

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

CHAD EVANS

*
*
*
*
*
*

00-S-888 -
00-S-896
00-S-934 -
00-S-935

TELEPHONE DEPOSITION OF MICHAEL M. BADEN, M.D.
(Volume 1)

Deposition taken by agreement of counsel at the
Office of the Attorney General, 33 Capitol Street,
Concord, New Hampshire, on Friday, November 30,
2001, commencing at 12:17 p.m.

Court Reporter: Linda J. Harnum, CSR
NH CSR No. 11

DAVID R. JORDAN & ASSOCIATES
Certified Shorthand Reporters

P.O. Box 303
Exeter, NH 03833

(603) 778-7710
NH 1-800-562-3945

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

APPEARANCES:

For the Plaintiff: OFFICE OF THE ATTORNEY GENERAL
By: Neals-Eric William Delker,
Esq.
Simon R. Brown, Esq.
33 Capitol Street
Concord, NH 03301

For the Defendant: TWOMEY & SISTI
(Via Telephone) By: Mark L. Sisti, Esq.
Alan J. Cronheim, Esq.
78 Fleet Street
Portsmouth, NH 03801

STIPULATIONS

It is agreed that the deposition shall be taken in the first instance in stenotype, and when transcribed may be used for all purposes for which depositions are competent under New Hampshire practice.

Notice, filing, caption and all other formalities are waived. All objections except as to form are reserved and may be taken in court at the time of trial.

It is further agreed that if the deposition is not signed within thirty (30) days after submission to counsel, the signature of the deponent is waived.

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

WITNESS:

MICHAEL M. BADEN, M.D.

EXAMINATION:

By Mr. Delker

Page

4

EXHIBITS FOR IDENTIFICATION:

None.

1 Q. Okay. As chief forensic pathologist for
2 Duchess County, is that also a half -- or how do you
3 split up your time between those different
4 occupations? Let me ask you that.

5 A. I have -- half of my time is spent with
6 the New York State Police. And in Duchess County,
7 I'm available on an as-needed basis; that is, all
8 sudden, suspicious homicidal deaths. So it just
9 depends. I don't do any of the administrative work
10 there.

11 Q. Okay. How much of your time would you say
12 that takes up, the Duchess County?

13 A. Over a year time, maybe, let's see, half a
14 day a week it might average out.

15 Q. Okay. And then you said the rest of your
16 time you have a private practice?

17 A. Well, not the rest of my time. But in
18 addition to that, I have a private practice. I also
19 do a lot of teaching and lecturing and writing, so
20 that is included in the rest of my time.

21 Q. Okay. Just in rough terms, how much would
22 you say of your time is made up of private practice?

23 A. Of the total time, I would guess

1 approximately about a quarter of my time.

2 Q. Okay. I want to -- I've got as I
3 mentioned your CV. I want to just ask you a couple
4 of questions about that.

5 It lists a number of publications. Is
6 that everything that you have written?

7 A. No. Actually, I have been faulty in not
8 including a bunch of stuff that's happened since,
9 none of which would be pertinent to this matter.

10 I have written a number of articles on
11 going over to Croatia and Serbia, exhuming bodies and
12 of that ilk which I haven't had the time to put
13 together in an updated curriculum vitae.

14 Q. Okay. Let me ask you about publications
15 that are pertinent to this case. Have you written
16 anything in the area of child abuse?

17 A. I think -- and also a couple of books
18 meant for popular consumption. I think -- I don't
19 have it in front of me, but there are chapters in the
20 Atlas of Legal Medicine, sequentially probably the
21 first thing on the list or second or third. And I
22 did a chapter in a book for the Practicing Law
23 Institute that should be listed there.

1 Q. I'm sorry. Just so I'm clear, those are
2 -- those would be issues pertinent to child abuse?

3 A. Yes, that specifically have to do with
4 child abuse.

5 Q. Okay.

6 A. And there are probably a few other
7 articles there that have to do with it, but they
8 would be obvious from the titles.

9 Q. Okay.

10 A. But most of the work did have to do with
11 alcohol and drug abuse.

12 Q. Anything specific in the area of battered
13 child syndrome that you have written?

14 A. Yeah. What comes to mind is the chapter
15 in the volume on child abuse for the Practicing Law
16 Institute in which I traveled around with some other
17 -- a law professor and a couple other people giving
18 lectures on child abuse. It must have been in the
19 '70s, I think. And that was incorporated in a book.
20 It was really a more lawyer oriented description.

21 Q. Okay. In terms of medical publications,
22 have you written anything specifically on battered
23 child?

1 A. Well, in that first volume in the Atlas of
2 Legal Medicine is a chapter on child abuse in that
3 one.

4 Q. Okay.

5 A. And I think I refer to child abuse in --
6 one of the last listings is Unnatural Deaths,
7 Confessions of a Medical Examiner. That's for public
8 consumption. I think there is some material about
9 child abuse in that and in a more recent book that I
10 just published called Dead Reckoning.

11 Those aren't scientific publications, but
12 there are -- there is information from me about child
13 abuse, if you wanted to check it out.

14 Q. How many fatal child abuse cases would you
15 say you have worked on?

16 A. Oh, I would say over -- going back 40
17 years, over many hundreds, perhaps a thousand, taking
18 all kinds of -- not child death, but child abuse?

19 Q. I'm sorry. Say that again.

20 A. Yeah. Children, traumatic injuries to
21 children, over a thousand. Child abuse, many
22 hundreds.

23 Q. Okay. And just so I'm clear about the

1 distinction, traumatic injury isn't necessarily
2 inflicted by someone, it just --

3 A. That's right. Children who die in auto
4 accidents or fall from buildings or fall off
5 refrigerators where there is no evidence of other
6 abuse might not be classified as child abuse.

7 Q. I want to ask you a couple more background
8 questions before I get into the specifics of this
9 case.

10 Can you just describe or explain for me
11 what the diagnosis of battered child syndrome is as
12 you use that or understand that term?

13 A. Surely, yeah. It refers to multiple
14 injuries over a period of time to the child. That's
15 a battered child. Multiple injuries occurring over a
16 period of time, not at one sitting. And it may or
17 may not lead to death.

18 So most battered children, 99 percent
19 supposedly survive and live, and they are still
20 called battered children. So it's multiple injuries,
21 usually blunt force injuries, inflicted upon the
22 children over a period of time.

23 Q. Okay. And what symptoms -- obviously

1 multiple injuries, but what types of symptoms do you
2 look for in order to reach a diagnosis of battered
3 child syndrome?

4 A. Symptoms would be to the living, you know,
5 for a pediatrician or doctors who deal with a live
6 patient, and the kind of symptoms they would look for
7 would be bruising, fractures in various stages,
8 bruising in various stages of healing, fractures of
9 usually the extremities or ribs in various stages of
10 healing. They didn't all occur at the same time.

11 Q. Okay. And you said that's in terms of
12 live patients. How about --

13 A. And -- I'm sorry. That's in terms of a
14 live patient. And that will be -- the signs and the
15 symptoms would be the child would cry or not swallow,
16 not take food. As an example, one of the injuries
17 you have here is a torn frenulum, an injury to the
18 inside of the mouth. The symptom there would
19 probably be the child refusing to take the bottle
20 because it hurts.

21 So the children to whom this occurs often,
22 as with Cassidy, aren't old enough to say hey, it
23 hurts over here, or this happened just yesterday or

1 something. Usually the only symptom would be crying.
2 And the signs would be all the other things we talked
3 about.

4 Q. Okay. Is there anything else that you
5 look for in doing an autopsy in terms of, you know,
6 the symptoms, or not symptoms, but the signs of a
7 battered child?

8 A. Yeah. What we look for would be any
9 injuries on the outside of the body, on the inside of
10 the body, documented further by x-rays and by
11 microscopic slides and also by toxicology because
12 sometimes part of one child can be injured by giving
13 drugs to the child or alcohol to a child. So all
14 those kind of tests would be done, as Dr. Greenwald
15 did to evaluate any injuries that are present, and
16 also the ages of the injuries, to see if they have
17 happened at the same time or over a period of time.

18 Q. Okay. Does the role of explanations by
19 the parents or caregivers play any role in the
20 diagnosis of battered child syndrome?

21 A. Well, yes. The circumstances that you are
22 talking about, the autopsy. Now, in addition to the
23 autopsy, there are a lot of other factors that the

1 medical examiner or the examiner would want to know
2 about. The circumstances, the statements made by
3 various caregivers or persons who have knowledge
4 about what was going on in the household, all of
5 those statements surely would be -- should be taken
6 into consideration, not necessarily -- not at all
7 just to adopt them uncritically, but to evaluate them
8 to see which ones make sense and which ones don't.

9 And it's also very important for the
10 medical examiner to be able to assist in determining
11 whether statements made by each of the parties having
12 to do with the kind of injuries, of when injuries
13 occurred, are consistent or inconsistent with the
14 autopsy findings to be able to better determine how
15 much credibility can be given to the statements.

16 And then an examination sometimes of the
17 residence where the child lives. You know, burns can
18 also be a problem. How hot the water is, how the
19 crib is, how dirty or clean things are, what the --
20 how much the child was fed, whether or not 911 should
21 have been called and when they should have been
22 called looking at the injuries all come into part of
23 the evaluation that the medical examiner makes.

1 Q. Anything else significant just to make
2 sure we get the universe of factors that should be
3 considered by the examiner?

4 A. Yeah. Whatever past history there is with
5 the -- it's important to know from birth exactly the
6 condition of the body. You know, was it a difficult
7 birth? Can some of these injuries have been birth
8 injuries? How often was the child taken to see the
9 pediatrician? Did the child get its proper shots?
10 Did the pediatrician see any abnormalities? Did the
11 pediatrician look for abnormalities? Did some health
12 professional or professional look at the baby to
13 determine were there any bruises or fractures on the
14 baby during each visit, and when was the last visit?
15 That would also be taken into account.

16 Q. Anything else?

17 A. That's about what I can think of.

18 Q. Are there any common sort of explanations
19 that you see from case to case that caregivers give
20 for particular injuries? Are there any that are more
21 common than others?

22 A. Well, there are lots of things that can be
23 said such as the baby fell down a flight of stairs,

1 the dog jumped on the baby. And part of what may
2 happen if you are interviewing a person who is
3 suspected of being a batterer is that if the
4 explanation is not satisfactory to the interviewer
5 and more information is given, the person may keep
6 embellishing the story to include whatever new
7 information is given by the interviewer. So that --
8 nobody calls up the police and says, "I just battered
9 my child." There is always the story like I just
10 found the baby dead in the crib.

11 Also, there is another aspect to it; that
12 the call is usually delayed. That is, typically when
13 a child is battered, the caregiver doesn't call it in
14 right away. And so by the time that the ambulance
15 comes or that the baby is brought into the emergency
16 room, there is often the story that, you know, I just
17 fed the baby or just saw the baby a half an hour ago
18 and now the baby is dead, and the signs of death, the
19 texture change, the rigor mortus, the lividity, is
20 inconsistent with the story that's told; that is, the
21 signs of death may indicate this baby has been dead
22 for three or four or five hours from what the stomach
23 contents would so indicate. And the caregiver would

1 say, "Well, I just found the baby, or the baby -- it
2 just happened." So that's part of the investigation
3 and part of the pattern.

4 Q. Okay.

5 A. And often another part of the pattern is
6 if there are multiple children in the family, often
7 there may be just one child that gets battered, not
8 every child.

9 Q. How about do you hear the excuse like the
10 child bruises easily? Is that something that
11 caregivers --

12 A. That might be stated. That could be
13 stated. Sure.

14 Q. Okay. I'm going to turn now specifically
15 to this case. And --

16 A. But, I mean, even just in general, the
17 first reaction usually is the child isn't bruised,
18 nobody touched the child, nobody hit the child,
19 nobody did anything. But one of the patterns -- one
20 of the big patterns is that the child is not brought
21 to attention, to an emergency room when the injuries
22 occur. This happens during life also.

23 After death there is often a delay before

1 the baby -- the officials are called or the ambulance
2 is called. During life when the baby is alive,
3 typically there are injuries that don't get reported
4 at all, including fractures. And that I think is a
5 big thing that gets into this kind of case,
6 unfortunately.

7 But usually when a baby suffers a fracture
8 of an extremity, the parent immediately calls an
9 ambulance or goes and brings the child to the
10 emergency room, whereas in a battered child, very
11 commonly the child is not brought for medical
12 attention. And that's very important. And we see
13 that because there is a history of not being brought
14 because these fractures heal poorly.

15 The reason that the child could be
16 documented with fractures is that it's set properly
17 so it will grow normally and heal and grow normally.
18 If that doesn't happen, then the bone will be
19 abnormal for the rest of his life or her life.

20 Q. Anything else significant about -- in
21 general terms about reviewing a battered child case
22 that comes into play that you consider evaluating?

23 A. I'm trying to --

1 Q. I know this is a broad question, but I
2 just want to make sure.

3 A. If there are any additional questions you
4 have, I would be glad to address those. But these
5 are the kinds of issues that must always be addressed
6 in evaluating battered child. I'm sure there are
7 some others that I neglected to mention.

8 Q. I want to turn to this case and ask you
9 some background questions about this case.

10 I have a letter dated November 20, 2001,
11 addressed to Mark Sisti. It's a two-page letter from
12 Michael Baden. Is this your report in this case?

13 A. Yes.

14 Q. Is it the complete report?

15 A. Yes, it's a complete written report. I
16 have discussed the matter also with Mark.

17 Q. So just with respect to written material,
18 have you generated any other written reports in
19 connection with this case other than this letter?

20 A. No.

21 Q. I'm sorry?

22 A. No, I have not.

23 Q. Okay. Now, you mention some items that

1 you have or material that you have reviewed in
2 generating this report. The autopsy report, that's
3 the autopsy report of Dr. Greenwald?

4 A. Yes.

5 Q. And I presume you reviewed all the
6 attachments as well, the toxicology reports --

7 A. Right.

8 Q. -- and the report of Dr. Pendlebury, etc.?

9 A. Yes.

10 Q. Now, you got copies of the autopsy
11 photographs. When you say "seen photographs," what
12 are you referring to there?

13 A. As I recall, and I don't have them with
14 me, there were some photos of the residence for where
15 Kassidy -- there were some photos I reviewed, I
16 believe, where the baby was cared for.

17 Q. So meaning where she died, where she --

18 A. Both. I'm not sure now. At the home and
19 at Marshall's place, where the ambulance was called
20 to.

21 Q. Okay. So you think you saw both Evans'
22 home as well -- photos of Evans' home as well as
23 Marshall's?

1 A. I think so, I think so. Unfortunately,
2 when I got on the plane this morning from New York,
3 some of my materials didn't arrive with me which
4 includes the photos. I will get them, but it will be
5 after the deposition.

6 Q. Microscopic slides, those are the original
7 slides that Dr. Greenwald sent you; correct?

8 A. Well, they were -- yes. I wouldn't say
9 originals. Those were slides prepared at Dr.
10 Greenwald's request.

11 Q. But just so I am clear, they are the
12 slides that she -- you reviewed the same slides she
13 reviewed, right, not copies?

14 A. I think so.

15 Q. Did you receive the second -- you have
16 listed here autopsy x-rays. Did you receive the
17 x-rays from York Hospital yet?

18 A. I had asked Mark about those. And no, I
19 haven't.

20 Q. They should be arriving shortly. I
21 received mine the other day.

22 A. Okay. I haven't gotten those.

23 MR. SISTI: We haven't gotten anything

1 like that. I think -- Alan, did you have them
2 directly going down to Dr. Baden? Is that what your
3 plan was?

4 MR. CRONHEIM: Yes.

5 MR. DELKER: That was the address -- I
6 gave them the New York, New York address.

7 THE WITNESS: Thank you. That will be
8 fine.

9 Q. BY MR. DELKER: So in terms of the next
10 thing you list, the medical and hospital records, the
11 hospital records I take it from the York Hospital?

12 A. Yes.

13 Q. And any other medical records other than
14 the emergency room records from November 9th?

15 A. I think it was the emergency room and also
16 the ambulance or -- now, I don't recall whether --
17 yeah, I think an ambulance was called and responded
18 to the scene.

19 Q. Okay. Did you have any prior medical
20 history in terms of any reports from --

21 A. No. My understanding was that the baby
22 had been last seen by a pediatrician in July, around
23 July. And I don't believe I have any of those prior

1 records.

2 Q. And then you list the Maine State Police
3 reports broadly. Can you be more specific in terms
4 of what police reports you reviewed?

5 A. Unfortunately I don't have them with me.
6 And I'm sure that Mark has a list of everything he
7 sent to me. And I could -- I could -- I will be back
8 in my office Sunday. I could fax you a list of
9 everything that I received.

10 Q. I would appreciate that so I know the
11 universe of what you -- in terms of written materials
12 and what you received.

13 A. So I will fax it. What is your fax
14 number?

15 Q. Area code 603-271-2110.

16 A. Okay. List of police reports, right, and
17 medicals.

18 Q. Let me just cover a couple categories and
19 see if you recall having reviewed any of these.

20 Did you review the defendant's statement
21 to the police on the night that Cassidy died?

22 A. Yes.

23 Q. How about Jeff Marshall's statements?

1 A. Yes.

2 Q. Did you review -- well, you wouldn't know
3 all, but did you review more than one of his
4 statements?

5 A. I don't recall. I don't recall.

6 Q. How about Amanda Bortner's statements?

7 A. Yes.

8 Q. Jennifer Conley's statements?

9 A. I don't recall that. I'm not sure. I may
10 have. But I reviewed statements of the principals
11 and some other statements, but I don't remember the
12 names.

13 Q. Did you speak with the defendant in this
14 case?

15 A. I did not.

16 Q. You mentioned that you spoke with Mark
17 Sisti. Was there anything about what he told you
18 that you relied on in reaching your conclusions in
19 this case?

20 A. Not that I relied upon. We did discuss my
21 opinions. But nothing other than he felt his client
22 was being unjustly and unfairly accused. I didn't
23 adopt that feeling from what he told me.

1 Q. I just want to make sure that there wasn't
2 anything verbally conveyed to you that you --

3 A. No, nothing verbally that I relied upon in
4 arriving at my opinion.

5 Q. Did you speak with Dr. Greenwald in this
6 case?

7 A. I did.

8 Q. What was the nature of that conversation?

9 A. Well, the nature was, one, to advise her
10 that I received all the material that she had sent to
11 me, which was considerable, and to advise her that I
12 thought that she did a superb job as far as a medical
13 examiner and did a much better investigation report
14 than a great majority of battered child
15 investigations done by other colleagues.

16 Q. Have you worked with Dr. Greenwald in the
17 past?

18 A. I have worked in the sense that we both
19 participate in an annual seminar around August at
20 Colby College on forensic science which Henry Ryan
21 was very much involved with before her. And I think
22 people from your office have been down to it. So for
23 about 25 years I have been involved with Colby

1 College, Waterville, Maine, annual forensic medicine
2 -- what do they call it, continuing medical education
3 type of course, about a week-long course. And I have
4 met Margaret Greenwald there and spoke to her in that
5 circumstance.

6 Q. In your opinion is she a competent,
7 experienced --

8 A. I think she is excellent. And I was truly
9 very impressed with the care that she made in this
10 particular case.

11 Q. Anything in particular in terms of the
12 autopsy report? I know you have sort of given some
13 praise to the autopsy. I just want to make sure that
14 there aren't any deficiencies either in the autopsy
15 itself or in the report, things that you would have
16 liked to have seen that you didn't see there.

17 A. The only thing would be complete x-rays,
18 which I asked her about. And she had explained to me
19 that she didn't duplicate the x-rays that had been
20 taken at the hospital, which is reasonable. So that
21 it was a matter of getting copies of the hospital
22 x-rays, which should be available.

23 But other than that one issue, I think she

1 went much beyond what's normally done in a battered
2 child case, to her credit.

3 Q. All right. Now I want to ask you some
4 more questions about -- going back to your report,
5 your November 20th letter.

6 You have -- the second paragraph starts
7 "Kassidy was born," etc. Where did you get the
8 background information in this paragraph? What was
9 the source of that?

10 A. I would have gotten it from Dr.
11 Greenwald's autopsy report and also I think in the
12 medical records. I'm sure in the medical records
13 that I did have there was listed date of birth.

14 Q. Okay.

15 A. There were various records that have a
16 date of birth listed.

17 Q. Okay. That was too broad of a question.
18 Let me try again.

19 A little bit further down in that
20 paragraph you have some information about that
21 Kassidy was dropped off by Amanda at eight o'clock
22 and Marshall found her around noon. What was the
23 source of those timing -- that timing information?

1 A. I believe that was the interviews with the
2 -- or the statements made by the three people,
3 Kassidy, Marshall -- not Kassidy, but Marshall, Chad,
4 and the mother.

5 Q. Amanda?

6 A. And Amanda. And also I think from police
7 reports, from other police reports and from the -- as
8 I recall, you know, some of this also was in Dr.
9 Greenwald's records that I received, part of the
10 postmortem records.

11 Q. Okay. You have stated here that Marshall
12 found her, meaning Kassidy, unconscious at around 12
13 noon but delayed in calling 911. In terms of the
14 delay, I mean, are you -- if he found her around 911
15 -- I mean around 12 noon, how do you know there was a
16 delay in calling?

17 A. I think some information that I -- that I
18 read perhaps in Marshall's girlfriend, Amanda's
19 sister, or something, Amanda's relative who said that
20 he -- that Marshall had called her and indicated that
21 he thought there was something wrong with the baby
22 somewhere around 12 o'clock or so or maybe earlier,
23 maybe around 11 o'clock, the times aren't that

1 straight, to indicate that he thought there was
2 something wrong with the baby and then during the
3 conversation decided that there wasn't anything wrong
4 with the baby, and then sometime later called and
5 said there was -- the baby was unconscious or
6 something. There were two telephone calls to his
7 girlfriend, as I recall.

8 And also I put that together with the
9 photographs, the police photographs that were taken a
10 couple hours later, showing a very pronounced
11 lividity, indicating in my interpretation that the
12 baby was dead by the time -- at the time of the first
13 call. That is, it would have taken many hours for
14 that lividity to develop. There wasn't enough time
15 after the one o'clock call to the EMT's.

16 Q. Let me sort of parse that a little bit.
17 The police photographs, do you know what time those
18 were taken, how much after the EMT's arrived?

19 A. My recollection is somewhere around 2,
20 2:30 in the -- at the hospital, I believe. That is
21 an hour or two or three hours -- within two or three
22 hours of the EMT's getting there.

23 Q. Okay. And would it change your opinion if

1 those photographs were taken later than that, like
2 four or five o'clock in the afternoon, about
3 Cassidy's condition when Marshall called?

4 A. That might. There are two things about
5 it. One is in that three or four hours, I would have
6 to look at the intensity of the lividity and whether
7 it was fixed or not fixed. But it could have an
8 effect.

9 Q. How long does it take for lividity to
10 become apparent, to be observable?

11 A. Usually in a child it takes at least two
12 hours before you would see a definite lividity.
13 There might be inklings of it in an hour or hour and
14 a half. In two hours one can usually see lividity,
15 and then it gets more and more intense. Two hours is
16 a very faint lividity. And after three, four, five
17 hours, it becomes much more intense. And then after
18 six, seven hours, it becomes fixed. If you press on
19 it, it doesn't go away. In the first few hours,
20 pressure will cause it to go away.

21 Q. Did you observe the photographs of Cassidy
22 being treated by the EMT's at the Marshall residence?
23 There is two -- there is a couple of photographs,

1 there is a couple of EMT's sort of working on Kassidy
2 on a piece of sheetrock.

3 A. I don't recall.

4 Q. I think --

5 A. Regular or Polaroid?

6 Q. No. They were regular photographs.

7 A. I don't recall.

8 Q. Okay. I think what I'd like to do since
9 we are doing this by telephone and it's impossible to
10 sort of sit down and look at the photographs
11 together, before you testify -- and Mark and Alan, if
12 we can get an agreement that I'd like to have a few
13 minutes to talk with him and with the photographs in
14 hand about these issues of lividity.

15 A. Yeah. I think I would be more
16 comfortable, also, so you know exactly what my
17 opinions are and what we are talking about. It's
18 very difficult to do that over the phone, especially
19 when I don't have the photos in front of me either.

20 Q. Okay. So we will take a few minutes
21 before you testify to talk about those issues.

22 A. That would be fine.

23 MR. SISTI: We will have the same

1 opportunity concerning the photographs with
2 Dr. Greenwald?

3 MR. DELKER: Absolutely. Okay.
4 All right.

5 Q. BY MR. DELKER: Just so I am clear about
6 your opinion, based on the material that you have
7 reviewed so far and the information you have, is it
8 your opinion that Kassidy was dead when the EMT's
9 arrived?

10 A. Yes, or that is, was dead but was not
11 pronounced dead.

12 Q. I understand.

13 A. Essentially dead, yes.

14 Q. Do you have -- this may not be a very
15 medically correct question, but do you have an
16 opinion on how dead she was, how long she had been
17 dead? Maybe that's better phrased.

18 A. Well, I think from the history, and again,
19 I don't want to be misleading because neither of us
20 have the photos. We are not necessarily talking
21 about the same photos. But I think from my
22 evaluation of the lividity and what was attempted,
23 that she was dead essentially around -- you know,

1 before, for perhaps an hour before the EMT's were
2 called, before the ambulance was called.

3 Q. Okay.

4 A. But I would be glad to more specifically
5 address that when you and I look at the photographs
6 together.

7 Q. Okay. That's fair enough.

8 I want to turn now to the issue of the
9 timing of the bruises. You have some time frames
10 here, and I want to try to understand the parameters
11 of those time frames.

12 I think your report says that Kassidy
13 suffered from many different bruises. Correct?

14 A. Yes.

15 Q. And those were of all different ages?

16 A. Many different ages, yes.

17 Q. So maybe it makes sense to go through the
18 particular injuries and that will give me a better
19 understanding of which injuries correspond to which
20 ages. I mean, have you reached conclusions or
21 opinions with respect to that?

22 A. I would just say that I think when
23 injuries occur and they start healing, you know,

1 after a few hours they start to heal, there is a
2 great variation in how the injuries heal. It depends
3 on what organs or tissues are involved. It depends
4 on the skin or -- could you hold on for one second
5 here because I think I'm -- can you hold on a moment,
6 please?

7 MR. DELKER: Sure.

8 (Discussion off the record.)

9 THE WITNESS: Hello?

10 MR. DELKER: Yes.

11 A. I'm sorry. I can't be very specific about
12 each injury. What I can say is that many of them are
13 days old. The bone injuries can be months old. Not
14 many of them are fresh; that is, less than an hour or
15 two, if that makes sense.

16 Q. Sure. Do you have an opinion about
17 whether any of them were inflicted between nine
18 o'clock or when Cassidy was dropped off that morning
19 and the time she died?

20 A. Well, that's difficult because some of the
21 skin injuries on the face and abdomen allegedly were
22 not there when the mom dropped the baby off. So that
23 would indicate that they were incurred after the baby

1 was dropped off or they weren't seen the night before
2 when there was a friend over to the house. But the
3 microscopic sections could be reflective of some of
4 the injuries being within that three-hour time limit
5 or so or longer than that, or longer than that.

6 And I wouldn't want -- and I don't --
7 remember, the microscopic sections, unfortunately,
8 and I think Dr. Greenwald did a very thorough job in
9 trying to sample everything, but you can't sample all
10 of the injuries because there would be thousands of
11 sections then. So the pathologist doesn't always get
12 the oldest part of the lesion or the youngest part of
13 the lesion in making microscopic slides.

14 So to translate that into English, the
15 history indicates that some of the injuries occurred
16 after nine o'clock or after the baby was dropped off.
17 The microscopic slides are consistent with that or
18 consistent with other times.

19 Q. Okay. Just so I'm clear, your opinion
20 that some of the injuries could have been inflicted
21 after Kassidy was dropped off is based on
22 observations of witnesses that are -- well, let me
23 ask you that. Is it based on the observations of the

1 witnesses?

2 A. It's based on both. The mom says some of
3 those injuries weren't there when I dropped the baby
4 off. A fellow who I forget the name who was at the
5 residence the night before and saw the baby being
6 bathed said that he hadn't seen some of those
7 injuries that night.

8 The microscopic findings are consistent
9 with those statements, but they are also consistent
10 with the injuries being there longer.

11 So it's on the basis of the statements by
12 the mom in particular and the fact that the
13 microscopic slides of those areas would be consistent
14 with what she is saying. They can't be excluded.
15 But they can also indicate -- they can also be
16 consistent with a longer length of time interval.
17 The reason for that is that the body changes after
18 injury and sends in all kinds of repair processes.
19 And they are very variable from person to person,
20 from site to site, and in -- and a specific time.

21 Q. Let me ask you about some of the specific
22 areas. I just want to see if this holds true, your
23 sort of general opinion holds true with some specific

1 areas.

2 You are aware of the bruising on the
3 abdomen; correct?

4 A. Right.

5 Q. And there was also internal injury in that
6 area as well; correct?

7 A. Yes.

8 Q. Could you describe what you saw with
9 respect to the injury in that area of the abdomen and
10 internally?

11 A. I think that the injury to the skin, to
12 the abdominal skin surface could have occurred,
13 developed after being dropped off by the mom as the
14 mom indicates or might have been there a longer
15 period of time, as well as the injury to the
16 underlying intestine.

17 Q. Okay.

18 A. Hemorrhage of the underlying intestine.
19 That could have been a few hours or maybe a lot
20 longer.

21 Q. All right. Now, if there was, as Dr.
22 Greenwald recognized, reaction in the cells
23 internally, would that be consistent with those

1 injuries having been inflicted the night before?

2 A. Could be. There is a wide area there. It
3 could have been the night before or many hours before
4 that.

5 In my report I say something about
6 consistent with five hours or consistent with 20
7 hours for some of those injuries. That is, the
8 microscopic slides are helpful but not specific
9 enough in telling when an injury occurred.

10 Q. Okay. So what is it that you look for in
11 the microscopic slides in order to assist in timing
12 of the injuries?

13 A. Well, the cellular reaction. The body
14 starts sending live cells, polymorphonuclear cells,
15 polys to the injured site, and then at a later time
16 macrophages, mononuclear cells. Scavengers come in.
17 Various proteins and fibrin comes in, swelling,
18 edema. But this varies from tissue to tissue and
19 from person to person.

20 Q. Okay. Are there any sort of ranges of
21 times when these different reactions occur in the
22 cells?

23 A. It depends not only on that range of time

1 but the intensity of the reaction. Part of our
2 problem with intensity is it depends how many
3 sections are taken, because in the same lesion in the
4 body one can get an area that looks two hours old and
5 another area might be 20 hours old because the whole
6 injury doesn't respond in the same time.

7 Also, one of the things I think that Dr.
8 Greenwald did was look for iron pigment. If there is
9 iron pigment, that would indicate more than a few
10 days to develop iron pigment. So those -- and in
11 bone, one can look for callus formation and bone
12 restructuring.

13 Q. Okay.

14 A. The different tissues react differently.
15 And that's why also I think the x-rays are so
16 important.

17 I must say that the x-rays that are being
18 sent to me might be helpful because sometimes aging
19 can be better identified by bones, by the x-rays,
20 rather than by microscopic slides. And I think it
21 would be a good idea if when I see you with the
22 photographs I also go over the x-rays with you --

23 Q. Okay.

1 A. -- so that we are all on the same page.

2 Q. Let me just make sure I understand how the
3 x-rays assist in aging. I mean, how would x-rays
4 assist in the aging of the abdominal injuries?

5 A. Bones, only the bones. X-rays are good
6 only with bones.

7 Q. Okay. Right. But those were -- right.
8 Those would only tell you when the fractures
9 occurred. They don't tell you anything about the
10 blunt injuries in terms of the abdomen or the head?

11 A. That's right. We are talking about bones.
12 We are talking about the extremities and when those
13 fractures occurred, that's right, from the healing
14 process which shows up in x-ray.

15 In the soft tissues like the abdomen, we
16 are talking about the body's reaction. That can't be
17 seen on x-rays.

18 Q. Okay. Do you have Dr. Greenwald's report
19 in front of you?

20 A. I don't. It was being faxed up here.
21 It's in the luggage that didn't come. Alan tried to
22 fax it. The secretary went down to try and get it
23 from the fax machine, but apparently there is -- they

1 get a lot of stuff in. So I will -- it's been faxed
2 to me, but I haven't received it yet.

3 Q. Okay. But I wanted to ask you some
4 questions particularly about the section -- I wanted
5 to focus for the time being on the abdominal
6 injuries. And I am going to ask you some
7 questions --

8 A. How much more time do you have? The
9 reason I'm down here is I'm giving a lecture at 1:30.
10 I don't want to make suggestions because I'm not a
11 lawyer, but would Sunday morning be any good to go
12 over this? Then I will have everything together.

13 MR. DELKER: That's fine by me. Is that
14 okay with Mark and Alan?

15 MR. SISTI: I have an appointment.

16 MR. CRONHEIM: It's fine with me.

17 THE WITNESS: Do you think the x-rays will
18 be -- you got the x-rays today?

19 MR. DELKER: I got them actually two days
20 ago. So you should have them in your office.

21 THE WITNESS: Because I think you are
22 getting at some questions that those x-rays will be
23 helpful for me. I would hate to tell you one thing

1 now and say my opinion has changed now that I saw the
2 other x-rays.

3 MR. DELKER: No. I agree. I wouldn't
4 want that to happen.

5 THE WITNESS: Also then I will have
6 everything in front of me.

7 Alan, would that intrude upon you too
8 much?

9 MR. CRONHEIM: Not for me.

10 MR. DELKER: Okay.

11 THE WITNESS: Then I won't be under a time
12 pressure.

13 Q. BY MR. DELKER: Okay. Why don't I -- I
14 will save the timing questions. I might be able to
15 ask you some more general questions. Do you have a
16 few more minutes?

17 A. Maybe about five minutes.

18 Q. Okay. Let me ask you a general question
19 about a child's reaction. Cassidy in this case had a
20 subdural -- had subdural hemorrhaging; correct? What
21 would you expect in that situation in terms of the
22 reaction of a child?

23 A. Usually there is a subdural that is not a

1 very big subdural. So sometimes there may be no
2 symptoms from a small subdural like this, and
3 sometimes it will irritate the child and make the
4 child more irritable, crying.

5 And if there were pressure -- as I recall,
6 there was no evidence of pressure on the brain. You
7 see, the subdural isn't what causes the problem.
8 It's the pressing on the brain. And as I recall,
9 there was no brain pressure, which I will explain to
10 you next time, how we tell that.

11 But the part of the problem, just so you
12 understand where I'm coming from, Mr. Delker, is
13 Kassidy didn't appear to react normally as other
14 children do, or if she did react, nobody noticed it,
15 because remember, when you are talking about the
16 subdural hemorrhage or the fractures of the
17 extremities or the intestinal injuries, some of which
18 clearly were days before or weeks before, most babies
19 yell and scream until a doctor saw the baby.

20 Whatever happened here, none of those
21 injuries triggered off an examination by a physician.
22 So we can talk about normally what you would expect,
23 but if indeed Kassidy reacted as I would expect from

1 the tibia fracture or from the ulnar fracture, she
2 would have been seen by a doctor, if she had been
3 making such a fuss and the caregiver would have seen
4 the injuries, that a physician would have been
5 called. So that this is not the normal situation.

6 MR. DELKER: Okay. All right. Well, why
7 don't we just then so we don't --

8 THE WITNESS: I think I have confused all
9 three of you.

10 MR. DELKER: I think so. Let's follow up
11 on that so that we are not under time pressure on
12 Sunday, because I do want you to explain that.

13 THE WITNESS: Let me give you my number.

14 MR. DELKER: Hang on a second. Okay.

15 THE WITNESS: It's 212-397-2732.

16 MR. DELKER: 2732?

17 THE WITNESS: Yeah.

18 MR. DELKER: Well, the way we can do this
19 is I will be -- because it will only be three of us
20 instead of four, I will be able to contact Alan and
21 you and we can do it with our internal conferencing
22 system.

23 THE WITNESS: That would be great. Maybe

1 around ten o'clock would be a good time for me. Is
2 that okay?

3 MR. CRONHEIM: Fine.

4 MR. DELKER: Okay. I've just got to make
5 sure we can get a stenographer. Okay. We are all
6 set on the stenographer. Fine. Then we will
7 continue this on Sunday. Thank you.

8 THE WITNESS: Okay. Thank you very much.

9 (Deposition suspended at 1:13 p.m.)

10 * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

David R. Jordan & Associates
Certified Shorthand Reporters
Professional Videotape Services
P.O. Box 303
Exeter, New Hampshire 03833-0303
(603) 778-7710 NH (800) 562-3945 Fax (603) 926-7950

December 3, 2001

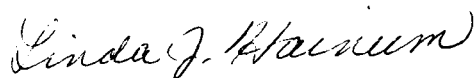
Alan Cronheim, Esq.
Twomey & Sisti
78 Fleet Street
Portsmouth, NH 03801

Dear Mr. Cronheim:

Enclosed please find the original transcript of the deposition of Michael Baden, M.D., (Volume 1 and 2) taken on November 30 and December 2, 2001, Re: State of NH v. Chad Evans.

Thank you.

Yours very truly,



Linda J. Harnum, CSR

Enc.