

1 part here. It, of course, shows a very bizarre and very,
2 very -- what shall I say -- titillating type of sexual con-
3 duct. I let that in because you have made the point that
4 it was important to show that that was the nature of their
5 relationship and how intense it was, and I just selected one
6 episode in there, all of the rest being repetitious. By my
7 saying this is admissible, I'm not indicating to you that I
8 am suggesting that you should put it in, you understand
9 that? You still should exercise your judgment whether you
10 feel you want this in.

11 MR. NESS: What I may do with this, I may call
12 him and ask him instead of going through the detail, "Is
13 this the type of letter, a love letter?" That may be the
14 simplest way of doing it.

15 THE COURT: That could be. It may be the easiest
16 way out. What do you think?

17 MR. NESS: Even if you cross-examine over his
18 parts, then I will bring out the various parts.

19 THE COURT: All right.

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

21 DANIEL GARBER RECALLED

22 DIRECT EXAMINATION

23 BY MR. NESS:

24 Q You have been sworn, I guess, Officer.

25 I just want to check the Clerk's files here.

1 Officer Garber, first of all, on January 12, 1982,
2 did you have an occasion to go to the Bailey residence?

3 A Yes, I did.

4 Q And with whom did you go?

5 A Beverly Mackereth from Children's Services.

6 Q And had you been requested by her to go along?

7 A Yes, I had.

8 Q Were you there as a Police Officer?

9 A Yes, Sir, I was.

10 Q When you went to the residence, who was there?

11 A Jo Ellen Bailey, Aleta Bailey, Larry Hake, and
12 another white male whom I didn't know.

13 Q What was the conversation that took place between
14 Beverly Mackereth and Jo Ellen Bailey in your presence?

15 A Beverly Mackereth said to Jo Ellen that she had
16 received a complaint of child abuse alleging that Aleta had
17 been bruised, and she asked if she could examine Aleta.
18 Jo Ellen consented to this, and Beverly Mackereth took Aleta
19 and Jo Ellen went back to the bathroom, out of my sight.
20 They apparently disrobed Aleta so the caseworker could
21 examine her.

22 Several minutes later, the caseworker came back
23 out and told me that there were severe bruises on the girl's
24 backside and she felt the child should be taken to the hos-
25 pital for treatment. I said, "Okay, if we have to take her

1 out, we will." Beverly then said to Jo Ellen Bailey that
2 she felt that the child was in need of immediate medical
3 treatment and that we wanted to take her to the hospital.
4 Jo Ellen was somewhat reluctant to let us do that. Beverly
5 became more insistent and said, "We are taking Aleta out,
6 and we are going to take her to the hospital for treatment."
7 At that point, Jo Ellen consented to go along, and we all
8 left in Beverly's car.

9 Q Was the child taken to the hospital at the in-
10 sistence of the Defendant?

11 A No, it was at the insistence of the caseworker.

12 Q Were you summoned, to your knowledge, to the
13 mobile home by the Defendant?

14 A As far as I know, I was not.

15 Q Beverly Mackereth asked you?

16 A That's right.

17 Q Now, the preliminary hearing of this case was, I
18 believe, March 1, 1982.

19 A Yes.

20 Q Were you at that preliminary hearing?

21 A Yes, I was.

22 Q Did Catherine Foreman O'Wyler, the Coroner of
23 York County, testify at that hearing?

24 A She did.

25 MR. SMITH: I am going to object to that, Your

1 Honor. May we approach the Bench?

2 THE COURT: All right.

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

5 MR. SMITH: I am going to voice the same objection
6 that he made to me earlier this day.

7 THE COURT: What is the relevancy?

8 MR. NESS: I want to establish that this was the
9 preliminary hearing for Hake and that the Defendant was
10 there, and that she, in March, heard the details of the
11 abuse made against Mr. Hake.

12 THE COURT: All right, we will permit it.

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

14 BY MR. NESS:

15 Q Was Larry Hake at the preliminary hearing?

16 A Yes, he was.

17 Q Was the Defendant at that preliminary hearing?

18 A She was also.

19 Q Did Catherine Foreman O'Wyler, the Coroner who
20 testified in Court here, testify at the preliminary hearing?

21 A Yes, she did.

22 Q Did the Coroner, in the course of her testimony,
23 refer to the notes of Dr. Kirby?

24 A She did.

25 Q In the course of her testimony, did she substan-

1 tially, in similar fashion, outline the abuse that was ob-
2 served on the child?

3 A Yes, she did.

4 Q Was this detailed at the hearing?

5 A Yes, it was.

6 Q Was the Defendant in a position to hear?

7 A She was.

8 Q Now, this letter that we have referred to as
9 Commonwealth Exhibit No. 6, when did you first receive the
10 letter?

11 A I received this on July 6, 1982.

12 Q You have notes made on the envelope that is
13 labeled Commonwealth Exhibit No. 7?

14 A Yes.

15 Q Is this the letter that you received?

16 A Yes, it is.

17 Q And it is dated when?

18 A It's dated May 1st, 1982, 2:00 p.m.

19 Q That was after the preliminary hearing?

20 A Yes, Sir, it was.

21 Q Now, without, at this point, reading all the
22 substance of the letter, the letter consists of about how
23 many pages?

24 A About ten pages.

25 Q Essentially, what type of letter is this?

1 A It's basically a love letter.

2 Q Does it contain graphic sexual references?

3 A Yes, it does.

4 Q You are the prosecuting Officer in this case?

5 A Yes, Sir, I am.

6 MR. NESS: Cross-examine.

7 MR. SMITH: I have no questions, Judge.

8 THE COURT: You may step down.

9 MR. NESS: Your Honor, I suppose we should do
10 this at Side Bar.

11 THE COURT: All right.

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

14 THE COURT: Are you resting?

15 MR. NESS: Well, I am moving for the introduction
16 of Commonwealth Exhibits although I have acknowledged that
17 not all the Exhibits will go out with the jury.

18 THE COURT: All right.

19 MR. NESS: I'm trying to think what they are.

20 THE COURT: We will decide later then what goes
21 out with the jury. At the moment, we are just dealing with
22 what is going to be introduced into the record.

23 MR. SMITH: I missed that -- I'm sorry.

24 MR. NESS: I am moving for the introduction of
25 our Exhibits.