

STATE OF NEW HAMPSHIRE

STRAFFORD, ss.

SUPERIOR
COURT
TERM
DECEMBER
2001

* * * * *
STATE OF NEW HAMPSHIRE,
Plaintiff,
v.
CHAD EVANS,
Defendant.
* * * * *

Docket No. 00-S-888-I
through
00-S-896-I,
00-S-596-I,
00-S-597-I

TRANSCRIPT OF JURY TRIAL - DAY ELEVEN

CLOSING ARGUMENTS ONLY

BEFORE

Honorable Tina L. Nadeau
Presiding Justice
Strafford County Superior Court
Dover, New Hampshire

DECEMBER 18, 2001

APPEARANCES:

For the State : William Delker, Esq.
Simon Brown, Esq.
Assistant Attorneys General
Concord, New Hampshire
For the Defendant : Mark Sisti, Esq.
Alan Cronheim, Esq.
Portsmouth, New Hampshire
Recording Monitor : Brenda Turgeon

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INDEX OF WITNESSES

WITNESSES: DIRECT CROSS REDIRECT RECROSS

No witnesses presented on the record.

INDEX OF EXHIBITS

EXHIBITS: FOR IDENTIFICATION IN EVIDENCE

No exhibits presented on the record.

1 HEARING COMMENCED (DECEMBER 18, 2001, 10:03 A.M.)

2 (FOLLOWING IS REQUESTED PORTION OF TRIAL ONLY)

3 MARK SISTI, ESQ.: Good morning.

4 JURORS, IN UNISON: Good morning.

5 MR. SISTI: I've got to tell you, it doesn't
6 matter how many of these things you do, these are nerve-
7 racking, okay? And one of the reasons that they're nerve-
8 racking is because it's the last time I get to talk to you,
9 and I don't want to forget anything. I'm going to do the
10 best I can to get out to you in the next hour as many themes
11 as I can, because you'll have all the time you need to work
12 on the case, and you took notes, and you were very attentive
13 during the course of the case. But I may forget things.
14 I'm going to be honest with you. I'm not trying to hide the
15 ball from you, but there is an amount of time that we have
16 and there's only so much we can get in during that
17 particular time period. I guess what I'm asking you to do
18 is when you're finally selected, the twelve of you get
19 together and go through this thing in great detail. Folks,
20 this is a case where the most important part of the case
21 started three weeks ago. I've been told over and over by
22 judges, by much more experienced lawyers, that really the
23 most important part of a case is selecting a good jury.
24 And in this particular case, we had over 100 people, between
25 100 and 150 people to select from, and you are it. Many

1 were called, and few were chosen. And it's important to
 2 keep that in mind. You qualified to do this job. I know
 3 it's not an easy job to do, especially around Christmas. I
 4 mean, I've got a wife and six kids, and I understand that
 5 this is not the kind of place you want to be day-in and
 6 day-out. This is not the subject matter you have to deal
 7 with, or you want to deal with day-in and day-out, and we
 8 appreciate it. We do. Folks, you were selected for this
 9 particular case because you understood the rules. There
 10 are rules here. The prosecutor's got to prove the case
 11 beyond a reasonable doubt. There is a presumption of
 12 innocence. You are to determine the credibility of the
 13 witnesses. You're to be fair. You're to use your common
 14 sense. You're to operate with objectivity, not with anger,
 15 not with malice, none of those things. Common sense,
 16 objectivity, and an open mind, and that's what we're asking
 17 you to do. In this case the State has a--has a very
 18 difficult problem, and I like Simon and I like Will, they're
 19 actually pretty good guys. But they got dealt a hand that
 20 just stinks. And a lot of it wasn't their fault. As we all
 21 know, a building is only as good as the foundation that it's
 22 built on, and in this particular case, the foundation
 23 crumbles from day one. It crumbles from day one because of
 24 the shoddy investigative work that was done in the case,
 25 and primarily, I might add, by the Maine State Police. It

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1 was shoddy, they jumped to conclusions, they interrogated
2 people, they interrogated Chad without the opportunity of
3 police information, good police information, they
4 interrogated Chad without the opportunity of good searches,
5 they interrogated Chad without the opportunity to consult
6 with the medical examiner, they interrogated Chad, and they
7 accused him. They accused him without an autopsy report.
8 They did all those things, they did all those things, and
9 more. They interrogated Chad based on Jeff Marshall. They
10 interrogated Chad based on Jeff's girlfriend. They
11 interrogated Chad and they accused him hours, hours after
12 the lifeless body of Cassidy Bortner was found in Jeff
13 Marshall's residence. Jeff Marshall's residence. Now,
14 I've got to tell you, I've got to tell you, and, folks, it
15 doesn't take a genius to figure this one out. When a baby
16 is found at a residence, dead, a light should go on. A
17 light should go on, and people should investigate. They
18 shouldn't just take the statements from a guy like Jeff
19 Marshall and say, "Well, he said it, so it's got to be
20 true." "He said it, so it's got to be true." Folks, you
21 all know, you all know in your heart, you all know in your
22 soul, that you wouldn't do one important thing in your life
23 if it affected your child, your finances, your health, based
24 on Jeff Marshall's word. When you really distill this case
25 down into what it's all about, that's what it's all about.

1 Yeah, we are bringing it back to Jeff Marshall, and by the
2 end of my statements to you, it'll be Jeff Marshall, and by
3 the end of the prosecutor's statements to you, they won't
4 be able to eliminate him. And there's a reason for that.
5 The reason is they can't prove their case beyond a
6 reasonable doubt. They can't do it. They can't do it.
7 Chad didn't kill Cassidy, period. It's not second-degree
8 murder, it's not a manslaughter. He didn't kill Cassidy,
9 period. Period. And they got problems. And they can
10 attack the messenger when it comes to Dr. Baden or they
11 can attack the message, but they got problems, and they
12 know they got problems. And you just can't ignore those
13 problems. Folks, this is a jury trial in criminal court.
14 This isn't a bunch of newspapers writing goofy articles.
15 This isn't a one-minute sound bite on the radio or
16 television. You people have been here every day. You
17 have seen what everybody has seen that comes here every day.
18 Their witnesses either fail outright, they're people you
19 would not believe, or they're people that say, yeah, we
20 can't eliminate Jeff Marshall. Yeah, he's in there. We
21 can't eliminate him. His girlfriend can't eliminate him.
22 The medical examiner can't eliminate him. I can't eliminate
23 him. Nobody can eliminate him. There's a reason we
24 can't eliminate him. You can come to an inescapable reason.
25 He can't be eliminated. Jeff Marshall has a huge problem

1 here. And it gets bigger and huger as the case goes on, and
2 you know it. Deep in your bones you know it. And it's one
3 of those things that it's bothersome. It's bothersome in
4 any case, and we're not just casting blame on some Martian.
5 There's a reason that Jeff Marshall is in the middle of this
6 mess. On November 8th, 2000, something very unique did take
7 place. At or around 5:45 p.m., Chad Evans made a cell phone
8 call to Jeff Marshall. The baby, Cassidy, had been dropped
9 off at Jeff Marshall's home in the afternoon somewhere
10 between 3:30 and 4 o'clock. When dropped off, the baby
11 wasn't exhibiting any problems, no problems, no distress.
12 She wasn't exhibiting weird behavior, strange behavior,
13 abnormal behavior. She wasn't exhibiting any problem with
14 her appetite, with her gait, with anything. Nothing.
15 Nothing. At 5:45, at 5:45, while that baby was seat-belted
16 in the back of Chad's automobile, he called. He called Jeff
17 Marshall, and the prosecutors want you to believe that he
18 called Jeff Marshall to set him up. I want you to sit
19 back for a second and think about that. That he called
20 Jeff Marshall to set him up. Just what are they saying?
21 That Chad Evans is going to put the perpetrator on notice
22 that there's something wrong with the person that he just
23 beat? Chad Evans called Jeff Marshall up because the baby
24 was exhibiting very, very significant problems. She was
25 hunched over in the seat, in the back seat, drooling, she

1 was acting strange, she was obviously in distress. Yeah,
2 something very unique did happen on November 8th, 2000.
3 Kassidy Bortner went to Jeff Marshall's home okay, and
4 left Jeff Marshall's home beaten. Something did happen at
5 that house on November 8th. And you know what else? You
6 can't eliminate it. The medical people can't eliminate it.
7 Greenwald was on the stand, she's a wonderful medical
8 examiner, and we'll talk a little bit more about her as we
9 go along, but she has ranges--on her chart her ranges are 8
10 to 12 hours, on the stand she says, well, it could be 8 to
11 18 hours when the baby suffered a gastrointestinal injury.
12 That's one, subdural hematoma, one hour to 24 hours.
13 Well, 3:30, 4 o'clock, 5:30, 5:45. What are the symptoms
14 of either one of those injuries? It's no surprise what
15 those symptoms are. Are they consistent? A baby suffering
16 from those types of injuries, would that baby exhibit things
17 like being hunched over, drooling in the back of an
18 automobile shortly after having those injuries inflicted.
19 Dr. Bach from the hospital in York says, "Yep."
20 Dr. Greenwell--wald, from the medical examiner's in Maine
21 says "Yep." Dr. Baden, "Yep, yep, yep, yep." Every medical
22 person who qualified on that stand says yes, that could be
23 it. That could be it. But it's going to get better. When
24 Chad gets home, he's still concerned. He's concerned
25 because that baby is showing real problems with balance.

1 He placed her outside the car and she fell over for no
2 apparent reason at all. Is that consistent with a
3 significant injury? Yes, it is. Dr. Bach said it,
4 Dr. Greenwald said it, Dr. Baden said it. Every medical
5 witness said it. Now, folks, let's just think about that
6 for a second. Cassidy goes to Maine, Cassidy goes home.
7 When she goes to Maine, she's fine. Shortly after leaving,
8 she's exhibiting these problems. Now, is there anything--
9 I'm going to ask this, is there anything at all in the
10 record that indicates that, quote, "something happened, and
11 we'll never be sure, on the Spaulding Turnpike that night."
12 It's in the opening statement from the prosecutor.

13 "Something happened, but we can never be sure, on the
14 Spaulding Turnpike that night." You cannot speculate in
15 this case. And all that is is an invitation for you to
16 speculate that Chad did something to the baby in the car.
17 Is there any evidence of that? They searched his car.
18 They came up with absolutely not a hair out of place, no
19 fluids, nothing, zero. No implement that would have
20 created a blunt injury. Nothing, nothing. But they're
21 stuck because they bought into Jeff Marshall. They're
22 stuck, so they want you to speculate. And they wanted
23 you to speculate from the beginning of the case.
24 Something happened on the turnpike that night, and we can't
25 be sure? Well, folks, let me tell you something, if

1 something happened on the turnpike that night and they can't
2 be sure, then we call that "not guilty" at the end of the
3 case. If that's the case, that's "not guilty." The Judge
4 will tell you that you're not allowed to speculate back
5 there. You're not allowed to engage in the "could have's,
6 the possibilities." The only way that you deal with those is
7 could Jeff Marshall have been responsible? Could the injury
8 possibly have happened at his house? Have we eliminated the
9 reasonable doubt that he inflicted the injury to the baby?
10 No. You know, if they're honest with you, they'll tell you
11 that. They'll tell you that. But the night goes on. The
12 baby's off of her appetite. She can't eat the grilled
13 cheese sandwich that was made. So Chad helps her, tries--
14 tries have her eat half a banana, and they're all over, all
15 over this guy. You know, the kid can't be eating with an
16 injury like that. Remember now, remember, Chad doesn't--
17 doesn't know what's going on when he gives a statement,
18 okay? But he's telling the police to his best recollection
19 that the child had something to eat. He's not schooled in
20 subdural hematomas or gastrointestinal injuries or anything,
21 okay? The baby was off her feed. But she ate. She half a
22 banana, just like Chad says to the police. We know that
23 because the State Police did a trash search over at his
24 house and found it. There's no question about it. We also
25 know and, you know, you can speculate, you can infer, you

1 can do whatever you want, we also know Chad and Kyle and
2 Kassidy were engaged in some kind of game of ball. There
3 were balls scattered all over the house. Sergeant Magee
4 basically stated it looked like they had been out and they
5 were being played with. It's not as though they were put
6 away or something like that. People were engaging in
7 playing ball. And then Kyle apologized to his mother and
8 basically stated to his mother that night when she called to
9 check in that he hit the baby with the ball. Now, let me
10 tell you something. That's not--that's not a cause of death
11 or anything like that. What the prosecutors want to use
12 that for is that it's impossible, a ball couldn't have hit
13 Kassidy Bortner, a ball could not have hit Kassidy Bortner.
14 Chad describes starter ball, lo and behold, there's two of
15 them. We're going to talk about the statements that were--
16 to the police in a few minutes. The bottom line is the baby
17 had a bath that night, the baby was observed by Travis, the
18 baby was observed having a Popsicle, the baby was observed
19 at least operating in some fashion, probably not normally,
20 but certainly conscious. I would suspect, and I think all
21 the medical people would testify that she was probably
22 suffering already from some of the injury that she had
23 already received previously. But the observations at the
24 time were that, one, she was alive; two, Chad was bathing
25 her; three, Chad was holding her and feeding her a Popsicle;

1 four, Chad had given her a banana earlier; five, Chad
2 dressed her for bed; six, Chad put her to bed. We call that
3 caring for somebody, and we'll talk about that relative to
4 Jeff Marshall in just a few minutes. The baby woke up in
5 some distress the next morning, but that's to be--that's to
6 be expected. The nature of the injuries would indicate that
7 she would. And again, those are injuries that very well
8 could have been inflicted at Jeff Marshall's. Probably most
9 significant of all is that that baby was taken to Jeff's
10 Marshall's house on November 9th, 2000. When she was
11 dropped off, she was alive, beyond any reasonable doubt.
12 She was dropped off, and you're going to hear, and you
13 already did, testimony about what her condition was, what
14 her face looked like. And Amanda said, "Oh, her face
15 looked like hell. Look at her eye," or something like
16 that, and she pointed it out. And whether you believe
17 Amanda on the stand through her testimony or you disbelieve
18 her, there's one thing that's going to ring true, it's
19 almost haunting about Amanda Bortner, chilling even. Some
20 people have described it as one of the most amazing things
21 they've ever seen in a courtroom. That Amanda Bortner was
22 sitting up there under oath and she was shown a photograph,
23 and it wasn't a pleasant photograph. It was a photograph of
24 her baby. And I guess you can take every medical examiner
25 in the world, every doctor in the world, every lawyer in the

1 world, and take all the micro slides that you want to take
2 about bruises that you want to take, but I'm going to ask
3 you to reflect back about ten days, and I'm going to ask
4 you when you deliberate whether or not the reaction that
5 we saw from Amanda Bortner was one that would have been
6 fabricated, rehearsed, one that you could prepare yourself
7 for, one that you can con a jury with. No. When she was
8 shown this photograph, she recoiled in horror at the sight.
9 She recoiled in horror at the sight because that was her
10 baby in a condition that she had never seen her in.
11 Folks, she dropped her off in the morning on November 9th,
12 alive, at Jeff Marshall's house. At Jeff Marshall's house.
13 And at Jeff Marshall's house she was supposed to be cared
14 for by Jeff Marshall. Cared for. And she wasn't cared for
15 by Jeff Marshall. She was dealt with at the highest level
16 of neglect, and she was beaten at that house. Folks, I'm
17 going to--I'm going to tell you, we don't know what exactly
18 happened over at Jeff Marshall's house, but he wasn't
19 straight with you. He wasn't straight with you at all.
20 And you don't have to take that from me. Just listen to
21 some of the things he said on the stand. Try to figure
22 this out. Try to figure out what's going through this guy's
23 brain, okay? I mean, the elections back in 2000, they were
24 important, but he had a baby--take a little time, okay, he
25 had a baby to care for. He said that when he saw the baby

1 it had shown some bruising and he wanted to care for the
2 baby. His girlfriend left, Amanda left, and he was in
3 charge. And when his girlfriend left and when Amanda left,
4 that baby was in bed. That baby was in bed. Part of her
5 clothing, little red pajama bottoms, that baby was in bed
6 with red pajama bottoms, that baby was in bed covered up,
7 that baby was in bed with a little bag of cereal. That baby
8 may have been in distress, but that baby was alive when that
9 baby was in bed, and that baby had these pajamas on. And
10 there wasn't any good reason in the world why these pajamas
11 should have been off at or about one o'clock when we know
12 the State Police were taking pictures. But you know and I
13 know that these pajama bottoms were off, and they were lying
14 on the bed, they were lying on the bed next to Jeffrey
15 Marshall's pants. That's where these were. Now, did
16 Jeffrey Marshall mention removing these pajama bottoms for
17 any legitimate good reason whatsoever? No. Did he tell you
18 that he cared for Cassidy and changed her diaper or checked
19 her or did anything like that? Nope. His testimony was a
20 sham. And you got to see it with your very own eyes just
21 how desperate Jeffrey Marshall is, just how much he has
22 bought into this. You saw him parade in front of you--I
23 asked him to get down from that stand, under oath, and
24 parade in front of you as he pointed out imaginary
25 bruises on the face of Cassidy Bortner in the picture

1 that was taken by her grandmother on October 1st, 2000.
2 Jeffrey Marshall is a liar. Jeffrey Marshall is protecting
3 himself. Jeffrey Marshall is avoiding reality here, folks.
4 While we may not know what happened in Jeffrey Marshall's
5 house because, folks, it was just Jeff Marshall, all six-
6 foot, three inches, 240 pounds of him, and Kassidy Bortner,
7 all 21 months of her, alone. But he's a liar for more than
8 one reason, and he's covering up, and he's minimizing, and
9 he's doing everything that a liar would do. That baby had
10 been dead for some time prior to the emergency medical
11 people showing up. Upon showing up, the emergency medical
12 people noted that the baby was pale, cool to the touch,
13 pulseless, no respiration whatsoever, no blood pressure,
14 nonresponsive to any stimuli given. That baby was dead.
15 And that baby was placed on the porch by Jeff Marshall.
16 And that baby didn't have pajama bottoms on out there.
17 Now, he went through a lot of testimony about what he did
18 to help that baby, but I know of no heroic procedure that
19 includes taking off pajama bottoms. And I know of no heroic
20 procedure that goes in the order that he stated without
21 calling 911 first. Folks, I don't know, it's not a
22 difficult thing to do, but I guess if you hurt somebody or
23 if you've killed somebody, you may not want to call 911.
24 You may want to call your girlfriend first, you may want to
25 call around to other sources instead of the police. You may

1 want some time to think. You may want some time to think of
2 what you're going to say. You may want some time to get rid
3 of something. You may want some time, because that's all
4 you've got is some time. And he had time. He made it so he
5 had time. Ladies and gentlemen, when he claims to have been
6 feeling the slight pulse of Cassidy Bortner, she was dead.
7 Dead for a long time. Dead. He's lying about the pulse. I
8 mean, if there's one thing you would ever remember if you
9 were in a situation like that, it would be whether or not
10 the baby was alive or Responsive or not. He's lying
11 about it. Why? Why? Why would lie about that? Because
12 he's innocent? Because a baby in his care, not at his hand,
13 died, or was in distress? No. No, no. Oh, no. He had a
14 dead baby. He had a dead baby in his house. And he knows
15 why he had a dead baby in his house. He knows why he did
16 it. He inflicted her wounds, okay, and we'll talk about the
17 medicals in a minute, but she died in his house. She died
18 while he was on duty. She died while he was caring for her.
19 She died and he hung around and thought, and thought and he
20 thought, "Who should I call? Who should I set up? What
21 should I do?" Well, he knew who to set up, we know that,
22 and we'll get to that in a minute. But that baby was worked
23 on by EMTs out on his porch, and they confirmed that she was
24 already dead. When Detective Hamel showed up, and that's
25 the first law enforcement person that showed up, and he lied

he

1 to the detective. He lied to you in Court. Hamel took the
2 stand and said that Jeff Marshall, without any question,
3 blamed him. "It's not me, I wouldn't do anything like that.
4 Chad Evans. It's Chad Evans." The police come, he's quick
5 to blame Chad. Jeff Marshall said he'd never done anything
6 like that. Never. He did. And if you want to take a
7 choice as to who you want to believe, Detective Hamel or
8 Jeff Marshall, I would suggest that you would believe
9 Detective Hamel. There's more than that. Prior to any of
10 this happening, okay, prior to the 911 call, he called his
11 girlfriend. Now, you're going to hear the Judge basically
12 state to you that nobody owns witnesses here, okay? I mean,
13 if the prosecutors call a witness, that doesn't mean it's
14 their witness, okay? I mean, cross examination, examination
15 by the defense is just as important as the direct
16 examination, probably more so in many instances. Jennifer
17 took the stand. Jennifer tells you that she got two phone
18 calls, two, from Jeff Marshall on November 9th, 2000. When
19 she got those two phone calls, the baby was dead. The baby
20 was dead. On the first phone call Jeff sounded frantic,
21 didn't know what to do, and she says, "Call the hospital.
22 I mean, what are you doing?" But let's get back a second.
23 The clear inference was that the baby was alive at the time.
24 And the baby was dead. The baby was already dead. And on
25 the second phone call she was left with the distinct

1 impression, because Jeff was calmer, because Jeff said the
2 baby was alert, awake, and watching television. She said
3 that to the police. She said that to the police hours
4 after she got that phone call. She said that to the police
5 while she didn't have the opportunity to mesh stories with
6 Jeffrey, and she said she was left obviously with the
7 impression that the baby was okay, she went right back to
8 work, no problem. Jeff Marshall called his girlfriend
9 before calling 911 and told her that the baby was fine,
10 okay, no problem. "I'll dress her up and take her to the
11 hospital," you know, to get her checked out, and
12 everything's all right. That's a lie. That baby was dead.
13 And what the heck was going through Jeff Marshall's head?
14 We don't know. And you'll never know, and we can't ever
15 solve that. I suggest that he was still thinking, still
16 trying to figure it out, because he killed the baby. And
17 we'll talk about the cause of death in a few minutes.
18 Jeff Marshall, you can't shake him, he's going to be there
19 all the time. He's like a burr when you walk through the
20 fields, it sticks to you, you take it off, keep walking,
21 there's another one there, there's another one there. You
22 can't keep them off of you. You can't keep them off of you
23 because he's always going to show up. The guy's a walking
24 reasonable doubt. The police did an investigation of Chad,
25 they went to his house, they went through his house. They

1 came up with nothing. You are left with a case, folks,
2 where there's not one shred of physical evidence connecting
3 Chad Evans to the death of Kassidy Bortner. Now, that's
4 generally not a surprise when somebody didn't have any
5 involvement in killing a baby. Sergeant Magee did a
6 thorough search of Chad Evans' home, top to bottom,
7 basement, first floor, second floor, photography, garbage
8 searches, everything, okay? A search. A search. And he
9 told you they came up with absolutely nothing. Nothing at
10 all to connect Chad to the death of Kassidy. Nothing.
11 Nothing at all. Our counterparts in Maine did a search of
12 Jeff Marshall's. Now, I'm going to ask you something. You
13 don't have to be an expert on this. But if you're doing a
14 search of a residence where a 21-month-old baby is found
15 dead, and there's blood that is found in the bedroom, and
16 it's not a big place, it's a small place, you've been
17 there, would you not check out the basement? Would you not
18 do that? Detective White knows he should have done it. He
19 blew it. And he had to eat it on the stand. But whatever
20 way you weigh it, it's a lousy search, it's a crummy search.
21 And then he released the crime scene to Marshall after just
22 about three hours of searching, without searching the
23 basement. Well, you can call it whatever you want. It's
24 shoddy police work. It's shoddy. Compare that with what
25 happened over at Chad's house when they went through and

1 picked up everything and looked through everything they
2 could. They got nothing. Nothing at all. That was a
3 search. In this particular case, you're going to get
4 videotapes. On November 9th, 2000, the police had their way
5 with Chad Evans for over three hours and 30 minutes. This
6 has been redacted to, I think, around two hours and 20
7 minutes, something like that. Three hours and 30 minutes
8 with Chad. Their rules. No lawyer, nobody there for him,
9 nothing. All by himself. With 45 years' worth of
10 investigator questioning, three different guys. These are
11 the tapes. And let me just start here by telling you if you
12 think for a moment that they hadn't already made up their
13 mind by the time they talked with Chad Evans, I want you to
14 go back and watch these tapes again. That's not--that's not
15 a--policeman interview like they do that involves some
16 information. They were--they already tagged him. They
17 accused him. They accused him. Based on what, I have no
18 idea. But they accused him. They pointed a finger at him,
19 they said "That's it, you're it, you're the guy that did
20 it." Boom, boom, that's it. Simple as that. "You're it."
21 You're it? He talked with these guys for over three hours.
22 Now, I'm going to ask you, is that the way you would have
23 wanted to be treated, like him? Do you think that's fair
24 the way he was treated, like him? Do you think that's good
25 police work, the way they operated, the way they dealt with

1 him? You think that was some way of finding the truth?
2 Now, Chad's not proud of everything he's ever done, and I've
3 got to tell you something, we're not out here saying please
4 crown him, you know, humanitarian of the year, father of the
5 year. This is not what this case is about, okay? And on
6 the tape itself Chad tells them that he's ashamed of what
7 he's done, you know, he's taken the kid by the jaw, all
8 right, and he says that at least on a couple occasions, all
9 right, that he left some bruises. He told them that, Chad
10 told them that, okay? Chad told them that. And Chad's not
11 proud of a lot of stuff, okay? All right? The trampoline
12 thing, all right? That's a goofy excuse, all right? This,
13 the trampoline thing, those are terrible, terrible.
14 Absolutely terrible. But that's light years, folks, away
15 from killing a baby. And if they can jump from this, okay,
16 or a trampoline, to the death of Cassidy Bortner, then
17 there's something wrong, especially in an absolute vacuum,
18 no facts, when they're talking to Chad. Nothing. Nothing.
19 The baby had to have been killed after they left Jeff
20 Marshall's house. Where did that come from? Did Lance
21 McCleish really believe that? I mean, who told him? He
22 withstood that kind of grilling for three hours, over three
23 hours. Alone, with their rules. Rules like "You can leave
24 if you want to, you don't have to answer questions," and
25 then they tell him to stay there, "Sit down." "Hold on

1 there, Chad. Stay." He was in their place, alone, for over
2 three hours, and they got this and they got a trampoline.
3 That's what they got. And they're going from that--they're
4 going from that to killing a baby. They have completely
5 ignored Jeff Marshall at this point. They have dedicated
6 themselves, dedicated themselves to Chad Evans. They have
7 dedicated themselves to Chad Evans when Jeff Marshall made
8 phone calls to his own girlfriend, holding a dead baby and
9 saying the baby was okay. That's what that interrogation
10 was about. It's like let's solve the crime, we'll figure
11 out the evidence later. And what was that? Is that the way
12 you would want your loved ones treated? Is that the way you
13 want to be treated? Is that the way you think a police
14 investigation should go? None of those things. Playing
15 pretty fast and loose. When you play fast and loose,
16 though, you see, you get caught up. You get caught up
17 because eventually there is an autopsy, all right? And
18 eventually you're going to get results. You know, some of
19 the results are pretty interesting. I'll bet Lance McCleish
20 would be quaking in his boots knowing that, gosh, there were
21 injuries there that would have happened exclusively at the
22 hands of Jeff Marshall. Now, is that some kind of
23 coincidence? Are we supposed to ignore that? The ranges
24 all include Marshall, outside ranges to inside ranges. But
25 look at some of these other ones. Look at the ones, folks,

1 that eliminate, eliminate Chad Evans. They eliminate him.
2 The mouth, it's less than four hours. Chad wasn't around.
3 Explain that one, okay? Don't ignore it. Don't ignore it.
4 Explain it away. Reasonably, beyond a reasonable doubt.
5 Explain that away. Explain--explain injuries like the back
6 of the head, less than four hours. Fresh, noninflammatory
7 injuries. Fresh. This is by the Maine State medical
8 examiner. A well-qualified physician. No problem
9 whatsoever, okay? Let's talk about other ones. The back--
10 right there. Less than four hours. How can this be? How
11 can this be? How can this baby have her pajama bottoms off
12 and have injuries inflicted on her body less than four hours
13 prior to her death? How can this be? It's at Jeff
14 Marshall's hand, it's at Jeff Marshall's house. We can't
15 get rid of Jeff Marshall, we can't shake him. How can that
16 be if that baby, who was tucked into bed, and tucked in, not
17 thrown in bed, not beaten into bed by her mother or aunt,
18 but tucked into bed at or around nine o'clock in the
19 morning? How can it be that she has injuries like that?
20 Even one hair out of place, she can't, it's impossible.
21 Because Jeff Marshall says he didn't even touch the kid.
22 His testimony would be he didn't touch the kid until she was
23 already dead. But how can it be? How can it be that she
24 has bruises? There's nobody else in the house. How can
25 it be? Okay? When you get back to the deliberation room

1 and go "How can it be," "Shall we just explain it away,"
2 "Well, we didn't get the right microscopic section." Is
3 that what it is? Dr. Greenwald didn't give kind of an
4 excuse, okay? Baden didn't give that kind of an excuse.
5 How can it be? I'll tell you how can it be. Jeffrey
6 Marshall beat her. Jeffrey Marshall inflicted injuries on
7 Kassidy Bortner. Wake up, folks. It happened. He beat
8 her, he delayed in reporting, he lied when he talked to his
9 girlfriend, he bought time, he blamed Chad Evans. How can
10 it be? How can that be? How can it be? How can it be,
11 folks? How can it be that he comes up with lame excuses
12 time after time after time. How can it be that Jeff
13 Marshall says he just gave her a little smack on the rump?
14 How can it be that just within a day of her--of him claiming
15 this little smack on the rump people observed her black and
16 blue buttocks from the waist down through her knees? How
17 can that be? How can it be? How can it be that she falls
18 out of a truck, and Melissa Chick tells what she knows about
19 that, a couple weeks before her death? How can that be?
20 And that she hurt herself, and that Amanda was angry about
21 it. And he says it doesn't happen, and he points to his
22 friend, Mr. Pierce. I'm not talking about the two days
23 before she died. I'm talking about two weeks before she
24 died. Now, although Mr. Pierce was a very interesting
25 witness, Melissa Chick tells you that there was this truck

1 incident that created a major bruise, a major--she also
2 tells you that in her opinion, from what she remembers,
3 Kassidy was afraid of big men. Big men. Remember that
4 testimony? Maybe Kassidy Bortner had a darned good reason
5 to be afraid of big men. How can it be that Jeffrey
6 Marshall sat right up here, after raising the hand that he
7 hit that kid with, telling you, telling you, under oath,
8 that he pointed out bruises two days before the baby died to
9 his friend William Pierce? How could it be that he could
10 tell you something and then William Pierce would come in and
11 say, "No. I looked for bruises. I wanted to see if there
12 were any signs of child abuse, and there was none." How
13 could it be that Jeff Marshall kept seeing bruises and
14 injuries on Kassidy? How could it be when he's always got
15 something to say about bruising and injury, how could it be?
16 Because he did it. How can it be that he can describe
17 Kassidy Bortner, all right, at Chad's house on a paved
18 driveway falling down and having to have the dirt taken off
19 of her face and head? How could it be? Because that baby
20 fell on his dirt driveway two weeks before, and that's what
21 he had to do. Jeffrey Marshall's going to dump everything
22 he can on Chad, dump it all away. And whether the police
23 want to hear Chad talk about Jeffrey Marshall, well, you
24 know, that's their business. They don't want to hear it,
25 they want to ignore it, that's fine. They ignored a lot of

1 evidence in this case. They ignored a proper investigation,
2 they ignored delving into facts instead of figment. They
3 ignored a lot, so it shouldn't surprise you they didn't want
4 to hear about Jeffrey Marshall, on the very day the baby was
5 found at his house dead. And they may not want to know
6 about the results of blood tests on a sheet, and that's in
7 front of you. And they may want to tell you that the blood
8 on a napkin is purged fluid. Purged fluid, of course, the
9 medical examiner told you, would only occur if the baby was
10 already dead. It was already dead. It was already without
11 a pulse. It was already unable to be alert, awake and
12 watching television. Either way that you want it, there was
13 blood on that napkin, and that was either blood on that
14 napkin because of a fresh injury that would have occurred at
15 Jeffrey Marshall's house, less than four hours before her
16 death, and you take it that way. Or there was blood on that
17 napkin because of purging fluids. Folks, either way you
18 take it, it either means Jeffrey Marshall assaulted the
19 baby, okay, or it means that Jeffrey Marshall is an
20 absolutely confirmed liar when he says he was clearing the
21 baby's mouth because he had heard gurgling, or something to
22 that effect. Why the call to his girlfriend saying she was
23 alert, awake and watching television? So you can have it
24 either way. That's fine. Either way, it's Jeffrey
25 Marshall. Jeffrey Marshall and Jeffrey Marshall alone was

1 with that baby when that blood came out of her mouth. He
2 either lied afterwards to cover himself up or inflicted the
3 injury that caused the blood. And that's it. It isn't that
4 often, ladies and gentlemen, that in murder cases I have the
5 opportunity to have two medical examiners support my client.
6 And in this case, I have two medical examiners supporting
7 Mr. Evans. The range of injuries, the times are all
8 consistent with Marshall. The cause of death and the time
9 of the fatal injury as far as the Maine medical examiner is
10 concerned is unknown. Let me talk a little bit about the
11 medical examiner. The medicals are very important. At the
12 beginning of this case we asked that you keep an open mind
13 when we get into medicals here. I want to talk about
14 Dr. Greenwald, and I'll end up with Dr. Greenwald.
15 Dr. Greenwald did a very nice job of putting together this
16 particular case. The slides were excellent, the autopsy
17 protocol was well done. And there's a few problems that the
18 prosecutor's got to jump over, and Dr. Greenwald can't cope
19 with the problems either. There was something very
20 significant and very, very wrong with this baby, okay? She
21 noted subdural hematoma, we've already said consistent with
22 time ranging from one hour to 24 hours. The intestinal
23 injury, again, a fairly large time frame consistent with
24 basically embracing Jeff Marshall and embracing Chad Evans,
25 both. There's something else that only, only points to

1 Jeff Marshall. No matter how much they want to fight it
2 off, no matter how many articles they want to bring in, all
3 right? No matter how much they want to bash Dr. Baden,
4 there's one huge problem with the prosecutor's case, and you
5 learned a little bit about it yesterday and a little bit
6 from Dr. Greenwald the week before. It's called fat emboli.
7 And we learned during the course of this case that when
8 there are foreign bodies in places that there shouldn't be,
9 in a body, in your own body, that white blood cells come in
10 and they attack it and they try and get rid of it, they try
11 to get rid of the stuff that shouldn't be there. And that
12 shows generally a reaction, and you can kind of time an
13 injury to that particular reaction. In this particular
14 case, folks, whether they like Dr. Baden or not, Dr. Baden
15 used a slide prepared exclusively by Dr. Greenwald, the
16 Maine State Medical Examiner. Dr. Baden examined the
17 special stain on the slide, and on a scale of 1 to 10,
18 Dr. Baden concluded that Cassidy, Cassidy had a fat emboli
19 in her lung. She died of the fat emboli, not because of a
20 broken bone, but because of a very traumatic injury that
21 would have been inflicted on the fat underneath the skin, a
22 beating, a hit that literally liquifies fat and sends it
23 shooting up into the vital organs, the brain, the lung, the
24 kidney. It is no surprise, all right, that the fat was
25 found in her kidney and in her lung. And on a scale of 1

1 to 10, it was massive in her lungs, massive. Massive to the
2 point that it would have caused death within two hours of
3 the infliction of an injury. Within two hours. Two hours.
4 Now, you know, they can stand up here and they can attack
5 Michael Baden all they want. They can attack him from
6 morning, they can attack him till night, and I want to talk
7 a little bit about that. They can attack him because he was
8 on the O.J. Simpson defense team. Okay, they can attack him
9 for that, I don't care. I don't think he cares. But I
10 don't know if they're trying to give you the whole message
11 or not when they're attacking, okay? Because while he was
12 on the O.J. Simpson case in L.A. County, he was also
13 testifying for the Los Angeles District Attorney in a
14 multiple murder case right across the hall. The very same
15 district attorney's office that was prosecuting Simpson
16 hired Baden specifically to testify in a multiple murder
17 case right across the hall. Now, I don't know, I don't know
18 if the prosecutors here knew that or not. I don't know. I
19 don't know if the prosecutors here were flinging barbs at
20 Dr. Baden in a desperate effort to have him back away from
21 what is obvious on a microscopic slide. I don't know. But
22 if they were, you didn't hear the whole story, did you?
23 Until Dr. Baden had an opportunity to explain it on
24 redirect. And, you know, I don't know. I don't know if the
25 prosecutors knew when they were attacking on that

1 Pennsylvania case, I don't know if they knew that the
2 findings that were made by the judge that they so embraced
3 on their cross examination had not only been rejected by a
4 federal appellate court last week, but that there had been a
5 declaration that the person that Dr. Baden testified for on
6 behalf of in that particular case was unlawfully convicted
7 due to prosecutorial misconduct, obstruction of justice, and
8 perjury. Now, I don't know if that's what these prosecutors
9 knew before they started in on that. But they tried to make
10 him Satan's son. Funny. A paid whore. Funny. When what
11 he just did is testify on behalf of a person that a federal
12 court judge has just declared, quote, "actually innocent,"
13 end quote. I don't know what that was all about. It was
14 interesting. I don't know if it was just a matter of not
15 being prepared or thinking that we wouldn't check up on it.
16 But, folks, it that's the best shot they've got at
17 Dr. Baden, they're hurting. The best shot they have is that
18 he didn't review the microscopics in a timely manner
19 inadvertently. Now, these are folks that know how to call
20 witnesses on rebuttal, call the witnesses. You saw that
21 yesterday. Dr. O'Connor came to the stand a little bit
22 late. If there was something out of line that Dr. Baden
23 said about fat emboli in the lung, they're free to call
24 anybody they want to testify against that. And anyway,
25 sometimes there is a resounding statement where nothing is

1 said. And, you know, it's kind of like a perfect example of
2 like jumping to conclusions too quick without doing your
3 homework, you know? Kind of like putting or Corey Merrill
4 without really testing Corey Merrill first. It's like
5 criticizing Dr. Baden without really following up on what
6 that case eventually led to. Kind of like this case in a
7 lot of ways, you know? It's scary, isn't it? How they
8 jumped to conclusions early and wouldn't let go? No matter
9 what the evidence, they won't let go. They're going to ride
10 this thing all the way they can ride it, they won't let go.
11 They're invested in it now. They won't let go. They put
12 more time and effort in looking for Chad Evans and Amanda
13 Bortner in the woods in Vermont than they did investigating
14 this case. They wanted--they wanted so to hear that Chad
15 Evans tampered with a witness or obstructed justice, and
16 they put it before a grand jury in August. And ladies and
17 gentlemen, it's December 18th, 2001. Chad's not charged
18 with anything like that. Nothing. Nothing at all. It is
19 December 18th, 2001, and Amanda has gotten on that stand
20 with an immunity guarantee, she's testified under oath,
21 she's gotten off the stand. And the only thing she couldn't
22 do was perjure herself. Because if she perjured herself,
23 she'd be charged. And it's December 18th. The rules in
24 this Court are a lot different than being at the police
25 station where you can just point your finger at somebody and

1 say "You're guilty, you're a murder or you're"--okay?
2 That's why you guys are here. That's why you're here. I
3 mean, this isn't about lawyers, you know, when you really
4 get down to it. It's not about words. It's about you guys.
5 The bottom line is all of the trust that we have in the
6 system is wrapped up in you guys. And Chad doesn't stand a
7 chance if you look through the lenses of law enforcement,
8 because they've already committed themselves. And when you
9 guys were picked, you said you'd keep an open mind. That's
10 all we kept thinking. That's all we wanted. We want the
11 one fair shot that Chad hadn't got for a year. We want the
12 one fair shot so that we could tell you guys what really
13 went on, what really was ignored, who these people really
14 are. We want the one clear shot where just because there's
15 an arrest, you don't have to close the door. Folks, don't
16 close the door, you know?

17 THE COURT: You have--

18 MR. SISTI: I mean, how could you close the door?

19 THE COURT: Mr. Sisti, a couple more minutes.

20 MR. SISTI: Thank you. I'm going to wrap it up.

21 Defendant's Exhibit J is the cause of death supplement.
22 It's an official medical record from the State of Maine.
23 You'll have it back there with you. Take a look at it.
24 The state medical examiner in Maine, knowing all the
25 things, okay, all the things available to her that you

1 will have, came to a conclusion. Look at that
2 supplement and read it, and you'll understand she
3 doesn't know what state the fatal injury was inflicted
4 in, she doesn't know the time, she doesn't know all of
5 it. This speaks volumes. And I'm asking you, please,
6 I'm begging you, but you don't have to do us any favors
7 at all. We don't need favors, okay? What we need is
8 for you guys to adhere to your oath and don't do those
9 guys a favor. Go back there and be the jury in this case.
10 This is a jury case, not a cop case. Thank you. Thank
11 you, your Honor.

12 THE COURT: Thank you, Mr. Sisti. Does the State
13 need have just a minute to organize some exhibits?

14 SIMON BROWN, ESQ.: Yes, thank you.

15 THE COURT: Okay.

16 (PAUSE)

17 MR. BROWN: We've asked you to sit through a very
18 difficult case. It won't be a difficult case to decide.
19 Deciding this case will be easy for you because the evidence
20 of the defendant's guilt is so devastating, so overwhelming
21 and so clear. But it was a difficult case to watch and to
22 listen to. Nobody wants to believe that a person is capable
23 of doing what the defendant did in this case, to repeatedly
24 manhandle, beat, and eventually kill a beautiful little girl
25 less than two years of age. But now you know the defendant

1 is capable of such brutality, and you know that he murdered
2 Cassidy Bortner. And as hard as this evidence has been to
3 listen to, I'm going to ask you even more right now. I'm
4 going to ask you to think about the last months of Cassidy
5 Bortner's life. The time that she lived with the defendant.
6 The time that she was transformed from a vibrant, playful,
7 happy little girl into a withdrawn, quiet, shell of a human
8 being. When Amanda began living with the defendant, she was
9 attached to her mother. She was jealous of her mother's
10 attention. And when the defendant showed affection towards
11 her mother, Cassidy cried, she threw tantrums. She reared
12 her head back and stomped her feet and she cried. She also
13 did this at bedtime. The defendant could not tolerate
14 tantrums. His son Kyle, his three-year-old son, he didn't
15 throw tantrums. Kyle was disciplined. And the defendant
16 insisted on discipline and eye contact with children in his
17 household. But from Cassidy he got neither of those things.
18 He got tears and tantrums. As Cassidy's crying continued,
19 the defendant's anger erupted. He began to grab Cassidy's
20 face with his hand, hold her eyes to his, and make her look
21 him in the eye. He was disciplining her. But he squeezed
22 her cheeks and he hurt her. Ugly bruises began to appear on
23 Cassidy's face. But instead of the defendant being
24 horrified that he caused even one mark on that little girl,
25 his temper continued to erupt. And this grabbing of the

1 face, we heard, happened at least twice a week, and the
2 bruises kept reappearing. When old ones began to fade, new
3 ones took their place. But the defendant's violence towards
4 Kassidy was not confined to grabbing her face. He hurled
5 Kassidy into a wall. He propelled her into a wall. One
6 time he threw her into a closet door, causing her to bang
7 her head. He picked her up by her armpit and her arm and
8 jerked her arm back and he threw her on the bed. When she
9 cried, he took his finger and he jabbed her in the throat,
10 making her gag, and angering Amanda. He pulled roughly on
11 her leg and fractured it. One time when she was crying, he
12 couldn't take it, and he took her, brought her to a faucet,
13 put water in her face, causing her to scream, and after
14 that, Kassidy was terrified of water. As Jeff Marshall told
15 us in this trial, when he tried to give her a bath, she
16 freaked out, she was terrified. He described to the police
17 how he roughly picked up Kassidy off the ground by her neck.
18 He described it as pulling her up like a kitten. And he
19 told the police that he smacked her in the mouth when she
20 used bad language. He showed the police. He went like
21 that. Which is pretty ironic. Pretty ironic that the
22 defendant would chastise and discipline Kassidy for bad
23 language, considering how he talked about Kassidy. During
24 one of his violent outbursts he told Amanda exactly how he
25 felt about her daughter. He told Amanda that he wished

1 Kassidy wasn't around. He wished she had never been born.
2 The 18-year-old girlfriend was fine with the defendant, but
3 he couldn't stand her child. He couldn't stand her crying.
4 And this grown man actually referred to a 21-month-old on a
5 regular basis as "a little bitch," as "stupid," and as "a
6 retard." That's how he felt about Kassidy. Instead of
7 learning to coexist with his girlfriend's daughter and doing
8 something about his out-of-control temper, the defendant's
9 violence continued to escalate. It got to the point where
10 he and Amanda took steps to keep her away from people who
11 would likely report the abuse. She wasn't taken to daycare,
12 she wasn't taken to the doctor, she was kept away from
13 parents. And then wild excuses started to come from Amanda
14 and the defendant. Stories of trampolines and falls and
15 flying toys. And during this time Kassidy's personality
16 changed. It changed to the point that on an overnight stay
17 at Jeff Marshall's house, Jeff found her out of bed, in the
18 living room, standing in the darkness, staring at a wall.
19 That was Kassidy living with the defendant. A living hell.
20 Jeff Marshall became the defendant's fall guy on November
21 the 8th of last year because on that day the defendant went
22 too far. He beat Kassidy Bortner to a pulp, he didn't take
23 her to a doctor, and because of that beating, she slowly
24 died, and died at Jeff Marshall's house. On November the
25 8th, Kassidy was at the defendant's--I'm sorry, Jeff's

1 house. The defendant was in Portsmouth. He wanted Jeff to
2 bring Kassidy down to him. He needed to get to Dover for a
3 six o'clock pickup time. Jeff wouldn't go to Portsmouth, so
4 the defendant had to go north to Kittery to pick up Kassidy.
5 And when he got there, he realized he didn't have a car seat
6 for little Kassidy, so he was frustrated. He put her in the
7 back seat, strapped her into an adult seatbelt, which you
8 can imagine for a 21-month-old, would not be the most
9 comfortable situation. He straps her in, chit-chats with
10 Jeff, and he drives off. During that trip, during that trip
11 back to New Hampshire, Dover, something happened in that
12 car. Only the defendant knows when and where he struck the
13 first blow, but a first blow was struck in that car. And
14 the result of him striking Kassidy caused her to become
15 groggy and lethargic. The defendant noted her behavior, and
16 he began his campaign to shift the blame, something that he
17 and Amanda had become practiced at by that point. He called
18 up Jeff and he said to him, "The little bitch is acting
19 weird. What did you do to her?" Jeff said, "Nothing,
20 nothing, she was fine." The topic is changed. He continues
21 to drive. He picks up Kyle from Dover and then they head to
22 Rochester. When the defendant gets to Rochester, he
23 observes the result of his blow. He sees that Kassidy is
24 injured. And he knows at that point that Jeff knows when
25 that child was picked up she had no new bruises on her face.

1 He has to explain this. And so phone calls to Jeff kept
2 coming, and the story got more and more bizarre. He called
3 Jeff and he told him that Kassidy was injured but it was due
4 to a flying baseball. But unfortunately for Kassidy, that
5 first blow would not be the last one she would absorb that
6 night. There would be more. Horrible photographs show us
7 that there were more. And we know that the defendant was
8 the only adult caring for Kassidy for about one hour plus
9 before Travis got home, and then from about nine o'clock to
10 midnight when Amanda got home. And we know that during that
11 night the defendant called or spoke to Amanda on the
12 telephone and he told her, "Amanda, I don't want to look
13 after her any more. Something always happens when I look
14 after her." And he told her "We should take her to a doctor
15 once the bruises go away." The bruises. And what was the
16 defendant's mood that night? Was he the multi-tasked
17 Mr. Mom that he described to the police? Hardly. When
18 Amanda got home from working at Old Navy, they discussed
19 changing a messy diaper on Kassidy. Neither of them ended
20 up changing it. And then the subject turned to work.
21 Amanda worked a long shift that day, and she made the
22 innocuous little statement of "I work harder than you."
23 Incredibly, the defendant's reaction to that innocent
24 statement was to fly into a rage, to grab Amanda by the
25 throat, pin her up against the couch, and to have the gall

1 to say to her, "You know what gets me going. You've got to
2 work with my temper. It's as if you're looking for it."
3 That is the foul, assaultive mood the defendant was in
4 around midnight on November 8th going into the 9th.
5 Coincidentally, that is in the time range that Dr. Greenwald
6 ages the vast majority of the bruises on Cassidy. Let's
7 talk about the defendant's claims in this case and to point
8 out the serious problems with his claim. We know that
9 Cassidy died from blunt impact injuries to the head, face
10 and abdomen. Dr. Baden made that fat emboli opinion
11 yesterday morning, but he agrees that blunt force trauma
12 caused this child's death. When the defendant picked up
13 Cassidy from Jeff's house on Wednesday evening, she had no
14 new bruises. She had fading bruises around her mouth that
15 Jeff described, but no new bruises. And the defendant, in
16 his multiple phone calls to Jeff, never says to Jeff, "What
17 the heck! She's covered in bruises! What did you do to
18 this girl? She's got bruises all over her face and body."
19 He never says that. He says that she's been injured by a
20 flying baseball, a baseball that came off the bat of his
21 three-year-old son, a little indoor baseball, where his
22 three-year-old generated enough bat speed and power to send
23 a line drive right into Cassidy's face. That's how he
24 accounts for injuries on Cassidy that night. And the next
25 morning when the defendant tells the police that Cassidy

1 was fine and mowing cereal, the reality is, she was returned
2 to Jeff Marshall's house a mass of bruises. Jennifer Conley
3 had never seen anything like it before. Jeff Marshall said
4 it was the worst ever. She left his house on Wednesday with
5 no new bruises. She returned covered with them. That's the
6 problem with the defendant's story. And Dr. Greenwald
7 already told us that the injuries were not consistent--no
8 injury on this child is consistent with a ball.
9 Unfortunately, we're getting used to look at these terrible
10 photographs. But Dr. Greenwald pointed out circular
11 injuries on this little girl's forehead and her cheek, but
12 she told us that if this was a ball, a baseball, the surface
13 of the ball would cause an accompanying contusion. It
14 wouldn't be clear skin next to the curve. It makes sense.
15 That's not a ball injury. Another problem is there are 8 to
16 10 blows to the child's head and face, not a single blow
17 from a ball. The blows that happened in this case would
18 have left corresponding bruises, Dr. Greenwald told us that.
19 And she told us that she painstakingly aged these bruises,
20 and as I said, the vast majority are in the 8-hour range to
21 12-hour range, the time when the defendant had control of
22 Cassidy. And I note that even Dr. Baden wouldn't touch the
23 baseball. We heard no opinion from the defendant's expert
24 accounting for the baseball story. And Dr. Greenwald told
25 you it didn't happen. This trial from the defense

1 perspective has been as much about Jeff Marshall as it's
2 been about the defendant. And they told you that he's an
3 animal. That's what you were told in opening. He's an
4 animal, and they told Jeff Marshall to his face "We're
5 accusing you of murder, let's get that straight." But let
6 me point out something very obvious. Making Jeff Marshall
7 the scapegoat is the defendant's only viable defense in this
8 case. This is not an original defense. It's his only hope
9 of deflecting this evidence. And the evidence--the defense
10 in this case in a nutshell is basically to acknowledge that
11 the defendant hated Kassidy, hurt Kassidy, abused her over
12 many, many weeks, but miraculously on November 8th and 9th,
13 Jeff Marshall comes in and murders her, and the defendant
14 has nothing to do with it. That's what they want you to
15 believe. How unlucky for Kassidy. How unlucky to have two,
16 not one, unbelievably cruel and violent caretakers. But the
17 evidence doesn't bear that out. In opening, the defense
18 told you that the ugly bruising that so many witnesses saw
19 in this case began to develop 4 to 5 weeks before Kassidy's
20 death when they say Jeff Marshall was looking after her.
21 Well, there are several problems with that claim. We know
22 now after trial that the ugly bruising was appearing long
23 before 4 to 5 weeks before death, long before Jeff
24 Marshall's slow season in landscaping. Bruising was first
25 seen by other witnesses as early as July. Tammy Gagne saw a

1 bruise on Cassidy's forehead in early September. Melissa
2 Chick told us about the bath she gave Cassidy where she saw
3 incredible bruising on her buttocks, on her legs, on her
4 abdomen, and all over her face. Early September, long
5 before Jeff Marshall even semi-regularly looked after
6 Cassidy. Kathy Nuernberg told us that before she went back
7 to Texas in September, she saw grab marks or what she
8 thought were grab marks on Cassidy's face. Amanda only
9 began her job at Old Navy the very week that Cassidy died.
10 And it was that week that Jeff looked after her. And it was
11 during that week, up until Wednesday, that he told you her
12 bruising was clearing up. But before that week when she
13 started working at Old Navy, the defendant told the police
14 that Amanda was looking at Cassidy during the day for about
15 three weeks, which takes us into October, folks. And he
16 called it complete Cassidy time for Amanda. Yet in that
17 time period when the defendant's coming home in the evenings
18 and Amanda is looking after Cassidy during the day, she's
19 getting these bruises. And the defense can't have it both
20 ways. Amanda Bortner accounts for that horrible bruising.
21 She told you in vivid detail how the defendant would abuse
22 her, throw her into walls, jerk her arm, throw her onto beds
23 and grab her face. You are the fact-finders in this case.
24 You've heard that over and over again. Will in his opening
25 asked you not to be passive observers but to actively

1 participate in this trial and actively assess each of the
2 witnesses that's come before you to determine who is telling
3 you the truth, who is credible, who has no credibility. And
4 I want to talk about some of the important witnesses in this
5 case and talk about their credibility. There's a cynical
6 saying that you may have heard, "No good deed goes
7 unpunished." And that might apply to Jeff Marshall in this
8 case. Because he did a favor for the defendant and Amanda
9 by looking after Cassidy. His season got slow, and he
10 looked after her when he could. Yet now he finds himself
11 accused of murder by the defendant's lawyers. And in
12 retrospect, Jeff's problem may have been that he was too up
13 front with the defendant and Amanda about each and every
14 mishap that happened at his house. He told Amanda
15 everything. He said he did so because she was his [sic]
16 mother. He told her about the fall from the truck. He told
17 her about slapping Cassidy on the bottom after she got into
18 Windex. He told her about tripping over Cassidy when he was
19 answering the phone. He told her everything. He didn't
20 tell her wild stories to account for her bruising. He told
21 her everything. And you have to ask yourself if Jeff
22 Marshall was abusing this child all the while, why would the
23 defendant and Amanda send her back to Jeff Marshall time and
24 time and time again? It doesn't make any sense. And it
25 makes as much sense as the trampoline story and the baseball

1 story. It was, in fact, the opposite situation. The
2 bruising was getting so bad that the defendant and Amanda
3 sent Kassidy to Jeff to stash her away, basically, to keep
4 her away from people who might report this. And the plan
5 was always "Once the bruising goes away, we'll put her in
6 daycare." But the bruising didn't go away. Jeff Marshall
7 said that she had bruising on her face almost all the time.
8 And let's not forget, Jeff Marshall had a relationship with
9 Kassidy. He had known her basically since birth. He drove
10 up to Auburn, Maine, and would visit with her. Josh Conley
11 said that Kassidy loved Jeff, Jeff loved Kassidy. Jackie
12 Conley said the same thing. He had no reason to hurt this
13 child. It was his girlfriend's niece. And if he was
14 hurting Kassidy, he wouldn't be approaching his neighbor,
15 basically presenting his neighbor Kassidy, pointing to
16 bruising on her face and asking the neighbor, "Should I
17 report this?" He wouldn't be doing that if he was the one
18 abusing her. And in none of the excuses that came from the
19 defendant and Amanda while Kassidy was alive, during none of
20 those excuses about trampolines and falls and things like
21 that do they mention "We think it's Jeff. We think Jeff
22 Marshall is doing this." That didn't happen. They made up
23 wild excuses to cover the defendant's conduct, not Jeff's.
24 On the night that the defendant was arrested, November 16th,
25 when he was arrested one week after Kassidy died, Amanda was

1 there, she was at his house. The police come in, they
2 serve him with the arrest warrant. She gets into her car
3 and drives to Springvale, Maine. She drives unannounced to
4 Tracey Foley's house, the woman she used to babysit for.
5 She shows up in tears. She shows up, Tracey lets her in.
6 Does she say to Tracey, "They've arrested Chad but they got
7 the wrong guy. It was Jeff Marshall. Let me tell you what
8 he's been doing to Cassidy"? No. She said to Tracey Foley,
9 "And you knew, you knew and I didn't listen." And then for
10 the next two hours she proceeded to tell Tracey Foley
11 exactly what the defendant had been doing to Cassidy. So
12 recognize this defense for what it is. It's the defendant's
13 only way out, to point the finger at Jeff Marshall. Not
14 that Jeff Marshall isn't [sic] without blame here. He is.
15 He is with blame. Cassidy was delivered to him on Thursday,
16 November 9th, covered in bruises, and he didn't do anything
17 about it. He saw bruises before that; he didn't do anything
18 about it. He told us "I looked up to Chad." That certainly
19 doesn't cut it. But he didn't try to make an excuse to you
20 for his behavior, because for two days he was questioned and
21 he was intensely cross-examined by the defense, and he
22 didn't make excuses. He knows that he made a huge mistake.
23 You could be angry at his inaction. No question about it.
24 But don't confuse his inaction to the actions that caused
25 these injuries and caused the death of Cassidy Bortner.

1 Only one person caused those injuries, and that's the
2 defendant. Let's talk about the defendant's credibility.
3 The defendant in this case told so many lies it is hard to
4 count them. He told that trampoline story, what we now know
5 as the trampoline lie. He told numerous people that he was
6 on the trampoline with Cassidy, they're bouncing around, and
7 somehow she bounces off the trampoline, and like Spider Man,
8 he's able to grip her by the face and bring her back in.
9 That's the story he concocted with Amanda to tell people to
10 account for that facial bruising. The bruising that some
11 people described as looking like dirt that was all over her
12 face. And amazingly, a lot of people bought that lie. He
13 told it to Cassidy's grandmother. He told it to Jeff and
14 Jennifer. He told it to a lot of people, and he told it to
15 the police detectives who were investigating the death of
16 Cassidy, right there, in an earnest manner, having a great
17 conversation with the police, he out and out lied to them.
18 And he said it in as convincing a manner as you could
19 believe. But as absurd as the trampoline story was, the
20 defendant topped himself with the baseball story. The
21 baseball stories that he told to the police, where he's
22 letting his child hit baseballs in the bedroom, we were all
23 in that bedroom, he says he's sitting on the bed, Cassidy's
24 to his right, and he's throwing baseballs to three-year-old
25 Kyle. And Kyle whacked one, and you can listen to this on

1 the tape, and the defendant says he reached out with his
2 left hand, couldn't get the line drive, and it went right
3 into Cassidy's face. That was the story that he was
4 concocting to the police. And it's a story he told to
5 others as well. He told Jeff the story, and he told Travis
6 and Tristen. You know what? When you're lying, it gets
7 difficult to keep the details straight. And that's what
8 happened here. Because the defendant told some people it
9 was a baseball, and he told some people it was a Whiffle
10 ball. Ladies and gentlemen, there is no mistaking a
11 baseball with a Whiffle ball, especially if you were there.
12 Travis got home that night and Travis tells us that he went
13 up and was talking to the defendant, watching Cassidy splash
14 around in the bath. He described her mood that night as
15 chipper at one point. He said on the stand she was
16 absolutely normal. He saw no bruising on her other than
17 what the defendant told us, the bruise under her eye. But
18 Travis tells us that, yeah, gee, "After that I went into the
19 bedroom with Kyle and I did a little batting practice with
20 him, too." Here's Travis, he's home from work, he's in his
21 uniform, and he goes into that bedroom and he starts tossing
22 Whiffle balls to Kyle. And he's whacking them, he's hitting
23 them pretty good, Travis said. And he was asked what kind
24 of bat was he using? Well, he was using one of those yellow
25 skinny long Whiffle ball bats. We've all seen them. That's

1 what he said. Well, the police secured that house that
2 night. They wouldn't let anyone in or out. Well, they let
3 them out, but they secured it, and the very next day they
4 searched the house and removed every single ball and bat in
5 that house. And there was no long yellow Whiffle ball bat
6 in that house. And we know that Travis left that house at
7 nine o'clock that night. He went to his then girlfriend's
8 house. He said he wasn't back till midnight. And during
9 that time the defendant was the only adult with Cassidy.
10 Let's talk about the defendant's statements to the police.
11 He told so many lies in that statement it's difficult to
12 count them. His first one was immediately. He walks in and
13 he tells the detectives he doesn't want to sit down, he's
14 been driving for two and a half hours. And we know that he
15 was in Portsmouth around four o'clock talking with his
16 friend Jeremy. He was in the area. Portsmouth is right
17 down the road from Kittery. He told the trampoline story,
18 he told the baseball story. He said that Cassidy was fine
19 in the morning, she was mowing cereal. He gave her a kiss
20 goodbye and he described only limited bruising on Cassidy's
21 face. Well, even Amanda contradicts him on how Cassidy was
22 behaving that morning. She told us that she didn't even get
23 out of bed. Cassidy normally walked into their bedroom
24 every morning. But this morning she was lying in bed crying,
25 and she was lethargic. That's not what the defendant told

1 police. The defendant says that the night before Cassidy
2 was eating a pop-ice, they were playing games, doing ABCs,
3 having a great time. Dr. Greenwald told us that if that
4 child had sustained a serious subdural prior to that, she
5 wouldn't be going in peaks and valleys behavior. It was a
6 steady decline. He told the police that Cassidy had a giant
7 goose egg on her head from Jeff, that Jeff had caused.
8 Dr. Greenwald told us that she performed an autopsy on
9 November 10th and she saw no goose egg on that child's head.
10 He said that Cassidy had a black and blue foot from Jeff
11 stepping on her. She had that on Wednesday night. These
12 are the photographs of her feet. They're not black and
13 blue. And then he began to tell a series of excuses about
14 Cassidy, about the bruises, that she fell a lot, that Kyle,
15 here's Kyle again, hit her with toys, causing bruising. He
16 admitted that he himself grabbed Cassidy by the face to get
17 eye contact. But then he said, "But Kyle touched her face
18 right after me. Kyle did, too, so it could have been from
19 him." He told the police that he never choked Amanda. Even
20 on Amanda's version at trial when she says she threw a mug
21 at him first, she told us he certainly did choke her and pin
22 her up against the couch, and he told the police he never
23 did it. And maybe most incredibly, he told the police that
24 Cassidy on her own would sometimes run into the wall herself
25 and propel herself into the wall, causing bruising, and that

1 he and Amanda had chuckled about it, they couldn't believe
2 it. These are the things that he's telling the detectives
3 investigating Cassidy's death. Let's look at how he behaved
4 on November the 9th, Thursday the 9th. Cassidy has gone to
5 Jeff Marshall's, and he receives a phone call from DCYF,
6 from Patricia Hawker. She leaves him a message saying,
7 "It's about the children. Get back--please give me a call
8 back." Well, he does call her back. This is Thursday
9 morning. And he tells her, leaving her a message, "You
10 know, why don't you call me back on Tuesday afternoon
11 between 3 and 4. I'm going out of town." This is an effort
12 to buy time, ladies and gentlemen, to buy time for the
13 bruises to go away. So after the DCYF called, he picks up
14 the phone and calls Jeff Marshall. He calls Jeff and says,
15 "How's Cassidy?" And then he says to Jeff--he tells Jeff
16 about the DCYF call. He tells Jeff that he knows it was
17 Emily, Amanda's friend, who called DCYF on him, and he was
18 angry about that. He wasn't calling Jeff and saying,
19 "Thanks a lot, Jeff. You beat her up last night, she's
20 covered in bruises, and now I'm getting calls from DCYF."
21 He's saying "Emily called on me," And he says to Jeff, "If
22 this is about Cassidy, Amanda and Cassidy are out of my
23 house." Later that day he's paged by the Kittery Police
24 Department. It's in the phone records and they're in
25 evidence. He's paged after two o'clock, just after two, and

1 asked to come down to the police station. Now, the
2 defendant knows that Cassidy was staying in Kittery that
3 day. Does he get in his car and immediately drive up to the
4 station as he's asked to do? No. He starts contacting all
5 of his close friends wondering, "Hey, what do you think this
6 is about? What do you think?" He actually goes to visit
7 Jeremy Hinton at a restaurant and tells him or talks to him
8 about the situation. He calls Travis. He calls Travis and
9 says to him that he needs to go to the Kittery Police
10 Department and he reminds Travis, he reminds him of the
11 baseball story. He reminds him that Cassidy was hit by a
12 baseball, and he reminds Travis that he was playing games
13 with Cassidy and she was fine. Kind of a curious thing
14 to do, don't you think? Cassidy's father figure, the
15 defendant, shows up at the Kittery Police Department that
16 evening later than anyone else, and he arrived with a posse
17 of loyal friends. Are these the actions of a man with a
18 clear conscience who is totally surprised by this page, or
19 is he circling the wagons? Amanda Bortner, let's talk about
20 her a minute. Amanda got on the stand and she told you an
21 incredible eyewitness account of the abuse that Cassidy
22 suffered at the defendant's hands. Her testimony supports
23 all of the assault charges that you have before you. She
24 told you some terrible things that happened to Cassidy. But
25 you've got to look at Amanda and ask yourself if she's

1 telling you everything. She told you on the stand that she
2 loves the defendant, she misses him, she wants to be with
3 him, she's been staying with the defendant's sister. In
4 this case she over and over again lied to other people to
5 cover for the defendant's abuse. To Sergeant White, the man
6 she described as kind and nice, she lied. She lied to him
7 when he asked her if she was having contact with the
8 defendant. And given her loyalties at this point, she has
9 every incentive to trash Jeff Marshall, to make Jeff
10 Marshall look bad because that's going to help the defendant
11 in this case. To use Attorney Sisti's words, be suspect
12 about her claims regarding Jeff. Be suspect when she tells
13 you that she never, ever saw bruising on her daughter's
14 body. She never did. She bathed her all the time. She
15 never saw that. Well, her very close friend Melissa Chick
16 testified in early September she gave Cassidy a bath and she
17 saw her covered in bruises, her stomach, her bottom,
18 everything. And she approached Amanda immediately. She
19 said to Amanda, "There's something wrong. There's something
20 wrong here. You better take her to a doctor. She might
21 have leukemia. She might be anemic." And Melissa told you
22 that Amanda's response was "I don't want people to think
23 she's being abused." Amanda made her choice a long time
24 ago. She told you about the abuse that she witnessed. She
25 lived that. She saw Cassidy being hurt, she knows that

1 Kassidy has died, and she's still standing with the
2 defendant. She didn't protect Kassidy in life and she's
3 chosen to defend him in death. Now, the defendant
4 dominated this relationship. Kathy Nuernberg told us about
5 that. She had seen Amanda in a prior serious relationship,
6 and she said Amanda did what she wanted before. But with
7 the defendant it was different. She was afraid to be late,
8 she was afraid to go against him. And it's easy to see why.
9 It's easy to see why the defendant was the dominant one in
10 this relationship. He had the good job, he had the money,
11 he was better educated, he had a lot of close friends, he
12 had a house, and he was 10 years older than her. We all
13 know that there's a big difference between the age of 18 and
14 28. And we know that he's a persuasive person. When you
15 watch that tape again, you can see that the defendant is
16 very comfortable talking to these detectives. He's very
17 comfortable talking about topics not having to do with
18 Kassidy. And he's gone far in his job because he's a
19 schmoozer, he knows how to talk. But when you watch that
20 tape, pay special attention when the questions get pointed,
21 when they start asking him questions about the abuse of
22 Kassidy. You'll see him, when he's asked, "Did you ever
23 cause bruises to that child?" "Is that your cell phone or
24 mine?" Then in mid-stream when he's answering the question,
25 he'll change the topic entirely and they'd have to bring him

1 back to it. He admits to causing bruising on Cassidy's
2 face, but then says Kyle did it, too. He tried to be
3 persuasive to the detectives, but it didn't work. And the
4 detectives told you that they had talked to him for a long
5 time that night and they, in monitoring other interviews
6 that had been going on, and Lance McCleish said that the
7 tough questions had to be asked, and they asked them. They
8 were investigating the death of a 21-month-old girl. We
9 know the defendant is persuasive for other reasons. We know
10 that he persuaded Amanda to stay with him for nine months
11 in violation of the bail order. We know that he persuaded
12 a close friend of his to do incredible things to help him
13 violate the bail order. And he convinced Jeremy Hinton,
14 a restaurant manager, and Vanessa Manson, who worked in
15 the prosecutor's office, he convinced them to help him out.
16 People gave up their apartments and their own beds so that
17 the defendant can have intimate time with the eyewitness
18 of his abuse. These close friends didn't say to the
19 defendant, "Are you crazy? You're on your own." They
20 didn't do that. They wanted to help him. And it even
21 got to the point where the defendant's own family set
22 up this campsite in the woods of Vermont, a campsite
23 where the defendant could have unfettered contact with
24 the State's star witness, in secret, in violation of the
25 Court's order, and out of sight of authorities. And

1 please don't accept the claim that's been made in this
2 case that, well, the defendant was just helping out
3 Amanda because she had nowhere else to go. He did it out
4 of the goodness of his heart. We know that Amanda had
5 other options. She had her friend, Kathy, in Texas who
6 she actually lived with for a while, and she had Melissa
7 and Tracey in Maine. Tracey Foley had an open invitation
8 for her to stay with her. But instead, she abandoned her
9 close friends, dropped contact with her close friends, and
10 aligned herself with the defendant. Now, the defense has
11 said what does this all add up to? It doesn't mean
12 anything, nobody's been tampered with here, nobody's been
13 influenced. But the tricky thing about influencing a
14 witness is that if you're successful, that witness isn't
15 going to acknowledge they've been influenced. The point
16 of this contact for nine months against the Court's order
17 is to show that the defendant was being deceptive and that
18 he is conscious of his guilt. On that tape when he was
19 talking to the police, when he's have a free-wheeling
20 conversation, you know, they start talking about Amanda,
21 and he says, "Well, guys, you know, I'm just getting out
22 of a divorce, and I'm going to take things real slow. You
23 know, I can tell this girl really loves me, but I don't
24 want to jump into it too quickly." He says to the police
25 that Amanda keeps bugging him to tell her "I love you."

1 But he said that he told her, "Well, don't you want it to
2 be natural, Amanda, when I finally do say this to you?"
3 This is what he's telling the detectives. But by the end
4 of that interview, he knew that the police suspected him,
5 and within minutes he's out in the parking lot of the
6 police department approaching Amanda and telling her how
7 much he loves her. This is on the same day that he called
8 Jeff Marshall and said that "They're out of my house if
9 this is about Cassidy." Now, the defendant's lawyers,
10 their job in this case is to convince you that there is
11 reasonable doubt--

12 MR. SISTI: Objection.

13 THE COURT: Sustained.

14 MR. BROWN: The defense in this case has poked
15 and prodded the State's case, trying to hit parts of
16 the case that they think show a shoddy investigation.
17 And perhaps the most shameless of those is the one
18 involving these pajama bottoms. They want you to believe
19 that Jeff Marshall was doing something inappropriate with
20 this child on that morning. What other reason would they
21 point to that? The fact is, Cassidy had a diaper on.
22 Jeff Marshall had pants on, and the photograph of those
23 men's jeans show that it was right below an overloaded
24 laundry basket. And we have heard absolutely no medical
25 evidence that anything of the like was going on.

1 Dr. Baden was the last defense witness in this case.
2 And Dr. Baden was hired by the defense and paid handsomely
3 to provide you with an expert opinion. Judge Nadeau will
4 tell you that you are not required to accept an expert's
5 opinion. If you weigh it against other expert opinions
6 and against the other evidence in the case, you can find
7 that opinion to be unreliable. In this case, Dr. Baden's
8 opinion is unreliable. In this case, Dr. Baden had known
9 about this case for a long time. And on November 20th he
10 issued a report, he issued a report agreeing with
11 Dr. Greenwald, this child had died from blunt impact
12 injuries of the head and abdomen. That report was a page
13 and a half, and nowhere in that report was there one
14 mention of fat emboli. Sixteen days before today Dr. Baden
15 was deposed. It was the second day of a two-day deposition.
16 And Will mentioned to him Dr. Greenwald's findings as to
17 fat emboli. Dr. Baden expressed surprise at that time that
18 fat emboli was a part of this case, even though it was
19 mentioned several times in the autopsy report of
20 Dr. Greenwald. And yesterday morning he traveled up here
21 to New Hampshire and for the first time in this courtroom
22 yesterday morning he presented his opinion that fat emboli,
23 something that he didn't know anything about two weeks
24 before, caused a sudden death on Thursday morning. Major
25 trauma happened on Thursday morning that caused fat to

1 liquify and go into major organs and cause a sudden death.
2 That's his brand new opinion. But strangely, Dr. Baden
3 did not testify about what this major trauma was. What
4 were these blows on Thursday morning that brought about this
5 rare medical phenomenon? He didn't point to these blows
6 that caused that. In his report of November 20th, he said
7 that the bruising that Dr. Greenwald aged was between 5,
8 12 and 20 hours old. His new opinion about the fat emboli
9 is totally contrary to Dr. Greenwald's expert opinion about
10 fat emboli in which she said it takes many, many hours for
11 that to develop and is contrary to the treatises that were
12 presented to him. Additionally, he was wrong about the
13 leg fracture. He was emphatic that he did not see a leg
14 fracture to the left tibia, and he disagreed with
15 Dr. Greenwald on that. He said that the fracture, if there
16 even was one, didn't go through the bone marrow. Then you
17 heard from Dr. O'Connor, who is a pediatric radiologist,
18 and he told you that there most certainly was such a
19 fracture. Ladies and gentlemen, the purpose of Dr. Baden's
20 testimony was to muddy the waters. Muddy the waters where
21 they're in reality clear. While you wonder how Dr. Baden
22 earned his \$9,000 in this case, let me talk to you about
23 Dr. Greenwald. Dr. Greenwald is not a hired gun. Her
24 testimony was hardly biased. She herself has over 20 years
25 of experience as a forensic pathologist. She has practiced

1 all over the country, and unlike Dr. Baden, she did her
2 homework in this case. She was prepared and she
3 painstakingly aged these bruises. As I said before, using
4 a microscope, she aged these bruises, and the vast majority
5 of them are in the 8 to 12-hour range, 8 to 12 hours before
6 death. Now, Attorney Sisti talked about three injuries,
7 three injuries that could be recent. We're talking about
8 two bruises on the back, one to the frenulum--and let's not
9 confuse the frenulum. This giant injury right here is not
10 the frenulum. The frenulum is that little mark there. And
11 one to the back of the head. None of these injuries, ladies
12 and gentlemen, were to fatty areas of the body, fatty areas
13 where this emboli would originate. And Dr. Greenwald told
14 you that when you take these slides, the bruising ages from
15 the outside in, and there's a possibility that you're not
16 getting a section of the bruise that's started the healing
17 process. And also, in this case Jeff Marshall testified
18 that he was fishing around in her mouth when he was trying
19 to help her. There is photograph--there are photographs
20 where the EMTs are putting tubes into little Cassidy's
21 mouth. A picture right here with an EMT and with his hand
22 in her mouth. And you have heard no convincing evidence
23 that Jeff Marshall beat this child that morning. That
24 child was brought to his house covered in bruises. She
25 couldn't walk. He put her in bed. The defense wants you

1 to believe that in that state he began administering more
2 beatings. It's not credible. Dr. Greenwald told us that
3 Kassidy was a battered child. She had injuries of varying
4 ages all over her. An aspect of battered child syndrome
5 is that the parent singles out one child and leaves other
6 children alone. That's what happened in this case. The
7 abuser creates implausible stories that don't fit the facts.
8 That's what the defendant did in this case. And the most
9 common area for abuse with battered child syndrome, the
10 head and the abdomen. That's where the defendant struck
11 in this case. Ladies and gentlemen, the defendant roughly
12 pulled on Kassidy's leg, fracturing her leg. He repeatedly
13 grabbed her face, causing bruising, he assaulted Amanda
14 Bortner on November 8th. He had repeatedly hurt Kassidy
15 and did nothing to help her. He finally on November 8th
16 into the 9th, he recklessly caused her death by beating
17 her again. And he showed an extreme indifference to the
18 value of Kassidy's life. Kassidy's life with the defendant
19 was a living hell. And the abuse only stopped when the
20 defendant finally killed her. We ask that when you
21 deliberate and you decide who has told you the truth here,
22 who has credibility, and where the truth lies, because the
23 time for lies is over, the time for false excuses is over.
24 It's now time to gain justice for Kassidy Bortner. We ask
25 that when you finish your deliberations, you come back into

1 this courtroom and deliver the only verdicts consistent
2 with the evidence and consistent with justice: Verdicts of
3 guilty.

4 THE COURT: Thank you, Mr. Brown.

5 (END OF REQUESTED PORTION OF TRIAL)

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7 HEARING RECESSED (DECEMBER 18, 2001, 12:11 P.M.)
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