

1 **THE WITNESS:** Thank you.

2 **MR. BATARSE:** May I proceed, Your
3 Honor?

4 **THE COURT:** You may.

5 **LAWRENCE THOMPSON, JR.,**
6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **Q.** **(BY MR. BATARSE)** Dr. Thompson, please
9 introduce yourself to the jury.

10 **A.** Yes. My name is Lawrence Thompson, Jr.

11 **Q.** And is it Dr. Thompson?

12 **A.** It is really just Lawrence Thompson, Jr.;
13 but I am a doctor.

14 **Q.** Okay. And what are you a doctor of?

15 **A.** Clinical psychologist. I have a Doctorate
16 in clinical psychology.

17 **Q.** Why don't you tell the jury a little bit
18 about your educational background.

19 **A.** I have a Bachelor's degree in English and a
20 Bachelor's degree in psychology from Schreiner
21 University. I also have a Master's degree in
22 clinical psychology and a Doctorate in clinical
23 psychology from the University of Michigan.

24 **Q.** And what do you do for a living?

25 **A.** I'm the director of therapy and

1 psychological service at the Harris County Children's
2 Assessment Center.

3 Q. And how long have you been the director of
4 the CAC?

5 A. Been the director of the mental health
6 portion of things about 11 years at this point.

7 Q. And how about before that?

8 A. Before that I also worked at the advocacy
9 center for several years, for a couple years as a
10 staff psychologist; and I spent about a year or so as
11 just director of psychological service and research.

12 Q. Okay. So, tell us what it means to be the
13 clinical psychologist.

14 A. It can mean a lot of things. But clinical
15 psychology concerns itself with people's mental
16 health and the treatment of some of the problems that
17 people can have in terms of their mental health. So,
18 in a nutshell, that's what this means.

19 Q. And is your experience -- I mean, do you
20 have a lot of experience with victims of these types
21 of crimes?

22 A. I do have a lot of experience with child
23 sexual abuse, worked with child sexual abuse
24 survivors and their family members the last 15 years
25 that I have worked at the children's advocacy. The

1 Children's Assessment Center has specifically been
2 focused on work with that population.

3 Q. And tell us exactly what that work has been
4 for the last 15 years.

5 A. Well, my primary responsibility is
6 oversight of the mental health services. So, we have
7 a team of over 25 Master's and Doctoral level
8 clinicians that provide the mental health services
9 I'm talking about. And I oversee all their work at
10 some level or another.

11 But in addition to that, I have and
12 continue to provide some direct services myself. I
13 do some individual therapy, group therapy, crisis
14 intervention, suicide assessment, homicide
15 assessment, things of that nature. Court testimony
16 is something that I regularly do in child abuse
17 cases. Presentations related to child abuse.
18 Psychology, more generally, is something I work with
19 when called upon to do. Other than that, a lot of
20 administrative sort of physical oversight
21 responsibilities.

22 Q. When you say "child abuse," does that --
23 what does that encompass?

24 A. Well, child sexual abuse, certainly. But,
25 you know, we see children at the advocacy center who

1 have been abused in other ways, too. It could
2 include physical abuse, emotional neglect. But child
3 sexual abuse is certainly a focus of all the work at
4 the Children's Assessment Center.

5 **Q.** So, how does child sexual abuse -- how does
6 that affect the victim?

7 **A.** We -- various ways. It depends on the
8 person that's being traumatized, how they are going
9 to respond individually. But we tend to see people
10 who have been sexually abused be depressed. We tend
11 to see them be anxious. We tend to see them have
12 interpersonal problems, and we also tend to see them
13 having sexual acting out behaviors or sexual
14 concerns.

15 **Q.** And what about something like suicide or
16 suicidal tendencies?

17 **A.** Absolutely. That could fit with a lot of
18 the things that I just mentioned but, specifically,
19 with the depression, sometimes the depression is so
20 intense that people will literally be sad enough to
21 think about something like taking their own life.

22 **Q.** And when we are looking at the effects of
23 child sexual abuse, are we talking like short-term
24 effects; or are we talking about longterm effects?
25 How does that work?

1 **A.** We're talking about both. Certainly a
2 trauma like that can impact the person in the here
3 and now; but with child sexual abuse, we do see
4 people a lot of times having difficulty with these
5 types of problems for extended periods, even
6 sometimes into their adult life.

7 If you can imagine, a child maybe
8 they're 9 and gets sexually abused. You know, the
9 abuse means something to them as a 9-year-old. They
10 certainly understand it a certain way as a
11 9-year-old; but when the 9-year-old becomes 15 and
12 they are thinking maybe dating somebody, all of a
13 sudden that sexual abuse means something different.
14 It feels different. It bothers them in a different
15 way. It concerns them in a different way. So, they
16 deal with it then.

17 Then later, when they think about
18 maybe getting married, they go through that process
19 again. When their child -- they have a child and
20 their child comes to an age where maybe they were
21 abused, they deal with it then.

22 So, for a lot of our survivors of
23 child sexual abuse, it's a lifelong process of
24 dealing with what's happened to them.

25 **Q.** Does that mean -- so, do you -- do these

1 child victims, as they go into adulthood, I mean, do
2 they still need therapy? Do they still need help?

3 **A.** Some do. Some do, some don't. But it's
4 certainly not uncommon at the advocacy center for us
5 to see people come back multiple times at different
6 parts of their lives to receive therapy related to
7 the child's sexual abuse that they have suffered.

8 **Q.** How does the sex -- I mean, is the effect
9 of the sexual abuse confined solely to that one
10 victim; or does it expand outward?

11 **A.** Well, to the extent that, you know, that --
12 that victim, that survivor, is having relationships
13 with other people, it could certainly impact those
14 relationships, too.

15 **Q.** What about their family?

16 **A.** Absolutely. It could impact friendships,
17 family members. I referenced somebody maybe
18 eventually having a child. It can impact their
19 ability to parent. It can impact a lot of things in
20 a person.

21 **Q.** I want to talk a little bit -- I mean,
22 how -- is there a different -- you know, is there a
23 different way that the sexual abuse maybe affects
24 their relationship between -- say the victim is a
25 female, with a male parent; or if it's a male, with a

1 female parent? Is there any relation to that?

2 **A.** Really, let me make sure I understand the
3 question. Repeat the question for me.

4 **Q.** So, is -- you know, let's say you have a
5 female victim who has been abused by a male adult.
6 Will that have an effect on her future relationships
7 with maybe other male adults or other males?

8 **A.** Yes, certainly, it could. I mean, to the
9 extent that that child has -- you know, sometimes
10 kids are abused by -- maybe it's a female that's
11 abused by a male. And they carry with them a fear of
12 males moving forward, and it impacts their ability to
13 have normal relationships in the future, even normal
14 sexual relationships with a male. We do see that
15 develop in some of our cases.

16 **Q.** And how does -- how does this type of abuse
17 affect the relationship between the child and, say,
18 the child's mother? Do you see any correlation
19 there?

20 **A.** You know, it depends on the response that
21 the child received from their -- their mother. I'm
22 considering the mother to be a person that didn't
23 abuse them. So, they are non-offending caregivers or
24 something. We might reference clinically.

25 You know, in some cases to the extent

1 that it's a mother who supports her child, is there
2 for her child, does all that she can to keep her
3 child safe, moving forward, it can strengthen their
4 bond. In some cases, though, we don't see that. We
5 see caregivers who aren't able to be -- sometimes
6 aren't able to be as available or more supportive of
7 their child as they might be.

8 And in those cases it can be
9 emotionally distressing for that child not to have
10 the support of their caregiver after they have been
11 sexually abused.

12 Q. So, I mean, we refer to that as a doubting
13 parent. Is that kind of what we're talking about?

14 A. Doubting. We do have some parents that do
15 literally believe that the child is not telling the
16 truth about what's happened to them in terms of the
17 sexual abuse. We, on occasion, even have some
18 parents that will support the perpetrator of the
19 abuse rather than support the -- support their child.

20 Q. How does that affect the child?

21 A. It can lead to -- it can also contribute to
22 some of the things we have already talked about, like
23 depression, depression to an extent that could lead
24 to even somebody thinking about taking their life.
25 The anxiety that we reference, interpersonal

1 difficulties that we referenced, the other problems.
2 It literally can be part of the development of those
3 problems and ultimately sometimes those clinical
4 disorders that we see.

5 **Q.** Okay. So, is it fair to say that would be
6 definitely considered like aggravating factors to the
7 stress that the child is under?

8 **A.** Yes.

9 **Q.** Okay. I want to ask you, do you know
10 anything about, you know, animals and their
11 involvement in therapy? Do y'all use that a lot at
12 all at the CAC?

13 **A.** We do a lot of different types of therapy
14 at the CAC, Children's Assessment Center; but we do
15 animal-assisted therapy. You know, we reference the
16 interpersonal problems that children can have after
17 they have been sexually abused earlier; and their
18 interpersonal problems basically stem from the fact
19 that kids usually know the people that abuse them,
20 have a relationship with them.

21 And as they're abused by those people,
22 it undermines their trust in people and their trust
23 in relationships with human beings moving forward.
24 Even when that trust in human beings has been
25 undermined, a lot of times kids maintain an ability

1 to trust and connect with animals. And that's the
2 idea behind having animals in the therapeutic space
3 calms the kid. They feel like they can connect with
4 that animal. They feel like they can trust it. And
5 having them in the therapeutic space can literally be
6 part of reawakening their ability to trust human
7 beings again.

8 Q. All right. Now, Mr. Thompson, I want to
9 change the scope here just a little bit; and I want
10 to look at the other side of the spectrum here. Have
11 you ever -- have you had any work with the offender,
12 the sex offenders on that end of the spectrum?

13 A. Through my work with survivors of child
14 sexual abuse, certainly I've heard lots of accounts
15 of the abuse that they have suffered at the hands of
16 different sexual offenders.

17 I have also actually visited several
18 of the sex offender treatment programs here in the
19 state of Texas and had opportunity to engage directly
20 with some sex offenders at the Texas Department of
21 Criminal Justice in that way.

22 I have also been trained and done a
23 fair amount of training related to sex offenders.

24 Q. Is there -- is there some way to -- I mean,
25 is this like a disease or ailment that can be cured,

1 this desire to have sex with children?

2 **A.** We -- we have no cure for sexual attraction
3 to prepubescent children. To the extent that we have
4 an adult that is sexually attracted to prepubescent
5 children, clinically considered kids sort of 13 years
6 of age or below, we have no cycle therapy, no cycle
7 pharmacology, or medicine or anything that we can do
8 to change that sexual attraction.

9 The quote-unquote treatment focuses on
10 manage -- focuses on acknowledgment of the fact that
11 that inappropriate sexual impulse will always be
12 there and management of that impulse in a way that
13 hopefully keeps the person in a place where they are
14 not able to act on it.

15 **Q.** How important in -- how important to a
16 person's process as a sex offender is acknowledgment?

17 **A.** Acknowledgment is important. Now, that
18 said, it is common for sex offenders to present to
19 sex offender treatment with some amount of denial and
20 lack of acknowledgment of their problem or -- of
21 their problem. I can just leave it at that.

22 But, certainly, through the course of
23 therapy, to the extent that the therapy process
24 progresses and is successful, the person will not
25 only acknowledge their wrongdoing and their role in

1 that wrongdoing but hopefully also take
2 responsibility for it and responsibility for not
3 being abusive moving forward and hopefully also
4 develop some empathy and compassion for the victims
5 of child sexual abuse that they may have been
6 involved with.

7 Q. I guess the question that I have: Is there
8 any treatment to ensure that this person will not
9 reoffend in the future?

10 A. No, there is no treatment that can
11 guarantee that.

12 Q. What is -- I mean, how is it that you
13 could -- I mean, how is someone able to ensure that
14 someone who's not going to reoffend with someone who
15 has this desire?

16 A. The only way to be certain the child is not
17 going to be sexually abused is to have that person in
18 prison.

19 Q. Now, and where -- tell the jury, where is
20 the best program for sex offenders located?

21 A. The best program I'm aware of is in the
22 Texas Department of Criminal Justice. They have a
23 sex offender treatment program there that's
24 comprehensive as anything that I'm aware of. It
25 involves an evaluation of the person as they come

1 into the program to get a sense of their offense
2 cycle and come up with a plan of trying to help them
3 deal with that.

4 There is regular psychotherapy,
5 individual therapy, group therapy, even family
6 therapy, to the extent the family members are willing
7 to be involved. There is what's called -- you know,
8 a fancy term -- milieu therapy, which basically means
9 that any materials that the inmates can see on
10 television or read or control such that they don't
11 have access to children that they can use to
12 fantasize about and sort of drive, you know, their
13 wish and urge to abuse kids moving forward.

14 There is an evaluation of the person
15 as they leave the program. There is a parole plan as
16 the person moves out into society to try to help them
17 make an appropriate transition to the extent they're
18 being released back out into society. It's a
19 thorough, comprehensive program.

20 **Q.** Are they forced into the program, or how do
21 they get into the program?

22 **A.** No, nobody is forced into -- into that
23 program. The sex offender would literally have to
24 petition to be part of the program and be accepted
25 into the program.

1 **Q.** Does everyone get in that wants to get in?

2 **A.** No. No. There -- there -- there are --
3 there are more sex offenders in the Texas Department
4 of Criminal Justice than could be part of their sex
5 offender treatment program.

6 **Q.** Let me ask you this, Doctor: What are some
7 of the dangers that the community is looking at if
8 it's not treated?

9 **A.** Abuse of more children.

10 **THE COURT:** Approach, please.

11 **(At the Bench)**

12 **MR. BATARSE:** Yes, Judge.

13 **THE COURT:** This is beginning to make
14 me real nervous because it invites the jury to
15 speculate about crimes he might be committing in the
16 future.

17 **MR. BATARSE:** Yes, Your Honor.

18 **THE COURT:** And that's kind of a gray
19 area.

20 **MR. BATARSE:** Yes, Your Honor.

21 **THE COURT:** So, you know, some of this
22 is fine; but I urge you to be careful about something
23 that -- he has never even interviewed this defendant?

24 **MR. BATARSE:** No, Your Honor.

25 **THE COURT:** So, I'm just telling you

1 it's making me nervous. I would hate for this case
2 to have to be retried.

3 **MR. BATARSE:** Yes, Your Honor.

4 **(End of Bench Discussion)**

5 **MR. BATARSE:** Your Honor, we pass the
6 witness.

7 **THE COURT:** Thank you.

8 Cross-examination?

9 **MR. TABOADA:** Yes, Your Honor.

10 **CROSS-EXAMINATION**

11 **Q. (BY MR. TABOADA)** Dr. Thompson, let's talk
12 about resilience of the victims.

13 **A.** Resilience?

14 **Q.** Yes, sir.

15 **A.** Yes.

16 **Q.** Excuse me. How do you assess the
17 resilience of the child that has been sexually
18 abused?

19 **A.** I mean, as a clinical psychologist, you
20 meet with that child and get a sense of what
21 strengths they have that you are able to work with
22 therapeutically or otherwise.

23 **Q.** And what are the strengths of Jasmine
24 Chacon in working with her in terms of giving her a
25 better opportunity of overcoming this?

1 **A.** Well, I'm not aware of the child you have
2 referenced and any one of her strengths. I have not
3 met with her.

4 **Q.** How -- you have not met with Jasmine?

5 **A.** No, I have not.

6 **Q.** Oh, okay. So, I see. So, you cannot give
7 the jury a -- a depiction of the damage caused to her
8 because you have not visited with her?

9 **A.** No, I have not visited with the specific
10 child that he is referencing.

11 **Q.** Oh, okay. Okay. But in your experience,
12 some children are more resilient than others?

13 **A.** Yes.

14 **Q.** Do you find big gaps in resilience between
15 one child and another?

16 **A.** I mean, you can. There are some kids that,
17 just based on previous experiences before they have
18 been abused, may have a lot of advantages just in how
19 strong they are emotionally and how they are able to
20 cope with things versus other kids who maybe did not
21 have the same advantages in terms of upbringing and
22 don't have the same psychological resources related
23 to them.

24 **Q.** Isn't it true that the oldest child in the
25 family is usually a very resilient child?

1 **A.** I can't say in all cases. What I can say
2 is that it's not uncommon for the oldest children in
3 the families to take on additional responsibilities
4 for the younger kids and that could certainly be seen
5 as a source of strength, that they have that capacity
6 as they take responsibility for other children maybe
7 in the family.

8 **Q.** All right. And like, for example, in times
9 of war, you know, you may have some children become
10 extremely resilient because there is a need to
11 survive, correct?

12 **A.** It's possible.

13 **Q.** Or like, for example, in instances where
14 there are people that are displaced from their homes
15 because of, say, guerrillas or paramilitaries or
16 external sources of violence, you know, that may make
17 a child get more resilient?

18 **A.** Hardship of any type that -- hardship of
19 any kind that a child has the resources to try to
20 respond in the best way possible to can -- can call
21 on them to be resilient.

22 **Q.** Okay. What kind of hardships make a child
23 less resilient?

24 **A.** It kind of depends on if they have the
25 capacity to be resilient at the time of the hardship.

1 Sometimes, you know, it could be -- I mean, you
2 referenced things. Military, that could be negative
3 in a child's life and call them to be resilient.

4 You can imagine that maybe a younger
5 child might not have a lot of psychological reserve,
6 just based on their age, to kind of call upon; and
7 so, they are at the mercy of that in a different way
8 than maybe an older child who has had the time to
9 develop a little more strength to resolve and ability
10 to deal with themselves.

11 So, it just depends on where that
12 child is at the time of the hardship that we're
13 talking about.

14 Q. Okay. Dr. Thompson, you're aware that
15 the -- Mr. Lopez himself is a victim of sexual abuse?

16 A. Yes.

17 Q. And let's talk about him -- or let's talk
18 about victims of sexual abuse in general.

19 Do victims of sexual abuse eventually
20 become assailants themselves?

21 A. No. No, they do not always become
22 assailants. In fact, in some cases victims of child
23 sexual abuse can come -- can become the staunchest
24 defenders of making sure other people aren't abused.

25 Q. Okay. But can an episode of sexual abuse

1 of a child, can that contribute to becoming a sexual
2 abuser?

3 **A.** It can. To the extent that a person is
4 sexually abused and they don't receive the
5 appropriate treatment related to that abuse, it can
6 impact them negatively moving forward in their lives.

7 **Q.** Okay. And were you made aware that
8 Mr. Lopez had never received treatment for sexual
9 abuse?

10 **A.** No, I did not know that.

11 **Q.** Okay. Does -- I think you mentioned that a
12 victim of sexual abuse continues having problems into
13 their adulthood; is that correct?

14 **A.** It can, yes.

15 **Q.** Okay.

16 **THE COURT:** Excuse me just a moment.
17 I have some people waiting. We were going to take a
18 break at a quarter until. If this witness -- if
19 you're almost finished with this witness, both the
20 Defense and State, then I will try and finish that;
21 but if you're going to be quite a while longer -- I'm
22 certainly not rushing you. I'm going to go ahead and
23 take a break.

24 **MR. TABOADA:** Yes, Your Honor. We
25 will need a break because I do have some material to

1 cover with him.

2 **THE COURT:** All right. Thank you.

3 Then, jurors, we will take a 15-minute
4 recess.

5 All rise, please.

6 **(Jury released)**

7 **(Recess taken)**

8 **THE COURT:** So, I have been informed
9 by the State that they do not plan to present any
10 evidence about an alleged assault by the defendant in
11 the jail; is that correct?

12 **MR. BATARSE:** That's correct, Judge.

13 **THE COURT:** And so, I understand,
14 Mr. Taboada, the witnesses you had attached to this
15 case will not be called also, since State is not
16 going into the assault; is that right?

17 **MR. TABOADA:** Correct.

18 **THE COURT:** Okay. So, Mr. Reyes and
19 Mr. Escalante may be returned to the jail. And let
20 them know that the lawyers have decided not to call
21 them as witnesses.

22 **THE BAILIFF:** Certainly, Your Honor.

23 **THE COURT:** When Mr. Romero comes
24 back, will you let him know?

25 **THE BAILIFF:** Yes, ma'am.

1 **THE COURT:** Okay. Thank you.

2 **(Recess taken)**

3 **(Jury enters the courtroom)**

4 **THE COURT:** Thank you. Please have a
5 seat.

6 Thank you. You may continue with
7 cross-examination.

8 **MR. TABOADA:** Your Honor, may I please
9 have the last question and answer?

10 **THE COURT:** Can't you just start?

11 **MR. TABOADA:** Yes.

12 **THE COURT:** Okay.

13 **Q.** **(BY MR. TABOADA)** Okay. Dr. Thompson, we
14 are talking about -- when we left off, we were
15 talking about a victim of sexual assault becoming a
16 sexual assailant, correct?

17 **A.** Yes.

18 **Q.** Okay. Why would somebody who has been a
19 victim of sexual assault as a child and has carried
20 all this pain with him, why would he then choose to
21 make another child a victim? What -- what is his --
22 his mental progress?

23 **A.** I mean, I can't -- what I can say -- first
24 thing I would say is that that depends on the
25 individual offender. The only thing that I could say

1 in answering that question is that sometimes these
2 people have suffered assault themselves and learned
3 to be assaulted in different ways. They, for
4 whatever reason -- I can't say why -- do end up
5 hurting other people in similar ways.

6 Q. Do you explore their mental processes when
7 giving therapy?

8 A. I don't do any psychotherapy with sex
9 offenders. So, I do not.

10 Q. Okay. So, what exactly do you do then?

11 A. But the therapy that I provide is to
12 survivors of child sexual abuse and their family
13 members.

14 Q. Okay. So, I mean -- but somebody who is a
15 sexual assailant who himself has been a victim of
16 sexual abuse/sexual assault himself is a survivor of
17 sexual assault, right?

18 A. Repeat the question, please.

19 Q. Okay. The fact that somebody commits
20 sexual assault to somebody does not negate the fact
21 that he has been a victim of sexual assault if, in
22 fact, he has been a victim of sexual assault. I
23 mean, he doesn't stop being a victim because he
24 commits the same act?

25 A. No, you could have somebody that's been a

1 victim of child sexual abuse and is also a sex
2 offender.

3 *(Juror sneezes)*

4 **THE WITNESS:** God bless you.

5 **A.** What I'm saying is that I do not treat sex
6 offenders.

7 **Q.** Oh, okay.

8 **A.** Which is not to say that there aren't sex
9 offenders who have also been victims of child sexual
10 abuse.

11 **Q.** Okay. I get it. Okay. Now, you mentioned
12 that the Texas Department of Criminal Justice has, in
13 your opinion, the best treatment for sexual
14 offenders.

15 **A.** It's the most comprehensive program I'm
16 aware of.

17 **Q.** Right. And are you aware -- are you
18 familiar with the study that was conducted which is
19 entitled "Sexual Violence in the Texas Prison
20 System"?

21 **A.** I'm not familiar with that.

22 **Q.** You're not familiar with that study?

23 **A.** No, I'm not.

24 **Q.** Okay. You're aware that there are between
25 approximately five to six hundred cases of

1 prisoner-on-prisoner sexual assaults in the Texas
2 Department of Criminal Justice?

3 **MR. BATARSE:** Your Honor, I object to
4 hearsay. And I'm also going to object to -- the
5 witness already testified he is not aware of the
6 report -- states he is not aware of the report.

7 **THE COURT:** Can you be specific about
8 the report? Is that a different one?

9 **MR. TABOADA:** Your Honor, this -- at
10 this point I request judicial notice of the report.
11 It's --

12 **THE COURT:** I can't take judicial
13 notice of something that is not commonly known within
14 the jurisdiction -- so, I can't take judicial notice
15 of that -- or unless something occurred in this
16 courtroom is in the file.

17 **MR. TABOADA:** I'm requesting that
18 pursuant to Rule 201(d) judicial notice be taken
19 since I am pointing out in this document the source,
20 and I'd like to file my request at this point.

21 **THE COURT:** Okay. Let me see -- let
22 me see what you're talking about. You're entitled to
23 question him about anything his opinion is based on,
24 but I don't have to take judicial notice of it. You
25 wish to offer it into evidence?

1 **MR. TABOADA:** Yes. Well, yes. First
2 I need to have --

3 **THE COURT:** There is -- there is some,
4 I think -- Ms. Warren, aren't you the expert on this?
5 Don't you recall it from another trial?

6 **MS. WARREN:** There is, but it has to
7 be acknowledged by the expert as a study that he is
8 familiar with and that it's well documented,
9 peer-reviewed, and all that other stuff. And that
10 has not been laid because he said he was not familiar
11 with that.

12 **THE COURT:** Then that saves me the
13 time of having to look it up again.

14 **MR. TABOADA:** Your Honor, under Rule
15 201(d), the Court shall take judicial notice -- a
16 Court shall take judicial notice if requested by a
17 party and supplied with the necessary information. I
18 supplied the necessary information as the government
19 document.

20 It's a study conducted with funds from
21 the United States Department of Justice. There is --
22 and it's accessible on line, and it's -- these are
23 facts that are -- that are not subject to reasonable
24 dispute because it's a government conducted study.

25 And they are generally known within

1 the territorial jurisdiction because it deals with
2 the Texas Department of Criminal Justice, which the
3 State has alluded to. Or, it's capable of accurate
4 and ready determination from sources whose accuracy
5 cannot reasonably be questioned. And this is a
6 study, Your Honor.

7 **THE COURT:** May I see the article,
8 please?

9 I'm sorry, jurors. It's going to take
10 me a minute to look at all this. So, I have to ask
11 you to retire again. I'm sorry. Okay.

12 **(Jury released)**

13 **THE COURT:** Thank you. Please be
14 seated.

15 **THE WITNESS:** Can I step down, Your
16 Honor?

17 **THE COURT:** Yeah. Yes, sir.

18 **THE WITNESS:** Okay.

19 **THE COURT:** The problem is,
20 Mr. Batarse, when you start going into what happens
21 in the criminal justice facilities and what kind of
22 treatment they have, you know, you put yourself in a
23 really risky position.

24 **MR. BATARSE:** Your Honor, the question
25 that we asked is what was the best treatment

1 center/treatment facility that he was aware of; and
2 the response --

3 **THE COURT:** You're trying to
4 communicate to the jury about treatment in prison,
5 and then why would not everything else in prison be
6 relevant? So, I'm just saying this is the first time
7 I have seen this done in a case like this; and
8 it's -- you know, it can be real effective; but it's
9 also risky, you know, because anything -- you put him
10 up as an expert on this subject and, you know,
11 then -- you know, pretty broad cross-examination.
12 So, let me see what this article says, if it's
13 relevant.

14 **MR. BATARSE:** And, Your Honor, I might
15 have some case law that I can show you as well if
16 you'd like.

17 **THE COURT:** About what?

18 **MR. BATARSE:** About asking the witness
19 about this type of testimony, Judge.

20 **THE COURT:** I don't know how you even
21 got him to testify because he has never treated a sex
22 offender and he is not an expert on that, some people
23 could argue. So, you know, they didn't object to him
24 as an expert; but it's very problematic to do this.

25 So, let me see what the article says

1 first. And Tony Fabelo is one of the authors, you
2 know; and he is someone that's much relied on by the
3 legislature and other people. So, let me see.

4 **THE REPORTER:** Judge, will you spell
5 the last name?

6 **THE COURT:** F-A-B-E-L-O. Have you-all
7 seen the article?

8 **MR. BATARSE:** No, Judge. I don't know
9 what this article is.

10 **THE COURT:** Okay. It says, Texas has
11 the highest reported number of alleged incidents at
12 550 for a per rate 1000 prisoner population of 3.95,
13 almost four times the national average for the states
14 of 1.05. It also has one of the lowest
15 substantiation rates.

16 So, what points are you trying to get
17 at, Mr. Taboada?

18 **MR. TABOADA:** Your Honor, three
19 points. First, the defendant gets sentenced to
20 prison. That's not -- let's say he gets sentenced to
21 12 years, for example.

22 **THE COURT:** I don't need that kind of
23 detail.

24 **MR. TABOADA:** Well --

25 **THE COURT:** What three points are you

1 trying to make with this?

2 **MR. TABOADA:** Well, the number of
3 years he gets sentenced to should not be looked at in
4 a vacuum. I mean, he gets sentenced to that many
5 years and the likelihood that many years that he is
6 going to be sexually assaulted based on the report.

7 Also --

8 **THE COURT:** Are you trying to
9 establish there is a likelihood he will be sexually
10 assaulted?

11 **MR. TABOADA:** That my client, yes,
12 Your Honor.

13 **THE COURT:** Okay. All right. Point
14 2?

15 **MR. TABOADA:** Point 2, that becomes
16 relevant in connection with the therapy that he would
17 get in the prison. So --

18 **THE COURT:** How does that jive with
19 the therapy he has discussed?

20 **MR. TABOADA:** Because that can impede
21 the therapy.

22 **THE COURT:** Okay.

23 **MR. TABOADA:** So, the longest he is in
24 prison, the greater likelihood that his therapy will
25 be hindered or impeded on.

1 **THE COURT:** Okay.

2 **MR. TABOADA:** And the third point in
3 the report indicates that those are -- the longest
4 sentences are the ones that are most likely to become
5 victims of sexual abuse in prison.

6 **THE COURT:** Does the study say that?

7 **MR. TABOADA:** Yeah. It's in -- it's
8 in there, Your Honor.

9 **THE COURT:** Okay. So, are you trying
10 to offer the whole report into evidence or just ask
11 questions about it?

12 **MR. TABOADA:** I'm offering -- because
13 the whole report was like 94 pages. I'm offering the
14 executive summary, the report which is in there.

15 **THE COURT:** Okay.

16 **MR. TABOADA:** I don't think the jury
17 would want to read the whole report.

18 **THE COURT:** I think lawyers learned a
19 long time ago in death penalty cases where they are
20 trying to keep the defendant from not getting life in
21 prison -- you know, I tried I think nine of these as
22 a Judge and three as a prosecutor. Lawyers learned a
23 long time ago to be really careful with this kind of
24 stuff because it can backfire.

25 So, first of all, it says, mandatory,

1 a court shall take judicial notice if requested by a
2 party and supplied with the necessary information.
3 It says in criminal cases the Court shall instruct
4 the jury that it may, but it's not required, to
5 accept as conclusive any fact judicially noticed.

6 Okay. So which part are you referring
7 to? Which section?

8 **MR. TABOADA:** Oh, 201(d), Your Honor.

9 **THE COURT:** Okay. What was the rule
10 you used in that last trial, Ms. Warren?

11 **MS. WARREN:** It is an exception to
12 hearsay, Judge. It was one of the exceptions. Let's
13 see. 803 or 804, the learned treaties exception,
14 No. 18. And it was -- if I remember correctly, if
15 the witness adopted the learned treatise as a
16 representable treatise, then I could have the
17 witness -- I could read into evidence portions of
18 that learned treaties because it had been adopted by
19 the expert. Here, I mean --

20 **THE COURT:** Okay. This is not a
21 learned treatise.

22 **MS. WARREN:** Right.

23 **THE COURT:** Let me look at that
24 section. Let's see. It says: Under the learned
25 treatise section, to the extent called to the

1 attention of an expert witness upon cross-examination
2 or relied upon by the expert in direct examination,
3 statements contained in published treatises,
4 periodicals, or pamphlets on a subject of history,
5 medicine, or other science or art established as a
6 reliable authority by the testimony or admission of
7 the witness or by other expert or by judicial notice.
8 If admitted, the statements may be read into
9 evidence, but may not be received as exhibits.

10 So, that's what you did before you
11 read it into evidence and put it on the PowerPoint?

12 **MS. WARREN:** Yes, ma'am. With
13 cross-examination of the Defense expert.

14 **THE COURT:** Right. Apparently it does
15 not have to be a learned treatise, though. It can
16 include periodicals or pamphlets.

17 **MS. WARREN:** But the key --

18 **THE COURT:** It has to be established
19 as a reliable authority by the testimony or admission
20 of the witness or by the expert testimony or by
21 judicial notice. So, I don't think I can take
22 judicial notice because it has to be well-known
23 within the jurisdiction.

24 **MR. TABOADA:** And -- well, Your Honor,
25 it is a government document.

1 **THE COURT:** Well, but you look at Rule
2 201(b): A judicially noticed fact must be one not
3 subject to reasonable dispute. And no offense, but
4 people dispute government findings all the time, you
5 know, government agency findings. Must be one not
6 subject to reasonable dispute in that it is either,
7 one, generally known within the territorial
8 jurisdiction of the trial court.

9 So, it's clearly not generally known
10 because I didn't -- I didn't even know about this.
11 And some people in criminal justice may know about it
12 in criminal justice academic departments, but your
13 average person on the street certainly would not know
14 about it.

15 So, it says within the jurisdiction of
16 the trial court. It doesn't mention, you know, a
17 more limited or specific population. Or capable of
18 accurate and ready determination by resort to sources
19 whose accuracy cannot reasonably be questioned.

20 **MR. TABOADA:** Exactly.

21 **THE COURT:** So --

22 **MR. TABOADA:** It's -- the Court has
23 already made an accurate and ready determination
24 because the Court has a copy of it, and also the
25 Court can access it online.

1 **THE COURT:** Well, just because
2 something is online, you know, that doesn't mean that
3 it's accepted. It is a valid point, I think, that
4 it's not peer-reviewed. And do you have any
5 reason -- anything that has been quoted in our -- I
6 can't even see a year on it or a date on it. If it's
7 just a section, I wouldn't know how old this is.

8 What year was the study?

9 **MR. TABOADA:** It's right there, Your
10 Honor.

11 **THE COURT:** I'm sorry.

12 **MR. TABOADA:** The Court has the study.
13 The Court has the document.

14 **THE COURT:** Oh, here it is.
15 March 2006. So, it's nine years old anyway. But I
16 am going -- the State's objection is sustained with
17 regard to admitting the article. I don't find that
18 it meets the qualifications of the treaties, nor is
19 that test well-known within the jurisdiction.

20 However, you may ask him if he is
21 aware that -- as to the number -- that there are
22 large numbers of sexual assaults in the prison
23 system, and you may ask him how that interplays with
24 the therapy.

25 Anything else you want to go into? I

1 will allow you to make your point.

2 **MR. TABOADA:** Your Honor --

3 **THE COURT:** I don't see that this is
4 admissible. Still hearsay.

5 **MR. TABOADA:** Okay.

6 **THE COURT:** I think it's only fair you
7 make your -- I think it's only fair you make your
8 point.

9 **MR. TABOADA:** How is it hearsay?
10 There is no declarant in the study. It's a study,
11 not a statement.

12 **THE COURT:** Yeah, it's hearsay. This
13 is what somebody is telling. Writings are hearsay.
14 Hearsay doesn't have to be oral. Any witness
15 statement or any offense report or anything like
16 that, anything contains information contains hearsay.

17 **MR. TABOADA:** It is a statistical
18 study, Your Honor. Statistical study.

19 **THE COURT:** So --

20 **MR. TABOADA:** So, there is no -- there
21 is no declarant. It is a statistical.

22 **THE COURT:** You know --

23 **MR. TABOADA:** Just like a census.

24 **THE COURT:** This is so foolish. Why
25 on a case where you would never want to put the child

1 through a trial again would you do this risky stuff?
2 I just don't get it. So, what points in here -- I
3 haven't read the whole thing. I just started.

4 What are the points in here you want
5 to make?

6 **MR. TABOADA:** The number of inmates
7 that are victims of prisoner-to-prisoner sexual
8 assaults.

9 **THE COURT:** Okay.

10 **MR. TABOADA:** How --

11 **THE COURT:** You may ask him: Are you
12 aware that this 2006 study says such and such?

13 **MR. TABOADA:** He already indicated he
14 is not aware.

15 **THE COURT:** Well, then ask him: How
16 does sexual assaults in prison affect treatment?

17 What other points do you want to make?

18 **MR. TABOADA:** That sexual assaults can
19 impede therapy.

20 **THE COURT:** You may -- you may.

21 **MR. TABOADA:** Sexually assaulted
22 again, that can impede therapy.

23 **THE COURT:** Then certainly you may ask
24 him about that.

25 **MR. TABOADA:** So, the longer you are

1 in -- okay.

2 **THE COURT:** So, I will allow you to
3 make your points. But the probative value is not
4 nearly as great because it's 2006. So, they may have
5 changed a lot of stuff up there. So, you can make
6 your points. If they are requesting to hear about
7 all the wonderful treatment and therapy up there,
8 they ought to hear about the bad stuff. It seems
9 fair to me. Okay.

10 **MR. TABOADA:** Thank you, Your Honor.
11 Exception is taken to the Court's ruling.

12 **THE COURT:** Okay. Thank you. Then
13 we're ready for the jury.

14 **(Jury enters the courtroom)**

15 **THE COURT:** Thank you. Please be
16 seated. Thank you.

17 Mr. Taboada, you may continue.

18 **MR. TABOADA:** Thank you, Your Honor.

19 **Q.** **(BY MR. TABOADA)** Dr. Thompson, first of
20 all, let me thank you for your patience.

21 **A.** No problem at all.

22 **Q.** Thank you. You have indicated to the jury,
23 of course, that you're aware of a treatment
24 facility -- treatment facility or treatment programs
25 for inmates in the Texas Department of Criminal

1 Justice?

2 **A.** Yes.

3 **Q.** Okay. And you're quite familiar with their
4 program?

5 **A.** Yes, I am familiar with the program.

6 **Q.** Okay. Is it true that the -- would you
7 have any reason to dispute that about 500 or 600
8 inmates become victims of prisoner-on-prisoner sexual
9 assaults? Would you dispute that figure?

10 **A.** I have no knowledge how many inmates become
11 victims of prisoner-on-prisoner sexual assaults. I'm
12 not aware of that.

13 **Q.** But you're aware that it goes on?

14 **THE COURT:** Excuse me. Can you
15 clarify during what period of time?

16 **MR. TABOADA:** Currently.

17 **A.** I'm not aware of statistics on
18 prisoner-on-prisoner sexual assaults in the Texas
19 Department of Criminal Justice currently.

20 **THE COURT:** Are you talking about
21 during somebody's entire time in prison? Are you
22 talking about a year? A decade? What is your time
23 frame?

24 **MR. TABOADA:** Currently. Currently.

25 **Q.** **(BY MR. TABOADA)** You're aware that many

1 prisoners are sexually assaulted in the Texas system?

2 **A.** I'm not aware. I'm not aware of any
3 specific statistics on prisoner-on-prisoner sexual
4 assaults.

5 **Q.** Okay. Your work is mostly with sexual
6 assault victims, correct?

7 **A.** That's correct.

8 **Q.** And, obviously, if there is a segment of
9 the population that is subjected to sexual assaults,
10 you consider that it would be important for you to
11 know?

12 **A.** Repeat the question, please. Let me make
13 sure I understand your question.

14 **Q.** Okay. It is your job to know about the
15 populations that are most exposed to sexual assaults,
16 correct?

17 **A.** Yes, I definitely want to be aware of the
18 literature on child sexual abuse.

19 **Q.** All right. And you're aware that if an
20 individual is confined in a space where there are
21 many sexual assault aggressors, that person is
22 exposed to be sexually assaulted, correct?

23 **A.** Again, I'm not familiar with any specific
24 statistics with regard to the Texas Department of
25 Criminal Justice. To the extent that a child is in

1 an environment where there are people around them
2 that might abuse them, then, yes, that child is
3 certainly at risk for abuse.

4 Q. Okay. And for that matter, even an adult.
5 An adult -- an adult is exposed to an environment
6 where there are many people who have committed sexual
7 assault, that adult is exposed to the likelihood that
8 he is going to be sexually assaulted?

9 A. I mean, can you be specific in terms of
10 environment?

11 Q. Okay. If there is an environment that --
12 okay. Let's -- let's just say are you aware of how
13 many people are convicted in Texas for sexual
14 abuse/sexual assault?

15 A. No, I don't have any specific statistics on
16 that.

17 Q. Okay. But you are aware that many, many
18 individuals are convicted of sexual assault?

19 A. I am aware that there are convictions for
20 sexual assault.

21 Q. Okay. So, that means there are many sexual
22 assailants in the Texas Department of Criminal
23 Justice?

24 A. Yes. I am aware there are sexual
25 assailants in the Texas Department of Criminal

1 Justice.

2 Q. And the fact that somebody is confined in a
3 prison does not take away his desire to sexually
4 assault other individuals, correct?

5 A. That's correct.

6 Q. Okay. And you understand that in a sexual
7 assault, what we have in play is a physical
8 overpowering somebody who is much bigger than someone
9 else is going to overpower physically the victim,
10 correct?

11 A. I mean, we have all kinds of different
12 sexual assaults. Sexual assaults can have a physical
13 component. They can have a psychological component.
14 You know, all sexual assaults do not involve physical
15 overpowering. But some do.

16 **THE COURT:** Are you referring to
17 sexual assaults in general or sexual assault in a
18 particular place?

19 **MR. TABOADA:** In general, Your Honor.

20 **THE COURT:** Okay.

21 **MR. TABOADA:** Which would also apply.

22 Q. (BY MR. TABOADA) That -- okay. So, in
23 general, the victims -- the child -- the children
24 that are victims of adults in sexual assault cases,
25 generally speaking, the assailant is stronger than

1 the child; is that true?

2 **A.** That's correct.

3 **Q.** Okay. So, we do have a physical -- we do
4 have a physical overpowerment or physical use of
5 force element, correct, in a sexual assault?

6 **A.** That can be. Again -- again, that can be
7 part of sexual abuse; but there is not always a
8 physical overpowerment component in a sexual abuse
9 case.

10 **Q.** Okay. Now, what is more likely for a --
11 for a man who is 5'4 inches to sexually assault a guy
12 that is 6 feet tall and who is 60 pounds heavier than
13 him or for a man who is 6 feet tall to sexually
14 assault a guy who is 5 feet 4 and is 60 pounds
15 lighter? What is more likely?

16 **A.** I -- I can't -- I can't say. I don't know
17 what's more likely.

18 **Q.** Okay. In the -- in the Texas Department of
19 Criminal Justice program for sexual assailants that
20 you are familiar with, how long does the therapy
21 take? What is the usual -- usual program -- therapy
22 program? How long does it last?

23 **A.** The sex offender program is designed to be
24 an 18-month program, but it can be longer, to the
25 extent that the person has not made the appropriate

1 progress in the treatment.

2 Q. So, has the State then determined that 18
3 months is a period of time that is needed for the
4 inmate to make progress?

5 A. I think the program is designed with the
6 idea that 18 months is enough time to do some of
7 those things that we have talked about. But, again
8 ultimately, successful completion of the program
9 involves, you know, meeting the goals of the program.
10 So, it is an 18-month program. But if goals are not
11 met, the program could continue for certain
12 individuals.

13 Q. Okay. If the goal is not met after 18
14 months, usually how much time longer is taken to
15 complete the program?

16 A. That -- that depends on the inmate, the
17 person in the program and them being allowed to
18 continue in the program.

19 Q. Okay. And -- but -- but from what you have
20 seen, how much longer -- if after 18 months the
21 program is not completed, from what you have seen,
22 how much longer does it take to complete the program?

23 A. Again, that gets very individual. It
24 really depends on the individual person and when they
25 are able to meet the requirements of the program. I

1 can't give you a specific time period because I don't
2 have one. It depends on that individual.

3 Q. Have you seen many inmates complete the
4 program after the 18 months?

5 A. Yes.

6 Q. And what does -- what does it mean -- what
7 does "complete the program" mean?

8 A. It means they have recognized offense
9 cycle, what sorts of things proceed or have proceeded
10 their sexual acting out behavior. It means having a
11 clear plan of ways to avoid those things moving
12 forward, to the extent that there is going to be a
13 release back out into society.

14 It can even involve a plan of what
15 that release is going to look like, how to address
16 their offense cycle in the outside world as opposed
17 to the controlled environment in prison, being aware
18 of registration requirement, being aware of
19 requirements with regard to how close they can live
20 to places that have kids in them, all of those types
21 of things.

22 What types of jobs they might be able
23 to get even though they continue to be a registered
24 sex offender. All of those things. Also, some
25 compassion and recognition and acknowledgment of

1 wrongdoing on the part of that program. And we also
2 talked some about the understanding of the impact of
3 what they have done has had on victims of abuse that
4 they have had.

5 Q. So, during those 18 months, a lot of
6 inmates learn to have empathy for the victims?

7 A. That is a goal of the treatment.

8 Q. And many of them do?

9 A. Yes.

10 Q. Have --

11 A. Some of them can.

12 Q. Understand the pain of the victims?

13 A. Yes. Some of them can.

14 Q. Some of them will never learn the pain of
15 the victim, but others will learn the pain of the
16 victims?

17 A. That's correct.

18 Q. And when the -- when the sexual assailant
19 has been a victim himself, isn't it more of a
20 likelihood that he is going to learn -- or he is
21 going to be able to feel the pain of his victim?

22 A. That depends on the individual sexual
23 assailant. That can go both ways. Could put some in
24 a place of being able to better recognize what they
25 put somebody else through because of what they have

1 it wouldn't do that and they would still carry some
2 of those gains with them.

3 Q. But it raises the possibility that it
4 could? I mean, there is the possibility that it
5 could affect the progress he has made?

6 A. Somebody could respond negatively,
7 certainly, to being sexually abused.

8 Q. Okay. So, it does not make sense if
9 somebody has received therapy, has achieved the
10 goals, he understands the pain of the victim, he
11 empathizes with the victim, it does not make sense to
12 leave him in an environment where he is likely to be
13 victimized again if he was -- if he had been a
14 victim, to be victimized again and to do away with
15 the progress that he has made? Doesn't make sense
16 to, right?

17 A. I reiterate what I have already said.
18 Someone could suffer sexual abuse or another trauma
19 of whatever sort after they have been in therapy, and
20 it does not have to take away any of the gains that
21 they have made in therapy.

22 Q. Okay. Now, in the -- in the prison system,
23 when these sexual assailants receive their therapy,
24 okay, do you look into whether they're gang members
25 or not?

1 **A.** When you say "you" --

2 **Q.** Or --

3 **A.** -- I want to make clear, I am not
4 providing --

5 **Q.** Yes.

6 **A.** -- services myself. But in terms of my
7 familiarity with the program, I do think that all
8 kinds of aspects of the offender's life are broached
9 and discussed and worked on. Especially to the
10 extent that it's anything that may have been a
11 negative impact on their life, like maybe gang
12 involvement. So, that could be part of the group
13 therapy or the individual therapy. You know, the
14 people can talk about what they need to talk to to
15 try to move forward.

16 **Q.** Okay. Isn't it true in the prison system
17 that the -- the sexual assailants in the prison
18 system usually are gang members?

19 **A.** I don't have any specific knowledge of who
20 the sexual assailants in prison are, if they are --
21 if they are always gang members. I don't have any
22 specific knowledge of that.

23 **Q.** Uh-huh (affirmative.)

24 **MR. TABOADA:** I have no further
25 questions, Your Honor.

1 **THE COURT:** Thank you.

2 Any redirect?

3 **MR. BATARSE:** No, Your Honor.

4 **THE COURT:** Thank you.

5 May this witness be excused?

6 **MR. BATARSE:** Yes, Your Honor.

7 **MR. TABOADA:** Yes, Your Honor.

8 **THE WITNESS:** Thank you.

9 **THE COURT:** Thank you so much for
10 coming, Doctor.

11 **THE WITNESS:** All right.

12 *(Witness released)*

13 **THE COURT:** Any other witnesses?

14 **MR. BATARSE:** No, Your Honor.

15 **THE COURT:** The State rests?

16 **MR. BATARSE:** Yes, Your Honor.

17 **THE COURT:** Thank you.

18 Will the Defense be presenting any
19 witnesses?

20 **MR. TABOADA:** No, Your Honor. We'd
21 like to first present a document -- offer a document
22 into evidence.

23 **THE COURT:** Okay. What document is
24 that?

25 **MR. TABOADA:** It's a newspaper