

1 well.

2 MR. SMITH: I don't think it's relevant at this
3 particular time, Your Honor.

4 THE COURT: I don't think it's relevant at this
5 time. It may be rebuttal later on if she argues or tes-
6 tifies that she was abused, then this would be rebuttal,
7 but it's anticipatory at this point. I will sustain the
8 objection.

9 REPORTER'S NOTE: End of Side Bar discussion.

10 MR. NESS: Dr. Logan, come down here please.

11 Dr. Cohen.

12 THE COURT: Excuse me just a minute. What was
13 Dr. Logan's name, his first name?

14 MR. NESS: David.

15 DR. MERRILL COHEN CALLED AND SWORN

16 DIRECT EXAMINATION

17 BY MR. NESS:

18 Q Would you state your name, Doctor?

19 A My name is Merrill Cohen.

20 Q How are you employed, Doctor?

21 A I am employed as an Emergency Physician in the
22 Emergency department at York Hospital in York, Peansyl-
23 vania.

24 Q How long have you been a physician?

25 A I have been a physician since 1965.

1 Q Will you give the jury your educational back-
2 ground?

3 A I received my college training at Albright Col-
4 lege in Reading, Pennsylvania, and I graduated with a
5 B.S. degree. I then entered Medical School and graduated
6 Temple University Medical School after four years of train-
7 ing with an M.D. degree. That was followed by a year of
8 Internship at Philadelphia General Hospital, and then I
9 went into a Residency program in Pathology at University
10 of Michigan. I completed that four years of training at
11 Ann Arbor Michigan, University of Michigan. Then, after
12 several years of practice, including some time in the Army,
13 I took further training in the field of, first, general
14 surgery at Johnstown, Pennsylvania; one year of surgical
15 training followed by two years of training in emergency
16 medicine at Akron General Medical Center in Akron, Ohio.

17 Q You are presently employed as an Emergency Room
18 Physician?

19 A That's correct.

20 Q Were you employed in that capacity in January of
21 1982?

22 A Yes.

23 MR. NESS: Cross-examine on qualifications.

24 MR. SMITH: No questions.

25 MR. NESS: I offer him as an expert.

1 THE COURT: In the field of Emergency Medicine?

2 MR. NESS: Yes -- right.

3 THE COURT: All right.

4 BY MR. NESS:

5 Q Doctor, in January of 1982, did you have occasion
6 to see Aleta Bailey?

7 A Yes.

8 Q When was that?

9 A When?

10 Q Yes.

11 A It was on the 12th of January, approximately
12 11:45 in the morning.

13 Q January 12, 1982 at 11:45 in the morning?

14 A Yes.

15 Q Who was in the company of the child?

16 A Aleta Bailey was with her mother and also a
17 worker from Childrens' Services of York County, one Beverly
18 Mackereth.

19 Q Beverly Mackereth. Is the mother in the Courtroom
20 today?

21 A Yes.

22 Q Would you please point to her?

23 A (Witness points to the Defendant).

24 Q You refer to the Defendant?

25 A Yes.

1 Q When you examined the child, did you notice any
2 evidence of trauma on the child's body on January 12, 1982?

3 A Yes, I did.

4 Q Would you describe what you saw?

5 A The child had a number of bruises on the buttocks,
6 and on the lower part of the back, and also on both her
7 forearms. There were --

8 Q Both forearms?

9 A Yes, Sir.

10 Q Then --

11 A There were on the buttocks merging large bruises
12 that were purplish in color without any associated swelling
13 or tenderness, and this was on both buttocks. In addition,
14 some of these bruises extended up onto the lower part of
15 the lower part of the back, extending off of the buttocks a
16 little bit further up onto the back. Some of these bruises
17 had a certain pattern to them; they were linear, and also
18 some of them had the shape of a loop, as if, for example,
19 the child had been struck by a strap. It is very common to
20 see a loop-type of injury on the buttocks after having been
21 disciplined.

22 Q Did you take, as part of your history, the age of
23 the child at that time?

24 A The child was four years of age, if I recall.

25 Q Four years of age on January 12th.

1 Did you have conversation with the mother about
2 the causes of these bruises?

3 A Yes.

4 Q What did she tell you?

5 A She stated that she was aware that a boyfriend
6 was living in the home or the place with them, and that she
7 was aware that this boyfriend had disciplined the child
8 several days earlier because of, I believe, she said that
9 this child was wetting the bed.

10 Q Discipline for wetting the bed?

11 A Yes, Sir. And she stated that the day before she
12 noticed the child's buttocks and also the arms, and she
13 thought they were more extensive bruises, and that was the
14 reason she stated was the purpose of the visit to the Emer-
15 gency department..

16 Q If that was the purpose of the visit, did she
17 convey to you that she voluntarily came in?

18 A I got that impression from her, yes.

19 Q Now, did you give her any warning or instructions
20 with respect to this boyfriend?

21 A Yes.

22 Q Why did you give her such warning or instruction?

23 A Because I thought that the discipline was more
24 extensive than one would normally see from simply having
25 chastised the child -- the extent of the discolorations, the

1 bruising on the buttocks, the fact that it had extended be-
2 yond the buttocks onto the back, and the fact that there
3 were also bruises on the forearms led me to believe that
4 there was some danger to the child and that the child would
5 be better protected if there was no possibility of further
6 contact with the boyfriend.

7 Q Did the mother indicate to you that she had, in
8 any way, participated in this?

9 A No.

10 Q Now, at that time, was there any discussion of
11 this boyfriend's past behavior or character?

12 A She said that she was aware that the boyfriend
13 had a tendency to discipline the child excessively, and she
14 was aware that he did chastise more than was necessary.

15 Q Was there any discussion as to whether he had a
16 criminal record or trouble with the law?

17 A There was discussion between the social worker,
18 who was accompanying, and myself but not with the mother.

19 Q The mother was not there?

20 A Well, the mother was there in the department but,
21 if I recall, there were some discussions between the social
22 worker and myself in the hall outside of the room where the
23 mother and the child were, within the department.

24 Q What did you tell the mother with respect to this
25 boyfriend?

1 A Well, I told the mother that I was very much con-
2 cerned about the future health of this child in the presence
3 of the boyfriend who was disciplining the child excessively,
4 and that it would be necessary that the child have no fur-
5 ther contact with this boyfriend, and that it would be
6 essential that this boyfriend no longer have access to the
7 child by which he could further discipline the child, and
8 that if the boyfriend were not removed from the home, that
9 it would be necessary to take the child into custody at
10 that time.

11 Q To take the child away from the mother?

12 A Yes.

13 Q You say for the boyfriend not to have access to
14 the child. Did you make that clear?

15 A Yes.

16 Q Did the mother agree?

17 A Yes, the mother did agree. I left the social
18 worker and the mother to consider some possibilities
19 together; I left them in the room, and the result of the
20 discussion between the social worker and the mother was that
21 the child would be, for her sake, be placed in the home of
22 a relative until arrangements could be made between the
23 mother and Children's Services for the boyfriend to be taken
24 away from the home and would no longer have access to the
25 child to further discipline the child.

1 MR. NESS: That's all I have.

2 CROSS-EXAMINATION

3 BY MR. SMITH:

4 Q Doctor, did you write down on some sort of report
5 the substance of your examination and the substance of your
6 discussions with everybody?

7 A Yes, I did. I prepared an Emergency department
8 form, which is on record in the Medical Records department
9 at York Hospital.

10 Q Do you have that with you?

11 A I have a copy of it, yes.

12 Q May I see it please?

13 A Of course.

14 Q Thank you. (Attorney looks at document at this
15 time.)

16 You examined the child on what day, Doctor?

17 A I believe it was the 12th of January.

18 Q Would you read the first page of that report
19 please?

20 A My own writing?

21 Q Yes, Sir.

22 A (Reading) Mother is separated from husband
23 (father of child) and has a boyfriend living with them now.
24 About three days ago, mother heard boyfriend striking the
25 child with a belt, apparently for wetting bed. Mother re-

1 buked boyfriend for doing same. He said he wouldn't do it
2 again. Yesterday mother again saw child's bottom and noted
3 more extensive bruises than she thought there had been;
4 also others on wrist which she thinks are more recent and
5 suspects the boyfriend has struck child again since.
6 Brought to E.R. to document injuries. Apparently the police
7 are aware of the boyfriend from previous incidents. Exam:
8 No acute distress; active child; chest clear; soft abdomen
9 with no tenderness. (End of reading) Shall I continue?

10 Q Let me see what we have over here, if it's rele-
11 vant. I think that's fine. Thank you.

12 Now, Doctor, is it correct that you described
13 these bruises that you saw on January 12, 1982, as not life-
14 threatening?

15 A That is correct.

16 Q And characterizing them as a good licking?

17 A It was more than just a good licking. I was so
18 concerned about the extent of the bruising that I was ready
19 to remove the child from the custody of the mother. This
20 was more than just a good licking. They were extensive on
21 the buttocks and extending off of the buttocks onto the
22 lower back. It is --

23 Q I think that's all I have, Doctor.

24 THE COURT: Any redirect?

25 MR. NESS: That's all I have.

1 THE COURT: You may step down, Doctor.

2 MR. NESS: May the Doctor be excused?

3 THE COURT: Yes, he may be excused.

4 MR. NESS: Thank you, Doctor, for coming.

5 Your Honor, it's my intent to call Officer Gar-
6 ber now in order to establish the chain for certain other
7 evidence, and, of course, submit him for cross-examination
8 and have him sit back down here, and then call him later on
9 another matter so I can preserve the sequence of this.

10 THE COURT: All right, we will permit that unless
11 there is an objection.

12 Proceed.

13 DANIEL GARBER CALLED AND SWORN

14 MR. SMITH: May we approach the Bench, Your
15 Honor?

16 REPORTER'S NOTE: On-the-record Side Bar dis-
17 cussion held as follows:

18 MR. SMITH: I would like to know what he is going
19 to approach in this phase of it.

20 MR. NESS: I am going to call the Chemist, Mr.
21 Miller.

22 THE COURT: Uh-huh.

23 MR. NESS: He is a Criminologist, and Mr. Miller
24 analyzed certain evidence, and it was Officer Garber who
25 secured this evidence and transported it to Mr. Miller for