DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO

CASE NO. 07JD313, DIVISION 10.

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REPORTER'S TRANSCRIPT - APRIL 2, 2008

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PEOPLE OF THE STATE OF COLORADO
IN THE INTEREST OF:

D.P.L., THE JUVENILE.

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The above-entitled matter was held on this date before the HONORABLE BRIAN BOATRIGHT, Judge of the District Court.

The following is a partial transcript of the entire proceedings.

APPEARANCES

FOR THE PLAINTIFF: CAROL RETSECK

FOR THE JUVENILE: STEPHANIE SEIBOLD
JEFF GILLIO

released from his subpoena?

MS. RETSECK: None from the people.

THE COURT: Mr. Gillio?

MR. GILLIO: No, Your Honor.

THE COURT: Mr. Sulli, there's what's called a sequestration order and that just means you can't talk about what you testified to or what took place in the courtroom with any other witness until the matter is resolved with a ruling from the jury. And you're free to go. Thank you for being here. Ms. Retseck your next witness.

MS. RETSECK: The people call Jean McAllister.

MR. GILLIO: Your Honor, it's almost 20 till 12:00 and Ms. McAllister is the expert witness and I anticipate she'll take a long time.

THE COURT: Let's get 20 minutes in. It may not seem like a big deal today but tomorrow it's going to feel important so let's get as much done as we can before the lunch break.

MS. RETSECK: Yes.

MR. GILLIO: Okay.

THE COURT: Ma'am, if you'd please come forward and stand before me and raise your right hand.

JEAN MCALLISTER,

having been sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

BY MS. RETSECK

Q Good morning.

A Good morning.

Q Can you please introduce yourself and tell us -- or spell your last name just for the court record?

A My name is Jean McAllister, M-C-A-L-L-I-S-T-E-R.

Q And Ms. McAllister what is your background in terms of education?

A I have a master's degree in social work from the University of Denver and an undergraduate degree in sociology from the University of Northern Colorado.

Q And what is your background in terms of where do you work?

A Well I have several things I do. Part time I am the program director at a program called Health Bridge Alliance which provides work shops and training for professionals who are exposed to trauma in their work. So we work with like child protection workers, medical doctors, emergency department personnel,

therapists, a variety of different people.

And then part time I do consulting and training independently, so I sometimes testify in court. I provide training in the arenas of sexual assault, domestic violence, trauma reactions, victim reactions, offender management, that sort of thing.

Q Okay and what has been your -- well, let me back up. When did you get your degrees?

A Okay. I got my undergraduate degree in 1978 and I got my graduate degree in 1993.

Q Okay. And what is your employment background?

A Prior to doing what I do currently my last job previous was as the executive director of the Colorado Coalition Against Sexual Assault. Prior to that I administered a program at the Colorado Department of Human Services called the domestic abuse assistance program which was a program that set standards for and funded all of the shelters for victims of domestic violence and their children.

Prior to that I administered the sex offender management board for the state of Colorado at the Department of Public Safety and we set standards for intervention with convicted sex offenders in our state. Prior to that I worked as a therapist, a

psychotherapist at Lutheran Medical Center, West Pines, at a program called the assault survivor's assistance program which was a trauma treatment program.

We provided therapy for people who had been exposed to different traumatic situations, many of them related to sexual assault, domestic violence or witnessing other serious crimes or natural disasters. Prior to that, I was the program supervisor in a battered women's shelter and a caseworker in a battered women's shelter.

Prior to that and way, way, many years ago I worked in doing child protection investigations for the Arapahoe County Department of Social Services.

Q Okay. Now do you have any licenses?

A I do not.

Q Okay. Why not?

A I -- when I was out of graduate school I studied for and took the practice test for licensure as a social worker and the licensure had a number of questions on it that I found would have included things that were dangerous to clients that I was working with and I went to the licensing board and I talked to the association of social workers in Colorado and advocated for a couple of years that they change some of the answers to those questions and they did not and I chose

not to be licensed and haven't been and it has not been a problem ever since.

I know that they are now teaching more effectively in schools of social work about appropriate responses to trauma. I actually have taught as an adjunct professor at the University of Denver since that time and I work currently at Health Bridge Alliance.

We work with the University of Denver's trauma certification program to do research on our program outcomes so I know that people have changed some of those things but I don't do direct service right now so I don't -- have chosen not to get licensed.

Q Okay and you mentioned you have been an adjunct professor with the University of Denver?

A Yes.

Q What area?

A I actually developed and taught a course in domestic violence intervention, victim intervention.

Q And have you in your lengthy career dealt with victims of sexual assault?

A I have.

Q Okay. How many victims would you say that you have worked with?

A I usually say at least three thousand over the years. I could easily count that out in my head. It's probably more than that but that would be a conservative estimate.

Q Okay and is that -- does that include all age groups?

A All except for very young children. Anybody who's -- I've worked with children latency age, middle adolescence and adults, but I haven't worked with really, really young kids other than just as a child protection caseworker because little kids require very different interventions. Kids that are younger than what we call school age.

Q Do you know how many adolescents that you have worked with?

A I would say they are somewhere between a third to a half of the people that I worked with so again at least a thousand.

Q And in what capacity have you worked with these three thousand victims?

A A number of capacities. I have done child protection casework which is interviewing and following up with kids who have been hurt in some way. I worked extensively with adolescents through the Gateway Battered Women's Shelter, and then half of our program

at the assault survivor's assistance program at Lutheran Medical Center was focused on intervention with adolescent victims and did extensive work with adolescents group, individual, family work.

I've worked with -- I developed and carried out a program when I worked at Lutheran Medical Center that was designed to do what we called safety assessments where there were families where children had been either assaulted or abused in some way and we determined what the needs of victims were to be able to be home and be safe and have the kinds of support that they needed.

Worked just in a variety of arenas over the years doing those sorts of things. I've also done a lot of sex assault prevention education in high schools and junior high schools and college settings, so there's a range of ways that I've worked with adolescents.

Q Okay. And tell me just briefly about any community or professional development involvement you've had?

A A lot. I guess I should identify things related to sexual assaults --

Q If you could?

A -- helpful.

Q That would be great?

A I served on the board of directors of the Colorado Coalition for Sexual Assault for many years. I'm thinking 12 years probably total. I sat on the sexual assault prevention advisory committee for the Colorado Department of Public Health and Environment for a number of years.

I was asked to -- by the regents of the University of Colorado to sit on the independent investigating commission for the -- when there was the scandal around sexual assault and underage drinking at the University of Colorado. I was asked to do the senior executive leadership training for the U.S. Air Force Academy when the scandal around sexual assault first broke there.

There were eight of us around the country that were asked and we spent time training their new leadership there. Their generals and colonels and the leadership on the Air Force Academy. Those are some of the things that I've done related to sexual assault.

Q Okay and in your ongoing work with victims of sexual assault do you consult research studies?

A I do.

Q Okay. How often?

A I try to keep up on reading literature every

month. I still read some of the journals that address trauma and there's a fair amount of information about sexual assault in those. I review materials because I train in this arena a lot.

For instance in -- last fall and in November I did training for all of the bases in -- under space command for their sex assault response programs and wrote a training manual for them to use and so I consistently review the literature.

I feel like it's my responsibility when I'm working in a field to know the literature well because we learn a lot about what best interventions are, how people behave and things like that from the literature. And one of the things that I've learned over the years is that things as they appear to us unless we educate ourselves sometimes are different than they appear.

So I think it's really important to understand the literature and understand what kinds of things are accurate and inaccurate and also understand the limits of what we know about different things so that we're clear about that when we're training people.

Q And have you had any experience in being called as an expert in the area of sexual assault trauma, victim responses and victim behavior?

A I have.

Q Okay. Tell me about that? How many times have you been called to testify?

A This is another one where I don't know for certain. I was initially qualified as an expert witness in 1985 and sporadically have testified over the years. I generally say 75 times because I know that I could verify that. I -- that's something that I do relatively consistently.

Q And when you're called to testify, who are you called to testify for?

A Typically for the prosecution. I'm called periodically by defense attorneys and have testified not in child sexual assault cases for the defense but a few times in domestic violence cases but primarily for the prosecution.

Q Okay, do you get paid?

A Yes I do.

Q What do you get paid?

A I get paid the standard rate that state judicial pays experts in the field and with my degree which is $80 an hour while I'm on the stand or if I prepare any written materials and then $40 an hour if I have to wait to testify.

MS. RETSECK: Okay, Your Honor, at this time I would ask for the Court to -- for the endorsement of

Ms. McAllister as an expert in the area of sexual assault, trauma, victim responses, and victim behaviors.

THE COURT: Say it one more time, I'm sorry.

MS. RETSECK: In the area of sexual assault trauma, specifically victim responses and victim behaviors.

THE COURT: Any voir dire?

MR. GILLIO: I would like to voir dire, Your Honor.

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. GILLIO

Q Ms. McAllister, as I understand it you currently work essentially as a consultant and a trainer right?

A That's what I do half-time, yes.

Q Okay and your primary duties in that area are to provide consultation and training regarding trauma and victimization?

A Yes.

Q Okay. You don't treat individual patients do you?

A Not currently.

Q Before your current position you worked for

Project Safe Haven?

A Actually that was a short-term.

Q Before your current position you worked for Project Safe Haven?

A It was a part of my current position. It was a short-term employment for the Colorado Organization for Victim Assistance.

Q Okay. And you provided onsite victim advocacy?

A That's accurate.

Q And in that job you also observed trauma caused by things other than sexual assault such as the hurricanes down in Louisiana?

A Yes, that was in specific response to people who were evacuees from the hurricanes.

Q Okay and that's obviously a different source of trauma than sexual assault is?

A It is.

Q Okay. In 2004 you worked as executive director of the Colorado Coalition Against Sexual Assault?

A That's accurate.

Q You did programming, planning and implementation there?

A Yes, provided training, worked directly with

all of the programs in Colorado that provided services, direct services to victims of sexual assault and provided training for their staffs, developed -- did -- we did some research in conjunction with the Department of Public Health that was identifying the needs of sexual assault survivors and what best kinds of things helped with prevention and I did some policy advising work as well.

Q Okay and I was going to ask about that. Part of your policy type work was administrative stuff, administering agent activities and such?

A Agency activity.

Q Agency. I'm sorry I misspoke.

A Some of it was, yes.

Q So that was an administrative position?

A Yes it was a management position.

Q Okay not a clinical position?

A Rarely did I do clinical work. There were periods when I may meet with victims who had special needs and wanted to engage with the coalition but that was rare.

Q Now you said you did meet with people, meet with clients in that position?

A Not as a therapist. There would be times when I would do direct service with victims who were

needing to talk to someone who had a broader picture, who had special requests.

Q Okay so you didn't actually treat any victims in that position?

A No I wouldn't consider myself -- that was not a therapeutic position.

Q Okay. You didn't treat any offenders in that position either did you?

A I did not.

Q Okay. In 2004 you also worked as an adjunct faculty member at DU which you mentioned?

A That's accurate.

Q And that was in the area of social work?

A Yes it was in the graduate school of social work.

Q Okay. And your job there involved teaching and developing a course on domestic violence intervention right?

A Yes it was teaching graduate students in social work how to do intervention in those situations.

Q So you didn't do any clinical evaluations on victims in that position either?

A I did not.

Q And you didn't do any clinical evaluations of offenders in that position?

A I did not.

Q Okay. You didn't do any therapeutic type treatment either?

A I taught therapeutic treatment I didn't do any, that's correct.

Q Right. Okay. And you were teaching graduate school students?

A Yes, second year -- or the people who are ready to graduate out of -- with a master's degree in social work.

Q Okay. And between 2001 and 2004 you were the program administrator for the domestic abuse assistance program run by the Colorado Department of Human Services?

A That's correct.

Q Okay. And that was an administrative job also?

A Yes, I administered the funding that went to all the shelters in the state and I administered the group that set standards for appropriate intervention and treatment for people who had been abused in intimate situations by people that they knew.

Q Okay. So again there was no clinical work in that position?

A No, we set standards for that work we did not

do the direct service.

Q And you didn't provide any therapeutic work in that --

A No I did not.

Q Okay. With either victims or offenders?

A That's accurate.

Q Okay. And that program, that dealt with domestic violence not sexual assault right?

A It dealt with domestic violence and sexual assault does happen in domestic violence settings and so that -- it dealt with both issues but the primary focus was in intimate relationships, yes.

Q Okay and according to your resumé you don't list sexual assault in that position on your resumé right?

A It's not -- that was not its primary work.

Q And the -- if I understand it correctly, the domestic abuse assistance program is directed at providing assistance to victims not offenders, is that right?

A Primarily, yes. We interfaced with offender treatment but we did not fund programs that provided it.

Q Okay. Before that job you worked at the American Prosecutors Research Institute?

A That was actually a very part time contract position doing training for a number of different states on intervention with sexual assault.

Q But you did work there?

A Excuse me?

Q You did work for them though?

A I worked for them as a contract worker. I did not work for the American -- I did not work on site.

Q Okay.

A I was a contract trainer who was asked to go to different states and provide training in those states.

Q Okay so you developed curricula and materials?

A Yes I did.

Q And taught courses it sounds like?

A Yes I did.

Q Okay. And the American Prosecutors Research Institute, that's a -- it's basically the training arm of the National District Attorneys Association isn't it?

A That's accurate.

Q Okay. And they only provide training to prosecutors right?

A To prosecutors and victim advocates.
Q Okay.
A As I understand it yes.
Q And victim advocates tend to work hand in hand with prosecutors?
A Well the victim advocates who work in prosecutors' offices do. There are victim advocates who work in community based settings that are different.
Q Sure.
A Yes.
Q Before that job you worked as a faculty member at Denver Cares?
A I actually did that -- that was again a part time position. Denver Cares is a training program for professionals who do work with a variety of different kinds of people in the community and I developed and taught courses in working with sex assault victims and working with domestic violence.
Q Okay. And the goals of those programs are to train counselors working in those fields?
A Yes they were active training for professionals so that professionals could keep up their continuing education.
Q Okay so it's focused on victim advocacy

actually?

A No it's focused on victim treatment.

Q Okay.

A They're not the same they're different roles. Therapeutic treatment requires that people be able to provide a range of treatment and do psychotherapeutic interventions. Victim advocacy provides support and assistance to people who've been identified as victims of crimes specifically.

Q Okay. Maybe I didn't word that very well. What I was getting at is it's victim-focused right?

A Yes that was focusing on working with people who had been victimized in those situations.

Q And you didn't do any clinical work in that position did you?

A No I taught people who were doing clinical work.

Q And you didn't do any therapeutic work yourself in that position either?

A No I taught people who were doing that.

Q Between '97 and 2001 you worked for the Colorado Department of Public Safety in the Department of Criminal Justice, is that right?

A Division of Criminal Justice, yes.

Q Okay. And that's when you were working on

the sex offender management board?

A Yes I administered that board.

Q Again as you just said you administered so that was an administrative job?

A Yes it was.

Q No clinical work involved in that job?

A No.

Q And no therapeutic work involved in that job?

A No we set standards for people who did therapeutic treatment and we approved treatment providers as being qualified based on their work but I didn't do direct therapeutic work.

Q You've never held an administrative position that also involved hands-on clinical practice with either victims or offenders have you?

A Actually the position at Gateway Battered Women's Shelter when I was program supervisor I was the clinical supervisor for all the people who did direct service work and I also carried a case load the entire time that I did that work. I was strictly a psychotherapist when I was at the assault survivors assistance program.

Q Okay. The faculty positions that you've held, they never involved providing clinical treatment right?

A No they involved teaching people how to do that.

Q Okay. From '99 to 2000, you worked for the Columbine Connection Victims Advocates is that right?

A I did. I provided consultation and training. For the first probably six weeks or so I did direct intervention with students and faculty at the school and family members of the people who had been victimized and then I provided training and supervision for the Columbine Connection Victims Advocacy program for a year following the shootings.

Q Okay, and when you mentioned the school you're referring to Columbine High School and the tragedy that happened at the high school right?

A I was.

Q And that had nothing to do with sexual assault?

A It did not, it was a different victimization.

Q From '98 to '97 you were working for the assault survivors assistance program at West Pines?

A It wasn't' '98 to '97 it was 1989 to '97.

Q Okay I may have transposed those?

A Okay. Well that's a difference between one year and eight.

Q Yeah, exactly and I apologize for that. My

fingers don't type so well sometimes but you were working there right?

A Yes I was.

Q And you worked as the therapist in that position?

A I did.

Q Okay and that's the one you were referring to a moment ago when you said you were carrying a case load, is that right?

A That's one of the places where I carried a case load. I saw individual clients, ran groups, responded to victims in the emergency room, did inpatient trauma assistance at the request at any of the medical personnel or the psychiatrist who ran the units at West Pines. So it was a range of things and we also did the reunification assessment program there.

Q Okay. And that -- according to your resumé that you provided, that was the last time that you did any clinical work?

A That was the last time that I was employed primarily as a psychotherapist, that's correct.

Q Okay and that employment ended in 1997?

A That's correct.

Q So since 1997 you haven't been doing clinical work?

A Only sporadically in response to major tragedies or disasters.

Q Which isn't listed on your resumé?

A The work that I did was direct service work with the victims of -- and survivors of Katrina, I did a substantial amount of direct service work with the victims of Columbine Connections, of the Columbine High School shootings, and we just talked about those so they are both listed on my resumé.

Q Those are listed but they don't mention you doing any direct work with the victims in those situations. I think they refer to, you know, working with FEMA and Red Cross, providing assistance and assessing financial services, things like that?

A That's direct work with victims who needed to be assisted obtaining those services and I believe that's how I've -- if you misunderstood that, I apologize --

Q Okay.

A -- if it's not clear but that's not been misunderstood by others.

Q Okay.

THE COURT: Mr. Gillio, how much longer do you have?

MR. GILLIO: I don't have very much more.

THE COURT: Why don't you finish up.

Q (By Mr. Gillio) Okay let's see. After the West Pines position between, I think it's between 1988, right, and 1990, you taught a course in domestic violence, is that right?

A Which course are you referring to?

Q Let me look at your resumé.

A I taught a course in 2000 I believe in domestic violence at the University of Denver graduate school of social work, and I periodically taught courses in domestic violence for Denver cares. A long time ago I taught -- developed curriculum and taught at the community college of Aurora courses in domestic violence.

Q Yeah that's the one I was getting to.

A Okay.

Q That was part time job also?

A Yes it was part time.

Q And it didn't involve hands-on clinical work there did it?

A No teaching at the community college did not.

Q Or any hands-on therapeutic work?

A No again it was teaching people to do intervention themselves.

Q And before that was when you worked as a

social worker at the senior resource center and at the battered women's shelter run by Gateway?

A Yes, I worked at Gateway Battered Women's Shelter for eight years and then I worked before that at the Arapahoe County Department of Social Services.

Q Okay. And back in 1978, '79 I believe it was, you worked at Excelsior Youth is that right?

A Yes that's our residential treatment facility for adolescent girls.

Q Okay dealing with abuse and delinquency, that sort of thing?

A Yes.

Q Okay. So am I correct in thinking that according to your resumé that the only time that you've you done clinical work involving sexual assault was at the sexual assault survivors assistance program?

A No. A number of the -- I did direct work at Excelsior Youth Center with adolescents who had been sexually assaulted, both group living counseling on site and providing groups as well. I did -- I saw a number of people when I was doing therapeutic work at the battered women's shelter who had also been sexually assaulted or who had been sexually assaulted by boyfriends or husbands or other intimate partners.

So there were people over all of those years

as well which is another 12 or so years that had been sexually assaulted as well.

Q You know on your resumé you don't list those positions as dealing with sexual assault?

A I -- my resumé is very short. The descriptors are very short. All of the research about domestic violence --

Q My question is on your resumé you don't list sexual assault in those positions do you?

A Probably not as primary.

Q Okay. And all of your clinical experience was victim based?

A The majority of it was. There were people at West Pines who had been traumatized by auto accidents or natural disasters that were not -- they were not victims of crime, they had harm as a result of some of those things.

The primary -- the very large part of my experience is working with people who had experienced trauma or victimization in some fashion or learning myself and then teaching people how to screen out those who had not been.

Q Okay.

MR. GILLIO: I think that's all I have, Your Honor.

THE COURT: Your position on her --

MR. GILLIO: I have no objection to her being --

THE COURT: All right, Court will admit Ms. McAllister then as an expert in sexual assault trauma, victim responses, and victim behavior. And ladies and gentlemen when someone's admitted as an expert that means they can testify to opinions based on their training and experience.

What weight you give their opinions and their testimony still is entirely up to you and I'll give you an instruction on that but it's different than -- most witnesses are restricted to what they saw or heard. When one's admitted as an expert it can be based on training and experience and that's what it means when someone is admitted as an expert.

All right with all that let's go ahead and take our lunch hour. Ms. McAllister if you could be back at 1:15.

THE WITNESS: Yes, sir.

(End of the testimony for the morning.)

(At 12:19 p.m. a lunch recess was taken.)

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WEDNESDAY, APRIL 2, 2008, AFTERNOON SESSION

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

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(At 1:15 p.m., court reconvened with the juvenile being personally present, and the following proceedings were had:)

THE COURT: Let's go back on the record in 07JD313, counsel are present. Do we have Ms. McAllister?

MS. RETSECK: She was just in the restroom so I don't know if --

THE COURT: Why don't you bring her in. Anything before we bring the jury?

MS. RETSECK: Not for the people.

THE COURT: Ms. Seibold?

MS. SEIBOLD: Your Honor, we have a unanimity instruction if you want it now or --

THE COURT: Yeah, if you can just hand it to me.

MS. SEIBOLD: We only brought one so we could have you look at it first.

THE COURT: That's fine. Ms. McAllister, if you would just retake the stand. I just need to remind you, you are still under oath.

THE WITNESS: Thank you, Your Honor.

(The following proceedings were held in the presence of the jury.)

THE COURT: You may be seated. Thank you. Record should reflect the jury is back in the courtroom. All right Ms. Retseck you may resume with your direct.

MS. RETSECK: Thank you Your Honor.

DIRECT EXAMINATION(Resumed)

BY MS. RETSECK

Q All right Ms. McAllister I believe we left off with your background, experience and education and so forth?

A Yes.

Q Okay now I want to ask you some questions. Do you know a Nena Harkey?

A No I do not.

Q Have you ever heard that name before?

A I have not.

Q Have you ever met anyone by that name?

A No I have not.

Q Do you recognize the name Doug Lindsay?

A Yes. My understanding is that's the name of the man who's the defendant in this trial.

Q And have you reviewed any reports or any of the investigatory documentation about any of the

charges against Mr. Lindsay?

A I have not.

Q What information have you been given?

A I was called by I believe initially your victim advocate and asked if I was available to testify in a sexual assault case about typical dynamics of victims and victim reporting and what kinds of reactions are common in sexual assault.

Q And is this something you've testified about in the past?

A Yes it is.

Q And is it standard procedure to not be given reports?

A It's common. I would say about half the time I get reports and half the time I don't.

Q Now I want to ask you a little bit about reporting and how victims report, okay?

A How victims report sexual assault?

Q Yes. Are there any I guess statistics regarding how many sexual assaults are reported?

A There are. There are a large number of studies. We have national data from about 25 years of large national studies that have looked at sexual assault, victim reporting, and we have also data from sex offender treatment that reinforces that and we have

actually Colorado data on reporting as well because our Department of Public Health and Environment --

MR. GILLIO: Your Honor, I'm going to object to this answer as a narrative.

THE COURT: Overruled.

A Our Department of Public Health and Environment in collaboration with the Coalition Against Sexual Assault was actually the first state to start putting in our general public health survey questions about sexual assault. So we have strong indicators about reporting and the reality is that most victims of sexual assault never report it.

Q (By Ms. Retseck) Is there a percentage?

A Most studies say approximately 16 to 19 percent of people ever report sexual assault. Those that are most likely to report are adult women who've been sexually assaulted by strangers or people who experience physical injury. And those two scenarios are the least common forms of sexual assault.

Q What are the statistics with regard to at adolescents? Particularly adolescents involving an acquaintance type of sexual assaults?

A Well, there are ranges from somewhere around 15 percent to 5 percent depending on the type of study you look at. All of the studies clearly indicate that

the younger the victim and the more likely that they know the offender, the less likely they are to report.

So the younger victims are less likely to report and if they do they typically take a very long time before they tell anyone. What we call immediate reports or reports immediately post-assault are very --

MR. GILLIO: Your Honor, I'm going to object. This is narrative again. She's asked about a statistic as to how many people report.

THE COURT: Overruled.

Q (By Ms. Retseck) Okay, is there research regarding when -- what you might expect from a victim in an immediate outcry, who might they tell?

A If a victim does tell someone typically they tell someone that they know and trust and that -- that would be for children and adolescents there's a range. Sometimes it's a family member or trusted advisor like a school counselor or a youth minister or someone like that and sometimes it's a peer or a friend.

But they almost always, if they do report, they tell someone that they know before they tell authorities.

Q Okay. And are there studies regarding when the disclosure comes out, whether it's immediate or whether there's a timeframe?

A There are a number of studies. There is typically a long delay in reporting. Actually the average age of adolescents who have been sexually assaulted for telling anyone in a life span is 26.7 years actually. People who have been assaulted from the age 11 for 18.

So of course a substantial number would report before that time and some would never tell anyone else at all. Some would tell someone when they're older but it's very common for there to be long delays in reporting sexual assault.

Q Okay. Let me see if I got this right. I'm not so great at math. So the average age -- 26.7 is the average age in which persons who are between the ages of 11 and 18, that's the average age that they report?

A That they tell someone, yes.

Q Okay. And are there reasons in the studies set forth why someone doesn't report right away?

A Well there are a number of reasons that are identified in studies. The first of those is that many people who are sexually assaulted by someone they know don't initially label what's happened to them as sexual assault.

The studies identify that in our culture we

have substantial misinformation about sexual assault. Most people including victims believe that sexual assault is a violent act -- attacked by a stranger with a weapon in a public place or an alley or somewhere like that and they don't understand that the large majority of sexual assaults are committed by people that the victim knows in an environment that is typical of their common social environment. Their home, their school, their social circle.

So the first reason for not reporting is not initially understanding that it was a sexual assault per se. Other reasons that are identified in the research literature are that people are afraid they won't be believed because the person who assaulted them is someone other people know and like, that they are ashamed or feel dirty or bad about what happened to them and they don't want other people to know what happened.

There are also reasons identified in the clinical literature that are related to how people cope with the trauma of sexual assault. And consistently one of the ways that they cope is called dissociation or compartmentalizing. Setting aside part of their emotional reaction to the event.

In the rape trauma therapy there is

indication that after the sexual assault the most common thing that people will do after the initial distress is to try to pretend like it didn't happen. To try to pretend like things are normal, like their life hasn't been upset, like they haven't been hurt, and try to act like their life has not been impacted. That's called pseudoadjustment in the rape trauma literature.

Q You mentioned four different reasons for not reporting that are in the literature, are there more?

A There are. There are perceptions that among victims that they'll be blamed for the assault, that they will somehow be accused of doing something wrong that made them deserve it or ask for it. Often that's the case when you have adolescents who are somewhere they're not supposed to be or at a party or drinking or taking drugs or something like that.

They will -- they're more afraid of getting in trouble than they are telling what happened. There are also fears of retribution from some offenders who threaten victims that they will harm them in some way if they tell anyone. Those are very common reasons.

Q Okay. I want to move on to when a victim does tell somebody about the abuse, are there studies that show how the memory works, about what they

remember about the assault?

A Yes. And actually this is not just -- this does not apply just to sexual assault but to all experiences of trauma, when people experience something that is identified as so powerful, harmful, threatening or severe that it requires that they cope differently.

It sort of overwhelms the way we normally cope and people utilize different coping mechanisms. Dissociation is one of those and another thing that happens is how people remember the experiences different when they've experienced trauma.

Typically as trauma is remembered is as images or pictures, physical sensations, or the way your body feels, feelings or emotions and the kind of behavioral responses. So they are actually very sensate memories. They're not always connected to what we would consider them, a more cognitive part of our memory.

The part of our memory that remembers order, and detail and dates and times and things like that. They're very experiential and they are not typically subject to a person's voluntary recall and dismissal. What that means is they can be triggered by reminders of things in the environment but they may not be in your consciousness all the time.

And so somebody can be reminded of something that happened to them and become very upset even though they're not currently in danger or they may not think about the event for long periods of time which is thought to being protective from not having to deal with the really negative psychological consequences of trauma.

Q And is that kind of attached to what you talked about as dissociation or pretending like something didn't happen or not addressing it?

A Yes that's one of the common responses yes.

Q And if a person -- are there studies that show how a person who may have dissociated for a period of time, let's say years, how their memory may be and how their memory may come back about the assault?

A Well as I said it's typically going to be that experiential kind of memory that may be flashes of that experience or feeling or images of what happened to them. And typically in my experience clinically and what you see in the research literature is that things come back a little at a time.

It's very rare that somebody even immediately after a trauma, this way that we -- that our memory works when we're traumatized is consistent whether there's a short delay or a long delay after a traumatic

experience but what will happen is people can -- something comes up or they remember something often that's triggered by some kind of reminder in the environment.

It may be a very simple reminder. It may be somebody saying something about something happening to somebody else and that for whatever reason jogs their memory. It may be just a feeling or something that reminds them of their internal experience.

But when it comes up, it typically comes up a little at a time and then -- because the other kind of way we psychologically cope that goes with dissociation, is called the anxiety set of responses. They're real distressing responses. They're the things that make people look and appear upset. Their shakiness, crying, really strong emotion.

And in most trauma you get a fluctuation between those intense kind of intrusive or anxiety-producing emotions or reactions and then the distancing or pulling away the dissociation until you can know what happened, feel all the feelings and not have it be overwhelming.

But because it's still traumatic when someone hasn't told anyone before, they will typically remember a little bit and then try to back away from it again or

dissociate some and so what you get is pieces of information that typically over time become a description of the whole event but not an A to Z description of a traumatic event at the very beginning. That's a more rare experience of trauma and reporting of trauma.

Q Okay. And when victims do report does how they report -- is that affected by a victim's age at the time of reporting?

A It actually is. As I said, the younger a victim is the less likely they are to report but also the less likely they are to tell an authority person right away -- or authorities. They are more likely to tell someone that they know and to say something bad happened or something happened to me or this happened to me.

And it's sometimes in the literature identified as accidental that kids and adolescents don't always have the conscious intent of reporting something. Sometimes an emotion or a feeling or a memory of something just comes up and they talk about it.

And then they are worried about it afterwards because they didn't really intend to say it and then the overwhelming and stressful feelings about what

happened also come up and they also don't want to feel those.

Q Now if a victim were assaulted at a younger age would the maturing process affect their ability to report or their likelihood to report?

A It does and the literature identifies for a couple of different reasons. One is just their capacity to tolerate what happened and be able to talk about it and deal with it can sometimes shift over time. And I think what I've seen in my clinical experience is that people who are a little older and into older adolescence or adulthood are better able to cope with really differ things than younger adolescents or kids.

The other thing is that the research clearly indicates that developmentally people understand the experience of sexual assault differently as they get older. That particularly people who don't have a lot of experience with sex or sexual interaction may really try to avoid thinking about it or dealing with it at all and do the dissociating kinds of behaviors we talked about, distancing from it.

But as they get older and they begin to understand what sexual activity is and what consensual sex is supposed to be, sometimes then they are better

capable of understanding what happened to them and don't push it away so much. But it comes up more just because of what they understand developmentally.

Q Okay. Now I want to ask you about during -- during a sexual assault are there different ways that a victim may react while a sexual assault is occurring?

A Yes. And those are consistent with how all human beings react to, in my opinion, kinds of trauma that they experience, so this is consistent across all human experience. When someone experiences trauma there are some what we call primary survival mechanisms that kind of take over and in our culture we tend to label those fight or flight but that's actually an incomplete picture of what the survival reactions are typically.

And those are fight, flight and freeze. And they're designed to help people survive a traumatic experience. And I think it's easy for us to understand the function of fighting. If you can fight someone off you won't be hurt as much. Trying to run away makes sense to most of us, but freezing is also a very effective way of staying alive.

The mechanism is survival based and when someone freezes there are, both predators in the wild and just human beings, who will not continue to hurt

someone sometimes. So freezing is an effective way of not getting more hurt and there are offenders who when someone fights back will become more violent and hurt someone more.

So they're very simple survival based mechanisms and they go across the range of all human traumatic experience and they are all used by different people at different times.

Q Okay.

A And typically victims in our culture who freeze, because we don't talk about that publicly, very much feel like they did something wrong because they didn't fight or they didn't scream or they didn't do what they think they're supposed to do, but it's a very common reaction when someone's being traumatized.

Q Okay. One moment.

MS. RETSECK: No further questions at this time.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. GILLIO

Q When you were doing clinical work and you made observations or you -- or when you were participating in research, because I think you said you did some research right?

A I participated in it, I was not the primary researcher but I participated in a number of studies.

Q Okay, well, when you were doing that sort of work, clinical research type of work, you always had contact with the individuals that you were helping right?

A Yes when you're doing direct work a requirement is that you have interpersonal contact, that you meet the person, interview them, sometimes there's testing.

Q Okay and you need to do that in order to form opinions right?

A Yes. And to form any sort of diagnosis.

Q -- and you wouldn't just meet with them once, you would have extensive contact wouldn't you?

A In a crisis situation you might meet with someone once but you wouldn't make a determination about what was going on with somebody in one visit.

Q Because you'd want to rule out things that might skew your observations correct?

A Absolutely.

Q You'd have to rule out things like symptoms that might be exhibited as a result of an organic brain disorder?

A In some cases you would want to rule that out

yes.

Q Or a brain injury?

A In some cases that might be something you'd want to rule out.

Q And when I say organic brain disorders I'm talking about things like schizophrenia, things like that. Those sorts of disorders can lead to symptoms that are similar to the same sorts of symptoms that trauma victims would suffer correct?

A I'm having a hard time identifying symptoms of schizophrenia that are consistent with trauma but there are certainly many different diagnoses that have some symptoms in common and you do need to rule out what are -- what's actually happening.

Q Symptoms such as avoidance or numbing, those appear in other situations other than just trauma?

A They can. Yes.

Q And that would also apply to things like bipolar disorder?

A If a person has bipolar disorder with a serious depressive component they may have numbing or avoidance yes.

Q It could also be caused by substance abuse by certain substances right?

A Substance abuse can cause people to feel

numb. It can also be a result of people attempting to stay numb from a trauma experience so you have to rule that out over time.

Q Okay. I want to go back to some of the stuff we talked about before the break. You had mentioned that you got your MSW from the University of Denver, right?

A Yes.

Q And you got that in 1993?

A Yes.

Q Which was the last year that Denver -- or University of Denver had a concentration as a part of its MSW program is that right?

A I know they don't have them anymore. I'm not certain which year it ended but that's sometime in the 90s, yes.

Q And you concentrated in child and family?

A I had a clinical concentration at that time is what it was called.

Q Okay, dealing with child and family?

A Child, family, diagnosis, mental health treatment.

Q Okay. And that was towards the goal of working as a clinical social worker?

A At that time, yes.

Q And you told us you're not licensed?
A That's correct.
Q And you've never been licensed as a social worker?
A That's correct.
Q Okay. But you practiced as a clinical social worker a for a time?
A I did.
Q You practiced as a psychotherapist?
A I did.
Q You weren't licensed as a psychotherapist?
A No I was not.
Q Okay. You're not a licensed psychologist either?
A I'm not a licensed psychologist, no.
Q And none of your professors at University of Denver were licensed psychologists?
A I'm thinking because I had some people who were not clinical social workers who taught. I can't answer that completely. I would have to go back and look at credentials.
Q You've testified in earlier hearings, not in this case but in earlier hearings here in Jefferson County, that none of your professors were licensed psychologists?

A Not entire -- I think that's probably true but I have not looked recently so I would have to go back and look.

Q And you talked a little bit about what you need to do to become licensed. And I want to go into that. You need to practice under supervision for about 3,000 hours isn't that correct?

A That's correct.

Q And then you mentioned a test. You have to take a test?

A Yes.

Q Okay. And that was the test that you chose not to take?

A That's correct.

Q Okay. While you were at University of Denver you didn't take any classes dealing specifically with sexual assault?

A None were offered. At that point in time there were no classes dealing specifically with sexual assault.

Q Okay. After you graduated in 1993 you didn't receive any formal certifications other than your certification in eye movement and desensitization is that correct?

A That's correct.

Q And you received that in 1995?
A That's correct.
Q So since then no other certifications?
A That's correct.
Q And unless I read your resumé incorrectly I didn't see anything in your resumé that mentioned anything to do with behavior of sexual assault victims?
A I would say that you read my resumé incorrectly then.
Q So there's something in your resumé that mentions behavior of sexual assault victims?
A It may not say those words. In my field, working in a trauma treatment program would directly address the behavior of sexual assault victims. Any teaching, any intervention program development, any standards development around sexual assault would necessitate an understanding of common behaviors of sexual assault victims and of the research.

So while those words may not be in my resumé, if you were in my field, you would understand that when I have a job that addresses those issues or addresses clients who may have those issues even if that's not the primary name of the location where you work, those would be required skills.

Q Okay. Because the trauma suffered by sexual

assault victims is trauma and trauma creates a certain behavior pattern, is that correct?

A Trauma is one of the components of sexual assault that is common across all experience of trauma whether it's sexual assault or any other sort of inducement of traumatic experience. There are some sequella and behaviors of sexual assault that are common of sexual assault.

Sometimes for instance some traumas are almost always reported to -- immediately reported to authorities and sexual assault is not but that's not got to do with the trauma reaction as much as it has to do with the way it's perceived and understood by both victims and other people in the culture.

Q And not all traumas are the result of crimes?

A No some are the result of natural disasters, accidents. In some cases certain serious and crisis based medical conditions can cause trauma as well.

Q And your experience with sexual assault victims' behavior, that comes primarily from your clinical experience?

A My experience with sex assault victims yes comes from -- primarily from my clinical experience.

Q Okay. And you talked about this a little bit earlier but I want to touch on it again. You -- the

district attorney had asked you about the number of times you've testified and that sort of thing and she mentioned that you're being paid to be here correct?

A Yes.

Q And you're being paid by the district attorney's office to be here?

A I'm not certain if this will come from the district attorney's office or state judicial department but one of the two, yes.

Q Okay. And every time you've testified as an expert in a sexual assault case it's been on behalf of the prosecution, correct?

A That's correct.

Q Okay. In your clinical practice when you are presented with a patient or I don't know if you refer to them as patients or client but a patient for -- it was always someone that you understood to be the victim of a trauma right?

A No.

Q It wasn't?

A No.

Q Okay. The victim of -- in the realm of sexual assault I'm talking, the victim of a sexual assault?

A No actually when I worked at West Pines one

of the things that we did relatively routinely was at the request of medical staff, typically psychiatrists, we would assess patients who they didn't understand a symptom set for, or didn't understand what was happening with them, and didn't -- many of those patients didn't have any identification or reporting of any victimization or trauma at the time we were asked to assess them.

That was also true in the chemical dependency unit that we were asked to assess and intervene as well.

THE COURT: Could I interrupt Ms. McAllister? I think you're pushing the mute button so it's kind of cutting in and out a bit. You can bend down the microphone?

THE WITNESS: Thank you. I apologize. I heard it go out but I didn't know I was doing it. Thank you.

THE COURT: It happens a lot.

Q (By Mr. Gillio) Okay, well, let me ask you this. Once you understand that someone is the victim of trauma or sexual assault, it's your job -- when you were working in the clinical field it's your job to help them deal with that trauma?

A Typically, yes.

Q Okay. And determining whether or not they were actually a victim wasn't part of your job?

A Not in an investigative sense, however an appropriate diagnosis is required to do effective treatment and there were people who I saw who had reported sexual assaults where that had not happened and I was able to identify that.

There were also people where we didn't know what was happening and I was asked to intervene. So once I have a fairly reasonable idea that I have an accurate understanding about what's going on with someone, that's true, but it would be inappropriate for me to treat someone for something that I did not find consistent with what their symptom set was or with what their experience was.

Q Which sort of goes back to what I was asking you earlier about your meeting with patients, it would be -- I would guess it would be malpractice essentially to diagnosis somebody without having met them is that right?

A Yes that would be unethical in my -- that's how it's identified in my -- malpractice is typically identified for doctors. It would be unethical in the social work code of ethics.

Q Okay. And the field you're in, that's

considered to be a social science?

A Yes there are a number of social sciences that contribute to the field that I work in.

Q Okay. And so as a social scientist you're familiar with the term scientific method?

A Yes.

Q And you would agree that scientific method is the idea that uses a particular method when you're trying to prove or -- well essentially prove a certain hypothesis?

A That's accurate.

Q Okay. Are you familiar with the term falsification principle?

A Yes.

Q And that's the idea that if a hypothesis survives continuous attempts to falsify it, then although you can't be conclusively sure that it's true that you can work on the presumption that it's true?

A Right.

Q If that's not too terribly confusing?

A No you're -- that's general -- I would say that's a reasonable general description.

Q And that's the reason that we use control groups when we're doing scientific studies right?

A Yes.

Q Okay. Yet in the social sciences you don't use primary control groups?

A In some circumstances you do. In many studies you do not. A control group which is a group of people who get no intervention or completely different intervention from people who get a certain kind of intervention, some are thought to be ethical in the social sciences and some not.

In some social science research there have been very strong control groups but one of the responsibilities in social science is to identify what the limits of your study are if you don't have a standard control group or to figure out other ways to control for what might be distortions or what you referred to as falsification in your findings.

Q Okay. In terms of sexual assault symptomology, you know, the symptoms that people appear with when they've been assaulted, you yourself never participated in any tests that made use of the falsification principle or a primary control group?

A No I have not.

Q Okay. And in your clinical practice when you were practicing clinically, and your training in the research that supports it that you rely upon, that in large part relies on the truthfulness of the victims

and the alleged perpetrators, is that correct?

A Actually not always. Especially not the research. That is one component and definitely it is a component in any voluntary intervention is being able to assess the truthfulness of a client that you're working with. And sometimes people are honest and sometimes they are not.

But a lot of the research as I said while it might is not have primary control groups like you put this thing in this petri dish and you don't put this thing in this petri dish. And in social science we rarely have that kind of control but we do have other ways to screen out inaccurate information to make sure that we look at information from a variety of different perspectives and different research studies and different kinds of fact finding information.

And the more often you can do that from a variety of different perspectives and replicate results regardless of the type of population you're studying, the more likely you would have strong research outcomes.

So some of the research that I've looked at in the field of sexual assault is very strong and has very strong findings from a variety of different places and then some of it is much less strong and will take

time before we call it knowledge building.

Q Okay. And some of the symptoms that you've described as being common for somebody that's suffered a sexual assault, those can also be presented by somebody who is malingering or in other words making a false report?

A They can, yes.

Q And in your participation in the clinical field and the limited participation that you had in research, you were never presented a situation where you -- there was a control group that you weren't aware of, in other words there was somebody else behind the scenes knowing that a person was or was not a victim, is that correct?

A Not with actual victims. In some of the classes I took there were people who were actors who played different roles of different things.

Q Okay let me stop you if I could. I was talking about in your clinical practice?

A No I did not.

Q Okay. So you were never presented with somebody that said they were a trauma victim but actually wasn't and somebody else knew that they weren't and they were just checking to see how you diagnosed them?

A No I was not.

Q And you said in the general population 16 to -- I think you said 16 to 19 percent of people of sex assaults are reported, is that right?

A Yes.

Q So the rest of them are not reported?

A Are not reported.

Q Okay. And in the general population about 16 to 20 percent of women -- or females in general are opposed to -- or not opposed. I assume everybody's opposed to -- but exposed to sexual trauma?

A That's what the common population studies identify.

Q Okay. And around 80 percent of people who experience sexual trauma are -- they experience post-trauma symptoms, is that right?

A I'd say that's consistent. It's a higher percentage of people who experience trauma as a result of sexual assault that end up experiencing post-traumatic symptoms than any other kind of trauma except for direct -- extended direct combat.

Q Okay.

A So it's higher than normal and those are estimates. I wouldn't consider that -- that research is good but not perfect.

Q Okay. And that good but not perfect 80 percent number that's speaking about the general population, males and females, correct?

A Males and females who have experienced sexual assault, yes.

Q Okay. And -- okay. And so based on the numbers you've given us about 80 percent of females have never been sexually traumatized, is that correct?

A Depending on the study that's somewhere in there, 75, 80.

Q Okay. And there is a percentage of female nonvictims who present a symptomology that is consistent with having been sexually assaulted?

A If you're identifying a very clear post-traumatic set of symptoms related to sexual trauma I'd say that percentage is relatively small. If you're saying that somebody may have a symptom or two that's related and has not been sexually assaulted, that's entirely possible.

Q Okay. And you wrote a report for this case, correct?

A I did.

Q Okay. And according to your report when -- and also I think what you've testified to already, according to that, when the brain perceives some sort

of traumatic threat your body is flooded with various chemicals right?

A That's correct.

Q You may not have testified to that it's just a sidestep?

A I didn't.

Q But a couple of those chemicals are adrenaline and epinephrine, is that right?

A That's correct.

Q And those are chemicals that are associated with allowing you to make quick reactions?

A Yes.

Q Okay. The sorts of chemicals that would spark the fight or the flight reaction is that right?

A Or the freeze reaction, yes.

Q Okay.

A Any of those three.

Q Any of those three?

A Yes, all three of those are related.

Q But with the freeze reaction there's further changes in your brain chemistry, aren't there, that get you past the fight or flight and put you into the freeze mode?

A No it -- what would be accurate is that any of those reactions might be immediate as in response to

trauma and the way those -- that changes your chemistry. What is accurate is that if you were exposed to trauma over an extended period of time almost everyone will eventually develop a freezing reaction if there's -- over an extended period of time that can happen.

Q Okay and that's caused by further brain chemical changes?

A It's because of how the -- how the chemicals impact your brain chemistry and your capacity to react over time.

Q Because specifically I'm looking at the line in your report that says brain chemistry changes further to facilitate freezing or inaction?

A Yes, and what that means is you have an extended period of time with exposure of those chemicals and you've not successfully been able to resolve the traumatic experience.

Q Okay. And you'd have that where the -- where resistance or fighting -- where that would be perceived to be impossible by the victim is that right?

A That's one of the ways that freezing is induced, that's one of the responses that causes freezing. Some people freeze initially in a traumatic experience without attempting to fight first.

Q Okay. It also occurs when the escape or the flight instinct is perceived to be impossible also is that right?

A Yes it's very common if someone feels or experiences feeling trapped or unable to get away, freezing is the most common reaction when that's their experience of being trapped.

Q Kind of the equivalent of being backed into a corner with a bear coming at you or something like that right?

A I guess that's one way you could describe it.

Q All right.

A Yes.

Q Now you described traumatic memories as being stored as images or sensations, feelings, things like that right?

A Yes and behavioral responses.

Q Okay. And -- and you said they're not subject to voluntary recall?

A When they are not integrated trauma, when they haven't been fully integrated, they are not subject to voluntary recall and dismissal.

Q So sometimes they are subject to voluntary recall?

A Yes and as someone integrates the traumatic

experience they become more and more subject to voluntary recall.

Q Okay. And I think your report mentioned that -- that traumatic memories, that they don't have cognitive components like a linear timeline or specific dates involved?

A Unintegrated trauma typically doesn't have those more cognitive components that the experiential memory related to trauma does. The exception to that is if a date is related to something that somebody has an experiential experience of, a common kind of thing is if somebody's assaulted on a holiday or at a time when something meaningful has happened to them they might remember that day even though they don't have the kind of cognitive timeline we're thinking about or I'm talking about right now.

Q Okay. And that gets to my next question actually. I was going to ask you if that applied to -- to important events but I guess that with an important event like a holiday that's what you were just describing right?

A When there's -- when there is an experiential reason for remembering a cognitive detail sometimes that gets attached anyway.

Q Okay. Just for clarification, just because

you don't remember something doesn't mean that you suffered a trauma, right?

A That's accurate. People forget things for lots of reasons.

Q And you can also forget timelines for nontraumatic events right?

A I think that's very common, yes.

Q You can forget the dates of nontraumatic events?

A Yes.

Q And just because you don't recall something doesn't mean it was traumatic?

A No that's one piece of information that you would need to consider in a larger pattern.

Q Okay. And you would describe how traumatic memories are often brought back up by I think you said something small could bring it up, you know, like seeing something or something jogging your memory in that way?

A The literature calls it reminders in the environment.

Q Okay and that can happen with just ordinary memories too?

A That's true. Often the classic example of that is people smell cookies baking and they think of

their home or their mom or grandma or something.

Q And we've been talking about memory for quite a bit here. I want to make it clear you're not a memory expert are you?

A No I'm not.

Q In your report you mention anxious responses?

A Yes.

Q And those are things like extreme distress or awareness of pain, fear, terror, things like that?

A Yes the traditional responses that we culturally think of when we think somebody's been upset or hurt in some way.

Q The sorts of things that would alert you to a potential threat?

A Or that are in response to a threat.

Q Okay.

A Yes.

Q Okay. You've also talked about dissociative response?

A Yes.

Q Okay and that involves the compartmentalization of events is that right?

A Yes it's as I described earlier compartmentalizing or distancing from in some way part of your reaction or all of your reaction to an event.

Q Okay. And you told us I think about expressed and controlled reactions or maybe I got that out of your report?

A I don't believe I testified to that but they are ways of labeling victim behavior that are consistent with anxious responses or dissociative responses. Expressed responses are those typically overly upset looking responses. Controlled responses are those more dissociative responses where people can look kind of numb or flat or like nothing bad happened.

Q And it's not uncommon for adolescents to present either of those?

A No.

Q Okay. And a lot of people will fluctuate between the two?

A In a healthy resolution of trauma you may get some fluctuation between the two until as I said before you can know everything that happened, hold on to it, feel how bad it felt and not have it overwhelm you or feel a need to shut down to protect yourself.

Q Okay, so if you're fluctuating between the two that could mean that if you're angry you could be the victim of a trauma?

A Any -- if you're angry by itself independent of anything else could be indicative of a thousand

things. It's not appropriate to identify a single indicator of something as an indicator of that thing absent a picture that fits many indicators that makes sense in the context of that trauma.

So you're right. Anybody could feel anger. They might have been the victim of sexual assault. They might not have been. That thing by itself can't be considered as an indicator, it's the consistency of information or the pattern of the information.

Q And the same would be true with the sort of dissociative things, like for instance, if a person is subdued it doesn't necessarily mean they're a victim of trauma right?

A Not by itself no.

Q And that's part of the reason as a clinician you would have had to sit down and meet with someone?

A Yes. And more than once.

Q Right. And as you've just said there can be other causes besides trauma of those sorts of reactions right?

A Yes.

Q Okay. Events at home could cause things -- could cause those reactions is that right?

A As I said, there could be a thousand causes for those. Any -- anything that might happen in

someone's life might cause any one of those reactions.

Q Divorce possibly?

A I would assume so.

Q Custody dispute if you're a child that's in the midst of a custody dispute?

A That could be a cause.

Q Okay. Being abandoned by a parent?

A That could be a cause.

Q Being abused as a child by a parent or a stepparent?

A That could be a cause.

Q And those events in themselves if you're a child, if you're anyone, really could be traumatic?

A Some of them could, yes.

Q They're the sorts of events that could make a child depressed?

A Some of the events you described could, yes.

Q It could cause anxiety disorders?

A In some cases, yes.

Q Sleep disorders?

A In some cases.

Q Changes in the way you're functioning in school?

A In some cases yes.

Q And because of that when you were working as

a clinician if you saw a client that was exhibiting these behaviors you'd want to know about these circumstances in their life, wouldn't you?

A Yes.

Q Okay. You talked about the amount of reading that you do, it sounds like you read a lot?

A I do.

Q Okay. And you talked about keeping up with the studies in your field?

A Yes.

Q So you'd say you were well read in the area of sexual assault?

A I'm not as well read as I'd like to be but I'm more well read than most people I've met yes.

Q Are you familiar with the statistics that came out in 1996 that said in every year since 1989 in about 25 percent of the sexual assault cases referred to the FBI where results could be obtained primary suspect has been excluded by forensic DNA testing?

(The courtroom telephone ringing.)

A I'm not sure if I'm aware. I don't know who the author of that study is. If you can tell me that I can tell you whether I'm --

Q That's in a study that was put out by the U.S. Department of Justice and it's entitled Convicted

Juries Exonerated -- Convicted by Juries Exonerated By Science and it's by Edward Connors, Thomas Lundregan, Neal Miller, Tom McEwen.

A I believe I know some of that material.

Q All right.

MR. GILLIO: Nothing further.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. RETSECK

Q Well let's start with that. You know some of that material?

A I do.

Q What do you know about that material?

A What I know about these studies where there have been DNA exonerations of convicted sex offenders as -- as I understand them is that many of those --

THE COURT: Just a minute.

(The courtroom telephone ringing again.)

THE CLERK: They were calling back to make sure it was the wrong number.

THE COURT: I've got no comment. Excuse the interruption.

Q (By Ms. Retseck) Okay I believe you were responding to my question with regard to what do you know about this research that Mr. Gillio had referred

to?

A Yeah and again I would need to see the specific study but the studies I've seen when DNA is used to address the fact that sometimes people are falsely convicted of crimes, the ones that I have seen often are -- some of them are older investigations. The other thing is those DNA studies are almost always what we used to call whodunits or where there's a stranger assailant in a sex assault.

DNA is not used when they are non-stranger sexual assaults because the identity of the alleged offender is not in question. So typically those are a false identification of someone who was a stranger to the victim in the first place and somebody misidentified or an investigation wasn't done well or something to that effect.

Q Okay. Now you have testified -- actually let me back up. You provided us a summary of your possible testimony in this case is that right?

A I did.

Q Okay. And in that summary you covered several different areas?

A I did.

Q Can you tell me what were those areas, those topics?

A The general topics were the nature and dynamics of trauma, victim responses to traumatic events, the nature and dynamics of sexual assault, and an overview of the literature that I reviewed.

Q Okay and why -- why prepare a general summary like that?

A Because you didn't give me specific information about the case and you said this is an adolescent. It's a nonstranger situation and I need a general report in what you would say about what we know or what I know or my field knows about those kinds of cases.

Q Okay. So you're not being asked to assess whether the victim in this case is telling the truth or not?

A No I couldn't do that.

Q And have I asked you to diagnose anyone?

A No you haven't.

Q Now what you've testified to, what do you base your testimony on? Primarily research is that accurate?

A I would say primarily research with a strong component that is based in my clinical experience.

Q Okay. And the research that you review and refer to is this published research -- what type of

research?

A It's a variety -- yes it's all published. And it comes from a variety of sources. Some of it is clinical studies, some of it is criminal justice information. Some of it is studies done with offenders who have talked about what they've done after the fact, after being convicted.

Some of it is based on -- there's a combination of what we call retrospective studies where people look back on something that happened to them. There are some studies that are prospective which means you study people who haven't had any of the problems you're looking at and you see what happens over time. So there's a real range.

Some are published in books. Many are either published through governmental agencies like the Centers for Disease Control or the Office of Justice programs. Many are published in what's called peer review journals.

That is, those are journals where there are other researchers in the field who have rigorous standards for whether the research has been done appropriately, whether people either had control groups or did other things to control findings that might not be related to what people are looking at and so you

have to be accepted through an editorial board of experts to have your material published in those. So there's a range of different material from different areas.

Q Okay and the different studies and research that you've referred to in your testimony are those studies and research accepted in your field of study sexual assault trauma or trauma in general?

A Yes and I think that with the exception where I said one of the findings I would say was good but not really strong, most of the research has huge national samples -- has some studies that have similar findings that have very large national samples, several thousand people.

Those are -- those studies with large number of people are more likely to generalize to the general population. If you have a study with four or five people in it or a very small number, all you know about is that small group of people.

But if you have very large numbers of people who are randomly selected they're not just hand-picked because somebody thinks this applies to them, but out of the general population, it's much more likely to be true of the general population of people you're looking at.

So there are those large national random sample studies on victims, there are a number of studies of victims clinically, there are studies that compare people who have reported being victimized where there's independent verification of sexual assault, either an admission by an offender or a conviction or a later admission by a convicted offender about previous sexual assaults and there are some where there aren't those.

There are offenders studies that have been done with federal certificates of confidentiality which means that sex offenders have been given a -- basically permission to tell the whole truth about what they've done and they won't be prosecuted for it as a result of the research study.

So those findings are considered to be very strong that have very similar findings about these things as do the victims studies. And then there are studies on offenders that are post-conviction studies that are verified by external information.

So there's a whole range of different research, comes from the psychology field, from the criminal justice field, from the sociology background where people study large groups and aren't interested in individual treatment.

And for that reason the kinds of things that I'm talking about are very generally accepted across the board. The research on trauma has been done not only by observing external behavior but also -- and initially published in the mid-90s at Harvard Medical School by Vessel Vanderkolk(phonetic) and replicated many times and we continue to get information about how human beings react to trauma.

And so there's a body of actual -- that are medical studies that indicate how the brain functions and those sorts of things that are also published.

Q Okay. And Mr. Gillio referenced the term malingering or someone making a false report, are you aware of literature in your field regarding how common false reports of sexual assaults is?

A Yes. And actually most of the -- and there's not a whole lot but most of the research that I've seen consistently says that false reports of sexual assault happen about as often as false reports of other serious crimes and that's not very often.

There were some studies in the 80s and some before that that made claims that as many as 50 percent or 80 percent of sex assaults were false reports. When those studies were reviewed by researchers who would currently do research now, one of them came out of the

Air Force and it was -- they identified that all of the victims who were interviewed who said they false reported had been ordered by their commanding officer to say they lied.

There were other studies that included unfounded reports or reports that had hadn't gone ahead with a prosecution to be false which is not an accurate finding. Many, many crimes are reported and there may not be enough information to determine whether or not a crime was committed, that's an unfounded report.

So when you do away with those studies that were not responsible in the way they identified false reporting what you end up with typically is very common, similar to other crimes, which is a small percentage and I've heard and read between like 2 and 6 or 2 and 8 percent which is consistent with other crimes.

Q Okay.

MS. RETSECK: Thank you.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. GILLIO

Q Ms. McAllister you said that you're somewhat familiar with the study I mentioned. So you would be -- and you mentioned to the district attorney here

that the -- that typically when DNA is used in a sex assault it's because it's an unknown assailant?

A A stranger what we would call a stranger assailant yes.

Q So you would be -- specifically in the case that I mentioned they looked at 28 cases where there was an eyewitness who identified the assailant and in each of those 28 cases that DNA showed that the person that was identified was not the assailant?

A I understand that that happens and eyewitnesses are typically not eyewitnesses to the crime but eyewitnesses to seeing someone at some point after. It's rare to have an eyewitness witness a complete sexual assault.

Q Sure. And you said that the statistics that you gave were approximately 2 to 8 percent?

A Those are studies that I've seen. It ranges.

Q So when the FBI's crime lab said that 25 percent of the DNA cases that they had for sexual assault exonerated the person that was convicted in the case, that's a small percentage?

A The DNA -- okay. Let me ask you, this case, they said 25 percent of all cases ever recorded by the FBI?

Q In every year since 1989 this report came out

in 1996.

A Okay.

Q 25 percent of sexual assault cases referred to the FBI where results could be obtained, the primary suspect was excluded by DNA evidence.

A And you're talking about suspects not convictions. In that -- when you're reporting that, that does not mean -- that meant that they were screened out or exonerated in the process of the investigation.

Q Okay.

A So I think that's really important to -- when she asked me about false reports that are -- where a victim says this person did it and is lying about that, which is what a false report is, those numbers are very small.

When you say that somebody's been sexually assaulted by a stranger and someone who's identified as an eyewitness of a suspect, and they get DNA evidence on the suspect which is someone who's not been charged with a crime and screen them out, that prevents people from being falsely convicted --

Q Okay.

A -- in those circumstances.

Q And you would agree that of the 10,000 cases

that we're talking about here at the FBI crime lab, that 25 percent though is a large percentage?

A Yes, which is why it's really important that they screen them out ahead of time. Those were not, as I understand it, you said eyewitnesses which are not victim false reports, they are people doing their investigations as they should which is to screen out inappropriate suspects --

Q And certainly --

A -- in stranger cases.

Q And certainly the victim could be an eyewitness?

A They could. But typically they're -- the reporting victim is not reported as an eyewitness to a crime. That's very inconsistent with anything I've ever read in the research.

Q Okay.

MR. GILLIO: Nothing further.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen of the jury this is your opportunity to ask Ms. McAllister any questions that you have. I do not see anybody writing. Ms. McAllister there's a sequestration order so you can't discuss your testimony or what's taken place here in the courtroom with any other witnesses in the matter

REPORTER'S CERTIFICATE

STATE OF COLORADO )
) SS:
JEFFERSON COUNTY )

The above and foregoing is a true and accurate transcription of my stenotype notes taken in my capacity as a Certified Shorthand Reporter for the District Court, for Jefferson County, State of Colorado, at the time and place above set forth.

Dated: MAY 7, 2008.

/s/ Pamela L. Petralia

Pamela L. Petralia, CSR