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LAVINE, J., concurring. I agree that the conviction of the defendant, Sushil Gupta, should be reversed and a new trial ordered because the trial court excluded evidence in the form of instructional videotapes and learned medical treatises. I agree that these rulings deprived the defendant of the right to present a defense to the serious charges against him.

I am not persuaded, however, that it was improper for the court to deny the defendant's motion to sever the charges related to M, one of the victims of the alleged sexual assaults at issue in this case. As the majority notes, in *State v. Boscarino*, 204 Conn. 714, 529 A.2d 1260 (1987), our Supreme Court set out three factors a trial court should consider in deciding whether severance is required. The second factor is "whether the crimes were of a violent nature or concerned brutal or shocking conduct on the defendant's part" (Internal quotation marks omitted.) *State v. Ellis*, 270 Conn. 337, 375, 852 A.2d 676 (2004). With respect to M, the evidence of the defendant's conduct significantly was different in degree, but deeply offensive as it was, I cannot conclude that it was so different in kind as to fit within the second *Boscarino* factor. Stated otherwise, the fact that the evidence as to M was more compelling or graphic does not, in my view, render the charge so shocking that it necessarily will overwhelm the jury's ability to be fair and to evaluate each charge separately.

It is true that in *Ellis*, our Supreme Court decided that the trial court had abused its discretion because the defendant's abuse of one of the victims was "substantially more egregious"; *id.*, 378; than the abuse of the other two victims in that case. The *Ellis* court also determined, however, that "the [trial] court's instructions to the jury were insufficient to cure the substantial prejudice to the defendant that resulted from the improper joinder." *Id.*, 369. In this case, the court repeatedly and emphatically instructed the jury that it must evaluate each charge separately.¹ I am aware that such an instruction may be difficult for a jury to follow in a case such as this, but I am not willing to conclude that it is impossible.

While I do not agree with the majority's conclusion that the court's denial of the motion to sever was reversible error given the facts of this case, I do share the majority's concern that the cumulative impact of charges, such as those present in this case, often may overwhelm the jury's ability to be fair to a criminal defendant. Merely because charges *can* be joined under the law, for reasons of judicial economy, does not mean that they *should* be. If the trial court harbors doubts that a jury fairly can assess the guilt of a defendant due

to the aggregation of charges against him, the court should not hesitate to exercise its discretion in favor of severance. Judging is an intensely human process. Judicial economy, as important as it is, should never trump justice.

¹ For example, the court charged in part: "Now, these informations pertain to three separate and distinct cases which have been consolidated for trial. You must infer nothing from that consolidation. It is essentially for the purpose of judicial efficiency and nothing more. It is of the utmost importance that you keep each alleged incident separate and distinct from one another. You must keep them separate in your evaluation of the facts and separate in your minds, and the determination of your verdict. You must not mix the evidence of one incident with the evidence of another."
