

IN THE COURT OF COMMON PLEAS
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

- - -

COMMONWEALTH OF PENNSYLVANIA:

vs.

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NO. 3932-16

WILLIAM H. COSBY, JR.

- - -

TESTIMONY OF BARBARA ZIV, M.D.

- - -

Courtroom A
Tuesday, April 10, 2018
Commencing at 10:37 a.m.

- - -

Virginia M. Womelsdorf, RPR
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

- - -

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

AND A JURY

- - -

COUNSEL APPEARED AS FOLLOWS:

KEVIN R. STEELE, ESQUIRE
District Attorney
M. STEWART RYAN, ESQUIRE
KRISTEN GIBBONS-FEDEN, ESQUIRE
Assistant District Attorneys
for the Commonwealth

LANE L. VINES, ESQUIRE
THOMAS A. MESEREAU, JR., ESQUIRE
KATHLEEN BLISS, ESQUIRE
JASON HICKS, ESQUIRE
BECKY S. JAMES, ESQUIRE
RACHAEL ROBINSON, ESQUIRE
JAYA GUPTA, ESQUIRE
for the Defendant

- - -

ALSO PRESENT:

JONATHAN PERRONE,
Computer Operations Supervisor
Montgomery County District Attorney's
Office

- - -

I N D E X

COMMONWEALTH'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
BARBARA ZIV, M.D.	4	36	81	124	132

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E X H I B I T S

COMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-1	Cirriculum Vitae - Barbara Ziv, M.D.	8	9
C-2	Sexual Abuse Current Literature and Perspectives	38	

- - -

DEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-1	Sky News article "Judge declares a mistrial in Bill Cosby sex assault case"	103	

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(The following proceedings were commenced with the Court, the jury, Mr. Steele, Mr. Ryan, Ms. Gibbons-Feden, Mr. Vines, Mr. Mesereau, Ms. Bliss, Ms. James, Mr. Hicks, Ms. Robinson, Ms. Gupta, and the defendant being present:)

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BARBARA ELLEN ZIV, M.D., having been duly sworn, was examined and testified as follows:

MS. FEDEN: May I, Your Honor?

THE COURT: Yes.

EXAMINATION ON VOIR DIRE

BY MS. FEDEN:

Q Dr. Ziv, good morning.

A Good morning.

Q Can you tell the jury where you work?

A I am a forensic psychiatrist. I graduated from medical school, Northwestern University Medical School, in 1987. I did a psychiatry residency at New York Hospital, Cornell University, which I finished in 1992.

Since then I've had a variety of jobs in patient psychiatric care. Currently I have a number of positions. I'm on the Medical-Legal Advisory Board for

1 the Prevention of Child Abuse. I'm on the Pennsylvania
2 Sex Offender Assessment Board which I've been appointed
3 to by every governor of the State of Pennsylvania since
4 2000.
5

6 I also teach. I'm on faculty at Temple
7 University Medical School and am responsible for
8 teaching forensic psychiatry to the psychiatry
9 residents there. I am also medical director at Aetna.
10 And I have a private practice.

11 Q And Dr. Ziv, can you just tell the jury what
12 forensic psychiatry is and what that field involves?

13 A Forensic psychiatry involves any matter that comes
14 to a courtroom, civil matters and criminal matters. It
15 differs from clinical psychiatry in that when you're a
16 clinic psychiatrist, your job is to advocate for the
17 patient, for the person who comes into your office.

18 So if somebody comes into your office
19 and says my husband's a cheating, dirty scoundrel, it's
20 not my job as a clinical psychiatrist to get data to
21 confirm her perception that her husband is a dirty,
22 cheating scoundrel. As a forensic psychiatrist, my job
23 is to advocate for the truth.

24 So I have somebody who comes into -- I
25 am usually presented with a case. In criminal cases,

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2 it can be a question about whether somebody had a
3 mental illness that caused them to commit a crime. It
4 can be do they have the capacity to stand trial. It
5 can be do -- are there mitigating circumstances that
6 would allow for a different consideration of the
7 sentence. So those are the kinds of things that I
8 often address in criminal trials.

9 I also, as a member of the Pennsylvania
10 Sexual Offender Assessment Board, I've evaluated over a
11 thousand convicted sex offenders, and my job is to make
12 an assessment about whether their behavior is
13 consistent with the statutory criteria for designation
14 as a sexually violent predator. So I'm also, in
15 criminal settings, involved in offering opinions about
16 whether they meet criteria for somebody who's a
17 sexually violent predator.

18 In civil cases, I'm often asked to
19 address an individual who is involved in a sexual
20 assault or a car accident or a malpractice case. And
21 under those conditions, I am asked to evaluate the
22 individual. So I look at what was their functioning
23 before, what was their functioning after, is there a
24 difference.

25 If there is no difference, then, you

1
2 know, I can say whatever happened did not cause a
3 change in that person. If there is a difference, I
4 have to look at that event and say is it likely to have
5 contributed to that.

6 Also, as a forensic psychiatrist, I am
7 asked to, as I am in this case, offer opinions about
8 what the literature says, about what the field says,
9 about patterns of behavior of individuals who are
10 involved in sex crimes. Sometimes in other situations
11 as well.

12 But I am -- you know, I've testified in
13 190 trials throughout the country, and my job is really
14 to educate people about psychiatric conditions, about
15 patterns of behaviors of sex offenders, of victims of
16 sexual abuse.

17 Q And, Doctor, do you have an office?

18 A I do.

19 Q And where is that office located?

20 A It is located about 15, 20 minutes away. It's in
21 Flourtown. It's in Montgomery County on Bethlehem
22 Pike.

23 Q And you mentioned that you're prepared to educate
24 the jury on victim responses and behavior. Did you
25 provide me with your curriculum vitae prior to today?

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A I did.

(Cirriculum Vitae - Barbara Ziv, M.D.
marked Commonwealth's Exhibit C-1 for
identification.)

MS. FEDEN: Your Honor, at this time I'd
like to mark C-1 for identification purposes. If the
record could reflect, I'm handing counsel a copy which
has already been provided.

Your Honor, may I approach Dr. Ziv?

THE COURT: Yes.

BY MS. FEDEN:

Q Dr. Ziv, I'm approaching you with what I've marked
as C-1, and you've already given the jury an
introduction into a little bit about your background,
but I wanted to focus a little bit more on your
background, if I could.

Can you just identify that document for
me --

A It's my --

Q -- for the record?

A It's my C.V., curriculum vitae.

Q And does that give an overview of your total
educational experience as well as your clinical
experience?

1
2 A Yes.

3 MS. FEDEN: Your Honor, at this time I'd
4 move for the admission of C-1.

5 MS. BLISS: Your Honor, I'm going to
6 object. It's cumulative. She can talk about her
7 qualifications. There's no need for this. It's also
8 hearsay. So as far as addressing anything in it, we
9 have no objection, but the document itself is
10 inadmissible.

11 THE COURT: Okay, but I'm going to admit
12 it for the purposes of the record in this case as the
13 foundation of the questioning that is occurring at this
14 stage. It doesn't mean the jury will necessarily see
15 it because they're eliciting it in testimony, but for
16 the record of this case it will be admitted as
17 Commonwealth's Exhibit 1.

18 (Commonwealth's Exhibit C-1 received in
19 evidence.)

20 THE COURT: How about a copy for the
21 Court?

22 MS. FEDEN: Your Honor, I apologize. I
23 do have a copy for the Court. May I approach?

24 THE COURT: Yeah. Or let's work out a
25 device, Barb, where you can get it. Thank you.

MS. FEDEN: May I, Your Honor?

THE COURT: Yes.

BY MS. FEDEN:

Q Doctor, you already went into your medical experience, but I wanted to see if you could just illustrate to the jury, did you have any post-medical graduate specialization training?

A Well, as I said, I'm a forensic psychiatrist, and so we are -- so I have been educated in all aspects of forensic psychiatry when I -- I'm a member of the American Academy of Psychiatry and the Law. I was a member of the American College of Forensic Psychiatry.

I teach widely both at Temple University Medical School and in other forums about -- about matters that are related to forensic psychiatry, specifically related to sex offenders, sex offenses, victims of sexual abuse. I've spoken to various legal societies, the American Bar Association, Pennsylvania Bar Association, and I have given ground rounds at other institutions.

Q And Doctor, are you licensed?

A I'm licensed in Pennsylvania and New Jersey, Vermont, North Carolina, Florida, and Delaware. Those are active licenses. I have inactive licenses in

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Massachusetts, New York, California, and maybe some other places as well.

Q And Doctor, overall, how long have you practiced as a forensic psychiatrist evaluating both sex offenders and victims of sexual assault?

A I've been a forensic psychiatrist for approximately 28 years. I was first appointed to the Sex Offender Assessment Board in 2000, so, you know, I've been a recognized expert since -- for 18 years in the field of sex crimes.

Q And Doctor, have you -- you mentioned earlier that you testified or you have been deemed an expert by a Court over 190 times. Are there any notable cases that you provided opinions in specific to sexual assault or sexual behaviors?

A I've testified a lot in trials that have involved sexual misconduct, both criminally and civilly. There -- and I've testified on both sides. I've testified for the prosecution, and I've also testified for the defense.

In one case in Virginia, there was an allegation of sexual crimes against a college student. And I was hired to do an assessment. And during my review of the assessment, it became clear that the

individual who had been accused of these sex crimes was, in fact, not guilty of them. And the jury agreed with that. That was a case in Virginia.

I recently testified in a case in Tennessee regarding similar issues related to an individual who was accused of sexual assault and who, in all probability, did not commit it.

I have also testified in a number of cases on behalf of the Commonwealth or the prosecutor in cases where somebody was sexually assaulted. So I've done both of those things.

In addition, I've also spoken about this issue in public forums. I've been interviewed on several T.V. programs including 20/20, Oprah, and some other non -- one of the ones that is most relevant to my experience as an individual with expertise in sexual assault is I spoke about a famous case involving a man named Jeffrey Marsalis.

Jeffrey Marsalis was known as the Match.com rapist. And I guess it was probably 10 or more, 15 years ago. Jeffrey Marsalis met women online through Match.com. He drugged them. He sexually assaulted them.

MS. BLISS: Your Honor, I'm going to

object to the narrative. It's beyond the scope of her qualifications which is what we're here for.

THE COURT: Try to limit it to -- just say you testified in that case and you can proceed on. So just keep giving us your qualifications.

BY MS. FEDEN:

Q Doctor, you were talking about your contributions as an expert to sources other than the Court. Without getting into a narrative of the case, what type of opinion did you offer for the prime time news stories regarding Jeffrey Marsalis?

MS. BLISS: Your Honor, objection.

THE COURT: Sustained. Just tell us you testified that you were qualified as an expert. That's all I need.

THE WITNESS: All right. I've been qualified as an expert, as I said, over 190 times in Federal Court, in multiple counties in the State of Pennsylvania. I've been qualified as an expert in New York, in California, in New Jersey, in Delaware, in Tennessee, in Virginia, in Florida. And I may be forgetting some other places.

I have always been qualified as an expert. I've been qualified as an expert in the field

1 of forensic psychiatry and I've been qualified as an
2 expert in the evaluation of individuals who commit sex
3 crimes and as an expert in the field of sexual
4 misconduct, sexual assault, and paraphilia, deviant
5 sexual offenses.
6

7 BY MS. FEDEN:

8 Q And over the past 18 years, as you were -- as you
9 had previously testified, where you have given
10 testimony and you have been an expert in this field,
11 did you stay on top of the literature and maintain
12 certain educational courses so that you're able to
13 opine about the different culture and how sex assault
14 culture has changed throughout the years that you've
15 practiced?

16 A Yes. I teach -- it's my job as a professor at
17 Temple Medical School to keep abreast of the
18 literature. In addition, I teach a course about
19 paraphilias virtually every year. I think every year.
20 And as I say, paraphilia involves deviant sexual
21 interest.

22 MS. BLISS: Your Honor, I have to
23 object. She's being qualified to talk about
24 characteristics, general characteristics of sexual
25 abuse victims, and we're going off onto this rabbit

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2 trail about paraphilia and other matters.

3 THE COURT: Yeah, they're not relevant
4 here.

5 MS. FEDEN: Respectfully, Your Honor,
6 may I respond?

7 THE COURT: The statute is to simply set
8 out what the limits of her testimony is, and that's not
9 involved in this case. So, again, it's good to know,
10 it's contained in your C.V., but you may continue on.
11 But we don't need to know about areas that are just not
12 going to be involved in this case.

13 MS. FEDEN: Your Honor, respectfully,
14 may I respond?

15 THE COURT: Yeah, if it's going to help,
16 but I think I've -- I'm trying to keep within the
17 statute of where it is. What would your response be?

18 MS. FEDEN: I understand, Your Honor. I
19 think it's important for the jury to see her
20 qualifications as a whole to show that not only has she
21 treated sex offenders, but victims as well, to show the
22 lack of bias here.

23 THE COURT: I understand. Of course, if
24 you need to rebut that inference -- they're going to
25 cross-examine her on her qualifications. And of

1 course, if that would come up there, I'd permit you to
2 expand it. But this is essentially does she meet the
3 qualifications that are at least envisioned by a
4 statute that permits her to be an expert. So --

5 MS. FEDEN: And, Your Honor, one of the
6 areas is the dynamics of sexual violence. Sexual
7 violence includes a victim as well as an offender.

8 THE COURT: I agree 100 percent. Ask
9 her about that. Right now the category's regarding
10 paraphilia. I think that's where the objection came
11 in. It's not involved in this case. So let's see if
12 we can move forward and just keep talking about it,
13 specifically the dynamics of sexual violence or
14 assault, victims' responses to sexual violence or
15 assault, or impact of sexual violence or assault on
16 victims. That's really what the statute talks about.

17 All right?

18 BY MS. FEDEN:

19 Q Dr. Ziv, prior to the objection I was asking you
20 about your continuing education in this field. In
21 addition to teaching regarding paraphilia, is there any
22 other area of continuing education that you would like
23 to alert the jury to in regards to the dynamics of
24 sexual violence?
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2 A Yes. In all -- I teach also every year the
3 residents general topics in forensic psychiatry. This
4 involves both becoming familiar with the connection
5 between the law and psychiatry, especially as it
6 relates to sex abuse because that's one of the areas
7 that forensic psychiatrists are related to.

8 When you are teaching about forensic
9 psychiatry, I teach about both patterns of behavior of
10 individuals who commit sexual crimes and I talk about
11 patterns of behavior of victims of sexual crimes. And
12 we talk about things such as rape myths and commonly
13 held beliefs that are not accurate, that are not
14 supported by the literature in terms of victim behavior
15 on a sexual assault.

16 Q And are you prepared to educate the jury on those
17 topics?

18 A Yes.

19 Q And is your preparation based on your professional
20 experience in the field of psychiatry as well as the
21 literature and as well as your educational training and
22 background?

23 A Yes.

24 Q And is that the type of information and material
25 that forensic psychiatrists reasonably rely upon to

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2 make such opinions regarding sexual violence, rape
3 myths, and the other topics that you're here to
4 discuss?

5 A Yes.

6 Q And based on that, any opinions, should you be
7 qualified by this Court, would you be able to opine
8 based on a reasonable degree of scientific certainty in
9 the field of psychiatry?

10 A Yes.

11 MS. FEDEN: Your Honor, at this time I
12 would ask that Dr. Ziv be offered as an expert in
13 victimology and sexual assault subject to voir dire.

14 THE COURT: Okay. Victimology is not a
15 term I am familiar with. I can only -- again, are you
16 offering her as an expert in the standards set forth in
17 our statute known as 5920 which --

18 MS. FEDEN: Correct, Your Honor. And if
19 you'd like, I can certify to ask the Court to qualify
20 her as an expert in understanding the dynamics of
21 sexual violence, victim responses to sexual violence,
22 and the impact of sexual violence on victims during and
23 after being assaulted.

24 THE COURT: All right. So those are the
25 tender. Who will be doing cross-examination?

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MS. BLISS: I will, Your Honor.

THE COURT: At this stage it's very normal when they go through qualifications that the other side at this stage gets to ask questions just about her qualifications, and then we'll determine whether she will be admitted as an expert witness.

So here's where we are now.

BY MS. BLISS:

Q Good morning.

A Good morning.

Q Dr. Ziv, my name is Kathleen Bliss. It's nice to meet you.

A You, too.

Q I want to focus your attention. I know we kind of strayed off on to some other areas, but you've been asked to testify here about the general characteristics of alleged victim response in sexual abuse cases; is that correct?

A Yes.

Q And you're familiar with the parameters that the law sets now on what you can and cannot do; is that right?

MS. FEDEN: Your Honor, I have an objection.

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THE COURT: Reason for the objection?

MS. FEDEN: This is for voir dire. This is qualifications. And what, Your Honor, I believe she is trying to elicit is the statute which is the law.

THE COURT: I don't know what she's doing because she just started.

MS. FEDEN: Respectfully, Your Honor, we know what she's not doing.

THE COURT: She's just asking a question. I mean, the direct examination was in narrative form, so let's just hear where she's going and then you can object at that time. But right now I haven't heard anything that's objectionable.

BY MS. BLISS:

Q Okay. But you are familiar with the statute?

A Yes.

Q Okay. Of course you are because you're a forensic psychologist.

A Psychiatrist.

Q Psychiatrist, I'm sorry. And you understand that you can't comment on any person's credibility?

MS. FEDEN: Objection, Your Honor.

THE WITNESS: Any individual's credibility --

1 THE COURT: Hold on a second. There's
2 an objection. Asking her about the statute probably
3 isn't in terms of -- I will take care of that if she's
4 qualified as an expert. I can handle that because I
5 have to read an instruction to the jury. And I'll make
6 sure that I have looked at my instructions and it
7 incorporates what 5920 says because it's a specialized
8 statute. So this is probably not necessary on
9 cross-examination. Ask her about her qualifications to
10 even become a 5920 expert.

11 MS. BLISS: Yes, Your Honor. These were
12 all foundational because I believe she testified that
13 as a forensic psychologist, she's an advocate for the
14 truth.

15 BY MS. BLISS:

16 Q So I just wanted to be clear that you're not
17 advocating one way or the other. You're just going to
18 be talking generally about signs, symptoms,
19 characteristics and patterns; is that right?

20 A Well, when I say the truth, I'm talking about
21 information that --

22 Q That's not my question. My question is --

23 MS. FEDEN: Objection, Your Honor.

24 THE COURT: Let her answer the question.
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BY MS. BLISS:

Q Did you understand my questions?

A Well, you said I'm not here -- I'm not here to talk about any specific individual, but I am here to advocate for the truth which is contained within the literature, which is generally accepted in the field of forensic psychiatry regarding victim behavior.

Q Generally accepted is, I think, where we should be because you're not commenting on anyone's credibility.

A I'm not commenting on any specific individual.

Q Let's go to your qualifications. Focusing entirely on sexual assault, would you describe to the jury your practice over the last 10 years in testing alleged adult sexual assault victims?

A I don't understand the question.

Q What, if any, experience do you have over the last 10 years in evaluating alleged sexual assault victims?

A I have extensive experience over the past 10 years. I don't know how many, you know, hundred perpetrators of sexual assault --

Q Not perpetrators.

A -- that I evaluated, but I have also evaluated their victims. In addition, I have independently evaluated scores, hundreds of victims of sexual assault

both in my forensic practice and in my private practice. So I have evaluated, I would hazard to say, thousands of victims of sexual abuse.

Q Okay. Now, have these alleged victims been both adults as well as children as well as adolescents or have you focused on one age group?

A No. I haven't focused on one age group. I've evaluated children, adolescents and adults.

Q Okay. And what, if any, testing or studies have you personally conducted in your practice and then made publication about adults who report sexual assault?

A Well, that's sort of two different questions. What have I published in the field? I have not published in the field of -- I have not published a scientific treatise. I have conducted many tests and evaluations of individuals. I've prepared hundreds and hundreds of reports on individuals who have been sexually assaulted, adults.

Q I'm sorry. Yes, let's focus on adults because you said hundreds and hundreds. But you also testified -- and correct me, please, if I'm wrong. You also testified that that includes adolescents as well children. I just want to focus on adults.

Can you give us a ballpark of how many

adults alleging sexual assault that you have treated?

A That I have treated?

Q In the last 10 years.

A In my private clinical practice?

Q If that's the way you want to qualify it.

A Or in my forensic practice?

Q If that's the way you want to qualify it. You'll need to explain the difference.

A Well, I've treated in the past 10 years victims of sexual assault -- you know, I don't have specific numbers -- a hundred -- in my forensic practice it's hundreds in the past 10 years that I -- there's a difference.

As I've said, when somebody is my patient, I'm responsible for treating them, meaning making them better, taking them along the journey. In my forensic practice I'm not a treatment provider. I'm acting to assess them. So I've written probably a couple hundred reports on victims of -- adult victims of sexual abuse.

Q Now, based upon your practice, clinical practice, what percentage would you say are adults versus adolescents? 50/50? 10 percent adults? What do you think?

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2 A 10 percent adolescents, 90 percent adults.

3 Q Okay. And how about children?

4 A In my clinical practice?

5 Q Yes, ma'am.

6 A I don't treat children.

7 Q Okay.

8 A I evaluate children, but I don't treat children.

9 Q Okay. Now, describe for the jury what, if any,
10 training that you have had in distinguishing the
11 reactions or signs and symptoms, however you want to
12 characterize it, between adults who are alleging sexual
13 assault and adolescents who are alleging sexual
14 assault.

15 Have you had any training in
16 distinguishing the two?

17 A Well, I think that that's a false dichotomy. I
18 don't think there are many courses that --

19 Q Have you -- I'm sorry.

20 A If you let me answer the question.

21 Q Have you had any training in it? That's the
22 question.

23 A In the differences between the responsiveness
24 of -- the responses of adolescents versus adults? I
25 have had training in the responsiveness of adolescents.

1 I have had training in the responses of adults.

2 Q And how about children?

3 A Yes.

4 Q And have you had any training on distinguishing
5 the differences among those three groups?

6 A That's -- I don't know that there is a course that
7 is, you know, understanding the differences between
8 children and adolescents and adult responses to abuse.

9 Q None that you're aware of. And you've had no
10 training? Is that your response?

11 A That isn't my response. In all of those -- when
12 you are trained in patterns of responses of children,
13 patterns of responses of adults, patterns of responses
14 of adolescents -- you know, I'm an M.D. The people who
15 are teaching or whose courses I'm involved are also
16 M.D.s. It is assumed that you can make those
17 judgments.

18 So the training between the differences
19 between adolescents, adults and children is based on
20 being trained in understanding patterns of behaviors of
21 children who are victims of sexual assault, teenagers
22 who were victims of sexual assault, and adults.

23 Q Okay. So you're not mixing all of them together?
24 You understand the dynamics of each group?
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2 A Very, very clearly, yes.

3 Q Okay. Thank you.

4 Now, how about any particularized
5 training with respect to false allegations of sexual
6 assault?

7 A Have I had training in that?

8 Q Yes, ma'am.

9 A Yes.

10 Q How much?

11 A Hours.

12 Q Hours?

13 A You know, I'm required -- yes. First of all, as a
14 member of the Pennsylvania Sex Offender Assessment
15 Board, we go to quarterly trainings. In addition, the
16 American Academy of Psychiatry and the Law has
17 trainings.

18 In addition, to maintain my license in
19 the multiple states that I'm licensed, I probably -- in
20 fact, I just calculated for 2017. For six months in
21 2017 I completed 60 hours of educational training with
22 a focus on sex crimes, victims of sex crimes.

23 Q And included in that is false accusations?

24 A That is always included, yes.

25 Q Okay. And then what, if any, presentations have

1
2 you provided educating your peer group or the law
3 groups about false allegations and identifying those
4 and separating them from allegations that are
5 consistent with the patterns of behavior about which
6 you are going to discuss?

7 A In virtually -- in public forums, I don't know off
8 the top of my head. In virtually every report that I
9 write -- in fact, I have a paragraph, a standard
10 paragraph that I include in almost all of my reports
11 that says that in forensic settings you cannot rely
12 upon self-report. You need to have corroborating
13 information.

14 So in the hundreds and hundreds of
15 reports that I have written, I have addressed the issue
16 of false reporting implicitly, and sometimes
17 explicitly, and accuracy of information provided by
18 both alleged victims and alleged perpetrators.

19 Q From a training standpoint, when you say
20 corroboration, just as an overview, what is your
21 training related to identifying corroboration --

22 A I'm not sure I understand the question:

23 Q -- as a self-reporter? What are you looking for?
24 What have you been trained to look for?

25 A You are trained to look at objective information.

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2 You're trained to look for patterns that are consistent
3 with known patterns of behavior. You are trained to
4 listen carefully to narratives. You are trained to,
5 when you're doing interviews, to ask open-ended
6 questions and not direct the narrative. I have had
7 this training and I give this training to psychiatric
8 residents.

9 Q And then -- and I think this may align with what
10 you do for Aetna. You're doing consulting work for
11 Aetna, the insurance company, or is it a hospital?

12 A No, it's the insurance company. But that's
13 separate and apart from my forensic practice.

14 Q Okay. But are you involved in any way either as a
15 student -- I guess we're all students in everything,
16 but in setting up like multidisciplinary teams and
17 evaluating sexual assault allegations for best
18 practices?

19 A For Aetna?

20 Q No, for any group with which you're involved. Are
21 you familiar with best practices?

22 A Yes.

23 Q Okay. Are you involved with setting up or
24 modeling best practices?

25 A Yes, with the SOAB, the Sex Offender Assessment

Board.

Q Okay. And that would include what you were just telling the jury about, being able to identify information that's objective and would corroborate a self-report by an alleged victim?

A It's -- it includes it. It's not -- that's not all that you look at. It includes that though, yes.

Q Okay.

MS. BLISS: If I may have just a moment, Your Honor?

THE COURT: Yes.

(Pause.)

MS. BLISS: Your Honor, we'll accept Dr. Ziv as being qualified in the area of identifying certain patterns, and particularly in forensic psychiatry as it relates to the information she's given us here.

THE COURT: Well, I don't want to get too hung up on what her offer of tender was, what you're accepting, meaning if they're tendering this person as an expert in what I'm going to call a statutory expert of 5920, I'm going to qualify her. And then when I give the instructions around that qualification, you'll certainly touch on the statutory

1 definition.

2
3 So I will qualify her as an expert, and
4 that requires me to give you an instruction of law
5 right now. So remember I talked about preliminary
6 instructions? Then you may hear some during -- so you
7 don't have to write anything. You're technically not
8 supposed to be writing when the Court is giving you
9 law. They're not facts. Remember, this is the law
10 from the Court. And after we do this, then we'll give
11 you your midmorning break so you can refresh up, and
12 then we'll come back for the testimony.

13 So, ladies and gentlemen, I am now
14 permitting, as tendered, Dr. Ziv to testify as an
15 expert witness. Now, this expert witness was
16 tendered -- tendered simply means that they were
17 offered by the Commonwealth to be an expert. And
18 again, that expertise is almost clearly to a degree
19 statutorily defined.

20 And when I say that, it clearly says
21 that someone such as Dr. Ziv can testify which will
22 assist the trier in fact in understanding the dynamics
23 of sexual violence or assault -- that's what it
24 means -- victim's response to sexual violence/assault,
25 and the impact of sexual violence/assault on victims

1 during and after being assaulted.

2 That's the statute under which she's
3 testifying, so whatever you heard back and forth, that
4 is what I am permitting her to testify as that expert
5 witness.
6

7 An expert witness is a person that has
8 special knowledge or skill in some science, art,
9 profession, occupation, or subject that the witness
10 acquired by training, education or experience. Because
11 the expert has special -- that is out of the
12 ordinary -- knowledge or skill, she may be able to
13 supply the jurors with specialized information,
14 explanations, and opinions that will help them decide a
15 case.

16 Regular witnesses, which are almost all
17 other witnesses -- and I'll always identify an expert
18 witness here.

19 So regular witnesses, meaning all other
20 witnesses, are bound by two limitations that do not
21 apply to an expert. First, regular witnesses generally
22 can testify only about things they personally
23 perceived, things that they saw and heard themselves.
24 And second, regular witnesses are not allowed to
25 express opinions about matters that require special

1
2 knowledge or skill. By contrast, an expert is allowed
3 to express an opinion about a matter which is within
4 the area of her expertise.

5 Furthermore, while an expert may base an
6 opinion on things personally perceived, she may also
7 base an opinion on factual information learned from
8 other sources. And that may be, again, her readings of
9 the literature in this regard or information learned
10 from other experts in this -- in the field. So she
11 reads, she publishes, she experiences, she assesses,
12 and that's all part of where the expertise comes.

13 If an expert witness bases an opinion on
14 things not personally perceived, she can describe the
15 information on which she relies and identify its source
16 when explaining the opinion.

17 Now, remember this. It was correctly
18 noted that the statute -- and this is the statute under
19 which she is qualified as an expert. It just simply
20 says the witness's opinion regarding the credibility
21 of any witness, including the victim, shall not be
22 admissible. So if you hear it, then there may be
23 objections around what I do with it.

24 And here's the importance of that.
25 Remember that it is you, the jurors, who are the sole

1 judges of the credibility and the weight of all
2 testimony. The fact that the lawyers and I have now
3 referred to this witness as an expert and that witness
4 does have special knowledge or skill, it does not mean
5 that their testimony and opinions are right.
6

7 When you are determining the credibility
8 and weight of an expert's testimony and opinions,
9 consider all of the factors that I talked about in the
10 opening instructions about credibility of witnesses
11 generally, bringing your experience as men and women of
12 the world to make credibility determinations as you
13 would in your everyday life. And again, I'll give you
14 more general credibility instructions at the end of the
15 case.

16 You should also consider all things
17 bearing on credibility and the weight, including her
18 training, education, expertise, and the ability of any
19 expert that would testify, any factual information, any
20 literature, any experience, any training on which they
21 base that opinion, the source of that information and
22 the reliability of that information, and the
23 reasonableness of any explanation that she gave to
24 support any opinion that she will give you.

25 So, with that said, that is an expert

1 witness charge. And I think it kind of worked right up
2 to that hour. If we start at 9:30, we're about an hour
3 and 45 minutes in. This is really a -- a break that if
4 you're part of a fresh air contingency -- we'll call it
5 that -- you'll let them know that you need to do that.
6 And use the restrooms. And we'd like to get back
7 starting within 15 minutes.

8
9 And again, in the afternoon -- the rest
10 of the morning -- I may go to 12:30, 12:35. All of
11 your lunches will be here. We're not in the problem of
12 hot lunches as much as we have colder lunches, so we
13 have a little flexibility of when we break for our
14 luncheon break. So this is a refreshment of using the
15 facilities and any fresh air. So let's get to it.

16 The cautionary instructions apply. You
17 are deemed to have been given them. The principal one
18 at this stage, do not discuss amongst yourselves
19 anything that you have heard up to this stage. Thank
20 you very much. Please be seated so they can get out.

21 (At 11:21 a.m., the jury was excused.)

22 THE COURT: All right. Dr. Ziv, I don't
23 have to instruct you. You are now an under-oath
24 witness. You may not talk about any of your proposed
25 testimony or any testimony you've given up to now with

any attorney from either side. Just take a break yourself. Thank you very much.

- - -

(Recess.)

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(The following proceedings were reconvened with the Court, the jury, Mr. Steele, Mr. Ryan, Ms. Gibbons-Feden, Mr. Vines, Mr. Mesereau, Ms. Bliss, Ms. James, Mr. Hicks, Ms. Robinson, Ms. Gupta, and the defendant being present:)

THE COURT: All right. You may inquire of the witness.

MS. FEDEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. FEDEN:

Q Dr. Ziv, prior to being called as an expert in the case, the Court permitted questioning into your knowledge and familiarity of 5920 as asked by Ms. Bliss.

You are familiar with the statute; correct?

A Yes.

Q And you're familiar that it does not permit you to

testify as to the credibility of witness, including the victim in this case; right?

A Correct.

Q And just to be clear, has the Commonwealth asked you to make credibility assessments regarding this case?

A No.

Q In fact, have any of our case materials been shared with you?

A No.

Q Have you read any statements by the victim or the defendant in this matter?

A No.

Q Have you reviewed any case-specific materials in regards to this case?

A No.

Q What do you know about this case?

A I know the very broadest outline that Mr. Cosby had been accused of a sex crime. I don't actually know what sex crime. And I know that -- that's about all I know.

Q Do you have any personal interest in the outcome of this case?

A No..

1
2 Q Any bias?

3 A No.

4 Q And just going back to your familiarity with the
5 statute again, you're familiar that the statute does
6 permit you to testify with regard to the facts and
7 opinions regarding specific types of victim responses
8 and victim behaviors; right?

9 A Yes.

10 Q And is that what you're here to do today?

11 A Yes.

12 Q And in fact, have you authored a report outlining
13 common victim behaviors and talking about rape myths
14 and everything that you'll testify to on direct
15 examination?

16 A Yes.

17 (Sexual Abuse Current Literature and
18 Perspectives marked Commonwealth's
19 Exhibit C-2 for identification.)

20 MS. FEDEN: Your Honor, at this time I'd
21 like to mark this document as C-2. The record can
22 reflect I am providing counsel an additional copy which
23 has been previously provided in discovery.

24 May I approach with your copy as well as
25 a copy for the witness?

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THE COURT: You may.

MS. FEDEN: Thank you, Your Honor.

BY MS. FEDEN:

Q Dr. Ziv, I'm approaching you with what I've marked as C-2 for identification purposes. Can you tell the jury what that document is?

A It's a document that -- it's entitled "Sexual Abuse: Current Literature and Perspectives". And it's a 17-page discussion of matters that are related to sexual assault.

Q And if I could refer you to Page 17 of that document, is that your signature?

A Yes.

Q And you authored this report?

A I did.

MS. FEDEN: Your Honor, at this time I'd like to move for the admission of C-2, Dr. Ziv's report.

MS. BLISS: Objection, Your Honor. Total hearsay. She can --

THE COURT: I can handle it.

MS. BLISS: Yes, Your Honor. I'm sorry.

THE COURT: I'm going to admit it.

Again, you're going to hear me say a lot of times,

1
2 okay, a lot of times here, Don't ever expect to see
3 this report. You will never have it in your
4 possession. I can admit certain things just to say
5 that she did a report, here's some foundations for
6 everything that she's about to be asked.

7 So that should say to you, Don't put the
8 pen down or put the mind back and say, Well, I don't
9 have to listen here. I'm going to get it in a report.
10 You will not. So it's the questions and the testimony
11 here that control.

12 I need to keep a record, however, of
13 things that -- their position is simply that you did
14 author a report and it was given to the defense and
15 this is what we're offering. So, for the record only,
16 I'm admitting it. It will not be given to the jury.

17 (Commonwealth's Exhibit C-2 received in
18 evidence.)

19 MS. BLISS: And Your Honor, just to
20 emphasize that there are areas she discusses in this
21 report that are outside what the point of her testimony
22 is today.

23 THE COURT: All right. Understood. The
24 jury will never see it. It is for me for the purpose
25 of then saying -- if you have an objection, you'll say,

Well, that's in her report or that's not in her report. It's just to allow the Court to have a guide to her testimony, but you won't need it because the testimony will be what controls for this jury.

All right. There we go.

MS. FEDEN: Thank you, Your Honor. And it's just for record purposes.

THE COURT: Understood.

BY MS. FEDEN:

Q: Dr. Ziv, when you began -- when you -- excuse me. When you first got on the stand, you were talking about rape myths, misconceptions, and things along that nature.

Can you just describe why it is important to educate a jury in this day and age about those things, the misconceptions, the rape myths?

MS. BLISS: Objection, Your Honor. Relevance. She can talk about these areas as to why. It's just not relevant.

THE COURT: Overruled.

THE WITNESS: Sexual assault is one of the most misunderstood crimes. People have an opinion, people think that they know it, which is not unexpected. One in five women in this country is --

has a history of sexual assault, one in seven men.

So many people know somebody who's been sexually assaulted. It's not surprising that people have opinions about sexual assault, both -- all aspects of it: Perpetrators, victims, patterns of behavior of perpetrators, patterns of behavior of victims, consequences of sexual assault. However, most of what people believe, most common knowledge about sexual assault is wrong.

There are a number of reasons why people hold on to things that are not accurate. But as a result of that, as a result of common misbeliefs surrounding sexual assault, perpetrators, victims, et cetera, there has been intensive study into this area. There has been a lot of scholarly work on why do people in society hold on to erroneous information.

And the subject heading under which this scholarly work is generally referred to is great myths or sexual assault myths. And these are beliefs that are culturally dependent. What we believe in the United States is not necessarily what they believe in India. It's not necessarily what they believe in Japan. And they are time dependent. What we believe about sexual assault in 2018 is very different than

1 by somebody who was a stranger. That's not true. Less
2 than 14 percent of rapes in this country are
3 perpetrated by a stranger. 85 percent of sexual
4 assault occurs -- is perpetrated by somebody who's
5 known to the offender -- to the victim. Sometimes --
6 and that can be a family member, it can be somebody
7 with whom that are intimately involved, it can be an
8 acquaintance. But the vast majority of sexual assaults
9 are perpetrated by somebody who's known to the victim.
10

11 Another rape myth is that victims of
12 sexual assault -- and they're called rape myths, but
13 they really apply to all sexual assault -- is that
14 victims report the crime. That's inaccurate
15 information. It is -- the U.S. Bureau of Justice
16 Statistics notes that it is the most underreported
17 crime.

18 Studies suggest that somewhere between
19 five and 30 percent of sexual assaults are reported to
20 police. The vast majority of victims do not report
21 sexual assault to police. Or other authorities,
22 actually. They don't report to clergy. They don't
23 report to doctors. They don't report to mandatory
24 reporters. They don't report to their HR department.
25 The vast majority of victims of sexual assault do not

report to any authority. So that's another rape myth.

A third rape myth is that if an individual does report, that they report in a timely fashion. That's not true. Most individuals, even those who do report -- and again, we're talking about a very small section of people who actually report sexual assault. A delayed reporting is the norm, not the exception. Delayed reporting can go from days to weeks to months to years. There are lots of reasons behind that, and I'll get into some of that.

So sexual assault is unusual in that we hold the victim accountable, you know, to some extent depending on who you are. But I think in the United States we have been educated and come a long enough way to know that victims of sexual assault haven't brought it on themselves. What we have done less well and what is still part of the U.S. rape myth is we blame victims for not being the kind of victim that we think that they should be.

So it's part of the rape myth that victims report promptly and display a certain symptom. That's what people have in their mind if people are sexually assaulted. You go to the police and then you become this broken creature hiding under your covers.

MS. BLISS: Your Honor, objection. We started off with why it's important for the jury to know about this. And I've not objected to this long narrative, but I think at this point counsel needs to formulate questions for responses as opposed to just a narrative.

THE COURT: She's giving her general within the scope of the statute, so it does help the jury. It helps everyone. Focus if you can. Just maybe ask a question around it. But you may finish that thought and then we'll try to launch into a question.

THE WITNESS: So people believe that victims should, you know -- and it's not accurate -- should report and then that they are immediately broken. That's a myth, you know, and it doesn't jive with what we believe about a lot of other things.

You know, if an athlete, a football player, gets hit very hard on the field and then gets back up again or if a skier has a huge fall and gets back up again, you applaud them. But if a sexual -- a victim of sexual assault moves on with their life and gets back up again, the common response is, well, then nothing happened. So that is all part of the great

1 myth.

2 BY MS. FEDEN:

3 Q And when you're talking about the rape myth, Dr.
4 Ziv -- and you mentioned earlier that it wasn't just
5 rape, it was sexual assault -- would that encompass all
6 sexual crimes, crimes of a sexual nature?

7 A Yes.

8 Q And would that include any penetration of any
9 person's genitalia?

10 A It includes all sexual assault. It includes, you
11 know, anything -- it includes all sorts of sexual --
12 unwanted sexual behaviors, yes.

13 Q Now, one of the things you testified to was that a
14 lot of these rape myths or sexual assault myths is
15 because society holds the victim accountable. In your
16 training and experience, does the victim hold him or
17 herself accountable as well?

18 A Yes. In fact, that's one of the reasons for
19 delayed reporting or non-reporting. You know, victims
20 of sexual assault are also part of this society. And
21 adult women in general -- and again, I'm speaking about
22 adult women -- often take responsibility for things
23 that happen to them and feel a sense of blame. This is
24 especially true when they may have been in a
25

1
2 circumstance where alcohol was involved or their memory
3 is impaired, where they may be tired.

4 But women absolutely hold themselves
5 when they are sexually assaulted -- I mean, I've sat
6 with -- recently I evaluated a woman who was put into a
7 cab by her friends at college, completely passed out,
8 was raped by the cab driver and sort of dumped on --
9 not sort of. She was dumped on the street naked.

10 She came to me and said it's her fault,
11 you know, it was her fault. It was her fault for -- I
12 don't know. But even under that extreme circumstance
13 where she was raped by a stranger, she took
14 responsibility. That's the norm. Women take
15 responsibility for things that happen to them. And it
16 takes time to work it through.

17 This is especially true given the fact
18 that most women are sexually assaulted by somebody that
19 they know. So you take somebody that you know and that
20 you believe that you have a trusting relationship with
21 or -- and you are sexually assaulted by them, it
22 doesn't -- there's something called cognitive
23 dissonance. It doesn't make sense that this person
24 that I knew, that I worked with, you know, that my
25 boss, that my coach, that my -- that this person who I

1 thought well of would sexually assault me.

2 So that cognitive dissonance makes
3 people step back and say, Hang on. Which reality is
4 true? I can't hold on to both of these things at the
5 same time. I can't both believe that my judgment is
6 good and that my judgment of this person is good and
7 that this bad thing happened. And it takes some time
8 to figure out.

9 Because women are blamed at least in
10 part for their own sexual victimization, people are
11 loath to talk about it for a number of reasons.
12 There's shame involved. There is a sense of
13 culpability. It's talking about private -- the most
14 private area of your life. Women do not talk about
15 sex, consensual sex, very often to very many people.
16 It's a very private area.

17 So you have somebody who is in a
18 situation where they have these competing issues.
19 Which is right? This bad thing happened to me. Do I
20 believe that or do I believe in my judgment and I
21 believe in my perception?

22 And because of the shame that is
23 inherent in sexual assault, they often don't have
24 anybody to sort of talk to about this. So this is

1 going on in their own head: What happened? How did it
2 happen? How do I control what happened? Whose -- you
3 know, what's going on here?

4 I mean, other crimes don't have the
5 stigma that sexual assault does. So if I'm robbed, if
6 I'm walking down the street and somebody steals my
7 purse, I can talk to my mother about it or I can talk
8 to my friend about it, I can talk to 15 people about it
9 and say, What just happened? That doesn't happen with
10 sexual assault.

11 Q And Doctor, we're talking about this myths and
12 this misconception and talking about -- and I think the
13 quote you used, victim being held accountable, being
14 the kind of victim that we want them to be. Has that
15 culture where the victim is blamed, has that culture --
16 did that culture exist 10 years ago?

17 A That culture has always existed. And I think that
18 probably in 2018 we are more educated as a society
19 about this, certainly more than we were 20 years ago,
20 30 years ago, 100 years ago. So it absolutely existed
21 probably in a much more robust and more -- and less
22 questioned form than it exists now.

23 Q And when you're talking about that shame and
24 embarrassment where a victim is holding themselves
25

accountable, have you found in your experience that that response is at all impacted or exacerbated by the use of an intoxicant?

A Oh, absolutely. I mean, one of the reasons -- when they do surveys about individuals who have been sexually assaulted and they ask them about why they haven't reported, a couple of patterns emerge.

And, actually, this was studied by the U.S. Government in 2014 and they had weeks of testimony and every expert, and they came up with an incredibly comprehensive report that addressed both civilian and military problems with reporting.

So victims face many difficulties when considering whether to report. Alcohol is probably more commonly involved in sexual assaults than it is known. If it is involved, a victim is much less likely to bring it to the attention of authorities, or if drugs are involved, for two reasons. Number one, it increases somebody's sense of responsibility, the victim's sense of responsibility. And number two, it impacts your memory.

Alcohol and other central nervous system depressant medication is -- probably everybody's heard of roofies. Rohypnol is a barbiturate. It affects

both retrograde, meaning your ability to remember what happened in the past, and anterograde, your ability to remember what's going on in the future.

So if you've got a spotty memory -- that's another rape myth, by the way. Part of the rape myth is that a victim of sexual assault will be able to tell you A, B, C, D and give you a nice chronological, consistent, coherent timeline of what happened.

In my experience of doing this for 20 years, I can tell that you I don't think that I have ever seen that pattern of reporting from a victim. People's memories are impacted. They may be impacted by substances, but they are also impacted by the sexual assault itself. People talk about feeling disassociated, people having out of body experiences, people focusing on other aspects. So even if drugs and alcohol are not involved, individual's memories for sexual assault is not precise.

And so that part of the narrative, that part of the rape myth narrative, which is that somebody was sexually assaulted will be able to tell you and be able to provide, you know, details, that's another part of the rape myth.

Q Now, Doctor, I wanted to explore some of the

things you were mentioning regarding rape myths, specifically about victim behavior during an assault.

One of the things you identified as a rape myth is the ability to report, whether or not it's delayed; if a report is made, whether it's delayed or not. I want to talk about during an assault.

Based on your experience and training and background, do you find that sexual assault victims will immediately escape right after being sexually assaulted?

A. No. In fact, that's -- another part of common rape myths is that women fight back against someone's sexual advances, and that is not true. The vast majority do not have any physical or even verbal statements. A lot of people who are victims of sexual assault describe themselves in a state of being frozen.

I mean, I hear that a lot from individuals who were sexually assaulted. They were frozen. They didn't know what to do. They couldn't do anything. They're afraid. So during a sexual assault, most people do not fight back. Most of the time they don't even verbally fight back. They almost never physically fight back.

And then during the experience of a

1 sexual assault -- and it depends, again, on when it's
2 occurring who the perpetrator is -- individuals find
3 themselves feeling frozen, not knowing what to do,
4 feeling frightened. I mean, remember, sexual assault
5 is a physical violation. And individuals who are being
6 physically violated, one of the questions is what's
7 going to happen next? What's going to happen next? Is
8 it going to get worse? Is something else bad going to
9 happen? They didn't anticipate this happening, but
10 could it get worse? You know, could somebody get
11 violent with them? That's not uncommon.

13 So most people do not -- don't fight
14 back, don't say anything. And they don't, you know,
15 immediately when it's over jump up and leave. I mean,
16 they're, you know -- I'll use a colloquial term.
17 They're in a state of shock. That's how they describe
18 it.

19 And so the most common scenario is that
20 when somebody is being sexually assaulted, they're sort
21 of frozen. They're frightened. They don't even know
22 what's happening. They don't understand it. Their
23 mind may be going blank or it may be going 100 miles an
24 hour. But they take their time before they exit the
25 situation. That's the usual pattern in a sexual

1 assault.

2 Obviously, I'm talking about the
3 majority of sexual assaults. I'm talking about sexual
4 assaults -- the 85 percent of sexual assaults that
5 occur when the perpetrator is somebody who's known to
6 the victim.
7

8 You know, somebody who is raped in an
9 alley at gunpoint -- well, I mean, actually, that's --
10 I interviewed a woman who was raped in a public
11 building. And when the perpetrator left the public
12 area, she lay there. She didn't -- so even under those
13 circumstances, she lay there for a period of time
14 before she got up and left.

15 And by the way, even she -- the first
16 person that she called was not the police. The first
17 person she called was her friend. And it's only
18 because she called her friend that her friend said,
19 We're going to the police. But so that's the usual --
20 that's the usual response for sexual assault.

21 Q Doctor, talking about feelings of frozen, fright
22 and shock, in your experience do you find that's at all
23 exacerbated when there's the introduction of an
24 intoxicant?

25 A Oh, absolutely. You know, take everything I said

1 and double it. I mean, so here you are under the
2 influence of alcohol or an intoxicant. It's going to
3 impair your memory more, it's going to impair your
4 ability to understand what's happening in the moment
5 more, and it's going to impair your ability to respond
6 more.

7
8 So if you add a central nervous system
9 depressant, then everything that I just said just
10 multiplies. When those people wake up, often they're
11 not even really sure of what happened. I've been
12 involved in cases where the only way that they know
13 that something happened was that somebody told them or
14 they find discharge in their underwear or they find
15 themselves unclothed when they don't remember getting
16 unclothed, or they find themselves in a strange
17 situation.

18 I was involved in a case where a woman
19 was sexually assaulted by multiple people over a pool
20 table in a public place. This came to the attention of
21 others because somebody took a picture of it. And
22 somebody took her out of the situation and brought her
23 out of the situation.

24 She had virtually no memory of the whole
25 event. Not only did she not fight back, not only did

1 she not leave, she didn't have much of a memory of it.
2 She was intoxicated, but she wasn't in a blackout
3 drunk. She was aware and she could mobilize and she
4 could get out of the situation. So even in very
5 extreme circumstances you see this kind of issue.

6 Q In your experience -- and again, I want to talk a
7 little bit about reporting it. Before we get into
8 reporting to authorities or friends, do you find in
9 your experience is it common for victims to confront
10 their accusers?

11 A No, it is not common. It's very uncommon. So
12 remember, 85 percent are sexually assaulted by somebody
13 they know. That person is almost always in a position
14 of power. It can be a family member. It can be a
15 boss. It can be a teacher. It can be a mentor. It
16 can be somebody -- sexual assault and power are
17 inextricably tethered, entwined.

18 And so, number one, you've been sexually
19 assaulted by somebody you know, presumably somebody
20 that you have based some -- had some trust in. So you
21 relied upon your own judgment. So during -- one of the
22 consequences of sexual assault is that it makes you
23 doubt your judgment, makes you doubt your judgment of
24 yourself and the world. So individuals who are -- are

sexually assaulted question themselves and they want it not to be true.

So there are two reasons that an individual rarely confronts the perpetrator. Number one is that they sort of want an explanation. Even if you don't say, well, what happened, you go back into the situation. And it's not at all uncommon for women to go back and sometimes even date and have consensual sexual relations with a perpetrator. They want to gain some control. They want to go back to that person and see is there an explanation; you know, was he on drugs? Was he -- did he have a stroke? Is he going to apologize? Is he going to say this is totally aberrant? Is it going to be okay? Is it going to be normal?

The flip side of that is given the fact that it's a power dynamic differential, is he going to go after me? Is he going to ruin my reputation? Is he going to tell people? Is he going to say bad things about me? Is he going to ruin my career? Am I going to have a job? You know, depending on the dynamics, the specific dynamics.

So you have both this fear that you may actually have not only been violated physically, but

1
2 that your whole life could be turned upside-down, your
3 reputation, your job, your security, your public
4 persona, the way that people think about you. That
5 could be damaged.

6 And you hold out hope that there's
7 some -- some logical way that you can wrap your mind
8 around what happened in a way that doesn't mandate that
9 you throw out your belief in your own judgment and your
10 belief in that person. I mean, often these
11 relationships are important, you know. You have your
12 boss or your father or, you know, somebody who's close
13 to you.

14 People don't think in blank and white.
15 They think in shades of gray. If this is a trusted
16 relationship that's important, you're going to find
17 your first impulse -- a woman's first impulse is to try
18 to find a way to make it make sense. And the only way
19 that you can do that is by having contact with that
20 individual again.

21 Q I want to talk to you about having contact with
22 that individual again. You were mentioning
23 specifically regarding trying to get an explanation for
24 what happened. But before I ask you about that, I
25 wanted to ask you in those rare cases where a victim

1
2 may confront the perpetrator or sexual offender, if the
3 offender is dismissive of the assault, the sexual
4 assault, what impact would that have on the victim?

5 A It has a devastating effect. That's another
6 reason why people don't come forth, by the way, because
7 victims are often not believed, especially if the
8 perpetrator is somebody who is in a position of
9 authority, has an otherwise good reputation, you know,
10 is known, you know. Joseph wouldn't do that. He's
11 chairman of the department. He funds a charity for,
12 you know, problem children.

13 MS. BLISS: Objection, Your Honor. I
14 think it was asked and answered. Now we're straying.

15 THE COURT: You've indicated that it's a
16 person of authority or closeness. I understand. You
17 don't have to give specifics examples unless you say
18 you've treated certain people like that.

19 THE WITNESS: I have treated --

20 MS. FEDEN: May I, Your Honor? Based on
21 her report which has been provided to the Court which
22 has a lot of literature in there, I would ask that her
23 opinion also be permitted to be based on the --

24 THE COURT: She also has a
25 classification. She's done a very good job of giving

you a classification. She's in the narrative. She doesn't have to keep searching out -- that might get her to the next area that you want to talk about.

THE WITNESS: Sorry. People are often not believed. They're not believed by the perpetrator, not believed by the individual. And if they present, if they tell their story and somebody says that doesn't happen or it didn't happen or you wanted it to happen, then that's incredibly invalidating.

It's known as secondary victimization. And it actually creates more psychiatric, psychological problems. It adds on to the psychological problems. There is robust literature that shows that the response of an individual when somebody is sexually assault has a tremendous impact on subsequent functioning.

BY MS. FEDEN:

Q Particularly those victims that have secondary victimization, as you stated, would those victims want to work towards normalization as well?

A. Yes.

MS. BLISS: Your Honor, objection. It's been asked and answered. And it's a question that I believe is starting to cross the lines of what this witness is qualified to testify about and what she can

do so appropriately under the statute.

THE COURT: Overruled. I mean, at this stage she's used the term secondary victimization, so I'm going to let her continue.

THE WITNESS: Individuals would rather believe that there is an explanation that they can live with that justifies the act rather than throwing out the entire relationship. That is almost universally true that individuals go back to the perpetrator to try to have a normal relationship, to maintain what was good, to try to -- and often it's not explicit. They don't go up and say, What did you do to me? While that happens, it's rare.

Most of the time they approach the individual, the perpetrator, hoping that some information is going to come out, but also maybe hoping that it can be, you know, swept under the rug, that it wasn't a big deal, or maybe that they're misremembering what happened exactly, especially if drugs or alcohol were involved.

And so it is the rule, not the exception, that individuals go back and have ongoing contact with the perpetrator, especially -- keep in mind, again, that this is a person that they have had a

1 previous relationship with and that they place some
2 trust and some respect in.

3
4 BY MS. FEDEN:

5 Q And Doctor, moving on with the normalization, I
6 wanted to talk to you as well as -- about specific
7 behaviors of victims of sexual assault or sexual
8 crimes.

9 Is it uncommon for a victim to show
10 little emotion or even inappropriate emotion
11 immediately after being sexually assaulted?

12 A No. Again, that's the rule. Individuals -- I
13 mean, we all know what the experience is of laughing at
14 inappropriate moments or solemn moments. So you can
15 have a wide range. You can have people shut down and
16 shut down completely. You can have people behaving
17 inappropriately. You can have people that just become
18 really angry. Not toward the perpetrator, but toward
19 family members or colleagues or other people.

20 You can have a whole range of responses
21 because it's a pretty -- it's a -- it's a physically
22 violating experience, but I don't think that you can
23 really underestimate how psychologically disruptive it
24 is to be sexually assaulted by somebody that you know.
25 And as a result of that, you're not going to behave in

1
2 a way -- most people don't behave in a way that other
3 people watching them would say is typical for them.

4 Q And you're saying when they're psychologically
5 disrupted because of the sexual assault, what type of
6 behaviors would those sexual assault victims who have a
7 disrupted psychological effect exhibit based on your
8 experience?

9 A It can range from anything to -- some people try
10 to carry on and act normally and go back to their jobs
11 and their families and, you know, go forth. And some
12 people shut down completely, tune out, retreat into
13 themselves, turn off. Some people go to drugs and
14 alcohol. Some people engage in self-injurious
15 behavior; they cut themselves, they burn themselves,
16 they may become suicidal.

17 They may -- paradoxically, again,
18 victims of sexual assault can go through periods of
19 being promiscuous, even if they were not promiscuous
20 before. And it's all a way to gain some control over
21 the circumstance.

22 People often ask why people cut
23 themselves or burn themselves. Because they would
24 rather feel -- the answer is because they would rather
25 feel physical pain than psychological pain.

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2 So all of those things in one way or
3 another are ineffective and maladapted but very common
4 ways for people to treat psychological pain. They
5 would rather -- you know, either they down it with
6 alcohol or drugs or they transform it in some way.

7 Q And Doctor, when you're talking about the response
8 of a victim to a sexual assault crime, you're talking
9 about now delayed disclosure. And I know you kind of
10 touched on it briefly, but I'd like to ask you some
11 specific questions in regards to it.

12 When a victim -- can you describe to the
13 jury some of the -- what's going on in a victim's head
14 when they do decide to disclose? And I think one of
15 the things you had mentioned before was whether or not
16 it was to law enforcement or friends. So if you could
17 touch upon that as well.

18 MS. BLISS: Your Honor, I'm going to
19 object to the way that question was posed, What's going
20 on in a victim's head? That calls for speculation.
21 Even though she is an expert witness and treats
22 patients, perhaps she could base it on actual knowledge
23 that she has rather than what she speculates is going
24 on in the victim's head.

25 THE COURT: You'll be permitted

1 cross-examination. I overrule your objection. It's
2 within the scope of 5920.

3 THE WITNESS: Individuals who have been
4 sexually assaulted first have to come to some
5 understanding of what happened. That often takes time.
6 It takes time to assess the situation, to get some
7 distance from the situation, perhaps to get some
8 additional information about the situation sometimes
9 from the perpetrator, sometimes just by reflection,
10 sometimes because somebody saw something, whatever.

11 So the first part of -- the first period
12 of time after a sexual assault, individuals are really
13 trying to understand what happened. They often then,
14 very often try to minimize it, try to put it behind
15 them, try to move forward, try to normalize the
16 relationship, try to say it's no big deal, I'm not
17 impacted by this. Over time it may become apparent
18 that they can't move beyond it, that it has a
19 psychological impact on them.

20 Just like somebody who gets a
21 concussion. They say, So I had a concussion. It
22 doesn't matter. I'm still going to work. I'm still
23 going to do my stuff. And only when they realize that
24 actually concussions take time to heal and they can't
25

do it that they realize, okay, I have to take care of this.

So individuals who have been sexually assaulted may find themselves with lingering or persistent psychological problems that impact their life, impact their relationships. Most commonly it's their relationships, but may impact their ability to work, may impact many aspects of their lives. They become depressed. They may be drinking more. As I said, they may be engaging in self-destructive behaviors. So that may prompt them to say, Hang on, I'm putting two and two together. This is happening to me because this event happened.

It also may be that over time, especially -- over time -- I mean, it doesn't go away. People are -- women are still processing this over time. And what they may have tried to normalize may shift in their mind and say, Wait. Hang on, this wasn't okay. Hang on, I wasn't to blame. Hang on, this really did happen.

And under those circumstances, individuals may then decide this is a crime, I should report it. I need to report it. It certainly is a very difficult task for individuals to report sex

1 crimes to police.

2 Q And when you talk about that difficulty, do fear,
3 humiliation and shame come into play at all for these
4 victims?

5 A Yes. I would challenge you to find one victim of
6 sexual assault, one -- I've been doing this for a long
7 time. I don't know that I can name one victim of
8 sexual assault who is not humiliated by the fact that
9 they have been sexually assaulted, who doesn't blame
10 themselves in some way, and who is not deeply ashamed
11 of it.

12 And that's another reason that you don't
13 go to the police. Once you go to the police, you lose
14 control over your narrative. All of a sudden they take
15 control of your narrative. People can ask you
16 questions about your life. People can ask you
17 questions about your sexuality. People can make
18 innuendos. People can make comments about the way you
19 look. I mean, they can doubt your story.

20 They can -- in fact, there's a lot of
21 literature about the act of reporting it to the police
22 and the police response. They're not educated in terms
23 of how to deal with sexual -- victims of sexual abuse
24 behaving in such a way that there is secondary
25

victimization just through that process of reporting.

So if you go to police and somebody doesn't take you seriously or dismisses it or, worse, lays the blame on you -- What were you doing? Why were you there? How much did you have to drink? Look at what you're wearing now. How many sexual partners have you had -- which is actually what they used to -- up until recently you used to be able to bring in somebody's past sex life into these kinds of trials, which is another big reason why people didn't report.

I don't know when the law changed in Pennsylvania, but there -- but it was within the time that I've been practicing that people with past sexual history could be brought into it, and other aspects of the person could be brought into it.

So the minute you offer your story up to the police, you lose control of your narrative and your whole life may then take a tailspin.

Q Now, when the talking to police and being asked those types of questions, based on your experience and the literature, have you found -- sorry.

Earlier you testified about how a victim reports crime and the memory deficiencies and inconsistencies. Could questions regarding a

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person's -- what they're wearing and sexual contact have anything to do with their ability to recall consistently?

A You mean is -- the nature of the questioning can impact one's memory?

Q Yes.

A Absolutely. The way that questions are posed to a victim of sexual abuse is really critical. If information is asked in a very specific way, everybody's natural response is to want to give an answer. And actually, if it's something like that directive. If somebody says you must remember what you were doing at lunch time, then you'll do your very best to approximate it.

I mean, there's pressure when you are asked directive questions to come up with the answer to that question, which is why best practice is interviewing, especially with a victim of sexual assault, but generally speaking that you ask open-ended, nondirective questions because directive questions can influence memory and it can influence responsiveness.

Q And based on your experience, is it unusual for a victim of sexual assault when initially disclosing the

1 assault to the police to have additional information in
2 subsequent timing to give to the police?

3 MS. BLISS: Objection, Your Honor. It's
4 exceeding the scope.

5 THE COURT: I don't agree. I mean, she
6 may answer it. She's an expert. And you are going to
7 be given wide latitude for cross-examining on exactly
8 what she's saying.

9 THE WITNESS: Yes, it is not uncommon
10 for individuals to provide additional information or
11 information at subsequent meetings with police than
12 they provided at the initial meeting. There are lots
13 of reasons for that, but yeah, it's not uncommon.

14 BY MS. FEDEN:

15 Q When you say there's lots of reasons for that, can
16 you give the jury an overview of some of the
17 significant reasons for that?

18 A One reason is that when somebody is presenting
19 allegations of sexual abuse to police, it may be sort
20 of acting as a trial. How is this going to be
21 perceived? Am I going to be attacked? Is it going to
22 be given credibility? I'm going to give you an outline
23 of the information. And depending on the police
24 response, I may then choose to -- to provide more
25

information later.

Another big hurdle in terms of -- another big reason that people provide information not in a direct narrative is because, remember, we are talking about for a woman the most sensitive area of one's life, one's sexuality.

And, you know, I -- most victims of sexual abuse -- you know, it's hard to talk about. It's hard to talk about because you're going to be judged. It's hard to talk about because it's private. It's hard to talk about because it's humiliating. It's hard to talk about because you blame yourself a little or a lot. And you're afraid that they're going to blame you a little or a lot. So all of those reasons play into the way that people disclose.

Again, it is very rare -- I don't know that I've ever seen it where somebody comes in -- I have never seen it where somebody comes in and says, Here what's happened from Point A to Point C and that's the end of the story. Most often information is provided incrementally. And sometimes, you know, people's memories can be jogged by some information, you know.

People like to think that people with

precise memory is a bad thing. That's not true. Victims of sexual abuse will, you know -- won't necessarily know the date that it happened and they say it happened around my birthday or I remember it was hot out or it was around Christmas or I remember I just came back from a vacation. That sort of stuff, you know, especially if -- that's not uncommon.

So, you know, for people to look for somebody to say I know that it happened on this date and here are the circumstances, that doesn't happen very often.

Q And when you're talking about that incremental disclosure or disclosing one detail at a time, do you find it is common for victims of sexual assault to do that in cases where they were sexually assaulted in a situation where they were unable to consent?

A Yes. I mean, that's a whole other area is the capacity to consent. So there are lots of studies about responses to -- of perpetrators to victims. In my experience -- and I have interviewed over a thousand sex offenders -- there are two typical responses. One, it didn't happen. Two, it was consensual.

In all of the years that I've been doing

1
2 this, I have never had somebody say, Yeah, it happened
3 and I'm responsible. I have interviewed murderers --

4 MS. BLISS: Your Honor, I'm going to
5 object. She's not here to talk about her treatment of
6 offenders. Again, that's completely outside the scope
7 here. And she's trying to tailor it to issues that are
8 not allowed by you.

9 THE COURT: Again, she's not at this
10 stage directly commenting on credibility. She's come
11 to say she's treated 100 people. You may ask her the
12 specifics to name one of those that she has, but this
13 is placed in more of a negative that she's never come
14 across anything other than these two. And that's all
15 she has said.

16 So I'm going to overrule the objection.
17 But how much longer? I mean, now we're starting to
18 deal with the lunch. I can break up direct and cross,
19 but --

20 MS. FEDEN: If Your Honor wants, after
21 she's finished answering, I can stop. I don't have
22 much more, but I also don't want to hold the jury if
23 their lunch is here.

24 THE COURT: If you don't have much more,
25 we can rely upon that.

MS. FEDEN: I probably have like 10 more minutes, but it's 12:42. So you decide.

THE COURT: Let's try to keep going and then I'll alert. If you're listening, Michael, tell them to get the lunch ready. We'll be in in about 10 minutes. Okay. Keep going because it's better to break at the end of direct examination than it is now.

MS. FEDEN: Okay.

BY MS. FEDEN:

Q Okay. So if you want to finish your answer. You were talking about --

A Responses in individuals when they report. So -- but I don't remember what the question was.

Q I'm sorry. I can restate it. I was asking whether or not, when you're dealing with incremental disclosure or providing more details over time, whether or not there is any impact when a victim of sexual assault has been sexually assaulted in such a manner where she or he was unable to consent?

A Yes. Obviously, if you're unable to consent as an assault, there are two reasons or three. One is that you are impaired because you're cognitively impaired. And this issue comes up in nursing homes. Number two, you don't have the capacity to consent because you are

2 under the influence of a substance, drugs or alcohol.
3 I'll just keep it to those two.

4 So those are the issues that have faced
5 adult women when they have the capacity to consent.
6 The capacity to consent refers to you have to
7 understand what's going on, what your options are, what
8 the -- what the consequences of saying yes are, what
9 the consequences of saying no are. That is, in a
10 nutshell and very broadly, the definition of capacity.

11 So to have a consensual sexual
12 relationship, you have to be unimpaired so that you can
13 figure out these things. What are the consequences if
14 I say yes? What are the consequences if I say no? Do
15 I have the power? What are the alternatives? If you
16 are impaired, you're drunk or if you're high or having
17 been on drugs or cognitively impaired, you cannot make
18 those determinations; therefore, you do not have the
19 capacity to consent to a consensual relationship.

20 Q And when you're talking about the response of a
21 sexual crime victim and in that situation where there
22 was an intoxicant involved, whether alcohol or drugs,
23 how is the response impacted when the individual
24 voluntarily consumed that intoxicant?

25 A They feel guilty. You know, it's another reason

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2 A Yes.

3 MS. FEDEN: Thank you, Your Honor. I
4 have no further questions.

5 THE COURT: All right. Perfect time to
6 break. We will return after the luncheon break for
7 cross-examination. And so, importantly, you've now
8 heard a witness, opening statements. You know that
9 they're not evidence, but now you've heard a witness,
10 which is evidence.

11 So, again, human nature is you might
12 want to say, Well, we're all eating lunch. How about
13 we talk about the one thing we all witnessed? Uh-oh.
14 See, that's what I'm talking about. So you're almost
15 resisting the very social nature of us as beings,
16 meaning like, hey, we don't really know each other
17 other than we're brought together under these
18 circumstances.

19 So that would be normal, but that would
20 be highly in violation of the rules because then you'd
21 be talking amongst yourselves. It would not be the 12
22 jurors that may be retiring to the deliberation room.
23 And you simply don't have all of the evidence. And
24 clearly you don't have all of the law.

25 So that's why you can't talk amongst

12 So, in all other respects, that Rule
13 206, that charge is kind of given to you again. You
14 can't try to get the information. Even if you're
15 having a private moment with your phone checking your
16 e-mail, you must make all efforts to avoid anything
17 that would be a blog, you know, an e-mail blast. You
18 know, don't go on your social media. You're in the
19 courthouse. Just stay away from it because you can't
20 control it. Just check e-mails and make sure
21 everything is okay at work, if that's how you use it,
22 or check in with home, but that's the limit.

23 But, again, if you feel you are exposed
24 to anything both internally -- that means amongst
25 yourselves -- or externally from the outside, it's your

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2 duty and your obligation to bring it to the Court
3 immediately.

4 In all other respects, you are now
5 excused for lunch. We'll come and get you probably in
6 about an hour and 15 minutes.

7 (At 12:51 p.m., the jury was excused.)

8 THE COURT: All right. We're subject to
9 the call of the crier. And to the media, you're
10 subject to the call of the Michael or the Court
11 Administrator. He'll let you know. We should be about
12 an hour and 15 minutes.

13 And again, you're instructed, Dr. Ziv,
14 that you are as if you are on cross-examination right
15 now. You are not to speak to anyone about your
16 testimony.

17 All right. Thank you very much.

18 - - -

19 (At 12:51 p.m., a recess was taken until
20 2:16 p.m. of the same day.)

21 - - -

22 (Proceedings were reconvened with the
23 Court, the jury, Mr. Steele, Mr. Ryan,
24 Ms. Gibbons-Feden, Mr. Vines, Mr.
25 Mesereau, Ms. Bliss, Ms. James, Ms.

Robinson, Ms. Gupta, and the defendant
being present:)

THE COURT: All right. Thank you very
much. You may commence with the cross-examination.

CROSS-EXAMINATION

BY MS. BLISS:

Q Hello again, Dr. Ziv.

A Good afternoon.

Q Dr. Ziv, I want to make sure I understand
something.

THE COURT: Move that microphone in a
little closer to you.

MS. BLISS: Sure. Usually my voice
blows us all out of the courtroom.

BY MS. BLISS:

Q I want to make sure I don't misunderstand what you
said, or anyone else does for that matter. You're not
saying that questioning what an accuser says about an
alleged crime is shaming a victim, are you?

A It depends on the manner or the style and the
questions. It can be.

Q But, if the police ask questions of someone making
accusations and they do so with open questions, trying
to get to the bottom of it, that's not shaming that

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person?

A It's not -- no. It's not always shaming by the police.

Q Well, it's not always shaming. You just have to know the circumstances; right?

A Yeah.

Q And you're not doubting that law enforcement most of the time tries to conduct investigations in good faith, are you?

A It has nothing to do with doubting that they conduct investigations in good faith. It has to do with whether they've been trained specifically about interviewing victims of sexual assault, which is a -- which is different than interviewing different kinds of victims.

Q Sure. And on that note, it's -- I mean, you're aware that there are also certain ways to interview children that are different from interviewing adults?

A Yes.

Q Because children, at least what the, mind you, folklore out there was about kids, was that they're so easily influenced to lie?

A What's your question?

Q That children are questioned in a different way

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because of a belief --

A No, that's not why they're questioned in a different way.

Q Okay. Tell us why.

A Why are children questioned in a different way?

Q Sure.

A Oh, for many reasons. Number one, children have -- children have different understandings of things that are involved in sexual assault. They have different words for body parts. They have a different understanding about what sex is, about what touch is, about what good touch is, about what bad touch is.

They also have -- are -- there's just so much that's different about kids. They also need to feel safe in a situation. They don't understand the legal process. They don't understand the difference between being interviewed as a victim versus them getting in trouble.

I mean, it depends on the age of the child, but there are so many developmental differences between a child and an adult that there are myriad reasons that you interview children differently than you interview adults.

Q And you don't want to appear as though you're

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Q Sure. Because while you talk about victims of sexual assault giving inconsistent statements -- I believe that was your testimony, correct, that it's not uncommon?

A It's not uncommon.

Q It's also not uncommon for people who are lying to give inconsistent statements; correct?

A_f Correct.

Q And on that same note, delayed disclosure, again, that's going to depend on the circumstances; is it not?

A What do you mean? Whether disclosure is delayed
or not?

Q: Correct.

A: It's the norm. And most sexual abuse is not disclosed. It's between five and 30 percent depending on what literature you're looking at. And delayed disclosure is the norm rather than the exception.

Q Well, actually, I think in your report -- and you may need to refer to it -- the norm that you were quoting there was based upon, according to your footnote, citing back to reference points, those were studies on adolescents and children?

A: No. The -- I have two things in my report. One

1
2 refers to 18- to 24-year-olds and their disclosure, and
3 one is from the Centers for Disease Control which talks
4 about overall reporting.

5 Q Okay. And so let's cut out the college kids, all
6 right, and let's talk about adults who are over the age
7 of 25. What would be the percentage of delayed
8 disclosure for adults over 25 years of age if you have
9 any studies that would bear that out?

10 A The studies that I cite in my report are about
11 reporting full stop at any point in time sexual abuse.
12 I don't have studies that specifically talk about
13 percentages of delayed disclosure.

14 Q Okay. So it was a broad brush you were painting
15 and you have it teased out in the older age groups?
16 You were just relying on an 18- to 24-year-old age
17 group, the college-age kids?

18 A No, it's just -- that's one set of -- that's
19 one -- that's large studies between 1995 and 2013. And
20 it happens to be that that age was the age that they
21 studied.

22 Q The 18- to 24-year-olds?

23 A Yes.

24 Q Okay. And those were college kids; were they not?

25 A Yes.

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Q Okay. And a college environment is a certain type of environment; correct?

A Yes, it is.

Q Just like a workplace environment is going to be a certain type of environment?

A That's a pretty broad statement, you know --

Q Of course it is.

A -- your workplace.

Q If you'll bear with me one second. Because it kind of depends on where you are in the workplace; right?

A I don't understand the question.

Q The environment itself depends on your role in a particular environment that you would be looking at?

A Your workplace also depends on what job you have. If you're a tennis pro, your workplace is different than if you are a D.A. I mean, you can't make any --

Q Assumptions about that; right?

A About the physical environment.

Q You have to look at the circumstances. And again, I go back to what you said when I was conducting voir dire. You have to evaluate the objective evidence and what corroborates it; right?

A In general, in -- you have to evaluate objective

1 evidence, absolutely.

2 Q: And for all intents and purposes, you're a
3 scientist, you've studied the scientific methods in
4 looking at situations and trying to evaluate as a
5 forensic psychiatrist what happened here; correct?

6 A: Is that my role? To say what happened here? No,
7 usually it's not.

8 Q: No?

9 A: My role is --

10 Q: I'm sorry. In the way -- the manner in which you
11 evaluate a patient, you're applying criteria that's
12 been set up based upon a scientific method?

13 A: More or less, yes.

14 Q: You're trying to take away your subjective view or
15 bias in order to render a sound medical opinion;
16 correct?

17 A: Yes, you are objective when you're doing a
18 forensic evaluation.

19 Q: And just like in a courtroom where you testified
20 190 times, you're trying to present to a fact finder,
21 to a jury, objective evidence that meets certain
22 criteria, here jury instructions; is that fair to say?

23 A: I'm presenting evidence based on the scientific
24 literature, my experience about patterns of behavior of
25

1 victims of sexual abuse.

2 Q Well, and we've already talked about inconsistent
3 statements. Inconsistent statements can be made by a
4 true victim of sexual assault just like they can be
5 made by a liar; right?

6 A Yes.

7 Q Delayed disclosure can be made by a true victim of
8 sexual assault and can also be made by a liar; right?

9 A Can.

10 Q And confronting the perpetrator, I was a little
11 confused where you were going with that because are you
12 saying that victims of sexual assault typically
13 confront their accuser?

14 A No, they don't.

15 Q They do not?

16 A I said they have -- they have subsequent
17 interactions and relationships with the perpetrator.

18 Q But there are also victims of sexual assault who
19 never want to have anything to do with the person who
20 just violated them?

21 A It's rare, but it happens.

22 Q On what study are you basing that?

23 A On my 20 years of experience. And I'm sure that I
24 can find you -- you know, I have 69 references in here.
25

1
2 Q How many patients --

3 MS. FEDEN: Your Honor, if she could
4 finish her statement. This is the second time she's
5 been interrupted.

6 THE COURT: Yeah. You asked what study
7 and then she's got to look at it, so give her the
8 chance to do that. Thank you.

9 BY MS. BLISS:

10 Q Please. And if you'd please refer me to whatever
11 page you're finding this study.

12 A I'm just looking to -- I didn't specifically
13 address the percentage of victims who have subsequent
14 contact. It is -- I'm sure it's in one of these, but
15 rather than -- but in the 20 years that I have been
16 doing this and in the thousands of victims of sexual
17 abuse, it is rare for somebody, except for a stranger
18 rape, to not have any subsequent contact with the
19 offender.

20 Q Again, it would depend on the circumstances. If
21 they weren't -- it would be understandable if they were
22 in a familial relationship where they would have to be
23 exposed to them; right?

24 A It isn't different. Yes, obviously, if they're in
25 a familial relationship when it's a child. As you've

1 said at the beginning, we're not talking about
2 children. In most circumstances, most women who were
3 sexually assaulted by someone they know have subsequent
4 contact with that individual.
5

6 Q Well, for example, in the military research that
7 you did, someone's in the military, so they're probably
8 going to have subsequent contact with the violator
9 because of the environment in which they're in?

10 A Yeah, but it is also not just dependent on
11 environment, meaning that women who are not, you know,
12 in the military or not in the same family independently
13 most often seek out or have subsequent contact with the
14 individuals who have sexually assaulted them.

15 Q Okay. Based upon your clinical experience, but --
16 okay. Well, then tell us a little bit of what kind of
17 contact. You've seen most women having subsequent
18 contact with their perpetrator. What kind of contact
19 was it?

20 A Well, I think I talked about that before. I think
21 most women who are sexually assaulted by a nonfamily
22 member, someone that they know, return to the same --
23 the previous kind of relationship they had. So if it
24 is an acquaintance, they may call them or text them or
25 have -- or if they have called or texted, they'd

1
2 respond. If it's a friend, they'd continue that for at
3 least a period of time.

4 It's a very powerful job to normalize a
5 relationship to make yourself feel safe both in your
6 own judgment and in your judgment of the other
7 individual and to psychologically ensure that they're
8 not going to do further damage.

9 So the vast -- in fact, I'm sitting here
10 struggling to think of a time where somebody was
11 sexually assaulted by a nonrelative, somebody that they
12 didn't live with, who had no subsequent contact. And
13 I'm sure I'll think of somebody, but nobody immediately
14 comes to mind.

15 Q Okay. But you wouldn't doubt that a very logical
16 and rational response to being sexually assaulted would
17 be one of revulsion, never wanting to have any contact
18 with that person whatsoever?

19 A That's the whole point of the rape myth. You just
20 articulated it.

21 Q Ma'am --

22 A A core -- no, it isn't normal. What you just said
23 is wrong. That's not a natural response. The natural
24 response is to be frightened. A natural response is to
25 feel confused. A natural response is to feel ashamed.

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Those are the natural responses. That's why there is all this literature about sexual assault victims.

Q Frightened, confused, that is not the same as then wanting to maintain a relationship with the person who just raped you?

A No.

Q That's what you're saying.

A No.

Q That's what you're saying by --

A No. You're conflating two different ideas.

Q No, we're not.

A Yes.

Q You're not disputing --

THE COURT: Just ask the question.

BY MS. BLISS:

Q -- are you, that someone who never wants contact again and tries to find a safe place, that that can happen with someone who's really been sexually assaulted?

A It can. It's rare. That's not the norm.

Q Okay. That's based on your clinical assessment and no studies that you've pointed to?

A No. That's based on -- that is based on 69 studies. This idea that people's response --

1
2 Q Sixty-nine studies contained in your report?

3 A Well, not all 69 specifically address that exact
4 issue, but yes. All of these are about the rape myth.
5 Well, not all of them. Again, there are sections in
6 there. But the ones that address the great myth say
7 exactly the opposite of what you said. And so
8 References 17 to 49 address some element of that.

9 Q Okay. Well, Reference 17 is a 1998 study about
10 "Rape myths as neutralizing cognitions: Evidence for
11 causal impact of anti-victim attitudes on men's
12 self-reported likelihood of raping." That's based upon
13 offender profiles you've done.

14 And then you've got 18 through 27 on
15 Page 5, those are all studies that were in the '70s or
16 '80s.

17 A Because that's when the studies of this phenomenon
18 began.

19 MS. FEDEN: Your Honor, I have to object
20 only because this is about the third or fourth time
21 that Dr. Ziv has not been permitted to finish what
22 she's --

23 THE COURT: I would prefer if -- if
24 you're going to read from it, then ask -- a normal
25 question when you're doing that kind of

1
2 cross-examination would be "Is that correct?" or do you
3 agree with this as opposed to -- if you're just reading
4 it, she doesn't know how to respond.

5 So try to keep it in the form of a
6 question and then we'll let her respond, and then
7 hopefully we can move through this.

8 MS. BLISS: Certainly, Your Honor. I
9 thought she was responding.

10 BY MS. BLISS:

11 Q Okay. So, again, you would agree with me that, as
12 you just responded, the rape myth literature that you
13 cite to was from the '70s and '80s?

14 A No, not at all. It begins in the '70s and it goes
15 through to 2005. There's an article, 2010.

16 Q Okay. Well, let's stop. 2005 -- I want to make
17 sure I'm on the same page with you. 2005 is an article
18 "Doing Gender in the bedroom: Investing in gender
19 norms and the Sexual Experience". Is that correct? Am
20 I reading the right footnote?

21 A Yes. That's -- well, no. There's another one
22 from 2005, "Rape Perceptions, gender role attitudes,
23 and victim-perpetrator acquaintance." That's also from
24 2005.

25 Q Okay. I see that. And --

1
2 A There's one from 2009, "Understanding attribution
3 of blame in cases of rape: An analysis of
4 participant" --

5 Q But stop.

6 MS. FEDEN: Your Honor, again, if Dr.
7 Ziv could just be permitted to finish her statement
8 and, respectfully, not be told to stop.

9 MS. BLISS: Your Honor, I'm sorry. I
10 was just trying to -- she moved on to another footnote.
11 I was trying to ask her about the one she had just
12 cited. If I may finish my question?

13 THE COURT: Let's go back. Start and
14 finish the question, and then wait until the
15 question -- and you can answer it fully.

16 BY MS. BLISS:

17 Q Right. I think we were on the 2005 which would be
18 Footnote 35; is that right?

19 A Well, no. The one that I just cited is Footnote
20 35, yes.

21 Q Yeah, that's what I thought. That's what I was
22 trying to clarify. And does Footnote 35, that
23 corresponds -- that follows Footnotes 33, 34, all to
24 the same conclusion about date rape; is that correct?

25 A Date rape or acquaintance rape, which is what

1 we're talking about.

2 Q Sure, and sharing responsibility for the offense?

3 A No. I mean --

4 Q Isn't that what you said in your paper?

5 MS. FEDEN: Objection, Your Honor. If I
6 could just direct Dr. Ziv to Page 7 of her report to
7 clarify the misstatement.

8 THE WITNESS: No. It involves the
9 perception which I've talked about at length that
10 places the blame, at least in part, on the victim.

11 So these studies all point to this issue
12 that in date rape or acquaintance rape, whatever you
13 want to call it -- you know, it's called different
14 things in different places -- individuals are more
15 likely, common people are more likely to blame -- place
16 more blame on the victim than in situations of stranger
17 rape.

18 That's the gist of what this is is that
19 if somebody is more closely associated, if they're an
20 acquaintance or a date, then people are more likely to
21 perceive the victim in that circumstance as having some
22 responsibility or some liability, sharing some of the
23 blame.

24 BY MS. BLISS:

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Q. Dr. Ziv, but your statement in your paper is victims are more likely to be seen as sharing responsibility. Is that what it says?

A. What it says specifically, many studies indicate that in circumstances involving date or acquaintance rape, victims are more likely to be seen -- which is what I just said -- viewed by others as sharing the responsibility for the offense, meaning that others blame them or hold them responsible to a certain extent.

Q. Okay. In date rape.

A. "In date or acquaintance rape" is the way that the sentence reads.

Q. But let's go back to -- it's your opinion then that it's rare for a victim of sexual assault to extricate herself, remove herself from a situation in which she was violated by someone she knows? You're saying that's rare?

A. Yes.

Q. Now, let's talk a little bit about this paper that you did prepare for the Commonwealth, "Sexual Abuse: Current Literature and Perspectives." You prepared that at the request of the Commonwealth here for this case; is that right?

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2 A Yes.

3 THE COURT: I believe that was C-2.

4 MS. FEDEN: Yes, Your Honor.

5 MS. BLISS: Yes.

6 THE COURT: So we can keep referring to
7 the record.

8 BY MS. BLISS:

9 Q When did you prepare this, because it doesn't say
10 or at least I haven't found where you prepared it?

11 A Well, the date I submitted it is on the bottom, so
12 I prepared it in the weeks prior to that.

13 Q Okay. So it was just in the weeks prior to it,
14 not over the course of time?

15 A I keep abreast and I teach about this topic. I
16 keep -- you know, I review the literature at least
17 weekly. And I am called upon to testify on various
18 aspects of sexual assault frequently, so I always keep
19 abreast of the literature. So, you know -- but all the
20 literature is not relevant to all the cases.

21 Q Sure. And were you asked to prepare certain
22 opinions specific to this particular case?

23 A No. The charge was very broad. I was asked to
24 speak as a subject matter expert -- the conversation --
25 I can tell you that the conversation took place over a

1
2 very short period of time. I got a call as I was on my
3 way to the airport, and they -- and I was advised that
4 I would need a report. And I said, "About?" You know,
5 and general -- I don't even know that I was told, but
6 about general aspects of sexual abuse, adult sexual
7 abuse. And that's pretty much the only directive I
8 had.

9 Q All right. But you did know about this case?

10 A What do you -- of course. I was called and asked
11 if I would testify in this case.

12 Q Right. You've been following this case?

13 A I have not been following this case.

14 Q You were recorded in the newspaper making comments
15 about the case?

16 A No. I was interviewed by Sky News, an English
17 media company, and I was asked. And I told them at the
18 time that I had no particular familiarity with this
19 case. And I was asked sort of general questions much
20 in the manner that I am being asked general questions
21 now. And, you know, I said to the person who
22 interviewed me very similar things to the things that
23 I'm saying now. I talked generally about victims of
24 sexual abuse and counterintuitive behaviors, why
25 people, you know -- how I evaluate, et cetera. And I

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didn't speak specifically about --

Q Well, Dr. Ziv, if I may, the article reported you commenting about the jury's inability to reach a verdict and convict Mr. Cosby.

MS. FEDEN: Objection, Your Honor.

THE WITNESS: No.

BY MS. BLISS:

Q That was the context --

MS. FEDEN: Your Honor, can we see you at sidebar?

THE COURT: Sidebar. Bring the -- if you have something you're reading from, then bring it to the sidebar.

- - -

(Whereupon, a conference was held at sidebar, not reported.)

- - -

THE COURT: All right. Ladies and gentlemen of the jury -- let's keep it down. Ladies and gentlemen of the jury, we had a conference to try to at least determine -- because I don't have a copy of what Ms. Bliss is cross-examining the witness on. And I believe at the time the witness did not have any copy and still doesn't.

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2 So there was a question that came from
3 Ms. Bliss. That question -- I can't make any clearer
4 to you, which I've been telling you throughout,
5 questions of counsel are not any evidence whatsoever.
6 They're just not. So when you have heard a question
7 and then you say before she could answer, before she's
8 even seen it, it's not evidence in the case.

9 Anything that may have occurred in this
10 case or didn't occur in this case in its history is not
11 any evidence whatsoever. And, in fact, I harken unto
12 your voir dire in which each of you said you wouldn't
13 let anything that may have happened in this case or
14 anything you may have heard of, may have read -- and
15 everybody said they read something. So that question
16 really has no basis whatsoever in this case, and it
17 just starts with questions of counsel are not evidence.

18 So if you're going to continue to
19 cross-examine, please show this witness this -- what
20 you say are her own statements before you read her
21 statements to her. Let her look at what you're going
22 to ask her about.

23 MS. BLISS: Certainly, Your Honor.

24 THE COURT: Thank you.

25 MS. BLISS: I have one copy. I'll mark

1
2 it as D-1.

3 (Sky News article "Judge declares a
4 mistrial in Bill Cosby sex assault case"
5 marked Defendant's Exhibit D-1 for
6 identification.)

7 THE COURT: Again, do not expect to ever
8 see this document in evidence. It is being used for
9 the record so that a witness -- which is how you're
10 supposed to ask a witness about a question. Let them
11 see the document first, and then you can ask them about
12 whatever they said here.

13 MS. BLISS: Okay. I'll mark it D-1 and
14 show -- should I hand it to your clerk or should I
15 approach the witness?

16 THE COURT: You can approach the
17 witness. I don't have a problem with any counsel
18 approaching the witness.

19 BY MS. BLISS:

20 Q: Dr. Ziv, when you're finished looking at the
21 article, then I'll take it back from you. It's going
22 to be on the third page. You see your name?

23 A: Yes.

24 Q: Okay. Do you recognize the quotation that's a
25 attributed to you?

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2 A Yeah, but it's not --

3 MS. BLISS: May I approach the witness?

4 THE COURT: Yes.

5 BY MS. BLISS:

6 Q Now, you gave an interview to Sky News, as you
7 said; correct?

8 A Yes.

9 Q And when you gave that interview, you knew that it
10 was about the Cosby case; correct?

11 A It was not, actually. And I specifically said it
12 was an unresolved case and that I wasn't going to
13 comment on any specific case. And it was a discussion
14 about sex crimes. And if you note, the quote there
15 does not refer to Mr. Cosby. It refers generally
16 speaking to a general point in sex crimes.

17 Q Sure. And why don't you take the mystery out of
18 it and share with the jury what your quote was.

19 A Well, you have it in front of you.

20 THE COURT: Now you let her read it
21 or -- if you read it, then you're going to have to ask
22 her if it's correct.

23 MS. BLISS: Okay. May I approach?

24 THE COURT: She can read it if she
25 wants.

MR. RYAN: The witness doesn't have it with her.

THE COURT: I thought you gave it to her.

MS. FEDEN: She took it away.

THE COURT: A general good practice is to have a copy for the witness, have your working copy, have one copy for the Court. So, in the future, I'm going to instruct counsel that any time there's a document that we're going to work with with a witness, have three copies, assuming that the other side has their own copy.

MS. BLISS: Your Honor, with all due respect, I'm just refreshing her recollection here. It's not evidence because it's hearsay. I will then follow up --

THE COURT: I'm really aware of what it is. I am really aware. You have to trust me. I know what it is. The point of it is is good practice is to always have -- anything we're working with, have some copies so the Court can be looking. It's not up on any screen. Nobody can see it. I'm just asking counsel. You don't have to do it. I'm just asking counsel, all counsel, in the future just to have copies so I can

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follow along.

BY MS. BLISS:

Q Dr. Ziv, do you need the article in order to remember exactly what you said?

A To quote it precisely, yeah.

Q Okay. So why don't you tell the jury what you said and then we'll put it into context?

A It says: Dr. Barbara Ziv, a forensic psychiatrist who has worked with victims of sexual assault, told Sky News: "When there are only two people involved, there is always a 'he said, she said' element. So who are you going to believe? It's hard to make judgments about credibility, so there is a heavy reliance on physical evidence."

Q Okay. Now, you're telling the jury here that you didn't know anything about the case?

A I don't. I still don't know -- I know the broad outlines. I don't know much specific about the case.

Q But you were given certain parameters about your testimony by the Commonwealth?

A I was told that I -- that my testimony had to be within the rules of evidentiary law and that the focus is on behaviors of victims of sexual assault.

Q Are you being paid?

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2 A Yes.

3 Q How much?

4 A \$400 an hour.

5 Q Are you typically paid on your cases --

6 A Yes.

7 Q -- when you testify at trial?

8 A Yes.

9 Q And what's your rate?

10 A \$400 an hour.

11 Q How much have you charged thus far?

12 A Nothing.

13 Q I'm sorry?

14 A Nothing.

15 Q Okay. But you've put in how many hours of work at
16 \$400 an hour?

17 A Probably 10.

18 Q Okay. I think we spoke about confronting the
19 perpetrator. It's your view that that can be common
20 with victims of sexual abuse?

21 A You keep saying the word "confronting". I don't
22 believe I've used that word. I've said interacting,
23 having a relationship, you know, communicating. I
24 don't believe that I've used the word "confronting". I
25 think confronting actually is pretty rare in terms of a

1
2 direct --

3 Q A "what did you do to me" kind of confrontation?

4 A Correct.

5 Q That would be rare then?

6 A It's relatively rare, yes.

7 Q And why is that?

8 A Well, for the reasons that we've talked about.

9 People are -- blame themselves to a certain extent.
10 They want to believe that somebody that they trusted is
11 trustworthy because they're afraid of -- because they
12 feel ashamed, because they're afraid of damage to their
13 reputation, perhaps damage to their career, because
14 there is a hierarchy in the relationship.

15 Women are often sexually assaulted by
16 individuals who are in a more powerful role than they,
17 and they may be wary of the consequences. And they
18 don't want to be told that it didn't happen, and they
19 don't want to be told that it was their fault. And
20 there are lots of reasons, most of which I've
21 discussed.

22 Q Okay. But someone who can -- someone who -- let's
23 talk about normalizing a relationship. You said that
24 that also occurs with victims of sexual abuse; is that
25 correct?

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2 A Yes.

3 Q Okay. So confrontation, rare; but sustained
4 interaction, not so rare?

5 A I didn't say sustained either. I said
6 interaction. And interaction can be time limited. It
7 depends on the nature of the relationship. It depends
8 on many circumstances. Sometimes it is sustained;
9 sometimes it's not. Sometimes it's brief. It depends.

10 Q And if nothing ever happened, there could also be
11 a sustained relationship?

12 A Obviously.

13 Q Yeah. Because that relationship, for -- it was a
14 normal relationship, for lack of a better way to put
15 it; correct?

16 A Yes.

17 Q Now, you talked about corroborating evidence,
18 evidence that corroborates the accusations of someone
19 who is accusing another of sexual assault; right?

20 A Yes.

21 Q And explain to the jury what you mean by
22 corroborating evidence based upon your training and
23 experience as a forensic psychiatrist.

24 A Well, if you limit it to sexual abuse -- which I
25 think that you all would like me to, but it's broad --

1
2 sexual abuse often only involves two people. Often
3 it's he said, she said. And often there is no physical
4 evidence.

5 One of the other rape myths that I
6 didn't talk about was that there's a common belief that
7 if somebody is sexually assaulted, there's physical
8 evidence. It's actually rare. It's rare to -- even if
9 somebody has immediate reporting and they go to a SANE
10 nurse, they go to a specialized sexual assault nurse,
11 it's rare to find physical evidence.

12 So it is very common in cases of sexual
13 assault that you have an accuser and then you have an
14 alleged perpetrator. So what you need to do is you
15 need to look at other information. You need to look
16 whether lots of factors make sense.

17 You need to look and see what the
18 alleged perpetrator says about the interaction. You
19 need to look and see whether the tiny was possible,
20 because sometimes people accuse people and they find
21 out they were not even in town. You need to look at
22 information that may come from ancillary sources, you
23 know, people who know them or people who are around at
24 the time. You need to look at all of the information
25 that you can get your hands on.

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2 Most often, as I said -- because it's
3 rare that there's physical evidence. And even when
4 there is physical evidence, you can always claim that
5 it was consensual which is, you know, not uncommon.
6 Even if you have DNA evidence that a sexual act
7 occurred, that doesn't mean necessarily a crime
8 occurred. You still have this he said, she said issue
9 where she says it was sexual assault and he says that
10 it was consensual.

11 So even when there is physical evidence,
12 you still need to have a story that makes sense. So
13 you need to hear both sides of the story. You need to
14 hear what the victim says, and you need to hear what
15 the alleged perpetrator says. And you need to look at
16 all the circumstances surrounding an event. Sometimes
17 there's a lot; sometimes there's less. But that's the
18 information that goes into making an assessment about
19 what happened.

20 Q But, I mean, you know, you've been a frequent
21 visitor to courtrooms. You know that a person accused
22 doesn't have to say a word. That's what the
23 Constitution says; correct?

24 A Correct.

25 Q But someone who is accused who cooperates with law

1 enforcement, that would be important to you?

2 A Well, first of all, in my experience, most of the
3 time -- and we're not just talking about what happens
4 in the courtroom. We're talking about what happens in
5 the investigation, too.

6 Q Oh, certainly.

7 A And what other information there is. You know,
8 sometimes you look at people's Facebook posts or their
9 text messages or other, you know, e-mails. There are
10 lots of different ways of getting information. So
11 obviously you're right, nobody is required to take the
12 stand in a courtroom. And, quite frankly, nobody's
13 required to talk to law enforcement personnel if
14 they're a subject. So anybody's who's accused of
15 sexual assault can say -- can refuse to speak.

16 But oftentimes there is other
17 information. There's corollary information in e-mails,
18 Facebook, messages, cell phone records, whatever.

19 Q Sure, because records are documents that are fixed
20 in time; right?

21 A Well, it depends. Sometimes they are; sometimes
22 they're not.

23 Q Well, say telephone records, for example.

24 A Well, we've all learned that depending on where
25

1 the ping is that that might not be a hundred percent
2 accurate. But yeah, generally speaking they're
3 relatively accurate.
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5 Q That, again, is an evolving science, where the
6 ping is. But what about an accuser who destroys any
7 evidence that would be available at the time of the
8 alleged assault? Is that something that you would
9 factor in in your evaluation of corroborating evidence?

10 A I mean, it depends. You'd have to be more
11 specific.

12 Q Destroying evidence is not specific?

13 A No. I mean, if somebody goes home and washes
14 their clothes, that's -- you know, in the immediate
15 aftermath of the sexual assault, I wouldn't call that
16 destroying evidence. So I don't know what you mean by
17 that.

18 Q Victims -- you said that victims rarely fight
19 back; is that right?

20 A Yes.

21 Q But victims do fight back?

22 A Sometimes, yeah.

23 Q And you said that victims often are frozen and
24 don't try to immediately escape?

25 A Yes.

1
2 Q But again, depending on the circumstances, a
3 victim may escape?

4 A Of course.

5 Q And this issue about drinking alcohol, you're not
6 telling the jury that if a woman has a couple of drinks
7 with a man, or another woman for that matter, and then
8 has sex, that somehow that woman had no faculties about
9 her to be able to assess the situation? You're not
10 saying that, are you?

11 A Am I saying that you have to be stone cold sober
12 to have sex? No.

13 Q But a couple of drinks isn't going to make you a
14 victim of rape?

15 A It depends. Some people say "a couple of drinks"
16 and they're talking about, you know, jugfuls. And some
17 people say "a couple of drinks" and they're talking
18 about, you know, a light beer or two.

19 So one of the things we learn very early
20 in med school is that you need to ask people
21 specifically what they mean when they're talking about
22 alcohol, and even then it's not usually precise.

23 Q I just wanted to make sure I understood your
24 testimony that just having a drink or two with someone
25 of the opposite sex, or even the same sex, which then

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2 leads to a sexual encounter doesn't mean that it wasn't
3 a knowing sexual encounter. You just have to look at
4 the circumstances; right?

5 A You have to look at somebody's level of
6 intoxication.

7 Q Okay. And you can't just judge someone's level of
8 intoxication based upon an amount reported without
9 knowing more, like the blood alcohol content or
10 their --

11 A Well, nobody ever knows the blood alcohol content,
12 but you have to rely upon as much objective information
13 as you have.

14 Q Sure. Let's talk a little bit more about false
15 accusations in sexual assault. They happen, don't
16 they?

17 A Yes.

18 Q And I think some of the studies range up to
19 10 percent. I think the norm seems to be around
20 seven percent; is that correct?

21 A It depends on what population you're talking
22 about.

23 Q Okay. Why don't you tell us about population of
24 adult women or adult men, if you know.

25 A Well, this is always evolving and changing. It's

1
2 changing as a result of Title 9 enforcement on college
3 campuses. It's changing as a result of increased
4 awareness about sexual assault. I don't think that the
5 number is as high as seven percent in adult women. And
6 I -- this is the kind of science where you have to be
7 really careful. How do you prove a negative?

8 So when there -- so in order to have
9 really accurate data about when somebody falsely
10 reported, you would have to have one of two things.
11 You would either have to have an admission that the
12 person lied, but even that in sexual assault is not
13 entirely reliable because people simply can't, because
14 of all this other stuff I talked about, the shame, the
15 exposure, afraid of retaliation, blah, blah, blah,
16 blah, blah.

17 So you either have to have somebody tell
18 you that they lied -- but again, that's not always --
19 or you have to have the physical evidence that says
20 that it didn't happen. Somebody was in, you know,
21 Tanzania at the time or for the past five years and
22 couldn't have possibly done it.

23 So when you're talking about false
24 reports, you know, what are you basing that on? Are
25 you basing that on acquittals? Are you basing that on

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lack of conviction? Are you basing that on not being prosecuted? Are you basing that on, you know, lack of information?

So that kind of science is really hard to come by accurately. Accurate numbers are very hard to come by. You know, we can look at the Bureau of Justice Statistics to say how many crimes are reported. But if you're talking about how many false reports, it's a harder number to get at for those reasons, because you either have to have objective evidence that it didn't happen or you have to have somebody saying that they lied about it.

The numbers historically have been below five percent, more toward the, you know, rare two percent maybe.

Q Well, another report out there -- I think De Zutter has a report from 2017 that puts it more --

MS. FEDEN: Objection, Your Honor.

THE COURT: Why don't you ask her, first of all, if she's familiar with the report and then cross-examine her with the report as opposed to -- because it just causes me again to have to make a statement. If you're about to quote a report that has a statistic in there, I in turn would just have to just

1
2 tell the jury that your statements aren't the evidence
3 for fear that they may say, oh, an attorney told me
4 there's a different report.

5 That's why it's best to say, Are you
6 familiar with this? Are you familiar with that report?
7 And then you might have the report and show her the
8 report. And then you'd show her the report and she'd
9 look at the report and then say whether she
10 incorporated that into her testimony or not.

11 So if you ask the question, I am going
12 to have to respond that way if you don't show her what
13 you are obviously are referring to.

14 MS. BLISS: I hadn't even finished my
15 question, actually.

16 THE COURT: You did say there was
17 somebody and you gave a name and you said you know they
18 had a report. So sometimes we do have to with an
19 objection stop a question so I don't have to get to the
20 place to remind the jury that the question isn't
21 evidence.

22 Why don't you show me what you're about
23 to ask her and then that way at least I'll know that
24 it's a proper question that's not going to have the
25 other statistics in there. All I'm asking you to do is

show her.

MS. BLISS: Your Honor, with all due respect, I've got to ask her the question first. And I hadn't completed my question. And if she knows De Zutter, she does. If she doesn't, she doesn't.

THE COURT: Let's ask it that way.

BY MS. BLISS:

Q Are you familiar with the 2017 report by De Zutter about the incidents of false reporting?

A In what journal is this?

Q It's a European journal.

MS. FEDEN: Your Honor, I would just ask if it's going to be referred to by the witness and produced by Ms. Bliss, I'd ask for a copy to go along prior to her question.

THE COURT: Before you show it to her --

MS. BLISS: Judge, I've got a little bit of a foundation to go here.

THE COURT: Yes, you do. And that's why I'm going to ask you make it. But if it is a document, just have one ready for the other side as well.

MS. BLISS: Well, we're not there yet.

BY MS. BLISS:

Q First of all, are you familiar with the European

1 Journal of Psychology applied to legal context?

2 A No.

3 Q You're not familiar with Andre De Zutter?

4 A I don't know. I don't know if I've read articles
5 by Andre De Zutter.

6 MS. BLISS: Well, Your Honor, based upon
7 what I've learned, that ends it.

8 BY MS. BLISS:

9 Q But I believe where we started was you are
10 familiar with studies about false accusations; yes or
11 no?

12 A I'm aware of statistics involving false
13 accusations, and all of them have the caveat that I
14 just mentioned which is that in order to prove that
15 there's a false accusation -- and this isn't just for
16 sexual assault. This is for other crimes as well.
17 There have been false accusations, false convictions.
18 And that's where most of the work is done, actually, on
19 individuals who have been exonerated based on new
20 evidence and, therefore, it's that they were falsely
21 accused.

22 Q There's a quite of few of those with DNA; isn't is
23 that right?

24 A It depends on what --

1 Q Where DNA exonerated someone?

2 A In murder trials and in -- and, you know, there
3 are some -- I hate talking about this without the
4 things. There's some sexual assault where, yes, that
5 DNA may have exonerated somebody. Mostly those
6 exonerations have involved murders, but --

7 Q I think there was a Central Park case in which
8 some kids were exonerated based on DNA.

9 A Yes.

10 Q And the Duke lacrosse investigation, there was an
11 exoneration there.

12 A Yes, but that wasn't based on DNA. The Duke
13 lacrosse was based on, I think, somebody saying that
14 they lied or something like that. I don't think that
15 it was based on DNA evidence.

16 Q But that was certainly a false accusation case?

17 A Well, no, no, no. It was not a false accusation
18 case. It was a false attribution case. It was --
19 there were -- the Central Park Five were falsely
20 accused and falsely convicted or they were not guilty,
21 but they were convicted. It doesn't mean that the
22 accuser -- that the assault did not happen.

23 Q We were talking about the Duke lacrosse case.

24 A Well, first of all, the --

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Q The Duke lacrosse case started with a false accusation; right?

A Yes.

Q And there was an investigation; correct?

A Yes.

Q And it turned out that that accusation was false?

A Yes.

Q Have you ever heard of the Fatty Arbuckle case back in the 1920s, a case about rush to judgment in a false accusation about rape?

A I'm -- not well enough to offer an opinion about it.

Q Okay. And I think you testified earlier -- correct me if I'm wrong -- that you actually came in as a consultant on a couple of cases in which the accused had not committed the crime, one in Virginia and one in Tennessee; is that right?

A Yes.

Q Tell us about the one in Virginia.

A What do you want to know? I've actually done a couple in Virginia.

Q Oh, okay. And was that a false accusation case?

A Yes.

Q Both of them were false accusation cases?

1
2 A Yes.

3 Q And the one in Tennessee, that was a false
4 accusation case?

5 A It's more complicated than that.

6 Q Okay. But the offender didn't do it?

7 A What happened was there was a -- a teen whose
8 mother found him looking at pornography. She began to
9 beat him saying, Who did it? Who did it? Who did it?
10 You're not like this. Somebody must have assaulted
11 you. Then she goes through a bunch of names. She
12 mentions the name William. He begins crying. She made
13 an assumption about which William it was. And the kid
14 sort of went with that. And it wasn't that person,
15 so --

16 Q Again, what you do in particular cases like that,
17 you're actually looking at and evaluating allegations
18 of sexual assault, is to look at the totality of the
19 circumstances, the evidence that you have before you as
20 a clinician and a trained medical doctor; is that
21 right?

22 A Yes.

23 MS. BLISS: May I have just a second,
24 Your Honor?

25 THE COURT: Yes.

(Pause.)

MS. BLISS: Your Honor, I have no other questions at this time.

THE COURT: All right. Redirect examination.

MS. FEDEN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. FEDEN:

Q Dr. Ziv, if I could, I wanted to clear up some things regarding your report. Do you still have C-2 in front of you?

A I do.

Q During direct examination, Ms. Bliss was asking you about References 17 through 49 and made a statement that they were mostly from the '70s and '80s.

A She said that. That's not accurate.

Q I'd like to -- if you wouldn't mind, could you tell the jury the name of the article for Number 41 and the date?

A "Understanding attribution of blame in cases of rape: An analysis of participant gender, type of rape, and perceived similarity to the victim." And it's from 2009.

Q And specifically when Ms. Bliss was asking you

1
2 about your report and suggesting that you were dealing
3 with outdated articles, would you agree with me that
4 2009 would be a pretty relevant and dated article
5 regarding rape myths?

6 MS. BLISS: Your Honor, I'm going to
7 object. That mischaracterizes my question. I was
8 limiting it to a certain scope of footnotes. We can go
9 back through it on redirect.

10 THE COURT: All right. You get the
11 final shot at recross examination. So if you need to
12 clarify, you can do it.

13 THE WITNESS: There's another article
14 from 2002. "Attribution of blame in rape cases: A
15 review of the impact of rape myth acceptance, gender
16 role conformity and substance use on victim blaming."
17 There's a 2009 article, 2005 article, 2010 article,
18 2014 article, 2008.

19 BY MS. FEDEN:

20 Q And Dr. Ziv, if I could refer you to also
21 footnote -- excuse me, Reference Number 42, would that
22 be a 2012 article?

23 A Yes.

24 Q And to be clear, all of these articles, are they
25 peer review journal articles --

1
2 A Yes.

3 Q -- relied upon by forensic psychiatrists in the
4 field such as yourself?

5 A Yes. I also note that not all of them, but most
6 of them -- as I said in the beginning, you know, rape
7 myths are culturally dependent and not all of them, but
8 most of them, are from American journals and the
9 research is done on Americans because that's relevant.

10 Q Now, Dr. Ziv, Ms. Bliss was also asking you a lot
11 about false accusations. I wanted to talk to you
12 briefly about that, if I could, and just address some
13 of the things she stated.

14 Specifically regarding the Tennessee
15 case that you were referring to, did that case involve
16 any evidence where the defendant admitted to engaging
17 in sexual contact that the victim claimed?

18 A No.

19 Q What about the Duke case, did that case involve
20 sexual conduct that the defendant admitted to engaging
21 with that was consistent with what the victim claimed?

22 A No.

23 Q Did either one of those two cases involve the
24 defendant admitting to administering an intoxicant?

25 MS. BLISS: Your Honor, I'm going to

object.

THE COURT: Nature?

MS. BLISS: I'm sorry?

THE COURT: Nature?

MS. BLISS: The nature of it is she's exceeding -- she's trying to now get commentary on credibility in violation of the statute.

THE COURT: I'm not so sure. They were clear questions regarding certain things. I mean, I specifically may look at the record. I can take this off the record. You can go back and do this, but I know the two areas where I think the door may have been opened. But at this stage try to stay focused with your question. I'm going to overrule your objection for now, but let's finish up. This is redirect.

MS. FEDEN: Thank you, Your Honor.

BY MS. FEDEN:

Q. So in neither the Tennessee or the Duke case was there any admission by the defendant that -- where the victim -- that corroborated what the victim said?

A. No.

Q. In fact, in your studies with false accusations, are they typically he said, she said?

A. All accusations typically are he said, she said,

24 "When there are only two people involved, there is also
25 always a he said, she said element. So who are you

going to believe? It's hard to make judgments about credibility, so there is heavy reliance on physical evidence."

Did I read that correctly?

A Yes.

Q I want to ask you questions about those statements that Ms. Bliss referred you to. When you're talking about physical evidence, could that include the statements of the defendant?

A Yes.

Q When you're talking about physical evidence, could that be actions made by the defendant to cover up a crime?

A Yes.

Q When you're talking about physical evidence, could it be actions that have been made to silence the victim or victims?

A Yes.

Q And when you're talking about physical evidence, Dr. Ziv, could it be statements made by the perpetrator that are consistent with those made by the victim?

A Yes.

Q Ms. Bliss was also asking you about subsequent contact. I'm trying to limit you to the familial

contacts. You mentioned --

THE COURT: I didn't hear that. Was something said --

MS. FEDEN: I'm sorry, familial context.

THE COURT: And then you said something before that. Subsequent?

MS. FEDEN: I'm sorry, I was asking -- Ms. Bliss was asking some questions about subsequent contact..

THE COURT: Subsequent, all right. Thank you.

BY MS. FEDEN:

Q Ms. Bliss was asking you questions about subsequent contact that a victim may have with an offender and limiting it to familial contact, meaning father/daughter, mother/son, victim/perpetrator dynamic.

Could that sustained or continued contact also be common in the workplace?

A Yes.

Q And, lastly -- I apologize. And lastly, Ms. Bliss cut you off when you were talking about two different ideas. Specifically, on direct examination you mentioned that it is a natural response for a victim to

1 be frightened, confused and humiliated.

2 Ms. Bliss made a comment and you
3 responded that she was conflating the two ideas, but
4 she didn't let you finish. I'd like you to give you
5 the opportunity to finish now.
6

7 A Those are not the feelings that are the impetus to
8 maintaining a relationship. They are separate and
9 apart. The humiliation and shame, confusion, doubt,
10 disappointment, betrayal, lots of those things people
11 experience.

12 They also experience other emotions,
13 including respect for the person if they knew them, a
14 desire not to hurt the person, a desire to be able to
15 find a way to understand what happened, a desire to
16 have something make sense, to have an explanation, to
17 have a narrative that you can live with. Those are the
18 motivations for the continued contact.

19 The other emotions that you experience
20 as a result of sexual assault are not the reason that
21 you continue. So, I mean, Ms. Bliss put those together
22 and those don't go together.

23 MS. FEDEN: Thank you, Dr. Ziv. I have
24 no further questions.

25 THE COURT: Final recross.

MS. BLISS: Just a couple, Your Honor.

RECROSS-EXAMINATION

BY MS. BLISS:

Q Regarding that question that was posed to you about an accused describing the same sexual conduct as an accuser, accused/accuser aside, if there was a consensual sexual relationship, that conduct would be similarly described; right?

A Yes. Well, the physical act may be similarly described. Obviously, if one is accusing somebody of sexual assault, then the feelings about it and their opinions about whether it was consensual are going to be different.

Q But that aside --

A The physical -- specific physical interaction? Yeah, it should be relatively similar.

Q Yeah, in a consensual relationship. The sexual act that the man and the woman had together would be similarly described; is that your answer?

A The physical act, not necessarily the motivation or the consent or the feelings behind it.

Q Okay. But I was posing it as a consensual act. And you agree that it would be similarly described?

A No, because nobody describes -- I mean, if you

1
2 take out all the nuances and all the feelings about it
3 and the expressions about it, then yeah. If you boil
4 it down to physical acts, then yes. But nobody
5 describes sexual contact without some emotional
6 response.

7 So no, it's not going to be similarly
8 described when it's consensual, even if you have the
9 facts the same. Part of the description involves
10 motivation, feelings, you know, the nuances around it.
11 So no, it would not be described in the same way in a
12 consensual. The physical act may be.

13 Q Right.

14 A But the description is not going to be the same.

15 Q Right, because my response may be different
16 emotionally; right?

17 A Right.

18 Q But yeah, let's go to the feelings and the motives
19 that you were discussing with counsel. Certainly the
20 act in which someone would engage could also be
21 motivated by a financial interest?

22 A I don't understand the question. Somebody would
23 have sex with somebody for financial reasons?

24 Q It happens, doesn't it?

25 A It's called -- yeah, it happens.

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MS. BLISS: I have no further questions.

THE COURT: All right. Thank you very much. And you may step down subject to recall if necessary later in the case.

MS. FEDEN: Thank you, Your Honor.

THE COURT: So you are then subject to recall by either party, but make sure the Commonwealth -- they have your information.

THE WITNESS: Thank you.

(At 3:38 p.m., the witness was excused.)

- - -

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

VIRGINIA M. WOMELSDORF, RPR
Official Court Reporter

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