

SEX CRIMES IN **NEW JERSEY**

UNDERSTANDING THE PROCESS AND THE LAW

BY

Honorable Barnett E. Hoffman, PJSC (Ret.)
Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C.
North Brunswick, New Jersey

AND

Alison Stanton Perrone, Esq.
Law Offices of Alison S. Perrone
Columbus, New Jersey



**THE NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION ®
CELEBRATING OVER 40 YEARS OF SERVICE TO THE BENCH AND BAR**

The New Jersey Institute for Continuing Legal Education was created in 1962 to help lawyers and judges increase their general professional competence, keep abreast of developments in the law, and become more proficient in selected areas of practice. Since 1962, ICLE has served the educational needs of the New Jersey bench and bar and continually strives to respond to their many and varied concerns.

A non-profit, completely self-supporting organization, ICLE is the joint venture of the New Jersey State Bar Association, Rutgers - The State University of New Jersey, and Seton Hall University. Representing a merger of the practicing bar and the academic community, the Institute is governed by an autonomous Board of Trustees, which includes representatives of the State Bar Association, deans of the law schools and officers of the participating universities.

The Institute presents more than 230 seminars each year throughout the State, offers CDs of seminars, markets software programs especially designed for the practicing attorney, and publishes comprehensive practice manuals and lecture handbooks. Its programs and publications must be financially self-supporting since ICLE is not subsidized in any way. The professional staff of attorneys and administrators, aided by a dedicated support staff, is headquartered at the New Jersey Law Center in New Brunswick, along with the State Bar Association, the State Bar Foundation and IOLTA.

The ingredients that contribute most to the stature of the Institute are the talent, time and effort expended by the very best of New Jersey attorneys, representing every field of specialization and every type of practice. The voluntary participation of practicing lawyers and judges as ICLE lecturers, authors, and advisors is appreciated and encouraged, for without their assistance, high quality continuing legal education would not be possible.

The Institute welcomes this opportunity to serve you.

The material contained in this publication is for educational purposes only and is not intended to serve as a substitute for the professional services an attorney would normally provide to a client, including up to the minute legal research.

**Copyright © 2011 by the
NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION
All Rights Reserved**

HONORABLE BARNETT E. HOFFMAN

Judge Barnett E. Hoffman is Of Counsel to the Law Firm of Borrus, Goldin, Foley, Vignuolo, Hyman, and Stahl in North Brunswick, N.J. He specializes in mediations and arbitrations. He also consults with private counsel on criminal matters.

He was born and raised in New Brunswick, New Jersey. He is a graduate of Rutgers College and Rutgers Law School in Newark, N.J.

Judge Hoffman was admitted to the New Jersey and Federal Bars in 1965. He served in the United States Army from 1966-1968 attaining the rank of Captain. He was in the private practice of law until 1978 when he became the First Assistant Prosecutor of Middlesex County, N.J. He was appointed to the New Jersey District Court Bench in 1981 by Governor Brendan Byrne, and reappointed to the New Jersey Superior Court Bench by Governor Thomas Kean. After spending two years in the Chancery Division-Matrimonial, Judge Hoffman was transferred to the Criminal Division. He served eighteen years in that division. For approximately five years before his retirement from the Bench in 2002, he served as the Presiding Judge of the Criminal Division.

During his tenure on the Bench, Judge Hoffman specialized in the trial of homicides and sex crimes. He tried eleven death penalty cases, more than any other judge in New Jersey. He also tried in excess of eighty serious sexual assault cases. Judge Hoffman was known for his innovative methods such as using PowerPoint in the presentation of the instructions to the jury.

Judge Hoffman was the founder of the Middlesex County Adult Substance Abuse Program (ASAP) located in the Middlesex County Adult Corrections Center. The program became operational on October 1, 2001, and now has in excess of six hundred graduates. ASAP is the only program of its kind in the State of New Jersey. Judge Hoffman and the program were honored by the New Jersey Senate on December 10, 2009. He continues to serve as President of the Friends of ASAP.

Judge Hoffman was a member of the faculty of Rutgers University. He taught "Sex, Crime & Justice" as well as other criminal justice courses. He has taught "Sex Crimes" at the New Jersey, Vermont, Florida and National Judicial College.

Governor James E. McGreevey appointed Judge Hoffman to the New Jersey Commission to Review Criminal Sentencing. He was elected Chair by the other Commission members. The Commission was responsible for building the groundwork for substantial changes in the drug laws of the State of New Jersey.

Judge Hoffman was President of the Rutgers Alumni Association and a member of the Board of Trustees of Rutgers University. He has been inducted into the Hall of Distinguished Alumni of New Brunswick High School. He also has served on the St. Peter's Hospital Board of Trustees. He is an avid Rutgers sports fan.

ALISON STANTON PERRONE, ESQ.

Alison Perrone began practicing law in New Jersey in 1997 with the Special Hearings Unit of the Office of the Public Defender, assisting with federal litigation challenging the constitutionality of Megan's Law and representing Megan's Law clients in state trial court proceedings and on appeal. From 1998 to 2001, she was an Assistant Deputy Public Defender with the Public Defender's Appellate Section, handling a wide range of criminal appeals. In 2001, Ms. Perrone went into private practice, where she specializes in criminal appeals.

Ms. Perrone has represented over 350 criminal defendants on plenary appeals in the New Jersey Appellate Division. Ms. Perrone has also represented hundreds of criminal defendants on sentencing appeals in the Appellate Division and has handled several dozen sexually violent predator commitment appeals. In addition, she has argued more than 25 criminal appeals in the New Jersey Supreme Court, several of which involved issues pertaining to sex offenses.

Ms. Perrone received a B.A. degree in English from Douglass College of Rutgers University. She graduated *Cum Laude* from Georgetown Law School, where she was a member of the Georgetown Law Review and Assistant Editor of the Law Review's Annual Criminal Procedure Project.

CHAPTER AUTHORS

Chapter 5

WHY LITIGATION OF SEX CASES IS DIFFERENT

Julia McClure, Esq.

*First Assistant Prosecutor
Middlesex County Prosecutor's Office
New Brunswick, New Jersey*

Chapter 7

A PROSECUTOR'S PERSPECTIVE

Laurie Head-Melillo, Esq.

*Assistant Prosecutor
Supervisor, Sex Crimes Unit
Somerset County Prosecutor's Office
Somerville, New Jersey*

Chapter 8

THE DEFENSE PERSPECTIVE

Joseph J. Benedict, Esq.

*Benedict and Altman
New Brunswick, New Jersey*

Chapter 21

THE PSYCHOLOGIST'S PERSPECTIVE

Philip H. Witt, Ph.D., ABPP

*Associates in Psychological Services, P.A.
Somerville, New Jersey*

Chapter 22

PSYCHOLOGICAL EXPERIENCE OF CHILDREN AND ADOLESCENTS

AS WITNESSES IN SEXUAL ABUSE CASES

Susan Cohen Esquilin, Ph.D., ABPP

*Center for Child Advocacy, Montclair State University
Montclair, New Jersey*

Chapter 27

THE NEW JERSEY PREVENTION OF DOMESTIC VIOLENCE ACT

Jessica Oppenheim, Esq.

Middlesex County Prosecutor's Office (Ret.)

New Brunswick, New Jersey

Chapter 34

CHILD VICTIMS OF SEXUAL ASSAULT

Richard Pompelio, Esq.

Executive Director

New Jersey Crime Victims' Law Center

Whippany, New Jersey

Chapter 35

THE ADULT DIAGNOSTIC AND TREATMENT CENTER (ADTC)

William Plantier

Administrator (Ret.)

Adult Diagnostic and Treatment Center

Avenel, New Jersey

ACKNOWLEDGMENTS

The authors would like to acknowledge the help and support they received from Michael Weisberg and Kathryn Retkwa of the New Jersey Institute for Continuing Legal Education and Diane Masucci of Montclair, New Jersey.

TABLE OF CONTENTS

INTRODUCTION	xix
--------------------	-----

CHAPTER 1

HISTORICAL PERSPECTIVE	1
Overview	1
The Crimes of Rape and Carnal Abuse.....	1
Definitions of Rape and Carnal Abuse	1
The Crime of Fornication.....	2
The Crime of Adultery.....	2
The Crime of Prostitution	3
The Crime of Sodomy.....	3
The Crime of Incest	3
The Crime of Abortion.....	3
The Crime of Bigamy	3
The Marital Rape Exemption.....	4
Discussion.....	4

CHAPTER 2

THE SEX CRIMES STATUTE	5
Overview.....	5
Discussion.....	6

CHAPTER 3

DEFINITIONS	19
Overview.....	19
Case #1: <i>State v. Buchsam</i> (Fresh Complaint, Supervisory and Disciplinary Power).....	19
Case #2: <i>State v. Olivio</i> (Mentally Defective Victim).....	20
Case #3: <i>State v. Rush</i> (Physically Helpless Victim)	22
Case #4: <i>State v. Walker</i> (Severe Personal Injury, Incapacitating Mental Anguish, Expert Witness).....	22
Case #5: <i>State v. Timothy Brown</i> (Definition of Affinity)	24

SEX CRIMES

Sexual Penetration	24
Intimate Parts	25
Sexual Contact	25

CHAPTER 4

SITUS OF PENETRATION	27
Overview	27
Case #1: <i>State v. J.A.</i> (Vaginal Intercourse)	27
Case #2: <i>State in the Interest of S.M.</i> (Fellatio).....	28
Case #3: <i>State v. Fraction</i> (Cunnilingus)	29
Case #4: <i>State v. Gallagher</i> (Anal Penetration).....	30
Conclusions as to Situs of Penetration.....	30
Penetration at the Direction of the Actor	31
Case #5: <i>State v. Maxwell</i> (Victim’s Self-Penetration Upon the Actor’s Instruction).....	31

CHAPTER 5

BIOGRAPHY OF JULIA MCCLURE	33
WHY LITIGATION OF SEX CASES IS DIFFERENT	35
Overview	35
1. Bail Conditions	35
2. Motion Practice.....	37
3. Plea Agreements	37
4. Cases Involving Child Victims	39
5. Relationship Between the Victim and the Defendant	40
6. Jury Selection.....	41
7. Unique Evidence Issues:	41
8. Trial Issues	42
9. Courtroom Atmosphere	43
10. Sentencing.....	44
Conclusion	44

CHAPTER 6

JUDICIAL PERSPECTIVE	45
Overview.....	45
Status Conferences.....	45

TABLE OF CONTENTS

Scheduling.....45
In Limine Motions.....46
Child Viewing Courtroom46
Preparation of Courtroom and Staff.....46
Jury Selection.....47
Child Victim Testimony51
Disruptive Defendant.....55
Adult Witness Testifying.....55
The Jury Charge.....55
Sentencing.....56

CHAPTER 7

BIOGRAPHY OF LAURIE HEAD-MELILLO.....59
A PROSECUTOR’S PERSPECTIVE.....61
 Overview.....61

CHAPTER 8

BIOGRAPHY OF JOSEPH BENEDICT73
THE DEFENSE PERSPECTIVE.....75
 The Initial Client Interview.....75
 In or Out, Jail or Bail76
 Pre-Trial Preparation.....77
 Grand Jury.....79
 Motion Practice.....80
 The Trial.....82
 Sentencing.....86

CHAPTER 9

BAIL ISSUES89
 Overview.....89
 Ten Percent Option89
 No Contact Provision.....90
 Familial Cases.....90
 Divorce Setting90
 Internet Crimes.....91

CHAPTER 10

SUFFICIENCY OF INDICTMENT93
 Overview.....93

SEX CRIMES

Case #1: <i>State in the Interest of K.A.W.</i> (Date and Time of Offense)	94
Case #2: <i>State v. C.H.</i> (Notice)	96

CHAPTER 11

PLEAS AND PLEA BARGAINS	97
Overview	97
Special Sentencing Provisions	98
NERA	98
ADTC	98
Megan’s Law	100
Parole Supervision for Life	101
Sexually Violent Predator Act (SVPA)	101
Case #1: <i>State v. Smullen</i> (Factual Basis of a Plea)	102
Case #2: <i>State v. Jamgochian</i> (Community Supervision for Life)	103
Case #3: <i>State v. Bellamy</i> (Sexually Violent Predator Act)	104
Case #4: <i>State v. Luckey</i> (No Early Release Act, Megan’s Law, ADTC, “Repetitive and Compulsive” Offender, Sexually Violent Predator Act, Parole Supervision for Life)	105

CHAPTER 12

JURY SELECTION PROCESS	107
Overview	107
Open-Ended Jury Questions for Child Sex Cases	111

CHAPTER 13

THE OATH AND COMPETENCY OF WITNESSES	117
Overview	117
Case #1: <i>State v. G.C.</i> (Competence of Child Witness)	118
Case #2: <i>State v. T.E.</i> (Administration of the Oath)	119

TABLE OF CONTENTS

CHAPTER 14

MOTION PRACTICE.....121

 Overview.....121

 Nature of the Motions121

 Psychological Exams122

 Case #1: *State v. R.W.*
 (Age of the Victim; Substantial Need).....122

 Case #2: *State v. Michaels*
 (Sufficient Showing of Need)123

 Medical Exams.....124

 Case #3: *State v. D.R.H.*
 (Examination Must Produce Certain Evidence;
 Right to Examination).....124

 School Records125

 Overview.....125

 Case #4: *State v. Krivacska*
 (Review of Records; Expert)126

 Case #5: *State v. Van Dyke*
 (Trial Testimony Triggering *In Camera* Review)126

 Juvenile Records.....128

 Case #6: *Davis v. Alaka*
 (Disclosure of Records when Juvenile is Still on
 Probation).....128

 Case #7: *State v. Allen*
 (Review of Juvenile’s Medical Records and Disclosure)129

 DYFS Records130

 Overview.....130

 Case #8: *State v. Cusick*
 (Obtaining Information from Other Sources)131

 Closed Circuit TV132

 Overview.....132

 Case #9: *State in the Interest of B.F.*
 (Burden of Proof).....132

 Case #10: *State v. Crandall*
 (Constitutionality of Statute; Source of Child’s Fear)133

 Case #11: *State v. Michaels*
 (Responsibility of the Court in Making Decisions
 Under the Statute)135

 Case #12: *State v. Smith*
 (Confrontation Clause; Eye-to-Eye Contact).....136

SEX CRIMES

Case #13: <i>State v. Delgado</i> (Waiver of Appearance by Defendant; Responsibilities of Court)	138
Privileges.....	138
Overview.....	138
Victim-Counselor.....	140
Overview	140
Case #14: <i>State v. J.G.</i> (Secondary Victims; Waiver; <i>In Camera</i> Review).....	140
Psychologist-Patient.....	141
Overview.....	141
Case #15: <i>State in the Interest of L.P.</i> (Scope of Privilege)	141
Case #16: <i>State v. L.J.P.</i> (Piercing the Privilege)	142
School Records	143
Case #17: <i>State v. Krivacska</i> (Balancing of Interests; Necessity of Experts).....	143
Case #18: <i>State v. Van Dyke</i> (Mid-Trial Review of Records)	144

CHAPTER 15

<i>STATE V. MICHAELS AND N.J.R.E. 803 C 27</i>	147
Overview.....	147
Case #1: <i>State v. Michaels</i>	148
Issues.....	149
Primary Issue	149
Taint Issue.....	150
Taint Holding	150
Assumption of Guilt by Interviewer	151
The Kelly Michaels Lessons.....	152
<i>N.J.R.E. 803(c)(27)</i>	154
Overview.....	154
Case #2: <i>State v. Maben</i> (Child's Unavailability)	158
Case #3: <i>State v. J.G.</i> (Trustworthiness; "Four Corners: Test)	159
Case #4: <i>State v. Donegan</i> (Trustworthiness; Videotape).....	160

TABLE OF CONTENTS

Case #5: *State in the Interest of S.M.*
(Notice Requirement).....161
Case #6: *State v. D.G.*
(Outside Influence; Gap in Videotape).....162
Case #7: *State v. Smith*
(Break in Interview; Leading Questions).....163
Case #8: *State v. Krivacska*
(Coercive/Suggestive Interview Techniques).....164
Case #9: *State v. T.E.*
(Trustworthiness).....165
Case #10: *State v. Delgado*
(Recorded Recollection, Memory Problems)166
Case #11: *State v. R.B.*
(Trustworthiness; Cross-Examination)166
Case #12: *State v. Burr*
(Replaying Video of Child’s Statement During Deliberations,
Unique Nature of the Evidence)167
Case #13: *State v. Nyhammer*
(Failure to Cross-Examine Child Witness on Core Accusations).....169

CHAPTER 16

OTHER CRIMES EVIDENCE-*N.J.R.E.* 404B171
Overview.....171
Case #1: *State v. Orlando*
(Joinder of Similar Charges).....172
Case #2: *State v. Cusick*
(Accidental Touching Claim)173
Case #3: *State v. Stevens*
(Evidence Probative and Necessary)173
Case #4: *State v. Oliver*
(Common Scheme or Plan; Intent; Court’s Instruction).....174
Case #5: *State v. G.S.*
(Prior Sexual Abuse of a Child; Limited Purpose).....175
Case #6: *State v. Zeidell*
(Evidence of Past Sexual Misconduct to Show Motive)176
Case #7: *State v. Covell*
(Prior Lewdness to Prove Motive and Intent in Luring Charge)177
Case #8: *State v. G.V.*
(Evidence of Prior Sexual Assault of the Victim’s Sister)177

SEX CRIMES

Case #9: *State v. L.P.*
(Prior Sexual Assault as Part of *Res Gestae*; *Res Gestae*
Distinguished from “Other Crimes” Evidence)178
Case #10: *State v. Davis*
(Prior Internet Communications to Prove Intent or Motive)179

CHAPTER 17

RAPE SHIELD181
 Overview.....181
 Case #1: *State v. Rowe*
 (Procedural Issues).....182
 Case #2: *State v. Ryan*
 (Prior Sexual Conduct with Someone Other Than the Defendant).....184
 Case #3: *State v. Ogburne*
 (Whether the Victim was a Virgin, Whether a Defendant can be
 Excluded from a Rape Shield Hearing)184
 Case #4: *State v. Burke*
 (Whether the Victim was a Virgin).....185
 Case #5: *State v. R.E.B.*
 (Whether the Victim was a Virgin; Evidence that the Victim
 Claimed to be a Virgin after Alleged Abuse)186
 Case #6: *State v. Budis*
 (Constitutional Issues, Whether Details of Prior Sexual
 Abuse of the Victim by a Third Party is Admissible).....187
 Case #7: *State v. Ross*
 (Admissibility of Prior Allegations of Sexual Abuse by the Victim).....188
 Case #8: *State v. Bray*
 (Admissibility of Prior Allegations of Sexual Abuse by the Victim).....189
 Case #9: *State v. Guenther*
 (Admissibility of Prior False Allegations; Limitations)190
 Case #10: *State v W.L.*
 (Admissibility of Victim’s Diary).....191
 Case #11: *State v. G.S.*
 (Balancing of Factors, Admissibility of Evidence of Prior Sexual
 Conduct, Limitations on Questioning).....191
 Case #12: *State v. Clowney*
 (Application of Rape Shield Statute to Deceased Victim,
 Admissibility of Evidence of Prior Sexual Conduct)192
 Case #13: *State v. Scherzer*
 (Procedural Issues).....193

TABLE OF CONTENTS

Case #14: *State v. Cuni*
(Admissibility of Evidence of Prior Sexual Conduct; Procedural
Issues; Mental Capacity to Refuse Consent)193
Case #15: *State v. Buscham*
(Admissibility of Evidence of Prior Sexual Conduct)196
Case #16: *State v. Garron*
(Admissibility of Evidence of Prior Sexual Conduct)196
Case #17: *State v. Velasquez*
(Admissibility of Evidence of Prior Sexual Conduct)198
Case #18: *State v. B.M.*
(Admissibility of Prior Allegations of Sexual Abuse by the Victim;
Disposition of Cases Against Persons Previously Accused)199
Case #19: *State v. Schnabel*
(Admissibility of Evidence of Prior Sexual Abuse of Victim)200

CHAPTER 18

CONSENT201
 Overview201
 Case #1: *State in the Interest of M.T.S.*
 (Definition of Force)203
 Case #2: *State v. Oliver*
 (Use of *N.J.R.E.* Regarding the Question of Consent)204
 Forcible Sexual Assault205
 Overview205
 N.J.S.A. 2C:14-2a(5)206
 Case #3: *State v. Scherzer*
 (Force)206
 N.J.S.A. 2C:14-2a(6)207
 Case #4: *State v. Day*
 (Severe Personal Injury)207
 Case #5: *State v. Walker*
 (Incapacitating Mental Anguish)207
 N.J.S.A. 2C:14-2c(1)208
 Case #6: *State v. Drury*
 (Definition of Force or Coercion)208
 Sexual Assault of a Person Legally Unable to Consent209
 Overview209
 N.J.S.A. 2C:14-2a(1)209
 Case #7: *State in Interest of C.P.*
 (Charges Against Juveniles Six and Nine Years Old)209
 N.J.S.A. 2C:14-2a(2)210

SEX CRIMES

1. Related	210
Case #8: <i>State v. Brown</i> (Related; Stepsister; Affinity)	210
2. Supervisory or Disciplinary Power	211
Case #9: <i>State v. Buscham</i> (Nature of Relationship)	211
3. <i>In Loco Parentis</i>	212
Case #10: <i>Harwicke v. American Boychoir School</i> (<i>In Loco Parentis</i>)	212
<i>N.J.S.A. 2C:14-2a(7)</i>	213
1. Physically Helpless	213
Case #11: <i>State v. Rush</i> (Physical Helplessness)	213
2. Mentally Defective	214
Case #12: <i>State v. Olivio</i> (Mental Defect; Defendant’s Knowledge)	214
Case #13: <i>State v. Cuni</i> (Prior Consensual Sexual Experience)	215
Case #14: <i>State v. Scherzer</i> (Mental Defect)	217
3. Mentally Incapacitated	218
<i>N.J.S.A. 2C:14-2b</i>	218
Case #15: <i>State v. Ridgeway</i> (Lack of Physical Contact)	218
Case #16: <i>State in the Interest of A.N.</i> (Proof of Age; Physical Appearance)	219
Case #17: <i>State v. Zeidell</i> (Actor Touching Himself in View of Victims)	219
Case #18: <i>State v. Breitweiser</i> (Victim’s View of Conduct)	220
<i>N.J.S.A. 2C:14-2c(2)</i>	221
Case #19: <i>State v. Martin</i> (Definition of “Detained;” Consent)	221
<i>N.J.S.A. 2C:14-2c(3)</i>	222
<i>N.J.S.A. 2C:14-2c(4)</i>	222
Hybrid Forms of Sexual Assault	222
Overview	222
<i>N.J.S.A. 2C:14-2a(3)</i>	223
Case #20: <i>State v. Jones</i> (Consent)	223
<i>N.J.S.A. 2C:14-2a(4)</i>	224

TABLE OF CONTENTS

Case #21: *State v. Martinez*
 (Force; Weapon)224

CHAPTER 19

FRESH COMPLAINT227

 Overview227

 Case #1: *State v. Balles*
 (Complaint to Mother Shortly After Event).....228

 Case #2: *State v. Tirone*
 (Complaint to Brother Seven Hours Later; Jury Charge;
 Harmless Error).....229

 Case #3: *State v. Hummel*
 (Remoteness in Time of Complaints)230

 Case #4: *State v. Cherry*
 (Complaint by Male Victim).....231

 Case #5: *State v. Brass*
 (Victim Did Not Testify at Trial).....231

 Case #6: *State v. J.S.*
 (Statements Given in Response to Questions; Amount of Detail
 Allowed; Jury Instructions).....232

 Case #7: *State v. Bethune*
 (Coercive Questioning; Detail of Testimony; Harmless Error;
 Court’s Instructions on Corroboration of Victim’s Testimony;
 Instructions of Child’s Silence)233

 Case #8: *State v. Hill*
 (Statements in Response to Questioning; Cumulative Fresh
 Complaint Witnesses)234

 Case #9: *State v. Scherzer*
 (Testimony Too Detailed; Harmless Error)236

 Case #10: *State v. L.P.*
 (Spontaneity of Statements; Length of Time before Disclosure)236

 Case #11: *State v. Pillar*
 (Spontaneity of Statement; Time Passage of Six Years;
 Harmless Error).....238

 Case #12: *State v. Buscham*
 (Testimony Too Detailed; Improper Instructions).....239

 Case #13: *State v. P.H.*
 (Interplay between Fresh Complaint and Child Sexual Abuse
 Accommodation Syndrome; Clarification of *Bethune* Charge).....240

SEX CRIMES

Case #14: <i>State v. Williams</i> (Erroneous Charge on the Use of Fresh Complaint Testimony; Plain Error).....	241
Case #15: <i>State v. R.E.B.</i> (Failure to Give Fresh Complaint Charge; Plain Error).....	242
Case #16: <i>State v. J.A.</i> (Retroactivity of <i>State v. P.H.</i>).....	242

CHAPTER 20

CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME (CSAAS)	245
Overview	245
Case #1: <i>State v. J.Q.</i> (Limits on Expert Testimony).....	246
Case #2: <i>State v. Michaels</i> (Use of Term “Consistent With” in Expert Testimony)	247
Case #3: <i>State v. W.L.</i> (Limits on Expert Testimony, Use of the Terms “Signals” and “Indicators” by Prosecutor).....	249
Case #4: <i>State v. W.L.</i> (Limits on Expert Testimony; Use of the Term “Not Inconsistent With” in Expert Testimony)	249
Case #5: <i>State v. Scherzer</i> (Limits on Expert Testimony, Rape Trauma Syndrome).....	250
Case #6: <i>State v. P.H.</i> (Jury Charges, Fresh Complaint)	251
Case #7: <i>State v. R.B.</i> (Jury Charges; Limits on Expert Testimony; Harmless Error).....	252
Case #8: <i>State v. D.J.P.</i> (Jury Charges).....	253
Case #9: <i>State v. Rufflin</i> (Jury Charges).....	254
Case #10: <i>State v. Schnabel</i> (Limits on Expert Testimony).....	254

CHAPTER 21

BIOGRAPHY OF PHILIP H. WITT, PH.D., ABPP	257
THE PSYCHOLOGIST’S PERSPECTIVE	259
Overview	259
Pre-Adjudication	261
Repetitive-Compulsive Offenders	263

TABLE OF CONTENTS

SVP Civil Commitment Evaluations	265
Community Notification Evaluation.....	266
Treatment	269
Conclusion	271

CHAPTER 22

BIOGRAPHY OF SUSAN COHEN ESQUILIN, PH.D., ABPP-CLINICAL	273
PSYCHOLOGICAL EXPERIENCE OF CHILDREN AND ADOLESCENTS AS WITNESSES IN SEXUAL ABUSE CASES	275
Overview	275
Time Frame Involved in Litigation.....	276
Confusion about Legal Issues	277
Children’s Concerns about Physical and Emotional Safety	278
Denial of Emotional Problems.....	280
Recommendations.....	281
References.....	283

CHAPTER 23

CHILD PORNOGRAPHY	285
Overview	285
The Statute	285
Manufacturing Child Pornography	286
Case #1: <i>State v. V.R.</i> (Videotaping a Nude Child).....	286
Case #2: <i>State in the Interest of A.B.</i> (Applicability to Juveniles).....	287
Case #3: <i>State v. Sisler</i> (Printing Pornographic Images from a Computer)	287
Disseminating Child Pornography.....	288
Overview.....	288
Case #4: <i>State v. May</i> (Virtual Images; Expert Testimony on Age)	288
Possessing or Viewing Child Pornography	290

CHAPTER 24

TECHNOLOGY	291
Overview	291
Case #1: <i>State v. Davis</i> (“Substantial Step”)	291

SEX CRIMES

Case #2: *State v. Condon*
("Impossibility" Versus "Substantial Step").....292
Case #3: *State v. Maxwell*
(Victim's Self-Penetration on Actor's Instructions).....293
Case #4: *State v. Reid*
(Internet Privacy)294

CHAPTER 25

INVASION OF PRIVACY295
Overview.....295

CHAPTER 26

LEWDNESS297
Overview.....297
Case #1: *State v. Zeidell*
(Masturbation with Children Nearby).....297
Case #2: *State v. Hackett*
(Lewdness Versus Endangering the Welfare of a Child).....298
Case #3: *State v. Breitweiser*
(Child Did Not View Act).....299

CHAPTER 27

BIOGRAPHY OF JESSICA S. OPPENHEIM, ESQ.....301
THE NEW JERSEY PREVENTION OF DOMESTIC VIOLENCE ACT303
Overview.....303
What is Domestic Violence?.....303
Criminal Procedure304
The Restraining Order Process305
Full Faith and Credit308
The Contempt Matter.....308
Guns309
Intent of the Statute.....309

CHAPTER 28

INTRODUCTION TO MEGAN'S LAW.....311
Overview.....311

TABLE OF CONTENTS

CHAPTER 29

REGISTRATION, NOTIFICATION & PAROLE SUPERVISION FOR LIFE—
THE SPECIFICS317
 Overview.....317
 Registration and Community Notification.....317
 Registration.....317
 Community Notification.....319
 Internet Notification.....322
 Parole Supervision for Life.....322

CHAPTER 30

SPECIAL SENTENCING PROVISIONS325
 Overview.....325
 Terms of Incarceration.....325
 Megan’s Law326
 Community Supervision for Life.....332
 Parole Supervision for Life.....333
 NERA Applicability.....335
 Internet Access Conditions for Certain Offenders.....336
 DNA Testing.....337
 Adult Diagnostic and Treatment Center338
 Nicole’s Law340
 Sexual Offense Chart for Adult Offenses343
 Sexual Assault – Penalties344

CHAPTER 31

STATUTE OF LIMITATIONS345
 Overview.....345
 Aggravated Sexual Assault and Sexual Assault345
 Aggravated Criminal Sexual Contact and Sexual Contact345
 Endangering the Welfare of a Child345
 Luring a Child or an Adult.....345
 Lewdness.....346
 Other Relevant Provisions346

CHAPTER 32

EXPUNGEMENT OF SEX CRIME AND RELATED CONVICTIONS347
 Overview.....347

SEX CRIMES

CHAPTER 33

SEXUALLY VIOLENT PREDATOR ACT.....349
 Overview.....349
 SVPA Commitment Proceedings.....350
 Plea Consequences.....350

CHAPTER 34

BIOGRAPHY OF RICHARD POMPELIO, ESQ.....351
CHILD VICTIMS OF SEXUAL ASSAULT.....353
 The Child Sexual Abuse Act.....353
 Historical Development of CSAA353
 Cause of Action and Parties Liable under the CSAA354
 Governmental and Charitable Immunity355
 Damages.....356
 Evidence of Repressed Memory356
 References.....357

CHAPTER 35

BIOGRAPHY OF WILLIAM PLANTIER361
THE ADULT DIAGNOSTIC AND TREATMENT CENTER (ADTC).....363
 Overview.....363

APPENDIX

Attorney General Guidelines for Law Enforcement for the
Implementation of Sex Offender Registration and Community
Notification Laws (Selected Exhibits)..... A-3
 Exhibit E: Registrant Risk Assessment Scale Manual..... A-5
 Exhibit F: Registrant Risk Assessment Scale A-15

Additional Questions for Certain Sexual Offenses..... A-17

Additional Questions for Certain Sexual Offenses
Committed On or After December 1, 1998 A-21

Plea Form..... A-23

Supplemental Plea Form for *No Early Release Act* (NERA) Cases
 (between June 9, 1997 and June 29, 2001 A-27
 (on or after June 29, 2001)..... A-28

TABLE OF CONTENTS

Parole/Community Supervision for Life Forms A-29

TABLE OF AUTHORITIES

..... T-1