MEMORANDUM

FROM: Kevin C. McDowell, Assistant Chief Counsel, Advisory Division

RE: *Case of the Week*: ***In the Matter of the Personal Restraint of Todd Dale Phelps***, __ P.3d __, 2018 WL 1004783 (Washington Supreme Court, February 22, 2018): **"Grooming" & Educator Misconduct**

DATE: February 28, 2018

In ***Gebser v. Lago Vista Independent School District***, 524 U.S. 274, 118 S. Ct. 1989 (1998), the U.S. Supreme Court's seminal decision regarding potential liability under Title IX, 20 U.S.C. § 1681(a), 34 C.F.R. Part 106, the teacher (Frank Waldrop) made sexually suggestive remarks to students in a book discussion group he led at the high school. Alida Star Gebser, although in the eighth grade at the time, was a member of the book discussion group. The following year when she was a freshman enrolled in Waldrop's class, he again made sexually suggestive remarks to the class, but then he began to direct such remarks at Gebser herself. The two began to spend a considerable amount of time alone in his classroom. Sexual contact began in the spring of her freshman year when Waldrop, ostensibly returning a book to Gebser's home, kissed and fondled her. They began to engage in sexual intercourse on a number of occasions thereafter, through the summer and into her sophomore year. Gebser never reported the relationship to anyone, even though she knew Waldrop's conduct was improper. She was not certain how to react. She also wanted to continue to have him as a teacher.

During the second semester of her sophomore year, a police officer discovered Waldrop and Gebser engaged in sexual intercourse at an off-campus site. Waldrop was arrested. The school district fired him and his teacher license was later revoked.

How would you describe Waldrop's conduct vis-à-vis Gebser?

If you said he had been "grooming" her all along, did you really need an expert witness to point this out, or could you have reasonably inferred this from the operative facts in this case?

As an individual, you probably don't need an expert witness, but what if you're a member of a jury in a criminal trial?

Although there are quite a few cases that refer to "grooming" (the Supreme Court, by the way, never used the term "grooming" in describing Waldrop's conduct), most of the reported cases describe "grooming" by its elements rather than through an operative definition. The following is one definition that appears to have general applicability:

> **Grooming**: The process of manipulation often utilized by child molesters, intended to reduce a victim's or potential victim's resistance to sexual abuse. Typical grooming activities include gaining the child victim's trust or gradually escalating boundary violations of the child's body in order to desensitize the victim to further abuse.[1]

In the Matter of Phelps is a petition for post-conviction relief by a former softball coach who was convicted of third degree rape and sexual misconduct with a minor, aggravated by the fact Phelps knew the victim was a minor and "particularly vulnerable" and that he used a "position of trust" to "facilitate commission of the crimes." He argued that the prosecutor engaged in misconduct and prejudiced the jury through multiple references to "grooming" in his closing argument.

Background

When Phelps was the assistant coach of the girls' softball team, he took team members to tournaments during the summer. One of the team members was A.A., then 16 years old who had a strained relationship with her parents. This resulted in other emotional issues—she cut herself, experienced depression, and contemplated suicide. She confided in Phelps. Over the next few months, he continued to talk to her about her self-harm, her suicidal thoughts, and other personal issues. Phelps told A.A. stories involving his sexual experiences with women, reportedly so that "she could have dirt on him because he now had dirt on her." *Slip opinion* at 2-3.

These in-person conversations led to phone calls and frequent texts, "sometimes late into the night." Phelps had A.A. show him where she cut herself. A.A. cut herself near the top of her thighs. In order for her to show Phelps where she did so, she had "to pull her pants halfway down." Phelps used these occasions to engage in "some kind of sexual contact," which escalated over time. On softball team trips, Phelps would sometimes grab parts of A.A.'s body. A.A. eventually told the wife of a youth pastor that she and Phelps "had kissed" but apparently did not reveal the extent of the abuse. This was reported to the superintendent, who placed Phelps on administrative leave. *Id*. at 3.

He eventually regained his position as a softball coach, with the consent of A.A.'s parents. Phelps was warned by multiple people to cease texting A.A. and maintain "an appropriate coach/player relationship." He disregarded this advice, choosing to text A.A. "on a near daily basis." When school officials learned of this, he was forced to resign as a softball coach. A.A.'s father told Phelps not to attempt to contact A.A. again. He ignored this as well. *Id.* at 3-4.

[1] "Glossary of Terms Used in the Management and Treatment of Sexual Offenders," Center for Sex Offender Management (June 1999), available at http://www.csom.org/pubs/glossary.pdf (last visited February 28, 2018).

During the summer, Phelps arranged to meet A.A. at his brother's house. He again asked her to show him where she had been cutting herself. This time, Phelps raped her. She did not report the rape until two months later. He was arrested and charged with third degree rape and sexual misconduct with a minor. *Id*. at 4.

The Trial

During *voir dire*[2] of prospective jurors, the prosecutor asked the pool if they had ever heard of "grooming." Several responded that they had. The prosecutor did not mention "grooming" in his opening argument. It did come up twice during the trial itself: A.A.'s father testified that he believed Phelps had been "grooming" his daughter for what eventually occurred. Oddly enough, Phelps' attorney did not object to this statement. Defense counsel did object to the prosecutor's attempt to get the other softball coach to characterize what Phelps did as grooming. The court sustained the objection, adding that "grooming" is "an issue that is for expert testimony. She is not an expert." *Id*. at 5.

During closing arguments, the prosecutor used the term "groom" (or a variant) 19 times along with 97 PowerPoint slides, eight of which mentioned "grooming." Phelps' attorney did not object to any of this. The prosecutor noted the "continuous, secretive nature" of Phelps' conduct with A.A., adding that she was a "prime candidate" to be groomed because of her "low self-esteem and stressed relationship with her family." He argued Phelps wasn't just grooming A.A. but was grooming her family and her friends "to make himself appear concerned about [her] mental health." The prosecutor also noted Phelps' "repeated efforts to desensitize A.A. to sexual contact" and to isolate her from friends and prevent her from talking to her counselor. The prosecutor said grooming explained A.A.'s behavior, such as her efforts to protect Phelps by deleting text messages and her apparent obsession with him. "We're here because of grooming," he added, "we're here because of deceit, concealment, half-truths, [and] misrepresentations." *Id*. at 5-6.

Phelps' defense was that he did not commit the crimes because he wasn't there, or, if anything sexual did occur, A.A. had consented (she was at least 16 years old, which apparently is the "age of consent" in Washington).

Post-Conviction Relief

The principal issue Phelps raised is whether the prosecutor's repeated references to grooming from *voir dire* through closing arguments was misconduct in that this was unduly prejudicial, denying him a fair hearing. The Court of Appeals agreed the prosecutor engaged in misconduct and reversed his convictions. Evidence of "grooming" requires expert testimony to establish the predicate facts. By not doing so, the prosecutor was arguing facts that were not in evidence during his closing argument, the appellate court found.

[2] "Voir dire" literally means "to speak the truth." This French phrase describes the process of questioning prospective jurors to detect bias or obtain other information that may be relevant in determining who will be empaneled on the jury. Because this is sometimes a way for the competing attorneys to subtly bias prospective jurors ("educate them as to a theory of the case"), some courts restrict *voir dire* to questions posed by the sitting judge.

The Washington Supreme Court saw this differently. Whether expert testimony is *required* when the State employs the concept of "grooming" to argue a case to a jury is a matter of first impression for Washington. The Court noted that there is no consensus among the other jurisdictions that have addressed it. Some States have held such expert testimony is admissible but not required; others are divided as to when or under what circumstances expert testimony is required, if at all. *Id*. at 7-8 (collected cases).[3]

"Expert testimony" is designed to assist the trier of fact (the jury, in this case) to understand certain complex evidence. The expert has "specialized knowledge" regarding the issue. Washington law—as is true of other States and the federal rules of evidence—"allows an expert to testify about his or her specialized knowledge if it would help the jury understand the evidence, but the rule does not require expert testimony where it would not be helpful to the jury." Whether expert testimony is warranted (or if one is sufficiently imbued with the knowledge, experience or training to be an "expert") is within the "sound discretion of trial judges." *Id*. at 8.

"Grooming" evidence, the Court determined, is not *per se* inadmissible. There are concerns that there might be a prejudicial effect stemming from the weight accorded expert testimony such that an expert's "grooming" testimony might be "evidence of a defendant's guilt," especially because the jurors know this testimony is coming from someone "the court has deemed an expert." *Id*. at 9.

In this matter, there was no expert testimony. One person (A.A.'s father) opined that he believed Phelps groomed A.A. for his nefarious purposes. While this testimony was not objected to, the trial court did sustain the objection to a similar line of inquiry of Phelps' fellow softball coach. The issue is really whether the prosecutor's repeated use of "grooming" and its variants in closing argument constituted misconduct warranting reversal of Phelps' convictions. *Id*. at 10.

For Phelps to prove prosecutorial misconduct, he has a fairly substantial burden: Did the misconduct result in actual and substantial prejudice or a fundamental defect "resulting in a complete miscarriage of justice." *Id*. The misconduct has to be "flagrant and ill intentioned," but this occurs only where the misconduct "crosses the line of denying a defendant a fair trial." *Id.* at 11.

> Put simply, to prevail in his [petition for post-conviction relief], Phelps must overcome three hurdles. First, he must show the prosecutor committed misconduct. Second, because he did not object during trial, Phelps must show that misconduct was flagrant and ill-intentioned and caused him prejudice incurable by a jury instruction. Third, because he raises this issue in a [petition for post-conviction relief], Phelps must show the prosecutor's flagrant and ill-intentioned misconduct caused him actual and substantial prejudice

Id. at 11-12. The appellate court determined the prosecutor engaged in misconduct by arguing "facts not in evidence," given the lack of expert testimony on "grooming." But what is a "fact"?

[3] A synopses of the cases cited by the Washington Supreme Court appears at the end of this Memorandum for ease of reference.

"Definitions are only marginally helpful; there are no objective criteria to distinguish between facts, inferences, and facts not in evidence." *Id*. at 12. Prosecutors have "wide latitude to argue reasonable inferences from the evidence" in closing arguments. The act of "grooming" can be either an established fact or a reasonable inference based on facts properly introduced as evidence. In this matter, the prosecutor was not so much establishing Phelps engaged in the "grooming" of A.A. as he was drawing reasonable inferences from the evidence.

> [H]e used grooming to paint a picture of the evidence for the jury. Grooming is descriptive of how Phelps's and A.A.'s relationship began, developed, and expanded[,] and in reality has or adds little value to what the State needed to prove: that Phelps committed the crimes. The facts and the way the facts fit together are two different things. The prosecutor's comments connecting the evidence to grooming are more akin to permissible inferences drawn from the evidence than arguing facts not in evidence.

Id. at 13. The "grooming" remarks were intended to rebut Phelps' claims that he "was merely trying to help A.A. deal with her personal issues." *Id*. at 14. "[I]t is not misconduct for a prosecutor to argue the evidence does not support the defense theory; prosecutors are entitled to respond to defense counsel's arguments."[4] *Id*.

The prosecutor's theory of the case was that Phelps did groom A.A. Whether he actually did so "is not key to the jury's determination of Phelps's guilt," which found that Phelps had abused a position of trust with a vulnerable victim based not on closing arguments but on evidence in the record.

> Even if prohibited from using the term "grooming" without expert testimony, the prosecutor could have explained the evidence using grooming-related concepts, such as developing trust, isolation, and manipulation. We have never held that jurors need expert testimony to establish that a defendant manipulated or controlled someone; jurors can understand these concepts based on common sense and experience. We have trouble envisioning a world in which experts must be called into court to explain trusting relationships to jurors. Indeed, expert testimony may have lent inappropriate weight to the issue of grooming, which did not go to the ultimate determination of Phelps's guilt.

Id. at 14-15.[5] "We find no support for Phelps's claim the prosecutor presented his own invented definition of grooming to the jury, and even if this were the case, prosecutors are free to characterize the evidence to tell their story in closing argument." *Id.* at 15-16. Besides, jurors are instructed that statements made by counsel in closing arguments are not evidence and they

---

[4] Oddly enough, Phelps' attorney "also referenced grooming several times in his closing argument, which somewhat weakens Phelps's claim that the prosecutor's use of grooming denied him a fair trial." *Slip Op.* at 14, n. 4 (citation omitted).

[5] The Court agreed that "the prosecutor could have replaced 'groomed' with 'manipulated' for the same effect in closing argument…. Little meaningful difference exists between the prosecutor's comments and arguing Phelps had developed a 'trusting relationship' with A.A. or manipulated her." *Id.* at 15.

can consider "only the testimony and exhibits in reaching" their verdict. The prosecutor did not engage in misconduct. He didn't argue facts not in evidence. *Id*. at 16.

The appellate court's determination that "grooming" requires expert testimony creates its own set of problems. Jurors are specifically instructed that closing arguments are not evidence. However, "there is no similar instruction offering jurors guidance on how to interpret expert testimony, which is offered to them as evidence or to assist in understanding evidence." *Id*. at 16-17.

> As alluded to earlier, cases express concern about the weight jurors might give to an expert opinion, so trial courts should be hesitant to admit expert testimony on grooming. We reverse the Court of Appeals and hold the concept of grooming, as used in this case, is within the common knowledge of jurors and the State was not required to present expert testimony to argue grooming to the jury…. That is not to say that expert testimony may never be offered; there may be instances where expert testimony could be admissible and appropriate. Nor does our holding allow grooming evidence to be offered for any purpose;… grooming evidence may not be introduced as profiling evidence, or as circumstantial evidence of a defendant's guilt.

Id. at 17. Even assuming the prosecutor committed misconduct, "the misconduct did not cross the line into areas of conduct that would have threatened the fundamental fairness of his trial. The grooming comments did not rise to the level of being inflammatory, nor did they come close to the level of severity our precedent suggests is necessary to meet the 'flagrant and ill intentioned' standard." *Id*. at 19.

Lastly, Phelps did not show that the prosecutor's comments created actual or substantial prejudice.

> Phelps does not point out where in closing argument the prosecutor's use of grooming affected the jury's determination of Phelps's guilt regarding the substantive crimes. As we have discussed, the prosecutor's use of the term "grooming" was similar to arguing Phelps had manipulated, controlled, or influenced A.A. Grooming was not central to proving the elements of the crime. Instead, the prosecutor used grooming to describe the context of Phelps's and A.A.'s relationship and how it evolved leading up to the incident. Phelps does not establish actual and substantial prejudice as a result of the prosecutor's use of grooming in closing argument. The evidence of how the relationship developed and evolved tended to be more specific to the aggravating circumstances found by the jury of abuse of trust and particular vulnerability.

Id. at 20. The Court of Appeals decision in Phelps' favor was reversed and his convictions affirmed. *Id*. at 21.

There are two concurring opinions. The chief justice, although agreeing Phelps had not proven his case for post-conviction relief, nevertheless cautions about the use of "grooming evidence" as a means of profiling a defendant (that is, inviting a jury to infer guilt based on the characteristics of a class of offenders, such as child molesters). This creates an "implication of guilt" that is

prejudicial. "Perpetrator profile testimony clearly carries with it the implied opinion that the defendant is the sort of person who would engage in the alleged act, and therefore did it in *this* case too." *Id.* at 4 (Fairhurst, C.J., concurring) (emphasis original; citation omitted).

In this case, the prosecutor used "grooming" or a variant over 30 times in front of the jury without any basis in testimony, lay or expert. He even discussed it with nine potential jurors during *voir dire*, drawing out the elements of "grooming" even though no evidence was later introduced. *Id*. at 5-6 (Fairhurst, C.J., concurring). The concurring opinion believed the prosecutor went too far. "Grooming," in a sexual assault matter, is a concept that is not within the common knowledge of jurors. The prosecutor was not referring to "grooming" in any ordinary sense of the word; he was strongly suggesting the psychological dimensions of "grooming," which would require expert testimony. "The record suggests that the prosecutor provided the jury with his own definition of 'grooming' and told the jury that Phelps met that definition." *Id.* at 6-9 (Fairhurst, C.J., concurring).

> When the prosecutor gave the jury his own definition of "grooming behavior" and asserted that Phelps' behavior falls within that definition, the prosecutor was, in essence, saying that Phelps' behavior is consistent with a specific set of calculated psychological behaviors. The prosecutor does not get to provide, through argument, facts not in evidence.

Id. at 10-11 (Fairhurst, C.J., concurring). The concurring justice believed the Court of Appeals "correctly determined that the psychological complexities in understanding and evaluating the grooming process demand expert testimony to aid the jury." *Id.* at 11 (Fairhurst, C.J., concurring) (citation and internal punctuation omitted). Understanding the complexities of "grooming" behavior requires the specialized knowledge of an expert, although a court must be careful to ensure that such testimony "does not constitute improper profiling evidence." *Id.* at 12 (Fairhurst, C.J., concurring).

Even though the concurring justice believes the prosecutor did engage in misconduct that was prejudicial, Phelps failed to object, thus waiving any error. Had he timely objected, the "resulting prejudice could have been neutralized by a curative instruction" from the trial court to the jury. *Id.* at 13-14 (Fairhurst, C.J., concurring).

"Reluctantly, I agree with the majority that reversal is unwarranted because Phelps cannot establish a substantial likelihood that the misconduct affected the jury's verdict." *Id.* at 14 (Fairhurst, C.J., concurring).

"GROOMING" CASES THE COURT FOUND ILLUSTRATIVE

The Washington Supreme Court looked to cases from other jurisdictions to illustrative of the disagreement or confusion over when "grooming" evidence requires an expert (with the problems attendant with *that* route) or would merely be a euphemism for "manipulation," which would be in a common knowledge of a juror and not require an expert's testimony. The following are some of the cases cited by the court with synopses.

Jones v. U.S., 990 A.2d 970, 978 (D.C. 2010). A school counselor's misdemeanor convictions for sexual abuse and assault of two students was affirmed. He objected to expert testimony provided regarding the methods employed by child sex offenders and the reactions of their immature victims. The expert had over two decades of work in the FBI's Behavioral Science Unit, specializing in child sexual victimization. The expert defined "grooming" as a type of seduction.

"The key feature of this grooming process is that the abuser identifies and tries to fill a child's needs, for example by listening sympathetically to the child, complementing her on her looks, giving her hugs, and buying her things she needs. After having formed a relationship of trust and dependence, the abuser undertakes to manipulate the child's feelings and overcome her sexual inhibitions…. The preferential abuser's goal is to bond with the child in order to control her psychologically. Children from dysfunctional homes, especially teenagers, are most susceptible to being groomed in this way[.]… [Such child molesters] "may" employ such unsavory tactics as exposing children to pornography, supplying them with drugs and alcohol, blackmailing them, and coercing their silence by threats of suicide…. The grooming process results in what [the expert called] called 'compliant victims'—children who cooperate in their victimization." *Id.* at 976. In this case, the trial court did not abuse its discretion in allowing the expert testimony. Jurors are not expected to understand the various types of child molesters. Many may adhere to the stereotype that a child molester is "a dirty old man in a wrinkled raincoat who snatches children off the street as they wait for the school bus." *Id.* at 978. "The testimony helped to explain not only how a child molester could accomplish his crimes without violence, but also why a child victim would acquiesce and be reluctant to turn against her abuser." *Id.*

Montana v. Berosik, 214 P.3d 776 (MT 2009). "[E]xpert testimony explaining the complexities of child sexual abuse for the purpose of assisting jurors in understanding and evaluating a child's testimony is admissible." *Id.* at 782. "The testimony of the State's expert witness gave general information about grooming; that is, the process of eroding a victim's boundaries to physical touch and desensitizing them to sexual issues. Her testimony concerned a subject about which lay persons would have little or no experience. She based her opinions on her experiences and research in the field. The expert testimony is relevant in that it provided the jury with information about how research and experience shows abuse of a child oftentimes does not occur all of a sudden. It provided evidence that young victims sometimes delay in disclosing abuse, disclose the abuse piecemeal, and described how they react to having been sexually abused." *Id.* at 782-83.

Morris v. Texas, 361 S.W.3d 649, 669 (Tex. Crim. App. 2011) The expert "described 'grooming' as 'an attempt by the offender to get the victim compliant with what he wants to happen.' [The expert] explained that grooming typically occurs over an extended time period and involves spending intimate time alone with the child. [The expert] further explained that grooming involves an element of trust, created by an emotional tie between the offender and the victim. [The expert] cited specific examples of grooming such as supplying the child with alcohol or pornography, engaging in sexual banter, giving or withholding gifts, or telling the child about the adult's own prior sexual experiences." *Id.* at 651-52. There is often a pattern of "desensitization" whereby through touching, often under the guise of a "game," the adult prepares the child victim for gradual sexual touching. *Id.* at 652. While some "courts have

suggested that the factfinder or the appellate court can infer grooming from the defendant's conduct without the assistance of an expert…[,]…we find the weightier and more persuasive authority to be that expert grooming testimony is useful to the jury. Recent appellate cases suggest that grooming testimony still involves matters beyond the understanding of the jury…. Although it may be true that many jurors will be aware of the concept of grooming (in practice if not necessarily by name), that does not mean that all jurors will be aware of the concept or that the jurors will have the depth of understanding needed to resolve the issues before them." *Id*. at 669.

Kansas v. Akins, 315 P.3d 868 (Kan. 2014). "Grooming is a well-known phenomenon in the context of sexual abuse." It is a "psychological concept" not unlike the Stockholm syndrome, requiring testimony "through an expert witness…. [The prosecutor's] comments on the condition were improper because [the prosecutor] was asserting personal knowledge of the evidence and arguing facts not in evidence." *Id.* at 878.

New Mexico v. Sena, 192 P.3d 1198 (N.M. 2008) "[G]rooming evidence [walked around naked in front of victim, showed her a pornographic video, showed her his wife's thong underwear, and showered naked with her] was admissible to prove Defendant's intent." *Id.* at 1202. Sena had stated he did touch the victim but only when applying medicinal ointment for a rash and denied doing so for any sexual reason. "The grooming evidence counters that inference because it suggests that Defendant was attempting to familiarize Child with sexuality and thereby to create an atmosphere in which she would be less resistant to his sexual advances. As evidence of Defendant's sexually fraught conduct with the Child, the grooming evidence was properly admitted to refute the evidence that Defendant touched the Child strictly for medical reasons." *Id.* at 1203 (internal punctuation and citation omitted). "[T]he grooming evidence was probative of the fact that Defendant acted with a sexual intent. Without hearing the grooming evidence, the jury was more likely to believe that Defendant touched Child simply for medicinal purposes and less likely to believe that he did so with a sexual intent. Given the probative value of the grooming evidence when offered to show Defendant's intent, we cannot characterize the trial court's admission of it as clearly untenable or unjustified by reason." *Id.* "While an expert witness is needed when details of a scientific or specialized theory and its application to the facts of a particular case are being introduced to the jury, … we do not agree that the grooming evidence in the instant case needed an expert witness to explain to the jury how Defendant's behavior showed his sexual intent or his lack of mistake or accident…. Although the factual question of whether certain behavior constitutes grooming — as the term is scientifically or specially understood — begs an answer laced with details from the theory of grooming, the question of whether certain behavior shows a sexual intent does not. Lay persons are well-aware of what it means to act with a sexual intent, and therefore can identify behavior as exhibiting that trait without the aid of an expert witness. Thus, in this case, the lay witnesses and lay persons on the jury were well-equipped to understand how Defendant's behavior proved his sexual intent, even though they may have been ill-equipped to decide whether Defendant had groomed Child, according to a scientific or specialized definition of that term. Had the grooming evidence been offered and admitted solely as proof of the fact that Defendant had groomed Child, an expert would likely have been necessary to expound upon the theory of grooming and to explain how that theory applied in this case. However,…the grooming evidence was properly admitted to prove intent[.] … We conclude that the grooming evidence, as used in this case, was not based

in scientific, technical, or other specialized knowledge and was thus within the realm of lay testimony." *Id.* at 1204.

Dandass v. Mississippi, 2017 WL 1709396 (Miss. Ct. App. 2017), *cert. den.,* 230 So.3d 1023 (Miss. 2017). The prosecutor's use of the term "groom" in closing arguments to describe the victim's testimony and how the defendant "began his sexual encounters with her" does not constitute reversible error. "The prosecutor inferred that [the defendant] groomed [the victim] based on [the victim's] testimony regarding the instructions [the defendant] gave her to perform oral sex on him, and her description of the gradual progression of sexual contact. In context of the argument, the use of the term 'groom' is similar to 'coached' or 'primed' as a descriptive term to illustrate [the defendant's] sexual abuse of [the victim], beginning when she was around eleven years old and could barely speak English. The prosecutor is entitled to argue reasonable inferences from the evidence at trial. In the context of the witness testimony and the prosecutor's closing arguments, we do not find that a layperson on the jury could not understand whether [the defendant's] behavior proved sexual intent. Moreover, we do not find that expert testimony was required to aid the jury in understanding the term 'groomed' as a description of behavior that occurred over a course of years."