

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	CR2013-428563-001DT
CHRISTOPHER A. SIMCOX,)	
)	
Defendant.)	
_____)	

Phoenix, Arizona
July 7, 2015
2:00 p.m.

BEFORE: THE HONORABLE JOSE S. PADILLA, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

Renée A. Mobley, RPR, CSR
Certified Reporter
Certificate No. 50500

(COPY)

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On Behalf of the State:

Mr. Yigael Cohen
Deputy County Attorney

Ms. Katie Staab
Deputy County Attorney

On Behalf of the Defendant:

In Propria Person
Mr. Robert S. Shipman
Ms. Sheena Chawla
Advisory Counsel

Also Present:

Ms. Colleen Clase
Counsel for Victim AS
on Behalf of Minor Victim ZS

Mr. John D. Wilenchik
Counsel for Victim MA
on Behalf of Minor Victim JD

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GAIL S. GOODMAN, Ph.D.

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THE COURT: The next matter on the calendar is
CR 2013-428563-001, State of Arizona vs. Simcox.

This is the time for a hearing on the State's
Accommodation Motion and Mr. Simcox's
A.R.S. 13-1421 Motion.

And, parties, please announce.

MR. COHEN: Good afternoon, Your Honor. Yigael
Cohen and Katie Staab on behalf of the State.

Also present.

MS. CLASE: Good afternoon, Your Honor. Colleen
Clase on behalf of AS, mother and legal guardian of ZS.

MR. WILENCHIK: And, Your Honor, John Wilenchik
on behalf of MA, as mother of minor victim, JD.

THE COURT: And good afternoon, counsel --
counsels.

And I'm sorry. The last name? The last name?

MS. CLASE: My apologies. My client or my name?

THE COURT: Oh, your name.

MS. CLASE: Clase, C-L-A-S-E. Thank you.

THE COURT: And I take it we have victims present
as well or victims' representatives?

MS. CLASE: We do, Your Honor.

THE COURT: All right. And Mr. Simcox?

1 THE DEFENDANT: Good afternoon, Your Honor.

2 Chris Simcox appearing pro per.

3 THE COURT: And, good afternoon, Mr. Simcox.

4 And advisory counsel that's present?

5 MS. CHAWLA: Good afternoon, Your Honor. Robert

6 Shipman and Sheena Chawla, advisory counsel for

7 Mr. Simcox.

8 THE COURT: Okay. And, Mr. Cohen, are we ready

9 to proceed on your motion?

10 MR. COHEN: We are, Your Honor.

11 THE COURT: And, Mr. Simcox, are we ready to

12 proceed on your motion?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. The order will be, since

15 it was first in time, Mr. Cohen, it will be your motion

16 hearing first.

17 And, again, simply to make that sure we're all on

18 the same page, the substance of the hearing is whether

19 there should be some accommodation made for the victims

20 pursuant to *Maryland v. Craig*.

21 And this number is 44 something, the victim

22 statute that talks about accommodation.

23 But, anyway, that's the scope of that hearing.

24 And, Mr. Simcox, obviously, the scope of your

25 hearing is whether there's credible evidence in order to

1 bring information about other occurrences not related to
2 yours.

3 So, with that said, is either side invoking the
4 rule?

5 MR. COHEN: Yes, Your Honor.

6 THE COURT: All right. Besides your expert and
7 the victims' representatives, all other individuals that
8 may be called to testify have to wait outside.

9 MR. COHEN: There are no other witnesses.

10 THE COURT: Okay. And, Mr. Simcox, likewise, if
11 you have -- your expert may remain in court. Any other
12 witnesses would have to remain outside.

13 THE DEFENDANT: Okay. I have -- Okay. Yeah.
14 It's taken care of.

15 THE COURT: Correct. So, with that said, a
16 really, really, really brief opening.

17 MR. COHEN: Your Honor, the State would rest
18 on -- we've already made openings. This is a continuation
19 hearing. I think the Court is well briefed on the status.

20 Simply today, the State will be presenting the
21 testimony of Dr. Gail Goodman, who is an international
22 expert on issues relating to children and trauma in the
23 courtroom.

24 The State will also be calling the mothers of the
25 two victims in this case. And they will be able to testify

1 as to what they believe would be the traumatic impact on
2 their children if the defendant is allowed to
3 cross-examine them.

4 THE COURT: All right. And, Mr. Simcox, a brief,
5 opening, if you want.

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: All right. And call your first
8 witness.

9 MR. COHEN: The State calls Dr. Gail Goodman.

10 THE COURT: Dr. Goodman.

11 THE CLERK: Please state your name for the
12 record, ma'am.

13 THE WITNESS: Gail Goodman.

14 THE CLERK: Please raise your right hand.

15 (WHEREUPON, the witness was duly sworn by the
16 clerk.)

17 THE COURT: Ma'am, if you would, please, come
18 this way and make yourself comfortable. There is a
19 microphone there.

20 And once you have seated yourself and made
21 yourself comfortable, adjust the microphone.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Mr. Cohen.

24 MR. COHEN: Thank you.

25

1 GAIL S. GOODMAN, Ph.D.,
2 having been first duly sworn to tell the truth, the whole
3 truth, and nothing but the truth, testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. COHEN:

7 Q. Good afternoon, Dr. Goodman.

8 A. Hello.

9 Q. Would you please introduce yourself to the Court?

10 A. My name is Dr. Gail Goodman. And I'm a professor
11 of psychology at the University of California Davis.

12 Q. And what type of classes do you teach at
13 UC Davis?

14 A. I teach undergraduate and graduate courses in
15 developmental psychology and psychology and law, including
16 on the graduate level, courses on trauma and memory and
17 children's memory development and testimony in court.

18 THE COURT REPORTER: Is that microphone on? I
19 can barely hear it.

20 (WHEREUPON, an off-the-record discussion ensued.)

21 THE COURT: Do you want any of that repeated?

22 MR. COHEN: I don't think it's necessary unless
23 the court reporter needed it repeated.

24 THE COURT: Madam court reporter, do you need it
25 repeated?

1 THE COURT REPORTER: No.

2 THE COURT: All right. You may continue,
3 Mr. Cohen.

4 MR. COHEN: Thank you, Your Honor.

5 Q. BY MR. COHEN: Do you have a particular area that
6 you specialize in?

7 A. Yes. I'm trained in the study of memory
8 development, but I've also made my expertise in psychology
9 and law, particularly in child maltreatment and sexual
10 abuse cases and children's memory and testimony and
11 reactions to legal involvement in such cases.

12 Q. Well, let's go back in time a little bit and talk
13 about what degrees do you hold?

14 A. I have a Ph.D. in psychology as well as a
15 master's degree and undergraduate bachelor's degree.

16 Q. And what did you -- what is your Ph.D. in?

17 A. It's in developmental psychology.

18 Q. What exactly is developmental psychology?

19 A. Well, developmental psychology is the study of
20 generally the human mind and behavior as it changes with
21 age and development.

22 Q. Okay. Now could you just give an overview of
23 where you've worked since obtaining your Ph.D.?

24 A. Sure. Well, first I did post-doctoral studies at
25 the University of Denver and also at the

1 Université René Descartes, Paris, France.

2 And then I was hired onto the faculty of the
3 University of Denver. And I left there to be on the
4 faculty of the State University of New York, where I was
5 granted full professorship.

6 And then I left in 1992 for the University of
7 California at Davis.

8 I also had an appointment as an adjunct faculty
9 member at the University of Oslo in Norway.

10 Q. Now, aside from your schoolwork, have you had any
11 specialized training in the work that you do?

12 A. Well, of course getting a Ph.D. is a lot of
13 specialized training, and then post-doctoral studies
14 include even more specialized training.

15 During my doctoral training, it was mainly on
16 basic developmental psychology and developmental theory as
17 well as memory development.

18 But in my post-doctoral years, I received more
19 specialized training by attending law school classes at
20 the University of Denver on children and the law and
21 juvenile justice issues.

22 Then, of course, since then, I've gone to many,
23 many conferences and workshops. I've read journals that
24 are relevant and books, you know, and I really -- and I do
25 the training now as well as maintaining my training.

1 Q. Do you have any certifications or licenses?

2 A. As a professor, I don't -- I don't need a license
3 or require a license, no. Professors aren't licensed.

4 Q. And I think you did mention that you've done a
5 number of publishing?

6 A. Yes.

7 Q. How many books have you published or at least
8 have had articles within books that have been published?

9 A. Oh, I've never counted exactly. I've probably
10 have published maybe five or six, maybe even ten books.
11 And in terms of chapters in books, maybe a hundred or so.

12 But, also, of course, journal articles and
13 integral articles as well, probably another a hundred or
14 150 of those, something like that.

15 Q. And would it be fair to say that a good portion
16 of those writings relate to children and sexual trauma and
17 issues arising out that?

18 A. Yes.

19 Q. And, of course, you teach at the University of
20 California Davis?

21 A. Correct.

22 Q. And you give presentations at conferences,
23 workshops, seminars?

24 A. Yes. That's right.

25 Q. What are the typical topics that you talk about?

1 A. Usually people want to hear about my research on
2 children in court or my research on children's memory and
3 forensic interviewing of children as well as memory
4 development, generally, in child sexual abuse cases.

5 Q. Are you a member of any professional
6 organizations?

7 A. Yes. I'm a member of Fellow of the American
8 Psychological Society and the Association for
9 Psychological Science. I'm also a member of the Society
10 for Research in Child Development and the Society for
11 Child Abuse and Neglect and several other organizations
12 as well.

13 Q. And how do you keep updated in the current
14 literature in the field?

15 A. Well, I'm always reading, of course, journal
16 articles and books and going to conferences.

17 Also, because we do our own research in my
18 laboratory, you know, that also keeps me up-to-date by
19 helping students with their dissertations and master
20 theses.

21 I corroborate also with others around the country
22 and really around the world. So I'm also kept up-to-date
23 on their research. You know, we e-mail and we chat and
24 things like that.

25 Q. And with, specifically, courtroom issues relating

1 to children, what research have you done?

2 A. Well, I -- early in career, I received funding
3 from the National Institute of Justice, which is part of
4 the U.S. Department of Justice, to do one of the first
5 studies that looked at the emotional and attitudinal
6 effects on children when they're involved in criminal
7 prosecutions for child sexual abuse.

8 So that -- that study was actually cited
9 pivotally in the *Maryland vs. Craig* decision that
10 Your Honor referred to.

11 We later received funding from the National
12 Science Foundation to follow up those children when they
13 were older adolescents and adults to see how they fared in
14 the long-term. So that was one major project.

15 I've also -- I was funded by the federal
16 government to look at children who had been removed from
17 the home in child protective matters, funded by the
18 Administration on Children and Families of the
19 U.S. Government.

20 And then now I have funding from both the
21 National Science Foundation and the National Institute of
22 Justice to follow up that sample as well.

23 And we've done other studies. I don't know if
24 you want the whole list, but those are just some of those.

25 Q. Well, as it relates to this topic, yes, please.

1 A. We've also interviewed children coming out of
2 dependency courts, which I know this of course is not a
3 dependency court matter, but it still I think is
4 enlightening in terms of comparison, first of all, to
5 children coming out of criminal court, but also in terms
6 of interviewing child abuse victims about their
7 experiences and needs in the legal system.

8 Q. Now have you testified as than expert before?

9 A. Yes, I have.

10 Q. And where have you testified?

11 A. I've testified in criminal court matters, in
12 family courts, in juvenile courts. And, also, a
13 habeas corpus hearing, which may have been a criminal
14 matter. I could classify that. But that was actually for
15 the Court as opposed to one side or another.

16 But I've only testified, say, probably around 15
17 or so times. I get asked to do it a lot more than that.

18 Q. Well, thank you for being here.

19 And, in addition to that, have you provided
20 assistance to foreign countries -- other countries on
21 legal procedures relating to children in court?

22 A. Yes, I have.

23 Q. And what have you done?

24 A. Well, again, early -- fairly early in my career,
25 I was really one of the only researchers in psychology who

1 was addressing these issues.

2 And the Government of New Zealand was considering
3 changing their laws concerning child victims and witnesses
4 and actions there including criminal court.

5 And so the government brought me in and I gave
6 talks throughout the country of New Zealand on the
7 research to inform people there, including, you know,
8 professional audiences, attorneys and judges, as well as
9 others.

10 And I also met with a cabinet level person in
11 their federal government who was the head of the
12 Department of Health and Human Services at the time to
13 talk about child abuse research. So that was one time.

14 I've also met with the Supreme Court Justices in
15 Israel and the also the head of their Department of Health
16 and Human Services to talk about research on children as
17 witnesses and victims in child sexual abuse and other
18 kinds of cases.

19 I've consulted with members who are writing
20 reports for the government for Canada as well as Norway
21 and England, things like that.

22 Q. And you mentioned that you were -- you had some
23 involvement with *Maryland v. Craig*?

24 A. Yes, I did.

25 Q. How so?

1 A. Well, I was asked by the American Psychological
2 Association as well as other agencies that also signed on
3 to help write an amicus brief that was presented to the
4 U.S. Supreme Court in the *Maryland v. Craig* case.

5 And then they, you know, cited my research I
6 guess pivotally in their decision that under certain
7 circumstances, child sexual abuse victims should be able
8 to -- after, you know, a particularized hearing, be able
9 to testify at times under close circuit television.

10 Q. And so, essentially, that was the work that you
11 did in *Maryland v. Craig* was accommodation for children?

12 A. That was the work that they --

13 Q. That you did?

14 A. They -- they cited our research on children's
15 reactions to criminal court involvement in child sexual
16 abuse cases to help base their decision on it.

17 They weren't as much citing my work on
18 accommodations and close circuit television, which we did
19 do work on that later. But, at that point, the main study
20 we had done was on the effects on children of testifying
21 face-to-face in criminal court.

22 Q. And have you done work or work been used in other
23 Supreme Court cases?

24 A. Yes. Well, for example, in *Kennedy vs.*
25 *Louisiana*, I believe it was, in 2008, the issue there was

1 whether there should be capital punishment for someone
2 convicted of child rape.

3 And Justice Kennedy wrote the decision saying:
4 No, that capital punishment should be reserved more for
5 homicide murder kind of offenses and there shouldn't be
6 capital punishment for child rape and child abuse cases,
7 and cited our work on children in court as well as our
8 work on children's memories, suggestibility and delays in
9 disclosure of child sexual abuse, topics like that.

10 Q. Now you were first contacted by my office to work
11 on this about approximately two months ago?

12 A. That sounds right.

13 Q. In preparation for your testimony, what have you
14 reviewed in terms of initially what -- relating specific
15 to this case?

16 A. Uh-huh. I did make a list if that helps. May I
17 look at my notes?

18 Q. Yes, to refresh your recollection.

19 A. I don't think I've got the right thing out.
20 Okay. So reviewed several phone calls that were made
21 generally where a police detective was calling,
22 for example, a mother of one of the children in this case.

23 So it was a phone call with D [REDACTED] C [REDACTED], A [REDACTED]
24 S [REDACTED], Nicole Evans, and then in addition one of the
25 adult children, L [REDACTED] B [REDACTED].

1 I also reviewed videotape recordings, for
2 instance, of forensic interviews with Z [REDACTED] and C [REDACTED]
3 S [REDACTED], J [REDACTED] D [REDACTED], 3T BJ, L [REDACTED] B [REDACTED], and, also,
4 with the defendant Christopher Simcox.

5 And then I reviewed a variety of documents, such
6 as Wild Wood records of employment and a request for
7 information relevant to support payments, police reports,
8 Child Protective Services reports, including medical exam
9 reports, and an e-mail message from Christopher Simcox
10 which I believe was intended for a therapist.

11 Q. Now, in addition to that, did you set upon doing
12 research on this topic area?

13 A. Yes. I researched in terms of, you know, looking
14 at the literature and relevant studies to the extent ones
15 exist, talking to other researchers in the field, talking
16 to various attorneys in the field, looking on the Internet
17 for information that might be relevant, you know,
18 specifically to a pro per case and sexually abused
19 children.

20 Q. Well, let's first discuss the issues simply of
21 children -- young children testifying in a courtroom
22 setting, to begin with.

23 And could you please describe the types of
24 methodology commonly used in research on children's
25 reactions to court?

1 A. Sure. Well, there's several types of research
2 methodology that's used. One of those on a broad level is
3 to actually do research with child sexual abuse victims
4 who are or were -- either are currently or were involved
5 in the legal system.

6 So, for instance, you can do questionnaire
7 studies, say, before and after children testify, or adults
8 testify, to look at their views and reactions, or do
9 questionnaire studies with their parents or family
10 members.

11 You can also -- and we've done this -- observe
12 children testifying in court, again, you know, actual
13 sexual abuse victims, to see how they respond to,
14 for instance, different kinds of questioning that occurs
15 under different kinds of cases.

16 And one of the things I think that my -- that was
17 funded by the National Institute of Justice that the
18 Supreme Court cited used a kind of methodology that's
19 called a quasi experimental design.

20 Sorry to give you a little research lesson here.
21 But, you know, in science, what you really would ideally
22 love to do is randomly assign people to groups. And then
23 you can do a true experiment rate and look at cause and
24 effect relations. And so that's, you know, kind of your
25 most pristine best research assignment.

1 But the legal system will not let us randomly
2 assign children to testify or not testify in a case,
3 obviously. So we do something sort of a random
4 assignment, which is called a quasi experimental design.

5 So, for instance, in our study, we worked with
6 several prosecutors' offices. Their office would contact
7 families when the case was referred for prosecution and
8 ask whether we could contact the families as researchers.
9 The families said yes. We got obtained measures on the
10 children's emotional adjustment and various types of
11 information on the case.

12 And that gave us kind of a baseline of the
13 children's emotional adjustment at that time when they
14 first entered into the prosecution and the legal case.

15 And then we waited to see which children
16 testified and which didn't. And when a child testified,
17 because most children actually don't testify -- many cases
18 are resolved by plea bargain -- we, instead for
19 comparison, selected a child who matched the child who
20 testified on many levels: Age, gender, race specificity,
21 severity of abuse, relationship to the perpetrator,
22 socioeconomic level, just about everything we could,
23 except one child had testified and the other had not.

24 And then we followed those children over time to
25 see if the children who testified, if their mental health

1 now looks worse than the children's mental health who did
2 not testify.

3 Then we are on somewhat safer ground making
4 causal inference about the effects of the testimony even
5 though we couldn't randomly assign.

6 So that's called -- you know, when you try to
7 kind of make up for not being able to randomly assign by
8 equating the two groups at the start and looking at the
9 effect over time, that would be considered a quasi
10 experimental design.

11 Q. You've also engaged our used or looked at
12 experimental studies?

13 A. Yes, yes. So we've also done experimental
14 studies now. The beauty of experimental studies, of
15 course, in the laboratory, for example, you can randomly
16 assign people -- children to groups.

17 So, for instance, we've done studies where we
18 have children. They come in and say or they are involved
19 in what to them is a babysitting event and the children
20 are touched on their bare bodies in legal ways and the
21 other half are not.

22 And then we have the children involved in mock
23 trials, which is very realistic mock trials often done in
24 actual courthouses. And we can then randomly assign the
25 children who were really touched versus who were not to

1 different conditions of testimony. So whether they would
2 testify in open court with members of the community there
3 serving as jurors or whether they would testify via close
4 circuit television.

5 And so we can question the children about how
6 they feel about going into the courtroom or how they feel
7 about testifying via close circuit TV. We can look at
8 their accuracy of their memory in reporting under these
9 conditions where the questioning and everything is the
10 same, but the difference is, you know, some are testifying
11 in open court and some are testifying via close circuit
12 television.

13 So you can do these kinds of experimental designs
14 where you can do true experimentation. But, of course,
15 the minus part is in those studies, you're not dealing
16 with actual child sexual abuse or actual child victims.

17 Q. You've also looked at studies using children in
18 mock forensic interviews?

19 A. Yes, yes. We've done a lot of that work as well
20 as children in actual forensic interviews.

21 Q. And another form of study was questionnaires of
22 adults?

23 A. Yes. We've -- because of my mandatory, we're
24 interested also in procedural fairness issues. We've
25 wanted to see what do community members -- what do they

1 feel is fair when you're dealing with a child victim or
2 witness, you know.

3 The legal system originally was -- presumably our
4 legal system was not designed with children in mind. So
5 we've wanted to see whether people in our country feel
6 that children should be treated differently.

7 And so we can do questionnaire studies asking
8 them how they think -- you know, just regular adults --
9 how they think children should be treated. And, often,
10 they're shocked that children would have to come into
11 court and testify pretty much like an adult and be
12 subjected to cross-examination, which just, you know, does
13 not happen in every country.

14 Q. Now, based upon these different studies, were you
15 able to -- have you been able to come to conclusions on
16 the emotional effects of the courtroom and the child?

17 A. Yes. But it's complex, like most important
18 things.

19 Q. What are some of the child's main fears about
20 testifying in a criminal court?

21 A. Well, that's pretty clear across our studies and
22 other studies that have been conducted. The main fear
23 that children mention is seeing the defendant in the
24 courtroom. They also are afraid of cross-examination.
25 Those are usually the two biggest fears.

1 They sometimes also mention having to testify in
2 open court. You know, having an audience there is also
3 frightening for children. They're afraid that they will
4 be accused of being liars. Sometimes they're afraid they
5 will go to jail themselves.

6 But the biggest ones are usually seeing the
7 defendant in the courtroom and cross-examination. And
8 when you interview children, before they go into the
9 courtroom, the children who have the biggest fears of
10 seeing the defendant are the ones who have the most
11 trouble answering the prosecutor's questions.

12 And that's actually what the Supreme Court really
13 dictated on in the *Maryland v. Craig* decision was that if
14 the child was so frightened, they couldn't reasonably
15 communicate, it would interfere with the truth-seeking
16 function of the trial. And, therefore, the defendant's
17 rights might have to be somewhat limited because there was
18 a state interest in -- important public interest in
19 protecting victims -- child victims, in particular.

20 Q. And you were also able to look at the long-term
21 effects of testifying on children's emotional and
22 attitudinal well-being?

23 A. Yes. Because we were able to follow our sample
24 over time when they got to be older adolescents and
25 adults, we were able to look longitudinally at their

1 outcomes.

2 Q. And what were your findings?

3 A. Well, there's a lot of findings in there. But
4 some of the findings I guess more relevant to here are
5 children who cried on the witness stand have worst
6 outcomes.

7 Children involved in particularly severe cases,
8 including incest that went on for a while or rape at
9 gunpoint, have worst outcomes.

10 Just testifying itself put the children more at
11 risk. But then there's these special groups that over the
12 long-term have -- have more problematic outcomes. And you
13 can see it in their scores on mental health measures.

14 They have more what's called post-traumatic
15 symptoms. For example, more defensive avoidance, which is
16 defending against not wanting to think about the past, not
17 wanting to deal with it, not think about it, and more
18 sexual problems.

19 It also, you know, can affect their attitudes
20 towards the legal system as to how fair they think the
21 process was.

22 But there also can be adverse effects of not
23 testifying, you know. So that's also important to
24 acknowledge. Children, for example, where the defendant
25 either walked, was not convicted, was acquitted, or that

1 got a very light sentence, that the children who testified
2 in those cases, tend to feel the legal system is less fair
3 later.

4 So, overall, our conclusions tend to be that
5 children do need to be able to have a voice in legal
6 cases. Obviously, there's some crimes you can't prosecute
7 without hearing children's voices. And for their own
8 sense of procedural justice and fairness, it can be
9 important. But it depends on how it's done.

10 So if it's done in a way that's really
11 traumatizing for them, if it's done in a way where they're
12 highly anxious, where they're crying, you know, where
13 they're having cross-examination that's too hostile and
14 goes on too long, various factors like that, then it can
15 be adverse for them.

16 So having voice can be good. How it's done is
17 important.

18 Q. So are there predictors of adverse emotional or
19 attitudinal effects on the child?

20 A. Yes, there are. So, again, if it's more severe
21 abuse, that's a predictor. If the child has to testify
22 multiple times, that is one of the bigger predictors.

23 If a child lacks maternal support, like or at
24 least a nonoffending support, or a particular lack of
25 corroborative evidence where the whole case rests on their

1 shoulders, those are also predictors of adverse effects.

2 And one problem is for this particular kind of
3 case for a case where the defendant wants to cross-examine
4 the children, is there's a risk of getting sort of a
5 magnified effect of that because you've got for the child
6 kind of a double whammy. They're very frightened to see
7 the defendant. They're frightened of cross-examination.
8 And now they've got the defendant doing both.

9 And in an incest case, for example, which would
10 count as one of our more severe cases, that child, in
11 particular, would be at more risk.

12 Q. So are these the accumulative effects of trauma
13 on children?

14 A. There are accumulative effects of trauma on
15 children, various studies. And now scientists are even
16 finding physiological effects that the accumulative trauma
17 basically, you know, gets into their body as well as into
18 their mind and psychology.

19 You know, everybody has some traumas in
20 childhood. You know, your parents might get divorced or
21 you might have a grandparent die, I mean. But as those
22 traumas accumulate, what you see is it gets to a certain
23 point on some measures through trauma. Other measures, it
24 varies, where the child's system just can't take it
25 anymore and you start to, you know, really see these more

1 adverse effects on their mental health. Even on their
2 intelligence testing on school performance, you know, just
3 a variety of things.

4 And so often you're dealing with children in
5 these legal cases who have multiple traumas in their lives
6 and then you're adding -- you know, you're adding more.
7 It's not good for them.

8 Q. Well, let's also look at completeness and
9 accuracy effects. How do frightened children perform in
10 the courtroom?

11 A. Usually not very well. There is research, for
12 instance, as I mentioned where we've looked at children's
13 fear of the defendant. And then we can see where in
14 actual cases, you know, you can see the children have more
15 trouble answering the prosecutor's questions.

16 You can also do studies where you look at
17 children in these mock court situations and/or even in
18 more forensic interview types of situations where you can
19 have, for instance, an interviewer who's being very nice
20 to the child or an interviewer who's being -- you know, we
21 can't really be mean to children in a laboratory. Of
22 course, you don't want to be, really. But you can be kind
23 of cold to them. Not smile. You know, not give them any
24 validating information.

25 And you can see those children become more

1 suggestible. They become less accurate. They sometimes
2 shut down. They will put their head down. You know, just
3 refuse to answer.

4 It of course depends on the child and the
5 individual differences. There's also some age
6 differences. But, overall, you know, intimidation and
7 discomfort has an adverse effect.

8 Cross-examination itself has been shown to
9 generally have an adverse effect on children.

10 Q. You talk about age. The younger the child, the
11 more an adverse effect there would be?

12 A. Of -- of in terms of their testimony?

13 Q. Yes.

14 A. Yes.

15 Q. What are the effects of social support versus
16 intimidation of the interviewer and/or the context?

17 A. Well, as I just -- I pretty much just answered
18 that, I think. But when the greater the intimidation for
19 many children, the more they -- they shut down or become
20 suggestible.

21 And I should mention, too -- one thing I forgot
22 to mention is girls tend to find the legal system,
23 including things like cross-examination, more intimidating
24 and more stressful. And so you actually see they have
25 more negative attitudes towards the legal system. So they

1 are more likely to shut down in the process.

2 Q. So, in your opinion, is it better for defendant's
3 rights, for children who testify, using protective
4 measures?

5 A. Well, that's a really interesting question that
6 we've dealt with. Generally what you find, through our
7 laboratory and other laboratories around the world,
8 really, is when children testify via protective measures,
9 say, like closed circuit television or with a support
10 person standing by them, in a forensic interview that's
11 been shown to the Court, which, of course, qualifies as
12 hearsay, but it has -- you know, it's done in many
13 countries -- the children are more accurate, and they're
14 viewed as less credible by the jurors. It's sort of --
15 it's ironic, really; isn't it?

16 So the kids' accuracy goes up, and they're seen
17 as less accurate and less honest, less credible, less
18 intelligent, less cute, a variety of things, and their
19 credibility actually goes down.

20 So, on that level, a defendant is better off in
21 terms of the child witness's credibility, having the child
22 testify with protective measures because that child's
23 credibility is then lowered.

24 Q. Now if there was physical abuse or domestic
25 violence in the past involving the defendant, how would

1 that affect the child's ability to testify?

2 A. Well, what -- there's a little bit of an
3 inference involved in answering that question. But when
4 researchers have looked at abused children and you present
5 them with anger cues -- so, say, these children have
6 suffered physical abuse or witnessed domestic violence
7 and, you know, just in the other room, you can overhear an
8 argument between a man and a woman when they're really
9 arguing and they've got anger going on, those children who
10 have abuse histories, their physiological arousal goes way
11 up compared to other children, and that physiological
12 arousal can then interfere with their ability to report
13 events and recount their experiences.

14 So if they've been exposed to physical abuse or
15 domestic violence, if you had an anger cue, which the
16 defendant likely could be for them, that might interfere
17 with their ability to testify.

18 Q. Now one of the main reasons we're here is to
19 determine what additional trauma would be brought on the
20 child by the defendant engaging in cross-examination.

21 And one of the things you tried to do was to look
22 to see if there was any research on this specific topic.

23 Were you able to find any studies that dealt with
24 these specific issues?

25 A. I found no studies that were specifically on the

1 defendant cross-examining child witnesses. It happens
2 rarely enough, apparently that researchers have not been
3 able to study it, and in many countries, it's not even
4 allowed, which also makes it harder to study, for
5 instance, if other researchers in other countries want to
6 study it.

7 But we did find some case examples.

8 Q. Could you go over those, please?

9 A. So in our study, the one that was cited in
10 *Maryland vs. Craig*, we had one case where the defendant
11 represented himself. And this was an eight-year-old girl.
12 It was a step parent -- well, a live-in partner, really I
13 guess you would say, like a boyfriend, but who was living
14 with the child. And the defendant represented himself.
15 It was a preliminary hearing, actually. Not a trial.
16 Where we interviewed the girl.

17 And we interviewed her before she went into the
18 courtroom. And she said she was very frightened of seeing
19 the defendant and being cross-examined. We had a scale
20 where four was like the most frightened you could be on
21 the scale, and she indicated a four.

22 We then observed her in court under direct and
23 cross-examination. And I actually have some of the data
24 here. You know, when she was being under direct
25 examination by the prosecutor, you know, she was able to

1 answer the questions. She was sad, but, you know, she
2 showed some self-confidence. She wasn't really crying
3 and able to answer questions with some detail.

4 And then -- this is, you know, observations we
5 did several years ago, not knowing anything about this
6 trial, of course.

7 Then it switched to the cross-examining her, and
8 you could just see, you know, this decrease in the
9 ratings. She's crying. Her self-confidence goes way
10 down. She's, you know, less able to answer questions.

11 In that particular case, he was yelling at her.
12 He was calling her a liar. So it was a very hostile
13 cross-examination as well.

14 The judge asked him to calm down and he didn't.
15 He was told he would be held in contempt of court and he
16 just proceeded anyway. And so she was pretty devastated
17 by that.

18 And years later when we talked to her, she said
19 that she felt the legal proceeding was unfair. It was
20 revictimizing.

21 Q. Were you able to come across any other cases or
22 anecdotes on this area?

23 A. By the way, she did attempt suicide at age 13.
24 Although, we don't know why.

25 But, yes. You just reminded me of the other

1 case -- another case that's been written about. It was
2 actually an adult. I believe she was 21 years old. She
3 was testifying about child sexual abuse in Washington
4 State. And there were other child victims who did
5 testify. They were adults I think as well.

6 And when it came to this one woman's time to
7 testify, she went to the top of the building. It was like
8 the twelfth or eleventh floor. She hung her legs off and
9 said she was going to jump. And so she was threatening
10 suicide if she had to go in and testify. And this was
11 when the defendant was going to cross-examine her. So she
12 said she just wouldn't do it and was going to jump.

13 And it took quite a while apparently to convince
14 her not to, and the prosecutor decided he would just go
15 with the other witnesses and not involve her in the case.
16 So that was another example.

17 I also contacted the attorney who is the current
18 head of the National Center for the Prosecution of Child
19 Abuse near Washington, DC, and she said she has dealt with
20 quite a few of these cases and she's had children react in
21 every way from running out of the courtroom and crying,
22 refusing to answer questions, recanting. And that she has
23 usually been able to convince the judge to have another
24 attorney ask the questions rather than have the defendant
25 ask the questions.

1 Q. Now, based upon your anecdotal research and the
2 actual research in case studies that you've conducted,
3 would cross-examination by the child's actual abuser
4 increase their fear in the courtroom?

5 A. Well, it's -- it's a matter of probabilities.
6 You know, our science is not so developed that we can say
7 with absolute certainty. But it's -- it's likely, yes.

8 Q. And it would also affect their performance in the
9 courtroom?

10 A. Yes. This, again, based on some research shows
11 the child should get to choose. If the child wants to
12 testify that way in court, the child doesn't mind being
13 cross-examined by the defendant, that might make a
14 difference.

15 But for children who indicate fear and
16 anticipatory fear of it, don't want to, you're more likely
17 to get an adverse effect.

18 Q. And, thus, that would also increase their
19 post-testimony trauma?

20 A. We would predict that, yes.

21 Q. Now what are approaches taken in other
22 countries -- although, they don't have the Sixth
23 Amendment, of course -- but in dealing with this
24 situation?

25 A. Well, countries that have an inquisitorial

1 system, such as in Continental Europe and places like
2 Norway, have worked out -- because they don't have the
3 Sixth Amendment, they have worked out a system where often
4 the judge and the defense counsel and the prosecutor would
5 go to something like a children's advocacy center or a
6 children's interview center like we have here, a very
7 child-oriented room where a trained investigator -- in
8 Norway, it's actually a trained police person or officer.
9 In other countries, it might be a trained social worker.

10 They interview the child, and the prosecutor, the
11 defense attorney and the judge get to feed questions to
12 that interviewer, who then tries to make sure the
13 questions are asked in a developmentally appropriate way.
14 And so the children often never go into court in those
15 cases. That is the direct and cross-examination in many
16 countries.

17 And it's possible that -- you know, it's usually
18 videotaped. It's possible that videotape then will serve
19 in the trial in the inquisitorial system.

20 However, in other countries that have more of an
21 adversary system -- they're modeled after the British
22 system and they're more like ours -- there are a number of
23 countries, again, without the Sixth Amendment, where they
24 are either trying to model their procedures after what
25 they do in an inquisitorial system such as Norway, or some

1 of them have where the child is -- the forensic interview
2 in the child advocacy center is videotaped versus direct
3 examination, and then the child's cross-examination is
4 done via close circuit link, as they call it. We call it
5 close circuit television. It's projected into the
6 courtroom.

7 Again, these countries do not allow the defendant
8 to do the questioning of the child in those situations.

9 Q. And, in fact, also the United Nations issued a
10 report in part dealing with children testifying when being
11 cross-examined by pro per -- pro per defendants?

12 A. Right. They have a report that's sort of a model
13 law to be used in child victim and witness cases. And
14 they specifically recommend that the defendant should not
15 be allowed to question the child victim witnesses.

16 Q. So, to recap, what do you conclude from your
17 research?

18 A. Oh, well, there's sort of a continuum. You know,
19 you have to think of it as sort of a continuum and there's
20 several factors involved. You could kind of go from the
21 worst case scenario to a more benign scenario for the
22 children and for hopefully being able to get to the truth
23 of what happened. You know, hopefully while still
24 protecting the defendant's rights.

25 You know, with the worst case scenario for many

1 children being having to testify live in court when
2 they're frightened, they don't want to, they're afraid of
3 the defendant, afraid of cross-examination. It would be
4 like it would be magnified when it's the same person doing
5 both.

6 And I didn't address it, but the whole attachment
7 issue of when it's your father cross-examining you, if you
8 are truly a victim or you've been exposed to violence by
9 the father, it really puts a child in a horrible double
10 bind.

11 So severe abuse, you know, rape at gunpoint, a
12 violent perpetrator, those are going to be some of your
13 long hostile cross-examinations -- those are going to be
14 some of your worst case scenarios.

15 And then for the child's point of view, if the
16 person has a light sentence, which, of course, you can't
17 know that at this point in this case. You know, and then
18 there's sort of a continuum going out to, you know, giving
19 the child a choice, having more protective measures for
20 the child, given that child's choice, you know, would be
21 more benign, but still giving a child's voice.

22 Q. And if the child has given indication that this
23 would be a very upsetting experience for them, that they
24 would be traumatized by that, is that something that you
25 would factor in?

1 A. Absolutely.

2 Q. And how would that factor in?

3 A. Well, that would predict -- if the child is still
4 being -- saying they don't want to do it and they're
5 frightened, they would be at risk for worse long-term
6 emotional effects.

7 We're not talking about just being a little
8 nervous on the stand. We're talking about long-term
9 mental health effects. And that child, you know, would be
10 at risk for that and also be a greater risk of not being
11 able to answer questions or being more suggestible,
12 especially if it's a younger child, preadolescent, say.

13 Q. Preadolescent?

14 A. Yes.

15 MR. COHEN: Okay. Thank you very much,
16 Your Honor, and Doctor.

17 THE COURT: Mr. Simcox.

18

19 CROSS-EXAMINATION

20 BY THE DEFENDANT:

21 Q. Good afternoon, Dr. Goodman.

22 A. Hello.

23 Q. Thank you for coming today.

24 Most of your testimony so far -- and I had a
25 chance to read Testifying in Criminal Court and Emotional

1 Effects on Child Sexual Assault Victims. Most of that is
2 from this report -- this research?

3 A. Yes.

4 Q. Okay. Thank you. I just wanted to make sure. I
5 only had a brief time to read it and it was quite a read.
6 There was a lot of information there.

7 Dr. Goodman, is it true that research -- all
8 research is pretty narrow in scope and sometimes is very
9 varied and unpredictable when it comes to the group that
10 you're studying?

11 A. I'm sorry. Do you mean research in general?
12 Research is a huge field for us and has many, many
13 different areas. So do you mean specifically the research
14 that I talked about today?

15 Q. Yes.

16 A. And your question is whether it's variable?

17 Q. Yes.

18 A. There are some parts that are and some parts that
19 are very consistent.

20 Q. Okay. I mean, so can research results be
21 different with each individual and with each different
22 circumstance?

23 A. Well, you know, as researchers, we are usually
24 talking about group averages. Whereas, the courts are
25 often concerned about, you know, a particular witness.

1 That said, some of the relations -- some of the
2 relations, you might say, you know, are very strong, that
3 they can be, you know, strong predictors of the
4 individual.

5 Q. Okay.

6 A. You know, your best guess on that.

7 Q. In your study, did your study show that sometimes
8 six- to eleven-year-olds actually showed emotional
9 improvement after testifying at trial?

10 A. If you look at the children, I said there was two
11 groups. There's groups who testified and then a matched
12 group that did not testify.

13 What you see is for the group that did not
14 testify, their reported mental health, is reported by
15 their parents -- their nonoffending parent, if one of the
16 parents is a defendant.

17 The children who did not testify, their mental
18 health scores tend to be very high at the start of the
19 prosecution. And then as the prosecution continues --
20 and, again, most -- many of these children would be in
21 cases that are plea bargained out -- their mental health
22 gets better over the course.

23 The children who are testifying, their mental
24 health level tends to stay high as the prosecution
25 proceeds, if they're going to testify. Because there is

1 some variability in that, and some of the kids do find --
2 they find for this group. That's compared to these other
3 kids who aren't having to testify; right?

4 It's not compared to your well-adjusted, average
5 child out there in the community. These are all kids
6 where there's allegations of abuse.

7 So those kids who testify, some of them, you
8 know, end up at the end of the prosecution being -- as
9 scoring as well as children who did not testify, but then
10 there's a subset that ends up being worse off.

11 Q. Was your evaluations based on the CBCL?

12 A. That -- that was the main one, yes. Child
13 Behavior Checklist.

14 Q. Yes.

15 A. It's one of the gold standards for assessing
16 mental health in research of children.

17 Q. On the back end, after the children have
18 testified, is most of your data based on parent
19 questionnaires or children interviews?

20 A. In the initial study that we did, we were not
21 permitted to interview the children because they were
22 involved in active cases. We could observe them. If they
23 commented things to us, you know, we could take those
24 comments. We could interview them before and after they
25 went into the courtroom.

1 But, generally, we weren't allowed to interview
2 them about their mental health because there's concerns,
3 you know, that we would be tampering or accused of
4 tampering with a witness.

5 In the long-term study cases, you know, usually
6 long over, we interviewed both the victims and the parent,
7 again, nonoffending parent, to the extent that we could
8 find them. We found about 80 percent of them.

9 Q. Okay. Is it possible that parents perhaps were
10 not accurate or perhaps even biased in their reporting
11 that was completed after their children testified?

12 A. It is definitely possible. However, Deborah
13 Whitecomb and Desmond Runyon then received a grant also
14 from the federal government to use a different measure for
15 that kind of reason. And so they used, instead, a
16 psychiatric interview of the children, and they got very
17 comparable results.

18 Q. In your study -- in your studies, you talked them
19 about being quasi experimental. So were most of these
20 mock trials, then, or not accurate -- not actual trials?

21 A. Oh, no. In the study of real child sexual abuse
22 victims, those are real trials. Those are real criminal
23 prosecutions.

24 Q. Okay. I was not sure from your answer.

25 A. In the experimental work, it was mock trials.

1 However, in one of our main ones, we were allowed for a
2 very short time, the children thought it was real.

3 Q. Okay. Dr. Goodman, I'm -- I'm nervous today.
4 Are you nervous when you testify?

5 A. Yes.

6 Q. So it's -- it's not a traumatic experience, but
7 it certainly is an emotional experience; would you agree?

8 A. Yes, I would agree with that.

9 Q. Okay. In your research, does the premise of an
10 alleged victim, suffering trauma when being subjected to
11 cross-examine -- does that naturally infer that the
12 defendant is guilty?

13 A. Well, we -- in the experimental work, we can
14 actually experimentally manipulate whether the defendant
15 is guilty or not.

16 So, for instance, in the experimental work, we
17 can randomly assign, as I mentioned, children to a group
18 where they're touched on their bodies by the babysitter,
19 again, in a legal way. So it's not the same as child
20 sexual abuse, but they're still touched on their bodies on
21 their bare skin, their stomach and arm and toes, and they
22 can be a little taken aback by it.

23 And we call that as being guilty at trial. The
24 child is to say that, you know, it's as if the crime is
25 being touched on your bare skin versus -- versus children

1 who just have stickers put on those parts of the body, and
2 in that situation, the defendant is not guilty.

3 And you still see that, you know, either way, the
4 children who are highly anxious before they go in to
5 testify, you know, still can have an adverse effect on
6 their ability to communicate what happened.

7 Q. You've talked about that this is a nervous
8 experience. It can be unsettling for anyone.

9 If -- if the defendant is actually innocent and
10 these situations never really occurred, would -- would
11 that cause trauma or psychological damage for the child to
12 be forced to testify against someone who they know didn't
13 do the act?

14 A. To be forced to testify?

15 Q. Well, to be asked to testify against someone who
16 is actually innocent?

17 A. I mean, I think there's a difference between
18 being forced or not. But, say -- I think what you're
19 asking is if the child testifies against someone who is
20 innocent and makes a false allegation?

21 Q. Yes.

22 A. What is their long-term outcome; is that right?

23 Q. Yes.

24 A. It's very difficult to study because in real
25 cases, you know, there wouldn't be a trial if you knew for

1 sure what was happening or what has happened, most likely.

2 But there are some, again, anecdotal cases.

3 So, for example, in this habeas corpus hearing
4 that I testified in for the Court, it was a case of
5 John Stole, a case in Bakersfield, a rather infamous case,
6 really, where it -- there was possibly egregious
7 interviewing of the children -- six-year-old children --
8 and he was convicted and spent, I don't know, 20 or 30
9 years in jail. And The Innocence Project convinced the
10 courts to have a habeas corpus hearing.

11 And I think it was three or four of the boys who
12 had made allegations against him, you know, got on the
13 stand and said that they had lied and they felt horrible.

14 His son, however, still maintained that the
15 sexual abuse occurred and was still willing to testify and
16 say it was true, it really did happen.

17 Q. Dr. Goodman, in the past, have you been a
18 practicing clinical psychologist?

19 A. No. I'm not a clinician.

20 Q. Okay. You stated that you reviewed or viewed
21 videotapes of the interviews with the children involved in
22 this case?

23 A. Yes.

24 Q. Okay. Have you read any psychological
25 evaluations of any of the children involved in this case?

1 A. I read a medical evaluation. I don't believe I
2 read a psychological evaluation. You mean, like from a
3 therapist to --

4 Q. Yes.

5 A. -- say, for the family courts? I don't believe
6 so.

7 Q. So, in this case, do you know if there's any
8 proof of the children being molested?

9 A. It depends on what you mean by proof. Are
10 children's statements -- the children statements are
11 evidence. Do you mean corroborative proof?

12 Q. Yes. Other than -- other than their interviews,
13 do you know if there's any other proof of the children
14 actually being abused in this situation?

15 A. I just want to be careful here, Your Honor,
16 because I don't want to go to any ultimate issues.

17 THE COURT: There is no jury.

18 THE WITNESS: Oh, from my ethical -- from an
19 ethical standpoint, I need to be careful, anyway.

20 Well, my understanding is that there there's no
21 medical evidence. That there is a -- an adult child with
22 corroborative evidence about past tendencies towards both
23 sexual and physical abuse. And that there are also -- I
24 don't know whether the mothers will be able to testify in
25 this case about what the children said. But if they can,

1 they can bring in that hearsay. That would be evidence as
2 well. So I think it's a little more complicated than just
3 the children's forensic interviews.

4 Q. BY THE DEFENDANT: Dr. Goodman, could it be true
5 that children can be coached a lot?

6 MR. COHEN: Objection. Relevance to this
7 hearing.

8 THE COURT: Sustained. Limit it to whether the
9 doctor can tell us whether these children are going to be
10 traumatized or not by testimony.

11 THE DEFENDANT: One second.

12 Q. BY THE DEFENDANT: You mentioned earlier in your
13 testimony that you're aware that the research does show
14 that jurors can have negative perceptions of a pro se
15 defendant when he is not allowed to personally
16 cross-examine witnesses during trial?

17 MR. COHEN: Objection. Misstates prior
18 testimony.

19 THE COURT: If you know What he's talking about,
20 you can answer.

21 THE WITNESS: Yeah. I didn't say that.

22 THE DEFENDANT: In any research, do you know if
23 that's true in the research? Have you read any --

24 THE COURT: She just said she didn't say.

25 THE DEFENDANT: Yes.

1 THE COURT: Could you clarify what you did say?

2 THE WITNESS: Okay. Well, I think -- I think
3 what you mean or what you're asking about -- and tell me
4 if I'm right or wrong -- is I said that when children are
5 permitted to testify via various protective procedures
6 such as close circuit TV, a support person, videotape
7 testimony, that the children's credibility is reduced.

8 THE DEFENDANT: Yes.

9 THE WITNESS: Is that it's not in the pro per
10 situation. That hasn't been tested.

11 Q. BY THE DEFENDANT: Okay. So, again, do you agree
12 that most people, especially children, would experience
13 some discomfort when called to testify at a trial?

14 A. Certainly many -- many people would.

15 Q. Also, in your study -- oh, I was curious. In
16 your -- in your evaluations, in the outcomes, did you --
17 did you use a trauma index or just the CBCL in your
18 evaluations of the post-experience, the post-evaluation of
19 the children?

20 A. In our long-term follow-up, we use the --
21 basically kind of the adult version of the CBCL, but it's
22 a self-report by the actual, you know, victim witness.

23 We also use the Briere's Trauma Symptom Index,
24 which is a measure of various types of post-traumatic
25 responses such as defensive avoidance dissociation and

1 post-traumatic stress-related things.

2 And I would have to look to see what else -- what
3 else findings. I mean, we also looked at their attitudes
4 towards the legal system and towards justice and, you
5 know, their retrospective accounts of what happened.

6 But the main measures for the trauma index -- oh,
7 yeah, there was, also -- I'm sorry. There was a couple of
8 others.

9 So there was the adult version of the CBCL, which
10 is called like the You Self-Report. There was Briere's
11 Trauma Symptom Checklist or Inventory.

12 There was also a post-traumatic scale, PTS. It's
13 by Edna Foa. The author of it is Dr. Edna Foa, F-O-A.

14 And, also, Dr. Putnam's scale that's called the
15 DES -- D like in dog; E like in elephant; S like in Sam --
16 Dissociative Experiences Scale.

17 So we have -- we have more measures. We also got
18 measures from the nonoffending parent as well on the
19 child.

20 Q. Just one final question. Were the children in
21 your studies -- were they prepared before they testified
22 or were they sent to testify cold?

23 A. Interesting question, yeah. We worked with three
24 jurisdictions in the Denver area. And in two of them,
25 they had various levels of preparation of the children to

1 go into court. So, for instance, a tour of the courtroom.

2 In the third one, kids just went in cold. The
3 defense attorneys had so objected to even the children
4 having a tour of the courtroom, that the kids often didn't
5 even know why they were there and were just basically
6 thrown in. You know, it was stressful to watch.

7 Q. Certainly.

8 THE DEFENDANT: Thank you, Dr. Goodman. No more
9 questions.

10 THE COURT: Mr. Cohen.

11

12 REDIRECT EXAMINATION

13 BY MR. COHEN:

14 Q. So most of the defendant's questioning related to
15 your article, the Emotional Effects of Criminal Court
16 Testimony on Child Sexual Assault Victims; is that a fair
17 assessment?

18 A. Well, that seemed to be the -- in terms of the
19 research, he was certainly asking about that. I don't
20 know if most of the questions were from that, but that was
21 certainly a good part.

22 Q. There's been quite a bit of other research that
23 you've relied upon today in coming up with your
24 assessments?

25 A. Correct.

1 Q. And you indicated that, at least in this study,
2 there was a reliance on parental interviews?

3 A. In the study that -- it's the Goodman et al.
4 Study from 1992. The one that the defense -- I'm not sure
5 if I should refer to Mr. Simcox as the defense or
6 defendant in this context. But, yes, he was referring to
7 that one.

8 Q. But there are other studies that involved
9 questioning the children?

10 A. Yes.

11 Q. And the results of those studies are there's
12 similarity in the results?

13 A. Correct.

14 Q. The results supported each other?

15 A. Yes.

16 Q. And, again, there have been no studies
17 undertaken where the children have been testifying falsely
18 and then questioned later about the effects?

19 A. I -- I don't know if I can say there are no
20 studies depending on what you define as case study.

21 There are more like case studies, you know,
22 anecdotal accounts. I don't know if the court would call
23 it a study. In my field, we wouldn't really call it a
24 study.

25 Q. And you're not here to assess the proof or the

1 strength of the State's case; are you?

2 A. No.

3 MR. COHEN: Nothing else. Thank you very much,
4 Doctor.

5 THE COURT: I have some questions. Well, I
6 actually have one question.

7 From this article that was presented to the
8 Supreme Court in *Craig*, they talk about essentially two
9 different groups, that there is a class of children that
10 may be especially likely to be emotionally distressed.

11 Would you agree with that statement?

12 THE WITNESS: That certain children would more
13 likely be emotionally distressed?

14 THE COURT: Yes.

15 THE WITNESS: Yes.

16 THE COURT: And there is also significant -- and
17 this is according to the article -- that a substantial
18 number of children are capable of testifying fully and
19 accurately under conventional criminal procedures without
20 serious and lasting harm.

21 Would you agree with that statement?

22 THE WITNESS: As far as we know, I believe that
23 is still true. There has been research since that
24 amicus brief was written.

25 THE COURT: Okay. Based on your review all of

1 the documents, records, tapes, et cetera, et cetera, can
2 you tell with any degree of scientific certainty where any
3 one of these children fall?

4 THE WITNESS: The children in this case?

5 THE COURT: In this case.

6 THE WITNESS: You have to make certain
7 assumptions to answer that question. I would -- you know,
8 for example, if one assumes that the abuse really took
9 place, then the child most at risk would be the daughter,
10 Z█.

11 But if they -- if they were objecting to
12 testifying, if they were indicating fear, if they know
13 that the defendant -- they had witnessed a history of
14 violence, domestic violence or physical abuse or just, you
15 know, a really short trigger, alcoholism, things like
16 that, then, all of them could be at risk if they have --

17 THE COURT: Okay.

18 THE WITNESS: Oh, go ahead.

19 THE COURT: Let me ask you to quantify that, if
20 you will, within a reasonable degree of scientific
21 certainty.

22 Let's assume for a second because we -- have you
23 been presented with anything other than the girls and
24 their young age?

25 Other than those two factors, have you been

1 presented with anything that would indicate that the other
2 factors exist, first of all?

3 THE WITNESS: Well, I mean, I know that one of
4 the children said that the defendant was scary --

5 THE COURT: Okay.

6 THE WITNESS: -- and got mad and stayed mad and
7 threw things. An adult daughter also talked about that.
8 Although, she's not a victim in this case.

9 So that's one thing that would be potentially
10 very frightening for a child.

11 THE COURT: So, again, the question comes down to
12 within a reasonable degree of scientific certainty -- and
13 you mentioned Z█. Would it be, yes or no, your belief
14 that that child is likely to be harmed if she testifies in
15 open court?

16 THE WITNESS: By the defendant? By the
17 defendant, I assume?

18 THE COURT: Yes, as in this case.

19 THE WITNESS: Oh, okay. Because before you --
20 I'm sorry. I just answered without knowing you meant by
21 the defendant. So I might have to backtrack a little bit.

22 But if the questioning is by the defendant -- you
23 know, I don't know if you can give me any guidance on
24 where you would make the cut of reasonable certainty.

25 THE COURT: That would have to be within your

1 field, Doctor.

2 THE WITNESS: Well, we don't talk that way in my
3 field, yeah. So that kind of puts me a little on the --
4 on the spot. You know, we -- we think about continuums
5 and probabilities. Yeah, and we can say that the
6 probability increases with those factors. It never gets
7 to be a perfect correlation.

8 THE COURT: Okay.

9 THE WITNESS: But the probability would -- you
10 know, I can maybe divide it into low, medium and high.

11 THE COURT: Whatever you feel comfortable with,
12 Doctor.

13 THE WITNESS: You know, and I would say that if
14 the children really were victimized --

15 THE COURT: Okay.

16 THE WITNESS: -- that the chance of an adverse
17 effect on C [REDACTED] -- no. Z [REDACTED].

18 THE COURT: Z [REDACTED].

19 THE WITNESS: Z [REDACTED]. Okay. Z [REDACTED]. Would be in the
20 high range. For -- is it J [REDACTED]?

21 THE COURT: I'm not privy to the names.

22 THE WITNESS: Yeah. I'm sorry. For the other
23 child who was a neighbor and seems to have, from the phone
24 call that I heard, a supportive mother, she would
25 probably -- she's a pretty young girl. You know, probably

1 more in the middle range for her.

2 THE COURT: And that's the neighbor child?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 THE WITNESS: But, you know, again, it's very
6 hard to say. And that's assuming they were victimized.

7 THE COURT: All right. And, Mr. Cohen, any
8 questions about that?

9

10 FURTHER REDIRECT EXAMINATION

11 BY MR. COHEN:

12 Q. Ma'am, just to be clear, your work in *Craig* --
13 the *Craig* brief did not involve a pro per litigant
14 cross-examining the actual victims?

15 A. Exactly. We just had that one case in our study.
16 It's not enough to make generalizations from. And I
17 apologize when I was answering about the brief. I -- I
18 didn't realize you meant in a pro per case. Because that,
19 you know, hasn't -- it hasn't been studied.

20 Q. And, in the area of psychology, is it difficult
21 to talk about things within a degree of scientific
22 certainty?

23 A. Is it -- is it difficult to talk about it?

24 Q. Is it difficult to talk about --

25 A. Is it difficult?

1 Q. -- in the field of psychology?

2 A. Uh-huh. I'm sorry. I'm just hung up on your
3 word whether you mean difficult or typical.

4 Q. Difficult.

5 A. Difficult, it would be. Yes, it's difficult. We
6 talk about usually statistical significance, which is
7 not -- in my opinion, not, you know, always a high enough
8 standard to predict for the courts.

9 Its statistical significance can depend a lot on
10 how big your sample size is. You know, something could be
11 statistically significant and still not predict that well
12 to the individual children.

13 Or something that can be statistically
14 significant and predict well. But there's such a range
15 there.

16 We just usually talk about statistical
17 significance. And more and more, they're talking about
18 sex sizes, but that's -- you probably don't want to get
19 into that.

20 Q. And it's certainly possible that the child who
21 was the neighbor, rather than the biological child, just
22 because of who they are and their own psychological
23 makeup, could be even more traumatized than the biological
24 daughter?

25 A. That's possible.

1 MR. COHEN: Thank you.

2 THE COURT: Mr. Simcox.

3 THE DEFENDANT: Yes. Just one more. Thank you.

4

5 RECROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q. Dr. Goodman, you testified earlier that you're
8 not a clinical psychologist?

9 A. That's correct.

10 Q. You don't practice. In any way, would it --
11 would it have helped you to make a research determination
12 about the effects on the children if you had read any
13 psychological evaluations of the children?

14 A. Umm, it could or could not. You know, it depends
15 I guess on what measures we use and what the context was.
16 If the child was, for instance, having post-traumatic
17 stress disorder already and nightmares, you know, that --
18 that could be relevant.

19 THE DEFENDANT: Okay. Thank you. No more
20 questions, Your Honor.

21 THE COURT: All right. Any further questions,
22 Mr. Cohen?

23 MR. COHEN: No, Your Honor. Thank you.

24 THE COURT: You may step down, ma'am, with the
25 Court's thanks.

1 THE WITNESS: Thank you.

2 THE COURT: May this witness be excused?

3 MR. COHEN: She may, Your Honor.

4 THE COURT: All right. You are excused, ma'am.

5 You may return back to your briefs, and, again, much

6 success in your field.

7 THE WITNESS: Thank you.

8 (WHEREUPON, the witness exited the courtroom.)

9 THE COURT: Mr. Cohen.

10 MR. COHEN: Thank you. Does the Court want to
11 give the court reporter a break?

12 THE COURT: Oh, yes. I was going to say this is
13 our 90-minute cut-off. We will take a recess until 20
14 till. And remain seated for the recess.

15 (WHEREUPON, a recess ensued from 3:21 p.m. to
16 3:44 p.m.)

17 THE COURT: This is CR 2013-428563, State of
18 Arizona vs. Simcox.

19 The record will reflect Mr. Cohen for the State
20 and Mr. Simcox for the defense.

21 And, Mr. Cohen, we're still on your case.

22 MR. COHEN: The State will now call A [REDACTED] S [REDACTED].

23 THE COURT: All right. Ms. S [REDACTED].

24 THE CLERK: Please state your name for the
25 record.

1 THE WITNESS: A [REDACTED] [REDACTED] S [REDACTED].

2 THE CLERK: Please raise your right hand.

3 (WHEREUPON, the witness was duly sworn by the
4 clerk.)

5 THE COURT: Ma'am, if you could have a seat. And
6 once you make yourself comfortable, please adjust the
7 microphone.

8 THE WITNESS: Okay. Is that okay?

9 MR. COHEN: Whatever works for you.

10 THE WITNESS: Is that cool? Can you hear me?
11 Can you hear me?

12 THE COURT: I can hear you just fine.

13 Mr. Cohen.

14

15 A [REDACTED] [REDACTED],

16 having been first duly sworn to tell the truth, the whole
17 truth, and nothing but the truth, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. COHEN:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. May I call you A [REDACTED]?

24 A. Absolutely.

25 Q. Now can you hear her? Because I don't know --

1 A. Can you hear me? Wait. Should I put it like
2 that? Is that better?

3 Q. Yes, that is better.

4 A. All right.

5 Q. Would you please introduce yourself to the Court?

6 A. A [REDACTED] [REDACTED] S [REDACTED].

7 Q. And, A [REDACTED], you have children?

8 A. Yes.

9 Q. How many children do you have?

10 A. I have three.

11 Q. And what are their names?

12 A. D [REDACTED] [REDACTED] L [REDACTED]. Z [REDACTED] S [REDACTED] and
13 C [REDACTED] S [REDACTED].

14 Q. And what are the ages of C [REDACTED] and Z [REDACTED]?

15 A. C [REDACTED] is seven and Z [REDACTED] is eight.

16 Q. And who is the father of C [REDACTED] and Z [REDACTED]?

17 A. Christopher Allen Simcox.

18 Q. And he is the defendant in the courtroom today?

19 A. Yes.

20 Q. Let's, for purposes of background, talk about
21 your relationship with the defendant. He is your
22 ex-husband?

23 A. Yes.

24 Q. When did you first meet him?

25 A. April 2005.

1 Q. And where were you living at the time?

2 A. Arizona.

3 Q. And how old were you at the time?

4 A. Umm, I just turned 25.

5 Q. And, eventually, you married?

6 A. Yes.

7 Q. And when did you get married?

8 A. August 20th of 2005.

9 Q. And the children were born again what years? Z [REDACTED]
10 and C [REDACTED]?

11 A. Z [REDACTED] was 2006, [REDACTED]. And C [REDACTED] was
12 [REDACTED] of 2008.

13 Q. And, at some point, the marriage begin having
14 difficulties?

15 A. Yes.

16 Q. What was the nature of those difficulties?

17 A. Domestic violence.

18 Q. When you say domestic violence, what do you mean
19 by that?

20 A. Umm, physically hitting, drinking. Abusing my
21 son and myself and getting punched in the face.

22 Q. So there was physical abuse?

23 A. Yelling. There was emotional abuse as well.

24 Q. And how old were Z [REDACTED] and C [REDACTED] when the physical
25 and emotional abuse began?

1 A. I would say it was two years into the marriage.

2 Q. And were they around when --

3 THE COURT: Do you know how long that was? How
4 old were they?

5 THE WITNESS: My daughter was about two.

6 THE COURT: Which one?

7 THE WITNESS: Z█.

8 THE COURT: Okay. And the other child?

9 THE WITNESS: I was pregnant with my younger
10 daughter.

11 Q. BY MR. COHEN: So the abuse began when you were
12 pregnant with C█?

13 A. Yes.

14 Q. And how long did the abuse last?

15 A. Until our divorce.

16 Q. And when was the divorce?

17 A. It was 2010, I believe, April.

18 Q. And April of 2010 -- and I'm not so good with
19 math. That's why I'm a lawyer. But how old were you Z█
20 and C█ in April of 2010?

21 A. Z█ was four, maybe five. And C█ was four.
22 Five and four. Four and five.

23 Q. While you were still living with the defendant,
24 the domestic violence was -- the abuse was going on all
25 the way up until the divorce?

1 A. I'm sorry. Somebody coughed. I couldn't hear
2 you. Sorry.

3 Q. The abuse was going on all the way up until the
4 divorce?

5 A. Yes.

6 Q. Did you separate at the time you filed the
7 divorce or did you separate prior to that?

8 A. I separated before the divorce because the
9 anxiety was getting too much with him living in the house.

10 Q. Were the girls, C [REDACTED] and Z [REDACTED], around when the
11 abuse was happening?

12 A. Yes.

13 Q. Did they actually see physical violence or --
14 well, did they see any physical violence?

15 A. Yes.

16 Q. Did they hear the yelling?

17 A. Yes.

18 Q. Were there any incidents that were particularly
19 -- was there an incident involving a weapon?

20 A. Yes.

21 Q. Could you tell me about -- tell the Court about
22 that?

23 A. There was an incident where there was a gun on
24 Chris's birthday, November 29th, and --

25 Q. What year?

1 A. Umm, I'm thinking it was about 2009. And I came
2 back from shopping and basically he was inebriated. The
3 children were there. And he started throwing condoms at
4 me and saying that I was cheating. And the kids were all
5 present. Everyone saw it.

6 Then he flaied guns around at me -- one
7 particular gun. It was a .45. And he said that he was
8 going to shoot me and the rest of the children in the
9 house because I was cheating on him. And then he took all
10 of his rifles out of our safe and went to the --

11 THE DEFENDANT: Your Honor, could I object to the
12 relevance of this? We're supposed to be talking about --

13 THE COURT: You can. And it's sustained.

14 THE DEFENDANT: -- the children.

15 THE COURT: Sustained.

16 Mr. Cohen.

17 Q. BY MR. COHEN: So but the children were aware of
18 what was going on?

19 A. Yes.

20 Q. You also indicated that your son was physically
21 abused as well?

22 A. Absolutely.

23 Q. Were Z [REDACTED] and C [REDACTED] present at least during some
24 of the physical abuse on yourself?

25 THE DEFENDANT: Objection, Your Honor.

1 Irrelevant.

2 THE WITNESS: Yes.

3 THE COURT: Overruled on that issue.

4 THE WITNESS: Yes.

5 Q. BY MR. COHEN: How did the girls react to the
6 divorce?

7 A. Nobody likes a divorce. It's a horrible thing.
8 Not very well.

9 Q. Was there turmoil during the divorce proceedings?

10 A. Yes.

11 Q. And were the girls aware of what was going on?

12 A. I tried to shield them, but I feel for the most
13 part, that they were.

14 Q. And, eventually -- well, how was custody
15 issues -- how were they resolved?

16 A. There was -- I got primary custody and Chris had
17 visitation -- supervised visitation under the -- I'm
18 trying to think of how to say it -- as long as he
19 completed domestic violence counseling, anger management
20 counseling and alcohol, AA.

21 Q. And so time went on and in May of 2013, what was
22 the status of custody and visitation?

23 A. She had unsupervised visitation. The kids were
24 at the house, I would say, quite often. And he would have
25 his guns. They would stay overnight.

1 Q. Were there any issues going on between you and
2 the defendant in May of 2013?

3 A. I don't believe we had any. No.

4 Q. And going back to that time period, on May 29,
5 2013, you received a call from Detective Scott from the
6 Phoenix Police Department?

7 A. Yes.

8 Q. And he advised you about a neighbor girl who had
9 made some disclosures relating to the defendant?

10 A. Yes.

11 Q. And after hearing about that, what did you do
12 next?

13 A. I brought the girls down to meet with the
14 detective and get interviewed and then to also get
15 medically examined.

16 Q. That was about five days after the initial call?

17 A. Yeah.

18 Q. At the time you had gotten the initial call, had
19 there been any disclosures of any inappropriate touching
20 by Z███?

21 A. Umm, no.

22 Q. Now in between the time that you got the call
23 from the detective and the time you took the children to
24 Childhelp for interviews, did Z███ make a disclosure?

25 A. Yes, she did.

1 Q. She indicated the defendant had been touching
2 her?

3 A. Yes.

4 Q. Did you prompt that disclosure in any way?

5 A. No.

6 Q. How did that disclosure come about?

7 A. I was in the pool and she was talking to me.

8 THE COURT: Counsel, let me stop you here. We're
9 dealing with issues dealing with the children testifying.
10 We've got the DV. We've got the girls. We've got that
11 dad is dad.

12 Can we move onto those areas?

13 MR. COHEN: I'm getting there, Your Honor. Just
14 some background.

15 THE COURT: Okay.

16 Q. BY MR. COHEN: What was Z■■■■'s demeanor when she
17 disclosed to you?

18 A. Very upset.

19 Q. So this matter has now been proceeding for a
20 couple of years?

21 A. Yes.

22 Q. And you've talked to the girls about testifying?

23 A. Yes.

24 Q. And, initially, it was your understanding that
25 defense counsel would be examining the girls?

1 A. Yes.

2 Q. At some point early this year, you found out that
3 the defendant was going to be representing himself?

4 A. Yes.

5 Q. And your understanding in him representing
6 himself, he would be allowed to cross-examine the
7 children?

8 A. Yes.

9 Q. Did you talk to Z■■ about that possibility?

10 A. Yes.

11 Q. And what was her reaction?

12 A. Very anxious and scared.

13 Q. And how did she exhibit this anxiousness and her
14 being scared?

15 A. I took her for a Kids in Court class to prepare
16 her for testifying in front of the counsel or the lawyers.
17 And she said to me that she was afraid of where her father
18 would sit and she didn't want to see or look in his area
19 because he yelled at her.

20 THE COURT: Because he what?

21 THE WITNESS: He yelled at her.

22 THE COURT: Okay.

23 Q. BY MR. COHEN: So even being in the same
24 courtroom, she indicated she was afraid of him?

25 A. Yes.

1 Q. When you introduced the thought that he would be
2 the one actually examining her, what was her reaction?

3 A. She did not want that.

4 Q. And how did she exhibit that?

5 A. Umm, by telling me she did not want that.

6 Q. Now, since the time that you told Z [REDACTED] that she
7 would be facing cross-examination by the defendant and
8 now, have you seen a change in her demeanor?

9 A. Yes.

10 Q. The way she behaves?

11 A. Umm, she's very anxious. I have to definitely
12 treat her with more attention because of being anxious and
13 having difficulty with understanding.

14 Like, today, she knows I'm coming here and she
15 got very upset. I think she's very scared and she keeps
16 repeating to me that he yells at her.

17 Q. And so this is something that's even more on top
18 of any anxiousness she felt before she found out about the
19 cross-examination?

20 A. Yes.

21 Q. And she has told you that she is afraid to come
22 into court and have him question her?

23 A. Absolutely afraid to come in.

24 THE COURT: Now is she afraid of him or afraid
25 that he will yell at her, because I've heard that several

1 times?

2 THE WITNESS: I think that she's afraid of him,
3 in general.

4 THE COURT: Okay. That wasn't my question.

5 THE WITNESS: Okay.

6 THE COURT: You mentioned several times --

7 THE WITNESS: She's afraid of him, period.

8 THE COURT: Because he yells at her?

9 THE WITNESS: No. Of him, period.

10 THE COURT: Okay.

11 MR. COHEN: No other questions, Your Honor.

12 THE COURT: Okay. Cross.

13 MS. CLASE: Your Honor, Colleen Clase on behalf
14 of Ms. Simcox. I just want the record to note our
15 continued objection to Mr. Simcox conducting any
16 cross-examination of the victim's legal representative.

17 THE COURT: Ma'am, you don't have a right to
18 participate in this part. Mr. Cohen is the attorney of
19 record for the State. You're not representing the State.
20 You represent this witness. We're not dealing with
21 litigation involving this witness.

22 So it will be noted, but that's about it.

23 MS. CLASE: Okay. And may -- I'm sorry. I also
24 would object that statement. We do have standing under
25 13-44 --

1 THE COURT: You have standing to represent her --

2 MS. CLASE: -- 37.

3 THE COURT: -- but not participate.

4 MS. CLASE: Okay. Thank you.

5 THE COURT: All right? And the case is called
6 *Cohen*, I believe where the issue came up.

7 MS. CLASE: *Lindsay Arbor vs. Cohen*. And in that
8 case, the Court of Appeals held that victim's counsel
9 cannot present evidence, but it is noted we can still
10 assert rights on behalf of the victim.

11 THE COURT: You have certain rights, but
12 presentation of evidence also includes cross-examining,
13 et cetera, participating. We've made it quite clear
14 that's Mr. Cohen's job.

15 MS. CLASE: Okay. Thank you.

16 THE COURT: Mr. Simcox.

17 The objection is overruled.

18 THE DEFENDANT: Thank you.

19

20 CROSS-EXAMINATION

21 BY THE DEFENDANT:

22 Q. A [REDACTED] or Ms. S [REDACTED]? What would you prefer?

23 A. Ms. S [REDACTED].

24 Q. Ms. S [REDACTED]. Okay. Before May 6th of 2013, after
25 I was cleared to have access to the children --

1 A. Yes.

2 Q. -- visitation, did the children ever complain to
3 you about problems with me yelling at them?

4 A. Yes.

5 Q. They did? Did you ever -- were the children in
6 therapy at that time?

7 A. No.

8 Q. Were they seeing a court-appointed therapeutic
9 interventionalist?

10 A. Yes.

11 Q. And that would have been Dr. Pyburn?

12 A. Yes.

13 Q. That's correct. So from May of 2011, is that
14 when we began the reunification process with Dr. Pyburn?

15 A. Yes.

16 Q. Okay. During that time, did Dr. Pyburn ever
17 report to you that the children were scared of me or that
18 there were any issues of -- any emotional issues with
19 them?

20 MR. COHEN: Objection. Hearsay.

21 THE COURT: Sustained. It does go to the very
22 issue presented, exception.

23 Q. BY THE DEFENDANT: Did you ever report to
24 Dr. Pyburn that the children were -- had emotional issues
25 with me or problems with me yelling at them after we were

1 reunified?

2 A. I don't understand the question.

3 Q. You testified earlier to the prosecution that the
4 children were scared of me and that Z ■ complained about
5 me yelling at her.

6 Did you ever report that to the court-appointed
7 therapeutic interventionist?

8 A. I can't remember.

9 Q. Being the mother of the children, would it be
10 likely that that would be something that you would be
11 concerned about, since you testified that they had
12 witnessed domestic violence previously?

13 A. I did report it to CPS.

14 Q. And when did you make a report to CPS?

15 A. Shortly after you made the report to CPS.

16 Q. Okay. Can you have a date when you made that
17 report?

18 A. Chris, when did you make the report?

19 Q. Umm, so a report was made. You claim that a
20 report was made to CPS about me yelling at the children?

21 A. Yes. I reported that you were yelling at the
22 children and the children were going to other peoples'
23 apartments and hiding under their bed like your dog.

24 Q. And but the children at that time had a
25 counselor; is that true?

1 A. Yes.

2 Q. And that would have been Dr. Pyburn?

3 A. Yes.

4 Q. So the children reported to you that they were
5 afraid to come to my home and have visitation?

6 MR. COHEN: Objection. Hearsay.

7 THE COURT: It's a child victim. So I'll allow
8 that question. Overruled.

9 You may answer.

10 THE WITNESS: Honestly, I -- I can't actually
11 remember that. I was concerned.

12 Q. BY THE DEFENDANT: And with the children being in
13 therapy and having counseling as part of the court order,
14 you never brought those issues to Dr. Pyburn; is that
15 true?

16 MR. COHEN: Objection. Hearsay.

17 THE COURT: It's her statement whether she
18 brought the issues. So overruled.

19 THE WITNESS: They were the children's TI.

20 Q. BY THE DEFENDANT: And did you report your
21 concerns to the TI?

22 A. I actually cannot remember. I'm sorry. I can't.
23 It was too long ago. I don't want to -- I just can't
24 remember. I'm sorry.

25 Q. So you're telling the Court that you can't

1 remember ever, as the mother of the children, being
2 concerned about their safety or well-being at my home
3 after visitation was approved? You never reported that to
4 the therapist that was in charge of the case?

5 A. I don't think I was even -- no. I called CPS and
6 I made a report with CPS.

7 Q. On May 6th, you took the children for a
8 counseling session with Dr. Pyburn; is that correct?

9 MR. COHEN: Objection, Your Honor.

10 THE WITNESS: I can't remember.

11 THE COURT: What's the objection?

12 MR. COHEN: Foundation. May 6th of which year?

13 THE DEFENDANT: 2013.

14 THE COURT: All right. Overruled.

15 THE WITNESS: I don't know.

16 Q. BY THE DEFENDANT: You don't remember a
17 counseling session with Dr. Pyburn on May 6th of 2013?

18 A. I have to look at my schedule, my checkbook. I
19 would have to look at something.

20 Q. Before that, at -- and you can't remember when
21 you called CPS to report your concerns about the children
22 complaining about me yelling at them any time during 2013?

23 A. I cannot remember exact dates, no. I don't want
24 to give false information.

25 Q. At any time before you were contacted by

1 Detective Scott, did you have any concerns for the
2 children's safety or well-being at my home?

3 A. No.

4 Q. Did the children resist wanting to come to my
5 home?

6 A. No.

7 Q. Okay. During that time, did we actually increase
8 the visitation because the children actually wanted to
9 spend more time in my home?

10 A. Yes, we did.

11 Q. Why did you tell the children about them having
12 to testify at court with me cross-examining them, if you
13 didn't know it was going to happen?

14 MR. COHEN: Objection. Facts not in evidence.

15 THE WITNESS: I -- I cannot --

16 THE COURT: Overruled.

17 MR. COHEN: Misstating facts.

18 THE COURT: Overruled. She said she told the
19 kids they were going to testify.

20 THE WITNESS: It's all over the news.

21 Q. BY THE DEFENDANT: So you've been allowing the
22 children to watch news reports about this case?

23 MR. COHEN: Objection. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: The news is on and then it comes

1 on. Sometimes it comes on. Sometimes it doesn't come on.
2 I don't --

3 THE DEFENDANT: Well --

4 THE WITNESS: You know it's been in the news,
5 Chris. It's not --

6 Q. BY THE DEFENDANT: The question is why you felt
7 it was necessary to tell the children that they were going
8 to have to be cross-examined by me in court if that in
9 fact was not going to happen yet? There was no evidence
10 that that was going to occur?

11 A. That's -- no.

12 Q. No? I mean, I'm asking why did you feel that you
13 needed to tell them?

14 A. No. Before it happened?

15 Q. You testified earlier that you had taken Z█ to a
16 court preparation class. Is that true?

17 A. Yes, I did. It's Kids in Court where they show
18 the children where you sit, where the jury is, and it's
19 for preparing them for being in court. And I think it's a
20 very good idea for a child to understand where they're
21 going to be and what's going to happen and --

22 Q. How long ago did you take them to that? Take Z█
23 to that class?

24 A. Umm, May, I want to say.

25 Q. At that time, was it -- was it a fact that I was

1 going to actually cross-examine them in court at that
2 time?

3 A. No.

4 Q. So you did choose to tell Z█ that this could
5 happen before you knew it was actually going to happen?

6 A. No.

7 MR. COHEN: Objection. Misstates the facts.

8 THE WITNESS: No. This is a class.

9 THE COURT: Sustained. That becomes
10 argumentative, so --

11 THE WITNESS: It's a class stating you're sitting
12 here. The jury is here. The judge is here. It's a class
13 given to children so they're not so nervous.

14 Q. BY THE DEFENDANT: Do you recall the last session
15 that Z█ and C█ had with Dr. Pyburn?

16 A. No, I do not.

17 Q. Since you were contacted by Detective Scott, and
18 Z█ made accusations against me, have you taken the
19 children back to see Dr. Pyburn since that time?

20 A. No, I have not.

21 Q. And were you concerned for their -- their
22 emotional state at that time to have them see a therapist,
23 especially someone who had had two years of experience
24 with them?

25 MR. COHEN: Objection. Argumentative.

1 THE COURT: The question was: Was she concerned?
2 Ms. Simcox.

3 THE WITNESS: I'm thinking.

4 THE COURT: All right.

5 THE WITNESS: Umm, I did not feel that that was
6 the appropriate way to go.

7 Q. BY THE DEFENDANT: Since that time, have the
8 children been seeing a new therapist --

9 A. No.

10 Q. -- or counselor? So -- okay. Let me back up.
11 Did CPS do an interview with the children before
12 Detective Scott contacted you in May?

13 MR. COHEN: Objection. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: Now, come again?

16 Q. BY THE DEFENDANT: In May of 2013, did CPS come
17 to your home to do an interview with the children before
18 you were contacted by Detective Scott?

19 A. Yes.

20 Q. Can you tell the Court why CPS came to do that
21 interview?

22 MR. COHEN: Objection. Calls for speculation.

23 THE COURT: If she knows, she can answer.

24 Overruled.

25 THE WITNESS: Because my son was accused of

1 molesting my children -- my daughters.

2 Q. BY THE DEFENDANT: During that interview, did you
3 know that someone had accused your son?

4 A. No.

5 Q. During that interview with CPS, did the girls
6 divulge to the CPS person that someone had been molesting
7 them?

8 MR. COHEN: Objection. Hearsay.

9 THE WITNESS: No.

10 MR. COHEN: Objection. Hearsay and relevance.

11 THE COURT: That's all right. Well, it's not
12 being offered for the proof of the fact therein since it
13 is simply a state of mind as to why this is why they
14 accused him. So I ruled on that.

15 How is that relevant, though, Mr. Simcox?

16 THE DEFENDANT: It will be relevant in the
17 context of the --

18 THE COURT: -- of the trial maybe?

19 THE DEFENDANT: -- of the testimony that's coming
20 after this from my witnesses.

21 THE COURT: Well, in terms of this hearing now,
22 how is it relevant?

23 THE DEFENDANT: That CPS had been involved
24 already with the family.

25 THE COURT: Well, right now, we're talking about

1 harm as a result of testifying.

2 THE DEFENDANT: Yes.

3 THE COURT: I like to compartmentalize. So let's
4 keep it with that.

5 THE DEFENDANT: All right. I understand.

6 Q. BY THE DEFENDANT: Did -- in May of 2013, did the
7 children show any signs of being fearful or having trauma
8 from any -- from their relationships with me?

9 A. At times when I picked Z█ up, she would take the
10 butterfly and move it around a lot and seem anxious. But
11 on the whole, no. And that's why we decided to increase
12 the time together.

13 THE DEFENDANT: I have no more questions,
14 Your Honor. Thank you.

15 THE COURT: Thank you.

16 Redirect?

17

18 REDIRECT EXAMINATION

19 BY MR. COHEN:

20 Q. So there were times after you picked Z█ up from
21 visitation that she displayed an increase in her anxiety?

22 A. Yes.

23 Q. How did she display that?

24 A. Umm, moving very fast with this butterfly doll
25 that she had and tiptoeing.

1 Q. You talked about this butterfly doll. Was this
2 something part of her therapy or was this just something
3 that she did?

4 A. No. It's just a doll that she had. But she
5 moved it like nervous -- like a nervous moving.

6 Q. And did she do that all the time?

7 A. No.

8 Q. Just after some visits with the defendant?

9 A. Yes.

10 Q. Now who exactly is Dr. Pyburn?

11 A. Dr. Pyburn is our therapeutic interventionist
12 that was assigned to help integrate the children back into
13 Chris's life because during the divorce, they hadn't seen
14 him for such a long time, and we wanted to make it easier
15 for the children the transition to see them more often --
16 to see him more often -- excuse me -- smoother.

17 Q. So was there a point in time where Dr. Pyburn was
18 no longer needed after the Court had increased visitation?

19 A. Yes.

20 Q. So she wasn't a therapist that the children were
21 seeing after Z ■ had disclosed --

22 A. No.

23 Q. -- that what had happened to her?

24 A. Not after she disclosed that.

25 Q. Now, just for clarification's sake, you talked

1 about Kids in Court, and that was some time before the
2 April trial date. Is that fair to say?

3 A. Well, that actually makes more sense, April,
4 because to take everyone before March. Maybe it was in
5 March.

6 Q. Well, at the time you took Z█ to Kids in Court,
7 were you aware that the defendant was going to be able to
8 cross-examine Z█ and C█?

9 A. No. No.

10 Q. And what you had talked about was simply that the
11 defendant would be in the courtroom with her?

12 A. Yes.

13 Q. And it was only later on in preparation for the
14 April trial date, that it -- when the trial had actually
15 begun, that you had talked to Z█ for the very first time
16 that she would be cross-examined by the defendant?

17 A. Yes.

18 Q. And that's when she showed an increased level of
19 fear or anxiety?

20 A. Yes.

21 MR. COHEN: Thank you. No other questions.

22 THE COURT: All right. May this witness be
23 excused?

24 MR. COHEN: Yes.

25 THE COURT: All right. You may step down.

1 Call your next witness.

2 MR. COHEN: The State would call M [REDACTED] L [REDACTED].

3 THE CLERK: Please state your name for the
4 record, ma'am.

5 THE WITNESS: M [REDACTED] L [REDACTED].

6 THE CLERK: Please raise your right hand.

7 (WHEREUPON, the witness was duly sworn by the
8 clerk.)

9 THE COURT: Ma'am, if would you please have a
10 seat. Make yourself comfortable and adjust the
11 microphone.

12

13 M [REDACTED] [REDACTED]. L [REDACTED],

14 having been first duly sworn to tell the truth, the whole
15 truth, and nothing but the truth, testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. COHEN:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Would you please introduce yourself to the Court?

22 A. M [REDACTED] L [REDACTED].

23 Q. May I call you M [REDACTED]?

24 A. Yes.

25 Q. M [REDACTED], you have a daughter by the name of

1 J [REDACTED]?

2 A. Yes.

3 Q. And how old is J [REDACTED]?

4 A. She is eight.

5 Q. What is her birthday?

6 A. Her birthday is [REDACTED], 2007.

7 Q. And going back to May of 2013, where were you
8 living?

9 A. I was living in an apartment in Scottsdale.

10 Q. And did J [REDACTED] have some friends in the
11 neighborhood?

12 A. Yes.

13 Q. And two of those friends were Z [REDACTED] and C [REDACTED]?

14 A. Yes.

15 Q. And how often would they play with or she would
16 play with Z [REDACTED] and C [REDACTED]?

17 A. An time that they were with their father.

18 Q. And he lived nearby?

19 A. Yes.

20 Q. You met the father, the defendant?

21 A. Yes.

22 Q. And he's in the courtroom today?

23 A. Yes.

24 Q. Did you any indepth encounters with him or talks
25 with him?

1 A. Umm, not -- not really. I mean, I -- we were
2 cordial. There wasn't a whole lot of discussion between
3 us. I mean, my ex-husband and I did talk with him for a
4 little bit.

5 Q. So did you have any concern with J [REDACTED] playing
6 with Z [REDACTED] or C [REDACTED] or spending time at their home?

7 A. No.

8 Q. So there came a time in May -- the middle of May
9 of 2013, that J [REDACTED] approached you and told you that
10 something had happened?

11 A. Yes.

12 Q. What was her demeanor when she told you what had
13 happened to her?

14 A. Well, we were going to bed. So I mean,
15 physically I couldn't see her face. But, I mean -- I
16 mean, I can tell you what she said. But I honestly can't
17 tell you what her physical demeanor was. I mean, I can
18 tell you what her voice sounded like.

19 Q. What did her voice sound like?

20 A. She was kind of like kind of choppy, like
21 nervous. She was -- I don't know how to explain it. Like
22 she was kind of sad. Like it sounded like she was going
23 to cry.

24 Q. So and that was different than the normal
25 J [REDACTED] --

1 A. Yes.

2 Q. -- talking about other things?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. So you've been to court multiple times to see
7 different proceedings?

8 A. Yes.

9 Q. And you're aware that this has been pending for
10 some time?

11 A. Yes.

12 Q. And over the last couple of years, there have
13 been a number of trial dates?

14 A. Yes.

15 Q. Did you take J [REDACTED] to a Kids in Court session
16 like Z [REDACTED] and C [REDACTED] did?

17 A. I did.

18 Q. Did you go to the same one that Z [REDACTED] and C [REDACTED]
19 were at?

20 A. No.

21 Q. How did J [REDACTED] like the Kids in Court?

22 A. Umm, it was an empty courtroom and there was a
23 judge who was really nice to her. And she got to sit in
24 the judge's chair. I think she had fun, really. I mean,
25 it wasn't presented as being something fearful. It was an

1 empty courtroom.

2 Q. Now did you have talks with her leading up to any
3 of the trial settings about what was going to go on for
4 her at the trial?

5 A. No. I didn't discuss any court days that I went
6 with her. She never knew where I was going. I don't
7 discuss it with her at all.

8 Q. What about discussing that at some point, she was
9 going to have to come into court and talk about what
10 happened to her?

11 A. Umm, we -- I -- we didn't feel that that was
12 necessary to do at this very moment. And so because it's
13 been such a long process, I don't know when -- I'm not
14 going to encourage her anxiety. So waited and I've been
15 waiting.

16 Q. And at some point, you did learn that the
17 defendant was going to be able to represent himself and
18 cross-examine J [REDACTED] directly?

19 A. Yes.

20 Q. And you became aware of this before the last
21 trial setting where jury selection actually began?

22 A. Yes.

23 Q. So, in preparation for that trial, did you
24 believe that that trial was actually going to happen at
25 that point in time?

1 A. Yes.

2 Q. Did you talk to J [REDACTED] about testifying in that
3 trial?

4 A. Umm, I -- I actually did it with her counselor.

5 Q. And, at some point, J [REDACTED] learned that the
6 defendant himself would be able to examine her directly?

7 A. Yes.

8 Q. What was her reaction to that?

9 A. She jumped into my lap and started crying.

10 Q. And have you had discussions about that since
11 that first time that you talked to her about it?

12 A. No.

13 Q. Have you seen any change in J [REDACTED] relating to
14 before she found out that he was going to be able to
15 examine her directly?

16 A. Umm, we don't -- we don't discuss -- I mean, I
17 leave everything -- I don't really discuss any of that
18 with her. But her behavior since this has happened has
19 been up and down and, you know, extremely emotional,
20 angry, panic attacks.

21 Q. And she has discussed or talked to you about her
22 fear of the defendant?

23 A. Yes.

24 Q. And how did she describe that?

25 A. She says he yells a lot and that she doesn't want

1 to speak with him and that she is scared of him.

2 MR. COHEN: No other questions.

3 THE COURT: Cross.

4

5 CROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q. Ms. L [REDACTED], before J [REDACTED] made these allegations to
8 you -- disclosure to you in June, did she have a
9 predisposition to anxiety or panic attacks?

10 A. No.

11 Q. No?

12 A. None.

13 Q. Okay. Before that time, was she seeing a
14 counselor?

15 A. No.

16 Q. And you just stated that you chose not to tell
17 her until April of this year about the chance -- the
18 possibility that she would have to testify in court?

19 A. The most recent -- the most recent time we
20 thought we were going to court, I told her she needed to
21 be prepared because, at that moment, you were going to be
22 able to cross-examine her.

23 Q. So since that time, she's shown more anxiety
24 about it or has talked about it?

25 A. Her days are different. Some days she's

1 extremely emotional. Some days she's angry. School is
2 difficult for her. She's very angry at school. I mean,
3 it's -- it's all the time.

4 She sleeps in the same room with me because she
5 can't sleep through the night. So, I mean, it just
6 depends. I can't tell you exactly how much more, you
7 know, anxious or panicky she is since I told her, but her
8 behavior is different than May of 2013.

9 Q. So, before that time, she never displayed the
10 anxiety or the panic or needing to sleep with you --

11 A. No.

12 Q. -- that scene?

13 A. No. She was a very well-adjusted child for the
14 age of five.

15 Q. And there were no problems with her being angry
16 on the playground with other children, that you know of?

17 A. No. I mean, not to the extent of what she deals
18 with currently at school. I mean, kids fight. They don't
19 like to share. You know, that's child behavior.

20 But screaming at people, telling them you hate
21 them or, you know, physically pushing them, you know,
22 where you are angry -- true anger where your teacher
23 e-mails you, I mean, that's -- that's way different.

24 Q. And those episodes never occurred before?

25 A. No, never.

1 Q. Were there ever times that other parents in the
2 apartment complex where we resided brought J [REDACTED] home in
3 tears needing to have her mother?

4 A. No.

5 Q. No?

6 A. No one else -- you're the only one who's been to
7 my apartment. I have picked my daughter up from another
8 child's house -- a mutual friend of our children. But
9 nobody has ever been to my apartment but you.

10 Q. So no other interaction with other parents who
11 had concerns about J [REDACTED]'s anxiety or issues with anger?

12 A. J [REDACTED] didn't have anxiety. I would know if she
13 had anxiety. That only occurred at the playground.

14 Q. But the question was: Were there ever times that
15 other parents have discussed with you the fact that J [REDACTED]
16 had issues with anxiety?

17 MR. COHEN: Objection. Hearsay.

18 THE COURT: It calls for a yes or no.

19 THE WITNESS: No.

20 THE DEFENDANT: No more questions, Your Honor.

21 THE COURT: All right. Redirect?

22 MR. COHEN: No other questions, Your Honor.

23 THE COURT: All right. May this witness be
24 excused?

25 MR. COHEN: Yes, Your Honor.

1 THE COURT: You may step down, ma'am.

2 Call your next witness.

3 MR. COHEN: The State has no other witnesses,
4 Your Honor.

5 THE COURT: Okay.

6 MR. COHEN: It is 4:30.

7 THE COURT: We've got the following dates:
8 July 22 at 1:30. We've got three hours. July 23rd at
9 1:30, three hours. July 24th.

10 Any one of those work?

11 MR. COHEN: They're all fine for the State,
12 Your Honor.

13 THE COURT: Mr. Simcox?

14 THE DEFENDANT: Are we not continuing with any
15 more testimony today, Your Honor?

16 THE COURT: Not today. That's why I'm asking for
17 these potential dates: July 22nd and the 23rd for the
18 three hours each.

19 THE DEFENDANT: Even if my witness could be
20 brief, say, 20 minutes?

21 THE COURT: Not today, Mr. Simcox.

22 THE DEFENDANT: Yeah, I'll -- I'll need a minute
23 to ask the witnesses who went out of their way to come
24 here today to see when they can come back.

25 THE COURT: All right.

1 MR. SHIPMAN: Your Honor, July 22nd and 23rd?

2 THE COURT: July 22nd, July 23rd at 1:30 for the
3 afternoon.

4 (WHEREUPON, an off-the-record discussion ensued.)

5 MS. CHAWLA: July 23rd, Judge.

6 THE COURT: All right. We will continue this
7 hearing on July 23rd.

8 Mr. Cohen has to finish his -- now are these
9 witnesses part of your motion or part of Mr. Cohen's
10 motion?

11 THE DEFENDANT: Umm, my motion -- well, my part
12 of this hearing and then also for the next hearing.

13 THE COURT: All right. So then we'll reserve all
14 of that to July 23rd.

15 The Court makes no ruling on the accommodation
16 motion as of today.

17 And so, July 23rd at 1:30, continuation of
18 hearing for the remainder of the afternoon, three hours.

19 Anything else for today, counsel?

20 MR. COHEN: Just, Your Honor, the defense hasn't
21 noticed witnesses for this specific hearing. So the State
22 would like -- the State is aware of Dr. Pyburn. The State
23 is not aware of the other witnesses.

24 THE COURT: Okay. Mr. Simcox.

25 THE DEFENDANT: Yes, I made --

1 THE COURT: Please make sure that you --

2 THE DEFENDANT: I did make that disclosure
3 already to the Court. I filed a motion listing these
4 witnesses.

5 THE COURT: There's two parties here. One is
6 Mr. Cohen and the State. And the other is the Court. So
7 make sure that he gets a copy of it, too.

8 MR. COHEN: And the State is aware of witness
9 disclosures, but not for this specific hearing.

10 THE COURT: All right. Other than Dr. Pyburn,
11 who else? Who are the other witnesses?

12 THE DEFENDANT: Also, Your Honor, one of the
13 witnesses is already on the prosecution's witness list.

14 THE COURT: The other witness -- the defense
15 witness.

16 THE DEFENDANT: It would be Dr. Pyburn.

17 THE COURT: Dr. Pyburn.

18 THE DEFENDANT: And Kayla Buckles, CPS.

19 THE COURT: All right.

20 MS. CLASE: Your Honor, may I ask a question,
21 please?

22 THE COURT: Sure.

23 MS. CLASE: On behalf of Ms. Simcox, I'm
24 requesting a victim's free copy of the transcript.
25 Pursuant to 39-127, victims are entitled to a free copy

1 for the purpose of asserting a claimed victims' rights.

2 Earlier, I attempted to ask the Court to note my
3 objection to the continued cross-examination by
4 Mr. Simcox. And, as this Court knows, there is a
5 supplemental brief that is due to the Arizona Supreme
6 Court July 17th, which I imagine that date will be moved.
7 But victims will need a copy of the transcript to prepare
8 their brief.

9 THE COURT: Okay. So noted.

10 And, Madam Reporter, if you could prepare that
11 and bill it to the Court.

12 MS. CLASE: Thank you, Your Honor.

13 THE COURT: Is it the Court or the State? Who
14 gets --

15 MS. CLASE: I think it's the Court. Do you want
16 me to read it to you?

17 THE COURT: No. I'll take your word for it.

18 MS. CLASE: Okay.

19 THE COURT: All right. With that, we'll see you
20 on the 23rd at 1:30.

21 THE DEFENDANT: Your Honor, I just had -- I want
22 to make sure that the subpoenas are still in effect.

23 THE COURT: Subpoenas are in full force and
24 effect on both sides.

25 THE DEFENDANT: Okay. Thank you.

1 (WHEREUPON, the proceedings were concluded at
2 4:31 p.m.)

3 * * * * *

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C E R T I F I C A T E

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9

10 I, RENÉE A. MOBLEY, RPR, a Certified Reporter in
11 the State of Arizona, do hereby certify that the foregoing
12 98 pages constitute a full, true, and accurate transcript
13 of the proceedings had in the foregoing matter, all done
14 to the best of my skill and ability.

15 SIGNED and dated this 12th day of July, 2015.

16

17

18 /s/ Renée A. Mobley, RPR

19

RENÉE A. MOBLEY, RPR

20

Certified Reporter

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Certificate No. 50500

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