

1 DISTRICT COURT, ARAPAHOE COUNTY, COLORADO
Arapahoe County District Court
2 7325 S. Potomac St.
Centennial, CO 80112
3

4 COURT USE ONLY
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7 PEOPLE OF THE STATE OF COLORADO,

8 v.

9 SHANNON GONSER,
Defendant.

10 Case No. 04CR652
Division 207
11

12 REPORTER'S TRANSCRIPT
13

14
15 FOR THE PEOPLE: Cori Alcock, #33752
Gary Dawson, #39874
16

17 FOR THE DEFENDANT: Martin Stuart, #28852

18 This matter comes on for a Jury Trial before the
19 HONORABLE MARILYN ANTRIM, on July 23, 2010, in Division 207.

20 THIS TRANSCRIPT CONTAINS SUVI MILLER'S TESTIMONY ONLY.
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1 AFTERNOON SESSION, JULY 23, 2010

2 (The following proceedings were had out of the
3 presence of the jury:)

4 THE COURT: Does anybody have a record to make on
5 the Gonser case?

6 MS. ALCOCK: Nothing for the People, Your Honor.

7 MR. STUART: Nothing from the defense.

8 THE COURT: That answers my question. Jury has
9 buzzed are. Are we ready to proceed?

10 MR. DAWSON: Yes.

11 MR. STUART: Yes.

12 (The following proceedings were had in the
13 presence of the jury:)

14 THE COURT: Call your next witness.

15 MR. DAWSON: Judge, the People call Suvi Miller.

16 SUVI MILLER

17 (called as a witness on behalf of the People in this matter,
18 having first been duly sworn, testified as follows:)

19 DIRECT EXAMINATION

20 BY MR. DAWSON:

21 Q Can you please tell the jury your name and spell
22 it for our stenographer.

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

24 Q And what do you do for a living?

25 A I am a licensed clinical social worker.

1 Q And how long have you done that for?

2 A I received my Masters degree in 1992 so I have
3 been practicing for a little over 18 years.

4 Q You indicated your Masters degree. What was your
5 undergrad degree in?

6 A I received an undergrad degree from Syracuse
7 University in Speech Communications in 1985 and then I
8 received my Masters degree in Social Work from New York
9 University in 1992.

10 Q What types of cases do you have or do you
11 typically see in your practice?

12 A Well, throughout my career I have primarily seen
13 children, adolescents and families. The majority of that
14 have been children who were victims of trauma. Majority of
15 those were sexual abuse also some witness to domestic
16 violence. Some witness to homicide.

17 And then I currently have a private practice that I
18 have had for about three years, a little over three years.
19 And I continue to see clients who have had a history of
20 sexual abuse either as children or as survivors, as adults.
21 But I also see children who have other behavioral issues
22 more generalized practice in my private practice now.

23 Q Approximately how many clients do you have in a
24 given month?

25 A Currently it is a part-time practice because I

1 have other jobs that I do but that's probably somewhere
2 between 10 to 12 clients a week or some of them are every
3 other week so it is a part-time practice that I see there.

4 Prior to my private practice, I worked in the agency
5 work where I carried a caseload specifically all the
6 children who had those issues in terms of their history of
7 sexual abuse or other kind of trauma.

8 Q Can you give an estimation to number of children
9 that you have worked with whose primary referral to you was
10 for sexual abuse?

11 A I don't have an exact number. But the number that
12 I can give is in excess of 300 children that I have seen
13 individually for treatment. I also have had a history as a
14 clinical supervisor in the last organization where I worked
15 for about nine and a half years. And supervised the
16 therapists who saw children who were victims of trauma as
17 well. And supervised graduate students who were at the
18 agency for internships and have consulted on cases. So it
19 is far in excess of 300 but that's the number that I give
20 that I have seen individually.

21 Q Can you describe to the jury the training that you
22 received to see children who have these issues?

23 A Well, my graduate degree was very focused on
24 clinical work, which really just means it is intended so
25 that the work I would do would be to provide therapy to the

1 clients that I would see and I have focus there on working
2 with child abuse and related issues.

3 Received my degree and became licensed in the state of
4 New York and then also had attended trainings throughout
5 both my graduate program as well as post-graduate. I tried
6 to obtained workshops or trainings annually probably a
7 little bit less now that I have been in the field a lot
8 longer. I have to find things that are newer to me that
9 would add to my practice but have also tried to make sure I
10 am attending trainings that are related specifically to the
11 population I work with. And then I am licensed in Colorado
12 since 1995 with the state examination as well that allows me
13 to practice in the field that I do.

14 Q Have you previously testified in the courts of
15 Colorado in the area relating to children who have been
16 sexually abused?

17 A Yes, I have.

18 Q Do you know which courts or which counties you
19 have testified in?

20 A I have testified in Denver County, Jefferson
21 County, Larimer County, Arapahoe County, Douglas County,
22 Elbert County, and I think that covers all the ones in
23 Colorado.

24 Q Have you ever -- is that criminal court or
25 juvenile court or matrimonial court?

1 A The majority of those are criminal. I have done
2 some expert witness in the juvenile court system as well.
3 But I would say the significant majority was in the criminal
4 court system.

5 Q How many times have you testified previously and
6 qualified as an expert in those courts?

7 A I believe the number is 57.

8 Q Which party or which side have you previously
9 testified for?

10 A To date I have testified for the District Attorney
11 for all of those cases. I am currently under contract with
12 a defense attorney on a specific case. But prior to that I
13 hadn't been asked by a defense attorney to testify.

14 MR. DAWSON: Judge, I would ask that she be
15 qualified as an expert in the area of sexually abused
16 children and particularly sexually abused disclosures.

17 THE COURT: I haven't heard anything about her
18 qualifications in the disclosure process. Perhaps you can
19 elicit more testimony.

20 MR. DAWSON: Certainly, Judge.

21 Q (By Mr. Dawson) Ms. Miller, have you in
22 your clinical role, have you dealt with children who
23 have disclosed sexual abuse and not just prior to
24 when they come into your therapy but during the
25 course of your treatment with them?

1 A Yes, I have.

2 Q And you indicated that you have seen about 300
3 kids. Of those 300, did each of them have some level of
4 disclosure during your therapy?

5 A Certainly some level of disclosure. A number of
6 them would have had some level of disclosure prior to coming
7 because of the nature of the organizations for which I
8 worked. So they were referred because they had disclosed to
9 someone that they had been sexually abused and then referred
10 on for treatment.

11 But certainly during the course of treatment with the
12 children with whom I work, there is a subsequent disclosure
13 process, if you will, around talking again about what has
14 happened to them, possibly talking more about what has
15 happened to them, if that's something that they needed to.
16 I have also seen children who have given additional
17 disclosures that have not been heard before in treatment
18 having been in that treatment process for awhile or with
19 children who have disclosed -- made initial disclosures in
20 treatment.

21 And my process has always involved making sure that I
22 stay abreast of any of the literature that's related to that
23 because of the kind of work that I do around treatment and
24 disclosure.

25 Q In addition in your role when you were supervising

1 other people, did part of that involve them relating what
2 the status of their cases were and the disclosures in those
3 cases?

4 A Yes.

5 MR. DAWSON: Judge, again I would ask that she be
6 qualified.

7 THE COURT: Voir dire? Objection?

8 MR. STUART: Before I voir dire, Judge, my concern
9 is the prosecution has previously endorsed the witness for
10 several specific areas. They have gone into one which is
11 disclosing. So when I voir dire, I want to make sure that's
12 the only thing they are offering the witness for.

13 THE COURT: For what purpose are you offering this
14 witnessed as an expert? You said disclosures; right and
15 what else?

16 MR. DAWSON: Judge, developmental age of children.

17 THE COURT: I haven't heard anything about that
18 either.

19 MR. DAWSON: That would be part of her working
20 with children exclusively.

21 THE COURT: Earlier you said disclosure of
22 children and you said one other area and now I deleted it
23 when you added more information. What did you say earlier?

24 MR. DAWSON: Judge, I believe I said disclosures
25 and children who have been sexually abused.

1 THE COURT: All right. Voir dire on those topics?

2 MR. STUART: Can we approach, Judge?

3 THE COURT: Yes.

4 (Bench conference was had and the following
5 reported:)

6 THE COURT: First of all, she has never testified
7 in my courtroom. She is not the person I thought you were
8 going to use as an expert. And so any statements that I
9 made about Suvi Miller don't apply to this woman. I have
10 never met her before.

11 MR. STUART: Judge, I have the prosecution
12 endorsement for expert witness and it is much more specific.
13 What I heard is now they want to qualify her generally as an
14 expert in child sex abuse. And that is a much, much broader
15 area than they have offered than we have litigated and that
16 you have ruled previously on.

17 MR. DAWSON: Judge, I am looking at defense
18 counsel's notice that I provided and I see some things
19 highlighted at least the first two things deal with
20 disclosures. The last one highlighted is -- the last one
21 that is highlighted is rape trauma syndrome and that would
22 be subsumed with -- that is the only part I am going to get
23 into with dealing with the general topic as counsel has
24 couched it.

25 But children who have been sexually abused is

1 essentially her working with kids that have been sexually
2 abused and you know what is rape trauma and does she deal
3 with it or actually -- excuse me, not rape trauma, PTSD.

4 THE COURT: So this is --

5 MR. DAWSON: That's correct. She is not going to
6 specifically talk about rape trauma. It will be more about
7 PTSD and the effective trauma.

8 THE COURT: Did you hear Mr. Dawson? It is not
9 going to be about rape trauma so much as it is evidently
10 PTSD and trauma related to being a victim. Is that it?

11 MR. STUART: Okay, Judge. If then we can have the
12 prosecutor on the record in front of the jury then specify
13 more specifically because I think that just qualifying a
14 clinician as an expert in sex abuse on children generally is
15 just far too broad of a topic. She is not qualified to
16 generally opine on sex abuse victims.

17 THE COURT: Mr. Dawson, I am generally very
18 specific in the areas I will allow someone to testify as an
19 expert. And for instance, I would never qualify someone as
20 an expert in child abuse because that's so broad. We need
21 specific areas of child sexual assault. And I have not
22 heard her indicate any classes that she has taken or papers
23 that she has written. It sounds like she is a clinician so
24 she doesn't write and she has never presented and what she
25 can testify to for the most part is I mean this is what she

1 does is a 701 witness.

2 If you want her as an expert, I don't mean to be
3 difficult but I really need to know how she is more
4 qualified than the man who was here yesterday.

5 MR. DAWSON: Okay.

6 (Bench conference was concluded.)

7 Q (By Mr. Dawson) Ms. Miller, what are the
8 ages of children that you work with?

9 A I work with ages of children -- I have worked with
10 children the ages of 2 all the way up to 18.

11 Q And as part of your working with children between
12 those age ranges, do you have to do a developmental
13 assessment of their ability?

14 A Yes.

15 Q And what percentage of your cases do you have to
16 do some form of a developmental assessment?

17 A In all of them. What I need to do when working
18 with children in particular is I look at development and I
19 look at where they are and where we expect them to be
20 because those are issues for consideration as to how I
21 approach working with the child and whether or not this
22 child may have any kind of developmental delays that I
23 should be aware of or has any specific needs that I need to
24 attend to.

25 So I collect information from families if that's

1 available around development as well as assess the child
2 within the clinical setting in terms of development and
3 where I see them on that developmental scale.

4 Q Are you familiar with the term delayed disclosure?

5 A Yes.

6 Q And approximately what percentage of the cases
7 both the 300 you supervise as well as the ones that you
8 dealt with -- excuse me, let me rephrase that. The three
9 you know that you directly dealt with as well as the case
10 load that you reviewed as part of your interactions, what
11 percentage of those dealt with delayed disclosures?

12 MR. STUART: Objection, relevance.

13 THE COURT: Overruled.

14 THE WITNESS: I don't have a specific number for
15 you but I can tell you that it is -- I know that it is well
16 in excess of 95 percent of the cases that I saw. There is a
17 small percentage of children that I have worked with and I
18 can recall just a couple of cases off the top of my head
19 where I might have had more of what we call an immediate
20 disclosure but that the very significant majority of
21 children that I worked with delayed telling anyone about
22 being sexually abused.

23 Q (By Mr. Dawson) And as part of your
24 supervision or direct therapy with children, did you
25 discuss with them some of the reasons why they did

1 not disclose immediately?

2 A Yes.

3 Q Are you familiar with the term partial disclosure?

4 A Yes.

5 Q Can you give again an idea of the approximate
6 number of children that you have seen or supervised the case
7 load of that dealt with partial disclosure?

8 MR. STUART: Judge, I am going to object. This is
9 702 testimony. I thought what we were doing here is laying
10 foundation for offering the witness.

11 THE COURT: We are but to some extent I am asking
12 for additional information to qualify this witness as an
13 expert so I need some more information before I can even
14 allow you to voir dire to see what questions you have
15 concerning her experience. And it appears, Ms. Miller, you
16 have not written on any of these topics; is that right?

17 THE WITNESS: No, I am not a researcher, no.

18 THE COURT: And you have not presented on any of
19 these topics; is that right?

20 THE WITNESS: No, I have presented on these
21 topics, yes.

22 THE COURT: I hadn't heard that.

23 Q (By Mr. Dawson) Ms. Miller, what is the
24 percentage of cases that you had where children have
25 had partial disclosures?

1 THE COURT: What do you mean by had partial
2 disclosures? Are you talking about before they saw her?
3 After they saw her?

4 Q (By Mr. Dawson) At any point in the
5 disclosure process?

6 A I would say again I don't have a specific number
7 but if what I understand what we are talking about is that
8 children don't disclose all of the information all at once.
9 In other words, if they have been sexually abused, they
10 don't give every detail of every incident all at once when
11 they disclose initially.

12 Again if I were to talk about a percentage, I would say
13 again that unless a child has had a single incident of
14 sexual abuse and then we don't often get all that
15 information all at once, a very significant majority takes
16 time to give all of those details, all of those incidents
17 and that can be to different people at different times and
18 even in the therapy process. So again I would say probably
19 in excess of 95 percent.

20 Q And are those disclosures things you either deal
21 with directly or deal with the child during the course of
22 the therapy?

23 A I would say I am not a forensic interviewer so I
24 don't do investigative interviews with children. But
25 certainly I talk to them about, you know, what they stated

1 or if they have information to share. We talk about that in
2 session but I don't do an investigative interview on it.

3 Q And do you talk about the reasons why children
4 don't disclose all at once with them?

5 A Yes.

6 Q Where have you presented before?

7 A I have presented.

8 Q And on what topic?

9 A A number of different venues but I presented
10 specifically on children's disclosure of sexual abuse at the
11 State of Colorado organization of victim's assistance
12 conference. And I am doing that actually again this fall
13 and I did that two years ago.

14 I had presented on issues related to children -- to
15 treatment of children who have been sexually abused. Both
16 at the same conference in different years as well as for
17 local not for profit agencies that work with these children.

18 I presented on identifying concerns or red flags around
19 children that might identify that they have been physically
20 or sexually abused. To also again local organizations for
21 workers who might see those children.

22 I have presented on different kind of techniques and
23 art therapy and play therapy with those children. And I
24 have also presented -- I presented one time to the police
25 academy a number of years ago again related to children and

1 issues related to physical or sexual abuse in terms of
2 working with them or identifying those issues.

3 I also am an adjunct faculty member of the graduate
4 school of social work at the University of Denver and I
5 teach coursework there both during the academic year and
6 also post-graduate work on interventions working with
7 children who have had traumatic experiences. So that's part
8 of a course that I teach there as well as I have taught a
9 specific post-graduate training on interventions with
10 children and families who have been victims of trauma. I
11 think that's most of it.

12 Q Speaking of children with trauma, have you dealt
13 with not just within the children that you have talked about
14 the number who were there for sexual abuse but the broader
15 ones there for who were there because of domestic violence
16 and who observed some form of violence, have you dealt with
17 children and observed children who have had a reaction to
18 trauma?

19 A Yes.

20 Q And what percentage, again ball park number, that
21 you have of the children that you see have had some form of
22 trauma to them when they come to therapy?

23 A Historically or currently?

24 Q Either.

25 A I would say historically a hundred percent because

1 my career has been focused on children who were exposed to
2 trauma. In all of the venues that's not true with the
3 exception I worked for a year and a half in a hospital
4 setting of which there was about 50 percent of those women
5 were victims of trauma in childhood.

6 So there was 50 percent of that population that may not
7 have had that issue. But the significant majority of my
8 18-year career plus in my internships and graduate school
9 were specifically working with children who had been victims
10 of trauma, sexual abuse, domestic violence, witnesses to
11 other kind of trauma.

12 My current practice, as I mentioned, is probably right
13 now about 50 to 60 percent children who have experienced
14 some sort of trauma and then the other percentage of
15 children who have just anxiety issues, behavioral issues are
16 dealing with of course which are traumatic but I am not
17 categorizing it there for this conversation.

18 Q Of that group of children that you have described
19 that have had trauma, have you also observed affects of
20 trauma on various forms of their demeanor, their memory, the
21 way that they relate to other people?

22 A Yes.

23 MR. DAWSON: Judge, again I would ask that she be
24 qualified in the four areas that we discussed at the bench.

25 THE COURT: I will allow you to voir dire but I

1 have -- what I have heard so far is that this witness is
2 qualified to testify as an expert in the areas of trauma,
3 both physical and/or sexual abuse and identifying children
4 who suffer trauma as well as delayed disclosures. Voir
5 dire?

6 MR. STUART: Yes, please.

7 VOIR DIRE EXAMINATION

8 BY MR. STUART:

9 Q Good afternoon, Ms. Miller.

10 A Good afternoon.

11 Q You don't actually hold a degree in any of these
12 areas that you have been offered as an expert; right?

13 A There is on my awareness a degree in those areas
14 so no, I don't.

15 Q And you wouldn't -- you would agree with me that
16 simply holding a Masters degree in social work doesn't
17 necessarily qualify one as an expert in these areas either?

18 A That's correct.

19 Q And you don't hold any particular certifications
20 to be an expert in any areas of child sexual abuse or
21 trauma?

22 A No. Again I don't believe that there are any
23 particular certifications at least that I am aware of.

24 Q And your primary job at this point is as a
25 therapist?

1 A Yes.

2 Q And that's also known as a clinician?

3 A Yes.

4 Q And you are not a researcher?

5 A Correct.

6 Q But you are aware that there is a separate field
7 of researchers who actually do scientific evidence-based
8 research in areas of identifying indicators of child sex
9 abuse?

10 A Yes.

11 Q And in your role as an adjunct professor, did you
12 teach your students some of this material from researchers
13 in that field?

14 A Yes.

15 Q And you are familiar and up to date with the
16 literature of the researchers in that field?

17 A I try to be, yes.

18 Q And this literature -- does some of the literature
19 involve actual controlled scientific studies?

20 A Yes.

21 Q Could you explain to the jury what a controlled
22 scientific study is?

23 A The way that I would describe that would be that
24 when we are talking about research, particularly around a
25 study of humans that we are looking at instead of being

1 anecdotal as an example, that I am talking about my
2 experience that I have had with clients or I am giving
3 information. Generally what we do in a controlled study is
4 that we identify a certain group that we are going to study
5 and we look at certain factors, say age or gender or
6 background. And we try to narrow that and make sure that we
7 are looking at people who have these shared characteristics
8 so that those are common.

9 And then whatever it is we are trying to look at say
10 with the example around delayed disclosure, we try to then
11 control for looking at what would have been into the factors
12 involved in that. So how do we -- how are we going to look
13 at this information. How are we going to ask the questions
14 of these particular individuals. And then we take a look at
15 the data and try to make some statements or ascertain or
16 make some assumptions about it once we see. So that would
17 be my definition of that.

18 Q And one of the pre-eminent researchers in the
19 field of identifying indicators as child sex abuse and
20 disclosures and suggestibility would be Dr. Stephen Ceci?

21 A And suggestibility, yes. I don't know that -- I
22 mean, he has done some research around child sexual abuse
23 indicators but there are certainly a number of people who do
24 a lot more work around that area but suggestibility, yes.

25 Q And previous -- well, earlier I guess in this case

1 you provided the prosecution a source list?

2 A Yes.

3 Q And the source list is a list of studies that you
4 rely on?

5 A Yes.

6 Q And included in that source list is one by
7 Dr. Ceci?

8 A Yes.

9 Q So you have even attended some of his lectures?

10 A I attended a workshop that he provided on
11 suggestibility, yes.

12 Q And you are familiar with his work, Jeopardy in
13 the Courtroom?

14 A Yes.

15 Q Would you agree that that's reliable and
16 authoritative in the field of child suggestibility?

17 A I think there is a lot of content in there that we
18 rely upon, yes.

19 Q Do you rely upon it?

20 A I think that a lot of the research that's been
21 done around suggestibility in children is quite valid and I
22 also know of studies that look a little differently at that
23 but absolutely, yes.

24 Q And are you also familiar with his work Expert
25 Witnesses in Child Abuse Cases?

1 A Yes.

2 Q And would you also consider that a well-respected
3 authority in the field?

4 A I would say that's a well-respected text, yes.

5 Q Now Dr. Ceci has directly addressed the difference
6 between the area of expertise in which you are being offered
7 as a clinician as opposed to researcher scientists. Are you
8 familiar with that?

9 A Yes.

10 Q And what Dr. Ceci has stated is that I will quote
11 from his work, expert witness in child abuse cases generally
12 speaking on --

13 MR. STUART: Judge, if I have a copy of what I am
14 reading from from the court if that might assist her.

15 Q (By Mr. Stuart) General speaking
16 clinicians are most likely to treat sexually abused
17 children and most likely to serve as expert
18 witnesses. You are a clinician?

19 A Yes.

20 Q These clinicians are generally more confident
21 about the reliability of behavioral indicators of abuse. On
22 the other side, research scientists are more likely to test
23 the reliability of syndrome testimony in controlled
24 scientific studies and they are generally more critical of
25 testimony regarding behavioral indicators of sexual abuse.

1 That's Dr. Ceci's opinion?

2 A Yes.

3 Q And he went onto state, in general it is fair to
4 say that the research community has grown wary regarding the
5 existence of distinct behavioral characteristics. And in
6 two recent studies, prominent researchers evaluated the
7 large number of studies that have investigated the existence
8 of behavioral characteristics. Both groups are critical of
9 the presence of clear indicators of sexual abuse. Kendall
10 Tackett reviewed 45 studies. Their finding is that although
11 sexually abused children demonstrate more symptoms than
12 non-sexually abused children, these symptoms covered a wide
13 range and fell into no clearly discernible pattern. Do you
14 agree with that?

15 A Yes, that's actually what I would testify to.

16 Q So that there is no clearly distinguishable
17 pattern when it comes to things such as delayed disclosures,
18 purposeful or accidental disclosures as it relates to child
19 sex abuse?

20 A No, I would disagree with that. I think and I may
21 be disagreeing then with what Ceci stated there but
22 misunderstanding around indicators oftentimes behavioral
23 indicators we are talking about, at least when I testify
24 about that, I am talking about do we see a child that
25 demonstrates one behavior for us and we can say for sure

1 that child has been sexually abused and that is not the
2 case. There is no one specific behavioral indicator that
3 tells us that a child has been sexually abused.

4 So the way that I talk about behavioral indicators and
5 make that useful is to look at red flags and try to look at
6 that collectively because we certainly do see more behaviors
7 than not as you stated in what you had just read. The
8 research around delayed disclosure however specific to
9 delayed disclosure demonstrates very strongly that in those
10 controlled research studies, these children more often than
11 not delay in their disclosures about being sexually abused.

12 Q In your sources that you have provided me, can you
13 point to the study that supports that for me?

14 A There are a number of them.

15 Q Can you tell me any off the top of your head?

16 A Herskowitz (phonetic) is one. I would have to
17 probably look at authors. I am not very good with that.

18 Q Is that a hard question to ask on the stand?

19 A I am not very good with the names. I could tell
20 you if I look at them. I know which articles they are,
21 sorry.

22 Q When I just mentioned the term before
23 evidence-based, what does the term evidence-based mean in
24 your field?

25 A In my field it means that you practice as far as

1 maybe a therapy approach, means there needs to be some
2 evidence that this is worked. In other words, we don't go
3 and just try something out and think this sounds like a good
4 idea and so I will try it with my clients. We try to use
5 practices that have been researched to show that there is
6 evidence that they are effective.

7 Q And so evidence-based practices fundamentally rely
8 upon researchers as opposed to clinicians; is that fair to
9 say?

10 A I would say that that's probably a combination of
11 the two but certainly research is critical to that, yes.

12 Q But what your testimony or what you have told us
13 so far is that most of your experience and what you would
14 testify to today is based on your experience as a clinician
15 actually seeing patients as opposed to doing research?

16 A That's correct. The testimony that I give is
17 based on my experience but also because I needed to do
18 research to be sure that I am practicing in a way that is
19 most effective with my clients. And understanding that
20 process that I rely on that research that has been done and
21 has been tested to understand that process as well. So my
22 testimony does rely on that research as well.

23 MR. STUART: At this time, Judge, I would object
24 to the qualifications of the witness under 702 pursuant to
25 703. The expert witness must be based on facts or data in a

1 particular case upon which an expert bases an opinion. Must
2 be reasonably relied upon by experts in the particular field
3 forming the opinion on the subject. And here the area of
4 proposed expertise I believe is in direct conflict with
5 learning treatises in the field stating that there are no
6 patterns or there are no indicators of child sex abuse that
7 are reasonably relied upon in the field.

8 And I think this witness testimony should be
9 offered under 701 based on her experience but not as expert
10 witness testimony.

11 THE COURT: Response?

12 MR. DAWSON: Judge, I think she has stated both
13 through direct and cross-examination that it is reliable and
14 used in the field.

15 THE COURT: I appreciate your objection. However,
16 I am going to qualify this witness as an expert in the area
17 of trauma, physical and sexual trauma to children and
18 identifying children who suffer from those traumas as well
19 as delayed disclosures. Those are the areas in which I will
20 allow her to testify as an expert.

21 MR. DAWSON: Judge, with regard to partial
22 disclosure, would that be under 701 then?

23 THE COURT: I'm sorry. You spoke so fast. What
24 did you say?

25 MR. DAWSON: I'm sorry, Judge. With respect to a

1 partial disclosure, would that then be under 701?

2 THE COURT: I didn't say partial disclosure. You
3 said partial disclosure; is that right?

4 MR. DAWSON: There were two aspects. There was
5 delayed disclosure and partial disclosure.

6 THE COURT: You want her to testify -- well, I
7 have seen nothing to indicate she is an expert to testify in
8 the area of partial disclosure. She is qualified as a 701
9 witness in all of the areas that I indicated and also in
10 partial disclosure.

11 MR. DAWSON: Thank you.

12 DIRECT EXAMINATION (cont'd)

13 BY MR. DAWSON:

14 Q Ms. Miller, prior to testifying today did you
15 review any police reports?

16 A No, I did not.

17 Q Did you interview any witnesses?

18 A No, I have not.

19 Q Did you speak to either David Gonser, Christopher
20 Gonser or Daniel Gonser?

21 A No, I have not.

22 Q The testimony that you are giving today is based
23 on what?

24 A The testimony that I am giving today is general
25 testimony around these areas, around what we have previously

1 discussed, how victims of sexual abuse respond to that
2 trauma and what we see as far as disclosure of that sexual
3 abuse. And I have some very basic minimal information
4 regarding the case but no specific facts.

5 Q Can you give the jury an idea you talked about
6 when a child comes to you, you do a developmental
7 assessment. Can you again kind of give the jury an idea
8 about what you are talking about when you do that?

9 A Well, it would depend on the case with the child
10 but certainly in general, I collect data from the family, as
11 I said, if I can about the child, children meeting
12 developmental milestones. So there are certain things we
13 know that children do at certain ages and so we try to look
14 at those from birth all the way through to the child's
15 current age. And they might be basic such as sitting up,
16 walking, crawling, feeding themselves, potty training,
17 things like that for obviously smaller children.

18 And then in talking about older children, we ask
19 questions about how are they doing in social interactions,
20 how do they do if they are in a school setting, where are
21 they in terms of their academic levels, how are their fine
22 motor, gross motor skills, things like that.

23 And then we look at the child in the play therapy
24 program. If it is a younger child trying to assess whether
25 or not there are any developmental issues in terms of this

1 child seems to be on level with where they should be. So
2 they are 10 years old and they are doing their drawing as 10
3 year olds would. They are able to interact with the room
4 appropriately as a 10 year old could in terms of their --
5 that's very different than a two year old would interact in
6 the room.

7 And we ask questions just around some of those similar
8 things, social interactions, frustration, tolerance, some of
9 those kinds of issues and to see if they are on level there.
10 Because one of the things we do know is that trauma can
11 impact children in terms of where they are developmentally
12 so a child might seem developmentally younger than they
13 would be expected to be. But that isn't the only reason
14 that I would do that as I mentioned also just to assess if
15 there are any learning deficiencies, if there are any
16 significant developmental delays so that I can interact with
17 that child in a way that's developmentally appropriate.

18 Q You use the term younger child and older child.
19 Can you kind of give the jury what age ranges you are
20 attributing those numbers to?

21 A Yeah, I guess I was pretty general there. When I
22 am thinking of a younger child, I would make a distinction
23 around a very young child say 2 or 3 years old versus a 4 or
24 5 year old when I am looking at a child who is in school age
25 which is usually around 6 years old. We see some bumps up

1 there developmentally.

2 But again an older child might be a 10 or 11 year old
3 and the adolescent is older than that. But very young
4 children we look for very different things than for a 2 or 3
5 year old versus a 9 or 10 year old.

6 Q And again where does adolescent start? What age
7 would that start at?

8 A In general adolescence starts around age 12 but
9 for some children together through puberty younger it can
10 start at 11. We don't see it much younger than that but
11 again assessing where children are in terms of puberty or
12 development would be important especially around the ages of
13 say 10 to 13 to see where they are with those physical
14 changes as well as social changes.

15 Q Would it matter then to you whether or not a child
16 disclosed at 11 or 12 versus 6 or 7?

17 A Yes.

18 Q How might that affect the disclosure or your
19 therapy? I should say how would that affect your therapy?

20 A Well, again how we interact with children would be
21 based on where they are in their development. So a 6 or 7
22 year old in terms of their ability to have a conversation
23 would be very different than you would expect with an
24 adolescent. Their interests are very different. Their
25 cognitive ability, their ability to understand language or

1 different kind of things would be very different.

2 And certainly with sexual abuse, a child who is either
3 in puberty or has begun to go through puberty has a very
4 different understanding of sex and sexuality than might a
5 child who is 6 and 7 years old. So my way of approaching a
6 child who would be in puberty around sexual abuse would take
7 into account where they were in puberty and their
8 understanding of sex and sexuality versus how I might talk
9 to a 6 or 7 year old about those areas.

10 Q Earlier we talked a little bit about what a delay
11 in reporting would be. Can you give your definition first
12 of all to the jury of what a delayed report would be?

13 A Well, when we talk about a delayed report or
14 delayed disclosure, the way that I use that term is simply
15 means if a child doesn't immediately go and tell someone
16 right after they have been sexually abused. I think that
17 when I use that term, I am not referring necessarily to a
18 child who discloses within 24 hours of it happening because
19 oftentimes there can be circumstances around that where the
20 child feels like they need to get an adult alone or
21 something like that that might delay that some.

22 But what we see is children who are delaying weeks,
23 months, sometimes years. And sometimes never because we
24 certainly see children who get into adulthood who have never
25 told anyone about being sexually abused. That delayed piece

1 really means that there has been -- the child has not
2 immediately told anyone and let me clarify also not simply
3 telling someone after the last time that it happened to
4 them.

5 So what I mean is that say a child has been sexually
6 abused over a long period of time but is sexually abused and
7 then tells someone after that last act, I am talking about
8 no immediate disclosure from the first time that it happens
9 to them. So a delayed disclosure to me would be delay in
10 sharing that information with someone else.

11 Q And based on your experience, is that a common or
12 uncommon factor to have revealed by a child?

13 A The delay in disclosure?

14 Q Yes.

15 A Based on my experience and again what I have seen
16 strongly supported in research is that children more often
17 delay in disclosing what has happened to them. And that in
18 many instances that delay can be quite significant, months,
19 years.

20 Q Based on your experience, what are some of the
21 reasons why children may delay a report?

22 A Well, there can be a number of things that might
23 impact a child in terms of not disclosing right away. We
24 can look at the age of the child as we were talking about
25 how that might impact. We can look at the relationship that

1 they have to the perpetrator which plays a significant role
2 in their sense of their ability to tell anybody about what
3 is happening. And also the duration of the abuse.

4 What we see is that children who have had a single
5 incident of sexual abuse are more likely to tell sooner than
6 children who have had sexual abuse happen multiple times.
7 And in part what we see is that children talk about being
8 afraid to tell and what their fear that I have seen and also
9 in terms of what I have read in different texts and what
10 children have talked about in some of the studies that I
11 have seen is that they fear that harm is going to come to
12 them or to the perpetrator either because they worry that
13 they are going to get in trouble or that that person is
14 going to get trouble, something bad will happen to them.

15 And sometimes that's because the perpetrator might have
16 said something bad will happen to you or me or someone else
17 if you tell. But in many instances kids will say, I don't
18 know why but I just thought I would get in a lot of trouble
19 so I didn't want that to happen.

20 That they fear losing the affection of the perpetrator.
21 Children are most often sexually abused by someone known to
22 them. And that often means that the relationship has very
23 many positive elements to it. That it isn't just a
24 relationship that involves sexual contact. So the
25 perpetrator might be someone whom this child relies on for

1 care, day to day support. This person might be someone who
2 gives the child a lot of affection and love, takes care of
3 them when they need -- physical needs or emotional needs.
4 Could be a person that has been a very important person to
5 the family. So someone on whom others in the family rely on
6 and that person's status in the family could be very
7 important.

8 And children will often say I just wanted the abuse to
9 stop. I didn't want him or her to be mad at me or stop
10 liking me. And I have actually worked with children who
11 will talk about wanting to continue to see a perpetrator
12 even after they have disclosed, even after they had been
13 through a trial process because they say, well, he was a
14 really good friend or she was my aunt or something like
15 that. So this issue related to loss of affection which can
16 be very significant because of the complexities of that
17 relationship between the child and the perpetrator.

18 We also see negative consequences. Kids fear that
19 others are going to be angry with them. There is going to
20 be disruption in the home. If this person is a family
21 member that they are going to -- people are going to be --
22 maybe they will have to leave the house or others will have
23 to leave the house and children are very sensitive to that.
24 They don't want to create disruption in households,
25 certainly not significant. So they will often say, well, I

1 didn't want anybody else to be angry with me so I just
2 didn't tell.

3 We also see consistently with children that when they
4 have been sexually abused, there is a tremendous amount of
5 shame and guilt that is associated with being sexually
6 abused. And even with very young kids that I worked with
7 say 3 and 4 years old who don't understand sex and
8 sexuality, they will say it was icky and yucky and I didn't
9 know why we did it and I didn't like it.

10 MR. STUART: I am going to object. It is
11 narrative.

12 THE COURT: It is narrative. I am going to ask
13 that you ask more specific questions. And ma'am, just
14 respond to what you are asked please.

15 Q (By Mr. Dawson) You were starting to talk
16 about how some children feel conflicted about the
17 abuser and the abuse itself?

18 A Yes.

19 Q What is some of the conflict that a child feels
20 during the abuse itself?

21 A That --

22 MR. STUART: Judge, I object. This witness hasn't
23 been qualified to testify in that area.

24 THE COURT: She has not.

25 Q (By Mr. Dawson) Ms. Miller, is a reason

1 for a delay that you have dealt with the fact that a
2 child feels conflicted about the abuse itself?

3 A Yes.

4 Q And what is the conflict that they feel?

5 A That at least one of those pieces can be that that
6 is a person in terms of the abuse that they feel a sense of
7 responsibility connected to the abuse. If I must have done
8 something to make this happen, I should have told someone
9 right away. And because I didn't, it keeps happening and
10 now I am part of it.

11 I don't go away. I don't run away and I don't tell and
12 therefore, it must be partially my fault. And in fact it is
13 something that we work on significantly in therapy with
14 children because they feel this sense of responsibility of
15 shame and of guilt.

16 Q Does the -- you mentioned the relationship may
17 affect the delay in disclosure. Would the status of the
18 adult -- I'm sorry, would the status of the perpetrator
19 matter or does that seem to matter to the child? In other
20 words, whether it is a younger person versus an adult or an
21 adult figure?

22 A It certainly can. Particularly because children
23 are very aware of the authority roles of adults. So they
24 understand that adults are in charge and again depending on
25 the age of the child, their sense of ability to change that

1 or to challenge that can be impacted by how old they are or
2 by how much responsibility or authority this person has in
3 the household.

4 So if this is an adult and it is a person in a role of
5 responsibility or caretaking, then children are very aware
6 that that is a person on whom I rely for my day to day care
7 or this is a person that is my parent and that my other
8 parent cared a great deal about. And that we are a family.
9 And so I am not going to disrupt this family and I am not
10 going to challenge an adult because I am not in a position
11 to do that.

12 Q Do children in your experience based on the
13 children that you have dealt with do they disclose in a
14 consistent manner? Is there, as counsel was talking about,
15 is there one way that they disclose?

16 A I would say no.

17 Q And have the children that you have dealt with in
18 therapy dealt with the trauma differently?

19 A Yes.

20 Q Talking about the disclosures themselves again
21 just for the record, what percentage of children do you see
22 where they have disclosed to someone prior to you?

23 A Significant majority. In my job prior to my
24 private practice where I was for 9 and a half years, the
25 majority of those children were referred from Social

1 Services after an initial disclosure had been made and
2 Social Services had done an initial investigation. And that
3 the charges were founded. And so the child was then
4 referred on for therapy.

5 In other words, it looked like a credible disclosure.
6 So that those disclosures were made at least in part prior
7 to coming to that particular place of employment. I
8 certainly worked with children who would give additional
9 information or additional disclosures in the therapy
10 process. But that most of the children had disclosed prior
11 to coming to that agency and also in my current practice
12 that is the case.

13 Q When you say a child disclosed, do they disclose
14 everything all at once typically?

15 A That initial disclosure piece before they came to
16 my agency would in most cases look like a piece of
17 information given to a trusted adult say and that that was
18 then reported to Social Services.

19 And then there was an investigation and a forensic
20 interview where information was obtained in order to pursue
21 further charges or further investigation. So that the child
22 might give more information in the forensic interview or at
23 least give enough information even if they have given a bit
24 more for a parent say in that forensic interview that would
25 cause the interviewer to feel that these charges shouldn't

1 be founded or move forward.

2 So we would see that children will give information to
3 one person and sometimes other information to others. And
4 in my practice sometimes I will see a child who will after a
5 number of months even in treatment say there is one thing I
6 haven't told anybody that has happened to me. I told about
7 the other stuff but I didn't tell about this or a child who
8 might have been minimizing some of what has happened and
9 feels safe.

10 You have to talk about what has happened because in
11 general my sense of that is it is very, very difficult for
12 children to discuss this information certainly to share it
13 initially. And then they don't want to talk about it. They
14 don't want to talk about it to adults. They don't want to
15 talk about it to a therapist. They want it to go away from
16 their mind and they want to, as they say, forget about it.

17 Q How might the fact that the abuse was over years
18 and multiple events affect the partial aspect of the
19 disclosure that you are not getting all the information at
20 once?

21 A I think that when we look at anything happening to
22 us over multiple events, it is very difficult to be able to
23 recall specifics of one incident over another. Especially
24 if this has happened multiple times. It has happened in
25 different circumstances. It has happened in different rooms

1 or people. Everything was not consistent.

2 So even if you have a routine that you wake up to every
3 single day if you vary it some, it is difficult to say,
4 well, this happened this time or this happened that time.
5 In fact that children will often reveal pieces that they can
6 recall. And adults as well, if something has happened
7 multiple times but it is easier to recall if there has been
8 a single incident more specific.

9 So multiple incidents over multiple times and depending
10 about how long ago it started and what the time frame is now
11 can also impact my ability to recall exactly what was
12 happening during that time period or how it happened. If I
13 can say it happened in this order or if it happened out of
14 sequence.

15 Q You may have answered this but do children
16 disclose in kind of a linear fashion if they say A, B, D
17 happened, will they tell A, B, D to the next person and then
18 add onto that or can what they say kind of expand and
19 contrast depending how they feel toward that person?

20 A In my experience what I have seen is that that
21 certainly can vary. So I might give some information to
22 mom. I might tell mom this initial piece and then I might,
23 based on mom's response, based on what happened when I told,
24 based on whether or not the person to whom I gave that
25 information became very angry or very distressed or accused

1 me of lying. All of those things could impact my sense of
2 how much more I want to talk. But also because children
3 will say I don't want to talk about this, sometimes they
4 will give just enough information so that they feel like
5 they have told someone.

6 In a forensic interview setting, the questions are
7 framed to be more neutral or more open and this isn't a
8 person that the child has an emotional relationship with so
9 that can have an impact. It can sometimes allow the child
10 to give more information without concern for this person's
11 emotional response. Sometimes we see kids who say I don't
12 want to talk to that person and I don't know them. They are
13 a stranger to me. So they will give less information.

14 But we have also seen children will leave out
15 significant things that happened as far as saying, well, it
16 was only fondling and we hear later in an interview that
17 there was actual oral contact. That children will say I
18 just didn't want to talk about that icky stuff with my dad
19 but that other lady she told me to tell her everything so I
20 told her all of it.

21 And the same in therapy where a child might say, okay,
22 I feel like I can tolerate talking about this now. When
23 before all I wanted to do was stop thinking about it. And I
24 need to tell you something else that happened. In therapy
25 what we try to do is always present very open and

1 emotionally as neutral as we can but create an environment
2 where a child feels safe to talk about whatever they want to
3 talk about so we might see pieces coming in.

4 THE COURT: Again, we are getting into the
5 narrative area. I am going to ask that you ask specific
6 questions and that you respond a little more narrowly
7 please.

8 THE WITNESS: Sorry.

9 Q (By Mr. Dawson) Ms. Miller, you were just
10 starting to talk about when a child -- making an
11 area safe for a child and when a child is ready to
12 disclose, what affect might it have to a child who
13 is not safe and not ready to disclose who is being
14 either in therapy or being asked to disclose?

15 A If a child feels unsafe or is unclear of what is
16 going to happen when they are giving that information,
17 that's going to impact them. So if they are afraid of what
18 their response of this person is going to be, I decide I am
19 going to tell my aunt about this but I am not sure she is
20 going to believe me or I am not sure what she is going to do
21 so I will tell her a little bit.

22 And if she says, oh, my gosh, I am so sorry. You need
23 to tell me more or tell me about what happened, I might feel
24 like I can tell her more. If she says -- if what I fear
25 comes true, you are lying. That's terrible. You should

1 never say something like that about someone else. I don't
2 ever want to hear that again. My worst fear may have come
3 true and I am not going to continue to persevere to try to
4 convince her. I decide maybe this person is not going to
5 help me.

6 So I think whether or not a child feels safe, feels
7 trust, has a sense of what is going to happen can certainly
8 impact their ability to give information or how much they
9 want to give.

10 Q Can you give the jury your definition of what a
11 purposeful disclosure would be versus an accidental
12 disclosure?

13 A I would say that for me an accidental disclosure
14 is more of a term that I would use for younger children say
15 the age 2, 3 years old, maybe 4. Meaning that a child is
16 not intending to talk about what has happened. They tell it
17 in the sense of a story. Like oh, I want to tell you about
18 this weird game that Cousin Johnny and I keep playing
19 together. So that's not intended to be a disclosure. It is
20 just a conversation or they think they are telling another
21 piece of the story.

22 When I talk about purposeful disclosure, I don't mean
23 that a child necessarily sets out to disclose. Sometimes
24 that's the case. But sometimes something happens and that
25 they feel that they can now share the information or they

1 have to share the information or they can't keep it to
2 themselves any more.

3 So maybe I am in a school setting and there is a a
4 presentation on sexual abuse and I feel like I need to talk
5 about what happened to me. Maybe I have a caring adult who
6 says why do you keep acting like this. There is something
7 wrong with you. You haven't been the same for so long.
8 What is wrong with you. And I decide to tell. I would call
9 that purposeful, even though it may not be that I
10 premeditated to go in and talk about this incident. It came
11 up. I think there are others who might use those terms a
12 little bit differently. That's how I use them.

13 Q Are you familiar with the term PTSD?

14 A Yes.

15 Q What is that?

16 A PTSD is a diagnosis for -- we look at a series of
17 different characteristics that a person might present and we
18 take a look and see if they meet what we call different
19 criteria and we can give them this diagnosis.

20 So someone has to be exposed to a traumatic or
21 perceived life threatening event is one of the requirements.
22 They have to -- and it has to do some sort of integral
23 damage to them or psychological damage to them.

24 And then we look onto other criteria that have to be
25 met to give them that diagnosis. And that's part of a

1 manual that we look to in the psychiatry and psychological
2 community as well as the clinical social work community for
3 diagnosis of different mental disorders. And so PTSD is in
4 there as one of them.

5 Q Is sexual abuse a possible trigger to --

6 MR. STUART: Judge, I will object. This witness
7 is not qualified to make a psychological diagnosis.

8 MR. DAWSON: Judge, we are not asking her to make
9 a psychological diagnosis. I have not asked her that.

10 THE COURT: That's the way the question seems to
11 be starting. You want to rephrase.

12 MR. DAWSON: Judge, my question is to the witness
13 whether or not sex abuse can be a trigger or result in PTSD.

14 THE COURT: If she knows.

15 MR. DAWSON: If she knows.

16 THE WITNESS: Yes, and I actually am qualified to
17 make diagnoses.

18 MR. STUART: Judge, I move to strike the last
19 response.

20 THE COURT: Sustained. It was not in response to
21 a question so disregard the last sentence.

22 MR. DAWSON: And, Judge, for the record I am not
23 asking her to make a diagnosis.

24 THE COURT: All right.

25 Q (By Mr. Dawson) Ms. Miller, in your

1 experience does it matter whether it is a single
2 incident of sexual abuse -- let me rephrase. Can a
3 single incident of sexual abuse result in someone
4 who has PTSD?

5 A Yes.

6 Q And you indicated that you deal with children
7 almost a hundred percent over your career with children who
8 have dealt with some form of trauma in their life?

9 A Yes.

10 Q Have you observed the affect that trauma has had
11 on a child's memory?

12 A Yes.

13 Q How can trauma affect a child's memory?

14 A What we see is that trauma can impact a child's
15 ability to recall certain aspects of the event. That they
16 are able to recall sort of the primary pieces of it but we
17 might choose some of the other more peripheral aspects of it
18 if they are trying to recall what exactly has happened to
19 them.

20 Q Let me stop you there. Why is that -- if you know
21 and can explain why is it that sometimes children or people
22 can remember part of a traumatic event but not all of it?

23 A There is no absolute answer to that. But part of
24 the thinking is that when --

25 MR. STUART: Judge, I am going to object in

1 speculation.

2 THE COURT: It is sustained.

3 Q (By Mr. Dawson) What have you observed as
4 far as the effect of trauma on children if you can
5 continue that answer.

6 THE COURT: Well, she has already said there is a
7 difference between children, young children and older
8 children before they reach adolescence. So why don't you
9 give us a direction what age children you are interested in
10 hearing from her about.

11 MR. DAWSON: Sure.

12 Q (By Mr. Dawson) Let me ask you this
13 question. If a child who is between the ages of 6
14 and 10 undergoes traumatic events, does the age at
15 which they talk about that disclose that traumatic
16 event, is that dependent on the age they disclose or
17 might it depend on the age of that traumatic event
18 occurred to them or both?

19 THE COURT: I don't understand the question. I'm
20 sorry. Can he rephrase?

21 Q (By Mr. Dawson) Sure. When you are
22 talking about trauma to a child who is between --
23 well, say between the ages of 6 and 10, how might
24 that affect their ability either at that age or down
25 the road to be able to recall that event?

1 A As the trauma might be occurring to a child, say,
2 ages 6 to 10 where they are in terms of their development
3 would have an impact. So if I am 6 years old, my cognitive
4 ability, my sense of how to learn and to understand some
5 things is different than when I am 10. It is a little bit
6 more mature when I am 10 so I might have a different
7 perception at that age. And what I remember about certain
8 things when I am 6 might be a little bit different than when
9 I am 10 because of what is important to me or what I fear
10 what I understand is to be feared and not to be feared.

11 So if I am a 6 year old, there could be things that
12 could really scare me in terms of somebody taking care of me
13 that I would be worried about. As a 10 year old, I might
14 have a little better sense. So the impact of how old I am
15 when it happens, it certainly can impact my memory.

16 Q And have you observed in your 18-year career a
17 situation where children have been through a traumatic event
18 and not be able to recall something that based on the fact
19 that you are interacting with a parent or something that you
20 know has happened?

21 A Yes.

22 Q Can you describe the circumstances under which
23 that sort of -- let me try that again. Can you describe to
24 the jury how it is or why it is if you know that trauma
25 would have that effect on memory where the mind can't recall

1 that information?

2 A Trauma by definition is an overwhelming event.
3 And so at times the way that our mind responds to
4 overwhelming events is to shut certain pieces of that off so
5 that they are not easily accessible. I can get through this
6 because I develop certain ways to cope and that might be in
7 part that my mind has helped me do that. I can't remember
8 certain parts of it because I have developed a coping skill
9 to do that. So that there might be certain things that I
10 can't remember initially and maybe I could remember later
11 but that may be part of response to trauma.

12 Q Have you dealt with children who there has been a
13 delay in disclosure of the trauma so trauma happened some
14 years ago but they are talking about it to you now, do they
15 still have a reaction to that trauma when they talk about
16 it?

17 A Very often, yes.

18 Q And how does that manifest itself in your
19 experience?

20 A Again, it would depend on the child. It could go
21 from a range of a child becoming very stoic and very
22 matter-of-fact. It could be a child who becomes what we
23 might expect very emotional. Or I have had children who can
24 be almost giddy and look almost agitated, happy when they
25 are talking about these things as a response.

1 So it would depend on that child and their sense of
2 safety about talking about it now and if they have been able
3 to process it if it hasn't been sort of shoved away and they
4 have been living with it. But how much have they been able
5 to talk about it or sort it out or help them figure out how
6 it impacted them.

7 Q Can trauma also affect other functions of a child
8 besides memory?

9 A Yes.

10 Q Particularly physical functions or the ways that
11 trauma might manifest a child physically?

12 A Yes.

13 Q What are they?

14 A We might see children who have issues with bed
15 wetting or soiling well beyond potty training years even
16 into adolescence. We might see children who develop eating
17 issues, stomach issues, headaches over time. We also might
18 see depression in children and that has physical
19 responsibilities to it as well. Sleep issues also can be a
20 manifestation. And then if we do have a child who has PTSD,
21 we might see some of those symptoms that look more physical,
22 like flashbacks, like some of those anxiety responses.

23 Q And Ms. Miller, when you are dealing with a child
24 who has come to you for therapy, you are not making an
25 assessment of the truthfulness of what they are telling you?

1 A No. When I have a child come to me?

2 Q Yes.

3 A It isn't my job to do an investigation but I would
4 say that in working with children what they present to me, I
5 don't simply accept it at face value. Because it is part of
6 the process to help them understand how they are feeling.
7 In other words, if a child tells me something that's really
8 outrageous, that's not possible that's happening to them, I
9 would certainly question some of that to understand why they
10 feel the need to talk about those kind of issues.

11 But my job isn't to investigate if they come in and
12 say, I have been sexually abused. I don't do a forensic
13 interview but I try to create a safe place where the child
14 can talk about what their experiences are and how they
15 impacted them.

16 Q And again you have not met with David Gonser,
17 Christopher or Daniel Gonser before testifying?

18 A No, I have not.

19 MR. DAWSON: Thank you, Judge. I have no further
20 questions.

21 THE COURT: Mr. Stuart, should we take our
22 afternoon break now?

23 MR. STUART: If you say so.

24 THE COURT: Well, I just think this is a good
25 breaking point. It is 2:15. We can start again at 2:30.

1 Thank you. Please stand.

2 (The following proceedings were had out of the
3 presence of the jury:)

4 THE COURT: Thank you. You may step down. Does
5 anybody have a record to make?

6 MS. ALCOCK: Not from the People, Judge.

7 MR. STUART: Judge, I want to be clear that I
8 think that the procedure the prosecution has been using is
9 essentially vouching for the children. What they are doing
10 is they are having a witness testify about generalities that
11 she has seen in her practice, then they will apply and ask
12 facts more specific to our case. Specifically an age of a
13 child, the number of disclosures and then have her apply
14 that to what she has seen in her practice, which is
15 essentially the same thing as saying have you seen what
16 these kids did in the kids that you have treated. So I
17 think it is vouching and I think it is improper testimony
18 and I am asking for a mistrial based on that.

19 THE COURT: All right. Thank you. I am going to
20 deny your motion at this time. Let's talk about
21 Dr. Serotnick. Is he still coming at 4?

22 MS. ALCOCK: It sounds like he will be here
23 earlier than -- he will be here at 3.

24 THE COURT: All right. And I would like an offer
25 of proof of what is he going to testify to and I ask this

1 because I have had him testify before as an expert but it
2 has always been in a personal injury case.

3 MS. ALCOCK: Your Honor, I don't think his
4 testimony will take a significant amount of time. He did do
5 a physical examination of all the boys in this particular
6 case so he will be testifying about that. And he will also
7 testify about, and I think Mr. Stuart actually had mentioned
8 this that the fact that there are no signs of sex abuse does
9 not mean one way or the other whether sex abuse occurred.

10 THE COURT: Are we going to have a discussion
11 about that, Mr. Stuart?

12 MS. ALCOCK: Your Honor, I know that this is
13 pretty much he is going to have the same facts that he
14 testified to at the last trial minus the issues with
15 Savannah because she is not part of this trial.

16 MR. STUART: Well, Judge, if he has not been
17 endorsed as a witness as an expert witness in the field of
18 any field he has been endorsed as Dr. Serotnick, I mean, he
19 testified in the last trial and he was -- I don't believe he
20 was qualified as an expert in that trial.

21 MS. ALCOCK: Your Honor, I don't think he was and
22 again I am anticipating basically the similar questioning as
23 was the last trial.

24 THE COURT: All right, okay. We will see you back
25 at 2:30.

1 (The court took a brief recess.)

2 (The following proceedings were had in the
3 presence of the jury:)

4 THE COURT: Thank you. Please be seated.
5 Ms. Miller, will you please come back to the witness stand.
6 You are still under oath. And Mr. Stuart?

7 CROSS-EXAMINATION

8 BY MR. STUART:

9 Q In the hundreds of children that you have
10 counseled who have made allegations of sexual abuse, how
11 many of those turned out to be false allegations?

12 A In my practice I didn't have any that turned out
13 to be false allegations.

14 Q So in the hundreds you have had zero?

15 A Yes, because I would say the majority of those
16 were already screened through Social Services with founded
17 charges and I wasn't doing those initial assessments so I
18 think that has some -- that has certainly an influence on
19 those numbers.

20 Q Have you ever seen a situation where founded
21 charges through Social Services ever turned out to be false
22 allegations?

23 A I am aware of some, yes, but I didn't have any in
24 my practice.

25 Q And all of the children that you have seen as a

1 therapist -- well, let me ask you. Is there a significant
2 body of research in your field pertaining to false
3 allegations?

4 A There is some research, yes.

5 Q And specifically in the area of divorces and
6 custody disputes, there is a significant amount of research
7 pertaining to false allegations in those situations?

8 A Yes, there is some research around that, yes.

9 Q And back to Dr. Ceci's book Jeopardy in the
10 Courtroom that we talked about earlier, Dr. Ceci
11 specifically talked about a study by Thoennes and Tjaden in
12 which they studied 9,000 families involving custodial
13 disputes and that they found of those -- in those 9,000
14 cases where there were reports of sexual abuse they
15 concluded 50 percent were likely, 17 percent uncertain and
16 33 percent unlikely. Are you familiar with that study?

17 A I think I have heard about that study but I am not
18 super familiar with it, no.

19 Q But 33 percent is a pretty high number of false
20 allegations in the context of divorces, would you agree?

21 A Yes. And I think it would be important to know
22 though as well in terms of false allegations, is that
23 initial false allegations or is that something that was
24 discovered through an interview process which certainly what
25 we have as a process for Social Services is to eliminate

1 those before they move any further forward.

2 Q Well, let's talk about that. You did talk about
3 how the process of disclosure and there is partial
4 disclosures and children don't always come out with details
5 right off the bat?

6 A Yes.

7 Q So would it be unusual in your experience to find
8 a child whose initial disclosure very first time to a
9 forensic interviewer, for example, would be the first time
10 that it ever happened, it was anal sex, would that be an
11 unusual disclosure?

12 A Not necessarily because I think what I am talking
13 about is a child may not give specific details but if a
14 forensic interviewer asks a specific question, they might
15 say the first time this happened he put his pee-pee in my
16 bottom but not necessarily all of the details but that would
17 be consistent.

18 Q Well, what about if a child says that very first
19 time it was anal sex, I remember it was right after my
20 birthday and then later as they go through sort of the
21 process of being interviewed again and the therapist, it
22 turns into actually it wasn't anal sex, it started out slow
23 and it worked up to that over a number of years. Would that
24 be an unusual disclosure?

25 A I think that isn't the norm for how those things

1 go that we get the bigger information up front. But I think
2 that the way that children talk about sexual abuse varies so
3 much because of their understanding of what their purpose is
4 in sharing information is that they want to tell somebody
5 because they want to stop it because they need to tell
6 somebody and they need to make them understand what
7 happened. So a child giving them --

8 THE COURT: Ma'am, well, first of all, I think we
9 have already talked about some folks aren't able to answer a
10 question really succinctly. They sort of feel a need to
11 talk more than other people do. But your answer is not
12 really responsive to the question you were asked.

13 THE WITNESS: Okay.

14 Q (By Mr. Stuart) I will ask it again.
15 Would that kind of disclosure be unusual?

16 A I think it would be less usual, yes.

17 Q What if that kind of disclosure came from a
18 13-year-old child?

19 A I think that actually a 13 year old I wouldn't
20 call that highly unusual from a 13 year old. If as I said
21 before the purpose was for them to understand something
22 really bad that has happened here.

23 Q And then subsequent disclosures where the story
24 changes and actually it started out with just touching and
25 then a year later added this and added that and you

1 eventually got up to anal sex. So if that was a subsequent
2 disclosure by that same child, would it be unusual in the
3 initial disclosure to be that specific?

4 A I would say that if the child's intent was I need
5 you to understand that this terrible thing happened to me
6 and I don't want to talk about my role in it as it went
7 smaller, smaller, smaller, that would certainly be
8 consistent with a disclosure. It would be less usual but I
9 wouldn't see that as remarkable, no.

10 Q That wouldn't be a red flag for you?

11 A As far as an investigation would be concerned or
12 as far as a clinician would be concerned?

13 Q You are not an investigator so I am only asking
14 you as a clinician?

15 A No.

16 Q What does the research say about the percentage of
17 false allegations that were delayed disclosures?

18 A I don't know what the research around delayed
19 disclosure addresses, false allegations and in an article
20 that I am citing. In other words together that what the
21 samples that they are looking at are founded allegations of
22 sexual abuse and they are looking at those in terms of
23 disclosure so that's a different question I think for some
24 of that research.

25 Q So you don't know?

1 A I don't think I can speak to that particular
2 issues on those articles, no.

3 Q So your practice has solely been focused on you
4 are testifying to children who are telling the truth?

5 A My practice has solely been -- I don't think I
6 know what you mean.

7 Q Well, we established that you have never had a
8 child who made a false allegation in your practice; right?

9 A Correct.

10 Q And so then your practice is based on children who
11 are telling the truth?

12 A Yeah, I didn't understand your question the way
13 you phrased it, yes.

14 Q And also a fair percentage of your current
15 professional income comes from doing this testifying?

16 A A percentage of it does but it is certainly not
17 what I rely on for my livelihood.

18 Q At least 20 percent of your income?

19 A I don't know what the numbers would be right now
20 but maybe somewhere in that neighborhood, yeah.

21 Q And you have -- you said you testified in 57 cases
22 previously?

23 A I believe that's the number, yes.

24 Q And the list I got from the prosecution only had
25 54 so a couple more since then. And of those 57 cases every

1 single one has been testifying for the prosecution?

2 A Yes, the defense hasn't asked me to testify.

3 Q And every time that you come in and you testify
4 for the prosecution, you are getting paid to do that?

5 A Yes.

6 Q And you said that -- and the prosecutor repeatedly
7 asked you these questions that you have not reviewed this
8 case, didn't know the facts of this case; right?

9 A Correct.

10 Q So you don't know if what you are testifying about
11 today even applies to the allegations in this case?

12 A I give general testimony so I don't know if there
13 is any specific application. I assume there is because the
14 prosecutors asked me to testify but I don't know
15 specifically.

16 Q And of those 57 cases that you testify for the
17 prosecution, that's all been since 2004?

18 A Yes.

19 Q So that's a lot of time in court?

20 A Well, that's six years so, yeah.

21 MR. STUART: No further questions.

22 THE COURT: Redirect?

23 MR. DAWSON: Yes, Judge.

24 REDIRECT EXAMINATION

25 BY MR. DAWSON:

1 Q Ms. Miller, are you aware of any articles as
2 counsel was describing them where delayed disclosures are
3 incorporated into a false report study?

4 A I am not thinking of any off the top of my head,
5 no. There may be some that I am not able to access but I
6 don't know that those two items have been connected in a
7 study.

8 Q Okay. So if I can provide you the names of
9 studies that had those two things combined, you might
10 recognize it?

11 A I might.

12 Q And you were asked by counsel in his last question
13 about you weren't given specific information about this
14 case; correct?

15 A Correct.

16 Q Is there a reason why you are able to testify
17 without knowing that information?

18 A Because I believe that my testimony is not related
19 to the credibility of the victim's guilt or innocence. It
20 is about generally my understanding, my knowledge based
21 around this area so I don't need the specifics of the case
22 because I am not testifying as to whether or not the victim
23 in this case is telling the truth. I am not making that --
24 I am not making that assessment or that judgment. It is
25 just based on what I know about how children behave when

1 they have experienced this kind of trauma.

2 Q Have you ever refused to testify for a defense
3 attorney or defense case?

4 A No.

5 Q And counsel said 57, that's a lot of time in
6 court. Are you any good at math?

7 A Not very.

8 Q None of us seem to be either. Over 6 years what
9 would 57 approximately be in a month?

10 A I am putting it out there but I think I was going
11 to say a year. You are making it harder on me. So 10 cases
12 a year so maybe one case a month.

13 Q And just so we are clear are you paid for the
14 outcome of your testimony or are you paid for your time?

15 A I am paid for my time.

16 MR. DAWSON: Thank you. I have no other
17 questions.

18 MR. STUART: No questions.

19 THE COURT: All right. Thank you. You may step
20 down.

21 (That concludes Suvi Miller's testimony.)

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REPORTER'S CERTIFICATE

The above and foregoing is a true and partial transcription of my stenotype notes, taken in my capacity as Official Reporter, Division 207, on the date and place heretofore set forth.

Dated this 16th day of February 2011.

Margaret A. Bacheller, RPR, CSR