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4 Attorney for Defendant

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

6 THE PEOPLE OF THE STATE OF)	Case No.
7 CALIFORNIA,)	
)	MOTION IN LIMINE:
8 Plaintiff,)	EXCLUDING EVIDENCE OF
)	ALLEGED VICTIM'S STATUS
9 AS)	
10 vs.)	"IN THERAPY" OR AS A
)	"DEPENDENT CHILD"
)	
)	Date:
12 Defendant.)	Time:
_____)	Dept:

13
14 The defense moves for a protective order that:

15 1. The prosecution cannot introduce evidence that the
16 alleged victim is receiving therapy for child molestation.

17 2. The prosecution cannot introduce evidence that the
18 alleged victim is in need of psychological counseling for child
19 molest.

20 3. The prosecution cannot introduce evidence that the
21 alleged victim is a Dependent Child of the Juvenile Court under
22 Welf. & I. Code Section 300.]
23

24
25 **ARGUMENT**

1 I.
2

3 THERAPY AND DEPENDENCY STATUS ARE IRRELEVANT.
4

5 California Evidence Benchbook, 2d Edition:

6 "Section 21.1 Admissibility of Relevant Evidence;

7 Inadmissibility of Irrelevant Evidence:
8

9 RULE (1): No evidence is admissible unless it is
10 relevant evidence.
11

12 RULE (2): All relevant evidence is admissible unless
13 it is made inadmissible by some constitutional or
14 statutory provision or by a judicial rule of exclusion
15 that is established in the interests of justice by the
16 California Supreme Court by virtue of its inherent
17 supervisory power over the trial courts of the state.
18

19 AUTHORITY: Evid. C. Section 210, 350-351."
20

21 "Section 21.2 Relevancy of Evidence Offered on

22 Undisputed Fact:
23
24
25

1 RULE: Evidence that is offered to prove a fact that
2 is not disputed is irrelevant evidence and, as such,
3 is inadmissible.

4
5 AUTHORITY: Evid. C. Section 210, 350."

6
7 "Section 21.3 General Test for Determining Whether
8 Proffered Evidence is Relevant to an Issue in the
9 Action:

10
11 RULE (1): Proffered evidence is relevant to prove or
12 disprove a disputed fact in an action if:

13 (a) The disputed fact is either an intermediate
14 fact or an ultimate fact that is of consequence to
15 determination of the action; and

16 (b) Such evidence, in the light of logic, reason,
17 experience, or common sense, has, by reasonable
18 inference, a tendency to prove or disprove such
19 disputed fact.

20
21 RULE (2): Proffered evidence is not relevant if it
22 has a tendency to prove or disprove a disputed
23 intermediate fact or an ultimate fact of consequence
24 to determination of the action only by resort to
25

1 inference or deductions from such evidence that are
2 speculative or conjectural in nature.

3
4 AUTHORITY: Evid. C. Section 210."

5
6 Also see **People vs. Scheid** (1997) 16 Cal.4th 1 [only
7 relevant evidence is admissible]; **People vs. Crittenden** (1994) 9
8 Cal.4th 83, 132 [a trial court has no discretion to admit
9 irrelevant evidence]; **People vs. De La Plane** (1979) 88
10 Cal.App.3d 223, 242 [evidence which only produces speculative
11 inferences is irrelevant evidence].)

12
13 **II.**

14
15 **OPINION TESTIMONY THAT ALLEGED VICTIM WAS IN FACT**
16 **SEXUALLY MOLESTED IS INADMISSIBLE.**

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18 Expert opinion testimony that an alleged victim suffers
19 from rape trauma syndrome or child molest syndrome is
20 inadmissible to prove that any rape or molest/abuse occurred.
21 (**People vs. Bledsoe** (1984) 36 Cal.3d 236, 238; **People vs. Roscoe**
22 (1985) 168 Cal.App. 1093, 1099-1100.)

23
24 **III**

25 **THE ADMISSION OF EVIDENCE OF THERAPY AND DEPENDENCY**
STATUS VIOLATES EVIDENCE CODE SECTION 352.

1
2 Evidence Code section 352 requires the trial court to
3 balance any asserted probative value of a particular piece of
4 evidence against its prejudice and exclude evidence the
5 prejudice of which outweighs its probative value or has a
6 substantial danger of confusing the issues or misleading the
7 jury. In **People vs. Harris** (1998) 60 Cal.App.4th 727, the
8 reviewing court restated the meaning of "prejudice" within the
9 context of Evidence Code section 352:

10
11 "The prejudice which [section 352] is
12 designed to avoid is not the prejudice or
13 damage to a defense that naturally flows from
14 relevant, highly probative evidence.' [Citations.]
15 'Rather, the statute uses the word in its
16 etymological sense of "prejudging" a person or
17 cause on the basis of extraneous factors.'
18 [Citation omitted.]" (**Id.**, at p. 737.)

19
20 The fact that the alleged victim may be in therapy or a
21 dependent child would only serve to create undue sympathy for
22 **him/her** at the defendant's expense and would confuse the issues.
23 Such evidence must therefore be excluded.

Attorney for Defendant

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