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The STATE of Ohio v. JOHNSON. *

* Reporter's Note: This case was dismissed on the state's motion on November 27, 1996. No appeal has been taken from the judgment of the court.

No. 96CR86.**STATE OF OHIO, COURT OF COMMON PLEAS, WASHINGTON COUNTY****83 Ohio Misc. 2d 26; 677 N.E.2d 1281****November 15, 1996, Decided****SUBSEQUENT HISTORY:** [***1]

* Reporter's Note: This case was dismissed on the state's motion on November 27, 1996. No appeal has been taken from the judgment of the court.

COUNSEL:

Michael Spahr, Washington County Prosecuting Attorney, and Kevin Rings, Assistant Prosecuting Attorney, for plaintiff.

Buell & Sipe Co., L.P.A., and Rolf Baumgartel, for defendant.

JUDGES: ED LANE, Judge.**OPINION BY:** ED LANE**OPINION:** [*26]

[**1281] ED LANE, Judge.

The above-styled action came on to the court for an oral and evidentiary hearing on November 8, 1996 on the motion in *limine* filed by the state of Ohio on July 28, 1996, and on the defendant Hubert Johnson's motion filed on October [*27] 23, 1996 to expand the scope of hearing on the state's motion in *limine*. The state seeks to have the court rule prior to the commencement of the jury trial in this action on the issue of whether the alleged victim's statements are admissible at trial. At the commencement of the hearing on November 8, 1996, both of the parties [**1282] stipulated that the child victim in this case is physically available to testify at trial but is unavailable as a matter of fact and a matter of law. Attorney Rings advised the court that he has been able to get no response from the child victim [***2] in this case to any of his questions. He stated that the child simply refuses to discuss anything with him or any other attorney or representative of the state. The child was age

three on the date of the alleged incident and is now age four.

The state urges this court to find that the statements of the child are admissible at trial pursuant to the dictates of Evid.R. 803. Evid.R. 803 provides for exceptions to the hearsay rule where the availability of a declarant is immaterial. Specifically, the state requests a ruling on Evid.R. 803(2), excited utterances, and 803(4), statements for purposes of medical diagnosis or treatment. Clearly, the alleged victim's statements are hearsay. The issue presently before the court is whether these statements come within one of the recognized exceptions to the hearsay rule.

Both attorney Rings and attorney Baumgartel made opening statements to the court. The opening statements set forth the following factual background. On April 30, 1996, three witnesses called the Marietta Police Department approximately forty-five minutes after seeing suspicious behavior between the defendant and the victim in a parked automobile on Second Street in Marietta [***3] in broad daylight. It is agreed that none of the three witnesses saw the defendant's pants down or his sexual organ, nor did they see the alleged victim place her mouth on a sexual organ. The Marietta Police Department contacted the Washington County Children's Services Agency. At approximately 6:30 p.m. on the same evening, a representative of the Washington County Children's Services Agency appeared at the alleged victim's home. At that time, no one at the victim's home knew of any of the allegations. Later that evening, Teri Wright of the Washington County Children's Services Agency interviewed the child at the Marietta Police Department.

At the hearing on November 8, 1996, Wright testified, as did Dr. Terence Campbell. The issues involving the reliability of the statements of young children in sexual abuse cases have been the subject of great attention in both the national media and the courts for many years. It has been made clear that children are

often very susceptible to suggestion and innuendo and that the interviewing process must be done very carefully and in accordance with established procedures. Ohio courts have developed specific guidelines for trial courts to use in [***4] these types of cases. The leading case in Ohio is the Ohio Supreme [28] Court's decision in *State v. Boston* (1989), 46 Ohio St. 3d 108, 545 N.E.2d 1220. There are no persons more deserving of the protection of the courts and the law than minor children; however, in a rush to judgment the rights of the accused cannot be forgotten. The weighing of these interests led the Ohio Supreme Court to hold in the *Boston*:

"Where a child [sexual assault victim] is either available or unavailable and the child declarant's out-of-court statements meet the rationale and policy of a firmly rooted exception to the hearsay rule, such as Evid.R. 803(4), and it is demonstrated that a good-faith effort has been made to produce the nontestifying declarant, *the out-of-court statements are admissible through a third person [as long as such statements have] 'indicia of reliability'* and factors such as the age of the child, the presence of corroborative physical evidence, the relationship of the victim to the accused, the child's relationship to the persons to whom the statements were made, and the terminology used by the child are to be used in determining reliability." (Emphasis added.) 46 Ohio [***5] St. 3d at 127, 545 N.E.2d at 1238.

The court further held that:

"Where [the child sexual abuse victim] is unavailable and there has been no good-faith effort to produce the child in court, and the out-of-court statement does not comply with any hearsay exception, and *there is no particularized guarantee of trustworthiness, then the child's out-of-court statement is not admissible.*" (Emphasis added.) *Id.*

The court also held:

"When [a child sexual abuse victim] is unavailable [to testify] and does not testify [**1283] either at a hearing or trial and *no exception to the hearsay rule is applicable and when 'indicia of reliability' are absent*, [in order] to satisfy the requirements of the Confrontation Clause the *out-of-court statements must have a particularized 'guarantee of trustworthiness.'* To show that there is a 'guarantee of trustworthiness,' the proponent of a child's out-of-court statements must prove that a good-faith effort has been made to produce the child as a witness, there must be specific evidence of abuse, either physical or emotional, and there must be no apparent motive to falsify the out-of-court statements." (Emphasis added in part.) *Id.*

The court [***6] further held:

"An out-of-court statement of an allegedly abused child of tender years including identification of a

perpetrator, made to a qualified expert in child abuse, is admissible if the *expert has independent evidence of physical or emotional abuse of the child*, the child has no apparent motive for fabricating the statement [*29] and the child has been found unavailable after a good-faith effort to produce the child in court." (Emphasis-added.) *Id.*

It is clear to this court that in order for this court, under the present state of Ohio law, to allow the child victim's statements to Teri Wright to be admissible, there must be a "particularized guarantee of trustworthiness." In order to have this guarantee of trustworthiness, there must be specific evidence of abuse, either physical or emotional, and there must be no motive to falsify the out-of-court statements. In the present case, this court must examine in great detail the statement that was given to Wright. This was the first interview of this child in regard to this case. The court has reviewed the videotape that was admitted into evidence. The court has also listened to the testimony of Dr. Campbell. Dr. Campbell has [***7] a resume that must be highly regarded. Dr. Campbell received his bachelor of science in Psychology and in Sociology from Western Michigan University in 1965. He graduated cum laude. In 1970, he received his Ph.D. from the University of Maryland in Human Development and Clinical Psychology. He has had extensive postdoctoral training. He is a member of many professional organizations. Dr. Campbell has written a book in the area of psychotherapy and has authored no fewer than twenty-six separate articles that have been published in various legal and professional psychological publications. He has also made thirty-four paper presentations dealing with areas of divorce and child custody evaluations, behavior modification, hypnosis, reducing parental conflicts, repressed memories, allegations of sexual abuse, psychotherapy with children of divorce, appropriate standards of care when working with client memory, cross-examining evaluations, etc. He has been qualified as an expert witness in the states of Alabama, Indiana, Maryland, Kentucky, New York, Ohio, and Virginia, and in the District of Columbia and the province of Ontario, Canada. His testimony has been cited in two appellate decisions [***8] in the state of Michigan, and has been cited by the Michigan Supreme Court on one occasion. Dr. Campbell has appeared in many national newspapers and on television programs.

Dr. Campbell testified that he has interviewed children under age five over one thousand times and interviewed them for sexual abuse allegations approximately two hundred times. Dr. Campbell, in great detail, explained the appropriate interview protocol. The appropriate and approved interview protocol was not used in the present case by Wright. According to Dr. Campbell, what was done in this case can best be described as an interrogation of the alleged victim and not an interview. A review of the tape confirms Dr.

Campbell's testimony. The alleged child victim in this case was never given the opportunity to tell or narrate what had happened on the date and time alleged in the indictment.

Dr. Campbell testified that the type of interview used in this case by Wright can destroy a child's memory. He noted that at every occasion that the child was [*30] asked a direct question she answered "no." He testified that the first interview of a child is the most important. The interview by Wright was clearly the first interview [***9] in this case. Wright did not ask open-ended questions. [**1284] She never used questions that could have been used to rule out sexual abuse.

It is apparent to this court that based upon the testimony of Dr. Campbell and upon a review of the tape of the interview, Wright interrogated the child with only one objective in mind. That objective was to obtain information that could lead only to an indictment of the defendant. Her objective was never to obtain the truth of the matters alleged. It was Dr. Campbell's professional opinion that the likelihood was "alarmingly high" that this alleged victim's testimony is not reliable because her memory has been destroyed by the nature of the interview conducted.

The interview was unacceptably long and did not take appropriate breaks. The interview of this three-year-old child lasted for over one hour in a closed room.

What is notable to this court is that the child repeatedly answered all questions in the negative and denied that anything had happened. Throughout the vast majority of the interview, the child denied that anything had occurred in the car with the defendant. Approximately halfway through the interview, the child said something bad had [***10] happened, and at the end of the interview the child made a gesture and pointed to Wright. Both of these incidents are described in detail later in this opinion.

Early in the interview, when given an anatomical doll and asked what "Hubie" did to her in the car, the child laid her head on the doll's shoulder. When asked repeatedly what she did in the car with Hubie, she answered "we took a nap." When asked repeatedly if bad things were done, the child repeatedly answered "no, no, no." When asked "Did Hubie do something to you?" the child replied "Nope." This interview was conducted in such a manner that it is obvious to the court that this child eventually realized that she was not going to be allowed- to see her grandmother/mother or to leave the room until she told Wright what Wright wanted to hear. Early in the interview, Wright stated to the child, "We are almost done." However, the interview continued for well over three-quarters of an hour after that point in time.

At various times Wright would say, "Just a few more

questions and we will get your mommy." That did not happen. When asked if she played games in the car with Hubie, the child replied "No." All through the interview, [***11] this child said "No." More than halfway through the interview, Wright asked the child if something good or bad happened in the car. The child answered "bad." Immediately thereafter when asked if the child could show her on the doll what "bad" had happened, the child replied "No." The child began asking for her "mommy." At that point, Wright left the room and promised the child that she would get her [*31] mommy and return. Instead, she came back into the room with cookies and gave the child a cookie. Dr. Campbell testified that the cookie was used to reward the child for saying that something bad had happened. Wright then stated that her mommy had gone to the bathroom and would come to the room when she was done. This did not happen. Immediately, Wright began asking if Hubie had done something bad in the car. Again, the child began answering, "No, no." At this point, Wright asked the child if Hubie was a good guy and the child said "Yes." She also asked her if her grandmother was good or bad and the child did not answer. On more than one occasion Wright asked the child if Hubie was a good guy and the child said "Yes." Wright asked the child if someone told her not to tell and she said "No." [***12] The child repeatedly refused on numerous occasions to say what Hubie had made her do in the car. At this point in time the child finally said that Hubie "pooped" and "peed" in the back of the car. When asked if Hubie touched her pee-pee or if she touched Hubie's pee-pee, she repeatedly replied "No." When asked if Hubie had his pants on the child replied "Yes." When asked if she touched Hubie's pee-pee or if Hubie asked her to touch his pee-pee, the child replied, "No."

Finally in frustration, Wright told the child that if she answered her questions she would go get her mommy. This promise had been made to the child before. The child began running to the door, pulling on the door, switching off and on the lights, and making every effort possible to get out of the interview [**1285] situation. It is apparent again to this court that this child realized that she would have to say what Wright wanted to hear in order to get out of the room and see her mommy. Again, when the lights are turned on and the child returns to Wright's lap, the child again says that Hubie did not make her put her mouth on his pee-pee. She answered that question in the negative repeatedly. When asked if anyone did that [***13] to her she said, "No."

The state wants the jury to view only the final few seconds of this tape or have Wright testify only to this part of the interview. This part of the interview begins with Wright asking the victim if she (the victim) is going to tell her (Wright) what happened in the car. The child answers "Nope." Wright next asks if the victim is going

to tell her mom what happened in the car. Again the response is "Nope." Wright then asks, "Who peed in your face?" The child answers, "The doggie." Wright asks, "Did Hubie pee in your face?" The answer is "Nope." Then Wright instructs (not asks) the child to show her (Wright), "what you did to Hubie's pee-pee." Wright then puts the doll in the child's face. The child then puts the doll's private part in her mouth and looks at Wright. Wright asks, "Who had you do that?" In answering, the child makes no verbal reply but the child takes the doll and repeatedly points to Wright with the doll [*32] indicating that Wright made her do this. Wright asks, "Is that what you did in the car?" There is no response from the child and the interview ends.

This interview has no circumstantial guarantee of trustworthiness. The interview is a denial [***14] of the allegations of the indictment by the alleged victim.

Neither the safety of child victims, the rights of the defendant, nor the interest of the court in the pursuit of justice is served by this type of interrogation technique. There has been no evidence presented to this court that Wright has the training to conduct this type of interview. Ohio courts have allowed defendants in sexual child abuse cases to present testimony on the proper protocol for interviewing child victims regarding their abuse. *State v. Gersin* (1996), 76 Ohio St. 3d 491, 668 N.E.2d 486. It is clear to this court that the interrogation tactics used in this case by the Washington County Children's Services Agency are so bad that this child's statements are not reliable. In fact, if this court were to allow the

statements, the court would have to allow the entire statement to go to the jury. The vast majority of the statement is a denial that anything happened in this case. Bribing a three-year-old child with cookies is not a valid interview procedure whether it is done intentionally or unintentionally. Continually restraining a three year old and promising her that she will be able to see her mother/grandmother [***15] once she gives the right answers are not valid interview techniques. The techniques used in this interrogation are not valid for any age level, especially for a child of such tender years.

For all of the reasons contained herein, the motion of the state is denied. Under Ohio law this court cannot allow the out-of-court statements of the child to be introduced into evidence. Such statements are clearly hearsay. There is no circumstantial guarantee of trustworthiness upon which any court can rely or should be allowed to rely under the present state of Ohio law.

Dr. Campbell was the only expert witness to testify. He has extensive experience in this field. His professional opinion was that there was a high probability that this child's real memory was destroyed by this interview. In fact, the child now refuses to communicate with the state's attorney.

Judgment accordingly.

APPENDIX A

TERENCE W. CAMPBELL, Ph.D.

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[*33]

[**1286] *Educational History:*

1965 B.S. (Cum Laude) Western [***16] Michigan University, Psychology and Sociology Majors

1970 Ph.D. University of Maryland, Human Development and Clinical Psychology

Dissertation Title: "Client perceptions of psychotherapists: An analogue study."

Licensure and Certifications: Fully Licensed Psychologist (State of Michigan # 01174), Licensed

Marriage and Family Counselor (State of Michigan # 05478). Approved and Listed: National Register of Health Service Providers in Psychology.

Post-Doctoral Training: (1) Structural-Strategic Family Therapy, Academic year 1984-1985. Division of Family Psychiatry, University of Rochester Medical School, Rochester, NY (supervised by Judith Landau-Stanton and M. Duncan Stanton). (2) Structural Family Therapy, Academic year 1985-1986. Family Therapy Associates of Ann Arbor, MI (supervised by Charles Fishman). (3) Strategic Family Therapy. June 1986. Michigan Family Institute, Royal Oak, MI (supervised by Jay Haley and Cloe' Madanes). (4) Supervision of Family Therapy. Academic year 1987-1988. Plymouth Family Services,

Plymouth, MI (supervised by Jamshed Morenas).

Professional Memberships: American Psychological Association, American Psychological [***17] Society, American Psychology-Law Society, American Association of Applied and Preventive Psychology, American Association for Marriage and Family Therapy, Michigan Association for Marriage and Family Therapy.

Honors: 1992--Fellow of the American Psychological Society in recognition of "a distinguished contribution to scientifically oriented psychology."

Advisory Positions: 1993--Scientific and Professional Advisory Board, False Memory Syndrome (FMS) Foundation, Philadelphia, PA.

1994--Scientific Advisory Board, National Association for Consumer Protection in Mental Health Practices.

Editorial Positions: 1993--Editorial Board, *Journal of Systemic Therapies* (Guilford Press, New York, NY).

1993--Editorial Consultant, *Issues in Child Abuse Accusations*. Institute for Psychological Therapies, Northfield, MN.

Public Service: 1994-1995: Board of Trustees, Michigan Children's Law Center.

[*34] Publications

Books:

1. *Beware The Talking Cure: Psychotherapy May Be Hazardous to Your Mental Health*. Social Issues Resources Series (SIRS), Upton Books, Boca Raton, FL., September 1994.

Scientific and Professional Articles:

1. [***18] Psychotherapy: A Neglected Area of Malpractice. *Experts-at-Law*, Sept--Oct, 1990.

2. Evaluating Psychotherapists. *Employee Assistance*. Dec. 1990.

Summarized and cited by *The Brown University Family Therapy Letter*, January 1991, 3, p. 3.

3. Child custody evaluations and appropriate standards of psychological practice. *Michigan Bar Journal*, March 1992, 71, 278-283.

4. The "highest level of psychological certainty:" Betraying standards of practice in forensic psychology. *American Journal of Forensic Psychology*, 1992, 10(2),

35-48.

Reprinted by: *The Continuing Legal Education Society of British Columbia*. Family Law Seminar, Vancouver, B.C., November 13 & 14, 1992.

5. Promoting play therapy: Marketing dream or empirical nightmare? *Issues [**1287] in Child Abuse Accusations*, 1992, 4, 111-117.

6. False allegations of sexual abuse and the persuasiveness of play therapy. *Issues in Child Abuse Accusations*, 1992, 4, 118-124.

7. Therapeutic relationships and iatrogenic outcomes: The blame-and-change maneuver in psychotherapy *Psychotherapy*, 1992, 29, 474-480.

8. Diagnosing incest: The problem of false positives and their consequences. [***19] *Issues in Child Abuse Accusations*, 1992, 4, 161-168.

Reprinted by: *SIRS Medical Science Series*, Article No. 19, 1993. Social Issues Resources Series, Boca Raton, Florida.

9. False allegations of sexual abuse and their apparent credibility. *American Journal of Forensic Psychology*, 1992, 10(4), 21-35.

Reprinted in: R.E. Geiselman (Ed.). *Intersections of Psychology, Psychiatry and Law: Readings in Forensic Science*. Balboa Island, CA: American College of Forensic Psychology Press, 1995.

10. Allegations of sexual abuse II: Case of a criminal defense. *American Journal of Forensic Psychology*, 1992, 10(4), 37-48.

[*35]

Reprinted in: R.E. Geiselman (Ed.). *Intersections of Psychology, Psychiatry and Law: Readings in Forensic Science*. Balboa Island, CA: American College of Forensic Psychology Press, 1995.

11. Psychotherapy with children of divorce: The pitfalls of triangulated relationships. *Psychotherapy*, 1992, 29, 646-652.

12. Mistaken eyewitness testimony not always a fabrication of events. *Michigan Lawyers Weekly* (1993 March 15), p. 2B.

13. The reliability and validity of Gardner's indicators of pedophilia. *Issues in Child Abuse [***20] Accusations*, 1993, 5, 170-182.

14. Reliable classification vs. idiosyncratic opinion: A

reply to Gardner. *Issues in Child Abuse Accusations*, 1993, 5, 192-199.

15. The *Daubert* decision and its effects on expert testimony. *Michigan Lawyers Weekly* (1993 September 13), p. 5B.

16. Parental conflicts between divorced spouses: Strategies for intervention. *Journal of Systemic Therapies*, 1993, 12 (# 4--Winter) 27-39.

Translated and reprinted by *Fokus Pa Familien*, 1994, 22(3), 159--169. Oslo, Norway.

17. Psychotherapy and malpractice exposure. *American Journal of Forensic Psychology*, 1994, 12(1), 5-41.

18. Challenging psychologists and psychiatrists as expert witnesses. *Michigan Bar Journal*, January 1994, 73, 68-72.

Reprinted by: *The Legal Advertiser*, Detroit, MI, 24 February 1994, p. 6A.

19. Wolf, T.L. & Campbell, T.W. Effective treatments for children in cases of extra-familial sexual abuse. *Issues in Child Abuse Accusations*, 1994, 6, 207-213.

20. Repressed memories and statutes of limitations: Examining the data and weighing the consequences. *American Journal of Forensic Psychiatry*, 1995, 16(2), 25-51.

21. [***21] Lorandos, D. & Campbell, T.W. Myths and realities of sexual abuse evaluation and diagnosis: A call for judicial guidelines. *Issues in Child Abuse Accusations*, 1995, 7, 1-18.

22. Creating repressed memories: A case example. *Issues in Child Abuse Accusations*, 1995, 7, 164-174.

23. Good news and bad news: The burden is ours. *Issues in Child Abuse Accusations*, 1995, 7, 209-214.

24. Systemic therapies and basic research. (In press). *Journal of Systemic Therapies*. [*36]

25. Indicators of child sexual abuse and their unreliability. (In press). *American Journal of Forensic Psychology*.

26. Expert psychological testimony: Separating the trash from the truth. In E. Pierson (Ed.), *Expert witness update*, New York: John Wiley (In press).

[**1288] *Paper Presentations*

1. October 1976: "Divorce and Child Custody Evaluations." Presented at the Annual Conference of the Michigan Psychological Association.

2. April 1980: "Current Practices in Behavior Modification and Hypnosis." Presented to the Psychiatric Residents and Staff of the Detroit Psychiatric Institute.

3. May 1991: "Reducing Parental Conflicts Between Divorced Spouses: Strategies for Intervention." [***22] Presented at the Annual Conference of the Children's Center, Detroit, MI.

4. October 1991: "Reducing Parental Conflicts Between Divorced Spouses: Strategies for Intervention." Presented at the Annual Fall Conference of the Michigan Psychological Assoc.

5. February 1992: "Challenging Psychologists and Psychiatrists as Expert Witnesses." Presented to the Washtenaw County (MI) Bar Association.

6. April 1993: "Child custody evaluations and appropriate standards of psychological practice." Presented to National Congress for Men and Children--Michigan Chapter.

7. April 1993: "Psychotherapy and Malpractice Exposure." Presented at the Ninth Annual Symposium of the American College of Forensic Psychology, Santa Fe, New Mexico.

8. September 1993: "Psychotherapy with Children of Divorce: What to Do and What to Avoid." Presented to the Lakeshore (MI) Psychological Association.

9. October 1993: "Child Sexual Abuse: Facts, Myths, and Unknowns." Presented at the 51st Annual Conference of the American Association for Marriage and Family Therapy, Anaheim, California.

10. October 1993: "Allegations of Sexual Abuse: Myths, Facts and Unknowns." Presented to the Macomb [***23] Co. (MI) Bar Association; Continuing Legal Education Seminar.

11. October 1993: "Perception vs. Reality of Child Sexual Abuse." Presented to the 11th Annual Convention of the National Congress for Men and-Children, Kansas City, Kansas.
[*37]

12. March 1994: "Allegations of Sexual Abuse: Myths, Facts and Unknowns." Presented to the Trial Lawyers Association of Wayne County (MI) Juvenile Court.

13. May 1994: "Repressed Memory: Therapy, Research, and the Law." Presented to the Lakeshore (MI)

Psychological Association.

14. May 1994: "Psychotherapists: Who Are They and What Are They Doing?" Presented to the Midwestern Conference of the False Memory Syndrome Foundation, East Lansing, Michigan.

15. September 1994: "Suing The Mental Health Professional." Presented to the Third International Conference of the National Child Abuse Defense and Resource Center. Co-sponsored by the Cuyahoga County Bar Association, Cleveland, Ohio.

16. September 1994: "Repressed Memory." Presented to the Third International Conference of the National Child Abuse Defense and Resource Center. Co-sponsored by the Cuyahoga County Bar Association, Cleveland, Ohio.

17. October 1994: "Psychotherapy [***24] and Memory: Myths and Facts." Presented to the Illinois chapter of the FMS Foundation.

18. December 1994: "Good News and Bad News: The Burden is Ours." Presented to the Conference on Memory and Reality: Reconciliation. Co-sponsored by the Johns Hopkins Medical Institutions and the FMS Foundation, Baltimore, Maryland.

19. January 1995: "Current Developments in Forensic Psychology." Presented to the Washtenaw County (MI) Bar Association.

20. June 1995: "Creating Repressed Memories: A Case Example." Presented to the Michigan PFA Conference--"FMS Outreach: Families Working Together." Ypsilanti, Michigan.

[**1289] 21. July 1995: "Psychotherapy Practice and Basic Research." Presented as part of an invited symposium--"Training for What: Soothsayer or Scientist?"--to the Seventh Annual Convention of the American Psychological Society, New York, NY.

22. October 1995: "Suing The Mental Health Professional." Presented to the Fourth International Conference of the National Child Abuse Defense and Resource Center. Co-sponsored by the Illinois Attorneys for Criminal Justice, Chicago, Illinois.

23. October 1995: "Indicators of Child Sexual Abuse." Presented to the Fourth International [***25] Conference of the National Child Abuse Defense and Resource Center. Co-sponsored by the Illinois Attorneys for Criminal Justice, Chicago, Illinois.

[*38]

24. November 1995: "Creating False Memories: A Case Example." Presented to the Conference of Virginians

Advocating Responsible Psychotherapy, Fairfax, Virginia.

25. March 1996: "Mental Gymnastics: Repressed Memory Syndrome." Presented to "A Seminar for the Insurance Professional," sponsored by Niewald, Waldeck & Brown, New York, NY.

26. March 1996: "Behavioral Indicators of Sexual Abuse and Their Unreliability." Presented at the Twelfth Annual Symposium of the American College of Forensic Psychology, New Orleans, Louisiana.

27. May 1996: "Appropriate Standards of Care in Working with Client Memory." One-day workshop presented in Philadelphia, PA, sponsored by the False Memory Syndrome Foundation, and approved for continuing education credits by the American Psychological Association, and the National Association of Social Work.

28. August 1996: "Cross-Examining Wisconsin's Chapter 980 Evaluations." Presented to Continuing Legal Education Seminar organized by Styler, Kostich, LeBell, Dobroski & McGuire, Milwaukee, [***26] Wisconsin.

29. August 1996: "False Allegations of Sexual Abuse and The False Memory Syndrome." Presented to the National Congress for Fathers and Children, Lenexa, Kansas.

30. August 1996: "Child Abuse: Identifying and Defending Against." Presented to the Continuing Legal Education and Continuing Education Seminar of the National Congress for Fathers and Children, Lenexa, Kansas.

31. September 1996--with D. Lorandos: "Ethical Issues for Attorneys and Mental Health Professionals." Presented to the Fifth International Conference of the National Child Abuse Defense and Resource Center, Las Vegas, Nevada.

32. September 1996--with D. Lorandos: "Behavioral Indicators of Child Sexual Abuse." Presented to the Fifth International Conference of the National Child Abuse Defense and Resource Center, Las Vegas, Nevada.

33. October 1996: "Review of Research on Memory and Repression." Presented as part of a Continuing Education Seminar--"Clinical Issues in Dealing With False Memories: Prevention and Family Reconciliation." Sponsored by the False Memory Syndrome Foundation, and approved for continuing education credits by the American Psychological Association, and the National [***27] Association of Social Work.

34. October 1996: "Bias, Prejudice, and the False Memory Syndrome." Presented to the Illinois Chapter of FMS Foundation. [*39]

Qualified as an Expert Witness in the following States and Jurisdictions:

Alabama: Baldwin County, Escambia County.

District of Columbia.

Dominion of Canada: Province of Ontario--Essex County.

Indiana: Hamilton County, LaPorte County.

Maryland: Baltimore County, Montgomery County, Prince Georges County.

Kentucky: Perry County.

[**1290] Michigan: Allegan County, Antrim County, Berrien County, Delta County, Macomb County, Midland County, Monroe County, Oakland County, Ottawa County, St. Clair County, Wayne County, Wexford County.

New York: Nassau County, Oneida County.

Ohio: Cuyahoga County, Franklin County, Fulton County, Lucas County, Suffolk County, Summit County.

Virginia: Loudoun County.

Appellate Court Citations

Child custody evaluations and appropriate standards of psychological practice. *Michigan Bar Journal*, March 1992, 71, 278-283.

Cited by the Michigan Supreme Court in *Fletcher v. Fletcher* (1994), 447 Mich. 871, 526 N.W.2d 889.

Professional History

1972-Present [***28] Independent Practice (part-time 1972-1980, full-time 1980-present) Sterling Heights, Michigan.

1995-Present Consulting Psychologist--Mapletree Counseling Centers, Livonia, Michigan.

1995-1996 Consulting Psychologist, Family Centers of America, Farmington Hills, Mich.

1972-1981 Co-Founder and Consulting Psychologist, Psycho-diagnostic and Family
1990-1994 Services Clinic, Macomb County Circuit

Court, Mt. Clemens, MI.

1989-1991 Consulting Psychologist, Lifeline, Inc. (Doctor's Hospital of Detroit).

1972-1980 Assistant Professor of Psychology--Mercy College, Detroit, Michigan.

[*40]

1970-1972 Staff Psychologist and Chief Psychologist, Maryland Penitentiary, Baltimore, Maryland.

1969-1972 Adjunct Assistant Professor, Loyola College of Baltimore.

1968-1969 Clinical Psychology Intern, Clinical Branch of NIMH, St. Elizabeth's Hospital, Washington, DC (Approved by the American Psychological Assoc.).

Media Coverage and Media Appearances

Insight on the News (1994 August 29) "Couches, Quacks, and The Therapy Backlash" by C.C. Sileo.

Grand Rapids Press (1994 December 4). "Misty Memory," by Pat Shellenbarger.

Newsday--Long Island, New York [***29] (1994 December 7). "Issues cloud child sex abuse cases," by Maureen Fan.

Baltimore Sun (1995 April 30). "Legality of Memories a Key in Sex-abuse Suit," by Robert A. Erlandson and Joe Nawrozki.

WKBD Television--Detroit, MI (1995 June 11) "Repressed memories: Real or Imagined?"

WJBK Television-Detroit, MI (1995 August 22) "Repressed memories: Are they real?"

Health Confidential (October 1995). "How not to let Oprah, Sally Jessy, and Geraldo drive you crazy."

OHIO v. JOHNSON

CHRONOLOGY OF EVENTS

07-30-96: [The child] (DOB 7-2-92) is interviewed regarding allegations of sexual abuse directed at the defendant in this matter, Hubert Johnson. This interview took a total of approximately 1 hour and 12 minutes. Events in the interview will be identified by the approximate time they occurred.

[**1291] 10:55-Up to this point in the interview, nothing of any significance had yet transpired. At this juncture, however, the interviewer asked [the child], "Anyone you know have a moustache?"

This was a leading and suggestive question, directing [the child's] attention to the defendant.

22:40-24:00--At this point in the interview, [the child] takes the panties [***30] off of a child doll with which she was playing. She then proceeds to bite the vaginal area of the doll. At that point, the interviewer directed a series of questions at [the child], asking her: (1) "Who did that to your pee-pee?", (2) Who does that to your [*41] pee-pee?, (3) Is it somebody I know who does that to your pee-pee?, and (4) Did it hurt?"

These questions were exceedingly suggestive and leading because they assume that [the child] has been sexually abused. *Repeatedly directing such questions to [the child] left her feeling obligated to answer them in a manner that would obtain the interviewer's approval.*

25:00--At this point, the interviewer asks [the child]: "Can you show me what Hubie did in the car that wasn't very nice?"

This question is so leading and suggestive that it could have motivated [the child] to revise and ultimately distort her memory in a manner consistent with what the interviewer was suggesting.

26:00-29:00--At this juncture in the interview, the interviewer directs more questions at [the child] that are leading and suggestive: (1) "If you won't tell me what happened in the car, will you tell grandmother, (2) Remember when [***31] you and Hubie were in the car, and (3) Was Hubie sitting or standing?"

These questions are also leading and suggestive because the interviewer is persistently directing [the child's] attention to a particular topic--Hubie and what supposedly happened in the car.

31:00-32:00--[The child] claps the hands of an adult doll together in response to the prompting of the interviewer. The interviewer then asks: "Did anybody ever do something to your pee-pee?" [The child] replied, "No." The interviewer then pointed to the doll's penis, asking: "What else do you do with that?"

It is important to note that when asked directly--"Did anybody do anything to your pee-pee?"--[The child] clearly answers "No."

33:15-34:45--[The child] puts her finger in the doll's anus, and the interviewer asked: "Anybody do that to you?" [The child] replied, "No." The interviewer then asked again, "Somebody do that to you?" [The child] again replied, "No."

When asked directly--on two occasions--if anybody ever put anything in her anus, [the child] again clearly replied, "No."

35:00-37:30--The interviewer asked: "Do you like sitting in the car with Hubie?" and [***32] "What did you do while you were waiting in the car?" [The child] replied: "The cops came." The interviewer then asked: "What were you and Hubie doing?" [The child] replied: "Nothing."

AT THIS POINT IN THE INTERVIEW, THE INTERVIEWER TOOK A THREE-MINUTE BREAK BEFORE CONTINUING WITH [THE CHILD].

1:00--At this point in the interview, after the break, the interviewer told [the child], "Talk about the car, then we go get mommy." [*42]

2:06-2:55--At this juncture, the interviewer took off her watch saying to [the child], "So you can see what time it is." [The child] then put the watch back on the interviewer's wrist, and the interviewer said, "Let's talk about the car, and then you can play with my watch."

The interviewer is suggestively priming [the child] indicating what she wants her to talk about.

3:17-4:00--As [the child] stood on a chair in the interview room, the interviewer said: "You have to talk to me." [The child] replied, "No, no." The interviewer responded, "Talk to me and we'll go get mommy." The interviewer then said: "A few more questions and we'll go get mommy." Then the interviewer asked: "What were you and Hubie doing?" [The child] [***33] did not respond to this question.

[**1292] 7:00--At this point the interviewer asks [the child]: "Who told you not to tell?" [The child] did not respond.

8:00--The interviewer then asks, "Did Hubie do something to you?" [The child] answers, "No."

9:00-9:40: The interviewer then asks, "Did you and Hubie play games in the car, what happened in the car, something good or something bad?" [The child] answered, "Something bad."

10:23-11:25--The interviewer briefly exits the interview room, and then returns with a package of cookies for [the child].

12:00-13:00--The interviewer then says to [the child], "Remember you were going to tell me and Mommy what Hubie did to you." The interviewer then asked a question that could not be clearly heard about "... in the car?" In

response, [the child] shook her head no. The interviewer then asked: (1) "What about Hubie ... Hubie bad guy or good guy? (2) Can you show me what you and Hubie did in the car?" Once again, [the child] did not respond to these questions.

The statement indicating, "Remember you were going to tell me and Mommy what Hubie did to you," is so leading and suggestive that it amounts--to coercion. [***34]

The question assumes--without any basis in the interview for doing so--that "Hubie" did something to [the child].

15:05--The interviewer then asked: "... good thing or bad thing?" [The child] answered, "Bad thing."

[The child's] response likely reflected what the interviewer previously suggested--Hubie did something to her.

16:15--The interviewer asked, "What-bad thing did Hubie make you do?" [The child] answered, "Hubie pooped in the car ... back of the car."

[*43]

[The child's] response is indicative of a child who is trying to satisfy an interviewer's expectations. As a 4-year-old child the only bad thing she can imagine is that Hubie "pooped" in the back of the car.

17:00-17:30--The interviewer then asked: "What else did he do? Did he play with his pee-pee? Did you touch Hubie's pee-pee? Did he touch you with his pee-pee?" In response to this series of questions, [the child] replied, "No, no, no."

Despite the emphasis with which [the child] answers these questions, the interviewer would not accept her answers as legitimate.

19:37-20:00--The interviewer then asked [the child], "What did he do with his pee-pee, did you touch [***35] it?" [The child] responded, "No, no." The interviewer then asked, "Did you touch his pee-pee with your eyes, nose, fingers, mouth?" [The child] replied, "No, no, no."

Again the interviewer is disinclined to accept [the child's] answers; and as a result, the interviewer continued to direct questions at [the child] designed only to find evidence consistent with sexual abuse. The interviewer did not ask questions that could have ruled out the hypothesis of sexual abuse.

22:00--The interviewer asked [the child], "When your head was in his lap, show me what your head was doing,

and then we'll go find mommy." The interviewer repeated this statement at least *a total of three times*.

24:00--The interviewer said to [the child], "Remember when you put your mouth on the doll's penis, did someone do that to you?", and "Who put their mouth on your pee-pee?"

25:40--At this point [the child] goes to the door of the interview room indicating that she wants to leave.

*Given [the child's] demonstrated desire to terminate this interview, the interviewer should have concluded it herself. Prolonging the interview beyond this point merely invited unreliable [***36] information as a result of [the child's] fatigue level.*

27:00-27:30--At this point in the interview, [the child] begins to pull on the penis of the male doll. The interviewer responds by saying, "Tell me what happened?" and "Who did that ... pants fastened or unfastened?"

29:00-31:00--At this point in the interview, the interviewer asks [the child] a series of questions while she is in the corner of the room: (1) "Did somebody pee in your face? [**1293] " (2) "Did somebody pee on your face in the car?" (3) "Who peed on your face in the car?", (4) "Are you going to tell me?" and (5) "Somebody told me you were in the car with Hubie."

[*44]

This interview is now deteriorating from leading and suggestive to persistently coercive. The sequence of questions rapidly directed at [the child] reflected a demanding quality. In other words the interviewer was demanding that [the child] answer her questions.

32:55-33:10--[The child] begins to leave the interview room. The interviewer says, "Help me put the clothes on the baby, then we can go." [The child] initially responds by turning the lights off and on in the interview room.

34:00-35:20--[The child] then pushes [***37] her face repeatedly into the groin area of one of the dolls. The interviewer responds by asking, "Who made you do that, did Hubie make you do that?" [The child] does not respond with any clear answer and the tape ends.

Attributing any significance to [the child's] behavior at this point in the interview is ill-advised. Ultimately, 10 different psychologists could interpret her behavior in 10 different ways. In other words, [the child's] behavior is open to all kinds of suggestive interpretations.