

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

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STATE OF NEW HAMPSHIRE

v.

CHAD EVANS

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

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TELEPHONE DEPOSITION OF MICHAEL M. BADEN, M.D.  
(Volume 2)

Deposition taken by agreement of counsel at the  
Office of the Attorney General, 33 Capitol Street,  
Concord, New Hampshire, on Sunday, December 2,  
2001, commencing at 10:20 a.m.

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

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1     APPEARANCES:

2  
3     For the Plaintiff:     OFFICE OF THE ATTORNEY GENERAL  
4                             By: Neals-Erik William Delker,  
5                                     Esq.  
6                                     Simon R. Brown, Esq.  
7                             33 Capitol Street  
8                             Concord, NH 03301

9  
10  
11     For the Defendant:    TWOMEY & SISTI  
12     (Via Telephone)       By: Alan J. Cronheim, Esq.  
13                             78 Fleet Street  
14                             Portsmouth, NH 03801

15  
16                             STIPULATIONS

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

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

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

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I N D E X

WITNESS:

MICHAEL M. BADEN, M.D.

EXAMINATION:

By Mr. Delker

Page

4

EXHIBITS FOR IDENTIFICATION:

None.

1                   MICHAEL M. BADEN, M.D.

2                   having been previously duly sworn, was deposed  
3                   and testified as follows:

4                   EXAMINATION

5                   BY MR. DELKER:

6                   Q.        Good morning. I guess we will resume. I  
7                   actually wanted to cover one more background thing  
8                   that occurred to me before we go back into the  
9                   specifics of the case.

10                  I didn't get any information about your  
11                  fee structure in this case. Can you give me some  
12                  background on that?

13                  A.        My fee structure is usually worked out  
14                  with my secretary, but I received a retainer of  
15                  \$4,000, and that would cover pretty much everything  
16                  until testimony. And that testimony would be at  
17                  \$5,000 a day or \$4,000 a day depending what my  
18                  secretary worked out with Mr. Sisti.

19                  MR. DELKER: Okay. Alan?

20                  A.        Traveling out of town, plus expenses.

21                  MR. DELKER: Plus expenses. Okay. Alan?

22                  MR. CRONHEIM: Yes.

23                  MR. DELKER: Are you there? Is it

1 possible to get something in writing about his  
2 specific fee structure?

3 MR. CRONHEIM: We don't have one to my  
4 knowledge.

5 THE WITNESS: No, I don't think so. I  
6 think when my secretary spoke to Mark, it's less than  
7 it would normally be because of our prior long-term  
8 relationships.

9 Q. BY MR. DELKER: What do you mean by that?

10 A. I was involved with Mark in a couple of  
11 cases some 20 years ago or something when he was up  
12 in New Hampshire and I was down in New York City.  
13 And my fees were much less then, so I would assume my  
14 secretary made less charge than would normally be.

15 Q. Okay. All right. I wanted to get back  
16 into the -- what we were talking about on, when was  
17 it, Friday about the -- we were talking about the  
18 timing of the various injuries.

19 And I guess I wanted to start with the  
20 injuries around the abdomen area and what your  
21 opinion from reviewing the microscopic slides would  
22 be as to what the timing of those injuries were.

23 A. Yeah. The internal injuries to the

1 intestine and the mesentery show on the microscopic  
2 that some of the injury is maybe 12, 18 hours old.  
3 From the -- let's see. I think what -- see what Dr.  
4 Greenwald refers to. She refers to on Page 14 of her  
5 report --

6 Q. Yeah, I have it.

7 A. On the microscopic examination in the  
8 middle of that page in the fourth section, I agree  
9 with it, that there is considerable hemorrhage in the  
10 area of the intestines and mesentery with  
11 considerable inflammation. That inflammation is  
12 older than -- say older than the four hours the baby  
13 was with Marshall. Are you with me?

14 Q. Yes.

15 A. Assuming the baby -- I assume the baby  
16 died around 11 or 12. And this would precede that.  
17 It would go back a good 15, 18 hours. And when I say  
18 that, going through the history and trying to  
19 correlate it with what happened in the history, I  
20 can't tell from the microscopics whether it happened  
21 4 p.m., 5 p.m., 6 p.m. when the baby was in  
22 exclusively Marshall's control, or 6 p.m., 7 p.m., 8  
23 p.m. when exclusively in Chad's control, you

1 understand. But it happened around that time.

2 And my opinion from correlating it with  
3 the symptoms is that if Chad did see a change in the  
4 baby when he picked the baby up from Marshall at  
5 around 6 p.m. or so, it happened before that, to the  
6 extent that one can rely on that report.

7 What I am saying to you is when we look at  
8 these kinds of injuries, we have to be able to  
9 correlate the autopsy findings -- the microscopic  
10 findings, it's not specific, it's not like a clock,  
11 with the clinical symptoms. And in that regard, if  
12 there are two stories: it happened, A, before 6 p.m.  
13 or it happened after 6 p.m., I would say that it  
14 could have been either way, for a few hours either  
15 way.

16 Q. I guess, why would you accept one story  
17 over another story?

18 A. I'm not accepting it. I'm just saying to  
19 you only if it's consistent -- there is consistency  
20 with the autopsy finding.

21 I'm just saying to you that to give you an  
22 idea of how old that injury is that Dr. Greenwald  
23 sectioned through, it could have happened over, you

1 know, a number of -- a many hour period of time from  
2 the microscopic appearance. And then we have to  
3 correlate it with the different statements, the  
4 different descriptions. To the extent that Chad says  
5 that the baby looked peculiar and different and had  
6 diminished health when I picked her up than when she  
7 was dropped off in the morning, it would correlate  
8 with the injuries having occurred on 4 or 5 in the  
9 afternoon when Marshall had the baby.

10 If the baby was fine when he picks her up  
11 and then goes bad at 9:00 or 10:00, then it's  
12 consistent with that also. But you can't make the  
13 distinction just on the basis of the autopsy  
14 findings. That becomes, you know, a credibility  
15 issue by the caretakers.

16 Q. Okay. You sort of spoke generically about  
17 some of Chad's observations that would be consistent  
18 with this injury having been inflicted earlier. Are  
19 there specific things that are sort of more telltale  
20 in your opinion than others?

21 A. I think what's more specific is that  
22 apparently Chad makes a call to Marshall around --  
23 after he picks the baby up and says -- allegedly to

1 say what's -- you know, there is something wrong with  
2 the baby, what happened. That is very persuasive to  
3 me that something happened to the baby before Chad  
4 picked her up. Of course that's not my expertise. I  
5 mean, that's a jury question or your question or  
6 whatever it is. It's not my question as to who is  
7 telling the truth.

8 I'm saying that there is a -- I think  
9 Marshall as I recall did say he got a call from Chad.  
10 Chad says he made the call after he picks the baby  
11 up. He felt there was something wrong with the baby.  
12 And what he is saying is wrong with the baby would  
13 fit with what turns out later to be the autopsy  
14 microscopic findings.

15 Q. Okay. Let me ask you this: With  
16 respect --

17 A. In my experience, it's hard to make  
18 stories up that fit the pathology.

19 Q. Sure. I understand. Let me ask you this:  
20 With respect to that internal injury in the abdomen  
21 area, would observations of Kassidy eating be  
22 consistent with or inconsistent with the type of  
23 injury she inflicted -- or was inflicted?

1           A.     If Kassidy comes back home and just acts  
2 normally and eats normally, that would speak against  
3 an intestinal injury. If Kassidy comes back and  
4 isn't acting normally and doesn't eat normally, could  
5 eat but not necessarily normally, that would speak to  
6 the fact that the injury had already occurred at the  
7 time of eating. At the time of eating, if Kassidy  
8 eats normally would suggest that the intestines are  
9 entirely normal.

10                 But as I was advised, instead of eating a  
11 full meal, the baby ate half a banana or something  
12 which was abnormal, that would speak to the injury  
13 already having been there. You see, it's an injury  
14 that develops. There is an injury. There is  
15 technical repair. There is electrolyte loss because  
16 of that injury, so that it would get worse over time.

17           Q.     Okay. How about the external? I mean,  
18 what kinds of external --

19           A.     Well, the external is interesting because  
20 there is -- you know, in the photos I have here,  
21 there are some bruises on the abdomen. I find it's  
22 hard to tell age of bruises by photographs because it  
23 depends how the photos are taken, how they are

1 developed, etc.

2 The best ability for a pathologist to tell  
3 the age of a bruise on the abdominal skin is by  
4 looking at it under the microscope.

5 As best as I can determine, although I  
6 think Dr. Greenwald did a very fine autopsy and took  
7 samples from lots and lots of places, she didn't take  
8 samples from that area. So we don't have or I don't  
9 have a report or slide of a microscopic section of  
10 the abdomen unless I'm missing it someplace.

11 So I can't tell the age by looking at it  
12 with the naked eye. However, in trying to correlate,  
13 which medical examiners do, the autopsy findings with  
14 all the circumstances as seen on the examination of  
15 the body grossly, the statements that I read through  
16 by the mother and also by that visitor whose name I  
17 keep forgetting who was in the house, Train or  
18 something.

19 Q. Travis.

20 A. Travis, yeah. To the extent that the mom  
21 and the visitor said they didn't notice any bruises  
22 on the abdomen when the baby was given a bath or  
23 changed and to the extent that the mom says that

1 there were no bruises when she brings the baby -- on  
2 the abdomen when she brings the baby in to Marshall  
3 at 8 a.m. Thursday morning, that would speak to the  
4 baby having suffered those injuries after being  
5 dropped off at 8 a.m. That could -- that wouldn't  
6 account for the injury to the intestines the day  
7 before but could account for additional injury after  
8 to the abdomen and to the additional hemorrhage in  
9 the -- the fresher hemorrhage in the mesentery.

10 Q. Well, let me -- I mean, if there is older,  
11 and by older I mean in the 12 or 15 to 18-hour range,  
12 injury internally in the abdomen, how is that  
13 consistent with no external observations?

14 A. One can get internal injuries without  
15 external injuries especially if someone is wearing  
16 clothing. So that every internal injury doesn't need  
17 an external injury, just in general terms. A lot  
18 depends on clothing and how the injury is applied.

19 A blow from a fist through clothing might  
20 not leave a mark on the skin. It may or may not.  
21 That is, what I am saying here is the only  
22 information I have on that apart from, you know, the  
23 bruise on the skin itself is the mom saying it wasn't

1 there. In fact, the mom says -- for what it's worth,  
2 the mom says that there were no bruises on the  
3 abdomen when I bathed the baby, you know, I took the  
4 baby up in the morning, and there were less bruises  
5 on the face.

6 So according to the -- interpreting the  
7 mom's -- what the mom says, the injuries to the  
8 abdomen and some to the face could have occurred in  
9 less than four hours. I'm not saying they did occur,  
10 but they could have occurred in less than three or  
11 four hours.

12 Q. All right.

13 A. I think what I am saying -- I mean, not to  
14 be confusing, there are a bunch of injuries to this  
15 child. I agree with Dr. Greenwald, this is a  
16 battered child. The child was battered over a period  
17 of time and finally developed enough internal  
18 injuries that the baby died.

19 As I say in my report I think that I  
20 issued, any of the three people involved here did  
21 have exclusive opportunity to inflict injuries, many  
22 of the injuries, and that the -- if the mother is  
23 correct in her statements and observations, the final

1 injuries occurred after the baby was brought in at 8  
2 a.m. in the morning, because there are additional  
3 facial injuries and abdominal injuries that weren't  
4 present. Now, that all has a lot of assumptions in  
5 there, you know, the mother being accurate in her  
6 statements.

7 Q. Well, right. So, I mean, if you accept  
8 -- just to make sure I understand what you are  
9 saying, if you accept what the mother says, then the  
10 injuries occurred after she dropped the child off.  
11 But if you accept what --

12 A. Some of the injuries.

13 Q. Yeah, some of the injuries. But if you  
14 accept what Marshall and --

15 A. The straw that broke the camel's back.

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

17 A. That some of the injuries would have  
18 occurred -- specifically facial and abdominal  
19 injuries would have occurred after the mother dropped  
20 the baby off at 8 a.m. and would have been the straw  
21 that broke the camel's back; that is, would have been  
22 the final cause of death in a child who had had  
23 repeated injuries over a period of time previously.

1       When it would seem to me one can't specifically say  
2       who gave -- who committed any of the other injuries  
3       except the fact that I think Marshall says he stepped  
4       on the kid one time and Chad says that she got some  
5       kind of ball in the eye another time which could  
6       account for some of the injuries. Some aren't -- we  
7       can't account for.

8           Q.       All right. I think I understand your  
9       opinions in that regard. I want to go through some  
10      more of the specific injuries to get a sense of how  
11      much older or newer some of the other injuries are.

12                   Specifically -- actually, if you turn to  
13      Page 15 of Dr. Greenwald's report. I wanted to ask  
14      you about your observations of the injuries in the  
15      optic nerve.

16           A.       I think the optic nerve and retinal  
17      injuries show largely because of the iron stains that  
18      have a little bit of iron that these are a day or two  
19      or three old at least, because it takes that long for  
20      the iron to develop. The iron is a breakdown in the  
21      red blood cells. And after an injury, the red cells  
22      start breaking down. The iron isn't produced until  
23      the repair process starts. And so that there is a

1 time interval there.

2 Q. Okay. Let me ask you the question this  
3 way: If it's Dr. Greenwald's opinion that what she  
4 observed in the retinal and optic nerve injuries was  
5 an acute or recent hemorrhage with evidence of an  
6 older -- the iron was the result of an older injury  
7 that was healing, would that be consistent? Would  
8 that be --

9 A. Yeah.

10 Q. -- consistent with the observations?

11 A. The problem there is that, you know, there  
12 have been multiple injuries over a period of time.  
13 And that's possible. But, yes, that's possible.

14 But it's also possible that one can have  
15 an injury to the retina and eye and even though parts  
16 of it undergo change, what appears to be fresh; that  
17 is, once you get a hemorrhage in these areas, the  
18 whole thing doesn't evolve in the same speed. After  
19 many days there would still be some parts that still  
20 look fresh from the older injury.

21 So suppose this injury was three days old  
22 or four days old, there would be some parts that show  
23 iron pigment and other parts that would show nothing.

1 Now, one can say about those bland -- the bland parts  
2 where there is no reaction and no iron pigment that  
3 they happened an hour before, or it could also be  
4 four days before.

5 Now, you said to me something about Dr.  
6 Greenwald said what period of time?

7 Q. It was -- I believe it was her opinion  
8 that the hemorrhaging was contemporaneous with the  
9 injury -- the brain injury or the subdural  
10 hemorrhaging but that there was also evidence of an  
11 older healing injury that caused the iron to be  
12 observable on the slides.

13 A. Yes, that's possible. But I'm just saying  
14 that when you say contemporaneous with a subdural  
15 hemorrhage, there was iron pigment in the subdural  
16 hemorrhage, so that would also age it a bit.

17 Let's see. I see what you are saying.  
18 You are saying that the subdural happened -- let's  
19 see. Acute subdural hematoma with focal iron  
20 positive would make it a few days old in my  
21 interpretation. And that would be consistent with  
22 the findings in the eye.

23 In addition to that, there are areas in

1 the subdural and areas in the optic area that don't  
2 have iron pigment and the red cells look pretty  
3 fresh. And one can postulate, A, that they happened  
4 in an hour or two before death and were the cause of  
5 death or that they happened as part of the original  
6 injury and haven't had a reaction formed.

7           What we are looking at is a reaction. We  
8 are looking at the body's reaction. But in an  
9 injury, the whole injury doesn't show the reaction  
10 identically throughout. Some places take longer for  
11 the reaction to develop than others.

12           Q.     Okay. Well, let me -- I understand what  
13 you are saying.

14           A.     As long as you understand my opinion.

15           Q.     That's the part I just want to make sure I  
16 understand with respect to your opinion about --  
17 let's start with the injury to the eyes. You are  
18 saying that it's an older injury because of the iron;  
19 is that correct?

20           A.     Older being three, four days or longer.  
21 We are talking in days.

22           Q.     Okay. And --

23           A.     Not months.

1 Q. Okay. That's fair enough. And then with  
2 respect to the subdural, what's your opinion there?

3 A. Same thing. Similar. What page are we  
4 looking at here?

5 Q. Actually, I guess that would really be Dr.  
6 Pendlebury's report which is if you look at the top  
7 -- the numbers at the top of the page, 1135 is his  
8 report.

9 A. I got all the pages screwed up here.  
10 Okay. Just so that you -- on page 114, your number  
11 114 and 13 of the autopsy report --

12 Q. Yes.

13 A. Dr. Greenwald -- and I agree with her, it  
14 says that there is some clotted blood from the  
15 subdural which has early lines of Zahn and reactive  
16 inflammation. That also, you know, is timing. That  
17 takes some time.

18 But -- I'm sorry. What number did you say  
19 was the neuropathology report?

20 Q. Neuropathology is 1135.

21 A. I have got it someplace. Eleven -- I'm  
22 sorry. While I look for it, what is your question  
23 there?

1           Q.       Well, my question is timing of the  
2       subdural hemorrhage. And I think you answered that.  
3       You say it's the same as the optic nerve, three to  
4       four days old?

5           A.       Hold on. That's where -- in looking at  
6       what's her name's slides, Dr. Greenwald's slides. I  
7       put these all in order so I can find them and now I  
8       can't find them. You said 1130 what?

9           Q.       35.

10          A.       Okay. I got it here. That's the  
11       neuropathologist. Where is her microscopics? 1134.  
12       Pendlebury's report?

13          Q.       Yes.

14          A.       So, I'm sorry. So what is your question  
15       there? 1134 is her -- is his conclusion.

16          Q.       That's right. I'm sorry. My question is:  
17       Based on that report and Dr. Greenwald's  
18       observations, what's your opinion with respect to the  
19       timing of the subdural?

20          A.       Again, here, partly with the iron staining  
21       and all and the inflammatory response, I think it's  
22       also a few days old. It's not a very -- it didn't  
23       happen -- that didn't happen within the four hours

1 that the baby was with Marshall, for example. It  
2 could have happened 12 hours, it could have happened  
3 -- usually 36 hours or more or a couple days before.  
4 It usually takes a good 24, 36 hours before you can  
5 see any iron.

6 Could you hold on one second?

7 MR. DELKER: Sure.

8 (Discussion off the record.)

9 THE WITNESS: Hello?

10 Q. BY MR. DELKER: Yeah. Let me follow up on  
11 questions about the subdural.

12 What if a child of Cassidy's age suffered  
13 this subdural, what types of behavior would you see,  
14 would you expect to see?

15 A. Well, it depends. It's not a very big  
16 subdural. It can cause, what do you call it, it  
17 needn't suffer -- it need not produce much more pain  
18 from the injury to the skin because the way subdurals  
19 cause symptoms is by pressing on the brain. And it's  
20 not clear here that there was much pressure on the  
21 brain.

22 So it can cause lethargy. It can cause  
23 lethargy. It can cause, you know, coma. It can

1 cause the baby going to sleep, you know, being sleepy  
2 all the time. It can cause a lot of crying. But it  
3 needn't -- it depends how big it is. See, a subdural  
4 by itself doesn't -- you don't lose enough blood from  
5 the subdural. It's not from blood loss. It's from  
6 pressure on the brain. It's two by three  
7 centimeters, which isn't very big. So that --

8 Q. So, would --

9 A. The baby is described as lethargic at --  
10 on what do you call it, lethargic on Wednesday --  
11 Thursday morning. One can get lethary from a growing  
12 subdural. It could cause a compression. But you can  
13 also get lethargy from lots of other things including  
14 abdominal injuries.

15 Q. All right.

16 A. But it sounds to me that the baby was fine  
17 Wednesday morning. And I think the baby had the  
18 subdural Wednesday morning. So that for whatever,  
19 you know, the observations were, even though she had  
20 the subdural, she wasn't showing much symptoms from  
21 it, which is also consistent with a subdural this  
22 size.

23 Q. Okay. I want to move sort of on in the

1       microscopics to the injuries on the skin and scalp,  
2       Page 16 in Dr. Greenwald's report. Do you have that?

3             A.       Hold on. Yes, I have that here. Yes.

4             Q.       Why don't we just go down the list and  
5       give me a sense of what you think in terms of the  
6       timing of these different microscopics that you  
7       reviewed.

8             A.       I also see -- yeah. Okay. Okay. Going  
9       down. Now, we are just doing it from the  
10       microscopics?

11            Q.       Right.

12            A.       I agree with her findings here. There is  
13       hemorrhage with no inflammation.

14            Q.       Which one are you on?

15            A.       The bruises from the mid-back, at the top  
16       of 16.

17            Q.       Yeah.

18            A.       Are you there?

19            Q.       Yes, I see it.

20            A.       Okay. That would indicate very fresh. It  
21       could be minutes up until two hours, because usually  
22       after two hours, you get some kind of inflammation.

23            Q.       Let me just make sure before we move on to

1 the next one. You said, though, that injuries heal  
2 at different rates. So is it possible that this  
3 particular slide was taken from a part of the injury  
4 that hadn't yet shown the reactive inflammation?

5 A. It's possible. Maybe there is something  
6 else in that injury, another section would have shown  
7 some inflammation. That's possible. It's just  
8 saying -- right. All we can -- what we can -- what I  
9 am responding to is what's on the slides.

10 Q. Right. I understand that. I want to make  
11 sure that --

12 A. If another part of the injury showed an  
13 inflammation, that would make it older.

14 Q. Okay.

15 A. But when we go through all of these  
16 injuries, and what you are saying would hold for all  
17 of them; that is, from the part of the injury we are  
18 looking at shows acute hemorrhage, it's fresh  
19 hemorrhage with no reaction in the posterior  
20 occipital area of the scalp. That would appear --  
21 that would be very fresh.

22 The next one, the right posterior  
23 occipital area, shows more prominent reaction. So

1 that's older.

2 Q. How much older?

3 A. Well, what does Dr. Greenwald say?

4 Q. Twelve hours, around twelve hours.

5 A. I would say even more than that, because  
6 there are macrophages and plasma cells. They usually  
7 come in later on. And they do have some iron. I  
8 wouldn't -- you know, and these are rough, rough. So  
9 that I would say it's older than Dr. Greenwald says.

10 Q. How much older would you say?

11 A. Twenty-four hours, forty-eight hours  
12 period of time, that kind, because the neutrophils  
13 are leaving and the mononuclear cells are coming in.  
14 And there is some iron. It could even be four or  
15 five days old. It's an older lesion.

16 Q. Okay. The superior occipital?

17 A. The top of the head. It has both  
18 neutrophils, those polys, and macrophages. We are  
19 talking there 24 hours or more, also. The iron would  
20 make it 36 hours.

21 So, again, what I am trying to indicate --  
22 I'm not giving a precise time. I'm giving you a  
23 ballpark approximately. Certainly those areas are

1 older than the areas of hemorrhage without any fresh  
2 -- that don't have any inflammation.

3 Q. I understand. I just wanted to get -- and  
4 I understand that it's not an exact -- that you can't  
5 tell exactly, but I'm trying to just get a ballpark  
6 on these.

7 A. And I don't want -- if Dr. Greenwald says  
8 24 hours and I say 48, I don't want it to indicate a  
9 sharp difference in opinion. That could still all be  
10 in the same ballpark.

11 Q. Okay.

12 A. I just go from my experience in these  
13 things.

14 The left buttock shows -- is older than  
15 any -- that is many days old, at least.

16 Q. Eight to twelve days, would that be  
17 consistent?

18 A. Is that what Dr. Greenwald says?

19 Q. Yes.

20 A. Yes, I would say that's consistent. But I  
21 would -- we couldn't rule out 13 and we couldn't rule  
22 out 6.

23 Q. Right. No. I'm just ballparking.

1           A.       That is, engraving them and aging, this  
2 would be in the oldest age so far that we talked  
3 about. Yes, I agree with that.

4           Q.       Okay.

5           A.       And the right shoulder. The right  
6 shoulder looks normal.

7           Q.       Yeah.

8           A.       Are you talking about that?

9           Q.       Yes. I understand.

10          A.       I mean, there is -- see, that's an  
11 interesting thing here because you have, you know,  
12 normal skin with keratinization, which is normal for  
13 the shoulder. No hemorrhage, no inflammation.

14                    It may be -- again, Dr. Greenwald may have  
15 seen something there. Normally you don't take normal  
16 skin. But when the section was made, it missed it,  
17 you know what I mean. If you are right at the edge,  
18 you might not get it. When you have iron stains that  
19 are positive but no inflammation, so you won't --  
20 maybe that is some kind of an artifact.

21          Q.       Yes. I understand.

22          A.       And the soft tissue, subcutaneous tissue,  
23 left mandible, that looks, you know, like one of

1 those 24-hour kind of things, or -- and then with the  
2 iron, a little bit more than that.

3 The chin?

4 Q. Yeah.

5 A. Again, there is a reaction, so it's older  
6 than 24 hours.

7 Do you want to continue going through  
8 these?

9 Q. Sure. So --

10 A. What I will say is that whenever there is  
11 an inflammation, it makes it more than a few hours  
12 certainly.

13 Q. I understand that. How about -- I mean,  
14 can you tell from the examination of the slides based  
15 on the extent of the reaction whether it's more  
16 recent or older?

17 A. Not so much the extent of the reaction  
18 because -- you mean how -- I'm sorry.

19 Q. Well, maybe that was a poor --

20 A. The reaction or the different cells that  
21 are coming in?

22 Q. The different cells. I mean the  
23 macrophages and so forth.

1           A.       In general, first you get hemorrhage. And  
2 this would go for all of these. First you get  
3 hemorrhage. That happens immediately when the blood  
4 vessel is broken by trauma. And then within two  
5 hours one should start seeing polymorphonuclear cells  
6 come running to that area.

7                       So if it's bland, has no reaction, that's  
8 usually the first few hours. Then the polys come and  
9 they become greater and greater in number. And then  
10 as they start going away, the macrophages, and then  
11 the mononuclear cells come while the polys are still  
12 there. Oh, boy. And then the -- hold on. Again,  
13 hold on one second, please.

14                   MR. DELKER: Yes.

15                       (Discussion off the record.)

16                   THE WITNESS: Hello?

17                   MR. DELKER: Yes.

18                   THE WITNESS: I'm sorry. I'm back again.

19           Q.       BY MR. DELKER: You were describing -- you  
20 said that -- I think where you left off was the  
21 mononuclear cells come in while the polys are still  
22 there. When does that take place?

23           A.       The polys start leaving. The fibrin comes

1 in. The iron pigment develops. So it's a process  
2 until the healing is finished. Sometimes after the  
3 healing is finished, it leaves permanent scars,  
4 fibrous tissue and permanent iron pigment. So those  
5 vary over time. Just like when you look at your  
6 hands, sometimes when you have an injury to your  
7 hands or arm, it heals perfectly and you don't note  
8 anything, and sometimes you have that scar and that  
9 stays with you the rest of your life. So the healing  
10 process varies.

11 For example, by the time you get a scar,  
12 it's three months usually, usually. And then you  
13 can't tell much about a scar from three months to  
14 thirty years. But in the first three months, you can  
15 tell differences.

16 Q. Okay. So the chin you said showed  
17 inflammation, reaction?

18 A. Lower lip, chin? Where is the chin?

19 Q. I'm sorry. It was page 16 to 17.

20 A. Sixteen to seventeen. Well, in -- well,  
21 in the section on the chin, and the caveat with all  
22 of these things, as you pointed out, it depends where  
23 the section is taken also and that these reactions

1 are not uniform throughout, especially with  
2 subdurals, for example, and other accumulations of  
3 blood. One part may show a greater reaction, another  
4 part very little.

5 So, I mean, on the chin, acute hemorrhage  
6 and prominent inflammatory reaction would indicate  
7 that that section was going on for a number of days,  
8 24 hours, 36 hours, 48 hours.

9 Q. Okay. How about external -- I mean, if  
10 the microscopic shows that this injury is 24 to 48  
11 hours old, externally what would someone see?

12 A. It depends on the place in the body. If  
13 the injury is right in the skin or right under the  
14 skin, one should see some kind of discoloration  
15 within a short period of time.

16 If it's deep, like a buttock, if it's a  
17 deep hemorrhage like in the buttock, that might not  
18 become apparent for days.

19 So what we are looking at is how close it  
20 is to the skin. So the chin is very thin. So in  
21 that area you would see hemorrhage pretty quickly.  
22 Just like a black eye, somebody who gets punched in  
23 the eye in the third round and when they open the

1 fourth round three minutes later, you can see a big  
2 black eye there. You can see all the bleeding that  
3 goes into that very thin tissue very quickly, whereas  
4 if that same blow had occurred, same hemorrhage  
5 occurred in the buttocks, it may not become apparent  
6 for many days.

7 Q. The next one is the right mandible,  
8 saliva --

9 A. Salivary glands.

10 Q. Yes. Thank you.

11 A. She had two. To the extent that there is  
12 no reaction, those areas look fresh, and that there  
13 is an area of inflammation with a lot of polys, and  
14 it looks like the macrophages. It would be a number  
15 of days older.

16 And what could happen is that depending  
17 how thin the skin is, one can either be dealing with  
18 a large hemorrhage that part of it is -- that hadn't  
19 had a reaction, part of it has, which would make the  
20 whole thing old, or you can be dealing with two  
21 separate hemorrhages: a hemorrhage that was 36 hours  
22 ago and a hemorrhage that occurred an hour or two  
23 ago.

1 Under the chin and the very thin tissues  
2 of the eye and all, if there were an old hemorrhage,  
3 that discoloration should show at that time. And  
4 then if there were additional discolorations, they  
5 could -- that would kind of indicate that they were  
6 fresher. It wouldn't be a sampling -- it wouldn't be  
7 a sampling issue --

8 Q. Right.

9 A. -- because if -- you should see the whole  
10 thing pretty quickly.

11 Q. Okay. I think there is only a couple left  
12 here. Why don't we just continue through them  
13 quickly. The front -- no. The lower lip?

14 A. Yeah. The lower lip sounds pretty fresh.

15 Q. What do you mean? Just so I'm on the same  
16 page, what do you mean by "fresh"?

17 A. Let's see. I'm sorry. I see. She missed  
18 a section here. Okay.

19 That's an injury that has very little --  
20 no significant inflammation. And I remember looking  
21 at it. There is just fresh -- just fresh hemorrhage.  
22 So that could have happened within a few hours before  
23 death.

1 Q. Okay. The frenulum?

2 A. That's the frenulum.

3 Q. Oh. That's the frenulum you were talking  
4 about?

5 A. Talking about the frenulum. You are  
6 talking about the lower lip above it?

7 Q. Yes.

8 A. The mucosa of the lower lip -- see, the  
9 necrosis can all happen right away. That just means  
10 damage to the collagen. That could happen within  
11 minutes.

12 There is acute inflammation which refers  
13 to the polys coming in. So that would take more than  
14 two hours. So some of the acute inflammation -- we  
15 are talking about many hours. So, you know, I would  
16 say it's more than four hours, say. It could be 10  
17 hours, 12 hours, 14 hours.

18 Q. Okay. All right. You said the frenulum  
19 was fresh. No reaction there?

20 A. Right.

21 Q. Okay. Mucosa of the left cheek?

22 A. This is less than two hours, less than two  
23 or three hours since there is no reaction.

1           Q.     Okay. Now, the anterior frontal  
2 subgaleal?

3           A.     That's the frontal skin area.

4           Q.     Mid forehead sort of?

5           A.     Yeah, that's what it sounds like. Of  
6 course it doesn't say right or left. It sounds like  
7 that would be from the mid upper forehead area,  
8 probably forehead area.

9                     And that indicates that there is reactive  
10 inflammation with neutrophils and lymphocytes and  
11 macrophages. That places it -- and the iron stain  
12 pigment places it many days. I would say more than  
13 two or three days.

14          Q.     Is it possible -- I mean, I suppose --  
15 well, let me ask the question this way: Is it  
16 possible with this one that there are multiple fresh  
17 and old injuries over each other?

18          A.     That's always -- see, if that happens --  
19 yes. The answer is yes. There is no way of us  
20 distinguishing it.

21                     See, if there is injury on top of injury,  
22 we can't distinguish it microscopically. What we can  
23 say is the oldest parts -- the oldest part here is

1 many days old.

2 You are saying could there be additional  
3 injuries after that. It could happen. We can't make  
4 that diagnosis.

5 Q. And if the visual examination of the area  
6 indicates fading and fresh bruises, would that --

7 A. That would be --

8 Q. -- support a conclusion that there were  
9 multiple injuries over the same area?

10 A. I'm sorry. Let me stop talking and listen  
11 to what you were saying.

12 Q. My question is: If the visual examination  
13 of that area showed fading bruises as well as darker  
14 or fresher bruises, would that indicate that there  
15 were multiple bruises on top of each other or  
16 multiple injuries on top of each other?

17 A. Multiple bruises over a period of time,  
18 yes.

19 Q. Okay.

20 A. Over a period of time. So one would then  
21 have to piece apart the history and see if it's  
22 consistent with the history. Yes, I would agree with  
23 that.

1 Q. Okay. The right superior subgaleal?

2 A. This has been around for some time, many  
3 days or even weeks.

4 Q. Okay. Left superior subgaleal?

5 A. Also it's been around, but it's not as old  
6 as the right one. It's younger than the right one,  
7 but it is -- it could be hours or days old. Not as  
8 old as the right, as the one above it.

9 Q. Okay. Right supraorbital. That's above  
10 the right eyebrow?

11 A. Above the right eyebrow? No. Below the  
12 right eyebrow.

13 Q. Below the right eyebrow?

14 A. Excuse me. Supraorbital. Above the right  
15 eyebrow. You are correct. Supra is above.

16 There is an area there of old injury that  
17 could be weeks and months old. That's the golden  
18 brown pigment. There is no reaction around it. Then  
19 there is another area with fresh hemorrhage. That  
20 could be a day or two old. Okay.

21 Q. Okay. I think I'm going to save the stuff  
22 with the arms and legs for the x-rays.

23 A. If we could do that, because we are now --

1 we are going -- in fact going to the x-rays --

2 Q. Yes, that's what I want to do next.

3 A. I got the x-rays now, but the x-rays don't  
4 show the fractures. They don't show fractures.

5 Q. Okay.

6 A. The one from the hospital. All right?

7 Q. Okay.

8 A. You must have had it. Of course they also  
9 have a report in there from the hospital. The  
10 hospital only -- when they took those x-rays, they  
11 said there were no fracture. I agree with that.  
12 There are no fractures.

13 Q. How about if Dr. Greenwald saw injuries in  
14 the remottling stages on the left tibia?

15 A. Now that I have the x-rays, I have a  
16 better sense of the -- I can give you a better  
17 interpretation than I would have been able to before  
18 seeing the x-rays.

19 Q. Okay.

20 A. I think what these slides show are  
21 bruising on the bone and not real fractures of the  
22 bone.

23 You see, one of the things that concerned

1 me was usually when you have fractures of the tibia  
2 and ulna, the forearm bone, you can see it. You can  
3 see that the arms and the legs are bent or something.  
4 And to me, one of the concerns I had was that none of  
5 the three people said hey, what's wrong with these  
6 broken bones, because usually you can see broken  
7 bones through the skin. Are you with me?

8 Q. You can -- no. Wait a second. I didn't  
9 follow that. You can see broken bones through --

10 A. Yes. Full fractures of the arm bones or  
11 leg bones. Even, you know, a layperson can see that  
12 there is a fracture because it's bent, you know, in a  
13 way that's it not supposed to be.

14 So one of the concerns I had when I was  
15 first looking at this is where was the mother, Chad  
16 and Marshall, all three of them, as far as saying  
17 hey, we better get this kid to a hospital.

18 It turns out when I looked at the x-rays,  
19 the fractures are not what I had interpreted from  
20 what I read, but they were really just thickenings of  
21 the outside of the bones. It wasn't the kind of  
22 fracture that would have -- there is no break through  
23 the bones, through the arm and leg bones.

1           Q.     Okay. I mean, is it possible to have a  
2 fracture that doesn't go all the way through the  
3 bone?

4           A.     That would be a little chip. It's more of  
5 a bruise on the outside of the bone. So I think I  
6 agree with -- that there is some repair change of  
7 some injury in the outside of the bone which could be  
8 from twisting the bone, twisting it or a fall or a  
9 kick or something. The bone at some point was  
10 stepped on or something. There wasn't a fracture in  
11 the traditional sense of a break that needed setting  
12 or something. It didn't need to be set. There was  
13 nothing broken to be set. But this is a repair  
14 process of a bruising of the outside of the bone.

15                     And I think, yeah, there is some evidence  
16 that there are a number of different areas that were  
17 bruised and repairing, but there wasn't a traditional  
18 fracture.

19           Q.     Okay. If witnesses observed that Cassidy  
20 had difficulty walking in the days before her death,  
21 would that be consistent with the injuries that you  
22 observed in the x-rays?

23           A.     The only thing with walking is the tibia

1 -- and that tibia is the oldest. The baby would have  
2 had that for weeks or months. So I think if the baby  
3 was having difficulty walking, it was not from the  
4 bone. It was from the buttocks or arms or whatever  
5 or the subdural hemorrhage or other injuries.

6 See, if somebody has a subdural and starts  
7 getting symptoms, it could cause difficulty in  
8 neurological reactions and stuff. But I don't see --  
9 initially I thought that. I thought that difficulty  
10 walking could have been due to the fracture. But in  
11 looking at the x-rays, the bones are good.

12 Q. How about if witnesses made observations  
13 that Cassidy wouldn't put her arms out to protect  
14 herself when she would fall, would that be consistent  
15 with the injuries to the ulna and the metacarpal?

16 A. Well, no, because she could have moved --  
17 whatever injury she had to the ulna and metacarpal  
18 which would show up in the x-rays at say York  
19 Hospital, at the hospital the baby was brought to,  
20 wouldn't have prevented her from putting her arms in  
21 front of her.

22 But I'm not sure if at age 21 months one  
23 has the same reflex protection as adults. See,

1 normally if an adult falls or a child falls who is  
2 running around, they will automatically put their  
3 arms in front. How effective that is for babies, I'm  
4 not sure about. So I can't comment on that.

5 If what they are saying is normally the  
6 baby, Cassidy, always put its arms out when it fell  
7 and now it stopped putting its arms out, then we  
8 would have to consider the reasons why. And it could  
9 be because, yeah, that the finger injury, which is  
10 interesting because the finger, that part of the  
11 bone, the metacarpal, is present on the x-rays taken  
12 at York Hospital and doesn't show the fracture. But  
13 when Dr. Greenwald had the x-ray taken, it does show  
14 a fracture. That shows how even x-rays can be  
15 misleading sometimes.

16 But the hand fracture -- that hand  
17 fracture could have made the baby less willing to put  
18 its hands out. Sure, that's possible.

19 Q. Okay. Do you have an opinion about  
20 whether any of these injuries could have been caused  
21 by a baseball?

22 A. I can't tell one way or the other. I know  
23 that there is -- one thing I was going to ask is --

1 and I asked defense counsel, was -- there was a  
2 roundish area on the face that was swabbed for DNA  
3 because there was a concern that it was a bite mark,  
4 which I don't see a report back on, whether -- you  
5 know, what the DNA results were of the possible bite  
6 mark. But a round ball could cause some injury that  
7 might be confused with a bite mark. But I can't  
8 distinguish the different kinds of blunt force on  
9 this child.

10 Q. Okay. Let me ask you about the ultimate  
11 conclusion. What is your conclusion with respect to  
12 the ultimate cause of death?

13 A. I think the baby died of a -- what do you  
14 call it -- a multitude of injuries that occurred over  
15 a period of time which included the bruises on the  
16 body, the subdural hemorrhage, none of which caused  
17 death when they occurred, but that the final  
18 injuries, the freshest injuries do seem to be the  
19 abdominal injuries to the abdomen and mesentery. And  
20 I think that those final injuries consistent with  
21 something happening the day before, say Wednesday  
22 afternoon or evening time together with whatever  
23 additional injuries occurred after the baby came to

1 Marshall, bruises and perhaps additional mesentery,  
2 intraabdominal injuries, would have in and of  
3 themselves been probably the reason why the baby died  
4 when the baby did die. But that's in a constellation  
5 of all the other injuries having partially diminished  
6 her ability to withstand those injuries.

7 Q. Okay. If Dr. Greenwald's opinion is that  
8 it was a combination of the head trauma and fat  
9 emboli, would that be consistent, the ultimate --

10 A. I don't really -- I would have to look  
11 closer at the fat emboli because -- let's see. What  
12 page are we talking about there?

13 Q. I don't have the page off the top of my  
14 head here.

15 A. Because I wasn't impressed with that  
16 emboli. And I think that the business with the  
17 subdural -- I think the subdural was around for a  
18 while. I do agree. I think the subdural would have  
19 contributed to the death. But I think it was  
20 additional stuff also.

21 Q. Okay. The fat emboli are discussed on  
22 Page 13 in the lungs, microscopics of the lungs. Are  
23 you there, Doctor?

1           A.       Yeah, I'm here. What I will have to do is  
2 look more closely at those sections to see the extent  
3 of the -- I wasn't aware until you just mentioned it  
4 that Dr. Greenwald thought that the fat emboli was  
5 part of the immediate cause of death.

6           Q.       I think she said it could be a  
7 contributing factor.

8           A.       Yeah, it could be contributing. Usually  
9 fat emboli occur pretty quickly when a bone is  
10 fractured. And the only place here where it gets  
11 into the fat is the finger bone, the finger bone,  
12 because the fat isn't entered into the marrow on the  
13 ulna and tibia.

14                    To the extent that the fat is contributory  
15 to the cause of death, it would be very shortly  
16 before death. Usually death occurs within an hour,  
17 two, three hours if it's due to fat emboli. Unlike  
18 pulmonary -- are you more familiar with pulmonary  
19 emboli and blot clots that go to the lungs?

20           Q.       Sure, yeah.

21           A.       Those usually take a few days to develop  
22 and to go to the lungs. If one has a broken leg and  
23 then gets a pulmonary emboli, it's usually not until

1 three, four, five, six, ten days later while the  
2 pulmonary emboli develop and grow and go into the  
3 legs, whereas fat emboli are released immediately.

4 So the fat emboli would speak to a more  
5 rapid cause of death and a fresher fracture of the  
6 bone. And in this instance, the bone being the hand  
7 bone, usually the phalanx, the phalanx doesn't have  
8 enough fat to cause a lot of problems. The fat that  
9 causes problems usually comes from the tibia or the  
10 femur. The femur is the thighbone.

11 The tibia is fractured, but in looking at  
12 the x-rays, one thing that struck me is that it's --  
13 the fracture doesn't get into the bone marrow cavity,  
14 and it's an old fracture. It's an old fracture.  
15 What we are talking about here is fresh fat.

16 So I would just say this: My opinion was  
17 in reviewing this that the fat was too little to be  
18 of much consequence. However, I will have to look at  
19 that more carefully. And I agree with Dr. Greenwald  
20 that it might have been a contributory factor. But  
21 to the extent that it's a contributory factor, it's a  
22 fresh contributory factor, less than a couple hours  
23 old.

1           Q.     One issue that defense counsel brought up  
2 with Dr. Greenwald that I just wanted to cover with  
3 you is --

4           A.     Say again. I'm sorry.

5           Q.     One issue that defense counsel brought up  
6 during the deposition of Dr. Greenwald that I wanted  
7 to just cover with you. Do you have any opinions  
8 with respect to suffocation and whether that happened  
9 or didn't happen?

10          A.     Suffocation is one of those things that we  
11 don't see any findings necessarily except perhaps a  
12 frenulum being -- or the inside of the mouth being  
13 injured. That could happen if a pillow or a hand is  
14 put over the face. So that usually suffocation is a  
15 diagnosis of exclusion; that is, there is no other  
16 reason for death and the circumstances suggest that  
17 somebody did harm to the baby and it's possible for a  
18 pillow to have been put over its face.

19                   Certainly in this kind of situation it's  
20 possible, but there is -- one can't prove it by the  
21 autopsy. If a pillow had been put over Cassidy's  
22 face when she was crying or being a pain in the neck  
23 or something, nothing would have been seen, or

1 possibly just injury to the frenulum or to the inside  
2 of the mouth or something depending on the pressure.  
3 But that diagnosis can't be made on the autopsy  
4 findings.

5 Q. So --

6 A. That would be, you know, by some eye-  
7 witness or some incriminating statements or  
8 something. If somebody said, "I saw X put a pillow  
9 over the face and cause death," the findings are  
10 consistent with that. But we can't make a diagnosis.  
11 Of course that happens -- it has to happen minutes  
12 before the death. That would only be -- you don't --  
13 there is no delay in death from suffocation. You die  
14 immediately or not.

15 Q. Just so I am clear, I mean, given the  
16 conglomeration of other injuries, it would be pure  
17 speculation to say she died from suffocation in this  
18 case?

19 A. Suffocation would always be pure  
20 speculation unless there is something that points to  
21 it.

22 What I would say, given all the older  
23 injuries, there is sufficient other causes for the

1 baby to die. Right. That would be less -- one would  
2 have to put less possibility of suffocation.

3 However, the injuries themselves, there is no single  
4 injury that would have necessarily caused death when  
5 the baby died.

6 There are many babies that have all kinds  
7 of injuries to the body who are not dead; that she  
8 had survived all the injuries until the last 24  
9 hours. And it looks to me more like the freshest  
10 injuries are the intestinal injuries that would have  
11 led to the death. But even then, babies can get  
12 intestinal injuries like this and not die.

13 So what I would say, yes, it is  
14 speculation that the baby suffocated. But there is  
15 nothing in the findings that would eliminate  
16 suffocation.

17 MR. DELKER: Okay. I'm just going to put  
18 you on mute for one second while I check with my  
19 co-counsel and make sure I didn't miss anything. I  
20 will be back in --

21 THE WITNESS: Who is on the call,  
22 incidentally?

23 MR. DELKER: What's that?

1 THE WITNESS: Hello?

2 MR. DELKER: Yes. Hello.

3 THE WITNESS: I'm sorry. Who are the  
4 different people on the call? Is your co-counsel on  
5 the call?

6 MR. DELKER: Yes. It's Simon Brown.

7 THE WITNESS: Simon Brown. And you are?

8 MR. DELKER: Will Delker, D-e-l-k-e-r.

9 THE WITNESS: We spoke before. And there  
10 is Alan?

11 MR. CRONHEIM: Cronheim.

12 THE WITNESS: So there are four of us on  
13 the call. Is that it?

14 MR. DELKER: Yeah, and the stenographer.

15 THE WITNESS: Thank you. I will hold on.

16 MR. DELKER: Thank you.

17 (Discussion off the record.)

18 MR. DELKER: I just -- I don't have  
19 anymore questions at this point. I reserve, you  
20 know, the right as we talked about earlier to spend a  
21 few minutes before you testify going over the  
22 particular photographs that were taken at the  
23 hospital to talk about the lividity.

1 THE WITNESS: Sure. Mr. Cronheim?

2 MR. CRONHEIM: Yes.

3 THE WITNESS: That's fine. So we are all  
4 on the same page, number one and number two, I looked  
5 for those Polaroids of the home. I don't have those.  
6 So I would appreciate it if I can get copies of  
7 those.

8 MR. DELKER: The ones with the ME -- I  
9 mean the EMT's? Is that what you are talking about?

10 THE WITNESS: Yes.

11 MR. DELKER: Okay. We have --

12 THE WITNESS: Maybe Mr. Cronheim can work  
13 that out with you.

14 MR. CRONHEIM: Will, I will call you back  
15 on that.

16 MR. DELKER: We need to talk about some  
17 other things, Alan. Okay.

18 So thank you very much, Doctor.

19 THE WITNESS: Thank you very much.

20 MR. CRONHEIM: Thank you.

21 (Deposition concluded at 11:31 a.m.)

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CERTIFICATE OF WITNESS

I, Michael M. Baden, M.D., have read the foregoing transcript of deposition taken on December 2, 2001, at the Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire, and do hereby swear/affirm it is an accurate and complete record of my testimony given under oath in the matter of State of New Hampshire v. Chad Evans.

\_\_\_\_\_  
MICHAEL M. BADEN, M.D.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, SS.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2001.

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Notary Public/Justice of the Peace

My Commission Expires: \_\_\_\_\_

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C E R T I F I C A T E

I, Linda J. Harnum, a Certified Shorthand Reporter and Commissioner of Deeds, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the deposition of MICHAEL M. BADEN, M.D., who was duly sworn, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.

Linda J. Harnum  
LINDA J. HARNUM, CSR