

1 **CLANCY LITIGATION GROUP**
Patrick E. Clancy, SBN 60805
2 Dr. Demosthenes Lorandos, SBN 177644
1600 S. Main St., Suite 185
3 Walnut Creek, CA 94596
Tel: (925) 256-4600
4 eFax: (888) 802-5089

5 Attorneys for Defendant

6
7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

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

15 The defense moves for a protective order that:

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

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

22 I

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

26 In the case of **In re Amber B.** (1987) 191 CA3d 682, 236
27 Cal.Rptr. 623, the court held that the Kelly-Frye test applied to
28 the psychological technique of detecting child sexual abuse by

1 observing the child's behavior with anatomically correct dolls
2 and analyzing the child's report of abuse. The court ruled that
3 such a technique failed the Kelly-Frye test of reliability and
4 its wrongful admission into evidence compelled reversal:

5 "We conclude that the practice of detecting child
6 sexual abuse by (1) observing a child's behavior with
7 anatomically correct dolls, and (2) analyzing the
8 child's reports of abuse, is what Shirley characterizes
9 as 'a new scientific process operating on purely
10 psychological evidence' (31 Cal.3d at p. 53, 181
11 Cal.Rptr. 243, 723 P.2d 1354) and is subject to the
12 Kelly-Frye test. The specific causes of age-
13 inappropriate child sexual behavior, and indeed the
14 entire field of child sexuality since the theories of
15 Sigmund Freud, are beyond the scope of critical
16 analysis by the average lay person. Thus a
17 psychologist's examination and analysis employed the
18 technique used by Dr. Raming may be surrounded by an
19 'aura of infallibility', and a trier of fact would tend
20 to ascribe 'an ordinately high degree of certainty' to
21 the technique. (**People vs. McDonald**, supra, 37 Cal.3d
22 at p. 372, 208 Cal.Rptr. 236, 690 P.2d 709.) Unlike
23 with expert testimony where a witness gives a personal
24 opinion, triers of fact are in no position to temper
25 their acceptance of the psychological evidence 'with a
26 healthy skepticism born on their knowledge that all
27 human beings are fallible.' (Ibid.)

17 The trial court therefore erred when it failed to
18 require a showing of general acceptance in the relevant
19 scientific community in accordance with Kelly-Frye."
20 (Id., at p. 692.)

19 (See also **United States vs. Gillespie** (9th Cir. 1988) 852 F.2d
20 475,

21 481 [adopting the reasoning of **Amber B.**, supra, and finding
22 reversible error in the wrongful admission of expert opinion
23 testimony based on play therapy with anatomically correct dolls];
24 **In re Christine C.** (1987) 191 Cal.App.3d 676, 680, 236 Cal.Rptr.
25 630 [error in allowing expert testimony regarding minor's
26 behavior with anatomically correct dolls.)

27

28

1 **ADMISSION OF PLAY WITH ANATOMICAL DOLLS**
2 **WITHOUT EXPERT OPINION IS INADMISSIBLE.**

3 In **In re Christie D.** (1988) 206 CA3d 469, 253 Cal.Rptr. 619,
4 the court held evidence of an alleged child victim's behavior
5 with anatomical dolls without the use of expert opinion equally
6 inadmissible because the effect was to make the trier of fact the
7 expert on an unproven technique. In other words, the deletion of
8 the expert's opinion does not cure the problem noted in **In re**
9 **Amber B** (1987) 191 CA3d 682, 236 Cal.Rptr. 623 and **In re**
10 **Christine C.** (1987) 191 CA3d 676, 236 Cal.Rptr. 630.

11 **III**

12 **THERE IS NO CONSENSUS THAT PARTICULARIZED DOLL PLAY IS AN**
13 **INDICATOR OF ABUSE.**

14 The use of anatomical dolls as an indicator of abuse is
15 without scientific merit. Anatomical dolls are likely to elicit
16 sexual reenactment in older children even if they have not been
17 abused. (Everson, M. & Boat, B. (1990), "Sexual doll play among
18 young children: Implication for the use of anatomical dolls in
19 sexual abuse allegations," Journal of American Academy of Child
20 and Adolescent Psychiatry, 29, 736-742.)

21 Within the scientific community the use of anatomical dolls
22 is questioned because they are sensitive but lack specificity of
23 the information obtained. Specificity is the ability to identify
24 persons who do not become abusive, so called true negatives.
25 Sensitivity is the ability of the information to identify people
26 who actually become abusive, so called true positive.
27 (Schneider, C., Helfer, R., & Hoffmeister, J. (1980) Screening
28 for the potential to abuse: a review. In C. Kempe & R. Helfer

1 (Eds.), The Battered Child, 3d Ed. (pp.420-430). Chicago:
2 University of Chicago Press.

3 **CONCLUSION**

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

8
9 Dated:

10 Respectfully submitted,

11
12 _____
13 Attorney for Defendant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28