

WRITTEN TESTIMONY OF MICHAEL PETERS, ESQUIRE

In the late summer and fall of 1997, Jane Doe was a normal, functioning adult who held a job and did things most normal Americans do on a daily basis. She then, however, had the misfortune of suffering multiple strokes, which left her as a 36-year-old woman with catastrophic injuries, including, complete left-sided paralysis, brain injury and severe cognitive dysfunction. At the time this happened to her, she was not married and her only real family contact and support was her cousin Timothy. After a lengthy hospitalization for rehabilitation from her injuries, she was admitted to Maitland Health Care Center in Maitland, Florida for long-term skilled nursing care and rehabilitation. Due to Ms. Doe's severe mental and physical disabilities, she required extensive assistance with all activities of daily living and motor functions, including the most basic of activities such as bathing, dressing, personal hygiene, grooming, toileting, eating, etc.

As a result of her complete dependence, the employees who care for Ms. Doe occupied a special position of trust and confidence, much in the same way a day care employee would occupy a position of trust and confidence to the infants and toddlers whom they care for. Over the next 2 ½ years, that special relationship continued and, in fact, became more established as time passed.

Tragically, sometime in or around April, 2000, that trust and confidence was shattered in a cruel and unusual manner. Moreover, Ms. Doe was unaware of the violation until January 14, 2001, when Ms. Doe went into labor alone and without warning. Then an employee who came in to simply change Ms. Doe's adult diaper discovered an infant lying in feces with the umbilical cord still attached. You see, unbeknownst to Ms. Doe, she had been raped by an employee of the nursing home and carried a child without her knowledge to full term and delivered this baby with no family support, no medical support, no anesthesia, with no one. She laid in a dark room in a nursing home, by herself and delivered the child.

The employee who committed this heinous act has been arrested, arraigned, and will stand trial in a criminal court of law in Orlando, Florida. Evidently, the employee has claimed that the child was born out of a "consensual" sexual encounter with Ms. Doe. Anyone who spends more than a couple of minutes with Ms. Doe knows such a notion is preposterous, given her mental and emotional condition. In fact, Ms. Bennett has been examined by professionals who are of the opinion that she could not have possibly consented, any more than a young child could have.

The unbelievable events of this case raise many questions. Why was a 40-something-year-old male employee allowed to be alone, unsupervised, for any appreciable time with this 38-year-old severely impaired nursing home resident? Why did the staff in charge of Ms. Doe's daily care on a very personal and intimate level not know that she was pregnant? Was this the first time that this individual sexually assaulted a resident? Would this have happened to Ms. Doe had a surveillance camera been installed in her room as advocates for nursing home residents have asked for in the state of Florida?

Regarding the issue of law enforcement and their response to this particular situation, I must be candid, and say that law enforcement did its job and did it in a timely manner. It is my

impression, that is the exception, rather than the rule. In this case, the local police department in Winter Park investigated the matter and within an 8-month period of time, they were able to identify the perpetrator, arrest him based on a DNA match between the child and the employee. The employee has now been arraigned and will stand trial within the next few months. On the other hand, the state agencies charged with investigating these matters have not performed their duties in an expeditious manner. To my knowledge they have conducted no interviews of any of the co-employees who might have had knowledge of this situation or the individual responsible, nor have they reviewed the nursing home's policies and procedures in an effort to find out how this could have been avoided.

I also have a case against a nursing home in the State of Tennessee, which involves an elderly man who was beaten to death by an employee. In that case, law enforcement's response to the situation borders on comical. They have made no arrest and conducted no real investigation and appear to have decided to sweep this ugly incident under the rug. Clearly, that response is unacceptable.

However, in my opinion, although investigation as to law enforcement's response to these situations is meritorious, and certainly warranted, I think the bigger focus should be on prevention. A primary intervention that should be considered either on the federal or the state level to prevent these kinds of incidents from happening are the presence of security/surveillance cameras in the rooms. To avoid any privacy concerns, the decision of whether to have a camera in each resident's room could be left to the individual and/or their family. Clearly, an employee is far less likely to commit such a heinous act if they know their activities are being monitored and watched. Someone who habitually breaks the speed limit while driving, will not speed down a street where they know a cop is present on a daily basis. They will simply slow down while they are on that stretch of road and then continuing their law-breaking habits once they pass. While it may not be possible to weed out all of the bad apples who become employees in nursing homes, the presence of a security camera would limit the bad behavior, and potentially eliminate it altogether. I would like to see these in place on behalf of the families that I have devoted my career to representing, even if it meant in the long run putting me out of business. Thank you for your time and commitment to addressing this important issue.