

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. O'SHEA:

"Question:

Kristen, what does naked mean?

"Answer," from Kristen, "Sex." Now, if someone walks up to a child and asks them, "What does naked mean," does a child say, "Sex"?

Ask yourself that question first, ladies and gentlemen, the most striking of all questions and answers in the course of this case.

Now, like the prosecutor, I'd also like to thank you for the last week, week and a half that we've been here. I've almost lost count myself.

It's been a trying week in this courtroom and in this country, and it hasn't been easy for my partner, Mr. Goldberg and I, and Miss Giordano to concentrate on this case because of everything else that was going on, so I'm sure it wasn't any easier for you folks to get on an elevator every day and come back here in light of everything else.

And Mr. Goldberg and I talked about it a lot, and we thank you. We thank you for your attention, which is not easy when the accusations are as bizarre as they are here .

Also, I'd like to thank the prosecutors for doing as good a job as they could given what they had. That's their job.

Mr. Goldberg and I bear them no animus. We understand there are two sides to a dispute.

I'd like to thank the Judge for allowing us to put this case on in spite of the crazy week that we had. She obviously was able to adjourn and take care of us and take care of the case in a very professional way, and I thank her.

You know, I live in the City of Rocky River, out on the west side here, and in a certain part of my city there is a -- the airplanes fly right overhead, just where I'm likely to be, you know, a certain way, and for the last five-and-a-half years that we've lived there, when these planes fly

over at night, it bugs me, because it gets loud.

I'll either be watching TV or trying to talk to my kids or my wife or my neighbor, and I hear that, and you've got to stop, and I say to myself, "One of these days, you know, we'll get after the FAA, and we're going to stop all of that nonsense and get them to fly out a different way. "

And last Thursday night as I was getting ready for bed, having come home at 10:00, for the first time in two days I heard a plane fly over my house, and it was the best sound I'd heard all year, and I thought that was so weird, how my perspective on something like that can change so dramatically.

And I thought about that, and I thought about it in the context of this case that we're here in, and I said to myself, "Perspective can mean everything."

It can mean -- the perspective that you have controls in many ways how you see things on a particular day and on a

particular job.

If you're a police officer, you tend to be a little bit jaded, and you'll see things on the street a little differently than the person who's not a police officer.

If you're in the military and you've been trained a certain way, you see things a little differently perhaps than a nonmilitary person, with no military background, would see things.

In the same vein, ladies and gentlemen, if you're a social worker and you've been trained this is the way life is and that's the way that the people are out in the streets, you have a perspective on looking at things and how to perceive them and how to read things, and this is what happened in this case.

Now, the very fine people that came into this courtroom and testified on behalf of the State of Ohio, people such as Mrs. Prettyman, Mrs. King and Dr. Gemmill, are very fine people. They're very devoted to their cause, to their war upon things being done to children.

Nothing I say in my closing statement and nothing that Mr. Goldberg and I did during our cross-examinations was meant in any way, directly or indirectly, to make you infer that these people are anything other than good-intentioned advocates for their respective positions.

Nevertheless, their perspective on how to evaluate things when it calls for neutrality exists and makes it difficult for them to see anything other than what they have been trained to see.

Let's talk about that first. Let's talk about Julie Prettyman.

She calls herself, ladies and gentlemen, an advocate for children.

Now, an advocate is like a lawyer. You have a side, and you argue that side and only that side.

She is not an advocate, ladies and gentlemen. She's -- or, rather, she's an advocate, ladies and gentlemen, and not a neutral evaluator or an investigator.

And that's sort of like having a Baltimore Ravens' fanatic fan be chosen to

referee a football game; a Superbowl football game, for that matter, between the Baltimore Ravens and, say, the Cleveland Browns or something.

And that referee is supposed to remain neutral when those close plays come?

Not a chance.

Do you think Big Dog, that guy we saw with the Cleveland Browns when they were trying to resurrect that team again, that guy that would wear that mask, they call him Big Dog, do you think he can be a referee in a Browns' game?

Not a chance. Because he could never be objective and fair and neutral. And I wouldn't want him to be.

And perhaps our system doesn't want these people to be objective either. They want them to be advocates. That's their job. But when we're in this courtroom, we need that objectivity.

Now, some of the other things that Miss Prettyman indicated to us are somewhat disturbing, though.

When asked, "Why can't you," or, "Why

didn't you record these interviews with these children," be it through an audiotape or through a videotape, her response to that was, "Well, it's broken. Both of them are broken. We haven't gotten around to fixing them yet."

Now, that should disturb you a great deal.

Cassette recorders, ladies and gentlemen, can be bought at Office Max for 30 bucks, and if these people are such advocates for these children and they want objectivity, go buy the recorder, go buy the video camera and put it in yourself .

Why couldn't we hear tape recordings or video recordings of these kids?

Because they're broken.

Now, one of the things that Miss Prettyman did, perhaps in her haste and her zealousness to protect what she believes to be the children from the world, is that she kind of misled Mr. Goldberg on cross-examination about how long she did her initial workup to get into these kids' heads.

And I don't think she lied because she's a bad person. She just lied because she's an advocate, because, "This is my job, and that's what I got to do."

She's just a devoted zealot. The cause justifies the means, the ends justify the means, even if it's including letting the wrongfully accused get convicted. To her she's just erring on the side of caution.

Again, ladies and gentlemen, we're not saying that Miss Prettyman is anything other than a person who goes home every night, is a good neighbor and a good person and a good advocate, but she is not to be refereeing or objectively evaluating this situation.

Then we go on, ladies and gentlemen, to Miss King.

As you recall, I cross-examined Mrs. King, and she told us some things on' cross-examination that were not brought out by the prosecution.

First of all, she's a professional witness. We know that. She admits that.

She admits that she assists in the training of actors so that they know how to present a case for purposes of putting on a play.

We know that she has some training, a certain amount of training, that she knows how to look directly at you folks, unlike a nonexpert witness. She knows how to look at a jury and talk to the jury in their faces to make a better impression.

We also know, ladies and gentlemen, that she only assists prosecutors and the police.

She indicated that she's testified numerous, that was her term, times as an expert witness for the prosecution and the police, and that she succeeded in getting thousands of dollars of grants for police and prosecutors.

Now, she indicated, "Oh, over all the thousands of times or whatever that I've done what I've done, I've consulted with a defense attorney now and then, twice and/or three times, but would not testify."

Now, she didn't say -- she tried to get around that and make that very

sugarcoated and say, "Well, they didn't subpoena me."

And the question we asked was, "Well, why didn't they subpoena you?"

And the answer to that was, "Because I would have said the wrong thing for them."

So she's never been an advocate on behalf of the accused, ever, nor can she be in her heart. And perhaps we, as a society, wouldn't want her to be.

But we also know something else about Miss King in connection with her involvement in this case.

She didn't look at any medical records. She didn't look for them. She didn't ask for them. She didn't even check. She didn't even ask the question, "Might there be more out there?"

She never even interviewed these children herself. How unforgivable can that be, ladies and gentlemen? She did not even bother to look and go talk to the children herself.

She never tried to even speak to the teachers that these children saw in their

lives, never tried to speak to the neighbors with whom these kids play and hang with, never tried to speak with the friends of these kids, never tried to speak to any of the relatives of these kids, never even spoke to the social workers who interviewed these children personally, never spoke with the police who were involved in this **case** in an attempt to get anything from those police investigators, getting any additional supplemental information, other than the records that she had right here.

And where did those records come from, ladies and gentlemen?

One place and one place only. The prosecutor. That was the entire gateway of the information she received and evaluated.

Ladies and gentlemen, she also indicated quite clearly that she cites in support of many of her positions the studies that certain professionals have done throughout the ages, or perhaps more specifically, throughout the last 15 or 20 years, to support the things that she was saying.

Now, when I asked her some questions about some of the other studies that have been written; for instance, there was a Hewitt & Tackett, which is one of the people that she says were authorities on certain things, but she completely refutes the Hewitt & Tackett study that says that sometimes kids bring this stuff up or are encouraged to bring it up.

"That's not true, but the stuff that supports the way I believe that they did is now true."

And then she completely rejects any study or literature or scientific finding that doesn't support what she believes to be her dogma, completely ignores it.

"It's all wrong. Those people only work for defense lawyers, so I just completely reject it."

Again, ladies and gentlemen, more examples of how she lacks the neutrality and objectivity to come in here and tell us objectively and empirically what happened. We know, ladies and gentlemen, that Miss King, in her efforts to ferret out what

she believes the evil in this world to be, has been an expert, essentially speaking, ladies and gentlemen, since the day she graduated from school.

It's almost like a med student who walks into an OR room and says, "I'm going to be doing brain surgery from this point forward, and I'm going to be an expert."

Can you imagine being the patient?

And then I go on to Dr. Gemmill, a man who obviously has a lot of ethics and a lot of character. You can tell that and emulate it from him on the stand, a professionalist. This is a guy who's willing to concede some things.

First of all, though, ladies and gentlemen, we know, and the prosecution will poke fun at, perhaps, the fact that there was absolutely no physical or medical evidence whatsoever that these children had been sexually abused. None.

And, you know, we'll hear the prosecutor get up and say, "Well, look, we know that things were shoved up the rectum of these children on a regular basis, toys,

spoons, knives and forks."

Do you remember that?

And Dr. Gemmill has indicated that, of course, sometimes there are tears, and we know that Dr. Gemmill has a microscope-type of device that can go in and see the slightest tears, and we know that that microscopic examination reveals nothing.

And what the prosecution would have you believe is that toys, spoons, forks, knives are being shoved up a lot of times. Remember that use of the term? Up these children's rectums. And not one child, one, two, three, four kids, shows any signs of any of this.

THE COURT:

Just a minute.

Ladies and gentlemen, both parties have referred to four children. You will remember that although four children have been mentioned, that the State only alleges criminal acts against three children; most notably, Kristen, Ryan and Aaron. Katelyn is not mentioned in the indictments.

MR. O'SHEA:

Thank you, Your

Honor.

Dr. Gemmill also agreed with Mr. Goldberg that the memories of children can be easily corrupted. He conceded that.

He also conceded on cross-examination, ladies and gentlemen, that all of his opinions that he gave and all of his findings are based upon, 100 percent, on what he read, rather than what he saw in these children.

He has had to base his entire opinion, ladies and gentlemen, his entire opinion, on what is known as history and nothing whatsoever on his physical examination.

Now, all three of those witnesses confirmed strongly that their society of social workers and doctors, Ph.D.'s and masters, what have you, psychiatrists, psychologists, have gotten together over the years, and they form these things called guidelines, these APSAC guidelines, and these guidelines are designed to prevent people from being essentially wrongfully accused of sex abuse.

They are set out to be objective

guidelines that people in these professions must follow in order to have an empirical and objective evaluation of any accusations.

And these guidelines are important, ladies and gentlemen, because once memories are corrupted at the initial point upstream and they continue to flow downstream, they are forever corrupted, and they corrupt and pollute the entire stream all the way downstream. So these guidelines were designed to prevent that.

Dr. Gemmill loves them and has worked on drafting them. **We** know that. Miss Prettyman loves them. And we know Miss King loves them and has worked on drafting them.

Okay. So I went through with Miss King these guidelines and what needs to be done and how it applies to this case.

And we talked about APSAC Guideline 1A1. She agreed that the interviewer must have an advanced health degree, that is, an MD, a master's degree, a Ph.D.

How many of the workers, the foster parents here, that initially took in this

information, had those degrees?

None .

And we talked about APSAC Regulation or Guideline 1A2, which says the initial interviewer should have at least three to five years of experience in the field or be supervised by someone who does.

None of the social workers or the foster parents involved in this case had anywhere near that type of background.

And we had Miss King indicate that APSAC Guideline 1A6 requires that someone approach the interview with an open mind.

Now, we know that Miss Prettyman did not approach that interview with an open mind. She'd already been told by people that these kids were abused.

We know that Miss King certainly couldn't have had an open mind because she was only supplied with information given to her by the prosecution.

Then she went on to indicate that there's APSAC Guideline 2B2, which concerns the practice of having a court-appointed evaluator and that discretion should be used

when a court is already involved.

Now, as the social workers already indicated to you when they testified, we know that the Juvenile Court was already heavily involved in these children's lives. So these social workers and these experts never bothered to comply with that guideline in order to seek objectivity and neutrality.

Miss King also conceded that APSAC Guideline 2D1 requires the interviewer or the people involved to review all relevant background material.

We didn't see that with Miss King's evaluation. She conceded that. We didn't see that with any of the foster mothers. We didn't see that with any of the social workers. None of them attempted to go further back in time other than to just take the kids' word for it.

Then we have Miss King indicating that we have APSAC Guideline 2A2, which requires keeping a detailed reporting method, that is, videotaping and audiotaping the whole session.

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And we know that wasn't done. And we know why such a guideline exists, for that reason.

We have Miss Prettyman telling me that or telling Mr. Goldberg that the video or audio machines are broken.

Again, how complicated is it to simply fix those?

We have no report from Miss Prettyman, and we have no report from Miss King.

We have Miss King just coming up on the stand with some handwritten notes that she brought to help herself to prepare herself to testify, but not a report.

Miss King also acknowledges APSAC Guideline 3C1, which talks about the requirement that there be at least two to six sessions before these children can be properly evaluated.

How many sessions did we have in this case?
One. With Miss Prettyman. Then Miss King indicates that we have APSAC Guideline 3D1, which requires the

interview or attempted interview of the primary caretaker.

Did Miss King even attempt to do that?

No.

And then we have Miss King indicating that we have APSAC Guideline 4C3, which basically says the use of anatomically detailed dolls is not to be used, ever, as a diagnostic test.

Then Miss King talks about and concedes that we have APSAC Guideline 4C4, where it concedes that basically mental health professionals have no special ability to detect whether a child is telling the truth.

Miss King will not concede that. "That's a wrong guideline. That doesn't make any sense here. Of course, we do."

Then, of course, we have the APSAC guideline that prohibits the use of leading questions, questions that suggest an answer to a child.

And we all know that was done. We all know that was done by these workers. It

was done in this courtroom in front of you.

Ladies and gentlemen, when dealing with these social workers, and experts, too, we're also faced with a "damned if you do, damned if you don't" type scenario. What do I mean by that? Well, if a child says he or she was abused, that's evidence that the child was abused, but if a child says, "I wasn't abused," well, it's just evidence, ladies and gentlemen, that the child's experiencing repression or a fear, which is evidence of . abuse. So you can't win.

For instance, Dr. Gemmill says, "There's no evidence of abuse," but then he says, "This does not prove abuse did not occur."

What does that do, ladies and gentlemen? Why did they have Dr. Gemmill if it doesn't matter what you find?

But we all know, ladies and gentlemen, that if there were medical or physical findings by Dr. Gemmill of abuse, scratches, tears, scars, that they'd be standing up here and pounding their fist,

saying, "And it's been scientifically proven, ladies and gentlemen." You know that.

But here when we got Dr. Gemmill coming up and saying, "We found no evidence, but that in and of itself, ladies and gentlemen, is almost evidence of abuse," you can't win again.

Now, Mr. Goldberg and I, Miss Giordano, Mr. Krzywkowski would ask you to review these children's testimony the same way as if you would if this were a robbery case, or even a DUI case, where a child is called in to testify about what he or she saw.

Please don't let your emotions be your guide in evaluating their testimony and their ability to recollect.

Now, we also heard, ladies and gentlemen, some stuff in this courtroom that was presented to you that has nothing to do with rape or gross sexual imposition.

We heard about kids being placed in the attic, kids being given cold baths, kids being hit with a wrench, not getting enough

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food, being thrown up against a wall, socks in the mouth, being tied up in this thing called a papoose.

And we submit to you, ladies and gentlemen, that the prosecution presents that to you in order to get you to hate Grady Krzywkowski, "Bad dad, rape dad."

Those actions had nothing, no connection whatsoever to the legal indictment that we have here.

That was meant to tear you up, to bad-mouth this guy, so that you lose objectivity when evaluating the evidence as it applies to the counts in the indictment. And I ask you, ladies and gentlemen, to dismiss that outright and not apply that in any part of your evaluation.

And at the very least, call it what it is, and that is an attempt to make you hate Grady Krzywkowski.

Now, having said all that, we have to then ask you to review the testimony of these children.

And let me start with Kristen. We know that Kristen lies. We do.

Why?

Because the foster mother tells us that she lies. She lies about stuff at home. See lies to people at the supermarket. Remember that?

She comes up to people at the supermarket, on numerous occasions, and says, "My mom's not feeding me," because she doesn't get her way.

She was on the stand at least three or four times, ladies and gentlemen. Remember that? We had to have a break. And she came back each time with a different version of what happened.

And it had to be brought out of her through these leading questions. "Remember what you said to me in my office? Do you remember that, Kristen? "No. . .
"Well, don't you remember you said that and this and this? "Oh , okay . "

Now, interestingly enough, from a time-line perspective, we have Kristen bringing out these accusations against Mr.

Krzywkowski, her father, only after she is caught doing somewhat of an innocent sex game with her sister.

It's almost like the grocery store situation. Something's happening that she doesn't want to happen, so she throws out these allegations.

But what else does she say?

To the social worker and the foster mother she says, "Yeah, my dad did it to me. My mom did it to me. My uncles, my aunts, my grandparents did it to me."

What else do we know, ladies and gentlemen?

We have the guardian ad litem and the foster mother during the course of her testimony up there on the stand, and they're sitting right back there, right within her eyesight, the whole time.

What was that all about?

We also know that the foster mother spoke with this little girl about her testimony. The little girl told us, little Kristen told us that, "We talked about it when we were in the minivan at the socker

game the other day."

The prosecution would want you to believe that this girl has not been instructed or trained about what she's about to say, yet the little girl blurts it out herself.

She has a picture on the stand of the foster mother's son so that she can feel secure and have this connection with the foster mother, who's watching her in the back of the courtroom.

We know that all of these kids, because Ryan told us that, practiced in this courtroom before you heard them testify about what they were going to say.

Kristen also knows what these dolls are all about that are in a bag that are brought into this courtroom. Before the bag is opened, she knows what's in the bag. She knows that these dolls have private parts.

Do you think these kids haven't been prepared to testify?

She knows that when you pull the pants down off the dolls, that they've got private parts behind them.

The social worker walks in the house and the little girl walks up with this list and says, "Look what I got. Look at my list."

Where did that come from? Do you think this little girl was up in her room alone writing this list?

She also knows how to use this word called "uncomfortable."

"Kristen, how did that make you feel?"

"Uncomfortable."

Now, how many five or six-year-olds use that word?

"How does that make you feel?" You know how they answer. "Good. "How is your day going? "Good.

"How's that?"

"Bad," or, "Boring. Those are the words that those five and six-year-olds use .

They don't come up and say, sit in these chairs and say, "Wow, this is uncomfortable," or, "That situation on the

playground made me feel uncomfortable."

That word was put into her head, ladies and gentlemen.

Now, we also know that Kristen told us some unusual things on the stand the first time that she was up there.

First of all, she's talking about an attic, and she said that there's a big hole in the roof of the attic. Do you remember that?

And then she further says, "It didn't have no roof, and it was snowy, cold and rainy."

And then she follows that up by saying, "And it was summer."

Snowy, cold and rain in the summer, ladies and gentlemen?

And then we have her say, "Question: All right. How do you know your dad put four fingers in your butt?"

"Answer: He tried to." That's her response.

"And how do you know it was four fingers, Kristen?"

"Because we were talking about it

2007 yesterday.

"Who was talking about it yesterday, Kristen?"

"Me and my foster mom." Now, then the prosecution goes on later and asks her questions like, on this French kissing thing, "Was there anybody that you would kiss when you lived with your dad and you would put your tongue in their mouth?"

"Answer: No.

"How did you know about sticking your tongue in somebody's mouth to kiss them?"

"Answer: You mean when I did it?"

"Question: Yes. How did you know about that?"

"Answer: Because my mom told me. •

Then it further goes on, "Question: Okay. Did you ever kiss your dad like that?"

"Answer: Nope.

"Did your dad ever kiss like that?"

"Answer: Nope.

"Okay. Did you ever kiss your mom

Faith Ann like that? "Answer: No."

Then we have the question, "All right. Now, you said the first time he stuck toys in your crack, play spoons and play forks. Did he stick things in your crack more than one time?"

"Answer: I don't know. "And what did he do with your fingers when he stuck them in your --" strike that.

"When your dad put his fingers in your crack, what did he do with his fingers? When his fingers were touching your private part, what did he do with his fingers?"

"Answer: He moved them around like that."

That was her testimony. Then another question, "All right. Can you tell us how your dad's private part looks?"

"Answer: I've never seen how it looks."

This is their witness, ladies and

gentlemen.

"Question: Okay. I want you to explain to us why you would touch Katelyn's private part when you would touch her private part.

"Answer: I did not do that. "Question: When you lived with your dad and your mom, when you lived with Grady and your mom, was there ever a time when you were in the bathroom with Grady and your mom?

"Answer: No. No.

"Question: And when we talked then, you and I, did you tell me some things that made you feel pretty uncomfortable?

"Answer: No.

"Question: All right, Kristen. Did you ever see your dad touch Katelyn's private part with his hand? "Answer: No.

"Do you remember telling me about your mom and dad being in the bathroom together with you and they were doing something to each other and you saw? "Answer: No.

Do you remember that little girl, she would get up to that microphone and she would give you a good, "No"? Okay. "Did that ever happen?" "Answer: I never seen that. I never seen that."

Then she's off the stand, ladies and gentlemen. We take a break. Then she's back up on the stand after that, I believe the next morning.

"Question: All right. Do you remember when you met with me in my office and you told me things that your dad did that made you feel uncomfortable?" "Yes."

Now, here we are a day later, and now she's remembering the interview and the preparation that she had at the Prosecutor's office, which is different from the day before.

"Question: When your dad touched your butt with his private part, did your dad touch the other part of your private part?"

"Answer: No."

"Question: When your dad touched your private part with his private part, did he use his private part that peed or did he use his private part that poops?"

She's asking her essentially did he use his buttocks or did he use his penis.

And her answer is, "He used his private part that poops.

"Question: Did you ever see your dad do anything to Katelyn's private part? "Answer: No.

"Did you ever see your dad do anything to Ryan's private part? "Answer: No.

"Did you ever see your dad do anything to Aaron's private part? "Answer: No.

"Question: Okay. Let me ask you this: Did you ever see your dad do anything to Aaron that made you afraid of your dad?

"Answer: No.

"Question: I asked you if you ever saw your dad do anything to Ryan that made you afraid of your dad. "Answer: No.

"Question: Do you know about a game called The Spider and the Fly? "Answer: No."

Then she gets down from the stand and she gets back up a little while later. Here's the question, ladies and gentlemen: "Okay. Now, I want you to tell us, when your dad put his fingers in your butt, did he put his fingers either in the part where the poop comes out or did he put them -- or did he put his fingers in the crack?"

"Answer: He put them in the crack. "Okay. Did your dad ever put his fingers in the part where the poop comes out?"

"Answer: No.

"Question: Again, did your dad ever put his fingers in the part where the poop comes out?"

"Answer: No."

That's followed up later by a question, "Did your dad put his private part in the butt where your poop comes out or in the crack of your butt?"

"Answer: The crack. "Question: Did your dad ever put his private part or did your dad ever do anything to your private part where the pee comes out?

"Answer: No."

Now, that is followed up by another question, "Was there ever a time that your dad did something to your private parts and Ryan saw?

"Answer: No.

"Did Aaron ever see what your dad , did to your private part?

"Answer: No.

"Did Katelyn ever see what your dad did to your private part?

"Answer: No."

Then the interesting question, the dolls.

"Okay. Do you remember telling me about when you saw your dad do something to Katie and Katie cried? "Answer: No. "You don't remember that? "Answer: No."

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Then the question, "Kristen --" this is the fourth time the question is asked --"did Grady ever put his private part in your private part that pees?

"Answer: No. "

Then the question follows up again. "So you'll understand, did you ever see Grady and Faith touching each other on their private parts?

"Answer: Yes.

"And how did you see that?

"Under the bathroom door somehow.

"And when you saw Grady and Faith touching each other --"

THE COURT: Can I see
counsel at the sidebar, please?

(Thereupon, a sidebar discussion was had off the record.)

MR. O'SHEA: "Question: And
when you saw Grady and Faith touching each
other's private parts, what room were you
in?

"Answer: My room.

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"And what did you see? And when you saw Faith touching Grady's crack, what was Faith doing to Grady's crack?

"Answer: Rubbing against each other's butt.

"Question: How did Grady's private part look?

"Answer: I don't know. "Question: How did Faith's private part look?

"I don't know.

"Question: Later, did Grady ever poke your crack with his private part in the bathroom?

"Answer: No.

"Question," for the fifth time, "When you told us that your father, when Grady poked your crack and it hurt, did Grady ever poke inside your body, inside where the poop comes out and it hurt? "Answer: No. In the crack. "Question: Okay. Did Grady ever put anything in your private part where the pee comes out?

"Answer: No. Because it doesn't

fit in there."

Followed up immediately by a question, "Did Grady ever try to put anything in your private part where the pee comes out?"

"Answer: No."

That is the testimony, excerpts of the testimony of Kristen, ladies and gentlemen.

These are inconsistent answers, these are forced answers, I submit to you, as you recall them when you hit the deliberation room, ladies and gentlemen.

Then we have this child called Aaron, a young child. The first thing that Aaron tells us, ladies and gentlemen, about why he's here is that Aaron's there to tell us, quote, "Tell the bad stuff that dad did to me," end quote.

So he's been briefed. This young boy knows exactly what he's going to get up here and tell about, the bad things.

As you know, ladies and gentlemen, throughout the course of his testimony he has to be given toys and prizes on the stand

in order to get him to talk about what they want him to talk about.

And we know from his testimony and from the prosecutor, who insinuates when she asks him the question, that they have practiced before he testified with the dolls.

We also know about this thing -- and this is what gets really interesting. We know about this thing called the white stuff now.

Now, the foster mother, the social workers, Dr. Gemmill and Miss King and Miss Prettyman never figure out -- or haven't, rather, figured out in their own heads what this white stuff is, and we learned from Aaron and Ryan what this white stuff is. "Daddy put the white stuff on our nose and our butts when we had sores on it, and it burned." And that's what the white stuff was.

And little Aaron says, "Daddy gets it out of the cover in the kitchen."

And somehow the prosecutor says, "In the cupboard in the kitchen?"

"Yeah. In the cover." And then he gets confused.

And that's where the Desitin came from, ladies and gentlemen, that was placed on this boy's nose and on their butts, and that's what that white stuff is. That's the only logical explanation of what that was.

And look at how the County social workers interpreted that bit of information. That is a litmus test about how they viewed anything that these kids said.

They take the innocent placing of Desitin, this rash ointment, on a child's nose, on their buttocks and their penis, as some sort of semen. That's what they're saying. "See, it's semen. It's semen from dad." That's what they're doing.

Aaron was also very clear, and we won't even necessarily go through all of it, ladies and gentlemen, that he never saw Mr. Krzywkowski do anything to any of the other kids.

And then we have Ryan get on the stand, ladies and gentlemen. He's been

told, like his brother and sister, that he' i here to,
quote, "Tell about the bad thing* dad did to me," end
quote.

But the bad things that Ryan thinks he's here to
testify about are the spankings, the papooses, this tying
up of him.

He does not tell you that there was anything sexually
done to him. He will not be pushed, prodded or led there, no
matter what, by the prosecutor.

Now, one might argue, well, he's had time to -- if
you're a prosecutor, you'll argue that he's had time to get
his story straight.

Now, well, if he was living with Grady Krzywkowski or
Faith Krzywkowski, he might have had that opportunity, maybe,
one might argue, to get his story straight for when he gets on
the stand and surprises everybody, but who has he been living
with, folks?

His foster mom.

And he's been coddled and protected by the social
workers.

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There's no chance that they put any of that into his head. None. He came in here and refused, the oldest one of the bunch, to be pushed into making an accusation against his father that was not true.

Now, he readily conceded that dad wasn't the greatest disciplinarian in the world and that he maybe didn't take us out as much as he should have, he may have spanked us too much, he may have tied us up, he may have been tough on us, but he would not be pushed into saying that he did anything sexually with him. He wouldn't.

Now, how is it that he would readily come in here and say the bad things were this, this, this and the spankings and the other things, and yet refuse to be pushed into this idea that anything sexually happened?

Now, here's where it gets interesting again. You get the "damned if you do, damned if you don't" philosophy coming out.

If Ryan gets up here and says, "Yeah, he did these things to me, did all these

terrible sex acts to me, did all this other stuff," that's all evidence, see, ladies and gentlemen, they'd be saying, "Ryan got up and testified that's happening," but if Ryan gets on the stand and says it didn't happen, then they'll say, "Well, see, he's got repressed memory because he's recanting. It's all evidence of sex abuse."

So you can't win, no matter what comes out of Ryan's mouth. It's evidence of sex abuse.

By the way, it was Ryan who finally explained to us, although Aaron had led us there a little bit, exactly what this white stuff was all about.

He made it very clear/ and that makes everything abundantly clear, why dad would have four fingers on Kristen's butt in order to place this cream on, why dad would put it on your nose and on your buttocks and everything else and why it burned.*

Suddenly Ryan, without trying to, finally reveals to us what has really been going on here, something that the foster parents didn't catch, the overly educated,

to some degree, social workers didn't catch, Miss Prettyman didn't catch, Miss King never bothered to look at, not at all.

It's this young boy, Ryan, who becomes the Sherlock Holmes here. I don't know what else to call him in that regard.

Ryan also makes it very clear this Spider and the Fly game stuff was absolutely a joke, that somehow the insinuation was that Grady Krzywkowski played this Spider and the Fly sex game with his kids, and little Aaron said, "No, it wasn't a sex game."

And Ryan made it very clear that it's a game that they play at their house that has nothing to do with sex whatsoever, but it sure sounds weird when you're hearing it if you're a less than neutral social worker who's trained to look for things.

The spider and the fly are coming into the web, and the spider is coming, and, "Oh, my gosh, what is he doing at this home?" That's what they're thinking.

Now, the allegation has been that these kids have been abused -- or rather,

that further evidence of these kids' abuse is that they act out, that they're mad, that they're aggressive, that they don't listen, that their attention span isn't what it should be.

But I'll bet you that the social workers involved with these kids, these good-intentioned people, never even conceded or would concede that rather maybe the reason that these kids are so upset and -are acting out and are aggressive is because they've been torn from home to home in the last 18 months, forced to live with strangers and other people, not allowed to live with one another.

And they want these kids to be a bunch of Shirley Temples, and if they're not Shirley Temple when living with the foster mother, they've been abused, sexually abused.

Let's talk about some tough stuff, too, ladies and gentlemen.

Let's talk about this thing called penetration, which is not easy to.

You've heard testimony from these

information provided to you with reference to Providence House.

MR. O'SHEA: Let's assume that Dr. Gemmill's examination produced no physical evidence whatsoever.

Let's also assume, ladies and gentlemen, that the APSAC guidelines were complied with.

Let's assume, ladies and gentlemen, that there were photos, video or audio recordings of these providers, and let's assume that the testimony of these kids was consistent, and let's assume further that there was testimony of teachers that the kids complained or manifested sexual abuse behavior.

Let's assume that all for a second. Let's assume that that evidence is there for purposes of argument, when we know it's not.

Then we have to talk about these dirty things, these difficult things, like penetration, and you have to get a little technical.

And the Judge is going to read for you what the definition of penetration is,

and I ask you, as difficult as it may be, to listen to that instruction and listen to that definition, because that will enlighten you exactly about what is necessary in order for them, assuming all those other things were there, and they're not, for you to consider.

Let's also ask ourselves something else, ladies and gentlemen.

Ask yourself if you heard a single child get up on this stand or a single social worker get up on this stand and testify about the dates in question here. Did you hear any such testimony? Did you?

When in the past did these accusations or did these alleged acts occur? When? What date did you hear?

Did you hear Dr. Gemmill give you a date? Did you hear Miss King give you a date? Did you have Miss Prettyman give you a date? Did you have any of the kids give you a date?

Well, no. The kids didn't give you a date, and I'll concede in a moment that that would be impossible for the kids to do.

But what dates have you been given?

Well, the indictment has given you some dates, ladies and gentlemen.

The prosecution wants you to believe that they've proven beyond a reasonable doubt that these acts occurred from November 8th of 1999 to sometime in April, April 26th of the year 2000.

Did you hear anybody mention the date October 8th, 9th through April 26th of the year 2000 or any date in between there? Did you?

So the prosecution would want you to believe that these things happened at any time in the past.

No. They are obligated to prove that they happened during that time frame.

Have you heard any such evidence at all?

Well, what makes sense, ladies and gentlemen?

Would it make sense that Mr. Krzywkowski, as one of the social workers testified, would bring his kids to Providence House if, in fact, Mr.

Krzywkowski had abused his kids sexually?

Does that make any sense to you?

Does it make any sense to you that **Mr.**

Krzywkowski would bring his kids to doctors on his own if they were sexually abused?

MS. SMITH: Objection.

THE COURT: Sustained.

MR. O'SHEA: What else makes sense, ladies and gentlemen?

We know what the prosecutor insinuated when he had the two or she had the two younger kids on the stand.

"Did daddy give you a cold bath?"

"Yes. Daddy gave me a cold bath."

That's one of the mean things he did, which is one of those things she's trying to get you to listen to to make you hate Grady Krzywkowski.

Well, Ryan revealed to us what that was all about, how simplistic that was.

Ryan said, "Yeah, on one occasion we had a cold bath because the gas was off." Okay? And that's where that all comes from. Ryan enlightens us again without even

trying.

And then Ryan also gives you an idea as far as the white stuff explanation and why the four fingers is necessary to place the ointment on a little kid and how you do that.

And these are things, ladies and gentlemen, these are sensible, logical things that the social workers never even considered and summarily dismissed.

And I guarantee you, when the prosecution gets up here and I'm done, they'll do the same.

Ladies and gentlemen, like the witches of Salem, the mere accusation that someone has engaged in this type of activity is, in and of itself, in many people's minds, evidence of guilt, the accusation alone.

It's tough. When people hear about this evidence, they squirm in their chair. When the guy across the street or down the road or in the papers has been accused of this, he must have done something, there must be something wrong with him. It's a

horrible crime.

It's like a McCarthy era type of stigma, just the accusation alone. In that case suddenly someone's got to prove their innocence, rather than the prosecution proving guilt, because it's such a bad stigma.

Now, during the course of this case -- and I've tried many cases, and I've discussed these cases with my friends and family, and this one I discussed with them, and they go to me, "Well, how can you represent someone like that?"

So I say, "Well, though I've represented robbers, drug dealers, thieves and everyone else, why is this different?"

Well, because people think that the mere accusation, the mere fact that someone's arrested, detained or placed into a courtroom with this type of accusation is evidence of guilt.

They question you why you can represent somebody like this, and that somehow the rules change and objectivity and neutrality changes when we're dealing with

an accusation

like this.

Mr. Goldberg and I, Miss Giordano, certainly Mr. Grady Krzywkowski will ask you to keep your neutrality and use your same neutrality and objectivity that you would use in evaluating any other type of case, be it a drug case, a robbery case or anything else, or jaywalking case.

Evidence beyond a reasonable doubt, you apply that same standard in every courtroom, no matter what the charge, as hard as that might be and as hard as it might be against your will.

Now, there might be -- we heard and we all know from the social workers that the Krzywkowski children are never going back home, that they're going to be placed in permanent custody, as the social worker said. They're never going to see these parents again, no matter what.

So I don't believe that you should go into that jury room and think that, "We, the jury, are the only thing between those kids and those parents."

MS. SMITH:

Objection.

THE COURT:

Sustained.

MR. O'SHEA: Now, one of the things that I would ask you to do is to get a little empirical again.

I have here, ladies and gentlemen, the same document that the prosecutor just showed you, this thing called the indictment. Okay?

And as the Judge has told you, this document is not evidence, but the document itself has exactly eight counts in it.

I'm going to ask this jury, as the law requires, to separately go through each element of each count of this indictment and see whether or not the State of Ohio has met each and every element of each count of this indictment.

It's a little bit scientific, if you will. Look it over, read it, use the instructions that the Judge gives, the definitions that the Judge gives, and please do that.

Don't do it all or nothing or whatever kind of thing. Look at this indictment and understand the instructions

that you're given and follow them, please.

Now, ladies and gentlemen, I'm pretty much done, and when I get done, the prosecution will get up and have the last word.

Now, a couple months ago I just celebrated my tenth anniversary with my wife Gina, and I'm an Irish guy from the west side, and she's Italian, she's got a hot Italian temper, and whenever we get into our rare disagreements about things, I guarantee you, Mrs. O'Shea has the last word. It's just the way it is. And that's the rule of our house. But it's tough.

And I won't have the last word here. The prosecution will, and that's tough, too. I ask you to consider that.

Now, it may be that the prosecution will get up and attempt to point at Mr. Grady Krzywkowski and call him horrible names. She'll get up and attempt to get emotional, get you subjectively to make you into an advocate, in an effort to get you to ignore your common sense and to follow your duty according to law.

MR. O'SHEA: May I proceed, Judge?

THE COURT: With an argument.

MR. O'SHEA: Thank you, Your Honor.

THE COURT: But not with further instructions of law,
please.

MR. O'SHEA: Ladies and gentlemen, let me say this
as one final comment: "Naked" does not mean "sex,"
unless a good-intentioned social worker or
prosecutor has told you so.

Thank you.