

JUVENILE COURT
CITY AND COUNTY OF DENVER
1437 BANNOCK STREET
DENVER, CO 80202

THE PEOPLE OF THE STATE OF
COLORADO
IN THE INTEREST OF

PHILLIP WILDMAN,
DEFENDANT,

FOR PETITIONER:
DOMINIQUE K. WAPLES-TREFIL,
36986
FOR THE JUVENILE:
SARAH WELTON, 24939
HOLLY LUCAS, 28727

COURT USE ONLY

Case Nos: 06JD1729
06JD1730
Division: I

REPORTER'S TRANSCRIPT

These matters came on for Trial To a Jury commencing Monday,
November 5, 2007 through Friday, November 9, 2007, before the
HONORABLE KAREN M. ASHBY, Judge of the Denver Juvenile Court.

I-N-D-E-X,

	SUVI MILLER	DIRECT	CROSS	REDIRECT	RECROSS
	BY MS. WAPLES-TREFIL	3		56	
	BY MS. WELTON		28		60

1 THURSDAY, NOVEMBER 8, 2007

2 MORNING SESSION 9:15 A.M.

3 P-R-O-C-E-E-D-I-N-G-S

4 (Whereupon the following testimony of
5 Suvi Miller occurred in open court in the presence and
6 hearing of the jury.)

7 SUVI MILLER,
8 having first been duly sworn to state the truth, the
9 whole truth, and nothing but the truth, testified on
10 her oath as follows:

11 THE COURT: And, Ms. Miller, once you're
12 seated, if you could move the microphone as close to
13 you and adjust the height so you're speaking into it
14 as directly as possible, and then still keep your
15 voice up so I can hear you clearly.

16 THE WITNESS: Okay.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MS. WAPLES-TREFIL:

20 Q Good morning.

21 A Good morning.

22 Q If you could please tell us your full name
23 and spell your first and last name for the court
24 reporter?

25 A Suvi Miller, spelled S-u-v-i, M-i-l-l-e-r.

1 Q Ms. Miller, how are you employed?

2 A I'm a licensed clinical social worker.

3 Q And what other positions have you had in your
4 professional life?

5 A Well, I currently have a private practice. I
6 am a faculty member -- an adjunct faculty member at
7 the University of Denver. Prior to that, I graduated
8 from New York University with a master's in social
9 work in '92 and held a series of positions as a
10 clinical social worker, the last of which was a
11 position I held for nine and a half years at the
12 Denver Children's Advocacy Center. There I was a
13 therapist as well as a clinical supervisor for other
14 clinicians and graduate students who went there to do
15 their internships.

16 Q So how have those positions related to
17 counseling regarding sex assaults?

18 A Well, most of my career has been spent
19 working with children, adolescents and families
20 specifically in the areas of trauma and physical
21 abuse, emotional abuse, sexual abuse. The job that I
22 held at the advocacy center -- that is an agency that
23 provides assessments and treatment to children who are
24 victims of trauma -- mostly sexual assault and
25 domestic violence, although there were some others who

1 were witnesses to homicide incidents, things like
2 that. So my position there was to provide services to
3 the children who came in for counseling related to
4 those issues.

5 Prior to that, I also worked with children
6 who had been in residential treatment with a number of
7 issues related to physical abuse, domestic violence
8 and also sexual abuse. And I had also held a position
9 as an intern with a sexual abuse treatment program as
10 part of my graduate school work.

11 Q That was a lot of information. Have you, in
12 addition to that work, also had teaching experience
13 related to sex assaults on children?

14 A Yes, I have. I've provided trainings to
15 other individuals in the mental health community, as
16 well as students, related to issues around children,
17 adolescents and specifically to trauma identifying
18 when children have been sexually abused or physically
19 abused, also, in terms of how to work with children
20 who have been victims of trauma.

21 Q Can you estimate the number of
22 sex-assault-on-a-child victims that you've worked with
23 in your career?

24 A It is an estimation; I know it is well in
25 excess of 200. I don't have an exact number on that.

1 Q And during this career that you've had in the
2 field, have you made any written -- have you published
3 anything?

4 A I have not published anything.

5 Q Are you a member of any professional
6 affiliations or organizations?

7 A I am. I'm a member of the National
8 Association of Social Workers.

9 Q Have you ever testified in front of a jury
10 before?

11 A I have.

12 Q How many times?

13 A I believe it is 20.

14 Q In what capacity?

15 A Through -- as an expert witness in the area
16 of child sex assault.

17 Q Have you ever testified for the Denver
18 district attorney's office before?

19 A I have.

20 Q In this courtroom?

21 A I have.

22 Q In front of Judge Ashby?

23 A I have.

24 Q Ms. Miller, are you paid for your time?

25 A I am.

1 Q How are you compensated?

2 A The district attorney sets the rate and that
3 is \$80 an hour.

4 Q Is that typical for your work?

5 A Yes, it is.

6 MS. WAPLES-TREFIL: Your Honor, at this time
7 I would move to qualify Ms. Miller as an expert in the
8 area of sex assault on children pursuant to Rule 702.

9 MS. WELTON: Your Honor, I would like to
10 renew my objection as an expert in this area under the
11 Shreck ruling.

12 THE COURT: The Court will accept Ms. Miller
13 as an expert in the area of sexual assault on
14 children.

15 Q (By Ms. Waples-Trefil) I want to make
16 several things clear before we go into the dynamics of
17 SAOC -- or sex assault on a child. Have you ever
18 counseled Robert Brown?

19 A I have not.

20 Q Have you ever counseled Stephen Brown?

21 A I have not.

22 Q Have you ever counseling Richard Garcia?

23 A I have not.

24 Q Have you ever met any of those three?

25 A I have not.

1 Q Have you ever reviewed any police reports or
2 documents in connection with any case where those
3 three are the listed victims?

4 A I have not.

5 Q So, other than the general statements of
6 what's involved here -- sex assault on a child -- do
7 you know any particular details about this case?

8 A I only know some very general things that we
9 discussed in terms of having a conversation about
10 using my expert testimony for the case, but no
11 specifics related to the issues that you asked about.

12 Q Ms. Miller, are you here today to tell us
13 whether Robert, Stephen or Richard are lying or
14 telling the truth?

15 A I am not.

16 Q Instead, what type of insights can you give
17 us into the behaviors of sex-assault-on-a-child
18 victims?

19 A Well, through my training and my experience
20 as well as the research that I have reviewed and I'm
21 aware of, my understanding is and my role is to give
22 information that I have related to children who have
23 been sexually assaulted in the areas of disclosure,
24 why they tell, when they tell, how they tell, and
25 areas related to that in terms of behavioral

1 indicators and some other areas that I might be asked
2 about.

3 Q Let's now talk about some of those things
4 that you've just mentioned. One of the things that
5 you said is when they tell. Is there a more clinical
6 term for that?

7 A We call it disclosure.

8 Q Okay. And what about the delayed outcry?

9 A That's how we refer to that, as well. So
10 those two things -- yeah, I can talk about either of
11 those.

12 Q What is delayed outcry?

13 A Delayed outcry, the way that we use it, is
14 that a child does disclose at some point that they
15 have been sexually assaulted, and that there is much
16 more common than not, a delay in that outcry.
17 Children do not usually immediately tell someone when
18 something like this has happened to them. There are a
19 number of factors that play into that, but it is much
20 more uncommon to have a child who immediately goes and
21 tells about a sexually assaulted incident. And what
22 we see is that age, duration of the abuse -- how long
23 it has gone on -- and the relationship to the
24 perpetrator play into how or when a child tells.

25 The issues related to age we see sometimes

1 with very young children -- with a two- or
2 three-year-old, for example. They seem to tell things
3 anyway. They will immediately tell someone, I'm going
4 to my grandma's house" -- and it may be a stranger;
5 and they'll reveal things, or they will come and say,
6 "So-and-so just turned off the TV when I was watching
7 it."

8 As children get to be a little older, they
9 understand more consequences of telling someone about
10 something that's happened -- someone might get in
11 trouble. So oftentimes they want that to happen; or
12 maybe they're concerned it could be them that gets in
13 trouble, so they'll try and keep that to themselves.
14 And even with a child, say, as young as 4 or 5 years
15 old, we see that they will often withhold this
16 information from a parent, from a caregiver.

17 A number of the reasons that we see for that
18 are related to issue of fear; fear of harm coming to
19 them or coming to the perpetrator because they believe
20 it to be so or it's been told to them overtly, fear of
21 loss of affection from the perpetrator. We often see
22 that there are positive elements to the relationship
23 even though there is this sexual piece. So, children
24 may be concerned that this person won't like me
25 anymore if I tell what happened.

1 Q Can I just jump in here just for, perhaps --

2 A Yes.

3 Q So we're talking about delays in outcry.

4 What length of time might be typical for children to
5 delay? Are we talking about a week? A month? Years?

6 A We see it in a very long range. It can be
7 weeks, it could be months, it could be years, it could
8 be never.

9 And how we know about the never, as an
10 example, is the research that's done with anonymous
11 surveys: Has this ever happened to you? Have you
12 ever told anyone? But it is -- there isn't a specific
13 number of how long. Different studies show different
14 things. But most often we see children delay a
15 significant period of time; say, months, but even into
16 years. And, again, that can be impacted by what this
17 relationship looks like.

18 Children take a tremendous amount of
19 responsibility for what happens to them, especially in
20 a relationship where there has been some sort of
21 sexual assault, and that will play into how they can
22 share that information. If they feel that they should
23 have done something differently, if they feel ashamed
24 or embarrassed, they may make a decision to just not
25 share the information either for the reasons I was

1 mentioning before, or: I'm just going to forget about
2 this and I don't want anyone to know about it because
3 it will be embarrassing for me or it will be shameful
4 for me or I should have done something differently.

5 So all of those things can play into a
6 child's decision, but certainly what we see is that
7 children delay particularly if it is someone known to
8 them for a significant period of time. That -- like I
9 said, that can range from a short period of time to a
10 very long period of time.

11 Q Okay. We've been talking about the delay in
12 outcry, and now I'm going to talk about the outcry
13 itself. So, you know, the kid finally gets to that
14 point where they can start to tell. How common is it
15 for children just to say everything, all the details
16 all at once, right away?

17 A That would be very uncommon, again, relating
18 to age, relating to how long the abuse has gone on,
19 relating to the relationship. If we are thinking
20 about children who have been abused over a period of
21 time, what often happens is when the opportunity
22 presents itself, this child tells, either because
23 someone has said something that has given them the
24 opportunity to talk about it or someone has asked them
25 a question in such a way that now they feel safe to

1 talk about it.

2 One of the big reasons that children delay in
3 telling is because they don't think anyone will
4 believe them. And even if they have supportive
5 family, they often feel like if this is a person that
6 is well liked by others, no one will believe me when I
7 say these things are happening. And sometimes
8 perpetrators will tell them that. But oftentimes they
9 just think this is something that no one is going to
10 really think could happen.

11 So in thinking about, you know, this belief
12 piece when we're talking about gradual disclosure,
13 we're telling little bits at a time. So this
14 opportunity presents itself, however, the situation is
15 there, the child has made a statement, and what they
16 will often do is test the waters, if you will. They
17 will say something smaller than necessarily all of the
18 incident that happened to see what the response of the
19 person to whom they're telling would be.

20 One of the things they look for is the person
21 believing them. Are they supporting me? Are they
22 going to tell me it didn't happen? And, of course,
23 for a child, oftentimes if it has taken a long time
24 for them to tell, then they will decide, "This isn't a
25 safe person to talk to, so I'm not going to tell

1 anymore."

2 And if the person becomes very upset, it is
3 apparent, and they become angry or they become sad or
4 they become tearful, a child might often think: "I've
5 said enough that they know something happened and I
6 don't want to upset this person anymore. So maybe
7 I'll just -- I told them something smaller like, you
8 know, Uncle Joe used to touch me in a way I didn't
9 like," and maybe that's enough for the person to have
10 said, "Okay. Well, we're going to do something about
11 this."

12 But if you're thinking about a child who has
13 been sexually abused over a period of time to -- as an
14 adult -- to be able to say: "Okay, here are all the
15 things that happened to me over this long range of
16 time statement that I'm just telling you something
17 that I may have kept secret for awhile" -- it's
18 extremely difficult. It's difficult on a number of
19 levels, but not the least of which we talked about
20 with the shame piece -- I don't want to talk about
21 this out loud. This is very difficult material to
22 talk about. So if I think you're believing me and I
23 feel better just having told you this piece, I might
24 often keep the rest of it to myself, at least for now.

25 Sometimes what we'll see is that children

1 will then give more information as time goes on either
2 to a parent or, if there has been a police
3 investigation, to a forensic interviewer -- somebody
4 who is presenting the questions in a way that allows
5 the child to answer them more specifically. Most
6 parents won't know how to ask those questions and in a
7 way that allows a child to perhaps give some detail,
8 but sometimes children will just give that information
9 anyway. So -- sometimes we'll also see, though, in a
10 forensic interview a child may give less information
11 because this is a person they don't know. So it can
12 work both ways.

13 But what I have seen in my own practice over
14 periods of time, as well as what I've seen in the
15 community itself, is that children will oftentimes not
16 give all the information; sometimes not for months
17 later. So we'll have a child that I might have worked
18 with for a long period of time and something else will
19 come up, not necessarily because they forgot it -- or
20 perhaps they did; there is a detail they forgot -- but
21 oftentimes because this has become an environment
22 where they feel safe to talk about anything, and so
23 now they can share this one last piece. So we'll see
24 children do that sometimes, as well.

25 Q Okay. So, is there any additional stigma

1 associated with coming forward when it's, say, an
2 adolescent male talking about being abused by another
3 male?

4 A Absolutely. The issues that are more
5 specific to boys versus girls are -- or male-on-male
6 sex assault, as we know, we're in a society where if a
7 child might identify this, then somebody might say,
8 Well, it's because you're gay. That's why it
9 happened." And that's a stigma in itself. So if this
10 child is concerned that people are going to identify
11 him as gay, or they don't want to be gay, or whatever
12 comes along with that. There is a stigma regardless.

13 So we'll see with male children that there
14 is -- there tends to be a longer period of time before
15 they'll report, or less information might come forward
16 because of the stigma around sex on males,
17 particularly male-on-male sex assault.

18 Q So once a person has come forward, you know,
19 with this outcry and some of the details, are the
20 details -- let me restate this.

21 You've told us that sometimes the outcries
22 don't come all at once, they come in pieces and they
23 will either expand or retract based on feelings of
24 safety or acceptance.

25 A Yes.

1 Q Okay. When they're talking about what
2 happened to them, are they always able to give
3 specific dates?

4 A Again, if we're talking about -- each child
5 is different, of course. But if we're talking about
6 children who have had -- have been sexually assaulted
7 multiple times or over a period of time being able to
8 give dates specific to each incident, how it happened,
9 exactly what happened, the sequence of events is very
10 difficult. It is difficult for adults, it is more
11 difficult for children. And depending upon the length
12 of time between when sexual assaults have happened or
13 begun and when this child makes the decision to talk,
14 that, of course, can impact it, as well.

15 If something is happening to me repeatedly
16 and it is not always exactly the same day, it is not
17 always a Tuesday, it is not always at four o'clock, it
18 is not always when mom went to this particular job, it
19 is not always in this room when this show was
20 playing -- you can see how those details, if they
21 shift at all -- a different room, a different day, a
22 different time -- every year can be very difficult to
23 remember. Additionally, children can mix some of
24 those things up. So if this has happened over a
25 period of time and I'm trying to talk about what

1 happened and I say I think that was in the winter
2 because I think I -- this was happening at that time,
3 but I'm not sure -- it could have been the spring
4 because maybe there were multiple incidents in the
5 winter and spring.

6 What we see with children is sometimes they
7 can recall how things started, you know, what the
8 circumstances were the first time -- but, again, not
9 necessarily every detail of that -- or what was the
10 last time that this happened, we often get more
11 information around that, depending again on how long
12 the period of time has passed. So I think when you're
13 thinking about memory, what we know is that there can
14 be things that are forgotten or mixed in -- some of
15 the details of the event.

16 But we know also that the essence of the
17 memory or the basic piece of what happened,
18 particularly with trauma, stays the same. So we know
19 that I was sexually abused by this person but I know
20 it also happened a lot of times. And so, some of the
21 details around that might get mixed or might get
22 misplaced.

23 Q Okay. So now, just to clarify, if a child --
24 if it happens when they are young and they don't
25 disclose until they're a lot older, this still applies

1 to, you know, teenagers or adults who are disclosing
2 about their childhood, right? This isn't just
3 children who are disclosing.

4 A Absolutely.

5 Q Now, you mentioned something about the person
6 who was abusing them. Obviously, that's one thing
7 that most outcries are going to include. It is a
8 detail. When children are mixing up details or mixing
9 up dates and times, do you often see that they are
10 mixing up --

11 MS. WELTON: Objection, leading question.

12 THE COURT: All right. I haven't heard it
13 fully yet, so --

14 Finish the question.

15 Q (By Ms. Waples-Trefil) Do you often find
16 that they are mixing up issues of identification, as
17 well?

18 THE COURT: Overruled.

19 THE WITNESS: I can answer?

20 THE COURT: You may answer.

21 THE WITNESS: We don't see the children mix
22 up who the perpetrator was. What we -- again, we
23 might see, you know, "This was this time;" or, "I
24 think it was this time;" or, "I think this happened on
25 this time." But we don't see children saying, "I

1 can't remember who the person was that did this to
2 me."

3 If you have a child who was being abused
4 simultaneously by multiple people at the same time --
5 there were three people there -- they might mix up who
6 did what, but if you're talking about a child who is
7 identifying who did this to me, we don't see children
8 mixing up identification of the perpetrators in terms
9 of the memory piece.

10 Q (By Ms. Waples-Trefil) You are referring
11 to -- one of the things you are referring to is times
12 of year and how kids bracket events in their lives.
13 Are they always able to say: Well, you know, it was
14 this time of year, but, you know, I was a certain age?
15 That -- let me -- that was a bad question.

16 Are they always certain about their age when
17 the abuse took place?

18 A We -- again, that can be a thing that
19 children can mix up if there is -- particularly if
20 there is a long delay in the outcry. That can be an
21 element.

22 So if I'm a five-year-old and it is -- this
23 abuse starts to happen and it doesn't happen on my
24 sixth birthday or my fifth birthday so there is a
25 piece that I can relate to that, and then it happens

1 multiple times over a period of time and someone says,
2 "Well, how old were you when it started?" I might say
3 that: I'm now 14, I think I was five or I think I was
4 six; I think I was six because I had this particular
5 teacher -- you know, trying to pull in those pieces to
6 remember. But, if it happens, again, over a period of
7 time, it's often harder for adults and children to
8 place exactly when something was initiated or not. So
9 age can be a piece.

10 You know, you won't have a child that says:
11 It started when I was three -- and then in fact we
12 discovered it started when this child was 10. That
13 kind of gap you're not going to see. But maybe when
14 you're five and turning six: I think I was five. I
15 think I was in kindergarten -- some of those things,
16 or maybe that piece isn't quite as clear. And then,
17 again, if you're talking about it happening over a
18 long period of time: I know I was six for a while
19 when it was happening, I'm just not sure it started
20 when I was six -- might be a piece.

21 Q Now, when children tell or when they're
22 finally able to tell and they're older, they're giving
23 these details, do they often minimize the emotional
24 impact or the effect that it has had on them right at
25 that time?

1 A At the time of disclosure?

2 Q Yeah -- or, I guess -- let me -- I'm not
3 asking good questions today. I apologize.

4 Do children minimize the events?

5 A They can. Again, if there has been a delay
6 in the disclosure and they have had -- they have found
7 a way to cover a period of time without sharing that
8 information, oftentimes that will come into play. So:
9 I have some distance from this even though it has
10 created a lot of struggles for me in my life. I found
11 a way to kind of box this; compartmentalize this.

12 So if I'm telling my dad or I'm telling my
13 mom what happened, I might say, "Well, it's okay. It
14 happened a long time ago. Don't worry. I'm okay" --
15 or I might feel that maybe I'm okay, I'm not
16 connecting some of the things that are going on for me
17 now with what happened earlier.

18 So, minimizing could be for a number of
19 reasons. If my parents get very upset and say, "I
20 can't believe this happened and I didn't know," or
21 something like that, I might say, "It's okay. It's
22 okay. Really, I'm fine; I'm fine. I just wanted you
23 to know that it happened" -- so that kind of
24 minimization. And sometimes we see with children over
25 time that they -- until they're able to start talking

1 about this in a safe environment like counseling or in
2 a way that their feelings are supported, they may not
3 recognize the impact and, again, sort of try to
4 minimize what has happened to them.

5 I think the only other piece I would add
6 would be for adolescents sometimes this is something
7 that they'll say is just not that big of a deal
8 because they oftentimes don't want to identify
9 themselves as being vulnerable. So they might say,
10 "Well, it just wasn't that big of a deal. You know, I
11 got through it and it's okay."

12 Q It has to do with stature and your feeling
13 empowered that way?

14 A Not necessarily. But that is one piece I
15 might add around that.

16 Q So what type of behaviors do people often
17 exhibit when they have been sexually assaulted?

18 A Well, there is no one behavior that we see.
19 With children who have been sexually abused, what we
20 look for is a number of different kinds of behavioral
21 indicators, we call them, as helpful information for
22 us when we're trying to figure out what has happened
23 or how this child was doing with what has happened.

24 So we might see, you know -- again, it varies
25 with younger children to older children. Younger

1 children, we might see a child who has been fairly
2 independent become very clingy; we might see a child
3 who is a younger child who has been potty trained and
4 all of a sudden they're not potty trained again. We
5 see across the board with younger children and
6 adolescents.

7 Oftentimes we'll see increases in aggressive
8 behavior or confrontational behavior. We also see
9 increases in depression, and depression can look
10 differently in children than in adults. Some children
11 do act out aggressively when they're depressed and
12 then other children do withdraw and are more
13 traditionally depressed. Some older children in
14 adolescence may run away from home, may start
15 indulging in substance abuse, may act out sexually.

16 Other things that we might see with all
17 children is sort of isolation from other people,
18 grades dropping and disruption in sleep, having
19 nightmares, having night terrors, and sometimes
20 interruptions in their eating patterns, as well.
21 They're eating a lot, they're eating not at all;
22 they're not taking care of themselves, in general. So
23 those are some of the more generalized ones.

24 A couple things that we sometimes see are
25 sexually acting out behaviors. And, again, there is

1 no one behavior that we look at, but when we see a
2 child and we -- even if we don't know specifics of
3 what happened, if we're seeing some behavioral issues,
4 we know that all of those things can be part of a
5 child who has had some sort of trauma or trouble.

6 Q If I could just jump back for a second?

7 A Uh-huh.

8 Q One of the things that you mentioned was
9 night terrors. What is a night terror?

10 A A night terror differs from a nightmare in
11 that a child may -- they won't necessarily wake up
12 during the nightmare itself. They'll experience it
13 and someone else might know about it because they're
14 yelling in their sleep, et cetera, et cetera, and they
15 can't necessarily recall it when they wake up.

16 A nightmare on the -- a nightmare might be of
17 somebody, if they're having -- they're woken up from
18 something scary or if they wake up, they're able to
19 recall what they were dreaming about.

20 MS. WAPLES-TREFIL: If I may have a moment?

21 (Whereupon a brief pause is taken.)

22 Q (By Ms. Waples-Trefil) Ms. Miller, the issue
23 of false memories has been raised in this trial.
24 Do you know anything about false memories?

25 A I know in conjunction with what I know about

1 children's memories in terms of recalling some of the
2 things that we treat. And so I have some general
3 knowledge of that, yes.

4 Q What are they?

5 A Well, false memories would be a memory that
6 has been suggested or implanted in someone else
7 through a number of different techniques that they
8 never had.

9 Generally, how those happen -- there isn't --
10 there is no evidence, there is no disclosure of
11 evidence, there is nothing that leads up to it, but
12 that. This child might be -- or an adult might be, I
13 might say, because it happens much more often in
14 adults -- in therapy they have sort of generalized bad
15 feels and they may be led to believe something has
16 happened by a poor clinician, if I might suggest
17 somebody who leads someone that way.

18 What we see in my experience with working
19 with children who have been sexually assaulted is that
20 there -- I have never, in my experience, had a child
21 who has had false memories around sexual assault.
22 Again, more related to "I have a memory of this
23 particular incident," whether there is collaborating
24 evidence or not. But after you work with a child what
25 they present to you is -- it is apprehensive enough

1 that this isn't something that someone might have
2 said -- "Do you think you may have ever been sexually
3 abused and let's talk about that?"

4 So false memories, also in terms of
5 investigation, continued to not hold up through an
6 investigation with the police and et cetera, like that
7 because these are much more generalized pieces of
8 information and there is nothing for the person who
9 might be presenting that to kind of collaborate or
10 connect it to, if you will.

11 MS. WAPLES-TREFIL: If I may have one moment?

12 THE COURT: Uh-huh.

13 (Whereupon a brief pause is taken.)

14 Q (By Ms. Waples-Trefil) I just want to touch
15 on another issue briefly. When siblings are
16 assaulted -- let's assume by the same perpetrator
17 around the same time -- is it common for their
18 outcries to be -- to be at different times?

19 A It wouldn't be uncommon. I don't think there
20 is statistics on whether or not that would be common,
21 but for children who are living in the same household,
22 whether or not they are siblings or cousins or they
23 have a lot of contact, if they've been sexually
24 assaulted by the same person, it isn't at all
25 necessarily so that one person outcries and the other

1 one follows.

2 Sometimes we'll see a sibling or a cousin or
3 someone very connected saying that, "This didn't
4 happen to me," and denying it for a much longer period
5 of time for a number of reasons. Maybe they -- again
6 they're not making necessarily the choice to disclose
7 this information, so perhaps somebody says, "Well,
8 this did happen, and this person feels like, "I
9 don't -- I don't want to open all that up. I have
10 found a way to deal with it," or they don't -- they
11 feel ashamed, or any of the things that we talked
12 about before.

13 So that -- you may see a sibling deny that
14 having happened or a cousin or someone close, and then
15 later saying, "Okay. It did in fact happen and I just
16 didn't want to talk about it before." So there could
17 be a number of reasons that might play into that. But
18 it wouldn't be uncommon for that to happen.

19 Q Thank you.

20 MS. WAPLES-TREFIL: No further questions.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MS. WELTON:

24 Q Let's talk about your background first a
25 little bit.

1 A Okay.

2 Q You're a licensed certified social worker,
3 correct?

4 A Yes.

5 Q And you have acted as a professor -- or
6 adjunct professor on occasion?

7 A I am an adjunct professor at the University
8 of Denver, yes.

9 Q But it's safe to say that most of your
10 experience is not in the academic realm, it would be
11 from your experience, correct?

12 A Correct.

13 Q And most of the testimony that you've given
14 today is not based on your academic experience, it is
15 based on your personal experience, correct?

16 A My testimony is a combination of my
17 professional experience as well as the research that
18 is available to me, yes.

19 Q But you're not primarily a research person,
20 correct?

21 A I don't do research, but I believe as part of
22 my profession, I need to stay abreast of what the
23 research is in order to provide the best possible care
24 to my client.

25 Q But you yourself have not written or

1 published anything?

2 A I have not.

3 Q And the resources that you base your
4 testimony on, can you -- withdraw that question.

5 Right now, how many children did you say you
6 treated? Was that 200?

7 A In excess of 200.

8 Q And have you ever -- in those 200 children,
9 ever treated someone who was accused of sexual
10 assault?

11 A I have treated young children who have been
12 accused of sexual assault, but I have not treated --
13 and that is in conjunction with being victimized; you
14 know, perhaps they -- and I shouldn't say sexual
15 assault, more sexually reactive behaviors. But have I
16 treated someone who has been -- someone accused of
17 sexually assaulting a child identified as a defendant?
18 No.

19 Q And have you ever testified for any
20 defendant?

21 A I have not.

22 Q So all of your testimony has been for the
23 prosecution?

24 A It has.

25 Q Specifically, as far as the research that

1 you've done, there -- would you agree that there is
2 very little research specifically towards the --
3 adolescents reporting?

4 A I don't know that I would qualify it as very
5 little. I think there is research out there, but
6 there is less around adolescents than there is around
7 schoolage children -- younger children, if you will.

8 Q Is there any scientific study, any accepted
9 literature that deals specifically with adolescent
10 reporting that you can cite for us right now?

11 A If I could look at my source list, I could
12 tell you some of the ones that are related to
13 adolescents. I'm not very good at citing the title of
14 the articles. I might have to look at them.

15 Q Those studies that you're citing, do they
16 deal specifically with adolescents?

17 A I know there is one on my list that does and
18 I would have to look at the other ones. I think there
19 is a cross in terms of ages, so --

20 Q So of the research that you're aware of,
21 there is one study on statistical --

22 A If you're asking me to quote it right off the
23 top of my head, that's the only one I can think of;
24 but I know there are other ones that are general to,
25 say, a six to 14-year-old, that kind of thing.

1 Q Most of the research is towards a broader
2 range or skewed towards younger children; is that
3 correct?

4 A That is correct.

5 Q And I want to talk about the general
6 principles that you're talking about today. You
7 testified that, in general, lots of your work is from
8 your own experience -- your anecdotal experience,
9 correct?

10 A Yes.

11 Q Which has been as a child advocate from the
12 beginning, correct?

13 A Yes.

14 Q And the methods that you rely upon that you
15 used today -- because you've been working as a child
16 advocate for a significant amount of time -- they're
17 based upon your experience as a child advocate,
18 correct?

19 A The methods that I'm using?

20 Q Correct.

21 A I think I need to understand what you mean by
22 that.

23 Q The opinions that you're giving today are
24 based upon your experience as a child advocate?

25 A Well, again, I would say my opinions are

1 based on both the research as well as my professional
2 role, but my professional role has been to provide
3 therapeutic services to children. So, you could
4 identify that as an advocate, but really my role has
5 been to be a therapist. But I think the two of them
6 go together.

7 Q Well, let me ask you this, you've never
8 tested the veracity of any of the children you talked
9 to, correct?

10 A No, it is not within my role to do so.

11 Q It is not within your role to confront the
12 child about whether or not he is telling the truth?

13 A Correct.

14 Q Your role is to offer, you know, therapeutic
15 support and comfort?

16 A Correct.

17 Q And, really, your role is to treat someone's
18 pain?

19 A Correct.

20 Q And whether or not that pain is from
21 something that factually happened or didn't, that's
22 really not your role, correct?

23 A Correct.

24 Q Did you ever have an occasion to have a child
25 that you personally saw that you came to the

1 conclusion that that person was lying?

2 A About anything or about sexual assault?

3 Q About sexual assault.

4 A No.

5 Q No?

6 A I have not.

7 Q Let me ask you about something different.

8 You are aware of the concept that is based upon your

9 expectations of the Rosenthal Effect, that -- to be

10 blunt -- if you have a hammer everything is a nail.

11 Are you aware of that concept?

12 A I'm aware of the concept.

13 Q Okay. And, again, because your experiences

14 are based upon your experiences with children and

15 every child that you have seen is -- you have not

16 tested the veracity of their claims, what you're

17 testifying to today is based upon your belief that

18 everything that you have heard is true, correct?

19 A The children that I saw at the advocacy
20 center were probably 95 to 98 percent children who
21 have had founded cases of sexual abuse.

22 So these were not: "Can you figure out
23 what's going on with my child?"-cases, these were
24 cases where there was either a trial -- there was a
25 criminal investigation, so that there weren't, I

1 think -- these were not children who -- there was sort
2 of a discovery process and through therapy trying to
3 work on whatever issues they had that there would be
4 the outcome of whether or not this was a true
5 statement.

6 Q So you testified a few minutes ago that you
7 do not test the veracity of your children.

8 A I don't.

9 Q Did you follow the trials and have a --
10 basically, a chart for -- or any kind of win/loss
11 column for how many of those defendants were actually
12 convicted?

13 A I did not. I -- what I did was take whatever
14 information was available and work with the child from
15 that point. I'm just making a point that I had had
16 some of that information to begin with.

17 Q I understand that. But I'm saying that a --
18 and not a good sort of check either, but a check on
19 whether or not the children were telling the truth or
20 not telling the truth would be the outcome of that
21 case, and your testifying that you do not know the
22 outcome of the cases?

23 A No, I'm testifying that I might not have kept
24 track to check it off or not check it off. But,
25 certainly, I would keep track of it as an issue

1 related to the child.

2 Q So you're telling me that every case that you
3 have had that has gone to trial has ended in a
4 conviction. Is that what you're telling me?

5 A No. I'm telling you that there would be
6 information that would come forth through an
7 investigation where it would be founded and then there
8 may be a trial; and then the trial may not end with a
9 conviction, but that there would be information at the
10 outset that would indicate there was some kind of
11 corroborative evidence about sexual abuse.

12 Q So even when a defendant is not found to be
13 guilty, are you still saying --

14 MS. WAPLES-TREFIL: Objection, relevance.

15 THE COURT: Overruled.

16 Q (By Ms. Welton) Even when a defendant is
17 found not guilty, because you're a child advocate,
18 you -- your testimony is that the child is still
19 telling the truth?

20 A I would certainly not think just because a
21 defendant was found not guilty that the child wasn't
22 telling the truth.

23 Q Okay. Thank you.

24 So back to what I was talking about, the
25 Rosenthal Effect. Your expectations -- because you

1 have never dealt with a child that you believed has
2 made false allegations, your expectations with regard
3 to each time you have testified is that a child victim
4 has a certain set of predispositions in terms of
5 reporting issues -- or delayed reporting, and those
6 are expectations for every child you will see,
7 correct?

8 A And, again, I would say, yes, I have certain
9 information around expectations -- I don't know that I
10 would use that term. The research that's done on it,
11 though -- however, doesn't have an expectation and --
12 at least to my knowledge, and the statistics around
13 whether or not children have been identified as being
14 sexually abused and whether or not they disclose and a
15 number of things that corroborate that -- a confession
16 from an alleged offender, a witness, some of those
17 other things. And even in fact under some of those
18 circumstances, a child who has had a witness -- who
19 has been witnessed being sexually abused might not
20 tell, might deny it even at the time that someone asks
21 them.

22 So a lot of the research conducted around it
23 is why -- or when do children deny or delay their
24 disclosure. That information comes from cases that
25 are cited to be corroborated on some level, as far as

1 the research goes.

2 Q Hold up just a second. Your testimony today
3 is based largely on your own experience, correct?

4 A It is based on my experience, yes.

5 Q And you testified that it may be that if
6 there is a delayed outcry, it was because the
7 allegations were true, correct?

8 A Yes.

9 Q You also said that outcry with siblings is
10 not uncommon or common?

11 A Simultaneously.

12 Q And that delay is not common or uncommon?

13 A No, I didn't say that delay wasn't common or
14 uncommon. It is more common than not to delay.

15 Q But it could be uncommon, as well?

16 A It could be a child may not delay, but it is
17 much less common than common.

18 Q And you said it is typical for someone to
19 delay weeks, months or years. So, virtually any time,
20 correct?

21 A Yes.

22 Q Your testimony right now is that sometimes
23 children who are clearly sexually abused delay their
24 outcry, correct?

25 A Yes.

1 Q But you don't turn that on its head and say
2 every time someone delays, there must really be abuse,
3 correct?

4 A No.

5 Q And you did not interview any of the parties
6 in this case?

7 A I did not.

8 Q Read any of the statements?

9 A I did not.

10 Q Did you view any of the video statements?

11 A I did not.

12 Q Do you know any facts leading up to the
13 allegations of this case?

14 A I know -- because of some of the information
15 that's given to me by the district attorney's office;
16 they make decisions about it -- so, my general
17 testimony, what are the areas that I'll be testifying
18 about, and then I will know generally what the age of
19 the child is at the time that there was sexual assault
20 going on, if it was going on over a period of time,
21 and that -- the time of disclosure. Those are some of
22 the facts that I may know.

23 Q Do you know any of the information that the
24 detective had leading up to this case?

25 A I don't.

1 Q Is it your testimony that there is always
2 good investigation to a case?

3 MS. WAPLES-TREFIL: Objection, speculation.

4 THE COURT: Sustained.

5 Q (By Ms. Welton) Do you have any information
6 about the background of the alleged victims in this
7 case?

8 A I don't.

9 Q Do you have any information as to the family
10 of the victims in this case?

11 A I know that there was a mother present.
12 That's the only piece of information I can recall.

13 Q You have no basis to offer an opinion about
14 this case, correct?

15 A This case specifically?

16 Q Specifically.

17 A Around the facts, no.

18 Q Have you ever testified for the DA in a case
19 where you did not believe a child?

20 A I don't testify specifically to whether or
21 not the children in cases are telling the truth, I
22 just testify about what I know about children who have
23 been sexually assaulted. So I have never been asked
24 in a trial, "Suvi Miller, do you believe this child is
25 telling the truth?" -- because I don't have enough

1 information to inform me about that.

2 Q So you actually have never testified in a
3 case where you had any information about any of the
4 facts of the case?

5 A I believe on one occasion I did and that was
6 because the judge wanted to have more information.

7 Q In that case did you come to the conclusion
8 that the child was not telling the truth?

9 MS. WAPLES-TREFIL: Objection, relevance.

10 THE WITNESS: I had very limited --

11 THE COURT: Hang on. Sorry.

12 Sustained.

13 Q (By Ms. Welton) Your role here today is to
14 help the district attorney get a conviction, correct?

15 A My role here today is to provide testimony to
16 be helpful, as I see it, to the jury to understand the
17 dynamics of sexual abuse on children.

18 Q And your role here today is as a child
19 advocate who is paid by the district attorney who has
20 never testified for the defense; is that not correct?

21 A I guess those facts would be true.

22 Q I want to ask you about delay. You testified
23 that -- I believe you said it is not uncommon for
24 child victims of sexual assault to feel uncomfortable
25 discussing sexual assault with a stranger such as

1 police personnel?

2 A My testimony was that it can work both ways.
3 What we see sometimes is that children might give more
4 information to a forensic interviewer because of the
5 nature of the questioning and that this person is
6 someone not known to them so they don't have to worry
7 about that person's reaction. But we've also seen
8 that sometimes children feel fearful because it is
9 someone that's unknown to them or they see it as an
10 authority figure and that they may not give that much
11 information.

12 Q Is it typical for a child to -- would you
13 feel, say, that it is typical for a child to report to
14 law enforcement personnel first, in your experience
15 with 200 children?

16 A I would say that's probably less common,
17 although age plays into that. So adolescents will
18 often report to a friend or somebody outside of their
19 family before they'll report to a family member, but,
20 again, it isn't necessarily the case.

21 Q In the 200 people that you have talked to,
22 how many of those -- what percentage went to law
23 enforcement first?

24 MS. WAPLES-TREFIL: Objection, relevance.

25 THE COURT: Overruled.

1 THE WITNESS: I don't have an exact statistic
2 on that. I would say that would be in a minority of
3 the cases. Because most children go to someone that
4 they -- that will believe them is sort of the tune,
5 and -- but, again, I think age plays into that.
6 Because we'll see -- certainly, an eight-year-old
7 child might not be likely to go tell law enforcement
8 first, but a 17-year-old might because they understand
9 the implications of it and they made a decision to
10 pursue that.

11 Q (By Ms. Welton) When you say this, do you
12 have the statistical number of the number of
13 adolescents that you personally have treated out of
14 those 200 who went first to law enforcement personnel?

15 A I don't have a number for you, no.

16 Q If a perpetrator is a close family friend, I
17 believe you testified that it's more likely to delay
18 the outcry; is that correct?

19 A It does impact the outcry, correct.

20 Q So if the perpetrator would not be a close
21 family friend, it would be less likely to delay the
22 outcry; is that correct?

23 A It might be. The relationship of the child
24 to the perpetrator is first and foremost; but, yes, if
25 it is someone that is not known to the family, that

1 might impact whether or not a child will delay or not.

2 Q That wasn't my question. I said if it wasn't
3 a close family friend.

4 A If it is not somebody that the family has
5 involved in their lives -- a close family friend --
6 would the child be less likely to delay. Is that your
7 question?

8 Q That's my question.

9 A It could impact it. Again, I would go back
10 to the child's relationship with the perpetrator. But
11 it is possible that it could be less, but I don't
12 think it would have a significant impact if this is a
13 person that the child feels close to.

14 Q You -- I think you answered both yes and no
15 in that question. Let me clarify.

16 If it is more likely that if a perpetrator is
17 a close family friend that the child will delay,
18 doesn't it follow that it is less likely if that
19 person is not.

20 A You could say that it might be less likely.

21 Q Another question -- if the perpetrator
22 threatens or promises something, isn't it true that
23 the child is more likely to delay?

24 A Threatens or promises something? I think I
25 need to know more about what the threat was or what

1 the promise was.

2 Q If the threat or promise was no longer an
3 issue, would that delay still be likely?

4 A It could be, absolutely; yes.

5 Q But it could not be also, correct?

6 A It could not be.

7 Q Let's talk about some indicators in sexual
8 abuse that you talked about earlier. You said that
9 some of the indicators are clinging?

10 A In a younger child it might be, yes.

11 Q Bed wetting?

12 A Yes.

13 Q Increases in aggressive or confrontational
14 behavior?

15 A Yes.

16 Q Depression?

17 A Yes.

18 Q Withdrawal?

19 A Yes.

20 Q Running away?

21 A Yes.

22 Q Substance abuse?

23 A Yes.

24 Q Acting out sexually?

25 A Yes.

1 Q Isolation?

2 A Yes.

3 Q Bad grades?

4 A Yes.

5 Q Disturbances in sleep?

6 A Yes.

7 Q Disturbances in eating?

8 A Yes.

9 Q Is it your testimony today that if you meet
10 an adolescent that runs away, he's been sexually
11 abused?

12 A No.

13 Q Is it your testimony that if you meet an
14 adolescent that exhibits signs of depression he is
15 abused?

16 A No.

17 Q Is it your testimony today that if you meet
18 an adolescent that is acting out sexually he is
19 sexually abused?

20 A No. We look at those factors collectively.

21 Q Have you looked at those factors collectively
22 in this case?

23 A I have not.

24 Q Other things could cause these factors?

25 A Yes.

1 Q Even collectively, correct?

2 A Yes.

3 Q For example, physical abuse?

4 A Yes.

5 Q And I believe that is one of the areas that

6 you had some experience in?

7 A Yes.

8 Q Someone who is physically abused by a family

9 member, for instance, could have some or all of the

10 symptoms?

11 A Yes.

12 Q And it is also true that a survivor of

13 another type of trauma could have any or all of these

14 symptoms, correct?

15 A Yes, correct.

16 Q For example, if someone was a survivor of a

17 natural disaster?

18 A Yes.

19 Q Hurricane Katrina?

20 A Yes.

21 Q It is possible that the survivors of

22 Hurricane Katrina exhibited many or all of these

23 symptoms, correct?

24 A It could be, yes.

25 Q The absence of these behaviors is not proof

1 that it didn't happen though, correct?

2 A Correct.

3 Q So I think what you're saying is that if you
4 see these, it tends to show it happened, and if it
5 didn't happen -- you can't rule out it didn't happen
6 either?

7 A No. What I would say about indicators are
8 that they are information -- more information -- at
9 least from my perspective -- on what might be going on
10 with a child or some of the things that we would want
11 to address. But children demonstrate different
12 behaviors, so if we had a parent who gave us a number
13 of behavioral indicators, do we say absolutely they
14 have been sexually abused? No. We take that
15 information, again, and -- as part of the whole
16 picture to try to make a determination as to how the
17 treatment is going to go.

18 Q And you're familiar with the DSM, correct?

19 A Yes.

20 Q Could you -- and is it -- tell me what DSM
21 stands for?

22 A Diagnostic and Statistical Manual. It is a
23 book that's written by the American Psychological
24 Association and it is a tool that we use in the field
25 to make diagnoses of clients. So if you were to go

1 and have therapy and you had -- you were bipolar --
2 people talk about bipolar a lot -- there is a category
3 in there with a number attached to it that might be a
4 diagnosis.

5 The other piece that's helpful is there is a
6 listing of different behaviors that would be
7 indicators of that. So I can't just give you a
8 diagnosis of bipolar disorder unless certain criteria
9 are met within that.

10 Q And isn't it true that if you find the
11 indicators of something, oftentimes it is true that
12 you must rule out other things in order to make that
13 diagnosis?

14 A You would want to do that as good practice,
15 yes.

16 Q I want to talk a little bit about your
17 specific training. You went through training with --
18 I believe his name was Stephen Ceci -- is that the way
19 it is pronounced?

20 A Yes.

21 Q And Doctor Ceci has researched the --
22 Doctor Ceci has researched the suggestibility of
23 children, correct?

24 A Yes.

25 Q And then you are aware of the deleterious

1 effect of repeated questioning, correct?

2 A Yes.

3 Q Specifically of repeated questions within
4 interviews?

5 A Yes.

6 Q Doctor Ceci probably talked about how
7 repeated questions within an interview signals to the
8 child the answer that that child gave was somehow
9 wrong and that the answer needs to be corrected; is
10 that correct?

11 A To the best of my recollection.

12 Q And oftentimes children change an answer if
13 they want an interview to end?

14 A That may be part of what he presented.

15 Q And he probably presented evidence on the
16 danger of gathering only confirmatory evidence?

17 A I don't recall that piece at this time, but
18 I've read other things, sure. Uh-huh, yes.

19 Q So that would be when an interviewer only
20 gathers evidence that tends to support a hypothesis
21 that he already has and does not go down an avenue
22 that leads to an inconsistent or otherwise negative
23 statement; is that correct?

24 A Yes.

25 Q Are you aware of the studies that have shown

1 the effect of interrogative suggestibility; that is
2 the concept of basically that -- the degree to which
3 people accept a message that's communicated to them
4 within the interview?

5 A I don't have a lot of research that I read
6 recently about that. I know that the suggestibility
7 piece which Doctor Ceci also talks about is related to
8 traumatic events.

9 There is -- there may be some pieces that can
10 be suggested or inconsistent, but a lot of his
11 research is also done around -- as an example, an
12 event with an adult and you see a car accident and
13 information suggested to you about what might have led
14 up to it or some of the details about what you saw,
15 and people can be convinced of, around details.

16 The way that I utilize that information, as
17 well as to also talk -- he talks about the memories
18 and concerns in terms of a basic memory of an event
19 and how some of those things can be shifted in
20 details, but that that piece of the trauma piece
21 doesn't tend to be shifted.

22 Q Well, let me ask you a question then. If
23 someone were to undergo an interview with somebody who
24 is not a trained interviewer and did do some of the
25 things that you just talked about, suggest things that

1 happened, would that person be more likely to
2 incorporate those things into their testimony?

3 A They might be.

4 Q Memory is not really like a tape recorder, is
5 it?

6 A It is not.

7 Q And the brain processes information and
8 stores it in many different ways, correct?

9 A It does.

10 Q And I think you testified on direct that you
11 were aware of the dynamic of false memory.

12 A Yes.

13 Q And I think that some of the research has
14 shown people remembering things that absolutely could
15 not have been true. I found research that -- that
16 somebody had remembered being decapitated.

17 Have you ever heard of that sort of research?

18 A I haven't heard of that one, no.

19 Q But there is some sort of controversy over
20 this particular phenomena when we're talking about
21 victims of childhood sexual abuse; is that correct?

22 A There is some controversy. I think a lot of
23 what false memory formed -- this is probably a decade
24 ago -- is probably interviewing skills, techniques for
25 children so that, you know, some of these sort of

1 outrageous things wouldn't be presented consistently
2 over time.

3 Q And I think that one of the leading
4 researchers in this area would be Doctor Richard
5 McNally. Are you aware of his research?

6 A I don't know his research, no; not off the
7 top of my head.

8 Q Have you heard of the research that
9 suggested -- suggesting that false memory could be
10 created in children? Research that said that false
11 memories of being lost in a shopping mall could be
12 implanted in children?

13 A Yes.

14 Q Are you aware of research that says that
15 people tend to recall things in groups?

16 A Tend to recall things in groups?

17 Q Correct.

18 A Not specifically, but in general.

19 Q Specifically, collaborative groups tend to
20 have more intrusions in memory?

21 A Yes.

22 Q Wouldn't you say that it's true that
23 adolescents are highlighted by year?

24 A Yes.

25 Q Have you read the research that says that

1 memories of real life events are more likely to occur
2 in groups where members identify with each other?

3 A So -- repeat it, please?

4 Q That research shows that false memories of
5 real life events are more likely to occur in groups
6 where members identify with each other?

7 A I don't know that research. I'm not sure
8 specifically what they're talking about in terms of
9 false memories -- again, if they're talking about
10 details around certain things which could be qualified
11 as false memory or if they're talking about an actual
12 traumatic event; which the research shows that trauma
13 without a whole lot of isolated, specific information
14 being given is likely to be created that way.

15 Q I'm sorry. Did you just testify that you
16 think research does not show that?

17 A No, I'm not familiar with that piece of
18 research.

19 Q Are you aware of experimental -- experiments
20 on social influences on memory that tend to show that
21 people tend to incorporate details of other people's
22 memories into their own?

23 A Yes.

24 Q Even when it's false?

25 A Yes.

1 Q As long as it's plausible?

2 A Yes.

3 Q So, another hypothetical. If a person were
4 in a situation where his peers and his family had
5 experienced a traumatic event, based on what you just
6 said, that person would be more likely to incorporate
7 those traumatic events into their own memory as long
8 as it was plausible, correct?

9 A I would say that the details may be things
10 that someone might incorporate.

11 With a child, say -- if a sibling said: I
12 was sexually abused by this particular person -- would
13 this child say: I was, too? That makes sense: "It
14 happened to me, as well." Traumatic memory like that
15 would be very -- I can't imagine a circumstance where
16 a child would identify with that.

17 Now, some details around a traumatic memory
18 that someone might present, like: "Don't you remember
19 it was Christmas and don't you remember that we opened
20 our presents at this time and Uncle Joe was there?" --
21 they might incorporate those details. I might say:
22 It was the Christmas where Uncle Joe was there, yes.
23 But what we also know about memory and trauma is that
24 the essence of that memory stays intact around those
25 pieces and we know that traumatic memories also store

1 differently than other memories.

2 So the contrary around false memories and
3 traumatic memory -- therein lies the rub. Because
4 they're different around at least as far as the
5 research that I have read and am familiar with.

6 Q Yet it seemed that you are not aware of
7 Doctor Richard McNally who's one of the leading
8 researchers in this?

9 A Not by name, no.

10 MS. WELTON: I have no other questions.

11 THE COURT: Redirect?

12 MS. WAPLES-TREFIL: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. WAPLES-TREFIL:

15 Q You've been asked quite a few questions in
16 quite a few different areas. One of the things that
17 defense counsel asked you about was whether or not you
18 were basing your testimony today on research that you
19 read or your own experience.

20 A Yes.

21 Q When you compare your own research -- or, I'm
22 sorry -- the research that you read and your own
23 experience, are they similar?

24 A They are.

25 Q Okay. So when you tell us: I'm basing this

1 on my own experience and also what I read, it really
2 is two parts of very similar conclusions?

3 A Yes.

4 Q Defense counsel also asked you a lot of
5 questions about whether specific indicators would
6 necessarily negate or prove abuse.

7 A Correct.

8 Q Okay. When you look at indicators and then
9 you also look at what children are telling you about
10 what happened and you look at their family situations,
11 and maybe also what happened in court and also police
12 reports or founded Social Services cases, do you look
13 at each part of those individually or all together?

14 A All together.

15 Q What is the common -- or a common thread
16 between sexual assault trauma and other types of
17 trauma like Ms. Welton was mentioning? You know,
18 victims of Katrina or some other powerful event?

19 A Well, trauma, by definition, is a situation
20 or an incident that's overwhelming to us emotionally
21 or physically. So that would be the common thread.
22 Something that happened that becomes overwhelming and
23 very difficult to integrate would be a traumatic
24 experience for an individual.

25 Q So people who have experienced very traumatic

1 things might show those kind of characteristics, but
2 someone, for example who had this, you know, memory
3 implanted and nothing really happened to them, they
4 would be less likely to show these other
5 characteristics you're talking about?

6 A They might be less likely, yes.

7 Q You were also asked a lot of questions about
8 this suggestibility and interrogative suggestibility.

9 A Yes.

10 Q We've heard some testimony about whether or
11 not this type of questioning might be used. What we
12 haven't heard is examples of specific types of
13 questions that would be very suggestible or
14 interrogatively suggestible. Can you give us an
15 example of the kind of questions and also the age of
16 the child that might be influenced by something like
17 this?

18 A Well, I'm not a trained forensic interviewer,
19 because that would be easier for me because I would
20 know absolute right from absolute wrong to come up
21 with. But as an example, let me speak to the age
22 piece first. A younger child might -- or is more
23 suggestible than, say, an adult. They just are. You
24 know, we know this about little kids.

25 We can suggest all kinds of fantastic ways of

1 getting out of something -- "You promised..." -- and
2 they'll believe them. But as people get older, you
3 know, especially children -- adolescents -- they
4 wouldn't necessarily buy what you're trying to sell if
5 you're a parent or trying to get out of something that
6 you were supposed to do, for example.

7 But if you're thinking in a serious way about
8 an interview about something that happened, a question
9 might be: Isn't it true that Uncle Joe tried to put
10 his hand in your pants? That would be a suggestive
11 question: "So isn't it true?"; "Yeah. It's true.";
12 or", Uncle Joe put his hands in his pants, didn't he?"
13 So you're hearing kind of this: I'm supposed to
14 answer a particular way, this question.

15 If someone said, "Can you tell me, when you
16 were with uncle Joe, what happened?" Well, I could
17 answer that a hundred different ways. I'm not
18 necessarily sure what this person's looking for. So
19 that might be a more open-ended way of asking the
20 question versus suggesting: "Didn't Uncle Joe do
21 this?."

22 Q If the person doing the interview didn't have
23 any of the details that were given up during the
24 interview, would it be possible to suggest those
25 details to the person they were interviewing?

1 A I think it would be very difficult. It would
2 be guessing, at best, and if you didn't have the
3 details to come up with to see if you were right, it
4 would be problematic, yes.

5 MS. WAPLES-TREFIL: May I have one moment?

6 (Whereupon a brief pause is taken.)

7 MS. WAPLES-TREFIL: No further questions.

8 Thank you.

9 THE COURT: Any recross?

10 MS. WELTON: Yes.

11 RE CROSS-EXAMINATION

12 BY MS. WELTON:

13 Q You just testified that your research -- I'm
14 sorry, your research and your experience with children
15 lines up; is that correct?

16 A Yes. In general, yes.

17 Q But you testified on cross that you never had
18 a child who made up a false memory -- or that you felt
19 was making up a story.

20 That's not what the research shows, is it?

21 A No.

22 Q So your experience and the research do not
23 match up.

24 A Oh, in regards to that specific piece, no.

25 Q I want to ask you about some types of leading

1 questions. And I know that you're not a forensic
2 interviewer.

3 A Correct.

4 Q Would this question be the type of question
5 that an untrained person could possibly change
6 someone's answer with?

7 "Okay. When you say he took your pants down,
8 what did he say to get you to let him take your pants
9 down?"

10 A I'm having some trouble here testifying about
11 that because I don't know what leads up to that. So
12 that gives me concern in answering that.

13 Q Let me ask you a different question. "He had
14 taken his penis out and he wanted you to touch it and
15 you didn't want to?"

16 Is that a leading question?

17 A It wouldn't be if the child had just said,
18 "He took his penis out and I didn't want to touch it."

19 Q And if that had not occurred, would it be?

20 A Again, it certainly -- it could be if not --
21 there was no context for it. But I feel like I'm
22 answering questions without any context.

23 Q I understand. I won't ask any more
24 questions.

25 THE COURT: Anything further?

1 MS. WAPLES-TREFIL: Nothing from the People.

2 THE COURT: All right. Thank you,

3 Ms. Miller. You may step down.

4 May this witness be excused?

5 MS. WELTON: Yes, Your Honor.

6 THE COURT: All right. And you are free to

7 leave.

8 (Whereupon the testimony of Ms. Miller is

9 concluded.)

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1 REPORTER'S CERTIFICATE

2 The above and foregoing is a true and complete
3 transcription of the stenograph notes taken in my
4 capacity as Official Reporter for the Denver Juvenile
5 Court, at the time and place above set forth.

6 Dated at Denver, Colorado this 10th day of
7 March, 2008.

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11 _____
THERESE J. STRICKLAND, CSR
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