Combating Sexual Grooming

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United States Supreme Court Justice Potter Stewart is famous for writing in his concurring opinion in Jacobellis v. Ohio (1964), regarding the definition of pornography: "I have reached the conclusion... that under the First and Fourteenth Amendments, criminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that." (Emphasis added). Within a decade, the Court, in Miller v. California (1973), provided a three-prong test regarding what constituted obscenity. Still, it is difficult to ascertain a "bright line" rule for precisely indicating what actions are considered protected versus unprotected speech/expression under the First Amendment. Does the same "I know it when I see it" phrase apply to sexual grooming?

In a 2015 American Bar Association article in Child Law Practice, "Understanding Sexual Grooming in Child Abuse Cases," we wrote:

"In many child sexual abuse cases, the abuse is preceded by sexual grooming. Sexual grooming is a preparatory process in which a perpetrator gradually gains a person's or organization's trust with the intent to be sexually abusive. The victim is usually a child, teen, or vulnerable adult. Understanding sexual grooming and common sexual grooming behavior can help professionals prevent sexual abuse before it occurs. Evidence of sexual grooming can be used to convict offenders—in those jurisdictions where sexual grooming is a crime—and substantiate allegations of sexual abuse where a victim's testimony is unclear or misleading.

The key elements of sexual grooming may include:

- targeting the victim,
- securing access to and isolating the victim,
- gaining the victim's trust, and
- controlling and concealing the relationship (citations omitted)."

The federal legal definition of "sexual exploitation of children" can be found at 18 U.S. Code § 2251. It reads, in part: "Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished…"

I was recently doing some yard work. In the process of pruning some bushes, a small thorn became embedded in my thumb. Ouch! I walked over to my neighbors – both parents are nurses. With their three small children looking on, after 15 minutes, they poked and coaxed the splinter out. In gratitude, I slipped the parents a $20 bill. Perhaps they would like to take the kids out for an ice cream sundae? Could an outside observer construe such a gesture as sexual grooming? The answer is 'perhaps'. That suspicion could be reinforced if there was a pattern of such behaviors, as well as other questionable actions.

I had the opportunity to sit on the "Larry Nassar Commission," formally called the Game Over Commission to Protect Youth Athletes. In our final report, John-Michael Lander, a former athlete who competed in international springboard and platform diving competitions, writes: "I want to clarify that predators are always lurking in the shadows and constantly evaluating, changing, and adapting their means of grooming. There is no set formula that a predator follows to groom a prey. Each predator's approach and process are unique and individualized. The predator will pursue who they are attracted to and use their expertise to manipulate the situation and the victim. The one thing that they all have in common is the ability to excuse their actions convincingly (p. 68)."

While on the Commission, I wrote an article, "Children, Sports, and Sexual Groomers: Ten Commandments for Parents to Follow." Modified, similar commandments apply to the health profession as well:

1. To the extent possible, children should not be left alone with a nurse, physician or other health professional. At least one other responsible person should be present.
2. Health providers should do a thorough background check into every adult who interacts with children. Whether the facility has a worldwide reputation or not, do not assume they are to be trusted with a child.
3. Parents should not give up, and health providers should not attempt to exert, authority over a child.
4. Administrators, and all staff, should be aware of the general culture that a healthcare facility has. Professionalism should reign.
5. If a health care staff member sees physically inappropriate behavior, they should report it immediately to the proper authorities. This might include law enforcement or child protective services. They should not try to smooth things over.
6. A child should never receive texts from a health care professional that do not also go to the child's parent or guardian.
7. Health care professionals are not a child's friend. They can be friendly, but they are not friends.
8. Be especially aware of particularly vulnerable children. Groomers have a knack for identifying them.
9. Provide staff with training and information that is designed to help them with skill development in this area. Some resources include:
   - National Sexual Assault Hotline, 1-800-656-4673
   - Many other resources are available at the Child Welfare Information Gateway, https://www.childwelfare.gov/pubs/reslist/tollfree/
10. Unfortunately, sexual grooming is more obvious in hindsight than in real time. And so, the best policy is the 'roach approach' – turn on the light!

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