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ABSTRACT

Legal suits concerning sexual abuse of students in the schools have increased since 1987. This paper examines recent cases involving child abuse in the schools from two perspectives. First, it reviews a line of federal cases that have considered whether school districts have an affirmative constitutional duty to protect children similar to the duty that the state owes prisoners and mental patients who are unable to protect themselves. Most federal courts hold that students are not in state custody and can act on their own behalf. Second, the paper reviews factual allegations in recent cases involving sexual abuse in the schools and concludes that the sexual exploitation of students by school employees often occurs for long periods of time. Next, the paper reviews recent research on child abuse and trauma. Findings indicate that children who are victims of physical or sexual abuse often lack a supportive network of peers and adults. In addition, profound psychological trauma often renders children vulnerable to further abuse and diminishes their ability to get help. These findings suggest that the federal courts are wrong to assume that child abuse victims have the capacity to defend themselves or summon aid. (LMI)

LAW, TRAUMA, AND SEXUAL ABUSE IN THE SCHOOLS:

WHY CAN'T CHILDREN PROTECT THEMSELVES?

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> Children have little faculty of distinguishing between disaster and the ordinary course of their lives.
>
> Richard Hughes
> A High Wind In Jamaica

Introduction

Law suits concerning sexual abuse of students in the schools are on the increase. Professor Gail Sorenson, in an analysis of these cases from 1987 through 1990, found that reported litigation increased each year. There were 6 such cases in 1987, 10 in 1988, 16 in 1989, and 19 by the end of 1990.[1] It now appears that the increase is accelerating. In 1993, the Education Law Reporter published 35 cases involving accusations of sexual abuse of students by school employees.

These cases are an urgent reminder that school districts need to understand childhood sexual abuse in the schools in order to protect school children from being exploited and to avoid lawsuits. Fortunately, the cases themselves provide some help in this regard. Because they often describe the circumstances of abuse, they contain clues that help explain how children are assaulted in our schools.

This paper examines recent cases involving child abuse in the schools from two perspectives. First, it reviews a line of federal cases that have considered whether school districts have an affirmative constitutional duty to protect school children similar to the duty that the state owes prisoners and mental patients who are unable to protect themselves. Most federal courts reject this duty, holding that students, unlike prisoners and mental patients, are not in state custody and can act on their own behalf. Second, the paper reviews factual allegations in recent cases involving sexual abuse in the schools and concludes that school employees who sexually exploit students often do so for long periods of time--months or even years. In other words, for some reason, children who are sexually abused in the schools are often unable to find effective help.

The paper then goes on to review recent research on child abuse and trauma. This research found that children who are victims of physical or sexual abuse are often isolated from parents and friends, which indicates that these children may not have a supportive network of peers and adults to assist them when they are molested by a school employee. In addition, research has shown that the trauma of sexual abuse has profound psychological effects on developing children, effects which may render them vulnerable to further abuse and diminish their ability to get help. These findings suggest that the federal courts are wrong to distinguish school children from prisoners and mental patients on the basis of their ability to protect themselves. In fact, school children may be as helpless as prisoners when it comes to defending themselves from sexual abuse by school employees.

Are School Children Like Prisoners For the Purposes of Finding A Constitutional Duty To Protect?: A Review of Federal Cases

As a general proposition, government agencies do not have an affirmative duty under the Constitution to protect citizens from injury.[2] However, the Supreme Court has recognized an exception to this rule. States have an affirmative duty to protect those with whom it has a custodial relationship. Specifically, states have an affirmative duty to protect incarcerated prisoners[3] and hospitalized mental patients[4] from harm because those persons are unable to care for themselves. It is sometimes said that the state has a "special relationship with the persons it holds in custody,[5] requiring the state to assume responsibility for their safety and general well-being.[6]

In a 1988 decision, Stoneking v. Bradford Area School District[7] (hereinafter Stoneking I), the Third Circuit Court of Appeals applied the "special relationship" principle to a case involving a student who accused her high school band director of repeated sexual abuse. The Third Circuit ruled that the student had a well-established constitutional right to be free from sexual molestation by a teacher and that the school district had a duty to protect her from such abuse. This duty, the Third Court concluded, arose from the fact that the student was in the school district's functional custody.[8]

Stoneking I was a significant decision because it ruled for the first time, at least at the federal appellate level, that a school district had an affirmative constitutional duty to care for and protect school children. However, in the following year, the decision was vacated by order of the Supreme Court, which directed the Third Circuit to

reconsider the case in light of the Supreme Court's decision in DeShaney v. Winnebago County Department of Social Services.[9]

In DeShaney, the Supreme Court had ruled that social workers and officials of a county social services department had no duty to protect a child from physical abuse by his father, even though they had evidence that the child was in danger and had failed to intervene. Although the Court affirmed that the state has an affirmative duty to protect those it takes into custody, it emphasized that the duty to protect does not arise simply because state officials know of an individual's predicament or from an expression of an intent to help.[10]

In the wake of DeShaney, the Third Circuit amended its Stoneking decision to make clear that school officials' liability for a school employee's sexual abuse of a student did not depend on a special relationship between the student and the school. Instead, in Stoneking II the court ruled that school officials could be liable for the student's alleged injuries if they maintained, "with deliberate indifference to the consequences," a policy, practice, or custom that caused the student a constitutional injury.[11] Without regard to whether a "special relationship" existed between school officials and the student, the Third Circuit concluded, the "deliberate indifference" standard provided an independent basis for liability.

Since Stoneking II, school children and their parents have repeatedly asked federal courts to revive the Stoneking I concept that school officials have an affirmative constitutional duty to protect students from sexual assaults. These families have argued that children, like prisoners and mental patients, are in a custodial

relationship with the state, and that this relationship imposes an affirmative duty on school officials to protect children from harm.

For the most part, however, these arguments have failed. In J. O. v. Alton Community Unit School District 11,[12] a 1990 case involving accusations of abuse by three children against a teacher, the Seventh Circuit expressly rejected the analogy between school children and prisoners or mental patients. Prisoners and mental patients, the court wrote "are unable to provide for basic human needs like food, clothing, shelter, medical care, and reasonable safety."[13] In contrast, the state merely requires a child to attend school, which does not prevent the child from meeting her basic human needs. By mandating school attendance, the court said, "the state . . . has not assumed responsibility for [children's] entire personal lives; these children and their parents retain substantial freedom to act."[14]

In short, the Seventh Circuit concluded, school children are not entitled to the special constitutional protection given to prisoners and mental patients. "The analogy of a school yard to a prison may be a popular one for school-age children," the court observed, "but we cannot recognize constitutional duties on a child's lament."[15]

Likewise, in a 1992 case, the Third Circuit rejected the argument that a Pennsylvania school district had a constitutionally imposed affirmative duty to protect two school girls from sexual molestation by other students in a school bathroom. In D. R. v. Middle Bucks Area Vocational Technical School,[16] the plaintiffs claimed that this molestation occurred several times a week over a period of more than four months. According to the students, school

officials knew or should have known what was occurring; nevertheless, they took no action.

While the court acknowledged "the apparent indefensible passivity" of some school employees,[17] it found no constitutional duty to protect the school girls from harm. Unlike prisoners and mental patients, the court said, the students remained residents in their own homes, and channels of outside communication were not closed. Although the alleged acts of sexual abuse took place at school during school hours, the students were free to leave the school building each day. The school district had not prevented them from acting on their own behalf or blocked the way to outside help.[18]

These circuit court decisions have been echoed by several federal district courts. For example, a Pennsylvania federal court ruled that there was no "special relationship" between a school district and a student who had allegedly been abused by his teacher because the child had not been rendered helpless to care for himself. The court cited the fact that the child had voluntarily accepted rides from the teacher to rebut the child's argument that he was placed in custody against his will.[19] And in Illinois, another federal trial court ruled that a school district had no special duty to protect a school girl from sexual abuse by a teacher.[20] The girl was free to act on her own, the court observed; the school district had not prevented the girl from telling her parents or the police what had happened to her.[21]

Among the circuit courts, only a Fifth Circuit panel ruled that a school district has an affirmative duty to protect children from a teacher's sexual abuse, and the panel's pronouncement on this issue

was superceded by a subsequent en banc decision. In Jane Doe v. Taylor Independent School District,[22] in which a veteran teacher and coach was accused of sexual molestation of a 15-year old school girl, a Fifth Circuit panel specifically rejected the reasoning of the Third and Seventh Circuits on this issue.

> [B]y compelling a child to attend public school, the state cultivates a special relationship with that child and thus owes him an affirmative duty of protection. Although we . . . would not equate 'a school yard to a prison,' we nevertheless find a school child to be in the "functional custody" of school officials.[23]

Separated from her parents, the court wrote, a child's safety and well-being were entrusted to school officials. During this time, parents and children had the right to expect the school to provide a safe environment.[24]

After Taylor Independent School District was decided in 1992, the Fifth Circuit withdrew the decision for en banc consideration. In March, 1994, the full circuit court issued a new opinion which omitted the argument that school officials have an affirmative constitutional duty to protect school children. Instead the court ruled that school officials can only be liable for a school teacher's sexual misconduct toward a student if they know about the misconduct and demonstrate "deliberate indifference" to the child's plight by failing to take action.[25] Under this standard for assessing liability, the court ruled that the principal might be held liable, but not the superintendent.

In sum, after the Fifth Circuit's en banc decision in Taylor Independent School District, the argument that public school officials have an affirmative constitutional duty to protect children from

sexual abuse based on a custodial relationship may be a dead issue. In the courts' view, children are not as helpless as mental patients and prisoners and do not need special constitutional protection. Although a school supervisor can still be held liable for maintaining a policy of "deliberate indifference" to a subordinate's acts of child abuse, that liability is not linked to any notion that school children are particularly vulnerable and require special care.

Do School Children Find Help When Threatened With Abuse in The Schools?

By refusing to equate school children with prisoners and mental patients, the federal courts have good arguments. In fact, a school child's status is far different from that of a prisoner or confined mental patient. Unlike prisoners and mental patients, school children are not physically confined, and they are not in full-time custody. As several courts have noted, if children are sexually assaulted in the schools, they are free to leave the school grounds, call their parents, or seek other outside help.

Remarkably, however, as many recent federal cases illustrate, school children who are sexually molested in the schools are often unable to find effective help. In many instances, school children endure abuse for many months before school officials render assistance.

• In Middle Bucks,[26] the Third Circuit case discussed earlier, two high school students claimed they were sexually abused by other students several times a week for five months in 1990.

• In Taylor Independent School District,[27] a school girl described repeated acts of sexual molestation by a teacher over a period of several months in 1987.

•In Franklin v. Gwinnett County Public Schools,[28] in which the Supreme Court recognized a cause of action for damages under Title IX against a school district for a teacher's sexual abuse, a student accused a teacher of three separate acts of "coercive intercourse" during her junior year in high school.

• In Stoneking v. Bradford Area School District,[29] the leading case in establishing a school child's constitutional right to be free of a teacher's sexual abuse, a former student charged that she had been forced to engage in sexual acts with the school district's high school band director during her sophomore, junior, and senior years in high school.

The allegations described in these federal cases are not unusual. State court cases and newspaper reports also describe sexual abuse by teachers taking place for months or even years before school authorities take action to stop it. For example:

• In a recent Tennessee case, several high school girls averred that they were sexually abused by a teacher in a series of incidents stretching over a period of three years.[30]

•In Santa Clara, California, seven former students, ranging in age from their teens to their forties, accused a retired school teacher of sexually molesting them during the years he was employed by the Santa Clara School District.[31]

• An Anne Arundel County, Maryland teacher, arrested in April 1993, admitted having sexual relations with several students during

his 20 years of teaching. According to a state investigative report, school officials received a complaint about the teacher's sexual misbehavior more than five years before he was arrested.[32]

Moreover, several studies have noted that sexual abuse in the schools often involves repeated abuse of the same child or a pattern of abuse involving several students. For example, Professor Gail Sorenson surveyed reported court cases involving child abuse in the schools over a four-year period, 1987 through 1990. Of 37 cases, Sorenson found twenty of the cases involved multiple victims, and 30 involved multiple acts of abuse against the same individual.[33] A more recent study, examining cases of sexual abuse by school employees that were published in West's Education Law Reporter in 1933, found 35 cases. Among these cases, 19 involved allegations describing multiple victims; and 21 involved multiple incidents of alleged abuse against the same victim.[34]

Finally, an article written by two FBI agents who investigated child abuse on the Hopi and Navajo reservations in northeast Arizona described a lengthy criminal investigation that lead to the arrest of five teachers for child molestation or related offenses. All five avoided detection for long periods of time, one for a period of eighteen years. One teacher, who taught for eight years on the Hopi reservation, kept records of his sexual activities with 142 Hopi school children, one out of 20 of all school-age Hopi males.[35]

If the federal courts understand sexual abuse correctly, children who are abused for extended periods of time are at least partly to blame for what happens to them since they failed to act on their own behalf when they were free to do so. They were not

prisoners, after all, or mental patients. At any time they could have left the school grounds to escape their assailants, or they could have reported the abuse to their parents, the police, or social welfare agencies.

However, if we look deeper, we are compelled to ask whether there is something about the dynamics of sexual abuse itself that renders some school children helpless and prevents them from seeking and finding effective assistance. If there is, then the federal courts are wrong to suggest that school children can protect themselves from assault. In fact, recent research on the sexual abuse of children indicates that exactly the opposite is true. When it comes to sexual exploitation in the schools, children may be as helpless to act on their own behalf as if they were incarcerated prisoners.

Sexual abuse victims are often isolated.

Although some courts apparently believe that children, if physically unrestrained, are free to get help if they are threatened with abuse, there is an abundance of research that concludes that child abuse victims are often isolated from parents and peers. Thus, the network of family and friends that people rely on when they feel threatened may not be available to a child who is sexually molested by a school employee.

David Finkelhor, summarizing the research about girls who are at high risk for abuse, found these common themes. Girls at high risk for abuse often have absent or unavailable parents, poor relationships with parents, or conflicts with parents. All these findings, Finkelhor concluded, "seem to point strongly toward the

idea that sexually victimized girls have disturbances in their relationships with their parents."[36]

Research also indicates that abused children may be isolated from friends. A recent study conducted at New York State Psychiatric Institute found that children who are physically abused at home are often unpopular with classmates. Parents and teachers were more likely to describe them as disturbed than nonabused children.[37] The Harvard Mental Health Letter summarized the study's findings about peer friendships as follows:

> Many of the friends identified by abused children were very young (under six), saw the child less than once a month, and were unknown to the child's parents. Worse yet, abused children did not seem to know who their friends were. The children they named as friends often rejected them and there were usually other classmates who liked them better. Other children rarely made this kind of social misjudgment.[38]

It seems likely that predatory school employees choose isolated children as their victims to reduce the risk of discovery . The FBI agents who investigated sexual abuse in Arizona Indian communities noted that the abusers often targeted victims from dysfunctional families.[39] A legal advisor for the Illinois Board of Education made a similar observation. She stated that abusive teachers chose their victims carefully. "They zero in on the more vulnerable kids--the unhappy ones, the ones with no one to tell."[40]

Child abusers themselves confirm that they often look for particular characteristics in their potential victims; they seek children who are isolated, withdrawn, and compliant. The following

quotes are taken from a handbook on child abuse prevention developed by sex offenders at Maine State Prison:

> "Someone who had been a victim before; quiet, withdrawn, compliant."
>
> "Quieter, easier to manipulate, less likely to put up a fight, goes along with things."
>
> "The look in their eyes. It's a look of trust. They like you. If they are going to show resistance, they'll look away."[41]

This portrait of the child abuse victim as lonely, vulnerable, and isolated from family and friends may explain why children who are sexually abused by school employees often suffer for so long. They may have no one to turn to for help.

School Children May Be Rendered Helpless by the Trauma of Sexual Abuse: A Review of Recent Medical Research

Not only a child's isolation, but the trauma of sexual abuse itself may diminish a child's ability to protect herself from the molester. Thanks in great part to the work of Judith Herman and other researchers at Harvard Medical School, much has been learned in recent years about the effects of trauma on the developing child. Although the impact differs from child to child, based in part on the child's development stage and the severity and duration of the trauma, the effects are fairly predictable. Severe trauma, such as that caused by sexual abuse, can result in long-term psychological injury, and this injury may increase a victim's vulnerability to further abuse.

Trauma victims may suffer cognitive impairment. First, child abuse victims may suffer cognitive dysfunction that impair their intellectual and social development. "[U]nder conditions of chronic childhood abuse," Judith Herman wrote, "fragmentation becomes the central principle of personality organization."[42] This fragmentation "prevents the ordinary integration of knowledge, memory, emotional states, and bodily experience."[43] Some researchers have noted a similarity between the symptoms of trauma victims and attention deficit disorder, suggesting that for some children ADD may be linked to trauma.[44]

Although there is still much to be learned about the impact of trauma on children's thought processes, the effects are serious and long-term. Indeed some researchers have concluded that severe trauma creates physiological changes in the central nervous system.[45] Thus, when a school employee sexually abuses a school child, it seems plausible that the cognitive dysfunction that results makes the child even more vulnerable to abuse and less able to obtain help.

A child who is abused by a caregiver may develop a pathological attachment to the abuser. Second, there is good evidence that a child who is abused or sexually exploited by a caregiver sometime develops a destructive attachment to the perpetrator, an attachment that may prevent the victim from breaking free from her abuser and seeking assistance. "Even more than adults," Judith Herman wrote, "children who develop in [a] climate of domination develop pathological attachments to those who abuse and neglect them, attachments that they will strive to maintain even at the sacrifice of their own welfare, their own reality, or their lives.[46] Richard Kluft

noted that women who were incest victims as children often protect those who exploit them as adults--in particular, their sexually exploitive therapists.[47]

There have been few studies of sexual exploitation of children by nonfamily members,[48] but it seems plausible that the same urge to protect when the abuser is a parent or a therapist may also manifest itself when the abuser is a teacher. If this is so, it may help explain those cases that describe long-term abusive relationships between teachers and students. In Jane Doe v. Taylor Independent School District,[49] for example, a school girl allegedly denied having a sexual relationship with her teacher when she was first questioned by school officials, even though she later claimed to have been molested for several months.[50]

Trauma victims may reexpose themselves to trauma. Third, trauma victims have a tendency to reexpose themselves to situations that are reminiscent of the original trauma.[51] As Judith Herman observed, "Traumatized individuals have a more general tendency to recreate situations that resemble the original traumatic event, both within the family and in the world at large."[52] Bessel van der Kolk described this phenomenon as "addiction to trauma,"[53] and others have referred to as "learned helplessness."[54] Richard Kluft, who studied incest victims who were later sexually exploited by their therapists, called the phenomenon the "sitting duck syndrome."[55]

Trauma victims who exhibit learned helplessness lack a belief that they can control their environment. They often feel personally responsible for the traumatic event, even if no one could have reasonably been expected to have avoided it. Perhaps as a

consequence, they tend to reexpose themselves to harmful situations, possibly in an effort to master the original trauma by reexperiencing it.[56]

These findings have not been applied to sexual exploitation in the schools, but it is possible that school children, once victimized by a teacher or other school employee, become "sitting ducks" for more abuse. If so, then learned helplessness may account for some of the cases in which a student is a long-term victim of a sexually abusive school employee.[57]

Conclusion

School children, although physically unrestrained, frequently appear helpless to protect themselves from sexual molesters in the schools. Often they endure sexual abuse for many months before school officials detect the molester and stop the abuse. And some children never obtain effective aid.

Nevertheless, the courts have not acknowledged a school child's vulnerability when they weigh liability issues surrounding sexual assaults by school employees. Almost unanimously, the courts have refused to extend to school children the duty of protection which the state owes other helpless individuals: incarcerated prisoners and institutionalized mental patients. Because children are not in full-time custody of the schools, the courts have reasoned, they have access to outside sources of help.

Recent research on child abuse suggests that the courts are wrong to assume that child abuse victims have the capacity to summon aid. Child abuse victims may be isolated or troubled, with

less access to parents, teachers, or other adults who might provide assistance. In addition, the trauma of sexual molestation may diminish a child's ability to fend off further abuse. Sexual abuse impairs a child's thought processes in ways that may increase her vulnerability to further harm. Victims may develop pathological attachments to their abusers, inhibiting them from reporting the abuse to their parents or teachers. Finally, child abuse victims may exhibit tendencies of "learned helplessness," a reduced capacity to protect themselves from exploitation and a tendency to recreate the original trauma, even by enduring more abuse.

Put another way, children do not understand what is happening to them when they are sexually abused by a caregiver. As the novelist Richard Hughes wrote, they lack the capacity to distinguish between disaster and the ordinary course of their lives.[58] Thus, the courts are woefully ignorant of a child's reality when they say, in effect, that school children are better able to protect themselves than prisoners or mental patients. In fact, sexually abused school children are quite like prisoners, "made captive by the condition of their dependency,"[59] and shackled by confusion, shame, isolation, and fear.

In one sense, school districts have benefited from this judicial misunderstanding, since it has reduced their exposure to liability for a school employee's sexual abuse. Nevertheless, educators should not make the same mistake the courts have made by overestimating a school child's capacity to fend off a sexual abuser. Successful strategies for reducing sexual molestation in the schools depend on a thorough understanding of the dynamics of sexual abuse. Often

those dynamics include an isolated and traumatized child who is totally without resources to protect herself.

[1]Sorenson, Sexual Abuse in Schools: Reported Cases From 1987-1990, EDUC. ADMIN. Q. (1991) 460, 461 (1990).

[2]See Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982) (the Constitution is a "charter of negative liberties"); Note, Due Process Clause--Custodial Relationships--Third Circuit Finds No Affirmative Duty of Care by School Officials to their Students--D.R. v. Middle Buck Area Vocational Technical School, 106 HARVARD L. REV. 1224, 1224 (1993).

[3]Youngberg v. Romeo, 457 U.S. 307 (1982).

[4]Estelle v. Gamble, 429 U.S. 97 (1976).

[5]One commentator has noted that the term "special relationship" as a constitutional concept can be traced to Estelle v. Gamble, 429 U.S. 97 (1976). Although the term "special relationship" did not appear in the Gamble opinion, the Court explained that when the state incarcerates an individual, it must provide the prisoner with medical care. Thus, Gamble described a special relationship between the state and the person held in custody, giving rise to an affirmative duty of care. Note, Affirmative Duties in the Public Schools After DeShaney, 90 COLUM. L. REV. 1940, 1944 n. 22 (1990).

[6]DeShaney v. Winnebago County Dept. of Social Serv., 489 U.S. 189, 1005 (1989).

[7]856 F.2d 594 (3d Cir. 1988), vacated sub nom, Smith v. Stoneking, 489 U.S. 1062 (1989).

[8]Id. at 601-03.

[9]489 U.S. 187 (1989).

[10]Id. at 199-200.

[11]Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 725 (3rd Cir. 1989), cert. denied, 493 U.S. 1044 (1990) (Stoneking II).

[12]909 F.2d 267 (7th Cir. 1990).

[13]Id. at 272-73.

[14]Id.

[15]Id.

[16]972 F.2d 1364 (3rd Cir. 1992) (en banc), cert. denied 113 S. Ct. 1045 (1993).

[17]Id. at 1376.

[18]Id. at 1372.

[19]C. M. v. Southeast Delco Sch. Dist., 828 F. Supp. 1179, 1187 (E. D. Pa. 1993). Nevertheless, although the court declined to find an affirmative duty to protect based on a custodial relationship, the court did rule that the school district had an affirmative duty to protect school children from sexual abuse by a teacher. The district court distinguished the case before it from D. R. v. Middle Bucks Area Vocational Technical Sch., 972 F. 2d 1364 (3d Cir. 1992) on the grounds that Middle Bucks involved sexual abuse of a student by other students. See also C. M.'s companion case, K. L. v. Southeast Delco Sch. Dist., 828 F. Supp. 1192 (E.D. Pa. 1993). In K. L., the court again distinguished abuse of school children by teachers from abuse by private actors. Id. at 1195-96.

[20]Jane Doe v. Board of Educ. of Hononegah Community High Sch., 833 F. Supp. 1366 (N. D. Ill. 1993).

[21]Several other district courts have ruled that school districts do not have an affirmative duty to protect school children from harm. See Dorothy J. v. Little Rock Sch. Dist., 794 F. Supp. 1405 (E.D. Ark. 1992); Elliott v. new Miami Bd. of Educ., 799 F. Supp. 818 (S.D. Ohio 1992); Russell v. Fannin County Sch. Dist., 784 F. Supp. 1576 (N. D. Ga. 1992); Jane Doe v. Douglas County Sch. Dist. RE-1, 770 F. Supp. 591 (D. Colo. 1991); B. M. H. v. School Bd. of City of Chesapeake, No. 2, 833 F. Suppp 560 (E.D. Va. 1993).

[22]Jane Doe v. Taylor Indep. Sch. Dist., 975 F.2d 137 (5th Cir. 1992), reh'g en banc, granted, 987 F.2d 231 (5th Cir. 1993). For a comprehensive discussion of this opinion, see Comment, The Special Relationship Doctrine and a School Official's Duty to Protect Students From Harm, 46 BAYLOR L. REV. 215 (1994).

[23]Id. at 147 (citations omitted)

[24]Id.

[25]Jane Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443 (5th Cir. 1994).

[26]D. R. v. Middle Bucks Area Vocational Technical Sch., 972 F.2d 1364 (3rd Cir. 1992) (en banc), cert. denied 113 S. Ct. 1045 (1993).

[27]15 F.3d 443 (5th Cir. 1994).

[28]Franklin v. Gwinnett County Public Sch., 112 S. Ct. 1028(1992).

[29]882 F.2d 720, 722 (3d Cir. 1989) cert denied, 493 U.S. 1044 (1990).

[30]Jane Doe v. Coffee County Bd. of Educ., 852 S.W.2d 899 (Tenn. App. 1992).

[31]Woolfolk, More Accuse Their Former Teacher, 7 From Santa Clara Come Forward to Say Educator Molested Them, San Francisco Chronicle, May 13, 1993, at A14.

[32]Shen, Arundel School Officials Chided in State Report; Sexual Allegations Reportedly Ignored, Washington Post, July 30,1993 at B1.

[33]Sorenson, Sexual Abuse in Schools: Reported Cases From 1987-1990, EDUC. ADMIN. Q. (1991) 460, 464 (1990).

[34]Fossey and Mukuria, Sexual Abuse in the Public Schools: Using Court Case Narratives to Map the Abusive Terrain. Paper presented at the Southwest Educational Research Association annual meeting, San Antonio, Texas, January 21, 1994.

[35]Schafer & McIlwaine, Investigating Child Sexual Abuse in the American Indian Community. 16 AM. INDIAN Q. 157, 163 (1992) [hereinafter, Schafer & McIlwaine].

[36]D. FINKELHOR, SOURCEBOOK ON CHILD SEXUAL ABUSE 77 (1986).

[37]S. Salzinger, R. Felman & M. Hammer, The Effects of Physical Abuse on Children's Social Relationships, 64 CHILD DEVELOPMENT 169, 181-84 (1993).

[38]Abused Children and Their Friends, 10 HARV. MENTAL HEALTH LETTER 5 (March 1994).

[39]Schafer & McIlwaine, supra note 27, at 163.

[40]Bosworth, Charges of sex abuse by teachers up: over half of 61 challenges filed by state involve abuse, St. Louis Post-Dispatch, Illinois sec., p. 1.

[41]Singer, Hussey & Strom, Grooming the Victim: An Analysis of a Perpetrator's Seduction Letter, 16 CHILD ABUSE AND NEGLECT 877, 879 (1992).

[42]HERMAN, TRAUMA AND RECOVERY 107 (1992).

[43]Id.

[44]Fish-Murray, Koby, & van der Kolk, Evolving Ideas: The Effect of Abuse on Children's Thought, in PSYCHOLOGICAL TRAUMA 89, 103-04 (B. A. van der Kolk ed. 1987).

[45]van der Kolk, The Separation Cry and the Trauma Response: Developmental Issues in the Psychobiology of Attachment and Separation, in PSYCHOLOGICAL TRAUMA 31 (B. A. van der Kolk ed. 1987).

[46]HERMAN, TRAUMA AND RECOVERY 98 (1992).

[47]Kluft, Incest and Subsequent Revictimization: The Case of Therapist-Patient Sexual Exploitation, With a Description of the Sitting Duck Syndrome, in INCEST-RELATED SYNDROMES OF ADULT PSYCHOPATHOLOGY 263 (R. P. Kluft ed. 1990).

[48]See generally, Summit, The Centrality of Victimization, Regaining the Focal Point of Recovery for Survivors of Sexual Abuse, PSYCHIATRIC CLINICS OF NORTH AMERICA (1989) 413, 415 (noting that the focus on family pathology overlooks importance of extrafamilial abuse).

[49] 15 F.3d 443, 446-449 (5th Cir. 1994).

[50] See also generally, Fossey & Merseth, Anchorage School District (1990) (A teaching case study prepared at Harvard Graduate School of Education describing child abuse investigation by school district in which victim, when first questioned by school authorities, allegedly denied sexual relationship with teacher).

[51]van der Kolk & Greenberg, The Psychobiology of the Trauma Response: Hyperarousal, Constriction, and Addiction to Traumatic Reexposure, in PSYCHOLOGICAL TRAUMA 63, 73 (B. A. van der Kolk ed. 1987).

[52]Klugman, Trauma in the Family: Perspectives on the Intergenerational Transmission of Violence, in PSYCHOLOGICAL TRAUMA 135 (B. A. van der Kolk ed. 1987).

[53]van der Kolk, The Psychobiology of the Trauma Response: Hyperarousal, Constriction, and Addition to Traumatic Reexposure, in PSYCHOLOGICAL TRAUMA 63 (B. A. van der Kolk ed. 1987).

[54]Flannery, From Victim to Survivor: Stress-Management Approach in the Treatment of Learned Helplessness in PSYCHOLOGICAL TRAUMA 217 (B. A. van der Kolk ed. 1987).

[55]Kluft, Treating the Patient Who has been Sexually Exploited by a Previous Therapist, 12 PSYCHIATRIC CLINICS N. AM. 483 (1989).

[56]HERMAN, TRAUMA AND RECOVERY 111 (1992).

[57]It is also possible that some children who are abused in the school setting were previously abused by others, a family member perhaps; and the learned helplessness stemming from the earlier abuse made these children especially vulnerable to a predatory school employee.

[58]R. HUGHES, A HIGH WIND IN JAMAICA 39 (Perennial Library edition, 1972). Hughes' novel was first published in 1928.

[59]HERMAN, TRAUMA AND RECOVERY 74 (1992).