

**KEY APPELLATE CASE LAW CITES ON SEX ABUSE 11/07**

By Margaret A. Burt, Esq.

**No Reasonable Efforts**

**Matter of Marino S.**, 100 NY2d 361, 763 NYS2d 796 (2003) – key Court of Appeals case re sex abuse being severe abuse and derivative severe abuse re sibs and therefore NRE on all kids

**Culpability of Parent who “allows”**

**Matter of Tashia QQ** 27 AD3d 849 (3<sup>rd</sup> Dept. 2006)

**Matter of Ivette R.** 282 AD2d 751 (2<sup>nd</sup> Dept. 2001)

**Matter of Hope S.**, NYLJ 12/18/00 at 30 (2<sup>nd</sup> Dept. 2000)

**Matter of Anita J.**, 701 NYS2d 557 (4<sup>th</sup> Dept. 1999)

**Matter of Jennifer G.**, 687 NYS2d 844 (4<sup>th</sup> Dept. 1999)

**Matter of Elizabeth G.**, 680 NYS2d 32 (4<sup>th</sup> Dept. 1998)

**Matter of Maryann NN.**, 665 NYS2d 710 (3<sup>rd</sup> Dept. 1997)

**Matter of Jessica DD.**, 651 NYS2d 673 (3<sup>rd</sup> Dept. 1996)

**Matter of Rhiannon B.**, 654 NYS2d 537 (4<sup>th</sup> Dept. 1997)

**Matter of Eric J.**, 636 NYS2d 762 (1<sup>st</sup> Dept. 1996)

**Matter of Jaquay O.**, 232 AD2d 422 (1<sup>st</sup> Dept. 1995)

**Matter of Nina M.**, 189 AD2d 1010 (3<sup>rd</sup> Dept. 1993)

**Matter of Anna Marie A.**, 194 AD2D 608 (2<sup>nd</sup> Dept. 1993)

**Matter of Nicole B.**, 175 Ad2d 205 (2<sup>nd</sup> Dept. 1993)

**Matter of Scott X.**, 184 AD2D 866 (3<sup>rd</sup> Dept. 1992)

**Matter of Alan G.**, 185 AD2D 319 (2<sup>nd</sup> Dept. 1992)

**Matter of Kasey C.**, 182 AD2D 1117 (2<sup>nd</sup> Dept. 1992)

**Matter of Jose Y.**, 177 AD2d 580 (2<sup>nd</sup> Dept. 1991)

**Matter of Tania J.**, 147 AD2D 252 (1<sup>st</sup> Dept. 1989)

**Matter of Daniel DD.**, 142 AD2D 750 (3<sup>rd</sup> Dept. 1988)

**Matter of Faith AA.**, 139 AD2D 22 (3<sup>rd</sup> Dept. 1988)

**Derivative Findings**

**Matte of Daniel W** 37 AD3d 842 (2<sup>nd</sup> Dept 2007)

**Matter of AR** 309 AD2d 1153 (4<sup>th</sup> Dept. 2003) – good language on derivative reversing lower court who dismissed derivative

**Matter of Shaun X** 300 AD2d 772 (3<sup>rd</sup> Dept. 2002) – “beyond dispute”

**Matter of Melissa “L”.**, 714 NYS2d 154 (3<sup>rd</sup> Dept. 2000)

**Matter of Falcon “EE”.**, 703 NYS2d 569 (3<sup>rd</sup> Dept. 2000)

**Matter of Ashley “D”.**, 702 NYS2d 209 (3<sup>rd</sup> Dept. 2000)

**Matter of Lauren B.**, 200 AD2D 740 (2<sup>nd</sup> Dept. 1994)

**Matter of Amanda LL.**, 195 AD2d 708 (3<sup>rd</sup> Dept. 1993)

**Matter of Douglas EE.**, 191 AD2D 694 (2<sup>nd</sup> Dept. 1993) – the key case

**Matter of Jeremy H.**, 193 AD2D 799 (2nd Dept. 1993)  
**Matter of Kelly M.**, 196 AD2D 538 (3rd Dept. 1993)  
**Matter of Rachel G.**, 185 AD2D 704 (3rd Dept. 1993)  
**Matter of Lynelle W.**, 177 AD2D 1008 (4th Dept. 1993)

### **Sexual Gratification**

**Matter of Raymond M** 13 AD3d 377 (2<sup>nd</sup> Dept 2004) – can be inferred from circumstances  
**In re Keisha McL.**, 691 NYS2d 428 (1st Dept. 1999) - can be inferred if no innocent explanation is offered for touching  
**Matter of AG** 686 NYS2d 396 (1st Dept. 1999)  
**Matter of Karen BB.**, 628 NYS2d 431 (3rd Dept. 1995)  
**Matter of Sandra S.**, 195 AD2d 1070 (4th Dept. 1993)  
**Matter of Olivia YY.**, 209 AD2d 892 (3rd Dept. 1994)

### **Res Ipsa**

**In Re Anthony S.** 280AD2D 302 (1<sup>st</sup> Dept. 2001)  
**In re Magnolia A.**, 707 NYS2d 176 (1st Dept. 2000)  
**Matter of Yazalin P.**, 680 NYS2d 530 (1st Dept. 1998)  
**Matter of Tyeasia**, 641 NYS2d 673 (1st Dept. 1996)  
**Matter of Lauren B.**, 200 AD2D 740 (2nd Dept. 1994)  
**Matter of Phillip M.**, 82 NY2d 238 (1993) - key case  
**Matter of Heith S.**, 189 AD2D 875 (2nd Dept. 1993)  
**Matter of Tania J.**, 147 AD2D 252 (1st Dept. 1989)

### **Corroboration of Child's Out of Court Statements**

**Matter of Teonia B.** 37 AD3d 1101 (4<sup>th</sup> Dept. 2007) – child's out of court statement plus medical evidence  
**Matter of Sylvia J.** 804 NYS2d 783 (2<sup>nd</sup> Dept. 2005) – child's out of court statement plus unsworn but cross examined in camera testimony  
**Matter of Addie F.** 22 AD3d 986 (3<sup>rd</sup> Dept. 2005) – repeated and consistent out of court statements plus child behaviors, age inappropriate knowledge, pattern of progressively intrusive perp behavior, respondent's bizarre theory of a stranger crawling in the child's window  
**Matter of Nathaniel II** 795 NYS2d 780 (3<sup>rd</sup> Dept. 2005) – child's out of court statements plus age inappropriate sexual knowledge, acting out of the activity, drawings, other children's statements, father's obviously false statements  
**Matter of Besthani M** 13 AD3d 452 92<sup>nd</sup> Dept. 2004) – child's out of court plus her unsworn, cross examined testimony in camera  
**Matter of Raymond M** 13 AD3d 377 (2<sup>nd</sup> Dept. 2004) – child's out of court cross corroborated by other child, father's statements to police and then failed to testify

**Matter of Nyomi AD** 10 AD3d 684 (2<sup>nd</sup> Dept. 2004) – child’s out of court corroborated by otherwise unexplained medical findings

**Matter of Sabrina M** 6 AD3d 759 (3<sup>rd</sup> Dept. 2004) – child’s out of court corroborated by another child’s out of court, child’s unsworn but cross examined in camera

**Matter of Dylan Y** 4 AD3d 643 (3<sup>rd</sup> Dept. 2004) – child’s out of court plus validator and in camera by child

**Matter of Yorimar K** 309 AD2d 1148 (4<sup>th</sup> Dept. 2003) – out of court statements plus validator’s opinion on behavior, doll play, age in appropriate knowledge

**Matter of Brittany K** 308 AD2d 585 (2<sup>nd</sup> Dept. 2003) – child’s out of court statements plus older brother’s out of court statements, medical evidence, validation opinion on child’s “classic” behavior, father’s failure to explain child’s injuries

**In Re Nicole B** 308 AD2d 412 (1<sup>st</sup> Dept. 2003) – child’s out of court plus validator opinion plus preliminary medical findings

**Matter of Evan Y** 307 AD2d 399 (3<sup>rd</sup> Dept. 2003) – child’s out of court and two validator opinions on behavior, lack of testimony by father

**Matter of Arielle “LL”** 294 AD2D 676 (3<sup>rd</sup> Dept. 2002) – child out of court statement corroborated by father’s “admission” that he could not remember as he was so drunk but he could have believed that 8 year old was his girlfriend and so did it by mistake, also child testified in camera

**Matter of Cecilia “PP”** 290 AD2d 836 (3<sup>rd</sup> Dept. 2002) – out of court statements plus regressive behavior, changed behavior after removal (severe abuse and no reasonable efforts finding also)

**Matter of Joshua “QQ”** 290 AD2D 842 (3<sup>rd</sup> Dept. 2002) – multiple, consistent out of court statements plus age inappropriate sexual knowledge, father’s sworn confession to police

**Matter of Martha “Z”** 288 AD2d 706 (3<sup>rd</sup> Dept. 2001) – out of court corroborated by in court testimony, change in child’s behavior

**Matter of Zachary “Y”** 287 AD2D 811 (3<sup>rd</sup> Dept. 2001) – corroboration of child’s out of court by behavior while telling, validator describing behaviors – court also not impressed by father’s expert saying he did not fit the offender profile

**Matter of Akia “KK”** 724 NYS2d 207 (3<sup>rd</sup> Dept. 2001)- 3 children cross corroborated each other’s out of court statement and oldest testified in court

**Matter of Elizabeth “MM”.** 715 NYS2d 99 (3rd Dept. 2000) - spontaneous disclosure, demeanor during exam, demonstrated touching, older sister testified to her own abuse

**Matter of Rosemary F.** 6/18/00 (4th Dept. 2000) - validation, doll play and drawings within the validation

**Matter of Rebecca S.** 703 NYS2d 626 (4th Dept. 2000) - cross- corroboration, medical, validator, consistency of statements

**Matter of Ashley “D”.** 702 NYS2d 209 (3rd Dept. 2000) - medical proof and perp removed child from school in middle of day for no reason

**Matter of Kaitlyn “R”.** 700 NYS2d 533 (3rd Dept. 1999)- validator based solely on behaviors and no disclosure to validator

**Matter of Anita J.** 701 NYS2d 557 (4th Dept. 1999) - eyewitness of sister, validator

**Matter of Lisa “Z”.** 699 NYS2d 810 (3rd Dept. 1999) - validator re child’s behaviors, rapid attachment to foster parents, sex play with dolls, sexual knowledge, violent aggressive behavior, changes in demeanor during interviews

**Matter of Shawn P.** 697 NYS2d 901 (4th Dept. 1999) - validator who told of child’s demeanor

while disclosing, inappropriate sexual behavior, recanted only upon mother's encouragement  
**In re Nathaniel "TT".**, 696 NYS2d 274 (3rd Dept. 1999)- child's in camera, although defense attorney not present to cross, did submit questions, child's behavior improved after contact ended

**In re Keisha McL.**, 691 NYS2d 428 (1st Dept. 1999) - expert evidence that the children did not appear to be coached, age inappropriate sexual knowledge, behavior common to sexually abused children

**Matter of Sueann B.**, 685 NYS2d 357 (4th Dept. 1999) - validation, children's out of court statements as to each other

**Matter of Roseanne G.**, 681 NYS2d 262 (1st Dept. 1998) - medical, children's out of court statements as to each other

**Matter of Victoria H.**, 680 NYS2d 577 (2nd Dept. 1998)- doll play, medical, precocious knowledge

**Matter of Elizabeth G.**, 680 NYS2d 32 (4th Dept. 1998) - children's out of court statements as to each other, expert's opinion

**Matter of Tanya T.**, 675 NYS2d 237 (3rd Dept. 1998) - children's out of court statements as to each other, sex play with dolls, medical

**Matter of Ashley M.**, 653 NYS2d 163 (3rd Dept. 1997) - validator, acting out sex with dolls, sexual behavior with other children

**Matter of Heather P.**, 649 NYS2d 551 (4th Dept. 1996) - acting out sex, validator

**Matter of Jessica G.**, 200 AD2D 906 (3rd Dept. 1994) - expert opinion, precocious knowledge, in camera of child unsworn

**Matter of Brandon UU.**, 597 NYS2d 525 (3rd Dept. 1993) - doll play, acting out the sex, expert opinion

**Matter of Jamie D.**, 199 AD2D 688 (3rd Dept. 1993) - precocious knowledge, medical

**Matter of Abbey Gail E.**, 191 AD2d 696 (2nd Dept. 1993) - medical, expert opinion

**Matter of Michelle I.**, 189 AD2d 998 (3rd Dept. 1993) - doll play, medical, other children's out of court statements

**Matter of Sharrell B.**, 190 AD2d 1993 (1st Dept. 1993)doll play, acting out the sex, precocious knowledge

**Matter of Nicole G.**, 187 AD2d 650 (2nd Dept. 1992) - medical, expert opinion

**Matter of Davina C.**, 186 AD2d 422 (1st Dept. 1992) - medical, expert opinion

**Matter of Margaret F.**, 186 AD2d 254 (2nd Dept. 1992) - out of court statements, previous acts by parent, doll play, validator

**Matter of Lisa S.**, 187 AD2d 435 (2nd Dept. 1992) - medical, expert opinion

**Matter of Anthony R.**, 175 AD2D 284 (2nd Dept. 1991) - precocious knowledge, expert opinion, medical, in camera of children

**Matter of Chianti FF.**, 163 AD2D 688 (3rd Dept. 1990) - doll play, expert opinion

**Matter of Erick R.**, 166 AD2D 161 (3rd Dept. 1990) - medical, expert opinion, precocious knowledge, doll play

**Matter of Shaune L.**, 150 AD2D 689 (2nd Dept. 1989) - child's in camera, expert opinion

**Matter of Erin G.**, 139 AD2D 737 (2nd Dept. 1988) - child's sworn in camera

**Matter of Nicole V.**, 71 NY2d 112 (1987) -landmark validation case by Court of Appeals

## Validations

**Matter of Kaitlyn “R”.** 700 NYS2d 533 (3rd Dept. 1999)  
**Matter of Randy A.** 670 NYS2d 225 (3rd Dept. 1998)  
**Matter of Katje YY.** 650 NYS2d 363 (3rd Dept. 1996)  
**Matter of Thomas N.** 645 NYS2d 573 (3rd Dept. 1996)  
**Matter of Jessica DD.** 651 NYS2d 673 (3rd Dept. 1996)  
**Matter of Jaclyn P.** 86 NY2d 875 (1995) - Court of Appeals reaffirms use of validators  
**Matter of Keala XX.** 629 NYS2d 331 (3rd Dept. 1995)  
**Matter of Michael J.** 211 AD2d 155 (3rd Dept. 1995)  
**Matter of Dawn H.** 633 NYS2d 782 (1st Dept. 1995)  
**Matter of Kelly F.** 206 AD2d 277 (3rd Dept. 1994)  
**Matter of Vincent I.** 613 NYS2d 488 (3rd Dept. 1994)  
**Matter of Carol Ann D.** 195 AD2d 460 (2nd Dept. 1993)  
**Matter of Paul P.** 185 AD2D 981 (2nd Dept. 1992)  
**Matter of Latisha V.** 175 AD2D 839 (2nd Dept. 1991)  
**Matter of Nicole V.** 71 NY2d 112 (1987) -landmark validation case by Court of Appeals

## Medical Proof

**Matter of Falcon “EE”.** 703 NYS2d 569 (3rd Dept. 2000)  
**Matter of Ashley “D”.** 702 NYS2d 209 (3rd Dept. 2000)  
**Matter of Melissa I.** 681 NYS2d 372 (3rd Dept. 1998)  
**Matter of Yazalin P.** 680 NYS2d 530 (1st Dept. 1998)  
**Matter of Dora F.** 675 NYS2d 655 (1st Dept. 1997)  
**Matter of Jessica N.** 652 NYS2d 177 (4th Dept. 1996)  
**Matter of Najam M.** 648 NYS2d 559 (1st Dept. 1996)  
**Matter of Julissa II.** 213 AD2d 18 (3rd Dept. 1995)  
**Matter of Tyeasia.** 641 NYS2d 673 (1st Dept. 1996)  
**Matter of Lauren B.** 200 AD2D 740 (2nd Dept. 1994)  
**Matter of Lisa S.** 187 AD2d 435 (2nd Dept. 1992)  
**Matter of Katrina W.** 171 AD2d 250 (2nd Dept. 1991)  
**Matter of Sheikara C.** 163 AD2D 69 (1st Dept. 1990)

## Respondent Evaluations of Child

**Matter of Sylvia J.** 804 NYS2d 783 (2<sup>nd</sup> Dept. 2005)  
**Matter of Ashley B** 2 AD3d 1402 (4<sup>th</sup> Dept. 2003)  
**Matter of Keith “JJ”** 295 AD2d 644 (3<sup>rd</sup> Dept. 2002) – good wording on denying the respondent’s request for a eval of child  
**Matter of Megan G.** 698 NYS2d 375 (4th Dept. 1999)  
**Matter of Tyler** dec’d 5/10/99 (4th Dept. 1999)  
**Matter of Melissa K.** 678 NYS2d (4th Dept. 1998)

**Matter of Dawn H.**, 633 NYS2d 782 (1st Dept. 1995)  
**Matter of Diana D.**, 630 NYS2d 382 (2nd Dept. 1995)  
**Matter of Delores W.**, 190 AD2D 611 (1st Dept. 1993)  
**Matter of Skye B.**, 185 AD2D 880 (2nd Dept. 1992)  
**Matter of Danielle “YY”.**, 188 AD2d 894 (3rd Dept. 1992)  
**Matter of Jessica R.**, 78 NY2d 1031 (1991) -**key case from Court of Appeals**  
**Matter of Erick R.**, 166 AD2D 161 (3rd Dept. 1990)  
**Matter of Michele A.**, 140 AD2d 604 (2nd Dept. 1988)

### **Child’s Testimony**

**Matter of Katherine S.**, 705 NYS2d 670 (2nd Dept. 2000)  
**Matter of Kaitlyn “R”.**, 700 NYS2d 533 (3rd Dept. 1999)  
**Matter of Jennifer G.**, 687 NYS2d 844 (4th Dept. 1999)  
**Matter of Rhianna R.**, 684 NYS2d 389 (4th Dept. 1998)  
**Matter of Robert H.**, 681 NYS2d 887 (3rd Dept. 1998)  
**Matter of Randy A.**, 670 NYS2d 225 (3rd Dept. 1998)  
**Matter of Jamie EE.**, 670 NYS2d 931 (3rd Dept. 1998)  
**Matter of Erinn G.**, 672 NYS2d 445 (3rd Dept. 1998)  
**Matter of Randy A.**, 670 NYS2d 225 (3rd Dept. 1998)  
**Matter of Darnell Mc.**, 645 NYS2d 881 (2nd Dept. 1996)  
**Matter of Leslie C.**, 637 NYS2d 560 (4th Dept. 1996)  
**Matter of Karrie B.**, 207 AD2d 1002 (4th Dept. 1994)  
**Matter of Woodley B.**, 207 AD2d 885 (2nd Dept. 1994)  
**Matter of Lynelle W.**, 177 AD2d 1008 (4th Dept. 1993)  
**Matter of Christina F.**, 74 NY2d 532 (1989) - **key case re child’s unsworn by cross examined testimony in camera can corroborate out of court statements**

### **Law Guardian’s Role**

**Matter of Colleen CC.**, 232 AD2d 187 (3rd Dept. 1996)  
**Matter of Jamie TT.**, 191 AD2d 132 (3rd Dept. 1993)

### **Criminal Convictions**

**In re PF and R Children** NYLJ 10/30/00 at 24 (1st Dept. 2000)  
**Matter of Denise GG.**, 678 NYS2d 821 (3rd Dept. 1998)  
**Matter of Michael V.**, 83 NY2d 178 (1994) - **key case re criminal conviction is summary judgment for same act in family court**  
**Matter of Sarah L.**, 617 NYS2d 71 (4th Dept. 1994)

## **Dispositions**

**Matter of Kristi “AA”** 742 NYS2d 920 (3<sup>rd</sup> Dept. 2002) – not a violation of respondent’s 5<sup>th</sup> amendment rights for Family Court to require him, after he consented to a finding, to sign the service providers contact for sexual offender treatment where he had to admit that he had sexually abused child

**Matter of Jennifer “WW”.**, 710 NYS2d 733 (3rd Dept. 2000)

**Matter of Ashley M.**, 683 NYS2d 304 (3rd Dept. 1998)

**Matter of Sharon E.**, 676 NYS2d 601 (2nd Dept. 1998)

**Matter of Victoria H.**, 680 NYS2d 577 (2nd Dept. 1998)

**Matter of Sharon E.**, 676 NYS2d 601 (2nd Dept. 1998)

**Matter of Tanya T.**, 675 NYS2d 237 (3rd Dept. 1998)

**Matter of Esther CC.**, 194 AD2D 949 (3rd Dept. 1993)

**Matter of Nina G.**, 594 NYS2d 305 (2nd Dept. 1993)

**Matter of Sharrell B.**, 190 AD2d 1993 (1st Dept. 1993)

**Matter of Sheikara C.**, 163 AD2D 69 (1st Dept. 1990)