

1 recollection of the testimony is not the
2 same as yours, you must follow and rely on
3 your own recollection.

4 The summations of the lawyers are
5 merely that, summations. They are not
6 evidence, nor should they be construed by
7 you as evidence or instructions on the
8 law. The summations are intended to help
9 you in understanding the contentions of
10 each side.

11 With that, ladies and gentlemen,
12 Ms. Timmins will proceed first followed by
13 Ms. Schaefer, and Ms. Timmins will get a
14 reply to the argument of the defense.

15 Ms. Timmins.

16 MS. TIMMINS: May it please the
17 Court.

18 THE COURT: Ms. Timmins.

19 MS. TIMMINS: Counsel.

20 Ladies and gentlemen, I stated at
21 the beginning of this case that the
22 Defendant used his power, his control, the
23 trust that he had been given to abuse, to
24 exploit, and to endanger.

25 You have now seen and heard the

1 evidence for yourself, and it is now time
2 for you to make a decision about that
3 evidence. The power and the control is
4 soon going to get turned over to you.

5 This is my time to walk through
6 what we've seen, what we've heard, and
7 what we haven't heard, and talk about how
8 the facts and the law fit together, and
9 how it is that the State would argue to
10 you about the end result of this case.

11 A lot of people hear those
12 instructions and see them for the first
13 time and say, that's a lot, and that seems
14 confusing. But it's really not once you
15 start taking all the facts and you put
16 them into the elements and break down each
17 one.

18 The first one that is the most
19 important in any criminal case is proof
20 beyond a reasonable doubt. Proof beyond a
21 reasonable doubt is the State's burden.
22 We gladly take it on in every criminal
23 case that we do.

24 This is the definition: "If, after
25 a full and fair consideration of all the

1 evidence, you are firmly convinced of the
2 defendant's guilt, then you have no
3 reasonable doubt and you should find the
4 defendant guilty."

5 Okay. That's the standard, firmly
6 convinced. What it doesn't mean is beyond
7 all doubt, beyond any doubt, beyond a
8 shadow of a doubt. It's called reasonable
9 doubt for a reason. Firmly convinced.

10 What it also doesn't mean is that
11 if something's possible then that means
12 there's reasonable doubt. Anything is
13 possible. It's possible you're going to
14 walk out of the courthouse and get hit by
15 a car. Is that reasonable? It's possible
16 that we all might not wake up tomorrow
17 morning because the earth explodes. Is
18 that reasonable?

19 So just because an alternative
20 theory is given, just because someone
21 says, I didn't do it and another says I
22 did, that doesn't mean there's reasonable
23 doubt.

24 Reasonable doubt is based on your
25 common sense. It's based on the kind of

1 doubt that would make a reasonable person
2 hesitate to act.

3 Now, don't confuse hesitation with
4 deliberation, but it is your job as a jury
5 to deliberate. You are supposed to go
6 back to the jury room and to talk and to
7 discuss, and some of you may argue. So
8 deliberating and going through the facts
9 and taking all of this through your mind
10 and trying to make decisions about things.
11 That's not hesitation. That's doing your
12 job. When you look at that word
13 hesitation, that comes to when you're
14 ready; when you're ready to make that
15 decision. So if you're talking about it,
16 you're thinking about it, you're doing the
17 right thing, and that doesn't mean that
18 you have doubt about it.

19 A reasonable doubt is one also that
20 naturally and fairly arises from the
21 evidence or lack of evidence. It's based
22 on reason and common sense, not on the
23 mere possibility of innocence. That
24 naturally and fairly arises, what it means
25 is you don't go looking for it.

1 You will see in your jury
2 instructions, it says it's your duty to
3 seek the truth. That's what your duty is.
4 It is not your duty to seek doubt. You
5 are truth seekers, not doubt seekers. So
6 let the evidence fall in front of you,
7 talk about it, think about it, put in the
8 puzzle pieces, look at the big picture,
9 and then make a decision about where
10 you're at, about what you believe, about
11 who you believe.

12 Some of the other instructions that
13 you have--there are three counts in this
14 case, three charges. Each one has to be
15 decided on its own, so you need to look at
16 each one separately and not say, well,
17 because he's guilty of this one, then
18 we'll just say guilty on all three. You
19 have to decide on each one.

20 The other thing is you don't have
21 to agree as to which acts occurred. So
22 when you are looking at a count, for
23 example, Count I is a Sexual Abuse. Well,
24 the State has put in front of you several
25 acts of what we will argue to you is

1 sexual abuse, several different times that
2 it happened to Kxxxxxxx.

3 So when you go back to the jury
4 room and you start talking about those, if
5 six of you say, well, I think the seminar
6 room happened but I'm not for sure about
7 the sleeping room; and, then six of you
8 say, well, I think the sleeping room
9 happened, but I'm not for sure about up by
10 the med room. It's all okay as long as
11 you're all agreeing that a sex act
12 occurred. So you don't have to agree on
13 all of the facts. As long as you're
14 getting to the same place and meeting the
15 definitions and coming to a final
16 agreement in the end, then that is all
17 okay.

18 You also don't have to agree to how
19 the acts occurred or when the acts
20 occurred. Again, it's the same
21 proposition. And that's with most
22 everything that you're going to see in
23 these counts. So you can have your own
24 version of events in your head as to how
25 this particular thing occurred or when

1 this particular thing occurred or didn't
2 occur. But as long as you come to the
3 same end result that the other jurors are,
4 even when they have a different opinion on
5 the facts, then you have the same verdict.

6 When you consider the evidence,
7 you've been instructed that you're going
8 to use your observations, your common
9 sense, and your experience. You get to be
10 you when you're looking at this case. We
11 talked about that in jury selection. You
12 don't leave your common sense at the door
13 when you enter the courtroom. Of course
14 you get to use your common sense. That's
15 how we all make reasonable decisions.

16 You are also told that you try to
17 reconcile any conflicts in the evidence,
18 but if you cannot, then accept the
19 evidence that you find more believable.
20 So if he said something, and she said
21 something completely polar opposite, what
22 this instruction is telling you to do--and
23 what it's telling you not to do is throw
24 up your hands and say, well, don't know;
25 can't make a decision.

1 If you can't reconcile the
2 conflict--because in this case you can't
3 reconcile the conflict. Kxxxxxxx said it
4 happened. He said it didn't. So if you
5 can't reconcile that conflict, accept the
6 evidence you find more believable. What
7 do you find more believable? Who do you
8 find more believable? What do you find
9 more credible? Who do you find more
10 credible? Don't throw up your hands.
11 Make a decision.

12 On the lesser included offenses,
13 the Court read to you Count I and went
14 through what the elements are. And then
15 if you flip the page, and then he also
16 said Count I, and went through some more
17 elements but they were a little bit
18 different. The second page, the third
19 page, those are the lesser included
20 offenses.

21 When you're looking at a charge,
22 you start with the highest count. You
23 start where it's charged at. If you go
24 through that, for example the sex abuse
25 charge, if you go through that and you

1 say, okay, I think the State has met its
2 elements. Beyond a reasonable doubt the
3 State has proved that a sex act occurred
4 and it was by force or against the will,
5 and everybody agrees, you're done. You
6 don't have to go through the lesser
7 included offenses. Because if you find
8 that first count, the lessers don't
9 matter. But that's why those second pages
10 are there behind a couple of those counts.
11 That's what those are.

12 So you start at the top, and you
13 don't move down unless you have questions
14 about the top.

15 Here is the first count, Sexual
16 Abuse in the Third Degree.

17 During the timeframe January 2015
18 through and including December 2015, which
19 is the timeframe that Kxxxxxxx was at the
20 school, the Defendant performed a sex act
21 on Kxxxxxxx [REDACTED]

22 The Defendant performed the sex act
23 by force or against the will of Kxxxxxxx

24 [REDACTED]

25 That is the first charge.

1 So what do we have in this case
2 then? The State has to prove to you
3 beyond a reasonable doubt the first
4 element that a sex act occurred.

5 What's a sex act? Well, it's
6 pretty much anything. I won't read
7 through that one. You heard the Court say
8 it. But it's pretty much any touching of
9 one part of your body to another part of
10 your body that includes some private parts
11 somewhere. That is a sex act. It doesn't
12 matter if it's over the clothing; it
13 doesn't matter if it's under the clothing,
14 as long as there's that touching.

15 It doesn't have to be actual sex.
16 It can be somebody putting or grabbing
17 someone's hand and placing it on their
18 crotch and feeling their erect penis.
19 That's a sex act.

20 So what do we have on the first
21 one? Let's put this in context a little
22 bit before we start talking about this
23 too. We heard a lot of evidence about all
24 of the rules and how strict the school was
25 and all of those things. A lot of the

1 reason that you need to know about that,
2 that you have to consider that is because
3 you have to look at the circumstances
4 surrounding the sex acts.

5 It is extremely important in this
6 case that you consider what the power
7 imbalance is between the Defendant and
8 Kxxxxxxx. You cannot ignore that. And all
9 of those rules, all of the structure, all
10 of that goes towards what position Kxxxxxxx
11 was in when she came to that school. What
12 the position all of the students were in
13 when they were at that school. What the
14 position the staff was in.

15 You know, you heard testimony about
16 the fact that staff lived in the
17 condominiums. The staff had cars. The
18 staff was very dependent on him as well,
19 okay? And that's the environment of that
20 place. Those children had absolutely no
21 control over anything that they did. And
22 that's where all of this starts.

23 So Kxxxxxxx has been there for a
24 while. Kxxxxxxx adjusts pretty well. She
25 comes into the school. She can handle the

1 rules. She's one of those people that can
2 sit back and think about her actions, and
3 she does fairly well. She moves up fairly
4 quickly. She gets to go on services
5 projects. All of those things are
6 occurring.

7 You heard testimony that the
8 Defendant has started to pay some more
9 attention to her; that some of the girls
10 were getting jealous of that; that she was
11 getting treated like a princess.

12 All of that leads up to when
13 Kxxxxxxx has to go to a Child Protection
14 Center. And she's taken to that Child
15 Protection Center by the Defendant's wife,
16 and it has to do with issues that came out
17 of her past.

18 And don't forget why these kids are
19 here. These kids were all here for a
20 reason, right? These kids were all
21 vulnerable. Kxxxxxxx, just like the rest
22 of them, was also vulnerable.

23 So she's taken to the CPC. She did
24 a couple of interviews there. They wanted
25 some follow-up. They wanted to have some

1 photos, have her checked to see if there
2 were any marks or scars or birthmarks,
3 anything like that. That's where we have
4 the first physical contact.

5 Kxxxxxxx testified that the
6 Defendant came to her, explained to her
7 what was needed, asked her if she wanted
8 to go to the CPC. She didn't want to go
9 back to the CPC. Kxxxxxxx didn't like that
10 kind of stuff, and you saw that throughout
11 her testimony. She didn't like social
12 workers. She wasn't all that trusting of
13 police. And the Defendant offered, let me
14 help you with that, then you don't have to
15 go.

16 And he takes the opportunity to go
17 up to the upstairs seminar room. And,
18 yes, there's another girl there. She's
19 downstairs doing the cleaning or whatever
20 it is she was supposed to do, and they go
21 upstairs so he can look at the birthmarks.

22 Now, the State is not arguing to
23 you that a sex act occurred there, because
24 it didn't. You know, she didn't even take
25 off her clothes. All he did was maybe

1 touch her a little bit on the hip to pull
2 down her pants some, and had her pull up
3 her shirt so he could look and see if
4 there was anything there.

5 But once you look back, step back
6 and look at the big picture, you see
7 what's going on in this situation. And
8 remember what Dr. Salter testified about,
9 about the desensitizing, getting kids used
10 to being touched and things like that.

11 This is where he first tried it out
12 to see how she would react, to see if this
13 was all going to be okay. And it was
14 okay. He just did what he said he was
15 going to do, and they left, and there was
16 no issues; right?

17 She was also in a very vulnerable
18 situation at this time. She had just been
19 to the CPC. The Defendant knew that. He
20 knew the emotional state she was in,
21 because already by this time he had
22 started talking to her about things, about
23 her emotions, about her past, about how
24 she was feeling.

25 So then we move on to the first

1 sexual act. It happened a short time
2 after the birthmarks. It's not right
3 away, but sometime after the birthmarks.
4 Kxxxxxx knows it was summer because the
5 air-conditioner broke, and the girls had
6 moved upstairs. It was a box air-
7 conditioner. That's how she was able to
8 give you the timeframes on that.

9 It was maybe an hour after lights
10 out, but she knew it was lights out.
11 Everybody was in bed. Everybody was
12 facing the wall like they were supposed
13 to. Do you remember what a big
14 consequence it was to not face the wall?
15 That you lost a lot of points if you
16 weren't facing the wall when you went to
17 sleep?

18 She was a bunk leader at that time,
19 so she's on the bottom bunk. She said she
20 had been upset earlier in the day; that
21 she had been talking to the Defendant.
22 And it was that night that he came into
23 her room.

24 Now, I'm going to guess when
25 everybody first heard that you go, whoa,

1 wait a minute. He walked into a room with
2 a bunch of girls in there and did this?
3 But again, step back and look at the big
4 picture.

5 You knew he had the power to walk
6 around where he wants to. Cheyenne told
7 you they don't mark down when staff is
8 coming off the floor. Cheyenne said that
9 he did come up there sometimes after hours
10 to pull the girls out or talk to the
11 girls. The Defendant says he would come
12 up there after hours sometimes and pull
13 girls out to talk to the girls. So it's
14 not crazy that he was on that floor.

15 And after seeing this entire case
16 and knowing the type of power and control
17 that he had, that adults had there, how
18 conditioned those kids were to do as
19 they're told, it's not shocking that he
20 walked into that room and did what he did.
21 Actually, it makes sense when you look at
22 this case and after watching the Defendant
23 testify.

24 So he comes in the room. She heard
25 his voice. She knew he was out there.

1 And then he comes up to her bed. And she
2 says he's talking to her. She's not for
3 sure what he says. And he puts his hand
4 under the covers, under her shorts, and
5 inside of her. He inserts his finger in
6 her vagina. She felt it. It hurt. She
7 said it felt like it scratched, his
8 fingernail scratched her. And she said it
9 was seconds. And then he left.

10 Put that act into the context of
11 what that just told Kxxxxxx. He walked
12 into a room full of girls with staff
13 outside, and he put his finger inside of
14 her. And then the next day, everything is
15 normal. The next day everybody walked
16 around like nothing happened. The next
17 day nobody knew except Kxxxxxx and the
18 Defendant. At that point, if he wasn't
19 all-powerful before that happened, he sure
20 was now.

21 How many times did you hear that in
22 this case? The Defendant was like God
23 there. He was worshiped there. He had
24 all the power. He could do whatever he
25 wanted. Him doing that in that room full

1 of girls just set the stage for everything
2 else to happen.

3 The second time a sex act happened,
4 again, we're on the floor. Again, it's
5 not abnormal for him to come on the floor
6 after hours. This time she's watching the
7 dorm because she's a dorm leader. So
8 before she was a bunk leader, and now
9 she's moved up to a dorm leader, so she
10 sits at the door at bedtime. The kids
11 talked about that.

12 He took her in--he wanted to talk.
13 They were talking quite a bit now. She
14 goes down the hallway. They go around the
15 corner to where the sitting area is by the
16 med room and they talk. She said they
17 were talking about something that was
18 emotional for her. It was upsetting,
19 things about her past.

20 And when they get up to leave, he
21 hugs her and he holds his arm around her
22 back so she can't back up. And then he
23 grabs her hand and he puts it on his
24 crotch and he holds it there. And he's
25 not erect at first, but after a bit he is.

1 And she said she tried to back up but she
2 couldn't because the hand was there. And
3 she also knew, what was she supposed to
4 do?

5 You know, I asked her that. You
6 didn't say no. Why didn't you yell? You
7 all know why she didn't. We don't have to
8 spend a lot of time talking about that.
9 Because of who she was and where she came
10 from and where she was at the time, and
11 who the person was that was offending on
12 her. And he let her go. Seconds. Just
13 another stolen touch.

14 And that's what all these things
15 have to be because of the environment
16 they're in. You know, they really
17 couldn't go spend an hour in the seminar
18 room doing these types of things. That
19 would get noticed. So it's just seconds.
20 Stolen moments here and there when it
21 works out.

22 The next day, she didn't tell
23 anyone. Everybody acted like nothing
24 happened.

25 The third time, this time it was

1 the Defendant's house. This time not only
2 is he the owner, the all-powerful, the man
3 that could come in the room and put his
4 finger inside of you when people are all
5 around, but now, now he's her family rep.
6 Now he controls even more of her day-to-
7 day life. Now he gets even more access to
8 her to pull her out of class, to take her
9 places, to talk, to counsel.

10 They're at the Defendant's house.
11 Mxxxxx [REDACTED] is the other girl, the
12 only other girl, those two, on his
13 caseload. They're outside there at the
14 picnic table. They're talking. They're
15 setting goals. And for some reason they
16 go into the house because something is
17 said about cinnamon rolls.

18 Now, here's where you get the big
19 diversion; right? So the Defendant says
20 he has a really foggy memory of this, not
21 for sure. But he does remember cinnamon
22 rolls. He does remember Layani being
23 there. And, you know, he told agents he
24 could not remember if Kxxxxxxx was in the
25 house. But now he's saying he has a foggy

1 memory that that happened.

2 Layani testified that she remembers
3 the day out of all those days of being at
4 the academy and with all the kids there,
5 she remembers that particular day that
6 Mxxxx and Kxxxxxx came over for cinnamon
7 rolls.

8 This is where you have to start
9 deciding credibility, not just of the
10 Defendant but other people who are
11 testifying for him.

12 But what Kxxxxxx tells you is that
13 they went in the house. She hadn't been
14 the house before. She'd never been in the
15 house. So she's wandering around. She's
16 looking at the pictures. And think about
17 what a treat this is, too. They're
18 outside. She's now in the Defendant's
19 house, an environment she hasn't been in
20 for how long because she has been inside
21 the academy with the concrete walls. And
22 she's looking around at the pictures.

23 And at some point she goes down to
24 the basement, and the Defendant comes down
25 to the basement. And in the basement

1 there's that back empty room. You've seen
2 the photographs. You'll have them to look
3 at. But there's the back empty room--or
4 not empty. I'm sorry--unfinished room.
5 And it's in that room that we have another
6 sex act.

7 It's in that room that the
8 Defendant came in; that he unbuttoned
9 Kxxxxxx's pants; that he again put his
10 finger inside of her vagina. She said it
11 didn't hurt this time. And keep in mind a
12 lot of those details, too, because those
13 are things that show the credibility of
14 it. You know, this time it hurt because
15 it felt like it scratched; but this time,
16 it didn't hurt. You know, the senses that
17 she has during the experiences. But this
18 time it didn't hurt.

19 She doesn't resist. She doesn't
20 say no. She doesn't yell upstairs to
21 Mxxxxx [REDACTED]. This was when--and I
22 know you all remember this--this is when
23 Kxxxxxx was on the stand, and I asked her,
24 why didn't you say no? That's when she
25 got so quiet, and she looked down, and she

1 said, I don't know why. And I asked her,
2 did you think you could say no to Mr. Ben?
3 No.

4 She is not the only person you
5 heard in this case that would say that.
6 Rxxxxxx [REDACTED] testified, you didn't say no
7 there. When she was being asked about
8 whether or not the--going to do the mirror
9 class, well, that was voluntary, wasn't
10 it? Well, he said it was, but you don't
11 say no there. Okay? Nothing is voluntary
12 there.

13 And she didn't think she could say
14 no to Mr. Ben. And Mr. Ben knew that she
15 wouldn't say no to him. She didn't tell.
16 Life went on like nothing happened.

17 We're in the fall now, and this is
18 when things increased. And again, go back
19 to Dr. Salter's testimony where she talked
20 about how that's common in these types of
21 situations with offenders; that they start
22 out with the small touch, and then it
23 keeps moving up until you're into the
24 full-blown sex.

25 The rest of the sexual acts from

1 here on out happened in the seminar
2 building. It happened in the building
3 that is the farthest away from anywhere
4 else in that campus. It is a long walk
5 back to the seminar building. You have to
6 go through a lot of doors to get into the
7 seminar building. The seminar building
8 has no cameras.

9 She talked about the different
10 times she would either be cleaning, maybe
11 watching a movie, or talking. He would
12 bring them there like when he talked about
13 with her and another girl to set goals.

14 The acts, her masturbating him,
15 meaning she put her hands on his penis,
16 touch. She said that his hands were over
17 hers when that happened. Force.

18 Her performing oral sex, her mouth
19 was on his penis. She talked about that
20 where she was the one moving in that
21 situation.

22 Him rubbing on her. Both clothed.
23 You know, she didn't say that, you know,
24 he always made me take my clothes off and
25 then he'd do this or that. She said there

1 was a time when she was on the floor and
2 he got on top of her and he was rubbing
3 her, on top of her.

4 And sex. Now, the last time was
5 really explicit. The last time is the one
6 that she remembers the clearest, which
7 makes sense when you look at the timeline
8 of things, because things happened pretty
9 quickly after that.

10 So what do we know from Kxxxxxxx?
11 The Defendant took her and two other
12 students to the seminar room to clean.
13 And I think he was going to do goals with
14 one of them as well. All right. So
15 they're in the seminar room. We know that
16 happens. Nobody has disputed it. The
17 Defendant agrees, yeah, we take kids to
18 the seminar room to clean.

19 He told her to go upstairs. She
20 knew why. She had been through the
21 routine before. She goes. This time it's
22 a little different when she goes up the
23 stairs. When she got up there, this time
24 she saw the camera on the table. She saw
25 rags and spray sitting by the camera.

1 She said when she got up there she
2 saw that and started to go back down, but
3 he was already on his way up, so back into
4 the room she went. He told her it would
5 be really fast. It would be okay. It was
6 always really fast. It had to be. You
7 had to have the stolen moment.

8 He had her lay down with the camera
9 facing the mirror. He unbuttoned and
10 unzipped her pants. He pulled them down.
11 And what did Kxxxxxxx do? She laid on the
12 floor and she closed her eyes. And the
13 phrase that she used is, she didn't want
14 to pay attention.

15 She heard him spit, and she could
16 feel the wet when he touched her vaginal
17 area with his hand. Again, those little
18 details, that's important.

19 She's not for sure if she tried to
20 flip over and move away, or if he's the
21 one that flipped her over, but at some
22 point she's flipped over. And now she's
23 on her knees, and he's having sex with her
24 from behind, vaginal sex. She felt his
25 penis go inside of her.

1 She made a noise. He told her to
2 be quiet. He told her to look in the
3 mirror, but she said she kept her eyes
4 closed. It only took a few minutes, and
5 this time he ejaculated inside of her.

6 And she talked about when he was
7 done, he told her to push it out; that he
8 had her push out his semen into his hand
9 where he went and wiped it off on a rag.
10 And then he handed her cleaning supplies
11 and had her clean the floor.

12 Now, if there's not more of a power
13 imbalance in this situation. Just picture
14 that in your head. He just had sex with
15 Kxxxxxxx, and now he's standing, watching
16 her while she's cleaning up his semen off
17 the floor. And she didn't tell, and it
18 went on like nothing happened.

19 Ladies and gentlemen, Kxxxxxxx's
20 testimony alone by itself establishes that
21 a sex act occurred. There is not a third
22 party witness to any of this. There's no
23 video footage of any of this.

24 Do you remember the camera that he
25 used? They found it. So there was a

1 camera. But it has a little SD card, so
2 there's no footage. They took the SD
3 cards that were sitting around. It's not
4 there. But keep in mind, too, when did
5 Kxxxxxxx report? December 1st is when it
6 all came out. The Defendant knew it. In
7 fact, he knew it was coming the week
8 before that because little stuff started
9 to come out.

10 When did they go in to do a search?
11 January 28th. He had two months to take
12 care of what he needed to. So they found
13 the camera, but they didn't find any
14 footage. That doesn't mean it didn't
15 happen.

16 We don't have that third party
17 witness. We don't have that video
18 footage. We don't have DNA. We normally
19 don't in sex abuse cases like this. But
20 what you do have is the eyewitness to the
21 crime. Don't hold her to a different
22 standard than you would hold somebody who
23 had their purse stolen. She gave you the
24 details of that as good as she could, as
25 well as she could, sitting up in a room

1 full of strangers in front of the
2 Defendant, in front of people that she
3 knew in the back, and having to tell that.

4 Her testimony is believable, and it
5 is proof beyond a reasonable doubt. Her
6 testimony alone, if you believe it and you
7 find it to be consistent with what else
8 you know, her testimony alone is beyond a
9 reasonable doubt. Because you do have to
10 decide who to believe.

11 So I want you to go back to last
12 week. It has been a long couple of weeks.
13 And I want you to go back to the days that
14 Kxxxxxxx was here and that she was sitting
15 in this chair in front of you. And I want
16 you to remember what you thought when you
17 listened to her. And I want you to
18 remember what you saw when she testified.

19 She was on the stand a long time.
20 Did you find anything inconsistent when
21 she was up there? Did you find that she
22 suddenly changed her story from here to
23 there?

24 Joe Lestina testified that her
25 story had always been consistent with him;

1 that she gave a description of the
2 Defendant's house and his basement, and it
3 was completely consistent with what he saw
4 when he did the search there.

5 Go back to when she was on the
6 stand. And when she was done with her
7 testimony, did you believe her? That's
8 beyond a reasonable doubt.

9 But there is more. Okay? There's
10 not, like I said, the eyewitness, the
11 camera, but there's more to corroborate
12 and to show the credibility of Kxxxxxx.

13 The circumstances of her disclosure
14 alone are credible. They want you to
15 believe that she was mad; that she made
16 all of this up because she didn't get to
17 go home to see her sister--or she didn't
18 get to go off campus to see her sister.
19 That's what they want you to believe;
20 that's their motive for Kxxxxxx not being
21 honest. Does that fit with what you know
22 in this case? Because what you know is
23 her disclosure was not so much her doing
24 it.

25 All right. We know that last sex

1 act happened mid-November, and it was
2 shortly after that, after this had been
3 going on for months, after you heard from
4 some of the girls that they saw a change
5 in Kxxxxxxx's behavior; that she didn't
6 want to be around the Defendant anymore;
7 that it wasn't cool to have him as a
8 family rep; that she wasn't happy when he
9 came in the room.

10 And what you also know is that
11 Kxxxxxxx started having some suicidal
12 expressions. And with that she had made
13 the comment to a girl, a couple of girls,
14 I'm not comfortable, I'm uncomfortable
15 around Mr. Ben. That's all that was said.

16 The girls tell. They did what
17 they're supposed to. They went and told
18 what was going on; that Kxxxxxxx was saying
19 suicidal things; that Kxxxxxxx said Mr. Ben
20 makes her uncomfortable.

21 And what happens to Kxxxxxxx? She
22 is written up. She is given a life buddy.
23 She's put out in the hallway and she's
24 lost her level. So Kxxxxxxx found out
25 really quick what happens when you tell.

1 You know, she tested the waters and she
2 got probably what she expected from it,
3 punishment.

4 What's important about this, too,
5 is that it's at this point that the
6 Defendant knows this has been said. Now,
7 he told you he's busy with Thanksgiving
8 and, you know, he knew about it at some
9 point. He admitted he knew about it
10 before December 1st. So he knows at this
11 point.

12 Miss Cindy, Miss Jane, on the 24th,
13 Miss Jane talks to her. Kxxxxxx doesn't
14 tell. She doesn't say anything. Nothing
15 at all. She takes her consequence and
16 goes back to having her life buddy and
17 sitting out in the hallway. Is that what
18 someone does who is making this up, who's
19 trying to hurt somebody, who's trying to
20 get back at somebody? Not at all.

21 But at some point it starts rolling
22 out. At some point it's too much. Like
23 Dr. Salter said, that pressure cooker in
24 these kids that don't tell, and then they
25 have all these outside influences of

1 everybody acting like it's normal and
2 nobody knowing what's going on, and all of
3 this builds up, and a lot of times it
4 comes out when there's anger or suicidal
5 thoughts.

6 She finally tells. She tells
7 Cheyenne, just a little. So again, if
8 she's trying to get to the Defendant, if
9 she's trying to hurt him, trying to get
10 him in trouble, is this how she would
11 tell? No. She tells just a little.
12 Again, testing the waters.

13 They talk over a few nights. She
14 tells Cheyenne about the birthmarks, that
15 that part happened. And Cheyenne asked if
16 he did anything else. And Kxxxxxx
17 confirms it, that there's more but she
18 won't say what. Cheyenne, the first time
19 that's brought up to her, do you remember
20 that testimony from Cheyenne? The first
21 time that's brought up to her, she tells
22 Cindy Crew. So they knew about it.

23 Cheyenne said that Kxxxxxx begged
24 her not to say anything. Cheyenne said
25 that Kxxxxxx didn't want to leave; that

1 when she was talking about this she was
2 shaking, she was crying. But Cheyenne did
3 do the right thing, despite what the
4 Defendant wants you to believe. She did
5 the right thing and she went and she told.
6 She told Cindy Crew that night.

7 And then after a couple of days
8 when she figures out nothing is going to
9 happen, nobody is doing anything, and now
10 I'm getting called into the office, into
11 management? And she calls DHS. Cheyenne
12 is one of few adults at that place that
13 did the right thing, and she called DHS.

14 But we still see with this
15 disclosure, why this disclosure makes her
16 testimony credible, is because she still
17 doesn't want to tell. So Davis and Riter
18 talk to Kxxxxxx. She doesn't say
19 anything. She doesn't want to leave. She
20 told you that.

21 And maybe that surprised you a
22 little bit when you heard that. Because I
23 know when I heard that, I'm like, man, I
24 would be running out of that place as fast
25 as I could. But she didn't want to leave.

1 She had friends there. It was a home.
2 Regardless of the type of home it was, it
3 was one that she had because she didn't
4 have one to go to.

5 She refuses to say anything.
6 Cheyenne is called for the meeting. She
7 called DHS. She tells them at the
8 meeting, I've called DHS. Cheyenne is
9 fired two days later. And I hope you do
10 not buy that testimony that it wasn't the
11 Defendant's decision or that he wouldn't
12 have been part of that decision that
13 Cheyenne was fired.

14 Isn't it interesting that he had no
15 problem taking credit for every good thing
16 that happened at that school, but
17 everything that wasn't, that was somebody
18 else fault, somebody else's
19 responsibility.

20 Kxxxxxxx is removed from the
21 facility. It took some time but she
22 finally told. She disclosed. It came
23 out. It took a few days, but she got it
24 out.

25 The places that he chose makes her

1 story credible. So not only disclosure,
2 but his choice of location. He picked the
3 building that's the farthest away from
4 anything else on that campus for the sex
5 act. He picked a room in the basement
6 where they were around a corner, back in
7 the back, for a sex act, for a few
8 seconds' worth of a sex act.

9 He picked the upstairs of the
10 seminar room. They weren't in the
11 downstairs area, the big place where just
12 anybody--or if somebody did walk in they'd
13 see them right away. They were in the
14 upstairs. He chose the location. He
15 chose the times.

16 The significance of that first
17 sexual act, and don't think he didn't know
18 what he was doing when he did that.
19 Kxxxxxxx knew from the very beginning who
20 had all of the power. Every one of you
21 knew before Kxxxxxxx even got on the stand
22 who had all the power. You had heard
23 enough about that school. He was all-
24 powerful from that point on after being in
25 the room with those girls.

1 You also have to consider the
2 Defendant's actions with Kxxxxxxx. It's
3 not just Kxxxxxxx saying that he paid more
4 attention to her, all right? You also
5 know that he knows that she's vulnerable.
6 She's there for a reason. Kids like
7 Kxxxxxxx are the perfect kids to pick for
8 this kind of stuff. Unfortunately, they
9 get picked a lot for this kind of stuff.
10 Why? Because they're the easiest ones to
11 later on say, they're liars; they steal;
12 they're runaways; they do bad things; you
13 can't believe these kids. And the kids
14 know it. They know who they are and where
15 they come from, and you know what their
16 self-esteem is, and you know what the
17 issues are. They don't think anyone is
18 going to believe them either, so they
19 don't tell. He knew her vulnerabilities.

20 He starts paying more attention to
21 her, taking her on the service projects,
22 choosing her for a second. You heard that
23 from multiple students at the academy. It
24 wasn't just Kxxxxxxx saying that.

25 And everyone wanted to be around

1 Mr. Ben, right? So to the outside world,
2 she's so lucky. She gets treated like a
3 princess. But what did Kxxxxxxx say to
4 Mxxxxxxx [REDACTED]? They wouldn't want him
5 for a rep if they knew.

6 So others noticed. Lxxxxxx [REDACTED],
7 go back to her testimony. It's been a
8 while back as well. He gave her more
9 attention than the other students. He
10 picked her more often for trips and for
11 seconds. There was time when Lxxxxxx was
12 with them, and he let Lxxxxxx go to the
13 bathroom while he stayed alone with
14 Kxxxxxxx. Now, to all of us that may seem
15 like, what's the big deal? But you know
16 in that school that was a huge deal for
17 the Defendant to say, yeah, I'm fine
18 sitting here by myself for her to go to
19 the bathroom. That didn't happen.

20 He gave Kxxxxxxx extra points.
21 Lxxxxxx saw him pull her out class a lot.
22 Other girls were jealous. All the other
23 girls there were jealous. It didn't help
24 Kxxxxxxx when he was giving her this
25 attention, because they were getting mad

1 about it and jealous.

2 And what did Lxxxxxx say? He was
3 the owner. He could do whatever he
4 wanted. Everybody at the school knew Mr.
5 Ben could do whatever he wanted.

6 Fxxxxxxx [REDACTED] She saw the
7 Defendant pull Kxxxxxx out of gym class.
8 She saw her pull her out of class multiple
9 times. He'd always be talking to Kxxxxxx
10 away from the other kids. Now, she didn't
11 say, you know, I saw him in the hallway
12 alone walking up to the stairs or
13 whatever, but she said it was normal in
14 gym class or whatever class to have the
15 Defendant pulling her aside in the same
16 room and just talking to Kxxxxxx.

17 He'd buy the brand products for
18 Kxxxxxx, not the cheap stuff. And again,
19 to us, well, maybe not such a big deal,
20 but to those kids, huge. They were
21 getting the Dollar General shampoo and
22 Kxxxxxx the brand name. Big deal. Staff
23 rules of being alone did not apply to Mr.
24 Ben. That's what Fxxxxxxx told you.

25 Cheyenne Jerred. Cheyenne was--I

1 put that down wrong. She was not her
2 family rep. Cheyenne was the night staff.
3 Cheyenne would see the Defendant come in
4 and talk to the girls at night. Now,
5 Cheyenne--they're going to say Cheyenne is
6 a disgruntled employee. Did Cheyenne seem
7 like she was trying to add things to the
8 story, to make things up? Because if she
9 wanted to tell a really good story, if she
10 really wanted to stick it to the
11 Defendant, wouldn't she have come in and
12 said, yeah, I saw him come in one time and
13 I saw him walk down the hall with Kxxxxxxx,
14 and they didn't come back for, like,
15 fifteen minutes? But Cheyenne didn't do
16 that, which is what makes her credible.

17 She said, I can't say that I saw
18 him with Kxxxxxxx, but he did come on the
19 floor. So you know that happens. It was
20 usually between 9:00 and 11:00 at night,
21 and that they didn't--the staff didn't
22 keep track of staff who came on the floor.
23 And Cheyenne also knows Mr. Ben could go
24 wherever he wanted.

25 Mxxxxxxx [REDACTED]. The only staff

1 you could hug was Mr. Ben. So again, it's
2 that kind of all-powerful position that he
3 had. All the kids wanted to be with him.
4 He was the only staff that you could hug.
5 He had all these special things that he
6 would do for everyone. Mxxxxxxx said it
7 was usually Kxxxxxxx that he would take on
8 errands. It was usually Kxxxxxxx that he
9 would take as a second.

10 Mxxxxxxx herself went with the
11 Defendant and Kxxxxxxx to get graduation
12 robes out of the seminar room. So you
13 know it's not ridiculous for Kxxxxxxx to
14 say that there were times she went with
15 the Defendant with one or two other people
16 to the seminar room. Mxxxxxxx confirms
17 that.

18 Mxxxxxxx said Kxxxxxxx at first was
19 excited to see Mr. Ben. She thought--I
20 mean, everybody thought it was cool that
21 Mr. Ben was the family rep. Over time,
22 she didn't want to go with him. She made
23 excuses why she wouldn't or couldn't go
24 with Mr. Ben.

25 And one time Mxxxxxxx and Kxxxxxxx

1 were talking about the other girls'
2 jealousy, and Mxxxxxxx was bringing up what
3 some of the other girls were saying and
4 how they were so jealous. And Kxxxxxxx
5 says, yeah, well, they don't even want Mr.
6 Ben as a rep if they knew.

7 All right. That was before any
8 disclosures came out, before she started
9 doing even the Mr. Ben makes me
10 uncomfortable. That shows the credibility
11 of what she's telling you. It's a prior
12 consistent statement of hers.

13 He chose to be Kxxxxxxx's family
14 representative. This choice was not made
15 by some committee. This choice was made
16 by him. Mike Davis testified that he told
17 the Defendant that he shouldn't be
18 Kxxxxxxx's family rep. He told him that
19 Kxxxxxxx was better suited with a female
20 family rep, as was Mxxxxx [REDACTED]
21 And those are the two people the Defendant
22 chose to have on his caseload.

23 Jane Riter says she was not
24 involved in that decision. Now, Ben and
25 his wife Layani, it was a whole big group

1 committee, and everybody thought it was a
2 great idea. Everybody agreed to it. And
3 the Defendant, well, he'd just reluctantly
4 take that on; he was trying to help the
5 other people out, too busy of a caseload.

6 Did you notice he was able to
7 always have an explanation, an innocent
8 explanation for things? But his
9 explanation is not consistent with the
10 evidence. It's not consistent with what
11 the people on this administrative
12 committee are telling you.

13 The other thing that was
14 interesting to me is when the Defendant
15 testified he said, well, nobody wanted
16 Kxxxxxxx. That's why he took Kxxxxxxx on
17 his caseload. Did you find that odd?
18 Because you've never heard anything bad
19 about Kxxxxxxx. She moved up. She did
20 well. But he wanted to make it, like,
21 nobody else wanted her because she was
22 awful or whatever it may be, and he was
23 just being the good guy, the good
24 administrator taking one for the team and
25 took Kxxxxxxx on. You decide what you find

1 credible in that.

2 Also, go back to Dr. Salter when
3 you are looking at the facts of this case
4 and deciding what you believe. You know,
5 sometimes things that Kxxxxxxx did may seem
6 counterintuitive to what we believe people
7 would do had they been sexually assaulted,
8 right? Because what we want people to do
9 is jump and yell and say stop, no, and go
10 tell somebody right away.

11 But what you know from Dr. Salter
12 from the science and the research is
13 people don't do that, especially kids,
14 especially kids who are in a situation
15 like she was in that controlled
16 environment, completely secluded from the
17 outside world. Delayed disclosure is
18 normal, afraid of punishment, won't be
19 believed, shame. You saw all of those
20 things in this case.

21 Pressure cooker. Kids don't tell.
22 They internalize their feelings.
23 Everything around them remains the same,
24 and the Defendant just walks around like
25 nothing happened. Think of how crazy

1 making that is, and what Kxxxxxxx was going
2 through with her emotions and living that
3 every day. At some point that pressure
4 cooker has to blow. Then it comes out.
5 And we saw it come out when she was on
6 suicide watch and she was sitting there
7 with Cheyenne Jerred, and it comes out.

8 Dr. Salter also talked about
9 implicit coercion. There's no violence.
10 You don't have to have violence to coerce,
11 to have something against somebody's will.
12 Kxxxxxxx knew her existence depended on
13 this man. She knew her life could be
14 really good or really bad depending on
15 what he chose to do.

16 We saw the grooming behaviors: the
17 special attention, the gifts, the
18 privileges, the points, the moving her up
19 a level. We saw the desensitizing with
20 the birthmarks. We saw the progression of
21 abuse. We saw the trauma bonds. Because
22 all of this was going on, but you still
23 heard out of Kxxxxxxx's mouth, I didn't
24 want to leave. All of this was going on,
25 but you still know that Kxxxxxxx was

1 talking to the Defendant about prior
2 issues, past issues, emotional things.

3 So even though she wanted the sex
4 acts to stop, there was still those things
5 that kept her bonded there. And like Dr.
6 Salter said, with kids like that you don't
7 cut the bond, you twist it, and it's
8 pretty ugly looking but it's there. And
9 she was completely isolated from the
10 outside world. That increases that trauma
11 bond. Kxxxxxxx had nowhere to go.

12 The carrot and the stick. How much
13 did we see a carrot and a stick in this
14 case? Over and over and over again. I
15 can give you something; I can take it
16 away. I can care for you; I can hurt you.
17 It was a big stick in this case. Kxxxxxxx
18 had no control over anything.

19 And the risky situations, when we
20 talked about the Defendant going into that
21 room. Dr. Salter told you in her
22 training, her experience, her education
23 what we see in the research, what she sees
24 through talking to offenders. This is
25 normal. A lot of people think, well that

1 can't happen. How can you molest a kid in
2 the backseat of a car when the mom is up
3 in the front driving? That can't happen.
4 Yes, it can, and it does. Why? It's a
5 thrill. It's powerful. And because they
6 can. It makes the child feel not safe
7 anywhere. It makes it more likely the
8 child won't tell.

9 The Defendant committed sex acts
10 against Kxxxxxx. They were not
11 accidental. They were nothing but sexual.
12 They were done in the context and the
13 circumstances of sexual gratification, his
14 sexual gratification.

15 Element 1 is proven beyond a
16 reasonable doubt. Sex acts occurred.

17 Element 2, by force or against the
18 will. We don't have to spend a lot of
19 time on this, because we've talked about
20 most of it already when talking about how
21 those sex acts occurred.

22 We do not have to prove to you that
23 she physically resisted. Now, you can see
24 it in a couple places. And even when she
25 talks about it. You know, he put the hand

1 behind her back and she tried to back up
2 when he hugged her. That's some physical
3 resistance. Or she talked about--she
4 wasn't for sure, but maybe she tried to
5 flip over to move away, or maybe he did
6 it. But if she was trying to flip over,
7 there's some physical resistance.

8 But what this case is really about
9 is about the power imbalance. The act can
10 be against the will if there is a
11 psychological force or inability to
12 consent based on the relationship and
13 circumstances of the participants.

14 Who had all the power and control?
15 Kxxxxxxx didn't think she could say no to
16 Mr. Ben. You all know in that environment
17 none of those kids could say no to Mr.
18 Ben.

19 This is how old Kxxxxxxx was when
20 she came in (indicating). She's 16. When
21 she came into this facility, she was a
22 kid. Her first encounter with Mr. Ben is
23 in the OSS room. Did you hear that from
24 pretty much almost every kid that
25 testified? Do you think that's by chance

1 that they pick the OSS room for all kids
2 to be checked in with they arrive there?

3 Kxxxxxxx knew when she was sitting
4 in that OSS room and her stuff is being
5 gone through and there's kids in these
6 cells and she doesn't even know what this
7 place is, and Mr. Ben comes in and walks
8 in and says, hey, how are you doing? Can
9 I help? Are you okay? From that day on,
10 he controlled every aspect of her life,
11 everything. Now, he wants to step back
12 from that. It's Devon Dade; it's Mike
13 Davis; it's these other people. You all
14 know that's not true. You all know that
15 he had total control of that facility.

16 How could any sexual contact in a
17 relationship with such a power imbalance
18 ever be consensual? It cannot. Kxxxxxxx's
19 entire existence was dependent on the
20 Defendant. The act was against the will.

21 How did Kxxxxxxx describe it? I
22 didn't think you could say no to Mr. Ben.
23 How many times did you hear it, over and
24 over? The Defendant had the final say.
25 He did as he pleased. He was her family

1 rep. He had absolute control over her,
2 and he knew it. He knew the power that he
3 held and he used it to gratify himself.
4 He used it to coerce Kxxxxxx for sex
5 against her will. He abused his power.
6 He abused his position. He abused his
7 trust, over and over and over with her.

8 So did he commit Sexual Abuse in
9 the Third Degree? He committed sex acts
10 with Kxxxxxx [REDACTED]. They were by force
11 or against the will of Kxxxxxx [REDACTED].
12 He's guilty of Sexual Abuse in the Third
13 Degree. That is Count I.

14 Count II is the Sexual
15 Exploitation. During the timeframe, and
16 you've got a broad timeframe on this one,
17 because we're talking about pattern,
18 practice, or scheme of conduct. We're
19 looking again at the big picture, okay?

20 When you focus it down, the focus
21 is Kxxxxxx, but you get to look at his
22 pattern, practice, and scheme of conduct,
23 okay?

24 So you've got this September 18,
25 2014, through January 31, 2016. The

1 Defendant engaged in sexual conduct with
2 Kxxxxxxx.

3 No. 2, he engaged in the conduct as
4 part of a pattern, practice or scheme of
5 conduct.

6 No. 3, he did so with the specific
7 intent to arouse or satisfy the sexual
8 desires of the Defendant or Kxxxxxxx.

9 No. 4, he was then a counselor or
10 therapist.

11 Some of you may have heard that
12 when we did the instructions and you went,
13 what does that mean, because everybody is
14 saying he's not a counselor? We'll get to
15 that.

16 No. 5, Kxxxxxxx [REDACTED] was then a
17 client, or a patient, or an emotionally
18 dependent patient or client.

19 Sexual conduct includes this long
20 list of things (indicating) or a sex act.
21 We have already discussed a sex act. If
22 you find element 1 in Count I, that a sex
23 act occurred, then we have met this
24 element that sexual conduct occurred.
25 It's that simple. So that's that element.

1 Pattern, practice, or scheme of
2 conduct. You just have to look at the big
3 picture. What it means is it can't be
4 just a one-time thing that he acted like a
5 therapist. It can't be just a one-time
6 touch. You've got to look at this whole
7 picture. What his motivations are, what
8 the similarities are in his actions and
9 his behavior, the methods of the
10 commission, the interrelated circumstances
11 and factual characteristics. Step back and
12 look at the puzzle.

13 And it's not just the sexual
14 conduct or the sex acts when we're talking
15 about what acts occurred. Again, we're
16 talking about it all. We're talking about
17 the body image. We're talking about the
18 sex acts. We're talking about the
19 Victoria's Secret. We're talking about
20 all of that. Look at the whole picture.

21 Specific intent. That is fairly
22 simple in this case. We have to show
23 specific intent to arouse or satisfy
24 sexual desires of another person. Again,
25 if there's a sex act, of course that's

1 what it's for. There was no other intent
2 for having sex with Kxxxxxx and
3 ejaculating. So specific intent is there.
4 And the same thing when you start looking
5 at all of the other behavior that occurred
6 that he has innocent explanations for, but
7 when put all together, not so innocent;
8 correct?

9 Counselor or therapist. This is
10 the one where some of you may have paused
11 for a moment and said, what are they
12 talking about? What we have to show is a
13 professional counselor, family therapist,
14 or any other person, whether or not
15 licensed by the State, who provides or
16 purports to provide mental health
17 services.

18 Now, it makes total sense why our
19 law wants to keep psychologists,
20 psychiatrists, social workers, people
21 providing mental health services, why our
22 law wants to prevent those kinds of people
23 from taking advantage of their vulnerable
24 clients; right? Okay. But the law also
25 wants to keep those people who pretend

1 like they are therapists or counselors or
2 who hold themselves out to be. They want
3 to keep those people from taking advantage
4 of the vulnerable clients or patients, the
5 people who believe that they're going to
6 this person for counseling, even though
7 they're not really a counselor.

8 So a perfect example. I went this
9 weekend to the toy store with my son. I
10 was exhausted. I promised myself I was
11 spending Saturday not working with my
12 kids, whatever they wanted to do. He
13 loves Hobby Haven. We went there. It's
14 just a family-owned, ma and pop shop. And
15 it's all the remote control cars and
16 airplanes and all those things. So we
17 went there. He needed to fix a thing on
18 his car. We're looking around. He's
19 telling me--he's all excited. He's 9--
20 well, he's 10, just 10. He's telling me
21 about this particular plane that he
22 really, really wants.

23 And this guy comes up and he starts
24 talking to us and says--he says, well,
25 that one might be a little old for you.

1 Why don't you look at this one? And he
2 pulls this other one out. And my son
3 says, oh, I have that one. That's the one
4 I started out on. So they start talking
5 about what are some good levels for him to
6 move up to in a remote control airplane.

7 And this guy is walking around the
8 store. You know, I'm staying with him all
9 the time to make sure things are fine.
10 But by the time we're done, he's got us up
11 at the counter and he's showing us this
12 particular item that--I don't remember
13 what it's called, but it flies like a
14 helicopter and you can fly it in the
15 house. It's all safe. There's things it
16 can do. And he's showing this to us and
17 somebody from behind the counter comes up.
18 And they say, oh, are interested in
19 getting that? We're having a sale on it.
20 And I said, well, we're looking at it, but
21 this person is helping me. True story.
22 And the guy says, oh, I don't work here.
23 He says, I just come here and hang out all
24 the time. He goes, I should work here
25 because I'm here all the time.

1 He had no intent to mislead me.
2 But because of his actions and because of
3 his words, I thought he was a salesperson.
4 I thought he worked at the store. He just
5 was a guy that loved remote control stuff
6 and had fun talking to kids about it. He
7 was being helpful.

8 Now, it's all fine because there
9 was no harm done. But what happens if
10 that guy, that same guy, had taken me up
11 to the counter and nobody else was around
12 and he said, look--and it's a ma and pop
13 store--and he said, look, we're trying to
14 get rid of our products so for after
15 Christmas we can get all our new stuff in
16 after the year. We've got a big sale
17 coming up. I'm going to give you the deep
18 discount price now if you want to buy
19 this. You know, just 60 bucks cash and
20 we're done.

21 And I pull out my purse and hand
22 him \$60 cash and I walk out with
23 something, and he has \$60 in his pocket.
24 Is there harm now? Yeah, because now he
25 deceived. Now, he used that position and

1 he tricked me to get something for
2 himself.

3 So that's what we're talking about
4 here. Did the Defendant hold himself out
5 to Kxxxxxxx as a counselor? Did Kxxxxxxx go
6 to him and act like a patient, like a
7 client? Was she in that position to him?

8 So you're looking at how did he
9 portray himself? What role did he take on
10 in this situation? What words and actions
11 did he use to purport to provide mental
12 health services to Kxxxxxxx?

13 So Kxxxxxxx was 16. She comes in
14 this school. She's told it's a
15 therapeutic boarding school. This is the
16 owner and director, Ben Trane. He holds
17 himself out to her and everybody else as
18 very knowledgeable on this topic. You got
19 a taste of that when he testified; right?

20 How many times did you hear from
21 him, well, as Dr. Grassian said, and then
22 he started to give you a lecture on
23 whatever psychological concept he was
24 telling you about? He holds himself out
25 like he knows a whole lot about that

1 profession.

2 He's the owner of a therapeutic
3 boarding school, and he becomes her family
4 rep when the switch is made that all of
5 the other counselors are made family reps.
6 You heard that from numerous people, that
7 that's what happened, and the kids knew
8 that's what happened.

9 So when you're supposed to be a
10 counselor as a family rep, the Defendant
11 stays a family rep. Is it unreasonable
12 for Kxxxxxx to think that he's a
13 counselor, that he's a therapist, that
14 he's the one that she's supposed to be
15 talking to? It's not unreasonable at all.
16 That's what he holds himself out to be.

17 What does he do? He pulls her out.
18 He talks to her a lot. All the other kids
19 confirmed that. Kxxxxxx tells you that.
20 Now, she tells you it started out once
21 every few weeks, you know, when she first
22 came there throughout the summer. But
23 when he became her family rep, it was a
24 lot more.

25 They'd talk about past issues. He

1 wasn't just pulling her out and talking to
2 her about what college do you want to go
3 to, how can we get your high school
4 degree, where are you going to live at?
5 He is talking to her about her past issues
6 with sexual abuse.

7 Kxxxxxxx said it was hard sometimes
8 to talk because she would get emotional in
9 some of the things that they discussed.
10 She talked about one time he gave her a--
11 something to do, like to go back to work
12 on to help her dealing with her emotions
13 better, an exercise to do for that.

14 He told her that he had more
15 experience with sexual trauma than any
16 other counselor there. You heard him
17 testify. Was that surprising that he said
18 that? He told her it would be better for
19 her to talk to him instead of her other
20 counselor, instead of Miss Jane, about the
21 sexual trauma issues. And he is
22 redirecting her from a real counselor, a
23 real therapist, to get her to come talk to
24 him because he's better at it.

25 Is he purporting to be a counselor?

1 Is he purporting to be a therapist? He
2 gave her suggestions on how to deal with
3 her emotions. She believed he was a
4 counselor. She confided in him. She
5 trusted him with her emotions. And what
6 did he do with that? Just like he did
7 with the sex abuse, he abused his power.
8 He abused his position.

9 Now, there's a lot of definitions
10 in this count that you have to look at.
11 One of those is mental health services.
12 Did he purport to be a counselor or
13 therapist who provides mental health
14 services? There's the definition up on
15 the top (indicating).

16 So he's purporting to provide
17 treatment. I can help you. Come to me.
18 I can talk about it. I can make you feel
19 better. Did you see that? He's providing
20 assessment. Here are some things you need
21 to work on. Let's take a look at this.

22 He's providing counseling. Talk to
23 me; I know about sexual trauma. I know it
24 better than anybody else here. Kxxxxxx
25 had issues. He offered to help.

1 Intrapersonal issues, those are the issues
2 inside of your head. Interpersonal
3 issues, those are the issues she's having
4 with her family. He dealt with all of
5 that with her.

6 Her emotional condition or the
7 nature of the treatment provided was such
8 that the Defendant knew or had reason to
9 know that she was significantly impaired
10 in the ability to withhold consent to the
11 sexual conduct. I'm not going to spend a
12 lot of time on this. All of this fits in
13 with what we've already talked about and
14 why this is against the will. So think
15 about the argument made for that and tie
16 it into this.

17 But here's the thing to keep in
18 mind. That big paragraph up there
19 (indicating), that's the definition for
20 emotionally dependent patient. You can
21 also choose patient or client. So when
22 you get to Count I (sic) on Sexual
23 Exploitation, you have these three
24 options, which goes back to you don't have
25 to agree on which one, just pick one,

1 okay?

2 So if you don't want to deal with
3 the big paragraph definition, just go to
4 the patient or client. That's the easiest
5 one. It's a person who received mental
6 health services from the counselor or
7 therapist.

8 If you find that the Defendant was
9 talking to her about these issues; if you
10 find that he was pulling her out and
11 acting as a counselor or therapist and
12 talking to her about past sexual abuse,
13 issues with her family, with her emotions,
14 then she's a patient or client. I mean,
15 it looks as easy as this (indicating).
16 Patient or client equals student plus
17 conduct.

18 She's a student there. She's in a
19 position where it is so easy to say that
20 she is a client. She goes to that
21 facility. They paid for her to go to that
22 facility. She's going to him for
23 services, for counseling. So she's a
24 student, plus his conduct, means that
25 she's a patient or client.

1 The last one, Child Endangerment.
2 Again, we have the same timeframe, big
3 broad timeframe. We're talking about
4 Bxxxxxx [REDACTED] and Dxxx [REDACTED]. Bxxxxxx and
5 Dxxx were under the age of 14 years. I'm
6 sorry. Element 1 is the custody or
7 control. The Defendant had custody or
8 control of them.

9 The boys were under 14 years of
10 age.

11 The Defendant knowingly acted in a
12 manner which created a substantial risk to
13 the physical, mental, or emotional health
14 or safety of Bxxxxxx or Dxxx.

15 I can tell you guys are ready to
16 get up. You're tired. I won't spend a
17 lot of time on this because it is so
18 absolutely clear.

19 There is a definition for a person
20 having control. The Defendant is the
21 owner of the school. The position itself
22 means he has custody and control of all of
23 those children that go there. He was the
24 director of the school. The position
25 itself means he has that custody and

1 control.

2 He himself on the stand
3 reluctantly, reluctantly, admitted that he
4 has control of the kids there. Again, who
5 wants to accept all of the good things
6 that happen at the school. But he knew
7 why I asked that question. Did you have
8 custody and control of the children?

9 Well, the school did, the school. He knew
10 why I asked the question. He didn't want
11 to admit to it.

12 The parents turned the care of
13 their children over to him. He is Midwest
14 Academy. He had custody and control of
15 those children.

16 What else do we know about his
17 control? He has total control of the
18 school. That's from Mike Davis. Anything
19 that happened there he had to approve.
20 Mike Davis was the clinical director with
21 the degree, and he was in an advisory
22 capacity. So he could make suggestions.
23 He could advise what should be happening
24 with the clinical program, but the
25 Defendant got the final say.

1 And the compartmentalized culture,
2 you saw a lot of that, the lack of
3 communication, not just with the kids but
4 with the staff too. When the left hand
5 doesn't know what the right hand is doing,
6 the person at the top gets to control all
7 of it.

8 He was the top of the pyramid. He
9 was my boss. That was Gary Lachapelle.
10 Jane Riter; he was my boss. He was the
11 person who had control of everything. The
12 Defendant himself described himself as a
13 control freak. That doesn't change.

14 Bxxxxxx [REDACTED] was 12 years old when he
15 entered that school. His birthday is
16 Xxxxxxxxx xx, xxxx. He's 12 years old.

17 Dxxx, his birthday is Xxxxx x,
18 xxxx. He's 12 years old. That's element
19 2. They had to be under the age of 14.
20 That's met, no question.

21 Now, the State does have to show in
22 element 3 that the Defendant knowingly
23 acted in a manner that created a
24 substantial risk. Do you know what
25 knowingly acted means? It means he had a

1 conscious awareness. He was aware that
2 things were going on that could be a
3 substantial risk to these children.

4 He doesn't have to be the one
5 shutting the door. He doesn't have to be
6 the one dragging them in there. He
7 doesn't have to be the one that said, oh,
8 you moved your leg; structure starts over.
9 You've been in here three days, now it's
10 going to be four. But he has a conscious
11 awareness of it.

12 He wrote the rules. He wrote the
13 policies. It's his rules that kept them
14 in there. He may not have shut the door,
15 but it's his rules that kept them in
16 there.

17 You heard a lot of the talk about
18 the strict behaviorist, and it's behavior,
19 it's not mental health. All these kids
20 are making a choice. They choose to stay
21 in there. They choose not to do as
22 they're told. It's their fault is what
23 they want you to believe.

24 He told agents he made the rules,
25 policies, and procedures. He said that in

1 the interview. You heard that from Tom
2 Pearson. He made the rules, the policies,
3 the procedures. Everybody followed the
4 rules at Midwest Academy. You don't want
5 to step out of line there. His rules.

6 He made all the final decisions.
7 His clinical directors had an advisory
8 capacity. His clinical directors were
9 telling him, we need to change the OSS
10 room a little bit. This probably isn't
11 the healthiest thing. This isn't working.
12 He didn't do it. When did he do it?
13 After DHS came in. After the FBI came in.
14 After he said, oh, maybe we might make a
15 few changes now.

16 He said, I will decide who comes
17 and goes. He told agents that. He told
18 Mike Davis that. Remember he said that
19 there was a short period of time he gave
20 Mike Davis the power to decide who's
21 appropriate to come in and who's not. Do
22 you remember what Mike Davis said when
23 Mike Davis started turning away some kids
24 because they had too many mental health
25 problems that they wouldn't be a good fit?

1 The Defendant got mad, and he took that
2 authority away from Mike Davis, and he
3 said, I will decide who comes and goes.

4 Mike Davis also told you he'd
5 refute what clinical staff would say
6 because he knew better. Did you pick that
7 up a little bit on the stand too, that the
8 Defendant thinks he knows better than a
9 lot of people?

10 He took the attitude that he knew
11 more about therapy than the therapists.
12 He believed that you must interrupt
13 behavior and correct it with immediate
14 consequences. And despite the staff
15 recommendations, he would not change the
16 rules of the room. He wouldn't change
17 them. Even when he did change them, you
18 heard that too, that when he did change
19 them after DHS that he took the locks off
20 of the doors, after a while they put it
21 back on.

22 He wouldn't follow clinical advice
23 that a child needed to go to a hospital or
24 didn't belong there or needed to get out
25 of the room. You heard that from Jane

1 Riter. Now, she said usually, you know,
2 it would happen, the kid would get to the
3 hospital, but not when she recommended it.
4 Sometimes she said, oh, maybe a few days
5 later. Is that okay for a few days later
6 for a kid to go to a hospital when a
7 licensed therapist is saying he needs it
8 right now? He got to decide that.

9 He refused to give staff mandatory
10 child abuse training. Everybody agreed to
11 that. There was no dispute about that.
12 Why? Because he told Mike Davis they
13 might make reports that we don't want them
14 to. You knew from the staff that you went
15 up through the chain. You didn't go
16 outside. You stayed within MWA on that
17 stuff.

18 He put in his friend as the
19 director, Devon Dade, but he still ran the
20 show. He still had control. He did not
21 step away from this. This was his baby.
22 This was his business. There was no way
23 that he stepped away from this.

24 And he didn't require front line
25 staff to have any sort of background or

1 training with children. That is no
2 criticism on having a high school diploma.
3 But these people are working with these
4 troubled kids. They were restraining.
5 They were the person that was having that
6 direct interaction that if they didn't
7 maybe do it right, it was going to get the
8 kid in the OSS room. And there was no
9 requirement for any type of education for
10 the dorm people, for the night staff, for
11 the family reps for a very long time.

12 Combine that attitude that he has,
13 that was shown through the evidence, you
14 combine that with what he knew was going
15 on with Bxxxxxx and Dxxx. Bxxxxxx spent a
16 minimum--because the records weren't
17 complete--minimum 133 days in OSS out of
18 210 days at Midwest Academy, 63 percent of
19 his time. He was 12 and 13 years old, and
20 he spent 63 percent of his time in an 8 by
21 8 room. And I don't care if the door was
22 open or if the door was shut. That was
23 not good for him.

24 Dxxx  spent a minimum 163
25 days in OSS out of 323 days, 50 percent of

1 his time. He was 12 and 13 years old.
2 The Defendant knew that. He was in OSS.
3 He had been warned of the problems with
4 Bxxxxxx and Dxxx, and he knew it and he
5 did nothing.

6 His attitude is, it's just
7 behavior; it's not mental health. They go
8 to the OSS room so they can screw around.
9 It's their choice to be there. If you
10 lock down on them tight enough, we can fix
11 anything. He said that to Mike Davis.
12 They're not psychotic, they're just faking
13 it. That's the attitude he's taking into
14 this situation.

15 You saw it a little bit with Gary
16 Lachapelle too. And, again, it's not a
17 criticism of him. It's just a little bit
18 of maybe he drank the Kool-Aid and maybe
19 wasn't able to step back and look at what
20 was really going on there. But he had a
21 little bit of that attitude too, that it's
22 the kids' fault.

23 You know from the weight charts the
24 drastic weight loss that occurred. Now,
25 you could be like Gary Lachapelle for Dxxx

1 [REDACTED] and just say, well, he was fat when
2 he got there. Was that a healthy way to
3 lose weight? Does that make it okay,
4 because he needed to lose weight that he
5 lost weight in that extreme manner and
6 that fast?

7 Bxxxxxx did not need to lose
8 weight. You saw his picture. The
9 Defendant wanted to tell you he was
10 overweight. Yet another excuse for his
11 behavior. He weighed 89 pounds when he
12 left there. He went into the hospital a
13 day after he got home for malnutrition.

14 The Defendant saw him. You look at
15 those two pictures (indicating). Do you
16 believe anybody who says that they didn't
17 see a problem with Bxxxxxx, that Bxxxxxx
18 was healthy and fine and no issues? He
19 looked like he came out of a concentration
20 camp when you look at these end
21 photographs.

22 And they want to tell you, well,
23 that's Bxxxxxx's problem. Bxxxxxx chose
24 not to eat. Those are his choices.

25 Who are the adults here? Who is

1 entrusted with keeping that child safe?
2 And whether he's following your rules or
3 not, if he's not eating, if your peanut
4 and jelly sandwich isn't enough to keep
5 weight on him, then it's time to put the
6 rules aside and do what's right and take
7 care of the child. It didn't happen here.

8 And Dxxx, you can look at his
9 before and after too (indicating). That's
10 pretty extreme. The other thing that
11 happened with Dxxx under the Defendant's
12 care is he was put in that Pride group

13 So he got moved into the family
14 with a group of boys who were struggling.
15 They call it struggling. A group of boys
16 who were a problem is the group he got put
17 into. They got segregated in a different
18 room. And the Defendant knowingly put
19 another juvenile who was a sex offender in
20 there.

21 There was kids from 12 to 17 in
22 this group. This is why DHS had to come
23 in that second time, because of the report
24 of the sex acts that had gone on in that
25 group. What did the Defendant say when

1 Agent Pearson was asking about it?

2 Supervision isn't their problem.

3 Dxxx finally got out in April after

4 [REDACTED] came back and went straight

5 to DHS and realized what DHS was telling

6 her is not what she was being told by the

7 Defendant. Do you remember her saying

8 that? Those stories were not consistent.

9 And then she went and she took her boy

10 home because she was done with there.

11 He knew exactly what was going on.

12 Nothing happened in that place without his

13 say-so. He was not going to change the

14 rules for anyone, not for Bxxxxxx, nor for

15 Dxxx, not for anybody. His ego was not

16 going to let anyone tell him any

17 different. And his creation of the

18 environment was an action. He created

19 that place. He created those rules. And

20 his failure to change the situation was a

21 choice. He knowingly acted.

22 Now, we want to talk about

23 substantial risk. We really don't have to

24 talk too much. Bxxxxxx alone, he was

25 malnourished. Okay. That right there

1 can just meet beyond a reasonable doubt
2 this element.

3 But also look at what Dr. Grassian
4 said. And I won't go through it all. But
5 what Dr. Grassian was here for was to give
6 you that foundation you needed to show
7 that possibility of substantial risk when
8 you keep a child in a cell like that.

9 They're less capable of processing
10 their emotions. When they go in if
11 they're not too upset, if they're a kid
12 that doesn't have that good thought
13 process, doesn't have some mental health
14 issues, they're the ones that are going to
15 escalate when they're in there.

16 How many times did you hear those
17 kids would be in there just yelling and
18 screaming for days? Was that because they
19 chose to or because of their mental health
20 and being in that room made them that way?

21 Dr. Grassian said they start
22 somewhat in control, it's normal to get
23 out of control. It's that maxing out.
24 This is research. This is studies. This
25 is for adults. It's worse in children.

1 Their brains are developing.

2 Higher rates of self-harm. You saw
3 it over and over and over with those kids.
4 I can't remember if it was Mxxxxxx or
5 Lxxxxx, you know--and they're not under
6 14, so they don't fit in this count. But
7 their accounts of the rooms can help you
8 decide what kind of environment that was.
9 And one of them said that they were in
10 that room and just lost hope. They were
11 done.

12 Mxxxxxx was the one in the room
13 trying to harm herself. Lxxxxx as well.
14 It has--it can have a physical effect on
15 the brain. It can change the formation of
16 a child's brain from being in there. That
17 is proven through the research, through
18 the studies, through the MRIs. It is not
19 a good thing to do.

20 Ask yourself this: If you heard
21 that a parent locked their child in an 8
22 by 8 closet for a period of time and the
23 amount of time that Bxxxxxx [REDACTED] was, and
24 that the parent fed them peanut butter and
25 jelly at every meal with nothing else, and

1 that the parent (sic) was kept in the
2 conditions that Bxxxxxxx and Dxxx were
3 there, would you find that okay? Or would
4 you find that criminal?

5 Even a parent doesn't have the
6 authority to keep those kids like they
7 did. It was wrong. It was damaging. It
8 caused harm. There was that substantial
9 risk of harm, but this caused the harm.
10 You didn't need a doctor to tell you that.
11 You knew that before Dr. Grassian
12 testified. Your common sense told you
13 that to be true.

14 We don't have to prove the actual
15 harm, we only have to prove substantial
16 risk. They were in there too long. They
17 were not nourished enough. They were not
18 kept safe. They were at substantial risk
19 of harm to their physical, mental, or
20 emotional health, and the Defendant had a
21 conscious awareness of that. That is
22 Count III.

23 So truly at the end of this case,
24 you're going to have to decide who you
25 believe, because that's really what it

1 comes down to. Because the Defendant is
2 telling you a whole lot of different
3 things than what you're hearing from other
4 people.

5 So you could tell that he admitted
6 what he had to. You know, there was too
7 many kids that said Victoria's Secret.
8 There were pictures on his phone at
9 Victoria's Secret. So he had to admit
10 that. But he gave you a good reason for
11 it.

12 We found the sexual surveys in his
13 office, so he had to admit that. But he
14 gave you a good reason for doing it. Oh,
15 then all of a sudden we found out they
16 were planted somehow before the search.
17 He doesn't have any idea how they got
18 there. Do you find that credible?

19 So you've got to look at who you
20 believe, and what did the Defendant say.
21 And he wants to take all the credit for
22 all the good and go on and on and talk to
23 you at length about the psychology and the
24 therapy and how great he is and how great
25 the school is. But not the bad. The bad

1 was everybody else's fault. When bad
2 things happened, he's not responsible.

3 How many names were dropped to you
4 while he sat up here and testified? Do
5 you remember when he sat here and he said,
6 well, I picked Keokuk because I was
7 looking for a community of good people,
8 right as he's looking at you?

9 And how many names of the good
10 people of Keokuk did he drop when he was
11 talking about his testimony of Jane
12 Babcock and started listing off all these
13 people that he knew. Don't think that
14 that wasn't contrived, and don't think
15 that wasn't an attempt to manipulate you.

16 Do you find him credible? What
17 reason would the kids have to make this
18 up? All these kids from all over the
19 United States, what reason do they have?
20 How are their stories so consistent if
21 this is all made up? You heard the same
22 thing over and over. Everybody had their
23 own version, their own effect from being
24 there, but it's still the same.

25 He wants you to disregard

1 everything that everybody else has said,
2 and he wants you to believe him. He wants
3 you to take his word for it, because he's
4 used to having people just take his word
5 for it, because he was the owner and
6 director of MWA, because nobody questioned
7 Mr. Ben, because nobody said no to Mr.
8 Ben, because everybody did what Mr. Ben
9 told them to do.

10 He just wants to walk in here and
11 be able to say, didn't do it; this is what
12 happened; all done. Disregard, ignore all
13 of those troubled children who you
14 shouldn't be believing; disregard and
15 ignore those prior employees; disregard
16 and ignore DHS, because they're just out
17 to get him; disregard and ignore law
18 enforcement, because they just--they don't
19 understand. They're just taking this all
20 the wrong way.

21 Do you find that reasonable? It's
22 not. Ladies and gentlemen, the Defendant
23 committed sex abuse. We've met every
24 element. The Defendant committed sexual
25 exploitation. We've met every element.

1 The Defendant committed child
2 endangerment. We have met every element
3 beyond a reasonable doubt.

4 The power and the control is yours
5 now, and I ask that you use it to do
6 justice, to seek the truth, and to find
7 the Defendant guilty.

8 Thank you.

9 THE COURT: Ladies and gentlemen,
10 at this time we will take a break. I
11 think your meals just arrived here a few
12 minutes ago, so it's timed pretty well.
13 They should be hot yet.

14 One of the things, remember what I
15 told you several times was don't begin.
16 Your deliberations begin when all the
17 arguments of counsel have been made. So
18 we're not done yet. So you can talk in
19 there about Christmas, bowl games,
20 football, whatever you want to talk about,
21 except do not deliberate the case. Do not
22 talk about the case or deliberate it in
23 any fashion. That comes after all the
24 arguments are made, and I have a couple of
25 short instructions to read yet. So that's

1 when you start to deliberate.

2 (A recess was taken at 1:20 p.m.)

3 (In open court, outside the
4 presence of the jury, in the presence of
5 the Court, the Defendant, and counsel at
6 2:15 p.m.)

7 THE COURT: The record shall
8 reflect that all counsel are present and
9 the Defendant. The break for noon and for
10 the jury to eat is over. You may bring in
11 the jury.

12 (In open court, in the presence of
13 the jury, the Court, the Defendant, and
14 counsel at 2:16 p.m.)

15 THE COURT: Please be seated
16 everyone. Everyone has now been seated.

17 Ms. Schaefer, you may proceed with
18 your argument.

19 MS. SCHAEFER: May it please the
20 Court.

21 THE COURT: Ms. Schaefer.

22 MS. SCHAEFER: Counsel.

23 Good afternoon. I trust the pizza
24 was good, and probably well needed. I
25 will not take two hours, just to let you