

*People v. David Alan Westerfield*  
**Trial Day 29- August 7th 2002**  
**Closing Arguments - Defense Feldman**  
**San Diego, California, Wednesday, August 7, 2002, 8:54 a.m.**

**Mr. Feldman:** Thank you, your honor.

Good morning, ladies and gentlemen.

**The Jurors:** Good morning.

**Mr. Feldman:** Maybe last night it started to hit you. Maybe some of the intensity started to set in. But as the judge said to you yesterday when you left the courtroom, you're not allowed to form or express any opinions. The case hasn't been submitted. So your minds are open because that's your obligation as jurors.

I know -- I have to start by saying I've been thinking about this. I know my personality, I've done this for years, I know there are many people that will turn off to my clients because they'll look to his lawyer and say this guy, uh-uh. I know that we're dealing with extraordinarily experienced, competent, extraordinary lawyers. I know Mr. Dusek is a veteran prosecutor. Mr. Clarke is an extraordinary lawyer. You can't use that as bias against Mr. Westerfield. You decide this is a personality contest, usually we lose. This is not a personality contest. This is about a pursuit for the truth.

And so if there's anything I've done, if there's anything I've said that has caused any of you I'll say heartburn, please don't hold it against Mr. Westerfield. We do the best we can, all of us. All of us are doing the best we can under these circumstances. They are extraordinary.

When last we left, I was trying to address Mr. Dusek's arguments concerning how and why there's no evidence of Mr. Westerfield in the Van Dam residence. And you'll recall from yesterday that it was Mr. Dusek's theory that Mr. Westerfield apparently stealthily, like our stealth jets, under the radar screen, in the dark of night, when it was pitch black, snuck in somehow into the Van Dam residence.

And you heard his speculation. And he told you it wasn't anything you could feel an abiding conviction to the truth of the charges about. He told you it was nothing more than guesswork, which is not something you're permitted to do. He told you his best guess was that somehow Mr. Westerfield came into the Van Dam garage, apparently through the side door. And in 18-g -- now, you folks have the exhibits in mind. You're going to decide. So if I get it wrong, I'm sorry. I'm trying to get it straight.

Mr. Dusek's argument is that Mr. Westerfield snuck in through the side garage door, left no fingerprints, left no physiology, left no trace, and somehow knew that the door that Denise Kemal had told you under oath I closed, didn't lock it, I closed it. That's the testimony. The state of the record is when Kemal got done smoking dope, she closed this door. And when she came back that evening, either she or Brenda closed this door. So they're saying somehow mysteriously Mr. Westerfield crept in the door.

Now, there's something odd about that because that would require that Mr. Westerfield know that the door into the house, and I think -- I think this door we see in g is the same door we see in a. I'm trying to draw inferences from the cabinets that I see in f. But regardless, remember the testimony. The testimony was the Van Dams had reversed their door, where in my house or your house if I walk into the garage from the side door, and somebody locks it from where the laundry room is, I'm going to the door, I'm going to

turn the handle, and it's going to be locked. Right. And that's common sense. That's how everybody's house is. Not this house. But everybody else's house. You walk in through the garage, there's a double lock. Especially in suburbia. And this is suburbia, isn't it. So the door's locked from the -- not from the outside or inside like you would expect it, but from this way.

Now, since there's no evidence and the truth of the matter is Mr. Westerfield was never in the house, Mr. Dusek's theory requires him to have that knowledge. Good guess. There's no proof. It's nothing but speculation. It's not reasonable. It's a great guess. So somehow Westerfield realizes, who knows how, that the door that's probably locked he can get in. And he goes in.

And then never in the house before -- we can do this two or three ways. He walks in the house. I looked at this this morning. I can't find the specifics, but we know the doors were on the side, right. We know the doors were around the side. But somehow he enters and there's this living room. And you know this is a man who is supposed to be drunk. And even if you think he's sober, it doesn't matter. Cold sober, drunk makes no difference on this one. It's pitch black downstairs. The Van Dams said the lights are out. It's completely dark downstairs. It's completely dark upstairs. They've gone to bed. If it's before Brenda comes home, Damon's told you it's pitch black. He's turned the lights off.

There's two spins on the evidence here. In one spin Damon's light upstairs is seen when Brenda comes home because the T.V.'s on. And so there's some kind of flickering. But that's not going to illuminate the downstairs. And there's another spin. And again you select the witness to believe. I don't make that judgment for you. You do. But on another theory it's pitch black.

I think this is -- this is Danielle's bedroom I think. How you going to see that? You're standing on the street looking in, I don't care whether the shades are open or shut, you can't see. The angles aren't right. Think about it. Common sense. You're standing on the street, you're looking up. Your angle is upward. You don't see downward. So it's in the stealth. In the dark of night.

I don't know stumbling around. We don't know. We don't know. Somehow Mr. Westerfield has the ability to figure out on their theory without any evidence of any kind whatsoever, not trace, not fiber, not hair, not fingerprint, not nothing. In he goes. And he walks around. And he goes to the stairway. Now, first of all, how does he even know there's a stairway there? Good guess. And this is the stairway. And we look at the stairway. And we see it. And how does he know who's where. He's never been there.

**The Court:** Counsel.

**Mr. Feldman:** Thank you.

Up the stairs. No noise. Is somebody home? Didn't Mr. Dusek tell you? Well, his theory is it must have been 1:45 when Layla went off a little bit and Damon came downstairs. And maybe the light was blinking. Let's say it was 1:45. Let's say it's about 3:30. I don't care. And it's in there somewhere according to their theory. Up the stairs this man goes. What.

We have a fingerprint on the banister. Guess who's excluded. All of the Van Dams, all of the police, Rich Brady, Keith Stone, every single person the Van Dams told you had ever been in their house with their knowledge or at least those that they admitted to the police were excluded from being the donor of that fingerprint.

Up the stairs he goes. Up the stairs he goes. It's dark. It's really dark.

What a surprise. He comes out of the stairwell. He looks to his right. Who knows what's down there. It's dark. He looks to his left. Who knows what's there. There's three bedrooms. You've heard testimony, oh, the bedrooms were plainly marked. And he looks down that hallway. He looks down the hallway. Right?

People -- court exhibit 15. And this is what he sees. Doors. Gee, how do you know whose door is what. How do I know in a that the door with the flowers above the handle is a girl's or the door with something below the handle is a girl's or any of the other doors are anybody's. 'Cause he's never been in there. Good guess. Their theory.

Their theory requires you to be convinced beyond a reasonable doubt that this is what happened. Although Mr. Dusek said to you yesterday I can't tell you. We're just guessing. He's right. He's just guessing. Because this is a circumstantial evidence case. Because if there's two reasonable interpretations of the evidence, he knows there's a problem for the prosecution. There's a fly in the ointment.

So somehow on Mr. Dusek's theory David Westerfield, all six feet two of him, sneaks into the bedroom of Danielle Van Dam. Doesn't make a sound when he opens the door that Brenda testified she closed when she put the kids to bed. That Damon Van Dam said -- he said just enough to leave open. No sound. No sound. So he sneaks in.

He must be really careful not to leave any fingerprints. Now, they are going to say he had gloves on. Didn't find any, did you. There's no evidence of that. So into the bedroom Mr. Westerfield goes. And on the prosecution's theory, whoops, in comes Brenda. It's not just in comes Brenda, it's in comes Keith Stone, in comes Rich Brady, in comes Denise Kemal, in comes Barbara Easton. And on the D.A.'s theory, David is hiding some place. And Brenda goes upstairs and closes that door so the kids don't hear the noise. He's now trapped. Really. Now, is that plausible.

Well, Brenda and the girls. I know there's a photo of the master bedroom. So people are going to get on me now because I can't find a photograph.

It's just down the hall, right. This is just down the hall. Remember. Just down the hall. This is the master bedroom. Okay? This is what happens if you turn right down the hallway. This is what happens if you turn left down the hallway. But when Brenda Van Dam comes in, she brings her girl friends upstairs. And somebody jumps in the bed with Damon. Now, I don't know how much noise that made. I don't know how long they were in there. I know this about the testimony. The testimony was that Denise Kemal said she's positive Brenda -- Damon Van Dam never came downstairs. Check the record. Kemal said Damon never made it downstairs. What's he doing in bed with Barbara. And his wife. And Denise. Folks, they introduced this evidence. I didn't.

In bed they are for who knows how long. Fifteen minutes, twenty minutes, thirty minutes. How long does it take? Think about it. Is what they're saying reasonable.

Out of bed at some point, out of the bedroom comes Brenda. Walks apparently close enough to hear if something's up. Doesn't hear anything. And down the stairs.

Now we get a split in the testimony. Some people say Damon came down and ate pizza. Some people say Barbara came down and ate pizza. Denise says Barbara said it didn't happen. The prosecution didn't call Barbara. You are going to get an instruction from the judge because they're going to turn that around on us, I see that punch coming. They get rebuttal evidence. I forgot to tell you that. Remember this is the only time I get to speak to you, folks; this is it. The defense is done, okay, when I conclude this closing argument. Because the law, our constitution says it's the prosecution that's got the burden of proof.

They have two arguments. I only get one. This is it. So, you know, you know whatever I got to say now, please, please keep in mind that when Mr. Dusek stands up and makes his arguments, please try and think of what the defense might respond, because I don't got a chance to respond. Mr. Boyce doesn't have a chance to respond. Mr. Westerfield, Miss Schaefer don't have a chance to respond. It's the prosecution that's got the burden of proof. That's why this system is structured the way it is. It's why they get two and we only get one. So they're going to say something different. You already know that.

Regardless. Downstairs the women come. And on Mr. Dusek's theory thirty-five minutes later they leave. But on Mr. Dusek's theory Mr. Westerfield is still there. Now he's heard all of this. They've been yucking it up downstairs. They -- I don't remember whether they had a beer downstairs at 2:00 or -- but certainly the testimony is they had pizza. I don't know whether you can hear the refrigerator opening and shutting. I don't know whether you hear the beer cans opening. I don't know whether you hear the front door slamming. He's in the room hiding? What's Danielle doing? She's fast asleep in her bed while a stranger's in there. Is that reasonable. For an hour and a half. 'Cause the next thing we know about the time line is it's 3:30. And there's some kind of blinking. Right? This is the security system that doesn't make noise; it just blinks. This is the house that has the dog that apparently doesn't bark even though Damon testified that when the dog wants to go out, it barks. Check the record. Okay?

You have the right any time there's a dispute in any of your minds as to what the evidence might be, we have a daily transcript, you can get the official record read back to you any time you want. All you have to do is ask. So if there's any confusion on what the facts are, if some of you have one view, some of you have another, send a letter out. The judge will address it. We need you to find the truth. We don't want you to guess.

So Mr. Westerfield is in there. Now it's 3:30. What? On Mr. Dusek's theory what does he do? Pick up Danielle. She doesn't know him. The only thing that makes any logical sense, the only thing that's logical is that when that little girl woke up, she knew who was in there. She had to have known. Because otherwise, like any child, you all have kids, I raised kids, you send somebody strange into the room to touch your child, they're going to scream bloody murder. They're not going to put up with some foreigner, some -- some person that they've had, what was it, fifteen or twenty minutes' experience with in their entire

Life in their bedroom in the dead of night with mom and dad right down the hall asleep. They're not going to scream mommy. Daddy. Help me.

Their theory is he killed her. Their theory is he killed her in the bed. That's the only way to shut her up. You heard it yesterday. We didn't advance it; we didn't raise it. They did.

And as the judge told you, the defense' argument is both a rebuttal argument and a substantive argument. And some of the things that counsel raised yesterday I have to address. And so let's examine is there any merit to Mr. Dusek's theory that the killer killed Danielle Van Dam in her bed.

**Mr. Dusek:** That misstates our argument, your honor. We never said that.

**The Court:** Clearly misstates the argument, Mr. Feldman. Move on.

**Mr. Feldman:** I'm sorry, folks. I heard -- I thought I heard the district attorney -- again, this is an argument. Okay? I'm doing the best I can. If they say to you that they didn't make that argument, I heard the argument dead in the bed, because part of the instruction involved --

**Mr. Dusek:** Objection. Misstates the argument, your honor.

**The Court:** It misstates the argument, Mr. Feldman. Let's move on.

**Mr. Feldman:** If you look to their instruction, their instruction talked about a scenario, this was Mr. Dusek's instruction, that required forcible movement while alive.

**Mr. Dusek:** Objection. It's not our instruction; it's the court's instruction.

**The Court:** It's the court's instruction, Mr. Feldman.

**Mr. Feldman:** Judge, thank you.

**The Court:** It's the court's instruction.

**Mr. Feldman:** Thank you. Thank you. Thank you, your honor.

The court's instruction that was written by Mr. Dusek in the effort to save \$46,000.00 because that's what they spent on the D.N.A. And I'm sorry, that's a little facetious, but I told you this is an extraordinarily intense experience. This is what they said.

The kidnapping began when the victim was alive. This is his words.

**Mr. Dusek:** Objection, your honor. It's from the instruction.

**The Court:** The words are from the instruction, Mr. Feldman. Let's limit it to an argument as to what the instructions say, not who prepared them, not who wrote them, but how they were given.

**Mr. Feldman:** However you spin it, this is the law. This is what counsel presented to you.

His argument was somebody had to be less than fourteen. These are the elements. He argued what the elements were he had to prove. And one of those elements he has to prove is the movement with regard to the kidnapping had to occur when she was alive. The inference being that if she is dead in the bed, there's an acquittal. It's a problem. It's the theory.

Was she killed in the bedroom? I ask you; I don't advance. Is there evidence of that? Is there an interpretation of the evidence that suggests that she was killed in the bed? We know that Mr. Cornacchia who was a criminalist tested the bean bag chair. There's blood. Now, they're going to get up and argue that the majority of the blood wasn't Danielle's. But Danielle Van Dam's blood is on this. Beyond a reasonable doubt. Uncontradicted. Undisputed. No questions. No nothing.

I'm not seeing the blue pajamas. There's blood on the blue pajamas. We don't know whether these are the same blue pajamas she had on or not. We had testimony from Mrs. Van Dam that they are identical. If somebody is going to do this, are they going to carry that little girl out dressed? Are they going to shut her up? Because if she wakes up and sees him or anyone, she's going to scream. Help. That's completely logical. It doesn't matter who gives you the instructions. This is what the law is. If she was killed before they left that room, he's not guilty.

It doesn't seem intuitive. That seems counter-intuitive, doesn't it? It doesn't seem right. That's what the law is. And you all promised to follow the law whether you agreed with it or not.

And again I say to you that's not the defense' position. That's an inference I draw from their argument.

So how's he going to get out of there? He's upstairs now. On their theory he's got her. He's got to get her out of there. And he gets to the top of the banister. And you'll remember, this is court exhibit 88, he gets to the top of the banister, which I don't have up yet. I'm sorry. And there's a fingerprint at the top of the banister. And Jeff Graham told you about the fingerprint. And he said the orientation was kind of like this. As though whoever had -- somebody was falling or slipped. It's a makeable print. It's an identifiable fingerprint.

It's a good latent fingerprint. It was collected by Dorie Savage at the scene, and it excludes David Westerfield.

Where's the evidence of who in the house. Is there two reasonable interpretations as to who entered that house? The possessor of this print, the person responsible for the blood on the bean bag and the pajamas. Is that a reasonable explanation of the evidence? Is there only one reasonable interpretation, theirs. Because the law says it's not a question of which is more reasonable. Don't go there. You decide reasonable. That's the end of the exercise; we're done. That's the law. As the judge has pointed out, it's not what I argue to be the law; it's not what counsel argues to be the law. It is what it is.

So because the door handle was reversed, because this is a house that apparently has a dog that doesn't bark, because so many people were in the house, law enforcement went to the Van Dams that day and said please tell us everybody who was in that house. And you heard me argue yesterday, and it's right, check the record, it took Damon fifteen hours before the light bulb went on, before he decided to try and cool that iron that was really hot when the cops were initially onto it, and cool with every passing minute, every passing hour, as the Van Dams, as they've testified, made judgments as to what was relevant to the investigation and what was not relevant to the investigation. While their child was missing. This is terrible. This is a tragedy.

The babysitter's supposed to be in the house. According to the prosecution's theory David Westerfield had had a conversation with Brenda Van Dam. Look to the evidence on that. She told him both. There was going to be a babysitter and that there was a father-daughter dance. She admitted to that.

So they come back in rebuttal say, gee, Westerfield had information that only the kidnapper could have. Pshaw. Read the record. Check your notes. Ask for a readback if there's any doubt. Read the truth, ladies and gentlemen. This is a search for the truth.

So we got the speculation from the prosecution that he moved her. We got no evidence that Mr. Westerfield was in the house. We got evidence that the dog jumped up and down and no tertiary transfer. That means -- remember Locard, that which Mr. Dusek pooh-poohed yesterday but admitted. That was interesting. Did you notice that? Oh, there goes Locard he said. And later he argued there were dog hairs in the Westerfield I think he said motor home. Gee, I didn't know that there was evidence that Layla was in the motor home. And if his position is she wasn't in the motor home, that concedes the Locard transfer principle which, look, it's a fundamental principle of science. Their experts testified to it. It's there. Sometimes it helps you, sometimes it hurts you, sometimes it puts you in the position where you got to say it didn't exist and it did exist all in the same argument.

Take yesterday, for instance. Denise Kemal told you, Rich Brady told you, Keith Stone told you, that damn dog. It was jumping all over, licking. It was a pain. So now it's getting to be 3:00 o'clock in the morning. By the way, Rich Brady who had been up in that house before, who was in the residence before, who had been shown the residence by the Van Dams, who had been taken upstairs by the Van Dams. He didn't even know whose bedroom was whose. But you're led to believe in this courtroom that it's obvious. Why. I heard Dorie Savage testify the other day or whenever it was, now we're about two months into it, huh. Dorie Savage testified that, well, you could tell because there was a little girl's stuff around. Really? Tell me how you going to tell the difference between A, B, and C, beyond a reasonable doubt in the dark at nighttime when you've never been in there.

Terrible coincidence. So it's two hours later. And it must be 3:00 o'clock in the afternoon according to Mr. Dusek's theory.

And David Westerfield has got Danielle Van Dam. How? Does he gag her? There's no gags. Does he tie her up? There's no rope. Does he kill her? There's no evidence of that. How does she get out of there? They have to guess. They have to guess. We heard Damon testify that his daughter sleep-walked. In fact, that next morning in his panic he ran up and down the street thinking that she had sleep-walked out the side door. I'm sorry. Out the side gate. He knew it was possible.

Law enforcement, too, recognized this is a problem because, remember, you heard testimony not merely on the choker but Danielle had earrings. Right. I think they were Mickey Mouse earrings. And law enforcement at the recovery site was able to find the earrings and one earring back. We're still looking for that earring back. Remember Jeff Graham testified after he found the fingerprint in David Westerfield's motor home, he went back to his motor home on his hands and knees looking for that earring back because they realized they needed some way to link Westerfield, they had to time date it. They had a problem. They knew without being able to put him there at the right time, they recognize they didn't have clear and unambiguous evidence. They knew the evidence was susceptible of more than one reasonable interpretation. And they've been desperately seeking clear and unambiguous, meaning clear, capable of only one interpretation. We're still looking.

That smoking gun we're trying to find. You might see the shadows of the outline of the gun, but they don't got the smoking gun. We're looking.

So Dorie Savage and law enforcement went to the Van Dam residence any number of different times in the ensuing weeks. And you heard testimony they took walls down. Damon kept the door open. The Van Dams suddenly became so cooperative. They showed law enforcement everything they wanted. Damon went a step further and became so cooperative that he locked down the ability to get into Danielle Van Dam's residence. But somehow we know a shell casing got in there. I don't know what to make of that. There's a shell casing in Danielle Van Dam's bedroom that was not in the bedroom when law enforcement strip-searched it the first time in.

Dorie Savage told you on her hands and knees she looked. Dorie Savage told you we secured the premises. Dorie Savage told you I went back the next time and, darn, there would be a shell casing there.

Well, we're not talking about scene contamination. We're not talking about the integrity of crime scenes. I'm asking this question. Explain that, Mr. Dusek. You tell this jury beyond a reasonable doubt with only one reasonable interpretation how did that get there. Is that the trace evidence that the maker of the fingerprint on the balcony, that the maker of the fingerprint outside the doors left. I don't know. Did Dorie Savage miss it the first time? I don't know. Did law enforcement pursue it? We don't know.

There's simply no way, there's no way someone unfamiliar with this residence could do this. But later, when David Westerfield was being as cooperative as was the Van Dams, it suddenly became sinister. Suddenly Westerfield is overly cooperative. And Mr. Van Dam and Brenda Van Dam were overly cooperative. And, of course, they're both with good reason being overly cooperative. They're trying to help. Except the spin from the table on the left is that it's sinister when Westerfield does it, and it's innocent when the Van Dams do it. This is an adversary system. I told you that yesterday. Please keep that in mind. Advocates. Advocates. Impartial. You find the facts. Your honor -- his honor decides the law.

What he says are the rules. You find the facts. It doesn't matter what you find as long as it's as best you can, as long as you do the best you can.

So we have Jeff Graham. Ah, I'm sorry, I missed something. There was an issue as to a vacuum cleaner. You will remember Dorie Savage was kind of cute about it. I said, well, ma'am, there was a vacuum cleaner in the Van Dam residence. Yeah, there was. And, gee, was it wet. I said did it have water in it. Yeah. And why. Well, I don't know. It was wet. Well, I don't know either. Why. Why would there need to be a vacuum cleaner there. We don't see the vacuum cleaner in 19. But we see the stairwell. And if you think back to an abduction with a live seven-year-old who's not making a single sound, as somebody who is a stranger to her is carrying her out the house, down the -- oops. Another fingerprint. Down the stairs. Whoops. Another fingerprint. Excluded David Westerfield. Down the stairs. Looking. Carefully inspecting. Doing everything they could to identify the perpetrator. And they get nothing.

So, yes, yesterday I was sarcastic. It's true. The evidence of Westerfield in the Van Dam residence is as it is.

Now, on the prosecution's theory -- you need a bigger courtroom. Figured that one out? This is the Van Dam residence. This is the 1-B. Okay? Neighborhood aerials. This is the Van Dam residence. According to them, apparently David goes out the back door because, remember, in the back of the house the slider was apparently open. And there's a fingerprint there. Excluding David Westerfield. They're going to say, oh, there's lots of people in there. But they identified at least two dozen. I think two dozen folks were identified. He was excluded. So on their theory it's either I can't -- I don't know what time it is. Is it 2:00 o'clock in the morning, is it 2:30 in the morning, is it 4:00 o'clock. We don't know. They don't know.

Out comes Mr. Westerfield. I don't know if -- is he holding her hand. I don't know. Has he got her in his arms? Is she carried over his shoulder? He walks out into a residential neighborhood in Sabre Springs, and he walks or runs or skips or hops or whatever, somehow he's got to move not one -- not all of the Van Dams. Yes. All the next-door neighbors. Yes. All the way across the street. Yes. Under the streetlights. Yes. And into his house. That's pretty clever, isn't it?

Drunk, Mr. Dusek tells you, and wearing black boots. Except, remember Susan L. who told you, no, I lived with this guy. He doesn't own a pair of black boots. That's a red herring. Okay. Watch out for them red herrings, folks. There's lots of them being tossed out. We don't want the courtroom smelling like a fish Market. That's not a joke. You throw these little pearls out, make it seem incriminatory. The shoes. Never happened, 'cause he didn't -- he didn't even own them.

So we have David excluded from the Van Dam residence.

Who is David Westerfield? Who is this guy? Who's this person that they say would in the dark of night stealthily sneak into somebody's house and kidnap a seven-year-old. He who has no history of ever engaging such behavior. Period. He's a fifty-year-old design engineer. He lives in a suburban community. He's got patents. You heard that through Redden. He's got numerous relationships with adult women. He's the father of two college-age children. He's been fifteen years married before he was divorced. He's got mortgage payments like we all do. He's got other payments. He's got to make house payments. He's making payments to his kids to go to college. You heard Neal Westerfield tell you he's given them computers. All of a sudden he's going to decide for no reason because he's depressed

over the breakup of Susan Lelek, adult woman. But if you looked her -- I'm sorry -- a large-breasted adult woman, Susan L. He's going to suddenly go across the street for no reason because he's depressed. Uh-uh. That's not logical. That's not reasonable. That's not a reasonable interpretation of the evidence.

Unless your cup when you look at it -- are you an optimist; it's half full. Are you a pessimist; it's half empty. If you're the prosecution, it's half empty with the sulfuric acid. That's the way they look at the case. It's an adversary system. So suddenly because Mr. Westerfield is depressed that he's had a breakup with an adult female with whom he's had a longstanding relationship, that that's going to cause him instantly to change into a child killer. Completely illogical. Another fly in the ointment. Another problem.

Who is David Westerfield? 146 is a picture of Danielle L. and Susan L. That's what it is. And when Mr. Dusek was arguing to you, it also contained kiddy porn. First of all, we don't know who took these pictures, folks. These are not racy pictures. Come on. A mom and a daughter. A daughter in a jacuzzi. He's arguing this is for a sexual purpose. The D.A. is. Two chairs. Okay. Look at 146. I think it's -- I can't read. I really can't tell. It may say C. W. It's not separately labeled. You'll see. It's coming to you in the jury room. It's coming to you under seal, though. This is not a public document. We see two chairs. It's obvious who took the other picture. It's whoever is sitting in the other chair. That's with a digital camera. Is that a problem? And because it's in Mr. Westerfield's computer, suddenly he's a child pornographer.

The argument is one of prejudice; it's not logic. We need you to be objective, not emotional. And this is kiddy porn. According to the district attorney. A picture of Danielle L. sunbathing in his backyard in a bik -- in her bathing suit.

Is that stretching? Isn't that really stretching? They have to stretch. There's too many holes. There's no smoking gun. There's too many explanations. They can't put it together. That's the problem. It doesn't come together.

So we know of David, that he's a good enough man to allow Susan to move in, to take care of his daughter when it's appropriate, and also to allow in Susan, Christina Gonzales. Christina Gonzales was Susan L.'s daughter who was in an abusive relationship if I am remembering her correctly. And David allowed her to come in and put her up. Completely gracious. Child killer? Completely gracious.

She would see the motor home. He used the motor home. Gee. You know, if you remember what Mr. Sherman said, I think he said between six and twelve times in November David was in the motor home. Here we have Christina Gonzales. My mom lived with David on and off for about two years. I was there for three and a half months in August of 2000. I was in an abusive relationship. David and my mom were aware of it. They helped me. They did the right thing. That's morally the right thing to do.

The motor home. She participated, and she would load it and unload it. It was getting loaded. It was open. All the doors were open. Not just one door or two, whatever. The doors were open. So that exercise about, oh, let's see how hard it is to open the door and shut the door, well, that was good. But we don't know, by the way, whether or not the condition of the motor home when you inspected it in July is exactly the same as it was on February the 2nd. It matters. We don't know whether it's been in storage. I don't know what the effect of long-term sitting in the weather is. Does it affect how the door handle works? I don't know. Think about it.

On the issue of Susan, she knows David about as well as anyone. Doesn't she? Certainly as well as anyone we've heard testify. That David, you know, when he does the laundry, he makes a point of tossing things over and making sure they land on the bottom of the residence. I really wish I had one of those powerpoint things.

So we see the laundromat in the Westerfield residence, and we heard this is the custom and practice in the Westerfield home. Either you accept the prosecution's spin he's a neatnik and it always has to be done this way, or you listen to the witnesses. The witnesses say from the upstairs you just toss the laundry down. It's sorted, and it's put in the washer/dryer. And suddenly that's now sinister.

But we know Tuesday, Wednesday, Thursday immediately preceding Danielle Van Dam's disappearance the kids were all over it. They came in the front door. I don't even see the front door. I have to confess, okay, I'm spatially handicapped. You'll find it. They come in the front door. Challenged. That's the word. Challenged. I wanted that word.

This is a back door. We know they went out this way. We know they were in the living room because that's what Brenda said. We know they went upstairs. That's what David said. We know they wanted to go in the garage.

**Mr. Dusek:** Objection. That misstates the evidence.

**The Court:** It will be up to you, ladies and gentlemen, to determine what was actually said.

This is just argument of counsel.

You can proceed, Mr. Feldman.

**Mr. Feldman:** Look to David Westerfield's statement to Paul Redden. Look to David Westerfield's statement to Johnny Keene. We know the kids were in the garage. I think that's what he told Keene. I think that's what he told Redden. Take a look. Mr. Dusek invited you to do so. I encourage you to do so. Listen to those tapes, please. Because one thing that will scream out to you is the demeanor of Mr. Westerfield on tape is completely inconsistent with any nightmare you may have about a person who would do something like this. The kids are all over. And there's the trace. And when the laundry gets dropped down, it's no surprise it gets picked up and popped into the laundromat.

Two reasonable interpretations of the evidence. One pointing to the defendant's guilt, one pointing to his innocence, you must adopt the interpretation pointing to his innocence. You must. You shall. Even though you may say, oh, I think it's less likely, but it's possible, it's reasonable. That's the end of the exercise. You make the decision. If it's reasonable, not more reasonable, if you start engaging in discussions about, well, I think it's more reasonable what Dusek says than what Feldman says, you violate your oath. Because the law says you decide if there's a reasonable interpretation, not more or less, just reasonable, you must, you must return a verdict of not guilty.

All over they were. Fifteen minutes. Think about it. Fifteen, twenty minutes. I mentioned this to you yesterday. Fifteen or twenty minutes. Hmmm. And what's Brenda doing. Well, she's talking to David. And they're having this conversation. Excuse me. (discussion off the record among the defense.)

**Mr. Feldman:** See, I tried to come in early today so I wouldn't do this to you folks. I'm sorry.

(Juror number 7 raised her hand.)

**The Court:** Oop. Break time. Got the high sign.

Please remember the admonition of the court not to discuss any of the evidence or testimony among yourselves or with others nor form or express any opinions on the matter until it is submitted to you.

Let's be outside the door at 10:10, please. 10:10.  
(Recess, 9:56 o'clock, a.m., to 10:10 o'clock, a.m.)

**The Court:** Welcome back, ladies and gentlemen. all right. Mr. Feldman.

Mr. Feldman: at breaks I get a chance to talk to my team. My team jumped me a little bit. I need to go back. there's two things probably more than that later, but there's at least two things I need to clarify. I drew an inference as to whether or not one of the children was in the house based upon -- I'm sorry -- in the garage, based upon statements that were made by Mr. Westerfield to Keene and Redden. And if I argue to you that that was explicitly clear, I apologize. You're the final judges of the evidence, not me. I give you my best recollections.

I missed a part of the argument back at the Van Dam residence when the DA's theory is Mr. Westerfield is upstairs, and that's this. On the evidence Mr. Westerfield knew when he left that Brenda Van Dam apparently was still at the bar.

Therefore, she had to come home. He knew then she would not only come home but most likely check on the kids. Another reason why it's absurd to think that he would hide in the bedroom. Didn't happen. I was trying to talk to you about Susan L. and I discussed with you the business about the laundry and how that goes over the edge and that's uncontradicted. Remember Susan L. told you that there was a time when Mr. Westerfield went to Glamis looking for the Laspisas' without even telling them he was coming. Didn't find them. Nothing unusual about that. a point was tried to be made about Mr. Westerfield and a wallet. Susan L. told you he doesn't keep his cash in his wallet. But you know what? Denise Kemal corroborated that because she claimed she saw Mr. Westerfield at the bar reach into his pocket and pull out cash. No wallet. As I think Laspisas and Susan L. told you, he keeps his credit cards in his wallet. nothing unusual about him cleaning his comforters. it was the time to do it. There's -- for that matter, there's nothing unusual about doing your laundry when you come back from going away.

Most people, seems to me, when they come home from work at night are going to take their clothes off, they're going to put their wallet down, they're going to undress, they're going to do whatever. That's not surprising. if you go on a vacation or you go on an overnight you're going to come back -- at least around my premises, the first thing that happens is the laundry gets done and sorted. unusual? I don't think so. Common. But it depends on how you take it. You focus on it. You spin it in a direction and it's sinister or you look reasonably and say wait a minute. Wait a minute. We're trying to make a lot -- a mountain, as it were, out of a mole hill.

You heard argument that Mr. Westerfield would always take his toys to the desert. That's not what Susan told you. That's not what she told you. You heard argument that it was completely unreasonable for Mr. Westerfield to take a spur-of-the-moment trip. Not what you heard from Susan L. You heard argument that it's very unusual to leave the boards that Laspisas told you might cost five or ten bucks in the desert.

Not what Susan L. told you. She contradicted that argument also. Look to the evidence. Look to her words. Look to her sworn testimony. Look to the cross-examination. Stephanie Escadero was called by the defense. she's Susan Gonzales' mother. Susan's

mother -- or mother-in-law. Escadero is Susan -- I'm sorry, I'll try that again. Stephanie Escadero is the mother of the husband of Christina Gonzales, Christina Gonzales being the daughter of Susan L. she was called to tell you that in early 2001 she was invited by Mr. Westerfield and Susan to a barbecue they went together. Happened that the motor home was down at the end of the street. Happened that David took her out to see the motor home, walked her in. But before he walked her in, the door was wide open. So we see time and again not locked, open. that's really what the neighbors all had to say, by the way. No matter how we look to the times that were presented to you, if you look at the substance of what the neighbors had to say, that motor home was all over the neighborhood all the time. Danielle L. was called and so too, Jennifer L. Now remember Danielle L. Was the daughter of Susan L. and I showed you her picture in 146.

What we learned from Jeff Graham were that there were two fingerprints taken in the motor home, remember? I think Mr. Dusek brought this out. Two fingerprints. I called him, I can't remember. Two fingerprints were taken in the motor home by the back windows near the bed in the rear of the motor home. And then questions were asked, oh, when did he get the motor home, when did it show up, how long could they have been there. And remember Jennifer L. Told you she had only been with David and them in the motor home since thanksgiving 2000 in Glamis and at the strand in the beginning of 2001.

So we introduced court exhibit 184, which is the sales contract for the motor home, and you will see that the motor home was purchased 11/12/2000. That's more than a year and three months -- two months before Danielle was missing. So we know that that motor home had fingerprints in it, it could have been there for 14 months. So when I asked questions of Jeff Graham and Annette Peer, how long was it there? 14 months? that's a reasonable interpretation of the evidence.

Those young girls came and testified. They told you. The sales contract proves the dates. It's a timing issue.

The question is how long could it have been there. That's all.

How long were the prints there? Did they show you clearly and unambiguously beyond a reasonable doubt that there is only one possible time anything from Danielle Van Dam could have been in the motor home, and the answer is no.

David Westerfield is a very friendly man. He's outside quite a lot. Ask the neighbors. David likes Mark Roehr, his friend who he talked to. The motor home's out there all the time. He has been to Mr. Westerfield's house more than two dozen times. David would invite him camping. I sometimes -- I wrote "come out with us sometime." David had girlfriends. He would tell them I'm either going to the desert or the strand. They couldn't remember the specific day. Janet Roehr, his wife, the same. the motor home's in the neighborhood about once a month. I've seen the -- but she also says this. I've seen the Van Dams out recently. One of the children. Didn't look supervised. A ball went across the street. I got the ball. I stopped the traffic.

That's inconsistent with the testimony you heard about how closely, how scrupulously the children were being watched. That contradicts that position. there's more. the weekend of the super bowl David had plans to go away. It was spontaneous but it wasn't as though, ah, I've just kidnapped somebody and now I've got to drive away immediately.

That's not what happened. That's not what the evidence shows you. Go back to the evidence.

Glen Seebruch, he knows David through work. He's another -- I think he's a software engineer for Nokia. He met David Westerfield through Paul Huong, h-u-o-n-g, who is David Westerfield's neighbor right next door, who the D.A. Didn't call, who contradicted what Christina Hoeff said about the condition about the curtains and the blinds. Check the record.

Donna Boe, the operations assistant at the union bank of southern California, knew David. She had a social relationship with him. She was a blonde adult female.

Dave Laspisas. You know, one of the things -- one of the ways you can tell if a party's getting hurt by the testimony is how the cross goes. Notice that? Did you see a more aggressive cross on any witness in this case?

Neil Haskell took some serious punches, but so too did Dave Laspisas because of what they had to say. And here again we see how the adversary system works. You're not here as casual observers. You're here as judges of the facts. And the manner in which Mr. Laspisas was attacked told you must have been hurting somebody, huh?

Mr. Laspisas, who are you? I'm a friend of David Westerfield's. Oh, you have been stuck in the desert? Yeah, I've been stuck in the desert. There's nothing unusual about that. What's the longest you've ever been out to the desert?

Twelve hours. Huh? Wrong answer. Why did you always take highway 8? There's problems with the road conditions. There's things like black ice. Sir, when you go out to the desert you always close your windows, don't you? No. I keep the curtains closed. That's the first thing we do. What about super bowl weekend? We go to the desert on super bowl weekend. Why?

Because it's the least crowded.

What does he tell you about the route? Well, the D.A. called Sergeant Holmes, who meanders in his own kind of way on his vacations. That's completely legitimate. People have different ways they go different places. Laspisas goes this a'way. now you heard Sergeant Holmes describe, by the way, first, Laspisas made a mistake and drove, okay, and then Mr. Dusek seized on that but Laspisas got confused. Take a look out there, be a witness. It's different. The pressure's much greater. Sitting in this chair? You all are under pressure. we're under pressure. The judge is under pressure. But these folks, so a little slip gets enormously magnified in cross-examination. Oh, you had to change your testimony. No. This is the way the man goes. There's nothing unusual about the route. And you know what? If you look at this road it's a two-lane highway. And so when Neal Westerfield said it went straight, of course it goes straight. And what would Neal Westerfield know about five years ago? Now this is -- let me see if I understand this correctly. Neil's 18 years-old. He's asked by Mr. Dusek how does your dad go. Five years ago he says I remember a straight highway. So I say to any of you do you remember when you were 13 vacationing with your parents? Do you remember those vacations? Do you remember the drives? For that matter, tell me what you were doing five years ago, precisely under oath, with cross-examination and direct examination, and don't slip.

And lucky we got the cell phones because they corroborate what Mr. Westerfield told the cops. What David said they proved, even though they were looking as hard as they could not to, they proved what the man had to say. So really, is there anything so unusual about the route? Sergeant Holmes, when he described the one time he had a bad time going down the hill, I asked him oh, was that banner grade. And he said yes, sir. And banner grade, we have learned, is steep. It's so steep, I think Laspisas might have told us it's so

steep -- or maybe it was sergeant Holmes, I can't remember that -- it's so steep that the motor homes which are 30 feet -- 35 feet long, they're going to clunk the rear so they don't take it. The motor homes don't go there. And one spin of this, two reasonable interpretations? There's five reasonable interpretations. But the one the D.A. Wants you to take is ah, this is a secret sneaky place to go. Nobody's going to find it. That was the argument, no? No, no, no. There's more than one explanation for that. It's the way people go. There's nothing suspicious. There's nothing unreasonable.

Furthermore, if there was something suspicious or unreasonable, where is the body? Why isn't it there? Isn't their theory she's either dead or he's carrying her alive?

Where is the body? According to the argument, that's a perfect place to dump a body.

And then we called Eugene Yale. Now, Eugene Yale testifies. He's just this guy who's reading about the case in the newspaper and he's alarmed because -- at least he has a sense of integrity. He wants to make sure you get the truth and he's concerned that some of the information you're getting isn't accurate, with the way guys and gals, women, men who have motor homes drive. That's what his testimony was about. And he said there's nothing unusual about it. I go this way. And yeah, there's wind problems on 8, and there is -- and if you read the newspapers, if you use your common sense, if you remember your personal experience, you know, sometimes it's easier, sometimes it's not so easy. If you're in a hurry use 8. If you're out in the motor home, kind of like Paul Redden described it, it's just like driving a motorcycle. There is no rush. There's no rush.

The man told the cops he wasn't busy. He didn't have work in his face that weekend. He told friends he was planning to go ahead, and he had asked his son whether he'd go with him, and he asked Donna Boe, and he asked Glen Seebuch.

And so the bottom line in all of that is he just spontaneously said I'm out of here and he left.

Now, is that so sinister?

With regard to that motor home, I talked to you about the sales contract, so at least now we know when it was purchased. Remember what Mr. Sherman had to say about the motor home, and Mr. Westerfield? I thought this was pretty good. Mr. Sherman was a character, to me anyway. I thought the guy was a character. He turned to the judge. He shook the judge's hand.

He turned to the jury. He smiled at you all. I think he shook Mr. Dusek's hand on the way out, and he looked and smiled at Mr. Westerfield. He said you know, David's all right. David says when he leaves the motor home here I charge him I think a hundred bucks. I think that's what he said. I can't remember the specifics of the money. Spent a hundred bucks. David was the same as usual on the 4th when he took the motor home back, quote, "the same as usual," end quote. David had said that when he left the coach up there in the hill, he'd turn the alarm on but it was only then.

And then he saw David later in the day, and that David took the motor home six to eight times. I think I told you earlier six to 12? Six to eight is what my notes are saying, between November and February. So there's nothing unusual about Mr. Westerfield taking the motor home. And there's no reason to mistrust him because he's been really good with us. That's what the man said. That's called character evidence. The man told you David Westerfield's an honest guy based on his experience. There's no reason to mistrust him because he's been really good with us. I think that was on cross -- or direct.

With regard to the motor home, the criminalist on the 4th said didn't look like it had been wiped down. Did not look like it had been wiped down. That would be Karen Lealcala, Annette Peer, Tanya Dulaney. That weekend David did go on a vacation. He did go to the desert. He did go to Glamis. No issue. He went to the strand first.

Yesterday I mentioned Mr. Raymond. I've been thinking about Mr. Raymond again. I told you yesterday Mr. Raymond didn't recollect seeing a wallet. I'm trying --

**Mr. Dusek:** Objection, that misstates the evidence.

**The Court:** I think you just misspoke. Mr. Raymond did remember seeing the wallet.

**Mr. Feldman:** I said -- thank you, your honor.

I think I told you yesterday that Mr. Raymond said he didn't remember seeing the wallet. I said that's what I think I said yesterday.

Here's what I'm saying to you today. Raymond didn't see the wallet. There is no question. And how do we know that? For two reasons. Number one, he was interviewed twice by the police. Those are the two reasons -- two interviews, sorry. The first time didn't even mention a wallet.

The second time, by Mark Tallman, that's why we called Mark Tallman, because we knew they were going to make a do out of wallets or no wallets.

So Tallman comes in and says he didn't even know who David Westerfield was. Didn't even know who David Westerfield was. Now, I'm sorry, folks. Yesterday I talked to you about how does the human memory work. Okay? We got this guy Raymond, I think Mr. Dusek referred to him yesterday as a park ranger. My recollection is the man was a camp ground host, or whatever those words are. He's not law enforcement. Older gentleman, nice man. He was the guy who said that he felt Tallman was grilling him. And I said -- I thought I was being nice to the guy. I said sir, am I grilling you? He said yup, that's your job. And then he showed -- he, Tallman, showed Mr. Raymond a photograph of David Westerfield and he, Tallman, showed Raymond a photograph of Danielle Van Dam, and Mr. Raymond said don't know them.

So anything you may have heard about a wallet is contradicted by those two separate interviews with law enforcement. And it illustrates what I told you yesterday happened in the case. There's been so much attention, so much publicity, so much focus on David, so many hundreds of times the man's face has been on television, his motor home's been on television, this case has been on television, that people's memories alter on the basis of information that's later acquired. And we see it.

Suddenly Raymond is seeing a wallet that he didn't -- in court he's telling us there's a wallet that -- contemporaneous with the cops within several days only. No, what Raymond did was gave information regarding the person in space 66, which would have been closest to the motor home in space 72. That's the facts of Raymond. Look to the cross, look to the direct and you'll see that's the bottom line. Also please look to what Mark Tallman had to say. Remember Mark Tallman. He was a -- he's one of the homicide detectives. He's about six feet and something. He had a very thin face, at least that's how I recollect him.

if you think about the area at the strand, you'll remember that there was testimony that it was an honor system. that's what Olen Golden told us. He was the park ranger. So Westerfield pulls up at the strand. He parks in space 72. And in space 72 -- you'll see this when you look at the exhibits.

When he's in space 72 there is a number of people that are close to him. What a surprise, the Chula Vista police department is there.

Now, I, David Westerfield, I've got a kidnapped girl in my car, who's seven-years-old, that the entire city's going crazy about. I know what I'll do. I'll drive to the strand where I've been a number of different times where people are gonna know me. That's a great idea to conceal something, isn't it? And I think I'll just pull in -- I'll take my high visibility vehicle and I'll pull into a space where I can be seen, and then I give you two spins: one, remember, David, on one theory, is under the influence of alcohol and drunk from the night before. He can sleep his hangover off. Or is that so sinister? Don't people do that?

Two, he had to get out of his car -- I'm sorry, out of the motor home -- walk to what was -- remember I thought this was clever, the iron ranger. Do you remember the iron ranger?

It's not the lone ranger. That's the iron ranger. The iron ranger is that in any parking lot you see with the squares in it which has the spaces where you take your five bucks or whatever and you stick it in. But first you get the envelope and on the envelope you write David Westerfield, which he did. Vehicle license number, which he did. Time. My recollection is the time was 10:26 a.m. Now that's my recollection. You check yours. So he's doing exactly what somebody would expect him to do. But suddenly it's sinister. What? I've just kidnapped a seven-year-old in a case that's making huge national waves and I'm gonna go places to hide it, to conceal it, so here, I'll go -- I'm going to the strand because that's -- who sees him at the strand?

Beverly Askey, who saw no one in the water at the strand, who said it was cool, that David who got out of the car and talked to the ranger for five or more minutes. Now, I'm sorry, someone's in the motor home, dead or alive, I don't know, on their theory, I'm gonna get out of the motor home. I'm going to engage in a conversation with somebody that can bust me.

Does that make sense? Is that logical? Is that the only interpretation of the evidence? Because, if there's any other reasonable interpretation, you know what your duty is. So out he goes. And it's cold out. And we know that from Beverly Askey and we know that from Teresa Hastings who was wearing jeans and a T. -- sweatshirt because it was cool out. And although Mr. Dusek told you the sun was out and you can look at the weather, that doesn't tell you about the wind blowing in off the ocean, does it? L. and if you've been there you know it gets very windy. And if you look in the photograph you'll see a number of the vehicles had their curtains pulled. Their exhibit. Any coolers? No.

Another one. Oh, they left between -- I think the motor home left about 2:30. And Teresa Hastings who says, in addition to she's wearing a sweatshirt and it's cool out, she sees the motor home is at the strand around 10 o'clock. And oh, ma'am, how's the TV reception there? I only get three or four channels with my antenna in the motor home. But they called somebody else to testify that you could get more channels. Now which is it? What reason does Teresa Hastings have to lie about something like that?

They interview Jimmy Rodgers and Joyce Rodgers.

Hey, Mr. Rodgers, how's the weather? It was really pretty breezy that day. That motor home was there for several hours.

But -- but five minutes before Jimmy Rodgers took the witness stand he was shown photographs of the motor home. What a surprise. He identified the motor home in court. What's going on with this idea of refreshing recollection? Why do you need to show a

witness five minutes before you're going to be asked on the witness stand your best recollection? Gee folks, I'm going to show you this photograph later. Look at it now and I'm going to ask you about it in five minutes. Is that -- I'm sorry -- is that the pursuit of truth or is that trying to do something to refresh recollection to get testimony to conform with a particular theory? Ask yourselves that.

Joyce Rodgers never once got out of the motor home.

She does remember Mr. Westerfield. I can't recall whether she was sitting with Jimmy her husband when the photos were shown.

The occupant walked up to the front of the motor home for a few minutes. David Westerfield is in front of the motor home for a few minutes. Five minutes later she says he left. So now with a young girl in the motor home, on their theory she's not making any noise, there's no noise, there's no yelling, there's no screaming, there's no nothing. But Mr. Westerfield is behaving normally. And her initial reaction, Joyce Rodgers' initial reaction, was that David was traveling and needed some rest.

And that Mr. Golden, Olen Golden, the ranger. This is an honor system. And David behaved honorably. He paid his money. And finally they called -- I wrote Officer Neil. It's because I can't remember Neil's first name. But he was the witness who said Mr. Westerfield left somewhere around 3:30 p.m. and at that time he headed out to Glamis.

Now think about this. You've just been dumped, okay. I don't know what your personal lives are like. I can remember when I was younger getting dumped. It ain't fun. It sure does take away your joie de vivre, doesn't it? It takes away that which makes you the happiest, doesn't it? Because you can't go to your loved one, and suddenly you're all alone with nothing but this pit of anxiety in your stomach, this misery, this grief over the loss of your relationship, so you're going to go anyplace. It may not be linearly logical to a prosecutor but emotionally it's rational to a jury. It makes sense.

The guy goes and drives. And it made sense to Redden, and Redden confirmed it when he said oh, just like the guy in the motorcycle. It's not -- you're self-contained. You just wanted to get out. Listen to the tape.

So David then gets to Glamis. And Mr. Dusek whips out from the computer this one exhibit 140, which we have no idea when it was written. We don't know how many years it's been in the computer. And it is directions to a girlfriend to get to Glamis that are different than the directions that he took. Because the directions on 140 say take the freeway. Go east on 8 to 111, et cetera. Look for the sixth wash. They're getting deep inside. And keep looking for the motor home.

So what this document infers, demonstrates, is that Mr. Westerfield is -- Tammy, must have been another girlfriend. adult women, adult women. This document plainly says I got the motor home here. Honey, drive your truck out. We'll meet. Two reasonable interpretations? Or let's seize on a piece of evidence, take it out of context and give it the sinister spin.

Ryan Stralthearn is interviewed by law enforcement.

He's another one of the Glamis witnesses. He says it's cold. he closed the windows. He had a sweater and a long sleeve shirt on. But what he really said that was important was that the cell phones don't work. And we know that. We only got one cell phone call, and that's just what David said. That's what he told the cops. And stralthearn noted that Mr. Westerfield was trying to dig his motor home out of the dirt.

Think about it. Go to the desert. Who's going to expect that someone's going to be

out on a motorcycle with a video camera? Pretty cool. This is what people must do in Glamis, huh? And what an even better, I don't know, surprise for Mr. Westerfield. Better that somebody actually captures the way it really looked, how deep it was. And you can see he's trying to dig out. You see it. He had a shovel. He had a shovel. That shovel that counsel was going to argue to you was going to be used to bury somebody, no. It's completely legitimate to use to dig out. And he really did need some help digging out. There is no question about it. And you can see how stuck he was. Is this usual or unusual? Answer: it's usual. How do we know that? Because every single witness told you, everyone who had been to the desert -- yeah, everyone who had been out to the desert, this is common. It's not unusual.

this happens.

Joseph Koemptgen, he's the one that took the video, but he's also the one who testified -- this is the guy from Arizona, if I recollect him correctly. Remember? There is an issue as to what time Mr. Westerfield arrived. Mr. Dusek raised this in his opening argument. Mr. Dusek argued to you that the time that Mr. Westerfield arrived had to be after 11 o'clock, and he based that on the testimony -- or I would infer he based it on the testimony of Mr. Koemptgen. However, with regard to Mr. Koemptgen, what he told you in court he admitted was different than what he told the cops, because he was cross-examined on it on the basis of his interview to a detective named Mark Keyser who did not testify in this case.

But he admitted that he told Keyser he went to bed at 10 o'clock, then he changed to Arizona time, 11 o'clock. So when Mr. Dusek argues to you Westerfield got there after 11:00 Arizona time, which is 10 o'clock our time, which is exactly what Mr. Westerfield told Mr. Redden. So there's consistency, not inconsistency. And where there's consistency and not inconsistency, there's two reasonable interpretations of the evidence. And where that consistency is opposed to inconsistency points to innocence, you must adopt the interpretation pointing to innocence and reject the interpretation pointing to guilt.

Chris Redden was out there. Chris Redden, you'll recall, was a young man who said I was with a group of 11 to 18 people, 14 of whom were drinking, but we weren't making any noise. Come on. Just use your common sense. Not logical.

This is the man, though, who, when he saw that motor home, he walked right up to it 'cause he thought it was cool, it was a new motor home and the windows were open. And I asked him did you look in? Yeah, he looked right in. He looked in from the front and the sides. And the only rescue on cross was -- or on redirect, well, you didn't look all the way back to the bedroom, did you? But there is no indication he couldn't see all the way back to the bedroom from the front, is there? And he was looking because he was impressed, and he remembered specifics about the motor home. He was impressed.

Now is that consistent with an individual that's kidnapped a seven-year-old and stashed her? I don't think so.

John Hoffman was in wash 13. Gosh, that's far out.

It's all sinister that David's at 14, he's trying to get away from people? She watches -- I'm sorry -- he watches as the motor home's being pulled out. and then we go to Deborah Martinez. Deborah Martinez is another prosecution witness who's called to testify.

She's interviewed twice by the cops, by the way. And she tells -- she gives one story in court, and then the defense calls detective Jody Thrasher. Jody Thrasher is one of the detectives who was involved on Holmes' team. I believe she's a homicide detective. She

may have been a robbery detective, I can't recall which. She said she interviewed Deborah Martinez when the events were fresh in Deborah Martinez' mind. She said that Martinez said she, Martinez, left Glamis about 3:45 p.m. that's inconsistent with Martinez' testimony but consistent, and at that time she saw the motor home being driven off, 3:45 p.m., okay. That's inconsistent with the prosecution's theory. It's inconsistent with what the witness testified to but consistent with what David Westerfield told the police.

Two reasonable interpretations. She said she saw the R. V. Freed from the sand that was leaving and then saw it again later. How was Mr. Westerfield dressed? This is now February the 3rd at about 3:30 in the afternoon. He's wearing t-shirts, shorts, a hat and sunglasses. How was he dressed at the cleaners? T-shirts and shorts, no hat and sunglasses. Is that sinister? Is that his skivvies? We didn't hear that word.

She, Martinez, has Westerfield dressed exactly the way he's dressed at the cleaners the next day. Two reasonable interpretations of the evidence.

Then we have Dan Conklin. Now, you recall Dan Conklin. He's the guy that said ha-ha, I wouldn't talk to Marion Pasas, the defense investigator, because Westerfield didn't pay me the money. Wait a minute, Mr. Conklin. Mr. Dusek argued to you and elicited well, I think I heard talking. remember that? Conklin said he thought he heard talking when he was trying to pull the motor home out of the house -- out of the sand. He had a dog. The dog was out running wherever the dog was running, pulled up in his truck and he says he thought he heard talking. Remember? And then he said Mr. Westerfield offered him something to drink. Huh? Wait a minute. David's talking to a kidnapped seven-year-old: shut up. Sir, can I get you a glass -- do you want something cold to drink? Hey, shut up in there. You want soda? Is that reasonable? Mr. Conklin, isn't it true you don't even know whether you heard any voices.

Answer: yes.

Now I could spin this off for you if you want. We can throw this one out. Oh, Conklin's right, he heard talking.

Here's three interpretations of one piece of evidence.

Conklin's right, he heard talking. Westerfield was talking to Danielle Van Dam. Conklin's right, he heard talking.

Westfield's talking to some unknown third party. Somebody else.

Conklin didn't hear anything. There was no talking. That's four interpretations of the same evidence, and that's the same testimony from the same witness. There's nothing unusual for people to get stuck in the desert. Deborah Martinez' brother-in-law, Frank, went up to talk to David to offer help. One thing I want you to remember, though, the way Conklin looked at Westerfield -- we call it mad dogging -- it was a look of hatred. We saw it. The community's got its opinions. The witnesses have their opinions. to the Cays goes David, just like he told the cops.

We have a gas receipt. The gas receipt puts Mr. Westerfield's arrival back in his neighborhood somewhere around I think it's 1912 hours. That's 24 hour police time -- I'm sorry 1726, 5:26 p.m. We've got a gas receipt. It shows \$65. Now Mr. Dusek mentioned to you that on the gas receipts -- there's a whole bunch of gas receipts. I don't know what he's going to make of that. I don't know how he's going to argue it. He said to David -- grab the receipts, that they came out of David Westerfield's house. But you look at them, see if they make any sense at all. They don't. It makes no sense. I don't know where the receipts came from. There is no evidence. There is no showing that they have any bearing on the case. But

they're up on the board. Take a look at 'em.

So David goes to the Cays just like he tells the cops. He doesn't go back home because by then there's hundreds and hundreds of press, hundreds of law enforcement officers, no place to park the vehicle. He had problems. As you recall, when the Roehrs were talking earlier, the Roehrs said there was no place for the guy to park. And Mr. Dusek raised this in opening. He had no place to park. They didn't know whether he was coming or going. That's my recollection of the state of the evidence.

So Heather Mack says I'm not paying particular attention. The cops came up to me they asked me did I see a blue motor home. No. Mr. Dusek says she's lying. Didn't like -- this is another witness. Did you see the attack on the witness? Did you see the attack? But what rang truthful from Heather Mack, what the ring of truth we heard was these words.

"He smiled at me that night just like he smiled at me in court."

She remembered. Yeah, he was heading north on 75 but he could have made a u-turn. He was driving a light motor home and the cops asked me about a blue one.

By the way, with regard to the Cays, this is not a gated community. There's 15 miles of roads. And yesterday the argument was made to you that the Coronado police department came in and searched the area and evicted the only motor home that was there. But, first of all, that's not what officer Britton told you. Britton told you that he told the motor home that he found to move and it did, and he let it go wherever, but he didn't check the whole Cays area. So we don't know. And so there is no evidence that David Westerfield was not at the Cays as he said. You can't infer on the basis of no search, on the basis of Britton's testimony that the Cays, the 15 mile area of the Cays, where Britton testified he only looked to one small part, I think it was the part -- I can't remember -- it was across from where there was a flagpole. There are several other places motor homes can park. He did not check them. He was called by security to only go in response to a complaint about this one particular vehicle. He went there I think it was about 2:37 in the morning -- 2:34 in the morning. He only checked -- go to the transcripts, go to the reporters, check your notes.

Britton checked only the immediate area. The motor home couldn't have been there. then David went to the cleaners the next morning.

And we get a little bit of confusion here because what happens is when law enforcement goes to the cleaners they talked to Julie Mills. And Julie Mills is a woman that told you David Westerfield looked to be tired, like he had a hard weekend. He sure did. And she said if there would have been any blood on any clothing, I would have spotted it. Hmm. Kelly Belom was called immediately thereafter because there was a problem with the timing on the receipts. Remember? It's claimed that the receipts, these are 74, I think 74, 75 and 76. Yes, 73, 74, 75.

This is one of the receipts that checks in at a jacket, that's wanted out 2/6/02.

Now I thought I heard testimony that Mr. Westerfield, when he went to the cleaners, wanted the stuff out immediately. And it was rare, unusual, never that he wanted the stuff out immediately. That's not what this receipt says. This receipt says ordinary, basically ordinary course, 2/6. 6:50.

It says "S jacket." doesn't say what color, although it says quantity, description, type, color. And why I'm raising this is because there's another receipt. There's a receipt dated January the 26th. Which jacket is which? Look to the January 26th receipt. You form the opinion. Same cleaners. The January 26th receipt isn't as complete. No issue. But take a

look. Ask yourselves what are they talking about? Whose receipts are messed up? What day did this happen? Why is it that exhibit 75 I think says that with regard to the comforters -- that's not this one -- with regard to the comforters, they came in at 9:44. The computer was down.

That's what she said. Julie Mills told you the computer was down. Ms. Belom, how was the computer working that day. It was no problem. It was working just fine. And then detective Torgerson had a problem with it because on 2/6 he went and he showed the receipts to mills, and it turns out now what's being provided is a black t-shirt, black pants, a black sweater. And this suddenly is what's been provided to the cleaners. But Torgerson has to go back on the 8th to the cleaners, to the laundry, and is told for the first time oh, we made a mistake.

Somebody else took the pants.

**Mr. Feldman:** Your honor, is this an appropriate time to break?

**The Court:** It's not quite an hour, but if you want to take a break.

All right. Ladies and gentlemen, we are going to take a break before we get to the noon hour. Remember the admonition of the court not to discuss any of the evidence or the testimony among yourselves or with others. Please be outside the door. Let's make it a short one. 11:10, please. ten minutes after eleven.

(at 10:59 a.m. The court was in recess until 11:10 a.m.)

**The Court:** Okay. Welcome back, ladies and gentlemen. All right. Mr. Feldman.

**Mr. Feldman:** thank you, your honor.

Some clarifications. Give us an hour to think, right?

With regard to the testimony of Denise Kemal that Damon Van Dam never came downstairs, those words were not uttered in the courtroom through her mouth, rather she was impeached by our presentation of the prior inconsistent statement that she made to detective Gerback. You'll remember that Denise testified she told Frank, and she referred to detective Gerback as Frank, everything there was to tell. Well, what she told Frank, who it turns out to be detective Gerback, is that Damon never came downstairs.

So when you look to evaluate how accurate the testimony of Ms. Kemal was, look to detective Gerback so that you will understand -- also I think some of detective hall -- so that you'll understand under different circumstances people say different things. She testified after she had the opportunity to consider, to be prepared, to go through other hearings. What she said to you in court was not what she told you when the events were freshest in her mind.

With regard to a statement I made to you concerning Brenda Van Dam and wearing a red sweater, the testimony at trial was that on dad's, I believe on February the 1st, she was wearing a red sweater. However, in court I can't recall -- my recollection is in court she had an orange sweater on.

**Mr. Dusek:** Objection, there is no record of that.

**The Court:** The record speaks for itself, ladies and gentlemen. You're going to be the ones that are going to determine all of this. This is just argument.

all right. Go ahead, Mr. Feldman.

**Mr. Feldman:** And you'll see on that issue of it's just argument, both sides. And so I got this -- I'm telling you, folks, as soon as I sit down there's going to be some fireworks.

they're going to start leveling on the other side. That's coming, all right. This is part of the system. It's an adversary system. We don't fight wars in our society in the streets. This is

why I used the word "Taliban" yesterday. We don't fight our wars in the streets. Literally our wars come to the courtroom. We don't have lynchings anymore. We don't have gun fights at the okay corral, we bring them into the courtroom.

And this really is a very, very adversarial intense experience, and you can bet the other side is loading up. So keep that in mind. You're -- you're the objective parties, not the lawyers. It's you who has to decide the facts, not the lawyers. It's you who has to decide what's argument, what's real, what's not, not the lawyers. And the judge will make sure you follow the law. That's how we're structured. That's our social contract. That is our social contract, folks. It's how we function in our society. It's why we're a democracy. It's how our democracy works. And it's why it's so important each of you understand your individual duties, your individual responsibilities. That's why I started yesterday by saying each of you is empowered, you are all citizens, we're all equal in this courtroom.

You heard evidence that, and I started right before the break, you heard evidence about some allegations that a tracking dog was involved in this case. And I read you a portion of the jury instruction that the judge has given you concerning whether or not Hopi, not Cielo, Hopi was a tracking dog.

And you learned that Hopi has nothing to do with this case except insofar as gee, there's not much orange, is there? I'm not saying this is orange acrylic but there sure is a lot of orange. And you heard testimony in this case from their witness that orange was an uncommon color. But if you look at 181, you're going to see a dog and another dog in "B" and "D", and you heard testimony that as to one of the dogs they did an evaluation of the dog vest, but you didn't hear it as to the other dog.

And regardless, what these photos show -- what these photos show is the traffic outside Mr. Westerfield's premises. This isn't just a couple of guys walking by. We see detective Holmes, we see Mr. Frazee, we see people we don't even recognize, detective Parga. It's unfortunate that Mr. Gripp, frankly, couldn't more closely get the photos, but these are screen captions, they're not the quality of representations that we get from the district attorney's office.

Resources again. Another reason the burden of proof is the way it is. It's because our society recognizes the resources are on the state, not the defense. It's why the burden is what it is. It's why they've got the only burden of proof in a criminal case. It's why we didn't have to show anything. It's why we don't have to present evidence. I told you in voir dire it wasn't even necessary for me to ask a single question, and if the prosecution doesn't prove its case, Mr. Westerfield's entitled to an acquittal.

So on the 4th of February, Cielo goes to the motor home and nothing happens. They run the dogs up to high valley and apparently nothing happens. On the 6th then we hear -- I think we learned, by the way, that as to 49, which is the chart I got up, I think "a" -- now again this is my recollection, the record's going to speak for itself, and I'm sure counsel's over the noon hour going to the record and they're going to be reading you other things. "A", my recollection is, is a photo depicted at Mr. Sherman's residence. I'm not sure that about "C", "D" and "E" depict the motor home as it appeared there.

But regardless, the point is only this -- or the point is this.

If you look at "a" that's the compartment that the dog allegedly alerted on, the compartment that the dog allegedly alerted on that had the shovel, the shovel that Mr. Westerfield dug himself out of the desert on. But remember, Danielle Van Dam was not buried, so that shovel certainly wasn't used to bury her.

Now, allegedly the dogs are moved around. I think the testimony was the dogs went inside the motor home. Maybe that's how Layla got there, I don't know. The dogs went in the house. Maybe that's how Layla got there, I don't know. The dogs were in every single house in the neighborhood. That's the evidence.

You heard testimony that I think in the motor home there were carpet fibers. We got that same problem with the carpet fibers. Okay, there was the allegation that they were trilobal carpet fibers that could have had a common source with the van -- with Brenda --

I'm sorry -- Danielle Van Dam's bedroom or the Van Dam's residence, but it's the same problem.

There's two reasonable interpretations, according to the experts. Ma'am, could it have come from the same place? Yes, it could. Could it not have come from the same place? Well, that's true, too.

If there's two reasonable interpretations of the evidence, here it is again. The case is entirely circumstantial. The prosecution is obligated to try and find some interpretation of the evidence that's consistent only with the prosecution theory and inconsistent totally with the defendant's theory. And each fact which is essential to complete a set of circumstances, that trilobal carpet fiber must not only be proved beyond a reasonable doubt, but I want you to look at it to see whether or not it's not only beyond a reasonable doubt such a fiber, but that it's beyond a reasonable doubt inconsistent. That it absolutely has to match that word.

Not could have come from a common source, match. And that finding you cannot make on this evidence.

So we know, we got more ambiguity, and we are in pursuit of clear and unambiguous evidence. That's what the case requires. Because if the evidence is ambiguous, the circumstantial evidence instruction controls and Mr. Westerfield's entitled to an acquittal.

the dogs. Well, according to Mr. Frazee there was an alert. And I said to Ms. Reddick, ma'am, the alert is clear and unequivocal. I know about the circumstantial evidence instruction. Yes, yes. And so we introduce exhibits 154 and 153.

Now, understand James Frazee is asked to run his dogs in the biggest case in San Diego history, the case that's drawing the most media attention of any case in the United States. He's excited. He gets to show how well his dogs are going to behave. The only purpose of those dogs is to give a trained alert. And then Frazee claims there's some code of silence, that if a dog alerts he's not supposed to tell the cops? He's not supposed to tell the lead sergeant in the investigation? Shhhhhh, the dog's alerted but we're not going to tell. I'm sorry, that is absurd. That is his testimony.

He finds chilling information, he said. But he doesn't say anything about it to anybody. How do we know?

Detective Tomsovic, come on back. That poor guy, in and out, in and out, in and out. Sir, were you present when Frazee ran the dogs around that motor home? I was. And did they do anything unusual? I didn't see anything. And did they say anything about an alert? They did not. Another red herring. That shovel is a red herring, folks. It's the fish Market smell again. It's out there to get you suspicious. It's out there to get you to think something got done that didn't get done. It's out there because if you spin it right it's sinister, but it's only a shovel. And it was used, as we saw, to dig Mr. Westerfield out of a hole in the desert. chilling discovery the body hadn't been found yet, so he thought he was about to crack the

case. How exciting. How really wonderful. He got so excited, he got so, so tremendously proud of his dogs that he wrote an e-mail to Maria Zirconi, and he sent it to a couple other friends, and he called it a secret message. Pretty cool, huh? A secret message. "I'm busting with pride," he says. "they asked me to sent Hopi. I can't say what his reaction is." what? "I wasn't sure. He might have been giving an alert."

Read it. Read it. Take this to the jury room. "I wasn't sure." what his dog was doing. I'm sorry, the dogs are trained to give a clear and unequivocal alert. This man comes before you, says the dog's alerted but he's not even sure, to his trainer, to detective Tomsovic. But I've told you, people's memories have a way of changing in this case. By the time he gets to the witness stand, boy, oh boy, he's right on the money, the dog's alerted. But that's not what really happened. And you need to know what really happened, not what the witnesses want you to believe happened.

And therein lies the difficulty of your job, because as you evaluate the credibility, you're directed to consider -- I covered the chart -- the presence or absence of a fact. Did it really happen? No. You know Reddick -- they're going to say Reddick was there. Tomsovic was there. He was the detective. He was the responsible party. He was working under Sergeant Holmes. This man is a veteran homicide detective.

These guys, I'm telling you folks, there is no question law enforcement did a great job in this case. These guys know what they're doing. Not only do they know what they're doing, they were really exquisitely careful in this case as best they could be, as best they could be. So there's no way, unless the prosecution calls Tomsovic a liar, for you to believe that there was an alert because Tomsovic was straight.

That man is a straight arrow. He's an experienced homicide detective. He was honest and he told you time and again what really happened instead of the spin they wanted on the shovel.

Realistically anyway, if it's true that that shovel was gonna be used to bury Danielle, and two days before or two days after -- yeah, two days before, why wasn't the body buried?

Why would David take that shovel hundreds of miles, according to the prosecution's theory, drive it who knows where to Dehesa, walk the body up a hill that the cops couldn't even get to -- remember the access only came from the north -- walked the body up the hill and not use it? Completely doesn't make sense. doesn't make sense.

But what they're trying to do is take a fact, a single fact, claim that it only points to guilt. And you, the judges of the facts and the followers of the law, will see there's two reasonable interpretations. That's grasping, okay?

Another way the government was grasping, the state was grasping was in the pornography. Now they recognize they got a serious problem. That's no joke. The issues. You have to decide on the issue of whether or not Mr. Westerfield committed the crime of possession of child pornography. I think we decided that's the wrong word but please bear with me. The photos have to show children having sex or photos of children depicting sexual conduct or photos of children simulating sexual conduct. They don't. You were shown the boards.

**Mr. Dusek:** Misstates the law, your honor.

**The Court:** The law is laid out for you in this instruction, ladies and gentlemen. It's in black and white. you can read it for yourselves.

**Mr. Feldman:** Thank you.

They'll show you pictures, and they showed you a picture yesterday that was put up on the board. Okay. It was one of the better points, the power point, right? They showed you a picture of a girl who was having intercourse. And I looked at that photo and I thought what is this? They're trying to shock you? They're trying to say to you that she's under 18? clear and unequivocal, you all are obligated to decide, if you decide that the crime was committed, you have to decide what photo or photos. Not that one because that one's ambiguous. We don't know how old she is. The same with the M pegs, Frankly. I'm sorry, my slang. The rape videos that you all, all of us had the experience with. If those females are over 18, there's no crime. End of discussion. Gross, okay. disgusting, okay. Inappropriate, okay. Enough to shock you, okay. Enough to bias you, definitely. Enough to prejudice you against Mr. Westerfield, absolutely. The plan.

But you're not allowed to consider bias, passion or pity or prejudice. Objectively, those pictures don't depict females under the age of 18. Period. Look. And I'm not encouraging to look for any purine interest or any interest.

That's bad enough. But what they did was take two or three videos out of thousands and claim this is a true and accurate representation of Mr. Westerfield.

What they did was take stills. I think the ultimate evidence was there were I think 85, possibly 89 questionables. That was what Watkins said, questionables.

Ultimately I believe there's a total of 29, but you'll check the record on that, of children similar to those depicted in what the prosecution was running on the board. Okay. You decide whether any of those fit the definition of the pornography, fit the definition of the crime as the judge has defined it. And I submit to you that's not going to happen.

But what it does, and even if you find it, that's -- those charges aren't about the possession of those pictures. They're about their desperation, search for a motive. How do you explain why a 50 year-old would do this? There is no explanation. There's no history. Ah, we found a history. Wait a minute. In the thousands of downloads we found a video or two or five or ten that maybe prove the point. So by that logic, any of us who may possess anything like that are going to go out and kill children. Right? Isn't that the logic? You got 'em in your possession, as it was argued to you yesterday, it was a fantasy. We're going to act on our fantasies. Because we possess these we're going to go out and commit crimes?

No. don't. Please keep in mind, these were delivered to you to inflame you, to enrage you in the same way Mr. Dusek has laid photographs of Danielle Van Dam out in front of the autopsy boards, at counsel table. That's a direct appeal to your passions, your prejudices, your pities, your sympathies, your emotions, your empathy. But that's not an objective approach to the law.

And who gets victimized by this process? Neal Westerfield, an 18 year-old boy, imagine. An 18 year-old boy dragged down to a police department, a district attorney's office with his mom, sat around with four men, says to Detective Cooksey, by the way, yeah, I was looking at porn. Remember, I had to call Cooksey to say that. Remember, Cooksey was one of the last witnesses. He's their investigator. That poor boy, you know, it's -- I guess you could call it collateral damage.

Trials like this in life have collateral damage. He's a collateral victim. 142a, 143. Okay. This is what he was doing. It's not subject to argument. It's not subject to dispute. It's not -- you know, I'm not arguing with him.

Marcus Lawson's job wasn't to go trash the family. it was get us -- just tell us what's there. We don't know.

Help us. This is what was delivered. 2/4/02 at 4:47 and :58 p.m. And they're going to say it was just an e-mail. And oh, Mr. Watkins, he ran an internet search. And, you know, you look through the internet search and it's www dot union trib dot com, and it's this and it's that. But the one thing that's explicitly clear is -- it's a little distracting.

**The Court:** So are sleeping people in the audience.

Ladies and gentlemen, the reason my bailiffs have started to stir around is -- I realize it's after lunch. If you can't keep awake out there, you're out of here. It's that simple. Sorry for the interruption, Mr. Feldman.

In addition to that, one of the jurors has said please keep your voice up at all times.

**Mr. Feldman:** okay.

**The Court:** thank you.

**Mr. Feldman:** I have to say some people hammer me for yelling too much. This is true. You don't see the cards and the letters. Don't yell. I'll do my best to keep my voice up but I'm not yelling at you.

Only in this courtroom could that happen, I'm telling you.

Here's the internet history. David Westerfield lifetime opportunity, lifetime opportunity stats delivered.

This was all great. And remember, Marcus Lawson was on the witness stand and in came the district attorney, and the district attorney says "and what's this, Mr. Lawson?" and he said shoot, I don't have any idea. I don't know.

And then in comes Watkins who says well, it's the internet history, and this proves that -- well, what does it prove? Well, it proves that Neal Westerfield was getting into games. He told you he was playing video games. And independent of this, we don't need this. This document does not follow Watkins' logic, if you believe it. And he's -- I'll tell you, there's some issues with Mr. Watkins. Just remember, he's the guy that told you that e-mail was received before it was sent.

I don't mean to keep hammering that point, but I'm sorry. The judge told you to weigh the credibility of the experts. I invite you, weigh Marcus Lawson's history against Jim's Watkins' history. Marcus Lawson is a federal agent. He's worked for 20 years investigating these cases. That man has more experience than virtually all of San Diego. So they want you to disbelieve him because they think he was called a hired gun. No.

Explicitly clearly it was asked, sir, what was your task. I just was to look and tell you what happened, and this is what he did. And what he did was say I kept finding Neal Westerfield.

And they're saying oh, they're blaming Neal for the killing. I told you yesterday that was too outrageous. It gets me too angry just thinking that. No. It does raise the issue, though. It does raise the issue. The anime', however it was stored, okay, that Mr. Dusek read to you doesn't have I. E. A. on it. Doesn't come from a zip -- I'm sorry, doesn't come from a C. D. And again, please look, not to gross yourselves out, but if you track Lawson's work you'll see there's no question. You know, can you imagine being 18 years-old and looking at your dad's playboy and having your dad come in and bust you? Now, for the women that's probably not too much, but for the men it's embarrassing. You don't want dad to know you're doing that.

And it's worse than that. It's these guys who are bringing murder charges against dad, and they're putting him in a room with mom who's divorced from dad and whose loyalties are obviously with children, appropriate, completely appropriate.

But consider the circumstances of how awful that was. And they had to do that. They had to do that, huh? and we know, we know that it was impossible for David Westerfield to be accessing porn after 2:00 to 3 o'clock on February the 4th because he was in custody. You know he was with Mr. Redden. You know he couldn't get back into the house at midnight. You heard that from Neal. So the only person it could have been was Neal. And it doesn't matter what kind of stuff Jim Watkins comes with. Look to what Lawson did. No question.

This might be a moral issue, might be an emotional issue. It is not a legal issue. Don't get sidetracked into their speculation. They don't have a motive. They're struggling. They're grasping at straws. They're desperate. ah, we got a motive. We found a video. Good. Hey, I bet you if we look through whatever's in here we could find something that would give them another theory. Now, you might have moral problems with what Mr. Westerfield did or did not do, but morals aren't the same as law. Certainly we hope everybody's a moral person. But if you find that this is immoral behavior, that's not enough.

By the way, we know that when you review, it's 147 is the defense exhibit, anime dot com and video was viewed about every two weeks. Hmm, about every two weeks is when Neal would visit his dad. That's the evidence. so the bottom line on Mr. Watkins is, with regard to the porn, we can't tell when it was last accessed. A very very small selection was shown to you. It made it seem to be as though there was more young children than in point of fact there was. He, Watkins, was not asked to identify who the downloader was. He speculated that the clock was altered. Do you remember that? I think Mr. Clarke's question: sir, what about if the clock was altered, would that change your opinion?

Oh, yeah, it would. Oh, did you have any evidence the clock was altered? No. He came back some day later and said maybe there was an hour difference, or was that the day you said it was zooloo, i'm sorry i can't recall. Check your notes.

One thing's clear. Lawson, Lawson is the expert on this issue. So the mere presence of photographs by a -- of adults engaged in sexual behaviors does not infer acting out, except in the speculative arguments of counsel. There's a major difference between the priests and the Bobby Socker coaches who are out doing what they're doing than David Westerfield. This is their own motive. They have nothing else on David Westerfield as a pedophile. It's this or it's nothing. so I say to you, is possession of 29 or 85 pictures out of 6- to 10,000 to 15,000 to 20,000, to 25,000, is that proof? Is that less than .00001 percent? Maybe good enough for government work, not good enough for a jury trial. in the motor home -- I'm changing. I want to talk to you about fibers a little bit. When you all walked through the motor home you all saw -- we all saw, we all got the experience, more painful for others than some -- we saw cuttings off of clothing. I'm sorry, we saw cuttings off of cloth off of virtually every single piece in the motor home. They looked for any evidence of Danielle Van Dam fibers -- I'm sorry. They looked for fibers from the motor home in the body bag in which they found Danielle Van Dam. They scoured that motor home.

They searched the motor home. They cut it up in every way they could to try and find a single fiber that they could at least come to court and say common source. And guess what? None.

So if Danielle Van Dam was really in the motor home when they say she was, where is the trace in the body bag that links back to the motor home? There is none. None. Zero. they were very careful. Remember folks you had the view. remember the front seat. Remember there was a cutting of the drapes. Remember the passenger seat. Remember

where the kitchenette area was. Every single place they checked for trace. They did the cuttings so that they could evaluate the fiber evidence. They found nothing. By the way, when it came time to do the body recovery, or when it came time for them to do the search of the fibers, Fay Springer was brought down from Sacramento.

Fay Springer, you'll recall, is the mass spec more or less expert from Sacramento. She published a chapter in a book. I asked her about the collection process, because they're all aware of law enforcement, and Simpson is very much aware of contamination, right? So she wrote a book. She wrote a chapter in a book and she said this is how you're supposed to be because what we want to do is avoid the transfer. Because we all recognize there's this thing called the Locard transfer principle that messes up crime scenes, that if we put too many cops in the same spot it's going to get things screwed up, so this is how you're supposed to dress. And then when I asked Springer about it, well, ha-ha-ha-ha, that must have been somebody else's idea, that wasn't mine.

This is the text on how to do this work. This is what they teach law enforcement. This is how the evidence technicians are trained. This is what they're taught to wear because of the obvious. The feet contaminate, the hands contaminate, the clothes contaminate, the hair contaminates. An argument was made yesterday that the only way for hair to get pulled out -- I'm sorry -- to get hair roots, was if you pull it out. But ladies, any of you who've had ponytails know if you just take your hair out of a ponytail, whoops, there goes the roots. Those of us who maybe have had long hair in another part of life know this, too. Put your hair up in a ponytail, try and remove it and see how many hair roots you get out. Don't tell me there's only one reasonable explanation for the presence of hair with roots. At the body scene, intensity of the focus shifts. By now David Westerfield is in jail. They think they got him because they found the fingerprint and they got some D.N.A. In the motor home. Okay. It's there. I'm not going to come in here and tell you it's not. It's there. I'm going to say this to you the same way I said to them. Wait a minute. Where is the smoking gun? Can you tell me when it got there? No. Can you tell me how it got there?

No. Can you tell me how long it's been there? Nope. Okay. We're going to tell you how long Danielle Van Dam was there. We know more than they do about that, don't we? underneath Danielle Van Dam's body was a seven centimeter hair, Jennifer Shen, this is not the same hair that Jen said she cleaned and turned out to be Danielle's. This is a different hair. I'm sorry, I remember back to the crime scene where there's fingerprints that aren't matched. I'm thinking about the crime scene where I got a client who sweats so much that at 9 o'clock in the morning or 8:50 in the morning on February the 4th the cops look at him and say jeez, Parga said it was so freezing I was walking around like this, and this guy had sweat rings down to his armpits. Now, that was -- she didn't say quite so much, but obviously gigantic sweat rings.

Well, so I'm thinking if someone's sweating that much and hanging out in Danielle's room, where is the D.N.A.?

You know if it works to show that he's nervous, wouldn't he be nervous in the bedroom? Where is the proof? Well, of course, there isn't any. That infers he wasn't there, doesn't it? Let me see, is that another reasonable interpretation? Is there two ways to interpreter that or only one?

I talked to you earlier today about the Locard Exchange Principle. I discussed with you that it could go from Brenda to David, from Brenda to Denise, from Barbara and back again to David. In dancing, we had testimony through one of the experts relying on

Robertson and Greeves that a hundred fibers could transfer just in the process of dancing. We know that thousands of fibers were collected in this case, thousands.

They presented to you what, eight or ten important or 40? And at the bottom line of the conclusion of the eight or ten or 30 or 40, could have come from a common source, could not have come from a common source. They only tested a few.

And then when they put those boards up, you'll remember, I had to cross-examine Shannon (sic) Dulaney about the conclusions, because you'll recall they said there were 20 or 30, I think on one of the boards, fibers. I said wait a minute, ma'am. You didn't test all those, did you? No, no, no. We just took a representative sample. Oh, you're telling the jury that 20 matched but you only tested five? Oh, you're drawing inferences? Yeah, could have come from a common source, could not have come from a common source. Two reasonable interpretations.

But I say this to you, folks. You have to feel an abiding conviction that there's only one source. You have to know it in your heart, know it in your bones, be so sure of it you pull that plug.

**Mr. Dusek:** Objection, misstates the evidence.

Argumentative.

**The Court:** Well, it is argumentative but the last portion will be struck and the jury's to disregard pulling plugs or any reference to penalty or punishments or anything else as prohibited.

**Mr. Feldman:** Okay. My analogy is not to punishment.

Please understand that. It's only to the severity, to the nature, to the nature of the decision-making process. I don't mean in any way to raise punishment. I understand. But what I want to communicate to you is the difficulty of the decision of pulling the plug. It is not an address to penalty. It's an address to how sure do you have to be before you make that decision. How sure do you have to be before you have an abiding conviction, before you feel, right?

The word is feel. We're human beings. The law says in case of a reasonable doubt, in case of a reasonable doubt. And how do you define it? You feel an abiding conviction of the truth of the charge. So I say to you, you got to feel that there's only one reasonable interpretation. It's not a penalty statement. It's a certainty statement.

This is the single most, I submit to you, the single most difficult decision you'll ever have to make in your lives. Never, except as jurors, do 12 people have to go into a room who don't know each other, sit down and reach an accord. Can you imagine what life would be like at home? You got four children, come on, let's go out to McDonalds. We got to vote on it. Ah, somebody wants to go to, I don't know, Carl's Jr.. Somebody wants pizza. Somebody wants Chinese food. Now we got to negotiate. We don't make decisions in life like that.

Sometimes there are executive decisions like in a courtroom, and we got the CEO sitting up on the bench, he makes the calls. We don't debate it. Only in the jury room do we bring citizens with diverse point of views and backgrounds who have to unanimously agree or we don't have a result. But that's okay. Because your job is to vote your conscience. That's all we ask of you as citizens. Vote your conscience.

We have an exclusion of a key fiber in this case.

We had an exclusion of the orange acrylic fiber. Do you remember that fiber around Danielle's neck? Ms. Shen, let's talk about fibers. Okay. Ma'am, you got notes, right? Right.

Your notes are prepared contemporaneously, right? Right. You concluded that that particular orange fiber could have come from a common source, right? Right. Now, ma'am, you described -- the way you described the fibers is in different ways, right? Right. For instance, with regard to the orange fibers, you described whether or not -- you'd agree with me, wouldn't you, a bright fiber is different than a dull fiber?

"Answer: yes. Remember. Do you remember, ma'am?

Would you agree that there is a difference between a dull orange fiber and a bright orange fiber?

"Answer: yes." therefore, ma'am, you're telling us that there is an exclusion, right? Right. But you didn't form that opinion.

**Mr. Dusek:** Objection, that misstates the evidence.

**The Court:** That misstates the evidence, ladies and gentlemen. You're to disregard the last statement.

**Mr. Feldman:** I'd like a side bar.

**The Court:** You're certainly welcome to it.

(Bench conference not a public record.)

**Mr. Feldman:** With regard to the orange fiber, remember, Jennifer Shen was shown her notes. Remember, first she claimed that there was a common source. The issue is whether or not she excluded it. You decide that based on how her face looked when she realized that her notes contradicted her testimony. If that's not an implied exclusion, there is none. That woman could not say in this courtroom you're right. But if you remember the expression on her face, it will never go away.

It's one of the things lawyers understand. We go to the notes. You look to the notes of the witnesses. You see what the notes say. Check the transcripts. The transcripts will have her telling you that there's a difference between an orange acrylic fiber that's dull and a bright orange acrylic fiber. And the evidence and the testimony will show that she made the distinction, and the evidence and the testimony will show that she was caught. And it was only on redirect when Mr. Clarke realized it that he tried to fix it. You decide whether it was fixed or not. But regardless, the circumstantial evidence takes control here, too. there's two reasonable interpretations and the government's best on -- the prosecution's best position could have come from a common source, could not have come from a common source. That's their very best position. Two reasonable interpretations.

There was a number of other fibers that were found in the washing machine and other places. Red fibers, pink fibers with dog bone cross-sections. A delustered rayon and red polyester fiber that was removed from Danielle Van Dam's fingernail. No match to the Westerfield environment.

One of the technicians -- I'm sorry -- Shen or Dulaney, I don't recollect, looked at the red fibers and could not find any similar in ways that she could test and excluded. so what I'm telling you is the body bag from which much of the evidence of Danielle Van Dam sourced, where Mr. Dusek argued yesterday, Danielle was speaking to you from the grave, she was. she was telling you there's a universe of fibers on me that don't apply to David -- David Westerfield. It's somebody else.

That's -- that's a message. Same fiber evidence, two interpretations. there were special fibers of note in the Van Dam environment. A bright green long acrylic fiber, a bright red acrylic fiber, a light blue long acrylic fiber, a bright red acrylic fiber, a blue medium delustered fiber of note. None in the Westerfield environment. An exclusion.

And then there's that afghan that I mentioned to you earlier. You look to the fibers. You'll see. They're in evidence.

Bottom line is their expert said we can't compare the emerald green acrylic fiber dog bone cross to anything. All we can do is operate on color, and then we only get as close as we can because the state of the art, it's an art.

In fact, in trying to determine if there were red acrylic fibers in the wash were similar to the red acrylic fibers in the body bag, they didn't correlate. They excluded one another, and the only opinion statement was they do not share a common source. But they did say that the acrylic fibers in the body bag could have come from a multi-colored sweater or a blanket. But ask yourself, would a multi-colored blanket shed only orange fibers? I don't think so.

On the issue of the D.N.A., on the issue of what was in the motor home, we know the motor home was there since -- what did we decide the date was -- November of 2000. We know from every witness who testified that that motor home was in the neighborhood. It was a pain. The door was open. Barbara Crum, his motor home was there. She was talking to Mark Roehr.

Barbara Crum has seen Danielle Van Dam in the neighborhood on a bike alone unsupervised. She's seen the motor home parked in the area of Mr. Westerfield's home for days on end. She's told the investigators that that bothered people.

Access to the motor home is the issue. Access to the motor home. That's my issue to you. Martin Franklin, I think he was the gentleman that had the British accent. One of the first witnesses, sees the motor home in the neighborhood, and sees David draining the motor home on the 4th. I'm sorry, isn't on the 4th when he's draining the motor home the same time he's got a kidnapped child?

You know, I said the 4th. The 2nd. Check your notes. It's the 2nd. It's the morning he left. So he's doing that. Jon Stinebaugh: it's 9:15 in the morning on the 2nd and they see David. Hmm, what's he doing in his neighborhood? Mr. Meerchaum: this vehicle is in the neighborhood all the time. It's not leaving. Mr. Woods: I've seen David driving the motor home. Alick Lau: the motor home's parked across the street.

It's often in the area. Angela Elkus: the motor home's around when he's loading and unloading. The doors are open sometimes, the doors are shut sometimes. Christina Hoeffs: saw -- their witness, their first or second witness. This is a woman who couldn't -- who worked for law enforcement, remember? She was the dispatcher for the police department. She was the neighbor who lived right next door, who was looking into Mr. Westerfield's backyard, who said it was unusual to have the curtains shut. Remember? That's who she was. Ms. Hoeffs. She said she saw the motor home doors open. Those doors were open, folks. That's access. Can I prove to you when they got there?

No. Can they? No. the blinds were shut, says Ms. Hoeffs, the light was on. That's unusual? To a trained law enforcement officer?

Well, what took her so long to report it to the police? She waited days. If it's such a big deal, there's hundreds of police in the area. What's she waiting for? Godot: she didn't report this, quote "unusual circumstance," unquote for days.

The neighbor Paul Wong: for four years he's a next door neighbor. There's nothing unusual about the motor home being there. It's there all the time. Mark Roehr: another time you saw some aggression in cross-examination, remember that? Didn't like the answers too much. The cross-examination, because this was a defense witness now. For

some reason the prosecution exercising its adversary tactical right chose not to call the Roehrs. But the cross let you know how they felt about them. regardless, in the same way Mr. Laspisas held his own. He did.

He told the truth. He told the truth. In the face of the pressure of a very, very experienced prosecutor. David Westerfield's friendly. I've been to his house many times. We went into the motor home. Whoops, transfer. What kind of carpet fibers could come in if they did that? Whoops, it's the same neighborhood. Whoops, their house was built at the same time as the Van Dam's. Been to Mr. Westerfield's house more than two dozen times. Janet Roehr: the motor home's out all the time. It's a pain. We talk about it. In fact, Brenda Van Dam talked to Rich Brady about what a pain the motor home was because they have CC&RS, covenants, conditions and restrictions in this saber hills springs neighborhood which requires them to comport with certain requirements, ie., you can't leave your car parked in a particular location for too long.

Again I say to you, if we were able to produce a single witness that would have said they saw Danielle playing in the motor home would we be here today? Does that failure of proof on our part mean that they prove she was there, or is that just yet another interpretation? We have an access issue. And yet, we have time of death to talk about. I complimented the San Diego police department for their work, but I've got a couple of complaints to lodge with you on what they did with regard to the D.N.A. I want to know how that blood got there. You have a right to know how that blood got there. The only way any of us could know is if we were able to get a blood spatter expert, someone who understands that if there's saliva -- or I can't really do this, but if you think of this it this way. If there's a hammer that hit somebody and comes back, there's a spatter. That's what happens. If I put my pen in this and went wonk, there would be a pattern. If this pen leaked and I went wonk, it would leak, it would drop, it would deposit. We need to know what that looked like. Ms. Peer, what did it look like? How big was it?

I don't remember. What? Oh, I just remembered it's a quarter of an inch. Wait a minute, ma'am. In this courtroom for the very first time you are, the technician, whose responsibility it is to evaluate presence or absence of blood, to come tell the jury it's one times ten to 240 zeros, it's your job to do those calculations and you did not preserve the evidence? You never took a picture of the way it looked at the scene? No. so it's impossible for me to discuss with you whether it was a drop, which you heard an argument made, a splatter, a transfer, anything. We don't know. Mr. Soriano, same problem. With Mr. Soriano we scanned up a picture. You'll see it. 121. You didn't take pictures of the jacket. Remember we looked at that jacket as hard as we could. All we see in court is two holes. Two holes. This does not tell us what did it look like. It just tells us the cut. Did you take a picture, Mr. Soriano? (defense counsel snaps fingers). No.

took a polaroid which we blew up which doesn't show anything. you can't tell anything. When did this get here? Beyond a reasonable doubt. When did this get here? They didn't take photos that would allow us to tell how the blood got there. they didn't do anything that allows us to know how it got there, when it got there or how long it was there. your honor, I'm almost --

**The Court:** all right. We'll take a break. all right. Ladies and gentlemen, please remember the admonition of the court not to discuss any of the evidence or testimony, nor form or express any opinions on the matter till it's submitted to you. please be outside the door at 2:15. Quarter after 2:00.

**The Court:** okay. Welcome back, ladies and gentlemen.

All right, Mr. Feldman.

**Mr. Feldman:** I'm just waiting for the noise, folks, that's all.

This is the home stretch. The defense is going to rest probably within thirty minutes, forty minutes.

Please remember, the last opportunity the defense has to address you. I know fire and brimstone's coming. I don't have the opportunity to respond. There's going to be a response. Please keep in mind the system is adversary. Please consider what the defense' position might be in response to some of the line of fire.

Danielle Van Dam's body was deposited in the area of Dehesa, singing hills. The allegation is that David Westerfield did that. Ask yourself these questions. Why would the guy drive several hundred miles and do that. Better yet, look to the photographs of the scene. You'll see it's very narrow. You put your motor home right there or down here and walk it up. Where's the motor home going to be? Where's the evidence that anybody saw any motor homes. Where's any evidence of David Westerfield at Dehesa.

For the driest year as Mr. Dusek argued since 1850, if that's the case, sure is a lot of water around, isn't there. Sure does provide a nice environment for the animals that reside in this area that we learned about through the first two or three witnesses in the case who testified that they used their sense of smell, and that was how they found Danielle Van Dam. Because first they discovered that by using their sense of smell they were going to catch animals, and they were locating dead animals using their nose. And they continued to use their sense of smell, and the odor was so strong, the odor of Danielle was so strong, they were able to find her.

But consider no evidence of Westerfield.

And the location, think about this. Okay. I'm going to -- I'm Dave. I'm the guy. Okay. I got my shovel. Oh, I didn't use a shovel, didn't bury her. I got a blank. . . Didn't use a blanket. She wasn't wrapped. I'm going to put her . . . No, she wasn't moved. I know. I just have to pick her up and walk her up the Berm. But the Berm was so steep law enforcement had to cut steps into it. Remember. That's what sergeant Holmes told you.

The searchers found her. That gave some closure to the Van Dam family. That's a good thing. It gave some closure to the community. That's a good thing. But we're still here. That's not a good thing.

We found, as I discussed with you, actually we didn't, law enforcement did, a hair under her body. Whose was it? It wasn't David Westerfield's. It was not Danielle Van Dam's. How could it have gotten there? Obviously when she was placed. From the placer.

At autopsy law enforcement did the best they could. I'm sorry. Before I slide there, please, court 5 shows some of the pictures of the area the way it actually looked as opposed to the way ultimately you saw some of the photos. What's of consequence is that it is a dump site and that there's any number of items, including some orange, you see in d. Who knows? I don't know how that fiber got there. Could have blown off this piece of -- who knows what it is. It's a dump site. If she is out there on the government -- on the prosecution's theory, she's there since February 3rd or 4th or 2nd. If she's there on the defense' theory, she's there from between the 16th and 18th, ten days minimum, who knows what winds blow. Actually we do know what winds blow. We know the Santa Ana winds were blowing.

At autopsy we discover there's no fracture of the hyoid bone or the thyroid cartilage. That means she wasn't strangled. The bones in the neck were present. The muscles were intact. She was missing some teeth. In the early part of the case the D.A. Was making a big deal. Who knows in rebuttal he's going to come back at this. I don't know.

He's got a problem. He can't explain what Mr. Rodriguez had to say about it. But the reality is although they tried to infer that there would be trauma to the lip, arguing that asphyxiation, suffocation was the manner in which she was killed, there's no evidence of that. So they speculate to the trauma in the same way they speculated that there was more blood.

Let me ask you this: you heard the argument. We got what Sean Soriano didn't photograph on the jacket. You saw it. It's about this big. But who knows how much. We got what Annette Peer remembered on the witness stand months later that was a quarter of an inch or so maybe. So now they want you to speculate as to cause of death. But we don't ask you to speculate. We presented evidence as to time of death.

And herein lies the rub to the government's case. Over here is the prosecution's case and their physical evidence that they cannot explain its source, which is to say they can't tell you when it got there. They cannot tell you how it got there. They cannot tell you how long it got there.

Over here literally we have reasonable doubt. We have time of death. How does this happen. What happened in this case? We know that the autopsy did not answer the question. But we also know because we've learned a lot. First, we learn that the month of February is very, very hot. And remember I talked to you about the winds blowing. Remember the D.A. Needs you to find -- you don't find February 2nd for oviposition, they're in trouble. That's their theory. But we know it was hot. And we know that heat accelerates, doesn't decelerate, it accelerates how the bugs grow. We know that a number of experts were called. The very first expert, the man that law enforcement relied upon, the person that's not been referred to as a hired gun by Mr. Dusek, the man that Mr. Dusek has used in other cases to testify as his expert, David Faulkner, the man that law enforcement called in, the man that the police brought in to autopsy. David Faulkner, a forensic entomologist.

He hurt them. Not on purpose. That poor guy. He was called in as a prosecution expert to help them generate information. And what did he tell you. He told you he's never had such a good opportunity to do the work that he got to do. He's never been given the opportunity to do the kind of collection that he did.

Later you hear because Mr. Dusek argued in opening statement, oh, we didn't know what to ask him. Think about that. He's called him in another case or cases before. Didn't know what to ask him. We didn't know about it. I'm sorry. Doesn't work. Faulkner said I was stumped. This is a problem. I know they've got a suspect in custody. It's Westerfield. Now they've found the body. The body's found 28th. Westerfield is in custody since the 22nd. I got to come up with some evidence to help us, us meaning law enforcement, find the truth. Because this is a search for the truth.

What does Faulkner do? He collects up all the bugs. Now you hear argument, oh, we don't know what size it was. We don't know what temperature it was. We don't know what the gradient was. We don't know this; we don't know that. Well, ask the question. Did those questions get asked? No. Who's got the issue? The prosecution. So they're going to say because we failed to ask the right questions, you should convict David Westerfield. That's their position.

Thank you, David Faulkner. In the same way Mr. Dusek said thank you to the San Diego police department, I say to you thank you, San Diego police department, thank you, David Faulkner, because this is their best. He was their best. True.

And what did he have to say. Oh, whoops. I got a problem. My problem is I've done the calculations, I've done the studies, I'm experienced, I've testified as a witness for the prosecution, I've testified as a witness for Jeff Dusek, but the time, I can't understand the time, because on Mr. Faulkner's -- I guess didn't get written on this. 16, 17, 18, huh?

Dr. Blackbourne. Dr. Blackbourne, you will recall, was the autopsy pathologist. He testified there were bugs coming out of her mouth. You've heard examination. You've heard allegations. Ah, the bugs couldn't get to her head. Take a look at what Blackbourne testified to. Read his testimony. Consider what the other experts relied upon in terms of what Tomsovic saw, in terms of what other officers saw, in terms of what bugs were available or not.

The only rescue to the prosecution is the specious theory, the specious theory, that suddenly the ants came along, and we already know when the ants come along their ain't going to be no flies.

Dr. Blackbourne, do you have an opinion as to how much time elapsed; can you tell me what's your opinion, what's your estimate of the time of death. Answer: ten days to six weeks. Okay. Ten days to forty-two days. All right.

Now we have two experts agreeing to a window. We have Faulkner who's 16 to 18. I wrote it on this one. And now we got Blackbourne who fits right into that. Whoops. Now there's two.

The defense hired Neal Haskell. Neal Haskell performed a series of studies. And this is another witness that Mr. Dusek really took off. Remember we had to recess. There was an objection. The judge said it. They were yelling. Mr. Dusek was yelling at him when the judge said wait a minute. Now's the time for a break. Remember. When the evidence twists in a particular direction, adversary counsel rises. We saw it.

And their hit, if that's the word, their hit on Haskell is, well, he considered maggot mass. And that artificially inflated the day. Guess what. By one day. One day. So Haskell really said, I think he said fourteen. I'm going to put another chart up. We'll see. Mr. Dusek's cross was, well, the maggot mass is going to distort it. And so you artificially inflated it. But the artificial inflation makes absolutely no difference. It's not artificial inflation anyway, because hall told you there is a scientific discussion. This isn't a question of Goff making mathematic errors. That isn't what this is. This is the dispute in the relative scientific community. Over twenty-four hours' difference. That's all. It's only a twenty-four-hours difference.

Well, we learn from Neal Haskell that there's a particular way in which these life processes evolve and devolve for want of a better way. We learn that we start at death and these guys work backwards. And they consider the decomposition process. And you got much more than you needed to hear -- actually, I'm sorry, you needed to hear this -- on the process of decomposition. And it's a one-way street. You don't recompose after you decompose. That's Rodriguez' theory.

Suddenly, magically, mysteriously, she mummified in twenty-four hours. We're going to talk about that in a minute. No. What happens is the body decays. It putrefies. And they do what they can to make their post-mortem interval estimates. We know, we've learned, we learned it through their expert, William Rodriguez, that maggots which are fly

larvae are responsible for the dramatic consumption of a cadaver's organs and tissues. Much later, much later, when the corpse has to a large extent dried out do these species of other insects, noticeably beetles, move on. And we know there's beetles, that's all they can say. But the beetles don't get there according to their expert who is not a forensic entomologist 'til much later.

Their expert admitted to saying large, highly mobile flies are typically the first in, attracted by the faint aromas emanating from a fresh corpse. Blow flies, ours, frequently arrive minutes to a few hours after death. Unless he's paid by the prosecution. Suddenly, ah, sorry.

You heard in opening arguments that the bugs go to the nose, the ears, and the mouth. Wrong. That's not all. They also go to the anus and genitalia. The vaginal area. If Mr. Dusek's right about his argument to you, if he's right when he inferred to you she was raped, that was what his pounding was about yesterday, folks. When Mr. Dusek was trying to explain, he pounded up, that's what he was arguing.

The down side to his theory is that creates an opening for the bugs. Didn't happen. Not possible. Impossible. Impossible. Because the flies would have been there. And they weren't. So it was a good thought. And I thought it had a good effect on the jury. I thought it was intense. It was dramatic. That was the point. It was prejudicial. That was good. But it wasn't accurate.

I thought I was getting it up all this time, too.

Whoops. What do we see? David Faulkner was their expert. Right? Neal Haskell was the defense' entomologist. Lee Goff was their doctor. Talk about hired guns. Darn. Robert Hall was a defense doctor. Brian Blackbourne was the medical examiner. You didn't hear from Cyril Wecht directly. And William Rodriguez was their expert.

Okay. What we have is a concordance, a concordance of science in two disciplines, forensic pathology and forensic entomology, that addresses timing in ways D.N.A. Cannot.

I told you I will show you it is impossible for Westerfield to have dumped the body. How is that the case? Answer: Faulkner estimates the 16th to the 18th. We already know David's under constant surveillance. Impossible. If Faulkner's right, not guilty. No issue.

Neal Haskell, a forensic entomologist who they claim would artificially inflate, push him back one day. That's what they get out of it. One day. Guess what, impossible. Lee Goff, the man from Hawaii who Mr. Dusek conceded had addition errors which he did. Oh, well. He said in his report the 9th to the 14th. I don't care whether he uses singing hills, I don't care whether he uses 16 degrees c., I don't care whether he uses 23 degrees c., I don't care if it's Anderson, Greenburg, or Kamal study, the experts unanimously agree. The experts unanimously agree.

Dr. Hall. In agreement. Pushes it out a little more. But in agreement.

So here's what the prosecution does. They hire William Rodriguez, an anthropologist. He's the guy about mummies. Because they realize whoops, we got a problem. This is before we hear from Goff or Hall. After Haskell. They hire the entomologist. I'm sorry. The anthropologist. And he comes in. And Mr. Clarke does an examination. And one of the clever things the prosecution did, I guess, was to take Cyril Wecht's report which in testimony it turns out Cyril Wecht was a forensic pathologist consulted by the defense, the report was provided to the prosecution. That's the evidence. The prosecution likes the report so much they fed it to William Rodriguez. And in that report Wecht found, hmmm, ten days to twenty-eight days. Concordance.

Now two forensic pathologists have agreed that within the window that the entomologists have said, that's a reasonable interpretation of the evidence. That's reasonable. It's that science. These aren't just cheap whatever. These are ph. D.-educated, nationally, internationally recognized experts.

And if you don't like that argument, go to the home court. Right. Mr. Dusek, his cross was, well, Faulkner's a home court guy. He knows what it was like here. He's been here all his life. I agree. Take him. No. Don't use that. Use Dr. Blackbourne. He's got more experience with mummification than anybody else. Take him.

But Dr. Rodriguez, now I've talked about Rodriguez, how he undercut some of the prosecution's testimony. But there's something else about Rodriguez that I find particularly troubling, and I'm going to give it to you because it's in my craw Frankly. I asked Rodriguez how did you get to the dates 1/17 to 1/31, because you know, sir, that's impossible. Because we all know she wasn't even missing until the 1st or the 2nd. He said, well, I did this, and it's my experience. Wait a minute, sir. Isn't it true you utilized Dr. Blackbourne's estimate of ten days to six weeks. Six weeks is forty-two days, isn't it. No. Isn't it true you used Cyril Wecht's estimate of ten to twenty-eight days. No. What's your opinion? Twenty-eight to forty-two days. Does that have the ring of truth? Come on. Come on. Does that ring true to you?

How did he get there? Answer. He took the outside numbers of the forensic pathologist furnished to him by the prosecution. The prosecution had the faith in Wecht. Okay. We didn't even have to call him. There's a jury instruction. It's number 2.11. It says neither side has to call any witness. They used them. Thank you. Because what he does is prove the defense' point.

There is a remarkable, unique, undisputable, indisputable, beyond-a-reasonable-doubt concordance of a combination of professions that make impossible David Westerfield's ability to have deposited Danielle Van Dam in Dehesa. Because every single expert, no matter what, and Mr. Dusek is going to have to get up and tell you impossible, disregards it. He can't live with the bug evidence because he loses. This is absolute certainty.

Folks, you got two disciplines you got called by both sides. And when Rodriguez blew up in their face, they are going to attack the entomologists. When Rodriguez blew up in their face by denying he got the 28-to-42-day interval, by not admitting at least because, remember, he was at Disneyland or vacation or on vacation, that's what he told you, by not admitting that he used the outside ranges of the forensic pathologists, I submit to you that wasn't a true statement. And I don't for the life of me understand it. There's no reason for that kind of scientific dishonesty. There's none.

Some of the things he said are believable. That which was in his range. Sir, are you a forensic entomologist. No. You know, he might be great on mummies, he might be good on carbon dating, he might be able to tell us how many thousands of years the Incas were up in the Andes, but he doesn't know much about forensic entomology. And that which he does know, he didn't get right. Beyond a reasonable doubt.

Danielle Van Dam was not deposited at Dehesa any earlier, any earlier, than the 9th of February. And that uses Dr. Goff who said with regard to the singing hills data I'm not even using it. Hall used singing hills, used some skewered formula that Mr. Dusek presented him with, and in a prepupal state, that is the condition of the insects in which

they never were, pushed hall back. But that's not accurate. The bottom line of hall's testimony is the dates.

Okay. The reports. And they can complain and they can whine they didn't have time. You deal with 13,000 pages in six months. Talk about time to prepare.

Use David Faulkner who first came in and talked to you about the life of the blow fly. Do you know what you see? You see that they get smaller, not bigger.

Oh, we're going to say conditions in San Diego were so unusual we've never seen anything like this before. The body mummified so much that the bugs went boink. It's not the hands. It's not the face. It's not the shoulders. It's not the outer extremities. You are going to see the autopsy board. I don't need to put it up. It's going to be with you. Look. Look at the outer extremities. That's mummification is a slow process. It doesn't take overnight. If somehow Rodriguez left you with the belief that mummification was a process that occurred in twenty-four to forty-eight hours, first that's highly unlikely, and even if it's true, the bugs go not to the extremities where it starts but to the orifices. Nine. Count them. Nine. That was the testimony.

So here we have beyond any doubt a coalescence that's unexplainable by the prosecution. Unexplainable. They're going to say to you any number of spins. The heat was different. It's a hundred-year drought. Hall: flies are remarkably resilient to drought. Doesn't work. Goff concedes our point. Their expert.

You know, it doesn't matter what you say about these guys. This is their guy. And he was stumped because he needed to know and he went to law enforcement and he didn't get the answers. Was she covered? No. Was she moved? No. There's no evidence of that. Time and again you heard that. Much of the last three weeks that's where we've been. Was she moved? Wasn't she moved? Was she covered? Wasn't she covered? That's where their theory of, oh, we threw her in the compartment of the motor home comes from. Because counsel knows he's got a serious problem because of the concordance. That area in black, ladies and gentlemen, every expert agrees to.

I say to you if there's two reasonable interpretations of the evidence, one pointing to the defendant's guilt, theirs, one pointing to the defendant's innocence, ours, because it's a constitutional democracy, you don't decide which is more reasonable, you must, must adopt the interpretation pointing to innocence and reject the interpretation pointing to guilt.

This fits in with an instruction that the court has given you. I don't like the term because it just connotes things that people infer adversely. It's called alibi. Evidence has been introduced to show that Mr. Westerfield couldn't have done it. There it is. If you have a reasonable doubt, you have to vote not guilty. Like it, don't like it, pressure, no pressure. This is what the bugs have been about.

So they need to get out of this. They're in trouble. They recognize it.

One of the last things that happened in the trial is the judge said save your arguments, Mr. Feldman. When I talked about the remarkable concordance to one of their I think surrebuttal witness. Here it is. We have a remarkable concordance. Every single witness, with one exception who's in lala land, agrees. Theirs and ours. This is the case, ladies and gentlemen, for the defense. It doesn't matter. They cannot explain to you when. We can. They can't explain to you how long. We can.

There are two reasonable interpretations, and this is why circumstantial evidence is so difficult and why in voir dire the D.A. Was asking you questions and you saw in the

questionnaire how do you feel about circumstantial evidence. Can you find guilt with circumstantial evidence, 'cause he knew and the lawyers knew and the judge knew two reasonable interpretations. This is it.

I'm expecting, you know, they are coming at this. They have to. Please, remember the testimony. Remember the demeanor of the witnesses. Remember their expertise. Remember that Neal Haskell was recently invited to Europe to lecture or participate in a concourse of the European law enforcement community. Remember these men travel all over the united states to give lectures to D.A.'s office, to police departments, so that they can gather more evidence to help explain time of death, post-mortem interval.

Counsel is going to come back and say she must have been laying out for seven days. No. Yeah, he's got to say seven days at least. Impossible. Sorry. Impossible. The body, there is no evidence, there's no literature. You heard it from hall. Mr. Dusek's theory, his only theory, on this is she was laying out, she mummified. The bugs couldn't get to her. The animals eviscerated her and that opened her up. That's not how it works. The decay process is one way, and it continues. It doesn't arrest. The internal organs continue to deteriorate. And when that proposition was put to hall, hall said not only have I never heard about it or read about it, no.

Almost done. Just want you to be able to see this. Want you to -- let Mr. Dusek explain it to you. He'll take them apart one at a time. He'll try. He is going to go after David Faulkner, his own expert. The cops' own expert. Thank you, San Diego police department. You did a great job in this case. We needed it. That's not facetious. The extraordinary work that went in is remarkable.

We have doubts. I told you that in the beginning of the case. We have doubts. We continue to have those doubts. What possible motive could there be. Spare me the speculation on pornography. What's the motive for a fifty-year-old design engineer with no prior history to do anything at all like this?

What about access. Access is a two-way street. David to the Van Dams'. In other words, their theory that he's sitting in the door for two hours in a room and he's kidnapping her and she's silent in a house with a dog that doesn't bark and a security system that doesn't work and locks that are reversed and about which he has no knowledge. And access to a third party. That third party is the hair, the evidence of the third party is hair under the body of Danielle, is the three fingerprints that are not matched in the house, is the blood on the bean bag, and is the blood on the pajamas.

I'm asking, you have to decide. We have doubts.

David's behavior. They want you to say it's sinister, it's guilty, it's terrible, it's awful. He's guilty. No. Two reasonable interpretations.

We want to know when did that physical evidence get there. Beyond a reasonable doubt. When. Convince us when did it get there. And finally. Where is the earring back?

Ladies and gentlemen, this has been an extraordinary experience. It's been hard. It's been emotional. It's been tense. It's been at times overwhelming. The burden that the lawyers have is coming your way. The tension, the angst, the pain is coming your way. You are the conscience of our community. You, you save us from lynchings. You protect us.

Thank you.