

(Witness was sworn by Mr. Verzaal.)

2

3 Whereupon,

4

AMY MORTON,

5 having been called to the stand as a witness by and on behalf of  
6 the defendant, after having first been duly sworn on her oath,  
7 was examined and testified as follows:

8

DIRECT EXAMINATION

9 BY MR. VERZAAL:

10 Q Tell the judge your name.

11 A Amy Morton.

12 Q Ms. Morton, what do you do for a living?

13 A I'm a licensed marriage and family therapist in private  
14 practice in Macon.

15 Q What are your qualifications for that?

16 A I have a Bachelor's degree from Morrisville College in  
17 Morrisville, North Carolina. I have a Master's of Family Studies  
18 from Mercer University in Macon. I did the equivalent of 2,000  
19 hours of supervised experience post-graduate in order to qualify  
20 to sit for my state boards, and I additionally have done  
21 additional course work at Mercer to supervise the practice of  
22 psychotherapy for other people since I've graduated.

23 Q Who supervised the 2,000 hours?

24 A It was split between two people. One of those  
25 individuals was Allen Williams at Charter Hospital in Macon where

my practice was based. He's a clinical psychologist specializing  
2 in child adolescent work. And the other person who supervised me  
3 was Warren Jones who is an approved supervisor for AAMFT.

4 THE COURT: What is AAMFT?

5 THE WITNESS: The American Association of Marriage  
6 and Family Therapists. I'm a clinical member of that  
7 group.

8 Q And who has licensed you?

9 A The state of Georgia, license number 758.

10 Q What experience? That's your educational background.  
11 What experience have you had in this field?

12 A In the field of therapy or in the field of child abuse?

13 Q Child abuse.

14 A The first job I had when I moved to Georgia was as the\_  
15 coordinator with the Rainbow House in Houston County which is and  
16 was a function of the Houston County Child Sexual Abuse Council.  
17 The Rainbow House is where all investigative interviews with  
18 child abuse victims in Houston County occurred. When I was  
19 working there it was specifically designated for sexual abuse  
20 victims. I worked there for three *years* received additional  
21 extensive training in child abuse protocol, investigative  
22 techniques. We were functioning under the VOCA grant, Victims of  
23 Crime Act grant, and as a part of that grant I also did training  
24 for other counties in south Georgia for DFCS, law enforcement  
25 personnel, that sort of thing. I had four supervisors in Houston

County: Luke Myer who was an ADA then, but he's now a superior  
2 Ilcourtjudge, from the district attorney's office; the lieutenant  
3 llincharge of the juvenile division of the sheriff's department;  
4 litheprotective service supervisor at DFCS; and the supervisor for  
5 lithechild and adolescent mental health part of Peach Belt which  
6 Ilwasthe public mental health. It was my job to do a lot of  
7 ||things but to coordinate the case from report through  
8 llinvestigation through resolution in that system.

9 Q Were you involved in the establishment of protocol  
10 iiprocedures and training of personnel?

11 A Yes. Additionally, after I left the Rainbow House I  
12 worked at the Methodist Home for Children in Macon for five  
13 llyears. There I worked with children between the ages of 6 and 12  
14 primarily but designed a program that's still in place called the  
15 stars program which is, essentially, a residential treatment  
16 program for young offenders, young sexual offendersi and those  
17 were children who had both been victims of sexual offenses and  
18 ||had begun to act out themselves aggressively toward other  
19 children. That program was established under the children's  
20 trust fund grant and continues to operate. My understanding is  
21 they've just completed a longitudinal study and quite  
22 successfully in terms of recidivism for those children. And then  
23 in private practice I've continue to My private practice is, I  
24 would estimate, 60 percent child and adolescent, and in family  
25 practice certainly see children in that context who are victims

of abusei do a lot of court referred work in that judicial  
2 circuit in Macon in terms of custody cases and secondary opinions  
3 in terms of issues like this.

4 Q When you say you do court referral work, do you testify  
5 in court?

6 A I do. I do either when it's a case that specifically  
7 == a child that I'm seeing and it comes up in court and there's a  
8 need for my testimony. I have also testified as an expert in  
9 cases in both civil and criminal courts in Georgia.

10 Q What sides do you testify for in criminal cases?

11 A Most often when I've sat in this chair I have sat here  
12 to say that == to support an allegation of abuse. There have  
13 only been six times that I recall being called as a defense  
14 witness.

15 Q Would you tell the court what some of the issues are,  
16 not only that you addressed when you were setting up the program  
17 for the district attorney's office, DFCS, and the sheriff's  
18 office, but also in a more general sort of way in interviewing  
19 children who have allegedly been sexually molested?

20 A Yes. As do many other people who are my age in this  
21 field, I began my work in the middle of the 1980's when doing  
22 investigation of child sexual abuse in a coordinated manner was a  
23 relatively new thing. We, at that time, believed that a  
24 coordinated protocol was in order in terms == in order to prevent  
25 traumatization of the child by re-interviewing, et cetera. We

1 have since found that not only is a coordinated approach and  
2 specific interviewing styles important to prevent traumatizing a  
3 child, we've found that it's important in order to insure  
4 accuracy in the report that the child gives.

5 Q And when you say it's important, you're talking about  
6 to avoid repeated interviews?

7 A Well, there are a number of factors. Children,  
8 everyone, is vulnerable to suggestion. Memory is not a static  
9 item that you just sort of take a picture in your mind and it's  
10 always there. Memory is a process and because of that, recall is  
11 subject to suggestion and even adults are subject to suggestion,  
12 but particularly children are, and in order to avoid influencing  
13 the statements of the child it's very important to follow  
14 specific interview protocols and to avoid what I call some major  
15 pitfalls in investigative interviewing. I think that the first  
16 thing that's important is simply the attitude and perspective of  
17 the interviewer. It is just critically important that the person  
18 who is doing investigative interviews with the child, what I  
19 would call a forensic interview with the child, go into that  
20 interview with an unbiased attitude; that they go into the  
21 interview believing that they are just simply a neutral finder of  
22 fact. And even though when we approach these situations, all of  
23 us may have bias, we have to be aware of that bias and try our  
24 best to stay neutral in that setting. So one of the key things  
25 is that the interviewer be unbiased. Another thing that's very

important is the interviewer be well trained. What we have found  
2 is that you can't simply go by intuition as to what might be  
3 appropriate to do in a child abuse investigation. Sometimes  
4 intuition runs exactly counter to what needs to happen in order  
5 to have the best opportunity to get an accurate report from the  
6 child. When you're talking with a child, for example, and you  
7 feel that something bad has happened, there is a tendency to want  
8 to find out what's happened at any cost and quickly because if  
9 something bad has happened you want to find out so you can put a  
10 stop to it. I mean most of us who do this work would easily say  
11 we don't want anything bad to happen to children so that's the  
12 motivation. And you have to check that. That's an example of  
13 how intuition doesn't == is not accurate in terms of what the  
14 interviewer needs to be doing. Instead, what the interviewer  
15 needs to do is to go into the interview to find out two things:  
16 what is the child saying occurred and why is the child saying  
17 this occurred. And to do that they need to approach the  
18 interview with what I call a hypothesis testing approach which  
19 means that if the child is saying this happened, if the child is  
20 saying Johnny hit me, you know, for simplicity, then the  
21 interviewer needs to go to find out what the child is saying  
22 firsthand, not by secondhand report but firsthand, and then why  
23 might the child be saying this. Well, the child might be saying  
24 this because it happened. The child might be saying this because  
25 they are mad at Johnny and want to get Johnny in trouble. The

child might be saying this because they believe that Johnny hit  
2 them when really he just bumped into them and didn't intend to at  
3 all. That's what I mean by hypothesis testing. And when you are  
4 in the context of a sexual abuse interview, obviously the stakes  
5 are much higher and you want to make sure that you explore all of  
6 those interviews with the child. That's an example. There are  
7 other techniques that are important to avoid in questioning  
8 children. One of those is doing repeated interviews. Sometimes  
9 if an investigator doesn't think that they get enough information  
10 in one interview or that they don't get correct information,  
11 they'll just keep going back to the well over and over again.  
12 And in my opinion and in my experience that tends to contaminate  
13 the interview because it gives the message to the child that what  
14 they said the first time is not good enough so they are sort of  
15 going back to the well. Again, repetitive questions themselves  
16 in the context of the interview do the same thing. If you ask a  
17 child once a question, and the response is, I don't know, or the  
18 response is, no, and you don't like that response, and you just  
19 keep asking the question again until you get the response you  
20 want, that's another example. Another is obviously asking  
21 leading or suggestive questions. And with this I think it's  
22 important to point out that in my discipline a leading question  
23 might be different than what it is in your discipline. What I'm  
24 referring to as a leading question is any question that contains  
25 the answer or part of the answer that the person is looking for,

often any question that is not open-ended. Any investigative  
2 interview with the child, even a young child, should begin with  
3 open-ended questions giving the child the opportunity to tell  
4 their story without the interviewer interjecting anything.  
5 Leading and suggestive questions also occur in non-verbal manners  
6 which can also be referred to as positive reinforcement that's  
7 selective. In other words, if you ask a child a question, did  
8 such and such happen, and they say, no, and you say nothing but  
9 you frown, you know, that's negative reinforcement for that  
10 answer, and the message to the child is that that's the wrong  
11 answer; or they say, yes, and you go, ahh, and you smile, and  
12 that's positive reinforcement which you can get from body  
13 language. I've watched hundreds of interviews with children, and  
14 it's amazing what you can see in terms of the body language of  
15 the interviewers and the children in terms of how that reinforces  
16 a child's statements. Other things like using anatomically  
17 correct dolls or drawings can be suggestive: the use of  
18 stereotype induction, talking about the offender or the alleged  
19 offender as if he or she is a bad person. The child doesn't want  
20 to be affiliated with a bad person. Co-opting, having the child  
21 sort of become part of the prosecutorial team, come help us with  
22 this investigation, tends to contaminate the outcome. Peer  
23 pressure saying to the child, well, you know, your sister said  
24 this happened, you know, what's with you. That sort of peer  
25 pressure also tends to cause problems. One of the things that

we've found is you take those six or seven different key things,  
2 every interviewer makes mistakes, but when an interviewer goes  
3 into questioning a child those mistakes tend to cause greater  
4 problems when the interviewer themselves has a strong  
5 confirmatory bias, when they are only looking for the answer  
6 that, yes, this happened, and they use these leading techniques.  
7 That's the most lethal combination in terms of affecting the  
8 outcome of the child's statements. What we have found is that  
9 when these combinations of events exist not only can they lead to  
10 false reports of abuse, but they can also lead to a situation  
11 where children can actually believe that what they are telling  
12 you is the truth. That's how strong these techniques can be.  
13 And I think it's important to say that the investigator does not  
14 have to intend to do anything. It is not a situation where an  
15 investigator has to go into an interview and say, you know, I'm  
16 going to do whatever I have to do to get my answer here. They  
17 may be totally unaware of their bias. They may be totally  
18 unaware of the proper procedure, but the effect is still the  
19 same. They don't have to mean to do this.

20 Q Is there a cure for that?

21 A No. Especially with young children. Once the sugar is  
22 in the tea it's hard to get it out. The other thing an  
23 interviewer has to do, especially with older children, is with an  
24 older child you have an interesting dynamic because not only do  
25 you have the issue that, yes, these older children can also be

suggestible ==

2 Q What age group are you talking about when you are  
3 talking about an older child?

4 A I'm talking about children ages 8 through adult. Like  
5 I said, not only do you have the issue that these children can be  
6 subject to suggestion, but this is the age group where children  
7 most often outright lie about sexual abuse and sexual  
8 experiences.

9 Q What is that based on? What is that statement based on  
10 when you say that this is the age group that most likely lies?

11 A Well, there are two things. One is that young children  
12 often don't have enough explicit sexual information to make up a  
13 believable lie about sexual abuse, but adolescents often do,  
14 especially when they are sexually active. Second is that there  
15 have been actual studies that have been done on cases reported to  
16 DFCS looking at the cases that were ruled out and looking at the  
17 cases where it was determined the child was actually not telling  
18 the truth, and most often in cases where the child initiated a  
19 disclosure that was not true the child was an adolescent, and the  
20 motive was most commonly retaliation.

21 Q Go ahead.

22 A The other thing that I think is important to note == I  
23 think I mentioned that an investigator needs to be thoroughly  
24 trained. I need to say that that doesn't mean a workshop every  
25 other weekend even. I mean that would be great if they did that

1 much, but it means having background in child development, some  
2 understanding of linguistics and memory and recall. It means  
3 making== Well, actually, in terms of parameters for who should  
4 do investigations and who should do interviews, the accepted  
standards nationally == and there are two or three sets of  
6 standards == all prefer that that person be someone who holds a  
7 degree in a related field to mental health or even forensic  
8 evaluation. But in the absence of that ==

9 MS. FOX: Your Honor, I'm trying to be understanding  
10 and let Mr. Verzaal put up some evidence, but Barlow  
11 specifically is directed to interview techniques. She has  
12 talked a lot about generalities and things that apply in  
13 some cases, but I would ask that Mr. Verzaal start going to  
14 what Barlow specifically addresses which is interview  
15 techniques instead of a litany of all of these different  
16 things that ==

17 THE COURT: Well, you've asked the question and gotten  
18 a really long answer. So can you ask ==

19 MR. VERZAAL: She is going to address some questions  
20 and get a direct response.

21 THE WITNESS: Sorry.

22 Q Well, let me ask you this. Have you had an opportunity  
23 to interview [CHILD]?

24 A No.

25 Q Did you have an opportunity to review the transcript of

her interview?

2 A Yes.

3 Q Let me ask you a couple of questions about the  
4 interview techniques, proper and otherwise, that you've been  
5 talking about. You indicated that in general repetitive  
6 interviews are dangerous. Is there an exception to that? Would  
7 you ever interview a child at a subsequent time?

8 A It's not that you should never interview a child at a  
9 subsequent time. Repetitive interviews that are essentially  
10 designed to == you don't like the answer you've gotten and so you  
11 keep going back to the well. One of the issues that I think  
12 would make a second interview an important thing to do would be  
13 the child recanting, especially an adolescent.

14 Q You indicated that questions should generally be open-  
15 ended. Would you say that that's the case even when the  
16 interviewer has been given a background, a paradigm, a list of  
17 facts, a story?

18 A It's even more important. Even if the interviewer has  
19 been given a list of facts, a paradigm or a story, the  
20 interviewer needs to try to wipe that slate as clean as they can  
21 and go into that interview open minded, not looking to support  
22 that paradigm.

23 Q In the course of your reviewing the transcript of  
24 [CHILD] with Ms. McElrath, did you determine any inappropriate  
25 interview techniques?

A Yes.

2 Q Would you tell the judge what those are.

3 A First of all, I thought that interviewer bias, which is  
4 Iakey factor in inappropriate interview techniques, was  
definitely present in this case. I think that the fact, based on  
6 Iimyreview of the record, that the detective basically went into  
7 litheinterview and was reviewing, I assume, a written statement  
8 Iithatthe child had made and basically asked the child leading  
9 llquestions in the presence of the person that she had completed  
10 the statement for. Based on my review of the interview, she did  
11 not conduct an independent investigation at all. She simply went  
12 through the story that had already been told and confirmed it, in  
13 many cases giving the child the information and soliciting simply  
14 yes or no responses.

15 Q Were there any other interview techniques that you  
16 felt, in your professional opinion, were inappropriate?

17 A Well, as she questioned the child she offered a great  
18 deal of information. Her questions were leading, and I don't  
19 mean in a subtle sense leading. I can go to the transcript and  
20 give examples if you

21 Q That would be good.

22 A When I looked at the transcript I'm == I'm looking at  
23 the transcript of the interview which, in the trial, was  
24 Iiprosecution exhibit 4. And I will just kind of pullout a couple  
25 IIOfkey examples.

Q Would you mention a page number as you are mentioning

2 **these examples.**

A sure. well, this is ~~ I'll just start on the very  
3 first page which on my copy is page 7 even in the introduction  
4 down toward the bottom of the page. Question, Okay, [CHILD].  
5 You know why we are here. You had a talk with Ms. Burke about an  
6 incident that happened from what you can remember. You remember  
7 it was the summer before you went to the 8th grade and during  
8 your 8th grade year, is that correct? That's an extremely  
9 leading question that was unnecessary. It would have been much  
10 better for her to have, one, interviewed the child outside the  
11 presence of the counselor, because if this was the story she had  
12 already told the counselor, if it were not accurate she would be  
13 more likely to stick with her original story in the presence of  
14 the person she told it to. Here she gives numerous facts, and  
15 that's a minor example. I want to go to page ~~ This is on page  
16 10, another example of a leading question and a repetitive  
17 question. It's in the middle of the page and she says to  
18 [CHILD], Okay. And this is the first time that it ever happe  
19 was in the trailer. And in my reading of this, that was  
20 information that she, the interviewer, was saying at that point  
21 We go to the section where she is talking with her about "" It"  
22 on page 13. She's talking to her about private parts and what,  
23 she calls them. Actually, this begins on page 12 at the bottO  
24 and she's telling her "" The question is, our private parts o  
25

our body, the part that we put a bra on, right, and what do you  
2 I call that? You want me to tell you what I call it? And  
3 Heather's response is: Mrrnmn. And then the investigator's  
4 question is: Boobs. Okay. I didn't mean to embarrass. That  
5 I didn't embarrass Robert. It didn't embarrass Ms. Burke. It  
6 I doesn't embarrass me. Oh, we know. I've heard every == and I  
7 I have one. A little girl in here one day told me she called them  
8 "balloons. (sic) And she goes on. And then on the next page at  
9 the top in that section she labels the butt, and all through this  
10 [CHILD] is giving very limited responses or just reflecting to  
11 her what she is saying. Again, it's just extremely leading.

12 Q Do you have other examples of this leading phenomenon?

13 A Well, I could go through the whole transcript, but  
14 there are multiple examples. I'm just pulling them out because  
I've labelled them in here. On page 27 the question is: Okay.  
16 And you don't know what made him stop. [CHILD] says: I don't  
17 remember that. Question: You don't remember. You guys put your  
18 clothes back on. [CHILD] says: Mnmun. I mean, again, that  
19 contains information that the child didn't provide. On page 28  
20 the question is: Okay. What did he do when he laid down on top  
21 of you and what part of his body touched your part. She said --  
22 And [CHILD] responds: Private part. Which earlier in this  
23 transcript was a term that the investigator had provided. Down  
24 If further on that same page: Okay. And what happened when he put  
25 his private part inside your private part. And she says: |

1 don't know. Question: What did he do when == Did he say  
2 anything to you? Suggesting that he might have. I mean, again,  
3 as I go through this, my concern is that this is a child  
4 particularly who was old enough to have given a narrative account  
5 of what occurred.

6 Q All right.

7 A And rather than being allowed to do that she almost  
8 question by question, in my opinion, was coached through this  
9 interview to restate an account that she had apparently given to  
10 someone else. I see this interview as in no way being  
11 independent of what the child had already told to Ms. Burke, and  
12 that's not proper.

13 Q All right. Besides the issue of these leading  
14 questions with the interviewer providing the information, are  
15 there other examples of improper interviewing techniques?

16 A In the trial transcript on page 205 it addresses the  
17 issue of [CHILD] recanting what she had said previously. And on  
18 page 205 the detective is asked if she re-interviewed her at that  
19 point. Her response was == Shall I read it directly or ==

20 Q Yes, please.

21 A Okay. This is line 10 on page 205: You've known for  
22 some time either by instruction from the district attorney's  
23 office or DFCS or some custodian that [CHILD] has recanted her  
24 testimony, haven't you? The answer: I have not been officially  
25 told that. I've been told by somebody that had heard it but not

1 directly from her. I can't go interview a child twice. And my  
2 question is, in an instance like that, why not. What would be  
3 the problem with simply going to listen to what the child has to  
4 tell you. It would not even be necessary to ask them any  
5 questions, you know, to simply approach it and listen to what the  
6 child has to say. I think it was improper for her not to pursue  
7 that.

8 Q You have trained people on behalf of the district  
9 attorney, the sheriff, and DFCS down in Houston County?

10 A Yes, I've trained people in counties in south Georgia.

11 Q What would your training be to them regarding the issue  
12 of handling a recantation or a rumor of a recantation?

13 A What would my training be to them now?

14 Q Yes.

15 A My training would be that this is something that you  
16 need to take note of. A recantation may not necessarily mean  
17 that the events did not occur, but it is a factor that you take  
18 into account in the investigation. Especially with a child this  
19 age it is an important factor to take into account when you're  
20 trying to do the hypothesis testing that we talked about in terms  
21 of looking at why the child made the statements that she made.

22 Q Did you see any examples of interviewer bias?

23 A Yes. The most glaring example that I saw was when  
24 Detective McElrath was describing at trial her interview of Amy  
25 Abernathy, a sister, or I assume a sister of the alleged victim

in this case. In that ==

2 MS. FOX: Your Honor, I'm going to object to anything  
3 that Detective McElrath stated at trial because the purpose  
4 of this testimony is supposed to be interview techniques,  
5 not something that was said later at trial. That wouldn't  
6 have been available.

7 MR. VERZAAL: Judge, I think this is pertinent because  
8 a properly trained interviewer is trained == Everyone has  
9 biases, and they must be trained to be aware of their biases  
10 and take appropriate precautions, and this is an example of  
11 where this was a biased interviewer who did not take proper  
12 precautions.

13 THE COURT: Well, I'll let her testify about  
14 interviewer bias exhibited at the interview.

15 MR. VERZAAL: All right.

16 Q Besides the interview situation with a person other  
17 than [CHILD], are you aware of any indications of interviewer  
18 bias indicated in the interview with [CHILD]?

19 A With [CHILD], yes. Again, I think this is restating  
20 what I've already said, though, that her failure to conduct what  
21 I would consider to be an independent investigation is, in my  
22 opinion, an example of interviewer bias, because I don't see any  
23 evidence in the transcript that she went into this interview to  
24 look at what happened in this case; rather to confirm what she  
25 already thought happened, and that is the definition of

interviewer bias. I also think that it's important to note that  
2 in the context of the interview [CHILD] was with some adults of  
3 fairly high status who do have significant influence on children:  
4 school personnel and law enforcement personnel. I don't know,  
5 but it should have been asked, for example, whether Detective  
6 McElrath went into this interview in her uniform or in plain  
7 clothes because, again, that's an intimidation factor. It's also  
8 an identification factor in terms of interviewer bias. If  
9 someone works for law enforcement it's their job to investigate  
10 these cases, but it also goes to bias because part of their  
11 function is to basically get the goods on the defendant. So that  
12 doesn't mean that they cannot conduct an appropriate  
13 investigation. They can, but they have to be aware of their  
14 biases as they move forward. I don't ==

15 THE COURT: Was there any report here made known of  
16 what the child told the counselor? Apparently, that was a  
17 Ms. Burke. What did she tell Ms. Burke from the get-go?  
18 I'm sorry. I mean from when she first made a revelatory  
19 statement without == In other words, she went to the  
20 counselor and said, Ms. Burke, I want to tell you something.  
21 Ta-da. What did she tell Ms. Burke?

22 THE WITNESS: Are you asking me?

23 THE COURT: Yes, to you. In other words ==

24 THE WITNESS: Based on my review of the transcript and  
25 this interview it's my impression that there was more than

one conversation between this child and this counselor and  
2 that at one point she provided a written statement to the  
3 counselor. And the interview with Detective McElrath that I  
4 || have the transcript of, it's my impression, basically  
5 || follows the script of that written statement because the  
6 || detective refers to it repeatedly in her interview.

7 THE COURT: Okay. Is there some variation between what  
8 the child says and what she wrote out in hand to the school  
9 counselor than what came out in the interview with McElrath?

10 THE WITNESS: I don't think so but I'm not sure about  
11 that. But as I read this, I don't see that Detective  
12 McElrath gave her much room to differ. If she asked a  
13 question and the child hesitated, she would say, well, here  
14 it says, da-da-da-da-da. This is right, correct? And then  
the child would move on. When I look in an interview like  
16 this, I try to look at it in terms of if I was just looking  
17 at this from the information the child provided and did not  
18 consider the information that the interviewer provided, what  
19 has the child told me.

20 THE COURT: Okay. I guess what I'm trying to ascertain  
21 is whether -there was any difference between what Ms.  
22 McElrath gleaned from the child and what had been made known  
23 to the counselor originally, because my thinking is that  
24 what was made known to the counselor originally would be  
25 something a person not in a uniform, you know, not a badge,

not a gun, and who didn't have any inkling of what was  
2 fixing to come out of the child's mouth so that if what she  
3 said in the interview with the officer was not much  
4 different from what she told the person from the beginning,  
5 that to me would lend some weighti even though she may not  
6 have used a very good technique that the substance of what  
7 was said would have carried some weight.

8 THE WITNESS: I agree with you in part. I agree with  
9 you with the part that the school counselor would have been  
10 less biased in terms of a professional affiliation; but if  
11 we look at that issue, then we also have to take the issues  
12 of training and documentation and apply those to the school  
13 counselor because she, in effect, was the first person who  
14 interviewed this child, and we would need == and it would  
15 have needed to have been explored. In other words, I would  
16 have wanted to know what was this counselor's background and  
17 training; what does she know about interviewing children;  
18 what kinds of questions did she ask this childi were they  
19 appropriate; were they leading; how did she conduct herself.  
20 I don't know the answer to those questions.

21 THE COURT: All right. Go ahead, Mr. Verzaal.

22 Q You've raised the question just now about documentation  
23 of the interview, and I don't think you've had an opportunity ==  
24 I didn't ask you specifically initially what's the standard on  
25 preservation of the interview.

1           A       The interview should be preserved at the highest level  
2   Ipossible. In other words, if there is videotape equipment  
3   Iavailable, that should be usedi if there is nothing but audiotape  
4   Iequipment, that should be used, for two reasonsi one, to preserve  
5   Ithe evidence for trial and the other to have given the  
6   Iinterviewer an opportunity, since they are unbiased ideally, to  
7   IIgOback and look at the interview and evaluate their interaction  
8   Iwiththe child. That would apply to the school counselor, too.

9           Q       Revealing here

10           THE COURT: To tell you the truth, I don't mean to want  
11   to interrupt this or anything, but I think I've been sitting  
12   here since 1:15. I think I'm going to take myself a break.

13                   (Brief recess)

14           THE COURT: Thanks. To preserve the interview. Have  
15   you gotten beyond that? It ought to be with the highest ==

16           MR. VERZAAL: Preserved in the highest class possible,  
17   preferably video; if not, then audio.

18           Q       Ms. Morton, the judge was inquiring about whether or  
19   not there was an indication in the record about ==

20           THE COURT: What level of preservation would you class  
21   a handwritten statement by the complainant?

22           THE WITNESS: I think that would be very important  
23   information to preserve, but it's not enough to document  
24   what happened in the interview, because it does not document  
25   the questions that the interviewer asked.

1 Q The judge was inquiring about the records indication,  
2 the trial transcript indication of whether or not Heather's  
3 statements to Ms. Burke, the statement she made in writing, and  
4 her statements with Ms. McElrath were consistent or inconsistent.  
5 Do you have an opinion as to the importance of consistency from  
6 one interview to another?

7 A It would == In this instance I think it cuts two ways.  
8 Just because it's consistent you cannot assume that it's accurate  
9 because of the way the second interview was conducted, because it  
10 was basically, in my opinion, just a leading through what had  
11 already been said. Had the second interview occurred in a  
12 different manner, had it been outside the presence of this  
13 person, had it been more open-ended and the statement had  
14 remained the same, then that to me would be important in terms of  
15 looking at the issue of reliability.

16 Q In this particular case we are dealing with the issue  
17 of recantation and admitted lying by the alleged victim. Is  
18 there any standards or professional standards in regard to  
19 that ==

20 MS. FOX: Your Honor, I'm going to object to any of  
21 these other questions. I've really tried to be very  
22 gracious and let him make his case, but the issue here is  
23 the interview, the questions used in th~ interview. All  
24 this extra stuff that he's trying to bring up and talk about  
25 are not really admissible. Barlow specifically goes to

interview techniques.

2 MR. VERZAAL: Judge, I think that professionals are  
3 trained to deal with the issue of a possibly lying person,  
4 and I think this person, this expert that we have here,  
5 should be allowed to tell the court how they deal with the  
6 possibility of a lying person.

7 MS. FOX: Your Honor, his motion for new trial stated  
8 he was relying on Barlow; that Randy Bates was ineffective  
9 because he didn't use an expert because of Barlow. Barlow  
10 goes to interview techniques in that the interviewer is so  
11 poor that she suggests the answers to the child and because  
12 of that the defendant is going to be convicted.

13 THE COURT: I'll sustain your objection.

14 MR. VERZAAL: I understand, Your Honor. Judge, I don't  
15 mean to argue with the court, but I think that the issue in  
16 that the way professionals are trained to interview children  
17 of this type in this kind of situation is considered by  
18 professionals and they have a particular way of handling the  
19 possibility of lying, and that a competent expert  
20 interviewer would have handled or addressed and been  
21 prepared for, and there's no indication. I would expect  
22 I would proffer that the testimony would be along those  
23 lines.

24 THE COURT: Well, you can present the expert testimony  
25 of this witness on how an interview should be conducted.

1 Q Is there any particular training that competent  
2 interviewers use in regard to handling the issue of a possibly  
3 lying victim?

4 THE COURT: Well, I'm not here interested in the  
5 training of but in how the information should have been  
6 obtained from the witness.

7 Q What would be a proper interview technique?

8 THE COURT: Because you could have an untrained person  
9 who would have done it properly.

10 MR. VERZAAL: Correct.

11 Q What is the proper way that the issue of lying should  
12 be handled involving a person of Heather's age?

13 A The technique is called falsification, and especially  
14 with a person of Heather's age what that technique means is that\_  
15 you inquire in the context of the interview whether or not the  
16 person is telling the truth. It sounds very simple. It is.

17 MS. FOX: Your Honor, I'm going to object as to  
18 anything about whether or not a person is telling the truth,  
19 because that really would have been to the province of the  
20 jury, and the Barlow case specifically goes to the interview  
21 technique of the interviewer and that person. It doesn't go  
22 to all these other issues that he is now trying to catapult  
23 into now that he's gone through his litany of questions with  
24 his expert.

25 MR. VERZAAL: Judge, I'm going to the issue --

2 THE COURT: Well, it says here an expert witness for  
3 the defense cannot give an opinion that the victim made  
4 false allegations of molestation.

5 MR. VERZAAL: But an interviewer, a properly trained  
6 interviewer, an effective interviewer, would be aware of and  
7 they have techniques for being aware at the time of the  
8 interview to consider that issue of whether there are  
9 landmarks, hallmarks, red flags, and a proper interview  
10 would include those.

11 THE COURT: Well, with regard to this interview in this  
12 case which is relevant to this case, I'm letting this  
13 witness state her opinion about the interview techniques in  
14 this case.

15 Q Do you have an opinion about the interviewer's  
16 techniques in this case?

17 A Just stop me if I'm going the wrong way here. Okay?  
18 But as in specific interview technique, the interviewer's job is  
19 to be a finder of fact, and to be a finder of fact they have to  
20 take steps to not just solicit a statement from the child but  
21 also to determine in their mind what the possible reasons for the  
22 child's statements could be. And one of those possible reasons  
23 in that hypothetical framework is that the child is not telling  
24 the truth. And so it is important for the interviewer to  
25 investigate that themselves and come to a determination  
26 themselves about what they think.

1 Q Did you see any such technique used in this interview?

2 A No.

3 MR. VERZAAL: One moment, please.

4 Q Having reviewed the interview in its totality, do you  
5 have an opinion as to the overall effectiveness of the  
6 interviewer?

7 A I think it was very poorly done. I have reviewed many,  
8 many interviews, both firsthand and vicariously in this way. It,  
9 in my opinion, falls so far outside the boundaries of what would  
10 be appropriate that not just considering the new information that  
11 we've had in the last couple of years about what's appropriate  
12 but even standards that were in place back in the mid '80s, this  
13 interview fails to meet those standards.

14 MR. VERZAAL: Thank you. I have no further questions ..

15 You may ask.

16  
17 CROSS-EXAMINATION

18 BY MS. FOX:

19 Q When you were reviewing the transcript, did you also  
20 take the time to listen to the tape so that you could hear the  
21 tone in which the child answered the questions and the tone in  
22 which the investigator afforded the questions?

23 A I did not have access to the tapes.

24 Q Were you aware of how many people the child talked to  
25 before she gave this particular interview?

1 A I think that would be an important question based on my  
2 review. I would assume that it was three to four people.

3 Q Would it surprise you if she had not given any  
4 different information to the investigator that she did all the  
5 other people that she had spoken to?

6 A No, that would not surprise me at all.

7 Q So you would agree that even though you thought the  
8 questions were poor, you are not surprised by the fact that the  
9 child was consistent in her testimony to the investigator as she  
10 was to other persons. That would not surprise you.

11 A It did not surprise me that she was consistent because  
12 the investigator, in my opinion, didn't ask her any open-ended  
13 questions or very few.

14 Q You demonstrated and read some questions that you  
15 thought were leading that gave positive responses. There were  
16 many questions that, under your definition of leading, that had  
17 negative responses, correct?

18 A That's correct. And

19 Q And some examples would be on page 15. I'll direct  
20 your attention to the bottom part of that page. Did he ever  
21 touch any of your other private parts? Answer: Nay. Did he  
22 have you touch any of his private parts? Answer: Nay. Okay.  
23 Did he ever have you touch his private part, his front private  
24 part, with any part of your body besides your private part?

25 Answer: No. Question: Maybe your hands, your mouth or any

1 other part of your body? Answer: Nay. This child demonstrated  
2 Iithatshe was capable of hearing a question that would be leading  
3 lIandstill give her own independent answer, didn't she?

4 A Actually, at another place in this interview that she  
5 Iibringsthis up again --

6 THE COURT: Well, you need to answer the question she's  
7 asked you and then you can explain your answer.

8 Q The child demonstrated that she could be given a  
9 leading question that suggested an answer and still give her own  
10 independent information, didn't she?

11 A In that context, yes, however as this interview  
12 progressed the interviewer revisited those questions.

13 Q She still didn't get different responses, though, did  
14 she?

15 A I believe she did. I'm looking at page 28. She was  
16 going through the questions: What was he laying on? Me. Okay.  
17 Was his back touching your front or was his front touching your  
18 front? His front. Okay. What did he do when he laid down on  
19 top of you and what parts of your body did his body touch? What  
20 part of his body touched your part, private part? She goes on.  
21 His private part touched what? Mine. Okay. And did it just  
22 touch you outside or did he put it inside you? Inside. I see  
23 that as running counter to the statements on 15.

24 A That's the exact same thing. Did he ever touch any of  
25 your other private parts? Nay. She's only talking about her

vagina area and that's the same thing that you just read.

2           THE COURT:   Is that a question or are you arguing with  
3           the witness?

4           Q     Do you agree that you've just stated that she's only  
5           ever alleged that he put his private to her private?

6           A     When I was reviewing that, what I was looking at was  
7           her statements about him laying on top of her.  It would seem to  
8           me that if he was laying on top of her there would be other body  
9           parts touching.

10          Q     But she did demonstrate that she was not capable of  
11          being led.  She gave independent answers even though the  
12          questions suggested a response.

13          A     I don't think so over all this interview that she  
14          demonstrated that she was not capable of being led.  I think in  
15          that instance she was able to give independent answer.  Whether  
16          she did that through the course of the interview, I don't think  
17          so.

18          Q     What did you do to determine the educational level of  
19          the particular child that was interviewed?

20          A     What did I do to determine the educational level of the  
21          child who was interviewed?  I can't recall whether I had access  
22          to her school records.  At this moment I can't recall whether I  
23          did.  I had questions about her intellectual ability as I  
24          reviewed this.

25          Q     Because that would be an important factor.

A Yes.

2 Q Were you aware that she was 16 years old?

3 A Yes.

4 Q Would you say that it was less likely that someone as  
5 old as 16 who is in the ninth grade would be led as someone who  
6 is 4, 5, 6 years old?

7 A It is less likely that they would be subject to  
8 suggestion; more likely that they would fabricate a story. Less  
9 likely that they would be led, but more likely that they would  
10 intentionally fabricate.

11 Q There is not just one method of questioning children  
12 that's purported by all the different experts. Would you say  
13 that's a fair statement?

14 A There's not just one method, but there are common  
15 denominators among the several accepted methods, and the absence  
16 of those factors that I've talked about are those common  
17 denominators.

18 Q Did you ever take the time to read the statement she  
19 originally wrote the counselor?

20 A It's attached to the trial transcript, I believe, and I  
21 did read it.

22 Q And what exhibit number did you read that you thought  
23 was the statement that she had read?

24 A You're going to have to give me a second. It's been ==  
25 I haven't looked at that in several == If you'll direct me to the

exhibit I'll give you an honest answer about whether that's what  
2 I thought.

3 Q I would like to know what you thought was her  
4 handwritten statement.

5 A You'll have to give me a second to locate it. It's not  
6 attached to the transcript that I have in this.

7 Q So you didn't have access to it, then, did you?

8 A I'm not sure, because there is a possibility that when  
9 this got put together this morning that it and/or other material  
10 was left out.

11 Q Possibly you haven't read the statement she hand wrote.

12 A It's possible, but I believe I did.

13 Q Did you ever read the handwritten letter that she  
14 initially wrote her boyfriend that started this entire case  
15 alleging that her father had molested her?

16 A I'm not sure.

17 Q Did you ever read any transcripts or information from  
18 Mr. Burke (sic), the first adult who interviewed her about the  
19 incidents that occurred?

20 A Mr. Burke?

21 Q I'm sorry. Mr. Hall, the principal, the first adult  
22 that interviewed her.

23 A No. I don't have any information from that interview.

24 Q Did you ever read the transcript of Ms. Burke's  
25 testimony of how she interviewed her?

1 A I reviewed a substantial portion of the transcript of  
2 the trial, and it's my understanding that I had primarily the  
3 information related to Heather's testimony and to the detective's  
4 testimony; so I don't think so.

5 Q So the answer would be no.

6 A I don't think that I had that complete information.

7 Q How much time did you spend reviewing the information  
8 that you were provided?

9 A Several hours.

10 Q And from what you're saying you didn't have all the  
11 facts and things in front of you that you would really need to  
12 consider whether or not the interview techniques this interviewer  
13 used made this child say something different than she already had  
14 told those other people.

15 A That's not true.

16 Q What ==

17 A I had ample. All that I needed to have to look at what  
18 this interviewer did, in my opinion, was the transcript of her  
19 interview with the child.

20 Q And are you saying that you have information that would  
21 show this interviewer made this child say something different  
22 than she had already told other people?

23 A As far as == I don't have that information. As far as  
24 I'm concerned, in terms of looking at how this interview was  
25 done, that information professionally would be irrelevant,

because this interviewer should have been doing an independent  
2 IIjoband not simply building on what other people have done.

3 Q Would it surprise you if our local organization, the  
4 IIDA'soffice, sheriff's office, and DFCS, prohibit a second  
interview based on bad experiences in the past because we do not  
6 IIwantchildren traumatized by repeated interviews and, therefore,  
7 Ilweve instructed people not to re-interview children?

8 A I think that that is a common policy, but I don't  
9 IInecessarily think it's a well-founded one.

10 Q How much were you paid for your time for reviewing all  
11 lithedocuments you've mentioned?

12 A I reviewed all the documents and prepared a written  
13 summary of my findings and was paid \$650.

14 Q How much are you being paid for your time here today?

15 A I haven't been paid anything as yet.

16 Q How much are you --

17 A And I would charge \$100 an hour, but just so you know  
18 it's my policy to not come to participate in these proceedings  
19 Iuntila retainer has been paid. I came to participate in this  
20 proceeding today without that having been done, because I believe  
21 the techniques used in this case were so egregious.

22 Q Okay. And have you ever testified for Mr. Verzaal in  
23 lithepast?

24 A One time.

25 MS. FOX: No further questions, Your Honor.