

4/3/01

**SUPREME COURT OF LOUISIANA**

**NO. 2000-KK-1554**

**STATE OF LOUISIANA**

*versus*

***PATRICK KENNEDY***

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIFTH CIRCUIT, PARISH OF JEFFERSON**

**VICTORY, J., concurring with reasons.**

As tempting as it is to provide a badly needed reform in our law to combat the epidemic of pedophilia in this country, I agree with the Chief Justice's views that it is improper for us to legislate in this matter. However, and though the majority says we have consistently applied this law for 30 years, this Court has not always declined to legislate, even in this area, as is illustrated by *State v. Achiese*, 403 So. 2d 665 (La. 1981), cited by the majority. There, this Court, without any exception found in Louisiana statutory law, applied its own jurisprudentially created exception to the other crimes evidence rules to allow prior crimes against the same victim in a general intent case where intent was not an issue. Applying the law as written by the Legislature, unless it is unconstitutional, is mandated by our law, and it is refreshing to have the majority explicitly acknowledge the principle in such a forceful way.

That being said, let me take this opportunity to point out that our Legislature should consider changing the law in this area to allow for the admissibility of evidence like that at issue in this case. This change in the law has already taken place in federal law and the majority of state jurisdictions around the country. Our current law allows the admissibility of other crimes evidence in specific intent crimes, such as molestation

of a juvenile, but denies its admissibility in general intent crimes, such as aggravated rape. And, unbelievably, this evidence would be admissible here under *State v. Miller*, 98-0301 (La. 9/9/98), 718 So. 2d 960, if the defendant was charged with only attempted aggravated rape, a specific intent crime, rather than the completed general intent crime of aggravated rape.