

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
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PLAINTIFFS,)
VS.) NO. BA 068880

ERIK GALEN MENENDEZ, AND)
JOSEPH LYLE MENENDEZ,)
DEFENDANTS.)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
MONDAY, APRIL 1, 1996
VOLUME 318
(SEALED PAGES 53495 THROUGH 53498)

APPEARANCES:
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI
3 DISTRICT ATTORNEY
BY: DAVID CONN, DEPUTY
4 AND
CAROL NAJERA, DEPUTY
5 18000 CRIMINAL COURTS BLDG.
210 WEST TEMPLE STREET
6 LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT
9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
PUBLIC DEFENDER
10 BY: CHARLES GESSLER, DEPUTY
AND
11 TERRI TOWERY, DEPUTY
210 WEST TEMPLE
12 LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT
15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON
ATTORNEY AT LAW
16 4929 WILSHIRE BOULEVARD
SUITE 940
17 LOS ANGELES, CA 90010

18

BARRY LEVIN, ESQ.
11661 SAN VICENTE BOULEVARD
19 LOS ANGELES, CA 90049

20

21

MARY LU MURPHY
22 CSR NO. 5178
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS

1 VAN NUYS, CALIFORNIA; MONDAY, APRIL 1, 1996

2 9:15 A.M.

3 DEPARTMENT NW "N" HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD OUT OF THE PRESENCE OF

10 THE JURY:)

11

12 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE IN

13 COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

14 ARE WE READY TO PROCEED WITH THE JURY?

15 MS. NAJERA: YOUR HONOR, THERE IS JUST ONE THING.

16 COUNSEL FOR THE DEFENSE SHOWED US TWO

17 PHOTOGRAPHS THIS MORNING OF WHAT APPEAR TO BE ERIK

18 MENENDEZ AND SOMEONE WHO WE BELIEVE IS KIRSTEN SMITH.

19 ONE APPEARS TO BE A PROM PHOTO, AND THE OTHER APPEARS TO

20 BE A CASUAL PHOTO OF THE TWO OF THEM TOGETHER.

21 AND WE BELIEVE THEY HAVE NO RELEVANCE, AND

22 SO WE WOULD OBJECT TO THEM BEING SHOWN TO THE JURY.

23 COUNSEL WANTS TO MARK THEM NOW. WE HAVE NO OBJECTION TO

24 THEM BEING MARKED.

25 THE COURT: ALL RIGHT.

26 DID YOU INTEND TO SHOW THEM, OR HAVE THEM
27 MARKED AND REFERRED TO BY THE WITNESS?
28 MS. ABRAMSON: I WAS GOING TO HAVE THEM MARKED

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1 AND REFERRED TO BY THE WITNESS. THEY ARE TOO SMALL FOR
2 THE JURY TO SEE AT THIS TIME.

3 THE COURT: ALL RIGHT. WE WILL MARK THEM AND
4 DISCUSS THEM AT A LATER TIME.

5 MS. ABRAMSON: WHAT IS THE NEXT NUMBER, YOUR
6 HONOR?

7 THE COURT: 453.

8 LET'S GET THE JURY OUT THEN, PLEASE.

9 (THE JURY ENTERS THE COURTROOM
10 AND THE FOLLOWING PROCEEDINGS
11 WERE HELD:)

12

13 THE COURT: THE JURY IS IN THE COURTROOM.

14 GOOD MORNING, LADIES AND GENTLEMEN. WE'RE
15 READY TO RESUME WITH THE TRIAL.

16 YOU MAY CALL YOUR NEXT WITNESS.

17 MS. ABRAMSON: DEFENSE CALLS KIRSTEN SMITH.

18

19 KIRSTEN SMITH,
20 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
23 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
24 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
25 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

26 THE WITNESS: I DO.

27 THE CLERK: PLEASE BE SEATED.

28 PLEASE STATE AND SPELL YOUR NAME FOR THE

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1 RECORD, PLEASE.

2 THE WITNESS: KIRSTEN INGRID CHRISTINE SMITH,
3 S-M-I-T-H.

4

5 DIRECT EXAMINATION

6 BY MS. ABRAMSON:

7 Q. MS. SMITH, HOW OLD ARE YOU?

8 A. TWENTY-FOUR.

9 Q. AND WHAT DO YOU DO FOR A LIVING?

10 A. I'M A TENNIS PROFESSIONAL AND PART-TIME
11 SPORTS MODEL.

12 Q. AND AS A TENNIS PROFESSIONAL, DOES THAT
13 MEAN YOU TEACH PEOPLE HOW TO PLAY TENNIS?

14 A. I TEACH ABOUT 30 HOURS A WEEK AT A TENNIS
15 CLUB IN THE VALLEY.

16 Q. AND WHAT TENNIS CLUB IS THAT?

17 A. CALABASAS TENNIS AND SWIM CENTER.

18 Q. AND WHEN YOU WERE A STUDENT IN HIGH SCHOOL,
19 DID YOU RECEIVE COACHING AT THE CALABASAS TENNIS CENTER?
20 A. YES.
21 Q. AND WHERE DID YOU GO TO HIGH SCHOOL?
22 A. I WENT TO THOUSAND OAKS HIGH SCHOOL.
23 Q. AND DID YOU, AFTER HIGH SCHOOL, GO TO
24 COLLEGE?
25 A. YES.
26 Q. AND WHAT COLLEGE DID YOU ATTEND?
27 A. PEPPERDINE UNIVERSITY.
28 Q. DID YOU GRADUATE?

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1 A. APRIL OF '94.
2 Q. AND WHEN YOU WERE A HIGH SCHOOL STUDENT AND
3 GOING TO THE CALABASAS TENNIS CENTER, DID YOU MEET ERIK
4 MENENDEZ?
5 A. YES.
6 Q. AND EVENTUALLY DID YOU AND ERIK HAVE A
7 PARTICULAR KIND OF RELATIONSHIP?
8 A. WE DATED.
9 Q. AND WAS HE YOUR BOYFRIEND?
10 A. YES.
11 Q. AND IS HE SOMEONE THAT YOU'RE STILL FRIENDS
12 WITH?
13 A. VERY MUCH SO.

14 Q. AND WHO WERE YOU TAKING TENNIS INSTRUCTION
15 FROM WHEN YOU WERE IN HIGH SCHOOL AT THE CALABASAS
16 CENTER?

17 A. PAUL HOLBACH, AND HIS NICKNAME WAS HOBIE.

18 Q. AND DO YOU KNOW WHETHER OR NOT MR. HOLBACH
19 WAS ALSO A COACH FOR ERIK MENENDEZ?

20 A. HE WAS ERIK'S COACH AS WELL.

21 Q. AND HOW DID YOU COME TO MEET ERIK?

22 A. MY COACH SUGGESTED THAT I STICK AROUND AND
23 SEE HIS NEXT LESSON. HE THOUGHT WE'D BE GOOD TOGETHER.

24 Q. SO HE WAS SORT OF PUTTING THE TWO OF YOU
25 TOGETHER?

26 A. IN A WAY, YEAH.

27 Q. AND DID YOU STICK AROUND AND MEET ERIK?

28 A. YES.

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1 Q. AND WHEN WAS IT, IF YOU CAN REMEMBER, JUST
2 GENERALLY; WHAT MONTH, WHAT YEAR WAS IT WHEN YOU FIRST
3 MET ERIK?

4 A. FIRST TIME WE TALKED WAS IN JANUARY,
5 FEBRUARY OF '87.

6 Q. AND WERE YOU AWARE OF WHAT HIGH SCHOOL ERIK
7 WAS ATTENDING?

8 A. HE WENT TO CALABASAS HIGH SCHOOL.

9 Q. AND SINCE YOU ATTENDED THOUSAND OAKS HIGH

10 SCHOOL, YOU DIDN'T SEE EACH OTHER AT SCHOOL OBVIOUSLY?

11 A. WE ONLY SAW EACH OTHER AT CLINICS AND

12 TENNIS WORKOUTS AT THE CLUB.

13 Q. CLINICS BEING TENNIS CLINICS?

14 A. MM-HMM, I'M SORRY. TWO-HOUR TENNIS

15 CLINICS, ABOUT THREE HOURS A WEEK, AT THE CLUB.

16 Q. AND DID YOU SEE EACH OTHER AT THE CLUB

17 VIRTUALLY EVERY DAY?

18 A. ALMOST EVERY DAY. MAYBE ABOUT FOUR DAYS A

19 WEEK OR SO.

20 Q. AND WHEN YOU WOULD BE AT THE CLUB, EACH OF

21 YOU WOULD HAVE CLINICS, AND EACH OF YOU WOULD HAVE

22 INDIVIDUAL LESSONS?

23 A. WE EACH HAD OUR OWN PRIVATE LESSONS, MAYBE

24 ONE OR TWO HOURS A WEEK. BUT WE ATTENDED THE SAME

25 CLINIC TWO HOURS DAILY.

26 Q. AND WOULD YOU HAVE SOME TIME AT THE CLUB TO

27 SOCIALIZE WITH ERIK AFTER THE CLINIC, AFTER THE LESSONS?

28 A. WE'D HANG OUT IN THE SNACK BAR WITH OTHER

-12283

1 PLAYERS, AND AROUND THE POOL IN BETWEEN WORKOUTS.

2 Q. AND WHEN WAS IT THAT YOU ACTUALLY STARTED

3 DATING HIM?

4 A. OUR FIRST DATE WAS MARCH 1ST.

5 Q. 1987?

6 A. 1987.

7 Q. AND AT THAT TIME, MS. SMITH, HOW OLD WERE
8 YOU?

9 A. I WAS 15, HE WAS 16.

10 Q. NOW, DID YOU DATE HIM FOR A PERIOD OF TIME
11 BEGINNING MARCH 1ST, '87?

12 A. WE DATED FOR ABOUT SEVEN AND A HALF MONTHS,
13 SEVEN MONTHS.

14 Q. AND THEN YOU BROKE UP?

15 A. MM-HMM.

16 Q. AND YOU EACH WENT OFF AND DATED OTHER
17 PEOPLE FOR A WHILE?

18 A. RIGHT. FOR MY ENTIRE JUNIOR YEAR WE DATED
19 OTHER PEOPLE.

20 Q. AND THEN AFTER YOUR JUNIOR YEAR DID YOU AND
21 ERIK GET BACK TOGETHER FOR A PERIOD OF TIME?

22 A. FOR MY SENIOR YEAR.

23 Q. AND WHAT PERIOD OF TIME IN YOUR SENIOR YEAR
24 DID YOU GET BACK TOGETHER?

25 A. WE STARTED DATING IN THE MIDDLE OF AUGUST,
26 BEFORE MY SENIOR YEAR STARTED, UNTIL ABOUT THE FIRST
27 WEEK IN FEBRUARY, SECOND WEEK IN FEBRUARY.

28 Q. AND THAT WAS AUGUST 1988?

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1 A. CORRECT.

2 Q. UNTIL FEBRUARY 1989?

3 A. MM-HMM, YES. SORRY.

4 Q. AND AT SOME POINT IN FEBRUARY OF 1989, YOU
5 BROKE UP AGAIN?

6 A. MM-HMM, YES.

7 Q. YES?

8 A. SORRY.

9 Q. AND DID YOU SEE ERIK AGAIN AFTER YOU BROKE
10 UP IN FEBRUARY 1989 UP UNTIL THE TIME THAT HIS PARENTS
11 WERE KILLED?

12 A. DID I SEE HIM?

13 Q. YES.

14 A. I REMEMBER SEEING HIM AT TENNIS TOURNAMENTS
15 AND SUCH AS THE EASTER BOWL, AND THEN I SAW HIM AGAIN AT
16 THE HARD COURT NATIONALS IN BURLINGAME.

17 Q. AND THE HARD COURT NATIONALS WERE IN JULY
18 OF 1989?

19 A. CORRECT.

20 Q. AND WHEN YOU SAW HIM AT THOSE NATIONALS,
21 WERE HIS PARENTS THERE?

22 A. THEY WERE BOTH THERE.

23 Q. BOTH PARENTS?

24 A. YES.

25 Q. AND, TO YOUR KNOWLEDGE, WAS ERIK PLAYING IN
26 THE JUNIOR NATIONALS THAT SUMMER?

27 A. RIGHT. YES.

28 Q. WERE YOU?

1 A. MM-HMM.

2 Q. YES?

3 A. YES. WE PLAYED THE NATIONAL CIRCUIT, SO
4 YOU HAVE TO PLAY HARD COURT NATIONALS AND CLAYS TO GET A
5 RANKING.

6 Q. NOW, WERE YOU A NATIONALLY-RANKED TENNIS
7 PLAYER IN HIGH SCHOOL?

8 A. YES.

9 Q. AND WERE YOU HIGHER RANKED IN TENNIS, IN
10 GIRLS' TENNIS, THAN ERIK WAS IN BOYS' TENNIS?

11 A. YEAH, I WAS.

12 Q. IS THAT SOMETHING YOU KIDDED HIM ABOUT?

13 A. WELL, YEAH. IT'S KIND OF FUN. HE THOUGHT
14 HE WAS BETTER THAN ME, BUT HE WASN'T. SO WE MADE THAT
15 UNDERSTOOD.

16 Q. NOW, WOULD YOU TELL US WHAT DID YOU DO FOR
17 THIS -- WELL, FIRST OF ALL, BETWEEN THE TIME WHEN YOU
18 FIRST MET ERIK AND THE TIME YOU STARTED DATING HIM,
19 WOULD IT BE FAIR TO SAY THAT THE ONLY PLACE YOU SAW HIM
20 WAS AT THE CLUB?

21 A. I DIDN'T HEAR THE QUESTION.

22 Q. BETWEEN THE TIME THAT YOU FIRST MET ERIK
23 AND THE TIME YOU STARTED DATING HIM ON MARCH 1ST, WAS
24 THE ONLY PLACE THAT YOU ACTUALLY SAW HIM THE CALABASAS
25 CLUB?

26 A. WE SAW HIM -- I SAW HIM AT THE CLUB, AND WE

27 DATED ON WEEKENDS MOSTLY.

28 Q. BEFORE YOU STARTED DATING HIM, DID YOU ONLY

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1 SEE HIM AT THE CLUB?

2 A. I'M SORRY. YES.

3 Q. YOU DIDN'T EVER GO TO HIS HOUSE?

4 A. NO.

5 Q. HE DIDN'T GO TO YOURS; IS THAT RIGHT?

6 A. I ONLY SAW HIM AT TENNIS WORKOUTS UNTIL
7 AFTER WE STARTED DATING.

8 Q. AND FOR THAT FIRST DATE, WHAT WAS THE PLAN
9 FOR YOUR FIRST DATE?

10 A. WE WENT TO WATCH HOBIE RUN THE L.A.
11 MARATHON ON MARCH 1ST.

12 Q. HOBIE BEING YOUR COACH?

13 A. RIGHT. BOTH OF OUR COACHES.

14 Q. AND HOW WERE YOU GOING TO GET TO THE L.A.
15 MARATHON. IT'S OVER ON THE CITY -- CITY SIDE?

16 A. I DIDN'T DRIVE YET, SO MY DAD DROVE BOTH OF
17 US.

18 Q. AND YOU WERE LIVING IN THOUSAND OAKS?

19 A. MM-HMM, YES.

20 Q. AND ERIK WAS LIVING IN CALABASAS?

21 A. RIGHT.

22 Q. AND WHEN YOU SAY YOUR DAD DROVE "BOTH OF

23 US", WHERE DID YOU MEET UP WITH ERIK?

24 A. WE MET AT THE CALABASAS CLUB IN THE
25 MORNING, PRETTY EARLY IN THE MORNING, BECAUSE WE WANTED
26 TO GET THERE BEFORE START TIME.

27 Q. BEFORE START TIME ON THE RUN, THE MARATHON?

28 A. RIGHT.

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1 Q. AND HOW DID ERIK GET THERE?

2 A. HIS DAD DROPPED HIM OFF IN FRONT OF THE
3 CLUBHOUSE.

4 Q. AND DID YOU SEE THE KIND OF CAR HIS DAD
5 DROVE?

6 A. YES. WE WERE THERE BEFORE THEM, SO HE
7 DROVE IN IN A BLACK MERCEDES.

8 Q. AND DID THAT BLACK MERCEDES SUGGEST
9 SOMETHING THAT YOU DIDN'T KNOW ABOUT BEFORE?

10 A. YEAH. HE HAD SOME MONEY.

11 Q. DID ERIK EVER MENTION THAT HIS FAMILY WAS
12 WELL OFF?

13 A. I HAD NO IDEA.

14 Q. HE NEVER TALKED ABOUT IT?

15 A. NO.

16 Q. AND YOUR FATHER THEN TOOK THE TWO OF YOU
17 AROUND TO THE MARATHON THAT DAY?

18 A. WE DROVE AROUND TO DIFFERENT WATER SPOTS TO

19 SEE IF WE COULD SEE OUR COACH RUN BY, AND WE CAUGHT HIM

20 TWICE, SO THAT WAS PRETTY LUCKY.

21 Q. AND DID YOU SPEND ANY TIME ALONE ON THAT

22 FIRST DATE?

23 A. NO. WE WERE WITH MY DAD THE ENTIRE DATE.

24 Q. AND WHAT DID YOU DO ON THE SECOND DATE?

25 A. SECOND DATE, I BROUGHT SOME CLOTHES TO THE

26 CLUB ON A FRIDAY NIGHT AFTER OUR WORK-OUT, AND WE WENT

27 OUT TO DINNER TOGETHER TO THE PIZZA COOKERY OFF TOPANGA.

28 Q. AND HOW DID YOU GET AROUND THAT NIGHT? DID

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1 SOMEONE DRIVE YOU, OR DID ERIK DRIVE?

2 A. ERIK DROVE.

3 Q. DID HE HAVE A LICENSE AT THAT POINT?

4 A. NO, HE DIDN'T.

5 Q. BY THE TIME OF THE SECOND DATE?

6 A. HE DID.

7 Q. AND DID HE DRIVE YOU HOME?

8 A. THAT WAS THE FIRST TIME HE HAD EVER DRIVEN

9 ME HOME.

10 Q. AND DID YOU DO SOMETHING WITH RESPECT TO

11 GIVING HIM DIRECTIONS AS TO WHERE HE SHOULD DROP YOU

12 WHEN HE DROVE YOU HOME?

13 A. HE HAD NEVER BEEN TO MY HOUSE BEFORE, AND I

14 HAD HIM DROP ME OFF FOUR HOUSES DOWN FROM MY HOUSE.

15 Q. WHY'D YOU DO THAT?

16 A. MY HOUSE HAD A HUGE PILE OF DIRT IN THE
17 FRONT LAWN BECAUSE WE WERE PUTTING SOD DOWN, AND I WAS
18 EMBARRASSED. AND SO SINCE THEY WERE TRACT HOMES, I HAD
19 HIM DROP ME OFF FOUR HOUSES DOWN, TO A HOUSE THAT LOOKED
20 EXACTLY LIKE MINE BUT HAD A NICER-LOOKING YARD.

21 Q. SO YOU WERE EMBARRASSED THAT YOUR HOUSE
22 LOOKED MESSY?

23 A. YES.

24 Q. AND SO YOU PRETENDED THAT ANOTHER HOUSE WAS
25 YOUR HOUSE?

26 A. RIGHT. I HAD HIM DROP ME OFF IN FRONT, AND
27 SINCE IT WAS OUR FIRST DATE HE GOT OUT OF THE CAR AND
28 HUGGED ME, AND GOT BACK IN HIS CAR.

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1 AND IT WAS NIGHT, SO I WAITED BY THE
2 MAILBOX. I WASN'T GOING TO WALK UP TO THIS DOOR, YOU
3 KNOW. AND SO I WAITED FOR HIM TO TURN AROUND AND GO
4 BACK UP THE STREET, AND APPARENTLY HE SAW ME IN HIS REAR
5 VIEW MIRROR RUNNING UP THE STREET.

6 Q. YOU WERE RUNNING TO YOUR OWN HOUSE?

7 A. RIGHT. HE TURNED AROUND AND SAID: "WHAT
8 ARE YOU DOING?"

9 AND I SAID -- I WAS REALLY EMBARRASSED, AND
10 I SAID: "I'M GOING TO MY HOUSE."

11 THE COURT: OKAY. LET'S TRY TO KEEP THE LAUGHTER
12 DOWN.

13 THE WITNESS: I'M SORRY.

14 THE COURT: IT'S NOT YOUR FAULT. IT'S PEOPLE IN
15 THE AUDIENCE WHO ARE REACTING, AND WE DON'T NEED THAT
16 DURING A TRIAL.

17 Q. BY MS. ABRAMSON: SO HE INTERCEPTED YOU,
18 AND WHAT DID YOU TELL HIM?

19 A. I SAID I WAS RUNNING UP TO MY HOUSE. AND
20 HE TOLD ME TO GET BACK IN THE CAR. WE WERE GOING TO DO
21 THIS RIGHT, BECAUSE IT WAS OUR FIRST DATE.

22 AND HE DROVE ME BACK UP TO MY HOUSE, AND HE
23 SAID SOMETHING TO THE EFFECT OF: "DON'T EVER BE ASHAMED
24 OF WHERE YOU COME FROM. I DON'T CARE WHERE YOU LIVE."

25 AND I SAID: "HERE'S MY PILE OF DIRT," AND
26 HE GOT OUT AND HUGGED ME AGAIN, AND THAT WAS OUR FIRST
27 DATE.

28 Q. HOW MANY DATES DID YOU HAVE WITH ERIK

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1 BEFORE THE TWO OF YOU KISSED?

2 A. HE KISSED ME ON THE CHEEK THE THIRD DATE.

3 Q. AND ON THE FOURTH DATE DID HE KISS YOU ON
4 THE LIPS?

5 A. YES. WE TRIED. IT WAS KIND OF LIKE A HIT
6 AND MISS, BUT YES. OKAY.

7 Q. DID IT APPEAR TO YOU, MS. SMITH, THAT HE
8 WAS INEXPERIENCED IN KISSING?

9 A. YEAH. WE KIND OF RAMMED FACES. IT WAS AN
10 EXPERIENCE BY BOTH PARTS. BUT I THOUGHT IT WAS HIS
11 FAULT.

12 Q. AND DID HE APPEAR, IN FACT, TO EVEN HAVE --
13 YOU WERE A RELATIVELY INEXPERIENCED YOUNG GIRL IN THESE
14 MATTERS YOURSELF, WERE YOU NOT.

15 A. YES.

16 Q. AND YOU HAD NOT HAD ANY INTIMATE
17 RELATIONSHIPS WITH ANYONE, HAD YOU?

18 A. NO.

19 Q. AND DID HE SEEM TO BE EVEN MORE
20 INEXPERIENCED THAN YOU WERE?

21 A. MM-HMM, YES.

22 Q. AND WERE YOU, AT 15, KIND OF SELF-CONSCIOUS
23 AND INSECURE ABOUT YOURSELF AND THE WAY YOU LOOKED?

24 A. MM-HMM, YES.

25 Q. AND WAS HE THE SAME WAY?

26 A. HE WAS MORE SO THAN I WAS, AND I COULDN'T
27 UNDERSTAND THAT, BECAUSE I THOUGHT HE WAS VERY
28 GOOD-LOOKING.

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1 Q. BUT HE DIDN'T THINK SO?

2 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

3 THE COURT: SUSTAINED.

4 REPHRASE THE QUESTION.

5 Q. BY MS. ABRAMSON: BASED ON THINGS THAT HE
6 SAID, DID HE APPEAR TO THINK THAT HE WAS GOOD-LOOKING?

7 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

8 THE COURT: OVERRULED.

9 YOU CAN ANSWER THAT QUESTION.

10 THE WITNESS: HE DIDN'T THINK HE WAS
11 GOOD-LOOKING. HE THOUGHT HE HAD BIG EARS AND A BIG
12 NOSE, AND I TOLD HIM THAT HE DIDN'T, THAT HE WAS ONE OF
13 THE BEST-LOOKING PEOPLE I HAD EVER MET.

14 Q. BY MS. ABRAMSON: AND HOW DID HE TREAT YOU
15 DURING THE TIME THAT YOU DATED HIM?

16 A. VERY WELL, LIKE I WAS HIS QUEEN. HE WAS MY
17 SWEETHEART.

18 Q. HOW DID HE TALK TO YOU?

19 A. HE ALWAYS COMPLIMENTED ME. HE WAS VERY
20 COMPLIMENTARY, VERY KIND, AND HE WROTE ME LETTERS ALL
21 THE TIME, AND -- LOVE LETTERS. HE EXPRESSED HIMSELF
22 BETTER ON PAPER THAN ANYONE I HAVE EVER DATED.

23 Q. AND WHEN YOU SAID HE WROTE YOU LETTERS ALL
24 THE TIME, WAS THAT EVERY DAY?

25 A. ABOUT THREE DAYS A WEEK I HAD LETTERS IN MY
26 MAILBOX, AND I LIVED IN THOUSAND OAKS. AND EVERY TIME I
27 SHOWED UP AT THE CLUB FOR MY WORK-OUT OR MY PRIVATE
28 LESSON, THERE WAS A NOTE AT THE FRONT DESK WAITING FOR

1 ME, "HAVE A GOOD WORK-OUT. I'LL SEE YOU AFTER YOUR
2 WORK-OUT," AND HE JUST -- HE WAS REALLY GREAT THAT WAY.
3 HE ALWAYS MADE ME FEEL LIKE I WAS NO. 1 IN HIS HEART.

4 Q. DID HE EVEN DRIVE TO YOUR SCHOOL IN
5 THOUSAND OAKS AND LEAVE NOTES FOR YOU BEFORE CLASSES TO
6 SURPRISE YOU?

7 A. YEAH. HE DID THAT A COUPLE TIMES. I WAS
8 KIND OF GETTING WORRIED THAT HOW COULD HE COME OVER TO
9 MY SCHOOL, YOU KNOW, WHEN HE SHOULD BE OVER IN
10 CALABASAS.

11 BUT I HAD -- A COUPLE TIMES I WOULD GET
12 SOME STUDENTS WALKING INTO MY FOURTH PERIOD CLASS RIGHT
13 BEFORE LUNCH, AND THEY HAD A LETTER THAT SAID, "KIRSTEN
14 SMITH, URGENT," AND IT WAS WRITTEN SO PROPERLY THAT I
15 THOUGHT IT WAS FROM MY PARENTS OR SOMETHING. AND INSIDE
16 WAS JUST A REALLY FUNNY NOTE, "HEY, BABE, PICK YOU UP
17 AFTER SCHOOL. GOOD LUCK IN YOUR HIGH SCHOOL MATCH," AND
18 IT WAS FROM ERIK, AND HE DID THAT A COUPLE OF TIMES.

19 Q. AND YOU WERE OBVIOUSLY PLAYING TENNIS
20 MATCHES AND TRAINING. WAS HE SUPPORTIVE OF YOUR
21 EFFORTS? WAS HE ENCOURAGING?

22 A. HE WAS.

23 Q. WAS HE EVER CRITICAL OF THE WAY YOU PLAYED?

24 A. NO.

25 Q. NOW, WERE YOU AWARE OF THE LEVEL AT WHICH
26 HE WAS TRAINING?

27 A. YEAH.

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1 YOURS?

2 A. WE BOTH HAD THE SAME LIKE INTENSE WORK-OUT,
3 BUT HIS SEEMED LIKE HE HAD A LOT MORE PRESSURE IN HIS
4 WORK-OUTS TO DO WELL THAN MYSELF.

5 Q. AND DID YOU OBSERVE YOURSELF WHERE THAT
6 PRESSURE WAS COMING FROM?

7 A. WELL, ON A FEW OCCASIONS HIS DAD, YOU KNOW,
8 WAS STANDING BEHIND HIM YELLING AT ME -- I MEAN, YELLING
9 AT ERIK LIKE HE WAS HIS COACH, YOU KNOW. BUT HIS DAD
10 WASN'T HIS COACH. AND IF MY DAD DID THE SAME THING, I
11 WOULD TELL HIM TO GET LOST, BECAUSE I HAVE A TRAINER,
12 YOU KNOW, AND -- YEAH, I THINK I ANSWERED YOUR QUESTION.

13 Q. LET ME TALK TO YOU ABOUT A COUPLE OF
14 THINGS.

15 WERE THERE A COUPLE OF DIFFERENT TIMES WHEN
16 YOU HAD A DATE WITH ERIK, YOU WERE SUPPOSED TO GET
17 TOGETHER WITH HIM AND GO OUT WITH HIM, WHEN THE DATE
18 BASICALLY WAS INTERFERED WITH BY HIS FATHER TRAINING
19 HIM?

20 A. TWO TIMES.

21 Q. AND WOULD YOU DESCRIBE -- WAS THE FIRST
22 TIME WHEN ERIK WAS STILL LIVING AT CALABASAS?

23 A. RIGHT.

24 Q. AND WOULD YOU TELL US WHAT HAPPENED ON THAT
25 OCCASION? FIRST OF ALL, WHEN WAS THAT?

26 A. THAT WAS IN THE FIRST TIME WE WERE DATING,
27 SO I WASN'T DRIVING YET.

28 Q. AND WAS THAT A DAYTIME DATE? YOU HAD A

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1 DATE TO SEE HIM ON A SATURDAY AFTERNOON?

2 A. IT WAS JUST A SATURDAY AFTERNOON. WHEN WE
3 WERE DATING, I DIDN'T HAVE A CAR, AND HE FINALLY HAD HIS
4 LICENSE. SO WHEN WE DATED IT WAS ON WEEKENDS.

5 AND SO THIS PARTICULAR WEEKEND IT WAS A
6 SATURDAY AFTERNOON, AND MY MOM DROPPED ME OFF OVER AT
7 HIS HOUSE, AND HE WAS SUPPOSED TO BE THERE. I KNEW HE
8 WAS GOING TO WORK-OUT IN THE MORNING, BUT HE WAS
9 SUPPOSED TO BE THERE.

10 AND KITTY SAID THAT THEY WERE STILL UP AT
11 THE HIGH SCHOOL PRACTICING. SO SHE DROVE ME UP TO THE
12 HIGH SCHOOL, AND I WAITED FOR THEM WHILE THEY FINISHED
13 THEIR PRACTICE.

14 Q. AND WHO WAS PRACTICING AT THE HIGH SCHOOL?

15 A. ERIK AND LYLE WERE HITTING, AND JOSE WAS
16 COACHING.

17 Q. AND WHAT DID YOU OBSERVE BY WAY OF
18 MR. MENENDEZ' COACHING?

19 A. HE WAS STANDING RIGHT BEHIND ERIK, YELLING

20 AT HIM, BASICALLY. LYLE WAS FEEDING HIM OUT OF A BALL
21 HOPPER, AND THEY WERE OUT THERE, BOTH OF THEM, WITH
22 THEIR SHIRTS OFF AT THE HIGH SCHOOL COURTS DRILLING EACH
23 OTHER, AND JOSE WAS JUST TELLING HIM TO MOVE HIS FEET,
24 AND HE WAS BEING REALLY SARCASTIC.
25 AND I WAS STANDING THERE IN MY STREET
26 CLOTHES ON TOP OF THE MERCEDES WAITING FOR THE WORK-OUT
27 TO FINISH, BECAUSE WE WERE SUPPOSED TO GO OUT TO A
28 MATINEE, AND THEIR WORK-OUT TOOK FOREVER, SO . . .

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1 Q. WHEN YOU SAID THAT MR. MENENDEZ WAS VERY
2 SARCASTIC, WHO WAS HE AIMING THOSE SARCASTIC REMARKS AT?

3 A. ERIK. ERIK WAS STILL COMPETING IN THE
4 JUNIOR TOURNAMENTS. LYLE WAS AT PRINCETON. HE WAS DONE
5 WITH THAT, SO . . .

6 Q. AND WAS THE KIND OF INSTRUCTION THAT
7 MR. MENENDEZ WAS GIVING TO ERIK, IN YOUR OPINION AS A
8 COMPETITIVE TENNIS PLAYER, CONSTRUCTIVE?

9 A. NO. IT WAS -- I WOULD NEVER PLAY WELL IF
10 SOMEONE WERE YELLING AT ME BEHIND ME, BELITTLING,
11 SARCASTIC COMMENTS. I MEAN, WHEN YOUR COACH IS COACHING
12 YOU. THEY SAY: "MOVE YOUR FEET AND RACKET BACK," AND
13 THEY GIVE YOU CONSTRUCTIVE CRITICISM, YOU KNOW.

14 BUT THIS WAS MORE LIKE HOUNDING. "YOU
15 BETTER DO THIS." YOU KNOW. "PLAY WELL. YOU'RE PLAYING

16 A TOURNAMENT. YOU'VE GOT TO PRACTICE LIKE YOU PLAY,"

17 AND LIKE THAT, YOU KNOW.

18 Q. AND WHAT --

19 A. I WAS EMBARRASSED FOR HIM.

20 Q. YOU WERE EMBARRASSED FOR ERIK?

21 A. YEAH, I WAS. I WAS EMBARRASSED TO BE THERE

22 WATCHING THAT.

23 Q. AND HOW DID ERIK RESPOND TO THESE THINGS

24 THAT HIS FATHER WAS SAYING TO HIM?

25 A. HE MOVED HIS FEET FASTER AND HIT THE BALL

26 HARDER AND TRIED HARDER, AND GRUNTED LOUDER, AND DIDN'T

27 SAY A WORD, SO --

28 Q. AND YOU NEVER -- DID YOU EVER SEE ERIK TALK

-12270

1 BACK TO HIS FATHER?

2 A. NO. NO.

3 Q. AND DID YOU SEE, DURING THIS PRACTICE, THAT

4 ERIK DID WHATEVER IT WAS HIS FATHER TOLD HIM TO DO?

5 A. YES.

6 Q. DID YOU GET TO GO ON THE DATE WITH ERIK

7 THAT AFTERNOON?

8 A. I WAS REALLY -- I WAS P.O.'D. NO.

9 Q. WHAT HAPPENED?

10 WELL, WHAT HAPPENED? HOW DID YOUR

11 OBSERVATION OF THIS TENNIS DRILL COME TO AN END?

12 A. JOSE CAME OFF THE COURT AND SAID THAT THEY
13 WERE GOING TO BE A LITTLE WHILE LONGER, AND WHY DON'T
14 YOU USE THE CAR PHONE TO CALL YOUR DAD, AND I'LL DRIVE
15 YOU HALFWAY SO HE DOESN'T HAVE TO COME ALL THE WAY OUT
16 HERE AND PICK YOU UP.

17 Q. SO HE -- DID YOU HAVE AN OPPORTUNITY AT ALL
18 TO TALK TO ERIK?

19 A. NO.

20 Q. TO SAY GOODBYE?

21 A. WE JUST LOOKED AT EACH OTHER. WE DIDN'T
22 TALK TO EACH OTHER. I MEAN, HE KNEW WE WERE SUPPOSED TO
23 GO OUT. BUT I JUST SAT ON THE TOP OF THE HOOD OF THE
24 MERCEDES AND WATCHED HIM PRACTICE UNTIL JOSE CAME OUT
25 AND SAID THAT.

26 THAT WAS THE ONLY TIME I HAD EVER DRIVEN IN
27 THE CAR BY MYSELF WITH JOSE. SO HE DROVE ME, AND I MET
28 MY DAD HALFWAY.

-12269

1 Q. NOW, WHEN YOU HAD GOTTEN TO THE HOUSE --
2 YOU WERE ORIGINALLY SUPPOSED TO MEET ERIK AT THE
3 CALABASAS RENTED HOUSE?

4 A. RIGHT. THE ONE ON THE LAKE.

5 Q. THE ONE ON -- PARK LIVORNO WAS THE STREET?

6 A. LIVORNO.

7 Q. AND THERE WAS LIKE A MAN-MADE LAKE BEHIND

8 THAT HOUSE.

9 A. RIGHT.

10 Q. BEHIND THE WHOLE DEVELOPMENT, RIGHT?

11 A. RIGHT.

12 Q. NOW, DID MRS. MENENDEZ APPEAR TO BE

13 EXPECTING YOU WHEN YOU GOT THERE?

14 A. SHE KNEW WE WERE SUPPOSED TO GO OUT, YEAH.

15 I THOUGHT HE WAS -- I KNEW HE WAS WORKING OUT AT THE

16 CLUB IN THE MORNING -- I MEAN, AT THE HIGH SCHOOL IN THE

17 MORNING, AND SO I THOUGHT HE WOULD E ALREADY BACK AND

18 SHOWERED AND READY TO GO.

19 AND SHE SAID HE WAS STILL UP AT THE HIGH

20 SCHOOL, IF YOU WANT TO SEE HIM.

21 Q. AND SHE DROVE YOU TO THE HIGH SCHOOL?

22 A. SHE DROPPED ME OFF. IT'S JUST AROUND THE

23 CORNER.

24 Q. DID SHE SAY ANYTHING TO HER HUSBAND OR TO

25 ERIK ABOUT FINISHING UP SO YOU COULD KEEP YOUR DATE?

26 A. SHE JUST DROPPED ME OFF.

27 Q. NOW, THE NEXT TIME THAT -- WAS THERE

28 ANOTHER OCCASION WHEN SOMETHING SIMILAR HAPPENED?

-12268

1 A. IT WAS DURING THE SECOND TIME THAT WE WERE

2 DATING, WHEN HE LIVED IN BEVERLY HILLS NOW.

3 Q. AND DID YOU HAVE AN EVENING DATE WITH HIM

4 WHEN HE WAS LIVING IN BEVERLY HILLS?

5 A. MM-HMM.

6 Q. AND WERE YOU DRIVING AT THAT TIME?

7 A. RIGHT.

8 Q. AND DID YOU DRIVE IN FROM THOUSAND OAKS TO

9 HIS HOUSE IN BEVERLY HILLS?

10 A. YES.

11 Q. AND WERE YOU SUPPOSED TO GO OUT AT A

12 PARTICULAR TIME?

13 A. RIGHT.

14 Q. AND HAD YOU CALLED BEFORE YOU LEFT YOUR

15 HOME?

16 A. I CALLED TO TELL HIM THAT I WAS LEAVING MY

17 HOUSE AND THAT I SHOULD BE THERE, IF THE TRAFFIC WASN'T

18 BAD, IN ABOUT 45 MINUTES.

19 Q. AND DID YOU SPEAK TO ERIK DIRECTLY?

20 A. RIGHT, YES.

21 Q. AND DID HE INDICATE TO YOU AT THAT TIME

22 THAT HE WAS PRACTICING, BUT THAT HE'D BE READY WHEN YOU

23 GOT THERE?

24 A. RIGHT.

25 Q. AND WHAT HAPPENED WHEN YOU GOT THERE?

26 A. I HIT SERIOUS TRAFFIC, AND I WAS REALLY

27 LATE. IT TOOK MORE LIKE AN HOUR AND A HALF.

28 AND I GOT THERE AND HE WAS STILL ON THE

1 COURT PLAYING. I ASKED KITTY WHERE HE WAS, AND HE WAS
2 IN THE BACKYARD PLAYING WITH ED.

3 Q. PLAYING WITH ED FENNO?

4 A. RIGHT.

5 Q. AND WAS HIS FATHER THERE?

6 A. YES.

7 Q. AND WHAT WAS HIS FATHER DOING ON THAT
8 OCCASION?

9 A. SAME TYPE OF THING, JUST COACHING HIM. AND
10 HE WAS STANDING BEHIND THEM WHILE THEY WERE PLAYING
11 POINTS.

12 Q. HE WAS STANDING BEHIND THEM RIGHT ON THE
13 TENNIS COURT?

14 A. BEHIND THE BASELINE, AGAINST THE FENCE, BUT
15 NOT TO BE IN -- YOU KNOW, NOT TO BE IN THE POINT, YOU
16 KNOW.

17 Q. HE'S INSIDE THE FENCE THOUGH; HE'S NOT
18 LOOKING FROM OUTSIDE?

19 A. HE'S ON THE BACKSIDE OF THE FENCE, BEHIND
20 THE BASELINE, JUST KIND OF PACING, WATCHING HIM.

21 Q. INSIDE THE COURT, THOUGH?

22 A. INSIDE THE COURT, RIGHT.

23 Q. AND WAS HE, ON THAT OCCASION ALSO, MAKING
24 SARCASTIC REMARKS AT ERIK?

25 A. SAME KIND OF COACHING. IT WASN'T AS MUCH
26 AS IT WAS -- IT WASN'T AS MUCH AS I'D SEEN BEFORE, BUT I
27 THINK IT WAS BECAUSE BOTH ED AND I WERE THERE. I MEAN,
28 RIGHT WHEN I WALKED IN JOSE SAID: "HI, HI. HOW ARE YOU

1 DOING?"

2 Q. SO HE SAW YOU?

3 A. YEAH.

4 Q. AND YOU UNDERSTOOD ED WAS A FRIEND OF
5 LYLE'S, NOT A RELATIVE?

6 A. RIGHT.

7 Q. AND LYLE MENENDEZ WASN'T THERE ON THAT
8 OCCASION, WAS HE?

9 A. NO.

10 Q. SO WHEN YOU GOT THERE AND THIS WAS GOING
11 ON, DID THE TRAINING STOP SO THAT YOU COULD GO ON YOUR
12 DATE?

13 A. NO. IT WENT FOR A LITTLE BIT LONGER, SO I
14 WENT IN THE HOUSE AND I VISITED WITH KITTY.

15 Q. AND WAS THERE A PLAN THAT YOU AND ERIK HAD
16 FOR WHERE YOU WERE GOING TO GO ON THAT PARTICULAR DATE?

17 A. WE WERE SUPPOSED TO GO DANCING.

18 Q. AND DID MRS. MENENDEZ DO SOMETHING TO
19 ASSIST YOU IN GOING DANCING?

20 A. I WASN'T YET 18, AND ERIK WAS, AND WE
21 REALLY WANTED TO GO TO AN 18-AND-OVER-CLUB. WE BOTH
22 REALLY WANTED TO GO DANCING. AND ERIK HAD THIS PIECE OF
23 PAPER, BECAUSE HIS LICENSE WAS REVOKED, THAT HAD HIS
24 NAME AND BIRTHDAY ON IT.

25 Q. LET ME STOP YOU.

26 WAS THIS A PIECE OF PAPER FROM THE

27 DEPARTMENT OF MOTOR VEHICLES?

28 A. RIGHT.

-12265

1 Q. IT WAS A TEMPORARY --

2 A. LICENSE.

3 Q. -- LICENSE?

4 A. RIGHT.

5 Q. HE HAD GOTTEN HIS OTHER LICENSE --

6 A. HE WAS WAITING FOR HIS PICTURE.

7 Q. HE WAS WAITING FOR THE PICTURE LICENSE, HE
8 HAD A PAPER LICENSE AT THAT POINT?

9 A. RIGHT.

10 Q. SO DID MRS. MENENDEZ DO SOMETHING WITH THAT
11 PAPER LICENSE?

12 A. WE WENT UPSTAIRS TOGETHER, AND SHE SAID:

13 "WELL, I CAN MAKE YOU 18 FOR THE EVENING, AND YOU CAN
14 BOTH GO."

15 AND THAT'S WHAT WE HAD PLANNED. I WANTED
16 TO SEE IF I COULD GET IN ON ANOTHER FRIEND'S I.D., AND
17 SHE SAID, YOU KNOW, "USE THIS ONE."

18 AND WE WENT UPSTAIRS, AND THEY HAD A
19 PHOTOCOPY MACHINE IN HER BEDROOM, AND SHE ADDED AN "A"
20 AND MADE IT ERIKA MENENDEZ. I ASSUMED WE COULDN'T GO AS
21 TWINS, YOU KNOW, THE SAME BIRTHDAY. SO THEN SHE CHANGED

22 THE MONTH.

23 Q. SO SHE CAME UP WITH AN ALTERED VERSION OF
24 THAT LICENSE FOR YOU TO USE?

25 A. ERIK AND ERIKA MENENDEZ.

26 Q. SO THERE WERE TWO LICENSES NOW; ONE SAID
27 "ERIK" AND ONE SAID "ERIKA"?

28 A. I DIDN'T THINK IT WOULD WORK, BUT WE HAD

-12264

1 IT, SO . . .

2 Q. WAS IT YOUR IDEA TO CHANGE THAT PIECE OF
3 PAPER, OR WAS IT MRS. MENENDEZ'?

4 A. NO. I WAS A LITTLE NERVOUS ABOUT IT.

5 Q. BUT IT WAS HER IDEA?

6 A. RIGHT, RIGHT.

7 Q. NOW, MS. SMITH, YOU WERE VERY FOND OF
8 MRS. MENENDEZ, WERE YOU NOT?

9 A. MM-HMM.

10 Q. AND DID SHE TREAT YOU NICELY?

11 A. YES.

12 Q. AND CAN YOU DESCRIBE THE FIRST TIME THAT
13 YOU ACTUALLY MET HER? DID YOU GO ON A DATE WITH ERIK
14 WHERE YOU WOUND UP STAYING OVER NIGHT AT HIS HOUSE?

15 A. THE FIRST TIME I MET HER?

16 Q. YES.

17 A. I DIDN'T STAY THE NIGHT AT THE HOUSE THE

18 FIRST TIME I MET HER.

19 Q. DO YOU REMEMBER THE FIRST TIME YOU EVER
20 HUGGED HER?

21 A. THE FIRST TIME I MET HER, DURING THE FIRST
22 TIME WE DATED, ERIK BROUGHT ME TO HIS HOUSE. I HAD
23 NEVER SEEN HIS HOUSE ON THE LAKE.

24 AND I SHOOK HER HAND WHEN I WALKED IN, AND
25 YOU KNOW, SHE SMILED, AND WE TALKED FOR A WHILE. AND
26 THEN ERIK AND I WERE GOING TO GO OUT TO A MOVIE, OR
27 WHATEVER, AND I HUGGED HER, AND I SAID, "IT WAS VERY
28 NICE MEETING YOU."

-12263

1 Q. WHEN YOU HUGGED HER, DID YOU SEE
2 SOMETHING -- DID YOU SEE AN EXPRESSION ON ERIK'S FACE?

3 A. ERIK KIND OF RAISED HIS EYEBROWS AND LOOKED
4 AT ME, YOU KNOW, AND WE WALKED OUT. AND WHEN WE GOT TO
5 THE CAR, HE SAID: "I CAN'T BELIEVE YOU HUGGED MY MOM,"
6 SOMETHING LIKE THAT, YOU KNOW.

7 AND I WAS LIKE, "WHY?" I THOUGHT IT WAS
8 BECAUSE I HAD JUST MET HER, YOU KNOW, AND HE SAID -- HE
9 GOES: "I DON'T EVEN DO THAT."

10 Q. DID HE SAY ANYTHING ABOUT IT NOT BEING DONE
11 IN THE FAMILY?

12 A. HE SAID ""I DON'T EVEN DO THAT. WE DON'T
13 DO THAT."

14 Q. "WE DON'T DO THAT," MEANING IN HIS FAMILY?

15 A. IN HIS FAMILY. HE SAID, "WE DON'T DO

16 THAT." I THOUGHT IT WAS BECAUSE I WAS BEING TOO CLOSE

17 OR SOMETHING, BECAUSE I SHOOK HER HAND WHEN I CAME IN,

18 AND I HUGGED HER WHEN I LEFT.

19 Q. NOW, YOU SAW ERIK INTERACTING WITH HIS

20 MOTHER DURING THE TIMES THAT YOU DATED HIM?

21 A. MM-HMM.

22 Q. HOW DID HE TREAT HIS MOTHER?

23 A. VERY WELL.

24 Q. WAS HE NICE TO HER?

25 A. MM-HMM.

26 Q. KIND TO HER?

27 A. YES.

28 Q. AND WAS HIS MOTHER GENEROUS TOWARDS ERIK

-12262

1 WHEN HE WAS DATING YOU, THAT YOU NOTICED? DID SHE GIVE

2 HIM A LOT OF MONEY SO THAT HE COULD SPEND IT ON YOU?

3 A. WHENEVER WE WOULD LEAVE FOR A DATE, SHE

4 ALWAYS ASKED HIM IF HE HAD ENOUGH MONEY, AND HE WOULD

5 SAY YES, AND THEN SHE'D SLIP HIM ANOTHER \$20 AND SAY:

6 "TREAT HER RIGHT," YOU KNOW. AND THEN WE'D GO TO DINNER

7 AND A MOVIE USUALLY.

8 Q. HE DIDN'T EVEN ASK HER FOR MONEY?

9 A. NO.

10 Q. HE HAD IT FROM HIS ALLOWANCE?

11 A. I GATHERED THAT HE HAD AN ALLOWANCE, YEAH.

12 Q. BUT SHE WOULD GIVE IT TO HIM ANYWAY?

13 A. RIGHT.

14 Q. WAS HE GENEROUS TOWARDS YOU?

15 A. MM-HMM.

16 Q. IN WHAT WAY?

17 A. HE WAS SO NICE TO ME. I MEAN, HE TREATED

18 ME SO WELL. YOU MEAN LIKE --

19 Q. DID HE BUY YOU THINGS?

20 A. HE BOUGHT ME A LOT MORE THAN I EVER BOUGHT

21 HIM.

22 Q. WHAT KIND OF THINGS DID HE BUY YOU?

23 A. WE CELEBRATED EVERY ANNIVERSARY, EVERY

24 MONTH; ONE MONTH, ONE WEEK. AND I'D GET A PRESENT, YOU

25 KNOW. TWO MONTHS, I'D GET SOMETHING. HE ALWAYS HAD A

26 CARD OR A GIFT.

27 AND ON MY BIRTHDAY I REMEMBER EXACTLY WHAT

28 I GOT, BECAUSE I STILL HAVE IT. HE GAVE ME A MINI-SKIRT

-12261

1 AND A MATCHING SHIRT, AND HIS BIRTHDAY WAS -- YOU KNOW,

2 A MONTH LATER, AND I GAVE HIM SOMETHING, AND HE WORE IT

3 ALL THE TIME.

4 Q. HE WORE WHAT YOU GAVE HIM ALL THE TIME?

5 A. ALL THE TIME.

6 Q. AND HE HAD MORE MONEY TO SPEND THAN YOU

7 DID, WOULD THAT BE FAIR TO SAY?

8 A. RIGHT. HE WAS SO APPRECIATIVE OF

9 EVERYTHING THAT I GOT HIM, AND I WAS A LITTLE

10 EMBARRASSED THAT I COULDN'T GIVE HIM AS MUCH, BUT I

11 THINK HE WAS SO APPRECIATIVE BECAUSE HE KNEW THAT I WAS

12 BABYSITTING TO GET MY MONEY, AND HE -- HE'D WEAR IT.

13 Q. TO SHOW HOW MUCH HE APPRECIATED IT?

14 A. I'M SO EMBARRASSED.

15 Q. ARE YOU OKAY?

16 MS. ABRAMSON: YOUR HONOR, COULD WE TAKE A BREAK?

17 THE WITNESS: I'M SO SORRY.

18 THE COURT: DON'T BE SORRY. JUST TELL US IF YOU

19 NEED A BREAK.

20 THE WITNESS: I'M FINE.

21 THE COURT: OKAY.

22 Q. BY MS. ABRAMSON: ARE YOU OKAY? DO YOU

23 WANT A TISSUE?

24 A. NO.

25 Q. NOW, WAS THERE A TIME DURING THE FIRST

26 PERIOD THAT YOU WERE DATING ERIK THAT HE CALLED YOU UP,

27 AND IT WAS A VERY UNUSUAL PHONE CALL?

28 A. DURING THE FIRST TIME?

-12260

1 Q. YES.

2 A. YES.

3 Q. AND CAN YOU -- FIRST OF ALL, WAS THIS ON A
4 DAY WHEN YOU HAD A DATE WITH HIM THAT NIGHT?

5 A. IT WAS A FRIDAY NIGHT, AND WE WERE SUPPOSED
6 TO GO OUT. HE WAS SUPPOSED TO PICK ME UP IN THOUSAND
7 OAKS.

8 Q. AND DID YOU RECEIVE A PHONE CALL BEFORE THE
9 TIME THAT HE WAS SUPPOSED TO PICK YOU UP?

10 A. MM-HMM, YES.

11 Q. IT'S OKAY. DO YOU WANT A BREAK?

12 A. (WITNESS SHAKES HEAD).

13 Q. CAN YOU DESCRIBE THE PHONE CALL FOR US?

14 A. ERIK CALLED -- I KNEW HE WAS CALLING,
15 BECAUSE MY BEST FRIEND HAD JUST CALLED AND SAID: "I GOT
16 OFF THE PHONE WITH ERIK. HE WAS CRYING HYSTERICALLY.
17 HE'S GOING TO CALL YOU."

18 AND SO I GOT THIS PHONE CALL, AND IT WAS
19 FROM ERIK. AND HE SAID -- HE WAS JUST CRYING
20 HYSTERICALLY, AND I SAID: "WHAT'S THE MATTER? WHY ARE
21 YOU CRYING?"

22 AND HE SAID: "I CAN'T TELL YOU. I JUST
23 WANTED TO CALL AND TELL YOU THAT I LOVE YOU SO MUCH, AND
24 THAT I'LL NEVER BE ABLE TO SEE YOU AGAIN."

25 AND I COULDN'T UNDERSTAND. I SAID: "WHAT
26 ARE YOU TALKING ABOUT? YOU'RE SUPPOSED TO BE HERE IN
27 TWO HOURS. WHAT ARE YOU DOING?"

28 AND HE SAID: "I NEED TO BREAK UP WITH

1 YOU."

2 AND I SAID: "NOW, WHAT ARE YOU DOING?

3 YOU'RE BEING STUPID." AND I DIDN'T UNDERSTAND WHAT HE

4 WAS DOING, AND HE WAS CRYING SO HARD, AND THEN SO I

5 STARTED CRYING.

6 AND I SAID: "WHY ARE YOU BREAKING UP WITH

7 ME? YOU HAVE NO GOOD REASON TO BREAK UP WITH ME. GET

8 YOUR BUTT OVER HERE. YOU'RE SUPPOSED TO BE HERE IN TWO

9 HOURS," YOU KNOW.

10 AND HE JUST KEPT SAYING: "I LOVE YOU SO

11 MUCH. I REALLY HAVE TO GO."

12 AND THEN I HEARD A VOICE IN THE BACKGROUND:

13 "ERIK, HANG UP THE PHONE," AND THAT WAS THAT.

14 Q. WHO WAS THE VOICE IN THE BACKGROUND?

15 A. IT WAS HIS DAD. IT WAS JOSE.

16 Q. NOW, IN FACT, DID YOU SEE ERIK AGAIN AT THE

17 CLUB -- HE DIDN'T MAKE THAT DATE, I TAKE IT?

18 A. NO.

19 Q. DID YOU SEE HIM AGAIN AT THE CLUB AFTER

20 THAT PHONE CALL?

21 A. YES.

22 Q. AND DID YOU START HANGING AROUND WITH HIM

23 JUST LIKE BEFORE?

24 A. YEAH. WE -- I DON'T KNOW. I MEAN, IT WAS

25 SO LONG AGO. I DON'T KNOW WHY WE NEVER TALKED ABOUT THE

26 CONVERSATION.

27 Q. BUT YOU DON'T HAVE ANY RECOLLECTION ABOUT
28 TALKING ABOUT IT?

-12258

1 A. WE NEVER -- WHEN WE SAW EACH OTHER. WE
2 KISSED AND HUGGED LIKE NOTHING HAD HAPPENED, AND WE
3 NEVER TALKED ABOUT IT, AND I DON'T REMEMBER TALKING
4 ABOUT IT.

5 Q. AND HE NEVER EXPLAINED TO YOU WHAT IT WAS
6 THAT HE COULDN'T TELL YOU?

7 A. HM-MM. HE SAID, "I CAN'T TELL YOU RIGHT
8 NOW. I JUST WANT TO LET YOU KNOW THAT I LOVE YOU SO
9 MUCH, AND THAT WE NEED TO BREAK UP."

10 Q. LET ME ASK YOU SOMETHING:
11 WHEN -- DURING THE FIRST PERIOD OF TIME
12 WHEN YOU WERE DATING HIM, DID YOU NOTICE THAT HE WAS
13 ALWAYS WEARING THE SAME KIND OF CLOTHES EVERY SINGLE
14 TIME YOU SAW HIM?

15 A. YEAH.

16 Q. WHAT WAS HE WEARING?

17 A. TENNIS CLOTHES AND A NIKE SWEATSHIRT, THE
18 SAME ONE.

19 Q. AND WOULD HE WEAR THAT WHEN HE WENT OUT
20 WITH YOU ALSO?

21 A. HE TRIED TO A COUPLE -- I MEAN, HE DID THE
22 FIRST FEW TIMES, AND THEN HE DIDN'T BECAUSE I TOLD

23 HIM -- YOU KNOW. I ASKED HIS MOM, I SAID, "DOES HE WEAR
24 THIS ALL THE TIME?" YOU KNOW.
25 Q. YOU HAD A CONVERSATION WITH HIS MOTHER
26 AFTER YOU NOTICED HE WAS WEARING THE SAME THINGS, TENNIS
27 CLOTHES AND THE SAME SWEATSHIRT ALL THE TIME?
28 A. I ASKED KITTY: "DOES HE WEAR TENNIS

-12257

1 CLOTHES TO SCHOOL EVERY DAY?" BECAUSE WE WENT TO
2 DIFFERENT HIGH SCHOOLS.
3 AND SHE SAID: "HE WEARS THE SAME
4 SHIRTS" -- I MEAN, THE SAME SHORTS AND THE SAME NIKE
5 WARM-UPS. HE HAD A BLACK ONE AND A WHITE ONE, AND HE
6 WORE THEM ALL THE TIME.
7 Q. AND DID SHE INDICATE TO YOU THAT HE DIDN'T
8 HAVE ANY INTEREST IN CLOTHES?
9 A. YEAH. I SAID: "DOESN'T HE HAVE ANY
10 JEANS?"
11 AND SHE SAID: "I DON'T EVEN KNOW IF HE HAS
12 THAT OR NOT. HE JUST DOESN'T WEAR IT. DOESN'T CHOOSE
13 TO WEAR IT IF HE HAD IT."
14 Q. SO DID YOU AND MRS. MENENDEZ COME UP WITH A
15 PLAN TO HAVE ERIK DRESS BETTER?
16 A. SHE HANDED ME HER CREDIT CARD, AND SHE
17 SAID: "GO TO THE MALL AND DRESS HIM UP IN YOUR LOVE."
18 AND SO WE WENT TO THE TOPANGA PLAZA MALL

19 AND WE SHOPPED ALL AFTERNOON, AND WE PUT A BUNCH OF
20 THINGS ON HOLD, AND THEN SHE -- I DIDN'T USE THE CREDIT
21 CARD. WE JUST PUT EVERYTHING ON HOLD, AND THEN SHE CAME
22 LATER WITH HIM TO PICK IT UP.

23 Q. NOW, DID YOU GO TO THE MOST EXPENSIVE
24 STORES TO LOOK FOR CLOTHES FOR HIM?

25 A. WE PICKED A LOT OF THINGS OUT FROM JEANS
26 WEST AND MILLER'S OUTPOST.

27 Q. WHICH ARE INEXPENSIVE STORES?

28 A. I GUESS, YEAH.

-12256

1 Q. DID ERIK SHOW ANY INTEREST IN BUYING
2 EXPENSIVE THINGS?

3 A. I DON'T THINK HE KNEW HIS RIGHT FROM HIS
4 LEFT IN DRESSING, SO I DRESSED HIM UP THE WAY I WANTED
5 TO.

6 Q. AND HOW MUCH TOTAL WAS THIS -- SO YOU GOT
7 HIM WHAT YOU CONSIDERED TO BE A WARDROBE?

8 A. MM-HMM. WE SPENT -- I THINK I DIDN'T PUT
9 MORE THAN -- OR HOLD MORE THAN ABOUT \$200 WORTH OF
10 CLOTHES. BUT WE BOUGHT A COUPLE PAIRS OF JEANS AND JEAN
11 JACKETS AND SHIRTS. THAT WAS IT.

12 Q. AND AFTER HIS MOTHER WENT AND BOUGHT THOSE
13 THINGS, PICKED THEM UP, DID HE START WEARING THOSE
14 CLOTHES AROUND YOU?

15 A. MM-HMM.

16 MS. ABRAMSON: YOUR HONOR, I HAVE A PHOTOGRAPH
17 THAT'S MARKED 453.

18 THE COURT: OKAY.

19 MS. ABRAMSON: I WOULD LIKE TO SHOW IT TO THE
20 WITNESS.

21 Q. IS THAT A PHOTOGRAPH OF YOU AND ERIK?

22 A. MM-HMM.

23 Q. IS THAT YES?

24 A. SORRY.

25 Q. AND IS THAT TAKEN SHORTLY AFTER YOU TOOK
26 HIM SHOPPING?

27 A. THIS IS LIKE TWO DAYS AFTER WE BOUGHT ALL
28 THESE CLOTHES. WE GOT DRESSED UP TO GO OUT TO DINNER

-12255

1 AND A MOVIE ALL DRESSED UP IN HIS NEW CLOTHES.

2 Q. AND ARE THOSE NEW CLOTHES A PAIR OF JEANS
3 AND A JEANS JACKET?

4 A. MM-HMM, YES.

5 Q. AND SO IS THAT PHOTOGRAPH TAKEN AT SOMETIME
6 IN THE SPRING, YOU THINK, OF 1987?

7 A. ABOUT JULY OR JUNE.

8 Q. JUNE OR JULY?

9 A. YEAH.

10 Q. COULD YOU WRITE JUNE OR JULY, 1987 ON THE

11 BACK OF THE PHOTOGRAPH.

12 THAT WAS ONE THAT DOESN'T HAVE A DATE.

13 A. (WITNESS COMPLIES).

14 Q. WOULD YOU WRITE THE YEAR?

15 A. (WITNESS COMPLIES).

16 Q. THANK YOU.

17 NOW, YOU WERE FAMILIAR WITH THE CAR THAT

18 ERIK HAD?

19 A. THE CARD?

20 Q. CAR. AUTOMOBILE?

21 A. HE HAD A MAROON ESCORT, FORD.

22 Q. AND WAS IT YOUR UNDERSTANDING THAT HE COULD

23 HAVE PICKED ANY KIND OF CAR HE WANTED?

24 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

25 THE COURT: SUSTAINED.

26 Q. BY MS. ABRAMSON: DO YOU KNOW IF HE PICKED

27 THAT CAR OUT, OR IF SOMEONE ELSE DID?

28 MR. CONN: OBJECTION. IF SOMEONE ELSE DID --

-12254

1 THE COURT: SUSTAINED.

2 Q. BY MS. ABRAMSON: WELL, DID HE TELL YOU?

3 MR. CONN: OBJECTION. THAT'S HEARSAY.

4 THE COURT: SUSTAINED.

5 Q. BY MS. ABRAMSON: DID HE EVER COMPLAIN

6 ABOUT THE CAR HE HAD?

7 A. NO.

8 Q. DID HE EVER COMPLAIN ABOUT HIS PARENTS AT
9 ALL?

10 A. NO.

11 Q. DID HE EVER SAY A NEGATIVE THING ABOUT
12 EITHER ONE OF THEM?

13 A. NO.

14 Q. DID YOU EVER HEAR ERIK SAY -- WELL, DID YOU
15 EVER HEAR ERIK SAY A CRUEL WORD TO ANYBODY?

16 A. NO.

17 Q. DID YOU EVER SEE HIM BE AGGRESSIVE OR MEAN
18 TO ANYBODY?

19 A. NO.

20 Q. YOU WERE NOT DATING ERIK AFTER THAT SUMMER
21 NATIONALS TOUR; IS THAT CORRECT?

22 A. WHICH SUMMER? WE PLAYED IT EVERY SUMMER.

23 Q. 1989.

24 A. NO.

25 Q. AND DID YOU HEAR FROM HIM AT SOME POINT
26 AFTER HIS PARENTS WERE DEAD?

27 A. YES. I GOT 18 ROSES ON MY 18TH BIRTHDAY,
28 AND A NOTE.

-12253

1 Q. AND YOUR BIRTHDAY IS IN OCTOBER?

2 A. YES.

3 Q. HAD YOU SPOKEN TO HIM SINCE HIS PARENTS

4 DIED UP UNTIL OCTOBER?

5 A. NO, THAT WAS THE FIRST.

6 Q. HAD YOU TRIED TO REACH HIM?

7 A. I LEFT SEVERAL MESSAGES ON HIS ANSWERING

8 MACHINE WHEN I HEARD ABOUT EVERYTHING, AND I HAD NEVER

9 SPOKEN TO HIM. I HADN'T SPOKEN TO HIM UNTIL NOVEMBER,

10 WHEN I WAS A FRESHMAN AT PEPPERDINE.

11 Q. AND IN NOVEMBER DID YOU GO OUT TO THE

12 MOVIES WITH ERIK AND WITH MR. AND MRS. HEFFERNAN, HIS

13 COACH AND HIS COACH'S WIFE?

14 A. THAT WAS THE FIRST TIME I HAD SEEN HIM

15 SINCE THE HARD COURT NATIONALS, AND HE PICKED ME UP IN

16 FRONT OF MY DORM AND WE WENT OUT TO A MOVIE WITH THEM.

17 Q. AND AFTER THE MOVIE DID HE TAKE YOU BACK TO

18 YOUR DORM?

19 A. MM-HMM.

20 Q. AND COULD YOU SAY YES?

21 A. I'M SORRY. YES.

22 Q. THANK YOU.

23 AND UP UNTIL THAT POINT, HAD YOU ACTUALLY

24 TALKED TO HIM ABOUT HIS PARENTS, OR OFFERED YOUR

25 CONDOLENCES?

26 A. I DIDN'T -- I DIDN'T SAY A WORD THE WHOLE

27 NIGHT. WE WERE JUST HAPPY TO BE AROUND EACH OTHER. I

28 DIDN'T MENTION -- I JUST DIDN'T MENTION ANYTHING ABOUT

1 IT UNTIL THE END OF THE EVENING, AND WE WERE SITTING ON
2 A WALL IN FRONT OF MY DORM, AND IT WAS LIKE 11:30, 12:00
3 O'CLOCK AT NIGHT, AND I SAID: "YOU KNOW, WE'RE SO
4 CLOSE, AND WE HAVEN'T DATED FOR A LONG TIME, AND I JUST
5 I NEED TO SAY SOMETHING. I'M SORRY I HAVEN'T SAID
6 ANYTHING THE WHOLE NIGHT. I HAVE BEEN AVOIDING IT, BUT
7 I JUST WANT TO GIVE YOU A HUG AND TELL YOU THAT I'VE
8 BEEN THINKING A LOT ABOUT YOU."

9 AND WE STARTED TALKING ABOUT IT, AND HE
10 STARTED CRYING.

11 Q. AND HOW HARD DID HE CRY? WHAT HAPPENED?

12 A. HE CRIED REALLY HARD IN FRONT OF MY DORM,
13 AND HE WAS TELLING ME HOW MUCH HE MISSED HIS PARENTS,
14 AND THEN HE TALKED ABOUT A POEM THAT HE HAD EITHER
15 WRITTEN OR READ CALLED "CASTLES IN THE SAND."

16 Q. AND WHO WAS THE POEM ABOUT?

17 A. IT WAS ABOUT KITTY.

18 Q. ABOUT HIS MOTHER?

19 A. MM-HMM.

20 Q. AFTER ERIK WAS ARRESTED, DID YOU START TO
21 VISIT HIM IN JAIL?

22 A. YES.

23 Q. AND YOU WEREN'T ROMANTICALLY INVOLVED WITH
24 HIM AT THAT TIME, WERE YOU?

25 A. NO.

26 Q. WERE YOU SEEING SOMEONE ELSE, IN FACT?

27 A. YES.

28 Q. AND DID YOU GO ON VISITING HIM IN JAIL

-12251

1 PERIODICALLY FOR ABOUT FIVE YEARS?

2 A. YEAH. IT AFFECTED MY GRADES MY FRESHMAN
3 YEAR, BECAUSE I WAS DRIVING DOWN TWO OR THREE TIMES A
4 WEEK.

5 Q. AND WHY --

6 A. FOR THE FIRST YEAR.

7 Q. AND WHY WERE YOU DOING THAT?

8 A. BECAUSE I THOUGHT HE NEEDED FRIENDS.

9 Q. AND DID YOU, AT SOME POINT, COME TO
10 UNDERSTAND THAT HE AND HIS BROTHER WERE RESPONSIBLE FOR
11 KILLING THEIR PARENTS?

12 A. MM-HMM, YES.

13 Q. AND DID YOU CONTINUE TO VISIT HIM AFTER
14 THAT?

15 A. YES.

16 Q. AND DURING YOUR VISITS, DID YOU EVER
17 DISCUSS THE CASE?

18 A. WE NEVER TALKED ABOUT THE CASE. WE
19 ALWAYS -- WE ALWAYS TALKED ABOUT HIGH SCHOOL AND THE
20 GOOD TIMES, AND "DO YOU REMEMBER THIS? AND DO YOU
21 REMEMBER THAT?" AND ALL THE FUN THINGS THAT WE HAD DONE
22 TOGETHER.

23 AND HE ALWAYS ASKED ME EVERYTHING ABOUT

24 SCHOOL AND MY TESTS, AND HOW I WAS PLAYING IN TENNIS.
25 BUT WE NEVER, EVER TALKED ABOUT HIM.
26 Q. AND DID YOU MENTION THAT TO HIM ON ONE
27 OCCASION, THAT YOU'RE ALWAYS TALKING ABOUT YOUR LIFE AND
28 NEVER TALKING ABOUT HIM?

-12250

1 A. WE -- I DID NOT FOR THE FIRST COUPLE YEARS.
2 THIS WAS -- YOU KNOW, HE HAD BEEN IN THERE THREE OR FOUR
3 YEARS, AND JUST ONE TIME I WAS IN A SERIOUS MODE, AND I
4 SAID -- YOU KNOW, BECAUSE HE WANTED ME TO BRING OLD HIGH
5 SCHOOL PICTURES, AND PICTURES OF MY FRIENDS AND WHO I
6 WAS HANGING OUT WITH. HE JUST WANTED TO KNOW WHAT I WAS
7 DOING.

8 AND I SAID: "DOES IT BOTHER YOU THAT WE
9 ONLY TALK ABOUT OUR PAST?" I SAID, "WE'VE NEVER, EVER
10 TALKED ABOUT WHY YOU'RE IN HERE," AND THEN I -- I'M NOT
11 LIKE THIS. I DON'T CRY VERY EASILY. I APOLOGIZE.

12 BUT I STARTED TO CRY, AND I REALLY DIDN'T
13 MEAN FOR HIM -- I DIDN'T WANT HIM TO CRY, BECAUSE -- YOU
14 KNOW, THERE ARE INMATES ON BOTH SIDES OF US, AND A PHONE
15 AND A LITTLE CUBICLE.

16 AND HE STARTED TO CRY, AND HE JUST LET ME
17 TALK, AND HE SAID: "I CRY AT NIGHT IN MY CELL, BUT I
18 CAN'T CRY IN FRONT OF THESE OTHER INMATES." AND HE
19 STARTED TO CRY A LOT, AND I WAS TRYING TO STOP SO HE

20 WOULDN'T CRY ANYMORE.

21 Q. DID HE EVER COMPLAIN TO YOU ABOUT BEING IN
22 JAIL?

23 A. NO.

24 Q. DID HE EVER DESCRIBE FOR YOU THE KIND OF
25 CONDITIONS HE WAS LIVING UNDER?

26 A. YEAH, HE DID IN LETTERS. HE WOULD TELL ME
27 THE SIZE OF HIS CELL, AND HE WROTE ME MAYBE FOUR TIMES,
28 AND I WROTE HIM A COUPLE TIMES BACK.

-12249

1 BUT THEN WE JUST -- I JUST VISITED HIM
2 EVERY NOW AND THEN, I DIDN'T WRITE ANY MORE, AND HE
3 WOULD TELL ME ABOUT --

4 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: SUSTAINED.

6 YOUR NEXT QUESTION, PLEASE.

7 Q. BY MS. ABRAMSON: NOW, JUST ONE OTHER
8 THING.

9 YOU WERE DATING ERIK BOTH BEFORE AND THEN
10 AFTER CHRISTMAS TIME OF 1988; IS THAT RIGHT?

11 A. RIGHT.

12 Q. YOU REMEMBER THAT CHRISTMAS OF 1988
13 MRS. MENENDEZ HAD THE HOUSE DECORATED PROFESSIONALLY
14 WITH A HUGE TREE AND SOME STUFF?

15 A. CHRISTMAS OF '88, YOU SAID?

16 YEAH. SHE HAD A HUGE PARTY.

17 Q. AND AROUND -- AT ANY TIME -- WELL, FIRST OF

18 ALL, AT ANY TIME BEFORE ERIK WAS ARRESTED DID HE EVER

19 MENTION TO YOU THAT HIS BROTHER, LYLE, WORE A HAIRPIECE?

20 A. NO.

21 Q. DID HE EVER -- DID YOU EVER HEAR HIM

22 MENTIONING IT TO ANYBODY ELSE?

23 A. I HAD NO IDEA. HE HAD NO IDEA.

24 MR. CONN: OBJECTION. MOTION TO STRIKE. CALLS

25 FOR SPECULATION.

26 THE COURT: SUSTAINED.

27 THE ANSWER IS STRICKEN.

28 Q. BY MS. ABRAMSON: AND PARTICULARLY AROUND

-12248

1 THIS TIME OF DECEMBER '88, YOU NEVER HEARD HIM SAY

2 ANYTHING ABOUT THAT, DID YOU?

3 A. NO.

4 Q. AND YOU WERE VERY CLOSE, WEREN'T YOU?

5 A. YES.

6 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

7 HONOR.

8 THE COURT: ALL RIGHT.

9 ANY EXAMINATION ON BEHALF OF LYLE MENENDEZ?

10 MR. GESSLER: NO, YOUR HONOR.

11 THE COURT: CROSS-EXAMINATION?

12 MR. CONN: YES.

13

14 CROSS-EXAMINATION

15 BY MR. CONN?

16 Q. MS. SMITH, DID YOU KNOW THAT DETECTIVE

17 ZOELLER HAD BEEN TRYING TO TALK TO YOU --

18 MS. ABRAMSON: I WILL OBJECT TO THIS, YOUR HONOR,

19 AS FIRST OF ALL IT IS FACTS NOT IN EVIDENCE, AND I WOULD

20 LIKE TO BE HEARD. COUNSEL SHOULD MAKE AN OFFER OF PROOF

21 BEFORE HE DOES THIS.

22 THE COURT: OVERRULED AS TO THE LATTER PART, AS

23 THIS IS CROSS-EXAMINATION.

24 AS TO THE FIRST ASPECT OF IT, IT DOES

25 ASSUME FACTS NOT IN EVIDENCE.

26 REPHRASE THE QUESTION.

27 MR. CONN: YES.

28 Q. DID YOU EVER TALK TO DETECTIVE ZOELLER?

-12247

1 A. WHO? I'M SORRY.

2 Q. DETECTIVE ZOELLER, BEVERLY HILLS POLICE

3 DEPARTMENT.

4 A. I HAD ONLY TALKED TO BEVERLY HILLS POLICE

5 DEPARTMENT LIKE SIX YEARS AGO WHEN THIS FIRST HAPPENED.

6 Q. AND WHO INTERVIEWED YOU FROM THE BEVERLY

7 HILLS POLICE DEPARTMENT?

8 A. I TALKED TO SOMEONE ON THE PHONE THAT WAS
9 FROM THE POLICE DEPARTMENT, MAYBE THREE OR FOUR DAYS
10 AFTER THIS ALL HAPPENED, AND I HAD NEVER TALKED TO A
11 DETECTIVE SINCE.

12 Q. AND HOW LONG WAS THAT CONVERSATION?

13 A. NO LONGER THAN -- I DON'T KNOW. TEN,
14 FIFTEEN MINUTES.

15 Q. AND --

16 A. I DIDN'T EXPECT ANY CALLS, AND SO I WAS
17 SHOCKED THAT I HAD SOMEONE CALLING ME FROM THE BEVERLY
18 HILLS POLICE DEPARTMENT THREE DAYS AFTER THIS HAD
19 HAPPENED.

20 Q. AND YOU DON'T KNOW THE NAME OF THE MAN THAT
21 YOU SPOKE TO FROM THE BEVERLY HILLS POLICE DEPARTMENT?

22 A. THAT NAME ZOELLER, I RECOGNIZE THE NAME
23 NOW. I WOULDN'T KNOW WHO INTERVIEWED ME ON THE PHONE,
24 THOUGH.

25 Q. AND SINCE THEN DID YOU RECEIVE ANY
26 MESSAGES, PHONE MESSAGES AT YOUR HOME FROM DETECTIVE
27 ZOELLER, TELLING YOU THAT HE IS TRYING TO CONTACT YOU
28 AND HE WANTS TO SPEAK TO YOU?

-12246

1 A. MAYBE WITH MY PARENTS. BUT I HAVEN'T LIVED
2 AT HOME FOR A LONG TIME.

3 Q. OKAY. DID YOU RECEIVE WORD FROM YOUR

4 PARENTS --

5 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.

6 THIS CALLS FOR HEARSAY.

7 THE COURT: SUSTAINED.

8 Q. BY MR. CONN: DID YOU EVER RECEIVE ANY --

9 DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER OR NOT DETECTIVE

10 ZOELLER HAS BEEN TRYING TO CONTACT YOU FOR THE PAST

11 SEVERAL YEARS?

12 A. A LOT OF PEOPLE HAVE BEEN TRYING TO CONTACT

13 ME FOR THE LAST SEVERAL YEARS.

14 Q. I AM NOT ASKING YOU ABOUT OTHER PEOPLE. I

15 AM ASKING YOU ABOUT DETECTIVE ZOELLER.

16 A. I WOULDN'T KNOW --

17 Q. LET ME FINISH THE QUESTION, PLEASE.

18 DID YOU KNOW THAT DETECTIVE ZOELLER WAS

19 TRYING TO CONTACT YOU?

20 MS. ABRAMSON: OBJECTION, YOUR HONOR. ASSUMES

21 FACTS NOT IN EVIDENCE.

22 THE COURT: OVERRULED.

23 Q. BY MR. CONN: DID YOU KNOW WHETHER OR NOT

24 DETECTIVE ZOELLER WAS TRYING TO CONTACT YOU FOR THE PAST

25 SEVERAL YEARS?

26 A. NO, I DID NOT.

27 Q. YOU HAVE NO INFORMATION FROM YOUR PARENTS

28 OR ANYONE ELSE --

1 A. I DID NOT KNOW WHO ZOELLER --

2 THE COURT: LET HIM FINISH THE QUESTION,

3 OTHERWISE YOU DON'T KNOW WHAT HE'S GOING TO ASK.

4 Q. BY MR. CONN: YOU HAVE NO KNOWLEDGE FROM

5 YOUR PARENTS, OR ANYONE ELSE, THAT DETECTIVE ZOELLER WAS

6 TRYING TO CONTACT YOU FOR SEVERAL YEARS?

7 A. I DID NOT KNOW IT WAS ZOELLER. I KNOW

8 PEOPLE HAVE BEEN TRYING TO CONTACT ME, FROM POLICE

9 DEPARTMENTS TO TOM BROKAW SHOWS. I MEAN --

10 Q. DID YOU KNOW THAT THE BEVERLY HILLS POLICE

11 DEPARTMENT WAS TRYING TO CONTACT YOU?

12 A. AT THE BEGINNING, YES. BUT NOT IN THE LAST

13 SEVERAL YEARS, NO.

14 Q. WELL, OVER THE PAST SEVERAL YEARS YOU HAD

15 NO REASON TO BELIEVE THAT SOMEONE FROM THE BEVERLY HILLS

16 POLICE DEPARTMENT WAS TRYING TO CONTACT YOU; IS THAT

17 WHAT YOU'RE SAYING?

18 A. NOT IN THE LAST SEVERAL YEARS, NO.

19 Q. AND YOUR FATHER NEVER GAVE YOU ANY SUCH

20 MESSAGES; IS THAT CORRECT?

21 A. I DON'T RECALL MY DAD TELLING ME ANYTHING

22 LIKE THAT.

23 Q. AND YOU SAID THAT YOU AND ERIK MENENDEZ --

24 HAVE YOU HAD -- HOW MANY TIMES HAVE YOU BEEN INTERVIEWED

25 BY THE DEFENSE ATTORNEYS OR DEFENSE INVESTIGATORS SINCE

26 THE TIME --

27 MS. ABRAMSON: I OBJECT AS IRRELEVANT, YOUR

28 HONOR.

1 THE COURT: OVERRULED.

2 Q. BY MR. CONN: SINCE THE TIME OF THE
3 KILLINGS?

4 A. HOW MANY TIMES HAVE I BEEN INTERVIEWED?

5 Q. YES.

6 A. TWO FORMAL TIMES -- THREE FORMAL TIMES.

7 Q. AND WHEN DID THEY TAKE PLACE?

8 A. THE FIRST ONE WAS -- I DON'T KNOW. THREE
9 YEARS AGO, TWO OR THREE YEARS AGO. RIGHT BEFORE THE
10 FIRST TRIAL, I BELIEVE. AND THEN JUST LAST SUNDAY.

11 Q. NOW, YOU SAID THAT YOU AND ERIK MENENDEZ
12 HAVE SHARED A COMMON COACH SOMEWHERE; IS THAT CORRECT?

13 A. WE HAD THE SAME COACH.

14 Q. AND WHO WAS THAT?

15 A. PAUL HOLBACH, HOBIE.

16 Q. HOW DO YOU SPELL THAT LAST NAME?

17 A. H-O-L-B-A-C-H.

18 Q. H-O-L-B-A-C-H?

19 A. HOLBACH, YEAH.

20 Q. AND WHERE WAS HE YOUR COACH?

21 A. CALABASAS TENNIS AND SWIM CENTER.

22 Q. NOW, DURING THE FIRST PERIOD OF TIME THAT
23 YOU DATED ERIK MENENDEZ, I BELIEVE THAT YOU SAID THAT
24 THAT IS BETWEEN MARCH OF '87 UP UNTIL AUGUST OF '87?

25 A. AUGUST, SEPTEMBER. YEAH.

26 Q. AND HOW MUCH TIME DID YOU SPEND WITH HIM
27 DURING THAT TIME PERIOD?

28 A. A LOT. AS MUCH TIME AS WE COULD POSSIBLY

-12243

1 SPEND TOGETHER.

2 Q. BUT WHAT I'M ASKING YOU FOR IS AN
3 APPROXIMATION OF WHAT THAT TIME ENTAILED.

4 A. WE DIDN'T ATTEND THE SAME HIGH SCHOOL, SO
5 WE ONLY SAW EACH OTHER AT TENNIS WORK-OUTS IN THE LATE
6 AFTERNOON, AND ON WEEKENDS AT TOURNAMENTS, OR WHEN WE
7 WENT OUT.

8 BUT WE TALKED TO EACH OTHER EVERY DAY --
9 EVERY DAY ON THE PHONE, THROUGH -- ON THE PHONE AND
10 THROUGH LETTERS.

11 Q. SO YOU HAD TENNIS WORK-OUTS DURING THE
12 WEEK?

13 A. RIGHT.

14 Q. AND HOW MANY TIMES A WEEK WOULD YOU HAVE
15 TENNIS WORK-OUTS IN WHICH YOU WOULD SEE ERIK MENENDEZ?

16 A. I THINK I DID THE MONDAY-WEDNESDAY-FRIDAY
17 CLINICS, 4:30 TO 6:30, AND I THINK HE DID THE SAME. AND
18 I ALSO HAD AN HOUR PRIVATE LESSON A WEEK.

19 Q. AND WOULD YOU SPEND TIME WITH HIM AFTER THE
20 TENNIS WORK-OUTS?

21 A. UP AT THE SNACK BAR AND BY THE POOL, IN THE

22 LOUNGE AREA.

23 Q. HOW MUCH TIME WOULD YOU BE ABLE TO HANG

24 AROUND WITH ERIK MENENDEZ AFTER THE WORK-OUTS DURING THE

25 WEEK?

26 A. WELL, I HAD TO GET HOME FOR HOMEWORK. SO

27 ABOUT AN HOUR OR SO. I DON'T KNOW.

28 Q. AND DURING THESE TENNIS WORK-OUTS DURING

-12242

1 THE WEEK, WOULD HIS FATHER OR MOTHER BE PRESENT?

2 A. NO. THEY WEREN'T AT THE CLUB.

3 Q. AND DO YOU KNOW HOW HE -- DID HE DRIVE

4 HIMSELF FROM THE TENNIS WORK-OUTS BACK HOME?

5 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS FOR

6 A CONCLUSION.

7 THE COURT: REPHRASE THE QUESTION.

8 Q. BY MR. CONN: DURING THIS PERIOD OF TIME

9 YOU SAID HE WAS 16 YEARS OLD?

10 A. RIGHT.

11 Q. WAS HE DRIVING?

12 A. NOT AT THE BEGINNING, NO, BECAUSE HIS

13 LICENSE WAS REVOKED. BUT AFTER THAT HE WOULD DRIVE

14 HIMSELF.

15 Q. AND --

16 A. I'M A YEAR YOUNGER. HE DROVE BEFORE I DID.

17 Q. YES. AND FOR THE -- YOU SAID THAT YOU

18 WOULD SEE HIM DURING THE WEEKEND AS WELL; IS THAT

19 CORRECT?

20 A. DURING THE WEEKEND, YES.

21 Q. AND HOW MUCH TIME WOULD YOU SPEND WITH HIM

22 ON THE WEEKEND DURING THAT TIME PERIOD?

23 A. WE'D PLAY THE SAME TENNIS TOURNAMENTS, AND

24 WE FOUND OUT EACH OTHER'S TIMES, AND WE WOULD TRY TO

25 WATCH EACH OTHER'S MATCHES AT THE SAME TOURNAMENTS. AND

26 THEN IF WE HAD A CHANCE TO, WE WOULD GO TO LUNCH, AND

27 SEE EACH OTHER IN THE EVENING.

28 Q. AND HOW OFTEN DID YOU DATE HIM BETWEEN

-12241

1 MARCH AND AUGUST OF '87? WOULD THAT BE EVERY WEEKEND

2 THAT YOU WOULD DATE HIM?

3 A. HE WAS MY BOYFRIEND. WE DATED THE WHOLE

4 TIME. WE ALWAYS DATED.

5 Q. THAT'S WHAT I'M ASKING YOU. DID YOU DATE

6 HIM ON BOTH SATURDAYS AND SUNDAYS EVERY WEEKEND?

7 A. I WOULD SEE HIM AS MUCH AS I POSSIBLY

8 COULD. SO YES, PROBABLY.

9 Q. SO PROBABLY EVERY SATURDAY AND SUNDAY YOU

10 SPENT WITH HIM?

11 A. RIGHT.

12 Q. WOULD YOU SPEND THE ENTIRE DAY WITH HIM

13 EVERY SATURDAY AND SUNDAY?

14 A. NOT THE WHOLE DAY. IT VARIED.

15 Q. A GOOD PORTION OF THE DAY ON SATURDAY AND
16 SUNDAY?

17 A. IF I HAD A CHANCE TO, I WOULD PROBABLY
18 SPEND THE WHOLE DAY WITH HIM, BUT --

19 Q. EVERY WEEKEND?

20 MS. ABRAMSON: I DON'T THINK THE WITNESS HAD
21 FINISHED HER ANSWER, YOUR HONOR.

22 THE COURT: I THINK SHE HAD.

23 YOUR NEXT QUESTION, PLEASE.

24 Q. BY MR. CONN: OKAY.

25 AND DID IT APPEAR TO YOU THAT ERIK MENENDEZ
26 HAD FREE TIME, THAT HE COULD SPEND THE ENTIRE WEEKEND
27 WITH YOU IF HE WANTED TO?

28 A. WE WOULD HAVE TO COORDINATE OUR SCHEDULES.

-12240

1 I MEAN, WE WOULD HAVE TO SEE WHAT WE WERE DOING.

2 IN THE TENNIS CIRCUIT JUNIOR TENNIS, YOU
3 HAVE TOURNAMENTS EVERY WEEKEND, AND IT DEPENDED ON WHAT
4 TOURNAMENTS HE WAS PLAYING, WHICH CITY WAS HE GOING TO.
5 BUT WE ALWAYS TALKED ON THE PHONE, OR WE ALWAYS
6 COORDINATED OUR SCHEDULE.

7 Q. ASIDE FROM YOUR RESPECTIVE TENNIS
8 SCHEDULES, DID IT APPEAR TO YOU THAT ERIK MENENDEZ WAS
9 FREE TO SPEND AS MUCH TIME WITH YOU THAT HE WANTED TO

10 AND SATURDAYS AND SUNDAYS?

11 A. NOT FREE, NO. I MEAN, IF HE LOST A MATCH

12 HE WOULDN'T BE ABLE TO GO TO LUNCH WITH ME. AND

13 SOMETIMES HE COULD GO PLACES, SOMETIMES HE COULDN'T.

14 BUT IT DEPENDED REALLY ON HOW HE DID IN THE

15 TOURNAMENT.

16 Q. NOW, DURING THIS TIME PERIOD WHEN YOU FIRST

17 DATED HIM, MARCH TO AUGUST OF 1987, CAN YOU TELL US HOW

18 MUCH OPPORTUNITY YOU HAD TO OBSERVE HIM INTERACT WITH

19 HIS PARENTS?

20 A. HOW MUCH I HAD TO --

21 Q. THE OPPORTUNITY THAT YOU HAD TO OBSERVE HIM

22 INTERACT WITH HIS PARENTS DURING THAT FIRST DATING

23 PERIOD.

24 A. MOSTLY DURING TENNIS THINGS. SO AT

25 TOURNAMENTS.

26 Q. TOURNAMENTS.

27 DID YOU GO TO HIS HOME AT ALL DURING THIS

28 FIRST DATING PERIOD?

-12239

1 A. YEAH. I WOULD MEET HIM THERE OR GO BACK

2 THERE AFTER WE WERE DONE FROM A MOVIE, AND --

3 Q. AND DID HIS PARENTS ATTEND ALL OF HIS

4 TOURNAMENTS?

5 A. YEAH. THEY ALWAYS TOOK HIM, BOTH OF THEM.

6 Q. AND DURING THOSE TOURNAMENTS WHEN HE WAS
7 PLAYING, WOULD YOU BE ABLE TO SIT WITH THE PARENTS AND
8 WATCH ERIK MENENDEZ PLAY?

9 A. I WAS USUALLY PLAYING AT THE SAME TIME, AND
10 SO HE WOULD BE FOUR OR FIVE COURTS DOWN PLAYING HIS
11 TOURNAMENT, OR EVEN AT A DIFFERENT SITE OR LOCATION.

12 BUT MY DAD WOULD ALWAYS DRIVE ME TO WATCH
13 THE TAIL END OF HIS MATCH. I WOULD NEVER BE ABLE TO SIT
14 AND WATCH AN ENTIRE MATCH.

15 Q. DID YOU EVER HAVE AN OPPORTUNITY TO SIT
16 WITH HIS PARENTS AND WATCH HIM PLAY IN A TOURNAMENT?

17 A. I WOULD SIT NEXT TO THEM WHEN I GOT BACK
18 FROM MY MATCH A COUPLE OF TIMES.

19 Q. AND HOW DID HIS PARENTS CONDUCT THEMSELVES
20 DURING THE TIMES THEY WATCHED THEIR SON PLAY TENNIS,
21 DURING THE TIME THEY HAD TO SIT WITH YOU?

22 A. THEY MADE ME NERVOUS. THEY TALKED THE
23 WHOLE MATCH.

24 Q. ABOUT WHAT?

25 A. ABOUT HOW HE WAS PLAYING EVERY SINGLE POINT
26 DURING THE RALLY.

27 TENNIS IS LIKE GOLF. YOU SIT AND YOU WATCH
28 AND YOU BE QUIET. BUT THEY WERE TOTALLY INTO HIS

1 MATCHES, USUALLY.

2 Q. AND HAVE YOU HEARD THE PHRASE BEFORE,

3 "TENNIS PARENTS?"

4 A. YEAH. I WOULD LIKE TO USE THAT.

5 Q. CAN YOU TELL US WHAT A TENNIS PARENT IS?

6 A. I DON'T KNOW IF YOU KNOW MARY PIERCE, BUT

7 HER FATHER IS A TRUE TENNIS PARENT.

8 Q. AND WHAT IS A TENNIS PARENT?

9 A. SOMEONE WHO IS FANATICAL ABOUT THEIR CHILD

10 PLAYING IN ANY SPORT, WHO -- THEY WANT THEM TO WIN MORE

11 THAN THE KID WANTS TO WIN.

12 Q. AND IS THAT SOMETHING THAT IS SO COMMON IN

13 COMPETITIVE SPORTS, PARTICULARLY IN REGARD TO TENNIS,

14 THAT THERE IS A TERM FOR IT CALLED "TENNIS PARENT"?

15 A. IT'S COMMON, BUT IT'S NOT THAT COMMON. BUT

16 EVERYBODY WOULD KNOW THE TERM "TENNIS PARENT" THAT PLAYS

17 TENNIS.

18 Q. NOW, HOW DID ERIK MENENDEZ INTERACT WITH

19 HIS MOTHER DURING THE TIME THAT YOU HAD TO OBSERVE HIM

20 INTERACT WITH HIS MOTHER?

21 A. HE LOVED HIS MOTHER. HE WAS VERY NICE TO

22 HER.

23 Q. HOW DID SHE INTERACT WITH HIM?

24 A. THEY WERE NICE TO EACH OTHER.

25 Q. HOW DID SHE BEHAVE TOWARD HIM?

26 A. SHE WAS NICE TO HIM.

27 Q. WHAT DO YOU MEAN BY NICE?

28 A. FRIENDLY. IN FRONT OF ME -- YOU DON'T KNOW

1 WHAT GOES ON BEHIND CLOSED DOORS -- BUT WHEN I WAS THERE
2 SHE WAS NICE TO HIM IN FRONT OF ME.

3 Q. YOU NEVER OBSERVED ANYTHING GOING ON BEHIND
4 CLOSED DOORS; IS THAT CORRECT?

5 A. OBVIOUSLY. I WASN'T THERE.

6 Q. SO I'M JUST ASKING YOU HOW SHE BEHAVED
7 TOWARD HIM. DID SHE EVER SHOW AGGRESSIVENESS OR ANGER
8 TOWARD HIM?

9 A. NOT IN FRONT OF ME.

10 Q. YOU NEVER ONCE SAW KITTY MENENDEZ ANGRY AT
11 HER SON?

12 A. SHE WOULD -- THEIR FAMILY HAS A VERY UNIQUE
13 SENSE OF HUMOR AND SARCASM, VERY SARCASTIC. AND SHE
14 NEVER RAISED HER VOICE AND NEVER YELLED AT HIM IN FRONT
15 OF ME. BUT IF THERE WAS ANYTHING SAID THAT WAS NOT VERY
16 NICE, IT WAS SAID SARCASTICALLY OR DEMEANING, SO -- BUT
17 IT WASN'T AGGRESSIVE. IT WAS JUST SARCASTIC, YOU KNOW.
18 I DON'T KNOW. BELITTLING COMMENTS. THAT WAS IT.

19 Q. AND I BELIEVE THAT YOU SAID THAT YOU WERE
20 VERY FOND OF MRS. MENENDEZ?

21 A. I WAS.

22 Q. WHY WERE YOU VERY FOND OF HER?

23 A. WE WERE GOOD FRIENDS. SHE WAS VERY NICE TO
24 ME. SHE CARED ABOUT ME.

25 Q. HOW DO YOU KNOW THAT?

26 A. BECAUSE SHE REALLY LOVED THE FACT THAT WE

27 WERE DATING, AND --

28 Q. DID SHE EVER TELL YOU WHY SHE LOVED THE

-12236

1 FACT THAT YOU WERE DATING?

2 A. NO. BUT I DON'T KNOW -- I KNOW. I JUST

3 KNOW.

4 THE COURT: OKAY. YOU'VE ANSWERED THE QUESTION.

5 OKAY. HE ASKED YOU DID SHE EVER SAY THAT, AND YOU SAID

6 NO.

7 YOUR NEXT QUESTION.

8 Q. BY MR. CONN: AND HOW DID SHE TREAT YOU?

9 A. SHE TREATED ME VERY WELL. SHE LOVED IT

10 WHEN I CALLED. IF I CALLED LOOKING FOR ERIK, SHE WOULD

11 STAY ON THE PHONE, YOU KNOW, FIVE, TEN MINUTES BEFORE

12 SHE EVEN CALLED HIM DOWN.

13 WE GOT ALONG WELL. AT TIMES SHE WAS LIKE

14 MY OWN MOTHER, SO . . .

15 Q. LIKE YOUR MOTHER IN WHAT SENSE?

16 A. SHE CARED A LOT ABOUT MY FEELINGS.

17 Q. AND WHAT DID SHE DO THAT CAUSED YOU TO

18 CONCLUDE THAT SHE CARED A LOT ABOUT YOUR FEELINGS?

19 A. WHAT DO YOU MEAN? I MEAN, WHEN SOMEONE

20 CARES ABOUT YOU AND TALKS TO YOU, YOU KNOW. I MEAN --

21 I DON'T KNOW HOW ELSE TO DESCRIBE IT.

22 THE COURT: HOW MUCH LONGER ARE YOU GOING TO BE?

23 MR. CONN: ABOUT 20 MINUTES.

24 THE COURT: ALL RIGHT. WE WILL TAKE OUR BREAK AT

25 THIS TIME.

26 DON'T DISCUSS THE MATTER WITH ANYBODY.

27 DON'T FORM ANY FINAL OPINION ABOUT IT. WE WILL RESUME

28 AT 10:30.

-12235

1

2 (A RECESS WAS TAKEN FROM

3 10:15 A.M. TO 10:30 A.M.)

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53302

1 THE COURT: LET'S HAVE THE JURY OUT, PLEASE.

2 (THE JURY ENTERED THE COURTROOM

3 AND THE FOLLOWING PROCEEDINGS

4 WERE HELD:)

5

6 THE COURT: THE JURY IS BACK. YOU MAY

7 CONTINUE YOUR CROSS-EXAMINATION.

8 MR. CONN: THANK YOU.

9 Q MS. SMITH, I BELIEVE, AS I WAS

10 QUESTIONING YOU ABOUT CONTACTS, ATTEMPTED CONTACTS

11 THAT PEOPLE WERE MAKING TO DISCUSS THIS CASE WITH

12 YOU --

13 MS. ABRAMSON: OBJECT TO THE FORM OF THE

14 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

15 THE COURT: OVERRULED.

16 Q MR. CONN: I BELIEVE YOU MENTIONED IN
17 PASSING POLICE DEPARTMENTS AND NEWSMEN.

18 DO YOU RECALL SAYING THAT?

19 A NEWSMAN? I THINK I SAID --

20 Q POLICE DEPARTMENTS AND NEWSMEN.

21 A I THOUGHT I SAID "DATELINE", BUT I DON'T
22 KNOW. WHATEVER SHE'S WRITTEN DOWN IS WHAT I SAID.

23 Q DO YOU RECALL SAYING POLICE DEPARTMENT?

24 A RIGHT. I SAID POLICE DEPARTMENT. I
25 DON'T KNOW IF I SAID NEWSMEN.

26 Q AND WHAT POLICE DEPARTMENT WERE YOU
27 REFERRING TO, IF NOT THE BEVERLY HILLS POLICE
28 DEPARTMENT?

53303

1 A JUST THAT DEPARTMENT.

2 Q OTHER THAN THAT FIRST CONTACT THAT YOU
3 HAD WITH THEM, DID YOU HAVE CONTACT WITH ANY OTHER
4 POLICE DEPARTMENT, OR WERE YOU AWARE OF ANY EFFORTS
5 BY ANY POLICE DEPARTMENT TO CONTACT YOU?

6 A NO ONE TRIED TO CONTACT ME PERSONALLY,
7 BECAUSE I WAS LIVING IN THE DORMS AT PEPPERDINE. I
8 THINK THE NUMBER THEY HAD WAS MY PARENTS' NUMBER IN
9 THOUSAND OAKS.

10 Q SO YOU'RE NOT AWARE OF ANY POLICE

11 DEPARTMENT TRYING TO CONTACT YOU?

12 A JUST PROBABLY BEVERLY HILLS. NO. I'M

13 NOT AWARE OF IT.

14 Q YOU'RE TELLING US YOU WEREN'T AWARE OF

15 BEVERLY HILLS TRYING TO CONTACT YOU? IS THAT WHAT

16 YOU'RE SAYING?

17 A I SAID THEY DID CONTACT ME.

18 Q AFTER THAT FIRST CONTACT, YOU'RE NOT

19 AWARE OF ANY EFFORTS --

20 A I KNEW SOMEONE HAD CALLED MY HOUSE, BUT

21 NOT IN THE LAST THREE YEARS. I KNEW THAT A POLICE

22 DEPARTMENT HAD CALLED MY PARENTS, BECAUSE MY DAD HAD

23 TOLD ME THAT. WE DIDN'T MAKE ANY EFFORTS TO PURSUE

24 IT.

25 Q SO YOUR FATHER TOLD YOU THAT THE POLICE

26 DEPARTMENT WAS TRYING TO CONTACT YOU?

27 A NOT IN THE LAST THREE YEARS. BUT AT THE

28 VERY BEGINNING -- IT'S BEEN SIX YEARS -- AT THE VERY

53304

1 BEGINNING, YES.

2 Q WHAT DID YOU DO AFTER YOU LEARNED THAT

3 THE POLICE DEPARTMENT WAS TRYING TO CONTACT YOU?

4 A NOTHING.

5 Q WHY NOT?

6 A I DIDN'T -- I WAS IN COLLEGE, AND I
7 DIDN'T WANT TO DO ANY OF THESE SHOWS, AND I DIDN'T
8 WANT TO HAVE ANYTHING TO DO -- I DIDN'T WANT TO BE IN
9 THE LIMELIGHT, SO TO SPEAK. I DIDN'T WANT TO BE A
10 PART OF THIS.

11 Q DID YOU BELIEVE THAT THE POLICE
12 DEPARTMENT WANTED TO PUT YOU ON A TELEVISION SHOW?

13 A NO.

14 Q WHY DID YOU THINK THE POLICE DEPARTMENT
15 WANTED TO CONTACT YOU?

16 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS AS
17 CALLS FOR SPECULATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: PROBABLY TO ASK ME ABOUT THE
20 CASE, ABOUT WHAT I KNEW.

21 Q BY MR. CONN: WHEN WAS IT THAT YOUR
22 FATHER GAVE YOU THAT MESSAGE?

23 A I REALLY DO NOT RECALL. I KNOW I WAS IN
24 COLLEGE. IT WAS MY SOPHOMORE YEAR.

25 Q AND YOUR SOPHOMORE YEAR IN COLLEGE WAS
26 WHAT YEAR?

27 A I GRADUATED IN '94. I DON'T KNOW. '92,
28 '91. I ENTERED PEPPERDINE IN '89, AND I GRADUATED

1 IN '94.

2 Q SO WHEN I WAS ASKING ABOUT THE POLICE
3 DEPARTMENT TRYING TO CONTACT YOU BEFORE THE BREAK,
4 DID YOU FORGET THIS MESSAGE THAT YOU RECEIVED FROM
5 YOUR FATHER?

6 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

7 THE WITNESS: I DIDN'T FORGET IT.

8 THE COURT: OVERRULED.

9 THE WITNESS: MY PARENTS ARE TRYING TO
10 PROTECT ME FROM ALL OF THIS. THIS WHOLE THING HAS
11 BEEN TELEVISED. WHY WOULD I WANT TO BE, YOU KNOW --

12 Q BY MR. CONN: BEFORE THE RECESS I ASKED
13 YOU IF YOU WERE AWARE OF ANY CONTACTS OR EFFORTS BY
14 THE POLICE DEPARTMENT TO CONTACT YOU, AND YOU SAID
15 THAT YOU WERE NOT AWARE OF ANY EFFORTS BY THE POLICE
16 DEPARTMENT TO CONTACT YOU, WITH THE EXCEPTION OF ONE
17 CONTACT THAT YOU HAD WITH THE POLICE DEPARTMENT
18 WITHIN DAYS OF THE KILLINGS; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q WHY DID YOU ANSWER THAT WAY IF, IN FACT,
21 YOU KNEW THAT THE POLICE WERE TRYING TO CONTACT YOU
22 DURING YOUR SOPHOMORE YEAR AT COLLEGE?

23 A I JUST TALKED TO MY DAD, AND HE TOLD ME
24 THAT HE GOT MESSAGES, AND HE DIDN'T TELL ME, AND HE
25 WAS PROTECTING HIS DAUGHTER.

26 Q MY QUESTION IS: WHEN I ASKED YOU THAT
27 QUESTION EARLIER, WHY DID YOU TELL -- WHY DID YOU SAY
28 THAT YOU WEREN'T AWARE OF ANY EFFORTS BY THE POLICE

1 TO CONTACT YOU, WITH THE EXCEPTION OF THE INTERVIEW
2 THAT YOU HAD WITH THEM WITHIN DAYS OF THE KILLINGS?

3 A BECAUSE --

4 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

5 THE COURT: REPHRASE THE QUESTION.

6 LET ME CLARIFY SOMETHING. YOU SAID YOU
7 TALKED TO YOUR FATHER?

8 THE WITNESS: JUST NOW.

9 THE COURT: DURING THE RECESS?

10 THE WITNESS: HE JUST --

11 THE COURT: ANSWER MY QUESTION. DID YOU TALK
12 TO YOUR FATHER DURING THE RECESS?

13 THE WITNESS: FOR A MINUTE, YEAH.

14 THE COURT: ABOUT THE PHONE CALLS?

15 THE WITNESS: YEAH. HE GOT A FEW HE DIDN'T
16 TELL ME.

17 THE COURT: IS THAT WHAT HE TOLD YOU?

18 THE WITNESS: RIGHT.

19 THE COURT: AND HAD YOU HEARD THAT BEFORE
20 FROM YOUR FATHER?

21 THE WITNESS: NO.

22 THE COURT: OKAY.

23 Q BY MR. CONN: SO YOU'RE SAYING THAT YOU
24 LEARNED OF THAT JUST NOW DURING THE BREAK?

25 A HE HAD --

26 THE COURT: YOU CAN ANSWER IT YES OR NO,
27 BECAUSE YOU GET INTO DIFFERENT ANSWERS.

28 THE WITNESS: YOU'RE MAKING ME SO NERVOUS.

53307

1 AND I DON'T UNDERSTAND WHY YOU'RE --

2 THE COURT: LISTEN TO THE QUESTION. IT'S A
3 SIMPLE QUESTION. JUST LISTEN TO THE QUESTION AND
4 ANSWER THE QUESTION.

5 THE WITNESS: BEVERLY HILLS POLICE DEPARTMENT
6 CALLED ME MAYBE THREE OR FOUR DAYS AFTER THE
7 MURDERS. I TALKED TO WHOEVER THE DETECTIVE WAS FOR
8 MAYBE 10 OR 15 MINUTES. I NEVER TALKED TO ANYONE ON
9 THE PHONE, PERSONALLY, AFTER THAT. I NEVER DID. I
10 TALKED TO PEOPLE THAT WANTED ME ON TELEVISION
11 SHOWS.

12 I JUST TALKED TO MY DAD DURING THE
13 RECESS, AND HE SAID THAT THE BEVERLY HILLS
14 DEPARTMENT DID CALL MAYBE A COUPLE OF OTHER TIMES,
15 BUT NOT IN THE LAST THREE YEARS; AND HE NEVER GAVE
16 ME THE MESSAGE, AND THAT'S THAT.

17 Q BY MR. CONN: SO WHAT YOU'RE SAYING IS
18 YOU NEVER KNEW UP UNTIL A FEW MINUTES AGO WHEN YOU
19 SPOKE TO YOUR FATHER THAT THE BEVERLY HILLS POLICE

20 DEPARTMENT WAS TRYING TO CONTACT YOU --

21 A I NEVER KNEW.

22 Q -- AFTER YOUR INITIAL INTERVIEW WITH
23 THEM; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q NOW, YOU INDICATED THAT YOU DIDN'T SEE
26 HUGGING AMONG MEMBERS OF THE MENENDEZ FAMILY; IS
27 THAT CORRECT?

28 MS. ABRAMSON: OBJECTION. MISSTATES THE

53308

1 TESTIMONY.

2 THE COURT: OVERRULED.

3 Q BY MR. CONN: DID YOU SEE HUGGING AMONG
4 MEMBERS OF THE MENENDEZ FAMILY?

5 A NO.

6 Q DID YOU SEE THEM KISS EACH OTHER?

7 A YES. THEY ALWAYS KISSED ON THE CHEEK.

8 Q WHO KISSED WHO ON THE CHEEK?

9 A JOSE KISSED ME ON THE CHEEK. JOSE
10 KISSED ERIK ON THE CHEEK, HIS MOM. THEY DIDN'T
11 HUG. THEY DIDN'T EMBRACE EACH OTHER.

12 Q JOSE KISSED ERIK ON THE CHEEK. DID YOU
13 SEE ERIK AND HIS MOTHER KISS EACH OTHER?

14 A YES. THAT'S HOW THEY SHOWED THEIR

15 AFFECTION IN FRONT OF ME WHEN I WAS THERE.

16 Q SO WAS THIS A ROUTINE THING, THAT

17 MEMBERS OF THE MENENDEZ FAMILY WOULD KISS EACH OTHER

18 ON THE CHEEK?

19 A IT'S NOT LIKE I WALKED IN THE DOOR AND

20 THEY WERE ALWAYS KISSING ON THE CHEEK. WHEN THEY

21 WERE SEEING EACH OTHER AND SAYING -- LIKE "GOOD-BYE

22 MOM. I'M GOING TO A MOVIE WITH KIRSTEN," AND SAY

23 GOODNIGHT AND KISS EACH OTHER ON THE CHEEK.

24 Q EVEN SOMETHING LIKE GOING TO THE MOVIES,

25 THEY WOULD KISS EACH OTHER ON THE CHEEK?

26 A THAT'S JUST AN EXAMPLE. NOT ALL THE

27 TIME, NO.

28 Q YOU SAW THAT HAPPEN ON OCCASION. JUST

53309

1 FOR SOMETHING LIKE GOING TO THE MOVIE ERIK WOULD

2 KISS HIS MOTHER ON THE CHEEK GOODNIGHT?

3 A I WOULD WALK UP TO HER AND GIVE HER A

4 BIG HUG AND KISS, AND ERIK WOULD WALK UP AND KISS

5 HER ON THE CHEEK, AND SHE'D KISS HIM BACK.

6 Q NOW, DID IT APPEAR TO YOU THAT ERIK

7 MENENDEZ LIKED TO PLAY TENNIS?

8 A YEAH. HE LIKED TO PLAY TENNIS.

9 Q DID HE LIKE IT VERY MUCH, SO DID IT

10 APPEAR TO YOU?

11 A YEAH. YES.

12 Q NEVER COMPLAINED ABOUT TENNIS?

13 A NEVER COMPLAINED ABOUT IT. HE

14 COMPLAINED ABOUT THE WAY HE PLAYED IF HE LOST.

15 Q HE NEVER COMPLAINED ABOUT THE FACT THAT

16 HE PLAYED SO MUCH, DID HE?

17 A NO. HE JUST -- HE NEVER COMPLAINED ABOUT

18 TENNIS. HE JUST ALWAYS WANTED TO DO VERY WELL AND

19 HE TRAINED REALLY HARD. HE'D TALK ABOUT, YOU KNOW,

20 SUCCEEDING, BEING NO. 1.

21 Q DID HE EVER EXPRESS ANY ANGER OR

22 RESENTMENT ABOUT THE AMOUNT OF TIME THAT HE PLAYED

23 TENNIS?

24 A NO, HE NEVER DID.

25 Q WERE YOU CLOSE TO HIM?

26 A I WAS VERY CLOSE TO HIM.

27 Q DID YOU SHARE YOUR FEELINGS ABOUT THINGS

28 WITH EACH OTHER?

53310

1 A YES, WE DID.

2 Q DID YOU EVER GET THE IMPRESSION THAT HE

3 WAS RESENTFUL OR ANGRY ABOUT THE AMOUNT OF TIME THAT

4 HE SPENT PLAYING TENNIS?

5 A NO.

6 Q AND DID YOU GO OUT WITH MUTUAL FRIENDS?

7 A UH-HUH. YES.

8 Q WHO WOULD YOU GO OUT WITH?

9 A USUALLY WE'D GO OUT JUST THE TWO OF US,
10 BUT SOMETIMES WE WENT OUT WITH MY FRIEND RACHEL AND
11 HIS FRIEND CRAIG.

12 Q CRAIG CIGNARELLI?

13 A YES.

14 Q WHAT WAS RACHEL'S LAST NAME?

15 A COLLINS.

16 Q I'M SORRY?

17 A COLLINS, C-O-L-L-I-N-S.

18 Q NOW, YOU DESCRIBED AN EMOTIONAL BREAK-UP
19 IN WHICH HE SAID, "I'M NOT GOING TO SEE YOU ANYMORE,"
20 AND HE DIDN'T GIVE YOU A REASON; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q NOW, IS THAT AT THE CONCLUSION OF THIS
23 FIRST DATING PERIOD OR THE SECOND DATING PERIOD?

24 A THAT DIDN'T END OUR RELATIONSHIP.

25 Q I'M ASKING YOU WHEN THAT INCIDENT
26 OCCURRED. WAS THAT AT THE CONCLUSION?

27 A THE FIRST TIME WE DATED, MARCH 1ST
28 THROUGH SEPTEMBER.

1 Q OKAY.

2 A OKAY.

3 Q NOW, YOU HAD A GOOD RELATIONSHIP WITH
4 KITTY MENENDEZ AT THAT PERIOD OF TIME; IS THAT
5 CORRECT?

6 A I HAD A GOOD RELATIONSHIP WITH HER BOTH
7 PERIODS OF TIME.

8 Q AND YOU WERE VERY MUCH SHOCKED BY THE
9 FACT THAT HE SUDDENLY BROKE UP THIS RELATIONSHIP
10 WITH YOU; IS THAT CORRECT?

11 A YOU'RE TALKING ABOUT OVER THE PHONE OR
12 WHAT?

13 Q I'M TALKING ABOUT WHEN HE BROKE UP THE
14 RELATIONSHIP, AFTER THIS FIRST TIME?

15 A WHICH TIME?

16 Q THE FIRST -- I'M TALKING ABOUT THE FIRST
17 TIME?

18 A RIGHT.

19 Q THAT'S WHEN YOU HAD THIS EMOTIONAL
20 BREAK-UP WITH HIM; IS THAT CORRECT?

21 MS. ABRAMSON: OBJECTION. YOUR HONOR, HE'S
22 MISSTATING THE TESTIMONY.

23 THE COURT: WHY DON'T YOU REPHRASE THE
24 QUESTION.

25 Q BY MR. CONN: DID YOU DESCRIBE AN
26 INCIDENT HERE IN COURT WHERE ERIK MENENDEZ CRIED
27 OVER THE PHONE AND SAID "I HAVE TO BREAK UP WITH

53312

1 A THAT DIDN'T BREAK UP OUR RELATIONSHIP.
2 AFTER I SAID THAT, I SAID THE NEXT DAY WE SAW EACH
3 OTHER AND NEVER TALKED ABOUT THAT.

4 THAT WAS MAYBE THREE OR FOUR MONTHS INTO
5 OUR DATING PERIOD. THAT DIDN'T BREAK UP OUR
6 RELATIONSHIP THE FIRST TIME.

7 Q OKAY. SO THAT -- ALL RIGHT. WHEN YOU
8 FINALLY DID BREAK UP AFTER THAT FIRST DATING PERIOD,
9 WHAT WAS THE CAUSE OF THE BREAK-UP?

10 A WE REALLY DON'T KNOW WHAT THE CAUSE
11 WAS. WE JUST -- I REMEMBER A COMMENT BEING SAID THAT
12 WE'RE BROKEN UP AND -- I CAN'T -- THERE WAS REALLY NO
13 REASON WHY WE BROKE UP. WE SHOULD HAVE STAYED
14 TOGETHER.

15 Q SO, NO, THERE WAS NO CONVERSATION ABOUT
16 BREAKING UP?

17 A YEAH. THERE WAS AN EMOTIONAL
18 CONVERSATION ABOUT BREAKING UP. I DIDN'T CALL FOR
19 THREE OR FOUR DAYS BECAUSE I THOUGHT WE WERE BROKEN
20 UP, AND HE CALLED AND SAID, WHAT'S WRONG?"

21 AND I SAID, "I THOUGHT WE WERE BROKEN
22 UP."

23 AND HE SAID, "I GUESS WE WERE."
24 IT WAS A HIGH SCHOOL RELATIONSHIP. IT
25 WASN'T A MATURE, YOU KNOW, RELATIONSHIP. IT WAS
26 OVER SOMETHING PROBABLY REALLY PETTY.
27 Q UH-HUH?
28 A AND WE BROKE UP. BUT WE KNEW SOMEWHERE

53313

1 DOWN THE LINE THAT WE WOULD BE TOGETHER SO. . .
2 Q AND THEN WHAT CAUSED THE RELATIONSHIP TO
3 RESUME ONCE AGAIN, WHICH I BELIEVE YOU SAID WOULD
4 HAVE BEEN ABOUT IN AUGUST OF 1988; IS THAT CORRECT?
5 A RIGHT.
6 Q WHAT CAUSED THE RELATIONSHIP TO RESUME
7 AGAIN AT THAT POINT?
8 A WE HAD SEEN EACH OTHER DURING THAT -- MY
9 WHOLE JUNIOR YEAR AT TENNIS TOURNAMENTS AND AT THE
10 CLUB AND PRACTICING, AND BOTH OF US AT THE TIME WERE
11 DATING OTHER PEOPLE. AND WE JUST DECIDED TO START
12 DATING AGAIN IN AUGUST.
13 Q AND THEN WHAT CAUSED THE RELATIONSHIP TO
14 BREAK UP WHEN IT FINALLY DID ABOUT FEBRUARY OF 1989?
15 A THAT WAS MORE HAVING TO DO WITH
16 DISTANCE. HE MOVED TO BEVERLY HILLS, AND I LIVED IN
17 THOUSAND OAKS, AND I THINK BOTH OF US WANTED TO DATE

18 OTHER PEOPLE. AND HE WAS THE NEW KID IN HIS HIGH
19 SCHOOL, AND HE WANTED TO DATE OTHER PEOPLE, AND I
20 DID AS WELL.

21 Q DID HE INDICATE TO YOU THAT HE WANTED TO
22 DATE OTHER PEOPLE AT THAT TIME?

23 A NO. HE DIDN'T SAY, "I'M GOING TO BREAK
24 UP WITH YOU BECAUSE I WANT SOMEONE ELSE." I MEAN,
25 THAT'S NOT HOW IT HAPPENED. BUT WE BOTH -- IT WAS
26 MORE MUTUAL. WE HAVE ALWAYS BEEN REAL CLOSE
27 FRIENDS. WE'VE NEVER HAD A BAD BREAK-UP.

28 Q THEN YOU INDICATED THAT HE WOULD -- YOU

53314

1 USED TO VISIT HIM IN THE JAIL; IS THAT CORRECT?

2 A UH-HUH, YES.

3 Q HOW MANY TIMES DID YOU VISIT HIM IN
4 JAIL?

5 A HOW MANY TIMES?

6 Q YES.

7 A I VISITED HIM FOR FIVE YEARS. AND THE
8 LAST TIME I'VE SEEN HIM WAS IN '94 WHEN I GOT BACK
9 FROM ISRAEL, A TENNIS TOURNAMENT. BUT I VISITED HIM
10 THE FIRST COUPLE OF YEARS ABOUT TWICE A WEEK; NOT
11 REGULARLY, BECAUSE HE HAD HIS OWN GIRLFRIEND AND HIS
12 OWN FAMILY MEMBERS. IT'S HARD TO GET IN TO GET A

13 VISIT.

14 Q HE HAD HIS OWN GIRLFRIEND IN JAIL?

15 A HE HAD HIS OWN PEOPLE VISITING HIM.

16 Q DID YOU SAY HE HAD A GIRLFRIEND IN JAIL?

17 A YEAH. HE HAD A GIRL VISITING HIM MORE

18 OFTEN THAN ME. IT WAS HIS GIRLFRIEND.

19 Q SO YOU VISITED HIM APPROXIMATELY TWICE A

20 WEEK FOR THE FIRST TWO YEARS; IS THAT CORRECT?

21 A NOT TWICE A WEEK EVERY WEEK FOR TWO

22 YEARS STRAIGHT. BUT IT CAME OUT TO ABOUT THAT

23 PROBABLY. AND IT FIZZLED OFF A LITTLE BIT DURING

24 THE SUMMERTIME. I WAS AT PEPPERDINE. VISITING

25 HOURS ARE IN THE MIDDLE OF THE AFTERNOON. I HAD

26 CLASSES AND MY OWN PRACTICE. SO I WOULD TRY TO

27 VISIT ON WEEKENDS.

28 Q SO YOU VISITED HIM IN JAIL MORE THAN A

53315

1 HUNDRED TIMES OVER THE YEARS; IS THAT CORRECT?

2 A I DON'T KNOW A HUNDRED TIMES. MAYBE A

3 TOTAL OF, YOU KNOW, 60 HOURS. BUT I DON'T KNOW HOW

4 MANY TIMES I WENT DOWN TO VISIT HIM.

5 WHEN YOU VISIT SOMEONE YOU CAN STAY FOR

6 20 MINUTES, OR YOU CAN STAY FOR AN HOUR AND A HALF,

7 SOMETIMES 10 MINUTES. I DON'T KNOW HOW MANY TIMES I

8 VISITED HIM. BUT I KNOW THAT I VISITED HIM MANY
9 HOURS OVER THE COURSE OF FIVE YEARS.

10 Q AND WHAT INITIATED THESE VISITS? WHO
11 BROUGHT THESE VISITS ABOUT?

12 A WHO BROUGHT -- OBVIOUSLY, I DID. I HAD
13 TO DRIVE DOWN THERE TO SEE HIM.

14 Q I MEAN, DID YOU WRITE TO HIM AT FIRST,
15 OR HOW DID YOU RESUME THIS RELATIONSHIP WHERE YOU
16 WERE VISITING HIM IN JAIL? DID YOU WRITE TO HIM OR
17 JUST DROP IN ONE DAY TO SEE HIM?

18 A MARIA BROUGHT ME DOWN AS A SURPRISE
19 RIGHT AFTER HE WAS ARRESTED, AND I STARTED SEEING
20 HIM AFTER THAT. AND HE WROTE ME A COUPLE OF TIMES,
21 AND I WROTE BACK.

22 MR. CONN: ALL RIGHT. THANK YOU VERY MUCH.

23 I HAVE NO FURTHER QUESTIONS.

24 THE COURT: REDIRECT?

25 MS. ABRAMSON: JUST A FEW THINGS.

26

27 REDIRECT EXAMINATION

28 BY MS. ABRAMSON:

53316

1 Q MS. SMITH, YOU MADE REFERENCE IN

2 ANSWERING SOME QUESTIONS FOR MR. CONN ABOUT A TENNIS

3 PARENT TO SOMEONE NAMED MARY PIERCE?

4 A UH-HUH.

5 Q WHY IS MARY PIERCE AN EXAMPLE TO

6 ILLUSTRATE THE CONCEPT OF A TENNIS PARENT?

7 A SHE -- MARY PIERCE IS TOP 10 IN THE

8 WORLD RIGHT NOW, AND SHE'S KNOWN FOR ABANDONING HER

9 FATHER FROM THE TENNIS WORLD. HE CAN NO LONGER -- I

10 BELIEVE -- NO LONGER COME AND WATCH HER PLAY ANY

11 MATCHES IN PERSON.

12 Q WHY WAS THAT?

13 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR

14 HEARSAY.

15 THE COURT: SUSTAINED.

16 Q BY MS. ABRAMSON: WAS MARY PIERCE'S

17 FATHER THE EPITOME OF THE TENNIS PARENT?

18 A EPITOME.

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 THE COURT: IT'S IRRELEVANT. SUSTAINED.

21 THE ANSWER'S STRICKEN.

22 Q BY MS. ABRAMSON: IS THE TERM "TENNIS

23 PARENT" A COMPLIMENT OR A NEGATIVE TERM?

24 A IT'S A TOTALLY NEGATIVE TERM.

25 Q BEING A TENNIS PARENT IS BEING A BAD

26 THING; IS THIS NOT?

27 A YES.

28 Q IT'S CONSIDERED BAD FOR THE KID?

1 A CORRECT.

2 Q AND WAS MR. MENENDEZ A BAD TENNIS
3 PARENT?

4 A HE WAS A BAD TENNIS PARENT.

5 Q SO HE WAS WORSE THAN EVEN THE ORDINARY
6 TENNIS PARENT, WAS HE NOT?

7 A IN MY EYES, YES. I WOULDN'T WANT
8 SOMEONE -- IF MY FATHER WAS LIKE HIS FATHER WITH MY
9 TENNIS, I WOULD QUIT THE SPORT.

10 Q IS THE CONCEPT OF TENNIS PARENT SOMEONE
11 WHO PUTS DESTRUCTIVE PRESSURE UPON A CHILD TO
12 COMPETE?

13 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

14 THE COURT: IT'S ALSO LEADING.

15 Q BY MS. ABRAMSON: YOU WANT TO TELL US
16 WHAT THE CONCEPT OF A TENNIS PARENT IS? WHAT DOES
17 THE PHRASE MEAN, AS MR. CONN ASKED YOU ABOUT IT, AS
18 YOU ANSWERED HIS QUESTIONS?

19 A A TENNIS PARENT IS SOMEONE THAT -- HOW DO
20 I DESCRIBE A TENNIS PARENT? WHO'S THERE FOR EVERY
21 PRACTICE AND WANTS YOU TO PLAY SO WELL EVERY TIME.
22 AND IT'S ALMOST LIKE YOU'RE LIVING VICARIOUSLY
23 THROUGH THEM, AND THEY'RE TRYING TO WIN THE MATCH
24 FOR YOU.

25 I KNOW TENNIS PARENTS. I KNOW A LOT -- I
26 KNOW SOME TENNIS PARENTS.

27 Q DOES IT APPEAR THAT THE TENNIS PARENT
28 WANTS THE KID TO WIN FOR THEMSELVES RATHER THAN FOR

53318

1 THE KID?

2 A I THOUGHT ERIK WANTED TO WIN MORE FOR
3 JOSE THAN FOR HIMSELF.

4 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

5 THE COURT: SUSTAINED.

6 THE ANSWER IS STRICKEN.

7 MS. ABRAMSON: BASED ON THINGS ERIK WOULD
8 TELL YOU, DID IT APPEAR HE WANTED TO WIN MORE FOR
9 HIS FATHER THAN HIMSELF.

10 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

11 THE COURT: REPHRASE THE QUESTION.

12 Q BY MS. ABRAMSON: BASED ON THINGS THAT
13 ERIK SAID, DID IT INDICATE THAT HE NEEDED TO WIN
14 MORE FOR HIS FATHER THAN FOR HIMSELF?

15 MR. CONN: OBJECTION. IT'S ASKING FOR
16 SPECULATION.

17 THE COURT: OVERRULED, TO THE EXTENT THAT
18 IT'S A REFLECTION OF STATE OF MIND, NOT OPINION.

19 SO REPHRASE THE QUESTION AS TO WHETHER
20 OR NOT THIS WAS STATED BY THE DEFENDANT, AND NOT HER
21 OPINION OR IMPRESSION.

22 Q BY MS. ABRAMSON: DID HE INDICATE BY
23 THINGS HE SAID WHO HE WAS TRYING TO WIN FOR?
24 A HE NEVER SAID "I'M WINNING FOR MY DAD."
25 BUT --
26 MR. CONN: OBJECTION.
27 THE COURT: THE OBJECTION TO ANYTHING ELSE
28 WOULD BE RATHER CONCLUSIONARY ON THE PART OF THE

53319

1 WITNESS.

2 Q BY MS. ABRAMSON: DID HE SAY THINGS THAT
3 INDICATED THAT THAT WAS HIS STATE OF MIND, TRYING TO
4 WIN FOR HIS DAD?

5 A I THOUGHT THAT WAS HIS STATE OF MIND
6 THROUGH --

7 THE COURT: HOLD ON A SECOND. IT'S UNCLEAR
8 WHAT YOU MEAN.

9 REPHRASE THE QUESTION.

10 THE ANSWER IS STRICKEN.

11 Q BY MS. ABRAMSON: DID HE SAY THINGS THAT
12 LED YOU TO BELIEVE THAT HIS STATE OF MIND WAS TO WIN
13 FOR HIS DAD?

14 MR. CONN: OBJECTION.

15 THE WITNESS: YES.

16 MR. CONN: CALLS FOR OPINION AND SPECULATION.

17 THE COURT: SUSTAINED.

18 THE ANSWER IS STRICKEN.

19 MS. ABRAMSON: IF THE STATE OF MIND IS

20 ADMISSIBLE --

21 THE COURT: THAT'S TRUE, BUT IT HAS TO BE AN

22 EXPRESSION OF THE DEFENDANT'S STATE OF MIND, NOT

23 THIS WITNESS' PERSONAL OPINION AS TO WHAT SOMEONE

24 ELSE'S STATE OF MIND IS IF THE DEFENDANT DIDN'T SAY

25 IT.

26 YOUR NEXT QUESTION, PLEASE.

27 Q BY MS. ABRAMSON: DID YOU THINK THAT

28 ERIK WAS OVER-TRAINING?

53320

1 A YES.

2 Q WHAT IS OVER-TRAINING?

3 A OVER-TRAINING IS TOTALLY EXERTING

4 YOURSELF MENTALLY, PHYSICALLY, AND EMOTIONALLY FOR A

5 PARTICULAR GOAL, WHICH WAS, IN HIS MIND, TO BE

6 NO. 1.

7 Q AND DID IT APPEAR FROM WHAT YOU HEARD

8 HIS FATHER SAYING TO HIM IN THESE SARCASTIC REMARKS

9 THAT HIS FATHER WAS DEMANDING THAT HE BE NO. 1?

10 A HE TAUGHT HIM TO BE NO. 1.

11 Q YOU HEARD HIM USING THOSE PHRASES,

12 "YOU'VE GOT TO BE NO. 1." "YOU'VE GOT TO WIN"?

13 A SECOND SUCKS. SORRY.

14 Q THAT'S WHAT HIS FATHER WOULD SAY?

15 A IN -- YEAH.

16 Q NOW, WHEN YOU WOULD BE PLAYING IN

17 TOURNAMENTS ON THE WEEKEND, WOULD YOU TRY TO EVEN --

18 OR HAVE PLANS EVEN TO GO OUT WHEN YOU AND ERIK WERE

19 BOTH IN A TOURNAMENT?

20 A WELL, BOTH OF US DIDN'T GO OUT AT NIGHT,

21 USUALLY, THE NIGHT BEFORE A TOURNAMENT LATE. I

22 MEAN, MAYBE WE'D GO TO DINNER OR SOMETHING. BUT

23 DEPENDING ON HOW HE DID IN THE TOURNAMENT. . .

24 Q WHAT WOULD DEPEND ON HOW HE DID?

25 A IF WE GOT TO SPEND TIME WITH EACH OTHER

26 THAT DAY.

27 Q WHO WOULD DECIDE WHETHER YOU GOT TO

28 SPEND TIME WITH EACH OTHER?

53321

1 A JOSE WOULD DECIDE.

2 Q IF HE DIDN'T DO WELL IN A TOURNAMENT,

3 WHAT WOULD BE THE CONSEQUENCE?

4 A I WOULDN'T BE ABLE TO SPEND THE

5 AFTERNOON WITH HIM IN BETWEEN MATCHES OR AFTER

6 MATCHES.

7 Q AND WOULD YOU ORDINARILY HAVE DATES FOR
8 THE EVENING AFTER A MATCH?

9 A WE'D TRY TO GO OUT ON A SATURDAY NIGHT,
10 YEAH, FOR A LITTLE BIT.

11 Q AND IF HE HAD LOST THAT MATCH, WAS HE
12 ALLOWED TO GO OUT?

13 A WE USUALLY DIDN'T GO OUT IF HE LOST.

14 Q AND WAS THERE EVEN AN OCCASION WHEN YOU
15 WERE BOTH AT A TOURNAMENT AND ARRANGEMENTS HAD BEEN
16 MADE WHERE ERIK WAS GOING TO DRIVE BACK WITH YOU AND
17 YOUR PARENTS?

18 A ERIK WAS SUPPOSED TO COME BACK WITH ME
19 AND MY FATHER AFTER BOTH OF OUR MATCHES HAD
20 COMPLETED. AND ERIK DIDN'T DO WELL, SO JOSE SAID
21 "GET IN THE CAR." SO HE DIDN'T COME HOME WITH ME
22 THAT AFTERNOON.

23 Q GET IN WHOSE CAR?

24 A GET IN JOSE'S CAR.

25 Q AND DID ERIK DO THAT?

26 A YES.

27 Q IN FACT, DID YOU EVER SEE HIM BE DEFIANT
28 IN ANY WAY WITH HIS FATHER?

53322

1 A NO. HE WAS VERY RESPECTFUL OF MY

2 PARENTS AS WELL AS HIS.

3 Q DID YOUR FATHER HAVE A GOOD RELATIONSHIP
4 WITH ERIK?

5 A YEAH. ERIK AND MY DAD HAVE A GREAT
6 RELATIONSHIP.

7 Q AND TO YOUR KNOWLEDGE, HAS YOUR FATHER
8 VISITED ERIK WHILE HE'S BEEN IN THE JAIL?

9 A YES.

10 Q HAS HE BROUGHT AND SENT HIM BOOKS?

11 A MY DAD'S A HISTORY PROFESSOR AND ERIK
12 ALWAYS WAS INTERESTED IN HISTORY, AND MY DAD WANTED
13 TO HELP FURTHER HIS EDUCATION. SO HE VISITED HIM A
14 COUPLE TIMES, AND THEY HAD SOME NICE CONVERSATIONS.

15 MR. CONN: I HAVE NOTHING FURTHER.

16 THE COURT: ANYTHING ELSE?

17 MR. CONN: NOTHING FURTHER.

18 THE COURT: OKAY. THANK YOU. YOU MAY STEP
19 DOWN. YOU'RE EXCUSED.

20 YOUR NEXT WITNESS.

21 MR. LEVIN: JUST ONE MOMENT, YOUR HONOR.

22 DEFENSE CALLS MARIANNE CANO.

23

24 MARIANNE CANO,

25 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
26 SWORN, AND TESTIFIED AS FOLLOWS:

27 THE CLERK: RAISE YOUR RIGHT HAND TO BE
28 SWORN.

1 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
2 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
3 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
4 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

5 THE WITNESS: I DO.

6 THE CLERK: PLEASE BE SEATED.

7 PLEASE TAKE THE STAND AND STATE YOUR
8 NAME FOR THE RECORD.

9 THE WITNESS: MARIANNE CANO, M-A-R-I-A-N-N-E,
10 CANO, C-A-N-O.

11 THE COURT: OKAY. IF YOU'D GET A LITTLE
12 CLOSER TO THE MICROPHONE AND SPEAK UP SO WE CAN ALL
13 HEAR WHAT YOU HAVE TO SAY.

14

15 DIRECT EXAMINATION

16 BY MR. LEVIN:

17 Q MRS. CANO, YOU ARE THE COUSIN OF ERIK
18 AND LYLE MENENDEZ?

19 A THAT'S CORRECT.

20 CAN YOU HEAR ME?

21 (NO RESPONSE.)

22 Q AND DIRECTING YOUR ATTENTION TO YOUR
23 RIGHT, ON THE FAMILY TREE CHART, ARE YOU LOCATED AS
24 THE THIRD CHILD OF MARTA AND PETER CANO?

25 A THAT'S CORRECT.
26 Q AND JOSE MENENDEZ WAS YOUR UNCLE?
27 A THAT'S RIGHT.
28 Q KITTY MENENDEZ WAS YOUR AUNT?

53324

1 A THAT'S RIGHT.
2 Q NOW, HOW OLD ARE YOU?
3 A THIRTY-TWO YEARS OLD.
4 Q SO YOU ARE APPROXIMATELY FOUR YEARS
5 OLDER THAN LYLE AND ABOUT SEVEN YEARS OLDER THAN
6 ERIK?
7 A THAT'S RIGHT.
8 Q WHAT DO YOU DO NOW FOR A LIVING?
9 A I'M A PHYSICAL THERAPIST. I WORK IN A
10 HOSPITAL, AT AN OUTPATIENT CENTER IN MIAMI.
11 Q MIAMI, FLORIDA?
12 A THAT'S CORRECT.
13 Q WHERE WERE YOU BORN?
14 A I WAS BORN IN NEW YORK.
15 Q AND THEN SHORTLY AFTER YOU WERE BORN IN
16 NEW YORK, DID YOU MOVE TO PUERTO RICO WHERE YOU GREW
17 UP?
18 A RIGHT. ABOUT -- I WAS ABOUT A YEAR AND A
19 HALF OR SO.

20 Q AND HOW LONG DID YOU SPEND IN PUERTO

21 RICO?

22 A UNTIL I WAS 15 AND A HALF.

23 Q AND THEN WHERE DID YOU MOVE AFTER THAT?

24 A THEN WE MOVED TO NEW JERSEY, THE

25 PRINCETON AREA.

26 Q WHEN YOU RETURNED TO THE UNITED STATES

27 AT ABOUT AGE 15, DID YOU LIVE NEAR THE MENENDEZ

28 FAMILY, LYLE AND ERIK?

53325

1 A YES, WE DID.

2 Q AND THEN FOR ABOUT HOW LONG DID YOU LIVE

3 IN THE PRINCETON AREA?

4 A WE MOVED FROM PUERTO RICO IN 1979, AND

5 THEN IN 1982 I WENT TO COLLEGE IN PENNSYLVANIA.

6 SO -- BUT MY FAMILY STILL LIVED IN THE PRINCETON

7 AREA UNTIL 1986.

8 Q WHERE DID YOU GO TO SCHOOL?

9 A BUCKNELL, B-U-C-K-N-E-L-L, UNIVERSITY IN

10 LEWISBERG, PENNSYLVANIA.

11 Q WHEN DID YOU GRADUATE?

12 A 1986.

13 Q NOW, FOLLOWING YOUR GRADUATION FROM

14 COLLEGE, DID YOU HAVE AN OCCASION TO MOVE INTO THE

15 MENENDEZ FAMILY HOME?

16 A YES, I DID.

17 Q FOR HOW LONG OF A PERIOD OF TIME DID YOU
18 LIVE THERE?

19 A I LIVED THERE FROM ABOUT THE END OF
20 JUNE. I GRADUATED IN THE MIDDLE OF JUNE. AT THE
21 END OF JUNE I MOVED IN WITH THE MENENDEZES UNTIL THE
22 MIDDLE OF AUGUST.

23 Q NOW, THIS WAS ON THE MOUNTAIN AVENUE
24 HOME?

25 A RIGHT.

26 Q DID YOU INTEND ON STAYING LONGER THAN
27 THE MONTH AND A HALF THAT YOU DID?

28 A I DID. MY AUNT HAD -- MY FAMILY HAD

53326

1 MOVED TO FLORIDA AT THE TIME, AND I WAS INTERESTED
2 IN REMAINING AND WORKING IN THE PRINCETON AREA. SO
3 I WAS -- MY AUNT INVITED ME TO REMAIN WITH THEM
4 INDEFINITELY, TO LIVE AT THEIR HOME.

5 Q BUT YOU ONLY STAYED THERE FOR A MONTH
6 AND A HALF?

7 A RIGHT.

8 Q I WANT TO DIRECT YOUR ATTENTION BACK TO
9 THAT PERIOD OF TIME WHEN YOU LIVED IN THE HOME AND

10 ASK YOU IF ANY UNUSUAL INCIDENT OCCURRED WHICH

11 INVOLVED ERIK MENENDEZ AT A TENNIS MATCH.

12 DID SUCH AN EVENT OCCUR?

13 A YES.

14 Q AND ABOUT HOW OLD WERE YOU IN 1986?

15 A I WAS 22 YEARS OLD.

16 Q ERIK WOULD HAVE BEEN ABOUT 15?

17 A THAT'S RIGHT.

18 Q AND DID YOU HAVE AN OCCASION TO ATTEND A

19 TENNIS MATCH?

20 A YES, I DID.

21 Q AND WHO ELSE WAS PRESENT AT THAT TENNIS

22 MATCH?

23 A I WENT WITH MY AUNT KITTY.

24 Q KITTY MENENDEZ, YOURSELF, AND ERIK

25 MENENDEZ?

26 A RIGHT.

27 Q AND DID YOU UNDERSTAND THAT THIS WAS

28 SOME TYPE OF A TOURNAMENT, OR WAS IT A SINGLE

53327

1 MATCH? WHAT DID YOU UNDERSTAND THE EVENT TO BE?

2 A IT APPEARED TO BE A SINGLE MATCH KIND OF

3 EVENT, SINCE IT WAS NOT AN ALL-DAY TOURNAMENT-TYPE

4 EVENT. AND WE JUST OBSERVED THAT ONE MATCH AND THAT

5 WAS THE END.

6 Q DID YOU UNDERSTAND THAT THIS MATCH HAD
7 ANY PARTICULAR IMPORTANCE WITH RESPECT TO ERIK
8 MENENDEZ' RANKING AS A JUNIOR IN TENNIS?

9 A I UNDERSTOOD THAT IT WOULD INFLUENCE HIS
10 RANKING IN SOME WAY, HOW HE DID IN THAT MATCH.

11 Q DID YOU WATCH THE MATCH?

12 A YES, I DID.

13 Q AND DID YOU SIT NEXT TO MRS. MENENDEZ?

14 A WE WERE ACTUALLY STANDING MOST OF THE
15 TIME.

16 Q DID ERIK WIN OR LOSE THAT MATCH?

17 A ERIK LOST THE MATCH.

18 Q AND DID YOU NOTICE ANY PARTICULAR
19 REACTION FROM MRS. MENENDEZ DURING THE MATCH?

20 A YES. MY AUNT KITTY WAS -- I'M SORRY.
21 SHE WAS COMMENTING THROUGHOUT THE MATCH, AND SHE WAS
22 GETTING PERIODICALLY MORE AND MORE UPSET AT ERIK.

23 Q AND HOW WAS SHE DISPLAYING THAT SHE WAS
24 GETTING MORE UPSET?

25 A WELL, WITH THE VERBAL -- BOTH VERBAL AND
26 MANUAL EXPRESSIONS. SHE WOULD SAY THINGS LIKE, "I
27 CAN'T BELIEVE HE MISSED THAT. I CAN'T BELIEVE HE
28 MISSED HIS SERVE AGAIN. OH, MY GOD. WHAT A

1 TERRIBLE BACK HAND."

2 AND THEN SHE'D SAY, "I CAN'T BELIEVE
3 HE'S LOSING THIS," LIKE CLENCH HER HANDS AND GET
4 VERY UPSET ABOUT HOW ERIK WAS PERFORMING AT THAT
5 TIME.

6 Q DID SHE -- WAS SHE EXPRESSING THE KIND OF
7 DEMEANOR THAT YOU FELT WAS SUPPORTING OF ERIK, WHERE
8 SHE FELT BADLY THAT HE WAS DOING POORLY IN THE
9 MATCH?

10 A I MEAN, SHE WAS VERY UPSET THAT HE WAS
11 DOING POORLY, ANGRY UPSET.

12 Q DID SHE APPEAR ANGRY WITH ERIK?

13 A YES.

14 Q FOLLOWING THIS MATCH, DID YOU GO BACK TO
15 THE MOUNTAIN AVENUE HOME?

16 A FOLLOWING THE MATCH WE ALL GOT IN THE
17 CAR, AND WE ROAD BACK TO THE HOUSE IN SILENCE.

18 Q WHAT WAS ERIK'S DEMEANOR JUST FOLLOWING
19 THE MATCH?

20 A ERIK CAME TOWARDS US WITH HIS FACE
21 LOOKING TO THE FLOOR, DEVASTATED. HE APPEARED
22 DEVASTATED TO ME.

23 Q AND DID MRS. MENENDEZ SAY ANYTHING TO
24 HIM?

25 A NO.

26 Q DIDN'T SAY, "YOU TRIED YOUR BEST. GOOD
27 JOB." ANYTHING LIKE THAT?

28 A NO.

1 Q AND YOU DROVE IMMEDIATELY BACK TO THE
2 HOUSE?

3 A YES.

4 Q NOTHING WAS SAID AT ALL?

5 A THE ENTIRE CONVERSATION -- I MEAN, THE
6 ENTIRE RIDE IN THE CAR WAS SILENT FOR ABOUT 20
7 MINUTES.

8 Q DID YOU FEEL UNCOMFORTABLE WITH THIS?

9 A VERY.

10 Q WHEN YOU RETURNED TO THE HOUSE WAS
11 MR. MENENDEZ PRESENT?

12 A NO. HE WAS OUT ON A BUSINESS TRIP. BUT
13 WE WERE EXPECTING HIM SHORTLY.

14 Q AND DID MR. MENENDEZ RETURN HOME SHORTLY
15 AFTER YOU GOT BACK TO THE HOUSE THAT DAY?

16 A YES, HE DID.

17 Q AND DID YOU OBSERVE -- DID YOU OBSERVE
18 MR. MENENDEZ COME INTO THE HOUSE?

19 A YES.

20 Q NOW, HE HAD BEEN GONE ON SOME SORT OF A
21 BUSINESS TRIP?

22 A RIGHT.

23 Q DO YOU REMEMBER THE FIRST THING THAT HE

24 SAID WHEN HE WALKED IN THE HOUSE?

25 MR. CONN: OBJECTION. CALLS FOR HEARSAY. NO

26 FOUNDATION.

27 THE COURT: PERHAPS YOU CAN LAY A FOUNDATION

28 AS TO WHO WAS PRESENT.

53330

1 MR. LEVIN: PARDON ME, YOUR HONOR?

2 THE COURT: WHO WAS PRESENT?

3 Q BY MR. LEVIN: DID -- WHEN MR. MENENDEZ

4 CAME INTO THE HOUSE, DID HE TALK TO SOMEONE, SAY

5 SOME WORDS?

6 A YES.

7 Q AND TO WHOM DID HE DIRECT THOSE WORDS?

8 A TO MY AUNT KITTY.

9 Q AND WHERE WAS ERIK WHEN HE SPOKE THOSE

10 WORDS?

11 A I BELIEVE ERIK WAS IN HIS ROOM.

12 Q NOW, BASED ON WHAT MR. MENENDEZ SAID,

13 DID YOU FEEL AT A LATER TIME THAT YOU WOULD TALK TO

14 ERIK OR TRY TO TALK TO ERIK?

15 A I DID.

16 Q DID WHAT YOU HEARD MR. MENENDEZ SAY

17 AFFECT YOU?

18 A YES.

19 Q AND WAS THAT THE REASON WHY YOU WENT TO
20 TALK TO ERIK AT A LATER TIME?

21 A YES.

22 Q WHAT DID YOU HEAR MR. MENENDEZ SAY?

23 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

24 MR. LEVIN: JUST OFFERING IT FOR STATE OF
25 MIND, TO EXPLAIN WHY SHE DID WHAT SHE DID LATER.

26 THE COURT: WELL, DID SHE THEN COMMUNICATE
27 WHAT SHE HEARD TO THE DEFENDANT, ERIK MENENDEZ?

28 MR. LEVIN: I DON'T KNOW, YOUR HONOR.

53331

1 THE COURT: THAT WOULD BE A FOUNDATIONAL
2 ASPECT.

3 MR. LEVIN: COULD I HAVE A MOMENT, YOUR
4 HONOR?

5 (ATTORNEYS ABRAMSON AND LEVIN
6 CONFER SOTTO VOCE:)

7

8 Q BY MR. LEVIN: FOLLOWING WHAT
9 MR. MENENDEZ SAID -- FIRST OF ALL, DID HE DIRECT HIS
10 COMMENT TO YOU?

11 A NO.

12 Q HE DIRECTED THEM TOWARDS MRS. MENENDEZ?

13 A THAT'S CORRECT.

14 Q NOW, FOLLOWING THIS CONVERSATION, WAS
15 THERE A DINNER?

16 A YES.

17 Q AND WHO WAS PRESENT AT THE DINNER?

18 A BOTH JOSE AND KITTY MENENDEZ, ERIK AND
19 MYSELF.

20 Q AND HOW LONG AFTER MR. MENENDEZ CAME
21 HOME DID THE DINNER TAKE PLACE?

22 A WITHIN HALF AN HOUR. WE WERE ALREADY
23 PREPARING DINNER WHEN HE CAME HOME.

24 Q WHAT WAS THE DINNER LIKE?

25 A WELL, THE ENTIRE CONVERSATION WAS ABOUT
26 ERIK'S MATCH.

27 Q AND WHO WAS DOING THE TALKING?

28 A MY UNCLE JOSE WAS BASICALLY ASKING HIM

53332

1 ABOUT ALL THE DETAILS THAT MY AUNT HAD RELATED TO
2 HIM THROUGHOUT THE GAME, ALMOST EVERY SINGLE MOVE.

3 Q NOW, WAS MRS. MENENDEZ TALKING TO
4 MR. MENENDEZ ABOUT ERIK'S PERFORMANCE THAT DAY
5 PLAYING TENNIS?

6 A WHEN HE FIRST CAME IN, YES.

7 Q AND DID MRS. MENENDEZ ALSO TALK ABOUT
8 ERIK'S PERFORMANCE AT THE MATCH THAT DAY AT THE

9 DINNER TABLE?

10 A NO.

11 Q DID SHE DO ANY TALKING AT ALL?

12 A NO.

13 Q AND WAS ERIK -- ERIK WAS PRESENT AT ALL
14 TIMES DURING THIS DINNER CONVERSATION?

15 A YES, ERIK WAS PRESENT.

16 Q WHAT KIND OF THINGS WAS MR. MENENDEZ
17 SAYING TO ERIK?

18 A IT WAS A QUESTIONING, A SARCASTIC AND
19 MOCKING AIR TO IT. I DON'T KNOW IF I CAN EVEN
20 PARAPHRASE IT.

21 Q WAS HE TRYING TO BE INSTRUCTIONAL TO
22 ERIK?

23 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION
24 AS TO WHAT HE WAS TRYING TO DO.

25 THE COURT: SUSTAINED.

26 Q BY MR. LEVIN: WAS HE BERATING HIM?

27 A HE WAS BELITTLING AND BEING VERY
28 SARCASTIC. IF I UNDERSTAND IT -- THE REASON HE HAD

53333

1 LOST THE MATCH WAS BECAUSE HE HAD NOT PRACTICED MORE
2 THAT WEEK. THAT'S BECAUSE HE WASN'T TAKING HIS
3 SPORTS SERIOUSLY. HE WOULD NEVER AMOUNT TO ANYTHING

4 IF HE CONTINUED TO LOSE TO SUCH INDIVIDUALS AS
5 THESE, THAT HE WAS SUPPOSED TO RANK HIGHER.
6 THOSE KINDS OF COMMENTS.

7 Q AND WHAT WAS ERIK'S REACTION FOR WHAT
8 HIS FATHER WAS SAYING?

9 A WELL, DINNER WAS SERVED AND ERIK WOULD
10 JUST LOOK DOWN IN HIS PLATE AND DIDN'T RESPOND A
11 WORD, DIDN'T EVEN LOOK UP. JUST LOOKED DOWN AT HIS
12 PLATE. DIDN'T EVEN TOUCH HIS FOOD.

13 Q DID ERIK GIVE ANY EXCUSES FOR LOSING?

14 A NO.

15 Q WAS MR. MENENDEZ CRITICIZING HIM THE
16 ENTIRE TIME?

17 A ENTIRE TIME.

18 Q AND HOW LONG WAS HE CRITICIZING HIM FOR?

19 A THE ENTIRE DINNER. IT WOULD HAVE BEEN
20 APPROXIMATELY FOR AN HOUR WHILE WE WERE SITTING
21 THERE.

22 Q AND ERIK NEVER SAID A WORD?

23 A NO.

24 Q AT SOME POINT IN TIME DID ERIK LEAVE THE
25 DINNER TABLE?

26 A YES. APPROXIMATELY AFTER AN HOUR ERIK
27 ASKED TO BE EXCUSED AND HE GOT UP AND LEFT.

28 Q AND DID YOU SEE WHERE ERIK WENT?

1 A I SAW THAT HE WAS PROCEEDING TOWARDS THE
2 BASEMENT, WHICH WAS -- THE DOOR WAS CLOSE TO WHERE
3 WE WERE.

4 Q NOW, HOW DID YOU FEEL, HAVING
5 EXPERIENCED THIS DINNER IN THE MANNER YOU JUST
6 DESCRIBED IT?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: REPHRASE THE QUESTION.

9 Q BY MR. LEVIN: DID YOU FEEL BAD FOR
10 ERIK?

11 A I FELT TERRIBLE FOR ERIK.

12 Q DID YOU WANT TO TALK TO HIM?

13 A I DID. I HAD BEEN WANTING TO TALK TO
14 HIM SINCE THE MATCH, AND IT WAS SO UNCOMFORTABLE TO
15 REACH OUT TO HIM. I JUST WANTED TO SAY, "HEY, MAN.
16 IT'S ALL RIGHT. YOU WIN SOME, YOU LOSE SOME. SHAKE
17 IT OFF. IT'S NO BIG DEAL."

18 Q OTHER THAN ERIK NOT SAYING ANYTHING WHEN
19 HE SAT AT THE DINNER TABLE, HOW DID HE LOOK TO YOU?

20 A HE LOOKED DEVASTATED. AT ONE POINT I
21 SAW SOME TEARS IN HIS EYES, AND HE JUST BASICALLY
22 KEPT STARING DOWN AT HIS PLATE. NO COMMENT. NO
23 RESPONSE.

24 Q WERE THE TEARS THAT YOU SAW IN REACTION
25 TO WHAT HIS FATHER WAS SAYING TO HIM?

26 A I WOULD THINK, YEAH.

27 Q DID YOU ATTEMPT TO GO TO CONSOLE ERIK?

28 A WHEN ERIK PROCEEDED TO GET UP FROM THE

53335

1 DINNER TABLE, I PROCEEDED TO GET UP AS WELL. AND AT

2 THAT POINT MY UNCLE RAISED HIS HAND AND SAID

3 "MARIANNE." AND I STOPPED.

4 Q AND HOW DID YOU INTERPRET WHAT

5 MR. MENENDEZ HAD DONE BY RAISING HIS HAND? WHAT DID

6 IT MEAN TO YOU?

7 A MY UNCLE ONLY HAD TO SAY A FEW WORDS TO

8 GET HIS POINT ACROSS. WITH HIS EYE CONTACT AND HIS

9 HAND, IT WAS CLEAR TO ME THAT I WAS TO STOP.

10 Q AND DID YOU STOP?

11 A YES. I REMAINED WHERE I WAS.

12 Q AND DID YOU AT SOME POINT IN TIME GO TO

13 THE BASEMENT?

14 A YES. AFTER WE HAD -- I HELPED MY AUNT IN

15 THE KITCHEN, FINISHING WITH THE DINNER AND CLEARING

16 DINNER AND SO FORTH; AND AFTER THEY HAD RETIRED I

17 PROCEEDED TO SEEK ERIK OUT, SEE WHERE HE WAS.

18 Q DID YOU FIND OUT WHERE HE WAS?

19 A HE WAS STILL DOWN IN THE BASEMENT, YES.

20 Q WHAT WAS HE DOING?

21 A HE WAS SITTING AT A STOOL NEXT TO THE

22 POOL TABLE WITH HIS EYES DOWN, HIS ARMS CROSSED LIKE

23 THIS (DEMONSTRATING).

24 Q WAS HE SAYING ANYTHING AT ALL?

25 A NO.

26 Q DID YOU SAY SOMETHING TO ERIK?

27 A I WENT DOWNSTAIRS AND I WENT TO HIM, AND

28 I JUST SORT OF PUT MY HAND ON HIS SHOULDER, AND I

53336

1 JUST SAID, "HEY, IT MUST BE HARD TO BE MADE FUN OF

2 ALL THE TIME."

3 Q DID ERIK RESPOND TO THAT?

4 A WITHOUT EVEN LOOKING AT ME OR HAVING ANY

5 EYE CONTACT, HE JUST BASICALLY HE RESPONDED, "IT'S

6 ALL RIGHT. I'M USED TO IT."

7 Q HE SAID HE WAS USED TO THAT KIND OF

8 TREATMENT?

9 A THAT WAS HIS RESPONSE.

10 Q NOW, MS. CANO, YOU STATED BEFORE THAT

11 YOU INTENDED ON SPENDING MORE TIME AT THE MENENDEZ

12 HOME THAN THE MONTH AND A HALF.

13 WHY DID YOU LEAVE EARLY?

14 A IT WAS BECAUSE I NEVER FELT MORE

15 UNCOMFORTABLE IN A PLACE WHERE I WAS LIVING THAN

16 WHEN I LIVED IN THE MENENDEZ HOME.

17 Q WHAT WAS IT THAT YOU WERE UNCOMFORTABLE
18 WITH?

19 A I WAS UNCOMFORTABLE WITH THE
20 CONVERSATIONS, AS THE ONE I JUST DESCRIBED AT THE
21 DINNER TABLE. THAT WAS NOT THE ONLY TIME IT WOULD
22 HAPPEN.

23 I WAS UNCOMFORTABLE WITH FEELING LIKE --
24 I ALWAYS FELT LIKE I WAS ON THE SPOT, JUST LIKE ERIK
25 WOULD BE ON THE SPOT ON ATHLETICS.

26 I WAS INTERVIEWING AT THE TIME, AND I
27 WAS ALSO, AT THE DINNER TABLE, QUESTIONED. "WELL,
28 WHAT DID YOU SAY? WHAT DID YOU RESPOND? DID YOU

53337

1 THINK THAT WAS A WISE THING TO SAY?"

2 JUST IN A MOCKING, SARCASTIC WAY, WHERE
3 YOU ALMOST FELT YOU DIDN'T WANT TO SHARE. AND I
4 FELT VERY UNCOMFORTABLE IN A HOME WHERE I FELT I
5 COULDN'T SHARE, OR SAW ANY SHARING CONSTRUCTIVELY.

6 Q DID YOU FEEL ANY LOVE IN THAT HOUSE?

7 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

8 THE COURT: REPHRASE THE QUESTION.

9 Q BY MR. LEVIN: DURING THE TIME THAT YOU
10 WERE THERE, DID YOU -- WERE YOU PRESENT DURING TIMES
11 WHEN MR. MENENDEZ WAS THERE AND MRS. MENENDEZ WAS

12 THERE AND ERIK MENENDEZ WAS PRESENT?

13 A YES.

14 Q DID YOU FEEL ANY LOVE IN THAT HOUSE?

15 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

16 THE COURT: SUSTAINED.

17 MR. LEVIN: I HAVE NOTHING FURTHER.

18 THE COURT: CROSS-EXAMINATION?

19

20 CROSS-EXAMINATION

21 BY MR. CONN:

22 Q NOW, CAN YOU TELL US WHY IT WAS THAT YOU

23 WENT TO THE MENENDEZ HOME IN THE FIRST PLACE?

24 A I WAS INVITED BY MY AUNT TO STAY WITH

25 THEM, BECAUSE MY FAMILY HAD MOVED TO FLORIDA, AND I

26 WAS INTERVIEWING IN THE AREA TO FIND A JOB AFTER

27 COLLEGE.

28 Q SO YOU HAD BEEN LIVING WHERE BEFORE YOUR

53338

1 FAMILY MOVED?

2 A WE ALSO LIVED IN THE PRINCETON AREA.

3 Q YOU WERE LIVING WITH YOUR MOTHER IN THE

4 PRINCETON AREA?

5 A RIGHT. RIGHT.

6 Q AND HOW LONG BEFORE THE TIME THAT YOU

7 BEGAN STAYING WITH THE MENENDEZ FAMILY DID YOUR

8 FAMILY MOVE TO FLORIDA?

9 A HOW LONG?

10 Q YES.

11 A I'M SORRY. HOW LONG WAS IT -- CAN YOU

12 REPEAT THE QUESTION.

13 Q YES. ALL RIGHT. LET ME REPHRASE THAT.

14 YOU SAID YOU BEGAN LIVING THERE IN JUNE

15 OF '86; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q EXACTLY WHEN WAS IT THAT YOUR FAMILY

18 MOVED TO FLORIDA?

19 A AT THE SAME TIME. THAT'S HOW I ENDED UP

20 MOVING AT THAT TIME.

21 Q NOW, DURING THE TIME PERIOD THAT YOU

22 WERE LIVING THERE, WAS KITTY MENENDEZ NICE TO YOU?

23 A YES, SHE WAS NICE TO ME.

24 Q NICE IN WHAT WAY?

25 A MY AUNT WAS A VERY FUN, ACTIVE PERSON,

26 AND SHE ENJOYED DOING THINGS WITH ME. SHE INVITED

27 ME TO GO SHOPPING WITH HER, AND SHE WOULD ALWAYS GO

28 TO THE GYM AND WORK OUT. SHE'D COME WITH ME.

53339

1 SHE WAS NICE IN THAT RESPECT. YOU

2 KNOW. SHE WAS ACTIVE AND FUN TO BE WITH.

3 NOW, IN TERMS OF AFFECTION, IT WAS
4 DIFFERENT.

5 Q DID YOU FEEL THAT YOU WERE LIKE BUDDIES?

6 A YES. I FELT THAT WE WERE LIKE BUDDIES.

7 SHE WOULD COME WORK OUT WITH ME, AND WE'D GO
8 SHOPPING, AND DO THINGS TOGETHER.

9 Q KITTY AND JOSE MENENDEZ EXPRESSED AN
10 INTEREST IN YOUR INTERVIEWING EFFORTS DURING THIS
11 TIME PERIOD; IS THAT CORRECT?

12 A YES, THEY DID.

13 Q AND DID IT APPEAR TO YOU THAT THEY WERE
14 TRYING TO HELP YOU TO GET A JOB?

15 A WELL, I GUESS I WOULD SAY THEY WERE
16 TRYING TO HELP ME IN TERMS OF INTERESTED IN HOW MY
17 INTERVIEWS WERE GOING AND SO FORTH.

18 DID THEY ASSIST ME IN GETTING
19 INTERVIEWS? IN THAT WAY, NO.

20 Q IN OTHER WORDS, THEY WOULD ASK YOU ABOUT
21 HOW IT WENT?

22 A EXACTLY, EXACTLY.

23 Q AND DID THEY OFFER YOU ADVICE?

24 A YES.

25 Q DID THEY OFFER YOU THE BENEFIT -- SORRY --
26 OF THEIR EXPERIENCE IN TRYING TO TEACH YOU HOW TO
27 RESPOND IN SUCH SITUATIONS?

28 MR. LEVIN: OBJECTION. CALLS FOR

1 SPECULATION.

2 THE COURT: REPHRASE THE QUESTION.

3 Q BY MR. CONN: DID YOU FEEL THAT THEY
4 WERE TRYING TO TEACH YOU HOW TO RESPOND
5 APPROPRIATELY IN SUCH INTERVIEW SITUATIONS?

6 A DID I FEEL THEY WERE TRYING TO TEACH ME
7 HOW TO RESPOND APPROPRIATELY? I DON'T KNOW IF I
8 WOULD SAY TEACH ME HOW TO RESPOND APPROPRIATELY.

9 BECAUSE I FELT THREATENED, ACTUALLY,
10 WHEN I BROUGHT IT UP.

11 Q DID YOU GET THE IMPRESSION THAT THEY
12 WERE DOING THIS TO TORMENT YOU OR TO HELP YOU?

13 MR. LEVIN: OBJECTION, YOUR HONOR.
14 PRESENTING THE EITHER/OR. THERE MAY BE OTHER
15 REASONS.

16 THE COURT: CAN YOU ANSWER THAT QUESTION? IS
17 THAT A QUESTION THAT YOU COULD ANSWER?

18 THE WITNESS: WELL, I MEAN, LIKE I SAID, I
19 FELT THAT IT WAS VERY UNCOMFORTABLE TO SHARE WITH
20 THEM BECAUSE -- PERHAPS THE WAY THAT THEY FELT THAT
21 THEY WERE HELPING WAS -- SPECIFICALLY WITH MY UNCLE,
22 WOULD BE IN A MOCKING KIND OF SARCASTIC WAY.

23 SO IF THAT WAS HIS IDEA OF HELPING ME,
24 PERHAPS HE MEANT THAT AS A HELPING TOOL. TO ME IT
25 WAS INTIMIDATING AND THREATENING, AND I FELT

26 UNCOMFORTABLE.

27 Q BY MR. CONN: DID THEY OFFER TO HELP YOU
28 ON HOW TO RESPOND TO A JOB INTERVIEW?

53341

1 A WE WOULD DISCUSS AN INTERVIEW AT THE
2 DINNER TABLE. I WOULD SAY HOW IT WENT. I WOULD
3 SAY -- I WAS ASKED WHAT I SAID. I WOULD BE TOLD
4 WHAT WOULD BE A BETTER WAY. I WOULD BE TOLD HOW THE
5 PERSON WOULD HAVE RESPONDED PERHAPS POSITIVELY OR
6 NEGATIVELY TO WHAT I MIGHT HAVE SAID.

7 BUT THE TONE THAT WAS USED, THE
8 PARTICULAR LANGUAGE THAT WAS USED WAS THREATENING,
9 MOCKING AND UNCOMFORTABLE.

10 Q CAN YOU GIVE US AN EXAMPLE?

11 A I GUESS I JUST TRIED TO DO THAT.

12 FOR INSTANCE, IF I'M ASKED ABOUT WHAT
13 OTHER SUMMER JOBS I MAY HAVE HAD, AND I WAS TALKING
14 ABOUT THIS PARTICULAR JOB AND I DIDN'T -- YOU KNOW, I
15 SAID IT IN A CERTAIN WAY. AND IT WOULD BE SAID,
16 "WELL, HOW CAN THAT BE HELPFUL FOR YOU IF YOU SAY
17 IT LIKE THAT?"

18 YOU KNOW. I DON'T KNOW IF I CAN GIVE
19 YOU MORE SPECIFICS. IT'S BASICALLY -- THERE'S A WAY
20 OF SAYING THINGS THAT A PERSON CAN FEEL AS

21 CONSTRUCTIVE CRITICISM, AND A WAY TO FEEL THAT IT IS

22 A THREAT AND A NEGATIVE CRITICISM.

23 Q SO WHEN KITTY OR JOSE SAID TO YOU: "HOW

24 CAN THAT BE HELPFUL," YOU THOUGHT THEY WERE

25 THREATENING YOU; IS THAT CORRECT?

26 A THE WAY IT WAS SAID, YEAH.

27 Q AND HOW DID YOU INTERPRET THAT AS A

28 THREAT, MS. CANO?

53342

1 A YOU KNOW, AGAIN, IT'S JUST WHAT I SAID.

2 IT WAS INTIMIDATING. YOU KNOW. THERE'S A WAY TO

3 COMMUNICATE IN A HELPFUL MANNER, NURTURING OR

4 HELPFUL FOR SOMEBODY WHO'S LEARNING TO INTERVIEW.

5 AND THERE'S A WAY TO MAKE THE PEOPLE FEEL THEY'RE NO

6 GOOD WHEN THEY'RE INTERVIEWING.

7 Q DIDN'T YOU PREVIOUSLY TESTIFY THEY

8 OFFERED TO HELP YOU IN RESPONDING TO A JOB

9 INTERVIEW?

10 A THAT'S EXACTLY WHAT I'M DESCRIBING.

11 Q AND DIDN'T YOU PREVIOUSLY REGARD IT AS

12 AN OFFER TO HELP, RATHER THAN AN ATTEMPT TO

13 INTIMIDATE?

14 A I SAID IN THEIR EYES IT -- I DON'T KNOW

15 WHAT THEY WERE THINKING. I WOULD INTERPRET IT THAT

16 THEY WERE TRYING TO HELP ME. I JUST FELT THAT -- I
17 ALSO MADE IT CLEAR THAT THE WAY IT WAS USED TO HELP
18 ME, QUOTE, UNQUOTE, WAS INTIMIDATING AND NOT
19 PARTICULARLY HELPFUL FOR ME.

20 Q CAN YOU THINK OF ANYTHING THAT KITTY OR
21 JOSE MENENDEZ SAID TO YOU REGARDING YOUR INTERVIEW
22 PROCESS THAT YOU REGARDED AS THREATENING AND
23 INTIMIDATING, OTHER THAN THE PHRASE: "HOW COULD
24 THAT BE HELPFUL?"

25 A I GUESS I COULDN'T USE SPECIFIC PHRASES,
26 BECAUSE I DON'T RECALL THE EXACT CONVERSATION AT
27 THIS TIME.

28 BUT I CAN SAY THAT THERE'S A JUDGMENT

53343

1 CALL FROM THE PERSON WHO'S ON A RECEIVING END OF A
2 CONVERSATION IN TERMS OF WHAT IS BEING PORTRAYED AS
3 KIND, LOVING COMMENTS, AND WHEN IT'S BEING MORE OF A
4 MOCKING, SARCASTIC, MADE-FUN-OF DINNER CONVERSATION.

5 Q AND HOW MUCH TIME WOULD YOU SPEND
6 DISCUSSING YOUR INTERVIEWING WITH KITTY AND JOSE
7 MENENDEZ?

8 A WELL, AT FIRST I WOULD SHARE IT MORE, MY
9 FIRST FEW INTERVIEWS. AND TOWARD THE END I WOULD DO
10 MY BEST NOT TO SHARE AT ALL.

11 Q CAN YOU TELL US ON HOW MANY OCCASIONS
12 YOU DISCUSSED YOUR INTERVIEWING TECHNIQUES WITH JOSE
13 AND KITTY MENENDEZ?

14 A WELL, IN A PERIOD OF -- I WAS THERE FOR A
15 MONTH AND A HALF. THEY WERE GONE PART OF THE TIME.
16 I CAN -- I COULDN'T TELL YOU THE EXACT NUMBER OF
17 TIMES. I DIDN'T GO ON AN INTERVIEW EVERY DAY. SO
18 WHEN I DID, AT FIRST I SHARED. LATER ON, I'D AVOID
19 BEING PUT ON THE SPOT.

20 Q AND DID YOU TELL KITTY MENENDEZ OR JOSE
21 MENENDEZ: "I THINK THAT YOU ARE THREATENING ME,"
22 WHEN THEY WOULD ASK YOU -- WHEN THEY WOULD USE
23 PHRASES SUCH AS: "HOW CAN THAT BE HELPFUL"?

24 A DID I EVER TELL THEM THAT I FELT
25 THREATENED?

26 Q YES.

27 A NO, I DIDN'T TELL THEM. I THINK IT
28 WAS -- FROM MY FACIAL AND BODY EXPRESSIONS, THAT

53344

1 WOULD HAVE BEEN PRETTY EVIDENT.

2 Q AND YOU THINK KITTY MENENDEZ WAS A FUN
3 PERSON, IN SPITE OF THE FACT THAT SHE WOULD
4 SOMETIMES USE PHRASES SUCH AS: "HOW CAN THAT BE
5 HELPFUL"?

6 IS THAT CORRECT?

7 A YES. I SAID SHE WAS A FUN PERSON TO BE
8 WITH AND DO THINGS WITH, YES.

9 Q AND YOU STILL FEEL THAT OVERALL KITTY
10 MENENDEZ WAS NICE TO YOU DESPITE THE FACT SHE WOULD
11 USE A PHRASE SOMETIMES: "HOW CAN THAT BE HELPFUL"?

12 IS THAT CORRECT?

13 A I DIDN'T SAY KITTY MENENDEZ USED THAT
14 PHRASE. I'M SORRY.

15 Q WHO WOULD USE THAT PHRASE?

16 A THE ONE WHO WOULD TEND TO USE THESE
17 PHRASES WAS JOSE.

18 Q OKAY. WELL --

19 A IN DIFFERENT WAYS.

20 Q WHAT DID KITTY MENENDEZ SAY DURING THE
21 TIME THAT SHE WAS DISCUSSING WITH YOU YOUR
22 INTERVIEWING PROCESS THAT WOULD CAUSE YOU TO BE
23 INTIMIDATED OR THREATENED BY HER?

24 MR. LEVIN: OBJECTION. ASSUMING SHE SAID
25 SOMETHING.

26 THE COURT: IF SHE SAID ANYTHING.

27 THE WITNESS: I HAVE NOT SAID ANYTHING TO
28 THAT EFFECT.

1 Q BY MR. CONN: SO YOU NEVER FELT
2 THREATENED OR INTIMIDATED BY KITTY MENENDEZ AS YOU
3 WERE SITTING AT THE DINNER TABLE AND HAVING
4 CONVERSATIONS WITH JOSE MENENDEZ REGARDING THE
5 INTERVIEW PROCESS; IS THAT CORRECT?

6 A SHE DIDN'T SPEAK VERY MUCH AT THAT TIME.

7 Q ALL RIGHT. SO YOU DID NOT FEEL
8 THREATENED OR INTIMIDATED BY HER, CORRECT?

9 A THAT'S CORRECT.

10 Q SO YOUR REMARKS ABOUT BEING THREATENED
11 AND INTIMIDATED WERE ONLY IN REGARDS TO JOSE
12 MENENDEZ?

13 A THAT'S CORRECT.

14 Q BECAUSE HE WAS VERY FORCEFUL AND
15 AGGRESSIVE IN POINTING OUT WHAT HE PERCEIVED TO BE
16 POSSIBLE ERRORS IN YOUR INTERVIEWING PROCESS?

17 A RIGHT.

18 Q AND LATER, WHEN YOU HAD A PRIVATE MOMENT
19 WITH KITTY MENENDEZ, DID YOU EVER SAY TO HER: "GEE,
20 WHY DON'T YOU TELL YOUR HUSBAND TO EASE UP ON ME A
21 LITTLE BIT. HE DOESN'T HAVE TO BE SO FORCEFUL WHEN
22 HE DISCUSSES WITH ME HOW MY INTERVIEW WENT"?

23 A NO. I NEVER SAID THAT.

24 Q YOU FELT YOU HAD A GOOD RELATIONSHIP?

25 A YOU'RE SAYING WHY? IS THAT YOUR
26 QUESTION, WHY?

27 Q YES. DIDN'T YOU FEEL YOU HAD A GOOD
28 RELATIONSHIP WITH KITTY MENENDEZ?

1 A I FELT WE HAD A RELATIONSHIP. I DON'T
2 KNOW IF I'D CALL IT GOOD. WE WOULD DO THINGS
3 TOGETHER. IT WAS NOT -- I GUESS PERCEIVING HOW HE
4 WAS WITH ERIK, I THOUGHT IT WOULD BE VERY
5 INAPPROPRIATE FOR ME TO TRY TO INTERVENE BETWEEN THE
6 FAMILY MECHANICS.

7 Q YOU PREVIOUSLY DESCRIBED YOUR
8 RELATIONSHIP WITH KITTY MENENDEZ AS BUDDIES, DIDN'T
9 YOU?

10 A I SAID THAT, YES.

11 Q AND THIS WOULDN'T BE INTERVENING IN THE
12 FAMILY RELATIONSHIP. IT WOULD JUST BE HOW JOSE
13 MENENDEZ SHOULD ADDRESS YOU AT THE DINNER TABLE; IS
14 THAT CORRECT?

15 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

16 THE COURT: REPHRASE THE QUESTION:

17 Q MR. CONN: DID YOU FEEL THAT IF YOU WERE
18 TO TELL KITTY MENENDEZ THAT YOU DIDN'T LIKE THE WAY
19 THAT JOSE MENENDEZ GAVE YOU INTERVIEWING TIPS SO
20 AGGRESSIVELY, THAT THAT WOULD BE INTERVENING IN THE
21 FAMILY RELATIONSHIP?

22 A I WOULD FEEL SO, YES. SO I CHOSE NOT TO
23 BRING IT UP.

24 Q AND YOU FELT THAT WAS SOMETHING THAT YOU
25 COULDN'T SHARE -- THOSE WERE FEELINGS YOU JUST
26 COULDN'T SHARE WITH KITTY MENENDEZ; IS THAT CORRECT?
27 A THAT'S CORRECT.
28 Q NOW, YOU HAD AN OPPORTUNITY TO OBSERVE

53347

1 ERIK AND LYLE MENENDEZ, BOTH WHEN THEY WERE YOUNGER,
2 AND DURING THIS PERIOD OF TIME WHEN YOU LIVED WITH
3 THEM; IS THAT CORRECT?

4 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
5 EVIDENCE. IT'S BEYOND THE SCOPE.

6 THE COURT: SUSTAINED.

7 Q BY MR. CONN: NOW, YOU SAID THAT WHEN
8 KITTY MENENDEZ HAD THIS ONE CONVERSATION WITH JOSE
9 MENENDEZ -- LET ME REPHRASE THAT.

10 DO YOU RECALL AN OCCASION IN WHICH JOSE
11 MENENDEZ WAS CRITICAL OF ERIK MENENDEZ' PERFORMANCE
12 AN THE TENNIS COURT; IS THAT CORRECT?

13 A YES.

14 Q AND DID YOU HEAR KITTY MENENDEZ IN ANY
15 WAY TRY TO COME TO THE SUPPORT OR ASSISTANCE OR
16 DEFENSE OF ERIK MENENDEZ DURING THAT CONVERSATION?

17 A YOU'RE SPEAKING AT THE DINNER TABLE?

18 Q YES.

19 A NO.

20 Q NOW, YOU HAVE OBSERVED HER TRYING TO
21 DEFEND HER SONS IN SOME WAY IN THE PAST, HAVEN'T
22 YOU?

23 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
24 EVIDENCE.

25 MS. TOWERY: BEYOND THE SCOPE.

26 THE COURT: SUSTAINED.

27 Q BY MR. CONN: DID YOU EVER OBSERVE KITTY
28 MENENDEZ COMING TO THE DEFENSE, IN SOME WAY, OF HER

53348

1 SONS?

2 MS. TOWERY: OBJECTION. BEYOND THE SCOPE.

3 THE COURT: IT WOULD HAVE TO BE IN
4 RELATIONSHIP TO THE DEFENDANT, ERIK MENENDEZ.

5 MR. CONN: YES.

6 Q IN REGARD TO ERIK MENENDEZ, DID YOU EVER
7 SEE HER COME TO THE SUPPORT OF ERIK MENENDEZ ON
8 OCCASION?

9 A ON OCCASION I WOULD SEE -- I WOULD SEE,
10 FOR EXAMPLE, DIFFERENT COMMENTS LIKE, "OH, JOSE."
11 LITTLE THINGS LIKE THAT, WHERE SHE WOULD ATTEMPT TO,
12 PERHAPS, SAY SOMETHING OR STOP SOMETHING OR DEVIATE
13 SOMETHING THAT HE WAS SAYING. AND HE IMMEDIATELY

14 STOPPED HER. AND THEN IT WOULD ALMOST BACKFIRE ON
15 HER, BECAUSE THE MOCKING WOULD TURN TO HER.

16 Q SO THERE WERE EFFORTS THAT YOU SAW WHEN
17 KITTY MENENDEZ DID, IN FACT, MAKE AN EFFORT TO
18 INTERVENE ON BEHALF OF ERIK MENENDEZ; IS THAT
19 CORRECT?

20 A THAT'S CORRECT.

21 Q AND ON THIS PARTICULAR OCCASION -- WELL,
22 LET ME ASK YOU THIS.

23 HAD YOU -- HAVE YOU EVER HAD AN
24 OPPORTUNITY TO OBSERVE ERIK MENENDEZ PLAY TENNIS
25 PRIOR TO THIS ONE OCCASION WHEN YOU OBSERVED HIM
26 PLAY.

27 MR. LEVIN: OBJECTION. BEYOND THE SCOPE.

28 THE COURT: TALKING ABOUT DURING THIS TIME

53349

1 THAT SHE WAS AT THE HOME DURING HER STAY?

2 MR. CONN: YES, YOUR HONOR.

3 THE COURT: OVERRULED.

4 THE WITNESS: THERE WAS -- THERE WAS ONE TIME
5 THAT I RECALL SPECIFICALLY OBSERVING A MATCH. I HAD
6 OBSERVED PRACTICES AT THE HOUSE. AND OCCASIONALLY I
7 PICKED HIM UP AT THE CLUB AFTER HIS PRACTICES.

8 BUT I DON'T RECALL ANOTHER SPECIFIC

9 MATCH THAT I OBSERVED.

10 Q BY MR. CONN: SO THIS WAS THE ONLY MATCH
11 THAT YOU OBSERVED?

12 A THAT I RECALL, YES.

13 Q AND --

14 A I CHOSE NOT TO GO ANYMORE.

15 Q YOU DON'T KNOW WHETHER HIS PERFORMANCE
16 AT THIS MATCH WAS SUBSTANTIALLY BELOW HIS
17 CAPABILITIES OR NOT, DO YOU?

18 A I HAD SEEN HIM PRACTICE AND SO FORTH. I
19 DON'T KNOW IF IT WAS BEYOND WHAT YOU WOULD CONSIDER
20 BELOW HIS CAPABILITIES. I DON'T KNOW WHAT YOU MEAN
21 BY THAT.

22 Q IN OTHER WORDS, YOU DON'T KNOW IF HIS
23 PERFORMANCE ON THAT PARTICULAR DAY WAS ANYWHERE NEAR
24 WHAT HE'S CAPABLE OF PERFORMING, DO YOU?

25 A I DON'T KNOW THAT I WOULD BE -- I KNOW HE
26 LOST THE MATCH. I KNOW HE DIDN'T DO WELL. I MEAN,
27 I DON'T KNOW COMPARED TO WHAT. IS THAT --

28 Q AFTER YOU HEARD THE COMMENT AT THE

53350

1 DINNER TABLE BETWEEN JOSE MENENDEZ AND ERIK
2 MENENDEZ, DID YOU EVER SAY TO HIS MOTHER: "I SAW YOU
3 COME TO THE DEFENSE OF ERIK MENENDEZ IN THE PAST.

4 WHY DIDN'T YOU DO IT ON THIS OCCASION"?

5 A IN THE MIDDLE OF THIS FAMILY DYNAMICS IT
6 WOULD BE VERY INAPPROPRIATE TO SPEAK A WORD.

7 Q YOU DIDN'T --

8 A REGARDING ANYTHING THAT HAD
9 TRANSGRESSED.

10 Q I'M TALKING ABOUT ON A LATER OCCASION.
11 YOU NEVER ASKED THAT QUESTION OF KITTY ON A LATER
12 OCCASION, DID YOU?

13 A NO.

14 MR. CONN: I HAVE NO FURTHER QUESTIONS.

15 THE COURT: REDIRECT.

16

17 REDIRECT EXAMINATION

18 BY MR. LEVIN:

19 Q DID YOU EVER SEE MRS. MENENDEZ EVER
20 DISPLAY ANY AFFECTION TOWARDS ERIK?

21 A I NEVER SAW MY AUNT DISPLAY ANY
22 AFFECTION AT ALL TOWARDS ERIK.

23 Q DID YOU EVER SEE MR. MENENDEZ DISPLAY
24 ANY AFFECTION TOWARDS ERIK?

25 A NOW, THINGS WERE ALWAYS VERY COLD AND
26 TENSE. I NEVER SAW ANY AFFECTION.

27 Q DID MRS. MENENDEZ TREAT YOU BETTER THAN
28 SHE TREATED ERIK?

1 A I THINK SHE DID, YES.

2 Q NOW, WHEN YOU WERE SPOKEN TO BY
3 MR. MENENDEZ ABOUT YOUR PERFORMANCE OR INTERVIEWS,
4 WAS HE PUTTING YOU DOWN FOR WHAT YOU HAD SAID AND
5 HOW YOU HAD EXPRESSED YOURSELF?

6 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

7 THE COURT: ALL RIGHT. YOU'RE ASKING HOW SHE
8 REACTED TO IT, HOW SHE FELT?

9 MR. LEVIN: YES.

10 Q IS THAT HOW YOU REACTED TO IT?

11 A I FELT I WAS BEING MOCKED, AND I FELT I
12 WAS BEING MADE FUN OF. I DID NOT FEEL LIKE IT WAS
13 CONSTRUCTIVE OR HELPING ME BUILD MY SELF-ESTEEM
14 ABOUT BUILDING UP MY INTERVIEW SKILLS.

15 Q DID YOU FEEL THAT HE WAS PUTTING YOU
16 DOWN BECAUSE YOU WERE EXPRESSING YOURSELF THE WAY
17 YOU DO IT?

18 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: I'M NOT SURE WHY HE WOULD
21 RESPOND THE WAY HE RESPONDED. I JUST KNOW THAT I
22 JUST FELT LIKE I COULDN'T DO IT RIGHT, AND I
23 COULDN'T DO IT RIGHT IN HIS EYES, OR I COULDN'T DO
24 IT ANYWHERE NEAR OKAY. YOU KNOW.

25 I DIDN'T THINK I DID SUCH A BAD JOB
26 INTERVIEWING. AND I FELT WHEN I EXPRESSED OR --
27 ACTUALLY, I GOT SEVERAL OFFERS OUT OF IT, SO OTHER

53352

1 HOW COME I FELT SO TERRIBLE SHARING THIS
2 WITH UNCLE, AND I WAS MADE TO FEEL I WAS SO
3 INCOMPETENT IN MY INTERVIEW SKILLS?

4 Q WHEN MR. MENENDEZ EXPRESSED TO YOU THE
5 RIGHT WAY OF DOING IT, THAT WAS HIS WAY OF DOING IT,
6 CORRECT?

7 A I IMAGINE SO. THAT'S THE WAY HE FELT IT
8 OUGHT TO BE DONE.

9 Q WAS HIS WAY OF DOING IT YOUR WAY OF
10 DOING IT?

11 A I DID IT DIFFERENTLY, A DIFFERENT WAY OF
12 EXPLAINING MYSELF. I HAD DIFFERENT WAYS OF
13 PORTRAYING MYSELF. AND I GUESS HE FELT IT WASN'T
14 TOUGH ENOUGH OR AGGRESSIVE ENOUGH OR EMPHATIC ENOUGH
15 OR GOOD ENOUGH.

16 Q AND WHEN YOU TOLD MR. MENENDEZ HOW YOU
17 EXPRESSED YOURSELF AT YOUR INTERVIEWS, YOU WERE
18 TELLING HIM THE WAY YOU, MARIANNE CANO, EXPRESS
19 YOURSELF, CORRECT?

20 A THAT'S RIGHT.

21 Q WHEN MR. MENENDEZ WAS TELLING YOU THE
22 RIGHT WAY TO EXPRESS YOURSELF, WAS KITTY MENENDEZ

23 COMING TO YOUR DEFENSE WHEN HE CRITICIZED YOU?

24 A NO.

25 Q DID SHE SAY ANYTHING?

26 A NO. SHE WOULD REMAIN SILENT FOR THE

27 MOST PART WHEN MY UNCLE WOULD SPEAK.

28 Q AND YOU INDICATED TO -- BEFORE THAT YOU

53353

1 DID NOT CONFRONT JOSE MENENDEZ ABOUT THE WAY HE

2 TREATED YOU, DID YOU?

3 A NO. I WOULD NEVER DARE CONFRONT HIM IN

4 ANYTHING.

5 Q AND YOU DIDN'T CONFRONT HIM IN THE WAY

6 HE TREATED ERIK, DID YOU?

7 A I WAS VERY INTIMIDATED BY HIM. I WOULD

8 NEVER DARE -- IF HE SAID, "HEY," I'D SAY "HEY."

9 IT WAS VERY INTIMIDATING. THAT'S ALL I

10 CAN SAY.

11 MR. LEVIN: THANK YOU.

12 I HAVE NOTHING FURTHER.

13 THE COURT: ANYTHING ELSE?

14 MR. CONN: NOTHING FURTHER.

15 THE COURT: THANK YOU.

16 YOU MAY STEP DOWN. YOU'RE EXCUSED.

17 MR. GESSLER: CALL PETER CANO, YOUR HONOR.

18 MAY I GET HIM?

19 THE COURT: PLEASE.

20

21 PETER CANO,

22 WAS CALLED AS A WITNESS BY THE DEFENSE WAS DULY

23 SWORN, AND TESTIFIED AS FOLLOWS:

24 THE CLERK: RAISE YOUR RIGHT HAND TO BE

25 SWORN.

26 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY

27 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS

28 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND

53354

1 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

2 THE WITNESS: I DO.

3 THE CLERK: PLEASE BE SEATED.

4 PLEASE TAKE THE STAND AND STATE YOUR

5 NAME FOR THE RECORD.

6 THE WITNESS: MY NAME IS PETER J. CANO.

7 C-A-N-O.

8 THE CLERK: THANK YOU.

9

10 DIRECT EXAMINATION

11 BY MR. GESSLER:

12 Q MR. CANO, WE HAVE A FAMILY TREE TO YOUR

13 RIGHT THERE.

14 A I'M SORRY, SIR. I DON'T SEE IT. I SEE

15 IT, BUT I CANNOT READ IT FROM HERE.

16 MR. GESSLER: MAY HE STEP DOWN, YOUR HONOR,

17 FOR JUST A MOMENT TO SEE THAT?

18 THE COURT: SURE.

19 THE WITNESS: THANK YOU, SIR.

20 Q BY MR. GESSLER: NOW, IF YOU LOOK

21 DIRECTLY IN FRONT OF YOU THERE, CAN YOU SEE THE LINE

22 THAT SAYS MARTA AND PETER CANO?

23 A RIGHT.

24 Q ARE YOU THE PETER CANO, WHO AT THAT TIME

25 WAS MARRIED TO MARTA CANO?

26 A YES.

27 Q YOU ARE THE FATHER OF MARIANNE CANO, WHO

28 JUST TESTIFIED?

53355

1 A YES.

2 Q ARE YOU ALSO THE FATHER OF THE OTHER

3 NAMES THERE: MARTA, EILEEN, PETER AND ANDRES?

4 A INDEED, I AM. YES, SIR.

5 Q YOU CAN RESUME THE STAND, IF YOU WOULD.

6 NOW, MR. CANO, AT THE PRESENT TIME ARE

7 YOU STILL THE HUSBAND OF MARTA CANO?

8 A NO, I'M NOT.

9 Q AND AT SOME PERIOD OF TIME DID YOU AND
10 MARTA CANO SEPARATE?

11 A YES, SIR.

12 Q HOW MANY YEARS AGO WAS THAT,
13 APPROXIMATELY?

14 A ABOUT 16 YEARS AGO, 17 YEARS AGO.

15 Q BACK IN THE LATE 1970'S, '79, '80?

16 A YES. IN THAT PERIOD.

17 Q AND SINCE THE SEPARATION HAVE YOU LATER
18 ACTUALLY DIVORCED?

19 A YES, SIR, WE DID.

20 Q NOW, DIRECTING YOUR ATTENTION BACK TO
21 THE TIME WHEN YOU WERE STILL MARRIED TO MARTA CANO,
22 WAS THERE A PERIOD OF TIME IN WHICH YOU LIVED IN THE
23 NORTHEAST?

24 A YES. IN -- YES. IN NEW YORK, IN
25 BROOKLYN.

26 Q DO YOU STILL LIVE IN THAT AREA OF THE
27 COUNTRY?

28 A NO, SIR. I MOVED TO SAN JUAN, PUERTO

53356

1 RICO.

2 Q AND HOW LONG HAVE YOU RESIDED IN PUERTO

3 RICO?

4 A WE -- SINCE THE BEGINNING OF '66.

5 Q AND FROM TIME TO TIME -- YOU STILL RESIDE
6 THERE?

7 A YES, SIR.

8 Q ARE YOU IN BUSINESS THERE?

9 A YES, I AM.

10 Q WHAT DO YOU DO?

11 A IMPORT/EXPORT AND TRADE SEAFOOD.

12 Q AND IN CONNECTION WITH THAT, DO YOU HAVE
13 TO TRAVEL?

14 A VERY MUCH SO.

15 Q NOW, DIRECTING YOUR ATTENTION TO THE
16 1970'S, WOULD YOU AT TIMES VISIT THE MENENDEZ
17 FAMILY?

18 A YES. VERY OFTEN WE DID DO THAT, LIKE
19 THREE, FOUR, FIVE TIMES A YEAR.

20 WHEN I SAY MENENDEZ FAMILY, I MEAN THE
21 WHOLE FAMILY. WE WOULD BE GATHERING TOGETHER FOR
22 WHATEVER OCCASION.

23 Q WERE THERE ANY OCCASIONS IN WHICH YOU
24 WOULD STAY WITH JOSE AND MARY LOUISE MENENDEZ IN
25 THEIR HOME?

26 A RIGHT. YES, WE DID.

27 Q DID YOU EVER HAVE OCCASION TO STAY WITH
28 JOSE MENENDEZ AND MARY LOUISE MENENDEZ IN MONSEY,

1 NEW YORK?

2 A YES, I DID.

3 Q AND DID -- WERE THEIR SONS BORN AT THAT
4 TIME?

5 A YES. THAT WAS BACK IN '73. I THINK
6 THAT THE ELDEST, LYLE, WAS ABOUT FIVE YEARS OF AGE,
7 FIVE, SIX, YEARS OF AGE; AND THE YOUNGER ONE, I
8 DON'T KNOW, ABOUT TWO OR THREE YEARS YOUNGER THAN
9 THAT.

10 Q WAS THERE ANY INCIDENT THAT OCCURRED
11 BETWEEN LYLE MENENDEZ AND HIS FATHER DURING THAT
12 TIME WHEN YOU STAYED AT THE HOUSE THAT STICKS OUT IN
13 YOUR MIND?

14 A YES.

15 Q COULD YOU TELL US ABOUT THAT, PLEASE.

16 A YES, SIR. IT WAS A FAMILY GATHERING,
17 AND WE WERE STAYING AT THE JOSE MENENDEZ HOME. AND
18 LYLE WAS ABOUT FIVE YEARS OF AGE, MORE OR LESS, AND
19 HE WAS A HYPERACTIVE INDIVIDUAL.

20 SO HE WAS LIKE RUNNING BACK AND FORTH.
21 AND HIS FATHER JUST LOOKED DEEP INTO HIS EYES AND HE
22 STOPPED WHATEVER HE WAS DOING. AND HE SAID
23 SOMETHING TO -- "LYLE," LIKE THAT, AND THEN HE
24 GRABBED HIS SON AND TOLD HIM SOMETHING THAT WE -- I
25 COULDN'T HEAR.

26 Q WHEN YOU SAY GRABBED HIS SON, WHERE DID
27 HE GRAB HIM?

28 A BY THE ARM. HE GRABBED HIM BY THE ARM,

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1 AND THEN HE TOOK IT UPON HIMSELF AND SAID SOMETHING
2 TO HIM THAT I COULD NOT HEAR.

3 Q DID YOU SEE ANY REACTION BY LYLE
4 MENENDEZ WHEN THIS OCCURRED?

5 A OKAY, SIR. YEAH. HE BECAME
6 INCONTINENT, AND HE WETTED HIMSELF. HE DIDN'T SAY A
7 WORD.

8 Q AND DID YOU SEE ANY URINE GO ON THE
9 FLOOR AT THAT POINT?

10 A YES, I DID.

11 Q AND DID YOU SEE THE LOOK ON LYLE'S FACE
12 AT THE TIME THIS INCIDENT OCCURRED?

13 A VERY, VERY PALE, WITHOUT SAYING
14 ANYTHING. HE DIDN'T SAY A WORD. HIS FATHER GRABBED
15 HIM AGAIN AND TOOK HIM TO HIS BEDROOM.

16 Q DID YOU DO ANYTHING?

17 A YES. I DIDN'T LIKE THAT AT ALL. I
18 FOLLOWED THEM. AND AS SOON AS I OPENED THE DOOR OF
19 THE BOY'S BEDROOM I SAW THE FATHER, JOSE, MY
20 EX-BROTHER-IN-LAW, HITTING OR PUNCHING HIS SON ON

21 THE CHEST, OR IN THE UPPER ABDOMEN.

22 Q COULD YOU SEE WHETHER OR NOT THE PUNCH
23 WAS WITH AN OPEN HAND?

24 A NO, SIR. FIST CLOSED.

25 Q AND DID YOU HEAR OR SEE ANY REACTION
26 FROM LYLE MENENDEZ TO THIS PUNCH WITH THE FIST?

27 A NOTHING AT ALL, EXCEPT BECOMING VERY
28 PALE AND KIND OF GASPING, LIKE (DEMONSTRATING).

53359

1 THAT WAS THE REACTION HE HAD. HE DIDN'T SAY A
2 WORD. HE DIDN'T CRY.

3 Q AS THOUGH HE WERE GASPING FOR AIR; IS
4 THAT WHAT YOU'VE DESCRIBED?

5 A THAT'S THE WAY IT LOOKED, SIR.

6 Q AT THAT POINT DID YOU SAY ANYTHING TO
7 YOUR BROTHER-IN-LAW, MR. MENENDEZ --

8 A YES. YES.

9 Q -- ABOUT WHAT YOU OBSERVED?

10 A YES. I DID GIVE HIM A PIECE OF MY MIND.

11 Q WAS LYLE MENENDEZ STILL THERE IN THE
12 BEDROOM?

13 A YES, HE WAS. HE NEVER LEFT.

14 Q TELL US WHAT YOU TOLD MR. MENENDEZ.

15 A ALL RIGHTIE. YES. YES. I TOLD HIM

16 THERE WAS NO -- THAT WAS NO WAY TO RAISE A SON. AND
17 THAT'S NOT ONLY NOT THE WAY, BUT HE SHOULDN'T DO
18 THAT AT ALL.

19 AND HE ANSWERED TO ME DISTINCTLY THAT
20 THAT WAS HIS WAY OF BRINGING UP HIS SON, AND IF I
21 DIDN'T LIKE IT I COULD VERY WELL LEAVE. AND THAT'S
22 EXACTLY WHAT I DID. I LEFT.

23 Q YOU HAD BEEN STAYING THERE?

24 A I WAS STAYING THERE, YES, SIR.

25 Q AND YOU LEFT?

26 A YES, WE DID.

27 Q LEFT THE HOME ON THAT OCCASION?

28 A YES, WE DID.

53360

1 Q NOW, WAS THERE -- DID YOU EVER GO BACK TO
2 STAY IN THE HOME AGAIN WITH MR. AND MRS. MENENDEZ?

3 A NO. WE WENT TO THEIR HOME ON SEVERAL
4 OCCASIONS FOR FAMILY GATHERINGS, BUT I NEVER STAYED
5 OVERNIGHT IN THEIR HOME FROM THERE ON.

6 Q ON A LATER OCCASION DID YOU EVER HAVE
7 OCCASION TO SEE LYLE MENENDEZ PLAY TENNIS AFTER THE
8 FAMILY MOVED TO THE NEW JERSEY AREA?

9 A RIGHT. THAT WAS ABOUT FOUR, FIVE YEARS
10 LATER, OR SIX YEARS LATER.

11 Q LYLE WOULD BE ABOUT 10 OR 11 AT THAT
12 TIME?

13 A JUST ABOUT, I THINK. AND IT WAS A
14 TOURNAMENT. AND I DID ATTEND IT, AND I WAS WITH
15 JOSE AND KITTY WHILE THEIR SON, LYLE, WAS PLAYING
16 TENNIS.

17 Q AND DID YOU STAY WITH THEM; THAT IS,
18 WITH MR. AND MRS. MENENDEZ, DURING THE TIME OF
19 LYLE'S MATCH?

20 A YES, SIR. I WAS WITH THEM.

21 Q DID YOU WATCH THE MATCH?

22 A YES, I DID.

23 Q WAS THERE ANY OCCASION IN THAT MATCH
24 WHEN YOU THOUGHT THAT MR. MENENDEZ ENGAGED IN SOME
25 INAPPROPRIATE BEHAVIOR?

26 A YES, I DID.

27 Q TELL US ABOUT THAT, PLEASE.

28 A I SAW HIM WAVING AND TRYING TO DISTRACT

53361

1 LYLE'S OPPONENT, WHICH I THOUGHT WAS
2 UNSPORTSMANSHIP.

3 Q AND DID YOU HAVE ANY DISCUSSIONS WITH
4 JOSE MENENDEZ IN THE PRESENCE OF LYLE MENENDEZ ABOUT
5 THAT ACTIVITY?

6 A I DID TALK TO JOSE RIGHT AWAY. LYLE WAS
7 PLAYING. I DID CALL THAT TO HIS ATTENTION, THAT IT
8 WAS QUITE EMBARRASSING FOR ME TO BE THERE WITH HIM
9 WHILE HE WAS DOING SOMETHING THAT I THOUGHT WAS
10 UNSPORTSMANSHIP AND UNETHICAL.

11 Q WHAT DID MR. MENENDEZ REPLY?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

13 THE COURT: SUSTAINED.

14 Q BY MR. GESSLER: DID YOU HAVE ANY
15 DISCUSSION WITH MR. MENENDEZ ABOUT THIS LATER IN THE
16 PRESENCE OF LYLE MENENDEZ AFTER THE MATCH?

17 A RIGHT. I DID.

18 Q TELL US ABOUT THAT DISCUSSION.

19 A YES, SIR. FIRSTLY, THERE WAS -- LYLE
20 WON. THAT WAS A TOURNAMENT THAT WAS IN THE MORNING --
21 OR LATE MORNING, AND LYLE WON.

22 Q DID HE WIN THE TOURNAMENT OR THE MATCH?

23 A HE DID WIN THE MATCH, THAT MATCH.

24 Q AND TELL US ABOUT THE DISCUSSION THEN.

25 A ALL RIGHT. THE DISCUSSION WAS THAT
26 INSTEAD OF PRAISING HIS SON, HE WAS CRITICIZING HIM,
27 AND I COULDN'T HELP IT BUT --

28 Q WHAT DID YOU SAY?

1 A I TOLD HIM THAT IF MY SON WOULD HAVE WON
2 I WOULD HAVE HUGGED HIM AND KISSED HIM AND
3 CONGRATULATED HIM, WHICH HE DIDN'T.

4 Q WHAT DID MR. MENENDEZ REPLY?

5 A HE DIDN'T ANSWER. HE GAVE ME LIKE A BAD
6 LOOK AND THAT WAS ABOUT IT.

7 Q WAS THERE ANY FURTHER DISCUSSION, THEN,
8 ABOUT THE WAY THAT MR. MENENDEZ REACTED DURING THE
9 MATCH; THAT IS, THE TRYING TO DISTRACT THE OPPONENT,
10 AND SPORTSMANSHIP?

11 A NO, THAT I REMEMBER.

12 Q DID YOU EVER HAVE A DISCUSSION WITH
13 MR. MENENDEZ IN THE PRESENCE OF LYLE IN WHICH
14 MR. MENENDEZ SAID: "WELL, THE MEANS JUSTIFIES THE
15 END" -- OR "THE END JUSTIFIES THE MEANS"?

16 A YEAH. THAT WAS THE SAME DAY, LATER ON.
17 THERE WAS ANOTHER MATCH WHICH LYLE LOST, AND WE WERE
18 DRIVING. I WAS GOING WITH THEM AS A FAMILY TO THEIR
19 HOUSE, AND HE STARTED TO DISCUSS, ANGRILY SO, WITH
20 LYLE ABOUT THE MATCH.

21 Q WHAT DID HE SAY?

22 A OH, HE SAID -- I DON'T RECALL EXACTLY THE
23 WORDS, BUT HE DID SAY SOMETHING TO THE EFFECT
24 "YOU SHOULD HAVE WON. THAT WAS NO MATCH FOR YOU.
25 YOU DID PLAY SO BAD. YOU DIDN'T DO IT FOR ME. YOU
26 SHOULD HAVE DONE IT FOR ME. YOU SHOULD HAVE PLAYED
27 MUCH BETTER THAN THAT."

28 AND THEN THE CHILD DIDN'T RESPOND

1 ANYTHING. AND AT ONE POINT HE OPENED THE DOOR OF
2 THE CAR, AND HE TOLD THE CHILD, "NO, YOU WALK HOME."
3 AND HE CLOSED THE DOOR, AND WE DROVE ON. HE WAS
4 SEVERAL, SEVERAL BLOCKS AWAY FROM HOME.

5 Q WHEN MR. MENENDEZ SAID THIS AND MADE
6 LYLE GET OUT OF THE CAR, DID YOU SAY ANYTHING ABOUT
7 " HE SHOULDN'T BE PLAYING FOR YOU. HE SHOULD
8 BE PLAYING FOR HIMSELF," OR ANYTHING OF THAT NATURE?

9 A NO, I DIDN'T SAY THAT.

10 THE ONLY THING I SAID IS THAT "YOU
11 SHOULD NOT DO THAT TO A CHILD, EVER, BECAUSE THAT
12 WILL HAVE AN IMPACT ON HIM FOR THE WHOLE LIFE," AND
13 THAT IS NO WAY -- NO WAY OF TREATING HIS SON.
14 THAT'S CRUEL. "YOU'RE BEING VERY, VERY CRUEL."

15 Q AND WHAT DID MR. MENENDEZ REPLY WHEN YOU
16 TOLD HIM THAT WAS NO WAY TO TREAT A SON AND THAT WAS
17 CRUEL?

18 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

19 THE COURT: IT'S UNCLEAR AS TO WHAT CONTEXT
20 THIS CONVERSATION TOOK PLACE.

21 Q BY MR. GESSLER: WAS THIS CONVERSATION
22 AT THE TIME THAT MR. MENENDEZ WAS EXCLUDING LYLE
23 MENENDEZ FROM THE CAR AND TOLD HIM TO WALK HOME
24 BECAUSE HE HAD LOST?

25 A PARDON? WOULD YOU PLEASE REPEAT IT. I
26 CAN'T --
27 Q YES. WAS THIS CONVERSATION WITH
28 MR. MENENDEZ IN WHICH YOU WERE TELLING HIM IT WAS

53364

1 CRUEL TO TREAT A CHILD LIKE THAT -- WAS THAT AT THE
2 TIME THAT HE EXCLUDED LYLE MENENDEZ FROM THE CAR?

3 A DEFINITELY SO. DEFINITELY SO. JUST
4 RIGHT AFTER, AND HE DID RESPOND.

5 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

6 THE COURT: SUSTAINED.

7 MR. GESSLER: YES.

8 Q WAS LYLE MENENDEZ STILL RIGHT OUTSIDE
9 THE CAR WHEN YOU HAD THIS CONVERSATION WITH JOSE
10 MENENDEZ?

11 A YES.

12 Q DID IT APPEAR TO YOU THAT LYLE MENENDEZ
13 COULD OVERHEAR WHAT YOU AND HIS FATHER WERE TALKING
14 ABOUT AT THAT TIME?

15 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES. ALL RIGHTIE. YES,
18 INDEED. IT DID NOT ONLY APPEAR. I THINK LYLE WAS
19 LIKE WALKING NEXT TO THE CAR AT FIRST, BEFORE WE

20 TOOK OFF. AND HE HAD THEN TO WALK OVER --

21 Q BY MR. GESSLER: WHILE HE WAS WALKING
22 CLOSE TO THE CAR, TELL US WHAT YOU AND MR. MENENDEZ
23 SAID ABOUT THIS INCIDENT.

24 A ALL RIGHTIE. WE WERE HAVING AN ARGUMENT
25 ON THE BEHAVIOR OF JOSE AND THE WAY HE WAS TEACHING
26 OR SHOWING HIS SONS. THERE WAS NO LOVE OR
27 APPRECIATION.

28 Q DURING THAT ARGUMENT, WHILE LYLE

53365

1 MENENDEZ WAS STILL WALKING NEXT TO THE CAR, WHAT DID
2 MR. MENENDEZ SAY TO YOU?

3 A THAT THAT WAS NO BUSINESS OF MINE.

4 Q AND DID HE SAY WHY NOT?

5 A NO, SIR.

6 Q AT THIS POINT DID HE SAY ANYTHING ABOUT
7 THE END JUSTIFIES THE MEANS?

8 A YES. IT WAS LIKE THIS: WHEN I SAID TO
9 HIM THAT THAT WASN'T THE WAY YOU SHOULD BRING UP A
10 CHILD, AND IF HE LOSES HE LOSES, HE SAYS, "WELL, THE
11 END JUSTIFIES THE MEANS." THAT'S EXACTLY THE WORDS
12 HE USED, THE PHRASE HE USED.

13 MR. GESSLER: THANK YOU.

14 I HAVE NOTHING FURTHER, YOUR HONOR.

15 THE COURT: OKAY. WE COULD START, BUT HOW
16 LONG DO YOU THINK YOUR CROSS WILL BE?
17 MR. CONN: NOT MORE THAN FIVE MINUTES, YOUR
18 HONOR.

19 THE COURT: OKAY. LET'S SEE IF WE CAN
20 CONCLUDE IT.

21

22 CROSS-EXAMINATION

23 BY MR. CONN:

24 Q MR. CANO, THIS INCIDENT IN WHICH YOU
25 OBSERVED JOSE MENENDEZ STRIKE HIS SON OCCURRED WHEN
26 LYLE MENENDEZ WAS ABOUT FIVE YEARS OLD; IS THAT
27 CORRECT?

28 A I THINK SO, YES.

53366

1 Q AND CAN YOU TELL US HOW OLD JOSE
2 MENENDEZ WAS WHEN THIS TOOK PLACE?

3 A JOSE, HIS FATHER?

4 Q YES.

5 A I WOULD HAVE TO GUESS NOW. I DON'T
6 KNOW. LATE TWENTIES OR THIRTIES.

7 Q DO YOU KNOW HOW OLD JOSE MENENDEZ WAS
8 WHEN HE WAS KILLED IN 1989?

9 A ABOUT 40 SOME YEARS OF AGE.

10 Q WAS HE ABOUT 45 YEARS OF AGE AT THAT
11 TIME?

12 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
13 OBJECT AS IRRELEVANT.

14 THE COURT: OVERRULED.

15 AT WHAT TIME ARE YOU TALKING ABOUT?

16 MR. CONN: AT THE TIME THAT HE WAS KILLED.

17 Q IN 1989, WAS HE 45 YEARS OF AGE AT THAT
18 TIME?

19 A I'M NOT -- I DON'T KNOW FOR SURE. IF
20 YOU SAY SO I'LL AGREE TO IT. BUT I'M NOT SO SURE.

21 Q MR. CANO, WHEN YOU OBSERVED JOSE
22 MENENDEZ STRIKE HIS SON, YOU WERE WALKING INTO THE
23 BEDROOM?

24 A PARDON ME? YES, SIR.

25 Q AND DID JOSE MENENDEZ HAVE HIS BACK TO
26 YOU OR HIS SIDE TO YOU?

27 A HIS SIDE, SIR.

28 Q HIS SIDE?

53367

1 A YES, SIR.

2 Q SO YOU WERE ABLE TO SEE LYLE MENENDEZ
3 FROM HIS SIDE AS WELL?

4 A RIGHT.

5 Q AND LYLE MENENDEZ WAS STANDING AT THE
6 TIME?

7 A YES, SIR.

8 Q WAS JOSE MENENDEZ STANDING OR SEATED AT
9 THE TIME?

10 A NO, SIR. HE WAS LIKE RECLINING OR
11 HAVING HIS KNEE ON THE FLOOR.

12 Q SO IT APPEARED TO YOU --

13 A HE WAS LIKE KNEELING.

14 Q ON ONE KNEE, ON THE FLOOR?

15 A I DON'T KNOW IF IT WAS ONE OR TWO. IT
16 APPEARED SO.

17 Q OKAY. AND HOW FAR AWAY WAS LYLE
18 MENENDEZ AT THAT TIME WHEN YOU SAW HIM STRIKE HIS
19 SON?

20 A NOT TOO FAR. HE WAS IN A STRIKING
21 DISTANCE, THAT I CAN ASSURE YOU, SIR.

22 Q AND HE PUNCHED HIM EITHER IN THE CHEST
23 OR THE STOMACH; IS THAT CORRECT?

24 A OR THE UPPER STOMACH, YES, SIR.

25 Q AND YOU SAID YOU SAW NO REACTION FROM
26 LYLE MENENDEZ EXCEPT THAT HE BECAME PALE AND THAT HE
27 MIGHT HAVE BEEN GASPING; IS THAT CORRECT?

28 A YES. IT LOOKED LIKE THAT, LIKE IF YOU

1 DON'T HAVE ANY AIR LEFT.

2 Q UH-HUH. DID HE SHOUT BACK AT HIS
3 FATHER?

4 A NO, SIR. HE DIDN'T SAY A WORD.

5 Q DO YOU RECALL PREVIOUSLY TESTIFYING THAT
6 HE DID SHOUT BACK AT HIS FATHER?

7 A NO, SIR. I DON'T RECALL THAT.

8 MR. CONN: OKAY. DIRECTING COUNSEL'S
9 ATTENTION TO VOLUME 79, PAGE 13,344.

10 MS. ABRAMSON: JUST A MINUTE, COUNSEL.

11 MR. GESSLER: JUST A SECOND.

12 MS. ABRAMSON: THIRTEEN THOUSAND WHAT?

13 MR. GESSLER: DID YOU SAY -344?

14 MR. CONN: YES. 13,344.

15 MR. GESSLER: LINES, PLEASE?

16 MR. CONN: LINES 5 AND 6.

17 MS. ABRAMSON: JUST A MINUTE.

18 MR. GESSLER: I WOULD ASK, YOUR HONOR, THAT
19 THE WHOLE ANSWER BE READ.

20 THE COURT: DID YOU HAVE ANY OBJECTION TO
21 READING THE WHOLE ANSWER?

22 MS. ABRAMSON: I WOULD OBJECT ON AUTHENTICITY
23 GROUNDS. THIS IS ONE PART OF THE TRANSCRIPT I WOULD
24 NOT STIPULATE TO. I BELIEVE THAT IS A TYPOGRAPHICAL
25 ERROR.

26 THE COURT: YOU MEAN THE COURT REPORTER MADE
27 A MISTAKE?

53369

1 BUT THEY DO MAKE SOME.

2 THE COURT: WE'LL TAKE A RECESS AND WE'LL SEE

3 IF THE COURT REPORTER CAN REVIEW THAT PORTION OF THE

4 TRANSCRIPT. AND WE'LL RESUME AT 1:30.

5 DON'T DISCUSS THE MATTER WITH ANYONE,

6 AND DON'T FORM ANY FINAL OPINIONS ABOUT IT. AND

7 WE'LL RESUME AT 1:30.

8 (AT 12:04 P.M. PROCEEDINGS WERE

9 ADJOURNED UNTIL 1:30 P.M. OF

10 THE SAME DAY.)

12166

1 VAN NUYS, CALIFORNIA; MONDAY, APRIL 1, 1996

2 1:40 P.M.

3 DEPARTMENT NW "N" HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 THE COURT: ALL RIGHT. EVERYONE IS BACK.

9 ANYTHING BEFORE THE JURY COMES OUT? OKAY.

10 LET'S GET THE JURY OUT, PLEASE.

11 (THE JURY ENTERS THE COURTROOM
12 AND THE FOLLOWING PROCEEDINGS
13 WERE HELD:)

14

15 THE COURT: WE HAVE EVERYBODY BACK, AND YOU MAY
16 CONTINUE YOUR CROSS-EXAMINATION.

17

18 CROSS-EXAMINATION (CONT'D)

19 BY MR. CONN:

20 Q. MR. CANO, I BELIEVE THAT JUST BEFORE WE
21 TOOK THE BREAK WE -- I ASKED YOU IF YOU PREVIOUSLY
22 TESTIFIED THAT LYLE MENENDEZ SHOUTED AT JOSE.

23 DO YOU REMEMBER TESTIFYING TO THE FOLLOWING
24 QUESTION AND ANSWER:

25 "QUESTION: AND DID LYLE CRY OUT IN
26 ANY WAY?

27 "ANSWER: I DON'T REMEMBER SEEING
28 HIM CRYING. HE JUST -- I DON'T KNOW HOW,

-12165

1 BUT HE TOOK IT. AND APPARENTLY HE LOST
2 HIS AIR OR SOMETHING, BECAUSE HE LOOKED
3 VERY PALE, AND THAT WAS IT. HE DID KIND
4 OF SHOUT IT AT JOSE."

5 DO YOU REMEMBER TESTIFYING TO THAT?

6 A. NO. I DON'T RECALL THAT, SIR. I DON'T

7 KNOW IF I DID SAY "HE," BUT IF I DID SAY "HE," I MEANT
8 ME, BECAUSE I WAS THE OTHER ONE THAT COULD ONLY SHOUT IN
9 THAT ROOM, BECAUSE THE CHILD WAS NOT IN A POSITION TO DO
10 THAT. AND I MEANT AT EVERY TIME TO SAY THAT I DID SHOUT
11 AT JOSE.

12 Q. SO THAT MAY HAVE BEEN IN REFERENCE TO YOU
13 SHOUTING AT JOSE?

14 A. I DID, SIR, AND HOW.

15 Q. NOW, AS FAR AS LYLE MENENDEZ IS CONCERNED,
16 YOU DID NOT SEE LYLE MENENDEZ FALL DOWN ON THE GROUND AT
17 THAT TIME?

18 A. NO, I DIDN'T.

19 Q. AND YOU DID NOT SEE LYLE MENENDEZ STEP BACK
20 WHEN JOSE MENENDEZ HIT HIM?

21 A. NO, I DIDN'T. JOSE WAS GRABBING HIM, SO --
22 BUT I DIDN'T SEE HIM FALL.

23 Q. AND DID YOU ACTUALLY SEE HIS FIST GOING
24 TOWARD HIS STOMACH?

25 A. DEFINITELY SO, SIR.

26 Q. TOWARD HIM, TOWARDS LYLE?

27 A. YES, SIR. YES, SIR.

28 Q. AND YOU SAW THAT IT WAS A CLOSED FIST?

-12164

1 A. YES, IT WAS.

2 Q. AND LYLE MENENDEZ DID NOT DOUBLE OVER WHEN

3 HIS FATHER HIT HIM IN THE STOMACH OR THE CHEST?

4 A. I DON'T SAY THAT HE DID. I SAY THAT HE
5 TOOK IT.

6 MR. CONN: THANK YOU.

7 NOTHING FURTHER, YOUR HONOR.

8 THE COURT: ANY REDIRECT?

9 MR. GESSLER: NO REDIRECT, YOUR HONOR.

10 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

11 THE WITNESS: THANK YOU, SIR.

12 THE COURT: YOUR NEXT WITNESS.

13 MS. ABRAMSON: CHRIS SEMROD.

14

15 CHRISTOPHER SEMROD,

16 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND

17 TESTIFIED AS FOLLOWS:

18 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
19 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
20 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
21 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

22 THE WITNESS: I DO.

23 THE CLERK: PLEASE BE SEATED.

24 PLEASE STATE AND SPELL YOUR NAME FOR THE
25 RECORD.

26 THE WITNESS: CHRISTOPHER LUDWIG SEMROD,
27 S-E-M-R-O-D.

28 THE CLERK: THANK YOU.

1

2 DIRECT EXAMINATION

3 BY MS. ABRAMSON:

4 Q. MR. SEMROD, DID YOU ATTEND JUNIOR HIGH
5 SCHOOL AT THE PRINCETON DAY SCHOOL IN PRINCETON, NEW
6 JERSEY?

7 A. YES, I DID.

8 Q. AND DID YOUR FAMILY LIVE IN PRINCETON AT
9 THAT TIME?

10 A. WE DID.

11 Q. AND HAD YOU ATTENDED EARLIER ELEMENTARY
12 SCHOOL IN ANOTHER STATE THAN NEW JERSEY?

13 A. OTHER THAN LOWER SCHOOL, NO.

14 Q. WHAT I'M ASKING YOU IS DID YOU COME TO
15 PRINCETON DAY SCHOOL FROM A SCHOOL OUT OF STATE THAT WAS
16 NOT IN NEW JERSEY?

17 A. YES, MA'AM.

18 Q. AND WHERE WAS THAT?

19 A. OAKLAHOMA CITY.

20 Q. AND HAD YOU BEEN RAISED IN OAKLAHOMA CITY?

21 A. YES, MA'AM.

22 Q. AND THEN YOUR FATHER AND YOUR FAMILY MOVED
23 TO PRINCETON?

24 A. YES.

25 Q. AND WHILE YOU AND THE FAMILY WERE LIVING AT
26 PRINCETON, WHAT DID YOUR FATHER DO FOR A LIVING?

27 A. HE WAS A BANKER IN NEW JERSEY FOR U.J.B.

-12162

1 Q. THAT'S UNITED JERSEY BANK?

2 A. YES. IT'S NO LONGER THAT.

3 Q. AND WAS YOUR FATHER THE CHAIRMAN OR CHIEF
4 FINANCIAL OFFICER FOR UNITED JERSEY BANK?

5 A. CHIEF EXECUTIVE OFFICER, PRESIDENT AND
6 CHAIRMAN, YES, MA'AM.

7 Q. AND WHEN YOU STARTED AT PRINCETON DAY
8 SCHOOL, DID YOU START THERE IN THE GRAMMAR SCHOOL OR IN
9 THE JUNIOR HIGH?

10 A. IN THE MIDDLE SCHOOL, OR JUNIOR HIGH.

11 Q. WELL, WHAT GRADE DID YOU TRANSFER OVER
12 THERE?

13 A. I WAS -- I LEFT THE CASSIDY SCHOOL IN
14 OKLAHOMA CITY IN 5TH GRADE, AND REPEATED THE 5TH GRADE
15 WHEN I ARRIVED IN PRINCETON AT PRINCETON DAY SCHOOL.

16 Q. AND WHEN YOU WERE REPEATING THE 5TH GRADE,
17 DID YOU BECOME AQUAINTED WITH ERIK MENENDEZ?

18 A. YES, HE DID.

19 Q. AND, TO YOUR KNOWLEDGE, WAS ERIK ALSO
20 REPEATING THE 5TH GRADE?

21 A. YES, MA'AM, HE WAS.

22 Q. SO WERE THE TWO OF YOU THE OLDEST KIDS IN
23 YOUR CLASS?

24 A. AS I CAN RECALL, YEAH. TWO OF THE OLDER
25 KIDS, IF NOT THE OLDEST.
26 Q. AND AT SOME POINT AFTER YOU STARTED AT
27 PRINCETON DAY SCHOOL, DID YOU BECOME FRIENDS WITH ERIK
28 MENENDEZ?

-12161

1 A. YES, MA'AM.
2 Q. AND IN WHAT GRADE DID THE TWO OF YOU BECOME
3 FRIENDS?
4 A. PROBABLY THE LATTER PART OF THE 6TH GRADE,
5 OR THE BEGINNING OF 7TH GRADE.
6 Q. AND DID YOU REMAIN AT PRINCETON DAY SCHOOL
7 THROUGH THE 9TH GRADE?
8 A. YES, I DID.
9 Q. AND DID YOU KNOW ERIK ALL THE WAY THROUGH
10 THE 9TH GRADE?
11 A. YES, I DID.
12 Q. AND AS THE YEARS WENT ON, WAS THERE A TIME
13 WHEN YOU GOT TO BE BETTER FRIENDS THAN WHEN YOU FIRST
14 KNEW EACH OTHER?
15 A. AS I BECAME MORE COMPETENT IN TENNIS, I
16 THINK I HUNG AROUND WITH ERIK MORE, YES.
17 Q. YOU PLAYED TENNIS ALSO?
18 A. YES, I DID.
19 Q. WERE YOU ON THE TEAM AT PRINCETON DAY

20 SCHOOL?

21 A. I WAS.

22 Q. AND ERIK WAS ON THE TEAM, WAS HE NOT?

23 A. HE WAS.

24 Q. WAS HE A BETTER PLAYER THAN YOU WERE?

25 A. MUCH BETTER, YES.

26 Q. AND DID YOU ADMIRE HIS PLAYING, IN FACT?

27 A. VERY MUCH SO.

28 Q. AND DID YOU LIKE HIM?

-12160

1 A. VERY MUCH, YES.

2 Q. AFTER YOU AND ERIK BECAME FRIENDS, DID YOU
3 BECOME AWARE OF HIS SCHEDULE AND THE AMOUNT OF TIME HE
4 DEVOTED TO TENNIS EVERY DAY?

5 A. VERY MUCH SO.

6 Q. AND HOW MANY HOURS A DAY, TO YOUR
7 KNOWLEDGE, WAS HE INVOLVED IN TENNIS?

8 MR. CONN: OBJECTION. NO FOUNDATION.

9 THE COURT: PERHAPS YOU CAN ESTABLISH A
10 FOUNDATION.

11 Q. BY MS. ABRAMSON: HOW DID YOU KNOW WHAT HE
12 WAS DOING WITH RESPECT TO TENNIS?

13 A. WE DISCUSSED IT FREQUENTLY. IT WAS MORE
14 THAN OBVIOUS THAT HE WAS AN ICON IN SCHOOL IN TERMS OF
15 BEING A GREAT TENNIS PLAYER, SO IT WAS COMMONPLACE TO

16 DISCUSS SOMETHING THAT HE AND I BOTH SHARED AN INTEREST
17 IN.
18 Q. DID YOU ALSO TAKE LESSONS OCCASIONALLY FROM
19 HIS COACH, CHARLES WADLINGTON?
20 A. YES, I DID.
21 Q. DID YOU KNOW HE WAS BEING COACHED BY
22 WADLINGTON?
23 A. YES, I DID.
24 Q. DID YOU WATCH HIM SOMETIMES TAKING LESSONS
25 FROM WADLINGTON?
26 A. YES, I DID.
27 Q. DID YOU SEE HIM PRACTICING AND TRAINING FOR
28 THE TEAM AT P.D.S.?

-12159

1 A. YES, I DID.
2 Q. DID YOU EVER SEE HIM PRACTICING TENNIS ON
3 THE COURT AT HIS HOUSE?
4 A. YES, I DID.
5 Q. AND DID IT APPEAR TO YOU, FROM WHAT YOU SAW
6 AND WHAT YOU HEARD FROM ERIK, AND FROM WHAT YOU KNEW
7 FROM YOUR COACH, THAT HE WAS PUTTING IN MANY MORE HOURS
8 IN TENNIS THAN YOU WERE?
9 A. YES, I DID.
10 Q. AND HOW MANY HOURS A DAY, ON AVERAGE, WERE
11 YOU PUTTING IN FOR TENNIS?

12 A. MAYBE AN HOUR, IF I WAS LUCKY.
13 Q. SO TENNIS WAS NOT CONTROLLING YOUR
14 SCHEDULE?
15 A. NOT AT ALL.
16 Q. AND YOU HAD, THEREFORE, A FAIR AMOUNT OF
17 FREE TIME TO HAVE FRIENDS AND SEE FRIENDS?
18 A. YES, I DID.
19 Q. AND DID YOU TRY TO SPEND THAT FREE TIME
20 WITH ERIK?
21 A. YES, I DID.
22 Q. AND WAS HE AVAILABLE FOR YOU TO SPEND THAT
23 KIND OF TIME WITH HIM?
24 A. RARELY.
25 Q. NOW, WERE THERE CERTAIN KIDS AT P.D.S. THAT
26 WERE SORT OF THE "IN" CROWD?
27 A. SURE.
28 Q. WERE YOU AN ERIK THE IN CROWD OR THE OUT

-12158

1 CROWD?
2 A. THE OUT CROWD. DEFINITELY NOT THE IN
3 CROWD.
4 Q. AND WERE THE -- STRIKE THAT.
5 WAS IT YOU WHO REACHED OUT TO HIM FOR
6 FRIENDSHIP, OR HE WHO REACHED OUT TO YOU, IF YOU CAN
7 REMEMBER?

8 A. PROBABLY MYSELF REACHING OUT TO HIM,
9 ALTHOUGH WE WERE BOTH OUTSIDERS, AND IT COULD HAVE
10 HAPPENED JUST BECAUSE WE WERE BOTH IN THE SAME
11 SITUATION.

12 Q. WHAT, IN YOUR OPINION, MADE HIM AN
13 OUTSIDER?

14 A. THE FACT THAT HE DIDN'T HAVE THE TIME TO
15 SPEND SOCIALLY WITH OTHERS IN SCHOOL, LIKE MYSELF.

16 Q. AND WERE A LOT OF THE KIDS AT P.D.S. KIDS
17 WHO HAD STARTED GRAMMAR SCHOOL THERE, WHO WERE THERE
18 FROM LIKE KINDERGARTEN ON?

19 A. YES.

20 Q. SO THAT YOU AND ERIK COMING IN AT THE 5TH
21 GRADE ALREADY WERE SORT OF OUTSIDE THE CROWD?

22 A. YES, COUPLED WITH THE FACT THAT WE WERE
23 OLDER AS WELL.

24 Q. DID THE FACT THAT HE HAD A HISPANIC SURNAME
25 ALSO MAKE HIM SOMEWHAT DIFFERENT THAN THE OTHER KIDS AT
26 THE SCHOOL?

27 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

28 THE COURT: REPHRASE THE QUESTION.

-12157

1 Q. BY MS. ABRAMSON: WERE THERE A LOT OF KIDS
2 WITH HISPANIC SURNAMES AT THAT SCHOOL?

3 A. NO, MA'AM.

4 Q. DID YOU EVER HEAR ERIK TAKE ANY TEASING

5 BECAUSE HE WAS HISPANIC-AMERICAN?

6 A. NO.

7 Q. AND WHEN YOU DID HAVE TIME WITH ERIK, WOULD

8 THAT BE DURING THE WEEK OR ON WEEKENDS?

9 A. DURING THE WEEK, VERY RARELY. ON THE

10 WEEKEND, RARELY. BUT IF I RECALL CORRECTLY, WE SPENT

11 MOST OF OUR TIME ON THE WEEKENDS TOGETHER.

12 Q. THE TIME THAT YOU DID GET TO SPEND TOGETHER

13 WAS ON THE WEEKEND?

14 A. YES.

15 Q. AND WOULD THAT BE IN THE EVENINGS AFTER THE

16 TOURNAMENTS AND THE PRACTICES AND THE MATCHES AND ALL OF

17 THE REST OF THAT STUFF WAS DONE?

18 A. YES.

19 Q. AND WHEN YOU SPENT TIME TOGETHER ON THE

20 WEEKEND, WOULD YOU GENERALLY SPEND IT AT EACH OTHER'S

21 HOUSES?

22 A. YES.

23 Q. AND YOU WERE HOW OLD, UP TO WHAT,

24 15-AND-A-HALF DURING YOUR FRIENDSHIP WITH HIM?

25 A. YEAH. ANYWHERE BETWEEN 14 AND

26 15-AND-A-HALF. THIRTEEN.

27 Q. THAT'S WHEN THE BULK OF YOUR FRIENDSHIP

28 WAS?

1 A. YES.

2 Q. AND I TAKE IT NEITHER ONE OF YOU WERE

3 LICENSED TO DRIVE?

4 A. NO.

5 Q. AND YOU DIDN'T HAVE CARS TO GET ABOUT IN?

6 A. NO.

7 Q. AND DID YOU SPEND -- STRIKE THAT.

8 WAS ERIK THE PARTY-GOING TYPE, OR NO?

9 A. NOT AT ALL.

10 Q. SO, WOULD IT BE FAIR TO SAY MOST OF THE

11 TIME YOU SPENT WITH HIM, IT WAS JUST THE TWO OF YOU

12 ALONE?

13 A. FOR THE MOST PART, YES.

14 Q. DID YOU HAVE OTHER FRIENDS THAT YOU ALSO

15 SOCIALIZED WITH?

16 A. YES, I DID.

17 Q. TO THE BEST OF YOUR KNOWLEDGE, DID HE?

18 A. NOT ON SUCH A BROAD SCALE, I DON'T THINK

19 SO, BECAUSE TIME -- HIS TIME WAS SPENT PLAYING TENNIS,

20 NOT SOCIALIZING.

21 Q. BUT YOU HAD TIME TO SOCIALIZE WITH OTHER

22 KIDS FROM SCHOOL?

23 A. YES, I DID.

24 Q. THERE WERE OTHER KIDS AT SCHOOL THAT HE

25 TALKED TO AND WAS FRIENDLY WITH BESIDES YOURSELF?

26 A. SURE.

27 Q. BUT NOT FOR HIS FREE TIME; IS THAT CORRECT?

28 A. YES.

1 Q. NOW, HOW WOULD YOU DESCRIBE ERIK'S SORT OF
2 PHYSICAL PRESENTMENT IN THOSE DAYS? WAS HE A CALM,
3 EASY-GOING KID, OR SOMETHING ELSE?

4 A. HE WAS VERY FRENETIC. HE HAD A LOT OF
5 ENERGY. HE WAS A PEOPLE PLEASER.

6 Q. WHAT DO YOU MEAN BY PEOPLE PLEASER?

7 A. HE ENJOYED MAKING PEOPLE LAUGH.

8 Q. AND DID YOU SEE THAT AS A WAY OF HIS TRYING
9 TO GET ATTENTION?

10 A. I THINK AT THAT AGE --

11 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

12 THE COURT: SUSTAINED.

13 Q. BY MS. ABRAMSON: DID YOU DO THE SAME
14 THING?

15 A. YES, I DID.

16 Q. AND WHY DID YOU DO IT?

17 A. BECAUSE I WAS AN OUTSIDER, AND THAT WAS THE
18 ONLY WAY I DEEMED IT NECESSARY TO GAIN ATTENTION VIA MY
19 PEERS.

20 Q. FROM THE INSIDERS?

21 A. YES.

22 Q. AND WERE YOU AND ERIK SORT OF CONSIDERED
23 THE CLASS CLOWNS, THE JOKESTERS?

24 A. PROBABLY, YES.

25 Q. AND YOU WERE ALIKE IN THAT KIND OF

26 PERSONALITY?

27 A. VERY MUCH SO.

28 Q. BY THE WAY, MR. SEMROD, WHAT DO YOU DO FOR

-12154

1 A LIVING?

2 A. I'M AN INVESTMENT BANKER.

3 Q. AND WHERE DO YOU WORK?

4 A. TWO WORLD TRADE CENTER, IN NEW YORK CITY.

5 Q. AND DID YOU GRADUATE FROM COLLEGE?

6 A. YES, I DID.

7 Q. AND HAVE YOU BEEN IN BANKING AND FINANCE

8 SINCE THEN?

9 A. YES, MA'AM.

10 Q. HOW WOULD YOU CHARACTERIZE ERIK IN THESE

11 YEARS, SIR; 7TH, 8TH, 9TH GRADE, AS FAR AS HIS

12 WILLINGNESS TO WORK HARD?

13 A. HE WAS A VERY DILIGENT WORKER. HE SEEMED

14 TO HAVE EVERYTHING -- ALL HIS DUCKS IN A ROW.

15 Q. AND WHAT DOES THAT MEAN?

16 A. YOU LOOKED AT ERIK AND YOU SAW THIS PERSON

17 THAT'S THIS TOGETHER PERSON, BOTH IN SCHOOL -- HE WAS AN

18 ARTICULATE YOUNG MAN, PROBABLY HAD TOO MUCH ENERGY, LIKE

19 MYSELF, BUT YOU LOOKED AT HIM AND HE WAS FRIENDLY. HE

20 WAS NICE TO BE FRIENDS WITH.

21 Q. WE ARE TALKING ABOUT HARD WORKING.

22 DID HE WORK HARD IN SCHOOL?
23 A. VERY, VERY HARD.
24 Q. DID YOU EVER SEE HIM IN THE LIBRARY DOING
25 EXTRA WORK?
26 A. ALL THE TIME.
27 Q. AND DID HE WORK HARD AT ATHLETICS AND AT
28 TENNIS?

-12153

1 A. TOO HARD.
2 Q. WHY TOO HARD?
3 A. BECAUSE HE DIDN'T HAVE ENOUGH TIME TO DO
4 THE NORMAL THINGS THAT KIDS HAD TO DO AT THAT AGE, WHICH
5 I THINK IS IMPORTANT.
6 Q. NOW, HOW WOULD YOU CHARACTERIZE ERIK'S
7 ATTITUDE ABOUT GIRLS? WAS HE KIND OF AN AGGRESIVE,
8 PLAYBOY-TYPE, OR THE OPPOSITE?
9 A. THE OPPOSITE.
10 Q. AND HOW WOULD YOU CHARACTERIZE THAT?
11 A. SECRETIVE. AS FAR AS I CAN REMEMBER, WHEN
12 THE DISCUSSION CAME UP, IT WAS SOMETHING THAT HE OR I
13 ELABORATED ON TOGETHER.
14 Q. WHEN THE DISCUSSION OF WHAT, GIRLS AND
15 INTERESTING GIRLS CAME UP?
16 A. YES.
17 Q. HE DIDN'T TALK ABOUT IT MUCH?

18 A. NO.

19 Q. DID YOU HAVE A GAME YOU USED TO PLAY WITH
20 HIM ABOUT NAMING TO EACH OTHER WHAT GIRLS YOU WERE
21 INTERESTED IN, OR WHAT GIRLS YOU LIKED?

22 A. YES. ONE PARTICULAR OCCASION WE HAD THIS
23 WAY OF DECODING MESSAGES. ON THIS ONE OCCASION, WE WERE
24 TRYING TO DISCLOSE TO ONE ANOTHER IN A SECRETIVE WAY WHO
25 WE LIKED IN THE 7TH GRADE, AND IT WAS A PRETTY ELABORATE
26 DECODING MECHANISM. YOU KNOW, WE'D HAVE THESE SYMBOLS
27 AND THESE SIGNS, AND WE'D HAVE TO FIGURE THEM OUT. "A"
28 EQUALS THIS, "B" EQUALS THIS, ET CETERA, ET CETERA.

-12152

1 AND I DECODED -- OR HE DECODED MINE FIRST,
2 AND SAID "ANDREA".

3 Q. THAT WAS THE NAME OF A GIRL YOU WERE
4 INTERESTED IN, CORRECT?

5 A. YES.

6 Q. AND THEN YOU DECODED HIS AND EXPECTED TO
7 FIND THE NAME OF A GIRL?

8 A. YES.

9 Q. AND WHAT DID YOU FIND?

10 A. NOTHING.

11 Q. DID YOU SEE THE WAY ERIK TALKED TO AND
12 TREATED ADULTS?

13 A. YES, I DID.

14 Q. AND HOW WOULD YOU CHARACTERIZE THE WAY HE
15 BEHAVED TOWARDS ADULTS?
16 A. HE WAS VERY PLEASANT.
17 Q. DID HE SHOW ADULTS RESPECT?
18 A. VERY MUCH SO.
19 Q. WAS HE DILIGENT IN GOING TO HIS CLASSES
20 WHEN HE WAS AT THE SCHOOL?
21 A. VERY MUCH SO.
22 Q. TYPICALLY WOULD ERIK BE PICKED UP BY
23 SOMEBODY AFTER SCHOOL?
24 A. YES.
25 Q. AND -- TO BE TAKEN FOR ATHLETIC TRAINING?
26 A. YES.
27 Q. AND WHO WAS IT, TO THE BEST OF YOUR
28 KNOWLEDGE, WHO ORDINARILY WAS SUPPOSED TO PICK HIM UP?

-12151

1 A. MRS. MENENDEZ.
2 Q. HIS MOTHER?
3 A. YES.
4 Q. AND DO YOU REMEMBER OCCASIONS OF WAITING
5 AROUND WITH ERIK AFTER SCHOOL FOR HIS MOTHER TO COME?
6 A. SEVERAL SOMETIMES.
7 Q. WAS SHE FREQUENTLY LATE?
8 A. YES.
9 Q. WOULD THAT MAKE HIM NERVOUS WHEN SHE WASN'T

10 THERE?

11 A. I DON'T KNOW IF NERVOUS IS THE RIGHT WORD.

12 HE HAD AN EXCUSE FOR IT, OR --

13 Q. HE MADE EXCUSES FOR HER? WHAT DID HE SAY?

14 A. "SHE'LL BE HERE. SHE'S PROBABLY DOING

15 SOMETHING ELSE." YOU KNOW.

16 Q. WELL, WOULD YOU QUESTION HIM: "HOW CAN

17 YOUR MOTHER BE LATE," OR "WHY IS SHE KEEPING YOU

18 WAITING"?

19 A. IT WASN'T THE NORM AT PRINCETON DAY SCHOOL.

20 Q. TO BE LEFT WAITING?

21 A. NO.

22 Q. NOW, YOU WERE IN ERIK'S HOUSE FROM TIME TO

23 TIME, WERE YOU NOT?

24 A. I WAS.

25 Q. AND DID YOU OBSERVE -- OR DID YOU COME

26 UPON, WHEN YOU WERE IN THE HOUSE, ANY PORNOGRAPHIC

27 VIDEOTAPES?

28 A. I DID.

-12150

1 Q. AND WERE THEY IN A PLACE THAT WAS READY

2 ACCESSIBLE TO YOU KIDS?

3 A. THEY WERE.

4 Q. AND ON ANY OCCASION, DID YOU EVER TAKE ANY

5 OF THOSE TAPES TO YOUR OWN HOUSE AND PLAY IT SO YOU

6 COULD SEE THAT IT WAS A PORNOGRAPHIC TAPE?

7 A. YES, WE DID.

8 Q. AND DO YOU REMEMBER ANY PARTICULAR TAPE?

9 WAS THERE ONE THAT ACTUALLY HAD A NAME, A MOVIE NAME?

10 A. YES.

11 Q. AND WHAT WAS THE NAME OF THAT?

12 A. "EMANUELLE."

13 Q. AND WAS THAT THE NORM IN YOUR HOUSE? DO

14 YOUR PARENTS LEAVE PORNOGRAPHIC VIDEOTAPES AROUND?

15 A. NO.

16 Q. AND DID YOU FEEL IT WAS NAUGHTY OF YOU GUYS

17 TO BE WATCHING THIS TAPE?

18 A. OF COURSE.

19 Q. WAS ERIK A GOOD FRIEND TO YOU?

20 A. YES, HE WAS.

21 Q. WHY?

22 A. BECAUSE HE, LIKE MYSELF, HAD A LOT OF

23 ENERGY. HE WAS SOMEONE I LOOKED UP TO. AND IN TERMS OF

24 TENNIS, I PROBABLY LIVED VICARIOUSLY THROUGH HIM.

25 Q. DID YOU ADMIRE HOW HARD HE WORKED?

26 A. YES, I DID.

27 Q. DID HE EVER HE COMPLAIN ABOUT HIS SCHEDULE?

28 A. NO, NOT TO MY KNOWLEDGE.

1 Q. DID HE EVER COMPLAIN ABOUT HIS PARENTS?

2 A. NO.

3 Q. WHEN YOU WERE OVER AT HIS HOUSE, WAS HIS
4 MOTHER FREQUENTLY THERE?

5 A. SHE WAS.

6 Q. DID SHE HAVE A PARTICULAR WAY OF
7 COMMUNICATING WITH HIM THAT WAS DIFFERENT THAN WHAT YOU
8 WERE USED TO?

9 A. YES.

10 Q. AND WHAT WAS HER WAY OF COMMUNICATING?

11 A. SHE BICKERED FREQUENTLY. SHE WAS NAGGING.
12 SHE WASN'T VERY MONOTONE IN CONVERSATIONS, HER TONE

13 Q. DID YOU EVER HEAR HER TALKING TO HIM GENTLY
14 AND NICELY AND FONDLY?

15 A. I'M SURE ON OCCASION, BUT IT WAS RARE.

16 Q. AND USUALLY WHEN SHE TALKED TO HIM, WAS SHE
17 SPEAKING IN A LOW TONE OF VOICE OR IN A LOUD TONE OF
18 VOICE?

19 A. LOUD TONE.

20 Q. AND DID HE TALK BACK TO HER?

21 A. NO, HE DID NOT.

22 Q. WAS HE RUDE TO HER?

23 A. NO, HE WAS NOT.

24 Q. DID HE DO WHAT SHE SAID -- ASKED HIM TO DO,
25 OR DEMANDED THAT HE DO?

26 A. ALL OF THE TIME.

27 MS. ABRAMSON: I HAVE NOTHING FURTHER.

28 THE COURT: CROSS-EXAMINATION?

1

2 CROSS-EXAMINATION

3 BY MR. CONN:

4 Q. WHAT DID SHE NAG HIM ABOUT, MR. SEMROD?

5 A. "IS YOUR HOMEWORK DONE? ARE YOUR TENNIS

6 THINGS READY FOR YOUR NEXT LESSON?"

7 TYPICAL THINGS WHICH WERE IMPORTANT TO

8 SOMEONE OF HIS AGE; I.E., HOMEWORK AND TENNIS.

9 Q. CAN YOU THINK OF ANYTHING ELSE SHE USED TO

10 NAG HIM ABOUT OTHER THAN "DO YOUR HOMEWORK AND GET YOUR

11 TENNIS THINGS READY"?

12 MS. ABRAMSON: OBJECTION. THE QUESTION MISSTATES

13 THE TESTIMONY.

14 THE COURT: OVERRULED.

15 THE WITNESS: NO.

16 Q. BY MR. CONN: SO WHEN YOU SAY SHE WOULD NAG

17 HIM, IN WHAT WAY? EVERY FIVE MINUTES, OR ONCE A WEEK,

18 OR WHAT TYPE OF NAGGING ARE WE TALKING ABOUT HERE?

19 A. EVERY TIME I WAS OVER THERE.

20 Q. OKAY. AND HOW OFTEN WERE YOU OVER THERE?

21 A. I WOULD SAY, OVER THE COURSE OF TWO, TWO

22 AND A HALF YEARS, PROBABLY 10 TO 15 TIMES.

23 Q. SO ON 10 TO 15 OCCASIONS YOU HEARD HIM --

24 YOU HEARD KITTY MENENDEZ ASK HIM ABOUT HIS HOMEWORK AND

25 ASK HIM IF HIS TENNIS THINGS ARE READY; IS THAT CORRECT?

26 A. YES. AND THAT'S NOT INCLUDING THE TIMES I

27 WAS IN THE CAR. SO THEN YOU COULD PROBABLY ADD ANOTHER
28 30 TIMES ONTO THE 15 -- 10 TO 15.

-12147

1 Q. SO EVERY SINGLE TIME YOU GOT IN THE CAR
2 WITH ERIK MENENDEZ AND HIS MOTHER, KITTY MENENDEZ WOULD
3 SAY: "HAVE YOU DONE YOUR HOMEWORK"?

4 A. FOR THE MOST PART, YES.

5 Q. AND WHEN WOULD YOU GET IN, RIGHT AFTER
6 SCHOOL, OR IN THE MORNING, OR WHEN WOULD THIS BE?

7 A. RIGHT AFTER SCHOOL.

8 Q. SO SHE WOULD ASK HIM IF HE DID HIS HOMEWORK
9 RIGHT AFTER PICKING HIM UP FROM SCHOOL?

10 A. YES, SIR.

11 Q. AND WOULD SHE ASK IT OF HIM ONCE, OR ARGUE
12 WITH HIM ALL THE WAY HOME ABOUT THAT?

13 A. I THINK IT WAS A COMPILATION OF THINGS,
14 SIR. IF IT WASN'T ONE THING, IT WAS ANOTHER. IN TERMS
15 OF TENNIS, WHICH WE ALL KNOW WAS AN IMPORTANT ASPECT OF
16 ERIK'S LIFE, JUST A CONSTANT BICKERING AND NAGGING.

17 Q. WELL, WHAT DO YOU MEAN BICKERING? IF YOU
18 GOT IN THE CAR, GIVE US AN EXAMPLE. IF YOU GET IN THE
19 CAR SHE WOULD SAY: "HAVE YOU DONE YOUR HOMEWORK"?
20 IS THAT CORRECT?

21 A. "HAVE YOU DONE YOUR HOMEWORK? ARE YOUR
22 TENNIS THINGS READY? DO YOU HAVE YOUR RACKETS? DID YOU

23 BRING YOUR RACKET?" THAT WAS RESTRUNG FROM A PRIOR
24 OCCASION WHEN HE BROKE THE STRING. YES, SIR.
25 Q. CAN YOU THINK OF ANYTHING ELSE?
26 A. IN TERMS OF THOSE TWO TOPICS, TENNIS THINGS
27 OR HOMEWORK? NO, I CANNOT.
28 Q. ANYTHING ELSE SHE USED TO BICKER ABOUT?

-12146

1 A. NOT THAT I CAN RECALL, SIR, NO.
2 Q. I TAKE IT YOU DIDN'T LIKE KITTY MENENDEZ
3 VERY MUCH?
4 A. I WAS IN 7TH GRADE. I DIDN'T REALLY HAVE
5 AN OPINION OF THE LADY, TO BE PERFECTLY HONEST WITH YOU.
6 Q. BUT THE OPINION YOU DID HAVE WAS NEGATIVE;
7 THAT SHE WAS BICKERING AND NAGGING; IS THAT CORRECT?
8 A. WHEN I WAS THERE, YEAH. I MEAN, THERE'S
9 TWO SIDES TO THE STORY, THOUGH, I THINK.
10 Q. WELL, WHAT DO YOU MEAN BY THAT?
11 A. I MEAN, THERE'S THE KITTY MENENDEZ IN MY
12 PRESENCE AT HOME WITH THE MENENDEZ FAMILY, AND THEN
13 THERE'S KITTY MENENDEZ OUTSIDE OF THE SCOPE OF HER
14 FAMILY; I.E., AT MY HOUSE, IN THE PUBLIC EYE.
15 Q. AND WHAT DID YOU SEE OF KITTY MENENDEZ IN
16 THE PUBLIC EYE?
17 A. SHE WAS THE P.R. PERSON THAT EVERYONE, I
18 GUESS, EXPECTED HER -- WELL, I DON'T KNOW. I DON'T WANT

19 TO INCLUDE THAT, EXCUSE ME.
20 SHE WAS -- YOU KNOW -- THE MOTHERLY SYMBOL
21 THAT I GUESS MOST MOTHERS WOULD LIKE TO PORTRAY
22 THEMSELVES AS.

23 Q. SO IN OTHER WORDS, SHE DIDN'T NAG HER SON
24 ABOUT HIS HOMEWORK IN PUBLIC; IS THAT CORRECT?

25 A. YES, SIR.

26 Q. AND SHE DIDN'T BICKER WITH HER SON ABOUT
27 WHETHER HIS TENNIS GEAR WAS IN ORDER; IS THAT CORRECT?

28 A. YES, SIR.

-12145

1 Q. NOW, DID YOU REGARD ERIK MENENDEZ AS A
2 STAR?

3 A. YES, I DID.

4 Q. A STAR IN WHAT SENSE?

5 A. DILIGENT WORKER.

6 Q. WHAT DO YOU MEAN BY DILIGENT?

7 A. HARD WORKING.

8 Q. AND IN WHAT OTHER WAY WAS HE A STAR?

9 A. HE WAS THE GREATEST TENNIS PLAYER I KNEW AT
10 THE TIME, I PERSONALLY KNEW.

11 Q. DID YOU FEEL THAT HE CHEATED?

12 A. NO, SIR.

13 Q. YOU DIDN'T FEEL THAT HE CHEATED IN SCHOOL?

14 A. NO, SIR.

15 Q. DID YOU EVER --

16 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT

17 TO THIS AS BEYOND THE SCOPE AND UNDER 352.

18 THE COURT: HOW MUCH MORE DO YOU HAVE TO GO WITH

19 THIS WITNESS, OR IS THAT THE ONLY AREA THAT YOU'RE GOING

20 TO COVER?

21 MR. CONN: NO. I HAVE A COUPLE OF OTHER AREAS.

22 THE COURT: WHY DON'T YOU GO ON TO ANOTHER AREA

23 AND WE'LL GET BACK TO THIS.

24 Q. BY MR. CONN: NOW, WERE YOU FRIENDLY WITH A

25 PERSON BY THE NAME OF MATT MILLER?

26 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS, YOUR

27 HONOR, AS BEYOND THE SCOPE, AND ASK FOR AN OFFER, AND

28 UNDER 352 AS WELL.

-12144

1 THE COURT: OKAY. LET'S FIRST GET AN ANSWER TO

2 THE QUESTION.

3 CAN YOU ANSWER THAT?

4 THE WITNESS: AS I RECALL, HIS NAME WAS MATT

5 MILLER.

6 Q. MATT MILLER?

7 A. YEAH.

8 Q. AND WERE YOU FAMILIAR WITH A PERSON BY THE

9 NAME OF DAVID GRAY?

10 A. YES.

11 Q. AND A PERSON BY THE NAME OF DAVE MRAOVITCH?

12 A. YES.

13 Q. AND WERE THESE FRIENDS OF YOURS, OR FRIENDS
14 OF ERIK MENENDEZ?

15 A. FRIENDS OF ERIK MORE SO THAN MYSELF.

16 Q. WELL, DID YOU PREVIOUSLY SAY THAT YOU WERE
17 NOT AS FRIENDLY WITH THIS GROUP AS ERIK MENENDEZ WAS?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT'S
19 HEARSAY. NO FOUNDATION.

20 THE COURT: REPHRASE THE QUESTION.

21 Q. BY MR. CONN: DID YOU GIVE A STATEMENT TO
22 DEFENSE INVESTIGATORS SOMETIME IN THE PAST, MR. SEMROD?

23 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT AS
24 IRRELEVANT, YOUR HONOR.

25 THE COURT: FIRST YOU HAVE TO ESTABLISH A
26 FOUNDATION AS TO HIS CURRENT STATEMENTS, RATHER THAN
27 GOING INTO WHAT HE SAID BEFORE.

28 MR. CONN: YES.

-12143

1 Q. WERE YOU AS FRIENDLY WITH A GROUP THAT ERIK
2 MENENDEZ WAS FRIENDLY WITH, WHICH CONSISTED OF MATT
3 MILLER, DAVID GRAY AND DAVE MRAOVITCH.

4 MS. ABRAMSON: ASKED AND ANSWERED.

5 THE COURT: OVERRULED.

6 THE WITNESS: WITH ONE OF THEM I WAS MORE

7 FRIENDLY THAN ERIK WAS, AND WITH THE OTHER THREE -- ARE
8 THERE FOUR? IT'S DAVID GRAY -- COULD YOU REPEAT THE
9 NAMES, PLEASE?

10 Q. DAVID GRAY, MATT MILLER AND DAVE MRAOVITCH?

11 A. MRAOVITCH, YEAH.

12 Q. MRAOVITCH?

13 A. I WAS MORE FRIENDLY WITH DAVID GRAY THAN I
14 THINK ERIK WAS, BUT WITH DAVID GRAY AND MATT MILLER, NO,
15 NOT AS MUCH.

16 Q. WHICH ONE WERE YOU MORE FRIENDLY WITH?

17 A. DAVID GRAY.

18 Q. AND MATT MILLER AND MRAOVITCH WERE CLOSER
19 FRIENDS TO ERIK MENENDEZ THAN TO YOU; IS THAT CORRECT?

20 A. YES, SIR.

21 Q. OKAY. AND HOW DO YOU KNOW THAT ERIK
22 MENENDEZ WAS CLOSER TO MATT MILLER AND DAVID MRAOVITCH
23 THAN YOU WERE?

24 MS. ABRAMSON: I'M GOING TO OBJECT THAT THIS IS
25 IRRELEVANT, YOUR HONOR.

26 THE COURT: OVERRULED.

27 THE WITNESS: BECAUSE HE SPENT MORE TIME WITH
28 THEM THAN I DID, AND IT WAS KIND OF HIS CIRCLE OF

-12142

1 FRIENDS OUTSIDE OF OUR RELATIONSHIP.

2 Q. OKAY. NOW, ERIK MENENDEZ DURING THIS

3 PERIOD OF TIME THAT YOU HUNG AROUND WITH HIM WAS -- THIS
4 WAS THE 7TH AND 8TH GRADE; IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND YOU WERE APPROXIMATELY WHAT, 14?

7 A. FIFTEEN, FOURTEEN -- BETWEEN FOURTEEN AND
8 FIFTEEN.

9 Q. FOURTEEN AND FIFTEEN?

10 A. YES, SIR.

11 Q. AND ERIK MENENDEZ HAD A CIRCLE OF FRIENDS
12 THAT YOU WERE NOT TOO FAMILILAR WITH WHICH CONSISTED AT
13 THE TIME OF MATT MILLER, DAVE MRAOVITCH AND OTHER
14 PEOPLE?

15 A. I WAS VERY FAMILIAR WITH THEM. I JUST
16 DIDN'T HANG OUT WITH THEM.

17 Q. WHO ELSE WAS IN ERIK MENENDEZ' CIRCLE OF
18 FRIENDS?

19 A. OTHER THAN THOSE THREE PEOPLE YOU
20 MENTIONED, I DON'T RECALL. THAT WAS KIND OF HIS CLIQUE.
21 THAT WAS BASICALLY IT.

22 Q. AND ONE OF THE THINGS -- SOME OF THE THINGS
23 THAT YOU HAD IN COMMON WITH ERIK MENENDEZ BACK THEN WAS
24 TENNIS, SMOKING --

25 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
26 TO THIS AND ASK FOR AN OFFER UNDER 352.

27 THE COURT: WELL, YOU'RE ASKING WHAT NOW?

28 MR. CONN: I AM EXPLORING THE NATURE OF THE

1 RELATIONSHIP, AND WHAT THEY HAD IN COMMON.

2 MS. ABRAMSON: WELL, YOUR HONOR, I WOULD LIKE TO
3 APPROACH.

4 THE COURT: OKAY. SINCE COUNSEL HAVE SOME
5 INFORMATION THAT I APPARENTLY DON'T, WE WILL HAVE A
6 BRIEF DISCUSSION AT THE SIDE HERE.

7 (THE FOLLOWING PROCEEDINGS WERE
8 HELD AT THE BENCH OUT OF THE
9 PRESENCE OF THE JURY:)

10

11 THE COURT: YES.

12 MS. ABRAMSON: THE PREVIOUS OBJECTION, HE IS
13 TRYING TO PROVE WHAT CAN'T BE PROVEN, PARTICULARLY SINCE
14 THEY INTERVIEWED THE TEACHER INVOLVED, WHICH HAD TO
15 DO --

16 THE COURT: JUST FOCUS ON EXACTLY WHAT THE ISSUE
17 IS, NOT ALL THIS EDITORIALIZING.

18 MS. ABRAMSON: WELL, I WANT YOU TO UNDERSTAND
19 THIS. THIS GOES BACK TO THE PREVIOUS OBJECTION.

20 THEY ARE TRYING TO ELICIT FROM HIM
21 SOMETHING ABOUT STEALING A SPANISH TEST WITH MATT
22 MILLER.

23 THERE IS NO EVIDENCE TO PROVE IT. THIS
24 WITNESS DOESN'T HAVE PERSONAL KNOWLEDGE OF IT, AND THE
25 TEACHER INVOLVED, WHICH WAS SHARP, TOLD DETECTIVE
26 ZOELLER WHEN SHE WAS HERE THAT SHE CAME TO UNDERSTAND
27 THAT MATT MILLER STOLE THE TEST, AND NOT ERIK.

-12140

1 THE TRIAL, DIDN'T SHE; THAT IT WAS HER BELIEF THAT IT
2 WAS NOT STOLEN BY ERIK MENENDEZ?

3 MS. ABRAMSON: RIGHT. SO I THINK IT'S IMPROPER.

4 THE COURT: WHAT IS IT YOU'RE TRYING TO GET AT
5 NOW, MR. CONN?

6 MS. ABRAMSON: ANYTHING HE CAN COME UP WITH.

7 THE COURT: LET' S JUST FOCUS --

8 MS. ABRAMSON: LET ME SHOW YOU --

9 THE COURT: I AM ASKING MR. CONN. LET ME FIND
10 OUT WHAT HE WANTS BEFORE WE GET INTO WHAT YOU THINK HE
11 WANTS.

12 MS. ABRAMSON: I KNOW WHAT HE WANTS.

13 MR. CONN: THE FIRST THING I WANT TO GET INTO IS
14 I WANT TO EXPLORE THE NATURE OF THE RELATIONSHIP. WHAT
15 THEY HAD IN COMMON WAS TENNIS AND SMOKING CIGARETTES AND
16 CALLING GIRLS, AND I WANT TO FIND OUT THE NATURE OF THAT
17 RELATIONSHIP, AND WHAT THAT ALL CONSISTED OF.

18 AND THEN I WANT TO ASK HIM, GETTING BACK TO
19 WHAT MS. ABRAMSON IS RAISING ABOUT ERIK MENENDEZ
20 CHEATING IN SCHOOL. HE SAYS THAT HE KNEW ERIK MENENDEZ
21 CHEATED IN SCHOOL. NOW HE --

22 MS. ABRAMSON: NO.

23 MR. CONN: HE JUST FINISHED TELLING US --

24 MS. ABRAMSON: HE --
25 THE COURT: ONE PERSON AT A TIME. COME ON.
26 MR. CONN: HE JUST FINISHED TELLING US THAT ERIK
27 MENENDEZ WAS VERY DILIGENT AND VERY HARD WORKING.
28 MS. ABRAMSON: THAT'S TRUE.

-12139

1 MR. CONN: AND HERE HE SAYS THAT ERIK MENENDEZ
2 CHEATED IN SCHOOL.
3 WELL, I THINK SINCE COUNSEL OPENED UP THIS
4 DOOR AS TO WHETHER HE WAS A DILIGENT AND HARD-WORKING
5 PERSON --
6 THE COURT: MAYBE HE WAS A DILIGENT AND
7 HARD-WORKING CHEAT. THAT STILL CAN BE DILIGENT AND
8 HARD-WORKING.
9 MS. ABRAMSON: SOMETIMES IT'S HARDER TO CHEAT.
10 MR. CONN: I JUST THINK THAT THAT IS
11 INCONSISTENT, AND I THINK THAT THE JURY SHOULD BE MADE
12 AWARE OF THIS TO QUESTION HIS OPINION AS TO WHETHER IT
13 WAS DILIGENT AND HARD-WORKING.
14 MS. ABRAMSON: I DON'T THINK IT HAS ANYTHING TO
15 DO WITH DILIGENT AND HARD-WORKING.
16 THE COURT: YOU WOULD BE BETTER OFF IF YOU JUST
17 DIDN'T SAY A WORD. YOU'RE SAYING THINGS THAT DON'T HAVE
18 TO BE SAID.
19 I DON'T THINK THIS IS AN AREA OF

20 APPROPRIATE IMPEACHMENT OF THIS WITNESS, AND IT'S

21 CERTAINLY NOT AN AREA OF AGGRAVATING EVIDENCE.

22 SO I AM GOING TO SUSTAIN THE OBJECTION.

23 MR. CONN: AS TO THE CHEATING.

24 WHAT ABOUT SMOKING THE CIGARETTES AND WHAT

25 THEY HAD IN COMMON?

26 THE COURT: WELL, OBVIOUSLY YOU CAN EXPLORE THE

27 DETAILS OF THEIR RELATIONSHIP, BECAUSE THAT'S BEEN

28 BROUGHT OUT DURING THE EXAMINATION OF THE WITNESS BY THE

-12138

1 DEFENSE -- BY CALLING HIM.

2 BUT AS FAR AS CHEATING AND THINGS OF THAT

3 NATURE, I AM GOING TO SUSTAIN IT.

4 MS. ABRAMSON: BUT THE THINGS LIKE WHAT THEY HAD

5 IN COMMON IS NOT THE SAME THING AS THE NATURE OF THE

6 RELATIONSHIP. THERE IS ONE LINE IN THIS REPORT THAT

7 WHAT THEY HAD IN COMMON WAS TENNIS, SMOKING CIGARETTES

8 AND CALLING GIRLS.

9 AND I WOULD OBJECT TO THEM BRINGING THIS

10 OUT, BECAUSE IT'S JUST TO MAKE HIM LOOK BAD. IT'S NOT

11 AGGRAVATING STATUTORY EVIDENCE. AND SINCE THE SMOKER ON

12 THE JURY HAS HAD A HEART ATTACK, I DON'T THINK IT'S FAIR

13 TO BRING THIS OUT.

14 THE COURT: I'M SURE IT HASN'T CURED YOUR SMOKING

15 HABIT.

16 MS. ABRAMSON: DO YOU THINK THAT BEING IN THIS

17 TRIAL IS GOING TO CURE MY SMOKING HABIT, JUDGE?

18 THE COURT: SOMETHING SHOULD.

19 (THE FOLLOWING PROCEEDINGS

20 WERE HELD IN OPEN COURT

21 IN THE PRESENCE OF THE JURY:)

22

23 THE COURT: OKAY. LET'S RESUME.

24 Q. BY MR. CONN: MR. SEMROD, WERE THE THINGS

25 THAT YOU AND ERIK MENENDEZ HAD IN COMMON TENNIS, SMOKING

26 CIGARETTES AND CALLING GIRLS?

27 A. I WOULDN'T SAY WE HAD ALL THOSE THINGS --

28 THREE THINGS IN COMMON, NO.

-12137

1 Q. DID YOU PREVIOUSLY SAY THAT: "THE THINGS

2 WE HAD IN COMMON WERE TENNIS, SMOKING CIGARETTES AND

3 CALLING GIRLS"?

4 A. I SAID THAT WE HAD DONE THOSE THREE THINGS.

5 I DON'T THINK THAT SMOKING WE HAD IN COMMON. I DON'T

6 THINK ERIK AND I WERE BIG SMOKERS IN THE 7TH GRADE.

7 BUT YES, I DID STATE THAT IN MY PREVIOUS

8 TESTIMONY, AS I REMEMBER.

9 Q. DID YOU REGARD ERIK MENENDEZ'S HOME AS A

10 FUN PLACE TO BE?

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. BEYOND THE

12 SCOPE.

13 THE COURT: OVERRULED.

14 THE WITNESS: THE FACT THAT HE HAD A TENNIS COURT
15 WAS FUN, YES.

16 Q. BY MR. CONN: ANY OTHER REASONS WHY YOU
17 REGARDED HIS HOME AS A FUN PLACE TO BE?

18 A. BECAUSE THAT WAS THE ONLY PLACE I REALLY
19 GOT TO SPEND A LARGE AMOUNT OF TIME WITH HIM. OTHER
20 THAN THAT, NO.

21 Q. AND YOU DID FEEL THAT IT WAS FUN TO BE AT
22 HIS HOUSE?

23 A. OTHER THAN THE FACT THAT I WAS ABLE TO
24 SPEND TIME WITH HIM.

25 Q. AND AS FAR AS THE -- THE PORNOGRAPHY IS
26 CONCERNED, I BELIEVE THAT YOU TESTIFIED THAT THIS
27 PORNOGRAPHY WAS IN A PLACE THAT WAS READILY ACCESSIBLE
28 TO YOU IN HIS HOME; IS THAT CORRECT?

-12136

1 A. YES, IT WAS.

2 Q. WHERE WAS IT THAT IT WAS READILY
3 ACCESSIBLE?

4 A. IT WAS IN A BOX OF OTHER VIDEOTAPES ON THE
5 RIGHT SIDE OF THE TELEVISION SET IN THEIR COMMON ROOM.

6 Q. AND DID YOU SAY THAT YOU TOOK IT TO YOUR
7 HOUSE JUST TO SEE IF IT WAS PORNOGRAPHIC? IS THAT YOUR

8 TESTIMONY HERE TODAY?

9 MS. ABRAMSON: OBJECTION. THAT MISSTATES HIS
10 TESTIMONY.

11 THE COURT: REPHRASE THE QUESTION.

12 Q. BY MR. CONN: WAS IT YOUR TESTIMONY HERE
13 TODAY THAT YOU TOOK IT TO YOUR HOUSE TO SEE IF IT WAS
14 PORNOGRAPHIC?

15 A. I THINK WE KNEW IT WAS PORNOGRAPHIC. IT
16 WAS JUST A MATTER OF TAKING IT TO MY HOUSE TO VIEW IT.

17 Q. WHY DIDN'T YOU WATCH IT RIGHT THERE?

18 A. BECAUSE WE HAD A BASEMENT AT OUR HOUSE
19 WHERE MY PARENTS DID NOT VENTURE DOWN TO VERY OFTEN, AND
20 I THOUGHT THAT IT WAS PROBABLY A SAFER PLACE TO VIEW IT
21 AT MY HOUSE AS OPPOSED TO HIS HOUSE IN PENNINGTON.

22 Q. WHY WAS IT NOT SAFE TO VIEW IT AT HIS
23 HOUSE?

24 A. THAT'S A GOOD QUESTION. I DON'T KNOW.

25 Q. WHY DID YOU FEEL IT WAS SAFER AT YOUR
26 HOUSE?

27 A. PROBABLY BECAUSE IT WAS MY HOUSE, AND I
28 FELT SAFER IN MY HOUSE THAN I DID IN ERIK'S HOUSE.

-12135

1 Q. BECAUSE YOU KNEW THAT YOU WEREN'T SUPPOSED
2 TO BE WATCHING THAT TAPE, AND ERIK MENENDEZ WASN'T
3 SUPPOSED TO BE WATCHING THAT TAPE IN THAT HOUSE; IS THAT

4 CORRECT?

5 A. YEAH, THAT MAKES SENSE. I DON'T KNOW IF

6 IT'S CORRECT.

7 Q. WELL, I'M ASKING YOU. YOU WERE THE ONE WHO

8 TOOK THE TAPE AND BROUGHT IT TO YOUR HOUSE; IS THAT

9 CORRECT?

10 A. YES, SIR.

11 Q. AND YOU WERE THE ONE WHO JUST TOLD US IT

12 WAS SAFER TO DO IT IN YOUR HOUSE; IS THAT CORRECT?

13 A. TO MY KNOWLEDGE, YES.

14 Q. NOW WHY, MR. SEMROD, WAS IT SAFER TO DO IT

15 IN YOUR HOUSE?

16 A. BECAUSE IT'S MY HOUSE. I NATURALLY FEEL

17 SAFER IN MY HOUSE THAN HIS HOUSE.

18 Q. WHAT WAS UNSAFE ABOUT HIS HOUSE,

19 MR. SEMROD?

20 A. I GUESS RETRIBUTION WITH MY PARENTS IS A

21 LITTLE MORE COMMONPLACE THAN HAVING TO DEAL WITH IT WITH

22 HIS PARENTS.

23 Q. BECAUSE YOU KNEW YOU AND ERIK MENENDEZ WERE

24 NOT SUPPOSED TO BE WATCHING PORNOGRAPHY IN THE HOUSE,

25 CORRECT?

26 A. WELL, I MEAN, IT WAS LAYING OUT IN THE

27 OPEN. WHETHER OR NOT I KNEW IT WAS OKAY FOR ME TO VIEW

28 IT, I GUESS IT WAS A PERSONAL THING.

1 Q. WHY WOULD YOU BE CONCERNED ABOUT
2 RETRIBUTION FROM MR. MENENDEZ'S PARENTS, MR. SEMROD?

3 A. BECAUSE WE PROBABLY SHOULD NOT HAVE BEEN
4 WATCHING THE TAPE IN HIS HOUSE.

5 Q. NOW, HOW MANY PORNOGRAPHIC TAPES DID YOU
6 SEE?

7 A. JUST THAT ONE.

8 Q. THAT WAS THE ONLY ONE YOU EVER SAW IN HIS
9 HOUSE?

10 A. YES, SIR.

11 Q. IN ALL THE TIME YOU WERE THERE?

12 A. THERE WERE SEVERAL OTHER TAPES. WHETHER OR
13 NOT THEY WERE PORNOGRAPHIC IN NATURE, I AM NOT SURE,
14 BECAUSE I DIDN'T VIEW THEM.

15 Q. SO YOU ONLY KNOW OF ONE PORNOGRAPHIC TAPE
16 IN HIS HOME; IS THAT CORRECT?

17 A. I ONLY WATCHED ONE PORNOGRAPHIC TAPE IN HIS
18 HOME.

19 Q. YOU ONLY KNEW OF ONE; IS THAT CORRECT?

20 A. NO, I DON'T THINK SO.

21 Q. YOU WERE AWARE OF OTHERS?

22 A. THERE WERE SEVERAL OTHER TAPES IN THIS BOX
23 ABOUT YEA BIG (INDICATING), AND TO MY RECOLLECTION THERE
24 WERE OTHER TAPES WITH WOMEN ON THEM. WHETHER THEY WERE
25 PORNOGRAPHIC IN NATURE, I'M NOT SURE.

26 Q. SO YOU ONLY KNEW OF ONE PORNOGRAPHIC TAPE
27 FOR SURE; IS THAT CORRECT?

28 A. YES, SIR.

1 Q. OKAY. AND HOW LONG WAS THAT TAPE IN HIS
2 HOME, TO YOUR KNOWLEDGE?

3 A. I HAVE NO IDEA.

4 Q. COULD HAVE BEEN THERE JUST FOR THAT ONE
5 WEEK; IS THAT CORRECT?

6 A. IT COULD HAVE BEEN.

7 Q. COULD HAVE BEEN THERE JUST FOR THAT ONE
8 DAY; IS THAT CORRECT?

9 A. IT COULD HAVE BEEN.

10 Q. AND HOW LONG DID YOU RETURN IT AFTER YOU
11 TOOK FROM HIS HOME?

12 A. THE FOLLOWING DAY.

13 Q. AND YOU TOOK IT WITHOUT PERMISSION; IS THAT
14 CORRECT?

15 A. WE DID.

16 Q. AND DID YOU WATCH IT WITH ERIK MENENDEZ IN
17 YOUR HOME?

18 A. I DON'T THINK WE REALLY WATCHED IT, BECAUSE
19 IN 7TH GRADE OUR HORMONES DIDN'T DEEM IT NECESSARY TO
20 WATCH THIS PORNOGRAPHIC TAPE. AND, THEREFORE, I THINK
21 IT WAS KIND OF A QUICK VIEW, AND "OH, THIS IS BAD. WE
22 BETTER NOT DO THIS," TYPE SCENARIO.

23 Q. AND SO YOU RETURNED IT WITHOUT WATCHING THE
24 REST OF IT; IS THAT CORRECT?

25 A. YES, SIR.

26 Q. NOW, DID YOU SAY THAT ERIK MENENDEZ
27 PROJECTED THE ILLUSION OF BEING PERFECT?
28 A. HE DID.

-12132

1 Q. AND IN WHAT WAY?
2 A. HE WAS -- HE WAS THE BEST TENNIS PLAYER,
3 LIKE I SAID EARLIER, THAT I KNEW. HE STUDIED
4 DILIGENTLY. HE WAS OFTEN IN THE LIBRARY. HE WAS A
5 TOGETHER PERSON.
6 Q. WHAT DO YOU MEAN BY "A TOGETHER PERSON"?
7 A. I MEAN HE WAS ABLE TO FIT LARGE AMOUNTS OF
8 TIME-CONSUMING THINGS INTO 24 HOURS, WHICH I PROBABLY --
9 WELL, WHICH I DID THINK WAS AMAZING. IT AMAZED ME THAT
10 HE WAS ABLE TO PLAY THREE OR FOUR HOURS OF TENNIS A DAY
11 AND ACCOMPLISH HIS STUDIES AT ONE OF THE FINER SCHOOLS
12 IN NEW JERSEY.
13 A. AND BY A TOGETHER PERSON, DO YOU MEAN THAT
14 IT APPEARED THAT HE WAS MATURE FOR HIS AGE?
15 A. YES. YES AND NO.
16 Q. IN WHAT WAY YES, IN WHAT WAY NO?
17 MS. ABRAMSON: YOUR HONOR, AT THIS POINT I AM
18 GOING TO OBJECT. I THINK THAT'S AN OPINION BEYOND HIS
19 ABILITY TO HAVE FORMED AT THE TIME.
20 THE COURT: WELL, IT'S A REFLECTION ON THE OTHER
21 OPINIONS HE WAS ASKED TO EXPRESS WITHOUT OBJECTION, AND

22 ASKED ON DIRECT EXAMINATION.

23 OVERRULED.

24 THE WITNESS: WELL, HE WAS TOGETHER IN THE SENSE
25 THAT -- AS I STATED EARLIER, HE -- YOU KNOW, HE WAS A
26 GREAT TENNIS PLAYER. HE STUDIED HARD. HE WAS MY
27 FRIEND, MY CHUM.

28 BUT THEN ON THE OTHER HAND HE -- YOU KNOW,

-12131

1 HE WAS FRENETIC. HIS BEHAVIOR WAS FRENETIC. HE HAD A
2 LOT OF ENERGY, LIKE MYSELF, AND --

3 Q. WHAT DO YOU MEAN HE HAD A LOT OF ENERGY?

4 A. I MEAN, IT JUST -- IT'S A PERSONAL THING.

5 I MEAN, IF YOU LOOK AT SOMEONE WHO EXERTS THEMSELF
6 BEYOND THE NORMAL -- NORMAL WAYS OF EXERTING THEMSELF.
7 YOU KNOW; I.E., FOUR HOURS OF TENNIS. YOU KNOW, WE RAN
8 AROUND THE HALLS IN 7TH GRADE TOGETHER. WE WERE TOLD
9 FREQUENTLY TO STOP RUNNING. YOU KNOW, CHUMMING AROUND.
10 RUNNING OUT TO RECESS. WE HAD A LOT OF ENERGY. HE HAD
11 A LOT OF ENERGY.

12 Q. SO YOU SAY IN THAT SENSE HE WAS IMMATURE?

13 A. NO. I AM JUST SAYING THAT THE WHOLE
14 PACKAGE WASN'T THIS MATURE MAN IN THE 7TH GRADE.

15 Q. WELL, MY QUESTION WAS: DID YOU FEEL THAT
16 HE WAS AS MATURE FOR HIS AGE, GIVEN THE FACT THAT YOU
17 WERE WHAT, 14 YEARS OLD AT THE TIME? DID YOU FEEL THAT

18 HE WAS OTHERWISE A NORMAL 14 YEAR-OLD AS FAR AS MATURITY
19 IS CONCERNED?

20 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT, YOUR
21 HONOR. HE HAD NO WAY OF KNOWING WHAT A NORMAL 14
22 YEAR-OLD WAS.

23 THE COURT: REPHRASE THE QUESTION.

24 Q. BY MR. CONN: IN TERMS OF YOUR MATURITY OF
25 YOURSELF AND OTHER PEOPLE THAT YOU ASSOCIATED WITH AT
26 THE AGE OF 14, WAS IT YOUR OPINION THAT ERIK MENENDEZ
27 WAS AS MATURE AS THE REST OF YOU?

28 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT AS

-12130

1 IRRELEVANT, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: I THINK THE MATURE ASPECTS OF ERIK
4 MENENDEZ WHICH I LOOKED UP TO SO MUCH, LIVED VICARIOUSLY
5 THROUGH, WAS THE FACT THAT HE WAS AN INCREDIBLE TENNIS
6 PLAYER.

7 ASIDE FROM HIS TENNIS, I WOULD SAY HE WAS A
8 NORMAL KID.

9 MR. CONN: THANK YOU.

10 NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ANY REDIRECT?

12

13 REDIRECT EXAMINATION

14 BY MS. ABRAMSON:

15 Q. DO YOU REMEMBER DESCRIBING PREVIOUSLY WHAT
16 YOU MEANT BY FRENETIC AS BEING ANXIOUS AND NERVOUS?
17 IS THAT YES?

18 A. YES.

19 Q. THANK YOU.

20 A. UH-HUH.

21 Q. AND IS THAT HOW HE STRUCK YOU, AS BEING
22 ANXIOUS AND NERVOUS AND ENERGETIC IN THAT SENSE?

23 A. YES.

24 Q. AND WHAT -- ISN'T IT TRUE THAT THE OTHER
25 BOYS THAT YOU TALKED ABOUT, DAVID GRAY AND MATT MILLER
26 AND DAVE MRAOVITCH, WERE MUCH MORE SOCIAL AND INTO
27 DATING GIRLS AND GOING TO PARTIES THAN YOU AND ERIK
28 WERE?

-12129

1 A. YES, THEY WERE.

2 Q. AND THAT SOCIALLY ERIK WAS VERY IMMATURE?

3 A. YES.

4 Q. AND WHEN YOU TALKED ABOUT HIM HANGING
5 AROUND WITH THEM, THAT WAS WHAT YOU SAW AT SCHOOL,
6 CORRECT?

7 A. YES.

8 Q. HE SAW THOSE BOYS AT SCHOOL?

9 A. THAT IS IT.

10 Q. AND YOU WERE THE PERSON HE SAW OUT OF

11 SCHOOL?

12 A. YES.

13 Q. BECAUSE THEY HAD A VERY ACTIVE SOCIAL LIFE

14 THAT HE DIDN'T FEEL COMFORTABLE WITH?

15 A. YES.

16 Q. AND HE EXPRESSED THAT TO YOU?

17 MR. CONN: OBJECTION. LEADING.

18 THE COURT: SUSTAINED.

19 Q. BY MS. ABRAMSON: AND DO YOU CONSIDER

20 RUNNING DOWN THE HALLWAYS OF THE SCHOOL YARD AND TRYING

21 OUT CIGARETTES MATURE BEHAVIOR?

22 A. TYPICAL BEHAVIOR.

23 Q. AND WHERE'D YOU GET THE CIGARETTES FROM

24 THAT YOU AND ERIK TRIED OUT?

25 A. ERIK'S FATHER, JOSE.

26 Q. AND ISN'T IT TRUE BOTH OF HIS PARENTS

27 SMOKED?

28 A. YES.

-12128

1 Q. A LOT?

2 A. YES.

3 Q. NOW, CONCERNING MRS. MENENDEZ, DID SHE

4 APPEAR -- WHEN SHE WAS OUT IN PUBLIC AROUND OTHER

5 GROWNUPS AND OVER AT YOUR HOUSE, DID SHE SPEAK MORE

6 SWEETLY AND MORE SOFTLY THAN WHEN SHE WAS ALONE AT HOME

7 GIVING DIRECTION TO HER KID?

8 A. YES.

9 Q. AND SHE WAS VERY LIKEABLE WHEN YOU SAW HER

10 OUT AND ABOUT, WASN'T SHE?

11 A. YES.

12 Q. AND, IN FACT, YOU DIDN'T DISLIKE HER, EVEN

13 WHEN YOU SAW HER AT ERIK'S HOUSE, DID YOU?

14 MR. CONN: OBJECTION. LEADING.

15 THE COURT: SUSTAINED.

16 REPHRASE THE QUESTION.

17 Q. BY MS. ABRAMSON: DID YOU DISLIKE HER WHEN

18 YOU SAW HER AT HIS HOUSE?

19 A. NO.

20 Q. IS IT -- WHAT YOU TESTIFIED TO, YOU NOTICED

21 A DIFFERENCE IN THE WAY SHE TALKED TO HIM WHEN GROWNUPS

22 WEREN'T AROUND?

23 A. YES.

24 Q. DID YOU EVER HEAR HER, WHEN YOU WOULD

25 EITHER BE IN THE CAR WITH THEM OR YOU'D BE OVER AT HIS

26 HOUSE, DID YOU EVER HEAR HER SHOW ANY INTEREST IN: "HOW

27 WAS YOUR DAY, ERIK? HOW ARE YOU FEELING? WHAT DO YOU

28 THINK ABOUT THIS," THOSE KIND OF EXCHANGES?

-12127

1 A. NO.

2 Q. DID YOU EVER HEAR ANYTHING ABOUT A SERIES
3 OF QUESTIONS ABOUT HIS RESPONSIBILITIES TO TENNIS, THAT
4 HE DO SOMETHING?

5 A. NO.

6 MS. ABRAMSON: I HAVE NOTHING FURTHER.

7 THE COURT: ANYTHING ELSE?

8 MR. CONN: YES.

9

10 RECROSS-EXAMINATION

11 BY MR. CONN:

12 Q. YOU'RE NOT SAYING THAT JOSE MENENDEZ GAVE
13 HIS SON CIGARETTES, YOU'RE SAYING THAT HE TOOK THOSE
14 CIGARETTES; IS THAT CORRECT?

15 A. YES.

16 Q. AND YOU NEVER HEARD KITTY MENENDEZ YELL AT
17 ERIK MENENDEZ, AT LEAST NOT IN THE WAY THAT WAS OUT OF
18 THE NORM, DID YOU?

19 A. COULD YOU GIVE ME A BASIS OF THE NORM?

20 Q. WELL, DID YOU PREVIOUSLY MAKE A STATEMENT
21 THAT SHE WOULD YELL AT HIM, BUT NOT ANYTHING OUT OF THE
22 NORM?

23 A. I DID STATE THAT, YES.

24 MR. CONN: ALL RIGHT. THANK YOU.

25 I HAVE NOTHING FURTHER.

26 MS. ABRAMSON: I DID WANT TO GO BACK AND ASK ONE
27 OTHER QUESTION, YOUR HONOR, IF I COULD, ON REDIRECT.

28 THE COURT: ALL RIGHT. SURE.

1 FURTHER REDIRECT EXAMINATION

2 BY MS. ABRAMSON:

3 Q. DID ERIK TELL YOU THERE WERE PORNOGRAPHIC
4 MOVIES IN THE HOUSE?

5 A. HE DID --

6 MR. CONN: OBJECTION. HEARSAY.

7 THE COURT: OVERRULED.

8 THE ANSWER WILL STAND.

9 Q. BY MS. ABRAMSON: AND DID HE POINT TO THIS
10 BOX OF VIDEOS AND TELL YOU THAT THERE WERE PORNO MOVIES
11 IN IT?

12 MR. CONN: OBJECTION. HEARSAY.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES.

15 Q. BY MS. ABRAMSON: AND DID HE TELL YOU THERE
16 WAS MORE THAN ONE?

17 A. YES.

18 Q. AND DID HE TELL YOU HE HAD SEEN THOSE PORNO
19 MOVIES IN HIS OWN HOUSE?

20 A. HE DID.

21 Q. AND DID YOU FEEL UNCOMFORTABLE WATCHING
22 THEM IN HIS HOUSE NOT KNOWING HOW HIS PARENTS WOULD
23 REACT TO YOUR WATCHING THEM?

24 A. THAT'S WHY WE DIDN'T -- AS I WAS REFERRING
25 EARLIER TO HIS QUESTION -- WHY WE DIDN'T WATCH THEM IN
26 HIS HOUSE.

27 Q. DID HE INDICATE TO YOU THAT HIS PARENTS
28 KNEW THAT HE SAW THEM?

-12125

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

2 THE COURT: SUSTAINED.

3 Q. BY MS. ABRAMSON: DID HE EVER TELL YOU WHO
4 HE SAW THEM WITH?

5 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

6 THE COURT: SUSTAINED.

7 MS. ABRAMSON: I HAVE NOTHING FURTHER.

8 MR. CONN: NOTHING FURTHER.

9 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP
10 DOWN. YOU'RE EXCUSED.

11 YOUR NEXT WITNESS.

12 MS. ABRAMSON: MARTHA CANO.

13 SORRY, YOUR HONOR.

14 THE COURT: DO YOU HAVE SOMEONE ELSE?

15 MS. TOWERY: THERE'S BEEN A CHANGE IN PLANS, YOUR
16 HONOR. THE DEFENSE CALLS STEPHEN MOSNER.

17 THE COURT: OKAY.

18

19 STEPHEN MOSNER,
20 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE

23 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
24 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
25 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
26 THE WITNESS: I DO.
27 THE CLERK: PLEASE BE SEATED.
28 PLEASE STATE AND SPELL YOUR NAME FOR THE

-12124

1 RECORD.
2 THE WITNESS: STEPHEN MOSNER WITH A P-H,
3 M-O-S-N-E-R.
4 THE CLERK: THANK YOU.
5 THE COURT: MS. TOWERY.
6 MS. TOWERY: THANK YOU, YOUR HONOR.
7
8 DIRECT EXAMINATION
9 BY MS. TOWERY:
10 Q. MR. MOSNER, WHERE DO YOU LIVE?
11 A. I LIVE IN LAWRENCEVILLE, NEW JERSEY.
12 Q. AND HOW LONG HAVE YOU LIVED IN NEW JERSEY?
13 A. SINCE 1968.
14 Q. AND HAVE YOU BEEN A BOYS' SOCCER COACH IN
15 NEW JERSEY IN THE PAST?
16 A. I HAVE.
17 Q. AND WHEN DID YOU COACH BOYS' SOCCER?
18 A. I COACHED FROM 1972 TO 1983.

19 Q. AND WERE YOU A COACH IN SOME SORT OF A

20 SOCCER LEAGUE? WHERE DID YOU COACH?

21 A. I COACHED IN THE HAMNETT LEAGUE, WHICH HAD

22 TWO DIVISIONS. ONE WAS A HOUSE TEAM IN WHICH ALL BOYS

23 PARTICIPATED IN, AND THEN THE BETTER BOYS IN EACH AGE

24 GROUP WERE ON A COMPETITIVE TEAM THAT PLAYED AGAINST

25 OTHER TEAMS FROM OTHER TOWNS.

26 Q. AND DID YOU -- DID YOU EVER COACH LYLE

27 MENENDEZ IN SOCCER?

28 A. YES, I DID, MA'AM.

-12123

1 Q. ABOUT HOW OLD WAS HE WHEN YOU COACHED HIM?

2 A. HE WAS ANYWHERE FROM NINE TO TWELVE YEARS

3 OLD. I COACHED HIM FOR TWO TO THREE YEARS.

4 MS. TOWERY: I HAVE A PHOTOGRAPH I'D LIKE TO MARK

5 AS NEXT IN ORDER, YOUR HONOR, BUT I DON'T KNOW WHAT THE

6 NUMBER IS.

7 THE COURT: 454.

8 MS. TOWERY: MAY I APPROACH?

9 THE COURT: YES.

10 MS. TOWERY: THANK YOU.

11 Q. MR. MOSNER, I AM GOING TO SHOW YOU A

12 PHOTOGRAPH OF WHAT LOOKS LIKE A BOYS' SOCCER TEAM.

13 HAVE YOU SEEN THAT PHOTOGRAPH BEFORE?

14 A. I HAVE, MA'AM.

15 Q. DO YOU RECOGNIZE THE BOYS IN THE PICTURE?
16 A. YEAH. THIS WAS 90 PERCENT OF THIS -- THESE
17 GUYS WERE ON MY TEAMS AFTER THAT YEAR AND THE NEXT YEAR
18 AFTER THAT, AFTER THIS PICTURE WAS TAKEN.
19 Q. OKAY. I'M NOT QUITE SURE I UNDERSTAND WHAT
20 YOU MEAN.
21 YOU COACHED THESE BOYS THE SAME YEAR OR THE
22 FOLLOWING YEAR?
23 A. THIS PICTURE WAS TAKEN IN 1977. I COACHED
24 THIS GROUP OF BOYS IN 1978 AND 1979.
25 Q. AND THE REASON YOU KNOW THIS PICTURE WAS
26 TAKEN IN 1977 IS BECAUSE IT SAYS "NEW JERSEY STATE YOUTH
27 SOCCER ASSOCIATION STATE CUP CHAMPS 1977"; IS THAT
28 RIGHT?

-12122

1 A. YES, MA'AM.
2 Q. AND THERE IS AN ADULT MALE IN THE PICTURE.
3 IS THAT YOU IN THE PHOTOGRAPH?
4 A. NO, THAT'S -- HE IS THE HEAD OF RECREATION
5 FOR THE TOWNSHIPS. STEVE GROGER IS HIS NAME.
6 Q. ALL RIGHT.
7 AND DO YOU SEE IF LYLE MENENDEZ IS IN THAT
8 PICTURE?
9 A. I DO. FAR LOWER LEFT-HAND CORNER.
10 Q. ALL RIGHT. AND I AM ALSO SHOWING YOU A

11 PICTURE THAT I'VE MARKED AS EXHIBIT 455.

12 DO YOU RECOGNIZE THAT PHOTOGRAPH?

13 A. I DO.

14 Q. AND WHAT IS THAT A PHOTOGRAPH OF?

15 A. THAT'S LYLE MENENDEZ AND THAT'S -- THAT

16 WOULD HAVE BEEN WHAT WE CALL THE HOUSE TEAM. THAT'S NOT

17 THE COMPETITIVE TEAM. THAT'S WHERE ALL KIDS BORN IN

18 THAT YEAR ARE A MEMBER OF THAT LEAGUE.

19 Q. ALL RIGHT. AND CAN YOU TELL THAT BY WHAT,

20 BY THE LOCATION OR --

21 A. BY THE SHIRT.

22 Q. THE SHIRT THAT LYLE MENENDEZ IS WEARING?

23 A. YOU KNOW WHAT, I STAND TO BE CORRECTED.

24 I'M WRONG THERE. THAT IS A COMPETITIVE SHIRT THERE,

25 BECAUSE IT SAYS LAWRENCE HAMNETT. IF IT WAS A HOUSE

26 TEAM, IT WOULD HAVE BEEN A LOCAL BANK OR DELI, OKAY.

27 AND THAT'S A COMPETITIVE TEAM PICTURE.

28 Q. THE JERSEY THAT HE'S WEARING IN THE PICTURE

-12121

1 IS A JERSEY FROM THE ORGANIZATION THAT YOU COACHED?

2 A. YES. YES, MA'AM.

3 Q. DO YOU KNOW IF THIS PICTURE WAS TAKEN AT

4 THE TIME YOU WERE COACHING LYLE MENENDEZ? CAN YOU TELL

5 US FROM THE PHOTOGRAPH?

6 A. I BELIEVE SO. I CAN'T BE SURE.

7 Q. OKAY. THANK YOU.

8 WAS LYLE A GOOD SOCCER PLAYER?

9 A. HE WAS A GREAT SOCCER PLAYER.

10 Q. AND WHEN YOU WERE COACHING HIM, DID HE --

11 DID HE TRY HARD IN TERMS OF HIS EFFORTS IN PLAYING

12 SOCCER?

13 A. HE TRIED -- HE PLAYED HARDER THAN ANYBODY I

14 EVER COACHED. HE GAVE WELL OVER A HUNDRED PERCENT ALL

15 THE TIME.

16 Q. AND CAN YOU DESCRIBE LYLE MENENDEZ'

17 DEMEANOR OR ATTITUDE TOWARDS PLAYING SOCCER AT THAT

18 TIME?

19 A. HE TOOK IT VERY SERIOUSLY. HE PLAYED HARD.

20 HE -- HE PLAYED TO WIN ALL THE TIME.

21 Q. DID HE FOOL AROUND WITH THE OTHER KIDS?

22 DID HE --

23 A. NO.

24 Q. -- PLAY OR GOOF OFF?

25 A. HE WAS MORE OR LESS -- HE WAS ONE OF THE

26 BETTER PLAYERS. HE MAY HAVE BEEN THE BEST PLAYER ON THE

27 TEAM; BUT DEFINITELY ONE OF THE BETTER PLAYERS.

28 BUT HE WAS A LONER. DESPITE THE OTHER GUYS

-12120

1 ON THE TEAM LOOKING UP TO HIM AND REACHING OUT FOR HIM,

2 HE HAD TROUBLE -- HE HAD TROUBLE OPENING UP WITH THEM.

3 HE HAD TROUBLE BECOMING ONE OF THE GUYS ON THE TEAM.

4 Q. HE DIDN'T MINGLE WITH THE OTHER KIDS?

5 A. DIDN'T MINGLE WELL AT ALL.

6 Q. BUT I THINK YOU SAID THE OTHER BOYS ON THE

7 TEAM LOOKED UP TO HIM?

8 A. THEY LOOKED UP TO HIM AND THEY REACHED OUT

9 TO HIM. THEY LIKED HIM. THEY -- THEY WANTED TO BE A

10 PART OF -- YOU KNOW, PART OF HIM, OR TO HANG AROUND WITH

11 HIM.

12 IT WASN'T -- IT WASN'T A -- IT WASN'T A

13 SNOTTISH THING. I JUST THINK HE DIDN'T -- HE TOOK LIFE

14 MORE SERIOUS THAN THEY DID. THEY AT 11, 12 YEARS OLD,

15 THEY TENDED TO FOOL AROUND A LOT, AND HE CAME THERE --

16 HE CAME TO PRACTICE AND HE CAME TO GAMES. ONE THING ON

17 HIS MIND, AND THAT WAS TO PLAY SOCCER AND TO WIN.

18 Q. DID HE SEEM TO HAVE AS MUCH FUN AS THE

19 OTHER KIDS THAT YOU COACHED?

20 A. NO, MA'AM.

21 Q. WHAT ABOUT HIS -- HIS DEMEANOR TOWARDS YOU?

22 HOW DID HE ACT WITH RESPECT TO YOU?

23 A. YOU KNOW, LOOKING BACK, I DEVELOPED GOOD

24 STRONG RELATIONSHIPS WITH A LOT OF MY PLAYERS,

25 ESPECIALLY BETTER PLAYERS, THAT STILL STAND TODAY.

26 I WAS NEVER ABLE TO GET CLOSE TO LYLE. HE

27 NEVER -- WHEN YOU TALKED TO HIM, HE NEVER LOOKED YOU IN

28 THE EYE. HE ALWAYS LOOKED DOWN. HE WAS -- HE WAS VERY

1 RESPECTFUL. I COULD HAVE USED -- YOU WOULD HAVE NEVER
2 LOST IF YOU HAD 11 OF HIM.

3 BUT IT WAS NOT NORMAL FOR AN 11, 12
4 YEAR-OLD KID TO BE THAT -- THAT INTO JUST WINNING AND
5 GOING ABOUT DOING HIS JOB, YOU KNOW. I MEAN, IT WAS --
6 FOR A COACH IT WAS GREAT. IT WAS GREAT. I MEAN, I
7 NEVER HAD TO WORRY ABOUT LYLE. I NEVER HAD TO WORRY
8 ABOUT REPRIMANDING HIM, OR HIM FOOLING AROUND, OR HIM
9 NOT GIVING ME A HUNDRED PERCENT. BUT I NEVER DEVELOPED
10 A CLOSE COACH/PLAYER RELATIONSHIP WITH HIM.

11 Q. WAS HE COURTEOUS TO YOU?

12 A. EXTREMELY. HE WAS ALMOST -- LIKE HE WAS
13 AFRAID OF ME.

14 Q. DID HE APPEAR TO YOU TO BE SHY, OR --

15 A. WITHDRAWN. WITHDRAWN.

16 Q. DID -- DID LYLE MENENDEZ ATTEND ALL OF THE
17 PRACTICES OR GAMES THAT YOU HAD FOR YOUR TEAM?

18 A. ENOUGH. THE ONLY NEGATIVE TO HAVING HIM ON
19 THE TEAM WAS HE FREQUENTLY MISSED GAMES AND PRACTICES
20 DUE TO -- HE HAD A TREMENDOUS SCHEDULE FOR AN
21 11-YEAR-OLD KID. I USED TO HAVE TO TRY AND SCHEDULE
22 THINGS AND TALK TO HIM OR HIS PARENTS, AND HE JUST HAD
23 SO MANY OTHER THINGS THAT TOOK PRECEDENCE OVER SOCCER.
24 I BELIEVE -- IF I REMEMBER RIGHT, SWIMMING, TENNIS.

25 Q. HE HAD OTHER SPORTS ACTIVITIES?

26 A. OTHER SPORTS -- I THINK, TOO, SOME TUTORING
27 MIGHT HAVE BEEN INVOLVED. WE'RE GOING BACK A NUMBER OF

-12118

1 Q. YOUR OVERALL IMPRESSION WAS THAT HE WAS
2 VERY BUSY?

3 A. HE HAD A TREMENDOUS SCHEDULE, AND SOCCER
4 WAS NOT HIS NUMBER ONE -- MIGHT NOT HAVE BEEN -- IT WAS
5 NOT HIS FATHER'S NUMBER ONE PRIORITY FOR HIM TO BE
6 PLAYING.

7 Q. DID YOU EVER MEET LYLE MENENDEZ' FATHER?

8 A. MR. MENENDEZ? MANY TIMES.

9 Q. DID YOU HAVE MUCH PERSONAL INTERACTION WITH
10 HIM, JUST YOU AND MR. MENENDEZ?

11 A. I HAD MUCH, BUT NEVER AT ANY LENGTH. A
12 MINUTE HERE, TWO MINUTES HERE. I PROBABLY NEVER SPOKE
13 TO HIM IN MY LIFE MORE THAN TWO TO THREE MINUTES.

14 Q. BUT YOU DID SEE HIM ON A NUMBER OF
15 OCCASIONS?

16 A. I SAW HIM AT MANY GAMES. HE USED TO COME
17 TO MANY OF THE PRACTICES, TOO.

18 Q. AND DID YOU -- DID YOU OBSERVE ANY UNUSUAL
19 BEHAVIOR ON THE PART OF MR. MENENDEZ WHEN HE ATTENDED
20 THE GAMES?

21 A. HE WAS -- HE WAS MORE VOCAL. SHOWED A LOT
22 MORE MOVEMENT. HE WOULD OFTEN RUN UP AND DOWN THE
23 SIDELINES. OFTEN IT -- DEPENDING ON WHERE -- ALMOST

24 WITH LYLE. WHEREVER LYLE WAS, THAT'S WHERE HE WAS. AND
25 AS LYLE WOULD MOVE, HE WOULD MOVE WITH HIM.
26 Q. HE WOULD RUN UP AND DOWN THE SIDELINES
27 WHILE THE GAME WAS HAPPENING?
28 A. EXACTLY. AND USUALLY WITH LYLE. I MEAN,

-12117

1 IF LYLE WOULD MAKE A RUN, HE WOULD -- YOU KNOW. I MEAN,
2 HE WOULDN'T SPRINT, BUT HE WOULD JOG UP AND DOWN THE
3 SIDELINE SHOUTING INSTRUCTIONS TO HIM.

4 Q. DID THE OTHER PARENTS DO THAT AS WELL,
5 RUNNING ALONG WITH THEIR SONS?

6 A. MOST OF THEM, WHEN IT CAME TO A GAME, THEY
7 STAYED -- IF THEIR SON WOULD CHANGE POSITIONS; FOR
8 EXAMPLE, IF IN THE SECOND HALF YOU WOULD -- THE SON
9 WOULD MOVE FROM A FORWARD TO A FULLBACK, WHICH IS AT THE
10 OPPOSITE END OF THE FIELD, THEY WOULD CHANGE THEIR
11 POSITION THEN. BUT THEY WOULDN'T MOVE WITH THEM AS THEY
12 MOVED DURING THE PROCESS OF THE GAME USUALLY.

13 Q. YOU SAID HE WAS MORE VOCAL, I THINK.

14 WHAT DID YOU MEAN BY THAT?

15 A. HE WOULD YELL. HE HAD ONE FAVORITE
16 EXPRESSION, AND BECAUSE HE WAS CUBAN OR HE WAS LATIN,
17 THAT HE WOULD YELL: "GET THE BALL, LYLE."
18 "GET THE BALL" WAS HIS -- JUST AN
19 EXPRESSION. I JUST REMEMBER HIM ALWAYS SAYING IT OVER

20 AND OVER, AND IT REALLY DIDN'T BOTHER ME, BUT ONE -- I
21 WOULD RATHER -- BECAUSE I TRY TO TEACH -- WHEN YOU TEACH
22 SOCCER, I TRY TO TEACH POSITIONAL PLAYING.
23 LITTLE KIDS CHASE A BALL AROUND LIKE BEES
24 CHASE HONEY, YOU KNOW. BUT AS YOU GET A LITTLE OLDER,
25 YOU PLAY A POSITION AND YOU MAINTAIN -- YOU'RE
26 RESPONSIBLE FOR A POSITION ON THE FIELD, AND NOT TO JUST
27 CHASE THE BALL.
28 Q. OKAY. SO IF I UNDERSTAND YOU CORRECTLY,

-12116

1 MR. MENENDEZ WOULD RUN UP AND DOWN THE SIDELINES AND
2 YELL: "GET THE BALL," TO HIS SON; IS THAT RIGHT?
3 A. YES. "LYLE, GET THE BALL. GET THE BALL."
4 HE WAS LIKE TRYING TO -- I'M NOT EVEN SURE
5 OF THE WORD I WANT TO USE HERE. TRYING TO ENTICE HIM TO
6 GO GET THE BALL WHEREVER IT WAS. YOU KNOW, THE BALL IS
7 WHERE THE ACTION IS.
8 Q. AND THAT WASN'T NECESSARILY WHAT YOU WANTED
9 LYLE TO BE DOING?
10 A. THAT'S NOT THE WAY THE GAME SHOULD BE
11 PLAYED, NO, MA'AM.
12 Q. DID YOU NOTICE ANY SORT OF UNUSUAL BEHAVIOR
13 ON THE PART OF MR. MENENDEZ TOWARDS HIS SON DURING
14 BREAKS IN THE GAME, OR HALF-TIME?
15 A. YEAH. DURING HALF-TIME HE WOULD -- HE

16 WOULD IMMEDIATELY GRAB -- WE PLAYED DURING THE WINTER
17 QUITE A BIT. HE WOULD GRAB LYLE MENENDEZ' SWEATS AND
18 HEAD TO THE FIELD. THE OTHER PLAYERS WOULD COME AROUND
19 TO ME AND I WOULD GIVE THEM ORANGES.

20 AND HALF-TIME AT THAT AGE IS VERY SHORT.

21 YOU DON'T WANT KIDS OUT THERE STANDING AROUND.

22 Q. SO YOU WOULD HAVE THE OTHER KIDS COME IN?

23 A. THEY WOULD COME OVER TO THE SIDELINES AND
24 GET ORANGES. AND HE WOULD GO TOWARDS HIM AND ALMOST
25 GIVE HIM HIS PRIVATE INSTRUCTION, AND HE WOULD USUALLY
26 QUICKLY TOWEL HIM DOWN AND GET SOME SWEATS ON HIM.

27 Q. I'M SORRY, I DIDN'T UNDERSTAND WHAT YOU
28 SAID. "TOWEL HIM DOWN," YOU SAID?

-12115

1 A. TOWEL HIM DOWN. DRY HIM OFF, TOWEL HIM
2 DOWN. GET THE SWEATS ON HIM.

3 AND NO SOONER WAS THAT DONE -- LIKE I SAY,
4 HALF-TIME WAS MAYBE FIVE, SEVEN, EIGHT MINUTES. NO
5 SOONER WAS THAT DONE, IT WAS TIME TO GET THEM OFF.

6 AND I WOULD USUALLY GO OVER INSTRUCTIONS
7 BRIEFLY. MAYBE SHORT, BRIEF INSTRUCTIONS. MAYBE CHANGE
8 SOME POSITIONS, GIVE GUYS WHO HAD PLAYED BACK-- KIDS
9 LIKE TO SCORE. GIVE THEM A CHANCE TO GO UP AND PLAY ON
10 THE OFFENSE SO THEY CAN GET GOALS.

11 Q. SO YOU WOULD BE TALKING TO THE OTHER KIDS

12 ON THE TEAM, AND LYLE WOULD BE OVER WITH HIS FATHER

13 BEING TOWELED AND PUTTING SWEATS ON?

14 A. YEAH, ALMOST LIKE MR. MENENDEZ --

15 MR. CONN: OBJECTION. NO QUESTION PENDING.

16 THE COURT: ALL RIGHT. HE ANSWERED YES.

17 NEXT QUESTION.

18 Q. BY MS. TOWERY: YOU WANTED TO COMPLETE YOUR

19 ANSWER? WAS THERE SOMETHING ELSE THAT CAME TO MIND?

20 A. YEAH. I WOULD SAY ALMOST LIKE MR. MENENDEZ

21 WAS HIS COACH INSTEAD OF ME.

22 Q. DID THE TEAM THAT YOU COACHED ON WHICH LYLE

23 MENENDEZ PLAYED HAVE BOTH HOME AND AWAY GAMES?

24 A. YOU'RE SAYING IT PERFECTLY, YEAH. ABOUT

25 HALF AND HALF.

26 Q. ALL RIGHT. AND HOW DID THE TEAM GET TO THE

27 AWAY GAMES?

28 A. I USED TO TAKE A LOT OF THEM, THE MAJORITY

-12114

1 OF THEM. I HAD A VOLKSWAGEN BUS AT THE TIME, AND YOU

2 KNOW, PART OF THE FUN FOR THE KIDS WAS PILING IN THAT

3 BUS AND GOING. AND YOU KNOW, CUTTING UP ON THE WAY TO

4 THE GAME. YOU KNOW, HAVING FUN, CRACKING JOKES AND --

5 Q. LET ME ASK YOU THIS: DID LYLE MENENDEZ, TO

6 THE BEST OF YOUR RECOLLECTION, EVER RIDE WITH YOU IN

7 YOUR VOLKSWAGEN BUS TO THE AWAY GAMES?

8 A. IF HE DID -- IF HE DID, ONLY ONCE, MAYBE

9 POSSIBLY TWICE. I DON'T HAVE A RECALL IN MIND. I

10 REMEMBER USUALLY HIS FATHER WOULD BRING HIM.

11 Q. HIS FATHER WOULD TAKE HIM TO THE AWAY

12 GAMES?

13 A. YES, MA'AM.

14 Q. AND WHEN YOU -- WHEN YOU WERE COACHING,

15 AFTER THE GAMES WOULD THE KIDS AND THEIR PARENTS TEND TO

16 STAY AROUND AFTER THE GAME WAS OVER AND TALK, OR PLAY

17 WITH THE SOCCER BALL, OR DO WHATEVER PEOPLE DO?

18 A. YEAH. PEOPLE WOULD UNWIND A LITTLE BIT

19 AFTER THE GAME. I MEAN, THEY WOULD UNWIND. WE'D

20 USUALLY TALK BRIEFLY ABOUT -- IF WE WON THE GAME, I

21 WOULD TELL THEM: "GOOD GAME."

22 IF WE LOST THE GAME, I'D TELL THEM: "YOU

23 PLAYED A GOOD GAME. DON'T WORRY ABOUT IT."

24 I DIDN'T JUST WANT TO LEAVE WHEN THE GAME

25 WAS OVER. WE WOULD USUALLY TALK ABOUT WHEN THE NEXT

26 GAME WAS, NEXT PRACTICE WAS, BUT --

27 Q. LET ME ASK YOU THE NEXT QUESTION.

28 DID LYLE MENENDEZ STAY AFTER THE GAMES, TO

-12113

1 THE BEST OF YOUR RECOLLECTION, LIKE THE OTHER PLAYERS?

2 A. ALWAYS THE FIRST ONE OUT. ALWAYS -- I CAN

3 ALMOST PICTURE -- THERE IS A -- ESPECIALLY AT THE HOME

4 GAMES. THE PARKING LOT WAS PROBABLY ABOUT 200 YARDS
5 AWAY ACROSS THE FIELDS, AND I CAN ALMOST TO THIS DAY
6 PICTURE HIS FATHER IN A FRANTIC, HARD, QUICK WALK
7 HEADING TOWARDS THE PARKING LOT WITH LYLE MAYBE 10, 15
8 YARDS BEHIND HIM, YOU KNOW, SCURRYING TO KEEP UP WITH
9 HIM.

10 Q. DID YOU EVER SEE MR. MENENDEZ SHOW ANY
11 REACTION WHEN THE TEAM LOST?

12 A. YEAH, HE BECAME -- HE HAD ENERGY DURING THE
13 GAME, UP AND DOWN THE SIDELINE.

14 HE BECAME SULLEN. HIS BODY LANGUAGE, I
15 GUESS WITH -- THE SHOULDERS WOULD DROOP, HEAD DOWN. HE
16 DIDN'T LIKE -- LIKE I SAID, WE WOULD ALWAYS SAY TO THE
17 KIDS, THERE ALWAYS HAS TO BE A WINNER AND A LOSER TO
18 EVERY GAME. BUT HE TOOK IT HARD. HE TOOK IT SERIOUS.

19 Q. NOW, YOU NEVER HAD ANY CROSS WORDS WITH
20 MR. MENENDEZ YOURSELF?

21 A. NEVER. NEVER. TO ME HE WAS A GENTLEMAN.

22 Q. AND DID YOU NOTICE ANY -- WELL, LET ME ASK
23 YOU THIS:

24 DID YOU EVER SEE MR. MENENDEZ PRAISE LYLE
25 OR CONGRATULATE HIM AFTER LYLE HAD PLAYED WELL IN A
26 GAME?

27 A. I SAW -- LYLE SCORED A LOT OF GOALS. IT
28 WAS -- IF THERE WAS PRAISE, IT WAS VERY SHORT-LIVED. IT

1 WAS -- YOU KNOW, HE SCORED THE GOAL. "GOOD JOB, LYLE."

2 YOU KNOW. "NOW LET'S GET BACK."

3 THAT'S OVER WITH TYPE OF THING IS HOW I

4 FELT -- IS HOW I SAW IT LOOKING BACK ON IT. THAT -- YOU

5 KNOW, HE GAVE HIM HIS 30 SECONDS OR FIVE SECONDS OF

6 PRAISE.

7 Q. AND THEN IT WAS ON TO THE NEXT?

8 A. AND IT WAS ON TO BUSINESS, YOU KNOW.

9 THAT'S BEHIND YOU.

10 Q. WAS LYLE'S ATTITUDE OR DEMEANOR ANY

11 DIFFERENT, THAT YOU NOTICED, WHEN HE WAS AT PRACTICE OR

12 AT A GAME AND HIS FATHER WAS ABSENT, FROM THOSE TIMES

13 WHEN HIS FATHER WAS PRESENT AT THE PRACTICES OR GAMES?

14 A. HE WAS A LITTLE LOOSER. A LITTLE, VERY

15 LITTLE BIT. STILL NOWHERE AS LOOSE AS THE OTHER 11, 12

16 YEAR-OLD KIDS. BUT A LITTLE LOOSER, A LITTLE LESS

17 TENSE.

18 Q. AND THAT'S WHEN HIS FATHER WAS ABSENT?

19 A. WHEN HIS FATHER WASN'T AROUND.

20 Q. DID HE STILL APPEAR TO YOU TO BE NOT HAVING

21 ENOUGH FUN, EVEN WHEN HIS FATHER WAS NOT PRESENT?

22 A. HE WAS STILL ALL BUSINESS. HE WAS STILL --

23 LIKE I SAID, HE WAS -- MIGHT BE SAD TO SAY -- BUT HE WAS

24 AN IDEAL PLAYER FOR 11 OR 12. I PROBABLY WOULD HAVE

25 STAYED AROUND COACHING FOREVER IF -- IT WOULDN'T HAVE

26 BEEN AS MUCH FUN, BUT I PROBABLY WOULD HAVE WON A LOT

27 MORE GAMES IF I HAD A LOT OF LYLES OUT THERE.

28 Q. FROM YOUR OBSERVATIONS, DID JOSE MENENDEZ

1 SEEM TO BE PROUD OF HIS SON, LYLE?

2 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

3 THE COURT: SUSTAINED.

4 THE WITNESS: THAT WAS A HARD ANSWER ANYWAY.

5 THE COURT: WELL, YOU DON'T HAVE TO ANSWER IT.

6 MS. TOWERY: I HAVE NOTHING FURTHER, YOUR HONOR.

7 THE COURT: CROSS-EXAMINATION?

8

9 CROSS-EXAMINATION

10 BY MR. CONN:

11 Q. MR. MOSNER, WOULD YOU DESCRIBE JOSE

12 MENENDEZ AS A POLITE MAN?

13 A. TO ME HE WAS POLITE.

14 Q. AND WOULD YOU DESCRIBE HIM AS A NICE MAN

15 WHO WANTED THE BEST FOR HIS SONS?

16 A. I THINK ON THE SURFACE IT APPEARED THAT

17 WAY.

18 Q. AND THAT'S ALL YOU KNEW HIM ON WAS THE

19 SURFACE; IS THAT CORRECT?

20 A. NO. I THINK PEOPLE, WHEN YOU'RE AROUND

21 THEM ENOUGH -- I WAS AROUND HIM FOR TWO OR THREE

22 YEARS -- ENOUGH THAT I THINK YOU CAN KNOW THEM A LITTLE

23 BEYOND THE SURFACE.

24 Q. NOW, DID YOU SEE THAT -- DID JOSE MENENDEZ

25 SHOW A GREATER INTEREST IN THE GAME THAN OTHER PARENTS?

26 A. HE SHOWED A GREATER INTEREST IN HIS SON, I
27 THINK, THAN OTHER PARENTS. HIS FOCAL POINT WAS STRICTLY
28 AROUND LYLE.

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1 Q. BUT YOU'RE SAYING HE SHOWED A GREATER
2 INTEREST IN HIS SON THAN OTHER PARENTS SHOWED IN THEIR
3 SONS; IS THAT CORRECT?

4 A. I'M SAYING THAT HIS FOCUS, AS FAR AS SOCCER
5 WAS INVOLVED, WAS AROUND LYLE; WHERE OTHER PARENTS, I
6 THINK, UNDERSTOOD THAT IT WAS A TEAM MORE, AND THEY
7 SHOWED INTEREST IN THE TEAM AS A WHOLE, WHERE ESPECIALLY
8 IF THEY -- THERE WERE MAYBE 80 KIDS WOULD GO OUT FOR 14
9 SPOTS ON THIS COMPETITIVE TEAM. AND IF THEIR SON MADE
10 THE COMMITMENT TO TRY OUT FOR THAT TEAM AND TO MAKE THAT
11 TEAM, THAT THE TEAM -- THE TEAM HAD SOME PRIORITY IN
12 THEIR LIFE.

13 Q. WELL, WHAT I'M ASKING YOU IS WHETHER HE --
14 BY THE AMOUNT OF TIME THAT HE INVESTED, WHETHER IT'S IN
15 THE GAME OR WHETHER IT'S IN HIS SON, DID YOU FIND THAT
16 HE WAS UNUSUAL IN THAT HE INVESTED A LOT MORE TIME IN
17 THAT?

18 A. NOT UNUSUAL. I MEAN, THERE WERE PARENTS
19 THAT NEVER MISSED A GAME. I COACHED THOUSANDS OF BOYS
20 WHO HAD THOUSANDS OF PARENTS, AND YOU'RE ASKING ME TO
21 WEIGH HIM MORE UNUSUAL THAN THOUSANDS OF OTHERS.

22 Q. OKAY. DID YOU PREVIOUSLY GIVE A
23 STATEMENT -- A TELEPHONIC STATEMENT IN 1992 IN WHICH YOU
24 SAID: "HE WAS THE ONLY FATHER WHO CAME TO EVERY
25 PRACTICE"?

26 A. SEE, I READ THAT, AND THAT'S A
27 MISSTATEMENT, AND I TOLD THE LAWYERS.

28 Q. YOU TOLD WHAT LAWYERS?

-12109

1 A. I TOLD -- I BELIEVE I TOLD PAUL MONES YEARS
2 AGO WHEN I READ THAT.

3 Q. WHO WAS PAUL MONES?

4 A. HE WAS THE GENTLEMAN -- THE FIRST GENTLEMAN
5 THAT INTERVIEWED ME OVER THE PHONE BACK IN WHATEVER YEAR
6 THIS ALL STARTED.

7 Q. WELL, WOULD YOU SAY THAT --

8 A. HE -- WHAT I DID -- CAN I SAY WHAT I DID
9 SAY TO HIM?

10 MS. TOWERY: OBJECTION.

11 THE COURT: THERE IS AN OBJECTION?

12 MS. TOWERY: I'LL WITHDRAW IT.

13 Q. BY MR. CONN: YOU SAY THAT THAT STATEMENT
14 IS INCORRECT; IS THAT CORRECT?

15 A. THAT STATEMENT IS NOT COMPLETELY ACCURATE.

16 Q. OKAY.

17 Q. DID YOU TESTIFY UNDER OATH THAT HE WAS ONE

18 OF THE FEW FATHERS WHO ATTENDED PRACTICES?

19 A. I DID TESTIFY TO THAT.

20 Q. SO MOST FATHERS DIDN'T EVEN ATTEND THE
21 PRACTICES; IS THAT CORRECT?

22 A. NO, BECAUSE MOST FATHERS, THE PRACTICES
23 WERE USUALLY AT 3:00 AND 5:00 O'CLOCK IN THE AFTERNOON.
24 I IMAGINE MOST FATHERS -- A LOT OF FATHERS WERE WORKING.

25 Q. OR DIDN'T MAKE TIME; IS THAT CORRECT?

26 A. I WOULDN'T SAY THEY DIDN'T MAKE TIME. I --

27 Q. ALL YOU KNOW IS THAT THEY DIDN'T SHOW UP;
28 IS THAT RIGHT?

-12108

1 A. I THINK I KNOW MORE THAN THAT.

2 Q. AND MR. MENENDEZ DID ATTEND MORE PRACTICES
3 THAN ANY OTHER PARENTS; IS THAT CORRECT?

4 A. YES, HE DID.

5 Q. AND HE ALSO STAYED LONGER AT THOSE
6 PRACTICES; IS THAT CORRECT?

7 A. HE STAYED THE WHOLE -- WHEN HE WOULD BRING
8 LYLE -- IF HE BROUGHT LYLE TO THE PRACTICE, HE WOULD
9 STAY UNTIL THE PRACTICE WAS OVER.

10 Q. AND THAT WAS ANOTHER THING THAT
11 DISTINGUISHED HIM FROM OTHER PARENTS, BECAUSE NOT ONLY
12 DID HE ATTEND MORE PRACTICES THAN ANY OTHER PARENTS, HE
13 ALSO STAYED LONGER; IS THAT CORRECT?

14 A. THAT IS CORRECT.

15 Q. AND WHILE HE WAS IN ATTENDANCE, HE WAS ALSO
16 MORE ACTIVE THAN ANY OTHER PARENTS; IS THAT CORRECT?

17 A. IN WHAT WAY?

18 Q. WELL, IN HIS PARTICIPATION OF RUNNING UP
19 AND DOWN THE SIDELINES, MORE ENTHUSIASTIC.

20 A. THAT DIDN'T HAPPEN IN PRACTICE. THAT
21 HAPPENED IN GAMES.

22 Q. OKAY. DURING THE PRACTICE WHAT DID HE DO?

23 A. HE BASICALLY STOOD THERE AND WATCHED. I
24 MEAN, PRACTICES -- PRACTICES WITH 10-YEAR-OLD KIDS IN
25 SOCCER IS NOT THAT INVOLVED.

26 Q. AND THEN YOU SAID THAT DURING THE GAME HE
27 WOULD TAKE A TOWEL AND WIPE THE SWEAT OFF HIS SON; IS
28 THAT CORRECT?

-12107

1 A. YES, SIR.

2 Q. IS THAT SOMETHING THAT ALL THE PARENTS DID?

3 A. NO.

4 Q. THAT WAS ANOTHER THING THAT DISTINGUISHED
5 HIM FROM OTHER PARENTS?

6 A. YES.

7 Q. AND THE SOCCER OUTFIT CONSISTED OF SHORTS
8 AND A SHIRT, EVEN IN THE WINTERTIME?

9 A. IF IT WAS REAL COLD THEY WERE ALLOWED TO

10 WEAR SWEATS.

11 Q. BUT NORMALLY IT'S A SHORT-SLEEVED SHIRT AND
12 A PAIR OF SHORTS?

13 A. IN THE WINTERTIME IT'S A LONG-SLEEVED
14 SHIRT.

15 Q. IN THE SUMMER TIME A SHORT-SLEEVED SHIRT
16 AND SHORTS?

17 A. YES, SIR.

18 Q. AND WOULD HE WIPE THE SWEAT OFF HIM BOTH
19 DURING THE BREAK AND AFTER THE PRACTICE?

20 A. NOT AFTER. AFTER PRACTICE IT WAS ADIOS.

21 Q. DID YOU PREVIOUSLY TESTIFY THAT HE WOULD
22 TOWEL HIM DOWN AT HALF-TIME AND AFTER THE GAME?

23 A. NOT TO MY RECOLLECTION. HE WOULD PUT HIS
24 SWEATS -- HE WOULD PUT HIS SWEATS ON AT HALF-TIME.
25 AFTER THE GAME THEY WERE USUALLY GOING SO QUICKLY.

26 MR. CONN: OKAY. DIRECTING COUNSEL'S ATTENTION
27 TO VOLUME 75, PAGE 12,627.

28 MS. TOWERY: LINES, PLEASE.

-12106

1 MR. CONN: LINES 8 THROUGH 24.

2 WELL, STARTING WITH QUESTION AT LINE 6.

3 MS. TOWERY: EIGHT THROUGH 24? THAT'S FINE.

4 Q. BY MR. CONN:

5 "QUESTION: DID YOU SEE HIM

6 PHYSICALLY DO ANYTHING IN RELATION TO LYLE
7 MENENDEZ DURING THE HALF-TIMES?
8 "ANSWER: I DID. HE WOULD -- HE
9 WOULD RIGHT AWAY, WHEN THE WHISTLE BLEW
10 FOR THE HALF-TIME, HE WOULD HEAD RIGHT FOR
11 LYLE. THE TEAM WOULD COME TOWARD ME. HE
12 WOULD HEAD LYLE OFF WITH A TOWEL. IF IT'S
13 COLD OUT -- WE PLAYED THERE IN THE
14 WINTER -- POSSIBLY SOME SWEATS. PUT THEM
15 ON HIM, DRY HIM OFF.
16 HE ACTUALLY -- HE ACTUALLY --
17 THIS IS A LITTLE CRUDE TO SAY, BUT HE
18 ACTUALLY TREATED LYLE ALMOST LIKE HE WAS A
19 THOROUGHbred RACEHORSE THE WAY THAT HE
20 WOULD TOWEL HIM OFF -- AND AFTER THE GAME.
21 AFTER THE GAME IT WAS MORE OF A QUICK
22 THING. 'LET'S GET YOU OUT OF HERE AS
23 QUICK AS POSSIBLE.' OFTEN THE PLAYERS AND
24 THE FAMILIES WOULD STAY AROUND, PLAY
25 AROUND FOR A HALF HOUR AFTER THE GAME, 45
26 MINUTES. BUT THE MENENDEZ FAMILY WAS OUT
27 OF THERE AS QUICKLY AS POSSIBLE."
28 A. THAT'S JUST WHAT I JUST SAID, CORRECT?

-12105

1 Q. OKAY. MY QUESTION WAS ABOUT WHETHER HE

2 WOULD TOWEL HIM DOWN AFTER THE GAME.

3 DO YOU RECALL TESTIFYING THAT HE WOULD

4 TOWEL HIM OFF AT HALF-TIME OR AFTER THE GAME?

5 A. I DON'T RECALL TESTIFYING AFTER THE GAME HE

6 TOWELLED HIM DOWN. I RECALL THAT THEY EXPLODED OUT OF

7 THERE QUICKLY AFTER THE GAME.

8 Q. WAS THIS THE TESTIMONY FROM THE FIRST

9 TRIAL, TO THE BEST OF YOUR RECOLLECTION?

10 A. THAT YOU JUST READ? IT'S GOT TO BE.

11 Q. AND NOW WHEN HE WOULD PUT THE SWEATS ON HIM

12 DURING THE HALF-TIME, WAS HE THEN PERMITTED TO KEEP THE

13 SWEATS ON FOR THE REMAINDER OF THE PRACTICE OR FOR THE

14 GAME?

15 A. YEAH. YOU'RE MIXING GAMES AND PRACTICES

16 UP. MY TESTIMONY THERE WAS ALL IN THE GAMES, OKAY? IN

17 PRACTICES THEY WOULD WEAR SWEATS BASICALLY THE WHOLE

18 TIME, IF THEY WANTED TO. HALF-TIME WAS VERY SHORT. BY

19 THE TIME HE TOWELLED HIM DOWN, GOT ON HIS SWEATS, IT WAS

20 TIME TO TAKE OFF THE SWEATS ALMOST.

21 Q. SO EVEN THOUGH LYLE MENENDEZ WAS ONLY ABLE

22 TO KEEP THE SWEATS ON FOR FIVE MINUTES OR SO --

23 A. IF THAT.

24 Q. IF --

25 MS. ABRAMSON: OBJECTION.

26 Q. BY MR. CONN: -- LYLE MENENDEZ WAS ABLE TO

27 KEEP ON THE SWEATS FOR EVEN LESS THAN FIVE MINUTES, JOSE

28 MENENDEZ WOULD SEE TO IT THAT HIS SON WORE SWEATS DURING

1 THE BREAK; IS THAT CORRECT?

2 MS. TOWERY: OBJECTION. ARGUMENTATIVE.

3 THE COURT: REPHRASE THE QUESTION.

4 Q. BY MR. CONN: ARE YOU SAYING THAT --

5 WELL --

6 A. MAYBE I CAN HELP YOU. I'M SAYING --

7 MS. TOWERY: OBJECTION. NO QUESTION PENDING.

8 THE COURT: WAIT FOR THE QUESTION.

9 THE WITNESS: OKAY.

10 Q. BY MR. CONN: DURING THE GAME, HOW LONG WAS
11 THE BREAK?

12 A. ANYWHERE FROM A MINIMUM OF FIVE MINUTES TO
13 A MAXIMUM OF 10.

14 Q. OKAY. SO THE BREAK WAS ALWAYS FOR A SHORT
15 PERIOD OF TIME; IS THAT CORRECT?

16 A. YES, SIR.

17 Q. AND AFTER THE BREAK, EVERYONE ALWAYS HAD TO
18 GO BACK ON THE FIELD WITHOUT SWEATS; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. AND IT'S YOUR TESTIMONY THAT LYLE MENENDEZ
21 ALWAYS HAD TO RETURN TO THE FIELD WITHOUT SWEATS, YOU
22 WOULD STILL SEE JOSE MENENDEZ DURING THE BREAK MAKING
23 SURE THAT HIS SON HAD SWEATS ON DURING THE BREAK; IS
24 THAT CORRECT?

25 MS. TOWERY: OBJECTION. ARGUMENTATIVE.

26 THE COURT: OKAY. WITHOUT THE REFERENCE TO

27 MAKING SURE, JUST THAT HE WAS PUTTING ON HIS SWEATS AND
28 TAKING THEM OFF, WHAT IS YOUR ANSWER?

-12103

1 THE WITNESS: IF YOU PUT IT LIKE YOUR HONOR PUT
2 IT, YES. MY ANSWER IS YES.

3 Q. BY MR. CONN: OKAY. AND THIS IS ALSO
4 SOMETHING THAT DISTINGUISHED JOSE MENENDEZ FROM OTHER
5 PARENTS; IS THAT CORRECT?

6 A. YES.

7 MR. CONN: ALL RIGHT. THANK YOU, SIR.

8 THE COURT: ANY REDIRECT?

9 MS. TOWERY: JUST A COUPLE QUESTIONS, YOUR HONOR.

10

11 REDIRECT EXAMINATION

12 BY MS. TOWERY:

13 Q. MR. MOSNER, YOU SAID THAT YOUR STATEMENT
14 THAT YOU GAVE TO THE PERSON WHO INTERVIEWED YOU SEVERAL
15 YEARS AGO, AT LEAST THE STATEMENT THAT THAT PERSON WROTE
16 DOWN, WAS INCORRECT REGARDING WHETHER OR NOT JOSE
17 MENENDEZ CAME TO EVERY PRACTICE?

18 A. YES. YES, MA'AM.

19 Q. AND YOU WERE UNABLE TO CLARIFY WHAT YOU
20 REALLY SAID.

21 WHAT DID YOU REALLY SAY?

22 A. I SAID HE CAME TO MANY OF THE PRACTICES,

23 NOT ALL. AND WHEN I SAY MANY, PROBABLY NOT EVEN HALF.

24 PROBABLY MAYBE 10, 15, 20 PERCENT OF THEM.

25 Q. OKAY. DO YOU REMEMBER LYLE MENENDEZ EVER
26 GOING FOR PIZZA WITH THE TEAM AFTER THE TEAM LOST?

27 A. I USED TO TAKE THEM TO BURGER KING AND
28 PIZZA A LOT. I CAN'T RECALL HIM EVER COMING. HE MAY

-12102

1 HAVE COME, THOUGH. I CAN'T RECALL HIM EVER COMING WITH
2 THE TEAM, NO.

3 Q. AND LAST, THE PORTION OF YOUR PRIOR
4 TESTIMONY THAT MR. CONN READ, IN THERE YOU SAID THAT
5 MR. MENENDEZ TREATED LYLE LIKE A THOROUGHBRED RACEHORSE.
6 WHAT DID YOU MEAN BY THAT?

7 A. HE TREATED HIM MORE LIKE PROPERTY THAN A
8 SON.

9 MS. TOWERY: THANK YOU.

10 I HAVE NOTHING FURTHER.

11 THE COURT: ANYTHING ELSE?

12 MR. CONN: YES.

13

14 RECROSS-EXAMINATION

15 BY MR. CONN:

16 Q. YOU PREVIOUSLY DESCRIBED JOSE MENENDEZ AS
17 TREATING LYLE MENENDEZ LIKE A VALUABLE PRODUCT; IS THAT
18 CORRECT?

19 MS. TOWERY: OBJECTION. HEARSAY.
20 THE COURT: OVERRULED.
21 MS. TOWERY: IMPROPER IMPEACHMENT.
22 THE COURT: OVERRULED.
23 THE WITNESS: CAN YOU REPEAT THE QUESTION? I'M
24 SORRY.
25 MR. CONN: YES.
26 Q. DID YOU PREVIOUSLY DESCRIBE JOSE MENENDEZ
27 AS TREATING HIS SON, LYLE, LIKE A VALUABLE PRODUCT?
28 A. PRODUCT OR PROPERTY?

-12101

1 Q. PRODUCT?
2 A. I MAY HAVE SAID THAT. I COULD HAVE -- I
3 COULD SEE MYSELF SAYING THAT. I MAY HAVE SAID IT.
4 Q. AND THAT IS BECAUSE IT APPEARED TO YOU THAT
5 LYLE MENENDEZ WAS VALUABLE TO HIS FATHER; IS THAT
6 CORRECT?
7 MS. TOWERY: OBJECTION. CALLS FOR AN IMPROPER
8 CONCLUSION.
9 THE WITNESS: THAT'S NOT HOW I SAW IT.
10 THE COURT: OVERRULED.
11 Q. BY MR. CONN: WHY DID YOU USE THE WORD
12 "VALUABLE", MR. MOSNER?
13 A. VALUABLE, BECAUSE IT WAS MORE LIKE A
14 POSSESSION. AN ANTIQUE CAR, A THOROUGHBRED RACEHORSE.

15 I FAILED TO SEE -- I FAILED TO SEE THE -- A
16 COMPANIONSHIP AND A LOVE THAT I SAW BETWEEN OTHER
17 FATHERS AND SONS. I SAW ALMOST LIKE -- LIKE A -- LIKE
18 LYLE WASN'T VALUED AS A CHILD, HE WAS VALUED AS -- AS --
19 I DON'T WANT TO SAY PRODUCT. AS -- AS SOMETHING I OWN.
20 Q. ALL YOU COULD TELL, MR. MOSNER, WAS THAT IT
21 APPEARED THAT HE WAS VALUABLE TO HIS FATHER; IS THAT
22 CORRECT?
23 A. NO, THAT'S NOT CORRECT.
24 Q. WELL, WHY IS THAT NOT CORRECT, MR. MOSNER?
25 A. WHY IS IT NOT? BECAUSE HE DIDN'T APPEAR --
26 BECAUSE I THINK MOST KIDS ARE VALUED BY THEIR PARENTS.
27 I COACHED THOUSANDS OF KIDS. I SAW THOUSANDS OF
28 FATHER/SON RELATIONSHIPS, AND THEY WERE DIFFERENT, AND I

-12100

1 WOULD SAY THAT THE OTHER ONES I SAW WERE VALUED.
2 Q. WHY DID YOU USE THE WORD THAT IT WAS AS IF
3 JOSE MENENDEZ WAS SAYING: "THIS, MY SON, IS A VALUABLE
4 PRODUCT"?
5 A. WHY DID I USE THAT? BECAUSE THOSE WERE THE
6 WORDS THAT CAME TO MY MIND AT THAT TIME, SIR.
7 MR. CONN: THANK YOU.
8 I HAVE NOTHING FURTHER.
9 THE COURT: ANYTHING ELSE?
10 MS. TOWERY: NO.

11 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.
12 YOU ARE EXCUSED.
13 THE WITNESS: THANK YOU, YOUR HONOR.
14 THE COURT: WE WILL TAKE OUR RECESS. WE WILL
15 RESUME AT 20 MINUTES AFTER 3:00.
16 DON'T DISCUSS THE MATTER. DON'T FORM ANY
17 FINAL OPINIONS ABOUT IT. SEE YOU BACK HERE AT 20
18 MINUTES AFTER 3:00.
19 (AT 3:05 P.M. A RECESS WAS
20 TAKEN UNTIL 3:20 P.M.)

53437

1 THE COURT: ARE WE READY WITH THE NEXT
2 WITNESS?
3 MS. ABRAMSON: YES, YOUR HONOR.
4 THE COURT: OKAY. LET'S GET THE JURY OUT,
5 PLEASE.
6 (THE JURY ENTERED THE COURTROOM
7 AND THE FOLLOWING PROCEEDINGS
8 WERE HELD:)
9
10 THE COURT: THE JURY IS BACK IN THE JURY
11 BOX.
12 THE DEFENSE MAY CALL ITS NEXT WITNESS.
13 MS. ABRAMSON: THANK YOU, YOUR HONOR.
14 CALL MARTA CANO.
15

16 MARTA CANO,
17 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
18 SWORN, AND TESTIFIED AS FOLLOWS:
19 THE CLERK: RAISE YOUR RIGHT HAND TO BE
20 SWORN.
21 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
22 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
23 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
24 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
25 THE WITNESS: I DO.
26 THE CLERK: PLEASE TAKE THE STAND AND STATE
27 YOUR NAME FOR THE RECORD.
28 THE WITNESS: SURE. MY NAME IS MARTA,

53438

1 M-A-R-T-A, MENENDEZ, CANO, C-A-N-O.
2
3 DIRECT EXAMINATION
4 BY MS. ABRAMSON:
5 Q MRS. CANO, YOU TESTIFIED IN THE GUILT
6 PHASE OF THIS CASE, AND I'M NOT GOING TO HAVE YOU
7 REPEAT THAT TESTIMONY.
8 BUT I WANT TO FOCUS YOUR ATTENTION ON
9 OBSERVATIONS THAT YOU MADE OVER THE YEARS, AND
10 PARTICULARLY FROM THE PERIOD OF 1979 ON, WHEN YOUR

11 FAMILY MOVED TO NEW JERSEY, CONCERNING WHAT YOU SAW
12 WAS THE TREATMENT OF ERIK AND LYLE MENENDEZ BY THEIR
13 PARENTS.

14 OKAY?

15 A YES.

16 Q WAS THIS SOMETHING, IN GENERAL, THE WAY
17 THAT KITTY AND JOSE TREATED THE BOYS, THAT WAS OF
18 CONCERN TO YOU?

19 A DEFINITELY.

20 Q AND WHY WAS IT AN AREA OF CONCERN TO
21 YOU?

22 A BECAUSE I FOUND A LOT OF INSENSIVITY, A
23 LOT OF HARDSHIP, CRUELTY, THE WAY THEY WERE TREATED.

24 Q CRUELTY BY WHOM TOWARDS WHOM?

25 A BY BOTH OF THE PARENTS, THE WAY THEY
26 ADDRESSED THE TWO BOYS.

27 Q AND DID YOU SEE, OVER THE YEARS,
28 ANYTHING THAT YOU CONSIDERED TO BE A SIGN OF GENUINE

53439

1 AFFECTION BY EITHER PARENT TO EITHER CHILD?

2 A WHAT I CALL AFFECTION? NO.

3 Q DO YOU RECALL HEARING TESTIMONY RIGHT
4 HERE THAT YOUR SISTER-IN-LAW AND YOUR BROTHER WOULD
5 KISS THE KIDS ON THE CHEEK?

6 A RIGHT.

7 Q WHAT DOES THAT MEAN TO YOU?

8 MR. CONN: OBJECTION.

9 THE WITNESS: WELL --

10 MR. CONN: IRRELEVANT AS TO WHAT --

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: DOES THIS HAVE A

13 CULTURAL SIGNIFICANCE TO YOU CONCERNING YOUR FAMILY,

14 INCLUDING YOUR BROTHER, AND HOW YOU WOULD GREET EACH

15 OTHER RITUALISTICALLY?

16 A YES. IT'S VERY CUBAN.

17 Q AND DOES IT CONVEY AFFECTION, OR IS IT

18 SIMPLY A --

19 A NO. IT'S JUST SAYING HELLO. YOU JUST

20 PUT THE CHECK AGAINST THE OTHER PERSON AND JUST

21 THROW A KISS, AND THAT'S LIKE HELLO. INSTEAD OF

22 SHAKING HANDS WE DO THAT.

23 Q LIKE A HOLLYWOOD KISS, AN AIR KISS?

24 A IT'S CHEEKS TOGETHER, BUT THE KISS IS

25 THROWN OUT, YES.

26 Q DID YOU EVER SEE THAT BEHAVIOR, BY THE

27 WAY, BETWEEN JOSE MENENDEZ AND HIS SONS?

28 A YES. WE ALL DID IT.

1 Q DID YOU IN YOUR FAMILY -- IN ADDITION TO
2 DOING THAT, DID YOU DO SOMETHING ELSE WHEN YOU
3 GREATED PEOPLE YOU CARED ABOUT?

4 A YES, I DID.

5 Q WHAT DID YOU DO?

6 A I HELD THEM BY THE SHOULDERS, AND I GAVE
7 THEM A REAL KISS. I DIDN'T DO THAT TO MY CHILDREN.
8 I DID IT TO THE OUTSIDERS.

9 Q AND DID YOU EVER SEE YOUR SISTER-IN-LAW
10 HUG HER CHILDREN OR GIVE THEM A REAL KISS?

11 A NO.

12 Q DID YOU EVER SEE YOUR BROTHER HUG HIS
13 CHILDREN OR GIVE THEM A REAL KISS?

14 A NO. HE WOULD PUT HIS ARM AROUND THEM
15 OFTEN, WHEN HE WAS TALKING TO THEM, BUT THAT'S ABOUT
16 THE EXTENSION (SIC) OF IT.

17 Q WAS THAT A SIGN OF AFFECTION, OR WAS
18 THAT A WAY TO CONTROL THEM?

19 A THAT WAS A WAY TO TALK CLOSE TO THEM.

20 Q TO HOLD THEM CLOSE WHILE HE TALKED?

21 A UH-HUH.

22 Q DID YOU SEE HIM, IN FACT, WHEN HE WOULD
23 TALK TO HIS CHILDREN ONE-ON-ONE, DO SOMETHING TO
24 COMMAND THEIR ATTENTION?

25 A YES. JOSE ALWAYS DID THAT.

26 Q WHAT DID HE DO?

27 A JOSE WOULD LOOK STRAIGHT INTO YOUR EYES
28 WITH A VERY BEAM LOOK AND GIVE YOU HIS THOUGHT,

1 WHATEVER IT WAS. THAT WAS HIS STYLE TO EVERYBODY.

2 Q AND OVER THE YEARS DID YOU SEE HOW HIS
3 CHILDREN REACTED WHEN HE DID THAT?

4 A YES.

5 Q AND HOW DID THEY REACT?

6 A THEY WOULD LOOK DOWN.

7 Q WELL, DID YOU SEE THE LOOK IN HIS EYES
8 ON OCCASIONS WHEN HE WOULD TALK TO THE CHILDREN BE
9 QUITE INTIMIDATING?

10 A IT WAS ALWAYS INTIMIDATING, EVEN TO
11 OTHER PEOPLE.

12 Q NOW, YOU SAID YOU SAW A LOT OF
13 INSENSIVITY.

14 WITH RESPECT TO YOUR -- FIRST OF ALL,
15 WERE YOU FRIENDS WITH KITTY MENENDEZ?

16 A VERY MUCH SO.

17 Q DID YOU LIKE HER?

18 A YES, I DID.

19 Q DID YOU APPROVE OF THE WAY SHE TREATED
20 THE BOYS?

21 A NO, I DID NOT. AND I DID TELL HER THAT.

22 Q AND DID SHE APPEAR TO BE INSENSITIVE TO
23 A VARIETY OF THEIR NEEDS?

24 A YES.

25 Q AND IN WHAT WAYS DID SHE SHOW YOU HER

26 INSENSIVITY?

27 A MANY WAYS. WHEN THEY WERE SICK, FOR

28 EXAMPLE, SHE THOUGHT IT WAS NOT A BIG DEAL TO BE

53442

1 SICK. I MEAN, EVERYBODY GETS SICK AND EVERYBODY

2 GETS CURED. SO IT DIDN'T MATTER.

3 SHE DID NOT EVEN CATER EVEN MEDICINE TO

4 THEM. THEY WERE SUPPOSED TO GET IT THEMSELVES.

5 THEY WERE SUPPOSED TO MAKE THEIR DINNER THEMSELVES.

6 Q LET'S STAY WITH SICK FOR A MOMENT.

7 WHEN THEY WOULD BE SICK, ARE YOU TALKING

8 ABOUT JUST A LITTLE COLD, OR ARE YOU TALKING ABOUT

9 ILLNESSES WHERE THEY RAN HIGH FEVERS?

10 A I'M TALKING ABOUT HIGH FEVERS. I'M

11 TALKING WITH STOMACH VIRUSES. THEY WOULD BE

12 THROWING UP, GOING TO THE BATHROOM TO THROW UP BY

13 THEMSELVES, AND COME BACK, AND THEY WERE NOT EVEN

14 ASKED "ARE YOU OKAY? CAN I GIVE YOU SOMETHING, OR

15 SOME ALCOHOL TO SMELL," OR THINGS I DID. WE'RE

16 TALKING HERE YOUNG KIDS. I MEAN, AGES 7 TO 14. YOU

17 JUST DON'T LET THEM BE.

18 Q WAS THERE AT LEAST ONE OCCASION THAT YOU

19 WERE PERSONALLY AWARE OF WHERE SHE WOULD LEAVE ONE

20 OR THE OTHER OF THE CHILDREN HOME ALONE WITH A HIGH
21 FEVER ALL DAY LONG --
22 A YES.
23 Q -- SO THAT SHE COULD DO SOMETHING
24 FRIVOLOUS?
25 A CORRECT. GO SHOPPING.
26 Q AND DID SHE -- DID YOU GO SHOPPING WITH
27 HER ONE DAY WHERE YOU DETECTED THAT ERIK WAS HOME
28 WITH A VERY HIGH FEVER AND WAS VERY SICK?

53443

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY.
2 THE COURT: OVERRULED.
3 THE WITNESS: YES, I DID.
4 Q BY MS. ABRAMSON: AND DID YOU HAVE A
5 DISCUSSION WITH HER ABOUT THE WISDOM OF LEAVING THE
6 CHILD HOME ALONE WHEN HE WAS THAT SICK?
7 A YES, I DID.
8 Q AND DID YOU AND SHE BOTH EVENTUALLY
9 LEAVE THE CHILD HOME ALONE?
10 A YES. SHE TOLD ME IT WAS RIDICULOUS TO
11 BE SO WORRIED ABOUT IT, THAT HE WOULD BE FINE. IT
12 WAS NO BIG DEAL TO HAVE SOME FEVER.
13 Q YOU LEFT HIM HOME ALONE THAT DAY TOO.
14 WHY DID YOU DO THAT?

15 A IT'S INTERESTING. KITTY WAS VERY
16 INTIMIDATING. SHE MADE YOU FEEL THAT IT'S
17 RIDICULOUS NOT TO, YOU KNOW -- TO STOP WHATEVER
18 YOU'RE DOING.

19 IT WAS MY BIRTHDAY AND SHE HAD INVITED
20 ME OUT FOR LUNCH TO NEW HOPE, AND I ARRIVED THAT
21 MORNING AND FOUND OUT THAT LYLE -- ERIK WAS HOME, AND
22 ANDY WAS IN SCHOOL.

23 SO I SAID, "KITTY, WE DON'T HAVE TO GO."

24 SHE SAID, "OH, NONSENSE, MARTA. HE'LL
25 BE FINE. IT DOESN'T MAKE ANY DIFFERENCE. HE'S USED
26 TO IT."

27 Q YOU WERE A VERY PROTECTIVE PARENT IN
28 THAT WAY WITH YOUR CHILDREN, WEREN'T YOU?

53444

1 A I WOULDN'T SAY I WAS OVER-PROTECTIVE. I
2 WOULD SAY THIS WAS NORMALLY PROTECTIVE.

3 Q YOU HAD BOYS AND GIRLS?

4 A DEFINITELY.

5 Q DID SHE TALK YOU OUT OF YOUR CONCERNS
6 FOR ERIK?

7 A SHE DIDN'T TALK ME OUT OF MY CONCERNS.
8 SHE JUST TOLD ME TO FORGET ABOUT IT. AND I WENT
9 AHEAD WITH IT. I WAS WORRIED ABOUT ERIK ALL DAY. I

10 ASKED HER SEVERAL TIMES TO CALL HOME AND FIND OUT
11 HOW HE WAS DOING.
12 Q DID SHE DO THAT?
13 A NO. SHE TOLD ME IT WASN'T NECESSARY.
14 Q AND DID SHE TELL YOU THAT HE WOULD GET
15 WHATEVER HE NEEDED, ASPIRIN OR FOOD OR SOMETHING,
16 FOR HIMSELF?
17 A YES.
18 Q AND DID YOU OBSERVE, OVER THE YEARS,
19 WITH RESPECT TO BOTH CHILDREN, BOTH LYLE AND ERIK --
20 DID YOU SEE THEM GETTING THEIR OWN FOOD FOR
21 THEMSELVES AT A VERY YOUNG AGE?
22 A YES. THE ONLY MEAL THAT WAS PREPARED IN
23 THE HOUSE WAS THE DINNER, WHICH EVERYBODY SAT AT THE
24 TABLE. ALL THE REST OF THE MEALS THE KIDS HAD TO
25 FETCH FOR THEMSELVES.
26 Q AND DID YOU SEE EITHER OF THE CHILDREN
27 ACTUALLY FETCHING FOR THEMSELVES IN WAYS THAT YOU
28 CONSIDERED DANGEROUS?

53445

1 A YES.
2 Q WHAT DID YOU SEE?
3 A WELL, I SAW LITTLE LYLE AND LITTLE ERIK
4 SEVERAL TIMES PUTTING A STOOL IN FRONT OF THE

5 COUNTER. AND THEY WOULD GET ON TOP OF THE COUNTER
6 TO GET TO THE CABINET SO THEY COULD GET THEIR CEREAL
7 IN THE MORNING, AND THEN JUMP DOWN. SO I DIDN'T
8 THINK IT WAS NECESSARY IF I WAS THERE SO. . .

9 Q IF YOU WERE THERE WHEN IT WAS BREAKFAST
10 TIME, WOULD YOU DO IT FOR THEM?

11 A YES, I DID.

12 Q AND ON OCCASION WOULD KITTY TRY TO TALK
13 YOU OUT OF EVEN THAT ASSISTANCE?

14 A SHE ALWAYS TRIED TO. I TOLD HER,
15 "PLEASE. LET ME DO IT. I FEEL MORE
16 COMFORTABLE." SO. . .

17 Q WHAT WOULD SHE SAY?

18 A SHE SAID, "MARTA, DON'T DO THAT. THEY
19 KNOW HOW TO DO IT. THEY CAN DO IT THEMSELVES.
20 THEY'RE USED TO IT. COME OVER AND HAVE A CUP OF
21 COFFEE WITH ME," TYPE-THING.

22 Q DID YOU ON OCCASION GO SHOPPING WITH
23 YOUR SISTER-IN-LAW TO THE MALL AND OTHER AREAS, TO
24 MALLS AND BIG STORES?

25 A YES, SEVERAL TIMES.

26 Q ARE THERE TWO OCCASIONS IN PARTICULAR
27 WHEN YOU REMEMBER WHERE SHE LOST THE BOYS?

28 A YES.

1 Q NOW, THEY WERE ON -- THE FIRST OCCASION
2 HOW OLD WERE THEY?

3 A OH, THEY WERE VERY SMALL. AS A MATTER
4 OF FACT, I ONLY TOOK MY TWO ELDER DAUGHTERS BECAUSE
5 THE OTHER ONES WERE SMALL. SO I WOULD SAY THEY WERE
6 PROBABLY TWO AND FOUR, TWO AND FIVE.

7 Q AND AT SOME POINT WHEN YOU WERE SHOPPING
8 DID YOU NOTICE THAT THE BOYS WERE MISSING?

9 A YES. EVER SINCE THE BEGINNING THEY WERE
10 LOOSE AND PLAYING AROUND. AND I SAID, "KITTY,
11 THEY'RE GOING TO GET LOST." AND SHE SAID, "THEY'LL
12 BE FINE." AND THEY GOT LOST. THEY WERE NOT AROUND.

13 Q AND YOU NOTICED THEY WERE NOT AROUND?

14 A YES. I TOLD HER, "KITTY, WHERE IS ERIK
15 AND LYLE?"

16 SHE SAID, "DON'T WORRY ABOUT IT. IT
17 WILL BE FINE."

18 Q DID YOU TRY TO GO LOOKING FOR THEM?

19 A I LOOKED ALL AROUND, BUT THEY WERE NOT
20 AROUND. IT WAS A BIG MALL. THERE WAS NO WAY --

21 Q DID SHE LOOK, OR DID SHE CONTINUE
22 SHOPPING?

23 A NO. SHE CONTINUED SHOPPING. SHE TOLD
24 ME THEY WOULD BE FINE; THAT THEY KNEW WHAT TO DO.

25 Q AT SOME POINT WAS THERE AN ANNOUNCEMENT
26 THAT THE CHILDREN HAD BEEN FOUND?

27 A YES.

53447

1 ANYTHING, DID KITTY DO?

2 A WELL, I WAS VERY HAPPY BECAUSE THEY HAD
3 FOUND THEM. AND I SAID, "KITTY, WE CAN GO PICK THEM
4 UP."

5 AND SHE SAID, "GREAT. LEAVE THEM
6 ALONE. NOW WE KNOW WHERE THEY ARE. WE CAN KEEP ON
7 SHOPPING."

8 Q DID THAT HAPPEN AGAIN A FEW YEARS LATER,
9 A SIMILAR SITUATION?

10 A YES.

11 Q AND ON THE SECOND OCCASION HOW LONG WAS
12 IT AFTER THE CHILDREN WERE FOUND BEFORE SHE WAS
13 WILLING TO GO PICK THEM UP?

14 A AT LEAST 45 MINUTES.

15 Q NOW, FROM THE TIME THAT YOU MOVED BACK
16 TO NEW JERSEY, FROM 1979 ON, WERE YOU AROUND THE
17 FAMILY WHEN YOUR BROTHER WOULD BE VERY VERBALLY
18 ABUSIVE TOWARDS ERIK?

19 A I'M SORRY. AROUND THE FAMILY, YOU MEAN
20 THE MENENDEZ -- COULD YOU REPHRASE IT AGAIN.

21 Q LET ME STRAIGHTEN IT OUT.

22 YOU MOVED TO PUERTO RICO FOR A WHILE?

23 A CORRECT.

24 Q YOU MOVED TO NEW JERSEY?

25 A 1970.

26 Q WHEN YOU MOVED TO NEW JERSEY YOU WERE
27 LIVING WITHIN MINUTES OF JOSE AND KITTY AND THE
28 CHILDREN?

53448

1 A I WAS LIVING ABOUT 10 MILES AWAY,
2 CORRECT.

3 Q YOU WERE AROUND THEM FOR VARIOUS FAMILY
4 GATHERINGS AND FUNCTIONS AND SPORTING EVENTS,
5 CORRECT?

6 A YES.

7 Q AND DID YOU, FROM TIME TO TIME, SEE YOUR
8 BROTHER BEING VERBALLY ABUSIVE TOWARDS ERIK?

9 A THAT WAS HIS STYLE OF TALKING TO HIM ALL
10 THE TIME. I MEAN, HE WAS JUST ALWAYS MOCKING ON
11 HIM.

12 Q AND FROM THAT TIME, DID YOU EVER SEE
13 KITTY TRY TO STOP IT?

14 A NO. KITTY NEVER INTERFERED WITH JOSE.

15 Q AND DID YOU SEE JOSE BEING VERBALLY
16 ABUSIVE TOWARDS KITTY?

17 A VERY MUCH SO. IT WAS TO THE POINT TO BE

18 EMBARRASSING FOR ME TO BE THERE.

19 Q WAS IT EMBARRASSING AROUND OTHER MEMBERS
20 OF THE FAMILY?

21 A YES.

22 Q AND EARLIER, WHEN ERIK WAS VERY LITTLE,
23 HAD THERE BEEN WHAT YOU OBSERVED SOME FEEBLE
24 ATTEMPTS ON HER PART TO MAYBE INTERVENE ON ERIK'S
25 BEHALF?

26 A THE ONLY THING I EVER HEARD KITTY SAY
27 IS -- THAT WAS THE EARLY YEARS -- "JOSE, PLEASE."
28 SHE WOULD IMMEDIATELY BE TOLD, "KITTY,

53449

1 YOU STAY OUT OF THIS."

2 Q AND WHEN JOSE WOULD SAY, "KITTY, YOU
3 STAY OUT OF IT," WOULD SHE SHUT DOWN?

4 A YEAH. SHE DID. EVERYBODY DID.

5 Q WAS THAT THE MOST YOU HAD EVER SEEN HER
6 TRY TO DO TO PROTECT ERIK FROM HIS FATHER?

7 A DEFINITELY. IT'S VERY UNUSUAL. I MEAN,
8 WHEN JOSE WASN'T AROUND KITTY WAS IN CHARGE, AND
9 KITTY WAS JOSE. I MEAN, SHE REPRIMANDED THEM THE
10 SAME WAY AS JOSE. SHE SEEMS TO BE JOSE'S
11 PERSONALITY.

12 WHEN JOSE CAME HOME SHE JUST WOULD SORT

13 OF SAY, "IT'S YOUR TURN," AND SHE'D SAY NOTHING

14 ANYMORE.

15 Q WHEN HE WAS AROUND HE WAS TOTALLY IN

16 CHARGE?

17 A WHEN HE WAS AROUND? DEFINITELY, JOSE

18 WAS IN CHARGE.

19 Q WHEN HE WASN'T IN CHARGE, SHE ACTED LIKE

20 HIM TOWARDS THE BOYS?

21 A COMPLETELY. SHE FOLLOWED ALL HIS

22 INSTRUCTIONS, DID EXACTLY ALL THE SAME THINGS AS

23 JOSE DID.

24 Q FROM WHAT YOU OBSERVED OVER THE YEARS,

25 DID YOU FEEL THAT KITTY, IN PARTICULAR, WAS TREATING

26 THE CHILDREN LIKE CHILDREN VERSUS TREATING THEM LIKE

27 LITTLE ADULTS?

28 A NO. SHE NEVER TREATED THE CHILDREN AS

53450

1 CHILDREN. THEY DIDN'T BELIEVE IN THAT.

2 Q SHE SAID SHE DOESN'T BELIEVE IN THAT?

3 A YES.

4 Q DID SHE EXPRESS TO YOU IN FRONT OF ONE

5 OR BOTH OF THE CHILDREN OVER THE YEARS THAT SHE

6 REALLY DIDN'T LIKE HAVING BOYS?

7 A YES.

8 Q AND WHAT DID SHE SAY IN THAT REGARD?

9 A THERE WERE DIFFERENT DETAILED

10 CONVERSATIONS OR REMARKS. ONE SPECIFIC ONE THAT I

11 REMEMBER IS A DAY THAT SHE SAID TO ME, "YOU KNOW, I

12 WISH I WOULD HAVE HAD GIRLS. YOU'RE SO LUCKY YOU

13 HAVE GIRLS. I'M STUCK WITH THESE TWO BOYS."

14 Q AND DID YOU SEE THAT SHE GAVE -- DID SHE

15 BEHAVE ANY DIFFERENTLY TOWARDS, FOR EXAMPLE, YOUR

16 SISTER TERRY'S GIRLS AND YOUR OWN GIRLS?

17 A OH, YES.

18 Q IS THAT THE WAY SHE BEHAVED TOWARDS HER

19 OWN?

20 A YES.

21 Q EVEN TO THE GIRLFRIENDS OF THE BOYS?

22 A SHE LOVED GIRLS. SHE REALLY DID.

23 Q SHE WAS ALWAYS NICE TO GIRLFRIENDS AND

24 TO NIECES, WASN'T SHE?

25 A YES, SHE WAS.

26 Q DID YOU LIKE HER BOYS WHEN THEY WERE

27 CHILDREN?

28 A OH, OF COURSE I DID.

53451

1 Q WERE THEY LOVEABLE BOYS?

2 A YES. THEY WERE ADORABLE.

3 Q AND YOU LIKED TO BE AROUND THEM?

4 A DEFINITELY. AND I USED TO HUG THEM AND
5 PICK THEM UP AND PLAY WITH THEM AND EVERYTHING, SAME
6 AS MY KIDS.

7 Q AND DID YOU SEE, WHEN THEY WERE LITTLE
8 KIDS, ANYTHING IN THE WAY THE BOYS WERE THAT COULD
9 HELP YOU UNDERSTAND WHY SHE WAS SO NEGATIVE TOWARDS
10 THEM?

11 A NO. KITTY -- NO.

12 Q DID SHE EVER EXPLAIN TO YOU WHY SHE FELT
13 SO NEGATIVELY TOWARDS THEM?

14 A YES, SHE DID. I ASKED HER.

15 Q WHAT DID SHE TELL YOU?

16 A WELL, SHE --

17 MR. CONN: OBJECTION. CALLS FOR HEARSAY. NO
18 FOUNDATION.

19 THE COURT: SUSTAINED.

20 MS. ABRAMSON: LET ME HAVE A MOMENT, YOUR
21 HONOR.

22 (ATTORNEYS GESSLER, TOWERY, AND

23 ABRAMSON CONFER SOTTO VOCE.)

24

25 Q BY MS. ABRAMSON: DID YOU EVER HEAR
26 KITTY TELL EITHER OF THE BOYS THAT SHE FELT SORRY
27 FOR THEM, OR WAS SYMPATHETIC WITH THEM BECAUSE OF
28 THE THINGS THEIR FATHER DID?

1 A NO.

2 Q DID YOU EVER HEAR HER APOLOGIZE TO
3 EITHER ONE OF THEM FOR THE WAY SHE TREATED THEM?

4 A NO.

5 Q DID YOU EVER HEAR HER OR YOUR BROTHER
6 TELL THE BOYS, OR EITHER OF THEM, THAT THEY LOVED
7 THEM?

8 A NO. THAT WAS NOT A WORD THAT THEY EVER
9 USED THAT I HEARD, EVEN WITH MY CHILDREN.

10 Q WHAT WOULD HAVE BEEN THE WORD YOU WOULD
11 HAVE EXPECTED TO BE USED?

12 A "HI, CUTIE."

13 Q TERMS OF ENDEARMENT?

14 A YEAH.

15 Q HONEY, SWEETIE, DEAR?

16 A BUT THAT'S TO THE GIRLS, TO MY GIRLS.
17 THAT'S THE WAY -- "HI, CUTIE." "HI, BEAUTIFUL."
18 THAT'S HOW JOSE ALWAYS CALLED THEM.

19 Q I THINK YOU MISUNDERSTOOD MY QUESTION.
20 THE QUESTION IS: DID YOU EVER HEAR THEM
21 SAY WORDS LIKE THAT TO THEIR OWN CHILDREN?

22 A NO.

23 Q HONEY OR SWEETIE OR DEAR OR ANYTHING
24 LIKE THAT?

25 A NO, NO, NO.

26 Q DID YOU EVER HEAR THEM TALK IN THAT KIND

27 OF TONE OF VOICE THAT YOU USE WITH LITTLE KIDS WHEN
28 YOU WANT THEM TO KNOW THAT YOU LIKE THEM?

53453

1 A NO.

2 Q WAS YOUR BROTHER VERY FOCUSED ON HIS
3 BOYS?

4 A DEFINITELY. THEY WERE ALL HIS LIFE.

5 Q HOW WOULD YOU DESCRIBE HIS LEVEL OF
6 INTEREST IN WHAT THEY DID?

7 A JOSE CALLED THREE, FOUR TIMES A DAY TO
8 CHECK ON THEIR SCHEDULES AND WHAT THEY WERE DOING,
9 AND IT WAS OBSESSIVE. IT WAS COMPLETELY OBSESSIVE.
10 HE JUST LIVED FOR THEIR BOYS, BUT IN A
11 VERY OBSESSIVE WAY, UNFORTUNATELY.

12 Q DID HE EXPECT SOMETHING FROM THEM?

13 A YES. HE DEMANDED PERFECTIONISM.

14 Q NOW, WAS THERE A DIFFERENCE, FROM WHAT
15 YOU COULD OBSERVE, IN THE WAY IN WHICH YOUR BROTHER
16 VALUED THE ABILITIES OF LYLE VERSUS THOSE OF ERIK?

17 A DEFINITELY.

18 Q AND WAS THERE A COMMENSURATE DIFFERENCE
19 IN THE LEVEL OF PERFECTION THAT HE EXPECTED FROM
20 EACH OF THEM?

21 MR. CONN: OBJECTION. CALLS FOR

22 SPECULATION. NO FOUNDATION.

23 THE COURT: REPHRASE THE QUESTION.

24 Q BY MS. ABRAMSON: DID YOU HEAR HIM TALK

25 ABOUT HIS EXPECTATIONS FOR LYLE?

26 A YES.

27 Q WHEN LYLE WAS STILL A YOUNGSTER?

28 A YES.

53454

1 Q WHAT DID HE TELL YOU HE EXPECTED FROM

2 LYLE?

3 MR. CONN: OBJECTION. CALLS FOR HEARSAY. NO

4 FOUNDATION.

5 THE COURT: REPHRASE THE QUESTION.

6 Q WELL, FIRST OF ALL, WHEN HE WOULD TALK

7 ABOUT THE BOYS AND WHAT HE EXPECTED, WERE THEY RIGHT

8 THERE? WOULD HE SAY IT RIGHT IN FRONT OF THEM?

9 A SOMETIMES, SOMETIMES NOT. DEPENDING.

10 THE LARGEST EXTENSION OF CONVERSATION ON

11 THAT THEME THAT WE HAD WAS THROUGH THE PHONE, WHEN

12 HE WAS ALREADY IN CALIFORNIA AND I WAS IN FLORIDA.

13 Q WELL, DID YOU HEAR HIM, WHEN LYLE WAS

14 LITTLE, TALK ABOUT HOW HE EXPECTED HIM TO BE NO. 1,

15 RIGHT IN FRONT OF LYLE?

16 A OH, YES. BUT THAT WAS TO BOTH. THEY

17 HAD TO BE NO. 1.

18 Q AND THEY BOTH HAD TO BE NO. 1?

19 A YES.

20 Q AND DID HE -- WELL, FIRST OF ALL, DID HE

21 COMPARE ERIK TO LYLE IN FRONT OF THE BOYS? DID HE

22 TELL ERIK, "YOU'RE NOT AS SMART AS YOUR BROTHER?

23 YOU'RE NOT AS TALENTED AS YOUR BROTHER"?

24 A I WOULDN'T CALL IT A COMPARISON. HE

25 LAUGHED AT ERIK ALL THE TIME. HE RIDICULED ERIK ALL

26 THE TIME. HE REALLY DIDN'T COMPARE HIM. HE PUT

27 THEM IN COMPETITIVE POSITIONS, COMPETING WITH ONE

28 ANOTHER, BUT NOT -- HIS WORDS WERE NOT ON THE

53455

1 COMPARISON LEVEL. I DON'T KNOW HOW TO EXPLAIN THAT,

2 BUT IT'S NOT THE SAME FOR ME.

3 Q HE WOULD ENCOURAGE THEM TO COMPETE WITH

4 ONE ANOTHER?

5 A THEY COMPETED ALL THE TIME, YES. SEE

6 WHO'S STRONGER. HE WOULD LAUGH AT ERIK BECAUSE HE

7 WASN'T AS STRONG AS LYLE. HE WOULD LAUGH AT ERIK

8 BECAUSE HE DIDN'T MAKE, WHATEVER IT WAS, LIKE LYLE.

9 THAT KIND OF THING.

10 IN STRENGTH AND COORDINATION LYLE WAS

11 NOT ONLY OLDER, BUT HE WAS FASTER, AND HE USED TO

12 LAUGH AT ERIK BECAUSE OF THAT.

13 Q DID HE ALSO TALK ABOUT LYLE IN FRONT OF
14 ERIK AS BEING SMARTER THAN ERIK?

15 A I DON'T KNOW ABOUT SMARTER. HE -- JOSE
16 NEVER THOUGHT HIS IDEAS -- I NEVER HEARD HIM PRAISE
17 HIS KIDS. AND CALLING THEM SMART WOULD HAVE BEEN A
18 PRAISE TO ME.

19 HE -- I DON'T KNOW HOW TO EXPLAIN IT. HE
20 DEFINITELY DID NOT CALL HIM SMARTER. HE WOULD TELL
21 ME THAT -- ON A SEPARATE OCCASION HE DID TALK ABOUT
22 THAT, BUT NOT TO THEM. I DON'T REMEMBER THAT.

23 Q AND WAS IT CLEAR TO YOU THAT ERIK WAS
24 LESS FAVORED -- IN THE WAY THAT JOSE TALKED TO HIM
25 AND TREATED HIM, THAT ERIK WAS LESS FAVORED IN HIS
26 FATHER'S EYES THAN LYLE?

27 A I THINK IT WAS CLEAR TO THE WHOLE
28 FAMILY, TO EVERYBODY ELSE. I MEAN, YES, DEFINITELY.

53456

1 Q DID IT BECOME CLEAR TO YOU FROM WHAT YOU
2 OBSERVED IN THEIR BEHAVIOR THAT BY THE TIME THEY
3 WERE TEENAGERS, THOUGH, ERIK AND LYLE LIKED EACH
4 OTHER A LOT?

5 A YES. BUT THAT OCCURRED ALMOST WHEN THEY
6 WERE LEAVING PRINCETON, NOT BEFORE.

7 Q DID ERIK LOOK UP TO HIS BROTHER?

8 A YES, HE DID LOOK UP TO LYLE A LOT. AND
9 HE ALSO LOOKED TO LYLE'S OPINION AND LYLE'S
10 PROTECTION, YES.

11 Q AND LYLE'S APPROVAL?

12 A YES.

13 Q AND DID HE SEEM TO GET THAT FROM LYLE?

14 A IN THE TEENAGE YEARS, YES. WHEN HE WAS
15 YOUNGER, NO.

16 Q DID YOU, EARLY ON IN ERIK'S LIFE, HAVE A
17 DISCUSSION WITH YOUR BROTHER IN WHICH YOU TRIED TO
18 GET HIM TO CHANGE THE WAY HE DEALT WITH ERIK?

19 A YES, I DID.

20 Q AND AT THAT TIME WERE YOU AND HAD YOU
21 BEEN A PRESCHOOL TEACHER?

22 A YES.

23 Q AND WHEN YOU OFFERED YOUR OPINION TO
24 YOUR BROTHER ABOUT HOW HE SHOULD TREAT LITTLE ERIK,
25 WHAT WAS HIS RESPONSE TO YOU?

26 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

27 THE COURT: SUSTAINED.

28 MS. ABRAMSON: WELL, YOUR HONOR, I'M NOT

2 THE STATE OF MIND OF MR. MENENDEZ.

3 THE COURT: IT'S IRRELEVANT.

4 YOUR NEXT QUESTION, PLEASE.

5 Q BY MS. ABRAMSON: YOU WERE TRYING TO

6 INTERVENE?

7 A YES.

8 Q WAS YOUR INTERVENTION ACCEPTED?

9 A NO.

10 Q DID YOU EVER SEE ANYTHING CHANGE IN THE

11 WAY HE TREATED THE CHILDREN?

12 A NO.

13 Q LOOKING BACK ON IT, MRS. CANO, DO YOU

14 FEEL THAT YOU DID ENOUGH TO TRY TO STOP WHAT WAS

15 GOING ON IN THAT FAMILY?

16 A I WISH I WOULD HAVE DONE MORE.

17 Q DID YOU FEEL THAT IF YOU HAD TRIED MORE

18 IT MIGHT HAVE BEEN SUCCESSFUL?

19 A I DOUBT IT.

20 Q WHY IS THAT?

21 A BECAUSE IT'S LIKE TRYING TO BREAK A

22 WALL. YOU JUST -- THEY -- NOT ONLY THEY DIDN'T

23 LISTEN, THEY JUST WEREN'T EVEN ON THE SAME WAVE I

24 WAS. I WAS TRYING TO PORTRAY AN OPINION, AND IT WAS

25 NOT EVEN HEARD OR CONSIDERED OR -- IT WAS BELITTERED

26 (SIC) AND CONSIDERED COMPLETELY IRRELEVANT.

27 Q SO WERE YOU MOCKED AND RIDICULED WHEN

28 YOU TRIED TO POINT OUT --

1 A OH, YES, OF COURSE.

2 Q WAS THIS ONLY BY JOSE OR ALSO BY KITTY?

3 A NO. KITTY THE SAME. SHE WOULD LAUGH
4 AND SAY, "OH, MARTA, THAT WAS NONSENSE," OR SAID TO
5 ME, "MIND YOUR OWN BUSINESS, MARTA."

6 Q YOU WERE MORE OUTSPOKEN WITH YOUR
7 BROTHER THAN YOUR SISTER WAS?

8 A YES, I WAS. THAT WAS JUST A FAMILY
9 TRADITION. IT'S HARD FOR ME TO KEEP QUIET WHEN I
10 SEE SOMETHING. I ALWAYS MAKE SOME COMMENT.

11 Q IT'S FAIR TO SAY, IS IT NOT, MRS. CANO,
12 THAT YOUR BROTHER AND SISTER, TERRY, JUST HAPPENED
13 TO HAVE A BETTER RELATIONSHIP THAN YOU AND YOUR
14 BROTHER?

15 A DEFINITELY. I WAS A BLACK SHEEP.

16 Q SO YOU WERE MORE CRITICAL OF HIM?

17 A I WAS DIFFERENT. I DID NOT APPROVE OF
18 EVERYTHING, AND I LET THEM KNOW THAT.

19 Q IN 1989, IN JUNE, DID YOU COME OUT TO
20 CALIFORNIA FOR ERIK'S GRADUATION FROM HIGH SCHOOL?

21 A YES, I DID.

22 Q AND HAD YOU IN THE PAST EVER BEEN
23 PRESENT FOR OCCASIONS WHEN KITTY WAS TRYING TO GET
24 ERIK TO LIE ABOUT SOMETHING TO PROTECT HER? HAD YOU

25 HEARD THAT IN THE PAST?

26 A WELL, I HEARD THAT WHEN HIS GRADUATION
27 HAPPENED. THERE WAS AN ACCIDENT THERE.

28 Q I'M GOING TO ASK YOU ABOUT THAT. I'M

53459

1 ASKING IF YOU HAD BEEN AWARE OF THAT ASPECT --

2 A BEFORE?

3 Q -- OF HER DEALING WITH HIM BEFORE THAT?

4 MR. CONN: I WOULD OBJECT IF IT'S BASED ON
5 HEARSAY.

6 THE COURT: WITHOUT A FOUNDATION IT WOULD BE.

7 Q BY MS. ABRAMSON: LET'S DEAL WITH THIS
8 TIME.

9 WAS THERE -- WERE YOU RIDING IN A CAR
10 WITH ERIK AND KITTY WAS DRIVING WHEN SHE HIT ANOTHER
11 CAR?

12 A YES, I WAS.

13 Q AND WAS -- DID SHE -- WAS THIS ON THE
14 GRADUATION DAY ITSELF?

15 A IT WAS THE DAY BEFORE.

16 Q AND WHAT DID SHE DO AFTER SHE HIT THE
17 OTHER CAR?

18 A THE CAR TURNED -- IT WAS RIGHT AT A
19 TRAFFIC LIGHT. SO THE CAR TURNED TO GET OUT OF THE

20 TRAFFIC AND STOP. AND SHE JUST SPED OUT AND ASKED
21 EVERYBODY TO LOOK BACK AND SEE IF THE GUY HAD BEEN
22 ABLE TO GET HER LICENSE PLATE.
23 Q SO SHE HIT AND RAN?
24 A UH-HUH.
25 Q SHE HIT THAT CAR, CORRECT?
26 A YES.
27 Q AND AFTER SHE HIT AND RAN, DID SHE SAY
28 SOMETHING TO ERIK ABOUT --

53460

1 A YES.
2 Q -- ABOUT WHAT HE SHOULD SAY ABOUT THIS --
3 HER CAR WAS DAMAGED, WAS IT NOT?
4 A YES.
5 Q AND IT WAS AN EXPENSIVE -- IT WAS A
6 MERCEDES, RIGHT?
7 A YES.
8 Q DID SHE SAY SOMETHING TO ERIK?
9 A YES, SHE DID.
10 Q WHAT DID SHE TELL HIM?
11 A SHE TOLD HIM TO TELL HIS FATHER THAT --
12 NOT TO TELL HIS FATHER WHAT HAD HAPPENED. TO TELL
13 HIS FATHER THAT SHE WAS GOING TO GO SHOPPING.
14 Q WELL, WHAT WAS SHE GOING TO GO DO?

15 A TO FIX THE CAR IMMEDIATELY.

16 Q SHE SAID, "I'M GOING TO GO TAKE THE CAR

17 TO BE FIXED, BUT YOU LIE TO YOUR FATHER AND TELL HIM

18 I'VE GONE TO THE STORE"?

19 A YES.

20 Q WHAT DID ERIK SAY?

21 A "NOT ME. I'M NOT TELLING HIM ANYTHING."

22 SO SHE ASKED ME TO DO IT.

23 Q DID YOU LIE FOR HER?

24 A YEAH.

25 Q WHY DID YOU DO IT?

26 A I JUST FELT THAT I DIDN'T WANT TO BE THE

27 CAUSE OF PROBLEMS, AND SHE ACTED AS IF JOSE WAS

28 REALLY GOING TO RAGE ABOUT IT. AND I HAD SEEN RAGES

53461

1 BEFORE. I DIDN'T WANT TO SEE ANOTHER ONE.

2 Q YOU HAD SEEN HIM RAGE AT HERSELF AND

3 OTHERS?

4 A YES.

5 Q SO YOU WERE TRYING TO PROTECT HER?

6 A YEAH.

7 Q WERE YOU COMFORTABLE WITH THE FACT THAT

8 SHE PUT YOU IN A POSITION WHERE YOU HAD TO TELL THIS

9 LIE?

10 A NO, I WASN'T.

11 Q NOW, YOU SAID THAT YOU HAD SEEN A

12 CONSISTENT PATTERN OF VERBAL ABUSE BY JOSE TOWARDS

13 KITTY.

14 DID THAT CHANGE IN 1987?

15 A YES, IT DID.

16 Q AND IN 1987, AT YOUR FATHER'S --

17 A FUNERAL.

18 Q -- FUNERAL, WAS THAT WHEN YOU SAW A

19 COMPLETELY DIFFERENT KIND OF RELATIONSHIP BETWEEN

20 JOSE --

21 A COMPLETELY --

22 MR. CONN: OBJECTION. LEADING.

23 THE COURT: REPHRASE THE QUESTION.

24 Q BY MS. ABRAMSON: DID YOU SEE SOMETHING

25 DIFFERENT IN THEIR RELATIONSHIP?

26 A TOTALLY. COMPLETELY.

27 Q HOW WAS IT DIFFERENT?

28 A FIRST OF ALL, THEY WERE HOLDING HANDS

53462

1 ALL THE TIME. JOSE WOULD GO AND SIT BESIDE HER AND

2 PUT HIS ARM AROUND HER. EVERY TIME WE MADE A

3 COMMENT HE WOULD TURN AROUND AND SAY, "KITTY, DID

4 YOU HEAR THAT? WHAT DO YOU THINK OF THAT?"

5 UNHEARD --

6 Q HE NEVER --

7 A HE COULDN'T CARE LESS FOR KITTY'S
8 OPINION.

9 Q AND DID THIS NEW TYPE OF RELATIONSHIP IN
10 PUBLIC PERSIST THROUGH 1989?

11 A YES.

12 Q AND HOWEVER -- WELL, STRIKE THAT.

13 NOW, DID YOU EVER HEAR YOUR BROTHER
14 TALKING TO ERIK ABOUT THE IMPORTANCE OF BEING A
15 MENENDEZ?

16 A OH, YES. HE DID THAT TO MY CHILDREN
17 TOO.

18 Q WHAT WOULD HE SAY TO HIS CHILD ABOUT IT?

19 A WELL, YOU HAVE TO ACT LIKE A MENENDEZ,
20 AND YOU HAVE TO BE LIKE A MENENDEZ, AND YOU NEED TO
21 STAND UP TO THE NAME, TO THE MENENDEZ NAME.

22 Q AND WOULD HE USE THAT KIND OF LANGUAGE
23 TO CHIDE ERIK, FOR EXAMPLE, IF ERIK HADN'T WON
24 SOMETHING IN SPORTS?

25 A YES. WHEN ERIK DIDN'T PERFORM. HE
26 WOULD SAY "YOU DON'T -- I'M ASHAMED THAT YOU'RE A
27 MENENDEZ. I WISH YOU WEREN'T A MENENDEZ," OR
28 SOMETHING TO THAT EFFECT.

1 Q DID HE EVER TELL HIM HE WASN'T WORTHY OF
2 HIS LAST NAME?

3 A YES.

4 Q THAT HE WAS ASHAMED OF HIM?

5 A UH-HUH.

6 Q THAT HE WAS ONLY AVERAGE AND MEDIOCRE?

7 A YES.

8 Q WAS AVERAGE OR MEDIOCRE OKAY WITH YOUR
9 BROTHER?

10 A NO. THAT WAS THE WORST INSULT HE COULD
11 GIVE YOU.

12 Q DID YOU HEAR YOUR BROTHER TALKING TO HIS
13 CHILDREN ABOUT BEING A MENENDEZ WAS BEING SOMETHING
14 SPECIAL OR SUPERIOR?

15 A DEFINITELY.

16 Q NOW, YOU SAID HE TALKED ABOUT THIS WITH
17 YOUR CHILDREN TOO. WAS THAT THE THEME OF YOUR
18 FAMILY? DID YOU TELL YOUR KIDS THEY WERE SOMETHING
19 SPECIAL BECAUSE THEY WERE A MENENDEZ?

20 A NO, I DID NOT. MY FATHER DIDN'T DO IT
21 TO US EITHER.

22 Q WAS FAMILY, HOWEVER, IMPORTANT FOR YOU
23 AND FOR YOUR PARENTS?

24 A DEFINITELY.

25 Q AND DID YOU LOVE YOUR BROTHER?

26 A OH, YES. VERY MUCH.

27 Q WAS HE -- WERE YOU PROUD OF SOME OF HIS
28 ACCOMPLISHMENTS?

1 A I LOOKED UP TO JOSE ALL THE TIME. HE
2 WAS AN UNBELIEVABLE COMPETITIVE PERSON.

3 Q WAS HE SMART?

4 A VERY SMART AND VERY ACHIEVER (SIC) TOO.
5 HE WAS A GREAT ACHIEVER.

6 Q AND WAS HE VERY SPECIAL IN THE HEART OF
7 YOUR MOTHER?

8 A YES. HE WAS MY MOTHER'S FAVORITE.

9 Q AND WAS HIS DEATH VERY, VERY DIFFICULT
10 FOR YOUR MOTHER?

11 A OH, HORRENDOUS. STILL IS.

12 Q AND WAS THE ARREST OF ERIK AND LYLE VERY
13 DIFFICULT FOR YOUR MOTHER?

14 A YES.

15 Q AND WAS THEIR CONVICTION VERY DIFFICULT
16 FOR YOUR MOTHER?

17 A OH, SHE'S DEVASTATED.

18 Q AND YOU'RE CLOSE TO YOUR MOTHER AND YOU
19 TALK TO HER ABOUT THIS A GREAT DEAL, DO YOU NOT?

20 A YEAH.

21 Q SHE LIVES HERE IN CALIFORNIA, DOES SHE
22 NOT?

23 A DEFINITELY. I THINK THAT'S WHAT'S

24 KEEPING HER ALIVE, THE BOYS.

25 Q SHE ACTUALLY OWNS A HOME, OR OWNED A
26 HOME BACK IN NEW JERSEY?

27 A WHICH IS LEFT EMPTY AND STILL THERE.

28 SHE'S RENTING AN APARTMENT HERE.

53465

1 Q AND SHE HAS BEEN THE SINGLE MOST
2 PERSISTENT AND RELIABLE VISITOR FOR BOTH ERIK AND
3 LYLE ALL THIS TIME?

4 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: SUSTAINED.

6 Q BY MS. ABRAMSON: YOU'VE GONE DOWN TO
7 THE JAIL TO VISIT THEM WHENEVER YOU'VE COME TO TOWN,
8 HAVEN'T YOU?

9 A YES. I TRY TO.

10 Q AND SHE'S ALWAYS GONE?

11 MR. CONN: OBJECTION. LEADING.

12 THE COURT: SUSTAINED.

13 Q BY MS. ABRAMSON: HAS SHE GONE ON THOSE
14 OCCASIONS?

15 A YES. MANY TIMES.

16 Q DOES SHE TALK ABOUT THEM ALL THE TIME
17 WHEN YOU TALK TO HER?

18 A YES.

19 Q AND IN YOUR OPINION, MRS. CANO, WHAT
20 WOULD HAPPEN TO YOUR MOTHER IF THE BOYS WERE GIVEN
21 THE DEATH PENALTY?

22 MR. CONN: OBJECTION. SPECULATION.

23 THE COURT: SUSTAINED.

24 Q BY MS. ABRAMSON: DO YOU KNOW WHAT HER
25 FEELINGS ON THIS SUBJECT --

26 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

27 THE COURT: SUSTAINED.

28 MS. ABRAMSON: WELL, YOUR HONOR, IN THIS AREA

53466

1 I THINK HEARSAY IS APPROPRIATE.

2 THE COURT: IT'S UNRELIABLE HEARSAY.

3 MS. ABRAMSON: COULD WE BE HEARD?

4 THE COURT: SURE.

5 MS. ABRAMSON: THANK YOU.

6 THE COURT: LET'S DO IT THIS WAY. WE'LL HAVE
7 THE JURY GO IN THE JURY ROOM FOR A MINUTE.

8 WE'LL HAVE THE COURT REPORTER PUT THAT
9 IN HER NOTES.

10 (THE JURY ENTERED THE JURY ROOM
11 AND THE FOLLOWING PROCEEDINGS
12 WERE HELD:).

13

14 THE COURT: YES.

15 MS. ABRAMSON: YOUR HONOR, I THINK THAT IN A
16 MATTER OF FAMILY -- THIS IS FAR MORE RELIABLE FOR
17 EXAMPLE, THAN FAMILY HISTORY INFORMATION. SHE
18 CERTAINLY KNOWS WHAT HER MOTHER'S FEELINGS ARE ABOUT
19 THTE DEATH PENALTY AND -- WITH RESPECT TO HER
20 GRANDSONS -- AND SHE CERTAINLY HAS -- KNOWS HER
21 MOTHER'S MENTAL STATE AND KNOWS -- HAS AN OPINION
22 ABOUT WHAT IT WOULD DO TO HER MOTHER IF THEY WERE TO
23 BE GIVEN THE DEATH PENALTY.

24 I DON'T UNDERSTAND WHY THAT'S NOT AN
25 APPROPRIATE OPINION FOR HER TO -- IT'S HER OWN
26 MOTHER. SHE'S KNOWN HER -- WELL, I DON'T WANT TO
27 SAY HOW OLD SHE IS.

28 THE WITNESS: FIFTY-FOUR YEARS.

53467

1 MS. ABRAMSON: FIFTY-FOUR YEARS. SHE KNOWS
2 WHAT HER MOTHER'S EMOTIONAL STATE IS.

3 THE COURT: NOT THE WAY YOU'RE ASKING IT.
4 YOU'RE ASKING HER TO EXPRESS AN OPINION THAT WAS
5 EXPRESED TO HER BY HER MOTHER, WHICH IS HEARSAY.

6 MS. ABRAMSON: FIRST I TRIED TO ASK HER
7 OPINION OF HOW SHE BELIEVES IT WOULD IMPACT HER
8 MOTHER, WHICH HAS NOTHING TO DO WITH HEARSAY.

9 THE COURT: WHAT DO YOU EXPECT THE ANSWER TO
10 BE?

11 MS. ABRAMSON: THAT IT WOULD KILL HER.

12 THE COURT: ALL RIGHT. JUST LITERALLY KILL
13 HER? SHE WOULD DROP DEAD?

14 MS. ABRAMSON: EMOTIONALLY DEVASTATE HER. I
15 DON'T THINK YOU CAN SAY LITERALLY KILL HER.

16 THE COURT: THE OBJECTION WILL BE SUSTAINED
17 ON THAT GROUND AS WELL. JUST INADMISSIBLE OPINION
18 AS PHRASED.

19 MS. ABRAMSON: WELL, CAN YOU THINK OF A WAY
20 TO PHRASE IT WHERE IT WOULDN'T BE? IF SO, I'LL BE
21 HAPPY TO DO IT. I WILL CERTAINLY DEFER TO YOUR
22 INTELLECTUAL CAPACITY ON THIS ONE, JUDGE.

23 THE COURT: ALL I'M SAYING IS, AS PHRASED,
24 IT'S INADMISSIBLE HEARSAY. SHE'S ALREADY STATED
25 THAT IT'S -- IT HAS BEEN DEVASTATING TO THE FAMILY.
26 AND I SUPPOSE SHE CAN SAY IT WOULD BE -- HOW SHE
27 WOULD REACT TO IT. BUT TO SAY HOW OTHER PEOPLE
28 WOULD REACT WOULD REALLY BE CONJECTURE ON HER PART.

53468

1 MS. ABRAMSON: IF I COULD HAVE JUST A MINUTE.

2 THE COURT: OBJECTION SUSTAINED.

3 MS. ABRAMSON: IF I COULD HAVE JUST A MOMENT

4 BEFORE WE BRING THE JURY BACK OUT, YOUR HONOR. I

5 JUST WANT TO REVIEW SOMETHING.

6 THE COURT: SURE.

7 (BRIEF PAUSE IN THE PROCEEDING.)

8

9 MS. ABRAMSON: OKAY.

10 THE COURT: READY?

11 MS. ABRAMSON: YES.

12 THE COURT: ALL RIGHT.

13 (THE JURY ENTERED THE COURTROOM

14 AND THE FOLLOWING PROCEEDINGS

15 WERE HELD:)

16

17 THE COURT: OKAY. THE JURY IS BACK.

18 Q BY MS. ABRAMSON: MRS. CANO, I THINK

19 YOU'VE TESTIFIED PREVIOUSLY THAT ERIK IS YOUR GODSON

20 AND THAT YOU'VE GOTTEN VERY CLOSE TO HIM SINCE THE

21 TIME THAT KITTY AND JOSE DIED.

22 A YES, I HAVE.

23 Q AND WHAT DO YOU BELIEVE WOULD BE THE

24 IMPACT ON YOU IF HE WERE TO RECEIVE THE DEATH

25 PENALTY?

26 MR. CONN: OBJECTION. IRRELEVANT.

27 THE COURT: OVERRULED.

28 YOU CAN ANSWER THE QUESTION.

1 THE WITNESS: IT WOULD BE LIKE LOSING ONE OF
2 MY SONS.

3 Q BY MS. ABRAMSON: HAVE YOU EVER FELT
4 ANYTHING BUT MOTHERLY AFFECTION TOWARDS THEM?

5 A NO. I THINK -- AS A MATTER OF FACT, I
6 THINK THEY'VE HAD LESS CHANCES IN LIFE THAN MY
7 KIDS. THEY HAD A VERY HARD LIFE. I WISH THAT HE
8 WOULD HAVE HAD THE OPPORTUNITY TO LIVE IT
9 DIFFERENTLY.

10 Q YOU WISH YOU HAD BEEN HIS MOTHER, DON'T
11 YOU?

12 A DEFINITELY.

13 Q DO YOU FEEL THE SAME WAY ABOUT LYLE,
14 EVEN THOUGH YOU'RE NOT QUITE AS CLOSE?

15 A OF COURSE. OF COURSE. LYLE IS ALSO
16 VERY DEAR TO ME. IT'S JUST I HAPPEN TO BE CLOSER TO
17 ERIK. THAT DOESN'T MEAN ANYTHING. LYLE IS VERY
18 CLOSE TO MY HEART TOO.

19 Q IS LYLE A SON THAT YOU WOULD HAVE BEEN
20 PROUD OF?

21 A OF COURSE. BOTH OF THEM. THEY'RE
22 WONDERFUL PEOPLE. THEY JUST WERE -- I MEAN, TAKEN TO
23 THE EXTREME, I GUESS. I WISH I WOULD HAVE DONE
24 SOMETHING BEFORE.

25 Q AND OVER THE PAST SIX YEARS YOU'VE
26 TALKED TO ERIK FROM TIME TO TIME, HAVE YOU NOT?

27 A MANY TIMES.

28 Q AND WHEN HE TALKS TO YOU, DOES HE SHOW

53470

1 INTEREST IN YOUR LIFE AND WHAT'S HAPPENED TO YOU AND
2 YOUR CONCERNS?

3 A OH, DEFINITELY. HE'S VERY CONCERNED
4 WITH ANDY AS WELL.

5 Q AND HAS HE TRIED COUNSELING ANDY AND
6 HELPING ANDY?

7 A YES.

8 Q HAS ANDY HAD SOME PROBLEMS IN ACADEMICS
9 AND STAYING IN SCHOOL?

10 A ANDY IS HAVING A HARD TIME WITH THIS
11 WHOLE CASE.

12 Q HAS, IN FACT, ANDY BEEN UPSET EVER SINCE
13 ERIK'S BEEN ARRESTED?

14 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES, HE HAS BEEN. HE EVEN
17 FEELS GUILTY ABOUT THE WHOLE THING.

18 Q BY MS. ABRAMSON: WHY DOES HE FEEL
19 GUILTY?

20 MR. CONN: OBJECTION. CALLS FOR SPECULATION
21 AND HEARSAY.

22 THE COURT: SUSTAINED. SUSTAINED.

23 Q BY MS. ABRAMSON: AND YOU'VE TALKED TO
24 LYLE FROM TIME TO TIME SINCE HE'S BEEN IN CUSTODY?

25 A MANY TIMES.

26 Q AND HAS LYLE TALKED TO YOU IN A WAY THAT
27 INDICATES HE WAS SENSITIVE TO THINGS HAPPENING IN
28 YOUR LIFE AND WITH YOUR FAMILY?

53471

1 A OF COURSE. DEFINITELY. THEY'RE ALWAYS
2 CONCERNED ABOUT THE WHOLE FAMILY.

3 Q ARE THOSE THE KINDS OF THINGS THEY'VE
4 TALKED TO YOU ABOUT, WHAT'S HAPPENING WITH THE
5 FAMILY, WHAT ARE OTHER PEOPLE DOING IN THEIR LIVES?

6 A EVERYBODY IS CONTINUING THEIR LIVES AND
7 HAVING THEIR FAMILIES AND GETTING MARRIED AND
8 WISHING THEY WOULD HAVE THEM AROUND.

9 Q SINCE THE TIME THAT ERIK AND LYLE WERE
10 ARRESTED, HOW MANY GRANDCHILDREN HAVE BEEN BORN TO
11 YOU?

12 A OH, SIX. AND FOUR FOR TERRY.

13 Q SIX FOR YOU AND FOUR FOR TERRY?

14 A IN THREE YEARS, YES.

15 Q AND HAD YOU, YEARS AGO, HAD EXPECTATIONS
16 OF FAMILY GATHERINGS WITH ERIK AND LYLE'S CHILDREN

17 ALSO?

18 A DEFINITELY. WE EVEN TALKED ABOUT THAT.

19 I TOLD ERIK AND LYLE THAT I WOULD BE A GRANDMOTHER
20 FOR THEIR CHILDREN.

21 Q THAT WAS AFTER THEIR PARENTS WERE DEAD?

22 A YES.

23 Q THAT'S NOT GOING TO HAPPEN NOW, IS IT?

24 A I SUPPOSE NOT.

25 MS. ABRAMSON: I HAVE NOTHING FURTHER.

26 THE COURT: EXAMINATION ON BEHALF OF LYLE
27 MENENDEZ?

28 MR. GESSLER: ONE OR TWO QUESTIONS, YOUR

53472

1 HONOR.

2

3 DIRECT EXAMINATION

4 BY MR. GESSLER:

5 Q MRS. CANO, WHEN IT -- WHEN IT APPEARED
6 THAT LYLE HAD BECOME MORE FAVORED IN THE FAMILY, DID
7 IT ALSO APPEAR THAT MORE WAS EXPECTED OF HIM BY JOSE
8 MENENDEZ?

9 A OH, NO DOUBT ABOUT IT. TOTAL DEMAND.

10 Q IS THAT A YES?

11 A OH, YES, DEFINITELY.

12 MR. GESSLER: THANK YOU.

13 NOTHING FURTHER, YOUR HONOR.

14 THE COURT: CROSS-EXAMINATION.

15 MR. CONN: I HAVE TWO PHOTOGRAPHS I'D LIKE TO

16 MARK.

17 MS. ABRAMSON: WHAT ARE YOU GOING TO MARK

18 THESE?

19 THE COURT: ARE THESE PHOTOGRAPHS YOU WANT TO

20 MARK?

21 MR. CONN: YES.

22 THE COURT: 456 AND 457.

23

24 CROSS-EXAMINATION

25 BY MR. CONN:

26 Q SHOWING YOU 456 --

27 A YES.

28 Q -- CAN YOU TELL US WHO THAT IS?

53473

1 A THAT'S MY BROTHER, JOSE.

2 Q AND SHOWING YOU 457 --

3 A THAT'S KITTY.

4 Q YOU LOVED YOUR BROTHER?

5 A VERY MUCH SO. AND KITTY TOO.

6 Q WHAT WAS IT ABOUT YOUR BROTHER THAT YOU

7 LOVED?

8 A OH, MANY THINGS. JOSE WAS VERY GOOD TO
9 ME. JOSE WAS VERY GOOD TO ME. I LOVED HIS
10 SELF-DISCIPLINE, HIS ACHIEVEMENTS, HIS INTELLIGENCE,
11 HIS WIT, HIS CONTROL. I MEAN, HE WAS A PERSON THAT
12 COULD CONTROL A WHOLE AUDIENCE AND NOBODY WOULD EVEN
13 WINK. HE WAS AN OUTSTANDING PERSON.

14 Q AND DID YOU LOVE YOUR SISTER-IN-LAW,
15 KITTY MENENDEZ?

16 A SURE. YES, I DID.

17 Q WHAT WAS ABOUT IT ABOUT HER THAT YOU
18 LOVED?

19 A KITTY -- I DON'T KNOW. SHE WAS VERY GOOD
20 TO ME. KITTY WAS -- I CAN'T TELL YOU ONE SPECIFIC
21 THING THAT I LOVED OF HER, BUT -- SHE WAS TOTALLY
22 DEDICATED TO JOSE. SHE JUST ADORED HIM.

23 Q IS THAT WHAT YOU LOVED ABOUT HER?

24 A WELL, I ADMIRED THAT IN HER. I DON'T
25 KNOW. I MEAN, IT'S VERY HARD TO PINPOINT WHAT I
26 LOVED OF HER. I LOVED HER, PERIOD. AND I ACCEPTED
27 HER AS SHE WAS, THE SAME AS JOSE. BUT IT'S -- WHAT I
28 LOVED OF KITTY?

53474

1 I DON'T KNOW HOW TO MENTION IT. IT WAS

2 A COMBINATION OF THE WAY SHE WAS WITH ME, WITH MY
3 GIRLS. SHE WAS VERY GOOD TO US.

4 Q GOOD IN WHAT WAY?

5 A I DON'T KNOW. I MEAN, IF -- IF I NEEDED
6 SOMETHING, I KNOW THAT KITTY WAS THERE.

7 FOR EXAMPLE, YOU KNOW, WHATEVER. A
8 COUPLE OF TIMES MY CAR DIED ON ME, AND I CALLED HER,
9 AND SHE CAME TO THE RESCUE. SHE WAS GOOD TO ME.

10 I WOULD WALK IN, AND I WAS ALWAYS
11 WELL-RECEIVED BY HER, SOMETIMES EVEN BETTER THAN
12 JOSE.

13 Q NOW --

14 A SHE WAS ALSO VERY STRONG AND COULD DO
15 THINGS THAT I COULDN'T DO, WHICH I ADMIRED HER FOR
16 THAT.

17 Q YOU SAID THAT IN YOU ARE FAMILY YOU SAW
18 JOSE MENENDEZ AND KITTY MENENDEZ -- THEY WOULD KISS
19 THEIR CHILDREN; IS THAT CORRECT?

20 A AS A SALUTE, YES.

21 Q AND WERE -- WERE LYLE AND ERIK MENENDEZ
22 EVER TOLD BY THEIR PARENTS "WE'RE GOING TO KISS YOU
23 FROM TIME TO TIME, BUT DON'T THINK IT MEANS THAT
24 WE'RE BEING AFFECTIONATE TOWARDS YOU. IT'S JUST A
25 SALUTE?

26 MS. ABRAMSON: OBJECTION, YOUR HONOR.

27 THE COURT: REPHASE THE QUESTION.

28 Q BY MR. CONN: DID YOU EVER HEAR KITTY OR

1 JOSE MENENDEZ SAY ANYTHING TO THEIR SONS ABOUT THE
2 SIGNIFICANCE OF THE KISS?

3 A A KISS IS NOT SOMETHING THAT YOU SPEAK
4 ABOUT. IT'S SOMETHING THAT YOU FEEL. AND IT WAS
5 NOT FELT.

6 MR. CONN: MAKE A MOTION TO STRIKE AS
7 NONRESPONSIVE.

8 THE COURT: OVERRULED.

9 THE ANSWER WILL STAND.

10 Q BY MR. CONN: IT WAS NOT FELT BY WHO,
11 MRS. CANO?

12 A BY THE ONES GIVING IT.

13 Q AND HOW DO YOU KNOW THAT, MRS. CANO?

14 A YOU CAN SENSE IT.

15 Q ARE YOU TELLING US THAT KITTY AND JOSE
16 MENENDEZ DID NOT LOVE THEIR SONS?

17 A NO. THEY DID LOVE THEM, BUT IN A VERY
18 STRANGE WAY.

19 Q HOW CAN YOU SIT THERE AND TELL US THAT
20 WHEN THEY KISSED THEIR SONS ON THE CHEEK THEY DID
21 NOT MEAN IT?

22 A BECAUSE THAT KIND OF KISS WHICH YOU
23 GIVE, LOOKING SOMEPLACE ELSE AND DOING SOMETHING
24 DIFFERENT, AND MAYBE REACHING WITH THE EYE TO
25 SOMEBODY ELSE, ARE NOT LOVING KISSES. THEY'RE JUST

26 COORDINATION

27 OF -- HI. THAT'S IT.

28 Q ARE YOU SAYING THAT EVERY TIME KITTY AND

53476

1 JOSE MENENDEZ KISSED THEIR SONS THEY WERE LOOKING

2 SOMEWHERE ELSE?

3 A I WOULDN'T BE ABLE TO TELL YOU THAT.

4 I'M SAYING THAT THE ONES THAT I SAW OF HELLO AND

5 GOOD-BYE ARE THAT WAY.

6 Q AND SO YOU ARE TELLING US THAT EVERY

7 TIME YOU SAW THEM KISS THEIR SONS IT WAS A

8 MEANINGLESS KISS; IS THAT CORRECT?

9 A I CANNOT TELL YOU THAT. I WOULD NOT BE

10 CAPABLE OF SAYING THAT FOR ANYBODY. THAT WOULD BE A

11 HEARSAY FOR ME.

12 Q DID YOU EVER SEE JOSE MENENDEZ TENDER

13 WITH HIS SON, ERIK MENENDEZ?

14 A TENDER?

15 Q YES.

16 A I THOUGHT I DID SEE HIM TENDER. AFTER I

17 ANALYZED IT, I REALIZED TENDER IS NOT THE WORD.

18 HE WOULD KNEEL DOWN TO TALK TO HIM, AND

19 I THOUGHT THAT IS A TENDER ACTION, AND --

20 Q DID YOU PREVIOUSLY TESTIFY THAT HE WAS

21 MORE INCLINED TO BE TENDER WITH HIS SON, ERIK
22 MENENDEZ, IN CERTAIN CIRCUMSTANCES?
23 A YES, I DID. THAT'S WHAT I MEANT.
24 Q AND CAN YOU TELL US WHY YOU PREVIOUSLY
25 TESTIFIED UNDER OATH THAT ERIK MENENDEZ -- THAT JOSE
26 MENENDEZ WAS MORE INCLINED TO BE TENDER WITH HIS
27 SON, ERIK MENENDEZ, IN CERTAIN CIRCUMSTANCES?
28 A BECAUSE WHEN HE SPOKE TO ERIK ON SEVERAL

53477

1 OCCASIONS, WHEN ERIK WAS VERY YOUNG, HE WOULD GO
2 DOWN AND TALK TO HIM. AND I SAW THAT AS A
3 TENDERNESS, WHICH HE DIDN'T DO THAT, THAT SAME WAY
4 FOR LYLE. HE WAS MUCH ROUGHER WITH LYLE.

5 Q NOW, YOU FEEL YOUR BROTHER WAS VERBALLY
6 ABUSIVE TOWARDS HIS SONS; IS THAT CORRECT?

7 A JOSE WAS VERBALLY ABUSIVE TO EVERYBODY.

8 Q DO YOU FEEL THAT KITTY MENENDEZ WAS
9 VERBALLY ABUSIVE TOWARDS HER SON?

10 A KITTY WAS INSENSITIVE. IT'S DIFFERENT
11 THAN VERBALLY ABUSIVE. IT WAS COMPLETELY
12 DIFFERENT. SHE WOULD RIDICULE THEM ONCE IN AWHILE.
13 IT WAS MORE THE INSENSIVITY. YOU JUST COULDN'T FEEL
14 HER WHEN SHE TALKED TO THEM.

15 Q I'M SORRY. YOU JUST COULDN'T WHAT?

16 A YOU COULDN'T FEEL HER. SHE WAS JUST
17 INSENSITIVE TO THE THINGS THAT WERE OCCURRING AROUND
18 THEM.

19 Q IF SHE WAS SUCH AN INSENSITIVE PERSON,
20 WHY DID YOU LOVE HER?

21 A BECAUSE SHE WASN'T LIKE THAT WITH ME.
22 SHE WAS NOT LIKE THAT WITH ME OR MY DAUGHTERS.

23 Q IF SHE WAS INSENSITIVE TO HER OWN SONS,
24 WHY DID YOU FEEL SHE WAS A PERSON WORTHY OF YOUR
25 LOVE?

26 A LOVE IS SOMETHING THAT YOU GIVE
27 UNCONDITIONAL. DOESN'T HAVE ANYTHING TO DO WITH THE
28 WAY THE PERSON IS. AT LEAST THAT'S THE WAY I GIVE

53478

1 LOVE.

2 Q AND DID YOU EVER REPORT YOUR BROTHER FOR
3 BEING ABUSIVE?

4 A I WISH I WOULD HAVE DONE IT.

5 Q YOU NOW WISH YOU WOULD HAVE DONE IT?

6 A I WISH I WOULD HAVE DONE IT. MAYBE IT
7 WOULDN'T HAVE ENDED UP LIKE THIS.

8 Q YOU WOULD HAVE REPORTED HIM FOR BEING
9 VERBALLY ABUSIVE?

10 A I TALKED TO JOSE MANY TIMES ABOUT THAT,

11 AND HE JUST DISMISSED ME AND TOLD ME TO MIND MY OWN
12 OPINION. BASICALLY TOLD ME, "MARTA, STAY OUT OF
13 THIS."

14 Q YOU DIDN'T REPORT HIM FOR BEING ABUSIVE
15 BECAUSE THERE WAS NOTHING TO REPORT?

16 MS. ABRAMSON: ARGUMENTATIVE.

17 THE COURT: REPHRASE THE QUESTION.

18 Q BY MR. CONN: WHAT WOULD YOU HAVE
19 REPORTED?

20 A UNFORTUNATELY, YOU'RE RIGHT.
21 UNFORTUNATELY, THE ONLY WAY I COULD HAVE DONE
22 SOMETHING IS -- I DON'T KNOW HOW. I WOULD HAVE TO
23 RETHINK IT. AND I'VE DONE THAT MYSELF MANY TIMES.
24 UNFORTUNATELY, THAT'S NOT SOMETHING THAT THE POLICE
25 TAKES CARE OF, AND I WISH THEY WOULD. I HOPE IN THE
26 FUTURE IT WILL BE DIFFERENT.

27 Q NOW, YOU SAID THAT THERE WERE TIMES WHEN
28 KITTY MENENDEZ WOULD LEAVE SICK CHILDREN HOME AND GO

53479

1 SHOPPING?

2 A YES.

3 Q AND YOU WOULD GO WITH HER?

4 A I WENT ONCE. I KNOW OF THAT HAPPENING
5 MANY TIMES.

6 Q AND ON THIS ONE OCCASION WHEN YOU WENT
7 WITH HER, HOW SICK WAS HER CHILD?
8 A A HUNDRED AND THREE FEVER.
9 Q AND WHICH CHILD WAS THAT?
10 A ERIK.
11 Q AND HE WAS HOME ALONE?
12 A YES. HE WAS SEVEN.
13 Q AND WHY DIDN'T YOU TELL KITTY MENENDEZ,
14 "ERIK MENENDEZ IS TOO SICK. I'M GOING TO STAY HOME
15 AND TAKE CARE OF HIM, AND YOU GO DO THE SHOPPING"?
16 A I TRIED TO DO THAT. IT WAS NOT
17 SHOPPING. IT WAS HER INVITATION. SHE MADE ME FEEL
18 VERY NONSENSE (SIC), THAT I WAS REALLY -- KITTY
19 COULD INTIMIDATE YOU TOO. AND I JUST DIDN'T WANT TO
20 BE -- YOU KNOW, SHE SAID "MARTA, IT'S NONSENSE. I
21 MEAN, HE'LL BE FINE."
22 Q YOU FELT INTIMIDATED BY HER?
23 A DEFINITELY. MANY TIMES.
24 Q YOU FELT YOU COULDN'T SAY NO?
25 A IT'S NOT THAT I COULDN'T SAY NO. IT'S I
26 DIDN'T WANT TO HURT THE FACT THAT SHE HAD INVITED
27 ME. AND SAYING NO, I'M NOT GOING TO GO WITH YOU,
28 PERIOD -- I WISH I WOULD HAVE DONE IT, BUT I DIDN'T

1 DO IT.

2 Q YOU DIDN'T WANT TO HURT ERIK MENENDEZ

3 EITHER, DID YOU?

4 A I WASN'T HURTING HIM. HE WASN'T

5 COMPLAINING. HE WASN'T ASKING TO "PLEASE STAY WITH

6 ME."

7 Q NOW, DID KITTY MENENDEZ ALWAYS SPEAK

8 ABOUT GOOD THINGS WHEN SHE SPOKE ABOUT HER SONS?

9 MS. ABRAMSON: OBJECT TO THE QUESTION, YOUR

10 HONOR. VAGUE.

11 THE COURT: SUSTAINED.

12 Q BY MR. CONN: WHEN SHE SPOKE TO HER

13 SONS, DID SHE ALWAYS SPEAK FAVORABLY ABOUT HER SONS?

14 A KITTY ALWAYS PRAISED THEM AS FAR AS

15 ACHIEVEMENT IS CONCERNED. SHE WOULD ONLY SPEAK OF

16 THE GOOD THINGS THAT THEY DID. SHE DIDN'T TALK

17 ABOUT THE MATCHES THEY LOST OR THE THINGS THAT THEY

18 DID WRONG IN SCHOOL. SHE WOULD JUST TALK ABOUT THE

19 MATCH THAT THEY WON.

20 Q DID YOU PREVIOUSLY TESTIFY WHEN SHE

21 TALKED ABOUT HER CHILDREN SHE DIDN'T ALWAYS SAY GOOD

22 THINGS ABOUT THEM?

23 A YES. THAT'S WHAT I'M SAYING.

24 Q CAN YOU TELL US WHAT SHE WOULD SAY ABOUT

25 THAT THAT WAS NOT GOOD?

26 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR

27 HONOR. CALLS FOR HEARSAY.

28 THE COURT: SUSTAINED.

1 Q BY MR. CONN: AND YOU SAID THAT
2 SOMETIMES YOU WOULD WANT TO HELP THE DEFENDANTS GET
3 THEIR BREAKFAST CEREAL, AND KITTY MENENDEZ WOULD
4 TELL YOU TO STAY AWAY AND LET THEM GET THEIR OWN
5 BREAKFAST CEREAL; IS THAT CORRECT?

6 A MANY TIMES.

7 Q AND HOW MANY TIMES DID THIS HAPPEN?

8 A MANY TIMES. ALWAYS. ANY TIME I WOULD
9 WALK IN THE HOUSE AND IT WOULD BE DINNER TIME, AND
10 IT WOULD BE THE SAME THING.

11 Q HOW OLD WERE THE DEFENDANTS WHEN YOU
12 WOULD SEE THIS HAPPEN?

13 A VERY SMALL. AGE FIVE, SIX, SEVEN,
14 EIGHT, NINE.

15 Q AND DID YOU FEEL THAT A NINE-YEAR-OLD
16 WAS ABLE TO GET HIS BREAKFAST CEREAL?

17 A IF IT WOULD BE ON A REACHABLE DISTANCE,
18 YES. BUT WHEN YOU HAVE TO GO UP INTO A CABINET
19 WHERE THEY CAN'T REACH, NO. WHEN YOU HAVE A HUGE
20 GALLON IN THE REFRIGERATOR WHICH IS HEAVIER THAN
21 WHAT HE CAN POUR, NO.

22 IT DEPENDS ON WHAT WE'RE TALKING ABOUT.
23 I MEAN, THEY CAN SERVE THEIR OWN CEREAL. BUT I

24 WOULD RATHER SEE IT ON THE TABLE FOR THEM TO FETCH
25 FOR THEMSELVES.

26 Q IS THAT WHAT YOU WOULD OBSERVE, THAT
27 THEY WERE INCAPABLE OF GETTING THEIR OWN CEREAL?

28 A OH, NO. THEY DID IT. THEY WERE VERY

53482

1 RESOURCEFUL. THEY DID WHATEVER WAS NEEDED TO DO IT.

2 Q AND KITTY MENENDEZ WAS RIGHT, THAT THEY
3 WERE CAPABLE OF GETTING THEIR OWN BREAKFAST CEREAL
4 IN THE MORNING; IS THAT CORRECT?

5 MS. ABRAMSON: OBJECTION. OBJECT TO THE FORM
6 OF THE QUESTION, YOUR HONOR. ARGUMENTATIVE.

7 THE COURT: REPHRASE THE QUESTION, PLEASE.

8 Q BY MR. CONN: WAS KITTY MENENDEZ RIGHT,
9 THAT THEY WERE ABLE TO GET THEIR OWN BREAKFAST
10 CEREAL IN THE MORNING?

11 MS. ABRAMSON: SAME OBJECTION.

12 THE COURT: WHETHER OR NOT SHE'S RIGHT OR
13 WRONG, REPHRASE THE QUESTION.

14 Q BY MR. CONN: WERE THE DEFENDANTS ABLE
15 TO GET THEIR OWN CEREAL ON THOSE OCCASIONS THAT
16 KITTY MENENDEZ INDICATED TO YOU THAT THEY CAN GET
17 THEIR OWN CEREAL?

18 A THEY WERE SO USED TO DOING IT, SINCE

19 THEY WERE TINY LITTLE BOYS; THAT, OF COURSE, THEY
20 COULD DO IT AT AGE FIVE AND SIX, AND PROBABLY WITH
21 THEIR EYES CLOSED.

22 Q SO THE ANSWER TO THAT QUESTION IS YES;
23 IS THAT CORRECT?

24 A DEPENDS ON HOW YOU LOOK AT IT.

25 Q YOU SAY YOU WERE WITH HER AT THE MALL
26 WHEN SOMETIMES HER SONS WOULD GET LOST; IS THAT
27 CORRECT?

28 A DEFINITELY.

53483

1 Q THAT WASN'T THE OCCASION THAT TERRY
2 BARALT WAS THERE, WAS IT?

3 A NO. I DIDN'T GO WITH TERRY. THIS WAS
4 SOMETHING THAT HAPPENED MANY TIMES WITH MY MOTHER AS
5 WELL.

6 Q TELL US HOW MANY TIMES IT WAS WITH YOU
7 WHEN YOU WERE WITH KITTY MENENDEZ WHEN HER SONS
8 WOULD GET LOST IN THE MALL AND SHE WOULD BE PAGED.

9 A EVERY TIME THAT I WENT OUT SHE WAS PAGED
10 TWICE. OTHER TIMES THEY WERE NOT FOUND, THEY JUST
11 CAME BACK.

12 Q AND HOW MANY TIMES DID YOU GO OUT WITH
13 HER?

14 A TO MALLS? EVERY TIME THAT WE CAME FOR A
15 VISIT WE WOULD GO TO THE MALL FOR ONE REASON OR
16 ANOTHER.

17 Q CAN YOU GIVE US A NUMBER OF TIMES IN
18 WHICH YOU WERE AT A MALL WITH KITTY MENENDEZ IN
19 WHICH HER SONS WOULD BE LOST AND SHE HAD TO BE
20 PAGED?

21 A IMPOSSIBLE. YOU'RE TALKING FROM 1973 TO
22 1979 PROBABLY. IT'S -- NOT -- THEY WERE OLDER AROUND
23 THE -- '73, '74 '75. THOSE YEARS. I MEAN, I
24 WOULDN'T BE ABLE TO --

25 Q HUNDREDS?

26 A NOT HUNDREDS, BUT--

27 Q HOW MANY TIMES? A DOZEN TIMES?

28 A A DOZEN TIMES. UH-HUH.

53484

1 Q ARE YOU SAYING THAT EVERY TIME -- HOW
2 OLD WERE THE DEFENDANTS?

3 A THEY WOULD TAKE OFF. THEY JUST
4 COMPLETELY TOOK OFF. I HAD MY KIDS HOLDING HANDS
5 LIKE A CHAIN WITH ME, AND THEY WERE COMPLETELY
6 LOOSE. THEY WERE NOT RESTRAINED OR ASKED TO BE
7 RESTRAINED IN ANY WAY OR MANNER.

8 Q AND HOW OLD WERE THE DEFENDANTS DURING

9 THIS DOZEN TIMES WHEN THEY WOULD GET LOST IN THE

10 MALL?

11 A FROM TWO TO SIX.

12 Q SO YOU'RE SAYING A TWO-YEAR-OLD CHILD --

13 YOU'RE SAYING THAT KITTY MENENDEZ WOULD KEEP

14 SHOPPING WHILE A TWO-YEAR-OLD CHILD WAS LOST IN THE

15 MALL; IS THAT WHAT YOU'RE SAYING?

16 A YES, INDEED. YES, INDEED.

17 Q OKAY.

18 A TWO AND FIVE.

19 Q AND HOW MANY TIMES WERE YOU WITH KITTY

20 MENENDEZ WHEN TWO-YEAR-OLD ERIK BECAME LOST AT THE

21 MALL?

22 A THAT HAPPENED ONE TIME, AND I WENT TO

23 LOOK FOR HIM. I WAS LOOKING FOR HIM WHILE KITTY WAS

24 SHOPPING.

25 Q OKAY. DID YOU FIND HIM?

26 A NO.

27 Q WHAT HAPPENED?

28 A THEY WERE CALLED ON -- IT WAS CALLED THAT

53485

1 THEY HAD FOUND THEM.

2 Q AND THEN WHAT HAPPENED AFTER YOU HEARD

3 THAT THEY HAD BEEN FOUND?

4 A I IMMEDIATELY WENT TO KITTY AND TOLD HER
5 THAT THEY HAD FOUND THEM. JUST AS I SAID BEFORE.
6 AND SHE SAID, "FINE, GREAT. NOW WE KNOW WHERE THEY
7 ARE. WE CAN KEEP ON SHOPPING."

8 Q THEN WHAT HAPPENED NEXT?

9 A SHE KEPT ON SHOPPING.

10 Q WHAT DID YOU DO?

11 A WAITED FOR HER TO FINISH SHOPPING AND
12 GET THEM. I HAD NO IDEA WHERE WE HAD TO GO.

13 Q AND HOW MUCH LONGER DID SHE SHOP?

14 A AT LEAST 45 MINUTES. SHE KEPT ON
15 LOOKING AT THE THINGS THAT SHE WAS LOOKING FOR. AND
16 SHE FOUND WHAT SHE WANTED AND PAID FOR IT, AND THEN
17 WENT.

18 Q AND SO YOU DIDN'T GET -- YOU DIDN'T GET
19 THE DEFENDANTS AT THAT TIME BECAUSE YOU HAD NO IDEA
20 WHERE THEY WERE; IS THAT CORRECT?

21 A NO. I HAD -- IT'S JUST VERY HARD.
22 THEY'RE NOT GOING TO GIVE ME CHILDREN THAT ARE NOT
23 MINE. I'M SMART ENOUGH TO KNOW THAT.

24 Q DID YOU THINK IT MIGHT BE CONSIDERATE OF
25 YOU FOR YOU TO GO AND KEEP THE TWO-YEAR-OLD COMPANY
26 UNTIL HIS MOTHER COULD ARRIVE?

27 A WELL, IF I WOULD HAVE KNOWN SHE WAS
28 GOING TO TAKE 45 MINUTES I WOULD HAVE PROBABLY DONE

1 IT. BUT I WAS WAITING FOR HER ALL THE TIME. I
2 DIDN'T REALIZE. TIME GOES BY AND YOU WAIT AND WAIT
3 AND WAIT. IF I WOULD HAVE KNOWN -- THE SECOND TIME
4 I DID THAT.

5 Q THIS IS THE FIRST TIME IT HAPPENED. YOU
6 WERE WITH HER WHEN SHE LOST HER KIDS AT THE MALL; IS
7 THAT CORRECT?

8 A THAT'S THE FIRST TIME, THAT'S CORRECT.

9 Q AND HOW OLD WAS ERIK MENENDEZ THE SECOND
10 TIME IT HAPPENED?

11 A ABOUT THREE AND A HALF.

12 Q AND WHAT HAPPENED ON THAT OCCASION?

13 A SAME THING. EXACTLY THE SAME THING.
14 THE ONLY DIFFERENCE IS WHEN THEY FOUND HIM. I TOLD
15 HER, "I'LL GO OVER TO THE BOOTH AND I'LL WAIT FOR
16 YOU THERE," AND I DID.

17 Q IS THAT WHAT YOU DID?

18 A YES. THEY DIDN'T GIVE ME THE CHILDREN,
19 BUT I WAITED.

20 Q YOU'RE SAYING ON THE SECOND OCCASION IT
21 WAS THE SAME SITUATION, WHERE YOU LOOKED FOR THE
22 KIDS AND YOU DIDN'T FIND THEM; IS THAT CORRECT?

23 A I DIDN'T LOOK FOR THEM BECAUSE THEY
24 FOUND THEM PRETTY FAST. I MEAN, BY THE TIME I
25 REALIZED THAT THEY HAD GONE -- THEY USED TO PLAY
26 AROUND IN ALL THE CLOTHING AND GETTING UNDERNEATH
27 EVERYTHING. AND BY THE TIME I REALIZED THEY WERE

53487

1 LOOK FOR THEM AT THAT TIME.

2 Q WHAT HAPPENED ON THE THIRD OCCASION?

3 HOW OLD WAS ERIK MENENDEZ?

4 A THAT'S THE ONLY TWO OCCASIONS THAT I WAS
5 WITH HER THAT THEY FOUND THEM. THE OTHER OCCASIONS
6 THEY CAME BACK BY THEMSELVES.

7 Q THERE WAS ONLY TWO TIMES WHEN SHE HAD TO
8 BE PAGED; IS THAT CORRECT?

9 A ONLY TWO TIMES THAT SHE WAS PAGED.
10 THERE WERE MANY TIMES THAT THE KIDS WERE NOT SEEN.

11 Q THEY WOULD WANDER OFF AND COME BACK?

12 A I HAD NO IDEA WHERE THEY WERE AND THEY
13 WOULD COME BACK.

14 Q ON THOSE OCCASIONS WOULD YOU SEARCH FOR
15 THEM?

16 A I WAS VERY UNCOMFORTABLE. I DID NOT GO
17 SEARCH FOR THEM.

18 Q WHY NOT?

19 A THEY WERE A LITTLE OLDER, AND I ALREADY
20 KNEW THE PATTERN. AND I DIDN'T WANT TO BE TOLD TO
21 MIND YOUR OWN BUSINESS.

22 Q HOW OLD WERE THEY ON THESE OTHER 10

23 OCCASIONS ON WHICH THIS HAPPENED?

24 A FOUR, FIVE.

25 Q YOU HAD A FOUR-YEAR-OLD WALKING AROUND
26 BY HIMSELF IN THE MALL, AND YOU DIDN'T GO IN SEARCH
27 OF A FOUR-YEAR-OLD?

28 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

53488

1 MISSTATES THE TESTIMONY.

2 THE COURT: SUSTAINED.

3 Q BY MR. CONN: SO ARE YOU SAYING THAT
4 THERE WERE OCCASIONS WHEN ERIK MENENDEZ WOULD BE
5 LOST AT THE MALL, HE'D BE WALKING AROUND, YOU WOULD
6 KNOW HE WAS MISSING, AND YOU DIDN'T EVEN BOTHER TO
7 GO LOOKING FOR HIM; IS THAT CORRECT?

8 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
9 ASSUMES FACTS NOT IN EVIDENCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: KITTY WOULD RIDICULE YOU IF YOU
12 DID ANYTHING DIFFERENT.

13 Q BY MR. CONN: SO RATHER THAN RIDICULE
14 YOU, RATHER THAN BE RIDICULED, YOU DECIDED THAT IT
15 WAS BETTER TO LET THE FOUR-YEAR-OLD -- WHAT HAPPENED
16 TO HIM HAPPENED TO HIM, SO THAT COULD AVOID BEING
17 RIDICULED BY KITTY MENENDEZ; IS THAT CORRECT?

18 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q BY MR. CONN: ARE YOU SAYING THAT YOU
21 CONSIDERED, ON THE ONE HAND, FINDING THE LOST
22 FOUR-YEAR-OLD; AND YOU CONSIDERED, ON THE OTHER
23 HAND, THE POSSIBILITY OF BEING RIDICULED BY KITTY
24 MENENDEZ. AND YOU DECIDED THAT IT WOULD BE BETTER
25 NOT TO BE RIDICULED THAN TO FIND THE FOUR-YEAR-OLD?

26 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

27 THE COURT: SUSTAINED TO THE FORM OF THE
28 QUESTION.

53489

1 Q BY MR. CONN: WERE YOU MORE CONCERNED
2 ABOUT BEING RIDICULED THAN YOU WERE ABOUT THE SAFETY
3 OF ERIK MENENDEZ?

4 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
5 OBJECT TO THE QUESTION AS IRRELEVANT.

6 THE COURT: OVERRULED.

7 THE WITNESS: NO, I WASN'T. IT'S JUST THAT
8 IT'S -- THERE ARE DECISION YOU HAVE TO MAKE IN THE
9 INSTANT, AND THEY'RE SOMETIMES VERY HARD TO MAKE;
10 SPECIFICALLY WHEN IT'S NOT YOUR CHILD AND YOU FEEL
11 YOU'RE NOT BEING -- THEY'RE NOT APPRECIATING YOUR
12 COMMENTS AND YOUR CONCERN AND YOUR ACTIONS.

13 IF SOMEBODY TELLS ME TO "MIND YOUR OWN
14 BUSINESS, IT'S MY SON," IT'S VERY HARD TO SAY, "I'M
15 GOING TO DO IT ANYWAY."

16 I MEAN, THAT'S THE WAY THEY WOULD DO IT
17 PROBABLY, BECAUSE THEY'RE VERY POSSESSIVE PEOPLE. I
18 TRY TO RESPECT PEOPLE'S OPINIONS. AND I WISH I
19 WOULD HAVE DONE IT, BELIEVE ME. THEY WOULDN'T HAVE
20 BEEN HERE. I CAN TELL YOU THAT. BUT I DIDN'T.

21 Q DID YOU FEEL LYLE AND ERIK WERE IN SOME
22 DANGER WHEN THEY WERE WALKING AROUND THE MALL AT
23 FOUR YEARS OLD?

24 A DEFINITELY, MILLIONS OF DANGERS. AND I
25 TOLD HER THAT.

26 Q AND EVEN THOUGH YOU FELT HE WAS IN
27 DANGER --

28 A I COULDN'T STOP --

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1 Q ALLOW ME TO FINISH THE QUESTION,
2 PLEASE.

3 EVEN THOUGH YOU FELT HE WAS IN DANGER,
4 WALKING AROUND THE MALL AT FOUR YEARS OLD, YOU
5 DECIDED YOU WERE NOT GOING TO LOOK FOR HIM BECAUSE
6 KITTY MENENDEZ WOULD NOT APPRECIATE IT?

7 MS. ABRAMSON: OBJECTION, YOUR HONOR.

8 ARGUMENTATIVE. ASKED AND ANSWERED.

9 THE COURT: SUSTAINED TO THE FORM OF THE
10 QUESTION.

11 Q BY MR. CONN: ARE YOU SAYING THAT YOU
12 RECOGNIZED A DANGER TO ERIK MENENDEZ; AND YET YOU
13 DID NOT LOOK FOR HIM BECAUSE YOU FELT THAT KITTY
14 MENENDEZ WOULD NOT APPRECIATE IT?

15 A I KEPT ON TELLING KITTY, "KITTY, LET'S
16 GO LOOK FOR THE BOYS. I'M CONCERNED THEY'RE NOT
17 HERE WITH YOU." I KEPT ON TELLING HER THAT. I DID
18 NOT SHOP.

19 AS A MATTER OF FACT, THAT'S WHY I
20 SHOPPED SO VERY FEW TIMES WITH HER WHEN THE KIDS
21 WERE SMALL. IT WAS BEYOND WHAT I COULD TAKE.

22 Q AFTER TELLING HER YOU WERE CONCERNED
23 ABOUT IT --

24 A SHE DIDN'T CARE.

25 Q -- YOU CONTINUED SHOPPING RATHER THAN
26 LOOKING FOR ERIK MENENDEZ?

27 A NO. I DIDN'T SHOP. I KEPT ON WITH
28 MY --

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1 MS. ABRAMSON: OBJECTION.

2 THE COURT: WAIT A MINUTE. THERE ARE THREE

3 PEOPLE, ALMOST FOUR PEOPLE TALKING AT ONCE.

4 LET'S START OVER AGAIN. REASK THE
5 QUESTION.

6 THE ANSWER'S STRICKEN.

7 MS. ABRAMSON: I'M GOING TO OBJECT. THIS HAS
8 BEEN ASKED AND ANSWERED REPEATEDLY.

9 THE COURT: IT REALLY HASN'T BEEN ANSWERED.

10 TRY TO RESPOND TO THE QUESTION AND
11 FINISH THIS INQUIRY.

12 WHY DON'T YOU REASK THE QUESTION.

13 Q BY MR. CONN: ARE YOU SAYING THAT AFTER
14 DISCUSSING IT WITH KITTY YOU CONTINUED SHOPPING WITH
15 HER?

16 A I WAS NOT SHOPPING.

17 Q WHAT WERE YOU DOING?

18 A STANDING THERE WAITING FOR HER.

19 Q ON EACH OF THESE 10 OCCASIONS?

20 A EVERY TIME THAT THE KIDS GOT LOST I
21 WOULD NOT SHOP ANYMORE.

22 Q YOU WOULD STAND WHERE, WHEREVER YOU
23 WERE?

24 A BESIDE HER ASKING HER, "KITTY, LET'S GO
25 AND FIND THE BOYS."

26 Q AND SHE WOULD CONTINUE HER SHOPPING?

27 A YES.

28 Q FOR HOW LONG?

1 A AS LONG AS SHE WANTED.

2 Q AND YOU WOULD NOT SHOP. YOU WOULD JUST
3 ARGUE WITH HER?

4 A I WOULD JUST WAIT THERE. AND EVERY TWO,
5 THREE MINUTES I'D SAY, "KITTY, THE BOYS ARE NOT
6 BACK. WE BETTER GO FIND THEM. SOMETHING COULD
7 HAPPEN TO THEM."

8 AND SHE WOULD KEEP ON TELLING ME,
9 "NONSENSE. THEY'RE FINE. THEY'RE USED TO
10 IT."

11 Q WHY DIDN'T YOU WALK AWAY AND LOOK FOR
12 THE FOUR-YEAR-OLD LOST IN THE MALL?

13 MS. ABRAMSON: OBJECTION. OBJECT TO THE FORM
14 OF THE QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

15 THE COURT: OVERRULED.

16 THE WITNESS: IT'S NOT EASY WHEN YOU'RE IN A
17 MALL. WHERE WERE YOU GOING TO LOOK?

18 Q BY MR. CONN: YOU SAID THAT YOU WOULD BE
19 PROUD TO BE THE MOTHER OF ERIK AND LYLE MENENDEZ.

20 A I'M SORRY?

21 Q DID YOU SAY THAT YOU WOULD BE PROUD TO
22 BE THEIR MOTHER OR PROUD TO BE --

23 A I WOULD BE VERY HAPPY. I WISH THEY
24 WOULD HAVE BEEN MY CHILDREN, YES. THEY WOULD HAVE
25 BEEN TREATED MUCH BETTER.

26 Q TODAY, NOW THAT YOU LEARNED THAT THEY
27 SHOT YOUR BROTHER TO DEATH, ARE YOU STILL PROUD?
28 WOULD YOU BE STILL BE PROUD TO BE THEIR MOTHER?

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1 A I THINK THAT WAS THE CIRCUMSTANCE. I
2 DON'T THINK THEY'RE PROUD OF IT EITHER. NOBODY IS
3 PROUD OF IT.

4 Q ARE YOU PROUD OF THEM TODAY?

5 A THAT'S NOT SOMETHING YOU CAN BE PROUD
6 OF. THAT'S SOMETHING THAT IS VERY SAD.

7 Q I'M ASKING YOU IF YOU'RE PROUD OF THEM.

8 A I'M PROUD OF WHAT THEY ARE INSIDE, YES,
9 I AM. I THINK THEY DIDN'T MEAN TO DO THAT. I THINK
10 IT WAS A MATTER OF AN INSTANT, AND THEY WANTED TO
11 TAKE IT BACK TWO SECONDS LATER, AND THEY COULDN'T.

12 MR. CONN: I HAVE NO FURTHER QUESTIONS.

13 THE COURT: OKAY. ANYTHING FURTHER?

14 MS. ABRAMSON: NO.

15 MR. GESSLER: NO, YOUR HONOR.

16 THE COURT: THANK YOU. YOU MAY STEP DOWN.
17 YOU'RE EXCUSED.

18 WE'LL BE IN RECESS UNTIL TOMORROW AT
19 8:30.

20 DON'T DISCUSS THE MATTER WITH ANYONE.

21 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL SEE
22 YOU ALL BACK HERE TOMORROW AT 8:30.
23 (THE JURY ENTERED THE JURY ROOM
24 AND THE FOLLOWING PROCEEDINGS
25 WERE HELD:)
26
27 THE COURT: IF WE COULD CLEAR THE ROOM FOR A
28 MOMENT.

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1 (PAGES 53495 THROUGH 53498 WERE HELD
2 IN CAMERA AND SEALED BY ORDER OF
3 THE COURT.)

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12 53315-A 318
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13 MARIANNE 53323-L 53337-C 53350-L 318

14 CANO,
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15 (CON'D) 53370-C 318

16 SEMROD,
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18 MOSNER,
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20 MARTA 53438-A 318
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23
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27
28 LEGEND:

1 A = MS. ABRAMSON
C = MR. CONN
2 G = MR. GESSLER
K = MS. TOWERY
3 L = MR. LEVIN
N = MS. NAJERA
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2 EXHIBITS: MARKED RECEIVED VOL.

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