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Endorsing Pedophiles for Elected Office?

David R. Katner

Tulane University Law School, dkatner@tulane.edu

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David R. Katner*

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I. INTRODUCTION

A recent special election in the state of Alabama brought into public discussion the potential election of an accused pedophile to the U.S. Senate. There have been more than a few sexual scandals emanating from Congress, the White House, and the judicial branch of government, but a Senate candidate being publicly accused of sexual misconduct, child molestation,¹ let alone enjoying a public endorsement by the President of the United States is different, and it opens a door in public discourse that just over a year ago seemed unthinkable. This Article will discuss pedophilia, the dynamics of victims' delay in reporting their victimization, various institutional protections afforded

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* Professor of Clinical Law and Felix J. Dreyfous Teaching Fellow in Juvenile Law, Tulane University Law School. Thank you to my research assistant, Olivia L. Kinnear, Tulane Law School class of 2019, for her invaluable contribution to this work.

1. Samantha Cooney, *More Women Are Accusing Roy Moore of Sexual Misconduct. Here's Everything You Need to Know About the Scandal*, TIME (Nov. 17, 2017), <http://time.com/5029172/roy-moore-accusers/> [https://perma.unl.edu/Y342-N9RE].

to accused child molesters, political sexual misconduct, current literature on the impact of child molestation, and the difficulties faced by victims of child molestation following the President's endorsement of an accused pedophile for elected office.

II. DEFINING AND ATTEMPTING TO UNDERSTAND PEDOPHILIA

It is difficult to historically trace pedophilia,² or the sexual interest in prepubescent children, as it has not been written about for an extended period of time and has not always been prohibited by law.³ However, current researchers contend that as many as one percent of the male population find themselves attracted to prepubescent children, that the sexual attraction constitutes a mental illness, and these individuals should not be equated with child molesters as not all pedophiles molest children.⁴ In antiquity, the adult duty not to abuse positions of power by engaging in illicit sexual activities is found in the Hippocratic Oath (circa 460–377 B.C.): “Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves.”⁵ Although pedophilia has been recognized since ancient Greece, Greek society

2. As explained by Miller,

Pedophilia is defined as a persistent sexual interest in prepubescent children, as reflected by one's sexual fantasies, urges, thoughts, arousal patterns, or behavior. Hebephilia refers a sexual interest in young postpubescent children, while ephebophilia denotes an interest in children in the mid-to-late adolescent age range. Recent evidence suggests that hebephiliac and ephebophilia maybe distinct from pedophilia, as individuals who report being preferentially attracted to adolescents show different sexual arousal patterns than do individuals who prefer prepubescent children. Nevertheless, the term pedophilia is most frequently used to denote a sexual interest in children generally . . . Note that pedophilia per se is just that: a psychiatric diagnosis. It only becomes a crime if the subject acts upon his or her fantasies, urges, or preferences in ways that the prevailing laws proscribe

Laurence Miller, *Sexual Offenses Against Children: Patterns and Motives*, 18 *AGGRESSION & VIOLENT BEHAV.* 506, 507 (2013) (citations omitted).

3. See Robert W. Ten Bensel et al., *Children in a World of Violence: The Roots of Child Maltreatment*, in *THE BATTERED CHILD* 13 (Mary Edna Helfer, Ruth S. Kempe, & Richard D. Krugman eds., 1997).
4. Margo Kaplan, *Pedophilia: A Disorder, Not a Crime*, *N.Y. TIMES* (Oct. 6, 2014), <https://www.nytimes.com/2014/10/06/opinion/pedophilia-a-disorder-not-a-crime.html> (explaining that people who live with pedophilia do not necessarily “act on it” and suggesting that sites like *Virtuous Pedophiles* provide support for pedophiles who do not molest children and believe that sex with children is wrong). The author, Margo Kaplan, an assistant professor at Rutgers School of Law, Camden, and an op-ed contributor for the *New York Times*, claims that about half of all child molesters are not sexually attracted to their victims. *Id.*
5. LUDWIG EDELSTEIN, *THE HIPPOCRATIC OATH: TEXT, TRANSLATION, AND INTERPRETATION* (Baltimore Johns Hopkins Press, 1943).

tolerated men who “were boy lovers, or ‘pederasts,’ as long as their relationships did not disturb the basic family.”⁶

In the United States, we tend to trace public awareness of child abuse to 1874, when a highly publicized case involving a ten-year-old child, Mary Ellen Wilson, whose foster parents beat her daily, was met with public outrage and the establishment of “child protection” agencies across the nation.⁷ Throughout the late nineteenth and early twentieth centuries, criminal prosecutions for child abuse “were extremely rare.”⁸ Children were viewed as the “property” of their parents, who were thought to have every right to treat their children as they saw fit, and physical punishment was believed to be essential to maintain discipline, “transmit educational decisions, and expel evil spirits.”⁹

The “battered child syndrome” was identified in 1860 by Dr. Ambrose Tardieu, a French legal medicine professor in Paris,¹⁰ where he studied eleven thousand French rape cases from 1859 to 1869—eighty percent of which involved child victims.¹¹ In 1946, pediatrician and radiologist, Dr. John Caffey published a “ground breaking article titled Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma,”¹² an unexplained association of subdural hematoma and abnormal x-ray changes in children’s long bones, and co-authored an article identifying the discovery as trauma based.¹³

By 1955, Woolley and Evans published a paper in the *Journal of the American Medical Association*, *Significance of Skeletal Lesions in Infants Resembling Those of Traumatic Origin*.¹⁴ The medical profession was now documenting identifiable cases of child abuse. In 1961, Dr. C. Henry Kempe organized the first interdisciplinary presentation including pediatric, psychiatric, radiological, and legal contributions for the annual meeting of the American Academy of Pediatrics.¹⁵ In 1962, he published his paper, *The Battered-Child Syndrome*, in the

6. BENSEL et al., *supra* note 3, at 13; see RICHARD TAYLOR, *GOOD AND EVIL: A NEW DIRECTION* (1984).

7. LINDA C. FENTIMAN, *BLAMING MOTHERS: AMERICAN LAW AND THE RISKS TO CHILDREN’S HEALTH* 181 (2017).

8. *Id.*

9. RUTH S. KEMPE & C. HENRY KEMPE, *CHILD ABUSE* 4 (1978) (explaining that “beating the devil” out of a child is a common expression to this day).

10. *Id.* at 5 (explaining that in 1870, London records revealed 3,926 children under five years old who died by “accident or violence” and were all “obviously dead of child abuse”).

11. JOHN E.B. MYERS, *A HISTORY OF CHILD PROTECTION IN AMERICA* 364 (2004).

12. *Id.* at 270.

13. *Id.*

14. Paul V. Woolley & William A. Evans Jr., *Significance of Skeletal Lesions in Infants Resembling Those of Traumatic Origin*, 158 [J]AMA 539 (1955).

15. KEMPE & KEMPE, *supra* note 9, at 5–6.

Journal of the American Medical Association.¹⁶ Today, we think of child sexual abuse (CSA) as

any activity with a child below the legal age of consent, which is typically 14 to 18 years Children below the age of consent are legally incapable of consenting to sexual activity. Sexual abuse includes sexual penetration, sexual touching, and noncontact sexual acts such as exposure or voyeurism. Sexual contact between a teenager or a child and a younger child can be abusive Most sexual abuse is not committed by parents. Fathers or stepfathers are the offenders in only 16% of cases, and even when all relatives are included, familial sexual abuse is a minority of cases. . . . The most common sexual abuser is an acquaintance or someone the child or family knows¹⁷

The Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association¹⁸ dates back to 1844 when it was a “statistical classification of institutionalized mental patients.”¹⁹ The current edition of the DSM—the fifth edition (DSM-5)—provides “guidelines for diagnoses that can inform treatment and management decisions” for psychiatrists, other physicians, and other mental health professionals that describe the “essential features of the full range of mental disorders.”²⁰ The DSM-5 diagnostic category of “pedophilic disorder” includes three criteria: (A) “over a period of at least 6 months,” the individual has “recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger); (B) the individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty;” and “(C) the individual is at least age 16 and at least 5 years older than the child or children in criterion (A).”²¹

According to Ann M. Haralambie, one of the nation’s leading practitioner-scholars on CSA:

The Child Abuse Prevention and Treatment and Adoption Reform Act defines sexual abuse for the purposes of that Act as including: (A) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or (B) the rape, and in cases of caretaker or inter-familial relation-

16. C.H. Kempe et al., *The Battered Child Syndrome*, 181 [J]AMA 17 (1962).

17. Lucy Berliner, *Child Sexual Abuse: Definitions, Prevalence, and Consequences*, in THE APSAC HANDBOOK ON CHILD MALTREATMENT 215 (John Myers ed., 3d ed. 2011) (internal citations omitted).

18. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) [hereinafter DSM-5].

19. *Id.* at 6.

20. *Id.*

21. *Id.* at 697. The diagnostic criteria does not include an individual in late adolescence involved in an ongoing sexual relationship with a twelve or thirteen-year-old. The criteria also requires diagnosis of “specificity”—whether the person is exclusive type (attracted only to children) or nonexclusive type.

ships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.²²

Vladimir Nabokov's 1955 novel, *Lolita*, is recognized as a classic work in twentieth century literature²³ and as a shocking account of pedophilic disorder. *Lolita* reveals the monstrous desires of its main character, Humbert Humbert, a middle-aged literature professor and his inner thoughts on satisfying his compulsive fantasies.²⁴ When Nabokov's novel²⁵ was first made into a movie by director Stanley Kubrick, the actress Sue Lyon was cast as Lolita. Much was discussed about Ms. Lyon's physical appearance, as she clearly was not a prepubescent adolescent.²⁶ It may be that the times prohibited casting an actual child in the role, as the public's familiarity with pedophilia was lacking, and the notion of an adult man being unable to control his sexual desire for a twelve-year-old child was disturbing, if not incomprehensible.²⁷ Attempting to depict pedophilia in a manner palatable to movie audiences was more than a little challenging.²⁸

22. ANN M. HARALAMBIE, CHILD SEXUAL ABUSE IN CIVIL CASES 3 (1999).

23. "Nabokov's masterpiece—a book included on *Time Magazine's* list of the 100 greatest novels and ranked the fourth best novel of the century by the Modern Library . . ." Ira Wells, *Forgetting Lolita: How Nabokov's Victim Became an American Fantasy*, NEW REPUBLIC (May 28, 2015), <https://newrepublic.com/article/121908/lolita-cultural-icon> [<https://perma.unl.edu/XRB3-KGTZ>].

24. Although "[t]he publication, reception, and cultural re-fashioning of *Lolita* over the past 60 years is the story of how a twelve-year-old rape victim named Dolores became a dominant archetype for seductive female sexuality in contemporary America . . ." *Id.*

25. "*Lolita* has so far sold 50 million copies [and] it has been translated into dozens of languages." Bret Anthony Johnston, *Why 'Lolita' Remains Shocking, and a Favorite*, NPR (July 7, 2006), <https://www.npr.org/2006/07/07/5536855/why-lolita-remains-shocking-and-a-favorite> [<https://perma.unl.edu/EJD8-P3SY>].

26. For example, the *New York Times* review of the movie at release indicated:

In the first place, the character of Lolita, the perversely precocious child who had such affect on the libido of the middle-aged hero of the book, is not a child in the movie. She looks to be a good 17 years old, possessed of a striking figure and a devilishly haughty teen-age air. The distinction is fine, we will grant you, but she is definitely not a 'nymphet' as played by Sue Lyon, a newcomer . . . Right away, this removes the factor of perverted desire that is in the book and renders the passion of the hero more normal and understandable.

Bosley Crowther, *Screen: 'Lolita,' Vladimir Nabokov's Adaptation of His Novel*, N.Y. TIMES (June 14, 1962), <https://timesmachine.nytimes.com/timesmachine/1962/06/14/80400053.pdf>.

27. The actress Dominique Swain was subsequently cast in a second film based on Nabokov's novel, yet this fifteen-year-old actress did not appear to be prepubescent at the time of the filming. See Brandon Judell, *Dominique Swain: Lolita Has a Tattoo*, N.Y. THEATRE WIRE (2006), <http://www.nytheatre-wire.com/bj07011t.htm> [<https://perma.unl.edu/MGV8-4Z2Z>].

28. See Uri Klein, *Who Would Dare Remake 'Lolita' in the Age of #MeToo?*, HAARETZ (April 16, 2018), <https://www.haaretz.com/life/film/.premium.MAGAZINE-who-would-dare-remake-lolita-in-the-age-of-metoo-1.6006690>.

Public reaction to allegations of pedophilia in most Western countries is typically extreme revulsion.²⁹ However, published studies about adult male sexual attraction to “‘small children,’—a phrase that suggests prepubescent rather than adolescent children,” found that “21% of . . . male subjects admitted having some sexual attraction to small children”³⁰ The same studies concluded that this is “probably a gross underestimate of the percentage of males in the population who have some predisposition to abuse children sexually.”³¹ One writer addresses the many areas of progress society has made in understanding child sexual abuse over the last decades but frames the issue as follows:

Available statistics demonstrate the continued rampant existence of sexual assaults against children. States, as well as the federal government, have undertaken myriad programs and enacted legislation to address the problem. Yet, have the attitudes of the public and the courts really evolved with respect to the horrific criminal nature of the sexual abuse of our children?³²

According to John E.B. Myers, prior to the 1970s, the psychiatric and psychological literature about CSA focused on four themes.³³ First, children are responsible for their own molestation.³⁴ Second, mothers are to blame.³⁵ Third, child sexual abuse is rare.³⁶ Fourth, sexual abuse does little harm.³⁷

29. Myers has written that

[t]he subject is so unpleasant that many prefer to ignore it. Erna Olafson, David Corwin, and Roland Summit noted that “sexual abuse of children has repeatedly surfaced into public and professional awareness in the past . . . only to be resuppressed by the negative reaction it elicits.” In a similar vein, Judith Herman and Lisa Hirschman wrote that incest “has been repeatedly unearthed in the past hundred years, and just as repeatedly buried.”

Myers, *supra* note 11, at 364.

30. DIANA E. H. RUSSELL & REBECCA M. BOLEN, *THE EPIDEMIC OF RAPE AND CHILD SEXUAL ABUSE IN THE UNITED STATES* 261 (2000).

31. *Id.* (internal citation omitted). The authors noted,

[I]n a culture in which Brooke Shields was described at the age of 12 years as the most beautiful woman in the world, and in which female youthfulness has become eroticized for many males, a good case could be made for the notion that only a small percentage of men experience no sexual attraction toward postpubescent female children. While sexual attraction is not necessarily acted out, particularly if acting it out is illegal and/or stigmatized, it is an important factor in the occurrence of sexual abuse.

Id.

32. Debra Todd, *Sentencing of Adult Offenders in Cases Involving Sexual Abuse of Children: Too Little, Too Late? A View from the Pennsylvania Bench*, 109 PENN ST. L. REV. 487, 510 (2004).

33. MYERS, *supra* note 11, at 366.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

Early legal literature was no more enlightened than these psychiatric and psychological writings. But through the 1970s, as feminism evolved and altered the composition of law school faculties and classes, the publications in law, medicine, and social science focusing on CSA changed radically.³⁸ Previously embraced touchstones of CSA were challenged and scrutinized,³⁹ and empirical studies emerged documenting behavioral responses to CSA.⁴⁰ Blame shifted from mothers of the molested children to the behaviors of the actual molesters.⁴¹ The level of reliable and tested information about the actual perpetrators of CSA suddenly became important, especially as protecting children from exposure to life-altering sexual abuse became a priority.

A commonly-embraced concern about pedophilia is that the sexual perpetrator was once the victim of similar forms of childhood sexual abuse, resulting in a repeated pattern of behavioral misconduct.⁴² In the 1980s, Finkelhor and Browne developed a traumagenic model⁴³ of the sexual abuse of children to better understand why some abused children abuse others⁴⁴ as a response to their own sexual abuse.⁴⁵ In further examining this paradigm, at least one study has described the characteristics and likely causes of pedophilia based, at least partly, in neurological factors:

38. *Id.* at 364.

39. See Michael E. Lamb, *The Investigation of Child Sexual Abuse: An Interdisciplinary Consensus Statement*, 18 CHILD ABUSE & NEGLECT 1021, 1023 (1994) (“No specific behavioral syndromes characterize victims of sexual abuse. Sexual abuse involves a wide range of possible behaviors that appear to have widely varying effects on its victims. The absence of any sexualized behavior does not confirm that sexual abuse did not take place any more than the presence of sexualized behavior conclusively demonstrates that sexual abuse occurred; rather, both pieces of information affect the level of suspicion concerning the child’s possible experiences and should serve to promote careful and nonsuggestive investigation.”).

40. See Kathleen A. Kendall-Tackett et al., *Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies*, 113 PSYCHOL. BULL. 164 (1993).

41. See FENTIMAN, *supra* note 7.

42. See Chelsea Leach et al., *Testing the Sexually Abused-Sexual Abuser Hypothesis: A Prospective Longitudinal Birth Cohort Study*, 51 CHILD ABUSE & NEGLECT 144 (2015) (concluding that few sexual offenders (4%) had confirmed histories of sexual abuse; the researchers were unable to confirm any association between sexual abuse and sexual offending).

43. David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 AM. J. ORTHOPSYCHIATRY 530 (1985).

44. “Both boys and girls are known to be capable of behaving in a sexually aggressive way from approximately 6–7 years of age, if not younger.” Anne Blues et al., *Work with Adolescent Females Who Sexually Abuse, Similarities and Differences*, in CHILDREN AND YOUNG PEOPLE WHO SEXUALLY ABUSE OTHERS 168, 177 (Marcus Erooga & Helen Massoon eds., 1999).

45. CHILDREN AND YOUNG PEOPLE WHO SEXUALLY ABUSE OTHERS, *supra* note 44, at 2.

The last few decades have seen increasing evidence that pedophilia is biological and more specifically that it might be neurological in origin. In studies with large sample sizes, sex offenders diagnosed with pedophilia scored lower on intelligence tests than non-pedophilic patients, with number of child victims negatively correlating with intelligence while the number of adult partners positively correlated with intelligence. . . . They are also three times more likely to be left-handed or ambidextrous, strongly suggesting a neurological cause. Some findings suggest that disturbances to neurodevelopment in utero or in early childhood increase risk of pedophilia. Sex offenders with pedophilia are also more likely to report experiencing head injuries, a possible source of brain damage, before age thirteen . . . MRIs reveal that sex offenders with pedophilia have less white matter in their brains than individuals who have committed no offenses with children. White matter serves as a pathway in the brain's network, connecting various grey matter areas to each other and carrying nerve impulse between neurons.⁴⁶

This is not an attempt to reintroduce Lombroso's conception of people who have been "born criminal"⁴⁷ but a recognition of developing research⁴⁸ involving individuals charged or convicted of sexual offenses and those charged or convicted of sexual offenses involving children.⁴⁹

Before Michel Foucault died in 1984, he generated a theory of Western society's shifting views about sexuality in his work, *The History of Sexuality*, tracing an elaborate system of classifications of sexuality back to the seventeenth century, where western doctors first established a distinction between "normal" and "deviant" sexuality.⁵⁰ Foucault's work helped initiate a contextual appreciation of sexual behavior by examining primitive, ancient, and modern civilizations. We don't have current well-circulated theories about pedophilia or successful evidence-based treatment modalities for pedophilia that have undergone longitudinal studies for effectiveness. It is possible, however, to identify consensus among most experts that

[n]early all people with pedophilic tendencies are male. Studies of child molesters have reported only 1% to 6% of perpetrators are female. Co-occurring disorders, such as personality disorders or mood disorders, are common in

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46. Margo Kaplan, *Taking Pedophilia Seriously*, 72 WASH. & LEE L. REV. 75, 88–89 (2015).
 47. CESARE LOMBROSO, CRIMINAL MAN (Mary Gibson & Nicole Hahn Ritter trans., 1876). The Italian physician who had worked in lunatic asylums has been credited as the "founder" of modern criminology, theorizing that criminals could be identified by physical attributes like the size of their skulls, the shape of their noses, bloodshot eyes, and that criminality was inherited. *Id.*
 48. R. BARRI FLOWERS, KIDS WHO COMMIT ADULT CRIMES: SERIOUS CRIMINALITY BY JUVENILE OFFENDERS 99 (2002); see Sandy Lane, *The Sexual Abuse Cycle*, in JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 77 (Gail Ryan & Sandy Lane eds., 2d ed. 1997).
 49. See Jackie Craissati & Grace McClurg, *The Challenge Project: A Treatment Program Evaluation for Perpetrators of Child Sexual Abuse*, 21 CHILD ABUSE & NEGLECT 637 (1997).
 50. Michel Foucault, THE HISTORY OF SEXUALITY, VOLUME I: AN INTRODUCTION (Robert Hurley trans., 1978).

people with pedophilic tendencies. And about 50% to 70% of people with pedophilic tendencies are also diagnosed with another paraphilia, such as exhibitionism, voyeurism, or sadism . . . [P]edophilia is a distinct sexual orientation, not something that develops in someone who is homosexual or heterosexual. Some people with pedophilic urges are also attracted to adults, and may act only on the latter urges. Because people with pedophilic urges tend to be attracted to children of a particular gender, they are sometimes described in the literature as heterosexual, homosexual, or bisexual pedophiles. Roughly 9% to 40% of pedophiles are homosexual in their orientation toward children—but that is not the same as saying they are homosexual. Homosexual adults are no more likely than heterosexuals to abuse children.⁵¹

In addition to recent studies of neurological contributors to pedophilia,⁵² a growing body of research has examined the “cycle of victimization,”⁵³ “whereby children exposed to abuse and neglect [have been] shown to have an increased risk of perpetrating violence compared to non-victims.”⁵⁴ Kaplan has argued that “[w]hile treatment cannot eliminate a pedophile’s sexual interests, a combination of cognitive-behavioral therapy and medication can help him to manage urges and avoid committing crimes.”⁵⁵ Many believe that pedophilia, classified as a paraphilia (or an abnormal sexual behavior) in the DSM-5⁵⁶ has no effective treatment,⁵⁷ and that pedophilia, like other

51. Harvard Medical School, *Pessimism About Pedophilia*, 27 HARV. HEALTH PUBLICATIONS 1 (2010).

52. See Timm B. Poepl et al., *Association Between Brain Structure and Phenotypic Characteristics in Pedophilia*, 47 J. PSYCHIATRIC RES. 678 (2013); *Brain Scans Provide Clues for the Development of Pedophilia*, NEUROSCI. NEWS (Feb. 23, 2018), <https://neurosciencenews.com/mri-pedophile-brain-8548> [<https://perma.unl.edu/6FNN-W7ZN>]; Gilian Tenbergen et al., *The Neurobiology and Psychology of Pedophilia: Recent Advances and Challenges*, FRONTIERS HUM. NEUROSCI. (June 24, 2015), <https://www.frontiersin.org/articles/10.3389/fnhum.2015.00344/full> [<https://perma.unl.edu/H3AU-AYQ6>].

53. This is a complicated area where generalizations about behaviors of sex abuse survivors must be resisted. For instance, researchers who provide therapeutic services to adolescent females who sexually abuse found

that girls who sexually abuse are much more likely to have experienced sexual abuse themselves. Matthews et al. (1997), for example, suggests that approximately 77 percent of girls and women who sexually abuse are also sex abuse victims. In contrast Cavanagh-Johnson (1989) and O’Callaghan and Print (1994) suggest respectively that 30 and 50 percent of boys are themselves victims of sexual abuse. Furthermore, it is suggested that girls are more likely to have been abused by a perpetrator with whom they had sustained a close ongoing relationship Despite this strong correlation in young females between prior sexual abuse and sexually abusing behaviour, to use this factor as precondition to abusing must be considered inappropriate as only a few of the many tens of thousands of female victims of child sexual abuse become perpetrators.

Blues et al., *supra* note 44, at 172.

54. Kristen M. Benedini et al., *The Cycle of Victimization: The Relationship Between Childhood Maltreatment and Adolescent Peer Victimization*, 59 CHILD ABUSE & NEGLECT 111, 112 (2016).

55. Kaplan, *supra* note 4, at 2.

56. DSM-5, *supra* note 18, at 697.

sexual orientations, is unlikely to change. Any treatment regimen must therefore have a goal of preventing someone from acting on pedophilic urges by decreasing sexual arousal around children or increasing the ability to manage that arousal.⁵⁸ However, some therapists believe that certain pedophiles may alter their orientation away from children or engage in repression of their attractions by using drugs like androgen⁵⁹ to reduce testosterone levels⁶⁰ and curb sexual appetite.⁶¹ Still, other therapists contend that by combining cognitive behavioral therapy with psychopharmacological treatments such as

57. *But see* Simone Leavell Bruce et al., *Pedophilia-Themed Obsessive-Compulsive Disorder: Assessment, Differential Diagnosis, and Treatment with Exposure and Response Prevention*, 47 ARCHIVES SEXUAL BEHAV. 389 (2018) (discussing the treatment of misdiagnosed obsessive-compulsive disorder which may be confused with pedophilia as it is highly comorbid with other psychiatric disorders).

58. *See* Harvard Medical School, *supra* note 51 (“There is no cure, so the focus is on protecting children”). The Harvard publication asserts,

One challenge in the scientific literature is that most of the studies on pedophilia have involved men convicted of crimes against children, and experts estimate that only one in 20 cases of child sexual abuse is reported. It remains unclear how prevalent pedophilia is in the general population. Research on convicts may not apply to people with pedophilic tendencies who live without detection in the community or suffer silently while controlling their impulses.

Id.

59. As explained by Rice and Harris,

Androgen is the generic term for any compound that stimulates or controls the development of male characteristics in vertebrates. The principal androgen is testosterone, which . . . affects the degree of masculinity within each sex. Fetal testosterone has enduring effects by stimulating the development of receptors that allow the body to respond to testosterone throughout life.

Marnie E. Rice & Grant T. Harris, *Is Androgen Deprivation Therapy Effective in the Treatment of Sex Offenders?*, 17 PSYCHOL. PUB. POL’Y & L. 315, 316 (2011).

60. The use of androgen deprivation therapy for sex offenders is thought to be unclear in some measure because the results of studies often involve highly selected sample groups. *Id.* *But see* D. Turner & P. Briken, *Treatment of Paraphilic Disorders in Sexual Offenders or Men with a Risk of Sexual Offending with Luteinizing Hormone-Releasing Hormone Agonists*, 15 J. SEXUAL MED. 77 (2018) (discussing increased evidence that LHRH agonists are more effective than steroidal antiandrogens in lowering paraphilic sexual thoughts and behaviors but with possible side effects including fatigue, hot flashes, depressive mood, weight gain, high blood pressure, diabetes, gynecomastia, loss of erectile function, and loss of bone mineral density).

61. Lauren Cox, *Treating Pedophiles: Therapy Can Work, but It’s a Challenge*, LIVE SCI. (Dec. 16, 2011), <https://www.livescience.com/17519-treating-pedophiles-therapy-challenge.html> [<https://perma.unl.edu/4GQF-JAHL>] (quoting Robin Wilson, assistant professor of psychiatry at McMaster University in Hamilton, Ontario, who claims, “There’s a common misperception that sex offenders are sex offenders all the time. That’s not necessarily true. Under certain circumstances, they do have normal relationships.”). Dr. Richard Krueger, medical director of the Sexual Behavior Clinic at N.Y. State Psychiatric Institute in New York, says some pedophiles might be able “to turn their sexual attractions toward healthy adult relationships,” so that the

testosterone-lowering agents and serotonergic antidepressants, treatments can be effective to combat paraphilic sexual symptoms.⁶² J. Paul Federoff, professor of psychiatry at the University of Ottawa and director of the Sexual Behaviours Clinic, has argued that treatment regimens for paraphilic disorders including sex offenders against children can be assessed and treated.⁶³ Researchers identify two groups that engage in sexual offending against children: those “who show no sexual preference disorder, but whom, for various reasons, sexually abuse children . . . and those who do display a sexual preference disorder, namely pedophilia and/or hebephilia.”⁶⁴

“Some treatment regimens for persons with pedophilia include cognitive-behavior therapy . . . and drug therapy including androgen deprivation therapy” (ADT is “chemical castration”).⁶⁵ Additionally, hormone-inhibiting medications are used to diminish the sex drive of sexual abusers including “progestogens, the gonadotropin-releasing hormone agonists, and the competitive testosterone inhibitors,” but

“hebephillic” type of pedophile, who is sexually attracted to pubescent children, and the “pedohebephillic” type, who is sexually attracted to both prepubescent and pubescent children. . . . can sometimes be nudged into focusing on adults . . . [but] pedophiles who fall under the “classic type” and are attracted only to prepubescent children, usually under age 11, often don’t change their focus

Id.

62. Danilo Antonio Baltieri & Arthur Guerra de Andrade, *Treatment of Paraphilic Sexual Offenders in Brazil: Issues and Controversies*, 8 INT’L J. FORENSIC MENTAL HEALTH 218, 218 (2009) (conceding that “the use of hormonal medications for treatment of paraphilic sexual aggressors has been considered amoral”).
63. See J. Paul Federoff, *Pedophilia: Interventions that Work*, 33 PSYCHIATRIC TIMES (July 29, 2016), <http://www.psychiatrictimes.com/special-reports/pedophilia-interventions-work> [<https://perma.unl.edu/2VTB-NJB6>]; see also J. Paul Federoff, *Managing Versus Successfully Treating Paraphilic Disorders*, in HANDBOOK OF CLINICAL SEXUALITY FOR MENTAL HEALTH PROFESSIONALS 345 (Stephen B. Levine ed., 2016).
64. Tenbergen et al., *supra* note 52 (explaining that the reasons for those who do not display a sexual preference for children include “sexually inexperienced adolescents, mentally retarded persons, those with antisocial personality disorders, or perpetrators within general traumatizing family constellations, which seek surrogate partners in children” and also explaining that “only about 50% of individuals who do sexually abuse children are pedophilic and not every pedophilic individual actually has abused children”).
65. As Rice and Harris explain, although
[a]ndrogen deprivation can be accomplished both surgically and pharmacologically, Surgical castration (also called orchiectomy) is the irreversible removal of the testes. . . . Pharmacological or chemical castration involves the administration of anti-androgens—drugs that interfere with androgen production or effects. The most commonly used are cyproterone acetate (CPA), medroxyprogesterone acetate (MPA), and leutinizing hormone releasing hormone (LHRH) agonists (or, synonymously, gonadotropic-releasing hormone or GnRH agonists). Each works somewhat differently.

Rice & Harris, *supra* note 59.

they can be very expensive and have negative side-effects.⁶⁶ In addition, some “specific serotonin reuptake inhibitors that are used for treating obsessive-compulsive disorder (OCD) have been found to be effective for treating sexual disorders,” including the medication Sertraline (Zoloft), which has been tested on pedophiles and found to be effective while having less severe side-effects.⁶⁷ Some research differentiates pedophilic disorder from pedophilia-themed OCD (P-OCD)⁶⁸ where those afflicted “experience excessive worries and distressing intrusive thoughts about being sexually attracted to, and sexually violating, children,” but such thoughts for P-OCD individuals are distressing and cause severe shame,⁶⁹ disgust, and anxiety.⁷⁰ However, these researchers concede that “to date there has been no research to determine which measures are most effective in identifying P-OCD,”⁷¹ and they also indicate a high frequency of professionals either misdiagnosing the P-OCD individuals or incorrectly regarding them as pedophiles.⁷² Individuals with P-OCD generally avoid contact with children. Public perceptions and policies seeking to provide protection to child victims must be based on verifiable data⁷³ rather than

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66. Sharie Stines, *Treating Pedophilia*, PSYCH CENTRAL (Aug. 31, 2015), <https://pro.psychcentral.com/treating-pedophilia/> [<https://perma.unl.edu/6Q6T-GV6C>].
 67. *Id.* at 3. For long-term treatment outcomes of obsessive compulsive patients, see P. Alonso et al., *Long-Term Follow-Up and Predictors of Clinical Outcome in Obsessive-Compulsive Clients Treated with Serotonin Reuptake Inhibitors and Behavioral Therapy*, 62 J. CLINICAL PSYCHIATRY 535 (2001).
 68. See S.E. O’Neil et al., “*Not Knowing If I Was a Pedophile . . .*”—*Diagnostic Questions and Treatment Strategies in a Case of OCD*, 13 HARV. REV. PSYCHIATRY 186 (2005).
 69. See A.J. Cathey & C.T. Wetterneck, *Stigma and Disclosure of Intrusive Thoughts About Sexual Themes*, 2 J. OBSESSIVE-COMPULSIVE & RELATED DISORDERS 439 (2013).
 70. Bruce et al., *supra* note 57, at 390 (“In contrast, in pedophilic disorder, the thoughts are usually ego syntonic, (i.e. clients with pedophilic disorder enjoy and are sexually aroused by sexualized thoughts and images of children).”).
 71. *Id.* at 395 (citing a recent study which found that clinicians who were members of the American Psychological Association misidentified 42.9% “sexual obsessions about children, with over a third wrongly classifying the problem as pedophilia”).
 72. See Glazier et al., *High Rates of OCD Symptom Misidentification by Mental Health Professionals*, 25 ANNALS CLINICAL PSYCHIATRY 201 (2013). The problem was more glaring with primary care physicians who misdiagnosed 70.8% of the P-OCD cases. See Kimberly Glazier et al., *Half of Obsessive-Compulsive Disorder Cases Misdiagnosed: Vinette-Based Survey of Primary Care Physicians*, 76 J. CLINICAL PSYCHIATRY 761 (2015). Thus, individuals with P-OCD have less chance of receiving a proper diagnosis and appropriate treatment.
 73. The verification of sex offender treatment programs appears to be problematic. As some researchers have concluded, “Unfortunately . . . the empirical studies of sex offender treatment have generally been methodologically weak, and the studies of recidivism following surgical and pharmacological treatments have used the weakest designs of all . . . often failing to include even a comparison group of sex offenders not exposed to [androgen deprivation treatment].” Rice & Harris, *supra* note 59, at 323.

the mere appearance of crime control or myths surrounding sex offenders.⁷⁴

III. DELAYS IN REPORTING CHILDHOOD SEXUAL ABUSE BY VICTIM

Studies document the reluctance of responders and family members to give credibility to the accounts of children and adolescents who report their sexual abuse.⁷⁵ Attitudinal barriers have often stymied reports of childhood sexual abuse. For years, child sexual abuse was believed to be rare in this country. And for years, the subject was rarely discussed in the media—and little understood by the public. Many believed sexual abuse allegations were the product of children's fantasies. Some still do.⁷⁶ For decades now, databases showing the frequency of childhood rape have been exposed to a great deal of scrutiny, and official sources of rape statistics reveal that a very small percentage of rapes are ever reported to law enforcement agencies.⁷⁷ The reluctance of victims to report exposure to sexual abuse during childhood does not suggest that such incidents occur infrequently.⁷⁸ It is curious, therefore, that people would question the veracity of childhood sexual abuse survivors when they come forward to report for the first time in their lives—only after reaching adulthood—that they had been raped or subjected to sexual abuse during their early development or adolescence.⁷⁹

74. See Kelly M. Socia & Andrew J. Harris, *Evaluating Public Perceptions of the Risk Presented by Registered Sex Offenders: Evidence of Crime Control Theater?*, 22 PSYCHOL. PUB. POL'Y & L. 375, 375 (2016) (“[M]any members of the public believe a variety of myths surrounding those who are assigned the “sex offender” designation. These include myths related to the perceived homogeneity of the sex offender population, the extent and nature of reoffense risk . . . and the efficacy of treatment and rehabilitation efforts . . .”).

75. Rejecting claims of child abuse is not limited to challenging the credibility of child victims, but there is recognition that the subject matter itself is so disturbing that it is often simply ignored. As John E.B. Myers wrote:

Erna Olafson, David Corwin, and Roland Summit noted that “sexual abuse of children has repeatedly surfaced into public and professional awareness in the past . . . only to be resuppressed by the negative reaction it elicits.” In a similar vein, Judith Herman and Lisa Hirschman wrote that incest “has been repeatedly unearthed in the past hundred years, and just as repeatedly buried.”

MYERS, *supra* note 11, at 364.

76. DAVID HECHLER, *THE BATTLE AND THE BACKLASH: THE CHILD SEXUAL ABUSE WAR* 5 (1988).

77. RUSSELL & BOLEN, *supra* note 30, at 133.

78. *Id.* at 147.

79. See Sarah M. Tashjian et al., *Delay in Disclosure of Non-Parental Child Sexual Abuse in the Context of Emotional and Physical Maltreatment: A Pilot Study*, 58 CHILD ABUSE & NEGLECT 149 (2016).

One must ask, why would survivors of CSA intentionally expose themselves to humiliation and loss of privacy⁸⁰—surrendering the anonymity they once enjoyed in order to cope with the consequences of their abuse?⁸¹ Of course, this is not to suggest that every report of childhood sexual abuse is factually accurate,⁸² but the consequences of a child reporting exposure to sexual abuse are so conflicting for children that most survivors of CSA simply do not disclose their abuse during childhood.⁸³ One writer suggests:

No one knows for sure how many survivors of childhood sexual abuse there are, because sexual abuse is still one of the most underreported crimes. In North America, the most frequently cited estimates are that about one out of every three girls and one in six boys are sexually abused in some way before they turn eighteen. Half of all rape victims are children. Wherever you live, there are a lot of survivors around you.⁸⁴

Among the small number of children who reported their abuse while it was occurring, one study found only 8.3% stated that the abuse ceased, with the remaining 18.3% reporting that the abuse continued despite the disclosure.⁸⁵ This is especially compelling in the case of

80. See Berliner, *supra* note 17, at 216 (“Sexual abuse continues to be a stigmatizing and embarrassing experience. Consequently, some victims do not reveal past incidents even when sensitively asked. . . . Thus, answering the seemingly simple question, ‘How common is sexual abuse?’ turns out to be quite complicated.”).

81. Some of the complications of child-victim reporting sexual abuse can be summed up:

When a child comes to court to testify, it is often because she is the sole witness to a crime. This is particularly likely to be the situation in sexual abuse cases, where not only is the child the sole witness, but there may be no medical signs of abuse, or circumstantial physical evidence. The difficulty posed by the uncorroborated reports of sexual abuse is compounded by the fact that the testimony of young children may at times seem to lack credibility.

STEPHEN J. CECI & MAGGIE BRUCK, JEOPARDY IN THE COURTROOM, A SCIENTIFIC ANALYSIS OF CHILDREN’S TESTIMONY 269 (1995).

82. One concern about sexual abuse reports should be distinguishing between normative sexual behaviors displayed by children and behaviors displayed by CSA victims. For instance, Myers reports,

Although sexual behavior is normative, excessive sexual behavior appears related to other behavioral problems including sexual abuse Given the relationship between sexual behavior and sexual abuse, it is important for a pediatrician to be in a position to inform parents, for example, that simply because a 5-year-old boy touches his genitals occasionally, even after a weekend visit with his noncustodial parent, it does not mean he has been sexually abused. Rather, it is behavior that is seen in almost two thirds of boys at that age.

1 JOHN E.B. MYERS, MYERS ON EVIDENCE IN CHILD, DOMESTIC AND ELDER ABUSE CASES, 382 (2005) (citing William N. Friedman et al., *Normative Sexual Behavior in Children: A Contemporary Sample*, 101 PEDIATRICS 9 (1998)).

83. Janine M. Swingle et al., *Childhood Disclosure of Sexual Abuse: Necessary but Not Necessarily Sufficient*, 62 CHILD ABUSE & NEGLECT 10, 11 (2016).

84. CAROLYN LEHMAN, STRONG AT THE HEART, HOW IT FEELS TO HEAL FROM SEXUAL ABUSE xi (2d ed. 2014).

85. Swingle et al., *supra* note 83, at 13.

young male victims of sexual abuse.⁸⁶ In one study, three-quarters of the population did not disclose their abuse while it was occurring, and of those victims who did disclose the abuse, 70% reported that the abuse continued despite their disclosure, and over half of the disclosures were met with indifferent or negative reactions.⁸⁷

The impact of sexual abuse on child victims is life altering and often overwhelming.⁸⁸ A history of childhood sexual abuse often includes an increased prevalence of mood, anxiety, and psychotic disorders,⁸⁹ self-destructive behavior such as substance abuse and suicidal behavior,⁹⁰ relational and sexual problems,⁹¹ an increased risk of revictimization,⁹² and neurobiological alterations, along with the development of posttraumatic stress disorder (PTSD)⁹³ following subse-

86. See Jean Von Hohendorff et al., "A Boy, Being a Victim, Nobody Really Buys That, You Know?": *Dynamics of Sexual Violence Against Boys*, 70 CHILD ABUSE & NEGLECT 53 (2017) (describing the "social invisibility of sexual violence against boys, due to the low number of referrals as well as the disbelief and discrimination, which permeates the management of these cases").

87. See Kendal-Tackett, *supra* note 40.

88. See Ryan C.W. Hall & Richard C.W. Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 MAYO CLINIC PROC. 457, 465 (2007) (outlining the effects of sexual abuse on children).

89. See Richard J. Kavoussi, Meg Kaplan & Judith V. Becker, *Psychiatric Diagnoses in Juvenile Sex Offenders*, 27 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 241 (1988).

90. Federico M. Daray et al., *The Independent Effects of Child Sexual Abuse and Impulsivity on Lifetime Suicide Attempts Among Female Patients*, 58 CHILD ABUSE & NEGLECT 91 (2016).

91. See Hendrika B. Cantwell, *Sexually Aggressive Children and Societal Response*, in CHILD SURVIVORS AND PERPETRATORS OF SEXUAL ABUSE: TREATMENT INNOVATIONS (1995).

92. See Lynsey R. Miron & Holly K. Orcutt, *Pathways from Childhood Abuse to Prospective Revictimization: Depression, Sex to Reduce Negative Affect, and Forecasted Sexual Behavior*, 38 CHILD ABUSE & NEGLECT 1848 (2014) ("The link between adverse childhood experiences and subsequent trauma exposure is robust, and an extensive body of research indicates that women with a history of childhood sexual abuse (CSA) are at particularly high risk for later sexual revictimization (citations omitted). Results from a meta-analysis . . . indicate that 15–79 percent of women reporting CSA also experience adult sexual assault (ASA) . . . experiencing CSA doubles or even triples a woman's risk for ASA.")

93. In a Canadian study involving 447 sexually abused children ages six through twelve, boys and girls were found to exhibit different symptoms following sexual abuse. Amélie Gauthier-Duchesne, Martine Hébert & Marie-Ève Daspe, *Gender as a Predictor of Posttraumatic Stress Symptoms and Externalizing Behavior Problems in Sexually Abused Children*, 64 CHILD ABUSE & NEGLECT 79 (2017). As explained by Gauthier-Duchesne, Hébert, and Daspe,

Indeed, boys were more likely to display externalizing behavior problems, which is consistent with the literature The association between gender and PTSD seemed to be more complex. Results suggested that being a girl was directly associated with PTSD symptoms. For boys, however, this relationship was mediated by the severity of abuse, as defined by the degree of intrusiveness of the sexual acts in-

quent trauma during adulthood.⁹⁴ A diagnosis of PTSD is much higher in cases involving interpersonal violence than in cases where exposure is limited to impersonal trauma.⁹⁵

The symptoms and consequences of CSA are not uniformly similar.⁹⁶ They are extensive and widespread:

Fergusson and colleagues (1996) and Lynskey and Fergusson (1997) studied sexual abuse of children and child psychiatric disorders by following a birth cohort of more than 1,000 New Zealand children. They found that children who were sexually abused had higher rates of major depression, anxiety disorder, conduct disorder, substance use disorder, and suicidal behaviors than children not reported to being abused.⁹⁷

Studies show that child and adolescent boys are significantly more likely to have been exposed to physical assault, while girls had greater exposure to sexual assault:

Kaminer and colleagues, in their review of violent trauma among girls, reported disturbingly high rates of sexual abuse. Their examination identified a United States community study with a 34% rate, a German study with a 25% rate, and a New Zealand study showing a 10% rate by age 16. Additionally, at a South African clinic, sexual trauma emerged as the most common trauma among adolescent girls being treated for PTSD.⁹⁸

volved. Therefore, being a boy was related to a greater severity of abuse, which in turn predicted higher PTSD symptoms. . . . Girls seem more prone to experience traumatic symptoms (re-experiencing the trauma, avoidant behaviors and hyperarousal problems) following [sexual abuse]. For boys, the link between [sexual abuse] and PTSD symptoms seems less straightforward and more dependent on the type of abuse experienced. The current results suggest that boys are victims of more intrusive acts and . . . the more severe the abuse is, the more likely they are to experience PTSD symptoms.

Id. at 84–85.

94. Swingle et al., *supra* note 83, at 11.

95. Richard A. Bryant & Terence M. Keane, *Posttraumatic Stress Disorder*, in *PSYCHOPATHOLOGY: FROM SCIENCE TO CLINICAL PRACTICE* 172, 178 (2013). Additionally, 55% of rape victims develop PTSD while only 7.5% of accident victims develop PTSD, and evidence overwhelmingly supports that PTSD is more often associated with other psychiatric disorders than occurring as the sole diagnosis. *Id.*

96. This is often referred to as “resiliency and vulnerability factors” that mediate the development of PTSD and other identifiable responses to trauma, including CSA. See Raul R. Silva & Lena Kessler, *Resiliency and Vulnerability Factors*, in *POSTTRAUMATIC STRESS DISORDERS IN CHILDREN & ADOLESCENTS* 18 (2004).

97. Kenneth Spitalny, *Clinical Findings Regarding PTSD in Children and Adolescents*, in *POSTTRAUMATIC STRESS DISORDERS IN CHILDREN AND ADOLESCENTS*, *supra* note 96, at 141, 156 (citing D.M. Fergusson, L.J. Horwood & M.T. Lynskey, *Childhood Sexual Abuse and Psychiatric Disorders in Young Adulthood: Part II: Psychiatric Outcomes of Childhood Sexual Abuse*, 35 *J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY* 1365 (1996)); M.T. Lynskey & D.M. Fergusson, *Factors Protecting Against the Development of Adjustment Difficulties in Young Adults Exposed to Childhood Sexual Abuse*, 12 *CHILD ABUSE & NEGLECT* 1177 (1997).

98. Patricia Karen Abanilla, *Gender Differences in Childhood PTSD*, in *POSTTRAUMATIC STRESS DISORDERS IN CHILDREN AND ADOLESCENTS*, *supra* note 96, at 163, 164 (citation omitted).

Because of the highly secretive nature of most sexual abuse of children, psychological assessments of children and their families can be extremely helpful as children who have been sexually abused present high variability in symptoms, or sometimes appear to be entirely asymptomatic. Because symptoms vary so wildly, evaluations on family members, both suspected offenders as well as nonoffenders, can be highly valuable—especially when victims engage in denials or have the potential for latent symptoms.⁹⁹ It would be inaccurate to generalize from these psychological assessment instruments, however, that we can consistently identify CSA victims based upon identifying the symptoms exhibited by many CSA survivors:

It is important to emphasize that there is no psychological symptom or behavior, or set of symptoms or behaviors, observed in all or even a majority of sexually abused children. There is no psychological test that detects sexual abuse. The Child Sexual Behavior Inventory (CSBI), developed by William Friedrich, is a paper and pencil form filled out by a parent or caretaker in which the adult documents a child's sexual behaviors over the previous six months. The CSBI is a scientifically rigorous psychological tool that is a valuable component of an overall clinical assessment of sexual abuse. The CSBI is not, however, a test for sexual abuse. There is no Sexually Abused Child Syndrome that detects or diagnoses child sexual abuse Indeed, the majority of sexually abused children demonstrate no outward behavioral manifestations of the abuse.¹⁰⁰

Understanding the complexities of CSA requires that we recognize the reluctance of child victims to report their abuse.¹⁰¹ Complicating this scenario is the involvement of wealthy or powerful institutions that play a role in protecting or covering up CSA.¹⁰² One such powerful institution deeply involved in the denial and cover up of pedophilia by its members has been the Catholic Church.¹⁰³

99. WILLIAM N. FRIEDRICH, *PSYCHOLOGICAL ASSESSMENT OF SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES* xi (2002).

100. MYERS, *supra* note 82, at 375–76.

101. See Hanna-Mari Lahtinen et al., *Children's Disclosure of Sexual Abuse in a Population-Based Sample*, 76 *CHILD ABUSE & NEGLECT* 84 (2018).

102. See, e.g., *The Catholic Church's Defiance and Obstruction on Child Sex Abuse*, WASH. POST (Apr. 19, 2016), https://www.washingtonpost.com/opinions/defiance-and-obstruction-on-child-sex-abuse/2016/04/19/22efc3de-0351-11e6-9d36-33d198ea26c5_story.html?utm_term=.242e62405303 [<https://perma.unl.edu/PR5P-AT34>]; George Joseph, *U.S. Catholic Church Has Spent Millions Fighting Clergy Sex Abuse Accountability*, GUARDIAN (May 12, 2016), <https://www.theguardian.com/us-news/2016/may/12/catholic-church-fights-clergy-child-sex-abuse-measures> [<https://perma.unl.edu/EPP2-CVXD>].

103. See JASON BERRY, *LEAD US NOT INTO TEMPTATION, CATHOLIC PRIESTS AND THE SEXUAL ABUSE OF CHILDREN* (1992) (observing that between 1984 and 1992, some four hundred Catholic priests in North America alone were reported for sexually molesting children, mostly boys); see also *A History of Secrecy, Coverups in Boston Archdiocese*, BOS. GLOBE (Oct. 13, 2015), <https://www.bostonglobe.com/news/special-reports/2015/10/13/bcom-spotlight/H1GowF3c56Yq7n68ONhJcK/story.html> [<https://perma.unl.edu/Q3C8-HH3S>].

IV. INSTITUTIONAL PROTECTION FOR SEXUAL ABUSERS OF CHILDREN

From 1985 onwards, allegations of clergy in the Catholic Church sexually molesting children began to surface in the United States,¹⁰⁴ and the allegations have expanded to other nations as well.¹⁰⁵ But current databases of allegations of child abuse initiated by priests suffer from a number of shortcomings.¹⁰⁶ Many records have been destroyed over the years in local courthouses; law office files are geographically dispersed and prone to disappearance; electronic media records—Lexis/Nexis, Westlaw—exist only when cases have been published; press coverage is selective and fails to capture the many cases settled in an attempt to avoid publicity; diocesan records may be the best source of records of litigation against the Church for clergy sexual abuse.¹⁰⁷ Sex abuse allegations against Catholic clergy have not ended,¹⁰⁸ despite the massive amounts of money paid by the Church to resolve lawsuits resulting from child molestation and efforts by Church superiors to cover up the abuse.¹⁰⁹

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104. See Bettina Böhm et al., *Child Sexual Abuse in the Context of the Roman Catholic Church: A Review of the Literature from 1981–2013*, 23 J. CHILD SEXUAL ABUSE 635 (2014).
105. Willemien Langeland et al., *Childhood Sexual Abuse by Representatives of the Roman Catholic Church: A Prevalence Estimate Among the Dutch Population*, 46 CHILD ABUSE & NEGLECT 67, 74–75 (2015) (reporting that CSA within the Dutch Roman Catholic Church clergy was rather small, perhaps 1.7% of all reports of non-familial CSA, but institutionalized CSA was much higher for children in foster care homes and the overall rates of CSA in Dutch society was as high as 14%).
106. TIMOTHY D. LYTTON, HOLDING BISHOPS ACCOUNTABLE 43 (2008) (“Estimates of the number of priests accused of child sexual abuse, the number of victims, and the number of incidents of abuse within the Catholic Church are based on allegations recorded in church personnel files, court filings, and media reports. Since many victims never disclose their abuse, these estimates are, by all accounts, low, and there is no way of knowing by just how much.”).
107. *Id.* at 49. “Canon lawyer Thomas Doyle and plaintiffs’ attorney Steve Rubino suggested in a 2004 law review article that ‘[s]ince 1984, there have been about 3000 civil cases related to clergy sexual abuse throughout the United States.’” *Id.*
108. See Kris Maher, *Sexual-Abuse Allegation Against Cardinal Found Credible*, WALL ST. J. (June 21, 2018), <https://www.wsj.com/articles/sexual-abuse-allegation-against-cardinal-found-credible-1529506643> [<https://perma.unl.edu/92H8-XAUH>] (“The Catholic Church said . . . it found an allegation of sexual abuse against a former archbishop of Washington D.C., to be credible . . . He is the highest-ranking U.S. Catholic cleric ever to receive this penalty for alleged sexual abuse.”).
109. Laurie Goodstein, *Deal Reported in Abuse Cases in Los Angeles*, N.Y. TIMES (July 15, 2007), <https://www.nytimes.com/2007/07/15/us/15abuse.html> (“Lawyers for more than 500 people who say they were abused by Roman Catholic clergy members said last night that they had settled their lawsuits against the Archdiocese of Los Angeles for \$660 million. . . . It will dwarf the \$85 million paid for 552 claims by the Archdiocese of Boston [in 2002].”). The Church’s \$85 million settlement in the Boston Archdiocese had been the largest-ever settlement by an American diocese to resolve sexual abuse cases, prior to the L.A. diocese settle-

Some have theorized that the very nonconfrontational personalities of Catholic bishops made them attractive candidates for bishops to the Vatican in the first place.¹¹⁰ These personality types also made clergy susceptible to manipulation by child sex abusers within the church who knew they would turn a blind eye to abuse within their rectories.¹¹¹ Abusers counted on Bishops to avoid confrontation, bad publicity, and involvement by the Vatican.¹¹² The result allowed abusers to escape “punishment and continue abusing” victims.¹¹³

One author has asserted that a number of factors prevent the law from sufficiently protecting children in religious organizations: (1) children lacked legal capacity until relatively recently to challenge their abusers, (2) the statutes of limitations for child sex abuse make it practically impossible for the vast majority of victims to get a prosecutor and/or initiate a civil action before their claims expire, (3) as a society, we have a “romantic attitude” and trust religious organizations, (4) religious organizations have built-in theological or religious rules that keep child abuse in particular secret, and (5) religious organizations are quick to invoke federal and state religious liberty guarantees.¹¹⁴

In his book, *Lead Us Not Into Temptation, Catholic Priests and the Sexual Abuse of Children*, Jason Berry¹¹⁵ discusses the former Catholic priest, Tulane professor, and later CUNY professor, Dino Cinel. Father Cinel’s room in the New Orleans rectory where he lived included a cache of child pornography along with photographs and videos of the priest engaging in sexual acts with at least eight young men in the

ment. See Fox Butterfield, *Church in Boston to Pay \$85 Million in Abuse Lawsuits*, N.Y. TIMES (Sept. 10, 2003), <https://www.nytimes.com/2003/09/10/us/church-in-boston-to-pay-85-million-in-abuse-lawsuits.html>.

110. LEON J. PODLES, SACRILEGE, SEXUAL ABUSE IN THE CATHOLIC CHURCH 393 (2008).

111. *Id.*

112. *Id.*

113. *Id.*

114. Marci A. Hamilton, *The Licentiousness in Religious Organizations and Why It Is Not Protected Under Religious Liberty Constitutional Provisions*, 18 WM. & MARY BILL RTS. J. 953, 953–56 (2010).

115. Berry won the 1986 Catholic Press Association Award for his coverage of the clergy sex abuse scandals. See generally Jason Berry, *Is the Church Ignoring A Sexual Crisis in Its Ranks?*, WASH. POST (Sept. 17, 1989), https://www.washingtonpost.com/archive/opinions/1989/09/17/is-the-church-ignoring-a-sexual-crisis-in-its-ranks/3b929fd4-f509-475a-8334-eca7df4faec4/?utm_term=.f2f3742d7da5 [https://perma.unl.edu/887D-L5AV]; Manuel Roig-Franzia, *Despite Investigating Catholic Scandals, Author Jason Berry Keeps the Faith*, WASH. POST (Sept. 20, 2011), https://www.washingtonpost.com/lifestyle/style/despite-investigating-catholic-scandals-author-jason-berry-keeps-the-faith/2011/09/20/gIQA4tkYjK_story.html?utm_term=.506a593ed778 [https://perma.unl.edu/3DMW-FQ2K]; Berry, *Jason 1949–*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/arts/education-al-magazines/berry-jason-1949> [https://perma.unl.edu/72BK-GLNB].

late 1980s.¹¹⁶ Berry details the priest's arrogant responses in depositions in which he freely admits his sexual activities—including his sending photographs of one young man to a pornographic publication in Denmark.¹¹⁷ Attempting to understand the Church's failure to assist the young victims and the local prosecutor's refusal to bring felony charges against the priest, Berry examines the power structure that protected Dino Cinel. Berry suggests that the “ultimate vanity of a clerical state that considers itself morally superior was its appalling indifference to children.”¹¹⁸ The seventy-six-year-old Cinel was killed by a knife wound to the abdomen in Medellin, Colombia on February 1, 2018, by his eighteen-year-old lover, Santiago Alberto Morales Parra. His death was described as “a grisly and dramatic end for a man whose story served as a precursor to the national Catholic sex scandal that erupted in Boston in 2002.”¹¹⁹

It would be inaccurate to assume that the Church has adequately addressed child molestation by the clergy:

Between 1950 and 2002, there were 10,677 individual reports of sexual abuse in the United States against 4392 different priests. Despite the overwhelming number of reports by the end of 2002, just 14 percent of those abuses were referred to the police, resulting in criminal convictions in only 3 percent of cases.¹²⁰

The Catholic Church's hierarchy has attempted to address ongoing cases of CSA, but this is often done by transporting the accused sex offenders back to Rome to be held accountable.¹²¹

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116. BERRY, *supra* note 103, at 294–96. *See generally* Leslie Bennetts, *Unholy Alliances*, VANITY FAIR (Dec. 1991), http://www.bishop-accountability.org/news/1991_12_Bennetts_UnholyAlliances.pdf [<https://perma.unl.edu/NLQ7-HS48>] (“Father Dino Cinel, a charming Italian-born priest . . . was discovered to have stockpiled . . . commercially produced pornographic films, photographs, and magazines featuring young children as sexual objects. . . . Also found in Father Cinel's room were 160 hours of home-made pornographic videotapes in which the priest performed anal sex, oral sex, group sex, and a dizzying array of other diversions . . . with at least seven different teenage boys.”).
117. BERRY, *supra* note 103, at 294–96.
118. *Id.* at 299–300 (“This moral myopia caused otherwise decent men to betray the church's ethos of defending human life. Despite a noble history of voluntary celibacy, too many bishops—shut off from affective bonding, unlettered in the vocabulary of child raising, swamped by . . . pederasty, hiding behind lawyers, mired in the muck of the media—were blinded by their flaw and disgraced the People of God.”).
119. Ramon Antonio Vargas, *Dino Cinel, Ex-priest Whose Sex Scandal Rocked New Orleans, Is Killed in Colombia*, ADVOCATE (Mar. 26, 2018), http://www.theadvocate.com/new_orleans/news/crime_police/article_8326c106-312d-11e8-bcad-87662646bc37.html.
120. Benjamin D. Wasserman, *Searching for Adequate Accountability: Supervisory Priests and the Church's Child Sex Abuse Crisis*, 66 DUKE L.J. 1149, 1158 (2017).
121. In late 2017, the Vatican held a four-day congress, *Child Dignity in the Digital World*, at the Pontifical Gregorian University in Rome, awkwardly and “mere weeks after the Holy See recalled Msgr. Carlo Capella, a church diplomat in the Vatican Embassy in Washington, amid accusations that he had possessed child

In Australia, a long-term investigation documented more than 4,400 Australian child victims of sexual abuse.¹²² Although very few Catholic clergy around the world have ever stood trial, actual criminal charges have been filed against well over 100 priests in Australia alone.¹²³ That notwithstanding, Australian Archbishop Philip Wilson, age sixty-seven, was recently found guilty of a sexual abuse cover-up in May of 2018 concerning the “abuse by a priest, Jim Fletcher, in the state of New South Wales in the 1970s.”¹²⁴ The Archbishop “now faces a prison sentence of up to two years.”¹²⁵

In June of 2018, Australian Prime Minister, Malcolm Turnbull, said his government accepted most of the recommendations of a 2017 report by the Royal Commission into Institutional Responses to Child Sexual Abuse, the country’s highest investigative body, including the recommendation that victims be compensated an average of 75,000 Australian dollars per victim (or \$57,000) and a national office for child safety be established. This was after 4,444 victims of abuse and at least 1,880 suspected abusers, most of whom were Catholic priests and religious brothers, had been identified.¹²⁶ The Prime Minister announced that the commission had revealed “that for too long the reporting of this abuse was met with indifference and denial by the very adults and institutions who were supposed to protect them.”¹²⁷

pornography.” Jason Horowitz, *Vatican Shines a Light on Child Abuse Claims Against Priests Persist*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/world/europe/catholic-church-sex-abuse.html>. Canadian police had issued a warrant for Monsignor Capella’s arrest for distributing child pornography during a Christmas visit to Ontario in 2016. *Id.*

122. Madison Park, *Timeline: A Look at the Catholic Church’s Sex Abuse Scandals*, CNN (June 29, 2017), <https://www.cnn.com/2017/06/29/world/timeline-catholic-church-sexual-abuse-scandals/index.html> [https://perma.unl.edu/AB5X-M6CV] (explaining that in 2017, “a commission found that 7% of Australian priests were accused of abusing children between 1950 and 2015”).

123. Alexandra Zavis, *Senior Catholic Church Officials Have Rarely Faced Charges in the Sexual Abuse of Children. Here Are a Few Who Did*, L.A. TIMES (June 29, 2017), <http://www.latimes.com/world/europe/la-fg-church-abuse-charges-20170629-htmlstory.html> [https://perma.unl.edu/F6FT-HCN9].

124. Adam Baidawi, *Australian Archbishop Philip Wilson Guilty of Sexual Abuse Cover-Up*, N.Y. TIMES (May 21, 2018), <https://www.nytimes.com/2018/05/21/world/australia/philip-wilson-priest-abuse-guilty.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>.

125. *Id.*

126. 16 COMMONWEALTH OF AUSTRALIA, ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE 113 (2017), <http://www.childabuseroyalcommission.gov.au/religious-institutions> [https://perma.unl.edu/QU8D-6AMQ].

127. Adam Baidawi, *Australian Prime Minister to Apologize to Child Sexual Abuse Survivors*, N.Y. TIMES (June 13, 2018), <https://www.nytimes.com/2018/06/13/world/australia/child-abuse-survivor-apology.html>.

Ireland has also been shaken by reports¹²⁸ confirming widespread childhood sexual abuse by clergy.¹²⁹ The Dublin Archdiocese Commission released a 720-page report in 2009, commissioned by the Irish government, which found clerical child sexual abuse was covered up by the Church¹³⁰ from January 1975 to May 2004.¹³¹ In addition to naming eleven priests who pleaded guilty or were convicted of sexual assaults on children, the Commission's report included pseudonyms for an additional thirty-three priests involved in sexual misconduct cases.¹³²

Likewise, Canada has identified Catholic clergy involved in systematic sexual abuse of children placed in group homes or foster care facilities run by the Church. One such case involved the Christian Brothers, who ran the Mount Cashel orphanage in Newfoundland since 1875, and culminated in a government sponsored Royal Commission under retired Ontario Supreme Court Justice Samuel Hughes. This Commission eventually resulted in the conviction of eleven Christian Brothers for abuse, and the congregation being "ordered to pay \$70 million to the hundreds of abuse victims."¹³³

Between 1962 and 1995, former priest John Geoghan sexually abused approximately 130 people, mostly grammar school boys—he was ordered by the Church to get treatment, but was allowed to continue serving as a priest. The *Boston Globe's* exposure of the cases was later made into an award-winning movie, *Spotlight*.¹³⁴ Even though the Church's "child sex abuse scandal was exposed by the *Boston Globe* in 2002, pervasive child sexual abuse by priests continues, with over 2000 new credible, substantiated allegations since 2010."¹³⁵

The Pope's personal envoy, Archbishop Jozef Weslowowski, the Vatican's ambassador to the Dominican Republic, was accused by a prosecutor of involvement in the sexual abuse of underage boys while

128. JOE RIGERT, AN IRISH TRAGEDY, HOW SEX ABUSE BY IRISH PRIESTS HELPED CRIPPLE THE CATHOLIC CHURCH 79 (2008); see P. Pilgrim, *Child Abuse in Irish Catholic Settings: A Non-Reductionist Account*, 21 CHILD ABUSE REV. 405 (2012).

129. See RIGERT, *supra* note 128, at 25 ("[P]riests of Irish ancestry, as well as those from Ireland . . . make up one-third of the 2,000 priests publicly accused of sex abuse in America, giving them a huge role in this darkest of tragedies in their church.").

130. See H. GOODE, H. MCGEE & C. O'BOYLE, TIME TO LISTEN: CONFRONTING CHILD SEXUAL ABUSE BY CATHOLIC CLERGY IN IRELAND (2003).

131. Park, *supra* note 122.

132. *Id.*

133. PODLES, *supra* note 110, at 75–76.

134. Henry Barnes, *Spotlight: The Reporters Who Uncovered Boston's Catholic Child Abuse Scandal*, GUARDIAN (Jan. 13, 2016), <https://www.theguardian.com/film/2016/jan/13/spotlight-reporters-uncovered-catholic-child-abuse-boston-globe> [<https://perma.unl.edu/9UQZ-F8XU>].

135. Wasserman, *supra* note 120, at 1150 (internal citations omitted).

he worked in that country.¹³⁶ Wesolowski died in 2015 before being sentenced, but he was found guilty of sexual abuse of minors by a Vatican tribunal and defrocked in 2014; his laptop contained more than 100,000 files with pornographic images and videos.¹³⁷ The revelation of such a high ranking church official's personal involvement in sexual abuse of children within the past several years suggests the church has yet to adequately address pedophile misconduct within its ranks.¹³⁸ But he was not the only high ranking member of the Catholic Church to face recent accusations of child molestation. In June 2018, Cardinal Theodore McCarrick, the former archbishop of Washington resigned from his position, becoming "the first cardinal in history to step down from the College of Cardinals because of sexual abuse allegations."¹³⁹ The eighty-seven-year-old McCarrick's resignation followed a church panel's substantiation of allegations that he abused a teenage altar boy forty-seven years ago, and a series of adult seminarians for decades.¹⁴⁰

One of the Vatican's chief financial officers, Cardinal George Pell, has been sent back to Australia to face allegations made against him while he served as a priest there and to answer for the Vatican's pattern of transferring priests accused of CSA. Cardinal Pell is the high-

136. The *New York Times* reported:

The district attorney, Ms. Reynoso, said her investigators had identified four children aged 12 to 17 with whom the nuncio had sexual contact, but that there were likely others.

The 17-year-old had epilepsy, and the nuncio gave him medicine for his condition in exchange for sexual acts, starting from when the boy was 13, the district attorney said. She said she had "no doubt" about the credibility of the youths' testimony, because it was corroborated by other evidence.

"This is the most terrible case that I have ever seen," said Ms. Reynoso. "He was abusing kids who were living in extreme poverty, in exchange for pills for a boy's illness. It's very perverse."

Laurie Goodstein, *For Nuncio Accused of Abuse, Dominicans Want Justice at Home, Not Abroad*, N.Y. TIMES (Aug. 23, 2014), <https://www.nytimes.com/2014/08/24/world/americas/whisked-away-vatican-ambassador-accused-of-sexual-abuse-of-minors.html>.

137. Park, *supra* note 122.

138. See A.R. Piquero et al., *Uncollaring the Criminal: Understanding Criminal Careers of Criminal Clerics*, 35 CRIM. JUST. & BEHAV. 583 (2008).

139. Elisabetta Povoledo & Sharon Otterman, *Cardinal Theodore McCarrick Resigns Amid Sexual Abuse Scandal*, N.Y. TIMES (July 28, 2018), <https://www.nytimes.com/2018/07/28/world/europe/cardinal-theodore-mccarrick-resigns.html>. However, Cardinal Hans Hermann Groër of Vienna was removed from his duties following allegations that he molested young boys in 1998, asked for forgiveness, but made no admission of guilt. PODLES, *supra* note 110, at 235 ("All Groër said was 'I ask pardon of God [and] man, if I am guilty.'").

140. *Id.*; see Laurie Goodstein & Sharon Otterman, *He Preyed on Men Who Wanted to be Priests. Then He Became a Cardinal*, N.Y. TIMES (July 16, 2018), <https://www.nytimes.com/2018/07/16/us/cardinal-mccarrick-abuse-priest.html>.

est-ranking Church official to face charges of sex abuse.¹⁴¹ The Cardinal told an Australian commission that the Church had made “catastrophic” choices when it rejected the versions of alleged child sexual abuse victims and decided to relocate abusive priests from one parish to another.¹⁴² One writer has concluded that the policymaking role of tort litigation against the Church has served a positive role, yet:

The sexual abuse of over 13,000 children and adolescents by Catholic priests in the United States since 1950 is an astonishing fact. Even more astonishing is that church officials knew of these crimes and, for the most part, failed to report them to civil authorities or remove the perpetrators from ministry. Law enforcement authorities, even when notified, often failed to investigate or prosecute. Legislators were either unaware of the problem or unwilling to address it for fear of political repercussions. The clergy sexual abuse scandal is a story of multiple institutional failures.¹⁴³

Just as the Catholic Church utilized its wealth and power to successfully protect CSA clergy for decades,¹⁴⁴ the entertainment industry wields great power and financial weight and has often demonstrated great tolerance towards directors, producers, and actors accused of sexual abuse and in some instances, convicted pedophiles.

The movie director, Roman Polanski, fled the jurisdiction of U.S. courts in 1978 to avoid his sentencing hearing following his pleading guilty to having unlawful sexual intercourse with a minor, a thirteen-year-old girl.¹⁴⁵ Polanski has been a fugitive ever since, having served only forty-two days at the California Institute for Men, yet fleeing to France to avoid his sentencing hearing.¹⁴⁶ Despite this, Polanski still won Oscars in 1981 for *Tess*, (shortly after his conviction) and in 2002 for directing *The Pianist*.¹⁴⁷ Polanski continues to enjoy work as a di-

141. See Philip Pullella & Byron Kaye, *Pope's Close Aide Charged, Bringing Sex Abuse Scandal to Vatican*, REUTERS (June 28, 2017), <https://www.reuters.com/article/us-australis-abuse-pell/popese-close-aide-charged-bringing-sex-abuse-scandal-to-vatican-idUSKBN19K021> [<https://perma.unl.edu/A9G2-NG9L>] (“Pell, a former archbishop of Melbourne and Sydney, had come under pressure from an Australian government commission on institutional child abuse, and had himself been under investigation for at least a year.”).

142. *Id.*

143. LYTTON, *supra* note 106, at 191.

144. See MARIE KEENAN, *CHILD SEXUAL ABUSE & THE CATHOLIC CHURCH* (2012).

145. *Judge Denies Roman Polanski's Victim's Plea to End Rape Case*, CBS NEWS (Aug. 19, 2017), <https://www.cbsnews.com/news/judge-denies-roman-polanskis-victims-plea-to-end-rape-case/> [<https://perma.unl.edu/639G-Z3Y6>].

146. Rae Alexandra, *As Woody Allen Falls, Where Is Roman Polanski's Reckoning?*, KQED (Jan. 30, 2018), <https://www.kqed.org/pop/98603/as-woody-allen-falls-where-is-roman-polanskis-reckoning>.

147. See Melena Ryzik & Brooks Barnes, *Woody Allen Takes a Hit in the Wrath of #MeToo*, N.Y. TIMES (Jan. 28, 2018), <https://www.nytimes.com/2018/01/28/movies/woody-allen-dylan-farrow.html>.

rector and receives support from members of the movie industry to this date.¹⁴⁸

Recently, several women have come forward to accuse Polanski of raping them when they were children or sexually abusing them during their teenage years.¹⁴⁹ Polanski paid one of his victims \$500,000 plus interest after being sued in 1978 for sexual assault and false imprisonment.¹⁵⁰ Woody Allen, famed writer, director, and actor also won an Oscar despite allegations in 1992 from his adopted daughter, Dylan Farrow, claiming that she had been sexually abused by Allen when she was a seven-year-old child. Her public accusation was made in an interview published in *Vanity Fair*.¹⁵¹

Even New York's Metropolitan Opera has been impacted by recent accusations of sexual abuse and misconduct resulting in the dismissal of James Levine, the legendary seventy-four-year-old maestro, conductor, and former music director.¹⁵² Some of the most influential people in Hollywood and in television have seen their careers come to an abrupt halt as a result of the public outrage over sexual abuse allegations, yet others in Hollywood—and elsewhere—appear to have weathered the storm of public disapproval.

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148. However, the former prosecutor who handled his criminal rape case told ABC News: "It's outrageous . . . [t]his pedophile raped a 13-year-old girl. It's still an outrageous offense. It's a good thing he was arrested." Luchina Fisher, *Roman Polanski Victim's Testimony Released: What Did He Do?*, ABC NEWS (Sept. 30, 2009), <http://abcnews.go.com/Entertainment/roman-polanski/story?id=8705958> [<https://perma.unl.edu/F8TD-XPFT>]. A different former prosecutor claimed: "[I]f people knew all the details, they would have less sympathy for Polanski." *Id.*
149. Sophie Haigney, *Roman Polanski Is Accused of Rape by a Former German Actress*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/movies/roman-polanski-rape-accusation.html> ("Renate Langer, a 61-year-old former German actress, has reported to the Swiss police that the film director Roman Polanski raped her at a house in Gstaad in February 1972, when she was 15. Ms. Langer is the fourth woman to publicly accuse Mr. Polanski of sexual assaulting her when she was a teenager.").
150. Alexandra, *supra* note 146.
151. Maureen Orth, *Momma Mia!*, VANITY FAIR (Nov. 2013), <https://www.vanityfair.com/style/2013/11/mia-farrow-frank-sinatra-ronan-farrow> [<https://perma.unl.edu/NG4P-5K9M>].
152. Michael Cooper, *James Levine's Final Act at the Met Ends in Disgrace*, N.Y. TIMES (Mar. 12, 2018), <https://www.nytimes.com/2018/03/12/arts/music/james-levine-metropolitan-opera.html>; *see also* Michael Cooper, *Met Conductor Accused of Sexual Abuse*, N.Y. TIMES (Dec. 2, 2017), <https://www.nytimes.com/2017/12/02/arts/music/james-levine-sexual-misconduct-met-opera.html> (reporting that the Metropolitan Opera intends to open an investigation into Levine).

CBS host, Charlie Rose,¹⁵³ NBC Today Show commentator, Matt Lauer,¹⁵⁴ and NPR's Garrison Keillor¹⁵⁵ have each resigned or been fired from positions with their organizations after women came forward to allege sexual misconduct by each of these men. In many instances, after one victim made a public accusation, other victims joined in and disclosed that they too had been exposed to unwanted harassment, assaults, or other forms of sexual misconduct. Some men in the entertainment industry have issued apologies, and others have maintained denials and asserted their innocence. It is difficult to see any consistency in the public's reaction to allegations of sexual abuse.¹⁵⁶

Corporate entities fearing public relations backlashes¹⁵⁷ have also engaged in activities designed to silence or muffle the victims of sexual abuse that may be connected to employees or executives in the organization. For years, the various branches of the U.S. military followed protocols that suppressed complaints of sexual misconduct.¹⁵⁸

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153. Irin Carmon & Amy Brittain, *Eight Women Say Charlie Rose Sexually Harassed Them—with Nudity, Groping and Lewd Calls*, WASH. POST (Nov. 20, 2017), https://www.washingtonpost.com/investigations/eight-women-say-charlie-rose-sexually-harassed-them—with-nudity-groping-and-lewd-calls/2017/11/20/9b168de8-caec-11e7-8321-481fd63f174d_story.html?noredirect=on [https://perma.unl.edu/T3TA-MJW5].
154. Michael M. Grynbaum, *Matt Lauer Offers Apology (With a Caveat)*, N.Y. TIMES (Nov. 30, 2017), <https://www.nytimes.com/2017/11/30/business/media/matt-lauer-nbc-statement.html> (“Mr. Lauer’s abrupt downfall comes amid a head-spinning series of harassment and abuse claims that have toppled powerful men in journalism, comedy, Hollywood and Silicon Valley, including the movie mogul Harvey Weinstein and another famed television morning host, Charlie Rose of CBS.”).
155. Maya Salam, *Minnesota Public Radio Drops Garrison Keillor over Allegations of Improper Conduct*, N.Y. TIMES (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/media/garrison-keillor-fired.html>; see Abby Ohlheiser, Dan Zak & Marc Fisher, *Garrison Keillor, Founder of ‘A Prairie Home Companion,’ Fired After Allegations of Improper Behavior*, WASH. POST (Nov. 29, 2017), https://www.washingtonpost.com/lifestyle/style/garrison-keillor-ex-host-of-a-prairie-home-companion-dropped-by-minnesota-public-radio-after-allegations-of-improper-behavior/2017/11/29/5fa1256c-d52c-11e7-b62d-d9345ced896d_story.html [https://perma.unl.edu/DQY8-GANF].
156. Louis C.K., Bill Cosby, and Harvey Weinstein have each responded to public accusations of sexual abuse, some involving rape, or the use of drugs to render their victims unable to defend themselves (as in the case of Bill Cosby). See *Bill Cosby Implies Racism Revenge Behind Sexual Assault Allegations*, CBS NEWS (May 16, 2017), <https://www.cbsnews.com/news/bill-cosby-implies-racism-revenge-behind-sexual-assault-allegations/> [https://perma.unl.edu/5LES-BMZR].
157. See Peter J. Henning, *When Money Gets in the Way of Corporate Ethics*, N.Y. TIMES (April 17, 2017), <https://www.nytimes.com/2017/04/17/business/dealbook/when-money-gets-in-the-way-of-corporate-ethics.html> (explaining that 21st Century Fox attempts to resolve sexual harassment issues include its dismissal of Roger Ailes, the former Fox News chairman, and Bill O'Reilly, host of its top-rated program).
158. Michelle Chen, *Women in the Military Deserve More than Thank-yous. They Deserve to be Safe from Sexual Assault*, NBC NEWS (May 28, 2018), <https://www>

Academic institutions are now compelled under Title IX regulations to take seriously complaints of sexual misconduct, harassment, and created discomfort in academic settings due to faculty, staff, and fellow student misconduct.¹⁵⁹ Even the news agencies that disseminate information to the public about sexual misconduct in the workplace have been impacted by inappropriate sexual misconduct allegations leveled against some of the most prominent people in news organizations.¹⁶⁰

Famed New Orleans chef, John Besh, was forced to surrender his control over the business empire he created due to numerous accusations of sexual abuse in the workplace.¹⁶¹ In corporate boardrooms, banking institutions, and brokerage firms, power brokers have been called to task for their acts of sexual misconduct. This is a sudden and rather unanticipated series of events signaling the public willingness to accept accusations by victims with nothing more, and recognition that continued defiance and denial come with serious public relations complications that many businesses are not prepared to endure.

In the sports industry, the recent public sentencing hearing of accused pedophile and child molester, Dr. Larry Nassar, the former physician for some of America's best gymnasts, more than one hundred fifty women and girls have come forward during his seven day sentencing hearing in which he was sentenced to incarceration for forty to one hundred seventy-five years in addition to his previous sentence of

.nbcnews.com/think/opinion/women-military-deserve-more-thank-you-they-serve-be-safe-ncna877721 [https://perma.unl.edu/X74X-VQDC] ("How do you speak truth to power when your job is to keep quiet and follow orders at all costs? . . . New figures on sexual violence in the military ranks . . . from fiscal years 2016 to 2017, report [] sexual assault in the armed services rose 10 percent from 6,172 to 6,769."); see also Matthew Hay Brown, *Breaking the Silence, Men Who Are Sexually Assaulted in the Military*, BALT. SUN (Dec. 14, 2013), http://data.baltimoresun.com/military-sexual-assaults/ [https://perma.unl.edu/4L2UE7SW].

159. Nick Anderson, *At First, 55 Schools Faced Sexual Violence Investigations, Now the List Has Quadrupled*, WASH. POST (Jan. 18, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/at-first-55-schools-faced-sexual-violence-investigations-now-the-list-has-quadrupled [https://perma.unl.edu/75KK-AKQB] ("The Education Department's Office for Civil Rights, or OCR, now has 304 investigations underway related to sexual violence issues at 223 colleges and universities. Some schools have multiple open cases.").

160. Henning, *supra* note 157.

161. Samantha Cooney, *Chef John Besh Stepped Down from His Restaurant Company Amid Sexual Harassment Allegations*, TIME (Oct. 23, 2017), http://time.com/4993947/john-besh-new-orleans-restaurant-group/ [https://perma.unl.edu/F48V-H38R] (noting that twenty-five current and former Besh Restaurant Group employees claim regular sexual harassment in the workplace); see Niraj Chokshi, *Chef John Besh Steps Down Amid Sexual Harassment Scandal*, N.Y. TIMES (Oct. 23, 2017), https://www.nytimes.com/2017/10/23/us/john-besh-sexual-harassment.html.

sixty years for a separate child pornography conviction.¹⁶² Attention has now turned to the role of Michigan State University¹⁶³—whose president, Lou Anna Simon, resigned amid growing criticism of how the university handled accusations of sexual abuse of girls and young women by Larry Nassar.¹⁶⁴ Scrutiny is also focused on U.S.A. Gymnastics, another employer of Nassar during the hundreds of cases of sexual abuse.

Among investigations of institutional child sexual abuse, the Boy Scouts of America reportedly maintained a “perversion file” over a twenty-seven year period, which specified 1,892 alleged child molesters who had been involved in the Boy Scouts.¹⁶⁵ Organizations that involve young children are prime targets for pedophiles seeking potential victims.¹⁶⁶ The reluctance of unsuspecting parents to think that their children might be at risk when participating in organizations designed to provide healthy outlets and positive role models for their children is yet another contributing factor enabling pedophiles to gain access to children.

V. POLITICIANS AND SEXUAL SCANDALS

Sexual scandals involving political figures are hardly new in this country, or probably in any other country for that matter. The term “Founding Fathers” of the United States took an unanticipated turn of course when DNA evidence surfaced to suggest that President Thomas Jefferson was the likely father of six children with his slave,

162. Scott Cacciola & Victor Mather, *Larry Nassar Sentencing: 'I Just Signed Your Death Warrant'*, N.Y. TIMES (Jan. 24, 2018), <https://www.nytimes.com/2018/01/24/sports/larry-nassar-sentencing.html>.

163. The president of Michigan State University, Lou Anna Simon, has tendered her resignation from office in response to the Nassar scandal. Matthew Haag & Marc Tracy, *Michigan State President Lou Anna Simon Resigns Amid Nassar Fallout*, N.Y. TIMES (Jan. 24, 2018), <https://www.nytimes.com/2018/01/24/sports/olympics/michigan-state-president-resigns-lou-anna-simon.html>.

164. See Alexa Lardieri, *Michigan State President Resigns Amid Criticism over Larry Nassar Sex Abuse Scandal*, U.S. NEWS & WORLD REP. (Jan. 25, 2018), <https://www.usnews.com/news/national-news/articles/2018-01-25/michigan-state-president-resigns-amid-criticism-over-larry-nassar-sex-abuse-scandal>.

165. See Drew P. Von Bargen II, *Nittany Lions, Clergy, and Scouts, Oh My! Harmonizing the Interplay Between Memory Repression and Statutes of Limitations in Child Sexual Abuse Litigation*, 18 MICH. ST. U. J. MED. & L. 51, 54 n.23 (2014) (citing the so-called “perversion files,”— a record of “1892 alleged child molesters who have been involved with the Boy Scouts”).

166. Paul Mones, *The Illusion of Justice for Sexual Abuse Victims*, WASH. POST (May 1, 2016), https://www.washingtonpost.com/opinions/the-illusion-of-justice-for-sexual-abuse-victims/2016/05/01/721c0f18-0e27-11e6-8ab8-9ad050f76d7d_story.html?utm_term=.daf6b994d541 [<https://perma.unl.edu/2HWY-863Y>] (“A 2015 study on offenders in youth organizations found that more than half joined specifically to gain access to children. In no rush to achieve their goal, they are willing to spend months working their way into the fabric of a child’s life.”).

Sally Hemings, the half-sister of Jefferson's late wife, Martha.¹⁶⁷ Accused by journalist of the time, James Callender, of fathering Hemings's children, it was not until the year 2000 that DNA based evidence was utilized to identify the descendants of Ms. Hemings and their probable forefather. Given the status of enslaved people during this era, Hemings would have been unlikely to bring rape charges against Jefferson. The white descendants of Jefferson showed little reluctance in denying the blood line of Hemings's and Jefferson's descendants and sought to deny them any ownership interest in Jefferson's estate.¹⁶⁸

In the Netherlands, a political party formed by self-described pedophiles attempted, in at least two sets of national elections, to lower the age of sexual consent from sixteen to twelve and to legalize child pornography.¹⁶⁹ The group was unable to secure a sufficient number of signatures to win a place on the ballot in the country of 16.5 million. The creation of the PVND, or Party for Brotherly Love, Freedom and Diversity, did manage to stir up international outrage.¹⁷⁰ Although the creation of a political organization of pedophiles seems more than curious, the concept, had it been viable, would have made possible defending against accusations of child sexual abuse on the grounds that it might have been politically motivated. Establishing such a group might also have allowed members to assert that they were being discriminated against if they had been subjected to prosecution for sexual abuse of children.

167. See Aaron Schwabach, *Thomas Jefferson & Sally Hemings*, 21 T. JEFFERSON L. REV. 41 (1999).

168. According to the *New York Times*:

Hundreds of people count themselves as descendants of Thomas Jefferson. And their numbers grew substantially after a DNA test in 1998 bolstered the case for Jefferson's paternity of the children of Sally Hemings, his slave. That revelation spawned a feud between Hemings and Jefferson descendants over who would be allowed at sprawling Jefferson meetings. To this day, some white descendants of Jefferson deny that he had a sexual relationship with Hemings.

Farah Stockman, *'She Was Part of This Family': Jefferson Descendants Reflect on Sally Hemings Exhibit*, N.Y. TIMES (June 16, 2018), <https://www.nytimes.com/2018/06/16/us/jefferson-sally-hemings-descendants.html>.

169. *The Netherlands: Pedophile Party Lacks Support*, N.Y. TIMES (Oct. 6, 2006), <https://www.nytimes.com/2006/10/06/world/europe/06briefs-008.html> ("The party . . . has managed to attract just about 100 supporters.")

170. *Dutch Political Party PVND Formed by Paedophiles Disbanded*, ASSOCIATED PRESS (Mar. 15, 2010), <http://www.independent.co.uk/news/world/europe/dutch-political-party-pvnd-formed-by-paedophiles-disbanded-1921628.html>; see Reuters, *The Netherlands: Pedophile Party Lacks Support*, N.Y. TIMES (Oct. 6, 2006), <https://www.nytimes.com/2006/10/06/world/europe/06briefs-008.html> ("A political party formed by pedophiles will probably not succeed in gathering the . . . signatures needed . . . to run in national elections The party . . . has managed to attract just about 100 supporters. It seeks to lower the legal age of consent to 12, from 16, and to legalize child pornography.")

In the United States, the North America Man-Boy Love Association (NAMBLA) sought to politically “normalize” pedophilia based on behavioral arguments. Like the Dutch political organization, this group has not had a great deal of success in expanding its membership roles or in having publicly acknowledged membership. The statements issued by this group also seek to identify political objectives that include eliminating criminal statutes that prohibit sexual activity between adults and children. These types of political organizations have faced resistance from the general public and generally failed to change public attitudes towards pedophiles. Other than marginalized political organizations, individual politicians have managed to generate a great deal of publicity—and disapproval—for their personal sexual misconduct.

William Jefferson Clinton, the nation’s forty-second President, suffered the indignity of impeachment for perjury and obstruction of justice following revelations of his sexual misconduct in office with a young White House intern, Monica Lewinsky.¹⁷¹ President Clinton was never convicted of any criminal misconduct, despite the accusations made by numerous women of unwanted sexual advances.¹⁷² Following the second impeachment trial in the nation’s 209 year history, President Clinton was not removed from office. The increase of victims of unwanted sexual attention, assaults, batteries, or rape is seen with some frequency when the offenders enjoy some sense of celebrity.¹⁷³

Hours prior to Clinton’s impeachment, the just-elected Speaker of the House, Robert L. Livingston, a Louisiana Republican, tendered his

171. See Alison Mitchell, *Speaker-Elect Is Resigning*, N.Y. TIMES (Nov. 13, 1998), <https://www.nytimes.com/1998/11/07/us/the-speaker-steps-down-the-career-the-fall-of-gingrich-an-irony-in-an-odd-year.html>.

172. Caitlin Flanagan, *Bill Clinton: A Reckoning*, ATLANTIC (Nov. 13, 2017), <https://www.theatlantic.com/entertainment/archive/2017/11/reckoning-with-bill-clinton-sex-crimes/545729/> [https://perma.unl.edu/Y6L9-RPB8] (“[Y]et let us not forget the sex crimes of which the younger, stronger Bill Clinton was very credibly accused in the 1990s. Juanita Broaddick reported that when she was a volunteer on one of his gubernatorial campaigns, she had arranged to meet him in a hotel coffee shop. At the last minute, he had changed the location to her room in the hotel, where she says he very violently raped her. She said that she fought against Clinton throughout a rape that left her bloodied. At a different Arkansas hotel, he caught sight of a minor state employee named Paula Jones, and, Jones said, he sent a couple of state troopers to invite her to his suite, where he exposed his penis to her and told her to kiss it. Kathleen Willey said that she met with him in the Oval Office for personal and professional advice and that he groped her, rubbed his erect penis on her, and pushed her hand to his crotch. It was a pattern of behavior; it included an alleged violent assault; the women involved had far more credible evidence than many of the most notorious accusations that have come to light . . .”).

173. See Interview by Michel Martin with Caitlin Flanagan, Contributing Editor, The Atlantic, NPR (Nov. 18, 2017), <https://www.npr.org/2017/11/18/565095154/re-thinking-bill-clinton-amid-sexual-harassment-debates> [https://perma.unl.edu/CT37-VEUV].

resignation due to his own adulterous affairs.¹⁷⁴ Livingston stunned the House by announcing in the impeachment debate that he would resign as Speaker and quit Congress in six months, but he did encourage Clinton to follow his example.¹⁷⁵ Following Livingston's announced resignation, Dennis Hastert, Republican from Illinois, was elected to become Speaker of the House. Some seventeen years later, Hastert was formally charged with federal crimes related to failing to properly report bank transactions and lying to the FBI over million-dollar hush money payments he had been making to buy the silence of men whom he had sexually abused as teenagers while working as a high school teacher and wrestling coach.¹⁷⁶

Because of state criminal statutes of limitations, Hastert was charged in federal court with attempting to evade federal reporting regulations on withdrawal of large sums of money and lying to federal investigators. Ironically, Hastert presided over the resolution of another member of Congress charged with inappropriate conduct with underage Congressional interns while he served as Speaker of the House.¹⁷⁷ Hastert was never convicted of any sexual crimes against children, only violations of the financial reporting laws and lying to federal agents.

In the late 1990s, House Judiciary Committee Chairman, Rep. Henry J. Hyde,¹⁷⁸ found himself in the crosshairs with his own past affair being publicly scrutinized. Yet he defended himself, claiming

174. Mitchell, *supra* note 171.

175. Katherine Q. Seelye, *Livingston Urges Clinton to Follow Suit*, N.Y. TIMES (Dec. 20, 1998), <https://partners.nytimes.com/library/politics/122098impeach-livingston.html> (explaining that Livingston announced "I must set the example that I hope President Clinton will follow" to a shocked and silent chamber in an act that left the Republican Party in total chaos just hours before the vote to impeach President Clinton).

176. Lily Rothman, *How a Scandal Made Dennis Hastert the Speaker of the House*, TIME (May 28, 2015), <http://time.com/3900854/dennis-hastert-livingston-scandal/> [<https://perma.unl.edu/2MSC-7HRJ>].

177. Christy Gutowski & Jeff Coen, *Dennis Hastert Accused of Sexual Abuse by at Least 4, Sources Say*, CHI. TRIB. (Apr. 7, 2016), <http://www.chicagotribune.com/news/watchdog/ct-dennis-hastert-investigation-met-20160406-story.html> [<https://perma.unl.edu/UH64-TUUH>].

178. During an interview with a journalist, Hyde was quoted, saying:

The statute of limitations has long since passed on my youthful indiscretions . . . Suffice it to say Cherie Snodgrass and I were good friends a long, long time ago. After Mr. Snodgrass confronted my wife, the friendship ended and my marriage remained intact. The only purpose for this being dredged up now is an obvious attempt to intimidate me and it won't work. I intend to fulfill my constitutional duty and deal judiciously with the serious felony allegations presented to Congress in the Starr report.

Howard Kurtz, *Report of Hyde Affair Stirs Anger*, WASH. POST (Sept. 17, 1998), <http://www.washingtonpost.com/wp-srv/politics/special/clinton/stories/hyde091798.htm> [<https://perma.unl.edu/6RQL-HFDF>].

“[i]nfidelity, adultery is not a public act. It’s a private act, and the Government, the Congress, has no business intruding into private acts.”¹⁷⁹ So, the Chairman of the House Judiciary Committee, Henry Hyde, the Speaker of the House, Robert Livingston, the former Speaker of the House, Newt Gingrich,¹⁸⁰ and the President of the United States, Bill Clinton, were either publicly accused or publicly admitted to having engaged in sexual misconduct at the time of the 1998 impeachment hearings.

David Vitter, U.S. Senator from Louisiana, at one point faced being called to the witness stand by the defense in the prostitution case of Deborah Jean Palfrey—the so-called D.C. madam.¹⁸¹ Florida police investigated Ms. Palfrey’s apparent suicide shortly after her conviction on federal charges for operating a prostitution service, money laundering, racketeering, and using the mail for illegal purposes in connection with the prostitution ring from 1993–2006.¹⁸² Senator Vitter was not charged with any crimes, but he issued an apology for using an escort service¹⁸³ while he was the front runner in the Louisiana governor’s race in 2015.¹⁸⁴ Senator Vitter did not win election to the

179. Alison Mitchell, *President Is Impeached and Faces Senate Trial*, N.Y. TIMES (Dec. 20, 1998), https://archive.nytimes.com/www.nytimes.com/learning/general/featured_articles/981221monday.html.

180. Gingrich as Speaker pushed for Clinton’s impeachment, even as Gingrich announced he would step down as Speaker and resign from Congress for engaging in an affair with a Congressional aide. See Judd Legum, *What We Now Know About the Men Who Led the Impeachment of Clinton*, THINK PROGRESS (May 30, 2015), <https://thinkprogress.org/what-we-now-know-about-the-men-who-led-the-impeachment-of-clinton-8b5557723bc9/> [https://perma.unl.edu/KS8P-LFFL].

181. *Sen. Vitter Spared Stand in Escort Trial*, CBS NEWS (Apr. 14, 2008), <https://www.cbsnews.com/news/sen-vitter-spared-stand-in-escort-trial/> [https://perma.unl.edu/Z883-XFHP] (“Sen. David Vitter will not have to testify about his ties to an upscale Washington escort service . . . sparing the Louisiana Republican an embarrassing trip to the witness stand.”).

182. Justin Rood, *D.C. Madam Found Dead of Apparent Suicide*, ABC NEWS (May 1, 2008), http://abcnews.go.com/Blotthttp://www.bishop-accountability.org/news5/1991_12_Bennetts_UnholyAlliances.pdf/story?id=4765743 [https://perma.unl.edu/F7V8-5LDM].

183. Gary Scheets, *Prostitute Describes Vitter Affair*, TIMES PICAYUNE (July 12, 2007), http://blog.nola.com/updates/2007/07/former_prostitute_confirms_vit.html [https://perma.unl.edu/MB5F-YKW8] (explaining that a woman working as “Wendy Cortez”, a/k/a Wendy Yow, claims that Sen. Vitter was a regular client of hers while he was a state legislator; and also providing a statement from Jeanette Maier, the “Canal Street Madam,” who claimed that Vitter was a customer at her Mid-City brothel in New Orleans).

184. Tim Murphy, *Here’s the Story Behind That Crazy Story About David Vitter Having a Love Child with a Prostitute, Just What the Heck is Going on in Louisiana?*, MOTHER JONES (Oct. 23, 2015), <https://www.motherjones.com/politics/2015/10/david-vitter-louisiana-governors-race-lovechild-allegation/> [https://perma.unl.edu/RM7Y-SKR4].

governor's office in Louisiana.¹⁸⁵ *Time* magazine concluded of Vitter's campaign that, "if you find yourself explaining your prostitution scandal in a paid advertisement in the final days of a gubernatorial campaign, things could be better."¹⁸⁶ Following years of denying his involvement with prostitutes, Vitter decided to cast himself as a "fallen man" who had found redemption with the help of his wife and family for his "serious sin."¹⁸⁷ Vitter surrendered his law license in Louisiana rather than face—as his Democratic opponent claimed—"questions, not about a sin, but about a crime."¹⁸⁸ Although elected officials engage in violations of criminal statutes, they are rarely charged for their misconduct. The notion that some of these elected officials run for political office under the banner of restoring "family values" is especially ironic.

Anthony Weiner, Democratic Representative from New York, engaged in texting pictures of himself in various stages of undress to several different women, including a fifteen-year-old girl. He lost his seat in Congress, lost his bid to become mayor of New York, lost his wife, Huma Abedin, a senior aide to Hillary Clinton, in a divorce, and undermined Hillary Clinton's attempt to become president of the United States during the closing days of the 2016 campaign.¹⁸⁹ Representative Weiner was sentenced to twenty-one months in prison after he pleaded guilty to one count of transferring obscene material to a minor, yet he had faced up to ten years in prison, and he must now register as a sex offender.¹⁹⁰ He was described as "the essence of the brash politician fueled by relentless work and unbridled swagger."¹⁹¹

Recent reports of members of the U.N. House of Representatives utilizing taxpayer funded money to settle legal suits for allegations of sexual harassment—albeit of adult victims of sexual abuse or harass-

185. Chris Cillizza, *Why Did David Vitter's Prostitute Problem Kill Him in 2015 and Not in 2010?*, WASH. POST (Nov. 23, 2015), https://www.washingtonpost.com/news/the-fix/wp/2015/11/23/why-did-david-vitters-prostitution-problem-kill-him-in-2015-and-not-in-2010/?utm_term=.a59240f30216 [https://perma.unl.edu/M7WB-FZ8R].

186. Michael Scherer, *Republican David Vitter Battles Prostitution Scandal in the Bayou*, TIME (Nov. 10, 2015), <http://time.com?4106210/david-vitter-prostitute-louisiana-governor/> [https://perma.unl.edu/CV6E-T377].

187. Kevin Robillard, *Vitter Defends Self on Prostitution Scandal in Final Debate*, POLITICO (Nov. 16, 2015), <https://www.politico.com/story/2015/11/louisiana-vitter-edwards-governor-215960> [https://perma.unl.edu/86PW-BV4F].

188. *Id.*

189. Benjamin Weiser, *Anthony Weiner Gets 21 Months in Prison for Sexting with Teenager*, N.Y. TIMES (Sept. 25, 2017), <https://www.nytimes.com/2017/09/25/nyregion/anthony-weiner-sentencing-prison-sexting-teenager.html>; see Maggie Haberman, *Trump's Longtime Lawyer Says He Paid Actress out of His Own Pocket*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

190. Haberman, *supra* note 189.

191. *Id.*

ment—suggest that elected government officials have been similarly protected by wealthy and powerful institutions.¹⁹² Republican National Committee finance chairman, Steven Wynn, following accusations of decades of sexual misconduct with women, tendered his resignation as chairman and chief executive of his company, Wynn Resorts, on February 6, 2018.¹⁹³ Mr. Wynn has denied the accusations against him and labelled them “preposterous.”¹⁹⁴ Supporters indicated that Mr. Wynn was a gambling industry giant, a philanthropist, and a pivotal player in turning Las Vegas into an entertainment destination.¹⁹⁵ His reported multimillion dollar settlements suggest he is either a very generous supporter of his former employees or, perhaps, he was disinclined for the incidents to become the focus of public attention. The stock price of his company, Wynn Resorts, tumbled from \$200.60 to \$163.22 following the sexual misconduct allegations.¹⁹⁶

President Donald Trump himself has been accused of harassing, kissing, groping, and sexually assaulting women.¹⁹⁷ Film of his boast-

192. Michelle Ye Hee Lee & Elise Viebeck, *Treasury Paid \$174,000 in Taxpayer Money to Settle House Sexual Harassment Claims*, WASH. POST (Dec. 19, 2017), https://www.washingtonpost.com/powerpost/new-data-released-on-house-harassment-sex-discrimination-claim-settlements/2017/12/19/472f49d6-e4c8-11e7-833f-155031558ff4_story.html?utm_term=.f6de409cdd36 [https://perma.unl.edu/PN3H-7Q4K] (explaining that Treasury paid \$174,000 over five years to settle claims, but this was only a partial accounting as House members have used office funds to pay “severance” packages to employees to resolve claims); see Juliet Linderman, *\$300K in Taxpayer Funds Has Been Spent Settling Sexual Harassment Claims Against Congress, Report Says*, PBS NEWSHOUR (Jan. 12, 2018), <https://www.pbs.org/newshour/politics/300k-in-taxpayer-funds-has-been-spent-settling-sexual-harassment-claims-against-congress-report-says> [https://perma.unl.edu/X8U8-AK9R].

193. The *New York Times* reported that:

Mr. Wynn, one of the most magnetic and polarizing figures in the gambling industry, was the subject of an in-depth Wall Street Journal investigation published late last month. The Journal found that Mr. Wynn, 76, had harassed female employees for decades and coerced them into sex.

Among other things, he was accused of demanding that women masturbate him or massage him naked. A manicurist said that when she went to his office for an appointment in 2005, he pressured her to disrobe, lie on his massage table and have sex. The woman told co-workers about the episode at the time and filed a human resources report. Ultimately, Mr. Wynn paid her a \$7.5 million settlement, according to The Journal.

Maggie Astor & Julie Creswell, *Steve Wynn Resigns from Company*, N.Y. TIMES (Feb. 6, 2018), <https://www.nytimes.com/2018/02/06/business/steve-wynn-resigns.html>.

194. *Id.*

195. *Id.*

196. *Id.*

197. Michael D. Shear, *Trump Sexual Misconduct Accusations Repeated by Several Women*, N.Y. TIMES (Dec. 11, 2017), <https://www.nytimes.com/2017/12/11/us/politics/trump-accused-sexual-misconduct.html>.

ing about sexually assaulting women¹⁹⁸ was thought to have ended his political campaign for the presidency in the summer of 2016, but it did not. Disclosures of his—or his lawyer’s¹⁹⁹—alleged payments of \$130,000 of hush money to an adult film star, Stormy Daniels,²⁰⁰ generated an immediate media reaction but seems to have generated diminishing interest in public responses.²⁰¹ Subsequently, disclosures of Mr. Trump’s alleged acts of sexual misconduct have been frequent,²⁰² but they have stirred nowhere near the outrage generated by similar accusations later made against other powerful men in different fields, causing them to resign from their positions.²⁰³

Members of President Trump’s inner circle have been publicly accused of domestic violence by ex-spouses (one of whom posted photos of her black eye following one of the assaults) and girlfriends.²⁰⁴ While

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198. Alexander Burns, Maggie Haberman & Jonathan Martin, *Donald Trump Apology Caps Day of Outrage over Lewd Tape*, N.Y. TIMES (Oct. 7, 2016), <https://www.nytimes.com/2016/10/08/us/politics/donald-trump-women.html>.
199. Maggie Haberman & Charlie Savage, *Trump Lawyer’s Payment to Porn Star Raises New Questions*, N.Y. TIMES (Feb. 14, 2018), <https://www.nytimes.com/2018/02/14/us/politics/stormy-daniels-michael-cohen-trump.html>; see also Haberman, *supra* note 189 (stating Michael D. Cohen made a statement that he paid actress Stormy Daniels who had previously claimed to have had an affair with President Trump).
200. Michael Rothfeld & Joe Palazzolo, *Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star’s Silence*, WALL ST. J. (Jan. 12, 2018), <https://www.wsj.com/articles/trump-lawyer-arranged-130-000-payment-for-adult-film-stars-silence-1515787678> (providing that Ms. Daniels’s real name is Stephanie Clifford).
201. Shortly after the *Wall Street Journal’s* breaking story about Trump’s payment of hush money to Daniels, she made denials—and then denials of her denials—about her involvement with Trump. See Mark Berman, *Stormy Daniels Is Now Denying Her Affair with Trump. Here’s How She’s Confirmed It Before*, WASH. POST (Jan. 31, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/01/31/stormy-daniels-is-now-denying-her-affair-with-trump-heres-how-she-confirmed-it-before/?utm_term=.89a3c4f33692 [<https://perma.unl.edu/PV5B-Q45C>].
202. See Matt Ford, *The 19 Women Who Accused President Trump of Sexual Misconduct*, ATLANTIC (Dec. 7, 2017), <https://www.theatlantic.com/politics/archive/2017/12/what-about-the-19-women-who-accused-trump/547724/> [<https://perma.unl.edu/Y796-9B7S>].
203. Michael D. Shear, *Nikki Haley Says Women Who Accuse Trump of Misconduct ‘Should Be Heard’*, N.Y. TIMES (Dec. 10, 2017), <https://www.nytimes.com/2017/12/10/us/politics/nikki-haley-trump-women-sexual-misconduct.html>; see also Shear, *supra* note 197 (“Several women who came forward during the 2016 campaign to accuse Donald J. Trump of sexual misconduct renewed their allegations publicly on Monday [December 12, 2017], betting that recently aggressive attitudes against harassment will give their stories new life and demanding that Congress investigate the president’s actions.”).
204. See Peter Baker & Maggie Haberman, *Abuse Case Exposes Fissures in a White House in Turmoil*, N.Y. TIMES (Feb. 11, 2018), <https://www.nytimes.com/2018/02/11/us/politics/rob-porter-john-kelly.html> (explaining that Rob Porter, White House Staff Secretary, stepped down following accusations from his two ex-wives that they had been abused by Porter); see also Katie Rogers, *White House Speech-*

the alleged perpetrator's conduct was scrutinized and known to federal screening agencies—including the FBI—Trump's Chief of Staff, John Kelly, claimed he was unaware of the charges against one of Trump's closest advisors. In response to the publicized allegations of domestic violence, President Trump has continued to declare his support for the accused former advisors, and repeated—as he has done frequently—that the accused had denied any wrongdoing.²⁰⁵ The President of the United States has made no comments about the women who alleged the abuse.²⁰⁶ The President's focus has been on what appears—in his words—as “mere allegations” with no focus or concern voiced about the nature of the complaints or of the victims.²⁰⁷

Despite routinely denying any misconduct on their part, these officials show no discomfort in continuing to pursue their self-promotion, discounting the accounts of their victims, or decrying the people who publicly expose the misconduct.²⁰⁸ The narcissistic tendencies of such officials cannot be overlooked. The well-staged self-righteous indignation of sex offenders in the public's eye is apparent in the much publicized lives of elected officials. Although not accused pedophiles, such characteristics and responses may also be seen in sex offenders engaged in acts of pedophilia.

The consequences of an elected official's denial of any discovered sexual misconduct is the more interesting dynamic in terms of the impact on his or her victims. By hiding behind deceitful denials of their own misconduct, these individuals exploit the financial support they have become dependent upon to continue to pursue their careerist objectives. The exception appears to be the honest official who simply admits to the misconduct. But why is this the case?

With each succeeding generation of political sexual scandals, the public response has often been to brace for the story, then to simply move on to the next news item. In the era of President Trump, the

writer Resigns Amid Abuse Allegations, N.Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/us/politics/david-sorensen-trump-abuse.html> (explaining that David Sorensen, White House speechwriter, resigned—two days after Porter resigned—following a news report that his former wife said he abused her during their marriage).

205. See Mark Landler, *Trump, Saying 'Mere Allegation' Ruins Lives, Appears to Doubt #MeToo Movement*, N.Y. TIMES (Feb. 10, 2018), <https://www.nytimes.com/2018/02/10/us/politics/trump-porter-me-too-movement.html>.

206. See Jacey Fortin, *Trump on Men Accused of Hurting Women*, N.Y. TIMES (Feb. 12, 2018), <https://www.nytimes.com/2018/02/11/us/trump-sexual-misconduct.html?rref=collection%2Fissuecollection%2Ftodays-new-york-times-20180212&action=click&contentCollection=todayspaper®ion=rank&module=package&version=highlights&contentPlacement=5&pgtype=collection>.

207. See Landler, *supra* note 205 (“The statement echoed Mr. Trump's dismissive response to allegations of sexual misconduct or abuse made over decades against male friends, colleagues and, above all, himself.”).

208. See Flanagan, *supra* note 172.

litany of daily scandals changes so rapidly that the country barely has time to process one outrageous event before the next outrageous event is reported.²⁰⁹ The President endorsed an accused child sex offender? Okay, but the President has assured the public that the accused man denied his involvement in any misconduct. In fact, the alleged perpetrator had “seriously denied” his misconduct.²¹⁰ Thus, if the accused denies guilt, that appears to be the final word—resolving the matter entirely for the most powerful elected official on the planet.²¹¹ Our sense of outrage and rejection of such anticipated actions by anyone accused of a crime—regardless of de facto guilt or innocence—should not be mollified in this simple-minded manner.

It may be unfair to attempt comparisons between extramarital affairs and CSA. Although the spouse of the unfaithful partner may not feel any less pain, the consequences to a child victim of sexual abuse are frequently life long and sometimes result in suicide or other forms of self-injury.²¹² But the point is not to try to quantify the degree of harm to the victim or to measure which form of betrayal of trust creates greater injury. In the instances of elected officials reporting to have had adulterous affairs, the fallout has, at most, resulted in their resignation from office and sometimes the dissolution of their marriage. For those lawmakers to cavalierly engage in acts of sexual misconduct and not be held accountable, there is little reason to think they will hold child sexual abusers accountable for their acts of misconduct when they take no responsibility for their own sexual misconduct.

Additionally, the public’s sense of outrage over CSA²¹³ seems to have been significantly undercut by the President’s public announcement that he would endorse for the U.S. Senate a man who had been

209. See Jia Tolentino, *Listening to What Trump’s Accusers Have Told Us*, *NEW YORKER* (Nov. 9, 2017), <https://www.newyorker.com/news/news-desk/listening-to-what-trumps-accusers-have-told-us> [https://perma.unl.edu/BWT3-ZFJX].

210. *But see* Jon R. Conte, Steven Wolf & Tim Smith, *What Sexual Offenders Tell Us About Prevention Strategies*, 13 *CHILD ABUSE & NEGLECT* 293 (1989).

211. It is striking the similarity between the denials by former President Bill Clinton and President Trump when responding to the serious accusations each man has faced for sexual misconduct. *See* Callum Borchers, *Bill Clinton’s Very Trump-Like Response to Questions About Sexual Misconduct*, *WASH. POST* (June 4, 2018) https://www.washingtonpost.com/news/the-fix/wp/2018/06/04/bill-clintons-very-trump-like-response-to-questions-about-sexual-misconduct/?utm_term= [https://perma.unl.edu/T9Q6-QDJH].

212. This is not intended to diminish the harmful consequences to partners whose significant others have engaged in adultery, but those victims are adults—whether correctly or incorrectly—thought to be better able to handle the sexual misconduct of their partners rather than underage child victims not prepared mentally, emotionally, or physically for the abuse perpetrated against them.

213. For a study discussing public reactions of anger and disgust towards pedophiles, see Pascale Sophie Russell & Roger Giner-Sorolla, *Social Justifications for Moral Emotions*, 11 *EMOTION* 637 (2011).

accused of sexual misconduct with a fourteen-year-old girl.²¹⁴ The candidate, who was reportedly banned from the local shopping mall for inappropriate conduct towards young girls, enjoyed a position of great power²¹⁵—he rose to become the chief judge of his state’s Supreme Court, twice, and entered the race as a favorite to win a seat in the U.S. Senate.

VI. DIFFERENTIATING ACCUSATIONS FROM CONVICTIONS

The American criminal justice system defines itself in multiple ways, but perhaps one of the best known and most often identified components is the requirement of proof beyond a reasonable doubt in order to convict an individual accused of a crime. In cases where CSA has been reported, state prosecutors must make objective judgments that there is sufficient evidence to prove that the suspect committed the crime.²¹⁶ In many instances, the child’s testimony is the only available evidence.²¹⁷

When an individual has been accused of misconduct, that individual’s champions are quick to remind that the person has simply been accused and that an accusation is a far cry from being convicted of a crime. In the case of elected officials or of candidates seeking elected office, the issue is often not whether the person has actually been convicted of any offense (or ever will be). In the wake of the “#MeToo” movement, numerous once-powerful men have been removed or re-

214. Stephanie McCrummen, Beth Reinhard & Alice Crites, *Woman Says Roy Moore Initiated Sexual Encounter When She Was 14, He Was 32*, WASH. POST (Nov. 9, 2017), https://www.washingtonpost.com/investigations/woman-says-roy-moore-initiated-sexual-encounter-when-she-was-14-he-was-32/2017/11/09/1f495878-c293-11e7-afe9-4f60b5a6c4a0_story.html?noredirect=on&utm_term=.42eb8942e1ec [https://perma.unl.edu/5QVG-EVAF].

215. See Stephanie McCrummen, Beth Reinhard & Alice Crites, *Two More Women Describe Unwanted Overtures by Roy Moore at Alabama Mall*, WASH. POST (Nov. 15, 2017), https://www.washingtonpost.com/investigations/two-more-women-describe-unwanted-overtures-by-roy-moore-at-alabama-mall/2017/11/15/2a1da432-ca24-11e7-b0cf-7689a9f2d84e_story.html?utm_term=.45798676bd0f [https://perma.unl.edu/4QAS-CFHG] (describing Gena Richardson’s account of Moore calling her school, while she was in the middle of her trigonometry class, to ask her on a date, and Beverly Young Nelson’s account of being sexually assaulted by Moore in his car when she was sixteen and he was in his thirties).

216. Wendy A. Walsh et al., *Prosecuting Child Sexual Abuse: The Importance of Evidence Type*, 56 CRIME & DELINQ. 436 (2010).

217. See Emelie Ernberg, Inga Tidefors & Sara Landström, *Prosecutors’ Reflections on Sexually Abused Preschoolers and Their Ability to Stand Trial*, 57 CHILD ABUSE & NEGLECT 21, 21 (2016) (comparing Sweden’s estimated rate of only 10% of reported cases being prosecuted in comparison to a rate of 52% of cases in the United States and 26.3% of reported cases in Iceland).

signed from their positions as a result of accusations which have gone unproven in courts of law.²¹⁸

From Hollywood producer and mogul, Harvey Weinstein,²¹⁹ to television's Matt Lauer,²²⁰ to NPR's grandfatherly Garrison Keillor,²²¹ none of these powerful men ever faced formal charges in criminal proceedings, unlike the actor Bill Cosby.²²² In political circles, the inconsistency of public responses to accusations is profound. Upon being accused of sexual misconduct and disclosure of photos of him appearing to fondle a sleeping woman in a transport plane while on a USO tour overseas, Minnesota Senator Al Franken initially claimed that he had been unfairly accused. He then released a formal apology only to have more individuals come forward to join in a chorus of victims. Eventually, Senator Franken offered his resignation from office without legal charges pending or convictions for any crimes, whether misdemeanors or felonies.²²³

Matt Lauer, Senator Al Franken, John Besh, Garrison Keillor, James Levine, Charlie Rose, and others have not been convicted of

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218. See Jim Rutenberg, *A Failure of the Network News Star System*, N.Y. TIMES (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/media/matt-lauer-sexual-misconduct.html>.
219. Jodi Kantor & Megan Twohey, *Sexual Misconduct Claims Trail a Hollywood Mogul*, N.Y. TIMES (Oct. 6, 2017), <http://www.nytimes.com/images/2017/10/06/nytfrontpage/scan.pdf>; see also Daniel Victor, *How the Harvey Weinstein Story Has Unfolded*, N.Y. TIMES (Oct. 18, 2017), <https://www.nytimes.com/2017/10/18/business/harvey-weinstein.html> (stating that following the investigation of Harvey Weinstein by Jodi Kantor and Megan Twohey, more women came forward with accusations of sexual harassment and assault).
220. Ellen Gabler et al., *NBC Fires Matt Lauer, the Face of 'Today'*, N.Y. TIMES (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/media/nbc-matt-lauer.html>.
221. Salam, *supra* note 155.
222. In the case of Bill Cosby, prosecutors had interviewed nearly fifty women who accused Cosby of sexual misconduct, but the trial judge, Montgomery County Judge, Steven O'Neil, ruled that prosecutors could only present the testimony of one woman—other than the victim—in Cosby's sexual assault trial—which subsequently resulted in a mistrial—and none of the other twelve women that prosecutors sought to call to testify that the seventy-nine-year-old comedian had a history of similar bad acts, a pivotal pretrial ruling. *Bill Cosby Sexual Assault Trial: Only One Accuser Permitted to Testify*, GUARDIAN (Feb. 24, 2017), <https://www.theguardian.com/world/2017/feb/24/bill-cosby-sexual-assault-trial-one-accuser-permitted-testify> [<https://perma.unl.edu/9HQ4-J5BH>]; see also Kyle Kim, Christina Littlefield & Melissa Etehad, *Bill Cosby: A 50-year Chronicle of Accusations and Accomplishments*, L.A. TIMES (June 17, 2017), <http://www.latimes.com/entertainment/la-et-bill-cosby-timeline-htmlstory.html> [<https://perma.unl.edu/B3DG-HTB9>] (providing a timeline of Cosby's career and of sexual assault allegations since the 1960s).
223. Garrison Keillor, *Al Franken Should Resign? That's Absurd.*, WASH. POST (Nov. 28, 2017), https://www.washingtonpost.com/opinions/al-franken-should-resign-thats-absurd/2017/11/28/d33e2d8a-d482-11e7-a986-d0a9770d9a3e_story.html?noredirect=on&utm_term=.95d5ff10d0e7 [<https://perma.unl.edu/37KE-M987>].

criminal misconduct, but they all tendered resignations—or were terminated—from their respective positions. Although they have only been subjected to accusations, the underlying support of the accusations appears to have been sufficient for each of these men to wish to forgo defending themselves in the court of public opinion. The public relations consequences for each of their businesses compelled them to step down.

Perhaps Judith Herman's assessment of the criminal justice system's handling of accusations of CSA in the context of incestuous families is the most telling:

As a defendant charged with a sexual offense, [the father] has vastly greater legal protection than the child who accuses him. First, he has the constitutional rights, guaranteed to all criminal defendants, to be considered innocent until proven guilty, to confront his accuser in a public trial, and to cross-examine any witness against him. These safeguards, designed for adversary proceedings between adults, give an enormous advantage to the defendant, where the only witness for the prosecution is a child, dependent on [defendant's] care and habitually obedient to [defendant's] authority. In addition, many states require corroboration of the victim's testimony against any person accused of sex offenses. Since the incestuous relationship almost always occurs in secrecy, this requirement makes conviction of the father virtually impossible.²²⁴

Of course, these procedural safeguards are not restricted to cases of incest but apply in any scenario in which a child has been sexually abused and the State has elected to bring criminal charges.

VII. STATUTES ON CHILD MOLESTATION

The sexual abuse of children in this country was difficult to track prior to 1964 because there were "no effectual child abuse reporting laws."²²⁵ During the American Academy of Pediatrics' conference on child abuse in 1961, Dr. C. Henry Kempe²²⁶ chaired the conference and drafted the first proposed model child abuse law.²²⁷ In January 1974, Congress passed the Child Abuse Prevention and Treatment Act, which established a National Center on Child Abuse and Neglect and gave the following legal definition to child abuse: "Child abuse and neglect means the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate the child's health or welfare is harmed or threatened thereby."²²⁸ By 1978, Congress had incorporated CSA into the federal

224. JUDITH LEWIS HERMAN, FATHER-DAUGHTER INCEST 164-65 (1981).

225. Bensele et al., *supra* note 3, at 22.

226. Dr. Kempe has been credited with originally identifying the "battered child syndrome." See C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 [JAMA] 17 (1962).

227. Bensele et al., *supra* note 3, at 22-23.

228. *Id.* at 23.

Child Abuse Prevention and Treatment Act and defined sexual abuse so as to include rape, molestation, and child pornography.²²⁹ The Act expanded mandatory reporting requirements and tied reporting to federal funding of state child abuse and neglect programs.²³⁰

Each state has a criminal statute or statutes outlawing sexual crimes that target child victims. Perpetrators who can be identified and tried for sexual abuse of children face significant sentences of long-term incarceration. But obtaining a conviction in a child sexual abuse case can be challenging. As Myers has noted:

Sexual abuse is often difficult to prove in court. The U.S. Supreme Court noted that “child abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim.” Although most children are competent to testify, some cannot take the witness stand because they are too young or too frightened. When a child is asked to testify against a familiar person, the experience can be overwhelming. Yet, without the child’s testimony, criminal prosecution is typically stymied.²³¹

Fundamental aspects that might otherwise be taken for granted in other forms of litigation, such as the correct use of language identifying body parts, create barriers in trials of those accused of child molestation.²³² Professionals handling such cases must be specifically trained to avoid the many pitfalls in these court cases.²³³

The instruments developed to assess perpetrators of CSA sound attractive for those working in the field, but the reliability of the instruments continues to be a work in progress. In fact, the methods and instruments used to assess alleged child molesters leave a great deal to be desired. The National Institute of Justice Research report found that “[t]he sexual abusers of children are highly dissimilar in terms of personal characteristics, life experiences, and criminal histories. No single ‘molester profile’ exists. Child molesters arrive at deviancy via multiple pathways and engage in many different sexual and nonsexual ‘acting out’ behaviors.”²³⁴

The nature of the impact on victims is such that the reporting of crimes is somewhat infrequent. Victims face humiliation, loss of pri-

229. Child Abuse Prevention and Treatment Act, Pub. L. No. 95-266, 92 Stat. 205 (codified at 42 U.S.C. § 5101–5107 (2005)).

230. *See id.*

231. MYERS, *supra* note 11, at 392 (citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987)).

232. Kimberlee S. Burrows et al., *Children’s Use of Sexual Body Part Terms in Witness Interviews About Sexual Abuse*, 65 CHILD ABUSE & NEGLECT 226, 226 (2017) (“Requiring children to clearly identify the sexual body parts involved in offending may pose a challenge for those who elicit evidence from child complainants. Research suggests that young children . . . may not be aware of, or use, anatomical terms for their body parts, and will instead rely on colloquial terms . . .”).

233. For examples of preparation necessary to engage in interviews with young children, see DEBRA A. POOLE & MICHAEL E. LAMB, *INVESTIGATIVE INTERVIEWS OF CHILDREN* (1998).

234. HARALAMBIE, *supra* note 22, at 106.

vacy, and then what many describe as the trauma of having to appear in court and re-live the trauma created by their initial abuse. In addition to overcoming the attitudinal barriers posed by victims of CSA, criminal procedure itself creates additional hurdles for criminal resolution of such matters because of legal restrictions such as statutes of limitation.

Statutes of limitations in criminal cases against perpetrators of CSA have come under fire²³⁵ based on developing knowledge of how victims report their molestation and abuse.²³⁶ As a result, some states—such as New Hampshire—have enacted legislation that extends the time period for the state to initiate criminal proceedings where the victim is under eighteen years of age. Previously, criminal prosecutions in New Hampshire had to be initiated within six years of the victim's eighteenth birthday.²³⁷ California enacted California Penal Code § 803(g) which extended the limitation period for specific CSA crimes to one year after a report had been filed with state authorities.²³⁸ The U.S. Supreme Court in *Stogner v. California*²³⁹ rejected states' attempts to expand the shorter statutes of limitations in CSA prosecutions indicating such applications violate the Ex Post Facto Clause of the U.S. Constitution. While states may extend their statutes of limitations through new legislation, they may not prosecute any expired offenses—the fallacy identified in California's § 803(g).²⁴⁰

Despite these challenges, CSA perpetrators have been apprehended, tried, and convicted, and states have sought legislative enactments designed to protect victims and in some instances, to expand the period of institutionalization, seeking to isolate convicted pedophiles from the community at large.

The U.S. Supreme Court's decision in *Kansas v. Hendricks*²⁴¹ opened a door for state legislatures to incarcerate admitted child molesters indefinitely. The decision examined Kansas's Sexually Violent Predator Act,²⁴² a statute allowing for a "civil commitment procedure for the long-term care and treatment of the sexually violent predator."²⁴³

235. See Jessica E. Mindlin, Comment, *Child Sexual Abuse and Criminal Statutes of Limitation: A Model for Reform*, 65 WASH. L. REV. 189 (1990).

236. See David Viens, *Countdown to Injustice: The Irrational Application of Criminal Statutes of Limitations to Sexual Offenses Against Children*, 38 SUFFOLK U. L. REV. 169 (2004).

237. See Brian L. Porto, *New Hampshire's New Statute of Limitations for Child Sexual Assault: Is It Constitutional and Is It Good Public Policy?*, 26 NEW ENG. L. REV. 141, 141 (1991).

238. Cal. Penal Code § 803(g) (2008).

239. 123 S. Ct. 2446 (2003).

240. *Id.* at 2461.

241. 521 U.S. 346 (1997).

242. See KAN. STAT. ANN. §§ 59-29a01-17 (1994 & Supp. 1997).

243. *Hendricks*, 521 U.S. at 354-55.

Leroy Hendricks had multiple convictions for molesting at least twelve children, including his stepdaughter and stepson, over a forty year period, and he had been convicted and sentenced in his criminal proceeding.²⁴⁴ But because of his convictions, he became subject to the recently enacted Sexually Violent Predator Act—imposing civil commitment for sex offenders prior to the completion of their criminal sentences. Hendricks argued that the law²⁴⁵ violated the Due Process Clause,²⁴⁶ the double jeopardy prohibition, and constituted an ex post facto law.²⁴⁷ But in rejecting Hendricks's arguments, the Supreme Court ruled that the Kansas legislation's civil commitment did not establish criminal proceedings, and that the involuntary commitment was not punitive—and thus it did not violate the Constitution.²⁴⁸ *Hendricks* was a departure from the Supreme Court's decision five years earlier in *Foucha v. Louisiana*,²⁴⁹ where the Court held the Due Process Clause required a determination based upon clear and convincing evidence that the detainee had a mental illness²⁵⁰ and also was dangerous, before involuntary commitment could be constitutionally justified.²⁵¹ States were increasing their legal means to indefinitely incarcerate sexual predators, although some argued that such commitments could be applied to offenders other than CSA cases after *Hendricks*.²⁵²

Additionally, in 1994, Congress passed the Wetterling Act, recommending minimum standards for state sex offender registries, the length of time offenders should be registered, and methods to maintain the database of offenders.²⁵³ All fifty states have since adopted

244. *Id.*

245. § 59-29a01.

246. The relevant provision in the Due Process Clause indicates that “[n]o state shall . . . deprive any person of life, liberty, or property without due process of law” U.S. CONST. amend. XIV, § 1. In support of Hendricks's due process argument, see Eli M. Rollman, “*Mental Illness*”: *A Sexually Violent Predator Is Punished Twice for One Crime*, 88 J. CRIM. L. & CRIMINOLOGY 985 (1998).

247. The Ex Post Facto Clause of the U.S. Constitution guarantees against arbitrary and capricious retroactive legislation. See U.S. CONST. art. I, § 9, cl. 3 (“No Bill of Attainder or ex post facto Law shall be passed.”).

248. *Hendricks*, 521 U.S. at 356, 369.

249. 504 U.S. 71 (1992).

250. See Robert F. Schopp & Barbara J. Sturgis, *Sexual Predators and Legal Mental Illness for Civil Commitment*, 13 BEHAV. SCI. & L. 437 (1995).

251. *Foucha*, 504 U.S. at 75.

252. See Adam J. Fak, Note, *Sex Offenders, Mental Illness and Criminal Responsibility: The Constitutional Boundaries of Civil Commitment After Kansas v. Hendricks*, 25 AM. J.L. & MED. 117, 119–20 (1999); see also Peter C. Pfaffenroth, Note, *The Need for Coherence: States' Civil Commitment of Sex Offenders in the Wake of Kansas v. Crane*, 55 STAN. L. REV. 2229, 2256–57 (2003) (warning of the potential danger posed by jurisprudence upholding civil commitment).

253. 42 U.S.C. § 14071 (2006) (repealed 2009).

sex offender registration requirements.²⁵⁴ Convicted sex offenders must register with local police who then post registries available to the public, notifying²⁵⁵ them of the residences and conviction information of the sex offenders.²⁵⁶ The Supreme Court has found that registration laws are regulatory in nature and do not impose punitive restraints which might violate either the prohibition on ex post facto laws or the Due Process Clause.²⁵⁷

The same year the Wetterling Act passed, “seven-year-old Megan Kanka was raped and murdered by a neighbor who had been twice-convicted as a sex offender,” yet the girl’s parents “had no knowledge of the neighbor’s convictions.”²⁵⁸ The so-called “Megan’s Law”²⁵⁹ requires sex offenders to register with the states in which they reside,²⁶⁰ so that even if they are released following conviction, the public will have access to information about their residency, and potential employers will be informed about their convictions.²⁶¹

Civil remedies such as lawsuits for victims of CSA are equally problematic for a number of reasons.²⁶² Experts appear to agree that most CSA continues to be undisclosed due to threats by the abuser, emotional blackmail, and the existing dysfunction within the abusive households. In the case of sexual abuse of children, one commentator has written:

[W]e must recognize that children’s access to legal recourse is limited at best. First, the child has to recognize what is happening is wrong. Second, the victim needs to be willing to come forward and tell someone about the abuse before any action can proceed, and unfortunately, many children are ashamed and embarrassed about the sexual abuse and, thus, are hindered from coming

254. For a list of sex offender registration laws in each of the fifty states, see *People v. Ross*, 646 N.Y.S.2d 249, 250 n.1 (N.Y. Sup. Ct. 1996).

255. See Alex B. Eyssen, *Does Community Notification for Sex Offenders Violate the Eighth Amendment’s Prohibition Against Cruel and Unusual Punishment? A Focus on Vigilantism Resulting from “Megan’s Law”*, 33 ST. MARY’S L.J. 101 (2001).

256. See Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295 (2006).

257. See *Smith v. Doe*, 538 U.S. 84, 102 (2003).

258. See Kate Blacker & Lissa Griffin, *Megan’s Law and Sarah’s Law: A Comparative Study of Sex Offender Community Notification Schemes in the United States and the United Kingdom*, 46 CRIM. L. BULL. 987, 989 (2010).

259. See Megan’s Law: Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended, 64 Fed. Reg. 572–75 (Jan. 5, 1999). Megan’s Law was initially passed in New Jersey where the child was murdered, but a federal version of Megan’s Law was passed in 1996. See Blacker & Griffin, *supra* note 258, at 989–90.

260. *Smith*, 538 U.S. at 89, provides detailed accounts of the murder of Megan Kanka and the legislative response of “Megan’s Law.”

261. See Maureen Hopbell, *Balancing the Protection of Children Against the Protection of Constitutional Rights: The Past, Present, and Future of Megan’s Law*, 42 DUQ. L. REV. 331 (2004).

262. See Michael Krauss, *Fundamental Fairness in Child Sexual Abuse Civil Litigation*, 8 STAN. L. & POL’Y REV. 205 (1997).

forward. Third, the child needs to be honestly believed by someone who can do something. Until the 1970's, children reporting abuse were largely disregarded as fabricators. Additionally, juries often are not satisfied without seeing corroborating evidence. Finally, the child has to come up with legal representation if he or she intends to bring a civil suit.²⁶³

Haralambie has indicated that risk assessment instruments on whether an identified individual is likely to have molested a child—sometimes used in civil litigation—have not reached the stage where they provide good predictive ability, and that most of these have been developed with incarcerated sex offenders, including child molesters, excluding those who have been convicted but not incarcerated, those who have not been criminally convicted, or those whose abuse has not been reported.²⁶⁴

Assuming all of these conditions can be met, if the CSA survivor is contemplating civil action, he or she may shoulder the expenses of litigation in addition to other legal fees involved. In some instances, the accused perpetrator may have access to financial resources, as in the case of Harvey Weinstein, whose company was on the verge of being sold for approximately \$275 million dollars until the New York Attorney General filed a lawsuit against the studio and its founders, alleging repeated violations of state and municipal laws prohibiting gender discrimination, sexual harassment, sexual abuse, and coercion.²⁶⁵ Such well-funded child abuse perpetrators are likely the exception rather than the rule, and thus, even if the CSA survivor were to prevail in civil litigation, collecting damages would depend entirely upon the perpetrator's financial solvency or potential insurance coverage or protection. In cases where perpetrators of CSA are solvent, victims have recently turned to the law of defamation as a possible remedy

263. Erin Khorram, *Crossing the Limit Line: Sexual Abuse and Whether Retroactive Application of Civil Statutes of Limitation Are Legal*, 16 U.C. DAVIS J. JUV. L. & POL'Y 391, 407–08 (2012).

264. HARALAMBIE, *supra* note 22, at 104–09 (discussing the limitations of the Multiphasic Sex Inventory II (MSI II), the Minnesota Multiphasic Personality Inventory (MMPI), the Child Sexual Behavior Inventory (CSBI), polygraph examinations, the Violence Risk Appraisal Guide (VRAG), and the Canadian developed Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR), all failing to qualify under the evidentiary foundational requirements of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) or *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)).

265. Brooks Barnes & William Neuman, *Weinstein Company Sale Delayed by N.Y. Attorney General Lawsuit*, N.Y. TIMES (Feb. 11, 2018), <https://www.nytimes.com/2018/02/11/business/media/harvey-weinstein-company-sale.html> (providing, according to the N.Y. Attorney General in a news release, “Any sale of the Weinstein Company must ensure that victims will be compensated, employees will be protected going forward, and that neither perpetrators nor enablers will be unjustly enriched”).

after the statute of limitations of criminal prosecutions or civil tort actions have expired.²⁶⁶

Adult survivors of CSA often face significant barriers to bringing civil lawsuits against their perpetrators, regardless of whether criminal actions had been initiated against the abusers.²⁶⁷ Some estimates suggest that underreporting by adults of CSA may be as high as 80%.²⁶⁸ Nevertheless, adult survivors of CSA who have overcome some of these barriers have found they may have a tort action in some jurisdictions against passive parents in the cases of incestuous families.²⁶⁹

Some reformers have suggested that developments in the science of CSA over the past twenty or more years²⁷⁰ have set the stage for drafting a restatement of CSA law.²⁷¹ Still, others suggest that enacting criminal statutes that hold institutional decision-makers criminally liable for their roles in instances of clergy CSA would help to prevent such episodes from going forward.²⁷²

VIII. PRESIDENTIAL SUPPORT FOR ELECTING AN ACCUSED PEDOPHILE

This is complicated, as well as difficult,²⁷³ in that we have no universally acceptable metric designed to measure the impact of such previously unforeseen behaviors such as a president's endorsement of an accused pedophile. Anecdotal accounts of survivors of CSA can help us

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266. Beth Reinhard, *Woman Who Accused Roy Moore of Unwanted Sexual Contact Sues Him for Defamation*, WASH. POST (Jan. 4, 2018), https://www.washingtonpost.com/investigations/woman-who-accused-roy-moore-of-sexual-misconduct-sues-him-for-defamation/2018/01/04/3a9430ce-f0f3-11e7-90ed-77167c6861f2_story.html?noredirect=on&utm_term=.702f431b8804 [https://perma.unl.edu/35FW-VAMA].
267. See Elizabeth A. Wilson, *Child Sexual Abuse, the Delayed Discovery Rule, and the Problem of Finding Justice for Adult-Survivors of Child Abuse*, 12 UCLA L. REV. 145 (2003).
268. See William Winslade et al., *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, 51 SMU L. REV. 349, 363 (1998).
269. See Barbara A. Micheels, Comment, *Is Justice Served? The Development of Tort Liability Against the Passive Parent in Incest Cases*, 41 ST. LOUIS U. L.J. 809 (1997).
270. See Barry M. Maletzky & Cynthia Steinhauser, *A 25-Year Follow-Up of Cognitive Behavioral Therapy with 7,275 Sexual Offenders*, 26 BEHAV. MODIFICATION 123 (2002).
271. See Marci A. Hamilton, *The Time Has Come for a Restatement of Child Sex Abuse*, 79 BROOK. L. REV. 397 (2014).
272. See Laura Russell, Note, *Pursuing Criminal Liability for the Church and Its Decision Makers for Their Role in Priest Sexual Abuse*, 81 WASH. U. L. REV. Q. 885 (2003).
273. See D. FINKELHOR, A SOURCEBOOK ON CHILD SEXUAL ABUSE (1986).

gain a sense of perspective of the impact felt by CSA survivors,²⁷⁴ and the descriptions of their struggles can help sensitize the public to appreciating the suffering of such community members.²⁷⁵ Having some familiarity with the process pedophiles utilize to lure children into becoming victims²⁷⁶—and avoid discovery—can also be instructive for those otherwise unfamiliar with the dynamics of child molestation.²⁷⁷ The ever-increasing and extensive access children enjoy to the internet²⁷⁸ can also expose them to unknowing interaction with predators.²⁷⁹

Nevertheless, the President's endorsement of a man accused by numerous CSA victims willing to disclose their victimization²⁸⁰ in an effort to prevent the alleged perpetrator from obtaining a seat in the U.S. Senate seems to have never before occurred in this country's history. Recognizing that young victims of CSA frequently fail to report their abuse is a crucial component for public understanding of this phenomenon. Further, recognizing the compelling reasons for victims' reluctance to report is equally important. Being a child in an incestuous family, being a child completely dependent upon adult caregivers, being a child lacking comprehension of sexual motivations, fearing repercussions of reporting, feeling unprepared to create problems for adults, and so forth all contribute to lowered instances of reporting or avoidance of reporting altogether.²⁸¹ Even when child victims are

274. As Lyon and Ahern explain,

If children are reluctant, then abused children may deny and recant abuse. On the other hand, if abused children readily disclose, then denials and recantations may prove that an abuse allegation is false. If abused children are reluctant to disclose, then interviewers must look for means of reassuring children or otherwise overcoming their resistance. If abused children are forthcoming, then interviewers should focus on eliminating questions that might suggest abuse to a nonabused child.

Thomas D. Lyon & Elizabeth C. Ahern, *Disclosure of Child Sexual Abuse*, in THE APSAC HANDBOOK 233 (2011).

275. See LEHMAN, *supra* note 84.

276. See MICHAEL C. SETO, *PEDOPHILIA AND SEXUAL OFFENDING AGAINST CHILDREN: THEORY, ASSESSMENT, AND INTERVENTION* (2008).

277. See Reuben A. Lang & Roy R. Frenzel, *How Sex Offenders Lure Children*, 1 ANNUALS SEX RES. 303 (1988).

278. See Janis Wolak et al., *Current Research Knowledge About Adolescent Victimization via the Internet*, 18 ADOLESCENT MED. 325 (2007).

279. See Kimberly J. Mitchell, Janis Wolak & David Finkelhor, *Trends in Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet*, 40 J. ADOLESCENT HEALTH 116 (2007).

280. See McCrummen, Reinhard & Crites, *supra* note 215; McCrummen, Reinhard & Crites, *supra* note 214.

281. See Gisela Priebe & Carl Göran Svedin, *Child Sexual Abuse Is Largely Hidden from the Adult Society, An Epidemiological Study of Adolescents' Disclosures*, 32 CHILD ABUSE & NEGLECT 1095 (2008).

comfortable reporting their sexual abuse,²⁸² the criminal justice system provides little reassurance that they will be vindicated in courts of law.²⁸³ The variations in CSA that studies document help us understand some of the complications authorities in criminal justice settings must confront when attempting to respond to child victims:

Sexual abuse is perpetrated in a variety of ways. In some cases, even though the offender has a relationship with the child, the victimization occurs without warning. More typically, offenders engage in a gradual process of sexualizing the relationship over time Offenders may conceal the sexual nature of the activity by characterizing it as nonsexual (e.g., sex education, hygiene) or may encourage the child to consider the relationship as mutual. . . . Repeat offenders generally calculate and plan their approach to victimizing children, often employing elaborate strategies to involve the children, maintain their cooperation, and prevent reporting In a substantial percentage of cases, offenders use force, threats, or fear²⁸⁴

The stigmatization of sexually abused victims²⁸⁵ within their families and communities often creates additional pressure on the victims²⁸⁶ to dismiss or rescind their initial reports of CSA. Sexually abusive adults often select their victims carefully, seeking those children who appear vulnerable to accusations that they have manufactured reports of CSA²⁸⁷ or that they have engaged in exaggerations of behaviors²⁸⁸ that cannot be corroborated by forensic evidence.²⁸⁹

282. See Daniel W. Smith et al., *Delay in Disclosure of Childhood Rape: Results from a National Survey*, 24 CHILD ABUSE & NEGLECT 273 (2000).

283. HERMAN, *supra* note 224, at 167 (“Incestuous fathers have little to fear from the law. . . . The odds in favor of fathers may be judged from a study of 250 police reports of sexual assaults on children in New York City. In the majority of cases (75 percent), either no arrest warrant was made (31 percent) or the accused was arraigned but never brought to trial (44 percent). . . . Of these 53 men convicted (21 percent), over half (30) received fines or suspended sentences with or without probation. Twenty-three men, or nine percent of the total, were sentenced to prison, the majority for one year or less. . . . [T]he punishments for sexual abuse of children may be severe, but in practice they are almost never carried out.”).

284. Berliner, *supra* note 17, at 220.

285. Candice Feiring, Shari Miller-Johnson & Charles M. Cleland, *Potential Pathways from Stigmatization and Internalizing Symptoms to Delinquency in Sexually Abused Youth*, 12 CHILD MALTREATMENT 220 (2007).

286. See Mark Chaffin, Jeffrey N. Wherry & Roscoe Dykman, *School Age Children’s Coping with Sexual Abuse: Abuse Stresses and Symptoms Associated with Four Coping Strategies*, 21 CHILD ABUSE & NEGLECT 227 (1997).

287. As Rogers explains,

Data on the frequency of deceptive behavior in youths across settings are limited. The best information on nonclinical samples stems from two studies conducted in the mid-1980s. Achenbach (1985) noted that a large percentage of normal 4-to 5-year-old children engage in some form of lying. Similarly, Stouthammer-Loeber’s (1986: Stouthamer-Loeber & Loeber, 1986) study estimated the prevalence of lying to be 19.4% in normal children, with a gradual decline to 15% in adolescents.

RICHARD ROGERS, CLINICAL ASSESSMENT OF MALINGERING AND DECEPTION 344 (2008).

288. Rogers also provides,

Lawmakers' involvement in acts of harassment, sexual misconduct, adultery, sexual assault, and even CSA may be no different than that of the rest of the population, but they enjoy positions of power allowing them to draft legislation to protect victims of CSA. Until the rise of the #MeToo movement, few victims of sexual misconduct demonstrated the courage or strength of will to come forward and identify abuses they had suffered at the hands of men in power and in positions controlling jobs, careers, and even entire industries.²⁹⁰

The power imbalance that often provides cover and opportunities to perpetrators of sexual abuse is quite similar in acts of CSA. Sexual abuse exposes victims to serious and unexpected consequences, damaging their self-esteem, self-confidence, emotional stability, trust in others, and sometimes their capacity to continue working in their chosen careers. The impact of sexual misconduct on children, however, may result in impulsive behaviors, suicidal ideation, or attempts to commit suicide. For child sex abuse survivors who have been victimized by authority figures including parents, caregivers, relatives, or other adults playing significant roles in the child's life (as compared with total strangers), the impact of the abuse often creates far more serious dysfunction as the survivor matures into adolescence and adulthood.²⁹¹

The general reluctance of victims of sexual abuse—but especially child victims of sexual abuse—to report the misconduct is well known by professionals who work in this field, although the general public may be less aware of this dynamic.²⁹² When the Senate election in

A number of studies demonstrate that although young children lie and engage in deception, they are not able to sustain this deception In a series of studies . . . young children did not possess the conceptual knowledge that their deceptive behavior would result in a false belief in the person being deceived.

Id. at 345.

289. See Michele Elliott, Kevin Browne & Jennifer Kilcoyne, *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE & NEGLECT 579 (1995).

290. This is not meant as a criticism of the victims, as so many of them were dependent upon their abusers for their jobs, their career opportunities or their immediate source of income, so their very financial survival dictated their willingness to make public accusations against their abusers.

291. See Jamison D. Fargo, *Pathways to Adult Sexual Revictimization: Direct and Indirect Behavioral Risk Factors Across the Lifespan*, 24 J. INTERPERSONAL VIOLENCE 1771 (2009).

292. Developmental differences in children and adolescents also play a major role in the way young victims respond to traumatic experiences. As one group explained,

Developmental stages play a crucial role in the way a child or adolescent perceives and reacts to a given traumatic event. For example, very young children may perceive a brief separation from their parents as more traumatic than witnessing the World Trade Center twin towers come down, while adolescents, with their more mature cognitive development, may be more likely to recognize the separation as temporary, but may

Alabama thrust into public view accusations by survivors of CSA,²⁹³ many onlookers were swayed by assertions that because the alleged victims had never before come forward to make such complaints, the allegations must have been fabricated. In fact, one of Mr. Moore's alleged sexual victims claimed "Mr. Moore warned her that 'no one will believe you' if she told anyone about the encounter in his car."²⁹⁴ Adults who prey upon children are often well familiar with tactics that will successfully silence their victims.²⁹⁵ Such actions can help contribute to the delay involved in reporting CSA.

However, this delay in reporting their own victimization is hardly the exception, rather it more resembles the rule in responses by most victims of CSA.²⁹⁶ Although protestations of innocence should not be ignored completely, if they are based primarily on the delay of reporting the allegations of CSA, such behaviors must be understood to occur with relative frequency among sexual abuse victims.²⁹⁷ In this instance, the Senate Majority Leader eventually indicated that "I believe the women, yes" about the "accounts of lecherous behavior and child molestation by the Republican Senate candidate Roy Moore of Alabama."²⁹⁸ One woman asserted that Mr. Moore had undressed her to her underwear and placed her hand on his crotch when she was fourteen and in his home.²⁹⁹ Another woman indicated that Mr.

understand the gravity of the September 11, 2001, terrorist attack and experience the opposite reaction.

Mia Pappagallo, Raul R. Silva & Veronica M. Rojas, *Differential Diagnosis of PTSD in Children*, in *POSTTRAUMATIC STRESS DISORDERS IN CHILDREN & ADOLESCENTS*, *supra* note 96, at 219–20.

293. William Saletan, *Roy Moore's Story Is Unravelling*, *SLATE* (Dec. 7, 2017), http://www.slate.com/articles/news_and_politics/politics/2017/12/roy_moore_s_story_is_unraveling.html [<https://perma.unl.edu/4W53-V76P>].
294. Jonathan Martin & Sheryl Gay Stolberg, *Roy Moore Is Accused of Sexual Misconduct by a Fifth Woman*, *N.Y. TIMES* (Nov. 14, 2017), <https://www.nytimes.com/2017/11/13/us/politics/roy-moore-alabama-senate.html>.
295. See Isabelle Daigneault, Marc Tourigny & Martine Hébert, *Self-Attributions of Blame in Sexually Abused Adolescents: A Mediation Model*, 19 *J. TRAUMATIC STRESS* 153 (2006).
296. Daniel W. Smith et al., *Delay in Disclosure of Childhood Rape: Results from a National Survey*, 24 *CHILD ABUSE & NEGLECT* 273, 275 (2000).
297. See Lyon & Ahern, *supra* note 274, at 235 (discussing a survey of more than "3,400 adults in the United States and found that of those who stated they experienced contact sexual abuse before puberty, 74% of women and 78% of men did not tell anyone during their childhood").
298. *Mitch McConnell Believes the Women. Good for Him.*, *N.Y. TIMES* (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/opinion/roy-moore-women-mcconnell-alabama.html> ("Mr. McConnell and a growing list of other Republicans have been pressing Mr. Moore to quit the race after four women—Leigh Corfman, Wendy Miller, Gloria Thacker Deason and Debbie Wesson Gibson—told the *Washington Post* that Mr. Moore had pursued them as teenagers when he was a prosecutor in his 30s.").
299. *Id.*

Moore had molested her in his car when she was sixteen, and he was in his thirties.³⁰⁰

After so many women came forward to complain about Mr. Moore's predatory sexual misconduct, the *New Yorker* asserted that Mr. Moore had been barred from the local mall in his hometown of Gadsen, Alabama for bothering young women, "a memory that many in the town said they shared, though no one has found direct evidence."³⁰¹ After these accusations became public, the President of the United States gave his personal endorsement to Mr. Moore as a candidate for the U.S. Senate. The women, who accused Mr. Moore of abusing them when they were juveniles or young adults, had to contend with Mr. Moore's elevated status as the former chief justice in the Alabama Supreme Court and pushback from the local community of supporters who had been loyal to Mr. Moore and who knew nothing about the sexual abuse claims.³⁰² In one instance, an accuser became a victim again when her home burned down in a suspected arson.³⁰³

It is crucial for the general public to be aware of the complexities faced by victims of childhood sexual molestation. For those victims who have been subjected to incestuous molestation, their familial bonds and financial reliance upon their abusers must be taken into consideration.³⁰⁴ For molestation victims who have been subjected to sexual abuse by individuals connected to powerful institutions³⁰⁵

300. *Id.* (providing that Ms. Beverly Young Nelson made this public accusation). Ms. Nelson gave a complete statement that has been published by the *New York Times*, including:

Mr. Moore attacked me when I was a child. I did nothing to deserve his sexual attack. I was frightened by his position and his power. I am coming forward to let Mr. Moore know that he no longer has any power over me and I no longer live in fear of him.

Text of Beverly Young Nelson's Accusation Against Roy Moore, N.Y. TIMES (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/us/politics/text-beverly-young-nelson-statement.html>.

301. Martin & Stolberg, *supra* note 294.

302. See Petula Dvorak, *Larry Nassar's Enablers? A Nation that Doubts and Dismisses Women*, WASH. POST (Jan. 25, 2018), https://www.washingtonpost.com/local/larry-nassars-enablers-a-nation-that-doubts-and-dismisses-women/2018/01/25/439a3328-01db-11e8-bb03-722769454f82_story.html?utm_term=.ff82fbdff5a1b [<https://perma.unl.edu/G9HP-WQ8D>] (discussing the American public's tendency to believe sexual abusers over the accusations of women).

303. Samuel Chamberlain, *Roy Moore Accuser's Home Burns Down; Arson Suspected*, FOX NEWS (Jan. 5, 2018), <http://www.foxnews.com/us/2018/01/05/roy-moore-acusers-home-burns-down-arson-suspected.html> ("However, the Etowah County Sheriff's Office said in a statement that it did not believe the blaze at the home of Tina Johnson 'is in any way related to Roy Moore or allegations made against him.'").

304. Sally E. Palmer et al., *Responding to Children's Disclosure of Familial Abuse*, 78 CHILD WELFARE J. 259 (1999).

305. See Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, NEW YORKER (Oct. 23, 2017), <https://www>

which seek to protect their members and by extension, the organizations to which they belong,³⁰⁶ such individuals often lack the financial resources, social clout, or access to resources which might otherwise make it possible for them to immediately disclose their abuse. Of course, if we are speaking about children, adolescents, or even young adults, the likelihood that they would be empowered to stand up for themselves against an adult molester seems highly unlikely, except for cases involving exceptional children who have been supported by their families or groups seeking to assist the victims.³⁰⁷

Although the President's endorsement of Mr. Moore's candidacy for the U.S. Senate appeared to have been motivated primarily as an effort to prevent the seat from falling to a Democrat at a time when Republican control of the Senate might be in jeopardy, the consequences of dismissing the allegations made about Mr. Moore may be lasting. While there are no known reliable methods to measure the impact of the President's support of an accused pedophile for Senate on the survivors of CSA, it is reasonable to assume that such a public endorsement would contribute to the reluctance of survivors to come forward. Now, even the President of the United States has cast aspersions on other victims³⁰⁸ with no information other than the media accounts of the victims' stories.

IX. CONCLUSION

The public has an opportunity to better understand the dynamics of a victim's struggle in coming forward and identifying CSA and recognize that many individuals may be unable to do such things until they themselves are adults, if ever. The President of the United States made a public endorsement of a man accused repeatedly of sexual misconduct with young women and underage girls,³⁰⁹ but the notion that these behaviors are somehow acceptable in our society—let alone that they are qualities we seek in individuals seeking election to the U.S.

.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories [https://perma.unl.edu/59XF-WVV5].

306. See JASON BERRY & GERALD RENNER, *VOWS OF SILENCE: THE ABUSE OF POWER IN THE PAPACY OF JOHN PAUL II* (2004).

307. See Mones, *supra* note 166.

308. The President has cast aspersions on the many women who have accused him of sexual misconduct, so this tactic is not surprising. See Ford, *supra* note 202.

309. See McCrummen, Reinhard & Crites, *Two More Women Describe Unwanted Overtures by Roy Moore at Alabama Mall*, *supra* note 215; McCrummen, Reinhard & Crites, *Woman Says Roy Moore Initiated Sexual Encounter When She Was 14, He Was 32*, *supra* note 214.

Senate—is repugnant.³¹⁰ “The Senate majority leader, Republican Mitch McConnell, said he believes the women who have made allegations against Mr. Moore and called on him to stand down as the party’s Senate candidate.”³¹¹ The Trump Administration has not been a stranger to criticisms for policies that victimize young children,³¹² but endorsing an accused sex offender is altogether different. The institutional power and prestige of the office of the chief executive of the federal government was placed in support of the accused pedophile. The consequences of this endorsement are no different than the actions of other powerful institutions that have sought to support their own members once accused of sexual abuse.³¹³ The Catholic Church, the entertainment industry, the sports industry, and so many other corporate entities or powerful and well-financed organizations dependent upon public relations for their success have provided examples of

310. The man thought of as the modern day identifier of child abuse and child sexual abuse in America, Dr. C. Henry Kempe, described the complications of simply *discussing* sexual abuse of children:

A discussion of incest and other forms of sexual abuse of children is likely to bring forth strong feelings of revulsion or disbelief among readers. But these are the same feelings that have caused professionals to shy away from the problem of sexual abuse and to underestimate its severity and extent.

KEMPE & KEMPE, *supra* note 9, at 43.

311. Rozina Sabur, *Republican Senate Candidate Roy Moore ‘Banned from Shopping Mall for Badgering Teenage Girls’*, TELEGRAPH (Nov. 14, 2017), <https://www.telegraph.co.uk/news/2017/11/14/republican-senate-candidate-roy-moore-banned-shopping-mall-badgering/> [https://perma.unl.edu/RQE9-DGDT] (“Mr. Moore has denied the allegations made against him as false and political propaganda but admitted dating teenage girls, adding he never did so without the permission of the girls’ mothers.”).
312. Peter Baker, *Leading Republicans Join Democrats in Pushing Trump to Halt Family Separations*, N.Y. TIMES (June 17, 2018), <https://www.nytimes.com/2018/06/17/us/politics/melania-trump-family-separation.html> (“Republican lawmakers, the former first lady Laura Bush, a conservative newspaper and a onetime adviser to Mr. Trump joined Democrats in condemning family separations that have removed nearly 2,000 children from parents in just six weeks. The administration argued that it was just enforcing the law, a false assertion that Mr. Trump has made repeatedly. . . . Senator Susan Collins, Republican of Maine, . . . said on ‘Face the Nation’ on CBS[] [t]hat is traumatizing to the children, who are innocent victims. And it is contrary to our values in this country.”); see Miriam Jordan, *‘I Can’t Go Without My Son,’ a Mother Pleaded as She Was Deported to Guatemala*, N.Y. TIMES (June 17, 2018), <https://www.nytimes.com/2018/06/17/us/immigration-deported-parents.html?nl=top-stories&nlid=58967736ries&ref=cta> (“From April 19 to May 31, a total of 1,995 children who arrived with 1,940 adults were separated from their parents, according to administration officials.”).
313. *See After Weinstein*, USA TODAY (Jan. 30, 2018), <https://www.usatoday.com/story/news/2017/11/22/weinstein-aftermath-all-men-accused-sexual-misconduct/884778001/> [https://perma.unl.edu/64MS-5RJV] (listing more than 100 powerful men accused of sexual misconduct since the Weinstein matter became public).

institutional abuse that wreak havoc on the lives of children and other victims of sexual misconduct.³¹⁴

Hopefully, the President's endorsement has no more weight than so many of his other public declarations or his numerous "tweets." The impact may be shrugged off by his supporters, but such public statements must have taken a toll on the victims of CSA. Recognizing that CSA survivors often feel unable to disclose their abuse, to suggest that a victim's delayed response is somehow vindication of the abuser is simple ignorance and unfamiliarity with CSA.³¹⁵ By discussing the subject matter, seeking a better understanding by the public of how CSA impacts the victims, and by never endorsing, in public or private, accused child molesters, we will perhaps turn a corner. There is no merit in identifying accused child molesters or sex offenders³¹⁶ as individuals who should be promoted as meritorious candidates for elected political offices, let alone for the U.S. Senate. At the very least, extensive scrutiny of such individuals and interviews with their identified victims would be appropriate. In the Alabama Senate race, the issue of the candidate's background was played out in the media and in a court of public opinion, resulting in an unfair process for both the victims and the alleged abuser as well.

Of course, elected officials are no less virtuous than any other segment of society, but what is known about alleged child molesters suggests that they may likely engage in misconduct that includes going to great lengths to remain undetected. Because of the shame and fears of their victims, many CSA perpetrators remain undetected for years, if not decades.³¹⁷ Although in many jurisdictions convicted felons may

314. See Swetha Kannan & Priya Krishnakumar, *A Powerful Person Has Been Accused of Misconduct at a Rate of Nearly Once Every 20 Hours Since Weinstein*, L.A. TIMES (Dec. 29, 2017), <http://www.latimes.com/projects/la-na-sexual-harassment-fallout/> [https://perma.unl.edu/24ZZ-C5TL].

315. Blake Usry, a travelling nurse who grew up in Etowah County stated: "These stories have been going around this town for 30 years . . . It's not a big secret in this town about Roy Moore . . . [t]hat's why it's sort of frustrating to watch' the public disbelieve the women who have come forward." Anna Claire Vollers, *Gadsden Locals Say Moore's Predatory Behavior at Mall, Restaurants Not a Secret*, AL.COM (Nov. 13, 2017), https://www.al.com/news/index.ssf/2017/11/gadsden_residents_say_moores_b.html [https://perma.unl.edu/A3CU-M4EP].

316. DSM diagnostic reliability in sexually violent predator evaluations has been very poor. See Richard Wollert, *Poor Diagnostic Reliability, the Null-Bayes Logic Model, and Their Implications for Sexually Violent Predator Evaluations*, 13 PSYCHOL. PUB. POL'Y & L. 167 (2007).

317. As Mones states,

The enduring fantasy that nice guys don't molest children provides dangerous cover to perpetrators and engenders abject hopelessness in victims. Hiding behind a façade of kindheartedness, child molesters know they are committing the perfect crime, one that silences most of its victims forever. For those few able to muster the strength to come forward years later, it is not their perpetrator but the law itself that denies them justice.

not participate in elections,³¹⁸ it would be somewhat ironic if the political process would open the door not to just voting, but also to holding elected office. Because CSA may not get reported for long periods of time, frequently after the criminal statute of limitations has run for prosecution, the primary beneficiary of such procedural limitations may well be the offending abusers.³¹⁹ Admittedly, not a great deal of information is available from longitudinal studies of child molesters,³²⁰ other than the impact of their behavior on their victims.³²¹ Surely the President could have identified someone with less threatening credentials and background to endorse for the U.S. Senate.³²² One researcher of sex-offender assessments, treatment, and policy, recognizes that if the public truly wishes to reduce harm, what may be missing is the development of a culture that is more concerned with preventing sexual abuse entirely:³²³

Mones, *supra* note 166.

318. Christopher Uggen, Ryan Larson & Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, SENTENCING PROJECT (Oct. 6, 2016) (“Approximately 2.5 percent of the total U.S. voting age population—1 of every 40 adults [or an estimated 6.1 million people]—is disenfranchised due to a current or previous felony conviction.”).
319. See Laurie Goodstein & Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, N.Y. TIMES (Aug. 14, 2018), https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html?emc=edit_na_20180814&nl=breaking-news&nliid=58967736ing (“Bishops and other leaders of the Roman Catholic Church in Pennsylvania covered up abuse by hundreds of priests over a period of 70 years . . . according to a searing report issued by a grand jury . . . which covered six of the state’s eight Catholic dioceses and found more than 1,000 identifiable victims The report is unlikely to lead to any criminal charges. Or civil lawsuits . . . because the statute of limitations has expired. . . . The Pennsylvania State Legislature has so far resisted calls to lift the statute of limitations, which has prevented childhood victims from filing civil lawsuits against the church after they turn 30. For many victims, it has taken decades to gain the courage to speak about the abuse, long past when the law would allow them to sue.”).
320. It is important to understand that child molesters may be stigmatized by therapists who are reluctant to offer treatments, as indicated in studies from Germany where pedophiles avoided seeking help because they anticipated negative reactions even from professional therapists. Sara Jahnke, Roland Imhoff & Juergen Hoyer, *Stigmatization of People with Pedophilia: Two Comparative Surveys*, 44 ARCHIVES SEXUAL BEHAV. 21, 32 (2015).
321. See David FINKELHOR, CHILDHOOD VICTIMIZATION, VIOLENCE, CRIME, AND ABUSE IN THE LIVES OF YOUNG PEOPLE (2008).
322. H.L. Mencken famously stated “As democracy is perfected, the office of president represents, more and more closely, the inner soul of the people. On some great and glorious day the plain folks of the land will be adorned by a downright moron.” H.L. MENCKEN, *Bayard vs. Lionheart, July 26, 1920*, in ON POLITICS: A CARNIVAL OF BUNCOMBE 17, 21 (Maryland Paperback Bookshelf ed., 1996).
323. Actually, the literature is beginning to identify more suggestions about preventive measures to reduce the prevalence of child sexual abuse rates. See Klaus M. Beier et al., *The German Dunkelfeld Project: A Pilot Study to Prevent Child Sexual Abuse and the Use of Child Abusive Images*, 12 J. SEX. MED. 529 (2015).

When we hear about the next supposedly upstanding citizen offending against children, we'll still ask how it happened. But it's so much more effective to ask how we could have stopped it from happening in the first place. We will have that answer only when we insist on reasonable resources to develop a culture of prevention.³²⁴

324. Elizabeth Letourneau, *We Need to Make It Easier for Pedophiles to Seek Help*, TIME (Oct. 10, 2014), <http://time.com/3486493/preventing-child-sex-abuse-stephen-collins/> [<https://perma.unl.edu/EN4C-MKYU>].