

WRIT NO. 222074-C

EX PARTE)
MICHAEL PRINZ ARENA) **169th DISTRICT COURT**
) **BELL COUNTY, TEXAS**
)
Applicant)
_____)

BRIEF ON ABEL TESTING

At the Disposition Hearing in this case, Dr. Fred Willoughby claimed at some points that he gave Michael Arena an “Abel Assessment.” *See* Oct. 14, 1999 Tr. (“Tr.”) at 21:24; 26:23, 30:6. At another point, he claimed he gave Michael an “Abel Screen.” *Id.* at 26:6. Nevertheless, as Dr. Abel, himself, has noted, “[t]he stimulus set and the methodology underlying The Abel Screen are entirely different from the stimulus set and the methodology underlying The Abel Assessment.”¹

At the Disposition Hearing in this case, Dr. Willoughby claimed that, although Michael showed “no major psychiatric problems” (Tr. at 29:1) on the other tests he administered and “nothing all that significant” (*id.* at 29:29:10-11) came up with the other tests he administered, the results of the “Abel assessment” qualified Michael as a “pedophile.” *Id.* at 30:5-9. Nevertheless, Dr. Abel himself

¹*Sexual Abuse: A Journal of Research and Treatment*, “The Importance of Meeting Research Standards: A Reply to Fisher and Smith’s Articles on the Abel Assessment for Sexual Interest,” Vol. 12, No. 2 at 159 (2000) (attached hereto as Attachment A).

had noted that “[t]here has *never* been a claim that The Abel Assessment could be used to screen pedophiles from normals.”² He has likewise noted that visual reaction time (VRT) tests such as the Abel Assessment “cannot possibly make a diagnosis.”³

At the Disposition Hearing in this case, Dr. Willoughby claimed that the Abel test he gave Mr. Arena correctly classified an interest in prepubescent females 85 percent of the time. *See* Tr. at 11:1; 24:1-2 In fact, even Dr. Abel’s own research showed it to correctly classify an interest in prepubescent females only 66 percent of the time.⁴

At the Disposition Hearing in this case, Dr. Willoughby claimed the Abel test he gave was “accepted in the scientific community as a test that’s able to predict those people who have an interest in...particular types of sexes and age groups.” *See* Tr. at 3:10-6. In fact, Dr. Abel admits that his own research study involving 157 males, involved just 1.5% of males under the age of 18.⁵

At the Disposition Hearing in this case, Dr. Willoughby claimed that the

²*See* Attachment A *supra*. at 159 (emphasis added).

³ *Id.* at 156.

⁴*See Sexual Abuse: A Journal of Research and Treatment*, “Visual Reaction Time and Plethysmography as Measures of Sexual Interest in Child Molesters,” Vol. 10, No. 2 (1998) at 91 (attached hereto as Attachment B),

⁵*See* Attachment B *supra*. at 83-84.

reliability of the Abel test he gave was established by “researchers at Brigham Young University.” At the time Dr. Willoughby made that statement, there were two research articles written on the Abel Assessment by “researchers at Brigham Young University.”⁶ These researches, relied upon by Dr. Willoughby concluded:

“The test-retest data do not support the reliability of the AAIP for use with adolescents.” *See* Attachment C at 213.

“The screening validity data show that the ability of the AAIP to discriminate adolescent offenders from nonoffenders was not significantly better than chance.” *Id.* at 214.

“[I]ts ability to screen or diagnose adolescent perpetrators reliability has not been demonstrated. *No published data supports its use with such a population.*” *Id.* at 215 (emphasis added).

Moreover, Dr. Abel himself acknowledged that his 2004 study was “an *initial* attempt to evaluate the validity of the AASI with adolescent males.” *Sexual Abuse: A Journal of Research and Treatment*, “Use of Visual Reaction Time to Assess Male Adolescents Who Molest Children,” Vol. 16, No. 3 (1999) at 258 (attached hereto as Attachment D). What is more, he concludes in that study that even that study would not apply to alleged offenders, such as Mr. Arena who denies committing the alleged offense, and ultimately recommended against

⁶ *See Sexual Abuse: A Journal of Research and Treatment*, “Assessment of Juvenile Sexual Offenders: Reliability and Validity of the Abel Assessment for Interest in Paraphilias,” Vol. 11, No. 3 (1999) (Attached hereto as Attachment C); *Sexual Abuse: A Journal of Research and Treatment*, “Statistical Adequacy of the Abel Assessment for Interest in Paraphilias,” Vol. 11, No. 3 (1999).

“using VRT alone to identify male adolescents who molest children.” *Id.* at 263.⁷

Finally, while never developed by Mr. Arena’s attorney, Bobby Barina, he could have discovered the problems with scoring the test relied upon by Dr. Willoughby to reach his conclusion that Mr. Arena was a pedophile.

[T]he raw data is sent to Dr. Abel in Atlanta, Georgia... [where he] applies some “formulas” to it and plots the results on graphs. This is of particular import because it is the sum of Abel's work which is then interpreted by individuals such as [Willoughby] to derive the subject's sexual deviancy and dangerousness via the “danger registry” and like concepts.

In the Interest of CDK, 64 S.W.3d 679, 683 (Tex. App.--Amarillo 2002) (attached hereto as Attachment E). One Texas court likened the Abel’s secret scoring method to “the magic of young Harry Potters' mixing potions at the Hogwarts School of Witchcraft and Wizardry” and “the prophesies of Macbeth's demise floating from the cauldron of the three blind witches.” *Id.* at 63-844.

Indeed,

The AASI may only be purchased from Dr. Abel's company, Abel Screening, Inc., a for-profit company located in Atlanta, Georgia. All employees of the company are subject to confidentiality agreements. Users of the AASI must purchase computer software and stimulus package from Abel Screening, Inc. Further, all users of the AASI must send all of their raw data to Abel Screening, Inc. for processing.

Ready v. Commonwealth, 2002 WL 1255800 at *1 (Mass Super. 2002).

⁷Recall that there was nothing significant on any of the other tests given to Mr. Arena but for the alleged results on the Abel test.

Respectfully submitted,

F. Clinton Broden
Tx. Bar 24001495
2707 Hibernia
Dallas, Texas 75204
214-720-9552
214-720-9594 (facsimile)

LOCAL COUNSEL:

JAMES H. KREIMEYER, JR.
112 North Main St.
Belton, Texas 76513-0727
254-939-9393
254-939-2870 (fax)

Attorneys for Applicant
Michael Prinz Arena

CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that on December 11 2007, I caused the foregoing document to be served by first class mail, postage prepaid on Bell County Attorney's Office, Bell County Courthouse, Belton, Texas 76513.

F. Clinton Broden