

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 SUPERIOR COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_  
7

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

14  
15 The defense moves for a protective order that:

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

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

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

24 **ARGUMENT**

25 **I.**

26 **THERAPY AND DEPENDENCY STATUS ARE IRRELEVANT.**

27 California Evidence Benchbook, 2d Edition:  
28 "Section 21.1 Admissibility of Relevant Evidence;

1 Inadmissibility of Irrelevant Evidence:

2 RULE (1): No evidence is admissible unless it is  
3 relevant evidence.

4 RULE (2): All relevant evidence is admissible unless  
5 it is made inadmissible by some constitutional or  
6 statutory provision or by a judicial rule of exclusion  
7 that is established in the interests of justice by the  
8 California Supreme Court by virtue of its inherent  
9 supervisory power over the trial courts of the state.

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

11 "Section 21.2 Relevancy of Evidence Offered on  
12 Undisputed Fact:

13 RULE: Evidence that is offered to prove a fact that is  
14 not disputed is irrelevant evidence and, as such, is  
15 inadmissible.

16 AUTHORITY: Evid. C. Section 210, 350."

17 "Section 21.3 General Test for Determining Whether  
18 Proffered Evidence is Relevant to an Issue in the  
19 Action:

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

22 (a) The disputed fact is either an intermediate  
23 fact or an ultimate fact that is of consequence to  
24 determination of the action; and

25 (b) Such evidence, in the light of logic, reason,  
26 experience, or common sense, has, by reasonable  
27 inference, a tendency to prove or disprove such  
28 disputed fact.

29 RULE (2): Proffered evidence is not relevant if it has  
30 a tendency to prove or disprove a disputed intermediate  
31 fact or an ultimate fact of consequence to  
32 determination of the action only by resort to inference  
33 or deductions from such evidence that are speculative  
34 or conjectural in nature.

35 AUTHORITY: Evid. C. Section 210."

36 Also see **People vs. Scheid** (1997) 16 Cal.4th 1 [only  
37 relevant evidence is admissible]; **People vs. Crittenden** (1994) 9  
38 Cal.4th 83, 132 [a trial court has no discretion to admit  
39 irrelevant evidence]; **People vs. De La Plane** (1979) 88 Cal.App.3d  
40 223, 242 [evidence which only produces speculative inferences is

1 irrelevant evidence].)

2 II.

3 **OPINION TESTIMONY THAT ALLEGED VICTIM WAS IN FACT**  
4 **SEXUALLY MOLESTED IS INADMISSIBLE.**

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

10 III

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

13 Evidence Code section 352 requires the trial court to  
14 balance any asserted probative value of a particular piece of  
15 evidence against its prejudice and exclude evidence the prejudice  
16 of which outweighs its probative value or has a substantial  
17 danger of confusing the issues or misleading the jury. In **People**  
18 **vs. Harris** (1998) 60 Cal.App.4th 727, the reviewing court  
19 restated the meaning of "prejudice" within the context of  
20 Evidence Code section 352:

21 ""The prejudice which [section 352] is  
22 designed to avoid is not the prejudice or  
23 damage to a defense that naturally flows from  
24 relevant, highly probative evidence.' [Citations.]  
25 'Rather, the statute uses the word in its  
26 etymological sense of "prejudging" a person or  
27 cause on the basis of extraneous factors.'" [Citation omitted.]" (**Id.**, at p. 737.)

28 The fact that the alleged victim may be in therapy or a dependent  
child would only serve to create undue sympathy for him/her at  
the defendant's expense and would confuse the issues. Such

1 evidence must therefore be excluded.

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### III

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#### JUVENILE COURT STANDARD OF EVIDENCE

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At the jurisdictional hearing the standard of proof is

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preponderance of the evidence. Welf. & I. Code Sec. 355,

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Cal.Rules of Ct 1365(c).

9

#### CONCLUSION

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The issue before the court is whether or not a sexual molest

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occurred. It is not relevant that the alleged victim received

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therapy for sexual molestation after the alleged molest or that

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he/she is the subject of child dependency proceedings, which

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utilize a lesser standard of proof than a criminal case.

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Further, the fact that the child is receiving therapy for sexual

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molestation is evidence that his therapist has formed the opinion

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that the child was in fact molested, which opinion is

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inadmissible.

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Assuming that the victim's status of being "in therapy" or

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being a "dependent child" of the Juvenile Court has some arguable

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relevance, any such probative value is substantially outweighed

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by its prejudicial effect and thus it must be excluded by virtue

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of Evidence Code section 352.

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Dated:

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Respectfully submitted,

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Attorney for Defendant