

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

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

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24 BILLIE B. ROUNDS, Reg. #37788
25 Deputy State Public Defender

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27

28 Defendant personally present in custody.

I N D E X

People's Witness:

MS. SUVI MILLER

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

P R O C E E D I N G S

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

MR. GEIGLE: People would call Suvi Miller.

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

Before you sit down, please raise your right hand.

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

THE COURT: Please go ahead and have a seat.

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 standard of scientific process of creating a
2 hypothesis and finding methods and means to disprove
3 that hypothesis, and having been unable to do so,
4 being able to create a model or law in that regard.
5 That doesn't necessarily always apply in these areas.
6 In these areas where it should apply I think Shreck is
7 very clear what happens. In experienced areas I think
8 it's a little less clear.

9 Let me with that context, what opinions are
10 you seeing from Miss Miller that you think are purely
11 scientific that would have to meet scientific scrutiny
12 in terms of the scientific method for reliability?

13 MS. TRUJILLO: I think scientific is sort
14 of a loose term.

15 THE COURT: I agree.

16 MS. TRUJILLO: I agree with the Court it's
17 not a hard science like math but it is, nevertheless,
18 a social science and so to that extent it is science.
19 And I think it has to be -- in order to form an
20 opinion there has to be a basis for it and a basis
21 that can be -- I think it should be tested somehow and
22 I think you can do that even in social sciences. But
23 at least, documented and have data to support the
24 opinion.

25 And this was the problem and one of the

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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REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

6 I, Georgia Ann Akey, Jr., do hereby certify
7 that I am a Certified Shorthand Reporter within and
8 for the State of Colorado, Official Reporter for the
9 Second Judicial District of the District Court, at
10 Denver, Colorado; that as such reporter, I was present
11 upon the occasion of the testimony of Ms. Suvi Miller
12 of the above-entitled matter at the aforesaid time and
13 place, and that I stenographically recorded all
14 proceedings had.

15 I do hereby certify that I reduced my said
16 shorthand notes to typewritten form and the pages,
17 numbered 1 through 84, inclusive, constitute a full
18 and correct transcript of my shorthand notes, so taken
19 as aforesaid.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 27th day of March 2009.

GEORGIA ANN AKEY, JR.
Certified Shorthand Reporter