

1 MR. POTTER: Your Honor, the Defense
2 intends to call Ms. Estelle Brooks to the witness stand. We
3 didn't know the name of the foster mother prior to today
4 because that's a confidential matter, Your Honor. She's here
5 in Court and we may well question her. Therefore, we would
6 ask that she be sworn in as a witness, sir, and be put under
7 the rule.

8 MR. CARROLL: Judge, we would ask you to
9 not place this witness under the rule. We think that this is
10 being done in bad faith to intimidate the child, and we feel
11 it's necessary --

12 THE COURT: I'm going to -- because I
13 do not have time to stop and look at it at this time, and
14 it's important that we continue, I am going to place her
15 under the rule. And you'll need to wait right outside the
16 door, please, Mrs. Brooks.

17 Come to the bench a moment, Mr. Potter.

18 MR. POTTER: Yes, sir.

19 (Off-the-record discussion was had at the bench)

20 (Following a short recess)

21 MR. CARROLL: We're ready to go, Judge.

22 THE COURT: Bring the jury in, please.

23 (In the presence of the jury)

24 THE COURT: You may proceed.

25 MR. CARROLL: Judge, we'd call Beverly

1 Troupe.

2 THE COURT: Beverly, are you
3 comfortable?

4 A (Nods affirmative).

5 Q Raise your right hand, please.

6 Do you solemnly swear that the testimony or the
7 answers that you'll be giving in this case will be the truth,
8 the whole truth, and nothing but the truth? You're promising
9 according to God; is that correct? Do you do that?

10 A (Nodding affirmative).

11 Q You'll have to answer yes or no.

12 A Yes.

13 Q Yes? Is that your answer?

14 A (Nods affirmative).

15 Q Beverly, how old are you?

16 A Eight.

17 Q Eight years old?

18 A Yeah.

19 Q Do you understand the difference between telling
20 the truth and not telling the truth?

21 THE COURT: Take the jury out a moment,
22 please.

23 MR. POTTER: Your Honor, if it please
24 the Court. I can't hear the child.

25 THE COURT: I understand.

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(Out of the presence of the jury)

THE COURT: Beverly, when I ask a question, if you can answer yes or no, please do. If you don't understand what I say, just ask me to repeat it. Try to talk loud enough and speak into that microphone.

See what you can do about that microphone. Say one, two, three in that microphone.

THE WITNESS: One, two --

THE COURT: That's all right.

Q You told me you were eight years old?

A (Nods affirmative).

Q You'll have to answer yes or no?

A Yes.

Q And have you gone to Sunday school at any time?

A Yes.

Q Do you know that -- do you think that if you tell a lie, that you'd get punished if you tell a lie?

A Yes.

Q And do you know that you're supposed to tell the truth when you take an oath?

A Yes.

Q How far in school are you now? What grade?

A Second.

Q Second grade. Are you learning to read?

A Yes.

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1 Q You're learning to write some? Do you write your
2 name yet?

3 A Yes.

4 Q You know how important it is today just to tell
5 the truth? Will you do that?

6 A Yes.

7 THE COURT: Bring the jury in, please.

8 (In the presence of the jury)

9 MR. CARROLL: Judge, could you tell the
10 witness what we're waiting on here?

11 THE COURT: We're waiting on three other
12 people on the jury. They went out, and they'll be back in
13 just a minute.

14 THE COURT: Mr. Carroll, you may begin.

15 MR. CARROLL: Thank you, Judge.

16 DIRECT EXAMINATION

17 MR. CARROLL: Q Now, Beverly, when
18 I ask you questions, I want you to speak real good into that
19 microphone and speak real loud. Okay? Can you do that for
20 me?

21 A Yes.

22 Q I can't hear you.

23 A Yes.

24 Q Okay. I want you to play like this lady back
25 here, the very farthest one from you, I want you to play like

1 she's hard of hearing. And you need to speak real loud wher
 2 everyone on this jury, all of these people over here can hear
 3 what you have to say. Okay?

4 A Yes.

5 Q Okay.

6 MR. CARROLL: Judge, can we adjust that
 7 just a little closer to her mouth --

8 THE COURT: Yes.

9 MR. CARRLL: -- The microphone?

10 Q Now, can you tell us what your name is, Honey?

11 A Yes.

12 Q What is your name?

13 A Beverly.

14 Q What's your last name ,Beverly?

15 A Troupe.

16 Q Huh?

17 A Troupe.

18 Q And Beverly, how old are you?

19 A Eight.

20 Q And can you tell the jury what your birthday is?

21 A August the 15th.

22 Q Okay. August the 15th of this year, will you be
 23 nine years old?

24 A Yes.

25 Q Okay.

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1 MR. POTTER: Your Honor, may I approach
2 the bench --

3 THE COURT: Yes.

4 MR. POTTER: -- with the prosecutor?
5 (Off-the-record discussion was had at the bench)

6 MR. CARROLL: Q Beverly, can you
7 tell the people on the jury here where you were living at
8 with your mom and dad back when you went to the hospital last
9 year?

10 A Lake Travis.

11 Q Lake Travis? Is that in Killeen, Texas?

12 A Yes.

13 Q You need -- Honey, you're going to really have to
14 speak up. Play like you're mad at me, and speak real loud.
15 Okay? Can you say where your street is again?

16 A Lake Travis.

17 Q Lake Travis. Okay. Can you tell the people on
18 the jury what your mom and daddy's name are?

19 A Lavern and Brian.

20 Q What's your mama's name?

21 A Lavern.

22 Q Okay. Speak up, Honey. What's your daddy's name?

23 A Brian.

24 Q Brian. Okay. Do you have other brothers and
25 sisters?

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1 A Yes.

2 Q Okay. Are you the oldest or the youngest?

3 A Oldest.

4 Q You're the oldest one. Okay. Who's next after

5 you?

6 A Yoggi.

7 Q What is Yoggi's real name?

8 A Brian.

9 Q Okay. How old is Yoggi?

10 A Four.

11 Q Is that a little brother? Is he a boy?

12 A Yes.

13 Q Okay. Who's next after Yoggi?

14 A Timothy.

15 Q Timothy. Is that a boy?

16 A Yes.

17 Q How old is Timothy?

18 A Two.

19 Q Two. Okay. Is there any more? Do you have any

20 sisters?

21 A Yeah.

22 Q Huh?

23 A Yes.

24 Q What's your sister's name?

25 A Constance.

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- 1 Q Constance. What do you call her?
- 2 A Connie.
- 3 Q Connie. Okay. And how old is Connie?
- 4 Do you know how old Connie is --
- 5 A No.
- 6 Q -- or not? Is she the baby?
- 7 A Yes.
- 8 Q Does she still wear diapers, for example?
- 9 A Yes.
- 10 Q Okay. Beverly, back when you were living with
- 11 your parents on Lake Travis Street in Killeen, what school
- 12 did you go to?
- 13 A Hay Branch.
- 14 Q Hay Branch. Okay. And where is Hay Branch
- 15 School? Is it in Killeen, too?
- 16 A Yes.
- 17 Q Okay. What grade were you in when you went to Hay
- 18 Branch?
- 19 A Second.
- 20 Q Second grade? Is that what you said?
- 21 A Yes.
- 22 Q I'm having trouble hearing you, Honey. Did you
- 23 say second grade?
- 24 A Yes.
- 25 Q Okay. And are you still in the second grade right

1 now?

2 A Yes.

3 Q Do you go to a different school right now?

4 A Yes.

5 Q Okay. Are you living with your mom and daddy now?

6 A No.

7 Q You living with someone else?

8 A Yes.

9 Q Okay. Do you still go to school in Killeen,
10 though? To a different school in Killeen?

11 A Yes.

12 Q Okay. Beverly, let me ask you. You remember when
13 you went to the hospital at Fort Hood in December, before
14 Christmas?

15 A Yes.

16 Q Okay. I want to talk about that with you. Do you
17 remember who took you to the hospital?

18 A Yes.

19 Q Who took you?

20 A My daddy.

21 Q Okay. And why did you go to the hospital. What
22 was wrong with you?

23 A I was burning.

24 Q I can't hear you, Honey. What?

25 A I was burning.

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1 Q You was burning. Where were you burning at.

2 A In my vagina.

3 Q Okay. When would your vagina burn and hurt? Let
4 me just ask you this way, Hon. Did your vagina hurt all the
5 time or just sometime?

6 A Sometime.

7 Q Okay. What would you be doing when it would be
8 hurting? Did you use the bathroom?

9 A Yes.

10 Q And when you used the bathroom, when you had to go
11 pee, did it hurt then, or not?

12 A Yes.

13 Q It did hurt? What did it feel like? Do you
14 remember?

15 A No.

16 Q Okay. Do you remember the doctor that saw you?
17 Dr. Mujica?

18 A Yes.

19 Q Have you seen him here today --

20 A Yes.

21 Q -- at the courthouse? Have you seen him here
22 today?

23 A Yes.

24 Q Okay. Do you remember talking with him back when
25 you went to the hospital?

1 A Yes.

2 Q Okay. Did you tell him about your vagina burning
3 and hurting? Did you tell the doctor why -- that you were
4 hurting and burning there, or do you know?

5 A I don't know.

6 Q Huh?

7 A I don't know.

8 Q You don't know. Okay. Well, anything I ask you,
9 Beverly, if you don't know just let us know about -- in other
10 words, just answer what you do know, okay? And if you don't
11 understand what I'm asking you, you let me know, and I'll ask
12 it a different way or I'll slow down or do something
13 different for you. Okay? Okay? Will you do that?

14 A Yes.

15 Q Who had been hurting you in your vagina, Beverly?
16 Beverly, look at me. Who had been hurting you in your
17 vagina? Had someone been hurting you there?

18 A Yes.

19 Q Okay. Had that same someone done that more than
20 one time to your vagina?

21 A Yes.

22 Q Okay. Did it happen while you lived at your home
23 in Killeen?

24 A Yes.

25 Q Did that someone hurt your vagina?

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1 A Yes.

2 Q Huh?

3 A Yes.

4 Q Did it happen -- Did that someone hurt your vagina
5 when you lived other places, too? Did you understand my
6 question?

7 A No.

8 Q Okay. Did that same someone who had been hurting
9 your vagina, do things to hurt your vagina when you lived
10 other places besides Killeen? Where did you live before
11 Killeen?

12 A Germany.

13 Q Okay. Did someone hurt your vagina when you
14 lived in Germany?

15 A Yeah.

16 Q Okay. Is it the same person?

17 A Yes.

18 Q Okay. Has anybody else ever hurt your vagina
19 except this person you're talking about?

20 A No.

21 Q Okay. Do you see that person in the courtroom
22 today that's been hurting your vagina?

23 A Yeah.

24 Q Huh?

25 A Yeah.

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1 Q Okay. Would you point that person out and tell us
2 which one it is? Can you count, Beverly?

3 A Yes.

4 Q If I'm number one, and this is number two, and
5 this is number three, and this is number four, has one of
6 these people been hurting your vagina? Which one is it?
7 Which number. Now, you look if you need to. Be sure. Has
8 one, two, three or four been hurting your vagina, Hon?

9 A Yes.

10 Q Which one is it? You tell these people which one
11 has been hurting your vagina. Which number? Do you need to
12 look some more at these people that I've talked about? Have
13 you told me before who it was?

14 A Yeah.

15 Q Have you told Dr. Mujica before who it was that
16 was hurting you?

17 A Yeah.

18 Q Have you told my investigator right here, Cathy
19 Phillips, who has been hurting you there?

20 A Yes.

21 Q Have you told the social worker, Helen Paramore,
22 who's been hurting you there? Huh? You remember Ms.
23 Paramore, the pretty lady with the long brown hair that saw
24 you at the hospital, did you tell her who had been hurting
25 you there? Huh? The lady that came to see you in the

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1 hospital at Fort Hood, did you tell her who had been hurting
2 you there, too?

3 A Yes.

4 Q Okay. You need to tell these people on this jury,
5 Beverly, so they will know. They don't know. You've never
6 told them. Would you tell them who's been hurting you there?
7 Just say it, Hon. Just tell us. You can look at these
8 people if you want to. You need to let them know who's been
9 doing this. Tell them who did it to you.

10 Well, let's just do something else for a few
11 minutes. Okay. Let's talk about what this person did to
12 you, Beverly. Have you and I talked about what this person
13 did to you -- your vagina -- and how they hurt you?

14 A Yes.

15 Q Okay. Let's talk about that. You know the part
16 that's in between a boy's legs like your little brothers or
17 your dad. You know the part that's in between their legs in
18 the front?

19 A Yeah.

20 Q Huh?

21 A Yeah.

22 Q What do you call that? You call yours your
23 vagina. What do you call the boy's thing that's in the same
24 place? What do you call it? Don't you have a name for it?

25 A No.

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1 Q Okay. You know where your little brother's
2 pee-pee --

3 A Yes.

4 Q What do you call that? Tell me what you've told
5 me you call that. What's the word you used?

6 A Ding-a-ling.

7 Q Okay. Ding-a-ling. Does your little brothers
8 both have ding-a-lings?

9 A Yes.

10 Q Does your dad have a ding-a-ling?

11 A Yes.

12 Q Have you seen your dad's ding-a-ling before, and
13 your brothers?

14 MR. POTTER: Your Honor, I couldn't hear
15 a response to the last two questions.

16 THE COURT: I don't believe they've been
17 answered.

18 MR. CARROLL: Q Have you seen your
19 dad's ding-a-ling and your little brother's ding-a-lings?

20 A Yes.

21 MR. POTTER: Your Honor, that's
22 multifarious. I'd like to --

23 THE COURT: Sustained.

24 MR. CARROLL: Q We'll do it one at
25 a time. Have you seen Yoggi's ding-a-ling?

1 A Yes.

2 Q Have you seen Timmy's ding-a-ling?

3 A Yes.

4 Q Have you seen your daddy's ding-a-ling?

5 A Yes.

6 Q Has your daddy ever put his ding-a-ling inside
7 your body somewhere? Did you understand my question,

8 Beverly? Huh?

9 A No.

10 Q Okay. Has your daddy ever touched you with his
11 ding-a-ling. You don't have to look at your daddy. You look
12 at me, or look at these people. Has your daddy ever touched
13 you with his ding-a-ling?

14 MR. POTTER: Your Honor, if it please
15 the Court. These remarks that he makes these -- these
16 instructions he makes to this child are improper. We would
17 ask the child to look at him. But when he makes that, he's
18 making -- he's putting testimony in front of -- in this
19 record, Your Honor, that's not there.

20 THE COURT: Sustained.

21 MR. POTTER: Thank you, Your Honor.

22 MR. CARROLL: Q Has your daddy
23 touched you with his ding-a-ling, Beverly. Yes or no? Do
24 you understand my question?

25 A Yes.

1 Q Well, has he or not? You need to answer, Beverly

2 A Yes.

3 Q Okay. Can you tell the people over here where
4 he's touched you with his ding-a-ling, Honey? You can look
5 at these people or look at me. Where has your daddy touched
6 you with his ding-a-ling? Are you scared, Honey? Huh?

7 A Yes.

8 Q You don't have to be scared about anything. No
9 one is going to bother you or hurt you. You understand that?

10 A Yes.

11 Q Nobody will bother you. And these people are your
12 friends. Tell them where he's touched you on your body with
13 his ding-a-ling. Just tell them. Do you remember the first
14 time he touched you on your body with his ding-a-ling?

15 A Yeah.

16 Q Okay. Where did he touch you at with it?

17 A My --

18 Q I'm sorry. I didn't hear you?

19 A My vagina.

20 Q Okay. Did his ding-a-ling go inside your vagina?

21 A Half.

22 Q Huh?

23 A Half.

24 Q How far? Is that what you -- Half?

25 A Yes.

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1 Q Where was your mama at when this happened the
2 first time? Was she home?

3 A No.

4 Q Do you remember where she was?

5 A No.

6 Q Okay. Has this happened at your house in Killeen?

7 A Yes.

8 Q Okay. You said he put his ding-a-ling in your
9 vagina. Has he put his ding-a-ling in other places on your
10 body?

11 A Yeah.

12 Q Okay. What other places did he put his
13 ding-a-ling? What name do you have for that other place?

14 A Bootie.

15 Q Okay. Bootie is what you're saying. Where is
16 your Bootie? Is it on the front or in the back when you're
17 standing up?

18 A In the back.

19 Q Okay. Did he put his ding-a-ling in your Bootie
20 when you lived in Killeen at your house on Lake Travis?

21 A Yes.

22 Q Okay. Has he put other things besides his
23 ding-a-ling inside your vagina or your Bootie?

24 A No.

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MR. POTTER: Your Honor, that's --

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1 I thought you were asking multifarious question, but
2 she answered anyway. No.

3 MR. CARROLL: Q Has anybody put
4 anything besides his ding-a-ling -- has he put anything else
5 inside your vagina, Honey? Do you understand my question?

6 A No.

7 Q Do you have Popsicle sticks at your house?

8 A Yes.

9 MR. POTTER: Your Honor, if it please
10 the Court. This child has answered his question now twice.
11 And now he's asking it again the third time, Your Honor, and
12 she's answered it in a way that she doesn't like, Your
13 Honor --

14 MR. CARROLL: Your Honor, we object to
15 him --

16 MR. POTTER: -- we --

17 THE COURT: Just a moment.

18 MR. CARROLL: -- referring to what I
19 like or don't like --

20 THE COURT: Just a moment.

21 MR. CARROLL: -- that's a side-bar
22 remark.

23 MR. POTTER: Your Honor, I --

24 THE COURT: Come to the bench a moment,
25 please.

1 (Off-the-record discussion was had at the bench)

2 MR. POTTER: Your Honor, we object to
3 the prosecutor asking the same question in three different
4 forms after she has answered him in the negative. Therefore,
5 Your Honor, we object because he's again asking the same
6 question.

7 THE COURT: Sustained.

8 MR. CARROLL: Q Do you like
9 Popsicles, Beverly?

10 A Yes.

11 Q When you were living at your house with your mom
12 and dad on Lake Travis there in Killeen, did you all have
13 Popsicles sometimes at your house?

14 A Yes.

15 Q Okay. Did anyone --

16 MR. POTTER: Your Honor --

17 THE COURT: Just a moment.

18 MR. POTTER: -- if it please Court. May
19 I approach the bench with the prosecutor?

20 THE COURT: Yes.

21 (On-the-record discussion was had at the bench
22 out of the hearing of the jury)

23 MR. POTTER: If it please the Court.
24 One paragraph of this indictment alleges that he did insert
25 Popsicle sticks inside her vagina orifice.

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THE COURT: I don't recall that.

MR. CARROLL: It says sticks.

MR. POTTER: Sticks. And she has been asked and has twice said this, he has stuck nothing in her vagina orifice other than his penis. The third time that same question was asked, the Court sustained my objection. Your Honor, I simply am telling the Court that the prosecutor is very skillfully trying to find another way to skin-the-cat and ask the questions again. Therefore, Your Honor, I object. She has said he hasn't put anything in her --

MR. CARROLL: For the record, Mr.

Potter, interviewed this child in my office the other day and this child told Mr. Potter her daddy put Popsicle sticks and rubbed glass in her vagina --

MR. POTTER: Your Honor --

THE COURT: I'm overruling your objection. He may ask the question.

MR. POTTER: May I ask the jury at this point -- poll the jury to see if they heard what he just said, if they -- if any of them overheard what the prosecutor just said?

THE COURT: I'll ask them.

MR. POTTER: If you would, sir, in general terms.

THE COURT: I understand.

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1 (In the presence of the jury)

2 THE COURT: Ladies and Gentlemen of the
3 Jury, we've had a conference at the bench. And certain
4 statements were made to the Court at that time. Did any of
5 the jurors on the first row understand or comprehend the
6 conversation that occurred at the bench just a few moments
7 ago? Did any on the second row? Were any of you able to
8 follow in any way, the conversation or overhear any of it to
9 the extent that you heard something that -- that you have in
10 your mind about something that may or may not have happened
11 as a result of this conversation here at the bench? Anyone
12 on the first row? Second row?

13 (The jury nodded in the negative)

14 THE COURT: Mr. Potter?

15 MR. POTTER: Your Honor, we're
16 satisfied. Thank you, Your Honor, for your indulgence.

17 MR. CARROLL: Can we go ahead, Judge?

18 THE COURT: Yes.

19 MR. CARROLL: Q Anyhow Beverly,
20 let me finish asking you some questions. I'll try to go
21 quickly as I can. Has anyone ever put Popsicle sticks inside
22 your vagina?

23 A Yes.

24 Q Okay. Tell the people how that happened. What
25 happened?

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1 MR. POTTER: Again Your Honor, we object
2 to the question -- the answer just made because she has
3 already answered once in the negative. Now she answers in
4 the positive.

5 THE COURT: Overruled.

6 MR. POTTER: Thank you, Your Honor.

7 MR. CARROLL: Q Even though you
8 were interrupted, let me ask you again. Tell the jury when
9 someone put Popsicle sticks inside your vagina, tell them
10 what happened, Beverly. You're waiting a long time to answer
11 any questions that I ask. Did that happen?

12 A Yes.

13 Q Is it hard for you to talk about, Honey? Is it
14 hard for you to tell these people that?

15 A Yes.

16 MR. POTTER: Your Honor, if it please
17 the Court. He's now commenting -- now putting more
18 testimony into this record, Your Honor. And we ask these
19 remarks be --

20 THE COURT: All right. Sustained. The
21 jury is to disregard the remarks of the prosecutor.

22 MR. CARROLL: Q Okay. Did it
23 happen one time or more than one time when Popsicle sticks
24 were put inside your vagina, Beverly?

25 A One time.

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1 Q One time. Who put the Popsicle sticks inside your
2 vagina? Is that person in the courtroom that did that to
3 you?

4 A Yes.

5 Q I can't hear you. Speak up.

6 A Yes.

7 Q Do you know who that person is?

8 A Yes.

9 Q Who is that person? Tell these people who it is.
10 Beverly, can you tell the people who did that to you?

11 A Yes.

12 Q Huh?

13 A Yes.

14 Q I can't hear you?

15 A Yes.

16 Q Okay. Well, tell them, then. Tell them who did
17 that to you. Just tell them?

18 A My dad.

19 Q Okay. Just tell them what happened. What I want
20 to know, Beverly, you've told the jury that your dad has put
21 his -- Now, watch me, Honey, so you can understand my
22 question. You've told me when you're answering these
23 questions that your dad has put his ding-a-ling inside your
24 vagina and your Bootie. And he's put Popsicle sticks inside
25 your vagina. Has he ever put anything else -- has your dad

1 ever put anything else inside your vagina?

2 THE COURT: Just a minute.

3 MR. POTTER: Your Honor, his question to
4 her, because of her delicate age, especially with that in
5 mind, is multifarious and is duplicit, Your Honor, and I
6 simply ask the Court to make him make the questions less
7 complex for her.

8 THE COURT: All right. Sustained.

9 MR. CARROLL: Q Has your dad put
10 anything else inside your vagina besides his ding-a-ling or
11 Popsicle sticks?

12 A Yes.

13 Q Okay. Now, that was easy. What other things has
14 he put inside your vagina?

15 A Glass.

16 Q Glass. Do you remember the day that, that
17 happened?

18 A No.

19 Q Do you remember where you were when he put the
20 glass in your vagina?

21 A No.

22 Q Okay. Where was your mom that day?

23 A I don't know.

24 Q Was she home when this happened?

25 A I can't remember.

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1 Q Do you remember her being there when your dad put
2 the glass in your vagina?

3 A No.

4 Q Okay. Did you see the glass yourself?

5 A Yes.

6 Q Okay. Can you tell the jury where the glass came
7 from?

8 A Yes.

9 Q Okay. Well, tell us where the glass came from?

10 A My brother broke a glass, and dropped it on the
11 floor.

12 Q Honey, you're going to have to say that again real
13 loud where I can hear you. What did you say?

14 A I said my brother -- my brother broke this glass
15 on the floor.

16 Q Okay. What room of the house did your brother
17 break this glass on the floor?

18 A Kitchen.

19 Q Did you -- who cleaned up the glass that your
20 brother broke on the kitchen floor?

21 A Me and him.

22 Q Okay. How did you clean it up off the floor?

23 A With a broom and the dust pan.

24 Q Okay. Who had the broom and who had the dust pan?

25 A I had the broom and my brother Yoggi had the dust

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1 pan.

2 Q Okay. Did you sweep the glass into the dust pan
3 that Yoggi was holding?

4 A Yes.

5 Q What did you all do with that broken glass?

6 A We put it in the garbage.

7 Q Where was the garbage can in your house?

8 A Kitchen.

9 Q Okay. Were you there when it was put into the
10 garbage can?

11 A Yes.

12 Q Who put it into the garbage can?

13 A Yoggi.

14 Q Okay. Later that day did you see somebody get
15 that broken glass out of the garbage can?

16 A Yes.

17 Q Who did?

18 A Daddy.

19 Q Okay. Later that night, Beverly, did you take a
20 bath?

21 A Yes.

22 Q Okay. Did your daddy come in while you were
23 taking a bath?

24 A Yes.

25 Q Okay. Did you see where that glass was at?

1 A Yes.

2 Q Okay. Did you see it before you got into the
3 bathtub? Did you know where the glass was at?

4 A Yes.

5 Q Tell me how come you knew that?

6 A Because I came in the bathroom and I saw it up in
7 the window.

8 Q The window in the bathroom?

9 A Yes.

10 Q Okay. Who had put it up there in the window in
11 the bathroom?

12 A My daddy.

13 Q Okay. Who told you to go take a bath?

14 A My dad.

15 Q Was your mother at home?

16 A No.

17 Q Okay. You said your dad came into the bathroom.

18 Who went in there first when you were going to take a bath?

19 Did you go first or did your dad go in there first?

20 A I went in there first.

21 Q Did you take your clothes off and get into the
22 tub, or what?

23 A Yes.

24 Q You know the difference between a shower and bath
25 where you sit down in the tub?

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1 A Yes.

2 Q Which one did you take that day?

3 A A bath.

4 Q Okay. What happened with this glass while you
5 were taking a bath. Just tell the jury what happened?

6 A My dad came in there and he was -- he took the
7 glass and put it in my rag, and then he washed me up with it.

8 Q You need to say that real loud. I still can't
9 hear you, Honey. Your dad did what with the glass?

10 A He took and put it in the rag.

11 Q What kind of rag?

12 A A wash cloth.

13 Q Your dad put the glass in a wash cloth. And where
14 did he rub you with it?

15 A My vagina.

16 Q Huh?

17 A My vagina.

18 Q Were you sitting down or standing up, or what,
19 when he rubbed your vagina with that rag?

20 A I was sitting down.

21 Q Okay. Did it hurt?

22 A Yes.

23 Q Did you know that there was glass in that rag?

24 A Yes.

25 Q When did you find out? How did you find out?

9/7

1 A Because it was --

2 Q I can't understand you, Honey. Speak up real
3 loud. How did you know there was glass in that rag?

4 A It was feeling like glass. And then -- it was
5 feeling like glass, and then it cut me, and I saw it.

6 Q You saw it?

7 A Yes.

8 Q Okay. Did you say you felt it cut you?

9 A Yes.

10 Q Okay. Did you say anything to your daddy when
11 that glass cut you?

12 A No.

13 Q Huh?

14 A No.

15 Q Did it hurt?

16 A Yes.

17 Q Why didn't you say something to him?

18 A Because I was scared.

19 Q What were you scared of?

20 A My daddy.

21 Q So you didn't say anything to him?

22 A No.

23 Q Did it make you cry?

24 A No -- yes.

25 Q When did you cry?

1 A When he stopped.

2 Q Did he stay in there after he stopped, or did he
3 leave the room?

4 A He left.

5 Q Did you cry while he was in the room with you?

6 A No.

7 Q You waited?

8 A Yes.

9 Q This day when you went to the doctor when it was
10 burning when you had to pee, remember that? Remember when
11 you went and saw Dr. Mujica?

12 A Yes.

13 Q How many days before was it when your daddy washed
14 you with that glass in the rag? Do you remember --

15 A No.

16 Q -- or know? Huh.

17 A No.

18 Q Okay. Was it before you went to the doctor or
19 after you went to the doctor when he cut you with the glass?

20 A Before.

21 Q Did it make you bleed on your vagina?

22 A Yes.

23 Q When did you start bleeding from your vagina?

24 A I can't remember.

25 Q Huh?

1 A I can't remember.

2 Q Well, you've told the jury that it hurt and you
3 later cried when your daddy left the bathroom. When did you
4 first see blood either on your panties or on your vagina?

5 A My panties.

6 Q But did you see it the day that it happened --
7 when your dad did it? Did it start bleeding then or not?

8 A It started bleeding.

9 Q Okay. When did you first see the blood?

10 A When I went to the bathroom.

11 Q Huh?

12 A When I went to the bathroom. Inside of my
13 panties.

14 Q Did you see the blood on your panties, too?

15 A Yes.

16 Q Okay. You've told the jury that your dad had put
17 his ding-a-ling in your vagina and your Bootie. I want to
18 ask you, back when you lived in Germany, when you were in the
19 first grade, did your dad ever put his ding-a-ling somewhere
20 else on you or in you?

21 MR. POTTER: Your Honor, if it please
22 the Court. Now we're talking about extraneous offenses that
23 are uncharged.

24 THE COURT: All right. Sustain your
25 objection.

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1 MR. POTTER: Your Honor, we would like
 2 to have the question and the answer stricken from -- have
 3 the jury instructed to disregard the question and answer.

4 THE COURT: The jury is instructed to
 5 disregard the question and the answer.

6 MR. POTTER: Your Honor, at this time we
 7 would like to have -- we'd ask this Court for a mistrial.

8 THE COURT: Overruled.

9 MR. POTTER: Thank you, Your Honor.

10 MR. CARROLL: I'm not to ask that
 11 question?

12 Judge that's all the questions I have at this time.
 13 We'll let Mr. Potter ask her some questions.

14 CROSS-EXAMINATION

15 MR. POTTER: Q Beverly, you
 16 remember me from other day, don't you, Dear?

17 A Yes.

18 Q Okay. You remember Mr. Russell -- I mean, Mr.
 19 Carroll telling you that both he and I are nice men, and
 20 we're just trying to talk to you. Do you remember that?

21 A Yes.

22 Q Okay. And no one has told you to be afraid of me
 23 or anything like that, have they, Sugar?

24 A Yeah.

25 Q Who told that you, Baby? Has someone told you I'm

1 a bad man?

2 A No.

3 Q Beg your pardon, Dear?

4 A No.

5 Q Has someone told you to be afraid of me?

6 A No.

7 Q Okay. So we're still friends just like we were
8 the other day, aren't we?

9 A Yes.

10 Q Okay. Now, this Ms. Paramore, you remember her?

11 A Yes.

12 Q She was the lady, I think, she had brown hair.

13 You saw her again this morning?

14 A Yes.

15 Q Okay. Now, she tells -- or rather, did you tell
16 her any other stories about how you were -- how you got your
17 vagina hurt?

18 A No.

19 Q You didn't tell her about sitting on some glass or
20 anything like that?

21 A Yes.

22 Q You did tell her that?

23 A Yes.

24 Q Where did you sit on that glass, Baby?

25 A On Melody's swing.

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- 1 Q Who's Melody?
- 2 A My friends.
- 3 Q I'm sorry. I can't hear you.
- 4 A My friend.
- 5 Q Melody is your friend. Do you know her last name?
- 6 A No.
- 7 Q If you don't know, that's okay?
- 8 A No.
- 9 Q Did you say -- did you say you knew her name?
- 10 A No.
- 11 Q Okay. And where was it that you sit on this glass
- 12 on Melody's swing, Dear?
- 13 A I didn't understand.
- 14 Q I couldn't hear you. I'm sorry?
- 15 A I didn't understand.
- 16 Q Was it at Melody's house?
- 17 A Yes.
- 18 Q Okay. And did you cut yourself there?
- 19 A Yes.
- 20 Q And you cut yourself on the vagina there?
- 21 A Yes.
- 22 Q Okay. Did some man take you some place and help
- 23 you take out that glass off your vagina?
- 24 A Yes.
- 25 Q What was the man that did that to you?

1 A Her father.

2 Q Melody's father?

3 A Yes.

4 Q Okay. And where did he take you to do that, Dear?

5 A In his back yard.

6 Q In his back yard?

7 A Yes.

8 Q And he took you away from where the other kids
9 were when he did that, didn't he?

10 A Yes.

11 Q Okay. So when he was taking -- when he was
12 taking this glass out from your vagina, he did it away from
13 all the other kids, just you and him around --

14 A Yes.

15 Q -- is that right?

16 A Yes.

17 Q And wasn't that just a day or so before your mom
18 and daddy took you to the hospital?

19 A Yes.

20 Q Okay. Now, Baby, there's lots of kids in your
21 neighborhood that you play with, aren't there?

22 A Yes.

23 Q Okay. And sometimes those kids -- you're a good
24 girl, aren't you, Babe?

25 A Yes.

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1 Q Okay. And sometimes those kids in the
2 neighborhood, do they ever want to do bad things to you?

3 A No.

4 Q Have any of the kids in the neighborhood ever want
5 to touch you in a nasty part?

6 A No.

7 Q Okay. Now, is the only person that touched you
8 down there that way, the man known as Melody's father; is
9 that right?

10 A Yes.

11 Q Can you think of anybody else other than your
12 daddy, like you said, and Melody's father that's touched you
13 down there?

14 A No.

15 Q Even if you don't remember their name -- and
16 remember you can't get anybody in trouble. You know, we're
17 not here to have you get somebody in trouble. Okay?

18 A Yes.

19 Q Okay. Now, can you tell us now who else touched
20 you down there besides Melody's daddy and your daddy? Is
21 there somebody else?

22 A Nobody else.

23 Q Okay. Now, when was it that your daddy was
24 supposed to have put his ding-a-ling in your Bootie? When
25 was that, Sugar?

1 A I don't know.

2 Q Do you remember when he went to the hospital?

3 A Yes.

4 Q I'm not talking about the date. But you going to
5 the hospital -- your mom and daddy taking you to the hospital
6 like we talked about, okay?

7 A Yes.

8 Q Was it just a day or two before that, or was it a
9 long time before that?

10 A I don't know.

11 Q You don't know?

12 A No.

13 Q Okay. When your daddy washed you with the wash
14 rag that had the glass in it, was that a day or two before
15 you went to the hospital? Was that a long time before?

16 A Day or two.

17 Q Okay. Now, when Ms. Paramore asked you how you
18 got those cuts there on your vagina, did you tell her about
19 Melody and the neighbor's swing?

20 A Yes.

21 Q Okay. Did you -- when you're talking about --
22 when this thing happened with the wash rag, that's what I'm
23 talking about right now -- was Ms. Paramore the first person
24 you told that to?

25 A Yes.

1 Q And did you see the glass in the rag, or did you
2 feel the glass in the rag, Dear?

3 A I felt it.

4 Q If you don't know, just say "I don't know." Did
5 you see the glass in the rag, or did you just feel it in the
6 rag, Sugar?

7 A Feel it.

8 Q So you didn't really see it in the rag; is that
9 right?

10 A I seen it, too.

11 Q You didn't see it?

12 A I seen it.

13 Q Okay. I'm not trying to trick you. Just tell me
14 again. Did you see the glass in the rag? Not the glass an
15 the rag. I'm saying did you see the glass wrapped up inside
16 the rag, that's what I'm saying. I know you saw the glass.
17 The glass was on the shelf, right?

18 A Yes.

19 Q Did you ever see the glass in the rag, Dear?

20 A Yes.

21 Q Okay. And you felt it?

22 A Yes.

23 Q Now, that -- was that about the same time -- was
24 that -- what time of day was that? Was that night or during
25 the day, Babe?

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- 1 A During the day.
- 2 Q Okay. And that was a day or two before you went
3 to the hospital; is that right?
- 4 A Yes.
- 5 Q All right. And you're sure that it wasn't
6 nighttime?
- 7 A Yes.
- 8 Q It was daytime?
- 9 A Yes.
- 10 Q Was it -- was it right after you got out from
11 school, Babe?
- 12 A Yes.
- 13 Q Had you eaten supper yet? By "supper," I mean the
14 last meal you eat during the day. Had you eaten that yet?
- 15 A No.
- 16 Q Okay.
- 17 Q Now, was there -- who else was in the house
18 besides you and your daddy when this -- during the day before
19 supper when all this happened? This wash rag.
- 20 A I can't remember.
- 21 Q I'm sorry, Dear?
- 22 A I can't remember.
- 23 Q Do you know if your mom was there?
- 24 A No.
- 25 Q All right. Back to the -- back to the one time

1 that your daddy was supposed to put his ding-a-ling in your
2 Bootie. Was that, that same day?

3 A I don't know.

4 Q Do you think it was the day before?

5 A Yeah.

6 Q You think it was the day before, that the glass
7 happened; is that right?

8 A Yeah.

9 Q Are you sure of that?

10 A Yes.

11 Q Okay. And how many days was it after the glass --
12 that he rubbed you with the glass, that you went to the
13 doctor, Babe, with your mom and daddy? The next day? Two
14 days?

15 A Three.

16 Q Three days?

17 A Yeah.

18 Q And you're a smart girl, and you can count, right?

19 A Yes.

20 Q Okay. Count the number of people that are on that
21 second row up there.

22 A Seven.

23 Q Are you -- Show me -- What's the lady there?

24 What's her number? The lady in black. What's her number?

25 Black and white?

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1 A One.

2 Q The gentleman in the light blue and white shirt.

3 What's his number?

4 A Two.

5 Q And the gentleman in the blue suit with the white
6 striped tie. What number is he?

7 A Four.

8 Q Okay. Look at my hands and tell me how many
9 fingers I'm holding up.

10 A Four.

11 Q Okay. How many fingers am I holding up now, Dear?

12 A Three.

13 Q How many fingers am I holding up now?

14 A Six.

15 Q And now?

16 A Seven.

17 Q Okay. Are you sure it was about three days after
18 your daddy washed you with the wash rag that he took you to
19 the hospital?

20 A Yes.

21 Q Okay. You're sure that it wasn't a long time like
22 two weeks or three weeks or twenty days? You're sure it was
23 like three days?

24 A Yes.

25 Q All right. So -- I know you don't know any

1 dates. But you went to the hospital on one day, and three
2 days before that, your daddy washed you in the bathtub with
3 the glass, and the day before that is when he put his
4 ding-a-ling in your Bootie; is that right?

5 A Yes.

6 Q Okay. Now, when he put his ding-a-ling in your
7 vagina, was that the same day that he put his ding-a-ling in
8 your Bootie?

9 A Yes.

10 Q All right. How many times before that day, the
11 day that he put his ding-a-ling in your Bootie and in your
12 vagina, had he put his ding-a-ling in you before?

13 A I can't -- I can't remember.

14 Q Well, was it more than three? Was it more than
15 three?

16 A Yeah.

17 Q Was it less than ten?

18 A Yes.

19 Q Do you think that it was more than five, or five
20 or less?

21 A Five or less.

22 Q Five or less. Okay. Now, Sugar, you've got to
23 remember that this Judge and this jury and all these people
24 here are your friends and we're not trying to fuss at you,
25 cause nobody is trying to say you've done anything wrong.

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1 Okay? Now, can you tell me and this jury what you've put
2 inside your vagina? Not your daddy, but just you? And talk
3 to them, if you can. Can you remember what all you put
4 inside there? Not your daddy, just you?

5 A Tissue.

6 Q Okay. Anything else?

7 A No.

8 Q Okay. You never put anything else inside there,
9 Babe?

10 A No.

11 Q Okay. Now, your daddy ever whip you?

12 A Yes.

13 Q Why?

14 A Because I do bad things.

15 Q Okay. Did he ever -- Has he ever whipped you
16 real bad?

17 A Yes.

18 Q And that was when you did something real bad, is
19 that right?

20 A Yes.

21 Q Okay. Did he only whip you when you did something
22 bad?

23 A Yes.

24 Q Okay. When he whipped you, and it was something
25 bad, it was really something you did bad, not something he

1 made up; is that right?

2 A Yes.

3 Q Okay. So would you say that he was fair to you?

4 Do you know what fair means?

5 A No.

6 Q Okay. Would you say that your daddy whipped you
7 only when you needed it?

8 A Yes.

9 Q Okay. Has anybody told you that your daddy is
10 going to hurt you? You told Rusty -- you know who I mean by
11 Rusty. Mr. Carroll. You told Rusty that you were afraid of
12 your daddy. Remember when you said that?

13 A Yes.

14 Q Who told you that your daddy was going to hurt
15 you?

16 A Nobody.

17 Q Okay. Then why are you afraid of your daddy if
18 your daddy has never whipped you except when you did
19 something bad?

20 A Because he whips hard.

21 Q He what?

22 A He whip hard

23 MR. POTTER: I'm sorry, I --

24 THE COURT: He whips hard.

25 MR. POTTER: Q Okay. Do you

1 think you've done something wrong here today, Beverly, in any
2 way?

3 A No.

4 Q Okay. So you can't -- there's no reason for you
5 to think your daddy would whip you today, is there?

6 A No.

7 Q Okay. Now, the time that he took the Popsicle
8 sticks and put them in your vagina, was that the same day
9 that he put his ding-a-ling in your Bootie?

10 A No.

11 Q Was that the day before?

12 A Yes.

13 Q So all these things happened right before you went
14 to the hospital; is that right, Babe?

15 A Yes.

16 Q Okay. Now, have you talked with Dr. Mujica today?
17 Have you talked with Dr. Mujica today, Dear?

18 A No.

19 Q Have you talked with Ms. Paramore today?

20 A No.

21 Q When is the last time you talked with her? Has it
22 been a long time?

23 A Yes.

24 Q Okay. Have you talked with her since you talked
25 with me last week?

1 A No.

2 Q Okay. Did your daddy -- you love your daddy,
3 don't you?

4 A Yes.

5 Q You love your mama?

6 A Yes.

7 Q Has anyone told you after this trial where you're
8 going to be living or anything like that?

9 MR. CARROLL: Your Honor, we object.
10 All of this would be immaterial to the allegations in this
11 indictment.

12 THE COURT: Overrule your objection.
13 Come to the bench.

14 (An off-the-record discussion was held at the bench)

15 MR. POTTER: Could the court reporter
16 read back the last question?

17 (At this time the reporter read back the last question)

18 Q Has anybody told you after this trial where you're
19 going to be living or anything like that?

20 A No.

21 Q Have they -- has anyone promised you you're going
22 to be living with your mamma and daddy?

23 MR. CARROLL: Your Honor, we object this
24 question called for hearsay.

25 THE COURT: Overruled.

SJS

1 MR. POTTER: Q Has anybody told you
2 you're going to be going back to live with your mama and
3 daddy?
4 A Yes.
5 Q And who told you that, Babe?
6 A Ms. Paramore and Betty Campbell.
7 Q Ms. Paramore and Betty Campbell. Did you see Ms.
8 Campbell this morning?
9 A No.
10 Q Okay. Is she a case worker, or did she work for
11 that same place Ms. Paramore does?
12 A No.
13 Q Your mamma and daddy, do they take to you Sunday
14 school and church, Baby?
15 A Sometimes.
16 Q And where did you go? Do you know the name of the
17 church?
18 A No.
19 Q Okay. That was in Killeen, though, wasn't it?
20 A Yes.
21 MR. POTTER: Pass the witness, Your
22 Honor.
23 MR. CARROLL: We don't have any further
24 questions.
25 THE COURT: You may step down.

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MR. CARROLL: Call Dr. Mujica.

THE COURT: You may proceed.

SAMUEL A. MUJICA, M. D.

DIRECT EXAMINATION

MR. CARROLL: For the record are you the same Dr. Samuel Mujica that testified first thing this morning --

A Yes, sir.

Q -- in this same case? Doctor, Beverly has testified -- Beverly Troupe -- and I believe you indicated earlier in your testimony that she told you her dad was the one hurting her vagina; is that correct?

A Yes, sir.

Q Did she ever tell you anything concerning her dad using glass and inserting it in her vagina at any time?

A Not to me.

Q Okay. Well, for the purpose of my question, assume the truth -- about three days before you were seeing her in the emergency room there at Darnall on December 10th, assume that approximately three days before that while taking a bath, her father put glass -- broken glass into a wash rag and rubbed her vagina real hard; assuming that to be true, Doctor, would that account for the lacerations that you found on the inside and outside of the vagina of Beverly that you've described for the jury?

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1 A That depends, you know, on some conditions. If I
2 can elaborate?

3 Q Would you elaborate?

4 A The lesions indicate -- if there was a lot of
5 glass on that rag I would probably expect, you know, a lot of
6 major lacerations, you know, like big chunks of glass in the
7 wash rag. Also rubbing her genitals with a rag full of glass
8 and -- could happen, you know, could be -- there would be
9 two ways you could do it -- or anybody could do it -- rubbing
10 the genital area, you know, and cause lacerations that I
11 would expect if the rag had glass, again, not in the midline,
12 but more on the outside of her genitals.

13 Q But I believe you said from your testimony that
14 there were no outside or distal lacerations; is that correct?

15 A That is true. So you know, if it happened that
16 way, wouldn't it be likely, you know, from the physical exam.
17 The only way that could happen is somebody takes a wash rag
18 with some small pieces of glass, and you know, if they put --
19 inserting the finger inside covered with the wash rag, that
20 would cause lacerations, you know, like the physical
21 examination reveals.

22 Q That would be consistent with the way you found --

23 A That would be the only way I could explain that.

24 Q Well, with the size of vaginal opening on this
25 child -- for example, if a physician were to insert a finger

1 in this child for the purpose of a medical exam, would
2 Beverly experience any sort of discomfort from one finger
3 being put inside her?

4 A Not at all. She had a speculum placed in. And
5 when I examined her -- I mean, my finger was smaller than her
6 vaginal opening. She didn't put any resistance.

7 Q And for the record, Dr. Mujica, you mentioned
8 sometimes that you met with Beverly's dad and he talked to
9 you and said things. Do you see Beverly's dad here in the
10 courtroom this morning?

11 A Yes, sir.

12 Q And would you point him out for the record? Which
13 one he is?

14 A Right there (indicating).

15 Q Okay. If I'm one, two, and so forth, which number
16 is he?

17 A Fourth.

18 MR. CARROLL: Your Honor, let the record
19 reflect the witness has identified the Defendant in this
20 case?

21 THE COURT: Yes.

22 MR. CARROLL: That's all we have, Judge.

23 We pass the witness.

24 CROSS-EXAMINATION

25 MR. POTTER: Q I'm not really clear

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1 what we said. So I'm going to try to back it up just a
2 second, make sure. What you're saying is that the washing of
3 her vaginal area with a wash rag with chunks of glass in it,
4 wouldn't cause the lacerations you saw; is that right?

5 A Just, yes, general washing of the area. That is
6 true.

7 Q All right.

8 A It's not likely.

9 Q And --

10 MR. POTTER: Pass the witness.

11 MR. CARROLL: That's all we have.

12 THE COURT: You may step down.

13 MR. CARROLL: Your Honor, the State
14 rests.

15 THE COURT: May we excuse this Doctor
16 from attendance on the Court?

17 MR. POTTER: Yes, sir.

18 THE COURT: You are excused, Doctor.

19 MR. POTTER: Your Honor, may I walk up
20 with Mr. Carroll, just a minute?

21 THE COURT: Yes.

22 (Off-the-record discussion was had at the bench)

23 Ladies and Gentlemen of the Jury, we're going to
24 recess now until 2:30. And we'll have lunch and be back then
25 here in the courtroom -- in the jury room, please. You're