

The Trials of Gabriel Fernandez
by Brian Knappenberger

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Season 1 Episode 2- Evil in This Courtroom

This case was big

Talking about hundreds of witnesses,

Thousands of documents.

It ended up being over 1,200 exhibits.

We were nervous

As a prosecutor,

You do kind of think about how its gonna go down.

It is somewhat like being an actor.

You know, its real life,

But you do have to go over in your head how you're gonna

Convey something to a group of strangers,

And are they going to understand

What you're trying to explain?

We work really hard in trying to present it to the jury,

In a way that they would feel

What we were feeling, in a way that–

Gabriel's not there, but you want them to hear Gabriel.

In the DA's office, for several years,

Probably dating back to the OJ simpson case,

Former district attorney Gil Garcetti created the family violence unit.

And the family violence unit

Was supposed to handle...

Domestic violence.

But we noticed

That some of the child abuse cases were very complex.

We realized that we needed to know more

About medicine and science,

And how to age bruises,

And how to look for evidence in a pattern of abuse,

And how to look at old medical records, and put together a case.

And so, I created the Complex Abuse Unit.

As prosecutors, we need to up our game a little bit.

My unit's the Child Abuse Unit,

One of the first of the nation that I know of.

And all we handle is cases where children were killed or cases where,

Because of the child abuse,

They have some really serious injuries.

There's three prosecutors in that unit.

We get familiar with a lot of the detectives in LAPD,

And the Sheriff's Department who just work with child abuse.

In big trials, I do a little research on the defense attorneys.

He is very well known in Los Angeles he's been doing this for almost 30 years I've been doing it

for a little more than 10 I am a little intimidated

I never met judge Lomeli.

and from the first time I saw him I was like he's a good judge

He's a smart judge, he's a fair judge.

Are we strong on this?

Yeah, we're good.

-All right.

We'll be getting started in just, uh, a couple of minutes.

Ok. In the audience.

This case is going to be very emotional

So if at any point you find yourself getting a little overwhelmed

Or losing your composure,

Please step out of the courtroom, compose yourself,

And then come back inside.

We're going to be bringing out the parties in just a few moments.

Make sure your cell phones are turned off as far as the ring capacity.

I understand the jurors are present.

Is that right?

Yes, your honor.

-All right.

Initially, both defendants were to be tried together,

By separate juries,

But her attorneys filed an Atkins motion,

Claiming that she suffered from intellectual disabilities,

And that would cause a delay,

In terms of Isauro Aguirre's trial.

So the court separated the two.

All right. Good morning, ladies and gentlemen.

Goodmorning

We are prepared to go forwards on the matter of the

People vs. Aguirre.

We have all counsel present.

We have the defendant and all jurors.

Ladies and gentlemen, we've reached the point

Where the attorneys are allowed to give opening statements.

And an opening statement simply put, is kind of like a road map

Of what each attorney expects the evidence is going to show.

I'm the leader of this whole team.

Its not just a team sitting at my table.

It's all the witnesses.

It's all the family members,

It's all the community.

It's all the police.

It's everybody's looking at you.

I'll charge Mr. Hatami and ask you if you are prepared to do that.

-We are, your honor.

-All right, you may proceed.

Good morning, ladies and gentlemen.

-Goodmorning

On behalf of the Los Angeles County District Attorneys Office,

I'd like to thank you for being a juror in this case.

The evidence will show this case is about one thing.

And that the systematic torture

Of a helpless and innocent child.

This is Gabriel Fernandez.

He was a happy and healthy seven-year-old boy

When he went to live with the defendant in 2012.

After eight months of being with the defendant

This is how Gabriel looked.

This is the defendant.

When he was arrested, he was six feet two inches.

He weighed 270 pounds.

And this is Gabriel

When he died he was eight years old

He was four foot one

He weighed Fifty Nine Pounds

Gabriel Fernandez has a tough beginning

When he was born

Um, his mom gave him away

And he was raised by his grandparents and his uncle

And they showed love to him

And he showed love to them

And I think through is life,

He always wondered why, You know, his mom didn't love him.

He was a sweet kid.

He has a sweet spirit.

Children are innocent and they're very unconditionally loving

And so I think everybody can see probably a little Gabriel in them

Or spittle Gabriel in, you know, their children.

What are the charges?

The charges you'll have to decide, ladies and gentlemen,

The charges, at the end of this that I'll ask,

If you find the defendant guilty of,

His first-degree murder.

and that the murder was intentional,

And involving infliction of torture.

As far as I know,

It's the worst case of child abuse we've ever seen.

You don't hear about that child abuse cases

Where we're seeking the death penalty.

It's rare.

So I've been at the trial since it's inception

This is a death penalty case.

It means something to be a death penalty in California.

San Quentin contains the states only death row for men.

725 murders, cop killers, child killers and serial killers.

The question seems to be posed automatically at this point,

Whether or not Isauro Aguirre is a monster.

He, from the very beginning, wanted to fight this case.

Early on, a clergyman snuck audio equipment in, to visit him in jail,

And released audio of him speaking in Spanish to Univision

[speaking Spanish] one of the accused broke their silence from Prison and told Oswaldo

Borraez that his hands are clean

[Isauro speaking Spanish]

They want me to plead guilty

For something I haven't done.

They want me to sign a paper, that says I am guilty of something

I haven't done, justifying all that, for I know that, in my heart and in my mind ,

In my soul, that I am innocent.

My hands are clean.

[Chadburn] people were wondering how could anybody do this?

What was their motivation

Was Isauro being motivated by this black widow temptress?

Was Pearl an evil sociopath or was she a drug addict?

Was Isauro Aguirre jealous of Gabriel's attention

that he took from Pearl?

Even more important,

How could people have seen all this abuse,

With Gabriel Fernandez and not intervene?

John Alan and Micheal Sklar are trying to show that Isauro was

Either in a blind moment of rage,

At the moment he beat Gabriel to death

Or he was just heavily under the influence of his girlfriend.

The heaviest lift on a murder trial would fall with the prosecution having to illustrate

That this was an intentional act.

[lacey] you have got to have concrete evidence,

Of their state or mind.

Imagine how difficult that is,

Because you're coming in after the fact.

And you know that that person is going to be-

Have led to a double life.

The prosecution has to show

That that was his intent

without a shadow of a doubt,

That he intended to kill this child.

Your honor, the people's first witness is firefighter James Cermak.

All right. Firefighter Cermak, if you would, approach the witness stand.

Pearl first calls 911,

And so the fire department

Then immediately sends out

Paramedics and EMT

How long have you been a firefighter/paramedic?

Nineteen years.

And in May 22nd 2013,

Did you respond to an apartment complex located in Palmdale, California

Country of Los Angeles?

Yes

And could you tell the jury

What's the first thing you remember

When you got to that location?

The very first thing i remember is there was a...

maybe ten-year old boy that was outside.

And inherit was early in the morning.

I just thought it was strange

That a ten-year-old was outside at that time in the morning.

And he was. Uh,

Pointing up to the stairs,

Directing us up to the stairs.

[Hatami] And when you say "we" who was with you?

[Cermak] Sean Fox was my partner on the squad that day

He was driving.

He was directed into the back bedroom.

[Hatami] people call firefighter/paramedic Sean Fox.

All right, sir.

[Hatami] Most firefighters don't testify.

But they do in child abuse cases.

And all of them, that was the first time they ever testified.

How long have you been a firefighter/paramedic?

[Fox] um, 20— over 20 years.

Uh, I was the fist, uh, in the apartment complex.

-Did you see Gabriel in the bedroom?

-I did.

He was on the floor,

Face up.

I could tell,

from...

You know, not right on top of the bed, a close distance, that he was,

Uh, what appeared to be

In a —

severe distress.

I was instructed the male subject at the house to pick up the boy,

And bring him out into the living room 'cause I had my hands full at that point.

Uh, we noticed that the child was not breathing.

Uh, he has no heartbeat,

So he was in cardiac arrest.

So we started CPR.

At that point, it was a team effort.

The. We started compressions.

We started ventilations.

And we gave epinephrine,

Which is adrenaline,

To try to restart the heart.

This was about four and a half years ago.

Why do you remember that firefighter/paramedic Fox?

Sorry. I remember that call because of the, umm..

The nature of the call itself.

What turned out—

What was—

What came in as a...

A full arrest of a child.

Umm..

It turned out to be the most haunting call I've ever been on.

We had no idea what was happening obviously, so you just think it's a ...

a cardiac arrest but...

What has happened is, when we were doing CPR, um...

We just started noticing all the trauma on his body.

[Yang] it was a set of facts, that was ex— extremely brutal.

And John had very very clear idea in his mind,

His theory behind the prosecution of this case.

Which was bringing everything forward to the jury.

Letting them see...

Um...

The amount of callousness.

[Hatami] if you look at those photographs,

It's the worst of the worst

I've never seen anything like it before.

Even though Gabriel's gone,

Each one of those photographs...

Gabriel's talking.

-I think this photograph, Scott, is important,

Because it does show the BBs on his legs.

It also shows the the burned spoon mark.

Ligature

Yeah, and the liga— yes, you're right that was— you're right.

The ligature marks clearly are shown,

So I think it's an important, um,

-photograph to show to the jury.

-absolutely.

Umm, and in this photograph...

does show, um, some of the injury to the neck,

As far as the scrubbing and the chocking,

The injuries to the chin.

Um, it also does show the fact that he did have injuries in—

Or appeared to be even whip marks from the...

The data cord on both sides of his chest.

And then, this photograph,

It also shows that almost every one of Gabriel's fingers was injured, um..

[Yang] and he potentially was trying to defend himself.

[Hatami] Right.

Cermak and Sean Fox.

They thought that, you know, Gabriel has like a disease.

This wasn't somebody who had, you know, injuries or abrasions or things like this.

This was somebody who has some sort of, you know, skin disease or something.

Like he had rashes, like—

Like abrasions to his face,

Uh, strangulation marks around his neck,

His ankles were swollen.

Uh, i believe his...

Left palm looked like it was burned.

Bite marks.

Bruises, head to toe.

Uh, skull fractures, depressed skull fracture.

Uh...

Like, little holes, as if he was shot like with a BB gun or something.

I just—

You just— the more you looked, the more you saw.

It's just, it was just unbelievable.

[Hatami] You mention that it was unbelievable.

-Yes

Why do you say that?

The amount of...

Damage inflicted to a child.

I don't think they even, um...

Have come to, like, grips with that they saw,

And...I'm not sure they'll ever gonna come to grips with what they saw.

The people's next witness, Your honor, is Battalion Chief Anthony Buzzerio.

[Chadburn] initially, when the emergency response people came to the apartment,

They did say that Isauro and Pearl didn't seem upset about Gabriel.

The statements they were making didn't make sense.

[Hatami] what does that mean?

uh...for the condition of the patient, they didn't seem to be,

consistent with, um...

With the level of severity of my general impression of the patient.

They were nervous, concerned, argumentative, standoffish.

[Yang] we wanted to make it absolutely clear,

That this was not a situation where,

First responders and law enforcement arriving, and the parents of the victim were in a state of

hysteria.

This was not the case.

Their actions weren't consistent with someone who cared about the child.

Do you see that photograph, sir?

Yes.

That's Gabriel's mother, Pearl.

She kept asking about her daughter and her other son,

But never asked about Gabriel,

About what he was—

What was happening with him.

Or where he may be going, if he was transported.

[Yang] Did she express any concern to you about anything?

Her cats.

What, if anything, do you recall her saying?

She, um, was concerned that they'd be left in the apartment alone, um, in a cage.

And...what does that photograph depict?

Um, carrying a crate of cats.

[Hatami] They were also arguing with each other at some point, or appeared to the paramedics, they were arguing with each other.

You know, they were saying things like Gabriel was dirty,

Gabriel was a liar,

You know, Gabriel hit himself.

I remember stating,

"This boys a liar, and no matter what he's going to lie to you"

[Hatamo] And did she say that in the presence of the male?

Yes, sir.

Do you remember what the male said?

I remember him making one comment, that I remember, stating that the boy was gay.

[Chadburn] both Isauro and Pearl call him "gay"

They make him wear a dress.

In fact when they went and looked at the apartment, all of his clothes were bagged up under the sink, with the exception of two dresses hanging in the closet.

[Hatami] Gabriel was a softer, sweeter boy.

And Isauro Aguirre was not only a security guard, but he was very, you know,

Much more manly.

More macho.

We didn't have any evidence that Gabriel was actually gay, but we have evidence that Isauro Aguirre believed he was gay.

And we have evidence that when he was beating him to death, he was calling him gay.

And I think you can make a reasonable inference from that.

There was some people,
Who wanted or thought that we should file a hate crime,
Uh, allegation in the case.

[group applauding]

People ask me “why didn’t you charge a hate crime?”

And so, at the beginning of the case when I was assigned the case,
My team and I, we did talk about that.

The first thing Isauro Aguirre said was Gabriel was gay.

And why would that even be important? You have a dying child.

What is it important that he’s gay or not?

Or that you think he’s gay or not?

[man] that’s the first thing he always when the first responders got there?

Right, so what would be the relevance of that?

If not, you’re trying to give some sort of...

Motive or reason why this happened.

And so, in many of our cases in the DA’s office, we do, uh, sit down and strategize

And talk about, in hate crimes cases “are we gonna charge a hate crime?”

When we present thing o the jury,

We wanna present it to them in a way that it’s easy for them to understand it.

This case has a special circumstance, which means it was a death penalty case.

So adding a hate crime allegation, which could only give me maybe two, three, or four years,
having the jury have to decide that allegation behind a reasonable doubt,

It’s much more difficult, and strategically not as good as using it as a motive.

Gabriel’s case is more about chirp abuse,

And about murder and torture.

However, it is a hate crime also.

Everything that you can think about, Gabriel had went through

In addition to...

the injuries, was also the stress.

And that's the real thing that people need to understand,

Is the stress of being beat every day.

The stress of not having any toys,

The stress of being ashamed of who you are,

The stress of feeling it's your fault,

Being scared, every days.

I want you to take a look at something for me.

The evidence will show, ladies and gentlemen,

That in...the defendants bedroom...was this cubby.

And in the same bedroom that the defendant slept in every night,

Gabriel was in here.

Tied up and bound.

Gabriel was in here.

That's what the evidence will show and I want you to think about that.

Just that.

Gabriel's last vision was that man over there.

Standing over Gabriel, beating him to death.

At the end of this trial, I'm going to ask you, to find him guilty beyond a reasonable doubt of first degree murder.

And I will ask you to find him guilty of intentionally murdering Gabriel,

By torturing him to death.

Thank you.

[Children] Daddy!

-Hi! Hi, guys.

Hugs.

-How you doing?

Good.

Good.

What about salad? Do you eat salad?

I think Mommy made meatballs.

-I know.

-Ooh, that looks good, huh?

I think my, um, path to the DAs office is different than most.

When I was younger I had a...tough few years.

When I was in high school, I got in trouble a few times.

There was a lot of issues, I was dealing with,

I can never, like, compare anything that happened to me to any of my ases,

Including Gabriel.

But at least a little bit of what I've been through, I could have some, um...

Understanding.

My dad and my brother Pete and I, um-

Yeah I had a kind of a complicated childhood situation, so...

My dad had really bad anger problems,

And, um, he would get really mad.

He was abusive at times.

I remember numerous times picking me up by my hair,

Throwing me against the wall,

But I was most scared of his yelling.

Um, just the sound of his yelling, I'd start crying.

But, God I loved him.

You know, it's kind of hard to explain, uh...

My parents had a really bad divorce.

My mom and my dad would get into a lot of arguments.

We had some visitation with my dad on the weekends.

I remember one visitation,

We didn't wanna leave.

My mom and my dad got into a big fight, and I remember the police came.

And a week later there was a...court hearing.

God, i remember, my dad saying, you know,

“Stand up and tell the judge, you know, what you want— where you wanna go.”

And, um...the courtroom, it was so big.

And I was so small.

And so...I just couldn't say anything.

The judge kept asking me, you know, where I want to go,

Who did I want to stay with, but

Yeah, I couldn't say anything, I was so scared.

People say, you know,

“Why didn't Gabriel run away?”

They don't get it.

At that age you— you can't do anything.

When I am conveying to the jury about, you know,

How a child is being abused and how they feel, yeah, I mean,

a lot of it comes from inside me.

And part of me is what happened to me as a child.

Uh.. and...I still remember it,

And I still know how it feels.

My dad is denying that he abuses both me and my brother.

He basically says that, uh, it didn't happen.

As a child I, I think you get abused, a lot of it is, you feel...

Um, bullied, and you feel, like, belittled and small,

and everybody's so big and you're just so small.

And... you want somebody to fight for you.

And that feeling of being so powerless, um...

Yeah, I wanna get up there and fight for them,

Fight for the kids who couldn't fight for themselves.

-We will not tell you, nor will we call any witness, who will tell you,

That Isauro Aguirre did not commit these heinous acts.

Yet, while the evidence will show,

That Isauro and his girlfriend,

Gabriel's mother, Pearl Fernandez,

Committed unspeakable acts of abuse against Gabriel, over time,

And that together, on the night of May 22nd, 2013, they beat Gabriel so severely,

That he never recovered.

When Isauro exploded into a rags of anger.

The evidence will also show, that despite the horrific abuse.

Isauro never intended for Gabriel to die.

[lacey] Intent has to be proven, for the degree of crime to be established.

We felt this was murder by torture,

Which people don't realize it's kind of rare to get a conviction that someone was tortured to death.

You used the physical evidence, you use the scientific evidence, you use statements that the defendant has said at the scene,

You use the statements he said during the time he was committing these atrocious acts.

[Hatami's voice] First- degree murder is intentional, it's required premeditation.

We are asking the jury to convict Isauro Aguirre on a first degree murder charge.

I do believe the defense, in this case, is asking for second-degree murder.

Second degree murder doesn't required premeditation.

It doesn't required intent.

So their theory is this was a case of just sudden rage,

Where Aguirre just snapped and then all of a sudden, he did what he did and killed Gabriel.

[chadburn] so there was a point during the trial, where they play the 911 call and what defense

was setting up was that, because Isauro was performing CPR,

that he didn't have the intent for him to die.

All right, ladies and gentlemen, they're about to play, uh, several, uh...

Audios for you.

You'll get corresponding transcripts.

[Women] And right now, where are you?

You're kneeling next to him?

-[Isauro] Yes, ma'm

-[Women] Ok.

We're gonna do compressions, OK?

I want you to just give him 30 compressions on his chest, with your hands ñ.

Have you seen that done, you know how to do it? You're trained?

-OK.

[Isauro] Yes.

You hear the directions from the operator, but it's really unclear, through, whether or not he tried to perform CPR.

[Yang] Can you tell the court and jury whether or not you were able to see any blood on the defendant's body?

Uh, not that I remember.

[Yang] Did you see any blood on the defendant's face?

Not that I remember.

No.

-[Yang] Mouth?

-No.

[Yang] Side of his cheeks?

-No.

So no blood whatsoever?

Not that I recall.

[Hatami] Seeing Gabriel's condition, the fact there was actually no blood on his face, it's highly unlikely that he gave him CPR.

You hear him on the 911 call,

It's just not consistent with somebody actually giving somebody CPR.

[Women] Turn him on his side right now, and let any liquids that are in his mouth come out.

Do you see any vomit of anything in his mouth right now?

[Isauro] No.

[Woman] OK. So he's not choking on anything?

[Isauro] No.

[Chadburn] Pearl and Isauro contrived this story that Gabriel and his older brother Ezequiel were running around a coffee table.

Somehow, Gabriel had fallen while they were playing.

[Isauro] my other son called me— called me and my wife, and...he said he's unconscious.

So I took him to the shower and put water.

And then, I took him out and he did not respond.

Part of knowing how to do CPR is that you don't stop
until the paramedics showed up, and Sean Fox said walked in there

And he wasn't giving him CPR.

[Sklar] The man, uh, he was...

on the telephone with 911?

[Fox] I don't know if he was on the phone or not.

-[Sklar] You don't recall?

-[Fox] No.

[Sklar] um.. the male, um, was giving CPR to the boy when you first walked into the house?

No.

Not that I can recall.

And then all the bloods you know, washed off of you?

How did that happen? Why was there blood down the sink?

How'd that get down there,

Unless you guys were trying to wash it off of yourself?

If they cared so much about Gabriel, why didn't they get in that ambulance?

[Chadburn] The deputies explained when you have a situation like this,

Where the emotions are really high,

They try to isolate the two parties,

That are at the most high-level energy and aggressive.

So, they interviewed Pearl and Isauro separately.

[John] So defense was trying to say,

"Why didn't you let them go with their dying son in the ambulance?"

So are— are you suggesting to us that, um, while you were questioning, um, Mr.Aguirre that night, and...when the ambulance left to take Gabriel to the hospital that if Mr.Aguirre had said to you, you know, “I wanna go, um..down to the hospital either drive or ride in the ambulance, I’ll talk to you later about this,”

That would have been OK with you?

Yeah he was free to leave.

[John] And, so that would have been perfectly fine with you, at that point,

If Mr.Aguirre just said

“We’ll talk about this later.”

-He was free to leave at that time.

-[John] OK.

Was there anything preventing that male and that female from getting into that ambulance when Gabriel was taken to the hospital?

-NO.

In your 21 years of experience, have you seen parents of children who are injured get in that ambulance and go to the hospital?

-I’ve seen them fight their way into the ambulance.

I think it was important to kind of portray that to the jury, um, so they understood that they, They never cared about Gabriel.

[Chadburn] They went in saying, “He did this.”

So Isauro Aguirres defense was that at that moment, he was in a blind rage.

[Uribe] So your frustration level, dude, is way up here.

That’s where mine would be.

On a scale of one to ten, where would you say your frustration anger level is at?

-[Isauro] Twenty.

-[Uribe chuckles] Exactly. At 20.

[Chadburn] The very specific moment in question, you know, where Isauro Aguirre says that he was in a blind rage, was Pearl saying that Gabriel Asked her,

“Why did you let him treat you like that?”

Something to the effect that questioned Isauro Aguirre’s...commitment to Pearl Fernandez.

And Isauro Aguirre confronted Gabriel.

Gabriel said, “I didn’t say that.”

And then he proceeded to beat him to death.

He told detectives Uribe and Long, he became so out of control, with anger and rage, that he saw red.

A decision...to kill made rashly, impulsively, or without careful consideration, is not premeditated.

[Hatami] The problem with that theory is the eight months of torture.

You have a 32-year-old man, who’s not a child, right? Not a teenager.

Fully developed, 32.

He can take any avenue he wants, right, for eight months?

You make choices,

and he chose, for eight months, to do this, and never change.

[Chadburn] So the prosecution needs to show that there in intent, and that is shown through a series of events over time.

-Doctor,

-[Man] Yes.

Uh, Doctor, can you tell the jury what some of your findings were, as it pertains to Gabriel’s ribs?

-The most important finding concerning the ribs was that, “there are multiple, bilateral rib fractures,”

In other words, fractures on both sides of the chest,

Right and left, of variable ages, of different ages.

And can you explain for the jury why in particular, that rib fractures are painful?

Well, a couple minutes ago, I talked about the periosteum.

This is the covering of soft tissue around the bone.

That's where all the nerve endings are. The bone itself doesn't hurt, but the periosteum carries the nerve endings. And so when you have a fracture, and the bone moves, you get irritation of the periosteum where all the nerves nerve engined and nerves live.

That's why rib fractures hurt a great deal, because there is irritation of that periosteum and the nerves.

[Yang] And does breathing irritate the nerves?

Again, with motion, either direct pressure or breathing, any motion of the rib that moves— if there's a fracture that moves the rib fragments, irritates the periosteum and hurts.

[Yang] Practically, every minute of Gabriel's time with the defendant, after he suffered a broken bone, each... day that he was living with them was painful.

Each time he breathed, each time he took his, uh— his breath, was painful.

[Judge] Uh, People, you may call your next witness.

[Yang] Pleasure, thank you. People would like to call Dr. James Ribe.

[Judge] All Right.

[Yang] Dr. Ribe is a deputy coroner with Los Angeles County Coroner's Office.

He was a doctor who conducted the autopsy of Gabriel.

-Can you tell the jury, uh, how long the autopsy took?

It took two days.

[Yang] And is this... is this normal that it takes two days for an autopsy?

No.

[Yang] And I asked him why, and he said to document all the injuries that he found.

Was there something about Gabriel's thymus gland?

How long and what is the thymus gland?

Thymus gland is a gland in the throat, upper chest area of children and young people.

It's located right up here, right where my tie is, inside the...rib cage in the front, and in a child eight years old, that's quite a large, plump, white, soft gland that weighs 35 to 50 grams, sometimes even a hundred grams.

In Gabriel's case, the thymus gland was barely even there. It was extremely shriveled and thin, and with only ten grams.

[Yang] and what does that tell you, Dr. Ribe?

It's called stress atrophy and that means he's been under severe emotional and physiological stress for a long period of time, meaning months.

-This was not a one-time deal that led to Gabriel's death. This was systematic, progression of torture.

Dr.Ribe did you examine Gabriel's head for injuries?

Yes. He had a subdural hematoma, which is bleeding inside the head, caused by blunt force trauma.

[Woman] uh, this is a wood club. Those red stickers are pointing to red-brown stains, that I had visualized on the wood bat or club, and it tested positive for blood.

The DNA profile from the wooden club was a single-source profile that matches the profile of Gabriel Fernandez. This is the black bat that I analyzed in the laboratory. The blue arrows in this case are pointing to red-brown stains that I had visualized on the bat which tested positive for blood.

-And did you do a conducted comparison of each of the weapons profiles to a known sample?

[Shew] Yes, I did.

[Yang] Take the first one, the black bat. Did it come back to a match to a know sample?

Yes, it did.

[Yang] Who did it match?

-Uh, this— the DNA profile from the sampled on this DNA table matched the profile from Gabriel Fernandez.

[Yang] could all of those injuries been cause by...falling off a bike?

[Ribe] No.

[Yang] were all the injuries that you found, would they be attributed to accidental, uh, events?

-No.

Gabriel's death was cause by sequelae of blunt force trauma and child neglect.

[Yang] What is the— what does “sequelae” mean?

-Consequences.

And what is the basis for that opinion, Dr.Ribe?

That is that I saw Gabriel had suffered these injuries over a period of weeks or months, and he had not received any medical treatment for them.

-Were you able to determine the manner of death?

-[Ribe] Yes.

-[Yang] And what is your opinion?

The manner of Gabriel's death was homicidal.

-The argument would be “what'd you expect?”

What do you expect, your br—you but a child in this condition over this period of time, the only expectation that you can have is that this child would die.

And that's exactly what happened.

-Did you examine Gabriel stomach?

-[Ribe] Yeah.

-And can you tell the jury what, if anything, that you found?

-Hard , gritty, material that I described as looking like sand. It felt like sand when I picked it up.

[Stephan] After I had examined, visually and with a stereo microscope, I noticed that they were gray-colored particles, in the stomach contents.

This shows some of the gray particular material that I have removed from the stomach contents. I did, uh, a couple of different— two different types of instrumental tests. On both the gray particles from the stomach contents, and also the exemplar cat litter material.

[Yang] so they were similar?

[Stephan] Yes, I could not tell them apart.

The defendant's callousness had no limits.

Not only, weren't they feeding Gabriel food...they fed him cat litter.

He had, uh, no fat stores and no food inside of him at all, with the exception of cat litter. And then the cubby, they kept him in that cupboard almost every night and sometimes even during the day. Putting the handcuffs over his ankles, putting those socks in his mouth, and putting that bandana over his face.

[Hatami] The evidence will show the defendant intentionally murdered and tortured Gabriel. And he did it because he didn't like him. There is even in this room right now. And it's right over there.

[Elizabeth] This was Michael's album. Gabriel was very playful, lovable baby.

[George] Big ol' head.

[Elizabeth] he had a big head, very hard head.

Yeah, he was a very good kid, very playful and loving. Always smiling, always trying to help. Making sure everybody was ok, then, like, if anybody was crying or hurting or... He wanted everybody to be OK, you know? Even Pearl. He always worried about her and asked about her, and...he would still call her mom. But I don't know why she couldn't see his love for her. It's heartbreaking. To see- to see a kid with such a good spirit, so happy, so loving and... we'll never see him again. The DCFS worker, sheriffs, as many times as they were out and they were called, they ignored him.

I believe it was three times that we called, um, the social workers, and twice that we spoke with sheriffs. Later, when I heard that sheriffs had went out and...threatened Gabriel as if he keeps lying about things, that made me very angry.

-[man] The sheriffs threats Gabriel?

- I guess...Pearl had told the sheriffs that some bigger kids had beat him up. And that's why he had marks on him. And that wasn't true.

[Man] and so the sheriffs..

[Elizabeth] They put him in back of the car and told him, that if he kept lying about things, that he would be the one going to jail.

All of those workers that came in, and therapists, why did they all believe her over... the kid with the marks?

I didnt— I didn't get why they didn't never see that he was so terrified to talk.

The fact that they did nothing, they stood by, I regret now not coming and taking him.

I don't see how a mother can do something or allow something to happen like that. I will never understand it. Tore the family apart in so many ways.

[Judge] All right let me call the matter of People vs. Pearl Fernandez.

Miss Fernandez do you agree that I can continue your matter to the date of January 31st and for now, your procedure trial working 45 days of that date?

-Yes

[Judge] Both counsels join, please.

-Yes sir.

-[Judge] all right, anything further?

-[Harami] No, your honor. Thank you.

[Judge] All right, we'll stand in recess.

[Elizabeth] it was shocking, knowing it's something in your family, but it didn't completely surprise me, Pearl did something horrific like this.

Did I think she would ever kill one of her children? No.

But I thought, like at some point in her life, she would hurt somebody bad she'd wind up in prison.

[Pearl]

Like, what? Why is that f***** videotape me.

[Elizabeth]

Those are demons that she'll always fight in her head.

Season 1 Episode 5- Improper Regard or Indifference

I just got my investigation for tonight.

What came in was a...

- Out-of-home abuse investigation,
- Okay.

which means
it's with one of our foster parents.

And in this case
it involves a five-month-old baby.

The foster parent and her partner
got into a physical altercation.

So it's a domestic violence.

Are you nervous at all?
What are some of the threats?

You can be assaulted.
It's never happened to me,

but just the surprise of us showing up...

it takes them a while to get over
that initial response to...
having somebody knock on their door
and, you know, make an allegation.

I'm more concerned about getting

in the door than anything else.

Let me see what this baby looks like.

I just wanna see a child that's breathing.
I wanna see a child that looks okay.

Like, I can't find out. I can't...
I don't see the entrance to this place.

And this may be the projects.
Just a...

I have to interview them both,

see who's in the home
and assess the child,

and then, we may remove the child.

Okay.

Hello?

Pardon the intrusion
at this hour, ma'am.

Um, I'm with Children's Services.

Okay.
And we got a call today
regarding your home.

- What about my home?
- So, what it is, we got a call tonight,

to our child abuse hotline,

and they made allegations
of domestic violence.

- For... For my home?
- Yeah.

Wow.

- So I need to see the child.
- I'm shaking, sorry.

- It's Okay.
- Can we come in?

I'm not gonna get arrested
or anything?

No. We're just gonna make sure
that the baby's okay and that you're okay,

- and then we'll be out of your way.
- Wow.

Let me explain to you
what's going on.

- We got a call tonight...
- Okay.

...and what they reported was, um,

there's a history of you
and your girlfriend,

um, getting into physical altercations

in the presence of your chi...
of the foster child.

That two weeks ago, you and the girlfriend
were arguing outside,

and that you ran over
the girlfriend's foot.

Caller states
that the child was in the car

with the foster mother
during the incident.

Uh, law enforcement was called
but no arrests were made.

I haven't had my car in over...
since maybe like December or November.

- So you have no vehicle?
- No.

Did that incident occur?

Um, I just recently just got into it
with the ex-girlfriend,

so if... if I know the time,
I can go back to my text messages

to show you some of the messages
that she sent me...

- Okay.
- ...regarding another case.

So it sounds like this is the person
that's calling

in, as far as this... this case.

Do you mind
if I just see the baby?

- Oh, that's a big ol' baby.
- Yeah, she'll be six months.

So let me ask you,
what they reported was,

you were arguing outside of the apartment
with your girlfriend, it escalated,

girlfriend started hitting
the shopping bags out of your hands,

foster mother dropped the car seat
with the baby in it.

So, I just need to know...

- No.
- ...did an incident occur?

No incident? Okay.

So what I'm gonna need to do is,
'cause they made an allegation

the baby fell,
I need for you to undress the baby.

Oh, my goodness.
What a happy baby.

So pretty, look at her.

Okay, perfect and then her buttocks,
please.

Okay. So what I need to do now
is just, uh,

it's a welfare check.

So I need to just check out the house
in the... uh,

- the refrigerator of your home for food.
- Okay.

So, I'm gonna open this
if you don't mind? Okay.

Okay.

And what k...
the baby on, what type of formula?

- She's not on formula.
- Oh, lot's of food. Oh, mama!

I like all this!

The formula.

I know, huh? No way.

Okay, I'm gonna make sure you have water.

I'm gonna look in this cabinet,
if you don't mind.

Go ahead.

Okay. Can you do me a favor
and turn on the stove?

Okay, perfect.
Let me see the bathroom really quick.

Okay, um, I do apologize that we had
to come at this hour.

But what matters here is
that you cooperated,

and that we came in
and we didn't find what they reported.

- Right.

- For whatever reason,

um... decisions were made to do this.

The concern is... I have is that, um,

the person is gonna do this again,

and you gotta stop all communications.

- I'm about to actually change my number.

- Yeah.

When you have allegations
of physical abuse, you know,

domestic violence,
you have to look for the evidence,

which is the house.

There's no drugs in the house,
there was no booze.

Um, ample amount of food.

You know, you look at the care
of the child, that's a robust child.

But bottom line,
the child is safe.

Yeah, I feel good.

I don't feel that the child's in danger.

I don't feel like I had to remove a child.

Hello?

Hello, may I speak
with Patricia Clement, please?

Yes, this is Patricia.

Hi, this is Mary Cenovich.

I'm an investigator,

from the Los Angeles County
District Attorney's Office.

- How are you this morning?

- Yes.

Not good right now.

I'm so sorry. Um...

What are you calling me about?

I would like to, um,

Speak with you regarding

your prior employment by LA County.

Why?

Um, I have just a few,

like, procedural questions, I would like...

Are you go...

are you gonna charge me with something?

I have no way of knowing that.

I'm an investigator.

Why am I being...
is this regarding the little boy?

Yes, yes it is.

I didn't have anything
to do with that. They're lying.

Oh, God.

They're the District Attorney's Office.
Oh, God.

Are you able to speak with me?

I don't know.
I think I need to get an attorney,

if you're gonna... do this to me.
I had nothing to do with that.

I did my job.

Okay. Um, let me...

If... are you able...
are you driving right now?

No, I'm at home.

Okay.

I-I lost my house.
I lost everything!

Do you want the defendants to approach?

Yes, absolutely.

All right, let me call
the matter of the People vs. Kevin Bom.

The defense filed a motion
to dismiss.

What they basically are saying is
there was not sufficient evidence

to require them to stand trial.

We have a case here
that is unprecedented.

If you look at what the People have filed,

there is... there's nothing
that they've cited

that remotely comes close to the facts
that we have today, and...

there's a reason for that, Your Honor.

This is a case that just never
should have been filed

and it's a case
that the court should dismiss.

The social workers
are being charged

with child endangerment
resulting in death,

and...

falsification of public records
or documents.

But what kind of negligence
applies to a social worker

who is having problems?

Is it sufficiently clear
when they've crossed the line

from negligence or mistake
to gross negligence or recklessness?

After Gabriel died,
the case workers had no choice

but to sit down with Internal Affairs
investigators.

It was a condition of their employment.

They didn't wanna be there
and the...

questioning was sometimes,
you know, very adversarial.

Were there any other
main issues

that were, the sort of the focus
for this family?

He, um,
was acting up in school.

He had... was angry,
was rude to his teacher.

Where is this information
coming from,

that he's so rude or acting out so much?

Those things were told to me
by mom.

- By mom.

- Yes.

Did you ever talk
to his teacher

or the school to get
any additional information

- about how he was doing at the school?

- No, I did not.

Okay.

Since the case had
originally come in for physical abuse,

had any verification been obtained
that there were no new incidents

of physical abuse or excessive discipline?

It was never brought
to my attention,

by the social worker.

So, in terms of asking
the specific questions,

because you want your workers
to ask the specific questions,

did you ask your worker specifically
if she had assessed

whether or not there was
any ongoing physical abuse?

- I can't remember...
- Or physical discipline?

the details of a lot of that conversation,
but, um, no.

The tapes of these conversations
were very tightly held.

So far, they have been kept out
of the criminal trial,

and there is a question about whether

investigators relied on these statements
to build their case or not.

We evaluated everyone
who was involved with Gabriel's care,

very closely, looking at the law to see
if there were any violations of law,

and based on that we filed the case.

My client had only contacts
with the family from October 30th, 2012

to January 31st, 2013.

In that time, all injuries and evidence
and testimony presented after that date,

is irrelevant as to my client,
Ms. Rodriguez.

There were three subsequent supervisors,
two subsequent social workers,

one subsequent emergency response worker,

two other mental health professionals,

two law enforcement officers,

and all these people are mandatory
reporters, Your Honor,

came into contact
with the Fernandez family,

subsequent to the work of Ms. Rodriguez.

And no recommendations
for detentions were made,

no lingering injuries were noted,

no arrests were made,
and no removal orders made.

And with that, Your Honor, I'll submit.

Thank you.

Stefanie, she was a new recruit.

She didn't have a lot of experience.

But the basic allegations are saying

that you, Stefanie,

conducted a really shallow inquiry.

you didn't talk to the people
who knew the situation best.

You didn't talk to Gabriel's grandparents

who were really concerned
about what was happening.

When you look at Stefanie's notes,

you get the impression
that this is a gullible individual

who's easily manipulated
by Pearl Fernandez.

You know, time after time,
even when the explanations for, you know,

these supposed accidental injuries
are pretty thin,

Stefanie accepts them far too quickly.

And in the end she categorizes them
as accidents.

One of the things that social workers are
supposed to do is maintain a body chart,

and each time they see an injury
they're supposed to make a note about it.

She started one with that initial bruise
on Gabriel's butt,

after the beating with a belt buckle.

But then all these other injuries
never get marked.

The number of marks and bruises
and injuries

on this kid were all over the place.

And, if a body chart had been done,
it would have been made crystal clear

that this kid needed to get to the doctor.

The teacher calls and reports
that he's come to school

saying he's been shot with a BB gun.

The social worker walks away from that.

There's chunks of missing hair,
a shaved head with scabs.

Those are not typical childhood injuries.

Everybody can look from the outside

and say, "Oh, this should have been done."

But all the allegations that were made
were explained away.

The kids had done it, um,

It happened in the neighborhood.

It was never, ever

definitely defined that this was
the result of what the parents had done.

If you look at Mr. Bom's involvement
in this,

he had the file of Gabriel Fernandez

for three months.

In those three months, he approved
that there was a high risk level,

he approved
that there was general neglect,

and he approved that there was
improper corporal punishment

and he did what his job was to do.

He ran the case up the flagpole
for more intensive services.

Mr. Bom was no longer responsible
for the case.

Kevin Bom was Stefanie's boss.

He was supposed to be there to sign off
on every key decision she made,

for instance when it comes
to the decision about

not sending him to medical care, you know,
he's equally culpable for that.

The basic allegation is that Kevin Bom
took a fairly hands-off approach

to what she was doing.

He didn't make sure that she followed
the department's policy

to reach the appropriate witnesses,

to make sure that the body chart
was filled out,

to make sure that Gabriel saw a doctor
following some of these injuries.

You know, the reason he was there
was to make sure

that none of these things
fell through the cracks, but they all did.

When Kevin Bom and Stefanie Rodriguez
decide to close out their investigation,

they make a decision to walk over

to Greg Merritt's
Family Preservation team.

He's a supervising social worker
in the Palmdale office,

and one of his workers is Pat Clement.

Pat Clement was well-established
as a problematic worker.

She was generally perceived to be
pretty rude and unprofessional,

with clients and colleagues.

She was a nun for ten years

and that's one of the things
that really puzzles people now,

because the woman they see is profane,
loud.

So following Gabriel's death,
Pat Clement has given different accounts

of what happened
and what culpability she might have.

If you look at the Internal Affairs
interview,

that looks very different
from the conversation she has years later

with the District Attorney investigator.

There were never any mentions,

I gotta tell ya, of physical abuse.

That wasn't what the case was about.

The case was about neglect.

I was there, I did my job.

I gave the referrals. I was sitting there
with that family and it...

no one ever said anything. No one.

Not the children, not the older children,

no neighbors, no nothing...
said anything to me.

That there was any physical abuse
going on.

And there were never any bruises.

I saw the black eye.

Um, I can't remember the explanation.

I saw that he had a...

um, a BB shot,

and I was told that that was

a kid in the apartment complex.

When you saw marks on him,
did you ever complete a body chart?

No.

Are you aware that there
are body charts to mark?

Mm-hmm. Yes.

Okay.

Her assessment of Gabriel
was just, like, flatly false.

This was a period when he was
barely showing up to school,

and she said that he had virtually
perfect attendance.

She said that the family was improving
and that the...

that Gabriel's risk was diminishing,
not increasing.

That she spoke to Isauro and she deems him
a very pleasant person.

This man presented himself

as an upstanding, caring

adult.

He had no criminal history.

He said all the right things and did
all the right things and I had no...

there wasn't anything

that was a red flag about him.

How many times did you have
individual interviews

with mother's male companion,
the boyfriend?

The first time I went there.

- The first time?

- Yes.

Okay. After that, did you have any
individual interviews with the boyfriend?

No.

Pat backdated the end date
for... the case.

So she... when she closed the case,
that actually happened in April.

But she marked down a date in March
so that she wouldn't be responsible for
any visits to the family
during that final month.

It was only a week after she learned that
Gabriel had written these suicide notes,

that she wrote down that there were
no safety risks to Gabriel whatsoever

and her recommendation was
to close the case.

Okay, so based
on your understanding of the family,

at the time this referral was closed,

did you feel that the family was
at moderate risk? At high risk?

At no risk?

I would say they were
at a moderate risk,

from the information that I had.

Clearly, some information

that I thought I had,

I did not verify, which was my problem.

Other than Patricia's
report to you

about how the family is doing,

were any other steps taken by you

to verify any of that information?

I don't recall

any steps I've taken.

I'm not a horrible, terrible
person and I did not hurt that child.

His mother and her boyfriend
killed him. I did not.

I had nothing to do with that.
I didn't miss anything.

And it... it...

breaks my heart, it... it...

rips me apart,

when people in the community call him
by his first name.

They did not know that child.

It's, uh, excuse me very much,

but why don't you crucify the person

that did this to him?

I don't have any control
over what goes on in that family,

because a social worker has

no control over what goes on in families.

My client supervised
over 180 children

and he spent his entire life
trying to prevent

what occurred on that day.

These... these social workers
really aren't villains,

they're really unsung heroes in this case.

What I saw, I think certainly

indicated that they shouldn't be with...

the Department of Children
and Family Services again,

but in terms of whether there was

a criminal act that occurred,

I'm just not in the position
to comment on that.

There are affirmative things
that they did to keep that kid

in an abusive environment

and it was, quite frankly, foreseeable
that kid was going to die.

The DCFS has had all kinds
of child deaths in the past

that have never been the subject
of criminal prosecution.

And it's easy to find scapegoats.

The public is clamoring for justice
to be done.

I'm really angry.

I'm really angry.

They should have done their job.

They had a job and their job was
to save a little boy.

I've always wondered

how many...

kids under their care

were overlooked.

How many kids besides Gabriel,

did they actually leave in an abusive
home and did not do their job.

And we will never know,

because they're not gonna come out
and say it.

Unfortunately,

Gabriel, my cousin...

had to die and suffer to make this, um...

make it a known case that, you know,
the social workers, the DCFS...

it has to change.

Following consideration
of the overall evidence presented,

this court concludes that for purposes
of the requisite burden of proof required,

that there does exist a strong suspicion
that the defendants' overall conduct

does support the charges pending
against them.

From the overall evidence presented,

there is a strong suspicion
that said conduct was reckless

and or criminally negligent.

The defendants' actions and/or inactions,

similarly demonstrated an improper regard
for human life,

or indifference to the consequences.

As such the defendants' motions to dismiss are hereby denied.

That is the court's ruling.

Alright, thank you all.

- Thank you, Your Honor.
- You're welcome.

All four of them really understood

that things were becoming even more serious.

Nevertheless, they figured there's one more thing we can do.

We can go to the Appeals Court and ask them to reconsider

Lomeli's decision about sending this forward to trial.

This appeal is really one of their last chances to avoid facing the jury.

And now it's just a waiting game to see what happens.

And everybody's in limbo.

The judge said that the actions represented an improper regard

for human life.

How do you respond to that?

I don't believe that at all,
that's his opinion.

Uh, I have 24 years...

uh, working with children,

and...

I have always been a person
who has regarded human life.

What the Judge said was,
"there was failure here at every level."

Well, at every level means
there is failure here at a systemic level.

Uh, and that begs the question,

"Why are there only for social workers
being tried?"

Emily Putnam-Hornstein,
I am an associate professor

in the School of Social Work at USC

and director
of the Children's Data Network.

What was your impression
of the Gabriel Fernandez case?

I struggle with the Gabriel case.

It's absolutely heartbreaking, um,
as are, you know,

you know, other child deaths, but...

it's hard to understand some of the...

the decisions that were made.

Most of my research has focused
on using administrative records

to better understand maltreated children,

and children who are involved
with our child protection system.

There is a broad body of literature
that would suggest

that humans are not
particularly good crystal balls.

Instead, what we're saying is,
let's train an algorithm

to identify

which of those children fit a profile

where the long-arc risk would suggest

future system involvement.

People are using automated algorithms
everywhere, in all parts of life.

Most people are familiar with it
in their Facebook news feed,

how it ranks which of your friends' posts
you might find most interesting,

or on their Google Maps

when they're driving

and it sends them on some weird route
that the algorithm has decided is awesome.

But people don't realize
that they're also being used

in all sorts of high-stakes

human decision making.

I'm Marc Cherna,

The director of the Allegheny County
Department of Human Services.

In the 90s, in Allegheny County,

there were a number
of high-profile deaths.

The last director was,

basically, run out of town.

There were a lot of hearings,
a lot of demonstrations.

And we were looked at
as a national disgrace.

The problem that Allegheny County
was looking to solve was

that they were fielding
significant volumes of calls

to their child protection hotline,

and they were trying to figure out whether they could use data,

to better understand which calls they should screen in and investigate,

and which calls they could safely screen out and not investigate.

We actually have around six or seven million children

who are reported for alleged abuse or neglect every single year in the US.

And, historically, the way that we have made some of our screening decisions,

are just based on, kind of, gut assessments.

Predictive risk modeling is saying, "No, let's take a more systematic

and empirical approach to this."

- The worker gets the call.
- CYF Intake, may I help you?

The worker looks up the case to see what records we have,

and get the history of that.

Do the children have any special needs?

And they will then press a button

and that will give them the Allegheny Family Screening tool.

The Allegheny Family
Screening tool uses

a statistical technique
called data mining,

to look at historical patterns
in the data,

and use those historical patterns
when there's a new case,

to try to make a prediction
about what might happen

in the current case of a child or family.

Well, there's a hundred or so
different factors that are looked at.

Some basic examples are child
welfare history, parents' history,

certainly, drug use and addiction,

certainly, mental illness,

jail and convictions,

and especially if there are assaults
and things like that.

It's searching all of the data,

it's pulling that in,

and then the algorithm is applied.

They will see a number

from one to 20.

It's kind of a thermometer
in terms of what is

high risk, medium risk, low-risk,
in terms of that call.

I'm not sitting here and telling you

we can predict who's going to go on
to be abused and neglected.

We know that there is bias in our system,

we know that there are differences
in surveillance.

What we are doing here, is we are trying
to predict future system involvement.

I have no idea

how would a model have classified Gabriel.

We know that the risk assessment tool
that was filled out by workers,

was already indicating
that he was very high risk,

but all of the data
that I have worked with

and have seen, would suggest
that these algorithms are

unambiguously better
than human judgment alone

and are superior to tools that are currently being used.

But I've definitely heard from critics who

I truly do respect

that, ultimately, what we're doing
is creating

the equivalent of a nuclear weapon,

that can be used by the field at large.

Poor and minority communities
are over-represented

- in data collected by counties.

- Mm-hmm.

So if the data is already biased against
African Americans and other communities,

how do you create an analytics tool
that doesn't make the problem worse?

So, that is a very real
and legitimate concern.

For sure, there is bias
in our systems.

Child abuse, as seen by us in our data,
is not a function of actual child abuse,

it's a function of who gets reported.

We're very sensitive to that
and we are looking at our data

ongoing, in terms of seeing,

is this proportion growing
or being reduced?

And we have not found,
in effect, a disproportionality,

so far with this.

In Allegheny County, this system
is owned by the public,

but in a lot of places, these algorithms
are being run by private companies.

Is there a danger in these systems
being outsourced to private companies?

It's incredibly important

that these not be proprietary algorithms
or models.

I think they are built from data
that belongs to the public agencies

that are serving these clients,

in our community.

I do feel that's a kind of a fight
for this technology right now

by people who wanna use it
for their purposes,

which is not always for the public good.

It's like a black box.

They have no way to figure out
how they're actually deciding

a level of care that has a huge impact
on an individual.

Here, it's working.

Here, we are comfortable
with what we're doing.

Our ethical report is that it's unethical

not to try to keep kids safe
if you have tools to do that.

The software is ready.

They built it, they're ready to do it,
they're advocating for it and
it sure would save a lot of money, right?

And so we are coming up really fast
on these very important questions

that we need to address,

because, otherwise, we're all gonna be
answering to a machine,

and we're not gonna know
how it made its decisions,

and we're not gonna be able to hold it
accountable.

What I'm frustrated by is

the comfort so many have with criticizing

the child protection system.

But anytime a child welfare agency

attempts to innovate,

that quickly gets shut down

because people are more fearful
of the new thing

than they are of business as usual.

Today, possibly
an even more intense day,

as the two children took the stand
who witnessed the abuse,

Gabriel's older brother and older sister.

They were just 11 and 12
at the time of the abuse.

The first person on the stand was
Gabriel's brother, Ezequiel.

Details today about
how an 8-year-old Palmdale boy was killed

from someone who says
he saw it happen, his brother.

No cameras allowed
in the court today,

as the older brother of Gabriel Fernandez

took the stand.

He's now 16 and was identified only as Ezequiel.

...should be a lot quicker.

Okay, good. So you're gonna have Deputy McCarthy wrap it up with him?

- And then you're gonna have the children?

- Just the two children

- Who's first?

- Uh, Ezequiel.

Okay. We're gonna have... the jury's probably close to being here,

let's take a break and then, uh, we'll start. All right?

Very good.

Ezequiel is,

uh, Gabriel's older brother.

Virginia is

Gabriel's older sister.

Uh, they were the two children who were living with Gabriel at the time,

with both defendants, who also witnessed the last beating on, um...

at the end of Gabriel's life.

Both were called to testify

during the trial.

I'm a retired professor
and associate dean,

also retired psychotherapist.

In my psychotherapy practice,
that I had for 40 years,

I saw and treated many survivors
of sexual abuse and child abuse.

We showed you
some of the videos of...

Ezequiel and Virginia being questioned
by the detectives.

What was your impression of that?

What I saw, in both cases was, you know,
the initial attempt to hold up

the facade,

and then the gradual unburdening,

you know, and crumbling of that,
to reveal two frightened...

children.

Can you tell me what a truth is?
Can you define that word truth?

It means that you're telling
the real thing,

and not the thing

that you don't wanna say.

Okay. What about a lie?
What does a lie mean?

A lie means that you're not telling
the truth and

you're saying another thing that's

not the word that you want to say.

The experience of witnessing
Gabriel's abuse,

and of having to lie about it,

and of their own fears of their parents,

it's just an enormous burden.

Enormous.

When's the first time that you saw
something really bad at home

happen to Gabriel?

Um, I've seen him

pick Gabriel up and choke him.

Okay, so is Gabriel standing up?

- Yeah.

- And Tony picks him up how?

Like...

You can stand up and show me, that's fine.

He would pick him up... like, he'd have him right here and then he'd have him up there

- 'cause he was tall, so...

- Okay, so he put him against the wall?

- Yeah.

- And would he hold

his hand against his neck?

- Yeah.

- One hand or two?

One.

- One hand?

- Yeah.

- And would he pick him up off his feet?

- Yeah.

Like how high off his feet?

I think, like, his feet would be, like, up here.

- His feet would be up there?

- Yeah.

Gabriel used to clean the kitty litter.

- Okay.

- And Gabriel used to say he was done,

so my dad would go check and the whole kitty litter was peed on.

Tony would say, "Pick it up right,
or I'll make you eat it."

Mm-hmm.

And what did Gabriel do?

When Gabriel didn't pick... when Gabriel
didn't pick it up right,

he said, "Get in this corner and eat it."

Really?

Did he eat it?

He had to.

None of us knows
how to really think about that.

That you could do this to a child.

Your child.

Or any child.

One of the most moving days
of the trial,

was when Ezequiel and Virginia
came into the courtroom.

There were no cameras allowed
in the courtroom,

because they're minors,

but we did get the transcripts
of what happened.

This is prosecutor Jon Hatami
interviewing Ezequiel,

Gabriel's older brother.

"Do you remember where that box was at?

In my parents' room.

And do you remember
if Gabriel would be in that box a lot?

Yes."

Exhibit number seven, they brought in
the box into the courtroom,

and one thing that was also memorable
about the box or what stuck in my mind,

is that it had all these little tickers
of tape on it to mark

where his bodily fluids were.

"So, I noticed you had two,
two beds in your room, right?

Yes.

But Gabriel still stayed in that box
most of the time.

Yes.

He slept in that box.

Yes.

Even sometimes during the day?

Yes."

And then again later on.

"Do you remember
how they put him in there?

They put him in with handcuffs.

Were the handcuffs, were they on him,
or were they on the outside?

On the outside.

So, the two little metal handles?

Yes.

Did they do anything to keep him talking
or from saying things?

They wrapped a bandana around his mouth.

I'm sorry, they wrapped a what?

A bandana.

Okay.

Did they put anything in his mouth?

Sometimes a sock.

How did Gabriel go to the bathroom?

Inside the box.

Was Gabriel ever made to clean up?

Yes.

Did the defendant make him clean it up sometimes?

Yes.

Would the defendant, kind of, hide him in there sometimes?

Yes.

Who was he hiding him from, do you remember?

Social workers, when they would come over.

So sometimes when social workers came over,

the defendant would put him in there and kind of hide him, gag him?

Both him and my mom.

Both your mom and the defendant?

Yes.

Was Gabriel hungry?

Yes.

You tried to give him a banana?

Yes.

Was Gabriel hungry a lot of times?

Yes.

Did you try to give him the banana when he was in the box?

Yes.

So even though the handcuffs were on the box,

were you able to get a bit of space in there to squeeze in the banana?

Yes."

I knew the case

was...

a really serious case of child abuse,

but it really wasn't until I got all of the evidence,

that I realized how egregious the case was.

Especially, hearing the testimony of Ezequiel and Virginia.

I think then...

it probably hit me more.

"How were Gabriel's teeth knocked out?

With a bat.

My mom hit him with the bottom side

of the bat in the teeth,

and, you know, they got knocked out.

Was he crying?

Yes.

Was he on the ground?

Yes.

Did they take him to the doctor
or the dentist?

No. Ever? No.

Ezequiel, what's that?

Pepper spray.

Whose was that?

My mom's boyfriend.

So the defendant?

Yes.

One of the things
for being a security guard?

Yes.

Did he ever do anything with that,
that you remember?

Yes.

Can you tell the jury what you remember?

Uh, I remember them both, my mom
and her boyfriend, putting Gabriel

inside the bathtub and my mom's boyfriend
spraying him in the face

with pepper spray.

What did Gabriel do?

He started crying and trying to get out
of the restroom.

Was he able to get out?

No, they had locked the door.

Did they ever call him gay?

Yes.

Mom or the boyfriend or both?

Both.

Did the boyfriend call him gay a lot?

Yes.

So...

sometimes the defendant would put makeup
on his bruises. Yes.

Sometimes the defendant would put Gabriel
in a cold bath

to help get bruises to go away. Yes.

Was Gabriel cold?

Yes.

Was he ever put anywhere
after the cold bath?

Inside the Box."

Hearing about from the children,
strikes me to the core.

That really helps parse out
what exactly took place,

in that apartment.

"Okay, in your own words,

the best that you can,

can you tell the jury what you remember
happening that night?

I just came home from playing outside
and I walked to the house,

and I see my mom, Virginia
and Gabriel inside Virginia's room.

And then they were arguing
about something.

I think I remember that my mom got mad
because Gabriel was playing with Virginia,

with the toys, and then she got mad,

and started hitting him in the face.

She dragged him into a room,

and then that's when my mom's boyfriend
went to the room and they closed the door.

And then I was hearing screaming
and a lot of banging.

And then my mom came out,

I was scared.

And, um, she told me to tell the police
or the paramedics

that me and Gabriel were playing,

and that he hit his head and that's it."

Gabriel's sister then goes
on the stand.

"I was sitting on the edge of the bed

and my mother's boyfriend
was punching him.

Was there a point
where he didn't get back up?

He knocked the air out of him,

and he fell over
and he didn't get back up.

Nothing further.

So they picked him up.

Nothing further, Your Honor.

Are you finished?

They threw him in the shower,
and he kept on yelling at him to wake up,
and when he didn't wake up,
my mother decided to call the police.

And she told me to grab a rag,
and we cleaned up all the blood
that was on the floor.

Did you say nothing further?

Nothing further."

We'll never know,
really what Gabriel went through.

I don't know how you...

I don't think we'll know.

I didn't see any emotions
from Isauro Aguirre.

He sat there stoic and he stared
completely forward.

I didn't see a single tear drop
when Virginia testified,

about the amount of blood,
about the kicking and the punching.

I think that during that time there...
everybody in the courtroom

was emotional and he sat there.

Um...

I don't know how a reasonable person
can sit there and not feel anything,

but apparently he was able to do that, so.

Ezequiel and Virginia seem to have
now found some degree of safe harbor

in their uncle.

What does that stable home mean for them
and their future?

That's everything.

I mean, we all need that.

I mean, I'm so glad that they have him.

You have to have that

to be able to resolve
any of the rest of it.

If you don't have that... you can't.

But now having a kind of holding
environment that is benign,

and trustworthy,

it means everything.

And I hope that they will be able

to recover.

You know, I think they can,
but it will be a long process.

I mean, these are

terrifying experiences.

Terrifying.

And to feel in any way
implicated also,

it's just very tough.

One of the most important aspects
in recovering from trauma,

that's abuse trauma,

is moving it outside of yourself.

That is, it's not something about you,

it's not something you did,

it's something that happened to you.

And I think that shift is

the most important
kind of juncture toward healing.

I know I did something
to Gabriel.

What did you do to Gabriel?

I never went to go see him

or tell him I was sorry.

To tell him you were sorry?

Why were you gonna tell him that?

Because...

because

every time we would play together,
I would always tell him

that he can't play with me.

Why? Why couldn't he play with you?

Because every time he wanted to play
with me, I was with my friends.

And so that's what you did bad to him?
Because you didn't wanna play with him?

He always stayed in the dark
with no one.

He stayed in the dark where?

Inside my mom's room.

I'm gonna tell you this,

Because you're gonna talk,
you're gonna talk to all kinds of people.

You already have.

Would you say you've already had to talk
to a bunch of people in two weeks, right?

You... you're gonna be talking
to more people, okay?

But this is something...

the reason this is what I'm saying,
eye-to-eye with you,

is so important,

is I'm the policeman,

who's investigating the whole case.

I'm the guy in charge.

Okay? From the guy in charge,

I'm telling you,

none of this was your fault.

None of it.

- Do you believe me?

- Yeah.

I want you to believe me.

That's the guy in charge.

So you can hear
from a lot of different people about...

this and that and the other thing.

But when you go to bed at night,

I want you to try to remember,

the head guy told me, it's not my fault.

Okay?

'Cause it's not.

Nothing that happened
and nothing that you were told to do,

nothing that they made you do,

is your fault.

And I want you to believe that.

Okay? You're a good... you're a good guy.

All right.

And we're gonna work through this.
All right?

Okay.

Any questions?

- No
- Okay.

I think it's dinnertime.
What do you think?

Okay, come on.

♪ Every age ♪

♪ Has its turn ♪

♪ Every branch of the tree ♪

♪ Has to learn ♪

♪ Learn to grow ♪

♪ Find its way ♪

♪ Make the best of this
Short-lived stay ♪

♪ Take this seed ♪

♪ Take this spade ♪

♪ Take this dream of a better day

♪ Take this mind ♪

♪ Take this pen ♪

♪ Take this dream of a better land ♪

♪ Take your time ♪

♪ Build a home ♪

♪ Build a place where we all ♪

♪ Can belong ♪♪

Season 1, Episode 6: Gabriel's Voice

HATAMI: The social workers had a chance. The deputies had a chance. The school officials had a chance. The counselors had a chance. Now it's to you, the people. And I got one question to ask you about this case. What are you gonna do? What are you gonna do?

BASS: Gabriel's case was so horrific. I mean, when the details came out of how this poor child was tortured, and all of these people knew, and repeated contacts were made with the department, I think it shook the county to the core.

SCOTT: Gabriel's case definitely had an impact on LA County. Law enforcement, all the agencies that are involved in child abuse, I mean his name is, you know, a household word. And it started the, you know, Blue Ribbon Commission.

THEROLF: A Blue Ribbon Commission had some of the highest power in child welfare officials in the country on it. I have never seen such a deep examination of what's wrong with our system and how to make it right as I have in the aftermath of Gabriel's death.

[another commission] I mean no offense to any of you, but when I talked to folks saying I was gonna come down here and present to the Blue Ribbon Commission, some folks rolled their eyes and said, "Is it just another commission?" And I said, "No, I don't think it is."

LESLIE GILBERT-LURIE: We wanted to hear from every concerned member of the community. We wanted to hear from all the relevant county departments, mental health, public health, education, everyone who touched the system in a significant way.

[man]: You know, the motto ought to be, "No dead kids on my watch."

[woman]: It's difficult when your integrity is questioned. The very people we serve were sitting outside with signs saying, "Fire the workers," "Do your job," and we want to do that.

DAVID SANDERS: The single biggest issue that the commission felt that the county was challenged with was that departments that should be working together were not. The Department of Children and Family Services was often isolated as the agency responsible for child safety, and the Sheriff's, Health Department, Mental Health, Public Health, were not seen as having responsibility.

[woman] I believe that the child welfare system is a system for poor children. Period. The social workers are overworked, in the sense that it's not just the number of their caseload, it's the complexity of the individual cases. They're only expected to deal with one piece of it, and dealing with that one piece, oftentimes, is not enough. It wasn't enough to save Gabriel.

SANDERS: One set of recommendations was related to the sharing of information between law enforcement and child protection.

LESLIE: We felt that without that, children would continue to be harmed.

GILBERT-LURIE: It's really essential because a lot of the tragedies and mistakes and missteps that take place are that somebody saw something, but that message did not get passed on to a broad enough group of entities who could step in and take the child out of harm's way.

ANDREA RICH: The present state of the child welfare system is in crisis. This commission urges the board of supervisors to acknowledge this state of emergency.

LESLIE: We tried to get the system to move as one for the well-being of children, and from that thought came a suggestion to adopt an Office of Child Protection.

SANDERS: The idea of the Office of Child Protection was to say that there's a single entity that is responsible for children's issues and for setting those priorities.

[man]: One of the recommendations was to have overarching authority over the entire child protection system to the extent of actually controlling resources and personnel. Ultimately, the Board of Supervisors did create the Office of Child Protection without the authority that the Blue Ribbon Commission recommended. But I thought if they created this office, it would serve mostly as a facilitator, and that's exactly what we do. We're charged with helping to implement recommendations from the Blue Ribbon Commission as appropriate. I took over the executive director in January 2016 and I think in the two and a half plus years that we have essentially been in operation, I think we've helped move the ball. But the problems that contributed to Gabriel's death haven't been fixed. We're talking about a large county, so moving this battleship, you know, takes a little bit of time. And so you pray that while you're in this period of reform, something bad doesn't happen.

MALE NEWSCASTER: In just hours, jurors will begin deliberating the case of a Palmdale man charged with the beating death of his girlfriend's son.

FEMALE NEWSCASTER: Prosecution having their closing arguments this morning. The prosecution is seeking the death penalty for Aguirre.

CHADBURN: The way this trial works is, initially, you'll get a verdict on whether or not he's guilty or not guilty, and then there will be a penalty phase to determine whether or

not he will get the death penalty. That'll be the time when we actually get them both together in the room, and they'll be sentenced together.

MICHAEL SKLAR: While the evidence presented shows that Isauro Aguirre and Pearl Fernandez committed unspeakable acts of abuse against Gabriel over a period of time, it was the trauma caused as a result of the beating on May 22nd, 2013 that killed Gabriel. Isauro confessed to Detective Uribe. Pearl informed Isauro that Gabriel had asked her to leave him. Angry over the fact that Gabriel would interfere with his relationship with Pearl, Isauro confronted Gabriel, who denied saying it. When Gabriel twice called Pearl a liar in Isauro's presence, Isauro exploded into a rage of anger and, together with Pearl, struck Gabriel with his hands and fists to the head and body. Isauro described his level of anger at 20 on a scale of one to ten. He told Detectives Uribe and Long he became so out of control with anger and rage that he saw red, he was hyperventilating and he almost passed out. He stated in his confession that he was completely out of control and he just couldn't stop himself from hitting Gabriel. But note that he also told the detective that acting out of control, was no excuse for what he did. No one is asking you not to hold Isauro accountable and responsible for his actions. What we're asking that you do is come back with a verdict that serves the ends of justice, a finding that Isauro is guilty of murder in the second degree.

JUROR #1: I don't know anyone that's a victim of child abuse. Honestly, I've lived a pretty sheltered life, and I've really never been exposed to something like this before. I've really never give this topic very much thought, until now.

JUROR #6: I've only been on one other trial, and that was a civil trial. Otherwise than that, this is the first trial I've ever been on. And what trial to get.

JUROR #4: This case was something that hit home, because I'm a father of three and I could never imagine putting my kids through what Gabriel was put through. I just told myself I'm gonna go in with an open mind. I'm gonna forget about what I heard and just hear what evidence is gonna be presented, and just go by that.

JUROR #5: That's the beauty of the system. It's a jury of your peers. And while I might not have, on the face of it, anything in common with Gabriel, we are just basically regular citizens, we have equal weight in the eyes of the law. But there is a sense of responsibility and gravity that the law is being put in your hands. Someone is putting someone else's life in my hands. And that is a huge weight to carry.

HATAMI: The defense wants you to believe that the defendant was in a rage, and he was a 20 on a scale of one to ten, and completely lost control. Because that is their

theory, and that is their story. But it's just not consistent with the evidence. When the defendant grabbed him by the neck, and brought him towards that wall, and punched him right in the face, that's one time. And Gabriel's down. And the defendant's standing over him. And Gabriel's dying. And he's helpless. He's a child. You can't do anything. You can't do anything when you're helpless. And he picks Gabriel back up and he calls him gay, and he hits him again. And Gabriel's down. And that's only two times. And then Pearl gets in there. And then when he's down, they kick him. And they're hitting him, and he hits him 20 times. In the body. And he hits him ten times in the head. Ten times. And, Gabriel, he'll never know why. He'll never know why that he was beaten to death. He'll never know. His last breath when he looked up and saw the defendant beating him, and saw his mom there. He'll never know why. And he'll never get a chance. Ever. To live a normal life. Justice for Gabriel. Justice for Gabriel, this is first-degree murder and this is intentional murder by torture. That is beyond all doubt. All doubt.

JUROR #5: She said that in that recording we just heard, and this also makes you realize this is why Pearl and Isauro wanted to remove him from the school he was enrolled in...

JUROR #6: Everybody was talking back and forth about different things, about the doctors, the nurses, the teacher. It was going around and around about it. We didn't even vote.

FEMALE NEWSCASTER: The jury finished its first day of deliberations without a verdict. The seven women and five men deliberated for just three and a half hours. The jury will continue deliberations tomorrow morning.

JUROR #4: Next day it was pretty much down to business.

JUROR #1: We had to decide if he was guilty of first-degree murder or second-degree murder and if the special circumstance of torture was true or not. If we found Isauro Aguirre guilty of murder in the first degree and found that the special circumstance of torture was true, that would make him eligible for the death penalty. And it's really not as clear-cut as people think it is, because we had, like, 50 page[sic] of instructions.

JUDGE: The defendant is guilty of first-degree murder if the people have proved that he acted willfully, deliberately, and with premeditation. The defendant acted willfully if he intended to kill. The defendant acted deliberately if he carefully weighed the considerations for and against his choice and knowing the consequences, decide[sic] to kill.

JUROR #1: So, for first-degree murder, it had to be willful, deliberate and premeditated. And obviously there was no doubt in my mind that he was guilty of first-degree murder. But a couple people weren't convinced that it was premeditated.

JUROR #6: Finally, we all got together, and we said, "Well, let's take a vote." So we took a vote, and it came up—it was, uh, 11 to one.

JUROR #7: Uh, pretty much I'm always the last one to say OK. I got a master degree in civil engineering. Most people jump to the conclusion. My training tells me, "No, you shouldn't. You should examine all the evidence presented to us. If this is a first-degree murder, this defendant has to have an intent to kill. Did he intended to kill the poor child, or intend to torture him? It's the intent to torture. He wants to teach that poor kid a lesson. If that's the case, the first-degree murder won't stand. Based on that, I'm not going to say he's guilty.

JUROR #4: You don't starve someone. You don't beat someone. You don't hog-tie someone. You don't handcuff someone, and not think that everything you're doing is not going to lead to you killing them. They were basically killing him slowly. And that's one of the things that we tried to—to tell the one juror that was holding out.

JUROR #7: If he had premeditated to kill, he has to, say, kill this child and bury it in the forest. Nobody can find it. If he intend to kill that boy, he—he could do that a long, long time ago.

JUROR #1: Time doesn't matter. Like, he could have made the decision in one second, that, like, "I'm gonna do this. I'm gonna go through with it. I'm gonna kill him." It still would have been premeditated." But he just wasn't convinced.

MALE NEWSCASTER: So anything's possible. The jurors could, conceivably, come back with a "not guilty," although, based on what I've seen, I can't imagine how they would reach that conclusion.

HATAMI: I think it was, like, at 11:45, I got the word that there's a verdict. There's a text.

YANG: It's very nerve-wracking waiting for a verdict to come back. You know, you go back in your mind and you think about, "Was there something else I could have done?" Was there something I could have presented to the jury that would guarantee me a certain outcome?"

HATAMI: I remember walking up to go over there, I—I thought I was gonna, like—my legs were gonna give up. I didn't think I was gonna make it. My heart was pounding so hard.

BAILIFF: Move all the way down, 'cause we're gonna be sitting shoulder to shoulder. OK, good afternoon. We all know why we're here. So we expect the utmost courtesy and respect for the court. So, whatever decisions that may be rendered, no running out of the courtroom. No texting or causing any kind of disturbance once this process begins.

JUDGE: We are on the record in the matter of People vs. Isauro Aguirre. All counsel are present. The defendant as well. I understand that the jury has reached a verdict. We're gonna invite the jury to join us at this time, if you would, Mr. Clerk. All right, let the record reflect that the jury has now joined us. Good afternoon ladies and gentlemen.

JURORS: Good afternoon, Judge.

JUDGE: I understand that there is a verdict that's been reached?

JUROR: Yes.

JUDGE: Who is the foreperson?

JUROR: I am.

JUDGE: All right. Is it correct a verdict's been reached?

JUROR: Yes.

JUDGE: Hand the verdict forms over to my bailiff, please. All right Mr. Clerk, if you will read the verdict onto the lectern, please.

CLERK: The Superior Court of the State of California, County of Los Angeles, Department 107, People of the State of California vs. Isauro Aguirre, we the jury in the above entitled action find the defendant Isauro Aguirre guilty of the crime of murder in the first degree. We further find the allegation that said murder was committed intentionally and involved the infliction of torture, within the meaning of penal code section 190.2, subsection A18, to be true, dated November 15, 2017, juror number five, foreperson. Ladies and gentlemen of the jury, is this your verdict, so say you once, so say you all?

JURORS: Yes.

CLERK: Thank you.

JUROR #4: When we finally delivered a guilty verdict, I think there was relief. Someone's finally going to pay for this. Someone's actually standing up for Gabriel.

YANG: A verdict like that, uh, to me, is just, you know, this—this glaring statement by the community to that person. You can't hide from us anymore. You're guilty.

JUDGE: We stand and recess.

HATAMI: I'll never forget it. Ever. As long as I live. Never forget that feeling, never forget that verdict. To all of our years, you know, it just—all the work, it finally is, I was like, "Thank God." 'Cause you don't want to let the family down. I was so happy for Arnold. He was so upset at what happened to Gabriel, he felt so guilty. Also, just didn't believe in the system. Not only because of what happened to Gabriel but because of things that happened to him. And, you know, a lot of people who have been in custody, the system really hasn't been kind to them.

MALE NEWSCASTER: What happens next? They take a break. Same jury. Seven women, five men. They now begin what is called the penalty phase. That begins on November 27th. What's determined in that is, uh, the defendant, Aguirre, will it be life or death? The jury must decide on that.

CHADBURN: The penalty phase seemed a lot more tense and took a lot longer than the guilty verdict. We've already said, "OK, he's done it. Now we're gonna determine whether or not he's deserving of the death penalty.

[man]: California has the largest death row in the United States. There are 740 people currently on California's death row. And Southern California is currently sentencing more people to death than any other part of the country. In essence, the United States is the only western democracy that still has the death penalty. It continues to pose a significant moral dilemma for this country. We are, in many respects, of two minds. because this is the country of great opportunity, of respect for humanity, and at the same time, it's a country that's been highly punitive. The better angels of our nature want to get rid of the death penalty. Uh, they have not prevailed. We are a country of mercy, and we are a country of vengeance, and we live with both at the same time. California has this system where it can't just be a murder, it has to be a murder with special circumstances. Gruesome cases are really hard to decide. And you're going to

have jurors who believe that this person should not be killed. Juries have a choice. They have a choice between life without possibility of parole, and the death penalty. And when it gets down to a person who does not think a defendant should die, and jurors who think we have to kill this person in order to protect society, you have extraordinarily emotional debates.

JUROR #5: The instructions were different. The standards were different. Now it just came down to personal beliefs and personal preferences.

CHADBURN: The question seems to be posed automatically at this point whether or not Isauro Aguirre is a monster. You hear that word a lot during the penalty phase. And then the sort of character witnesses that are brought forward come forward to talk about how, you know, he's not a monster. This is where you get into a really interesting concept of justice when people start talking about morality and good and evil.

SKLAR: Your Honor, the defense calls Ms. Susan Weisbarth.

CHADBURN: The defense brought up his work with the elderly and the disabled.

JUDGE: All right, Counsel.

SKLAR: May I proceed, Your Honor?

JUDGE: Yes.

SKLAR: Thank you. Um, good morning, Ms. Weisbarth.

WEISBARTH: Good morning.

SKLAR: Ms. Weisbarth, directing your attention to the man whose back I'm touching, do you recognize him?

WEISBARTH: I do.

SKLAR: How do you recognize him?

WEISBARTH: Isauro worked for me.

SKLAR: Uh... where did he work for you at?

WEISBARTH: In Woodland Hills at Woodland Park Retirement Hotel. It has another name now.

SKLAR: What was Isauro's job at Woodland Park?

WEISBARTH: Isauro was a caregiver and a driver. We called him Shaggy.

SKLAR: Shaggy. That was a nickname for him?

WEISBARTH: Yes, it was.

SKLAR: Uh, was it—was the nickname a term of endearment?

WEISBARTH: Uh, yes, it was. He was quiet. He was just a—down-to-earth nice person, always willing to help. He was kind and caring, so when all this came up, it was, like, this has to be a mistake, it—it can't be true.

SKLAR: Did you see him carrying out his duties?

WEISBARTH: I saw him every day that we worked together.

SKLAR: And that was over a span of three years.

WEISBARTH: Yes. As a caregiver, if—a lot of them wore briefs. That's a diaper, and if someone was wet or dirty, he would clean them. The residents always wanted him to take care of them. I mean, he was like a teddy bear, the residents adored him. Um, so did the staff.

SKLAR: And what was Isauro's job at that time?

SHERLINE MILLER: He was the, uh, driver for the Woodland Park Retirement Hotel. One of the places we frequently went because of the weather in California—to the Santa Monica Pier, and we would go there and have lunch. And, um, on occasion, Isauro would suggest, could we take the scenic route back to the hotel, where the residents live, so that they could, you know, see different areas, not just see the freeway.

WEISBARTH: Compassion is the most important part. If you don't have it, then, well, they couldn't work for me.

SKLAR: Um... knowing what you know about the crime that he was found guilty of in this case, do you believe that there remains some goodness in Isauro that's worth saving?

WEISBARTH: I saw him as a good person. He worked for me, otherwise—he couldn't have worked for me if he wasn't.

HATAMI: So, would it change your opinion to know that he admitted to, um, punching an eight-year-old boy ten times in the face? Would that change your opinion that he's good?

WEISBARTH: No.

HATAMI: Excuse me?

WEISBARTH: No.

HATAMI: So you're OK with a grown man punching an eight-year-old child ten times in the face? In your opinion, that person could still have good in them, correct?

WEISBARTH: I'm not OK with what he did now.

HATAMI: You testify that now there's some good in him. Right?

WEISBARTH: I—I—yes, I did, because I know the type of person he was. I'm caught between a rock and a hard place, in a sense.

HATAMI: So if you knew that the defendant punched an eight-year-old boy 20 times in the body, would that change your opinion about your belief that he's a good person, here today?

WEISBARTH: I know what he did. I've read it, I've heard it, I've seen it, but I think deep down there was good. It's hard to wrap myself around all this. I don't think we'll get the answers. Because Shaggy is not talking.

HATAMI: What did Gabriel think during those last few seconds? "Does anybody love me? Does my mom love me? Why is this man who calls himself my stepfather doing this to me? Is anybody there to protect me? Where are my grandparents? Where is my teacher? Isn't anybody there to love me and hold me? I'm sorry. I'll be a good boy." There is evil in this room right now. And it's right over there. It's right over there. You

know what Gabriel went through. It is beyond all doubt cruel, inhumane, and evil conduct. No human with a heart and soul could do that to an innocent little boy, and no human with any goodness in them could do that to a helpless little child.

JUROR #1: I would, like, stare at him every single day, trying to see if I can find some humanity in him, just any kind of emotion.

JUROR #6: Just rolling his hands. That's all he was doing. And he would sit there—not even wipe his eye or a tear or anything. It infuriated me because he didn't show no kind of remorse.

JUROR #8: Remorse would be a mitigating factor. I mean, it was all so horrible. It's like, you know. Give us something—yeah, just a little bit—just a little, tiny bit, you know?

JUROR #1: And we took another vote, and it was 11 to one. And it was... the same guy who wasn't convinced of first degree murder wasn't convinced of the death penalty.

FEMALE NEWSCASTER: Well, it appears the jury, early this morning, was in sort of a deadlock. They out a note and it says here, "If we cannot unanimously agree on a penalty, what is the outcome?"

JUDGE: First of all, ladies and gentlemen, your inquiry is a little premature. Uh, this phase of the trial, the penalty phase, took about two weeks to do. You, uh, have only been deliberating for two hours. And so it really is premature, so I'm gonna ask you to continue deliberating, if you will. Thank you.

DUNHAM: Under California law, for a death sentence to be imposed, the jury must reach a unanimous verdict, uh, saying that death is the appropriate punishment. And that means one person can spare a defendant's life.

JUROR #7: Emotion was running high in that jury room. If everybody had got his way, we sentenced the defendant to the death penalty in two hours, in my opinion. Which I think is wrong. I think we should, uh, give the defendant a chance to defend himself, and we have to think from his point of view.

JUROR #4: It wasn't his kid. He wasn't married to Pearl. He could have just walked away and could have cleaned his hands of everything. And he would have been a free man that day, but he never did.

JUROR #7: I would have rather sentence[sic] the mother to the death penalty instead of him. I felt the mother should take care of the kids, no matter what happen[sic]. She's the mother. The defendant is just the boyfriend of the mother.

JUROR #1: We kept saying to him, "She's not on trial." And we already established that there was a co-conspiracy theory. So it doesn't matter if you think she was the mastermind behind all this. One isn't more guilty than the other. They did this together. He, like, thought deep down that Isauro was maybe a good guy.

JUROR #7: The act he did to Gabriel, there's no excuse for that. And it's evil. But, is he really, really that evil, a person? How do you define an evil person? It's hard.

JUROR #4: There's no way this man can be spared his life, because he didn't spare Gabriel's life.

JUROR #1: I never had any doubt in my mind that I wanted to sentence him to death. I was never going to sway. I was never gonna change my opinion on that, no matter what.

MALE NEWSCASTER: En estos dos días, el jurado ha deliberado durante para aproximadamente seis horas sin llegar a un veredicto. Si el jurado llegara a declarar nulo el juicio entonces la Fiscalía tendrá la opción de presentar la evidencia a un nuevo jurado. Mañana, a partir de las diez, aquí en la corte de Los Ángeles el jurado comenzará a deliberar.

JUROR #5: Once we hit that bell, you know whatever—three rings for a decision—uh, we all just burst into tears.

JUROR: There were not smiles, by any means. There was no sense of gratification.

JUDGE: Uh, we are on the record in this matter of the People vs. Aguirre. All 12 jurors are present. All counsel and the defendant. Juror number five, have you reached a verdict?

JUROR #5: Yes.

JUDGE: All right, Mr. Clerk, if you would read the verdict.

CLERK: In the Superior Court of California, County of Los Angeles, Department 107, People of the State of California vs. Isauro Aguirre, case number BA425180, we the jury

in the above entitled action, having found the defendant Isauro Aguirre guilty of the crime of murder in the first degree, and having found the special circumstance to be true, fix the penalty at death. Ladies and gentlemen of the jury, is this your verdict so say you one, so say you all?

JURORS: Yes.

MALE NEWSCASTER: Before the judge dismissed the jury, this message to him from the foreperson, off-camera.

JUROR #5: We were plucked out of our everyday lives and brought together to serve on this case, and we came together to bring justice for Gabriel.

MALE NEWSCASTER: "Justice for Gabriel." Now, typically, we would hear from the prosecutors, or perhaps the defense as well. But an unusual request by the judge. He asked the attorneys not to speak about this, didn't want any public comments tainting any potential future jurors. Reporting live downtown, I'm Phil Shuman, Fox 11 News.

[man:] We just had the decision from the jury on the death penalty for Isauro Aguirre. Um, I think that's really changed the environment for everybody involved in the case. Rumors started emerging pretty soon after that. It's had an effect on Pearl, and she's possibly seeking a plea agreement that would allow her to avoid a death sentence.

CHADBURN: Right up to the last minute, no one knew what Pearl was gonna say. We didn't know if she was gonna come out here and she was gonna want a trial and are we gonna sit here for another six months? Or if she was gonna turn around and—and take a plea deal.

JUDGE: Miss, uh, Fernandez, the prosecution is gonna explain to you the—your constitutional statutory rights, and then the specifics about your plea. I ask that you listen very carefully. To the extent that you do not understand something, make sure you consult with your attorneys, all right? We'll try to go slow on this.

HATAMI: Defendant Pearl Sinthia Fernandez, in case BA425180, to count one, a violation of California Penal Code Section 187, Subdivision A, the murder of Gabriel Fernandez, a serious and violent felony, how do you plead?

PEARL: Guilty.

HATAMI: Excuse me?

PEARL: Guilty.

HATAMI: Defendant Fernandez, you are being sent to state prison for the remainder of your natural life. You will never be paroled. You will never be released from prison. Do you clearly understand and agree to this?

PEARL: Yes.

HATAMI: Do you admit or deny that count one, the murder of Gabriel Fernandez, was committed by you, willfully, deliberately, and with premeditation in the first degree?

PEARL: Yes.

HATAMI: Do you admit it?

PEARL: Yes.

[woman]: She said yes.

HATAMI: Do you also admit or deny the special circumstance that the aforementioned murder of Gabriel Fernandez was intentional and involved the infliction of torture?

PEARL: Yes.

JUDGE: All right, the court will make a finding that the defendant knowingly, intelligently, and understandingly waived her constitutional and statutory rights, and that her plea was freely and voluntarily made with an understanding of the nature consequences[sic] thereof?

PEARL: Yes.

JUDGE: We stand and recess. Thank you.

HATAMI: Thank you, Your Honor.

JUDGE: Thank you.

JUDGE: All right, uh, let me draw the matter of the People vs. Isauro Aguirre and Pearl Fernandez. And, first of all, turn to the prosecution. Are there impact statements to be made?

[man]: Yes, Your Honor.

JUDGE: You may proceed.

JENNIFER GARCIA: I'm here to talk about how Gabriel's murder has affected my life. I feel strange even talking about me, because I'm living and he is dead. Time has helped, but I can honestly say there isn't a day that goes by that I don't think about Gabriel. I carry around a lot of guilt. I think about him most when I am alone with my thoughts on my way to work or trying to fall asleep. I replay over and over again what happened and what I could have done differently, what I should have said, what I should have done. My own school district thinks, since my testimony is over, that this is over and done. But for me it will never go away. This will always be a part of me and something I will think about until the day I die. For the last five years, Gabriel has been number 28 in my classroom. I don't assign number 28 to another student because... I feel it's only his number now. And it's a way for me to honor him in my classroom. It almost makes it like he's still here. I find comfort in believing he is now at peace. He cannot be harmed anymore. And i know that, unlike him, his abusers will never have peace. They will have a lifetime of suffering to endure. I know I'm not alone in hoping that they experience the same abuse in their lifetime and worse. They are evil people for what they did, and despite how I feel, I know that if Gabriel had survived, he wouldn't have wanted his mom and Isauro to be punished for anything they did to him. That's all.

JUDGE: All right–

[man]: Your Honor, may we have just a moment?

JUDGE: Yes.

[woman]: Ms. Fernandez would like to make a brief statement.

JUDGE: She may. Just keep your voice up so everybody can hear you, OK?

PEARL: OK.

JUDGE: All right.

PEARL: I wanna say I'm sorry to my family for what I did. I wanna say I'm sorry for this—what happened. I wish Gabriel was alive. Every day, I wish that I made better choices. I'm sorry to my children, and I want them to know that I love them. And I hope one day they will forgive me. And I hope one day they will come to their sense[sic] and come to me. I wish Gabriel's—I wish I could have saved Gabriel. And I just want to say thank you and God bless everybody.

JUDGE: All right. uh, let me move on to the issue of sentencing. Uh, as I stated, uh, next week, June 17th, it'll be 20 years that I've been on the bench. I have imposed a lot of sentences in the course of those 20 years, and generally it is my practice to comment on a lot of cases. But, you know, I was privy to this case. I sat through it. I heard the evidence. Uh, I was privy to the photographs, coroner's photographs, the extent of the injuries and what have you, and this almost demands that comment be made. I—it is unimaginable the pain that this child probably endured. And, uh, from what I heard, Gabriel was a... kind, loving individual, who just wanted to be loved. And, so... uh, you know, you wanna say that the conduct was animalistic, but that would be wrong. 'Cause even animals know how to take care of their young. You know, I can only wish—I—I really do, that you both, in the middle of the night, you wake up, and you think of the injuries that—that you subjected this poor, young man—this poor, seven-year-old, um, and that it tortures you. I rarely say that. It'll be a different type of torture, 'cause you won't be in pain—physical pain. But I'm not sure that you're capable of doing that. Um, but that's my wish. And I'm going to move to the issue of sentencing with respect to Pearl Sinthia Fernandez. It is the judgment and sentence of this court that the defendant shall be sentenced to a term of life in prison without the possibility of parole for the underlined murder charge coupled with the torture special circumstance allegation. With respect to Mr. Isauro Aguirre, Defendant Isauro Aguirre shall be put to death within the walls of the California State Prison at San Quentin in a manner and means prescribed by law, upon a date to be fixed by this court and a warrant of execution. The defendant shall be transported to the California State Prison at San Quentin, for the death sentence shall be executed. All right. Thank you, all. Please stand in recess.

[man]: Thank you.

[man 2]: Will the audience please remain seated...

HATAMI: Two weeks after Isauro Aguirre and Pearl Fernandez were sentenced, I got a phone call, from a deputy in Antelope Valley. And she said the same thing happened again.

FEMALE NEWSCASTER: It was Wednesday at 12:15 in the afternoon when deputies responded to the Village Point apartment complex on Challenger Way in Lancaster, for a call of a little boy not breathing, the child's mother reportedly telling deputies he had fallen. The little boy was rushed to the hospital in critical condition, and just 18 and a half hours later, ten-year-old Anthony was dead.

HATAMI: I was shocked. Um... I was shocked.

FEMALE NEWSCASTER: The child had severe head injuries and cigarette burns all over his body, and the newspaper says there had been a history of documented abuse.

HATAMI: It didn't make sense to me, in my head, that there could be another little boy like Gabriel. You're thinking about it in your head, "How could this be true? This can't be true."

PROTESTERS: "Justice for Anthony!"

FEMALE NEWSCASTER: Earlier today in Palmdale, members of the community rallied outside the DCFS office, demanding change.

LESLIE: Five years after Gabriel died, I was devastated to read about Anthony Avalos's death.

MALE NEWSCASTER: Prosecutors say the couple withheld food from him, denied him access to the restroom, slammed him into furniture, and would encourage the other kids in the house to hurt him. His case is being compared to the abuse and death of Gabriel Fernandez, who was also from the Antelope Valley.

HATAMI: How could it have happened again in the same location? The same, you know, boyfriend and mom dynamic. The same DCFS contact.

ASTRID: We just happened to be in Antelope Valley, two days before Anthony was killed, and went in and found the clinic closed, and realized that even though we'd already had a death up there, that the resources were not there for the next kid that was killed.

MALE NEWSCASTER: Despite all the publicity surrounding Gabriel's horrific murder, something prevented DCFS from saving a second little boy who was likely suffering just a few miles away.

CHADBURN: DCFS was very quick to say, like, “This is not the same case, or not a similar case,” but you couldn’t help but draw parallels between the two.

FEMALE NEWSCASTER: Did homophobia lead to this little boy’s death? Authorities say ten-year-old Anthony Avalos came out before he died last week, under suspicious circumstances.

RICARDO LARA: It’s the homophobia that you don’t see, that doesn’t play out on TV, that doesn’t play out on the street—that is alive and well in your own home.

LESLIE: Anthony’s death seemed so preventable. Officials were notified. People noticed that Anthony was suffering. It seemed to me that if our recommendations from the Blue Ribbon Commission had been fully implemented by this point, Anthony would be alive today. You asked for our help and our thoughts and our time. We’ve given you the best of all of these.

LARA: Who are we going to hold accountable for this? We have to figure out what is happening in LA County.

THEROLF: Ricardo Lara was one of the most active lawmakers seeking an independent audit of the DCFS. LA County fought him tooth and nail. We have finally have the results, and it’s a blistering account of what’s happened at DCFS. According to the state auditor, current DCFS management had the benefit of many, many extremely well-considered proposals on what could improve the situation, but there was no reasonable process in place to implement those recommendations.

[man]: I’d been working for the county for a while and when there was no external pressure or scrutiny, it just became that much easier to bury problems without really addressing them. Or to address them halfway or to let investigations or disciplinary proceedings or reform measures just sort of evaporate quietly, and nobody would be the wiser. It’s very unlikely that anything lasting and significant will be accomplished in darkness.

[man]: You know, DCFS has totally declined to talk to us about Gabriel Fernandez’s case or the Anthony Avalos case. Why do you think that is?

[man]: I—I can’t answer that question. You know, there are those who think that, by not talking, that you can limit the bad publicity, whereas, I don’t think that’s true.

SHELBY GRAD: I think we're at this sort of existential moment for journalism, particularly local journalism, because the cuts are getting really bad. As there's less watchdogs, it's easier for people to do things in secret, for government to do things that you don't know about. You know, we have only a few weeks left before the newspaper moves to El Segundo, so it's a totally different era, moving out of LA, moving into a kind of a new space and a new way of thinking. It's been really painful for some people. As there are just cuts and cuts and cuts at newspapers, no one is coming in to step in and fill that void of local reporting, and I think that's a crisis, and the crisis is going to get worse in the coming years. The Gabriel case is a good example of just how you need local reporting.

THEROLF: In the years since Gabriel died, we know by the county's own count that more than 150 children have died of abuse and neglect after receiving at least some DCFS involvement in their lives. The most recent child to come to our attention is a four-year-old boy named Noah Cuatro. A case worker went to a judge saying this child was in imminent risk. The judge agreed with her, issued a ruling the very next day saying that the boy should be removed. DCFS never carried that order out, and within weeks, he died under very suspicious circumstances.

MALE NEWSCASTER: California Appeals Court has thrown out criminal charges against four social workers in the murder of an eight-year-old Palmdale boy.

MALE NEWSCASTER: Today, the state appeals court ruled the social workers were not required to control the abusers or to care for Gabriel and the charges should be dismissed.

GREG: Those of us who were working the case seem to have done what we could have done. In my opinion, no crime was committed, and I did not commit a crime.

ASTRID: I think evil does reside in the heart of individuals. And you do see evil when you're a child abuse doctor. You also see anger and frustration and poverty, and—"What am I gonna do?" And, "I'm gonna hit my kid because I'm frustrated." But I believe the ultimate evil in this world is knowing what's wrong, seeing what's wrong, and looking away. It's in the looking away when you have a power to make the difference, that is true evil.