

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case No. 06 CR 7033, Courtroom 18

3 REPORTER'S TRANSCRIPT: Partial Transcript

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5 THE PEOPLE OF THE STATE OF COLORADO,

6 Plaintiff,

7 v.

8 LESLIE HOWARD DAVIS,

9 Defendant.

10 -----

11 This matter commenced on Wednesday, February  
12 4, 2009, before the HONORABLE JOHN W. MADDEN, IV,  
Judge of the Denver District Court.

13 This is a transcript of the testimony of Ms.  
14 Suvi Miller, being so requested by Ms. Miriam Stohs,  
Deputy State Public Defender.

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16

17 FOR THE PEOPLE: PHILLIP A. GEIGLE, Reg. #36056  
18 Deputy District Attorney

19

20 FOR THE DEFENDANT: DEMETRIA E. TRUJILLO, Reg. #34130  
21 Deputy State Public Defender

22 BILLIE B. ROUNDS, Reg. #37788  
23 Deputy State Public Defender

24

25 Defendant personally present in custody.

I N D E XPeople's Witness:

MS. SUVI MILLER

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1 MORNING SESSION 9:38 a.m.  
2 WEDNESDAY, FEBRUARY 4, 2009

3 P R O C E E D I N G S  
4

5 (Proceedings prior to the following were  
6 had and entered of record but are not herein  
7 transcribed, pursuant to direction of ordering  
8 counsel. The following proceedings occurred in open  
9 court in the presence of the jury with all parties  
10 present.)  
11

12 MR. GEIGLE: People would call Suvi Miller.

13 THE COURT: Miss Miller, if I could have  
14 you approach the witness stand, it's right up over  
15 here.

16 Before you sit down, please raise your  
17 right hand.

18 MS. SUVI MILLER,  
19 called as a witness by the People herein, having been  
20 first duly sworn by the Court, was examined and  
21 testified as follows:  
22

23 THE COURT: Please go ahead and have a  
24 seat.

25 What I'd like to have you do is speak as

1 close as you can to that microphone and start by  
2 stating and spelling your name.

3 THE WITNESS: Okay.

4 My name is Suvi, S-u-v-i. Last name  
5 Miller, M-i-l-l-e-r.

6 THE COURT: You may inquire.

7 MR. GEIGLE: Thank you, Judge.

8 DIRECT EXAMINATION

9 BY MR. GEIGLE:

10 Q. If I can go ahead and have you introduce  
11 yourself to the jury as it relates to what it is you  
12 do for a living.

13 A. I am a licensed clinical social worker and  
14 I have been practicing since I graduated from New York  
15 University in 1992. So, approximately, 18 years doing  
16 clinical work with children, adolescents and families.

17 Q. Can you give the jury an idea of what that  
18 involves as it relates to any practice that you have  
19 with victims of child abuse or sexual abuse?

20 A. For most of my career the population with  
21 which I've worked has been children and adolescents.  
22 Specifically, children who have been victims of trauma  
23 and the majority of those were children who were  
24 victims of sexual assault. Some, also, were witnesses  
25 to domestic violence. So most of my career has been

1 spent treating children who have been victims of  
2 trauma and specifically sexual assault.

3 Q. I want to focus on your professional  
4 experience as it relates to those two areas, can you  
5 give the jury an idea of what positions you've had and  
6 your experience in that?

7 A. I have practiced in a number of areas  
8 related to those specific pieces but one of them was  
9 in a treatment and prevention program around child  
10 sexual abuse. I've, also, worked in residential  
11 treatment with adolescent girls who were victims of  
12 trauma, the most of them were also victims of sexual  
13 assault.

14 I worked for nine and a half years in  
15 Denver for an agency called the Denver Children's  
16 Advocacy Center, which is an agency that provides  
17 assessment and treatment to children who are victims  
18 of trauma and most of them -- children who have been  
19 victims of sexual assault and my role there was as a  
20 therapist, so I worked directly with the kids and  
21 families and, also, as a supervisor to the other  
22 clinicians who worked with those families.

23 I currently have a private practice and a  
24 number of the children with whom I work currently are  
25 victims of sexual abuse, sexual assault.

1           Q.       Can you give the jury an idea of a  
2 particular ballpark figure of how many victims of sex  
3 assault on a child that you've worked with over the  
4 years?

5           A.       I don't have an exact number but,  
6 approximately, directly my work has been with over 300  
7 children, and then additional in terms of supervision  
8 with other therapists who have worked with those  
9 children.

10          Q.       Have you had the opportunity to publish any  
11 publications that relate to these specific areas that  
12 you've been speaking about?

13          A.       No, I'm not a researcher and I haven't  
14 published any work.

15          Q.       Okay; but part of your work is it's  
16 important to stay on top of other published materials  
17 that relate to these types of --

18                   MS. TRUJILLO:  Objection, leading.

19                   THE COURT:  Sustained.

20          Q.       (By Mr. Geigle)  Is it important for you to  
21 stay on top of publications in this area?

22          A.       Yes.  I make sure that I try to attend as  
23 many trainings and, also, read the research as it's  
24 related to the children with whom I work.  So I try to  
25 stay abreast of the current research as it relates to

1 these children in this particular population.

2 Q. Have you had the opportunity to testify as  
3 an expert in any particular area?

4 A. I have. I have testified as an expert  
5 around the areas of child sexual assault, prior to  
6 today I believe the number of cases is 27 times.

7 Q. Have you testified in Denver District Court  
8 before?

9 A. I have.

10 Q. And, approximately, how many times?

11 A. The majority of the 27 has been in Denver  
12 District Court, I'm not sure exactly but I think it's  
13 23 or 24.

14 Q. Okay.

15 MR. GEIGLE: Judge, at this time I'd move  
16 to qualify Miss Miller as an expert in the area of  
17 child sexual assault.

18 THE COURT: Any objection?

19 MS. TRUJILLO: May I voir dire?

20 THE COURT: You may.

21 VOIR DIRE EXAMINATION

22 BY MS. TRUJILLO:

23 Q. Good morning, Miss Miller.

24 A. Good morning.

25 Q. And I think Mr. Geigle went through this a

1 little bit, but you are a social worker?

2 A. Yes; clinical social worker, correct.

3 Q. You're not a medical doctor?

4 A. I'm not.

5 Q. You're not a psychiatrist?

6 A. I am not.

7 Q. Or a psychologist?

8 A. I am not.

9 Q. Your undergraduate degree was for visual  
10 and performing -- from the Visual and Performing Arts,  
11 correct?

12 A. Correct.

13 Q. And you received a B.S. in speech  
14 communication?

15 A. Yes. For undergraduate, correct.

16 Q. Undergraduate.

17 And your follow-up or your master's was in  
18 social work?

19 A. Correct.

20 Q. Right?

21 And I think you said this, but you're not  
22 published?

23 A. I am not published, no.

24 Q. Your -- your -- the opinions that you  
25 intend to offer come from reading and attending



1 seminars; is that right?

2 A. From my clinical practice which, as I  
3 stated, has been with over 300 children as well as  
4 trainings that I've attended and the research that I  
5 have reviewed, yes.

6 Q. Okay; and let me talk to you about your  
7 clinical practice, your role is a therapist, right?

8 A. Correct.

9 Q. So you don't -- you -- you just treat  
10 whatever the child tells you happened, correct?

11 A. I work with whatever the child presents,  
12 yes.

13 Q. Okay.

14 You don't question the child or confront  
15 the child?

16 A. No, that's not my role.

17 Q. Okay.

18 So you're not there to determine whether or  
19 not abuse actually occurred, right?

20 A. No, that's not my role.

21 Q. You just work through the child with  
22 whatever allegation that they've made?

23 A. Yes.

24 Q. Okay.

25 So whether or not the child is an actual

1 victim of sexual assault is not -- your role is not to  
2 test that, correct?

3 A. That isn't my role but certainly in the  
4 course of the work that I do those issues present  
5 themselves and we address them, yes.

6 Q. Okay.

7 So all of your opinions that you intend to  
8 offer are based on assuming everything the child tells  
9 you is true?

10 A. No, I would say that the opinions that I  
11 offer are in terms of clinical practice, what I have  
12 seen. Also in terms of research, a number of studies.  
13 But the vast majority of those are children with whom  
14 there's already been a determination that sexual  
15 assault has occurred. Most of the children with whom  
16 I had worked there was a determination that sexual  
17 assault had occurred, so it wasn't my role to do an  
18 investigation but the majority of the cases with which  
19 I've worked there was already indications -- or an  
20 actual verdict or conviction that a child sexual  
21 assault had occurred.

22 Q. Okay; but sometimes there weren't, correct?

23 A. Sometimes there was not a conviction at the  
24 time that I worked with the child, correct.

25 Q. Okay; and so I guess what I'm getting at is

1    when you are -- and I realize that you keep abreast of  
2    publications and attend seminars, but I'm talking  
3    about in your practice for purposes of treatment and  
4    therapy you assume everything they say is true?

5           A.     I don't -- I have to give the nuance of  
6    that. I don't -- it's not my job to question what  
7    they present to me but I don't assume that everything  
8    a child presents to me is true.

9           Q.     Okay; and I probably put that incorrectly.  
10   But you probably said it better than I did. You don't  
11   question them about whether or not the act or acts  
12   occurred?

13          A.     Correct.

14          Q.     Okay.

15                 MS. TRUJILLO: May we approach?

16                 THE COURT: You may.

17

18                 (Whereupon, the following sidebar  
19   conference was held outside the hearing of the jury  
20   with only counsel present.)

21

22                 MS. TRUJILLO: I would renew my objection  
23   that I raised and incorporate my request for a Shreck  
24   Hearing. I think there's insufficient evidence on all  
25   four bases and I would object on those grounds. I

1 think the Court has to make the determination on all  
2 four outside the presence of the jury before any  
3 opinions can be offered.

4 And then I guess, third, it's my  
5 understanding Mr. Geigle wants to admit her as an  
6 expert in -- in what specifically?

7 MR. GEIGLE: Victims of sexual assault on  
8 children.

9 MS. TRUJILLO: I think it's too broad. I  
10 would object and say that is too broad.

11 THE COURT: Any response?

12 MR. GEIGLE: Well, I can read the list of  
13 why she was exactly endorsed if it's going to be an  
14 issue but it specifically relates to outcry and how  
15 these victims deal with it, present themselves, who  
16 they tell, some common reasons as to why, things that  
17 we've already addressed in the pretrial issue, but I  
18 can certainly go through if the Court's not  
19 comfortable with the general areas. My focus will be  
20 on what we've already talked about with Miss Trujillo  
21 and this Court.

22 MS. TRUJILLO: Well, I think for purposes  
23 of her testimony then she needs to be qualified as an  
24 expert in child behavior after an outcry of sexual  
25 assault or something more specific, but I don't think

1     you can just be an expert in child sexual assault.

2                   THE COURT:   What I want to do, I'd like to  
3     hear a little more argument and have freedom that I  
4     can be asking questions more openly and this should  
5     take five minutes and send the jury back for a few  
6     minutes and let you talk and then go from there.

7                   MS. ROUNDS:   Can I ask, my client needs to  
8     take a break?

9                   THE COURT:   I plan to go ahead and take the  
10    break at 10:15, unless it's more urgent?

11                   MS. ROUNDS:   That's find.

12

13                   (Whereupon, the following proceedings were  
14    held in open court in the presence and hearing of the  
15    jury with all parties present.)

16

17                   THE COURT:   Ladies and gentlemen, this is  
18    one of those areas where we need a little more freedom  
19    in terms of exchange of give and take and it's  
20    difficult to do at the side.   What I'm going to have  
21    you do is just step back in the jury room, I think,  
22    for no more than five minutes, maybe ten at most, and  
23    then bring you back and resume the testimony at that  
24    point.   So I'll have you step back in the jury room  
25    and, please, don't discuss the case or listen at the

1 door and we'll see you in a moment.

2 THE WITNESS: Do you want me to step down?

3 THE COURT: Actually, you get to stay here.

4 THE WITNESS: Okay.

5

6 (Whereupon, the following proceedings were  
7 held outside the presence and hearing of the jury with  
8 all parties present.)

9

10 THE COURT: All right.

11 The jury's back in the jury room. I'm  
12 going to turn the microphone volume down.

13 We had the objection in terms of the  
14 qualifications issue. One of the things the People  
15 had suggested was more specificity regarding the  
16 tender in terms of the specific reasons and I think we  
17 touched on that and I'd like to hear that in a little  
18 more detail, if I could?

19 MR. GEIGLE: Judge, the People are seeking  
20 to admit Miss Miller, specifically, as an expert in  
21 the area of sexual assault on a child as it relates to  
22 the victim and how they react to the events that have  
23 taken place in their life. That encompasses their  
24 outcry, to whom their outcry is to, potential delays,  
25 potential conflicts that they deal with and how they

1 relate things.

2                   And I actually have presented about a page  
3 and a quarter synopsis of proffered testimony to Miss  
4 Trujillo, I didn't file it with the Court. I'm not  
5 sure if the Court is interested in reading that as  
6 well?

7                   THE COURT: I think that would be helpful  
8 so I can understand exactly what subject --

9                   MR. GEIGLE: If I can approach?

10                  THE COURT: You may.

11

12                  (Whereupon, Ms. Trujillo nodded her head in  
13 the affirmative.)

14

15                  (Whereupon, Mr. Geigle tendered a document  
16 to the Court.)

17

18                  THE COURT: Give me one moment, I want to  
19 look at one thing.

20                  All right; I think I now, having read that,  
21 I'm going to return that to the People, but I think  
22 it's probably good if I can get a copy of that  
23 eventually for the court file for the record. I now  
24 understand the subject matter that's being  
25 anticipated -- or at least, the limits of that

1 testimony.

2                   Let me go back to the defense and Miss  
3 Trujillo, given the nature of that and given what I've  
4 heard in terms of not only experience but, also,  
5 literature viewed, is there a particular area that you  
6 think doesn't meet the standard for reliability under  
7 Rule 702 as interpreted by Shreck?

8                   MS. TRUJILLO: There are; and I should have  
9 said this before, I would ask that Miss Miller not be  
10 here for this.

11                  THE COURT: In that case I'll just go ahead  
12 and have you step out, if you'd like to go straight  
13 back to that area and out the door.

14

15                   (Whereupon, the witness has left the  
16 courtroom and the following proceedings were held  
17 outside her presence.)

18

19                   MS. TRUJILLO: Judge, as I stated at the  
20 bench, I guess, I think it's all four prongs and I  
21 don't think the Court has -- even after reading that I  
22 think the Court has insufficient evidence at this  
23 point to determine that the scientific principles are  
24 unreliable. Miss Miller's already testified that she  
25 reads and attends seminars and does therapy but she's



1     relying primarily on the basis of her -- what seems to  
2     be the basis of her therapy and treatment which is not  
3     focused on any sort of statistical data or tested  
4     hypotheses that can be duplicated or replicated.  
5     She's not indicating that she's relying on any sort of  
6     data. There are no scientific principles that are  
7     going to form the basis of the opinions which the  
8     Court has just read. I don't think she's qualified to  
9     opine and I don't think that the information that  
10    Mr. Geigle is intending to present is helpful for the  
11    jury.

12                 For example, on the delayed outcry, Miss  
13    Miller's going to testify about why children would  
14    delay outcry. In this case Alaina Rife did not delay  
15    outcry, she told immediately, quite frankly. So it  
16    doesn't even apply in this case.

17                 She says -- particularly, that children who  
18    are abused over time will delay outcry and that didn't  
19    happen here and Alaina Rife was not abused over time.

20                 There's some information there about to  
21    whom disclosure is made. She indicates that it's more  
22    common to outcry to someone outside the family.  
23    That's not true in this case, she disclosed  
24    immediately to her mother.

25                 And then there's some information in there

1 about indicators of sexual abuse; specifically  
2 referring to anxiety, acting out, running away,  
3 sexualized behavior and problems in school. Those did  
4 not occur here. In fact, the exact opposite occurred.  
5 So the potential areas that she intends to cover are  
6 not going to be helpful to the jury.

7           And finally, on the 403 prong, I don't  
8 think that anything that she's going to say will  
9 satisfy 403. It has very little probative value,  
10 particularly because not many of her opinions apply in  
11 this case and the ones that potentially do apply --  
12 you know -- that someone may not disclose because they  
13 don't want to upset the family, well, that's common  
14 sense, it doesn't need to be in the form of some sort  
15 of expert testimony.

16           And so I'm renewing my request for the  
17 Shreck Hearing, I'm renewing my objections pursuant to  
18 Shreck. I don't think the Court has sufficient  
19 information at this time to make determinations about  
20 scientific principles or their helpfulness to the jury  
21 and they don't apply, regardless.

22           THE COURT: Let me go back to the  
23 scientific issue because we're in an area that's -- as  
24 I see it -- a little more close to the borderline in  
25 that regard. Obviously, if we have cases where

1 someone comes forth and says this is my opinion as to  
2 the mechanism of how this dynamic must work,  
3 oftentimes those will come up more often in civil  
4 cases when we're looking truly at a scientific  
5 principle that is a tested conclusion.

6           We, also, have experts that are able and  
7 have always been able to, as Rule 702 contemplates,  
8 talk about from their experience and the things  
9 they've seen and that's a little bit different than  
10 the scientific principle because it's not a tested  
11 area necessarily, sometimes it is. But sometimes  
12 individuals can come in based upon experience in  
13 addition to training or schooling or aside from  
14 training and schooling and say I've dealt with  
15 hundreds of people and in those hundreds of people I  
16 have seen the following behaviors and they're not  
17 unusual or not that uncommon.

18           What I'm hearing is Miss Miller may fall  
19 somewhat in that category as well and as well as  
20 falling in the category of saying there have been  
21 studies on this and I can tell you what the studies  
22 say and I can, also, confirm what I have seen in my  
23 personal practice. Given that overlap I'm not certain  
24 that we're necessarily always having to say this is  
25 something that's testable and verifiable under this



1 reasons that I requested the Shreck Hearing and I  
2 asked for data because Miss Miller's going to testify,  
3 as Mr. Geigle has already elicited, that she's treated  
4 300 some odd children and I assume she's going to say  
5 based on that these characteristics are likely to  
6 occur, she finds that these are common in the children  
7 that she's treated that would allow her to form the  
8 basis of the opinion. But I have no idea because I  
9 don't know if it was 299 out of 300 of the children  
10 that delay outcry in these situations, or if it's 151.  
11 And that's the problem is there's no way for me to  
12 cross-examine her on that, there's no way for me to  
13 test any of that and there's no way to establish that  
14 that has been tested to form the basis for her  
15 opinion.

16 And I think that that's been the problem  
17 and I don't think just because it is a social science  
18 that it is then not subject to any sort of scrutiny on  
19 how did you come up with these hypotheses? How did  
20 you come up with these opinions? That still needs to  
21 be done or otherwise the opinions are meaningless.

22 THE COURT: It's a good point because it's  
23 an area we sometimes gloss over. If we're talking  
24 about opinions and she says I've treated 300 children  
25 and in those children many of them have had a delayed

1     outcry or many of them have done something, it doesn't  
2     strike me there's an opinion there, that's her  
3     description of her experience that anyone can weigh.  
4     She's not saying I think it's because, or in my  
5     opinion they do this because. If she's simply  
6     reciting her experiences what opinion would we be  
7     testing at that point?

8                 MS. TRUJILLO: Well, she's not. I mean,  
9     according to the information Mr. Geigle provided me  
10    and the Court just received she's going to say in my  
11    experience children delay outcry and because of these  
12    reasons. So it is an opinion.

13                THE COURT: That's a good point.

14                MS. TRUJILLO: I think for her to simply  
15    get on the stand and say I've treated 300 kids and 299  
16    delay outcry without an opinion has no relevance then  
17    and it makes no sense and there's no probative value.  
18    To the extent that her opinion as to why children  
19    delay outcry has some probative opinion -- you know --  
20    that's the problem.

21                THE COURT: Don't we really run into this  
22    with every social science, though, when people talk  
23    about social sciences that aren't hard sciences and  
24    they talk about from their experiences and having  
25    treated individuals and the models they've seen? Some

1 social sciences we can, obviously, go back and test  
2 and say we went through and were able to  
3 scientifically test 200 children -- let me put it in a  
4 way that we get absurd here. We're not able to say  
5 we're going to take 200 children and subject them to  
6 sexual assaults and see what happens. By the very  
7 nature of this particular social science people have  
8 to come in after the fact and make conclusions from  
9 their experiences and they are the type of things that  
10 are not subject to the standard type of testing of a  
11 controlled test and I'm concerned that if we say -- in  
12 other words, if this science doesn't meet that  
13 requirement then, therefore, we can never have  
14 testimony in terms of these types of social sciences.

15 MS. TRUJILLO: I think I'm following, let  
16 me see.

17 Yes, I do believe that it's going to be a  
18 problem, anytime you're trying to bring social science  
19 type information in as an opinion. I don't think it's  
20 an insurmountable problem and I think that is the  
21 reason you have a Shreck Hearing.

22 So, for example, you know, if Mr. Geigle  
23 wanted to bring in evidence of phrenology, you know,  
24 I'm sure there's been tons of studies, etc., etc.,  
25 each study itself is going to have its own statistical

1 variance and degree of uncertainty, but that's the  
2 purpose. Is there sufficient evidence on this  
3 particular opinion, bases for the opinion, etc., to  
4 make a finding that, yeah, there's some leeway,  
5 there's give and take and there may be variance but  
6 there's sufficient evidence that this is a reliable  
7 science. This opinion is based on reliable science.  
8 And to the extent that it has to do with social  
9 sciences, I don't think it changes. You're going to  
10 have margins of error in any sort of examination,  
11 survey or testing, but that's the issue, is it  
12 50 percent margin of error or is it a 2 percent margin  
13 of area? And at this point the Court doesn't know any  
14 of that, I don't know any of that and that was, I  
15 think, one of the issues in not having a hearing but  
16 at this point we're in the middle of trial, there's no  
17 way for me to cross-examine her, confront her, on the  
18 bases for her opinions.

19 THE COURT: I'm not sure I agree with that  
20 last issue but I do understand the argument.

21 Let me go to Mr. Geigle now in terms of  
22 response of the issues we've just discussed?

23 MR. GEIGLE: Judge, the Court needs to  
24 evaluate under 702 which is exactly what Shreck,  
25 itself, sets forth. In this particular case she's not



1     testifying necessarily to a scientific or technical  
2     but under the third prong, specialized knowledge that  
3     will assist the trier of fact to understand the  
4     evidence or to determine a fact in issue. A witness  
5     qualified as an expert by knowledge, skill,  
6     experience, training or education may testify thereto  
7     and form an opinion or otherwise.

8                     In this situation is it going to be helpful  
9     for the jury? Yes.

10                    I would agree on some levels it's common  
11     sense but other levels it's most certainly not. I  
12     would suggest that most individuals in this world  
13     don't have a whole lot of experience with victims of  
14     child sexual abuse and their outcry and some of the  
15     ways in which they deal with the issues that have been  
16     presented to them in their lives. That's what we're  
17     dealing with here.

18                    Miss Trujillo says that, well, we don't  
19     have any issues present that Miss Miller would be  
20     testifying to, we don't have delayed outcry. Well, we  
21     do. She initially heard testimony that she initially  
22     told mom, mom did nothing. She told her friend, her  
23     friend she specifically told not to tell the police.  
24     That's not delayed outcry. But then we have a month  
25     goes by without Alaina telling the authorities,

1 without telling anybody else but her mother.

2 Outcry to friends. Miss Miller can testify  
3 as to why it's more common to outcry to friends. And  
4 what we have here is what Alaina Rife says, I just  
5 needed somebody to talk to.

6 Lena Delaney says she didn't tell me to  
7 call police. I just needed somebody to talk to. Suvi  
8 Miller can testify that that's not uncommon at all and  
9 that's actually consistent based on her experience in  
10 dealing with the hundreds of victims that she's dealt  
11 with.

12 Miss Trujillo said there's no history of  
13 abuse. Well, that's not true at all. That is not  
14 true at all. And actually, the defense themselves  
15 elicited that Alaina's been the victim of abuse her  
16 entire existence and that's through Lillian Moore and  
17 they described some of the abuse and the horrific  
18 things that Alaina observed as she was growing up and  
19 she can testify, yeah, that could potentially be  
20 consistent with delayed outcry and it certainly  
21 affects, in my experience, prior abuse, the way  
22 victims do outcry.

23 Now let me preface all of these statements.  
24 Miss Miller, of course, has not met Alaina Rife. She  
25 might be testifying to the specifics of this case,

1   it's appropriate for her to be presented with  
2   hypotheticals, is that consistent or inconsistent  
3   based on your experience with the way the victims that  
4   you've dealt with? She can talk about whether the  
5   factors that affect the method and the manner of  
6   outcry are consistent or inconsistent based on her  
7   experience.

8                   In this case we've heard testimony about  
9   the method and the manner. But, also, from Alaina, if  
10  the Court recalls, some of the reasons why. The  
11  impact that it's going to have on her family. The  
12  impact that it had on her mother. The fact that her  
13  mother was as happy as she's ever been and that's part  
14  of the reason why she didn't want to come forward to  
15  the police. The fact that she trusted her mother to  
16  make the right decisions. All of those things are  
17  consistent. All of those things the defense has been  
18  aware of through our endorsement and our subsequent  
19  proffer but, also, the initial endorsement itself.

20                   And finally, this isn't some nuanced area,  
21  the Court in a matter of moments can pull up an  
22  abundance of cases that deal with this particular  
23  issue and experts being addressed and accepted by the  
24  courts. It can do another search as it relates to the  
25  adult victims of sexual assault. The Court can do a

1 keyword search for rape/trauma syndrome. The same  
2 sort of principles apply. These are well accepted  
3 areas that experts have long been allowed to testify  
4 in the state of Colorado.

5 Shreck itself is really focused on nuanced  
6 technical knowledge. Be it DNA or something else  
7 along those lines. That's not what we have here.  
8 This is based on her specialized training and her  
9 experience to relay and her ability to relay those two  
10 things to the jury in a helpful manner.

11 THE COURT: All right.

12 It's defense objection, I'll allow you to  
13 reply.

14 MS. TRUJILLO: Just briefly.

15 I wholly disagree with Mr. Geigle's last  
16 statement that Shreck is somehow limited to nuance and  
17 technical knowledge. Shreck, itself, says this  
18 opinion is not limited to novel scientific principles  
19 or information. I think it's footnote 12. So the  
20 opinion itself is not limiting itself.

21 And what's important is that what Shreck  
22 says is the Court must make a determination in each  
23 case on all of the four prongs. So the fact that some  
24 other court has made a determination that the opinions  
25 offered about rape trauma syndrome in some other case

1 does not -- is not res judicata and does not say to  
2 this Court, well, some other court has accepted it.  
3 We don't know what the basis for the opinions in that  
4 case was, we don't know that the -- the experience  
5 that person had to testify, we don't know how it  
6 related in that case. The Court has to make the  
7 determination on this case based on what the  
8 information has been presented on each of the prongs  
9 in this case and by this witness.

10 So, other than that I would rest.

11 THE COURT: Now I want to make sure we're  
12 on the same page with the terminology. When you say  
13 the four prongs, specifically what four prongs do  
14 you --

15 MS. TRUJILLO: Well, it's -- you have to  
16 determine whether the person is qualified to opine.  
17 You have to determine -- and I should say two prongs,  
18 but there are two parts to each prong. That the  
19 scientific principles are reliable, that the  
20 information or proposed opinion testimony is helpful  
21 to the jury and that it succeeds a 403 analysis.

22 THE COURT: Okay; we are on the same page.

23 MS. TRUJILLO: Yeah.

24 THE COURT: What I'm going to find at this  
25 point is Shreck, although I agree is not based on

1 novel scientific theory, I think what it's trying to  
2 do is differentiate and show that whether something  
3 was a novel or scientific theory was not the standard,  
4 that scientific theory falls under the same standard  
5 as all expert testimony. But I don't know that it was  
6 saying that all expert -- in fact, I'm sure it was not  
7 saying that all expert testimony is necessarily  
8 scientific. It was saying that scientific testimony  
9 and scientific expert testimony must meet the standard  
10 that all expert testimony must meet. It specifically  
11 clarifies that there is opinion testimony and expert  
12 testimony that is not dependent on a scientific  
13 explanation and that there can be experienced based  
14 knowledge.

15 What I've heard at this point from Dr.  
16 Wells (sic) is that her testimony --

17 THE COURT REPORTER: Dr. Wells?

18 THE COURT: Excuse me, thank you very much.  
19 From Miss Miller.

20 What I've heard at this point from Miss  
21 Miller is that her testimony falls in a somewhat gray  
22 area between experience based knowledge and her  
23 recitation of that experience based knowledge and,  
24 also, on the fact that she has had the ability and the  
25 social science to read literature on this area, which

1 would appear from the testimony so far to potentially  
2 be subject to some level of scientific scrutiny. It  
3 may not be the classic hard science in terms of the  
4 scientific method but they can be peer review papers,  
5 there can be studies and I'm going to find at this  
6 point that I think it is likely that she should be  
7 allowed to testify based on her knowledge and  
8 background experience in terms of testimony that I  
9 find is not dependent on scientific explanation but is  
10 more experienced based, and with some additional  
11 testimony she may be able to testify in terms of  
12 findings in the literature if we establish at this  
13 point that that literature is scientifically based and  
14 I think she should even be able to do that or not do  
15 that. If we can't do that then the testimony about  
16 what the literature in this area is would not be  
17 relevant or not be admissible. But if she can I'll  
18 allow that as well. So I think we do need a little  
19 bit more proceedings and I'll allow direct and  
20 cross-examination.

21 In terms of that question of when she talks  
22 about the literature she's reviewed, what is she  
23 talking about, is it reliable literature and does it  
24 meet the standard under Rule 702 and Shreck?

25 MR. GEIGLE: My questioning to her will be

1 related to her training and experience, which I  
2 believe is about 17 years, that we've gone through  
3 because Miss Trujillo's questions have delved into, I  
4 think, some of her literature.

5 THE COURT: So at this point what I'm  
6 hearing you saying is that you are not going to be  
7 asking her --

8 MR. GEIGLE: My questions will be prefaced  
9 with based on your experience.

10 THE COURT: And so you won't be asking her  
11 to verify if the literature in the field supports that  
12 conclusion?

13 MR. GEIGLE: Correct.

14 THE COURT: With that then, I think we're  
15 probably ready to bring her back in. Obviously, if we  
16 go into that area the defense can certainly object  
17 because I'm not finding at this point there's been  
18 sufficient information to allow her to testify about  
19 the status of the literature as confirmed by her  
20 experience. But she can testify about her experience  
21 in dealing with these children and what she's seen, I  
22 will allow that.

23 MS. TRUJILLO: And I'm not trying to  
24 belabor it, but she's already testified that the  
25 opinions she's going to offer are coming from her



1     experience and Mr. Geigle was asking her whether she  
2     keeps abreast of literature and attends seminars as  
3     part of that. So that's already been asked. She's  
4     already said I'm relying on all three.

5             There you go.

6             THE COURT: All right; fair enough.

7             Any reply, first?

8             MR. GEIGLE: Reply is the same. I'm asking  
9     based on her experience. That was simply to establish  
10    the foundation of what she's done as it relates to her  
11    professional life. Part of what she does is  
12    publications and things along those lines.  
13    Specifically, my questions will be based on your  
14    experience is this consistent or inconsistent with  
15    what you have dealt with in your practice?

16            THE COURT: I will allow cross-examination  
17    into that area because it's come up but I'm not going  
18    to preclude her at this time. But certainly the  
19    defense has -- since the issue has been raised in the  
20    voir dire already and has been referenced, defense can  
21    certainly cross-examine on it, if they wish to do so,  
22    but I'm not going to block her at this time.

23            MS. TRUJILLO: And cross-examine her on  
24    her -- on -- on what books and --

25            THE COURT: Limitations of her knowledge or

1 her experience which would include potentially but  
2 isn't limited to -- but if you were going to  
3 cross-examine her on the source of these seminars or  
4 when she talks about the literature, what she means by  
5 the literature, any of those questions you certainly  
6 can. For instance, if you've got some basis to assert  
7 that the literature is not scientific literature you  
8 can certainly go into that area even though Mr. Geigle  
9 hasn't specifically elicited that opinion.

10 MS. TRUJILLO: Judge, I understand that and  
11 I just have to then incorporate the argument I made in  
12 our Motion To Continue. I indicated to the Court and  
13 I think I asked for a source list. Mr. Geigle did  
14 follow-up shortly before trial with a list of, I  
15 think, ten books. But would incorporate the argument  
16 that I made that I at that time did not have the time  
17 to do the appropriate research on those issues for an  
18 expert to prepare for expert cross-examination.

19 THE COURT: All right. I'll add that  
20 record to your prior motion.

21 MS. TRUJILLO: Okay.

22 THE COURT: All right. Let's --

23 MS. TRUJILLO: I'm sorry, I'm sorry.

24 Regarding the scope of her expertise, I'm  
25 still objecting to her just being I'm an expert in

1 sexual assault on children and I would ask that it be  
2 specifically narrowed. I don't -- whatever the  
3 wording is. But really it sounds to me they're trying  
4 to offer her as an expert in behavior of children who  
5 allege sexual assault.

6 THE COURT: What I'm going to find is that  
7 she can offer opinion testimony as consistent with the  
8 People's disclosure in this regard and recitation of  
9 the area she will go into. I'm not going to declare  
10 her to be an expert in a particular area as I think is  
11 really actually required by the rules, I'm going to  
12 allow her to offer expert opinion testimony as it has  
13 been outlined. I find that that subject matter the  
14 People have identified, she has met the qualifications  
15 to testify in that area and I'm going to accept the  
16 opinions in that area.

17 It's 10:17, that was much longer than I  
18 thought, but -- the parties want to take a recess at  
19 this point or do you want to start the testimony?

20 MS. ROUNDS: I know my client wants to take  
21 the recess.

22 THE COURT: Let's bring in the jury, let  
23 them take a 15-minute recess -- actually, do you want  
24 to let Mr. Davis go down the hall before we do that?

25 MS. TRUJILLO: Yes.

1 THE COURT: Let's do that.

2 Come back at 10:35.

3

4 (Whereupon, court recessed at 10:17 a.m.  
5 and reconvened at 10:36 a.m. in open court outside the  
6 presence of the jury with all parties present.)

7

8 THE COURT: All right; we're back on the  
9 record, the jury is not present but counsel and  
10 defendant are.

11 I need to actually make sure the record is  
12 clear in one area. As Miss Trujillo pointed out, I  
13 agree that you need specific findings, I think I only  
14 addressed one of those. I'm, also, going to find that  
15 based upon the testimony by Suvi Miller as to her  
16 experience that she is qualified given the number of  
17 individuals she has seen and the training to discuss  
18 her experience in that regard. I do find that this is  
19 an area that the average person does not have  
20 experience with and does not regularly deal with  
21 individuals who claim to have been or who have been  
22 sexually assaulted and, thus, being able to relay to  
23 the jury observations at that time that would be of  
24 assistance to them. So I'll, also, find that it is an  
25 area that would be of use to the jury.

1                   And finally, at this point -- I think I've  
2   already elaborated on it and overlapped but I'm also  
3   finding that it is the type of testimony that should  
4   be permitted under the rest of the standards of Rule  
5   702 for the reasons I earlier discussed.

6                   Are the parties ready to proceed?  
7   Obviously, maintaining and preserving objections, but  
8   are the parties otherwise ready to proceed?

9                   MR. GEIGLE:   Yes.

10                  MS. TRUJILLO:   Yes.

11                  THE COURT:   Let's make sure we have all of  
12   our jurors.  If we do, let's bring them in.

13                  Miss Miller, I'll let you go ahead and  
14   retake the witness stand.

15

16                  (Whereupon, the following proceedings were  
17   held in open court in the presence and hearing of the  
18   jury with all parties present.)

19

20                  THE COURT:   All right; thank you.  Please  
21   be seated.

22                  All right; at this time Miss Miller is on  
23   the witness stand and you're still under your oath to  
24   tell the truth.

25                  Based on our discussions I will allow

1 opinion testimony pursuant to Rule 702 as we discussed  
2 and you may inquire.

3 MR. GEIGLE: Thank you.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. GEIGLE:

6 Q. Miss Miller, I'm going to ask you some  
7 questions specifically relating to individuals --  
8 victims that you've dealt with of sex assault.

9 A. Okay.

10 Q. More specifically, children.

11 A. Okay.

12 Q. Okay?

13 Before that, are you familiar with the  
14 victim in this case?

15 A. I am not.

16 Q. Have you ever met the victim in this case?

17 A. I don't know her name but I don't believe  
18 so.

19 Q. You've never treated her?

20 A. No.

21 Q. Okay.

22 I'm going to ask you some questions  
23 beginning with just some general definitions.

24 What is outcry?

25 A. Outcry is a way that I would use it in my

1 line of work is, basically, the time at which a child  
2 tells somebody about what's happened. They outcry  
3 about it, they cry out about it.

4 Q. All right; and what are some of the  
5 different reasons based on your experience that govern  
6 to whom outcry is made by children?

7 A. Children can be impacted -- the choice  
8 about to whom disclosure is made can be impacted by a  
9 couple of things. Age of the child, duration of the  
10 abuse, if it's a single incident or it's multiple  
11 incidents or chronic, and also relationship to the  
12 perpetrator.

13 They -- if depending upon a child's age  
14 what we know is with very young children we might see  
15 that they would disclose in what we call accidental  
16 disclosure. Say, a three-year-old who may not  
17 understand what has happened to them but they would  
18 make a disclosure accidentally, just sharing some  
19 information as they do about lots of things. So this  
20 happened to me, Johnny and I were playing this game  
21 and this happened.

22 But what we see even with children ages  
23 four and five and older that they start to develop a  
24 sense of that something has happened and they may not  
25 have a context for that but they know that something

1 happened that was bad or wrong or nasty or whatever  
2 term they might use and they would start to be  
3 concerned about sharing that information.

4           And what we see is as children get older  
5 they sometimes change to whom their disclosure is  
6 made. So a very young child or even a school-age  
7 child who's really dependent upon their parents, as an  
8 example, or the person who cares for them most of the  
9 time, the adults around them, they would be more  
10 likely to disclose to those people because the choice  
11 of to whom a disclosure is made is around who is going  
12 to believe me and who can help me. So for younger  
13 children they definitely look toward adults around  
14 them, caregivers, a mother or a father or an aunt that  
15 cares for them.

16           We see then when children reach puberty or  
17 adolescence that sometimes they will disclose first to  
18 a peer before they might disclose to an adult and that  
19 is in part because what we see with children in terms  
20 of how they develop their social relationships, they  
21 rely a lot more on peers at that stage than they do  
22 necessarily on the adults around them. So they might  
23 make a choice to tell a peer this information because  
24 they're not necessarily sure what to do about it and  
25 they're looking for, again, someone who will believe



1    them and would support them.  So sometimes we'll see  
2    with adolescents that they'll share that information  
3    with a peer first before they might tell a parent or a  
4    caregiver, not always but very often that's the case.

5           Q.     Based on your experience, particularly  
6    focusing on early to mid-teens, would it be uncommon  
7    to outcry to a close friend but not necessarily in an  
8    effort to contact police?

9           A.     Not at all.  Actually, what we see with  
10   children when they're in adolescence and they share  
11   that information -- with a friend it is often that  
12   they're seeking support and some validation, trying to  
13   tell somebody what happened, maybe wondering what they  
14   should do next but not saying, okay, so I want you to  
15   help me tell the police, or I want you to help me tell  
16   a parent.  Oftentimes friends will say you should do  
17   something about this and adolescents will make a  
18   choice at that point if they will or they won't.

19                   Oftentimes just like how they confide in  
20   their friends about lots of things that are bothering  
21   them or that they're happy about they don't  
22   necessarily expect someone to do something for them.  
23   Versus if they were telling an adult and they know  
24   what the expectation might be that this person is  
25   going to do something or take some sort of action.

1           Q.       Let me ask you a question.  Once outcry is  
2   made to an individual in your experience does that  
3   have an impact -- well, does that person's subsequent  
4   reaction have an impact on the victim's outcries?

5           A.       Absolutely.  If a -- so we talked a little  
6   bit about that a child would seek out someone who they  
7   think would believe them and the considerations for  
8   why they might make that disclosure or that outcry.  
9   Children are very susceptible and they respond very  
10  much to the response of the people around them.  If  
11  they share this information oftentimes it's very  
12  difficult for them to talk about sexual abuse, sex  
13  assault tends to be a difficult thing for adults to  
14  talk about, so for children to be able to reveal  
15  details about sexual activity or sex assault is very  
16  difficult.  If they share the information, as an  
17  example, with an adult who becomes very distraught,  
18  very distressed, very upset, the child will usually  
19  try to give that information, again, to see if this  
20  person will believe them, if there will be some action  
21  taken but they don't -- the response of the adult to  
22  them is going to impact what else they share and if  
23  they continue to share that information.  If that  
24  person acts as though this isn't true or tells them  
25  that they shouldn't talk that way, that those are

1 lies, or disbelieves them overtly then the child,  
2 depending on who this person is to the child, if this  
3 is someone who is an adult caregiver or someone on  
4 whom they rely very often then the message to this  
5 child is their worst fear has come true, this person  
6 doesn't believe me and, therefore, no one will believe  
7 me. And so what we see oftentimes with children if a  
8 primary caregiver has a particularly negative response  
9 or doesn't believe this child then the child may  
10 choose then to not tell anyone else because their  
11 sense of it is no one's going to protect me, there  
12 isn't anything I can do about what's happening to me.

13           So the response of the person to whom they  
14 share that information has a significant impact on how  
15 much -- if they will continue to share anymore  
16 information or if they would be willing to share that  
17 information with someone else.

18           Q.     Is it uncommon -- or would you say the  
19 following statement is uncommon based on your  
20 practice? A child by the age of 14 years of age  
21 outcries to her mother about what has taken place.  
22 Would it be uncommon for that person to put her trust  
23 in her mother to make the appropriate decisions?

24           A.     I think that it would not be uncommon at  
25 all for a child if they outcry to their mother, so

1    this would be the person on whom they rely or they  
2    have a sense is going to be helpful to them, and if  
3    that -- if I share that information then my  
4    expectation would be that you're going to help me,  
5    you're going to help stop this, you're going to help  
6    me make sense of it, you're going to do something to  
7    be helpful to me. So the goal in sharing that  
8    information is, yes, I need to choose someone who I  
9    think will believe me and, also, what would happen as  
10   an end result, I want this to stop or I feel bad about  
11   what's happened.

12           Q.       Is it uncommon for victims of sexual  
13   assault during their initial outcries to not give  
14   every detail of every incident?

15           A.       That is not at all uncommon.

16                    Again, coming back to the -- the other  
17   issues related to age or the number of times that the  
18   assault may have happened and then, also, their  
19   relationship to the perpetrator, what we see with  
20   children is that they often will give enough detail  
21   initially to make the point to see what the response  
22   is going to be. So I make a decision to share this  
23   information with my mother and I tell her something  
24   bad has happened or Uncle Johnny has touched me in my  
25   private parts or I say something initially to let her

1 know some idea of what's happened. Oftentimes,  
2 though, if this has happened on multiple occasions or  
3 even if it's just that the child has difficulty  
4 talking about the details of this we don't see  
5 children giving all of the details of all of the  
6 incidents at once.

7           It's difficult to talk about depending on  
8 how many times it's happened, all of those details  
9 often don't reveal themselves immediately and so what  
10 we get is what we call a gradual disclosure that  
11 children might give some information initially, they  
12 may give more information to that same person later or  
13 to another person later and in my experience and  
14 therapy in working with these clients oftentimes we  
15 will see children reveal information in the therapy  
16 process because they feel safe enough to do so that  
17 there may be information that they haven't shared  
18 previously with anyone. So having a sense of the  
19 safety of the situation and to whom they're giving  
20 that information would impact that child. But having  
21 a gradual disclosure, which is how we refer to it, is  
22 much more common than not.

23           Q.       Well, let me ask you this, is it uncommon  
24 even when you're meeting with your patients and your  
25 clients and speaking with them about what has happened

1 to them for them to even hold back with you initially?

2 A. Absolutely.

3 The initial piece of -- particularly in my  
4 role is to just to create a safe place, so I don't get  
5 from a child initially in the first sessions of  
6 therapy, I don't ask for it but I, also, don't get  
7 details, specific details all at once, and even if  
8 we're able to talk about an incident I most often  
9 don't get all of those details at once. They come out  
10 gradually, they come out as the child either processes  
11 what's happened or feels comfortable enough to share  
12 that information. So, no, even in my practice I don't  
13 get that information usually all at once in a single  
14 event.

15 Q. I think you just said even -- you don't  
16 even inquire initially?

17 A. No, I do not. It's not my role to ask  
18 those questions specifically so that what I -- a child  
19 might present some of the information to me in the  
20 process of therapy but children don't -- don't want to  
21 talk about what has happened to them. It is  
22 traumatic, it is embarrassing, they feel guilty, they  
23 feel shame and so they try very much to not talk about  
24 things that have been traumatic or things that have  
25 been embarrassing or shameful or upsetting because it

1 doesn't feel good to talk about those things. So we  
2 might see a child give some information but, again,  
3 the discomfort in giving that information or the  
4 process of doing that is not something that children  
5 are comfortable doing and it takes time.

6 Q. Some questions about the different affects  
7 of your clients and your patients.

8 What is the one way which a victim of  
9 sexual assault reacts? Is there a one way?

10 A. There really is not one way. Children are  
11 very individual and they respond to trauma very  
12 individually. We look for some common responses that  
13 we might see across different groups of kids and  
14 different age groups and different scenarios but there  
15 is no one specific response that we know to be  
16 indicative that the child has been sexually abused or  
17 an indication that they have not been.

18 So an example might be that I might have a  
19 child that I'm working with who comes in to work with  
20 me, who seems very, very frightened and that might  
21 feel like, okay, that's what we would expect from a  
22 child who has had this kind of history. I might have  
23 a child who talks about the details of being sexually  
24 assaulted and continues to play at the same time and  
25 seems sort of matter of fact or not particularly

1     affected by it and that would be consistent because  
2     children respond so differently to what has happened  
3     to them. And I might even see a child who smiles when  
4     they're talking to me about it or engages in sort of  
5     distraction and comes back to it and, again, that  
6     would not be inconsistent with a child who's been  
7     sexually abused because the child, themselves, have  
8     dealt with this trauma in a particular way and are  
9     having their own unique response to what has happened  
10    and that we can't make -- dictate how a child is going  
11    to feel or respond or look like in response to this  
12    kind of a traumatic event. So we see kind of the  
13    whole range with children.

14           Q.     The victim presents -- well, he or she,  
15    because you work with male victims, too?

16           A.     Yes.

17           Q.     If a victim presents with kind of a flat  
18    affect, would that strike you as odd?

19           A.     No, not at all. I think -- again, sort of  
20    back to this piece of not really being emotional, if  
21    you will, or -- you know -- not -- not presenting as  
22    though this has been extremely traumatic, I'm not  
23    tearful, I'm not scared or I'm not angry or I'm not  
24    presenting those things, we deal with things as adults  
25    as well as children, we cope with them differently.



1     So if I have to talk about what has happened to me I  
2     find a way to do that and whatever my emotional  
3     response with that doesn't indicate whether or not  
4     I -- this has actually happened because this is the  
5     way that I'm able to talk about it. So, if I -- if I  
6     present with kind of a flat affect, this sort of  
7     matter of fact piece, so this happened, this happened  
8     and this happened that might be the way that I'm able  
9     to do that and talk about it and that's how I have  
10    figured out a way to express myself, not that I don't  
11    have any emotions behind that but that is the way that  
12    I'm able to talk about it at this time.

13           Q.     Kind of piling on that flat affect.

14                   Based on your experience with your clients  
15    that have that sort of affect, do you find that it  
16    arises more common in situations in which there's been  
17    a longer duration of abuse?

18           A.     I think that children who have been exposed  
19    to chronic abuse have had to find different ways to  
20    deal with what has happened in their lives, so they  
21    find different ways to cope with that and if children  
22    are being abused over periods of time they, as we all  
23    do, find a way to survive it, if you will. Find a way  
24    to emotionally survive it.

25                   So what we might see -- I wouldn't say it's

1 an absolute that a child who has been assaulted one  
2 time might present with a flat affect, but I think  
3 that it would be more consistent with a child who has  
4 been dealing with abuse over a period of time to  
5 possibly present that way because this has been part  
6 of their life, this is what this is and so I find a  
7 way to present this information so that I can but I'm  
8 not -- I don't become overwhelmed by those emotions so  
9 I may be -- if you will -- disconnected a little bit  
10 when I am talking about it because that's the way that  
11 I can talk about it.

12 Q. Fair to say that's applicable to both  
13 prolonged sexual and physical abuse?

14 A. Yes.

15 Q. You said something that's important as you  
16 relate to -- as you just stated that this isn't an  
17 absolute, do you remember that?

18 A. Yes.

19 Q. Nothing that we're talking about is  
20 absolute, is that fair to say?

21 A. That's fair to say.

22 Q. There's no cookie cutter reaction in any  
23 child?

24 A. No, there's not.

25 Q. Based on your experience?

1           A.       There's not.

2           Q.       Is it fair to say that just because a child  
3 chose one or two or, maybe, several of these  
4 tendencies that they all could come from different --  
5 they all can be different reasons for those  
6 tendencies?

7           A.       Yes. When we look at -- as we call them --  
8 behavioral indicators or behaviors that the children  
9 are presenting and we are trying to get a picture of  
10 what may have happened there is not one particular  
11 behavior that a child would present that would say to  
12 us this child has been sexually abused because we see  
13 certain things that may be more indicative of that but  
14 we never make the leap and say this child's presenting  
15 this behavior, therefore, this child has been sexually  
16 abused. What we do is we look at them as a  
17 collective, we look at them altogether and we say,  
18 okay, these are some things that would be red flags  
19 for us.

20                   So we see a child who's presenting  
21 depressed behavior or increased aggressive behavior  
22 or, maybe, they're more withdrawn than they used to  
23 be, maybe, they are more clingy than they used to be,  
24 maybe, they seem to be preoccupied with sex and  
25 sexuality, they have knowledge that we wouldn't

1 expect them to have at a particular age and the list  
2 goes on. But when we look at those behaviors we try  
3 to say, okay, if we see some of those behaviors  
4 presenting themselves this is something that we need  
5 to consider when we're thinking about what might be  
6 going on for this child.

7 Q. But it's by no means an exact science?

8 A. It is not.

9 Q. Okay.

10 When you're dealing with children and  
11 specifically teenagers of prolonged abuse, be it  
12 physical or sexual, does that impact their ability to  
13 relate when these events occurred in terms of time?

14 A. If abuse has occurred over a period of time  
15 what we see is that sometimes it is difficult for  
16 children to be able to remember specific details of  
17 specific events. So for any of us if something has  
18 happened multiple times in our lives, unless it  
19 happens exactly the same way at exactly the same time  
20 of day and exactly in the same sequence of events, the  
21 circumstances are precisely the same, it is difficult  
22 for us to be able to say, okay, this -- on that  
23 Tuesday and it was five o'clock this specific sequence  
24 happened as opposed to two weeks prior on a Wednesday  
25 in a different room. So some of those details get

1 lost because it has happened multiple times or over a  
2 long period of time.

3 That is not to say, though, that the -- the  
4 details around -- the essence of the trauma, what has  
5 happened to them, would not be accurate because we  
6 lose details around things like clothing or  
7 specifically who might have been in the house or  
8 specifically the time of day, but around what  
9 traumatic event has happened to me we're able to  
10 retain that and that we're able to hold onto those  
11 pieces of information, even if we lose some of the  
12 others.

13 Q. Is it fair to say that younger to mid-teens  
14 relate time periods as it relates to important events  
15 in their lives as opposed to calendar dates?

16 MS. TRUJILLO: Objection, leading.

17 THE COURT: Sustained.

18 Q. (By Mr. Geigle) Is it uncommon for  
19 children, let's say 14 years of age, to not  
20 necessarily relate things to a calendar?

21 A. That would not be uncommon, no.

22 Q. Explain how children and adolescents  
23 explain when things happen.

24 MS. TRUJILLO: And, Judge, I would just ask  
25 to clarify because I think Miss Miller has already

1     said there's differences in ages, so children versus  
2     adolescents? I just ask for clarification.

3                 THE COURT: I'll sustain it as potentially  
4     ambiguous and ask you to clarify that issue.

5             Q.        (By Mr. Geigle) Teens, 14 years of age.

6             A.        How a 14-year-old might reference things  
7     that have happened to them in a calendar year versus  
8     some other way?

9             Q.        Right.

10            A.        I think that what we know is that for  
11     children they don't necessarily abide by a calendar  
12     year on a day by day basis, maybe as adults do, and  
13     sometimes adults don't do that so much either. They  
14     have a memory of it was right around Christmas, it was  
15     New Year's Day, in terms of being able to retain  
16     details. But children definitely do this much more.  
17     It was -- I remember that it happened right before my  
18     ninth birthday and I can tell you some details about  
19     my ninth birthday but I can't necessarily tell you  
20     that it was May 1st because I didn't necessarily make  
21     a note of that internally for myself.

22                    So that we do see with children that they  
23     might mark certain things by events that happened to  
24     them or things that are happening around them, maybe a  
25     season changed, something like that versus their

1 ability to retain details around a calendar year.

2 Q. What role does fear play as it relates to  
3 outcry?

4 A. Well, what we know about children with  
5 outcry is that the majority of them don't tell someone  
6 right away, that it is more uncommon for a child to  
7 disclose that information right away than it is  
8 common. So children generally don't share the  
9 information and we know that there are a number of  
10 reasons that they might not do that but that they're  
11 all sort of cast under this umbrella of being fearful  
12 and the things that they might fear might be harm,  
13 they might fear harm to themselves or to the  
14 perpetrator and that can be either because the  
15 perpetrator has told them outright something's going  
16 to happen to you if you tell or it's just been  
17 implied, they think something bad could happen. They  
18 might fear losing the affection of the perpetrator,  
19 oftentimes children have positive relationships with  
20 these perpetrators in addition to this other piece and  
21 so they're fearful this person will be mad at me if I  
22 share this information. They fear the consequences of  
23 telling and so what does it mean if I tell and I am --  
24 and something is going to happen to this person and if  
25 I'm a little bit older I might actually know that this

1 person could go to jail for this. So if I'm an  
2 adolescent I might have a better awareness because I  
3 understand and have a context for sex and sexuality  
4 that this is a really bad thing that happened and  
5 there could be real consequences if I tell to this  
6 person that did this to me, or to me.

7           Also, children fear negative reactions of  
8 people that they care about. So if this is a person  
9 that's a really important person in my family and is  
10 important in terms of their status, they're someone  
11 who provides financially for the family, they're  
12 someone who is very close to my mother or someone else  
13 who's my primary caregiver, they're someone who I rely  
14 on to take care of me in a general sense, then the  
15 negative reactions that people around me might be very  
16 strong, so people are going to be mad at me if I say  
17 something bad about this person because of the role  
18 that this person plays in my family.

19           And then the other two pieces would be that  
20 children fear not being believed, which I've talked  
21 about, it's a very strong fear and we see this  
22 throughout the populations. Even if they've been  
23 believed about other things, no one would believe this  
24 person would do this. Again, kind of depending on the  
25 status.



1                   And then lastly, children have -- they take  
2   some responsibility for the abuse that has happened.  
3   One of the things that we work on in therapy is that  
4   even despite if they know that there was nothing that  
5   they could do to prevent what happened, they think  
6   there should be something and they should have done  
7   something differently, so that that piece around  
8   taking responsibility and feeling embarrassed or  
9   guilty about what happened will, also, play into that  
10   fear.

11           Q.       Is it common for the victims that you've  
12   specifically dealt with as it relates to their outcry  
13   for them initially to keep telling and keep telling  
14   till somebody does something?

15           A.       That is not common. One of the things that  
16   we actually work on with children in therapy is this  
17   idea of telling -- keep telling until someone does  
18   something because what we know is that children will  
19   confide this to someone and then based on the response  
20   of the person to whom they've confided it will make  
21   a -- it will have an impression on them and it'll make  
22   a decision for them as to whether or not they're going  
23   to be safe or protected or it's going to stop. So we  
24   actually encourage children in treatment as a  
25   self-protective measure that if something like this

1 ever happens again who do you tell and what if they  
2 don't believe you and what do you do next? Because  
3 it's not something that children are familiar with  
4 doing.

5           You think about a child who gets in trouble  
6 for something or someone's hurting them some way and  
7 they go, say to their mother, and they say so-and-so  
8 hurt me and mom says, well, too bad, that's your own  
9 fault, you know, I'm not going to do anything about  
10 it. It's pretty unlikely that the child is going to  
11 go back to her the next time this person hurts them  
12 and it's, also, not likely that they're going to walk  
13 around looking for others to protect them because  
14 their assumption is this person is the best person to  
15 tell, this person will take care of me. So, if that  
16 person does not then the message is that probably very  
17 little will get done.

18           Q.     I have a couple more questions, one relates  
19 to what you told this jury about fear of consequences  
20 and the victim's affinity for the perpetrator or any  
21 parties that might be affected. Is it common or  
22 uncommon based on your experience for victims of  
23 sexual assault to subsequently try and cover up  
24 anything that's happened to protect other parties?

25           A.     It certainly is a possibility. If -- if --

1 are we talking about that the child might make a  
2 disclosure and then try to protect others involved  
3 or --

4 Q. Let me phrase it as a hypothetical.

5 A 14-year-old victim initially outcries to  
6 her mother and is not believed and outcries to a  
7 friend and specifically instructs the friend not to  
8 tell the authorities. First of all, would it be  
9 uncommon for a 14-year-old not -- or to understand the  
10 process and not want the authorities involved?

11 A. That would not be uncommon, especially in  
12 an adolescent who would understand the implications of  
13 what they might state.

14 Q. And building on that hypothetical,  
15 authorities at some point get involved, would it  
16 strike you as uncommon or odd or inconsistent with  
17 your experience that the authorities were involved she  
18 wasn't truthful about what happened and tried to  
19 protect her family?

20 A. I don't believe that would be at all  
21 uncommon. I think what we're talking about is that  
22 children who make this disclosure, it has a tremendous  
23 impact on them if they're believed, if they're  
24 supported. If I rely on my mother and this is my  
25 family and my mother does not believe me about what

1 has happened and the authorities get involved or  
2 people start asking me questions I -- I'm going to  
3 rely on my family first and foremost, that is who --  
4 that's who I identify with. And so, if I think that  
5 my mother is not going to believe me or support me,  
6 the risk of telling the authorities what may have  
7 happened is pretty high. It means -- it's pretty sure  
8 that I'm going to be alienated or ostracized from my  
9 family if my mother has said I don't believe you and  
10 it's not going to go any further or she hasn't  
11 protected me. So children will do just about anything  
12 to maintain relationships with people that they  
13 identify as their family, even if that means  
14 subjecting themselves to further abuse or situations  
15 that are unsafe for them because -- because they don't  
16 have other supports that they can identify to do that  
17 like adults might.

18 Q. Based on your experience is it common or  
19 uncommon for children of this age that we have been  
20 speaking about to make distinctions between I want it  
21 to stop versus I don't want him punished, or I don't  
22 want the authorities involved, does that make sense?

23 A. Absolutely.

24 What we see very often with children is  
25 that they will talk about, even in treatment, that I

1 just wanted this stuff to stop but I didn't want him  
2 to get in trouble, or I still like him, or I still  
3 want to see him, or I don't want people to be mad at  
4 me, I just didn't want him to do this stuff to me  
5 anymore. So even with young children they will say  
6 those kinds of things.

7           And certainly with adolescents, confiding  
8 in a parent, they might just hope that the parent will  
9 protect them and hope that it goes no further because  
10 they don't want to deal with all of the ramifications  
11 that a criminal investigation will bring; so that they  
12 would have to put this person in jail, that they would  
13 have to go through a trial, all of those things -- in  
14 adolescents would certainly have some understanding of  
15 and would disclose the information primarily to make  
16 it stop. That is usually the first and foremost  
17 motivation for any child and not this secondary piece  
18 of I want him punished, particularly if they're not  
19 supported by these other people who they identify as  
20 their family.

21           Q.       You dealt with victims -- or have you  
22 dealt with -- the victims that you've dealt with do  
23 you maintain -- I want to say relationships, I'm  
24 not -- that's not the right characterization, but do  
25 you retain your professional relationship with them

1 over a period of time to continue some continuity in  
2 working with them?

3 A. In other words, do I work with children  
4 over the longer term?

5 Q. Right.

6 A. Yes, most of the time that is my role.

7 Q. Okay.

8 Is it uncommon that after some time has  
9 passed for victims to be angry about family members  
10 who knew and did nothing?

11 A. No, that is very common.

12 A child once they feel that they're in a  
13 supportive environment, talking about what has  
14 happened and they feel that their feelings matter,  
15 that what has happened to them is wrong, then they  
16 will often be able to access how angry they are with  
17 the people that didn't protect them. But that takes  
18 time, mostly because if I am angry with the person who  
19 didn't protect me that may be my family, that may be  
20 my mother, and if I become angry with her first that  
21 means that I have no support at all, so if I can  
22 protect her and say, well, I should have done this  
23 differently, I should have done that differently, I  
24 can hope to maintain that relationship. But what we  
25 do see over time is that children start to be able to

1 identify how this abuse has impacted them and their  
2 sense of feeling unsafe and unprotected by people who  
3 they care about and that will then allow them to deal  
4 with the anger they feel towards those people.

5 MR. GEIGLE: No further questions.

6 THE COURT: Any cross-examination?

7 MS. TRUJILLO: Yes.

8 CROSS-EXAMINATION

9 BY MS. TRUJILLO:

10 Q. Hello, again.

11 A. Hello, again.

12 Q. Let me start with the concept of outcry,  
13 okay?

14 A. Okay.

15 Q. I think -- outcry means when a person who  
16 is alleging a sexual assault -- and I'm just talking  
17 about sexual assault because that's what we're dealing  
18 with here --

19 A. Okay.

20 Q. -- who's alleging a sexual assault first  
21 tells somebody else, right?

22 A. Yes.

23 Q. And there's no distinction between the term  
24 "outcry" whether they tell a parent, a friend, a  
25 police officer, a school counselor, doesn't matter who

1 it is, right?

2 A. Correct.

3 Q. Outcry just means the first time,  
4 essentially?

5 A. Yes.

6 Q. Okay.

7 And so I'm clear, you deal with what age  
8 group generally in your counseling?

9 A. I work with children ages two to 18.

10 Q. Okay; and what do you consider an  
11 adolescent?

12 A. Generally, we identify adolescents as  
13 children who are 12 years old to 18 years old.

14 Q. Okay; and anyone under 12 is generally a  
15 child?

16 A. Well, we usually make distinctions around a  
17 young child, so someone under the age of five and  
18 under, or three and under, and then we talk about  
19 school-age children which usually means between six  
20 and 11, so we can break down a little more finely than  
21 that but those are generally the breakdown groups.

22 Q. And that's just so I'm clear which groups  
23 we're talking about. So young children, school-age  
24 children and adolescents; is that a fair  
25 characterization?



1           A.       Yes.

2           Q.       And, obviously, there's going to be  
3       distinctions and differences between what children do  
4       and what adolescents do, right?

5           A.       There are some, yes.

6           Q.       Okay.

7                    So, for example, when we're talking about  
8       the outcry, I think you may have said this before, but  
9       in general with the exception of the accidental  
10      disclosure, I guess, the majority of people do not  
11      outcry right away?

12          A.       Majority of people do not; that's correct.

13          Q.       And so -- and I know -- I don't want to use  
14      terms loosely, but by saying the majority of people do  
15      not outcry right away would that follow that it would  
16      be rare for someone to outcry right away, right?

17          A.       It would be unusual for someone to outcry  
18      right away.

19          Q.       Okay.

20                    And it may seem self-explanatory but right  
21      away to me would mean that day, the next day, as  
22      opposed to two months later, is that fair?

23          A.       Generally, when we talk about a delay in  
24      outcry, yes, we talk about someone telling pretty  
25      immediately or within, say, a day or so, something

1     like that, versus even a week, up to telling never.

2             Q.       Okay.

3                     And you would expect that based on your  
4     work that a person is more likely to delay an outcry  
5     if they know the person or the alleged perpetrator or  
6     is connected to them in some way; is that accurate?

7             A.       They would be more likely, yes.

8             Q.       And so -- and would it be fair to say that  
9     you would expect a delayed outcry in that type of  
10    situation; is that right?

11            A.       If their relationship to the perpetrator  
12    and what were the other things -- what I had said  
13    before?

14            Q.       Yeah. Like, for example, if the person is  
15    alleging that their mother's boyfriend, someone they  
16    live with is the perpetrator, you would anticipate a  
17    delayed outcry?

18            A.       I would say that that would play a role  
19    that would influence them, yes.

20            Q.       Okay.

21                     Another thing that influences that is the  
22    age of the person who's claiming the sexual abuse; is  
23    that right?

24            A.       Yes.

25            Q.       And you would expect -- or at least in your

1 experience, younger children often tell earlier than  
2 older children, right?

3 A. What we see is -- again, it depends on the  
4 age group, but what we see is that younger children we  
5 have to take into context all of the things that I  
6 talked about, relationship to the perpetrator, how  
7 many times has this happened? Older children it can  
8 work both ways, if you will, because older children  
9 have an understanding of what has happened, they have  
10 more information, more context to make a decision  
11 about outcrying. So, if I'm an adolescent and I know  
12 what has happened to me has been sex assault then  
13 depending on what I think the response or that  
14 something is going to stop, I might make a decision to  
15 tell someone sooner or I might actually because it's  
16 difficult to talk about or I don't know what the  
17 response of people is going to be around me, I might  
18 delay. So adolescents are a little bit of a different  
19 group and we can't make an absolute distinction. But  
20 with younger children we do see that they tend to  
21 outcry differently, sometimes sooner, but, again,  
22 there's variability in that.

23 Q. Okay.

24 Let me focus on adolescents because that's  
25 what we're dealing with, and I misspoke and I said

1 children.

2                   We've already talked that they're more  
3 likely to delay an outcry and I'm talking about -- and  
4 you just touched on their awareness of what's  
5 happened, right?

6           A.       Yes.

7           Q.       Adolescents are more likely to recognize  
8 this is bad, right?

9           A.       Hm-hmm.

10          Q.       And they're more likely to recognize if I  
11 tell, someone's going to get in trouble, right?

12          A.       Yes.

13          Q.       Okay.

14                   So, for example -- well, that's a  
15 hypothetical, let me put it that way. A person, a  
16 14-year-old girl, is more likely to be aware that if  
17 she tells someone that her mother's boyfriend is  
18 sexually assaulting her that police will be notified,  
19 services will be involved and something bad -- he's  
20 going to go to jail, something's going to happen?

21          A.       Yes, with the exception if I think that the  
22 person I'm telling, say a peer, would keep my secret  
23 for me then I might think that I'm telling her just to  
24 tell her and that not necessarily the police would be  
25 involved. If I'm telling an adult and, again, I make

1     that distinction because I think that adolescents  
2     identify peers very differently than they identify  
3     adults as to what action can be taken or what people  
4     might do then I might have a sense that somebody is  
5     going to do something.  If I tell a peer I'm not at  
6     all sure it's going to stop, so it might be different  
7     reasons.

8             Q.       Okay; let me stop you there.

9                     As a hypothetical, if the 14-year-old tells  
10    her peer and then says -- peer/friend, I told my  
11    friend because I knew she was going to call the  
12    police, I knew she would tell someone.  Obviously,  
13    that's going to be evidence that this person knew or  
14    expected that someone would be called or notified,  
15    right?

16            A.       That sounds like that's what she expected.

17            Q.       Okay.

18                     And Mr. Geigle asked you a few questions  
19    about whether or not the initial outcry is believed  
20    and what reaction you would expect from that  
21    adolescent at that point, do you remember that?

22            A.       Yes.

23            Q.       And if I heard you correctly, you said that  
24    if the initial outcry, let's take a hypothetical, if  
25    the 14-year-old outcried to her mother and was not

1     believed, you said it is not common to keep telling  
2     and to keep telling that person about alleged repeated  
3     abuse, right?

4             A.     You're asking if she would go back and tell  
5     the mother again?

6             Q.     Yes.

7             A.     That would be less common, yes.

8             Q.     Okay; and that kind of I think dovetails  
9     into what you're talking about fear and potential  
10    delay of outcry, fear of not being believed, right?

11            A.     Yes.

12            Q.     And so if a person had an initial fear that  
13    they were not going to be believed they're less likely  
14    to tell someone right away, right?

15            A.     Yes.

16            Q.     Okay; and so the follow-up then is they  
17    have this fear that they're not going to be believed,  
18    they're less likely to tell right away and then when  
19    they do, if they're not believed and their fears come  
20    true, they're less likely to keep telling that person?

21            A.     They would be less likely, yes, in my  
22    experience.

23            Q.     I want to talk to you about this sort of  
24    behaviors of -- let's talk about adolescents who have  
25    alleged sexual assault.

1           A.       Okay.

2           Q.       Okay?

3                   And Mr. Geigle had talked to you a little  
4 bit about the affect of adolescents who talk about  
5 what they say their experiences are?

6           A.       Yes.

7           Q.       Okay; and you indicated that adolescents  
8 react differently, right?

9           A.       Yes.

10          Q.       Some of them, would it be fair to say, cry  
11 and breakdown when they're talking about it?

12          A.       Yes.

13          Q.       Okay; and then there's some indication that  
14 sometimes when they're talking about it they have a  
15 flat affect?

16          A.       Yes.

17          Q.       So those would sort of be polar opposite  
18 affects, would you agree?

19          A.       They're certainly very different responses,  
20 yes, and I think you could see a response from a child  
21 at one point being -- having a flat affect and being  
22 very emotive and crying or any of those other pieces,  
23 you can see that in the same child at different times.  
24 I don't know if they're opposites but they're  
25 certainly different.

1 Q. Okay.

2 And I guess that's what I'm getting at,  
3 though, is you can have someone who's talking about  
4 sexual assault and they're very emotive, emotional,  
5 it's a physical sort of reaction, right?

6 A. Yes.

7 Q. And it's your testimony that that would not  
8 be uncommon?

9 A. Correct.

10 Q. And then sort of on the other hand you can  
11 have someone who is just -- will sit there and explain  
12 it to you matter of fact, right?

13 A. Yes.

14 Q. And that, also, is uncommon?

15 A. Correct.

16 Q. Okay.

17 So the two very different types of  
18 behavior -- and I understand you don't think they're  
19 polar opposites, but the two very different types of  
20 behaviors, it's all common with someone who is  
21 alleging sexual assault?

22 A. It's all within the range of normal, yes.

23 Q. Okay.

24 And so it doesn't matter -- at least in  
25 your experience and based on your -- the people that



1     you deal with, it doesn't matter how someone reacts,  
2     it's all consistent with being the victim, right?

3           A.     I think that because we see such a broad  
4     range of responses to trauma from children that we  
5     wouldn't identify something and say because this child  
6     is displaying this behavior they haven't had this  
7     experience. So, yes, we look at all different kinds  
8     of behaviors and consider them as possibly consistent  
9     with this child's traumatic experience, yes.

10          Q.     Okay.

11                 So anything they do is possibly consistent  
12     with being the victim of a sexual assault?

13          A.     Any behavior that they indicate -- or is  
14     that they present could be consistent, yes.

15          Q.     Okay.

16                 And you talked a little bit with Mr. Geigle  
17     about -- with the exception -- or along the same lines  
18     of the specific aspect of talking about sexual assault  
19     sort of behavioral changes that you find are common in  
20     adolescents who have been the victim, do you recall  
21     that?

22          A.     Yes.

23          Q.     Okay; and I think you said, for example,  
24     increased aggression, right?

25          A.     Yes.

1 Q. Increased depression, right?

2 A. Yes.

3 Q. Increased problems in school?

4 A. Yes.

5 Q. Okay; and just to be clear, these are  
6 common factors that you find -- and if you're going to  
7 link it to being the victim of a sexual assault, they  
8 would start occurring after the person was a victim,  
9 right?

10 A. What we see with those behaviors is that we  
11 would consider them in the context of what may have  
12 happened with this child. But would I expect to see a  
13 behavioral problem after the abuse has started?  
14 Possibly, but it would depend on the child's  
15 experience prior to that. So if there were other  
16 stressors or other issues in the home going on prior  
17 to the sexual abuse, might I see behavioral problems  
18 beforehand? I might, yeah.

19 Q. Okay; but that's kind of what I'm getting  
20 at is to link it to being the victim of a sexual  
21 assault -- in other words, the result of being the  
22 victim of a sexual assault, you would not expect to  
23 find those behavioral problems prior to the sexual  
24 assault?

25 A. I guess the question that I have about that

1 is if I'm -- if I'm trying to link it, which I don't  
2 know that would be what I'm trying to do, but maybe  
3 identify things that this child is presenting that  
4 might be consistent, but would I then say did this  
5 behavior exist prior to this time? Would I want to  
6 consider that? Yes.

7 Q. Well, I guess that maybe I'm asking it  
8 incorrectly, but if you have -- let's say a  
9 14-year-old girl who never wanted to go to school and  
10 then nine months later claims she's the victim of a  
11 sexual assault and then didn't want to go to school,  
12 there's no link between her not wanting to go to  
13 school and being the victim of a sexual assault,  
14 right?

15 A. With that particular behavior existing  
16 prior I would say that's not a direct link of a  
17 behavior.

18 Q. Okay.

19 So -- but that's what I'm getting at, in  
20 order to link the behavioral problems to the sexual  
21 assault -- or making it the result of a sexual assault  
22 you would expect those behaviors to start occurring  
23 after the sexual assault, right?

24 A. If I -- if what my goal was to link the  
25 behaviors to the time at which the assault occurred I

1 might be looking for things after the sexual assault.

2 I think what -- at least in my practice,  
3 what I do is I might ask for some behavioral changes  
4 but I don't necessarily say did this happen before?  
5 Was this happening exactly at this moment? I kind of  
6 look at the whole picture to see how the child  
7 responded to this particular event or what's been  
8 alleged.

9 So if the person says my kid has always  
10 been very, very, very clingy since she was a baby and  
11 I say, okay, so does that behavior present itself now?  
12 Yes. So that might be consistent with other things.  
13 What I look for is a collective of the behaviors  
14 around that. So I don't say this child's presenting  
15 this behavior, therefore, they've been sexually  
16 assaulted. I say what have you noticed in your child  
17 and when did you notice it to see if we -- if there's  
18 a connection there, but it isn't the thing that I look  
19 for -- I guess that's what I am struggling with, this  
20 linking piece.

21 Q. Okay.

22 Is it true that certain behaviors are  
23 typical in children who have been victimized like  
24 increased aggression, increased depression, increased  
25 problems in schools?

1 A. Yes.

2 Q. Okay; that's what I'm getting at.

3 A. Okay.

4 Q. So you would -- those behaviors are typical  
5 in children who have been victimized?

6 A. They might be, yes.

7 Q. Okay.

8 So those are types of behaviors that maybe  
9 you would look for after someone has claimed to be the  
10 victim of a sexual assault?

11 A. Yes, and many others.

12 Q. Okay.

13 Let me -- let me ask you -- cause we've  
14 been talking in hypotheticals and I'm trying to keep  
15 it focused on -- I'm sure you gathered -- a  
16 14-year-old girl and a sex assault.

17 You indicated today that you've never met  
18 Alaina Rife, right?

19 A. No, I have not.

20 Q. You came here today I assume under a  
21 subpoena from the District Attorney's Office?

22 A. Yes.

23 Q. Did they hire you?

24 A. To testify in this case, yes.

25 Q. Okay.

1                   Are you being paid?

2           A.       I am being paid, yes.

3           Q.       How much are you being paid?

4           A.       I get paid \$80 an hour.

5           Q.       Okay.

6                   So they've brought you in to come talk  
7 about why someone may or may not react in fashion A,  
8 right?

9           A.       I guess I'm -- what do you mean by that  
10 fashion, I'm not sure what you mean?

11          Q.       Well, I'm just trying to be general.

12          A.       Okay.

13          Q.       They've hired you to come in and say --  
14 let's take for example, affect, that no matter what a  
15 child does, that's all consistent with sexual assault?

16          A.       My understanding of what my testimony is  
17 to -- is to do is to present my expertise around  
18 dealing with children who have been victims of sexual  
19 assault and talk about what I know and what I have  
20 seen in those victims.

21          Q.       Okay; and in this case we've already talked  
22 about it, though, and part of your testimony has been  
23 that any way a child or adolescent reacts when telling  
24 the story, whether they have a flat affect or  
25 emotional, everything is consistent with being the

1 victim.

2 A. I think more of my goal is to present  
3 information that helps to understand that children  
4 don't behave in ways that people necessarily expect  
5 them to, so I'm focused more on that certain behaviors  
6 aren't inconsistent because I think that people have a  
7 certain set of ideas about how a child might behave.

8 So, maybe, that's the flip of what you've  
9 said, but that's my understanding of what my testimony  
10 is to do.

11 Q. Okay; but you've already testified that  
12 nothing is inconsistent, it's all inconsistent?

13 A. That -- that the behaviors that a child  
14 presents would be consistent with sexual assault?

15 Q. Right.

16 A. Yeah.

17 Q. Okay.

18 And so you were given no information in  
19 this case about Alaina Rife and what she did or did  
20 not do?

21 A. No, I had general information.

22 Q. Okay.

23 How did you get that?

24 A. Through the District Attorney.

25 Q. Through Mr. Geigle?

1 A. Yes.

2 Q. Okay.

3 What did he tell you?

4 A. The age of the child -- these are the  
5 questions I usually get the answers to. So, the age  
6 of child and the relationship to the perpetrator and  
7 the areas around which I was to testify we discussed.

8 Q. And those areas are the ones we've already  
9 talked about?

10 A. Correct.

11 Q. Okay.

12 And I think we talked about this a little  
13 bit about when you were initially on the stand before  
14 the break your role is the therapist, right?

15 A. Correct.

16 Q. You don't confront the adolescent with  
17 inconsistencies, say, in the investigation, right?

18 A. Correct.

19 Q. You don't confront the adolescent with,  
20 say, there's nothing to support -- there's no physical  
21 evidence to support what you're saying, right?

22 A. Correct.

23 Q. You just -- your therapy and your opinions  
24 are based upon just whatever the adolescent has said?

25 A. My opinions and what I'm presenting today



1 is based on my experience with adolescents and, also,  
2 corroborative research around those areas, yes.

3 Q. But you're not familiar with any of the  
4 investigation in this case?

5 A. No, I'm not.

6 Q. Okay.

7 MS. TRUJILLO: May I have a moment, Your  
8 Honor?

9 THE COURT: You may.

10

11 (Whereupon, there was a discussion off the  
12 record between Ms. Trujillo and her co-counsel, Ms.  
13 Rounds.)

14

15 MS. TRUJILLO: Thank you, Miss Miller, I  
16 don't have any further questions.

17 THE COURT: Any redirect?

18 MR. GEIGLE: Very briefly.

19 REDIRECT EXAMINATION

20 BY MR. GEIGLE:

21 Q. I'm just going to ask you about a specific  
22 portion of your testimony as it relates to the  
23 questioning by Miss Trujillo.

24 A. Okay.

25 Q. This relates to outcry and the immediacy of

1 outcry.

2 Is it fair to say that one of the reasons  
3 that adolescents do, in fact, outcry or what  
4 precipitates the outcry is safety concerns?

5 A. Yes.

6 Q. Are they in a safer place?

7 A. Yes.

8 Q. Is it uncommon for one of the reasons why  
9 outcry is delayed in situations certainly in which the  
10 perpetrator is known is because the perpetrator is  
11 still in the picture?

12 A. Would that be a factor that would influence  
13 their outcry, is that what you just asked me?

14 Q. Yes.

15 A. Yes, definitely.

16 Q. So is it uncommon for adolescents --  
17 adolescent victims of sexual assault to wait until the  
18 perpetrator is out of the picture before they tell  
19 somebody?

20 A. That would not be uncommon, no.

21 MR. GEIGLE: That's all I have.

22 Thank you.

23 THE COURT: Any recross on that subject?

24 MS. TRUJILLO: No.

25 THE COURT: Miss Miller, thank you very

1 much, you may step down.

2 Are the People ready to call their next  
3 witness?

4

5 (Whereupon, further proceedings were had  
6 and entered of record but are not transcribed herein,  
7 pursuant to directions of ordering counsel. The  
8 proceedings were concluded at 11:40 a.m.)

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