

Exercise

Background:*

Doreen Barnes is a 96-year-old woman living in a nursing home. She has the following diagnoses: Alzheimer's dementia, hypertension, atherosclerotic cardiovascular disease, arthritis, and repair of right hip fracture.

A nursing aide walked into Ms. Barnes' room and witnessed a male housekeeper, Marvin Green, crouched at her bedside with his penis exposed near Ms. Barnes' mouth. When the aide asked Mr. Green what he was doing, he got up, turned his back and began adjusting his clothing. The aide could tell that Mr. Green still had an erection.

The assessment of Ms. Barnes' immediate emotional and cognitive status indicated no particular response. She was staring blankly and did not respond to her name. However, when touched on the shoulder, Ms. B turned further over to the right and pulled the covers higher under her chin. Although Ms. B usually exhibited marked mumbling and unclear speech, no verbalizations were uttered.

One week later a psychiatric evaluation reported that since the sexual assault, Ms. B had become quite anxious and depressed and was not eating. She had been crying frequently and had become increasingly confused. She became socially withdrawn, irritable, and was unable to concentrate. Nursing progress notes indicated she had "inappropriate behavior of 'licking' as possible response to trauma." Earlier that month, Ms. Barnes had complained of a "man in the room" and had requested that the door to her room be closed.

Mr. Green asserts that the nurse aide's allegations are false. He was in Ms. B's room on his regular cleaning rounds when the aide came in. He claims that she is accusing him out of malice because he is not interested in dating her. Mr. Green is 27 years old and very good looking.

*Case drawn from: Ann W. Burgess & Paul T. Clements, *Information Processing of Sexual Abuse in Elders* (2006), www.medscape.com/viewarticle/546942

Q 1. Ms. B is unable to testify because of her medical condition. Will you allow the nursing aide who claims to have witnessed the abuse to testify?

Q 2. Assume that you admit the nursing aide's testimony and set the case for trial. The prosecutor asks for expanded voir dire because so few elder sexual abuse cases go to trial. The prosecutor wants to explore the potential jurors' attitudes toward elder sexual abuse, experiences with elder sexual abuse, and beliefs concerning its perpetration and frequency. The prosecutor particularly wants to explore their potential jurors' openness to the possibility that a good-looking young man might have sexual contact with an elderly woman.

Defense counsel also wants to explore the potential jurors' attitudes toward and experiences with elder sexual abuse, but objects that the prosecutor's proposed questions about openness to the possibility that a good-looking young man might have sexual contact with an elderly woman are too close to the facts of the case and should not be allowed.

The prosecutor replies that a child sexual abuse case that she tried ended in a hung jury because one juror refused to believe that any adult would engage in sexual activity with a child, a point the prosecutor had not thought to voir dire on. This case is analogous; many people simply do not believe that a young man would engage in sexual contact with an elderly woman. If potential jurors committed to that belief are not identified and excused, there cannot be a fair trial.

- **Would you allow the prosecutor's proposed line of questioning?**

Q 3. Assume that Mr. Green has been convicted of sexual assault [add the language for your jurisdiction here] and comes before you for sentencing.

- **What would you expect the Pre-Sentence Investigation to include?**
- **What sentence would you impose?**
- **If you impose any period of probation, what conditions would you impose?**

Q 4. Assume that Ms. Barnes dies shortly after the sexual assault without ever being able to describe the assault or its effect on her. Her estate sues the nursing home for its role in Ms. Barnes' emotional suffering. The nursing home never ran a background check on Mr. Green, who had a record as a sex offender.

The estate proposes to present an expert on elder sexual abuse who will testify that a person with dementia is capable of experiencing trauma incident to a sexual assault.

- **Do you admit that expert?**