**STATE’S CLOSING ARGUMENT AND REBUTTAL ARGUMENT**

**IN A MULTI-COUNT INTRAFAMILIAL SEXUAL ABUSE CASE**

**State of California**

**Prosecutor:** Good afternoon, ladies and gentlemen. I hope all of you are feeling well. We are down to the bare nubbins, as my mom would say. And I hope that any of you, if any of you are feeling kind of tired or overheated during my argument, which I hope won’t be because of my argument, please let me know and we can always take a break during that time.

Before this case the world of child molest was probably something you had just read about or heard about on television or on the radio. You are now a part of that world. You are a part of that world in listening to all of the testimony and the facts about the case and in making decisions about the case. It’s no longer something that just sort of happens out there. It’s something that is very personal to all of you now. I urge you to remember, as you begin the next step through this world of child molest, which is different probably than any other world that you have been in, to remember that that world exists very far and very deep below the surface of things, and that you cannot judge the truth in this world by appearances.

Whenever I give argument, opening argument in multi-count molest cases, I always think it’s helpful to try and visualize something. When I went to school I was what they used to call a look learner. It was always more helpful for me to see something, to see something visually, and that always helped me to sort of grasp the ideas. That’s what I’m going to spend the next 20 to 30 minutes doing with you.

The prosecution, the people of the State of California, have the burden of proving to you beyond a reasonable doubt each and every one of the elements of the crime with which the defendant is charged. It’s my responsibility to make as clear to you as possible what each of those elements are and how the evidence is proved to you beyond a reasonable doubt, the existence of each of those counts, the truth of each of those counts. I’m going to do that, as I said, by some overlays that I have presented that I hope will make some of that clear.

The Defendant is charged in an information of 29 counts: the Crime of Lewd Acts Upon a Child, a violation of Penal Code Section 288(a). That crime has what are called three elements. The first element is that some sort of a touching had to have occurred, a touching either of the Defendant or of the victim. The second is that the child involved had to have been under the age of 14 at the time of the commission of the offenses. And then the third element is that the touching was done with an intent to arouse either the Defendant’s or the child’s sexual desires.

The Judge is going to be giving you an instruction on this crime and is going to be talking further about the nature of each and every one of those elements. Element number two is really not something in dispute. At all times and even when she testified now, S. has been under the age of 14, that’s given. You don’t have any dispute with regard to the second element. The elements in dispute are with regard to the first and third.

The Judge will instruct you with regard to a touching, that the touching that is done does not have to be on the bare skin of the child. The touching can be over the clothing of the child. We have testimony from S. that although sometimes the touching has happened over her clothing, most of the touching have been of her bare skin. But there’s no requirement, there’s no differentiation in the law whether or not S.’s vaginal area was touched on the skin or whether or not the vaginal area was touched over underwear or bathing suit. The critical issue is the intent with which that touching is done.

You have to determine in your own mind what was in the Defendant’s mind when he did that touching. There’s no way to do that, to get into the Defendant’s mind. So you have to look at the circumstances surrounding the touching to try and determine what the Defendant’s intent was at the time the crime was committed. The Judge will give you an instruction about that, about looking at the circumstances surrounding the commission of the act.

You have had testimony with regard to three people who have touched S.’s vaginal area. I submit to you that two of these people touched S.’s vaginal area with a sexual intent. The third person did not. The third person is Dr. J., in North Dakota. Now, he touched a child when the child was under the age of 14. And he touched her in a vaginal area. Why is it then that Dr. J. is not charged with a crime of child molest?

It’s because the facts and circumstances attendant to that examination of S. by Dr. J. make it very clear to you what the purpose was for that touching. It was part of an examination. It was done with gloved fingers. It was done in the examining room. It was done for the purpose of trying to locate and identify any trauma to the genital area, if there was any.

The facts and circumstances attendant to the Defendant’s touchings are far different. The Defendant waited until S. was alone either in the trailer or house. He took her into his bedroom. He described the area he was touching, he referred to the vaginal area as a “pussy.” He asked S. to say things about the touching, to say she liked it. She told you about not telling about those touchings. Those facts and those circumstances require you, almost compel you to draw the conclusion that the touching was done with the specific intent for some sort of sexual gratification of the Defendant.

The Judge is also going to instruct you when he talks to you about Penal Code Section 288(a), that the prosecution has no burden, has no duty or obligation to show you that the touching actually aroused the Defendant or S. I don’t have to give you or prove to you through any evidence that the Defendant for example did reach any kind of climax or did achieve sexual gratification. We have evidence that that occurred. We have evidence that the Defendant did ejaculate. But that is not part and parcel of the crime. It certainly is corroborative evidence. But there is no further requirement that we show that the actual desires of either S. or the Defendant were aroused.

A long time ago it seems I read to you the information in this case. And it’s difficult when something is just being read to you to get the gist of the distinction between each of those 29 counts. I hoped I had made clear to you in my opening statement that we were not talking about 29 separate instances of touching. We are talking rather about different, many kinds of touchings that occurred in different time frames. That’s how the information, the charging document is sort of divided up. That’s what I’ve done with these overlays. I have tried to show you with them what the different time periods are, how it is you can differentiate between one count and the other count.

Counts 1 and 2 relate to a time period between June 1st,…and October 31st,…. That’s roughly the period of time from when S. moved into the Defendant’s house to before their marriage, the marriage of the Defendant and Patty S. in November…. The jacuzzi was still in the backyard, it had not been taken out yet. And the house is still painted red.

S. describes some activity occurring during that time. With regard to count 2, S. talks about an instance on an occasion, only occasion she recalls occurring in the jacuzzi, where there was touching, where the Defendant took S. by the waist and rubbed S. up and down on his, on his groin area, on his penis area. She could not recall whether she had her bathing suit on or not at that time. We know there were several times when there would not have been bathing suits on. Again that’s not a requirement. There is no need to show whether S. was clothed or not. You only have to make a decision of whether that kind of touching is the kind that comes within the ambit of Penal Code Section 288(a).

I need to make very clear in all of these time periods there’s a time frame, there’s a period of time. You have no obligations as jurors, as judges of the facts in this case to find a particular day. There’s no evidence of a particular day or date. There’s no evidence that says, well, yeah, that touching in the jacuzzi happened on September…. The law permits the time frame to be alleged and you as jurors simply need to agree that that particular touching happened within that time period. If you have a feeling that you have to find a particular day or date, you do not need to, you will be wasting your energy. It is a decision you do not need to make and cannot make because there is no evidence or any specific day. Only evidence with regard to the time frame.

With regard to Count 1, Count 1 is before you. You will have a verdict form for Count 1 and the Judge will instruct you with regard to the elements of Count 1.

You are going to hear me say something that a prosecutor rarely tells a jury. But I am urging you to acquit the Defendant of Count 1. In going back over the notes and the testimony of S., I do not feel that there is sufficient evidence to convict the Defendant of that count, not because S. didn’t describe that kind of touching, but S. could not be clear that that kind of touching occurred within that time period.

I urge you to consider that evidence, but it is my urging that you acquit the Defendant of that count. There is not sufficient evidence that that touching happened within that time period. And unless you can so find you must acquit the Defendant.

With regard to Counts 3 and 4, we’re talking now about a time period from approximately November 1st, 1985, to June 30th…, the remaining time after the Defendant’s marriage to P.S. and before the first summer visitation with S.’s father. This is after the marriage. The house is still red. The house has not been repainted. And it’s important, because we kept trying to differentiate with S. whether or not the touching happened in the red house, the gray house, the trailers and so on. At this point in time John is still living in the house and S. is upstairs sharing a bedroom with B. Those are some of the facts about that time period.

And S. recalls very clearly that the touching of S.’s boobies, as she calls it, fondling of the breasts, occurred clearly as she recalls it after the marriage. And the Defendant has S. touch his penis. S. described instances when the children would go into the Defendant’s bed where P.S. and the Defendant were. This is sort of what the Defendant described as a weekend ritual. And S. described that there were some occasions when P.S. would take B. with her down to the kitchen to make coffee. And the Defendant then would take S.’s hand and place it on his penis and rub it back and forth. That is the conduct described in Count 4.

Again, you do not have to try and find the date or day when that happened, simply that that conduct occurred in that time period and that that touching, putting S.’s hand on his penis, was done with the intent to arouse the Defendant’s sexual desires.

We are going to Counts 5 and 6, a different time period: November 1st…, immediately after, or around the time of the wedding, through January 30th…, which would have been the summer before moving into the trailers. Again, it is after the marriage. The jaccuzzi was removed sometime in the middle of this time period, in the summer …. And again in the middle of this time period S. has moved to the downstairs bedroom because J. has left.

S. describes during this time period, during the time they were still living in the house, the Defendant rubbed cream on her vaginal area. We have had a lot of discussion about rubbing cream, about where that took place, that it was in the living room. S. was very clear and very adamant that that cream was rubbed on her private part and underneath her clothing. In fact, she was not wearing clothing. Very clear, no doubt in her mind that occurred.

S. also talked about one time where the Defendant came downstairs to S.’s bedroom and had her touch herself, put her hands under her clothing and touch herself. And she recalls that occurring just the one time and occurring within that time frame.

The next time period is September 1st,…through June 30th…. This is after S. and B. get back from their first visit in North Dakota. The house has now been repainted. The house is now gray. And B. has Cub Scouts during the latter part of this time period, the scouting that took place on every Tuesday night.

S. talks about several kinds of touchings that occurred during this time period. With regard to Count 7, S. recalls one very specific instance in which the Defendant’s penis touched her vaginal area and that there was ejaculation. Most of the times S. talked about the fact that there was not ejaculation. I’m using a term other than what S. used. S. just talked about something coming out of the Defendant’s penis. The reasonable inference I think you can draw from those facts is that the Defendant ejaculated.

She recalls that that occurred in the Defendant’s bedroom, that the Defendant called her into that bedroom, that he ejaculated on top of her and that that ejaculate got on her private and on her legs. And after that happened, the Defendant took S. into the bathroom and continued to masturbate himself. S. talked about taking his hands on his penis and he kept going like this, rubbing his penis and more of the ejaculate went into the sink and S. described scooping, making S. scoop up some of the ejaculate and taste it and the Defendant told her that it was something her mother had done before and it was very nutritious for S.. That’s very clear in S.’s mind as to that time period.

Count 8 refers to another time when there was not ejaculation separate and distinct from Count 7. You are not required again as jurors to determine how many times that kind of conduct occurred, whether or not penis/vaginal touching without ejaculation happened just one time or ten times during that time period. S. talked about it happening a lot. All you need to do as jurors, and the Judge will instruct you about this, too, is to unanimously agree that that conduct occurred on at least one occasion during that time period.

I have not attempted to elicit or charge counts showing how many times it happened. You need to decide it happened at least once during the period of time that’s alleged. S. also talked about the fact that the Defendant had S. touch his penis during this time period, the same sort of thing where the Defendant would take S.’s hand and put it on his penis.

She talked about for the first time now as we get into this time period, after about a year of living at the house, a new kind of activity emerges other than just the penile/vaginal contacts, which is new, which is beyond the Defendant rubbing or fondling S.’s boobies. We now have the Defendant orally copulating S. And S. describes the Defendant’s mouth touching S.’s vaginal area.

Remember S. describing that the Defendant referred to that as her pussy, and as I said again asking S. to say things like, do you like it, do you feel good. S. responded to that by saying she was afraid to say anything other than yes. And that’s what occurred during the times where the touching, where the Defendant’s mouth would touch the vaginal area.

The Defendant’s hand also touched the vaginal area. Count 11 talks about that kind of activity where S. would talk about the Defendant rubbing her vaginal area. And then Count 12, the Defendant again fondling S.’s breasts. That kind of activity hadn’t occurred throughout the course of the molestations. S. talks about during the touch when the Defendant would touch S.’s vaginal area, about the fact that the Defendant would make comments to S. about, “You’re growing up,” would make comments to S. about checking for pubic hair.

One thing that I must make very clear to you is that the issue of penetration is really not an issue. Penetration of the vagina is not required per Penal Code Section 288. The law makes no distinction in terms of the crime of Penal Code 288 as to whether or not there is touching with both parties fully clothed, with penis to the vaginal area and whether there is full-blown intercourse. There’s no distinction. You do not have to decide whether there was penetration or whether there was no penetration. There clearly is evidence of penetration. You should not get bogged down in trying to determine whether there was penetration, how many times there is penetration. The Defendant is not charged with rape or statutory rape or any other crimes that would require penetration. As it is not an element of the crime you do not need to make any findings about penetration.

Counts 13 through 18 occur in a different time period, September 1st…through June 30th…, but a time period that really is much more narrowly defined by the testimony that you heard. Each of Counts 13 through 18 occur during the period of time when S.’s mother, P. S., was in the hospital. And that is something that’s been established to have occurred after January of …. The evidence has narrowed that time frame quite clearly to four or five days, to February of ….

The same kind of touchings, happened while S.’s mother was in the hospital. S. talked about the fact she wasn’t feeling well, she wanted comfort and went in the Defendant’s room. She was upset that her mother was in the hospital. During that period of time the Defendant molested her. S. talked about the fact like it seemed like J. was treating her like he was treating her mother, doing things with her like he would her mother.

The activity that is different and the only time that S. really describes this activity happening is when her mother was in the hospital, that is Count 16, the Defendant places his penis in S.’s mouth. S. recalls very vividly that happening and recalls that happening during the time when her mother was in the hospital.

Counts 19 through 24 represent a time period of September 1st,…through December 21st,…. And that’s the period of time in the fall when S. would have started fifth grade and the period of time when they moved into the trailers. Again, that time period has been narrowed somewhat so that you actually have information that the S.’s moved into the trailers in October…. So the time period really has been narrowed down to about a three-month period of time. B. continues in Scouts, continues going every Tuesday night. The same conduct has occurred.

You notice that Count 22 has been crossed off. I’ve crossed that off because Count 22 is no longer before you. You will not receive a verdict form for Count 22. You will not be instructed as to Count 22. That’s because there was an agreement reached, consent reached that there was insufficient evidence again with regard to Count 22.

S. was very clear that that kind of touching where J. put his penis in her mouth happened while her mother was in the hospital. But when I asked her on the stand whether or not that happened any other times and specifically whether that happened in the trailer, S. said she couldn’t remember. That response does not give you sufficient information to find the Defendant guilty of that conduct during that time period. There is insufficient evidence before you and that count is no longer before you.

S. described not only the layout of the house to you, she also described the trailers to you. She was very clear in distinguishing that setting, the trailers from the setting of the house and primarily from the Defendant’s bedroom. No issue of confusion of locations. Very clear in S’s mind what occurred in the trailers and what occurred in the house.

And finally the remaining five counts have to do with B. The Counts 25 through 28 involve a time period in, a very broad time period which is permitted under the law, June 1st…, the time when the children moved into the Defendant’s house, to June 30th…, the summer before the family moved into the trailers. B. talks about these kinds of touchings happening while they were living in a house, both when it was red and when it was gray. B. talks about very specific locations. B. talks about the time that the Defendant rubbed cream on his penis and was very clear that was on the bare skin, it was on his penis.

B. also talked about an instance of fondling when the Defendant called B. on his lap and fondled B.’s penis over B.’s clothing. The same kind of touching occurring in the truck. A broader time period from June…to December 21st…. There is no requirement that you have to decide with regard to Count 29, “Well, do we have to decide unanimously that it occurred in October or do we have to decide it occurred the year before?” You only have to decide unanimously that that incident with the Defendant fondling B.’s penis in the truck occurred during that time period. You need not be more specific. The law does not require you to find an actual date or time or month.

Count 28 relates to the Defendant touching B.’s buttocks in the bathroom. B. described that where the Defendant was washing B. and during that time in the shower the Defendant put his fingers, as B. said, up his butt.

Count 27 is no longer before you, again for the same reason. B. was very clear on the stand he had been wrong, there were no touchings that occurred in the jacuzzi. There was no evidence of that. You therefore don’t have enough evidence to find the Defendant guilty of Count 27. That has been removed. You will not be instructed as to that count, nor will you receive a verdict form as to that count.

Finally, there are added to several of the counts what are called under the law special allegations. There are special allegations primarily under two penal code sections. The first is Penal Code Section 1203.066(A)(8). That basically says that the touching involved is touching that is substantial sexual conduct and that when that touching happened, the child, the victim was under the age of 11.

Now, all of the touching that S. has described is what is considered substantial sexual conduct under the law. The law defines substantial sexual conduct as penetration, as masturbation or oral copulation. With regard to Penal Code Section 1203.0666(A)(9), you must find that the contact that occurred, the touching that occurred involves substantial sexual conduct and that when that touching occurred the defendant occupied a position of special trust. That’s because the law takes into account the aggravating factor that that person who was doing that touching is a person who does occupy a special position of trust and of authority over the victim. The law defines that very broadly. But included within that definition of a person who occupies a position of special trust is a stepparent.

When you receive your verdict forms you will see as to each of the counts that have been listed below that there will be the verdict form for the count itself and then there will be the additional findings to make with regard to the special allegations. You have additional decisions to make on those counts involving the special allegations. You first must decide that the touching occurred and it occurred with the requisite intent. Having done that and in finding the Defendant guilty, you move on to the special allegations. Again, count 22 is crossed off, because as I said, Count 22 as well as Count 27 are no longer before you.

When you are deliberating in this case I think it’s going to be very natural for you to want to distinguish or natural to distinguish between the touchings that occurred with S. and with B.. There is very clearly a difference in degree and a difference in duration. The molest that occurred with S. happened to a much more extensive degree and happened over a much longer period of time.

I think as jurors you have a much harder time deciding the intent with which the touchings were done to B. It is not as clear as it is with S.. There is, I think it becomes very clear to you that a touching that is done where the Defendant puts his mouth on S.’s vaginal area is a touching done with sexual intent.

The touchings that B. describes may be, or you may be convinced that those are touchings that are simply ones that happen, but B. is misinterpreting what just may be a sign of affection or it was touching in the shower, for example, that was a part of washing, it was not a sexual touching at all. If that’s your decision, if that’s your finding on the facts that those touchings were done innocently or just done during washing, then you must acquit the Defendant involving those counts.

The instruction that the Judge is going to give you with regard to that makes it very clear. And it talks about the circumstantial evidence that you need to prove specific intent. And the judge is going to instruct you along these lines. If the evidence as to any such specific intent is susceptible of two reasonable interpretations, one of which points to the existence of the specific intent, in other words the specific intent to arouse sexual desires, and the other reasonable interpretation points to the absence of specific intent you must, it is your duty to adopt that interpretation which points to the absence of specific intent.

I think that’s the issue really with B. Did those touchings happen with that specific intent or were they touchings that have been misinterpreted?

One of the ways I think you as jurors should approach the task in terms of whether touching was done is to look at the whole case. So many times I think in trying to make a decision we look at little pieces or little parts of the whole picture when it really is the whole picture that helps us understand about the conduct that is involved.

Part of that entire picture is the Defendant’s conduct with S.. That, I think, sheds a good deal of light on the kind of touchings involved with the Defendant and B. The other part of the picture is the photographs and the jacuzzi. So much has been made out of the photographs, this photograph with the children mooning, the photographs that the Defendant took of S. in the bathroom after she got out of the shower, nude bathing in the jacuzzi. Those are not crimes.

The Defendant is not charged with the crime of skinny-dipping in the jacuzzi with children. It is not a crime. It’s simply a decision that the parents made with regard to their children. But the Judge will instruct you that that evidence, the evidence of those kinds of facts, the evidence of lifestyle, the evidence of those photographs, for example, that evidence was not received and may not be used by you to consider that Mr. S. is a man of bad character or someone who would have committed crimes. This is not a witch hunt and we are not trying to get pieces of dirt and throw it on Mr. S. and say that, “You did that, you did that, and you are a bad person.” It is to give you a glimpse of how the lifestyle of this person affects the intent. The Judge will instruct you that that is the law.

With regard to the comments that B. describes that that the Defendant was rubbing cream on his penis, B. was very adamant that the touching was on his skin and occurred in the living room. That I don’t think is able to be interpreted any other way.

The Defendant’s position throughout is a denial. The Defendant doesn’t maintain that “I was touching B., but I was putting medicine on or I was looking at a sore.” The Defendant says that never happened. If you find that that activity did happen, I think you have no other reasonable option other than to decide it happened with that intent to arouse sexual desires.

Part of your job as jurors is going to be to determine the credibility and the believability of witnesses, all of the witnesses, not just the prosecution witness but all the defense witnesses, too. You are going to be asked to assess the credibility of B.J. and J.J, the first two witnesses that testified in this case.

One of the ways you assess that credibility is to look at their demeanor, their bias, motive, interest, anything that could affect their testimony and the manner in which they gave that testimony. I think B.J. and J.J. appeared to be very concerned, candid parents and related what they did. They were simply overwhelmed at the airport on December…when S.’s disclosure first came about. B.J. proceeded very cautiously from that point on. I think B.J. contacted every conceivable law enforcement agency from that airport back to Stockton. He didn’t want to get in trouble, frankly. He was supposed to return those children on that date at that time. He wanted to make sure everyone knew where he was with the children and what was happening. B.J. told you he took very special pains that night to make sure his own children were telling the truth. He talked to them about that. He talked to them about the importance of telling the truth and consequence of not telling the truth until he was satisfied in his mind that they were telling the truth.

You are going to be asked to judge the credibility and the believability of B.. B., I think, appears a very bright and a very responsive young boy who was willing to admit being wrong. You understand how hard that is for kids? It’s hard to do. And it’s even harder to do when 14 grownups and a man in the black robe with gray hair is looking at you and you say, “I was wrong.” And that’s what B. did. He was candid about “I was wrong.” That touching didn’t happen in the jacuzzi. It happened these other times.

But I think you also learned from B. that like most kids it’s real hard to talk about time. B. has a hard time talking about time. That’s one of the reasons I did the exercise or demonstration with B. When B. talked about the kind of touching that happened under the table that lasted for five minutes, when the defendant’s hand was under the table that lasted for five minutes, when the Defendant’s hand was under the table rubbing B.’s crotch, he said it lasted for five minutes. I suspected that B. didn’t appreciate the length of five minutes. That’s why I asked him and said well, let’s sort of time that. I asked him to, sort of estimate how long two minutes would be. For example, the rubbing in the truck that happened for two minutes, how long would that be. He closed his eyes and he remembered that in his mind and started and stopped. That’s 12 seconds later. That’s not unusual. That doesn’t mean it didn’t happen, it means it didn’t happen for two minutes, it means it didn’t happen for five.

Most importantly you are going to be asked to judge the credibility of S. It is hard for S. not to feel that she is on trial. It is hard for S. not to feel that she is the one that has done something wrong, because when she sits up there and she’s asked questions and you’re watching and looking and she’s asked more questions by the defense attorney and you are watching and looking, S. feels like she is on trial. And S. has been laid bare. If you can possibly imagine what it would feel like to take the witness stand and describe in intimate detail the sexual activity that you have had over the course of the last two years and to add to that the fact that we are considering this sexual activity which is supposed to be wrong and bad and a crime. Imagine that.

Imagine the guilty and the shame and the embarrassment. And she’s been laid bare and she has done that. For what? Why do kids lie? Kids lie to make themselves look good sometimes, make themselves look better. Kids lie sometimes to get themselves out of trouble.

What has S. gotten out of talking about these molests, relating the molests to you, disclosing them to you? Well, she doesn’t get any prizes. She doesn’t get any rewards. She got to be poked and examined and looked at by a doctor two times. She has had to face her mother’s constant disbelief. That’s important because you need to understand that S.J. does not live in a pretend world. S. doesn’t live in a bubble. S. understands the consequences of what this disclosure means. She understands that her mother doesn’t believe her and that for all intents and purposes her mother is alienated from her. That’s hurtful. S. understands there are consequences to what she says. She is not some happy-go-lucky little girl who didn’t realize the importance of what she says.

She’s also gotten to come to court twice, once at the preliminary hearing and once in front of the jury to talk about the things that the Defendant has done, to talk about it not behind a shield, not behind a closed door, not in chambers somewhere but right out here, right in front of you, with the microphone in front of her face and the Defendant sitting right across from her. That’s what the law requires and that’s what S. has had to do.

The Defense theory, I anticipate, will be that S. is simply lying. She’s fabricating all of this. It’s pulled out of thin air and she’s lying. To accept that theory you first have to ignore all the testimony about S.’s upbringing. You have to ignore the facts that there’s been a lot of testimony about the fact that S. understands the importance of telling the truth and the consequences of telling a lie, the fact that P.S. and B.J. were important parts of teaching her about the truth, that that was reinforced in school and at home and in court. You have to sort of ignore that and say that just doesn’t make any difference anymore.

I submit to you S. is not fabricating any of the injury to her genital area. That’s not made up. That’s not a story. That is real. Those are real injuries. That is real trauma. And the doctor testified, Dr. J. testified to you that that is evidence of repeated chronic trauma to that area.

The Defense will also talk about the fact that S. didn’t tell right away. And we have S.’s testimony that the Defendant told her on more than one occasion that this is our secret and what goes on in this house stays in this house.

S. talked about this morning about why kids, sometimes kids don’t tell right away, that sometimes it has to do with guilt, shame, fear of rejection, fear of not being believed. Maybe you already know all of that. Maybe Dr. B., the psychologist we presented as an expert witness, told you things that you already knew. But sometimes adults don’t understand how children can react to the situation because it’s so different from how they would have reacted. And I felt it was important that you hear what Dr. B. has to say about that, Dr. B., who has looked at these children over the last decade.

The reason why S. is lying and the reason she’s making it up is because she has to go live with her father? That’s not something new. It is not something that sprang up a couple months after S. got back from summer visitation. We have had testimony from S. herself that she wanted to live with her father and wanted to live there for years. I ask you to look at that evidence with your common sense, to really look at it.

Why would it be strange for a child to prefer not to live in an abusive home? Why is that unusual? Why should we expect a child to prefer to stay in the abusing home? S. has talked about repeated instances of sexual molest by the Defendant. She’s talked about strict physical discipline of B., so hard that B. peed in his pants on one occasion. She has talked about being molested by J. in that home, and her mother cannot protect her in that home. And perhaps S. sensed long ago that when push came to shove, P.S. would come down hard on the side of her husband.

In your job of satisfying the credibility of witnesses, it’s going to be part of your job not only to decide the believability of the children and of the Jones but to look at the credibility and the believability of P.S. in this case, P.S., who has been here throughout the pendency of the trial and who has testified on a number of occasions.

P.S., from the very beginning, the very beginning has been forced to choose sides and has chosen the side of her husband. That choice I think has been for a number of reasons. One of those reasons I think is fear, fear of culpability. Mrs. S. has talked about the fact that she has been afraid that she herself would be charged, has talked about the action she’s taken about that. And the judge is going to instruct you that it was entirely appropriate for Mrs. S. to hire her own attorney if she saw fit. That’s a right she has.

You need to look, however, at what may be motivating Mrs. S. when she testifies to you, when she communicates her belief and her ideas and the conversation she’s had to you. You need to question the bias and the motives she may bring with her into the court, the fears she may bring with her into court. And the judge will talk to you about how you can consider the attitude or the interest a person has in the giving of testimony in determining their credibility.

I think it interesting that while Mrs. S. was so very, very clear about everything else that happened, so very, very clear about conversations she had with S. three or four years ago, clear about dates and times and everything having to do with S., all of a sudden P.S became very equivocal about, for example, she’s not sure who’s rubbing lotion on who in the living room. She’s not sure how many times that happened. She’s not sure if she’s wearing a bra or not. A lot of the things she’s just kind of vague about.

Now, she admits that there was a photograph taken of the children, a mooning photograph for lack of a better word. Defendant says, “Show me some tush,” and the kids drop their pants and Defendant takes a photograph. The kids testified all along that mom was there in the kitchen, she saw that happen. When Detective H. first asked P.S. about that on December 30th…, P.S.’s quick and immediate response was that that didn’t happen, a different response than we have today in trial. And we still have not seen that photograph.

P.S. is a mother, a mother of two children. And I submit to you that another force that is motivating P.S. to talk to you in that manner that she has talked to you, to give the answers she’s given to you is the idea in P.S.’s mind is, “If this is true, if this happened, what does that say about me? What does that say about me as a mother? How could I have married a man that would hurt my children? How could I not have known? How could I not have protected my kids? I’m a good mother. And why didn’t my kids come to me? Why did they go to their stepmother?” And maybe that hurts most of all.

By believing in the Defendant, P.S. is trying to believe in herself. And she is relieving the guilt that she may feel about what has happened to these children. And that belief is the only hope she has of getting those children back to her.

But P.S. did not molest these children. This trial is not about P.S., it’s not about whether she is a good mother or a bad mother. P.S. was caught up in the situation that got way out of hand, and that got beyond her control. The Defendant, J.S., molested these children.

And your decisions about the Defendant’s guilt in this case would be so much easier, I submit to you, if the Defendant was not a nice guy. The Defendant is nice guy. The children have talked about that. The children have talked about the fun they had with the Defendant. The children have talked about the outings they have gone on. We have heard nothing but the fact that the Defendant is a nice guy. And we have had several fine upstanding people from this community come in and tell you about the Defendant, about how honest the Defendant is. And I would hope that each and every one of us, if we were in trouble, would be able to find persons in the community who would come to talk about us and our honesty.

We all know people about whom we have said, “I never would have thought that of him” or “My gosh, did you hear about what ‘X’ did? I never would have thought him capable of doing that.” We have all had that experience. The truth of the matter is that people commit crimes when they act out of character. That is the Defendant, acting out of character in committing these crimes.

The character witnesses and the people that have talked to you about the Defendant don’t know what happened. They were not there. They talked to you about their association with the Defendant at work, on the pit crew, his family, friends. They were not there and they do not know. The only people who know are the Defendant and the children.

The fact that the Defendant is a nice guy is perfectly consistent with the reality of everything you’ve heard in this case. P.S. would never have married the Defendant if he wasn’t a nice guy. She didn’t trust, if he wasn’t a nice guy, she didn’t trust him with her children. How do you, if you are S., tell your fifth grade teacher that the man who came in and played Santa Claus is molesting you? The nicer the guy, the harder it is to tell because the greater is the fear of disbelief.

That’s the reality of the situation. If no one liked the Defendant, if he was mean and cruel and ruthless, ugly, maybe it wouldn’t have been so hard for S. to tell. But it’s hard when they are nice guys, because no one wants to believe you that someone as nice as John could do these things.

I ask you when considering all of the evidence in this case to look beyond the surface. There’s a lot to be said for that old saying, you cannot judge a book by its cover. The truth in this case is beyond the surface. The truth in this case is that J.S. molested these children. And I ask you to return verdicts of guilt on all counts, save count 1. Thank you.

(Rebuttal closing argument:)

**Prosecutor:** Good morning, ladies and gentlemen. Some of you are looking at me and saying, “She’s standing up here again and she is going to talk to us. What could she possibly have left to say? She talked for an hour yesterday.”

If I had anything to with changing the system of how we give summation to jurors it would be—this is really an artificial way of doing it. The better way to end a trial would be for everyone to get together with coffee and danish and you ask me the questions you have or ask defense counsel about it. We are not talking, I am talking at you. But I’m stuck with this way.

And it may be that 10 or 11 of you don’t need to hear the things I’m saying because you already know them. But I have a very grave responsibility to the prosecution of this case, to the people of the State of California in the prosecution of this case. And if there’s one or two of you who may have questions left after the argument of defense counsel, I have an obligation to address those to you. And I will do that now.

Your job is not to exaggerate facts. Your job is not to misinterpret the facts. You took an oath as jurors in this case that you would well and truly judge the facts of this case. The judge will give you an instruction that you are under an obligation under the law not to speculate about the facts of this case. And each and every one of you were asked the question during *voir dire*, if you were told that the law tells you may not speculate about facts, could you follow that law? And each and every one of you said, “Yes, I will follow that law.”

The Defendant didn’t take that oath. The Defendant has not made that promise. The Defendant has exaggerated the facts. Let’s stay on track. Let’s focus on the facts of this case, because you have all of the facts that you need to convict the Defendant of these counts.

All of a sudden, now, P.S. has been beaten by her husband. These are beatings by B.J.. All of a sudden, now, B. is talking about the Defendant masturbating him at the table. That wasn’t the testimony. S. talked about the Defendant putting his hand on B.’s pants on his crotch area and rubbing it. We are not talking about masturbation. We are not talking about him pulling open his pants. We are not talking about him touching the skin of his penis. We are not talking rubbing to ejaculation. All of a sudden it’s now masturbating B. All of a sudden now it’s everybody masturbating B. with cream in the living room. P.S. is doing it, S. is doing it, the Defendant is doing it. That’s not the testimony. Those aren’t the facts.

All of a sudden, now, the testimony is that after the summer of …S. is constantly talking about going and living with her father. Those aren’t the facts. Mrs. W. said, oh, once or twice since she came to S.D. she talked about that. All of a sudden, now, you are led to assume that the fact is that P.S. doesn’t have a chance in this world of having those children back to her in S.D., that B.J. has permanent custody. That’s not the fact. B.J. has custody during this trial, pending this trial. The fact is the only chance, the only hope that P.S. has of getting her children from Alaska here to S.D. with her again is that if this Defendant is acquitted of all these charges. That’s the fact. They are not safely tucked away up in Alaska. It’s not decided.

The testimony now is that S. was completely different after the summer…. But then, remember, I had posed the question to S.Y., who is supposed, according to the defense, like her blood sister, her best friend, the person she would tell anything to, “Did she seem different when she went into fifth grade?” “No. Same old S.” But she is supposed to be this child possessed in 19….

Now, we have evidence that there were classes, not one, classes in which S. would have learned to lie about being molested. Grownups come into school and say to children, “Don’t like it at home? Things too strict? Want to get away? Here’s what you do, you lie about being molested. You say someone has touched you, even though it hasn’t really happened. That’s how you do it. Class dismissed.” That’s the inference. That’s not the fact.

And best of all, best of all, I wish I had a nickel for every time this happened during the trial. Now there’s a phantom lover during the summer…. Some phantom had consensual sexual activity with S.. I don’t know who that was. Of course, we never asked S. any questions on that on cross-examination. P.S. didn’t say anything about that. B.J. and J.J. weren’t asked any questions about that. There is a phantom out there. That’s who we can pin this whole thing on. Trial dismissed. Trial over. We will blame it on the phantom. That’s so easy to do. Let’s do that and not look at the facts.

But the Defendant wants to plant that little seed in you, because the Defendant’s hope is that little seed in you is going to grow into a reasonable doubt. The seeds must come from facts, not speculation. You took the oath not to speculate, not to conjecture. Our system rests upon that promise that you have given us.

The Defendant challenges and attacks the investigation process conducted by the prosecution in this case. Never mind the fact that all the law enforcement agencies are up in Northern California. Never mind the fact that the children are in North Dakota.

What efforts did the prosecution make to establish the Defendant’s guilt in the prosecution’s own best efforts in evaluating the case before it ever came to trial or the jury? Well, a lot of people were talked to. All of the J.’s were talked to, including the children. The prosecution talked to several other people and to Dr. J. and requested the physical examination. The prosecution requested that the children be interviewed by social workers in North Dakota. The prosecution interviewed P.S. But the theory is, “I don’t need to talk to you, P.S. You are just going to say it didn’t happen.” Why did I talk to her then? They sort of gloss over that fact. The prosecution wanted to talk to P.S.’s parents but they are too emotionally caught up, can’t involve themselves. They didn’t seem very emotionally torn or upset when they testified here. They are in support of their daughter, P.S. And it’s a sad commentary on the support that they have not given to S. or to B.

And then there’s that little thing called the preliminary hearing. Now, defense counsel wasn’t there then, another defense attorney was there then. That was who was representing the Defendant. And what’s the purpose of the preliminary hearing? To put the children on the stand to test the evidence through direct and cross-examination. We know that that preliminary hearing was had. We know it was in September. We know the children were flown back out to North Dakota. They were there. They were tested at the preliminary hearing. See, the defense attorney wants you to think that this is all just one speculation piled upon another speculation and that the prosecution never really investigated, the prosecution didn’t really inquire, we charged the man, and by gosh that’s the man we are going to find guilty.

Well, a couple of centuries ago if we had been in Salem, Massachusetts, the way we would have tested the guilt or innocence of the Defendant was to tie a stone around him and throw him in a lake like you did the people who are accused of witchcraft. You know what their standard was back then? If he sank to the ground because of the stone he’s not a witch. If he floats to the top, despite the stone, because everyone knows that witches are made of wood, then he’s a witch and we’ll burn him at the stake. Well, great for the person who is dunked in the lake, they either drown or they burn. Is that really what you think the system is about here?

The Defendant has had every constitutional right afforded him in the trial. He has had the right of representation. He has had the right of cross-examination, the right to produce witnesses, the right to testify on his behalf if he so chooses. There is nothing unfair or misguided about this trial except what the defense wants you to think about it.

The Defendant wasn’t ripped apart when he was on cross-examination. He sat here, he was in this very chair, and he didn’t break down. He didn’t hang his head and weep and say, You’re right. I confess. I did it.” You know where that happens? In Perry Mason. That’s where that happens. It doesn’t happen here.

What did we learn about the Defendant’s testimony? We know first of all that the Defendant is a witness unlike any other witness in a trial, because the Defendant and the Defendant alone gets to sit through the testimony of every other witness before he testifies. He sat through the testimony of P.S.. He heard what she had to say. He sat through the testimony of the children. Is it surprising there are no inconsistencies when you can sit and listen to what the testimony has been and can tailor your responses? So we learn that the Defendant was very well prepared. And we also learn that the Defendant knows that S. can tell the truth and has told the truth during this trial.

To acquit the Defendant, to exonerate the Defendant you must conclude that S. is a liar. There is no middle ground. There’s no compromise on that. There’s no kind of excuse that, “Well, she’s just confused about who did this—the Defendant or the Defendant’s son J. Jr. She’s mixing them up. She’s mixing the incidents up.”

There’s no confusion in S.’s mind about the molestation by the Defendant’s son J.Jr., and the molestation by this Defendant. S. talked to you very graphically about the things that J.Jr. did to her, that J.Jr. took her up to the bedroom, took her clothes off, spread her, put spit in her butt and then rubbed his penis against her butt. That happened twice. J.Jr. orally copulated her once. And one time there was penile/vaginal contact. That happened once. She was clear on that it happened in the house while J.Jr. was baby-sitting.

I’m so concerned that S. at this point has become an abstraction to you. Do you remember what she looks like? Do you remember what she sounds like? Every day you see the Defendant and everyday you see P.S. and her parents. It’s been a long time since you’ve seen S. She was here just one day. Now she’s hundreds of miles away. But each and every day she is waiting and wondering about this trial and wondering if you will understand and if you will believe. In your hearts and in your minds you must say that S. is a cold, calculating liar, deliberately lying. That’s the only way in which you can acquit the Defendant.

But the reason why I do not think that you will do that is because S.’s testimony has that ring of truth to it. And because of that you can be assured that she is telling you the truth.

The defense attorney has talked a lot about the inconsistencies in S.’s statements. You’ve heard about all the people that S. has talked to about the case: initially talked to J.J., then to her father, then to Detective H., then to B.M., then to Dr. B., to S.M., and then all the people in S.D. who are involved. That’s a lot of people.

Wouldn’t you be concerned if every single time that S. was asked to talk about these incidents she did it in the same, rote way, nothing changes, it’s always the same, the exact description every time? Wouldn’t that bother you? Wouldn’t that cause you to think, “That’s not the way I really think. Sometimes I leave things out or sometimes I remember something differently”? You need to use your common sense when evaluating S.’s testimony.

We talked a lot in that little diagram there about the difference between S.’s trial testimony and her conversation with Detective H. What you need to remember, which defense didn’t want to remind you of, is the context in which that conversation was had, the fact that Detective H. is interviewing S. less than 24 hours after S. has made the initial disclosure. S. is in a strange city with a person she’s never met before telling for the first time to somebody outside the family what has happened to her by the Defendant. And she doesn’t know if she’s going back to S.D. or not. She’s taking a real big risk: “I’m going to say it. I’m going to tell you what happened. I don’t know, I may be going back there. And I’m real scared of that.” Do you think that might be a reason why S. does what Dr. B. talked about, tests the waters a little bit, see what happens? “Am I believed?” It’s a big risk.

S. is eventually relating multiple incidents of sexual molest over a two and a half year period. But she didn’t give all of that to Detective H. So that must mean none of it ever happened. Well, S. didn’t talk about the photographs either, those silly, stupid photographs. Does that mean they didn’t happen because she didn’t tell Detective H.? We know that’s not the case.

Talk about the fact that there were inconsistencies, that S. told Detective H. that B. was in bed when the Defendant took S.’s hand and put it on the penis. That’s not what S. said. And you recall Detective H. saying that was an assumption on her part.

The defense talked about the fact that S. denied being molested by her stepfather to her aunt when her aunt asked her in the restroom at C.’s Restaurant. Of course, sitting out in the restaurant was the Defendant and P.S. and her grandparents.

And what I thought was so interesting when her aunt testified—because what was the conversation in the restroom? First her aunt says, “You know, I was real curious. There was something that made me curious. I needed to ask that question. I went in the restroom and I asked S. whether or not her stepfather had been touching her.”

What was the response? No. I asked her, “Did she say anything more than that?” No. She just said no. “Well, what was her tone of voice?” She says a normal tone of voice.

What’s interesting is what S. didn’t say. S. didn’t say, “What are you talking about? Oh, gross. Oh come one, what are you—that’s weird. Of course not.” No, that wasn’t the response. The response that S. gave to her aunt in the restroom was the same response that S. gave to B.J. and J. J. when B. brought up the mooning photographs: No. Shut it down. Stop it. We’re not talking about it anymore. No.

S.S. as a witness tried very hard to be accurate in her testimony for you. And I think each and every one of you who has had any experience with children knows something about how children behave when they lie, when they are saying things that have absolutely no basis in reality. Lying children have an answer for everything, because it’s easy to do. They are making it up as they go along. Lying kids never say, “I don’t know” or “I don’t remember,” because they just do it. What color was the bedspread? Green. What time was it? 3:30. What were you wearing? My shorts and my top. What color were your shorts? Pink. What color was your top? Blue. Answers for everything. That wasn’t S.’s testimony. She answered the best she could on things she could remember. The things she couldn’t remember or didn’t know, she said, “I don’t know.” I guess it would have been easy to make something up, but she didn’t do that. She said, “I don’t know.”

And lying kids are never wrong. Have you noticed that? Lying kids never get in trouble. Never do anything wrong. S. wasn’t that way when she testified to you. Remember her answer about how she found that photograph about, as the defense describes it, the Coppertone photograph. It wasn’t in the family album. It was when she said I was snooping through the Defendant’s desk drawers and I found it in the drawer. And she readily admitted to eavesdropping at her parents’ bedroom door. She admits those things. S. is not a perfect child. She doesn’t propose to you that she is. She’s coming to you. And she’s told you about things that have happened, warts and all. That’s who S. is for you.

The other thing that you have to consider about why S.’s testimony has that ring of truth is the fact about the knowledge, the sexual knowledge. Where did S. get the knowledge to make these things up? She talks about having to masturbate the Defendant. She talks about mutual oral copulation, the Defendant orally copulating her. She talks about tasting the ejaculate and the Defendant saying to her, “It’s okay. Your mom does it. It’s nutritious.” Where did she learn that? You don’t learn that from listening at a door. But that’s another little seed that the Defendant has planted or tried to plant in you. Use your common sense. S. knows that because that’s what happened to her.

S. initially denied that any photograph was taken of the kids with their pants down. She initially denied that when B. said that during the summer of 1986, she denied that happened. “No, it didn’t happen, B.” That’s kind of strange behavior on the part of a girl who wants to do anything she can to get the Defendant in trouble and go live with her father. Yet we know the photograph existed. Why would she do that? Because in S.’s mind that activity, that stuff that the Defendant did is part and parcel of everything else that is supposed to be a secret. And she doesn’t talk about it, not because it didn’t happen but because she is afraid.

The skinny-dipping. Why did S. wait two and a half years to tell anybody about that? It’s another admission by the Defendant that that happened. So why would S. not want to say anything about that to anybody? If her whole goal in life is to dump stuff on the Defendant and get to live with her father, why wouldn’t she say anything about that? Because again it’s part of what’s wrong in this family. It’s part of that secret. And it’s easier for S. to bear that secret than to suffer the consequences of telling.

But even children, even children have their breaking point. And S. had her breaking point. And she finally disclosed it to J.J., tearfully, slowly and desperately at the airport because she can’t go back. It just can’t go on happening anymore.

S.’s testimony also has the ring of truth because S. didn’t corroborate any of the instances of B. S. didn’t say, though she very clearly admitted that there were times when they all rode in the truck the same way that B. describes and the door was loose and rattling and they all sat around the kitchen, S. never said, “Oh, yeah. I saw John put B. up on his lap and I saw J. rub B.’s penis.” She didn’t say that. But it would have been so easy for her to do that. It would have been very easy for S. to say that to you and to help her little brother. But S.’s being truthful with you. She has told you what has happened. She has told you what she doesn’t know. She has told you what she has and has not seen.

And another very interesting point that the Defendant doesn’t want to remind you of but of which I will, you recall both S. and J.J. talking about the fact that even after S. moved to North Dakota, months after moving to North Dakota, S. had a fear of being alone with adult men, even her father. And S. expressed that fear to J.J.: “J.J., I know Dad wouldn’t do anything to me, but I’m just afraid to be alone with him.” Why in the world would S. have that residual fear if in fact she had not been abused by an adult? Think about those facts. That’s part of the whole picture.

And probably the most interesting of all that the defense again does not want to tell you when going over S.’s testimony is the fact that S. said that one of the last times that the touching happened in the trailer, “After the touching happened I was waiting for Mom to come home. And I was practicing my piano. And J. came up to me and he said, in a normal tone of voice, we can’t do this anymore. You’re got to start saying no now.”

How does S. know to say that unless S. has taken some advanced course in dynamics of incestuous relationships? How does she know to say that that’s what happens, that the onus of stopping this molest is now on her? I asked her, did it stop after that? NO, it kept on. That testimony has the ring of truth in it. It is believable.

Dr. Johnson talked to you about not only his training and experience but the examination he did of S. This is a picture of the scar. Dr. J. talked about several physical injuries to S., the scar and the fact that her hymen was almost completely gone, the result of repeated chronic trauma to that area, not the result of one time, repeated instances that would become less painful over time, repeated instances, not one. And the scar can last months or can last years.

I find the whole argument with regard to the defendant’s son, John, Jr., fascinating because what the Defendant wants you to believe now, ladies and gentlemen, is “Yes, we have physical evidence of molestation, it’s unchallenged, there were no defense doctors to come in and say that’s not what that is at all. We know S. has been molested and we concede that to you, ladies and gentlemen. But it was J.Jr., he is the culprit, the Defendant’s son, the 15 or 16 year old that molested S. That’s who did that.

There’s two problems with that. The first is that though J.Jr. may have contributed to some of this, he cannot account for it all, because S. talks about only one instance of vaginal contact with John, Jr. But the more interesting problem with that theory is the fact that what is the evidence that J.Jr. molested S.? What evidence do you have that there was ever a molest by the Defendant’s son? You have S. You don’t have an eyewitness, you don’t have a confession by J.Jr. You don’t have J.Jr. marching in here. So there’s the rub, ladies and gentlemen. S. is honest when it helps the Defendant, but S. is dishonest when it hurts. Believe S. when she tells you about the Defendant’s son; disbelieve S. when she tells about the Defendant. It doesn’t work that way, ladies and gentlemen. It just doesn’t work that way.

We talked in *voir dire* during jury selection about loose ends and about the standard of proof and puzzles. And after the trial got started, I think as I always do about how I respond to the argument of reasonable doubt. I thought to myself, “We talked about a puzzle. And I like to look at things and show things during argument. Why don’t I bring in a puzzle and let me demonstrate to you about reasonable doubt? That’s what I did.

Now, my youngest son is only three. And I took one of his puzzles. So unfortunately, the subject matter of the puzzle is somewhat juvenile. It’s not one of these 500 piecers. But this is the puzzle. Not a piece missing. You see what that picture is.

But in the course of the trial you lose pieces sometimes, there are missing pieces, there are loose ends. Some things do not always have answer and you don’t always get the whole picture. And there are questions left in your mind and there are doubts left in your mind. And I have taken out a lot of the pieces of the puzzle. And now you see what is left. It’s not all there anymore.

You have to have questions in your mind what goes in those places, what would fill up the rest of those pictures. You have doubts about that because it’s not there. The question is: Do you have a reasonable doubt about what this picture is? Can you tell that it’s a little boy in a superman suit? You don’t have all the ends tied up. But you know what that is to a moral certainty and abiding conviction. And that’s the standard of the law.

Every single one of those books has dozens and dozens of criminal cases in them. And every single one of those criminal cases was decided and the Defendant convicted on the standard of beyond a reasonable doubt. It is not an impossible standard, it is one employed in every criminal case. You have the evidence before you, evidence beyond a reasonable doubt so that you can find the Defendant guilty of each of these counts.

I submit to you, ladies and gentlemen, that J.S. wants a second chance from you. He’s here for a second chance. J.S. had two and a half years of second chances. And it is time now for J.S. to accept the consequences of his actions.

When I was growing up my parents told me, “C., you can do anything you want, good or bad, as long as you always accept the consequences of what you do.” That is what Mr. S. must do now, what he does not want to do.

The Defendant has a constitutional right to have you make the decision of his guilt. And I submit to you that that decision is an important one, but it is not a difficult one.

Defense counsel alluded several times to the idea that there is something under this surface of J.S. And I maintain that that is true. But I don’t ask you to speculate about what that is or to think that there must be some evil things going on that we don’t know about. What is under the surface of J.S. is what S. has described. It is in the bedroom, it is in the jacuzzi, it is in the trailer. It is oral copulation, masturbation. That’s what is underneath the picture.

You’ve heard about people who buy paintings and you take them home and do a little scratching and a little scratching and underneath they find another painting. That’s what this case is. What you have seen about J.S. is that top painting. It’s what P.S. believes with all her heart. What is underneath that painting is the truth about these crimes. You have the evidence to convict the Defendant of these charges. I ask you to weigh the evidence carefully, to consider it carefully and to return verdicts of guilt of those counts. Thank you, your Honor.