermissible comment on the child's truthfulness. The court disagreed, writing:

Essentially, the doctor testified that the physical trauma revealed by her examination of the child was consistent with the abuse the child alleged had been inflicted upon her. We find this vastly different from an expert stating on examination that the victim is "believable" or "is not lying." The latter scenario suggests that the complete account which allegedly occurred is true, that is, that this defendant vaginally penetrated this child. The actual statement of the doctor merely suggested that the physical examination was consistent with some type of penetration having occurred. The important difference in the two statements is that the latter implicates the

accused as the perpetrator of the crime by affirming the victim's account of the facts. the former does not.

The statement of the doctor only revealed the consistency of her findings with the presence of vaginal trauma. This expert opinion did not comment on the truthfulness of the victim or the guilt or innocence of defendant.

State v. Strickland, 96 N.C. App. 642, 387 S.E.2d 62 (1990). In a rape trial with an adult victim, the court held that an expert could testify that the victim did not appear to make false answers on a psychological test.

Matter of Lucas 94 N.C. App. 442, 380 S.E.2d 563 (1989). In this juvenile delinquency case, the Court of Appeal approves expert testimony relating to the credibility in general of children who report sexual abuse. The court also approves expert testimony describing behaviors commonly observed in sexually abused children.

State v. Boston, 46 Ohio St.3d 108, 545 N.E.2d 1220 (1989). The court held that "an expert's opinion testimony on whether there was sexual abuse would aid jurors in making their decision and is, therefore, admissible . . . ." 545 N.E.2d at 1239. The

court went on to hold that "an expert may not testify as to the expert's opinion of the veracity of the statements of a child declarant." *Id.* at 1240. It was reversible error to permit an expert to "express her opinion that [the victim] had not fantasized her abuse and that [the victim] had not been programmed to make accusations against her father." *Id.*

Commonwealth v. Cepull, 568 A.2d 247 (Pa. Super. Ct. 1990). Error occurred when an expert was permitted to quote studies on the percentage of rape victims that tell the truth.

Commonwealth v. Dunkle, 385 Pa. Super. 317, 561 A.2d 5 (1989). The majority holds that an expert witness should not have been permitted to testify in general terms about delay in reporting sexual abuse, children's inability to recall exact times and dates, and behaviors commonly observed in sexually abused children. The majority opinion appears to prohibit the types of rehabilitation testimony that most courts permit. In a dissenting opinion, Judge Kelly asserts that such testimony may assist the fact finder.

Commonwealth v. Gibbons, 383 Pa. Super. 297, 556 A.2d 915 (1989). The court holds that the trial court erred when it admitted expert testimony explaining why a child's inconsistent descriptions of sexual abuse could result from confusion



regarding dates and times. The defense built its case on inconsistencies in the child's story.

Commonwealth v. Emge, 381 Pa. Super. 139, 553 A.2d 74 (1988). The majority opinion rejects "testimony which matches up the behavior of known victims of child sexual abuse with that of an alleged victim." The court holds that such testimony "can serve no purpose other than to bolster the credibility of the alleged victim, and this purpose is patently prohibited." A dissenting judge would have permitted the expert testimony.

McCafferty v. Solem, 449 N.W.2d 590 (S.D. 1989). An expert may not testify regarding the credibility or truth-telling capacity of a witness.

State v. Spaans, 1990 WL 55697 (S.D. 1990). The Supreme Court held that it was not error to admit expert testimony generally describing characteristics observed in sexually abused children.

State v. Bachman, 446 N.W.2d 271, 276 (S.D. 1989). "[T]he trial court did not err in admitting expert testimony concerning the traits and characteristics typically found in sexually abused children, characteristics or emotional conditions observed in the victims, and opinion testimony that the victims' allegations were truthful."

State v. Schimpf, 782 S.W.2d 186 (Tenn. Crim. App. 1990). The court majority appears to hold that expert testimony that a child was sexually abused is not helpful to the jury and constitutes impermissible testimony on credibility. In a noteworthy dissenting opinion, Judge Daughtery disagreed with the majority.

State v. Rimmasch, 775 P.2d 388 (Utah 1989). The Utah Supreme Court holds that an expert may not offer an opinion that a child told the truth about sexual abuse. On another aspect of expert testimony, the court provides a thorough discussion of the foundation required to admit novel forms of expert testimony, and, in particular, the foundation required when expert testimony describing behaviors commonly observed in sexually abused children is offered as substantive evidence of abuse.

State v. Braun, 787 P.2d 1336 (Utah Ct. App. 1990). Following the guidance of Rimmasch, the court of appeal held that an expert may not testify directly about a child's credibility. The court also held that before expert testimony on whether a child was abused is admissible, the proponent must establish as a foundational matter the ability of mental health professionals reliably to make such determinations.

State v. Van Matre, 777 P.2d 459 (Utah 1989). Expert

witnesses may not offer opinions about the truthfulness of children's accounts of sexual abuse.

State v. Bates, 784 P.2d 1126 (Utah 1989). Reversal of a conviction was required where an expert opined that a child was abused, and based that opinion in part on the expert's belief that because of the richness of detail given by the child, she could not have made up the allegation. The expert's opinion was based too heavily on the expert's assessment of the child's credibility, and experts on child sexual abuse have no special expertise on assessment of credibility.

State v. Eldredge, 773 P.2d 29 (Utah 1989), cert. denied, 110 S. Ct. 62 (1989). An expert may not offer an opinion of the truthfulness of a child.

State v. Nelson, 777 P.2d 479 (Utah 1989). An expert offered testimony that in his opinion the child was telling the truth. The conviction was reversed. The Supreme Court ruled that the state cannot offer expert testimony on the truthfulness of a child unless the state establishes the reliability of the methodology used to determine truthfulness. There was no such proof in this case.

State v. Noltie, 57 Wash. App. 21, 786 P.2d 332 (1990). The colposcope is not a novel scientific technique subject to the

Frye test.

State v. Madison, 53 Wash. App. 754, 770 P.2d 662 (1989). The court rules that an expert may not offer an opinion that a child was truthful. However, expert testimony is permissible to rehabilitate credibility. The expert testified regarding recantation by child sexual assault victims.

Stephens v. State, 774 P.2d 60 (Wyo. 1989). The Supreme Court rules that an expert witness may not offer an opinion regarding the identity of the perpetrator of sexual abuse. Nor may an expert testify that a child was truthful.

Zabel v. State, 765 P.2d 357 (Wyo. 1988). The court rules that "an expert witness cannot vouch for the truthfulness or credibility of an alleged victim." Id. at 360. Such testimony does not assist the fact finder. The trial court committed reversible error when it admitted expert testimony relating directly to the credibility of the victim.

DECISIONS WHICH APPEAR TO APPROVE  
A VERSION OF EXPERT TESTIMONY  
DESCRIBING BEHAVIORS COMMONLY  
OBSERVED IN SEXUALLY ABUSED CHILDREN

People v. Deninger, 772 P.2d 674 (Colo. Ct. App. 1989).

Ward v. State, 519 So.2d 1082 (Fla. Ct. App. 1988).

People v. Ridgway, 1990 WL 18202 (Ill. Ct. App. 1990).

Brady v. State, 540 N.E.2d 59 (Ind. Ct. App. 1989).

State v. Reser, 767 P.2d 1277 (Kan. 1989).

Commonwealth v. Dockham, 542 N.E.2d 591 (Mass. 1989).

State v. Newman, 784 P.2d 1006 (N.M. Ct. App. 1989).

Stephans v. State, 774 P.2d 60 (Wyo. 1989).

DECISIONS EXPRESSING CONCERN ABOUT INTERVIEWS  
OF CHILDREN

United States v. Spotted War Bonnet, 882 F.2d 1360  
(9th Cir. 1989).

People v. Diefenderfer, 784 P.2d 741 (Colo. 1989).

State v. Wright, 116 Idaho 382, 775 p.2d 1224 (1989),  
cert. granted, 110 S. Ct. 833 (9190) (No. 89-260).

State v. Erickson, 1990 WL 52648 (Minn. Ct. App. 1990).

State v. Cain, 427 N.W.2d 5 (Minn. Ct. App. 1988).

State v. Babayan, 787 P.2d 805 (Nev. 1990).

Gotwald v. Gotwald, 768 S.W.2d 689 (Tenn. Ct. App.  
1988).

State v. Hadfield, 788 P.2d 506 (Utah 1990).

State v. Bullock, 1989 WL 201073 (Utah 1989)

## QUESTIONABLE TECHNIQUES FOR ASSESSING INTERVIEWS

1. H. Wakefield & R. Underwager, Accusations of Child Sexual Abuse (1988).

State v. SWAN, 114 Wash.2d 613, 1990 WL 56051 (1990)

Criticized in Chadwick, Book Review, 261 J.A.M.A. 3035 (May 26, 1989).

Myers, The Child Sexual Abuse Literature: A Call for Greater Objectivity, 88 Mich. L. Rev. (in press 1990).

2. R. Gardner, Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sexual Abuse (1987).

Sexual Abuse Legitimacy Scale.

Page v. Zordan, 1990 WL 60895 (Fla. Ct. App. 1990).

In re T.M.W., 553 So.2d 260 (Fla. Ct. App. 1989).

3. Statement Validity Analysis -- Content Based Criteria Analysis.

Raskin & Yuille, Problems in Evaluating Interviews of Children in Sexual Abuse Cases, in Perspectives on Children's Testimony (S. Ceci, D. Ross, & M. Toglia 1989).

Are Anatomical Dolls Too Suggestive?

Mark D. Everson and Barbara W. Boat

In Press in The Advisor,  
Newsletter of the American Professional  
Society on the Abuse of Children

The use of anatomical dolls in the assessment of sexual victimization of young children has become standard practice in many settings (Boat and Everson, 1988; Conte et al 1988). The use of anatomical dolls in such evaluations, however, has become increasingly controversial, culminating in recent court decisions in California severely limiting the admission of evidence from anatomical doll interviews (e.g. In re Amber B. [1987] and In re Christine C. [1987]).

At the heart of the controversy is the belief that anatomical dolls may be overly suggestive to young children (e.g., Terr in Yates and Terr, 1988a and b; Yuille, 1988). According to this position, the anatomical novelty and sexual explicitness of the dolls are likely to induce even normal, non-abused children to have sexual fantasies and to act out in sexually explicit ways which might then be misinterpreted as evidence of sexual abuse. This problem can be exacerbated by certain interviewer errors such as asking highly leading questions, posing the dolls in sexual positions, or verbally reinforcing sexualized play (Underwager et al, 1986; White, 1986).



The possible suggestibility of anatomical dolls is a concern that doll users must take seriously. Fortunately, there is a growing body of research that bears directly on this critical issue. This research can be categorized under the following three questions about the suggestibility of the dolls:

1. Does the use of anatomical dolls as interview aids or props lead young children to make false allegations of sexual abuse?

Goodman and Aman have addressed this question directly in their often-cited study of the impact of anatomical dolls on children's recall (Goodman and Aman, in press). Eighty 3 and 5 year-old children experienced a brief individual play session with a man. During the session they played a series of games including a version of "Simon Says" in which the man asked the child to touch parts of the child's own body (e.g., ear, toes) and also to touch the man's knee while the man touched the child's knees. A week later the child was questioned by a woman about the play session, under one of three experimental conditions: with anatomical dolls as props, with regular (non-anatomical) dolls as props, and with no dolls as props. In the two doll conditions, the dolls were available during the questioning and the child was encouraged to use the dolls to show what had happened in the play session.

The children were asked a series of specific questions about possible "abuse" during the play session, modeled after questions

that might be asked in a sexual abuse investigation. The questions were: "Show me where he touched you," "Did he keep his clothes on?" "Did he touch your private parts?" "Did he ask you to keep a secret about your private parts?" and "Did he put anything in your mouth?" In addition, the children were asked three misleading questions about possible abuse: "He took your clothes off, didn't he?" "He kissed you, didn't he?" and "How many times did he spank you?"

The use of anatomical dolls as interview props was not found to decrease the accuracy of the children's responses to the abuse questions. Regardless of their age, the children interviewed with anatomical dolls did not make any more errors on the specific or misleading abuse questions than the children interviewed either with regular dolls or with no dolls. The three-year-olds, on average, did prove to be less accurate in all three interview conditions than the 5 year olds. However, the vast majority of errors they made on the abuse questions occurred in response to the two "private parts" questions, a term many 3 year olds did not understand. When asked the more understandable question, "Show me where he touched you," none of the children indicated their genitals. Nor did any of the children in the study provide spontaneous comments or elaborations that would suggest that sexual abuse had occurred.

Goodman and Aman's results suggest that the use of anatomical dolls as interview props does not lead young children to make false

reports of abuse -- even under conditions of suggestive questioning.

2. When exposed to anatomical dolls, are normal, sexually-naive young children prone to engage in explicit sexual play with the dolls?

The answer to this question depends upon one's definition of "explicit sexual play." We recently completed a study of over 200 children drawn from a general pediatric clinic population (Everson and Boat, 1989). The children ranged in age from 2 to 5 years and represented a wide socioeconomic distribution. The children were seen in a structured anatomical doll session which included a review of body parts and functions and free play with the dolls both in the presence and in the absence of the adult interviewer.

Touching and exploration of the doll genitalia was a common behavior, occurring in over 50% of the children at each age. However, explicit sexual play in the form of apparent demonstrations of vaginal, oral or anal intercourse (i.e., penile insertion, sexual placement with "humping" motions, mounting a doll's genitals) occurred in only 6% of the total sample (12 out of 209 children).

This low incidence rate of explicit sexual play is consistent with the findings of seven prior studies in which non-referred, presumably non-abused children were observed with anatomical dolls.

The studies include: August and Forman (1986), Cohn (1988), Gabriel (1985), Glaser and Collins (1989), Jampole and Weber (1987), Sivan et. al (1988), and White et al (1986). The studies varied in session format from free play sessions in a preschool setting to highly structured interviews with an adult, and the children ranged in age from 2 years to 8 years. Summarizing across all seven studies, exploration of doll genitalia was fairly commonly observed, but less than 2% of the non-referred children in these studies enacted apparent sexual intercourse between dolls or between a doll and themselves (5 of 332 children). Such play was rare even though four of the studies included conditions in which the child was left alone with the dolls, minimizing the likelihood of the presence of an adult inhibiting such fantasy play. (Refer to Everson and Boat, 1989 for a more complete review of these studies.)

Although only 6% of our total sample demonstrated explicit sexual play, the frequency of such play was significantly related to the child's age, socioeconomic status (SES), and race and somewhat to the child's gender. In fact, over 20% of the 4 to 5 year old, low SES, black males in our sample demonstrated apparent sexual intercourse of some type during our sessions.

We believe, that our research, together with the seven prior studies in this area, offers substantial evidence that anatomical dolls do not induce young, non-abused, sexually naive children to engage in explicit sexual play. But our research suggests that the

dolls may provide sexually knowledgeable children with at least implicit permission as well as an easy vehicle for revealing their sexual knowledge.

3. Following exposure to anatomical dolls, do young children engage in more sexualized behavior or play?

We addressed the question of whether anatomical dolls might have delayed impact on the behavior of children by conducting follow-up interviews of 30 mothers whose children had been exposed to anatomical dolls (Boat, Everson, and Holland, in press). The children ranged in age from 3 to 5 years and had been subjects in our normative study of 209 children described above. The interview occurred about 2 weeks after the doll session. Mothers were asked in general terms about any changes in their child's behavior that they attributed to their child having participated in the doll session as well as specific questions about changes in sexual curiosity and sexual play since the session.

Twenty-three percent of the children were reported as displaying a heightened awareness of sexual body parts (e.g., a 4-year-old boy asked how boys and girls differ; a 4-year-old girl asked when she would get pubic hair). None of the children were reported to have begun playing with toys or regular dolls in a sexual way or to add genitals to their drawings of people. Only one child was described in any way as "acting out sexually" -- a 3-year-old boy who took his clothes off while playing with a little

girl his age. As his mother explained, "He thought since he took the dolls' clothes off, it was okay to take his own clothes off."

Neither this child's mother nor any of the other mothers had any concerns about the behavior of their children after exposure to the dolls, nor did they report any behavior that might be misconstrued as an indication that sexual abuse had occurred.

Are anatomical dolls too suggestive? The research evidence thus far offers a strong and reassuring "no." The one study (McIver and Wakefield, 1987) that is sometimes cited as proof of the suggestibility of the dolls is methodologically flawed and difficult to interpret. Nonetheless, more research is needed on this controversial issue, especially in replicating the Goodman and Aman study using a larger, demographically more diverse sample as a test of the generalizability of their important findings. Perhaps a target event to be recalled could also be devised that is a closer analogue to sexual abuse than a play session (e.g., a normal genital examination).

At this point, we can be confident in our continued use of anatomical dolls in sexual abuse evaluations, especially if we adhere to the excellent recommendations of Myers and White (1989). First, doll users should be prepared to describe how and why the dolls were used in a particular case. Second, we should be familiar with the research on the dolls and be sure that our use of them falls within acceptable practice in the field. Third, we

should be aware of the limits in the use of anatomical dolls and acknowledge that they are interview aids rather than a litmus test for sexual abuse.

Mark Everson, Ph.D. and Barbara  
W. Boat, Ph.D. are Co-Directors  
of the Program on Childhood Trauma  
and Maltreatment in the Department  
of Psychiatry, University of North  
Carolina at Chapel Hill

## References

- August R. & Foreman B. (1986), Differences between sexually and non-sexually abused children in their behavioral responses to anatomically correct dolls, in C. Walker (Chair) Use of anatomically correct dolls in evaluation of child sexual abuse. Symposium presented at the Fourth National Conference on Sexual Victimization of Children, New Orleans, LA.
- Boat, B.W. & Everson, M.D. (1988), Use of anatomical dolls among professions in sexual abuse evaluations. *Child Abuse and Neglect*, 12(2):171-179.
- Boat, B.W., Everson, M.D. & Holland, J. (in press), Maternal Perceptions of Nonabused Young Children's Exposure to Anatomical Dolls. Child Welfare.
- Cohn, D. (1988), Play activity with anatomically correct dolls: Is there a difference between preschool age children referred for sexual abuse and those not referred? Paper presented at the National Symposium on Child Victimization, Anaheim, CA.
- Conte, J.R., Sorenson, E., Fogarty, L., and Dalla Rosa, J. (1988), Evaluating children's reports of sexual abuse: results from a survey of professionals. Unpublished manuscript.
- Everson, M.D., and Boat, B.W., (1989), Sexualized play among young children: implications for the use of anatomical dolls in



sexual abuse evaluations. Submitted for publication.

Gabriel, R.M. (1985), Anatomically correct dolls in the diagnosis of sexual abuse of children. *Journal of the Melanie Klein Society*, 3:40-50.

Glaser D. & Collins, C. (1989), The response of young, non-sexually abused children to anatomically correct dolls. *J. Child Psych. Psychiat.*, 30:547-560.

Goodman, G.S., and Aman, C. (in press), Children's use of anatomically detailed dolls to recount an event. Child Development.

In re Amber B., (1987) 191 Cal. App. 3rd 682, 236 Cal. Rptr. 623.

In re Christine C., (1987) 191 Cal. App. 3rd 676, 236 Cal. Rptr. 630.

Jampole, L. & Weber, M.K. (1987), An assessment of the behavior of sexually abused and non-sexually abused children with anatomically correct dolls. *Child Abuse and Neglect*, 11:187-192.

Myers, J.E.B., and White, S. (1989), Dolls in court? The Advisor, Newsletter for the American Professional Society on the Abuse of Children, 2(3):5-6.

McIver, W. & Wakefield, H. (1987), Behavior of abused and non-abused children with anatomically correct dolls, unpublished manuscript.

Sivan, A.B., Schor D.P., Koepl, G.K. & Noble, L.D. (1988), Interaction of normal children with anatomical dolls. *Child Abuse and Neglect*, 12:295-304.

Underwager, R., Wakefield, H., Legrand, R. & Bartz, C. (1986), The role of the psychologist in cases of alleged sexual abuse of children. Paper presented at the American Psychological Association Annual Convention, Washington, D.C.

White, S. (1986), Uses and abuses of the sexually anatomically correct dolls. *Division of Child, Youth and Family Services Newsletter (APA Division 37)*, 9(1):3-6.

White, S., Strom, G., Santilli, G. & Halpin, B. (1986), Interviewing young children with anatomically correct dolls. *Child Abuse and Neglect*, 10:519-529.

Yates, A. & Terr, L. (1988), Anatomically correct dolls -- should they be used as the basis for expert testimony? *Journal of the American Academy of Child and Adolescent Psychiatry*, 27(2):254-257.

Yates, A. & Terr, L. (1988), Issue continued: Anatomically correct dolls -- should they be used as the basis for expert testimony? *Journal of the American Academy of Child and Adolescent Psychiatry*, 27(3):387-388.

Yuille, J.C. (1988), The systematic assessment of children's testimony. *Canadian Psychology*, 29(3):247-262.

# CHILD WITNESS LAW AND PRACTICE

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JOHN E.B. MYERS

Associate Professor of Law  
University of the Pacific  
McGeorge School of Law

Contributing Author  
NANCY W. PERRY

Associate Professor of Psychology  
Creighton University

Wiley Law Publications

JOHN WILEY & SONS

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## § 4.8 Demonstrative Evidence as an Aid to Testimony

*Demonstrative evidence* is "evidence addressed directly to the senses without the intervention of testimony."<sup>56</sup> McCormick gives depth to this definition when he writes:

There is a type of evidence which consists of things, e.g., weapons, whiskey bottles, writings, and wearing apparel, as distinguished from the assertions of witnesses (or hearsay declarants) about things. Most broadly viewed, this type of evidence includes all phenomena which can convey a relevant first-hand sense impression to the trier of fact, as opposed to those which serve merely to report the secondhand sense impressions of others.<sup>57</sup>

Within the generic class called demonstrative evidence, it is useful to distinguish between things which played an actual part in the matter being litigated (e.g., a gun) and things which "played no such part but [are] offered for illustrative or other purposes."<sup>58</sup> The former category is often called *real* or *original* evidence. The instant discussion is limited to the latter class of demonstrative evidence, which is designed to illustrate or aid testimony.

There are many uses for demonstrative evidence in litigation involving children. Professor Imwinkelried reminds us that "[t]he only limits on the use of demonstrative evidence are the trial judge's discretion and the trial attorney's imagination."<sup>59</sup>

As mentioned above, use of demonstrative evidence lies within the discretion of the trial judge.<sup>60</sup> Courts generally permit use of such evidence if it will aid the child in testifying or if it will assist the jury in understanding the child's testimony.<sup>61</sup> McCormick writes that "the theory justifying admission of these exhibits requires only that the item be sufficiently ex-

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<sup>56</sup> Black's Law Dictionary 519 (4th ed. 1968). For discussion of demonstrative evidence, see McCormick § 212, at 663-69.

<sup>57</sup> McCormick § 212, at 663 (footnotes omitted).

<sup>58</sup> McCormick § 212, at 667.

<sup>59</sup> Imwinkelried at 78.

<sup>60</sup> See *State v. Eggert*, 358 N.W.2d 156, 161 (Minn. Ct. App. 1984) ("In general, the use of models and other types of illustrative evidence is within the discretion of the trial court"; it was not an abuse of discretion to permit a young sex abuse victim to illustrate her testimony with dolls); McCormick § 212, at 669 ("Whether the admission of a particular exhibit will in fact be helpful, or will instead tend to confuse or mislead the trier, is a matter commonly viewed to be within the sound discretion of the trial court").

<sup>61</sup> *State v. Eggert*, 358 N.W.2d 156, 161 (Minn. Ct. App. 1984) ("The test is whether or not the testimonial aid will likely assist the jury in understanding the witness's testimony"). See also *Newton v. State*, 456 N.E.2d 736, 741 (Ind. Ct. App. 1983) ("Demonstrative evidence is admissible if the item is sufficiently explanatory or illustrative of relevant testimony to be of potential help to the trier of fact").

planatory or illustrative of relevant testimony in the case to be of potential help to the trier of fact."<sup>62</sup> The party desiring to use demonstrative evidence is not required to show that the witness will be completely unable to testify without the assistance of the demonstrative aid. Rather, the test is whether the demonstrative evidence will assist the child in describing what happened so that the jury can understand. For example, in *State v. Eggert*,<sup>63</sup> a young sex abuse victim was permitted to illustrate her testimony with dolls. The defendant objected that the demonstrative evidence was unnecessary because the child was able to tell her story without the aid of dolls. The appellate court disagreed, stating that:

Appellant's argument does not correctly state the true test of the use of testimonial aids. For instance, a doctor or engineer may be allowed to use artificial mockups of the human anatomy, cutaways, maps and diagrams, etc., even if the witness acknowledges that he does not *have* to have those things to testify. The test is whether or not the testimonial aid will likely assist the jury in understanding the witness's testimony.<sup>64</sup>

In sexual abuse litigation in criminal and juvenile court, young children often use anatomically correct dolls to illustrate their testimony.<sup>65</sup> The trial judge has broad discretion to authorize the use of dolls, and appellate decisions discussing the matter uphold trial-level decisions to permit children to illustrate their testimony with the aid of dolls.<sup>66</sup> Some states have enacted legislation expressly authorizing use of dolls during testimony. A recent Alabama statute provides that:

In any criminal proceeding and juvenile cases wherein the defendant is alleged to have had unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim or witness who is under the age of 10 in testifying on direct or cross-examination at trial, or in a videotaped deposition as provided in this chapter.<sup>67</sup>

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<sup>62</sup> McCormick § 212, at 668.

<sup>63</sup> 358 N.W.2d 156 (Minn. Ct. App. 1984).

<sup>64</sup> *Id.* at 161 (emphasis in original).

<sup>65</sup> The need for dolls to aid testimony is especially acute with the youngest children. See *Vera v. State*, 709 S.W.2d 681, 686 (Tex. Ct. App. 1986) ("The use of dolls is often critical when the complainant witness is very young").

<sup>66</sup> See *Cleaveland v. State*, 490 N.E.2d 1140, 1141 (Ind. Ct. App. 1986); *Commonwealth v. Trenholm*, 14 Mass. App. 1038, 442 N.E.2d 745, 746 (1982); *State v. Eggert*, 358 N.W.2d 156, 161 (Minn. Ct. App. 1984); *State v. DeLeonardo*, 315 N.C. 762, 340 S.E.2d 350 (1986); *State v. Madden*, 15 Ohio App. 3d 130, 472 N.E.2d 1126, 1130 (1984); *Bryant v. State*, 685 S.W.2d 472 (Tex. Ct. App. 1985); *Vera v. State*, 709 S.W.2d 681, 686 (Tex. Ct. App. 1986); *Kehinde v. Commonwealth*, 1 Va. App. 342, 338 S.E.2d 356 (1986).

<sup>67</sup> Ala. Code § 15-25-5 (1986 Supp.).

## § 4.8 Demonstrative Evidence as an Aid to Testimony

\* Page 141, add to footnote 60:

Brady v. State, 540 N.E.2d 59 (Ind. Ct. App. 1989).

Page 142, add to footnote 65:

See State v. Fletcher, 322 N.C. 415, 368 S.E.2d 633 (1988), in which the four-year-old victim used anatomically detailed dolls to illustrate her testimony. The court held that the practice of allowing children to illustrate sexual abuse with dolls "is wholly consistent with existing rules governing the use of photographs, and other items to illustrate testimony. It conveys the information sought to be elicited, while it permits the child to use a familiar item, thereby making him more comfortable." *Id.* at 637.

\* See also Brady v. State, 540 N.E.2d 59 (Ind. Ct. App. 1989); State v. Chandler, 324 N.C. 172, 376 S.E.2d 728 (1989) (not error to permit testifying social worker to use dolls to illustrate what victims did with dolls during interviews); Williams v. State, 539 So. 2d 1049, 1050 (Miss. 1989) ("The use of anatomically-correct dolls during a trial is a matter of discretion with the trial judge although . . . great care and caution should be exercised when making this determination"); State v. Hewett, 93 N.C. App. 1, 376 S.E.2d 467, 476 (1989).

Page 142, add to footnote 66:

Phillips v. State, 505 So. 2d 1075, 1077 (Ala. Ct. Crim. App. 1986) (seven-year-old victim; proper to permit child to illustrate touching of "intimate parts" with dolls); State v. Jarzbek, 204 Conn. 683, 529 A.2d 1245, 1247 (1987); People v. Hutson, 153 Ill. App. 3d 1073, 506 N.E.2d 779, 780 (1987) (11-year-old victim; proper to illustrate penetration with doll); State v. Watson, 484 So. 2d 870, 875 (La. Ct. App. 1986) (15-year-old victim; dolls used to illustrate that victim knew names of female and male genitalia); People v. Foreman, 161 Mich. App. 14, 410 N.W.2d 289 (1987).

In People v. Garvie, 148 Mich. App. 444, 384 N.W.2d 796, 799 (1986) (seven-year-old victim), the court wrote:

Defendant argues that he was denied a fair trial when Troy was shown, over objection, two suggestive and prejudicial "anatomically correct" dolls to demonstrate the sexual offense. Defendant asserts that the dolls were prejudicial as depicted because the "man" doll when compared to the "cute little boy" doll was designed particularly to appear "cynical" looking (defendant possibly intends to say "sinister" looking). Our review at oral argument of photographs of these dolls does not suggest that untoward prejudice would have resulted to defendant at trial from the mere appearance of the dolls.

Defendant further asserts that the dolls were admitted at trial without a proper foundation establishing that their use was necessary to assist Troy while testifying. Defendant acknowledges that Troy was timid but suggests that timidity is not unnatural in such a sensitive case. We think the situation presented to the trial court was one for the sound exercise of its discretion. . . . The court did not find the dolls' looks to be prejudicial and believed they would assist Troy in testifying. We find no abuse of discretion.

(Footnote omitted.)

See also People v. Herring, 135 Misc. 2d 487, 515 N.Y.S.2d 954 (1987) (70-year-old aphasic sodomy victim permitted to illustrate sodomy with anatomically detailed dolls); State v. Watkins, 318 N.C. 498, 349 S.E.2d 564, 565 (1986) (six-year-old victim

#### § 4.13 BATTERED CHILD SYNDROME

illustrated penetration with dolls); Pryor v. State, 719 S.W.2d 628, 631 (Tex. Ct. App. 1986) (six-year-old victim illustrated penetration with dolls); Murriel v. State, 515 So. 2d 952 (Miss. 1987).

In addition to their use as demonstrative evidence, anatomically detailed dolls are used to assist clinicians and other professionals in determining whether children have been sexually abused. For discussion of anatomically detailed dolls as an aid to diagnosis of sexual abuse, see § 4.17I in this supplement.

\* Page 145, add to footnote 79:

State v. Hewett, 93 N.C. App. 1, 376 S.E.2d 467, 476 (1989).

#### § 4.17L - Use of Dolls to Evaluate Possibility of Child Sexual Abuse (New)

Anatomically detailed dolls are often used as an aid when interviewing children who are suspected of being sexually abused. For example, dolls are widely used by law enforcement professionals, child protective service workers, and clinicians. In the hands of a trained professional, the dolls are helpful in the interview and diagnostic process.



A number of empirical studies have investigated children's interaction with anatomically detailed dolls. These studies indicate that although the dolls are not a litmus test for sexual abuse, they are a useful adjunct of interviewing children who may be sexually abused.

See White, Strom, Santilli, & Halpin, *Interviewing Young Sexual Abuse Victims with Anatomically Correct Dolls*, 10 Child Abuse & Neglect 519 (1987)(Sample: 25 children referred for suspected sexual abuse, and 25 children with no evidence of sexual abuse. Age range, two to five years. The children in the referred group displayed more sexualized behaviors with the dolls than the nonreferred children. The differences were statistically significant. Children not suspected of being abused showed no unusual sexualized behaviors with the dolls. Merely exposing nonabused children to anatomically detailed dolls does not itself produce indicators of sexual abuse); Jampole & Weber, *An Assessment of the Behavior of Sexually Abused and Nonsexually Abused Children with Anatomically Correct Dolls*, 11 Child Abuse & Neglect 187 (1987)(Sample: 10 sexually abused children and 10 nonabused children. Age range, three to eight years. There was a statistically significant difference between the two groups, as evidenced by the presence or absence of sexual behavior in play with the dolls. Ninety percent of the sexually abused children demonstrated sexual behaviors with the dolls. Eighty percent of the nonabused children did not demonstrate sexual behaviors with the dolls); Sivan, Schor, Koeppele, and Nobel, *Interaction of Normal Children with Anatomical Dolls*, 12 Child Abuse & Neglect 295 (1988)(study of 144 children with no history of sexual abuse. Age range, three to eight years. The children interacted with anatomically detailed dolls. "Little aggression and no explicit sexual activity was observed. In contrast to clinical observation of abused children, the doll play of nonreferred children is unlikely to be characterized by aggression or sexual concerns; thus these behaviors when observed in interaction with these dolls should be taken seriously").

See also Boat & Everson, *Interviewing Young Children with Anatomical Dolls*, 67 Child Welfare 337 (1988); Boat & Everson, *Use of Anatomical Dolls among Professionals in Sexual Abuse Evaluations*, 12 Child Abuse & Neglect 171 (1988); White & Santilli, *A Review of Clinical Practices and Research Data on Anatomical Dolls*, 3 J. Interpersonal Violence 430 (1988).

A number of cases discuss use of anatomically detailed dolls as an adjunct to interviewing and/or diagnosis.

See *United States v. Gillespie*, 852 F.2d 475, 480-81 (9th Cir. 1988)(expert testimony that child was molested by male rather than female was based in part on child's play with anatomically detailed dolls. Court holds that such use of dolls must meet the requirement established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)).

*In re Amber B.*, 191 Cal. App. 3d 682, 236 Cal. Rptr. 623 (1987)(when expert bases opinion of sexual abuse partially on child's use of dolls, such use of dolls constitutes a novel scientific test. Before evidence based on such a novel scientific test is admissible, proponent must prove that the test is generally accepted in the relevant scientific community). See also *Seering v. Department of Social Services*, 194 Cal. App. 3d 298, 239 Cal. Rptr. 422 (1987); *In re Sara M.*, 194 Cal. App. 3d 585, 239 Cal. Rptr. 605 (1987); *In re Christine C.*, 191 Cal. App. 3d 676, 236 Cal. Rptr. 630 (1987); *In re Cheryl H.*, 153 Cal. App. 3d 1098, 200 Cal. Rptr. 789 (1984).

*In re M.E.*, 715 S.W.2d 572 (Mo. Ct. App. 1986)(dolls were used by social workers to determine whether sexual abuse occurred; children played with dolls in a way that suggested they had sexual knowledge far in advance of their ages. Defendant objected that children's assertive play with the dolls was hearsay. Court stated that the assertive doll play was not admitted to prove that abuse occurred, but to prove the children's sexual knowledge, thus it was not hearsay); *State v. Mayfield*, 302 Or. 631, 733 P.2d 438 (1987)(assertive conduct with dolls is hearsay); *In re C.L.*, 397 N.W.2d 81 (S.D. 1986)(child's use of the dolls was evidence of sexual abuse; child's use of dolls was nonassertive, thus not hearsay); *In re Penelope B.*, 104 Wash. 2d 643, 709 P.2d 1185 (1985); *State v. Hunt*, 48 Wash. App. 840, 741 P.2d 566, 568 (1987).

*People v. Garrison*, 166 Mich. App. 557, 420 N.W.2d 851, 852 (1988)(expert "testified that the victim's use of the anatomically correct dolls corroborated the victim's allegations of sexual abuse. Defendant argued that the trial court erred in allowing this testimony because the opinion was given as though supported by scientific certainty. "Testimony as to a child's reaction to an anatomically correct doll may be admissible as a foundation for an expert witness's opinion that the child has been sexually abused even though their use does not rise to the level of a scientific test"); *In re Rinesmith*, 144 Mich. App. 475, 376 N.W.2d 139, 141-42 (1985)(anatomically detailed dolls were not a scientific test implicating admissibility rule of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); "The dolls are not calculated to elicit a particular result but as a tool to permit children to communicate ideas which they are unable to express verbally because they are too young or anxiety-ridden or because they lack the vocabulary").

The dolls employed to aid testimony in sex offense cases are usually anatomically correct, although the fact that a doll is not completely anatomically correct does not mean that it cannot be used. In *Cleveland v. State*,<sup>68</sup> the court wrote:

One of the victims, D.C., was eight years old at the time of the trial, and testified with the aid of two dolls, one representing a male and the other a female. Using the dolls, D.C. demonstrated that Cleveland had pulled down her pants and underwear and put his hand between her legs, touching an area indicated in pink on the doll. Cleveland argues that because the pink area between the doll's legs did not accurately represent the human vagina, D.C. should not have been allowed to use the doll during her testimony.

The trial court has discretion in allowing or prohibiting the use of demonstrative evidence. . . . Such evidence may be admitted if it is sufficiently explanatory or illustrative of relevant testimony in explaining what occurred. . . . The doll D.C. used had sufficient anatomical detail to help the jury. Cleveland has not established that the doll's lack of an accurately depicted vagina in any way misrepresented D.C.'s testimony or misled the jury, or prejudiced him in any other way.<sup>69</sup>

The test is whether the doll will help the jury to understand the child's testimony.

Before handing anatomical dolls to a child witness, counsel should state for the record that the dolls are anatomically correct.<sup>70</sup> This statement permits an appellate court to comprehend the child's testimony, and is important because the dolls, which are expensive, are not made a part of the record. In addition to describing the dolls for the record, it is appropriate for counsel to ask the child to identify the dolls. The child might say, "This is a girl doll and this is a boy doll." As a follow-up, counsel may ask the child to tell how he knows which is which. Counsel should also ask whether the dolls will help the child describe what happened. As the child illustrates the story with the dolls, counsel should clarify the record with such statements as, "May the record reflect that the witness has placed the penis of the male doll inside the vagina of the female doll while the male doll is lying on top of the female." Absent such clarification, an appellate court cannot recreate the child's testimony.

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<sup>68</sup> 490 N.E.2d 1140 (Ind. Ct. App. 1986).

<sup>69</sup> *Id.* at 1141.

<sup>70</sup> See *Kehinde v. Commonwealth*, 1 Va. App. 342, 338 S.E.2d 356, 358 (1986), where the court expressed concern "that the record does not disclose whether the doll was anatomically correct."

Dolls are particularly helpful with youngsters who are linguistically immature. Such children may not have the vocabulary to effectively describe the details of an occurrence. In particular, they may not know the proper terms for parts of the human body.<sup>71</sup> By using anatomically correct dolls, such children can show what they cannot tell. Such demonstrative evidence may be very helpful, indeed indispensable, to the jury.

If sexual penetration is an issue, anatomically correct dolls may be used to help a child illustrate how penetration occurred. Dolls are particularly helpful on this issue because many children are less than effective in describing penetration. They say such things as, "He put it in me," "He put it between my legs," "He touched my bottom," or "His popsicle hurt my peepee."<sup>72</sup> It is hardly reasonable to expect the average seven-year-old calmly to recite, "The accused penetrated my vagina with his penis," and if the child did use such words, most adults would suspect coaching. Accepting the fact that children use childlike language to describe events, including penetration, it is important to assist the jury to understand precisely what the child means. Anatomically correct dolls are well suited to this end. The child can testify orally using his own descriptive terms, and can illustrate what those terms mean by showing the factfinder what happened.<sup>73</sup>

It is also appropriate to use dolls in preparing children to testify.<sup>74</sup> In *State v. Eggert*,<sup>75</sup> the Minnesota Court of Appeals addressed the issue of preparation with dolls in a sex abuse case. The court wrote:

Appellant additionally argued that allowing the victim pre-trial practice with the dolls was prejudicial. We find that contention without merit. The

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<sup>71</sup> See *State v. Madden*, 15 Ohio App. 3d 130, 472 N.E.2d 1126, 1130 (1984):

A review of the transcript reveals that [witness] testified that appellant placed "his thing" on her and that he put it in between her legs. The girl did not know the correct name for appellant's "thing" nor could she give a description of it. A doll with anatomical details was then used to illustrate and clarify the girl's testimony. Based on the victim's obvious lack of knowledge of the correct terms for human reproductive organs, there was no abuse of discretion in allowing the use of dolls to clarify the girl's testimony.

See also *State v. Lee*, 9 Ohio App. 3d 282, 459 N.E.2d 910, 912 (1983) ("The record indicates that the witness was unable to relate to the jury the events using the appropriate sexual or physiological terminology. The dolls were used to clarify the witness's explanation and to insure a common understanding between the witness and jury as to the events which took place.").

<sup>72</sup> See *State v. Madden*, 15 Ohio App. 3d 130, 472 N.E.2d 1126, 1130 (1984).

<sup>73</sup> See *State v. DeLeonardo*, 315 N.C. 762, 340 S.E.2d 350, 352-53 (1986) (male sex abuse victim permitted to illustrate anal penetration with dolls); *Bryant v. State*, 685 S.W.2d 472, 474 (Tex. Ct. App. 1985) (five-year-old sex abuse victim permitted to illustrate how defendant touched her vagina by using dolls).

<sup>74</sup> See *Newton v. State*, 456 N.E.2d 736, 741 (Ind. Ct. App. 1983): Defendant

further argues the pretrial use of the dolls impinged upon his right to counsel and his right to cross-examination. He analogizes the witness's out of court experience with the dolls to hypnotically enhanced testimony. . . . His argument is based on his assumption the witness was able to remember details at trial she was previously unable to remember at her deposition as a result of her practice with the dolls.

Although the court found defendant's argument "creative," it was rejected.

<sup>75</sup> 358 N.W.2d 156 (Minn. Ct. App. 1984).

child had described the incidents to adults several times before there was any use of the dolls, not only to her parents but to the child psychologist and the pediatrician. There is no indication that the child's testimony was improperly reinforced by the use of the dolls at trial. It is accepted and ethical trial procedure for either side in a civil or criminal case to display to a potential witness a testimonial aid that he or she may be asked to use during the testimony.<sup>76</sup>

Needless to say, caution must be exercised to ensure that pretrial preparation with dolls does not degenerate into a coaching session in which the adult uses the dolls to show the child what happened. The cross-examiner may delve into this possibility, and if improper coaching is disclosed, the effect on the child's testimony can be devastating.<sup>77</sup>

Dolls are not the only type of demonstrative evidence used with child witnesses. Much the same explanatory effect can be achieved through use of diagrams of the human body. *Pittman v. State*<sup>78</sup> provides an example. In this sex offense case, the prosecutor presented the 13-year-old victim with an anatomically correct diagram representing her body. The child circled the mouth and hand on the diagram, and testified that these were the parts of her body which the defendant wanted her to use to touch him. Following this, the child was given an anatomically correct diagram representing an adult male. She was asked to circle the part of the diagram that defendant forced her to touch. In response, she circled the male sex organ. It is not difficult to imagine the impact of such illustrated testimony on the jury. The defendant objected to use of the diagrams, but the Georgia Court of Appeals rejected the objection, and held that the trial court acted within its discretion in permitting such demonstrative evidence.

In addition to dolls and diagrams, it may be proper in some cases to permit a child witness to draw a picture of an event.<sup>79</sup> Obviously, such a picture may be out of scale or otherwise inaccurate. Inaccuracy should not render such evidence inadmissible, however, unless the opponent can demonstrate that the picture is prejudicial or of no help to the jury. Counsel has the right to cross-examine the child about the picture in an effort to undercut its accuracy. In the final analysis, the use of in-court drawings by a child witness should be left to the sound discretion of the judge.

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<sup>76</sup> *Id.* at 161.

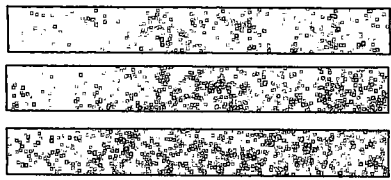
<sup>77</sup> See *Newton v. State*, 456 N.E.2d 736, 742 (Ind. Ct. App. 1983) (court held that it was proper to use dolls in pretrial preparation; it noted, however, that "the fact the witness did practice is a factor properly considered in determining her credibility"). See also § 4.43 for discussion of cross-examinations of a witness who used a doll on direct.

<sup>78</sup> 178 Ga. App. 693, 344 S.E.2d 511, 512 (1986).

<sup>79</sup> See *State v. Eggert*, 358 N.W.2d 156, 161 (Minn. Ct. App. 1984) (child was "allowed to draw a picture of the alleged actions which were shown to the jury").

BIBLIOGRAPHY  
FALSE ALLEGATIONS OF CHILD SEXUAL ABUSE

- Benedek & Schetky, Allegations of Sexual Abuse in Child Custody and Visitation Disputes, in Emerging Issues in Child Psychiatry and Law 145 (D. Schetky & E. Benedek eds. 1985).
- Everson & Boat, False Allegations of Sexual Abuse by Children and Adolescents, 28 J. Am. Acad. Child and Adolescent Psychiatry 230 (1989).
- Goodwin, Shad & Rada, False Allegations and False Denials of Incest: Clinical Myths and Clinical Realities, in Sexual Abuse: Incest Victims and Their Families 17 (Goodwin, Shad & Rada eds. 1982).
- Green, True and False Allegations of Sexual Abuse in Child Custody Disputes, 25 J. Am. Acad. Child and Adolescent Psychiatry 449 (1986).
- Horowitz, Salt, Gomes-Schwartz & Sauzier, False Allegations of Child Sexual Abuse (Unpublished paper 1985).
- Jones & McGraw, Reliable and Fictitious Accounts of Sexual Abuse to Children, 2 J. Interpersonal Violence 27 (1987).
- Jones & Seig, Child Sexual Abuse Allegations in Custody and Visitation Disputes, in Sexual Abuse Allegations in Custody and Visitation Cases 22 (B. Nicholas & J. Bulkley eds. 1988, ABA National Legal Resource Center for Child Advocacy and Protection).
- Katz & Mazur, The False Rape Report, in Understanding the Rape Victim 205 (S. Katz & A. Mazur eds. 1979).
- Peters, Children Who Are Victims of Sexual Assault and the Psychology of Offenders, 30 Am. J. Psychotherapy 598 (1976).
- Sink, Studies of True and False Allegations: A Critical Review, in Sexual Abuse Allegations in Custody and Visitation Cases 37 (B. Nicholson & J. Bulkley eds. 1988, ABA National Legal Resource Center for Child Advocacy and Protection).
- Thoennes & Tjaden, The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes, 14 Child Abuse & Neglect 151 (1990).

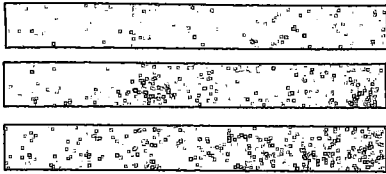


# Resource Materials

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## Investigation and Prosecution of Child Neglect and Abandonment

Presented by  
Jill Hiatt, J.D.



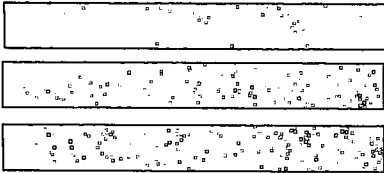
## Resource Materials

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# Prosecuting the Juvenile Sex Offender

Presented by  
Steven Jensen, M.A. and  
Susan Via, J.D.



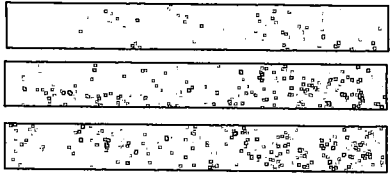


## Resource Materials

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# Coordinating Family Court Proceedings with Criminal Prosecution

Presented by  
Gail VanWinkle, J.D. and  
Reuben Young, J.D.



Outline

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Opening Statement

Presented by  
Wanda Robinson, J.D.



## National Center for the Prosecution of Child Abuse

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Research  
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### "OPENING STATEMENTS"

#### PRESENTATION BY:

WANDA KEYES-ROBINSON  
DIVISION CHIEF  
SEXUAL OFFENSE TASK FORCE  
STATE'S ATTORNEYS OFFICE FOR BALTIMORE CITY  
BALTIMORE, MARYLAND

#### I. INTRODUCTION

The opening statement is the **first** opportunity for a prosecutor to speak to a jury. Therefore, you must consider fully making use of your opportunity to introduce the jurors to the court, the defense attorney and yourself, but most importantly, the case that you are trying. In fact, the prosecutor has the first and unique opportunity to make an effective impression and subtly persuade the jury in understanding the case and listening to the evidence from the perspective of the prosecution.

Often this **first** opportunity is misused by lack of familiarity with one's case, inability to speak without reading the facts, and generally missing the opportunity to be persuasive in the rendition of crucial factual information.

Although the state may give an opening, remember that the defense may waive his or her opportunity to give an opening statement and reserve it for the beginning of the defense case.

#### II. PURPOSES OF OPENING STATEMENTS

- A. It is an overview of the state's case and the witnesses which the state intends to produce at trial.
- B. It offers the jury an opportunity to know what the case is all about.
- C. It gives the jury an opportunity to be introduced to the court, the defense attorney and the defendant as well as the prosecutor.
- D. It allows the state to "spark" an interest in the case.
- E. It gives the prosecutor an opportunity to "size up" the jury's rapport with him or her.

1033 N. Fairfax St.  
Suite 200  
Alexandria, VA 22314  
(703) 739-0321

### III. PROCEDURE

- A. Opening statements are permitted after a jury has been chosen and before any evidence is presented.
- B. The defense has the opportunity to reserve opening statements until the beginning of the defense case in some jurisdictions.
- C. The state is the first person to present his or her opening statement and the last person to argue in closing argument.

### IV. RESTRICTIONS

- A. You may not discuss or state the law during opening statements in the majority of jurisdictions. Some states will permit a description of the charges and a general definition of what those charges entail.
- B. You may not argue your case in opening statements. It is best to follow the evidence by witnesses that will testify and outline for the jury what they will see testifying on behalf of the state and what testimony they will hear.
- C. Time limitations - Most jurisdictions will restrict the amount of time that you have for opening statements. Being brief is better.
- D. Summarizing testimony is much better than going into detail.
- E. Factual recitation of your evidence is a must. Do not exaggerate. Stress those items quickly and efficiently that may be difficult for the jury to hear or uncomfortable for them, allowing them to relax as you present the evidence. (The manual on the Prosecution and Defense of Sex Crimes by B. Anthony Morosco suggests that a trial prosecutor not describe any child pornographic material in any detail, but rather give the jury a general idea of what they're about to see. This approach defers the "shock" affect on the jurors when confronting the child pornography for the first time.)

### V. PRESENTATION OF OPENING STATEMENT

- A. Theory of the case - Decide what the theory of your case is and follow it throughout the entire presentation of evidence, witnesses, photographs, etc. Begin the development of your theory during opening statements, when you are allowed to give an overview of your subject matter. Use this opportunity to educate your jury as to child sexual abuse as a common criminal act that does occur in our society. Explain or describe your children and how you expect the jury will view them when called to testify. Prepare them for the juvenile manner in which you will address those children. Remind them that you have the burden of proof but that these are real witnesses and real cases and not "L.A. Law".

- B. Keep it short. Spend enough time, summarize your case and briefly summarize the witnesses testimony. Spark the jury's interest in the subject matter, but do not give too much detail.
- C. Utilize the opportunity to speak to the jury and get a feel for who you are talking to. Be aware of any problems that may be presented when making eye to eye contact with your jury.
  1. Be concerned if a juror will not look at you.
  2. Be concerned if a juror appears to be giving you the "once over".
  3. Approach the jury (if your jurisdiction will permit it) and make them feel comfortable with you and your appearance.
  4. Make a mental note of anything that appears to preoccupy or distract the jury while you are talking (i.e., your appearance, your shoes, the color of your suit, individuals entering and leaving the courtroom, where you're standing, the pitch of your voice, etc.)

VI. TIPS

Do's

1. Change your tone and level of your voice during opening.
2. Use demonstrative evidence.
3. Make eye contact with the jury.
4. Utilize the courtroom - walk around.

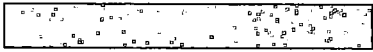
Don't's

1. Never waive opening.
2. Never be afraid to disclose a weakness in your case.
3. Never be afraid to pause.
4. Never discuss inadmissable evidence.
5. Never be preoccupied with outlining the defense's case

REFERENCES

Prosecution and Defense of Sex Crimes, B. Anthony Morosco, Matthew Bender, 1989 §Obscenity and Pornography, Sec. 8.05 [10] Opening Statements.

Investigation and Prosecution of Child Abuse Manual, National Center for the Prosecution of Child Abuse, Trial, V11B Opening Statement, (1989 Revised).

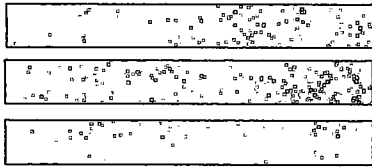


## Resource Materials

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# Admissibility of Uncharged Misconduct

Presented by  
John Myers, J.D.



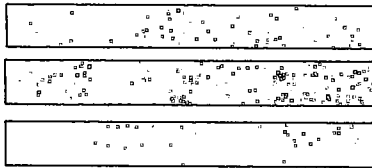
# Resource Materials

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## Special Problems of Teenage Witnesses

Presented by  
Mimi Rose, J.D.



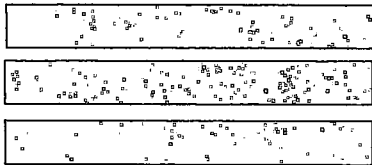


# Resource Materials

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## Cross Examination of the Defendant and Defense Witnesses

Presented by  
Wanda Robinson, J.D.



# Resource Materials

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## Closing Statements with Demonstration

Presented by  
Harry Elias, J.D.



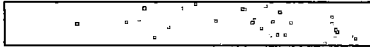
# Resource Materials

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## Prosecutorial Ethics in Child Abuse Cases

Presented by  
Tom Krampitz, J.D.

Saturday

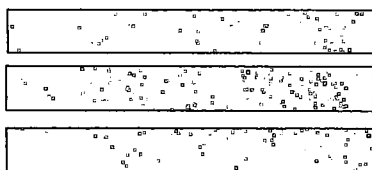


# Resource Materials

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## Plea Negotiation and Sentencing

Presented by  
Patricia Toth, J.D.



## Resource Materials

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# Victim Personalization and Impact Statements at Sentencing

Presented by  
Susan Via, J.D.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

LEROY F. HAINES, SR. )

CR. NO. 89-99-Mc

COPY

GOVERNMENT'S MEMORANDUM OF LAW SUPPORTING  
RETENTION OF INFORMATION CONTAINED IN PRESENTENCE REPORT  
AND ITS CONSIDERATION FOR SENTENCING PURPOSES

The United States of America, through Assistant U.S. Attorney Susan R. Via, files the following Memorandum of Law in the above-referenced case.

BACKGROUND

On January 23, 1990, Leroy F. Haines, Sr. entered a guilty plea to all four counts of the above-referenced indictment. The maximum total possible prison term is forty years, although the government agreed to recommend a sentence of thirty years incarceration at the time of disposition. If accepted by the Court, the defendant would be eligible for parole consideration after serving approximately nine more years in prison, less good time.<sup>1</sup> 18 U.S.C. §4205(a).

The indictment before this Court involves two counts of producing sexually explicit photographs of the defendant's prepubescent son and his two prepubescent nieces; one count of interstate transportation of the photographs; and one count of interstate transportation of the defendant's son for illegal sexual purposes.

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<sup>1</sup> Mr. Haines has been detained without bail since his arrest on March 22, 1989.

At the hearing on his change of plea during the second day of trial, the defendant began to explain his assaultive behavior towards these children by asserting that one of the victims "asked" him to photograph her engaging in sexually explicit conduct. The Presentence Report ("Report") states that the defendant "implied that the offenses may not be as egregious or extensive as claimed by the government."

In the Report, the Probation Department included a thorough description of the nature of defendant's relationship with these three victims, including his repeated sexual assaults upon them, as well as the threats and other tactics he employed to keep the children from disclosing their victimization. Also included was a description of the defendant's sexually assaultive behavior toward his son and daughter by a previous marriage and toward three other relatives, all of whom were youngsters at the time of the assaults. In her Report, Ms. Toye also provided a similar account of sexual abuse of a child of one of Mr. Haines' friends. Other than the friend's child, the five adults provided sworn statements recounting their victimization, and Ms. Toye personally interviewed all but one of these five victims. She also personally interviewed the defendant's son who is named in the indictment.

Defendant's counsel has challenged the inclusion of any and all information contained in the Report pertaining to the defendant's assaults on the six victims who are not involved in the instant indictment, as well as information pertaining to the



three children described in the indictment, except for the isolated acts to which the defendant pleaded guilty. Mr. Haines' attorney has asked that the challenged information be stricken from the Report, and that this Court not rely upon it in determining the sentence.

The government's position is that the challenged information is highly accurate and reliable, that it contains corroborative details, and that it should not be stricken from the Report. In addition, the prosecution argues that the information is highly relevant and material to sentencing in this case, and that the Court should consider the entire scope of the defendant's character, history and habits, including the sexual abuse of the nine youngsters detailed in the Report, in fashioning a just and appropriate sentence in this case.

#### DISCUSSION

Title 18, United States Code, Section 3577<sup>2</sup> clearly states:

No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

As was noted in Smith v. United States, 551 F.2d 1193, 1196 (10th Cir.), cert. denied, 434 U.S. 830 (1977), Section 3577 was enacted to authorize trial courts to consider, inter alia,

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<sup>2</sup> As a result of the passage of the Sentencing Reform Act, 18 U.S.C.A. §§ 3551-3586 (West 1985), this section is now set forth at 18 U.S.C. § 3661.

uncharged criminal behavior for purposes of sentencing. See, e.g., United States v. Kimball, 741 F.2d 471, 475 (1st Cir. 1984); United States v. Baylin, 535 F. Supp. 1145, 1150-1151 (D. Del.), remanded on other grounds, 696 F.2d 1030 (3d Cir. 1982); United States v. Hill, 688 F.2d 18, 20 (6th Cir.), cert. denied, 459 U.S. 1074 (1982). See also Fed. R. Crim. P. 32(c)(2)(A), which requires that a presentence report contain information regarding defendant's "history and characteristics" and "any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant".

Courts universally have interpreted both common law and the later statutory provisions as authorizing broad inquiry into a defendant's background, character and conduct for the purpose of imposing sentence. Roberts v. United States, 445 U.S. 552, 556 (1980), reaffirming United States v. Tucker, 404 U.S. 443, 446 (1972).

In United States v. Tracey, 675 F.2d 433, 440-441 (1st Cir. 1982), the First Circuit considered the propriety of the introduction at sentencing of grand jury testimony from a government witness concerning instances where the defendant had abused his office by accepting bribes in years prior to the occasions charged in the indictment. Ruling that consideration of this uncorroborated hearsay regarding uncharged similar crimes was proper, the court noted that the sentencing judge has wide discretion in determining both the relevance and the reliability

of sentencing information. Id. at 441.

Thus, a court is not bound to consider only the criminal conduct defined by the indictment in imposing sentence. See, e.g., United States v. Saade, 652 F.2d 1126, 1139 (1st Cir. 1981)(newspaper accounts of defendant's statements proper to consider despite their unsworn, out-of-court character); Billiteri v. United States Board of Parole, 541 F.2d 938, 944 (2d Cir. 1976)(sentencing judge's discretion "is by no means confined to the defendant's conduct in connection with the offense for which he was convicted"); United States v. Metz, 470 F.2d 1140, 1142 (3d Cir. 1972)(consideration of pending indictments for which defendant not yet convicted appropriate), cert. denied sub nom. Davenport v. United States, 411 U.S. 919 (1973); United States v. Legrano, 659 F.2d 17, 18 (4th Cir. 1981)(same); United States v. Garcia, 693 F.2d 412, 416 (5th Cir. 1982)(hearsay concerning facts of pending criminal charges proper if "sufficiently reliable"); United States v. Hill, 688 F.2d 18, 20 (6th Cir.)(prior uncharged crimes "highly relevant"), cert. denied, 459 U.S. 1074 (1982); United States v. Johnson, 507 F.2d 826, 829-830 (7th Cir. 1974)(facts of prior state acquittal may be considered in sentencing), cert. denied, 421 U.S. 949 (1975); United States v. Durbin, 542 F.2d 486, 489 (8th Cir. 1976)(court may consider "defendant's character, past life and habits, age, health, and also his reaction to prior punishment"); United States v. Weston, 448 F.2d 626, 633-634 (9th Cir. 1971)(uncharged criminal conduct relevant to central question of "what sort of

person is this defendant, and what sort of sentence should she receive?"); United States v. Graves, 785 F.2d 870, 875 (10th Cir. 1986) (arrests without conviction proper to include in presentence report and for judge to consider in sentencing); cf. United States v. Restrepo, 832 F.2d 146, 148-149 (11th Cir. 1987) (challenged information need only be supported by reliable facts).

As Judge Friendly cogently recognized in United States v. Doyle, 348 F.2d 715, 721 (2d Cir.), cert. denied, 382 U.S. 843 (1965), "few things could be so relevant [to sentencing] as other criminal activity of the defendant, particularly activity closely related to the crime at hand."

The First Circuit had occasion to discuss a district court's consideration of uncharged crimes in connection with arson convictions arising from the Dupont Plaza Hotel fire which killed 97 people in United States v. Jimenez-Rivera, 842 F.2d 545 (1st Cir.), cert. denied sub nom. Rivera-Lopez v. United States, 487 U.S. 1223 (1988). In upholding the sentencing judge's consideration of the uncharged offenses of first-degree murder, the court stated that Section 3577 permitted the court to "consider an almost unlimited range of information when imposing a sentence, including information relating to crimes of which the defendants have not been convicted." Id. at 550.

In the case at bar, the defendant has a history of sexually abusing and degrading his own children and other youngsters entrusted to his care by relatives or friends. To excise this

information from the Report and to refrain from considering this extreme, destructive behavior would be to sentence Leroy F. Haines in a vacuum, ignoring all but a fraction of his total character and antisocial nature.

If defendant is challenging the information as unreliable, the government asserts that all of these statements (made in some cases by people who are not even acquainted with one another), stand on their own as reliable and credible testimony concerning Mr. Haines' character and conduct.

While the government need not prove these matters by clear and convincing evidence, McMillan v. Pennsylvania, 477 U.S. 79, 91-92 (1986), it stands ready and willing to call these victims to the stand, making them available for cross-examination, should this Court determine that these facts remain unproven. They are ready to address the Court and face defense counsel to demonstrate that their traumatization by this defendant is real, palpable and persists to this day. The Court could then make the required finding under Rule 32(c)(3)(D) as to the accuracy of any facts challenged by the defendant prior to imposition of sentence.

In United States v. Graves, 785 F.2d at 875, the court described the several purposes of a presentence report beyond its obvious function of assisting the judge at sentencing. First, it is used to aid in the defendant's supervision while on probation or parole. Second, the report is relied upon by the Bureau of Prisons in classification of the defendant, selection of

institutional programs, and release planning. Third, information contained in the report is crucial to decisions to be made by the Parole Commission. Fourth, contents of the report are important for research programs.

Because this defendant will undoubtedly spend a significant period of time on parole, and that time is likely to be served in some state distant from Massachusetts, it is very important that a parole officer unfamiliar with him be able to understand the chronicity of his attraction to children as well as the severity of the danger posed by his proximity to children of any age and gender. As a condition of his parole (or probation if the Court so chooses), for example, he should not be permitted any unsupervised contact with minors, nor be permitted to cohabit with or marry any woman with young children. Unless the Probation Department and Parole Commission understand that this is a man capable of forcible rape of a five-year-old girl and forcible anal sodomy of young boys, restrictions on employment, lifestyle and residence may not be imposed, resulting in tragic consequences similar to those before this Court.

Both for release planning and supervision, the defendant's predatory pedophilic character must be made known to the authorities. If this information is redacted from the Report, his "picture taking" could well be viewed as an isolated, impulsive act, to be explained away by the defendant in later years and portrayed as far less egregious than it truly was.

The government is not asking this Court to sentence the

defendant for uncharged crimes, but rather to consider the real nature of this man and his complete indifference to the anguish he caused by repeatedly using children to gratify his own selfish needs. Consideration of this behavior ineluctably leads to the conclusion that the defendant should be punished, and that he must be incapacitated for as long as permitted by the applicable parole framework, because he is demonstrably incapable of rehabilitation.

[T]he evolutionary history of sentencing . . . demonstrates that it is proper--indeed, even necessary for the rational exercise of discretion--to consider the defendant's whole person and personality . . . . The 'parlous' effort to appraise 'character' [citation omitted] degenerates into a game of chance to the extent that a sentencing judge is deprived of relevant information concerning 'every aspect of a defendant's life' [citation omitted]. The government's interest, as well as the offender's, in avoiding irrationality is of the highest order.

United States v. Grayson, 438 U.S. 41, 53 (1978).

As this evidence would be relevant and material at trial under Fed. R. Evid. 404(b), see, e.g., United States v. Cuch, 842 F.2d 1173, 1174 (10th Cir. 1988); United States v. Azure, 801 F.2d 336, 341-342 (8th Cir. 1986), so too is it relevant and material to disposition.

If the information contained in the Report is reasonably reliable, it should neither be redacted nor ignored in fixing sentence. This Court should not be precluded from "candidly, honestly, and objectively evaluating all factors which in human experience would properly reflect upon the matter of appropriate

punishment". United States v. Cardi, 519 F.2d 309, 314 (7th Cir. 1975). The devastating impact of this man's conduct on his family members' lives cannot possibly be underestimated. Rule 32(c)(2)(D) specifically authorizes consideration of harm to victims, and this Court should take into account the losses which they suffered.

These victims lost the sense of security and trust which adults are morally and legally obligated to provide. They were robbed of their childhoods, because afternoons of giggling, shared secrets and childish dreams were replaced by sordid and frightening assaults on their bodies and minds. They lost hope, hope for the future and hope in themselves. Perhaps most tragically, they lost a sense of purpose and self-esteem, robbed of their innocence and made to feel dirty, ashamed, and culpable for the heinous conduct of this man to whom they were entrusted.

Indeed, the pathetic attempt by Leroy Haines to fix blame on a child for his brutish behavior is evidence of precisely what led these children to keep the secret for as long as they did, since the defendant repeatedly threatened to "blame" them if they dared to trust another adult enough to rescue them from his savage embrace. Their courage in coming forward and painfully recounting activity which makes all of us recoil should not be dismissed as irrelevant or unimportant. To do so would be to reward Leroy Haines for terrorizing children into remaining silent beyond statutes of limitations, so as to preclude prosecution for his crimes against them. See United States v.



Serhant, 740 F.2d 548, 542 (7th Cir. 1984)(victims' statements to sentencing judge held proper to consider in fixing sentence).

The government requests that the information not be stricken from the Report and that this Court consider it in imposing sentence in this case. The government further requests that should the Court be unable to ascertain the reliability of the challenged information from the record before it that the government be given notice and an opportunity to present the testimony of some or all of the victims prior to sentencing in order to establish the trustworthiness of the information contained in the Report.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:

  
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on this 8th day of May, 1990 to Owen S. Walker, Esq., Federal Defender's Office, 195 State Street, Boston, MA 02109.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COPY

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 EDWARD B. ELLIS )  
 a/k/a ROCCO ELLIS )

CRIMINAL NO. 89-30018-F

GOVERNMENT'S MEMORANDUM OF LAW ON ADMISSIBILITY  
OF DEFENDANT'S THREATS TO VICTIM

The United States of America, through Assistant United States Attorney Susan R. Via, files this Government's Memorandum of Law on Admissibility of Defendant's Threats to Victim.

Background

On September 6, 1989, the defendant, Edward B. Ellis, was charged in a three-count indictment with violations of Title 18, United States Code, Section 2423, interstate transportation of a minor with the intent to engage in illegal sexual activity. These charges arose from the defendant's sexual abuse of E.D., who was six years old when the abuse began, and who is presently nine years old.

The evidence at trial will show that the defendant threatened E.D. with harm to herself and threatened to hurt her mother if she were ever to tell anyone about his abuse of her.

Discussion

The government asserts that the threats made by the defendant to the victim are admissible to demonstrate his "consciousness of guilt." See 2 Wigmore on Evidence §§ 273-277 (Chadbourn Rev. 1979).

The First Circuit has held that "[e]vidence of threats to

witnesses can be relevant to show consciousness of guilt." United States v. Monahan, 633 F.2d 984, 985 (1st Cir. 1980) (per curiam). See also United States v. Pina, 844 F.2d 1, 9 (1st Cir. 1988); United States v. Rosa, 705 F.2d 1375, 1377 (1st Cir. 1983); United States v. Gonsalves, 668 F.2d 73, 75 (1st Cir.), cert. denied, 456 U.S. 909 (1982).

In Monahan, the defendant had threatened a key witness with unspecified harm if the witness testified at trial. 633 F.2d at 985. The Court found this evidence admissible under Rule 404(b), because it demonstrated that the defendant was willing to go to extreme measures to exclude pertinent evidence. Id. The Court further found that "Rule 403 is not contravened by evidence that might show only that the defendant is guilty of the crime charged." Id.

Indeed, threat evidence is admissible if the trial judge determines that the probative value "is substantially outweighed by the danger of unfair prejudice." Gonsalves, 668 F.2d at 75 (quoting Fed. R. Evid. 403). See also Pina, 844 F.2d at 9 (threat inadmissible when made after witness testifies because no probative value); Rosa, 705 F.2d at 1378 (judge did not abuse discretion in finding probative value of threat outweighed prejudice).

Other circuits have also recognized that threat evidence is admissible to show consciousness of guilt, after the trial judge weighs the probative value of the evidence against possible prejudice. See, for example, Wycoff v. Nix, 869 F.2d 1111, 1115 (8th Cir.), cert. denied, 110 S. Ct. 179 (1989) (review of state

murder conviction); United States v. Marks, 816 F.2d 1207, 1212 (7th Cir. 1987); United States v. Mendez-Ortiz, 810 F.2d 76, 78-79 (6th Cir. 1986), cert. denied, 480 U.S. 922 (1987); United States v. Guerrero, 803 F.2d 783, 785-787 (3d Cir. 1986); United States v. Smith, 629 F.2d 650, 651 (10th Cir.), cert. denied, 449 U.S. 994 (1980).

The government asserts that any threats Ellis made to E.D. are probative of his guilt because they show he was aware of the nature of his acts and that he acted with a "consciousness of guilt." The government further asserts that the probative value is not substantially outweighed by possible prejudice to the defendant, especially given the general and non-macabre nature of the threats. Gonsalves, 668 F.2d at 76.

Conclusion

For all of the above reasons, the government requests that this Court permit the government to introduce evidence of threats made by the defendant to the victim.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

by:

  
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have hand-delivered a copy of the foregoing upon Morris M. Goldings, Esquire, Mahoney, Hawkes & Goldings, 40 Rowes Wharf, Boston, MA 02110, on March 16, 1990.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 v. ) CRIMINAL NO. 89-30018-F  
 )  
 EDWARD B. ELLIS )  
 a/k/a ROCCO ELLIS )

GOVERNMENT'S MOTION IN LIMINE AND  
MEMORANDUM OF LAW IN SUPPORT OF  
ADMISSIBILITY OF DEFENDANT'S SEXUAL  
ABUSE OF VICTIM EXCLUSIVE OF  
ACTS CHARGED IN INDICTMENT

The United States of America, through Assistant United States Attorney Susan R. Via, files the following Motion in Limine and Memorandum of Law in Support of Admissibility of Defendant's Sexual Abuse of Victim Exclusive of Acts Charged in Indictment in the above-referenced case, pursuant to Fed. R. Evid. 404(b).

First, defendant has been provided with a specific generic description of all other crimes, wrongs or acts and the dates and places of such acts as to the victim in this case.

Second, evidence as to the sexual abuse of the victim in this case cannot be limited only to the acts charged in the indictment. Under Fed. R. Evid. 404(b), this evidence is highly relevant to show intent, motive, plan, scheme, design, preparation and identity. It would be impossible for any jury to understand the facts unless the defendant's entire relationship with the victim in this case is explored.

Third, there is no danger of unfair prejudice to the defendant from this child relating the entirety of her abuse by

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the defendant, since the acts charged in the indictment necessarily involve sexual abuse by the defendant. It would unfairly restrict the government's case to surgically edit this defendant's assaults on this child so that the government could not explain how it was that the defendant came to assault the child and capture her likeness in photographs, or prove the intent of the defendant in taking the victim across state lines.

For the forgoing reasons, the government should be permitted to fully explore the defendant's sexual assaults on this child during her examination, and in its opening and closing statements.

#### DISCUSSION

The government contends that this pattern of similar sexual assaults on the victim meets the test of relevance under Fed. R. Evid. 403, and is admissible to show, inter alia, motive, opportunity, intent, preparation, plan, absence of mistake or accident, and is highly probative of a material issue other than the character of the defendant. United States v. Huddleston, 108 S. Ct. 1496 (1988).

Under the two-step analysis for 404(b) evidence, United States v. Gonzalez-Sanchez, 825 F.2d 572, 579-80 (1st Cir.), cert. denied sub nom. Latorre v. United States, 108 S. Ct. 510 (1987), this evidence has special relevance and its probative value outweighs the danger of unfair prejudice to the defendant.

First, commission of highly similar assaults relates to this defendant's motive and intent, i.e., sexual arousal and

gratification arising from sexual attraction to and sexual interaction with this child. Cf. United States v. Masse, 816 F.2d 805, 813 (1st Cir. 1987).

Second, the assaults on E.D. during and following intrastate trips will corroborate the testimony of E.D. concerning the interstate assaults by the defendant upon her, which are the acts charged in the indictment, thus demonstrating a common scheme or plan to isolate the child in order to rape her.

Third, defendant gave E.D. similar reasons for why she should not tell about these other acts of abuse as he did regarding the crimes charged in the indictment. Clearly, this use of similar threats is highly probative of a common scheme or plan.

Fourth, the government must prove that the intent of the interstate transportation of E.D. was for illegal sexual purposes. Prior similar acts of isolating this child in order to sexually abuse her is highly probative of what intent the defendant had in this case when he transported E.D. to Vermont and Florida from Massachusetts. See United States v. Cuch, 842 F.2d 1173, 1174 (10th Cir. 1988)(evidence of prior, unrelated sexual assault admissible on issue of intent in aggravated sexual assault trial); United States v. Azure, 801 F.2d 336, 341-342 (8th Cir. 1986)(evidence of prior sexual acts with sister of victim admissible).

As the First Circuit noted in United States v. Flores-Perez, 849 F.2d 1, 4 (1st Cir. 1988):

where, as here, the other bad act evidence is introduced to show knowledge, motive, or intent, the Rule 404(b) exceptions to the prohibition against character evidence have been construed broadly. See, e.g., United States v. Cintolo, 818 F.2d 980, 1000 (1st Cir.), cert. denied, 108 S. Ct. 259 (1987).

Because the proffered evidence is virtually identical to evidence regarding the indicted offenses, it follows that its admission would not elicit emotional or irrational responses from the jury, since they will already be exposed to detailed descriptions by E.D. of vaginal, oral, genital, and digital intercourse, as well as to recitations of threats, fear, physical and emotional pain caused by these assaults. Arguably, testimony from this child will be no more inflammatory and emotional than that regarding the assaults at issue, and will not pose a risk of substantially unfair prejudice to the defendant. See United States v. Rosa, 705 F.2d 1375, 1377 (1st Cir. 1983); United States v. Masters, 622 F.2d 83, 87 (4th Cir. 1980).



For the above reasons, the government should be permitted to introduce this evidence at trial.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By: [Signature]  
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, hereby certify that a copy of the foregoing has been mailed this xth day of March, 1990 to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110.

[Signature]  
SUSAN R. VIA  
Assistant U.S. Attorney

Carole Jenny, MD  
1400 116th Avenue NE  
Bellevue, WA 98004

## MEDICAL EXAMINATION OF VICTIMS OF CHILD SEXUAL ABUSE

Why do medical examinations?

- To treat injury and look for evidence of past injury.
- To diagnose and treat sexually transmitted diseases.
- To collect forensic evidence of sexual contact (acute).
- To diagnose and treat associated physical illness.

Genital and anal anatomy.

Injuries associated with abuse.

Genital--acute and chronic.

Anal--acute and chronic.

What about the issue of hymenal diameter?

Sexually transmitted diseases.

Medical conditions associated with sexual abuse.

Medical conditions confused with sexual abuse.

Common questions that arise in court:

"Aren't girls sometimes born without hymens?"

"Don't girls injure themselves riding bicycles, riding horses, doing gymnastics, playing on the bars at school, etc."

"How can his/her physical examination be normal given a history of (anal/genital) penetration?"

"Couldn't these physical findings be caused by masturbation?"

"How can you diagnose injury if you didn't do colposcopy?"

Who should do medical examinations on abused children?

The Ohio study

Creating "Experts"--the Washington State Medical Training Program.

Bibliography on child sexual abuse.

Examples:

(+) Exam; (-) Conviction

(-) Exam; (+) Conviction

(+) Exam; (+) Conviction

The importance of the history from the child in child abuse cases.

MEDICAL ASPECTS OF CHILD SEXUAL ABUSE

An Annotated Bibliography

Astrid Hager, MD

Carole Jenny, MD

CHILD SEXUAL ABUSE  
ANNOTATED MEDICAL BIBLIOGRAPHY

GENERAL INTRODUCTION:

Pediatric and Adolescent Gynecology

COWELL, Carol. The gynecologic examination of infants, children and young adolescents, Peds Clinics of N Am. 1981; 28: 247.

Chapter which includes useful chart on the anatomy and physiology of the reproductive tract. Includes information on the changes of the external and internal anatomy with maturation.

EMANS, S. Jean. Pediatric and Adolescent Gynecology, Boston, Little and Brown, 1982.

General pediatric gynecology text, with sections devoted to developmental and normal genital anatomy. Also covers genital trauma and sexual abuse.

HUFFMAN, John. The Gynecology of Childhood and Adolescence, Phila., Saunders, 1981.

Pediatric and adolescent textbook which includes information on normal genital development, normal genitalia and hymenal configurations, congenital anomalies, and changes caused by trauma. Includes information on changes that occur with hormonal changes and maturation.

Sexual Abuse in the Child

Diagnostic and treatment guidelines concerning child abuse and neglect, Chicago. 1985, AMERICAN MEDICAL ASSOCIATION.

Pamphlet for physicians giving the diagnostic and treatment guidelines for child abuse including introductory information, physical signs (including a hymenal diameter of greater than 4 mm) and behavioral indicators.

BLYTHE, M.J.: D.P. ORR. "Childhood Sexual Abuse: Guidelines for Evaluation." Indiana Med 1985; 78: 11-18.

Review article covering basic introductory information on Sexual Abuse including definitions, behavioral and medical indicators. Details of genital and anal findings include disruption of hymenal integrity, change in vaginal opening and anal tears and changes in tone. Recommends medical and psychological follow-up.

ENOS, W.F. Forensic evaluation of the sexually abused child, Pediatrics, 1986; 78: 385-398.

Results of 16-year forensic study of 162 cases. Includes: examination protocol, taking laboratory specimens and evidence collection. Includes anatomical chart and illustrations of female abuse trauma. One hundred thirty two victims were female, 30 were male. Sexual abuse criteria included: 1) positive tests for ejaculation. 2) patterns of wounds including condition of hymen and or anal sphincter 3) foreign body materials 4) eyewitness accounts and 5) history from victim. Based on these criteria 41.7% of females had positive evaluation and 40.0% of boys did. Describes the examination of the hymen and normal anatomy. Accidental trauma does not cause hymenal damage. Significance of enlarged hymenal diameter also discussed. The younger the child the less likely there will be a positive examination. Fifty-five girls had positive findings of sexual abuse; 35 had intact hymens and 20 had non-intact hymens. Fifteen of these 20 were healed indicating previous old abuse. Four cases of intact hymens had positive tests for sperm.

FINKEL, K.C., Sexual Abuse of Children: and update, Can Med Assoc J. 1987; 136: 245-252.

General overview of child sexual abuse with background information on the psychosocial issues, pedophilia, and physicians role. Excellent review of medical and behavioral indicators with long list of references and charts. Focuses considerable attention to the difficult aspects of sexual abuse.

HERJANIC, B. Sexual abuse of children, JAMA, 1978, 239: 331-33.

Description of general management of the child sexual abuse victim, including developing a high index of suspicion on the part of the practitioner. Describes techniques for taking a history from the victim without parents' present. Also recommends that a social history should be taken from the responsible adults. Recommends tape recording all initial interviews.

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Medical management is discussed and includes description of examination techniques and collection of specimens. Forensic examination and STD's with therapy are also reviewed. Recommends coordinated followup with the legal system.

HOROWITZ, D.A., Physical examination of sexually abused children and adolescents. Peds Rev, 1987; 9: 25-29.

Intended as a detailed description of the vaginal examination of prepubertal child and adolescent. Includes information on: approach to the child; issues of privacy and control; different positions and obtaining specimens. Minimal information on physical findings other than a hymenal opening larger than 4 mm may be suggestion of penetration.

JONES, J.G. Sexual abuse of children, Am. J. Dis. Child. 1982; 136: 142-146.

Introduction to the sexual abuse of children with information on definition, incidence, types of abuse, pedophilia and rape. Describes behavioral indicators and interview techniques. Recommends the use of a forensic protocol, psychological referral and support as well as appropriate medical followup and evaluation for STD's. Discusses incest and describes this as being more common than extrafamilial abuse.

KRUGMAN, R. Recognition of Sexual Abuse in Children, Peds Rev 1986; 8:1.

Review article with overview of statistics, definitions, behavioral and medical indicators. Presents information on boys versus girls as victims, pedophilia with preconditions for abuse to occur; legal considerations with reporting requirements; guidelines for practitioners for diagnosing sexual abuse; behavioral and medical indicators. Advocates for multidisciplinary approach and good history taking. Includes information on hymenal diameter. Information on follow-up care; medical records and false allegations. Stresses importance of therapy and prevention and programs.

LADSON, S. Do physicians recognize sexual abuse? AJDC 1987; 141: 411-415.

Review of results of questionnaires given to primary care physicians. Indicates that many physicians cannot identify normal anatomy and often do not include genital examinations as part of their examination. States that the normal hymenal opening should be between 3-6 mm in diameter.

LEVITT, C.J. Sexual abuse in children: a compassionate yet thorough approach to evaluation. Post. Grad. Med. 1986; 80: 201-215.

Introduction with excellent color illustrations. Includes details of history taking and medical examination.

Includes information on normal genital anatomy and hymenal diameters; value of colposcopy; findings consistent with abuse, forensics and STD's. Discusses child's perception of abusive acts. Notes that often after the abuse phase, there may be no physical findings.

MURAM, David. Genital tract injuries in the prepubertal child. Peds. Annals 1986; 15: 616-620.

General overview of genital injuries including accidental and non-accidental trauma. Discusses the mechanism of injury for both blunt force vulvar injuries as well as penetrating injuries involving the hymen and the vagina.

ORR, D. P. Emergency management of sexually abused children, Am. J. Dis. Child. 1979; 133:628-631.

Review of 100 cases of sexual abuse of children, evaluated by pediatric residents. Describes protocols including the history taken from the child and parent. Uses drawings and dolls and emphasizes need for directed questioning. Describes nature of abuse in 100 cases, relationship of abuser and physical findings. Sixty-five percent of children had normal examinations. Recommends multidisciplinary approach to case management.

PAUL, D.M. The medical examination in sexual offenses, Med., Sci., Law, 1975; 15:154-162.

Early introduction to the evaluation of the rape victim during the acute post-rape period of time. Includes general protocols for the examining physician. Details importance of history and forensic examination. Introduces the concept of documenting injuries using the "face of a clock" technique.

Describes post-rape genital findings of the vaginal and anal area. Examination should note the size or laxity of the hymenal opening, recent and old tears, length of vagina, condition of vaginal rugae, bruising, scratches, lacerations and splits.

Vaginal penetration may occur without trauma, when rape occurs through an elastic hymen or when rape occurs via fear not force.

Anal injury of some kind is usually present with first time anal rape. More severe injuries present with the younger victim. Examination may return to normal after a few days to a week. Chronic abuse may result in changed anal tone, thickening of the anal mucosa and/or skin.

PAUL, D.M. The Medical Examination in Sexual Offenses Against Children, Med Sci and Law. 1977; 17:251-258.

General introduction to the problem of the child as a victim of sexual assault. Primary focus is on the acute post-rape evaluation. Patterns of injuries vary depending on the 1) size and type of the penetrating object 2) size of the victim's pelvic outlet and 3) the use of force. Describes pattern of injuries with attempted penetration versus actual penetration.

Vaginal penetration: results in 1) circumferential tears of the vestibular mucosa 2) posterior linear tears of hymen which may extend into vagina or posteriorly to perineum. 3) lacerations to vaginal walls. Digital penetration may cause linear tear of hymen.

Accidental injury to vaginal area may be by penetration or stretching. Penetrating injury is usually lateral to the hymenal margin.

Anal injuries: Any injury to skin, mucosa or muscles is significant. Anal hematomas may heal causing skin tag. Fissures may result (may also be due to constipation). Chronic penetration causes changes in tone and to the skinfolds, as well as thickening of the anal skin/mucosa.

History very important to evaluation: Children may be too frightened to respond during examination. In rape cases where the assailant is known to child there is often an absence of findings.

RIMSZA, M.E., Medical evaluation of sexually abused children: A review of 311 cases. Pediatrics 1982; 69:8-14.

Retrospective review of 312 cases who were medically evaluated for sexual abuse. Eighteen percent were assaulted by strangers: 131 were relatives and 30% reported abuse by more than one assailant. Only 23% showed no abnormalities. Mean age 9.2 years. Age ranges two months to 17 years. Eighty-six percent females. The younger the child the more likely the child described only genital fondling and the exam would be normal. When examined within 24 hours of the assault, 36% had findings of genital trauma; if examined after 24 hours only 13% had findings. By history 125 of the girls reported vaginal penetration. Correlations are made between the nature of the abuse by history and the physical findings. Stranger assault more likely to cause physical findings.

SANFILIPPO, J.S. Identifying the sexually molested preadolescent girl. *Peds Annals*. 1986; 15:621-624.

Overview of sexual abuse including information on incidence, recognition and reporting. Psychological support very important. Review of behavioral changes and indicators of abuse. Good history taking. Genital and anal findings described. Hymenal diameters discussed with significance of enlarged hymenal diameter. Discusses anal findings and hymenal trauma and locations of findings.

SARLES, R.M. Sexual abuse and rape, *Peds Rev*. 1982; 4:3.

Overview article with information on incidence, reporting, behavioral and physical presentations and medical management. History taking is important and may go from the non-direct to direct with specific question. Literature review shows that anywhere from 35% to 75% of cases may have physical findings. Family support is important to the outcome of the case. Discusses forensic examination and medical treatment of possible injuries or disease. Counseling recommended for all cases.

SEIDEL, J.S. Presentation and evaluation of sexual misuse in the emergency department. *Peds Emerg Care*. 1986; 2: 157-164.

A retrospective review of 300 cases of sexual abuse. All children presented to the emergency department. Fifty-seven of these did not present with complaints of sexual abuse. Results are not given for age, sex, chief complaint, physical findings, protocol for triage, history taking and physical examination. Techniques for genital examination with a drawing of normal anatomy also included. Discusses genital and anal trauma and its significance.

TILELLI, J. Sexual abuse of children, *NEJM* 1980; 302:319-323.

Retrospective review of 130 cases of sexual abuse ages 2-16 including 113 females and 17 males. Thirty presented with medical and social problems. Forty-three of the children had physical trauma. Physical findings ranged from bruises and nuchal petechiae to oral and perineal lacerations. Only four children less than 12 years of age had signs of chronic physical abuse. Younger children (<8) were more likely to know the assailant, be victims of recurrent abuse, report crimes not involving intercourse and to present with abused siblings. Incest victims were younger than other victims. Also notes that these victims were more likely to be reabused. Recommends evaluation by trained specialist rather than ER personnel.

WOODLING, B.A. Sexual abuse and the child. Em. Med. Ser. 1986; 15:17-25.

Review article includes information on incidence; type of abuse and relationship of abuser. Possible indicators of child sexual abuse both behavioral and physical. Details of STD's; hymenal diameter, physical and laboratory evaluation.

Good summary materials presented in table form of genital and anal findings related to both acute and chronic cases and to the type of abuse.

WOODLING, B. and KOSSORIS, P., Sexual misuse: rape, molestation and incest, Ped. Clin of N Am. 1981; 28:481-499.

General introduction to sexual misuse of children. Includes information on definitions, pedophilia, victims, incidence, emotional trauma and physical injuries. Discusses both acute and chronic cases of sexual abuse and the nature of the injuries. Outline of medical management of a sexual abuse case with the importance of history taking and a non-traumatizing physical examination.

Includes: Physical findings on the genital examination are outlined with locations using the "clock-face" technique. Discusses digital versus penile penetration, accidental injuries and the use of tampons. Medicolegal evaluation including laboratory analysis and tests for STD's. Patient management and preparation of the medical report. Information on preparing for and testifying in court.

WYNNE, J.M. Injuries to the genitalia in female children, SA Med. J. 1980; 57:47-50.

Review of 33 girls who had sustained injury to the genitalia. Twenty-four had been raped; seven had fallen and two were involved in auto accidents. Reviews findings in these types of genital injuries. In rape victims, average age was six. Recommended management and procedures are discussed. The pattern of injury for the rape victim is described as being either 1) without penetration -- bruising and minor lacerations of the vulvar region. 2) With penetration - posterior midline lacerations of varying severity.

#### BOOKS:

BERKOWITZ, C.D. Sexual Abuse of Children and Adolescents. Adv. Pediatr. 1987; 34:275-312.

Chapter with overview on sexual abuse including information on definitions, incidence, medical assessment and management, the taking of

the medical history and behavioral assessment. Detailed information on the physical examination including techniques, information on normal anatomy, hymenal diameter and abnormal findings consistent with trauma. The examination of the male victim and information regarding anal trauma. The section on the laboration evaluation includes information on the forensic examination and evaluation for STD's and appropriate therapy.

The psychosocial interview is also included with recommended therapy. Legal obligations and involvement with the court is also briefly discussed. Extensive bibliography.

HEGER, A.M.H. with Michael Durfee and Bruce Woodling. Medical evaluation chapter, Sexual Abuse of Young Children, by Kee MacFarlane and Jill Waterman et. al. (New York: The Guilford Press, 1986).

Introductory chapter on the medical evaluation of the sexually abused child in textbook with extensive information on the preschool-aged sexual abuse victim.

HEGER, A.M.H., Response: Child Sexual Abuse, A Medical View. Los Angeles, United Way, Inc., 1985.

Training manual to accompany video aimed at teaching physicians in training to recognize and diagnose sexual abuse. Includes protocols, bibliography of medical articles and prevention materials. Color plates illustrating both normal and abnormal genital and anal anatomy.

#### Evaluation of Trauma to Girls/Women

See all above items.

BERKOWITZ, C.D. "A simulated "acquired" imperforate hymen following the genital trauma of sexual abuse." Clin. Peds. 1987; :307-309.

Case report of a five-year-old originally evaluated for acute vaginal bleeding: This victim of sexual abuse showed scarring and tearing of the vaginal introitus and followup evaluations showed progressive healing with replacement of the hymen with a thick scar.

CANTWELL, H. Vaginal inspection as it relates to child sexual abuse in girls under 13. Child. Abuse and Neglect 1983; 7:171-176.

A review of 247 cases in which vaginal inspection and measurements of the horizontal hymenal diameter were done. With horizontal diameters of >4 mm there was a confirming history of past sexual abuse in 75% of these girls.

CANTWELL, H. "Update on Vaginal Inspection." Child Abuse and Neglect, 1987; 11:545-546. 545-546.

A followup study to initial '83 study in which review of histories with additional disclosures of abuse bringing correlation of enlarged hymenal diameter with abuse history to 80%. Also repeat examinations on some of the victims included in the original study showed that the hymenal diameter may become smaller with time.

EMANS, S. J. "Genital findings in sexually abused, symptomatic and asymptomatic girls." Pediatrics 1987; 79:778-785.

A review of 20 different genital findings in three groups of girls. The three groups are 1) sexually abused girls (n=119) 2) normal girls with no genital complaints (n=127 and 3) girls with other genital complaints (n=59). Comparisons of findings and hymenal diameters were made between each group.

Magnification, with colposcope or otoscope is discussed. There were marked differences between groups 1 and 2, but group 3 had significant similarities with group 1. Some original group 3 patients were moved to group 1 when they became culture positive for STD's. Conclusion that a significant number of girls in group 3, may have been sexual abuse victims or that vulvar inflammation may lead to some findings similar to group 1 findings.

EMANS, S. J. "Vulvovaginitis in the child and adolescent," PIR. 1986, 8:12-19.

Review article covering the etiology, evaluation and management of vulvovaginitis. A thorough evaluation will include a history, general physical examination and careful genital colposcopy and techniques for examination and culturing. Specific information on the adolescent patient is also included. Detailed information on specific organisms and treatment with charts listing normal flora and treatment of vaginal discharge.

Specific for sexual abuse: lacerations of hymen, attenuation, dilation of hymen and adhesions from hymen to vagina ... suggest sexual abuse.

FRITH, KATHLEEN. "Rape, divorce, and nullity," Brit. J. of Hosp. Med. 1970; :762-767.

A forensic guide to the evaluation of the rape victim. Primary focus is on the adult victim. Emphasizes need for careful history. Describes normal hymenal anatomy as a "thin piece of skin" and that hymens may be very elastic and therefore difficult to determine if penetration has occurred. Well illustrated documentation of the rupture of intact hymens with fingers and object simulating penile penetration in vaginal adult women under anesthesia. Tears occurred posteriorly with simulated penile penetration and laterally or postero-laterally with finger rupture.

FRITH, Kathleen. "Sexual offenses, divorce and nullity," chapter in Gradwohl's Legal Medicine, 3rd Ed. 1976.

Follow up article to above with emphasis on the forensic examination of different aged victims. Describes examination of the rape victims and the various configurations of hymens. Hymen may be lax or have evidence of old scars.

Anal examination should not: 1) smoothness of the mucosa 2) thickening of the mucosa 3) fissures or tears with fresh or old scars 3) funnel appearance 4) hemorrhoids or tags.

Includes extensive information on the forensic evaluation.

HERMAN-GIDDENS, M.E. "Prepubertal female genitalia: Examination for evidence of sexual abuse," Pediatrics. 1987; 80:2.1987.

A review of 375 cases discussing the techniques for evaluating sexual abuse victims and the types of injuries, both vaginal and anal, that occur with abuse. Uses two case reports to illustrate evaluation process. Recommends good history and careful examination noting, hymenal opening, evidence of recent trauma, scars, bruising, discharge, bleeding, lacerations, notches, etc. On anal exam, often no findings, but may include gaping anus, skin tags (not at 12 o'clock), fissures, scars, hyperpigmentation, and thickening of skin. Reviews normal hymenal variants.

JENNY, CAROLE. "Hymens in Newborn Female Infants." Pediatrics. 1987; 80:399-400.

A review of 1,131 female infant examinations in which all were found to have hymens.



McCAULEY, J., "Toluidine blue in the detection of perineal lacerations in pediatric and adolescent sexual abuse victims. Pediatrics, 1986; 78:1039-1043.

A study of 49 cases of sexual abuse. All patients were examined within 24 hours from the onset of symptoms. There were 25 adolescent and 24 preadolescent girls in the study. History from the adolescent girls -- all gave history of attempted vaginal penetration. (84% with actual penetration). The use of dye in this group increased the rate of detecting lacerations of the posterior fourchette from 4% to 28%. Pediatric age group divided into three groups 1) no history from child but parents suspected or child previously abused 2) history from child of fondling or rubbing 3) history positive for possible penetration.

In the pediatric age group the detection rate of posterior fourchette lacerations improved from 16.5% to 33% with the use of dye. Control groups were also studied. The adolescent control group was made up of girls who had engaged involuntary coitus during the previous 48 hours. Dye increased detection rate of lacerations from 0% to 28%. In the pediatric age control group of 25 there were not lacerations noted with or without dye.

PARADISE, J. "Probability of vaginal foreign body in girls with genital complaints," AJDC, 1985; 139:472-476.

A review of 48,053 outpatient visits to a children's walk-in clinic. Only 192 of these were girls less than 13 with gynecological disorders. One-hundred-seven with vulvovaginitis; 25 with genital trauma; 21 with menstrual disorders, eight with foreign bodies and three who were pregnant. Thus in a population consisting of outpatient girls under 13, the estimated probability is .04 that any girl has a vaginal consistency of small grey or brown fragments often described as probably toilet paper. Discusses differential diagnosis and vaginal bleeding as a presenting complaint increasing the likelihood of a foreign body fourfold.

POKORNEY, S.F. "Configuration of the prepubertal hymen," Am. J. Obst. Gyn. 1987; 157:950-956.

Description of 124 prepubertal hymens with focus on biologic configurations and the impact of trauma and hormones. Anatomical variations presented. "Sexually abused children were 3.5 times more likely to have a broken and/or altered hymen."

UNDERHILL, R.A. and DEWHURST, J. "The doctor cannot always tell: Medical examination of the "Intact" hymen." The Lancet, Feb. 18, 1978.

Brief communication describing how difficult it is for trained physicians examining a post-pubertal woman to determine whether or not she is virginal. Includes 28 women volunteers who were examined before a history of sexual activity was taken. In some cases the volunteers were examined by two different physicians and their findings compared.

WHITE, S.T. Vaginal introital diameter: A diagnostic aid to child sexual abuse. Abstracts. AJDC, 1987; 141:369-370.

A report on 242 girls between the ages of 1-12 divided into three groups 1) history of sexual abuse 2) no history of sexual abuse but at risk 3) controls. Vaginal introital diameter of more than 4 mm was highly associated with a history of sexual contact (94%) compared with the group with no history of sexual contact (5%). In group 3 (control) no patient had a vaginal opening greater than 4 mm.

#### Anal Trauma

see above items (general articles)

ELLERSTEIN, N.S. "Sexual abuse of boys" Am. J. Dis. Chil, 1980; 134:255-257.

Retrospective review of 145 cases of sexually abused children in which 11% were males. Physical findings are documented with only 50% of the boys having any positive findings. A comparison made between the male and female patients as to characteristics of the abuse and abuser, where it occurred, and presence of physical findings.

HOBBS, C. and J. WYNNE. "Child abuse: Buggery in childhood -- a common syndrome of child abuse." Lancet. 1986; 2:792-796.792-796.

A review of 35 cases; age 14 months to eight years with a history and physical signs of sodomy. Twenty-seven had history of abuse from child or perpetrator. Anal findings include fissures, dilatation, loss of sphincter, shortening and eversion of the anal canal, external venous congestion, and generalized reddening and thickening of the perianal tissues. Associated vaginal signs were found in 14 girls, but penile penetration uncommon. Excellent illustrations.

JOSEPHSON, G.W. "The male rape victim: Evaluation and treatment" JACEP 1979; 8:13-15. pp. 13-15.

Introduction to the evaluation of male rape victims noting psychological and physical findings. Recommended therapy and legal considerations. Includes specific types of injuries, forensic evaluation and treatment.

SPENCER, M.J. and DUNKLEE, P. "A study of sexual abuse in boys." Pediatrics. 1986; 78:113-138.

Retrospective review of 140 boys who were evaluated for sexual abuse. Boys made up nine percent of the referrals. Age ranged from 1-17 years. Most gave positive history of abuse. Physical evidence of abuse present in 68% of cases. Includes information on perpetrators; type of abuse by history, and physical findings in all cases: bruises, presence of ejaculate, erythema and abrasion, lacerations, fissures, hyperpigmentation, venous dilatation and hematomas, sphincter tone, scars (including skin tags) and STD's.

#### Colposcopy

NORVELL, M., "Investigation of microtrauma after intercourse," J. of Rep. Med., 1984; 29:269-271.

A report of a prospective study to determine if the colposcope could be valuable in documenting vaginal intercourse. Eighteen adult volunteers in the study were examined after 72 hours sexual abstinence and again within six hours of vaginal intercourse. Positive colposcopic findings were found in 61.1% of patients after consensual vaginal intercourse as compared with 11.1% of patients after abstinence.

TEIXEIRA, R. G. "Hymenal colposcopic examination in sexual offenses," Am. J. of For. Med. and Path. 1981; 2:209-214.

Review of 500 cases referred for evaluation of hymenal integrity. One hundred two of the cases were under the age of 14. Reports on the usefulness of the colposcope in clarifying the diagnosis in 11.80% of the cases. Compares the diagnosis made with and without magnification. Discusses complete vs. incomplete rupture of the hymen which may occur with vulvar coitus. In addition he documented the healing process, which may occur as quickly as nine days, but varies depending on the severity of the injury. He also compared congenital notches vs. post traumatic ruptures (with healing). The article raises the issue of "hymenal complacency" in which penetration may occur without lacerations; he notes that this is particularly true with fimbriated

hymens. With fimbriated hymens the colposcope was a particular value, establishing the correct diagnosis in 43% of the cases. With infantile hymens (to age 10: 33 cases in this series) colposcopic examinations helpful in 72% of the cases. Also documented the location of hymenal ruptures with 63% occurring in the posterior (5-7 o'clock) hymen.

Concludes that colposcopy is irreplaceable in cases such as incomplete ruptures, fringed (fimbriated hymens, infantile hymens, healing hymens and whenever the forensic doctors feels the diagnosis is difficult or impossible.

WOODLING, B. V., HEGER, A. "The use of the colposcope in the diagnosis of sexual abuse in the pediatric age group." Child Abuse and Neg. 1986; 10:111-114.

A brief communication documenting the usefulness of the colposcope for the diagnosis of sexual abuse in the pediatric age group. Reports that the diagnosis of an additional ten percent of pediatric cases of sexual abuse may be clarified through the use of the colposcope.

## ANNOTATED BIBLIOGRAPHY

1989 UPDATE

### GENERAL

HERMAN-GIDDENS, M., "Harmful genital care practices in children," JAMA 1989; 261:4, 577-579.

A review of 17 cases in which harmful genital care practices produced physical and psychological harm. These practices were primarily unusual and ritualistic handling and inspection of the child's genitals.

MURAM, David, "Child sexual abuse -- Genital tract findings in prepubertal girls: The unaided medical examination." Am J. Obstet. Gynecol 1989; 160:2, pp. 328-333.

A prospective study of 205 prepubertal girls who were victims of sexual abuse. 32% of the victims had normal-appearing genitalia and 46% had abnormal findings. The remaining had non-specific changes. Normal appearing genitalia were most often observed in those reporting difital assault, and specific findings were more commonly found in those describing genitogenital assault. The most common pattern of injury in this study was a linear laceration of the hymen posteriorly.

MURAM, David, "Child sexual abuse -- Genital tract findings in prepubertal girls: Comparison of colposcopic and unaided examinations." Ibid pp. 333-335.

Prospective study of 130 sexually abused girls. All victims were evaluated with and without a colposcope. 92/130 girls were found to have abnormal findings. These findings were noted during the unaided examination in 96% of the cases. Concluded that in most cases the unaided examination is adequate for the evaluation of most victims.

MURAM, David, "Child sexual abuse: relationship between sexual acts and genital findings." Child Abuse and Neglect, 1989, 13:2, pp. 211-216.

A comparison study between the findings observed during the examination of female victims of sexual abuse and compared to the sexual acts that the perpetrator confessed to having performed. Mean age of the girls was 9.1 years. 31 cases were reviews and in 18/31 the offended admitted to vaginal penetration. Specific findings were observed in 11 of these 18 (61%). Conclusion: All complaints of sexual abuse must be considered .. valid .. even if the physical examination fails to detect abnormalities.

TIPTON, A.C., "Child sexual abuse: physical examination techniques and Interpretation of Findings," *Adoles. Pediatr. Gynecol*, 1989, 2 pp. 10-25.

An in depth review article with general introductory information on CSA. Further information on the clinical interview with specifics that the medical professional may want to document during the course of the interview. Dr. Tipton also describes various examination techniques, hymenal diameters, different times of abusive acts. Article includes a list of physical findings that are strongly indicative of sexual abuse, these include: Hymenal damage or disruptions, damage to the posterior fourchette anal dilatation greater than 15 mm with traction on the buttocks. There are well organized sections on STD's and forensic evidence collection. Treatment, follow-up and testifying guidelines are also included. Excellent section discussing the developmental issues surrounding children as witnesses and historians.

WHITE, S.T. and D. L. INGRAM. "Vaginal introital diameter in the Evaluation of sexual abuse." *Child Abuse and Neglect*, 13:2 pp. 217-224.

Prospective study of 242 prepubertal females to determine if vaginal introital diameter is useful in evaluating a child for sexual abuse. Three groups were established: Group 1, history of sexual contact or GC; Group 2, no history but at risk; Group 3, nonabused. A vaginal introital transverse diameter of > 4 mm was more prevalent in Group 1 (94%) than in Group 2, (5%); or in Group 3 (0%). Their conclusion is that a vaginal introital diameter of > 4 mm is highly associated with sexual contact in children less than 13 years of age.

PARADISE, J.E. "Predictive accuracy and the diagnosis of sexual abuse: a big issue about a little tissue." *Ibid* pp. 169-176.

Commentary on the study by White as to whether measuring the hymenal introital diameter has any positive predictive value in the diagnosis of sexual abuse. Results show that if this was used as a screening device in 1000 girls, 250 would have a positive screening test. 35% of these would be true positives and 65% would be false positives. Conclusions: The over reliance on these measurements can result in not protecting the abused child with normal hymenal diameters and over protecting the normal child with an enlarged hymenal introital diameter. Diagnosis of sexual abuse depends on the history from the child not on genital measurements.

LANKTREE, C., ZAIDI, L., BRIERE, J., GUTIERREZ, V. "Differential identification of sexually abused children in psychiatric outpatient charts." Abstract, American Psychological Association, New Orleans, August, 1989.

A previous study by Briere and Zaidi revealed that adult psychiatric patients randomly selected from a psychiatric emergency room gave histories of child sexual abuse in only 6% of the cases, however, when personnel directly asked about childhood sexual victimization, the percentage increased to 70%.

A similar review of child psychiatric outpatient evaluations was done. 64 cases were reviewed. 29 were randomly selected and 35 in which clinicians were instructed to inquire as to the history of sexual abuse. 6.9% of the random cases reported sexual abuse, 31.4% of those asked directly about sexual abuse indicated that this had occurred. This is a 4.5 fold increase over those who were not asked directly.

This is an important study, especially in light of the fact these children were referred for evaluation because of emotional problems and they still did not report to the evaluator unless they were specifically asked. Perhaps even more interesting is a comparison of the adult and child statistics, where the adults had an 11 fold increase after asking compared to the 4.5 for the children.

#### ANAL EXAMINATION

HOBBS, C. J., and J. M. WYNNE. "Sexual abuse of English Boys and Girls: The importance of anal examination." Child Abuse & Neglect, 1989, 13:2, pp. 195-210.

A review of 608 cases of suspected child sexual abuse of which 337 were confirmed or probable cases. A wide variety of abuses were included, 30% gave history of digital or penile penetration of anus, and 42% had positive anal findings. 60% of those children under the age of 5 had positive anal findings. Anal findings included erythema, swelling, laxity, shortening or aversion, RAD, fissures, venous congestion, skin changes, twitching, funneling; hematoma and bruising; and infection. The authors noted a general absence of these findings in a group of children who were not abused. Recommend thorough anal examination of all children suspected to have been sexually abused, but do not recommend invasive procedures or digital examination. Note: majority of cases evaluations were done acutely, and follow-up examinations showed virtually complete healing with very few showing permanent scarring.

McCANN, J., VORIS, J., SIMON, M., and WELLS, R. "Perianal findings in prepubertal children selected for nonabuse: a descriptive study." Ibid, pp. 179-193.

A review of 318 children (161 girls and 106 boys) between the ages of 2 months and 11 years. Children were selected as non-abused after questionnaires were filled out by parents, and children with possible indicators of abuse were eliminated. No interviews of the children were undertaken. Half of the children were evaluated with the use of the Colposcope and the remaining were not. The study documented the presence of erythema; pigmentation, venous congestion (three times during exam); anal dilatation, intermittent anal dilatation (fluttering), configuration during dilatation, smooth areas, dimple/depressions, skin tags (actually skin folds anterior to anus) and scars (no scars were noted after colposcope was used so no verification of any scarring in these children is possible). **Commonly found:** erythema (41%), increased pigmentation (30%) venous engorgement (52%) wedge shaped smooth areas (26%) Skin tags/folds (11% and all anterior). 49% had some anal dilatation, which fluctuated in 62%. Flattening of anal verge during dilatation in 44% and 34%. **Infrequently:** Other skin tags/folds 0%; Scars (1%) and anal dilatation > 20 mm. (1.2%) and irregularity of the anal orifice after dilatation (3%) and prominence of the anal verge (3%). No abrasions, hematomas, fissures or hemorrhoids were noted. Author concludes that with the relatively high incidence of soft tissues changes caution needs to be used in rendering an opinion on the significance of these medical findings.

Author also mentions the need to understand that this group may include children who were sexually abused but remained undetected.



## Sexually Transmitted Diseases

### General STD Articles:

DATTEL BJ, Landers DV, Coulter K, et al: Isolation of *Chlamydia trachomatis* and *Neisseria gonorrhoeae* from the genital tract of sexually abused prepubertal females. *Adolesc Pediatr Gynecol* 1989 2:217-20.

Vaginal cultures for *C. trachomatis* and *N. gonorrhoeae* were obtained from 195 prepubertal females evaluated for sexual abuse. Both pathogens were found in 2.6% of the girls. Eleven percent (21/195) had purulent vaginal discharge at the time of the examination. Of the 21 girls with discharge, 43% (9/21) had either *C. trachomatis* or *N. gonorrhoeae*. One girl was infected with both organisms. The authors question the value of routine *C. trachomatis* and *N. gonorrhoeae* screening of girls evaluated for suspected abuse. They suggest an alternative may be to culture girls with purulent vaginal discharge. The cost to identify a single positive *Chlamydia* infection was \$4,212.00.

JENNY C, Hooton TM, Bowers A, et al: Sexually transmitted diseases in victims of rape. *New Engl J Med* 1990 322:713-6.

Two hundred four rape victims were evaluated for sexually transmitted diseases within seventy two hours of assault and again at follow-up. 88/201 (43%) had and STD at the time of the initial evaluation. 28% had a "new" infection at follow-up, not diagnosed at the initial visit. Vaginal infections were more prevalent than cervical infections. No new cases of HSV or HIV infection were diagnosed. The authors conclude that careful STD screening is warranted when treating adolescent and adult victims of sexual assault.

JENNY C: Child sexual abuse and STD. In, Holmes KK, Mardh PA, Sparling PF, and Wiesner PJ: Sexually Transmitted Diseases, 2nd Edition. McGraw Hill, New York, 1989, pp. 895-900.

An overview of the epidemiology and diagnosis of STD in sexually abused children.

NEINSTEIN LS, Goldenring J, Carpenter S: Nonsexual transmission of sexually transmitted diseases: an infrequent occurrence. Pediatrics 1984 74:67-76.

A comprehensive review of the pre-1984 literature on modes of transmission of STD in children.

WHITE ST, Ingram DL, Pearson A: Sexually transmitted diseases in sexually abused children. Pediatrics 1983 72:16-21.

409 children were examined for sexual abuse. STD was identified in 54 (13%): 46 gonorrhea, 6 syphilis, 4 trichomoniasis, 3 condylomata accuminata. 9 of 46 children with gonorrhea were asymptomatic. Only one of the 6 children with syphilis showed clinical signs of the disease. STD was more likely to be transmitted by an extended family member or a non-family member than by a father/stepfather.

WILLIAMS TS, Callen JP, Owen LG: Vulvar disorders of the prepubertal female. Pediatr Ann 1986 15:592-601.

A review. Includes STD and many other conditions.

#### Gonorrhea

ALEXANDER WJ, Griffith H, Housch JG, et al: Infections in sexual contacts and associates of children with gonorrhea. Sex Transm Dis 1984 11:156-8.

36 cases of gonococcal infection in children prompted the examination of 244 individuals who were identified as either sexual contacts, household associates or nonhousehold associates. The infection rate was 18.4% among 244 persons associated with cases of gonococcal infection in children. Of 21 sexual contacts examined, 10 (47.6%) had gonorrhea. Of 223 persons associated with the childhood cases of gonorrhea, 21 (16%) of household associates and 14 (15.2%) of nonhousehold associates were found to have gonorrhea. Associates aged greater than or equal to 30 years who were not named as sexual contacts had a risk of infection significantly lower than that of younger persons examined.

DE JONG AR: Sexually transmitted diseases in sexually abused children. Sex Transm Dis 1986 13:123-6.

Author examined 532 sexual abuse victims <14 years of age, 25 girls with vaginal discharge, and 6 children with perianal skin lesions. 34 infections were identified in 33 children. Gonorrhoea was present in 25 (4.7%), and other STD in 9 (1.7%). Rates of gonococcal infection were higher for children with multiple episodes of abuse (8.1%) and delayed reporting (7.4%). Eight of the gonococcal infections (32%) were discovered at sites not involved in the abuse by history. 44% (11/34) of infections were asymptomatic.

FARRELL MK, Billmire ME, Shamroy JA, et al: Prepubertal gonorrhoea: a multidisciplinary approach. Pediatrics 1981 67:151-3.

Forty six children under 12 years of age with gonorrhoea were studied. The source of the gonorrhoea was identified in 38/46 (83%). Nineteen were victims of sexual assault. Only 4 had a hymenal opening "larger than a fingerbreadth."

INGRAM DL, White ST, Durfee MF, et al: Sexual contact in children with gonorrhoea. Am J Dis Child 1982 136:994-6.

Study was performed to determine in gonorrhoea in children is frequently associated with sexual contact. All children with gonorrhoea over 4 years of age (14/14) and 35% (6/17) of children under 4 with gonorrhoea had sexual contact with older males who were almost always in their extended family.

NAIR P, Glazer-Semmel E, Gould C, et al: *Neisseria gonorrhoeae* asymptomatic prepubertal household contacts of children with gonococcal infection. Clin Pediatr (Phila) 1986 25:160-3.

Authors describe the occurrence of gonococcal infection among prepubertal household contacts of children younger than 12. 14 index cases were reviewed. Among 31 asymptomatic contacts of 10 index cases, 9 (29%) had positive cultures. 3 were siblings of the index cases and 6 were other children in the index households.

WHITTINGTON WL, Rice RJ, Biddle JW, Knapp JS: Incorrect identification of *Neisseria gonorrhoeae* from infants and children. *Pediatr Infect Dis J* 1988 7:3-10.

Forty *N. gonorrhoeae* isolates from children were sent to the CDC for confirmation from 1983-84. Fourteen proved not to be *N. gonorrhoeae*. In 10 of these children, abuse had not been suspected prior to the false identification of *N. gonorrhoeae*. The article includes an in-depth discussion of identification methods recommended.

### Chlamydia

BUMP RC: *Chlamydia trachomatis* as a cause of prepubertal vaginitis. *Obstet Gynecol* 1985 65:384-8.

Four of 29 girls evaluated for gynecologic complaints had *C. trachomatis*.

FUSTER CD, Weinstein LS: Vaginal *Chlamydia trachomatis* prevalence in sexually abused prepubertal girls. *Pediatrics* 1987 79:235-8.

50 girls examined for sexual abuse in an urban ER were tested for *C. trachomatis* vaginal infections. 8/47 (17%) of the cultures were positive. 4/43 (9.3%) of the direct immunofluorescence assay specimens were positive, all of which also had positive cultures. The culture-positive and -negative groups were not found to be different in regards to race, age, or symptoms, or physical examination findings.

HAMMERSCHLAG MR, Rettig PJ, Shields ME: False positive results with the use of chlamydial antigen detection tests in the evaluation of suspected sexual abuse in children. *Pediatr Infect Dis J* 1988 7:11-14.

A report of five cases of false positive diagnosis of *C. trachomatis* in children based on antigen detection methods. These tests have a limited utility in populations where the prevalence of chlamydial infection is low (<10%). Cultures should be the "gold standard" when evaluating chlamydial infections in sexually abused children.

HAUGER SB, Brown J, Agre F, et al: Failure of direct fluorescent antibody staining to detect *Chlamydia trachomatis* from genital tract sites of prepubertal children at risk for sexual abuse. *Pediatr Infect Dis J* 1988 7:660-662.

114 prepubertal children were evaluated for sexual abuse. The prevalence of *C. trachomatis* was 2.6% (3/114). *C. trachomatis* was isolated from 5 of 271 tissue culture specimens, while the direct fluorescent monoclonal species-specific antibody (DFA) stain was negative for all five specimens. The DFA was positive in 2 culture negative specimens. The sensitivity of DFA staining was 0% (0/5), the specificity was 99% (264/269), and predictive values for positive and negative results were 0% (0 of 2) and 98% (264/269) respectively. False positive and negative rates were 0.8% and 100% respectively. The DFA test is inadequate for diagnosis of *C. trachomatis* in the population of prepubertal children being evaluated for sexual abuse.

INGRAM DL, White ST, Occhiuti AR, et al: Childhood vaginal infections: association of *Chlamydia trachomatis* with sexual contact. *Pediatr Infect Dis J* 1986 5:226-9.

Compared 124 sexually abused female children (ages 1-12) with 90 controls. 10 vaginal, 3 rectal, and 2 pharyngeal cultures were positive for *C. trachomatis* in the sexually abused group. None of the controls were positive.

PORDER K, Sanchez N, Roblin PM, et al: Lack of specificity of Chlamydiazyme for detection of vaginal chlamydial infection in prepubertal girls. *Pediatr Infect Dis J* 1989 8:358-60.

65 girls with suspected sexual abuse were evaluated prospectively comparing Chlamydiazyme (an enzyme immunoassay for *C. trachomatis*) with cultures. 8% (5/65) were initially positive with Chlamydiazyme and none by culture. Some strains of *Streptococcus pyogenes* as well as other bacteria can cross-react with the EIA and give a false positive reaction. Chlamydiazyme is not specific for the detection of chlamydial infection in the vagina of prepubertal girls.

RETTIG PJ, Nelson JD: Genital tract infection with Chlamydia trachomatis in prepubertal children. J Pediatr 1981 99:206-10.

Authors examined 23 children with nongonococcal urethritis and vaginitis and 31 with anogenital gonococcal infection. *C. trachomatis* was not found in 12 males and 11 females with NGU or vaginitis. 9 of 33 (27%) of episodes of gonorrhea were complicated by concurrent or subsequent vulvovaginitis. *C. trachomatis* complicates gonococcal genital infections in prepubertal children at an incidence comparable to that seen in adults.

### Syphilis

GINSBURG CM: Acquired syphilis in prepubertal children. Pediatr Infect Dis J 1983 2:232-4.

Describes 3 cases of acquired syphilis in children.

### Bacterial Vaginosis

HAMMERSCHLAG MR, Cummings M, Doraiswamy B, et al: Nonspecific vaginitis following sexual abuse in children. Pediatrics 1985 75:1028-31.

Studied vaginal washes of 31 abused and 23 non-abused children ages 2 1/2 to 13 years. Possible nonspecific vaginitis (NSV) was found in 1/23 (4%) of non-abused girls. Of the abused girls, 1/31 (3%) had possible NSV within 48 hours after abuse. 4/31 (13%) of abused girls had possible NSV at follow-up (>7 days post abuse). Five of the 8 were symptomatic.

### Condylomata Acuminata

GOERZEN JL, Robertson I, Inoue M, Trevenen CL: Detection of HPV DNA in genital condylomata acuminata in female prepubertal children. Adolesc Pediatr Gynecol 1989 2:224-229.

In situ DNA hybridization using probes for HPV types 6, 11, 16, and 18 was performed on condylomata from 4 children, age 22 months to 9 years. Three were positive for HPV 6 and/or 11.

STRINGEL G, Mercer S, Corsini L: Condyloma acuminata in children. J Pediatr Surg 1985 20:499-501.

A review of 14 cases, including an interesting case where perianal condyloma developed after repeated rectal dilatations because of a pull through procedure for Hirschsprung's Disease. Includes a discussion of treatment alternatives.

VALLEJOS H, Kleinhaus S, Braunstein JD, Halwer M, Koss LG: Characterization of human papilloma virus types in condylomata acuminata in children by in situ hybridization. Lab Invest 1987 56:611-5.

The presence of HPV DNA sequences of types 6, 11, 16, and 18 was determined by in situ hybridization in eight condylomata acuminata from children <12 years old. Viral types detected: Type 6 alone in 3 cases, type 6 and 11 in 4 cases, and type 16 and 18 in 1 case. The authors suggest that the long term significance of HPV infection is unknown, but the oncogenic potential of types 16 and 18 is cause for concern.

GIBSON PE, Gardner SD, Best SJ: Human papillomavirus types in anogenital warts of children. J Med Virol 1990 30:142-5.

Anogenital warts for 25 children were examined for HPV type. Ten were suspected to have been abused. 22 were positive for HPV DNA. Types 6 and/or 11 were found in 20, type 18 in 1 (child also had 11), type 2 in 1, and one child had an unidentified HPV DNA. In three cases, HPV was the same type as isolated from warts from the parent. In nine other children, one or both parents were reported to have warts.

HERMAN-GIDDENS ME, Gutman LT, Berson NL: Association of coexisting vaginal infections and multiple abusers in female children with genital warts. Sex Transm Dis 1988 15:63-7.

Eleven girls under 12 years of age presenting with genital warts were evaluated for possible sexual abuse. 9/11 had condylomata acuminata. 2/11 had verruca vulgaris. 10 had evidence confirming abuse. 6 had other vaginal infections. 3 were known and 3 were suspected to have been molested by multiple perpetrators. Authors concluded that almost all genital warts in girls are sexually transmitted and that girls presenting with anogenital warts should be evaluated for other genito-vaginal infections and sexual abuse. Multiple vaginal infections with organisms that are sexually transmitted or associated with sexual activity, may be a marker for abuse by multiple perpetrators.

SCHACHNER L, Hankin DE: Assessing child abuse in childhood condyloma acuminatum. J Am Acad Dermatol 1985 12:157-60.

A "checklist" for dermatologists to consult when treating childhood condylomata acuminata to help in the detection of abuse.

SHELTON TB, Jerkins GR, Noe HN: Condylomata acuminata in the pediatric patient. J Urol 1986 135:548-9.

The authors review their experience with condylomata acuminata in children. Of 14 children evaluated, more than half were determined to have a sexual etiology for the lesion. Recommendations for evaluation and treatment of children with condylomata are reviewed.

#### Herpes Simplex Virus

KAPLAN KM, Fleisher GR, Paradise JE, et al: Social relevance of genital herpes simplex in children. J Pediatr 1984 104:243-4.

Chart review of 6 children (4 girls, 2 boys) with culture-proven genital herpes simplex virus (HSV). Five had HSV 1, one had HSV 2. Sexual abuse was documented in 4 of 6 (67%). Genital HSV should be considered a possible indicator of sexual abuse.

TAIEB A, Body S, Astar I, et al: Clinical epidemiology of symptomatic primary herpetic infection in children. A study of 50 cases. Acta Paediatr Scand 1987 76:128-32.

HSV 2 was isolated in 10% of the cases. Autoinoculation was frequent route of transmission of genital primary infection in young children.



Other STD

GELLERT GA, Durfee MJ, Berkowitz CD: Developing guidelines for HIV antibody testing among victims of pediatric sexual abuse. *Child Abuse Negl* 1990 14:9-17.

Sixty three physicians treating sexually abused children were polled to develop indicators for HIV antibody testing of victims of suspected abuse. The authors suggest the follow group should be tested:

- |            |  |
|------------|--|
| VICTIM:    | 1. Clinical profile consistent with AIDS/ARC                           |
|            | 2. Behavioral profile of adolescent high risk (prostitute, gay, drugs) |
|            | 3. Parent/adolescent insistent on test                                 |
| ASSAILANT: | 4. HIV antibody positive   |
|            | 5. Clinical profile consistent with AIDS/ARC                           |
|            | 6. Behavioral profile high risk (gay, drugs)                           |
|            | 7. Multiple assailants   |

HAMMERSCHLAG MR, Doraiswamy B, Cox P, et al: Colonization of sexually abused children with genital mycoplasmas. *Sex Transm Dis* 1987 14:23-5.

Pharyngeal, anorectal and genital specimens for 50 sexually abused children and 40 healthy controls were cultured for *M. hominis* and *U. urealyticum*. *M. hominis* was isolated from the anorectal and vaginal cultures of 11 (23%) and 16 (34%), respectively, of 47 abused girls as compared with 3 (8%) and 6 (17%), respectively, of 36 controls. *U. urealyticum* was isolated from the anorectal and vaginal cultures of 9 (19%) and 14 (30%), respectively, of the abused girls as compared with 1 (3%) and 3(8%), respectively, of 36 controls. Colonization with genital mycoplasmas was not associated with any symptoms.

JONES JG, Yamaguchi T, Lambert B: *Trichomonas vaginalis* infestation in sexually abused girls. *Am J Dis Child* 1985 139:846-7.

Report of *T. vaginalis* infection in 4 sexually abused girls. Two were prepubertal.

WAITES KB, Brown MB, Stagno S, et al: Association of genital mycoplasmas with exudative vaginitis in a 10 year old: a case of misdiagnosis. Pediatrics 1983 71:250-2.

A 10 year old with exudative vaginitis had *U. urealyticum* and *M. hominis* isolated from the lower genital tract. No other pathogens were identified. The child had a history of recent sexual abuse.

## Forensic Science

### DNA Typing

BEELER L, Wiebe WR: DNA identification tests and the courts. Washington Law Review 1988 63:907-55.

A complete overview of DNA typing technology and an excellent "layman's" description of how it works and why it is important.

FOWLER JCS, Burgoyne LA, Scott AC, et al: Repetitive deoxyribonucleic acid (DNA) and human genome variation--a concise review relevant to forensic biology. J Forensic Sci 1988 33:1111-26.

Overview of specific forensic issues in DNA analysis.

GIUSTI A, Baird M, Pasquate S, et al: Application of deoxyribonucleic acid (DNA) polymorphisms to the analysis of DNA recovered from sperm. J Forensic Sci 1986 31:409-17.

Describes the specific application of DNA typing to sperm. The DNA pattern from sperm recovered from the vagina after intercourse matches that from the blood of the male donor.

HIGUCHI R, von Beroldingen CH, Sensabaugh GF, et al: DNA typing from single hairs. Nature 1988 332:543-6.

Polymerase chain reaction was used to identify the DNA from a single hair using genetically variable mitochondrial and nuclear DNA sequences.

JEFFREYS AJ, Werrett DJ: Forensic application of DNA 'fingerprints'. Nature 1985 318:577-9.

Many highly polymorphic minisatellite loci can be detected simultaneously in the human genome by hybridization to probes consistin gof tandem repeats of the 'core' sequence. The resulting DNA 'fingerprints' produced by Southern blot hybridization are comprised of multiple hypervariable DNA fragments, show somatic and germline stability and are completely specific to an individual. DNA 'fingerprints' can be made from 4 year old blood and semen stains. Sperm nuclei can be separated from vaginal cellular debris to identify the male donor. DNA fingerprints will revolutionize forensic biology, particularly with regard to the identificationof rape suspects.

KANTER E, Baird M, Shaler R, et al: Analysis of restriction fragment length polymorphisms in DNA recovered from dried bloodstains. J Forensic Sci 1986 31:403-8.

DNA can be extracted an identified from dried blood stains aged up to three years.

THOMPSON WC, Ford S: DNA typing: acceptance and weight of the new genetic identification tests. Virginia Law Review 1989 75:45-108.

A legal review article presenting legal obstacles and objections to the use of DNA typing.

#### Other Forensic Tests

BISBING RE: The forensic identification and association of human hair. In, Saferstein R, ed: Forensic Science Handbook. Prentice-Hall, Englewood Cliffs, NJ, 1982, pp 194-221.

A thorough discussion of the process of forensic hair identification.

DAVIES A: Scientific examination in sexual assault. Med Law 1989 8:31-5.

The contribution fo a biologist to the investigation of alleged rape is summarized using examplesof serial rapes. The uses and limitations of ABO grouping of semen in discussed.

GAENSSLEN, RE: Sourcebook in Forensic Serology, Immunology, and Biochemistry. National Institute of Justice, US Department of Justice, US Government Printing Office, Washington, DC, 1983.

The most comprehensive overview of the field of forensic serology. Outlines the science of most biochemical forensic tests done on semen, blood, saliva and other body fluids.

GOLD MH, Roenick HH Jr., Smith ES, Pierce LJ: Evaluation and treatment of patients with human bite marks. Am J Forensic Med Pathol 1989 10:140-3.

A protocol for examining, determining the age, measuring, photographing, and treating human bite marks in adults and children.

GRAVES HC, Sensabaugh GF, Blake ET: Postcoital detection of a male-specific semen protein. Application to the investigation of rape.

Authors describe an ELISA test for a semen glycoprotein of prostatic origin, designated p30 antigen. The antigen can not be detected in body fluids from women. The p30 antigen was detectable in vaginal fluid for a mean of 27 hours after coitus, compared with 14 hours for acid phosphatase.

HELWEG-LARSEN K: The value of the medico-legal examination in sexual offences. Forensic Sci Int 1985 27:145-55.

Results of medico-legal examination in 74 rape and attempted rape cases in 1975 and 1980 are reviewed. 18% and 42% of offenders were charged in 1975 and 1980 respectively. 50% and 90% respectively were convicted. A correlation between the judicial outcome and the results of the medico-legal exam was not found in all cases.

HERR JC, Woodward MP: An enzyme linked immunosorbent (ELISA) assay for human semen identification based on a biotinylated monoclonal antibody to a seminal vesicle-specific antigen. J Forensic Sci 1986 32:346-56.

Describes a new rapid test for a protein found only in human semen.

**INDEST GF:** Medico-legal issues in detecting and proving the sexual abuse of children. *J Sex Marital Ther* 1989 15:141-60.

Reviews medical and legal issues in collecting evidence in child sexual abuse cases. Reviews a protocol for evidence collection.

**KANDA M, Thomas JN, Lloyd DW:** The role of forensic evidence in child abuse and neglect. *Am J Forensic Med Pathol* 6:7-15, 1985.

Reviews elements of the forensic examination and collection of forensic evidence.

**KOBERNICK ME, Seifert S, Sanders AB:** Emergency department management of the sexual assault victim. *J Emerg Med* 1985 2:205-14.

Reviews ER procedures in rape cases.

**PRAGAY DA, Casey SJ, Gottlelf J:** Use of different chemical methods for acid phosphatase in cases of rape. *Clin Biochem* 1977;10:183-7.

Three different methods for assaying acid phosphatase are described and compared. Vaginal washes of normal women contain low levels of acid phosphatase.

**RANDALL B, Riis RE:** Penile glycogenated epithelial cells as an indicator of recent vaginal intercourse. *Am J Clin Pathol* 1985 84:524-9.

Glycogenated squamous epithelial cells are felt to be specific for the vagina, and if recovered from the penis, they are indicative of penile vaginal penetration.

**RICCI LR, Tytell HG:** Unexpected vaginal sperm in two sexual abuse victims. *Pediatr Emerg Care* 1987 3:160-3.

Two cases of unexpected presence of vaginal sperm in prepubertal children are presented. Techniques of sperm and acid phosphatase collection are discussed.

SCHUMANN GB, Badawy S, Peglow A, et al: Prostatic acid phosphatase. Current assessment in vaginal fluid of alleged rape victims. Am J Clin Pathol 1976 66:944-52.

Prostatic acid phosphatase activity in the vagina is a more sensitive indicator of semen than the presence of sperm, and is more likely to substantiate the allegation of rape with respect to time.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COPY

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 EDWARD B. ELLIS )  
 a/k/a ROCCO ELLIS )

CRIMINAL NO. 89-30018-F

GOVERNMENT'S MEMORANDUM OF LAW ON ADMISSIBILITY  
OF DEFENDANT'S THREATS TO VICTIM

The United States of America, through Assistant United States Attorney Susan R. Via, files this Government's Memorandum of Law on Admissibility of Defendant's Threats to Victim.

Background

On September 6, 1989, the defendant, Edward B. Ellis, was charged in a three-count indictment with violations of Title 18, United States Code, Section 2423, interstate transportation of a minor with the intent to engage in illegal sexual activity. These charges arose from the defendant's sexual abuse of E.D., who was six years old when the abuse began, and who is presently nine years old.

The evidence at trial will show that the defendant threatened E.D. with harm to herself and threatened to hurt her mother if she were ever to tell anyone about his abuse of her.

Discussion

The government asserts that the threats made by the defendant to the victim are admissible to demonstrate his "consciousness of guilt." See 2 Wigmore on Evidence §§ 273-277 (Chadbourn Rev. 1979).

The First Circuit has held that "[e]vidence of threats to

witnesses can be relevant to show consciousness of guilt." United States v. Monahan, 633 F.2d 984, 985 (1st Cir. 1980) (per curiam). See also United States v. Pina, 844 F.2d 1, 9 (1st Cir. 1988); United States v. Rosa, 705 F.2d 1375, 1377 (1st Cir. 1983); United States v. Gonsalves, 668 F.2d 73, 75 (1st Cir.), cert. denied, 456 U.S. 909 (1982).

In Monahan, the defendant had threatened a key witness with unspecified harm if the witness testified at trial. 633 F.2d at 985. The Court found this evidence admissible under Rule 404(b), because it demonstrated that the defendant was willing to go to extreme measures to exclude pertinent evidence. Id. The Court further found that "Rule 403 is not contravened by evidence that might show only that the defendant is guilty of the crime charged." Id.

Indeed, threat evidence is admissible if the trial judge determines that the probative value "is substantially outweighed by the danger of unfair prejudice." Gonsalves, 668 F.2d at 75 (quoting Fed. R. Evid. 403). See also Pina, 844 F.2d at 9 (threat inadmissible when made after witness testifies because no probative value); Rosa, 705 F.2d at 1378 (judge did not abuse discretion in finding probative value of threat outweighed prejudice).

Other circuits have also recognized that threat evidence is admissible to show consciousness of guilt, after the trial judge weighs the probative value of the evidence against possible prejudice. See, for example, Wycoff v. Nix, 869 F.2d 1111, 1115 (8th Cir.), cert. denied, 110 S. Ct. 179 (1989) (review of state



murder conviction); United States v. Marks, 816 F.2d 1207, 1212 (7th Cir. 1987); United States v. Mendez-Ortiz, 810 F.2d 76, 78-79 (6th Cir. 1986), cert. denied, 480 U.S. 922 (1987); United States v. Guerrero, 803 F.2d 783, 785-787 (3d Cir. 1986); United States v. Smith, 629 F.2d 650, 651 (10th Cir.), cert. denied, 449 U.S. 994 (1980).

The government asserts that any threats Ellis made to E.D. are probative of his guilt because they show he was aware of the nature of his acts and that he acted with a "consciousness of guilt." The government further asserts that the probative value is not substantially outweighed by possible prejudice to the defendant, especially given the general and non-macabre nature of the threats. Gonsalves, 668 F.2d at 76.

#### Conclusion

For all of the above reasons, the government requests that this Court permit the government to introduce evidence of threats made by the defendant to the victim.

Respectfully submitted,


WAYNE A. BUDD  
United States Attorney

by:

  
SUSAN R. VIA  
Assistant U.S. Attorney

#### CERTIFICATE OF SERVICE

I hereby certify that I have hand-delivered a copy of the foregoing upon Morris M. Goldings, Esquire, Mahoney, Hawkes & Goldings, 40 Rows Wharf, Boston, MA 02110, on March 16, 1990.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS )  
a/k/a ROCCO ELLIS )

) CRIMINAL NO. 89-30018-F.  
)  
)  
)

GOVERNMENT'S MOTION IN LIMINE AND  
MEMORANDUM OF LAW IN SUPPORT OF  
ADMISSIBILITY OF DEFENDANT'S SEXUAL  
ABUSE OF VICTIM EXCLUSIVE OF  
ACTS CHARGED IN INDICTMENT

The United States of America, through Assistant United States Attorney Susan R. Via, files the following Motion in Limine and Memorandum of Law in Support of Admissibility of Defendant's Sexual Abuse of Victim Exclusive of Acts Charged in Indictment in the above-referenced case, pursuant to Fed. R. Evid. 404(b).

First, defendant has been provided with a specific generic description of all other crimes, wrongs or acts and the dates and places of such acts as to the victim in this case.

Second, evidence as to the sexual abuse of the victim in this case cannot be limited only to the acts charged in the indictment. Under Fed. R. Evid. 404(b), this evidence is highly relevant to show intent, motive, plan, scheme, design, preparation and identity. It would be impossible for any jury to understand the facts unless the defendant's entire relationship with the victim in this case is explored.

Third, there is no danger of unfair prejudice to the defendant from this child relating the entirety of her abuse by

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the defendant, since the acts charged in the indictment necessarily involve sexual abuse by the defendant. It would unfairly restrict the government's case to surgically edit this defendant's assaults on this child so that the government could not explain how it was that the defendant came to assault the child and capture her likeness in photographs, or prove the intent of the defendant in taking the victim across state lines.

For the forgoing reasons, the government should be permitted to fully explore the defendant's sexual assaults on this child during her examination, and in its opening and closing statements.

#### DISCUSSION

The government contends that this pattern of similar sexual assaults on the victim meets the test of relevance under Fed. R. Evid. 403, and is admissible to show, inter alia, motive, opportunity, intent, preparation, plan, absence of mistake or accident, and is highly probative of a material issue other than the character of the defendant. United States v. Huddleston, 108 S. Ct. 1496 (1988).

Under the two-step analysis for 404(b) evidence, United States v. Gonzalez-Sanchez, 825 F.2d 572, 579-80 (1st Cir.), cert. denied sub nom. Latorre v. United States, 108 S. Ct. 510 (1987), this evidence has special relevance and its probative value outweighs the danger of unfair prejudice to the defendant.

First, commission of highly similar assaults relates to this defendant's motive and intent, i.e., sexual arousal and

gratification arising from sexual attraction to and sexual interaction with this child. Cf. United States v. Masse, 816 F.2d 805, 813 (1st Cir. 1987).

Second, the assaults on E.D. during and following intrastate trips will corroborate the testimony of E.D. concerning the interstate assaults by the defendant upon her, which are the acts charged in the indictment, thus demonstrating a common scheme or plan to isolate the child in order to rape her.

Third, defendant gave E.D. similar reasons for why she should not tell about these other acts of abuse as he did regarding the crimes charged in the indictment. Clearly, this use of similar threats is highly probative of a common scheme or plan.

Fourth, the government must prove that the intent of the interstate transportation of E.D. was for illegal sexual purposes. Prior similar acts of isolating this child in order to sexually abuse her is highly probative of what intent the defendant had in this case when he transported E.D. to Vermont and Florida from Massachusetts. See United States v. Cuch, 842 F.2d 1173, 1174 (10th Cir. 1988)(evidence of prior, unrelated sexual assault admissible on issue of intent in aggravated sexual assault trial); United States v. Azure, 801 F.2d 336, 341-342 (8th Cir. 1986)(evidence of prior sexual acts with sister of victim admissible).

As the First Circuit noted in United States v. Flores-Perez, 849 F.2d 1, 4 (1st Cir. 1988):

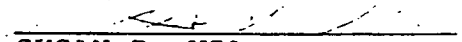
where, as here, the other bad act evidence is introduced to show knowledge, motive, or intent, the Rule 404(b) exceptions to the prohibition against character evidence have been construed broadly. See, e.g., United States v. Cintolo, 818 F.2d 980, 1000 (1st Cir.), cert. denied, 108 S. Ct. 259 (1987).

Because the proffered evidence is virtually identical to evidence regarding the indicted offenses, it follows that its admission would not elicit emotional or irrational responses from the jury, since they will already be exposed to detailed descriptions by E.D. of vaginal, oral, genital, and digital intercourse, as well as to recitations of threats, fear, physical and emotional pain caused by these assaults. Arguably, testimony from this child will be no more inflammatory and emotional than that regarding the assaults at issue, and will not pose a risk of substantially unfair prejudice to the defendant. See United States v. Rosa, 705 F.2d 1375, 1377 (1st Cir. 1983); United States v. Masters, 622 F.2d 83, 87 (4th Cir. 1980).

For the above reasons, the government should be permitted to introduce this evidence at trial.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:   
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, hereby certify that a copy of the foregoing has been mailed this xth day of March, 1990 to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS )  
a/k/a ROCCO ELLIS )

CRIMINAL NO. 89-30018-F

GOVERNMENT'S MEMORANDUM OF LAW  
IN SUPPORT OF ADMISSIBILITY OF  
PRIOR CONSISTENT STATEMENTS

The United States of America through Assistant United States Attorney Susan R. Via, seeks to introduce prior consistent statements of a child witness in this case pursuant to Fed. R. Evid. 801(d)(1)(B), as an exception to the hearsay rule.

That rule states in pertinent part:

A statement is not hearsay if

- (1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive . . . .

Evidence admitted under this rule "which counteracts a suggestion that the witness changed his story in response to some threat . . . by showing that his story was the same prior to the external pressure is highly relevant in shedding light on the witness' credibility." Weinstein's Evidence §801(d)(1)(B)[01] (1988).

In United States v. Vest, 842 F.2d 1319, 1329 (1st Cir. 1988), the Court of Appeals held that statements admitted under

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Fed. R. Evid. 801(d)(1)(B) "need not be identical in every detail to the declarant's testimony at trial." As long as the prior statement is consistent with respect to issues which are central to the trial, the statements can be considered consistent.

In this case, the prior statements will confirm the child's anticipated trial testimony with respect to central issues including intent, sexually explicit activity, taking of photographs, interstate transportation and other matters.

In addition, the prior consistent statements meet the other requirements for admission under 801(d)(1)(B) as set forth in this Circuit. First, the declarant must be available for cross-examination. The witness will have been cross-examined and questioned by defense counsel about the prior statements prior to introduction of such statements. In addition, defense counsel may recall the witness for further examination if he desires to do so.

Second, the statements must be offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive. Vest, 842 F.2d at 1329; United States v. Patterson, 644 F.2d 890, 899-900 (1981). As one author notes: "Rule 801(d)(1)(B) should apply only where there is some suggestion - even if it is slight - that the witness consciously altered his testimony after making the inconsistent statement by which he has been impeached." Weinstein's Evidence §801 (d)(1)(B)[01] (emphasis added).

Suggesting that a child is fabricating a story in order to



avoid scrutiny for her own conduct, or inferring that problems developed between a witness and the defendant (exclusive of sexual abuse) which engendered an improper influence or motive, or contending that the child's mother may have "put up" the story to seek revenge against the defendant, are all examples of bases which would permit introduction of prior consistent statements.

In United States v. Red Feather, 865 F.2d 169, 170-171 (8th Cir. 1989), the court affirmed admission of a child victim's diary entries under Fed. R. Evid. 801(d)(1)(B),<sup>1</sup> in part because the defense attorney had implied that the child had been coached by counselors and that she was prejudiced against her father, the defendant, because he had disciplined her.

Finally, the First Circuit and some courts<sup>2</sup> require that the alleged motive to fabricate be acquired after the prior statement is made. Vest, 842 F.2d at 1329. That is clearly present here, as the statements were made many months prior to trial, and defense counsel has suggested that the victim and/or her mother may have colluded and "compared notes" prior to trial.

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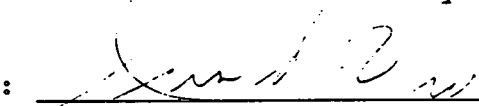
<sup>1</sup> The court did not permit this use as substantive evidence, but only as rehabilitation after the child's credibility was attacked. Id. at 171.

<sup>2</sup> See, for example, United States v. Bowman, 798 F.2d 333, 338 (8th Cir. 1986), cert. denied, 479 U.S. 1043 (1987); United States v. Henderson, 717 F.2d 135, 138 (4th Cir. 1983), cert. denied, 465 U.S. 1009 (1984); United States v. Quinto, 582 F.2d 224, 232-234 (2d Cir. 1978). Other circuits have held that the prior consistent statements need not be independent of the alleged motive to fabricate, and may be admitted even if made subsequent to the existence of such a motive. See, for example, United States v. Hamilton, 689 F.2d 1262, 1273-1274 (6th Cir. 1982), cert. denied, 459 U.S. 1117 (1983); United States v. Parry, 649 F.2d 292, 295-296 (5th Cir. 1981).

These prior consistent statements should be admitted under Fed. R. Evid. 801(d)(1)(B). The statements fulfill all of the prerequisites of the Rule, including consistency, availability of the declarant for cross-examination, and existence of the statements prior to development of any improper influence or a motive to fabricate.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:   
\_\_\_\_\_  
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, do hereby certify that I have served the copy of the foregoing, to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110, on March 7<sup>th</sup>, 1990.

  
\_\_\_\_\_  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS )  
a/k/a ROCCO ELLIS )

CRIMINAL NO. 89-30018-F

GOVERNMENT'S MOTION TO PERMIT  
USE OF LEADING QUESTIONS

The United States of America, through Assistant United States Attorney Susan R. Via, moves pursuant to Fed. R. Evid. 611(c) for permission to use leading questions in its direct examination of E.D., a child who is presently nine years old.

As the Notes of the Advisory Committee to Rule 611(C) indicate, courts have long recognized an exception to the prohibition against use of leading questions in cases involving "the child witness . . . with communication problems", citing 3 Wigmore §§774-778.

In United States v. Littlewind, 551 F.2d 244, 245 (8th Cir. 1977), the Eighth Circuit specifically acknowledged the trial court's discretion to permit a prosecutor to ask leading questions during direct examination when the witness is a young victim.

A similar exercise of discretion was upheld in United States v. Demarrias, 876 F.2d 674, 678 (8th Cir. 1989), which involved abusive sexual contact between the defendant and his fourteen-year-old stepdaughter. See also United States v. Iron Shell, Jr., 633 F.2d 77, 92 (8th Cir. 1988), cert. denied, 450 U.S. 1001 (1981) (no error in allowing government to ask nine-year old

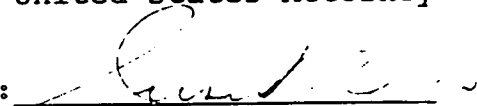
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sexual assault victim leading questions).

If E.D. exhibits reluctance to answer direct examination questions, the government asks permission to employ the technique used in Demarrais, which is to read portions of prior statements of E.D. to law enforcement authorities and to ask "Did you tell the officer that?" or "Did that happen?", or to use other leading questions.

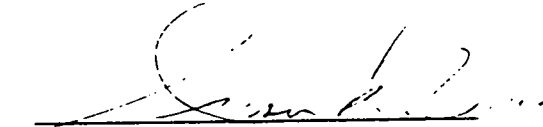
Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:   
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, hereby certify that I have served a copy of the foregoing to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110, on March ~~7~~<sup>8</sup>, 1990.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS, )  
a/k/a ROCCO ELLIS )

) CRIMINAL NO. 89-30018-F  
)  
)  
)  
)

GOVERNMENT'S REQUEST FOR CERTAIN  
VOIR DIRE QUESTION

The United States of America through Assistant United States Attorney Susan R. Via asks the Court to ask all potential jurors in this case the following question:

Have you, any member of your family, or any close friend been involved in any situation concerning child abuse?

The government then requests that the Court inquire further of each such person who indicates any problem with jury service in this case individually and outside the presence of other panel members.

In support of its request, the government states that responsible expert opinion estimates that one in five females in the United States suffers from some type of childhood sexual abuse, D. Finkelhor, Sexually Victimized Children 53 (1979), cited in Morgan v. Foretich, 846 F.2d 941, 943 (4th Cir. 1988), and that in two-thirds of such cases, the abuse remains unreported. Morgan, id.


Thus, it is highly probable that several potential jurors either have been abused as children or are acquainted with persons who have been abused or who have engaged in abuse. It is also likely that they have not discussed these highly personal

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and painful facts with others. In the interests of ensuring a fair trial and avoiding the danger of a mistrial resulting from such a juror's reaction to the anticipated testimony of the victim in his case, the government requests the Court to inquire into this matter as outlined above.

Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:   
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant United States Attorney, hereby certify that a copy of the foregoing has been mailed this 6<sup>th</sup> day of March, 1990 to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS )  
a/k/a ROCCO ELLIS )

CRIMINAL No. 89-30018-F

GOVERNMENT'S MOTION AND MEMORANDUM OF LAW  
IN SUPPORT OF ADMISSIBILITY OF STATEMENTS  
OF VICTIM TO SOCIAL WORKERS

The United States of America, through Assistant United States Attorney Susan R. Via, moves in limine for a pretrial ruling that the victim's statements to social workers about her abuse by the defendant be admitted as exceptions to the hearsay rule.

The testimony of social workers to whom the victim spoke about her abuse and who provided counselling and treatment is admissible under either Federal Rule of Evidence 803(4) or 803(24). For example, in United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980), cert. denied, 450 U.S. 1001 (1981), the Eighth Circuit reviewed the admissibility of a doctor's testimony concerning statements made to him by a nine-year-old victim of sexual abuse. In upholding the admissibility of such testimony, the court relied on a two-part test: "first, is the declarant's motive consistent with the purpose of the rule; and second, is it reasonable for the physician to rely on the information in diagnosis or treatment." Id. at 84. See also United States v. Iron Thunder, 714 F.2d 765, 772 (8th Cir. 1983) (allowing doctor to testify as to statements made by rape victim even if questions

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largely designed to prepare for criminal prosecution).

While the Iron Shell court noted that the identity of the assailant would seldom be relevant to treatment and thus would usually be inadmissible under the rules, 633 F.2d at 84 (citing United States v. Nick, 604 F.2d 1199, 1201-02 (9th Cir. 1979)), the Eighth Circuit has since recognized that the identity of the assailant is related to diagnosis and treatment when the offender is a member of the victim's household or family. See United States v. Shaw, 824 F.2d 601, 608 (8th Cir. 1987), cert. denied, 108 S. Ct. 1033 (1988) (upholding admissibility of doctor's testimony including victim's identification of her foster father as her abuser); United States v. Renville, 779 F.2d 430, 439 (8th Cir. 1985) (upholding admissibility of doctor's testimony including the victim's identification of her stepfather as her abuser).

In Renville, the court noted that "child abuse involves more than physical injury; the physician must be attentive to treating the emotional and psychological injuries which accompany this crime" and that "[t]he exact nature and extent of psychological problems which ensue often depend on the identity of the abuser." The court concluded that statements to a physician by a sexually abused child identifying a family member as the assailant are consistent with both parts of the Iron Shell test. 779 F.2d at 438. See also United States v. Provost, 875, 875 F.2d 172, 177 (8th Cir. 1989) (psychiatrist can testify to statements made by ten-year-old victim of sexual abuse identifying her half-brother



as her assailant); Morgan v. Foretich, 846 F.2d 941, 949 (4th Cir. 1988)(citing Renville in holding that psychiatrist should have been allowed to testify to statements made by four-year-old victim of sexual abuse even though child not competent to testify).

Social workers who examine and treat child sexual abuse victims are similarly situated to physicians with regard to statements made for purposes of treatment. In United States v. DeNoyer, 811 F.2d 436, 438 (8th Cir. 1987), the court relied on both Rule 803(4) and Rule 803(24) in upholding the trial judge's decision to allow social workers to relate statements made by a five-year-old who had been sexually abused by his father. Because the assailant was a member of the victim's family, the court relied on Renville and rejected the defendant's argument that these statements were not intended for purposes of medical treatment. Id. at 438.

In Shaw, 824 F.2d at 608, the court upheld admission of a social worker's testimony as to the victim's statements of abuse under Rule 803(24). The court rejected the argument that because the victim had testified, the testimony of the social worker was not "more probative", finding that child abuse is an exceptional situation where the "more probative" requirement should not be rigidly applied. Id. at 609-610.

Indeed, in United States v. St. John, 851 F.2d 1096, 1099 (8th Cir. 1988), the court allowed a social worker to testify concerning hearsay statements made by a ten-year-old who had been

sexually abused by his mother where the victim was unable or unwilling to testify meaningfully. The court noted that "a child victim's testimony is [not] always more probative than the prior hearsay statements he or she may have made in the more relaxed environs of a doctor's or social worker's office." Id. See also United States v. Cree, 778 F.2d 474 (8th Cir. 1985)(proper for social worker to testify about statements of four-year-old victim of physical abuse).

Based on the above, the government asserts that the statements of the victim revealing the nature and scope of the abuse and the identity of the defendant as her abuser to the social workers is admissible as substantive evidence under Fed. R. Evid. 803(4) and 803(24), and requests this Court to permit such testimony from the social workers at trial.

Respectfully submitted,


WAYNE A. BUDD  
United States Attorney

By: 

SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, hereby certify that on the 9<sup>th</sup> day of March, 1990, I mailed a copy of the above Government's Motion And Memorandum Of Law In Support Of Admissibility Of Statements Of Victim To Social Workers to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

EDWARD B. ELLIS )  
a/k/a ROCCO ELLIS )

CRIMINAL NO. 89-30018-F

GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE  
INQUIRY INTO PAST SEXUAL BEHAVIOR OF VICTIM'S MOTHER

The United States of America, through Assistant United States Attorney Susan R. Via, moves pursuant to Fed.R.Cr.P. 12(e) for a pretrial order prohibiting the defendant from introducing any evidence as to: (1) past sexual behavior of the mother of E.D., the victim, except as to her relationship with the defendant; and (2) reputation and/or opinion evidence of the past sexual behavior of the mother of the victim, except as to her relationship with the defendant. In support of its request, the government states as follows:

1. E.D. is the victim of sexual assaults by the defendant as charged in the indictment. Her mother will be a witness at trial.

2. The probative value of any such evidence is substantially outweighed by the danger of unfair prejudice to the government and harm to the witness involved.

3. Such evidence has no relevance or materiality to any issue in this case, and such evidence has been condemned as not being probative of a witness' credibility. "Rule 412 reflects the now universal view that chastity is absolutely irrelevant to the veracity of a witness". Government of Virgin Islands v.

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Jacobs, 634 F. Supp. 933, 936-937 (D.V.I. 1986).

In Cruz-Sanchez v. Rivera-Cordero, 835 F.2d 947 (1st Cir. 1987), the First Circuit rejected the habeas petitioner's argument that the jury should have been permitted to hear testimony concerning the rape victim's extramarital sex life, as it bore upon her character and credibility. The court rejected the argument as an attempt to introduce irrelevant evidence. Id. at 948-949.

Rule 412 is intended to protect victims "from humiliating cross-examination into the ultimate details of their lives" and "encourages the reporting and prosecution of rapes", as well as to eliminate "irrelevant and inflammatory issues from the trial". Id. at 937. See also Johnson v. Pittman, 731 F.2d 1231, 1236 (5th Cir. 1984) (refusal to permit prior sexual conduct evidence with person other than defendant facilitated rather than denied fair trial); Abdi v. Georgia, 744 F.2d 1500, 1504 (11th Cir. 1984) (upheld mistrial premised on defense attorney's improper question concerning victim's personal knowledge of ejaculation without orgasm).

The government contends that evidence of prior sexual conduct of the victim's mother, other than her relationship with the defendant, is irrelevant under the facts of this case, and should not be admitted.

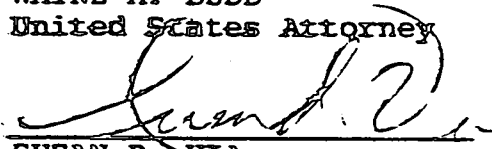
For the above reasons, the government asks this Court to preclude any inquiry into the prior sexual conduct of the mother

of the victim in this case, except as permitted by Fed. R. Evid.  
412.

In the alternative, the government asks that any  
introduction of such evidence be ~~preceded by a proffer outside~~  
the presence of the jury.

~~Respectfully submitted,~~

WAYNE A. BUDD  
United States Attorney

By:   
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, hereby certify  
that a copy of the foregoing has been mailed this 9<sup>th</sup> day of  
March, 1990 to Morris M. Goldings, Esq., Mahoney, Hawkes and  
Goldings, 40 Rowes Wharf, Boston, MA 02110.

  
SUSAN R. VIA  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA            )  
  )  
  )           CRIMINAL NO. 89-30018-F  
  )  
EDWARD B. ELLIS                        )

GOVERNMENT'S MOTION FOR PROTECTIVE ORDER

The United States of America, through Assistant United States Attorney Susan R. Via, moves pursuant to Fed. R. Cr. P. 16(d)(1) for a protective order to keep from disclosing the address or location of the victim (E.D.), her mother (C.D.), and the victim's little sister (L.E.), to the defendant before and during the trial in this case.

In support of its request, the government states as follows:

1. This defendant has a criminal history which includes crimes of violence. He was convicted in 1980 of four counts of attempted extortion, for which he received an eight to ten-year sentence at MCI Walpole. In 1982, he received a nine to ten-year Walpole sentence for attempted arson, which involved hiring a person to burn down the home of the victim in the 1980 extortion case while Ellis was awaiting trial. After his parole from Walpole, he was charged and convicted in 1988 of two counts of attempted extortion and one count of assault and battery with a dangerous weapon.

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2. There is evidence in this case that the defendant threatened the victim and her mother with physical harm, and that he threatened one of the agents who arrested him. See Order of Detention Pending Trial, M. Ponsor, U.S. Magistrate, dated August 28, 1989.

3. Defendant's repeated violations of the Magistrate's "no contact" orders, despite his being held without bail pending trial, caused the government to obtain extraordinary pretrial restrictions on the defendant on November 3, 1989. See Government's Motion for Additional Pretrial Restrictions. The magistrate found that this defendant's behavior awaiting trial "flagrantly violates the previous order of this court restricting contact between defendant and the alleged victims or their mother" and that his conduct "creates both a risk of emotional injury to the minor children and of obstruction to the coming trial."


4. E.D. and C.D. have repeatedly expressed fear of the defendant, and disclosure of their addresses would permit the defendant to obstruct the trial through third parties, or to jeopardize their welfare and safety after trial.

For the foregoing reasons, the government requests that this Court enter an order precluding the defendant from inquiring of

these witnesses (E.D. and C.D.) their address or location, and permitting the government to file its list of witnesses without any addresses for these two potential witnesses.

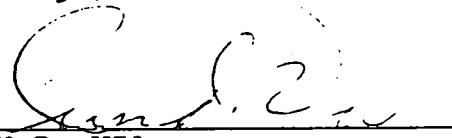
Respectfully submitted,

WAYNE A. BUDD  
United States Attorney

By:   
SUSAN R. VIA  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Susan R. Via, Assistant U.S. Attorney, hereby certify that a copy of the foregoing has been hand delivered to Morris M. Goldings, Esq., Mahoney, Hawkes and Goldings, 40 Rowes Wharf, Boston, MA 02110, on March 14, 1990.

  
SUSAN R. VIA  
Assistant U.S. Attorney



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 v. ) CRIMINAL NO. 89-30018-F  
 )  
 EDWARD B. ELLIS )  
 a/k/a/ ROCCO ELLIS )

GOVERNMENT'S MOTION IN LIMINE AND MEMORANDUM  
OF LAW IN SUPPORT OF ADMISSIBILITY OF  
EVIDENCE UNDER FED. R. EVID. 406 AND 404(B)

The United States of America, through Assistant U.S. Attorney Susan R. Via, moves in limine for permission to introduce evidence of certain prior sexual habits or practices of the defendant in the above-referenced case, pursuant to Fed. R. Evid. 406 and 404(b), to establish motive, intent, common plan, modus operandi and identity.

Specifically, the government seeks to introduce evidence that the defendant, while engaging in consensual intercourse with the victim's mother, would hold onto her feet; that he engaged in acts of consensual digital intercourse with her using his toes; and that he was sexually aroused by and had an unusual interest in female feet and toes. The evidence will be in the form of testimony from K.D., the victim's mother; photographs of women's feet; found during the post-arrest search of the defendant's home; and a letter to K.D. from the defendant dated 11-16-88, which contains an erotic reference to K.D.'s toes.

Such unusual habits, interest or practices are highly relevant to show that this defendant sexually assaulted the

victim in this case, since she will testify that the defendant frequently held onto her feet while he was forcing her to engage in sexual activity, and that the defendant performed digital intercourse upon her numerous times using his toes.

Modus operandi is a "distinct pattern or method of procedure thought to be characteristic of an individual criminally and habitually followed by him." Webster's New International Dictionary (3d ed. 1976).

In Youngblood v. Sullivan, 628 P.2d 400, 401-402 (Ore. Ct. App. 1981), evidence of a rape defendant's prior similar attack on a different victim was upheld, the court reasoning that the acts he performed with both victims were so unique as to constitute a signature, including time of day, place, position and particular sex acts.

Similarly, in State v. Plaster, 424 N.W. 2d 226, 231 (Iowa 1986), evidence of a prior similar act of forceful hand-manipulation of the vagina, followed by a forced (but different) sexual act, involving a woman other than the victim, was ruled admissible to establish lack of consent.

Another example of this type of signature evidence in a sex offense case is People v. Van de Water, 166 Cal. Rptr. 321, 323 (Cal. Ct. App. 1980), in which the court approved of testimony from the defendant's wife that he required her to urinate in his mouth, as well as her testimony that he had a particular interest in human excrement and urine. Because the assaults on the child victim involved anal intercourse and urination into the child's

mouth, the court permitted the prior similar act evidence.

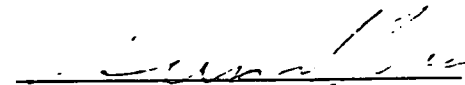
The First Circuit specifically approved of prior act evidence to show modus operandi in United States v. Frappier, 807 F.2d 257, 262 (1st Cir. 1986), cert. denied, 481 U.S. 1006 (1987) and in United States v. Medina, 761 F.2d 12, 15 (1st Cir. 1985).

Using the two-step analysis for reception of 404(b) evidence articulated in United States v. Scelzo, 810 F.2d 2, 4 (1st Cir. 1987), this evidence has special probative value, bearing on motive, intent, common plan, modus operandi and identity. In addition, the danger of unfair prejudice to the defendant from this evidence is slight, since it concerns only consensual, non-criminal acts between adults. Where, as here, other act evidence is introduced to show motive or intent, "the Rule 404(b) exceptions to the prohibition against character evidence have been construed broadly." United States v. Flores Perez, 849 F.2d 1, 4 (1st Cir. 1988), citing United States v. Cintolo, 818 F.2d 980, 1000 (1st Cir.), cert. denied, 108 S.Ct. 259 (1987). This should be particularly true where, as here, the prior act evidence involves non-criminal, albeit unusual, activity.

For the above reasons, the government asks this Court to

permit the introduction of the within-described evidence at trial.

Respectfully submitted,  
WAYNE A. BUDD  
United States Attorney

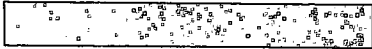
By:   
SUSAN R. VIA  
Assistant U.S. Attorney

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SUSAN R. VIA  
Assistant U.S. Attorney

*March 15, 1990*



# Resource Materials

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## Guidelines for Assessing Sex Offenders

Presented by  
James M. Peters, J.D.

Lenore Walker, Editor  
Springer Press, 1988

# 12

## Guidelines for Assessing Sex Offenders

*Kevin McGovern*  
*James Peters*

The need for adequate collaborative relationships between the legal and mental health professionals who deal with child sexual abusers has intensified as more such cases are being identified and communities demand effective resolutions. The ideal of resolving reported cases of sexual abuse using an interdisciplinary group including law enforcement officers, mental health professionals, judges, probation officers, educators, ministers, and health care providers has been difficult to achieve. Disparate reactions from these professional groups when confronted with child sexual abuse sometimes has led to chaos, confusion, and mishandling of cases. It is probable that a lack of standardized training as well as difficulty in controlling one's own emotional reactions lead to such unpredictable case resolutions. To help add stability, uniformity, and fairness to these systems, a series of practical guidelines can be used to identify and prepare appropriate dispositional plans for sexual abusers. Such guidelines have recently been developed in Portland, Oregon and in Vancouver, Washington, neighboring Northwest United States communities. The authors advocate a prosecution model; all cases in which an adult is accused of sexually abusing a child are reviewed by the elected local prosecutor for consideration of the filing of criminal charges. The guidelines presented in this chapter can be used to ensure that all relevant information has been obtained before the decision is made. Some of these data may be gathered by specially trained mental health professionals using up-to-date assessment procedures including physiological arousal measures. If guilt is established, these same guidelines can then assist both the legal and

mental health professionals to contribute information to be used in deciding the appropriate dispositional plans—for example, use of desistance deference, rehabilitation, or punishment, as required in each case. It is on issues of disposition that this chapter will focus.

When a sex offender has been found guilty, one important issue for both the courts and health care providers is the ability to differentiate between the habitual sexual offender and the sexual abuser who will be able to successfully complete an inpatient and/or outpatient treatment program. Predicting acts of future sexual deviance is a difficult clinical and legal task that relates to the whole issue of prediction of dangerousness (Monahan & Klassen, 1982). Neither the clinician nor agents of the court want to take the chance that a sexual abuser will reenact these crimes, yet protection of the offender's rights is also an important issue (see for example the discussion in Whitcomb, Shapiro, & Stellwegen, 1985). Many communities have chosen to provide treatment alternatives or adjuncts to incarceration for certain "treatable" sexual abusers. Based both in the community and in various institutions such as state hospitals and prisons, these programs are designed to reduce the likelihood that these men and/or women will reoffend. Much of what is presented in this chapter has been utilized in the authors' own communities and formed the basis of training workshops nationwide.

### INTRODUCTION TO ASSESSMENT

Sound theory and clinical research is crucial when evaluating sexual offenders. For example, some clinicians base their entire findings on a brief clinical interview and a review of psychological test results. This superficial assessment approach is not sufficient to make decisions regarding dangerousness, incarceration, and other related issues. Brief assessments do not usually provide enough information regarding these behavioral disorders. Although the clinical interview may provide some relevant information, most sexual abusers minimize their sexual deviance and/or past propensities to engage in inappropriate behavior. Thus, the evaluator may not learn much about the deviant behavior if only verbal self-report is used. Adding psychological inventory data provides added information but can also be misleading. In many cases, sexual abusers do not appear to be highly pathological on the Minnesota Multiphasic Personality Inventory (MMPI) profile (McGovern, 1984). A comprehensive evaluation should also include a penile plethysmography assessment and the other measures described in the suggested guidelines in Table 12.1.

Offenders typically minimize their behavioral problems, especially when they realize that their self-disclosure could lead to a long term of incarceration. In one evaluation, an offender was interviewed on six different occa-

TABLE 12.1 Guidelines for Evaluating Child Sexual Abuse Offenders

1. Review the police reports and be familiar with the official version of the offense.
2. Where appropriate, interview victim(s) and witnesses.
3. Review medical, psychiatric, and treatment history.
4. Review military, vocational, and educational history.
5. Identify what part alcohol, drugs, codefendants, pornography, social isolation, environmental issues, or other factors played in the commission of the offense(s) and to what extent these factors are still in operation.
6. Review social and marital history, including consultations with former spouse(s) and/or girlfriends and children, where applicable, to ascertain a possible prior history of sexually deviant, violent, or to her abnormal behavior.
7. Review offender's family history, including any indication of physical or sexual abuse or other relevant factors in his or her upbringing.
8. Determine prior criminal history, including arrests, convictions, and nonconviction data such as admitted criminal activity that was not adjudicated.
9. Investigate whether there have been unreported sexual offenses committed by this offender.
10. Evaluate to what extent the offender accepts responsibility for his offenses and to what degree guilt, remorse, or moral accountability is now being experienced.
11. Provide psychological testing, such as the Minnesota Multiphasic Personality Inventory (MMPI), Rorschach, Rotter Incomplete Sentence Blank, Cornell Medical Index, the Thematic Apperception Test, and the Sone Sexual History Questionnaire.
12. Make comparison of the offender's Minnesota Multiphasic Personality Inventory (MMPI) profile with that of imprisoned felons in general and with patients in sex-offender programs.
13. Complete a penile plethysmography evaluation.
14. Conduct a polygraph or voice-stress analysis regarding prior sexual offenses and current matters in dispute.
15. Make a determination of how long the deviant sexual behavior has been occurring in this person's life.
16. Record relevant clinical observations.
17. Compose a detailed treatment plan.

sions. He had been accused of sexually abusing a babysitter. Throughout the evaluation, this man continued to reiterate his innocence. His clinical evaluation consisted of several interviews, administration of an array of psychological tests including the Minnesota Multiphasic Personality Inventory (MMPI), the Rorschach, Cornell Medical Index, Rotter Incomplete Sentence Blank, the Sone Sexual History Questionnaire, and a penile plethysmograph assessment (McGovern & Jensen, 1985). During this assessment, the man continued to deny his involvement with the victim. Eventually, he pleaded guilty to a lesser charge of sexual abuse. During the dispositional planning interview, this man was asked why he had not been more direct and honest during the evaluation. He said, "Why should I tell the truth? I was trying to beat the system. What do I have to lose? I knew I was wrong."

Obviously this man, like many other sexual abusers, was trying to manipulate the system. In some states, the legal consequences are so severe that an individual convicted of sexual abuse charges will spend more time in prison than will an individual who has been convicted of aggravated assault with intent to kill or even one who has been convicted of murder. In addition, the sexual offender knows he often faces greater hardships than do other inmates in a prison environment. Prison inmates often verbally harass, physically abuse, sexually intimidate, and/or assault known sexual offenders (Groth, 1979). Thus, it is to be expected that sex offenders will be less likely to give reliable and valid self-report data. Knowing this about the abuser, we have developed specialized methods to be used both by the mental health care providers and by officers of the court that are designed to obtain reliable information. These methods are set forth in detail later in this chapter.

Unfortunately, even when conducting an interview for a sentencing report, many offenders still say they do not believe that they need treatment. They will tell their evaluator, or even their psychologist or psychiatrist, that they have been cured. Mental health professionals can be manipulated into believing that their client's sincerity and motivation can be a measure of therapeutic success. Even if this is an honest representation of the sex offender's feelings, without evidence of change in the man's deviant arousal pattern or behavior, there is a high probability of recidivism.

Because many sexual abusers minimize their deviant behavior, thorough clinical assessments can utilize the guidelines in Table 12.1 in conjunction with the *P & M Rating Scale: Risk Assessment For Sexual Abusers of Children* found in the Appendix. In Vancouver, Washington, the Prosecuting Attorney's office suggests mental health practitioners use the Evaluation Guidelines as well as this rating scale and a check on how closely the offender's story matches the facts. Sexual abusers who obtain high scores on the P & M Rating Scale are usually inappropriate candidates for outpatient therapy and most often are sent to a residential-care facility, such as a state hospital, or to prison (Saylor, 1984). On the other hand, individuals with low scores are usually adequate candidates for outpatient therapy programs that could be one condition of a strict probationary sentence. Each of the 17 guidelines is discussed in more detail in the following.

#### REVIEW POLICE AND SOCIAL SERVICE REPORTS (GUIDELINE 1)

The mental health professional assessing the alleged offender must review all available police, social service, and other reports of the offense and be aware of the victim's claims about what occurred (*Guideline 1*). Failing to comply with this seemingly basic requirement may cast doubt on any recommenda-

tions made by the treatment professional, as was the case with the clinician who examined Mr. SA, a schoolteacher accused of molesting children at the school where he was employed. The clinician met with SA for 1 hour in his office after the man's arrest, but before the police reports had been written. Unbeknownst to him, investigators had learned that SA had engaged in sexual contacts with virtually every minor in his classroom, had molested children from prior classes, had a history of involvement in bestiality, read child pornography, and frequently masturbated to thoughts about the children in his classroom after they had left for the day. While en route to the police station after his arrest, Mr. SA was observed removing a number of papers from his pants pocket and placing them into his jacket. The police reports indicated that these papers were, in fact, hardcore pornographic photographs depicting children engaging in various types of sexual activity with adults. On these photographs SA had written a number of names that corresponded with the names of students and other teachers at his school, which SA used to feed his sexually deviant fantasies. SA told the police that he used these photographs to fantasize while he was masturbating.

Without having seen this information, the clinician, who had been asked by SA's attorney to prepare an evaluation for the court, reported:

I believe that SA is a good candidate for outpatient treatment. He is not dangerous now to be at large. SA recognizes his difficulties and is agreeable to various treatment suggestions. An inpatient treatment program is not, in my opinion, appropriate for SA. He has a good relationship with his wife, good employment history, and restriction of victims to a classroom setting all indicate that he is at no risk to re-offend. Following successful outpatient treatment, he will pose no danger regardless of environment, though of course he will undoubtedly not teach young children again.

A subsequent treatment professional who evaluated SA after reviewing the police reports and conducting a thorough background and psychological analysis revealed that SA had been preoccupied with sexual issues over an extended period of time, and this evaluator came to quite a different conclusion about the risk this man posed to the community:

His interest in sexual matters included engaging a variety of animals in sexual behaviors. His behavior is chronic in that he engaged in deviant sexual acts daily. He could be considered predatory in that he selected children on the basis of their responses to him and manipulated their environment in order to gain more frequent access to them. He utilized his position as an authority and parental figure to control the children as well. He identified approximately 25 females he has fondled in the 3 years before his arrest. He has engaged in bestiality throughout his life, and fantasized and reinforced this deviant behavior through regular masturbatory activity. SA has utilized pornography involving a variety of inappropriate sexual themes, including children, over an extensive period of time.

The sexual molestation of his students over a 3-year period indicates he is a compulsive pedophile. Test data support our belief that he lacks insight into his offending behavior and minimizes his involvement in these offenses. He has a marked unwillingness to be open about himself and we suspect there is more information regarding his deviant sexual activities than he is currently willing to admit. We consider him to be a sexual psychopath who is dangerous to be at large.

The first evaluation is an extreme but not uncommon example of work by a mental health professional, uneducated about the true extent of his client's problems, assuming the role of an advocate for the offender. This clinician's recommendations were disregarded by the sentencing court after it reviewed the latter evaluation, which presented a more thorough review of the man's true situation.

### INTERVIEWING VICTIMS AND WITNESSES (GUIDELINE 2)

In many cases, it would be appropriate for the mental health professional to interview the victims and witnesses. This may be especially necessary when the investigatory reports that have been provided are vague and poorly constructed. Information obtained during the interview can help the evaluator in comparing the victim's version of the offense with that of the perpetrator. Comparisons regarding the degree of minimization and denial can then be made that help predict the potential to reoffend. During these interviews, the clinician can also seek to understand what effect the sexual abuse had on the victim, his or her feelings regarding the offender, and consider the form of restitution the abuser should make to help the victim heal.

In some cases, the evaluator will not be able to meet the victim. Some families move out of state or are unwilling to allow their child to go through another interview. It is believed that multiple interviews can have a damaging effect on the abused child. In fact, insensitive and repetitious interviews are reported as detrimental by victims when they seek therapy as adults. However, if the interview can be accompanied by reassurance to the child that what happened was not the child's fault, or even by an apology from the offender, healing might be facilitated. If the victim is not available for an interview, then the mental health care provider may want to contact the physician, social worker, school counselor, law enforcement officer, or whoever is currently working with the child. These professionals can provide valuable insights regarding the credibility of the victim's statements, emotional adjustment since the abuse was disclosed, and overall psychological characteristics, all of which may be important to the sentencing judge. There are new laws requiring a victim-impact statement to be presented at sentencing, so some idea of the child's current well-being will be available.



### TREATMENT HISTORY (GUIDELINE 3)

Numerous studies have concluded that mental disorders frequently play a role in the commission of sexual offenses. Persons with psychotic, sociopathic, or other personality disorders are seen to be at higher risk for reoffense than so-called normal individuals, because they may have weak impulse control and may engage in inappropriate behavior in exchange for the most fleeting gratification, without regard for the consequences. A review of the person's medical, psychiatric, and treatment history, together with an examination of the documentation of this history, can provide the evaluator with valuable information.

Until recently many child molesters and incest offenders were not formally prosecuted by law enforcement personnel. Unfortunately, many offenses were not reported, and even when they were, legal difficulties with evidence made them difficult cases for the criminal justice system to deal with (see, for example, *Attorney General's Task Force on Family Violence Report*, 1984). Many sexual abusers were never identified as offenders by the legal authorities even when apprehended. In numerous cases, they were perceived as unstable individuals with serious emotional and family problems, but were not classified as "criminals." Instead, they were referred to mental health care clinics. The issue of criminal responsibility was never addressed. For years, they may have continued their abusive behavior but avoided further confrontations with the legal authorities. During their current arrest, many will pretend to be "first-time offenders." A conscientious mental health professional will attempt, in his or her examination, to discover and include in the written report whether the individual being evaluated has committed, been accused of, or undergone treatment for an alleged sexual offense in the past.

In some cases, the sexual abuser has been evaluated by another health care provider or has a substantial history of past mental health care problems. The sexual abuser may not want to share this information with the clinician who is completing the evaluation. Release-of-information forms should be obtained at the initial meeting with the offender. Refusal to grant permission to share information must be viewed with skepticism and concern and reported in the evaluation.

### MILITARY, VOCATIONAL, AND EDUCATIONAL HISTORY (GUIDELINE 4)

A thorough evaluation of a sex offender's lifestyle will include a review of the individual's military, vocational, and educational history. This information can provide important insights into the individual's ability to satisfy long-term

commitments. In many cases, the clinician is attempting to determine whether or not an offender presents an acceptable risk for outpatient treatment, which may encompass several years of regular therapy sessions. His history of completing other lengthy obligations provides a gauge for assessing his ability to complete treatment. An individual who graduated from high school, has been honorably discharged from the military, and who has a steady vocational history is usually a more reliable outpatient treatment candidate than is a sexual abuser who dropped out of school in the ninth grade, could not complete his military obligation satisfactorily because of disciplinary violations, and who has had an unstable work history. A person's prior ability or inability to complete a series of long-term tasks may serve as a predictive indicator of future behavior. The individual who has failed almost every major endeavor he has undertaken may be less likely to complete a treatment program. Conversely, sexual abusers who have been able to complete a series of tasks may prove to be dedicated treatment candidates.

### THE ROLE OF CHEMICAL DEPENDENCY (GUIDELINE 5)

The evaluating mental health care professional needs to identify what part chemical dependency plays in the commission of these offenses and to what extent this factor is still in operation in the abuser's life. Unfortunately, some abusers use chemical dependency as a way to excuse their sexual deficits, whereas others minimize the effect of the chemical dependency upon their behavior. In many cases, self-report statements are unreliable indicators of the levels of drug and/or alcohol abuse. Specific details regarding the type and frequency of these abusive-substance-related patterns (i.e., how many beers, ounces of alcohol, pills, or joints were consumed) should be gathered and made part of the written report. As in addressing the individual's sexual history, and particularly the details of the offense(s), self-report of chemical usage may not be adequate. Minimization should be anticipated. These questions should be asked of both the offender and those who know him best, including the alleged victim(s). If there is a question regarding current chemical usage, the offender should be required to submit to urine or blood testing. Some studies reveal that at least 50% of all sexual offenders (primarily rapists) use alcohol prior to the commission of their offenses. Although there is no evidence proving that alcohol and/or drugs are the major cause for the commission of sexual offenses, in many cases they play an important role in allowing the person to reduce inhibitions before engaging in irresponsible behaviors. Those who are chemically dependent and/or impaired should be referred to a chemical dependency program prior to beginning treatment for the sexually offensive behavior. This may need to be an inpatient facility, depending on the degree of dependency and impairment. The chemical

abuse is a significant factor in the offense cycle of certain offenders, this deficit needs to be identified and arrested so that it neither provides an impediment to specific treatment for sexual deviancy nor places the offender in a state of mind where he is more likely to reoffend.

### **PORNOGRAPHY (GUIDELINE 5)**

Both the investigating officers and the mental health professional should evaluate what role pornography plays in the life of the offender. Child molesters often obtain sexual gratification not only from actual physical contact with children, but also from fantasy involving the use of pictures or other erotic and/or pornographic materials. Sex offenders may collect a library of sexually explicit materials consisting of photographs, magazines, motion pictures, videotapes, books, and slides to use for their own sexual gratification. Some will also use sexually explicit materials for lowering the inhibitions of children. These erotic materials can be used for sexually stimulating the victims and themselves, and for demonstrating the desired sexual acts before, during, and after sexual activity with children. Some sexual abusers have been known to obtain and collect photographs of the children they have been or are involved with on an ongoing basis. These photos may depict children fully clothed, in various states of undress, totally nude, and/or in various sexually explicit activities. These photos are rarely if ever disposed of. They are often kept upon the pedophile's person, as was the case with Mr. SA. discussed in the previous section. Sex offenders may use such photos as a means of reliving fantasies or actual encounters. In some extreme cases, they utilize the photos as keepsakes and as a means of gaining acceptance, status, trust, and psychological support by exchanging, trading, or selling them to other sex offenders.

Pedophiles have been known to cut pictures of children out of magazines, catalogs, and newspapers and then to use them as a means of provoking erotic fantasies. They may also collect books, magazines, newspapers, and other writings on the subject of sexual activities with children, maintaining them in order to justify their own feelings toward children, and to find countenance for their illicit behavior and desire. These materials are rarely destroyed, and an offender may go to great lengths to protect them, including the rental of safe-deposit boxes or the use of other storage facilities outside the immediate residence.

Some sex offenders may also maintain diaries of their sexual encounters with children. These accounts are used as a means of reliving the encounter when the offender has no children available to molest. Such diaries might consist of a notebook, scraps of paper, calendars, or a formal diary. One

offender recently prosecuted in Vancouver, Washington, maintained a color-coded indexing system cataloging his activities with the nine children he was molesting at various times in the months prior to his arrest. Depending upon the resources available to the offender, these records may be contained on audiotape or computer entries in a home computer. It is now known that a group of highly organized child molesters have their own "bulletin board," using home computers to communicate with one another on a national basis. A thorough evaluation of an alleged sex offender will inquire into his or her habits regarding the collection of pornographic material, cut-out pictures of children, diaries, and computer activity. Steps must be taken to alter these habits and patterns to assure protection of children and lower recidivism. These materials must be confiscated from the offender as a prerequisite to treatment.

### **SOCIAL AND FAMILY HISTORY (GUIDELINE 6)**

The comprehensive evaluation will also include a review of the suspect's social and family history, including consultation with any children, former spouses, and lovers. Intimate acquaintances from the past can be a valuable source of information about the individual's history—if they are willing to talk to the evaluator. Multiple partnerships where children were involved can be of help to the evaluator. Marriages or relationships may have ended because an individual was sexually abusing his own children, stepchildren, or other minors living in the community. There may also be undetected patterns of domestic violence, which could be an important factor in assessing the offender's current safety to be at large. Additional abusive behaviors, such as marital rape and physical or psychological abuse of the spouse or children, should be explored. In many cases, such maladaptive behaviors were not reported to a social or police agency and will not be uncovered without inquiry. A conscientious mental health professional, recognizing the shroud of secrecy that obscures so many cases of domestic violence and child sexual abuse, will inquire into these taboo topics that family members may discuss only reluctantly, if at all.

In some cases, the sexual abuser will blame his spouse's "frigidity" and/or promiscuity as the major reason for his inappropriate sexual behavior with children. From his point of view, her continuous sexual rejections and/or infidelities encouraged his clandestine sexual relationships. Many of these cases are actually battering relationships in which the man is unreasonably jealous, fears abandonment, and rationalizes his own abusive behavior. A number of these abusers will become intoxicated, verbally abusive, and physically assaultive. Other offenders engage in sadomasochistic activities

with their families. Obviously, information on these abusive behaviors needs to be integrated into the comprehensive evaluation as another measure of dangerousness. All too often, some evaluators devalue the offender's abusive behavior within his family as less dangerous than violence toward others. Obviously, this is inappropriate.

### FAMILY HISTORY (GUIDELINE 7)

In many cases, as children, these abusive offenders were themselves severely victimized by adults. Studies of incarcerated sex offenders, those deemed by a court as too dangerous to be in the community, suggest that more than half of the offenders were themselves sexually abused as children (Freeman-Longo, 1985). With this in mind, the clinician needs to carefully examine the type and frequency of past victimization. There are major differences between incidents of sexual abuse. For example, in some cases, the abuse consisted of an older male exposing himself or encouraging his younger brother to touch his penis on two or three occasions. The traumatizing effects, if any, of such behavior may be short-lived and minimal. In other situations, the child may have been raised by an abusive, alcoholic stepfather who forced his stepchildren into acts of fellatio and anal sex. If the children objected to these activities, such men reportedly would then torture the children's favorite pet and/or beat their mother. These dehumanizing experiences can be extremely demoralizing and cause long-term psychological scars. A review of the offender's family history, including a detailed exploration of any physical or sexual abuse, can be of assistance in judging both amenability to treatment and the risk of allowing the person to remain in the community.

### CRIMINAL AND SEXUAL OFFENSE HISTORY (GUIDELINES 8 AND 9)

A prior criminal record for sex crimes may be one of the best predictors of future criminal sexual behavior. With this in mind, the evaluator should obtain a copy of the criminal justice records to help determine an offender's prior criminal history. The chronic recidivists generally begin their deviant sexual behavior at an early age and may avoid detection for years. Data from the Sex Offender Treatment Program at the Oregon State Hospital shows that—beginning their history of sexual offenses in adolescence or even earlier—many sex offenders had committed sexual crimes for 15 years or longer before their first arrest and conviction (Freeman-Longo, 1985). In addition to checking official records, therefore, the patient himself, as well as

his family, should be questioned about prior juvenile and adult arrests, as well as about "undetected" crimes.

The possibility that the individual may have participated in a "diversion" or "deferred prosecution" program should also be examined. In some parts of the country, certain sexual abusers, particularly exhibitionists and incest offenders, have escaped criminal prosecution by agreeing to enter into a treatment program as part of so-called diversion or deferred prosecution. There is no national or intrastate method of recordkeeping for such prosecution-avoidance programs. That means an individual could molest a child in one county and participate in a treatment program that does not involve criminal conviction, then move to the adjoining county or state and reoffend without fear that his prior acts would be discovered through the criminal justice system. Although it often seems to be a more humane method of dealing with a "mental health problem," these programs erase an offender's record of deviant sexual behavior, which is an important variable in designing a current disposition. A thorough evaluation will inquire into the possibility that the offender may have been assigned to such a program. However, patients will often minimize their past involvement and not discuss prior convictions. This information needs to be in the report to the sentencing judge.

Obviously, a long history of arrests and convictions demonstrates that a specific offender has previously engaged in similar behaviors. In some cases, a careful review will reveal an escalation in the types of sexual deviancy and the frequency with which these behaviors occur. For example, in one case a man was first detained for public indecency. The police told him the charges would be dropped if he promised to leave the community. Years later, this man was again arrested for a similar incident in a conservative east coast town. After spending several days in jail and completing a superficial clinical assessment, he was referred to a clinician for outpatient therapy. These weekly sessions lasted for 3 weeks. Several years later, he was again arrested. This time he was accused of sexually abusing his nieces on numerous occasions. A brief jail sentence and enrollment into a structured therapy program was required by the court. Several years later, this man was again arrested for disruptive sexual behavior. He was sexually abusing children at his local church where he taught Sunday school. Obviously, an outpatient program is inappropriate for this offender.

When sexual abusers provide a long history of past criminal sexual behavior, their clinical assets and deficits must be cautiously reviewed. In some of these cases, the best form of clinical intervention is residential confinement and intensive treatment. Unfortunately, some of these abusers will continue to be a significant risk to engage in antisocial activities and may never be safe if released back into the community.

### RESPONSIBILITY (GUIDELINE 10)

The evaluator should identify to what extent the offender accepts responsibility for his offenses, and what degree of guilt, remorse, or moral accountability he is experiencing. Since most sex offenders are adept at manipulation and denial, the evaluating professional should look not only at the offender's words, but at his actions as well. Sex offenders diagnosed as psychopathic, or who have other personality disorders, may exhibit little remorse or guilt over their offenses and make no pretext of accepting responsibility for their actions. Others will make a grand show of remorse during the clinical interview and in front of authority figures such as the judge, their clergyman, or the district attorney; but, given the opportunity, they may continue to psychologically, if not sexually, abuse their victim and/or family. Thus, a thorough assessment requires consultation with appropriate victims, family members, and others with access to the offender and knowledge of his conduct outside of clinical and courtroom settings. A note of caution: The bias of the individual must be factored into any information obtained from a family member. Cases of intrafamily sexual abuse are especially known for divided loyalties and sometimes blind, unreasoning alliance to the offender—even when the perpetrator has admitted his or her guilt. Sometimes this is caused by fear that there is no way to control the abuser from continuing to hurt them all.

### PSYCHOLOGICAL TESTING (GUIDELINES 11 AND 12)

In order to obtain an accurate picture of an abuser's assets and deficits, a thorough and comprehensive psychological evaluation should be obtained. In our opinion, superficial interviews are often plagued with error. During a psychological evaluation, a thorough analysis should include: (1) reviewing pertinent records, (2) obtaining a thorough social history, (3) administering an array of psychological tests and questionnaires, and (4) physiological examination on the penile plethysmograph. By carefully examining the abuser's past records and comments made during the clinical interviews, as well as his overall responses during the psychological testing and plethysmograph evaluation, the clinician can then determine the extent and frequency of psychological deficits and assets. Obviously, the severely and habitually impaired offender who has had extensive previous therapy may not profit from another therapeutic program. On the other hand, individuals with few psychological deficits who are extremely motivated to change may be adequate candidates for outpatient therapy.

### The Cornell Medical Index

After reviewing the responses on this questionnaire, the clinician will have information to help decide if obtaining past medical records can be useful. The information obtained from state hospitals, private clinics, and/or medical facilities may provide the clinician with other valuable reports regarding the psychological assets/deficits of the sexual abuser. In one case, a sexual offender had been misdiagnosed for years as schizophrenic. Psychiatric, psychological, and neurological examinations eventually revealed the existence of brain damage and a seizure disorder. In this case, the sexual abuser was placed on a regimen of medications to reduce his seizures and aggressive tendencies. In another case, a sexual abuser had complained about chronic headaches and began to act inappropriately during a group therapy meeting. Over a short period of time, he began to act in an immature and adolescent fashion. During a neurological examination, an inoperable brain tumor was found. Six months later, this man died. These cases are unusual and care should be taken, however, not to utilize neurological symptoms as an excuse for most offenders' behavior.

In addition, while reviewing an individual's medical history, questions may arise regarding the efficacy of pharmaceutical agents such as Depo-Provera. This synthetic hormone has been utilized to extinguish obsessional thoughts and impulsive deviant sexual behaviors. Clinicians have demonstrated that some sexual abusers can absorb reasonable levels of this prescribed medication in order to control their aberrant sexual activities. Although there are opponents to this pharmacological therapy, others report that the combination of Depo-Provera and a multifaceted treatment program can be used successfully to reduce the frequency and intensity of aberrant sexual fantasies, impulses, and behaviors. Before this medication can be utilized, the clinician must thoroughly review an individual's medical history and carefully evaluate the short- and long-term side effects of this pharmaceutical approach.

### Minnesota Multiphasic Personality Inventory (MMPI)

This multi-item true-and-false questionnaire was developed to identify an array of psychological assets and deficits. Since its initial use, over 5000 research studies have been conducted on this instrument. After the sexual abuser has completed this self-report questionnaire, the responses can be either scored by hand or through a computerized scoring system. The latter usually provides a profile analysis that discusses the individual's psychological strengths and deficits. This provides valuable information regarding the sexual abuser's test-taking response set. Validity scales indicate whether or not the abuser is purposely portraying himself in an overly positive and/or

negative fashion. These test results also demonstrate whether or not the abuser has endorsed an overabundance of unusual or bizarre items. It can provide valuable information regarding the presence of a characterological disorder: depression, anxiety, cognitive distortions, manic disorders, anti-social personality disorders, chronic impulsivity, sexual identity conflicts, and a host of other psychological characteristics.

### Rorschach Test and Thematic Apperception Test

Two projective tests, the Thematic Apperception Test and the Rorschach, may provide additional information regarding the offender's psychological abilities. These tests can be used to identify distorted thinking, psychotic thought processes, levels of intellectual functioning, depression, anxiety, impulsivity, somatic concerns, and a preoccupation with sexual themes. In some cases, sex abusers may be able to camouflage their current psychological deficits during clinical interviews and while responding to the standardized tests. However, during the administration of these less structured tests, they may reveal a number of other psychological characteristics. Others are unable to handle the ambiguity of the task and become defensive, revealing little. Both styles are unusual.

During one assessment, a sexual abuser who had been arrested for child molesting portrayed himself as a healthy individual during the clinical interviews and while completing the Cornell Medical Index and the MMPI. However, while responding to the Thematic Apperception Test, he began to decompose and a number of unhealthy themes emerged. In addition, his responses to the Rorschach portrayed him as an impulsive individual who was extremely preoccupied with sexual objects and anatomical parts. Interestingly, after responding to the projective tests, this offender revealed that he repressed many of his original responses. In a later session he provided an even higher incidence of unique responses while identifying an array of female child, prepubescent, postpubescent, and adult female genitalia on the Rorschach cards.

### Rotter Incomplete Sentence Blank

This sentence blank test consists of 48 open-ended items. On this test, each offender is asked to fill in each incomplete sentence with whatever words appear to be appropriate. While reviewing the sexual abuser's responses, a number of interesting patterns may emerge. In some cases, the offender is extremely defensive, unwilling to share his psychological concerns, and cannot respond to these ambiguous materials. In other cases, the abuser will openly portray his concerns, anxieties, and fears. By examining these items, the evaluator in most cases will gain more valuable in-

formation about the offender's inner concerns, thoughts, feelings, and emotions.

### Sone Sexual History Questionnaire

Since the completion of Masters' and Johnson's initial research, a series of questionnaires have been developed by clinicians to assess an individual's basic understanding of human sexual behavior and to identify specific sexual dysfunctions and concerns. The Sone Sexual History Questionnaire is a 15-page questionnaire that asks germane questions regarding the individual's sexual development, history, sexual arousal patterns, fantasies, masturbatory behaviors, heterosexual and homosexual experiences, and a host of other pertinent topics. This questionnaire was designed specifically for sexual abusers. A section is provided that asks questions about how the sexual disorder began, what environmental cues are most sexually arousing, and other general questions regarding sexual behavior and arousal.

## PHYSIOLOGICAL ASSESSMENT (GUIDELINE 13)

Although the information obtained from psychological tests, questionnaires, and self-report procedures provides the clinician with valuable information, the importance of obtaining a physiological measurement of aberrant and nonaberrant arousal patterns cannot be underestimated. The data obtained from the standardized psychological tests and questionnaires rely on a person's integrity, long-term and short-term memory, and the ability to read and write. While responding to an array of questionnaires, an offender can provide an unreliable description of his personality characteristics and sexual preferences. With this in mind, physiological assessment approaches appear to be another valuable way to obtain information regarding an individual's sexual arousal responses.

Because many abusers are mandated by court to obtain evaluations and treatment, they often minimize their problems and sexual arousal patterns in order to appear as healthy as possible. During their therapeutic contacts, they often proclaim high levels of self-control. They want to believe they will never offend again. Many sexual abusers are quite convincing with their verbal comments, but they may be both inaccurate and offer a gross misrepresentation of reality.

No thorough evaluation of a sexual abuser will be complete without a physiological assessment of the suspect's arousal patterns on the penile plethysmograph. Under the supervision of a competent technician, this instrument can assess the single best index of male sexual arousal, penile erection. As with the more conventional psychological tests, however, re-

sponses to physiological testing must also be judged with some caution. The instrument measures penile tumescence, a response that can be both knowingly and unknowingly suppressed or inhibited by fatigue, masturbation, anxiety, discomfort, nervousness, aging, drugs, and alcohol. In addition, not all individuals can become sexually aroused in a contrived environment. However, many subjects will become partially or highly aroused in response to various sexual materials presented to them during this evaluation. In these situations, this assessment approach provides the clinician with another sample of behavior.

The subject, who is comfortably seated in a private room, slips a strain gauge over his penis, which is then electronically connected to the plethysmograph. The suspect is then exposed to a variety of erotic stimuli, ranging from "normal" to "deviant," and involving males, females, adults, and children. Various themes are presented, including consenting interactions, forced sexual behavior, and exploitive variations such as child molesting. The stimuli may include slides, audiotapes, films, and videotapes. The instrument monitors the subject's arousal, or lack thereof, and produces a graphic or digital readout. The resulting data demonstrate those themes that the subject does and does not find arousing. On occasion, the data indicates virtually no arousal to any stimuli. This could occur because the suspect was physically dysfunctional, anxious over the clinical context of the examination, or because he masturbated shortly before undergoing the examination in an effort to distort the results. When little or no arousal is detected, another examination under controlled conditions is indicated before the results can be considered conclusive.

What do the results of this examination mean to the criminal justice system? Obviously, the presence of high levels of arousal to "deviant" stimuli in a laboratory setting does not mean that the individual will expose himself, molest children, rape, or act out in other sexually inappropriate ways. However, high levels of arousal to deviant sexual stimuli coupled with lower arousal to nondeviant themes is highly indicative that the subject is more sexually attracted to deviant sex than to normal sex. This can be helpful if the man is continuing to deny any abusive behavior and does indicate a higher risk to reoffend because of the arousal pattern. It also is a useful means to assess treatment efficacy.

When an offender is provided with a copy of his own actual arousal patterns, he is often more willing to engage in a behavioral treatment program designed to modify his current aberrant thoughts and activities. In most cases, this is the first time that anyone has provided this individual with objective data regarding his normal and deviant arousal patterns. By reviewing the chart recordings, the offender can see which materials actually caused highest levels of arousal, and begin to understand the correlation between arousant arousal and inappropriate sexual behavior. Although it may

be extremely difficult to convince an offender that he should obtain treatment because of his responses to a true-and-false questionnaire and inkblot test, a sexual offender certainly understands the need for treatment if he has become highly aroused by themes describing sexual behavior with children and adolescents and/or aggressive, sadistic behavior with adults.

Any assessment conducted without a physiological evaluation is incomplete, since the therapist must rely upon observations or self-report of the suspect regarding his arousal. Accurate self-reporting, when the suspect knows the therapist is going to report to the judge and the district attorney, may not occur. The instrument, therefore, provides the therapist with a powerful tool for confronting an individual who may be denying or minimizing his problem.

#### POLYGRAPH (GUIDELINE 14)

In those jurisdictions where probation and community-based treatment for certain sex offenders are available, it is customary that a prerequisite for a probationary sentence be the individual's acknowledgment of responsibility for his or her actions. That task may not be an easy one for the attorney or therapist attempting to work with a person who fears going to prison, losing his spouse, his family, his church, and his friends if he admits that he has molested a child. Yet that admission is often the key to a treatment alternative that may keep him out of prison. Sometimes the polygraph can be a useful tool in arriving at the truth.

In contrast to the penile plethysmograph, which traces arousal patterns, the polygraph instrument can record the emotion of fear: fear of being caught in a lie, or fear of detection. The polygraph records an individual's physiological responses to carefully prepared questions. It operates under the theory that when the subject answers the polygrapher's relevant question with a lie, the lie creates the fear of detection, which stimulates a variety of physiological and psychological responses within the subject's body. Those include changes in respiration, blood pressure, pulse rate, and galvanic skin response. Changes in these responses are recorded on moving chart paper by the instrument. The examiner then numerically evaluates these changes and renders an opinion that the subject is either telling the truth or being deceptive about the issue. In some cases no opinion can be rendered; thus the test results will be inconclusive. It has been our experience that a polygrapher trained to work in conjunction with the evaluating therapist can be very helpful in overcoming stubborn denial in some offenders. Lie-detection techniques may not be very helpful, however, with psychopaths and others with reduced levels of autonomic response. Men who do not believe

sexual acts with children are either bad or harmful to the child may also not be detected by the polygraph examination.

### ORGANIZING THE DATA

Once all available information on the offender, his offense, and his victims has been accumulated, a risk assessment using the P & M Rating Scale (see Appendix) can be undertaken. The validity of this assessment will obviously be contingent upon the thoroughness and accuracy of the compiled data. Most of the questions can be answered using the information collected from the evaluation guidelines presented. This rating scale is only intended to help organize and quantify the data so that decisions can be made. It should not be considered a psychological test.

On the P & M Rating Scale, items are assigned a numerical value from 0 through 5. Experience as well as a review of the available literature were used to choose those items that make up the scale. It identifies those activities, behaviors, and factors that suggest that an individual is more or less likely to succeed in an outpatient, community-based setting. Viewing the scale as a whole, the more the individual offender falls into categories 0, 1, and 2, the more likely he is to be successful in outpatient treatment. Generally, the more ratings in categories 3, 4 and 5, the more risk he is to be at large. This scale is meant to assist professionals in identifying various factors that should be taken into consideration in the risk-assessment phase. We have identified four major areas of importance: criminal history, the facts of the present offense, personal data about the offender, and personal data about the victim. Within these four groups are 45 subcategories touching on a wide range of variables. If each of these categories is accurately investigated and scored on the P & M Rating Scale, the clinician or other professional evaluating the offender can assume with confidence that a thorough assessment of the offender has taken place.

### SUMMARY

We have discussed aspects of thorough clinical evaluations, court investigations, police interrogations, and presentence evaluations in this chapter. It is recommended that mental health care providers and agents of the court cooperate, and together work toward resolution of this complex social problem. As more reported cases of sexual abuse are reviewed by the court, there will be an even greater demand for clinical evaluations, treatment alternatives, and dispositional plans. Both the court and the community are

asking mental health care providers to furnish them with guidance and assistance regarding recidivism and related concerns. Communities need sensible guidelines that will allow them to make the often difficult decisions regarding prediction of recidivism, restitution, amenability to change, and potential for family reunification.

### REFERENCES

- American Psychiatric Association. (1987). *Diagnostic and statistical manual of mental disorders* (3rd ed., rev.). Washington, DC: Author.
- Attorney General's Task Force on Family Violence. (1984). Washington, DC: U.S. Department of Justice.
- Freeman-Longo, R. (1985, October 23). Paper presented at sexual assault conference, Gonzaga University, October 23, 1985. Co-sponsored by Forensic Mental Health Associates and Alternatives to Sexual Abuse.
- Freeman-Longo, R., & Wall, R. V., (1986, March). Changing a lifetime of sexual crime. *Psychology Today*, p. 58.
- Groth, N. (1979). *Men who rape*. New York: Plenum.
- McGovern, K. (1984). *The clinical assessment of sexual offenders*. Available from ASA, P.O. Box 25537, Portland, OR 97225.
- McGovern, K. (in press). The assessment of sexual offenders. In Maletzky (Ed.), *The assessment and treatment of sexual abusers*, New York: Grune & Stratton.
- McGovern, K., & Jensen, S. (1985). Behavioral group treatment methods for sexual disorders and dysfunctions. In Upper & Ross (Eds.), *Handbook of behavioral group therapy* (pp. 421-442).
- Saylor, M. (1984). Sex offender treatment program: Treatment success and recidivism rates between 1967 and 1982. Unpublished manuscript, Western State Hospital, Sexual Psychopathy Program, Ft. Steilacoom, WA.
- Whitcomb, D., Shapiro, E. R., & Stellwegen, L. D. (1985). *When the child is a victim*. Washington, DC: U.S. Department of Justice.

## Appendix

### THE P & M RATING SCALE: RISK ASSESSMENT FOR SEXUAL ABUSERS OF CHILDREN AND ADULTS (Circle the appropriate number)

#### I. CRIMINAL HISTORY

1. Prior sex offenses (convictions):
  - (0) none
  - (5) one or more
2. Allegation or arrest for sexual offense without conviction:
  - (0) none
  - (1) one
  - (2) two
  - (3) three
  - (4) four
  - (5) five or more
3. Total number of victims of sexual offenses that did not result in conviction:
  - (0) none
  - (1) one
  - (2) two to five
  - (3) six to ten
  - (4) more than ten
  - (5) more than twenty
4. Years since deviant sexual fantasies or behaviors began:
  - (0) less than one month
  - (1) less than one year

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- (2) less than two years
  - (3) less than five years
  - (4) less than ten years
  - (5) more than ten years
5. Nonsexual criminal history (juvenile):
    - (0) no convictions
    - (1) misdemeanor convictions only
    - (2) one felony conviction
    - (3) two felony convictions
    - (4) three felony convictions
    - (5) four or more felony convictions
  6. Nonsexual criminal history (adult):
    - (0) no convictions
    - (1) misdemeanor convictions only
    - (2) one felony conviction
    - (3) two felony convictions
    - (4) three felony convictions
    - (5) four or more felony convictions
  7. Incarceration history:
    - (0) never incarcerated
    - (1) incarcerated in jail more than ten years ago
    - (2) incarcerated in jail within the last ten years
    - (3) incarcerated in prison more than ten years ago
    - (4) incarcerated in prison within the last ten years
    - (5) incarcerated in prison within the last five years
  8. History of violence (not including present offense):
    - (0) no history of violent or assaultive behavior
    - (1) threats of violence not carried out
    - (2) assaultive, but not during sexual offenses
    - (3) assaultive during sexual offenses
    - (4) previously incarcerated for violent act
    - (5) previously incarcerated for both violent and sexual acts

Score: \_\_\_\_\_



## II. PRESENT OFFENSE

## 9. Nature of offense:

- (1) one isolated incident or impulsive act
- (2) fewer than five isolated instances over five years
- (3) fewer than five planned or premeditated offenses
- (4) multiple planned or premeditated offenses
- (5) part of an habitual pattern or central to the individual's life, as in a hobby or addiction (Carnes, *The Sexual Addiction—Pedophile*, *DSM-III-R*, APA, 1987)

## 10. Type of illegal or deviant behavior:

- (1) verbal communication or indecent exposure
- (2) sexual fondling or rubbing
- (3) digital or genital penetration or oral sex
- (4) multiple victims during the same episode
- (5) victim(s) forced to perform or endure degrading acts not set out above

## 11. Aggressive behavior:

- (0) no force or violence used in present offense
- (1) mild verbal coercive statements
- (2) aggressive verbal threats
- (3) force or violence used, but only to the point necessary to gain victim's submission
- (4) force or violence *beyond* that needed to overcome resistance or gain control: biting of victims; shaving or bathing victims; victim kidnapped; use of weapon; bondage; ritualistic behaviors
- (5) torture, mutilation, or injury to victim

## 12. Offender's degree of accountability:

- (1) complete admission, consistent with victim's account
- (2) minor to moderate minimization, or accepts only partial responsibility
- (3) gross minimization, and uses alcohol, drugs, victim's education, sex education, discipline, religion, etc., as an excuse
- (4) total denial of acts

- (5) required victim to testify in court in face of compelling evidence of guilt

## 13. Defendant's current grasp of the effect the offenses had on the victim:

- (0) fully understands effect on victim
- (1) moderate understanding
- (2) minimal understanding
- (3) uncaring and ambivalent
- (4) hostility and rationalization observed
- (5) projection and blames the victim for his behavior

## 14. Number of victims—present situation:

- (1) one
- (2) two
- (3) three
- (4) four
- (5) five or more

Score: \_\_\_\_\_

## III. OFFENDER—PERSONAL DATA

## 15. Number of marriages:

- (0) zero
- (1) one
- (2) two
- (3) three
- (4) four
- (5) five or more

## 16. Marital stability

- (0) stable, intact marriage with supporting spouse
- (1) minimal marital problems
- (2) moderate marital problems
- (3) major marital problems
- (4) irreconcilable marital problems
- (5) history of chronic domestic violence

17. Status of spouse or girlfriend:
  - (0) no spouse or girlfriend
  - (1) maintaining relations with defendant, acknowledges his guilt, willing to participate in his treatment, and supports the victim(s)
  - (2) maintaining relationship with defendant, acknowledges his guilt, but not willing to participate in his treatment though acknowledges the abuse
  - (3) maintaining relationship with defendant but denying his guilt and openly hostile to treatment plan
  - (4) maintaining relationship with defendant, denying his guilt, openly hostile to both treatment plan and victim(s)
  - (5) maintaining relationship with defendant, denying his guilt, encouraging him to leave treatment
18. Substance abuse:
  - (0) no use of alcohol or illegal drugs
  - (1) very infrequent use of alcohol or drugs
  - (2) situational or social drug or alcohol involvement
  - (3) alcohol and/or drug abuser currently in remission for at least one year
  - (4) alcohol or drug abuser in remission for less than one year
  - (5) chronic and untreated drug or alcohol abuse or addiction
19. Precipitating stress factors at time of offense
  - (1) major precipitating stress factors (e.g., loss of loved ones, loss of job, etc.)
  - (3) moderate precipitating stress factors (e.g., marital disturbance, financial difficulties, etc.)
  - (5) absence of identifiable extraordinary stress
20. Offender's social relationships:
  - (0) stable social relationships with numerous peer appropriate agemates
  - (1) stable social relationships with few peer appropriate agemates
  - (2) social relationships with both children and peer appropriate agemates

- (3) prefers social relationships with children but able to function socially with agemates
  - (4) feels uncomfortable interacting with adults, seeks interactions with children
  - (5) avoids functioning socially with agemates and seeks friendships with children
21. Offender's mental health status:
    - (0) no apparent mental health care problems
    - (1) minimal mental health care problems
    - (2) moderate mental health care problems
    - (3) frequent mental health care problems
    - (4) frequent and rarely changeable health care problems
    - (5) chronic and untreatable health care problems
  22. History of treatment for sexual deviancy (include all programs started, whether or not they were completed):
    - (0) no prior treatment
    - (1) one treatment program
    - (2) two treatment programs
    - (3) three treatment programs
    - (4) four treatment programs
    - (5) five or more treatment programs
  23. History of treatment for other mental health concerns:
    - (0) no prior treatment
    - (1) one treatment program
    - (2) two treatment programs
    - (3) three treatment programs
    - (4) four treatment programs
    - (5) five or more treatment programs
  24. Offender's present motivation for treatment:
    - (0) highly motivated
    - (1) moderately motivated
    - (2) minimal motivation
    - (3) ambivalent

- (4) manipulative—looking for “easiest way out”
  - (5) does not desire treatment
25. Pornographic or violent literature:
- (0) no known history of using pornographic or violent literature
  - (1) has read a few erotic magazines
  - (2) uses or collects pornography on a regular basis
  - (3) owns a large library of pornography and/or possesses sexual paraphernalia
  - (4) creates and/or sells pornography
  - (5) reads, collects, or views pornographic materials depicting people in scenes of torture, rape, death, or other forms of helplessness
26. Employment:
- (0) employed in steady fulltime job plus other appropriate activities, leaving little or no discretionary time
  - (1) employed in steady fulltime job, but has discretionary time
  - (2) retired but has time-consuming hobby or activities
  - (3) retired and without time-consuming hobby or activities
  - (4) has part-time or unsteady employment, or time-consuming hobby or activities but unemployed
  - (5) Unemployed and without time-consuming hobby or activities
27. Relationship to victim:
- (1) parent, grandparent, or sibling
  - (2) stepparent
  - (3) friend, acquaintance, or other relative
  - (4) occupied position of “special trust” (i.e., teacher, coach, religious leader, youth group leader, doctor, foster parent, daycare worker, etc.)
  - (5) stranger
28. Abscondence history (circle highest number applicable)
- (0) none
  - (1) continuously leaving home prior to age 12
  - (2) continuously leaving home prior to age 18
  - (3) AWOL from military or failures to appear in court

- (4) Absconded from jail, juvenile institution, work release center, mental health hospital, or other similar facility or situation
  - (5) Absconded from prison
29. Personal and family background:
- (0) normal childhood
  - (1) mild emotional, sexual, or physical abuse as child or adolescent
  - (2) moderate emotional, sexual, or physical abuse as child or adolescent
  - (3) severe emotional, sexual, or physical abuse as child or adolescent
  - (4) multiple foster home placements as child or adolescent
  - (5) institutional placement as child or adolescent
30. History of other deviant behavior/disorders (e.g., gender identity, conflict, cross-dressing, etc.)
- (0) none
  - (3) one
  - (5) more than one deviation
31. Chronological range of known deviant sexual behaviors:
- (1) less than one month
  - (2) less than six months
  - (3) less than one year
  - (4) one to five years
  - (5) more than five years
32. Frequency of known deviant sexual behavior:
- (1) first offense (verified by polygraph or other corroborative evidence)
  - (2) occasional offenses at random times
  - (3) approximately weekly offenses
  - (4) daily offenses
  - (5) multiple times daily
33. Offender's educational background:
- (0) college and/or high school graduate
  - (1) GED or equivalent

- (2) completed 3 or more years of high school but never graduated
  - (3) dropped out before finishing 11th grade
  - (4) completed eighth grade
  - (5) dropped out—did not complete grammar school
34. Offender's military history (circle highest number applicable):
- (0) no military history or received honorable discharge
  - (3) subject of disciplinary proceedings in military
  - (4) left military before completing tour of duty on other than honorable basis
  - (5) dishonorable discharge
35. Aberrant arousal patterns as tested on penile plethysmograph:
- (0) none
  - (1) minimal
  - (3) moderate
  - (5) high
36. Normal arousal patterns as tested on penile plethysmograph:
- (0) high
  - (1) moderate
  - (3) low
  - (5) none
37. Psychological test results—cognitive abilities:
- (0) normal
  - (1) mild psychological deficit
  - (3) moderate psychological deficit
  - (5) severe psychological deficit
38. Psychological test results—behavioral:
- (0) normal
  - (1) mild psychological deficit
  - (3) moderate psychological deficit
  - (5) severe psychological deficit
39. Psychological test results—characterological:
- (0) normal

- (1) mild psychological deficit
  - (3) moderate psychological deficit
  - (5) severe psychological deficit
40. Psychological test results—impulsivity:
- (0) none apparent
  - (1) mild psychological deficit
  - (3) moderate psychological deficit
  - (5) severe psychological deficit
41. Associated paraphilia (other types of deviant behavior):
- (0) none
  - (1) voyeurism or exposure
  - (2) public masturbation
  - (3) incest
  - (4) child molesting outside the domestic situation
  - (5) rape, bestiality, necrophilia

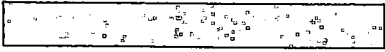
Score: \_\_\_\_\_

## IV. VICTIM—PERSONAL DATA

42. Physical and psychosocial trauma to victim (circle highest number):
- (1) minimal negative effects of victimization
  - (2) moderate effect—victim coping adequately
  - (3) victim physically injured or suffering serious psychological problems
  - (4) victim required hospitalization for physical or mental trauma
  - (5) pregnancy, venereal disease, or life-altering negative effect from victimization
43. Victim's attitude toward consequences (circle highest number):
- (1) undecided
  - (2) probation, outpatient treatment, local jail
  - (3) inpatient treatment
  - (4) prison
  - (5) gross retribution desired
44. Nonoffending spouse's or victim's parents' attitude toward consequences:

- (1) undecided
  - (2) probation, outpatient treatment, local jail
  - (3) inpatient treatment
  - (4) prison
  - (5) gross retribution
45. Age of victim:
- (1) eighteen or over
  - (2) twelve to seventeen
  - (3) seven to eleven
  - (4) four to six
  - (5) under four

Score: \_\_\_\_\_



# Resource Materials

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## Treatment of Sex Offenders

Presented by  
Steven Jensen, M.A.

Unmasking the Sexual Abuser

Steven H. Jensen M.A.

Director, Center for Behavioral Intervention

President, Board of Directors

Association for the Behavioral Treatment of Sexual Abusers

4560 S.W. 110th Suite 200

Beaverton, Oregon 97005

(503) 644-2772

Motivation to sexually molest a child cannot be causally linked to a genetic predisposition, prior victimization, exposure to pornography, lack of an appropriate sex partner, sexual dysfunction, excessive stress, anger problems, drug or alcohol intoxication, seductive children or an expression of love for children.

Ultimately, an uncontrolled urge to have sexual contact with a child and a conscious decision to engage is such behavior result in sexual deviancy. The behavior is always deliberate, intentional, and usually well planned out. In most cases, a period of time is spent "preparing the child for victimization" ie. befriending, setting up, gaining control over and "grooming". Child molesters engage in sexual contact with children because it is enjoyable and pleasurable to them.

Why Do People Go To Children For Sexual Contact?

The most compulsive sex offenders develop their interest in children by the age of 15. They report an awareness of this difference in their sexual preference at a very early age (under 8). Early sexual activities with children often take the place of the development of healthy, age appropriate sexual relations. One theory explains that early sexual experiences are imprinted in memory and thus set the standard for future sexual preference. Once arousal is established to sex and age specific stimuli, the pattern is further intensified and focused via actual contact or fantasy which is often accompanied by masturbation. If there is no motivation to alter that pattern, change of that arousal pattern occurs only when identified and re-conditioned.

As the offender enters puberty, the awareness of deviancy becomes more clear increasing their fear of discovery and subsequent rejection by family and peers. Lack of appropriate heterosexual skills are further inhibited by limited contact with appropriate sexual partners.

A second, less compulsive group of sex offenders, seem to develop their interest in children as a result of: loss of primary partner, rejection by age appropriate partners, lack of confidence in sexual abilities, sexual dysfunction with adults, or lack of heterosexual skills and information. These persons are attracted to children because of the child's sexual naivety, image of "pureness and innocence", the inability to make sexual demands or criticize performance, ability to be controlled, and their vulnerability to be victimized.

A third group of offenders use inappropriate sexual behavior as a method to diminish negative emotional states. These persons report abusing the child as retaliation to their partner. Their primary sexual interests appears to be directed toward adult partners.

One of the most clearly identifiable factors present in all child molesters histories is the fact that some aspect of their lives enables them to have regular contact with children. Child molesters work with children (ie. teaching and coaching), volunteer to participate in clubs or activities with children (ie. boy scouts, summer soccer leagues or big brothers), have children in their own homes (foster care and adoption are common) or simply frequent places where children are present (ie. parks, playgrounds, McDonalds, swimming pools, churches etc.)

#### Developmental Characteristics

1. History of physical or sexual abuse.
2. Absence of appropriate male role model.
3. Lack of warmth and affection in home.
4. Feelings of inadequacy, loneliness, depression and anxiety.
5. Poor impulse control.
6. Minimal dating and age appropriate sexual experience, poor social and sexual skills, low sexual information.
7. Religiosity and/or rigid sexual values.



## Personality Traits

Psychiatric Disorders - 5% (ie. Schizophrenia, Bi-polar Disorder, or Organic Brain Syndromes).

In very rare cases, psychoses, brain tumors or other abnormalities can be linked to sexual deviancy.

Anti-Social Personalities - 15%

Anti-social sex offenders are not commonly treated in out-patient settings, have lengthy histories involving other types of criminal behavior and often molest children because of availability rather than strong sexual desire.

Paraphiliacs - 80%

Although all child molesters are narcissistic to some degree, not all receive Narcissistic Personality Disorder as a primary diagnosis. Combinations of the below personality disorders are the most often observed. For a more detailed description of each, refer to handout.

Narcissistic Personality Disorder  
Histrionic Personality Disorder  
Dependent Personality Disorder  
Compulsive Personality Disorder  
Avoidant Personality Disorder

In general, child molesters are characterized as being cognitively, behaviorally and interpersonally impaired. Sex offenders tend to ruminate over real or imagined wrongs, distorting information or events to validate their "victim posture" in the world. The offenders ability to resolve conflict is limited to blaming others and reducing what might have been healthy and motivating stress by destructive coping mechanisms such as: drug and alcohol abuse, unproductive or deviant fantasy, aggression or depression, over involvement in religious groups, work or other escape oriented types of activities. Relationships are shallow and superficial. Offender's are usually unempathetic to the needs and concerns of those around him. His behavior is impulsive, reactive, flighty, guarded and manipulative.

## The Sexual Assault

Although many individuals have the potential or the predisposition to sexually abuse children, several other factors must be present in order to the offender to cross the line between fantasy and behavior. The offender must overcome or circumvent our cultures norms and information regarding the impending consequences to the victim. A series of predictable feelings, thoughts and behaviors must occur which lessen the moral and legal inhibitors that sometimes prevent offending in persons who may have the urge but restrain themselves from acting out in a sexually offensive manner.

As Inhibitors decrease and Environmental Cues increase, sexual assault is likely to occur.

Inhibitors

Impulse control  
Healthy social values  
Realistic cognitions  
Anger control

Sexual Deviancy

Environmental Cues

Cognitive distortions  
Faulty sexual skills  
Social isolation  
Trust between child and offender  
Emotionally distant or non-protective spouse

Once sexually deviant behavior has occurred a predictable series of thoughts, feelings and behaviors lead to further sexual deviancy. Being pleasurable, the behavior is repeated, becoming more and more compulsive. Frequency increases as well as severity of behavior. Offenders identify several stages leading to offence: (1) Befriending the child, developing trust and gaining control. The offender either has children in his own home or takes steps to gain access to other peoples children in the community. (2) Non-sexual Touching. The child must be "prepared" for the sexual activity. The offender begins with "roughhousing", backrubs, handholding etc. Many offenders expose thier gentials to the child, show the child pornography, or engage the child in sexual talk to further observe the childs reactions to sex. These behaviors are more easily explained if the child reports and the offender is questioned. (3) Sexual Touching. The offenders goal is to continue the child in a sexual relationship as long as possible. If the child is engaged in the behavior too quickly, frightened or physically harmed, the likelihood of reporting is generally increased.\* Usually the offender begins contact with lighter forms of sexual behavior to confuse the child. The offender usually presents the contact as a game or as having some sort of educational benefit. The offender proceeds cautiously, observing the childs responses carefully, making the contact as pleasurable and non-threatening to the child as possible. (4) Keeping the Child From Reporting. The offender reasons that the child will be less able to report if she feels that she allowed the sexual contact to take place or cooperated with the abuse, either by remaining silent, accepting bribes or experiencing some sexual or physical pleasure. (5) Keeping other Adults from Discovery. Simultaneously, the offender attempts to interfere with the already troubled or perhaps distant relationships the child has with other family members.

\*A lesser number of offenders induce physical pain and fear in order to maintain the victim in silence.

The child's credibility is also damaged within the family or community via various "divide and conquer" strategies (ie. appearing to favor the victim and act in a harsher manner with the victims siblings, appearing to "side with" the victim, all the while manipulating the non-offending spouse in punishing the child). The child is placed in a no-win situation, feeling the offender is his/her advocate and friend and that the other members of the family are perhaps less likely to support and believe the child should she report.

As the offender becomes more involved in the assaults, he rationalizes the consequences to the victim and/or vows that it will never happen again. This excuse making process becomes more complex and more believable to the offender the more frequently he rehearses it. Offenders report that after each assault they experience some negative emotional states such as guilt and remorse, however, these feelings soon dissipate as they immerse themselves in behaviors and fantasies designed to alleviate feelings of responsibility. Deviancy fantasies return and the behavior is resumed.

Research has demonstrated that pedophiles rarely molest only one child. One of the largest studies conducted revealed that homosexual pedophiles have an average of 150.2 victims. Heterosexual pedophiles were reported to have molested an average of 19.8 female children. Pedophiles committing only incest offenses had an average of 1.8 victims. In addition to child molestation, most offenders are reported to have engaged in a variety of paraphilic acts ie. bestiality, voyeurism, exposing, S/M behavior, frottage, fetishism etc.

#### Identification of the Sex Offender.

No profile of "the sex offender" has ever been validated by any form of research. The best indicator of sexual deviancy is past behavior.

Determining that a person has historically engaged in sexually deviancy behavior is the best predictor of future behavior.

A comprehensive evaluation by an expert in the field of sexual deviancy is the best way to gain helpful information regarding dangerousness to the community, likelihood of other crimes and treatability. An evaluation which has been performed by a non-expert is useless if not hazardous. An advanced degree in psychology or psychiatry does not denote expertise or experience in this field. Evaluation and treatment of sexual deviancy is a highly specialized area of practice. Referral to known experts is vital.

A "clean polygraph or clean plethysmograph" does not mean that the defendant did not commit the crime!

MOST COMMONLY DIAGNOSED PERSONALITY  
PROFILES OF SEX OFFENDERS

1. Antisocial Personality

Demonstrates irresponsible, illegal and unorthodox beliefs.

Presents callousness and total, if not ruthless indifference to the needs or sufferings of others.

Views the world and its contents as present to serve his/her needs.

Total lack of human compassion, personal loyalties or connections. Absence of guilt for hurtful actions.

Demonstrates rebellion toward traditional social and moral values. Revengeful attitude towards those who get in his/her way.

Low impulse control, regular outbursts of anger, low tolerance for stress or frustration.

2. Narcissistic Personality

Arrogant, displays a careless disregard for the rights and feelings of others.

Exploitive, expects special treatment, uses and takes advantage of others to benefit self.

Rationalizes plausible but deceptive beliefs to justify self-centered behavior. Presents self in best light.

Preoccupied with projecting self as successful, competent, caring, etc.

Distorts reality to cloak flaws, failures, and deficits from both self and others.

Projects an indifferent attitude to others unless confidence is shaken, then utilizes rage, shame or guilt to regain top-dog position.

3. Histrionic Personality

Demonstrates impulsive and attention seeking behaviors.

In interpersonal relationships, utilizes theatrical manners, superficial emotions, over reaction, and charm to maintain spot light.

Is often flighty, gregarious, hedonistic, demanding and vain. Avoids personal introspection, uses poor judgement and doesn't learn well from past mistakes. Easily angered, bored or excited.

Manipulative, low impulse control and lack of resolution skills.

4. Dependent Personality

Projects incompetent and "needy" posture.

Demonstrates docile and submissive behavior. Relegates decisions to stronger, nurturing persons.

Enters into placating, self effacing relationships with others.

Will avoid conflicts by superficially "going along with" or agreeing with more independent persons due to his/her fear of losing the relationship.

Usually non-competitive, compliant, and inadequate.

Lack of personal insight.

5. Compulsive Personality

Maintains a highly organized, rigid, and regulated lifestyle. Demands perfection from self and others. Fearful of error or incompetency. Rigid self discipline.

Maintains superficial but polite and strained relationships. Adheres to strict and perceived conventional behaviors.

Has difficulty grasping new concepts, differing views, and spontaneity.

Lacks creativity, is unable to identify or express feelings. Experiences tension and extreme frustration when life poses unpredictable problems.

Denies conflicts or "negative" feelings.

6. Avoidant Personality

Behaviorally guarded and interpersonally evasive. History of distrust and withdrawal. Sees self as isolated and rejected by others.

Devalues self and reports feelings of sadness, loneliness and emptiness. Vacillates between desire for affection, fear of rebuff and numbness of feeling.

Limited avenues of gratification and few mechanisms to channel needs, resolve conflicts or deflect external stressors. Maintains distance and privacy to avoid humiliation.

\*No profile of "the sex offender" has ever been validated.

Center For Behavioral Intervention  
4560 S.W. 110th, Suite 200  
Beaverton, Oregon 97005  
(503) 644-2772

4/5/89

## Treating the Sexual Abuser

Steven H. Jensen M.A.

Director, Center for Behavioral Intervention

President, Board of Directors

Association for the Behavioral Treatment of Sexual Abusers

4560 S.W. 110th Suite 200

Beaverton, Oregon 97005

(503) 644-2772

Sexual deviancy is not a curable disorder. Rather, it should be viewed as a controllable and manageable form of criminal behavior. Manageability is improved with adequate supervision, behavioral and cognitive intervention and limitations as to access to stimulus or victims.

Empirical evidence indicates that psychological treatment modalities are effective in inducing beneficial modifications of behaviors including those in the sexual arena. Comprehensive treatment programs dealing with sexual offenders are among the most effective of any form of mental health treatment. However, when dealing with sex offenders failure to maintain treatment induced changes has dire consequences dissimilar to most areas of mental health. To effectively motivate and maintain sexual offenders to participate in treatment requires the cooperation of the courts, correctional systems and the therapist.

### The Therapist

Currently, many sex offenders are being assessed and treated by naive, inexperienced mental health professionals. Although many generic mental health skills are a result of advanced degrees, these degrees do not ensure competence in the highly specialized area of sexual offender evaluation and treatment. The educational background of the therapist is often misleading. Few, if any medical schools, clinical psychology program or social work programs contain a single course in sexual deviance. Their total experience with offenders may be limited to attending workshop or reading a few chapters addressing the topic. Those who have developed expertise in the field of sexual deviancy suggest that long-term concentrated experience with large numbers of sex offenders is mandatory to adequately develop an understanding of sexual deviancy and the tools necessary to treat it. Many of these experts suggest that minimum skills to independently assess or treat offenders may be developed by completing at least 2,000 client contact hours under the supervision of a qualified professional. The therapist needs experience in dealing with coerced clients and setting firm treatment goals.

## Clinical Assessment of the Sex Offender

The sex offender evaluation is a challenge to even the seasoned evaluator. Not only does it require competence in the use of assessment tools, but the therapist must be able to bring to light the hidden agendas of the client and uncover information that may have been suppressed by referral sources (defense attorneys).

After a thorough review of all pertinent documentation, the evaluation begins by incorporating written tests, interviews and examinations via the penile plethysmograph and polygraph. Several factors are usually examined to determine the precursors to deviant behavior, the offenders risk to the community and treatment amenability. The offenders ability to disclose sensitive and criminal behavior is weighed heavily as well whether he is predatory, used force or coercion during the offenses. Overall stability as demonstrated by marital adjustment and regular employment, as well as chemical dependency and community support systems must be considered.

### Background Information:

- social and sexual history inventories
- marital history
- interviews with family members
- criminal history
- drug and alcohol history
- work and military history

### Psychological Assessment:

- personality testing
- hostility inventories
- depression inventories
- cognition scales
- risk inventories

### Psychophysiological Tools:

- polygraph examination
- penile plethysmograph

Evaluation should include recommendations as to appropriate disposition, strategies for supervision in the community if applicable and treatment methods most likely to effect a change.

Unless court orders are specifically geared to maintaining offenders in sex offender specific treatment, it is highly likely that the offender will out maneuver the system and manage to escape successful completion of a given treatment program. Court orders must reflect that the probationer is a sex offender.

For examples of well written court order amendments and treatment recommendations see handout.

## Treatment Modalities

Treatment can be successfully completed only when the supervising agencies support active participation and provide ample motivation for attendance and progress with swift consequences for failure ie. incarceration.

### AROUSAL CONTROL

1. Aversive Conditioning
2. Minimizing Undesirable Stimulus
3. Cognitive Restructuring
4. Controlling Desires and Fantasies
5. Improving Heterosexual Relationships

### MENS GROUP THERAPY

1. Responsibility - Acceptance of Deviancy
2. Developmental Pattern and Cycle of Behavior
3. Skill Building
  - a. Communication
  - b. Assertiveness
  - c. Anger Management
  - d. Stress Management
  - e. Sexual Information and Skills Training
  - f. Dating and Relationship Skills
  - h. Victimology and Empathy Training
4. Lifestyle Management
  - a. Positive Support Groups
  - b. Recreational Activities
  - c. Social Activities
  - d. Value Clarification

### NON-OFFENDING SPOUSE GROUP

1. Education - Acceptance of Deviancy
2. Understanding Sexual Deviancy, Etiology, Victimology, Arousal Patterns, Evaluation and Treatment Tools
3. Co-dependency, Assertiveness and Self-Esteem
4. Protection of Victims and Non-Victim Siblings
5. Appropriate Sexuality with an Offender



## COUPLES GROUP THERAPY

1. Identification of and Intervention of Cycle Behavior
2. Skill Building
  - a. Communication and Conflict Resolution
  - b. Assertiveness
  - c. Anger and Stress Management
  - d. Social and Recreational Skills
  - e. Sexuality, Dysfunction Identification and Resolution, Sexual Skill Training
  - f. Parenting
  - g. Victimology
3. Family Reunification
  - a. Clarification
  - b. Visitation
  - c. Reunification

## FOLLOW-UP TREATMENT

1. Surveillance Groups
2. Penile Plethysmograph
3. Polygraph Examination
4. Offender Interview with Therapist and Group
5. Interviews with Spouse, Victims, and Non-victim Siblings

During treatment, regular polygraph and plethysmograph examinations should occur on a relatively frequent basis.

Treatment for sexual deviancy does/should not end with the termination of regular treatment meeting or probationary status. Control over sexual deviancy requires a life long commitment.

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The below list of recommendations are typical of those listed at the end of most psychosexual evaluations produced by The Center for Behavioral Intervention. In many counties, the court simply adds these to their list of "Child Molester Conditions", copies of which are attached to this document.

Treatment Recommendations:

1. Offender should be court ordered to participated in and successfully complete a comprehensive outpatient treatment program for sexual deviance with a recognized specialist. Treatment should not be changed or terminated without direct permission from the therapist and court. This recommendation is made since it is quite likely that the offender will attempt such a maneuver once he begins to experience the necessary psychological discomfort treatment will engender.
2. Offender should participate in confrontive, group therapy designed to (a) increase assertiveness and self-esteem, (b) improve sexual competence, (c) learn how to accept constructive criticism, (d) recognize precipitants to sexual abuse, (e) establish personal surveillance network, and (f) expand social network and social activities. In addition, Offender should participate in cognitive restructuring, anger and stress management skills training and educational and vocational planning.
3. Offender should participate in aversive conditioning to reduce arousal, desires and fantasies of children and aggressive sexual behavior.
4. Offender should be frequently monitored via the penile plethysmograph and polygraph to insure that he is abiding by all program and probation restrictions and that he is gaining control over his deviant arousal.
5. Offender should have no contact with children even though he may have adult supervision. Offender should not be allowed to visit or frequent areas where children congregate such as: fast food establishments, parks and playgrounds, churches, shopping malls, etc., or to date women with children, should he and his wife divorce.
6. Offender should not be allowed any form of contact with his victim/s unless she has successfully participated in treatment and offender has gained approval for contact from his Probation/Parole Officer and both therapists (victims and offenders).

7. Should he and his wife remain married ( or if offender becomes involved in a committed relationship), offender and his partner should participate in a couples group after he has made significant progress in treatment and taken complete responsibility for all deviant behavior. Prior to their attending couple's group, the partner should participate in a Women's Support Group for wives of offenders in order that she fully understand the offenders sexual deviancy and be in a position to support treatment and insure his safety in the community.

8. Offender should not have sexual pornography in his possession and should be restricted from adult bookstores and arcades.

9. Offender should be restricted from entering bars and taverns and should participate in a chemical dependency evaluation and any treatment recommended.

\*\*\*\*\* other recommendations are made as necessary

Center for Behavioral Intervention  
4560 S.W. 110th Suite 200  
Beaverton, Oregon 97005  
(503) 644-2772

## CHILD MOLESTER CONDITIONS

- 1) That the defendant have no direct or indirect contact with the victim, or any other minors without the prior written consent of his probation officer;
- 2) That the defendant shall not enter onto the premises where the victim resides without the prior written permission of the probation officer;
- 3) That the defendant shall not be at any residence where minor children are residing without the prior written permission of the probation officer;
- 4) That the defendant, as provided by ORS 163.670, 163.673, 163.677, and 163.680, shall not possess any printed, photographed or recorded materials that he/she may use for the purpose of his/her deviant sexual arousal; nor shall the defendant frequent any place where such material is available to him/her for the purpose of deviant sexual arousal;
- 5) That the defendant undergo a complete psychological evaluation designed to address the issue of his/her sexually deviant behavior and, specifically, to determine if the defendant should be prohibited from possessing any photographs, drawings, magazines or other printed materials, motion pictures, video recordings, or audio recordings, or from frequenting any place where such material is available, that the evaluator has identified as items the defendant might likely use for the purpose of his/her deviant sexual arousal;
- 6) That, pursuant to the results of the psychological evaluation, the defendant is prohibited from possessing any photographs, drawings, magazines or other printed material, motion pictures, video recordings, or audio recordings, that the evaluator has identified as items the defendant might use for the purpose of his/her deviant sexual arousal; the defendant is further prohibited from frequenting any place where such material is available to him/her.
- 7) That the defendant shall involve self in any mental health treatment which may be recommended by the probation officer, and shall remain in said program until successfully completed or given permission to withdraw;
- 8) That the defendant submit to any program of physiological assessment at the discretion of the probation officer, to include the use of the plethysmograph, to assist in treatment, planning, and case monitoring; any refusal to submit to such assessment is a violation of probation;

- 9) That the defendant submit to polygraph testing, at his/her own expense and which may be recommended by the probation officer to determine if the defendant is in compliance with the conditions of his/her probation and/or facilitate mental health treatment; any refusal to submit to such testing is a violation of probation;
- 10) That the defendant's person, residence, or any vehicle which he may be operating, or in which he is a passenger, are subject to search at any time by his probation officer, without prior notice or search warrant, to determine if he is in compliance with the conditions of his probation; any refusal to submit to such testing is a violation of probation;
- 11) Pursuant to Oregon evidence code Rule #504, that the defendant waives all client/psychotherapist privileges;
- 12) That the defendant shall bear financial responsibility, as directed by his/her probation officer, for any counseling, therapy, treatment and medical costs incurred by the victim as a result of this offense;
- 13) Other

DEFINITION OF TERMS REGARDING CONTACT WITH MINORS

\_\_\_\_\_ A Minor is defined as anyone under 18 years old.

Contact can mean several things:

- \_\_\_\_\_ 1. Actual physical touching
- \_\_\_\_\_ 2. Association or relationship: taking any action which furthers a relationship with a minor such as writing letters, sending messages, buying presents, etc.
- \_\_\_\_\_ 3. Communication in any form is contact. This includes verbal communication such as talking, and/or written communication such as letters, etc.
- \_\_\_\_\_ 4. Proximity contact: Being in the proximity of a minor (such as in the same house, yard, store, or restaurant) where communication could be established with a minor. If a minor is known to the offender, the offender should control the situation by leaving. (It is not appropriate to put the responsibility on the minor to avoid communication). If a minor is in a non-public place and if the minor is not going to leave, the offender should leave. (Example: a minor selling magazines door to door, minors come into your yard to play or ask questions, minors come to visit a friend while you are at a friend's house). This constitutes a high risk for grooming behaviors, opportunity or interpretation of having an opportunity of inappropriate contact.

If the minor is unknown to the offender and is in a public place (encountered at a grocery store, church, movies, etc.): First, all efforts should be made to minimize such contact by timing visits to public places when minors are not likely to be present. (Example: Do not go to Saturday afternoon matinees at the movies). If this is done, and a minor is still encountered, the offender should not initiate any communication (verbal or nonverbal) with a minor. If a minor initiates communication, the offender should immediately move away from the minor's area. If the minor persists in trying to communicate, the offender should leave the public place.

\_\_\_\_\_ Direct Contact is 1:1 contact with a minor. This includes in person visits, touching, talking on the phone, letters or written notes, making proximity contact with a minor (see definition for proximity contact).

\_\_\_\_\_ Indirect Contact is making contact with a minor through another person which includes asking the mother, teacher, or a friend to tell a minor something, or to have a minor answer questions, send pictures, deliver or receive packages, gifts, or money.

WHEN IN DOUBT, TERMINATE CONTACT. THEN CALL YOUR PROBATION OFFICER AND REQUEST MORE INFORMATION.

\_\_\_\_\_  
Supervisor is a person who has been approved by the probation officer to supervise a contact between a minor and an offender. The approval MUST be in writing, and be obtained prior to any supervised contact. The probation officer and the judge are the only people who can approve a person as a supervisor, your counselor or attorney CANNOT. Supervisors must be adults who know the details of the offense, the offender's cycle, risk situations, conditions of probation, and agree to monitor the situation and report violations to the probation officer.

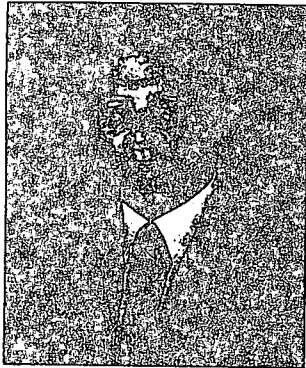
\_\_\_\_\_  
Supervised Contact is when an offender is allowed to have contact with a minor under prearranged conditions and times. The conditions must be approved IN WRITING PRIOR to the contact. The approval is by the probation officer or judge only. Deviations or substitutions must be by prior approval by probation officer in writing.

Supervised contact ALWAYS requires a preapproved supervisor. This NEVER means just another adult is present.

WHEN IN DOUBT, TERMINATE CONTACT. THEN CALL YOUR PROBATION OFFICER AND REQUEST MORE INFORMATION.

# The Sex Offender Experts

by Steven H. Jensen and Coralie A. Jewell



## Editor's Note

*Steven H. Jensen is the Director of the Center for Behavioral Intervention, one of Oregon's most comprehensive sex offender treatment programs. For the past 16 years he has worked exclusively with sexual deviancy. He designed and directed Oregon State's sex offender program for adult offenders and designed St. Mary's Boys Home juvenile sex offenders program. Mr. Jensen has lectured throughout the country on evaluation, treatment and program design for the sex offender. He is President-Elect of the Board of Directors of the Association for the Behavioral Treatment of Sexual Abusers (A.B.T.S.A.)*

*Coralie A. Jewell is the Assistant Director of the Center. A specialist in the treatment of*

*sexual abuse, Ms. Jewell designs and facilitates treatment programs for victims, non-offender spouses and non-victim siblings of abuse. Ms. Jewell also provides training to various child protection and correction agencies on the evaluation and treatment of both juvenile and adult offenders and their families.*

*Further information concerning the program may be obtained from the Center for Behavioral Intervention, 4560 S.W. 110th, Suite 200, Beaverton, Oregon 97005, Tel: (503) 644-2772.*

## Introduction

During the past decade our nation has been startled by the explosion of new cases involving child sexual abuse and increases in assaultive sexual behavior. As improvements continue in reporting, interview techniques, and evaluation and examination practices, there has been a concomitant rise in the number of professionals entering the work force to combat the problem of sexual abuse. In The Safer Society Program's 1986 survey of sex offender treatment programs available in the United States, less than 600 programs were located (Safer Society Program Press, 1986). Their 1988 survey revealed approximately 1,000 such programs. That level of growth has far exceeded

the amount of quality training available in this field.

Although there is a clear need for trained and qualified personnel to provide services for these perpetrator populations, many practitioners are assessing and treating sexual offenders using generic skills, without appropriate academic preparation or specialized training. Increasingly, these poorly qualified experts are testifying in court, where they are making absurd inferences and drawing unsubstantiated conclusions regarding treatment protocols or an offender's safety in the community. The frequent result is contradictory and confusing testimony.

While there are no professional organizations or national standards that license or certify practitioners in this field, there are a number of credible and well-designed treatment centers. These centers provide assessment and treatment of sexual offenders based on solid research data and clinical experience. While long-term recidivism studies have not been concluded, evidence tends to suggest that sex offenders are likely to respond to specific types of treatment: behavior modification, cognitive restructuring, skills training, and relapse prevention.

In light of the inevitable rise in future sexual abuse prosecutions, it is important for the legal community to become familiar with assessment and treatment programs for the sexual offender. It is hoped that this information will aid your communities in the screening and selection of appropriate evaluators and treaters. This article will discuss qualifications of the therapist, including background, training and professional philosophies, and the tools and techniques found to be effective in the treatment and evaluation of offenders.

While the authors do acknowledge that female offenders make up a small percentage of the adjudicated sex offender population, for reasons of clarity, this paper will refer to the offender as "he" and the victim as "she."

## The Therapist

Currently, many sex offenders are being assessed and treated by naive inexperienced mental health professionals. Although many generic mental health skills are a result of advanced degrees, these degrees do not ensure competence in the highly specialized area of sexual offender evaluation and treatment. The educational background of the therapist is often misleading. Few, if any, medical schools, clinical psychology programs or social work programs contain a single course in sexual deviance. Most mental health professionals complete their academic training without formally addressing the topic of sexual deviancy. Their total experience with



offenders may be limited to attending a workshop or reading a few chapters addressing the topic. The student may even develop philosophies and tools that hamper or are counter-productive to effective treatment of sex offenders.

Both professional ethics and the law support a patient's right to appropriate treatment. The Ethical Principles of Psychologists, as adopted by the American Psychological Association, state in part: "Psychologists recognize the boundaries of their competence and the limitation of their technique. They only provide services and use techniques for which they are qualified by training and experience" (American Psychologist, 1981). State statutes have upheld these principles as well in affirming that the right to treatment is a right to receive something effective—not merely access to a program.

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*"Although there is a clear need for trained and qualified personnel to provide services for these perpetrator populations, many practitioners are assessing and treating sexual offenders using generic skills, without appropriate academic preparation or specialized training."*

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The assessment and treatment of sexual offenders differ substantially from methods used with traditional mental health clients. Therapeutic techniques utilizing trust, support, and non-directive approaches to evaluation and treatment may allow the sexual offender to exercise his well-honed skills of manipulation and deception against the practitioner. Sexual offenders are far better at manipulation and deceit than many therapists can comprehend. In addition, a sex offender seldom seeks assistance voluntarily. More often, he enters treatment as the result of a marital breakup, a pending arrest, or by mandate from correctional authorities. When the offender does appear for assessment, he commonly denies any wrongdoing. Those who do admit the offense frequently minimize or rationalize the behavior as justifiable. Therapists who are to evaluate and treat these unique individuals require specialized training and experience. In most areas of mental health the practitioner's errors may mean longer therapy or lack of resolution for the client. In dealing with the sex offender, mistakes made by an untrained or incompetent therapist may result in re-offense, additional victims and sometimes deaths. This is not an area for the novice therapist.

Expertise in the field of sexual deviancy can be gained by working in large inpatient facilities, such as prisons, mental hospitals with specialized programs, or under the direct supervision of an acknowledged expert in outpatient sex offender programming. There are a growing number of specialized conferences dealing specifically with the assessment and treatment of sexual offenders. Some universities are beginning to introduce courses on the topic. Current research literature is growing, and refinements in

treatment techniques are being developed and published. A small, but growing, group of professionals have formed a national organization of sex offender specialists, the Association for the Behavior Treatment of Sexual Abusers (ABTSA). This group has begun to develop standards for the use of the plethysmograph and are attempting to create a certification process for practitioners in the field.

Those who have developed expertise in the field of sexual deviancy suggest that long-term concentrated experience with large numbers of sex offenders is mandatory to adequately develop an understanding of sexual deviancy and the tools necessary to treat it. Many of these experts suggest that minimum skills to independently assess or treat sex offenders may be developed by completing at least 2,000 client contact hours under the supervision of a qualified professional. Generally, a Masters Degree in Psychology, Social Work, or Social Science is considered the minimal academic preparation for the therapist. The therapist needs experience in dealing with coerced clients and setting firm treatment goals. An extensive background in behavioral and cognitive therapy, aversive conditioning, relapse prevention, plethysmography and polygraphy, marital and sexual dysfunction therapy, human sexuality, communication skills, anger management and victimology is highly desirable. Also desirable is a strong background in mental health services and group therapy, and familiarity with state sex offender statutes.

One important factor, often overlooked in evaluating a therapist, is a healthy value system and a personal background devoid of pathology. Individuals with a personal history of sexual deviancy, criminal behavior, alcoholism or drug dependency are seldom able to provide a consistent model of responsible behavior and provide clear guidelines for treatment.

The working philosophies of the evaluator and treater are of the utmost importance. He needs to be comfortable with the fact that therapy for mandated sexual offenders is often coercive, and that skepticism, confrontation and behavioral consequences are necessary. The treater's first concern should be protection of the community and prevention of further victimization. He needs to understand the necessity of prosecution and believe that treatment and incarceration are not incompatible. Protection from prosecution by the criminal justice system is not the concern of the therapist. Quite the contrary, there is strong evidence that prosecution for the offense will aid in motivating the client to complete the required treatment. Brief periods of incarceration are often desirable to ensure that the client understands the consequences of his behavior. It is the role of the therapist to encourage the client to take complete responsibility for all past deviancy. Therapists must not view themselves as advocates for the offender. It is advisable to avoid social contact with clients, and the therapist should not possess a need to be liked by clients. The therapist should be willing to freely communicate with supportive agencies such as child protective services, victim therapists, and parole and probation officers. The traditional guarantee of confidentiality is limited when treating sexual offenders in a community

setting. Credible therapists usually require their clients to sign releases so that both evaluation and treatment of sexual deviancy can be exhaustive and thorough. It is essential to maintain collateral contacts with victim treaters, parole and probation officers, family therapists and support persons. This form of interagency cooperation limits the offender's ability to manipulate the system and assists in consistent and effective treatment. The clinician should also be familiar with current literature and research findings and should participate in regular local and national treatment seminars.

### Clinical Assessment of the Sex Offender

The sexual offender evaluation is a challenge to even the seasoned evaluator. Not only does it require competence in the use of assessment tools, but the therapist must be able to bring to light the hidden agendas of the client and uncover information that may have been suppressed by referral sources.

Most offenders are skillful at looking good and have successfully avoided detection for years. The majority of offenders seen at the Center for Behavioral Intervention have many more victims than convictions demonstrate. Their life-long patterns of secrecy and deception are well-ingrained and can encompass all aspects of their lives, thus limiting the therapist's access to sensitive material. The client is usually interested in presenting himself in the best possible light and, therefore, may sabotage efforts to uncover pertinent historical data. A comprehensive assessment, utilizing some unique tools, is often necessary to uncover an accurate history of deviant behavior. The penile plethysmograph, a device which measures sexual arousal in the laboratory, is the most direct measurement tool in confirming aberrant sexual assessments. The polygraph is another tool found in the arsenal of many evaluators. It is not simply a device to demonstrate truthfulness; it is also a powerful aid in the examination process.

In the hands of a skilled interviewer, clients will often reveal information which would not have been discussed with a less confrontive approach. Research indicates that without the use of the polygraph and the plethysmograph, it is rare for an offender to admit to the chronicity of his problem, the number of victims, or the various types of deviant behavior. If the client does admit new and incriminating information, the problem is amplified by the threat of additional legal charges, the loss of family, friends, and job, and notoriety.

Psychosexual evaluations should be comprehensive in nature. Under no circumstances should a single form of assessment be considered definitive or adequate. Rather, a combination of psychological tests, inventories, clinical interviews and physiological measures such as polygraph examination and plethysmograph assessment should be administered. However, to date, no psychological test or inventory has demonstrated accurate prediction value in determining the propensity toward sexual deviancy. The best single indication of sexual deviancy is history.

Data such as social and sexual history, results from various

personality tests, cognition scales, depression and anger inventories, chemical dependency screening and arousal measures should be gained. Following a review of all relevant information, a skilled polygrapher, with training in the area of sexual deviancy and criminal thinking, should be used to corroborate and challenge self-report. Frequently, the client's response to the evaluation process and to the evaluators is useful as well.

Evaluations should include a thorough review of all police reports, victim statements, criminal history, probation or parole records and past evaluations. The traditional "blind evaluation," where the evaluator does not utilize collateral information, is not only ineffective, but irresponsible. Consultation with child protective workers or victim therapists is also advisable since victims often disclose further details of the abuse as they enter treatment. It is desirable to interview spouses, family members and other persons with pertinent information in order to further corroborate self-report and to gauge current functioning, sexual interests and biographical data.

Recently I was asked by a probation officer to evaluate and treat an offender who had been previously evaluated by another "expert in the field." The prior evaluation had been performed at the request of the client's attorney and was subsequently presented as evidence in court. In essence, the evaluator concluded that the defendant did not fit the profile of a pedophile, but rather, had a problem with alcohol. In that report the evaluator stated:

On September 17, 1986, Mr. Smith (a fictitious name), a 69-year-old married, male Caucasian, described an unfortunate incident that occurred between himself and his stepgranddaughter. Mr. Smith reports that this is the first time in his life that he has been accused of inappropriate touching. Quite frankly, this man does not remember the incident. However, he does recall drinking heavily on that day. He denies any long-term preoccupation with aberrant sexual thoughts, feelings, and/or emotions. From his point of view, this behavior was an isolated incident provoked by alcohol consumption.

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*"Increasingly, these poorly qualified experts are testifying in court, where they are making absurd inferences and drawing unsubstantiated conclusions regarding treatment protocols or an offender's safety in the community. The frequent result is contradictory and confusing testimony."*

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Clinical observations and impressions included these remarks:

To the best of my knowledge, this man has led a stable and socially respectable life. Since this incident occurred, this man has stopped using alcohol. In my opinion, his alcohol abuse is his primary problem. Mr.

Smith does not appear to be a chronic sexual abuser or pedophile.

This evaluator did utilize the penile plethysmograph, but was unable to detect a deviant arousal pattern. The polygraph was not used to challenge self-report information.

Fortunately, Mr. Smith resides in Washington County, Oregon, which has developed a comprehensive and effective correctional approach to managing sex offenders. Mr. Smith was convicted of Child Sexual Abuse and mandated to successfully complete sex offender specific therapy.

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*"In light of the inevitable rise in future sexual abuse prosecutions, it is important for the legal community to become familiar with assessment and treatment programs for the sexual offender."*

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Prior to beginning treatment at this center, Mr. Smith was interviewed and a polygraph examination was performed. In the subsequent interview Mr. Smith divulged the following relevant information, which was reported to the probation officer:

1. For the past fifteen years, he has had sexual feelings and fantasies concerning minor females.
2. He has been masturbating to deviant fantasies of touching minor females' genitals for approximately fifteen years.
3. He has been sexually touching his granddaughters while wrestling for approximately six years.
4. Over the last several years he has touched "A", thirteen years old on the breasts, and "B", five years old, on the bottom for sexual gratification on several occasions.
5. In the last year he has been touching "C" around her genitals while in the swimming pool as well as incidents in the garage.
6. He continues to have sexual fantasies of touching his granddaughters.

"In conclusion, we find that contrary to the initial evaluator's report, Mr. Smith has been sexually preoccupied with minors for at least fifteen years. He has clear recall of most of his numerous sexual encounters and this behavior was not primarily due to alcohol ingestion. Mr. Smith stated, 'I wanted to believe Dr. "X" when he suggested that I might not recall the sexual encounter with my granddaughter.'

"Mr. Smith needs to continue to take responsibility for his deviant sexual behavior. It is important that no further minimization of his deviant behavior occur, through his lawyer, psychologist, family or friends. If we are to be successful in treatment, all parties must understand and acknowledge that Mr. Smith is a chronic sex abuser."

A second example of the ineffective use of assessment tools is seen in the case of Mr. Brown (a fictitious name), a man accused of molesting his 11-year-old daughter. The following statements were made in the initial evaluation, performed by Dr. "Y"

Mr. Brown reports that his sexual fantasies are adult oriented. He denies engaging in aberrant sexual activities with any adolescents and/or minors.

During the physiological portion of the assessment, it was reported that, "On March 12, 1988, Mr. Brown viewed fourteen slides and listened to five tapes. He did not become aroused by any of these materials. Obviously these results are uninterpretable."

Other statements from the report included:

Mr. Brown did not describe any major sexual problems or abnormalities. He did not describe any common sexual dysfunction. Mr. Brown denied any aberrant sexual activities with his daughter or any other minor child.

This man portrayed himself as a moralistic individual with strong fundamental beliefs. There was also evidence of depression and, at times, confusion.

As we reviewed his past history, there was no evidence of a serious sexual disorder which would relate to gender identity problems, transsexuality, transvestism, cross-dressing, public masturbation, voyeurism, exposing, frottage, and/or other sexual problems.

Quite frankly, I could not find evidence of a sexual disorder. His overall profile is not consistent with the majority of men who have completed evaluations at our office.

At the time of this assessment, Mr. Brown was quite agitated about these allegations. From his point of view, they are unfounded, vindictive statements. During this assessment, Mr. Brown's psychological characteristics were not consistent with the majority of men who have admitted to engaging in aberrant activities. However, I cannot definitely say whether or not these allegations occurred.

This evaluation report raised the suspicions of an astute prosecutor who demanded that Mr. Brown be evaluated by another therapist. She then directed the client's attorney to our office. After a close reading of the prior evaluation, victim statements, and medical evidence, we assessed Mr. Brown on the plethysmograph, administered a battery of psychological tests, and engaged Mr. Brown in several clinical interviews.

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*"This article [discusses] qualifications of the therapist, including background, training and professional philosophies, and the tools and techniques found to be effective in the treatment and evaluation of offenders."*

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We suspected that one of two possible situations might explain Mr. Brown's lack of arousal on the previous

plethysmograph examination: a) he was, severely sexually dysfunctional or, b) he was attempting to suppress his arousal.

After the assessment we re-interviewed Mr. Brown regarding his lack of arousal and reported the following: Mr. Brown suffers from a sexual dysfunction. This is likely due to both biogenic and psychogenic factors related to back surgery. He reports extreme difficulty developing erections, which require ten to twenty minutes of manual stimulation and results in only partial erections. He also reports that he is only able to ejaculate about 50% of the time he engages in intercourse. He has a strong aversion to fondling his wife's genitals or any kind of sexual play. He also has an aversion to talking about sex with his partner.

The physiological assessment supports Mr. Brown's descriptions of his sexual dysfunctions. From this writer's clinical experience, it is not uncommon for persons who are unable to perform satisfactorily with adult partners to seek out children for sexual pleasure.

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*"The educational background of the therapist is often misleading. Few, if any medical schools, clinical psychology programs or social work programs contain a single course in sexual deviance."*

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Other factors came to light under careful scrutiny which led us to believe that Mr. Brown fit the profile of a pedophile and very likely had molested his daughter.

Ideally, assessments should be comprehensive and incorporate several forms of examinations. Use of the penile plethysmograph and polygraph are extremely useful, especially when used by skilled and well-trained operators.

Evaluators need to identify and differentiate between normal sexual behavior and sexually deviant behavior and identify the precursors to sexually deviant behavior. Evaluations are particularly helpful if they examine mental illnesses and personality disorders as they relate to aberrant behavior. In most cases the evaluator is expected to assess the offender's danger to the community and likelihood of re-offense. Many evaluators do provide specific recommendations regarding treatment amenability and/or appropriate disposition of the case.

### Treatment of Sexual Offenders

Treatment of sexual deviancy is a long and arduous task requiring commitment and hard work on the part of all involved. It is helpful if agency workers such as probation officers, child protective workers, and prosecutors have a basic understanding of the necessary components, as well as the proper applications.

In the state of Oregon, convicted sex offenders are generally sentenced to: a) imprisonment, which may or may not require completion of a treatment program; b) probation, with or without jail time and completion of outpatient community-based therapy; or c) formal diversion (which often results in the offender avoiding prosecution and sentencing). It is the opinion of this writer that diversion does not generally provide an adequate remedy, as many states do not register or tag offenders while on diversion. If he re-offends, perhaps in another state, no record of past offenses may be available.

In contrast, imprisonment serves two purposes. It reinforces and demonstrates to both the offender and the community that sexually assaultive behavior is not acceptable, and it also provides the community with a short reprieve from the offender. Unfortunately, most offenders do not participate in treatment while incarcerated and spend much of their time intensifying and expanding deviant fantasies. In such cases, the offender is likely to commit additional sexual crimes after his release from prison.

Given the more common situation, where the offender is placed on probation and mandated to participate in therapy, that therapy should be specific to sexual deviancy. General mental health services or providers should not be viewed by the court as sufficient. Community mental health centers in most areas do not have the necessary specialized components of treatment and are often not qualified or trained to provide services to offender populations.

Many of the well-known and comprehensive treatment programs across the country have developed similar protocols and techniques for treatment of the sexual offender. The more effective treatment programs combine behavioral/cognitive approaches and utilize four main components of therapy: aversive conditioning, skills training, cognitive restructuring and relapse prevention.

Treatment requires that the offender give up some of his most pleasurable and stimulating activities. The first concern of the therapist must be to diminish the compulsive sexual desires, fantasies, and accompanying arousal. This is most effectively accomplished through an individual therapy process called aversive conditioning.

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*"Sexual offenders are far better at manipulation and deceit than many therapists can comprehend. In addition, a sex offender seldom seeks assistance voluntarily."*

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Aversive conditioning is a process that reduces arousal to deviant themes by pairing deviant sexual arousal with a noxious odor. A specific form of aversion, Minimal Arousal Conditioning, requires the client to write out one of his most arousing scenarios involving molesting, raping or exposing. The client is then assessed on the penile plethysmograph

while reading his scenario. The point at which the client begins to become aroused (5%) is noted on the scenario. Later, the client is instructed to read his scenario to that 5% point and then inhale a noxious odor. This procedure is repeated 20 times a day, 7 days a week, for 12-16 weeks and until the client's arousal to deviancy is under control or below 5%. The future schedule is then tailored to each client. Aversive conditioning is an effective tool, but deviant arousal will return if the following four techniques are not in place as well.

The offender must be taught to minimize contact with stimulating persons, places or objects. For a child molester, contact with children must be avoided. In order to prevent such contact, offenders in therapy are prohibited from frequenting fast food establishments, parks, or shopping malls, or other areas when children are likely to be present. For the exposer or rapist, particular areas of town or driving alone at night may be inappropriate. As the offender demonstrates an ability to appropriately apply treatment techniques, these restrictions sometimes lessen.

Additionally, an offender needs to control spontaneous fantasies and arousal. If an offender is in a store and notices a child he finds sexually appealing, he is required to immediately leave the area, inhaling a noxious odor as he does so. Offenders in treatment at this center are required to carry an ammonia capsule with them at all times. Within 5 minutes the client must call a support person to report and describe the incident. Reporting the incident decreases the secrecy and excitement that is often associated with this type of contact.

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*"In dealing with the sex offender, mistakes made by an untrained or incompetent therapist may result in re-offense, additional victims and sometimes deaths. This is not an area for the novice therapist."*

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One of the components of sexual deviancy, cognitive distortions, sometimes make it impossible for the offender to accurately perceive the scope of his problems. The offender must rid himself of these distortions which have allowed him to excuse, rationalize and justify his aberrant behavior. Thoughts and beliefs such as "It didn't hurt her," "He liked it," and "I didn't know it was wrong," must be replaced with appropriate statements. This is usually accomplished by having the client and his therapist develop lists of these faulty cognitions. Appropriate statements are then developed as replacements and are rehearsed under deep relaxation several times per week. The client's thoughts and beliefs are also rigorously challenged in group therapy.

The final necessary component of arousal control is the development of healthy, adult heterosexual relationships. All five components are mutually dependent. Failure to

implement all five components will result in less effective controls, and thus an increased likelihood of re-offense.

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*"One important factor, often overlooked in evaluating a therapist, is a healthy value system and a personal background devoid of pathology."*

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As the offender demonstrates control over deviant arousal, he is placed in an offender therapy group. Weekly participation in the group usually continues for 2 years. Skill building, i.e., assertiveness training, communication skills, sexuality and sexual skills training, relationships and anger management and victimology are just a few of the topics covered. Participants write an extensive autobiography and sexual history while in the group as well as developing an "offender cycle chart." This chart is developed with the help of family members and friends in order to accurately identify the precursors to deviant behavior. This enables the offender and any supportive persons to intervene when maladaptive behavior or thoughts emerge.

Married offenders or offenders in a committed relationship also participate in an additional weekly group for couples. In most cases the non-offending spouses have already participated in a woman's support group or a group for mothers of child victims. In these groups, the wife is also challenged and confronted on any minimization or denial of her partner's sexual deviancy and possible harm done to the victims. Couples' group therapy focuses on communication, sexuality, and other components similar to the men's group therapy. In addition, parenting skills, family dysfunctions and victim treatment are covered. The couple must learn and demonstrate equal power in the relationship, the ability to solve problems, and must resolve any sexual dysfunctions. The wife is urged to develop her own circle of friends and must demonstrate the ability to emotionally and financially support herself. She must develop the strength necessary to report her husband to the treatment center or appropriate authorities should he begin to demonstrate "cycle" or dangerous behavior.

Effective intervention for the offender involves an eclectic treatment approach encompassing all aspects of the offender's life. His marital relationship, thinking patterns, home life, friends, work, recreational and social life, use of drugs or alcohol, and beliefs and value systems may all need modification in order to maintain control over his sexual deviancy. An uneducated or non-supportive spouse can rapidly undermine treatment gains unless invested and committed to the offender's treatment, her own personal growth, and the safety of her family. For this reason, it is sometimes beneficial for the child protection caseworker to strongly encourage the wife's participation. Other support persons can have an equally negative effect on treatment, including family members, religious leaders, and co-workers.

In the case of incest, offenders, not their victims, should

be required to move out of the residence unless the non-offending parent is incapable or unwilling to protect and emotionally support his or her children. Victims and their non-victim siblings should not participate in therapy with an offender until he has completed the majority of his therapy, and the victim's therapist deems contact to be in the best interests of the children. Some programs also offer prevention skills training and treatment for non-victim siblings. After the offenders and all members of the family have completed their therapy programs (approximately 1-2 years), "clarification" between victims and offender or family takes place. Earlier contact may reinforce maladaptive roles and dependency.

As the offender enters the final stages of treatment he is required to complete a follow-up program. During follow-up treatment, relapse prevention skills must be demonstrated over and over again before advancement to a less restrictive program. In many programs, follow-up treatment lasts 2 or more years—a compelling justification for longer probation periods being ordered by the court.

In short, the goals of treatment are to gain control over deviant arousal, maintain healthy functional relationships, and develop self-confidence in one's abilities to interact in the world. In addition, the client learns to accurately identify signs of remission and to take appropriate action, develops a support system which will assist him when problems arise, and learns to behave in a responsible and safe manner, thereby lessening the risk of re-offense to the community. Effective treatment has occurred when the offender has all the tools necessary to control his deviance, is aware of potential danger situations and how to avoid them. He must also develop and maintain healthy relationships and have a positive support system. This includes people who know of his deviance, understand what to do to avoid problems and encourage and support him in his lifelong treatment regime. There is no "cure" for sexual deviancy, only degrees of control.

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*"Research indicates that without the use of the polygraph and the plethysmograph, it is rare for an offender to admit to the chronicity of his problem, the number of victims, or the various types of deviant behavior."*

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Successful programs maintain high expectations for their clients and employ a multitude of rules. Typical rules, such as those listed at the end of this article, may aid the prosecutor in developing guidelines for probation. If violations are discovered, swift and effective intervention by the court, i.e., jail, is sometimes necessary and helpful to the client's treatment. Treatment of the offender is coercive. It is not necessary for the offender to enjoy treatment, like his therapist, or the treatment requirements.

Treaters are often caught in a dilemma when client resistance, break rules or are making no effort to. It frequently appears that once prosecution and sex has occurred, the treater is expected to deal singlehandedly with the unproductive or failing client. Failure on the part of the probation officer, prosecutor, or judge to take action or revoke probation when a therapist requests a very clear message to the offender. Such lack of confidence and support for the therapist by the correctional system only undermines treatment, but increases the risk to the community. Offenders are usually motivated to participate in treatment only as long as there is pressure from the

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*"We will only become more effective at eliminating this epidemic problem when the judicial system, correctional departments, offender and victim treaters set aside their distrust and prejudice and work together to control and manage sexual deviancy."*

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As they begin to feel the necessary discomfort treatment creates, the offender frequently attempts to drop out of treatment, therapists, or move to a different state. It is crucial that the system not allow such manipulation and, instead, hold the offender accountable for his behavior. All too often, offenders are allowed to slip through the cracks or seek easier, often ineffective treatment when expelled from a program due to their lack of compliance. Offenders should be mandated to successfully complete sex offender treatment to the satisfaction of the therapist and the community.

The community at large benefits greatly when the offender and his family successfully complete treatment. Treatment can, and very often does, result in healthier, happier, more productive members of society. We will only become more effective at eliminating this epidemic problem when the judicial system, correctional departments, and offender and victim treaters set aside their distrust and prejudice and work together to control and manage sexual deviancy.

### Basic Rules

The following is a partial list of the men's group rules by The Center for Behavioral Intervention:

- All group members are responsible for obtaining physiological evaluations every 3 months.
- Group members must be open and honest about deviant acts.
- Group members must inform all persons with whom they have a close relationship of their past and present participation in treatment and the goals and expectations of treatment.

- Group members may not have or involve themselves in any form of contact with their victim/victims. Contact is considered a violation of program and probation conditions, whether it is direct or indirect.
- Group members must immediately remove themselves from any situation where they are in close proximity to children of the same sex they molested.
- Group members may not date women with children of the same sex they have molested.
- Group members may not participate in activities where they will be in proximity of children, or settings where their deviancy is maintained, i.e., cruising or frequenting certain areas of town.
- Group members may not frequent fast food establishments, movies, churches, skating rinks, family swims, shopping malls or any other place during hours when children are likely to be present.
- Group members' employment may not involve activities where they might have contact with children.
- Group members' residence must not be in close proximity to schools, playgrounds or parks where children congregate.
- Group members must not abuse drugs or alcohol.
- If married or in a committed relationship, group members and partners are required to participate in and successfully complete couples' group therapy.
- Group members may not attend pornographic movies or shows, have any form of pornographic material in their residence, frequent nudist type areas, solicit prostitutes or involve themselves in "casual" sexual relationships.
- Members may not maintain relationships with persons who are negative support systems, such as a person who encourages members to break programs or probation rules.

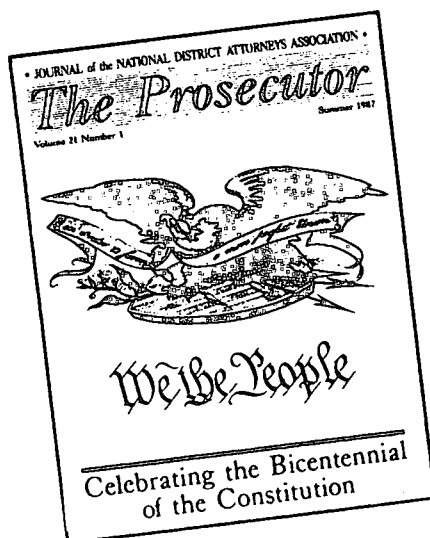
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#### WORKS CITED

- American Psychological Association's Council of Representatives. "Ethical Principles of Psychologists." *American Psychologist* 36 (1981): 633-638.
- Knopp, F.H., Jean Rosenberg, and William Stevenson. *Report on Nationwide Survey of Juvenile and Adult Sex Offender Treatment Programs and Providers*. Safer Society Press, Syracuse, N.Y., (1986).
- 

#### BIBLIOGRAPHY

- Abel, G., et al., "Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs," *J. of Interpersonal Violence* 2 (1987): 3-25.
- Crowdson, J., *By Silence Betrayed*. Boston: Little, Brown, 1988.
- Fillmore, A. and Coralie Jewell, "The Sex Offender Treatment Program: An Evaluative Overview." In *Sex, Gender and Care Work*. New York: St. Martin's Press, 1987.
- Greer, J.G. and Irving Stuart, *The Sexual Aggressor, Current Perspectives on Treatment*. New York: Van Nostrand Reinhold, 1983.
- Groth, N., *Men Who Rape*. New York: Plenum Press, 1979.
- Knopp, F., *Retraining Adult Sex Offenders: Methods and Models*. Vermont: Safer Society Press, 1984.
- Knopp, F., *The Youthful Sex Offender: The Rationale and Goals of Early Intervention*. Vermont: Safer Society Press, 1985.
- McGovern, K. and Steven Jensen, "Behavioral Group Treatment Methods for Sexual Disorders and Dysfunctions." In *Handbook of Behavioral Group Therapy*. New York: Plenum Press, 1985.
- Mildon, M., ed., *Preliminary Report From The National Task Force on Juvenile Sexual Offending*, 1988, *Juvenile and Family Court J.*, 39 (2) 1988.
- Salter, A., *Treating Child Sex Offenders and Victims, A Practical Guide*. California: Sage Publications, 1988.
- Weiner, B., "Legal Issues Raised in Treating Sex Offenders," *Behavioral Sciences and the Law* 3 (1985): 325-340.



### Call for Articles

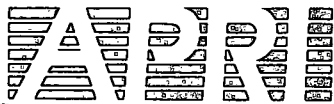
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# Supplemental Materials







National Center for the Prosecution of Child Abuse  
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American  
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## TITLES OF INTEREST FOR CHILD ABUSE PROFESSIONALS

### JOURNALS

Child Abuse and Neglect The International Journal published quarterly by Pergamon Press, Inc. Fairview Park, Elmsford, NY 10523. Annual membership dues for the International Society for Prevention of Child Abuse and Neglect of \$50 include a subscription. (This is a most respected journal dealing exclusively with child abuse issues.)

Journal of Interpersonal Violence published quarterly by Sage Periodicals, 2111 West Hillcrest Drive, Newbury Park, CA 91320. Annual subscription \$80.00 or included as a benefit of membership in The American Professional Society on the Abuse of Children, (312)702-9419. (Provides a forum for professionals and researchers working in child sex abuse, domestic violence, etc.)

### BOOKS

Investigation and Prosecution of Child Abuse, edited by Patricia Toth and Michael Whalen, The American Prosecutors Research Institute, Second Printing, 1989. (A must for anyone responsible for investigating or prosecuting child abuse.)

On Trial: America's Courts and Their Treatment of Sexually Abused Children, by Billie Wright Dziech & Judge Charles B. Schudson, Beacon Press, 1989. (Contains description of reforms designed to assist children in court.)

Just Before Dawn, by Jan Hindman. AlexAndria Associates, 911 S.W. 3rd Street, Ontario, Oregon, 1989. (Provides information on assessing trauma suffered by sexual abuse victims and determining treatment plans.)

Terrifying Love: Why Battered Women Kill and How Society Responds by Lenore Walker. Harper & Row, 1989. (Relevant to child abuse investigators because of the relationship between spouse battering and child abuse. Understanding the battering cycle makes it easier to see why some women side with the perpetrator, seek to have charges dropped or pressure their children to recant.)

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Suite 200  
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Color Atlas of Child Sexual Abuse, by David L. Chadwick, Carol Berkowitz et. al, Year Book Medical Publishers, 1989. (Contains data on medical evidence in sexual abuse of female children, including color photos and descriptions of normal findings, nonsexual and indeterminate findings and findings that commonly result from sexual abuse.)

The Child Molester: An Integrated Approach to Evaluation and Treatment, by George Barnard, A. Kenneth Fuller, Lynn Robbins and Theodore Shaw, Brunner/Mazel Publishers, 1989.

By Silence Betrayed, by John Crewdson, Little Brown, 1988. (Journalist's review of current issues in child abuse. Good general background and easy to read.)

The Sexual Trafficking in Children: An Investigation of the Child Sex Trade, by Daniel S. Campagna and Donald L. Poffenberger, Auburn House, 1988. (Examines child pornography, juvenile prostitution, procuring, pedophilia, sex tourism industry, indenturing and sex rings.)

Handbook of Sexual Abuse of Children, Lenore Walker, Editor, Springer Press, 1988. (Compilation of chapters by leading child abuse professionals. A good review of essential information.)

The Battle and the Backlash, by David Hechler, Lexington Book, 1988. (Balanced look by a journalist at the emergence of child abuse as a public issue and roots of the backlash currently being experienced in many jurisdictions.)

Accusations of Child Sexual Abuse, by Hollida Wakefield and Ralph Underwager, Charles C. Thomas, 1988. (Read very critically. Authors are frequent defense "experts.")

Treating Child Sex Offenders and Victims, by Anna Salter, Sage Publications, 1988. (Helpful in understanding the relationship between the courts and treatment professionals.)

When Your Child Has Been Molested: A Parent's Guide to Healing and Recovery, by Kathryn B. Hagans and Joyce Case, Lexington Books, 1988. (Good to recommend for parents of victims.)

Children's Eyewitness Memory, Edited by S.J. Ceci, M.P. Toglia and D.F. Ross, Springer-Verlag, 1987. (Literature exploring the reliability of children as witnesses.)

The Sexual Exploitation of Children, A Practical Guide to Assessment, Investigation, and Intervention, by Seth L. Goldstein, Elsevier, 1987. (Excellent guide for investigators; especially valuable discussion of expertise search warrants.)

Child Witness Law and Practice, by John E.B. Myers, Wiley Law Publications, 1987. (Valuable information on presenting children as witnesses written by a noted legal scholar.)

The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sexual Abuse, by Richard A. Gardner, Creative Therapeutics, 1987. (Sold through VOCAL - read critically. Contains "Sex Abuse Legitimacy Scale" sometimes used by defense experts.)

Sexual Abuse of Young Children, Evaluation and Treatment, by Kee MacFarlane, Jill Waterman, et. al., The Guilford Press, 1986. (Summary of useful information relevant to persons handling cases with preschool children.)

The Child Abuse Industry, by Mary Pride, Crossway Books, 1986. (Highly critical of child abuse professionals and intervention efforts; should be read carefully.)

The Politics of Child Abuse, by Paul and Shirley Eberle, Lyle Stuart, 1986. (Read very critically. Authors involved in publication of the LA Star, a soft-core pornographic tabloid and other questionable activities.)

Sourcebook on Child Sexual Abuse, by David Finkelhor, Sage Publications, Inc., 1986. (Summary of essential research.)

Unspeakable Acts, by Jill Hollingsworth, Congdon and Weed, 1986. (Non-fiction story of the Country Walk day care case).

A Question of Innocence, by Lawrence D. Speigel, Unicorn, 1986. (A psychologist asserts he was falsely charged with molesting his daughter - sold through VOCAL.)

When the Victim is a Child: Issues for Judges and Prosecutors, by Debra Whitcomb, Elizabeth Shapiro, and Lindsay Stellwagen, U.S. Dept. of Justice, National Institute of Justice, August, 1985. (currently being revised)

IMPACT: Sexual Exploitation Interventions for the Medical Professional, by Jan Hindman, McClure-Hindman Associates, 1985.

Inside the Criminal Mind, by Stanton Samenow, Times Books, 1984.

The Sexual Aggressor, by Joanne Greer and Irving Stuart, Van Nostrand Reinhold Co., 1983.

Child Pornography, by Shirley O'Brien, Kendall Hunt Publishing Company, 1983.

Handbook of Clinical Intervention in Child Sexual Abuse, by Suzanne Sgroi, Lexington, 1982.

Father-Daughter Incest, by Judith Lewis Herman, Harvard University Press, 1981.

Men Who Rape, The Psychology of the Offender, by Nicholas Groth, Plenum, 1979.

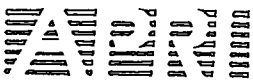
The Battered Woman, by Lenore Walker, Harper Colophon, 1979.



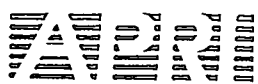
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Alexandria, Virginia 22314  
(703) 739-0321  
Patricia A. Toth, Director



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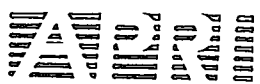




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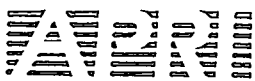
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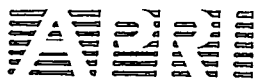
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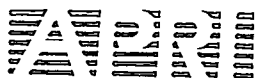


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