IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Appellee, vs. RAMON ESCOBAR-MENDEZ aka RAMON MENDEZ ESCOBAR, Appellant.	)	CR 95-09679 1 CA-CR 97-0999 TRIAL

MAR 06 1998

PHOENIX, ARIZONA
October 6, 1997

Before: THE HONORABLE STEPHEN A. GERST, Judge.

REPORTER'S TRANSCRIPT OF PROCEEDINGS.

COPY

Prepared for Appeal:

By: JANELL ROSE, CSR, RPR
Official Court Reporter

SUPERIOR COURT

WENDY DUTTON,

(Whereupon, the witness was sworn and testified as follows:)

THE COURT: You may proceed.

MR. AMATO: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. AMATO:

Q. Would you please state your name?

A. Wendy Dutton.

Q. And what is your occupation, Ms. Dutton?

A. I'm currently a forensic interviewer and certified professional counselor at the Child Abuse Assessement Center at St. Joseph's Hospital.

THE COURT: Ms. Harms, are you able to hear okay, Ms. Harms?

JUROR HARMS: It's a little hard.

THE COURT: Okay. I'll turn it up back here.

Q. BY MR. AMATO: Now, you just described what the title of your job is. Can you describe for the jury what it is you do?

A. My primary responsibility is to conduct investigative interviews of children who are making allegations of physical or sexual abuse.

Q. And in that regards, how many children have you interviewed?

A. I would say, roughly, 2,200, 2,300, somewhere around there.

Q. Can you tell the jury, just briefly, how one gets to be in a position you're at? Let's start with education.

A. Well, I have a Bachelor of Science Degree in Psychology from the University of Arizona. And I have a Master of Arts in Marriage and Family Counseling from the University of Arizona. And currently a doctoral in justice studies specializing in childrens justice issues in criminology.

Q. And what sorts of training have you received to do what you do?

A. During my last year in my masters program I specialized in -- during my intership -- in the treatment of sexual deviance, the assessment and treatment of sexual -- primarily working with sexual offenders.

Since that time, I've had approximately 500 hours of community education, primarily in the area of sexual abuse both in deviancy, assessing, and treating offenders, and also assessing and treating victims of sexual abuse.

Q. Now, can you describe for the jury just a

little bit more about your experience, as far as the treatment of children and/or offenders?

A. Yes. During my last year of graduate school, my internship was at the Arizona State Prison in Tucson, primarily working with adult sex offenders, primarily rapists.

After I graduated I went into private practice with the Center Against Adult and Adolescent Sexual Aggression in Tucson, Arizona. We did contract work with the Department of Corrections in Pima County Juvenile Probation to provide treatment to both adult and juvenile sex offenders in the adult prison, and also Catalina Mountain Juvenile Institution.

Also, in that private practice I began treating victims of sexual abuse, and, in addition, to treating offenders who had been sexually abused as children themselves.

I moved back to Phoenix in 1987 and worked for a brief period of time at the Department of Corrections, primarily in Juvenile Community Services, helping juveniles transition from the facilities back out into the community. And also worked at a halfway house that primarily has juvenile sex offenders.

Also, in 1987, a colleague and I started the Adolescent Sexual Addiction Program at Phoenix

Memorial Hospital where we treat both adolescent offenders and victims of sexual abuse. I was there for five years as the program manager and then moved to St. Joseph's in 1992.

Q. Now, since you've been at St. Joseph's, what are your primary duties?

A. Primarily conducting forensic or investigative interviews of children who are making allegations of abuse.

Q. And let's talk a little bit about what is a forensic interview. You've used that term a few times.

A. A forensic interview is, basically, a fact-finding interview. I approach a child from a neutral perspective, as though I don't know any information about what has happened to them, and try to provide a setting and ask questions in a way that can help them provide information without leading or suggesting information to them.

Q. And would that be different than, let's say, a clinical interview?

A. Yes.

Q. And would you describe for us what a clinical interview would then be?

A. Well, a clinical interview, primarily as a therapist you accept at face value what the child has told

you in a forensic interview. You're approaching it as though you don't know what happened and may, at times, search for alternative explanations for what the child has told you.

Q. Now, you described for the jury that a majority of what you do at the St. Joseph's Child Abuse Assessment Center is deal with these forensic interviews?

A. Yes.

Q. Now, as far as issues with victims and victims of sexual abuse, do you have any training in that area?

A. Yes. Of the 500 hours of continuing education that I described, I would say approximately half of that has to do with interviewing victims and also providing assessment and treatment for victims of sexual abuse.

Q. And is there a fair amount of literature out there regarding this issue?

A. Yes, there is.

Q. Can you describe, briefly, if you would, the literature to the jury, as well as your knowledge of that literature? I know this is kind of a broad question.

A. Yes, it is. Well, there are several journals that devote themselves to this field of study. Primarily the issue of inner personal violence.

There are also several professional organizations who devote their time into keeping professional members updated in the current research in the field.

Q. Are you a member of any of those professional organizations?

A. Yes, I am.

Q. And would you tell the jury what organizations those are?

A. I'm a member of the American Professional Society on the Abuse of Children, and the Association for the Treatment of Sexual Abusers.

Q. And have you published any works in this area?

A. Yes, I have.

Q. Would you describe those for the jury?

A. My masters thesis was published in 1987, and my thesis was on early childhood recollections and sexual fantasies of adolescent sex offenders.

I've also published an article in 1993 concerning the use of the polygraph with juvenile sex offenders. And in 1996 I published a chapter about the use of the plethysmography with sex offenders.

Q. And have you presented lectures or done any sort of speeches in this area?

A. Yes, I have.

Q. And can you describe those for the jury?

A. I've presented papers or presentations on both assessing and treating sex offenders and assessing, treating and interviewing victims both in the state and across the country.

Q. Approximately how many children have you met who are victims of sexual abuse, professionally?

A. I would say I've assessed and treated approximately 200 adolescent victims, and about 200 victims who are alleging sexual abuse.

Q. Now, let's talk a little bit about why you're here today.

Have you ever met Yvonne Tijerina?

A. No.

Q. Do you even know about the facts of today's case?

A. No, I don't.

Q. Why would that be important for you not to have met the victim or know the facts of the case for purposes of your testimony today?

A. Primarily my role here would be to talk to the jury about the research in the field and my clinical experience in working with victims of sexual abuse and the general characteristics that they tend to display.

Q. And by having met the victim or having read the police reports, that may bias you one way or the other?

A. Yes.

Q. Let's talk a little bit about some of those general characteristics that you mentioned.

Can you tell us a little bit -- is there any sort of -- I know psychologists love to make models -- are there any sorts of models out there or ways that you can break down characteristics of a victim of sexual abuse?

A. Yes. In a way. However, there are certain areas that I can talk about. One has to do with trauma symptoms that children who are victims of sexual abuse tend to display. And the other is the way in which children report and the way in which they allow more information to come out over time.

Q. Let's start with the trauma.

Would you describe for the jury your knowledge of trauma issues related to victims of sexual abuse?

A. Well, I would say one of the things that most characterizes victims of sexual abuse is that a large majority of them show no symptoms whatsoever that would bring them to the attention of the mental health

profession. Children who do display symptoms of trauma may show symptoms that are similar to children who experience other types of trauma such as growing up in a violent home, growing up with alcoholic parents, a death in the family, or some type of physical trauma that's occurred to them.

There tends to be two characteristics that separate out children who have experienced sexual abuse from children who experience other types of trauma. Those two sets of symptoms are: Post-traumatic stress disorder, and precocious or sexual acting-out behavior. So these children tend to display a knowledge and behavior associated with sexuality that is way beyond their developmental level.

Q. Now, you talk about this precocious nature. Is that in all of the victims of sexual abuse?

A. No. As I said, most victims of sexual abuse would show no symptoms.

Q. Now, you also talked a little bit about the issue of disclosure?

A. Yes.

Q. Before we go there, you also talked about symptoms similar to post-traumatic stress disorder?

A. Yes.

Q. Can you briefly describe for the jury what

that is?

A. Post-traumatic stress disorder is a diagnostic label that the mental health profession used to categorize what someone is suffering from. Post-traumatic stress disorder has to do with symptoms such as recurrent intrusive thoughts of the incident that caused trauma.

Victims who experience PTSD, for short, may try to avoid any stimulations that remind them of the trauma that has occurred. Many victims of PTSD experience nightmares, anxiety attacks when they're confronted with stimulus or objects that remind them of the abuse.

Many of them have sleep disturbances, either having difficulty falling asleep or staying asleep. They may experience partial memory loss with regards to the trauma that they've experienced. And many may describe feelings for shortened futures, believing they're never going to get married, that their future has somehow been cut off or obstructed in some way.

Q. Okay. Let's go to what else you were talking about as far as disclosure.

Is there any information you can share with the jury about a typical disclosure or the typical disclosure shown by or given by a victim of sexual abuse?

A. Yes. Probably the most typical disclosure is no disclosure. What we know from research, adults who

have been sexually abused as children, many of them never report the abuse until they spoke to the researchers for the first time.

As a general rule, children do not tell right away. In fact, they delay disclosure. And when they do disclose, they tend to do so inattentive or kind of testing-the-waters fashion. They will tell a little bit about the abuse and watch how the message is received by the adult that they tell. If the message is received well, then the child may move into a more active or more detailed form of disclosure and start talking about more incidents or more in detail about what has happened to them. If the message is not well received, the child may recant or retract their allegations, or they may decide not to continue providing more information about what has happened to them. Also, in general, children don't tend to fight back and don't tell right away and instead learn to live with or cope with what the abuser is doing to them.

Q. Is there a term for that?

A. Well, we tend to use the term accommodation. Basically, a child changes the way they think or the way they act in order to accommodate the offender's behavior.

Q. Now, as far as accommodation, can you

describe some of the different ways a child may accommodate or cope with these issues?

A. Certainly. There tends to be three ways in which children cope with the offender's behavior. Probably the most common is what we call disassociation. To give you an example of what disassociation is for children, if you're sitting listening to a really boring lecture and you're thinking about all the things you could be doing if you weren't stuck in your chair listening to this boring lecture, that's a very mild form of disassociation. Thinking about something else in order to make yourself feel better is an example of disassociation.

Taking that to an extreme, children are able to actually split off a part of themselves to cope with the abuse with what we see in multiple personality disorder. But most children tend to fall between those two extremes and may describe things like, "Well, the abuse didn't really happen to me. I was up on the ceiling watching it happen to my body. I wasn't really there." So, in a sense, that child has gone somewhere else for a while in order to a cope with the abuse.

Other children describe thinking about being with their friends or doing something that they really enjoy doing while the abuse is occurring to make themselves feel better.

Another form that children use to cope is to fantasize about being bigger and stronger than the offender and being able to fight back. Many children describe pretending they were Batman or Superman being able to fight off the offender and protect themselves.

Still other children tend to focus on the physical stimulations that's occurring during the abuse. We know that many offenders will deliberately engage in behaviors with children so that children experience sexual arousal, sexual pleasure, and at times even orgasm.

When that happens, some children tend to focus solely on the pleasurable feelings that the offender is imposing upon them in order to ignore the more disturbing social or emotional aspects of the abuse.

Children who engage in that type of coping strategy often think of the offender as their boyfriend or husband and pretend that their relationship is that type of relationship as opposed to an abusive one.

Q. Would, let's say, a child closing their eyes during a sexually abusive sex be indicative of what may be a coping mechanism?

A. That's difficult to say, but it certainly could be.

Q. Now, just briefly. When we were talking about disclosure a little bit a few minutes ago, we were

talking about how often there is no disclosure at all, or if there is, it's often delayed; is that correct?

A. Yes.

Q. When we're talking about disclosure and we're talking about, let's say, disclosure quite a while after the events, do children typically remember everything right away? Do they know the dates? Can they be very specific when they disclose these facts?

A. I would say, as a general rule, no. That has to do with the nature of disclosure. It also has to do with the nature of memory, especially if abuse has been chronic over a long period of time, and it's happened many times. It may be difficult for a child to pick out specific incidents when something occurred and describe that specific incident fully.

Q. Now, talking about memory. Is there a term "script memory"?

A. Yes.

Q. Okay. Would you describe that for the jury?

A. Script memory, basically, refers to how we remember things that we do fairly frequently. So, for example, if you go to church every Sunday for a year, and somebody asks you about it, "Tell me about your church experiences over the past year," most often you will give

them a general description of how that church service goes. That's what we call script memory.

So something like, "Well, first the pastor comes in and he says a prayer, and then we sing a song, then we do the offering, and then we do another song, and then we do the offering," for example. It's kind of a general description of how every Sunday goes.

Now, you may have a difficult time picking out what exactly happened in church on the second Sunday in March. You may have a difficult time remembering that. And unless something really unusual or special to you happened on that second Sunday in March, you would be unlikely to remember the specific details about what happened in that specific incident.

In sexually-abused children who have been abused over a long period of time with multiple incidents, they engage in script memory by talking about how things generally happened during the abuse. So, for example, "Daddy always used to come into my room at night, always wait until mom was asleep, and then he'd lock the door and take off my pajamas and touch me in private places." That's kind of a script memory.

Q. Now, would that issue affect the way a child would be questioned about these sorts of events?

A. Yes.

Q. And how would that affect?

A. Well, I know in my work one of the difficulties I face is helping children separate out specific incidents to discuss. And during investigations, what often happens is the investigator will ask the child to describe the last time something happened or the first time something happened, or the time that they remember the most clearly, or a time when something different or unusual happened. This is because those types of different or unique incidents are better included into memory as a separate incident as opposed to taking all those memories and blending them together, kind of one general description of a memory.

Q. Now, when questioning about that, are there other tools that can be useful for narrowing down, let's say, when these events occurred?

A. Yes.

Q. Would you describe how you do that or how it may be done in the profession?

A. Well, we know that children have a very difficult time dealing with the issue of time when talking about incidents in the past. And, generally, the hard wiring of the brain is not ready to do that until children are about 10 years old.

Therefore, investigators who are

interviewing children often have to rely upon special events in the child's life. For example, what grade they were in when something happened, was it before or after a certain birthday or certain holiday. But in most cases, children cannot specifically pinpoint a specific date when something happened. You have to place that into context with other events that are happening in their life.

Q. Now, when we talk about victims of sexual abuse, are these typically individuals who are abused by strangers, or is that an issue that you can talk about?

A. I would say that the vast majority of children are molested or sexually abused by somebody known to them.

Q. And can you describe how that affects how the victim responds to being abused?

A. Well, most children -- and the research shows that most children are abused by either a father-figure or stepfather, mother's boyfriend or family member. As a result, that child has a relationship with the offender prior to the abuse happening. And offenders use that relationship to gain access to victims and also to maintain their silence about the abuse that's occurring by appealing to their loyalty, the relationship of that child, or manipulating that child into maintaining the secret.

Q. Now, when you say manipulating the child, what ways are there to manipulate the child?

A. Well, many offenders will say things to a child like, "This is a special kind of love that I'm showing to you, and no one would understand it if you told." Other offenders become more obstrusive and will make subtle threats such as, "If you tell, nobody will understand." Or, "If you tell, no one will believe you."

Other offenders may be even more avert and say things like, "If you tell, I'll kill myself. If you tell, you'll be taken away and placed in foster care." Or, "If you tell, your mother won't love you anymore." And still further, offenders may threaten to kill children or kill their parents or kill their pets in order to make sure they remain silent. So then the ultimate form of maintaining the secrecy would be to kill the child victim.

Q. Now, in your experience, and knowledge of the literature, is it unusual to see a child who's being sexually abused remain in a relationship with the abuser and not have someone from the outside be able to tell that there's something going on?

A. That's quite common, yes.

Q. And can you describe for the jury why a victim would do something like that when they're being abused by this individual?

A. Well, especially in cases where the offender and victim have a close relationship. Most often victims will report that they didn't want to understand even the relationship. They just want to end the abuse. And they want to maintain that special relationship they had with the offender.

Secondly, if an offender has done a good job at making the child feel like a disaster will happen as a result of their disclosure, many children will maintain the secrets for quite a long period of time.

Q. Now, would you find it unusual to hear, let's say, a victim talking about crying at the time they're being abused and yet not telling the closest person they have to them like their mother?

A. Certainly. And that goes back to that coping strategy that I talked about earlier, that children develop a sense of -- develop a way of learning to live with the abuse. And many children are quite able to forget about it as soon as the abuse has happened.

Q. Now, when a child is being sexually abused, there are different levels of abuse; is that correct?

A. Yes.

Q. Touching, fondling, full-blown intercourse, things to that effect?

A. Yes.

Q. Does it typically start off with full-blown intercourse, or is there any sort of progression?

A. Most offenders do not start off with full-blown intercourse when molesting a child.

Q. Can you describe -- is there a term for, first of all, for that sort of a progression?

A. Yes.

Q. And what is that term?

A. We call that the "process of abuse" or "process of victimization."

Q. And can you describe that process in general terms for the jury?

A. Certainly. The first stage is what we call "far getting." Offenders will identify a particular child that they feel may be exceptionally vulnrable to abuse. And that may be a child that they find receptive and friendly or trusting, or a child they find attractive, or a child who is having difficulties within their own family, such as lack of parental supervision or parental affection, and the offender identifies that this is a child they can become important to.

The second phase is what we call "engagement" where the offender engages in things or strategies to develop a relationship with that child, gain that child's trust. And he may even gain that child's

parents' trust by complimenting the child, giving them gifts, doing special things with them.

And then the third stage is what we call grooming where an offender will gradually acquaint a child with more intrusive touching. So, for example, they may engage in tickling the child or wrestling with the child or having the child sit on their lap or give foot massages or back massages or take naps with the child. And during this process, they may accidentally on purpose touch the child's genitals and then will watch that child's reaction to that behavior. And if the child rejects them or shows signs of discomfort, then the offender may decide to target a different child or may make that behavior seem more normal by telling the child it's a normal behavior. It was done on accident.

Q. Now, when we're talking about this whole grooming process, is this, again, dealing with someone who may be known to the child?

A. Yes.

Q. And using the trust or the relationship with the child as a tool to engage in these activities?

MR. MUSSMAN: Objection. Leading.

THE COURT: Overruled. This is very general information.

THE WITNESS: Yes. In a sense, the process

by which offenders go through to target and engage in grooming victims is much likened to sexual dating. You identify somebody you're attracted to, ask them out on a date, engage in conversation, gain their trust and respect, and then move into things like hand-holding, put your arms around them, and then gradually engaging in more and more overtly sexual behavior.

Q. BY MR. AMATO: Now, when we're talking about these, this was -- you were interviewed by Mr. Mussman on the phone a couple weeks ago prior to this trial; is that correct?

A. Yes.

Q. Do you remember him asking you a question about your experience and whether or not you saw any differences between Hispanic versus Anglo family structures and how the victimization occurred?

A. Yes.

Q. Did you answer that question for Mr. Mussman?

A. Yes, I did.

Q. And can you describe for the jury what you told Mr. Mussman about that issue?

A. Yes. There are two characteristics that I find are slightly different with Hispanic families as opposed to Anglo families. One is that the importance of

the male figure in the Hispanic family is much more pronounced than in Anglo families where the adult male in the family exerts much more control over the other family members.

The second factor that I think is different is that women or females in Hispanic families are much more reluctant to discuss sexual issues than are Anglo children, and that in interviewing Hispanic children they are much more reluctant to talk about their sexual body parts and have a more difficult time talking about sexual acts that have occurred.

Q. Do you think that would be something that might affect disclosure in situations such as this?

A. Certainly it can.

Q. Now, let's go back to disclosure. Just one last question I had missed earlier.

Assuming that there is an abuse going on and eventual disclosure, would you find it unusual to learn that the victim is still talking to the perpetrator or friendly with the perpetrator of a crime like this?

A. No.

Q. And would you describe for the jury why that is?

A. Again, if that offender has established a good or a close relationship with that victim and has made

that child feel special, then many children experience wanting to maintain the relationship with the offender but wish that the sexual abuse would stop.

Q. And what ways might a perpetrator make the child feel special?

A. By complimenting them, telling them that they love them through physical contact, through gifts, special activities, those kinds of things.

MR. AMATO: I have no further questions for this witness.

THE COURT: All right. Mr. Mussman, you may cross-examine.

MR. MUSSMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MUSSMAN:

Q. Few questions, Ms. Dutton.

First, you, in fact, know no specifics about this case; is that correct?

A. That's correct.

Q. And the reason is that you're concerned that if you do find out specifics about this case, you would be biased?

A. I would want to talk about this case based solely on research and my clinical experience and not

enter into discussing the specific facts of the case. That certainly could influence what I would say.

Q. But there are times, are there not, where you do review the specific facts of cases and then testify in this fashion?

A. Generally no, not unless I've had direct involvement in the case where I've interviewed the victim involved.

Q. But there are times, in fact, you do interview the victim involved, and you do have factual information concerning the case, and you will testify about these areas concerning general characteristics of abused children, correct?

A. Generally, in cases like that, I tend to focus on issues such as appropriate interview techniques or childrens' memory, that sort of thing, and tend to stay away from general characteristics.

Q. You wouldn't say anything about general characteristics in this cases?

A. It may come up like things of tests as far as trauma symptomatology. I generally don't testify about a case where I don't have direct involvement.

Q. You say, generally, you don't testify about it, but sometimes you do, don't you?

A. I would say about trauma, no. But about

childrens' memory and the other general characteristics I talk about, yes.

Q. So sometimes you're able to set the facts of a case aside and testify, is that right, without being biased; but in this case, you didn't feel that you could?

A. It's just something I do primarily to avoid that issue coming up.

Q. So instead, what you're relying upon are your review of literature and your own personal involvement in this field, correct?

A. Yes.

Q. And one thing that you said early on was that based on your knowledge of this area, many people don't disclose, correct?

A. Yes.

Q. So this literature and these studies that you're relying upon, and we're talking about these general characteristics, if something is usual or unusual, you don't know if that's based upon an accurate sampling of population, do you?

A. No. It's based upon children who have disclosed.

Q. And there may be many other children who haven't disclosed, correct?

A. That's correct.

Q. Who may have completely different characteristics, correct?

A. That may be.

Q. And, in fact, when you take a look at the literature -- during your interview you told me that one of the key articles that you rely upon is an article called: Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies, written by Kendall-Tackett, Linda Meyer Williams and Finkelhor; is that correct?

A. Yes.

Q. And that article is very important to your work, isn't it?

A. Yes.

Q. And the abstract of that article indicates that there is no one symptom characterized by a majority of sexually-abused children, correct?

A. That's correct.

Q. And the findings suggest the absence of any specific syndrome in children who have been sexually abused and no single traumatizing event, right?

A. That's correct.

Q. So, basically, you just don't know how a child is going to react, do you?

A. Correct. There's no one way a child will

react if they've been sexually abused.

Q. So when you've talked about something being usual or unusual, in your mind nothing is unusual, correct, because any child could react in any particular way in any particular situation, right?

A. That's correct. That's the general characteristics of victims.

Q. So on direct examination when you were asked, "Could a coping mechanism be closing eyes?" If you were asked, "Could a coping mechanism be opening eyes?" The answer to that could be yes, correct?

A. That could be.

Q. And when you were asked, "Is having an ongoing relationship with somebody unusual?" You'd say no; but if you were asked, "Is severing the relationship unusual?" You'd say no too, correct?

A. I would say the majority of children describe wanting to maintain a special relationship with somebody who has become an important person in their life and has sexually abused them.

Q. But, again, you don't know how many children have even reported child abuse, and you don't know how many of those children have been interviewed who did report child abuse who would fit one of those characteristics, right?

A. Correct. Because that research is based on children who have disclosed sexual abuse.

Q. Correct. And even the research, taking a look at this article that we just talked about, indicates in its conclusion that researchers studying the child sexual abuse have looked in isolation of at many of the factors related to the impact of abuse. That's at page 176, bottom paragraph. All the way towards the bottom of page.

A. Yes.

Q. So right now in this field there is a lack of realistic models, correct?

A. What they're saying is that there is a lack of a multidimensional framework. And researchers have primarily focused on one specific area to look at. And what the researcher is asking for now is taking all those specific areas and trying to fit them together into a model as to why do some children react this way and why do other children react this way, for example.

Q. And right now we don't know, do we?

A. That's correct.

Q. You do recognize that false accusations have been made by children who say that they were abused, right?

A. Yes.

Q. And that even if a child presents with one of the more common symptoms we talked about like sexualized behaviors, that could be unrelated to having been abused, correct?

A. Certainly. It tends to suggest that they were sexualized somehow, though.

Q. Do you think that's a significant factor?

A. Sexualized behavior is relatively rare outside of children who have been sexually abused or have been exposed to, for example, pornography or have witnessed adults engaging in sexual activity. It's relatively rare to find precocious sexual behavior outside of that population.

Q. So, for example, somebody was sexually abused at the age of 13, and that sexual abuse stopped when they were 14, you would expect, based on your study, that that person would remain sexually active?

A. It's possible.

Q. And display some sexual precociousness, is that the word you used? What was the word you used, precociousness, I believe?

A. It's a possibility. It's not a given.

Q. But that's a significant factor that you've come up with through your research?

A. Yes.

Q. Now, as far as this whole area goes, it's not equal to any type of diagnosis, is it?

I mean, it's not a diagnosable -- child abuse, with these factors that you've listed, is not some type of diagnosable disease or diagnosable condition, correct?

A. Correct.

Q. And throughout your testimony, you've been talking about children, right, that's what you focus on, children?

A. Yes.

Q. And how children react when they're abused and how children react when they disclose, correct?

A. Yes.

Q. And you define children as being individuals who are less than 18 years old?

A. Yes.

Q. You also talked about, on direct examination, how you sometimes do forensic interviews; do you recall that?

A. Yes.

Q. And when you're doing a forensic interview, you're, in effect, on a fact-finding mission, correct?

A. Yes.

Q. And it's very important to get all possible

information that may bear on the person's motive for telling things?

A. My role as a forensic interviewer is not looking at motivation for why the child is saying that. It's simply to provide an environment and technique for children to elicit accurate information from them. I did not determine whether what they're telling me is true or false.

Q. Right. But as part of this fact-finding mission, you want to know the surrounding circumstances?

A. Yes.

Q. Including circumstances which may show whether or not this child has some motive to lie?

A. That would be correct.

Q. And it's important for you to know what the individual who's is reporting has told in the past before you interviewed them?

A. Yes.

Q. Because there's the possibility of suggestibility?

A. Yes.

Q. And also you're looking for consistency?

A. To a degree, yes.

MR. MUSSMAN: Your Honor, Ramon, apparently, needs to take a bathroom break. Would this be

a good time to break?

THE COURT: This would be fine. We'll go ahead and take our afternoon break for 20 minutes.

Ladies and gentlemen, please remember the admonition.

(Whereupon, a brief recess was taken.)

THE COURT: The record will show the presence of jury, counsel, the defendant.

Mr. Mussman, you may proceed with Ms. Dutton.

MR. MUSSMAN: Thank you, Judge.

Q. BY MR. MUSSMAN: We were finishing up where I was asking about interviewing techniques. Just to finish that up, we're talking about suggestibility.

I take it, then, a forensic interview would be interviewing inappropriately if they gave input to the alleged victim after the victim described the incident by saying something like "Very good. That's good." That would be inappropriate, correct?

A. Well, it's not a good interview technique, but the research on it shows that it generally doesn't have a whole lot of affect, other than with preschool children, it tends to elicit more accurate or more information from children.

Q. But if somebody says something that, for

example, implicates a potential defendant, and the interviewer says, "Very good," and then that same alleged victim says something that would be inconsistent with the defendant not having committed an act, and the interviewer says it doesn't, that would be sending an inappropriate message; would it not?

A. I would say it's not a good interview technique, no.

Q. Isn't that the type of thing that you would do?

A. I would avoid it, yes.

Q. On direct examination you were talking about some generalized characteristics with Hispanics; do you recall that?

A. With regards to what?

Q. Hispanics.

A. Hispanics, yes.

Q. That you think that Hispanics have male-dominated-type of situations?

A. Yes.

Q. And that Hispanic children are less likely to come forward than Anglo children?

A. They're less likely more forthcoming about graphic sexual information than Anglo children.

Q. How many Hispanic children have you

interviewed?

A. I would say, roughly, 30 percent of my case load has been Hispanic.

Q. And out of that 30 percent, you have seen some Hispanic children who are forthcoming, correct?

A. Some, yes. But as a general rule, they're less forthcoming than Anglos or African American children.

Q. But there are exceptions, right?

A. Yes.

Q. Now, when you began your direct and when I began my cross, we were talking about how you were striving in this case to be unbiased. Do you remember that?

A. Yes.

Q. And that's part of the reason that you didn't read the police reports or interview the alleged victim, right?

A. Yes.

Q. But, in fact, you're a child advocate, aren't you?

A. Yes.

Q. And right on your curriculum vitae it indicates that part of your job over at St. Joe's is to provide expert testimony, child advocacy and community outreach, correct?

A. Yes.

Q. And you consider that part of your job to be providing testimony on behalf of children?

A. No. The child advocacy part -- the majority of my time is spent working with community agencies to make child abuse investigations easier for children, less traumatic.

Q. But you have built your professional career, and really a lot of your identity, on being a child advocate, right?

A. Both for -- well, that's not my primary objective, no.

Q. But that's something that you pride yourself on being, an advocate for children?

A. Yes.

Q. And in child molestation criminal cases you have testified on behalf of the State on numerous occasions, haven't you?

A. Yes.

Q. And you haven't testified for a defendant, have you?

A. That's correct.

MR. MUSSMAN: Thank you. I have no further questions.

THE COURT: Thank you, Mr. Mussman.

Redirect examination, Mr. Amato?

MR. AMATO: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. AMATO:

Q. Ms. Dutton, the last question Mr. Mussman asked you was about whether or not you had testified for any defendants.

Have you ever been asked to testify for a defendant?

A. As an expert witness, no.

Q. If asked, would you testify?

A. I suppose so, yes.

Q. Okay. And would that be to provide relevant information to a jury?

A. Yes.

Q. Now, Mr. Mussman talks to you about you being a child advocate.

When you're asked questions about general characteristics, are you basing that upon the literature in your experience?

A. Yes.

Q. Does your being a child advocate, as Mr. Mussman called it, affect the testimony that you provided today?

A. No.

Q. Okay. As a matter of fact, if you were given your choice, when you were talking about general characteristics, would you prefer to read the police reports and meet the victim or to come in court like this so you have no idea what the facts of the case are so you could provide accurate information to the jury?

A. I prefer not to know the facts of the case.

Q. Now, when Mr. Mussman was talking to you about that article entitled Impact of Sexual Abuse, he asked you about one of the issues in there, the authors wanting a more complex model; is that correct?

A. Yes.

Q. Now, does that mean that they're saying what's out there is inaccurate or wrong?

A. No. What they're saying is that children react in a variety of ways. And what the authors were asking for is: Let's do a multifactual study to determine why certain children react in some ways and why other children don't or react in a different way.

Q. Now, when we talk about -- or when Mr. Mussman was questioning about suggestibility, he was talking to you about interviewing techniques; is that correct?

A. Yes.

Q. Okay. Are you aware of different interviewing techniques?

A. Yes.

Q. Is that part of your profession?

A. Yes.

Q. Can you talk to the jury a little bit, possibly educate them, about how interviewing techniques would relate to suggestibility, as well as if age plays a part in that issue as well, age of the witness?

A. Okay. Let's start with age of children.

Basically, the research that's been done tends to suggest that children who are most susceptible to suggestive or leading questions are preschool children and that school-age children and adolescents are no more or less suggestible than adult witnesses are. So, really, when suggestibility becomes a factor is specifically in cases dealing with preschool children.

Q. And so let's say my saying "okay" after you answer my question, would you consider that leading or suggestible to children other than preschool children?

A. No. In fact, a response like "okay" is considered a neutral response.

When we're talking about suggestibility or interview techniques that are really dangerous with regard to eliciting inaccurate information from children, you

have to really look at what types of questions are leading or suggestive. And, in general, there are only two types of truly leading or suggestible questions. Those are what we call "tag questions" which imply the answer you want at the end of the question.

So something like: "You had pizza for lunch, didn't you?" Would be a leading or suggestive question.

The other type of leading or suggestive question would be introducing a topic when a child has made no mention of that topic before. Such as if the child has told you nothing, and you ask a question like: "What hand did your daddy touch your pee-pee with?" That would be a leading or suggestive question. Because the child hasn't told you anything about daddies or touching pee-pees or anything to that point.

Q. And, again, that is going to be typically more an issue with preschool children?

A. Yes.

MR. AMATO: I have no further questions, Your Honor.

THE COURT: Thank you, Mr. Amato. Does the jury have any questions they'd like to ask Ms. Dutton? Okay. Thank you, Ms. Dutton. You may be excused.

THE COURT: Call your next witness.