

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT
SOUTHERN DISTRICT
CASE NO. 226-2021-CR-00944

STATE OF NEW HAMPSHIRE

v.

DANIELLE D. DAUPHINAIS

**OBJECTION TO STATE'S MOTION TO PRECLUDE IMPROPER OPINION
TESTIMONY OF DEFENDANT'S EXPERT WITNESS**

Defendant Danielle Dauphinais hereby objects to the State's "Motion to Preclude Improper Opinion Testimony of Defendant's Expert Witness." Dauphinais relies upon the following:

1. Dauphinais is charged with first degree murder, among other things.
2. In a defense motion filed on December 8, 2023, the defense proposed a deadline of July 15, 2024 for the filing of motions to exclude expert testimony.
3. In its response, the State objected to that deadline. The State also filed an Amended Assented-to Structuring Order which the Court ultimately approved.
4. On December 15, 2023, the State filed the State's Amended Assented-to Structuring Proposal which sets forth the following relevant deadlines:
 7. **Defense expert disclosure/CVs/ reports: February 12, 2024**
 10. **Pretrial evidentiary motions, including
motions in limine: April 15, 2024**
 11. **Depositos of expert/lay witnesses: May 15, 2024**

13. *Daubert* Motions:

June 19, 2024

5. On February 12, 2024, the defendant served an expert disclosure with the curriculum vitae and report of Jason J. Dickinson, Ph.D.

6. On April 15, 2024, the State filed several motions *in limine*, all of which are scheduled for a hearing on August 12, 2024. The State did not file a timely motion *in limine* seeking to exclude any testimony of Dr. Dickinson.

7. The prosecution waited from February 12, 2024 until April 25, 2024 to notify the defense that it intended to depose Dr. Dickinson. Nonetheless, in short order, a deposition was convened and Dr. Dickinson testified on May 8, 2024.

8. On or about May 17, 2024, the State produced a transcript of Dr. Dickinson's deposition.

9. The State chose not to file any *Daubert* motions on or before June 19, 2024. At no time on or before June 19, 2024 did the State object to the expert disclosure or request a more detailed disclosure from the defense.

10. On June 28, 2024, the defense filed a motion to continue trial on the grounds that the replacement of co-counsel required more time for the defense to prepare effectively for trial, among other things.

11. On July 1, 2024, the State filed its objection to the motion to continue, arguing that the defense had ample time to prepare.

12. On July 9, 2024, the Court denied the defense motion to continue, noting, among other things:

“Multiple structuring orders have been approved by the Court to ensure a fair and orderly pre-trial and trial process.”

“There is ample time for defense counsel to prepare for the trial.”

“The discovery phase of this case is complete and a hearing on all pending motions is scheduled for August 12, 2024.”

13. The State has not filed any motion for leave to file a motion *in limine* late or a *Daubert* motion late. The State’s motion contains no assertion or argument that it made any effort to comply with its own assented-to structuring order.

14. Because the State filed the motion late, the Court would need to schedule yet another hearing before trial, disrupting the fair and orderly pre-trial and trial process. Moreover, responding to the State’s motion requires time from counsel that could otherwise be spent preparing for trial.

15. Because the State’s motion, whether characterized as a motion *in limine* or as a *Daubert* motion, is late¹ without any explanation or excuse, and because the lateness of the motion interferes with the “fair and orderly pre-trial and trial process,” the motion must be denied.

16. Even if the State’s motion were not procedurally barred, it must fail on the merits. First, the State mischaracterizes Dr. Dickinson’s opinions.

17. Dr. Dickinson runs the “Talking Lab,” which has been “funded by the National Science Foundation since 2007.” The “overarching goal of our work is always the same, which is to generate evidence-based recommendations for improving the reliability of eyewitness testimony for both children and adults.” Dickinson Deposition Transcript (“T”) pp. 13-14. The current grant “is examining

¹ Notably, the State did not even file the motion before the July 15, 2024 deadline to which the State objected.

memory in both parents and children.” T p. 15. Twenty-five percent of the lab’s work involves adult witnesses. T p.16. Dr. Dickinson’s does “a significant amount of training regarding adult eyewitness testimony” and trains “the New Jersey Attorney General’s Office, their Clergy Abuse Task Force.” T p.17-18. Dr. Dickinson trains “teams that interview victims, adult victims of human trafficking” and has “a training relationship with the [SAKI] Network for the State of Michigan... training their cold-case sexual assault investigations.” T, p.18.² Likewise, he has conducted trainings for the “Center for Hope, which is the - essentially the Children’s Advocacy Center for the City of Baltimore... because they’re increasingly starting to interview adult witnesses and victims.” T, p.18.

18. Dr. Dickinson has testified in New Hampshire, New York, Florida, Louisiana, Colorado, Missouri, Indiana, Illinois, and the State of Washington. T. p.21.

19. Considering the factors memory and suggestibility, Dr. Dickinson will discuss interviewing best practices which “increase the reliability of witness reports.” Dickinson Report, pp.2-3.

20. Dr. Dickinson opines as follows:

Throughout his substantive interviews Mr. Stapf provided a great deal of information about the circumstances surrounding the maltreatment and the death of [EL]. However, much of the key information can be traced to suggestive questions posed by the investigators and pressure leveraged on Mr. Stapf to remember. These include the accounts of Ms. Dauphinais assaulting [EL] in the bathroom and what he witnessed the night before [EL]’s death.

² “SAKI” stands for “Sexual Assault Kit Initiative.”

I have not interviewed Mr. Stapf, nor have I reviewed his medical records or evaluated his memory or cognitive functioning. However, Mr. Stapf has repeatedly demonstrated the willingness to lie [to] investigators out of self-interest, and it seems evident that his drug use around the time of [EL]'s death may have opened vulnerability in his memory, making him susceptible to interrogative suggestion.

I cannot say whether Mr. Stapf's eyewitness testimony is accurate. However, from the perspective of human memory, which defines reliability as persistent and consistent memory for an event, his testimony is clearly unreliable. Moreover, as highlighted in this report, the investigators clearly and substantially deviated from interviewing best-practices by pressuring Mr. Stapf to remember, delivering suggestive and leading questions, and sharing key information to help Mr. Stapf reconstruct his account.

Dickinson Report, p.13-14.

21. Contrary to the arguments proffered by the State, Dr. Dickinson is not seeking to opine on the credibility of any testimony offered by Stapf at trial.

Instead, Dr. Dickinson is testifying as to the factors of suggestibility influenced by the suggestive interrogations and interviews performed by State investigators in the wake of EL's tragic death.

22. Stapf's well-documented prevarications form one of the bases for Dr. Dickinson's opinion(s) but do not constitute his opinion in and of itself. There is no question that Stapf provided false information during various interviews. Indeed, the State acknowledges that Stapf gave a false account of the disappearance. State's Motion, p. 4, n.4. The fact that the defendant told the same lie does not impact Dr. Dickinson's evaluation of the interrogations and/or interviews of Stapf. The point is that Stapf lied in his interview, and that Stapf's lies impact the suggestibility and human memory factors from a psychological perspective. If the State wishes Dr. Dickinson to use alternative language such as that Stapf provided "demonstrably

false information,” then the defense has not objection to requiring Dr. Dickinson to characterize that portion of the interview in that way.

23. Ultimately, however, Dr. Dickinson is not being called upon to opine that Stapf lied. He is being called upon to discuss the suggestibility of the manner and content of the interrogations and/or interviews and their impact on the psychological reliability of Stapf’s memory. Dr. Dickinson will not be commenting on the truth or falsity of Stapf’s trial testimony but only on the impact that the manner of the pretrial interrogations and/or interviews may have had on the psychological reliability of his memory.

24. Moreover, the State’s citation to *State v. Lopez*, 156 N.H. 416, 424 (2007) is completely inapposite. In that case, in cross-examination, the prosecutor had asked the testifying defendant at trial whether other witnesses had lied to the jury, and the State conceded the error. Here, the defense has no intention of asking Dr. Dickinson whether any aspects of Stapf’s trial testimony constitute a lie.

25. *State v. Huard*, 138 N.H. 256 (1994) is also inapposite. In that case, the State elicited from the social worker who had interviewed a sexual abuse victim “whether his story is consistent with that of a child of like years, nine years old, that's been sexually abused.” Dr. Dickinson is not going to testify regarding whether suggestive interrogation or interview may have compromised the reliability of Stapf’s memory, not whether his story was consistent with the killing of E.L.

26. Other cases cited by the State are inapposite: *United States v. Fosher*, 590 F.2d 381 (1st Cir. 1979) (defense sought expert testimony to undermine

eyewitness identifications); *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973) (defense proffered experts to testify that the witness “was a sociopath who would lie when it was to his advantage to do so”); *State v. Cressey*, 137 N.H. 402, 406 (1993) (State’s expert “ultimately testified that the children exhibited symptoms consistent with those of children who have been sexually abused”); *State v. Reynolds*, 136 N.H. 325, 328 (1992) (trooper testified that “discrepancies should not diminish the victim's credibility”).

27. Notably, one of the cases cited by the State held that testimony like that offered by Dr. Dickinson is admissible in New Hampshire. The prosecution hides the ball when it argues that in *State v. Sargent*, 144 N.H. 103, 105 (1999), the Court held that “expert testimony concerning a particular child witness’s veracity is inadmissible because that determination is solely within the province of the jury.” The State fails to disclose to the Court that in that case, the Supreme Court ultimately agreed “with those jurisdictions that find that the proper protocols and techniques used to interview child victim witnesses is a matter not within the knowledge and understanding of the average juror.” *Sargent*, 144 N.H. at 106. Ultimately, in that case, the Court held that the trial court should have admitted testimony similar to that which Dr. Dickinson will provide:

In this case, the defendant provided the trial court with examples of improper interview techniques and transcripts of the children's recorded interviews. The transcripts contain examples of suggestive and leading questions that the children were asked. Furthermore, the defendant made an offer of proof that his proposed expert witness would have testified that there is a danger that a child will respond with the answer that a leading question is suggesting. The defendant also made an offer of proof that Dr. Cone, the State's expert witness,

would have testified that there is a danger of confabulation by asking children leading questions. For these reasons, we conclude that the defendant made a sufficient particularized showing that improper interview techniques were used.

Sargent, 144 N.H. at 106.

28. Finally, the State claims to reserve “the right to challenge any of Mr. Dickinson’s opinions in terms of relevance and admissibility or as to Mr. Dickinson’s underlying expertise.” To the extent that the State seeks to cross-examine Dr. Dickinson, it has the right, within the Rules of Evidence, to do so. To the extent that the State foresees motions to exclude expert testimony, it should have filed a timely motion *in limine* or a timely *Daubert* motion. It chose not to do so. It cannot now “reserve” its right to do so later.

WHEREFORE, for the following reasons, Defendant Danielle Dauphinais respectfully requests that this Court DENY the State’s motion.

Defendant
Danielle D. Dauphinais
By her Attorney,

/s/ Benjamin L. Falkner
Benjamin L. Falkner (NH Bar # 17686)
Krasnoo, Klehm & Falkner LLP
28 Andover Street, Suite 240
Andover, MA 01810
(978) 474-9955 (telephone)
(617) 365-4368 (mobile)
(978) 474-9005 (facsimile)
bfalkner@kkf-attorneys.com

Dated: August 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a true and genuine copy of the within document upon counsel to the State via efileing on August 9, 2024.

/s/ Benjamin L. Falkner

Benjamin L. Falkner

Jason J. Dickinson, Ph.D.

RE: Interview of Joseph Stapf

Prepared 02/06/2024

Mr. Falkner,

You contacted me to evaluate the statements provided by Joseph Stapf in the matter of State v. Danielle Dauphinais and Joseph Stapf. Specifically, I was asked to review his statements within the context of human memory and cognition and to provide a critical analysis of the investigative practices that generated his statements. In short, I reviewed the interview transcripts with Mr. Stapf to identify potential sources of errors in his testimony.

In this report I provide a brief review of the mechanics of human memory as well as best practice interview techniques designed to minimize potential errors in a witness's testimony. I then provide a brief critical analysis that centers on two specific aspects of Mr. Stapf's testimony. As you will learn in my Summary and Conclusion, I have serious concerns about the reliability of Mr. Stapf's statements, and I am also critical of the investigative techniques used to elicit these statements. My analysis and opinion is based on the following discovery:

CD#101 - Joseph Stapf NY Interview 10.17.21

CD# 102 - Joseph Stapf NY interview 10.18.21

CD# 103 - Joseph NY interview (AUDIO ONLY) 10.18.21

CD# 104 - One Party Recording of Joseph Stapf - NH Boarder Transport

CD# 105 - One Party Recording of Joseph Stapf - Cruiser and VSJ 10.19.21

CD# 106 - One Party Recording of Joseph Stapf – Merrimack PD 10.19.21

CD# 118 - Joseph Stapf Booking Video

CD# 159 - Stapf One Party Recording Boyd Warrant

Joseph Stapf New York #5

Proffer of Joseph Stapf – 10/22/21 (transcripts)

Interview of Joseph Stapf – 11/17/2021 (transcripts)

Memory

Human memory is dynamic. When one remembers or otherwise recalls information—particularly personally experienced events—that recollection does not reflect a verbatim record of what transpired. Rather, it is driven by fluid cognitive processes that guide the reconstruction of those events. The reconstructive nature of memory makes it prone to a range of predictable errors. These include forgetting, source misattribution, false recognitions, intrusions, gist and script-based errors, among others. In the investigative context (i.e., interview and interrogation), one of the most concerning (yet avoidable errors) stems from suggestibility.

Suggestibility

Suggestibility occurs when post-event information influences the processes of memory, including encoding, storage, and retrieval. Concerns about suggestibility within an investigative context primarily reflect *interrogative suggestibility*, which is the extent to which a suspect or witness comes to accept implicit or explicit messages (i.e., information) communicated by investigators during formal questioning (i.e., interview or interrogation).

Suggestibility can impact a witness’s account through conscious and/or unconscious processes. In the former case, a witness knowingly acquiesces to an interviewer’s suggestion. This can occur, for example, when the subject wants to “be a good witness” (i.e. please the interviewer or be cooperative), or in the case of criminal suspects, escape real or imagined pressures of the interview or interrogation. In this case, the witness understands their account is not true (or may, at the very least, not be entirely accurate). In contrast, it is also possible for witnesses to unknowingly (i.e., unconsciously) acquiesce to an interviewer’s suggestions. Here, the witness is unaware of the investigator’s influence on their report and will come to believe their erroneous (i.e., false) memories.

The likelihood that a witness will succumb to interrogative suggestibility depends on many factors, including the strength of the suggestive questioning (e.g., repetition, intensity, duration). The likelihood of acquiescence will also reflect a suspect’s cognitive vulnerabilities (e.g., susceptibility to suggestion). Known risk factors include youth, mental illness, sleep deprivation, the introduction of false evidence, interrogative themes of memory loss, and memory vulnerabilities (e.g., memory source misattribution) derived from chronic substance abuse.

Interviewing Best Practices

In the absence of contradictory evidence, the identification of memories tainted by suggestibility can be extremely difficult to identify. This is particularly true in cases of unconscious acquiescence because these memories and the descriptions thereof often contain convincing contextual detail and they are genuinely believed by the witness (i.e., they do not reflect deception). Once a false memory has taken root, there is no known mechanism to undue it.

To increase the reliability of witness reports, best-practice interviewing guidelines recommend the following:

- Investigators should favor open-ended questions/prompts, which encourage witnesses to select what information they want to report from their memory and encourage them to report it in their own words.
- Investigators should not interrupt witnesses, but rather encourage witnesses to talk and continue their narrative by delivering pauses and non-verbal facilitators that encourage elaboration (without reinforcing specific answers).
- Investigators should refrain from delivering suggestive and leading questions and should be judicious when using yes-no recognition questions, which promote a shallow search of memory and require simple one-word answers.
- Investigators should not introduce new information to the witness during an interview. New information (i.e., suggested information) is any information that the witness has not previously reported or otherwise self-generated through their own recollection.
- Investigators should withhold case specific information from the witness or share key details of an event or alleged crime.
- Investigators should attempt to corroborate key information provided by witnesses, which serves as a check on the reliability of the witness's memory and helps buffer against accounts elicited through suggestive questioning.

Interviews with Joseph Stapf

In criminal investigations there are generally two categories of interviews. The first is a forensic interview with a cooperative witness or victim. Here, the investigator assumes the witness is candid, forthcoming, and motivated to provide information. The goal is to elicit an accurate and complete account from the witness. The second type of interview is conducted with criminal suspects. In these interviews, investigators believe the interviewee may be guilty of crime and may be lying about their culpability. The goal of this interview is to elicit and evaluate signs of deception that will inform an accusatory interrogation (where investigators employ psychological tactics [e.g., refuting details, theme development] designed to elicit a confession.

In the initial interviews conducted with Mr. Stapf in New York and while en route to New Hampshire, investigators clearly considered him to be a suspect who had firsthand knowledge of [REDACTED]'s death and/or had knowledge of the whereabouts of his body. There are two noteworthy features of these interviews. First, Mr. Stapf repeatedly lied to investigators. Second, though Mr. Stapf was clearly a suspect whom investigators approached with a strong presumption of guilt, they did not employ traditional interrogation strategies designed to overcome his denial and deception to elicit a confession. Rather, their strategy was driven by the need to not only learn what happened to the boy, but also learn his location given that he was

missing. These interviews generated little useful information because Mr. Stapf repeatedly lied about his knowledge of ██████'s death and the effort to hide his body.

The next interview of Mr. Stapf I reviewed was his proffer conducted on October 22, 2021 (transcripts of these interviews were titled "Disc pp 529-753.pdf" and "Disc pp 753-1010"). At the time of this interview, Mr. Stapf had apparently retained counsel and the premise of the interview was not to elicit an admission of guilt and/or a formal confession, but rather to share what he knew about ██████'s death and to help investigators find his body, the location of which as still unknown at the time of the interview.

Though the goal of this interview was not to elicit a confession from Mr. Stapf per se', there were still significant questions about Mr. Stapf's culpability in the maltreatment of ██████ and the events that immediately preceded his death. The purpose in noting this is that even though Mr. Stapf agreed to cooperate with investigators, he still had significant interest in minimizing his culpability and thus strong motive to lie. The investigators knew this, of course, but their priority was locating the remains of the boy, which still required Mr. Stapf's full cooperation. My analysis is that the investigators likely feared that if they challenged Mr. Stapf's account of the circumstances surrounding ██████'s death, they may lose his cooperation in locating his body.

My analysis of the interviews of Mr. Stapf revealed significant deviations in best-practice interview standards which likely compromised the reliability of his statements. My written report here focuses on two aspects of his interviews. The first, which occurred during Mr. Stapf's proffer interview (October 22, 2021), concerns his account of Ms. Dauphinais slamming ██████ into the bathroom tiles. The second occurs during his interview which took place approximately a month later (November 17, 2021) and centers on his account of the evening immediately prior to ██████'s death.

Interview October 22, 2021

The bathroom tiles were first mentioned (p. 146) by investigators when they asked Mr. Stapf if he ever made any repairs to the bathroom, or if he ever removed any of the bathroom tiles. Mr. Stapf stated he had removed tiles and that the tiles themselves were "nasty," "falling apart," and "crumbling."

Investigators next mentioned the bathroom tiles when questioning Mr. Stapf about other abusive acts Ms. Dauphinais subjected ██████ to. Mr. Stapf stated she would pin him against the wall sometimes in the bathtub (pp. 168-169). As seen in the following excerpt, the investigator then suggested to Mr. Stapf that he witnessed Ms. Dauphinais push ██████ into the tiles upon which they broke. When asked how he knew that, Mr. Stapf stated he never saw it, but he had seen tiles on the floor. He then changes his account to state that he did see Ms. Dauphinais shove him into the tiles, but stated he couldn't remember when he had seen her do it. The investigator next suggested that Mr. Stapf witnessed her doing so on the baby monitor:

8 INTERVIEWER: Okay. Where in the bathroom?
9 JOSEPH STAPF: In the bathtub.
10 INTERVIEWER: Okay. Against the tiles?
11 JOSEPH STAPF: Yes.
12 INTERVIEWER: Did she ever break any tiles?
13 JOSEPH STAPF: Yes.
14 INTERVIEWER: How?
15 JOSEPH STAPF: Like putting him against the
16 wall.
17 INTERVIEWER: Tell me about it.
18 JOSEPH STAPF: I don't know. I never really
19 saw it. It's -- I believe she just shoved him
20 against the wall and the tile would come crumbling.
21 INTERVIEWER: Why do you think that? Did
22 you hear it? Did you see it?
23 JOSEPH STAPF: I saw all the tile on the
1 floor in the bathtub, all of it, tons of it.
2 INTERVIEWER: What leads you to believe that
3 she had shoved him against the tile?
4 JOSEPH STAPF: I've seen her do it.
5 INTERVIEWER: Okay. When?
6 JOSEPH STAPF: When?
7 INTERVIEWER: Yes.
8 JOSEPH STAPF: I can't give you an exact,
9 you know, answer on that. But I have seen her do it.
10 INTERVIEWER: Okay. Did you see it like
11 live in person? Did you see it on the monitor?
12 JOSEPH STAPF: On the -- through the cam.
13 INTERVIEWER: Through the cam?
14 JOSEPH STAPF: Yeah.

The next time the bathroom tiles were mentioned is on p.181, where the investigator followed up on Mr. Stapf's previous account. This time, however, the detective suggested that Ms. "grabbed" [REDACTED] and "slammed" him into the tiles. Note, these are the detective's words, not the words of Mr. Stapf. Note also that Mr. Stapf said he witnessed this through the baby monitor, which as a detail previously suggested by the investigator:

14 INTERVIEWER: -- this occurred? Was there a
15 time where you saw -- and you had kind of described
16 it before -- but you saw Danielle grab [REDACTED] and
17 slam him into the tiles?

18 JOSEPH STAPF: Through the monitor.

19 INTERVIEWER: Through the monitor. When was
20 that incident?

21 JOSEPH STAPF: I wish I could be more
22 detailed for you.

Despite Mr. Stapf's admitted lack of memory, the investigator continued to question Mr. Stapf about this incident. Mr. Stapf went on to add significantly more detail to his account, much of it at the suggestion of the investigator (pp. 182-185):

3 INTERVIEWER: Before? Describe -- tell me
4 about that incident, where you saw that. Where were
5 you?

6 JOSEPH STAPF: I was with [REDACTED] playing
7 with her in the living room, watching one of her baby
8 shows.

9 INTERVIEWER: Okay. Where? Where are you?
10 Where are you watching that though? Are you on the
11 bed? Are you upstairs?

12 JOSEPH STAPF: No, I was like sitting with
13 her on the ground in the living room.

14 INTERVIEWER: So, you're in your living
15 room?

16 JOSEPH STAPF: Yeah. Playing with a bunch
17 of toys.

18 INTERVIEWER: Okay.

19 JOSEPH STAPF: TV's on.

20 INTERVIEWER: And what do you hear?

21 JOSEPH STAPF: A bunch of tile dropping.

22 INTERVIEWER: Okay. What else do you hear?

23 JOSEPH STAPF: I don't think I heard him cry

1 but --

2 INTERVIEWER: Any yelling?

3 JOSEPH STAPF: Yeah, I heard her yelling.

4 INTERVIEWER: What was she saying?

5 JOSEPH STAPF: Why can't you just ever
6 listen, why do you have to put me through this, what
7 are you doing, just stuff like that.

8 INTERVIEWER: Um-hmm. What was he doing?

9 JOSEPH STAPF: I don't even know what pissed
10 her off. I don't know what set her off. Like I
11 don't know what made her go loony like that. Like
12 she -- in her own words, she had said that [REDACTED] had
13 made her completely psycho and coldhearted. She said
14 that to herself.

15 INTERVIEWER: Was that incident that you
16 just described when she took him, how did she grab
17 him when she threw him into the tub?

18 JOSEPH STAPF: I think she grabbed him by
19 like right here.

20 INTERVIEWER: Why do you think that? Did
21 you see that or are you just speculating? Could you
22 not see?

23 JOSEPH STAPF: I only got like a quick

1 glance of it on the camera.

2 INTERVIEWER: Okay.

3 JOSEPH STAPF: So, when he was lowered down
4 from the wall, that's how the grip she had it with
5 him.

6 INTERVIEWER: Um-hmm. So, she's grabbing
7 him, is he facing her?

8 JOSEPH STAPF: Yes.

9 INTERVIEWER: And she grabs him by the
10 shoulders?

11 JOSEPH STAPF: Correct.

12 INTERVIEWER: And lifts him off his feet?

13 JOSEPH STAPF: Yes.

14 INTERVIEWER: And does what?

15 JOSEPH STAPF: Against the tile.

16 INTERVIEWER: Okay. How many times?

17 JOSEPH STAPF: I would say just once. I
18 only heard it crash once, yes.

19 INTERVIEWER: Okay. And what did you hear?

20 JOSEPH STAPF: What's that?

21 INTERVIEWER: What did you hear?

22 JOSEPH STAPF: What did I hear? Just
23 crashing -- tile crashing.

1 INTERVIEWER: Okay. Did you hear his head
2 hitting that tile?

3 JOSEPH STAPF: I believe so, yeah.

4 INTERVIEWER: And then you heard the tile
5 break?

6 JOSEPH STAPF: Yes.

7 INTERVIEWER: And the tile fall?

8 JOSEPH STAPF: Correct.

9 INTERVIEWER: Okay. And did you later go
10 into that bathroom and see what the damage looked
11 like?

12 JOSEPH STAPF: Yeah. I saw what it looked
13 like.

14 INTERVIEWER: Was that the first time any
15 tiles were ever damaged in there?

16 JOSEPH STAPF: I think it happened another
17 time when I was gone at work.

18 INTERVIEWER: Okay.

19 JOSEPH STAPF: Because when I got home,
20 there was a ton of tile missing.

21 INTERVIEWER: Was that the -- so, tell me
22 about the first time you realized that there was til
23 missing.

At this point the investigators have suggested many key details to Mr. Stapf, including (1) he witnessed Ms. Dauphinais grab [REDACTED] (2) lift him off his feet, (3) threw him into the tub, (4) and slammed him into the tile. My Stapf also said he witnessed this through the baby monitor (a previously suggested detail) and, at the suggestion of the investigator, he (5) heard [REDACTED]'s head hit the tiles and break, and (6) that he later went into the bathroom and saw what the damage looked like.

Interview November 17, 2021

The next interview with Mr. Stapf was conducted approximately a month later on November 17, 2021. This interview was also rife with suggestions from the interviewers. Particularly problematic were the questions about Mr. Stapf's trip to Target and the events immediately preceding [REDACTED]'s death. The investigators struggle to elicit a reliable account from Mr. Stapf about what happened the night he went to Target—which, according to the investigator, was the last time he and Ms. Dauphinais discussed [REDACTED] over text message.

Throughout the interview Mr. Stapf repeatedly indicated his memory was poor (i.e., his memory is “foggy” and “I’m having a hard time remembering.”)

Much of the questioning in this portion of the interview involved the investigators reading verbatim text messages to Mr. Stapf and attempting to jog his memory with information they acquired during their investigation. Though the investigators may have believed they were helping Mr. Stapf remember by sharing detailed information (i.e., the timeline, the content of text messages, etc.), doing so was clearly suggestive.

After investigators pressured Mr. Stapf to be forthcoming (see pp.178-179), he disclosed the following (p.179):

5 JOSEPH STAPF: When I got home that night
6 from Target, I had noticed a lot of tile in the
7 bathroom knocked down. [REDACTED] was just sitting there
8 with a bunch of tile around him and there was a
9 decent cut on his head like right here.

Mr. Stapf went on to provide additional information about this event and disclosed that when he awoke the next morning, he found [REDACTED] dead. In essence, he claimed that in the evening immediately preceding [REDACTED]’s death, he came home from Target and witnessed [REDACTED] sitting in the bathtub with broken tiles surrounding him and that he had an injury to the back of his head. Investigators apparently believed this is the assault/injury that was the immediate cause of his death.

The investigators appeared to struggle with determining if Mr. Stapf’s lack of memory was genuine or whether he was lying. That said, they appeared to settle on the belief that Mr. Stapf’s memory was poor. Consider the following excerpt (pp. 224-225):

21 LIEUTENANT JAY O’LEARY: And, you know, you
22 didn't make any -- you know, we didn't talk about the
23 tiles being broken from that incident then. So,

1 that's -- I guess that's what -- where is your memory
2 starting to become more clear? Is it as we speak
3 more or was this something that occurred over the
4 past few weeks with you? Like when -- when we had
5 the conversation a couple hours ago, when I showed
6 you the picture of the bathtub, you made zero mention
7 of the fact that the day before [REDACTED] died, Danielle
8 smashed his head into tiles and you found him in that
9 condition. I would think that would be an important
10 piece of when I ask you what happened to the tiles in
11 the bathtub that you might share; right?

12 JOSEPH STAPF: I follow you.

13 LIEUTENANT JAY O'LEARY: Okay. So, why
14 didn't you share them with me at that time?

15 JOSEPH STAPF: I couldn't tell you. I --

16 LIEUTENANT JAY O'LEARY: Well, I mean, is it
17 that your memory's becoming clearer or is it that --
18 I mean, I -- I don't really know and that's what I'm
19 trying to determine.

20 JOSEPH STAPF: No. It's 'cause my memory is
21 shot.

The interview essentially concluded with investigators openly expressing doubts about the reliability of Mr. Stapf's account and questioned why he wasn't previously forthcoming with the account of finding [REDACTED] in the bathroom surrounded by broken tiles and an injury to the back of his head (p.225-227):

22 LIEUTENANT JAY O'LEARY: Okay. So, that
23 incident that occurred after Target when you came

1 home and you found Eli in the bathtub with the tiles,
2 is that something that you just remembered when --
3 when Matt was telling you about it -- when you and
4 Matt were just talking? Is that something --

5 JOSEPH STAPF: Just like a week ago
6 probably.

7 LIEUTENANT JAY O'LEARY: So, a week ago you
8 remembered that you came home that day and you found
9 [REDACTED] with a -- with an injury to the back of his head
10 that was pretty substantial.

11 JOSEPH STAPF: I thought about it, yeah.
12 I'm constantly thinking about everything in my cell.

13 LIEUTENANT JAY O'LEARY: And then the next
14 day is when Eli's dead?

15 JOSEPH STAPF: Yes, sir.

16 LIEUTENANT JAY O'LEARY: Okay. And you
17 didn't think that that was an important thing to lead
18 with today?

19 JOSEPH STAPF: Um --

20 LIEUTENANT JAY O'LEARY: You didn't think
21 that was an important thing to tell us?

22 JOSEPH STAPF: It's important. I'm just
23 confused with the -- the date, timeframe of that

1 incident when I was upstairs. I wish I could give
2 you a better detail timeframe for that.

3 LIEUTENANT JAY O'LEARY: But -- but --

4 JOSEPH STAPF: That was the night I got back
5 from Target, you know, and I -- I don't know. It's
6 just like my memory -- I'm trying here. I really am.
7 This is a struggle. It's hard, man. It really is.

8 LIEUTENANT JAY O'LEARY: You remember that
9 this was two months ago; right? We're not talking
10 about something that was two years ago. Two months
11 ago a five year old boy died in your house.

12 JOSEPH STAPF: I understand, Jay.

13 LIEUTENANT JAY O'LEARY: I'm just saying,
14 man, like I have a hard time when you tell me that
15 you don't remember big events like this. This is
16 like -- I'm not asking you, were you wearing a watch
17 that day. I'm asking you, did this kid get killed as
18 a result of Danielle striking his head against the
19 tiles. And you're telling me two and a half hours
20 into the interview that that's how he died.

21 JOSEPH STAPF: I follow you.

22 LIEUTENANT JAY O'LEARY: You know, the first
23 -- the first thing I asked you is, what sort of

Summary and Opinion

Throughout his substantive interviews Mr. Stapf provided a great deal of information about the circumstances surrounding the maltreatment and the death of [REDACTED]. However, much of the key information can be traced to suggestive questions posed by the investigators and pressure leveraged on Mr. Stapf to remember. These include the accounts of Ms. Dauphinais assaulting [REDACTED] in the bathroom and what he witnessed the night before [REDACTED]'s death.

I have not interviewed Mr. Stapf, nor have I reviewed his medical records or evaluated his memory or cognitive functioning. However, Mr. Stapf has repeatedly demonstrated the willingness to lie investigators out of self-interest, and it seems evident that his drug use around the time of [REDACTED]'s death may have opened vulnerability in his memory, making him susceptible to interrogative suggestion.

I cannot say whether Mr. Stapf's eyewitness testimony is accurate. However, from the perspective of human memory, which defines reliability as persistent and consistent memory for an event, his testimony is clearly unreliable. Moreover, as highlighted in this report, the investigators clearly and substantially deviated from interviewing best-practices by pressuring Mr. Stapf to remember, delivering suggestive and leading questions, and sharing key information to help Mr. Stapf reconstruct his account.

Jason J. Dickinson, Ph.D.

February 10, 2024

A handwritten signature in black ink that reads "Jason Dickinson". The signature is written in a cursive style with a long horizontal line extending to the right.

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT-NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

V.

DANIELLE DAUPHINAIS

*
*
*
*
*

Docket #226-2021-CR-00944

VIRTUAL DEPOSITION OF JASON DICKINSON, PhD

May 8, 2024, 2:14 p.m.

DEPOSITION TRANSCRIPTION VERBATIM

Virtual & In-Person Depositions and Transcription Services
Paralegal, Notary Public, Medical Transcription

Jan-Robin Brown, CER-415, CET-415
Certified Electronic Reporter & Transcriber
86 Peaslee Hill Road
Weare, NH 03281

Telephone: **603.529.7212**
E-mail: AudioDepos@GSINET.net

CERTIFIED MEMBER:
AMERICAN ASSOCIATION OF ELECTRONIC REPORTERS & TRANSCRIBERS, INC.

IN ATTENDANCE**FOR THE STATE**

Bethany J. Durand, Esquire
Meghan C. Hagaman, Esquire
Office of the Attorney General
1 Granite Street
Concord NH 03301
603.271.3658

FOR THE DEFENDANTS:

Benjamin Falkner, Esquire
Tracy Scavarelli, Esquire
Krasnoo, Klehm & Falkner, LLP
28 Andover Street, Ste 240
Andover MA 01810
978.475.9955

STIPULATIONS

It is stipulated and agreed between the parties that this deposition is taken by WebEx video conferencing technology, and the transcript may be used for all purposes that are legal and accepted in the State of New Hampshire, waiving all formalities including notice and filing.

All objections, except as to form, are reserved and may be taken in court at time of trial.

A copy of the transcript will be provided to opposing counsel for review and signing by the deponent.

It is further agreed that if the deponent has not signed the deposition within 30 days, or by time of trial, the deponent's signature is waived and the deposition may be used for all purposes as if signed by the deponent.

TRANSCRIBER NOTE: Use of the non-words "um" and "uh," most false starts, stutters have deliberately been omitted for readability/fluidity of the transcript.

An errata sheet, located as the last page of this transcript, is for notation of any typographical errors or discrepancies. This is for your use, to be made part of the record, and not to be returned to DTV for editing purposes.

INDEX

DEPONENT: Jason Dickinson, PhD

Examination by Ms. Durand: Page 4, 73

Examination by Mr. Falkner: Page 69

Errata sheet: Page 78

EXHIBITS

Number	Description	Page
1	2/6/24 Report of Dr. Dickinson	61

1 ATTORNEY DURAND: So Miss Dauphinais has been
2 sort of introduced, but Tracy or Ben, I'll have you
3 guys go ahead and introduce who is present on your
4 behalf.

5 ATTORNEY FALKNER: Yes, so this is Attorney
6 Benjamin Falkner. Danielle Dauphinais is present on
7 the WebEx, as is co-counsel Tracy Scavarelli. And so
8 that's the three of us.

9 ATTORNEY DURAND: Okay. And on our end, I have
10 myself, for the record, Bethany Durand, and we also
11 have Meghan Hagaman on behalf of the Attorney
12 General's Office.

13 And Mr. Dickinson, if you could go ahead - you're
14 going to be, I think, primarily talking for us today.
15 So if you could unmute and introduce yourself just for
16 the record.

17 THE WITNESS: Hi, I'm Jason Dickinson.

18 ATTORNEY DURAND: And so those are all of the
19 parties that we have on the recording. As to all
20 parties, just so that we have it, everyone should be
21 aware that this matter is being audio recorded as part
22 of a deposition, and as such, by being on this call, I
23 would indicate you're consenting to such recording.
24 Does everyone agree with that? Ben, on your end?

1 ATTORNEY FALKNER: Yes.

2 ATTORNEY DURAND: Mr. Dickinson?

3 THE WITNESS: Yes.

4 ATTORNEY DURAND: Okay.

5 INTERROGATORIES BY ATTORNEY DURAND:

6 Q Now, Mr. Dickinson, have you been deposed before?

7 A Yes, but not in this case.

8 Q Okay. Now, to remind you, as a result of this
9 deposition, everything that you say will be being
10 recorded and will be transcribed. We're going to, in
11 just a couple of minutes, place you under oath, so you
12 will be required to answer any questions posed to you
13 truthfully. If at any point during this process, you
14 don't understand a question that I'm asking you, or
15 that anyone is asking you, please let us know.

16 A I will. Thank you.

17 Q Do you have any questions of us before we begin today?

18 A No, I don't.

19 Q I guess I should have you officially go ahead and
20 raise your right hand for us.

21 JASON DICKINSON, PhD, duly sworn.

22 Q Thank you. Now, with respect to today, obviously,
23 we're doing this video - or remote deposition. Where
24 are you located physically today?

1 A I'm in my home in Morristown --

2 Q Morristown, New Jersey?

3 A Yeah, I'm outside of Morristown. I'm in Mendham
4 Township, New Jersey.

5 Q Is there anyone else who's present in the room with
6 you?

7 A No.

8 Q In preparing for today's deposition, did you review
9 any documents or other materials?

10 A I reviewed the report that I submitted to Mr. Falkner.

11 ATTORNEY FALKNER: And I'm sorry, just before we
12 go any further, are we in the questioning portion of
13 the deposition right now?

14 ATTORNEY DURAND: Well, just background, but I
15 would say yes.

16 ATTORNEY FALKNER: I just wanted to put onto the
17 record stipulations that so long is that you're in
18 agreement, that all objections except as to form or
19 privilege are reserved until the time of trial.

20 ATTORNEY DURAND: That's fair.

21 Q So Mr. Dickinson, in preparing for today's deposition,
22 you indicated that you've reviewed your report; is
23 that correct?

24 A Yes.

1 Q In preparing for today's deposition, did you speak
2 with any other individuals?

3 A No.

4 Q So that we're all just on the same page, and I have
5 submitted a copy of your report on to the stenographer
6 in this case, but so that we're all on the same page,
7 what we have received from you for this case, or from
8 defense in this case, is a curriculum vitae for you
9 that is 21 pages long. It has a date on the top that
10 indicates June 16, 2023. Is that your most recent CV?

11 A No.

12 Q Since it is no, could you provide a copy to defense
13 counsel of your most recent CV so that we can have a
14 copy of that?

15 A Yes.

16 Q Thank you. We have also received a report that you
17 authored that is 14 pages long. That report is dated
18 February 6th of this year. Is that the report that
19 you authored related to the current case, State v.
20 Danielle Dauphinais?

21 A Yes.

22 Q Have you authored any additional reports related to
23 this case?

24 A No.

1 Q Have you rendered any opinions outside of this report
2 related to this case?

3 A No.

4 Q Do you have any notes related to your work or opinion
5 in this case?

6 A No.

7 Q Based on the report and the fact that you've reviewed
8 it, now that you've had a chance to review that
9 report, do you have any corrections or additions that
10 you want or need to make to the report at this time?

11 A No.

12 Q Did you have this report peer reviewed?

13 A Did I have the report peer reviewed?

14 Q Correct.

15 A No.

16 Q Do you have any draft versions of the report?

17 A I do not.

18 Q With respect to the current case, your report
19 indicates that you reviewed - and I want to go ahead
20 and get them correctly - on the first page of your
21 report, you indicate that you reviewed recordings of
22 statements of Mr. Stapf, being:

23 CD #101, Joseph Stapf, New York interview,
24 October 17, 2021.

1 CD 102, Joseph Stapf, New York interview, October
2 18, '21.

3 CD 103 --

4 And Jan please let me know if I'm going too fast.

5 CD 103 Joseph, New York interview, audio only,
6 October 18, 2021.

7 As well as CD 104, 105, 106 and 118. Those being
8 one-party recordings, and a booking room video of Mr.
9 Stapf.

10 You also reviewed CD #159, a one-party recording
11 out of New York; is that correct, in terms of the
12 audio that you reviewed with respect to this case?

13 A Yes.

14 Q You also reviewed two transcripts of Mr. Stapf, being
15 a "Proffer" dated October 22, of 2021, and "Proffer
16 Statement" dated November 17, 2021; is that correct,
17 in terms of the transcripts that you reviewed?

18 ATTORNEY FALKNER: Objection.

19 Q You have them listed on page one of your report, Mr.
20 Dickinson. Did you review those two transcripts?

21 A Yes.

22 Q Okay. When did you receive the materials?

23 A I don't know the exact date that I received the
24 material. It was, I want to say, September/October or

- 1 even maybe August of 2023.
- 2 Q Did you review any other materials associated with the
3 case?
- 4 A Not to my knowledge no. Not to my --
- 5 Q So the material - I apologize; I didn't mean interrupt
6 you.
- 7 A I'm sorry; not to my recollection, no.
- 8 Q So the materials that you list on page one of this
9 report comprise all of the materials that you
10 reviewed?
- 11 A Yes.
- 12 Q What, if any, information were you provided about the
13 investigation or the charges as a whole?
- 14 A Nothing, other than informal conversation with Mr.
15 Falkner about the case.
- 16 Q Is there any information that you obtained during that
17 informal conversation that you utilized when coming to
18 the conclusion in your report?
- 19 A No.
- 20 Q What were you asked to do in terms of this case?
- 21 A I was asked to review the interview - interviews with
22 Joseph Stapf to determine if they squared with best
23 practices for interview and interrogation, and to
24 determine what, if any, sources of suggestibility may

1 have influenced Mr. Stapf's testimony.

2 Q Now, how much time did you spend reviewing materials
3 and writing your report on this matter, if you know?

4 A Off the top of my head, I want to, you know - I'm
5 sorry; I should have been better prepared for these
6 questions. It's somewhere around 15 hours, maybe,
7 between reviewing the material listed on page one of
8 my report and writing the report itself. And then
9 some of that was, I think, some consultation with Mr.
10 Falkner after I submitted my report.

11 Q Based on that consultation, were you asked to make any
12 changes to your report?

13 A I'm sorry; was I asked what?

14 Q You indicated that following the writing of your
15 report, you consulted with defense counsel. I'm not
16 asking you what you spoke about with him, but were you
17 asked to make any changes to your report or
18 conclusions?

19 A No, nor did I.

20 Q Okay. Thank you. How much do you charge for your
21 expert services?

22 ATTORNEY FALKNER: Objection. And I'm going to
23 suggest that that is not an inquiry that he has to
24 answer. That's dealt with through the court-appointed

1 state system, and I don't think that's an appropriate
2 area of inquiry. I'm going to instruct the witness
3 not to answer.

4 Q How much, Mr. Dickinson, do you expect to be paid for
5 this case in its entirety?

6 ATTORNEY FALKNER: Objection. And again, the
7 same objection, and I'm going to instruct him not to
8 answer.

9 ATTORNEY DURAND: We'll address that separately.

10 Q Now, Mr. Dickinson, what is your current employment?

11 A I'm a professor of psychology at Montclair State
12 University, which is located in Montclair, New Jersey.

13 Q And I apologize if I'm not looking at you. This is
14 just an awkward setup, and I'm trying to read notes,
15 so.

16 THE WITNESS: Oh, that's okay. I understand.

17 Q So, with respect to your being a professor at
18 Montclair University, how much of your professional
19 life is occupied by being a professor versus the
20 services you offer as an expert witness?

21 A Oh, I mean, the vast majority of my time and income,
22 as it were, is tied to my work as a professor at
23 Montclair State University. I would say that in a
24 given 40-hour workweek, I might spend five hours

1 consulting. It doesn't take away from my university
2 work.

3 Q Oh, please don't think we were implying that at all.
4 Just trying to get an idea of how you spend your time.

5 A Oh, yeah. Yeah. I mean, that's what I really - you
6 know, that's my primary occupation is professor of
7 psychology. It's a full-time occupation.

8 Q Now, on your CV itself, you list two websites, one
9 under "Professional" and one under "Personal" in terms
10 of your contact information.

11 A Correct.

12 Q I think under your "Professional," it's the Talking
13 Lab.

14 A Yes. That is a website specific to the laboratory
15 that I run at the university.

16 Q Can you tell us a little bit about that, if you're
17 able to.

18 A The website or the lab?

19 Q Yep.

20 A The lab has been funded by the National Science
21 Foundation since 2007. And what we do generally is we
22 conduct scientific research. Could be laboratory
23 studies, field studies, analysis of transcripts of
24 various methods insofar as what we do. But the

1 overarching goal of our work is always the same, which
2 is to generate evidence-based recommendations for
3 improving the reliability of eyewitness testimony for
4 both children and adults.

5 Most of the - Actually all of the NSF-funded
6 research has been on interviewing children, but the
7 lab does other types of work as well. I co-direct the
8 lab, as it were, with another professor at the
9 university. And then we have anywhere from upwards of
10 15 students, grad students and undergraduate students
11 working in the lab. So the lab also, you know, it's a
12 space where we conduct research, but it's also a space
13 where we train students in how to conduct research,
14 which is an important part of NSF's mission.

15 And then the lab does a fair amount of
16 collaboration and training with other folks in the
17 field, dissemination.

18 Q Now, you indicate that the lab funding is for child
19 witness information. What percentage of child versus
20 adult information is handled by the lab?

21 A Well, I would say that, you know, it's probably - So
22 I've had five grants from NSF since I've been at the
23 university, and all of those grants were - You know,
24 the topic was children's testimony and suggestibility.

1 And so I would say out of all the work that's come out
2 of our lab, about 75 percent has involved child
3 witnesses and 25 percent has involved adults.

4 Sometimes there's some overlap. Our current
5 grant, for example, is examining memory in both
6 parents and children. The current grant is designed
7 to improve the reliability of hearsay testimony from
8 people, adults, who receive children's disclosures, so
9 it would be fresh complaint witnesses. Some
10 jurisdictions call it "first witness." So that grant
11 is really on improving interviewing strategies for
12 interviewing adults in cases of child maltreatment.

13 So there's a lot of overlap with what we do in
14 the lab.

15 Q Okay. On your "Personal" contact information, you
16 list a personal website as "thechildwitness.com"?

17 A Correct.

18 Q Can you tell us about that website, and what its
19 purpose is.

20 A Yeah. The purpose is just to provide some of the
21 people that I work with - some of the people that are
22 interested in my work or may consider consulting with
23 me - just provide them with some context about the
24 work that I do. A lot of my publications are

1 available there on PDF, for example. So I get a lot
2 of requests for, you know, "Hey, can you send me this
3 article or an article," and I'll say, "Hey, just go to
4 this website and you can download it." So that's the
5 purpose of the website.

6 Someone contacts me, wants to know a little bit
7 about my work, I might send them the URL. But I've
8 actually never been directly contacted by somebody
9 through the website. So that's it.

10 Q Okay. Now, in terms of your work as a forensic
11 witness, and you've said already it's about 25 percent
12 of sort of your professional job in terms of overall.

13 A Oh, no, I said about 75 percent of the Talking Lab's
14 work involves working with kids.

15 Q Okay. And I apologize; I backtracked way too far on
16 you. You've indicated that you spend 75 percent of
17 your time working as a professor, and maybe 25 percent
18 of your time, am I correct about that, working as an
19 expert witness?

20 A No, no. I had said that 75 percent of the lab's work
21 involved child witnesses, and another 25 percent
22 involved adult witnesses. You had asked previously
23 about how much time or effort I put into consulting or
24 testifying. So is your question along those lines?

1 Q Yes. So you had indicated that predominantly you work
2 as a professor, and I apologize if I inserted a
3 statistic in there.

4 A Oh, no, that's okay. Yeah. Yeah, my full-time job,
5 my full-time employment is a professor of psychology
6 at Montclair State.

7 Q Okay. Now, in terms of when you're working as a
8 witness, or as an expert witness, how much of your
9 time is spent on - or, what kinds of cases are you
10 being retained to work on?

11 A They could be - I mean, a lot of them are cases
12 involving child maltreatment or primarily CSA cases,
13 child sexual abuse cases, involving those allegations,
14 primarily. But I have had a number of cases involving
15 adult witnesses as well. And then I do a significant
16 amount of training regarding adult eyewitness
17 testimony as well, which - Some of that comes out of
18 the lab. Some of that more generally falls in with my
19 role as a professor. I don't know if I answered your
20 question to your satisfaction.

21 Q No, I think you have. My question now, though, is how
22 much training - or what kind of training regarding
23 adult testimony are you doing?

24 A Well, I'm not doing as much as I'd like. But, you

1 know, we train the New Jersey Attorney General's
2 Office, their Clergy Abuse Task Force. So that task
3 force was charged with investigating decades' old
4 claims of abuse by the Catholic Diocese in the State
5 of New Jersey. We've trained teams that interview
6 victims, adult victims of human trafficking. I have a
7 training relationship with the SACEY Network for the
8 State of Michigan. So we've done a number of
9 trainings with the State of Michigan, training their
10 cold-case sexual assault investigators.

11 Most recently, I partnered with the Center for
12 Hope, which is the - essentially the Children's
13 Advocacy Center for the City of Baltimore, Maryland.
14 Well, I've conducted several trainings with them,
15 because they're increasingly starting to interview
16 adult witnesses and victims. The most recent training
17 we did was a group of plaintiff attorneys who are now
18 representing a class of victims in an institutional
19 abuse case involving the Catholic Church.

20 And then there's a new set of cases involving, I
21 believe, the juvenile correctional - some class action
22 lawsuit involving a juvenile correction facility in
23 the State of Maryland. So we're going to be - we've
24 been invited to sit in on those interviews, provide

1 some additional training for the staff, and also
2 provide some peer review.

3 So I do quite a bit of training in the realm of
4 interviewing adults in various forensic contexts.

5 Also, developed some training and some guidelines
6 for interviewing fresh complaint witnesses in CSA
7 cases for the State of Michigan. So it's a little bit
8 of everything. There's quite a bit of overlap.

9 I mean, certainly there are some very important
10 developmental considerations when it comes to
11 interviewing children, but there's considerable amount
12 of overlap insofar as best practices between
13 interviewing adults and children.

14 Q Now, do you keep - Let me just backtrack. I want to
15 make sure I cover everything with you. Now, with
16 respect to your work as an expert witness, how many
17 cases or how many times have you testified as an
18 expert related to interview techniques?

19 A Oh, somewhere around 20 times, maybe. Twenty-five
20 times.

21 Q Do you keep a list of the cases in which you've
22 testified?

23 A I do, right? I haven't updated the list recently with
24 the last few cases, but I do have a list.

1 Q Is that a list that you can provide to us?

2 A Sure.

3 Q Have you ever testified as an expert witness in the
4 State of New Hampshire?

5 A Yes.

6 Q In what case?

7 A I don't recall the name of the case off the top of my
8 head.

9 Q Would that be on your case list?

10 A Should be, yeah.

11 Q Is it only one case that you testified in, in New
12 Hampshire?

13 A Yes.

14 Q Do you remember in what court you testified?

15 A I do not. I remember the defense attorney though.

16 Q Okay. Who was the defense attorney?

17 A Mr. Falkner. Not to put him on the spot. But I can
18 get you that information about that. That case was a
19 couple years ago, I think. And I don't remember - It
20 was on Zoom. I don't remember if it was a deposition
21 or in the context of a pretrial motion, but I don't
22 think it was - Well, I can tell you it was not a case
23 before a jury. It was not testimony before a jury, I
24 should say. I can find out for you.

- 1 Q I appreciate that. Thank you.
- 2 A Yeah.
- 3 Q Was that a criminal case or civil case?
- 4 A My recollection - Well, it wasn't a civil case. I
5 believe it was a criminal case involving allegation of
6 child sexual abuse.
- 7 Q With respect to that case, do you recall if it was a
8 child or an adult witness?
- 9 A Well, there were both child witnesses and adult
10 witnesses in that case.
- 11 Q In terms of your evaluation, you evaluated both?
- 12 A Yes.
- 13 Q In what other jurisdictions have you testified, or
14 what other states?
- 15 A Well, I don't have the names of the courts, as it
16 were. You know, again, that would be on the list, but
17 I can tell you the states.
- 18 Q Sure.
- 19 A New York, Florida, Louisiana, Colorado, Missouri,
20 Indiana, Illinois, State of Washington, Missouri. Did
21 I say Missouri?
- 22 Q You did.
- 23 A I mean, I've consulted on cases in other states, but I
24 believe those are the - Oh, and Alaska.

1 Q Now, if you're able to, the percentage of cases in
2 which you were retained as an expert witness, are you
3 able to give us sort of a percentage of what dealt
4 with child witnesses in terms of your examination of
5 the case versus what dealt with adult witnesses?

6 A Yeah. I mean, and so - I mean, first of all - Well, I
7 guess the best way to say it is most of the time, I'm
8 contacted in cases where there's a child witness or an
9 alleged, you know, child victim. And the starting
10 place for most attorneys or people who don't know
11 about children's testimony is usually the forensic
12 interview, because it's a, you know, key piece of
13 evidence in the case, and, you know, there's typically
14 a verbatim recording of the interview.

15 So oftentimes, attorneys want me to take a look
16 at the interview to determine whether it followed best
17 practices or if there were suggestive interviewing
18 techniques or so on and so forth. But what I would
19 tell attorneys is that the starting point of the
20 investigation is always the context of the disclosure,
21 which comes down to evaluating the testimony of the
22 fresh complaint witness in the case, or other adults
23 who may have - the child may have disclosed to or
24 brought the allegation to the attention of

1 authorities. So their testimony, their account is,
2 again, the starting point of these cases, and it's
3 always the first thing that I look at.

4 I published recommendations on interviewing fresh
5 complaint witnesses. So there is an analysis, as it
6 were, of their testimony, and I will certainly review
7 notes by investigators or recordings of those
8 interviews, if they exist. Sometimes they don't. So,
9 I mean, so you know, it's hard to say - Let me put it
10 to you this way: That's always the starting point.
11 That's always the starting point, is with the adults
12 in the case. It's always understanding who brought in
13 the allegation, who raises suspicion, under what
14 circumstances, for what reasons. They provide all of
15 the context for the investigation. So the child
16 forensic interview is just one part of the
17 investigation.

18 So the extent that I evaluate adult eyewitness
19 testimony in those cases really depends on the quality
20 of the discovery and the volume of the discovery, but
21 it's always the first thing that I look at in every
22 case.

23 Q Okay. Now, you've indicated, and I just want to be
24 clear for the record: You talked about looking at the

1 testimony of that witness. Do you mean what they said
2 during their initial interview or their initial
3 statement? Are you talking about going back and
4 reviewing prior court under-oath testimony?

5 A Oh, I'm sorry. Yeah. Well, it could be. It could be
6 under-oath testimony, and when that happens, it's
7 typically a grand jury testimony. But I'm talking
8 about their testimony as it is documented in police
9 reports or, you know, other things like that.

10 So it typically involves, you know, their initial
11 contact with disclosure - their initial contact with
12 law enforcement or the authorities.

13 Q You mean, essentially, their statement or their
14 interview?

15 A Correct, yeah.

16 Q Okay. I just wanted to clarify that to make sure that
17 we were all using the same terminology. Now, have you
18 ever participated in a criminal case in an
19 investigative interview?

20 A Yes.

21 Q Okay. How many times?

22 A Oh, just a couple of times.

23 Q In what kind of cases?

24 A The last case, my colleague and I were asked to

1 conduct an interview with - by a detective in Jackson
2 County, Michigan, to interview an adult victim who had
3 some cognitive issues as a result of a very violent
4 assault. And so my colleague and I interviewed him in
5 that case. I've interviewed a few children in civil
6 cases. But typically, it's just simply not something
7 that I'm asked to do.

8 In the State of New Jersey, I train detectives,
9 prosecutors, social workers in interviewing children,
10 and also provide some recommendations for interviewing
11 fresh complainant witnesses. But in the State of New
12 Jersey, all of those interviews, including the child
13 witness interviews, are conducted by detectives, which
14 is a little bit different than most states. So just
15 to be clear, the interviews are conducted in
16 children's advocacy centers, but they're done by
17 detectives. So it's just not - My role is primarily
18 as the trainer of the professionals who work the
19 cases.

20 Q In the cases where you've talked about - you indicated
21 one adult who was the victim of - it sounds like some
22 type of an assault or had an injury that resulted in
23 cognitive issues, and a couple of children in civil
24 cases. Have you ever been involved in an

1 investigative interview of an adult suspect?

2 A Yeah, I've been involved in cases involving adult
3 suspects.

4 Q When?

5 A Oh, I've had a number of those cases in the past,
6 primarily in the State of Alaska. I'm primarily asked
7 to evaluate the reliability of pretext phone calls; in
8 Alaska, what they call "Glass" warrants. So just for
9 example, in the last case, the detective in that case
10 was essentially using a suspect's girlfriend to
11 conduct an interrogation by proxy. So I evaluated
12 that, you know, that interview. That adult interview
13 fell somewhere in between.

14 Q Did you participate in the actual interview with the
15 adult suspect?

16 A No.

17 Q Okay. Have you ever participated in an actual
18 interview of an adult suspect?

19 A No.

20 Q Now in your work as an expert witness, specifically,
21 if you can, in criminal cases, - I know sometimes it's
22 hard to separate the two - but who are you generally
23 being retained by?

24 A I'm sorry; say the last part again.

1 Q Are you generally being retained by the defense, the
2 prosecution? Where is the majority of your business
3 coming from as an expert witness?

4 A Oh, the majority is coming from defense. I've
5 testified for the prosecution in one case, and that is
6 the only time the prosecution has contacted me. But
7 almost all of my training involves working with the
8 authorities.

9 Q And what, if any, training or experience do you have
10 in law enforcement, so police academies or attending
11 anything like that?

12 A No, other than my wife is a detective for the State.
13 That's about as much training as I've had, so no.
14 I've been through the Reid Interrogation four-day
15 training, but having to - You know, the police academy
16 courses are not open to civilians, as it were, but as
17 I mentioned, I do train attorneys - or prosecutors and
18 detectives here in the State of New Jersey.

19 Q Okay. And I have to ask, since you mentioned your
20 wife is a detective, at any point, did you, on this
21 matter, consult with her about any of your opinions on
22 this case?

23 A No, I did not. And she doesn't want to hear about my
24 work anyway. You know? So we --

1 Q It's probably more harmonious to keep them separate.

2 A Yeah, yeah. So she's currently - She worked Public
3 Corruption and Conviction Review, and right now, she's
4 doing insurance fraud. So mostly when we talk about
5 work, she's, you know, talking about her coworkers.

6 Q Understood.

7 A Nothing but nothing.

8 Q Now, what is your familiarity with proffer agreements?

9 A So my familiarity actually comes from - despite what I
10 just said, my familiarity with proffer agreements
11 comes from speaking with my wife about the proffer
12 agreements that she's been involved with.

13] My general understanding is that there are
14 different ways for proffers to kind of come to be or
15 to take place. But essentially, it's a situation
16 where a defendant is offering information which will
17 inform the prosecutor's office, essentially, whether
18 they want to offer a plea, or what kind of plea it is.

19 So I know that in proffer agreements, defendants,
20 of course, have rights. I don't exactly know what
21 those rights are or what rights they waive. But I do
22 know that in proffer agreements, defendants are
23 expected to be truthful. So the exact law regarding
24 the proffer agreement, I'm not - I'm uneducated, as it

1 were.

2 Q Okay. Did you review any of the proffer agreements in
3 this case as part of your review of the materials?

4 A Not that I recall, no.

5 Q Are you familiar with - You indicated you've testified
6 in New Hampshire once. Are you, or did that make you
7 familiar in any way with New Hampshire police
8 investigations?

9 A I'm sorry; say that again.

10 Q It's okay. And I apologize. It's hitting that time
11 of day where I think our Wi-Fi likes to try and go out
12 on us. You indicated that you had testified at one
13 point, you believe, in New Hampshire. What, if
14 anything, about New Hampshire police investigations
15 did you learn from that prior involvement?

16 A What did I learn about police investigations?

17 Q In the State of New Hampshire.

18 A Nothing new insofar as these cases go. Yeah.

19 Q Have you have you ever consulted with, reviewed, or
20 been asked to review any police investigative or
21 questioning techniques here in the State of New
22 Hampshire?

23 A I was asked to review the forensic interview in the
24 case that I mentioned.

1 Q Okay. And in this one as well, but not by law
2 enforcement; is that correct?

3 A Correct.

4 Q Have you ever - Well, we've already talked about
5 police academies - but have you ever participated in
6 any trainings with the New Hampshire Police Academy,
7 or any law enforcement agency here?

8 A I have not.

9 Q In preparing your report, did you review any articles,
10 literature, textbooks or research sources?

11 A No.

12 Q Did you have any discussions with your colleagues or
13 other sources, such as at the labs that you work at?

14 A No, not about the specifics of the case. I mentioned
15 to my lab partner, Nicole, that I have been contacted
16 by an attorney in this case, but that's all we talked
17 about.

18 Q Did you utilize or refer to any articles that you have
19 listed in your CV that you used or referred to when
20 you wrote this report?

21 A Not specifically. I mean, a lot of the, you know,
22 general principles that I talk about are captured in
23 those articles, but I didn't provide any citations,
24 per se.

1 Q Okay. So I think that's probably enough background.
2 I'm going to ask, since we've been going - you've been
3 on for a little bit longer, I think, than we've been
4 proceeding. Do you need to take a break? Is everyone
5 okay?

6 A Yeah, I'm okay. At four o'clock, though, I have to
7 just run outside and get my daughter off the bus,
8 because they won't let her off unless I'm there.

9 Q Understood. Well, I don't have terribly many more
10 questions. But I do want to go over some specifics
11 inside of your report. I am hoping will be done by
12 the time you have to go out to the bus.

13 A Okay.

14 Q So I do want to turn to your report. We're going to
15 try to go page by page as much as possible, just to
16 keep it easy for the record, and for all of us, as we
17 have the reports. At the beginning - at the end of
18 your report, and I want to refer first to page one in
19 the second paragraph. You indicate that your basic
20 opinion is that you have serious concerns about the
21 reliability of Mr. Stapf's statements, and that you're
22 critical of the investigative techniques used to
23 elicit them. Is that a correct assessment of the tone
24 of your report and your conclusions?

1 A Yes.

2 Q Now, on page two, your report contains a section
3 entitled "Memory." What, if any, sources do you have
4 for the information that you discuss in this section?

5 A I didn't cite any source because that all of - What I
6 cited there is pretty broad, and it's all, I would
7 say, foundational common knowledge. So much so that
8 if I were writing a research article and I constructed
9 this paragraph, I probably wouldn't cite any citations
10 given that. Again, this is all common knowledge,
11 generally accepted. The principles outlined in that
12 paragraph have been so for decades.

13 Q Is it fair to say that human memory can be individual?
14 Like some people can remember things better than other
15 people?

16 A Yes, it's possible.

17 Q Are there any factors specifically related to memory
18 that you considered in this case?

19 A That would help them remember better?

20 Q What factors about memory did you consider in this
21 case?

22 ATTORNEY FALKNER: Objection.

23 A I didn't hear the question anyway.

24 Q What factors concerning memory did you consider when

1 you were analyzing this case? Are there factors that
2 you looked at in terms of memory? I guess to make it
3 more clear, in your next section on "Suggestibility,"
4 you talk about risk factors and other things. Are
5 there similar factors in terms of determining whether
6 somebody has a good memory?

7 A Okay, so sure. There are a lot of potential factors
8 that you might look for. You might look for the, you
9 know, the delay between the event and the report. You
10 might look for if there is evidence of rehearsal. You
11 would look for any potential retrieval strategies that
12 the witness used.

13 I mean, there are a lot of different factors that
14 can impact memory. Some of those factors are beyond
15 the control of the person doing the remembering. Some
16 of those factors are beyond the control of
17 investigators. Some of those factors include what we
18 call well - Well, they could be what we call
19 "estimator variables" or "system variables." So
20 estimator variables are things that are beyond the
21 control of investigators. These are things like the
22 cognitive abilities of the person who's doing the
23 remembering. And then there are system variables.
24 System variables are things that they can control,

1 such as the type of questions that they ask or whether
2 they follow the protocol or best practices.

3 This language actually arose out of the adult
4 eyewitness identification literature. So we talk
5 about estimator variables being like lighting,
6 distance, presence of a weapon, cross identification.
7 System variables are the lineup format, pre-interview
8 instructions, using a blind lineup, things like that.
9 So there are a lot of different things.

10 So just in my - in, you know, the last sentence
11 in my paragraph, things like youth, mental illness,
12 sleep deprivation, memory vulnerabilities and
13 substance abuse would be estimator variables. These
14 are things law enforcement or investigators can't
15 control. Whereas things like the introduction of
16 false evidence, you know, interrogative themes of
17 memory loss, suggestive questioning, those would be
18 system variables.

19 Q Okay. So those all go under suggestibility, and not
20 necessarily on someone's ability to remember; is that
21 fair to say?

22 A I'm sorry; say that again.

23 Q Those things that you've just talked about in terms of
24 the way that someone is questioned, that - I want to

1 focus here, I guess, specifically on memory. So with
2 respect to human memory, that's slightly different
3 from your next section, which is suggestibility; is
4 that correct?

5 A Well, I mean, suggestibility is an aspect of human
6 memory. It's a memory concept.

7 Q Now, let's move into, I guess, suggestibility. You've
8 discussed several risk factors for suggestibility.
9 From what source do you have these risk factors? In
10 other words, where do you recite to, where are these
11 found in terms of your work?

12 A Are you talking about the risk factors on page two?

13 Q On page two, under the section on suggestibility, yes.

14 A Yeah, known risk factors, right?

15 Q Yes.

16 A Yeah, so some of those things like mental illness,
17 sleep deprivation, introduction of false evidence,
18 themes of memory loss, memory vulnerabilities, chronic
19 substance abuse, all of those are derived from the
20 interrogation literature, from various studies in the
21 interrogation literature, including the so-called
22 *White Paper on Interrogation and Interview Practices*
23 published by the American Psychology and Law Society,
24 which is Division 41 of the American Psychological

1 Association. There are - Let me grab a book here.
2 Sorry; I thought I had the book with me. I mean,
3 there are a number of books on risk factors in
4 interrogation practices, in interviewing practices.

5 Q Did you consult any of this literature when you wrote
6 your report, or is this another foundational common
7 knowledge area?

8 A Yeah, it's generally accepted within the psychological
9 community that memory is more vulnerable, and people
10 will be more prone to suggestibility when these
11 factors are at play. So just for example, I believe
12 in the State of Illinois, they passed a law saying
13 that, essentially, authorities cannot present false
14 evidence to juveniles during interrogations for the
15 exact reasons that I've specified. That would be one
16 example.

17 The literature also demonstrates that - it's a
18 correlational finding, but - the false confession rate
19 seems to be higher amongst people with substance abuse
20 issues. There could be a lot of different reasons for
21 that. So some of the - Well, actually, the guidelines
22 on interrogation practices urge authorities -
23 recognizing that they're not mental health
24 professionals - to consider suspect vulnerabilities

1 prior to conducting an interview or an interrogation.

2 Q So, I'm going to jump ahead, I guess, with my
3 questions here, but what guidelines are you referring
4 to, who publishes them, where are they?

5 A Yeah, that would be the *Best Practices* paper published
6 by the American Psychological Association, Division 41
7 of APA.

8 Q So the best practices that you adhere to, or you
9 believe that all law enforcement should adhere to, are
10 these guidelines published by the American
11 Psychological Society?

12 A Yeah. It's "Association." American Psychological
13 Society is actually a different organization. It's
14 called "APS."

15 Q Okay.

16 A So the "APA." Yeah, I mean, I generally agree with
17 the guidelines, the best practices. It was compiled
18 by a number of experts in the field based on, you
19 know, 30, 35 years of peer-reviewed research. And
20 it's led to many of the current recommendations and
21 safeguards today for conducting interviews and
22 interrogations.

23 Q When you say the number of experts, you're talking
24 about psychologists and academics in terms of that?

1 A Correct, yeah.

2 Q For lack of a better term, academics in general?

3 A Yes.

4 Q Okay. You also, however, indicated that you attended
5 a four-day course on the Reid Interrogation Method?

6 A Correct.

7 Q Do you subscribe to the Reid Method?

8 A Sure. The Reid Technique is probably the nation's
9 most widely - interrogation practice. I attended a
10 four-day training. There are three-day trainings, and
11 then there are trainings specific to child sexual
12 abuse, those particular cases. I haven't attended
13 that.

14 There are basically three phases of the
15 interrogation process. One is the factual analysis
16 where investigators essentially gather background
17 information. The second is the behavioral analysis
18 interview, where it's non-accusatory, but
19 investigators ask some very direct questions of the
20 suspect to lay down the foundation of their account,
21 but also those questions are also designed to elicit
22 potential signs of deception.

23 And then, if investigators choose to go forward
24 with the interrogation, that's the third phase. The

1 accusatory interrogation is exactly that. It's not an
2 interview anymore. The goal, the tactical goal of an
3 accusatory interrogation is to elicit a confession.
4 And there are nine steps to the Reid Technique:
5 Direct positive confrontation, theme development,
6 refuting denials, you know, mitigating psychological
7 withdrawal, the subject's rights, so on and so forth.
8 So the Reid Technique is a very well-established
9 interrogation technique.

10 In the United States, there's an alternative
11 called the PEACE Technique and the Strategic Use of
12 Evidence, which actually overlaps quite a bit with the
13 training I do on adult eyewitness memory, the
14 cognitive interview.

15 But anyway, that's the Reid Technique of
16 Interrogation in a nutshell.

17 Q Does the Reid technique comply with your best
18 practices that you referenced several times?

19 A I mean, it can. It's like anything, right? I mean,
20 to be honest with you, a lot of my colleagues are very
21 critical of the Reid Technique. They'll say like, "It
22 shouldn't be used," you know, "it's no good." You
23 know, "It's problematic. It produces false
24 confessions." Like anything, I think under the right

1 circumstances, you know, it can be very effective at,
2 you know, eliciting confessions from, you know, guilty
3 people in a legally voluntary manner. I also think
4 that the, you know, the framework can be used in ways
5 that are problematic.

6 So we know that the two big risk factors, for
7 example, are memory vulnerability and the presentation
8 of false evidence. The training that I attended, they
9 gave four days of training, and I left the training
10 thinking, "Wow, they should really bring a prosecutor
11 in here to talk to - a local prosecutor to talk about
12 like, 'Here's our culture, and here's what we do in
13 interrogation, and here's where the line is.'" The
14 Reid trainer was really quick to get out of there.
15 Didn't want to, you know, is not going to talk to the
16 trainees about the local law at all. So is Reid good
17 or bad? I think it depends on how it's being used and
18 what the context is.

19 Q Fair to say that that's kind of true for any interview
20 technique; it can be either good or bad depending on
21 what's happening in the room?

22 A It is. Yeah. I mean, it's not to say, though that,
23 you know, there's a difference between, for example,
24 you know - One distinction that I really try to make

1 when talking about child interviewing and the use of a
2 protocol - Let's just say, for example, New Hampshire
3 has a child interviewing protocol. And the
4 interviewer might say, "I was following the protocol."
5 The protocol may or may not embody best practices. So
6 when I look at any type of interview, that's what I'm
7 looking at, were best practices followed? Sometimes
8 those best practices square with the protocol,
9 sometimes they don't.

10 So there are several things that I don't like
11 about the protocol that we use in the State of New
12 Jersey. And I just - my role in the training is to
13 talk about those things, and, you know, in a way
14 that's fair to both sides. So I'll just say that I
15 think best practices trump what's in a protocol,
16 generally speaking.

17 Q Okay.

18 A So I'd like to say it doesn't matter what protocol you
19 followed; it just comes down to what questions you
20 asked.

21 Q Okay. And you're bringing up protocols, and what you
22 were talking about in New Jersey is a police protocol
23 on how to interview somebody. Our questions were more
24 designated towards the Reid Method, the other methods

1 of interrogation, and whether those comply.

2 A Yeah, that's not a protocol, but it essentially
3 provides the same thing, which is a phased approach to
4 eliciting a particular type of testimony from someone
5 that the police are talking to.

6 Q Okay. Now, in your report, - just to bring us back to
7 that - on page three you list, I think, six bullet-
8 pointed items about encouraging - about witness
9 interviews; is that fair to say?

10 A Um hmm (affirmative response).

11 Q Do those all apply to suspects as well?

12 A Yeah. I mean, if they're - I mean, so there's a
13 couple of important things here. If you are trying to
14 elicit a confession, that's maybe one part of the
15 interview. But if you are interviewing - if you are
16 asking questions of someone that you believe is
17 forthcoming and being cooperative, I mean, that's a
18 little bit of a different dynamic. And sometimes
19 these interviews are in between. So, yes, if you are
20 questioning someone, and you are trying to elicit
21 information about what that person remembers, or what
22 they experienced, then yes, absolutely, these apply to
23 both children or adults, or whoever, you know,
24 whatever context the interview is taking place.

1 Q In terms of witnesses or suspects?

2 A Correct.

3 Q Now, I guess that sort of leads us into - on page
4 three, you talk about two basic types of interviews.
5 You say, essentially, it's a cooperative witness or
6 victim or a suspect. But is it fair to say --

7 A Correct.

8 Q -- or from what information or source did you obtain
9 those are the two types of interviews that really
10 investigators are faced with, and the goals of the
11 investigators in each of these scenarios?

12 A Yeah, the goals are a little bit different, right,
13 when you're - So, you know, --

14 Q My question, sir, is what sources did you use in order
15 to come up with that those are the two types of
16 interviews, as well as the goals of investigators? Or
17 what did you cite to in order to have that information
18 in your report?

19 ATTORNEY SCAVARELLI: I would just object to the
20 form. I'm objecting to the form. If you can divide
21 those questions up so it's not a compound question, so
22 he can answer the sources relative to the first part
23 and then the second.

24 ATTORNEY DURAND: Sure.

1 Q Mr. Dickinson, you write about two basic types of
2 interviews: A cooperative witness victim or a suspect
3 interview. From what information source do you have
4 that those are the two basic types of interviews?

5 A Well, I would direct - I would direct you to the APLS
6 *White Paper* that I mentioned on interviewing, you
7 know, and interrogation.

8 And before I answer the rest of the questions on
9 the sources, I'll just note that the word is -
10 "interview" has been kind of confused with
11 "interrogation." So sometimes people talk about an
12 interview with a suspect. Well, it really comes down
13 to what the goal is: Is the goal to elicit a
14 confession? Because that's an interrogation. If
15 you're trying to elicit information, then that's
16 probably more accurately characterized as an
17 interview.

18 So police use the term "interview"
19 interchangeably when it suits them, because it is soft
20 language. No one, you know, - Interrogation after Abu
21 Ghraib and, you know, the CIA and after 911, really
22 took on kind of a, you know, heavy connotation. So
23 you hear this term "interview" a lot.

24 Insofar as the other sources go, I would

1 reference the APLS again, *Best Practices* paper on
2 interview and interrogation. I would reference the
3 Reid Interrogation manual. I would reference the book
4 on *The Cognitive Interview* by Ron Fisher and Ed
5 Geiselman, and I would also reference the book that I
6 co-edited. Let me see here. I'm looking at my CV.
7 I'm assuming that's permissible.

8 Q Absolutely.

9 A The book I co-edited, 2019, *Evidence-Based*
10 *Investigative Interviewing, Applying Cognitive*
11 *Principles*, 2019. I would also reference the book I
12 currently have in press on interviewing children,
13 which talks about some of these overlapping principles
14 between children and adults in terms of interviewing
15 cooperative witnesses.

16 Q Now, just so that I understand, your belief is that an
17 interview or discussion with a suspect is an interview
18 if police are just trying to confirm things, but an
19 interrogation if they're seeking a confession?

20 ATTORNEY FALKNER: Objection?

21 ATTORNEY DURAND: Basis?

22 ATTORNEY FALKNER: To the form, and to misstating
23 his testimony.

24 ATTORNEY DURAND: All right.

1 Q Mr. Dickinson, what is the difference between an
2 interview and an interrogation?

3 A Well, again, these terms are sometimes used
4 interchangeably by law enforcement, depending on who
5 you ask. But in my opinion, the goal of an
6 interrogation is to elicit a confession, which is to
7 basically, you know - First of all, the goal of an
8 interrogation is to elicit an admission, "I did it."
9 And then a confession, which is also, "Why I did it
10 and how I did it," right? And that's an accusatory
11 process. The interrogation is accusatory.

12 The interview is when you are seeking
13 information. It's not necessarily accusatory; you're
14 seeking information, you're trying to elicit an
15 eyewitness account, keeping in mind that sometimes
16 perpetrators are witnesses, and sometimes victims are
17 witnesses, but not all witnesses are victims, and not
18 all witnesses are perpetrators. So an interview is
19 anytime you're trying to elicit factual information,
20 you're trying to elicit an episodic memory from an
21 individual.

22 Q And a lot of the difference between the accusatory
23 nature of interrogation, is it fair to say, is the
24 method and manner in which the witness or the suspect

1 is being questioned; not just what's being sought?

2 A Yeah, how they're being questioned. So, you know -
3 you know, evidence of the Reid Technique in its
4 traditional form.

5 Q Okay. So you agree sort of, and this may be my
6 interpretation, but you kind of agree that it's a
7 little bit more nuanced, right, the difference between
8 interviews and interrogations than just accusatory?
9 It has to do with the way questions are asked, in
10 addition to what information is being sought?

11 A I mean, there's a really bright line, I think, between
12 an interview and an interrogation. You know, it just
13 really comes down to context.

14 Q A cooperative witness versus a not cooperative
15 witness, they're still being interviewed; is that fair
16 to say?

17 A Yeah. So when we say a cooperative witness, again, a
18 witness could be a perpetrator or victim or a
19 bystander. And when we say, "cooperative," it is
20 operating under the assumption that that individual is
21 being honest, and is attempting to be helpful, and is
22 not being deceptive. I mean, that's kind of the -
23 When we talk about a cooperative witness, that's what
24 we're, you know, that's what we're talking about.

1 So, yeah, in that sense, I mean, sometimes you
2 might interview a potential suspect, for example,
3 where you don't know who you're talking to. You might
4 be talking to a perpetrator or you might be talking to
5 an innocent person. So in that particular case, those
6 six things I mentioned on page three would apply.

7 Q When wouldn't they apply?

8 A These would always apply unless you just simply want
9 to get someone to say, "Yes, I did it." These are
10 always going to apply. Regardless, if you're
11 conducting an interview, or an interrogation, or
12 whatever you want to call it, the more investigators
13 can get that subject to talk, regardless of what they
14 say is truthful or not - I mean, they want truthful
15 testimony - but the more they can get someone to talk,
16 the more information they have to make case decisions
17 to inform subsequent strategies, so on and so forth.

18 So, yeah, some of these recommendations are
19 designed to kind of make sure that the testimony that
20 you elicit is reliable, but also, you know, I mean,
21 not interrupting that. You know, if you're - The only
22 time that you want to interrupt, according to the Reid
23 Technique, is when a subject is denying that they are
24 guilty. The idea is that you cut off their denials,

1 because it makes it more psychologically difficult for
2 them to confess later on. And that's the only time -
3 the only time I've ever seen an interruption
4 recommended in either an interview or interrogation,
5 for example.

6 Q And in this case, Mr. Stapf was both a witness and a
7 suspect; is that fair to say?

8 A Well, yeah, I would say he's - I mean, first of all,
9 you know, yeah, at a minimum, he's a witness and a
10 suspect. I guess it's for the court to decide or has
11 decided that he was a perpetrator or that he was
12 guilty of something. But, you know, it's pretty clear
13 that the investigators here are trying to elicit an
14 account from him about what happened. So yes, he's a
15 witness, he's a suspect. He's all the above, I would
16 say.

17 Is he being cooperative? I don't know. He says
18 he is. He's also demonstrated that he's, you know,
19 he's also lied repeatedly, so.

20 Q Let's talk about the lies. With respect to that, what
21 information are you indicating he repeatedly lied?
22 What are those repeated lies?

23 A In the very first interview I listened to him - with
24 him, and I believe those were the New York interviews.

1 I mean, it was basically, you know, three hours of him
2 saying he had no idea what happened. And then, of
3 course, as everyone knows, his subsequent interviews
4 and his proffer, he does know what happened. So, you
5 know, I'm going to go on the record saying he
6 repeatedly lied.

7 Q Okay. And that's based on the statements that he made
8 in New York were based on the initial arrest; is that
9 fair to say?

10 A Yeah, that's my recollection, when he was being
11 questioned in the State of New York. I guess it was
12 the Bronx or somewhere - one of the boroughs of New
13 York City.

14 Q Now, I just want to find this so that I don't - so I
15 can direct you in case you need it. On page four of
16 your report, at the top of the second full paragraph,
17 the first sentence, you write that the premise of the
18 interview - and I'm not certain; I believe you're
19 referring to the proffer interviews here, the October
20 22nd statement and the November 17th?

21 A Correct.

22 Q Okay. You indicate that the premise of those
23 interviews was not to elicit an admission of guilt or
24 a formal confession, but rather to share what he knew

1 about the death and locate the body. On what
2 information did you base your understanding of the
3 premise of the interview?

4 A Well, based on the questions that were asked and the
5 answers that were provided, they weren't accusing him
6 of doing - It was very different than his interviews
7 in New York, where he said, "I have no idea what
8 happened." There was no - At this point, there was
9 really no attempt to elicit an admission, right, where
10 he supposedly said, "Yeah. Yeah, I did it." Or, "I
11 know what happened." Right? This wasn't the "A-ha"
12 moment that investigators had been looking for in the
13 State of New York.

14 It's, I think, very clear to anyone who reads the
15 transcript that he had already signaled that he knew
16 that he had been in effect lying, and that he knew
17 what happened, and he was ready to provide an account
18 about what happened. And also, what led me to that
19 conclusion is there were none of the standard
20 interrogation practices, per se, that I had mentioned.

21 Q And with respect to not being any standard
22 interrogation practices, you've indicated you're not
23 familiar with the way in which, specific to this case,
24 New Hampshire State Police conduct interviews; is that

1 fair to say?

2 A Well, yeah, I don't know if they - I mean, let me put
3 it to you this way: I would be willing to - I'd be
4 willing to bet almost anything those detectives were
5 trained in the Reid Technique. Maybe they were
6 trained in something else; I don't know. Maybe they
7 were - I doubt they were new, because they were
8 investigating a homicide. So I can't say, but I'm
9 willing to bet that they were trained in the Reid
10 Technique. But just because they're trained in that
11 technique, doesn't mean they have to use it. But that
12 is the recognized - that model and the PEACE model and
13 the strategic use of evidence are the like major
14 interrogation models used throughout the world today.

15 Q I think, sir, what I'm more trying to ask you is
16 you're not familiar with whether State Police conduct
17 more relaxed interviews of suspects or more
18 interrogative, accusatory interviews of suspects?

19 A I'm not aware of any policy to that effect, that the
20 New Hampshire State Police may employ.

21 Q And I'm not saying there is one; I'm just asking,
22 you're not familiar, you haven't reviewed other
23 interviews or suspect statements in the State of New
24 Hampshire?

1 A Correct.

2 Q Okay. Now, I do want to ask you, because I think it
3 may be a correction. So on page four, that first full
4 paragraph, you indicate that the next interview you
5 reviewed of Mr. Stapf was the proffer on October 22nd.
6 In that paragraph, you don't actually mention the
7 second proffer statement. I assume you meant to since
8 you cited to the two discovery pages? The discovery
9 pages 529 to actually - You said 752. I believe it's
10 753 in the record - are the October 22, 2021 pages.
11 And the second set, which you have, is 753, which I
12 think might actually be set 754 to 1010. That's from
13 November 17th.

14 A Yeah. Okay.

15 Q So I want to make sure that that we flag that because
16 I think that you're just missing a date.

17 A I think that that's correct.

18 Q Okay.

19 A I would have to - I would have to --

20 Q I just want to make sure that you reviewed both.

21 A I reviewed - yes. To my knowledge I reviewed both.
22 Yes.

23 Q Okay. Now, in the second paragraph on page - Well, at
24 the time that Mr. Stapf made these two statements,

1 October 22nd and November, I believe, 17th, were you
2 aware that he had been charged with some criminal
3 offenses, was in custody, and was represented by
4 counsel?

5 A I was aware that, based on the transcript, I was aware
6 that he was in custody, and he was represented by
7 counsel. I wasn't aware of any player agreement. I
8 didn't read anything or, you know, regarding the
9 proffer. The file was named, I think, "Proffer." But
10 I wasn't aware of any agreement, or any of the
11 conversations that have taken place between his
12 counsel and the prosecutor's office.

13 Q Okay. So you didn't know the - And there were no
14 pleas or anything like that. But you're not aware of
15 any proffer discussions or any other communications
16 that had happened?

17 A Yeah, no, I'm not. I assume there were other
18 communications that weren't in the discovery; they
19 were privileged, and weren't necessarily relevant.

20 Q Okay.

21 A But I'm not aware of what they were.

22 Q Okay. Thank you for that. Were you aware that his
23 attorneys were present in the room during those
24 statements?

1 A Yes.

2 Q So in your second paragraph on page four, you indicate
3 that Mr. Stapf had a significant interest in
4 minimizing his culpability, and thus, a strong motive
5 to lie during these two proffer statements. To what
6 extent did you consider the fact that Mr. Stapf's own
7 attorneys were in the room?

8 A What do you mean, to what extent did I consider that
9 his attorney --

10 Q Does that come into any consideration in your
11 rendering of an opinion or your review in this case?

12 A Yeah. The fact that his attorneys were in the room?
13 Let me put you this way: I assumed that there had
14 been a conversation with Mr. Stapf, knowing what I
15 know about proffer sessions. As I mentioned at the
16 beginning of our conversation today, there is a, you
17 know, the proffer is kind of predicated on the, you
18 know, the assumption that the individual is going to
19 be honest and forthcoming and helpful. In other
20 words, a cooperative witness. So I mean that was more
21 - Yeah, I mean, that's what I based kind of - I mean,
22 that - Yes, I did consider that his attorney was there
23 and I did consider the fact that it was a proffer
24 session. Yeah.

1 Q To what extent did those considerations impact your
2 determination in this case?

3 A Minimally.

4 Q Now, at the end of - and let me just make sure I'm in
5 the right place - At the end of that same paragraph,
6 your second full paragraph on page four, you indicate
7 that - I apologize - that your analysis is - and this
8 is your last sentence in that paragraph - "is that the
9 investigators likely feared that if they challenged
10 Mr. Stapf's account of the circumstances surrounding
11 [REDACTED]'s death, that they may lose his
12 cooperation in locating the body." Is that a
13 statement that you made?

14 A It is, yes.

15 Q What information did you use in order to make that
16 analysis?

17 A I mean, I should maybe have stated better that that
18 was my opinion. I mean, during this phase of the
19 interview, they're looking for the boy's body, and
20 he's lying to them for hours, and they know he's
21 lying. He knows they know he's lying. I mean, I
22 think that that becomes very clear in the repeated
23 questions that investigators asked Mr. Stapf, so my
24 opinion is based on the transcript and the nature of

1 that conversation.

2 If the investigator can locate his body, that
3 brings them a long way to a confession. But it's
4 pretty clear - Well, I believe - my recollection is
5 the investigators stated as much; the priority was
6 finding the boy. That was their priority. That's
7 clearly - I think anyone who reads that transcript -
8 that's my opinion, would come to the conclusion that
9 that was their priority.

10 Q Did you, at that point that you rendered that opinion,
11 have any information about the investigation
12 concerning what authorities knew about where [REDACTED]
13 [REDACTED]'s body was at the time that they were asking
14 those questions?

15 A I did not.

16 Q Now, on page four, you start talking about the October
17 22, 2021 proffer statement. Do you know whether the
18 description provided by Mr. Stapf during that
19 statement was consistent with the location where
20 [REDACTED]'s body was located?

21 A I'm sorry; did I know if Mr. Stapf statements what?

22 Q Do you know whether his statements that he provided
23 about the location of [REDACTED]'s body was
24 consistent with where the body was eventually found?

1 ATTORNEY FALKNER: Objection. I'm not sure
2 specifically what statements you're asking were
3 consistent or not consistent. So it's to the form.

4 Q Mr. Dickinson, during the course of your review of the
5 October 22, 2021 proffer transcript, you've indicated
6 that detectives were asking Mr. Stapf questions about
7 the location of [REDACTED]'s body; is that correct?

8 A Yes.

9 Q Okay. Do you recall what that description was?

10 A I'm sorry; you cut out. Did you ask a question?

11 Q Okay. Do you recall what the description provided by
12 Mr. Stapf was as to where the body would be found?

13 A No. I mean, that was a - What I do - No, I don't
14 exactly.

15 Q Do you have any information or did you receive any
16 information during your analysis in order to allow you
17 to make a decision as to whether Mr. Stapf was being
18 truthful or honest in providing that description?

19 A No, other than the fact that during his initial
20 interview, he repeatedly said he had no idea what
21 happened, and now he's providing an account.

22 Q Okay. Now, in discussing the November - On page nine,
23 you start to discuss the November 17 proffer
24 statement.

- 1 A Uh huh (affirmative response). Yes.
- 2 Q Specifically - and I may jump around a little bit -
3 but specifically, you focused in on the Target trip,
4 for lack of a better way to describe it. Is that fair
5 to say?
- 6 A Yes, which --
- 7 Q When you talk about - I apologize; go ahead.
- 8 A Which reflects the investigators' focus on the Target
9 trip.
- 10 Q Okay. Now, Mr. Stapf eventually provided
11 investigators with a description of [REDACTED], from
12 when he came back from that Target trip; is that fair
13 to say?
- 14 A Yeah, he eventually provided a description, yes.
- 15 Q Did you have any information about that description or
16 about the case that allowed you to say whether that
17 description was truthful or not?
- 18 A No.
- 19 Q Whether it was reliable?
- 20 A Well, "reliable" in the sense that it was accurate?
21 Like so did I have any corroborating information to
22 corroborate the accuracy of those statements? No.
- 23 Q Now, I guess this is a little more open-ended, so I'm
24 going to cede the floor to you on this little bit.

1 But with respect to the October 22nd statement and the
2 November 17th statement, why did you focus in on the
3 bathtub incident in the first, and the Target trip in
4 the second?

5 A Well, that's what investigators focused on. And that
6 was both of those accounts as detailed in my report.
7 You know, document suggestibility on behalf of the
8 interviewers asking the questions around those events.
9 And those events appear to be eventually related,
10 because I mean, you're - I mean, it's kind of all
11 centered on something that, you know, allegedly took
12 place in the bathroom.

13 So these were his account of what happened in the
14 bathroom and his account of the visit to Target and
15 whatnot were, you know, critical information in the
16 case - I mean, so I think anyone would focus on that.
17 So you're looking - So I'm looking at whether or not
18 that information was provided voluntarily by Mr.
19 Stapf.

20 Q Okay. And in terms of the determination that it was
21 critical information to the case, who made that
22 decision in terms of your analysis?

23 A Yeah, whether it was critical information?

24 Q Yeah. Was that your determination that it was the

1 critical point you should focus on, or were you asked
2 to focus there?

3 A No, that was - I was not asked to focus there. Those
4 are both kind of a, you know. I mean, I think it's my
5 opinion, and I think anyone would come to the
6 conclusion that the investigators are looking for, for
7 lack of a better term, a discrete event that
8 precipitated [REDACTED]' death. So of course,
9 that's going to be a critical part of any interview or
10 interrogation.

11 Q And just so I can clarify - I only have about, I
12 think, five or six more questions unless Ms. Hagaman
13 wants to jump in on anything - but you have not, is it
14 fair to say - I'm just going from your report -
15 conducted any interviews of Mr. Stapf or any
16 evaluation of him?

17 A I have not, no.

18 Q You have not reviewed any of his medical records or
19 history?

20 A No.

21 Q Now, you indicate on page 13 in your "Summary and
22 Opinion" section, page 13 of your report. I guess I
23 should say for the record, this report that we've been
24 referring to, it is marked as **State's Exhibit #1** with

1 respect to this deposition. You indicate in your
2 Summary and Opinion section on page 13 that - and I
3 believe I'm quoting you here, "Mr. Stapf provided a
4 great deal of information about the circumstances
5 surrounding the maltreatment and death of [REDACTED]
6 [REDACTED]." But then you went on to write that much of
7 the key information was traced to suggestive questions
8 and pressure to remember. With respect to this "great
9 deal of information," what do you include in that, in
10 terms of what is a great deal of information?

11 A I mean, all the information he provided around the
12 abuse and neglect of [REDACTED] all of his
13 accounts. I mean, there was a lot of information.
14 Over the course of his many hours of interviews, there
15 was a lot of information. There was a lot of - there
16 was some detail; there was a lot of detail that was
17 lacking. But, yeah, that's my opinion. I stand by
18 that opinion in the document.

19 Q And so the information that you determined was key,
20 related to the abuse and the neglect information that
21 Mr. Stapf provided?

22 A I'm sorry; can you repeat the question?

23 Q We want to make sure we understand, because you wrote
24 generally there's "key information" that he provided.

1 What do you consider the key information that Mr.
2 Stapf provided?

3 A The key information? It would be his witnessing his
4 codefendant slamming his - slamming the child into the
5 tiles or not, and his account immediately preceding
6 ██████████' death, all of that information.

7 Q So it was essentially the bathtub incident and the
8 Target incident that you focused on?

9 A Correct.

10 Q Okay. Now, you went on to state - I want to make sure
11 that I get in the right section. In the second
12 paragraph on the bottom of page 13, you write that,
13 "Mr. Stapf has repeatedly demonstrated willingness to
14 lie to investigators out of self-interest." Am I
15 correct to say that that's based on those statements
16 you heard in New York, or is there something else?

17 A Yes, based on my - Yes, in New York. Can you hold on
18 one second?

19 Q Absolutely.

20 A I apologize. Sorry. My wife scheduled delivery
21 without my knowledge.

22 Q No worries at all. So with respect to - just to make
23 sure - because that was sort of an inartful question.
24 And you've gotten fuzzy on us, sir, and I'm not sure

1 why. Not that it matters. Your screen has gotten
2 blurry. There we go.

3 A I don't know. Is it any better now?

4 Q No, you're fine now. I thought it was my vision for a
5 second, but I'm glad it was your screen.

6 A I know.

7 Q We were talking about that - you were answering a
8 question in terms of when you state on the bottom of
9 page 13 that, "Mr. Stapf has repeatedly demonstrated
10 the willingness to lie to investigators out of self-
11 interest," am I correct that you're referring to the
12 New York statements that happened in October of 2021?

13 A Yes, that is the portion of interviews where I think
14 everyone's in agreement Mr. Stapf lied, and it's, you
15 know, can be objectively demonstrated that he lied.
16 When I said, "out of self-interest," that's the
17 motivation for lying the vast majority of the time.
18 Sometimes the motivation is to protect someone else.
19 But that's typically why people lie, is out of self-
20 interest.

21 Q So it was easily recognizable that the statement made
22 in October - I believe it was the 18th of 2021 by Mr.
23 Stapf was a lie?

24 A Yeah. His initial denial that he didn't know what

1 happened to [REDACTED], that the boy wandered off in
2 the middle of the night. Yeah, I would say that it's
3 fair to say that he was lying.

4 Q Okay. And that lie was coming out of self-interest?

5 A I assume. That's my opinion, out of self-interest. I
6 can't think of - I mean, logically, I didn't see any
7 other motivation for him to lie. Typically, in these
8 cases, as you are, I'm sure aware, people in these
9 cases lie to avoid the consequences of their actions.

10 Q Now, you indicated also in this paragraph, - and I
11 believe it's the last sentence on page 13 - you talk
12 about that it was evident to you that drug use around
13 the time of [REDACTED]' death opened up - you call
14 it "vulnerability in his memory." What information do
15 you or did you have related to Mr. Stapf's use of
16 drugs?

17 A Just the account in his interview about, you know,
18 there were different types of drugs in the dwelling;
19 you know, that they had left at some point to get
20 drugs or that, you know. So just based on the
21 information you provided. I don't have - I didn't
22 review his treatment records or medical records or
23 anything like that.

24 Q Okay. And now, last question, because I'm working to

- 1 get you to that bus. The last question I have right
2 now is on page 14 of your report, you make a final
3 statement, sort of your opinion in this matter. And
4 you indicate that you cannot say whether Mr. Stapf's
5 eyewitness testimony is accurate. Is that fair?
- 6 A Yes, I wouldn't - I would not offer an ultimate
7 opinion in any jurisdiction under any circumstance.
- 8 Q Yet - I apologize; were you finished with that
9 statement? I didn't want to interrupt you.
- 10 A That's simply what I meant by that statement on, you
11 know, I'm not going to - You know, as the statement
12 says there, I think that there were deviations from
13 best practices. I thought the interviewers were
14 suggestive in key parts of the interview, but
15 ultimately, I'm not - I do not - if I'm called to
16 testify, I'm not going to provide an opinion about
17 whether or not what he's saying is true is not. I
18 mean, right? Am I wrong? Isn't that the jury's job?
- 19 Q I'm asking you the questions today, sir.
- 20 A Yes.
- 21 Q But no, I agree with you. That is the jury's job.
- 22 A No, I understand why you want to ask that question,
23 and I'm not going to offer an ultimate opinion.
- 24 Q Okay. Now, you determined, however, that despite your

1 not knowing or being able to say whether his testimony
2 was accurate, that the testimony was that - And when
3 you say testimony here, you're talking about his
4 interview statements; is that correct?

5 A Yes.

6 Q Okay.

7 A And I've come to appreciate that the word testimony is
8 often - attorneys typically think about that as
9 something that happens in the courtroom. And that
10 just in the psychological science, we talk about
11 testimony as kind of like informal interviewing,
12 formal interviewing and court testimony. So I'll try
13 to be more --

14 Q Okay. But your answer depends whether someone's under
15 oath generally. So in this aspect, the statement is
16 what you're referring to, or his statements in
17 general?

18 A I'm sorry; I interrupted you before. Could you
19 rephrase the question?

20 Q It's all right. So you had indicated again that
21 you're not going to render an opinion as to whether
22 Mr. Stapf's eyewitness testimony, and meaning his
23 statements, are accurate. But you went on in your
24 opinion to determine and indicate that those

1 statements were unreliable. Can you please explain
2 that.

3 A Sure. So accuracy and reliability are really two
4 different things. And I can appreciate that these
5 terms may be used in legal contexts a little
6 differently. But typically, when we think about
7 reliability, we think about consistency. So when
8 someone asks you - You know, you apply for a job and
9 someone says, "Do you have reliable transportation?"
10 Or, you know, "Is your friend reliable?" "Are they
11 going to be there?" "Are they consistent?" "Do they
12 show up every time?" I mean, clearly, his testimony
13 is inconsistent. You know, there's - It changes over
14 time, there's an admitted lack of memory. You know,
15 he can't remember and then he does. So in that sense,
16 I would say that it's unreliable, the finding
17 unreliable is inconsistent.

18 Q So you're not saying unreliable in terms of a legal
19 determination. You're saying unreliable, that it's
20 just - it's inconsistent to what you reviewed in other
21 statements?

22 A Yeah, I can't say if it's - what actually happened or
23 not.

24 Q So knowing that, what impact does corroborative

1 evidence have on your determination of reliability
2 here?

3 A I mean. Corroborative evidence?

4 Q Yes.

5 A It depends on the strength of - it depends on the
6 evidence and what evidence, and I would have to
7 evaluate that corroborate evidence to make a
8 determination. I don't know. Yeah, no, that's it.

9 Q Okay. That's fair. Let me put you on mute just one
10 second to make sure that we have asked all of our
11 questions. Okay?

12 A Sure.

13 Q I think we've covered everything that we wanted to ask
14 you about your report. I don't know if Attorney
15 Falkner or Attorney Scavarelli have any questions for
16 you.

17 ATTORNEY FALKNER: I have just a few. So this is
18 Benjamin Falkner, just so that it's clear for the
19 court reporter. Just a handful of follow ups.

20 INTERROGATORIES BY ATTORNEY FALKNER:

21 Q Number one, Dr. Dickinson, were you able to recite
22 every single source that you relied upon today to
23 reach the conclusions in your report?

24 A No, not every single source. No.

1 Q Is it fair to say that beyond specific sources, you
2 relied on your education, research, training and
3 experience to reach your conclusions?

4 A Yes. I've been working in the field for 25 years.
5 So, yes.

6 Q Okay. You were asked by the State to list some lies
7 that Mr. Stapf told during his interview. Do you
8 remember that?

9 A Yes.

10 Q Okay. And you provided some examples, such as his New
11 York interview, correct?

12 A Correct.

13 Q Were the list of examples that you provided
14 exhaustive?

15 A No.

16 Q Is it fair to say that they were merely examples that
17 were relevant to the ultimate opinion that you
18 reached?

19 A Yes.

20 Q One of the purposes of the analysis you conducted was
21 to determine whether the interview techniques used by
22 law enforcement were consistent with best practices,
23 correct?

24 A Correct.

1 Q And another purpose was to analyze whether deviation
2 from those best practices may have impacted the
3 reliability of the information that Mr. Stapf
4 provided, correct?

5 A Correct.

6 Q Would any of your opinions change if there were
7 protocols in New Hampshire that demanded that
8 investigators interview in a different way?

9 A No.

10 Q So another way to put that is you're analyzing this
11 based on best practices, not based on any particular
12 protocol, correct?

13 A Correct. "Best practices" as defined by the current
14 state of the psychological science.

15 Q Would it make any difference to those best practices
16 whether there was an attorney in the room?

17 A No.

18 Q Would the terms of any proffer agreement make any
19 difference to your opinions?

20 A No.

21 Q When you say that you can't determine whether it's
22 accurate, that means you don't know whether he's, at
23 the end of the day, telling the truth or not, correct?

24 A Correct. That is correct.

1 Q At least as an overall, as opposed to specific
2 statements?

3 A Yes. Regarding these specific statements, correct.

4 Q And when you're talking about reliability, something
5 could be truthful but not reliable, or reliable but
6 not truthful, correct?

7 A Yes, insofar as I think the law is concerned. I mean,
8 typically, you have to have - In order for something
9 to be accurate, it has to be reliable, generally
10 speaking. So I could step on a scale - So these are
11 these are psychometric terms, what are called
12 "psychometric terms," right? I could step on a scale
13 and it would tell me I weighed 180 pounds, and I could
14 step on the scale ten times, and it would tell me the
15 exact same thing. It would be reliable, but if I
16 actually weighed 170 pounds, it would also - it would
17 be reliable but it would not be accurate.

18 So typically, you know, if something's going to
19 be accurate, it's also going to be reliable, but not
20 necessarily the other way around. I think I have that
21 right.

22 So I was - you know, my conclusion here that
23 those statements - his account was unreliable is - you
24 know, really considering his entire - all of the

1 testimony that I reviewed in this case, coupled with
2 the suggestive questions that the investigators asked
3 Mr. Stapf during the course of the subsequent
4 interviews.

5 Q So if Mr. Stapf - No, you know what? I don't have any
6 further questions at this time.

7 ATTORNEY SCAVARELLI: Does the State have any
8 follow up?

9 ATTORNEY DURAND: I do. I have two questions for
10 you, Mr. Dickinson, then we'll get you out to that
11 bus.

12 BY ATTORNEY DURAND:

13 Q You've indicated, and now during questioning by Mr.
14 Falkner, and he's used the word reliable, you had
15 indicated earlier that reliable, you were referring to
16 consistency of the information. Is that what you
17 meant during these questions?

18 A Yes.

19 Q So you were asked to determine whether the impact of
20 the questioning rendered Mr. Stapf's statement
21 consistent?

22 A Yeah, consistent, and also derived from interviewing
23 techniques that we know are more likely to generate
24 accurate testimony that reflected experienced events.

1 Q And lastly, you indicated that you made all these
2 determinations, and your opinion, considering all of
3 the testimony. You mean, again, statements that you
4 reviewed; is that fair to say?

5 A Yes. It includes his prior testimony and then his
6 testimony in this interview. His testimony, his
7 statements, as it were, sorry --

8 Q I'm not asking the legal definition. Again, I just
9 want to make sure that we're on the same page.

10 A Yeah, yeah. His statements, and also the questions
11 that he was responding to.

12 Q Okay. And those statements that you interviewed are
13 solely and strictly the material that you cite and
14 list on page one of your report?

15 A Correct.

16 Q So there was no outside information that you used?

17 A Correct.

18 Q Okay.

19 ATTORNEY DURAND: I don't have any questions.
20 Mr. Falkner, do you have any response questions to
21 what I just asked?

22 ATTORNEY FALKNER: No further questions.

23 ATTORNEY DURAND: Okay. Well, Mr. Dickinson, I
24 want to thank you very much for your time. I know we

1 got you squeezed in, and you've got one minute to get
2 to the bus. So thank you and have a good evening.

3 THE WITNESS: Thank you, all.

4 ATTORNEY SCAVARELLI: Thank you.

5 *****END OF DEPOSITION: 4:01 p.m.*****

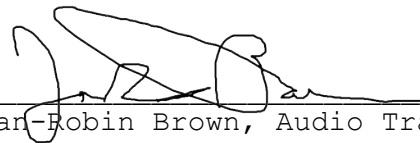
STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

I, Jan-Robin Brown, Certified Electronic Reporter and Transcriber, CER-415, CET-415, and a Notary Public in the State of New Hampshire, hereby certify that I transcribed from a digital recording the foregoing 75 pages, and that the same is a true and accurate transcript of all the recorded testimony, to the best of my knowledge and belief.

I certify I am not related to, nor employed by any of the parties in the above-entitled action, and I have no financial interest in the same.

This certification applies only to originals and copies that bear my signature and raised seal. Dated May 17, 2024.



Jan-Robin Brown, Audio Transcriber
Notary Public
My Commission Expires June 10, 2025