

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

No. 1:18-CIV-24145-WILLIAMS/TORRES

JOHN DOES et al.,

Plaintiffs,

vs.

RICHARD L. SWEARINGEN,

Defendant.

**REPLY TO DEFENDANT'S RESPONSE TO MOTION TO EXTEND AND/OR
MODIFY STIPULATED PROTECTIVE ORDER**

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The Plaintiffs, through undersigned counsel, herein reply to Defendant Swearingen's Opposition to their Motion to Extend the Anonymity Order (DE:178).

As Swearingen acknowledges, Plaintiffs' motion to extend the anonymity order was based on a single enumerated factor in the multi-factor anonymity test: whether they would have to admit conduct that risks their arrest and prosecution (DE:178 at 6). He addresses this factor at pp. 6-12. The remainder of his 21-page pleading addresses other factors for the purpose of re-arguing points already made in his numerous other pleadings opposing anonymity (DE:13, DE:44, DE:52, DE:57). Plaintiffs will focus primarily on his response to the single enumerated factor and address the other factors insofar as necessary to correct misrepresentations.

Plaintiffs would be impelled to admit conduct that may be criminal

When Plaintiffs addressed this factor in their initial motion for anonymity, they alleged that phrases used to define their in-person reporting obligations, which included travel-related reporting, were so vague that 1) they did not understand their meanings, 2) sheriffs would enforce them arbitrarily, and 3) they chilled their fundamental rights to movement and travel, in violation of their procedural and substantive due process rights (DE:102, ¶¶ 5, 38-45, 70, 97, 114). The challenged words and phrases included "48 hours," "within 48 hours of any change," "within 48 hours before," "day" "3 days" and "secure and update" a driver's license. Plaintiffs alleged that, due to vagueness and virtually strict liability, they could be arrested for violating the statute even if they did not understand it, and even if the alleged violation was due to inability or other unforeseen circumstances. Because Plaintiffs alleged only hypothetical scenarios instead of explaining how the vagueness could compel them to admit a violation, this Court gave no weight to this enumerated factor in its original grant of anonymity (DE:25 at 7-8).

Then Defendant Swearingen propounded discovery demands designed to reveal whether the Does had personally violated the registration statute through inability or other unforeseen circumstances (DE:178 at 6-7). As Plaintiffs prepared responses, they discovered 3 or 4 occasions occurring after they filed suit when they may have violated the statute through inability or unforeseen circumstances. Because the challenged phrases are vague, they could not determine this with certainty. They invoked their Fifth Amendment rights because their responses might subject them to arrest or prosecution, depending on the definitions of the identified phrases and depending on the existence and scope of a *mens rea* requirement.

Swearingen contends that “it still remains the case that [the Does] have ‘not explained how their allegation that a portion of Fla. Stat. § 943.0435 is vague compels them to admit an intent to violate it,’” quoting from the original anonymity order at DE:25, 7-8 (DE:178 at 9). This contention is mystifying for several reasons.

First, just as their previous failure to allege that they themselves were at risk of arrest due to the statute’s vagueness weighed against anonymity, a failure to produce evidence of this could preclude relief on their as-applied vagueness challenges, *see* DE:102 ¶¶ 115, 118, notwithstanding Swearingen’s misleading assertion that this evidence is not “necessary” to “establish any element of their constitutional challenge.” (DE:178, 8-9). *See Maynard v. Cartwright*, 486 US 356, 361 (1988) (“Vagueness challenges not threatening First Amendment interests are examined in light of the case at hand; the statute is judged on an as-applied basis.”); *United States v. Madison*, 337 F.Supp.3d 1186, 1196 (M.D. Fla. 2018) (court could not resolve propriety of as-applied vagueness challenge until facts about party had been developed at trial); *Thompson v. Rundle*, 393 Fed.Appx. 675, 680 (11th Cir. 2010) (where inmate had not personally moved under state rule for access to all DNA samples, as-applied challenge to state rule failed). *Compare Siebert v. Allen*, 506 F.3d

1047, 1058 (11th Cir. 2007) (injunctive relief granted for as-applied challenge to state’s lethal injection protocol where defendant presented medical evidence of recent diagnosis of terminal pancreatic cancer, obstruction of upper GI tract, use of feeding tube and compromised venous access to show likelihood that administration of protocol would cause him to aspirate to death); *with Arthur v. Dunn*, 195 F.Supp.3d 1257, 1271 (N.D. Ala. 2016) (as-applied challenge to lethal injection protocol failed where defendant presented only “speculative and unreliable evidence” that his unique medical condition created likelihood of painful heart attack before sedation).

In other words, without an extension of anonymity, Swearingen would be able to exploit the lack of evidence arising from Plaintiffs’ reasonable fear of arrest¹ to defeat their as-applied challenges at summary judgment or trial.

Second, the Does’ proffered testimony about the vagueness of the 48-hour in-person reporting requirement puts them at risk of arrest: they may or may not have violated the 48-hour in-person reporting requirement because of reportable events occurring on Friday and closure of their sheriffs’ offices when the 48 hours elapsed (DE:168 at 8-16). Their uncertainty is at the heart of their as-applied vagueness challenge.

Third, Swearingen knows the phrase “48 hours” is ambiguous.² His own witnesses Mary Coffee and Jeremy Gordon gave inconsistent definitions of the phrase in their depositions: under

¹ Swearingen complains that the Does have unjustly accused him “of lying in wait to arrest them” or “trying to lure [them] into a jail cell” (DE:178 at 8). This is inaccurate. The Does have merely pointed out that Swearingen’s persistent refusal to agree to any measure that would reduce their risk of arrest – by agreeing 1) not to arrest them, 2) not to divulge their admissions to local law enforcement officers, or 3) to extend the anonymity order – knowingly exposes them to arrest for testimony that supports their allegations and undermines his defense (DE:168 at 5-7, 15).

² “Ambiguous” is defined by Merriam Webster as “capable of being understood in two or more possible senses or ways, <https://www.merriam-webster.com/dictionary/ambiguous>; and by Dictionary.com “as open to or having several possible meanings or interpretations.” <https://www.dictionary.com/browse/ambiguous>.

Coffee’s definition, the Does violated the statute; under Gordon’s, they did not (DE:177 at 11-12). Furthermore, these witnesses admit that local sheriffs can interpret this phrase however they see fit (DE:177 at 12).

Fourth, Swearingen knows the *mens rea* requirement is at best ambiguous. When registrants ask him what to do when it is impossible, due to office closure or personal disability, to report in-person within 48 hours, he advises them to retain counsel or to consult the local sheriff (Exhibit 1, p. 144). Defendant’s witnesses Coffee and Gordon admit that sheriffs have the discretion to determine the issue as they see fit (DE:177 at 15). Inspector Chad Hoffman has made the same admission (Exhibit 3 at 157-58).

The definition of “48 hours” is only one of many inconsistencies among Swearingen’s witnesses and his lawyer about the meanings of the challenged words and phrases, as demonstrated in the chart below:

Words and Phrases	Swearingen	Coffee	Gordon	Hoffman
3 days (as used in temporary residence)	Excludes first day (DE103:12; DE125:12)	Different sheriffs may interpret differently (144) ³	Includes first day (82)	Includes first day (140-41)
48 hours		48 consecutive hours (70-71) but sheriffs may interpret differently (144)	2 business days (76, 206)	48 consecutive hours (137)
Within 48 hours before	No fewer than 48 hours before (DE103:15, 125:12)		During 48-hour interval before (126-27, 135-38); could be 3-4 days before (137)	During 48-hour interval before; could not be 3 days before (161-62)

³ The citations to interpretations by Coffee, Gordon and Hoffman refer to page numbers from their depositions, excerpts from which are attached hereto as exhibits. Excerpts from Mary Coffee’s deposition are Exhibit 1, Jeremy Gordon’s Exhibit 2, and Chad Hoffman’s Exhibit 3.

Within 48 hours after	No fewer than 48 hours after (DE103:16); No more than 48 hours after (DE125:12)		During 48-hour interval after (136-37); but can do it before change (73)	During 48-hour interval after (158-59)
Secure or update driver's license	Get a new license (DE103:15)	Not necessarily get a new license (73-74)	Get a new license (97, 111-12, 105)	No new license unless change permanent residence (143-45)
When to get updated license	When vacate temporary residence (DE109:16)	Discretion of DHSMV (73-74)	After 3d day (82) ⁴	On 3d day (141-42)
When to report temporary residence		Before leaving for, upon establishing or when vacating (75-79)	No need if temporary and permanent residence in Fla. (55-60); sheriff's discretion (71-73)	Must report in-person if temporary and permanent residence in Fla. (190-91); after establishing (141-42)
In-Person			Could mean by phone (109-10, 128)	Could mean by phone (148-50, 155-56)
When "day" begins	Midnight (DE103:13)		Upon arrival (75)	Midnight (187)
When "day" ends	Midnight (DE103:13)		Close of business (76, 82)	Midnight (187)
When 48-hour interval begins			After 3d day (82)	On 3d day (141-42)

In light of these multiple ambiguities, the Does reasonably regard their impending depositions (and their cross-examinations at trial) as a minefield of potential admissions to

⁴ Gordon initially said the 48-hour interval begins on 3d day (Exhibit 2 at 74-75) but then said 48-hour interval begins on 4th day (Exhibit 2 at 76) and reiterated that interpretation with example (Exhibit 2 at 82).

unwitting third degree felonies carrying significant penal sanctions.⁵ It is only through anonymity that the Does can safely establish the implications for them of the vague requirements of the statute in the context of a *mens rea* element that is at best murky, and at worst non-existent.

The Does have cited numerous cases in support of anonymity where, as here, they may suffer adverse legal consequences in the course of proving their case (DE:177 at 8-10). Swearingen has not even attempted to distinguish this case from those (DE:178 at 6-12). This omission suggests that the present opposition is merely a pretext for re-arguing his opposition to the Does' initial motion for anonymity, a conclusion supported by his extended treatment of anonymity factors that are not now at issue (DE:178 at 3-4, 12-21). The Does will address these factors briefly, chiefly to correct several inaccuracies in Swearingen's pleading.

The Does would be required to disclose information of the utmost intimacy

Swearingen argues that the only "intimate" information the Does would be required to disclose in connection with this case is that they are registered sex offenders (DE:178 at 4-6). This is inaccurate. Swearingen himself demanded production of medical records reflecting the hospitalization of John Doe 1's wife in connection with delivery of their stillborn daughter during the eighth month of pregnancy (Exhibit 5, RFP#21). The records reveal extremely intimate details about his wife's gynecological, obstetrical and mental health history (Exhibit 6).

⁵ Swearingen will almost certainly use his opportunity to depose and cross-examine the Does to elicit evidence of failure to register offenses. When he deposed Jane Doe, he asked several times whether her brother might have spent an aggregate of three nights away from home in a calendar year (Exhibit 4). An affirmative response would establish the requirement to make an in-person report of a temporary residence. Swearingen has possession of the registration file of John Doe 6, which he produced in discovery. The registration file does not reflect an in-person report of a temporary residence by John Doe 6. Although it was not defense counsel's purpose to establish a failure to register offense by John Doe 6, an affirmative response to his questions would in fact have served this purpose.

Furthermore, Plaintiffs have produced lengthy expert reports about their risk to sexually reoffend (Exhibit 7).⁶ These evaluations include questions about sexual history, sexual fantasies, sexual attitudes, paraphilias, masturbation practices and the like. Plaintiffs will be calling this witness at trial to discuss his findings and conclusions for the purpose of establishing that they individually pose an infinitesimal risk of sexual reoffense.

Finally, Plaintiffs reasonably anticipate that, during their depositions and at trial, Swearingen will question them in detail about their disclosures to this expert to impeach his findings about their sexual history, fantasies, attitudes, paraphilias and masturbation practices. He may question them about their sexual relationships with their current spouses, former spouses and other intimate partners for the purpose of eliciting evidence intended to discredit their expert's conclusions or to support his own expert's opinion about the Does' individual risk to reoffend. *See* Exhibit 8.⁷

The Does' exposure to physical violence

Swearingen accurately states that the Does have not yet been beaten up because of their status. However, as this Court found, being identified as a sex offender seeking to strike a popular statute that purports to protect the public from him creates a significant risk that the public will harm him (DE:9 at 11-12). The risk remains, notwithstanding the fact that two of the Does have thus far survived a non-pseudonymous lawsuit.

⁶ Plaintiffs attach only one such report for the purpose of supporting their contention that it contains extremely intimate information that is necessary to their as-applied challenges.

⁷ It bears mention that Swearingen's expert did not review the Does' evaluating experts' reports before he wrote his own and did not himself evaluate the Does, relying instead solely on the allegations in their Complaint.

In any event, this Court relied on status-related harms that did not include physical violence in granting anonymity (DE:25 at 9-12). With regard to these “other harms,” Swearingen refers to John Doe 1’s response to Interrogatory 18 as disclosing only harms that occurred “nearly *20 years ago*” (DE:178 at 16) (emphasis in original). This is inaccurate. Although Swearingen provided the text of Interrogatory 18, *id.*, he failed to provide the response, which lists many “other harms” arising from his status during the ensuing 20 years. *See* Exhibit 9. Swearingen similarly overlooks a 2020 status-related threat to illegally arrest John Doe 7, which he detailed in response to Interrogatory No. 24. *Id.*⁸

Prejudice to Swearingen

Swearingen complains he has already been prejudiced by the anonymity order because he has not been able to conduct third-party discovery. This is difficult to credit for several reasons. First, he does not identify any specific third party, or even a category of third party, whose records he might want. Second, Plaintiffs have produced at his request hundreds if not thousands of pages of third-party documents: police files, court files, probation files, school records, medical records, psychological records. Third, Swearingen is keenly aware of Plaintiffs’ unwavering commitment to facilitate his access to any information he wants. *See* Exhibit 10. Fourth, having doggedly litigated this issue in the past, *see* DE:9, 13, 41, 44, 46, 52, 57, 58, he has never before raised this particular objection to it.

Swearingen also complains that the Court was “incorrect in stating that ‘Plaintiffs do not oppose the disclosure of their names to *Defendant* for purposes of litigating this case. . . ,’” (DE:178

⁸ Swearingen is well aware of this kind of registrant-targeting harm, having provided reams of documents during discovery reflecting that multiple registrants have been similarly scammed, many of whom paid hefty ransoms to police impersonators threatening to arrest them for violating the statute unless they paid up.

at 18, quoting from DE:25, 13) (emphasis in original). That is inaccurate. Swearingen's disclosure of Plaintiffs' names to Terry Thomas, as stated in their motion at DE:168 at 9, n.4., was not "*for purposes of litigating this case.*" (emphasis supplied). Thomas' report contained the following opinions based on his own experience with FDLE: registrants are prolific, resourceful, recalcitrant and remorseless sex criminals; the registration statute is a useful regulatory tool for protecting the public and investigating sex crimes; sex obstacles in reporting them; and child pornographers are avid collectors with a marked propensity to reoffend (Exhibit 11). These opinions are supported by anecdotes that have nothing to do with the Does. Indeed, Thomas admittedly did nothing with the disclosure other than to look plaintiffs up on the FDLE website (DE:168 at 9 n.4; DE171-1 at 3, 7). More alarming than the disclosure itself was Swearingen's failure to inform Thomas that there is an anonymity order, leaving Thomas at liberty to divulge the Does' identities to anyone he wants (DE:171-1 at 6-7).

The fact that Swearingen views Thomas, a former employee, as "an agent of FDLE that [is] necessary to defend the case" (DE:178 at 18), does not mean that divulging Plaintiffs' identities to Thomas was necessary to defend the case. Swearingen did not divulge the Does' identities to Inspector Hoffman, who is *currently* employed by FDLE (Exhibit 3 at 92-93). Indeed, as Swearingen is aware from their depositions, *Plaintiffs' own experts do not know the Does' identities* with the exception of the one who evaluated them for risk of reoffense.⁹ Plaintiffs do not know each other's identities. In fact, on Plaintiffs' side, no one other than counsel and the examining expert knows the identities of the Does.

⁹ One expert Swearingen has not yet deposed knows the identity of John Doe 6, because she has evaluated him in the past. She does not know the identity of the other Does.

Swearingen also complains that anonymity frustrates preclusive doctrines like collateral estoppel and res judicata with respect to potential future litigation against him, conjuring up scenarios in which he would be crippled by the present anonymity order from defending himself against future litigation by the same plaintiffs.¹⁰ See DE:178 at 19-21. He claims to have already been hobbled in this case as the result of such a scenario: two of the Does sued him in a different case challenging the constitutionality of the internet provision of the present registration statute and he did not learn this until the Does disclosed their identities to him. This disclosure was delayed until October 2019, due solely to Swearingen's indefatigable resistance to engaging in discovery before resolution of his motion to dismiss. See DE:43, 44, 45, 46, 47, 57, 61, 67, 68, 81, 86. He now threatens to invoke doctrines of preclusion at some yet-to-be-determined time in the future (DE:178 at 21 n.2.).

That is daft. The case he cites began with an emergency motion for a pre-enactment injunction against a different version of the internet identifier provision as violating the First Amendment. After the injunction was granted, the legislature wrote a new amendment to the registration statute which, upon motion for summary judgment, was narrowed to pass First Amendment muster. Contrary to Swearingen's representation (DE:178 at 21), the Does have not challenged the constitutionality of the present internet provision, under the First Amendment or any other. They merely list it as one among innumerable burdens of the registration statute (DE:102 at ¶¶ 27, 53). As such, no preclusive doctrine could conceivably apply. See, e.g., *Christo v. Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000) (for collateral estoppel to apply, (1) the issue at stake *must*

¹⁰ He also complains that the anonymity order deprives local law enforcement agencies of preclusive doctrines in the event they are sued for notification practices. DE:178, p. 20. He has overlooked the statutory immunity for local law enforcement officers in connection with their notification practices. See § 943.0435(10).

be identical to the one involved in the other proceeding; (2) the issue was actually litigated in that proceeding; (3) the determination of the issue in the prior litigation must be a critical and necessary part of the decision; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding); and *In re Piper Aircraft*, 244 F.3d 1289, 1296 (11th Cir. 2001) (for res judicata to apply, (1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the *same causes of action*).

Remedy

Swearingen submits that, instead of extending the anonymity order, this Court should “stay the action until the statute of limitations period on the violations has expired” (DE:178 at 12). The Does disagree. As noted in the motion to extend the anonymity order, two or more of the potential violations occurred in 2020, and the statute of limitations is three years (DE:168 at ¶14). Discovery in this case this is almost complete, at great cost in time, effort and money. Among the nine experts deposed, at least two are elderly and frail. In the meantime, the Does continue to suffer the impacts of the registration statute, including in particular the impact reflected in this motion: the constant risk of arrest and prosecution for potential violations of statutory restrictions that are both ambiguous and chilling. Most importantly, Swearingen cannot, nor has he even attempted, to distinguish this case from the multiple cases cited by the Does in support of the relief requested.

WHEREFORE, based on the foregoing arguments and authorities, plaintiffs request that this Court extend the present anonymity order through trial and appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, November 5, 2020, the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered to receive electronic notification for this case, including all opposing counsel.

By: Todd G. Scher
TODD G. SCHER

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: 18-24145-CV-KMW

JOHN DOES, et al,

Plaintiffs,

-vs-

RICHARD L. SWEARINGEN,

Defendant.

_____/

VIDEO TELECONFERENCE DEPOSITION OF: MARY COFFEE

DATE: Wednesday, September 2, 2020

TIME: 10:15 a.m. to 4:14 p.m.

TAKEN BY: PLAINTIFF

PLACE: ZOOM CONFERENCE

REPORTED BY: JESSICA D'AGOSTINO, FPR,
NOTARY PUBLIC, STATE OF FLORIDA

1 A. Not to my knowledge.

2 MR. WEAVER: Object to form.

3 BY MS. JONAS:

4 Q. All right. Does it represent two business days?

5 MR. WEAVER: Same objection.

6 THE WITNESS: I'm sorry. Does 48-hours
7 represent two business days?

8 BY MS. JONAS:

9 Q. Yes.

10 A. Sometimes.

11 Q. Can you explain that answer?

12 A. Sure. If the 48-hours takes place between
13 Monday and Friday, then those 48-hours are going to
14 represent the two business days.

15 Q. Well, if the 48-hours happened to fall on
16 business days, but under the Federal SORNA if the three
17 days happened to fall on days that offices are closed and
18 they are not business days, then that would not count,
19 right, for the Federal SORNA?

20 MR. WEAVER: Objection.

21 THE WITNESS: That's not --

22 BY MS. JONAS:

23 Q. So you're not actually saying this 48-hours
24 means two business days, are you?

25 MR. WEAVER: Same objection.

1 THE WITNESS: No, I'm not saying that.

2 BY MS. JONAS:

3 Q. What's your understanding of the meaning of
4 48-hours?

5 A. I think that'd be the standard acceptable
6 version of the common definition of 48-hours.

7 Q. Okay. Forty-eight consecutive hours, correct?

8 A. Correct.

9 Q. Without regard to business days. I was confused
10 by your response, and I think maybe you didn't understand
11 the interrogatory properly, because it seemed like you
12 were mixing apples and oranges saying the three-day was
13 the same, but now you've clarified it from...

14 MR. WEAVER: Objection.

15 BY MS. JONAS:

16 Q. I just had a question, and this is maybe more
17 technical, but I read in your Field Guides from 2019,
18 that a temporary residence -- a report of a temporary
19 residence overwrites a permanent residence. And
20 that's -- I don't even think that I have seen that word
21 before, but it was spelled O-V-E-R-W-R-I-T-E.

22 Do you know whether that's the case?

23 A. I would have to look at it in context. Yeah, I
24 would have to look at that in context. That definitely
25 is technical.

1 multiple addresses, residences, associated with it. And
2 so the information has to be reported to the proper
3 office. I think now it's mostly, if not all tax
4 collectors, and before there was a mix of DHSMB offices
5 and things, but -- so --

6 Q. Go ahead.

7 A. So not all of those addresses, obviously, or
8 only one of those addresses is actually going to be the
9 one that's printed on the physical driver's license, but
10 the record, the driver's license record can contain all
11 of those, and all of that information is sent to the
12 Registry.

13 Q. So your understanding is that securing or
14 updating a driver's license doesn't mean issuing a new
15 driver's license with a temporary residence?

16 A. Not necessarily, no.

17 Q. Well, under what circumstances does it?

18 A. If you did not already have a driver's license
19 and wanted to report -- establish that and report your
20 address as a temporary, that would be a circumstance
21 where you would. If that was the only residence that
22 they had, that would be the one that would be on their
23 license.

24 Q. So you're saying that a temporary residence
25 would never be on the driver's license of a person who

1 had a permanent residence in Florida?

2 A. No, I'm not saying that. I couldn't speak to
3 that.

4 Q. You don't know?

5 A. Yeah, that's completely under the direction or
6 auspices of DHSMB, not FDLE.

7 Q. So you don't know what secure or update your
8 license means?

9 MR. WEAVER: Object to form, mischaracterizes
10 testimony.

11 BY MS. JONAS:

12 Q. You can answer.

13 A. I disagree with that.

14 Q. I'm sorry. You disagree with what? Oh, you do
15 know what it means? All I asked you was, do you know
16 what the term secure or update your license with the
17 DHSMB means?

18 A. Yes.

19 Q. And was does it mean?

20 A. It means you report to DHSMB and either acquire
21 a driver's license or identification card, giving them
22 your status as a sexual offender or sexual predator, or
23 update their records with your new or changed
24 information, residence or name, being the primary two.

25 Q. So you don't believe that it requires the

1 issuance of the driver's license with a temporary
2 address?

3 A. Not necessarily. No, I do not.

4 Q. I still don't understand the necessarily part,
5 I'm sorry. Is your exception for people who have nothing
6 but a temporary residence?

7 A. That's one of them, but I also think it's
8 possible that if somebody has a driver's license and has
9 a permanent residence on that driver's license, they
10 could go and report a temporary residence in addition to
11 that, to the DHSMB, and as I said, that information would
12 then be added to their DHSMB driver's license record, and
13 then submitted to the Registry without necessarily making
14 any changes to the physical driver's license.

15 Q. But you don't know whether or not they make a
16 change to the physical driver's license?

17 A. Yeah, I don't know, and I don't know if it's
18 consistent across the different offices. I can't speak
19 to that.

20 Q. But you do know that you can't have two driver's
21 licenses with two different addresses at the same time?

22 A. I believe that's a rule for all of us.

23 Q. Correct. Do you have any idea why, when it
24 comes to intrastate transit, that is, traveling in
25 Florida, you're required to report the temporary

1 residence within 48-hours after you return?

2 A. The question is why?

3 Q. Yes. Why, if you've gone to a temporary
4 residence and then returned to your permanent residence,
5 why at that point after you've left the temporary
6 residence do you have to go to DHSMB or to the sheriff to
7 report the temporary residence that you left?

8 A. Yes. In order to confirm and validate your
9 record.

10 Q. That you were some place, but you're not there
11 any longer?

12 A. Well, in that case, that you have returned. I'm
13 presuming your scenario involved somebody with a
14 permanent residence in one location, they go temporarily
15 to some other location within Florida, they return to
16 their permanent residence?

17 Q. Right.

18 A. And, yeah, it would be the same as if they
19 had -- if it were Interstate.

20 Q. Well, not exactly, because an Interstate, the
21 requirement is to report 48-hours before and 48-hours
22 after. For intrastate, as I understand it --

23 A. Oh, I'm sorry, I thought we were just talking
24 about the returning to --

25 Q. I'm only talking about intrastate transit?

1 A. Uh-huh.

2 Q. And your obligation to secure or update your
3 license upon return within 48-hours after returning.

4 A. Uh-huh.

5 Q. So my question is, why does the agency want to
6 know where you've been, if you've already left?

7 MR. WEAVER: Object to form.

8 THE WITNESS: I'm sorry, you're -- I think
9 you're making a presumption that's not --

10 BY MS. JONAS:

11 Q. So it's --

12 A. -- mixing with my understanding.

13 Q. So your understanding of the statute is that it
14 does not require somebody who has a permanent residence
15 in the state, and goes within the state to a temporary
16 residence, you don't believe the person has to report the
17 temporary residence after returning from it?

18 A. No, they have to report that they have returned
19 to their permanent residence.

20 Q. They don't have to provide the temporary
21 residence where they've just spent some time?

22 A. Upon their return?

23 Q. Yes.

24 A. Yeah, if that's part of their records then at
25 that point they would confirm that that was no longer an

1 active temporary residence, and that they had returned to
2 their permanent. Essentially closing that temporary out,
3 from the record.

4 Q. I'm going to give you as an example, myself. I
5 have a permanent residence in Miami. I recently traveled
6 to Sanibel for seven days. And then I came back. It was
7 seven days, so that's a temporary residence, if I'm a
8 registered person.

9 A. Uh-huh.

10 Q. When I come back from Sanibel, I would have
11 48-hours within which to report where I was, correct?

12 A. So you would have -- and you did not report that
13 you had established the temporary residence or that you
14 intended to establish that temporary residence?

15 Q. Is it your understanding that somebody has to
16 report before a temporary residence?

17 A. Or upon establishing it, yeah. Either will --
18 is accepted.

19 Q. I'm sorry. I don't understand. When does a
20 returning Intrastate registered person have to report the
21 temporary address?

22 A. It's the returning that's confusing me. You
23 have to report any address within the 48-hours of
24 establishing it. You can also, similarly to any other
25 temporary travel, you can report that information to a

1 sheriff's office before you actually establish that
2 temporary residence, and have that as part of your
3 record, go to Sanibel and spend your time there, and then
4 return and report that you have now returned, and
5 essentially re-established your -- and are continuing to
6 maintain your permanent residence.

7 Q. Is it your understanding that I am required to
8 report my Intrastate temporary residence before leaving?

9 A. No. No, the law says that you have to report
10 that any type of residence upon establishing them, so if
11 you did not tell Miami or Dade that you were going to
12 establish that, say you didn't know exactly where you
13 were going to be staying, for instance, when you went to
14 Sanibel -- and I don't -- I'm sorry, I don't know what
15 county that's in.

16 Q. Lee.

17 A. So when you went across the state to Lee County,
18 once you have either arrived there or established your
19 temporary residence there, you would report that to the
20 Lee County Sheriff's Office, and that would register that
21 address within the Registry. Similarly you could do it
22 with any DHSMB.

23 Q. In Lee County?

24 A. Sure.

25 Q. Okay. And that's your understanding of the

1 A. Yes.

2 Q. Are you aware that different sheriffs have
3 different constructions of that, right?

4 MR. WEAVER: Form.

5 THE WITNESS: Not specifically aware, but I
6 would not be surprised.

7 BY MS. JONAS:

8 Q. Similarly with the definition of day, correct?

9 MR. WEAVER: Same objection.

10 THE WITNESS: Yes.

11 BY MS. JONAS:

12 Q. You would tell them, get a lawyer or ask the
13 sheriff?

14 A. Consult your attorney or pose that to the
15 sheriff's office.

16 Q. Right. Right. And that would be true also of
17 the responses that you gave us to a request
18 seeking information given to people who can't register
19 due to cognitive or physical or psychological
20 disabilities, correct?

21 A. Generally, yes; however, it would not be unusual
22 for us to help facilitate in those sort of circumstances,
23 help to facilitate their connection to the sheriff's
24 office to make sure that they -- we would give them a
25 phone number and/or might also contact the sheriff's

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: 18-24145-CV-KMW

JOHN DOES, et al,
Plaintiffs,
v.
RICHARD L. SWEARINGEN,
Defendant.

_____ /

VOLUME I

DEPOSITION OF: JEREMY GORDON
DATE: FRIDAY, SEPTEMBER 4, 2020
TIME: 10:08 A.M. - 4:43 P.M.
PLACE: VIA VIRTUAL VIDEOCONFERENCE
STENOGRAPHICALLY
REPORTED BY: EVELYN RONDON

1 experience.

2 BY MS. JONAS:

3 Q. But you're supposed to report your location in
4 person, aren't you?

5 A. The -- no, not when it comes to address changes
6 within Florida. In person where?

7 Q. So your testimony is that you don't have to make
8 an in-person report of a change in your location in Florida?

9 A. Not to the sheriff's office if that's what you're
10 asking.

11 Q. What if you're staying in the location for three
12 days or more in the aggregate per year?

13 A. No. Address changes in -- I mean, once they've
14 initially registered where I'm assuming, as I understand it,
15 you said they have already reported the address and now
16 they're moving around. Once they have initially registered
17 as being a Florida resident, if they are moving within the
18 state of Florida there is not an obligation to report in
19 person to the sheriff's office to report address changes
20 within the state of Florida.

21 Q. Even before they leave or after they return?

22 A. That changes within Florida. If -- out of state's
23 out a different story. I mean, we're talking about two
24 different things --

25 Q. I'm just talking about Florida now.

1 A. Okay. So a move from one location in Florida to
2 another location in Florida where an individual has already
3 completed their initial registration, they are not obligated
4 to report in person to the sheriff's office to report a
5 change in a Florida address to another Florida address, no.

6 Q. Okay. You mean as long as they've registered in
7 person there permanently?

8 A. As long as they've completed their initial
9 registration at the time. They may never have a permanent
10 residence.

11 Q. As long as they've completed their initial
12 registration and provided a residence where they stayed for
13 three or more consecutive days?

14 A. As long as they provide a location because they
15 could have a permanent, they could only have a temporary,
16 they could only have a transient, it could one of those
17 three.

18 Q. Okay. And you're testifying that if a person
19 who's registered, let's say, in Miami-Dade County, that's
20 where they registered initially, that's where they continue
21 to reregister, that's where they continue to make in-person
22 reports of changes, right?

23 A. Correct.

24 Q. That person goes to another location in Florida.
25 Are they required --

1 A. Take Polk County, that's where I am. So Polk
2 County, no, they're not obligated to check in with Miami or
3 Polk County to report that address change.

4 Q. Okay. At any time?

5 A. No. They would be required to report to the
6 Department of Motor Vehicles.

7 Q. When?

8 A. When they -- when there's a change in address from
9 Florida to Florida.

10 Q. Okay. And when do they have to make that report?

11 A. They are supposed to report within 48 hours of a
12 change in permanent, temporary, or transient address.

13 Q. So they don't have to report to the DMV in the
14 county they're visiting, correct?

15 A. If it's visiting -- so as I understand it, the way
16 it's written, when it says permanent, temporary, or
17 transient, it's meaning it's inclusive, so it wants to make
18 sure that it includes everyone. So if they have a permanent
19 residence and, again, this is just my experience with
20 enforcement, so if they permanently live in Miami and they
21 want to come visit the campground in Polk County --

22 Q. Right.

23 A. -- temporarily --

24 Q. Right.

25 A. -- they are not obligated to report to the DMV to

1 report that temporary residence. The permanent residence
2 would stay on their driver's license, it would serve no
3 purpose.

4 Q. Okay. And they could stay a week or whatever in
5 the state park campground and come back and --

6 A. Correct. You know, I mean -- so, again, in
7 enforcement -- now, like I said, in terms of required, when
8 it becomes to temporary they're encouraged to let law
9 enforcement know. For example -- the thing is, you know,
10 the good thing about temporary addresses is it allows them
11 to say, hey, I have two potential locations. So if as a law
12 enforcement officer myself, if I go to their permanent
13 address in Miami and they're not home, okay, I don't need to
14 initiate an investigation for them absconding or, you know,
15 having violated the law. If I say, oh, I see they were
16 temporarily visiting Polk County, maybe that's where they
17 are, you know. So that's the benefit of having, you know,
18 both the permanent and the temporary address reported.

19 Q. I'm getting confused. I'm sorry.

20 A. It's okay.

21 Q. How would -- you mean because they have previously
22 visited Polk County and registered with the DMV -- reported
23 to the DMV after they got back to Polk County?

24 A. No. There's no -- no, I -- in terms of
25 enforcement there's no requirement to them to go to DMV when

1 they're just going to go on vacation and go back to DMV when
2 they return from vacation.

3 Q. As long as it's intrastate is what you're saying?

4 A. Exactly. As long as it's within state. Now, if
5 they only have one address, whether it be permanent or
6 temporary or transient, then absolutely, yes, if they move
7 locations. So if they originally had registered a temporary
8 address in Miami and that's the only address in Florida they
9 had -- which they are legally allowed to just have a
10 temporary address -- they then decide I'm now going to
11 temporarily reside in Polk County. So they leave their
12 temporary address in Miami-Dade and go the temporary address
13 in Polk County. In that case they would need to report to
14 DHSMV because that's the only address they have, that
15 address has changed.

16 But if they have maintained a permanent residence
17 in Miami, that's their home. If they just go visit some
18 place to, you know, to visit or on vacation, really any
19 reason, it doesn't matter, they don't have to explain why
20 they go visit, that's not a requirement of the law. They're
21 allowed to visit wherever they want to visit. The
22 information needs to be recorded but there's no obligation
23 -- at least from the enforcement side in my five years of
24 doing this, no one has ever been arrested for not going to
25 the DMV when they visited -- when they just went on

1 vacation, either before the vacation or after the vacation
2 for not going to the DHSMV, I know of no one that's been
3 arrested for that.

4 Q. Because there's no requirement to report a
5 vacation in Florida?

6 A. They're obligated to report the address. You
7 asked if they were obligated to report in person to the
8 sheriff's office. I don't think the statute requires that.
9 They would be obligated to report the temporary residence in
10 whatever manner that they're able to do it, that law
11 enforcement, you know, sees fit. Now, if it's a -- the
12 thing about temporary is it's three days in a year.

13 So if it's a matter of -- say it's not so much a
14 vacation but a second home, so maybe they own -- let's say
15 they own -- they live in Miami but they own a condo up in
16 the Panhandle, okay? So that's kind of an outstanding
17 temporary residence. They live in Miami, that's where they
18 live, that's their permanent residence, but they from time
19 to time will go visit their address in Panama City. Once
20 that's reported once there's no obligation for them to
21 continue going to DHSMV or updating just because they're
22 returning between the two addresses. They're telling us, I
23 may be at either of the two addresses at any given time.

24 I'm familiar with an individual right now that has
25 a permanent residence in Hillsborough County and a temporary

1 Q. Okay. And on what day is the residence
2 established?

3 A. The -- it would be the third day is when the
4 residence would be officially established.

5 Q. Okay. And then they have how much time to do what
6 after that?

7 A. They -- the way the statute is written they were
8 supposed to, within 48 hours, report the establishment of
9 the new residence. If it's -- again, only talking about
10 in-state.

11 Q. Yeah. Of course. Of course. And how do they
12 report that?

13 A. There's -- that would be -- I would say that would
14 differ from agency to agency. They can report in person and
15 they'll just make a note in our system. We call it a field
16 information where they can put the new address in and it'll
17 get uploaded in the system. Some will have them complete a
18 new electronic registration form. It ultimately depends on
19 what the sheriff's office does.

20 Q. But they don't have to report in the county where
21 they're camping, right?

22 A. The -- typically, if they maintain a separate
23 residence they usually report it -- if they've already
24 reported it in the other county then I don't see any
25 requirement to also check in with the other county as well.

1 If they never reported it, then the requirement would be
2 established in the other county, so that's where they're
3 located.

4 Q. In the county where they're camping?

5 A. Right. If they -- let's go back to our
6 Miami-Dade/Polk County. So if they live in Miami-Dade and
7 they're going to go camping in Polk County, if they report
8 to Miami-Dade that they're going to go camping in Polk
9 County, then that information would get put in the system.
10 There's then no complementary requirement for them to check
11 in with Polk County as well. Now, if they did not report it
12 before they established a campground -- they either didn't
13 know what campground they were going to stay in -- after
14 three days they established a temporary residence it does
15 need to be reported. And in that case, since they're
16 located in Polk, that would be the best place -- I wouldn't
17 expect them to go all the way back to the Miami-Dade to
18 report -- they could report that temporary residence in Polk
19 County.

20 Q. Okay. By calling up Polk County and reporting it?

21 A. Or go -- you know -- or usually they would call
22 and then if they want them to come in person they would let
23 them know whatever their procedures are. But at a minimum,
24 you know, if they called them that -- I mean, they just want
25 the information documented when it comes to temporary

1 residence if they have a other more permanent sort of
2 residence.

3 Q. I'm sorry. I didn't understand the last part of
4 your answer.

5 A. That if -- if -- remember what we said. If all
6 they have is a temporary address in Miami-Dade and they're
7 establishing a new temporary address, that's a different
8 story. Then they have to report to DHSMV because that's an
9 address change and there's different requirements. If it's
10 just a vacation, they're leaving their permanent residence
11 on a temporary basis to go to a different location, then
12 they would just report that temporary location to law
13 enforcement.

14 Q. Okay. When --

15 A. Go ahead. I'm sorry.

16 Q. When do they make that report, before they go?

17 A. The report -- you know, again, that's typically
18 how, A, the offender intends to handle it and how the
19 sheriff's office handles it. The way the statute is written
20 is it's 48 hours after they establish. So the way the
21 statute's written is it would be reported after the move,
22 but in my personal experience they typically know where
23 they're going on vacation, they report it in advance and
24 that is allowed, there's -- that's accepted. That's
25 reporting it within the requirements.

1 Q. Okay. Beforehand?

2 A. Uh-huh.

3 Q. Now, when you say within 48 hours after
4 establishment if you haven't reported it beforehand, you
5 defined temporary residence or repeated the definition of
6 temporary residence as three days in the aggregate for you.
7 So I've never been to this campground, I'm going to there
8 for the first time with my family and I want to call the
9 sheriff, make sure everything is fine that I don't get in
10 trouble within the 48 hours after establishing it. When
11 does the 48 hours start?

12 A. Would be after the third day. So it would be the
13 third day that they're at the place, the residence, the
14 location. That's when the -- then it would be 48 hours from
15 establishing that point.

16 Q. Okay. Let's say I take my family, we are driving
17 to a campground and it's up -- it's Myakka State Park up in
18 -- near Sarasota, very beautiful by the way --

19 A. Okay.

20 Q. -- it's a long drive, five hours or something --

21 A. Sure.

22 Q. -- and then I get to the campground, you know,
23 five or six hours after I left my permanent residence. And
24 then I enter the campground and the kids and I, we set up
25 the tent. And by then it's, you know, 4 o'clock before we

1 were at our campsite, have set up our tent --

2 A. Okay.

3 Q. -- what day is that in terms of --

4 A. I --

5 Q. So let's say I get there at 4:00 --

6 A. Okay.

7 Q. -- I'm really there at 4:00 --

8 A. Okay.

9 Q. -- I've established my residence, I've pitched my
10 tent, I'm there.

11 A. Okay. At 4 o'clock. Okay. I got you.

12 Q. Yeah. At 4 o'clock, right.

13 A. Okay.

14 Q. So how many hours -- when does the 48 hours begin?

15 A. Doesn't start until after they've been at that
16 location for three days.

17 Q. So if I got there on Monday -- I left on Monday
18 and I get there Monday at 4:00 p.m., when does the -- what
19 hour does the 48-hour --

20 A. I would say the 48 hours would start Thursday
21 because that would be three days at the location. It would
22 be Monday, Tuesday, Wednesday would be three days. If
23 you're at the location the entire three days and then 48
24 hours would be Thursday and Friday.

25 Q. What time on Thursday?

1 A. Time is irrelevant.

2 Q. No. No. It says 48 hours.

3 A. It says 48 hours, right. But from an enforcement
4 perspective it's a day, so it's two days. So 48 hours is
5 two days so they've got Thursday, Friday.

6 Q. So if after 4:00 Thursday -- I'm sorry. If I've
7 established the residence by Thursday at 4:00 p.m. --

8 A. You're saying it would -- well, if it started on
9 Monday you would have established it by Wednesday.

10 Q. By Wednesday. Okay. That's the three-day --

11 A. So -- right. Now -- and then also I would say
12 from an enforcement perspective when it comes to the 48
13 hours, not only is it looked at as two days, but it's two
14 business days. So if, for example, someone established the
15 third day on Thursday, okay? So say they started on
16 Tuesday. So they went Tuesday, Wednesday, Thursday would be
17 the third day. Friday would be the first day in the 48-hour
18 -- they would not be expected to report the address by
19 Saturday because Saturday is not a business day. So that
20 second day in the 48 hours would actually be Monday, and
21 that's been all my experience with registration enforcement,
22 that's the way it operates.

23 Q. Okay. And who taught you that 48 hours means two
24 business days?

25 A. That's the way that I -- that's through my

1 I don't believe I specified a time.

2 Q. Oh, okay. By when on Wednesday would it be
3 established?

4 A. It would just be as of Wednesday. In my personal
5 experience it would be end of business on Wednesday. So the
6 fact that they're still there on Wednesday, they now --
7 sleeping there on Wednesday they established the residence.

8 Q. Okay. That's your personal experience. Do you
9 mean that's how you regard the statute?

10 A. Correct.

11 Q. Okay. So when does the 48 hours start?

12 A. The 48 hours would start the following day from
13 that third day. So if they established the third day on
14 Wednesday, the 48 hours time frame would include the
15 following two days, Thursday, Friday.

16 Q. Okay. But that's not 48 hours, that's more than
17 48 hours. If you go from the close of business on Wednesday
18 to let's say close of business on Friday, is that what
19 you're talking about?

20 A. Right. As I said, in my personal experience
21 enforcing the law, the 48 hours is two days and so they've
22 got two days to report.

23 Q. And when does the day begin for the purpose of
24 reporting?

25 A. It would be the start of business on that day.

1 address in Leon County. In my personal enforcement
2 experience and reviewing that particular case, he has never
3 been obligated to go to DMV to also report the temporary
4 residence. As long as he maintains the driver's license
5 that has his permanent residence listed, he's being viewed
6 as in compliance with the law.

7 Q. And so if he, under the statute, establishes a
8 permanent residence in Leon County by staying at the same
9 place three or more consecutive days, does he have to get
10 another driver's license from DMV?

11 A. By statute, if he establishes a new permanent
12 residence --

13 Q. Uh-huh. Yeah.

14 A. -- then, yes, you're obligated to go to DMV and
15 obtain a new driver's license or identification card that
16 lists your permanent residence.

17 Q. And the permanent residence would be defined as
18 three or more consecutive days, right?

19 A. That is the way it's defined in the statute, yes.

20 Q. Which DMV would he go to to get the new driver's
21 license?

22 A. Any one that he wants to. There's no
23 obligation -- I mean, he can go to any location that he
24 chooses --

25 Q. Okay.

1 a change in their permanent, temporary, or transient
2 residence, okay? As well as some other things --

3 A. Okay.

4 Q. -- but let's just talk about permanent and
5 temporary for this purpose, okay?

6 A. Okay.

7 Q. So -- and what does it mean to secure or update a
8 driver's license?

9 MR. WEAVER: Form.

10 THE WITNESS: So to secure or update, from my
11 personal understanding of the law, that would be secure also
12 means obtain. And update means to obtain a new -- you know,
13 so that means you already -- most likely -- so it's saying
14 either get one for the first time or update or get a new one
15 if you already have one.

16 BY MS. JONAS:

17 Q. You mean like with a new address, right?

18 A. Yup. That's what it seems to be referring to to
19 my personal opinion.

20 Q. Okay. So the -- I've gone -- it's easier for me
21 to think about Sanibel because I just had a week there at an
22 Airbnb. So I'm going to talk about a Miami to Lee County
23 move because it's easier for me and I'm the registered
24 person in this scenario.

25 So I stayed for seven days at an Airbnb in Sanibel

1 Q. Right. So you've got a total of 48 hours in which
2 you go to the DMV and try to get a new driver's license, and
3 if you fail, then you go to the sheriff's to go report --

4 A. Go to report it to them that -- the issue that you
5 couldn't get the license, correct. And then report the
6 address, which there's different ways that they can then
7 input it into the system.

8 Q. Okay. So just -- it's the same 48 hours. That's
9 what I wasn't sure about. If it's the same 48 hours and you
10 get a new 48 hours after a failed attempt to go to the DMV.

11 MR. WEAVER: Form.

12 THE WITNESS: The way the statute is written
13 that is what it would say. Like I said, in terms of -- you
14 know, I can't recall any personal experience of ever
15 arresting anybody for going to the DMV, being denied, and
16 then -- you know, like I said, not coming -- like, changing
17 address. And then within that 48 hours of trying to update
18 DHSMV, not being successful, and then not going to the
19 sheriff's office in that same time, I can't recall anyone
20 ever being -- personally I've never been involved in anybody
21 being arrested for that.

22 It's just expected that if it can't happen -- in
23 my personal experience they will typically call the
24 sheriff's office immediately and say, what do I do now? And
25 in most cases they will tell them, okay, you know, come to

1 report or, you know, some may take it over the phone.

2 Again, it's up to the local agency on how they do those
3 procedures because the statute just says report, it does not
4 actually say report in person in that particular statute or
5 section of the statute.

6 BY MS. JONAS:

7 Q. Okay. With respect to this -- okay. It does
8 actually say starting on the third line of that --

9 A. Well, for DMV they have to report in person. And
10 to my knowledge they can't do it any other way. Like DMV
11 will not -- they cannot do it electronically. But when we
12 talk about the -- we were talking about the sentence at the
13 end when they were unable to secure. That says they shall
14 report any change, it does not say they shall report that
15 change in person to the sheriff's office.

16 Q. Okay.

17 A. It just says they shall report.

18 Q. Okay. So that doesn't have to be in person?

19 A. The way the statute is written, correct. It does
20 not require in person.

21 Q. Okay. Okay. Well, that makes more sense than the
22 48 hours for both, yeah. So if I've gotten my new driver's
23 license in Lee County when I'm staying there for my Sanibel
24 trip, when I come back to Miami do I have to get a new
25 driver's license with my year-round address?

1 A. If you had obtained a new identification card or
2 driver's license and listed the Sanibel address as your
3 residential address, yes, you would need to get it changed
4 because you would also be in violation of DHSMV laws by --
5 you're supposed to have a valid residential address listed
6 on there.

7 Q. Okay.

8 A. So if you did obtain a card that reported the new
9 address -- now, my personal knowledge with DHSMV is they can
10 record a residential address and a temporary address. So
11 you could go to DHSMV and report that I'm temporarily going
12 to be in Sanibel Island, they can record that address
13 temporarily. It would not change your actual driver's
14 license because it shows your residential address, which
15 would be your Miami-Dade address. And so then when you went
16 back at some point you would have to let DHSMV know, yes,
17 that, you know -- you know, if it was only a
18 temporary-temporary address, meaning that it was those seven
19 days and you're never going back ever again, then of course
20 you would want it eventually removed from your DMV record.
21 But it doesn't show up on the license so a new license
22 wouldn't need to be issue. It would just need to be
23 reported.

24 Q. But didn't you say earlier that secure or update a
25 license is to get a new driver's license?

1 A. Yes. So that's if they were required to secure or
2 update a license because this says -- let's see. So they
3 shall report in person when there's a change. It does not
4 say that they shall obtain a new ID card every time their
5 address changed. I don't believe it says that. So I --
6 that particular aspect would be referring to someone who
7 it's their first time. So if they go and they -- I'm now
8 new to Florida, I go to get my DL and ID card and it doesn't
9 get updated, then I would need to let the sheriff's office
10 know. Or if there's a 100 percent change in address, it is
11 a permanent change in address, they -- you have moved, you
12 have sold your Miami-Dade address, you are now living in
13 Sanibel. You've got to have your right address listed on
14 your driver's license. So in that case you would need to
15 secure the new license or identification card or update it
16 in that case, obtain an updated one.

17 And if you're unable to do so for whatever reason
18 then you'd be obligated to just let the sheriff's office
19 know. In that case, normally you wouldn't have had to let
20 Lee County know because you informed DHSMV. But since you
21 couldn't update it with DHSMV you let Lee County know and
22 let them know the issues with DHSMV and then the information
23 should get updated.

24 Q. Okay. I just wanted to point out that 4(a) does
25 appear to be directed just to people like me, registered

1 Q. Okay. You don't know what another law enforcement
2 officer might do with this statute in this situation --

3 A. I don't know what anybody would do.

4 Q. Let me get my question out, okay?

5 The hospital scenario that I've given you, you
6 don't know that any other law enforcement agency would take
7 that report by phone in order to avoid having me leave my
8 man in the hospital and not be able to come back?

9 A. Can you repeat that one more time.

10 Q. Yeah. Yeah. I think it was very garbled and
11 twisted.

12 A. Go ahead. Go ahead.

13 Q. Is it your testimony that no law enforcement
14 agency, under the circumstance that I just gave you --

15 A. Okay.

16 Q. -- that circumstance is I'm in the hospital with
17 my man, he's in ICU, the three days are up and I call to
18 report --

19 A. Uh-huh.

20 Q. -- is it your testimony that no law enforcement
21 officer would require that person to leave the hospital and
22 report in person?

23 A. No. It's my testimony that I can't testify to
24 that. I have no personal experience with anything like that
25 ever happening.

1 Q. In --

2 A. But I can't testify to what would happen in the
3 future or what had happened that I wasn't involved in.

4 Q. Okay. In your training of law enforcement
5 agencies and officers, how do you tell them to deal with a
6 situation like that?

7 A. I can't recall in my training ever talking about a
8 hospital example.

9 Q. Okay. Okay. That's useful. Okay. Oh, yes. I
10 wanted to now to look at Section 7, and I'd like you to look
11 at that.

12 A. Okay.

13 MR. WEAVER: Inspector Gordon, just let us know
14 if you need a break at any point.

15 MS. JONAS: Oh, yeah. Let's talk about that.
16 How about we break in -- give me a second. Would it be okay
17 if we break at 1:30 for like 20 minutes?

18 MR. WEAVER: I might need a little more than
19 that today.

20 MS. JONAS: You might? How much time would you
21 like, Shane?

22 MR. WEAVER: I'd say probably not less than 30
23 minutes.

24 MS. JONAS: Okay. Evelyn, how does that work
25 for you?

1 COURT REPORTER: That's good for me.

2 MS. JONAS: Okay. Mr. Gordon, how does that
3 work for you?

4 THE WITNESS: 30 minutes would be fine.

5 BY MS. JONAS:

6 Q. Okay. Okay. So we're looking at Section 7 now.
7 Now, this is addressed to a -- somebody who lives here but
8 wants to leave the state. Let's forget the out of the
9 country part for the sake of this discussion, okay?

10 A. Okay. Sure.

11 Q. Now, when -- it does say here they should report
12 in person to the sheriff of the county where he resides,
13 where I reside. Is that -- do you understand that to mean
14 it has to be in person or can that be by phone since you're
15 leaving the state?

16 A. Like I said, I just see what the statute says. It
17 says report in person to the sheriff --

18 Q. Right. But --

19 A. -- that's what the statute -- that's what the
20 statute says.

21 Q. Okay. And maybe some people regard a phone call
22 as an in-person report because it's the person reporting it?

23 A. Yeah. I don't know. I can't testify to you.

24 Q. In your experience, would you accept a phone
25 report?

1 written is they just have to report to the sheriff.

2 Q. Okay. Have you in your training talked about how
3 it's important for sheriffs' offices that are open, you
4 know, 24/7, to be available to take in-person reports of any
5 kind of change that must be reported in person from a
6 registered person?

7 A. I can't recall ever -- yeah, anything in training
8 discussing how they should operate their agencies. That
9 those not my role.

10 Q. Okay. But I would have to wait -- let's say I was
11 able on Friday night to go into the sheriff's office and I
12 found somebody outside of the registry division who's
13 willing to take my in-person report --

14 A. Okay.

15 Q. -- so I'd still have to wait 48 hours before I go
16 see my mom, right?

17 A. No. It says within 48 hours. That could be the
18 hour before is within 48 hours. So there's no obligation to
19 wait 48 hours. It's within 48 hours before you intend to
20 leave. So you've got to report it before you leave is what
21 it says.

22 Q. Okay. Somewhere in this 48-hour period before I
23 left?

24 A. As I'm reading the statute, yes. Again, it does
25 not specify a time frame. It's just within the 48 hours

1 before or, again, I would look at it as two days before --
2 within the two days before you've got to report it. And,
3 again, in my personal law experience I have never arrested
4 anybody or known of anybody being arrested for reporting one
5 day before because the way I read the statute, that's within
6 48 hours. It's not at least 48 hours, it's within 48 hours.

7 Q. It's at most 48 hours, in other words?

8 A. Well, no. And, honestly, my personal experience
9 is it's not necessarily "at most." I think, you know -- I
10 mean, if -- not think, but -- so if somebody were to call,
11 for example, and say, well, look, I know I'm going next
12 week. In my -- personally, I would not then obligate
13 anybody to come back the following week to just say, hey,
14 just reminding you that I'm going. If they reported it
15 that's considered the report. So it's encouraged within 48
16 hours but I know of nobody being arrested for reporting it
17 72 hours in advance. And because it wasn't 48 hours so I --
18 like I said, now, I can't speak to everybody, but in my
19 personal experience I've never known anybody being held to
20 that standard. It's just supposed to be, you know, within
21 the two days before. The key being before you leave --

22 Q. Right. Right. So I could go then and report to
23 whoever will take my report in the sheriff's office and
24 leave immediately from there --

25 A. Yeah.

1 Q. -- pack up my stuff --

2 A. Yeah.

3 Q. I'm just asking, wait.

4 A. I'm sorry.

5 Q. I could pack up my car, drive to the sheriff's
6 office, even if it's the middle of the night, find somebody
7 there who will take my in-person report, go back to my car
8 and continue to my mom, right?

9 A. As my reading of the law and my understanding of
10 the law, absolutely. Yes. And I have seen many examples of
11 people reporting a move the next -- starting the next day,
12 and I've never seen a problem with that.

13 Q. Okay. And even though it says within 48 hours if
14 somebody did it more than 48 hours, that's okay with you?

15 A. It would depend on the circumstances. Obviously,
16 a year in advance, you know, that would be a little
17 questionable. But, yeah, I mean, the example, 72 hours, you
18 know, four days before. Or, for example, while they're
19 there, you know, my personal enforcement experience would be
20 they're informing us, we'll make the note of when the day
21 starts. Because they can report a future address, you know,
22 of where they're going to be so I would think that it's that
23 obligation that they just report that they're moving out of
24 state. That's the key requirement, that they do report --
25 before they move out of state, that they report that move

1 out-of-state.

2 Q. Pretty much any time they want?

3 MR. WEAVER: Form.

4 THE WITNESS: It would be on a case-by-case
5 basis. Again, there of course would be -- I don't want to
6 say, you know, not in the sense of, well, I'm not going to
7 let this guy not do it, I need a year in advance. But then
8 it depends on the type of address. If it's a situation
9 where you're going to be going back and forth, then that
10 would be a little different than this is a vacation I've
11 scheduled, I know I'm going. So in that -- that can be
12 reported two days before, shouldn't be a problem.

13 But in the example of a death I've got to go
14 immediately. You report it as soon as you can. In some
15 cases I've seen where they contacted, I may have to go, I
16 don't know yet. Like work, for example. Like work just
17 told me I may have to leave in a week, so they'll make the
18 note. And then usually in that case when the follow-up
19 comes within 48 hours I see phone calls being made. Now, I
20 can't testify that that's the way everybody handles it, but
21 I've seen phone calls allowed if they've already reported in
22 person but it was a little far in advance.

23 When it gets a little closer just to confirm, yes,
24 I am going so we don't -- because we don't want to put a bad
25 address in the system and then again make it look like

1 familiar with the Florida statute as opposed to the actual
2 SORNA Act, but I have looked at it before but I'm not --
3 like I said, I'm not as confident with what SORNA
4 specifically says compared to the actual -- the federal
5 SORNA versus the Florida registrations.

6 Q. Who told you, Mr. Gordon, that 48 hours means two
7 business days?

8 A. That is my personal understanding of the statute.
9 When I read the language, that's how I understand it and
10 that's how I govern my actions.

11 Q. Okay. I want you to scroll down, please, to the
12 -- yeah. Where the little indented paragraph -- there.

13 Now, that's the federal SORNA. I assume you're
14 saying Mary wrote that part? Contributed that part,
15 correct?

16 A. Yeah. I wouldn't have had any impact on that. I
17 wouldn't have knowledge of what the guidelines -- like,
18 specific quotes of the guidelines, I did not provide that.

19 Q. Okay. You see there how it says: Not later than
20 three business days after each change of name, residence,
21 employment or student status?

22 A. Uh-huh.

23 Q. Do you think that it would be a good idea to put
24 your interpretation of 48 hours into the statute?

25 MR. WEAVER: Object to form. Calls for

EXHIBIT 3

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE No.: 18-24145-CV-KMW

4 JOHN DOES, et al,

5 Plaintiffs,

6 vs.

7
8 RICHARD L. SWEARINGEN,

9 Defendant.

10 _____/
11 VOLUME I

12 (Pages 1 through 176)

13 Deposition of: CHAD HOFFMAN

14
15 Date Taken: Monday, October 12, 2020

16
17 Time: 10:05 a.m. - 7:13 p.m.

18
19 Taken By: The Plaintiff

20
21 Location: VIA VIDEOCONFERENCE

22
23
24 Reported By: Alyssa Zumpano,
Stenograph Shorthand Reporter and
Notary Public, State of Florida at Large.

25

1 Q. Okay. Were you asked to read Mary Coffee's
2 deposition?

3 A. No.

4 Q. Do you know why you were asked to read
5 Jeremy Gordon's deposition?

6 MR. WEAVER: Object to form. Whatever you're
7 going to be asking about, why he was asked to read
8 or not read anything is attorney-client privilege.

9 MS. JONAS: So you're not objecting to form?

10 MR. WEAVER: What?

11 MS. JONAS: So you're not objecting to form.
12 I'm trying to figure out what you're objecting to.

13 MR. WEAVER: I just said, if you're going to
14 ask him what he's told to read or not read or why
15 or what was discussed, I mean, that's all -- that
16 would have been the preparation of counsel, so it's
17 all privileged. So I'm, you know, I would have to
18 instruct him not to answer the question.

19 MS. JONAS: I think you're looking for work
20 product, but anyway.

21 MR. WEAVER: Well, work product as well as
22 attorney-client, but, yes, that's the point I --

23 BY MS. JONAS:

24 Q. Okay. Do you know the identities of the
25 John Does in this case?

1 A. Identities as far as I read your complaint.

2 Q. No, their names, I mean. They're referred to
3 as "Does" in the complaint. Do you know what their names
4 are?

5 A. Oh, no. Other than -- if -- if it's not
6 stated in your complaint, I have no idea who they are.

7 Q. So nobody has given you the names of any of
8 those individual plaintiffs?

9 A. No.

10 Q. Okay. Have you been able to figure out a
11 name based on the descriptions of them?

12 A. I have not even considered it.

13 Q. Okay. When you were working for ten years
14 with ICAC -- that's how you pronounce it, "ICAC"?

15 A. Yes, ma'am.

16 Q. Okay. What -- and you said, I think, that
17 you were involved in 100 arrests, if I got that
18 correctly. And I wanted to know what percentage of them
19 were arrests of people who were already on the registry?

20 A. I have no statistical data to give you, other
21 than I know that I have arrested individuals that were
22 already registered sex offenders.

23 Q. Can you hazard a guess as to the percentage
24 of the 100 arrests that you made there that involved
25 people who are on the registry?

1 Q. Okay.

2 A. That was -- that was one of the examples
3 where he was a registered sexual predator.

4 Q. Yes. Actually, the handle was kind of a
5 giveaway. "Depraved Demon," is what he called himself.
6 You've read Jeremy Gordon's deposition. Do you agree
7 with his definition of 48 hours as meaning two business
8 days?

9 MR. WEAVER: Form.

10 THE WITNESS: I don't know if I agree with
11 what -- and I'm not exactly sure what he said, but
12 I know the statute says 48 hours.

13 BY MS. JONAS:

14 Q. How do you interpret 48 hours?

15 A. Well, my interpretation of that is I was not
16 part of writing, obviously, the statute --

17 Q. Understand. Neither were my clients, but
18 they read it. What does it mean to you?

19 MR. WEAVER: Form, argumentative.

20 THE WITNESS: 48 hours, to me, means
21 48 hours.

22 BY MS. JONAS:

23 Q. Okay. Not two business days, right? Okay.
24 So in looking at your response to interrogatory number 3
25 -- I'm sorry, interrogatory number 7, interrogatory

1 THE WITNESS: I wasn't a part of that.

2 MS. JONAS: Pardon?

3 THE WITNESS: I wasn't a part of that.

4 BY MS. JONAS:

5 Q. Okay. That's all I was trying to find out.

6 Okay. So what's your understanding of the definition of
7 a "temporary residence"?

8 A. A temporary residence is a place where a sex
9 offender may abide, lodge, reside, including but not
10 limited to vacation, business, or personal travel
11 destinations in or out of the state for a period of three
12 or more days in the aggregate calendar year.

13 Q. Okay. When does the three-day period start
14 for the purpose of establishing a temporary residence?

15 A. The way that I read the statute is, a day is
16 a day. So if they leave somewhere and get to their final
17 destination on that same day, that counts as a day.

18 Q. Okay. That would be the first day?

19 A. Correct.

20 Q. Okay. Now, if you look at the statute -- I'm
21 sorry to keep jumping around. But if you take a look at
22 the statute, it's 4A, 943.0435(4)(a). Did you find it?

23 A. Trying to find the hard copy. I had it
24 electronically and then I --

25 Q. So look at -- maybe if you just put in 4A,

1 you know, put each of them in parentheses.

2 A. Right. I'm -- got it now. You're talking
3 about 943?

4 Q. Yes, 943.0435(4)(a).

5 A. Paren 4?

6 Q. 4A. Yes. Paren 4 and then A.

7 MR. WEAVER: They both have to be in
8 parentheses.

9 MS. JONAS: Yes.

10 THE WITNESS: Okay.

11 MS. JONAS: Okay.

12 THE WITNESS: "Each time a sex offender's
13 driver's license."

14 BY MS. JONAS:

15 Q. Yes. "Is subjected to renewal, and without
16 regard to the status of a driver's license or ID card,"
17 quote, "within 48 hours after any change in the
18 offender's permanent, temporary, or transient residence."
19 Okay?

20 A. Okay.

21 Q. I wanted to ask you about that phrase. So if
22 I'm traveling, as you say, you know, for -- I'm leaving,
23 you know, on Monday and I get to my destination later
24 that same day, so that's day one?

25 A. Correct.

1 Q. And let's say Wednesday is day three, then,
2 right?

3 A. Correct.

4 Q. Okay. When do I have to report this?

5 A. After you have established the residency, you
6 -- it says you have 48 hours, within 48 hours.

7 Q. Okay. On what day did I establish the
8 residency?

9 A. You just stated Wednesday.

10 Q. Okay. That would be the day I established
11 the residence. So I have within 48 hours after
12 Wednesday, right?

13 A. Correct.

14 Q. Okay. When does the 48 hours begin?

15 A. I think it just says -- the statute says
16 within 48 hours. It doesn't say when it -- when it
17 begins.

18 Q. But it has to be within 48 hours of
19 something, right? I mean, what is the 48 hours tacked on
20 to?

21 A. It's, according to the statute, the third
22 day, the time -- at the time that you commit to residency
23 wherever you're at.

24 Q. When does that happen on the third day?

25 A. It doesn't speculate exactly when -- on what

1 date or on -- on what -- on what time on the third day.

2 Q. Okay. Because the clock -- and I'm trying to
3 figure out when the clock starts running, you know, on
4 the 48 hours. So you don't know?

5 A. I don't have an answer to that.

6 Q. Okay. Yeah. Does this apply -- so what do
7 you have to do after the 48 hours is over? Or within
8 that 48-hour period, what do you have to do?

9 A. You have to report that information to DHSMV.

10 Q. Does that have to be in person?

11 A. Yes.

12 Q. Okay. And what do you have to do at DHSMV?

13 A. You have to provide them the address as to
14 where you are staying.

15 Q. Okay. If you look down -- one, two, three,
16 four, five, six, seven, eight -- eight lines from the
17 top.

18 A. From 4A?

19 Q. Yeah. Yeah. It says there that "A sexual
20 offender who is unable to secure or update a driver's
21 license or identification card." What does it mean to
22 secure or update a driver's license?

23 A. I think secure and update mean the same
24 thing. I don't -- I'm not exactly sure why they say
25 "secure or update." To me, that -- that is the same

1 thing. It just means fulfilling your obligation to
2 update your driver's license.

3 Q. So does that mean getting a new driver's
4 license with the address of your temporary residence?

5 A. No. DHSMV can electronically update their
6 records to show that as one of your temporary addresses.
7 So you don't have to change -- a sex offender who's going
8 on vacation for a week, he doesn't have to completely
9 change his physical driver's license. He merely has to
10 update the address in which he is residing at that
11 current time, and that is done electronically.

12 Q. Let -- well, let me ask you this. What is
13 the definition of a "permanent residence"?

14 A. Anyplace where they abide, lodge or reside
15 for three or more consecutive days and is not a temporary
16 or transient residence.

17 Q. Okay. So if he's staying there a week, does
18 it turn into a permanent residence once he's been there
19 for three -- for more than three consecutive days?

20 MR. WEAVER: Form.

21 THE WITNESS: It can, if that -- if he
22 decides that he wants to say there permanently and
23 never go back to his -- his previous permanent
24 residence. It can be a permanent residence
25 eventually. And then he would have to update that

1 through DHSMV, which would be -- which would then
2 be reflected into the -- the registration.

3 BY MS. JONAS:

4 Q. He would have to get a new driver's license,
5 wouldn't he?

6 A. For the permanent. If he -- if that turned
7 into a permanent residence, you have to have that
8 reflected on your -- on your driver's license, yes.

9 Q. What if he stays there for three months?

10 A. Again, that -- whether or not he has -- he
11 makes that his permanent residence or not. You can have
12 a permanent residence and then you can have, you know,
13 two or three temporary residences. But the permanent
14 residence applies to the residence that you're -- that
15 you're at more than any other.

16 Q. So, I mean --

17 A. But as long as that's -- as long as his
18 temporary residences are listed within DMV, there's no
19 issue.

20 Q. Okay. So "secure or update a driver's
21 license," what does it mean?

22 A. I guess what they're trying to say there is,
23 in my -- in my speculation of this -- of the statute is,
24 "secure" might mean -- say -- say, like, in your example,
25 he might eventually be getting a permanent residence in

1 DHSMV?

2 A. I'm not sure if he wouldn't be able to not in
3 that circumstance where it's a temporary. They might be
4 able -- they should be able to just place that into the
5 computer system as a temporary address and he's good.
6 But it might be for whatever reason, when he goes to DMV,
7 the DMV says, "Well, you're not REAL ID-compliant, so we
8 might not be able" -- you -- they -- they sometimes say,
9 "You don't have the required documents for us to say that
10 we can allow you to put information into the system."

11 So what has happened in the past is they have
12 a little piece of paper that they give to sex offenders
13 that basically states, "Hey, you were here and you tried
14 to do the right thing, but because" -- and this applies
15 to anybody. It could -- it is not just sex offenders.

16 Q. Sure.

17 A. They -- they give them a piece of paper and
18 say, "You're not -- you don't have the required documents
19 for us to update this system," for whatever reason. The
20 sex offender then takes that documentation to the
21 sheriff's office to document that he's trying to be in
22 compliance with the statute.

23 Q. Now, is that -- that's within the same
24 48 hours, isn't it, that you have to go to the DHSMV?

25 A. I believe in the statute it says that if you

1 can't update your information properly, you do have to,
2 within 48 hours, notify the sheriff's office.

3 Q. So that's the same 48 hours, because, again,
4 48 hours after the change at the sheriff's office?

5 A. Change of residence, change in offender's
6 name by reason of -- or other -- complete the process
7 within 48 hours after the -- within 48 hours.

8 Q. Okay. So is that an in-person visit to the
9 sheriff's office with the proof that you were unable to
10 update or secure at the DHSMV the piece of paper you
11 talked about?

12 A. I'm reading the statute.

13 Q. Okay.

14 A. I believe it just says -- it's they shall
15 report.

16 Q. Well, how can they get the proof to the
17 sheriff's office if they don't go there in person?

18 A. It's been my -- now, you have to remember,
19 with FDLE, we don't deal, generally, with these types of
20 situations because, obviously, this is -- the reporting
21 process happens at the sheriff's office. It might be a
22 better question to ask the sheriff's office. But I know
23 -- I'm sorry.

24 Q. Okay. Go ahead. You know what? I'm sorry.
25 I didn't mean to cut you off.

1 A. I know that I've never seen a scenario where
2 a sex offender just -- it just goes back to the -- to
3 some of the other statements that I made that as I've
4 talked to sex offenders throughout the years, if they --
5 and I tell them each and every time, if you have any
6 questions, if you have any concerns about if you're doing
7 the right thing or not, you know, call your sheriff's
8 office and ask them what -- what you -- they -- they
9 require of you. And I think this is one of those
10 scenarios.

11 Q. Okay. I understand. So in other words, if
12 it's not clear from 4A itself whether they have to go in
13 person, they should call the sheriff's office to find out
14 if he or she wants them to go in person?

15 MR. WEAVER: Form.

16 THE WITNESS: As I said, in any circumstance
17 where a sex offender has any type of questions
18 about the registration process, I always recommend
19 them to call the sheriff's office.

20 MS. JONAS: Okay.

21 THE WITNESS: And I go further and sometimes
22 say -- you know, obviously there's -- there's
23 usually one or two people that they always deal
24 with at the sheriff's office, you know.

25 BY MS. JONAS:

1 Q. So if I'm establishing a residence and I
2 establish it on a Friday night, okay, and I've got
3 48 hours within which to report it first to DHSMV and
4 then to the sheriff, if unable to secure or update my
5 license there, within that 48-hour period that begins on
6 Friday afternoon, can I go to any substation? Let's
7 assume that the registration office is closed. They
8 close at 4:00 on Friday, as they always do, or some
9 offices aren't even open Friday. So 48 hours. What do I
10 do if my office is closed? Are you saying that I can go
11 to any substation to report the change of residence or
12 can I go to DHSMV over the weekend to try to secure or
13 update my license?

14 MR. WEAVER: Form and compound.

15 BY MS. JONAS:

16 Q. We'll take them each separately, if you would
17 like. We've just discussed how you have to go within
18 24 [sic] hours after a change to DHSMV to secure or
19 update your license, right? Okay. So if I have
20 established my residence on a Friday afternoon and the
21 48 hours is up on a Sunday afternoon and my registration
22 office isn't open on Sunday, beginning of the -- where do
23 I go to comply?

24 A. Obviously, you cannot go to DMV because
25 they're closed. I would always recommend a sex offender,

1 like I've stated in previous, that if he has any question
2 or concern what he needs to do, he needs to call the
3 sheriff's office. The sheriff --

4 Q. What does the statute say?

5 A. In reference to what?

6 Q. The 48 hours falls on a Sunday, what does the
7 statute say?

8 A. As opposed to -- I'm not -- I don't
9 understand your question.

10 Q. The 48 hours in this case expires and I
11 haven't been able to get to the DHSMV, so I can't even
12 show proof that I tried to secure or update a driver's
13 license.

14 A. You should then notify the sheriff's office.

15 Q. They're closed; it's Sunday.

16 A. The sheriff's office doesn't close.

17 Q. Okay. That was my question. You're saying I
18 can go and report my change of residence to any sheriff's
19 substation that I can find open?

20 A. No. I would first tell the sex offender to
21 call the sheriff's office and ask them that question.

22 Q. Well, the sheriff's office is closed. You
23 mean call anybody anywhere in the sheriff's office, not
24 my registration division?

25 A. There's a dispatch service that's open

1 24 hours a day. There's law enforcement in any city,
2 municipality, or county that is -- that is working. So a
3 sheriff's office never closes.

4 Q. So do you think that the dispatch officers
5 know the statute well enough to advise a registrant who
6 doesn't know where to go on a Sunday?

7 MR. WEAVER: Form.

8 THE WITNESS: That would be something that
9 you'd have to ask the sheriff's department.

10 BY MS. JONAS:

11 Q. Okay. The statute doesn't seem to provide
12 for any allowances if the 48 hours falls on a Sunday and
13 the DHSMV is closed; would you agree with that?

14 A. Yes.

15 Q. Okay. And the sheriff has discretion to do
16 what he wants with somebody in the situation that I've
17 just told you; is that what you're saying?

18 MR. WEAVER: Form.

19 BY MS. JONAS:

20 Q. You can answer.

21 A. The sheriff's office is the main area for
22 registration for sex offenders. You would have to ask
23 specifically how they would adhere to that.

24 Q. Would you agree that some of them may adhere
25 to it differently in the 67 counties?

1 A. I would say that's -- that's obviously a
2 possibility.

3 Q. Okay. I wanted to ask you now -- oh, before
4 we leave this 4A. What's your understanding of the
5 meaning of "within 48 hours after any change"?

6 A. Repeat that; it was vague. I couldn't hear
7 you.

8 Q. Yeah. Sorry. Oh, wait. Maybe I'm -- let me
9 straighten out my wires here. This might be better. Can
10 you hear me all right now?

11 A. Yes.

12 Q. Okay. So let's say I've established my
13 residence on this Wednesday and I have 48 hours after
14 establishing it to go to the DHSMV. Within 48 hours
15 after any change, what does that mean with respect to my
16 obligations?

17 A. What section are you referring to?

18 Q. I'm looking at 4A. Second line, within
19 48 hours after any change in the offender's address.

20 A. Okay. So -- and what's the question?

21 Q. What does "within 48 hours after" mean to
22 you?

23 A. It means exactly what it says in the statute.
24 It's within 48 hours after any changes.

25 Q. So are you saying that it means sometime in

1 the 48-hour interval after the change? Or do you mean
2 48 hours -- do you mean that the 48 hours begins after
3 the change?

4 MR. WEAVER: Form.

5 THE WITNESS: After you have established
6 residency, within 48 hours --

7 BY MS. JONAS:

8 Q. So you're saying 48 hours from the time that
9 I established the residency, correct? Sometime within
10 those 48 hours, right?

11 A. After you have established where you're
12 staying, you then have within 48 hours to --

13 Q. So during the next 48 hours, is that what
14 you're saying?

15 MR. WEAVER: Objection.

16 BY MS. JONAS:

17 Q. Sometime during the next 48 hours?

18 MR. WEAVER: Objection, asked and answered.

19 BY MS. JONAS:

20 Q. You can answer.

21 A. As it states, it states within 48 hours.

22 Q. I'm asking you, does that mean during the
23 48 hours after the change?

24 MR. WEAVER: Objection, asked and answered.

25 THE WITNESS: Within and during, I would

1 Q. You've answered that question. Schools.
2 What other population would be protected by seeing a sex
3 offender statute on a driver's license?

4 A. It could be individuals if they're going to
5 -- filing for some type of application, whether -- when
6 it comes to some type of housing, where it comes to
7 daycare facilities. Anything where a sex offender, be it
8 the statute, is not allowed, whether through probation or
9 whatever, to be in that area.

10 Q. Okay.

11 A. And that would be an indication to staff in
12 those types of settings that they would have to --
13 obviously, that would be kind of an indicator as to not
14 allowing if it's their policy to not allow a sex offender
15 on the grounds or --

16 Q. Okay.

17 A. -- housing in that area.

18 Q. Okay. Any others besides schools, daycare
19 facilities?

20 A. I'm sure there's several, but I can't think
21 of any right now.

22 Q. Okay. I want to ask you now, please, to look
23 at section 7. If you put in just parentheses the number
24 7, it should come up.

25 A. "Sex offender who intends to establish

1 permanent, temporary, transient" --

2 Q. Yeah. "In another state or jurisdiction,
3 other than the state of Florida, shall report in person
4 to the sheriff of the county of current residence within
5 48 hours before the date he or she intends to leave."

6 Okay.

7 Do you regard that within 48 hours is also
8 meaning during the 48 hours before you leave?

9 A. Like it says, the statute -- it says within
10 48 hours --

11 Q. Right.

12 A. -- before the -- you intend to --

13 Q. Right. So you just defined within 48 hours
14 after as being during the 48-hour period. Now I'm asking
15 you to look at within 48 hours before a date and ask you
16 if it means the same thing, during the 48 hours before?

17 A. If I understand your question, yes, it's
18 48 hours within, 48 hours of the date of when you leave.

19 Q. Okay. So it could be an hour before, right?

20 A. Correct.

21 Q. Okay.

22 A. Correct.

23 Q. But it shouldn't be three days before; that
24 would violate the statute, right?

25 A. According to the statute, yes.

1 THE WITNESS: If the statute says -- I'm not
2 here -- I didn't write the statute.

3 BY MS. JONAS:

4 Q. I know. But you've read it?

5 A. Correct.

6 Q. And how do you define "day" for the purposes
7 of the statute?

8 A. In what section?

9 Q. In 775.21, there's definitions of temporary
10 and permanent residence that use the term "day."

11 A. "Temporary residence," means a place where a
12 person -- for a period of three or more days.

13 Q. Right. How do you define "day" in that
14 context?

15 A. In that context, if a person arrived at a
16 certain location on a Monday, that's a day. The entire
17 day is the day.

18 Q. When did it begin and when does it end?

19 A. I would assume a day begins at 12:01 a.m. or
20 12:00 a.m.

21 Q. Okay. So you don't think it's any 24-hour
22 period, you think it's the 24-hour period beginning at
23 12, midnight?

24 A. I think that when the clock strikes midnight
25 at Monday, that's the beginning of that day.

1 already stated, if he's there three days, meaning,
2 if he gets there on a Monday. He's there Monday,
3 he's there Tuesday, and he's there Wednesday,
4 that's three days.

5 BY MS. JONAS:

6 Q. Okay. Here's another one. Somebody wants to
7 come here from out of state, a registrant from out of
8 state, who wants to come here from April 4th to
9 April 5th, leaving on the 5th. Now, this question was
10 posed when temporary residence was defined as "five
11 days."

12 So my question to you is, when does he have
13 to report? If he's leaving on the fifth day, or he does?
14 4/1 through 4/5 in the prior version, where temporary
15 residence was defined as five days?

16 A. That's not what the statute is now.

17 Q. I know. This was an e-mail sent before the
18 statute changed, when temporary residence was five days.
19 So I'm asking you to respond to that fellow's e-mail.
20 He's out of town, wants to come here from 4/1 to 4/5.

21 MR. WEAVER: We're talking about these as
22 hypotheticals, right?

23 MS. JONAS: That's correct.

24 BY MS. JONAS:

25 Q. So this is a hypothetical involving 2016,

1 before the five-day rule was changed to three. Is 4/1
2 through 4/5, leaving on the fifth day, is that five days
3 4/1 through 4/5?

4 A. Yes.

5 Q. That is five days. Okay.

6 A. He's still here on the fifth day. Just
7 because he's leaving, he's still here on the fifth day.

8 Q. So he has to report in person on his way out
9 of town, basically, right?

10 MR. WEAVER: Form.

11 THE WITNESS: If that's what the statute
12 requires, yes.

13 BY MS. JONAS:

14 Q. Okay. If a Florida registrant establishes a
15 temporary residence in a different part of the state,
16 does he have to report that in person to the DHSMV?

17 MR. WEAVER: Form.

18 THE WITNESS: If a Florida sex offender --

19 BY MS. JONAS:

20 Q. Yes. And he lives in Miami-Dade County, and
21 he decides to go to Lee County for a week. If he's
22 living in Florida permanently, does he report to the
23 DHSMV about this temporary residence in Lee County?

24 A. Yes.

25 Q. Okay. And where would he have to report that

EXHIBIT 4

Jane Doe
October 13, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:18-CV-24145-KMW

JOHN DOES, NOS. 1-5,

Plaintiffs,

vs.

RICHARD L. SWEARINGEN,
IN HIS OFFICIAL CAPACITY
AS COMMISSIONER OF THE
FLORIDA DEPARTMENT OF
LAW ENFORCEMENT,

Defendant.

EXCERPT OF
DIRECT EXAMINATION OF
JANE DOE
VIA WEB CONFERENCE

Tuesday, October 13, 2020

LOCATION: VIA ZOOM

Stenographically Reported Via Web Conference By:
Shelby Rosenberg, Florida Professional Reporter

Job No.: 160090

Jane Doe
October 13, 2020

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1 (The following is an excerpt of these proceedings)

2 * * * * *

3 Thereupon,

4 JANE DOE,

5 having been first duly sworn or affirmed, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WEAVER:

9 Q. Ms. Doe, at any point, has Mr. Doe spent three
10 days somewhere -- again, doesn't even have to be
11 consecutive -- three days in the year somewhere?

12 MS. JONAS: I'm going to invoke --

13 MR. WEAVER: It's not the point of the
14 question. I'm not asking when did he report it. That's
15 not where I'm going.

16 MS. JONAS: Can you just proffer the point
17 of the question just to reassure me you're not fishing
18 for evidence of crimes by a man who through no fault of
19 his own is not a plaintiff in the case and cannot speak
20 on his behalf? I simply ask as his lawyer that since
21 you insist you're not trying to elicit evidence of
22 crimes, to what purpose are you asking these three day
23 questions?

24 MR. WEAVER: Well, do you remember the
25 previous questions I asked before I started asking about

Jane Doe
October 13, 2020

Page 4

1 this?

2 MS. JONAS: Yes. It was about the three
3 days.

4 MR. WEAVER: Before that.

5 MS. JONAS: Whether he lived somewhere that
6 he hadn't reported. Before that?

7 MR. WEAVER: That was not it. Maybe at this
8 point, the way I'll respond is with a comment I was
9 given, that if you don't see what I'm asking for -- what
10 did you say to me yesterday? That it's truly
11 disconcerting or something like that?

12 MS. JONAS: Well, I said it was concerning
13 because the matter that I was trying to ask your witness
14 about was contained in your witness' interrogatory
15 response. So when you repeatedly accuse me of trying to
16 elicit discovery in a case I haven't filed, I thought it
17 best to let you know that it was not for that purpose.
18 And as you could see, once you stopped your objections,
19 it had to do with your witness' only statement in the
20 interrogatory. So yes, it was concerning that you could
21 not see the reference of the questions that were
22 directed from the witness' interrogatory response.

23 MR. WEAVER: He was asked something very
24 similar. My point, again, is not to ask him -- "ha ha,
25 he didn't register," I'm asking definitional questions

Jane Doe
October 13, 2020

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1 about the statute. Has he been exposed to the statute?
2 Does he understand what the statute is about? I'm not
3 looking to see if he didn't register somewhere.

4 MS. JONAS: Why don't you just ask her
5 again?

6 MR. WEAVER: I've been trying to ask, that's
7 why we're having this discussion.

8 MS. JONAS: As long as you're just trying to
9 ask her about her brother's comprehension of the
10 statute, I don't need to worry about you trying to fish
11 for information that could be used against her.

12 MR. WEAVER: I really am not. I'm trying to
13 understand if he has somewhere -- without specifying --
14 triggered exposure to the statute. We could say, "oh,
15 okay, he's, at some point, dealt with the statute," then
16 I'd ask the next question, which is not did he register
17 at the address, because again, I personally don't care,
18 I'm not looking to have him admit or have Ms. Doe admit
19 that he's in violation. Again, it is not a proper Fifth
20 Amendment invoking of the privilege, but I'm not looking
21 to do that regardless.

22 MS. JONAS: I'm very relieved to hear that.
23 Thank you, Mr. Weaver.

24 MR. WEAVER: You're welcome. For what it's
25 worth, I understand your concern.

Jane Doe
October 13, 2020

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1 MS. JONAS: I appreciate that. Thank you.

2 BY MR. WEAVER:

3 Q. So Ms. Doe, has he stayed somewhere in the state
4 of Florida for -- actually, strike that.

5 Let's say, excluding the jail and excluding the
6 situation where he lived with his wife, has he stayed
7 anywhere in the state of Florida, anywhere, for more
8 than -- for three days, even if it's nonconsecutive, at
9 any time?

10 A. At his mother-in-law's.

11 Q. How about we do this, don't tell me the place,
12 just answer yes or no.

13 A. I don't want to leave an open question like that.
14 Yes. As far as I know, it was at his mother-in-law's.

15 Q. Do you know if he ever expressed to you any
16 questions about what constitutes a temporary address? I
17 understand he couldn't read the statute; but has he ever
18 asked or understood what the concept of a temporary
19 residence is?

20 A. I don't think so, no. Not that I can recall.

21 Q. He's never asked you personally about how you
22 would calculate the number of days that would constitute
23 a temporary address under the statute?

24 A. No. I don't think he'd even know how to phrase
25 that, how to ask that.

Jane Doe
October 13, 2020

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* * * * *

(This concludes this excerpt.)

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:18-CV-24145-KMW

JOHN DOES, Nos. 1-5,

Plaintiffs,

vs.

RICHARD L. SWEARINGEN, in his
Official capacity as Commissioner of
the Florida Department of Law Enforcement,

Defendant.

DEFENDANT'S FIRST REQUEST FOR PRODUCTION TO JOHN DOE #1

Defendant RICHARD L. SWEARINGEN, by and through his undersigned counsel and pursuant to Fed. R. Civ. P. 34, serves his First Request for Production on Plaintiff JOHN DOE #1 and requests that Plaintiff produce the following within 30 days.

INSTRUCTIONS AND DEFINITIONS

1. As used herein, "record" or "document" means written, recorded or graphic matter of every type and description prepared, produced, reproduced, disseminated or made which is or was in your possession, custody, or control, including but not limited to all letters, electronic mail, memoranda, notes, diaries, calendars, reports, memoranda, notebooks, films, photographs, phone records, writings or other recorded or graphic matters of any kind or nature, and all mechanical and electronic sound recordings, or transcripts thereof, any retrievable data from all mechanical and electronic sound recordings, or transcripts thereof, and any retrievable data from which information can be obtained. The term "records" also shall mean each copy which is not identical to the original or to any other copy.

2. As used herein, "records relating to" a subject shall mean, unless otherwise stated, each document which refers or pertains to, discussions, embodies, records, evidences or contains any information which related in any way to that subject.
3. As used herein, the term "correspondence" shall include but not be limited to every letter, memorandum, note or other written communication and all notes, diary entries, calendars, tape recordings or other evidence of any oral communications.
4. The words "you," "your" or "Plaintiff" refers to Plaintiff JOHN DOE #1 and includes all attorneys, agents, representatives, family members or other persons acting on his behalf.
5. Each request herein for documents to be produced whether memoranda report, letters, minutes, or other documents of any description, contemplates production of the document in its entirety, without abbreviation or expurgation.
6. In the event that any documents called for by this request is to be withheld on the basis of a claim for privilege, that document or documents is to be identified as follows: addressor, addressee, indicated or blind copies, data, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown or explained, present custodian and nature of the privilege asserted.
7. In the event that any documents called for by this request has been destroyed, that document or documents is to be identified as follows: addressor, addressee, indicated or blind copies, data, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown or explained, date of destruction, manner of destruction, reason for destruction, person authorizing destruction and person destroying the document or documents.

8. If any matter covered by this request is no longer in the possession and control of the plaintiff, then the plaintiff is requested to describe the matter in detail and indicate the present custodian of same.

DOCUMENTS REQUESTED

1. All records pertaining to the arrest, prosecution and conviction that require you to register under Fla. Stat. § 943.0435.
2. All correspondence with, and documents provided to, any expert witness that you have disclosed under Fed. R. Civ. P. 26.
3. All records of any mental health or medical treatment, whether ordered by the court or not, related to the offense(s) for which you are required to register under Fla. Stat. § 943.0435, or allegedly resulting from or caused by your registration.
4. All records pertaining to any arrest or conviction for failing to register or report under Fla. Stat. § 943.0435.
5. All records of any other interaction with law enforcement regarding a failure or inability to register or report under Fla. Stat. § 943.0435, including but not limited to correspondence, e-mails, notices and/or written warnings or guidance.
6. All records of any unforeseen circumstances that prevented you from being able to register or report under Fla. Stat. § 943.0435, including but not limited to communication with any law enforcement agency regarding those situations.
7. All records of any lost or reduced employment, lost customer accounts, loss of income or revenue, lost business opportunities, bankruptcies or other damages to your employment or businesses that you allege were caused by having to register or report under Fla. Stat. § 943.0435.
8. All records of any lost housing or housing opportunity that you allege was caused by having to register or report under Fla. Stat. § 943.0435, including but not limited to applications, denials, notices, eviction documents, rules and regulations, correspondence and/or e-mails.
9. All records of any incident(s) of alleged threats to or harassment of you or your family caused by your registration under Fla. Stat. § 943.0435, including but not limited to letters, e-mails, notes, photographs, law enforcement incident reports, and/or communications with law enforcement or other individuals or entities.

10. All records of any instance in which you allege that you were prevented from or limited in traveling internationally, from Florida to another state, or within Florida because of having to register or report under Fla. Stat. § 943.0435.
11. All records supporting your allegation that you have personally been unable to determine the meaning of “temporary residence” as used within Fla. Stat. § 943.0435, or have had any difficulty registering or reporting because of that language, including but not limited to notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
12. All records supporting your allegation that you have personally been unable to determine the meaning of “day,” “place” or “destination” as used within Fla. Stat. § 943.0435, or have had any difficulty registering or reporting because of that language, including notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
13. All records supporting your allegation that you have personally been unable to determine the meaning of “within 48 hours” as used within Fla. Stat. § 943.0435(4)(a), or have had any difficulty registering or reporting because of that language, including but not limited to notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
14. All records supporting your allegation that you have personally been unable to determine the meaning of “secure” or “update” a license at the Department of Highway Safety and Motor Vehicles within 48 hours of any change to a temporary residence, as used within Fla. Stat. § 943.0435(4)(a), or have had any difficulty registering or reporting because of that language, including but not limited to notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
15. All records supporting your allegation that you have personally been unable to determine the meaning of “within 48 hours before the date he or she intends to leave this state to establish [temporary] residence in another state” as used within Fla. Stat. § 943.0435(7), or have had any difficulty registering or reporting because of that language, including but not limited to notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
16. All records supporting your allegation that you have personally been unable to determine the meaning of “within 48 hours of any change” in a temporary residence as used within Fla. Stat. § 943.0435(4)(a) or have had any difficulty registering or reporting because of that language, including but not limited to notes, notices, e-mails and/or communications with local law enforcement, FDLE or other individuals or entities.
17. All records relating to any instance in which you allege that local law enforcement has posted signs, distributed flyers, gone door-to-door, affixed a decal to your license plate or engaged in other “aggressive notification procedures” to alert others of your presence in

the community, including but not limited to photos, flyers, notices, notes, video, complaints, correspondence and/or e-mails.

18. All records relating to any instance in which you allege that local law enforcement has come to your home, family members' homes and/or neighbors' homes to verify whether you live at your home or have been seen there, including but not limited to photos, flyers, notices, notes, video, complaints, correspondence and/or e-mails.
19. All records relating to any instance in which you allege that any institution of higher education where you were a student or employee was notified of your status as a registrant under Fla. Stat. § 943.0435, including but not limited to notices, web postings, correspondence, e-mails, etc.
20. All records supporting your allegation that a "large hospital would be more likely to bar" you or your wife because of your status as a registrant under Fla Stat. § 943.0435, including but not limited to hospital policies, news articles, research, notices, web postings, correspondence, e-mails, etc.
21. All records of your wife's stay in the hospital alleged in Paragraph 68 of the Second Amended Complaint, including all discharge-related records; invoices or billing records; insurance policies in effect at the time or Medicaid/Medicare records; payment records, and correspondence or e-mails related to the stay, whether with hospital staff, insurers, local law enforcement, FDLE or any other individual or entity.
22. All records relating to any instance in which you allege that you or your family were scammed or targeted for scamming, including but not limited to correspondence, e-mails, phone logs, law enforcement incident reports, and/or communications with local law enforcement, FDLE or any other individual or entity.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon Valerie Jonas, Esq., at valeriejonas77@gmail.com and Todd Gerald Scher, Esq., at tscher@msn.com on April 17, 2020.

Respectfully Submitted,

ASHLEY BROOKE MOODY,
ATTORNEY GENERAL

s/ Shane Weaver
SHANE WEAVER, ESQ.

Senior Assistant Attorney General
Florida Bar No. 907421
Office of the Attorney General
1515 N. Flagler, Suite 900
West Palm Beach, Florida 33401
Tel. (561) 268-5216
Fax (561) 837-5102
shane.weaver@myfloridalegal.com

EXHIBIT 6

Discharge Summary

[REDACTED]

Table Of Contents

Patient Info	Social History	Health Concerns
Reason For Visit	Hospital Discharge Instructions	Goals
Problems	Plan Of Treatment	Assessments
Hospital Discharge Diagnosis	Results	Medical Equipment
Allergies And Adverse Reactions	Vital Signs	Authoring Details
Hospital Discharge Medications	Encounters	Signatures
Procedures	Hospital Course	

Patient Info

Patient Name

[REDACTED]

Date Of Birth

[REDACTED]

Patient Identifiers

[REDACTED]

Sex

Female

Patient Contact

Home:
[REDACTED]

Preferred Language

en

Race

White

Ethnicity

Not Hispanic or Latino

Related Visits

CARE TEAM SEEN

LAURIDSEN DEBORAH
performer (primary care physician)

Lauridsen Deborah I MD
performer (primary care physician)

HEREI
performer

Sierra Rios Kanisha L MD
performer

JAMDI
performer

AUGUISTE LEX MD
performer

Guzman Nicely Y MD
performer

Encounters

Dates

From: 08/5/2019, 19:42
To: 08/7/2019, 13:45

Encounter ID

████████████████████
████████████████████
████████████████████

Reason For Visit

THIRD TRIMESTER FETAL DEMISE

Problems

Postpartum care and examination immediately after delivery	Onset: 28-Mar-2020 13:42 JAMDI
36 weeks gestation of pregnancy	Onset: 28-Mar-2020 9:32 Sierra Rios Kanisha L MD
Preterm labor in third trimester	Onset: 28-Mar-2020 9:32 Sierra Rios Kanisha L MD
Premature rupture of membranes (PROM) affecting second pregnancy	Onset: 28-Mar-2020 9:32 Sierra Rios Kanisha L MD
35 weeks gestation of pregnancy	Onset: 25-Mar-2020 16:03 JAMDI
History of IUFD	Onset: 25-Mar-2020 16:03 JAMDI
Hx of cerclage, currently pregnant	Onset: 25-Mar-2020 16:03 JAMDI
Fetal demise, greater than 22 weeks, antepartum, single gestation	Onset: 5-Jun-2019 16:33 JAMDI
Urinary urgency	Onset: 10-Dec-2018 20:11 Guzman Nicely Y MD

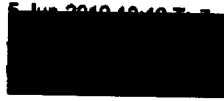
Hospital Discharge Diagnosis

████████████████████
████████████████████

Encounters

Inpatient encounter

Encounter Reason: THIRD TRIMESTER FETAL DEMISE



Discharge Disposition: Discharged to home or self care (routine discharge)

Encounter Diagnosis: 807 , SINGLE STILLBIRTH , LABOR AND DELIVERY COMPLICATED BY FETAL STRESS, UNSPECIFIED , 32 WEEKS GESTATION OF PREGNANCY , LABOR AND DELIVERY COMP BY CORD AROUND NECK, W COMPRSN, UNSP , OTHER SPECIFIED COMPLICATIONS OF LABOR AND DELIVERY , FIRST DEGREE PERINEAL LACERATION DURING DELIVERY , ARCUATE UTERUS , MATERNAL CARE FOR UNSP CONGEN MALFORM OF UTERUS, THIRD TRI , OTHER MENTAL DISORDERS COMPLICATING CHILDBIRTH , MAJOR DEPRESSIVE DISORDER, SINGLE EPISODE, UNSPECIFIED , MATERNAL CARE FOR INTRAUTERINE DEATH, NOT APPLICABLE OR UNSP , MATERNAL CARE FOR INTRAUTERINE DEATH, NOT APPLICABLE OR UNSP

Hospital Course

No Information

Health Concerns

No known health concerns documented

Goals

No Goals Information Available

Assessments

No Assessments Information Available

Medical Equipment

No Medical Equipment Information available

EXHIBIT 7

SPECIALIZED TREATMENT AND ASSESSMENT RESOURCES, P.A.

317 RIVER EDGE BLVD, STE. 202, COCOA, FL 32922
Phone: (954) 646-6141

ERIC A. IMHOF, PSYD
DIRECT TEL: (954) 646-6141
PRESIDENT/MANAGING PARTNER
DIRECTOR OF FORENSIC SERVICES
FLORIDA LICENSED PSYCHOLOGIST
ALABAMA LICENSED CLINICAL PSYCHOLOGIST
VIRGINIA LICENSED CLINICAL PSYCHOLOGIST

KIMBERLY G. SPENCE, PHD
DIRECT TEL: (321) 212-8997
SENIOR EXECUTIVE PARTNER
CLINICAL DIRECTOR OF AUTISM
OUTREACH SERVICES
FLORIDA CERTIFIED PROFESSIONAL EDUCATOR

PSYCHOLOGICAL EVALUATION

Risk Assessment

Name:	John Doe #1	Judicial District:	FL Southern Federal - MIA
Date of Birth:	[REDACTED]	Case #:	John Does vs Swearingen
Age:	45 yrs., 1 mo.	Referred By:	Valerie Jonas, Esq.
Ethnicity:	[REDACTED]	Date of Evaluation:	December 11, 2019
Location:	Specialized Treatment & Assessment Resources	Date of Report:	February 29, 2020
		Evaluator:	Eric A. Imhof, PsyD

REASON FOR REFERRAL:

John Doe #1 was referred by Valerie Jonas, Esq., his attorney, for an assessment of risk for future sexual offending.

SOURCES OF INFORMATION:

See Appendix A.

NOTIFICATION:

Mr. Doe #1 was presented with a copy of the Specialized Treatment and Assessment Resources Authorization for Evaluation and Release of Information form. He was informed of the nature and purpose of the evaluation and the potential limited confidentiality of the report. He was provided an opportunity to ask questions regarding the evaluation and evaluation process. Mr. Doe #1 indicated his willingness to proceed in light of the potential limits of confidentiality and signed the form.

RELEVENT BACKGROUND INFORMATION:

Sexual Offense Related Legal History:

Case # 1:

Charge(s): Count I – Sexual Battery with Minor [REDACTED]
[REDACTED]
Count II – Sexual Battery with Minor [REDACTED]
[REDACTED]

Case#: [REDACTED] Disposition Date(s): 2/19/97
Date of Offense: 11/9/90 – 11/8/92 Disposition: I & II – Adj. Withheld*
Plea: I & II – Guilty* Sentence Date: 4/24/97
Plea Agreement: Yes Sentence: I – 3 weekends BCJ, 3
weekends at Farm
consec. to weekends at
BCJ, & 10 yrs. SO prob.;
II – 3 weekends BCJ, 3
weekends at Farm
consec. to weekends at
BCJ, 10 yrs. SO prob.
concur to Cnt. I.

*Lewd, Lascivious, or Indecent Act Upon a Child

Collateral Information: An Arrest/Notice to Appear Probable Cause Affidavit/Juvenile Referral dated [REDACTED] indicated Mr. Doe #1 fondled the victim’s vagina, had the victim perform oral-penile intercourse on him on four occasions and performed oral-vaginal intercourse on the victim on several occasions. He reportedly rubbed his penis on the victim’s vagina on ten occasions, five of which involved skin to skin contact, and on her anus on at least one occasion. He also reportedly placed his mouth on the breast of the victim. The sexual contact was reported to have begun sometime during the summer of 1990 [REDACTED]

[REDACTED] occurred sometime shortly before or after John Doe’s graduation from high school in 1992].

Mr. Doe #1’s Report: Mr. Doe #1 reported that, at the age of fifteen or sixteen, he was curious about sex and began to engage [REDACTED] in sexual activities. He indicated the offense behavior started with mutual exposure, progressed to fondling, and eventually rubbing his penis on her vagina. He indicated that, on one occasion, she performed oral-penile intercourse on him. Mr. Doe #1 denied penetration of her vagina or anus with his penis or fingers. He reported he began to perceive his actions as inappropriate and he attempted to terminate their interactions; however, he described the victim wanted to continue and threatened to report the interaction to [REDACTED]. Mr.

Doe #1 indicated the sexual activity continued for a brief period of time after and eventually stopped, describing this activity occurred over a total period of a few months. When he was twenty-two, [REDACTED] which led to the investigation. Mr. Doe #1 indicated he was interviewed by law enforcement personnel, made a full confession, and was arrested. Mr. Doe #1 denied the use of bribery, threats, or force to obtain the victim's compliance. Mr. Doe #1 denied being under the influence of substances at the time of the offenses.

Other Sexual Offense Related History:

Mr. Doe #1 denied committing, and records do not indicate, other sexually related offenses, either arrested/charged or not arrested/charged, including voyeurism, exposure, frottage, child molestation, or rape.

Sexual Development:

Mr. Doe #1 reported first learning about sex at the age of twelve or thirteen when [REDACTED] talked to him about sex and showed him a pornographic magazine. He reported participating in formal sex education in school in the fifth grade. Mr. Doe #1 stated his parents did not talk with him about sex and sexuality.

Mr. Doe #1 reported viewing pornographic magazines including Playboy, Hustler, and other magazines which he described as "European," the names of which he could not recall, beginning as described above and continuing until his early twenties. He denied ever collecting magazines. He reported viewing pornographic videos in Video Home System (VHS) and/or Digital Video Disk (DVD) formats in his middle to late twenties. He reported first viewing pornography via the internet in 1994 via mainstream search engines and websites. He denied joining any websites or using search engines on the pornographic websites he visited, describing he would view the content available on the home page of the website. Mr. Doe #1 denied using peer-to-peer networking software to access pornography. He described the content of the material he viewed as depicting heterosexual intercourse in various positions. He indicated that while, he had encountered anime, Bondage/Discipline/Sado-Masochism (BDSM), and bestiality, he denied an interest in these genres. He denied ever viewing or producing child pornography. Mr. Doe #1 acknowledged masturbating while viewing pornography.

Mr. Doe #1 reported beginning to masturbate at age fourteen or fifteen. He indicated he masturbated approximately twice a month as a juvenile. He stated he currently masturbates one time per month. He denied use of sex as a coping mechanism for negative mood states.

Mr. Doe #1 reported his first non-offending partnered sexual experience occurred at the age of twenty-three with a nineteen-year-old girlfriend. He indicated their sexual activities began with fondling and eventually progressed to penile-vaginal intercourse. He reported they had been dating for two months prior to engaging in sexual relations. He described this experience in positive terms.

Mr. Doe #1 reported he engages in sexual thoughts and/or fantasy involving pornographic actresses. He admitted attending strip clubs beginning at the age of eighteen for a total of fifteen occasions and use of the Internet to obtain sexual material as described above. Mr. Doe #1 denied fantasies of, arousal to, or behaviors including use of the Internet to obtain sexual partners; use of telephone sex lines, wearing women's clothing for sexual gratification; use of prostitutes; making obscene phone calls; exposing himself; covertly rubbing against others in a sexual manner; fetishistic sexual activities; sexual activity with children, animals, or corpses; urinating or defecating on his partner or having his partner urinate or defecate on him as a component of sexual relationships; rape; sadism; masochism; or use of force, threats, or manipulation in sexual relations. Mr. Doe #1 reported his most unusual sexual fantasy involved engaging in sexual relations with two women at the same time.

Mr. Doe #1 reported being a victim of sexual abuse at the age of five or six. He indicated the perpetrator, [REDACTED] inserted objects in his anus and had him insert objects into his anus on approximately twelve occasions over the course of one year.

Mr. Doe #1 reported being of a heterosexual orientation and that he has had four sexual partners in his lifetime. He indicated none of these relationships were one-night stands. He denied engaging in infidelity in his relationships. He denied engaging in group sexual activities or partner swapping. He denied a history of problems with arousal, obtaining or maintaining an erection, or premature ejaculation. Mr. Doe #1 denied any concerns regarding the size or appearance of his genitals.

Attitudes/Beliefs Regarding Sexual Offenses:

Mr. Doe #1 generally accepted responsibility for his offenses. When questioned regarding the impact of his behavior on the victim in his offenses, Mr. Doe #1 indicated she may have experienced difficulty trusting men in relationships; however, added she has been married for a long period of time. When questioned directly by the evaluator regarding common distorted beliefs and values regarding women and relationships (i.e., If a woman says "no" does that really mean "yes"?), and sexual relations with children (i.e., Is it alright to have sex with children as long as you are teaching them about sex?), Mr. Doe #1 denied espousing to these beliefs

Non-Sexual Criminal History:

Mr. Doe #1 denied, and available information did not indicate, an additional criminal history as a juvenile or adult.

Attitudes/Beliefs Regarding Non-Sexual Offenses:

He reported generally suspicious attitudes toward law enforcement. He related he has not been treated fairly by the criminal justice system in that he perceives registration as lifetime punishment.

Incarceration History/Institutional & Community Supervision Adjustment: Mr. Doe #1 indicated he was detained overnight following his arrest in the index offense, having been released on bond the following day. He indicated he was sentenced to three weekends in the Brevard County Jail followed by three weekends at the Farm. He denied violating any of the rules while detained or incurring any disciplinary actions. He denied any violations of probation. Court Minutes/Order of Hearing Motion dated April 24, 2002 indicated Mr. Doe #1's probation was terminated on the date of the order, five years early.

Behavioral History:

Mr. Doe #1 reported a history of conduct problems as a child including shoplifting on a couple of occasions beginning at age eleven or twelve when he stole electronics parts of nominal value. Mr. Doe #1 denied a history of running away, fire setting, cruelty to animals, gang involvement, use of weapons in a fight, vandalism, or truancy. He denied engaging in significant risk-taking behaviors or having anger or impulse control problems.

Substance Use:

Mr. Doe #1 reported alcohol consumption beginning at approximately age sixteen. He reported consuming up to one drink every two months on average. He reported marijuana use, up to one time per week, beginning at approximately age twenty-four, and ending at the age of forty-two. Mr. Doe #1 reported experimental use of huffing gasoline as a child on four or five occasions and powdered cocaine, psychedelic mushrooms on four or five occasions, and ecstasy on one occasion as an adult. Mr. Doe #1 denied the use of crack cocaine, amphetamines, or barbiturates. He acknowledged a history of intoxication but denied ever experiencing blackouts, cravings, tolerance changes, consuming more than planned, or withdrawal symptoms. He denied substance use related social, legal, work, or health problems. Mr. Doe #1 denied ever having been an alcoholic or chemically dependent, participating in a substance abuse program, or unsuccessful attempts to discontinue his substance use.

Mental Health & Sex Offender Specific Treatment:

Previous General Treatment: Mr. Doe #1 reported that, in 2014, he attended eight sessions of outpatient premarital counseling. He indicated the main focus of treatment was his placement on the sex offender registry and differing religious backgrounds.

Mr. Doe #1 denied a history of acute inpatient hospitalizations (including Baker Act) or residential treatment. He denied a history of self-mutilatory, suicidal, or homicidal ideation, gestures, or attempts.

Previous Sex-Offender Specific Treatment: Mr. Doe #1 reported he attended weekly, outpatient, group sex offender specific treatment following his conviction. He reported the group leader would typically provide topics of discussion and the group members would discuss the topic. He recalled victim empathy was a focus of treatment and that

he possibly drafted a letter to his victim as part of treatment. He also indicated the group members discussed their sexual attractions which frequently involved attractions to prepubescent aged boys. He recalled feeling unable to relate in these discussions, describing his offense had occurred many years prior and he did not have attractions to prepubescent aged individuals. Mr. Doe #1 indicated the group members discussed the underlying causes of their behavior, describing he identified the reasons for his offense as curiosity and believing his actions were acceptable because of his own victimization by [REDACTED]. He indicated he was successfully discharged after attending the program for two years. A Letter from Spellman Counseling and Consulting, Inc. dated July 8, 1999 indicated Mr. Doe #1 was successfully discharged from the program on the date of the letter.

Progress in Current Treatment: Mr. Doe #1 did not report, and records do not indicate, he is currently participating in psychological or psychiatric treatment.

Educational History:

Mr. Doe #1 reported he completed high school in Titusville, Florida. He denied a history of learning difficulties or attending special education classes, adding he attended advanced placement classes in calculus, physics, chemistry, biology, and government in high school. He described having a small group of friends in school, indicating other students frequently teased and bullied him. However, he denied fighting with other students in school. He reported generally positive relationships with teachers and denied arguing with, or ever hitting, a teacher. He reported being a member of school-sponsored clubs including [REDACTED]. He denied being a member of a sports team. Mr. Doe #1 denied he had ever been suspended or expelled or that he ever failed or repeated a grade. He subsequently attended Florida Institute of Technology where he earned a Bachelor's of Science degree in Electrical Engineering.

Military/Employment/Financial History:

Mr. Doe #1 denied a history of military service. He reported beginning to work at the age of fourteen on weekends and summers in his father's construction business and in general maintenance when his father opened a retirement community. At the age of seventeen or eighteen, he left his father's business to work one summer in the transducer lab at [REDACTED] running experiments and performing electronics repair. In 1994, he began a business with [REDACTED] selling custom built computers, networks, and internet web hosting. He described that, after [REDACTED] left the business, he closed down the internet component and now focuses on computer networking, camera systems, and home automation/access controls. He added he also has a sideline business in specialized electronics repair, electric and mechanical systems engineering for custom built cars, as well as welding and metal fabrication. He added he also maintains some real estate investments, office leasing, and performs remodeling services. Mr. Doe #1 denied ever being unemployed, quitting a job without another job arranged, or being fired. He denied ever failing to make loan or rent payments or that he ever filed for bankruptcy.

Family/Social Background:

Mr. Doe #1 reported he was born in Warwick, Rhode Island on [REDACTED] to an intact family. He relocated to Titusville, Florida with his family at the age of six where he was primarily raised. He reported his parents remain married and reside in [REDACTED]. He described he speaks with them by telephone every two weeks but that they do not have a close relationship. He described his father as a strict disciplinarian who had a temper and would often punish he and his siblings by hitting them with a belt. Mr. Doe #1 reported having one older brother who resides in East Orlando with whom he talks four to five times a year. He reported having a younger sister who resides in Alabama with whom he talks twice a month and a younger brother in Sanford, Florida with whom he speaks with one time per month. He indicated his sister, [REDACTED] resides in Kissimmee, Florida and described he communicates with her on a weekly basis. He added he had a younger sister who died at the age of one. He described having "cordial" relationships with his siblings and that he visits with his sister in Kissimmee a couple times per month and his other siblings approximately three to four times per year. Mr. Doe #1 reported his father had a history of involvement with law enforcement related to assaulting a senior citizen; however, he denied knowledge of a family history of alcoholism, substance abuse, additional criminal history, or mental illness.

Mr. Doe #1 reported being married on two occasions. He married his first wife (age 21 at the beginning of the relationship) in approximately 2004 or 2005 at the age of twenty-nine or thirty. He described the relationship ended after two years because she "...was demanding and conceited." He reported they resided together for a total one and half years. He denied having children from this relationship. Mr. Doe #1 indicated he married his current wife (age 27 at the beginning of the relationship) in 2015 at the age of forty-one. He described the relationship as "good" and that they remain married. He reported they are currently expecting their first child.

Mr. Doe #1 related a satisfactory social life and described his friends as a positive influence. He reported he enjoyed camping, kayaking, hiking, biking, and electronics design in his leisure time. He denied participating in community sponsored sports teams or organizations. He denied having a religious affiliation.

Medical History:

Mr. Doe #1 did not recall discussion of problems with his mother's pregnancy or delivery of him or problems with his attainment of developmental milestones. Mr. Doe #1 reported a history of surgical repair of his intestine at the age of two or three; however, he could not recall additional details. He reported he has been diagnosed with hyperthyroidism; however, he denied other chronic medical problems, illnesses, or hospitalizations. Mr. Doe #1 denied a history of trauma to the head with loss of consciousness or seizures.

BEHAVIORAL OBSERVATIONS:

Mr. Doe #1 was a [REDACTED] interviewed in a private office at Specialized Treatment & Assessment Resources in Cocoa, Florida. He was of above average height and medium build and appeared to be his stated age. He had light colored blading hair. He did not wear facial hair. He was dressed in clean, casual clothing that was appropriate to the situation. His hygiene and grooming were unremarkable. He did not wear eyeglasses. No gross abnormalities were noted in ambulation and he did not evidence any fine motor or coordination problems, tics, or other unusual motoric symptoms. He did not have any scars, tattoos, or piercings that were obvious to the examiner. He was easily engaged and was polite, respectful, and cooperative throughout the interview.

Mr. Doe #1 was oriented to person, place, date, and situation. His eye contact was unremarkable. His speech was normal in tone, rate, and volume and he did not demonstrate significant articulation problems. His immediate, recent, and remote memory appeared to be within normal limits. His thought processes were logical and coherent without evidence of delusions, tangential thinking, preoccupations, or rambling. His mood was within normal limits and he demonstrated a broad range of expressed emotion that was appropriate to the content of material being discussed. He reported feelings of sadness, lack of motivation, and hopelessness since his arrest which last a few days at a time; however, he indicated he typically engages in a recreational activity to alleviate these feelings. Mr. Doe #1 denied past or current symptoms of major depression, mania, psychosis, dissociative episodes, anxiety, Posttraumatic Stress Disorder, obsessions, compulsions, bulimia, anorexia, enuresis, or encopresis. Intellectual functioning appeared to be in the above average range. Attention and concentration were within normal limits. His insight and judgment were within normal limits. Mr. Doe #1 denied recent or current self-mutilatory, suicidal, or homicidal ideation or attempts.

ASSESSMENT RESULTS:

Minnesota Multiphasic Personality Inventory – 2 – Restructured Form (MMPI-2-RF):

Mr. Doe #1 produced a consistent and valid MMPI-2-RF profile. He approached the test instrument in an open and candid manner and there were no indications of over- (fake bad) or under- (fake good) reporting of mental health problems in his protocol.

Mr. Doe #1 produced elevations on the instrument suggesting he does not enjoy social events, avoids social situations, and is likely to be introverted. He is likely to have difficulty forming close relationships, to be emotionally restricted, and will be self-reliant. However, he describes others as well-intentioned and trustworthy, denies cynical beliefs about them, and is possibly overly trusting. There are no indications of physical health, cognitive, emotional-internalizing, thought, or maladaptive externalizing behaviors in his protocol.

Psychopathy Checklist – Revised (PCL-R): The PCL-R is an assessment of psychopathy, a personality construct commonly identified in those individuals who repeatedly violate the law, are grandiose, and demonstrate a superficial and callous interpersonal style lacking in empathy and remorse. Mr. Doe #1's score on the PCL-R is 1 (out of a possible 0 to 40) which places him in the less than 1st percentile when compared to a sample of male inmates. The author of the instrument suggests a cutoff score of 30 to identify those individuals who have a clinically significant degree of psychopathy. The results of the PCL-R suggest Mr. Doe #1 does not possess clinically significant characteristics of psychopathy.

Abel Assessment for Sexual Interest – 3 (AASI-3):

Objective assessment of Mr. Doe #1's sexual interest of twenty-two image categories utilizing measurements taken beyond his awareness indicated an interest in Caucasian and African-American adolescent (14 to 17-year-old) and adult females. For comparison to his objective measures, Mr. Doe #1's self-reported ratings of sexual interest indicated interest in the Caucasian adult and African-American adolescent and adult female categories. It is important to note that normal, adult heterosexual males demonstrate sexual interest in both adolescent and adult females on the instrument and interest in these age categories is considered to be within normal limits.

DIAGNOSTIC IMPRESSIONS:

[REDACTED]

[REDACTED] Available information does not support other mental health diagnoses at this time.

RISK ASSESSMENT:

Actuarial Risk Assessment:

Static-99-R: The Static-99-R is one of the most extensively researched and widely accepted actuarial risk assessment tools designed to assess risk for future sexual offense developed on adult samples. It is noted that Mr. Doe #1 committed the offense as a juvenile, occurring sometime between the ages of fifteen and as late as seventeen (one day before his 18th birthday); however, he was released from the index sexual offense after the age of eighteen (e.g., 22) and his offense appears adult like in nature [REDACTED]. Therefore, with appropriate caveats for

the possibility that the Static-99-R may overestimate risk in Mr. Doe #1's case, the instrument may be applied. Furthermore, as Mr. Doe #1 has been in the community without incident for twenty-four years, exceeding the follow-up duration in the normative samples, his risk is best assessed using the associated risk at his time of release from arrest in the index offense and applying the reduction in risk over time. Accordingly, his score on the Static-99-R at the time of his release back to the community in 1996 is assessed to have been a 2 (out of a possible range of -3 to 12) on this instrument. Recidivism estimates for each score category on the Static-99-R based on updated international samples of sexual offenders released from incarceration since the 1990s revealed significant differences between samples of individuals who were routine correctional offenders and pre-identified as high risk/high need offenders. When compared to the normative sample which most closely matches Mr. Doe #1's history (routine correctional offenders), a score of 2 on the Static-99-R would have placed him in the "Average Risk" category where the associated rate for a future sexual offense from the normative samples is 5.6% (95% confidence interval = 4.8% to 6.5%) at five years post release. Ten-year post release data is not currently available for this sample. Compared to an international sample of offenders, a score of 2 would have placed him in the 48th percentile and in a category where the rate for future sexual offending was equal to the rate of future sexual offending for the typical sex offender (defined as a median Static-99-R score of 2). As noted, research has indicated that, in lieu of any significant involvement with the criminal justice system, risk would have been reduced by approximately half in every five years suggesting that his associated risk probability for a sexual offense was 2.8% in 2001, 1.4% in 2006, 0.70% in 2011, 0.35% in 2016, and will be 0.175% in approximately November 2021.

DYNAMIC RISK ASSESSMENT:

STABLE-2007: The STABLE-2007 measures empirical risk factors that are routinely addressed as part of correctional rehabilitation (i.e., criminogenic needs) for adult males convicted of sexual offences against a child or non-consenting adult. These factors are considered to be more dynamic or changeable over time; however, they are largely stable in nature.

Significant Social Influences: Mr. Doe #1 identified a number of supportive individuals including his wife, family members, and a close friend whom he has known since elementary school. He indicated he maintains regular contact with his family and friend and described them as positive influences in his life.

Capacity for Relationship Stability: Mr. Doe #1 has been married for over four years without periods of separation. There is no indication of domestic violence or significant conflict in the relationship.

Emotional Identification with Children: Mr. Doe #1 did not present with emotional identification with children, interests or activities typically associated with children, or distorted views of relationships between children and adults.

Hostility Toward Women: Mr. Doe #1 identified female friends with whom he shared positive and supportive relationships. He did not express negative or sexist views toward females during the interview. Available information did not reveal any prior convictions involving violence against women.

Social Rejection / Loneliness: Mr. Doe #1 reported feeling lonely and rejected by his family in the past; however, he denied current feelings of rejection. He indicated he feels rejected by his community due to placement on the registry. He indicated he has been restricted from social media applications, refused entry to local theme parks, and his driver's license and passport are stamped with a sex offender designation. He added there are locations in his community he is not permitted to enter or pass through.

Lack of Concern for Others: Available records did not indicate lack of concern for others. In the interview, Mr. Doe #1 demonstrated empathic and caring statements and attitudes towards others.

Impulsive Acts: Mr. Doe #1 presents with a stable lifestyle and denied engaging in thrill seeking behaviors or impulsive acts.

Poor Cognitive Problem-Solving Skills: Mr. Doe #1 did not demonstrate current difficulties with identifying life problems and developing and implementing plans to address challenges in his life.

Negative Emotionality / Hostility: Mr. Doe #1 does not have convictions for aggressive behavior and does not currently present with hostility toward others. Mr. Doe #1 did not express a sense of grievance or victimization.

Sex-Drive / Preoccupation: Mr. Doe #1 denied, and available information did not indicate, thoughts or behaviors indicative of problematic sex drive or sexual preoccupation.

Sex as Coping: Mr. Doe #1 denied, and available information did not indicate, use of sex as a coping mechanism for negative emotional states.

Deviant Sexual Interests: Mr. Doe #1 was convicted of sexual activity [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Cooperation with Supervision: Mr. Doe #1 successfully completed a ten-year period of sex offender probation in the index offense having been terminated five years early

on April 29, 2002. He has subsequently complied with the requirements of the sex offender registry. He presented with a generally positive attitudes toward law enforcement and the criminal justice system.

Mr. Doe #1 scored a 1 on the instrument placing him in the "Low" risk category. The only category suggesting a moderately increased current risk was Social Rejection with Mr. Doe #1 describing he experiences a sense of exclusion and rejection by his community due to placement on the sex offender registry. His score would suggest an overall reduction in risk from risk levels assessed using actuarial methods described above.

Release/Relapse Prevention Plans:

Mr. Doe #1 reported he plans to continue to reside with his wife in east Orlando and maintain his current employment. He did not articulate a relapse prevention plan, describing he did not perceive the need for a current plan and that he keeps vacations and travel at a minimum to avoid problems. Mr. Doe #1 indicated within five years when his expectant child attains school age, he may relocate where he will not be subject to registration which would restrict him from attending events at her school. Within ten years, he plans to remain married and have another child. Mr. Doe #1 identified his risk to commit a sex offense in the future as zero on a scale of zero to ten (zero being the lowest).

SUMMARY OF FINDINGS:

Mr. Doe #1 is currently post-conviction on two counts of Lewd, Lascivious, or Indecent Act Upon a Child, having been sentenced to three consecutive weekends in the Brevard County Jail followed by three consecutive weekends at the Farm and ten years sex offender probation. While a diagnosis of a Pedophilic Disorder was considered based on the facts underlying the criminal case, this diagnosis is not rendered due to lack of unequivocal, conclusive evidence that Mr. Doe #1 has an enduring pattern of deviant sexual interests or behaviors involving prepubescent aged individuals or forced sexual activity. He does not qualify for other mental health diagnoses at this time.

It is important to recognize the diagnosis does not determine the course of the disorder or risk for future behavior; therefore, assessment of risk factors and comparison to known samples of recidivists with similar characteristics is critical and, in Mr. Doe #1's case, indicates he was an average risk to commit a sexual offense at the time of his release back to the community to be at risk in 1996. Additionally, assessment of several dynamic risk factors known to exacerbate or mitigate risk for sexual offenders suggests a further overall reduction in his assessed risk for future sexual offending. He is also noted have two years of participation in, and successful completion of, a sex offender treatment program which is associated with up to 37% percent reduction in the likelihood to commit a sexual offense in the future. Lastly, as described above, research has indicated that, in lieu of any significant involvement with the criminal justice system, risk is reduced by half approximately every five years beginning from the time of release back to the community, which in Mr. Doe #1's case occurred in approximately November 1996. He has been in the community for an approximate

twenty-four years without any noted inappropriate sexual behaviors indicating a significant reduction in his risk as assessed by actuarial methods.

Given Mr. Doe #1's very low risk for future sexual offenses based on actuarial risk assessment procedures accounting for his time offense free in the community, assessment of a number of dynamic variables which indicate an overall further reduction in his risk, successful completion of sex offender treatment, and his having been in the community for an approximate twenty-five years without incident, his current risk for future sexual offending is negligible with probability estimates falling below 0.35%.

The above opinions and recommendations are provided based on available information and, should additional information become available, are subject to revision. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

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Eric A. Imhof, PsyD
Licensed Psychologist (Florida - PY 6061)
Licensed Clinical Psychologist (Virginia - # 0810002517)
Licensed Clinical Psychologist (Alabama - # 1635)

EXHIBIT 8

United States District Court

Southern District of Florida

Miami Division

John Does, Nos. 1, 3, 5, 6, 7, & Jane Doe,

As next friend on behalf of John Doe 6

Plaintiffs

v.

Case No. 18-cv-24145-KMW

Richard L. Swearingen, in his official capacity

as Commissioner of the Florida Department

of Law Enforcement

Defendant

Expert Report of Matt DeLisi, Ph.D.

- I. Opinions: The opinions that I would expect to offer at trial in this matter are included in the attached report.
- II. Sources: For this report, I used the case affidavit (18-cv-24145-KMW), plaintiff experts' reports by Drs. Socia, Levenson, Hanson, and Prescott, and all references listed at the end of my report.
- III. Exhibit: Pursuant to Rule 26 of the Federal Rules of Civil Procedure, a list of my publications between 2010-2020 and expert witness activities in the last four years constitute Exhibit 1 and my full curriculum vitae constitutes Exhibit 2.
- IV. Compensation: I am compensated at the rate of \$305 per hour for research time and report writing and \$450 per hour for court testimony and deposition. Total compensation not to exceed \$40,000.

V. Cases in which I have testified or been deposed within the last four years:

State of Colorado v. Glen Law Galloway, 4th Judicial District, El Paso County Colorado. I was the primary examiner for the prosecution in this capital case and was scheduled to testify at the sentencing phase, but my services were not required once the jury failed to reach a death verdict.

I have also worked as a consultant on the following cases but was not deposed and have not, at this writing, been scheduled to testify for any cases that have not reached disposition:

People of the State of Colorado v. Marco Garcia-Bravo

State of Arizona v. Bobby Charles Purcell

United States v. Brandon Council

Idaho v. Renfro

Equal Rights Center v. Mid-America Apartment Communities, Inc. and Mid-America Apartments, L.P.

Robert Jones v. Leon Cannizzaro et al.

I declare under penalty of perjury that the report is true and correct to the best of my knowledge and belief. Executed on May 14, 2020.

A handwritten signature in black ink, appearing to read "Matt DeLisi", with a long horizontal flourish extending to the right.

Matt DeLisi, Ph.D.

May 14, 2020

Shane Weaver, Esq.

Senior Assistant Attorney General

Office of the Attorney General

Ft. Lauderdale/West Palm Beach Civil Litigation Bureau

1. Qualifications

My full curriculum vitae appears in Exhibit 2. I am Distinguished Professor and College of Liberal Arts and Sciences Dean's Professor (an endowed professorship), Coordinator of Criminal Justice, and Faculty Affiliate with the Center for the Study of Violence at Iowa State University. My scholarly record includes over 400 publications including 31 books and over 13,300 citations. Several qualifications are particularly important regarding my insights into the dark figure of crime and specifically the dark figure of sexual crime and the empirical features of criminal careers.

First, I have interviewed approximately 5,000 criminal defendants and read an estimated 50,000-75,000 criminal histories, presentence investigation reports, and legal documents relating to criminal offenders. From 1995 to 2000, I worked as a pretrial services officer for the 20th Judicial District at the Boulder County Jail in Colorado. The work experience involved interviews with arrestees to gather information about residency, employment history, substance use and psychiatric history, and criminal history to set bond on eligible defendants and prepare a report for the judge, district attorney, and defense counsel at first appearance/arraignment. The central component of these bond interviews involved the defendant's self-reported criminal

history that was corroborated and supplemented by local, state, and national criminal records including National Crime Information Center record of arrest and prosecution (RAP) sheets.¹ Although some defendants would minimize their criminal history or refuse to divulge any information since official records were available, a major substantive theme that emerged was that offenders reported far more—at times exponentially more—criminal offenses than their official arrest records would indicate. Some of these disclosures, even for serious violent crimes, never resulted in police contact. In addition to this practitioner experience, I have also interviewed a range of criminal defendants in a variety of contexts. These include interviews with jail inmates in Onondaga County New York and psychopathy assessments of high-risk offenders on federal supervised release in the Southern District of Iowa.

Second, since 2014, I have worked as a research specialist with United States Probation and Pretrial Services in the Southern District of Iowa and conducted a variety of research projects. Two of these projects focused on sexual offenders and have resulted in a variety of publications.² In the federal criminal justice system, a relatively common offense is possession or receipt of child pornography. These cases involve defendants with heterogeneous offending histories, psychopathology, and criminogenic risks and needs and at times jurisdictions struggle

¹For detailed information on the NCIC system and the data it provides, see <https://www.fbi.gov/services/cjis/ncic>.

² Drury, A., Heinrichs, T., Elbert, M., Tahja, K., DeLisi, M., & Caropreso, D. (2017). Adverse childhood experiences, paraphilias, and serious criminal violence among federal sex offenders. *Journal of Criminal Psychology*, 7(2), 105-119; DeLisi, M., Caropreso, D. E., Drury, A. J., Elbert, M. J., Evans, J. L., Heinrichs, T., & Tahja, K. M. (2016). The dark figure of sexual offending: New evidence from federal sex offenders. *Journal of Criminal Psychology*, 6(1), 3-15; DeLisi, M., Drury, A., Elbert, M., Tahja, K., Caropreso, D., & Heinrichs, T. (2017). Sexual sadism and criminal versatility: does sexual sadism spillover into nonsexual crimes?. *Journal of Aggression, Conflict and Peace Research*, 9(1), 2-12; DeLisi, M., Drury, A. J., Caropreso, D., Heinrichs, T., Tahja, K. N., & Elbert, M. J. (2018). Antisocial Personality Disorder with or without antecedent conduct disorder: The differences are psychiatric and paraphilic. *Criminal Justice and Behavior*, 45(6), 902-917.

with the most appropriate manner of supervision ranging from a restrictive containment approach to less restrictive supervision. The central finding from my research on this population using various self-reported data from polygraphed sexual history disclosures, treatment records, presentence investigation reports, and other relevant case files is that prior contact offending among correctional clients convicted of sexual offenses—even putatively voyeuristic offenses such as possession of child pornography—is extensive. Indeed, the most prolific sexual abusers in our data did not have official criminal history and thus, the dark figure of their sexual violence would have been unknown without collection of self-reported data.

My work with federal practitioners has effectively replicated my prior pretrial services experiences in the sense that various data sources show that voluminous criminal offending occurs that is not captured by official records. Evidence for the dark figure of offending is relatively common in discourse between correctional clients and their supervising officers. For instance, correctional clients develop rather close relationships with supervising officers and divulge surprisingly frank admissions of criminal activity that never resulted in arrest.³ Research on federal correctional clients including those who have perpetrated sexual offenses has resulted in numerous presentations to practitioner audiences including Article III federal judges, the United States Probation and Pretrial Services Chiefs Research Group, United States Attorneys, federal public defenders, and a variety of federal correctional and law enforcement agencies.

Third, although I publish in multiple content areas, the area in which I am most known is for the study of pathological criminal offenders including those who perpetrate the most serious

³ There are important differences about the federal criminal justice system relative to state criminal justice systems. In the federal system, an indictment is much less likely to be dismissed compared to state court systems and various community-based sanctions, such as probation, are significantly underutilized federally. Instead, the overwhelming majority of federal defendants are sentenced to the Bureau of Prisons and then receive a post-conviction community sentence known as supervised release (federal parole was abolished in 1987).

crimes, such as homicide offenses and sexual offenses. My scholarly work on the most violent, severe, and recalcitrant offenders bears on a variety of other content areas that have facilitated my consulting experiences in civil and criminal litigation. Primarily, my consulting experience relates to issues of future dangerousness in capital sentencing, correlates and development of criminal careers, developmental psychopathology, and correlates of crime. My research accomplishments have also figured into policy discussions including my testimony to the United States Senate Judiciary Committee in November 2013 regarding the potential recidivism consequences of large-scale release of federal prisoners,⁴ and my invited meeting with former United States Attorney General Jeff Sessions in March 2017 regarding an employment opportunity to serve as Director of the National Institute of Justice.

Taken together, my qualifications present a research paradigm that is global and panoramic in the study of crime and the dark figure of crime, is empirical and dispassionate, and eschews self-identified labels (e.g., “sex offender researcher” or “sex offender registry researcher”) that run the risk of allowing advocacy and activism to contaminate the research enterprise.

2. Opinions of the Plaintiff’s Experts

First, I want to disclose that I have never met any of the plaintiffs’ experts (Drs. Socia, Levenson, Prescott, and Hanson) and thus have no personal, subjective experiences that would compromise this report. The only contact I’ve had with these scholars is in the course of the professional duties of editing a journal (i.e., plaintiffs’ experts authored or reviewed a paper). Even in this context, I do not recall ever having interaction with Dr. Prescott. Second, I respect

⁴ Testimony available at United States Senate Committee on the Judiciary: <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=5fa8a4fcfd512d43b3816f1ee70590ab> and CSPAN: <http://www.c-spanvideo.org/mattdelisi>

Drs. Socia, Levenson, Prescott, and Hanson for their research accomplishments and have cited their scholarship in my own publications. Although I've read all of their reports, my report focuses primarily on the issue of the dark figure of crime and sexual offending and thus the attendant focus is primarily Dr. Socia's report.

Dr. Socia expressed three opinions, these are:

Statement 1: More than 90% of sex crime arrests involve individuals who do not have prior sex crime convictions and thus would not be listed on the sex offender registry at the time of the offense.

Statement 2: The widely held public belief in a "frightening and high" sexual recidivism rate is not supported by research evidence, and that specific statistic is a myth resulting from junk science.

Statement 3: Estimates of the dark figure of sex crimes and the dark figure of sexual recidivism "does not provide any estimates that can be generalized to the current populations of individuals listed on the sex offender registry, and rather, are usually based on estimates of self-reported crimes prior to conviction from samples of very high-risk groups that cannot generalize beyond the original studies."

I disagree with all three statements due to the conflicting and overwhelming science on the dark figure of offending and specifically on the dark figure of sexual offending that are provided next.

3. My Opinions

Statement 1: Dr. Socia's own research and publication record conflict with his statements 1 and 2 and unequivocally refutes his position in statement 3. In his report, Dr. Socia advances that 90-95% of all sex crime arrests involve individuals without prior sex crime

convictions and thus would not be on the sex offender registry at the time of offense. This opinion is based on findings from the Sandler, Freeman, and Socia (2008) study.⁵ There are logical problems with this position that undercut Dr. Socia's thesis. First, if ~5% of sex offenses, rapes, or child molestations could be attributed to offenders known to the criminal justice system and thus subject to community notification and registries, that suggests these policies are *effective* at reducing recidivism because the social control mechanisms inherent to these policies appear to mollify sexual offending whereas the 95% of sexual crimes attributed to first-time offenders reveals the sheer volume of offending that typifies offenders without community and correctional oversight.

Second, an academic criminological viewpoint is that social control policies designed for sexual offenders are universally negative. Such a position reveals poor ecological validity and suggests little experience with actual offenders. For correctional clients who are earnestly attempting to desist from crime and rejoin society, there is acknowledgment that the various forms of oversight that the correctional system imposes serve as an accountability check. In our federal sexual offender data, this oversight can be effective at limiting offender access to populations of sexual interest (e.g., children), at monitoring sobriety to prevent relapse and potential triggering events that previously led to sexual offending, and, in terms of complying with provisions of registration and notification, facilitating the offender's ability to navigate and comply with conditions of his sentence.⁶

⁵ Sandler, J. C., Freeman, N. J., & Socia, K. M. (2008). Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law. *Psychology, Public Policy, and Law*, 14(4), 284-302.

⁶ For information on the federal Sex Offender Registration and Notification Act (SORNA), see <https://smart.gov/sorna.htm>. It is substantively similar to the Florida Sex Offender Registration Law.

Third, Dr. Socia's own writing highlights that the research upon which his opinions are based is tenuous, fragile, invalid, and unreliable. On page 6 of his report, Dr. Socia writes,

“Overall, the research on sexual recidivism suggests an official recidivism rate of between 5% and 15% over 5 years, when measured as rearrests [references omitted].

Obviously, the official rate of sexual recidivism among registrants is not the same as the actual rate of recidivism, as there are sex crimes that registrants commit but do not result in arrest. However, estimating the ‘actual’ rate of sexual recidivism is a difficult task, and prior research has not been able to provide reliable estimates that can generalize to registrants as whole (sic)[reference omitted].”⁷

This is a startling admission. Without explicitly using the words “dark figure of sexual offending,” Dr. Socia advances that any estimates of sexual offending based on official data are in no way equivalent to the true incidence of sexual offending, which is of course much larger. Although Dr. Socia dismissively writes that prior estimates of the dark figure of crime and sexual offending are difficult to produce and unreliable, the current author's report provides ample research (in statements 2 and 3) that has accomplished such.

But Dr. Socia's awareness of the dark figure of sexual offending and implicitly an understanding that sexual offenders have perpetrated far more acts of sexual violence and other crimes than their criminal records would indicate does not end there. More problematic for Dr.

⁷ Throughout his report, Dr. Socia draws a contrived and artificial distinction between sex offender “registrants” and presumably other sex offenders. On page 10 of his report, Dr. Socia opines that “any estimates generated from these prior high-risk, non-generalizable samples cannot, in turn, be generalized to reflect all ‘registrants’ and/or the population of individuals with prior sex crime convictions.” Yet all of the plaintiffs are registrants because they are convicted sexual offenders, and a significant amount of prior research does not use correctional samples that are presumably high-risk, but instead relies on community and even university samples to quantify the dark figure of sexual offending. These data are explored in statement 3 of this report.

Socia's thesis is Sandler, Freeman, and Socia's (2008) acknowledgment on page 298 of their study:

"The major limitations of this study, as with most studies that use official data sources, are those of data availability. The most notable of these is that the outcome measure, arrest for a registerable sex offense, was only an approximation of the true behavior of interest: sexual offending. As stated earlier, sexual arrest was chosen as the proxy to sexual offending as, of the variables available, it was most likely to show the impact of registration and notification. However, it would be very useful for a study to replicate the analyses presented here with a true measure of offending."

This too is a startling admission. In two places in this passage, Sandler, Freeman, and Socia (2008) refer to the actual volume of sexual offending as the "true" measure of offending. This suggests that the data that Socia and colleagues employ—that ignores the true amount of offending—are false. Moreover, the generalizability concerns about the dark figure of sex crimes that Dr. Socia expressed in statement 3 do not appear limited to "very high-risk groups" but instead appear representative of even his own scholarship.

Statement 2: The dark figure of crime can be estimated empirically using numerous data sources and analytical techniques and this corpus of research cumulatively demonstrates that official records of crime are a mere sampling of the actual amount of crime that occurs. In terms of a definition and general parameters, the dark figure of crime refers to the amount of undetected crime that occurs in a population where although an offense occurred, the event did not result in law enforcement or judicial intervention. It is broadly understood that even normative forms of antisocial behavior that are perpetrated during

adolescence, such as underage drinking of alcohol, occur frequently; however, these acts of deviance rarely result in police contact.⁸ The dark figure of crime relates to *all* forms of criminal activity and is not unique to sexual offending. To date, scientific research substantiates the dark figure of crime as seen in various manifestations of antisocial conduct.⁹

In effect, the dark figure of crime represents the incidence of crimes that the offender “got away with” and is seen methodologically in the differences between official records of crime, such as record of arrest and prosecution (RAP) sheets, victimization data, and, most crucially, offender self-reports. This is shown using a Venn diagram in Figure 1.

⁸ Moffitt, T. E. (1993). Adolescence-limited and life-course-persistent antisocial behavior: a developmental taxonomy. *Psychological Review*, 100(4), 674-701; Moffitt, T. E. (2018). Male antisocial behaviour in adolescence and beyond. *Nature Human Behaviour*, 2(3), 177-186.

⁹ Biderman, A. D., & Reiss Jr., A. J. (1967). On exploring the "dark figure" of crime. *The Annals of the American Academy of Political and Social Science*, 374(1), 1-15; Skogan, W. G. (1977). Dimensions of the dark figure of unreported crime. *Crime & Delinquency*, 23(1), 41-50; Tcherni, M., Davies, A., Lopes, G., & Lizotte, A. (2016). The dark figure of online property crime: Is cyberspace hiding a crime wave? *Justice Quarterly*, 33(5), 890-911; Pezzella, F. S., Fetzer, M. D., & Keller, T. (2019). The dark figure of hate crime underreporting. *American Behavioral Scientist*, doi:10.1177/0002764218823844; Braga, T., De Castro-Rodrigues, A., Di Folca, S. M. S., & Gonçalves, R. A. (2019). How dark are dark figures? Official and self-report rates of inmate-on-inmate victimization. *Victims & Offenders*, 14(6), 745-757; Fisher, B. (2000). *The sexual victimization of college women*. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

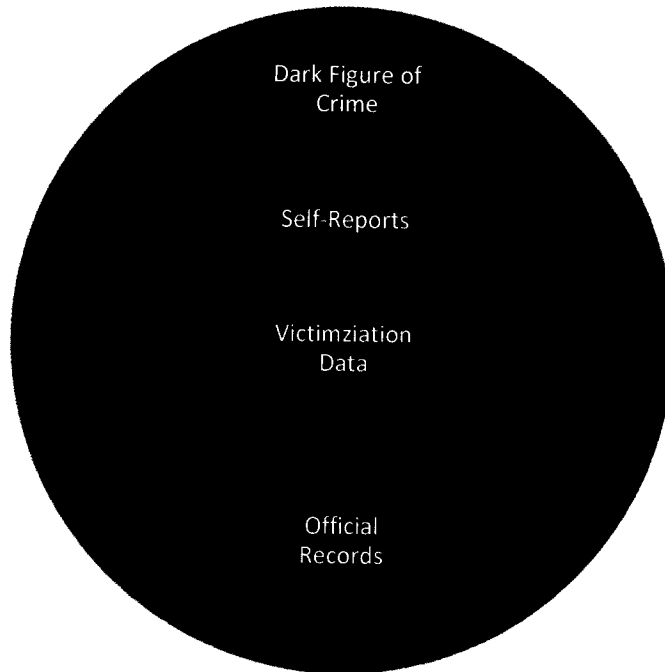


Figure 1: The Dark Figure of Crime and Various Data Sources

Although the dark figure of crime pertains to all criminal offenses, it is particularly pronounced for sexual offending due to a variety of offense, victim, and criminal justice processing reasons. First, the nature of sexual victimization is fundamentally different than other forms of criminal victimization due to the sensitive, intrusive, and intimate valence of sexual contact. More than other forms of criminal harm, sexual victimization produces a *mélange* of emotions spanning embarrassment, guilt, shame, anger, depression, and self-derogation. For these reasons, victims are less likely to report their victimization relative to a crime that does not produce these emotional sequelae, such as auto theft, for instance. To illustrate, a 25-year study of sexual offenders in Canada found that 70% to 77% of child molestation victimizations, 98% of exhibitionism victimizations, but only 9% of violent non-sexual victimizations were

unreported. Based on these estimates, most sexual crime goes unreported relative to non-sexual offenses.¹⁰

Second, sexual abuse occurs in many forms and is inflicted across the life course. Some victims of sexual aggression including infants and toddlers who lack expressed language cannot report their abuse, and other children, adolescents, and adults at times lack the resources, maturity, and understanding to not only process their victimization, but also to realize that it could or should be reported. In the event of intrafamilial sexual abuse, there is the additional burden of family dynamics that can complicate the reporting of sexual abuse. To illustrate, in the Langevin et al. (2004) study, nearly 72% of intrafamilial child molestations were unreported. Third, taken together, these conditions contribute to justice system processing that are informed by valuations about the prosecutorial strength of sexual assault cases that tend to be negative. Negative assessments about the prosecutorial potential of a sexually-based offense are based on assessments of victim legitimacy, corroborating evidence, and dismissal of sexual charges in favor of collateral offense charges that result in case attrition.¹¹

National-Level Data and the Dark Figure of Crime

As represented in Figure 1, diverse data sources provide disparate estimates of the amount of crime in the United States. Several examples illustrate this. The most comprehensive

¹⁰ Langevin, R., Curnoe, S., Fedoroff, P., Bennett, R., Langevin, M., Peever, C., ... & Sandhu, S. (2004). Lifetime sex offender recidivism: A 25-year follow-up study. *Canadian Journal of Criminology and Criminal Justice*, 46(5), 531-552.

¹¹ Frazier, P. A., & Haney, B. (1996). Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. *Law and human behavior*, 20(6), 607-628; Bouffard, J. A. (2000). Predicting type of sexual assault case closure from victim, suspect, and case characteristics. *Journal of Criminal Justice*, 28(6), 527-542; Spohn, C., & Holleran, D. (2001). Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Quarterly*, 18(3), 651-688; Martin, P. Y., & Powell, R. M. (1994). Accounting for the "second assault": Legal organizations' framing of rape victims. *Law & Social Inquiry*, 19(4), 853-890; Kingsnorth, R. F., MacIntosh, R. C., & Wentworth, J. (1999). Sexual assault: The role of prior relationship and victim characteristics in case processing. *Justice Quarterly*, 16(2), 275-302; .

official crime data source is the Uniform Crime Reporting (UCR) Program published annually by the Federal Bureau of Investigation. According to the most recent year of complete data in 2018, there were 139,380 rapes using the new criteria (involving the sexual assault of a male or females) and 101,151 rapes using the legacy definition (involving the forcible rape of an adult female victim).¹² The most comprehensive victimization data source is the National Crime Victimization Survey (formerly known as the National Crime Survey) which is a nationally-representative survey of American households but it only includes persons age 12 years or older as participants. Thus, all victimization of children age 11 years and younger is excluded. In 2018, the NCVS indicated 734,630 rape/sexual assaults in the United States.¹³ In terms of raw national data for rape/sexual assault, the ratio of victimizations to arrests is about 7 to 1. And we know that this is itself a downwardly biased estimate because the NCVS does not measure sexual abuse of younger children.

Official and victimization data have various strengths and weaknesses and fortunately the UCR and NCVS are generally convergent in terms of quantifying the various forms of crime and the basic correlates of who is involved in crime, that is in terms of demographic characteristics, such as age, race, and sex. For crimes such as robbery, burglary, and motor vehicle theft, correlations between UCR and NCVS/NCS data have been shown to range between $r = .56$ to $.91$, which are strong correlations. For rape; however, the correlations between official and victimization data sources range between $r = .01$ to $.38$, significantly smaller correlations

¹² Federal Bureau of Investigation. (2020). <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-1>;

¹³ Morgan, R. E., & Oudekerk, B. A. (2019). *Criminal victimization, 2018*. Washington DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

indicating divergence.¹⁴ Similar effects are also seen in other well known criminological data sources. For example, in Widom's longitudinal study of abused and neglected children followed into adulthood, the lowest convergence between official and self-report measures of crime and thus the largest dark figure was for rape.¹⁵

Although the UCR and NCVS provide annual estimates of the sexual assault occurring in the United States, it is obvious that methodological features of these data significantly undercount the true incidence of sexual violence. As indicated earlier, this is most glaring in the NCVS where sexual victimization by persons age 11 years or younger is not even considered. Fortunately there are additional national-level data files that shed empirical light on the magnitude of the dark figure of sexual offending. One important national-level data source is the National Survey of Children's Exposure to Violence (NatSCEV) which is a telephone survey of 4,503 youth. Summary reports of NatSCEV data indicate a lifetime prevalence of sexual victimization of between 5.1% and 20.2% for males and 26.6% and 34.9% for females.¹⁶ These prevalence estimates underscore how frankly common sexual victimization is in the United States and how rarely it culminates in official data.

Panel Studies and the Dark Figure of Crime

¹⁴ Gove, W. R., Hughes, M., & Geerken, M. (1985). Are uniform crime reports a valid indicator of the index crimes? An affirmative answer with minor qualifications. *Criminology*, 23(3), 451-502.

¹⁵ Maxfield, M. G., Weiler, B. L., & Widom, C. S. (2000). Comparing self-reports and official records of arrests. *Journal of Quantitative Criminology*, 16(1), 87-110.

¹⁶ Finkelhor, D., Turner, H. A., Shattuck, A., & Hamby, S. L. (2013). Violence, crime, and abuse exposure in a national sample of children and youth: An update. *JAMA Pediatrics*, 167(7), 614-621; Finkelhor, D., Shattuck, A., Turner, H. A., & Hamby, S. L. (2014). The lifetime prevalence of child sexual abuse and sexual assault assessed in late adolescence. *Journal of Adolescent Health*, 55(3), 329-333; Finkelhor, D., Turner, H. A., Shattuck, A., & Hamby, S. L. (2015). Prevalence of childhood exposure to violence, crime, and abuse: Results from the national survey of children's exposure to violence. *JAMA Pediatrics*, 169(8), 746-754.

Panel studies that are prospective and longitudinal provide important insights into offending continuity because participants are followed for many years and there are multiple points of data collection. Panel studies commonly employ both official records of criminal activity (e.g., arrests, convictions, incarcerations) and self-reports which permits direct quantification of the dark figure of offending. The Cambridge Study in Delinquent Development is a panel study that followed 411 London males from age 8 years to 48 years and research found that self-reported criminal offending was 34 times greater than convictions for offending, that the onset of antisocial conduct was significantly earlier than court records indicate, and that career duration or span was longer based on self-reports compared to convictions.¹⁷ Put another way, the ratio of self-reported offenses to convictions was on average 34 to 1.

Others studies furnish substantively similar findings. Longitudinal analyses of data from the Pittsburgh Youth Study that included both violent and property offending found that 22 offenses were reported for every conviction.¹⁸ Analyses of the National Youth Survey (now known as the National Youth Survey Family Study) found that approximately one in 20 whites and nearly one in 10 African Americans self-report more than 200 criminal offenses annually despite most youth having zero arrests. For predatory crimes against persons that includes various forms of sexual aggression, about 2% of whites and 4% of African Americans reported more than 55 offenses per year.¹⁹

¹⁷ Farrington, D. P., Ttofi, M. M., Crago, R. V., & Coid, J. W. (2014). Prevalence, frequency, onset, desistance and criminal career duration in self-reports compared with official records. *Criminal Behaviour and Mental Health*, 24(4), 241-253.

¹⁸ Theobald, D., Farrington, D. P., Loeber, R., Pardini, D. A., & Piquero, A. R. (2014). Scaling up from convictions to self-reported offending. *Criminal Behaviour and Mental Health*, 24(4), 265-276.

¹⁹ Elliott, D. S., & Ageton, S. S. (1980). Reconciling race and class differences in self-reported and official estimates of delinquency. *American Sociological Review*, 45(1), 95-110.

Dr. Socia intimates that the notion that criminal offenders commit many more offenses than their official record would indicate is based on junk science and that empirical studies of the dark figure of sexual offending are based on enriched, pathological samples that are fundamentally different than the plaintiffs. In contrast, the foundational official and victimization data sources on crime in the United States confirm that the dark figure of crime is substantial, and the idea that much sexual violence occurs in the population is also seen in prevalence surveys such as the NatSCEV, and panel studies from multiple places in the United States and United Kingdom. Cumulatively, all of these data sources show that the ratio of self-reported to official crimes is alarmingly high and thus the dark figure of crime is empirically large.

Statement 3: The dark figure of sexual offending is extensive evidenced by multiple studies employing assorted data sources and divergent analytical approaches. The diversity of this research allows a triangulated quantification of how much sexual aggression exists that is not captured by official records.

Since the dark figure pertains to all forms of crime, one should also expect that the volume of sexual violence is numerically much larger than official estimates would indicate. Numerous studies confirm this. A seminal investigation of men with paraphilic disorders unearthed a massive amount of sexual offending that is not encompassed by official records. In their sample, 224 heterosexual child molesters reported 4,435 victims, 153 homosexual child molesters reported 22,981 victims, and 126 rapists reported 882 victims. These correspond to average victim counts of 19.8, 150.2, and 7, respectively.²⁰ Interestingly, Dr. Levenson bristles at these estimates by noting that the extraordinary number of sexual assaults by the most prolific offenders artificially inflates the mean and that the median number of victims, between one and

²⁰ Abel, G. G., Becker, J. V., Mittelman, M., Cunningham-Rathner, J., Rouleau, J. L., & Murphy, W. D. (1987). Self-reported sex crimes of nonincarcerated paraphiliacs. *Journal of Interpersonal Violence*, 2(1), 3-25.

five, should be used instead—a point also acknowledged by that study’s authors. Unfortunately, Dr. Levenson seems to miss the broader substantive point which is a massive amount of unreported sexual assaults occurs even in populations without contact with the criminal justice system.

Many studies reveal the dark figure of sexual offending. A study of institutionalized sexual offenders including 37 rapists reported 66 official charges but 433 self-reported rapes that corresponded to mean estimates of 1.8 official victims and 11.7 self-reported victims, respectively.²¹ An important point to consider is these studies employed samples of both non-institutionalized and institutionalized persons which undermines Dr. Socia’s notion that estimates of the dark figure of sexual offending are based on enriched, pathological samples. The former point about the most prolific offenders inflating the mean as a measure of central tendency also undermines Dr. Socia’s contention in the next section that these quantitative estimates are illusory.

Evidence for the dark figure of sexual offending also emanates from samples of community participants often in university settings. Lisak and Miller (2002) studied 120 males who self-reported rape perpetration that were selected from a larger sample of 1,882 male university students. Of the 120 male students who self-reported at least one rape, 63.3% reported that they committed multiple rapes involving either multiple victims or multiple assaults against the same victim. In addition, 58.3% of males reported committing other acts of violence including battery, child abuse, sexual assault of a child, or other forms of sexual assault. The 120 males reported 1,225 violent acts including 483 rapes, 53 sexual assaults less than rape, and 319

²¹ Weinrott, M. R., & Saylor, M. (1991). Self-report of crimes committed by sex offenders. *Journal of Interpersonal Violence*, 6(3), 286-300.

sexual assaults of children.²² Similarly, a national-level study of university students indicated the incidence of sexual assault is 10-15 times larger than official estimates provide.²³ Other studies of university students uncovered significant evidence of what was referred to as “hidden” child molestation with 3-4% of males and females self-reporting sexual abuse of a child.²⁴

A study of juvenile sexual offenders compared prevalence estimates for bestiality using a self-report measure the Multiphasic Sexual Inventory-II (MSI-II) to self-reports elicited by polygraph. Compared to a recent meta-analysis that had reported a prevalence estimate of 14% for bestiality, the self-report study reported prevalence estimates of 37.5% on the MSI-II and 81.3% on the polygraph. This suggests the dark figure of bestiality is twofold to sixfold larger than official records indicate.²⁵ Drawing on data from all individuals consecutively admitted to a Canadian federal penitentiary for a sex crime between 1994 and 2000, Bouchard and Lussier (2015) estimated that the dark figure of sexual offending is 20.5 times larger than official records reveal.²⁶

²² Lisak, D., & Miller, P. M. (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims*, 17(1), 73-84.

²³ Koss, M. P., Gidycz, C. A., & Wisniewski, N. (1987). The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology*, 55(2), 162-170.

²⁴ Fromuth, M. E., Burkhart, B. R., & Jones, C. W. (1991). Hidden child molestation: An investigation of adolescent perpetrators in a nonclinical sample. *Journal of Interpersonal Violence*, 6(3), 376-384; Fromuth, M. E., & Conn, V. E. (1997). Hidden perpetrators: Sexual molestation in a nonclinical sample of college women. *Journal of Interpersonal Violence*, 12(3), 456-465.

²⁵ Schenk, A. M., Cooper-Lehki, C., Keelan, C. M., & Fremouw, W. J. (2014). Underreporting of bestiality among juvenile sex offenders: polygraph versus self-report. *Journal of Forensic Sciences*, 59(2), 540-542; Seto, M. C., & Lalumiere, M. L. (2010). What is so special about male adolescent sexual offending? A review and test of explanations through meta-analysis. *Psychological Bulletin*, 136(4), 526-575.

Mathesius and Lussier (2014) examined the dark figure of crime among a sample of 332 Canadian federal male sex offenders that were convicted of their first sexual offense and produced several critical findings. First, “first time” sexual offenders engaged in sexual offending for 7.5 years before their sexual aggression resulted in official arrest. Second, offenders averaged 2.4 victims (SD = 6.2) with a range of 1 to 91 victims. Third, a unique feature of their study is they measured the number of sex crime events that occurred against the victim. The median number of sex crime events was 10, the mean was 216.9 (SD=513.8), and the range was 1 to 5,524. These data dramatically quantify the dark figure of sexual offending: some sexual assault victims are abused once while others are abused thousands of times.²⁷

The current author’s study of 119 federal sexual offenders employed self-reported sexual offending data elicited by polygraph sessions. This sample was derived from a 5-year census of 225 federal correctional clients who had a sexual offense in their criminal career (the entire population was not used because some clients lacked polygraph self-report data). The most common conviction offenses for the 119 offenders were possession or receipt of child pornography or violation of the Sex Offender Registration and Notification Act or SORNA. The latter point is critical because this is the identical status—sex offender registrant—as the plaintiffs and the precise population that Dr. Socia opines is wholly different than the plaintiffs. The study produced several important findings regarding the dark figure of sexual offending. Correctional clients self-reported a mean of 3.69 contact victims (SD = 5.42) and a range of 0 to 24 victims. In terms of the official arrest charges for rape or sexual abuse the mean was 1.11 (SD

²⁶ Bouchard, M., & Lussier, P. (2015). Estimating the size of the sexual aggressor population. In A. Blokland & P. Lussier (eds.), *Sex offenders: A criminal career approach* (pp. 351-371). Malden, MA: John Wiley & Sons.

²⁷ Mathesius, J., & Lussier, P. (2014). The successful onset of sex offending: Determining the correlates of actual and official onset of sex offending. *Journal of Criminal Justice*, 42(2), 134-144.

= 1.50) and the range was 0 to 7 sexual offenses. The ratio of self-report to official victims is 3.32.

Additionally, 34 offenders among the 119 had zero official sex crimes, but self-reported a total of 148 contact victims. Among the seven most prolific sexual abusers, four did not have official criminal history and their instant conviction offense was possession or receipt of child pornography. Although the study furnished information about the dark figure of sexual offending in terms of victims, there is a broader question about how many sex crime events these victims survived. Based on the Mathesius and Lussier estimates of sex crime events—which are also based on federal sexual offenders—these 34 offenders potentially imposed a minimum of 148 sex crimes, a median of 1,480, a mean of 32,101, and a maximum of 827,552 sex crimes.²⁸ These results corroborate other polygraph studies that show dramatic increases in the self-reported perpetration of sexual offending among participants many of whom have no official criminal record.²⁹ On this matter, Seto, Hanson, and Babchishin's (2011) meta-analysis of contact sexual offending among online sexual offenders found that approximately one in eight or 12% had official records of contact sexual offending, but more than one in two or 55% admitted to contact sexual offending during self-reports.³⁰ Thus, if meta-analytic research by one of the plaintiffs' experts indicates that more than one in two online sexual offenders self-reported contact

²⁸ DeLisi, M., Caropreso, D. E., Drury, A. J., Elbert, M. J., Evans, J. L., Heinrichs, T., & Tahja, K. M. (2016). The dark figure of sexual offending: New evidence from federal sex offenders. *Journal of Criminal Psychology*, 6(1), 3-15.

²⁹ Bourke, M. L., & Hernandez, A. E. (2009). The 'Butner Study' redux: A report of the incidence of hands-on child victimization by child pornography offenders. *Journal of Family Violence*, 24(3), 183; Bourke, M. L., Fragomeli, L., Detar, P. J., Sullivan, M. A., Meyle, E., & O'Riordan, M. (2015). The use of tactical polygraph with sex offenders. *Journal of Sexual Aggression*, 21(3), 354-367; English, K., Jones, L., Patrick, D., & Pasini-Hill, D. (2003). Sexual offender containment: Use of the postconviction polygraph. *Annals of the New York Academy of Sciences*, 989(1), 411-427.

³⁰ Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men with online sexual offenses. *Sexual Abuse*, 23(1), 124-145.

offenses, it is unclear how the estimates from the current author's study could be construed as so off base. In fact, the findings from Seto et al. (2011) and DeLisi et al. (2016) are convergent in showing significant evidence for a dark figure of sexual offending.

Regarding the DeLisi et al. (2016) estimates of total sex crime events, which were prudent and provided mean, median, lower bound, and upper bound estimates, Dr. Socia was highly critical and referred to them as based on "unsupported logical leaps, outright logical fallacies, or junk science statistics" on page 7 and "wild guesses" that are "so ridiculously implausible that they cannot be taken as anything other than fantasy" on page 14 of his report. To demonstrate this, Dr. Socia writes that it would take an individual committing one sexual offense per day 66.7 years to achieve the upper bound estimate of sexual offending. Unfortunately Dr. Socia's argumentation conveys a poor understanding of the sexual offender literature—even research that he cites—and a naïve portrayal of sexual offenders that is inconsistent with the realities of sexual offending. In other words, Dr. Socia's report and its insights into the antisocial conduct of sexual offenders again lacks ecological validity. The Mathesius and Lussier study had a mean of 216.9 sex crimes occur *per victim* and the most prolific sexual abusers imposed 5,524 victimizations. These would involve offenders that perpetrate multiple incidents of sexual aggression and/or perpetrate multiple incidents of sexual aggression against multiple victims on a daily or weekly basis. Such a litany of sexual offending and victimization is fully consistent with multiple threads in the sexual victimization literature.³¹

³¹ Walker, H. E., Freud, J. S., Ellis, R. A., Fraine, S. M., & Wilson, L. C. (2019). The prevalence of sexual revictimization: A meta-analytic review. *Trauma, Violence, & Abuse, 20*(1), 67-80; Manly, J. T., Cicchetti, D., & Barnett, D. (1994). The impact of subtype, frequency, chronicity, and severity of child maltreatment on social competence and behavior problems. *Development and Psychopathology, 6*(1), 121-143; Neumann, D. A., Houskamp, B. M., Pollock, V. E., & Briere, J. (1996). The long-term sequelae of childhood sexual abuse in women: A meta-analytic review. *Child Maltreatment, 1*(1), 6-16; Browne,

Most recently, investigators used a probabilistic simulation analytical approach that included information on victim self-reports about sexual abuse, offender self-report data about the number of victims per offender, and modeled multiple assumptions about the likelihood of being convicted of a new sexual offense. The study employed information from four prior studies of sexual offenders: one with a 31-year observation period and 40% reported observed reoffending prevalence, one with a 25-year observation period and 25% reported observed reoffending prevalence, one with 5-year observation period and 15% reported observed reoffending prevalence, and one with a 5-year observation period and 5% reported observed reoffending prevalence. They found that the actual sexual reoffending rate was dramatically higher than the low rates that are often cited by sex offender researchers—including the plaintiffs' experts. Thus, the actual reoffending rate of study one that reported 40% recidivism ranged from 47% to 95%. The actual reoffending rate of study two that reported 25% recidivism ranged between 32% to 90%. The actual reoffending rate of study three that reported 15% ranged between 19% to 82%. The actual reoffending rate of study four that reported 5% recidivism ranged between 7% to 58%.³² The important substantive conclusion to draw is that reoffending estimates are not static but instead are *estimates* that can be significantly lower or higher depending on sample composition and the types of sexual offenders therein.

A., & Finkelhor, D. (1986). Impact of child sexual abuse: A review of the research. *Psychological Bulletin*, 99(1), 66-77.

³² Scurich, N., & John, R. S. (2019). The dark figure of sexual recidivism. *Behavioral Sciences & the Law*, 37(2), 158-175. The four original studies are: Hanson, R. K., Steffy, R. A., & Gauthier, R. (1993). Long-term recidivism of child molesters. *Journal of Consulting and Clinical Psychology*, 61(4), 646-652; Prentky, R. A., Lee, A. F., Knight, R. A., & Cerce, D. (1997). Recidivism rates among child molesters and rapists: A methodological analysis. *Law and Human Behavior*, 21(6), 635-659; Hanson, R. K., & Bussiere, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. *Journal of Consulting and Clinical Psychology*, 66(2), 348-362; Hanson, R. K., Lunetta, A., Phenix, A., Neeley, J., & Epperson, D. (2014). The field validity of Static-99/R sex offender risk assessment tool in California. *Journal of Threat Assessment and Management*, 1(2), 102-117.

Finally, research using a bogus pipeline procedure also indicted a large dark figure of sexual aggression in a community sample. The bogus pipeline procedure is a laboratory tool where participants are informed that their responses are being monitored by a device that can detect deception similar to a polygraph. Bogus pipeline protocols generally increase honest reporting and reduce deceptive reporting by participants. A recent study found that men in the bogus pipeline condition were 6.5 times more likely to report endorsement of sexual assault perpetration relative to males in the standard testing condition. These results indicate that the use of sexual violence is far more prevalent than standard self-report procedures indicate.³³

In sum, evidence for the dark figure of sexual offending is seen in studies of persons with paraphilic disorders and those without paraphilic disorders, in studies using U.S. and non-U.S. data, among university students and institutionalized sexual offenders, among juveniles and adults, and among correctional clients under state and federal supervision. Moreover, these studies were conducted by a variety of researchers beyond the small, cloistered roster of sex offender researchers that the plaintiffs' experts repeatedly cite.

Statement 4: Evidence for recidivism among sexual offenders is far more substantial than the plaintiffs' experts suggest not only when considering the dark figure of sexual offending but also when considering newer data from national-level prisoner releases. Dr. Socia writes that the recidivism rate for sexual offenders is between 5% to 15% over a 5-year period. This 5% to 15% recidivism rate is written as if it is criminological axiom. It is not. The Scurich and John study made clear that the recidivism rate, which is really the prevalence of reoffending, is highly dependent on a variety of considerations relating to victim self-reports,

³³ Strang, E., & Peterson, Z. D. (2020). Use of a bogus pipeline to detect men's underreporting of sexually aggressive behavior. *Journal of Interpersonal Violence*, 35(1-2), 208-232.

offender self-reports, and the likelihood of conviction. Moreover, recidivism can be defined in a variety of ways (e.g., police contacts, arrests, convictions, violations, reincarcerations) and to include diverse forms of antisocial behavior (e.g., sexual crimes, non-sexual violent crimes, property crimes, public-order crimes, drug crimes, among others). And most importantly: we know from the scientific research on the dark figure of crime that the recidivism rate—however it is defined—is at best a sampling of the true incidence of sexual recidivism. For instance, Brouillette-Alarie and Lussier’s (2018) overview of risk assessment of sexual offenders advised, “One of the limitations of risk assessment studies concerns the way recidivism (the dependent variable) is measured. Indeed, offenders are usually considered recidivists when new charges or convictions are added to their criminal file during the follow-up period. Therefore, recidivism rates can hardly be considered true reoffense rates, as an important number of crimes do not get reported to authorities, or do not end up in convictions after being reported.”³⁴ Their opinion is substantively congruent with Dr. Socia’s statements in his expert report and Sandler et al. (2008) study that because of the dark figure of sexual offending, official estimates of offending or recidivism are merely the tip of the iceberg.

The most recent national-level data indicate that sexual offenders in the United States pose tremendous risks for continued offending and noncompliance with the criminal justice system and are thoroughly counter to the plaintiffs’ experts’ theses. In their Bureau of Justice Statistics report, Alper and Durose (2019) examined the official recidivism of 20,195 prisoners who served a sentence for rape/sexual assault that were released from custody in 2005 and

³⁴ Brouillette-Alarie, S., & Lussier, P. (2018). The risk assessment of offenders with a history of sexual crime: Past, present and new perspectives. In P. Lussier & E. Beauregard (eds.), *Sexual offending: A criminological perspective* (pp. 349-375). Abingdon, UK: Routledge, p. 359.

followed through 2014, a 9-year follow-up. The data source included sexual offenders released from prisons from 30 states. In the first year after release, 29% of sexual offenders were rearrested and at the 9-year follow-up, 67% of sexual offenders were rearrested for a new criminal offense. Put another way, based on official data, which are a mere sampling of actual criminal activity based on dark figure of crime estimates, *two of three sexual offenders reoffend*. Just three years after release, nearly half of all sexual offenders had been rearrested. Although sexual offenders are three times more likely than other released prisoners to recidivate for a new sexual offense, the recidivism report indicates sexual offenders are generally versatile and serious offenders overall. More than 28% of sexual offenders recidivated for a new violent offense the most common of which were for assault (18.7%), rape/sexual assault (7.7%), robbery (3.8%), and homicide (0.2%). More than 24% of released sexual offenders are rearrested for a new property crime, nearly 19% for a new drug crime, and nearly 59% for a public-order crime.³⁵

The criminal careers of sexual offenders although heterogeneous are generally indicative of sustained involvement in multifarious crimes. To illustrate, 47.6% of sexual offenders in the United States had 5 or more prior arrests with a median of 6.3 and mean of 4. This is important because 5 or more arrests/police contacts is the standard criterion for habitual or career criminality.³⁶ Empirically, nearly one in two sexual offenders released from prison in the United States meets criteria for career criminality, a condition where the cardinal feature is life-long continuity in antisocial conduct and failure to comply with correctional interventions. Overall,

³⁵ Alper, M., & Durose, M. R. (2019). *Recidivism of sex offenders released from state prison: A 9-year follow-up (2005-2014)*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

³⁶ Edelstein, A. (2016). Rethinking conceptual definitions of the criminal career and serial criminality. *Trauma, Violence, & Abuse, 17*(1), 62-71.

the nationally representative report makes clear that as a population, a significant proportion of convicted sexual offenders—the same status as the plaintiffs—have extensive antisocial behavioral histories, engage in multiple forms of crime, and relative to other prison releasees, are three times more likely to recidivate with a new sexual offense.

Statement 5: The lawsuit contains superficial information about the plaintiffs and their criminal careers and psychopathology, but the information that is provided is itself indicative of increased likelihood for reoffending. In the lawsuit, John Doe 1 is a convicted sexual offender for an incest offense against his sister and the offender was reared in a “household wracked by abuse and neglect.” The suit alleges that John Doe 1 has committed no offense since the original sexual assault. John Doe 3 is a convicted sexual offender who fondled a 14-year old boy and is described as “never since committing any other offense.” John Doe 5 is a convicted sexual offender for possession of child pornography. It is written that he “has never been accused or found guilty of inappropriate contact with a child, physical or online, has never since committed any offense, and poses virtually no risk of sexual reoffense.” John Doe 5 is identical to the majority of subjects in the DeLisi et al. (2016) study of federal sexual offenders that found that 69% reported a contact victim even though many had no official criminal history. Moreover, the most prolific sexual abusers in those data were child pornography possession cases with no official criminal history—precisely the profile of John Doe 5. John Doe 6 is a convicted sexual offender whose offense is attempted kidnapping. John Doe 7 is a convicted sexual offender who was convicted of rape (described as “nonconsensual sexual intercourse” in the lawsuit) and is described as “not since committed nor been arrested for another offense and demonstrably poses virtually no risk of sexual reoffense.”

Biographical details in the lawsuit are extremely limited but there is a recurrent theme of disadvantage and adversity and this theme is explicit for John Doe 1. Ample research employing nationally representative samples of young adults from Sweden³⁷, a 30-year cohort of childhood sexual abuse victims in Australia³⁸, longitudinal samples of adults who were abused and neglected during childhood³⁹, samples of federal sexual offenders⁴⁰, and statewide samples of juvenile justice system-involved youth⁴¹ collectively show that various forms of abuse, neglect, and deprivation occurring during childhood are positively associated with criminal offending during adulthood. Two of the plaintiffs' experts—Drs. Socia and Levenson—have also published on the aggravating effects of childhood adversity among sexual offenders and the attendant risks for reoffending. In their study using a nonrandom convenience sample of 740 sexual offenders, adverse childhood experiences were significantly associated with sexual crime, prostitution, nonsexual assault or battery, property crime, nonperson, nonproperty crime, driving crime, and drug-related crime.⁴² Substantively, Dr. Socia and Dr. Levenson's study of adverse childhood

³⁷ Howell, K. H., Cater, Å. K., Miller-Graff, L. E., Schwartz, L. E., & Graham-Bermann, S. A. (2017). The relationship between types of childhood victimisation and young adulthood criminality. *Criminal Behaviour and Mental Health*, 27(4), 341-353.

³⁸ Papalia, N., Ogloff, J. R., Cutajar, M., & Mullen, P. E. (2018). Child sexual abuse and criminal offending: Gender-specific effects and the role of abuse characteristics and other adverse outcomes. *Child Maltreatment*, 23(4), 399-416.

³⁹ Maxfield, M. G., Weiler, B. L., & Widom, C. S. (2000). Comparing self-reports and official records of arrests. *Journal of Quantitative Criminology*, 16(1), 87-110.

⁴⁰ Drury, A., Heinrichs, T., Elbert, M., Tahja, K., DeLisi, M., & Caropreso, D. (2017). Adverse childhood experiences, paraphilias, and serious criminal violence among federal sex offenders. *Journal of Criminal Psychology*, 7(2), 105-119.

⁴¹ Fox, B. H., Perez, N., Cass, E., Baglivio, M. T., & Epps, N. (2015). Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders. *Child Abuse & Neglect*, 46, 163-173.

⁴² Levenson, J. S., & Socia, K. M. (2016). Adverse childhood experiences and arrest patterns in a sample of sexual offenders. *Journal of Interpersonal Violence*, 31(10), 1883-1911.

experiences and sexual offenders and the broad mix of crimes that they perpetrate is fully consistent with the Bureau of Justice Statistics report of approximately 20,000 sexual offenders released from prisons in 30 states.

That the plaintiffs have a prior criminal offense—particularly a nefarious crime like sexual assault—is also prognostic of increased likelihood of offending that contradicts the lawsuit’s statements that the plaintiffs have never engaged in crime since their original sexual assault. Here, Dr. Hanson cites studies by Kurlychek, Brame, and Bushway (2006) and Blumstein and Nakamura (2009) in his report (§§ 39-46) to putatively show that the risk of reoffense by the plaintiffs and offenders like them is virtually zero. Yet both of these studies explicitly acknowledged that the risk of offending for a prior offender is *always* higher than those without an official arrest record. Specifically, using the 1958 Philadelphia birth cohort data, Kurlychek, Brame, and Bushway (2006, p. 498) found that “statistically, we must conclude that persons with a prior police contact or arrest do not, at any time in the given follow-up period, become completely indistinguishable from those without a prior contact in regard to risk of offending.” Furthermore, they conclude, “although the hazard rate for persons with a prior offense rapidly approaches the lower hazard rate of persons without a prior record, at the 5-year follow up, the two hazard rates are still separated by over 1 percentage point: a difference that achieves statistical significance in this population” (2006, p. 499). In their data, 92.3% of their sample had zero arrests at age 18 suggesting that having mere single arrest was enough to distinguish them behaviorally from non-offenders.⁴³

⁴³ Kurlychek, M. C., Brame, R., & Bushway, S. D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5(3), 483-504.

Using data from over 88,000 individuals that experienced their first arrest in 1980 in New York State, Blumstein and Nakamura (2009) compared the offending careers of persons that were arrested for robbery, burglary, or aggravated assault. They found that persons arrested for violent offenses had the highest probability of subsequent arrest, followed by those arrested for property offense, and ultimately by those that were never arrested. The arrest probability for offenders only *approximates* that probability of arrest 23 years after the initial arrest, and the likelihood of arrest for a non-offender is *always* lower than an offender. At 7 years after the initial arrest, the arrest probability for violent offenders is .06, the arrest probability for property offenders is 04, and the arrest probability for non-offenders is .01.⁴⁴

Conclusion

In an insightful study that involved interviews with 91 child sex offenders, the following was provided about the dark figure of sexual offending: “The number of victims was alarming; 70% of the men had committed offenses against 1 to 9 victims, 23% had committed offenses against 10 to 40 children, 7% had committed offenses against 41 to 450 children. However, it should be pointed out that the 7% of offenders who reported a high number of victims gave a different high number when interviewed 6 months later.”⁴⁵ The latter sentence is open to multiple interpretations relating to the validity or stability of self-reports by chronic offenders, and the plaintiffs’ experts likely would quibble with these self-reports. But the quotation also reveals that some sexual offenders victimize so many victims that they cannot even keep the numbers straight.

⁴⁴ Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47(2), 327-359.

⁴⁵ Elliott, M., Browne, K., & Kilcoyne, J. (1995). Child sexual abuse prevention: What offenders tell us. *Child Abuse & Neglect*, 19(5), 579-594, quotation from p. 584.

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

JOHN DOES, et al.,

Plaintiffs,

v.

Case No. 18-24145-CV-KMW

RICHARD L. SWEARINGEN,

Defendant.

**PLAINTIFF JOHN DOE 7'S RESPONSES TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

PLAINTIFF JOHN DOE 7, by and through the undersigned counsel, serves his Answers to Defendant's First Set of Interrogatories pursuant to Fed. R. Civ. P. 33, and states as follows:

1. State your full legal name, any other names by which you have been known, your Social Security Number and date of birth.

[REDACTED]

2. State all permanent residences at which you have lived and the dates you lived at each address.

Plaintiff objects pursuant to Fed. R. Civ. P. Rule 26(b)(2) as overbroad and disproportional with respect to all past residential addresses. With respect to residential addresses since he was first required to register, Defendant has better access to that information than Plaintiff, having received and maintained this information as reflected in his response to Plaintiff's Second Request for Production no. 4.

3. State the name, address and dates of attendance for each educational institution attended, including any vocational or technical training, as well as any certificates, degrees or professional licenses obtained.

Miami-Dade College, BS in Information System Technology and Software Development, BS degree 2017.

4. State your employment history, including self-employment, and for each job held identify the employer and address, the dates of employment, the job title and description, direct supervisor(s), starting and ending salaries, and the reason(s) why the employment ended if it is not ongoing.

Plaintiff objects to this interrogatory pursuant to Fed. R. Civ. P. Rule 26(b)(2) as overbroad and disproportional insofar as it seeks to elicit information not calculated to lead to the discovery of admissible evidence. With regard to compensation information, Plaintiff has made no claim for compensatory or punitive damages, nor any claim to lost employment or wages as the result of his registration status. With respect to identity, location and dates of employment, Defendant has better access to that information that Plaintiff does, having collected and maintained that information contemporaneously as reflected in its response to Plaintiffs' Second Request for Production no. 4.

5. State the name, age and current address of any current or former spouses, children or step-children, and siblings and their spouses.

Plaintiff has been married for 13 years to [REDACTED], with whom he shares a daughter [REDACTED], both of whom reside with him. Plaintiff objects to that portion of the interrogatory seeking information about former spouses pursuant to Fed. R. Civ. P. 26(b)(2) as overbroad and disproportional. There are no claims or defenses to which the information could conceivably lead to the discovery of admissible evidence. Furthermore, the information is unwarrantably intrusive of his own privacy and that of his former spouses.

6. State the offense(s) and statute number that resulted in your registration under Fla. Stat. § 943.0435, the date(s) of the offenses, your age at the time of the offense, the age of your victim(s), the adjudicating court, the adjudication and the terms of, your sentence.

Date of offense 9/12/94, Sexual battery/no injury likely, date of offense 9/12/94, plaintiff's age 28, victim's age twenties, [REDACTED], 12 1/2-year prison sentence. Doe7 was released after 7 1/2 years for good behavior without supervision.

7. Excluding the offense(s) listed in your answer to Interrogatory #6, state whether you have ever been convicted of any crime punishable by death or imprisonment in excess of 1 year, or that involved dishonesty or a false statement regardless of the punishment. If so, state as to each conviction the specific crime, the date and place of conviction, and case number.

[REDACTED]

[REDACTED]

8. State whether you have ever been arrested for a failure to comply with Fla. Stat. § 943.0435, and if so, state the date of the arrest, the arresting law enforcement agency, the subsection allegedly violated, the court and case style if charges were brought, whether you used lack of notice of the statutory requirements as a defense to the arrest, and the manner in which the arrest was resolved if it is not still pending (e.g., no charges filed, nolle prosequi, conviction, etc.).

No.

9. State whether you have ever challenged Fla. Stat. § 943.0435 or any provision thereof as unconstitutional either under the federal or Florida constitution prior to this lawsuit, and if so, state the substance of the challenge, whether the proceedings were civil or criminal, the style of the case, the location and court in which it was brought, the date of adjudication if it is not still pending, and the outcome.

[REDACTED]

10. Excluding any proceeding identified in your answer to Interrogatory #9, state whether you have been a party to any civil action in the past 10 years, and if so, state the subject matter, the case style, the location and court in which it was brought, the date of adjudication if it is not still pending, and the outcome.

Mortgage foreclosure action in 2011, based on mortgage company's failure to realize that mortgage had already been paid when plaintiff sold the home. Action quickly dismissed.

11. State all incidents of lost housing or housing opportunities that you allege were caused by the registration or reporting requirements of Fla. Stat. § 943.0435, and for each incident state the type of housing (e.g., apartment, condominium, single-family home, etc.); the address of the housing; the name of the housing community or development if applicable; the name(s) of any landlord, manager, realtor, loan officer or any other housing representative that you communicated with; and any reason(s) given for the lost housing or housing opportunity.

For 6-7 months in 2003 following release from prison, Plaintiff resided with his cousin [REDACTED], who was renting a townhouse at [REDACTED]. Someone who resided in the same complex called the police to report that Plaintiff was a sex offender who had not reported this address. The police responded to the residence and ascertained that Plaintiff had in fact

[REDACTED]

reported this address. The same neighbor then made a complaint to the Townhouse Association about having a registrant residing there. As a result of this complaint, the owner of the townhouse forced Plaintiff's cousin to throw him out.

12. State all incidents in which you encountered any emergency or unforeseen situations that prevented you from reporting as required by Fla. Stat. § 943.0435, and if so, state the date and nature of the incident, the location where it occurred, the location where you were required to report, whether you communicated the situation to law enforcement or FDLE, any response you received, and whether you were arrested for a violation of the statute.

Plaintiff invokes his Fifth Amendment privilege against self-incrimination with respect to information seeking admissions to failure or inability to report due to emergency or unforeseen situations.

13. State all incidents in which you have been unable to travel internationally, to another state or within the state of Florida due to the registration or reporting requirements of Fla. Stat. § 943.0435, and if so, state the date the travel was canceled or abbreviated, the destination and purpose of the travel, the reason you were unable to comply with the reporting requirement (if applicable), whether you communicated the situation to local law enforcement or FDLE, and any response you received.

In 2012-13, a friend invited plaintiff to join him on a trip to Mexico. Although Plaintiff had entered Mexico without difficulty in 2007, this time he learned Mexico would prohibit his entry based on his Florida registration, so the trip was cancelled. In December 2019, he purchased a 3-day pass to Universal Studios for himself, his wife and their daughter. On the day they were supposed to leave in the afternoon, through fear of violating the 3-day temporary residence reporting requirement, and uncertainty about its terms, he cancelled the first day of his hotel reservation, abbreviating his visit by one day and only stayed 2 days.

14. State all incidents of alleged "aggressive notification" of your registrant status that you or your immediate family have allegedly been subjected to, and for each type of notification state the form (flyer, e-mail, home visit by law enforcement, door-to-door notices, etc.), the content of the notification, the persons or entities providing the notification, and, if you did not witness the notification first-hand, the manner in which you learned of it, including any person(s) who informed you.

In 2009-2010, he was informed by his friend [REDACTED], whose mother worked at an elementary school in Kendall, that a flyer with Plaintiff's photo and identifying information was posted at that school.

15. State all incidents in which you allege that your employment or business has been damaged by having to register or report under Fla. Sta. § 943.0435 or "aggressive notification" of that status, including but not limited to revenue and personal income figures, specific lost accounts, store closure(s), bankruptcies, etc., and for each damage listed state all reasons you believe it is attributable to your registrant status and/or "aggressive notification" as opposed to any other reason.

While working for attorney [REDACTED] due to the constraints of the Internet identifier provision in effect at the time, Plaintiff was precluded from using his own log-ins and passwords for legal research websites, due to the potential for discovery that the attorney had a registrant in his employ. Similarly, the requirement to report websites to FDLE diminished the amount of work he was able to do in part-time jobs held while completing college.

16. For the past 10 years, state how many times you reported in-person pursuant to any requirement of Fla. Stat. § 943.0435, and for each report state the reason for the report, the name and address of the entity to which you reported, the distance you traveled for the report, whether you were unable to report for any reason and had to return later that day or on another day, and if so, the reason(s) you were unable to report.

Plaintiff objects pursuant to Fed. R. Civ. P. Rule 26(b)(2) as overbroad and disproportional, where Defendant maintains information about the numbers and reasons for in-person reports, having produced it in response to Plaintiffs' second request for production of documents no. 4, and where Plaintiff did not retain personal records of his reports over the past 10 years.

When plaintiff reported from his then-home to the Miami-Dade County Sheriff, it took him between 20 and 30 minutes each way. When plaintiff reports from his current residence to the Palm Beach County Sheriff, it takes him approximately 10 and 15 minutes each way. Last year, a deputy at PBSO told him to return on another day to report for re-registration, preferably in the morning and mid-month.

17. State all incidents in which you allege that you or your family were "harassed and threatened" because of your status as a registrant under Fla. Stat. § 943.0435, and for each incident state the date; the form of the harassment or threat (e.g., verbal, letter, e-mail, etc.); the wording or substance of the harassment or threat; the person(s) perpetrating the harassment or threat if known; whether local law enforcement was contacted about the harassment or threat, and if so, the name of the law enforcement agency and officer involved, the substance of any response you received, and any case numbers assigned. (Note: this Interrogatory is requesting specific incidents and not generalized feelings of being harassed or threatened by the community at large.)

See response to Interrogatory No. 12. In addition, in approximately 2008, on two occasions, police officers attempting to conduct verification visits arrived at his home between 6:30 and 6:45 a.m., a time when he was customarily at the gym. On the second occasion, his wife called him in the presence of the police officers so that they would be able to verify that he was at the gym but continued to reside with his wife and mother-in-law at his registered address, [REDACTED]. The police refused to speak with him on the phone. They threatened his wife and mother-in-law that they would arrest him if he was not home during their next verification attempt. Plaintiff then began going to the gym an hour earlier than was customary. When his daughter was in kindergarten, the school sent him a letter barring his entry and directing him to wait outside in his car while dropping her off or picking her up. During a trip to Disneyworld in June 2013, notwithstanding the family's customary annual pass, he, his wife and their daughter

were detained by private security after a county sheriff had already, at the direction of the security issued a trespass warning. Disney's private security detained Doe 7 and his family for hours in their paid hotel room before he was told never to return, on pain of trespass arrest, and the family was escorted from the property.

18. State all specific incidents in which you allege that you or your family were allegedly "shunned and shamed" because of your status as a registrant under Fla. Stat. § 943.0435, and for each incident state the date(s), the persons or entities who shunned or shamed you; the form and substance of the shunning or shaming; and any responsive actions you took such as confronting the person(s), canceling plans, changing residences or jobs, etc. (Note: this Interrogatory is requesting specific incidents and not generalized feelings of being shunned or shamed by the community at large.)

See responses to Interrogatories Nos. 12 and 17.

19. State all incidents in which you allege that any institution of higher education where you were a student or employee was notified of your status as a registrant under Fla. Stat. § 943.0435, including the date; the name of the institution; whether you were a student or employee; who at the institution informed you of the notification; the dates and substance of all communications with the institution about your registration; and whether you were denied enrollment or employment, or had conditions placed upon your enrollment or employment, as a result of the registration.

While obtaining his 2017 BS degree from Miami-Dade College, disclosure of his status required him to see an Assistant Dean twice, one on enrollment to the AA program, and again on admission to the 4-year degree program. On August 26, 2014, Florida International University refused to admit him to its 4-year degree program based upon his status.

20. State whether you have ever treated with any doctor, mental health professional or facility related to the offense for which you are required to register under Fla. Stat. § 943.0435, or for any condition that you allege results from your registration under the statute (e.g., depression, anxiety disorder, etc.), and if so, state whether the treatment was court-ordered; the type of treatment (e.g., cognitive, behavioral, hormonal, faith-based, etc.); the name and location of each doctor, therapist or medical facility you treated with; the dates of treatment; any diagnoses given; any medications prescribed; and the reason(s) the treatment was discontinued if it is not ongoing.

Plaintiff objects pursuant to Rule 26(b)(2), Fed. R. Civ. P., on the basis that this interrogatory seeks information that has no conceivable bearing on any claims or defenses insofar as he has not claimed psychological or physical injury arising from his registration, nor sought any damages arising from unclaimed psychological or medical conditions.

21. State all dates on which you had any interaction with local law enforcement or FDLE regarding an actual or potential failure or inability to register or report under Fla. Stat. 943.0435, including the location of the interaction; the law enforcement agency and

officer(s) involved; the length of time of the interaction; the substance of the interaction; whether you had ever previously communicated with the law enforcement agency or officer(s) or FDLE regarding the same issue; and if so, the person or entity you communicated with and the substance of the communication and response.

Plaintiff invokes his Fifth Amendment privilege against self-incrimination with respect to actual failure or inability to report.

22. State all facts supporting your allegation in Paragraph 95 of the Second Amended Complaint that a person “driving her car hurled a bottle through the window of [your] car” and that “[a]nother person stole money from [you] through a fraudulent repair scheme” because of your status as a registrant under Fla. Stat. § 943.0435, including but not limited to the date and location of the incidents, any witnesses, the names of the perpetrators if known, the dates of all communications with local law enforcement about the incidents as well as the agency and officer(s) you communicated with, the responses you received, and any case numbers assigned.

Plaintiff objects to this interrogatory as being premised on FDLE’s mischaracterization of allegations contained in paragraph 95 of the Second Amended Complaint. Plaintiff did not allege that he was physically assaulted or defrauded as a result of his status, but rather that the police to whom he reported these crimes refused to investigate due to his status.

23. State the names and addresses of all schools that have restricted you from being on the premises or have required you to have an escort, and for each school identify the dates your daughter attended; the dates you were restricted or required to have an escort; the reason(s) you were attempting to enter the campus; the person who informed you that you of the restriction or need for an escort; and the dates and substance of all communications with the school about the restriction or need for an escort.

JCC David and Mary Alper Jewish Community Center. Other information about this restriction is found in Plaintiff’s Response to Defendant’s Request for Production no. 20. Royal Palm Beach Elementary School, 11911 Okechobee Blvd., West Palm Beach, Fla. 33141, 2017 to the present. Plaintiff’s driver’s license is scanned upon entry, after which employee on duty radios to someone to escort Plaintiff to parent-teacher meetings elsewhere on the campus for other routine parent visits.

24. If you are alleging that you or any family member has been scammed or targeted for scamming related to your registrant status, state the nature and substance of the scam(s); the form in which the scam was communicated to you (e.g., verbal, e-mail, letter, website, advertisement, etc.); the person or entity that perpetrated the scam(s), attempted to perpetrate the scam(s) or communicated the scam(s) to you; the results or effects of the scam(s); the dates and substance of any communications with law enforcement or FDLE about the scam(s) and any case numbers assigned.

On March 3, 2020, at 7:37 a.m., plaintiff received a phone call, from 561-408-8877, from someone identifying himself as a Palm Beach County Sheriff’s deputy. He asked

for plaintiff's date of birth, his wife's name, social security number and to confirm that his wife and daughter were the only people residing in his home. He said that a certified letter had been sent requiring compliance with a federal audit regarding registrants by 2/28/20, but that plaintiff had failed to comply, as the result of which he would be required to go to the sheriff's office to give fingerprints and an updated DNA sample. When plaintiff said he had not received the certified letter, the caller said that someone from his home had signed for the letter, without saying who, and asking plaintiff if he wanted to comply. Plaintiff said yes because he did not want to be arrested. The caller said he would transfer the call to Sgt. Cortez, then placed plaintiff on a 3-minute hold after which someone else picked up and said plaintiff would be served with an arrest warrant if he did not come to the sheriff's office located on Gun Club Road, next to the jail, to provide fingerprints and DNA. When plaintiff tried to question the man about the letter, he accused plaintiff of being uncooperative and threatened to send a squad car to plaintiff's home to arrest him for violating the registration statute. At that point, plaintiff became suspicious, put "Sgt. Cortez" on hold, and used his wife's phone to call the PBCS registrant unit, but there was no answer. He then called the non-emergency line, reaching Samara. He told her that he wanted to verify whether the man on the phone was really from the sheriff's office and gave her the name and phone number used. She confirmed that the call was not from the sheriff's office. In the meantime, he had put his phone on speaker so Samara could hear the caller, who was repeating his threats to arrest plaintiff for non-compliance. Samara told plaintiff to ask for the caller's badge number, which he did. The man refused to provide the badge number and continued to threaten plaintiff with arrest. Samara advised plaintiff to hang up his phone on the caller, that it was a scam and the caller was an imposter. When plaintiff told the scammer he was going to hang up, the man accused plaintiff of attempting to lure the caller's young daughter and threatened to report him for that. The call lasted approximately 23 minutes. Approximately ten minutes later, a deputy sheriff arrived at plaintiff's home to ask what had happened. Plaintiff showed the deputy a picture of the call and number, as well as the names used by the scammers. The deputy informed plaintiff that the phone number that generated the call had been involved in other similar reports, one in which someone was scammed for money, and warned plaintiff, who had given out his social security number, to take measures to protect himself from identity theft. Plaintiff provided a written statement to the deputy.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served upon Shane Weaver, Esq. at shane.weaver@myfloridalegal.com on June 2, 2020.

Respectfully submitted,

s/Valerie Jonas

Valerie Jonas
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s/Todd G. Scher

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Attorneys for Plaintiffs

EXHIBIT 10

From: Valerie Jonas valeriejonas77@gmail.com
Subject: Does v. Swearingen: Privileges and objections invoked by plaintiffs
Date: May 26, 2020 at 10:49 AM
To: Shane Weaver shane.weaver@myfloridalegal.com
Cc: toddscher tscher@msn.com, Alyssa Sasson Alyssa.Sasson@myfloridalegal.com



Hi Shane,

We served the privilege log on you last week. We are available to discuss ways in which we can provide you with responses without waiving any privileged materials. For example, we have already suggested a joint motion to extend anonymity through trial, for the purpose of resolving the Fifth Amendment privileges the plaintiffs have invoked.

We have invoked attorney-client and work-product privilege with respect to correspondence with our expert witnesses, but will provide you the documents on which our experts rely, if you agree to limit your request accordingly. As a practical matter, the documents presented to Drs. Haber and Imhof will be produced in response to other discovery requests, e.g., for criminal history documents and mental health records.

In addition, plaintiffs will be objecting to your interrogatory seeking all residential addresses they have ever had, as overbroad and not proportional. Having been peripatetic myself throughout from my late teens through my late twenties, I could never possibly answer interrogatories seeking addresses for this period of time in my life. We are happy to provide you with residential addresses our clients can remember or dig up, if those responses would be acceptable to you.

We have no desire to delay your access to documents or information to which you are entitled. As I've told you, we are all working fiendishly to produce responses to the vast majority of your 250 discovery requests by no later than 14 days after the original due date, an extension that was unavoidable given the enormous volume of requests, social distancing barriers, and tragedy of Todd's father's death from coronavirus. Discussing the privileges and objections with us now will prevent avoidable delays.

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305-527-6465

From: Valerie Jonas valeriejonas77@gmail.com
Subject: Does v. Swearingen: Discovery issues
Date: June 2, 2020 at 8:51 PM
To: Shane Weaver shane.weaver@myfloridalegal.com
Cc: toddscher tscher@msn.com



Hi Shane,

With regard to your inability to timely depose our fact witnesses, most of them were disclosed to you many months ago, some more than a year ago. With regard to your inability to depose the plaintiffs until you've received their discovery responses, you did not seek any discovery until April 20, 2020, less than 3 months before the discovery cut-off. With regard to our experts, we disclosed them shortly after we retained them, rather than withholding disclosure until their reports were due, as you did. In fact, you moved, over our objection, to take an additional two weeks to disclose two experts, then you took another three days to disclose your third expert.

We make these points to explain why your motion should not imply that we are to blame for your present dilemma. We sympathize with it, which is why we won't be opposing your motion for extension, but we did not contribute to it. As you well know, we have done everything possible on our end to meet the discovery cut-off. We have worked extremely hard to respond to your app. 250 interrogatory and production responses only 6 weeks after you propounded them, so that you could meet the deadline.

With regard to deposing your experts in person, that is customarily done where the experts reside, not where the litigation is filed. If we are willing to travel to take your experts' depositions, I presume you have no objection to our doing so, especially if social distancing regulations in their jurisdictions don't prevent it.

With regard to documents provided to our experts, I don't believe there are any documents, other than pleadings, not covered by except for Drs. Haber and Imhof. Those documents consist of criminal history records for each of the Does, and evaluations and reports about John Doe 6's cognitive deficits. These documents will be provided in response to your corresponding requests for production. I believe that both doctors listed the documents they relied on in their reports, so you'll be able to identify them easily without our having to compile them to respond to your amended request.

We are still awaiting FDLE's personnel, IA and other files on Mr. Thomas. We will also want all memorialized statements made by him at FDLE that are relevant to the issues raised in our complaint. We will request production of the documents we need, but wanted to alert you now because the request is time-sensitive given our need to prepare for deposing him. Until we have the documents, we won't know which of Mr. Thomas' available deposition dates in July will work for us.

With regard to the 3-month extension, we'd have to all resign ourselves to the fact that, given the possibility of a surge in the pandemic in the fall, all depositions are likely to be remote. If we can't agree on that now, we'll likely have to come back after 3 months expires and seek another extension. I think it's important for us to discuss various scenarios before we agree to the length of the extension. There is so much we don't know now. It's difficult to plan anything, isn't it.

Have a good evening.

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From: Valerie Jonas valeriejonas77@gmail.com
Subject: Does v. Swearingen: Does' 3d Request for Production
Date: August 22, 2020 at 10:17 AM
To: Shane Weaver shane.weaver@myfloridalegal.com
Cc: toddscher tscher@msn.com



Hi Shane,

Thanks for your time last evening to discuss your objections and privilege invocations to our third request for production of documents. Below is a summary of what we discussed in connection with these requests:

2. We agreed to narrow the request concerning FDLE/USMS/Local police agency sweeps for failure to register offenses to 5+ years: 1/1/15 to the present. In addition, we agree to narrow the request to violations of state not federal registration laws. Finally, we agree to narrow the request to completed rather than open investigations. We believe these measures will accommodate your objections. With regard to law enforcement privilege, we are willing to seek all public announcements and statements to the press about these operations, as well as documents reflecting the goals and the names of FDLE personnel that planned, organized, and/or participated in these operations.
3. We agreed to narrow our request to arrest and conviction records from 1/1/15 to the present resulting from the above-referenced operations. If FDLE does not have conviction records from these operations, we will accept the number of convictions obtained as a result of these arrests.
4. As I explained last evening, this request is relevant to the allegations in our complaint that police agencies fail to investigate and prosecute crimes committed against registrants. These allegations support claims of harassment and vigilantism arising from public notification and databases containing publicly-available information about registrants, including their cell phone numbers. Based on FDLE's responses to prior discovery requests, the agency is fully aware that registrants are victimized by fraud and extortion committed by people impersonating law enforcement officers who threaten arrest unless the victimized registrant pays large sums of money to them. The request identifies two statutes violated by this conduct: sections 843.08 and 775.21(10)(d), falsely impersonating a police officer, and using registry information to get money from sexual predators, respectively. You had objected in part for the asserted reason that the agency would have to check each registrant's file to determine whether that person had been arrested or convicted for this conduct. As you now understand, this is not conduct that would be charged against a registrant, but rather charged against people who had committed the enumerated offenses against registrants. This request, by its terms, seeks information over a five-year period only.
5. The reference to the "Integrity Unit" was based on FDLE's response to Does' First requests for production n. 10. An email from July 2019 described the scams and frauds against registrants, noting that some registrants had lost money to these schemes, and discussed referring complaints about these crimes to FDLE's integrity unit. Because this reference was made in an email from FDLE, I assumed FDLE must have an "Integrity Unit." You have agreed to double-check FDLE's response that it does not have such a unit.
6. The PCAT unit is described as follows in the 2019 FDLE Guidelines: **Policy & Case Analysis Team (PCAT) "researches cases in support of legal reviews and inquiries, case law and court order impact, and legislative changes relating to the implementation of registration laws in Florida. PCAT specialists perform in-depth registration case reviews and legislative analysis, process public records and certified documents requests for court and arrest purposes, and provide court testimony" for cases throughout the state. "PCAT members are responsible for the review of federal standards, developing related recommendations, and coordination of both internal and statewide implementation projects for registration laws and requirements."**
We are seeking "criteria" and "policies" or other operational standards for the unit and its "specialists" in performing "in depth registration case reviews and legislative analysis. We have agreed to waive our request for inquiries, responses and petitions.
7. This request was based upon FDLE's response to Does' First requests for production No. 9, which sought records reflecting communications between FDLE and local law enforcement agencies about verification. Included in FDLE's

response was a June 2019 Memo from Alan Moses to Mary Coffee and FDLE counsel regarding verification: "In the current statute, it only addresses the requirements under Walsh [AWA], which doesn't spell out the same address verification requirements under Wetterling, but allows for it. This has led to confusion on the locals part and could possibly hold them liable for harassment. The thought is that maybe if either the statute and/or MOU clarifies that SORNA allows jurisdictions to continue the provisions of Wetterling's address verifications (4 x's for predator/sexually violent v. 1 x for offenders), this could both clarify/protect the locals and inform the clients."

Our assumption is that MOU is an acronym for Memorandum (or memoranda) of Understanding. Hence our request for memoranda of understanding about verification procedures used by local law enforcement agencies.

I hope this clears up any questions you had about our requests and facilitates FDLE's responses to those requests that have been limited as set forth above. As always, don't hesitate to contact me if you have any questions.

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EXHIBIT 11

This expert report was prepared by: Retired Special Agent Terry Thomas
Crimes Against Children Unit
Florida Department of Law Enforcement

My CV is attached to this summary

Brief background of author:

I began my law enforcement career with the St. Petersburg Police Department in 1974 as a patrol officer. After a year and a half, I was transferred to a specialized undercover unit called the Anti-Burglary Anti-Robbery squad (ABAR). The unit was designed to respond to in-progress burglaries and in-progress robberies, and highly specialized training was provided.

After three years with the city I continued my career with the Pinellas County Sheriff's Office, first as a patrol deputy then as a Field Training Officer (FTO). After one year in patrol I was promoted to Detective in the Crime Prevention Unit supporting neighborhood watch and crime prevention workshops to citizen groups. I was then selected to pilot the new position of School Resource Officer (SRO) and assigned to Osceola High School. The pilot year was monitored and evaluated to determine the value and need of placing a uniformed officer in a school setting. After one year it was determined that the program was an overwhelming success and the program was eventually expanded to all public schools in the county.

In 1983 I was promoted to Detective and assigned to the Crimes Against Children Unit, where I was assigned an average of twenty cases a month investigating a variety of crimes from misdemeanor battery to capital sexual battery, rape, and homicide. In 1984 I was an invited panelist for the United States Department of Justice hearings on child molestation in Washington D.C. These hearings were the first on a national level to attempt to address the problem of child molestation. Experts from all over the country were assembled and recommendations were given which started the process of a national response to the problem. It was the beginning point of establishing a multi-disciplinary approach to working these cases. This was also where the talk of specialized training and specialized units to conduct these investigations began.

In addition to my law enforcement training, I received extensive training in crisis response. The training was provided through the National Organization for Victim Assistance (NOVA). I went on to become certified as a national trainer and helped to establish Crisis Response Teams throughout the State of Florida and the United States. I have responded to numerous national crises from the Oklahoma City bombing on April 19, 1995 to the 9/11 attack on the World Trade Center in New York City, both as a team member and as a team leader.

In 1987 I was recruited to leave the Sheriff's Office to be part of a new Crimes Against Children program with the Florida Department of Law Enforcement. The program was enacted by law, establishing a trust fund and mandating that the funds be used to provide investigative, technical assistance, and training to local and state agencies. These agencies provide services to victims and investigate crimes against children. Additionally, the program was mandated to provide state of the art training throughout the State of Florida to these same groups. The training funds allowed us to bring to conferences trainers that are experts in their fields. The trainings were weeklong conferences consisting of a variety of topics, including interviewing techniques of both children and offenders. This also included investigative techniques for the crimes of child abuse, both physical and sexual.

In 1988, as the statewide coordinator of the program, it was my responsibility to schedule and plan five major Crimes Against Children conferences a year. Because of the trust fund we were able to provide these advanced trainings to our allied professionals at no cost to the attendees. All instructors were certified, and all courses were submitted and approved for mandatory training for participants through the Police Standards and Training Commission. Additionally, my duties and responsibilities required that I assist, upon request, local and state agencies with multi-victim, multi-offender, and multi-jurisdictional cases. I have been a certified instructor since 1988. I have developed curriculum and taught courses in the area of child sexual abuse, child rape, and child homicide. Additionally, I have developed courses on interviewing techniques for child victims, interviewing techniques for interviewing offenders, and writing and executing the expert search warrant. I have lectured throughout the United States, Puerto Rico, and Canada.

In 1990, I developed a prototype mobile interview room for children. A thirty-five-foot travel trailer was converted to a child friendly interview platform. A section of the trailer allowed the interviewer to conduct comprehensive forensic interviews in a safe environment. The interview room was equipped with hidden cameras and a closed sound system that allowed other investigators to monitor the interview from a separate location and to interject questions to the interviewer through an earpiece. The interviews were recorded on DVDs. This mobile unit enabled FDLE Agents to respond anywhere in the state and to provide investigative assistance to any agency that made a request.

I have developed an expertise over the course of my forty-two years in law enforcement, and thirty plus years working exclusively investigating crimes against children. These investigations involved conducting thousands of interviews with thousands of victims, witnesses, and offenders. Most sex crime investigators leave this area of investigation after two or three years; I am of the belief that I had just begun to develop a clear understanding of the complexities of these investigations at the three-year mark. I have developed an understanding of the methods and strategies offenders use to manipulate, coerce, and put fear, blame, and shame on the most vulnerable of

our population. It goes without saying that these injuries, both physical and emotional, last a lifetime. I learned that an integral part of my job was to, in some small way, help these victims be strong in broken places. I learned that I could not undo what had happened to these children, I could only do everything in my power to break the cycle of abuse and do my part to hold the offender accountable for the unspeakable acts they committed. This took years of on-going training and evolving with new technologies that brought us abilities to develop systems that help keep track of child sex offenders. Which in turn, at least for that known population, is a prevention tool.

The following are my opinions of what thirty plus years of working these crimes has taught me regarding the need for a strong sex offender registry.

Opinion 1: Prior to the registry many sex offenders, upon conviction, through either a trial or a plea (mostly pleas) could, and often did, simply move to have the records completely expunged. This was often the norm. Sex offenders could then easily get jobs working in occupations working with or around children. Many of these sex offenders had multiple victims or offenses. I personally had several cases where I had developed suspects and when I checked prior offenders whom I remembered having charged with similar offenses, I could not find the records because the offender had had his record expunged. I certainly remember my fellow colleagues making the same complaint out of frustration of trying to do our jobs and being circumvented by the system, a system that allowed sex offenders to move freely and undetected to repeat their crimes on an unsuspecting society. Sex offenders can no longer have the record expunged.

Opinion 2: I remember a sixteen-year-old girl telling me during a forensic interview that as she described to me what her father had done to her sexually, she was comforted to know that after today she would be safe. When I asked her at the end of the interview if there was anything else, I could do for her, her only response was "you have already done it." When I asked what she meant, she responded, "it is going to be nice knowing I can go to sleep tonight knowing my dad won't be coming in my bedroom." This shows how we take some of the simplest parts of our lives for granted and how these crimes change lives.

Opinion 3: The registry is a tool and designed to regulate and as a safeguard for the citizens of this state. Society has a right to expect its government to provide a safety net from crime and particularly sex crimes. We cannot measure the number of crimes we have prevented, but we can certainly identify the offenders that have already demonstrated their propensity to commit their crimes.

Opinion 4: It is my belief that none of the offenders that I dealt with ever wanted nor ever thought that they would get caught. And based on my experience, I never had one do a "Perry Mason" style confession. They all deny. That is the very definition of an offender.

The very first and longest period of an offender interview is denying." It never happened", "she is lying". It goes on and on. The next period offenders go through is to minimize, and trust me, they all do. I have heard it all from "my hand slipped", "I don't know I just woke up and I was on top of her." And who really believes that seven-year-old girls crave sex with their brother to a point that she would declare, "she liked it and threatened to report me if I stopped having sex with her." This is an exactly how offender justify their behavior.

Opinion 5: Every system has loopholes. It is our responsibility to fix those loopholes in the interest of better public safety. I support revising and upgrading systems as we develop new and better ways of handling offenders. To think that offenders are not thinking about how to work the system is naive. I have had many sex offenders tell me that "if parents only knew that if they do not give their children the love and attention they need, there are hundreds of men like me out there ready to provide it for them." That is a statement from an offender to me. He was not under arrest. He was not a suspect in a case. He was just being himself.

I have never forgotten the value and importance of the registry to the citizens of this state and what they have constantly reminded me. "I am so grateful that I have a way to see if any offender lives near my family in real time."

This registry has evolved as sex offenders have evolved. Before there were computers and smartphones and ever-changing ways of communicating, the sex offender did not leave much of a paper trail and they certainly did not have the multiple ways to gain access to the child victim that they do today. Now and into the future more and better avenues of access to children will also evolve. It is important to recognize the need for the sex offender registry to evolve to keep up with those changes. It is important to know that sex offenders use all the new tools to further their cause. We must remember that for many of these sex offenders this a compulsion. I have had many sex offenders tell me "I love kids, I don't hurt them" and "I do more for him than his own parents". I have had many cases where the only tool the sex offenders needed was to have access to children. Their ability to slowly gain the confidence that begins the process of breaking down sexual inhibitions.

Opinion 6: There are many reasons sex offenders have gaps in their offenses. It is not uncommon for a sex offender to go weeks, months, even years between offenses. And even then, this does not necessarily mean that they have not reoffended in those gaps in time. It may just mean they have not gotten caught. And sex offenders will go to any means to avoid getting caught.

Take Fredrick Fretz, a three-time convicted child sex offender from Kentucky. Ten years after Fritz's convictions and release, he ended up in central Florida and kidnapped a ten-year-old boy from his elementary school and then fled the state enroute to Kentucky. This triggered an Amber Alert to be issued in both Florida and Georgia. Fretz

was located on I-75 north of Atlanta and Adam was recovered alive. Fretz not only failed to register in Florida, further complicating his identification as a suspect in this case, but his multiple aliases and misdemeanor charges did not prompt a background check prior to his release from a local Florida jail. At the time, the Florida sex offender registry did not require a background check before being released on misdemeanors.

Opinion 7: We know with all sexual violent crimes and child pornography related crimes that reporting by victims is woefully low. Dr. Nicholas Groth, author of the book Men Who Rape – The Psychology of the Offender written during his work with convicted rapists, reported that when they are raping actively, they are committing multiple rapes a week. We certainly do not get that number of rape victims reporting. In fact, most women rape victims do not report. And to support that, we only have to look at the “Me Too” movement to understand the stacked deck against girls and women. The reasons are many, but we do know often it is “he said, she said”. No witnesses, late reporting, lack of physical evidence, and of course the power and control over the victim, especially in child sexual abuse cases, often compound the issue. Shame, self-blame, uncertainty of criminality, fear of retaliation from the offender, and fear they will not be believed by their loved ones or by the system itself are other reasons for the abysmally low reporting rate. Florida Statute defines child sexual abuse as “molestation”, which minimizes the crime, because it is, in fact, rape. We do the same with adult victims; Florida Statute defines adult rape as “involuntary sexual battery”, thereby sanitizing and minimizing both crimes.

Another way to consider why victims do not report or delay reporting is best explained by Dr. Roland Summit, author of The Child Sexual Abuse Accommodation Syndrome, 1983. Dr. Summit states that “these five points describe both the luxury of the adult not to listen and the accommodating efforts of the child not to explain”.

These five points briefly are:

- Secrecy – The victim does not report due to threats made by the offender or fear of not being believed
- Helplessness – not knowing where or whom to turn to for help
- Entrapment and accommodation – the victim endure the abuse
- Delayed disclosure – conflicting and unconvincing statements by the victim
- Retraction – victim denies the allegations

To illustrate just how many child abuse victims, delay reporting, I remember when the 1984 movie Something About Amelia was aired on national television, which was a first time made-for-television story about a father sexually abusing his daughter. During and after the movie the Florida Abuse Hotline was flooded with child abuse calls.

As an agent with FDLE I have worked hundreds of cases with the Department of Children and Families (DCF). I have seen caseloads as high as thirty-five, forty cases a month. I have served on child abuse task forces trying to figure out a way to reduce the extremely high caseloads. Consequently, many cases are missed, children are sent back

home, and the cycle of abuse continues. So often the one opportunity to hear, listen, and intervene to take a child abuse victim out of the abusive environment is lost.

One of my cases involved a seven-year-old girl who had been sexually abused by her father since she was three. When she finally reported and I completed my investigation, I arrested the father. Within an hour, the victim's mother was yelling at me "why doesn't she stop saying these things. Doesn't she know she is breaking up the family."

In another case, a fourteen year old girl who had been sexually abused for over seven years finally reported that every time she went to stay with her father after her mother and father divorced, her father repeatedly had sex with her. The offender in this case was an elected Supervisor of Elections in a north Florida county. The offender told his daughter that "she could tell anyone she wanted about the sex, but no one will believe you." He then told her, on multiple occasions, "I am the gate keeper. No one gets elected up here without going through me" and "I have the Sheriff in my pocket." When I had the victim call him in a controlled call (recorded) and confront him, he told her "if you ever get asked about this you have to lie. You will ruin my career and I will go to jail."

Sexual assault victims respond to trauma in different ways. I investigated a case involving an eight-year-old boy and his five-year-old sister. The investigation was reported when the boy had to be hospitalized for mental health treatment. Over the course of weeks, I was finally able to interview him. He disclosed to me that his father had been forcing him to perform oral sex on him for a long time. When he tried to resist, his father took his pet rabbit and put it in the cage with a boa constrictor and made the victim watch while the snake ate the rabbit. He then told his son, "if you ever tell that's what I will do to your head."

His five-year-old sister suffered the same fate. When she resisted her father forcing her to perform oral sex on him, he took her teddy bear and put it in a trash compactor and made her watch. He then told his daughter, "that's what will happen to you if you ever tell."

Two days before trial the eight-year-old boy started a fire in his hospital room. When ask why he had started the fire, the boy replied, "I knew if I started a fire I would go to jail. And if I am in jail my father can't hurt me."

Opinion 7: I believe that after having been convicted of a sex offense, the requirement to register is regulatory. It provides a tool for law enforcement and the general public as a check and balance. For law enforcement, it allows an expedited means of locating and alibiing known offenders when a child goes missing or a rape is reported.

When nine-year-old Jessica Lunsford was abducted, sexually assaulted and then buried alive, it was the registry that gave law enforcement the ability to identify all known sex

offenders living in the Homosassa Florida area. John Couey's name was on the list. Law enforcement conducted a door to door search of the area. John Couey did not respond to investigators who went to his address because he was not there. Investigators went to his sister's address several blocks away and were told by Couey's sister that John was not there. In fact, he was hiding in a back bedroom. Jessica was in fact alive at the time, tied up in a closet in Couey's bedroom. It was not until John Couey returned home that he raped little Jessica again, and buried her alive in a shallow grave. If it were not for the lies of his sister Jessica would be alive today. The registry did its job. The registry quickly identified all known sex offenders in the area and allowed investigators to either include or exclude the known offenders.

The same was true with the abduction of eleven-year-old Jessica Rodrigues. She was abducted from her bus stop only a thousand yards from her home. Law enforcement response was to immediately, according to protocol, query the registry. Every known sex offender was located and alibied. Jessica was held and sexually abused for three and a half days before being released. The registry again did what it was designed to do.

Opinion 9: Over the course of my long career I investigated and arrested sex offenders from every walk of life, with varying levels of education and occupations. But they all had one thing in common - they were sex offenders. Many used their education and occupations as a tool to gain access and control over their victims.

Prior to the registry, Thomas Nibbio was convicted in Florida of multiple counts of child sexual abuse. Nibbio was a soccer coach holding a master's degree in sports medicine and was a "who's who" of college soccer coaches. Nibbio used his prestige and title to molest young boys playing soccer for him at Clearwater Central Catholic. Nibbio was allowed to plea and left teaching. Nibbio then reemerged in Illinois, where he again used his title and prestige to gain access and sexually abuse unsuspecting young boys. He was convicted of these offenses and served a minimal sentence of one year. After his sentence, Nibbio went on to reoffend yet again, this time in violation of the Mann Act.

Opinion 10: The viewing of child pornography is not done "passively". Again, this assertion is a perfect example of minimizing and justifying behavior. The viewing of child pornography is nothing less than watching a violent crime in progress.

It has been my experience that sex offenders that view child pornography are not merely viewing it passively, but they are collecting it. A lot of it. I never arrested a single offender in possession of one image. They collect these images for fantasy, for self-gratification, for trade, and for later viewing. These offenders are driven by compulsion and have a high degree of reoffending.

I worked an undercover case involving a well-connected individual to whom I was introduced that sold child pornography to me over a several month period. He wanted me to sell child pornography to him (which did not happen) and insisted that I watch it with him while he made copies to sell. When he finally trusted me, on one visit to his house he took me into a room and showed me his collection. When I opened the wall unit there were over four hundred videos, not counting the actual hard copy photos. These are visual images of sexual violence against children. He also introduced me to two other individuals wanting to buy child pornography, one an elementary school teacher and the other a children's clothing salesman. Sex offenders do not view pornography passively.

Opinion 11: Some suggest that some sex offenders in the registry have not re-offended. Might it be that the very requirements of the registry play a role? Like any offender, if they know they are being monitored, they are less likely to reoffend. It is not punitive to help prevent additional crimes, and as a tool of law enforcement I believe it does prevent future crimes.

The reason we do not have registries for other crimes such as burglaries, fraud, or any other crime is the sexual violence perpetrated against women and children is so horrendous and painful it leaves lifelong mental and sometime physical scars. Many victims never recover. No one compels another to commit a sex crime. That is an individual decision and choice.

While not every registrant will reoffend, the state has an obligation to its citizens to inform them of potential risks and dangers that may exist in their communities. The registry allows families, in real time, to determine who they want to interact with their children. Whether it is who coaches their child, allows them to date, or contacts them online.

For law enforcement, I am a firm believer that criminal history, knowledge of the offender's history, and patterns of behavior are tools in detecting and preventing all types of crime. An informed community creates a safer environment for us all.

My compensation for this case is one hundred dollars an hour and I have not testified as an expert within the last four years.