

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX SS.

SUPERIOR COURT
CRIMINAL ACTIONS
NOS. 85-63, 64, 66
67; 85-2678-2680

COMMONWEALTH

vs.

CHERYL AMIRAULT LeFAVE

BEFORE: Borenstein, J.

VOLUME II

Wednesday
February 18, 1998
Cambridge, Massachusetts.

APPEARANCES:

LYNN ROONEY and CATHERINE SULLIVAN, Assistant District
Attorneys, for the Commonwealth

DANIEL WILLIAMS, JAMES SULTAN, DANIEL FINNERAN and
CATHERINE HINTON, Esqs., for the Defendant

Patricia Bellusci
Official Court Reporter

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Wednesday
February 18, 1998
Cambridge, Massachusetts

(9:09 a.m.)

THE COURT: Good morning, counsel.

MR. WILLIAMS: Good morning, your Honor.

MS. ROONEY: Good morning, your Honor.

THE COURT: We did it during Mr. Williams direct yesterday. I'm going to wait to turn up the thermostat today when you begin your cross, Ms. Rooney.

MS. ROONEY: Thank you.

MR. WILLIAMS: Your Honor, I think we left off in the midst of the J [REDACTED] videotape. I want to resume there.

THE COURT: Yes.

DR. MAGGIE BRUCK, RESUMED

DIRECT EXAMINATION, RESUMED

BY MR. WILLIAMS:

Q. Good morning, Dr. Bruck.

A. Good morning.

1 Q. Let's talk about what we saw yesterday just
2 to orient ourselves. We began the tape at the
3 nine-minute twenty-second mark, at B-238,
4 when you see a series of questions beginning
5 with, "Did you ever see a clown" --

6 THE COURT: I'm going to need to get
7 those two again.

8 [Documents handed to Court.]

9 [By Mr. Williams:]

10 Q. I want to focus, for a minute, on B-238, the
11 fourth line down, where Susan Kelley asked,
12 "Did you ever see a clown before," and that
13 series of questions going down to about the
14 middle of the page. Do you see where she asks
15 a series of about four or five questions all
16 dealing with the clown?

17 A. Yes.

18 Q. That sort of repetitive questioning about one
19 particular topic, or person, or subject, what
20 do you have to say about that?

21 A. Well, repeating questions is not a great idea
22 under any circumstances, but there is
23 scientific evidence that when you do this
24 with young children, it certainly is a signal

1 to them -- or let me -- when you do this with
2 young children, it's very often that they'll
3 change their answer with the repeated
4 questioning. The signal is: You didn't give
5 me the right answer. Or the child reasons: I
6 didn't give the right answer; let me try
7 another answer.

8 So one tries very hard not to ask
9 repeated questions especially, I mean, if one
10 doesn't get the answer one wants. Sometimes
11 we might use it as another kind of technique
12 just to see how consistent the child is
13 being.

14 Q. You said it's not a great idea. Now, I want
15 to make sure whether that's just a particular
16 locution that you use in conversation or is
17 it not a great idea but it's okay --

18 A. No, I think --

19 Q. -- or does it have baleful effects?

20 A. It has baleful effects, and in some recent
21 interviewing guidelines, it's my impression
22 that this is one of the guidelines: don't ask
23 repeated questions. Don't ask the same
24 question over and over again.

1 Q. And in your research, the research that we
2 discussed yesterday, where we've got the high
3 rates of false assents, for example, in the
4 Monkey-Thief Study, where it even reached a
5 hundred percent.

6 A. Right.

7 Q. Did you deploy that technique of repetitive
8 questioning.

9 A. Within interviews we did.

10 Q. Within interviews?

11 A. Yes. And between interviews.

12 Q. Okay. Here we're talking about within an
13 interview?

14 A. Yes.

15 Q. Okay. Now, let's go down to the line -- the
16 next line, "Did you ever see an elephant?"
17 Do you see that?

18 A. Yes.

19 Q. Is that a -- from what you understand of the
20 record in this case, is that just an
21 innocuous question asked of this child, or
22 was there a theory behind it?

23 A. My understanding is that -- my reading of the
24 record -- that another child had previously

1 talked about an elephant, and they were
2 asking children about elephants. I think we
3 saw another child who was asked about an
4 elephant also. I think J [REDACTED] B [REDACTED] was
5 asked about elephants also.

6 Q. Okay. So that also is a leading question
7 trying to inject a particular topic for this
8 child?

9 A. Well, it's a specific question about
10 something the child's not brought up before,
11 yes.

12 Q. Okay.

13 THE COURT: Did you see anywhere in
14 the record where any child said anything
15 about an elephant on their own?

16 THE WITNESS: I have to go back and
17 review it. I think it first came up with
18 Jaimie Ryan, and I think that initially it
19 came up as an innocuous statement; and then
20 it was -- it's -- I had -- this is in our
21 brief. We have the whole description of the
22 elephant in our brief in a case history. The
23 name of the child is J [REDACTED] R [REDACTED]. And there
24 we described how that allegation comes out

1 and how it's spun out through what part of
2 the trial. I didn't review it for here
3 because it was just the four children.

4 THE COURT: Okay.

5 [By Mr. Williams:]

6 Q. Now, in the next question -- we're still on
7 the same page. So we've got repeated
8 questions about the clown. Then a question
9 directing the child's attention to an
10 elephant. Now, the next question, "Did you
11 ever see a puppet?" And she says she's
12 finished with the doll. So we move from dolls
13 to puppets?

14 A. Mm-hmm.

15 Q. And then just read, to refresh your
16 recollection, what Susan Kelley says there,
17 and I'd like you to tell me the significance
18 of that?

19 A. (Witness examines document.)

20 Well, she's taking the clothes off the doll
21 and --

22 THE COURT: She is whom?

23 THE WITNESS: Susan Kelley is taking
24 the clothes off the dolls.

1 A. She says, "We didn't see her with -- let's
2 take them off, okay." So she says, "We
3 didn't see her without her clothes on." I
4 don't know who "her" is, but I think that
5 she's inducing the child through some kind of
6 scenario where there's a kid without clothes
7 on, so let's take the clothes off the doll.
8 "Hope she doesn't get cold." And then, "She's
9 got blue eyes like you."

10 This could be an attempt to have the
11 child identify with the doll. And then -- but
12 then she says, but "the little girl's sad."
13 And so, again, this is not -- an attempt to
14 project this whole situation of the doll
15 being sad, being naked, onto J [REDACTED] to see if
16 any allegation will come out. And then J [REDACTED]
17 doesn't know why the doll is sad, doesn't
18 really get this one. And then gives a very
19 good answer about why she's sad. "She doesn't
20 have her clothes on."

21 Q. Okay. So, just for the record, and the tape
22 obviously will speak for itself, the first
23 question regarding the clown began at the
24 nine-minute-twenty mark. At this point we're

1 at the ten-minute ten-second mark, so all
2 this is happening within less than a minute.

3 I want to turn your attention to the
4 next page, at the ten-minute thirty-second-
5 mark, at the top of the page, where now the
6 child's directed to the vagina?

7 A. Right.

8 Q. Do you see that?

9 A. Mm-hmm.

10 Q. "Do you think someone touched her vagina?"

11 A. Right.

12 Q. The reference is to the, to what, the doll?

13 A. I guess.

14 Q. If you look back at the previous page, it
15 appears that's what --

16 A. It is the doll.

17 Q. Now, you talked yesterday about symbolic
18 representation --

19 A. Yes.

20 Q. -- do you recall that?

21 Is that what's happening here?

22 A. Uh, at this point, I don't think so. Kelley
23 has not said yet, "Let's pretend this doll is
24 you." She gets as far as saying, "Let's

1 pretend this girl doll is at Fells Acres."

2 So at this point she's trying to see if
3 Jackie will talk about any sexual activity at
4 Fells Acres at all using the doll, but it's
5 not yet directed towards her.

6 Q. Okay.

7 A. But still, she's still being asked to pretend
8 that this doll is at Fells Acres, and it's
9 this -- at this point it's not the symbolic
10 representation. It's the pretend part that's
11 really very worrisome.

12 Q. And it's worrisome in terms of --

13 A. Because the child's being asked to pretend
14 and not to tell what happened.

15 Q. And to root it in the research, one of the
16 research studies, is it not, the Mousetrap
17 Study, that --

18 A. Well, there are several studies that when you
19 ask children to pretend that at some point,
20 or just to imagine what would happen, or to
21 think about things that might have happened,
22 that over time they will come to claim that
23 these things did happen.

24 Q. By the way, in your research dealing with

1 children, normal-healthy children, did you
2 find an inclination towards wanting to
3 pretend or being amendable to pretending?

4 A. Well, children pretend. And it's one of the
5 reasons we use this in the Monkey-Thief Study
6 was when we couldn't get the child to go
7 along with our suggestions, you know when you
8 say, "Okay. Well, if you're not going to tell
9 us, then let's just pretend what will
10 happen," you always get answers from them at
11 that point. They'll pretend.

12 Q. And that Monkey-Thief story where you
13 resorted to the "let's pretend" --

14 A. Mm-hmm.

15 Q. -- when you failed to get them to talk about
16 -- talk about it directly --

17 A. Yes.

18 Q. -- that's the study you got a hundred
19 percent--

20 A. Yes.

21 Q. -- false assent --

22 A. Yes.

23 Q. -- assent rates?

24 A. Right. But we didn't count the pretend. When

1 they pretended, we didn't count that as a
2 false assent.

3 Q. Oh, you didn't?

4 A. No.

5 Q. So if you had counted that --

6 A. Well, then it would have been a hundred
7 percent from the very beginning because
8 everyone pretended. We only use -- we use the
9 pretend as a way to prime an assent for the
10 very next session, which would have been five
11 days down the line.

12 Q. So the pretending actually, it makes it even
13 more egregious under the Monkey-Thief
14 experiment, I mean if you try to graph that?

15 A. Well, it tells you that the rates that we
16 get, when we get a hundred percent, these
17 don't happen when children are pretending.
18 It's when they said, "Yes, it happened to me
19 and I was there."

20 Q. Okay. And that's when you testified
21 yesterday about the -- the blurring of the
22 line between fact and fantasy, is that what
23 you were referring to?

24 A. Well, the hypothesis is that when you ask

1 children to pretend, that you do blur that
2 line so that they eventually come to say,
3 "Yes, it happened to me."

4 Q. Now, since we're on the topic about the
5 pretending, that's not what you did with the
6 Pediatrician Study though?

7 A. No.

8 Q. And we saw there, even without resorting to
9 the pretending scenario or guided imagery, we
10 still had children touching their -- touching
11 a vagina or playing with the doll?

12 A. That's correct.

13 Q. Okay. Now, the next line, "What would happen
14 if someone touched her vagina, would she be
15 sad?" The phrasing of the question calls for
16 speculation?

17 A. That's right.

18 Q. Tell me about that again?

19 A. Well, this is another way to pretend, calling
20 for speculation. This is something that
21 Garven and Wood introduced into their study
22 as one of their components of suggestive
23 interviews that they found had a cumulative
24 effect on the children's false assent rates

1 to this man coming into the classroom.

2 Q. Okay. The Garven and Wood Study was the very
3 first one you mentioned. What was the name of
4 that study?

5 A. This was the one of -- the McMartin case -- I
6 think it was McMartin.

7 Q. Oh, the McMartin case. Right.

8 And then we see towards the middle of the
9 page an explicit invocation to "let's
10 pretend" --

11 A. Yes.

12 Q. -- do you see that? Okay.

13 Then towards the -- three-quarters of the way
14 down, "Remember you said you were a girl and
15 you had a vagina." Now, they're directing --
16 Susan Kelley is trying to direct it towards
17 her body?

18 A. That's right.

19 Q. "Did anybody touch your vagina," do you see
20 that?

21 A. Yes.

22 Q. And then what follows is a series of
23 questions to orient her towards that. They
24 talk about going to a doctor, taking a bath,

1 etcetera, and then using the doll?

2 A. Right.

3 Q. Okay. I think that takes us up to where
4 we're at.

5 It's the bottom of that page, 240.

6 [Videotape played.]

7 THE WITNESS: You have to put it
8 louder.

9 THE COURT: Yeah. Can you just stop
10 there for a moment.

11 [Videotape stopped.]

12 THE COURT: And have you go back just
13 a few seconds because in the transcript the
14 question -- part of the question from Miss
15 Kelley is, "J [REDACTED], did any person, any,
16 like, big person, ever touch you there?" And
17 I thought what is not included in the
18 transcript is the child shaking her head no,
19 but I want to make sure.

20 MR. WILLIAMS: Okay.

21 [Videotape played.]

22 [Videotape stopped.]

23 [By Mr. Williams:]

24 Q. I want you to go to 241, what we just saw.

1 A. Okay.

2 Q. Beginning where she begins to focus on Tooky,
3 the fourth line down, "J [REDACTED], did Tooky
4 ever look at you without your clothes on?"
5 Do you see that?

6 A. Mm-hmm.

7 Q. And then there's a series of questions
8 relating to Tooky, and then the direction is
9 towards Cheryl.

10 When you reviewed these interviews with
11 Susan Kelley, did you find this kind of focus
12 on a person, a series of questions about a
13 person as emphatic as we see here when the
14 child names another person aside from Tooky,
15 Cheryl or Violet?

16 Q. My impression is that the questioning was
17 generally on the defendants; that if another
18 person was named, there may be one question
19 about it, and then that was dropped, and then
20 the questioning focused on the defendants.

21 Q. Okay. Then at the bottom of the page, the use
22 of the puppets, and then the invocation of
23 helping, you know, that the dolls should help
24 us because we want J [REDACTED] to help us, do

1 you see that?

2 A. Yes.

3 Q. What can you tell us about that as a device
4 given your research?

5 A. Well, the puppets -- we've used -- puppets
6 are sometimes used to help children to talk
7 actually.

8 Q. Right.

9 A. And it's a way to induce fantasy, but it's --
10 it's not a very useful -- actually, it's not
11 a very useful technique. I certainly wouldn't
12 -- I wouldn't suggest that people use it. I
13 mean, what we know from our research is that
14 it distracts children. They get very confused
15 about who they're supposed to be talking to;
16 what they're supposed to be saying. And, I
17 mean, I just wouldn't endorse it as a
18 technique for eliciting true allegations or
19 false allegations. But here, she's trying to
20 use these play figures to get J [REDACTED] to
21 talk about what happened at Fells Acres, and
22 it's not very successful.

23 Q. Okay. And that's at the 14-40 mark, and then
24 at the 15-10 mark on the next page, where

1 we've just stopped it, she says -- you see,
2 it says, "I think she's still scared to talk
3 to me" --

4 A. Right.

5 Q. -- Susan Kelley's talking to the puppets --

6 A. Right.

7 Q. -- as if --

8 A. She's imputing a motivation to Jacqueline
9 about why she's saying no. I mean, she's not
10 saying, "Oh, maybe she's saying no because
11 nothing happened. Or maybe you don't
12 remember. Or maybe nothing happened." The
13 message is, you're not telling us because
14 you're scared to tell.

15 Q. Interviewer bias?

16 A. Well, it's a technique that's used that
17 reflects interview bias. It's a way to create
18 an atmosphere of allegation or fear to tell
19 the child: People are scared, and in order to
20 help us, and that you're not scared anymore,
21 you should tell us.

22 Q. Okay. You know, what we're doing here is,
23 we're playing some of the tapes and stopping
24 them to get your comments, but let me just

1 ask you, is it important to keep in mind that
2 all of these things are happening in one
3 setting. I mean, the child is not
4 experiencing it as we're experiencing it?

5 A. Absolutely not. This child is living in an
6 atmosphere or in a community where these
7 beliefs are being talked about all the time.
8 She -- this child is in therapy, where, you
9 know, I don't know what's being discussed,
10 but her fear, her whatever, so this is a
11 child where, you know, she's not coming into
12 this cold. It's very much within her own
13 experience.

14 Q. And the parents' meeting from the very outset
15 brought it within the home of the child?

16 A. That was the beginning.

17 Q. Right. Okay.

18 And that makes it different from your
19 research insofar as you don't bring in
20 children for your research studies that have
21 been bombarded with questions within their
22 own home before they're even brought in?

23 A. The children in our research studies have
24 experienced interviews that are pale versions

1 of whatever has gone on in any of these
2 criminal cases. I mean, the interviews that
3 they're exposed to are a twenty-minute slice
4 of their life, and then there's no
5 repercussions for whatever they say. They go
6 on with their daily duties, and they may see
7 us a week later. But there's nothing in
8 between, and there's certainly not the same
9 kind of emotional spill over and coercion, in
10 fact, to tell what happened.

11 Q. Okay. Now, let's go on to -- what we're
12 going to see here, I left off where Susan
13 Kelley says, "What's that called," and the
14 child says, "A bum." Do you see that?

15 A. Okay.

16 THE COURT: Page?

17 MR. WILLIAMS: 242.

18 THE WITNESS: 242, about four lines
19 down.

20 THE COURT: Yup.

21 MR. WILLIAMS: Yeah, let's play
22 that.

23 [Videotape played.]

24 [Videotape stopped.]

1 [By Mr. Williams:]

2 Q. Now, let's focus on what we just saw there,
3 that last part where she goes through the
4 body parts. Do you see that?

5 A. Mm-hmm.

6 Q. We just saw that. And then she gets to, "What
7 do you call that," on page 244; her answer,
8 "A dinky." And then there's a follow-up on
9 that.

10 A. Mm-hmm.

11 Q. There was no follow-up on --

12 THE COURT: Doctor, I'm going to need
13 you to answer yes.

14 THE WITNESS: I'm sorry.

15 THE COURT: I've given you a lot of
16 leeway prior to now.

17 A. Yes, I see that.

18 Q. Okay. And there's no follow-ups on any of the
19 other body parts. In other words, we get to
20 the dinky, then there's a follow-up?

21 A. That's right.

22 Q. But nothing on the mouth, the eyes, the nose,
23 etcetera?

24 A. That's right.

1 Q. Now, is that atypical in these Kelly
2 interviews, because we're not going to be
3 able to see them all in this hearing?

4 A. No. No, this is -- we saw this also with
5 J [REDACTED] B [REDACTED] where she said to J [REDACTED],
6 "Where did the clown touch you," and
7 J [REDACTED]'s naming the arms, the whatever, and
8 then Kelley comes back again and says, "Well,
9 what about" -- I can't remember, "On the
10 peepee," or whatever. But there is this focus
11 on these bottom parts that she's interested
12 in having the children name and talk about.
13 And there are not similar questions about
14 other parts, which is a technique that should
15 be used by good interviewers. "Did someone
16 touch you on the arm, or did someone ever
17 touch you on a funny way on the nose," just
18 to know that when you get these answers from
19 children for other parts, that you can
20 evaluate it within their own experiences.

21 Q. All right. Just another forty seconds or so
22 and then we'll stop it.

23 A. Okay.

24 Q. We'll just go to the bottom of page B-244.

1 [Videotape played.]

2 [Videotape stopped.]

3 [By Mr. Williams:]

4 Q. I just want you to comment on, again, the
5 last line, how we're ending this little
6 session. "I want you to talk to Susan and
7 help her ..cause mommy...." Now she's
8 invoking the mother here, that's what I want
9 you to focus on.

10 A. Well, this is a technique again that is a way
11 to induce children to talk. We used it in
12 Monkey-Thief. It's very helpful for children
13 to talk; the other children told us; it's
14 very good when you tell us things like this.
15 It's very helpful to us.

16 When we combine this with the other
17 kinds of suggestive techniques that are used
18 here, this is where we started to get very
19 high assent rates also.

20 Q. Now, rooted -- root your answer in the fact
21 that she's -- this child has experienced all
22 of these types of questioning that we've gone
23 over. She's now reinvoking the helping theme
24 and now has brought her mother into it. Does

1 the fact that the mother has obviously been
2 involved in the questioning of this child as
3 a result of the parents' meeting and now
4 bringing the mother into it, is that a good
5 idea? In other words, the child is now in
6 there with Susan Kelley, is now saying,
7 "Because you can help us," and essentially,
8 "mommy wants you to help?"

9 A. Well, it's just adding -- it's just another
10 form -- another way of adding to the coercion
11 of the interview. I can't tell you that
12 there's been a scientific study that's been
13 done on it, but --

14 Q. In fact --

15 A. -- the more we do -- Hmm?

16 Q. You mean, there's been no scientific study to
17 factor out the mother?

18 A. Exactly.

19 Q. Right. But you can say that that's another
20 suggestive force --

21 A. Absolutely --

22 Q. -- applied on the child?

23 A. It's, "Tell us what happened. You'll feel
24 better when you tell us. You're going to help

1 the other kids. You'll help me."

2 Q. Now, let me just see if I can kind of
3 symbolically represent what you're saying.
4 About the names, the variety of names, you
5 said yesterday that in reviewing the record
6 there was a variety of names that would be
7 mentioned, and then you testified yesterday
8 and this morning that the focus would be with
9 the follow-up questions on Cheryl, Tooky or
10 Violet?

11 A. Right.

12 Q. Would it be accurate to say that what's
13 happening is, it's kind of -- the
14 interviewers are funneling it down to three
15 people, Cheryl, Tooky or Violet, in other
16 words, like a funnel effect?

17 MS. ROONEY: Objection to the form.
18 Leading.

19 THE COURT: It is, but I'm going to
20 give leeway to both of you. Overruled.

21 A. What the interviewers do, is, they focus
22 their questions. They have a mass of data
23 sometimes, not all the time, but sometimes
24 children make lots of allegations and they

1 focus on certain elements of those
2 allegations. And if you want to call it a
3 funnel, you can call it a funnel, but you can
4 also just call it a focus.

5 Q. A focus. And is that also true -- I just want
6 to make sure that what we're seeing on this
7 tape is not an atypical phenomena. We see it
8 with the body parts, remember the --

9 A. The body parts, the children -- the children
10 are specifically asked about touching and
11 certain parts of their body.

12 Q. So we get the focus or --

13 A. Body parts --

14 Q. -- the funneling effect down to the private
15 parts?

16 A. Yes.

17 Q. Now, we start -- yesterday we talked about,
18 at the parents' meeting, the parents were
19 instructed to question about magic and secret
20 rooms?

21 A. And clowns.

22 Q. And clowns?

23 A. Yes.

24 Q. Let's just focus on the magic and secret

1 rooms, that is a location?

2 A. Right.

3 Q. Did -- in reviewing the Susan Kelley
4 interviews as well as the DSS and police
5 reports, did you find whether there were
6 questioning -- questions going on about those
7 two rooms?

8 A. Well, in the DSS and police reports, it's
9 hard for me to tell what they were questioned
10 about, but there are notations: knows
11 location or doesn't know location of secret
12 room or magic room, so I assume they were
13 asked about those. And in Susan Kelley
14 interviews we saw yesterday, certainly in
15 Jenny's, that she was asked about a magic
16 room or a secret room, and in the other ones
17 that I've reviewed --

18 Q. And --

19 A. -- this kind of questioning takes place.

20 Q. And did you notice in the questioning about
21 locations, geography, like magic room, secret
22 room, did any of the children talk about
23 other locations, not necessarily where abuse
24 took place, but just in the course of the

1 interviews would mention --

2 A. They went to -- they talked about going to a
3 zoo -- some child talked about going to a
4 zoo. They talked about swimming at Vi's
5 house. Those are the two that I remember
6 most, but they do talk about other locations.

7 Q. Do you recall a field trip?

8 A. The field trip I recall is to the zoo.

9 Q. Okay. So -- and then, let me just ask you in
10 terms of -- so we don't have to belabor the
11 point with the videotape -- did you find
12 whether the same phenomena was happening when
13 the child would assent, agree about --
14 something about a magic room or secret room,
15 that there would be a whole host of follow-
16 ups, but when, say, the child mentions a zoo
17 or --

18 A. I never remember their really being
19 questioned about the zoo or even going to a
20 circus. We saw --

21 Q. Exactly.

22 A. Maybe this child talked about going to a
23 circus, but it was kind of quickly dropped
24 over. It wasn't, "Tell me about the circus."

1 It was, "No. I want to know about when the
2 clown came to Fells Acres."

3 Q. So we see the same effect with the location?

4 A. Yes.

5 Q. It gets funneled down to basically FADS, and
6 more specifically, magic or secret room.

7 Now, if at trial children are giving
8 testimony specifically about Cheryl, Tooky
9 and/or Vi, private parts, about Fells Acres,
10 and a magic and a secret room, and they're
11 not talking in general terms or bringing in a
12 whole host of other names, or a whole host of
13 other body parts, a whole host of other
14 locations, in view of your research, is that
15 a surprising phenomenon?

16 A. No.

17 Q. Why not?

18 A. Well, I mean, first of all, by the time we
19 get to trial, we're two to three years down
20 the line for some of these children who have
21 been questioned and have been thinking about
22 these kinds of things. So the fact that they
23 focus on these is -- I mean, it's not
24 surprising at all. I mean, these are the

1 kinds of questions that they were prepared
2 for; that they were -- I mean, they weren't
3 asked at trial about other kinds of things. I
4 mean, it really was -- what were they asked
5 at trial; not what did they say at trial.

6 Q. Okay. Now, let's move on to M [REDACTED] T [REDACTED].

7 A. I don't have my notes.

8 Q. I think we've seen a lot of -- we've seen
9 some videotapes, so we'll just go quickly
10 through M [REDACTED], and if the Commonwealth
11 wants to delve into it, they can do that. But
12 let's just quickly go through M [REDACTED] on the
13 time line to see what her experience was.

14 Tell me, did -- we have something that
15 happens before the parents' meeting?

16 A. Right. Four days before the parents' meeting
17 the mother finds out about the allegations. I
18 think she hears about it on television. I'm
19 not sure. Anyway, she questions M [REDACTED]
20 about FADS, and M [REDACTED] says she's happy
21 about school. And in response to the mom's
22 question, she says nothing weird happened. So
23 we have: school's okay.

24 Q. Okay. Then on 9/12, is Michelle's mother one

1 of those who attended the parents' meeting?

2 A. On 9/12 the mother attends the parents'
3 meeting.

4 Q. And did you find in the record something
5 about what Michelle's mother recalls about
6 instructions given at the meeting?

7 A. The parents were instructed to question the
8 children about the magic and secret room and
9 clowns, and according to the mother, they
10 were told not to take no for an answer.

11 Q. Okay. Then what happens next?

12 A. Then -- so that's 9/12. The next day the
13 mother takes Michelle to the pediatrician.
14 It's unclear why. I think -- at trial I think
15 the appointment was made, she wanted forms
16 filled out to go to a new day care. At any
17 point, at this point, the mother is not
18 concerned about sexual abuse. She doesn't
19 report any behavioral problems or any
20 concerns that anything had happened at Fells
21 Acres.

22 Q. Okay. And then on September 17th, do you have
23 notations for that?

24 A. Yes. Here the mother visits the police

1 station, and again, is advised as to the
2 kinds of questions to ask. And I have a note
3 here that Detective Byrne told her that just
4 because a child says no means that sometimes
5 they're -- doesn't mean anything because
6 sometimes they're afraid to tell.

7 So at that point, Mrs. T [REDACTED] says,
8 "Well, she'll try to question her for a few
9 days."

10 Q. Okay. And then the next forensically
11 significant event from the records?

12 A. Well, either -- it's not clear when -- it's
13 either on the 17th or the 18th, but Mrs.
14 T [REDACTED]'s boyfriend questions M [REDACTED], and at
15 that point, Michelle says that Tooky
16 photographed children; Vi pulled down her
17 pants and hit her.

18 My notes are not clear -- yes, and
19 then on the 18th, there's a note that Cheryl
20 inserted a purple wand into her bottom.

21 Q. Do you recall what the occupation was of the
22 boyfriend?

23 A. He was a police officer.

24 THE COURT: Not in Malden, but he was

1 a police officer in some police department?

2 MR. WILLIAMS: I don't know where.

3 THE COURT: You don't know. Okay.

4 [By Mr. Williams:]

5 Q. Okay. And then on 9/19?

6 A. 9/19, she's interviewed by Dr. Brant.

7 Q. Can you say anything about that interview, by
8 the way?

9 A. (No verbal response.)

10 Q. Why not?

11 A. I don't have notes about it.

12 THE COURT: And there's nothing in
13 the transcript of the trial?

14 THE WITNESS: Well, actually, it's
15 not -- I have some things written down here,
16 but I couldn't get it from my record. I don't
17 know where I got it from, but according to
18 Brant --

19 MS. ROONEY: Objection.

20 THE WITNESS: Okay. I'm glad not to
21 testify about it.

22 THE COURT: Sustained.

23 [By Mr. Williams:]

24 Q. September 20th?

10/19/00

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1 A. September 20th. Okay. This is -- this takes
2 a little bit of -- you have to -- September
3 20th. Michelle is interviewed by the police
4 and DSS. Kirwin is the DSS worker. I don't
5 know who the police person is. It's written
6 down someplace.

7 Now, during this interview there are a
8 number of suggestive techniques that are
9 used. First of all, the dolls are brought
10 out. She wants to play with the dolls. She
11 undresses the dolls. But -- and drawings were
12 used also. So these naked drawings are also
13 used.

14 During this interview, there are comments
15 in both the police and DSS file that tell us
16 that there are other suggestive forces, such
17 as, this child would frequently refuse to
18 elaborate on these topics and had to be led
19 back by Kirwin to the subject.

20 Q. Okay. Is that something that you saw -- that
21 phrasing --

22 A. Yes.

23 Q. -- "had to be led back to the subject," is
24 something you saw in the report?

1 A. That's in the police report.

2 Q. Okay. What does that tell you about the
3 nature of the questioning?

4 A. What it tells me is that M [REDACTED] would say
5 no, or nothing, and that the questions would
6 have to be rephrased, or repeated, or they
7 didn't give up; they continued to ask her.

8 MS. ROONEY: Objection. I move to
9 strike. She's speculating as to what Michelle
10 said or didn't say.

11 MR. WILLIAMS: She's drawing --

12 THE COURT: No. Overruled.

13 The drawings that you say were
14 introduced --

15 THE WITNESS: Yes.

16 THE COURT: -- showing naked --

17 THE WITNESS: Yes.

18 THE COURT: -- bodies, that is, the
19 child was not asked to draw --

20 THE WITNESS: No.

21 THE COURT: -- something?

22 THE WITNESS: They had -- I'm not
23 sure if you saw these in the videotapes, and
24 I'm not sure if they used the exact same

1 ones, but these are pictures of the fronts
2 and backs of adults and children, males and
3 females, and the children were asked to look
4 at them and to circle things or to talk about
5 them.

6 [By Mr. Williams:]

7 Q. And just to seal off the point, do you recall
8 if Susan Kelley used anatomical drawings as
9 well?

10 A. No. I mentioned I think we saw that on the
11 tape. She used those in most every single
12 interview she used.

13 Q. In addition to the dolls?

14 A. Absolutely.

15 THE COURT: How old is M [REDACTED] at
16 this time?

17 THE WITNESS: M [REDACTED] is four or
18 five. I have it written down here at the very
19 beginning of my report. At the beginning of
20 my report --

21 THE COURT: Do we know the date of
22 birth?

23 THE WITNESS: She's four years old.

24 MR. WILLIAMS: She's four years old.

1 The record will speak for itself.

2 THE WITNESS: She's a young one.

3 They're all young.

4 A. Do you want me to continue?

5 Q. Yes. Just to complete the DSS and police
6 involvement, please?

7 A. Well, what happens in this interview is that
8 she's inconsistent. She says -- they ask her,
9 "Do you like school?" She says she hates it.
10 Later on she says she misses school. She says
11 she saw a friend -- her friend B [REDACTED] with no
12 clothes on but that there were no naked
13 pictures at school. She says there was no
14 magic room. And here the mother is asked to
15 come in and help interview.

16 Q. Who's asking the mother to come in to help
17 with the interview?

18 A. I think that Kirwin does because she explores
19 the concepts of the clown, and it says,
20 "explores concept of clown." And M [REDACTED]
21 says, "My mother knows." So the mother comes
22 in and asks M [REDACTED] about the clown.

23 Q. All right. Let me stop you there for a
24 moment. First of all, what does your research

1 say about the propriety of having multiple
2 people -- multiple adults in an interview
3 session?

4 A. The more people there are in an interview
5 session, the more questions can be asked to a
6 child. So it just doubles the force of an
7 interview. And it's highly unusual to have
8 more than one person interviewing a child.

9 Q. Now, on one of the overlays, the components
10 of suggestive interviews --

11 A. Mm-hmm.

12 Q. -- one of the items of a suggestive
13 interviewing technique is, you put down,
14 "authority figures?"

15 A. Right.

16 Q. Would a mother be considered, from the
17 perspective of a child, to be an authority
18 figure?

19 A. Well, the mother would -- there are two
20 things in terms of -- there are two important
21 points in terms of that suggestive
22 interviewing technique of high status. One
23 is, we know from the research that children
24 are much more to be swayed suggestively by

1 credible adults than by non-credible. So if
2 an adult says, "I know about it," or "I know
3 about the situation," then a child is much
4 more likely in fact to fall sway to those
5 things than if someone comes in and says, "I
6 don't really know about this," then the child
7 is much less likely to.

8 So I think that's an important point
9 here where this mother has been questioning
10 the child, and has been told that there is a
11 magic room and a secret room and a clown.

12 Now, the second part of that is that
13 there's a study by Gail Goodman that suggests
14 that when children are interviewed by someone
15 of high status, such as a policeman, that
16 children's reports are much more likely to be
17 inaccurate than when -- than someone of lower
18 status. So we have those two combined.

19 Q. So you have the police or high status
20 individuals, and then you have the -- what
21 I'll call the mother factor?

22 A. Right.

23 Q. Okay. All right. Anything else about the 9/20
24 -- the September 20th involvement of DSS

1 workers?

2 A. I just want to quickly look at my notes here
3 to make sure I haven't left anything out.

4 She's asked to name the dolls. And she --
5 here she talks about someone by the name of
6 Al who punches her. And so Al's name comes
7 out.

8 Q. Now, does Al -- this person Al --

9 A. Yeah.

10 Q. -- is that --

11 A. Al comes out --

12 Q. -- an unusual name that this child has been
13 throwing out?

14 A. No. Originally I think there were -- the
15 mother originally said she's talking about
16 Al. So that was really the first person she
17 was talking about was Al, and I think Al was
18 hitting her.

19 Q. What about other children, do other
20 children --

21 A. I see Al a lot.

22 Q. Okay. And are we seeing this phenomena --
23 I'll try to symbolically represent here with
24 respect to Al -- were there follow-up

1 questions on Al with the same degree of
2 intensity as there is with Cheryl, Tooky and
3 Vi?

4 A. Well, the only -- the Susan Kelley interviews
5 are the only ones where I can really look at
6 that, and I don't really see that that
7 happens to the same degree.

8 Okay, now there's one more thing that
9 happens here. Mom asked -- mom asked if the
10 clown was at Miss Vi's house, and Cheryl
11 (sic) stated, "No, but he rode by." And
12 then --

13 Q. Michelle.

14 A. -- M. [REDACTED] says that the clown had a magic
15 wand and it was purple. And the mother said,
16 "You told me that Miss Vi put a purple thing
17 in your bum. Was it a magic wand?" Michelle
18 stated, "No. It was a thermometer. It was in
19 my bum." And --

20 Q. So what are we seeing from that reference
21 that the mother is saying to the child, is
22 that --

23 A. Well, originally -- this shows that the
24 mother comes in and is saying to the child,

1 "Let's talk about what you told me before."
2 And who knows about the reliability of what
3 the child said before. And here you have the
4 child either contradicting the mother, or
5 changing her testimony, or who knows what's
6 happening, but it just points to, at the very
7 early stage of this investigation, the
8 unreliability of this witness.

9 THE COURT: Where are you --

10 MS. ROONEY: Objection. I move to
11 strike her comment on the reliability of the
12 witness.

13 THE COURT: I'll strike the portion
14 of the answer that deals with the
15 unreliability of the witness. That portion is
16 struck from the evidence.

17 Where are you reading from?

18 THE WITNESS: This is in the appendix
19 A, page 308. And I also think it -- I don't
20 know, I don't think it's in my affidavit.
21 It's right here (indicating).

22 A. And then, you know --

23 THE COURT: Just wait for the next
24 question.

1 THE WITNESS: I'm sorry. No, I'm --
2 Okay.

3 [By Mr. Williams:]

4 Q. When -- do your notes reflect, or do you
5 recall, after M [REDACTED] is shown the
6 anatomical drawings, -- which takes place after
7 she was shown the dolls, so there's the
8 dolls; now the anatomical drawings, whether
9 M [REDACTED] associates the male nude figure with
10 anybody?

11 A. Okay. She say's it's B [REDACTED] S [REDACTED].

12 Q. She associates the naked male to a person
13 named Brian?

14 A. She looks at the preschool boy and says it's
15 B [REDACTED] S [REDACTED].

16 Q. Okay.

17 A. Can I comment on something else about --

18 Q. What other significant fact are you seeing in
19 the record?

20 A. Well, I think that this is a problem with
21 this child in general; that when she's shown
22 the anatomical doll drawings, she stated --
23 she can't pick out a picture that looks like
24 her. And I think that it's the same thing

1 before with the dolls, that she won't
2 identify who the dolls are.

3 Now, one major hypothesis that comes
4 to mind is this child doesn't truly
5 understand that these dolls are supposed to
6 represent herself, or that these drawings are
7 supposed to represent herself; that she can't
8 find that link. So these questions that are
9 now going to ever be asked with her with
10 dolls, or with drawings, when she makes
11 responses to them, one has to hold in mind
12 that this child may not really be
13 understanding that she's showing what's
14 actually happening because she doesn't
15 understand that these are supposed to be
16 symbols for real things.

17 Q. Okay. Are we ready to move on to September
18 24th?

19 A. Yes. September 24th.

20 Q. This also involved DSS and the police?

21 A. Yes. This is a ninety-minute interview, four
22 adults are present --

23 Q. Four adults?

24 A. Yes.

1 Q. Can you identify those four adults from the
2 record?

3 A. The police, DSS, M [REDACTED]. T [REDACTED] and her boyfriend.

4 Q. Okay.

5 THE COURT: This is the gentleman
6 who's a police officer?

7 THE WITNESS: Yes.

8 [By Mr. Williams:]

9 Q. What does M [REDACTED] say in this interview?

10 A. I'm just going to the transcript.

11 (Witness examines document.)

12 Well, we can --

13 THE COURT: Page?

14 THE WITNESS: I'm looking at page
15 309.

16 A. Okay. What happens here is that they review
17 her past disclosure, whatever that is. She
18 then describes a good clown by the name of
19 Hippo. My understanding is there was a clown
20 by the name of Hickle (phonetic spelling) who
21 did come to school. And there's a bad clown,
22 and she said the bad clown might have been
23 John.

24 Then we go to this section -- and I

1 think I should read it out loud -- "I asked
2 Michelle to help me describe the clown,"
3 okay. "I asked M [REDACTED] to help me draw the
4 clown. I drew the clown under M [REDACTED]'s
5 direction. She gave me an orange crayon and
6 asked me to draw the hair; blue crayon for
7 feet and hands; and for his body, at this
8 point, M [REDACTED] took the orange crayon and
9 drew between his legs what she described as
10 the clown's penis."

11 Q. Who invoked the word penis?

12 A. Who knows.

13 Q. Okay.

14 A. Unclear. It could be: What was that. I don't
15 know. Was that the clown's penis? I don't
16 know.

17 It could have been: What's that? That's
18 the clown's penis.

19 One can not tell from the record how this
20 came out.

21 "I then inquired if M [REDACTED] touched the
22 penis with her mouth."

23 Q. Who's saying that, the writer of the report?

24 A. Kirwin.

1 Q. Kirwin is --

2 A. That's who it is? Let me just make -- it's
3 Kirwin.

4 Q. All right. It's the DSS person?

5 A. Right.

6 Q. Whoever that is?

7 A. Right. So we have a clown with something in
8 between its legs, and the worker asks, "Did
9 you touch the clown's penis with your mouth?"

10 Q. Okay.

11 A. "M [REDACTED] says, 'Yes.'"

12 Q. And then what happens when the child says,
13 "Yes?"

14 A. "I gave M [REDACTED] -- Yes. Worker then gave
15 M [REDACTED]" -- and there's a word missing to
16 show, it must be doll -- "to show me what
17 happened with the clown's penis."

18 Q. And then what happens?

19 A. "Using the dolls, without hesitation,
20 M [REDACTED] then turned around. The dolls are
21 behind us on the couch. She selected the
22 adult male doll and performed what appeared
23 to be fellatio."

24 Q. Okay. That happens on 9/24?

1 A. Yup.

2 Q. Let's back up for a moment. You said that
3 M [REDACTED] mentioned the clown Hippo?

4 A. Yes.

5 Q. Do you recall whether in reviewing the Susan
6 Kelley interview notes whether Susan Kelley
7 asked any of the children about Hippo the
8 clown?

9 A. I don't think she ever mentioned the name
10 Hippo. I think the children talked about bad
11 clowns and good clowns, and she asked them
12 about bad clowns.

13 Q. So even though there was -- and this occurred
14 before the Susan Kelley interview, is that
15 right?

16 A. Yes. This is September 24th.

17 Q. Okay. So this child is telling these adults
18 that she's aware of Hippo the clown; she had
19 seen at day care?

20 A. Right.

21 Q. What can you tell me about this episode
22 regarding M [REDACTED] and the penis?

23 A. Well, what -- the way I read this record is,
24 there's a clown -- they're drawing a clown --

1 I haven't talked about drawing, but --
2 they're drawing a clown; somehow or other
3 something orange gets on it, and somehow or
4 other M [REDACTED] identifies it as a penis, and
5 she's asked this very direct question, "Did
6 you touch the clown's penis with your mouth?"
7 The child says, "Yes."

8 What we know from the studies that
9 I've reviewed in my brief and here, is, you
10 ask children those kinds of questions, half
11 the time they're going to get it -- they're
12 going to -- it's a crap shoot. They're going
13 to say, yes; maybe yes is right. But I mean,
14 these are not the questions you ask children.

15 In the anatomical doll studies, "Did
16 the doctor touch your bum?" "Yes." Half the
17 time the children were right; half the time
18 they were wrong.

19 Then she's told, "Show me on the doll
20 what happened." This is exactly what we did
21 in our anatomical doll studies.

22 Q. Right.

23 A. "Show us on the doll how the doctor touched
24 your bum." For kids who didn't have their bum

1 touched, some of them didn't touch, but for
2 some of them who did, not only did they touch
3 the bum, inserted fingers into the bum;
4 sometimes inserted other objects into the
5 bum.

6 Q. We saw one child in the videotape actually
7 hammering a stick into the vagina, do you
8 recall that?

9 A. Yes.

10 Q. What do you recall about that child's
11 pediatric exam?

12 A. That was a child who had -- who was in what we
13 call the "no genital exam condition," where
14 nothing was touched.

15 Q. So that child, nothing was touched and she's
16 hammering it in?

17 A. Right.

18 Q. Do you remember yesterday you talked about
19 when a child begins to talk -- weaves a false
20 narrative about something. You said something
21 about the sky's the limit; the truth doesn't
22 constrain the story that --

23 A. It can expand and elaborate and grow.

24 Q. Is that one explanation for that particular

1 child engaging in that very aggressive act?

2 A. Well, this is the first allegation so we're
3 not--

4 Q. No, I'm talking about the child that we saw
5 on the videotape, the research?

6 A. Oh, I'm sorry. Oh, yes. I mean -- yes.

7 Q. All right. And the pattern of questioning in
8 that child and the research, who had no
9 genital -- whose genitals were never touched
10 but we see on the videotape is hammering the
11 stick into her vagina, tell me what you
12 recall about the sequence of questioning or
13 the pattern of questioning; how did that come
14 about--

15 A. In the videotape?

16 Q. -- in the videotape, yes.

17 A. Well, in the first interview where you saw
18 she was interviewed by me after the
19 pediatrician, and that was our standard
20 protocol: Did he do this; show me on the
21 doll? And the child denied, as you saw on
22 that videotape that she had been touched. And
23 she didn't want to show on the doll.

24 And then what happened was, a few

1 days later, actually, I went to visit her at
2 her house and I had the dolls in my car, and
3 asked the parents if it would be okay to
4 bring them out. And at that time we brought
5 the dolls out and she played with them, and
6 started doing some sexually suggestive things
7 with the doll. We don't -- this is not shown
8 on that videotape.

9 Q. Right.

10 A. Those are -- I have notes on that. And I was--
11 - I came out and told the father what was
12 happening, and he said, "Do you want me to
13 video -- shall we put this on videotape at
14 this point?" And I said, "No. Let's just
15 leave it alone. Let me come back again." So
16 it was the third interview with this child
17 where I went back again and brought the dolls
18 in; the father was there, and then you saw
19 this whole thing spontaneously -- well, not
20 spontaneously because we were asking her,
21 "Did anything happen at the doctor's office.
22 Here are the dolls. Show me."

23 So --

24 Q. It's somewhat similar to what we see with

1 M [REDACTED]. You give the child the doll and
2 then the person asks, "Show me on the doll?"

3 A. Right. And in fact, we have the September
4 20th interview with M [REDACTED] where the dolls
5 are brought out and it doesn't seem that --
6 well, this doesn't happen, right. So this is
7 repeated -- I think what's important is that
8 we have repeated exposure and repeated
9 questioning. We never see this with these
10 children when they're first questioned, that
11 these kinds of behaviors come out. And in
12 terms of my expertise, this is very
13 concerning.

14 Q. Disconcerting --

15 A. In concerning.

16 Q. Oh, okay.

17 A. Concerning.

18 Q. In the Pediatrician Study, did you ask the
19 parents to become involved in the
20 questioning, or to take on an emotional
21 stance with respect to the pediatric exam
22 such that you could replicate something like
23 the parents' meeting?

24 A. We told -- I mean, we told the parents that

1 they could be in the room with us; not to
2 talk to the kids.

3 Q. What about in these time intervals between
4 interviews?

5 A. Well, the one I showed you was the parents
6 didn't do any -- we didn't tell the parents
7 to do anything. And there are other things.
8 They didn't talk to the child during that
9 time.

10 Q. Okay. All right. Is there anything
11 forensically significant that you feel we've
12 left out?

13 A. Is there something else there?

14 Q. I'm asking you.

15 A. Well, there are other things that go on, but
16 I think that here you have an allegation that
17 involves fellatio with a bad clown, and
18 that's what comes out here. There are other
19 allegations. It now turns out that she saw a
20 magic room, where before she denied it; that
21 Tooky does things that before -- Al used to
22 do; and there are other allegations that come
23 out but the major one is the fellatio with
24 the clown.

1 Q. All right. Now, I just want to wind this up.

2 A. Okay.

3 Q. In the trial back in 1987 did you review any
4 -- you reviewed the minutes of the expert
5 testimony by the defense?

6 A. Yes.

7 Q. Okay. We went over that yesterday?

8 A. Mm-hmm.

9 Q. Do you recall in reviewing those minutes from
10 the 1987 trial, the prosecutor's cross-
11 examination of the experts in front of the
12 jury about J [REDACTED] B [REDACTED]'s disclosure in
13 the car a few minutes after the Susan Kelley
14 interview?

15 A. I do.

16 Q. Okay. What do you recall about the cross-
17 examination by the prosector in front of that
18 jury with respect to J [REDACTED] B [REDACTED]'s
19 disclosure?

20 A. That the expert -- and I can't remember who
21 it is. It's in our notes someplace -- was
22 specifically asked to explain how J [REDACTED]
23 B [REDACTED] could make allegations to her mother
24 that were not suggested by Susan Kelley in

1 the previous interview.

2 Q. In other words, how she had -- how elements
3 of her story to her mother could be different
4 or something that was not mentioned in the
5 Susan Kelley interview?

6 A. The expert wanted to -- drew the conclusion
7 that Jennifer's allegations to her mother
8 were the result of this very coercive
9 interview with Susan Kelley, and then the
10 prosecution asks, "Well, how is it possible
11 that Jennifer made allegations to her mother
12 that were not suggested to her by Kelley."

13 Q. All right. Let me stop you right there.
14 So the defense expert is making the precise
15 point that you're making in this hearing
16 about the Susan Kelley interview?

17 A. Yes.

18 Q. That it's coercive?

19 A. Yes.

20 Q. Okay. And the prosecutor is now attacking
21 that opinion?

22 A. Yes.

23 Q. Tell me how the prosecutor attacks it, and
24 tell me how the researcher -- I'm sorry, the

1 expert responds?

2 MS. ROONEY: Objection. The record
3 speaks for itself.

4 THE COURT: Overruled.

5 A. All I have in the notes is, on the cross,
6 Jennifer's disclosure to her parents after
7 this interview contained allegations not
8 discussed in the interview.

9 Q. Okay.

10 A. And the expert said, "I can't explain this."

11 Q. Had no research to back it up?

12 A. I don't think it had anything to do with
13 research. I don't think he could explain why
14 she could make allegations -- these kinds of
15 allegations if they had not been previously
16 suggested to her.

17 Q. Or mentioned --

18 A. Or mentioned in the Susan Kelley interview.

19 Q. Okay. So let me just -- And the record will
20 speak for itself --

21 A. Yes.

22 Q. -- on this in terms of how the prosecutor
23 phrased the question --

24 A. Mm-hmm.

1 Q. -- regarding that.

2 A. Yes.

3 Q. Back in 1987, could an expert in this field
4 cite any valid research to actually explain
5 that particular phenomenon of J [REDACTED]
6 mentioning things that were not explicitly
7 mentioned in the Susan Kelley interview?

8 A. No, he could not.

9 Q. Can we do that today?

10 A. Yes, we can.

11 Q. Tell me how? Tell me what research you're
12 referring to?

13 A. Well, let's start with the Monkey-Thief
14 Study. In Monkey-Thief we suggested things to
15 children about the scenarios of how the thief
16 came in and stole food, or we suggested
17 elements to the children about how the lady
18 found the monkey in the park.

19 Over time, children came out with
20 narratives. They repeated narratives over
21 time. When we look at these narratives to see
22 what percentage of the narratives contained
23 the children's suggestions, it's only 25 to
24 30 percent of the narratives that actually

1 contain the suggestions. The rest is the
2 child's construction of all kinds of things
3 that were never suggested to the child.

4 In the thief scenario, some of the
5 children talk about hitting the thief,
6 shooting the thief. In the monkey scenario,
7 there are all kinds of subplots that the
8 children weave-in that are never suggested to
9 them.

10 In the Pediatrician Study, which I
11 talked about first yesterday, we saw that we
12 suggested to the children that the
13 pediatrician -- that the research assistant
14 gave the shot, gave the medicine; what did
15 the children do? They also reported that the
16 research assistant examined them. This was
17 not in the suggestion.

18 What we know is that once the
19 suggestive process starts, and children start
20 weaving stories -- start weaving narratives
21 that, A, you cannot tell true from false
22 narratives, number one.

23 Number two, the narratives go beyond
24 the suggestions. The children are not merely

1 parroted what's going on, that they're
2 constructing what they think is a narrative.
3 They're using all their knowledge of what's
4 going on; maybe what they've heard before the
5 Susan Kelley interview. I don't really know
6 what J [REDACTED] heard before, but that's
7 another possibility.

8 But you see these things are very
9 generative. So one of the things we've
10 absolutely learned is that when children have
11 been suggestively interviewed and begin to
12 make allegations, you cannot just go from an
13 allegation to try to figure out what its
14 source has been, and then say: Well,
15 everything else that the child has said,
16 since we can't find the source, has to be
17 true. That, from the research studies, we
18 know that a major proportion of the
19 narratives contain details that were never
20 suggested to them but are consistent in many
21 ways with the whole scenario.

22 Q. Okay.

23 THE COURT: Let me just ask if your
24 testimony, your position is similar about, I

1 think what B [REDACTED] said regarding animals?

2 THE WITNESS: Well, what Billy said
3 regarding animals is along the same way. We
4 know that -- I mean, I don't know if this was
5 ever suggested to him. What I know -- what
6 we've learned about -- in the research about
7 Billy's allegations of animals is that when
8 you suggestively interview children, their
9 allegations over time become bizarre or
10 contain bizarre elements, or contain
11 fantastic elements.

12 And so, that's -- I mean, I can't
13 tell you whether he saw an animal being
14 chopped up, but I know how he was
15 interviewed, and we know that those kinds of
16 interview procedures do sometimes produce
17 these kinds of bizarre allegations, fantastic
18 allegations, and probable allegations in
19 children's stories.

20 [By Mr. Williams:]

21 Q. After all, Dr. Bruck, you weren't there. It
22 may very well be true --

23 A. It could be.

24 Q. -- that Billy -- that animals were sacrificed

1 in front of all the teachers at Fells Acres?

2 A. Yes.

3 Q. Okay. But there are also other explanations
4 for why that might be false?

5 A. Yes.

6 Q. Okay. Again, the record will speak for itself
7 on how the prosecutor cross-examined the
8 experts with respect to J [REDACTED]'s
9 disclosure. But let's assume for the moment
10 that the point of the cross-examination was
11 to communicate to the jury this one-to-one
12 correspondence between a suggestion and a
13 disclosure, and if there is no one-to-one
14 correspondence then we can assume or conclude
15 that the other elements of the story are
16 true. Let's -- if that's the point that the
17 prosecutor is making, your research says that
18 is a false assumption?

19 A. That's right.

20 Q. And the expert in this case was not able to
21 correct that assumption by the prosecutor?

22 A. That's correct.

23 Q. But we can do that today?

24 A. Yes.

1 Q. Okay.

2 Something that I think we just touched on
3 yesterday, and I want to make sure that we're
4 clear on the record with this.

5 This tainting of children through
6 suggestive interviewing, is it a temporary
7 phenomenon; does it wear off, or have we
8 found that it's permanent? We touched upon
9 it with that child B [REDACTED] in the mousetrap
10 case where John Stossel --

11 A. B [REDACTED] --

12 Q. B [REDACTED] --

13 A. I can't remember. Yes.

14 Q. With John Stossel trying to debrief that
15 child?

16 A. Right.

17 Q. But eventually will that child, for example,
18 begin to realize that the mousetrap thing
19 didn't really happen or --

20 A. Well, our understanding from the few follow-
21 up studies we've done with the children is
22 the following: that when -- that these false
23 reports continue for some time after the
24 suggestive interviewing has stopped. But if

1 the suggestive interviewing continues, or if
2 the belief systems continue, that the false
3 beliefs are going to continue. So one has to
4 think about it in terms of, when does
5 interviewing stop, right.

6 Now, I mean, we don't have any very
7 long follow-up studies on children, so it's
8 possible that if the interviewing goes on for
9 months and years, and these reports become
10 firmly established as beliefs, then they
11 could last forever.

12 What we know from our own studies is
13 that when the interviewing stops and it's
14 very short, that after a period of time some
15 of the children will come to forget. On the
16 other hand, I also know from some very recent
17 studies we've done that when the interviewing
18 techniques are less coercive -- I mean this
19 is very difficult. I don't want to get into
20 this -- but when there's misinformation
21 that's just kind of passed off: Oh, I heard
22 that there was a magic room. Or, I remember
23 being told that, and the children are just,
24 you know, not coerced into an answer, and

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1 they come to in fact say that these things
2 happened, that these beliefs last for up to
3 eighteen months even though there's been no
4 interviewing at all.

5 So we're still at the threshold of
6 understanding the longevity of these things,
7 but in terms of this case, I think it's fair
8 to say that these children -- the
9 interviewing went up -- right up to trial.
10 So, I mean, I don't know, you know, how the
11 suggestions -- I mean, you can say that they
12 were rehearsed, or true memories, or
13 suggestive for false memories, I don't care
14 what, but there wasn't a long period where
15 this wasn't discussed. So it's sort of a moot
16 question in terms of these children.

17 Q. There was a reference yesterday from the
18 prosecutor -- I'm referring to the trial
19 transcript of the mother of Jennifer -- that
20 the trial transcript indicates that the
21 mother testified that J [REDACTED] s disclosure
22 was, quote, "spontaneous?"

23 A. Right.

24 Q. Is there any research that's been conducted

1 in connection with suggestibility where you
2 focus on the accuracy of the -- of a mother's
3 report? We've talked about the birthday
4 example. You had researchers' reporting. Now
5 I want to focus specifically on mother's
6 reports.

7 A. Right. Well, we've conducted two studies, one
8 on mothers and one on interviewers, actually.
9 But let me talk about mothers.

10 This is the issue. The issue is when
11 children come to make reports of events, it's
12 very important for the court or anyone to
13 understand, from everything I've talked about
14 today, the context in which these reports
15 have come out. If the reports are truly
16 spontaneous, if they come out at the very
17 first time the child has been questioned,
18 based on the research we've done, we can have
19 a lot of faith or -- that maybe the child is
20 telling us something that's very important.

21 If the reports come out as a result
22 of repeated questioning, of suggestive
23 questioning over time, we have much less
24 faith in this.

1 Now, the question becomes now of,
2 when it's reported to you that the child has
3 said, for example, the clown stuck a
4 thermometer up my bum, how do you understand
5 the context of that allegation?

6 Now, in 1998, I think we know we have
7 to ask people: Well, how did the child say
8 that? Right. Was it spontaneous? Did you ask
9 a lot of questions? Did it take a lot of
10 time? And when you ask these questions, the
11 next question is, Well, someone gives you
12 answers, how reliable are their answers? Can
13 people really remember how information came
14 out?

15 And so, we've conducted two studies
16 to examine that issue. And one involved
17 mothers interviewing their children about an
18 event. This is filed and it's in the
19 affidavit. During the event, the mothers
20 didn't know what was happening; the child was
21 playing with our research assistant, and then
22 there was a surprising thing where a man kind
23 of rushed in and tried to take the child's
24 crayon, and then the mother was told to

1 interview the child. And half the mother's
2 were told this was a memory experiment where
3 later on we'd go back and ask them to
4 remember in detail exactly what words were
5 used; and the other half, the mother's
6 weren't told. Anyway --

7 Q. Wait. Whoa, whoa. One-half of the mother's
8 were told this was a memory experiment?

9 A. Right.

10 Q. And the other half were told what?

11 A. The other half were told: We're interested in
12 how you get information from your child.

13 Q. Okay. So it's more neutral?

14 A. Right.

15 Q. Okay.

16 A. They weren't warned -- they weren't warned to
17 remember.

18 Q. Okay.

19 THE COURT: I should probably have
20 said this earlier, but both of you have to
21 give some New England speed to your speech.

22 THE WITNESS: Oh, slower?

23 THE COURT: A bit slower.

24 THE WITNESS: Okay. I'm fine. I'm

1 living in the south now. I should be
2 practicing.

3 THE COURT: Okay.

4 A. Okay. So the mothers interview their child
5 and they found out about different events.
6 And after the interviews, we transcribed
7 these, from videotape, and then made up
8 memory tests. And two or three -- three days
9 later, two or three days later, we went back
10 and interviewed the mothers.

11 Now, let me give you in a nutshell
12 what we found. Overall, the mothers were
13 quite accurate in remembering the content.
14 They weren't a hundred percent, but they
15 could tell you the things that their kids
16 told them.

17 What they had a great deal of
18 difficulty in doing was remembering how they
19 found out about these things. They could not
20 remember if the information was produced from
21 a series of suggestive questions, which is
22 probably the most common way to interview
23 children, and the mothers did a lot. A lot of
24 times the mothers in fact reported: No, this

1 was spontaneous. My child just said it. When
2 in fact it was the result of many many
3 suggestive questions.

4 Mothers couldn't remember if they
5 were the first person to say, "Was there a
6 fireman in the room?" Or whether the child
7 said it first. So you have a great deal of
8 confusion in terms of memory of how
9 conversations are structured.

10 Now, we found the same thing with our
11 interviewers that I talked about in the
12 Birthday Party Study. We did the same kind of
13 study where -- actually, we brought them back
14 two weeks later -- but these interviewers
15 were allowed to consult notes that they had
16 taken during the interview. We allowed them
17 to do this.

18 And we asked them about two children
19 of the four they interviewed. We showed them
20 the pictures. We reminded them so that they
21 could remember. And again, we gave them
22 memory tests, and they made the same kinds of
23 errors that mother's made. They couldn't
24 remember if the children's statements were

1 spontaneous, of if they were the result of
2 suggestive questions.

3 The interviewers did something else.
4 We put something else into the experiment,
5 which is quite interesting. Also what the
6 interviewers couldn't remember was, what
7 child said what. So they mixed up -- if they
8 were asked to remember what child two said,
9 and -- they often reported maybe what child
10 four said.

11 Now, if you know anything about
12 human memory, I mean, this really isn't a
13 very surprising event. I mean, we can only
14 retain so much, and we retain the content,
15 and a lot of the structure just falls away.

16 Now, this is very important in terms
17 of trying to figure out how these children
18 were questioned, and forensically, what this
19 tells us is that we really need hard,
20 electronic copies of these video -- of what
21 the children said. And that's why the Susan
22 Kelley videotapes are so important because
23 it's the first time we really see how
24 spontaneous the children are; how the

1 information comes out. Even though it's way
2 down the line, it does not substitute for
3 these missing first interviews.

4 Q. Well, in fact, in the Susan Kelley interview
5 of J [REDACTED], the entire interview, first
6 interview, J [REDACTED] says nothing about sexual
7 abuse --

8 A. Well, that's true, but it's also -- the
9 Jennifer -- the Susan Kelley interview of
10 Jennifer, we know that before then, Jennifer
11 has not made any allegations.

12 Q. Right.

13 A. So that's what counts a little bit more.

14 Q. Right. But Susan Kelley's report to the
15 mother, even though there's never been an
16 allegation --

17 A. Right.

18 Q. -- was what?

19 A. I --

20 Q. In essence?

21 A. Is that: Get therapy for this child who's
22 been sexually abused.

23 Q. Even though there's been no allegation from
24 that child?

1 A. That's right.

2 Q. So from your research, it's entirely possible
3 that Susan Kelley actually believed this
4 child was abused, and thought she had heard
5 elements of abuse?

6 A. Yes.

7 MS. ROONEY: Objection.

8 THE COURT: I'll let the answer
9 stand. Overruled.

10 [By Mr. Williams:]

11 Q. I'm going to show you Exhibit 7. Is that the
12 study you've just been describing about
13 mothers' reports?

14 A. Yes.

15 Q. All right. I want you to just summarize --
16 we've been through several hours of this -- I
17 just want you to summarize. What are the most
18 salient observations of the record that
19 you've made here? I know the affidavit goes
20 into it in much more detail.

21 A. Right.

22 Q. I want you to talk about the most salient
23 observations.

24 A. Okay. The overriding observation is that

1 there were no spontaneous disclosures by
2 these children; that even when they were
3 first asked by their parents, these children
4 denied any sexual events at Fells Acres.

5 We don't exactly know how many
6 interviews it took. It's more than is in the
7 record because we don't -- it's clear that
8 the parents did talk to their children, but
9 we don't know about each talk they had.

10 When they were interviewed by DSS
11 and police, the children still, in the first
12 interviews, did not make allegations. It was
13 only after several interviews that were
14 repetitive, that contained suggestive
15 elements, that children began to make
16 allegations, sometimes about clowns.
17 Sometimes it took much longer for them in
18 fact to get to the defendants.

19 Now, in terms of the research that I
20 do, this is highly significant because what
21 we know is that when children's reports are
22 spontaneous, when they're asked open-ended
23 questions: Did something happen; can you tell
24 me about what happened, and you have a

1 description of event (sic), it's not always
2 correct, but chances are, most of the time
3 much of what children say is correct.

4 This did not happen in this case. The
5 research that Stephen Ceci and other
6 colleagues of mine have conducted show that
7 when you use elements -- when you have biased
8 interviews --

9 THE COURT: Okay. We don't really
10 need to go --

11 THE WITNESS: Okay.

12 THE COURT: I mean, you testified
13 about that. Anything else? Any other
14 salient points not already gone into?

15 [By Mr. Williams:]

16 Q. Any other salient -- you don't have to go
17 into detail. I just wanted you to
18 highlight --

19 A. Well, I think that the disclosure patterns
20 are extremely important. I think that there
21 is enough evidence in the record about the
22 bias of the interviewers: from the beginning,
23 sexual abuse took place, and that's what they
24 wanted the children to talk about.

1 And those are the -- you know, in
2 terms of my own expertise, those are the
3 things in the record that just absolutely
4 jump out and are impressionable.

5 Q. Okay. Now, I want to finish up by going back
6 to the 1987 trial, because I think you
7 understand, Dr. Bruck, that if you're tested
8 -- if the evidence you're providing here was
9 actually considered by a jury and rejected by
10 a jury, Miss LeFave is not entitled to a new
11 trial?

12 A. I understand that.

13 Q. Okay. Let's assume -- let's not even put a
14 fine, delicate point to it -- let's assume
15 that all the tapes of the Susan Kelley
16 interviews were played, okay?

17 A. Yes.

18 Q. Instead of quibbling over which ones, let's
19 assume all of them were played. And let's
20 assume that experts were on the witness stand
21 giving the exact same critique that you are
22 giving here in the substance of the critique,
23 going painstakingly, line-by-line, giving the
24 exact same critique here; and if that expert

1 were asked on cross-examination in 1987: Mr.
2 Expert, cite me a single study to support
3 your critique of all of these tapes, what
4 would that expert have to say if he or she
5 was honest?

6 A. They would rely on their clinical intuition
7 to critique those tapes.

8 Q. It would be intuition?

9 A. Yes.

10 Q. Any research?

11 A. They could cite some of the research we
12 talked about which, you know, such as, "Isn't
13 this a circle?"

14 Q. I'm talking about --

15 A. But there are none on the kinds -- there was
16 no research that they could cite in terms of
17 the kinds of suggestive interviewing
18 techniques that were used in these
19 interviews. They would have to rely on their
20 clinical intuitions to make those kinds of
21 statements.

22 Q. Final question. If this same testimony was
23 given in 1998 in front of that exact same
24 jury, would that expert have to rely on

1 intuition?

2 A. No.

3 Q. What could that expert -- what could that
4 expert rely on?

5 A. The excerpt could rely on the exhibits, on
6 about 10 to 20 studies, or even more, to
7 start to understand the interviewing context
8 and the statements the children made.

9 Q. Thank you.

10 MR. WILLIAMS: No further questions.

11 THE COURT: Before the cross-
12 examination, I do have a couple of questions
13 I wanted to ask the doctor.

14 Did you consider, in the opinions
15 you're offering to the Court, what happened
16 between these suggestive interviews and the
17 trial testimony of the children?

18 THE WITNESS: Right.

19 THE COURT: Including the context
20 and circumstances of how the children were
21 prepared for trial; did they know about each
22 other's testimony; were they ever together in
23 the courtroom; in the courthouse; and the
24 impact of that, if any, on your opinions?

1 THE WITNESS: Right.

2 In writing the affidavit I didn't. I
3 explained why. I explained that in terms of
4 my -- in terms of understanding the
5 allegations, I thought it was important to
6 describe the ground work and what happened
7 before the disclosures came out and how the
8 first disclosures came out.

9 I then -- I mean, I -- I've looked
10 through the record and I see that, you know,
11 these children continued in therapy. They
12 were in homes where the police continued. I
13 saw in the record that they did meet with
14 prosecutors to review testimony. But I really
15 didn't go through all -- all of the things
16 that you -- you considered, but I would
17 imagine if those were there, that it would in
18 fact consolidate their reports, if not
19 memories, of what happened. But my tack was
20 to get them to understand what was associated
21 with the allegations that came out that led
22 to trial; not what happened at trial.

23 THE COURT: Part of what this court is
24 interested in is understanding, if in fact

1 there's been impermissibly suggestive
2 interviewing and other investigative
3 techniques, the impact on those of any
4 rewarding process, or encouragement process,
5 or trial preparation process in reinforcing
6 those views.

7 THE WITNESS: Well, I'm sure the
8 record is available and if you want me to,
9 I'd be glad to review it for you to bring you
10 more up to date. But in terms of my own
11 expert opinion, you know, once we -- we've
12 shown how far we've gotten these children,
13 and then if there's even more going on, it's
14 only going to solidify or make the
15 allegations go further. It's really the
16 emergence that's really very important to
17 understand.

18 THE COURT: Along these lines, do you
19 know if any of the children during the
20 interviewing process with Miss Kelley or
21 others, were they told or can you tell if
22 they knew that the school was closed?

23 THE WITNESS: Oh, they knew the
24 school was closed because they weren't going

1 there anymore. I mean, we know with M [REDACTED]
2 T [REDACTED], for example, that December -- September
3 12th, or whatever, her mother was taking her
4 to the pediatrician to put her into a new
5 school. And so, the children knew the school
6 was closed.

7 THE COURT: Okay.

8 Before the cross-examination, why
9 don't we take a ten, fifteen minutes recess.
10 (Recess 10:36 a.m.)

11
12
13 (Hearing resumes 10:54 a.m.)

14 MS. SULLIVAN: Your Honor, I
15 apologize. Miss Rooney has not yet come back
16 from break.

17 THE COURT: Oh, okay. Do you know, is
18 she readily accessible or?

19 MS. SULLIVAN: I can run down after
20 her. We may cross paths. But I'm happy to do
21 that, your Honor.

22 MR. WILLIAMS: Actually, maybe I
23 could just use the time --

24 MS. SULLIVAN: Oh, I'm told by a

1 spectator that there may be something wrong
2 with the elevators.

3 THE COURT: Okay. Did you want to say
4 something?

5 MR. WILLIAMS: Yeah, I just wanted to
6 maybe -- because I was going to ask at the
7 conclusion of the day, but since we have a
8 little break --

9 MS. SULLIVAN: Your Honor, Miss
10 Rooney is lead counsel. If it's something --

11 THE COURT: Why don't we wait. We'll
12 take a couple of minutes and give you a
13 chance --

14 MS. SULLIVAN: We're only on seven. I
15 think we can try the stairs.

16 THE COURT: Okay. Let me know. I'm
17 right here so let me know when you're ready.

18 MS. SULLIVAN: I'm sorry, your Honor.

19 (Recess 10:55 a.m.)
20
21
22
23
24

1 (Hearing resumes 11:00 a.m.)

2

3 MS. ROONEY: May I proceed, your
4 Honor?

5 THE COURT: You may.

6

7 DR. MAGGIE BRUCK, RESUMED

8 CROSS-EXAMINATION

9 BY MS. ROONEY:

10 Q. Dr. Bruck, in your affidavit you indicate
11 that the behavior problems that some of these
12 children displayed, in fact all of these
13 children displayed, may have emerged as a
14 result of the coercive and suggestive
15 interviews in this case?

16 A. Can you tell me what section we're on?

17 Q. On page 67 of your affidavit.

18 THE COURT: I'm not sure I have the
19 affidavit. I've got it right here. Thank you.

20 Sixty-seven?

21 MS. ROONEY: Page 67.

22 A. Yes, I see it, yes.

23 Q. Could you point us to a study to demonstrate
24 that the behavioral symptoms exhibited by

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1 these children came about as a result of a
2 suggestive interview?

3 A. No, I can't.

4 Q. Could you demonstrate to us, or could you
5 indicate to us the results of a study that
6 demonstrates that a child who has cracking
7 and fissuring around her labial area is the
8 result of a suggestive interview?

9 A. No, I can't.

10 Q. Could you indicate to us a study that
11 demonstrates that a suggestive interview
12 causes children to have a bump, or a child to
13 have a bump on their hymen?

14 A. None that I know of.

15 Q. Could you indicate to us what study
16 demonstrates that a suggestive interview
17 causes children to have vulvitis?

18 A. I don't know of any studies.

19 Q. Now, yesterday his Honor asked you a question
20 about the behavioral symptoms of J [REDACTED]
21 O [REDACTED], do you recall that question?

22 A. No, I don't.

23 Q. Do you recall saying you couldn't speak to
24 the behavioral symptoms of J [REDACTED] O [REDACTED]?

- 1 A. I guess -- I don't -- I don't remember what
2 the behavioral symptoms of J [REDACTED] O [REDACTED]
3 were.
- 4 Q. Did you review the behavioral symptoms of
5 these children?
- 6 A. Uhm, I reviewed what was in the record, and
7 we did review the behavioral symptoms at some
8 point, yes.
- 9 Q. And J [REDACTED] O [REDACTED], six to eight months prior
10 to Fells Acres Day School closing --
- 11 A. Would you show me in the record where this
12 is?
- 13 Q. If you could look with respect to J [REDACTED]
14 O [REDACTED], the Susan Kelley interviews, all of
15 the information that you've testified in
16 Appendix B, the testimony of the trial of
17 J [REDACTED] O [REDACTED], of her mother Cy [REDACTED] O [REDACTED],
18 did you review all that?
- 19 A. The trial testimony?
- 20 Q. Yes.
- 21 A. No.
- 22 Q. You didn't look at the trial testimony --
- 23 A. I did look at the trial testimony but I
24 didn't put it into my affidavit.

1 Q. But you reviewed it?

2 A. At some point, yes.

3 Q. So you reviewed the behavioral symptoms of
4 Jackie Osgood at some point?

5 A. Yes.

6 Q. And you recall that she was exhibiting these
7 behavioral symptoms, specifically, she was
8 crying and didn't want to go to school?

9 A. You know, I -- this is really not very clear
10 in my memory. I'd have to go back to my
11 record to review when these -- when these
12 first appeared in the record.

13 Q. Well, Dr. Bruck, assume for the moment that
14 six to eight months prior to the school
15 closing, J [REDACTED] O [REDACTED] was crying because she
16 didn't want to go to school.

17 A. Mm-hmm.

18 Q. She didn't want to separate from her mother.
19 She was having trouble sleeping at night. She
20 was wetting herself two to three times during
21 the night. She refused to go to the bathroom
22 by herself, and all of these behaviors
23 started six to eight months prior to anyone
24 saying anything about what was going on at

1 Fells Acres?

2 A. Yes.

3 Q. Do the interviews of J [REDACTED] O [REDACTED] have
4 anything to do with any of those behavioral
5 symptoms?

6 A. If those symptoms preceded the interviews?

7 Q. Correct.

8 A. No.

9 Q. Now, J [REDACTED] B [REDACTED], again, well before any
10 kind of a disclosure was made, well before
11 any kind of an allegation was made, started
12 to wet herself after she had been toilet-
13 trained for a number of months; that J [REDACTED]
14 B [REDACTED] started to talk as a child again, as
15 a baby again; had difficulty in the bathtub,
16 screaming, "Don't touch me. Don't hurt me;"
17 stomachaches daily; didn't want to go to
18 school; waking up in the middle of the night,
19 screaming, "Don't hurt me. The clown is going
20 to get me," and all of these things are going
21 on before any disclosure is made, could the
22 interviews of Jennifer Bennett have anything
23 to do with any of those symptoms I've just
24 described to you?

1 A. They don't, but in the record that I read --

2 Q. Well, Dr. Bruck, could they or could they
3 not?

4 A. If they in fact had happened, then the --
5 obviously if they preceded the interviews,
6 the interviews could not have had any effect --
7 on those.

8 Q. And with respect to B [REDACTED] I [REDACTED] a month
9 before the disclosures started to happen,
10 he's exhibiting unusual sexual behavior. He's
11 grabbing his mother's head, trying to put his
12 tongue in her mouth. He's kissing her neck.
13 He's trying to suck on her chest. He's crying
14 and screaming he doesn't want to go to
15 school. He had stomachaches all the time,
16 could any of those behavioral symptoms have
17 anything to do with any of the interviews of
18 B [REDACTED] I [REDACTED]?

19 MR. WILLIAMS: Your Honor, I don't
20 mean to interrupt. I don't object to the form
21 of the question other than if we could have a
22 transcript reference, or is this just a
23 hypothetical? I mean, I'm not sure if she's
24 asking a hypothetical or if she's rooting it

1 in the trial transcripts.

2 THE COURT: What would help the
3 Court, Miss Rooney is, ultimately I may agree
4 with you that these things existed or that
5 there's evidence of them as you suggest, but
6 I'd have to agree in order to take her answer
7 or her opinion. Therefore, it would help the
8 Court if you would tell us where -- point to
9 where these things exist.

10 [By Ms. Rooney:]

11 Q. Referring directly to the transcript of the
12 trial of Cheryl Amirault LeFave, Volume IV,
13 page 62.

14 MR. WILLIAMS: I'm going to object.
15 Your Honor precluded us from making reference
16 to Gerald Amirault's trial --

17 MS. ROONEY: I believe I said Cheryl.

18 MR. WILLIAMS: I'm sorry, I thought
19 you said -- my apologies.

20 THE COURT: Okay. What -- where can I?

21 MS. ROONEY: Volume IV, page 62.

22 A. Who are we talking about?

23 Q. Billy Leary.

24 THE COURT: And who's testifying?

1 MS. ROONEY: This would be his mother
2 who testified under the name of Kerepka at
3 Gerald's trial; and testified under the name
4 of McCarthy at the women's trial. She was
5 married in between them.

6 THE COURT: Okay.

7 [By Ms. Rooney:]

8 Q. There was testimony that about a year before
9 the school closed in September of 1984, he
10 began to display unusual sexual behavior,
11 tightly grabbing the sides of his mother's
12 head, pulling her head towards her (sic) and
13 sticking his tongue in her mouth. Also
14 kissing her neck and trying to suck on her
15 chest, all happening about a year before the
16 school closed in September of 1984. Could any
17 of those behaviors have anything to do with
18 any of the interviews conducted of B [REDACTED]
19 L [REDACTED]?

20 A. If those behaviors happened --

21 Q. Yes or no, ma'am, could they have anything to
22 do with those interviews of B [REDACTED] L [REDACTED] if,
23 as the testimony indicated, they started to
24 occur a year before any interviews took

1 place?

2 A. If they occurred --

3 Q. Ma'am, yes or no? Are you having trouble
4 understanding my question?

5 A. No.

6 Q. Could they have had anything to do with the
7 interviews if, as the testimony indicated,
8 those behaviors began to occur a year before
9 the school closed in September of 1984?

10 THE COURT: And you may assume, for
11 purposes of the question, that they did
12 occur.

13 THE WITNESS: Okay.

14 A. Can you rephrase. I'm confused. The question
15 is, could the interviews have affected those
16 behaviors if they occurred before.

17 Q. Exactly.

18 A. The answer is no.

19 Q. With respect to M [REDACTED] T [REDACTED], could any of
20 the behavior symptoms, again, demonstrated by
21 M [REDACTED] T [REDACTED] prior to anyone making any kind
22 of a disclosure, M [REDACTED] T [REDACTED] included, the
23 sexualized behavior of coming out and putting
24 her hand between her mother's legs, trying to

1 touch her mother's breasts, masturbating in
2 the bath, beginning in December of 1983 and
3 going through January of 1984, and continuing
4 almost nightly complaints of vaginal pain,
5 waking up one to two times a week in pain --
6 complaining of pain in her vagina, could any
7 of those things have anything to do with any
8 interviews conducted of M [REDACTED] T [REDACTED]?

9 THE COURT: From where do you get
10 that, please?

11 MS. ROONEY: Your Honor, again, I
12 would refer to the testimony of D [REDACTED] T [REDACTED].

13 THE COURT: Trial testimony?

14 MS. ROONEY: I'm sorry. The trial
15 testimony of D [REDACTED] T [REDACTED].

16 A. No.

17 Q. Now, Dr. Bruck, you talked about, in some
18 detail, this meeting that occurred at the
19 police station. I believe you refer to it as
20 the parents' meeting --

21 A. Yes.

22 Q. -- at the police station in September of
23 1984?

24 You're aware, are you not, Dr. Bruck, that

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1 J [REDACTED] B [REDACTED] s mother did not even attend
2 that meeting?

3 A. I know that J [REDACTED] B [REDACTED] s mother did not
4 attend that meeting.

5 Q. So she certainly couldn't have gone home and
6 started questioning her daughter because she
7 didn't even know what happened in that
8 meeting?

9 MR. WILLIAMS: I'm going to object.
10 It calls for speculation, number one. Number
11 two, I think we were precluded into going
12 into the child A [REDACTED] J [REDACTED] and her mother, who's
13 outside the parameters of this hearing, which
14 we could have established. So I think they
15 have to play by the same ground rules as we
16 are.

17 THE COURT: You can rephrase the
18 question.

19 [By Ms. Rooney:]

20 Q. The question simply is this, Dr. Bruck. Did
21 J [REDACTED] B [REDACTED] s mother attend the parents'
22 meeting at the police station?

23 A. No, she did not.

24 Q. Could she have possibly known what was said

1 at that meeting from being there herself?

2 A. Say that -- could she have known what
3 happened at the meeting?

4 Q. Yes?

5 A. She could have, yes.

6 Q. Because she was there?

7 A. No. If she -- no. Okay. She wasn't at the
8 meeting.

9 Q. You weren't at the meeting either?

10 A. No.

11 Q. Now, J [REDACTED] O [REDACTED]'s mother attended the
12 meeting?

13 A. Yes.

14 Q. And you're aware that she testified that
15 following that meeting she did not go home
16 and question her daughter?

17 THE COURT: Is this her trial
18 testimony?

19 MS. ROONEY: Again, her trial
20 testimony, C [REDACTED] O [REDACTED].

21 A. The trial testimony. Immediately following
22 the meeting she did not question her
23 daughter?

24 Q. That's correct.

1 A. Well, maybe immediately following, I don't
2 know.

3 Q. You don't know --

4 A. I guess not. I don't know of when she started
5 to question her, but it wasn't -- maybe not
6 immediately following.

7 Q. Well, it certainly wasn't as you testified
8 that the atmosphere was created that all
9 these parents went rushing home and grabbed
10 theirs kids and started saying, "What
11 happened at the school? What happened to you?
12 I know you were abused." Isn't that what was
13 your testimony yesterday?

14 A. Well, we know that by October 3rd, when there
15 was the first police interview, that both
16 parents had already questioned J [REDACTED], so
17 some time between the police interview and
18 October 3rd, she had been questioned by her
19 parents. I don't know exactly what the time
20 line was.

21 Q. And you don't know how that was done, do you?

22 A. Uh, we know -- I know that the mother
23 questioned her, and we have a note in the
24 file that the father was more confrontative.

1 Q. But you don't know what that means, do you?

2 You certainly weren't there?

3 A. No, I don't know what it means. I know it
4 wasn't one question.

5 Q. And in fact, do you know that C [REDACTED] O [REDACTED]
6 said that she was impressed with the care
7 that her daughter received at the day care --

8 A. Yes, I know that.

9 Q. -- following the meeting?

10 A. Mm-hmm.

11 Q. And in fact, she didn't learn what the
12 specific allegations were during that police
13 meeting because no one said what the specific
14 allegations were?

15 A. My understanding was that at the police
16 meeting they had been told to question their
17 children about a clown, magic room, and a
18 secret room, and that sexual abuse had
19 occurred.

20 Q. Did anyone say what kind of sexual abuse at
21 the meeting?

22 A. I don't know.

23 Q. In fact, they were quite careful not to say
24 what type of sexual abuse occurred, is that

1 correct?

2 A. I don't know. I --

3 Q. And in fact, C [REDACTED] O [REDACTED] testified at the
4 trial that what she was told at the meeting
5 is, "Don't say anything good about the
6 Amiraults, but don't say anything bad
7 either," do you recall that testimony?

8 A. No, I don't.

9 Q. You only remember the part about saying,
10 "Don't say anything good about the
11 Amiraults," correct?

12 A. Yes.

13 Q. You forget the part about C [REDACTED] O [REDACTED]
14 testifying at trial, "Don't say anything bad
15 about the Amiraults," is that correct, ma'am?

16 A. Well, in the notes that I have, what I have
17 is, "God forbid you say anything good about
18 the Amiraults or your children will never
19 tell you anything."

20 Q. And, in fact, those are your notes, is that
21 correct?

22 A. Yes.

23 Q. And those are notes that you made after
24 reviewing the record in this case?

1 A. Yes.

2 Q. And those notes are to help you testify here
3 in court today?

4 A. Uhm, no. Well, I took these notes also as I
5 was writing the affidavit.

6 Q. Well, certainly in preparation for both your
7 affidavit and your testimony --

8 A. Yes.

9 Q. -- here in court?

10 A. Mm-hmm.

11 Q. So you pulled from the record those items
12 which would be helpful to your testimony,
13 correct?

14 A. Yes.

15 Q. You did not pull from the record the
16 statement that C [REDACTED] O [REDACTED] said that the
17 police said, "Don't say anything bad about
18 the Amirault's," because that would not be
19 essentially very helpful to your testimony
20 here today, would it?

21 A. Well, to be truthful, I never saw that
22 statement.

23 Q. Now, E [REDACTED] I [REDACTED]'s mom attended the meeting
24 at the police station?

1 A. Yes.

2 Q. And she also testified that she did not go
3 home immediately and start questioning her
4 son?

5 THE COURT: This is her testimony at
6 trial?

7 MS. ROONEY: Again, her testimony at
8 trial.

9 A. Okay.

10 Q. You just have to answer for the reporter.

11 A. Okay. Well, I don't remember what she
12 testified, but if that's what she testified
13 to.

14 Q. And in fact, that B [REDACTED] L [REDACTED]'s mother said
15 that she couldn't believe that the
16 allegations were true?

17 A. Okay. I don't -- I don't have memory of this.

18 Q. In fact, that B [REDACTED] L [REDACTED]'s mother was
19 telling co-workers that nothing happened to
20 her son following that meeting at the police
21 station?

22 THE COURT: Are you aware that that's
23 what she testified at the trial? The answer?

24 A. I don't know that.

1 Q. Now, D [REDACTED] T [REDACTED], who's M [REDACTED] T [REDACTED] s
2 mother, she also attended this meeting at the
3 police station?

4 A. Yes.

5 Q. She left early though, didn't she?

6 A. I don't know.

7 Q. And do you know that she said at the trial,
8 again, when she testified, that she didn't
9 learn what the factual allegations were at
10 that meeting?

11 A. No, I didn't know that.

12 Q. And did you know that she stated that after
13 that meeting she went home but she didn't
14 talk to her child either?

15 A. No, I don't know that.

16 Q. Dr. Bruck, you told us yesterday during your
17 testimony that -- you talked a little bit
18 about the Mousetrap Studies?

19 A. Yes.

20 Q. And specifically you spoke about one child, I
21 believe you spoke about it just recently
22 again about this little boy named Billy who
23 was subsequently interviewed --

24 A. Yes.

1 Q. -- by channel 5?

2 And you indicated that when B [REDACTED] was talked
3 to by John Stossel, he insisted that his
4 finger had in fact gotten stuck in that
5 mousetrap, is that correct?

6 A. Right. Mm-hmm.

7 Q. You didn't mention yesterday that subsequent
8 to that ABC interview, B [REDACTED] was interviewed
9 again, and when asked the question, "Did you
10 ever get your finger caught in a mousetrap
11 and have to go to the hospital to get it
12 off?" He said, "No?"

13 A. When was that interview? Ten months later?
14 Twelve months later?

15 Q. It's described in the following article, "Are
16 False Memories Permanent?" --

17 A. Right.

18 Q. -- :An Investigation of The Long-Term Effects
19 of Source Misattributions," --

20 A. Right.

21 Q. -- published by Stephen Ceci?

22 A. Right. And do you know when he was asked that
23 question?

24 Q. It's not specifically indicated in the

1 paragraph I'm looking at, but the question
2 is, did you tell us yesterday that this
3 child, after being interviewed by John
4 Stossel --

5 A. He wasn't asked that question. He was asked
6 that question a year or so after being
7 interviewed by John Stossel.

8 Q. And he in fact denied that his finger got
9 caught in the mousetrap?

10 A. A year later, yes.

11 Q. And he in fact said that it was a story?

12 A. A year later he said that.

13 Q. You didn't tell us about that yesterday
14 though, did you?

15 A. I wasn't asked about that yesterday.

16 Q. You certainly didn't volunteer it though, did
17 you?

18 A. No.

19 Q. Now, you talk in your book, and I'm referring
20 now to your book, the 19 -- I believe it's
21 1995 --

22 A. But can I just go back to what you just asked
23 me?

24 Q. Ma'am, you've answered my question.

1 THE COURT: You should wait for the
2 next question.

3 THE WITNESS: I'm sorry.

4 [By Ms. Rooney:]

5 Q. The Jeopardy in the Courtroom book?

6 A. Yes.

7 Q. And you indicated that you're in the process
8 of revising that book, ma'am?

9 A. Yes.

10 Q. You talk in that case about the Country Walk
11 baby-sitting case?

12 A. Mm-hmm.

13 Q. And you refer to that case as the case where
14 the codefendant, who is Illiana Furster --
15 and correct me if I'm pronouncing their names
16 wrong.

17 A. Yes.

18 Q. She plead guilty?

19 A. Yes, she did.

20 Q. She in fact corroborated much of what the
21 children said was true?

22 A. Yes.

23 Q. But you question the veracity of her plea of
24 guilty, is that correct?

1 A. We raised issues about her plea of guilty.

2 Q. And in fact, you also question the physical
3 finding in that case where the child was
4 found to have gonorrhoea of the throat, you
5 say, maybe the medical test was incorrect?

6 A. Well, my understanding is that they have
7 subsequently found out that those medical
8 tests are highly unreliable.

9 Q. So maybe the medical tests that showed that
10 the child of the Furster's had gonorrhoea of
11 the throat, that was incorrect?

12 A. Mm-hmm.

13 Q. And maybe her plea of guilty in which she
14 corroborated the testimony of the children,
15 that was not true either?

16 A. There's a lot of evidence to suggest that
17 this was a coerced plea.

18 Q. That someone forced her to plea guilty?

19 A. Well, she -- Yes.

20 Q. She was sentenced to ten years, though,
21 correct?

22 A. Yes.

23 Q. Now, those Mousetrap Studies, the first one -
24 - you also did a couple of follow-up studies,

1 would you call them, sort of an attempt to
2 replicate some of those studies?

3 A. There were two Mousetrap Studies.

4 Q. And in the second Mousetrap Study, the
5 percentage of -- for the younger children --

6 A. Mm-hmm.

7 Q. -- who assented to the false events, actually
8 went down over the interviews, is that
9 correct?

10 A. I don't think so.

11 Q. Well, the first --

12 MS. ROONEY: Your Honor, if I could
13 approach.

14 THE COURT: You may.

15 THE WITNESS: Yes.

16 [By Ms. Rooney:]

17 Q. This is an article entitled, "Repeatedly
18 Thinking About a Non-Event: Source
19 Misattributions Among Preschoolers," and I'm
20 referring specifically to page 396.

21 A. (Witness examines document.)

22 Q. I'd ask you to look at the table. Just take a
23 moment.

24 A. Mm-hmm. (Witness examines document.) They --

1 it looks -- which one is this one? Oh. Okay.

2 This is the first study that was done.

3 Q. Do you need to look at it any further?

4 A. No. Okay. But I want to tell you --

5 THE COURT: Let's wait for the
6 question.

7 [By Ms. Rooney:]

8 Q. Do you need to look at it any further?

9 A. No. In this study --

10 Q. Ma'am --

11 THE COURT: You've got to wait for the
12 question.

13 THE WITNESS: Okay.

14 Q. You would agree with me that there's a table
15 here that indicates that at the first
16 interview, 44 percent of the younger children
17 assented to the false event?

18 A. Mm-hmm.

19 THE COURT: Is that --

20 A. Yes.

21 Q. And that by the time they got to the seventh
22 interview, that had gone down to 36 percent
23 of the children, is that correct? Is that
24 what the table shows?

1 A. That's what it shows.

2 Q. And there was also another sort of follow-up
3 study to these Mousetrap Studies?

4 A. There's a second one.

5 Q. There's a second study. And in fact, a
6 finding in that case was that 88 percent of
7 children were more likely to assent to
8 fictional neutral events, participant or non-
9 participant, and positive events than to
10 negative events, is that correct?

11 A. That's correct.

12 Q. Dr. Bruck, you testified yesterday that none
13 of the studies that you've conducted have
14 included children who have been sexually
15 abused?

16 A. That's true.

17 Q. And you've had no training or experience with
18 treating a child who's been sexually abused?

19 A. I spent -- No, I haven't.

20 Q. Have you ever evaluated a child who's been
21 sexually abused?

22 A. I've sat in on evaluations.

23 Q. Have you ever personally evaluated a child?

24 A. No, I'm not trained to do that.

1 Q. Do you have any clinical experience with
2 sexually abused children?

3 A. No, I do not.

4 Q. Are you aware of all the factors that a
5 clinician would take into account when
6 assessing the validity of a sexual abuse
7 allegation?

8 A. Well, I spent -- in the fall, at a clinical
9 facility at NYU at Cornell in fact observing
10 clinicians doing this to learn how competent
11 people come to make these kinds of decisions.

12 Q. Could you detail for us all the factors that
13 a clinician would take into account?

14 A. No, I couldn't.

15 Q. Have you ever applied the results of your
16 research, all of the research that you've
17 been talking about over the past day and a
18 half, to a population of sexually abused
19 children?

20 A. This -- No, and it's not meant to be.

21 Q. The research that you've conducted is not
22 meant to apply to a population of sexually
23 abused children?

24 A. No.

1 Q. Dr. Bruck, I'd like to refer you now to your
2 affidavit. Do you have that there in front of
3 you?

4 A. Yes, I do.

5 Q. And I would direct you to page 17 of your
6 affidavit.

7 A. Okay.

8 Q. Do you have it with you?

9 A. Yes.

10 Q. Now, on page 17, you indicate that the
11 experiments prior to the 1990s were not
12 designed to study the effects of suggestive
13 interviews on children's abilities to provide
14 accurate reports, correct?

15 A. I did?

16 Q. If I refer you to page 17 --

17 A. Yes.

18 Q. -- subsection 4, headline A. "Experiments
19 prior to the early 1990s were not designed to
20 study the effects of suggestive interviews on
21 children's ability to provide accurate
22 reports?"

23 MR. WILLIAMS: Well, your Honor --

24 A. I think you've left something out here.

1 MR. WILLIAMS: -- she leaves out the
2 clause, "like those in this case."

3 Q. Is that what this says?

4 A. No. It says that, "Experiments prior to the
5 early 1990s were not designed to study the
6 effects of suggestive interviews -- like
7 those in this case -- on children's ability
8 to provide accurate reports."

9 Q. And you go on to say that, "That void left
10 open the question of suggestibility of
11 preschool children?"

12 A. I go on to say it opened the void of what
13 happens to preschool children, can they be
14 suggested, central events that happen to
15 their own bodies that are sometimes sexual in
16 nature.

17 Q. Actually, what you said, and again, I'm
18 referring you now to page 18, paragraph 34,
19 "This void left open the question of the
20 suggestibility of preschool children?"

21 A. (Witness examines document.)

22 Q. The second-to-last line in that paragraph?

23 A. I'm sorry --

24 THE COURT: I'm sorry. What's the

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1 question?

2 Q. What she went on to say is, "This void left
3 open the question of the suggestibility of
4 preschool children."

5 THE COURT: Did you say that in this
6 affidavit?

7 THE WITNESS: Yes, I did.

8 Q. You're familiar with the misinformation
9 effect?

10 A. Yes, I am.

11 Q. And essentially the misinformation effect,
12 the theory is that post-event information can
13 alter a child's memory, or an adult memory,
14 for that matter?

15 A. Yes.

16 Q. And that theory was originated, I believe,
17 back in 1908?

18 A. Well, I think that Elizabeth Loftus was
19 really the first person to bring it to the
20 modern stage.

21 Q. But the original theory, I believe was
22 described in a book --

23 A. Yes.

24 Q. -- On The Witness Stand, back in 1908?

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1 A. By who?

2 Q. By Munsterberg?

3 A. Well, that's your reading of it. I -- I would
4 have to go back to history again to really
5 see where it first began. I don't think it
6 was there. Anyway--

7 Q. It began even earlier perhaps?

8 A. Maybe. I don't know. I really don't know.

9 Q. At least in --

10 A. I talked to Elizabeth Loftus about this --

11 Q. Ma'am, there's no question before you.

12 In 1908 --

13 A. Yes.

14 Q. -- in any event --

15 A. Mm-hmm.

16 Q. -- there is a book entitled, On The Witness
17 Stand --

18 A. Mm-hmm.

19 Q. -- and in that book it talks about how
20 leading questions and specific questions can
21 alter an eyewitness report.

22 A. Okay.

23 Q. And from 1908 up until 1990, there were
24 certainly studies which evaluated that

1 misinformation effect?

2 A. Yes.

3 Q. And in fact, Elizabeth Loftus conducted a
4 number of them?

5 A. Absolutely.

6 Q. But primarily her work focused on adults?

7 A. Yes, they did.

8 Q. But her work reviewed the effect of leading
9 questions?

10 A. Uhm, on adults.

11 Q. On adults?

12 A. Yes.

13 Q. The use of specific or directed questions on
14 adults?

15 A. I'm not that familiar with all of her work,
16 but she's looked at the form the questions
17 take on adults, yes.

18 Q. In fact, in 1978, there was a study conducted
19 by Elizabeth Loftus as well as Dale and
20 Rathbun?

21 A. Yes.

22 Q. And that study involved four and five-year-
23 old children?

24 A. That's true.

1 Q. And those children were asked to view some
2 short films and then asked a series of
3 questions about it?

4 A. Yes.

5 Q. And that study was done in 1978?

6 A. That's true.

7 Q. And there was also a study done in 1987 by
8 Marie Zaragoza?

9 A. Zaragoza.

10 Q. And she replicated that Loftus Study using
11 preschoolers?

12 A. That's true.

13 Q. And that was available in 1987?

14 A. In a book of edited readings by Ceci et. al.,
15 yes.

16 Q. And there was a study conducted in 1979 by
17 Marin, et. al.?

18 A. That's true.

19 Q. And again, he found a significant
20 misinformation effect for both children and
21 adults, is that correct?

22 A. Uh, yes.

23 Q. There was a study done in 1988 by Ochsner,
24 and again, Zaragoza?

1 A. Unpublished.

2 Q. And that study had children experience a man
3 coming into a room and stealing a purse?

4 A. Yes.

5 Q. Again, studying the misinformation effect on
6 children?

7 A. That's true.

8 Q. There was a study in 1987 done by King and
9 Yuille?

10 A. Yuille.

11 Q. Yuille?

12 A. Mm-hmm.

13 Q. And that was a series of experiments,
14 designed a study, what was presumed to be a
15 central concern of children, and that was the
16 Staged Bicycle Theft Study?

17 A. Yes.

18 Q. And that, again, was in 1987, is that
19 correct, ma'am?

20 A. Yes.

21 Q. And in 1986, is that when Gail Goodman and
22 Reed began doing some of the Simon Says
23 Studies?

24 A. Yes.

1 Q. And the Simon Says Studies in 1986 involved
2 three-year-olds, six-year-olds as well as
3 adults?

4 A. (No verbal response.)

5 Q. Is that correct?

6 A. There were three-year-olds in that study,
7 yes.

8 Q. You also go on to say in your affidavit,
9 again I'm referring you to page 18, at the
10 top of the page in that paragraph that's not
11 a complete paragraph, "Regardless of the
12 measure of suggestibility, a consistent
13 finding was that younger children were more
14 suggestible than older children?"

15 A. That's true.

16 Q. And again, you're referring to prior to 1990
17 studies?

18 A. Right.

19 Q. Would you agree with me, though, that prior
20 to 1990 there was also research that was
21 inconsistent --

22 A. Yes.

23 Q. -- on the issue of children's suggestibility?

24 A. We reviewed that in our Psychological

1 Bulletin paper.

2 Q. And it's actually on pages 409 and 410 of
3 your paper. You actually list the studies
4 prior to 1990 that found children are more
5 suggestible?

6 A. That's true.

7 Q. And in that list, you list a 1980 study by
8 Cohen and Harnick?

9 A. Yes.

10 Q. You refer again to the King and, is it,
11 Yuille?

12 A. Yuille.

13 Q. Yuille Study of 1987. And a study by Stephen
14 Ceci, et. al. in 1987?

15 A. Right.

16 Q. And a study by Goodman and Reed, again, the
17 Simon Says Studies in 1986. And all of those
18 were prior to 1990?

19 A. Yes.

20 Q. And all of those were -- had findings that
21 indicate that children are more suggestible
22 than adults?

23 A. Yes.

24 Q. You also go on in that article and list some

1 studies that show that children are not more
2 suggestible than adults. And you refer to a
3 study by Marin, Holms, Guth and Kovac in
4 1979?

5 A. Mm-hmm.

6 Q. And a study by Duncan, Whitney and Kunen in
7 1982?

8 A. That's true.

9 Q. So in fact, the research prior to 1990 was
10 somewhat inconsistent. There were people on
11 both sides of the fence as it were?

12 A. Yes. There were a few studies where -- Yes.

13 Q. You would also agree with me, would you not,
14 that prior to 1990, on page 18 of your
15 affidavit, you state that the studies that
16 were done about "inaccurate reports about
17 neutral events that had little personal
18 salience?"

19 A. Yes.

20 Q. And you go on to say that, "It was not known
21 if" there were "similar inaccurate reports
22 ... about more central events?"

23 A. Yes.

24 Q. But in fact, prior to 1990, there are at

1 least two studies on children's memories for
2 traumatic event?

3 A. What were they?

4 Q. Are you familiar with the study on the sniper
5 attack? I believe you referred to it in, I
6 believe it was in your affidavit --

7 A. Yes.

8 Q. -- in 1989 by Pynoos and Nader?

9 A. That's not a suggestibility study.

10 Q. It was an actual event --

11 A. Yes.

12 Q. -- that happened, correct?

13 A. Mm-hmm.

14 Q. A sniper actually shot at the schoolyard. And
15 the children were interviewed. These were
16 children who actually had experienced the
17 event?

18 A. Right.

19 Q. And that study back in 1989 found that some
20 of the children --

21 A. 1989?

22 Q. -- who weren't even there that day --

23 A. Right.

24 Q. -- said they were?

1 A. Right.

2 Q. And it also found that the children who were
3 directly involved in the incident were quite
4 accurate in their recall of central
5 information about the incident although not
6 necessarily about peripheral details?

7 A. Right.

8 Q. And that, again, was in 1989?

9 A. Okay.

10 Q. And the other study I'm referring to, again,
11 is an actual incident, "The Chowchilla Bus
12 Incident?"

13 A. Right.

14 Q. And that was done by Lenore Terr?

15 A. Mm-hmm.

16 Q. In 1988?

17 A. Mm-hmm.

18 Q. And that was a study conducted of some
19 children who were actually, I believe, buried
20 alive on a school bus?

21 A. Right.

22 Q. And that study found that the children's
23 memory for trauma, at least the gist of the
24 memory, was accurate?

1 A. Yes.

2 Q. Now, you go on to state in your affidavit --
3 I'm referring you now to page 19, subheading
4 B, that the "Recent Experiments Are Designed
5 to Study the Effects of Suggestive Interviews
6 -- Like Those in This Case -- On Children's
7 Ability to Provide Accurate Reports," is that
8 correct, ma'am?

9 A. Mm-hmm. Yes.

10 Q. And then you begin to go through in the
11 following pages all of the different things
12 that you've testified to about interviewer
13 bias and so on?

14 A. Okay.

15 Q. Now, with respect to the interviewer bias
16 that we've talked about a great deal, you've
17 talked about that Janitor Study, that I
18 believe was in 1997?

19 A. Yes.

20 Q. You would agree with me, would you not, that
21 that study had nothing to do with the
22 physical integrity of the child?

23 A. In terms of the child being touched?

24 Q. Correct.

1 A. No. I agree with you.

2 Q. It was only an observation by the child of
3 the janitor coming into the room and doing a
4 variety of things?

5 A. Yes.

6 Q. Now, you have stated that the interviewer
7 bias is a very crucial part of an interview?

8 A. No. What I stated is that the neutrality --
9 in terms -- the neutrality of an interviewer
10 is a very crucial part of an interview or a
11 good interview, yes.

12 Q. So, in fact, interviewer bias plays quite
13 heavily into whether or not a child's report
14 is accurate, do you agree with that?

15 A. Yes.

16 Q. Now, you've indicated that in order to
17 prepare your affidavit as well as to prepare
18 for your testimony here today, you reviewed
19 the transcripts of the testimony of several
20 of the experts that testified at the 1987
21 trial?

22 A. I did.

23 Q. Now, I'm referring specifically to Dr.
24 Schuman, who testified at a pretrial motion

1 hearing on March 20th of 1986?

2 A. Mm-hmm.

3 Q. Now, Dr. Schuman, on page 16 of his
4 testimony, talked about interviewer bias, did
5 he not?

6 A. Can I see the record?

7 Q. Certainly.

8 THE COURT: And it's an exhibit?

9 MS. ROONEY: I'm sorry?

10 THE COURT: It's an exhibit also?

11 MS. ROONEY: Yes, it is.

12 THE COURT: What exhibit number?

13 MS. SULLIVAN: 55.

14 THE COURT: 55. Okay.

15 A. (Witness examines document.)

16 Okay. Yes. Well, I think he described the
17 concept--

18 Q. Ma'am -- Do you need to look at it again?

19 A. Well --

20 Q. Perhaps I'll give you the exhibit, that will
21 be helpful.

22 THE COURT: Thank you.

23 A. Yes. What page are we on?

24 Q. Page 16.

1 A. (Witness examines document.)

2 I don't really see where the term interview
3 bias is used to begin with.

4 Q. Are you on page 16, ma'am?

5 A. Yeah.

6 Q. He does not use the term interviewer bias.

7 A. Okay.

8 Q. What he says is -- and I'm again reading from
9 page 16 -- "Well, to boil it down, the child
10 winds up conforming to the inadvertent
11 expectations of what the child is supposed to
12 say. What that does in clinical terms is to
13 impair the voluntariness of the child's
14 reports and thereby impacting adversely on
15 the child's voluntary component of
16 competency," is that correct?

17 A. Yes.

18 Q. He's referring there, is he not, to the
19 expectations of an interviewer, of what the
20 interviewer expects the child to say, and
21 then says that the child conformed to those
22 expectations?

23 A. I think he's trying to say that, yes.

24 Q. And I refer you, again, to the testimony of

1 Dr. Erickson, which is trial testimony --
2 it's Exhibit 56, the last volume on the
3 exhibit list, 12.

4 For the record, I'm handing Dr.
5 Bruck, it's Exhibit 56, subsection 12, which
6 is Dr. Erickson's testimony, and I believe
7 subsection 11, which is Dr. Skidmore's
8 testimony.

9 A. Okay.

10 THE COURT: And you're asking about?

11 [By Ms. Rooney:]

12 Q. I'm referring to Dr. Erickson's testimony, on
13 page 9-31.

14 A. What --

15 Q. Are you on that page?

16 A. Well, I can't read the page. Where does it
17 begin? "Well, I can think of a couple of
18 instances" --

19 THE COURT: Let's just wait for the
20 question.

21 Q. I believe you're on the right page.

22 A. Okay.

23 Q. He goes on in this point to talk about --
24 that the interviewer failed to distinguish

1 between a caretaking touch and a sexual
2 touch?

3 A. Am I in the right interview here.

4 THE COURT: Do you have a line number,
5 too? Or there is no line number.

6 A. Okay. I have Dr. Erickson's testimony, right?
7 I'm on page 31.

8 Q. 9-31.

9 A. Okay. Give me a line --

10 Q. Top of the page between lines 4 and 9.

11 A. (Witness examines document.)

12 Q. He states, "But I would also point out that
13 there was not an effort made to specify that
14 the touch, for instance, that was inquired
15 about, was different than touch in
16 caretaking."

17 A. Okay.

18 Q. So he's talking about, again, in this portion
19 of his testimony, that the interviewer,
20 namely Susan Kelley, made no effort to
21 distinguish what would be considered normal
22 caretaking touch, such as you testified to,
23 about changing the pants if the child had an
24 accident, and a sexual touch?

1 A. Right.

2 Q. Again, another example of interviewer bias?

3 A. Yes.

4 Q. And I refer you again in Dr. Erickson's
5 testimony to page 9-137.

6 A. Okay.

7 Q. Lines 7 through 11.

8 A. (Witness examines document.)

9 Q. He's talking about the normal response or
10 reaction of a typical parent learning that
11 their child may have been abused would be to
12 hope that it did not happen to their child?

13 A. Yes.

14 Q. So that in effect is talking about sort of
15 the other side of interviewer bias, that a
16 parent might not want to believe that sexual
17 abuse had occurred and might have different
18 expectations of a child?

19 THE COURT: Is your answer "yes?"

20 A. This is what the question is, yes.

21 Q. Now, you would agree -- you talked about,
22 yesterday, that B [REDACTED] L [REDACTED] disclosed to his
23 mother, do you remember saying that
24 yesterday?

1 A. I think he disclosed to his mother some time
2 in January after therapy.

3 Q. He actually disclosed to M [REDACTED] M [REDACTED],
4 which was his mother's boyfriend.

5 A. Oh.

6 Q. Do you recall that?

7 A. I didn't know that he disclosed to M [REDACTED]
8 M [REDACTED], but I have to look back at my
9 notes.

10 Q. And M [REDACTED] T [REDACTED], you've testified that she
11 actually talked about the allegations to her
12 mother's fiance, who was a police officer, a
13 Steven DiPietro?

14 A. Right.

15 Q. And that J [REDACTED] O [REDACTED], when she first made
16 the allegations about sexual abuse, she did
17 that to her mother in the car ride on the way
18 home?

19 A. I didn't testify to that.

20 Q. Do you recall that there was testimony that
21 after the Susan Kelley interview --

22 A. Oh, J [REDACTED] B [REDACTED].

23 Q. I'm sorry. J [REDACTED] B [REDACTED].

24 A. J [REDACTED] B [REDACTED]. I'm sorry.

1 Q. J [REDACTED] B [REDACTED], no disclosures during the
2 interview?

3 A. Right.

4 Q. But disclosures were made to her mom in the
5 car ride on the way home?

6 A. Yes.

7 Q. And that J [REDACTED] O [REDACTED] made disclosures to
8 her mother as well?

9 A. That's right.

10 Q. Now, you would agree with me that all of
11 those parents, including the boyfriend,
12 slash, fiance of these mother's, they don't
13 want to hear that the child's been sexually
14 abused?

15 A. I can't tell you what they wanted to hear.

16 Q. So it's your testimony that M [REDACTED] T [REDACTED]'s
17 mother wanted to hear that her child had been
18 sexually abused by the defendant?

19 MR. WILLIAMS: I object. She just
20 said she doesn't know.

21 THE COURT: You may answer that
22 question. Overruled.

23 A. What I understand from the record was --

24 Q. Ma'am, the question is, did M [REDACTED] T [REDACTED] s

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1 mother want to hear that her child had been
2 sexually abused?

3 THE COURT: And let's let her answer
4 the question.

5 MS. ROONEY: I believe it can be
6 answered with a yes or no.

7 THE COURT: Well, I'll disagree. You
8 may answer the question.

9 A. What I understand from the record was the
10 parents were told that sexual abuse had
11 occurred in the day care. They were told to
12 question their child. They were told not to
13 accept no as an answer; that no did not mean
14 no. And that -- and so, my impression is
15 that the parents didn't want their children
16 to be sexually abused, but when they heard
17 "no," it wasn't a relief to them; that they
18 were waiting to hear that their children were
19 sexually abused.

20 It's not that they wanted them to be,
21 but the expected answer that they were
22 waiting for was that something had happened
23 bad at the day care and they were ready to
24 hear it.

1 Q. So the expectation of these parents was that
2 their children had been sexually abused and
3 it was their goal, their mission, to question
4 their child until they said, "Yes, I was
5 sexually abused too?"

6 A. I can't tell you if that was in the head of
7 the parents. But certainly that's what the
8 police told parents, to question their
9 children and not to take no for an answer.

10 Q. I'm asking you now about the interviewer bias
11 as it pertains to those parents --

12 A. Right.

13 Q. -- when the children made their first
14 allegations to the parents, was it the
15 expectation of those parents and the desire
16 of those parents to hear allegations of
17 sexual abuse by their child?

18 A. I can't tell you about what their desire was.

19 Q. Was it their expectation?

20 A. Their expectation was that there had been
21 sexual abuse and that their children had been
22 in the day care, and their children had
23 previously said no, it hadn't happened, which
24 could be a sign that yes, it did happen.

- 1 Q. So the fact that one of these mothers is
2 telling coworkers that my son wasn't abused,
3 and is telling the pediatrician, "I don't
4 think my child was abused," that has no
5 bearing on their expectation; that doesn't
6 tell you anything about whether or not they
7 want to hear allegations of sexual abuse from
8 their child?
- 9 A. When did Mrs. L [REDACTED] tell her coworkers that?
- 10 Q. After the parents' meeting at the police
11 station?
- 12 A. Billy Leary did not make allegations until
13 the end of January.
- 14 Q. That's correct. So all of a sudden in
15 January she starts thinking my child was
16 abused, but back in September, after she goes
17 to the parents' meeting, she's not thinking
18 her child was abused?
- 19 A. My understanding is that Mrs. Leary said, "I
20 can't handle it if my child tells me I'm
21 abused, so I'm going to send him to a
22 therapist."
- 23 Q. Because she didn't want to believe that her
24 child had been abused?

1 A. I don't know if she didn't want to believe it
2 or didn't want to hear it, but she said, "I
3 don't want to learn ten to fifteen years down
4 the line," and she put her child into
5 therapy, and then we also have this statement
6 by the therapist that said, "At the mother's
7 insistence, he's come to talk to me about
8 this." I mean, I can't tell you what's in
9 the parents' heads.

10 Q. Can you tell us what's in the minds of the
11 police officers?

12 A. No, I can't.

13 Q. Can you tell us what was in the mind of Susan
14 Kelley?

15 A. I can tell you what Susan Kelley -- about
16 Susan Kelley's words, which are the only --

17 Q. Can you tell us about what was in Susan
18 Kelley's mind?

19 A. No.

20 Q. And you can't tell us what was in the mind of
21 the police officers?

22 A. No, I can't.

23 Q. There's also a 1995 study conducted by Gail
24 Goodman, et. al., and that study included

1 false suggestions of abuse when mothers
2 interview their children. Are you aware of
3 that study?

4 A. I know that study.

5 Q. And in fact, she found that children were
6 more resistant to suggestions when questioned
7 by their mothers versus being questioned by
8 strangers?

9 A. On very -- on a very small number of --

10 Q. So you disagree with her findings?

11 A. I don't disagree with her findings, but if
12 you read it carefully, she says on most
13 measures mothers and non-mothers did the
14 same. There are some very small differences
15 in that study, and I agree that when the
16 mothers question their children that
17 sometimes the children are more accurate.

18 Q. And sometimes they're not?

19 A. Sometimes they're as accurate, as accurate as
20 the non-mothers.

21 Q. You also talked about, during your testimony,
22 about the danger of specific and leading
23 questions of children?

24 A. Yes.

1 Q. And I refer you now to the testimony of Dr.
2 Skidmore on page 10-79.

3 THE COURT: This is trial testimony?

4 MS. ROONEY: Again, this is all trial
5 testimony.

6 THE COURT: From exhibit 56,
7 subsection 11?

8 MS. ROONEY: That's correct.

9 A. Okay.

10 Q. Lines 9 through 14. Dr. Skidmore testified
11 that, "The questions themselves need to be
12 nonleading, that is, to be asked in as
13 neutral a way as possible, and that goes for
14 adults, too, by the way, but it is more
15 important when we are dealing with kids,
16 because they are much more vulnerable to
17 suggestibility."

18 A. Yes.

19 Q. If you look on the next page, 10-80, Dr.
20 Skidmore goes on to talk about, "Both the
21 actual language and the way the words are put
22 together, and the tone of voice that is used,
23 the setting, the environment, the effect or
24 objectivity of the interviewer or examiner,

1 all of that goes into neutrality." She
2 testified to that before the jury?

3 A. Yes.

4 Q. Now, referring you to page 10-87 of Dr.
5 Skidmore's testimony where she states that --
6 the question is asked, "Dr. Skidmore, would
7 you characterize the interviewer that you saw
8 in J [REDACTED] B [REDACTED] s case as a neutral
9 interviewer?"

10 Answer: "Very few sentences,
11 questions, or phrases across the interview
12 were neutral."

13 Is that her testimony?

14 A. Mm-hmm. Yes.

15 Q. I refer you now to Dr. Erickson's testimony
16 before the jury, which is Exhibit 56,
17 subsection 12. And I'd ask you to turn to
18 page 9-30, and again, I understand that the
19 numbers are a bit cut off at the top.

20 A. Okay. This is the one with the cut-off ones?

21 Q. Yes.

22 A. Okay. What's the number you want me to look
23 at?

24 Q. It's page 9-30, and I'm referring you

1 specifically to lines 7 through 11.

2 A. (Witness examines document.)

3 Okay.

4 Q. And he testifies, "Another very significant
5 influence is the questioning style of the
6 investigator, and also the issue of how the
7 child perceives the importance of the
8 interview and the investigator."

9 That was his testimony before the jury?

10 A. Yes.

11 Q. And referring you in that same exhibit to
12 page 9-172, the question was, "Do you have an
13 opinion regarding the interviewing techniques
14 that were used during the course of those
15 videotaped interviews?"

16 Answer: "There were many parts or
17 many sequences that were extremely suggestive
18 and leading and selective in their response
19 to the child's answers."

20 That was his testimony?

21 A. Yes.

22 Q. Now, you would agree with me, would you not,
23 Dr. Bruck, that in order to get a disclosure
24 from a child, one might have to in fact use

1 some direct questioning?

2 A. Yes, I agree with that.

3 Q. And in fact, the question, "Was there anybody
4 you didn't like at school, or was there any
5 of the teachers that you didn't like at day
6 care," would you agree that's an open-ended
7 question?

8 A. I think that's a question one could use in
9 conjunction with the question, "Tell me about
10 the people you like."

11 Q. And in fact, if you just asked a child, "Tell
12 me about school," you would agree that it
13 would be an incredibly short conversation?

14 A. In some cases it could be a very short
15 conversation; in some cases you might get a
16 lot of information. Or just try it.

17 Q. But you would agree -- I'm sorry?

18 A. You should try it.

19 Q. You should try asking, "Tell me about school
20 today?"

21 A. You should always try, starting with the
22 open-ended questions, and see how much
23 information you get.

24 Q. And if you don't, then you should move on to

1 some more specific, more directed questions?

2 A. Slowly, yes.

3 Q. Now, you also talked about, in your testimony
4 and in your affidavit, the danger of repeated
5 interviews?

6 A. Yes.

7 Q. And I refer you now to Dr. --

8 A. To repeated suggestive interviews.

9 Q. And I refer you to Dr. Schuman's testimony at
10 the pretrial hearing, referring you to page
11 19, lines 12 through 16, where he testifies,
12 "The use of repetitive interviews or multiple
13 interviewers of a child would have a definite
14 impact on the child's capacity to report with
15 neutrality."

16 A. I see that, yes.

17 Q. Would you agree with me that there was a
18 study done in 1991 by Ornstein and Brainerd,
19 which had a finding -- state that it's well-
20 established that repeated interviewing can
21 help children maintain accurate memory by
22 keeping the information from being forgotten?

23 A. That's incorrect. They didn't do a study.
24 They wrote a paper, and in that paper they

1 reviewed literature on what was known about
2 children's reporting when they're asked over
3 a -- non-suggestive interviews about events.

4 Q. And their finding that it was well-
5 established that repeated interviewing helped
6 children maintain accurate memory by keeping
7 the information from being forgotten?

8 A. Yes. At that point, I think that finding is
9 now disputed, but in 1991, that's the
10 finding, but for non-suggestive interviews,
11 okay.

12 THE COURT: Let me just clarify. This
13 is a 1991?

14 MS. ROONEY: That's correct.

15 [By Ms. Rooney:]

16 Q. Now, you also talked about the emotional tone
17 of the interview and how that factors into a
18 child's report?

19 A. Yes.

20 Q. And that's on page 36 of your affidavit.

21 A. (Witness examines document.)

22 Q. Dr. Schuman testified at the pretrial hearing
23 about: "One additional factor comes to mind,
24 and that is, the use, the application of

1 interviews in a highly emotionally-charged
2 atmosphere, either an atmosphere of pressure
3 or in the presence of people who are known to
4 the child to have a powerful and emotional
5 investment in the process, people who are
6 either scared or angry, or very anxious, or
7 who evince through the child those kinds of
8 emotions that would inevitably have some kind
9 of skewing impact on the child."

10 Is he talking there about the
11 emotional tone of the interview?

12 A. The atmosphere of the interview, yes.

13 THE COURT: This is at the pretrial
14 hearing, at what page?

15 MS. ROONEY: I'm sorry. On page 20 of
16 the pretrial hearing.

17 Q. And I refer you to Dr. Skidmore's trial
18 testimony--

19 THE COURT: Let me, so that I
20 understand, Dr. Schuman did not, or was not
21 allowed to testify at the trial?

22 MS. ROONEY: He did not testify at the
23 trial. Dr. Skidmore and Dr. Erickson
24 testified at the trial.

1 [By Ms. Rooney:]

2 Q. And Dr. Skidmore testified on page 10-80,
3 that "Both the actual language and the way
4 the words are put together, and the tone of
5 voice that is used, the setting, the
6 environment, the effect or objectivity of the
7 interviewer or examiner, all of that goes
8 into neutrality."

9 And Dr. Erickson, on page 9-30 --

10 THE COURT: That was a "yes?"

11 A. Yes. I'm sorry. Yes.

12 THE COURT: And then, what was the
13 last?

14 Q. Dr. Erickson, on page 9-30, talked again
15 about "the questioning style of the
16 investigator, and also the issue of how the
17 child perceives the importance of the
18 interview and the investigator."

19 Would you agree that that goes to the
20 emotional tone of the interview? And that's
21 on page 9-30, line 7 through 11.

22 A. (Witness examines document.)

23 Uhm, that goes to emotional tone. It goes to
24 what we call interviewer status also, yes.

1 Q. And that's adults of high status, I believe
2 you referred to that as well?

3 A. Adults of high status or credible
4 interviewers, yes.

5 Q. You also talk about, in your affidavit, the
6 use of rewards and punishments?

7 A. Mm-hmm. Yes.

8 Q. And that's on page 39 of your affidavit?

9 A. Yes.

10 Q. And Dr. Schuman testified at the pretrial
11 hearing, a question was asked of him, "Tell
12 me -- if you tell me what we want to know
13 we'll get you a cookie, or we'll give you a
14 coloring book, or we'll let you go out and
15 play, that kind of thing, the operating of a
16 reward or a present." And his answer was, "I
17 really find that hard to believe. That's not
18 standard interviewing procedure?"

19 A. Yes.

20 Q. And he went on to say that he finds that hard
21 to believe. That it's inappropriate, it
22 shouldn't be used?

23 A. Yes.

24 MR. WILLIAMS: Your Honor, I don't

1 mean to interrupt again. I'm just going to
2 object on relevance grounds to Dr. Schuman.
3 After all, Judge -- Justice Dolan ruled that
4 he was not allowed to testify. So whatever he
5 said, I don't see how it's relevant to what
6 we have to do here. He wasn't allowed to
7 testify in front of the jury, precisely for
8 the reasons we're suggesting.

9 THE COURT: I assume part of your
10 theory with this question about Dr. Schuman
11 is, this is not newly discovered evidence?

12 MS. ROONEY: That's correct.

13 THE COURT: What's the relevance of
14 his testimony at the pretrial hearing where
15 the finding was that it was not admissible at
16 trial to the argument of: this is newly
17 discovered evidence?

18 MS. ROONEY: Your Honor, that was not
19 the finding at the pretrial hearing. That
20 pretrial hearing was actually a Motion to
21 Dismiss or a Motion to Suppress the
22 Children's Testimony.

23 THE COURT: I see. Okay.

24 MS. ROONEY: So it was not, with

1 respect -- it was not really a proffer of
2 expert testimony. It was merely their
3 pretrial Motion to Dismiss the indictments or
4 to suppress the children's statement.

5 THE COURT: So your position, in part
6 is, it is not newly discovered evidence --

7 MS. ROONEY: That's correct.

8 THE COURT: -- and we don't know why
9 they didn't call Dr. Schuman at the trial,
10 but that was the defendants' decision?

11 MS. ROONEY: Right. And they did in
12 fact call Dr. Erickson and Dr. Skidmore, who
13 testified, as I'm going through, in substance
14 to what Dr. Schuman testified at the
15 pretrial.

16 THE COURT: Okay.

17 MR. WILLIAMS: But, your Honor,
18 Justice Dolan rejected the testimony on Frye
19 grounds based upon the standards prevailing
20 at that time.

21 THE COURT: Okay. I'll reconsider the
22 ruling if you can point to the hearing, a
23 little bit later, where she makes that
24 ruling. But for now, I'm going to overrule

1 the objection.

2 MR. WILLIAMS: Fair enough.

3 [By Ms. Rooney:]

4 Q. Dr. Bruck, you go on to talk about -- I
5 believe we just spoke about this -- adults of
6 high status and how that may have an effect
7 on a child?

8 A. Yes.

9 Q. I believe we just reviewed Dr. Schuman's
10 testimony, on page 19, he was talking about
11 adults of high status, and he also said,
12 "interviewing in costume could be a coercive
13 element." Included in that, a costume as a
14 police officer's uniform?

15 A. Yes.

16 Q. And Dr. Skidmore, on page 10-87, of her trial
17 testimony on June 10th, 1987 --

18 THE COURT: Dr. Skidmore?

19 MS. ROONEY: I'm sorry. Dr. Skidmore,
20 page 10-87, line 11 through 16.

21 Q. "Another major source of error in child
22 statements is the perceived authority, the
23 child's perception. What the kid believes the
24 authority of the interviewer to be.

1 Therefore, it is crucial to keep the
2 authority loading as low as possible, just by
3 the nature of the fact that I'm an adult,
4 you're an adult and you have a young child;
5 that's a whole lot of authority. If we have
6 two adults or more, it's really loading the
7 deck."

8 "If the interview is conducted in an
9 authoritative place like a principal's office
10 or a police department; it adds to that."

11 That was her trial testimony?

12 A. Yes.

13 THE COURT: One moment. How are you
14 doing with the speed.

15 [Court reporter indicates.]

16 THE COURT: Not great. Let's --

17 MS. ROONEY: I will, your Honor.

18 [By Ms. Rooney:]

19 Q. You also talked a great deal, Dr. Bruck,
20 about the distinction between fact and
21 fantasy and the use of imaging with the
22 child, and I believe you were talking about
23 those puppets, the Bert and Ernie Puppets.

24 I refer you to Dr. Skidmore's

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1 testimony, and ask you to look at page 10-93.

2 A. (Witness examines document.)

3 Q. Are you there, ma'am?

4 A. Yes.

5 Q. At the bottom of the page, Dr. Skidmore
6 testified that, "It's import to evaluate for
7 each child, the child's degree of
8 distinguishing fact from fantasy. Every child
9 mixes up fact and fantasy a lot."

10 Is that her testimony?

11 A. Yes, it is.

12 Q. Then she goes on on page 10-106, and states
13 that -- Question: "Doctor, if you could
14 comment on the learning process that a child
15 may go through during the course of the
16 interview with respect to the issue of fact
17 and fantasy, or the degree of the child's
18 ability to distinguish between fact and
19 fantasy?"

20 Answer: "Okay. Up until about the
21 age of six, a child does not distinguish fact
22 and fantasy, or dream and fact."

23 That was her testimony?

24 A. Yes. Yes, it was.

1 Q. And directing you to page 10-108 of her
2 testimony, referring you down to line 12. She
3 states that, "A young child will not be able
4 to sort out and tell the difference what part
5 of the content and what part got put into the
6 content and they remember and think occurred.
7 They just can't sort it out, and that's not a
8 problem of lying and telling the truth,
9 that's got nothing to do with it. It's a
10 matter of in the kid's way of thinking
11 thoughts at a very young level, they put the
12 two together. They do the same thing with
13 dreams."

14 That was her testimony?

15 A. I read that, yes.

16 Q. And referring you now to the testimony of Dr.
17 Erickson, page 9-29, line 6 through 9.
18 "Children of that age have difficulty
19 distinguishing between the memory of a real
20 act that they really experienced and the
21 memory of a fantasy. That's a very -- that's
22 a quality of children's thought that has been
23 studied in some detail, specifically by Dr.
24 John Flavell at Stanford University."

1 That was his testimony?

2 A. Yes.

3 Q. You also talked about the use of props and
4 cues and anatomical dolls in your testimony?

5 A. Mm-hmm. Yes. Sorry.

6 Q. And I refer you again to Dr. Skidmore's
7 testimony, page 10-101 through 103, and she
8 testified: "As I mentioned earlier,
9 throughout the interview, there are multiple
10 mistakes."

11 "It is important for the child, the
12 child's responses to the dolls, what we call
13 the stimulus item, and in this case dolls, to
14 be as much spontaneous coming from them" --

15 A. I'm sorry. I can't find this.

16 Q. It's on page 10-101 of Dr. Skidmore's
17 testimony.

18 A. 101?

19 Q. 101.

20 THE COURT: Yes.

21 A. What line?

22 Q. Beginning at line --

23 A. 13?

24 Q. 14.

1 A. 14. I'm sorry. Keep going.

2 Q. Do you have it?

3 A. Yes. You can continue.

4 Q. "Repeatedly, the dolls are thrust or at least
5 very assertively offered to the child. Very
6 quickly in the interview, sometimes in doing
7 interviews with kids, they never touch the
8 dolls in the first interview. If they touch
9 them, they are just somewhat curious."

10 And Dr. Skidmore goes on on page 103,
11 line 15, "The interviewer would point to the
12 area of the doll, or if the child was
13 somewhat close to that area, the genital or
14 the buttocks area, the interviewer would very
15 specifically say, 'what do you call that?'
16 Very focal attention.

17 Frequently, before any other part of the doll
18 had been dealt with, you make sure you have a
19 common language, what do you call this?
20 Whatever the kid, what their head is. What do
21 you call this?"

22 That was her testimony with respect
23 to the dolls?

24 A. Yes.

1 Q. And she also, on page 10-98, talked about the
2 use of projected techniques. And I refer you
3 to line 13 stating that, "So people
4 interviewing kids need to have a real careful
5 training and experience in using projected
6 techniques. How not to lead, how not to
7 overly influence the information you get one
8 way or another."

9 Is that Dr. Skidmore's testimony
10 before the jury?

11 A. Yes, it is.

12 Q. Dr. Skidmore also talked about the use of
13 peer pressure which you've detailed. And I
14 refer you to page 10-83 of Dr. Skidmore's
15 testimony; again, before the jury.

16 At the top of the page: "If you pull
17 one of her friends in on your side as an
18 interviewer, you are stacking the deck. It is
19 not just a simple question about the content
20 you are asking about. You have added an
21 emotional loading and the child will tend to
22 say in this case, it is my understanding that
23 the interviewer -- the child or not many
24 children want to be interviewed."

1 "So, here you have a child who
2 essentially is a stranger and now he's got
3 her a little bit, and the interview is about
4 fact-finding and trying to understand what
5 happened with the child, but the interviewer
6 brings in the child's friend."

7 Is that Dr. Skidmore's testimony?

8 A. Yes.

9 Q. And she goes on, talking about the friend as
10 an emotional ally?

11 A. Mm-hmm. Yes.

12 Q. And she also stated that, "It would be really
13 important for this child or for any child,
14 not to have any information that there had
15 been any interviews of other kinds."

16 A. Yes.

17 Q. And she also talked -- or you've also talked,
18 or would you agree with me that the supplying
19 of content to a child during an interview is,
20 would you say it's probably the most
21 egregious thing an interviewer could do?

22 A. No. I don't know if it's the most -- but it's
23 leading -- it's very leading. It's providing
24 information.

1 Q. And you certainly wouldn't recommend that?

2 A. You have to be more specific.

3 Q. Well, you certainly wouldn't recommend an
4 interviewer just going in and saying to the
5 child, "Did they take a stick and stick it in
6 your rectum?"

7 A. I don't think that's a good question.

8 Q. Now, you talked a little bit at the end of
9 your direct testimony about J [REDACTED]
10 B [REDACTED]'s, shall we say, disclosure. She was
11 interviewed by Susan Kelley?

12 A. Yes.

13 Q. She made no allegations of any kind of sexual
14 abuse?

15 A. No.

16 Q. And on the way home, that's when she starts
17 talking to her mother?

18 A. Right.

19 Q. She bursts into tears actually --

20 A. Okay.

21 Q. -- is the first thing she does.

22 Have any of the children in any of your
23 research studies burst into tears?

24 A. Have any of the children burst into tears?

1 No. I don't think - No.

2 Q. And in the car on the way home, Jennifer
3 Bennett makes a disclosure about a pencil
4 being inserted into her vagina or her rectum?

5 A. Yes.

6 Q. And she talks about a thermometer being
7 inserted into her vagina or rectum?

8 A. Yes.

9 Q. She talks about a clown touching her on her
10 vagina or rectum with the clown's penis?

11 A. Yes.

12 Q. She describes how she'd been threatened with
13 her family being killed and with her being
14 killed?

15 A. Yes.

16 Q. And you'd agree, as you agreed on direct
17 examination, that none of those specific
18 things were mentioned by Susan Kelley in that
19 interview?

20 A. I agree.

21 Q. And M. [REDACTED] T. [REDACTED], the statements that she
22 made in September of 1984 to her mother's
23 then fiance, those disclosures had nothing to
24 do with the videotaped interview by Susan

1 Kelley which occurred many months later?

2 A. Yes.

3 Q. Dr. Bruck, if I could talk with you for a
4 moment about the anatomical dolls.

5 A. Yes.

6 Q. You state on page 48 of your affidavit that
7 "recent studies indicate that use of the
8 dolls does not improve accuracy of reporting
9 by young children?"

10 A. Right.

11 Q. And that, in fact, "In some cases, children
12 are more inaccurate with the dolls?"

13 A. Yes.

14 Q. Are you familiar with the "American
15 Professional Society on the Abuse of Children
16 Practice Guidelines for Anatomical Dolls?"

17 A. Can you give them to me? I've read them.

18 Q. You've read them?

19 A. Mm-hmm.

20 Q. And you're aware that the way that they come
21 up with those practice guidelines is by
22 asking clinicians across the country, who are
23 experienced in the treatment of children who
24 are sexually abused, and asking them whether

1 or not they agree with these guidelines?

2 A. I don't know how they come up with their
3 guidelines.

4 Q. Would you agree that the guidelines represent
5 a consensus of clinicians across the nation?

6 A. I really don't know.

7 Q. And in these Practice Guidelines, the
8 statement is that, "The majority of available
9 research does not support the position that
10 the dolls are inherently too suggestive and
11 over stimulating to be useful in sexual abuse
12 investigations and evaluations." And they
13 refer --

14 THE COURT: And the date?

15 MS. ROONEY: 1995.

16 Q. And they refer to that Everson and Boat
17 study, which I believe you referenced
18 earlier?

19 A. Yes.

20 Q. You disagree with the Everson and Boat Study,
21 is that correct?

22 A. No, I don't.

23 Q. And they talk in here about how there have
24 been three studies using anatomical dolls as

1 interview aides with children in the three to
2 seven-year-old age, and it found that the
3 dolls increased recall accuracy with little
4 or no increase in false reports of genital
5 touching. And for support on that, they
6 refer to a study by Katz, Schonfeld, Carter,
7 Leventhal and Cicchetti, 1995?

8 A. Yes. Mm-hmm.

9 Q. A study by Saywitz, Goodman, Nicholas and
10 Moan in 1991?

11 A. That's right. Mm-hmm.

12 Q. And a study by Steward and Steward, which was
13 in press at the time?

14 A. Yes, but that -- they're wrong, that's their
15 interpretation of that study, but anyway.

16 Q. And in fact, they go on to state, "That in
17 contrast to those three studies is the one
18 study conducted by you, which reported high
19 rates of false assertions and false denials
20 of genital touching among children under age
21 three and a half years when the dolls were
22 used as interview aides in conjunction with
23 direct-leading and misleading questions."

24 So in effect, what the guidelines

1 are saying, there are three studies that say
2 that the anatomical dolls are okay, and
3 there's one study conducted by you which says
4 that they're not so okay, is that correct?

5 A. Well -- that's what the guidelines say.

6 Q. And, in fact, are you aware of a recent study
7 conducted in 1997 by Goodman, Quas,
8 Batterman-Faunce? They're talking about a
9 memory for medical tests?

10 A. Yes.

11 Q. Where I believe it's genital catheterization
12 of children?

13 A. Yes.

14 Q. And they found that: "Even three-year-olds
15 are more likely to report a genital touch
16 actually experienced when given an
17 anatomically correct doll to reenact the
18 medical tests than when only asked free-
19 recall questions?"

20 A. I have to review my notes of that study, but
21 I remember reading that. But those are
22 children who had actually been touched.

23 Q. Correct.

24 A. They didn't have a group of children who had

1 not been touched.

2 Q. That's correct.

3 I don't know that you really discussed this
4 in your direct testimony a great deal, but
5 with respect to core versus peripheral
6 details --

7 A. Yes.

8 Q. -- I believe you stated that you would agree
9 that peripheral details are really what the
10 studies focused on early on?

11 A. Yes.

12 Q. And you would agree that personally
13 significant events are better retained in
14 memory than less significant events such as
15 those that are typically used in most abuse
16 research studies?

17 A. Yes.

18 Q. Would you agree that there are a number of
19 studies that highlight the strength of
20 children's memory, that try to show how good
21 even very young children are at recalling
22 salient events?

23 A. I am aware of the studies that show when
24 children are questioned non-suggestively

1 under very neutral conditions, they can show
2 -- they are very accurate in telling. And
3 I've reviewed some of those studies today in
4 our own control groups where children are not
5 asked any suggestive questions when they're
6 quite accurate in telling about central
7 events, yes.

8 Q. So there are a number of studies that
9 highlight the strength of children's memories
10 under those conditions that you've just said?

11 A. Under neutral, non-leading, non-suggestive
12 conditions, children can come to tell many
13 significant events that have happened to
14 them, yes.

15 Q. And would you also agree that there are
16 numerous examples in the literature and the
17 studies and the research that talk about the
18 difference between the ability of the child
19 to remember a core event versus the ability
20 of a child to remember peripheral details of
21 an event?

22 A. No.

23 Q. You don't agree with that?

24 A. No, I don't -- I -- you have to refresh my

1 memory on what those studies are.

2 THE COURT: Is this referring to the
3 same studies that you were asking about just
4 a moment ago? The studies regarding the --

5 MS. ROONEY: The studies in general,
6 the studies that she has in fact testified
7 to.

8 [By Ms. Rooney:]

9 Q. Well, are you familiar with literature and
10 the studies and the research that talk about
11 the difference between the ability of not
12 only adults but also children to remember
13 core events more easily --

14 A. Well, this is a general --

15 Q. -- and more accurately?

16 A. Yes. I'm sorry.

17 Q. You are.

18 A. I'm sorry. Continue.

19 Q. And would you agree that part of the reason
20 for the memory of the core events is the
21 importance that the child attributes to those
22 events versus the importance that a child
23 attributes to the peripheral detail, such as,
24 the color of someone's beard?

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- 1 A. Well, they're more salient and they become
2 encoded in memory, and it's the gist of
3 events that do get coded in memory and these
4 other things unless they have personal
5 significance, do tend to drop out over time.
- 6 Q. So you would agree that the gist of a memory,
7 of a core of a memory for a child, is more
8 accurately recalled than sort of the
9 surrounding details?
- 10 A. I -- I have to really think of specific
11 studies that have specifically compared
12 central to just -- to peripheral recall. But
13 I'm sure there are some that show that
14 children are much better, or adults are much
15 better at the more central ones.
- 16 Q. You agree with that in any event?
- 17 A. Yes.
- 18 Q. Now, you talked, I believe it was yesterday,
19 about the inoculation study that you
20 conducted?
- 21 A. Yes.
- 22 Q. I believe the article's entitled, "I Hardly
23 Cried When I Got My Shot!?"
- 24 A. Yes.

1 Q. There was a phase one of that study that
2 found that there were no effects of
3 suggestion on children's recall of a salient
4 event --

5 A. Right.

6 Q. -- that involved their own bodies, their own
7 feelings and their own actions?

8 A. Yes. I talked about that yesterday.

9 Q. You've talked about phase one?

10 A. Yes, I did.

11 Q. You also talked about phase two, when you
12 modify the study a little bit, and then found
13 that there is a somewhat greater latitude in
14 the scope of children's suggestibility than
15 indicated in phase one?

16 A. Yes. I talked -- Can I explain what I said
17 yesterday or --

18 Q. My question is simply that phase one --

19 A. We did not find differences.

20 Q. And then you modified it in some manner, and
21 then in phase two, you found some
22 differences?

23 A. Well, we modified it and then there is a year
24 that passed. There was also a delay between

1 the event and the questioning period, yes.

2 Q. So it changed in some manner?

3 A. I beg your pardon?

4 Q. The study, phase two, was different from
5 phase one?

6 A. Well, it was much longer from the -- from the
7 -- I'm sorry -- the inoculation. Phase one,
8 we asked children about the inoculation five
9 to seven days right after.

10 Q. And you asked them about the pain, is that
11 correct, that was about the pain --

12 A. We asked about pain and crying in both
13 phases, yes.

14 Q. Would you agree that those questions really
15 have to do with the child's emotions, how it
16 felt, did it hurt?

17 A. The hurt had to do with -- I don't know.
18 That's an interesting question. Emotions? I
19 really don't know what's involved in
20 reporting hurt.

21 Q. Well, did you ask the child --

22 A. There are physical -- certainly there are
23 physical qualities to remember, and when we
24 questioned them -- I'm sorry -- at time one,

1 they hurt. I mean

2 Q. Because they got a shot?

3 A. The inoculation was still hurting them a week
4 later. So at that point I don't know if we
5 were questioning them about their emotions or
6 just their physical sensations.

7 Q. Well, would you agree that pain is a feeling?

8 A. Yes.

9 Q. You feel pain?

10 A. If there is a physical sensation, yes.

11 Q. So you were questioning the child about the
12 pain that they were feeling or not feeling,
13 depending upon the child?

14 A. We asked them the question, "How much did it
15 hurt," right.

16 Q. You didn't ask them the question whether or
17 not they actually got a shot?

18 A. No, we didn't ask them.

19 Q. And would you agree with me that those Simon
20 Says Studies that were conducted back in
21 1986, they sort of involve the child's
22 participation in the event versus a child
23 just observing an event?

24 A. Well, there is one -- as my memory is, there

1 is one study that was conducted by Goodman
2 and Reed in 1986, so I don't think there were
3 studies. I think there was one.

4 Q. But they refer to it as the Simon Says
5 Studies because there were subsequent ones
6 after that?

7 A. Well, some people refer to -- I mean, I don't
8 think Goodman refers to them as the Simon
9 Says Studies, but there was one conducted in
10 1986.

11 Q. And they found that participation in a real-
12 life event heightened the children's
13 resistance to suggestion?

14 A. I don't think that was the 1986 study. I
15 think it's the 1991 study.

16 Q. And did they in fact find that?

17 A. Well, I didn't know I was going to testify
18 about that, but we actually wrote a critique
19 about their conclusions about participation.

20 Q. You disagree with the Goodman findings that
21 participation in a real-life event heighten
22 the children's resistance to suggestion?

23 A. Can I review my notes on this before I answer
24 the question?

1 THE COURT: You may.

2 A. (Witness examines document.)

3 In our book on page 69, we have a footnote
4 that modifies their interpretation. And, I
5 mean, it's been several years since I wrote
6 this, but I -- certainly when we wrote this,
7 I can tell you, I went through the study many
8 times.

9 Q. So you interpret their study differently than
10 they interpreted it, is that correct?

11 A. We interpret the results differently than
12 they do, yes.

13 Q. Would you agree -- and I'm referring now back
14 to the 1986 study, not the 1991 --

15 A. Right.

16 Q. -- that their findings in that study
17 indicated that children showed high
18 resistance to suggestion about actions that
19 might be associated with abuse?

20 A. I haven't read that study for a very long
21 time, so--

22 Q. So you're not sure about that?

23 A. I'm not sure, but it was one of their early
24 studies, and generally I can say that I agree

1 with their interpretations of those data.

2 Q. Now, you spent some time talking about the
3 disclosure process and how that comes about?

4 A. Yes.

5 Q. And have you ever had a child, a child who
6 had been sexually abused, disclose to you?

7 A. I don't understand.

8 Q. Have you ever personally observed a
9 disclosure process by a child who's been
10 sexually abused?

11 A. Uhm, yes.

12 Q. How many times?

13 A. I'd have to go back and look at my notes from
14 when I spent time at Northshore Hospital. So
15 I can't --

16 Q. And is that when you were observing other
17 clinicians so that you -- I believe you said,
18 so you could learn the process?

19 A. Yes. Well, I wasn't there to learn the
20 process. I was there to understand what
21 happened. I mean, I have no intent of ever
22 becoming a clinician or to learn these
23 techniques myself.

24 Q. But you want to be aware of the process and

1 how it works?

2 A. Yes.

3 Q. And there were children, while you were doing
4 this, would you call it an observation, or
5 what would you call it?

6 A. I don't know. Visit.

7 Q. While you were --

8 A. A study leave.

9 Q. When you were doing this visit --

10 A. I was allowed to sit in on evaluations that
11 clinicians conducted with families and
12 children.

13 Q. And during some of those evaluations children
14 actually disclosed sexual abuse?

15 A. Yes.

16 Q. Now, did you participate in it, or were you
17 an observer?

18 A. I did not participate.

19 Q. Now, you referred to, I believe it was
20 guidelines, that Roland Summit had come up
21 with, and that was sort of what you believe
22 was in the minds of the police?

23 A. No, I don't think I said that. I said -- and I
24 don't think that Roland Summit came up with

1 guidelines. I think that Roland Summit tried
2 to describe the phenomenon that he -- he
3 tried to describe a phenomenon of disclosure,
4 and it was called the sexual accommodation
5 syndrome or something.

6 Q. And in part, that was a child might disclose
7 a little bit, recant a little bit, tell a
8 little bit more, go back and forth, that was
9 sort of his theory at the time?

10 A. I don't know if it was a theory. I don't
11 think it was a theory.

12 Q. What was it?

13 A. I think it was just a way to describe a
14 series of events that might be helpful to
15 clinicians in terms of their practices in
16 understanding why children who have been
17 sexually abused might go through these --

18 Q. Stages?

19 A. Stages, behaviors, whatever, yes.

20 Q. And you indicated that Roland Summit had
21 never seen a sexually abused child and that
22 he came up with this theory?

23 A. I've read that.

24 Q. Do you know that?

1 A. Well, the book -- there's a book that Debbie
2 Nathan and Mike Snedeker (phonetic spellings)
3 wrote in which they say that he never
4 assessed sexually abused children himself.

5 Q. Similar to you?

6 A. Yes.

7 Q. Now, are you aware there was a book by, I
8 believe it's Karen Kuehnle, in 1996,
9 Assessing Allegations of Child Sexual Abuse.
10 Are you familiar with that text at all?

11 A. What's her name?

12 Q. It's -- I could be saying it wrong. I could
13 spell it for you.

14 A. Could you spell it?

15 Q. K-u-e-h-n-l-e.

16 A. She's from Florida?

17 Q. Yes.

18 A. Yes, I've seen -- well, I've glanced
19 through --

20 Q. That book?

21 A. Mm-hmm.

22 Q. And in that she talks about how disclosure
23 tends to be a process rather than a single
24 event --

1 A. Yes.

2 Q. -- with children disclosing --

3 A. Well, I don't know --

4 Q. -- further pieces of information --

5 A. Okay.

6 Q. -- over time?

7 A. Well, if that's what she writes, yes.

8 Q. Which is similar in theory to what Roland
9 Summit said?

10 A. Mm-hmm.

11 Q. And you would agree that, or do you know,
12 that this book by Karen Kuehnle is sort of
13 considered to be, if you will, a primer for
14 people who are assessing allegations?

15 A. I don't know that. Is --

16 Q. Can --

17 A. Okay.

18 Q. Now, you indicate -- I'm referring you now to
19 page 9 of your affidavit -- that: "There is
20 little scientific evidence to support the
21 view that children may not readily or
22 consistently disclose sexual abuse when
23 directly asked about it?"

24 A. Yes.

1 Q. And you go on in your affidavit to talk about
2 this Bradley and Wood article?

3 A. Yes.

4 Q. And you rely upon this Bradley and Wood, I
5 suppose it's a study, actually, the Bradley
6 and Wood Study?

7 A. It is a study, yes.

8 Q. And you rely upon that study to support the
9 statement about children not readily or
10 consistently disclosing sexual abuse when
11 directly asked about it?

12 A. Yes. And there's another study.

13 Q. I believe that's the Gray Study?

14 A. No. Johns and McGraw.

15 Q. If we could just take a moment and talk about
16 this Bradley and Wood Study.

17 A. Okay.

18 Q. Now, you're familiar with the term coding?

19 A. Coding --

20 Q. Coding.

21 A. How you code an interview or --

22 Q. Yes. How, when you do a study, that coding is
23 done, it's important to establish the
24 reliability of the coding?

1 A. Yes. Okay.

2 Q. Could you just tell us what coding is in that
3 context?

4 A. If you want -- could you tell me more about
5 it in terms of study, so I don't -- I can
6 kind of tell you exactly --

7 Q. I'm just asking, in a general term, coding is
8 something that is done in research studies to
9 further the validity of the results?

10 A. Sometimes, for example, if you have an -- you
11 have a description from a child and the
12 question is, "Does the child make an
13 allegation?" You have someone read through
14 and make a judgment, yes or no. You want to
15 know if someone else reads the same thing
16 will they in fact make the same judgment. And
17 so, you have sometimes one code -- two
18 coders, or more than two coders, look at the
19 same piece of data to make these subjective
20 judgments to see how consistent they are.

21 Q. Because you want to make sure, sort of like
22 we've been talking about interviewer bias,
23 that one person isn't sort of putting their
24 own spin on the study, you're sort of trying

1 to establish the reliability of the coding so
2 that --

3 A. You want to make sure you have an objective
4 process that you're using, yes, that can be
5 replicated.

6 Q. And you're aware that for this Bradley and
7 Wood Study, they didn't establish the
8 reliability of the coding?

9 THE COURT: They did or did not?

10 MS. ROONEY: They did not.

11 A. My understanding is that they selected cases
12 that had been validated by CPS workers.

13 Q. But are you aware that they did not establish
14 the reliability of the coding for this
15 particular study?

16 A. What was the coding?

17 Q. Well, they had -- one of the authors of the
18 article, I don't know if it was Bradley or
19 Wood, but one of the authors who knew what
20 the hypothesis was, simply monitored the
21 coding -- the coder's adherence to their
22 system. In other words, would you agree that
23 very often it's helpful to have a blind
24 coder, someone to come in who doesn't know

1 what they're looking for so they can just
2 sort of evaluate the research on its face?

3 A. This -- I -- I really -- this is not a very --
4 I don't really understand your question
5 because they got these interviews, right?

6 Q. Mm-hmm.

7 A. And what -- okay. So what they had to do was
8 to decide whether or not the child had denied
9 in the first interview, or whether there was
10 recantations.

11 Q. Right.

12 A. So that was probably what the coding was.

13 Q. That's correct.

14 A. Whether there was denial or whether there was
15 recantation.

16 Q. That's correct.

17 A. And what you're telling me is you're reading
18 -- from your reading of the article, they did
19 not have two people make this determination
20 and then compare?

21 Q. That's correct.

22 A. Okay.

23 Q. Do you know that or not?

24 A. I don't know that.

1 Q. Now, this study, all of -- where they got
2 sort of their subjects were from the New
3 Mexico Department of Protective and
4 Regulatory Services, is that correct?

5 A. I don't have the study in front of me, but if
6 you're reading from the method's section, I
7 agree with you.

8 Q. Well, the way that they conducted their
9 study, they studied the social service case
10 files of 249 child victims of sexual abuse,
11 and all of those were reported to sort of
12 their child protection agency in New Mexico,
13 and all of the cases that they looked at were
14 substantiated or validated for sexual abuse,
15 is that correct?

16 A. Yes.

17 Q. Now, you're aware that if we talk about the
18 demographics of that study, 76 percent of the
19 victims were Hispanic?

20 A. Right.

21 Q. And only 15 percent were non-Hispanic whites?

22 A. Yes.

23 Q. Would you agree that that limits the
24 generalized ability of these results to

1 children in this particular case who are non-
2 Hispanic whites?

3 A. One would have to do another study to see if
4 there are the same patterns of disclosure,
5 that's true.

6 Q. And you also are aware that in this study,
7 the Bradley and Wood Study, the perpetrator
8 was a member of the child's household in 59
9 percent of the cases, is that correct?

10 A. I don't -- I don't remember those figures,
11 but that's probably typical of these kinds of
12 case loads, yes.

13 Q. And are you aware that of the remaining 41
14 percent, Bradley and Wood don't even identify
15 who the perpetrator was?

16 A. Okay.

17 Q. So we have no idea of knowing if any of the
18 perpetrators in the Bradley and Wood Study
19 were day-care providers?

20 A. Okay.

21 Q. And it would be helpful to know if the
22 Bradley and Wood Study had day-care providers
23 in them so we could apply it to the facts of
24 this particular case, would you agree with

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1 me?

2 A. What you're saying -- what you're asking is -
3 - what you're saying is, it would be very
4 helpful to see how children who have been
5 abused, where we know they've been abused by
6 day-care workers, how they come to make
7 allegations of abuse. And it would be in
8 terms of any case, I mean, one wants the
9 evidence that most closely aligned with it;
10 in the real world --

11 Q. Absolutely.

12 A. -- that rarely happens.

13 Q. But my question is, essentially, you're
14 relying on the Bradley and Wood Study for the
15 proposition that states that children may not
16 readily or consistently disclose sexual abuse
17 when directly asked about it, and yet, the
18 children that were studied in that study, we
19 don't know who the perpetrators were, is that
20 correct?

21 A. I really have to read through that paper
22 more, but they were validated cases, right?

23 Q. They were all validated cases.

24 A. Okay.

1 Q. And if we could talk about the cases, in
2 fact, they only studied 67 percent of the
3 cases that were validated in 1992. They sort
4 of picked out the ones they wanted to study.

5 A. Mm-hmm.

6 Q. And then again, in 1993, they only picked out
7 56 percent?

8 A. Mm-hmm.

9 Q. So they didn't even look at all of the cases?

10 A. They probably looked -- you would have to put
11 Dr. Wood on the stand and ask him.

12 Q. But you relied on his study in your
13 affidavit?

14 A. Yes, I did.

15 Q. Now, the other thing that is perhaps
16 interesting about this study, the way they
17 made their evaluations was only through the
18 reading of the social services case files,
19 correct?

20 A. Yes. They had the case files. They didn't
21 have the children.

22 Q. They didn't have the children?

23 A. No.

24 Q. So they looked at the social services' notes?

1 A. They -- Yes.

2 Q. And it was on the basis of the social
3 services' notes that they made their call as
4 to whether or not a child had recanted or a
5 child had not recanted, correct?

6 A. Yes.

7 Q. Now, you in fact testified here that in your
8 opinion, notes from the social services can
9 be in fact useless?

10 A. Absolutely.

11 Q. Because sometimes they contain
12 misinformation?

13 A. Yes.

14 Q. They contain incorrect information?

15 A. Yes.

16 Q. They might in fact contain a recantation when
17 a recantation never happened?

18 A. That's possible.

19 Q. So there's no way of knowing what's the
20 reliability of those social services' notes?

21 A. It's a real problem with these studies.

22 Q. With this study in particular?

23 A. With also the Jones and McGraw Study, which
24 is children in Denver.

1 Q. Because, again, they were relying on those
2 types of notes?

3 A. They rely on the notes. We don't, you know --
4 they go by the best they -- I mean, they're
5 trying their best to get some evidence, and
6 that's what they have. They certainly can't
7 go back and interview or be present at the
8 interview of all these children, so they are
9 doing these retrospective studies, yes.

10 Q. So the entire study, again, was just based on
11 a review of those social services' case
12 files?

13 A. Yes.

14 Q. Now, the Sorenson and Snow article in 1991,
15 or study --

16 A. Mm-hmm.

17 Q. -- is it fair to say that you've criticized
18 that?

19 A. We do.

20 Q. You don't in fact agree with their findings?

21 A. It's not a matter of agreeing with their
22 findings. It's a matter of problems in
23 understanding how they selected their
24 subjects in terms of -- the study is so

1 poorly described it's very hard to understand
2 why they selected some subjects and not
3 others. It's very hard to know in fact
4 whether these cases are truly cases of
5 children who have been sexually abused. We
6 write about this extensively in our book. I
7 don't know if you want me to go through it,
8 but --

9 Q. Well --

10 A. -- it's a very problematic study because
11 these are from their own clinical case files
12 where they've done therapy with these
13 children and there is a lot of doubt in the
14 minds of experts about whether -- what
15 proportion of the children in this case file
16 in fact are validated cases of sexual abuse.

17 Q. Would you agree that this particular study,
18 Sorenson and Snow, is cited quite frequently
19 by people about recantation rates?

20 A. I think it's cited very frequently.

21 Q. Would you say it's sort of the foremost study
22 in the area that people rely on?

23 A. I think that before the Bradley and Wood
24 Study came along it was.

1 Q. And Sorenson and Snow, they were actually
2 talking about -- they were actually looking
3 at children versus the Bradley and Wood Study
4 which was looking at the notes of the social
5 services' records?

6 A. Well, my understanding -- Okay. Can I just
7 take a minute to --

8 THE COURT: You may.

9 A. -- find this in my book? In our book.

10 THE COURT: Ms. Rooney, I assume that
11 you have a bit more to go.

12 MS. ROONEY: I could probably be done
13 by one o'clock.

14 THE COURT: Well, all right. So about
15 another 25 minutes? I'll remember that. But
16 let's break now anyway for lunch.

17 We'll resume at twenty-five of two.

18 [Luncheon Recess 12:33 p.m.]

19

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1 AFTERNOON SESSION

2 (1:43 p.m.)

3

4 DR. MAGGIE BRUCK, RESUMED5 CROSS-EXAMINATION, RESUMED6 BY MS. ROONEY:7 Q. Dr. Bruck, I believe when we left off we were
8 talking about the Sorenson and Snow --

9 A. Yes. Okay.

10 Q. -- Study?

11 A. Yes.

12 Q. One of the findings in that study was that
13 when asked, only 75 percent of the children
14 denied being sexually abused --

15 A. Right.

16 Q. -- is that correct?

17 A. That's in their paper, yes.

18 Q. And there's also another study in 1992 by
19 Lawson and Chaffin --

20 A. Yes.

21 Q. -- are you familiar with that study?

22 A. Yes.

23 Q. And the findings in that study were that only
24 43 percent of the children made a verbal

1 disclosure of abuse at the initial interview?

2 A. Yes.

3 Q. Dr. Bruck, would you agree with me that it's
4 probably one of the most difficult things for
5 a child to do is to talk about sexual abuse?

6 A. I can't answer that. I don't know if that's
7 the most difficult thing. I --

8 Q. I'm sorry, did you --

9 A. I don't think you should ask me. I don't
10 really think I should tender --

11 THE COURT: If you can't render an
12 opinion or --

13 A. I can wax on --

14 THE COURT: No.

15 A. -- but I don't think that it would be
16 relevant to the Court.

17 THE COURT: Okay.

18 Q. Well, have you ever stated before that you
19 believe it's an easy thing for children to
20 talk about?

21 A. I don't think I've ever written that it's
22 easy.

23 Q. Dr. Bruck, do you recall testifying in 1991
24 down in North Carolina?

1 A. I remember it, yes, I do.

2 Q. You were asked a question, "So wouldn't it be
3 fair to say that one of the least favorite
4 subjects of children to talk about, whether
5 it's with their own parents or strangers,
6 would be anything that occurred to them of a
7 sexual nature?"

8 Answer: "Oh, I don't agree with you,
9 Mr. Hart. I think that children in fact love
10 to talk about those kind of things especially
11 among themselves. I have seen my daughter and
12 her friends carrying on in matters that are
13 related to all kinds of sexual things while
14 taking a bath, when they were four and five
15 years-old, just having a wonderful, hilarious
16 time about it - wonderful, hilarious time
17 about it."

18 Do you recall testifying to that?

19 THE COURT: Do you recall that
20 testimony?

21 A. Yes, I do.

22 Q. Do you still agree with that, that children
23 love to talk about sexual abuse, or has your
24 position changed?

1 A. Well, I said that seven years ago during the
2 very first time I ever appeared in criminal
3 court --

4 Q. Has your position changed or do you still
5 believe that children enjoy talking about
6 sexual abuse?

7 A. Well, I don't think in that question I was
8 actually asked -- I was talking about whether
9 children like talking about sexual abuse. I
10 mean, I think this is --

11 MR. WILLIAMS: Your Honor, I'm going
12 to object to the form of the question. I'd
13 like to hear the question again that was
14 asked of her at that 1991 trial. I think it
15 was sexual things --

16 THE COURT: I think she answered
17 that. The witness said that it was not about
18 sexual abuse.

19 MR. WILLIAMS: Right.

20 THE COURT: Next question.

21 (By Ms. Rooney:)

22 Q. Dr. Bruck, if we could turn now to page 9
23 again of your affidavit, when you're talking
24 about threats.

1 A. (Witness examines document.)

2 Q. And on page 9 of your affidavit, you state
3 that: "The available evidence . does not
4 support . common assumption that sexually
5 abused children do not disclose because of
6 explicit threats made by the perpetrators" --

7 A. Yes.

8 Q. -- is that what you state in your affidavit?

9 A. Yes.

10 Q. And for support of that proposition, you cite
11 to, I believe it's a 1989 study by Maria
12 Sauzier?

13 A. Yes.

14 Q. Are you aware, Dr. Bruck, that on page 458 of
15 a paper entitled, "Disclosure of Child Sexual
16 Abuse For Better or For Worse," written by
17 Maria Sauzier, when she's talking about this
18 study, she states, "Threats also seem to
19 prevent children from telling immediately,
20 only 23 percent did."

21 A. It must be a different study, or I really
22 have to go back -- if you're going to
23 question me about this, I really have to go
24 back to my notes and see where I got this

1 information from. My understanding is that
2 there were different surveys that she did. I
3 wrote this a very long time ago. But --

4 Q. You wrote the affidavit a very long time ago?

5 A. No. I wrote this section about threats awhile
6 ago and --

7 Q. In fact, it's in your book almost word for
8 word, is it not?

9 A. It's in the book, yes.

10 Q. And you just took it from your book and put
11 it in this affidavit?

12 A. Yes, I did.

13 Q. Did you review the Maria Sauzier Study before
14 you put this information in your affidavit?

15 A. No, I did not.

16 Q. Are you aware that according to Maria
17 Sauzier, she only did one study in 1989 about
18 threats and children?

19 A. Okay.

20 Q. And in fact, in the study for which you
21 indicate this statement is supported, she
22 states that: "Threats also seem to prevent
23 children from telling immediately?"

24 A. I have --

1 Q. Would it be helpful if I showed you the
2 study?

3 A. I would -- it would take me awhile to go
4 through the study. I'd be glad to reply. If
5 there's a mistake, I'd be glad to go on
6 record that it's a mistake, but I have to go
7 back and look at it carefully to see where we
8 got this information from.

9 Q. So is it your testimony that in your
10 affidavit when you refer to the Maria Sauzier
11 Study as support for the proposition that:
12 "The available evidence . does not support
13 the common assumption that sexually abused
14 children do not disclose because of explicit
15 threats made by . perpetrators," that perhaps
16 this study does not in fact stand for that
17 proposition?

18 A. I don't know.

19 Q. It could in fact be a mistake?

20 A. I could have made a mistake. I have to see
21 what I wrote here, which was that the
22 likelihood of disclosure was unrelated to
23 threats. It's not how many threats there
24 were, but once there was a threat, what was

1 the likelihood of disclosure. I have to look
2 at the data again and go back to my notes.
3 And if it's a mistake, I certainly will --

4 Q. In that study Maria Sauzier found that most
5 children who are subjected to intercourse
6 with aggression never told?

7 A. That was intercourse with aggression.

8 Q. Yes.

9 A. Okay.

10 Q. Do you agree with that?

11 A. I have -- I really -- you know something -- I
12 -- if it's written there, I have to read the
13 whole study to go back to see how we reached
14 these conclusions.

15 Q. So you're not prepared to testify with
16 respect to that portion of your affidavit?

17 A. I'm not prepared to, unless you want to give
18 me some time to go through this study very
19 carefully, to tell you where this statement
20 came from.

21 Q. Well, in your affidavit, you indicate that
22 it's based on the Maria --

23 A. Yes.

24 Q. -- Sauzier Study?

1 A. Yes.

2 Q. So it's fair to say that what you're saying
3 in your affidavit about, "There's a common
4 assumption that sexually abused children do
5 not disclose because of explicit threats made
6 by perpetrators," you're relying on the Maria
7 Sauzier Study for that?

8 A. That was one of them.

9 Q. You also rely on this 1993 Study by Gray?

10 A. Yes.

11 Q. And you're aware that the only cases that
12 they reviewed in that study were cases that
13 were referred for prosecution?

14 A. Yes.

15 Q. And that there was disclosure before
16 questioning of those children in two-thirds
17 of the cases?

18 A. Yes.

19 Q. But in fact, there's no breakdown in that
20 study in terms of the age of the children, is
21 that correct?

22 A. I think there is, but --

23 Q. Can you point to me where in the study --

24 A. No, I --

1 Q. -- there's a breakdown of age?

2 A. I can't now.

3 Q. And also, there's no breakdown in that study
4 with respect to the child's relationship to
5 the perpetrator, correct?

6 A. I can't remember. I would be surprised.

7 Q. If I were to tell you that there was not--

8 A. Okay.

9 Q. -- any breakdown?

10 A. Okay.

11 Q. And would you agree with me that in that
12 particular study, the Gray Study, they're
13 talking about a prosecution sample, correct?

14 A. Absolutely.

15 Q. And that in fact differs from a whole
16 population because, would you agree that
17 those cases that are referred for prosecution
18 probably are with the kids that tend to
19 disclose?

20 A. Well, it's probably the closest to this case
21 here where there were kids referred for
22 prosecution.

23 Q. But you would agree that there are a lot of
24 cases out there that never make it to the

1 prosecution --

2 A. Yes, I would.

3 Q. And that the children involved in
4 prosecutions may in fact differ from the
5 children who are involved in cases that never
6 reach the prosecution level?

7 A. Yes.

8 Q. Dr. Bruck, would you agree with me that not
9 all children are suggestible?

10 A. I would agree that there are differing
11 amounts of -- that it is a continuum and that
12 we all differ in the degree to which we're
13 suggestible.

14 Q. Would you agree that some children are highly
15 resistant to suggestion?

16 A. I have said this in my testimony. There are
17 some children who are highly resistant to
18 suggestion.

19 Q. In fact, you indicated that some three-year-
20 olds in your own studies, no matter what you
21 do --

22 A. Right.

23 Q. -- you can't get them to say what you're
24 expecting them to say or want them to say?

1 A. Within the confines of our studies, that's
2 absolutely true.

3 Q. And you would agree that the research that's
4 been conducted, the studies that have been
5 conducted, is of no help in predicting which
6 child would be in which category?

7 A. As of today I think that we're just beginning
8 that kind of investigation of, what are the
9 characteristics. But for your purposes today,
10 I think that we're a very long way of knowing
11 that, yes.

12 Q. Are you aware, Dr. Bruck, that Stephen Ceci -
13 - with whom you collaborate a great deal, is
14 that fair to say?

15 A. Yes.

16 Q. Has recently noted that his research is often
17 misused by false memory advocates to persuade
18 juries that children are easily led by
19 suggestion and that their memories are not to
20 be trusted. Are you aware that Dr. Ceci said
21 that --

22 A. No.

23 Q. -- in 1996?

24 A. No.

1 Q. Are you aware that Dr. Ceci said that he
2 himself noted that to obtain his result, the
3 pressure on children must be extensive and
4 intensive and that his own position is that
5 children are generally believable and
6 resistant to suggestion except under the very
7 specific extreme interviewing that was the
8 focus of his research. Are you aware that he
9 made that statement in 1996?

10 A. No, I'm not.

11 Q. Dr. Bruck, you're familiar with the term
12 ecological validity?

13 A. Yes, I am.

14 Q. And that essentially means that you're
15 looking at the degree to which an experiment
16 mirrors many of the important factors of the
17 situation that it purports to make
18 generalizations to, is that an accurate
19 statement of that?

20 A. Yes.

21 Q. And you've stated, I believe it's in the
22 preface of your book, Jeopardy in the
23 Courtroom, that: "Although much of the
24 research on children's recollection is being

1 carried out in more naturalistic contexts,
2 this does not in itself make it generalizable
3 to a particular court case unless the
4 research contact closely mirrors the factors
5 at bar." Do you still agree with that
6 statement?

7 A. Yes, for a study in particular, yes.

8 Q. For a particular study?

9 A. Yes.

10 Q. Do you agree with the statement that the
11 studies that you've talked about here today
12 have limited applicability to sexual abuse
13 situations?

14 A. No, I don't agree.

15 Q. So you're saying that the studies you've
16 talked about today are meant to be applied to
17 children who are or have been sexually
18 abused?

19 A. Oh, I'm sorry. I told you before that I think
20 that the studies that I've talked about today
21 raise issues about children who come to make
22 claims of sexual abuse who initially denied
23 these claims.

24 Q. So your assumption, when you're talking about

1 a case, is that the children are not telling
2 the truth?

3 A. I never characterize these children as lying
4 or not telling the truth.

5 Q. I think I'm a little bit confused. I believe
6 you said earlier --

7 A. I think I'm a little bit confused.

8 Q. I believe you said earlier today that your
9 studies are not meant to be applied to
10 children who have been sexually abused?

11 A. Right.

12 Q. And yet, you're saying now that the studies
13 are applicable to children who have not been
14 sexually abused but may have claimed to have
15 been sexually abused, is that correct?

16 A. Okay. I think that the studies that we've
17 conducted are applicable to cases where
18 children come to make allegations of sexual
19 abuse.

20 Q. That are untrue?

21 A. That are untrue? Well, we never know whether
22 they're true or untrue, do we?

23 Q. I'm just trying to understand if you're
24 saying that your research applies to a

1 population of children who have been sexual
2 abused? I believe your answer to that is no.
3 You would not use your research and apply it
4 to --

5 A. Oh, to confirm that --

6 Q. -- a sexually abused --

7 A. -- a child had been --

8 Q. -- population?

9 A. -- sexually abused, for example?

10 Q. Not to confirm.

11 A. Yes.

12 Q. Would you apply your research studies and the
13 laboratory studies that you've talked about
14 today --

15 A. Mm-hmm.

16 Q. -- to a population of children who have been
17 sexually abused? I believe you testified
18 earlier that you would not do that.

19 A. Okay. I'm sorry. But how -- could you explain
20 to me what you mean "apply?" I mean, give me
21 an example about how I, you know -- of how
22 you might think I could use these to that
23 kind of sample and then I can maybe
24 understand what you're talking about and

1 answer your question.

2 Q. Your testimony here today?

3 A. Yes.

4 Q. You're using your research studies and
5 applying them to the children who testified
6 before a jury, and that jury convicted the
7 defendant --

8 A. Yes.

9 Q. -- of sexual abuse?

10 A. Right.

11 Q. You are now applying your research to those
12 children?

13 A. I see. You're calling those children sexually
14 abused?

15 Q. Yes. Along with the jury, I am.

16 A. Okay. I think that in the terms of this case
17 and the scenario that you've set up that my
18 studies can be used to in fact raise
19 questions and issues about those children,
20 yes.

21 Q. Because these are children who have claimed
22 to be sexually abused or because these are
23 children who have been sexually abused?

24 A. Because --

1 Q. Are you differing -- are you making a
2 differentiation there?

3 THE COURT: Let me clarify for
4 counsel and the witness that I don't see my
5 role here in deciding whether or not the
6 children were in fact sexually abused.

7 MS. ROONEY: I agree with that.

8 THE COURT: That's not my role.

9 MS. ROONEY: I agree.

10 THE COURT: And therefore, the
11 relevance of the question?

12 MS. ROONEY: As to whether or not
13 these research studies, for which she has
14 testified, have any applicability to this
15 case at all which would merit a new trial.
16 Because if they don't, and if they don't have
17 any applicability, then there's -- the motion
18 should be denied. But if they do have
19 applicability, and I'm trying to determine
20 exactly what that applicability is, that the
21 doctor has previously testified that they're
22 not applicable, that goes to that issue.

23 THE COURT: I think those are fair
24 questions, and you can explain what you

1 assume or don't.

2 THE WITNESS: Right.

3 THE COURT: And answer.

4 THE WITNESS: Okay.

5 A. I'm going to answer your -- I'm going to tell
6 you -- I'm going to answer this question as
7 to why I think these studies are applicable
8 to this case.

9 I think these studies are applicable
10 to this case because in this case you have a
11 pattern where children first denied that
12 abuse went on. And then you have a series of
13 widespread suggestive interviews by a number
14 of different professional and
15 nonprofessionals. And these professionals
16 used a number of techniques that we have
17 learned through our science can come to make
18 children make false reports. And it was as a
19 result of these -- I'm not saying as a result
20 -- associated with these interviews, children
21 came to make reports of abuse that they had
22 previously denied.

23 Now, there are two hypotheses. One
24 hypothesis is that the children were scared;

1 that they didn't want to tell and you had to
2 use everything you could to ferret out the
3 truth, and you did it.

4 But the other hypothesis, which is
5 born out by the science, is that there are
6 times where that -- nothing happened to the
7 children, that they correctly denied, and it
8 was only when these aggressive, suggestive
9 techniques were used that the allegations
10 began to come out. And when you look at the
11 allegations, also, the science can tell us
12 something about what they mean about what
13 happens when you get bizarre allegations;
14 what happens if you get allegations that
15 grow; what happens if allegations look
16 truthful; if the children look credible, what
17 kinds of judgments can you make about that.

18 In all those ways, the science that
19 I've talked about is particularly applicable
20 to this case, but I wouldn't call it
21 applicable to children who have been sexually
22 abused, but to children who have made
23 allegations of sexual abuse, rather -- I
24 mean, whether rightfully or wrongfully. So I

1 think that's why I was a little confused
2 before when you asked the question because I
3 thought you were talking about children where
4 we really knew that the abuse had gone on and
5 they had in fact quickly made statements. And
6 I just couldn't understand how come my
7 research could be used other than to say:
8 Well, when kids spontaneously make statements
9 to neutral interviewers then one could have a
10 lot of faith in that. But unfortunately,
11 I've never been used by the prosecution to
12 help them make those kinds of statements.

13 But in terms of your question, I
14 mean, the research I've stated is crucial to
15 understanding one of the major hypotheses or
16 alternative explanations for what happened in
17 this case.

18 Q. You talked a little bit there about bizarre
19 allegations, and earlier you stated how very
20 often when you get bizarre allegations that's
21 a function of, I believe counsel said, sort
22 of the sky is the limit; anything you say,
23 the story gets more and more fantastic?

24 A. Yes.

1 Q. There are some pretty bizarre allegations in
2 that Country Walk case --

3 A. Yes.

4 Q. -- aren't there, about riding on sharks?

5 A. Riding on sharks I think was Edenton. But it
6 may be Country Walk also.

7 Q. And, again, that Country Walk case is the one
8 where the codefendant corroborated much of
9 what the children said?

10 A. Well, you and I -- there's certainly a great
11 deal of opinion on Country Walk --

12 Q. And your opinion --

13 A. -- of whether those allegations are true or
14 false.

15 Q. And your opinion, clearly, is that there is
16 some problems with that?

17 A. I think there are tremendous issues in
18 Country Walk.

19 Q. You've talked in the past about how the
20 laboratory's a sanitized environment, and in
21 fact stated that when kids come into the
22 laboratory they know that their lives aren't
23 at stake; they know that if they do something
24 bad that their mummies are still going to

- 1 love them, and they're still going to go to
2 school, and so on, and that's how those
3 laboratory studies are carried out?
- 4 A. Did I write that?
- 5 Q. You testified to that. Does that sound
6 familiar to you?
- 7 A. No.
- 8 Q. Do you agree with that, or is it something
9 you don't agree with?
- 10 A. No. I think -- I agree.
- 11 Q. Would you agree that there's a great
12 controversy still today about the ecological
13 validity of any of these research studies as
14 it would apply to an understanding of what
15 would happen in a child abuse situation, and
16 actual real-life interviews, would you agree
17 with that, that there's a controversy?
- 18 A. I think the controversy concerns the --
19 using one study to understand one whole case.
- 20 Q. Would you agree with --
- 21 A. I don't think that there's a controversy --
22 well, there is a controversy, but it's
23 certainly among -- a majority of cognitive
24 and developmental psychologists and

1 scientists in general, there is an
2 understanding of how science works. And the
3 understanding is that it is not one study
4 that builds a case; that it is a compilation
5 of studies that yield consistent findings;
6 studies that draw a consistent picture that
7 helps you understand certain parameters of a
8 case.

9 Q. And in fact, there is -- there are people on
10 one side of it saying that there's
11 controversy about using one study or all of
12 these studies, and there are people on the
13 side that you're sitting on which states that
14 this body of research should in fact be
15 applied to these situations, correct? There
16 are people on either sides of the fence?

17 A. Well, I'm not quite sure who the people are
18 on the other side of the fence who would
19 really argue that these kinds of studies
20 don't apply, and in fact, inform cases such
21 as this one here.

22 Q. Would you agree with the statement by Dr.
23 Ceci in which he says, "In fact, most studies
24 that purport to say something about the

1 suggestibility of children's recollections of
2 sexual abuse events have omitted all
3 consideration of the strong motives, threats
4 and inducements that are often part of the
5 aftermath of abuse. Any one of these
6 motivational forces can be used to reverse
7 the findings that have been reported in the
8 literature." Would you agree with that
9 statement of his?

10 A. Well, I think we wrote that statement
11 together actually.

12 Q. Do you agree with that?

13 A. Yes, I do.

14 Q. Now, just to clarify for a moment, there's
15 testimony earlier today about these
16 videotapes. You're aware that the videotape
17 of J [REDACTED] B [REDACTED] was played in full to the
18 jury that convicted this defendant, are you
19 not?

20 A. That was my understanding yesterday, yes.

21 Q. Is it your understanding today, too?

22 A. Well, I'm glad you confirmed it for me. Yes.

23 Q. And in fact, also the videotape of J [REDACTED]
24 O [REDACTED], that videotape was played in full

1 before the jury that convicted this
2 defendant?

3 A. I didn't know that.

4 Q. And if I would reference you to the testimony
5 in this defendant's trial, Volume V, pages
6 133 and 134, in which it states that the
7 video of ^J [REDACTED] O [REDACTED] was in fact played
8 directly after B [REDACTED] L [REDACTED] s testimony.

9 A. Okay.

10 Q. So that you would agree, would you not, that
11 the jury who convicted this defendant had the
12 opportunity to see, as we did, J [REDACTED]
13 B [REDACTED] s testimony through the interview
14 with Susan Kelley; and the testimony of
15 J [REDACTED] O [REDACTED] through the testimony of --
16 through the videotape of Susan Kelley, and
17 that in fact both J [REDACTED] B [REDACTED] and J [REDACTED]
18 O [REDACTED] also testified in person in addition
19 to their videotaped interviews, would you
20 not?

21 A. I -- I -- it happened. You said it happened.
22 I agree it happened.

23 MS. ROONEY: I have no further
24 questions.

1 THE COURT: Redirect?
2

3 REDIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Well, Dr. Bruck, let's talk about the facts
6 of the case. You've been questioned about it
7 on cross-examination. You were asked about
8 J [REDACTED] O [REDACTED] and about J [REDACTED] O [REDACTED] s
9 mother, about when she began questioning her
10 child. Do you recall that? It was one of the
11 very first questions you were asked.

12 A. Yes.

13 Q. Now, do you recall seeing in the transcript,
14 Volume V, page 15, testimony that the mother
15 of Jackie Osgood --

16 THE COURT: Volume V from the trial?

17 MR. WILLIAMS: Trial.

18 THE COURT: Okay.

19 Q. That the mother questioned her child the day
20 after the parents' meeting?

21 A. It was in the notes that I reviewed, yes.

22 Q. Now, B [REDACTED] L [REDACTED], do you recall reading from
23 the trial transcript, June 4th, 1987, page
24 44, where the police came to the house and

1 the police instructed the mother to question
2 her son about a magic room and clowns, and
3 she said that she did so on the very same
4 day?

5 A. That was in the materials that I reviewed.

6 Q. Since we're on Billy Leary, let's talk about
7 his behavioral symptoms. I want to refer to
8 your affidavit. I believe it's on page 66,
9 just to refresh your recollection.

10 What does the record indicate about
11 the evidence of his behavioral symptoms as
12 you report it in your affidavit?

13 A. In my affidavit I have that: "On October
14 11th, 1984, B [REDACTED] L [REDACTED] s mother reported to
15 DSS worker, Karen Gaughan, that B [REDACTED] was
16 asymptomatic."

17 Q. The mother reported that B [REDACTED] was
18 asymptomatic?

19 A. Yes.

20 Q. Okay. And what else?

21 A. Then "four months later she reported to the
22 police-DSS that 'during his tenure at
23 school there were many clinical indicators of
24 abuse which became evident in hindsight.'"

1 Q. Okay. And when was that, on February 1st,
2 1985?

3 A. Yes.

4 Q. Okay.

5 A. And then I have, "At trial, she testified
6 about inappropriate sexual behaviors ... that
7 began late in January or early February '85."

8 And then, I also have that "none of
9 this information was related to Susan Kelley
10 who gave" her "questionnaire to fill out on
11 February 15th, 1985."

12 THE COURT: May I ask --

13 THE WITNESS: Yes.

14 THE COURT: -- just for my own
15 clarification, when was the interview with
16 Billy by Susan Kelley?

17 THE WITNESS: That was --

18 MR. WILLIAMS: February 15th.

19 THE COURT: 1985?

20 MR. WILLIAMS: Of '85.

21 THE WITNESS: Yes.

22 [By Mr. Williams:]

23 Q. All right. Let me just do a little time line
24 on B [REDACTED] I [REDACTED] for a moment on the behavioral

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1 symptoms since it was raised on cross-
2 examination.

3 MS. ROONEY: Your Honor, I would
4 object to this. If we're going to have a
5 chart, I believe the witness should be the
6 person rather than counsel --

7 MR. WILLIAMS: No, I'm just going to
8 write down what she's saying, that's all.

9 THE COURT: Overruled.

10 MR. WILLIAMS: If she's got better
11 handwriting than I do --

12 THE COURT: Overruled. You may have
13 it.

14 A. Okay. October 11th, she tells Karen Gaughan
15 that he's asymptomatic.

16 Q. Okay. So there's a report by the mother that
17 B [REDACTED]'s asymptomatic (writing on chalk).
18 Okay.

19 A. It's February 1, '85 --

20 Q. Right.

21 A. This is right before his interview with the
22 police. She reported that there were many
23 clinical indicators of abuse which became
24 evident in hindsight.

1 Q. Okay. So there's the hindsight behavioral
2 symptoms (writing on chalk)?

3 A. Yes. And then at trial, again she's
4 consistent with this where she says -- No.
5 She testifies that her son began in late
6 January or early February '85 to show
7 behaviors.

8 Q. Okay. So at trial she says that --

9 A. They began. She testified about inappropriate
10 sexual behaviors of her son that began --

11 Q. That began in --

12 A. In late January '85, or February.

13 Q. Okay.

14 A. Now, okay. At February 15th --

15 Q. Right.

16 A. -- there's -- none of this information is
17 related to Susan Kelley.

18 Q. And Susan Kelley asked for this information?

19 A. There was a questionnaire that was given to
20 the children.

21 Q. Okay. So we'll put down "no symptoms
22 recorded in questionnaire" (writing on
23 chalk).

24 Now, I want you to turn your

1 attention to the affidavit -- to A-171 of the
2 exhibits.

3 A. Okay. Wait a minute.

4 THE COURT: This is Exhibit 2A?

5 MR. WILLIAMS: 2A, that's right.

6 THE WITNESS: Yes.

7 A. Oh, I'm sorry.

8 Q. A, A-171. Tab number 4.

9 A. Okay. Here she --

10 Q. Okay. Now, what's the date of this
11 questionnaire?

12 A. This is -- how do they go -- January is the
13 first date of the month? We do it different
14 in Canada.

15 Q. January 6th, right?

16 A. January 6, '86.

17 Q. 1/6/86.

18 A. Okay.

19 Q. Long after the interview with Susan Kelley?

20 A. That's right.

21 Q. Now, let's look at the next page where the
22 mother is indicating the behavior of the
23 child. What did the mother say about nail-
24 biting?

- 1 A. No.
- 2 Q. Thumb-sucking?
- 3 A. No.
- 4 Q. Jealousy?
- 5 A. No.
- 6 Q. Won't mind?
- 7 A. No.
- 8 Q. Won't -- no. Bed wetting?
- 9 A. No.
- 10 Q. Breath holding?
- 11 A. No.
- 12 Q. Bad temper?
- 13 A. No.
- 14 Q. Hyperactivity?
- 15 A. Yes. Can't sit still.
- 16 Q. Stealing?
- 17 A. No.
- 18 Q. Fire setting?
- 19 A. No.
- 20 Q. Irritability?
- 21 A. Yes.
- 22 Q. Nightmares?
- 23 A. Yes.
- 24 Q. Speech problems?

1 A. No.

2 Q. Running away?

3 A. No.

4 Q. What's there for aggressiveness?

5 A. (No verbal response.)

6 Q. On the very bottom --

7 A. Nothing.

8 Q. Now, what did the mother say about B [REDACTED] as a
9 behavioral problem with respect to lying?

10 A. Well she says, "lying," and she goes, "Yes."
11 And then --

12 Q. Wait. Hold on.

13 A. Sorry.

14 Q. So she marks off in January of 1986, she says
15 one of the problems with her child is that he
16 lies?

17 A. Yes.

18 Q. And then it's after just - list or describe
19 in more detail his problems?

20 A. Yes.

21 Q. What is important enough that she writes
22 down?

23 A. The first is, "Stays in room."

24 Q. Right.

1 A. Three, "Keeps to self." Four, "Makes up
2 unbelievable stories."

3 Q. Actually, three --

4 A. Sorry.

5 Q. "One, stays in the room; two, keeps to
6 himself; three" --

7 A. "Makes up unbelievable stories."

8 Q. "Makes up unbelievable stories." And then
9 fourth?

10 A. "Spaces out a lot. Doesn't hear what you're,"
11 I guess, saying.

12 Q. Okay. So the mother, in 1986, finds it
13 important enough to say that her son is
14 lying, makes up unbelievable stories, but no
15 sexualized behavior in this report, is that
16 right?

17 A. No.

18 Q. Now, what about in -- do you recall in mid-
19 1985 that the mother reported that B [REDACTED]
20 I [REDACTED] had no preoccupation with sexual acts
21 or sexual play inappropriate for his
22 behavior?

23 A. In mid-'85?

24 Q. In mid-1985?

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1 A. In my -- that's with the Susan Kelley
2 interview.

3 Q. Now, let's talk about the mother of M [REDACTED]
4 T [REDACTED]; again, referencing the cross-
5 examination on the behaviors and the
6 questioning by the mother.

7 You're told -- you were asked on
8 cross-examination whether you knew that D [REDACTED]
9 T [REDACTED], the mother, left the parents' meeting
10 early. Do you recall that?

11 A. Yes.

12 Q. When you were preparing your affidavit here,
13 were you aware that D [REDACTED] T [REDACTED] questioned
14 M [REDACTED] T [REDACTED] the day after Labor Day, even
15 before the parents' meeting?

16 A. I didn't know if it was the day after Labor
17 Day, but I have a cite that it's 9/8. So
18 maybe Labor Day was the 7th.

19 Q. Okay. And what did M [REDACTED] T [REDACTED] say when she
20 was questioned by her mother even before the
21 parents' meeting?

22 A. "Mother states she is happy about school and
23 nothing weird happened."

24 Q. Now, let's go to J [REDACTED] B [REDACTED] s mother.

1 Do you recall reading in the record there
2 that her mother saw on the news in September
3 of 1984 that there had been an arrest in this
4 case?

5 A. Wait a minute. I'm sorry. J [REDACTED] B [REDACTED].

6 Q. Right.

7 A. Okay.

8 Q. That J [REDACTED]'s mother saw that there was an
9 arrest in this case and she then contacted
10 the police and that the police gave her
11 instructions or a list of questions to ask,
12 and that she proceeded to ask them. Do you
13 remember seeing that in the record?

14 A. Yes. I have, "Mother on -- in September '84,
15 mother calls a detective who instructs her to
16 question J [REDACTED] B [REDACTED] about sexual abuse,
17 possibly by a clown, taking place in a magic
18 room or a secret room."

19 Q. Okay. Now, you were asked about the medical
20 conditions of the children. Do you recall
21 what the record reflects about M [REDACTED]
22 T [REDACTED]'s pediatric exam on the 13th of
23 September?

24 THE COURT: Of what year?

1 MR. WILLIAMS: Of '84.

2 A. On September 13th, the mother takes M [REDACTED]
3 to pediatrician. The mother is not concerned
4 about sexual abuse, and there's no positive
5 findings in that examination.

6 Q. Are you aware that Dr. Gauthrie (phonetic
7 spelling) testified about the medical
8 condition of M [REDACTED] T [REDACTED]?

9 A. I read that, yes.

10 Q. You did?

11 A. Yes.

12 Q. And that he found that her genitals were
13 normal?

14 A. Yes.

15 Q. And that her appetite was good, her bowel
16 movements were normal, and she had no other
17 symptoms?

18 A. I read that testimony, yes.

19 Q. And you said that the mother was not
20 concerned about sexual abuse?

21 A. Yes, she was not concerned.

22 Q. Since we're on M [REDACTED] T [REDACTED], let me just
23 then go to her behavioral symptoms that you
24 were asked about.

1 Let's assume that the prosecution is
2 right, that the mother reported and testified
3 to sexualized behavior by her daughter
4 M [REDACTED] Let's just posit that for the
5 moment.

6 A. Yes.

7 Q. Okay. In conducting an unbiased interview or
8 an unbiased investigation into a child that's
9 exhibiting sexualized behavior, where the
10 possibility exists that it might -- the
11 perpetrators might be day-care workers. To do
12 an unbiased interview would you want to know
13 whether the mother believes that the father
14 had molested his own daughter?

15 A. Yes.

16 Q. To rule out that possibility, isn't that
17 right?

18 A. Well, this child is showing sexualized
19 behavior and one has a suspicion that there's
20 sexual abuse, one wants to in fact cover the
21 waterfront of who it might be, yes.

22 Q. And, now, are you aware, and were you aware
23 when you prepared this affidavit, that the
24 mother of M [REDACTED] filed a 51 for molestation

1 against the father?

2 MS. ROONEY: Objection. Relevance.

3 THE COURT: Overruled.

4 MR. WILLIAMS: You went into the
5 behaviors.

6 THE COURT: Well, the time period.
7 When was that 51A, if it was filed.

8 MR. WILLIAMS: The 51A was filed
9 immediately after this trial was over.

10 MS. ROONEY: I move to strike with
11 respect to relevance.

12 THE COURT: Overruled.

13 [By Mr. Williams:]

14 Q. Would that, in terms of evaluating behavioral
15 symptoms that you were asked about on cross-
16 examination, would you want to look into --
17 would that be a relevant factor to evaluate
18 behavioral symptoms?

19 A. It would be incredibly relevant, not only for
20 that, but in terms of the allegations she
21 made about the clown during her early
22 interviews with DSS and police, and a whole
23 set of -- a whole set of allegations. It
24 would be very helpful.

1 Q. And did you find any evidence in the record
2 that you reviewed that investigators pursued
3 that hypothesis, the mother's suspicion that
4 her own husband has been molesting her
5 daughter?

6 A. I never saw that in the record.

7 Q. Now, going back to J [REDACTED] B [REDACTED] and the
8 medical condition of J [REDACTED] B [REDACTED]. What
9 do you recall about her medical condition?
10 There was questioning --

11 A. J [REDACTED] --

12 Q. Wait. Hold on. There was questioning of you
13 on cross-examination about vaginal pain?

14 A. Yes.

15 Q. And there was testimony in this trial, you
16 may recall, about vaginal pain on the part of
17 J [REDACTED].

18 A. Right.

19 Q. What do you recall the records actually show
20 with respect to J [REDACTED]?

21 A. J [REDACTED] had diabetes, and that there was a
22 urinary tract infection that caused vaginal
23 pain.

24 Q. And wasn't that testimony from J [REDACTED] s own

1 pediatrician that she had a history of
2 urinary tract infection?

3 A. Yes.

4 Q. And that her pain in her vagina could be
5 associated with that urinary tract infection?

6 A. That's my memory, yes.

7 Q. And that's the evidence of -- against -- for
8 J [REDACTED] B [REDACTED] of a physical nature, isn't
9 that right?

10 A. That's right.

11 Q. So with that --

12 THE COURT: Let me just clarify. Do
13 you recall -- any of the counsel -- if the
14 testimony about the urinary tract infection
15 by the pediatrician predated --

16 MR. WILLIAMS: Yes. It predated
17 the --

18 THE COURT: -- her attendance at
19 Fells Acres, do you know? If you don't know,
20 that's fine.

21 MR. WILLIAMS: I don't. I believe so,
22 but I don't want to state for certain.

23 [By Mr. Williams:]

24 Q. All right. So given all of these elements

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1 that we went through, Michelle Tebo's father
2 being accused of molestation --

3 MS. ROONEY: Objection. As to when? I
4 mean, I believe the testimony was it was
5 after the trial, so how does it have any
6 relevance?

7 THE COURT: The only other issue is, I
8 think you've covered it, so rather than
9 recover it --

10 MR. WILLIAMS: Okay.

11 [By Mr. Williams:]

12 Q. Now, are you saying, Dr. Bruck, and have you
13 taken the position here in this hearing, that
14 there are absolutely no studies about
15 suggestibility before 1987 --

16 A. No.

17 Q. -- is that your position?

18 A. That is not my position.

19 Q. Okay. Just clarify briefly then what is your
20 position if you're saying that there were no
21 studies of suggestibility, if you're saying
22 that that's not your position?

23 A. My position is that there was not an
24 acceptable scientific record of the

1 suggestibility of young children who were
2 questioned under the same kinds of conditions
3 that prevailed in this case, and that there
4 was not a systematic body of science upon
5 which an expert could come into the courtroom
6 and testify about.

7 Q. So you don't think --

8 A. There were -- as I was examined on, there
9 were some studies on three-year-olds, but
10 these studies did not involve repeated
11 interviews about events after a long delay.
12 There wasn't a lot of pressure on the
13 children in these interviews to make
14 statements one way or another. They miss many
15 of the very key qualities that are faint
16 mirrors of what went on in this case.

17 Q. Okay. In a follow-up to that, I want to quote
18 you what's been marked as Exhibit 41,
19 submitted by the Commonwealth, page 239 of
20 that exhibit, which is a book, Memory,
21 Trauma, Treatment and the Law, page 239,
22 where they discuss Gail Goodman's work,
23 particularly the Simon Says Study, which you
24 were cross-examined on. And tell me if this

1 comports with your understanding.

2 These authors say, quote, "Over the
3 next five years" -- that is, after the first
4 1986 study you were asked about -- "Goodman
5 and her associates made a number of important
6 modifications in the Simon Says procedure."
7 Then he goes and he proceeds to describe
8 those modifications.

9 Then at the bottom of the page, going
10 into the next page, he says that those
11 modifications were designed -- were done,
12 quote, "In order to distinguish more
13 carefully between the relative suggestive
14 influence of different types of post-event
15 information from peripheral to more central
16 information." Again, what you were cross-
17 examined on.

18 "A very important innovation since
19 the 1986 Study was the inclusion of abuse
20 questions. These suggestive questions were
21 specifically created to address," quote,
22 "actions that might lead to an accusation of
23 child abuse, such as, he took off your
24 clothes, didn't he? Or, did he kiss you?

1 The questions were derived from ratings by
2 professionals as to the kinds of questions
3 likely to be asked in an abuse
4 investigation."

5 So these modifications were of that
6 sort, does that comport with your
7 understanding?

8 A. That's my memory of this, yes.

9 Q. And would you say that those modifications
10 which took place in the five years after 1986
11 were improvements on that original Simon Says
12 Study?

13 A. Yes.

14 Q. Okay. Now, let's go to the same exhibit by
15 the Commonwealth. It's marked as 42.

16 THE COURT: Mr. Williams -- and I'm
17 going to ask the same thing of Miss Rooney --
18 because this is in evidence and it may be
19 easier and more efficient if you could, when
20 I give you all ample time to argue the motion
21 and the opposition to it, refer to these
22 rather than have her agreement to them. I
23 mean, I'll give you some leeway. You've just
24 done it with one study, but --

1 THE WITNESS: Okay.

2 THE COURT: -- I'm also concerned
3 about the next witness.

4 MR. WILLIAMS: So long as the Court is
5 -- so the ground rules are clear, the fact
6 that I'm not referring to it in my
7 examination, I can still cite to it and quote
8 from it in my brief.

9 THE COURT: Especially when it's an
10 exhibit in evidence, absolutely.

11 MR. WILLIAMS: Terrific. I'll do
12 that.

13 [By Mr. Williams:]

14 Q. You were asked about misinformation studies,
15 do you recall that?

16 A. Yes.

17 Q. Are the misinformation studies before 1987
18 applicable to evaluating child sex abuse
19 cases?

20 A. They -- there are very few of them involving
21 children and the ones that were available I
22 think share the same deficits that I've
23 talked about before. There were not many on
24 three-year-olds, the children were shown

1 videotapes or slides, and they were asked
2 questions that really didn't involve
3 themselves.

4 Q. Okay. Now, you were -- for the same effect,
5 you were asked questions about janitor -- the
6 janitor experiment, and the point was that
7 that did not involve anything about the
8 bodily integrity of the child?

9 A. Right.

10 Q. And therefore, it may not be wholly
11 applicable here?

12 A. Right.

13 Q. Doctor, wasn't the pediatrician studies that
14 we saw and heard about yesterday to address
15 that very point?

16 A. The Pediatrician Studies were one that did
17 involve things that happened to the child and
18 whether or not one could move that child's
19 memory or report around about who did what,
20 yes.

21 Q. Now, let's quickly turn our attention to the
22 defense experts, and you were questioned
23 about a variety of elements of their
24 testimony. Do you recall that?

1 A. Yes.

2 Q. The defense experts in this case?

3 A. Right.

4 Q. Do you recall, in connection with any of that
5 testimony, whether any studies were cited
6 which shows the actual impact on the child
7 when the child is subjected to these types of
8 interviewing techniques?

9 A. I didn't see that.

10 Q. So what we have here in the record at the
11 trial was simply -- what we have here in the
12 record is simply a -- a recounting of what we
13 see in the record rather than what the impact
14 was?

15 A. Right.

16 Q. And isn't that what the science is
17 addressing, not what we can all see. We all
18 know what a leading question is, but what
19 exactly is the impact of that question?

20 A. Exactly.

21 Q. Or that set of questions?

22 A. I mean, what happened was, these experts at
23 these trials were very -- their intuitions
24 were right, but their intuitions were in

1 search of some data to support them, and
2 those data simply weren't available. And a
3 lot -- some of the data that I talked about,
4 you know, eight years later, are now
5 available. But I mean --

6 Q. Right.

7 A. -- they were good hypothesis generators.

8 Q. And the fact that an expert can get on the
9 stand and tell a jury: Well, what we see here
10 is peer pressure. What we see here are
11 suggestive questioning. What we see here is
12 evoking the child to help, but without
13 telling the jury what exactly is the impact
14 of all of that, wouldn't you say it's
15 somewhat worthless?

16 A. Well, it's worthless if they're supposed to
17 be there as experts to present scientific
18 data, yes.

19 Q. Was there any studies to suggest -- to rebut
20 the suggestion that children do not
21 confabulate when it comes to matters about
22 their private parts?

23 A. No, there were none.

24 Q. Now, you were asked about the anatomic doll

1 studies, and you were -- your attention was
2 called to three of them. Do you recall that?

3 A. Yes.

4 Q. And you wanted to explain what you felt was
5 wrong about those?

6 A. Right. Yes.

7 Q. Okay. Can you tell me --

8 A. Well, there's -- I can't -- we could -- two
9 of the studies were studies that were done
10 with children who in fact had experienced
11 some medical -- no. The Goodman Study was one
12 where children had experiences, very painful
13 medical procedure, and they were given the
14 dolls. And, as I remember reading the study a
15 few months ago, the dolls did result in more
16 accurate reports.

17 And that's always -- I mean, that's
18 good. I mean, in Monkey-Thief we saw if you
19 use these suggestive techniques with children
20 about punishments that they didn't want to
21 talk about, what did it do? It got them to
22 talk about these punishments, right?

23 Q. Right.

24 A. So there are very beneficial effects to using

1 these techniques for children who don't want
2 to talk about real events.

3 What this Goodman -- newer Goodman
4 Study I think is missing is a condition that
5 makes it interesting to this trial, which is,
6 what happens when you have children who
7 didn't experience an event and you give them
8 the doll. Then is their reporting going to
9 remain silent or are they going to begin to
10 make false comments.

11 Now, the other study that was
12 mentioned was Steward and Steward. And I
13 actually had to review that study very
14 carefully for a report I had to write on it.
15 And I summarize part of the findings in my
16 report here. And I wrote down the numbers so
17 I wouldn't waste everyone's time, but you'll
18 just have to wait a minute.

19 (Witness examines document.)

20 What Steward and Steward found --
21 it's right here -- I said -- in fact, the
22 Steward and Steward Study is one that
23 includes older children. So we've done two
24 studies so far. We've done one on three-year-

1 olds and one on four-year-olds. And now
2 there's this one with Steward, children as
3 old as six-years-old, these children were
4 reporting events that happened to them in a
5 medical clinic.

6 And they were interviewed three
7 times, and with each interview, children's
8 false reports of anal touching increased. By
9 the final interview, which took place six
10 months after the initial interview, more than
11 one-third of the children falsely reported
12 anal touching.

13 So I think that the -- this study is
14 one that really does raise -- raise some
15 concerns. So I don't know if it's one that --
16 I can't say it's inconsistent with our
17 studies.

18 But each study is different, and you
19 know, I can -- you can set studies up in ways
20 where the events are neutral, where children
21 aren't asked a lot of questions, where it's
22 really, you know, drilled into them it's
23 important to tell the truth. And in those
24 settings, you're going to get very low rates,

1 and you may find very beneficial effects of
2 using these kinds of dolls or props.

3 But if you set studies up in ways
4 where children aren't given this information,
5 or they're repeatedly interviewed, or there's
6 some kind of implicit message: It's good to
7 touch these dolls. Show us what happened with
8 these dolls, you'll change the numbers
9 around. So it's very hard to talk about
10 consistent and inconsistent studies. You have
11 to look very carefully at what the procedures
12 are and what the children are being asked to
13 do.

14 Q. Okay. Now, just quickly, and I don't want you
15 to belabor this point, but --

16 THE COURT: Excuse me, but I'm
17 thinking about that.

18 Q. But you were asked about the Mousetrap Study,
19 and I just want to make it clear so there's
20 no confusion later when we have to write
21 briefs on this, was there more than one
22 Mousetrap Study?

23 A. Well, there are two studies. We call them
24 Mousetrap Studies. Really, the first one is

1 the official Mousetrap Study.

2 Q. The first one?

3 A. Mm-hmm.

4 Q. Now, yesterday when you were testifying
5 about, and we were talking about the
6 Mousetrap Study, what were you talking about?

7 A. When I was talking about children's assent
8 rates increasing --

9 Q. Yes.

10 A. -- I was talking about the second Mousetrap
11 Study, which is really the Bicycle Stitches
12 Study.

13 Q. Okay. And when did that take place?

14 A. Oh, about six months after the first one.
15 There were two studies.

16 Q. Okay. Was there an improvement on the second
17 one you talked about yesterday --

18 A. Yes.

19 Q. -- over the first one?

20 A. In the first study which I was just shown the
21 table for -- that's why I was a little
22 confused when I saw it -- we -- it was noted
23 in the study that when children were first
24 asked to think about: Did these things

1 happen, you get fairly high assent rates for
2 false events. And these don't change over
3 time. It looks in the table as though there's
4 a drop, but it's not statistically
5 significant. So there's very little change.

6 In the study that I testified about
7 yesterday, we changed the procedure somewhat
8 where children were now told to think about
9 events that had happened, and they were given
10 a few more props to use, what we call memory
11 and visualization techniques, to think about
12 things that might have happened.

13 And when you use those procedures,
14 you do get changes in children's assents over
15 time. But as the prosecutor pointed out, and
16 I mean, we make these very clear in our brief
17 and in other things we've written, in this
18 very mild procedure it is true that it's much
19 easier to get rises for true -- for positive
20 assents, such as, going up in a hot-air
21 balloon, compared to getting, you know,
22 falling off and hurting yourself. And that's
23 why we did -- then went to Monkey-Thief, to
24 look at this under more coercive situations.

1 So I just wanted to clarify that.

2 Q. Okay. You were asked some questions about
3 behavioral syndromes. I know you addressed it
4 in the affidavit. I want to show you the --
5 an exhibit marked by the Commonwealth,
6 Exhibit 44, and I'm not going to ask you to
7 belabor that one either. I just want you -- I
8 just want to know whether the authors of that
9 particular exhibit, Exhibit 44 offered by the
10 Commonwealth, are telling us that there is a
11 set or definable set of behavioral symptoms
12 that tell us that a child has been abused?

13 A. No. In this abstract -- and there's a
14 subsequent paper that was written by Lucy
15 Berliner (phonetic spelling) that mirror this
16 -- that says, "No one symptom characterized a
17 majority of sexually abused children."

18 Q. Now, you were asked about studies by Snow and
19 Sorenson, do you recall that?

20 A. Yes.

21 Q. Do you like those studies?

22 A. Like?

23 Q. Or do you have a problem with them?

24 A. No, I don't know if that's the right word to

1 use for a scientist. I think there's enormous
2 problems with the Snow and Sorenson Study.

3 Q. Just give us a brief evaluation of that?

4 A. Okay. I'll quickly go through this. The first
5 problem is that it appeared in a journal
6 that's not a very good peer review journal.
7 It's a social work journal. And the
8 procedures are so poorly outlined that when
9 we sent them to experts or people who are
10 editors of other journals to ask them what
11 they thought, they said -- you know, they
12 would never -- they just really had no idea
13 what the procedures were, which is really
14 very important. And as the prosecutor
15 questioned me about the Wood Study, I mean,
16 with every study, you do have problems. You
17 want to know what the case sample is, and how
18 you selected them and so on.

19 But with this study, you know less.
20 It's just unclear. They said there were 630
21 cases and they selected 116; and you don't
22 really know why - why these were selected.

23 But the larger concern with this,
24 and it arises really uncommonly in science,

1 is that there's concerns about the bias of
2 one of the interview -- of one of the
3 authors, who in two parts of our book we cite
4 transcripts from trials where it's clear that
5 Dr. Snow was a therapist who treated sexually
6 -- or children who were allegedly sexually
7 abused, and had the belief that no matter
8 what children said, they were abused.

9 And I have the passages in our book
10 that you can look at this, but one of the
11 Supreme Court Justices in Utah really came
12 down very hard on her in this.

13 Now, the problem in terms of the
14 science is the following: That the cases that
15 they were dealing with were her cases, and if
16 she was one who evaluated children and
17 believed that everything a child said was
18 symptomatic of sexual abuse, and she's using
19 these cases in her studies, then maybe this
20 high rate of recantation, or this high rate
21 of denial, is symptomatic of kids who are not
22 sexually abused. And we simply don't know.
23 And this is why it's a very very problematic
24 study.

1 And as was mentioned, until a few
2 years ago, it really was very highly cited
3 because it was the only one that was
4 available.

5 The Bradley and Wood one is
6 available now; as is pointed out, there are
7 probably -- there are certainly problems with
8 these studies. And hopefully, people will do
9 more and more, getting better databases, and
10 we'll have a fairer picture of what's going
11 on. But, you know, we have to go by the best
12 light available.

13 Q. Okay.

14 THE COURT: Mr. Williams, I'm going
15 to ask you to --

16 MR. WILLIAMS: Three more questions.

17 [By Mr. Williams:]

18 Q. Now, do you agree, Dr. Bruck, that children
19 cannot be easily led -- and I want to
20 underscore that phrase -- easily led to make
21 allegations of sexual abuse?

22 A. In the -- on the average, I would agree with
23 that. I think that there are always a few
24 children that if you look at them cross-eyed,

1 they're going to say whatever you want. But I
2 also think that if you ask -- if you have an
3 interview where there are a couple of
4 misleading questions, this is not -- should
5 not have a significant effect on children's
6 testimony. We've seen this in a number of the
7 studies that we've reviewed. In the Garven
8 and Wood one, which was the McMartin Study,
9 they had leading questions there. In Gail
10 Goodman's studies where these questions are
11 asked by neutral interviewers, where they're
12 peppered along a lot of other kinds of
13 questions, it's not common for children to
14 falsely make allegations in these more
15 neutral-kinds of situations.

16 So just asking leading questions by
17 themselves is not going to do it all the
18 time, but there are always some kids who are
19 going to say yes no matter what.

20 Q. In fact, it's safe to say, in looking at the
21 Susan Kelley tapes that we did, that J [REDACTED]
22 and J [REDACTED] were quite resilient?

23 A. Yes. We had very resistant children, yes.

24 Q. And that doesn't conflict with your research

1 or your position?

2 A. No.

3 Q. Last question. You were asked about other
4 day-care center cases and the facts of those.
5 Did you find in other day-care center cases,
6 like the McMartin case, where there were
7 allegations of animal sacrifices?

8 A. I'm not as familiar with McMartin. Edenton,
9 there were sacrifices.

10 Q. Animal sacrifice?

11 A. Yes. And --

12 Q. And what about just bizarre allegations
13 generally?

14 A. And bizarre allegations generally.

15 MR. WILLIAMS: I have no further
16 questions.

17 MS. ROONEY: No. I have nothing
18 further.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you. Nice meeting
21 you.

22 (Witness excused.)

23 MS. ROONEY: I have a few motions to
24 strike portions of her testimony that I could

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1 either put on the record now or later, just
2 to protect the record.

3 THE COURT: I'll save your rights on
4 that.

5 MS. ROONEY: Well, I think I have to
6 say what they are in order to have my rights
7 saved, otherwise --

8 THE COURT: Okay.

9 MS. ROONEY: Just essentially, I
10 believe yesterday Dr. Bruck made a statement
11 about the unreliability of the child's
12 reports. I would move to strike that, given
13 she's an expert, she should not be commenting
14 on the credibility of the child.

15 She also testified --

16 THE COURT: Well, I'll say this,
17 without telling you everything I want to say
18 about your objection to that, but at the very
19 least, what I want to say is, if we were in
20 front of a jury, I would agree with you
21 without any reservation. But for purposes of
22 this hearing, I'm going to overrule that
23 objection.

24 MS. ROONEY: Also, again, yesterday I

1 believe it was, she testified with respect to
2 the police officers and statements in the
3 police officers reports, as well as the
4 Department of Social Services reports, she
5 indicated that that information was incorrect
6 or inconsistent. And again, on the same
7 grounds, it was commenting on another
8 witness.

9 THE COURT: An opinion about that, I
10 would agree is not for this witness even at
11 this hearing.

12 MS. ROONEY: Your Honor, the
13 Commonwealth would renew its motion at this
14 time to strike the information contained in
15 her affidavit with respect to the six
16 children who did not testify in the case
17 against this defendant. I believe we've made
18 that motion before.

19 THE COURT: Okay. I'm going to deny
20 that request without prejudice. What I would
21 like for you to do -- not now -- is maybe put
22 on paper for me which of those sections of
23 the affidavit you're referring to, and then
24 I'll give you time to argue before I --

1 MS. ROONEY: And finally, your Honor,
2 Dr. Bruck testified, yesterday I believe, to
3 a 1998 study that she had conducted. I don't
4 know if it had a name. It had something to do
5 about the adults and the interviewer bias of
6 adults. I believe it had to do with children
7 being at a birthday party or not being at a
8 birthday party. I would move to strike her
9 testimony with respect to that study. It is
10 not in fact, in her words, written up yet. It
11 obviously hasn't been subjected to peer
12 review. We have no -- there's no information
13 about it in the record. She was unable to
14 provide any, and I would just move to strike
15 that based on those grounds.

16 THE COURT: What about that issue? If
17 it hasn't been provided to the Commonwealth,
18 if it's not been published, they don't have
19 access to it and can't question her on it?

20 MR. WILLIAMS: No, your Honor, then
21 what they're really saying is that we can't
22 present the most recent state-of-the-art
23 studies that are being conducted in this
24 area. It's so new that she's in the midst of

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1 writing it up.

2 I think what it goes to is the
3 weight. The fact that it's not peer reviewed,
4 you could -- at this juncture, I think
5 ultimately it will be -- but you can consider
6 that for the weight of that evidence.

7 THE COURT: I'll note your objection.
8 I'm going to overrule it at this time. Any
9 others?

10 MS. ROONEY: That's it, your Honor.

11 THE COURT: Okay. Your next witness?

12 MR. SULTAN: Yes, your Honor. The
13 defendant calls Dr. Schetky, please.

14

15 DR. DIANE H. SCHETKY, SWORN

16

17 THE CLERK: Please state your name
18 and spell your last name for the record?

19 THE WITNESS: Yes. Diane H. Schetky.
20 That's spelled S-c-h-e-t-k-y.

21

22 DIRECT EXAMINATION

23 BY MR. SULTAN:

24 Q. Good afternoon, ma'am. Where do you live?

1 A. Rockport, Maine.

2 Q. And how -- what is your profession?

3 A. I'm a child and adult psychiatrist.

4 Q. Now, before you were on the witness stand,
5 there's an exhibit that's been marked,
6 Exhibit 25, can you tell the Court what that
7 is, please?

8 A. That is my most recent curriculum vitae.

9 Q. And is that an accurate statement of your
10 professional experience and training?

11 A. It is.

12 Q. Are you board certified, Dr. Schetky?

13 A. I am.

14 Q. And in what specialties are you board
15 certified?

16 A. Adult psychiatry, child psychiatry, and
17 forensic psychiatry.

18 MS. ROONEY: Your Honor, the
19 Commonwealth is happy to stipulate to the
20 C.V.

21 MR. SULTAN: I'm not going to go
22 through her credentials, your Honor. The
23 Court has her C.V. obviously in evidence.
24

1 [By Mr. Sultan:]

2 Q. Could you just generically describe the
3 nature of your present professional practice,
4 Dr. Schetky?

5 A. I'm in private-solo practice in Rockport,
6 Maine. Currently about 50 percent of my
7 practice is doing forensic evaluations. I'd
8 say the bulk of these I'm appointed by the
9 Court. I've also done some defense work,
10 quite a bit of plaintiff work in civil
11 litigation, many in cases involving sexual
12 abuse of the children and adults --

13 THE COURT: This is where -- in the
14 civil cases, where a plaintiff alleges that
15 he or she was sexually abused and is claiming
16 damages?

17 THE WITNESS: Correct.

18 A. In addition, I'm involved in teaching at
19 Maine Medical Center, where I teach a seminar
20 that's led jointly for law students at
21 University of Maine and the child psychiatry
22 trainees at Maine Medical Center. And I'm
23 involved in quite a bit of writing and
24 lecturing around the country.

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1 Q. Have you been qualified as an expert witness
2 in any courts before?

3 A. I have.

4 Q. And tell us the states in which you've been
5 qualified, or some of the states in which
6 you've been so qualified?

7 A. Oregon, Washington, Florida, Louisiana,
8 Pennsylvania, Illinois and, let me think,
9 Massachusetts, Connecticut, Maine and --

10 Q. Dr. Schetky, in the course --

11 A. -- New Hampshire.

12 Q. -- are you done?

13 A. And New Hampshire.

14 Q. And New Hampshire.

15 In the course of your professional career,
16 have you developed -- have you become
17 familiar with the -- the subfield of young
18 children's memories, including how they work
19 and how they can be manipulated?

20 A. Yes.

21 Q. And what are the sources of your familiarity
22 with that particular subfield?

23 A. Reading in the literature, continuing
24 education courses at annual meetings and

1 seminars, my own experience in interviewing
2 many many young children over the years.

3 Q. Over what period of time have you done
4 clinical work?

5 A. I've been engaged in the field of sexual
6 abuse since 1975 and seeing children in many
7 contexts albeit in dependency and neglect
8 hearings, allegations of sexual abuse that
9 arise in the context of custody and divorce
10 disputes, as well as sexually abused children
11 I have treated over the years.

12 Q. Have you written in this field?

13 A. I have.

14 Q. Have you lectured in this field?

15 A. I have.

16 Q. Are you familiar -- do you have a working
17 knowledge of the literature in this field?

18 A. Yes. I wouldn't say it's as detailed as Dr.
19 Bruck however.

20 Q. Okay. Are you familiar with the generally
21 accepted views within the community of child
22 psychiatrists --

23 A. Yes.

24 Q. -- in this field?

1 Have you also, in the course of your
2 professional career, developed a familiarity
3 with various techniques of interviewing
4 preschool children, and in particular, the
5 relationship between such techniques and the
6 reliability of information provided by such
7 children?

8 A. Yes.

9 Q. And the sources of your familiarity with that
10 subfield, essentially the same as those you
11 already testified to?

12 A. In addition, over the years I have critiqued
13 many evaluations of so-called validators,
14 other people who have assessed children for
15 sexual abuse.

16 Q. Have you had any role in drafting any
17 protocols or guidelines for how young
18 children should be interviewed in cases
19 involving allegations of child abuse?

20 A. Yes. In 1988, the American Academy of Child
21 and Adolescent Psychiatry put forth
22 guidelines for evaluating children alleging
23 sexual abuse.

24 Q. What is the American Academy of Child and

1 Adolescent Psychiatry?

2 A. It's a national organization of child
3 psychiatrists. I think there are about six
4 thousand of us in the organization now.

5 Q. These guidelines that were published in 1988,
6 are they before you and marked Exhibit 21?

7 A. Yes.

8 Q. And what role did you have in the preparation
9 of those guidelines?

10 A. I was Chair of the committee that wrote the
11 guidelines, and the principal author of them.

12 Q. Subsequent to the publication of those
13 guidelines by the American Academy of Child
14 and Adolescent Psychiatry in 1988, have you
15 had any further role in drafting or reviewing
16 guidelines in this area?

17 A. Yes. The Academy is now coming out with
18 practice parameters affecting many areas of
19 our practice. These are much more detailed,
20 referenced guidelines for practitioners.

21 Q. Have such parameters been published by the
22 American Academy of Child and Adolescent
23 Psychiatry in this particular area, that is,
24 interviewing young children in cases

1 involving allegations of sexual abuse?

2 A. Yes. In 1977.

3 Q. What's the year again?

4 A. 1977, October. I'm sorry. 1997. October.

5 Q. 1997, okay.

6 And are those marked Exhibit 24?

7 A. Yes.

8 Q. What role, if any, did you have in -- with
9 respect to those 1997 practice parameters?

10 A. I critiqued several drafts of it. I was not
11 one of the primary authors.

12 Q. Now, Dr. Schetky, have you read the trial
13 transcript in this case, or read the
14 investigative reports, or read anything else
15 about this case other than what's been
16 presented in the courtroom yesterday and
17 today?

18 A. I have not.

19 Q. Did you, in the course of your preparation
20 for appearing at this hearing, review the
21 affidavit of Dr. Bruck, which has been marked
22 Exhibit 1?

23 A. I did.

24 Q. Do you know, or at least prior to yesterday

1 when this hearing began, did you know Dr.
2 Bruck personally?

3 A. No. Only by name.

4 Q. Had you ever met her before yesterday?

5 A. I had not.

6 Q. Have you read any of the articles or other
7 works that Dr. Bruck has authored or
8 coauthored?

9 A. Yes.

10 Q. Now, Dr. Bruck is a psychologist and you're a
11 psychiatrist, right?

12 A. That's correct.

13 Q. And can you just briefly describe the
14 significance, if any, of that distinction in
15 the professional world dealing with children?

16 A. The two professions are often confused even
17 by lawyers. A Ph.D. is a post-doctoral
18 degree. It may be more research oriented or
19 it may be clinically oriented, but a Ph.D. in
20 Psychology does not have the medical training
21 a psychiatrist does.

22 Q. And vice versa?

23 A. Correct. And what they do have that we do not
24 have, they are trained to administer and

1 interpret psychological testing, and they
2 probably receive more training in research
3 methodology than the average psychiatrist
4 does.

5 Our training is, first of all,
6 medical -- four years of medical school
7 followed by four or five years of post-
8 graduate clinical experience, which is
9 supervised. And in my case, I took an
10 additional two years in child psychiatry.

11 Q. Is there any cross-fertilization between
12 child psychiatrists and child psychologists,
13 or at least the works of psychiatrists and
14 psychologists?

15 A. I think it varies around the country.
16 Probably people in academia work in closer
17 quarters, so in very large departments, they
18 may have very little to do with each other,
19 large university centers.

20 Unfortunately, we tend not to read
21 each other's literature much unless we're
22 writing a paper and trying to do a literature
23 review.

24 Q. With respect to -- I'm sorry.

1 A. Unfortunately, we tend not to go to each
2 other's meetings a lot because it is a
3 problem how much time you can take away from
4 your practice. It also becomes very
5 expensive.

6 Q. With respect to Dr. Bruck's works, that is
7 articles or other works she's written, you
8 said you have read some of her works, though,
9 correct?

10 A. Yes.

11 Q. Are you familiar with her reputation as a
12 researcher and scholar within the -- within
13 your professional community, that is, the
14 community of child and adolescent
15 psychiatrists?

16 A. I am.

17 Q. And what is her reputation?

18 MS. ROONEY: Objection.

19 THE COURT: Basis?

20 MS. ROONEY: I believe we're in the
21 area of character evidence with respect to an
22 expert. I mean, she shouldn't -- my
23 understanding is that Dr. Schetky was merely
24 going to testify as to whether or not the

1 research was generally accepted in the field,
2 and now we're commenting on Dr. Bruck's
3 stature in the community.

4 THE COURT: Well, I take that
5 question to go to the limited purpose of Dr.
6 Bruck's research in the field, and whether
7 it's accepted; not accepted. Limited to that,
8 I think it's an appropriate question for a
9 Lanigan --

10 MR. SULTAN: That's the only purpose
11 of the question.

12 THE COURT: I will not take it for
13 purposes of any credibility judgments I make
14 about her testimony, or the weight of her
15 testimony. I will not take it --

16 MS. ROONEY: Then perhaps the
17 question can be rephrased so that we're
18 talking about the research studies rather
19 than Dr. Bruck herself.

20 MR. SULTAN: I'll do so.

21 [By Mr. Sultan:]

22 Q. With respect to the quality of Dr. Bruck's
23 research and work in -- she has described
24 over the past couple of days, are you

1 familiar with the reputation of that body of
2 work within your professional community?

3 A. I can't speak for the entire profession
4 clearly, but among my colleagues who work in
5 the area of forensics and child sexual abuse,
6 her work is held in high regard. In fact, the
7 practice parameters put out in 1997 has an
8 extensive bibliography, and they have starred
9 several of the references with an asterisk
10 that are particularly recommended, and one of
11 those is her book, Jeopardy in the Courtroom.

12 Q. And what is the significance of that asterisk
13 on the bibliography published by the American
14 Academy of Child and Adolescent Psychiatry?

15 A. To key the reader to what are considered to
16 be the most significant works, and perhaps
17 most useful. It's about a four-page
18 bibliography -- five page. Maybe only about
19 six works were starred.

20 Q. And that's one of them?

21 A. Yes.

22 Q. Dr. Schetky, I'd ask you to keep your voice
23 up.

24 A. Yes.

1 Q. Thank you.

2 Now, did you read the portion of Dr. Bruck's
3 affidavit regarding the effect of interviewer
4 bias upon the reliability of reports by young
5 children? I think that appears at paragraphs
6 41 and 46 of her affidavit.

7 A. I did.

8 Q. And did you hear her testimony on that
9 subject in the courtroom over the past two
10 days?

11 A. I did.

12 Q. In general, can you tell us whether you agree
13 or disagree with her opinions on that
14 subject?

15 MS. ROONEY: Objection.

16 THE COURT: Basis?

17 MS. ROONEY: Again, we're commenting
18 on Dr. Bruck's opinion. She testified as to
19 her opinions of the research. I don't believe
20 it's appropriate testimony for Dr. Schetky to
21 now comment on Dr. Bruck's opinions.

22 MR. SULTAN: I think as a -- I think
23 in order to establish, under Lanigan, the
24 reliability, the validity and the general

1 acceptability of the testimony that's been
2 put forth by Dr. Bruck, I think it's entirely
3 appropriate to ask a qualified professional
4 her views on those subjects, as well as her
5 assessment, if she has one, as to the general
6 acceptability of Dr. Bruck's views within her
7 professional community.

8 I think that's what I have to do.

9 THE COURT: Well, she can testify to
10 that, that is, I'll let her testify to that
11 if you could rephrase the question.

12 MS. ROONEY: Your Honor, I believe
13 that the Lanigan standard is that of the
14 reliability of the theory or process
15 underlying the expert's testimony. And I have
16 not yet heard what theory or process we're
17 talking about. And unless we can identify a
18 particular theory or a particular process
19 which they are proffering as meeting the
20 Lanigan standard, I don't believe this
21 testimony is appropriate.

22 THE COURT: Well, you can rephrase
23 the question along those lines. Overruled.
24

1 [By Mr. Sultan:]

2 Q. Dr. Schetky, with respect to the views
3 presented by Dr. Bruck over the past two days
4 regarding the effect of interview bias upon
5 the reliability of reports by young children,
6 is -- are those views, in your opinion,
7 generally accepted within the field of child
8 psychiatry today?

9 A. Yes.

10 Q. And are those views, to your knowledge,
11 supported by published peer review articles
12 in medical or scientific journals?

13 A. Yes.

14 Q. Now, with respect to Dr. Bruck's testimony
15 and what it sets forth in her affidavit
16 regarding the use of repetitive leading
17 questions and the impact of such questioning
18 upon the reliability of reports by young
19 children, did you read that portion of her
20 affidavit?

21 A. I did.

22 Q. And did you hear her testify in this
23 courtroom over the past two days regarding
24 that subject?

1 A. I did.

2 Q. Now, in your opinion, are the views that she
3 presented on that particular subject, are
4 those views generally accepted today within
5 the field of child psychiatry?

6 MS. ROONEY: Objection. I'm going to
7 object to this entire line of questioning,
8 and for purposes of the record --

9 THE COURT: Overruled. You may
10 answer.

11 A. Yes, they are accepted.

12 Q. And why don't you tell us your understanding
13 of what those views are, in summary fashion,
14 regarding the use of repetitive leading
15 questions and the impact of such questioning
16 upon the reliability of reports by young
17 children?

18 A. My understanding of the data she's presented
19 is that it can indeed affect a child's
20 response.

21 Q. In what way?

22 A. In what way? The child may be led in the
23 course of repetitive questions. The child may
24 take it as a demand for more information. The

1 child might feel that he or she is not
2 believed if the question continues to be
3 repeated, or the child may start to
4 confabulate, feeling the interviewer wants
5 additional information.

6 Q. And based on your understanding and knowledge
7 of your peers, the community of professionals
8 and colleagues who you work with on a regular
9 basis, those views -- are those views
10 generally accepted within that community?

11 A. Yes. In fact, this is something we have all
12 cautioned about for many years. It's been a
13 matter of intuition and judgment that it's
14 not a good idea to lead children, but the
15 research data has been sorely lacking, and I
16 think we have welcomed this sort of research
17 to bring us back to scientific foothold that
18 there is a scientific basis for our fears
19 about using leading questions.

20 Q. Dr. Schetky, did you review the portion of
21 Dr. Bruck's affidavit, and did you hear her
22 testimony in the courtroom, regarding the
23 effect of the emotional tone of an
24 interviewer upon the reliability of reports

1 by young children?

2 A. I did hear that.

3 Q. And with respect to the views that Dr. Bruck
4 expressed and the research that she relied
5 upon with respect to that particular subject
6 matter, are those views, in your opinion,
7 generally accepted today within the field of
8 child psychiatry?

9 A. Yes, they are.

10 Q. Now, did you review the section of Dr.
11 Bruck's affidavit, and did you hear her
12 testimony, regarding the use of anatomically
13 correct dolls and drawings of naked people as
14 -- as props or as devices to be used during
15 interviews with young children, and the
16 impact of those particular techniques upon
17 the reliability of subsequent reports?

18 A. Yes, I heard her testimony.

19 Q. Is it fair to say that there's -- there
20 continues to be a certain amount of
21 controversy over whether or not it is ever
22 appropriate to use these kinds of techniques
23 in interviewing young children?

24 A. The controversy continues. I would say most

1 of us are wary at this point about using the
2 dolls. Mine have been sitting in a closet,
3 covered with dust, for several years now.

4 Q. And with respect to the particular concerns
5 that Dr. Bruck expressed regarding the use of
6 those dolls in the context of interviews in
7 which other suggestive techniques are
8 employed, do you have an opinion about
9 whether her views on that particular subject
10 are generally accepted within the field of
11 child psychiatry today?

12 A. They're accepted and they're consistent with
13 what we teach.

14 Q. Now, Dr. Schetky, did you review the portion
15 of Dr. Bruck's affidavit, and were you
16 present to hear her testimony, regarding the
17 effect of peer pressure during interviews
18 with young children upon the reliability of
19 their subsequent reports?

20 A. Yes, I heard that and I read about it.

21 Q. And in your opinion, are the views expressed
22 by Dr. Bruck and the research that she relied
23 upon with respect to the impact of peer
24 pressure on reliability, are those views, and

1 is that research generally accepted today
2 within the field of child psychiatry?

3 A. It is accepted within my speciality field.

4 Q. Now, did you hear Dr. Bruck's testimony in
5 the courtroom regarding certain other
6 suggestive techniques other than the ones
7 I've mentioned so far?

8 A. (No verbal response.)

9 Q. Stereotype induction, for instance?

10 A. Oh. Okay. Yes.

11 Q. Okay. And what is stereotype induction?

12 A. This is where you convey a mental picture of
13 the character of a particular person that
14 then gets in the child's mind-set and may to
15 some degree affect their recall or testimony.
16 If you, for instance, portray a teacher as
17 bad, they may be more likely to report that
18 teacher doing bad things than if you
19 portrayed a picture of that teacher as being
20 kindly, good.

21 Q. In the field of child psychiatry today, can
22 you say whether it is generally recognized
23 that stereotype induction, as used as you
24 have described it, is a suggestive technique

1 which could well adversely affect the
2 reliability of reports by young children?

3 A. That concept is accepted, yes.

4 Q. What about selective reinforcement? Did you
5 hear Dr. Bruck's testimony about selective
6 reinforcement?

7 A. I did.

8 Q. And just to refresh us, what is selective
9 reinforcement?

10 A. Selective reinforcement is where the
11 interviewer pursues those desirable
12 responses, often disregarding other
13 information the child has given them because
14 it doesn't fit with their particular
15 hypothesis.

16 Q. And with respect to Dr. Bruck's testimony and
17 the research that she relied upon in
18 testifying about selective reinforcement, is
19 that testimony -- is that research and her
20 views on this subject, are they generally
21 accepted today within the field of child
22 psychiatry, if you can say?

23 A. Yes, they are.

24 Q. Now, did you hear Dr. Bruck's testimony

1 regarding the technique of blurring the line
2 between reality and fantasy, that is, playing
3 let's pretend games?

4 A. Yes.

5 Q. And you heard her testimony regarding the
6 impact of that technique on the reliability
7 or unreliability of resulting reports by
8 young children?

9 A. I did.

10 Q. And the research that she's relied upon?

11 A. Yes.

12 Q. Are her views on that subject and the
13 research that she relied upon, in your
14 opinion, generally accepted today within the
15 field of child psychiatry?

16 A. Yes, they are.

17 Q. Now, did you read the section of Dr. Bruck's
18 affidavit and did you hear her testimony over
19 the last two days regarding the cumulative
20 impact of multiple suggestive techniques upon
21 the reliability of reports by preschool
22 children?

23 A. Yes, I did.

24 Q. And with respect to her views on that

1 subject, and the research that she relied
2 upon in testifying, and her affidavit, are
3 those views and is that research generally
4 accepted today within the field of child
5 psychiatry?

6 A. Some of the research she cited is relatively
7 new, and I'm not sure how widely disseminated
8 it is amongst my profession. Certainly the
9 concept is one we're aware of and which we
10 incorporate in any guidelines about how to
11 interview children.

12 Q. Now, did you hear Dr. Bruck's testimony that
13 in her opinion younger children are more
14 vulnerable to suggestion than older children?

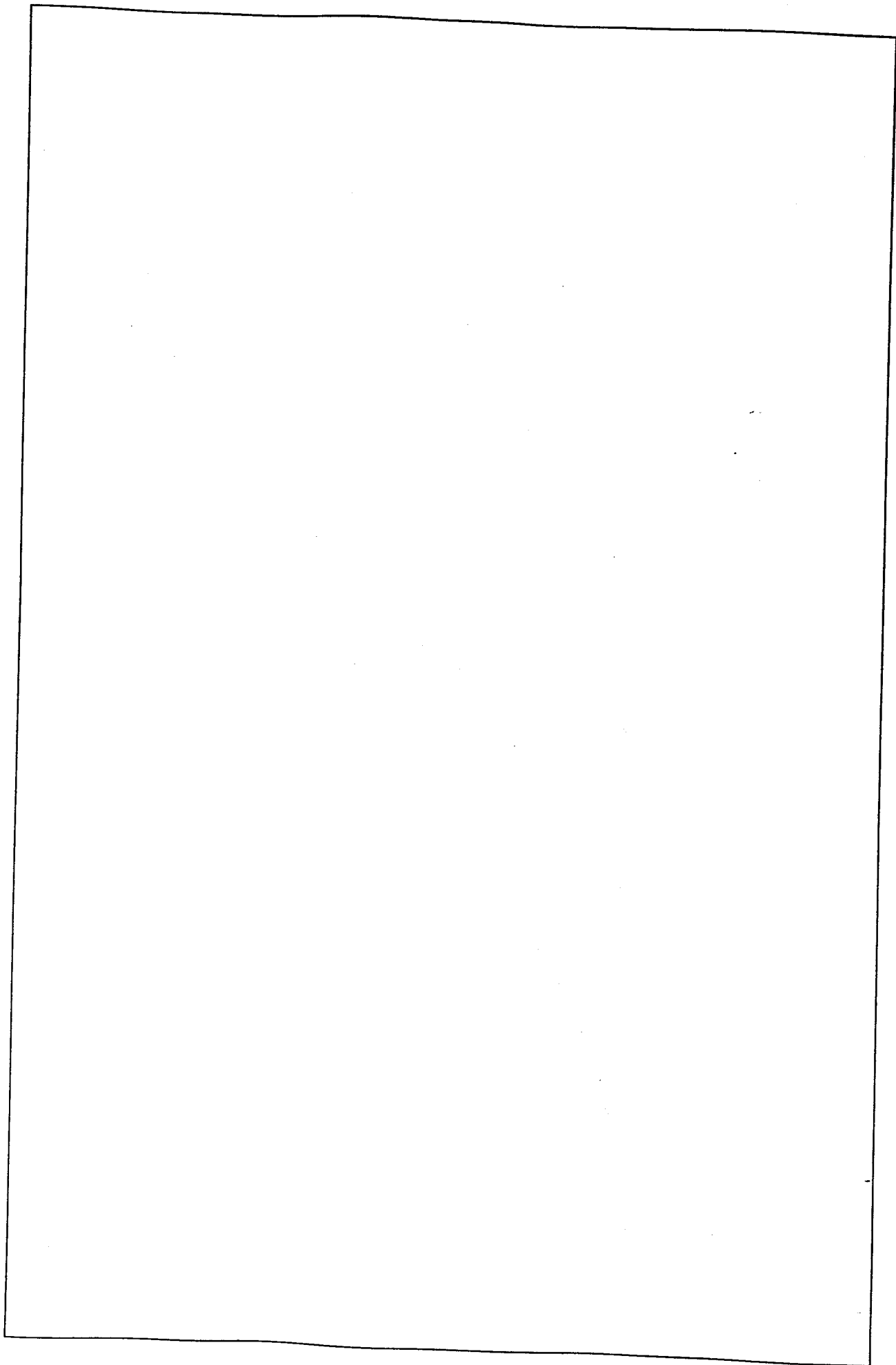
15 A. Yes, I did.

16 Q. Is that particular view one which is
17 generally accepted today within the field of
18 child psychiatry?

19 A. Very much so.

20 Q. Did you hear Dr. Bruck's testimony regarding
21 methods of minimizing or reducing unreliable
22 reporting by small children in conducting an
23 interview?

24 A. I did.



1 Q. And with respect to that subject matter, are
2 there generally accepted views in your field
3 reflected, for example, in the parameters
4 that have been admitted as Exhibit 25 at this
5 hearing, or 24 at this hearing?

6 MS. ROONEY: Objection as to
7 vagueness. I'm not clear on what exactly --
8 what view we're talking about right now.

9 MR. SULTAN: Okay.

10 THE COURT: Rephrase the question.

11 MR. SULTAN: Yes, your Honor.

12 [By Mr. Sultan:]

13 Q. What do you recall about what Dr. Bruck had
14 to say regarding how to minimize unreliable
15 reports in interviewing young children?

16 A. She addressed the value of getting a
17 narrative history, which is certainly
18 something echoed in the child psychiatry
19 literature as well as the literature on
20 memory in children; that narrative history
21 tends to be much more reliable than questions
22 in response to pot-shot questions --
23 responses to -- answers to pot-shot
24 questions.

1 She stressed the value of the
2 initial interview. She stressed the value of
3 an interview that occurs in close proximity
4 to the alleged event as opposed to one that
5 occurs several years later.

6 Q. Interviewer bias, do you recall what she said
7 about the importance of an unbiased
8 interviewer?

9 A. Certainly the research would confirm our
10 clinical apprehension that bias in the
11 interview can color the whole interview and
12 lead to such things as selective
13 reinforcement. It can affect the emotional
14 tone of the interview. I've seen interviews
15 where the interviewer is very remote until
16 the child starts talking about sexual views,
17 and suddenly they're reinforcing their
18 responses, and much more interactive, and
19 much warmer, and patting them on the head,
20 and telling them what a good job they did.

21 Q. Is there a general consensus in the field of
22 child psychiatry regarding the kind of people
23 who should be doing interviews of
24 preschoolers in sexual abuse cases?

1 A. I think it requires very particular skills.
2 Certainly you need some knowledge of child
3 development, of how memory develops in
4 children, understanding the fact that most
5 preschoolers don't think very abstractly, are
6 not able to handle symbolic language; that
7 they may be confused by multiple pronouns
8 being thrown at them, or rapid transitions in
9 the line of questioning.

10 You need to pare down the length of
11 your sentences to approximately the child's.
12 You need to know where the child is
13 developmentally. Just because they're
14 chronologically four or five, doesn't mean
15 they're four or five mentally.

16 You also need to know something
17 about where that child lives. You cannot
18 evaluate them in a void. You need to know
19 about their life experiences, about what
20 might be going on in the home to account for
21 some of these suspicious behaviors; about
22 what their exposure to sexuality has been;
23 whether there's been any other abuse.

24 Q. Are those basic concepts reflected in Exhibit

1 24, the parameters of the Academy?

2 A. Yes, they are.

3 Q. And they're generally accepted within your
4 field today?

5 A. Absolutely.

6 THE COURT: We're going to take a
7 ten-minute recess.

8 [Recess 3:13 p.m.]

9

10 [Hearing resumes 3:26 p.m.]

11

12 MR. SULTAN: May I proceed, your
13 Honor?

14

15 DR. DIANE H. SCHETKY, RESUMED

16 DIRECT EXAMINATION, RESUMED

17 BY MR. SULTAN:

18 Q. Dr. Schetky, are you familiar, or were you
19 familiar in 1987 with the state of
20 professional literature and what was
21 generally accepted in your field respecting
22 the fields of memory in young children,
23 suggestiveness of young children, and the
24 impact of various interviewing techniques

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1 upon the reliability of the reports of young
2 children?

3 A. I became familiar in that time period because
4 I happened to be writing -- coauthoring a
5 book on child sexual abuse at that time. So I
6 was trying to review what was out there.

7 Q. What was the state of knowledge and the state
8 of the literature in this area at that time?

9 A. Not a lot out there. I would say most of the
10 memory studies dealt with adults. There were
11 few studies suggesting the suggestibility of
12 children, but they certainly did not in any
13 way replicate a forensic setting.

14 There were some studies out on
15 eyewitness testimony in children and how that
16 wasn't very reliable, particularly young
17 children, suggesting that young children are
18 much more suggestible. But we know that all
19 people are suggestible, but young children
20 more so than middle-aged children.

21 And there was very little out there
22 regarding suggestibility in the area of child
23 sexual abuse. In fact, we weren't hearing
24 much about false allegations then either.

1 Q. Was there a systematic body of science that
2 existed at that time with respect to the
3 suggestibility of young children and the
4 impact of various interviewing techniques?

5 A. It wasn't a large body at all.

6 Q. Were there detailed protocols that existed at
7 that time as to how interviews should and
8 should not be conducted?

9 A. None that I'm aware of.

10 Q. And were there -- the principles that Dr.
11 Bruck discussed over the last two days
12 regarding various interviewing techniques and
13 their impact, that you say are now generally
14 accepted in your scientific community, were
15 those principles generally accepted within
16 your scientific community back in the mid-
17 1980s?

18 A. No. We were working in the dark.

19 Q. Now, how about today, describe in general
20 what kind of evolution has occurred with
21 respect to the development of science, and
22 what is generally accepted in this field
23 within your professional community over the
24 past decade or so?

1 A. I think the courts got ahead of the
2 profession in terms of the types of questions
3 they were asking us in regard to sexual
4 abuse, and expert witnesses responded to
5 these questions based on opinion or intuition
6 rather than giving answers that were data-
7 based. And I think professionals probably
8 thought they were being helpful. The other
9 problem was the data simply was not there at
10 that time.

11 Q. What about today, is the data there today?

12 A. Absolutely.

13 Q. Thank you.

14 MR. SULTAN: I have no further
15 questions, your Honor.

16

17 CROSS-EXAMINATION

18 BY MS. ROONEY:

19 Q. Dr. Schetky, you stated that you can't speak
20 to the general community, that you can speak
21 about acceptance among your colleagues?

22 A. I can't speak for all child psychiatrists.

23 Q. You can only speak to your colleagues, is
24 that correct? Did I misunderstand you?

1 A. Well, I will rephrase it. I cannot obviously
2 speak for every child psychiatrist in the
3 country. I can speak as an Officer of the
4 American Academy of Child and Adolescent
5 Psychiatry. I can tell you what the position
6 of the American Academy is. I can also speak
7 as one who is well acquainted with most of
8 the other child psychiatrists doing forensics
9 because there are very few of us. There are
10 probably only two dozen in the country who do
11 a lot of this.

12 Q. Only two dozen psychiatrists?

13 A. Child psychiatrists who specialize in child
14 forensic psychiatry.

15 Q. And when you speak about your colleagues,
16 when you're referring to your colleagues, are
17 you talking about the two dozen who
18 specialized in the field of child --

19 A. No. I'm saying this is accepted by the
20 American Academy of Child and Adolescent
21 Psychiatry, that would encompass all of our
22 membership. Certainly our guidelines are
23 directed towards all of them. They've gotten
24 that message.

1 Q. And in fact, what you're saying, just to be
2 clear, you're saying that it's --

3 A. In terms of the guidelines, yes.

4 Q. The guidelines are generally accepted?

5 A. Yes. If we're talking about some of the
6 research --

7 Q. Yes.

8 A. -- probably your average child psychiatrist
9 who doesn't work in forensics may not be
10 conversant with it, but I think those who
11 spend time working, evaluating very young
12 children, evaluating allegations of sexual
13 abuse, are well acquainted with the current
14 research.

15 Q. And that is approximately two dozen you're
16 estimating?

17 A. I'm talking about people whom I would
18 consider to have expertise. I'm sure there
19 are many more out there doing these
20 evaluations.

21 Q. But when you --

22 A. Many being asked to do it because there are
23 no real experts in their area. So most child
24 psychiatrists are evaluating child sexual

1 abuse even though they don't have forensic
2 training.

3 Q. I'm just trying to clarify. I believe when
4 you started you indicated that you could not
5 speak for the general community but that you
6 could speak for your colleagues. And I'm just
7 trying to establish, when you're saying "your
8 colleagues," are you referring specifically
9 to the two dozen, more or less, individuals
10 who specialize in this field of child --

11 A. It depends what the question is.

12 Q. When you're talking about the general
13 acceptance of the research underlying
14 interviewer bias, are you saying that that is
15 generally accepted by your colleagues?

16 A. It is accepted in terms of that is what is
17 promulgated by the American Academy of Child
18 and Adolescent Psychiatry as is reflected in
19 our guidelines. It is certainly reflected in
20 the scientific articles that are published in
21 our journals, that this is standard of
22 practice currently.

23 Q. Standard practice, okay. But I'm asking you
24 about the theory about interviewer bias, is

1 the theory about interviewer bias generally
2 accepted among all child psychiatrists, is
3 that your testimony?

4 A. I cannot speak for every child psychiatrist.

5 Q. Thank you.

6 A. It is certainly accepted as it is reflected
7 in our journal, in our newsletter, in our
8 practice parameters --

9 Q. So you're indicating that --

10 A. -- that this is the ideal. I cannot tell you
11 what every psychiatrist is doing in terms of
12 how they're conducting evaluation, clearly.

13 Q. So you can't tell us today whether or not the
14 theory underlying interviewer bias is
15 generally accepted among child psychiatrists,
16 in general, correct?

17 A. It's accepted in terms of that is being
18 what's taught to our trainees across the
19 country.

20 Q. But you can't tell us whether or not, in
21 general, in the community of child
22 psychiatrists, the theory about interviewer
23 bias is generally accepted. You can tell us
24 that it's in the papers and the guidelines,

1 is that correct?

2 A. Yes.

3 Q. And with respect to the theory of repetitive
4 leading questions, again, when you talked
5 about general acceptance, are we talking in
6 the same manner? You can't tell us whether or
7 not it's generally accepted among all child
8 psychiatrists, but again, you can say these
9 are in the guidelines as well?

10 A. I would be hard pressed to come up with a
11 name of any child psychiatrist who was in
12 favor of leading questions.

13 Q. So, when we're talking about repetitive
14 leading questions and the theory underlying
15 that, how many questions are considered too
16 many?

17 A. It is commonly suggested you might ask the
18 same question twice, perhaps rewording it a
19 little bit to make sure the child has
20 understood it. But if you persistently get
21 "no" twice, that you don't pursue that line
22 of questioning. I mean it's --

23 Q. So it's your testimony that the generally
24 accepted principle here is that two

1 questions, if you go beyond that, then you're
2 going to get into some trouble, is that the
3 general acceptance?

4 A. That is not written in stone.

5 Q. It's not?

6 A. I'm saying, as a guideline, we teach
7 minimizing the number of questions.

8 Q. What you teach, but I'm trying to ask you
9 what is generally accepted. What is the
10 consensus among child psychiatrists, your
11 colleagues, about the number of questions,
12 when you're talking about repetitive leading
13 questions, how many is too many, what's the
14 number that everybody agrees on?

15 A. There is no consensus. Nobody has done a
16 poll.

17 Q. And with respect to, I believe you talked a
18 little bit about the emotional tone, you said
19 there's a theory about the emotional tone of
20 an interview. Would you agree that there's a
21 spectrum: some interviews may be highly
22 charged, and other interviews may not have as
23 much emotion involved in it?

24 A. First of all, I don't believe I used the word

1 "theory" about the emotional tone.

2 Q. Well, what word did you use?

3 A. That it's accepted that emotional tone can
4 affect the quality of the interview and the
5 responses elicited. That's not a theory.

6 Q. How much emotional tone?

7 A. How much?

8 Q. Yes. What's the general consensus?

9 A. Certainly if you're being exceedingly
10 aggressive with a child, intimidating them,
11 coming on as too authoritarian, that can
12 influence the data you get. It could be --

13 Q. But what is the general consensus? If someone
14 were to say, the general consensus among the
15 relevant scientific community is that this
16 amount of emotion is too much, what's the
17 amount? What's the consensus?

18 A. Again, nobody has done surveys on this. It
19 comes down to using good clinical judgment,
20 conducting your interview in a way that does
21 not intimidate or harm that child in any way,
22 and in a way that's going to elicit the most
23 valid information.

24 Q. So you would agree with me that some child

1 psychiatrists might consider one interview to
2 have overriding emotional factors, and
3 another psychiatrist looking at that same
4 interview might have a different opinion, is
5 that correct?

6 A. No, I didn't say that.

7 Q. So everybody, every child psychiatrist within
8 the community is going to look at one
9 interview and they're going to say, that
10 interview has too much emotion overriding it,
11 is that correct?

12 A. I think we would probably agree on the
13 extremes. There would obviously be difference
14 of opinion as you approach the middle ground.

15 Q. So would you agree that some are going to
16 have an opinion about some, and others are
17 going to have a different opinion. There's
18 differing opinions on what is too much in a
19 particular interview?

20 A. Again, I think most child psychiatrists would
21 recognize the extremes of inappropriate
22 behavior. This might include very seductive
23 behavior, reinforcing desired questions, or
24 the interviewer who comes on too strong,

1 threatens the child, intimidates them, uses
2 coercive techniques. I don't think anybody
3 would agree that those are okay.

4 Q. Now, you indicated that -- you talked a
5 little bit about cumulative impact, and that
6 there's general acceptance about the
7 cumulative impact of some of these qualities,
8 is that correct --

9 A. Yes.

10 Q. -- did you testify to that?

11 And exactly what research points to that,
12 what is the general consensus, what research
13 is it that points to the cumulative impact?

14 A. Well, we have the Garven Study for one, where
15 in essence it's combining a lot of bad
16 techniques, and if you have more than one bad
17 technique, if you add in some of these other
18 bad techniques on top of suggestive leading
19 interviews, you're going to get higher and
20 higher incidents of false reports.

21 Q. Do you know what year that study was, the
22 Garven Study?

23 A. Yes. I can give you the reference if you
24 want. I don't have the year right here. I

1 believe it's a fairly recent one.

2 Q. Any other studies other than the Garven
3 Study?

4 A. Poole and Lindsay.

5 Q. Again, a recent study?

6 A. Poole and Lindsay --

7 Q. Is that a recent study?

8 A. -- yes, it's fairly recent.

9 And the Ceci Studies.

10 Q. Dr. Schetky, would you agree with me that
11 there has been little research done on the
12 emotional components of disclosure and their
13 relationship to suggestibility?

14 A. I'm not sure what you mean by that question.

15 Q. Are you familiar with the process of
16 disclosure?

17 A. Yes.

18 Q. Would you agree that that's an emotional
19 process for a child?

20 A. It can be.

21 Q. Some children just don't have any - no
22 problem --

23 A. I've seen that, too.

24 Q. -- disclosing it?

1 A. I've seen that, too, particularly those
2 who've been repeatedly interviewed. They're
3 sort of like zombies. They rattle it off very
4 mechanically.

5 Q. Well, would you agree with me that there
6 hasn't been any research conducted on abuse
7 populations?

8 A. Any research on what?

9 Q. Would you agree that there has been no group
10 of sexually abused children that have been
11 involved in any of these research studies
12 with respect to suggestibility?

13 A. With respect to suggestibility?

14 Q. Yes.

15 A. Well, you get into very difficult ethical
16 questions here.

17 Q. Well, have they ever been involved in any
18 such study?

19 A. Probably not, for good ethical reasons.

20 Q. Now, I'd like to talk with you a few minutes
21 about the rate of error in some of these
22 studies. Would you agree with me that there's
23 very little known about the degree to which
24 any particular child, from a particular age

1 group, is likely to produce an incorrect
2 response when exposed to suggestion?

3 A. No. I think there's consensus there.

4 Q. What is the consensus?

5 A. That three-year-olds are much more
6 suggestible.

7 Q. I'm not talking about three-year-olds in
8 general. I'm talking about one child. Is
9 there any research that says Child A, who is
10 three-years-old, is more likely to produce an
11 incorrect response when exposed to
12 suggestion?

13 A. Than who?

14 Q. Child B?

15 A. Well, tell me about Child B.

16 Q. So you can tell me?

17 A. I'm asking you.

18 Q. Okay.

19 A. Your question doesn't make sense.

20 Q. So if I present a child to you --

21 A. Mm-hmm.

22 Q. -- you can interview a child and you can say:
23 This child is highly resistant to suggestion.
24 Can you say that?

1 A. Uhm --

2 Q. Yes or no. Can you say that?

3 A. There are too many variables. I would have to
4 know what questions were put to the child.

5 Q. No, my question is, a particular child?

6 A. It depends who's questioning them; what the
7 question is.

8 Q. Well, would you agree that children have
9 different personality traits?

10 A. There are too many variables here. I cannot
11 give you a simple response.

12 Q. Well, my question is, Dr. Schetky, can you
13 point to one child and say: This child, if
14 subjected to a number of interviews, is going
15 to be highly resistant to suggestion in the
16 interviews, or this is a child who is going
17 to fall sway to the suggestion right off the
18 bat? Can you identify which child is going to
19 fall into which category?

20 A. There's certainly profiles.

21 Q. So you can do that?

22 A. There's a whole list in one of your
23 references by Brown on factors which heighten
24 suggestibility.

1 Q. So you can take -- so it would be possible
2 for you to look at a particular child, spend
3 some time with that child, and decide whether
4 or not that child would fall sway to
5 someone's suggestion more easily than another
6 child?

7 A. I could use Brown's profile and say: Gee,
8 based on these factors, this child's probably
9 at high risk for being suggestible.

10 Q. So you can predict that?

11 A. I said probable.

12 THE COURT: Is it possible that each
13 child then could respond differently?

14 THE WITNESS: Indeed they can, but
15 that's why it doesn't help talking about
16 these kids in the abstract. I'm not going to
17 evaluate any child in the abstract. I need to
18 know a lot more information about the child,
19 including their cognitive development --

20 [By Ms. Rooney:]

21 Q. Would you agree with the statement that even
22 in studies with significant suggestibility
23 effects, there are always some children who
24 are highly resistant to suggestion? Would you

1 agree with that?

2 A. I don't know if I could say always.

3 Sometimes.

4 Q. So you don't agree with that statement?

5 A. I would need to know more about the research.

6 Q. Do you agree with the statement that some
7 children incorporate suggestions quickly even
8 after one short interview?

9 A. I've certainly seen that.

10 Q. Do you agree with that statement?

11 A. Some, yes.

12 Q. And in a way you don't agree with it?

13 A. I'm not going to generalize to all children,
14 or use terms like always and never.

15 Q. And yet, you've just testified here to the
16 general acceptance in the community about all
17 these theories. So you're generalizing there,
18 are you not?

19 A. I think I defined what terms I was talking
20 about and in regard to what concept.

21 Q. And you in fact said that those concepts
22 about which you testified, those are
23 generally accepted; you're generalizing
24 there?

1 A. No.

2 Q. You're not generalizing?

3 A. It's based on my knowledge of what's in our
4 literature, what our practice parameters are,
5 what is taught to trainees, what I have
6 taught in institutes; my personal contact
7 with most of the child forensic psychiatrists
8 in this country.

9 Q. Are you telling this Court that a particular
10 child's accuracy can be estimated by the
11 percentage quoted in some of these research
12 findings?

13 A. No. It will give you a profile as to where
14 this child might fall in the spectrum
15 theoretically.

16 Q. In fact --

17 A. I'm not going to use that, however, to
18 determine how I feel about their disclosures
19 necessarily. It might alert me that this kid
20 is more suggestible.

21 Q. Would you agree that the research is unable
22 to account for individual differences in
23 children's responses?

24 A. I don't think I can answer that.

1 Q. Would you agree that there is no study that
2 perfectly mimics the constellation of
3 variables observed in any particular case?

4 A. (No verbal response.)

5 Q. Are you having trouble understanding my
6 question?

7 A. No. You're jumping all over. I'm trying to
8 think about this.

9 Q. Take your time.

10 A. All right. Clearly, there have been no
11 studies that absolutely replicate child
12 sexual abuse. We've agreed on that. But when
13 you say there's no study that replicates a
14 particular child, I have to know more about
15 that particular child.

16 Q. So in fact, it's your testimony that there
17 may be a particular research study which
18 mimics the constellation of factors in a
19 given case for a child who's alleged to have
20 been sexually abused?

21 A. No. I can't answer that because I don't know
22 the given factors you're talking about.

23 Q. Because children -- there are a lot of
24 variables when you're talking about children?

1 A. Sure there are.

2 Q. Would you agree that all these studies that
3 we've talked about, the results vary both
4 among and within those studies?

5 A. Again, I'd want to know what you mean by all.
6 You're asking me to make sweeping assumptions
7 here which I'm not going to do.

8 Q. So you're not going to comment on whether or
9 not the studies that we've been talking about
10 have varying differences within those
11 studies?

12 A. Again, which studies.

13 Q. Well, let's talk about the Inoculation Study
14 for a moment. Phase one of that study they
15 found that children -- it wasn't so easy to
16 influence children about personal salient
17 events, correct?

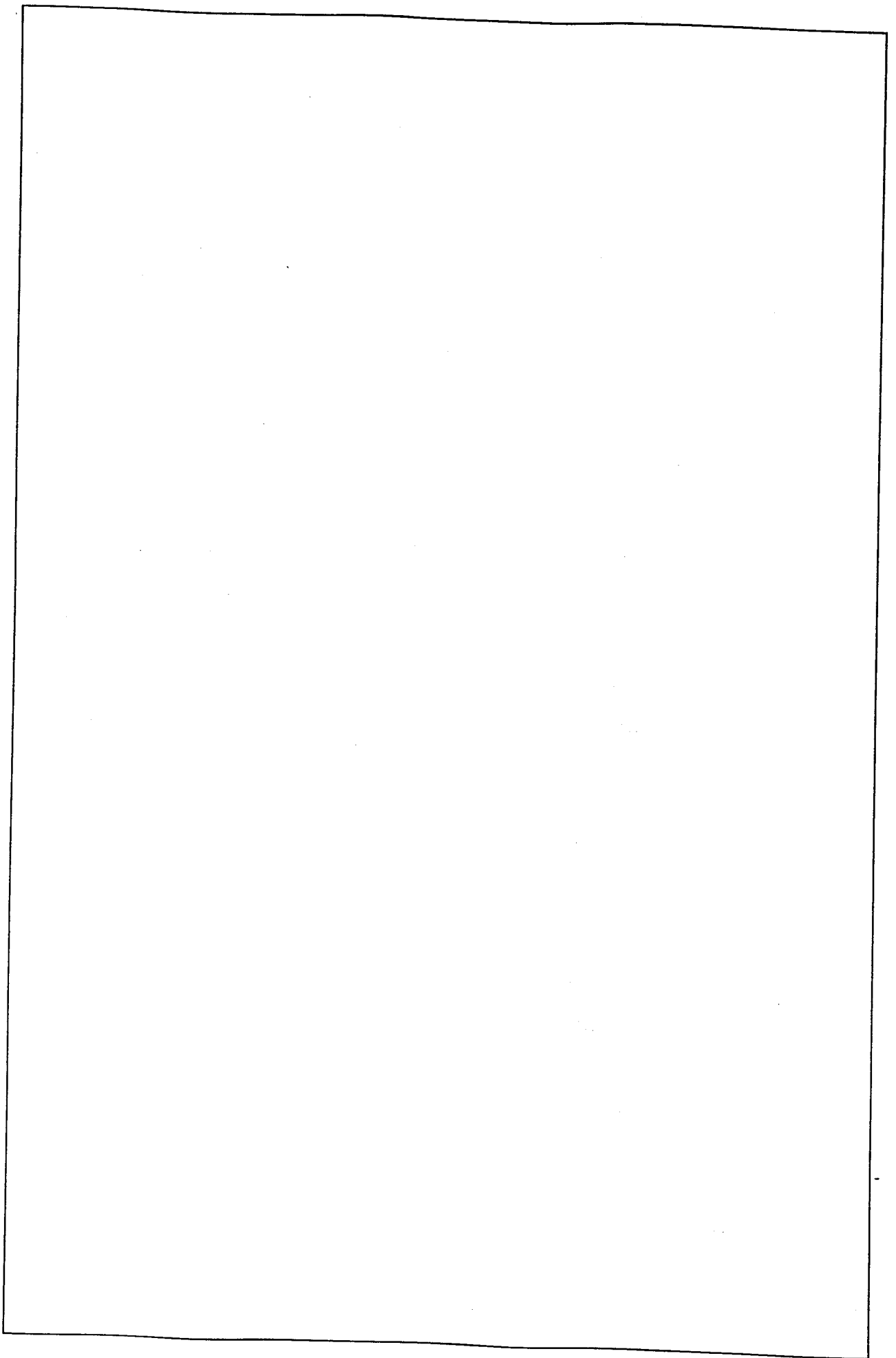
18 A. Yes.

19 Q. Phase two of that study, they found that,
20 yeah, maybe you can?

21 A. Yes.

22 Q. Would you agree that in that one study, the
23 results varied?

24 A. That's true.



1 Q. In that one study?

2 A. Yes.

3 Q. And you would agree with me that there are
4 other studies which have different phases, in
5 which phase one might have one result, and
6 phase two might have another result?

7 A. That's true.

8 Q. In fact, it's rare that one can replicate a
9 study and get the exact same findings in
10 phase two that they got in phase one. Would
11 you agree with me?

12 A. That's probably true.

13 Q. And you would agree that there are a number
14 of factors that vary widely among these
15 suggestibility studies, specifically, some of
16 the studies have mildly suggestive questions,
17 true?

18 A. Well, they vary in the ages of children, the
19 sexes of the children, the children are
20 different in each study, the interviews are
21 different. So you've got many many variables.

22 Q. There's -- some of them have forced-choice
23 questions, correct?

24 A. Yes.

1 Q. Some have questions that are purposefully
2 misleading?

3 A. Yes.

4 Q. Some of these studies, the interview is
5 conducted immediately after the event,
6 correct?

7 A. That's true.

8 Q. Some of them, they conduct the interview five
9 days later, correct?

10 A. Yes.

11 Q. Sometimes they conduct the interview a month
12 later?

13 A. Yes.

14 Q. Sometimes they conduct the interview even a
15 year later?

16 A. That's true.

17 Q. Some of these studies involve events in which
18 the child actually participated in?

19 A. Yes.

20 Q. Some of these studies involve events which
21 the child merely observed?

22 A. True.

23 Q. Some of these studies contain some emotional
24 components, is that correct?

1 A. Yes.

2 Q. And some do not?

3 A. True.

4 Q. Some studies focus on the suggestibility
5 that's raised when you have repeated
6 questions within one interview?

7 A. Yes.

8 Q. Some of them focus on the repeated questions
9 within numerous interviews, correct?

10 A. Yes.

11 Q. Some of them only have one interview?

12 A. True.

13 Q. And some have many interviews?

14 A. True.

15 Q. So you'd agree with me that there's a wide
16 variety in all these studies that have been
17 talked about the past two days?

18 A. Yes, there is.

19 Q. Now, you've talked a great deal about the
20 general acceptance of the studies conducted
21 by Dr. Bruck?

22 A. Yes.

23 Q. Would you agree with me that Dr. Bruck and
24 Stephen Ceci have been criticized for their

1 lack of objectivity and generalizing from
2 their data?

3 A. No.

4 Q. They've never been criticized for that?

5 A. I'm not aware of the criticism.

6 Q. Would you -- would you agree with the fact
7 that Ceci and Bruck acknowledge that
8 scientists disagree whether suggestibility
9 effects render a child's original memory
10 inaccessible?

11 A. I can't answer that. You're asking me to tell
12 you what Dr. Bruck thinks?

13 Q. What her research says. That is what you're
14 here to testify about, is it not?

15 A. Yes. Well, I can't answer that particular
16 question.

17 Q. So it's your testimony that you don't know
18 whether or not scientists disagree whether or
19 not suggestibility effects render a child's
20 original memory inaccurate or inaccessible?

21 A. No, I'm not testifying to that.

22 Q. Well? Does an interview change a child's
23 memory?

24 A. What interview?

1 Q. Any interview? A suggestive interview?

2 A. You're talking so globally, I'm not going to
3 answer that.

4 Q. Dr. Schetky, is it your testimony that a
5 suggestive interview would render a child's
6 memory inaccurate or merely the child's
7 report of an event inaccurate?

8 A. My testimony is --

9 MR. SULTAN: Well, I object --

10 A. -- neither --

11 MR. SULTAN: Excuse me. Your Honor, I
12 object. The prosecution didn't want me to
13 elicit this witness's own views, and now I
14 think she's being -- we're going to open up
15 what her own views are, and I think that
16 given the prosecution's objection to my
17 eliciting this witness's personal views was
18 sustained, I don't think they should be
19 permitted on cross to, in effect, cross-
20 examine her on the views I was not permitted
21 to elicit on direct.

22 THE COURT: I'm going to ask you to
23 rephrase the question.

24 MS. ROONEY: Your Honor, I didn't

1 object to Dr. Schetky's opinions. I merely
2 objected to her characterizing, or giving me
3 an opinion as to Dr. Bruck's credibility.

4 THE COURT: She didn't render her own
5 opinion about some of this, so I'll let you
6 pursue the area, but rephrase the question.

7 [By Ms. Rooney:]

8 Q. Ceci and Bruck acknowledge that scientists
9 disagree whether or not suggestibility
10 effects render the child's original memory
11 inaccessible. Do you agree with that?

12 MR. SULTAN: I object to the form of
13 the question. I don't understand whether
14 she's being asked whether Ceci and Bruck say
15 that, or whether she agrees with a statement
16 that's attributed to Ceci and Bruck.

17 THE COURT: Clarify that. Are you
18 asking whether she knows that they said that?

19 [By Ms. Rooney:]

20 Q. Do you agree with the statement by Ceci and
21 Bruck where they state that scientists
22 disagree whether suggestibility effects
23 render the child's original memory
24 inaccessible?

1 A. Yes. That remains controversial.

2 MS. ROONEY: No further questions.

3 MR. SULTAN: Nothing further, your
4 Honor.

5 THE COURT: You may step down.

6 (Witness excused.)

7 MR. SULTAN: The defense has no
8 further witnesses to present. We would at
9 this time, in case we need to do this
10 formally, proffer into evidence all of the
11 exhibits which have been previously marked.
12

13 [Defendant rests 3:54 p.m.]
14

15 THE COURT: I deemed them formally
16 admitted yesterday. So they're in evidence,
17 and they number, I think, 56.

18 So, now, I need to ask the
19 Commonwealth a couple of things. First of
20 all, to this day I still don't know who you
21 will be calling as an expert or experts?

22 MS. ROONEY: Your Honor, prior to
23 that, I just have a few motions with respect
24 to Dr. Schetky's testimony, just to keep the

1 record in order.

2 THE COURT: Sure. Okay.

3 MS. ROONEY: The Commonwealth would
4 move to strike her testimony based on two
5 items. First of all, there's been no
6 testimony with respect to the relevancy of
7 the research studies by Dr. Schetky and the
8 facts of this case. In fact, she acknowledged
9 that she has in fact no knowledge other than
10 reading Dr. Bruck's affidavit as to the facts
11 of this case. And my understanding, pursuant
12 to Lanigan, there has to be -- there has to
13 be a relevancy tie. It has to be tied in. One
14 cannot simply talk about a theory or a
15 process and -- in the abstract without tying
16 it to the facts of this case.

17 In order to be admissible under
18 Lanigan, one has to establish not only that
19 the theory or process is generally accepted
20 within the scientific community, but that it
21 has relevance to the facts in this case.

22 And in addition, her statement was
23 basically that it's controversial whether or
24 not -- that there's disagreement whether or

1 not suggestibility effects render the child's
2 original memory inaccessible. And my
3 understanding, and my recollection, is that
4 is what we were told her proffer would be.

5 THE COURT: Mr. Sultan?

6 MR. SULTAN: Well, your Honor, with
7 respect to the first point, Dr. Schetky was
8 proffered as a witness for the limited
9 purpose of demonstrating to the Court that
10 Dr. Bruck's testimony, had it been -- if it
11 were presented in either a pretrial context,
12 or in a trial context, in 1998, would be
13 admissible under Lanigan.

14 Basically, as one -- since one of the
15 indicia under Lanigan is generally --
16 basically, the Frye standard, which is in
17 effect what she testified to.

18 So there's certainly no requirement
19 that the witness who comes in and says, and
20 testifies to general acceptance, that that
21 witness know anything about the underlying
22 facts of the case. So I think the first
23 objection is without merit.

24 With respect to the second

1 objection, she did testify at the end of
2 cross that a particular point, that is,
3 whether children's memories are permanently
4 tainted, or whether it is merely the report
5 which is affected by the suggestive
6 techniques, remains in controversy. But I
7 don't see how that in any way detracts from
8 her testimony with respect to all of the
9 various elements of Dr. Bruck's testimony
10 with respect to suggestive interviewing
11 techniques and their impact on the
12 reliability of the child's report.

13 That is what the essence is of our
14 claim. We are not -- the essence of our claim
15 is that the suggestive interviewing
16 techniques that were used here rendered the
17 resulting reports inherently unreliable.
18 Frankly, it doesn't matter whether the child
19 came to actually believe that he or she was
20 abused, or whether the child was simply
21 saying that he or she was abused to please
22 somebody.

23 The important thing, from the
24 standpoint of the defense motion, is that

1 those subsequent reports were inherently
2 unreliable in the same way that eyewitness
3 identification testimony following an overly
4 suggestive show-up or photo array would be
5 inherently unreliable whether or not the
6 defendant was in fact the perpetrator.

7 So that is the essence of our -- that
8 is the thrust, really, of our position here.
9 And I don't see how the Commonwealth's
10 objection really goes to the essence of
11 what's before the Court.

12 MS. ROONEY: Your Honor, I believe
13 the Court will recall, we were here; I
14 specifically asked several times what theory
15 Dr. Schetky would be testifying on because we
16 did not have an affidavit from her. Mr.
17 Sultan actually kept saying, "I don't
18 understand why Ms. Rooney is so befuddled,
19 because she keeps asking the same question."
20 And the question I kept asking, and your
21 Honor eventually clarified for me, is what
22 Dr. Schetky was going to be offering
23 testimony on. And we were told that Dr.
24 Schetky would be offering testimony that it

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1 was generally accepted within the scientific
2 community that suggestive interviewing
3 techniques alters a child's memory.

4 Now, the record will speak for
5 itself, but that is my distinct recollection
6 of what we were told her testimony would be.
7 I would submit that that was not what her
8 testimony was, and in fact, what she
9 testified to on that particular point was
10 that it's in controversy.

11 MR. SULTAN: Well, let me respond --

12 THE COURT: I recall that it was
13 "may" - may alter a child's memory or may
14 alter a report of what may have actually
15 happened. I recall that it was broader than
16 that, frankly, is my recollection.

17 I'm going to deny the motion to
18 strike.

19 The witness or witnesses that the
20 Commonwealth intends to call?

21 MS. ROONEY: Your Honor, I will be
22 happy to report that to the Court by the end
23 of this week. My intent was to listen to the
24 testimony here and make a determination as to

1 whether or not we would be offering expert
2 testimony.

3 THE COURT: Okay. So I will have, the
4 Court and the defendant will have, in writing
5 from your office, what expert or experts you
6 intend to call?

7 MS. ROONEY: Yes.

8 THE COURT: And I would like to pick
9 a date now for that next hearing. I also have
10 not yet gotten a memorandum of law in
11 opposition to the Defendant's Motion for a
12 New Trial. I've given the Commonwealth a
13 significant amount of leeway on that. That
14 leeway is now ending.

15 MS. ROONEY: Your Honor, perhaps we
16 were under a misimpression. I thought that
17 you had requested that we have that
18 memorandum for you by March 2nd. Perhaps I'm
19 incorrect.

20 THE COURT: It may be my memory
21 that's faulty, and I'll agree it happens. So,
22 by March 2 at the latest.

23 MS. ROONEY: Certainly.

24 THE COURT: And you will -- shall I

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1 pick one, perhaps as many as two days for
2 your witness or witnesses? It depends. I
3 don't know. You may be calling just one.

4 MS. ROONEY: I can't imagine we'd be
5 calling more than one, your Honor.

6 THE COURT: Okay. So why don't we
7 pick one day then. I think we should be able
8 to conclude, hopefully, within one day.

9 MS. ROONEY: I would think so.

10 THE COURT: This Friday's the 20th.
11 Is March 2 unrealistic, or should we do March
12 16th instead?

13 MS. ROONEY: Depending upon what the
14 Court is going to require for the
15 Commonwealth to provide to defense prior to.
16 I believe they stated they wanted at least
17 two weeks upon receiving some kind of a
18 written statement.

19 THE COURT: You're going to do an
20 affidavit?

21 MS. ROONEY: If the Court orders us
22 to, we certainly will. It just may -- it's
23 going to take us some time to figure out who
24 the expert is and then prepare an affidavit.

1 THE COURT: It doesn't matter to me
2 as much whether it's in affidavit form or
3 report form, but it should be reduced to
4 writing. You're going to tell us by Friday.
5 When will you have that report available?

6 MS. ROONEY: I could probably have it
7 within two weeks of Friday. I'm saying this,
8 again, without having conferred with --

9 THE COURT: Two weeks from Friday
10 is --

11 MS. ROONEY: I don't have a calendar.

12 MR. SULTAN: The 6th, your Honor, of
13 March.

14 THE COURT: So by March 6th, you will
15 have a written report from your expert. By
16 February 20th we'll know who the expert is.
17 And you need two weeks from March 6th?

18 MR. SULTAN: I think that's fair,
19 your Honor.

20 THE COURT: So, Monday, March 23 for
21 the Commonwealth's hearing?

22 MR. SULTAN: That's fine for the
23 defense, your Honor.

24 THE COURT: Okay. And then by March

1 2, your memorandum in opposition of the
2 Motion for New Trial.

3 In terms of scheduling, any other
4 issues I need to address with counsel?

5 MR. SULTAN: Only, your Honor, that
6 as I understand it, the Court is going to
7 give both sides leave to file a post-hearing
8 memorandum, after all the evidence has been
9 complete, is that correct?

10 THE COURT: Post-hearing memorandum,
11 slash, brief.

12 MR. SULTAN: Right.

13 THE COURT: Yes. And there may be a
14 number of issues. You all remain a few
15 minutes anyway and there are a number of
16 issues, just procedural things, that I want
17 to go over with counsel before you leave.

18 MR. SULTAN: That's all, your Honor.

19 THE COURT: Thank you.

20 MS. ROONEY: Thank you.

21 (Hearing adjourns 4:04 p.m.)

22
23 [Lobby Conference, not transcribed.]
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C E R T I F I C A T E

I, Patricia Bellusci, do hereby certify that the foregoing transcript, pages 2 through 317, is a complete, accurate and true record of my voice recorded tapes taken in the aforementioned matter to the best of my skill and ability.

Patricia Bellusci
Official Court Reporter

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