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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7 THE PEOPLE OF THE STATE OF) Case No.
8 CALIFORNIA,)
9 Plaintiff,) MOTION IN LIMINE:
10 vs.) EXCLUDING TESTIMONY
11) REGARDING USE OF
12 Defendant.) ANATOMICAL DOLLS
13)
14) Date:
15) Time:
16) Dept:

17 The defense moves for a protective order that:

18 1. The prosecution not be permitted to introduce expert
19 opinion testimony based upon observation of the child playing
20 with dolls that the child is a victim of molest.

21 2. The prosecution not be permitted to introduce evidence
22 of play with dolls even without expert testimony interpreting
23 said play.

24 I

25 **EXPERT TESTIMONY THAT A CHILD IS A VICTIM
OF CHILD MOLEST, BASED UPON OBSERVATIONS
OF THE CHILD'S INTERACTION WITH ANATOMICAL DOLLS, IS
INADMISSIBLE.**

1
2 In the case of **In re Amber B.** (1987) 191 CA3d 682, 236
3 Cal.Rptr. 623, the court held that the Kelly-Frye test applied
4 to the psychological technique of detecting child sexual abuse
5 by observing the child's behavior with anatomically correct
6 dolls and analyzing the child's report of abuse. The court
7 ruled that such a technique failed the Kelly-Frye test of
8 reliability and its wrongful admission into evidence compelled
9 reversal:

10
11 "We conclude that the practice of detecting child
12 sexual abuse by (1) observing a child's behavior with
13 anatomically correct dolls, and (2) analyzing the
14 child's reports of abuse, is what Shirley
15 characterizes as 'a new scientific process operating
16 on purely psychological evidence' (31 Cal.3d at p. 53,
17 181 Cal.Rptr. 243, 723 P.2d 1354) and is subject to
18 the Kelly-Frye test. The specific causes of age-
19 inappropriate child sexual behavior, and indeed the
20 entire field of child sexuality since the theories of
21 Sigmund Freud, are beyond the scope of critical
22 analysis by the average lay person. Thus a
23 psychologist's examination and analysis employed the
24 technique used by Dr. Raming may be surrounded by an
25 'aura of infallibility', and a trier of fact would
tend to ascribe `an ordinatedly high degree of

1 certainty' to the technique. (**People vs. McDonald**,
2 *supra*, 37 Cal.3d at p. 372, 208 Cal.Rptr. 236, 690
3 P.2d 709.) Unlike with expert testimony where a
4 witness gives a personal opinion, triers of fact are
5 in no position to temper their acceptance of the
6 psychological evidence 'with a healthy skepticism born
7 on their knowledge that all human beings are
8 fallible.' (Ibid.)

9
10 The trial court therefore erred when it failed to
11 require a showing of general acceptance in the
12 relevant scientific community in accordance with
13 Kelly-Frye." (Id., at p. 692.)

14
15 (See also **United States vs. Gillespie** (9th Cir. 1988) 852 F.2d
16 475,

17
18 481 [adopting the reasoning of **Amber B.**, supra, and finding
19
20 reversible error in the wrongful admission of expert opinion
21
22 testimony based on play therapy with anatomically correct
23 dolls];

1 **In re Christine C.** (1987) 191 Cal.App.3d 676, 680, 236 Cal.Rptr.
2 630 [error in allowing expert testimony regarding minor's
3 behavior with anatomically correct dolls.)
4

5 **II**

6 **ADMISSION OF PLAY WITH ANATOMICAL DOLLS**
7 **WITHOUT EXPERT OPINION IS INADMISSIBLE.**
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9 In **In re Christie D.** (1988) 206 CA3d 469, 253 Cal.Rptr.
10 619, the court held evidence of an alleged child victim's
11 behavior with anatomical dolls without the use of expert opinion
12 equally inadmissible because the effect was to make the trier of
13 fact the expert on an unproven technique. In other words, the
14 deletion of the expert's opinion does not cure the problem noted
15 in **In re Amber B** (1987) 191 CA3d 682, 236 Cal.Rptr. 623 and **In**
16 **re Christine C.** (1987) 191 CA3d 676, 236 Cal.Rptr. 630.
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19 **III**

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21 **THERE IS NO CONSENSUS THAT PARTICULARIZED DOLL PLAY IS AN**
22 **INDICATOR OF ABUSE.**
23

24 The use of anatomical dolls as an indicator of abuse is
25 without scientific merit. Anatomical dolls are likely to elicit

1 sexual reenactment in older children even if they have not been
2 abused. (Everson, M. & Boat, B. (1990), "Sexual doll play among
3 young children: Implication for the use of anatomical dolls in
4 sexual abuse allegations," Journal of American Academy of Child
5 and Adolescent Psychiatry, 29, 736-742.)

6 Within the scientific community the use of anatomical dolls
7 is questioned because they are sensitive but lack specificity of
8 the information obtained. Specificity is the ability to
9 identify persons who do not become abusive, so called true
10 negatives. Sensitivity is the ability of the information to
11 identify people who actually become abusive, so called true
12 positive. (Schneider, C., Helfer, R., & Hoffmeister, J. (1980)
13 Screening for the potential to abuse: a review. In C. Kempe &
14 R. Helfer (Eds.), The Battered Child, 3d Ed. (pp.420-430).
15 Chicago: University of Chicago Press.

17 **CONCLUSION**

18 It is impermissible to admit evidence of children's play
19 with anatomical dolls, whether or not accompanied by expert
20 opinion, because the practice does not comply with the Kelly-
21 Frye rule of reliability.

23 Dated:

24 Respectfully submitted,
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