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IN THE SUPREME COURT OF FLORIDA

PAULA JEAN HEARNDON,	:	
Petitioner	:	*Case No. 92,665*
vs.	:	*First District Court of Appeal*
KENNETH L. GRAHAM,	:	*1st District - No. 92-3842*
Respondent.	:	

PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE

Undersigned counsel opened this file 21 years ago, when Paula Hearndon, a high school sophomore, worked part-time in his office. App. 1, p. 3, 8. An incident of bizarre behavior made counsel aware that she had been severely terrorized and sexually abused. App. 1, p. 3. Counsel's secretary, Melba Adams, also knew. Counsel could not prepare a lawsuit because Paula had no memories. R7, App. 1, p. 3.

Twelve years later, she called counsel. Her memories first came back as flashbacks in 1986; petitioner did not know their meaning, and thought she was going insane. In 1988 she recovered enough memory to know her history. Counsel interviewed her more than 20 hours in 1989, substantially revealing her history.

The Florida Department of Law Enforcement took over her case; Gov. Robert Martinez ordered it presented a second time to the grand jury. The second Alachua County Grand Jury found Wilma Graham's death was "probably murder" but criminal limitations had run. App. 2, p. 6-7.

This action was filed in 1991. By then, Lindabury v. Lindabury, 552 So.2d 1117 (Fla. 3rd DCA 1989), Rev. Dism., 560 So.2d 233 (Fla. 199) had been decided. At hearing May 27, 1992, on respondent's motion to dismiss:

"MR. LA COE: She was born March 26, 1960, and her memory began to return in 1986.

"THE COURT: So there's no way she could have fought this lawsuit under the holding of the Lindabury decision.

"MR. [MICHAEL W.] JONES: That's correct, sir."

App. 1, p. 8. The trial court dismissed the complaint, citing Lindabury. Mr. Jones is respondent's attorney.

Appeal was taken in 1992 to the District Court of Appeal, First District, which in 1998 certified the question to the Florida Supreme Court.

STATEMENT OF THE FACTS

A civil complaint is required to plead ultimate facts. It is improper to plead more, which violates the spirit of the rules. Balbontin v. Porias, 215 So.2d 732 (Fla. 1968).

However, sexual abuse civil actions in which plaintiffs have simply pleaded ultimate facts have all failed on appeal. On a motion to dismiss for failure to state a cause of action, a plaintiff has no opportunity to plead documents, transcripts or other evidence which reveal the case. Counsel believes some understanding of the evidence is necessary, due to the extraordinary nature of this case.

The murder of Paula's mother was investigated by the Gainesville Police Department in 1975; that file clearly reveals petitioner's contemporary memory loss, and strongly

signals sexual corruption. App. 3 and infra.

Defendant-respondent Kenneth Graham is a former F.B.I. agent and former homicide detective, who in 1975 was top cop at Santa Fe Community College. He taught unarmed combat at the Police Academy, and was trained in methods of inflicting agonizing pain. (R2-3). He married Wilma Graham when Paula was seven years old.

He punished Paula, but left no bruises. When she complained, he denied it, and said she was trying to drive him away in hopes her real father would return. No one believed her. No one listened. With terrifying pain, he trained Paula to absolute, unquestioning obedience. (R2).

On her 9th birthday, he began her sexual ruin. He plundered her for five years, two months. He said if she told, her mother would be killed or go to prison. If she refused to enjoy her corruption (App. 1, p. 6), she was terribly hurt. (R3 et seq). Enjoyment of sex was compulsory. At ten, he called "my little whore." He taught her she was born bad, and it was her destiny to please men. The only power she was permitted in her life was the power of sex, and she was trained to be aggressively hyper-sexual.

The experience of forbidden pleasure caused corrosive guilt and self-hatred. As sexual, powerless, corrupted,

guilty, traitorous children do, she "escaped". At first, her escape was made by "splitting" or "leaving" her body. She was mentally gone; it wasn't her body. It is like owning a car which someone else uses at will; after a time, when he is using the car, you accept it, forget about it and go away in your mind; except, the car is your body. She learned the other coping mechanism of the sexually plundered child: to forget. This is the syndrome of traumatic amnesia, so well known to those who work with abused children, but not recognized by Florida courts. (R5-8, also App. 1, p. 5 et seq.). These syndromes are common coping in the sexually plundered child. See page 42, Bass, Ellen and Davis, Laura, The Courage to Heal A Guide for Women Survivors of Child Sexual Abuse, Harper & Roe, New York 1988. Forgetting is memory repression. It occurs when the only other power permitted the child--sexual pleasure--creates unbearable self-hatred and guilt. In this case, "leaving" means suicide.

The evidence in this case will show that Paula splintered into three personalities: The core Paula, a helpless girl of eight, frozen and mute in terror; the first "shell", which is the hyper-sexual Paula, using the only power she was permitted--sex--to protect the child. This is the girl who, true to respondent's training, worked

as a whore when a junior in high school, and who slept with more than 500 men, mostly adults many years her senior, before her 18th birthday. The second "shell", the pleasant, smart, achieving Paula, without knowledge of the other two. This girl worked in counsel's office.

Paula's condition is called the "Multiple Personality Disorder", discussed scientifically by James A. Monteleone in Recognition of Child Abuse for the Mandated Reporter at page 55 et seq.; 1994 G.W.. Medical Publishing, Inc., St. Louis. App. 4; this book is donated to the court's library.

At ten years old, her morals destroyed, Paula became respondent's eager sexual partner. At 11, her early childhood moral training put her at war with herself. At 12, living with self-hatred, she became alcoholic. At 13, supplied by a school mate, she found oblivion in heavy use of phenobarbital. This helped her split and forget her pain, defendant's relentless demands.

He told her she was born bad, and he'd keep her secret so long as she didn't conceal her badness from him. She believed. She kept secrecy to protect her mother and herself, and for shame.

Two months before her 15th birthday, the burden of self-hatred became overpowering. She tried to kill herself. She failed, but he attempt shocked her mother from her

complacency. Mother took Paula to a rehabilitation center, and learned the problem was a "family" matter. Any mother could figure out what that meant. The marriage moved toward divorce. (R4).

Graham knew Paula's mother had discovered what he had done to Paula. He knew Wilma Graham would never tolerate it. He did what he needed to do to protect himself and terrify Paula into silence. (R4 et seq; App. 1, p. 5). Ken Graham murdered Paula's mother. (R5 et seq; App. 2, page 5-6). After, he told Paula that if she ever talked, he would kill her.

With her history of terror and exploitation, Paula Hearndon's capacity was destroyed to remember her own life.

Gainesville police investigated, and Paula's lack of memory about her mother's murder is well documented. In her transcribed interview April 30, 1975 with detectives (App. 3), she used the phrase "I can't remember" or "I don't remember" 18 different times.

Despite an obvious bloodstain on her knee, drops of blood on her bedroom carpet and blood on the sill of her bedroom window through which she fled (all indications that she had entered the kitchen, knelt by her mother who lay dying, then fled) despite these indications, she did not remember being in the kitchen with her mother as she died.

In 1989, she remembered.

Police knew in 1975 that Paula was amnesiac. They did not know why. In an effort to bolster her memory, police at her suggestion arranged a hypnotic interview of Paula by Dr. George F. Welscher, M.D. This was not successful. App. 3, Paula's police interview of April 30, 1975, page 48.

That interview includes powerful signals of sexual exploitation by Ken Graham of Paula. See the Lindabury section of argument.

Example: At page 33 of her April 30, 1975, interview of Paula Hearndon by Tom Greene (App. 3), Paula refers to her closet as her "refuge." Why did she need a refuge?

Example: Paula less than two hours after her mother's stabbing quoted her mother as saying two days earlier:

> "I ought to kill you [referring to Paula], and I ought to kill KEN [referring to KENNETH GRAHAM], and then I ought to kill myself."

Why would a woman say, unless she knew that her daughter and husband were engaged in a sexual affair? App. 3, Entry #58.

Example: In her police interview, App. 3, page 4, Paula refers to her suicide attempt the previous January.

> "I'm sure you know that I took an overdose of phenobarbital because I wanted, I wanted to leave."

Paula was 14. Why would she want to kill herself?

Further, note Paula's inability in her interview of

April 30, page 4, to speak the word "loyalty".

These examples together mean Ken Graham was having sex with Paula, who felt so guilty she tried to kill herself. As a result her mother found out, and stated that she ought to kill all three of them. Instead, her mother decided to move out and seek divorce Ken Graham killed her to prevent her from prosecuting him for corrupting Paula.

The terror, trauma and threats done to Paula by respondent were so long-enduring, so overpowering, that when super sex would no longer save her, memory shattered.

The grand jury, returned a no true bill; (R5; App. 2).

In 1986, when Paula was 27, buried memories began to surface in "freeze frame" flashbacks and nightmares. She did not know these were memories, and thought she was insane. (R7).

In 1989, she remembered enough to call Gainesville Detective Sgt. Tom Greene, who called in the Florida Department of Law Enforcement. After initial investigation, Gov. Robert Martinez ordered the case completed and presented a second time to the Alachua County Grand Jury. (R8-9, App. 1, p. 3). During 1989 and 1990, enough memories returned that she knew what had been done to her by respondent. (R8-9; App. 1, p. 3).

This lawsuit followed within four years from the time

when sufficient memory returned for Paula to understand what had been done to her.

Increasingly, courts are letting go of the kind of knee-jerk suspicion (as shown in Lindabury) and are accepting the reliability of studies of repressed memory.

As an overview to the most recent professional writings on this subject, this Court is referred to App. 10, Chapter 16, Brown, Scheflin and Hammond, "Repressed Memory and the Law", Memory, Trauma, Treatment, and the Law, 578, W. W. Norton Co., St. Louis, 1998. The chapter contains a substantial summary of judicial thinking on this subject. This book is donated to the Court's library.

POINT I. ARGUMENT

FLORIDA COURTS SHOULD APPLY THE DOCTRINE OF DELAYED DISCOVERY TO TOLL LIMITATIONS, TO PERMIT AN ADULT SURVIVOR OF CHILDHOOD ABUSE OR OTHER TRAUMA TO SHOW:

1, THAT SHE WAS ABUSED OR TRAUMATIZED; AND

2, THAT SHE SUFFERED FROM TRAUMATIC AMNESIA OR OTHER SYNDROME, WHICH

3, WAS CAUSED BY HER ATTACKER AND WHICH WAS PART OF HER INJURY, AND WHICH

4, CAUSED HER TO BE UNABLE TO COMMENCE LEGAL ACTION WITHIN THE LIMITATIONS PERIOD.

This is the court that said: "The means of knowledge is knowledge itself." Scroggin Farms Corp. v. McFadden, 165 F.2d 10, 18 (8th Cir. 1948) quoted in Nardone v. Reynold, 333 So.2d 25, 37 (Fla. 1976). That precept is the heart of this case.

This is a case brought by an adult survivor of childhood physical, emotional, moral and sexual abuse.

It is a judicial maxim that law should not be construed so as to reach an absurd result. For this reason, no Florida decision is precedent for this case, or if precedent is obsolete.

In this case, petitioner never had a cause of action because she never had knowledge. Her case is exactly like that of the sponge left in the patient's stomach, where

limitations is tolled until discovery of the sponge.

To do justice in cases of this kind, justices must understand that threshold questions: Why does the child become amnesiac, repress memories?

Why does the child act promiscuously, or work as a whore?

The limitations proper for this case is that line of cases saying a cause accrues when the injured person has knowledge. Contra, Lindabury, infra.

One of the unstated policies supporting the delayed discovery rule is simply that to permit action after delayed discovery means to put the cost of the injury back on the person who caused the injury--and not on the public.

Thus, in Celotax, infra, this Court put the burden of asbestosis disability back on the manufacturer. It did not allow the maker to plead limitations, and put the burden of care on the public treasury.

SEC. A. THE FULTON COUNTY ADMINISTRATOR V. SULLIVAN 22 FLW S578, Opinion No. 87,110 relied on by the District Court DOES NOT CONTROL THIS CASE

The District Court of Appeal relied on Fulton County in affirming the trial court's dismissal.

Sullivan's counsel misunderstood his case and misled this court, arguing Sec. 95.051, F.S., prohibited the plea of fraudulent concealment. This Court's reasoning turned on that issue.

Fulton County's Plaintiff claimed fraudulent concealment, which would toll the statute of limitations.

Defendant's counsel should have argued that the doctrine of fraudulent concealment does not apply, because no fraud arises absent a duty to speak or to warn, and a person involved in crime has a legal right to remain silent.

The fraudulent concealment doctrine properly applies only where the civil wrongs is not also a crime. This Court's decision reached the right result.

RIGHT TO REMAIN SILENT

Counsel's research reveals one case in which this Court addressed a defendant's right to remain silent, holding that a corporation does not have the right. State v. Wellington

Precious Metals, Inc., 510 So.2d 902 (Fla. 1987). District courts of appeal developed the doctrine that a defendant may plead the 5th in a civil case, but a plaintiff may not affirmatively seek relief, then plead the 5th to avoid discovery of relevant matters; e.g., Fischer v. E. F. Hutton & Co., Inc., 463 So.2d 289 (Fla. 2nd DCA 1984).

In Fulton County, the criminal did not seek affirmative civil relief, and his rightful silence was not fraud.

SEC. A (1) SEC. 95.051 and SILENCE WHERE THERE IS A DUTY TO SPEAK OR WARN

Neither the majority nor dissent in Fulton County noted that the fraudulent concealment rests on the doctrine that silence is fraudulent where there is a duty to speak. See Davis v. Evans, 132 So.2d 476 (Fla. 1st DCA 1961), a duty was recognized to admit to a correct name, making limitations a jury question. Also North v. Culmer, 103 So.2d 701 (Fla. 4th DCA 1967); the court held limitations was tolled where insurance adjusters concealed the death of a party. See cases cited therein.

Also see cases involving dangerous premises, negligent hiring and retention, and slip-and-fall. These all delay limitations until discovery, and are not barred by Sec. 95.051. Counsels research reveals numerous cases decided by district courts of appeal, none in the last half century by

this Court. Premises, see, e.g., Webb v. Glades Elec. Coop., 521 So.2d 258 (Fla. 2nd DCA 1988) holding that an electric utility had a duty to warn of a hazardous condition where a guy wire was stretched across a recognizable cow path; a cowboy was injured.

In these cases defendants had a duty to speak or warn, making silence wrongful.

Petitioner does not assert fraudulent concealment, because respondent never owed disclosure.

The issue of fraudulent concealment is germane to the larger issue of equitable (judicial) tolling of limitations.

SEC. A (2)
FLORIDA COURTS RECOGNIZE FOUR CIRCUMSTANCES WHEN LIMITATIONS IS TOLLED:

1. CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS
2. BLAMELESS IGNORANCE
3. EQUITABLE ESTOPPEL including FRAUDULENT CONCEALMENT
[Both "delayed discovery" doctrines]
and 4. SECTION 95.051

The "delayed discovery" doctrine implicit in right of access, blameless ignorance, and equitable estoppel (including fraudulent concealment) was explained by this Court three years after enactment of 95.051 in Celotex Corp. v. Meehan, 523 So.2d 141, 13 FLW 204 (Fla. 1988):

> "[T]he district court reasoned that a cause of action in tort arises in the jurisdiction where

> the last act necessary to establish liability occurred, and since the accrual of a cause of action must coincide with the aggrieved party's discovery of the injury, a cause of action in tort arises only when the plaintiff knew or should have known of the existence of the cause of action."

Celotex means petitioner's cause of action in this case arose when she had knowledge of her injury. Here, Paula Hearndon's loss of knowledge was part of her injury.

1. CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS ' No Wrong Without a Remedy '

It is settled judicial constitutional doctrine in Florida that no wrong shall be without a remedy. In (Slavin v. Kay, 108 So.2d 462 (Fla. 1958), this court held in a contract dispute:

> "To hold otherwise would result necessarily in the anomaly of fault without liability and wrong without a remedy, contrary not only to our sense of justice but directly conflicting with the express mandate of the Florida Constitution, Declaration of Rights, Section 4, F.S.A., that 'ever person for any injury done him * * * shall have remedy * * * ." The court in the case of Colbert v. Holland Furnace Co., supra [331 Ill. 78, 164 N.E. 164], concluded to the same effect that "the law is presumed to furnish a remedy for every wrong. The defect was hidden from ordinary observation and was a latent defect of which the owner, who accepted the work, would not be chargeable with knowledge." At 468; emphasis supplied.

Prior Sec. 4, Declaration of Rights carries over to the present Constitution, Article I, Dec. of Rights, Sec. 21: "The courts shall be open to every person for redress of any

injury * * * ."

See Calvera v. Green Springs, Inc., 220 So.2d 414 (Fla. 3rd DCA 1969), holding liable the builder who performed unsafe work. Also Simmons v. Owens, 363 So.2d 142 (Fla. 1st DCA 1978): a latent construction defect was actionable when discovered.

> "To hold otherwise would result in the anomaly of fault with liability and wrong without a remedy, contrary to our sense of justice and directly conflicting with the express mandate of the Florida Constitution, Declaration of Rights, that 'every person for any injury done him . . . shall have remedy. . . .'"

At 144. This case and that sub judice both involve hidden wrongs, one in a house, the other to a child's lack of knowledge of her own life experiences.

Also Baxter's Asphalt & Concrete, Inc. v. Liberty County, 406 So.2d 461 (Fla. 1st DCA 1981): an aggrieved party was allowed to sue for damages when the court's order permitting injunction came too late; the wrong was award of a public contract after material deviation from public bid specifications.

Two of these cases were decided after enactment in 1974 of 95.051.

They mean the limitations statute cannot supersede the constitution.

In this case, respondent committed two torts which this

court should recognize as actionable: 1, He destroyed Paula's capacity to know right from wrong by teaching her she was born bad, born to be a whore; even if she had knowledge of her actions, she did not know she was injured. and 2, also by destroying her capacity to remember her own experiences.

2. BLAMELESS IGNORANCE

City of Miami v. Brooks, 70 So.2d 306 (Fla. 1954), involved a patient overdosed with x-rays. Suit was brought within the limitations period after discovery, but not after exposure. This court adopted the doctrine announced by the United States Supreme Court in Urie v. Thompson, 337 U.S. 163, 69 S.Ct. 1018, 1024, 93 L.Ed. 1282, 11 A.L.R.2d 252, an action based on a claim for silicosis. The court held that a disease not yet intrusive on consciousness did not trigger limitations. Quoting the U. S. Supreme Court, the Florida Supreme Court said at 309:

> "We do not think the humane legislative plan intended such consequences to attach to blameless ignorance. Nor do we think those consequences can be reconciled with the traditional purposes of statutes of limitations, which conventionally require the assertion of claims within a specified period of time after notice of the invasion of legal rights...."

In 1955, this Court again addressed the issue; Seaboard Air Line Railroad Co. v. Ford, 92 So.2d 160 (Fla. 1955).

This court applied Brooks to a case of skin disease contracted from chemicals to which plaintiff was exposed at work. The court at 161 said limitations attaches

> "when there has been notice of an invasion of the legal rights of the plaintiff or he has been put on notice of his right to a cause of action. * * * To hold otherwise, under circumstances of this kind, would indeed be a harsh rule and prevent relief to an injured party who was without notice during the statutory period of any negligent act that might cause injury."

On rehearing, the Court concluded that knowledge attached when the disease was apparent, not when diagnosed.

In Creviston v. General Motors, 225 So.2d 331 (1969), this court applied the doctrine to an injury which occurred when a door fell off a refrigerator, even though limitations had run on product warranty. This Court said at 334:

> "[T]he holdings in the cases above discussed appear to crystalize in favor of application of the blameless ignorance doctrine in those instances where the injured plaintiff was unaware or had no reason to know that an invasion of his legal rights has occurred. In reality, such a doctrine is merely a recognition of the fundamental principle that regardless of the underlying nature of a cause of action, the accrual of the same must coincide with the aggrieved party's discovery or duty to discover the act constituting an invasion of legal rights."

Although Sec. 95.051 was adopted in 1974, the blameless ignorance doctrine was extended in 1978 to delayed discovery of an error in a survey; Lund v. Cook, 354 So.2d 940 (Fla. 1st DCA 1978); and in 1984 of fraudulent retention of money;

Senfeld v. Bank of Nova Scotia Trust Co., 460 So.2d 1157 (Fla. 3rd DCA 1984); and was cited Lindabury dissent.

Also see Flanagan v. Wagner, Nugent, et al., 594 So.2d 776, 17 FLW D155 (Fla. 4th DCA 1992), holding that discovery of defamation, not publication, triggered the period; reversed by this Court, 629 So.2d 113, 18 FLW S595 (1993) on grounds the statutory language made limitations ran from date of publication. This Court's reversal did not reject the doctrine.

Celotex decided in 1988 remains viable doctrine.

Limitations does not begin to run until the last element of a cause of action--knowledge--is in place. In this case, ignorance not only existed, it was directly caused by respondent's traumatic assaults upon Paula.

Fulton County's dissent specifically noted S.A.P. v. State Dept. of Health & Rehabilitative Services, 22 FLW D2095 (Fla. 1st DCA 1997), in which a child's delayed discovery of abuse while in H.R.S. foster care was recognized.

Further, to say that Sec. 95.051 reflects the legislature's intention to bar a delayed discovery action for childhood assault is to ignore the plain public policy implicit in the 1992 amendment to 95.11 (7), which attempted to extend protection to assault survivors with knowledge for

whom limitations already had run.

To extend the Fulton County decision to other equitable cases will require reversal of a substantial body of law.

3. EQUITABLE ESTOPPEL

Fraudulent concealment is one form of equitable estoppel, and is adequately discussed in Fulton County.

The inherit doctrine of equitable estoppel is well stated by this Court in Mulkey v. Purdy, 234 So.2d 108 (Fla. 1970), when it said at 109:

> "The commands of a government of laws require that this court confine its acts within the scope of judicial power recognizing the co-equal powers of the other branches of government." * * *
>
> "Our retention of judicial review in cases of 'overriding equitable considerations' is to provide a remedy in a rare case when it is undeniable * * * " [that relief is required].
>
> The dissent at 112 concurred in recognition of the right to equitable relief: "The instant case is not one that requires equity to blindly follow the law. Equity courts do not slavishly follow the letter of the law if extraordinary circumstances or countervailing equities call for relief."

Equitable estoppel to bar limitations has been discussed in many Florida decisions. Counsel will address several decided after the legislature enacted 95.051.

Machules v. Dept. of Administration, 523 So.2d 1132, 13 FLW 239 (Fla. 1988). This Court said:

Majority at 1134:

> "The doctrine [of equitable tolling] serves to ameliorate harsh results that sometimes flow from a strict, literalistic construction and application of administrative time limits contained in statutes and rules. * * *
>
> "Generally, the tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum. * * * We find the doctrine of equitable tolling application under the facts of this case for two reasons: petitioner was misled or lulled into inaction by his Employer, and his appeal to DOA raised the identical issue raised in the originally timely claim filed in the wrong forum."
>
> Dissent at 1140: "I agree that application of the doctrine of equitable tolling should be permitted in Florida administrative proceedings under the proper circumstances. * * * "

Emphasis supplied; citations omitted.

Cheshire v. Alachua County, 603 So.2d 1334, 17 FLW D1916 (Fla. 1st DCA 1992): county estopped to raise the five-year limitations defense.

Solimando v. International Med. Centers. 544 So.2d 1031, 14 FLW 1126 (Fla. 2nd DCA 1989): agency estopped to enforce 90-day notice rule where actual notice was mailed.

Grissom v. Commercial Union Ins. Co., 610 So.2d 1299, 18 FLW D113 (Fla. 1st DCA 1992): limitations ran from time claims were fully litigated, not when defense was refused.

Boyd v. Florida Memorial College, 475 So.2d 990 (Fla. 1st DCA 1985): employer for its conduct was estopped to deny

late-filed claim for workmen's compensation.

Troiano v. Troiano, 549 So.2d 1053, 14 FLW 2061 (Fla. 5th DCA 1989): equity estopped the limitations defense when the trial court reformed a deed seven years old.

Stewart v. Dept. of Corrections, 561 So.2d 15, 15 FLW D1274 (Fla. 4th DCA 1990): equity permitted filing a notice of appeal one day late to a public agency.

Glantzis v. State Auto. Mut. Ins. Co., 573 So.2d 1049, 16 FLW D405 (Fla. 4th DCA 1991); party who induced inaction was equitably estopped to plead limitations.

Baptist Hospital of Miami, Inc. v. Carter, 20 FLW D1452 (Fla. 3rd DCA 1995): misrepresentation of estate assets was grounds to estop limitations plea.

It is well-settled in case law subsequent to 1974 that the statute of limitations will not be literally applied if such 1, would deny a person her constitutional access to the court, or 2, where the plaintiff is blamelessly ignorant, or 3, where there are grounds for equitable estoppel.

LEGISLATIVE FAILURE TO AMEND AFTER JUDICIAL DECISIONS

It is a maxim of statutory construction that judicial interpretations, left undisturbed, properly apply original statutory purpose.

The legislature adopted F.S. 95.051 in 1974. In subsequent years, this Court and others repeatedly declared exceptions to the statute on three constitutional or equitable grounds. Yet, the legislature did not amend the statute to abrogate judicial doctrines.

This argument takes on more weight when the legislature actually does amend the statute, but does not disturb the doctrines developed by the courts in equity. In 1992, the legislature amended Chapter 95, by addition of subsection (7) to F.S. 95.11, which itself impliedly amended 95.051. This amendment declared a legislative policy that the courts be open to victims of sexual abuse. This Court in Wiley v. Roof, 641 So.2d 66, 19 FLW S334 (Fla. 1994) struck down the retroactive portions of the statute on grounds the legislature cannot revive a cause of action after limitations has run.

In construing 1974's Sec. 95.051, the Court should attempt to reach a decision in harmony with 1992's 95.11(7).

Neither the subsection (7) amendment nor this court in Wiley encroached on the three recognized equitable grounds which permit suit upon delayed discovery of a cause of action, meaning the limitations period had not commenced.

SUMMARY: Fulton County is a sound result, because no wrong results from exercise of a legal right to

remain silent, because there was never a duty to speak.

This case is different. It involves actual harm to Paula, by destroying her personhood, splintering her personality into three, destroying her capacity to remember, and destroying her capacity to know right from wrong.

This Court recognizes the need for equitable relief in cases of extraordinary circumstances. Supreme Court law recognizes the need to allow constitutional access to the courts when necessary to prevent a wrong otherwise without a remedy. Supreme Court law establishes the doctrines of blameless ignorance and equitable estoppel.

The Florida Legislature has allowed these judicial doctrine to stand undisturbed for 24 years.

The question certified by the District Court of Appeal, First District, should be answered in the negative.

SEC. B. WILEY V. ROOF
641 So.2d 66, 19 FLW S334 (Fla. 1994)
relied on by the District Court
DOES NOT CONTROL THIS CASE

This Court in Wiley ruled that the legislature cannot revive a cause of action barred by limitations.

However, this Court also has ruled that a cause of action accrues when all the elements are in place. This includes knowledge or the duty to know that legal rights have been invaded.

The facts in Wiley differ greatly from those sub judice; so does the legal issue.

The facts are given in greater detail in the opinion of the District Court of Appeal, Second District, 622 So.2d 1018 (Fla. 2nd DCA 1993).

Roof sued several in her family 19 years "after the last instance of alleged abuse"; at 1019. Roof did not allege any reason for her failure to bring suit at an earlier time, so as to invoke the doctrines of blameless ignorance, equitable estoppel, or right of access to the courts.

The legal issue was whether she could sue under that portion of Sec. 95.11(7) as amended, which stated:

> "Notwithstanding any other provision of law, a plaintiff whose abuse or incest claim is barred

> under section 1 of this act has 4 years from the effective date of this act [April 8, 1992] to commence an action for damages."

At 1019. Bracketed words were stricken through in the original text.

This Court said at 67:

> "[T]he torts of incest and abuse involve a myriad of social, psychological, and legal variables that often prevent a person, particularly a minor, from immediately reporting these types of offenses. The legislature may appropriately determine and modify the period of time for filing actions in abuse and incest cases. This does not mean, however, that it may revive a cause of action that has already been barred by the expiration of the pre-existing statute of limitations. * * * "
>
> "We find that chapter 92-102, section 2, deprives Wiley of a constitutionally protected property interest and is violative of article I, section 9 of the Florida Constitution."

In order to find that Wiley bars the plaintiff at bar, this court must find that every element of her cause of action had accrued prior to four years before she filed her suit; and must find she knew or should have known at 22 what had been done to her. At 22, she had no knowledge.

This case involves more than physical acts of torture or sexual assault, or of her mother's murder. Those acts cannot be isolated from the larger injury which she suffered at that time of psychic trauma, emotional destruction and perversion, and actual loss of memory and capacity to function. Loss of memory and severe memory distortion is a

part of the injury she suffered as a child and in 1975 when her mother died.

In Wiley, there was no allegation of amnesia or other claim that the plaintiff never could have sued as a direct result of the attacks of her predator. Nothing in Wiley explains 19 years of delay from the last physical attack.

In this case, plaintiff for years was so traumatized she could not remember details of her mother's murder, or of her own degradation. When childhood knowledge became unbearable and suicide failed, knowledge itself was sent into oblivion. Her mind did what it had to do, to enable to organism to survive until her body reached safety. This is discussed infra.

SEC. C. LINDABURY V. LINDABURY 552 So.2d 1117, 14 FLW 2196 (Fla. 3rd DCA 1989, dism. 560 So.2d 233 (Fla. 1990) relied on by the trial court DOES NOT CONTROL THIS CASE

Lindabury is one of Florida's saddest decisions. Nancy Lindabury pleaded memory loss. The Court held as a matter of law her action was barred. The decision means either 1, the court did not care that her childhood horrors destroyed her capacity to know or 2, the court did not believe she could forget those events.

Sexual abuse takes place in secrecy, and children usually are terrified other children may find out. Objective corroborative evidence is rare. Delayed discovery means either that repressed memories surface, or that the child begins to correct perverted moral teaching.

Credibility always is a problem. Courts struggle with the role of doctors and therapists who attempt to assist in evaluation of credibility or help a child remember. Historically, courts reject testimony uncorroborated or augmented by drugs or therapy.

Some 32 years before Lindabury, this Court in Knight v. State, 97 So.2d 115 (Fla. 1957), reversed conviction of a father for incest, where his daughter's testimony came

after she was injected with sodium amytal "truth serum" by a doctor who became a witness. Her testimony was otherwise not corroborated.

Nothing is new in the requirements of the law. What is new is the quality of knowledge about behavior of the sexually corrupted child.

Since Lindabury nine years ago, massive advances have been made in our cultural and legal understanding of behavior of the sexually victimized child. More advances have been made than in the 160 years from 1829 to Lindabury. This Court now has access to knowledge of human behavior that Lindabury's judges did not dream of.

Lindabury's majority said:

> "Appellant brought an action in 1985, shortly after she sought psychological counseling in the course of which she purportedly 'rediscovered' previously repressed or blocked memories of suffering 'sexual batteries' by her father beginning in 1955, when she was four, and continuing through 1965, when she was thirteen. * * *
> "It is beyond contradiction that the alleged incestuous acts, if taken as true, damaged the appellant at the time they occurred. The last contemporaneous injury is itself sufficient to complete the cause of action and commence the limitations period. Thus, under any conventional application of the statute of limitations, the appellant's cause of action accrued, and the statutory clock began running, no later than 1965. * * * The action is clearly time-barred as a matter of law."

Emphasis supplied.

The Lindabury majority disregarded the standard announced by this Court in construing Sec. 95.10 in Celotex, an asbestos case, four years earlier that

> "accrual of a cause of action must coincide with the aggrieved party's discovery of the injury, a cause of action in tort arises only when the plaintiff knew or should have known of the existence of the cause of action."

Lindabury also disregarded those cases involving constitutional right of access to the courts, such as this court's decision in Slavin v. Kay, 108 So.2d 462 (Fla. 1958) that no wrong should be without a remedy.

To reconcile Lindabury with Celotex and Slavin requires an assumption that a child must have known of her injury when it occurred, and at 18, and limitations began to run. This is the credibility issue of Knight, supra.

Lindabury also questioned whether limitations was tolled during the plaintiff's minority; but see Blackstone V. 1, 453, stating the common law that

> "an infant shall lose nothing by non-claim, or neglect of demanding his right; nor shall any other laches or negligence be imputed to an infant, except in some very particular cases."

Jorgenson, J., in his Lindabury dissent, anticipated the later developments in studies of human behavior and in law.

Lindabury was not the first decision in this nation on this issue. The first reported decision dealing with delayed discovery of childhood sexual abuse came 12 year ago--nine after undersigned counsel opened his file in this case.

In Tyson v. Tyson, 727 P.2d 226, 107 Wash.2d 72 (Wash. en banc 1986) the majority held that delayed discovery of childhood sexual abuse could not compare with delayed discovery of a sponge inside a surgery patient. The majority feared "spurious claims". Dissent was vigorous.

Both majorities assume based on nothing that a child somehow knows of her injury, her legal rights, and somehow could not forget rape and abuse.

In fairness, note that twenty years ago, a social scientist said incest existed in no more than one of a million families. Today we know every third girl is molested, and every 25th is severely damaged.

In light of behavioral studies since Lindabury it is fair that this Court question whether that majority's assumptions remain valid (if they ever were).

SEC. C (1) THE INTERACTION BETWEEN THE MAKING OF LAW AND THE SCIENTIFIC STUDY OF HUMAN BEHAVIOR 1986-1998

Blackstone, in the 1965 introduction to his monumental

Commentaries on the Laws of England speaks (V. I, p. 453) of the burning of a female child for murder. His Commentaries are the written history of the common law, adopted into Florida in 1829; the burning of a female child was the common law of Florida, now modified by statute and reason.

Changes in law result from superior the knowledge of men and women, and their behavior.

Judicial decisions relating to abuse survivors resulted in study of adults abused as children. Studies, in turn, influenced the direction of judicial decisions.

Numerous studies are collected and summarized in App. 5, Memory, Trauma, Treatment, and the Law, Brown, Scheflin & Hammon, W. W. Norton Co., New York, 1998; pages 154 et seq., espec. 161 et seq. Memory includes studies by false memory syndrome advocates.. It is a massive, comprehensive compendium of more than 600,000 words plus index and appendices. A copy is donated to the Supreme Court Law Library for reference.

WILLIAMS' STUDY and SHAHZADE V. GREGORY

The compelling study conducted by Linda Meyer Williams is summarized in Memory, page 178 et seq. Dr. Williams studied 129 female children who in 1973-75 were treated for sexual abuse injury at Philadelphia Children's Hospital.

Seventeen years later, she interviewed all these patients as she could find (about half). Of these, 38 per cent had no memory of sexual abuse, and 32 per cent actively denied abuse. Williams reported that "having no memory of child sexual abuse is a common occurrence" [Memory, 179]. Evidence indicated that where evidence of child abuse was strongest, amnesia was greatest. "Recall of Childhood Trauma: A Prospective Study of Women's Memories of Child Sexual Abuse", Journal of Consulting and Clinical Psychology, 62, 1167-1176 (1994); App. 6.

Two years later, the United States District Court, District of Massachusetts, decided Shahzade v. Gregory, 923 F.Supp. 286 (D.Mass. 1996) involving delayed discovery 45 years after childhood sexual abuse. The court discussed the standards which must be met in accepting scientific knowledge, and said at 287:

> "After considering these factors, this Court finds that the reliability of the phenomenon of repressed memory has been established, and therefore, will permit the plaintiff to introduce evidence which relates to the plaintiff's recovered memories."

The court ruled for the plaintiff, citing Dr. Williams' study, and also 1987 Herman and Schatzoq study, "Recovery and Verification of Memories of Childhood Sexual Trauma,", Psychoanalytic Psychology, 4(1), pages 1-14 (1987), App. 7. Also see "Betrayal Trauma: Traumatic Amnesia as an Adaptive

Response to Childhood Abuse," by Jennifer F. Freyd, Ethics and Behavior, 4(4) pages 307-329 (1994), App. 8.

Interestingly, the earliest known study of sexual abuse was by Sigmund Freud. On April 21, 1896, he presented his "seduction theory" paper to the Society for Psychiatry and Neurology, in which he said mental illness results from childhood sexual abuse. He wrote to a friend that is father abused his brother and several younger sisters.

Colleagues responded with a storm of criticism. Soon after, Freud recanted and announced his Oedipal theory, which blamed the children, not their parents.

THE WIDOM-MORRIS STUDY OF TRAUMATIC AMNESIA

A 1997 study included only "court substantiated cases of child abuse and neglect". This was "Accuracy of adult recollections of childhood victimization" by C. S. Widom and S. Morris, published in Psychological Assessment, 19, pages 34-46 (1997), summarized in Memory, page 181 et seq.

Widom-Morris found a "substantial underreporting" of sexual abuse by adults who were known victims. They also reported that "the relationship between child hood sexual abuse and subsequent alcohol problems and suicide attempts in females is robust...." Memory, p. 182.

From these studies, the authors of Memory prepared a

list of "positive predictors" of amnesia; App. 5. page 182. The list includes biological factors not relative to this case, and also 11 factors to be used in evaluation of the truth or accuracy of surfacing memories. These factors are:

Predisposing Factors: Developmental factors - age of onset of trauma. Closeness of relationship between victim and offender

Precipitating Factors - the Traumatic Event - Intensity of emotional arousal; Degree of violence; Physical injury; Coping ability during event (e.g., disassociation).

Perpetuating Factors Duration, repeated traumatization; Number of perpetrators; Conspiracy to silence (threats and rewards); Victim's cognitive appraisal of the abuse; Accommodation and consent

All of these factors are present in the case sub judice except multiple perpetrators.

Had this list been available in 1991, the original complaint would have tracked this list. Even so, the correlation between events alleged and the objective standards is striking.

Evidence in this case is well developed by police investigation and interviews by counsel, and will show how the Memory factors apply to the case sub judice.

1. Predisposing factor: Age at onset of trauma

Paula was seven when her mother married respondent, eight when torment began. Respondent was a homicide investigator and self-defense instructor; he knew how to inflict great pain. Paula recalled in 1989 (App. 9), p. 1:

> "He'd hurt me, he'd bend my little finger. It would hurt so bad. He would say,
>
> "'Eat it. Eat the carpet. * * *
>
> "'Eat the carpet.' And that was from age nine. Actually, age eight. Eight and a half. Ahhhh.... [crying]
>
> "Ah, all I knew was that I'd better stop fighting because the more.... the more I'd wiggle and squirm, the worse it hurt. Because if I just stayed still and didn't move too much it didn't hurt too bad. * * *
>
> "It became apparent by after a year or so that uh... Submitting was easier than fighting."

2. Closeness of relationship between victim and offender

Ken Graham was her stepfather, living in the same house.

3. Precipitating Factors - the Traumatic Event; Intensity of Emotional Arousal.

> At. 2. "The way he did it then, he'd sit me on his lap. He'd say, 'let's watch TV.' And that meant, I'd get on his lap. Then he'd put his hands on me. He'd touch me like he wanted. * * *
>
> "I don't know how hard it is, being good. But it's hell, being bad.
>
> "I always felt so bad, lying to my mother, lying to myself I guess.
>
> "But part of me, I wanted to be good. I didn't want to be Ken's little whore. I didn't want him to touch me. I knew other little girls didn't experience what I did. I wanted to be like other little girls. I wanted to be good.
>
> "When Ken touched me, I liked it.
>
> "But when he didn't touch me, I liked myself.

> And by the time I was 11, I knew I didn't want him touching me. I didn't want him doing things to me, even if he forced me to feel it. Even if he made me like it.
>
> "I didn't really like it, 'cause I didn't like myself. * * * "

4. Degree of Violence

Paula remembers agonizing pain whenever she resisted, from age eight to age fifteen, when her mother was murdered. She was never allowed to say 'no', and never allowed to be sexually non-responsive.

5. Physical Injury

Because secrecy was so important to Graham, no visible injury was inflicted. All injury was in self-defense holds: bent fingers, or later, whipping with a wet towel.

6. Coping Ability During Event (e.g., Disassociation)

> At 2-3: "I try to remember what my life was like from nine to 12, it's a lot of gray. A lot of memories, they're just gone. I blacked them out, probably as soon as they happened.
>
> "I don't remember what he did, not much of it. I don't know who I was."

> "If you don't know what being good is, don't know how to do it, then you're trapped. When the only being you know is being bad, you have no choice. That's one thing Ken Graham did to me. He took away my choice.
>
> "By the time I was 11, I didn't know any more how to be good. Being bad feels bad. When Ken was doing, it made me feel foul. Degraded. I hated myself.
>
> "I hated my lies and my deceit. I hated looking at my mother, and not being able to tell her the truth.

"I hated my feelings, and my body.

"Somehow, I began to think of them as separate from me. When Ken touched me, I taught myself that it wasn't my feelings he was arousing, giving sensation to. It wasn't my body that was doing things with him. It was his, he'd taken my feelings and my body and made them his.

"So while he was using me, it wasn't me. The feelings that I felt were not my feelings. Oh, the pain was, if I fought him. But the pleasure, that was not my pleasure. That was Ken's. He took it when he wanted. I couldn't stop him.

"And if my body moved for him, if he forced my body to respond, that was not my body. While he was using it, it was his, not mine.

"When he made me have orgasms, it wasn't really me. Because I wasn't there."

Emphasis supplied. Alienation from her body preceded Paula's collapse of knowledge of her behavior (memory loss).

7. Duration, repeated traumatization

At 2: "Ken Graham used to call me 'my little whore.' I thought that's what I was. * * * Do you know how old I was when he used to call me that? I was 10 years old. It started when I was 8."

At 3: "I thought 12 was a hell year. Thirteen was.... I can't really deal with it, even now. I try not to remember. When I do remember, I don't let myself remember more than a little bit at any one time. * * *

"There was no way out.

8. Number of perpetrators

At 7: "I think I started losing it, after he made me masturbate for friends of his. He was showing them how much control he had over me. There wasn't any way I could stop him. He just did it, and made me do that for them, and they were putting their hands on me.

"It wasn't too long after that, I couldn't do it any more. I couldn't tell anyone. But I couldn't stand it any more. I had to leave. I

just knew I had to leave. To commit.... Why can't I say the word? Suicide.

"Anyway, I had to leave. There wasn't anything else I could do.

"So I didn't take just 20 or 21 pills then. My phenobarbitols.

"I took them all."

Emphasis supplied.

9. Conspiracy to Silence

At 1-2: "I remember thinking about it when I was 9 years old, after I tried repeatedly to communicate it in my own ignorant way, what this guy was doing to me and that he was a bad person, and nobody listened.

"I can remember very clearly sitting down on the edge of my bed one day in my bedroom * * * and really thinking about it, and saying okay, this is the situation. * * *

"And my mother, when she first married Ken, they sat down certain ground rules for their life together. * * * I remember my mother telling my stepfather, that if he ever touched me, if he ever molested me, or did anything bad like that, that she'd kill him.

"And my father, it didn't even have to be said about my father. * * * [M]y father would kill Ken.

"So I remember thinking about it, I say down and said okay, what are my options here. (a) He's molesting me. (b) I can go to Mother and tell her and two things will happen there. Either she'll believe me or she won't believe me.

"If she believes me, then she's going to kill him. And if she doesn't kill him, Dad will kill him. And then either way, I'll lose one or the other of them totally. And (b), if she doesn't believe me and she confronts or tells Ken that I've told her this * * * then as he had promised, he would make life miserable for me.

"I mean, unbearably miserable. * * *

"That's when I decided,

'okay, I'll just keep my mouth shut, maybe he won't do it again.' * * *

"But then it didn't stop, and then after a

while it was too late to say anything * * * What would they think of me because I hadn't said anything sooner?"

At 5-6: "I was a bad girl. He always made me believe I deserved what he did to me. If he did bad things, he taught me I deserved what he did. He taught me that's what I was. A bad girl. A sex girl.

"I believed him. * * * How could I tell anybody. I couldn't say 'Ken has molested me.'

"Because they'd ask 'when did it start?'

"And I'd have to say 'on my 9th birthday.'

"And they'd ask 'why did you wait so many years to tell us?'

"And I couldn't ever answer that question. I couldn't answer it, and they'd know I wanted him to do what he did, even if I really didn't. They'd say I couldn't have minded, because if I minded, I'd have told someone.

"So I couldn't tell anybody. I didn't want people to know I was bad. So I never told anybody. I tried with all my heart to hide it, to never let anybody know.

"I made up my mind to hide it so well, nobody would ever know."

11. Victim's cognitive appraisal of the abuse

Counsel does not understand what this means.

12. Accommodation and Consent

At 4-5: [Crying]

"For a long time I thought that I must be a terrible person because I liked it

[Crying]

"Because I didn't.... Because after awhile I didn't try to stop him.

"And then after a while, it was too late because it had been going on too long. And I knew that even if I did tell, because it had been going on so long, that people would say that I must have been doing something to encourage it, or whatever.

[Crying]

"And, uh, he convinced me that Gainesville was such a small town and people were so critical,

that if people did know, that I'd never find a suitable husband. Nobody would ever like me, and that I would just be a social outcast.

[Crying]

"And, he caught, he caught me with that one at a point where being accepted by my peers was really important.

[Crying]

"And finding a suitable boyfriend and getting married and having kids one day was still something I wanted.

[Crying]

"And, uh, I bought it. I believed him. And then after awhile by the time I was 13, 14, it's like there was a, a bond between us or something. We shared this secret, and I guess after awhile it got to be a game.

"And it got to be... Fun. * * *

"Being his mistress. Being uh, more desirable than my mother was. See, I always thought she was so fantastic * * * she was just something I idealized * * * .

"Obviously now I was tainted, and bad, and uh, I hated myself. Ahhhh ."

[Crying in despair]

At 3-4: "13. By the time I'm drinking every day in school I hit eighth grade, seventh grade, eighth grade. * * * And I'm 13 years old.

"And, uh, the molestations are occurring just as regularly as ever, and uh.... By this time I'm just like a little robot, just going to school, and trying to be normal. And drinking. * * *

"And that went on until.... By the time the 7th, in the 8th grade, as, I was starting to get fed up with it, starting to get to the point where I was much more defiant. I fought him much more often. * * * Not all the time. I knew that life would be a total h ell, if I fought too often."

"So most of the time, I just took a mind vacation while he was molesting me. And uh.... Just tried to forget it. And by the time I entered the 9th grade in high school, ah, he was really getting [me] to the point where I was a very well groomed as a little young lady.

"I could cook, I could do the grocery

shopping, I could do the laundry, and ah, I was like I was his junior wife * * * .

"And as long as I toed the line, I could go out with my friends, I got nice clothes, I had an excellent allowance. I had a better allowance than most of the kids in the neighborhood, most of my peers. Umm, I got jewelry for birthdays and Christmases * * *

At 6: "My drugs. I took drugs, because that way, I didn't feel the pain. When I didn't feel the pain, then I could make people think I was okay.

"I'd take phenobarbital, to go to school. Lots of it. I got it by the baggies full. A girlfriend had a great big bottle of it. Like a gallon-size bottle.

"I'd take pills. When I took enough, I'd be okay. I wouldn't feel any pain. If I took too many, I'd start fading out. Losing it. Falling asleep. Usually I took 20 or 21. When I took 22, it was too many.

"So every morning, I'd take what I needed. If I started running out, I'd tell that girl. I don't remember her name. * * * But when I was running out, she'd give me another baggie full. She never charged me.

"I think she knew how much pain I was in. How bad it was for me. And it was bad. It was so foul.

"I was bad. Ken told me that. I can't ever remember him telling me I was good. Or smart, or anything. He always said I was a sex girl. That my place in life was to be a sex girl, to please men.

"That's what he taught me to be, a sex girl. A whore in the bedroom. So if I knew I was bad, it's because I believed it.

"I was very determined, I'd never let anybody find out I was bad. Whatever I had to do, I'd never let anybody find out.

"In school, people didn't know. I hid it so well. * * * I was in student government, and always was elected president of my class. That's how well I hid it. I hid it. I did.

"What choice did I have? What choice does any kid have?

"If my mother had found out, she would have

killed him, and then she would have been sent to prison. So I protected her. I didn't want her to go to prison. Then I wouldn't have any parents at all.

"Except, when I was 14, I couldn't do it anymore.

"It hurt me so much, I felt so bad all the time. I felt so worthless.

"I knew I couldn't get away.

Paula kept her secrets so that her mother would not kill Ken Graham and go to prison. With Paula's suicide attempt, and her mother's murder three months later, all her coping devices shattered.

The organism in unbearable pain did not succeed in killing its own body, so it killed its conscious knowledge.

CORROBORATIVE EVIDENCE IN THIS CASE OF SEXUAL ABUSE AND MEMORY LOSS

Refuge: In her police interview on April 30, 1975, App. 3, Paula refers (at 33) to her closet as her "refuge". What did she mean. In 1989, she explained:

> "There were times when Ken and I would be home alone and I used to hide in my closet when I thought he was looking for me, make him think I was outside or had slipped out somehow and he wasn't aware of it. There are so many times when he molested me that I refused to remember a lot of ways. I know that I probably only remember 10 to 20 percent of the times he did. I know there's a large percentage of the time that I literally tuned out. I was very capable of that at this point, at some point. I don't know when I learned it, or affected it, but I was able to mentally take a vacation when he was molesting me. * * *

> "I seem to recall being pulled out of there [her closet] quite a few times by Ken. Either I had hidden there--there were times when he was out back working and he would come into the house and I was there, I was alone, and I knew by the tone of his voice as he was calling for me, what the situation was, what was going on, and I would hide in my closet, and I was found there a couple of times, and pulled out by him. Other times, must have been in the beginning, before he discovered it, I would just hide there and he would go back outside or think I had gone outside while he was out in the garage. Later on he must have discovered that I had indeed hidden out in the closet, and that's when it ceased to be my refuge."

Bad Girl: In her police interview on April 30, 1975, Paula refers (at page 23) to her self as being a bad little girl. That is adequately explained in previous quotations; Ken Graham taught her she was bad.

Could not remember: In her police interview, Paula said "I can't remember" or "I don't remember" 18 times.

Hypnotism attempted: At the end of her police interview, she and investigators agreed that she would be hypnotized in order to try to retrieve memories which she could not reach. This was done, but produced no usable results.

Bloody knee: At police headquarters, police observed that the knee of her slacks was bloody. This was confirmed in 1989 in an interview with her stepmother, Dee Hearndon. In her April 30 police interview, Paula was asked to (at 3)

describe her movements, and did not remember that she went in the kitchen and knelt by her mother. Drops of blood were found on her carpet, and a smear of blood on the sill of her window where she pushed out the screen and fled. In 1989, she remembered going into the kitchen, putting her knee down in her mother's pooling blood, and hearing her mother's last word:

"Run!"

She did, out through her bedroom window, scraping blood off her knee on the sill.

POINT 2. THIS COURT SHOULD RECOGNIZE THE COMMON LAW TORT OF 'CORRUPTION OF THE CHILD'

The term "sexual abuse" trivializes and does not describe the horror of the plundered child. "Corruption" is a better term.

Destruction of a child's capacity to know--memory--is one form by which the parent makes her "safe" for sexual games. The other is destruction of her moral values, teaching her she is "born bad", sentenced to secret shame.

In this case, respondent acquired total submission from Paula by inflicting agonizing pain on her at eight. At 9, she was required to experience orgasm, or suffer unbearable pain.

He taught her she enjoyed it, was born for sex, born to give men pleasure. At age ten, he made her "my little whore." And as a junior in high school, true to her training, she worked as a whore for an escort service. She slept with more than 300 grown men before age 18.

Blackstone in Ch. 16, "Of Parent and Child", stated that the common law recognized a parent's duty to provide maintenance (necessaries); V. 1, p. 436 et seq. He also recognized the parent's duty to provide children education "suitable to their station in life" at p. 438 et seq. This education includes "his culture and education." It would be

useless, said Blackstone, for a parent to give a child life who later

> "neglects his culture and education, and suffers him to grow up like a mere beast, to lead a life useless to others, and shameful to himself."

Does it not violate this standard to teach a girl she is a sexual animal, condemned to shame?

Blackstone said the father has power to keep his child in order and obedience, and at 440 "may lawfully correct his child, being under age, in a reasonable manner; for this is for the benefit of his education." A father may control his child's marriage "in order the better to discharge his duty; first of protecting his children from the snares of artful and designing persons * * * ."

Florida in 1829 clearly recognized a parent's duty to provide education and moral training.

In Boyce v. Cluett, 672 So.2d 858 (Fla. 4th DCA 1996) the court refused to recognize "corruption of the child" as a viable cause of action. What Florida tort gives a girl a remedy for being made into a whore? For later degradation?

Florida courts recognize a right of action on behalf of a child for necessaries.

Florida courts should recognize a right of action for failure to provide moral training and education, for the intentional perversion of moral teaching.

CONCLUSION

THE LEGAL AND CULTURAL CONTEXT OF THIS CASE

Law is a product of cultural and historic values, and by advances in knowledge of human behavior. Some advances are the subject of a part of this brief. However, bias about sexual exploitation of little girls also is a part of our culture. Judicial work reflect cultural values--and entertainment.

Ours is a nation that laughs at the sexual agony of little girls.

-- A TV comedian jokes to a national audience "we need to lower the age of consent" while leering at the 9-year-old on his show.

-- Grown men joke "if she's old enough to bleed, she's old enough to butcher." Or "You can't marry that girl, son. She's virgin. If she aint good enough for her daddy, she aint good enough for you."

-- Entertainment Weekly tapped the humor found in sex with children Oct. 10, 1997. Reviewing recent movies in which incest is the theme, the magazine began its article "REMEMBER THAT crass playground maxim 'Vice is nice, but incest is best'?

-- The humor is even nastier in John Sandford's best-selling novel Sudden Prey, read by millions. He writes:

> ' "The guy's amazed. He says 'What's going on? What happened?' 'I'm leaving you,' says the girlfriend. 'What'd I do? Everything was okay this morning,' says the guy. 'Well,' says the girlfriend, 'I heard you were a pedophile.' And the guy looks at his girlfriend and says, 'Pedophile? Say, that's an awwwwfully big word big word for a ten-year-old....' " '

Sandford's detective tells the joker to get away, "but he was laughing despite himself.' Berkley Books, 1997, page 46.

And we have a woman who grew up playing with Barbie dolls endowed with unreal breasts, and who gave us Jon Benet Ramsey.

In our culture, sex with little girls is high entertainment.

Yet, there is hope. Early last century, New York adopted a model of reform when it amended its law, raising the minimum age for prostitution to nine years old.

Perhaps in this century, Florida courts will recognize that the sexually corrupted child has no knowledge upon which she can act, in cases such as this of memories repressed because survival required it, or in those cases in which a child is taught that bad is good and must teach herself true values after she leaves behind her childhood.

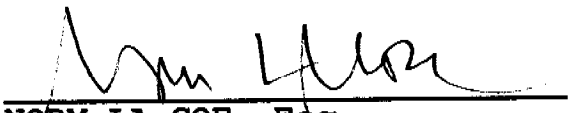
THIS COURT'S DIFFICULT POLICY CHOICES

This Court has two difficult policy choices. To continue to grant license to men to plunder and corrupt little girls so they can reap a harvest of forbidden sexual games, and leave those girls forever frozen in mute terror and silence, sexual robots, the victims of atrocity.

Or to risk late claims and possibly stale evidence, to trust juries to sort it out, to trust the developing science of behavioral studies, to trust the work that has been done in response to Tyson v. Tyson and Lindabury. In short, to give that little girl a voice, so she can when she is able stand up and say before the whole world:

"No. You cannot do this to me."

Respectfully Submitted,



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I HEREBY CERTIFY that a true copy of the foregoing pleading, motion or paper has been served on Michael W. Jones, Esq., attorney for defendant, at P.O. Box 90099, Gainesville FL 32607, by U. S. Mail this 27th day of April, 1998.

NORM LA COE, Esq.