

DISTRICT COURT
DENVER COUNTY COLORADO
1437 BANNOCK STREET
DENVER, COLORADO 80202

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

TOMASITTO ULLOA, and
MARK LORENCE ULLOA,
Defendants.

FOR THE PLAINTIFF:

MARGUERITE CONBOY, #29292

FOR THE DEFENDANT TOMASITTO ULLOA:
THOMAS R. WARD, #28877

FOR THE DEFENDANT MARK ULLOA:
KATHARINE WHITNEY, #35730

Case No.06CR10573
Case No.06CR10521
Courtroom 23

The matter came on for hearing on motions on
January 22, 2007, before the HONORABLE MORRIS B. HOFFMAN,
Judge of the District Court, and the following proceedings
were had:

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1 AFTERNOON SESSION, JANUARY 22, 2007

2 THE COURT: Let's call up this afternoon's -- I
3 think -- the remaining motion hearings, 51, 52, 53, and 54
4 on today's docket.

5 People versus Ulloa. Mark is 51 and 52, and 53.
6 51 is 06CR10521 -- that case comes on for
7 continued motions hearing.

8 Fifty-two and fifty-three are trailing.
9 Fifty-three is a probation revocation; fifty-two is a new
10 case that we probably need to get dates on; and then
11 fifty-four is People versus Tomasitto Ulloa, 06CR10573,
12 also here for a continuation of motions hearing.

13 We do have trial dates on the 51 and 54.

14 Could we have appearances, please.

15 MS. CONBOY: Maggie Conboy for the People on all
16 of the cases.

17 MS. WHITNEY: It's Katie Whitney on behalf of
18 Mark Ulloa, who is present today in custody on all -- on
19 51, 52 and 53.

20 Your Honor, I did want to mention, though, that
21 Ms. Wilson is here from this morning. I didn't know if
22 you knew that. That was the set-over from this morning.

23 THE COURT: Right.

24 MS. WHITNEY: I just want to -- and if we want
25 to take care of her, that's fine. That will be great, if

1 we can do that.

2 (Whereupon, a recess was then taken.)

3 THE COURT: Okay. Our reporter is now reporting
4 this, and I want this record to be self-contained, so the
5 record should reflect that counsel and I have all agreed
6 that we're going to switch around -- well, defense counsel
7 had these dates switched already -- but the People and I
8 had them differently, so just so we're all on the same
9 page, Mark's trial is going to start March 26;
10 Tomasitto's, March 12.

11 Now, both cases come on for -- here's what I
12 had -- well, first of all, could we have appearances so we
13 have this self-contained, please.

14 For the People?

15 MS. CONBOY: Maggie Conboy for the People.

16 MR. WARD: Tom Ward on behalf of Tomasitto
17 Ulloa.

18 MS. WHITNEY: Katie Whitney on behalf of Mark
19 Ulloa, who is in custody.

20 THE COURT: When I went back and looked at the
21 notes from last time, here's what I have on the schedule
22 for today's hearing -- well, first of all, it's a
23 mandatory disposition day, I believe. I think we
24 technically continued mandatory disposition to today's
25 date, so I should ask whether there's a disposition.

1 Ms. Whitney?

2 MS. WHITNEY: There is no disposition.

3 THE COURT: And Mr. Ward?

4 MR. WARD: No disposition, Your Honor.

5 THE COURT: So there is no disposition, and I
6 won't accept a disposition after today's date, so these
7 are both going to go to trial on the days that were
8 mentioned.

9 What I had was a continuation of the child
10 hearsay motion that I think we've now done in two
11 different segments. We also had to finish and start the
12 Shreck motion with respect to Ms. Miller; and the third
13 thing that I failed to do -- and I want to apologize to
14 everybody, is that I was going to make -- rule on the
15 threshold rape shield. This didn't get tickled and I
16 apologize, but --

17 MR. WARD: You did.

18 MS. CONBOY: You did, Your Honor.

19 THE COURT: Did you get it from me?

20 MS. CONBOY: Yes, and I responded.

21 THE COURT: Yes, I did read the People's
22 response, so we'll have some -- I think -- argument or
23 offers of proof on rape shield.

24 I'm up to speed. I've read both the motion and
25 the response.

1 MR. WARD: Actually, can I address that
2 situation, Your Honor?

3 THE COURT: Sure.

4 MR. WARD: I think what happened was I filed my
5 motion, the People filed a response, and then the Court
6 issued its order that the People were to respond to your
7 order by a date certain as to whether they wanted an
8 evidentiary hearing under the rape shield or whether they
9 would allow the Court to rule based upon the offers of
10 proof.

11 Apparently Ms. Conboy -- not apparently -- she
12 did file a response to that, which I never received. She
13 just told me about it today, so I was under the impression
14 that we were going forward based upon my offer of proof
15 and not having an evidentiary hearing.

16 THE COURT: Ms. Conboy?

17 MS. CONBOY: Your Honor, I did -- I did -- I did
18 file a pleading indicating I wished to contest the offer
19 of proof, although I do believe that it's something that
20 could be done through argument. It's my understanding I
21 just needed to preserve my right, and I will defer to the
22 Court.

23 THE COURT: I am -- I think this is really an
24 interesting issue and I read Kyle and I reread it, and I'm
25 trying to think of whether that case applies, and I am

1 happy to proceed just with offers of proof; but at any
2 time if you're uncomfortable with that, Ms. Conboy, you
3 let me know and -- we'll, I guess we'll have to set this
4 over for some evidence.

5 MS. WHITNEY: With respect to setting it over,
6 Your Honor, I have a similar motion ready to be filed. I
7 don't have my affidavit. I can do an oral affidavit today
8 or file that with the Court, but it's similar to
9 Mr. Ward's with respect to my proffered reasons for
10 wanting the evidence. I just --

11 THE COURT: I actually just assumed that you're
12 going to be piggybacking on rape shield, although I
13 noticed you haven't. But the issues are quite similar, it
14 seems to me.

15 MS. WHITNEY: They are, but I wanted to file a
16 separate motion just because.

17 THE COURT: I think you have to, for one thing.

18 MS. WHITNEY: Yes; and so I have it ready to go,
19 but you haven't read it and Ms. Conboy hasn't read it. I
20 just wrote it this weekend, so we can argue that.

21 THE COURT: Let's try to do this: Let's try to
22 get rid of -- let's try to resolve at least one motion in
23 this case at one hearing; and I'm happy to start with
24 that, or -- but give me the big picture before we start
25 going off in directions. Are we going to finish up the

1 child hearsay motion?

2 MS. CONBOY: Your Honor, I don't believe we can
3 because I -- the People can be prepared. All we have left
4 is Tomas Ulloa. He's the child. He's been here a couple
5 hearings in the past. He's here again, and I would ask if
6 he could be -- if we could have his testimony today.

7 I don't have anybody else to put on. The Court
8 has already heard from Louise, Detective Cotter, and Karen
9 Blackwell.

10 MR. WARD: The Court should have my motion to
11 partially continue the hearing with respect to that.

12 THE COURT: I don't.

13 Do you have a copy? Was it just filed?

14 MR. WARD: No, it was filed -- what was the date
15 on that? January 21. It should be there.

16 THE COURT: Today is January 22. What do you
17 mean?

18 MR. WARD: I'm sorry, did you just print that
19 off of your --

20 MS. CONBOY: Yeah --

21 MR. WARD: No, this was filed last week, I
22 believe, actually.

23 THE COURT: Well, it doesn't matter, I don't
24 have it. I haven't read it. So if you have a copy, I
25 think I'll have to read it.

1 Why do we need to continue?

2 MR. WARD: Well, the reason, Your Honor, the
3 Court may recall the last time we were here I had Shannon
4 Christner present under subpoena. Her subpoena was
5 continued to today's date. She is a Department of Social
6 Services caseworker who is assigned to the Ulloa children
7 during the time period both before and after all of the
8 outcry out-of-court statements were made that is the
9 subject of the child hearsay motion.

10 She contacted me a couple of weeks ago and said
11 that she recently had a baby, she had a C-section, and her
12 doctor told her that she's medically unable to be here --
13 she's supposed to refrain from all work activities for an
14 eight-week period from when she had this surgery.

15 That --

16 THE COURT: Wasn't she part of the reason we
17 continued one of these in the first place?

18 MS. WHITNEY: Yes.

19 THE COURT: -- was because she was about to have
20 her baby?

21 MS. WHITNEY: I filed a motion to continue the
22 jury trial which was formally (sic) set for -- formerly
23 set for December 13th, 2006, based upon her having the
24 baby.

25 I also continued my subpoena from the last

1 hearing to today for purposes of this hearing.

2 I didn't hear from Ms. Christner, so I wasn't
3 aware that she wasn't going to be here.

4 THE COURT: Well, we can at least get one child
5 witness that the People have on and --

6 MR. WARD: Absolutely.

7 THE COURT: What's your position on whether we
8 need to continue this for their witness -- continue a
9 ruling, that is to say, Ms. Conboy?

10 MS. CONBOY: The People's position is that the
11 child hearsay -- Shannon Christner was not present for the
12 outcry to Louise Lee, outcry to Tomasitto Ulloa. She may
13 have watched the outcry to Karen Blackwell, but it would
14 be our position is that is a self-contained interview and
15 that when the Court looks at the fact -- and save for
16 Detective Cotter -- Mr. Ward is indicating he believes
17 that I said that I wouldn't object to Shannon Christner
18 not being present.

19 THE COURT: Here's what we'll do: I want to
20 finish the People's end of this motion, and then we'll
21 talk about whether we need to continue this for other
22 witnesses. Can we do that?

23 The other thing -- piece is Shreck.

24 Are we ready to go forward and finish the Shreck
25 motion?

1 MS. CONBOY: Yes. Yes.

2 THE COURT: Okay, what's the People's preference
3 about doing what first?

4 MS. CONBOY: I would prefer to do Shreck next as
5 opposed to the rape-shield because Suvi Miller is here.

6 THE COURT: Okay, any objection to that, defense
7 counsel?

8 MR. WARD: We can do that first.

9 MS. WHITNEY: That's fine.

10 THE COURT: Okay, let's do the Shreck hearing.

11 MS. CONBOY: We were asking to do Tomasitto
12 first --

13 THE COURT: So we're not doing the Shreck first?
14 What do you want to do first?

15 MS. CONBOY: The child hearsay, please, Your
16 Honor.

17 THE COURT: Okay, we'll do that.

18 MS. CONBOY: Thank you.

19 THE COURT: Counsel have a seat.

20 All right, the People's next witness on the
21 child hearsay, please.

22 MS. CONBOY: People call Tomas Ulloa.

23 MR. WARD: Your Honor, Jodi Byrnes, who is a
24 social services caseworker -- she's here under my
25 subpoena. She doesn't have anything to apply to the rape

1 shield issue, but I think I am going to ask her to wait in
2 the hallway. I think the Court previously did issue a
3 sequestration --

4 THE COURT: I did. That's fine.

5 Ms. Byrnes, if you can just step out in the
6 hallway, we'll let you know when we're ready for you.

7 And who is the People's next witness?

8 MS. CONBOY: Tomas Ulloa.

9 THE COURT: Mr. Ulloa --

10 THE WITNESS: Ulloa.

11 THE COURT: Ulloa.

12 If you will raise your right hand, please.

13 TOMASITTO ULLOA,

14 a witness herein, being first duly sworn in the above
15 cause, was examined and testified as follows:

16 THE COURT: Thank you. If you'll have a seat.

17 You know what, there's some water in that
18 pitcher. If you want any water, will you just help
19 yourself.

20 THE WITNESS: Yes.

21 THE COURT: I saw you in here earlier when I had
22 a bunch of people in here and there were all kinds of
23 things going on. That was you, right?

24 THE WITNESS: Yeah.

25 THE COURT: It's kind of hard to hear in here.

1 When you were back there, could you hear what everybody
2 was saying?

3 It's pretty hard to hear, isn't it?

4 THE WITNESS: Yeah.

5 THE COURT: It's because of these great big,
6 tall ceilings. So you really need to keep your voice up.

7 That's really good, the way you are right there,
8 close to the mike.

9 THE WITNESS: Okay.

10 THE COURT: Ms. Conboy?

11

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DIRECT EXAMINATION
12 ††††††††††††††††††††††††††††

13 BY MS. CONBOY:

14 Q. Tomas Ulloa, could you please spell your whole
15 name for our court reporter here today.

16 A. T-O-M-A-S-I-T-T-O, U-L-L-O-A.

17 Q. Tomas, who do you live with?

18 A. Louise; my sister, Monique Ulloa; Vincent Lee;
19 Michael Lee, two of my cousins; and me.

20 Q. How old are you --

21 MS. CONBOY: I'm sorry, could you keep your
22 voice up. What else?

23 THE WITNESS: And me.

24 MS. CONBOY: And you.

25 Q. (By Ms. Conboy) How old are you?

1 A. I'm fourteen.

2 Q. What grade are you in in school?

3 A. Eighth.

4 Q. Where do you go to school?

5 A. Skinner Middle School.

6 Q. Are you missing school to be here?

7 A. Yes.

8 Q. How do you feel about that?

9 A. I would rather be there.

10 Q. How do you feel about being here in the
11 courtroom?

12 A. New experiment.

13 Q. I want to talk to you a little bit about
14 something that happened back when you were in fifth grade.
15 Where were you living at the time?

16 A. 890 Utica.

17 Q. And who else was living there with you?

18 A. Monique Ulloa, Lori, and me; and my Uncle Mark
19 would come visit us off and on and stay with us once in a
20 while.

21 Q. So Monique -- and Monique is your sister?

22 A. Yeah.

23 Q. How old is Monique now?

24 A. She's fifteen.

25 Q. And you said Lori?

1 A. Yeah, Lori.

2 Q. Who is that?

3 A. She's my grandma.

4 Q. Your grandma. And how is she related to you?

5 A. My dad's mom.

6 Q. And who is your dad?

7 A. Tomasitto Ulloa.

8 Q. And so it was you, Monique, and your grandma;
9 and then you said your Uncle Mark would come to visit?

10 A. Once in a while.

11 Q. Can you describe for Judge Hoffman the way that
12 the house is set up at 890 Utica Street?

13 A. Well, when you walk in there's a living room
14 where we never used, and if you turned to the left there
15 was a hallway, where the first door to the left -- your
16 other left -- is the bathroom. You turn to the right, is
17 the computer room, which is a room; and you keep walking
18 and there's two doors that are right across from each
19 other, the left one was mine, the right one was Monique's.
20 And if you go back, there's the kitchen; and when you go
21 down the stairs, you turn to the right, there is a
22 backyard, a door to the backyard, and if you turn to the
23 left you go downstairs. You turn left, and Lori's room
24 would be right there if you go -- keep going straight.

25 Q. And Lori is what you called your grandma?

1 A. Yeah.

2 Q. What was her full name?

3 A. Lori Lupprino.

4 Q. Lori Lupprino. And you do not live with her
5 now; is that right?

6 A. Yes.

7 Q. Because you're living with your Aunt Louise?

8 A. Yes.

9 Q. Now, do you remember a time when your sister,
10 Monique, asked you to sleep in her room with you?

11 A. Yes, I do.

12 Q. I would like to talk to you a little bit about
13 that. First off, do you remember, Tomas, was it hot or
14 cold outside -- or what was the weather like?

15 A. It was -- it was pretty warm at night. It was
16 pretty windy, like cool breeze.

17 Q. Were you in school at the time?

18 A. Yes, I was.

19 Q. And you said you were in the fifth grade; is
20 that right?

21 A. Yes.

22 Q. Okay. Let's talk about what happened. About
23 what time was it that your sister asked you this?

24 A. Around ten.

25 Q. And what were you doing?

1 A. I was playing my Play Station.

2 Q. Where was your Play Station?

3 A. In my room.

4 Q. So you're in your room playing on your Play
5 Station. Is your door opened or closed?

6 A. It's cracked.

7 Q. What exactly do you remember first happening?

8 A. Just that my sister scam.

9 Q. Pardon?

10 A. She scam. She screamed.

11 Q. She what?

12 A. She scam.

13 Q. She scam?

14 A. Yeah, she --

15 Q. Your sister did?

16 A. Yeah.

17 Q. What does that mean?

18 A. Yelled.

19 Q. You said she scrambled?

20 A. She yelled.

21 Q. So you're playing with your Play Station, you
22 heard Monique yell?

23 A. Yeah.

24 Q. Had you heard anything unusual before that?

25 A. I heard the door slam, the front door.

1 Q. And when you heard the door slam, do you know if
2 anybody came into the house?

3 A. Yeah.

4 Q. Who came into the house?

5 A. My Uncle Mark.

6 Q. And where did your Uncle Mark go?

7 A. I don't know.

8 Q. Okay. About how soon after Uncle Mark came into
9 the house did your sister yell?

10 A. I wasn't paying attention to the time.

11 Q. Okay.

12 THE COURT: I didn't hear that. Could you say
13 that again?

14 THE WITNESS: I wasn't paying attention to the
15 time.

16 Q. (By Ms. Conboy) Okay. So what happened next?

17 A. Like I told you, she yield and she called me to
18 her bedroom and she said, Brother, do you want to sleep
19 with me, and I said, Why, and she didn't say why. She
20 said she was sort of scared. And I said, Okay, I went to
21 go ask my grandma; and evidently, I guess, she said yeah,
22 and I slept with her.

23 Q. So you slept with her that night?

24 A. Yeah.

25 Q. Tomas, did you have any follow-up conversation

1 with Monique about what happened and why she asked you to
2 sleep with her?

3 A. Well, what she told me was that Uncle Mark tried
4 to touch me.

5 Q. Did she tell you where Uncle Mark tried to touch
6 her?

7 A. No, she didn't.

8 Q. Tomas, do you remember when you met with a
9 detective, a police detective named Brian Cotter?

10 A. Yes, I do.

11 Q. And that was on June 29th of 2005. Do you
12 remember talking with him a little bit about this case?

13 A. Yeah.

14 Q. And do you remember him asking -- or do you
15 remember he was saying, She said Uncle Mark almost touched
16 me. And Detective Cotter said, What does that mean to
17 you? And you said, On her privates for like -- like
18 something bad, like privates touching you. Do you
19 remember that?

20 A. Yes, I do.

21 Q. So you said that to Detective Cotter?

22 A. Yes.

23 Q. Did Monique -- and do you remember when that
24 conversation took place?

25 A. No.

1 Q. No?

2 A. I don't.

3 Q. Do you remember telling Detective Cotter that
4 that conversation took place about three months after this
5 happened with her -- with your Uncle Mark?

6 A. Yeah. Yeah -- wait, I do, but I was just
7 filling in the gaps.

8 Q. Okay. Can you explain what you mean by "filling
9 in the gaps"?

10 A. Like when someone says -- I don't know -- like
11 someone asks, Do you remember what time it was? And they
12 don't remember, they weren't paying attention to the time,
13 and all they say, Was about five minutes, ten -- five
14 minutes to ten minutes. I was just filling the gaps. I
15 really didn't know what to say.

16 Q. All right. And that's fine. So what you're
17 telling us now is you're not sure when you had that
18 conversation with Monique; is that right?

19 MR. WARD: Objection, leading.

20 THE COURT: Overruled.

21 Q. (By Ms. Conboy) That's okay. Tomas, you can
22 answer that. Is that what you're telling us?

23 A. (Nods head.)

24 Q. You have to say yes or no for our court
25 reporter.

1 A. What do you mean?

2 Q. Well, let me ask you -- let me -- with that
3 question, and let me ask: Do you remember where that
4 conversation take places?

5 A. I don't know.

6 Q. Do you remember what you guys were talking about
7 before that conversation took place?

8 A. No.

9 Q. Had you asked her anything about what had
10 happened with your Uncle Mark?

11 A. Yeah. At first I didn't believe it.

12 Q. Okay. And before she said, Uncle Mark almost
13 touched me, what -- what had you guys been talking about?
14 Had you asked her something first, or was that after she
15 said it?

16 A. I don't remember.

17 Q. Pardon?

18 A. I don't remember.

19 Q. You don't remember. You say you don't believe
20 it, so how so?

21 A. I said I didn't believe it.

22 Q. Right. And -- and why did you -- why did you
23 not believe it?

24 A. Because usually she would lie a lot to me.

25 Q. When did she lie to you?

1 A. Just over stupid things; but when somebody comes
2 this big, you know -- if she tells us little lies, why not
3 tell a big lie and see if she could get away with that.

4 But first I didn't believe it. I was like,
5 whatever, no, he didn't. And we had this big conversation
6 between Louise -- when Shannon left -- and -- and we just
7 had a big argument, and we just stopped talking about it.
8 And I really don't remember what it was about because we
9 were leaving.

10 Q. Because why?

11 A. Because we were leaving.

12 Q. Where were you leaving?

13 A. It was -- I don't remember. It was most likely
14 to the Club.

15 Q. When you say "the Club," are you talking
16 about --

17 A. Boys and Girls Club.

18 Q. And you said Shannon had left. Who is Shannon?

19 A. My -- our caseworker.

20 Q. Shannon Christner?

21 A. Yes.

22 Q. Was Shannon Christner present for that
23 conversation?

24 A. No, she was not.

25 Q. She was not. But you remember she had left?

1 A. Uh-huh, yes. And we were in -- and her and I
2 were in her room listening to music and she just brought
3 it up.

4 Q. So she -- she brought it up first, are you
5 saying?

6 A. Yes.

7 Q. And you said you didn't believe her at first.
8 You said she tells little lies. What kind of lies would
9 she tell you?

10 A. Like when Shannon was -- last time when Shannon
11 was over, we were talking about -- Shannon asked Monique
12 if she wants her -- she wants her to tell me -- I was
13 like, Tell me what? And I was getting angry because I
14 asked her -- finally I asked her, Does it have anything to
15 do with you? And she said no, and so -- but it did have
16 something to do with her.

17 And little stuff like did you -- like I asked
18 you to do this. She would ask me to do something -- or I
19 would ask her to do something, and I asked her if she did
20 it, and she said, yes, and I found out later she didn't.
21 And it was just getting me angry.

22 Q. How is your relationship with Monique?

23 A. Very close.

24 Q. Very close. I want to ask you about that.

25 Shannon -- you said the last time Shannon was

1 over and Shannon asked Monique if she wanted to tell you,
2 where did that conversation happen? Where were you guys?

3 A. We were -- we were having our once-a-month
4 meeting to go talk about stuff and court and how we're
5 doing in school, and I guess Shannon -- Shannon brought it
6 up and --

7 Q. Where was that meeting?

8 A. At our -- at our house.

9 Q. And do you remember how old you were?

10 A. I was thirteen.

11 Q. And what grade would that have been?

12 A. It was in the summer -- I was getting out of
13 seventh going into eighth.

14 Q. So that would be summer -- this past summer,
15 right?

16 A. Yes.

17 Q. And so when Shannon said to Monique, Do you want
18 to tell Tomas, and she said, No -- now why did you think
19 that was a lie?

20 A. I didn't think that was a lie. I said, Does it
21 have anything to do with her -- with my sister -- and she
22 says, It does not have anything to do with me.

23 Q. And, Tomas, why do you think that's a lie?

24 A. Because she should have just said -- told the
25 truth.

1 Q. And what would have been the truth?

2 A. That it does have something to do with her.

3 Q. When you say "it"?

4 A. I mean, the dad's situation, which I have no
5 clue what that's about.

6 Q. So Monique -- or Shannon -- I just want to
7 clarify -- Shannon was asking Monique if she wanted to
8 tell you about your dad's situation; is that it?

9 A. Yeah.

10 Q. Am I understanding that?

11 And Monique said, No, it didn't have anything to
12 do with me, and you believe that was a lie?

13 A. Yeah.

14 Q. Okay. You mentioned some other lies, things
15 about if -- you asked her if she did something and she
16 says no. Had she ever told a lie to you about somebody
17 doing something bad to her before?

18 A. Not that I know of.

19 Q. Has she ever lied to you about anything
20 involving -- other than that, your father's case?

21 A. No.

22 Q. Has she ever lied to you about anything
23 involving your Uncle Mark's case?

24 A. That I don't know. I don't know.

25 Q. You don't know?

1 A. Huh-uh.

2 Q. Let me ask you it this way: To your knowledge,
3 has Monique ever lied to you about anything involving
4 Uncle Mark's case?

5 A. No.

6 Q. And had -- to your knowledge, has Monique ever
7 lied to you about anything involving your Uncle David's
8 case?

9 A. No.

10 Q. Has Monique ever told you any lies about
11 anything that might have happened to her of a sexual
12 nature?

13 A. Not that I know of.

14 Q. So when you talk about her, that she's told you
15 little lies before -- not to put you on the spot -- but
16 what kind of little lies? Can you be a little more
17 specific with us?

18 A. Like when something big -- like something big is
19 going on, and I -- I ask her to do something, she says,
20 Sure, I'll do it, and it's like really big -- like the
21 Youth of the Year book I'm doing --

22 Q. The what?

23 A. Youth of the Year book I'm doing -- and
24 something big, like that. I'll be like, Can you please
25 bring these, and she forgets them and she goes -- she

1 knows she forgot them, and I ask her, Do you have them? I
2 asked her before everything started, Do you have it? And
3 she said, Yeah, I have them, and when the time comes up,
4 she's lying to me, saying she lost it, and when we go
5 home, it's right there where I left it.

6 Q. So just so we understand, you have an honor
7 coming up, the Youth of the Year; is that right?

8 A. Yes.

9 Q. Can you explain what that is?

10 A. Yes. We have to write eight essays about
11 different subjects -- for instance moral character,
12 school, posthigh school education, what the Club means to
13 me, so on and so forth; and there's a junior one where you
14 just win a gift card, and then there's a senior one from
15 fourteen to eighteen, and you win a scholarship to high
16 school -- to college.

17 Q. Okay. So that's -- is that a big deal to you?

18 A. Yes, it is.

19 Q. So Monique told you a lie and said she brought
20 materials for you and she hadn't, about the Youth of the
21 Year, would you consider that to be a big lie or a little
22 lie?

23 A. Yeah, it would be not as big of between life and
24 death, or life in prison, or -- you know what I mean?

25 Q. Okay. You said you are close, do you two ever

1 argue, you and Monique?

2 A. A lot.

3 Q. Getting back to Monique telling you about Uncle
4 Mark having almost touched her, do you know -- or could
5 you tell us what was Monique's relationship with your
6 Uncle Mark before all this happened?

7 A. From what I know?

8 Q. Uh-huh.

9 A. Laughing, joking, having fun, being like
10 friends -- like really close friends, but also at the same
11 time being related -- playing games, stuff like that,
12 watching movies together.

13 Q. Okay. When Monique told you, Tomas, how was she
14 acting?

15 A. I don't know. I wasn't paying attention to her
16 emotions or --

17 Q. Did you -- after you said -- first you said that
18 you didn't believe her and you had a big conversation.

19 A. Yeah.

20 Q. How did that play out?

21 A. Like, I don't care, Brother, you don't have to
22 believe me, and stuff like that.

23 I'm like, Then I won't. And I would just start
24 talking about how -- how much she loves Uncle Mark, and I
25 was like -- then I was like, Well, how come you are making

1 this up? She goes, I'm not making it up. I'm telling the
2 truth. And then we would get off the subject and get back
3 on it, and it was like the first five months when we moved
4 in.

5 Q. And when you say "first five months you moved
6 into" --

7 A. Louise's.

8 Q. And what went on for the first five months when
9 you moved into Louise's?

10 A. Crazy.

11 Q. Can you explain that?

12 A. I was not doing good in school. I was
13 overweight, getting in fights, all this stuff, and I
14 would, like, talk back and cuss at Louise.

15 Q. Okay. Do you remember -- you moved to Aunt
16 Louise's, when was that, just so we kind of understand the
17 time period? When did you leave 809 Utica Street and when
18 did you go to Aunt Louise's?

19 A. I think on July 30th, around there.

20 Q. And what year was that?

21 A. I don't know.

22 Q. Is that 2004?

23 A. Yeah.

24 Q. Okay.

25 A. Yeah, it was -- actually, it was, I guess.

1 Q. Okay. So you moved to Aunt Louise's and was --
2 were you already at Aunt Louise's when you had this
3 conversation with Monique when she said Uncle Mark almost
4 touched her?

5 A. Yes.

6 Q. And you mentioned that first five months?

7 A. First five months.

8 Q. It was during that time period?

9 A. Hum?

10 Q. Was it during that time period or after that
11 time period, do you remember?

12 A. It was -- yeah, it was between that time period.

13 Q. How do you remember that?

14 A. Because the place where we went to go sign the
15 papers and everything, to go live with Louise.

16 Q. The place that you went?

17 A. To go sign the papers to go live with Louise.
18 I'd already been there twice, between five months, and the
19 second time I went was to talk about it.

20 Q. And where was it that you went?

21 A. Hum?

22 Q. Where was it that you went to sign the papers?

23 A. It was part of that -- I don't know, I forgot
24 what that place is called, the --

25 Q. You mentioned, Tomas, "the second time I went to

1 talk about it," what were you going to talk about there?

2 A. About the Uncle Mark, and different subjects,
3 and -- mainly about Uncle Mark.

4 Q. And who was there?

5 A. I think it was Detective -- I don't know his
6 name. I didn't pay attention to his name.

7 Q. Now, how are you doing now in school?

8 A. I'm on the honor roll. I'm getting As and Bs.

9 Q. And you've been with Aunt Louise since July of
10 2004?

11 A. Yes.

12 Q. Did you have any other -- or did Monique ever
13 tell you anything else about anyone else touching her?

14 A. My Uncle David.

15 Q. And how about -- did you have any conversation
16 with Monique about your father?

17 A. Yeah, that was a big issue we had in the house.

18 Q. Can you tell us more about that?

19 A. I went off. I was hitting things and throwing
20 things, because she -- like I told you, she said it had
21 nothing to do with her, and at first I was like -- I
22 denied it. I was like, No, he didn't; he didn't -- just
23 like I did with Uncle Mark. I said, Forget that, that
24 ain't true.

25 And when we called Lori in, she told Lori; and

1 then I was like, Yeah, see, Lori don't believe that. I
2 don't believe it.

3 But then I prayed to God and he told me to
4 believe my instincts, and at first I believed him. I was
5 like, That ain't true; but then I got more mature, it was
6 like I just started getting mature about the situation
7 between the three weeks that her and I were fighting, and
8 I started being mature about it, and I was like you know
9 what, for some reason I'm going to believe her.

10 And I'm just saying what I heard. I wasn't
11 there. I mean, I can't even testify on that.

12 Q. You mentioned that this conversation took place
13 when you had a vacation in the house?

14 A. A what?

15 Q. I probably wrote that down wrong. But you
16 said -- where were you when Monique told you about
17 something happening with your father?

18 A. We were in her room talking, having jokes,
19 having fun, and then everything got all sad, and then,
20 like I told you, Shannon asked Monique if she wanted to
21 tell me, and I was -- started to argue: Tell me what?
22 And I started having an attitude with Shannon and my
23 sister and Aunt Louise until finally five weeks, something
24 like that, almost a month later, Louise told me, and I was
25 like -- and I started taking it into consideration, what

1 if it is true.

2 Q. So to be clear, this conversation took place
3 when you were living where?

4 A. At Louise's house.

5 Q. At Louise's house. How long after you got to
6 Louise's house did you have that conversation?

7 A. I don't know. I don't remember.

8 Q. Did Monique ever tell you directly that
9 something had happened with your dad?

10 A. After -- after Louise told me. And then after
11 Louise told me, I was like -- I went -- I went to my
12 sister and I said, I'm sorry for getting angry at you, and
13 then we just started talking from there. And I don't
14 remember what the conversation was because I was not
15 feeling so good about the situation.

16 Q. Generally speaking, do you remember --
17 generally -- what she told you had happened with your dad?

18 A. That he touched her in an inappropriate place.

19 Q. I know this is hard, but she used the -- what
20 word did she say? You just said "in an inappropriate
21 place"?

22 A. Inappropriate place.

23 Q. Do you remember the word Monique used?

24 A. No, I do not.

25 Q. Did she say "inappropriate place," or is that

1 how you are -- how you heard -- or how you're explaining
2 it to us now?

3 A. That's how I -- that's how I heard it.

4 Q. Okay, do you remember the word she used?

5 A. Specifically, no.

6 Q. Specifically no?

7 A. I mean, why would someone go to court because
8 you touched someone's wrist or something, or a leg? It
9 has to be somewhere inappropriately, so --

10 Q. What does "inappropriate" mean to you?

11 A. In the privates.

12 Q. Tomas, did you have any other conversations --
13 just backing up, you've told the judge about the
14 conversation you had with Monique about your Uncle Mark.
15 Did you have any other conversations about Uncle Mark --
16 with her about Uncle Mark doing anything to her --

17 A. Nope.

18 Q. -- other than that discussion that you had with
19 her after Louise and you talked, and the discussion you
20 had when Shannon had asked -- the two things you talked
21 about already -- have you had any other conversation with
22 Monique about something happening with your father?

23 A. No.

24 MS. CONBOY: Thank you.

25 THE COURT: Okay. Do the other lawyers have

1 talking about Detective Cotter, about what may have
2 happened with -- involving your dad and your sister,
3 Monique; do you remember that?

4 A. We really didn't talk about that. We had, like,
5 two sentences about that and we just started getting off
6 the subject.

7 Q. So most of what you talked about with Detective
8 Cotter was what your sister had told you about your Uncle
9 Mark?

10 A. Yes.

11 Q. And when the topic did come up about whether you
12 knew or someone had told you that your dad had touched
13 Monique, you told Detective Cotter that it was your Auntie
14 that told you all about that?

15 A. Yeah.

16 Q. Okay. And that's what happened when you did
17 find out, it was your Aunt Louise that told you about
18 that?

19 A. She told me, yeah, and I went to go talk to
20 Monique about it.

21 Q. And let me see if I have the sequence kind of
22 straight about how this all happened; so this was a day
23 that Shannon was over at your Auntie's house?

24 A. Yeah.

25 Q. And Shannon and your Aunt Louise and Monique

1 were having a conversation about something?

2 A. No, it was just us three in the room: Monique,
3 Shannon, and I.

4 Q. Okay. But you didn't hear Monique say anything
5 to Shannon about your dad?

6 A. No, she told her when -- she must have told her
7 before all this.

8 Q. Right. Okay. And --

9 THE WITNESS: Bless you.

10 Q. (By Mr. Ward) You were able to somehow
11 determine from the conversation that what they were
12 talking about is whether your dad had touched your sister,
13 Monique?

14 A. Yeah.

15 Q. And you got mad?

16 A. Yes.

17 Q. And the reason that you got mad was because you
18 asked -- they were talking about your father?

19 A. They would -- like talking code or -- some girl
20 code or something, like, Are you sure? Blah-blah-blah. I
21 couldn't understand them.

22 Q. So they were saying things to each other in a
23 way that it seemed to you like they didn't want you to
24 really know what they were talking about; is that right?

25 A. (Nods head.) Yeah. They were like, You want to

1 know this, or that, and that; and, whoa, you know. They
2 were like, no, no. I started getting angry.

3 Q. And then Shannon left and that's when you asked
4 your sister: Is this about you?

5 A. No, I found out in the car on the way to the
6 Boys and Girls Club.

7 Q. Okay. Well, when you first asked your sister:
8 Is this about you? She told you, No, it doesn't have
9 anything to do with me?

10 A. Yeah. Yes.

11 Q. And that's what made you mad?

12 A. Uh-huh.

13 Q. Because you later found out that it did have
14 something to do with her?

15 A. (Nods head.)

16 Q. And that was in the car, is when you found that
17 out?

18 A. Yup. And then after -- like a couple weeks
19 passed and I was like, You should have told me.

20 And then we were in her room, and Shannon was
21 out -- or my Auntie was out talking to her, and so we went
22 in her room. The boys went inside our room, and then we
23 started talking, Like you should have told me. And then
24 she was like, You wouldn't believe me, and I was like, I
25 didn't believe you. And she was like, That's why I didn't

1 tell you, and stuff like that.

2 Q. Okay. Now, in the first conversation about
3 this -- I guess in the car when you first found out about
4 it and a couple weeks -- weeks later when you're talking
5 to Monique about it -- neither of those conversations did
6 she ever specifically say to you or describe what happened
7 involving her dad, correct?

8 A. (Nods head.) All she said is, "Dad touched me."

9 Q. Okay. Well, it was -- it was understood between
10 you and Monique that that's what this conversation was
11 about, correct?

12 A. Yes.

13 Q. But she never told you when it was that your dad
14 touched you -- or touched her -- I'm sorry?

15 A. Not that I can remember.

16 Q. She never said how your dad had touched her?

17 A. Huh-uh, no.

18 Q. Never said any details about time, place, or
19 anything like that?

20 A. No, she didn't.

21 Q. So this was more of a conversation kind of in
22 the abstract that you and Monique were having about
23 whether or not the dad, at some point, had touched her?

24 A. Yes.

25 Q. And you said that you -- you think that it

1 happened maybe sometime around the first five months that
2 you were living at Aunt Louise's?

3 A. Between there.

4 Q. Between -- somewhere between when you got there
5 and five months after you had been there?

6 A. Yeah.

7 Q. Okay. And are you real good with remembering
8 the exact dates that things happen?

9 A. Not really.

10 Q. Was it pretty close in time to when you went to
11 talk to Detective Cotter about it, that Monique had told
12 you about this?

13 A. I wasn't paying attention to the date and the
14 time, what the weather was like.

15 Q. Right. Suffice to say, you have kind of a hard
16 time remembering exactly when these conversations happened
17 between you and Monique?

18 A. Yes.

19 Q. And you do remember that you went in, in June of
20 2005, to talk to Detective Cotter about what Monique had
21 told you?

22 A. Yes.

23 Q. Do you remember just a rough estimate of how
24 long before your interview with Detective Cotter it was
25 that she had told you about this? I mean, do you think it

1 was maybe a couple of weeks? a couple months? a year?

2 Could you at least narrow it down that much?

3 A. I don't know. I mean, I can't fill no gaps in
4 right now.

5 Q. I'm sorry, what?

6 A. I can't fill no gaps in right now. I don't
7 remember.

8 Q. You've used that phrase, "fill in the gaps," in
9 a couple of times. Can you tell us again what you mean by
10 that?

11 A. Sometimes it can mean you're lying, you're not
12 quite sure, or just fitting something in to fit something
13 in.

14 Q. Okay. And you're not sitting here lying to us
15 today, I assume?

16 A. No. I'm just telling you what I know.

17 Q. But when you say that you're filling in the gaps
18 in some places, you mean that sometimes your memory is not
19 perfect about things?

20 A. Yeah.

21 Q. And you --

22 A. You weren't paying attention. Like I told you
23 what time was it, or I don't know, about five o'clock,
24 seven, I wasn't paying attention to time.

25 Q. And by "filling in the gaps," it means you may

1 say something but you're not completely confident that
2 that's really when or where it happened, it's just kind
3 of --

4 A. Yeah.

5 Q. -- filling it in to make the story make sense?

6 A. Yeah.

7 Q. Now, you mentioned that Monique -- well, you
8 first didn't believe her when she told you this, right?

9 A. Yes.

10 Q. And one of the reasons you didn't is because she
11 tells a lot of lies to you?

12 A. Yeah, little ones.

13 Q. Usually they're about little ones?

14 A. Yeah.

15 Q. And your thought process was: If she can tell a
16 lot of lies about little things, then why wouldn't she lie
17 about a big thing?

18 A. Yeah.

19 Q. Can you tell us when Monique tells these lies to
20 you, what are her reasons for lying? Why does she lie to
21 you?

22 A. Maybe because she's scared.

23 Q. All right.

24 And I'm not talking about anything involving
25 your dad or your uncle, but the little lies that you said

1 she tells, why does she tell those kind of lies?

2 A. I don't know.

3 Q. Okay, do you think it's just to try to be mean
4 to you?

5 A. No.

6 Q. You mentioned the Youth of the Year Award when
7 she lied about picking up some materials that you needed
8 for that; is that right?

9 A. No, I was giving an instance, like saying
10 something that big, like school or your education or
11 something.

12 Q. So you were giving us an example?

13 A. Like those kind of things.

14 Q. Okay. And why would she have lied to you about
15 that? Did she not want you to get the Youth of the Year
16 Award?

17 A. Well, we're running against each other, so I
18 would assume she wants her to win.

19 Q. Okay. So you think she lied about that to
20 improve her chances of winning the award and hurt your
21 chances of winning the award?

22 A. No, I don't think that at all. I think that she
23 was scared that I might have forgot something that's
24 really important and she lied to me and said, I brought
25 it, and she didn't.

1 Q. You talked a little bit about the initial time
2 period when you were living at your Aunt Louise's house
3 and you said that it was crazy?

4 A. Yeah.

5 Q. Can you tell us a little bit more about that?
6 What was "crazy" about that time period for you and your
7 sister?

8 A. Because there was a lot of differences about how
9 she was raising kids and how we got raised.

10 Q. Okay. So you had come from your Grandmother
11 Lori's home and moved into Aunt Louise's?

12 A. (Nods head.)

13 Q. And at Aunt Louise's, there was a lot more
14 structure for you; is that right?

15 A. Yeah.

16 Q. She had rules that you guys had to follow?

17 A. (Nods head.)

18 Q. And when you had been living at your Grandmother
19 Lori's prior to that, those rules and that structure were
20 not in place?

21 A. Yeah. I mean, they would be, but we would never
22 follow them and she would never follow them, and so we
23 were just kind of one, big -- trying-to-be -- happy
24 family.

25 Q. You're kind of running wild at your

1 grandmother's?

2 A. Yeah.

3 Q. Doing poorly in school?

4 A. (Nods head.)

5 Q. Poor behavior around the house, getting into
6 trouble, things like that?

7 A. Yeah.

8 Q. And your sister, Monique, was in a similar
9 situation?

10 A. Yup. Yes.

11 Q. And after you moved to Aunt Louise's, it was a
12 time period for the two of you to adjust to this new kind
13 of lifestyle, right?

14 A. Yes.

15 Q. But the adjustment, even though it was
16 difficult, was making things better for you?

17 A. Yes, it was.

18 Q. And better for your sister, Monique?

19 A. Yes.

20 Q. And you started doing better in school?

21 A. Yes.

22 Q. Having more friends at school and at home,
23 right?

24 A. Yes.

25 Q. And during that initial period -- well, for --

1 for most of the first year that you lived with Aunt
2 Louise, you wanted to eventually move back to your
3 grandmother's house?

4 A. Yes.

5 Q. And the reason that you had been living -- or
6 that you had moved into your Aunt Louise's house, is your
7 grandmother, her health wasn't doing very well, right?

8 A. Yes.

9 Q. And she wasn't physically able to take care of
10 you?

11 A. No, she wasn't.

12 Q. So your plan and Monique's plan and Shannon's
13 plan, too, was that once your grandmother was better and
14 well enough to care for you, you were going to move back
15 into her house?

16 A. Yes, and Oregon, Yoncalla.

17 Q. Right. And you decided at some point, around
18 May of 2005 -- you and Monique decided that you didn't
19 want to go to Oregon?

20 A. Oh, she did, not me. I wanted to go.

21 Q. Okay.

22 A. My choice was to go to Louise's and leave to
23 Oregon, but I wanted to go. And at first I was thinking
24 that she just wants me to stay because she don't like my
25 grandma, and that was no reason at all. She was -- she --

1 she raised us the best way she knew how to raise us, and
2 not to get gospel on you, but God says when you've done
3 something, like, just sit back and let the rest happen.

4 Q. Okay. And let me see if I understand what you
5 mean by that. You're saying that you kind of let Monique
6 take control -- or let the other people take charge, as
7 far as where you were going to end up living?

8 A. I was telling that to my grandma, and then she
9 understood that because we were -- we always went to
10 church.

11 Q. Okay, let me stop you. Let's get back to when
12 Monique changed her mind about wanting to go back to live
13 with your Grandma, Lori. Do you remember that?

14 A. I don't remember the time.

15 Q. Okay.

16 A. I don't remember the date.

17 Q. Do you remember that it was around the same time
18 period when your sister told you about these things
19 involving Mark and your dad?

20 A. No, I don't. It was -- I don't even know if I
21 knew anything about any of that stuff.

22 Q. About Uncle Mark --

23 A. Uncle Mark.

24 Q. -- and your dad --

25 A. And my dad.

1 Q. -- when Monique first changed her mind about
2 wanting to live with your grandma?

3 A. Yeah.

4 Q. And when she first changed her mind, you didn't
5 change your mind?

6 A. I wanted to go.

7 Q. You wanted to go and she wanted to stay with
8 Aunt Louise?

9 A. Yes.

10 Q. And what did she tell you were her reasons for
11 that?

12 A. I know one, because Yoncalla was, like, one
13 mile -- like one mile long and -- one mile in length and
14 width.

15 Q. It was a real small town?

16 A. It was a small town, next town wasn't for like
17 two or three miles away.

18 Q. So pretty rural setting?

19 A. (Nods head.)

20 Q. And -- is that a yes?

21 A. What do you mean?

22 Q. I said, "It's a pretty rural setting," and you
23 were nodding your head. Are you saying yes?

24 A. Yes.

25 Q. And you and Monique, I guess, both had some

1 concerns that you weren't going to fit in there, right?

2 A. (Nods head.) Well, I thought I was going to fit
3 in just fine. I really don't think about fitting in or
4 not.

5 Q. Monique didn't want to leave because she didn't
6 want to be separated from her friends that she had here in
7 Denver?

8 A. One of the reasons, yeah.

9 Q. And because by that time life had gotten a lot
10 better for you and Monique, living with Aunt Louise, then
11 it had been when you lived with your grandma?

12 A. Yes.

13 MR. WARD: I don't think I have any other
14 questions. Thank you.

15 THE COURT: Thank you.

16 Ms. Whitney, do you have questions?

17 MS. WHITNEY: I do. Thank you.

18 THE COURT: All right.

19 íííííííííííííííííííí
 CROSS-EXAMINATION
20 íííííííííííííííííííí

21 BY MS. WHITNEY:

22 Q. Good afternoon, Tomas. My name is Katie
23 Whitney. I represent your Uncle Mark, okay? I'm going to
24 ask you a few questions.

25 Talking about -- you were talking about a time

1 when you were living with your grandmother or your mom,
2 Lori, right?

3 A. Yes.

4 Q. And that was -- did you said you were living
5 with Lori; your sister, Monique; and sometimes your Uncle
6 Mark would come and stay with you all, right?

7 A. (Nods head.)

8 Q. And just remember to answer out loud so --

9 A. Yes.

10 Q. So you said at some point when your Uncle Mark
11 was staying with you, you -- you remember something
12 happening with Monique, right?

13 A. Yes.

14 Q. And you said on that particular day it was --
15 well, it was at nighttime?

16 A. Yes, it was.

17 Q. And you said it was around ten o'clock?

18 A. Yes.

19 Q. And you said that you were in your room playing
20 Play Station, right?

21 A. Yes, I was.

22 Q. And you said that your Uncle Mark was at the
23 house?

24 A. Yeah, he had just come in.

25 Q. Okay. Did you see your Uncle Mark when he was

1 there that night?

2 A. I don't remember seeing him.

3 Q. Okay. Do you remember hearing your Uncle Mark
4 that night?

5 A. Yes.

6 Q. Do you remember?

7 A. He slammed the door.

8 Q. I'm sorry?

9 A. Slamming the door and coming in screaming.

10 Q. Do you know who slammed the door?

11 A. It might have been my grandma -- him.

12 Q. Okay. So you heard your grandma, meaning Lori
13 Lupprino, and your Uncle Mark having an argument?

14 A. No, all I heard was screaming.

15 Q. Okay. So you didn't -- when you say
16 "screaming," what do you mean by that?

17 A. Yelling at the top of someone's lungs.

18 Q. Okay. Who was?

19 A. Cursing. Cursing.

20 Q. Who was screaming?

21 A. My Uncle Mark.

22 Q. Who -- who was he screaming at?

23 A. I don't know. I was playing my Play Station.

24 Q. Was somebody else -- was -- was he having a
25 conversation with somebody?

1 A. I don't know. I was in my room with the door
2 cracked.

3 Q. So you don't know if there was an argument going
4 on between your Uncle Mark and your mom at that point?

5 A. No, I don't.

6 Q. Do you know where your grandma was -- or where
7 your mom was that night?

8 A. Downstairs, watching TV.

9 Q. So you said that you were in your room and that
10 Monique came into your room?

11 A. No, she called me. She -- she yield, and then I
12 turned -- first I turned my Play Station off to watch some
13 TV, and then after she yield and said, Come here, I turned
14 it off.

15 And then she goes, I want you to sleep with
16 me -- or she asked me, Will you sleep with me? And then I
17 said --

18 Q. Okay, just a second here. When you -- when she
19 started talking to you, did you leave your bedroom?

20 A. Yes. I was in the hall.

21 Q. Okay. And that's when she asked you if you
22 would stay with her?

23 A. Yes.

24 Q. What did -- I know that Ms. Conboy asked you,
25 but what was she acting like when she said that?

1 A. I don't remember.

2 Q. Well, did she often ask you to stay in her room
3 with her?

4 A. Not often.

5 Q. Okay. Was she -- did she look upset?

6 A. I don't remember.

7 Q. Do you remember if she was crying at all?

8 A. No, I don't.

9 Q. Okay. You said that was sometime when you were
10 in the fifth grade?

11 A. Yes.

12 Q. Okay. When Monique was talking to you in the
13 hallway, do you know where your mom was at that point?

14 A. Downstairs.

15 Q. Downstairs?

16 A. Yes, or -- either that or in her room
17 downstairs.

18 Q. And then you said that you just stayed with
19 Monique on that night?

20 A. Yes, I did.

21 Q. And then she didn't say anything to you on that
22 night?

23 A. She must have said -- my sister said the reason
24 why she didn't tell me right then and there is because
25 nobody would believe her.

1 Q. Okay, when you say "she must have said," what do
2 you mean by that?

3 A. She said the only reason why I didn't tell
4 nobody is because nobody would have believed me.

5 Q. So are you referring to a conversation that you
6 had later on, after that night then?

7 A. Not at that night, but at Louise's, when we were
8 with Louise.

9 Q. Okay. So on -- on that night when you were
10 playing Play Station and you heard the yelling, she --
11 Monique -- didn't say anything to you?

12 A. No. She said something to me, but not that:
13 what had gone on.

14 Q. So now when you're talking about Monique being
15 concerned about people not believing her, you're talking
16 about another conversation that you had later, right?

17 A. With Louise. She said -- yeah -- she said the
18 reason why she didn't tell nobody is because nobody
19 believed her.

20 Q. Okay. Now, you said that you found out about
21 this from Monique some time after all the -- after that
22 night with the Play Station, right?

23 A. Yes.

24 Q. And you said it was around the time that you
25 were going down to do the paperwork with the detective,

1 right?

2 A. What do you mean? The only reason I went to the
3 one place is to do the paperwork, is because we were going
4 to go live with Louise.

5 Q. Let me -- let me ask that differently.

6 Monique told you about Uncle Mark trying to
7 touch her around the time that you went down to do the
8 paperwork with the detective, right?

9 A. She told me before.

10 Q. Okay. How long before? I guess I'm just not
11 clear on that.

12 A. I don't remember. It was -- I mean, if it was
13 in June, I guess.

14 Q. June of 2005?

15 A. I think. I don't know -- someone said that we
16 went to go speak with the detective --

17 Q. It was when you were living with your Aunt
18 Louise?

19 A. Yes, sometime between July and five months, she
20 told me that -- that she was scared to tell me because
21 nobody would believe her.

22 Q. She told you about Uncle Mark after?

23 A. When we were living at Aunt Louise's. I don't
24 know the exact day.

25 Q. Okay, it was -- you said when you were talking

1 about going back to live with her -- your mom, in Oregon,
2 it was -- she told you after you first started talking
3 about going back to live with your mom in Oregon?

4 A. I don't remember. I mean, there was a whole
5 bunch of stuff going on.

6 Q. Okay. When Monique told you, was there anybody
7 else around when she told you about your Uncle Mark?

8 A. I don't remember.

9 Q. Okay. Do you remember talking with
10 investigators from the District Attorney's Office about
11 this stuff back in early -- or last year, like in May of
12 last year?

13 A. I remember it, but I don't remember what we were
14 talking about --

15 Q. Okay.

16 A. -- talking about the Uncle Mark, and I don't
17 know nothing about the dad.

18 Q. Do you remember talking to somebody from the
19 District Attorney's Office about when Monique told you
20 about -- about your Uncle Mark? Let me -- let me ask it
21 this way: Do you remember telling somebody that Monique
22 told you about your Uncle Mark when you were riding in the
23 van with your Aunt Louise?

24 A. No.

25 Q. Do you remember saying something about how your

1 Aunt Louise was talking about it and that's when Monique
2 brought it up, what your Uncle Mark tried to do?

3 A. I think she brought it up, the Uncle Mark part,
4 first.

5 Q. What do you mean by that?

6 A. Like she said about Mark, and then we went on
7 that -- we went on that for like -- I don't know how
8 long -- and then she said something about how dad tried --
9 our dad touched her inappropriately.

10 Q. Where was that, in the van?

11 A. She told somebody, I don't know when. I don't
12 know when.

13 Q. I'm talking about when you heard.

14 A. When I heard it, it was in the van after Shannon
15 left the second -- yeah, the second time, before the last
16 time we saw her.

17 Q. So that's when you found out from Monique about
18 both your Uncle Mark and your dad?

19 A. Just from my dad.

20 Q. Okay. When -- so about Uncle Mark, you weren't
21 in the van when you heard about that?

22 A. I knew -- I don't remember.

23 Q. Okay.

24 A. It was -- all I heard was, Uncle Mark tried to
25 touch me, and went on that.

1 Q. So what you can say for sure is it was sometime
2 after you were living with your Aunt Louise?

3 A. Yes.

4 Q. And that was sometime when you were how old, do
5 you think?

6 A. Twelve, thirteen.

7 Q. Twelve or thirteen?

8 A. Yeah, because it couldn't be this year, because
9 I'm fourteen and I've known about this for, I think, a
10 long time.

11 Q. You said that you and your sister are really
12 close, right?

13 A. Yes.

14 Q. And have you always been really close like that?

15 A. I don't remember. I mean, I've always called
16 her sister.

17 Q. Okay. Have you always -- you've always talked
18 about stuff like brother and sister, right?

19 A. Yeah.

20 Q. When Monique told about your Uncle Mark, did she
21 say anything about you not believing her then?

22 A. No.

23 Q. How was she acting when she told you?

24 A. I don't remember.

25 Q. Um --

1 A. Oh, I do. She was calm. She was calm and
2 mature about it.

3 Q. And mature about it?

4 A. She was mature -- mature. She was mature about
5 it.

6 Q. Mature about it?

7 A. Yes.

8 Q. Okay. When you said before that -- you used the
9 word "inappropriate" to talk about where Monique said your
10 uncle and dad had been touching her, right?

11 A. Yeah.

12 Q. Who told you that? Where did you learn that
13 word "inappropriate"?

14 A. Inappropriate?

15 Q. Yeah. I mean, with respect to that -- that kind
16 of stuff?

17 A. I don't know, sometimes I just know words.

18 Q. Well, it sounds like --

19 A. Fast, and what does fast mean, I don't know, you
20 go fast.

21 Q. Did anybody ever tell you that -- to use that
22 word in describing this --

23 A. No.

24 Q. -- sort of touching?

25 That was a name you came up with all on your

1 own?

2 A. Yes.

3 Q. And you said you wanted to go stay in Oregon
4 with your mom?

5 A. I wanted to, but, I don't know, it was just -- I
6 didn't want it no more because all my family is here and
7 who is out there besides, like, three people that are my
8 family members.

9 Q. Okay. And is that -- is that something that you
10 and Monique talked about?

11 A. Yes.

12 Q. When you said that Monique was acting mature
13 when she told you about your Uncle Mark, what started that
14 whole conversation? What were you guys doing before then?

15 A. I don't remember.

16 Q. Okay. You -- that's -- that's a pretty
17 important thing, right?

18 A. Yes.

19 Q. And do you remember -- how did you respond
20 afterwards, I guess?

21 A. I told you, I didn't believe her.

22 Q. You didn't believe her?

23 A. I just started having an attitude, and then I --
24 it's: Whatever. I don't believe you. It's not true,
25 and, You're a liar, and --

1 Q. Do you remember what she -- how she responded to
2 that?

3 A. Like a sister would.

4 Q. What do you mean by that?

5 A. Beat her little brother up, I guess.

6 Q. I'm sorry?

7 A. Beat her little brother up, but with words,
8 saying, It's whatever, Brother. It really happened, and
9 stuff like that.

10 Q. Okay.

11 A. And after that -- after I calmed down, she
12 finally told me the only reason why I didn't tell you
13 before is because no one would have believed me.

14 Q. Okay. So she also told you that?

15 A. Uh-huh.

16 Q. Because before you said your Aunt Louise told
17 you that, right, that Monique was concerned about not
18 being believed, right?

19 A. I don't know if she told my Auntie Louise, but
20 you know, she told me that.

21 MS. WHITNEY: That's all I have. Thank you,
22 Tomas.

23 THE COURT: Redirect?

24 MS. CONBOY: Briefly. Thank you.

25

1 the question. I think it's a compound question and it's
2 difficult to understand. It also, I think, asserts a fact
3 that is not what this witness testified to, that it was a
4 conversation between just he and Monique.

5 As I understood it, he said it happened in the
6 van and the guardian, Louise Lee, was present and involved
7 in the conversation as well.

8 THE COURT: The objection is overruled. Why
9 don't you ask it again.

10 Q. (By Ms. Conboy) The -- the -- Monique said to
11 you, Dad touched me, and you understood that to mean that
12 it was because of something that meant something
13 inappropriate. And I asked you why, and you had said,
14 well, because you wouldn't have a trial for something like
15 that?

16 A. Yes.

17 Q. And I was -- and then I asked you a follow-up
18 question and I said, Well, I'm not really asking about the
19 trial so much as I am about a conversation between you and
20 Monique.

21 A. Yes.

22 Q. Whether or not Louise was in the car or not.
23 But just as between what you understood your sister to be
24 saying, what was it -- what was it about what Monique said
25 that made you think that was -- she meant an inappropriate

1 touch?

2 A. Because the way she looked at me.

3 Q. Okay. Can you tell us a little bit more about
4 that?

5 A. It was more like fear and -- and a look like she
6 was hurting deep down inside.

7 Q. Mr. Ward asked you a little bit about filling in
8 the gaps. We were just trying to figure out what you
9 meant. Are you filling in gaps today?

10 A. Partially.

11 Q. Okay.

12 A. I would say something and then I would back it
13 up; but sometimes when I -- if I backed it up, it wasn't
14 right, it wasn't what the -- the situation.

15 Q. And now, Tomas, just so we're clear, I'm asking
16 you about what you said today in court.

17 A. Yes.

18 Q. Are you filling in any gaps today?

19 A. No, I'm just telling you what I know.

20 Q. When you were talking about filling in gaps,
21 when did that happen?

22 A. When he asked me a question, I didn't know I was
23 going to get off on a whole different story, so I stopped
24 talking and said I don't remember. I don't know. And
25 that because they said tell the truth and not -- no gaps.

1 Q. Fair enough. Do you remember where you might
2 have filled in a gap?

3 A. No.

4 Q. You had mentioned the three month -- you had
5 mentioned that Monique had told you about Uncle Mark three
6 months later. Was that filling in a gap?

7 A. Yes, it was.

8 Q. Okay. And that was -- that was when you talked
9 to Detective Cotter?

10 A. Yes.

11 Q. Okay. Do you remember any other -- any other
12 times?

13 A. No, I don't.

14 Q. Okay. Mr. Ward asked you a little bit about
15 Youth of the Year, and I know we keep asking you about
16 that, but did that happen or was that an example you were
17 giving?

18 A. Kind of both.

19 Q. Kind of both?

20 A. Yeah. I was meaning to bring my packet but I
21 was caught up at school and I had a big test coming and I
22 asked Monique to put it in the backpack, and I guess she
23 forgot it, and I was also giving a big example like that.
24 It was an example of what happened.

25 Q. But Monique did actually forget to put something

1 in your backpack?

2 A. Yes.

3 Q. And then she said --

4 A. I lost it.

5 Q. -- I lost it.

6 Mr. Ward asked you a little bit about why you
7 thought that happened, and I didn't quite understand your
8 answer. Do you have any opinion as to why Monique said,
9 "I lost it"?

10 A. No, I do not.

11 Q. Do you think she was trying to hurt your chances
12 of getting that award?

13 A. No.

14 Q. I want to ask you a couple questions about what
15 Ms. Whitney asked you.

16 A. Okay.

17 Q. Okay. Mom is who? Who do you call mom?

18 A. Grandma.

19 Q. Okay.

20 A. Lori.

21 Q. Lori Lupprino, you call her mom?

22 A. Yes, I did.

23 Q. Is that right?

24 A. Yes.

25 Q. And who is your mom mom -- your biological mom?

1 A. Nisa.

2 Q. And what's her last name?

3 A. Pelman.

4 Q. Do you remember following up, both of the
5 attorneys asked you a little bit about exactly the
6 conversation that you had with Monique when she asked you
7 to sleep in the room, and you had said that she said she
8 was scared. Did she say anything else to you?

9 A. No, she didn't.

10 Q. Do you remember when you came into the District
11 Attorney's Office on May 8th of 2006, Ms. Whitney asked
12 you a little bit about that. Do you remember coming to
13 our office?

14 A. Oh, yes.

15 Q. Okay. Do you remember you met with -- you met
16 with me and also a man named Ralph?

17 A. Yes, I do.

18 Q. Ms. Torres here. Do you remember that meeting?

19 A. Yes. Yes.

20 Q. And do you remember you had said that Monique
21 came into your room and asked you, Will you sleep with me,
22 and you said you asked is it okay with mom?

23 A. Yes.

24 Q. Do you remember that?

25 A. Yes.

1 Q. And do you remember then you asked Monique why,
2 and you told us that Monique told you, I'm scared Uncle
3 Mark might hurt me. Do you remember that?

4 A. No.

5 Q. Okay. So it's your recollection that she just
6 said she was scared?

7 A. Yes.

8 Q. Okay. I want to just make one final thing
9 clear, okay -- sorry about this -- filling in the gaps.
10 When you told -- when you are telling us that Monique said
11 to you that your Uncle Mark almost touched her; is that
12 filling in the gap at all?

13 A. What do you mean?

14 Q. Are you filling in the gap or is that something
15 that really happened?

16 A. It's something -- like, what do you mean? Like
17 is that something that really happened?

18 Q. When you tell us that Monique told you that, so
19 you come into court today and say Monique told me Uncle
20 Mark almost touched me, did you really have that
21 conversation with Monique?

22 A. Yes.

23 Q. Okay.

24 A. Yes, I did.

25 Q. Are you filling in the gaps at all about that?

1 A. No, I'm not.

2 Q. No. Okay. And when you tell us that Monique
3 said to you, Dad touched me, that statement that Monique
4 made, did she really say that to you?

5 A. Yes --

6 Q. Okay.

7 A. -- I heard it from two people.

8 Q. Pardon?

9 A. I've heard it from two people.

10 Q. Right. The important one for today, though, is
11 Monique. Are you absolutely certain that Monique told you
12 that?

13 A. Yes, I'm absolutely certain.

14 Q. You are?

15 A. I'm absolutely certain.

16 Q. And are you filling in the gaps at all about the
17 fact that she said that to you?

18 A. No.

19 MS. CONBOY: Okay, thank you, Tomas.

20 THE COURT: Recross? Mr. Ward, any questions?

21 MR. WARD: No, I think I'm going to refrain.

22 THE COURT: Ms. Whitney?

23 MS. WHITNEY: No, thank you.

24 THE COURT: Okay. Thank you, Tomas.

25 You can -- you can leave now. Thank you.

1 Any other witnesses from the People on child
2 hearsay?

3 MS. CONBOY: No, Your Honor.

4 THE COURT: Now, let's talk about whether we
5 shall set this over to give Mr. Ward and Ms. Whitney a
6 chance to call the caseworker. Anything you want to add
7 to what you've told me before?

8 MR. WARD: Well, I don't know, do you want me to
9 give an offer of proof as to why I want the testimony
10 or --

11 THE COURT: Sure.

12 MR. WARD: -- or why she's not available?

13 THE COURT: No, I think we've covered why she's
14 not available. How about an offer of proof about her
15 testimony, what factors would bear on it in terms of the
16 statute of People v. District Court.

17 (Speaking to witness entering courtroom:) Not
18 quite ready for you, just a couple of minutes.

19 And maybe we can short-circuit this. There was
20 some question about whether the People had agreed to
21 continue this or not.

22 MR. WARD: That was my understanding, that she
23 said that that was fine, and I don't know if maybe that's
24 different from we're not objecting, and I'm not --

25 MS. CONBOY: I definitely don't want to -- I

1 don't want to have any bad faith with Mr. Ward, if that's
2 his recollection.

3 THE COURT: One of the factors, of course, of
4 People v. District Court is the general character of the
5 child, and it seems to me this is somebody who knows
6 something about the general character of Monique, so --
7 that was the nature of the offer of proof, but more
8 specific.

9 MR. WARD: That's part of it; and also the
10 Fifth -- the People v. District Court factor, whether
11 either the child or hearsay witness had any bias against
12 the defendant, or motive. What Ms. Christner is going to
13 give the Court is the detailed background and the exact
14 timing of these disclosures by Monique Ulloa in the
15 context of what was happening with the D and N proceeding
16 and social services.

17 THE COURT: And the question about leaving to
18 live with her grandmother or not?

19 MR. WARD: All of those kinds of things.

20 MS. CONBOY: No objection then, Your Honor.

21 THE COURT: Okay, but remind me before we leave,
22 we have to set another date. How long do you think it's
23 going to take to put her testimony on?

24 MR. WARD: I would say maybe an hour.

25 THE COURT: Okay. Before we leave let's get a

1 date.

2 Now, shall we proceed with the Shreck hearing?

3 MS. CONBOY: Yes, Your Honor. And just one
4 matter, I had endorsed Shannon Christner as a child
5 hearsay witness, so I would just like to reserve the
6 right, if there's certain testimony that comes out
7 pursuant to her examination, it may be that she has child
8 hearsay that I would want to admit through the course of
9 that hearing.

10 She was an endorsed witness on my child hearsay.
11 I wasn't intending on putting her on in my direct, but if
12 there is some hearsay relating to this case, that I would
13 reserve opportunity, since I have endorsed her, to also
14 call her for child hearsay.

15 THE COURT: Okay.

16 MR. WARD: I guess I have a question about that,
17 for the record. The -- what the motion says is
18 additionally it is understood that caseworker so-and-so
19 and Shannon Christner were present and observed the
20 forensic interview of Monique.

21 That's the interview that Karen Blackwell has
22 already testified about.

23 THE COURT: Then I'm lost.

24 MR. WARD: If that's all it is, then I don't
25 have any problem with it, however, there are other

1 statements. I think the statute requires that we have
2 notice of those, and that hasn't been provided.

3 THE COURT: You're not talking about new
4 statements that we might learn about at the hearing
5 that -- that Monique made to Shannon, are you?

6 MS. CONBOY: No, nothing that wouldn't have been
7 already contained in discovery.

8 THE COURT: What you're really saying is: Can
9 you go outside the scope of direct because you might have
10 called her in your case, and that's fine.

11 MR. WARD: Yeah.

12 THE COURT: Okay. The People's first witness --
13 well, I guess it's -- I guess it's the People's burden, so
14 People's first witness on the Shreck motion.

15 MS. CONBOY: Thank you, Honor.

16 People call Suvi Miller.

17 THE COURT: Ms. Miller, good afternoon.

18 THE WITNESS: Good afternoon.

19 THE COURT: If you will come right on up here
20 and raise your right hand.

21 SUVI MILLER,
22 a witness herein, being first duly sworn in the above
23 cause, was examined and testified as follows:

24 THE COURT: Thank you, ma'am.

25 If you'll have a seat. There's water in that

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THE WITNESS: Okay, thank you.

THE COURT: Ms. Conboy?

MS. CONBOY: Thank you, Your Honor.

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DIRECT EXAMINATION

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BY MS. CONBOY:

Q. Good afternoon.

A. Good afternoon.

Q. Could you please state your name and spell your
for the record.

A. Suvi Miller; S-U-V-I, last name Miller,
L-L-E-R.

Q. Ms. Miller, where are you employed?

A. Currently employed at Denver University as well as doing some work with the District Attorney's Office, I am a licensed clinical social worker.

Q. And you said you're employed at Denver University, what do you do there?

A. I am part of the adjunct faculty there. I teach as well as I have a job as a liaison for graduate students in the graduate school of social work.

Q. What is it that you teach?

A. Currently teaching clinical theories. I've also
nt social work practice; and I teach a course that's a

1 seminar class that's for students to talk about their
2 field placements.

3 Q. All right. So you are an adjunct professor at
4 Denver University, and you stated that you also do
5 additional work at DU?

6 A. Yes, I have a job as a field liaison.

7 Q. And could you explain that?

8 A. That just means that I -- I'm a liaison between
9 the students who are graduate students and have a job at
10 an internship or an internship, and I am the liaison
11 between the student, the agency, and the school.

12 Q. Prior to being employed at Denver University,
13 what were you doing?

14 A. Immediately -- well, actually at the same time I
15 was employed at Denver University -- I finished last
16 January -- I worked for the Denver Children's Advocacy
17 Center for a period of about nine and a half years.

18 Prior to that I worked for Denver Public Schools
19 for a brief time. I had worked in residential treatment
20 in New York City as well as hospital placement in New York
21 City and have done -- have done an internship in a
22 child-abuse-treatment program in New York as well as an
23 internship in an adult psychiatric facility.

24 Q. Let's talk about the Denver Children's Advocacy
25 Center, you were there nine years, nine and a half years?

1 A. Yes.

2 Q. What exactly were you doing?

3 A. I was, at the time that I left, the clinical
4 supervisor, so I provided treatment to children who were
5 brought in for services as well as provided clinical
6 supervision to the clinical staff, the clinical therapists
7 at the agency.

8 Q. And who were those children being brought in for
9 services?

10 A. The children who are brought in were identified
11 as victims of trauma, either having experienced it
12 directly or witnessed it, and that could include physical
13 abuse, domestic violence, witnessing a homicide, as well
14 as sexual abuse.

15 Q. How did these children find their way, as a
16 general matter, to the Denver Children's Advocacy Center?

17 A. A number of ways, but they were often referred
18 from social services or schools. They had been identified
19 as victims of some sort of trauma and referrals came
20 predominantly from those sources as well as other ones;
21 and individuals in the community.

22 Q. You mentioned that you provided treatment, in
23 what capacity?

24 A. Well, the children would be referred to the
25 organization for services, and part of my job was to do

1 some assessment -- what we called assessment -- first with
2 a primary caregiver, if they were available, to get a
3 sense of how the children were doing and what the issues
4 might be, to gather some history, if possible; and then to
5 work with the child by identifying really what was going
6 on for this child in the immediate time and to provide an
7 environment where they felt safe and supported so that
8 they could work through some of the things that had
9 happened to them.

10 Q. And in doing -- in doing the assessment and
11 providing the environment, were you doing any kind of
12 therapeutic treatment with those children?

13 A. Yes, I was. That was most of what I did.

14 And we did a number of different treatment
15 modalities, depending on the age of the child and where
16 they were developed mentally. So we would provide play
17 therapy, art therapy, we did some direct-talk therapy with
18 older children -- a lot of different kinds of tools that
19 we could use to work with kids because they do better in
20 those contexts than necessarily talking about what's
21 happened to them as adults do.

22 Q. And was this something that you did throughout
23 your nine years at the Denver Children's Advocacy Center?

24 A. I started initially, developing a position for
25 the agency, as a volunteer, and then I provided them with

1 some court/school coordination services so they had a
2 program in place for children who were going to testify in
3 cases, and we did kind of a classroom environment. We
4 never talked about specifics of cases but allowed the
5 children to understand what is a courtroom and what does
6 the judge do and what does a jury do, those kinds of
7 things. So I put that together, and then subsequently
8 provided services to the agency as a therapist.

9 Q. Approximately at what point during your tenure
10 did you begin providing therapeutic services?

11 A. That was -- I think I did the court school
12 coordination for a period of maybe six months, and then I
13 provided the services as I was available, so I think that
14 was -- I'm thinking fall of '97 was probably when I
15 started. I can't recall exactly.

16 Q. Then, Ms. Miller, during the course of your work
17 at the Denver Children's Advocacy Center, are you able to
18 make an approximation of how many victims of -- child
19 victim of trauma that you had provided therapeutic
20 services for?

21 A. I don't have an exact number, but in general it
22 was in excess of two hundred.

23 Q. What were some of your other roles at the
24 Advocacy Center?

25 A. Well, it's a small staff, so I did a lot of

1 support within the staff; and then, as I mentioned, I
2 provided supervision to the other therapists who were
3 providing direct services as well as to supervise graduate
4 students from Denver University.

5 Q. In your role in a supervisory capacity to the
6 other therapists, what kind of things were you doing?

7 A. Well, we met on a regular basis for them to
8 discuss cases, whatever issues they might be having, and
9 also to provide logistical support, if you will, helping
10 them with resources, more practical things; and then I was
11 really just available in an ongoing basis if they had
12 general questions or specific questions as needed.

13 Q. Can you make any generalizations as to -- when
14 you talk about the -- let me ask a better question.

15 What kind of logistical support would you be
16 offering?

17 A. Well, to the clinicians -- I guess my intent by
18 saying that would be that if there were things that they
19 needed help in a very concrete way, so there -- we were
20 managing a number of cases and making sure that they got
21 the right number of cases, the cases that suited them, if
22 there were issues around getting particular clients and
23 that kind of a thing, so there was a lot of management in
24 that piece as well.

25 Q. So, to be clear, though, from about fall of 1997

1 until 2004 when you left, you were also in the role of
2 actually directly providing therapeutic services?

3 A. Oh, yes, I was. The clinical supervisory piece
4 was for the last fifteen months that I was there --
5 sixteen months that I was there. The rest of the time
6 was -- in addition, I provided the supervision but the
7 entire time that we talked about I was providing a direct
8 service to the children and their families.

9 Q. You mentioned that you've had some experience
10 as -- in internships in New York, and could you tell us a
11 little bit about that?

12 THE COURT: You know, Counsel, I don't want to
13 interrupt, but we've spent, so far, the whole time on the
14 qualification issue and that's never a big issue for me.

15 MS. CONBOY: Okay.

16 THE COURT: And if we're going to get done with
17 the other motion that we still have to have oral arguments
18 on, we really need to get to the other -- the deal
19 breakers on reliability, and I need to know what her
20 opinions are and the scientific reliability of them, but
21 I've read the motion, I've read that offer of proof. I
22 have no issue with her qualifications.

23 MS. CONBOY: Very good.

24 Q. (By Ms. Conboy) Do you have an understanding
25 as to why you're being called as an expert witness in this

1 case?

2 A. My general understanding of what my role is as
3 an expert witness is to provide information to a jury to
4 help them understand the impact of sexual abuse on
5 children, specifically around things like: Why would they
6 delay in disclosure, why would they gradually disclose
7 issues related to sexual abuse, as well as to whom might
8 they disclose, and at times I will also talk about some of
9 the behavioral indicators of sexual abuse, or some of the
10 behaviors that are manifest as a result of that trauma.

11 Q. I would like to talk about those one at a time.
12 With respect to delayed disclosure, what exactly is that,
13 in your definition?

14 A. In my definition, as we're talking about sexual
15 abuse, it would be disclosure meaning when the child talks
16 about what's happened to them, to another person, another
17 individual; and delayed disclosures would just mean that
18 there was a delay in the time that they talked about it
19 from the time that it happened, that they didn't
20 immediately disclose.

21 Q. Is that common or rare in your experience?

22 A. It is much more common for a child to do delay
23 in disclosures than to immediately disclose, particularly
24 if the perpetrator is known to them.

25 Q. And why would that be?

1 A. There are a number of factors that are involved
2 in that, but in general what we see is that children have
3 a tremendous amount of anxiety and fear around disclosure:
4 Fear of harm from the perpetrator; fear of loss of
5 affection from the perpetrator because oftentimes there
6 are positive elements to this relationship as well; fear
7 of consequences for telling, to the perpetrator or to
8 themselves; fear of negative reactions from family members
9 or others around them; and a very big fear is not being
10 believed.

11 Children often think that this -- whatever is
12 happening to them -- that nobody would believe that this
13 might be happening despite the fact that others have even
14 believed them in the past.

15 They carry a tremendous amount of shame and
16 guilt around this, so often all of these things come into
17 play when they are considering disclosure, and oftentimes
18 they come into play in terms of delaying in that
19 disclosure.

20 Q. Is this information that you believe would be in
21 the -- in the common knowledge of the average person?

22 A. I would say no. I think most people would
23 assume that a child, if they were being sexually abused
24 and were unhappy with that, on some level, would tell
25 someone because they would want it to stop.

1 So I think most people think that children would
2 tell, especially if they've got an individual who they
3 have access to, about what's happening to them. I don't
4 think that the average person understands the different
5 levels of complication that are involved in that and how
6 hard this is for a child to do.

7 Q. And can you make any generalizations as to the
8 kind of families or home environments that the children
9 that you have treated come from? Are you able to make
10 generalizations?

11 A. I've treated children sort of from across the
12 spectrum. I think certain things in the environment can
13 play more into whether or not a child might delay in
14 disclosure -- not necessarily -- but things like more of a
15 chaotic environment, more people coming and going, a lot
16 of different people residing in the home, less
17 availability of one primary caregiver either because
18 they're working or they're depressed or they are just less
19 accessible.

20 And oftentimes the perpetrator, if they're a
21 person that's trusted by the family, just in general, or
22 providing financial support, or is a parent to this child,
23 that can play in tremendously as to whether or not a child
24 is going to disclose this information.

25 Q. Why do you mention the chaotic environment?

1 What role or what would that have to -- how would that
2 play in a child delaying a disclosure?

3 A. Well, children do much better in terms of
4 general behavioral things and other factors when things
5 are more predictable, but if you have a child who feels
6 that people are coming and going, that things are more
7 chaotic, they don't have a reliable person to which to
8 turn, so they may feel less support from people around
9 them.

10 If there are a number of people that are in
11 their household and they don't have a sense of who is
12 going to be there at all times, or that they're going to
13 be left alone frequently with somebody who has been
14 abusing them, then they might feel much less inclined to
15 share that information. There has been no pattern,
16 necessarily, that they've been supported in the past, and
17 therefore, with something like this they might feel less
18 so.

19 Q. Are you familiar with the facts of this case?

20 A. I do have some knowledge of this case.

21 Q. What is your knowledge of this case?

22 A. I had interviewed the foster-care -- kinship
23 foster-care mother when these children were referred to
24 the Advocacy Center. I don't know exactly what the time
25 frame was on that, but I did provide that initial

1 assessment with her during which we talked about some of
2 her goals for them and some of the services that could be
3 provided by the agency, and additionally I did provide
4 some supervision to the people who were working directly
5 with the children.

6 Q. So you interviewed Louise Lee when this case
7 first came in?

8 A. I did.

9 Q. Were you ever in the role of providing
10 therapeutic services to Monique or Tomas Ulloa?

11 A. I was not.

12 Q. And other than your involvement with the
13 assessment and the supervision, have you ever reviewed the
14 case file -- or have you had any other involvement with
15 the cases?

16 A. I have not had any other involvement with the
17 case other than that.

18 Q. Have you ever reviewed the case file?

19 A. I have not been with the agency over a year, and
20 at the time I did not review the files for those children.

21 I would at times sign off on notes for graduate
22 students who worked with Tomasitto earlier on, so I was
23 aware of some of the issues going on during their session.
24 We would talk about some of those, but they were not
25 related to sexual abuse. It was more current issues,

1 struggles that he was having within the current family
2 dynamics, some of those kinds of things.

3 Q. And how about Monique?

4 A. I did not review Monique's notes because the
5 person providing services to her, it wasn't required that
6 I sign off on her notes.

7 I had some information, again, about some of the
8 dynamics of the treatment sessions; and again, most of
9 that was related to how she was adjusting to this
10 household, because when the children came to the Advocacy
11 Center they had been there for a limited amount of time
12 and a lot of this was around how they were adjusting,
13 living with a new foster mom and other children in the
14 home.

15 Q. So, to be clear, then, have you ever read any of
16 the notes relating to any of the allegations involving
17 these cases?

18 A. No.

19 Q. Any sex abuse or any sex allegations?

20 A. I have not. To the best of my recollection, I
21 have not.

22 Q. Your second one you talked about, to whom a
23 child discloses, can you tell us a little bit about that?

24 A. Well, briefly, there -- to whom a child might
25 share this information, that decision would be impacted on

1 the age of the child, the length or the duration of abuse,
2 and particularly on the relationship to the perpetrator.

3 Children choose to tell someone about sexual
4 abuse -- predominantly to someone that will believe them.
5 That is usually if they're going to delay in the
6 disclosure and then subsequently make a decision to share
7 it, is with somebody that they feel will believe them.
8 It's critical that they have that.

9 So they will make choices based upon that, and
10 depending upon their age, and depending upon what the
11 circumstances are, they might make a choice to share with
12 their peers -- for example if they're an adolescent --
13 because those relationships come more into play.

14 A younger child might choose a primary
15 caretaker, a parent, or they might choose someone in the
16 extended family, even outside of the family, but may
17 choose an adult in that situation because they have those
18 kinds of relationships with adults that they may not have
19 with peers that an adolescent might have.

20 Q. So you're touching on this now, but what role
21 would you say -- generally -- age plays in the disclosure
22 process?

23 A. Well, I think it -- it impacts the -- it impacts
24 the child in terms of when they disclose and to whom they
25 disclose and what they disclose. It can play a very large

1 role -- as an example, you have a very, very young child
2 who would not necessarily understand -- we're talking
3 about a three-year-old, as an example, or four-year-old,
4 that may or may not understand what has happened to them
5 if they have been sexually abused, and they may actually
6 reveal this information to someone accidentally, if you
7 will. I was playing a game with Uncle Joe and he touched
8 me on my pee pee as a game. And so they wouldn't
9 necessarily be disclosing this in order to unburden
10 themselves, but just sharing information.

11 Another example might be that a school-age
12 child -- as children get older -- do develop a further
13 understanding of what is happening to them, and it becomes
14 then, for them, a much more shame-based thing and they
15 feel a great deal of responsibility as they get older.
16 They feel a tremendous amount of responsibility for what
17 has been happening, so that child might seek some -- an
18 adult because they identify adults as people who can help
19 them, but again choosing who that adult might be will
20 depend a lot on the availability of people around them.

21 An adolescent has moved into the time where they
22 would have more peer relationships, seeing them as their
23 most reliable relationships. Adolescents also are
24 entering puberty and there is a whole other element, then,
25 added into what has happened to them because they have a

1 much fuller understanding of sex and sexuality and
2 therefore sexual abuse has a very different meaning for
3 them than it might have when they were younger.

4 So all of those things play in, and so age and
5 developmental level have a lot to do with that.

6 Q. Conversely speaking, are you able to speak to
7 the question of what -- what about when a child doesn't
8 tell someone close?

9 In other words, you know, answering the question
10 for a juror, why didn't he or she tell mom why, or, you
11 know, why he or she might not have told a person that that
12 child was very close to. Can you answer that?

13 A. Well, I think that there can be a number of
14 factors that weigh into that, and not saying specifically
15 to -- to this case, because I don't know what the
16 relationship of this child might have been to a primary
17 caregiver in any real extent -- but in general children
18 might not disclose, and -- to somebody who is a primary
19 caregiver because the perpetrator is someone who is
20 important to their mom, to their caregiver, to someone,
21 that this is a person who -- that is trusted in the
22 family, and so their concern would be that this would be
23 not only very upsetting to mom or whomever, but that they
24 may not believe them.

25 They also may not share this information with

1 mom in general because even if they have a positive
2 relationship with the parent, there's this concern about
3 upset. There is this concern about consequence for
4 themselves or for the perpetrator, or in general, and they
5 may feel that they don't want to cause that kind of
6 disruption within the family.

7 Sometimes they can be due to lack of
8 accessibility -- accessibility or believability, but
9 sometimes it can also just be because this child doesn't
10 think that anyone's going to either believe them or that
11 the consequences for it are not worth the disclosure.

12 Q. Do you think these are things in the common
13 knowledge or experience of the average person?

14 A. I do not.

15 MR. WARD: I object. I don't think there's been
16 anything as far as her qualifications would establish
17 she's qualified to say that.

18 THE COURT: Sustained. I think it's a legal
19 question for me. Sustained.

20 Q. (By Ms. Conboy) Have you done any work or
21 studies with respect to perceptions about these concepts?

22 A. I haven't done any studying independently -- I
23 mean, I haven't performed a research or a study on this.
24 I have studied it and I have seen it in practice.

25 Q. Tell us about that.

1 A. Well, in general what we see in terms of
2 research around children and their understanding of why
3 they would disclose the factors that I've shared with you
4 is what comes up, that people aren't going to believe
5 them, that people aren't going to think these kinds of
6 things happen, that the consequences are too large for why
7 they would share the information, and that they blame
8 themselves.

9 My experience with what people, in general,
10 understand -- particularly related to families -- extended
11 families of children who have been sexually abused -- is:
12 Why didn't they tell me? I'm there. I care. I don't
13 understand why this child wouldn't come to me immediately
14 and tell me. And I would have that question asked over
15 and over again, because the understanding of what might
16 play into a child's disclosure was not there.

17 Q. So you've told us you've treated, ballpark, two
18 hundred children on a therapeutic basis who have been
19 victimized, correct?

20 A. Yes.

21 Q. And now you're telling us that you have also,
22 through that work, had interaction with those extended
23 family and the people surrounding these children, correct?

24 A. Yes.

25 Q. And so when you're making these opinions and

1 you're -- you're telling us that you've had these
2 conversations with them, fair to say then that you have
3 had follow-up and dealt with disbelief, or do you have
4 familiarity with the perception that these extended
5 families have regarding how these kids are disclosing,
6 when they're disclosing, to whom?

7 A. Yes.

8 Q. Okay. And are the opinions that you would be
9 rendering in this case based upon your -- your experience
10 dealing with the extended families of these victims that
11 you've treated?

12 A. They would be both with my experiences as well
13 as what I have studied in terms of research and training
14 and presentations, that -- that would be all encompassed
15 in that.

16 Q. And can you speak to things that you have
17 studied regarding people's perceptions or perceptions that
18 the average person has about disclosure and how that comes
19 about?

20 A. Well, specifically around people's perceptions,
21 it's usually -- most of the research that I have seen and
22 the text that I have seen is encompassed in text
23 surrounding how to treat children, or studies around why
24 children have not disclosed information, or why they delay
25 in disclosure.

1 So a specific study to the average person on the
2 street's perception, I couldn't cite that for you, no; but
3 I do know, you know, from my -- from a learned experience
4 as well as personally, people have these questions all the
5 time: Why wouldn't a child tell -- if they've got someone
6 to tell, why wouldn't they make it stop as soon as they
7 could make it stop?

8 It's very confusing for adults to understand why
9 a child won't try just about anything to make this stop,
10 in my experience.

11 Q. Okay, one of the questions you've heard: If
12 they've got someone to tell, why don't they tell? What
13 other questions have you heard in your experience?

14 A. Why -- why would a child wait so long. If they
15 can tell someone and they finally decide to tell somebody,
16 why would they wait so long? What would play into that?

17 If this person was -- had never threatened to
18 hurt them or be violent, why would they think that they
19 couldn't tell on them because they didn't -- they -- they
20 didn't have the assumption that something terrible was
21 going to happen to them physically, so why wouldn't they
22 just share the information?

23 People look for understanding all the time about
24 why would a child -- as an example, the child who was
25 abducted and the child who was in custody for -- or being

1 kidnapped for four years. Why didn't he runaway? This
2 was a question I heard over and over and over on the news
3 which I felt like I could answer, but people don't
4 understand those kinds of dynamics. So why is a child in
5 a situation where bad things are happening, why do they
6 not take action? That's a question I hear all the time.

7 Another question I might hear is: If a child
8 finally tells, why don't they tell everything all at once?
9 Why would they tell something a little bit at a time and
10 not tell all the details at once and get it all out there?
11 That's another question that you hear frequently from
12 extended family, individuals, and just people in my own
13 community that are trying to understand.

14 Q. So do you have an opinion then as to whether
15 those are issues that are understood commonly based upon
16 your experience?

17 A. In my opinion those are not commonly understood.

18 Q. Gradual disclosure was another concept you
19 talked about. What is gradual disclosure?

20 A. Meaning for me, when I'm using that term, that a
21 child would disclose some of the information but they
22 would not talk about all of the incidents, all of the
23 sexual abuse at once, they might tell it more gradually.

24 Q. And again, is this something you believe is --
25 you were touching on it and saying that was not something

1 you thought people would understand, why not?

2 A. Well, in my experience people feel that if this
3 child has finally pulled a lid off, if you will, and
4 started to talk about this, why wouldn't they just tell
5 everything? Why wouldn't they unburden themselves
6 immediately and get it all out of there and that way we
7 can follow up and do what we need to do to the
8 perpetrator?

9 They don't understand how the levels of
10 complexity that a child might experience with that, like a
11 child makes a decision to share some information and
12 they're looking to see what the response of the other
13 person is going to be: Will they be believed? Will they
14 cause this person that they're sharing this information
15 with distress? Will they feel more shame? Will they feel
16 like this person tried to convince them that these things
17 didn't really happen?

18 So if they're in a situation where they don't
19 feel heard, then they may decide not to talk anymore
20 because they've at least given some information and it
21 hasn't been received well.

22 Another -- another circumstance might be that
23 they are heard but they're sharing this information with
24 an adult and the adult becomes very distressed, and
25 children don't want to see people they care about very

1 distressed, so they might decide that they've given some
2 information that the perpetrator won't hurt them anymore,
3 maybe this won't happen anymore, but they no longer want
4 to upset this person they're sharing the information with,
5 so they'll just talk about a single incidence of fondling,
6 as an example.

7 Also we see, in a forensic interview, a child
8 might give a forensic interviewer more information than
9 they might have to an immediate family member because they
10 feel like this person is asking these questions and can
11 help and they can be much more matter of fact.

12 Conversely, a child may not want to talk to a
13 forensic interviewer because this is someone who is a
14 stranger to them and they're not sure what this person is
15 going to do with this information. So we do see both
16 sides of that.

17 I can say in my experience in treatment that
18 children -- very often you would have a certain set of
19 information about what has happened with this child based
20 upon a forensic interview, based upon a disclosure to
21 whomever, and later in treatment when this child feels
22 more safe and more secure, we often get much more
23 information about what has happened because the child then
24 feels safe enough to talk about some of the things that
25 they've continued to withhold for a number of reasons, not

1 the least of which is out of shame.

2 Q. You also mentioned behavior implications. What
3 have you observed, in your experience, or what's been --
4 can you comment on whether there are certain behavior
5 implications for these kind of victims?

6 A. Well, I think you look at a large picture
7 because no one behavior can indicate sexual abuse, but
8 what we do see is pattern behaviors in children who have
9 been sexually abused. We see increased aggression. We
10 see increased depression. We see increased clinging
11 behavior, you know, not wanting to let go of mom or that
12 kind of regressed behavior that a child may not have
13 demonstrated before. We see children being much more
14 anxious, fearful to go outside, fearful to go to school,
15 having a much stronger startle reflex so that some small
16 incident can cause them to startle, or a small incident
17 can cause them to be very upset.

18 We also see, in teenagers -- sometimes we see
19 running away, sometimes we see substance abuse, sometimes
20 we see promiscuity.

21 So none of those things taken on its own would
22 be a single indicator that something -- that this child
23 has been sexually abused, but we look at the collective of
24 those and that helps us in understanding what may have
25 happened to this child.

1 Q. How about sexual acting out, can you comment on
2 that?

3 A. Sexual acting out can happen with a child all
4 the way down to a very young child. We have seen children
5 who are two and three years old sexually acting out, and
6 this is very often a behavior that we see with children
7 who have been sexually abused; it can stem from other
8 things, but it's very unusual that it would. And we will
9 see children who, because they have been overstimulated
10 and their systems can't quite integrate what has happened,
11 they will reenact this over and over: public masturbation,
12 inappropriate behaviors, very poor boundaries around their
13 bodies and their private parts, things like that.

14 That they -- you will see in terms of behaviors
15 from a child who may have been sexually abused.

16 Q. In your work with the families of these victims,
17 are these behaviors ever misunderstood by the family when
18 they see that -- when they see the children manifesting
19 the signs?

20 A. Yes.

21 Q. How so?

22 A. I've seen that very many times, and that parents
23 will say, Well, we did see -- he, all of a sudden,
24 became -- he was a happy kid, and all of a sudden he
25 became a very moody kid; or he never fought with anybody,

1 and all of a sudden he started fighting with people; or he
2 was a kid who hit, but he started hitting much more and he
3 started hurting his little brother and I couldn't get him
4 to stop; I would tell him to go to his room, but he kept
5 putting his hand down his pants, things like that, that
6 they thought were some kind of behavioral problem but they
7 couldn't pinpoint it.

8 And I think it's more difficult with kids
9 because when children have depression, it can look very
10 different than an adult's depression. So adults can just
11 think that this child is acting out, you know, over
12 something much smaller, not in a pervasive way that
13 they're seeing real changes in behavior, but you do see
14 caregivers trying to account for those behaviors without
15 knowing what's going on for this child, and then later
16 saying, I can remember a time where I started seeing more
17 of this and that coincides with the sexual abuse and or
18 the disclosure.

19 We receive behavior problems after disclosure
20 oftentimes, too.

21 Q. How -- how does depression manifest itself
22 differently in children than adults?

23 A. Well, it can look very much more like
24 aggravation and increased aggression in children versus an
25 adult who we more often see sleeping more, withdrawing

1 more; but we do see some of those symptoms in children as
2 well, it's just that we can see depression manifest itself
3 in this other way in children.

4 Q. You mentioned that you had met Ms. Louise Lee.
5 Would it be typical for you to meet with a foster-care
6 provider?

7 A. It was -- as a practice within the organization,
8 whomever was caring for that child, we tried to meet with
9 them to create a relationship as well as let them know
10 what was available to them through the organization, so we
11 meet with a foster-care parent. We would also meet with a
12 biological parent, if that was appropriate, if the child
13 was in foster care but had a biological parent involved as
14 well. We would try to involve as many people as were
15 important to this child as we could in order to give them
16 more comprehensive care.

17 Q. But, to be clear, did you ever interview the
18 children?

19 A. I did not.

20 Q. And did you ever treat them in any way?

21 A. I did not.

22 Q. You mentioned that you had reviewed notes, but
23 you say you also never reviewed any therapy notes with
24 respect to Monique, only Tomas, correct?

25 A. Correct.

Q. Do you have any knowledge about the particular sex abuse in this particular case?

A. To the best of my recollection, it was very general. I don't know anything specific.

MS. CONBOY: If I may?

I have nothing further. Thank you.

THE COURT: Thank you.

Cross-exam, Mr. Ward?

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CROSS-EXAMINATION

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BY MR. WARD:

Q. Ms. Miller, good afternoon.

A. Good afternoon.

Q. I don't want to ask you a whole bunch of specific questions about your qualifications, education and background, but basically is it a fair summary that your expertise is in the therapeutic realm when it comes to dealing with child victims of abuse?

A. Versus -- I'm just trying to understand.

Q. Well, you're not actively conducting any research in this field, are you?

A. No, I'm not.

Q. And you never have done that?

A. I have not done research in this field, no.

Q. Your focus has been on being available as a

1 source of treatment and therapy for children who have been
2 abused?

3 A. Yeah. I read the research, but I didn't conduct
4 the research, correct.

5 Q. And when you say you "read the research," you're
6 talking about some books that are on your CV?

7 A. Yes, some of the articles, and just different
8 things as they come along, I try to stay current, as well
9 as with trainings, additional things like that, yes.

10 Q. Okay. And primarily what you talk about today
11 and what you would propose to testify about if you're
12 allowed to testify in this case is what you've observed in
13 your experience as a therapist?

14 A. That, as well as my educational experience and
15 exposure to the other resources that I've stated, yes.

16 Q. Okay. And your experience, primarily, would
17 consist of about two hundred victims that you've treated?

18 A. In excess of that, but yeah.

19 Q. Okay. So you obviously -- you don't have a list
20 of who they all are?

21 A. I do not have that.

22 Q. Or keep any running total?

23 A. No. No, I do not.

24 Q. And your belief is that every one of the two
25 hundred or so people that you have treated was telling the

1 truth about having been sexually abused?

2 A. By definition, in my role as a clinician, as a
3 therapist, it wasn't my job to question them, so I would
4 say, yeah, I wasn't -- I didn't provide a forensic
5 interview or question their credibility, correct.

6 Q. That would be more of a forensic role?

7 A. Correct.

8 Q. So you accept the allegation as truthful and
9 don't do any further -- I guess -- looking into whether
10 they were truthful or not?

11 A. Correct.

12 Q. So when you talk about some of the different
13 things that may or may not happen, such as delay in
14 outcry, gradual disclosures, things of that nature, you
15 haven't conducted any research into how that correlates
16 with the truth or falsity of the allegation?

17 A. I haven't conducted any research, no.

18 Q. Okay. And essentially it's possible that some
19 of those things that you described are applicable to
20 people who have made false allegations of abuse just as
21 they are to children who actually have been abused?

22 A. The research that I have has been around people
23 who have been identified as sexually abused and there
24 hasn't been the question of whether or not this child --
25 or this adult, giving information later in life, the

1 question of credibility.

2 There have been -- some of the research is based
3 in -- there have been witnesses of that. Some of the
4 children still don't disclose, even though there's
5 witnesses of the acts.

6 Children who report these things anonymously --
7 but as far as a comparison of whether or not somebody is
8 giving a false accusation within that research, that, I
9 don't recall, has been identified in the research that I
10 have covered.

11 Q. And in a great many of these cases, it would be
12 impossible to determine conclusively whether the
13 allegation is true or false if there's not some sort of
14 physical evidence?

15 A. Or a witness, yes. Usually it is the child's --
16 the child's word, the child's experience that we go with.

17 Q. Okay. So it would be very difficult to draw
18 conclusions about the statistical correlation between the
19 factors you've described and the truth or falsity of a
20 particular allegation?

21 A. I wouldn't want to venture to say if that would
22 be difficult or not. I haven't studied it so I don't
23 know.

24 Q. You don't know?

25 A. I don't know.

1 Q. That's not something that you're focused on?

2 A. It's not something that I'm focused on.

3 Q. You're focused on helping people who have
4 disclosed, true or false, that they have been sexually
5 abused?

6 A. As -- in my role, yes, to not question them,
7 yes.

8 Q. Okay. Now, how much of your experience did you
9 give an estimate out of the two hundred or so cases that
10 you have been involved in -- specifically concerns cases
11 where abuse happened to a child who was very young, say
12 under the age of six, and a disclosure is made at the time
13 that that person has become an adolescent, say over the
14 age of fourteen?

15 A. I wouldn't be able to give you an exact
16 statistic on that.

17 I would say -- I will have to venture a guess,
18 really, because I would have to think about it a little
19 bit more than the Court would have time for. But I
20 certainly have seen that in my practice with children,
21 with an adolescent coming back and saying these are things
22 that happened to me when I was very much younger.

23 Q. And I guess that just brings up a point that,
24 you know, I asked you about -- that you don't keep a list
25 or an exact tally of the number of people that you've

1 treated, correct?

2 A. Correct.

3 Q. And you also don't keep any kind of statistics
4 or data about how often you observe these specific
5 phenomena that you testified about that sometimes come up
6 with abused children?

7 A. I haven't kept specific data on it, no; but
8 there is research that does keep specific data on it, and
9 it seems to correlate with that.

10 I mean, what we see is the majority of children
11 do delay in disclosures, and that's been my experience.
12 That's what I've seen in the research as well.

13 Q. When you say "in the majority," you don't know
14 what -- in what percentage of cases people delay in
15 disclosure?

16 A. The research says somewhere between 60,
17 80 percent, if not more.

18 Q. Okay. And I guess that would correlate to
19 meaning in 20 to 40 percent of the cases the children
20 don't delay?

21 A. I guess that you could say that. I think there
22 are -- there are a number of things that factor into that,
23 so it's probably not quite that simple.

24 Q. Okay. So it -- suffice it to say that in your
25 experience and in the research, sometimes children delay

1 disclosure and sometimes they do not delay in disclosure?

2 A. Most of the time they delay in disclose and
3 sometimes they don't delay in disclosure.

4 Q. Okay. And you are not able to say how that
5 delay in disclosure correlates with the credibility of the
6 accusation?

7 A. I could not say to that.

8 Q. And you gave some reasons for why these delays
9 occur. One of those is that children could be afraid?

10 A. Correct.

11 Q. And another was, I think, it could be because
12 they don't understand what happened to them, maybe with
13 younger children?

14 A. It, again, comes back to where they are age-wise
15 and developmentally, but it can be that there is a piece
16 of that, whether or not they're not quite sure what's
17 happened, yes.

18 Q. And there can be a whole bunch of other reasons,
19 too.

20 A. Why a child might delay in disclosure? Yeah.
21 Yes.

22 Q. All right. And you don't -- you haven't
23 interviewed or met with the alleged victim, Monique Ulloa,
24 in this case?

25 A. I have seen her in the organization, but I have

1 never met with her or interviewed her, no.

2 Q. So you don't even know in this case whether
3 there was a delay in outcry or whether she's exhibited any
4 of these other factors that you talked about?

5 A. I don't recall any information about how the
6 disclosure happened. My recollection was really around
7 the behaviors that her foster-care mother was concerned
8 with about her now -- or then, when I met with her at that
9 time that she was living with her. And that was more
10 around boundary things that she had some concerns that
11 she -- she was -- she might attach to men too readily, be
12 too open, and that is something that is consistent with
13 sexual abuse, yes.

14 Q. And it's also consistent when a young person
15 doesn't do those things?

16 A. Yes.

17 Q. Now, back then, why children delay in
18 disclosure, it's also a possible reason that one of the
19 reasons there might be a delay is because the allegation
20 is false?

21 A. Why they might delay in the disclosure?

22 Q. Why they might say something happened but a long
23 time ago?

24 A. I guess that's a possibility, yes.

25 Q. You talked also about to whom a child might

1 disclose something like this?

2 A. Yes.

3 Q. And it's your testimony that it's possible that
4 a child might disclose it to a parent or a guardian?

5 A. Yes.

6 Q. Possibly that they might disclose it to a
7 sibling?

8 A. Yes.

9 Q. Possibly they might disclose it to a stranger
10 that they meet on the bus?

11 A. Unlikely, but I suppose it's possible.

12 Q. Well, you've actually previously testified in a
13 number of cases concerning your expertise, right?

14 A. Yes.

15 Q. And do you recall testifying in the case of
16 People versus Arturo Marquez?

17 A. I recall testifying. I don't remember my exact
18 testimony in that case.

19 Q. Okay. And you testified on June 15th, 2005, in
20 that case.

21 MS. CONBOY: Does Mr. Ward have a copy for me to
22 look at?

23 MR. WARD: I'm sorry, I do not; but I'll be
24 happy to hand you this one as soon as I ask one question
25 about it.

1 Q. (By Mr. Ward) And I'll show you a transcript
2 of your testimony in that hearing.

3 You were asked the question about younger
4 children, and you said, What I'm talking about are two- or
5 three-year olds. They might come and talk about that
6 they -- that something happened to them that day. They
7 may tell a stranger on the bus as well as their mom.

8 A. Oh, okay. So that puts it in a context for me,
9 because I was in a different developmental stage than
10 that.

11 Yes, that's, in fact, possible. A two- or a
12 three-year-old, as they tell strangers all kinds of things
13 sometimes -- not all of them -- but, you know, two- or
14 three-year olds can often just talk about things; and if
15 they're that excited or interesting or fun, they might
16 share it with someone on a bus: We're going to my
17 grandma's house today, to someone that they've never seen
18 before. We're going to the store to buy me a new toy.

19 With children who have had sexual abuse
20 exposure, if this is something that they really don't
21 understand what has happened, they might say, My grandma
22 touched me in my pee pee. And usually a parent, right
23 there, would say, You can't talk about that to other
24 people. So in that context, I apologize, you're right,
25 the stranger on the bus does apply there.

1 Q. And no need to apologize. I'm just making sure
2 that we get your responses correct.

3 A. Okay.

4 MR. WARD: Do you want to take a look?

5 Q. (By Mr. Ward) So the bottom line with regard
6 to that is that these types of disclosures can be made to
7 all different types of people?

8 A. Yes.

9 Q. And any one of those is consistent with an
10 allegation of sexual abuse, in your view?

11 A. Disclosure to any of those people would be
12 consistent.

13 Q. Well, to just about anyone, correct?

14 A. Well, I think it does matter who the person is
15 in terms of to whom this child would disclose. It
16 wouldn't just be any random person. There would be a
17 reason why, and predominantly because this child feels
18 this is someone who is going to believe them.

19 Q. And who the child discloses to does not in any
20 of the research you are aware of -- or your experience --
21 you're not able to say how that correlates to the truth or
22 the falsity of the accusation?

23 A. I am not.

24 Q. You talked about gradual disclosures and why
25 children do that sometimes.

1 A. Yes.

2 Q. And the truth with regard to gradual disclosures
3 is that sometimes it happens and sometimes it doesn't?

4 A. Correct.

5 Q. So in your experience -- and in the research
6 that you've reviewed, either one of those would be
7 considered -- consistent with an allegation of sexual
8 abuse?

9 A. Correct.

10 Q. Either gradual disclosure or an all-at-once
11 disclosure?

12 A. Correct.

13 Q. And another way of describing a gradual
14 disclosure could be that the child's statements from one
15 time to the next time are inconsistent with each other?

16 A. I wouldn't necessarily -- I mean, I think I
17 would have to know more information other than to say that
18 that would be gradual disclosure.

19 Q. Well, let's say a hypothetical, if the first
20 time the child said something about this, he described an
21 act of sexual abuse and said the perpetrator had touched
22 his privates, and then the next time that he talked about
23 it, the child said that the perpetrator had sexually
24 penetrated him --

25 A. Yes.

1 Q. Now, would you -- you would consider that a
2 gradual disclosure?

3 A. I would.

4 Q. And another way of looking at that is as an
5 inconsistent statement?

6 A. Yeah, I -- I suppose you could look at that as
7 an inconsistent statement.

8 Q. And another reason someone might make those
9 inconsistent statements is because the disclose that
10 they're making is not true?

11 A. I would say that it's a possibility that the
12 inconsistent statements might go along with somebody
13 making a false accusation, however, moving up in terms of
14 sexual abuse and the kinds of things that have happened
15 would not be consistent in terms of a child who has been
16 sexually abused. In my experience, they would not want --
17 they wouldn't want to maximize what's happened. They want
18 to minimize it because of all the ramifications of what
19 has happened and what they feel their role is, so I would
20 say that your example, I would not think would be
21 inconsistent.

22 Q. Okay. And it's also possible to see a situation
23 where a child tells a more fantastic or extreme story
24 initially and then scales it back to something lesser?

25 A. Yes.

1 Q. You do -- and that would also be consistent with
2 the sexual abuse, in your experience, in research and
3 review?

4 A. Yes.

5 Q. You talked about some of the behaviors you see
6 exhibited in children who have made allegations of sexual
7 abuse?

8 A. I did.

9 Q. I think you said increased clinginess?

10 A. Can be.

11 Q. Antisocial, fear, sometimes you see children
12 runaway, sometimes you see substance abuse or bad
13 behavior, and it's true that sometimes none of those
14 things are present?

15 A. Yes.

16 Q. And sometimes parent and caregivers aren't able
17 to discern any difference in the child's behavior
18 whatsoever?

19 A. In general -- in my experience parents aren't
20 able to discern a difference in behavior but then later
21 they are able to identify a difference because the child
22 is demonstrating something different, in my experience.

23 Q. So if I understand you correctly, you're saying
24 that after the disclosure has been made, then the parents
25 will say, Oh, jeez, he has been kind of moody but I didn't

1 really notice it before?

2 A. That can happen.

3 I think when a parent says there have been
4 absolutely no changes in behavior, I've seen an indication
5 all things have remained the same, what we see is that
6 there were some changes in behavior, perhaps more subtle
7 than with another child, but a parent may not notice those
8 for a number of reasons and then later will say, now that
9 you mention it, I did see, you know, she did seem more
10 sad. She didn't want to talk to her friends as much as
11 she used to. There was some shift.

12 Q. Okay. And we don't need to go into what all of
13 them are, but it's also fair to say that all of those
14 things that you described can be manifested in a child or
15 an adolescent as a result of all kinds of different
16 reasons --

17 A. Yes.

18 Q. -- that are not sexual?

19 A. Yes.

20 Q. It could be instability in the home?

21 A. Yes.

22 Q. Anything along those lines?

23 A. Yes.

24 Q. Okay. And you don't know, again, whether any of
25 those behaviors or factors are present in this case?

A. Only when I mentioned to you about my knowledge of Monique having some boundary issues with men.

Q. All right. And again, you can't say with any kind of statistical accuracy or anything along those lines how often any particular behavior that's observed is correlated with an accurate or true allegation of sexual abuse as opposed to a false one?

A. I cannot.

MR. WARD: I don't have any further questions.

THE COURT: Thank you.

Ms. Whitney?

MS. WHITNEY: I don't have anything further than what Mr. --

THE COURT: Redirect?

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  REDIRECT EXAMINATION
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BY MS. CONBOY:

Q. Ms. Miller, is it your role to tell the jury whether or not the victim is telling the truth?

A. It is not.

Q. What is your role?

A. As I see it, it's to help them understand the impact of sexual abuse on children and how that might affect how they communicate what has happened to them and some of the behaviors that might manifest as an end

¹ result.

2 Q. Are you here to tell us that because a child
3 does A, B, or C, that that means that the sexual abuse
4 happened?

5 A. I am not.

6 Q. Or that it didn't happen?

7 A. I am not.

8 MS. CONBOY: Nothing further. Thank you.

9 THE COURT: Okay. Thanks very much.

10 MR. WARD: Your Honor, I have one very brief
11 line in response to that, if you wouldn't mind.

12 THE COURT: Did you do -- yeah, you did cross,
13 so recross. Sorry I left you out.

[illegible]

16 BY MR. WARD:

17 Q. Is it your belief that your role is to correct
18 the perception that you observed in your practice in
19 treating kids who are abused?

20 A. I wouldn't say my role is to correct the
21 perception. My role is to just provide information to
22 give further understanding. I don't assume that a jury
23 does or doesn't know, but I would want to give them
24 information to consider, but not correct a perception.

25 Q. Okay. And what you have observed during your

1 treatment and therapy that you conduct is that family
2 members or people who are close to these children often
3 say to you, why didn't he or she tell me sooner, or why
4 did he only tell me a little bit now and tell me more
5 later, and things along those lines?

6 A. That has happened in my practice, yes.

7 Q. And those people are often in shock or emotional
8 pain for a whole variety of reasons surrounding this?

9 A. They can be, yes.

10 Q. And one of them would be a lack of understanding
11 of why the person -- the child that's close to them
12 behaved in that particular way?

13 A. Yes.

14 MR. WARD: That's all.

15 THE COURT: Okay, thank you, ma'am.

16 Ms. Conboy, any other witnesses on the Shreck
17 issue?

18 MS. CONBOY: No, Your Honor.

19 THE COURT: Shall we hear some brief argument on
20 Shreck?

21 MS. CONBOY: Jodi Byrnes is still here.

22 THE COURT: Who is still here?

23 MS. CONBOY: She was here at the defense's
24 behest.

25 MR. WARD: Rape shield.

1 MS. CONBOY: Oh, okay.

2 MR. WARD: We can talk about what we're going to
3 do with that.

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      CLOSING STATEMENT
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6 MS. CONBOY: Your Honor, I might also want to
7 refer to a couple of cases, and I have packets for -- if I
8 may please approach?

9 Just speaking generally about it -- thank you --
10 Your Honor, I think the question that the Court must ask
11 is whether or not Ms. Miller can offer assistance on a
12 matter which is not within the knowledge or common
13 experience of people of ordinary intelligence.

14 THE COURT: I guess the first question I need to
15 ask is what her opinions are, because the way you phrase
16 them, it sort of came out a little differently.

17 Tell me if I'm right, I have four of them down,
18 why -- well, I wasn't sure whether she was going to
19 testify about why people delay in outcry. I'm not sure
20 she's going to testify that this specific-named victim
21 delayed in outcry because of these things or whether she
22 was just going to testify that victims of sexual assault
23 more often than not delay in outcry.

24 What was your understanding of the opinion --
25 well, which one are you going to elicit, I should ask?

1 MS. CONBOY: Well, it would be my intension
2 to -- I would want to use Ms. Miller to explain to the
3 jury why it is that Monique was sexually assaulted and
4 will come in to describe acts of sexual assault by her
5 father when she was five or six years old and then acts
6 that occurred at the hands of Mark when she was ten or
7 eleven, but then waits to disclose until she gets to
8 Ms. Lee's house.

9 THE COURT: Except I didn't hear her opine about
10 them. She just said, More often than not victims delay.
11 There are lots of reasons they might. It might be this,
12 it might be that, it might be this; but I didn't hear
13 anything tying up to an opinion about why this victim
14 might have delayed. Maybe it's not even an appropriate
15 opinion, but --

16 MS. CONBOY: Well, the reason that she is -- the
17 reason that Monique -- we want to use the jury to explain
18 why Monique delayed -- is because Monique wasn't in any
19 kind of safe environment.

20 This case has a horrific chronology, Your Honor,
21 and one that I'm not sure -- and I recognize this Court
22 has sat through quite a few hearings in this case.

23 THE COURT: I not only sat through, I've gone
24 through the social services records.

25 MS. CONBOY: Fair enough. Then you are as

1 familiar as anybody in this room with the chronology; and,
2 Your Honor, I believe that the average juror that's going
3 to sit in that box is not going to understand -- I'm
4 sorry.

5 THE COURT: I just need to know what opinions
6 she's going to elicit. That's step one. What are you
7 going to get her to say?

8 MS. CONBOY: That Monique did not tell until she
9 got to Louise Lee's house because she was safe there.

10 THE COURT: That's surprising to me because she
11 didn't say that today. You didn't ask her that. She
12 didn't say that.

13 MS. CONBOY: Well, I -- she doesn't know the
14 facts of the case. I -- I can ask her hypotheticals about
15 the case. I can say: If a child -- if a child is -- Suvi
16 Miller is going to explain to the jury why it is that if a
17 child is not in a safe environment, they are in a chaotic
18 place, they may not feel safe.

19 THE COURT: Sure, they may not -- they may.
20 60-40, 70-30. I mean, they may, they may not.

21 Can -- maybe we can focus a little bit. What
22 about gradual disclosures, what do you want her to opine
23 about in terms of gradual disclosures, that they happen?
24 That they happen more often than not?

25 MS. CONBOY: Yes, that the reason that Monique

1 might have only told -- as you know from reading the
2 social services history, Monique had some sexual acting
3 out way back when she's three years old, in 1995. In
4 19 -- they have a sexual abuse consultation because she's
5 having inappropriate behaviors with a doll.

6 At that point she says Tommy touches her.
7 Nothing's ever done about it, so she says nothing further
8 until she makes a disclosure in 2000 about her Uncle
9 David. And, again, she only tells an aunt.

10 And then they follow-up and have her interviewed
11 with a Detective Joe Rodarte, which she says it again.
12 Then, all along, there's this horrible family history
13 where mom is out, dad's in, they're bouncing around with
14 Lori Lupprino. Ultimately she gets to Louise Lee's,
15 then -- then it's only then when her life is getting on
16 track, that she's able to really come out and say, Hey,
17 here's what really happened to me.

18 THE COURT: But I guess I have the same kind of
19 question: Is it your expectation that Ms. Miller will
20 testify at trial in a way more specific than she testified
21 at this hearing? That is to say, is she going to say that
22 in her professional opinion within a degree of
23 professional, reasonable certitude that this victim
24 delayed outcry because of these factors that I haven't
25 heard? Or is she going to say victims sometimes gradually

1 disclose -- gradually?

2 Is it going to be a general: This is what
3 sometimes happens? Because that's what I heard here
4 today. Or is it going to be, It's my opinion that this
5 victim may have delayed because she suffers from these
6 behavioral -- from this hist -- terrible history?

7 MS. CONBOY: Given -- given the Court's inquiry,
8 I think it would be prudent to have Ms. Miller read the
9 file and make exactly that opinion based upon her
10 experience.

11 THE COURT: So why hasn't she? This was the
12 hearing to find out what her opinion was going to be.

13 MS. CONBOY: Because, Your Honor, it is still
14 the People's position that under Rule 702 it is still very
15 helpful -- if we've got jurors that don't understand
16 anything about delayed disclosure, don't understand about
17 gradual -- have all the questions that she told us, based
18 upon 200-plus families that she's been working with, that
19 these are all questions that people ask so the standard
20 for letting someone come in and opine -- I recognize
21 there's five for cross-examination, absolutely, but that
22 doesn't change the fact that if it's going to assist the
23 trier of fact if these are questions -- if we have a
24 professional who is out there in the field who is telling
25 us that she's been in the trenches with these people, the

1 families who are asking all of the questions that I am
2 concerned our jury is going to ask, I'm not offering her
3 to say Monique is telling the truth or not.

4 THE COURT: Right. Right. But that's, of
5 course, the big problem we all ball up against with this
6 kind of evidence when you just throw it out there and
7 there's kind of -- from therapists whose world is to
8 assume this happened in a context where in our world we
9 assume it didn't.

10 There's this -- there's this friction, and so
11 when you say it will be helpful to the jury to answer
12 these questions, what's the answer to the question going
13 to be? Is it that -- is it that this sometimes happens
14 because of these factors, or that it more likely than not
15 happened in this case because of these particular factors?

16 MS. CONBOY: The latter for sure, but I --
17 definitely the latter. But that's what we want to tie up
18 to the jury.

19 Suvi Miller, Your Honor, is only one piece of
20 the puzzle in this case.

21 The cases that I handed to you and also handed
22 to counsel, this is not a new area for the courts to
23 allow. For example, in the Morrison case that I have in
24 the file, expert testimony was allowed -- or was held
25 proper to help the jury understand the reactions that

1 happened by young boys who were the victim of sexual
2 assault; or the Fasy case, expert testimony on the
3 posttraumatic syndrome is admissible on the issue of child
4 victim delay in reported sex assault.

5 Again, I think that these are -- if these are
6 all admitted under 702, the Carter case, which is the
7 second in the packet, testimony based upon professional --
8 clinical observations of professionals regarding pattern
9 affects and dynamics of child sex abuse is admissible.

10 These are -- I think it's a regular -- a regular
11 thing for these -- the courts to be allowing -- if it's --
12 if it's to assist the trier of fact.

13 THE COURT: Can -- what about the third thing
14 that I have down, behavioral indicators, what's the actual
15 opinion going to be there? Because the opinion I heard
16 here is, Here's seven things, we sometimes see it, we
17 sometimes don't. Sometimes it's an indication of sexual
18 abuse, sometimes the engine can be other things.

19 What's the actual -- is she going to give an
20 actual opinion about behavioral indicators that she saw
21 these six things in this file and she believes within a
22 reasonable degree of -- whatever -- social-worker
23 expertise that this -- these are indicators of sex abuse?
24 Or is she just going to say in general, These are the
25 things that sometimes are indicators?

1 MS. CONBOY: Your Honor, I don't think that --
2 well, let me answer your question. The -- she's going to
3 talk about how she saw Monique getting herself together.
4 You heard Tomasitto talking today about this terrible
5 period of time when they first got to Louise's house and
6 they got themselves back on track, and there were
7 significant behavior changes in both of these kids, but
8 most specifically and most important with Monique when she
9 finally arrived at Louise's and got into a safe
10 environment was able to settle down and feel that someone
11 was taking care of her and she wasn't in this chaotic,
12 tumultuous environment that finally she was -- she felt
13 like she was in a place where she could disclose. And I
14 do expect Ms. Miller is going to be able to tie that.

15 Respectfully, Your Honor, I don't know that she
16 needs to testify to a reasonable degree of certainty as a
17 professional in her field. I think the question is
18 whether or not she -- what she has to say would be
19 assisting the trier of fact.

20 I recognize that there are cases out there where
21 there -- where we do put on an expert, we qualify them,
22 and they say, To a reasonable degree of medical certainty,
23 I believe that her patella was fractured. But we also --
24 okay. We also have all kinds of experts that come in and
25 talk about things such as rape-trauma syndrome -- I had a

1 case with an expert -- I mean, I could cite for the Court
2 all kinds of cases where the Court of Appeals have said
3 the trial court was within its discretion in order to
4 allow an expert to come in and testify about the affects
5 that a rape would have and what we might expect to see
6 from a victim. And those cases, I think, are very, very
7 analogous to what we have in the present case.

8 THE COURT: Right, but in those cases they
9 don't -- do they or don't they -- say, And we saw them in
10 this case and therefore this is consistent with being
11 raped?

12 MS. CONBOY: No, I don't believe so, Your Honor.

13 THE COURT: So you are not going to ask the
14 specific question in this case, you're just going to have
15 hearsay, This is what we see sometimes?

16 MS. CONBOY: I think the way the Court's asking
17 those questions of me, I think I'm going to have to ask
18 her that question, that's with just what I'm hearing.

19 THE COURT: These are just questions. I don't
20 know what her opinions are. You are telling me one thing.
21 After hearing what she said, it basically -- I'm not sure
22 I can compare. That's why this is an unusual Shreck
23 hearing for me. She says this sometimes happens but I
24 don't know anything about this case. This sometimes
25 happens, but I don't know nothing about this case.

1 Is that the opinion that she's giving -- or
2 she's going to, between now and trial, know something
3 about this case?

4 MS. CONBOY: Your Honor, if the Court's troubled
5 by the fact that she has not -- I heard her give quite a
6 few opinions today -- but is the Court troubled by the
7 fact that she has not read the case file? That's
8 something that can be rectified, and that's not something
9 that I understood was the problem. I felt that Ms. Miller
10 gave quite a few opinions.

11 THE COURT: She did, but not about this case in
12 particular.

13 MS. CONBOY: No.

14 THE COURT: Okay, that's all I wanted to know.
15 So she's not or she is?

16 MS. CONBOY: Well, I'll ask -- I'm going to ask
17 her and say, Given -- Given what we know, if you have --
18 if you have a child who does this, this, and this, is that
19 to be expected? Are these behaviors to be expected?

20 THE COURT: Are they consistent with being
21 sexually abused?

22 MS. CONBOY: Yes.

23 THE COURT: Are they consistent with not being
24 sexually abused?

25 MS. CONBOY: Yes.

1 THE COURT: How does that help the jury again?

2 MS. CONBOY: Because -- because I think the jury
3 is -- the jury -- the average person is going to come: My
4 kid will tell me. My kid will tell me. I've got a great
5 relationship.

6 The average juror has not dealt with sexual
7 abuse so the average juror is going to say, I don't get
8 it, Monique had a mom. She called this lady, Lori
9 Lupprino, her grandma, her mom. This woman took on this
10 raising/caretaker role for her. Why didn't she tell Lori
11 Lupprino? Why did she tell Louise as soon as she got
12 there? Tomasitto is in jail. I don't get that.

13 THE COURT: And the expert will be of assistance
14 because the expert will say, sometimes 60-40, or 70-30,
15 they don't tell, and that will be the extent?

16 MS. CONBOY: No, I think the expert is going to
17 say, I treated over 200 victims of child sexual assault
18 and I am telling you, based upon my experience, that this
19 is what happens, that she didn't say 60-40.

20 Mr. Ward might have gotten her to use that
21 percentage on cross, which I don't recall, to be honest,
22 but she -- she's saying that it is -- it is far more
23 common this is what happened, why children delay
24 disclosures. Children disclose when they feel safe.
25 Children disclose -- you know, all of the things that we

1 can tie into the facts of this particular case.

2 THE COURT: Right. More often than not they
3 disclose, is what she said; probably far more often than
4 not.

5 MS. CONBOY: Yeah. Based upon her experience,
6 and I think coming in with two hundred -- treating two
7 hundred victims is nothing to scoff at, and I think she --
8 she's saying, Look, I'm out there in the trenches, and not
9 only is she treating the two hundred kids, she's treating
10 the families, too; and she's saying, Look this is
11 happening. These kids aren't talking.

12 And the way I heard her to say -- and the way I
13 understood it through all my preparation with her is that
14 kids delay. That's the vast majority of them. They're
15 not coming home and saying, Mom, I got sexually abused by
16 my teacher or by my dad or by my uncle.

17 They are delaying. They are telling in bits and
18 pieces and they are -- they are telling at times when
19 they're feeling safe. And I'm planning on taking facts of
20 this case and applying them directly when I question her.

21 But just -- like I say, I have further argument
22 if the Court wishes further argument, or I can reserve it
23 for rebuttal.

24 THE COURT: Okay, thanks.

25 Mr. Ward, your brief argument?

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2 CLOSING STATEMENT
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4 MR. WARD: Well, Your Honor, first of all, I've
5 got a big problem with the District Attorney now stating
6 that there's going to be some other kind of opinion that
7 will be expressed that was not stated in the offer of
8 proof, in the written motion, and it was not testified to
9 by her witness today. I mean, if that's the case, what is
10 the point of having this hearing at all?

11 She can just, you know, double back and try to
12 retread this thing for a different angle since she doesn't
13 appear to believe that the Court likes the original angle
14 that she was trying as to what was said today.

15 You know, as far as the prongs of Shreck, we
16 have reliability and relevance. I'm not going to talk
17 about whether the witness is qualified to opine, she
18 obviously has some specialized experience that the rest of
19 us don't; but I think there's a problem with whether the
20 principles that she's talking about are reasonably
21 reliable.

22 You know, the social sciences are not hard
23 sciences in a lot of people's eyes, but they are science
24 and there are ways that these types of things that she
25 wants to express opinions about can be studied in a
reliable manner, can be quantified.

1 THE COURT: If I allow her to give the -- what
2 I'm going to call the general opinion that -- that victims
3 who survive sexual abuse more often than not -- greatly
4 more often than not -- delay; greatly more often than not
5 give gradual disclosures, they are no more complicated
6 scientific principles than that in arithmetic, counting up
7 the number of cases that she's had and say, Hum, how many
8 delay?

9 MR. WARD: Which is something she said that she
10 has not done, Your Honor.

11 Your Honor, she hasn't kept track of anything
12 that's happened in the specific cases. She just says:
13 For all we know. It's kind of -- yeah, it seems to me
14 that that happens a lot.

15 THE COURT: But she referred to studies that
16 were -- and the studies are attached to them -- to her CV
17 and the motion.

18 MR. WARD: Well, she didn't refer specifically
19 to any studies that say a number with regard to that. And
20 none of the -- I suppose I can go pull each and every one
21 of those studies and see what each one says.

22 The CV doesn't list that -- what that
23 information is. And taken aside, the one thing that she
24 did express some sort of a probability for -- all of the
25 other opinions she didn't say anything as to how

1 frequently we might observe this particular phenomenon --
2 those are all things that could be studied by legitimate
3 social science tests and could be quantified and a
4 reliable opinion would be able to be expressed on those
5 things: How frequently is this phenomenon seen in what
6 context.

7 What this evidence is really about, Your Honor,
8 is whether this is a true allegation or a false
9 allegation. I mean, that's the bottom line of what the
10 jury needs to figure out here.

11 I guess that's kind of shifting a little bit to
12 the -- more of the first question, or whether it's
13 relevant here. And I think that's probably the bigger
14 problem with this evidence than the reliability problem.
15 There is some kind of notion being touted here that this
16 is going to be a problem for jurors to understand, that
17 children sometimes delay in making outcry or disclosure.

18 She wasn't able to state any evidence that would
19 support that as far as whether there is any general public
20 perception of that sort that would have to be rebutted by
21 any kind of opinion she could provide.

22 What they said is that based upon family members
23 that she's talked to, she's heard people say, Well that's
24 a whole lot different from the public at large and from
25 the typical juror. That's a person that is directly

analysis. If she is allowed to testify, the danger of unfair prejudice to the jury in terms of the danger of her testimony validating Ms. Ulloa's statements as it goes to her general credibility, that's the issue in this case; and the 403 analysis should be considered also.

That's all I have.

THE COURT: Thanks.

Ms. Conboy, anything else from you then?

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CLOSING STATEMENT

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MS. CONBOY: Your Honor, just to point out -- and again, just to point out for the Court and counsel, on the first case of the packet that I handed everyone is the People v. Morrison, and that was at 985 P.2d 1st, Colorado Court of Appeals from 1999.

THE COURT: Is that the one where it says cert granted?

MS. CONBOY: Yes, cert was granted; and, Your Honor --

THE COURT: So what happened?

MS. CONBOY: Your Honor, I do not have the follow-up -- the follow-up history -- subsequent history.

I will tell the Court that --

THE COURT: It was affirmed.

MS. CONBOY: Thank you.

1 THE COURT: I don't know what was affirmed
2 though, what cert was taken on, but my intern just looked
3 it up.

4 MS. CONBOY: Thank you.

5 THE COURT: Okay.

6 MS. CONBOY: As part of the prosecution's case,
7 they had a licensed marriage and family therapist with a
8 Ph.D. in clinical psychology testify as an expert in the
9 area of sexual abuse treatment and the dynamics of sexual
10 abuse, and I just want to point out that during the
11 expert's first day of testimony, that expert testified in
12 general terms.

13 The Court notes about many aspects of the sexual
14 abuse, including, number one, the grooming of the victim
15 by the sex offender; to common patterns of disclosure of
16 sexual abuse by children, including delayed reporting; and
17 three, differences between male and female victims. These
18 were general -- again -- general matters that this expert
19 was testifying to.

20 And the other thing I wanted to point out is the
21 matter of People v. Carter, which is the second case in
22 the packet, 919 P.2d 862; and that was April 11th of 1996.

23 The Court of appeals noted that, "While the
24 behavioral changes in children are -- that frequently are
25 associated with sexual abuse are not conclusive on the

1 issue of whether the abuse actually occurred, these
2 behavioral changes may constitute corroborative evidence
3 of the existence of the sexual abuse of which the victims
4 have complained; thus, evidence of this type is admissible
5 even if it tends to support the credibility of a
6 child/victim's out-of-court statements as long as it's not
7 offered as evidence that the victim was being truthful on
8 a particular occasion."

9 Again, I've cited the Court to the Fasy decision
10 as well, which was 829 P.2d 1314, which is a Supreme Court
11 decision in which the Colorado Court of Appeals allowed
12 the expert to testify about the delay in reporting.

13 Your Honor, I'm just asking this Court to
14 recognize that the average person, contrary to what
15 counsel said, is not going to understand or have any
16 experience with child victims of sexual assault.

17 There are a lot of questions in this case. I
18 think that the average person will have a lot of questions
19 about why Monique waited, why she chose to disclose to
20 Louise Lee, why she didn't tell Nisa Pelman, with whom she
21 had apparently a very close relationship for a period of
22 time, albeit a tumultuous one.

23 All of those are questions that I think it's
24 fair to the jury to allow them opportunity -- and I will
25 tie up through her -- through Suvi Miller -- the specific

1 patterns or the specific behaviors that then we will seek
2 to argue later on to the jury are corroborative evidence
3 of what happened in this case. So I would ask this Court
4 to allow us to present evidence of Suvi Miller's
5 expertise.

6 THE COURT: Thank you.

7 Let me start with what Ms. Conboy ended with.
8 Ms. Miller will not be permitted to testify -- quite apart
9 from Shreck and 702 -- to any opinions she did not give
10 today. That's the whole purpose of this hearing, so the
11 universe of opinions that I'm dealing with are the
12 opinions that she gave today.

13 The other thing I want to start out by saying --
14 and I can't remember if I've had you all ever before,
15 maybe some of you and maybe not some of you in these -- in
16 these hearings -- these are difficult for me because -- I
17 guess for two reasons: I have -- I have so much trust in
18 jurors that if it were up to me, I would let every kind of
19 opinion in as long as there was some minimum qualification
20 and relevance and would let them decide reliability; but
21 it isn't up to me, it's up to our Supreme Court, so the
22 Supreme Court has told us that we have some gatekeeping
23 responsibility with respect to these issues, including
24 reliability.

25 The other thing I do want to say, generally

1 speaking, is sometimes I think we -- sometimes I think we
2 treat all expert opinion as if it's scientific opinion and
3 it's not true and 702 recognizes that it's not true. 702
4 talks about scientific, technical, or other specialized
5 knowledge, and so the question really isn't whether
6 Ms. Miller is a scientist or whether this is science, the
7 question is whether she has specialized knowledge that's
8 reliable and relevant, which of course we'll talk about in
9 a second.

10 The problem comes up -- the -- the problem is
11 sort of exacerbated by the fact that many of these
12 nonscientific experts act like they're scientists so they
13 talk about research, and that's where sort of the rubber
14 meets the road and I start to have problems with
15 reliability.

16 So let me talk about what I understand are the
17 opinions that are on the table. I heard three opinions
18 that -- for the reasons Ms. Miller articulated -- and
19 there were many of them; some may apply to this case, some
20 may not apply to this case -- victims of sexual assault
21 often do not -- often delay in their outcry. I think the
22 testimony was much more often than not delay in their
23 outcry. That's one opinion.

24 The other opinion is victims of child sexual
25 assault much more often than not give a gradual

1 disclosure, again, for the reasons -- various reasons she
2 articulated, some of which may apply here and some of
3 which may not.

4 And then the third opinion that I heard her give
5 today was that there are behavioral indicators that are
6 neither sufficient nor necessary, as I understood her
7 testimony with respect to sex -- sexual abuse, but often
8 times accompanying sex abuse. And she ran through a list
9 of about seven or eight, increased aggression, increased
10 clinginess, anxiety, fearfulness, sometimes substance
11 abuse. All of these are -- sometimes promiscuity, sexual
12 acting out. Those -- and those are the three opinions
13 that I heard. So, of course, there's the reliability
14 prong and the relevance prong.

15 Let me talk about reliability first. Two issues
16 she qualified -- yes, no doubt she qualified on all three
17 of these -- is she a scientist? No. But I think her
18 experience and her -- not only clinically but academically
19 gives her qualification to give these opinions.

20 The most difficult prong -- well, maybe not the
21 most, but one -- another difficult prong is reliability,
22 and the reliability prong asks: Are there scientific
23 principles -- are the scientific principles that the
24 witness is testifying about reliable? And this is the one
25 I was talking about. It doesn't have to be scientific

1 principles, but when it's dressed up as science, then I
2 expect some doubt or like evidence.

3 And in this case, let me start with the third
4 opinion, these behavioral indicators that Ms. Miller wants
5 to opine about are dressed up as science and so I expect
6 some Daubert kind of backup for this, and Shreck says we
7 can look at Daubert even though Daubert is not dispositive
8 of the reliability inquiry. These are things that we can
9 look at when somebody's professing to give a scientific
10 opinion.

11 Has the technique been tested? I don't know.
12 I -- she didn't testify about whether any of these
13 indicators are corroborative of whether somebody actually
14 was sexually assaulted, when these -- whether there has
15 ever been any studies about what variables weighted more
16 than any other variable.

17 Some of the other Dalbert things subject to peer
18 review and publication, no doubt that's true. I don't
19 know about peer review, but certainly publication.

20 Scientific techniques known -- no evidence about
21 whether there's any science behind these behavioral
22 factors, except, you know, anecdotal things that a barber
23 could tell you, somebody who has been sexually assaulted
24 is sometimes fearful, you know.

25 Whether the technique has been generally

1 accepted, no, no evidence about that. I'm not even sure
2 there was a technique about error rates -- no nothing
3 about error rates because that gets to the thing that I
4 mentioned at the very beginning, which is that -- and I
5 think counsel touched on it in their cross-examination --
6 we have the world of therapy which presumes these
7 allegations are true and doesn't care whether -- what --
8 Ms. Miller doesn't care whether the two hundred clients of
9 hers were actually sexually abused, it doesn't matter to
10 her, is what I heard, because people get treated -- people
11 have psychiatric problems if they believe they were
12 sexually assaulted and or even if they weren't just as
13 much they have if they really were.

14 And I appreciate that and respect it, but it's a
15 very different thing than we do. What we deal with in
16 courtrooms is the truth, and in courtrooms the presumption
17 is exactly the opposite. The presumption is that these
18 allegations are not true.

19 And so it's not surprising that there's not any
20 Daubert kind of evidence which would support the
21 reliability prong, because we never get -- in this body of
22 work -- to the question of whether these indicators are
23 indicators of anything. For all I know, every one of
24 these indicators applies only when somebody is not telling
25 the truth as opposed to when somebody is telling the

1 truth, or vice versa, or some subset of indicators, so I
2 think opinion three about the behavioral indicators fails
3 the reliability prong. It also fails the fifth -- let me
4 move to relevance now.

5 Will it be of assistance to the jury? I don't
6 think so. I answer no to all of these, that's my way of
7 saying jurors know that somebody who has been sexually
8 abused may be fearful, it may screw them up. That's
9 basically what Ms. -- what Ms. Miller says about
10 behavioral indicators: If you get sexually abused when
11 you're a child, you might get screwed up emotionally,
12 psychiatrically, in all kinds of ways. Everybody knows
13 that. And since she can't distinguish between the screw
14 up that happens when you're actually sexually abused and
15 the screw up that happens from some engine that causes you
16 to think you were sexually abused or to lie about your
17 being sexually abused, this really does not -- gives the
18 jurors no additional information or useful information.

19 And, finally, on the relevance prong, let me
20 talk about the prejudice. The prejudice is that these
21 jurors will think that this is science when it's not.
22 Even though Ms. Miller won't be permitted to testify about
23 her beliefs about whether this victim is testifying
24 truthfully or not, that's what all these have a risk of
25 causing the jurors to think: Hum, people who are sexually

1 assaulted are sometimes aggressive, sometimes clingy,
2 sometimes anxious, sometimes fearful, sometimes they abuse
3 substances, sometimes they're promiscuous. Gosh this
4 victim has all of those things, she must be telling the
5 truth.

6 I mean, that's the whole purpose, it seems to
7 me, of this kind of testimony and it's just not reliable
8 enough and there's substantial risk, in my judgment, that
9 jurors will give this reliability that it does not
10 deserve, so I'll not permit Ms. Miller to testify about
11 the behavioral indicators.

12 The other two opinions are harder for me because
13 I think Ms. Conboy is right, not every expert opinion --
14 it's really interesting, and I don't think there's ever
15 been many cases that talk about this -- but not every
16 expert opinion -- we all go through the motions and say,
17 you know, you understand, Doctor, that every question I'm
18 going to ask you needs to be answered and your opinion has
19 to be within a degree of reasonable scientific certainty
20 or expert certainty, and some expert opinions aren't like
21 that. Some expert opinions are, You know, Doctor, does
22 this sometimes happen to somebody's knee? You know,
23 that's not within a reasonable degree of medical
24 probability because the whole question presumes sort of a
25 lower level of probability, and I think that's what we're

1 faced with in these other two opinions.

2 The other two opinions are: Do -- is it more
3 common than not -- much more common than not for victims
4 of sexual assault to delay and to give their outcries
5 gradually?

6 I think there's some marginal probative value of
7 that, although I think Mr. Ward's point was really well
8 taken. It's -- it's family members and parents who are
9 astonished that I would -- I think -- astonished that
10 people -- that children who are sexually abused don't
11 outcry immediately.

12 I'm not sure that's a belief in the general
13 public. If it is, people have been asleep at the wheel
14 for about twenty years. I mean, every time you read a
15 newspaper, watch television, see a movie, it's about
16 delayed outcries. I think that's very common out there,
17 but -- but again, I'm not going to be so presumptuous to
18 think that everybody knows that, and I think this has some
19 marginal probative value as to the reliability prong.

20 As I indicated with counsel, this is really just
21 arithmetic, so, you know, she's done two hundred of these,
22 she's read studies about a bunch of them, and this happens
23 much more often than not. I think that's -- since it's so
24 modest, is reasonably reliable, so for all those reasons,
25 I will permit those two opinions, but not the third.

1 Anything else on Shreck from the People?

2 MS. CONBOY: No, Your Honor. Thank you.

3 THE COURT: Defense?

4 MR. WARD: No. Thank you.

5 THE COURT: We have to talk quickly about -- I
6 don't mean fast, because the court reporter's exhausted
7 already -- but we need to get a new date for the continued
8 trial.

9 Hearsay -- should we also have that be the time
10 we talk about rape shield, or do you want to do rape
11 shield tonight?

12 MR. WARD: I would like to actually clarify
13 where we are as far as the rape shield.

14 THE COURT: Yes, because, as I said, I have no
15 doubt that the District Attorney's Office did mail or
16 serve me with the response to the Court's order, however,
17 I didn't receive that or see it until today. There are
18 two responses though, right?

19 MR. WARD: Well, they filed a response to my
20 motion seeking the evidence.

21 THE COURT: Right, I saw that.

22 MR. WARD: Then the Court issued an order
23 directing them to -- if they wished to contest the offer
24 of proof, to say that they were going to do that on or
25 before -- I can't remember exactly what the date was --

1 the end of November sometime, and their response to the
2 court order saying that they did wish to contest the offer
3 of proof is what I didn't receive.

4 THE COURT: And I haven't seen that either. I
5 don't know if it's lost in the files or --

6 MS. CONBOY: If I could approach, Your Honor?

7 THE COURT: So the point of all this?

8 MR. WARD: So the point of all this is that I
9 don't have any witnesses under subpoena, and I guess if I
10 understand what they're saying, is that they have a
11 problem with this being done by offer of proof and that I
12 need to present some evidence for an in-camera hearing
13 that the statute calls for.

14 THE COURT: Can I tell you what my views of this
15 are and let me find out if you agree?

16 I think everybody agrees based upon the written
17 briefs that I did read that this evidence is not within an
18 exception.

19 Defense counsel are in agreement with that,
20 right?

21 MR. WARD: I think so, yeah.

22 THE COURT: That is to say, it's presumptively
23 inadmissible, unlike garden-variety evidence that is
24 admissible. Right so far?

25 MR. WARD: Right.

1 THE COURT: So you have the burden of overcoming
2 that presumption of irrefutability.

3 MR. WARD: Essentially I don't know how much it
4 changes things, as a practical matter, because, as I
5 understand it, I think the test is if it's relevant and it
6 passes a 403 analysis, then the presumption has been
7 rebutted, so --

8 THE COURT: I guess we can talk about what it
9 means, but there is a presumption of irrefutability. Is
10 that what everybody agrees?

11 MR. WARD: Of irrelevance?

12 THE COURT: Of irrelevance. Presumption of
13 irrelevance.

14 Well, I don't want to get on the slippery slope.
15 I think I've said I read Kyle, I've thought about it. I'm
16 not sure how it came up in Kyle.

17 This is not a situation, it seems to me, where
18 defense counsel is trying to elicit prior sexual -- I know
19 there's a case that says prior -- involuntary sexual
20 conduct is sexual conduct. It -- it doesn't have to be
21 conduct. It can be hoisted upon them -- the victim --
22 maybe that's even Kyle.

23 But, in Kyle, if I understand it correctly,
24 defense counsel wanted to introduce evidence of a prior --
25 of prior sexual assaults. In this case defense wants to

1 introduce evidence that the outcry about this case was
2 coupled with an outcry about the other case -- the other
3 incident. The David outcry is all bound up with this
4 other outcry, at least I think -- at least with respect to
5 Mark.

6 MR. WARD: Right.

7 THE COURT: Is that right?

8 MR. WARD: That's right. There are some other
9 bits of evidence.

10 THE COURT: And that just sort of seemed
11 different to me and I was willing to hear arguments about
12 that but I can't imagine that we would have to have a
13 hearing.

14 MR. WARD: That's fine. I -- if the Court is
15 going to accept my offer of proof, then I don't have any
16 need to put on additional evidence about it.

17 There's one thing --

18 THE COURT: I guess I'm a little bit confused
19 about the cases and statutes. Am I to make some threshold
20 decision about whether I believe your witness or something
21 like that? Is that why we have to have a hearing?

22 MR. WARD: You know the statute says the Court's
23 supposed to hold an in-camera hearing. I'm not aware of
24 if there is any authority saying that it has to be shown
25 to have happened by a preponderance. I mean, that would

1 be similar to what we do in 404(b)-type of issues.

2 THE COURT: Not only that, but the evidence
3 that's coming from the People's own witness, I mean the
4 main evidence, the outcry that combines "Mark did this to
5 me and David did this to me," is from the People's
6 witness.

7 So, what was the additional witness that you had
8 on call that you thought you might want to offer
9 available?

10 MR. WARD: The witness that's here today, Your
11 Honor, is Jodi Byrnes from the Department of Social
12 Services. The reason that I think Ms. Byrnes is important
13 kind of comes from the Kyle case where one of the reasons
14 the Court of Appeals found that the Court didn't abuse its
15 discretion in keeping that evidence out was that there
16 wasn't any kind of expert testimony to say that this
17 repackaging type of thing did happen or that the victim
18 was -- had confusion about who had assaulted him.

19 In this case Ms. Byrnes is a -- some sort of a
20 clinical specialist at the Department of Social Services.
21 I did subpoena her CV today and when she got here today
22 she told me she doesn't have one but she would be willing
23 to e-mail me her r,sum,, which I think would shed some
24 light on what her qualifications are.

25 But after observing the forensic interview,

1 Ms. Byrnes came to the conclusion, wrote -- a quote from
2 her report -- that, "It appears that Monique was sexually
3 abused by all three of these men so often and over such a
4 long time period that she's unable to differentiate and
5 recall one specific incident from start to finish."

6 Well, that is part and parcel exactly what we're
7 saying our repackaging theory is, that they can't
8 differentiate other than the fact that she says abused by
9 all three of them.

10 THE COURT: That's not exactly repackaging,
11 that's that there's one package.

12 MR. WARD: No, what it is, is when she's
13 describing one incident, she's not able to differentiate
14 is it from another or to reliably state who it was that
15 was sexually assaulting her at that time.

16 THE COURT: Let's do this -- I think that's
17 important enough, and you reminded me that is one of the
18 reasons the Kyle court came to the conclusion it did, was
19 there wasn't that kind of evidence.

20 I think this is the kind of evidence Ms. Conboy
21 should be able to cross-examine the expert on, so let's
22 just kick this to the -- did we finish one thing today, at
23 least?

24 MR. WARD: We finished --

25 MS. WHITNEY: -- the Shreck hearing.

1 THE COURT: So we need time, Linda, probably
2 about two hours, I would think, between finishing both of
3 these motion. You can have your witness come in to clear
4 some dates, Mr. Ward.

5 MS. WHITNEY: Should I -- should I plan on --
6 I'm filing my motion tomorrow, so I want to allow enough
7 time -- are you planning on doing that one at the same
8 time as well?

9 THE COURT: Yes.

10 MS. WHITNEY: Okay.

11 THE COURT: And I'm not going to make the People
12 respond. We'll just assume it's the same kind of response
13 and that it's basically piggybacking. There may be
14 nuances of differences, and you're welcome to talk about
15 those at the hearing, but let's not have a whole, long
16 briefing schedule because we don't have time.

17 The first trial date is when? March?

18 MR. WARD: 13th -- or 12th. I'm sorry.

19 THE COURT: I think we moved it to the 12th, so
20 we do need two hours, basically.

21 MS. CONBOY: The other restriction is that it's
22 got to be after February 8th, which I believe would be the
23 last day of medical restriction for Shannon Christner.

24 MR. WARD: So that would be the 12th or 13th or
25 26th or 27th?

1 THE COURT: March 13th works.

2 MR. WARD: March 13th --

3 THE COURT: Did you say February? Sorry,
4 March 13th is the trial date.

5 MS. CONBOY: February 13th, right, works for us.

6 MR. WARD: I cannot do February 13th. I will be
7 out of town. The following week, the 19th or 20th, I have
8 available.

9 THE COURT: I'm gone. The 26th looks like the
10 only day.

11 MS. WHITNEY: I'm not available on the 26th.

12 MR. WARD: 27th?

13 MS. WHITNEY: I'm available on the 27th.

14 MS. CONBOY: Can we go backwards?

15 THE COURT: Let's go off the record while we're
16 doing this so we don't drive the reporter nuts.

17 (Whereupon, a discussion was had off the
18 record.)

19 THE COURT: February 27th at 1:30.

20 MS. CONBOY: February 27th, Your Honor?

21 THE COURT: Right.

22 Anything else for me today?

23 MR. WARD: Your Honor, Jodi Byrnes is the
24 witness I've been describing. I apologize to her.

25 THE COURT: I apologize. Is it Ms. Byrnes or

1 Dr. Byrnes?

2 THE WITNESS: Ms. Byrnes.

3 THE COURT: I'm sorry that you've been waiting.

4 We have a new date, February 27th.

5 Have you subpoenaed her?

6 MR. WARD: Well, she's under subpoena for today,
7 so I was going to ask the Court to continue that subpoena.

8 THE COURT: Did you clear that date with her,
9 too?

10 MR. WARD: Does that date work for you?

11 MS. WHITNEY: She's under my subpoena as well,
12 which was informally continued by way of telephone.

13 THE COURT: And that date works for her?

14 MR. WARD: It does, Your Honor.

15 THE COURT: So let's go back on the record, in
16 case we're not now.

17 We agreed -- does that February 27th date -- it
18 works for almost everybody. It works for counsel, and
19 does it work for your expert, Mr. Ward?

20 MR. WARD: My expert is Ms. Byrnes.

21 THE COURT: Right. I'm just asking, does it
22 work for her?

23 MR. WARD: It does.

24 THE COURT: It doesn't really work for us, but
25 I'm outvoted, so we'll do it on the 27th.

1 I'll probably have to transfer some other
2 motions hearings to my colleagues if they all go.

3 And so, Ms. Byrnes, your subpoenas -- I
4 understand you have two, one from Mr. Ward and one from
5 Ms. Whitney -- they are continued. You need to be back in
6 this courtroom on February 27th at 1:30 in the afternoon;
7 that's a Tuesday. Do you understand that, ma'am?

8 THE WITNESS: Yes, I do.

9 THE COURT: Thank you.

10 Counsel, anything else?

11 MR. WARD: I do have one additional thing with
12 respect to Ms. Byrnes. The subpoena was a subpoena duces
13 tecum which directed her to bring a copy of her CV. She
14 informed me when she got here that she doesn't have one
15 but she does have a r, sum, which would list her
16 qualifications. She's going to e-mail that to me.

17 I guess I would just ask the Court make that a
18 requirement.

19 THE COURT: That's great. If you will do that
20 before the end of the week, Ms. Byrnes, that will be fine;
21 and you'll make copies and provide it either by e-mail or
22 hard copy to Ms. Whitney and to Ms. Conboy, right?

23 MR. WARD: I will, yes.

24 MS. CONBOY: Thank you.

25 (Whereupon, the hearing then concluded.)

C E R T I F I C A T E

I, Pamela J. Nilsen, Certified Shorthand Reporter, Registered Merit Reporter, Federal Certified Realtime Reporter, State of Colorado, in my capacity as Official Reporter of Courtroom 23, do hereby certify that I was present and recorded the above proceedings in stenotype and reduced the same to typewritten form, that if the labels affixed to the foregoing 156 pages are not tampered with that the foregoing 156 pages constitute a true and complete record of the proceedings had and done on March 22, 2007, before the Honorable Morris B. Hoffman, in the Denver County District Court, Courtroom 23, State of Colorado.

Dated this 9th day of March, 2007.

Pamela J. Nilsen, CSR/RMR/FCRR