**DEFENSE EXPERT PRESENTED TO TESTIFY ABOUT INTERROGATION PROCESS USED WITH CHILDREN AND RELIABILITY OF CHILDREN’S STATEMENTS**

**Washington State**

**DIRECT EXAMINATION**

**Defense Counsel:**

**Q.** Dr. U., would you state your full name for the record, spelling your last name?

**A.** My name is Dr. R.C.U.

**Q.** Dr. U., what is your doctorate in, your degree in?

**A.** I have a Ph.D. from the University of Minnesota in clinical psychology, with a medical minor and a collateral field of child development and child therapy.

**Q.** When did you receive your degree?

**A.** 1970.

**Q.** Could you describe for us briefly the rest of your educational background?

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**Q.** Could you give us a description of your current practice at the Institute for Psychological Studies?

**A.** We have a professional staff of six persons, ….

**Q.** Have you ever published in the field of psychology?

**A.** Yes, I have.

**Q.** And can you again briefly go through these publications?

**A.** The books that I have written include—

**Q.** How about any honors that you have?

**A.** The Wheat Ridge fellowship would be in the nature of an award, an honor, and the Missouri Senate elected me to receive that.

**Q.** Have you had any publications or presented any papers or otherwise been involved on a professional basis in the area of child sexual abuse?

**A.** Yes. Together with my staff….

**Q.** How about presentation of any papers to any formal psychological associations?

**A.** We have been asked to make a presentation on child sexual abuse….

**Q.** Can you briefly describe for the court what the American Psychological Association is?

**A.** It’s a professional psychology association with over 50,000 members, including the whole broad range of persons involved in the science of psychology.

**Q.** What percentage of psychologists, if you know, are members of the American Psychological Association?

**A.** I have no way of knowing that.

**Q.** Is there any licensure procedure for psychologists?

**A.** Yes.

**Q.** Are you licensed as a psychologist?

**A.** Yes, I am. Under Minnesota statute I am licensed as a licensed psychologist.

**Q.** Are you a member of any other organizations dealing with psychology?

**A.** Yes.

**Q.** Which organizations are those?

**A.** The Minnesota Psychological Association, the Lutheran Academy for Scholarship, the Society for the Scientific Study of Religion, and I am on the National Registry of Health Providers in Psychology.

**Q.** Dr. U., have you ever in your practice or in research or otherwise done any special studies or presented any special papers in the area of child sexual abuse?

**A.** Yes.

**Q.** Can you describe for the court what studies you have done?

**A.** The staff at IPT and the staff of Search Institute, a free-standing research institution in the Twin Cities, have conducted a thorough and comprehensive review of the whole field of child sexual abuse, and we have produced a manuscript, which is currently with the publishers. As part of that, we did conduct a scientific study or analysis of over a hundred hours of videotapes of 15 children and five different therapists, and using appropriate scientific methodology, produced a statistical analysis of that process. Since the writing—

**Q.** Doctor, let me interrupt you for a moment. What process is it that you are talking about?

**A.** The interrogation process.

**Q.** And who was being interrogated, or what interrogation process are we talking about?

**A.** There were 15 children that were represented in the videotapes supplied to us. They were all from one large situation. There were five different therapists. The children ranged in age from four to eight. The five different therapists included one psychiatrist, one psychologist and three social workers. That was the first of the studies that we have done of this sort.

**Q.** What specifically were you studying?

**A.** The nature of the interactive process between the interrogator and the child. We used standard research methodology, the same kind of methodology used to study the process of psychotherapy, for example, for 40 years, and it consists of defining specific behavior so that you can point and say, “This is the behavior that I am talking about, that’s what I mean,” and then you count them and look at the relationship between them, to assess what follows what and what may be inferred to cause what. We rated, with raters, 11 interrogator behaviors and 11 child behaviors.

**Q.** Okay. Can you tell us specifically what those behaviors were that were rated as to the adults and as to the interrogators and as to the child?

**A.** With the behaviors of the interrogators, we have defined and are able to clearly establish the inter-rater reliability for this task, which is very important to use as scientists, as ranging from .75 to .95, which is very acceptable.

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**Q.** —reliability. What is inter-rater reliability?

**A.** A technical term. It means that when you claim that you are measuring something, and you have different people doing the measuring and they agree at a given level, in other words, and that tells you whatever it is you are saying you are trying to measure, you are measuring it. The behaviors include, for the interrogator, open questions, closed questions, ambiguous questions or combination questions, the use of modeling, or reinforcement, coercion and pressure, the use of aids of various sorts, under pressure and coercion, which I think is number six. There are three different subcategories under that. The child behaviors that we rate are affirming responses, disaffirming responses, description, non-responsiveness. The child may also engage in sort of incompatible behavior or irrelevant behavior. Those are the things that I recall offhand…..

**Q.** Are you aware of any other similar studies that have ever been conducted?

**A.** I am not aware of any studies that have been conducted in this way to scientifically analyze the interrogation process between a child and an adult.

**Q.** Now you mentioned earlier that this is a scientifically valid, that you have described this as a scientifically valid study?

**A.** Yes.

**Q.** Is there a particular model within the psychological community that you followed?

**A.** As I indicated, the model is a standard research methodology, it’s well known, and then what we have done is what scientists are supposed to do. We have kept meticulous records, we have everything available, we have written various reports, we have given results of the statistical analysis, and it’s available to anybody who wants to examine our methodology to ascertain if we did a good job. That’s fundamentally the model that a scientist follows.

**Q.** Now you mentioned when you were discussing your education and background that your Ph.D. was in clinical psychology and that you had a subspecialty of child psychology, is that correct?

**A.** No, not really.

**Q.** Okay.

**A.** Psychology does not recognize specialties nor subspecialties beyond clinical counseling and school psychology, so psychology as a profession simply doesn’t deal with specialties in the way that medicine does.

**Q.** What is it about your—was there some sort of special emphasis on child psychology? I must have misunderstood what you had said originally.

**A.** No. As part of my own choice, I elected to take additional credits as a collateral field, and at the University of Minnesota at that time a collateral field required 15 additional credit hours above and beyond those required for the Ph.D., and I chose to use as a collateral field child development and child therapy.

**Q.** What specific training did you have in that collateral field then?

**A.** Well, in addition to the 15 additional credit hours of classes that I took, which included developmental psychology and mental retardation and supervised child therapy, diagnosis and assessment, I also took specific clerkships in the in-patient unit at the University of Minnesota Hospital for Children, in other words, a child psych unit at U. of M.

**Q.** What did those consist of?

**A.** Under the supervision of Doctors Q. and H. who were the child psychologists on staff of the U. of M. Hospital for that service, I worked for a six-month period with children on the in-patient service. I had three children who were then assigned to me for therapy, and then as part of that clerkship I also did evaluations and assessments of children when they would come into the in-patient unit.

**Q.** Aside from your training that resulted in your Ph.D., do you have any special expertise in the area of child sexual abuse or child psychology?

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**A.** [A] meeting at Hilton Head was called by the APA, the Section on Child Psychology, which is a part of Division 12, Clinical Psychology, for the specific purpose of determining the best way to train people to give good psychological services to children, and the result of that meeting is the official recommendation that exactly the kind of training I had received, clinical psychology, with specific lifespan content in the courses taken and specific experience in the practical aspects of dealing with children is, by that conference of prestigious child psych types from all over the country, that’s the best way to train people to give good services to children.

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**Doctor:** And the kind of training I have is recognized by an official APA meeting to be the basis for saying I can provide good services for children, I can claim to be an expert in dealing with children.

**Q.** (By defense counsel) Doctor U., during the course of your practice as a psychologist, have you had any experience in dealing with the issue of child sexual abuse?

**A.** Yes, I have.

**Q.** Have you had experience in dealing with the interrogation process of children who have been sexually abused?

**A.** Yes, I have.

**Q.** … Have you yourself ever been involved in the interrogation process of a child who was suspected to have been sexually abused?

**A.** Yes.

**Q.** Do you use a specific model or have you developed a model yourself in accordance with some guidelines regarding that interrogation process?

**A.** Yes. I believe that the way that I go about making such an evaluation reflects both the best standards of the science of psychology and the most effective way, based upon the research available, to maximize the reliability of a child’s statements.

**Q.** How did you develop that interrogation process?

**A.** Simply based upon my knowledge, experience, my awareness and understanding of the research and literature in developmental psychology and interrogation and social psychology, and just the whole broad spectrum of the science of psychology.

**Q.** Have you developed any model for the Minnesota Psychological Association regarding those issues?

**A.** I have had input into, again, a committee of the Minnesota Psychological Association, which a month and half ago produced the guidelines for psychologists in dealing with child sexual abuse.

**Q.** What was your input into that?

**A.** I made reports, both written and verbal, to the members of the committee, and testified before the Attorney General’s Task Force on Sexual Abuse.

**Q.** Do you have any special background and training or training in the area of child development?

**A.** Again by virtue of the collateral field and the kind of training that I have, yes, I have the basis for claiming to be an expert in developmental psychology.

**Q.** Have you had any experience in that field utilizing those, utilizing the training that you have had?

**A.** My practice across the years has consistently included anywhere from one-sixth to one-third, sometimes a bit more, children, adolescents. The three major national research projects that I was involved in all dealt with adolescents, so throughout the course of doing therapy, providing treatment, evaluation and assessment, one always uses the knowledge of development psychology, I mean, developmental psychology actually covers people from conception until death, so I use it all the time.

**Q.** Have you ever testified in court, Doctor, as an expert in the area of child sexual abuse?

**A.** Yes, I have.

**Q.** Can you give me an estimate of approximately how many times you have testified in court?

**A.** It would be an approximation…I believe I have testified between 60 and 70 times in courts related to issues of child sexual abuse.

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**Q.** Have you ever been called or requested by someone other than a defense attorney in a criminal case or someone representing the parents in a dependency case to testify on the issue of child sexual abuse?

**A.** Yes.

**Q.** And can you describe that? First of all, how many times has that occurred?

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**Q.** Could you briefly tell the court what is the basis of your expertise in the area of child sexual abuse interrogation?

**A.** We simply stay current with the literature. Again, the basic approach that psychology takes is that we just don’t recognize specialties, and if a person with the training that I have got is viewed by psychology as competent and expert in dealing with human behavior, and that includes children, child sexual abuse, the interrogation process, that’s where the base for the expertise lies.

**Q.** Based on your study of child development and on the model that you have created regarding the interrogation process, are you able to look at an interrogation and form an opinion as to the interrogation process or aid the court in interpreting the interrogation process?

**A.** I believe that is true, yes.

**Q.** And on what is the basis that you use the interpreting the interrogation process? Are there specific criteria that you use or—

**A.** Okay. The categories into which we will put the things we look at to try to understand what’s going on and what the relationship is between the various inputs would include the individuals, both the adult and the child, the children especially, whatever information we have about their individual capacities, their cognitive abilities, what developmental psychology tells us. That is well-established and well-founded about the capacities of a child of a given age…, so that’s the first step, the individual capacities and characteristics that you have to work with. The second would be the environment, the surroundings, the setting, the stage, the total impact of that environment. Third would be the nature of the process itself, and that, as I said, depends upon having the skill and the training to observe the interactions between people and to have the knowledge to understand what those interactions are. And finally would be the level of documentation or the level of empirical information, the real data that you have that tells us about whatever the process is you are looking at.

**Q.** Doctor U., have you been requested by Defense Counsel in this case to view materials regarding this case?

**A.** Yes.

**Q.** Can you tell us what your criteria is for acceptance of this case.

**A.** Basically, the judgment on my part that the situation is described to me in a way that lets me make the choice that what I can contribute as a scientist with a knowledge different than or other than that which is available to the general public will advance and serve the cause of justice. That’s fundamentally the criteria that I would apply in deciding whether or not to be involved.

**Q.** Does that involve reviewing of materials regarding facts in a particular case?

**A.** Yes, it does.

**Q.** What materials did you receive to review in this particular case?

**A.** A whole box full, and that indicates police reports, charging sheets, copies of depositions, copies of testimony in prior proceedings, progress notes from therapists, the—apparently the complete notes of the, I believe in Washington, the Child Protection Services worker, various notes and memos of interviews conducted with a variety of persons involved in the case….

**Q.** How do you review the materials?

**A.** Take time and go through them, read them, make notes on the documents available to me of things that are of significance and import, then prepare to—

**Q.** Doctor, let me stop you right there. When you say what is of significance and import, what were you looking for, specifically?

**A.** Anything that would give me information about the four things I mentioned before, the capacities of the child involved, the capacities of the adults or the competencies of the adults involved, the environment, the nature of the process that went on between them, and the level of documentation that’s available.

**Q.** You stated, Doctor, when I asked you about the criteria for the acceptance of the case, that you felt that your particular knowledge, that you would take the case where you felt your particular knowledge can aid the court. Can you explain that a little bit further?

**A.** I have written about this in a publication…, and made a presentation on that, and I believe that the role of the expert witness is, and the only reason that an expert witness has any basis in a courtroom at all, is the demonstrated ability to provide information and knowledge that isn’t available generally, that is not generally known and that can aid in the determination of fact and the cause of justice, so I believe that that’s the only reason that an expert has got any place in the courtroom.

**Q.** What specific knowledge do you have as a psychologist with the experience and research that you have described that is not generally known to the public that is applicable to the area of interrogation in child sexual abuse?

**A.** Big question. Well, one, I think that by virtue of training and experience and the skill and observations and the knowledge of what to look for, I would be able to say more than persons in the general public about non-verbal behaviors, …the nature of influence, to understand the roles that people play and to be able to delineate them and point to them and say this is what’s happening here and this is what’s happening there. My experience has been that most people tend to pay a great deal more attention simply to the words that people say, and 95 percent of what we communicate is communicated without the words, so there is an awful lot that goes on between people that just isn’t generally recognized….I think the training in psychology also provides an understanding and awareness not generally available as to the cognitive capacities of children, to the abilities, the mental abilities that children, the knowledge about memory and how human memory functions and how that is different from the way most…people tend to see it.

**Q.** What about the research that you described earlier to be the double bind study, or the review of the tapes? Does that fit into your ability to—

**A.** Yes. We have had the experience of looking at the behaviors. I personally am responsible for the concept and for the initial development of the behaviors that are rated, my staff has carried them out under my direction, and we have right now a significant amount of experience in observing the nature of the process. I personally have observed and been involved in the analysis, …of at least 500 hours or more of videotapes and audiotapes from all over this country on the interrogation process or what actually is done, what actually happens between a child and an adult. Yeah, I think that gives me the ability to more accurately and clearly describe what’s going on than the general public has.

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**Defense Counsel:** Thank you. I have no further questions. I would ask the court to qualify Doctor U. as an expert at this time.

**THE COURT:** Prosecutor?

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**Q.** Okay, Dr. U., when you talk about interrogation, you mean questioning techniques; is that right?

**A.** That would be another phrase to use to describe it, yes.

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**Q.** Dr. U., you have indicated that you took a six month clinic in child—was it development or in a child ward at that time in your class?

**A.** I spoke of the clerkships on the child, in child psychiatry in-patient…as part of my training.

**Q.** What other clerkships of six months duration did you take?

**A.** Clerkships ran by quarters, and, okay, the clerkships were before the internship, and they were in the locked unit. U. of M. Hospital had three units…and you just did a clerkship in each one of those….one that was locked, then the child psych unit. Those were the clerkships that I did. The internships followed that, and there—do you want me to describe those?

**Q.** Yes. You have indicated there were three units and you did a clerkship in the locked unit and then also in the child psych unit; is that right?

**A.** Yes.

**Q.** Okay. Was that a normal rotation that everyone did, two out of the three or three out of the three choices?

**A.** The child psych clerkship was not something that most of the clinical students did. I chose to do that.

**Q.** Okay. And it was a choice out of two or three others; is that correct?

**A.** Approximately. Some of the clerkships were done at the VA Hospital, too.

**Q.** And that was in a normal year of clerking prior to your internship?

**A.** Three years.

**Q.** What, you have three years of clerkships?

**A.** Yes.

**Q.** And—

**A.** You have three years before you start your internship.

**Q.** And of the three years, it was six months in the child psychiatric unit?

**A.** Yes.

**Q.** And then your internship was spent where?

**A.** At the N. Clinic.

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**Q.** And how long were you there?

**A.** Actually, I was with the N. Clinic, as I testified earlier, from 1965 to 1972. The first year, 1965, was classified as the internship. Subsequent to that, I remained as an employee.

**Q.** And what specifically were your duties there when you were an employee?

**A.** To provide the full range of psychological services expected of a staff psychologist, including evaluation, assessment, diagnosis, treatment, and during those years, that was both in-patient and out-patient, the N. Clinic had hospital privileges at both Abbott and Northwestern Hospitals, and also at the Golden Valley Hospital. Those are the three that we went to on a regular basis.

**Q.** So was it a general psychiatric or a psychological job, not limited to one specialty, in those five or six years you were there?

**A.** It was limited to one specialty. That’s the specialty, one of the three specialties that psychology recognizes, and that’s clinical psychology.

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**Q.** What percentage of your work as a clinical psychologist at the N. Clinic was with sexually abused children under the age of six?

**A.** That’s a number of years ago, but insofar as in the mental health division of the N. Clinic at that time, I was the only one with training and experience in dealing with children. I dealt with the children that we had. That did include sexually abused children. I do not recall, I didn’t keep any records of it at the time, but throughout the seven years I was there, if there was any sexual abuse that anybody in the N. Clinic dealt with, I am the one that did it.

**Q.** Okay. But, Doctor, approximately what percentage, I understand you didn’t keep numbers, but what percentage of your six years there were your patients sexually abused preschoolers?

**A.** The best approximation would be five percent, five to ten percent.

**Q.** And you were a Lutheran—you are a Lutheran minister; is that correct?

**A.** That’s right.

**Q.** Okay. And you practice that or were employed as a Lutheran minister for some time before you began your training in psychology?

**A.** That’s right.

**Q.** And the fellowship that you were awarded was awarded to you as a Lutheran minister through the Missouri synod?

**A.** The Wheat Ridge Foundation provided the money. The Missouri synod is the group that sort of ran it, did the selection and so on.

**Q.** And is it true that you were one of several of a group of Lutheran ministers who proceeded with this program?

**A.** There were six.

**Q.** And it was sponsored or I would say assisted by your church or your synod for you to go through on this program?

**A.** Yes.

**Q.** You indicated you had three research projects, one on generations. Would you be more specific about that?

**A.** The “Study of Generations” was funded by Foundation money. It was a national study of the values, attitudes, beliefs, opinions and behaviors of Lutherans. There was a national sample of a two-stage, random, stratified sample of 5,444 people. There were about a thousand open-ended interviews with additional persons as part of the preparation. The 5,444 responded to a 740 item questionnaire, and we then did the statistical analysis of, I suppose, about 80 million bits of information, and produced the book. The title of the study is the “Study of Generations,” which describes the out comings of that.

**Q.** Is it basically regarding generational differences or values, and it was mostly of Lutherans?

**A.** The sample was entirely of Lutherans, and one of the goals was to look at the question of the relationship between generations. One of the claims we made that Time Magazine reported is we falsified Margaret Mead’s thesis that generations couldn’t talk to each other.

**Q.** In the second one, or the second research project, I am sorry, was about a caring God. I just have the note.

**A.** That’s a book. The second research project I was involved in is “Project Youth,” and from that the book which I co-authored is “Extend.”

**Q.** And “Project Youth” dealt with, I believe, adolescent or later adolescent children; is that correct?

**A.** “Project Youth” was funded by the National Institute of Mental Health, and it had the goal of finding the best way to train high school youths to be helpful, therapeutic friends to the alienated and troubled youth. It is the project that started all the peer counseling that’s going on, I think, in just about every high school in the country right now.

**Q.** So it is dealing with mostly or did deal mostly with adolescent youth?

**A.** Yes.

**Q.** And then the third one resulted in, I believe, a thesis on the topic of scientists and ethical decisions?

**A.** That’s another one of the books that I co-authored, it was not a research project.

**Q.** What was your third research project?

**A.** That was “Clergy Youth,” again NIMH funded, and the object of that was to find again the best, most practical way to train clergymen to be effective counselors and therapists to the children in their parish.

**Q.** And none of these three projects dealt with sexually abused preschoolers?

**A.** That’s correct, not directly.

**Q.** Doctor U., what specialized clerkships or classes dealing with sexually abused preschoolers did you take or have taken?

**A.** At that time, and to my knowledge up to this point, I am not aware of any APA-approved clinical program that does have specialized classes in child sexual abuse.

**Q.** So you didn’t take any, either in graduate school or in the clerkship, other than perhaps the six-month clerkship at the psychiatric ward for children; is that correct?

**A.** In terms of a focus upon child sexual abuse, that would be correct.

**Q.** And the clerkship involved with the children, I think you indicated primarily involved three children?

**A.** The three children where I was assigned to be therapist to them during the time that they were on the in-patient service.

**Q.** You are currently involved or have been involved in a study reviewing videotape questioning of children; is that right?

**A.** Yes.

**Q.** And that’s something that you apparently received a grant for?

**A.** Not exactly a grant….

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**Q.** And you are reviewing hours of videotapes of primarily 15 children; is that right?

**A.** That was the initial project that we did.

**Q.** And it was established that all 15 of these children have been abused in some way?

**A.** No, that has not, to my knowledge, yet been established. It is still, as I understand it, proceeding toward trial.

**Q.** Approximately how long ago did these taped interviews take place?

**A.** They would have, that project would have been in the…spring, summer and fall of 1984.

**Q.** And who is the person who is paying you to proceed with it now, some defense or defense-funded organization?

**A.** We are done with that particular project. The ones we are conducting now are being paid for in a variety of ways.

**Q.** What about the primary project, the people who originally paid you, were they associated with the defense in these cases?

**A.** The initial project, we were retained basically by an insurance company that was involved by virtue of a number of civil suits.

**Q.** Okay. And they were defending against the accusations; is that right?

**A.** Intending to, yes.

**Q.** And what type of abuse is alleged for those 15 children? Is it sexual or physical?

**A.** Sexual.

**Q.** Okay. And is it alleged that some of those children at least have also been physically tortured?

**A.** There are allegations to that effect.

**Q.** And are there concerns on the part of all involved that physically tortured children require much more time in talking or are more afraid than children that have not been physically tortured?

**A.** I am not aware of concern on the part of all of those involved.

**Q.** Do you think that’s a fair statement to say, that physically tortured children may be more afraid to speak about the torture than—

**Defense Counsel:** Your Honor, I am going to object to this line of questioning. I think that goes to cross-examination, if Doctor U. is allowed to testify. What we are going to is his qualifications to whether or not he has the required expertise to be able to testify in this case, and I don’t see that his opinion on any one particular point in the articulation process would go to his qualifications to testify, it goes to the weight of his testimony.

**Prosecutor:** Your Honor, I believe that was raised by the defense as one of the ways in which he was so qualified to testify as an expert, and I think further questions or interrogations in that area would go to show that the is not qualified.

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**THE COURT:** —the prosecutor has indicated she thinks there may be some relationship between these details and qualifications, and I am inclined to agree. The objection will be overruled. You may answer, Doctor, if you remember the question.

**Q.** (By prosecutor) I believe I asked you if you thought that was a fair statement at this point, that children who have been physically tortured might be more reticent or more afraid to talk than children who had not been physically tortured.

**A.** When it’s phrased in terms of “might be,” of course, I mean, anything might be. I don’t know of any specific research where there is a criterion group of actually, physically tortured children. We are aware, there has been an assessment of their propensity or lack of propensity to talk about it.

**Q.** Now, Doctor, you are not aware of any other studies such as yours reviewing videotapes and questions processes; is that correct?

**A.** That’s correct.

**Q.** And regarding your study, you are the person who is really in charge of that study?

**A.** Yes.

**Q.** Okay. And you are the one who determined the category and the rating systems?

**A.** The initial concept and the behaviors to assess, yes.

**Q.** And you indicated in your direct that you still monitor that and observe it, oversee it?

**A.** Yes.

**Q.** And you talk about, I believe, in your study; it’s to review the nature of the interactive process?

**A.** Yes.

**Q.** And you indicate one of the things you look for is what may be inferred within that process or by the process; is that correct?

**A.** Inference is one of the things that a scientist does. You look at the data and infer from that data to whatever the theory is that you are using. That’s what psychologists call construct validity.

**Q.** To examine inferences that the raters of the measurers determine or see?

**A.** No.

**Q.** Then what? Do you look for inferences in your studies?

**A.** Psychology recognizes four kinds of validity, and when again you are attempting to measure anything, in addition to reliability; you look at the four kinds of validity that are available. They are predictive validity, concurrent validity, content validity and construct validity. It’s the latter, the construct validity, and all of this is in the official APA document establishing the standards for psychological research and psychological assessment, I am just basically giving what’s in that official standard. Construct validity is pursued by looking at the data, the things that you count and the things that you can point at and say, this is A, B, C, D, E, and so on, and then being able to infer from that variety of ways and brings you back to another point in the observation base, and if you can do that, then your presentation, your claim has what is called construct validity. That’s the role of inference.

**Q.** Doctor, you have been in your present employment, which is, I believe you run the company or the establishment; is that right?

**A.** Institute, yes.

**Q.** And you founded that and it has since grown and there are now how many, four para-professionals there?

**A.** Six. Currently six.

**Q.** Okay. And you have been in that since 1979?

**A.** Four. 1974.

**Q.** I am sorry. Okay. And then in the last two to three years you have testified several times in court?

**A.** Yes.

**Q.** And many of those cases have been out of the State of Minnesota; is that right?

**A.** Yes.

**Q.** And you indicated in the last two years you have testified, you believe, 60 to 70 times?

**A.** Yes.

**Q.** Does that involve testifying in court such as now or only as an expert witness, having been qualified?

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**A.** Only as an expert witness. I have been qualified every time, it’s never failed.

**Q.** Okay. Doctor, have you also frequently had to testify in pretrial then?

**A.** On occasion. Not too often.

**Q.** And have you been retained to review or examine documents in other cases in which you have not testified?

**A.** Yes.

**Q.** Approximately how much time do you think you put on each case prior to testifying?

**A.** It varies, depending upon the nature of the material and the amount of the material. We have had material provided that might be only about that thick, so much, an inch, and we have had material provided that filled four boxes, four cartons, so it varies.

**Q.** Well, Doctor, how about answering the question, though? Approximately how much time. Give the ranges you usually spend.

**A.** I can’t.

**Q.** I am sorry? What did you say?

**A.** I can’t. I mean, I can’t give an approximation, it just is much too variable.

**Q.** Doctor, if allowed to testify, are you wishing to testify as to—I am sorry, as an expert exactly in what?

**Defense Counsel:** Your Honor, I am going to object to that. I think that’s for the court to decide, what he will be allowed to testify for, or for counsel to propose to the court. Doctor U. has testified he has been in a variety of different cases, including dependence and criminal cases, on a variety of different subjects. There are obviously things that he could testify to in a dependency that would not be appropriate in a criminal case.

**THE COURT:** The question is what the proposed expertise is for this case; and I think it’s an appropriate question.

…………………………

**Defense Counsel:** ….If the court would like, I can make an offer of proof as to what we would propose to have him testify …in terms of expertise is the interrogation process of these particular children and how that affects the, how that affects how the statements come out. He is not, obviously, going to be testifying as to whether or not the children were telling the truth or whether or not the statements actually happened, that is beyond the competency of what he can testify to, and what we would be asking the court to allow him to testify to is those factors within the interrogation process, which include the development of the particular child and various other factors that would influence the statements….

**THE COURT:** All right. Defense Counsel, thank you. With that clarification, Prosecutor, are you assisted in your examination?

………………………………

**Defense Counsel:** Yes. Also, to make it clear, so that there is no question of springing something on the prosecutor, one of the criteria that is used is the development of the particular child at that time as described by others, for example, what the child’s speech is like.

**THE COURT:** Well, I take it the four criteria earlier indicated by the doctor, which would include characteristics, capacities and abilities of the individuals, the interrogator and child, the environment, the nature of the process and the level of documentation available would be the specific subject matter.

…………………………..

**Defense Co-Counsel:** Your Honor, there is, I think, one other issue that potentially we would be proposing to have Dr. U. testify to. That would be given a hypothetical situation, which obviously would include numerous, numerous facts, quite lengthy in fact. Today we may address that hypothetical situation, using the various components or using the analysis that Dr. U. has already laid out, what can we say, or is Dr. U. in a position to say or draw a conclusion regarding the reliability of a statement given in that situation….

**THE COURT:** With that further clarification, Prosecutor?

……………………………

**Q.** (By prosecutor) Dr. U., in the step number one, or incident number one, regarding the individuals and the child’s cognitive development or capacity or characteristics, do you take into account the child’s memory or development of memory at that point?

**A.** That certainly is, as I believe I indicated earlier, one of the factors that is important in the developmental process and the way in which human memory functions in relationship to statements that are made, and there is very powerful and significant and, to my knowledge, undisputed research on human memory, how it develops, at what ages, what capacities there are, and so on.

**Q.** And when you say undisputed knowledge regarding the capacity of children to remember, do you believe it’s undisputed that children’s memory is substantially different from adults’, or the ability to memorize is different?

**A.** I think that there—

**Defense Counsel:** Your Honor, excuse me just a moment. Again, I would be objecting on the basis that this goes not to his qualifications but to the weight of his testimony that this does not go to his qualifications. It is not a question—he has already testified that he has had the background and training in this area. This goes into the specifics of what he would say on the stand, assuming that such question would be asked. I don’t think that is appropriate to this particular inquiry.

**THE COURT:** The question was, as I recall it, whether or not the doctor believes something to be true with respect to children’s memories.

**Prosecutor:** Your Honor, it’s based on the doctor’s prior statement that he pointed, as his reason for claiming specialty or specialized knowledge in this area, to his Ph.D., so I am now interested in delving into whether he is involved or in fact has been involved in recent literature regarding this, if there has been further knowledge or acquisition of knowledge or experience on his part in these areas in which he plans to testify.

**THE COURT:** You may proceed. Go ahead.

**Q.** (By prosecutor) Doctor, do you recall, is it in your mind undisputed that children remember either more or less completely than adults?

**A.** When I used the word “undisputed,” I was referring to the research relating to the development of the human memory and the human memory capacity. Certainly there is dispute in terms of the, or at least some contrary statements in terms of the comparison between child memory capacity and adult memory capacity. I am aware of a number of claims that have been made fairly recently, I have reviewed those, I am prepared to address them specifically and to give my opinion about those claims, if asked.

**Q.** Is it fair to say that in the last two or three years there have been several articles regarding memory in children which indicates that children’s memory does not differ substantially from adults’ ability to remember?

**A.** There have been such articles. I regard them as poor in the quality of the scientific claims and credibility and not persuasive.

**Q.** And although you may not agree with them, that claim that children’s memories are far inferior to adults’ memories is no longer undisputed in the scientific community; is that correct?

**A.** I have never claimed that it was undisputed.

**Q.** Children vary in their cognitive capacity development in preschool age, do they not?

………………………………………..

**A.** Certainly, individual variations do exist. There is an entire sort of content area in the science of psychology; it’s called individual differences. That does a pretty good job of indicating what the difference between individuals are.

**Q.** (By prosecutor) All right. You have not spoken with either of the two children involved in the case, have you?

**A.** That’s correct, I have not spoken with either of them.

**Q.** Except for watching one child out in the hall this morning, you have never seen either of the children, have you?

**A.** That’s correct.

**Q.** And you haven’t watched either a videotape or heard on audio or anything like that of these two children?

**A.** That’s correct.

**Q.** And you have no personal knowledge as to how they were six months ago?

**A.** That’s correct.

**Q.** Okay. Have you met any of the witnesses in this case to whom the children apparently made statements?

**A.** The only persons that I have met are Defense Counsel and Defense Co-Counsel, yourself, yes, thank you, very briefly, at least, and we did talk on the phone, defendants, and then this morning I believe another woman. That’s, to my knowledge, the people that I have met.

**Q.** Okay. And what you know of them is simply from a review of the police reports or CPS documents, the documents you answered in response to a question from Defense Counsel?

**A.** What I know of the people I have met here?

**Q.** No, what you know of the other people, the people to whom statements were made.

**A.** Yes, that’s—my knowledge is limited to the documents that I have been provided.

**Q.** Did you receive these documents as one package?

**A.** Yes, with the exception of late last week I received two memos from Defense Counsel and Defense Co-Counsel relating to interviews that they had with two of the witnesses, I believe.

**Q.** And did you read, with the exception of those two memos you received late last week, read the material you received pretty much as a whole, as a unit?

**A.** Across several days, yes.

**Q.** You indicated the fourth factor that you examined is the level of documentation; is that correct?

**A.** Um-hum.

**Q.** And that’s primarily something that allows you to evaluate the question and answer process, right?

**A.** That would be one of the things that would come out of having as much documentation as possible.

**Q.** Okay. Does it actually go to the level of the quality of the questions asked or just to the later documenting of it, those questions and information?

**A.** I am not sure I understand the question, ma’am.

**Q.** Okay. The level of documentation is important for you in your review of this; is that correct?

**A.** Yes.

**Q.** But the level of documentation reflects something apparently the questioner wrote down simultaneously or thereafter; is that right?

**A.** That would be one of the kinds of documentation, yes.

**Q.** And it does not necessarily reflect the quality of the actual interchange, is that correct?

**A.** If I understand your question, the weaker or the less detailed and the less information available in documentation, yes, that would affect the ability to deal with the process that went on.

**Q.** For you to deal with the process that went on?

**A.** I would think for anybody.

**Q.** Not necessarily for the person who is involved in the process, is that fair?

**A.** No, I wouldn’t say that’s fair, no.

**Q.** Doctor, would you say that in order to have a fair question and answer session, fair at the time of the questions and the answers, that the person asking the questions must write them down at that time, or is it only fair for a later review of it?

**A.** I would need to get more understanding of what you mean by “fair.” If in fairness to the person who is being asked the questions, the discourse is to have any significance for that person whatsoever in the future, that has some weight, then I think it will be part of fairness, yes, to do the best possible job of documenting whatever the discourse is.

**Q.** So you are not looking for documenting or reviewing it in the future; is that right?

**A.** The documentation that I would be looking at would be, again, whatever documentation is available at the present time of the questioning or the interrogation.

**Q.** Okay. Whether a person documents extensively does not necessarily mean that the question was not an appropriate or a fair or a non-leading question; is that correct?

**A.** Well, I am—I guess I am going to have to say that your question is epistemologically foolish, because if you have no documentation and you have no report, then there is no way to assess anything.

**Q.** Sure. And it doesn’t mean it was necessarily a bad question or a good question, does it?

**A.** There is no way to determine that. Then if you would be interested in pursuing it, what you would need to do would be to sort of look at whatever you know about the base rates of it, but in bad questions—

**Q.** Now Doctor, you indicated that about 95 percent of communication is without words; is that right?

**A.** Yes, yes.

**Q.** Is that based on your own studies?

**A.** No.

…………………………………….

**Q.** Dr. U., did you say there were no other studies in this area except for yours regarding the monitoring or the questioning of children like this?

**A.** No, I don’t believe I said that.

**Q.** I am sorry, what was your statement regarding that then?

**A.** As far as I know, what we are doing is the only study of actual videotapes, audiotapes from real-life cases, I don’t know of anybody else doing anything of that nature, but in terms of the issues involved in the communication process between people, those that are in the nature of any interrogation and involving an adult and a child, there are many, many, many studies that bear on that particular mode of communication, I would say literally thousands of them.

**Q.** Okay. And are there established standards accepted in the community as to the proper methodology used for questioning of preschoolers regarding sexual abuse?

**A.** First, “in the community” is pretty broad, or vague, I believe. The closest I can come, I think, that I am aware of, of some kind of official or quasi-official or some sort of opinion that has more than that of an individual, are things like the guidelines produced by the Minnesota Psychological Association for the involvement of psychologists in matters related to sexual abuse. There is not a specific statement about standards of the way that you question children, but there are very clear statements about the responsibility of a psychologist being involved in child sexual abuse.

**Q.** And your study is not published at this time, is it?

**A.** That’s right, it’s not. We are at this point preparing a manuscript for publication.

**Q.** And it’s used primarily for research or as a basis or testimony; is that correct?

**A.** At this point it’s both…we have replicated or repeated that process in five additional instances and are currently involved in five more, so it’s a total of 11.

**Q.** And that’s all within your control, or within your study?

**A.** That’s correct.

**Q.** Okay. And the four factors that you recognize as important, or view as important, are factors that have been singled out by you in your study; is that right?

**A.** I believe the four factors that I have described as significant would be recognized by all competent psychologists as fundamental to basically getting any kind of evaluation or opinion. I mean, the role of the environment, the influence of the environment certainly is one of the most widely understood and accepted things in the whole field. The nature of the interactive process, again, the whole bulk of psychology deals with the interaction between human beings, the individual capacities and the cognitive capacities. Again, that’s simply what the science of psychology says you pay attention to no matter what it is that you are trying to understand. No, I don’t think that they are by any means peculiar to me.

**Q.** Is it fair to say that the recognition of these four particular and the pulling out of these four particular factors, listing them as the most important things, in this case, is really the crux of your study, is that correct?

**A.** No.

**Q.** Is it fair to say that other people have done studies similar to yours or exactly the same as yours with those four standards or those four factors as their standard?

**A.** I would expect that every scientific study that claims to be scientific has to deal with those four factors, I mean, every research report that has any credibility as a work of science is going to involve some effort to deal with those four factors.

**Q.** What is unusual about your study, then?

**A.** As I believe I have said twice before, what is unusual is that, to my knowledge, we are the only ones who are currently using this approach with actual videotapes, sort of the real-life kind of things rather than a laboratory kind of experiment or one that sets up essentially an artificial situation.

**Q.** And are there any other studies which use exactly the same criterion you did that reviewed sexual abuse questioning or children—I am sorry, questioning of allegedly sexually abused children identical or very similar to yours without the videotapes?

………………………………..

**A.** Yes.

**Q.** And are most studies or all other studies limited to the same four that you have—

**A.** Most other studies I would say are limited to those four, because that pretty well covers the waterfront, I believe.

**Q.** You indicate that these four are indications of reliability, is that right, examining those four factors?

**A.** No, I don’t believe I said that.

**Q.** Okay. Does it look; do you examine those four factors to determine the reliability of the statements made by the children?

**A.** I must say that, to me, “reliability” is a technical term, and it has to do, as I believe I testified earlier on direct examination, with the accuracy of your measurement.

**Q.** I am sorry, the accuracy of the—

**A.** Measurement, and these four factors are the fundamental matrix of the things you look at to be able to say that your result or your opinion or the things that you are observing on the basis of the data you have makes some sense. I mean, it’s much broader than for me, at least the issue of reliability.

**Q.** So you examined these four factors to see if the opinions people who ask questions come away with are not just reliable but make sense; is that correct?

**A.** A little bit narrow, but something like that. The four factors I am describing are simply the kinds of things that scientists pay attention to in order to have some idea that whatever it is you are doing is more than looking at the sun moving across the sky, and like the ancient Egyptians, conclude that it’s driven across the sky in a chariot by the gods. It’s the way science breaks through the barrier of the common public knowledge and gets more accurate kinds of information.

**Q.** Other than this study, which has been fairly long-range, you indicated—have you done any other studies especially regarding questioning or interrogation techniques?

**A.** Well, yeah, very much so, all of the research projects, particularly the study of generations that I was involved in.

**Q.** Doctor, if I may object as not responsive to the question, maybe I can clarify that, Doctor, not involving techniques or not understanding interrogation techniques but that go to the accuracy of the credibility, the goal of the research is to learn about the techniques?

**A.** Oh, it is—it’s something that we pay attention to all the time.

**Prosecutor:** Nothing more.

**THE COURT:** Anything further, Defense Counsel?

……………………………..

**REDIRECT EXAMINATION**

**By Defense Counsel:**

**Q.** Dr. U., Prosecutor asked you about documentation. Are you saying that it would be impossible to make any determinations of the kind of analysis we have talked about if you don’t have videotapes and the documentation?

**A.** No, not at all.

**Q.** Can you identify for us what you mean by documentation and perhaps how you rank that in terms of how it aids you in your analysis?

**A.** One of the things that I was trained to take as a very basic principle at Minnesota is the first four data, and by documentation I basically mean data, the kinds of empirical things that can be in one way or another, counted, measured and used to give information about whatever the object is that you are interested in studying, so by “documentation,” that’s basically what I mean, I don’t necessarily mean pieces of paper or videotapes or audiotapes.

**Q.** Is there a way that you rank the documentation in terms of what is more or less valuable to you?

**A.** The data would be arranged in terms of degree of completeness. For any kind of investigation or study or attempt to understand something, the more complete data you have, the better off you are. However, that does not mean that you are prohibited from drawing opinions, presenting hypothesis or giving some kind of analysis if you have less than complete data.

**Q.** Another question that the prosecutor asked you was if you knew of any other studies that dealt with the issue of the interrogation process of the child’s sexual abuse. You started to give some examples and were told not to at that point. Do you have, can you describe to us—I guess the first question is, is the field of literature large or small?

**A.** Oh, very large, very large and multifaceted. Any number of large research areas are directly related to and directly involved in understanding the interrogation process between an adult and a child.

**Q.** And again, are there other studies of the effect of the communication process on children whether or not that deals specifically with sexual abuse?

**A.** Oh, yes, many, many.

**Q.** One other question: The prosecutor asked you about training in child sexual abuse cases. Have you ever taught any classes on the issue of child sexual abuse?

**A.** Seminars and workshops, and to the extent that at least the one in Thunder Bay had continuing education, and they had continuing legal education credits for the one last November.

……………………………

**Q.** Any other classes that you have taught around that issue?

**A.** Not specifically at a university of a school.

**Q.** Presentation you have made, then?

**A.** Yes.

**Q.** Can you briefly tell us the title, when they were and where they were?

**A.** We dealt with sexual abuse for the staff of an adolescent chemical dependency unit, a free-standing one; and the same thing for another staff of a hospital-based chemical dependency unit; we presented a day long seminar on sexual abuse at the Southeastern ALCP Pastor Conference; we presented shorter half-day things for the staff of three or four residential facilities.

**Q.** What kind of residential facilities?

**A.** And treatment facilities….

**Defense Counsel:** Thank you, Doctor. I have no further questions.

……………………………..

**DIRECT EXAMINATION**

**By Defense Co-Counsel:**

**Q.** Doctor, you were talking before about the expectation, I think you mentioned an expectation. Have you discussed an expectation factor any time here in the courtroom?

**A.** I believe so.

**Q.** Okay. Could you briefly describe what an expectation factor is and how that, just so that it brings us back in the current context, what the expectation factor is and how that plays into a determination or how that plays into your analysis of the investigation process?

…………………………….

**Q.** (By defense co-counsel) Doctor, could you tell us about the expectation factor and how that, what role that plays in your analysis?

**A.** The expectancy effect is one of the, again, very solidly established things in the science of psychology, and it’s supported by all the research on interviewer bias, on the non- verbal communication. This is the reason that the FDA requires that any drug study that is done—

**Q.** I would object, as this part of the answer appears to be non-responsive, regarding FDA studies.

**THE COURT:** Sustained….Will you try, please, Doctor, to confine yourself to answering the question itself. If further elucidation is required, counsel will ask you.

**Q.** (By defense co-counsel) …You said it’s a, I believe, it’s a well-documented effect, or something. Could you describe what the effect is, exactly?

**A.** That the expectancy of an individual in a given setting, and there can be many different settings, is communicated to another individual and is determinative of the outcomes or the behaviors of that other individual.

……………………………..

**Q.** (By defense co-counsel) Are you familiar with whether or not there is any literature that exists which speaks to sexual acting-out as it ties into sexual abuse?

**A.** Yes, I am aware of that literature.

**Q.** Can you tell us about that literature?

**A.** There is a fairly narrow group of articles and books which repeat the claim that there are so-called indicators of sexual abuse. Among those indicators, alleged indicators of sexual abuse, is frequently listed—in fact, I don’t think I have ever seen it dropped out of one of those lists—sexual acting-out, or sometimes it’s termed precocious sexual behavior on the part of the child, and the claim is made that it is possible to reason backwards from observing what is termed sexual acting-out behavior, or precocious sexual behavior, to reason backwards from observing that to a time previous in the past when a child was sexually abused, I am aware of that claim and aware of that literature.

**Q.** Is there any scientific basis that you have been able to find from your—in your analysis of this information, is there any scientific basis for this claim?

**Prosecutor:** I would object to the doctor testifying to the scientific basis. He indicates in the scientific community there is a group of books and articles on that. Clearly, they have some basis. Defense Co-Counsel is asking him if he agrees with them. I think the doctor has already expressed that opinion.

**THE COURT:** Sustained. I don’t see how this goes to the doctor’s qualifications.

**Defense Co-Counsel:** I have no further questions.

……………………………

**THE COURT:** Thank you, Doctor. You may step down.

Doctor, excuse me a moment; I have a couple of questions, if I may, before you go.

……………………………

Doctor, I understood that you were engaged in the private practice of psychology from 1965 to the present time?

**Doctor:** Yes.

**THE COURT:** Okay. During that time you had private patients, including, and I believe you indicated five to ten percent at the N. Clinic were sexually abused children under the age of six?

**Doctor:** Yes. That was, I believe the question I was asked dealt with the percentage of people or children that I saw while I was at the N. Clinic from 1965 until 1972.

……………………………

**THE COURT:** Okay. And five to ten percent would have been how many children?

**Doctor:** Generally during that period, my caseload would have varied between 15 and 20 direct client hours per week….Across the time that I have been involved with children, I believe that I have dealt with child sexual abuse specifically in at least 500 cases.

**THE COURT:** These are 500 children being treated subsequent to abuse?

**Doctor:** Children of varying ages, yes. I mean, not—the earlier question that you asked me I think limited it to six to seven, or under six or under seven, there was some limitations in that.

**THE COURT:** So you have personally acted in a clinical capacity for 500 children that have suffered abuse?

**Doctor:** Across the years, yes.

..…………………………

**THE COURT:** On any of the occasions when you have testified, have you testified in a jury trial, in a criminal action as an expert on the subject of the conclusions to be drawn by interview techniques?

**Doctor:** Yes. Several. I can begin to tell you about them if you would like me to, or list them.

**THE COURT:** Just tell me how many times if you recall.

**Doctor:** All right. Criminal trials with juries, and the information about the impact of the interrogation process would be at least 20 times. The ones that sort of go in backwards, Wisconsin and Michigan and Maryland, well, at least 20 times across the last two-and-a-half years.

**THE COURT:** I think you indicated that Minnesota has recently established guidelines for psychologists in dealing with child sexual abuse allegations.

**Doctor:** What I was speaking of was the Minnesota Psychological Association’s development of guidelines for psychologists in dealing with child sexual abuse allegations.

**THE COURT:** Does that include guidelines for the interview techniques?

**Doctor:** Only to the extent that it speaks about the ways in which a psychologist must avoid doing an interrogation that does contaminate and does basically pressure and coerce a child.

No, there is no—I am not aware of any statement, any official statement as to the proper techniques to use.

**THE COURT:** And I take it you have developed a model which you regard as the proper techniques?

………………………………

**Doctor:** I have. I have written material on that, so I both have stuff written and yes, I believe that I do a good job at it, yes.

**THE COURT:** In terms of the written material you have had on that, would you call that a written model?

**Doctor:** I could say it, yes.

**THE COURT:** All right….Doctor, specifically what do you propose with respect to this case to offer as testimony?

**Doctor:** My understanding of the role is that the expert witness responds to questions. What I understand that I will be talking about, that I am willing to talk about, is the way in which as a scientist we simply know, I know the research evidence that shows how powerfully one person can influence another, and we have in the science of psychology established a number of different ways to see, to observe and to be able to point to how that influence is communicated and how that influence affects the outcome.

**THE COURT:** What are those ways?

**Doctor:** One is the expectancy factor, another is the majority effect. I am just going to give you the names of the research areas. Another is interviewer bias, another is verbal conditioning, another is all of the research in psychotherapy. I mean, we have spend 40 years as psychologists trying to figure out how as a psychotherapist we can influence another person to change their behavior or to produce certain kinds of results that we desire.

**THE COURT:** …What are the techniques that you believe are not known to the general public for observing an interview and determining to what extent the interview is tainted by any of those factors?

**Doctor:** I do not believe the general public has much sophistication at all in terms of non-verbal behaviors. I do not believe the general public has much sophistication about how, what a person is looking for or expecting, what a person wants does influence the results of an interaction. I do not believe the general public knows at all that I can confidently say within 20 minutes I could have your Honor or any of the people in this courtroom saying three times as many pronouns simply by each time you said a pronoun, I wink my eye. I don’t think the general public knows that. I don’t think the general public knows the general public is subject to influence by advertising. I sort of got off the track.

**THE COURT:** Doctor, I suppose advertising, however, isn’t likely to come into this kind of hearing. I would like you to confine yourself, if you will, to our context. We are talking about, as I understand, interviews at various stages following the initial allegations—okay, if I predict correctly, the defense position will be that those interviews somehow influenced what they heard by their manner of questioning or otherwise.

**Doctor:** The basic point, your Honor, would be that the kind of interrogation or the questioning influenced the responses.

**THE COURT:** Can you give me some examples?

**Doctor:** Certainly. Based on the very solid, very widely accepted research literature on the expectancy affect, and the majority affect, if you get two or more people saying in one way or another something that’s true when it isn’t true, it has been specifically demonstrated that children are much more likely than adults to go along and agree that something that is immediately in front of their eyes as fact isn’t fact but something else is true, and I don’t think the general public knows what has been established by Marinda that children seven to ten are different from those older in that they showed no emotional conflict. Now that particular study didn’t include children under seven because of the limitations of doing research with them, but certainly the children under seven are much more likely to be subject to that effect than those older. I don’t think the general public knows that. I do not believe the general public knows the ways in which it has been established, again, clearly, that leading questions provide information. You alter the effects of the responses or you get different responses if you include, if you say, “Did you see the car,” rather than “a car,” you get different responses. I don’t think the general public knows that.

**THE COURT:** Specifically with respect to children making allegations of sexual abuse, will you apply those principles?

**Doctor:** Would I apply them?

**THE COURT:** Will you demonstrate for me their application?

**Doctor:** What is the situation with, of a three-year-old child, three years, five months, who is confronted with powerful adults, who are asking questions? A three-year-old child in that position, with the limited capacities that children that age have, and that’s again well established in developmental psychology, is going to fundamentally be looking for whatever is going to avoid trouble and whatever the adults want, and again I can refer you to an extensive body of research done by PIJ that deals specifically with that issue, that children under six confronted with adults who are asking them questions will respond not in terms or truth or accuracy, because they know that, they don’t understand that, they don’t have the cognitive capacity to make that kind of discrimination, and a child under those circumstances is extremely subject to the influence that we know also influences adults. I believe you will, each time the jury leaves the courtroom, advise the jury that they are not to talk to each other and not to talk to other people. Why? Because they are subject to influence. A three-year-old child in a situation with an adult asking them questions is going to be much more subject to that, and I don’t think the general public recognizes that. Very frankly, it’s been my experience throughout the country that the awareness of the extremely powerful impact that these behaviors, based upon very solid research, have, based upon what we know about children, I don’t think people recognize that at all.

**THE COURT:** All right, Doctor. Thank you. Defense Counsel, anything further?

**Defense Counsel:** Your Honor, if I might just say one thing. I think that we are dealing with a situation where there is an enormous amount of publicity around the issue of child sexual abuse, that one of the things that comes across in popular literature is children don’t lie about things like this.

I think that to have someone of Doctor U.’s stature, who can discuss the scientific principles with the jury behind reliability, what makes a statement of a child more or less reliable, I think is—essentially, it is not a matter of common knowledge, it is a matter of applying certain scientific principles to certain situations.

This is not a situation where, as the prosecutor has said, all of this is common knowledge. It is not common knowledge, it is a body of scientific thought within the psychological community that, for those of us perhaps who might have some more experience with it, it seems fairly obvious, but it is not obvious, it is not popularized within the community, and I think it is essential for the jury to hear this.

It is not a matter of Dr. U. getting up there and saying this person is telling the truth, this person is lying, that’s obviously not what he is doing. What he would be doing would be presenting to the jury factors that they should take into consideration that are not common knowledge that are based on established psychological principles.

It’s for those reasons that we are asking that his testimony be allowed.

……………………….

**Doctor:** I would never say to a jury or to anyone else that a child is lying, under these circumstances. I don’t—that’s a totally wrong way to think about it. It is not a matter of a child lying.

**THE COURT:** I have not so taken that, I don’t think that’s the offer and that’s not what the court has received, it’s a question of, as I understand it, the likelihood of reliability of the child’s statement, and I there use reliability in the legal sense, but not, of course, the child’s deliberate falsification, that’s a different question. All right. Anything further for the doctor while he is still up here?

**RECROSS EXAMINATION**

**By Prosecutor:**

**Q.** Doctor, would part of your testimony be that, for instance, a three and a half-year-old child is surrounded by two or three adults who might be viewed as powerful could direct the child’s answers or elicit from the child what those adults wished to hear?

**A.** That’s what the research literature says, yes, and that can be done both wittingly and unwittingly, but it is a very, very powerful effect. That’s, as I said before, thousands of research studies in the area of education establish it beyond a doubt that that’s exactly what occurs.

**Q.** Similar to situations to the adults saying this in the courtroom with those three and a half-year-olds.

**A.** I am sorry?

**Q.** Would it be similar to the adults today in the courtroom questioning those three and a half-year-olds?

**A.** Yes.

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**THE COURT:** I have reviewed the offer of proof that was submitted this morning. It does clarify those matters upon which the defense is offering Doctor U.’s testimony.

As of Friday, the court was relying on what the court was able to infer to what Dr. U.’s testimony might be, but it happens that the offer of proof in those inferences coincide.

There is nothing in here that is surprising to the court with respect to what Dr. U.’s testimony is likely to be.

I have considered at some length my notes of Dr. U.’s testimony, the cases that appear to me to apply to this matter, the evidence rules and the representations made by Dr. U as to his qualifications and his studies.

 I believe that the proposed testimony of Dr. U. is not proper for a number of reasons.

The doctor has apparently devised a method of examining videotapes interviews of allegedly abused children and applying some accepted psychological knowledge as to interview techniques and phenomena, and from that he claims to be able to establish the reliability of the results of those interviews. I believe he so indicated on Friday. Apparently using those same methods, he would here evaluate the techniques and the results of the interviews in this case and offer the jury some indication as to whether he believed the results were reliable. Now the doctor’s qualifications for this testimony are first that he is a licensed consulting psychologist. Parenthetically, the court does not know the difference between a licensed clinical psychologist and a licensed consulting psychologist, but the doctor has a Ph.D. in clinical psychology, has in the past on some occasions treated sexually abused children. There is no indication to the court whether such treatment involves evaluating interview techniques. He indicates he is familiar with the literature with respect to interview techniques in general, and in addition to that, he has conducted recent studies examining videotaped interviews of children alleging sexual abuse.

It’s not known whether or not those children are in fact abused children, but apparently are children alleging sexual abuse. As I understand it, that project is funded by insurance companies, whose interest would be in disproving the abuse. Those project results have not been described for the court except that they have included some identified interviewer behaviors and some identified child behaviors and some correlations between those two. The study is described as the first of its kind, the first ever to scientifically analyze the interrogation process in sexual abuse cases, and has resulted in a manuscript which is not yet published nor anywhere presented, so far as the court is aware.

The requirement for the presentation of such testimony to the jury would include first that the resulting opinion would be regarded as reliable in the scientific community, and that’s the first test that’s failed here. There is no indication whatsoever that the results of the doctor’s work have been accepted in the scientific community. The only indications are that he has been invited to present this paper and further that he has been invited to have input into his professional association’s promulgation of guidelines, which do not include specifics for interview techniques. There is also no indication for the court that the videotaped interviews are comparable in any way to the descriptions of the interviews which would be available to the doctor in this case. The doctor testified that most behavior, 95 percent is non-verbal. That’s the 95 percent of the behaviors in these interviews which would be unavailable to the doctor for review and analysis.

The doctor nevertheless indicated that his opinion would not be invalid because it was based on incomplete data. Again, there is no indication that that particular notion is accepted in the scientific community. The court is further concerned that the testimony goes directly to the credibility of the victim and an invasion of the province of the jury.

 And finally, I think that there is extraordinary prejudice resulting from this offer of testimony. The court would have to find, before permitting such testimony, that it goes to a subject that’s outside the common experience of a jury. Counsel indicated on Friday, if I understood correctly, that should the court disallow Dr. U.’s discussion, if you will, of these particular interviews, counsel wished to offer his testimony on those more general grounds. I am not quite sure what was intended there, but if I understood it correctly, it was as to subjects more generally accepted in the field of psychology, which might include the cognitive abilities of children of that age, the abilities of children at that age to remember and those may be proper subjects of opinion testimony, but it is not proper to place before a jury a dissection after the facts of the interviews which were conducted of these children and offer the jury the doctor’s opinion as to whether or not the outcome of those interviews was reliable.

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**THE COURT:** The difficulty the court has with those subjects is with respect to expectancy factor, majority factor, non-verbal behaviors; I think those are within the general common knowledge of the jury.

The doctor did not say, except as to one factor, as to whether or not children respond more suggestively than might other people to those same possible influences. I think he indicated that children are more likely than adults to agree with an interviewer, and that children under seven were most likely. I don’t know what that’s based on, the doctor didn’t offer that, that was the only indication that I recall from Friday that children respond differently from adults to those possible influencing factors.

At present the court has no offer of proof with respect to what would be the doctor’s testimony as to those issues. There is some indication in this offer of proof this morning that Dr. U. would respond to the child abuse syndrome testimony expected from Dr. J. There has been no ruling by the court as to whether Dr. J. will be permitted to testify as to child abuse syndrome, and the court is certainly not prepared to rule at this time whether a response to Dr. J. would be appropriate. I haven’t considered yet the question of Dr. J. Based on the offer of proof in the testimony, so far, the court is only prepared to rule that Dr. U. will not be permitted to dissect the interviews which occurred, testify as to their reliability.