

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3 STATE OF ARIZONA,)

4 Plaintiff,)

5 vs.)

CR97-14791

6 EDWARD JAMES SEKAQUAPTEWA,)

7 Defendant.)

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11 BEFORE: THE HONORABLE DAVID R. COLE

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TESTIMONY OF WENDY DUTTON

16

17 May 10, 1999
Phoenix, Arizona

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22 Court Reporter:

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3 APPEARANCES:

4 Appearing on behalf of the Plaintiff:

5 Mr. Jeff Pitts,
6 MARICOPA COUNTY ATTORNEY'S OFFICE

7 Appearing on behalf of the Defendant:

8 Mr. Michael Hruby
9 MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE

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12 I N D E X

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14 E X A M I N A T I O N

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1 THE COURT: Mr. Pitts, as soon as you're ready, will
2 you call your next witness, please.

3 MR. PITTS: Yes. Thank you, Judge. We would call
4 Wendy Dutton to the stand.

5 THE COURT: Good morning, Ms. Dutton. If you will
6 come up to the clerk's desk, she will take your name and swear
7 you in.

8 WENDY DUTTON

9 Having been called as a witness by the State and
10 been first duly sworn upon her oath to tell the truth, the
11 whole truth, and nothing but the truth, testified as follows:

12 THE COURT: Watch your step, please, on your way
13 around the court reporter up to the witness stand, ma'am. The
14 microphone is still on, at least as far as my controls are
15 concerned. If you will make sure it is on before you speak
16 into it. Mr. Pitts.

17 MR. PITTS: Thank you, Judge.

18 D I R E C T E X A M I N A T I O N

19 BY MR. PITTS:

20 Q. Wendy, can you please state your full name?

21 A. My name is Wendy Dutton.

22 Q. What is your present occupation?

23 A. I'm a certified professional counselor and a
24 forensic interviewer at the Child Abuse Assessment Center at
25 St. Joseph's Hospital.

1 Q. How long have you been so employed?

2 A. Since October of 1992.

3 Q. Do you have any particular specialty in your work?

4 A. My area of specialty is conducting investigative
5 interviews of children who are making allegations of abuse.

6 Q. What services are provided at your organization?

7 A. As I said, investigative interviews and also medical
8 evaluations of abused children.

9 Q. What are your specific duties?

10 A. My primary duty is to conduct investigative
11 interviews of children who are making allegations of abuse and
12 providing that information to the doctor I work with to assist
13 her in making a medical diagnosis. And I also provide that
14 information to our referral services, primarily Child
15 Protective Services and law enforcement.

16 Q. Can you describe your prior responsibilities at
17 prior places of employment?

18 A. Yes. My first professional employment was with the
19 Center Against Adult and Adolescent Sexual Aggression in
20 Tucson, Arizona. It was a private practice that contracted to
21 state agencies to provide sex offender treatment in the prison
22 and in the community. I was employed there until 1987 when I
23 moved to Phoenix and worked for the Department of Corrections
24 in Juvenile Community Services. My primary duties there were
25 to help juveniles transition from institutions back into the

1 community. And I also provided group and individual and
2 family counseling to juveniles in a halfway house, most of
3 whom were juvenile sex offenders. I then moved to Phoenix
4 Memorial Hospital in 1987 and became the program manager of
5 the adolescent sexuality and addiction program there. We had
6 an inpatient treatment unit for both adolescent victims of sex
7 abuse and juvenile sex offenders. My primary duties there
8 were to oversee staff and to conduct individual and family and
9 group counseling with the individuals who were hospitalized.
10 I was there for five years until I moved to St. Joseph's
11 Hospital in October of 1992. And I've been there every since.

12 Q. What education do you have to allow you to do this
13 work?

14 A. I have a Bachelor of Science degree in Psychology
15 from the University of Arizona. I have a Master of Arts
16 degree in Marriage and Family Counseling from the University
17 of Arizona. And I'm currently a doctoral student at Arizona
18 State University in Justice Studies, specializing in
19 criminology and children's justice issues.

20 Q. Have you had any other specialized training in the
21 field, including on the job training or seminars?

22 A. Yes. Since I graduated from my master's program,
23 I've probable had over 600 hours of continuing education
24 specifically in the area of sexual abuse, either assessment
25 and treatment of offenders or assessment and treatment of

1 victims. And about, I would say, about 170 of those hours
2 have been specifically in the area of conducting forensic
3 interviews of children.

4 Q. Approximately how many hours of specialized training
5 have you had?

6 A. As I said, probably over 600 hours.

7 Q. Have you published any books or articles that deal
8 with your work?

9 A. Yes, I have.

10 Q. About how many?

11 A. I would say three or four.

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

13 A. Yes, I am.

14 Q. And what are those?

15 A. I'm a member of the American Professional Society of
16 the Abuse of Children which is a multidisciplinary group that
17 specializes in research and treatment of victims of sexual
18 abuse. I'm also a member of the Association for the Treatment
19 of Sexual Abusers, and its state chapter, which specializes in
20 research and treatment of sex offenders.

21 Q. Have you had any teaching experience yourself? Have
22 you taught this--or taught any seminars in these types of
23 fields?

24 A. Yes.

25 Q. Can you explain?

1 A. I was employed at Pima Community College in Tucson,
2 where I taught courses in Human Sexuality and Psychology of
3 Women to inmates in the prison system. I was also an adjunct
4 faculty member at Ottawa University and taught courses in
5 Abnormal Psychology, Advanced Abnormal Psychology and the
6 assessment and treatment of sexual deviancy and victims of
7 sexual abuse. And I've presented lectures across the country
8 at various professional seminars. And also I'm a member of
9 the Children's Justice Task Force Training Team, which goes to
10 all the counties in Arizona to train law enforcement and CPS
11 workers in victim dynamics and appropriate ways to interview
12 children.

13 Q. Have you testified and been qualified as an expert
14 in court in the area of child sexual abuse?

15 A. Yes, I have.

16 Q. Approximately how many times?

17 A. I would say approximately 30 times.

18 Q. Have you ever been called by or consulted a defense
19 attorney to give testimony on sex abuse characteristics?

20 A. Yes, I have.

21 Q. Approximately how many times?

22 A. Twice.

23 Q. Do you have any hands-on experience--um, well,
24 strike that. Can you estimate the number of victims you have
25 interviewed in the last 15 years?

1 A. I would say I've probably clinically evaluated and
2 treated approximately 200 victims. And I have conducted
3 investigative interviews with children, with approximately
4 3000 children.

5 Q. Ms. Dutton, have you reviewed any of the police
6 reports in this case?

7 A. No. I have not.

8 Q. And has that been by choice?

9 A. Yes.

10 Q. Why is that?

11 A. When I'm called upon to testify in this manner, I
12 don't like to know the facts of the case so I cannot
13 inadvertently tailor my testimony to fit the facts of the
14 case.

15 Q. Based on your experience in this field and current
16 research and literature can you say whether or not children
17 are more likely to be sexually abused by someone they know or
18 a stranger?

19 MR. HRUBY: Objection. Foundation.

20 THE COURT: Sustained.

21 BY MR. PITTS:

22 Q. Have you read research in terms of the area of
23 whether or not someone's been a victim or more likely to be
24 abused by someone they know or someone who is a stranger; yes
25 or no?

1 A. Yes.

2 Q. How many articles or studies, if you know?

3 A. They are too numerous to count. I don't know.

4 Q. And how recent have you -- what is the recency (sic)
5 of these studies?

6 A. Well, I keep current on the literature, so within
7 the past month I've kept current on the journals that I do
8 receive in the area.

9 Q. And in terms of your interviewing children, are you
10 aware of those children who are abused by someone they know
11 versus those who are abused by a stranger?

12 A. Yes.

13 Q. Based on both that experience and that current
14 research, can you say whether or not children are more likely
15 to be sexually abused by someone they know or a stranger?

16 MR. HRUBY: Objection. Foundation. Calls for
17 speculation. Also relevancy.

18 THE COURT: Sustained on all grounds.

19 BY MR. PITTS:

20 Q. Based on your experience, in the field of current
21 research and literature and your own studies, can you say
22 whether or not it is unusual for a child not to have reported
23 an incident of sex abuse by--by someone immediately?

24 MR. HRUBY: Objection, relevancy. Objection,
25 foundation. We do not know the basis for which this opinion

1 is called.

2 THE COURT: The objection to relevancy is overruled.
3 The objection to foundation is sustained.

4 BY MR. PITTS:

5 Q. Ms. Dutton, you had experience in hands-on study in
6 terms of children who have been sexually abused?

7 A. Yes.

8 Q. Okay. And have you had opportunities to see
9 instances when children have either reported immediately or
10 delayed in reporting?

11 A. Yes.

12 Q. Have you engaged in any literature, read any recent
13 literature on this topic?

14 A. Yes.

15 Q. And based on that reading of literature and your own
16 experience, yes or no, do you have an opinion as to whether or
17 not it is unusual for the child not to report immediately an
18 incident of sex abuse?

19 MR. HRUBY: Objection on foundation.

20 THE COURT: The objection is overruled. The witness
21 may answer yes or no as to whether she has an opinion on the
22 topic.

23 THE WITNESS: Yes, I do.

24 BY MR. PITTS:

25 Q. And what is that opinion on the topic?

1 MR. HRUBY: Objection, foundation.

2 THE COURT: What foundation do you believe is
3 missing?

4 MR. HRUBY: The foundation I believe is missing.
5 Have you read literature, who, what, based on what, when?
6 What was the sample study group? Any controls, validity
7 factors, error factor.

8 THE COURT: The foundational objection is overruled.
9 Counsel may choose to inquire on cross-examination. Would you
10 like counsel to rephrase the last question to you?

11 THE WITNESS: Please.

12 BY MR. PITTS:

13 Q. You indicated you had an opinion and I asked you
14 what was that opinion.

15 A. My opinion is that most children delay disclosure.

16 Q. What is this called?

17 A. We typically refer that in my field--term it delayed
18 disclosure, meaning that children disclose abuse after a
19 significant delay after the time of the last incident to the
20 time of their disclosure.

21 Q. Have there been studies on what factors cause this
22 delay of disclosure?

23 A. Yes.

24 Q. And have you had hands-on experience in terms of
25 what causes this delayed disclosure?

1 A. Yes.

2 Q. And in terms of--do you even--can you give us the
3 name of one recent article or publication discussing this
4 topic?

5 A. Um, could you repeat the question?

6 THE COURT: Could the court reporter read the last
7 question back, please?

8 (Last question read)

9 THE WITNESS: Yes. There's an article by Tina
10 Sorenson and Snow entitled "How Children Tell: The Process of
11 Disclosure." It was published in 1991 in the Journal of Child
12 Welfare.

13 Q. And what factors are there that determine or give
14 reasons for a child delaying disclosure?

15 MR. HRUBY: Objection. Foundation. We don't know
16 anything other than the title of the article and the name of
17 the publication.

18 THE COURT: Mr. Pitts, I need clarification on
19 whether your last article is one that Ms. Dutton read or if it
20 is her own experience or a combination thereof.

21 MR. PITTS: My intent was a combination thereof.

22 THE COURT: Please rephrase the question then.

23 MR. PITTS: Thank you.

24 BY MR. PITTS:

25 Q. Ms. Dutton, based on a particular article you have

1 read, other studies, and your own personal experience, what
2 factors are there that children give in why they delay
3 disclosure of reporting sex abuse?

4 MR. HRUBY: Objection, foundation.

5 THE COURT: The objection is overruled.

6 MR. HRUBY: Objection, hearsay and objection, no
7 personal knowledge.

8 THE COURT: All objections overruled. The witness
9 may answer.

10 THE WITNESS: Children delay disclosure for a
11 variety of reasons. Some of the most common ones are they are
12 fearful of the repercussions of disclosure, especially if the
13 person abusing them is a known or trusted person or a loved
14 person. Many children are embarrassed to talk about what has
15 happened to them. Many children are told by offenders to not
16 tell or something bad will happen as a result of their
17 disclosure, such as they won't be believed or that they will
18 be taken away from their home and placed in foster care or the
19 offender will go to jail. Other children report that they are
20 fearful of being harmed if they disclose. And especially in
21 cases of young children, they have no idea the abuse is wrong
22 and don't realize it is something that they need to disclose.

23 Q. Thank you. Is--yes or no, is there a term for a
24 child who discloses more events over time?

25 A. Yes.

1 Q. What is that term?

2 A. In my field we call that piecemeal disclosure.

3 Q. Have you read any studies on that?

4 A. Yes.

5 Q. What was your most recent study?

6 A. Actually, the article that I mentioned before is one
7 of the most salient articles about piecemeal disclosure in the
8 field.

9 Q. Have you had any hands-on experience through your
10 own dealings with children you've counseled and interviewed?

11 A. Yes.

12 Q. Based on the studies and your own personal
13 experience, can you explain to us what piecemeal disclosure
14 is?

15 MR. HRUBY: Objection. Foundation.

16 THE COURT: Sustained.

17 BY MR. PITTS:

18 Q. In terms of the article, you--can you describe the
19 one article a little bit more, get a little more history on
20 that?

21 A. The article that I mentioned, "How Children Tell:
22 The Process of Disclosure", how that study was conducted is
23 they took, I believe it was 112 children, who had reported
24 being sexually abused and the abuse has been confirmed either
25 through medical evidence or confession from the offender. And

1 they went back and took a look at how children disclosed in
2 those situations. What they found was--

3 THE COURT: Hold on before you say what they found.
4 Next question Mr. Pitts.

5 MR. PITTS: Thank you.

6 BY MR. PITTS:

7 Q. Have you had an opportunity, in your own
8 interviewing therapy, to run across this phenomena yourself?

9 A. Yes.

10 Q. In what way, without disclosing any--in what way?

11 A. Both in my experience in assessing and treating
12 victims of sexual abuse and my work in assessing and treating
13 offenders and their reports about their victims and in the
14 interviews that I've conducted with children in an
15 investigative way.

16 Q. Based on your personal experience and the studies
17 you've just related, can you describe the term, piecemeal
18 disclosure?

19 MR. HRUBY: Objection. Foundation. The question
20 is raised in terms of studies you have related. One study was
21 related. We have no idea the qualifications of the people who
22 wrote that article or conducted that study, I object to the
23 size of the group, involving 112 kids. We don't know anything
24 about it. We're taking something and putting it on top of
25 something else.

1 THE COURT: The foundational objection is overruled.

2 BY MR. PITTS:

3 Q. I mean, in general, based on the studies and
4 personal experience, in the study you have described can you
5 define for us what is meant by piecemeal disclosure, the gist
6 of the question?

7 A. Yes.

8 Q. What is that?

9 MR. HRUBY: Objection on relevancy.

10 THE COURT: Overruled. The witness may answer.

11 THE WITNESS: Piecemeal disclosure refers to how
12 children tell about abuse. Typically what happens is when
13 children make an initial disclosure they tend to do so in a
14 very tentative fashion, telling about a small part of the
15 abuse. They do this in order to gauge the reactions of the
16 people they are disclosing to. If the message is well
17 received and the child is supported in their disclosure, they
18 then move on to discussing or disclosing more information over
19 time. Typically, children will disclose parts of the abuse
20 that is most easy for them to talk about first and then, based
21 on how they are questioned, they may disclose more information
22 or information they are more embarrassed to talk about over
23 time.

24 Q. Yes or no, do the studies and your own personal
25 experience indicate an approximate amount of time that this

1 happens or approximate percentage of time that this happens?
2 Yes or no?

3 A. No.

4 Q. Yes or no, have you seen it in your own particular
5 experience?

6 A. Seen piecemeal disclosure?

7 Q. Piecemeal discovery?

8 A. Yes.

9 THE COURT: For planning purposes only, how much
10 longer for this witness?

11 MR. PITTS: I would guess about five minutes.

12 THE COURT: Let's go ahead and finish direct before
13 we take our break.

14 BY MR. PITTS:

15 Q. In terms of sequence of events or memory of children
16 between the age of 8 to 10, have you had a chance to observe
17 how children relate things in terms of sequence and memories
18 through your forensic interviewing and counseling?

19 A. Yes.

20 Q. And how have you observed that?

21 MR. HRUBY: Objection, foundation. Objection,
22 relevancy.

23 THE COURT: I think the question needs to be
24 rephrased in terms of what I think Mr. Pitts is getting at.
25 What I want to avoid is the ultimate conclusion before we get

1 some foundation for it. Would you rephrase, please?

2 MR. PITTS: Thank you, Judge.

3 BY MR. PITTS:

4 Q. Ms. Dutton, in sequence of events, 10-year-olds
5 relate--have you had an opportunity to interview children 8 to
6 10?

7 A. Yes.

8 Q. Have you tried to remember events as they happened
9 to them?

10 A. Yes.

11 Q. Have you read studies in the terms of the memory
12 development of children between 8 and 10?

13 A. Yes.

14 Q. What studies or books have you read that describe
15 the memory of children in that area that you can remember or
16 rely on?

17 A. There have been several. Most of the body of work
18 by Linda Goodman and Gail Saywitz, who specialize in the area
19 development of children's memory, children's ability to recall
20 information, and their ability to serve as witnesses. One
21 study that comes to mind is a study called developmental--uh,
22 well, may I double check the title? I have it with me.

23 Q. Would that refresh your memory?

24 A. Yes. Um, children's -- well, two of them are
25 "Children's Testimony and Their Perceptions of Stress In and

1 Out of the Courtroom" by Saywitz and Nathanson that was
2 published in 1993 and "Developmental Implications of
3 Interviewing Children" conducted, I believe, by Gail Goodman
4 in 1993 .

5 Q. Can you relate what those articles generally
6 discuss?

7 MR. HRUBY: Objection, hearsay. Objection,
8 foundation.

9 THE COURT: Sustained on both grounds.

10 Q. In terms, then, of the studies you've mentioned,
11 other studies and research you've done and your own experience
12 in interviewing and counseling children, can you talk to us
13 about the memory development, especially in terms of sequence
14 of events in terms of children between 8 and 10 years old?

15 A. Yes.

16 Q. And can you go ahead and address that?

17 MR. HRUBY: Objection, foundation. Objection,
18 relevancy. Objection, hearsay.

19 THE COURT: Counsel approach please.

20 (bench conference held off the record, out of the
21 hearing of the jury)

22 THE COURT: The last objections are sustained.

23 Mr. Pitts, you may attempt to show the necessary information
24 before we go further.

25 BY MR. PITTS:

1 Q. Thank you. Ms. Dutton I believe you said that
2 you've taken a number of college classes in terms of the
3 relevance of memory to children?

4 A. Yes.

5 Q. Have you taken any classes that talk about generally
6 how memory develops in human beings?

7 A. Yes.

8 Q. What are the names of those classes?

9 A. Oh, boy, most of it was done in my undergraduate
10 work, which was quite some time ago. I don't recall the exact
11 names of the courses offhand, but it had generally to do with
12 developmental psychology.

13 Q. And where were those courses taken?

14 A. At the University of Arizona.

15 Q. In terms of articles, have you read articles talking
16 about the development of memory in children?

17 A. Yes.

18 Q. And what--where have--have you engaged in reading a
19 number of literature articles about this, studied this?

20 A. Yes.

21 Q. Where did you study that?

22 A. Most of it is done--has been research I've done on
23 my own or in conjunction with my Ph.D program. Specifically
24 in the area of children's eyewitness testimony, children's
25 ability to serve as witness, children's memory, how they

1 encode events into memory, and the effects of stressful events
2 on memory.

3 Q. In terms of those studies, have you personally
4 conducted studies in this area?

5 A. No. I have not.

6 Q. Now did you--can you then explain how--I think you
7 said that you studied them; in what way did you study them?

8 A. By reading articles and books about those topics in
9 conjunction with my work in my doctoral program.

10 Q. What work in your doctoral program would relate to
11 this topic?

12 A. Courses and readings and conferences where I can
13 structure myself in topic areas I want to learn about. The
14 readings and conferences are monitored by a faculty member
15 whom I check in with every week and report back as to what I
16 have studied and how.

17 Q. Have you read articles, recent articles, about
18 children's memory and development of children's memory?

19 A. Yes.

20 Q. What's a recent article you recall?

21 A. Well, some of the most recent ones are the ones I
22 mentioned about developmental perspectives, developmental
23 psychology, and implications of interviewing children.
24 Children's eyewitness memory. There are books called, Child
25 Victim; Child Witnesses; The Child Witness: Children's

1 Ability and Subject of Children's Recollections. They have
2 been so numerous. It could take me quite a while to name them
3 all.

4 Q. And in this research, both your research and
5 hands-on interviewing and counseling have you made--strike
6 that--in terms of your interviewing and counseling
7 10-year-olds have you made personal observations on how
8 children are in relating events?

9 A. Yes.

10 Q. Relating events that have happened before?

11 A. Yes.

12 Q. Taking that and your personal experience and reading
13 and research--I'll ask you at this time to describe to the
14 jury child development of memory relating to children from the
15 age of 8 to 10.

16 MR. HRUBY: Objection, foundation. We still do not
17 know the background, other than several articles. Vague
18 references to several study. There is no hard foundation
19 here.

20 THE COURT: The objection is sustained, except to
21 Ms. Dutton's previous statements with respect to her knowledge
22 about the development of human memory. I will permit her to
23 testify about that. The objection to the last question, other
24 than that, is sustained. It's time for a break. Ten minutes.

25 (morning recess taken)

1 THE COURT: The defendant, counsel for both parties,
2 and the jury are all present. Mr. Pitts, if you would like to
3 resume direct of Ms. Dutton, you may.

4 BY MR. PITTS:

5 Q. Ms. Dutton, can you discuss the memory and as it
6 relates to placing events in time?

7 MR. HRUBY: Objection, foundation.

8 THE COURT: Objection overruled.

9 MR. HRUBY: Objection, relevancy. I should have
10 included that.

11 THE COURT: It's also overruled.

12 THE WITNESS: With regard to children's ability to
13 place or remember things occurring in time, typically a
14 child's ability to do that is not in place until about the age
15 of time (sic). So children prior to that age, upwards to 11,
16 have difficulty answering questions such as, well, when did
17 this happen? Typically children can't do that and must place
18 events in time in relationship to other important events in
19 their life.

20 Q. What effect does the passage of time from an event
21 until having to recall that event or relate that event have on
22 memory?

23 MR. HRUBY: Objection, foundation.

24 THE COURT: Sustained.

25 BY MR. PITTS:

1 Q. What effect can stress have on memory?

2 MR. HRUBY: Objection on foundation.

3 THE COURT: As to people generally, Mr. Pitts?

4 MR. PITTS: As to--maybe I can rephrase that.

5 THE COURT: You may.

6 BY MR. PITTS:

7 Q. What affect, in terms of children 8 to 10, does
8 stress have on their memory?

9 MR. HRUBY: Objection, foundation. Objection,
10 relevancy.

11 THE COURT: Objection sustained.

12 BY MR. PITTS:

13 Q. Let me go back to one area we talked about and that
14 is in terms of delayed disclosure. If, in fact, the child
15 does delay disclosure and not tell right away, from your
16 personal experience and the studies, what do they do?

17 MR. HRUBY: Objection, foundation. Objection,
18 relevancy.

19 THE COURT: Objection sustained.

20 BY MR. PITTS:

21 Q. Have you read studies in this particular area, what
22 children do in terms of delayed disclosure?

23 A. Yes.

24 Q. What type of studies?

25 A. Both in my own experience in working with children

1 and also in the research by Sorenson and Snow that I mentioned
2 and other researchers, particularly Lucy Berliner, Finklehor,
3 Jan Heiman. I've read information or studies related to their
4 work.

5 Q. Based on all of that that you told us about, do you
6 have an answer as to what children who are delayed disclosing,
7 what is going through their minds in terms of their memory?

8 MR. HRUBY: Objection, foundation. Objection,
9 relevancy. And objection, hearsay on hearsay.

10 THE COURT: The question is, does she have an
11 answer. I will permit a yes or no answer to that question.

12 A. Yes.

13 Q. What is that answer?

14 MR. HRUBY: Objection. The same objection as
15 before.

16 THE COURT: They are sustained.

17 BY MR. PITTS:

18 Q. If I can--if you can relate some of those studies in
19 terms of what the topic they're about and--or the types of
20 things discussed?

21 MR. HRUBY: Permission to voir dire.

22 THE COURT: Granted.

23 VOIR DIRE EXAMINATION

24 BY MR. HRUBY:

25 Q. You're talking about delayed disclosure, correct?

1 A. Yes.

2 Q. And in talking about delayed disclosure, we are also
3 talking about memory, correct?

4 A. Not necessarily, no.

5 Q. Can there be delayed disclosure without any memory?

6 A. Meaning?

7 Q. If you don't remember something, how can you
8 disclose it?

9 A. Right. In terms of repressed memory, yes, there can
10 be a loss of memory, a retrieval of that memory, and a
11 disclosure.

12 Q. Does delayed disclosure also deal with repressed
13 memory?

14 A. No. Not always.

15 Q. Now, in point of fact, memory is in reality a neural
16 chemical and electrical process, correct?

17 A. Yes.

18 Q. Now outside of the electrochemical process, is the
19 neural chemical process going on inside of our heads and the
20 low level electrical processes associated with those
21 neurochemical actions and reactions there isn't anything else,
22 is there?

23 A. No. We are essentially biological creatures who are
24 chemical and electrical in nature.

25 Q. Okay. That is what I wanted to get to. Have you

1 studied neurochemistry?

2 A. Yes, I have.

3 Q. And have you studied neurophysiology?

4 A. Yes, I have.

5 Q. And do you know the chemical electrical process that
6 occurs in memory?

7 A. I'm not sure anybody does exactly.

8 Q. So the answer to my question is, no, you don't?

9 A. No.

10 Q. Correct?

11 A. Correct.

12 Q. You only know what people tell you?

13 A. Yes.

14 Q. Which could be true and could be not true?

15 A. That's correct.

16 Q. Okay. And as far as the studies that you mentioned,
17 you dropped a couple of names, Finklehor and a couple of
18 others, do you know the representative groups, numbers,
19 occupations, where they lived how many people in the family,
20 things like that, upon which those studies you read were
21 based?

22 MR. PITTS: I'm going to object as to multiple
23 question.

24 THE COURT: Overruled. The witness may answer the
25 question if she understands it.

1 A. I believe you're referring to do I know the family
2 background in every single subject in the study.

3 Q. No. No. No. No. Of course not. Pick a name.
4 Pick an author, whoever it was, and the study that they wrote
5 about of the three or four that you just told us about.

6 A. Linda Goodman.

7 Q. Okay. She did a study?

8 A. Yes.

9 Q. It was based upon a sample group, correct?

10 A. Yes.

11 Q. Do you know how large the group was, what their
12 situation was, where they were located, how long the study
13 took, what the study itself examined? In other words, the
14 bases, the numbers, the physical foundation of the study?

15 A. It depends on which study you're talking about. But
16 I would have to go back and review. So, not right off the top
17 of my head do I know that information.

18 Q. If you don't know it you certainly can't relate it
19 to us.

20 A. Those specific details, no. I can relate the
21 conclusions of those studies.

22 Q. Only the conclusions?

23 A. Yes.

24 Q. Do you know that author's educational or
25 professional background by which she did that study or

1 supported that study?

2 A. Yes.

3 MR. HRUBY: Renew my objection, same grounds,
4 foundation. We don't know what it's based on.

5 THE COURT: The problem is I don't recall Mr. Pitt's
6 question. So, I will simply have Mr. Pitts restate his
7 question and rule accordingly and keep in mind the responses
8 we got on voir dire.

9 DIRECT EXAMINATION (Cont'd.)

10 MR. PITTS: Thank you.

11 BY MR. PITTS:

12 Q. If I recall, I believe I was asking you to relate
13 for those children who do delay disclose what is the happening
14 in terms of their memory, in terms of the delayed disclosure.

15 THE COURT: The objection to that question was
16 sustained.

17 BY MR. PITTS:

18 Q. You've indicated you are familiar with repressed
19 memory, did you say that?

20 A. Yes.

21 Q. And had you had personal knowledge about--strike
22 that--have you read studies in terms of repressed memory?

23 A. Yes.

24 Q. And articles or books on repressed memory?

25 A. Yes.

1 Q. Have you read things on--through counseling or
2 through interviewing children have you had the repressed
3 memory topic raise itself in that area?

4 A. No.

5 Q. In terms of the studies, have you read about it?

6 A. Yes. Repressed memory is a phenomenon most commonly
7 associated with adults; so it is not something I typically
8 deal with day-to-day.

9 Q. Ms. Dutton, let me go back briefly to delayed
10 disclosure. Yes or no, you had indicated a number of reasons
11 why children--let me strike that--let me go back to piecemeal
12 disclosure. You related a number of reasons why people, why
13 children engage in the piecemeal disclosure process?

14 A. Yes.

15 Q. Is there another term called partial disclosure?

16 A. Yes.

17 Q. And in terms of that have you read studies in terms
18 of the term partial disclosure?

19 A. Yes.

20 Q. Do you know the names of the articles, recent
21 articles you've read in terms of partial disclosure?

22 A. Yes. The study I mentioned before by Sorenson and
23 Snow and also the research and clinical work of John Briere.

24 Q. Have you, in your interviewing and counseling, come
25 across partial disclosure in terms of child abuse?

1 A. Yes.

2 Q. Can you relate to us what the term partial
3 disclosure means?

4 A. Yes.

5 Q. What does it mean?

6 A. Well, partial disclosure is similar or if not the
7 same as piecemeal disclosure, meaning that a child discloses
8 only part of what has happened to them. Again, the part that
9 is usually easiest to talk about or the least embarrassing.

10 Q. And based on the studies and your personal
11 experience, what is the reason for this phenomenon?

12 Phenomenon. Excuse me.

13 MR. HRUBY: Objection, foundation, relevancy,
14 hearsay.

15 THE COURT: Sustained on at least the first two
16 grounds.

17 BY MR. PITTS:

18 Q. Have you read specific articles on partial
19 disclosure?

20 A. Yes.

21 Q. What are the names?

22 A. "How Children Tell: The Process of Disclosure" and
23 a book by John Briere called Child Abuse Trauma.

24 Q. Does the book by John Briere go into studies of this
25 partial disclosure?

1 A. Yes.

2 Q. And does Mr. Briere put forth findings in his book
3 about partial disclosure or conclusions about partial
4 disclosure?

5 A. Yes.

6 Q. Have you relied on those conclusions in dealing with
7 your work?

8 A. Yes.

9 Q. Can you tell us who -- what Mr. Briere who is he?

10 A. John Briere is a Professor.

11 MR. HRUBY: Objection, hearsay.

12 THE COURT: Overruled.

13 A. John Briere is a professor of psychology, I believe,
14 at the University of California.

15 Q. Are you relying on his work in terms of your work?

16 A. Yes.

17 Q. And can you relate to us his working conclusions on
18 partial disclosure?

19 MR. HRUBY: Objection, foundation and foundation
20 upon foundation. We don't know what his work is based on.
21 Objection, lack of personal knowledge, relevance, hearsay and
22 hearsay on hearsay.

23 THE COURT: At least three of those objections are
24 sustained.

25 BY MR. PITTS:

1 Q. Okay. In terms of his studies, do you recall off
2 the top of your head what those studies are?

3 A. John Briere's study?

4 Q. Yes.

5 A. It's contained in his book, Child Abuse Trauma.

6 Q. Do you recall, off the top your head, what those
7 are?

8 A. As far as his conclusions?

9 Q. Right.

10 A. Yes.

11 Q. In terms of your own personal experience in
12 interviewing children have you come across partial disclosure?

13 A. Yes.

14 Q. And would it be fair to say that this is not
15 uncommon?

16 MR. HRUBY: Objection, relevancy. Objection,
17 foundation. This is not uncommon. Based on what?

18 THE COURT: Objection sustained.

19 BY MR. PITTS:

20 Q. Okay. In terms of the general overall delayed
21 disclosure, I believe that you had said is it possible--in the
22 studies that you've already talked about in your own personal
23 experience that some children would be more comfortable
24 disclosing events of child abuse to someone rather than
25 someone else?

1 MR. HRUBY: Objection, foundation. Objection,
2 relevancy.

3 THE COURT: Sustained.

4 MR. PITTS: No other questions, Your Honor.

5 THE COURT: Cross examine?

6 MR. HRUBY: Thank you.

7 C R O S S E X A M I N A T I O N

8 BY MR. HRUBY:

9 Q. Ms. Dutton, you mentioned to us that you have a
10 degree, a Bachelor of Arts degree in Psychology, correct?

11 A. No. I have a Bachelor of Science degree in
12 Psychology.

13 Q. From where?

14 A. The University of Arizona.

15 Q. When?

16 A. I received that in May of 1983.

17 Q. And you then went on to get a Master's degree in
18 counseling, correct?

19 A. Yes.

20 Q. That being a Master of Arts degree?

21 A. Yes.

22 Q. Presently working on your Ph.D?

23 A. Yes.

24 Q. A doctorate degree?

25 A. Yes.

1 Q. You've been working on that for over 7 years,
2 correct?

3 A. Yes.

4 Q. Haven't received it yet, have you?

5 A. Not yet.

6 Q. And that would be a doctorate not in medicine,
7 correct?

8 A. That's correct.

9 Q. Certainly not in physiology?

10 A. That's correct.

11 Q. It's not in neurology?

12 A. Correct.

13 Q. What is it that you're working on?

14 A. A degree in Justice Studies.

15 Q. A degree in Justice Studies. That deals primarily
16 with the criminal justice system, correct?

17 A. Not exactly, no.

18 Q. What is a degree in Justice Studies?

19 A. Justice Studies at Arizona State University is a
20 multidisciplinary program that incorporates psychology,
21 sociology, law, criminology, and alternative dispute
22 resolution. Students can tailor make their program,
23 basically. I've concentrated in the area of criminology and
24 children's justice.

25 Q. So you've tailor made your own Ph.D program?

1 A. Yes. I'm required to take six core courses in the
2 program and then my electives can be drawn from psychology,
3 sociology, law, criminology.

4 Q. And also reading things that you choose to read?

5 A. Yes.

6 Q. That you're interested in?

7 A. Yes.

8 Q. In your own field of study?

9 A. Yes.

10 Q. So you tailor made your own Ph.D program that you
11 haven't completed yet, correct?

12 A. Yes.

13 Q. Do you have children of your own?

14 A. No, I don't.

15 Q. You mentioned that you testified with some frequency
16 on behalf of the State of Arizona, correct?

17 A. Yes.

18 Q. And you are called as an expert witness with some
19 frequency by the County Attorney's Office, correct?

20 A. Yes.

21 Q. And in fact about 60 to 70% of your income comes
22 from fees that you derive testifying for the County
23 Attorney's Office, correct?

24 A. No.

25 Q. Has that changed?

1 A. Not--my fees don't come from expert testimony. Most
2 of the revenue generated from my program is in relation to
3 interviews conducted in the investigation of children and the
4 medical examinations. The County Attorney's Offices across
5 the state are required by law to pay those fees.

6 Q. And those are fees that are paid to you?

7 A. They are paid to the hospital I work for.

8 Q. Which pays them, in turn, to you?

9 A. Yes.

10 Q. And that amounts to something of the neighborhood to
11 60 to 70% of your income, correct?

12 A. Roughly, yes.

13 Q. That's on a fairly regular basis and it's been that
14 way for a number of years, hasn't it?

15 A. Yes.

16 Q. So, the money goes through a number of hands before
17 it gets to you, but in fact a majority of your income comes
18 from the County Attorney's Office or various county attorney's
19 offices on whose behalf you are called as an expert witness
20 correct?

21 A. I would say most of the fees generated by my program
22 come from the county attorney's offices across the state.

23 Q. You have talked about--you have talked about various
24 studies and various books that you have read of which you
25 remember the conclusions but you do not remember the

1 underlying foundational basis from which those conclusions are
2 drawn, correct?

3 A. Correct. I don't exactly recall the size of the
4 subject group or the ages of the subjects across all of those
5 studies right offhand. No, I don't.

6 Q. Or what other stresses or other life circumstances
7 the subjects of those study groups have been themselves
8 subject to, correct?

9 A. No.

10 Q. How many other times those very subjects have been
11 tests themselves, correct?

12 A. That's correct.

13 Q. Whether those studies were result of telephonic
14 interviews randomly picked out of the phone books or types of
15 studies that follow certain groups for certain purposes,
16 correct?

17 A. Yes. I do know that.

18 Q. And what do you know about that?

19 A. Well, in the studies that I talked about, I can tell
20 you whether or not they were conducted with children or
21 whether they were conducted through anonymous phone survey. I
22 can tell you that much.

23 Q. Now, you've also done some work on the
24 suggestibility of children's memories, correct?

25 A. Yes. I've read a lot of information in that area.

1 Q. Are you familiar with the term confabulation?

2 A. Yes.

3 Q. What does that mean?

4 A. Confabulation refers to a child making up
5 information as they go along through the course of the
6 interview. For example, something I see in, especially in
7 three-year-olds, is they will incorporate information from the
8 actual interview room environment in their account of what
9 happened to them.

10 Q. You're talking about three-year-olds incorporating
11 physical observations in the interview room into the answers
12 of the interview itself, correct?

13 A. Not just three-year-olds. It happens on up to six
14 to seven years of age, that I've personally experienced.

15 Q. And in fact it happens beyond that. That is to say
16 adults can confabulate?

17 MR. PITTS: I'll object this time to foundation of
18 studies.

19 THE COURT: Sustained.

20 BY MR. HRUBY:

21 Q. In fact, confabulation really means or can mean
22 adopting memories as your own, correct?

23 A. It can, yes.

24 Q. And, in fact, people who confabulate, they are not
25 necessarily lying, are they, that is to say, they are not

1 deliberately lying?

2 A. That's correct.

3 Q. So the terms confabulation, on the one hand, and
4 lying, on the other hand, they are separate and distinct terms
5 and they are not synonymous are they?

6 A. That's correct.

7 Q. And in fact confabulated memories may be the result
8 of either suggestions or suggestibility, correct?

9 A. That's correct.

10 Q. And, in fact, that is most often how confabulation
11 occurs, that is to say suggestibility, correct?

12 A. Yes.

13 Q. And if the suggestibility items, whatever they are,
14 whether they are events or conversations or conversations
15 about remembered events, the more they are repeated and
16 repeated back, the more they become entrenched in the memory,
17 correct?

18 MR. PITTS: I'm going to object to this point on
19 more foundation of studies, whether they relate to adults or
20 children or three-year-olds.

21 THE COURT: The foundational objection is sustained.

22 BY MR. HRUBY:

23 Q. You told us a little while ago you have done a great
24 deal of study in the area of confabulation and suggestibility
25 of memory, correct?

1 A. Yes.

2 Q. Will you give us some examples of the things, books,
3 seminars, conferences, whatever, that you have studied or
4 attended in developing your knowledge about confabulation
5 and/or suggestibility?

6 A. I've attended numerous conferences that deal with
7 the issue of suggestibility in children's memory. And I've
8 also read articles by Stephen Ceci and Maggie Bruck and a book
9 of theirs called Jeopardy in the Classroom.

10 Q. And what did those things tell you?

11 A. Well, there's a wide range of things, but
12 specifically in the area of confabulation, that children are
13 more prone to confabulate when the memory for the event is
14 weak. They are more likely to confabulate or make up or make
15 errors of memory in peripheral details as opposed to central
16 details or central events. They are also more likely to--to
17 be suggestible-- suggestibility--it also talks about
18 suggestibility is not a static trait, it varies from person to
19 person, from topic to topic.

20 Q. And it's true, isn't it, that as far as
21 suggestibility goes that children who are emotionally needy,
22 who have emotional needs that are not being fulfilled, either
23 abandonment issues or rejection issues, empty places in their
24 lives, tend to be more suggestible than children, on the other
25 hand, who have a more, I guess you could say, traditionally

1 balanced lifestyle?

2 MR. PITTS: I'll object to that as to foundation;
3 there is nothing on that.

4 THE COURT: The objection on that is overruled. The
5 witness may answer.

6 A. Actually, there is nothing in the literature looking
7 at the specific backgrounds of the children in the studies
8 concerning their emotional neediness; so I can't answer that
9 question.

10 Q. Do you know if the studies, to your knowledge,
11 addressed that issue; in other words, emotionally needy
12 children versus children who are not determined to be
13 emotionally needy?

14 A. No. No studies, to my knowledge, have be conducted
15 like that.

16 Q. Children from broken homes versus children with both
17 parents in the home?

18 A. With respect to suggestibility research?

19 Q. Suggestibility. Correct.

20 A. No. No. They have not conducted research study
21 delineating children who are emotionally distraught or who
22 have emotional problems versus children who are well
23 functioning.

24 Q. None of those distinctions were drawn out in those
25 studies?

1 A. No. To my knowledge, that has never been a
2 controlled study.

3 Q. What are some of the physical methods, the actual
4 physical methodology, that can be used to suggest things to
5 children? That is to say, to perhaps unwittingly confabulate
6 in aiding their memories?

7 A. Well, with the research, particularly Stephen Ceci's
8 research has done, taken children, had them watch an event
9 that everybody could agree on this is what indeed occurred.
10 They then went back and interviewed children in a variety of
11 interview styles. One style would be a nonleading style
12 interview, tell me what happened in this event. Children in
13 the other situations were asked deliberately misleading and
14 subjective questions in order to try to elicit a false
15 response from them.

16 Q. Okay. So one way--one way that children's memories
17 can be, as it were, suggestible or confabulated is to ask
18 leading questions, correct?

19 A. Leading or misleading questions. Okay.

20 Q. Okay. I don't recall the distinction. What is your
21 working definition of leading question. Do you have one?

22 A. Yes. There are several types of leading questions.
23 Probably the most leading and coercive type is called a tag
24 question. For example: You had garlic for lunch, didn't you?
25 That tag at the end, didn't you, implies the answer that you

1 want. And you're also implying the information in the first
2 part of that question. Another type of leading question would
3 be introducing the--in particular in sexual abuse cases--the
4 perpetrator in the alleged act in the same question. For
5 example, your mommy told me that daddy touched your pee pee.
6 Where were you when daddy touched your pee pee? For example,
7 when the child has not already volunteered that information or
8 that information has not been obtained in a less directive
9 way. The other leading question would be what I term a
10 misleading question. That would be for example, if a child
11 discloses information about, let's say, abuse; and you're
12 asking something like, he was wearing green jeans or where was
13 his green shirt when he was molesting you, when the child has
14 not mentioned anything about a shirt or the shirt being green
15 or anything like that.

16 Q. Okay. So you have, basically, given me two answers
17 regarding leading questions and another answer regarding
18 misleading questions, correct?

19 A. Yes.

20 Q. So leading questions, then, are questions that
21 contain within them their answer, correct?

22 A. The implied answer that the interviewer wants.

23 Q. If they are direct or implied it can be both, right?

24 A. Yes.

25 Q. Then the misleading questions are nevertheless

1 injected into a question that is deliberately or perhaps
2 inadvertently misinformation, correct?

3 A. Yes.

4 Q. And those are techniques to suggest to children
5 certain answers, correct?

6 A. Yes.

7 Q. Are--and is the suggestibility factor enhanced if
8 the questions are asked by an authority figure, that is, a
9 person who is in a position of authority over the child?

10 A. It can be, yes.

11 Q. A parent perhaps?

12 A. Actually the only studies that have been done on
13 that issue have been done not with parental figures, but
14 authority figures such as a stern interviewer or law
15 enforcement officer.

16 Q. Law enforcement officers are pretty much recognized
17 by children as authorities, correct?

18 A. I don't know that for sure, but one would think
19 that.

20 Q. The displaying of the badge, the uniform, the police
21 building, setting, that kind of thing. That's a way to
22 reinforce the authority figure presentation?

23 A. Yes. It can be.

24 Q. Another--another way, children--generally speaking,
25 children want to please adults, is that a fair general

1 statement?

2 A. It depends on the child, so...

3 Q. In an interviewer/interviewee situation, child being
4 interviewed by an adult, in an authority environment but not a
5 coercive or painful environment, a child is going to have a
6 tendency to please the interviewer, correct?

7 A. It's very difficult for me to say. It depends on
8 the individual child.

9 Q. Let me give you an example. One way of suggesting
10 answers to children is to say something like, you've got to
11 help me out here. Help me with this. In other words, putting
12 the child in a position of helping the adult, correct?

13 A. Is that a leading technique; is that what you're
14 asking?

15 Q. Correct?

16 A. Not necessarily.

17 Q. Ordinarily it is the adult who helps the children,
18 correct?

19 A. Yes.

20 Q. Putting--have the interviewer put the child in the
21 position of helping the adult rather puts the shoe on the
22 other foot, doesn't it?

23 A. Yes, it does. And it is a legitimate interview
24 technique.

25 Q. And it can also be a legitimate leading technique?

1 A. It depends on the times of subsequent questions
2 asked.

3 Q. If it is repeated to the child several times, you
4 have to help me out here, is that a leading type questioning
5 technique?

6 A. Um, it depends on the questions that are asked after
7 that statement is made.

8 Q. How about where a question is prefenced by a
9 phrase such as, I heard something bad happened to you. Will
10 you help me out here and tell me about that? Is that a
11 leading technique in questioning?

12 A. It depends.

13 Q. It injects into the questioning format, basically, a
14 person who is not physically there, correct?

15 A. Could you repeat the question, please?

16 Q. It injects into the questioning format a person or
17 personality who is not physically there. I heard something
18 bad happened to you.

19 A. Um, I've never thought of it in that terms, but I
20 guess you can say it implies that somebody else is there.

21 Q. And that somebody else has been telling something to
22 the interviewer?

23 A. Yes.

24 Q. About the situation about which the interviewer is
25 talking to the child?

1 A. Yes.

2 Q. Now, another way to suggestibility or leading to
3 confabulation is for the interviewer to tell the child what
4 another authority figure has told the interviewer about
5 something that supposedly happened, correct?

6 MR. PITTS: Objection. Misstates evidence about the
7 previous method to confabricate (sic).

8 THE COURT: I'm going to sustain the objection
9 because I think the way it is asked, it is a compound
10 question. In terms of linking these various things together,
11 could you rephrase, please?

12 MR. HRUBY: Yes.

13 BY MR. HRUBY:

14 Q. Another way of suggestibility in questioning
15 children is to tell the child what someone else has told the
16 interviewer, someone who is an authority figure in the child's
17 life, present it to the child that way. In other words,
18 already telling the child the story or the facts or whatever
19 they are. Attributing that telling to an authority figure and
20 then questioning the child. Mommy told me this happened, only
21 the "this" is more detailed.

22 A. In general, that's a question that I advise
23 investigators to avoid. But it depends on the context in
24 which the question occurs in the context of the whole
25 interview.

1 Q. Well, really whose credibility is being put at
2 issue, mommy, right?

3 MR. PITTS: Objection, argumentative.

4 THE COURT: Objection overruled. Witness may
5 answer.

6 A. Could you repeat the question, please.

7 Q. Whose credibility is being put at issue there,
8 mommy's, correct?

9 A. I'm not sure anybody's credibility is put on the
10 spot in an investigative interview at that point.

11 Q. Isn't that a confrontational method of questioning
12 where the actual confrontation is with the person who isn't
13 there to say mommy-- mommy told me this happened and that
14 happened and this happened. Can you tell me about that?

15 A. I would say, yes, it is a confrontational question.

16 Q. And it is--it rather leads to a high degree of
17 suggestibility, doesn't it?

18 A. I think you're misusing the term suggestibility in
19 the context you're asking a question. Suggestibility is a
20 fluid trait--or not--is a fluid dynamic in children's ability
21 to recall remembered information. Do you mean suggest? Can
22 it suggest information?

23 Q. Yes.

24 A. It can. But it depends on the child's, again,
25 willingness to be influenced by the suggestion.

1 Q. It suggests in its technique that the child adopt
2 the memory of mommy as it is related to the child by the
3 interviewer, correct?

4 A. It can. But as I said, some children are more
5 suggestible than others, so just based on that question alone,
6 we can't determine whether or not the child was actually
7 impacted by that question in their memory.

8 Q. You wouldn't know whether any given child would be
9 impacted by that question technique or not?

10 A. Well, we do note that preschool children are more
11 easily influenced by questions like that than older children.
12 Typically, school age children are no more or less suggestible
13 than adults are.

14 THE COURT: We need to take our lunch break. We
15 will start back up at 1:20. Please keep in mind the aspects
16 of the court admonition I gave last week and again by reminder
17 this morning. We will come back in one hour and fifteen
18 minutes and resume questioning of this witness. Thank you.

19 (Afternoon recess taken)

20 THE COURT: Good afternoon. Counsel and the
21 defendant are present, as is the jury. Mr. Hrubby you may
22 resume cross-examination.

23 MR. HRUBY: Thank you, Judge.

24 BY MR. HRUBY:

25 Q. I think when we ended about an hour and a half ago

1 we were talking about leading questions and suggestibility.
2 The question--the type of questioning technique I was asking
3 you about is where an authority figure tells the child what
4 another non-present authority figure told that person. Tells
5 that to the child and then asks the child a question or
6 questions based on that set up. Do you recall?

7 A. Yes.

8 Q. That's leading, isn't it?

9 A. It can be leading. Again, but it needs to be placed
10 in context with the rest of the interview.

11 Q. And it can be suggestive of the answer, can't it?

12 A. It can, but there again, it needs to be taken in
13 context of the whole interview.

14 Q. And really what's happening is there's suddenly a
15 third person in that interview room even though only two
16 people are physically present; that being the authority
17 figure, whether it's a policeman or someone else, and the
18 child, correct?

19 A. No. There's not a third person actually present in
20 the interview room.

21 Q. Okay. Well, basically there's a lot of variables as
22 to how children are questioned and what those answers can be,
23 correct?

24 A. Yes.

25 Q. Some of those variables could be input from external

1 sources; isn't that correct?

2 A. It's possible, yes.

3 Q. One of those might be another person coming in after
4 the initial encounter with the police and telling the child to
5 use different words or phraseology, isn't that correct?

6 A. It's possible. Yes.

7 Q. And there could be input from external sources
8 telling this child that other things could have happened to
9 the child, correct?

10 A. Yes. It's possible.

11 Q. And adults can suggest things to children and
12 children will often accept them, correct?

13 A. Adults can suggest things to children and children
14 -- it's possible for them to acquiesce to that suggestion.

15 Q. And these things that may be suggested to children
16 that children may accept and take on as their own, after a
17 while it is possible that the child will treat that memory as
18 their own memory at later point, correct?

19 A. It's possible. Yes.

20 Q. And that is really what confabulation is, isn't it?

21 A. Yes. That's one of the meanings, yes.

22 Q. So in terms of that approach, confabulation is not
23 outright lying where a person knows that they're lying and
24 tells the lie anyways; a person may actually think they're
25 telling what they think is the truth?

1 MR. PITTS: Objection. Asked and answered.

2 THE COURT: Overruled. The witness may answer.

3 THE WITNESS: Yes.

4 BY MR. HRUBY:

5 Q. In effect, that person adopts that memory as their
6 own?

7 A. Yes. Especially if their memory is weak for that
8 specific topic.

9 Q. Or if their personality is weak, correct?

10 A. I know of no research that has measured weakness or
11 strength of personality, so it is impossible to answer that
12 question.

13 Q. What about emotional neediness? What about adopting
14 the opinion of an authority figure filling a need? Wouldn't
15 that be a--

16 A. I can't comment on that. There has been no research
17 as to that issue.

18 Q. And you haven't seen that in your practice?

19 A. No. I haven't been able to determine whether a
20 child is emotional needy or not and making up or confabulating
21 information.

22 Q. Have you encountered situations where a child may
23 seek to gain something by certain answers or certain reports
24 that are not factually accurate? In other words, there is
25 gain--the child perceives gain by that?

1 A. Yes.

2 Q. And that can and does happen, doesn't it?

3 A. It can and it does. Yes.

4 Q. You did not interview any of the witnesses in this
5 case, did you?

6 A. That's correct.

7 Q. You did not talk to the alleged victim in this case
8 correct?

9 A. That's correct.

10 Q. You did not review any of the video or audio tapes
11 in this case?

12 A. That's correct.

13 Q. You read none of the police reports, correct?

14 A. That's correct.

15 Q. You read none of the transcripts?

16 A. That's correct.

17 Q. Have you even met with the alleged victim or family
18 in this case?

19 A. No. I have not.

20 Q. So you do not know if any of those models or factors
21 that you have discussed with Mr. Pitts or myself apply to this
22 case in any way?

23 A. That's correct.

24 Q. And, in fact, some victims of child abuse or child
25 sexual abuse show none of these symptoms, do they?

1 A. None of what symptoms?

2 Q. None of the various symptomology you have been
3 discussing with us.

4 A. I don't believe we really discussed symptoms. Are
5 you talking about psychological or emotional symptoms.

6 Q. Correct.

7 A. I don't believe we've discussed that in testimony.

8 Q. Have we discussed behavioral symptomology?

9 A. No. We've talked about memory and suggestibility,
10 which is different than psychological or emotional or
11 behavioral symptoms.

12 Q. A lot of your work and a lot of the approach you
13 take toward your studies has to do with what is called child
14 sexual abuse accommodation syndrome, correct?

15 A. Yes. I am familiar with that.

16 Q. And have we discussed that here today, either with
17 me or Mr. Pitts?

18 A. No.

19 Q. Have we worked within that framework at all?

20 A. We have in part, yes.

21 Q. It's true, isn't it, that there is no working model
22 to determine when a sexual offense against a child has
23 occurred by interviewing or talking with that child, correct?

24 A. Correct. There is no one technique or test that we
25 can apply to a child's statement to determine whether they're

1 telling the truth or not telling the truth about sexual abuse.

2 Q. Or whether something happened or didn't
3 happen--didn't happen or the extent to which something
4 happened or did not happen, correct? So, in other words,
5 there is no quantitative model? There is no qualitative
6 model?

7 A. No. There is not.

8 Q. Now, you told us earlier--actually you told
9 Mr. Pitts that you are a forensic interviewer.

10 A. Yes.

11 Q. There is no degree or accreditation for being a
12 forensic interviewer, is there?

13 A. That's correct.

14 Q. So do you--how do you attach that label to what you
15 do if it is not an accredited skill or technique?

16 A. How do I apply that? Basically, what I do as a
17 forensic interview, which means I apply knowledge about child
18 development, children's memory, ability to serve as witnesses,
19 and incorporate that into an interview for the purposes
20 of--for diagnosis or for legal purposes.

21 Q. And you do this yourself?

22 A. Yes. I conduct forensic interviews.

23 Q. You determine what standards to apply to your
24 practice as a forensic interviewer, correct?

25 A. Because there's no accreditation for a forensic

1 interviewer, I'm governed by the, Board of Behavior Health
2 Examiners, which oversees my practice as a counselor. There
3 is no set of qualifications or guidelines that have been
4 nationally or locally determined to qualify to be a forensic
5 interviewer or not.

6 Q. Are there any things that occur, any more symptoms
7 or any behavior that will always be present in a case of child
8 sexual abuse?

9 A. No.

10 Q. There are some behaviors manifested by children that
11 may be indicative of abuse, but, in fact, these behaviors are
12 manifested by children who have never been abused, correct?

13 MR. PITTS: Objection, relevance in terms of
14 corrosion and in terms of this case. Foundation.

15 THE COURT: I'll ask the court reporter to read the
16 question back, please.

17 (Last question read)

18 THE COURT: The objection was foundation?

19 MR. PITTS: The objection was foundation.

20 THE COURT: Sustained.

21 BY MR. HRUBY:

22 Q. You've observed certain types of behavior is present
23 in children who you know for a fact have been sexually abused
24 for a fact?

25 A. Yes.

1 Q. And you know for a fact either because of the
2 medical evidence or the perpetrator confessed?

3 A. Yes.

4 Q. And in certain cases you have observed certain types
5 of behavior, correct?

6 A. Yes.

7 Q. And you have observed that type of behavior in
8 children who have not been sexually abused, correct?

9 A. Yes.

10 Q. Certain types of behavior then are indicative of
11 both sexual abuse or the lack of sexual abuse, correct?

12 A. It's indicative of trauma of some kind. It could be
13 sexual or some other type of trauma the child has experienced.

14 Q. Some other time of trauma being?

15 A. Growing up in a violent situation, divorce, death,
16 traumatic accident, illness in the family.

17 Q. Abandonment?

18 A. Yes.

19 Q. Rejection?

20 A. Yes. That can be.

21 Q. Neglect?

22 A. Neglect, yes.

23 Q. Lack of parental supervision?

24 A. That's possible yes.

25 Q. Same type of behaviors manifested across the board,

1 correct?

2 A. With the exception of two, yes.

3 Q. Regarding the issue of delayed disclosure, you
4 mention that many kids delay disclosure, correct?

5 A. Yes.

6 Q. Some kids don't delay disclosure, correct?

7 A. Yes. Some children never disclose at all and other
8 children disclose at the first opportunity.

9 Q. And some kids disclose piecemeal, correct?

10 A. Yes.

11 Q. And some kids do not, correct?

12 A. It's rare, but, yes, some children do disclose the
13 full information right away.

14 Q. And you can't necessarily tell just talking to a
15 child right off whether that's going to be a piecemeal
16 disclosure or a full and complete disclosure, correct?

17 A. Not when you first start talking to a child, no.

18 Q. Is it unusual for a child nine years of age to not
19 have any kind of verbal reference to their own private parts?

20 A. Could you rephrase the question, please?

21 Q. Is it unusual for a child approximately nine years
22 of age to have no verbal reference to their private parts?

23 A. It's not unusual. It depends on various factors.

24 Q. Factors such as?

25 A. Factors such as how the family discussed the sexual

1 abuse, the cultural background of the child, the child's level
2 of comfort in discussing that information with somebody new or
3 somebody they've never met before.

4 Q. Have you ever conducted interviews with the use of
5 stuffed animals?

6 A. Yes, I have.

7 Q. And do you use the stuffed animals to comfort the
8 child or to aid the child in referring to body parts?

9 A. I've used them for both purposes.

10 Q. Are these anatomically correct stuffed animals or
11 just generic stuffed animals that really don't have genitalia?

12 A. These are generic stuffed animals.

13 Q. With no genitalia?

14 A. Correct.

15 Q. Is it fair to say that using the stuffed animal
16 removes a child one step from the actual physical incident or
17 act, that is removing the act further from the child?

18 A. I'm not sure I know what you're asking.

19 Q. If you use a stuffed animal in interviewing a child
20 and ask the child to point to the places on the stuffed animal
21 where the child was supposedly hurt or touched, doesn't that
22 tend to remove the child one step from what actually happened?

23 A. I would say no.

24 Q. In other words, nothing has happened with the
25 stuffed animal. It's just a stuffed animal?

1 A. I would say no.

2 Q. Why?

3 A. Because it's simply a communication aid at that
4 point. I think you may run a risk of introducing erroneous
5 information if the child is under the age of, only 3.

6 Q. Is there a cut off age, a top level cut off age, for
7 using stuffed animals?

8 A. It depends on the individual need of the child.

9 Q. Would you elaborate on that a little, please.
10 That's--that doesn't--

11 A. Well, for example, I've used teddy bears in
12 interviews with teenagers where they have difficulty
13 communicating verbally or are developmentally delayed somehow
14 and have trouble articulating information and may use the
15 teddy bear as a way of helping them communicate.

16 Q. When you use teddy bears or stuffed animals with
17 kids, do you let them keep them?

18 A. No.

19 Q. Are there certain factors that are more conducive to
20 a child fabricating or confabulating an incident of alleged
21 abuse?

22 A. Yes.

23 Q. What factors are those that are more conducive
24 toward confabulation or fabrication?

25 A. Probably the most common one is if a child has a

1 weak memory for a specific incident. For example, as I
2 mentioned before children are less suggestible, less likely to
3 confabulate, on central details of the event, but more prone
4 to suggestion or confabulation on peripheral details or
5 details that they don't remember very well. Children are also
6 more prone to fabricate in situations where there's a divorce
7 or custody situation going on, in which case, generally, the
8 allegation is originated by the parent trying to gain the
9 advantage in the custody dispute. There are other instances
10 where children are more prone to fabrication or not prone to
11 confabulation, but less likely to resist leading or misleading
12 questions. And that's in the case where the interviewer is
13 very stern, very authoritarian, and not very warm or
14 supportive at all.

15 Q. So then confabulation tends--would tend to occur
16 more often in a situation involving a broken home or a home
17 about to be broken?

18 A. Only if the disputants are disputing custody,
19 generally, of the child in question.

20 Q. During the course of your work, you rely upon an
21 article that is entitled, "The Impact of Sexual Abuse on
22 Children: A Review and Synthesis of Recent Empirical Studies"
23 by Kendall T-A-C-K-E-T-T. Apparently that is a last name.
24 Linda M-E-I-R Williams and Finklehor, correct?

25 A. Yes.

1 Q. You still rely on that, correct?

2 A. Yes.

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

6 A. That's correct.

7 Q. The findings suggest that the absence of any
8 specific syndrome in children--the findings in that article
9 suggest the absence of any specific syndrome in children who
10 have been sexually abused and no single traumatizing event; is
11 that correct?

12 MR. PITTS: Your Honor, I'm going to object as to
13 lack of foundation.

14 THE COURT: Sustained.

15 BY MR. HRUBY:

16 Q. Are you familiar with that article?

17 A. Yes, I am.

18 Q. Are you familiar with the research upon which that
19 article is based?

20 A. Yes, I am.

21 Q. Is that--I don't know. Is it fair to call that an
22 article? What is it really?

23 A. It's really a review article where the authors
24 examined 45 different studies of sexually abused children and
25 essentially grouped them all together to look at the

1 commonalties and differences among those studies.

2 Q. And the findings in that article, that compilation,
3 as it were, suggests the absence of any specific syndrome in
4 children who have been sexually abused and no single
5 traumatizing event, correct?

6 MR. PITTS: Again, Your Honor, objection as to what
7 syndrome we're talking about. I don't believe it's been
8 defined for the jury.

9 THE COURT: I take that to be a foundational
10 objection.

11 MR. PITTS: Yes.

12 THE COURT: I'll sustain it.

13 BY MR. HRUBY:

14 Q. Is there any specific syndrome in children who have
15 been sexually abused?

16 A. By that you mean collection of behavioral,
17 emotional, and psychological symptoms?

18 Q. Correct.

19 A. No. There's no one single syndrome that describes
20 sexually abused children.

21 Q. So then is it fair to say that you would point to
22 certain observable behavior in a sexually abused child and you
23 could see that same behavior in a child who has not been
24 sexually abused?

25 A. That's correct.

1 Q. You do recognize the fact that false allegations
2 have been made by children who say they were sexually abused,
3 correct?

4 A. Yes. False allegations do occur.

5 Q. And that even if the child has certain
6 characteristics or certain symptoms that have been associated
7 with sexual abuse that is not necessarily determinative, is
8 it?

9 A. That's correct.

10 Q. And those behaviors, as it were, they could be
11 unrelated-- completely unrelated to sexual abuse, correct?

12 MR. PITTS: Again, objection as to foundation as to
13 behaviors.

14 THE COURT: Overruled on that question. The witness
15 may answer.

16 A. Could you repeat the question, please?

17 Q. Let me clarify. Could I ask the court reporter to
18 read back the question, please?

19 (Last question read)

20 A. If the child has been sexually abused and they're
21 showing symptoms?

22 Q. No. The child has not been sexually abused.

23 A. But they are showing symptoms similar to a child
24 that has been sexually abused?

25 Q. Correct.

1 A. Yes. They may be unrelated to sexual abuse.

2 Q. How do you tell the difference? There is no way to
3 tell the difference, is there?

4 A. Correct.

5 Q. There are situations where a children's testimony
6 can be coached, correct?

7 A. It's possible, yes.

8 Q. It is also possible that the child nay not even know
9 consciously that they are being coached, correct?

10 A. I would say especially young children that's--that
11 may be true.

12 Q. Or perhaps children who are immature, that is to
13 say, they are not emotionally as old as their chronological
14 age would suggest them to be?

15 A. Again, I don't think I can answer that question
16 because no specific research has been done on mental age and
17 coaching of children.

18 Q. Isn't it generally true that statements made closer
19 in time to the event by children tend to be more accurate and
20 more detailed than statements made later on?

21 A. I would say in general that's true, but with
22 sexually abused children, that may not necessarily apply.

23 Q. But on the other hand, it could very well apply?

24 A. It could very well apply.

25 Q. And there's, again, no way to tell one way or the

1 other, correct?

2 A. Not without an in-depth evaluation or investigation.

3 Q. You yourself interview children on a frequent basis
4 where it has been alleged these children have been abused,
5 correct?

6 A. Yes.

7 Q. And during the course of your interview you would
8 want to know whether or not some adult has suggested something
9 to the child, correct?

10 A. Yes.

11 Q. That would be an important thing to know during your
12 interview, correct?

13 A. Yes.

14 Q. And you would want to know who suggested things to
15 the child, correct?

16 A. Yes.

17 Q. And when you--when you hear the words in an
18 interview, I heard somebody tell me that, or someone told me
19 that, that is suggestive to you that someone told them
20 something, correct?

21 A. Yes. It suggests that someone told them something,
22 but it is a legitimate interview technique.

23 Q. And if the child had overheard numerous
24 conversations about a certain incident or issue coming up, you
25 would also want to know about that as an interviewer, correct?

1 A. Yes. That may be important to know.

2 Q. You would want to know what the child overheard,
3 correct?

4 A. Yes, if possible.

5 Q. Who the child overheard it from, correct?

6 A. Yes.

7 Q. How often or how many times the child overheard
8 certain things, correct?

9 A. Yes.

10 Q. And the physical circumstances, how it is that
11 happened or how it is it happened that often, correct?

12 A. Yes.

13 Q. And you would be concerned about that as an
14 interviewer, wouldn't you?

15 A. Depending on the content and the people talking and
16 the child's age, yes.

17 Q. Now, in--in the studies that you have quoted for us
18 or that you rely on in your--in formulating your testimony
19 here today, is there a known rate of error in those studies?

20 A. Um, generally, studies will publish their error rate
21 or in the statistical analysis of the information gained in
22 the study, the researchers will give a probability of whether
23 or not the results they had were a result of what they were
24 actually studying or as a result of error.

25 Q. So the rate of error is set forth as a probability

1 only?

2 A. Well in the statistics, yes.

3 Q. And upon what is the probability based?

4 A. The probability is based on whether or not the
5 conclusion the researchers came to was an actual result of the
6 study or what they were studying versus something else that
7 the researchers did not take into account.

8 Q. Is it a statistical model or probable rate of error?

9 A. Yes.

10 Q. Oh. So then it is not something that is based on
11 earthbound physical facts? We knew we were wrong in this one,
12 we know we're not wrong on this one, we know we're not wrong
13 on this other one. That's what I'm saying, an earthbound
14 physical fact.

15 A. No. It's a mathematical probability that what we
16 were studying is actually a result of the manipulations or
17 what we did in the study versus something extraneous the
18 researchers did not take into account. And in general, what
19 studies, in order to be published, that error rate has to be
20 less than five percent, usually.

21 Q. So a five percent or less error rate is acceptable?

22 A. Yes. For a publication. Yes.

23 Q. Which you rely upon to formulate your techniques and
24 conclusions, correct?

25 A. Yes.

1 Q. I don't think I have any further questions.

2 THE COURT: Redirect?

3 MR. PITTS: Thank you.

4 BY MR. PITTS:

5 Q. Ms. Dutton, I think you had answered a question that
6 possibly children could be coached, especially young children.
7 Do you recall that answer?

8 A. Yes.

9 Q. Can you tell us, what do you mean, "especially young
10 children" what's your definition of that?

11 A. Young children meaning preschool children.

12 Q. Ms. Dutton you said that-- first of all, are you
13 salaried or do you work on a percentage basis?

14 A. I'm paid a salary.

15 Q. So the--and who are you paid a salary for--by?

16 A. By St. Joseph's Hospital.

17 Q. Does the majority of income you earn from the
18 company come from either testifying or does it come from
19 seeing children?

20 A. It comes from seeing children.

21 Q. Ms. Dutton, there were some questions about there
22 being a qualitative or quantitative model in connection with
23 cases such as this. Do you recall that?

24 A. Yes.

25 Q. Giving--maybe simplifying the answer a bit more, in

1 our system who decides whether events took place?

2 MR. HRUBY: Objection, improper question.

3 Relevancy, invades the province of the jury.

4 THE COURT: Counsel, approach please.

5 (A bench conference was held off the record)

6 THE COURT: The objection on the last question is
7 sustained. Go ahead, Mr. Pitts.

8 BY MR. PITTS.

9 Q. Ms. Dutton, do you recall being asked whether false
10 allegations do occur in child abuse cases?

11 A. Yes.

12 Q. And you indicated that they do occur. Do you have
13 information on the number or percentage?

14 A. Yes, I do.

15 Q. And what is that?

16 MR. HRUBY: Objection on foundation.

17 THE COURT: Foundational objection sustained.

18 BY MR. PITTS:

19 Q. Ms. Dutton can you explain to us the--in terms of
20 your knowledge and studies of giving the answer that false
21 allegations do occur, could you explain the studies you have
22 relied on in giving that answer?

23 A. Yes. I've relied upon the studies of-- if I could
24 check my references here to make sure to get them right.
25 Kathleen Faller, Benedict and Shetke, Theones and Tagen.

1 Q. In terms of the question, do false allegations
2 occur, do you rely on your own experience in interviewing and
3 counseling?

4 A. Yes.

5 Q. Based on those studies and your own individual
6 experiences, do you have an opinion, yes or no, as to the
7 percentage of the amount of likelihood of false allegations in
8 these type of cases?

9 A. Yes, I do.

10 Q. What is that opinion?

11 MR. HRUBY: Objection, foundation. And really
12 foundation upon foundation. We don't know anything at all
13 about the studies that this witness allegedly relies on. We
14 don't know what those were about when and where they occurred,
15 et cetera. Also hearsay.

16 THE COURT: The objection is overruled. I will
17 allow brief re-cross on the this issue. You may answer
18 Mr. Pitts' question.

19 THE WITNESS: Well, the percentage varies from study
20 to study, but in all cases in all studies the false allegation
21 rate was under ten percent.

22 Q. Thank you.

23 MR. PITTS: No other questions.

24 THE COURT: Any re-cross?

25 MR. HRUBY: Yes. Thank you.

1 BY MR. HRUBY:

2 Q. You threw a figure out that in the false allegations
3 it was under ten percent, correct?

4 A. Yes.

5 Q. So ten percent or less, correct?

6 A. Yes.

7 Q. As much as, but no greater than one allegation out
8 of ten, correct?

9 A. Right.

10 Q. Do you know--I think you quoted us three authors,
11 apparently three studies, am I correct? Did I hear that
12 correctly?

13 A. Yes.

14 Q. Roughly, the years these studies were conducted?

15 A. 1990, 1988, uh, 1991.

16 Q. And do you know--

17 A. I'm sorry one other one. 1987 as well.

18 Q. Thank you. Do you know what physical facts or
19 physical occurrences these writers used to determine that
20 false allegation rate? In other words, we know this to be
21 true because...?

22 A. It varied from study to study, but, yes, I do know.

23 Q. What were they?

24 A. In Benedict and Shetke study it was in-depth
25 evaluation of the studies, Kathleen Faller's is the same. In

1 Theones and Tagen it was official findings in cases.

2 Q. So based on cases that have gone to court?

3 A. Or have been investigated by CPS or the police.

4 Q. So, basically, to get their error rate, they were
5 relying on the error rate of CPS?

6 A. Of determining whether allegations were actually
7 false versus unsubstantiated.

8 Q. These are Ph.D psychologists who are relying on the
9 error rate of a local CPS?

10 A. No. Not of local CPS. It was done in four
11 different sites across the country.

12 Q. So they were relying on four different CPS's
13 somewhere else?

14 A. Social service agencies, yes.

15 Q. They must--then we're assuming that the CPS
16 organizations they relied on did not make errors, right?

17 A. Yes.

18 Q. That's unrealistic, isn't it?

19 A. I can't comment on that.

20 Q. You don't know?

21 A. I don't know.

22 Q. Were any of these ten percent or less error rates
23 the result of statistical models?

24 A. I don't believe so, no.

25 Q. You don't believe so?

1 A. No. They were simply reporting percentages of
2 cases.

3 Q. Which they in turn were getting their stats from
4 somewhere else, right?

5 A. Well the case with Theones and Tagen, were official
6 cases that had been reported to the authorities.

7 Q. So basically, the authors had no personal knowledge
8 of the error rate that they reported to be the basis of their
9 studies, correct? In other words, the findings they reported
10 in their studies were based upon things they had no personal
11 knowledge of, correct?

12 A. No. It was file review of cases.

13 Q. File review?

14 A. File review of cases.

15 Q. Someone else's files?

16 A. Yes. The social service or CPS case file.

17 Q. So they had no personal knowledge of whether what
18 was in that file was true or not?

19 A. Correct.

20 Q. And they came up with a ten percent or less figure?

21 A. Yes.

22 Q. Thank you.

23 MR. HRUBY: Nothing further.

24 THE COURT: Are there any question ins the box?

25 Would counsel bring them up, please. Ms. Dutton, if you'll be

1 patient with us, we'll be right back with you. There may be
2 some additional questions.

3 (reading questions from jury box).

4 THE COURT: Ms. Dutton, do you recall Mr. Hrubby
5 asking you some questions a little while ago with respect to
6 various behaviors, he listed six or seven behaviors, and then
7 asked you a follow up question and you said with the exception
8 of two behaviors do you recall that line of questioning?

9 A. Yes.

10 Q. Would you specify for the jury the two exceptions
11 you are making in response to that question for Mr. Hrubby, for
12 the jury?

13 A. Yes. The two types of behavioral or psychological
14 problems that we see in children who are sexually abused which
15 tend to set them apart from children who experience other
16 trauma are precocious sexual behavior and post traumatic
17 stress disorder. Precocious sexual behavior meaning a child
18 engaging in sexual behavior beyond what is normal for their
19 age. Typically we see this in children who have been sexually
20 abused or sexualized in another way, either pornography or
21 witnessing adult sex acts. The next is post traumatic stress
22 disorder, which is a diagnosis a psychological diagnosis which
23 is characterized by disturbances in sleep, nightmares, flash
24 backs, difficulty, depression, being hypervigilant, meaning
25 being always on guard and looking for where the next problem

1 is, their moods may become angry or have mood swings. Things
2 like that.

3 THE COURT: One additional question: Do you recall
4 discussing this morning a--something known as piecemeal
5 disclosure?

6 A. Yes.

7 THE COURT: When you talked about piecemeal
8 disclosure, were you referring to events being disclosed or
9 disclosures about one specific event or were you referring to
10 the disclosure of many events over time or could it be either?

11 A. It could be both. For example, if a child is
12 describing one incident and then talks about more happening
13 during that incident at a later time, for example. Or a child
14 may be disclosing other incidents of abuse over time, for
15 example, it happened longer or more often than they original
16 had said it did.

17 THE COURT: Mr. Pitts, any follow up to the jurors'
18 questions.

19 MR. PITTS: Yes.

20 BY MR. PITTS:

21 Q. In terms of the two behaviors, precocious sexual
22 behavior post traumatic stress behavior, do you see that in
23 each and every child abuse victim?

24 A. No.

25 MR. PITTS: That's all.

1 THE COURT: Mr. Hruby, any follow up to either of
2 the jurors' questions?

3 MR. HRUBY: Yes, please.

4 BY MR. HRUBY:

5 Q. If you do see certain precocious sexual behavior
6 and/or you do see the post traumatic stress disorder behavior,
7 in your mind, based on your studies and based on your
8 experience, does that make it more likely that a child was
9 sexually abused?

10 A. I have to take those separately. With the
11 precocious sexual behavior, typically we don't see that in
12 children who have experienced other kinds of trauma. And, as
13 I said, the child has been sexually abused or sexualized into,
14 usually in exposure to pornography, hard core pornography,
15 actually. With post traumatic stress disorder, those types of
16 symptoms we do see in kids who have experienced other kinds of
17 trauma, but it is more common in sexual abuse victims.

18 Q. So then if you do see that it is--it is probably
19 more likely that that is a sexual abuse victim for real?

20 A. Yes.

21 Q. In other words, it's going to take them out of that
22 ten percent false allegation population?

23 A. I think the two are separate issues.

24 Q. Okay. Now, there was an exception to what you
25 talked about. Regarding the precocious sexual behavior and

1 the post traumatic stress disorder and that had to do with
2 observing adult sexual behavior?

3 A. Yes. For example a child witnessing sex acts
4 between adults.

5 Q. Sex acts can be fondling? I mean, something other
6 than a hey, buddy boy, kind of thing? (Indicating patting on
7 the back)

8 A. I'm really thinking of, for example, if you find two
9 nine-year-olds engaging in oral sex, to me that generally
10 means they have been exposed somehow.

11 Q. What about fondling behavior?

12 A. Well fondling can or cannot be precocious. It
13 depends upon the age of the child.

14 Q. What about fondling the genital area?

15 A. Again, it depends on the age of the child.

16 Q. The other is pornography. Now, you said hard core
17 pornography?

18 A. Yes. Typically you don't see oral contact or oral
19 genital contact in soft core pornography.

20 Q. What about sexualized--I guess what we call--I don't
21 know if there is such a thing, sexualized soft core
22 pornography, that is to say people without their clothes on in
23 obviously sexually provocative positions. Would that tend to
24 have an effect on a child's perception of sexuality?

25 A. It can, but you would see behaviors that are

1 reflective of what the child has seen.

2 Q. And would the child then tend to talk about
3 behaviors that they saw in these soft core situations?

4 A. It depends on the child.

5 Q. Nothing further. Thank you.

6 THE COURT: Counsel, may this witness be excused?

7 MR. PITTS: Yes, Judge.

8 MR. HRUBY: Yes. Thank you.

9 THE COURT: Thank you ma'am. Watch your step on the
10 way down.

11 (Witness excused and left the courtroom)

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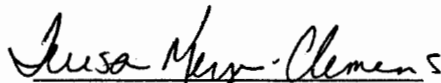
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4 C E R T I F I C A T E
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7 I, Teresa Meyer-Clemens, Certified Shorthand
8 Reporter licensed in the State of Arizona, do hereby certify
9 that the foregoing proceeding was recorded stenographically by
10 me and were thereafter transcribed by means of computer-aided
11 transcription; that the foregoing testimony of the witness is
12 a full, complete and true record of said proceeding.

13 I further certify that I am in no way related to the
14 parties in this action or in any way interested in the outcome
15 thereof.

16 IN WITNESS WHEREOF, I have subscribed my name this
17 24th day of May, 1999.

18 
19 TERESA MEYER-CLEMENS
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INVOICE

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Phoenix, AZ 85003
FED TAX NO. 86-0743442

INVOICE DATE: May 27, 1999

Date taken	Description	Unit Price	Total Amount
5/10/99	Invoice No.: PD5/10TM CAPTION OF CASE: STATE OF ARIZONA vs. SEKAQUAPTEWA, CR 97-14791 Reporter's fee for the testimony transcript of WENDY DUTTON, in the above entitled matter, original and one copy plus binding, 81 pages, at \$ 21.80 per page	\$ 229.80	
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