

1 Q Okay. What did you do with her that first night,
2 then, for example, when you observed what you have told us so
3 far?

4 A Because of the physical findings, she was admitted
5 to the hospital.

6 Q And why is that?

7 A At this point with the finding of a gapping
8 vagina, you know, suspicion of sexual abuse is very strong.
9 And the procedures is to admit the child to the hospital to
10 try to provide a safe environment for her and make sure it
11 won't happen until more investigation is done.

12 Q Okay. And Doctor, can you tell the jury from your
13 training and experience with sexually abused children, how
14 did Beverly present herself as far as her behavior and her
15 personality?

16 A You could see right away in Beverly that she was
17 -- she's kind of a very reserved child. And most striking
18 thing with her was that she has what we call a flat affect.

19 Q Flat affect?

20 A Yes.

21 Q Would you describe what you mean?

22 A Mostly somebody that -- it doesn't matter what you
23 tell them, if it's a joke or if it's something sad, they
24 usually have the same expression on their face. They just
25 don't change. They just don't give you much to go by in

1 terms of non-verbal communication or facial expression.

2 Q Okay. What about -- for example, did you talk
3 with her yourself that night?

4 A Yes.

5 Q Do you recall whether she could or would maintain
6 eye contact with you, for example?

7 A That night, no, she would not maintain eye
8 contact.

9 Q Is that, in your opinion from your training and
10 experience is --

11 MR. POTTER: Your Honor, if it please
12 the Court. He's a highly intelligent man. The prosecutor, I
13 believe is leading him. Therefore, we object to leading.

14 THE COURT: Finish your question,
15 please.

16 MR. CARROLL: Q Doctor, from what
17 you observed in Beverly that night and from your training and
18 experience with sexually abused children, does this flat
19 affect that she presented -- the reserved nature of her
20 personality that you described, and the lack of eye contact,
21 are those things, from your training and experience,
22 indicative or indicators of any problem that the child may
23 have?

24 THE COURT: Just a moment.

25 MR. POTTER: Again, Your Honor, we

1 object to leading.

2 THE COURT: Overruled. You may answer
3 the question.

4 THE WITNESS: A Yes, it's very --
5 Yes, sir.

6 MR. CARROLL: Q And what is that?
7 A It is stated in the literature that one of the
8 things that they see along going with child abuse -- sexual
9 abuse in children --

10 MR. POTTER: Your Honor, if it please
11 Court. Now he's testifying from hearsay, Your Honor.

12 THE COURT: Overruled.

13 MR. POTTER: Sir?

14 THE COURT: I said overruled. He may
15 answer.

16 MR. POTTER: Your Honor, may I approach
17 the bench with the prosecutor?

18 THE COURT: Yes, sir.

19 (The following bench conference was held out of the presence
20 of the jury)

21 MR. POTTER: Your Honor, unless I'm
22 mistaken, I believe he just said "according to the
23 literature." Your Honor, unless there is a predicate laid as
24 to what the literature is, for instance, if it is from a
25 recognizable scientific journal or from a recognizable

1 medical text book that's known as generally authoritative in
2 the field, then he cannot simply testify as to what is from
3 the literature because, Your Honor, that's hearsay. It could
4 be in the Reader's Digest. It could be anything. Until he's
5 qualified along those lines, Your Honor, he's testifying from
6 hearsay. And when His Honor overrules me with the objection
7 of hearsay, Your Honor, then the jury is going to be
8 listening to testimony which later may be ruled inadmissible.
9 Therefore, Your Honor, we re-urge and amplify our objection
10 to hearsay because what he's saying is clearly hearsay.

11 THE COURT: I'm going to sustain his
12 objections as to that part unless you can show as to what the
13 literature was that he bases that answer on.

14 MR. POTTER: Your Honor, for that we'd
15 like to have this witness, then, on voir dire by the
16 prosecutor to make sure that this question and answer as to
17 the literature is done properly, and then put him back in
18 front of the jury. That's our request, sir.

19 THE COURT: Take the jury out, please.

20 (Out of the presence of the jury)

21 THE COURT: All right, Mr. Carroll.

22 MR. CARROLL: Q Dr. Mujica, you were
23 explaining that some of the literature that you -- that
24 you're familiar with that you've read concerning these
25 behavioral expressions or observations you made in Beverly,

1 would you explain that for the Court, what type of training,
2 experience and literature you've become familiar with in this
3 area?

4 A It's a compilation of really several journals.
5 For example, the Pediatrics Interview, also the American
6 Academy of Pediatrics. Pediatrics. It's another journal
7 published by the same academy. There's several -- oh,
8 there's General Pediatrics American Journal, Diseases of
9 Children.

10 Q Are these journals that you've mentioned, are they
11 widely recognized authoritative medical journals in the field
12 of pediatrics?

13 A Yes, sir, very.

14 Q For example, are you a member of the American
15 Academy of Pediatrics?

16 A Yes, sir.

17 Q And you subscribe to these medical journals?

18 A Yes, sir.

19 MR. CARROLL: Your Honor, we feel he's
20 qualified to rely on any type of -- even though it is
21 hearsay, that's part of his expertise, and we feel he is
22 qualified, and pass him for any voir dire Mr. Potter wants.

23 MR. POTTER: Thank you, Your Honor.

24 VOIR DIRE EXAMINATION

25 MR. POTTER: Q Sir, what you're

1 saying is that specifically you've learned this from
2 periodicals and that you -- that these -- I'm not real sure
3 of the word you used, the flat effect or affect?

4 A It's affect.

5 Q The flat affect is characteristic of child abuse;
6 is that right?

7 A It is seen with sexual abuse -- child abuse in
8 general.

9 Q It's seen with it. Okay. And you have
10 specifically read that in certain periodicals; is that right?

11 A Yes, sir.

12 Q And those periodicals are the ones you just talked
13 about?

14 A Yes, sir.

15 MR. POTTER: All right, Your Honor.

16 Your Honor, we have nothing further of this witness.
17 We still object to him testifying as to what a periodical
18 says as it's hearsay. However, Your Honor, he can testify
19 from his experience and his education. And I think that's a
20 proper question, if that question is asked.

21 THE COURT: Bring the jury in, please.

22 (In the presence of the jury)

23 MR. CARROLL: Is his objection
24 overruled, Your Honor?

25 THE COURT: You need to ask the question

1 again so I can --

2 MR. POTTER: Your Honor, it looks to me
3 like some of my witnesses have just come in, Your Honor. I'd
4 like to ask them.

5 THE COURT: I think it would be wise,
6 yes, sir.

7 You may proceed.

8 MR. CARROLL: You want us to continue,
9 Your Honor.

10 CONTINUED DIRECT EXAMINATION

11 MR. CARROLL: Q Doctor, what I was
12 asking before the jury was excused was concerning these
13 things you observed; the flat effect of Beverly, the lack of
14 eye contact, and the reserved way that you described her --
15 the way she presented herself to you. And my question was,
16 have you, from your training or experience, determined
17 whether this type of -- these types of symptoms are
18 indicative of any type of specific abuse in children that you
19 find in children?

20 A Yes, sir. I've seen it in some other cases.

21 Q You personally have seen it in other cases?

22 A Yes, sir.

23 Q Were these cases involving sexual abuse of
24 children?

25 A Yes, sir.

1 Q Okay. In addition, Doctor, have you -- have you
2 read any literature -- any medical literature concerning this
3 very thing that you have observed personally?

4 A Yes, sir.

5 Q Okay. And for the jury's benefit, can you tell
6 them any of the medical or professional literature that you
7 have become familiar with regarding these symptoms?

8 MR. POTTER: Your Honor, in regard to
9 this question as well as the last question, we again object
10 as to hearsay, and the reason we object, Your Honor, is
11 because he is -- he is indirectly quoting from some journal
12 or periodical that we have not in front of us and which we
13 cannot cross-examine.

14 THE COURT: All right. Sustained.

15 MR. POTTER: Thank you, Your Honor.
16 Now, at this time, Your Honor, we would ask the jury to
17 disregard any mention by the witness or by the prosecution
18 concerning any periodical or any written materials that he
19 has testified to.

20 THE COURT: Overruled.

21 MR. POTTER: Thank you, Your Honor.

22 MR. CARROLL: Q Doctor, in how many
23 cases -- if you can give the jury an idea of the numbers, how
24 many cases have you observed these symptoms in sexually
25 abused children, this flat affect, lack of eye contact,

1 appeared generally reserved nature?

2 A I have had experience in about ten cases while
3 I've been here at Fort Hood. Mix child abuse -- pure child
4 abuse and some other sexual abuse --

5 Q Okay.

6 A -- or a combination of both. And every single one
7 of them really showed a degree, at least mild manifestation
8 of those characteristics.

9 Q From your personal experience in these other
10 cases, can you compare the way -- or the degree of severity
11 of these symptoms in Beverly and compare that with other
12 cases where you've observed these symptoms?

13 A As explained logically by the fact that any
14 four-year-old that has been abused --

15 MR. POTTER: Your Honor, if it please
16 the Court. His answer is not being responsive. He's asking
17 the contrast -- the degree -- between this and other cases,
18 Your Honor, and now he's talking about specific cases.

19 THE COURT: All right. Sustained.

20 MR. POTTER: Thank you, Your Honor.

21 MR. CARROLL: Q Doctor, what did
22 you do -- you mentioned that you ordered that she be
23 hospitalized that first night; is that correct?

24 A Yes, sir.

25 Q What is the next medical contact you had with