

1 VAN NUYS, CALIFORNIA; WEDNESDAY, APRIL 3, 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 COURT: ALL RIGHT. IN THE TRIAL, ANYTHING

9 BEFORE WE HAVE THE JURY OUT?

10 MS. ABRAMSON: YES, YOUR HONOR.

11 WE ARE VERY CONCERNED ABOUT A MATTER THAT

12 WE GAVE THE COURT A COPY OF THE MATERIAL YESTERDAY

13 AFTERNOON.

14 THE "NATIONAL ENQUIRER" OF APRIL 9, 1996

15 HAS A STORY IN IT, WHICH IN THE WAY IT READS, WOULD

16 INDICATE AND MAKE YOU BELIEVE THAT A MEMBER OR MEMBERS

17 OF THE JURY HAS DISCUSSED DELIBERATIONS AND CERTAIN

18 OPINIONS AND CONCLUSIONS THAT THE JURY CAME TO WITH

19 SOMEONE, WHETHER THE REPORTER FOR THE "NATIONAL

20 ENQUIRER" DIRECTLY, OR WITH SOMEONE ELSE, WHO THEN GAVE

21 THE INFORMATION TO THE ENQUIRER.

22 WE THINK THIS REQUIRES INVESTIGATION. I'M

23 NOT SURE HOW TO GO ABOUT IT. BUT IF IT IS TRUE, THAT

24 THE IMPRESSION FROM THIS STORY IS THAT ONE OF THE JURORS

25 HAVE BEEN TALKING, THAT IS CLEARLY MISCONDUCT OF THE

26 WORST SORT.

27 WE TURNED THIS IN, A COPY OF THIS

28 YESTERDAY, TO THE CLERK.

1 DID YOU GIVE IT TO HIM? OKAY.

2 THE COURT: THIS IS THE FIRST I'VE HEARD OF IT.

3 MS. ABRAMSON: I'M SORRY, JUDGE. WE TURNED IT IN  
4 YESTERDAY. I THOUGHT IT HAD BEEN SHOWN TO YOU. I WILL  
5 GIVE IT TO THE BAILIFF.

6 THE COURT: ALL RIGHT. WE WILL LOOK AT IT A  
7 LITTLE LATER. I DON'T WANT TO DELAY THE TRIAL RIGHT NOW  
8 FOR THAT.

9 ALL RIGHT. SO ANYTHING ELSE BEFORE WE HAVE  
10 THE JURY COME OUT?

11 MS. ABRAMSON: JUST ONE OTHER MATTER, YOUR HONOR,  
12 BEFORE WE LOSE TRACK OF IT. THIS HAPPENED YESTERDAY.

13 WE HAVE ASKED THE PROSECUTION FOR  
14 INFORMATION ABOUT WHO THEY INTEND TO CALL IN REBUTTAL,  
15 AND THEY HAVE JUST INFORMED US THAT THEY INTEND TO CALL  
16 MILTON ANDERSEN AND BRIAN ANDERSEN, AND WE WANT AN OFFER  
17 OF PROOF AS TO WHAT IT IS THEY'RE BEING CALLED FOR, SO  
18 THAT WE CAN RESPOND.

19 WE DO NOT BELIEVE THAT EITHER OF THEM HAVE  
20 THE KIND OF INFORMATION THAT WOULD CONSTITUTE REBUTTAL  
21 TO WHAT WE HAVE DONE IN THIS PENALTY PHASE.

22 THE COURT: ALL RIGHT. WELL, WE'LL DEAL WITH  
23 THAT, BUT AT THIS POINT WE HAVE THE WITNESS ON THE  
24 WITNESS STAND, AND I WANT TO RESUME WITH HIS TESTIMONY.

25 ANYTHING ELSE BEFORE WE BEGIN?

26 MS. ABRAMSON: I JUST DON'T WANT TO LOSE TRACK OF  
27 THAT BEFORE THE END OF THE DAY, JUDGE.  
28 THE COURT: I AM SURE YOU WILL REMEMBER.

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1 MS. NAJERA: I'M SORRY. FOR THE RECORD, ALSO  
2 DETECTIVE ZOELLER.

3 MS. ABRAMSON: AND WE NEED AN OFFER OF PROOF ON  
4 THAT ALSO.

5 THE COURT: ANYTHING ELSE NOW BEFORE WE HAVE THE  
6 WITNESS BACK ON THE WITNESS STAND?

7 OKAY. LET'S GET HIM ON THE WITNESS STAND,  
8 DR. HART. IS HE HERE?

9 MS. ABRAMSON: YES, HE'S HERE.

10 (BRIEF PAUSE IN PROCEEDINGS)

11

12 THE COURT: OKAY. BEFORE WE RESUME, JUST TO  
13 REMIND COUNSEL AND THE WITNESS, DO NOT REFER TO THE  
14 PARTICIPANTS IN THIS CASE BY THEIR FIRST NAMES. USE  
15 EITHER FIRST AND LAST NAME, OR MR. SO AND SO, SO THAT WE  
16 DON'T GET INTO A SITUATION OF REFERRING TO PEOPLE BY  
17 THEIR FIRST NAMES, OKAY?

18 LET'S GET THE JURY OUT.

19 (THE JURY ENTERS THE COURTROOM

20 AND THE FOLLOWING PROCEEDINGS

21 WERE HELD:)

22

23 MS. ABRAMSON: CAN I APPROACH THE WITNESS FOR A  
24 MOMENT?

25 THE COURT: SURE.

26 OKAY. WE WILL NOW RESUME.

27 MS. ABRAMSON: THANK YOU.

28

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1 STUART HART,

2 THE WITNESS ON THE STAND AT THE TIME OF THE ADJOURNMENT,

3 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

4

5 THE COURT: STATE YOUR NAME AGAIN FOR THE RECORD.

6 THE WITNESS: YES. STUART HART.

7 THE COURT: OKAY. I WILL REMIND YOU YOU'RE STILL

8 UNDER OATH.

9 WE HAVE THE JURY IN THE JURY BOX.

10 GOOD MORNING, LADIES AND GENTLEMEN. AND

11 WE'LL NOW CONTINUE WITH THE DIRECT EXAMINATION OF THE

12 WITNESS.

13

14 DIRECT EXAMINATION (RESUMED)

15 BY MS. ABRAMSON:

16 Q. DR. HART, WE'VE BEEN TALKING ABOUT THE FACT

17 THAT THERE WERE VARIOUS FORMS OF PSYCHOLOGICAL

18 MALTREATMENT DEMONSTRATED OVER THE YEARS BY MR. AND  
19 MRS. MENENDEZ TOWARDS THEIR CHILDREN.

20 COULD YOU GIVE US, JUST TO START UP AGAIN  
21 TODAY, A ONE-SENTENCE DEFINITION OF PSYCHOLOGICAL  
22 MALTREATMENT THAT IS APPLICABLE TO THIS FAMILY  
23 SITUATION?

24 A. YES. AND IN FACT, IT'S THE ONE THAT WE USE  
25 GENERALLY NOW. IT'S A REPEATED PATTERN OR EXTREME  
26 INCIDENCE OF THOSE CONDITIONS I HAVE DESCRIBED TO YOU,  
27 WHICH CONVEY THE MESSAGE THAT THE CHILD IS WORTHLESS,  
28 FLAWED, UNLOVED, ENDANGERED, OR ONLY VALUABLE IN MEETING

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1 SOMEONE ELSE'S NEEDS.

2 Q. AND WITH RESPECT TO THE MENENDEZ FAMILY,  
3 WAS THERE A BASIC PARENTING STYLE THAT YOU CAN SEE, IN  
4 REVIEWING ALL THE MATERIALS THAT YOU'VE RELIED UPON,  
5 REVIEWING ALL THE TESTIMONY OF WITNESSES AT THIS TRIAL  
6 AND THE LAST TRIAL, THAT CHARACTERIZES, FIRST OF ALL,  
7 MR. MENENDEZ' MODUS OPERANDI, IF YOU WOULD?

8 A. THE HIGHLIGHTS OF THAT FOR ME ARE A DIVIDE  
9 AND CONQUER WAY OF HANDLING PEOPLE, WEAKENING THEIR  
10 POSITIONS IN WAYS THAT THEY REALLY HAVE TO DEPEND ON  
11 YOU, OR LOOK OUT FOR YOU. SORT OF MASTER OF ALL, POWER  
12 THROUGH INTIMIDATION, HUMILIATION AND DEPENDENCY, AND  
13 CERTAINLY THE USE OF HIS CHARM AND MANIPULATION.

14 Q. AND WHEN YOU SAY "DIVIDE AND CONQUER," ARE  
15 THERE PATTERNS THAT EMERGE THAT HE TRIED TO KEEP EACH  
16 MEMBER OF THIS FAMILY FROM BONDING WITH EACH OTHER, AND  
17 ONLY BOND TO HIM?

18 A. I THINK THAT THERE IS A FAIR AMOUNT OF  
19 EVIDENCE OF THAT IN ENCOURAGING THE COMPETITION BETWEEN  
20 ERIK AND LYLE MENENDEZ, IN BELITTLING HIS OWN WIFE AND  
21 DEGRADING HER, YES.

22 Q. AND GIVING MESSAGES TO HIS SONS THAT THEIR  
23 MOTHER WASN'T THEIR FRIEND, BUT HIS FRIEND?

24 A. YES.

25 Q. AND WAS THERE A MANNER OR METHOD IN WHICH  
26 MRS. MENENDEZ BEHAVED IN HER ROLE IN THIS FAMILY AS THE  
27 MOTHER?

28 A. RIGHT. I THINK, AGAIN, THERE ARE A NUMBER

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1 OF ELEMENTS THAT STAND OUT. THIS EMPHASIS ON IMAGE, AND  
2 REALLY DECEIT AND HYPOCRISY TO MAINTAIN IT.

3 DOING WHAT JOSE REQUIRES, THAT THAT'S SORT  
4 OF THE LAW OF THE LAND. YOU DON'T INTERFERE WITH HIM,  
5 NO MATTER WHAT HE DOES WITH HIS SONS.

6 SORT OF A BOIL UNTIL YOU EXPLODE WAY OF  
7 HANDLING HER OWN STRESS, AND INFORMING ON HER SONS.  
8 USING FEAR AND PUNISHMENT OF JOSE TO HELP HER CONTROL  
9 THE BOYS, MAYBE EVEN TO GET BACK AT THEM WHEN THEY

10 ANGERED HER, AND TO CHARACTERIZE HERSELF AS VICTIM IN  
11 THE FAMILY.

12 Q. NOW, THERE IS EVIDENCE, IS THERE NOT, THAT  
13 MRS. MENENDEZ WAS, IN FACT, QUITE UNHAPPY OVER VARIOUS  
14 PERIODS OF HER LIFE AND HER MARRIAGE; IS THERE NOT?

15 A. YES.

16 Q. AND IS THERE ALSO AN INDICATION THAT SHE  
17 TOOK HER UNHAPPINESS OUT ON HER CHILDREN?

18 A. THERE IS.

19 Q. AND SHE'S EVEN ACKNOWLEDGED THAT IN THE  
20 PAST, DID SHE NOT?

21 A. THAT'S MY UNDERSTANDING, THAT SHE HAS  
22 ACKNOWLEDGED IT.

23 Q. NOW, TURNING SPECIFICALLY TO ERIK MENENDEZ  
24 AND HIS ROLE, THE ROLE THAT WAS GIVEN TO HIM IN THIS  
25 FAMILY, AGAIN, ANY OPINIONS THAT YOU'RE OFFERING, THESE  
26 AREN'T JUST YOUR PERSONAL OPINIONS, ARE THEY?

27 MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR  
28 HEARSAY.

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1 MS. ABRAMSON: I'LL WITH --

2 THE COURT: OKAY. SHE IS WITHDRAWING THE  
3 QUESTION.

4 MS. ABRAMSON: YES. THANK YOU, YOUR HONOR.

5 Q. FOR THE NEXT SERIES OF QUESTIONS, ARE YOU

6 AGAIN RELYING UPON THE OBSERVATIONS OF THIRD PARTIES IN  
7 THE MAIN?

8 A. YES.

9 Q. AND THAT'S PEOPLE BOTH WHO DID AND WHO DID  
10 NOT TESTIFY IN THIS TRIAL?

11 A. THAT'S MY UNDERSTANDING.

12 Q. OKAY. ALL RIGHT.

13 THEN FOCUSING THEN ON ERIK MENENDEZ AS THE  
14 YOUNGEST MEMBER OF THIS FAMILY, ARE THERE CERTAIN  
15 FEATURES THAT DESCRIBE BASICALLY THE PATTERNS OF  
16 TREATMENT THAT HE EXPERIENCED, AND THE SPECIFIC MESSAGES  
17 THAT THIS TREATMENT GAVE HIM IN THE FAMILY, WHETHER  
18 EXPLICIT, VERBAL MESSAGES, OR THE KIND OF THINGS THAT A  
19 CHILD WOULD COME TO UNDERSTAND ABOUT HIMSELF, GIVEN THE  
20 BEHAVIORS OF THE PARENTS THAT WE'RE FAMILIAR WITH?

21 A. YES. AND THIS IS A PARTICULARLY IMPORTANT  
22 PART, BECAUSE, OF COURSE, IT'S THE MESSAGES THAT ARE SO  
23 POWERFUL.

24 THE ONE WOULD BE THAT IN A SENSE THAT  
25 YOU'RE LOWEST ON THE FOOD CHAIN, MEANING ERIK.

26 Q. MEANING ERIK?

27 A. ERIK, RIGHT. THAT YOU'RE THE INFERIOR ONE.  
28 YOU'RE THE ONE OF LEAST SIGNIFICANCE, THE ONE WHO IS TO

1 BE IGNORED AND TREATED WITH CONTEMPT. HE EXPERIENCED



2 THAT A GREAT DEAL DURING HIS EARLY LIFE, WHILE IN  
3 CONTRAST TO HIS BROTHER, WHO WAS GETTING THE EXTREME  
4 PRESSURE AND FOCUS ON HIM FOR -- TO DEVELOP IN SPECIFIC  
5 WAYS IN THOSE YEARS.

6 ANOTHER WOULD BE THE DENIAL -- BEING DENIED  
7 LOVE, AFFECTION AND EMOTIONAL SUPPORT.

8 Q. NOW, I WANTED TO ASK YOU SOME QUESTIONS  
9 ABOUT THAT.

10 A. OH, CERTAINLY. YES.

11 Q. THERE IS SOME INDICATION THAT WHEN HE WAS  
12 VERY YOUNG IT APPEARED THAT MRS. MENENDEZ DID HAVE SOME  
13 AFFECTION TOWARDS HIM, AND SHOWED SOME AFFECTION TOWARDS  
14 HIM; IS THAT CORRECT?

15 A. YES. IT ISN'T AS THOUGH IT WERE JUST --  
16 YOU KNOW, EVERY MOMENT WAS VOID OF ANYTHING.

17 Q. AND THERE IS ALSO AN INDICATION FROM OTHER  
18 PEOPLE THAT THOSE DISPLAYS OF AFFECTION, HOWEVER,  
19 STOPPED AT RATHER AN EARLY AGE.

20 A. THAT'S MY UNDERSTANDING.

21 Q. IS IT UNDERSTOOD IN THE AREA OF CHILD  
22 DEVELOPMENT THAT IF A CHILD GETS SOME AFFECTION WHEN  
23 THEY'RE VERY YOUNG, THAT CAN SOMETIMES PROVIDE THAT  
24 LITTLE NUGGET OF STRENGTH THAT PREVENTS THEM FROM, FOR  
25 EXAMPLE, YOU KNOW, GOING MAD OR CRAZY, OR BECOMING A  
26 SOCIOPATH OR TURNING TO DRUGS, AND THAT COULD BE THIS  
27 LITTLE SAVING GRACE?

28 A. IT CERTAINLY CAN HELP IN THAT WAY, PROVIDE

1 THAT EXTRA LITTLE SPARK THAT CAN MAYBE BECOME A FLAME  
2 SOME DAY.

3 Q. AND CERTAINLY IN YOUR INTERACTION WITH ERIK  
4 MENENDEZ, HAVE YOU DETERMINED, DR. HART, THAT THERE ARE  
5 SOME VERY GOOD QUALITIES THAT HE HAS?

6 A. YES, THAT'S MY FEELING. THAT'S MY OPINION,  
7 THAT HE HAS NUMEROUS GOOD QUALITIES.

8 Q. AND THAT THERE IS A PART OF HIM THAT'S VERY  
9 HEALTHY, AS WELL AS A PART THAT'S VERY DAMAGED?

10 A. YES.

11 Q. NOW, CONCERNING THIS DENIAL OF EMOTIONAL  
12 SUPPORT, BASED ON YOUR REVIEW OF ALL THE MATERIALS, DID  
13 THAT CHANGE FOR THE BETTER IN ANY WAY WHEN ERIK MENENDEZ  
14 WAS AN ADOLESCENT?

15 A. WELL, NO. THE INFORMATION THAT I HAVE  
16 INDICATES THAT WITHIN THE FAMILY THAT IT WAS ACTUALLY  
17 REDUCED EVEN MORE.

18 IF WE THINK ABOUT THE -- A PERIOD WHICH IS  
19 CLEARLY, FROM THE INFORMATION GIVEN BY OTHERS, A PERIOD  
20 OF GREAT STRESS FOR HIM, AROUND THE 9TH-GRADE YEAR, AND  
21 THEN WHEN HE WAS AT P.D.S., AND THEN HIS MOVE ON TO  
22 CALIFORNIA, THAT WAS A TIME WHEN HIS MOTHER, AS MANY  
23 REPORTED, HAD NUMEROUS DIFFICULTIES THAT MADE HER MORE  
24 DISTANT, LESS AVAILABLE AS ANY KIND OF SUPPORT TO HIM.

25 Q. AND WITH RESPECT TO THAT 9TH-GRADE YEAR; IS  
26 THAT THE YEAR THAT YOU UNDERSTAND THAT SANDRA SHARP, FOR

27 EXAMPLE, AND BONNIE HUNTER WERE HIS TEACHERS?

28 A. AND WHEN THEY RECOGNIZED THE SYMPTOMS OF

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1 THE REALLY POWERFUL STRESS THAT HE WAS UNDER, THE  
2 ANXIETY THAT HE WAS FEELING, THE WAY HE WOULD BREAK DOWN  
3 AND -- WELL, FOR EXAMPLE, CRYING FREQUENTLY, WHICH IS IN  
4 SCHOOL IN FRONT OF STUDENTS. THAT IS SO UNUSUAL FOR A  
5 BOY AT THAT GRADE LEVEL THAT IT JUST STANDS OUT IN BOLD  
6 RELIEF. IT'S SOMETHING THAT BOYS WOULD AVOID GENERALLY  
7 AT ALL COSTS.

8 AND HE BROKE DOWN THAT WAY, FROM THEIR  
9 DESCRIPTIONS, AT A FREQUENCY LEVEL JUST BEYOND ANYTHING  
10 THAT -- WELL, I REMEMBER, THAT SANDY SHARP HAD SEEN.

11 Q. WELL, LET ME JUST -- DOES THAT -- IS THAT  
12 ONE OF THE INDICATORS, AMONG OTHERS, THAT HE WAS HAVING  
13 EXTREME DIFFICULTIES IN THAT PARTICULAR YEAR, THE YEAR  
14 THAT HE WAS 15?

15 A. YES.

16 Q. AND WAS THAT THE SAME YEAR, THE END OF THAT  
17 SCHOOL YEAR, WHEN HE WAS -- APPEARED FOR EVALUATION AT  
18 THE LEWIS SCHOOL?

19 A. THAT'S MY UNDERSTANDING, YES.

20 Q. AND HAVE YOU REVIEWED THE RECORDS OF THE  
21 LEWIS SCHOOL -- WELL, FIRST OF ALL, DO YOU UNDERSTAND  
22 THE LEWIS SCHOOL TO BE A SCHOOL FOR THE LEARNING

23 DISABLED?

24 A. YES.

25 Q. AND HAVE YOU REVIEWED THE RECORDS OF THE  
26 EVALUATIONS THAT WERE DONE ON ERIK MENENDEZ AT THE LEWIS  
27 SCHOOL?

28 A. YES.

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1 Q. AND DO THOSE EVALUATIONS REVEAL LEARNING  
2 DISABILITIES?

3 A. YES. THEY SEEM TO BE -- THOSE WHO HAD DONE  
4 THE EVALUATIONS, AND SO ON, WERE QUITE CONCERNED ABOUT  
5 HIS LEARNING PROBLEMS, AND GAVE RESULTS THAT WOULD  
6 INDICATE LEARNING DISABILITIES.

7 Q. AND CAN YOU GIVE THE JURY AN EXAMPLE OF THE  
8 LEVEL OF HIS IMPAIRMENT? FOR EXAMPLE, WAS THERE ONE  
9 TEST WHERE HE WAS SIMPLY TO WRITE THE ALPHABET?

10 A. AND THE NOTES -- AS I REMEMBER THE  
11 REPORT -- INDICATED THAT HE EVEN HAD DIFFICULTY DOING  
12 THAT, AND HAD TO SUB-VOCALIZE, ACTUALLY KIND OF TALK HIS  
13 WAY THROUGH, AND HAD DIFFICULTY GETTING THEM IN THE  
14 RIGHT ORDER AS A 15-YEAR-OLD.

15 Q. GETTING THE ALPHABET IN THE RIGHT ORDER?

16 A. YES.

17 Q. DID IT ALSO INDICATE THAT HE HAD EVEN  
18 DIFFICULTY FORMING THE LETTERS OF THE ALPHABET?

19 A. HE DID.

20 Q. NOW, DID THOSE RECORDS FROM THE LEWIS

21 SCHOOL -- YOU HAD MENTIONED BEFORE THAT THERE IS A

22 COMPONENT OF PSYCHOLOGICAL MALTREATMENT CALLED "DENYING

23 EDUCATIONAL NEGLECT," OR "DENYING EDUCATION"?

24 A. THAT LAST CATEGORY, WHICH IS DENYING HELP

25 IN ANY OF THE THREE AREAS; EDUCATION BEING CLEARLY ONE

26 OF THEM, WHEN IT'S CLEARLY APPARENT THAT THE PERSON

27 NEEDS HELP THERE.

28 Q. AND WAS THERE INFORMATION IN THOSE RECORDS

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1 INDICATING THAT MR. AND MRS. MENENDEZ DENIED ERIK HELP

2 THAT HE NEEDED FROM THE LEWIS SCHOOL?

3 A. WELL, THE RECORDS, AS I RECALL, INDICATED

4 FROM THAT SCHOOL'S POINT OF VIEW -- POINT OF VIEW OF

5 THEIR EXPERTS, THAT A FULL EVALUATION SHOULD TAKE PLACE,

6 NOT THE -- WHAT WOULD SIMPLY BE THE FIRST-PHASE

7 EVALUATION THAT THEY CONDUCTED, AND THAT THEY

8 RECOMMENDED THIS, AND IT WAS NOT DONE.

9 Q. WELL, WAS THERE AN INDICATION THAT

10 MR. MENENDEZ SPECIFICALLY SAID HE REFUSED TO HAVE ERIK

11 TESTED FURTHER?

12 A. YES.

13 Q. AND WOULD THAT TESTING HAVE INVOLVED

14 PSYCHOLOGICAL TESTING?

15 A. PROBABLY SO. GENERALLY SUCH TESTING WOULD  
16 BE DONE IN MOST OF THE SCHOOLS OF THE COUNTRY, SIMPLY  
17 BECAUSE YOU -- YOU NEED TO PUT THOSE LEARNING  
18 DISABILITIES ALSO IN THE CONTEXT OF THE PERSON'S  
19 PERSPECTIVE AND REACTIONS TO THE MANNER WHICH THAT  
20 PERSON IS HANDLING THEM AND FEELS ABOUT THEM AND THINKS  
21 ABOUT THEM, AND SO ON.

22 Q. ISN'T IT ALSO IMPORTANT TO DO PSYCHOLOGICAL  
23 TESTING TO SEE IF WHAT LOOKS LIKE LEARNING DISABILITIES  
24 OR ATTENTION DEFICIT DISABILITIES AREN'T, IN FACT,  
25 MENTAL ILLNESS?

26 A. WELL, IT'S NECESSARY, BECAUSE TO MAKE A  
27 FINAL DETERMINATION OF A LEARNING DISABILITY, YOU NEED  
28 TO BE ABLE TO RULE OUT OTHER PROBLEMS AS MAJOR CAUSES OR

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1 THE CAUSES OF THE DIFFICULTIES YOU HAVE SEEN THE CHILD  
2 HAVE.

3 Q. NOW, IS THERE ALSO AN INDICATION THAT AFTER  
4 ERIK WAS EVALUATED, TO THE LIMITED EXTENT HE WAS AT THE  
5 LEWIS SCHOOL, IT SHOWED MULTIPLE LEARNING DISABILITIES,  
6 DID IT NOT?

7 A. YES. AUDITORY PROCESSING PROBLEMS,  
8 PROBLEMS IN READING, YES.

9 Q. SHOWED DYSLLEXIA AND DYSGRAPHIA AND OTHERS?

10 A. YEAH.

11 Q. IS THERE ANY INDICATION THAT ERIK EVER GOT

12 ANY REMEDIAL --

13 THE COURT: WHO ARE YOU REFERRING TO,

14 MS. ABRAMSON?

15 MS. ABRAMSON: EXCUSE ME?

16 THE COURT: YOU'RE REFERRING TO SOMEBODY.

17 Q. BY MS. ABRAMSON: IS THERE ANY INDICATION

18 THAT MY CLIENT EVER GOT ANY REMEDIAL HELP, OR HELP WITH

19 LEARNING DISABILITIES, AFTER THE FAMILY MOVED TO

20 CALIFORNIA THAT SAME SUMMER?

21 A. NO. I'VE HAD NO INFORMATION TO INDICATE

22 THAT, TO SUGGEST THAT.

23 Q. AND YOU WERE GIVEN, AS FAR AS YOU KNOW, ALL

24 OF HIS RECORDS?

25 A. THAT'S MY UNDERSTANDING.

26 Q. ALL OF HIS SCHOOL RECORDS, ALL OF HIS

27 MEDICAL RECORDS?

28 A. YES.

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1 Q. NOW, WHEN THE FAMILY ARRIVED IN CALIFORNIA,

2 YOU'RE AWARE THAT LYLE MENENDEZ REMAINED BEHIND IN NEW

3 JERSEY?

4 A. YES.

5 Q. SO ERIK MENENDEZ WAS SEPARATED FOR THE

6 FIRST TIME FROM HIS BROTHER?

7 A. YES. SO HE DIDN'T HAVE THAT SUPPORT, AND  
8 THE DIFFICULTIES IN TERMS OF HIS MOTHER BEING MORE  
9 DISTANT.

10 Q. AND BASED ON THAT YOU HAVE EXAMINED THE  
11 RECORDS OF MRS. MENENDEZ' THERAPISTS, DR. COX AND  
12 DR. SUMMERFIELD, HAVE YOU NOT?

13 A. YES.

14 Q. AND DID THOSE RECORDS INDICATE THAT SHE WAS  
15 GROSSLY, GRAVELY --

16 MR. CONN: OBJECTION. I AM GOING TO OBJECT AT  
17 THIS POINT AS CALLING FOR HEARSAY AND IRRELEVANT.

18 THE COURT: I HAVEN'T HEARD THE QUESTION YET.

19 Q. BY MS. ABRAMSON: GROSSLY AND GRAVELY  
20 DEPRESSED AND UNHAPPY AND UPSET DURING THOSE FIRST FEW  
21 MONTHS AFTER THE FAMILY MOVED TO CALIFORNIA?

22 MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR  
23 HEARSAY.

24 THE COURT: OVERRULED.

25 THE WITNESS: THAT'S MY MEMORY.

26 Q. BY MS. ABRAMSON: AND DO YOU REMEMBER ERIK  
27 MENENDEZ TESTIFYING -- I CAN'T REMEMBER NOW WHICH TRIAL  
28 IT IS -- BUT UNDER OATH THAT HIS MOTHER SPENT THOSE

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1 FIRST FEW MONTHS WHEN THEY WERE HERE IN CALIFORNIA  
2 CRYING AND ISOLATED AND AWAY FROM HIM IN HER ROOM?



3 A. THAT'S MY MEMORY.

4 Q. AND HE, MEANWHILE, WAS TRYING TO ADJUST TO

5 A NEW SCHOOL AND MAKE FRIENDS AND FIGURE OUT HOW TO GET

6 AROUND, AND --

7 A. YES.

8 MR. CONN: OBJECTION. LEADING.

9 THE COURT: OVERRULED.

10 Q. BY MS. ABRAMSON: ARE YOU AWARE OF THE

11 INFORMATION THAT ERIK MENENDEZ TRIED TO COMFORT OR

12 CONSOLE -- OR AT LEAST FIND OUT -- TRY TO HELP HIS

13 MOTHER IN WHAT APPEARED TO BE HER DESPAIR?

14 A. YES.

15 Q. AND THAT SHE REBUFFED HIM?

16 A. YES.

17 Q. AND ARE YOU AWARE OF THE INFORMATION THAT

18 ERIK MENENDEZ CAME UPON AT THE SAME TIME, IN 1986 OR

19 EARLY '87, A -- WHAT APPEARED TO BE A SUICIDE LETTER

20 FROM HER?

21 A. YES.

22 Q. NOW, IS IT UNDERSTOOD OR RECOGNIZED THAT

23 BEING WITH A PARENT WHO IS EXPRESSING INTENTIONS TO

24 COMMIT SUICIDE HAS A NEGATIVE AND PROFOUND IMPACT ON A

25 DEPENDENT-TYPE CHILD?

26 A. CERTAINLY.

27 Q. AND DOES ALL OF THE EVIDENCE SUGGEST THAT

28 ERIK MENENDEZ WAS A VERY DEPENDENT-TYPE CHILD?

1 A. YES.

2 Q. EVEN AS A TEENAGER?

3 A. YES.

4 Q. EVEN AT THE TIME OF THE OFFENSE?

5 A. YES.

6 Q. AND WHAT IS UNDERSTOOD IS THE IMPACT ON  
7 SUCH A CHILD OF A PARENT THREATENING TO KILL HERSELF?

8 A. WELL, IT WOULD BE THE FEAR OF GREAT LOSS,  
9 THE FEAR OF NOT HAVING WHATEVER SUPPORT IS IMAGINED OR  
10 REAL MIGHT BE THERE, A FEELING OF BEING PUT IN AN EVEN  
11 MORE WEAKENED POSITION THAN THE PERSON IS.

12 Q. AND IF THIS IS A TEENAGE CHILD WHO IS  
13 SUFFERING FROM AN ANXIETY DISORDER OF ONE KIND OR  
14 ANOTHER?

15 A. YOU WOULD EXPECT IT TO INCREASE THE  
16 ANXIETY.

17 Q. AND WHEN A PARENT IS NOT ABLE OR IS NOT  
18 WILLING, FOR WHATEVER REASON, TO SHARE WHAT'S GOING ON  
19 WITH THAT CHILD?

20 A. THAT WOULD INCREASE THE ANXIETY EVEN MORE,  
21 BECAUSE YOU WOULD BE WORRYING ABOUT WHAT IS GOING ON,  
22 AND IS THERE ANY WAY -- IS THERE SOMETHING I SHOULD  
23 UNDERSTAND? IS THERE SOMETHING I SHOULD DO?

24 Q. AND DOES THE FACT THAT MRS. MENENDEZ WAS  
25 GOING THROUGH THIS STAGE IN 1986, RIGHT AFTER THE MOVE,  
26 WOULD THAT HAVE MADE ERIK MENENDEZ' LIFE AT THAT TIME  
27 EVEN MORE ISOLATED FROM ANYONE BUT HIS FATHER?

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1 Q. NOW, WHAT WERE THE OTHER FEATURES,  
2 OVER-ARCHING, IF YOU WILL, PATTERNS OF THE TREATMENT OF  
3 ERIK MENENDEZ IN THIS FAMILY?

4 A. GROSS NEGLECT OF HIS SAFETY.

5 Q. IS THAT AN ASPECT THAT'S PARTICULARLY  
6 PREVALENT IN HIS EARLY YEARS?

7 A. YES.

8 Q. AND WHEN THAT HAPPENS, WHEN A CHILD IS  
9 NOT -- HIS SAFETY ISN'T PROTECTED -- APART FROM WHETHER  
10 HE PHYSICALLY HARMS HIMSELF, DOES IT HAVE A  
11 PSYCHOLOGICAL IMPACT ON THE CHILD, EVEN IF HE DOESN'T  
12 GET HIT BY THE TRAFFIC ON ROUTE 59?

13 A. CERTAINLY IT WOULD HAVE A STRONG EFFECT ON  
14 TRUST. IT WOULD MAKE THE WORLD SEEM AN INCREASINGLY  
15 DANGEROUS PLACE AND CREATE MORE ANXIETY.

16 Q. OKAY. WHAT WAS THE NEXT FEATURE, IN YOUR  
17 ASSESSMENT?

18 A. ISOLATED FROM SUPPORT AND HELP.

19 Q. AND HOW WAS THAT ACCOMPLISHED? I MEAN, HE  
20 WENT OUT, WENT TO SCHOOL, WENT TO COACHES AND PLAYED  
21 TENNIS.

22 HOW WAS HE ISOLATED?

23 A. WELL, HE WAS, IN FACT, TAUGHT NOT TO TRUST

24 OTHER PEOPLE, AND THAT FRIENDS WERE NOT IMPORTANT, AND  
25 THAT HE SHOULD NOT GET CLOSE TO PEOPLE AND HAVE FRIENDS.  
26 HE WAS KEPT EXTREMELY BUSY WITH HIS SCHEDULE, SO THAT  
27 THERE WAS LITTLE TIME FOR THAT.  
28 EVEN THE FAMILY WAS KEPT AT A DISTANCE AT

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1 TIMES, AND WHEN -- WHEN HE WAS IN DISTRESS, I THINK YOU  
2 HAVE ALREADY PRESENTED THERE HAVE BEEN SITUATIONS IN  
3 WHICH PEOPLE WERE NOT ALLOWED TO COME TO HIS ASSISTANCE  
4 TO GIVE HIM SUPPORT.

5 Q. AND WOULD IT ALSO BE ISOLATING THAT THE  
6 FAMILY MESSAGE WAS: "WE'RE THE SMARTEST. WE'RE THE  
7 MOST POWERFUL. WE'RE THE BEST. WE KNOW BETTER THAN  
8 ANYBODY"?

9 A. WELL, YES. THAT INDICATES THAT OTHER  
10 PEOPLE ARE -- WELL, "WE'RE THE ONLY ONES THAT CAN HELP."

11 AND, OF COURSE, THAT'S ONE OF THE MESSAGES  
12 WITHIN THAT, "WE'RE THE ONES THAT HAVE THE POWER, AND  
13 OTHER PEOPLE ARE INFERIOR, AND IN FACT MIGHT EVEN  
14 CONTAMINATE YOU."

15 Q. AND IF IT'S A CHILD'S EXPERIENCE THAT HIS  
16 PARENTS ARE ABLE TO INTIMIDATE TEACHERS AND INTIMIDATE  
17 COACHES AND INTIMIDATE OTHER -- YOU KNOW, STRANGERS AND  
18 POLICEMEN AND OTHER FAMILY MEMBERS, IS THAT AWARENESS OF  
19 THE POWER OF THE PARENT TOWARDS OTHERS AN ISOLATING

20 FACTOR?

21 A. CERTAINLY IT WOULD BE. HAVING MORE THAN  
22 ONE TENNIS COACH AT A TIME WOULD DO THAT.

23 Q. I DON'T UNDERSTAND THAT.

24 A. IF -- THAT WOULD KEEP YOU FROM GETTING AS  
25 CLOSE AS YOU MIGHT TO THOSE PERSONS, AND BEING AS  
26 TRUSTING IN THOSE PERSONS, AND IN FACT BEING CONFUSED BY  
27 THE DIFFERENT MESSAGES YOU'RE GETTING.

28 Q. AND WOULD ALSO OBSERVING ANY TENNIS COACH

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1 WHO WOULD STAND UP TO THEM, EITHER GETTING FIRED OR  
2 WITHDRAWING, ALSO A STRONG INDICATOR THAT YOU SHOULDN'T  
3 TELL OTHER PEOPLE YOUR PROBLEMS?

4 A. YES. IF YOU SEE ADULTS, OTHER PEOPLE WHOM  
5 YOU MIGHT SUSPECT HAVE SOME KIND OF AUTHORITY, SOME KIND  
6 OF STRENGTH, BEING BROWBEATEN, INTIMIDATED, THESE THEN  
7 BECOME LESS POSSIBLE AS SOURCES OF SUPPORT TO YOU.

8 Q. OKAY. WHAT WAS THE NEXT FEATURE OF THE  
9 TREATMENT OF ERIK MENENDEZ?

10 A. BEING TERRORIZED AND DEGRADED FOR  
11 WEAKNESSES AND VULNERABILITIES.

12 Q. AND DO YOU HAVE EXAMPLES OF THAT?

13 A. WELL, FOR EXAMPLE, CERTAINLY BEING STRONGLY  
14 CRITICIZED AND DEGRADED FOR CRYING. BEING CALLED A  
15 SISSY AND STUPID.

16 THE CEMETERY INCIDENT IS AN EXAMPLE OF  
17 THAT: HIS RECOGNIZED VULNERABILITIES AND FEARS BEING IN  
18 FACT HEIGHTENED ON PURPOSE, POSSIBLY WITH THE IDEA OF  
19 TRYING TO TOUGHEN HIM. BUT CERTAINLY WITH THE RESULT OF  
20 FRIGHTENING HIM AND MAKING HIM MORE ANXIOUS.

21 I THINK THERE WAS ALSO AN INCIDENT AT A  
22 CERTAIN FUN PARK IN WHICH HE WAS WITH A COUSIN AND AUNT,  
23 AND HE WAS AFRAID TO GO ON A SORT OF -- ONE OF THOSE  
24 SORT OF TRAMPOLINES IN A FUN HOUSE-TYPE OF ENVIRONMENT  
25 WHERE YOU BOUNCE UP AND DOWN, AND WHICH HIS MOTHER  
26 DEGRADED HIM AND HUMILIATED HIM WITH STATEMENTS ABOUT  
27 BEING A SISSY AND SO ON.

28 Q. NOW, YOU'RE JUST USING THESE AS EXAMPLES.

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1 THESE AREN'T THE ONLY EXCLUSIVE INCIDENTS OF THIS KIND  
2 OF BEHAVIOR THAT'S DOCUMENTED IN THIS CASE, RIGHT?

3 A. NO, RIGHT. THESE ARE SOME.

4 Q. WHAT WAS THE NEXT PATTERN OF TREATMENT OF  
5 ERIK MENENDEZ?

6 A. NOT SUPPORTED IN DEVELOPING PRACTICAL  
7 COMPETENCIES THAT WOULD SERVE HIM IN BECOMING A STRONG  
8 PERSON WHO COULD DIRECT HIS OWN LIFE, AND CAPABLE OF  
9 DEALING WITH LIFE'S PROBLEMS, AND SO ON.

10 Q. DEALING BETTER WITH HIS OWN ANXIETY  
11 DISORDER, FOR EXAMPLE?

12 A. YES.

13 Q. AND WHAT ARE SOME EXAMPLES, OR WHAT DO YOU  
14 MEAN BY THAT?

15 A. WELL, FOR EXAMPLE, HE WASN'T GIVEN THE KIND  
16 OF SUPPORT HE NEEDED TO BECOME A STRONG STUDENT, TO  
17 BECOME COMPETENT AS A STUDENT, TO BE ABLE TO HAVE  
18 CONFIDENCE IN HIMSELF IN THAT AREA. HE NEEDED SPECIAL  
19 HELP, AS WE HAVE ALREADY RECOGNIZED, AND HE HAD OTHER  
20 PEOPLE DOING HIS WORK FOR HIM.

21 Q. AND LET ME JUST BACK UP.

22 EVEN BEFORE THE LEWIS SCHOOL, WAS THERE AN  
23 INDICATION WAY BACK WHEN ERIK WAS -- ERIK MENENDEZ WAS  
24 10 THAT HE HAD AUDITORY PROCESSING DISABILITIES?

25 A. YES. THERE WAS AN EVALUATION BY -- I THINK  
26 IT WAS A PSYCHOLOGIST RATHER THAN A PSYCHIATRIST. IT  
27 USUALLY WOULD BE A PSYCHOLOGIST TO DO THIS KIND --  
28 DR. GEISLER, I THINK, WHO IDENTIFIED AUDITORY PROCESSING

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1 PROBLEMS.

2 Q. SO, IT WAS A LONG-STANDING THING?

3 A. WELL, IN FACT, THAT ONE I THINK CAME UP  
4 JUST REPEATEDLY AS A DIFFICULTY THAT PEOPLE RECOGNIZED  
5 WHO WERE WORKING WITH HIM, AND THAT PEOPLE FOUND WHEN  
6 THEY DID EVALUATIONS.

7 Q. AND LOTS OF PARENTS HELP THEIR CHILDREN

8 WITH THEIR HOMEWORK, DON'T THEY, DR. HART?

9 A. CERTAINLY DO. SOME -- ACTUALLY, SOME QUITE

10 EFFECTIVELY, AND SOME RECOGNIZINGLY BETTER KEEP AS FAR

11 AWAY FROM THAT AS THEY CAN, BECAUSE IT DOESN'T WORK.

12 Q. THE EVIDENCE YOU HAVE HERE IN THIS CASE, IS

13 THIS JUST A MATTER OF HELPING A CHILD LEARN AT HOME AND

14 HELPING THEM DO THE HOMEWORK, OR IS IT DIFFERENT?

15 A. NO, MY -- THE INFORMATION THAT I HAVE HAD

16 HAS INDICATED THAT IT WENT WELL BEYOND THAT, TO THE WORK

17 ACTUALLY BEING DONE FOR HIM.

18 Q. AND WHAT IS THE MESSAGE THAT A CHILD GETS

19 WHEN THE PARENT DOES THEIR WORK FOR THEM?

20 A. YOU'RE NOT CAPABLE OF DOING IT; THAT YOU'RE

21 NOT EVEN CAPABLE IF I WERE TO HELP YOU; THAT YOU'RE NOT

22 CAPABLE OF DOING BETTER.

23 SO IT'S NOT WORTH EVEN TRYING.

24 Q. NOW, WERE THERE OTHER WAYS IN WHICH HE WAS

25 NOT SUPPORTED IN DEVELOPING COMPETENCE?

26 A. WELL, IF YOU THINK ABOUT SOME OF THE

27 THINGS I SAID EARLIER, OF THIS HOPE THAT I THINK SO MANY

28 PARENTS WOULD HAVE FOR THEIR CHILDREN TO BE ABLE TO

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1 STAND ON THEIR OWN FEET EVENTUALLY, HE WAS NOT SUPPORTED

2 IN MAKING CHOICES, IN DEVELOPING PROBLEM SOLVING

3 CAPABILITY. HE WAS DIRECTED INSTEAD.



4 Q. AND IS THERE ANY INDICATION THAT IT WAS,  
5 EVEN WITHIN THAT FAMILY, THAT IT WAS OKAY TO VOICE YOUR  
6 OWN POINT OF VIEW, OR TO DISSENT OR TO CHALLENGE THE  
7 PARENTAL AUTHORITY OR THEORIES, OR ANY OF THAT?

8 A. NO. AND IN FACT, THAT -- SOME OF THESE  
9 THINGS -- OBVIOUSLY THEY'RE NOT JUST PURE CATEGORIES,  
10 AND SOME THINGS ROLL INTO ANOTHER AND HAVE IMPACT, TOO.

11 BUT THAT WAS THE ONE I WAS GOING TO MENTION  
12 NEXT IS HIS PERSPECTIVES, NEEDS, AND DESIRES WERE JUST  
13 GENERALLY IGNORED.

14 AND SO ANY QUESTIONS ABOUT A SENSITIVITY TO  
15 WHAT HE THOUGHT OR FELT, HIS PERSPECTIVE ON A DIFFICULTY  
16 AND HOW IT MIGHT BE TAKEN CARE OF, I DON'T HAVE  
17 INFORMATION THAT INDICATES THAT THAT HAPPENED.

18 Q. EVER; IS THAT CORRECT?

19 A. I CANNOT REMEMBER ANYTHING THAT I'VE COME  
20 ACROSS IN THIS THAT INDICATED THAT HIS NEEDS, HIS  
21 PERSPECTIVES, WERE SOUGHT AND CONSIDERED.

22 Q. IN FACT, ISN'T THERE INFORMATION FROM  
23 FAMILY MEMBERS THAT IT WAS MARKED HOW THE CHILDREN IN  
24 THIS FAMILY WERE NEVER -- THEIR OPINION ABOUT THEIR OWN  
25 LIVES WAS NEVER SOLICITED BY THE PARENTS?

26 A. YES. THAT WAS ONE OF THE THINGS THAT HAS  
27 STOOD OUT VERY STRONGLY FOR ME, THAT I JUST -- AGAIN,  
28 THAT I HAVE NOT BEEN ABLE TO FIND ANYTHING INDICATING

1 SUPPORT FOR THAT.

2 Q. AND THEIR IDEAS OF THINGS OR THEIR FEELINGS  
3 WERE NEVER SOLICITED?

4 A. NO. THAT'S MY UNDERSTANDING.

5 Q. AND WHAT -- IS THERE ONE MORE PATTERN?

6 A. OH, YES. YES. BEING CORRUPTED AND NOT  
7 TAUGHT APPROPRIATE VALUES, AND THERE ARE LOTS OF  
8 INSTANCES OF THAT.

9 CERTAINLY THE WAY HIS SCHOOL WORK WAS  
10 HANDLED. LYING ABOUT HIS SUCCESSES. THE WINNING AT ALL  
11 COSTS, AND THERE ARE MANY MORE.

12 Q. AND THERE IS, OF COURSE, SEXUAL  
13 MOLESTATION, IS THERE NOT?

14 A. YES.

15 Q. AND THAT IS AS CORRUPTING AS YOU CAN GET?

16 A. YES. THAT'S A TERRIBLY CORRUPTING  
17 EXPERIENCE.

18 Q. OKAY.

19 NOW, WHAT THEN ARE THE MESSAGES -- GIVEN  
20 THIS TREATMENT, WHAT ARE THE MESSAGES OF SIGNIFICANCE  
21 THAT SHAPED THE WAY THAT ERIK MENENDEZ THEREFORE WOULD  
22 HAVE THOUGHT ABOUT HIMSELF?

23 A. ALL RIGHT. WELL, I THINK THE MAJOR MESSAGE  
24 IS "YOU'RE NOT LOVED. YOU'RE VALUED FOR -- ONLY FOR  
25 WHAT YOU CAN ACHIEVE PUBLICLY, AND FOR BEING -- YOU  
26 KNOW, NO. 1. NO MATTER HOW HARD YOU TRY, ALL YOU CAN DO  
27 WILL NOT BE GOOD ENOUGH."

28 Q. NOW, IS THERE A LARGE BODY OF INFORMATION

1 HERE THAT EVEN WHEN HE WON HE WAS CRITICIZED?

2 A. I BELIEVE THERE WAS INFORMATION SUPPORTING  
3 THAT.

4 Q. IN FACT, THAT'S JUST THE FAMILY PATTERN.  
5 IF HE'S COMPETING IN A TOURNAMENT AND HE LOSES, HE'S  
6 BERATED. IF HE'S COMPETING IN A TOURNAMENT AND HE WINS,  
7 HE'S TOLD HE COULD HAVE DONE IT BETTER.

8 A. THAT'S MY UNDERSTANDING OF WHAT WOULD  
9 HAPPEN. THERE WOULD BE AN EXTENDED LESSON BEYOND THAT  
10 OF HOW YOU COULD DO BETTER. AND MY UNDERSTANDING IS FOR  
11 ERIK -- AND WHEN HE WAS A YOUNG BOY, TOO, THAT IF HE  
12 WOULD -- IF HE WOULD WIN IN SOME KIND OF COMPETITION  
13 WITHIN THE FAMILY, THAT HE WOULD BE TOLD IN ANY NUMBER  
14 OF WAYS THAT HE HADN'T REALLY WON; WHAT HE HAD DONE THEN  
15 WASN'T GOOD ENOUGH; THAT HE HAD -- THAT HE HAD NOT WON  
16 IN A WAY THAT HAD ANY REAL MEANING.

17 Q. OKAY.

18 WHAT WERE THE OTHER MESSAGES?

19 A. LET'S SEE. I THINK I'VE --

20 Q. NO MATTER HOW HARD --

21 A. I STARTED TO SAY THAT. NO MATTER HOW HARD  
22 YOU TRY, WHATEVER YOU DO WILL NOT BE GOOD ENOUGH.  
23 YOU'RE IN CONSTANT DANGER OF RIDICULE. YOU'RE  
24 ESSENTIALLY FLAWED, AND YOU WILL ALWAYS BE DEPENDENT ON  
25 YOUR PARENTS AND UNDER THEIR CONTROL.

26 Q. AND THIS IS JUST AN ASSESSMENT OF WHAT THE  
27 PSYCHOLOGICAL MALTREATMENT BEHAVIORS WOULD HAVE LEFT HIM  
28 WITH, CORRECT?

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1 A. YES. MY OPINION WOULD BE THOSE COULD STAND  
2 ON THE PSYCHOLOGICAL MALTREATMENT BEHAVIORS.

3 Q. NOW, THERE IS ALSO INFORMATION, IS THERE  
4 NOT, THAT WHEN HE WAS QUITE SMALL HE WAS BEING  
5 DISCIPLINED WITH A BELT?

6 A. YES.

7 Q. AND THAT EVEN MINOR TRANSGRESSIONS RESULTED  
8 IN PHYSICAL PUNISHMENT?

9 A. THAT'S THE INFORMATION THAT I'VE HAD, AND  
10 AT A PRETTY FAIRLY HIGH LEVEL OF FREQUENCY.

11 AND THE ESTIMATES -- I AM TRYING TO  
12 REMEMBER WHICH OF THE COUSINS GAVE THE INFORMATION ON  
13 THAT -- BUT THEIR ESTIMATES, AS I REMEMBER, WOULD  
14 HAVE -- WOULD HAVE PUT THAT PUNISHMENT, IF WE CONSIDERED  
15 IT TO HAPPEN WHEN THEY WEREN'T AROUND, TOO, WHICH IS  
16 LIKELY AT A LEVEL THAT IN THE NATIONAL VIOLENCE SURVEY  
17 IN THIS COUNTRY WOULD HAVE BEEN THE MOST EXTREME LEVEL  
18 THEY TOOK INFORMATION FROM.

19 Q. LET ME ASK YOU THIS:

20 IS IT FAIRLY TYPICAL THAT IF YOU PHYSICALLY  
21 DISCIPLINE YOUR CHILDREN SEVERELY WHEN THEY'RE LITTLE,

22 YOU ORDINARILY DON'T NEED TO GO ON DOING THAT LATER,  
23 BECAUSE THEY GOT THE POINT?  
24 A. YEAH. EVEN THOSE WHO THINK -- WELL,  
25 OBVIOUSLY, THERE ARE PEOPLE WHO COME DOWN ON ALL SIDES  
26 OF THIS. BUT SOME OF THE PSYCHOLOGISTS WHO WOULD EVEN  
27 SUPPORT IN ANY WAY CORPORAL PUNISHMENT TEND TO SAY THAT  
28 IT SHOULD STOP BY THE TIME A CHILD IS 10 OR 11.

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1 Q. WELL, BUT MY POINT IS SLIGHTLY DIFFERENT.  
2 WHETHER IT SHOULD STOP BECAUSE THE PARENTS STOP OR NOT,  
3 IF YOU'RE VERY SEVERE IN PUNISHING SMALL CHILDREN,  
4 THEY'RE PRETTY EASY TO BREAK AND TO GET THEM TO BE  
5 OBEDIENT, ARE THEY NOT?

6 A. WELL, YES. CERTAINLY WITH THAT KIND OF  
7 PHYSICAL POWER, AND THAT'S WHEN -- AND THEY'RE  
8 ESPECIALLY SUSCEPTIBLE TO THAT EARLY.

9 Q. AND IF YOU TRAIN THEM RIGHT, YOU CAN  
10 ULTIMATELY CONTROL THOSE CHILDREN JUST VERBALLY. YOU  
11 DON'T NEED TO HIT THEM ANYMORE, THEY KNOW?

12 A. YOU DON'T NEED THAT ANYMORE, THAT'S RIGHT.  
13 YOUR POWER WOULD HAVE BEEN ESTABLISHED.

14 Q. WOULD A MESSAGE FOR ERIK MENENDEZ, A THEME  
15 OF HIS LIFE BE: "IF YOU MAKE US ANGRY, WE WILL PUNISH  
16 YOU"?

17 A. YES.

18 Q. "IF YOU DO SOMETHING WE THINK IS WRONG,

19 THERE WILL BE PUNISHMENT"?

20 A. THERE WILL BE PUNISHMENT.

21 Q. WAS THIS PARENTING STYLE BASICALLY A STYLE

22 THAT TRIED TO CONTROL THROUGH THE THREAT OF PUNISHMENT?

23 A. YES. IT USES FEAR AND INTIMIDATION TO

24 CONTROL.

25 Q. NOW, ARE THERE COMMONLY ACCEPTED EFFECTS

26 THAT THIS KIND OF PARENTING, IF YOU WILL, HAS ON

27 CHILDREN?

28 A. YES.

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1 Q. NOW, CAN YOU PREDICT THAT EVERY SINGLE

2 CHILD EXPOSED TO THESE DIFFERING TYPES OF PSYCHOLOGICAL

3 MALTREATMENT WILL NECESSARILY HAVE THE IDENTICAL EFFECTS

4 OF EVERY OTHER CHILD?

5 A. NO, CERTAINLY NOT.

6 Q. IS THERE SOME DIFFERENCES BASED ON THE

7 PARTICULAR TEMPERMENT OF THE CHILD FROM BIRTH?

8 A. THERE COULD BE DIFFERENCES BASED ON THAT.

9 THERE COULD BE DIFFERENCES BASED ON THE TIMING, THE

10 RELATIVE LEVEL OF SUPPORT, THE PARTICULAR SENSITIVITIES

11 OF THAT CHILD.

12 Q. BASED ON EVERYTHING THAT YOU KNOW, WAS, IN

13 YOUR OPINION, ERIK MENENDEZ A CHILD WHO WAS PARTICULARLY

14 VULNERABLE TO BEING HURT BY THIS KIND OF TREATMENT?

15 A. YES. HE WAS, I THINK, IN THE EYES OF MANY  
16 PEOPLE, A VERY SENSITIVE AND VULNERABLE CHILD.

17 Q. AND WHAT WERE THE EFFECTS, IN YOUR OPINION,  
18 ON HIM OF THIS STYLE OF PARENTING?

19 A. THE ONES THAT I'VE IDENTIFIED. THAT THERE  
20 WAS EVIDENCE FOR THAT HE BREAKS DOWN UNDER STRESS.  
21 CERTAINLY THE CRYING. THAT HE BECOMES ANXIOUS AND  
22 OBSESSED WITH THE PROBLEM THAT HE'S DEALING WITH. THE  
23 SCHOOL PERFORMANCE WAS A STRONG EXAMPLE OF THAT.  
24 SEVERE CONCENTRATION PROBLEMS TO THE POINT  
25 OF APPEARING TO BE SPACED OUT. LOW SELF-ESTEEM. VERY  
26 NEGATIVE FEELINGS ABOUT HIMSELF. STRONG DOUBTS ABOUT  
27 HIMSELF.

28 Q. LET ME ASK YOU SOMETHING. WE HEAR "LOW

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1 SELF-ESTEEM" IN POP CULTURE, AND IT SOUNDS LIKE NOTHING.

2 DO PEOPLE WHO COMMIT SUICIDE USUALLY SUFFER  
3 FROM A CONDITION KNOWN AS DEPRESSION?

4 MR. CONN: OBJECTION. IRRELEVANT.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES. THAT'S MY UNDERSTANDING.

7 Q. BY MS. ABRAMSON: IS DEPRESSION A FREQUENT  
8 OUTCOME FOR PEOPLE WHO HATE THEMSELVES?

9 A. I THINK IT'S ASSOCIATED, YES.

10 Q. AND DOES LOW SELF-ESTEEM REALLY MEAN HATING  
11 YOURSELF, THINKING YOU'RE NOTHING?

12 A. LOW SELF-ESTEEM MEANS BELIEVING THAT YOU'RE  
13 NOTHING, OR THAT YOU'RE FLAWED, THAT YOU'RE INFERIOR.

14 Q. OKAY. GO ON.

15 A. ACCEPTANCE OF BEING HUMILIATED AND  
16 DEGRADED.

17 Q. AND WHAT DOES THAT MEAN?

18 A. THAT MEANS TENDENCIES NOT TO ASSERT  
19 HIMSELF, NOT TO FIGHT BACK, BUT JUST TO ACCEPT AND  
20 EXPERIENCE WHAT SOMEBODY IS GOING TO DO TO HIM.

21 Q. IF YOU DON'T ASSERT YOURSELF AND YOU DON'T  
22 FIGHT BACK, IS THE IMPACT OF THESE TREATMENTS EVEN  
23 GREATER?

24 A. YEAH, IT WOULD BE STRONGER.

25 Q. BECAUSE YOU'RE NOT STANDING UP FOR  
26 YOURSELF?

27 A. YOU'RE NOT STANDING UP FOR YOURSELF.  
28 YOU'RE NOT DOING SOMETHING TO GIVE YOURSELF A SENSE OF

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1 INTEGRITY, THAT YOU HAVE SOME POWER.

2 Q. OKAY. WHAT ELSE?

3 A. FEW FRIENDS. TRYING HARD TO HAVE THEM, BUT  
4 STAYING ON THE FRINGE UNTIL CERTAINLY HIGH SCHOOL.  
5 POOR SUCCESS, AND REALLY QUITE MISERABLE



6 DURING PARTICULARLY HIS P.D.S. SCHOOL EXPERIENCE.

7 Q. WHEN YOU SAY "MISERABLE," HE WAS FEELING  
8 MISERABLE?

9 A. YES.

10 Q. OKAY. HE CERTAINLY HAD INDICATIONS OF  
11 DEPRESSION, KIND OF A HEAD-DOWN BEHAVIOR. FEARFUL,  
12 DEPENDENT, WITHDRAWN.

13 Q. IS THIS A PICTURE OF A HEALTHY, HAPPY  
14 CHILD?

15 A. CERTAINLY NOT, NO. IT'S A PICTURE OF  
16 SOMEONE WHO'S MISERABLE A GOOD DEAL OF THE TIME.

17 Q. AND ARE OTHER CHILDREN, AS ADOLESCENTS WHO  
18 ARE KNOWN TO HAVE THESE KIND OF EFFECTS FROM WHATEVER  
19 FORMS OF ABUSE -- ARE THERE PATTERNS OF DESTRUCTION, IF  
20 YOU WILL, THAT ARISE IN THE LITERATURE?

21 WHAT HAPPENS TO KIDS WHO FEEL THAT WAY  
22 ABOUT THEMSELVES WHO ARE TREATED THIS WAY?

23 A. WELL, THE -- THE DESCRIPTIONS THAT I'VE  
24 JUST GIVEN YOU ARE THE KIND OF IMPACT OR THE IMPACTS  
25 THAT ARE FOUND IN THE RESEARCH, TOO, FOR CHILDREN WHO  
26 WERE PSYCHOLOGICALLY MALTREATED.

27 AND THEN CERTAINLY, DEPENDING ON ALL KINDS  
28 OF FACTORS, SOME THAT NO ONE'S FIGURED OUT HOW TO

1 MEASURE YET, YOU HAVE CHILDREN WHO -- THE DESTRUCTIVE

2 TENDENCIES SHOW THEIR WAYS IN DIFFERENT FORMS.

3        YOU HAVE ADOLESCENTS WHO END UP TAKING

4 DRUGS AND BECOME ALCOHOLICS, WHO TURN THEIR ANGER ON

5 OTHERS AROUND THEM IN SOCIETY, WHO HAVE MAJOR

6 PSYCHOLOGICAL DISORDERS. CERTAINLY THOSE KIND OF THINGS

7 HAPPEN. WHO COMMIT SUICIDE.

8        Q.    THE SUICIDE RATE AMONG ADOLESCENTS, IS THAT

9 HIGHER THAN IN MOST OTHER PARTS OF THE POPULATION?

10      A.    I'M TRYING TO REMEMBER IF IT'S NOW THE

11 SECOND OR THIRD LEVEL OF THOSE THINGS THAT KILL

12 ADOLESCENTS. IT'S VERY HIGH, AND IT'S DISTURBINGLY HIGH

13 TO THE SPECIALISTS AND THOSE WHO STUDY THE AREA.

14      Q.    IS IT UNDERSTOOD BY PEOPLE WHO ARE FAMILIAR

15 WITH CHILD DEVELOPMENT THAT ADOLESCENCE IS TOUGH, EVEN

16 WHEN EVERYTHING ELSE IN YOUR LIFE IS OKAY?

17      A.    YES. I THINK THE -- THE THEORISTS AND THE

18 RESEARCHERS AND MOST PEOPLE KNOW THAT THERE ARE SO MANY

19 CHANGES OCCURRING TO YOU. YOU'RE OFF BALANCE IN SO MANY

20 WAYS WHEN YOU JUST -- WHEN THE JOB IS TO ESTABLISH

21 YOURSELF AS AN INDIVIDUAL AND TO KIND OF HAVE A SENSE

22 OF -- OF POSITIVE FEELINGS ABOUT YOURSELF AS SOMEBODY

23 WHO CAN DO THINGS, AND YOU'RE GOING TO MAKE IT, AND

24 YOU'VE GOT A FUTURE OUT THERE YOU'RE GOING TO BE IN

25 CONTROL OF. IT'S A VERY IMPORTANT TIME.

26        AND WHEN YOUR SEXUAL RELATIONSHIPS AND

27 INTEREST IN THE OPPOSITE SEX ARE DEVELOPING, IT'S A

28 TOUGH TIME. IT CAN BE MARVELOUS, IT CAN BE HORRIBLE.

1 Q. AND IS IT PARTICULARLY HORRIBLE FOR KIDS  
2 WHO HAVE THE KIND OF EFFECTS AND THE KIND OF  
3 SELF-OPINION THAT ERIK MENENDEZ HAS?

4 A. IT CAN BE PARTICULARLY DIFFICULT FOR PEOPLE  
5 LIKE THAT, BECAUSE YOU'RE -- ALL OF THOSE THINGS PRESS  
6 IN ON YOUR THOUGHTS AND FEELINGS AS YOU'RE TRYING TO  
7 BECOME THIS PERSON WHO HAS SOME INTEGRITY.

8 Q. IS IT UNDERSTOOD -- NOT TO USE ANY FANCY  
9 PSYCHOLOGICAL LANGUAGE -- BUT IS IT UNDERSTOOD,  
10 DR. HART, THAT FOR ABUSED CHILDREN, IN ADOLESCENCE THEY  
11 REACH A POINT WHEN IN ORDER TO SURVIVE AS PEOPLE, THEY  
12 CAN'T TAKE IT ANYMORE?

13 A. YES, YES. THEY SORT OF SHUT DOWN IN WAYS,  
14 IN SOME MODE.

15 Q. AND SOME KILL THEMSELF?

16 A. MM-HMM, YES.

17 Q. AND SOME KILL THE PEOPLE WHO ARE ABUSING  
18 THEM?

19 A. YES.

20 MS. ABRAMSON: I HAVE NOTHING FURTHER.

21 THE COURT: ANY QUESTIONS ON BEHALF OF LYLE  
22 MENENDEZ?

23 MS. TOWERY: NO, YOUR HONOR.

24 THE COURT: OKAY. WE'LL TAKE RECESS, AND WE'LL  
25 RESUME AT 20 MINUTES AFTER THE HOUR.

26 DON'T DISCUSS THE MATTER WITH ANYONE, DON'T

27 FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME AT 20  
28 MINUTES AFTER 10:00.

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1 (A RECESS WAS TAKEN FROM  
2 10:00 A.M. UNTIL 10:20 A.M.)

3

4 THE COURT: ALL RIGHT.

5 DO COUNSEL HAVE SOMETHING BEFORE WE HAVE  
6 THE JURY OUT?

7 MS. TOWERY: YES, YOUR HONOR, VERY BRIEFLY.

8 I WOULD ASK THAT THE COURT INSTRUCT  
9 MR. CONN IN HIS CROSS-EXAMINATION OF DR. HART NOT TO  
10 MAKE REFERENCE TO THE FACT THAT DR. HART TESTIFIED ON  
11 BEHALF OF LYLE MENENDEZ AT THE PRIOR TRIAL, AND MY  
12 OBJECTION IS BASED ON --

13 THE COURT: DO YOU INTEND TO DO THAT?

14 MR. CONN: YES. I INTEND TO ASK HIM EXACTLY WHAT  
15 HIS ROLE HAS BEEN IN THIS CASE FROM THE BEGINNING.

16 MS. ABRAMSON: IT'S IRRELEVANT.

17 MR. CONN: HE IS HERE GIVING AN OPINION  
18 CONCERNING THIS CASE, AND THE JURY NEEDS TO KNOW  
19 PRECISELY WHAT HE DID, WHEN HE DID IT, HOW MUCH HE WAS  
20 PAID FOR IT, SO THEY CAN ASSESS WHETHER IN FACT HE IS A  
21 BIASED WITNESS.

22 MS. TOWERY: I HAVE NO OBJECTION TO THE

23 PROSECUTION MAKING REFERENCE TO THE FACT THAT DR. HART  
24 TESTIFIED IN THE PREVIOUS TRIAL, NOR HOW MUCH HE WAS  
25 PAID.

26 BUT I DO HAVE OBJECTION TO HIS SPECIFICALLY  
27 MAKING REFERENCE TO THE FACT THAT HE TESTIFIED ON BEHALF  
28 OF LYLE MENENDEZ AT THE LAST TRIAL, BOTH BECAUSE THAT'S

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1 IRRELEVANT, AND BECAUSE IT'S HIGHLY PREJUDICIAL TO THE  
2 DEFENSE OF LYLE MENENDEZ IN THIS PROCEEDING.

3 YOUR HONOR, IT WOULD GIVE THE JURY THE  
4 FALSE IMPRESSION THAT SOMEHOW DR. HART HAS CHANGED HIS  
5 OPINION WITH RESPECT TO LYLE MENENDEZ, OR OTHERWISE HAVE  
6 NEGATIVE CONNOTATIONS THAT AREN'T TRUE, WHEN IN FACT  
7 COUNSEL, MR. GESSLER AND MYSELF, HAVE MADE THE TACTICAL  
8 DECISION NOT TO PRESENT EXPERT TESTIMONY IN THIS  
9 PROCEEDING.

10 SO I THINK THAT MR. CONN CAN INQUIRE ALONG  
11 THE LINES THAT HE SUGGESTS WITHOUT PREJUDICING --  
12 WITHOUT THE ADDITIONAL PREJUDICE OF FOR WHOM DR. HART  
13 TESTIFIED.

14 MS. ABRAMSON: WELL, I HAVE A FURTHER OBJECTION,  
15 YOUR HONOR, WHICH HAS TO DO WITH HOW MUCH HE'S BEEN  
16 PAID.

17 AS THE COURT KNOWS, DR. HART WAS NOT  
18 WORKING ON BEHALF OF ERIK MENENDEZ THROUGH THE FIRST

19 TRIAL. THERE WAS ANOTHER EXPERT WHO WAS DOING THAT.  
20 AND THE BULK OF HIS FEES THAT HAVE BEEN  
21 PAID, BOTH BEFORE THAT TRIAL AND SINCE THAT TRIAL, UNTIL  
22 A DECISION WAS MADE BY LYLE MENENDEZ' DEFENSE, WERE  
23 AUTHORIZED BY THE COURT FOR THE LYLE MENENDEZ DEFENSE  
24 AND NOT THE ERIK MENENDEZ DEFENSE. AND, IN FACT, HE HAS  
25 BEEN PAID VERY LITTLE IN ORDER TO PREPARE TO TESTIFY FOR  
26 ERIK MENENDEZ IN THIS PENALTY TRIAL.

27 AND SO I WOULD OBJECT TO ELICITING THE  
28 NUMBER OF HOURS HE'S WORKED OVER THE YEARS, OR WHO HE

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1 WAS WORKING ON BEHALF OF PREVIOUSLY, OR THE TOTAL AMOUNT  
2 OF MONEY THAT HE WAS PAID FOR ALL OF HIS WORK ON THIS  
3 CASE, BECAUSE IT'S UNRELATED TO MY CLIENT.

4 THE COURT: OKAY.

5 AS TO THE FIRST ARGUMENT OF MS. TOWERY, I  
6 AGREE THAT THERE IS NO PROBATIVE VALUE IN REFERRING TO  
7 THE FACT THAT THIS WITNESS TESTIFIED ON BEHALF OF LYLE  
8 MENENDEZ IN THE FIRST TRIAL. I DON'T THINK THERE'S ANY  
9 RELEVANCE TO THAT WHATSOEVER. THE PROSECUTION IS TO  
10 REFRAIN FROM MAKING ANY REFERENCE TO THAT.

11 THE FACT HE DID TESTIFY HAS ALREADY BEEN  
12 BROUGHT OUT, AS I RECALL, DURING THE EXAMINATION OF  
13 MS. ABRAMSON.

14 MS. ABRAMSON: NO, I DON'T BELIEVE SO.

15 THE COURT: I THOUGHT YOU ASKED THAT QUESTION.

16 MS. ABRAMSON: I DID NOT.

17 MS. TOWERY: YOUR HONOR, I WOULD ASK THE COURT --

18 I WOULD ASK THE COURT TO INSTRUCT MR. CONN NOT TO BRING

19 IT OUT IN SOME OTHER WAY, SUCH AS QUESTIONS THAT HE

20 INTERVIEWED WITNESSES ON BEHALF OF LYLE MENENDEZ, OR

21 CONDUCTED INVESTIGATION INTO THE DYNAMICS OF THE FAMILY

22 ON BEHALF OF LYLE MENENDEZ.

23 THE COURT: YES. I DON'T SEE --

24 MS. TOWERY: BECAUSE THAT WOULD BE EQUALLY

25 HARMFUL.

26 THE COURT: YES. I DON'T SEE THAT THERE IS ANY

27 PROBATIVE VALUE IN FOCUSING ON HIS RELATIONSHIP TO LYLE

28 MENENDEZ, AND THERE IS THE POTENTIAL FOR PREJUDICE IN

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1 THAT HE HAS NOT BEEN OFFERED AS A WITNESS BY LYLE

2 MENENDEZ, AND THERE COULD BE SOME ADVERSE INFERENCES

3 DRAWN IF IT WAS DISCLOSED THAT HE HAS BEEN, IN THE PAST,

4 WORKING FOR LYLE MENENDEZ.

5 THE FACT THAT HE DID WORK ON THIS CASE.

6 AND THE NATURE OF HIS WORK IN GENERAL, AND THE FACT THAT

7 HE INTERVIEWED MANY WITNESSES, THAT HAS ALL BEEN BROUGHT

8 OUT DURING TESTIMONY OF DR. WILSON AND OTHERS DURING THE

9 COURSE OF THE GUILT PHASE.

10 THE FACT THAT HE HAS BEEN INVOLVED IN THIS

11 CASE, AN INTERVIEWER OF WITNESSES, WAS CLEARLY DISCLOSED  
12 BY THE DEFENSE IN ITS EXAMINATION OF DR. WILSON. AND  
13 THE FACT THAT HE DID THAT, AND THE FACT THAT HE HAS BEEN  
14 COMPENSATED FOR HIS WORK IN THIS CASE, AND THE AMOUNT OF  
15 HIS COMPENSATION, ARE ALL RELEVANT EVIDENCE AND CAN BE  
16 EXPLORED.

17 BUT THE CONNECTION TO LYLE MENENDEZ WOULD  
18 BE PREJUDICIAL, AND THEREFORE I WILL FORECLOSE THAT.

19 OKAY?

20 MS. ABRAMSON: SO HE CAN ASK ABOUT ALL THE  
21 COMPENSATION, EVEN THOUGH IT HAD NOTHING TO DO WITH  
22 PREPARING FOR ERIK MENENDEZ?

23 THE COURT: YOU UTILIZED ALL OF THAT  
24 INVESTIGATION DURING YOUR PRESENTATION IN THE GUILT  
25 PHASE, THE PRESENTATION THAT HE DID, THE INTERVIEWS OF  
26 WITNESSES HE CONDUCTED, AND THE FACT THAT WILSON RELIED  
27 UPON ALL OF THAT FOR HIS OPINIONS.

28 MS. ABRAMSON: THERE WERE TWO POTENTIAL

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1 WITNESSES.

2 THE COURT: THE DEFENSE RELIED UPON IT.

3 MS. ABRAMSON: THERE WERE ONLY TWO WITNESS  
4 INTERVIEWS THAT WERE RELIED UPON BY DR. WILSON.

5 THE COURT: YOU MADE IT SOUND LIKE THERE WERE A  
6 MULTITUDE OF WITNESSES THAT THIS WITNESS, DR. HART,



7 INTERVIEWED AND WERE RELIED UPON BY DR. WILSON, IS MY  
8 RECOLLECTION.

9 MS. ABRAMSON: BUT DR. WILSON ISN'T IN FRONT OF  
10 US, AND THIS WITNESS, IN THE OPINIONS HE HAS OFFERED  
11 TODAY, IS ONLY RELYING UPON ONE INTERVIEW THAT HE DID,  
12 AND ALL OTHER MATERIALS THAT HE'S RELYING ON IS THE SAME  
13 LIST OF WITNESS INTERVIEWS AND WITNESS TESTIMONY THAT  
14 DR. WILSON AND DR. VICARY RELIED UPON.

15 THE COURT: BUT HIS CREDIBILITY IS AN ISSUE  
16 BEFORE THE JURY, AND ANY BIAS HE MIGHT HAVE DERIVED FROM  
17 COMPENSATION IN CONNECTION WITH THIS CASE THROUGHOUT ITS  
18 PENDENCY CERTAINLY IS RELEVANT EVIDENCE FOR THE JURY TO  
19 CONSIDER.

20 ALL RIGHT. LET'S GET THE JURY OUT.

21 (THE JURY ENTERS THE COURTROOM  
22 AND THE FOLLOWING PROCEEDINGS  
23 WERE HELD:)

24

25 THE COURT: OKAY. THE JURY IS BACK IN THE JURY  
26 BOX, AND NOW WE WILL HAVE CROSS-EXAMINATION OF THE  
27 WITNESS.

28 MR. CONN: THANK YOU.

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1

2 CROSS-EXAMINATION

3 BY MR. CONN:

4 Q. ESSENTIALLY, DR. HART, WHAT YOU'RE SAYING

5 IS THAT KITTY AND JOSE MENENDEZ WERE VERY BAD PARENTS;

6 IS THAT CORRECT?

7 A. YES.

8 Q. IS THERE ANY DOUBT IN YOUR MIND THAT KITTY

9 AND JOSE MENENDEZ LOVED THEIR SONS?

10 A. IN TERMS OF THE KIND OF LOVE THAT I'VE

11 DESCRIBED.

12 Q. AND WHAT DO YOU MEAN BY THAT?

13 A. A LOVE THAT CARES ABOUT CHILDREN BECOMING

14 THEIR OWN PERSONS, VERSUS LIVING A LIFE THAT THE PARENTS

15 WANT THEM TO IN EXACT WAYS.

16 Q. HOW MANY WITNESSES DID YOU HEAR IN THIS

17 TRIAL ADMIT ON THE WITNESS STAND THAT KITTY AND JOSE

18 MENENDEZ LOVED THEIR SONS?

19 A. THERE WERE CERTAIN --

20 MS. ABRAMSON: I AM GOING TO OBJECT TO THE FORM

21 OF THE QUESTION. IT'S IRRELEVANT.

22 THE COURT: OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 THE WITNESS: THERE WERE CERTAINLY PEOPLE WHO

25 BELIEVED THAT, YES.

26 Q. BY MR. CONN: OKAY. AND YOU WEREN'T THERE

27 TO WATCH THE INTERACTION; IS THAT CORRECT?

28 A. WHICH INTERACTION?

1 Q. THE INTERACTION BETWEEN THE WITNESSES  
2 WHO -- BETWEEN KITTY AND JOSE MENENDEZ AND THE  
3 DEFENDANTS IN THIS CASE; IS THAT CORRECT?

4 A. NO. I HAVE ONLY THE REPORTS OF THOSE  
5 INTERACTIONS.

6 Q. AND ONE OF THE REPORTS THAT YOU HAVE IS  
7 FROM TERRY BARALT; IS THAT CORRECT?

8 A. YES.

9 Q. AND ANOTHER REPORT THAT YOU HAVE IS FROM  
10 MARTA CANO; IS THAT CORRECT?

11 A. DID YOU SAY MARTA?

12 Q. MARTA CANO.

13 A. YES.

14 Q. AND IT'S YOUR UNDERSTANDING THAT BOTH OF  
15 THOSE PEOPLE ADMITTED ON THE WITNESS STAND THAT KITTY  
16 AND JOSE MENENDEZ LOVED THEIR SONS; IS THAT CORRECT?

17 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
18 QUESTION, YOUR HONOR.

19 THE COURT: OVERRULED.

20 THE WITNESS: THAT THEY BELIEVED THAT, YES.

21 Q. BY MR. CONN: OKAY.

22 THEY BELIEVED THAT BASED UPON WHAT THEY  
23 OBSERVED; IS THAT CORRECT?

24 A. YES.

25 Q. AND YOU FEEL THAT YOU HAVE GREATER  
26 KNOWLEDGE SO THAT YOU CAN SAY THAT TERRY BARALT AND  
27 MARTA CANO ARE WRONG; IS THAT CORRECT?

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1 WERE WRONG IN THAT JUDGMENT, YES.

2 Q. OKAY. AND THE INFORMATION IS BASED UPON

3 WHAT?

4 A. IS BASED ON THE MANY OTHER THINGS THAT THEY

5 AND OTHER PEOPLE SAW IN TERMS OF THE TREATMENT OF THE

6 CHILDREN.

7 Q. YOU'RE TALKING ABOUT THINGS THAT THEY

8 THEMSELVES SAW THAT WOULD INDICATE TO YOU THAT THEY

9 DIDN'T LOVE THEIR SONS; IS THAT CORRECT?

10 A. IN THE SENSE OF LOVE THAT I HAVE DESCRIBED,

11 YES.

12 Q. AND THE LOVE THAT YOU'VE DESCRIBED IS AN

13 IDEAL LOVE IN WHICH YOU DO EVERYTHING RIGHT FOR YOUR

14 CHILDREN; IS THAT CORRECT?

15 A. NO. YOU DON'T HAVE TO DO EVERYTHING RIGHT

16 FOR YOUR CHILDREN TO SHOW THAT KIND OF LOVE. IT'S A

17 DIRECTION FOR LOVE THAT MOST -- THAT I THINK MOST PEOPLE

18 WOULD ASPIRE TOWARD.

19 Q. AND YOU DON'T THINK THAT TERRY BARALT AND

20 MARTA CANO ARE CAPABLE OF ASSESSING WHETHER OR NOT JOSE

21 AND KITTY MENENDEZ LOVED THEIR SONS?

22 A. I THINK THEY WOULD -- THEY MADE ASSESSMENTS

23 AS BEST THEY COULD. WHEN THAT'S MADE AGAINST STATEMENTS

24 THAT THEY WISH -- SUCH AS KITTY'S, THAT SHE WISHED THEY  
25 HAD NEVER BEEN BORN, IT DOESN'T BALANCE IN THAT  
26 DIRECTION, DOES IT?

27 Q. AND SO YOU THINK THAT TERRY BARALT WAS  
28 UNAWARE OF SUCH INFORMATION; IS THAT CORRECT?

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1 A. I THINK TERRY BARALT HAD INFORMATION THAT  
2 COULD HAVE LED TO A DIFFERENT OPINION, BUT THAT -- YES.

3 Q. AND YOU THINK THAT INFORMATION SUCH AS THAT  
4 SHOULD BE GIVEN GREATER WEIGHT THAN ALL OF THE YEARS  
5 THAT TERRY BARALT HAD AN OPPORTUNITY TO SEE HER BROTHER  
6 AND HER SISTER-IN-LAW INTERACT WITH THEIR SONS; IS THAT  
7 CORRECT?

8 A. I THINK THE WEIGHT OF INFORMATION FOR THE  
9 TREATMENT OF THOSE CHILDREN, YES, SHOULD BE GIVEN.

10 Q. THAT IT OUTWEIGHS HER OBSERVATIONS; IS THAT  
11 CORRECT?

12 A. THAT IT OUTWEIGHS, YES, THE OBSERVATIONS.

13 Q. AND YOU WOULD DISMISS HER OBSERVATIONS  
14 THEN; IS THAT CORRECT?

15 A. NO, I WOULDN'T DISMISS HER OBSERVATIONS. I  
16 AM SURE I WOULD ACCEPT THAT SHE SAW BEHAVIOR THAT SHE  
17 INTERPRETED AS LOVE.

18 Q. RIGHT. SHE ERRONEOUSLY CONCLUDED THAT HER  
19 BROTHER LOVED HIS CHILDREN; IS THAT CORRECT?

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

21 IT'S ARGUMENTATIVE AND IT CALLS FOR SPECULATION.

22 THE COURT: REPHRASE THE QUESTION.

23 Q. BY MR. CONN: YOU FEEL THAT TERRY BARALT

24 ERRONEOUSLY CONCLUDED THAT HER BROTHER LOVED HIS

25 CHILDREN?

26 A. IN THE TERMS -- LOVE IN THE TERMS THAT I'VE

27 DESCRIBED. I HAVEN'T HEARD TERRY BARALT'S DEFINITION OF

28 LOVE YOUR FAMILY OR YOUR CHILDREN.

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1 Q. DO YOU THINK THAT THERE IS A VERY BIG

2 DIFFERENCE IN THE DEFINITION BETWEEN YOUR DEFINITION OF

3 LOVE AND TERRY BARALT'S DEFINITION OF LOVE?

4 A. I DON'T KNOW THAT THERE IS A GREAT DEAL OF

5 DIFFERENCE THERE. I THINK THAT WE ARE INCLINED TO WANT

6 TO BELIEVE THAT OUR RELATIVES LOVE THEIR CHILDREN, AND

7 IF WE ARE SHOWN THAT -- SHOWN THINGS THAT SUGGEST THAT,

8 THEN IT ADDS TO THAT BELIEF THAT WE WOULD PREFER TO

9 HAVE.

10 Q. DO YOU THINK THAT THE AVERAGE PERSON HAS A

11 PROBLEM WITH THE UNDERSTANDING OF THE WORD "LOVE"?

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

13 SPECULATION. IT'S IRRELEVANT.

14 THE COURT: REPHRASE THE QUESTION, PLEASE.

15 Q. BY MR. CONN: DO YOU THINK THAT TERRY

16 BARALT HAS SOME MISUNDERSTANDING OF WHAT THE WORD "LOVE"

17 MEANS?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS FOR  
19 SPECULATION.

20 THE COURT: WELL, IT'S VAGUE AND ARGUMENTATIVE AS  
21 PHRASED.

22 MS. ABRAMSON: THANK YOU, YOUR HONOR.

23 Q. BY MR. CONN: DO YOU HAVE ANY EVIDENCE THAT  
24 TERRY BARALT MISUNDERSTANDS THE MEANING OF THE WORD  
25 "LOVE"?

26 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S  
27 IRRELEVANT.

28 THE COURT: OKAY. I THINK THE ISSUE IS WHETHER

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1 YOUR USE OF THAT TERM AND HER USE OF THE TERM ARE THE  
2 SAME.

3 DO YOU HAVE ANY REASON TO BELIEVE THAT THEY  
4 ARE THE SAME OR THAT THEY'RE DIFFERENT?

5 THE WITNESS: IF HER CONCLUSION IN EVIDENCE WAS  
6 THAT AFTER ALL THAT SHE KNOWS OCCURRED WITH THE FAMILY,  
7 ALL THAT SHE HAS SEEN, LED HER TO STILL SAY THAT AS A  
8 CONCLUDING SUMMARY STATEMENT, THEN I WOULD SAY THAT WE  
9 HAVE DIFFERENT DEFINITIONS OF IT, YES.

10 OBVIOUSLY IT'S THE MOST -- TO MANY PEOPLE,  
11 MANY PEOPLE WOULD THINK LOVE IS THE MOST POWERFUL

12 CONCEPT HUMAN BEINGS KNOW, AND CERTAINLY WE MISTAKE THE  
13 SUPERFICIAL QUALITIES OF IT FOR THE GENUINE QUALITIES,  
14 AND WOULD DEBATE SOME OF THOSE.

15 SO YES, IT'S POSSIBLE THAT WE HAVE  
16 DIFFERENT PERSPECTIVES OF IT.

17 Q. SO TERRY BARALT IS WRONG AND YOU ARE RIGHT;  
18 IS THAT WHAT YOU'RE TESTIFYING, DOCTOR?

19 MS. ABRAMSON: OBJECTION. IT'S ARGUMENTATIVE,  
20 YOUR HONOR.

21 THE COURT: SUSTAINED.

22 Q. BY MR. CONN: AND DO YOU HAVE A REASON TO  
23 BELIEVE THAT YOUR DEFINITION OF LOVE IS DIFFERENT THAN  
24 THAT OF MARTHA CANO?

25 A. IF WE WERE TO WALK THROUGH THE SAME PROCESS  
26 WE JUST DID, THEN I WOULD HAVE THAT REASON TO BELIEVE  
27 IT.

28 Q. SO ONCE AGAIN, YOU KNOW BETTER THAN MARTA

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1 CANO AS TO WHETHER OR NOT HER BROTHER LOVED HIS SONS; IS  
2 THAT CORRECT?

3 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S  
4 ARGUMENTATIVE.

5 THE COURT: SUSTAINED.

6 Q. BY MR. CONN: IS THERE ANY DOUBT IN YOUR  
7 MIND, DOCTOR, THAT KITTY AND JOSE MENENDEZ TRIED TO HELP



8 THEIR SONS?

9 A. I BELIEVE THAT THE INFORMATION WE HAVE  
10 INDICATES THAT KITTY AND JOSE MENENDEZ TRIED VERY HARD  
11 TO HAVE THEIR SONS BECOME EXACTLY WHAT THEY WANTED THEM  
12 TO BE.

13 Q. AND IS THERE ANY DOUBT IN YOUR MIND THAT  
14 KITTY AND JOSE MENENDEZ WANTED SUCCESS FOR THEIR SONS?

15 A. I BELIEVE THAT KITTY -- THERE IS NO DOUBT  
16 IN MY MIND THAT KITTY AND JOSE MENENDEZ WANTED SUCCESS,  
17 AS THEY DEFINED IT, FOR THEIR SONS. THEY WANTED THEIR  
18 PARTICULAR NOTION OF SUCCESS.

19 PROBABLY THE CLEARER WAY OF SAYING IT WAS  
20 THEY WANTED THEIR CHILDREN TO HAVE SUCCESS THAT THEY  
21 COULD ENJOY; THAT JOSE AND KITTY COULD ENJOY.

22 Q. AND ISN'T THAT WHAT MANY, MANY PARENTS DO,  
23 DOCTOR, WE WANT OUR CHILDREN TO HAVE SUCCESS AS WE  
24 UNDERSTAND SUCCESS?

25 A. I THINK THAT'S A COMMON WAY, OR THAT'S  
26 SOMETHING THAT WOULD BE TRUE OF MANY PARENTS, CERTAINLY.  
27 THERE WOULD BE GREAT DIFFERENCES IN THE DEGREE TO WHICH  
28 WE DENIED OUR CHILDREN OPPORTUNITIES OF THE SUCCESS THAT

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1 WOULD BE MEANINGFUL TO THEM, VERSUS US, PARENTS.

2 Q. SO IN THAT SENSE YOU DON'T FIND ANYTHING  
3 ALL THAT UNUSUAL ABOUT KITTY AND JOSE MENENDEZ, BECAUSE

4 THEY, LIKE MANY OTHER PARENTS, WANTED THEIR SONS TO  
5 SUCCEED, ACCORDING TO THEIR OWN DEFINITIONS OF SUCCESS?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S  
7 ARGUMENTATIVE AND COMPOUND.

8 THE COURT: REPHRASE THE QUESTION, PLEASE.

9 Q. BY MR. CONN: YOU DON'T FIND KITTY AND JOSE  
10 MENENDEZ, IN THAT SENSE, TO BE DIFFERENT FROM OTHER  
11 PARENTS, DO YOU?

12 A. GROSSLY DIFFERENT FROM OTHER PARENTS IN  
13 REGARD TO THE WAY THAT THEY DEFINED SUCCESS, AND IN  
14 REGARD TO THE WAY THAT THEY TRIED TO CONTROL AND DIRECT  
15 THEIR SONS TOWARD THAT.

16 Q. I'M SAYING, TO THE EXTENT THAT KITTY AND  
17 JOSE MENENDEZ SHARED THE COMMON BELIEF, AMONG OTHER  
18 PARENTS, THAT THE CHILDREN SHOULD SUCCEED ACCORDING TO  
19 THEIR OWN DEFINITIONS OF SUCCESS, THEY ARE NOT DIFFERENT  
20 FROM OTHER PARENTS, ARE THEY?

21 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

22 THE COURT: OVERRULED.

23 THE WITNESS: WOULD YOU SAY THAT AGAIN?

24 Q. BY MR. CONN: TO THE EXTENT THAT KITTY AND  
25 JOSE MENENDEZ, LIKE MANY OTHER PARENTS, WANT THEIR  
26 CHILDREN TO SUCCEED ACCORDING TO THEIR OWN DEFINITIONS  
27 AND UNDERSTANDING OF SUCCESS, YOU WOULD AGREE THAT KITTY  
28 AND JOSE MENENDEZ WERE NOT VERY DIFFERENT FROM OTHER

1 PARENTS, WERE THEY?

2 A. IN FACT, IT'S THE VERY EXTENT TO WHICH THEY  
3 PURSUED THAT THAT MADE THEM VERY DIFFERENT FROM OTHER  
4 PARENTS.

5 Q. I AM SIMPLY ASKING TO THE EXTENT THAT THEY  
6 WANTED TO DO THAT?

7 A. IF WE WERE TO TAKE THIS ABSTRACT NOTION OF  
8 PARENTS WANTING THEIR CHILDREN TO SUCCEED IN WAYS THAT  
9 THEY UNDERSTAND, WITHOUT GIVING ANY FURTHER MEANING TO  
10 IT IN THE WAY THAT IT APPLIES TO THEM, THAT SORT OF  
11 ABSTRACT NOTION WOULD BE ACCEPTABLE.

12 Q. NOW, YOU ARE A EDUCATIONAL PSYCHOLOGIST; IS  
13 THAT CORRECT?

14 A. UH-HUH.

15 Q. AND YOU ARE NOT A CLINICAL PSYCHOLOGIST; IS  
16 THAT CORRECT?

17 A. WELL, I AM A LICENSED HEALTH  
18 PROVIDER/PSYCHOLOGIST IN THE STATE OF INDIANA, AND SO I  
19 AM ALLOWED TO PURSUE WHATEVER PSYCHOLOGICAL COMPETENCIES  
20 I HAVE WITHIN THAT FIELD.

21 Q. YOU ARE ENTITLED TO PURSUE WHAT?

22 A. I AM -- WHAT I SAID WAS I AM A LICENSED  
23 PSYCHOLOGIST, A HEALTH PROVIDER/PSYCHOLOGIST WITHIN THE  
24 STATE OF INDIANA, WHICH THEN MEANS THAT I CAN PURSUE OR  
25 APPLY THOSE COMPETENCIES WHICH I JUDGE I HAVE ETHICALLY.

26 Q. WHAT DO YOU MEAN THAT YOU CAN APPLY THOSE  
27 COMPETENCIES?

28 A. WELL, WITHIN PROFESSIONS -- WITHIN THE

1 PROFESSION OF PSYCHOLOGY, YOU'RE EXPECTED TO UNDERSTAND  
2 THE STANDARDS OF PSYCHOLOGY, THE ETHICAL STANDARDS, AND  
3 YOU'RE EXPECTED THEN TO WORK WITHIN THE LIMITS OF  
4 WHATEVER YOUR COMPETENCY IS.

5 IF YOU ARE A CLINICAL PSYCHOLOGIST, YOU DO  
6 THE THINGS WITHIN CLINICAL PSYCHOLOGY THAT YOU'RE  
7 CAPABLE OF DOING, AND YOU DON'T DO THE THINGS THAT YOU  
8 ARE NOT CAPABLE OF DOING.

9 AND IF YOU'RE -- WHATEVER -- WHATEVER FORM  
10 OF PSYCHOLOGIST YOU MIGHT BE, OR WHATEVER LABEL MAY GO  
11 WITH IT, YOU STAY WITHIN THAT. ALTHOUGH THERE ARE --  
12 THERE CERTAINLY ARE COMPETENCIES THAT GO ACROSS SOME OF  
13 THE DIFFERENT FIELDS OF PSYCHOLOGY.

14 Q. AND YOUR LICENSE -- HOW DOES YOUR LICENSE  
15 READ? YOU ARE A LICENSED "HEALTH PROVIDER," IS THAT  
16 WHAT IT SAYS ON IT?

17 A. YES. I AM A LICENSED PSYCHOLOGIST, HEALTH  
18 PROVIDER STATUS, WHICH IS THE HIGHEST LEVEL THAT IS  
19 LICENSED.

20 Q. HEALTH PROVIDER STATUS, MEANING WHAT?

21 A. MEANING THAT I'M -- THAT I'M FREE TO WORK  
22 WITH PEOPLE WHO HAVE PSYCHOLOGICAL DIFFICULTIES AND  
23 PROBLEMS, AND WHICH ALLOWS YOU, IN THIS WORLD OF  
24 ECONOMICS, TO RECEIVE THIRD-PARTY REIMBURSEMENT THROUGH  
25 HEALTH INSURANCE AND THINGS LIKE THAT.

26 Q. SO, DO YOU PROVIDE THERAPY, PSYCHOTHERAPY?

27 A. NO, AT THIS TIME I DO NOT. THERE WERE

28 PERIODS WHEN I PROVIDED COUNSELING FOR INDIVIDUALS AND

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1 THEIR FAMILIES WITH CHILDREN. MY FOCUS HAS ALWAYS BEEN

2 ON CHILDREN AND FAMILIES.

3 Q. BY COUNSELING, DO YOU MEAN PSYCHOTHERAPY?

4 A. WELL, PSYCHOTHERAPY IS A VERY BROAD TERM.

5 I PROVIDE COUNSELING, AND CERTAIN PEOPLE WOULD CALL IT

6 PSYCHOTHERAPY, I'M SURE. THERE'S A DEBATE IN THE FIELD

7 AS TO WHAT THAT SHOULD MEAN AND BE LIMITED TO.

8 Q. YOU SEE NO DIFFERENCE BETWEEN THE TERM

9 COUNSELING AND PSYCHOTHERAPY?

10 A. WELL, THE ROLES OF COUNSELING AND

11 PSYCHOTHERAPY ARE SO DIFFERENT ACROSS PSYCHOLOGISTS, AND

12 THE ORIENTATIONS ARE SO BROAD IN MANY WAYS THAT IT ISN'T

13 NECESSARILY AN IMPORTANT DISTINCTION.

14 Q. SO FOR WHAT PERIOD OF TIME DID YOU

15 PROVIDE -- DID YOU PROVIDE TREATMENT?

16 IS THAT WHAT YOU'RE SAYING, YOU PROVIDED

17 TREATMENT TO PEOPLE?

18 A. DURING WHAT PERIOD OF TIME?

19 Q. YES.

20 A. WELL, I CERTAINLY DID IT WITHIN SCHOOLS FOR

21 A NUMBER OF YEARS. I DID IT IN A PRIVATE PRACTICE

22 CENTER FOR SEVERAL YEARS. I HAVE NOT DONE THAT SINCE  
23 PROBABLY, MUST BE THE MID '80'S, MAYBE EARLY '80'S.  
24 SOMETHING LIKE THAT.

1 Q SO YOU HAVEN'T PROVIDED TREATMENT FOR 10  
2 OR 15 YEARS?

3 A THAT'S RIGHT, YES. I THINK THAT WOULD  
4 BE ACCURATE.

5 Q WHY DID YOU STOP PROVIDING TREATMENT TO  
6 PEOPLE?

7 A BECAUSE MY DUTIES AND THE CHOICES I HAD  
8 MADE IN REGARD TO MY TEACHING AND SERVICE AND  
9 RESEARCH AT THE UNIVERSITY WERE TOO DEMANDING FOR ME  
10 TO BE ABLE TO MAKE THAT A MAJOR PART OF MY WORK, MY  
11 PROFESSIONAL LIFE.

12 Q AND WHAT IS IT EXACTLY YOU DO NOW ON A  
13 DAY-TO-DAY BASIS?

14 A ON A DAY-TO-DAY BASIS, NOW, I WILL TEACH  
15 COURSES AT THE UNIVERSITY.

16 Q SO YOU'RE ESSENTIALLY A TEACHER?

17 A WELL, NO.

18 MS. ABRAMSON: CAN THE WITNESS FINISH?

19 THE COURT: HAD YOU FINISHED YOUR ANSWER?

20 THE WITNESS: NO, I HADN'T.

21 THE COURT: GO AHEAD.

22 THE WITNESS: I WILL WORK WITH ANY NUMBER OF  
23 PEOPLE ON RESEARCH PROJECTS IN THE AREA OF  
24 CHILDREN'S RIGHTS AND PSYCHOLOGICAL MALTREATMENT.

25 I WILL WORK ON COMMITTEES WITHIN THE  
26 UNIVERSITY, WITHIN THE COMMUNITY, WITHIN THE NATION,

27 AND WITH INTERNATIONAL BODIES, ON ISSUES RELATED TO  
28 CHILD DEVELOPMENT, TO CHILDREN'S RIGHTS, TO

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1 PSYCHOLOGICAL MALTREATMENT.

2 Q BY MR. CONN: AND WHEN DID YOU FIRST  
3 BECOME INVOLVED IN THIS CASE?

4 A IT WAS EITHER LATE '91 OR EARLY '92, AND  
5 I DIDN'T BRING MY NOTES ON THAT. I DON'T REALLY  
6 REMEMBER WHICH IT WAS AT THE MOMENT.

7 Q SINCE 1991 OR 1992 AND TODAY, HOW MANY  
8 HOURS HAVE YOU PUT IN ON THIS CASE?

9 A IT'S 700 DIRECTLY FOCUSED ON ISSUES OF  
10 THE FAMILY AND DEVELOPMENT; AND PROBABLY ANOTHER  
11 HUNDRED OR SO TRAVELING AND WAITING-TIME HOURS.

12 Q AND HOW MANY TIMES HAVE YOU TRAVELED TO  
13 CALIFORNIA IN CONNECTION WITH YOUR WORK ON THIS  
14 CASE?

15 A I'LL GIVE YOU A ROUGH ESTIMATE. I THINK  
16 IT MIGHT BE -- IT'S GOING TO BE PROBABLY SIX TO  
17 EIGHT.

18 Q AND YOU WERE, IN YOUR WORDS, A LEADING  
19 WRITER AND RESEARCHER IN THE UNITED STATES IN THE  
20 AREA OF PSYCHOLOGICAL ABUSE, EVEN BEFORE YOU WERE  
21 CONTACTED BY THE ATTORNEYS ON THIS CASE; IS THAT

22 CORRECT?

23 A YES. YES. THAT WOULD BE ACCURATE. I

24 THINK THAT'S FAIR.

25 Q AND YOU WERE CONTACTED BECAUSE YOUR

26 EXPERTISE IS PSYCHOLOGICAL ABUSE; IS THAT CORRECT?

27 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

28 FOR SPECULATION.

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1 THE COURT: SUSTAINED.

2 Q BY MR. CONN: AND WERE YOU ASKED TO FIND

3 PSYCHOLOGICAL ABUSE IN THIS CASE?

4 MS. ABRAMSON: OBJECTION, YOUR HONOR.

5 HEARSAY.

6 THE COURT: OVERRULED.

7 THE WITNESS: I WAS ASKED TO CONSIDER, TO

8 STUDY THE RELEVANT SITUATIONS, TO DETERMINE WHETHER

9 IT WAS A FACTOR IN THIS CASE.

10 Q BY MR. CONN: TO DETERMINE WHETHER OR

11 NOT PSYCHOLOGICAL ABUSE --

12 A PSYCHOLOGICAL MALTREATMENT.

13 Q OCCURRED IN THIS CASE?

14 A TO DETERMINE WHETHER IT WAS A FACTOR,

15 WHETHER IT WAS INVOLVED IN THIS CASE, WHETHER IT WAS

16 RELEVANT.



17 Q SO YOU WERE TOLD TO LOOK FOR IT, SEE IF

18 YOU CAN FIND IT; IS THAT CORRECT?

19 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

20 FOR HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: WELL, I WAS ASKED TO STUDY THE

23 FAMILY AND DEVELOPMENT; AND ALONG WITH THAT, TO

24 DETERMINE WHETHER PSYCHOLOGICAL MALTREATMENT WAS

25 ASSOCIATED.

26 MR. CONN: UH-HUH.

27 Q AND BECAUSE OF ALL YOUR WRITINGS IN THE

28 AREA OF PSYCHOLOGICAL ABUSE, YOU ARE VERY SENSITIVE

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1 TO ISSUES OF PSYCHOLOGICAL ABUSE; IS THAT CORRECT?

2 A OH, CERTAINLY. I WOULD BE SENSITIVE TO

3 POSSIBILITIES OF ITS EXISTENCE AND TO ATTEMPTS TO

4 FALSELY INDICATE ITS EXISTENCE.

5 Q AND YOU FEEL THAT VIRTUALLY ANY TYPE OF

6 MISTREATMENT CONSTITUTES PSYCHOLOGICAL ABUSE, DON'T

7 YOU?

8 A NO.

9 Q TELL US THE TYPES OF MISTREATMENT THAT

10 YOU FEEL DOES NOT CONSTITUTE PSYCHOLOGICAL ABUSE.

11 A WELL, PROBABLY THE SIMPLEST WAY TO PUT

12 IT IS THIS: THAT WHEN THE FORMS THAT I'VE DESCRIBED  
13 OCCUR, AND WHEN THEY OCCUR AT THE LEVELS THAT I'VE  
14 DESCRIBED, AND SO ON, WITH THE -- AND IN THE --  
15 ACROSS THE YEARS; WITHOUT GOING BACK THROUGH ALL OF  
16 THAT, YOU HAVE PSYCHOLOGICAL MALTREATMENT.

17       WHEN YOU HAVE -- BUT THERE ARE CERTAINLY  
18 MANY INSTANCES; IN FACT, THE BULK OF PARENTING, THAT  
19 IS PSYCHOLOGICALLY NOT GOOD FOR CHILDREN, PROBABLY  
20 FALLS BETTER UNDER SOMETHING CALLED MISGUIDED OR  
21 POORLY CONCEIVED PARENTING, SOMETHING LIKE THAT.

22       IN FACT, WITH A COLLEAGUE, WE WROTE A  
23 POSITION PAPER TO THAT EFFECT FOR THE NATIONAL  
24 CENTER-- FOR THE NATIONAL INTERNATIONAL CENTER ON  
25 ABUSE AND NEGLECT -- THAT IT WAS IMPORTANT TO KEEP  
26 THE CONSIDERATION OF PSYCHOLOGICAL MALTREATMENT TO  
27 THOSE LESS FREQUENT AND MORE EXTREME CONDITIONS.

28       Q   SO WHAT, IN YOUR VIEW, WOULD CONSTITUTE

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1 MISGUIDED OR POORLY CONCEIVED PARENTING?

2       A   WHAT WILL BE MISGUIDED OR POORLY  
3 CONCEIVED PARENTING?

4       Q   YES.

5       A   NOT GIVING YOUR CHILD ATTENTION THAT  
6 YOUR CHILD NEEDS OCCASIONALLY, BUT THEN BALANCING

7 THAT WITH ATTENTION ON OTHER OCCASIONS.  
8 INDICATING YOUR ANGER OR ADDRESSING THE  
9 CHILD IN AN ANGRY WAY, AND LETTING A WORD SLIP  
10 INFREQUENTLY THAT SUGGESTS TO THE CHILD THAT HE'S --  
11 THAT THERE'S SOMETHING WRONG WITH HIM; THAT, IN  
12 FACT, YOU'RE DISGUSTED HIM. BUT BALANCING IT AT  
13 OTHER TIMES BY INDICATING THAT YOU'RE VERY MUCH  
14 PLEASED WITH THE EFFORTS THE CHILD'S MAKING, AND SO  
15 ON.

16 IT'S THAT KIND OF THING.

17 Q CAN YOU GIVE US A LITTLE BIT MORE -- A  
18 FEW MORE EXAMPLES OF WHAT YOU SAY THAT KIND  
19 OF --

20 MS. ABRAMSON: I'M GOING TO OBJECT. FIRST OF  
21 ALL, IT'S IRRELEVANT.

22 THE COURT: OVERRULED.

23 Q BY MR. CONN: YOU'VE ALREADY MENTIONED  
24 THAT SOMETIMES NOT GIVING ENOUGH ATTENTION OR  
25 DEMONSTRATING YOUR ANGER TO A CHILD CAN BE MISGUIDED  
26 OR POORLY CONCEIVED PARENTING, RATHER THAN  
27 PSYCHOLOGICAL MALTREATMENT.

28 CAN YOU GIVE US SOME MORE EXAMPLES OF

2 PARENTING?

3 A OH, CERTAINLY.

4 NOT LISTENING TO YOUR CHILD

5 OCCASIONALLY, WHEN YOUR CHILD IS IN DISTRESS, OR

6 WHEN YOUR CHILD HAS A PROBLEM AND YOU'RE JUST TOO

7 BUSY COOKING DINNER, OR YOU'RE TOO BUSY WORRYING

8 ABOUT WHAT YOU'RE GOING TO HAVE TO DO AN HOUR FROM

9 THEN; AND DOING IT, OH, MORE THAN JUST ONCE EVERY

10 FEW WEEKS, OR SO, MAYBE REPEATEDLY. BUT BALANCING,

11 BY NOT DOING IT AS A REGULAR DIET. YES.

12 Q BY MR. CONN: WHAT ELSE?

13 A TO THE CHILD? WHAT OTHER KINDS OF

14 THINGS WOULD BE MISGUIDED PARENTING?

15 Q YES.

16 A IF YOU WERE OCCASIONALLY TO BE HELPING

17 YOUR CHILD WITH HOMEWORK AND BECOME FRUSTRATED AND

18 STARTING TO DO SOME OF -- A LITTLE BIT OF THE

19 HOMEWORK FOR THEM, INSTEAD OF HELPING THEM TO THINK

20 THEIR WAY THROUGH IT.

21 Q WELL, WHAT ELSE?

22 A MAKE -- ONE OF THE EASY WAYS OF DOING

23 THIS IS FOR ME TO THINK ABOUT MY OWN PARENTING, AT

24 TIMES WHEN I'VE SLIPPED.

25 SHOWING OCCASIONAL FAVORITISM TOWARD ONE

26 CHILD.

27 IN FACT, WHAT WE COULD DO IS WE COULD

28 JUST WALK DOWN THROUGH THE PSYCHOLOGICAL

1 MALTREATMENT AREAS AND JUST MAKE MILD AND INFREQUENT  
2 OCCURRENCES OF THOSE WHICH ARE BALANCED BY OTHER  
3 GOOD PARENTING CONDITIONS.

4 Q OKAY. SO WHAT YOU'RE SAYING IS FOR EACH  
5 AND EVERY CATEGORY THAT YOU MENTIONED HERE AS A FORM  
6 OF PSYCHOLOGICAL MALTREATMENT, IF YOU TAKE MILD  
7 INCIDENTS OF THAT, OR INFREQUENT INSTANCES OF THAT,  
8 THAT WOULD CONSTITUTE MISGUIDED OR POORLY CONCEIVED  
9 PARENTING, RATHER THAN PSYCHOLOGICAL MALTREATMENT?

10 A I THINK THAT'S A FAIR STATEMENT.

11 Q OKAY. NOW, THESE -- THIS STANDARD THEN  
12 OF PSYCHOLOGICAL MALTREATMENT, IS THIS A TERM THAT  
13 IS ACCEPTED BY THE AMERICAN PSYCHIATRIC ASSOCIATION?

14 MR. CONN: OBJECTION, YOUR HONOR.  
15 IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: TO MY KNOWLEDGE, THE AMERICAN  
18 PSYCHIATRIC ASSOCIATION HAS NEVER TAKEN ANY ACTION  
19 ON IT. IT'S NOT BEEN BEFORE IT TO TAKE AN ACTION.

20 Q BY MR. CONN: SO IN OTHER WORDS, THIS IS  
21 NOT A DIAGNOSIS THAT YOU CAN FIND IN THE DSM, IS IT?

22 A NO, IT'S NOT IN THE DSM.

23 Q RIGHT. AND IN FACT, ISN'T IT TRUE THAT  
24 NOT TOO MANY YEARS AGO THERE WAS NOT EVEN ANY

25 AGREEMENT WHATSOEVER AS TO WHAT CONSTITUTES  
26 PSYCHOLOGICAL MALTREATMENT; IS THAT CORRECT?  
27 A OH, THERE WAS SOME AGREEMENT ON IT. BUT  
28 THERE WAS A FAIR AMOUNT OF CONFUSION AND DIFFERENCE

53671

1 OF OPINION IN TERMS OF JUST HOW IT SHOULD BE  
2 DESCRIBED, WHAT THE CATEGORIES WERE.

3 AND AS I INDICATED EARLIER, THAT'S ONE  
4 OF THE REASONS THAT I BECAME STRONGLY INTERESTED IN  
5 IT, AS DID OTHERS, BECAUSE THERE WAS THE CLEAR NEED  
6 BEING EXPRESSED TO CLARIFY THAT, TO STRAIGHTEN THAT  
7 SITUATION OUT.

8 Q WELL, THERE WAS NO AGREED-UPON  
9 DEFINITION OF PSYCHOLOGICAL MALTREATMENT; IS THAT  
10 CORRECT?

11 A NO. THERE WERE JUST MANY TERMS THAT  
12 WERE BEING USED INTERCHANGEABLE, WITHOUT AGREEMENT  
13 ON WHAT THOSE TERMS MEANT.

14 Q YOU'RE SAYING THAT THERE WAS NO  
15 AGREEMENT AS TO WHAT THOSE TERMS MEANT.

16 IS WHAT IN YOU'RE SAYING?

17 A NOT SUFFICIENT AGREEMENT ON WHAT THEY  
18 MEANT FOR PEOPLE TO FEEL THAT THEY WERE ON SOLID  
19 GROUND.

20 Q UH-HUH. AND DID YOU PREVIOUSLY TESTIFY  
21 THAT IT WAS ONLY DURING THE LAST 10 YEARS --  
22 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
23 THE COURT: I HAVEN'T HEARD THE QUESTION YET.  
24 MS. ABRAMSON: IT DOESN'T MATTER. REFERRING  
25 TO PRIOR TESTIMONY. THERE'S NO FOUNDATION.  
26 THE COURT: IS THIS OFFERED TO IMPEACH THE  
27 WITNESS?  
28 MR. CONN: YES, YOUR HONOR.

53672

1 THE COURT: HAVE YOU ASKED THE FOUNDATIONAL  
2 QUESTION?  
3 MR. CONN: I WILL ASK THAT QUESTION.  
4 Q WOULD YOU SAY THAT IT WAS ONLY DURING  
5 THE LAST 10 YEARS THAT THERE WAS A SET OF CATEGORIES  
6 AND DEFINITIONS THAT HAVE NOW COME TO ENJOY, QUOTE,  
7 RATHER WIDE SUPPORT?  
8 A THE CLEAREST STARTING POINT, I THINK, IN  
9 THIS PROGRESS TOWARD DEFINITIONS THAT HAVE STRONG  
10 SUPPORT WAS PROBABLY IN 1983, DURING THE  
11 INTERNATIONAL CONFERENCE ON PSYCHOLOGICAL ABUSE OF  
12 CHILDREN, WHICH I CHAIRED.  
13 Q UH-HUH.  
14 A THAT -- FROM THAT CAME STRONG SUPPORT

15 FOR A KIND OF BROAD, BUT STILL SOMEWHAT TOO  
16 ABSTRACT, DEFINITION AND SETS OF CATEGORIES WHICH  
17 THEN, FROM THAT TIME ON -- AND THE APSAC GUIDELINES  
18 CAME OUT IN '95, AND SO WE WOULD BE TALKING ABOUT 12  
19 YEARS OF PROGRESS.

20 THEN WITH RESEARCH AND RIGOROUS PROGRESS  
21 OF REVIEW, AND EXPERT ADVICE AND SO ON, WE HAVE  
22 ACHIEVED THE STANDARDS THAT ARE IN THE GUIDELINES  
23 THAT WE TALKED ABOUT EARLIER.

24 Q OKAY. ONLY 12 YEARS AGO WAS THERE  
25 FINALLY SOME CONSENSUS AS TO A WORKING DEFINITION;  
26 IS THAT CORRECT?

27 A THERE WAS -- YES. THERE WAS MORE IN THE  
28 WAY OF CONSENSUS AT THAT TIME. THERE WERE, AGAIN,

53673

1 THESE LABELS THAT WE USE INTERCHANGEABLY -- MANY OF  
2 THEM BEFORE THAT -- AND THERE WAS, IN THE FEDERAL  
3 STATUTE, THIS PHRASE "MENTAL INJURY," WHICH WAS  
4 HIGHLY AMBIGUOUS.

5 BUT NO, IN TERMS OF A DEFINITIONAL -- A  
6 BODY OF DEFINITIONAL ELEMENTS THAT IT HAD STRONG  
7 SUPPORT, NO. MY PERSPECTIVE ON THAT IS THAT IT  
8 DEVELOPED PARTICULARLY ACROSS THOSE 12 YEARS I'VE  
9 MENTIONED TO THIS POINT.



10 Q AND EVEN IN THOSE 12 YEARS, THE AMERICAN  
11 PSYCHIATRIC ASSOCIATION HAS NEVER ADOPTED THAT TERM  
12 ANYWAY WITHIN THE DSM, HAS IT?

13 A NO. AND IN FACT, THAT WOULD, IT SEEMS  
14 TO ME, HAVE BEEN -- IT'S SOMETHING I WOULDN'T HAVE  
15 SUPPORTED THE ADOPTION OF DURING THAT PERIOD OF THE  
16 DEVELOPMENT OF DEFINITIONS, BECAUSE IT REALLY NEEDED  
17 THE HARD WORK THAT WENT INTO IT TO SUPPORT IT.

18 Q SO YOU'RE SAYING THAT YOU SUPPORT IT?  
19 NOW YOU WOULD LIKE THE AMERICAN PSYCHIATRIC  
20 ASSOCIATION TO RECOGNIZE THAT THERE IS A CONCEPT  
21 SUCH AS -- THAT SHOULD BE CALLED "PSYCHOLOGICAL  
22 MALTREATMENT"?

23 A WELL, THAT'S AN INTERESTING QUESTION.  
24 I'M THINKING ABOUT THE WAY THE DSM HANDLES CHILD  
25 ABUSE OVERALL, WHICH IT DOESN'T DO MUCH WITH. SO  
26 THAT IT DEALS MORE WITH WHAT WOULD BE THE  
27 CONSEQUENCES. IT TENDS TO DEAL MORE WITH THE  
28 DISORDERS THAT WOULD FOLLOW FROM THAT KIND OF

53674

1 TREATMENT.

2 SO THAT'S SOMETHING I WOULD NEED TO  
3 THINK ABOUT, WHETHER THE ACTS OF -- WHETHER  
4 PSYCHOLOGICAL MALTREATMENT WHICH DESCRIBES THE

5 TREATMENT, WHAT THE PERSON EXPERIENCES, WOULD BELONG  
6 IN SOMETHING LIKE THE DSM.

7 I'M HARD PUT TO THINK OF, AT THE MOMENT,  
8 SECTIONS OR SPECIFIC CATEGORIES WITHIN THE DSM THAT  
9 DEAL PRIMARILY OR WHOLLY WITH THE TREATMENT THE  
10 PERSON HAS EXPERIENCED VERSUS -- AND NONE COME TO  
11 MIND -- VERSUS THE DISORDER OR THE PROBLEM THE  
12 PERSON ENDS UP WITH OR EXPRESSES, WHICH MAY BE  
13 ASSOCIATED WITH TREATMENT.

14 SO IT REALLY DOESN'T QUITE FIT IN THAT  
15 SENSE.

16 Q IT DOESN'T FIT BECAUSE IT'S NOT A  
17 CLINICAL TERM; IS THAT CORRECT?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
19 ARGUMENTATIVE.

20 THE COURT: OVERRULED.

21 THE WITNESS: IT DOESN'T -- AS I'M THINKING  
22 THROUGH IT NOW, IT'S REALLY AN INTERESTING QUESTION  
23 YOU POSED.

24 Q BY MR. CONN: YOU NEVER THOUGHT ABOUT  
25 THIS BEFORE?

26 MS. ABRAMSON: OBJECTION. COULD THE WITNESS  
27 ANSWER THE QUESTION?

28 THE COURT: NO. IT WAS A LEGITIMATE

1 INTERRUPTION.

2 YOU MAY ANSWER IT.

3 THE WITNESS: OKAY.

4 Q BY MR. CONN: YOU NEVER THOUGHT ABOUT  
5 THIS BEFORE?

6 A I HAD NOT THOUGHT ABOUT PRESSING FOR  
7 PSYCHOLOGICAL MALTREATMENT TO BE INCLUDED IN THE  
8 DSM, BECAUSE IT DESCRIBES THE ACTS, WHAT THE CHILD  
9 EXPERIENCES.

10 Q ISN'T THE PROBLEM WITH PSYCHOLOGICAL  
11 MALTREATMENT, DOCTOR, THAT THE WHOLE CONCEPT OF  
12 ABUSE, OR WHAT CONSTITUTES MALTREATMENT, IS VERY  
13 OFTEN A VERY SUBJECTIVE EVALUATION?

14 A WELL, THE REASON FOR DEVELOPING  
15 DEFINITIONS IS TO DECREASE THE DEGREE TO WHICH IT IS  
16 UNDERSTOOD DIFFERENTLY BY DIFFERENT PEOPLE; AND  
17 THEREFORE, SUBJECT TO SUBJECTIVE EVALUATION.

18 Q BUT WOULD YOU AGREE THAT WHETHER OR NOT  
19 A PERSON HAS BEEN ABUSED IS SOMETHING THAT IS OFTEN  
20 LIKE BEAUTY, IT'S IN THE EYE OF THE BEHOLDER?

21 A WELL, WHEN -- WHETHER SOMEBODY HAS  
22 BEEN -- MAKES A DETERMINATION OF WHETHER OR NOT  
23 SOMEBODY HAS BEEN ABUSED, THE DEGREE TO WHICH IT  
24 BECOMES MORE OBJECTIVE IS SUPPORTED STRONGLY BY THE  
25 DEGREE TO WHICH YOU HAD AGREED-UPON STANDARDS THAT  
26 PEOPLE CAN ADHERE TO AND WHICH ALLOWS THEM TO MAKE  
27 COMPARISONS. DOES THIS OR DOES THIS NOT FIT?

28 Q EVEN IF THERE WERE AGREED-UPON

1 STANDARDS, WOULDN'T YOU AGREE THAT IN MANY INSTANCES  
2 YOU ARE GOING TO HAVE A TYPE OF BEHAVIOR THAT IS --  
3 CAN BE INTERPRETED IN DIFFERENT WAYS?

4 A BEHAVIORS ARE, GENERALLY SPEAKING, OPEN  
5 TO DIFFERENT KINDS OF INTERPRETATIONS; AND SO, YOU  
6 WORK TOWARDS STANDARDS TO REDUCE WHAT WOULD BE A  
7 LACK OF RELIABILITY AMONG JUDGES, AND SO THAT'S --  
8 THAT IS THE PURPOSE OF PRODUCING THE STANDARDS SUCH  
9 AS WE HAVE BEEN TALKING ABOUT HERE, SO THAT YOU WILL  
10 NEVER REDUCE ALL SUBJECTIVITY, BUT YOU WILL -- BUT  
11 YOU WILL MOVE TOWARD HIGHER AND HIGHER LEVELS OF  
12 OBJECTIVITY. THAT'S THE PROCESS.

13 Q WHETHER OR NOT IT'S A WORTHWHILE GOAL TO  
14 TRY AND COME UP WITH STANDARDS, WOULDN'T YOU AGREE  
15 THERE ARE GOING TO BE MANY INSTANCES IN WHICH YOU'RE  
16 GOING TO HAVE SITUATIONS IN WHICH WHETHER OR NOT IT  
17 CONSTITUTES ABUSE IS GOING TO BE A MATTER OF OPINION  
18 OVER WHICH PEOPLE WILL DISAGREE?

19 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
20 FOR SPECULATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: IT'S CERTAINLY POSSIBLE FOR  
23 PEOPLE TO DISAGREE ON WHETHER SOMETHING DOES OR DOES

24 NOT FIT A PARTICULAR CATEGORY.

25 THE MORE EFFORT YOU PUT INTO APPLYING  
26 CATEGORIES THAT YOU UNDERSTAND WELL, THE LESS LIKELY  
27 THAT IS TO OCCUR; AND IF YOU ARE ABLE, ALSO, TO  
28 CONFER WITH PEOPLE WHO KNOW THE MEANINGS OF THESE

53677

1 STANDARDS AND DISCUSS WHETHER OR NOT SUCH CATEGORIES  
2 OR SUCH INSTANCES WOULD FALL UNDER THOSE CATEGORIES,  
3 THEN YOU INCREASE THE RELIABILITY.

4 Q YOU SAID, FOR EXAMPLE, SOMETIMES NOT  
5 GIVING ATTENTION TO YOUR CHILD, NOT LISTENING TO  
6 YOUR CHILD, GETTING FRUSTRATED WITH YOUR CHILD,  
7 DEMONSTRATING ANGER TOWARD YOUR CHILD, ARE ALL  
8 INSTANCES IN WHICH YOU MIGHT CHARACTERIZE SUCH  
9 BEHAVIOR AS MISGUIDED OR POORLY CONCEIVED PARENTING,  
10 RATHER THAN PSYCHOLOGICAL ABUSE; IS THAT CORRECT?

11 A YES. IT'S POSSIBLE TO CHARACTERIZE THEM  
12 THAT WAY IF THEY ARE QUITE MILD, INFREQUENT, AND SO  
13 ON.

14 IF INSTEAD, THEY'RE STRONGER  
15 INDICATIONS, THEY'RE MORE PERVASIVE, THEY'RE THE  
16 ONES MORE LIKELY TO OCCUR, THERE ISN'T THE  
17 COUNTER-BALANCING OF THEM AND SO ON, AS I WENT  
18 THROUGH THOSE, WHAT WOULD BE THE DIMENSIONS OR THE

19 FACTORS YOU'D CONSIDER IN DETERMINING SEVERITY, THEN  
20 IT BECOMES MORE AND MORE A CASE WHICH JUSTIFIES  
21 BEING CALLED PSYCHOLOGICAL MALTREATMENT.

22 Q AND WHO MAKES THE DETERMINATION AS TO  
23 WHETHER A PARTICULAR BEHAVIOR IS PSYCHOLOGICAL  
24 MALTREATMENT OR NOT?

25 A THE DETERMINATION WOULD BE MADE BY  
26 SOMEONE, OR SOME SET OF PEOPLE, WHO KNOW THOSE  
27 STANDARDS AND WHO HAVE THE INFORMATION AVAILABLE TO  
28 DETERMINE WHETHER OR NOT IT FITS THE STANDARDS.

53678

1 Q YOU DON'T THINK THAT LAY PEOPLE ARE  
2 CAPABLE OF LOOKING AT A RELATIONSHIP BETWEEN A CHILD  
3 AND HIS PARENTS AND MAKING THEIR OWN INDIVIDUAL  
4 CONCLUSION AS TO WHETHER OR NOT THAT RELATIONSHIP IS  
5 ABUSIVE OR NOT?

6 A I HAPPEN TO THINK THAT IF LAY PEOPLE HAD  
7 SUFFICIENT INFORMATION, THAT THEY WOULD HAVE THE  
8 CAPABILITY TO, ON MANY OCCASIONS, MAKE THE SAME KIND  
9 OF DECISION.

10 LAY PEOPLE GENERALLY AROUND FAMILIES  
11 DON'T GET TO OBSERVE THOSE FAMILIES FREQUENTLY  
12 ENOUGH, ACROSS ENOUGH SETTINGS; AND CERTAINLY NOT  
13 WHEN THEY WERE BEHIND CLOSED DOORS, TO RECOGNIZE --

14 QUITE OFTEN THEY WOULD NOT BE ABLE TO RECOGNIZE THE  
15 PATTERNS, BECAUSE ONLY THINGS WOULD BE REVEALED TO  
16 THEM -- ONLY CERTAIN THINGS WOULD BE ALLOWED TO  
17 HAPPEN IN FRONT OF THEM.

18 AND THEY MIGHT VERY WELL BE INCLINED --  
19 ESPECIALLY IF WE'RE TALKING ABOUT PEOPLE THAT THEY  
20 WOULD LIKE TO LIKE, OR THEY HAVE SOME CONNECTION TO  
21 THEM -- TO BELIEVE THIS IS AN UNUSUAL OCCURRENCE, OR  
22 THIS IS -- THIS ISN'T SOMETHING THAT THEY DO ALL THE  
23 TIME. AND IT'S JUST ONE OF THOSE CASES WHERE THEY  
24 SLIP OFF THE TRACK, WHICH IS CERTAINLY WHY MANY  
25 FAMILIES ARE NOT REPORTED FOR CHILD ABUSE, OTHER  
26 FORMS OF CHILD ABUSE TOO, BECAUSE PEOPLE WANT TO  
27 GIVE THE BENEFIT OF THE DOUBT.

28 AND ALSO IT CREATES A POWER OF

53679

1 CONSCIENCE, A WEIGHT OF RESPONSIBILITY TO DO  
2 SOMETHING, TO ACT, WHICH, FOR EXAMPLE, WE KNOW  
3 SOMEONE LIKE PETER CANO DECIDED TO ACT, AT LEAST TO  
4 MAKE AN ATTEMPT, AS HE DESCRIBED WHAT HE SAW IN THE  
5 FAMILY.

6 Q WELL, YOU NEVER OBSERVED THIS FAMILY  
7 BEHIND CLOSED DOORS, DID YOU, DOCTOR?

8 A NO, I HAVEN'T.

9 Q YOU WOULD AGREE THAT TERRY BARALT, FOR  
10 EXAMPLE, HAD MUCH MORE OPPORTUNITY TO OBSERVE THIS  
11 FAMILY INTERACTING THAN YOU DID; IS THAT CORRECT?

12 MS. ABRAMSON: YOUR HONOR, ARGUMENTATIVE,  
13 SINCE HE HAD NO OPPORTUNITY.

14 THE COURT: OVERRULED.

15 THE WITNESS: SHE HAD MORE OPPORTUNITY TO  
16 OBSERVE THIS FAMILY INTERACT THAN I DID. SHE DID  
17 NOT HAVE INFORMATION I HAD ABOUT THIS FAMILY'S  
18 INTERACTION ACROSS SETTINGS, ACROSS GROUPS, AS  
19 PERCEIVED BY MANY, MANY PEOPLE. BUT SHE CERTAINLY  
20 HAD MORE OPPORTUNITY TO OBSERVE THEM DIRECTLY THAN I  
21 HAD.

22 Q BY MR. CONN: WHO'S HAD AN OPPORTUNITY  
23 TO OBSERVE THIS FAMILY INTERACT MORE THAN TERRY  
24 BARALT?

25 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR  
26 HONOR. IT'S IRRELEVANT.

27 THE COURT: OVERRULED.

28 Q BY MR. CONN: AS FAR AS YOU KNOW, FROM

53680

1 WHAT YOU'VE READ?

2 A OH, MY, YES. WHO HAD AN OPPORTUNITY  
3 WITHIN -- OF ANYONE TO SEE THEM INTERACT MORE



4 DIRECTLY?

5 I'M NOT SURE THAT I WOULD KNOW THAT, FOR  
6 THIS REASON:

7 LET'S SAY THAT YOU HAVE A COUSIN WHO  
8 STAYS IN A HOUSE FOR A PERIOD OF MONTHS, DAY IN AND  
9 DAY OUT. THAT MIGHT BE MORE THAN TERRY BARALT HAD A  
10 CHANCE TO OBSERVE IN TERMS OF ACTUAL HOURS OF  
11 OBSERVATION.

12 I DON'T HAVE WITH ME, OR IN MY MEMORY,  
13 ANYTHING THAT WOULD HELP ME TO START COUNTING THOSE  
14 HOURS UP. SO I THINK I CAN'T ANSWER IT.

15 Q DO YOU THINK A COUSIN, WHO EVEN COMES  
16 CLOSE TO HAVING AN OPPORTUNITY TO OBSERVE THIS  
17 FAMILY INTERACT AS MUCH AS TERRY BARALT?

18 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
19 QUESTION AS VAGUE, YOUR HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: I CAN'T ANSWER THE QUESTION. I  
22 DON'T HAVE A SENSE IN MY OWN MIND OF HOW MANY HOURS  
23 TERRY BARALT WAS PRESENT IN THIS FAMILY. THERE WERE  
24 VISITS AND SO ON. BUT I REALLY DON'T HAVE THE  
25 NUMBER OF HOURS THAT ALLOWS ME TO MAKE THE KIND OF  
26 QUANTITATIVE COMPARISON I THINK YOU'RE ASKING FOR.

27 Q BY MR. CONN: DO YOU THINK YOU NEED AN  
28 EXACT NUMBER OF HOURS, DOCTOR, TO ANSWER THE

1 QUESTION I'M ASKING YOU?

2 A I THINK I NEED SOME GENERAL SENSE OF THE  
3 HOURS ACROSS TIME.

4 Q AND YOU'RE SAYING --

5 A YES. I MEAN, FOR EXAMPLE, IT REALLY  
6 ISN'T ONLY QUANTITATIVE. IT'S ONE THING TO OBSERVE  
7 A FAMILY INCIDENTALLY IN A MALL; FOR EXAMPLE, TO  
8 OBSERVE THEM AT A FAMILY FUNCTION. IT'S ANOTHER  
9 THING TO BE THERE FOR BREAKFAST, LUNCH AND DINNER,  
10 TO BE THERE IN THE EVENING, TO BE OVERNIGHT DAY  
11 AFTER DAY AFTER DAY.

12 SO IT'S A HARD -- IT'S NOT A DISTINCTION  
13 OR A JUDGMENT I THINK I CAN MAKE.

14 Q LET ME ASK YOU THIS, DOCTOR: YOU'VE  
15 READ A GREAT DEAL OF TESTIMONY IN THIS CASE; IS THAT  
16 CORRECT?

17 A UH-HUH. YES.

18 Q TELL US WHO HAD THE MOST CONTACT WITH  
19 THE FAMILY.

20 A I'VE JUST INDICATED TO YOU THAT I DON'T  
21 THINK I CAN MAKE THAT JUDGMENT. I HAVEN'T REVIEWED  
22 IT IN THAT SENSE TO TRY TO MAKE DISTINCTIONS.

23 I THINK THAT TERRY BARALT HAD A GOOD  
24 DEAL OF CONTACT WITH THE FAMILY.

25 I THINK SOME OTHER PEOPLE DID TOO, SOME  
26 OF THE COUSINS WHO ACTUALLY STAYED THERE, AND

27 THEY'RE QUALITATIVELY AND QUANTITATIVELY DIFFERENT.

28 Q WHO ELSE WOULD YOU PUT IN THE SAME

53682

1 CATEGORY AS TERRY BARALT AS HAVING A GREAT DEAL OF  
2 CONTACT WITH THE FAMILY? LET'S PUT IT THAT WAY.

3 A ACROSS TIME -- I'M NOT SURE I CAN MAKE A  
4 JUDGMENT ABOUT THE GRANDMOTHER, FOR EXAMPLE.

5 IN TERMS OF THE QUALITY AND INTENSITY, I  
6 SUPPOSE SOME OF THE COUSINS. IF WE'RE GOING TO MIX  
7 QUANTITY AND QUALITY, SOME OF THE COUSINS WHO STAYED  
8 THERE MAY HAVE HAD SOMETHING EQUAL TO HER TIME WITH  
9 THE FAMILY.

10 Q WHO ARE YOU REFERRING TO?

11 A I'M THINKING ABOUT DIANE AND KAREN AND --

12 Q KAREN SIMONTON -- KATHY SIMONTON?

13 A IT'S KATHY SIMONTON, ISN'T IT?

14 Q IS THAT WHO YOU'RE REFERRING TO?

15 A HER STAY WOULDN'T BE VERY -- MORE LIKELY  
16 TO BE SOMEONE LIKE DIANE, PROBABLY.

17 Q AND WHAT IS YOUR UNDERSTANDING OF HOW  
18 MUCH CONTACT SHE HAD WITH THE FAMILY?

19 A MY MEMORY RIGHT NOW IS PERIODS OF MONTHS  
20 THAT WENT ACROSS A COUPLE OF TIMES AT LEAST.

21 Q UH-HUH. ANYONE ELSE OTHER THAN DIANE

22 THAT YOU THINK HAD A GREAT DEAL OF CONTACT WITH THE  
23 FAMILY?

24 A I'M NOT SURE OF THE AMOUNT OF TIME THAT  
25 ALAN AND ANDY SPENT THERE. I THINK ALAN WAS THERE  
26 AT LEAST A COUPLE OF TIMES, AND I THINK IT WAS FOR  
27 MONTHS, TOO.

28 Q NOW, FOR YOUR 800 HOURS ON THIS CASE,

53683

1 HOW MUCH WERE YOU PAID?

2 A ABOUT \$24,000. I THINK THAT MUST BE  
3 ABOUT \$30 AN HOUR OR SO.

4 Q AND HAVE YOU TESTIFIED AS AN EXPERT  
5 WITNESS IN THE PAST?

6 A HAVE I?

7 Q YES.

8 A HAVE I EVER TESTIFIED AS AN EXPERT  
9 WITNESS?

10 Q YES.

11 A YES.

12 Q AND HOW MANY CASES HAVE YOU TESTIFIED AS  
13 AN EXPERT WITNESS?

14 A FOUR OR FIVE, I THINK. YEAH.

15 Q IN YOUR ENTIRE CAREER?

16 A YES.

17 Q WERE THOSE CASES CRIMINAL CASES?

18 A NO. THIS IS THE ONLY ONE.

19 Q THIS IS THE ONLY CASE YOU'VE EVER HAD  
20 CONTACT WITH?

21 A YES. I'M RECOLLECTING ONE IN WHICH A  
22 TEACHER HAD BEEN DEMEANING A CHILD, AND HAD TAPED  
23 THE CHILD'S MOUTH AND HAD THE CHILD SIT IN CLASS  
24 WITH HIS MOUTH TAPED. BUT I THINK THAT HAD TO BE A  
25 CIVIL COURT. I WASN'T -- I DIDN'T REALLY EVEN MAKE  
26 THAT DISTINCTION AT THAT POINT. IT DIDN'T -- MUST  
27 HAVE BEEN A CIVIL COURT. AND OTHERS HAVE BEEN CHILD  
28 CUSTODY KINDS OF CASES.

53684

1 Q I BELIEVE THAT YOU SAID WHEN THERE'S AN  
2 EXTREME LACK OF AFFECTION, DEATH COULD RESULT TO THE  
3 CHILD; IS THAT CORRECT?

4 A YEAH. I WAS DESCRIBING TO YOU THE  
5 DENYING EMOTIONAL RESPONSIVENESS, ITS ASSOCIATION  
6 WITH FAILURE TO THRIVE SYNDROME, YES.

7 Q WHAT ELSE CAN RESULT? IF DEATH IS NOT  
8 THE RESULT, WHAT ELSE CAN RESULT WHEN THERE'S AN  
9 EXTREME LACK OF AFFECTION?

10 A OH. THERE CAN BE RETARDATIONS OF ALL  
11 KINDS, ACTUALLY, PHYSICAL AND MENTAL AND CERTAINLY

12 THE SOCIAL DEVELOPMENT, LEARNING. ALL OF THOSE ARE  
13 ASSOCIATED WITH IT.

14 Q AND THEY COULD RESULT IN CHARACTER  
15 DISORDERS?

16 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
17 QUESTION, YOUR HONOR, AS IRRELEVANT.

18 THE COURT: YOU UNDERSTAND WHAT HE MEANS?

19 THE WITNESS: YES. I'M TRYING TO REMEMBER IF  
20 I'VE SEEN THAT PARTICULAR CONNECTION MADE FOR THE  
21 FAILURE TO THRIVE SYNDROME. I'M NOT SURE THAT I  
22 HAVE.

23 Q BY MR. CONN: WELL, AN EXTREME DENIAL OF  
24 PARENT CARE AT A VERY EARLY AGE CAN RESULT IN  
25 CHARACTER DISORDERS; WOULDN'T YOU AGREE?

26 MS. ABRAMSON: OBJECTION. YOUR HONOR. HE'S  
27 TESTIFYING.

28 THE COURT: OVERRULED.

53685

1 THE WITNESS: I THINK IT VERY POSSIBLY COULD,  
2 YES.

3 MR. CONN: I HAVEN'T HAD BEFORE ME EVIDENCE  
4 SPECIFICALLY TYING IT TO THAT, AND I'M NOT SURE THAT  
5 EVIDENCE IS IN THE RESEARCH.

6 Q AND YOU DIDN'T SEE EXTREME DENIAL OF

7 PARENTAL CARE IN THIS CASE THAT RESULTED IN

8 RETARDATION, DID YOU?

9 A WELL, CERTAINLY WE SEE PROBLEMS IN

10 LEARNING. CERTAINLY WE HAVE SEEN, IN THIS

11 SITUATION, PROBLEMS IN SOCIAL RELATIONS. THE

12 SPECIFIC DEGREE TO WHICH THE LACK OF SENSITIVE CARE

13 OF A RESPONSIVENESS TO FEELINGS AND NEEDS AND

14 DISTRESS IS CONNECTED TO THAT, IS SOMETHING THAT

15 CAN'T BE KNOWN.

16 WE SIMPLY KNOW THAT IN RESEARCH THOSE

17 THINGS HAVE BEEN CONNECTED; AND SO, THERE'S THE

18 POSSIBILITY THAT IN THIS CASE THOSE THINGS ARE

19 CONNECTED.

20 Q ARE YOU SAYING THAT ERIK MENENDEZ HAD

21 LEARNING DIFFICULTIES BECAUSE OF EXTREME DENIAL OF

22 PARENTAL CARE?

23 A THAT HE HAD LEARNING DISABILITIES

24 BECAUSE OF LACK OF SENSITIVE PARENTAL CARE?

25 PROBABLY THE BEST WAY TO LOOK AT THAT IS

26 THAT THE LEARNING DIFFICULTIES HE HAD DUE TO --

27 ASSOCIATED WITH WHAT THOSE OF THEM THAT EVALUATED

28 HIM AND CALLED LEARNING DISABILITIES, WERE MADE EVEN

53686

1 STRONGER, CREATED EVEN MORE INTERFERENCE FOR HIM

2 BECAUSE OF LACK OF SENSITIVE, SUPPORTIVE CARE,  
3 BECAUSE HE WOULD BRING LESS TRUST OF OTHERS, LESS  
4 TRUST OF HIMSELF, MORE ANXIETY TO THE SITUATION, AND  
5 SO ON, WOULD BE LIKELY CONNECTIONS.

6 TO BE ABLE TO INDICATE EXACTLY THAT THAT  
7 CONNECTION IS MADE HERE, NO. IT HAS TO BE A  
8 PROFESSIONAL JUDGMENT.

9 Q SO THERE'S NO WAY THAT YOU CAN  
10 DEMONSTRATE HOW A DENIAL OF PARENTAL CARE IN ANY WAY  
11 CONTRIBUTED TO ANY LEARNING DIFFICULTIES THAT HE  
12 HAD; IS THAT CORRECT, DOCTOR?

13 A THERE'S NO WAY THAT I CAN PROVE  
14 ABSOLUTELY THAT THE ONE CAUSED THE OTHER, NO.

15 Q NOW, YOU SAID THAT IT'S NECESSARY TO  
16 GIVE A CHILD WORK THAT WILL PROVIDE THEM WITH A  
17 SENSE OF ACCOMPLISHMENT; IS THAT CORRECT?

18 A YES. IT'S NECESSARY FOR A CHILD TO HAVE  
19 OPPORTUNITIES TO WORK ON THINGS, TO FEEL THAT TRYING  
20 IS IMPORTANT, AND THAT HE'S MAKING SOME PROGRESS,  
21 AND THAT THIS IS SOMETHING THAT'S VALUED. YES.  
22 CHILDREN NEED THAT.

23 Q AND A SENSE OF ACCOMPLISHMENT LEADS TO  
24 AN INCREASE IN CONFIDENCE; IS THAT CORRECT?

25 A IT SHOULD LEAD TO AN INCREASE IN  
26 CONFIDENCE, THAT'S CORRECT.

27 Q DID YOU HAVE A CHANCE TO SEE PHOTOGRAPHS  
28 OF THE DEN WITH TROPHIES LINING THE WALL OF THE DEN?



1 A I THINK I'VE SEEN THOSE BEFORE.

2 Q LET ME SHOW THEM TO YOU ONCE AGAIN.

3 THIS IS PEOPLE'S 9 AND PEOPLE'S 22.

4 MS. NAJERA: EXCUSE ME, YOUR HONOR.

5 THE COURT: LET'S TAKE A SHORT BREAK, AND

6 WE'LL RESUME IN APPROXIMATELY 10 MINUTES.

7 (A RECESS WAS TAKEN FROM

8 11:23 A.M. TO 11:40 A.M.)

9

10 THE COURT: LET'S GET JURY OUT.

11 (THE JURY ENTERED THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: JURY IS BACK.

16 YOU MAY CONTINUE YOUR CROSS-EXAMINATION.

17 MR. CONN: THANK YOU.

18 Q DOCTOR, DO YOU RECALL SEEING THESE

19 PHOTOGRAPHS WHICH DEPICT A LARGE NUMBER OF TROPHIES

20 LINING THE TOP OF THE BOOK CASE IN THE DEN?

21 A YES. LET ME HAVE THEM AGAIN, BECAUSE

22 WHEN WE STOPPED, I JUST SIMPLY TURNED THEM OVER, AND

23 I THOUGHT THEY'D BE HERE WHEN I GOT BACK.

24 Q OKAY.

25 A OKAY.

26 Q HOW MANY TROPHIES WOULD YOU SAY ARE  
27 DEPICTED IN THOSE PHOTOGRAPHS?  
28 MS. ABRAMSON: YOUR HONOR, I'M GOING TO

53688

1 OBJECT. IT'S IRRELEVANT.  
2 THE COURT: WELL, JUST AN APPROXIMATE.  
3 THE WITNESS: IN THIS TOP?  
4 THE COURT: YOU DON'T HAVE TO COUNT THEM.  
5 JUST --  
6 THE WITNESS: MAYBE 15, 12.  
7 Q BY MR. CONN: ON THAT SIDE?  
8 A ISN'T THAT THE SAME BOOKCASE?  
9 Q IT'S THE END OF THE BOOKCASE. IT'S THE  
10 OTHER SIDE.  
11 A SO NOW IT'S PROBABLY 10, 15, MAYBE 30 OR  
12 SO.  
13 Q AND DO YOU KNOW HOW MANY OF THOSE  
14 TROPHIES WERE EARNED BY ERIK MENENDEZ AND HOW MANY  
15 WERE EARNED BY LYLE MENENDEZ?  
16 A NO. I DON'T HAVE A BREAKDOWN ON THAT.  
17 Q DO YOU THINK THAT'S IMPORTANT TO KNOW?  
18 A EXACTLY HOW MANY TROPHIES THEY WON?  
19 MS. ABRAMSON: YOUR HONOR --  
20 THE WITNESS: MY SON PLAYS HOCKEY AND SOCCER

21 AND --

22 MR. CONN: WE'RE NOT ASKING YOU ABOUT YOUR  
23 SON.

24 Q WE'RE JUST ASKING, DO YOU THINK IT'S  
25 IMPORTANT TO KNOW THE EXTENT OF THE ACHIEVEMENTS IN  
26 THE AREA OF TENNIS THAT ERIK MENENDEZ MAY HAVE  
27 ACCOMPLISHED IN EVALUATING THE EXTENT TO WHICH HIS  
28 SENSE OF ACCOMPLISHMENTS AND CONFIDENCE WAS

53689

1 INFLUENCED?

2 A IT'S IMPORTANT TO KNOW THAT HE WAS  
3 SUCCESSFUL IN TENNIS AND THAT HE WAS WINNING AND HE  
4 WAS RECEIVING TROPHIES. YES, I THINK THAT IS  
5 IMPORTANT TO KNOW.

6 Q OKAY. AND WHAT AGE DID HE START WINNING  
7 TROPHIES FOR HIS SUCCESS IN SPORTS?

8 A I'M NOT SURE WHAT THE EARLIEST AGE IS.  
9 HE WAS IN SWIMMING CERTAINLY, AS WELL AS TENNIS. I  
10 THINK HE PROBABLY STARTED WINNING THEM FAIRLY EARLY.

11 Q WHAT DO YOU MEAN BY "FAIRLY EARLY"?  
12 WHEN DID ERIK MENENDEZ START --

13 A HIS FIRST TROPHY? I'M NOT SURE WHEN HE  
14 WON HIS FIRST TROPHY. I WOULD ONLY BE GUESSING.  
15 MAYBE NINE, TEN, ELEVEN, SOMETHING LIKE THAT.

16 Q AND HE CONTINUED TO WIN TROPHIES AND

17 AWARDS UP UNTIL WHAT AGE?

18 A RIGHT ON THROUGH 18.

19 Q AND YOU DON'T KNOW HOW MANY AWARDS HE

20 WON, OR IN WHAT DIFFERENT SPORTS ACTIVITIES HE WON

21 THOSE TROPHIES?

22 A I DON'T KNOW HOW MANY AWARDS HE WON,

23 NO. I DON'T HAVE ANY IDEA. THE INFORMATION I HAD

24 INDICATED THAT HE WAS QUITE SUCCESSFUL, THAT HE WON

25 MANY.

26 Q DO YOU THINK IT MATTERS AT ALL WHETHER

27 HE WON TWO OR THREE OR WHETHER HE WON 30 OR 40?

28 A YEAH. THERE'S A CLEARLY A DIFFERENCE

53690

1 BETWEEN TWO OR THREE AND 30 OR 40.

2 THE MORE YOU WIN, THE MORE MEANING IT

3 MIGHT HAVE.

4 Q AND SO, GIVEN THE FACT THERE'S A CLEAR

5 DIFFERENCE BETWEEN TWO OR THREE TROPHIES AND 30 OR

6 40 TROPHIES, DID YOU MAKE ANY EFFORTS WHATSOEVER TO

7 ASCERTAIN HOW MANY TROPHIES ERIK MENENDEZ WON IN

8 WHAT SPORTS, AND HOW OFTEN HE WON TROPHIES?

9 A I DIDN'T MAKE AN EFFORT TO DETERMINE HOW

10 MANY HE WON. I WAS SATISFIED THAT HE HAD WON QUITE

11 A FEW, AND THAT HE WAS VERY SUCCESSFUL ATHLETICALLY.  
12 Q AND WERE YOU CONCERNED ABOUT HIS SELF --  
13 SENSE OF SELF-ESTEEM AND HIS SENSE OF ACCOMPLISHMENT  
14 AND HIS SENSE OF CONFIDENCE?  
15 A WAS I CONCERNED ABOUT THOSE ISSUES?  
16 YES.  
17 Q YOU DIDN'T THINK, KNOWING HOW OFTEN HE  
18 WON TROPHIES, AND IN WHAT TYPES OF COMPETITIONS HE  
19 WON THOSE TROPHIES FOR, WOULD ASSIST YOU IN MAKING  
20 THAT DETERMINATION AS TO HIS SENSE OF SELF-ESTEEM?  
21 A I THINK KNOWING THAT HE DID WELL IN  
22 SPORTS AND THAT HE WON LOTS OF TROPHIES IS SOMETHING  
23 TO BE TAKEN INTO CONSIDERATION IN REGARD TO  
24 SELF-ESTEEM.  
25 Q AND WHEN DID HE BEGIN TO GET THAT TYPE  
26 OF GRATIFICATION FROM ACHIEVEMENTS IN SPORTS?  
27 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
28 ASSUMES FACTS NOT IN EVIDENCE.

53691

1 THE COURT: REPHRASE THE QUESTION.  
2 Q BY MR. CONN: DO YOU FEEL THAT HIS  
3 ACHIEVEMENTS IN SPORTS PROVIDED HIM WITH A SENSE OF  
4 ACCOMPLISHMENT?  
5 A I THINK THAT IT PROVIDED HIM WITH A

6 NUMBER OF MESSAGES; THAT HIS ACCOMPLISHMENTS IN  
7 SPORTS IS PROBABLY ONE OF THE -- OR HAS POSITIVE  
8 MEANING FOR HIM. IT'S THE CHIEF THING THAT WOULD  
9 GET ATTENTION FROM OTHER PEOPLE. THAT WOULD GIVE  
10 YOU SOME SENSE OF VALUE.

11 IT ALSO, VERY LIKELY IN THIS CASE, WOULD  
12 HAVE THE ADDITIONAL MESSAGE THAT -- WITHIN THAT  
13 FAMILY -- THAT THIS IS WHAT YOU'RE VALUED FOR,  
14 GETTING THESE TROPHIES. THAT IN A SENSE YOU'RE LIKE  
15 A TROPHY.

16 Q SO YOU'RE LOOKING FOR NEGATIVE THINGS?

17 A I'M LOOKING --

18 Q ALLOW ME TO FINISH MY QUESTION.

19 DOCTOR, ARE YOU LOOKING FOR NEGATIVE  
20 THINGS IN EVERY INTERACTION OR EVERY ACHIEVEMENT IN  
21 THAT FAMILY?

22 A I'M LOOKING FOR BOTH POSITIVES AND THE  
23 NEGATIVES IN THOSE INTERACTIONS, NOT TO EXCLUDE ONE  
24 OR THE OTHER.

25 Q AND DO YOU FEEL THAT HIS ACHIEVEMENT IN  
26 SPORTS AND THE SENSE OF ACCOMPLISHMENT THAT WOULD  
27 COME FROM THAT, CONTRIBUTED TO HIS SELF -- HIS SENSE  
28 OF CONFIDENCE?

1       A    I THINK, WHAT I'VE SAID JUST A FEW  
2 MOMENTS AGO, THAT IT WOULD HAVE AT LEAST TWO  
3 MESSAGES, AND IT COULD CONTRIBUTE TO HIS SENSE OF  
4 BEING SOMEBODY OF VALUE, AS WELL AS TO BEING USED,  
5 AND A TROPHY, YES.

6       Q    YOU UNDERSTAND NOW I'M TALKING ABOUT  
7 CONFIDENCE. I'M NOT TALKING ABOUT HOW YOU WANT TO  
8 CHARACTERIZE HIM AS REGARDING HIMSELF AS A TROPHY.

9           HOW WOULD IT CONTRIBUTE TO HIS SENSE OF  
10 CONFIDENCE, DOCTOR?

11      A    YOU'RE ASKING ME JUST FOR POSITIVE  
12 POSSIBILITIES OF THE TROPHIES; AM I CORRECT?

13      Q    THAT IS MY QUESTION RIGHT NOW, DOCTOR.

14      A    IT COULD, YES.

15      Q    IT COULD --

16      MS. ABRAMSON: COULD THE WITNESS ANSWER  
17 WITHOUT BEING CONSTANTLY INTERRUPTED.

18      THE COURT: LET'S NOT MAKE THESE TYPES OF  
19 OBJECTIONS. YOU CAN MAKE A SIMPLE OBJECTION.

20      MS. ABRAMSON: SORRY, YOUR HONOR.

21      THE COURT: BY ATTRACTING THE COURT'S  
22 ATTENTION, AND THE COURT CAN RULE.

23      MS. ABRAMSON: I OBJECT. THE WITNESS IS  
24 BEING CONSISTENTLY INTERRUPTED BY THE QUESTION.

25      THE COURT: AS TO THIS PARTICULAR INQUIRY,  
26 YOU DID INTERRUPT THE WITNESS. PLEASE DON'T DO  
27 THAT. LET THE WITNESS FINISH HIS ANSWER.

28           DO YOU REMEMBER WHERE YOU WERE?

1 THE WITNESS: I THINK SO. I WILL GIVE IT A  
2 TRY.

3 WINNING TROPHIES AND HAVING STATUS AS AN  
4 ATHLETE COULD GIVE HIM GOOD FEELINGS ABOUT HIMSELF.

5 Q BY MR. CONN: DO YOU THINK IT COULD,  
6 DOCTOR?

7 A I THINK IT'S PROBABLY ONE OF THE THINGS  
8 THAT KEPT HIM FROM HAVING MORE PROBLEMS THAN HE DID  
9 HAVE, FROM HAVING -- IT KEPT HIS SELF-ESTEEM FROM  
10 GOING EVEN LOWER THAN IT WAS. IT KEPT HIS SENSE OF  
11 VALUE FROM GOING EVEN LOWER THAN IT WAS.

12 YES, I THINK IT DID HAVE THAT KIND OF  
13 POSITIVE IMPACT ON HIM.

14 Q DO YOU FEEL IT DID CONTRIBUTE TO HIS  
15 SENSE OF CONFIDENCE?

16 A YES. IT WOULD MAKE HIS SENSE OF  
17 CONFIDENCE HIGHER, TO THE DEGREE THAT HE FELT HE WAS  
18 TRULY DOING IT HIMSELF.

19 Q AND HOW OFTEN DID HE TRAVEL IN DIFFERENT  
20 PLACES THROUGHOUT THE COUNTRY TO WIN TROPHIES IN  
21 TENNIS COMPETITION?

22 A MY UNDERSTANDING IS THAT THERE WAS QUITE  
23 A FEW TIMES. I DON'T HAVE AN EXACT NUMBER, BUT I



24 THINK IT WAS MANY TIMES. I THINK THAT TENNIS  
25 REQUIRES A GREAT DEAL OF TRAVEL.  
26 Q UH-HUH. AND HOW OFTEN DID HE COME BACK  
27 WITH A TROPHY IN HAND, DOCTOR?  
28 A I'M NOT SURE I CAN MAKE A JUDGMENT ABOUT

53694

1 THE PERCENTAGE TIME. MY SENSE IS THAT POSSIBLY MORE  
2 OFTEN THAN NOT.

3 Q UH-HUH. AND DO YOU FEEL THAT THAT IS  
4 SOMETHING WHICH WOULD CONTRIBUTE TO HIS SELF -- HIS  
5 SENSE OF CONFIDENCE?

6 A IT COULD CONTRIBUTE TO HIS SENSE OF  
7 CONFIDENCE, YES.

8 Q AND WOULDN'T YOU AGREE, DOCTOR, IN ORDER  
9 TO COMPETE ON THAT LEVEL AND TO TRAVEL AROUND THE  
10 COUNTRY IN SUCH SPORTS COMPETITIONS, THAT YOU NEED A  
11 VERY STRONG SENSE OF SELF AND CONFIDENCE IN ORDER TO  
12 WIN AN EVENT SUCH AS HE WON?

13 A YOU WOULD NEED A SENSE THAT YOU HAD AN  
14 ABILITY TO PLAY TENNIS, AND YOU WOULD NEED TO HAVE  
15 THE TALENT TO DO IT. IT WOULDN'T NECESSARILY BE THE  
16 CASE THAT YOU WOULD NEED A GENERALLY STRONG SENSE OF  
17 SELF-CONFIDENCE, BUT FOCUSED ON THAT PARTICULAR  
18 ACTIVITY. YOU'D NEED TO BELIEVE THAT YOU WERE

19 CAPABLE OF DOING THINGS.

20 Q AND WOULDN'T THAT SENSE OF CONFIDENCE IN

21 SPORTS SPILL OVER TO A SENSE OF CONFIDENCE

22 GENERALLY?

23 A IT COULD HAVE SOME EFFECT IN THAT WAY.

24 Q NOW, I'D LIKE TO FOCUS ON ERIK MENENDEZ

25 IN HIS LIFE IN CALIFORNIA; NOT WHEN HE WAS A LITTLE

26 BOY, BUT AFTER HE WAS OUT HERE IN CALIFORNIA AND HE

27 HAD A CAR, AND HE WAS DRIVING AROUND.

28 IS THAT YOUR UNDERSTANDING?

53695

1 A THAT'S MY UNDERSTANDING. YES.

2 Q AND WHEN HE WAS OUT HERE AND HE HAD A

3 CAR, AND WAS DRIVING AROUND, DID HE HAVE FRIENDS

4 THAT HE ASSOCIATED WITH?

5 A YES. THAT'S MY UNDERSTANDING.

6 Q HE DIDN'T LIVE AN ISOLATED LIFE OUT HERE

7 ONCE HE MOVED TO CALIFORNIA, DID HE?

8 A IT WAS -- MY UNDERSTANDING WOULD BE IT

9 WAS A LESS ISOLATED LIFE IN TERMS OF ACTUAL PHYSICAL

10 FREEDOM TO MOVE ABOUT, AND THAT ACTUAL MOVEMENT.

11 PEOPLE WHO HAVE LED ISOLATED LIVES AND

12 WHO ARE ENCOURAGED TO KEEP SECRETS WITHIN THE

13 FAMILY, AND NOT TO TRUST OTHER PEOPLE, CONTINUE TO

14 LIVE ISOLATED LIVES IN MANY WAYS, IN THAT THEY CAN'T  
15 REACH OUT TO PEOPLE IN THE SAME WAYS. THEY CAN'T  
16 REVEAL THEMSELVES TO PEOPLE IN THE SAME WAYS. THEY  
17 CAN'T MAKE THE CLOSE, INTIMATE, GENUINE OR -- DEVELOP  
18 THOSE KINDS OF GENUINE RELATIONSHIPS IN THE SAME  
19 WAY.

20 SO THEY CONTINUE TO BE, IN MANY WAYS,  
21 ISOLATED, EVEN IN A CROWD.

22 Q SO WHEN YOU SPEAK ABOUT ISOLATED IN A  
23 CROWD, YOU'RE NOT REFERRING TO THE TYPE OF ISOLATION  
24 THAT YOU MENTIONED EARLIER, WHERE YOU SAID ONE FORM  
25 OF PSYCHOLOGICAL MALTREATMENT IS THE ISOLATING  
26 CATEGORY, IN WHICH A CHILD IS KEPT FROM SOCIAL  
27 CONTACT?

28 A YES. WHAT I WOULD BE REFERRING TO, IF

53696

1 WE THINK ABOUT ISOLATION NOW, AT THIS TIME OF HIS  
2 LIFE, WOULD BE THE KIND OF ISOLATING THAT HAS BEEN  
3 FOUND IN THE RESEARCH AFTER EXPERIENCES OF CERTAIN  
4 KINDS OF PSYCHOLOGICAL MALTREATMENT IN WHICH THE  
5 PERSON, IN A SENSE, IS SELF-ISOLATING, MAYBE BY  
6 EITHER WITHDRAWING, OR NOT BEING AS ACTIVELY  
7 INVOLVED IN ACTIVITIES AND EVENTS AND INTERACTIONS  
8 WITH PEOPLE; OR ACTUALLY IS NOT PSYCHOLOGICALLY AS

9 MUCH INVOLVED IN THEMSELVES AS HE OR SHE COULD HAVE  
10 BEEN.

11 IT'S MORE AN EXTENSION OF THAT  
12 EXPERIENCE. BUT YES, THAT'S IT.

13 Q BUT KITTY AND JOSE MENENDEZ DID NOT  
14 ISOLATE HIM FROM SOCIAL CONTACTS IN CALIFORNIA, DID  
15 THEY?

16 A I DON'T THINK THERE WAS NEARLY THE KIND  
17 OF SOCIAL ISOLATION THAT WAS DETERMINED BY, OR  
18 DIRECTED BY, THE PARENTS IN THE EARLY YEARS AS THERE  
19 WAS IN THE LATER YEARS.

20 HIS TENNIS SCHEDULE, WHICH WAS, OF  
21 COURSE, STRONGLY SUPPORTED BY THEM, KEPT HIM FROM  
22 THE FREEDOM THAT MOST PEOPLE AT THAT AGE WOULD HAVE  
23 FOR FREE TIME, FOR TIME WITH FRIENDS.

24 JUST AS WAS INDICATED, IN FACT, BY  
25 KIRSTEN SMITH WHEN SHE WAS HERE; AND THEY WERE  
26 DENIED OPPORTUNITIES TO SPEND TIME MAYBE GOING OUT  
27 AS THEY HAD PLANNED. IT'S PROBABLY A GOOD EXAMPLE.  
28 KIND OF ISOLATION THAT CONTINUED AS A NATURAL PART

53697

1 OF THE HIGH LEVEL OF TIME AND INTENSITY FOCUSED ON  
2 TENNIS.

3 Q OKAY. WELL, IN THE EARLY YEARS HE WAS A

4 YOUNG CHILD; IS THAT CORRECT?

5 A IN HIS EARLY YEARS HE WAS A YOUNG  
6 CHILD? YES.

7 Q THAT WAS BEFORE HE CAME TO CALIFORNIA.

8 WHEN YOU SAY "EARLY YEARS," I'M ASKING  
9 YOU-- YOU'RE REFERRING TO THE TIME BEFORE HE CAME TO  
10 CALIFORNIA; IS THAT CORRECT?

11 A WELL, YES. OBVIOUSLY, HE WAS AN  
12 ADOLESCENT BEFORE HE CAME TO CALIFORNIA. SO IF WE  
13 WERE TO THINK ABOUT EARLY CHILDHOOD AND LATER  
14 CHILDHOOD AND EARLY ADOLESCENCE, THOSE OCCURRED  
15 BEFORE HE CAME TO CALIFORNIA, RIGHT.

16 Q AND IT'S NOT UNCOMMON FOR A CHILD SIX,  
17 SEVEN, OR EIGHT YEARS OLD TO SPEND A LOT OF TIME AT  
18 HOME WITH THE PARENTS, IS IT?

19 A SAD TO SAY, PROBABLY IN THIS WORLD, AND  
20 EVEN AT THAT TIME, IT WAS A CASE IN WHICH CHILDREN  
21 WERE NOT SPENDING A LOT OF TIME HOME WITH THEIR  
22 PARENTS, AS MUCH AS MANY FAMILIES MIGHT DESIRE.

23 BUT CERTAINLY, THE YOUNGER YOU ARE, IT'S  
24 MORE LIKELY YOU'RE TO SPEND -- TO HAVE THE FAMILY BE  
25 YOUR SOCIAL -- SORT OF THE CORE OF YOUR SOCIAL  
26 EXPERIENCES, AND YOU WOULD SPEND MORE TIME WITH  
27 THEM.

28 SO IF WE THINK OF IT THAT WAY. . .

1 Q WHEN HE MOVED TO CALIFORNIA HE WAS ABOUT  
2 16 YEARS OLD OR SO. WHAT RESTRICTIONS WERE PLACED  
3 UPON HIS MOVEMENT BY HIS PARENTS?

4 A THE STRONGEST RESTRICTIONS, AS I'M  
5 RECALLING NOW, WERE THOSE THAT WERE ASSOCIATED WITH  
6 THE TENNIS SCHEDULE, THE TRAINING AND TENNIS  
7 TOURNAMENT SCHEDULE.

8 YEAH. I THINK THAT WOULD BE IT IN MY  
9 MIND.

10 Q OTHER THAN HIS TENNIS SCHEDULE, ARE YOU  
11 AWARE OF ANY EVIDENCE INDICATING THAT KITTY AND JOSE  
12 MENENDEZ ISOLATED HIM FROM FRIENDS ONCE HE MOVED TO  
13 CALIFORNIA AND HAD A CAR TO DRIVE AROUND?

14 A NO. I THINK THE TENNIS SCHEDULE WAS THE  
15 MAJOR SPECIFIC CONDITION THAT WOULD HAVE REDUCED HIS  
16 OPPORTUNITY TO BE WITH FRIENDS, AND THAT WAS PRETTY  
17 STRONGLY PRESSED.

18 OTHERS WOULD PROBABLY BE MORE THE  
19 NATURAL SELF-ISOLATING OR REDUCED ABILITY TO CONNECT  
20 WITH PEOPLE GENUINELY THAT WOULD HAVE AN EFFECT ON  
21 HIM AT THAT POINT.

22 Q ARE YOU AWARE THAT WHEN HE CAME TO  
23 CALIFORNIA HE HAD A LOT OF FRIENDS?

24 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
25 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

26 THE COURT: OVERRULED.

27 THE WITNESS: MY UNDERSTANDING IS THAT HE DID

53699

1 CLEAR TO ME WHAT THE NUMBER OF THOSE FRIENDS WAS,  
2 BUT THAT HE DID HAVE FRIENDS, YES.

3 Q BY MR. CONN: WELL, WAS CRAIG CIGNARELLI  
4 ONE OF HIS FRIENDS THAT HE SPENT A GREAT DEAL OF  
5 TIME WITH IN CALIFORNIA?

6 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
7 OBJECT TO THE FORM OF QUESTION AND ASK TO APPROACH.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES. IT'S MY UNDERSTANDING  
10 THAT HE WAS.

11 Q BY MR. CONN: AND DID YOU READ CRAIG  
12 CIGNARELLI'S TESTIMONY TO GET A SENSE OF HOW MUCH  
13 TIME CRAIG CIGNARELLI SPENT WITH HIM?

14 A I DID READ HIS TESTIMONY. AND MY MEMORY  
15 FOR THAT ASPECT OF IT WAS THAT THEY SPENT A GOOD  
16 DEAL OF TIME TOGETHER.

17 Q AND WAS ANOTHER ONE OF HIS FRIENDS JOHN  
18 LIST?

19 A THAT'S MY UNDERSTANDING.

20 Q WAS GINSBERG ANOTHER FRIEND OF HIS?

21 A I THINK I DO RECALL THAT, YES.

22 Q WAS CRAIG HEINBERG A FRIEND OF HIS?

23 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
24 OBJECT AND ASK TO APPROACH.  
25 THE COURT: OVERRULED.  
26 MS. ABRAMSON: YOUR HONOR, I'D LIKE TO BE  
27 HEARD.  
28 THE COURT: HE'S JUST GOING THROUGH A LIST OF

53700

1 PEOPLE AND ASKING WHETHER OR NOT THIS WITNESS HAS  
2 ANY AWARENESS.  
3 MS. ABRAMSON: MISCHARACTERIZING --  
4 THE COURT: COUNSEL, THIS IS NOT THE TIME FOR  
5 YOU TO MAKE SUCH STATEMENTS. IF YOU HAVE AN  
6 OBJECTION, YOUR OBJECTION IS WHAT?  
7 MS. ABRAMSON: ASSUMES FACTS NOT IN EVIDENCE.  
8 THE COURT: OVERRULED. IT'S FOR THIS WITNESS  
9 TO GIVE HIS CHARACTERIZATION OF THE RELATIONSHIP AS  
10 HE UNDERSTANDS IT. THAT'S THE PURPOSE OF THE  
11 WITNESS BEING ON THE WITNESS STAND.  
12 DO YOU UNDERSTAND THE QUESTION?  
13 THE WITNESS: I THINK SO, YES.  
14 THE COURT: OKAY. YOUR ANSWER.  
15 THE WITNESS: HEINBERG; IS THAT RIGHT?  
16 Q BY MR. CONN: IS THAT ONE OF HIS  
17 FRIENDS?



18 A THE NAME SEEMS FAMILIAR. I DON'T

19 REMEMBER MUCH ABOUT HIM.

20 Q AND KIRSTEN SMITH WAS SOMEONE THAT HE  
21 SPENT A GREAT DEAL OF TIME WITH; IS THAT CORRECT?

22 A YES.

23 Q AND DID YOU HEAR HER --

24 A WELL, ACTUALLY, A GREAT DEAL OF TIME? I  
25 DON'T KNOW THAT THAT WOULD BE AN ACCURATE WAY TO  
26 DESCRIBE IT. I THINK A CLEAR INDICATION WAS THEY  
27 WANTED TO SPEND A GREAT DEAL OF TIME; AND CERTAINLY  
28 THEY WERE TOGETHER DURING THE TENNIS PRACTICES, AND

53701

1 SO ON, AND AT TOURNAMENTS. SO THEY CERTAINLY SPENT  
2 TIME TOGETHER, YES.

3 Q AND YOU HEARD THAT KIRSTEN TESTIFIED  
4 THAT THEY SPENT TIME TOGETHER DURING THE WEEK, AND  
5 SHE WOULD ALSO DATE HIM ON WEEKENDS; AND IF THE  
6 TENNIS SCHEDULE DID NOT INTERFERE, THEY WOULD SPEND  
7 BOTH SATURDAY AND SUNDAY TOGETHER; IS THAT CORRECT?

8 A YEAH. MY UNDERSTANDING OF WHAT I HEARD  
9 WAS THAT THEY WOULD BE TOGETHER AT THE TENNIS CLUB  
10 DURING PRACTICES, AND SO THEY WOULD GET TO HAVE SOME  
11 TIME TOGETHER BETWEEN PRACTICE SESSIONS.

12 THEY WOULD WATCH EACH OTHER AT

13 TOURNAMENTS AND GET TO SQUEEZE OUT MAYBE A LUNCH OR  
14 SOMETHING, OR SOME TIME TOGETHER THAT EVENING, IF HE  
15 WERE ALLOWED TO HAVE THAT FREE TIME.

16 AND THAT THEN THEY DID HAVE SOME TIME  
17 TOGETHER ON WEEKEND. I DON'T HAVE A REAL CLEAR  
18 SENSE OF THE KIND OF TIME THEY HAD ON THE WEEKENDS  
19 WHEN TENNIS WASN'T INVOLVED.

20 BUT, YES, I THINK THEY DID SPEND TIME  
21 TOGETHER.

22 Q SO ERIK MENENDEZ DID NOT LIVE AN  
23 ISOLATED EXISTENCE IN CALIFORNIA WITHOUT ANY  
24 FRIENDS, DID HE, DOCTOR?

25 A NO, NO.

26 Q AND, IN FACT, ISN'T IT TRUE THAT HIS  
27 MOTHER ENCOURAGED THE RELATIONSHIP WITH HIS  
28 GIRLFRIEND, KIRSTEN?

53702

1 A THAT'S MY UNDERSTANDING, YES.

2 Q AND IS IT ALSO YOUR UNDERSTANDING THAT  
3 EVEN BEFORE KIRSTEN CAME ALONG, HIS MOTHER WAS  
4 ENCOURAGING HIM TO HAVE A GIRLFRIEND?

5 A MY MEMORY IS SHE WAS PRESSING HIM VERY  
6 HARD TO HAVE A GIRLFRIEND, YES.

7 Q SO CONTRARY TO A PARENT WHO TRIES TO

8 RESTRICT A CHILD FROM SOCIAL CONTACTS, YOUR  
9 UNDERSTANDING IS THAT KITTY MENENDEZ WAS PRESSURING  
10 HIM TO HAVE SOCIAL CONTACTS; IS THAT CORRECT?

11 A THAT SHE WAS PRESSING HIM TO HAVE A  
12 GIRLFRIEND. THAT'S MY UNDERSTANDING. I DON'T KNOW  
13 OF ANY PRESSURING FOR ANY OTHER SOCIAL CONTACT. BUT  
14 THAT ONE I REMEMBER.

15 Q AND IS IT YOUR TESTIMONY -- THE ISOLATING  
16 CATEGORY IS ONE OF THE SIX MAJOR CATEGORIES OF  
17 PSYCHOLOGICAL MALTREATMENT; IS THAT CORRECT?

18 A THAT'S RIGHT.

19 Q LET'S MOVE ON TO ANOTHER CATEGORY OF  
20 PSYCHOLOGICAL MALTREATMENT. NEGLECT NEEDS.

21 YOU REFER TO PHYSICAL, MEDICAL AND  
22 EDUCATIONAL; IS THAT CORRECT?

23 A ONE OF THE CATEGORIES IS THE NEGLECT OF  
24 MEDICAL, MENTAL HEALTH, OR EDUCATIONAL NEEDS. YES.  
25 THAT'S ONE OF THE CATEGORIES.

26 Q UH-HUH. AND ARE YOU SAYING THAT KITTY  
27 MENENDEZ AND JOSE MENENDEZ NEGLECTED THE MEDICAL  
28 NEEDS OF ERIK MENENDEZ?

53703

1 A THE ONLY TIMES -- LET'S SAY THAT I'M  
2 REMEMBERING A CONCERN ABOUT PHYSICAL MEDICAL NEEDS

3 COMING UP WITH -- RELATIVE TO THE SORT OF FORCED  
4 TRAINING ON THE BICYCLE, IN WHICH HE FELL DOWN  
5 REPEATEDLY, AND MY UNDERSTANDING IS, GOT A CUT THAT  
6 PEOPLE BELIEVED DESERVED ATTENTION, WHICH IT DIDN'T  
7 GET.

8 I'M ALSO REMEMBERING THE TIME THAT HE  
9 WAS IN THE SHOE STORE WITH HIS MOTHER AND WITH FAITH  
10 AND JESSICA GOLDSMITH, I BELIEVE. I'M NOT SURE WHO  
11 ELSE WAS THERE. AND HE CUT HIMSELF, FELL DOWN AND  
12 GOT CUT, AND BOTH FAITH GOLDSMITH AND THE STORE  
13 CLERK, IT'S REPORTED, INDICATED THAT HE NEEDED TO  
14 HAVE ATTENTION IMMEDIATELY, AND THAT HE WOULD NEED  
15 STITCHES; AND THAT HIS MOTHER, INSTEAD, CONTINUED TO  
16 SHOP FOR SHOES UNTIL IT WAS TIME TO -- UNTIL SHE HAD  
17 COMPLETED HER SHOPPING, AND THEN WENT ON TO GET THE  
18 ATTENTION HE NEEDED.

19 I'M NOT -- IN TERMS OF MEDICAL NEGLECT,  
20 THERE ISN'T ANOTHER ONE THAT COMES IMMEDIATELY TO  
21 MIND. THEY WERE BOTH WHEN HE WAS RELATIVELY YOUNG.  
22 FIVES AND SEVEN, SOMETHING LIKE THAT AGE, CROSS  
23 THOSE TWO.

24 Q IN REGARD TO THE BICYCLE INCIDENT, YOU  
25 SAID THAT THERE WERE PEOPLE WHO BELIEVED THAT THE  
26 INJURY HE RECEIVED FROM THE BICYCLE FALL DESERVED  
27 MEDICAL ATTENTION?

28 A YES. I'M TRYING TO REMEMBER THAT -- I

1 THOUGHT THAT ONE OF THE PEOPLE THERE, WHETHER IT  
2 WAS -- I THINK IT WAS ALAN THAT WAS THERE, OR  
3 SOMEBODY -- WAS CONCERNED ABOUT THAT. BUT MY MEMORY  
4 ON THAT ONE IS FOGGY.

5 Q ALAN ANDERSEN IS THE ONLY PERSON WHO  
6 CLAIMS TO HAVE WITNESSED SUCH AN EVENT; IS THAT  
7 CORRECT?

8 A HE'S THE PERSON I REMEMBER AS HAVING  
9 OBSERVED.

10 Q NOW, IS IT YOUR UNDERSTANDING THAT KITTY  
11 OR JOSE MENENDEZ NEGLECTED ERIK MENENDEZ' PHYSICAL  
12 NEEDS IN ANY WAY?

13 A OH, IN TERMS OF FOOD AND CLOTHING AND  
14 BASIC SHELTER AND HEALTH CARE? BEYOND THAT, THERE  
15 ISN'T ONE THAT COMES TO MIND.

16 IT'S IMPORTANT TO REMEMBER THAT THIS IS  
17 ONE BROAD CATEGORY THAT INCLUDES THE MEDICAL, THE  
18 MENTAL HEALTH, AND THE EDUCATIONAL; AND SO IT HAS  
19 SUBDIVISIONS WITHIN IT.

20 YES. THAT WASN'T ONE I WAS DRAWING OUT  
21 AS A MAJOR AREA OF PROBLEMS.

22 Q AND IS IT YOUR CONTENTION, DOCTOR, THAT  
23 KITTY MENENDEZ NEGLECTED THE DEFENDANT'S EDUCATIONAL  
24 NEEDS?

25 A YES, UH-HUH. THAT'S RIGHT.

26 Q ISN'T IT TRUE, DOCTOR, THAT ERIK  
27 MENENDEZ WENT TO SOME OF THE BEST PRIVATE SCHOOLS?  
28 MS. ABRAMSON: OBJECTION TO THE FORM OF THE

53705

1 QUESTION. ASSUMES FACTS NOT IN EVIDENCE AND CALLS  
2 FOR SPECULATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: THAT HE WENT TO SOME OF THE  
5 BEST PRIVATE SCHOOLS? I THINK HE WENT TO VERY GOOD  
6 SCHOOLS.

7 Q BY MR. CONN: AND ISN'T IT TRUE, DOCTOR,  
8 THAT WHEN HE NEEDED TUTORING, NORMAN PULS WAS HIRED  
9 TO PROVIDE HIM WITH TUTORING?

10 MS. ABRAMSON: OBJECTION. MISSTATES THE  
11 EVIDENCE.

12 THE COURT: OVERRULED.

13 THE WITNESS: NOW WE'VE SHIFTED TO THE HIGH  
14 SCHOOL LEVEL, AND I BELIEVE NOW IN A PUBLIC SCHOOL.

15 AND, YES, NORMAL PULS DID PROVIDE  
16 TUTORING TO HIM.

17 Q BY MR. CONN: SO IT WAS YOUR  
18 UNDERSTANDING THAT HIS PARENTS PROVIDED TUTORING FOR  
19 HIM; IS THAT CORRECT?

20 A YES. IT'S MY UNDERSTANDING THEY

21 PROVIDED TUTORING TO HIM. THEY DIDN'T PROVIDE THE  
22 LEVEL OF SPECIAL HELP THAT WAS INDICATED BY AND  
23 SUGGESTED BY THE EVALUATIONS THAT WERE DONE.  
24 THERE'S EVIDENCE THAT INFORMATION -- THAT INSTEAD OF  
25 ENCOURAGING HIM TO LEARN HOW TO DO HIS WORK ON HIS  
26 OWN -- THAT IN FACT WORK WAS DONE FOR HIM.  
27       AND SO THOSE WOULD NOT -- WOULD CERTAINLY  
28 BE NEGLECT OF EDUCATIONAL NEEDS.

53706

1       SO THERE IS -- THERE IS THE TUTORING  
2 BEING USED TO HELP HIM GET HIS GRADES IN SCHOOL,  
3 WHICH PEOPLE HAVE INDICATED SEEMED TO BE THE MAJOR  
4 INTEREST ON THE PART OF THE PARENTS; AND THERE'S THE  
5 NEGLECT OF THE GENUINE LEARNING PROBLEMS THAT HE WAS  
6 DISPLAYING.

7       SO THERE'S THAT COMBINATION. LIFE IS  
8 COMPLEX.

9       Q   DOCTOR, IS THERE ANY DOUBT IN YOUR MIND  
10 THAT WHETHER OR NOT IT WAS A GOOD IDEA FOR KITTY  
11 MENENDEZ TO DO SOME HOMEWORK, OR ASSIST IN THE  
12 HOMEWORK OF ERIK MENENDEZ, THAT IT WAS HER INTENTION  
13 TO HELP HER SON?

14      A   I BELIEVE THAT IT WAS HER INTENTION TO  
15 SEE THAT HE GOT GOOD GRADES IN SCHOOL.

16 MR. CONN: THANK YOU.

17 DOES THE COURT WISH TO TAKE A BREAK AT  
18 THIS TIME, YOUR HONOR?

19 THE COURT: YES. WE'LL BE IN RECESS UNTIL  
20 1:30.

21 DON'T DISCUSS THE MATTER WITH ANYONE.  
22 DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE'LL  
23 RESUME AT 1:30.

24 (AT 12:00 NOON PROCEEDINGS  
25 WERE ADJOURNED UNTIL 1:30 P.M.  
26 OF THE SAME DAY.)

27

28

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1 VAN NUYS, CALIFORNIA; WEDNESDAY, APRIL 3, 1996

2 1:35 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. WE HAVE EVERYBODY BACK,  
9 AND WE'LL HAVE THE JURY OUT.

10 (THE JURY ENTERS THE COURTROOM

11 AND THE FOLLOWING PROCEEDINGS

12 WERE HELD:)

13

14 MS. ABRAMSON: YOUR HONOR, COULD WE APPROACH



15 BRIEFLY? I'M SORRY. COULD WE APPROACH BRIEFLY?

16 THE COURT: SURE.

17 (THE FOLLOWING PROCEEDINGS

18 WERE HELD OF THE PRESENCE.

19 OF THE JURY:)

20

21 MS. ABRAMSON: I AM CONCERNED AND ALERTED BY

22 MR. CONN'S REFERENCE TO DR. HART IN CLAIMING FRIENDSHIPS

23 FOR ERIK MENENDEZ WITH SOMEONE NAMED LIST, SOMEONE NAMED

24 GINSBERG, AND SOMEONE NAMED HEINBERG.

25 NOW, CRAIG HEINBERG, THE COURT MAY RECALL,

26 WAS NOT ONE OF THE DEFENDANT'S FRIENDS, BUT WAS A TENNIS

27 COACH.

28 MS. NAJERA: RIGHT.

-11827

1 MS. ABRAMSON: AND THE PEOPLE HAVE PREVIOUSLY

2 ATTEMPTED TO PUT BEFORE THE JURY --

3 THE COURT: ARE YOU GOING TO GO INTO ANYTHING

4 REGARDING THEFTS?

5 MR. CONN: NO.

6 MS. ABRAMSON: OR VANDALISM?

7 MR. CONN: NO.

8 MS. ABRAMSON: OR MALICIOUS MISCHIEF?

9 MS. NAJERA: NO.

10 MR. CONN: NO.

11 MS. ABRAMSON: I FAIL TO UNDERSTAND WHY THE  
12 PEOPLE CHOSE THOSE NAMES, BUT FINE.

13 (THE FOLLOWING PROCEEDINGS  
14 WERE HELD IN OPEN COURT IN  
15 THE PRESENCE OF THE JURY:)

16

17 THE COURT: THE JURY IS IN THE JURY BOX, AND WE  
18 WILL RESUME WITH THE CROSS-EXAMINATION.

19

20 CROSS-EXAMINATION (CONTINUED)

21 BY MR. CONN:

22 Q. WE WERE TALKING ABOUT THE -- YOUR OPINION  
23 THAT KITTY AND JOSE MENENDEZ PSYCHOLOGICALLY MALTREATED  
24 THEIR SON, ERIK MENENDEZ, BECAUSE THEY DIDN'T PROVIDE  
25 ADEQUATE EDUCATIONAL ASSISTANCE TO HIM; IS THAT CORRECT?

26 A. THAT'S WHAT WE WERE TALKING ABOUT.

27 Q. AND THAT IS YOUR OPINION?

28 A. YES.

-11826

1 Q. AND YOU'RE AWARE THAT HE WAS EVALUATED BY  
2 THE LEWIS SCHOOL AS WELL?

3 A. YES.

4 Q. AND THE PURPOSE OF THAT EVALUATION WAS  
5 WHAT?

6 A. IT WAS A REQUIREMENT, AS I RECALL, A

7 SCREENING EVALUATION REQUIREMENT TO BE ABLE TO GET

8 SERVICES THERE.

9 Q. TO GET SERVICES WHERE?

10 A. AT THE LEWIS SCHOOL.

11 Q. WELL, WHAT WAS THE PURPOSE FOR HIM TO BE

12 EVALUATED FOR POSSIBLE SERVICES?

13 A. WELL, AS I UNDERSTAND IT, THE LEWIS SCHOOL

14 REQUIRES AN EVALUATION FOR IT TO BE ABLE TO FEEL THAT IT

15 CAN BE RESPONSIBLE IN CARRYING OUT ITS SERVICES,

16 PROVIDING SERVICES FOR CHILDREN WHO HAVE LEARNING

17 PROBLEMS.

18 SO THAT WAS THE SCHOOL THAT REQUIRED THE

19 EVALUATION, AS I UNDERSTAND IT, AND WAS ABLE ONLY TO

20 GIVE A PARTIAL EVALUATION.

21 Q. BUT WHAT I'M ASKING IS WHAT IS YOUR

22 UNDERSTANDING CONCERNING WHY ERIK MENENDEZ' PARENTS EVEN

23 TOOK HIM TO THE LEWIS SCHOOL IN THE FIRST PLACE?

24 A. BECAUSE HE WAS HAVING SUCH DIFFICULTIES IN

25 SCHOOL.

26 Q. AND DID IT APPEAR TO YOU THAT THEY WANTED

27 TO HELP HIM CORRECT THESE DIFFICULTIES?

28 A. WELL, TO MY KNOWLEDGE, THERE WAS NO SPECIAL

-11825

1 HELP GIVEN ASSOCIATED WITH HIS LEARNING DISABILITIES

2 BEYOND THE BRIEF TIME THAT HE WAS AT THE LEWIS SCHOOL.

3 WHILE HE DID GET TUTORING, HE DIDN'T GET THE KIND OF  
4 SPECIAL SERVICES THAT ARE DIRECTED TOWARD A CHILD WHO  
5 HAS THE KIND OF LEARNING DISABILITIES THAT HE HAS.

6 Q. I AM NOT ASKING YOU WHAT TREATMENT HE  
7 RECEIVED AT THE LEWIS SCHOOL.

8 A. YES.

9 Q. I AM ASKING YOU, BY THE VERY FACT THAT ERIK  
10 MENENDEZ' PARENTS TOOK HIM TO THE LEWIS SCHOOL, WHAT  
11 DOES THAT INDICATE TO YOU CONCERNING THEIR CONCERN ABOUT  
12 HIS EDUCATION?

13 A. THAT HE WAS GETTING POOR GRADES, AND THAT  
14 THEY WANTED HIM TO GET HIGH GRADES.

15 Q. AND WHAT IS YOUR UNDERSTANDING AS TO WHY  
16 KITTY MENENDEZ AND/OR JOSE MENENDEZ WOULD DO HIS  
17 HOMEWORK?

18 A. WELL, MY UNDERSTANDING WOULD BE THAT THERE  
19 WERE AT LEAST A COUPLE OF REASONS. ONE, SO THAT HE  
20 WOULD GET HIGHER GRADES FOR HIS HOMEWORK.

21 TWO, SO THAT HE COULD HAVE MORE TIME TO  
22 DEVOTE TO HIS TENNIS, SO THAT BECAUSE OF THE DEMANDS OF  
23 SCHOOL, THAT HE WOULD HAVE HAD TO GIVE MORE TIME TO  
24 SCHOOLING, AND THAT WOULD HAVE INTERFERED WITH THE  
25 TENNIS.

26 Q. AND GETTING HIGHER GRADES WOULD HELP HIM  
27 ACHIEVE WHAT?

28 A. GETTING A HIGHER GRADE WOULD HELP HIM TO

1 REPRESENT THEM WELL, AS SOMEONE WHO DOES WELL IN SCHOOL.  
2 IT WOULD HELP HIM EVENTUALLY, POSSIBLY, TO GET INTO A  
3 COLLEGE, AND SO ON.

4 Q. SO DID IT APPEAR TO YOU THAT KITTY MENENDEZ  
5 AND JOSE MENENDEZ WERE USING VARIOUS STRATEGIES TO  
6 ASSIST HIM INTO GETTING INTO A GOOD COLLEGE?

7 A. I BELIEVE THEY WERE USING STRATEGIES TO  
8 HELP HIM TO GET HIGH GRADES AND TO SEE THAT HE WAS ABLE  
9 TO PROGRESS IN SCHOOL THROUGH THOSE GRADES.

10 Q. AND THAT IS BECAUSE THEY WERE CONCERNED  
11 ABOUT HIM SUCCEEDING WELL IN SCHOOL, CORRECT?

12 A. WELL, HAD THEY BEEN TRULY CONCERNED ABOUT  
13 HIM SUCCEEDING IN SCHOOL, IN TERMS OF DEVELOPING GOOD  
14 LEARNING STRATEGIES AND DEVELOPING THE COMPETENCIES THAT  
15 WERE NEEDED, THEY WOULD HAVE TAKEN ANOTHER COURSE OTHER  
16 THAN DOING THE HOMEWORK FOR HIM, YES.

17 Q. AND WHAT IS THAT OTHER COURSE THAT THEY  
18 WOULD HAVE TAKEN, OR SHOULD HAVE TAKEN, IN YOUR OPINION,  
19 DOCTOR?

20 A. THAT OTHER COURSE?

21 Q. YES.

22 A. THEY SHOULD HAVE PURSUED MORE EXTENSIVE  
23 EVALUATIONS, AND THEN THE SORTS OF PRESCRIPTIONS FOR  
24 EDUCATIONAL HELP THAT WOULD HAVE FOLLOWED THOSE.

25 Q. AND BECAUSE THEY DIDN'T TAKE THAT IDEAL  
26 COURSE, THEY'RE BAD PARENTS; IS THAT CORRECT?

27 A. BECAUSE THEY DIDN'T TAKE THAT GOOD COURSE,

-11823

1 DEVELOPEMENT, YES.

2 Q. SO YOU FEEL THAT THEY WERE NEGLECTFUL  
3 PARENTS? THEY SENT HIM TO PRIVATE SCHOOLS, THEY SENT  
4 HIM TO PRIVATE TUTORS, THEY TOOK HIM TO THE REMEDIAL  
5 SCHOOL, THEY ASSISTED HIM WITH HIS HOMEWORK.

6 A. YES. I BELIEVE THAT THEY WERE DOING A POOR  
7 JOB OF HELPING HIM TO DEVELOP EDUCATIONAL COMPETENCY,  
8 THAT'S RIGHT.

9 Q. AND THAT IS BECAUSE THEY WANTED TO HURT  
10 HIM, OR BECAUSE THEY WANTED TO HELP HIM, BUT THEY WERE  
11 DOING IT IN A WAY THAT YOU DISAGREE WITH?

12 A. BECAUSE THEY WANTED HIM TO GET HIGH GRADES.

13 Q. DID THEY DO IT -- DO YOU THINK THEY WANTED  
14 TO HURT HIM OR HELP HIM, DOCTOR?

15 MS. ABRAMSON: I AM GOING TO OBJECT TO IT, FIRST  
16 OF ALL, YOUR HONOR, AS CALLING FOR SPECULATION.

17 SECOND OF ALL, IT'S IRRELEVANT AS TO WHAT  
18 THEY INTENDED.

19 THE COURT: SUSTAINED ON THE FIRST BASIS.

20 Q. BY MR. CONN: AND SO WAS ERIK MENENDEZ'  
21 EDUCATION SUFFICIENT TO ALLOW HIM TO BE ACCEPTED INTO  
22 COLLEGE?

23 A. HE -- HIS INTELLECTUAL DEVELOPMENT WAS

24 SUFFICIENT FOR HIM TO BE ADMITTED TO COLLEGE, AND HE  
25 WAS -- MY UNDERSTANDING IS THAT HE WORKED VERY, VERY  
26 HARD WHEN GIVEN THE OPPORTUNITY IN SCHOOL, AND OUT OF  
27 SCHOOL, AND THAT HE DID WELL ON HIS S.A.T.'S, AND THAT  
28 HE WAS ADMITTED TO COLLEGE.

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1 Q. AND WHAT SCHOOLS WAS HE ACCEPTED TO AS A  
2 RESULT OF HIS INTELLECTUAL DEVELOPMENT?

3 A. I BELIEVE HE WAS ACCEPTED TO BOTH BERKELEY,  
4 AND -- OR CALIFORNIA -- OR UNIVERSITY OF CALIFORNIA AT  
5 BERKELEY, AND TO UNIVERSITY OF CALIFORNIA AT LOS  
6 ANGELES.

7 Q. ALL RIGHT. AND --

8 A. THERE MAY BE MORE.

9 Q. AND WHAT BROUGHT ABOUT THIS SUFFICIENT  
10 INTELLECTUAL DEVELOPMENT THAT ALLOWED HIM TO BE ACCEPTED  
11 INTO U.C.L.A. AND BERKELEY?

12 A. WELL, HE HAD SOME NATURAL INTELLECTUAL  
13 ABILITY, AND HE WORKED VERY, VERY HARD.

14 I ALSO -- IF I'M REMEMBERING CORRECTLY --  
15 BELIEVE THAT HE APPLIED UNDER A MINORITY STATUS FOR  
16 BERKELEY. I'M NOT SURE HE DID THAT IN MORE THAN ONE  
17 PLACE, THOUGH.

18 Q. NOW, WAS IT YOUR TESTIMONY THAT DIANE  
19 VANDERMOLLEN WAS SUICIDAL AFTER SIX MONTHS OF LIVING WITH

20 THE MENENDEZ FAMILY?

21 A. MY MEMORY IS THAT SHE WAS VERY MUCH  
22 DISTURBED BY HER EXPERIENCE WITH THAT FAMILY, AND THAT  
23 SHE INDICATED THAT.

24 Q. AND WAS IT YOUR OPINION THAT IT WAS KITTY  
25 MENENDEZ OR JOSE MENENDEZ THAT DROVE HER TO THIS  
26 SUICIDAL STATE?

27 A. THAT THAT WAS HER FEELING; BEING IN THAT  
28 HOME DROVE HER IN THAT DIRECTION, YES.

-11821

1 Q. AND DID YOU WONDER WHY SHE JUST DIDN'T  
2 LEAVE?

3 A. WHY SHE DIDN'T JUST LEAVE THE FAMILY?

4 Q. YES.

5 A. YES. WELL, ALL THE REASONS FOR NOT LEAVING  
6 ARE NOT CLEAR TO ME, EXCEPT THAT THERE WAS -- CERTAINLY,  
7 THAT SHE HAD VERY STRONG CONNECTIONS WITH THAT FAMILY  
8 INITIALLY, AND I THINK SHE WAS VERY MUCH DISTURBED BY  
9 THE NEGATIVE THINGS THAT HAPPENED TO HER THERE.

10 AND WHY SHE, AS A PARTICULAR INDIVIDUAL,  
11 FOUND IT DIFFICULT TO LEAVE, I DON'T HAVE A SPECIFIC  
12 OPINION ON.

13 Q. NOW, I BELIEVE YOU TESTIFIED THAT AFTER THE  
14 AGE OF 11 -- AFTER THE AGE OF 11 IT IS VERY DIFFICULT TO  
15 CHANGE THE PERSONALITY OF A CHILD.



16 IS THAT YOUR TESTIMONY??

17 A. IT'S NOT UNCHANGEABLE, IT JUST BECOMES  
18 INCREASINGLY DIFFICULT WITH AGE IF THERE AREN'T  
19 SUFFICIENT CONDITIONS TO SUPPORT IT.

20 Q. AND ISN'T IT TRUE THAT IF A CHILD IS  
21 EXTREMELY DEPRIVED OF EMOTION OR AFFECTION AT AGES TWO  
22 OR THREE, THE CHILD IS GOING TO HAVE PERMANENT SCARS IN  
23 THEIR PERSONALITY AS A RESULT OF THAT FAILURE TO PROVIDE  
24 ADEQUATE LOVE AND ATTENTION?

25 A. THAT THE CHILD WOULD BE -- WOULD BE LESS  
26 CAPABLE, HAVE LESS STRENGTH, LESS OPPORTUNITIES FOR  
27 LIVING A GOOD LIFE.

28 YES, I THINK THAT ARGUMENT COULD BE MADE.

-11820

1 THE -- OF COURSE, WE NEVER -- WE NEVER KNOW  
2 WHAT THE FULL POTENTIAL OF THE CHILD MIGHT HAVE BEEN,  
3 AND SO WHAT WE SEE MAY -- IT MAY VERY WELL BE CAUSED TO  
4 GREATER OR LESSER DEGREES BY THOSE EARLY -- BY THE  
5 DIFFICULTIES IN THOSE EARLY YEARS.

6 BUT YES, IT'S GENERALLY ACCEPTED THAT  
7 PROBLEMS -- LACK OF SUPPORT, LACK OF LOVE, LACK OF SOME  
8 OTHER CONDITIONS FOR A CHILD IN THE EARLY YEARS CAN  
9 DISTORT AND RETARD DEVELOPMENT, AND THAT YOU CAN'T FULLY  
10 MAKE UP THAT GROUND LATER ON.

11 Q. AND DID YOU SEE IN THIS CASE SUCH SEVERE

12 DEPRIVATION OF AFFECTION THAT THE DEFENDANT -- THAT ERIK  
13 MENENDEZ, AS A RESULT OF HIS TREATMENT, AND DURING THE  
14 AGES OF TWO OR THREE YEARS OLD, WAS PERMANENTLY SCARRED  
15 AS FAR AS HIS PERSONALITY IS CONCERNED?

16 A. IN TERMS OF THE -- AS WE HAVE DISCUSSED IT  
17 BEFORE, THERE WERE SOME INDICATIONS OF AFFECTION THAT  
18 PEOPLE SAW IN THOSE EARLY YEARS FOR ERIK. THERE WERE  
19 ALSO THE CONDITIONS IN WHICH HE WAS NEGLECTED AND HE WAS  
20 IN DANGEROUS SITUATIONS.

21 SO IT'S -- IT'S NOT MY POSITION THAT WHAT  
22 HAPPENED IN THOSE FIRST TWO YEARS OR SO WITH ERIK  
23 WOULD -- COULD BE PREDICTED TO PERMANENTLY SCAR HIM AT  
24 SOME PARTICULAR LEVEL.

25 Q. NOW, YOU FEEL THAT THE -- KITTY AND JOSE  
26 MENENDEZ WERE ALSO PSYCHOLOGICALLY MALTREATING THEIR SON  
27 BY PLACING HIM IN DANGEROUS SITUATIONS?

28 A. YES. I'VE SPOKEN TO THAT, BY ALLOWING HIM

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1 TO BE IN DANGEROUS SITUATIONS.

2 Q. AND YOU FEEL THAT AS A RESULT OF THAT THE  
3 DEFENDANT WAS PSYCHOLOGICALLY MALTREATED?

4 A. IT'S LIKELY TO -- YES. IT WOULD BE  
5 PSYCHOLOGICAL MALTREATMENT IN THE SENSE THAT IT WOULD  
6 REDUCE TRUST AND CREATE ANXIETY AND SO ON, WHEN YOU'RE  
7 LEFT IN A MALL AND YOU END UP WAITING FOR A LONG PERIOD

8 OF TIME. YES, THAT KIND OF THING. WHEN YOU ARE  
9 FRIGHTENED IN A CEMETERY ON PURPOSE. THAT KIND OF  
10 THING.

11 Q. WELL, WAS THE CEMETERY INCIDENT A DANGEROUS  
12 SITUATION?

13 A. THE TRUE DANGER ISN'T NEARLY SO IMPORTANT  
14 AS THE DANGER THAT A CHILD WOULD PERCEIVE IT TO BE.

15 AND THAT PARTICULAR SITUATION WAS ONE IN  
16 WHICH, FROM ALL INFORMATION AVAILABLE, WAS KNOWN TO BE  
17 ONE THAT WOULD BE QUITE STRESSFUL FOR HIM AND  
18 FRIGHTENING FOR HIM, AND IT WAS ANOTHER ONE OF THOSE  
19 SITUATIONS IN WHICH IT APPEARS PEOPLE WERE ATTEMPTING TO  
20 MAKE HIM TOUGH.

21 Q. WELL, I AM TALKING ABOUT PHYSICAL DANGER.

22 A. NO. NO.

23 Q. IS IT YOUR UNDERSTANDING THAT THE CEMETERY  
24 INCIDENT ENTAILED PHYSICAL DANGER TO HIS SAFETY?

25 A. IT WOULD NOT NECESSARILY. I DON'T KNOW THE  
26 EXACT CONDITIONS OF THAT CEMETERY, WHETHER THERE WERE  
27 THINGS YOU COULD BE HURT ON, OR THAT COULD CREATE  
28 DIFFICULTIES FOR YOU.

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1 BUT THAT WOULD NOT BE THE MAJOR DANGER, I  
2 WOULDN'T THINK, PHYSICAL DANGER.

3 Q. AND YOU INTERVIEWED ERIK MENENDEZ?

4 A. YES.

5 Q. AND HOW MUCH TIME DID YOU SPEND

6 INTERVIEWING HIM?

7 A. THIRTY-ONE HOURS.

8 Q. OKAY. AND DID HE TELL YOU THAT HE RECALLED

9 AN INCIDENT WHEN HE WAS WITH FAITH GOLDSMITH AND HE WAS

10 ABOUT TWO YEARS OLD, AND HE WALKED OUTSIDE THE REAL

11 ESTATE OFFICE, AND WAS PICKED UP ON A ROAD AND HAD TO BE

12 BROUGHT BACK INSIDE THE REAL ESTATE OFFICE?

13 A. NO. HE DIDN'T TELL ME ABOUT THAT INCIDENT.

14 Q. SO IS IT YOUR OPINION THEN THAT HE SUFFERED

15 SOME PERMANENT PSYCHOLOGICAL SCAR FROM THE FACT THAT HE

16 WAS MOMENTARILY OUTSIDE THE REAL ESTATE AGENT'S OFFICE

17 WITHOUT THE KNOWLEDGE OF HIS PARENTS?

18 MS. ABRAMSON: OBJECT TO THE FORM OF THE

19 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

20 THE COURT: REPHRASE THE QUESTION.

21 Q. BY MR. CONN: IS IT YOUR UNDERSTANDING THAT

22 HE SUFFERED SOME PERMANENT PSYCHOLOGICAL SCAR AS A

23 RESULT OF THAT INCIDENT?

24 A. IT COULD HAVE OCCURRED THAT WAY, YES.

25 CHILDREN ARE FRIGHTENED, BEWILDERED, IN SITUATIONS WHICH

26 THEY CANNOT REMEMBER LATER FROM THAT YEAR -- AT LEAST

27 CANNOT CONSCIOUSLY BRING FORTH -- BUT ARE STILL -- BUT

28 STILL HAS HAD AN IMPACT ON THEM.

1 Q. DOCTOR, WAS THERE ANY EVIDENCE THAT HE WAS  
2 CRYING OR TRAUMATIZED IN ANY WAY DURING THE COURSE OF  
3 THAT INCIDENT?

4 A. I DIDN'T HAVE INFORMATION ABOUT HIM CRYING.  
5 THERE WASN'T -- IN FACT, I DIDN'T HAVE A DESCRIPTION OF  
6 HIS BEHAVIOR AFTERWARD.

7 Q. SO YOU HAVE NO BASIS UPON WHICH YOU CAN  
8 CONCLUDE THAT THAT INCIDENT IMPAIRED HIM PSYCHOLOGICALLY  
9 IN ANY WAY, DO YOU?

10 A. I HAVE ONLY THE POINT OF VIEW THAT WHEN  
11 PLACED IN THE SITUATION IN WHICH YOU ARE ENDANGERED, IN  
12 FACT, EVEN COULD BE KILLED, THAT IT COULD PRODUCE THAT  
13 KIND OF STRESS.

14 Q. NOW, YOU SAID THAT LEAVING OR -- THE  
15 DEFENDANT BEING LOST IN THE MALL WAS A SITUATION IN  
16 WHICH THE PARENTS PSYCHOLOGICALLY MALTREATED THEIR SON.

17 A. YES. I ONLY KNOW OF KITTY MENENDEZ LEAVING  
18 HIM IN THE MALL. I DON'T KNOW OF THE PARENTS LEAVING  
19 HIM IN THE MALL.

20 Q. AND HOW MANY TIMES DID THIS HAPPEN, DOCTOR,  
21 WHERE HE WAS WANDERING AROUND IN THE MALL AND HIS MOTHER  
22 HAD TO BE PAGED?

23 A. WELL, THAT'S NOT COMPLETELY CLEAR TO ME.  
24 IT'S MY UNDERSTANDING THAT IT MAY HAVE HAPPENED QUITE A  
25 FEW TIMES; THAT IT CERTAINLY HAPPENED MORE THAN ONCE.

26 Q. AND WAS IT YOUR UNDERSTANDING THAT DESPITE  
27 THE FACT THAT HIS MOTHER HAD TO BE PAGED ON ONE  
28 OCCASION, OR MORE THAN ONE OCCASION, THAT HE WOULD STILL

1 END UP WANDERING OFF IN THE MALL?

2 A. NO. THE INFORMATION AVAILABLE TO ME  
3 INDICATED THAT IT WAS A PATTERN FOR WHICH THE TIME  
4 WASN'T EXACT, BUT THAT HE WOULD BE RUNNING AROUND, AND  
5 HE WOULD DISAPPEAR, AND THEN -- AND THERE WOULD BE NO  
6 SPECIAL CONCERN ON THE PART OF HIS MOTHER TO LOOK FOR  
7 HIM.

8 AND THAT MAYBE 10, 15 MINUTES OR SO LATER  
9 THERE WOULD BE AN ANNOUNCEMENT ON THE LOUD SPEAKER  
10 INDICATING THAT HE HAD BEEN FOUND, AND THAT SHE WOULD  
11 THEN GO AHEAD AND KEEP SHOPPING, AND BASICALLY USE THE  
12 SECURITY CENTER FOR A KIND OF BABYSITTING CENTER.

13 WITHOUT -- I DON'T -- I DIDN'T HAVE ANY  
14 INFORMATION TO INDICATE THAT ON ANY OF THOSE OCCASIONS  
15 SHE WENT TO HIM TO REASSURE HIM THAT SHE WAS STILL IN  
16 THE STORE, AND THAT HE WAS GOING TO BE TAKEN CARE OF AND  
17 SO ON. BUT INSTEAD, LEFT HIM TO STRANGERS HE DIDN'T  
18 KNOW, TO DO WHATEVER HE -- WHATEVER MIGHT OCCUR TO HIM.

19 Q. AND DURING YOUR INTERVIEW WITH ERIK  
20 MENENDEZ, DID HE SPEAK TO YOU ABOUT THE HORROR OF BEING  
21 HELD BY THE SECURITY GUARDS UNTIL HIS MOTHER ARRIVED?

22 A. HE DIDN'T SPEAK TO THE HORROR OF IT. HE  
23 SPOKE ABOUT IT HAVING HAPPENED, HAVING BEEN DISTRESSING,  
24 AS I REMEMBER.

25 Q. AND HE TOLD YOU IT WAS VERY DISTRESSING?

26 A. A LEVEL OF DISSTRESS WASN'T DESCRIBED, AS I  
27 RECALL.

28 Q. YOU USED THE WORD "DISTRESSED." HE WAS

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1 DISTRESSED OVER IT?

2 A. I DON'T REMEMBER THE EXACT WORDS. HE  
3 TALKED ABOUT IT. IT WAS BOTHERSOME.

4 Q. DID YOU TAKE A NOTE ON IT?

5 A. I DON'T BELIEVE I HAVE A NOTE.

6 Q. YOU DON'T HAVE ANY NOTES?

7 A. ON THAT PARTICULAR INCIDENT?

8 Q. YES.

9 A. I DON'T REMEMBER THAT I DO.

10 Q. WELL, WHAT DID ERIK MENENDEZ SAY ABOUT HOW  
11 THIS EXPERIENCE IMPACTED ON HIM?

12 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR HONOR,  
13 AS IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: THAT IT HAPPENED, AND THAT IT  
16 BOTHERED HIM.

17 Q. BY MR. CONN: IT BOTHERED HIM IN WHAT WAY?

18 A. TO BE ALONE IN A MALL.

19 Q. AND DID YOU ASK HIM: "WELL, WHY DIDN'T YOU  
20 STOP RUNNING AROUND AND JUST STAY SHOPPING WITH YOUR  
21 MOTHER AFTER YOU SUFFERED THIS EXPERIENCE"?

22 A. WHY DIDN'T HE STAY AROUND?  
23 Q. YES.  
24 A. YOU MEAN ON OTHER OCCASIONS?  
25 Q. ON OTHER OCCASIONS. IF IT BOTHERED HIM SO  
26 MUCH, DID YOU ASK HIM: "DID YOU LEARN YOUR LESSON AND  
27 JUST STAY WITH YOUR MOTHER THEREAFTER"?  
28 A. NO, I DIDN'T ASK HIM THAT QUESTION.

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1 Q. WHY NOT?  
2 A. IT JUST -- IT WAS A QUESTION THAT DIDN'T  
3 OCCUR TO ME AT THAT TIME.  
4 Q. YOU KNEW THAT THE DEFENDANT, ACCORDING TO  
5 THE DESCRIPTION OF SOME WITNESSES --  
6 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
7 AT THIS POINT TO THIS LINE OF QUESTIONING, AND ASK TO  
8 APPROACH.  
9 THE COURT: ALL RIGHT. I ASSUME HE'S GOING ON TO  
10 ANOTHER QUESTION, SO LET'S SEE WHAT THE QUESTION IS  
11 FIRST.  
12 Q. BY MR. CONN: YOU KNEW FROM THE TESTIMONY  
13 OF SOME OF THE WITNESSES THAT THE DEFENDANTS IN THEIR  
14 YOUTH WERE DESCRIBED AS BEING VERY WILD AND  
15 RAMBUNCTIOUS; IS THAT CORRECT?  
16 MS. ABRAMSON: OBJECTION, YOUR HONOR. MISSTATES  
17 THE TESTIMONY.



18 THE COURT: OVERRULED.

19 THE WITNESS: I KNEW FROM THE --

20 MS. ABRAMSON: YOUR HONOR, I WOULD LIKE TO BE  
21 HEARD ON THIS.

22 THE COURT: OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 THE WITNESS: OKAY.

25 I KNEW FROM THE TESTIMONY OF SOME OF THE  
26 WITNESSES THAT THEY -- THAT THE CHILDREN WERE ALLOWED AT  
27 TIMES TO RUN AROUND AND PLAY.

28 Q. BY MR. CONN: AND IS THAT BECAUSE IT

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1 APPEARED TO YOU THAT THE PHILOSOPHY OF THE PARENTS -- OF  
2 JOSE AND KITTY MENENDEZ WAS NOT TO SET CLOSE PARAMETERS  
3 ON THEIR CHILDREN, VERY RESTRICTIVE PARAMETERS, BUT LET  
4 THEM EXPLORE AND RUN AROUND AS MUCH AS THEY WANTED?

5 A. NO, I DIDN'T GET THE SENSE THAT THEY WERE  
6 ALLOWED TO RUN AROUND WHEREVER THEY WANTED AND WHENEVER  
7 THEY WANTED, BUT ONLY ON THOSE OCCASIONS WHEN THE  
8 PARENTS DECIDED TO LET THEM DO THAT; AND THAT A  
9 STATEMENT OR A LOOK BY JOSE, FOR EXAMPLE, WOULD BE  
10 ENOUGH TO STOP THEM IMMEDIATELY.

11 Q. AND WAS IT YOUR UNDERSTANDING FROM SOME OF  
12 THE WITNESSES THAT WHEN THEY WOULD GO OVER TO A  
13 RELATIVE'S HOUSE, FOR EXAMPLE, THEY WOULD RUN AROUND,

14 AND CONTINUE TO RUN AROUND, BECAUSE JOSE MENENDEZ WOULD  
15 NOT PROPERLY RESTRICT THEM, WOULD NOT SET THE LIMITS,  
16 AND HE WOULD JUST LET THEM RUN AROUND THE HOUSE?

17 A. THAT HE WOULD ALLOW THEM TO RUN AROUND THE  
18 HOUSE, YES.

19 Q. YES.

20 AND DOES THAT INDICATE TO YOU THAT JOSE  
21 MENENDEZ WAS A PERSON WHO WANTED THEM TO EXPRESS  
22 THEMSELVES, TO EXPLORE THE WORLD?

23 A. IT INDICATED TO ME THAT DURING THOSE TIMES  
24 HE THOUGHT IT WAS ALL RIGHT FOR THEM TO RUN AROUND.

25 Q. AND DID YOU FEEL THAT KITTY MENENDEZ PLACED  
26 HER SON IN DANGER ON OTHER OCCASIONS?

27 A. YES. WELL, I HAVE MENTIONED THE SITUATION  
28 IN THE SHOE STORE IN WHICH, AFTER HE WAS HURT, SHE

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1 DIDN'T MOVE TO ASSIST HIM WHEN HE WAS CUT.

2 WE'VE TALKED ABOUT THE ALLOWING HIM TO RUN  
3 AROUND OUT ON A VERY BUSY HIGHWAY.

4 Q. THAT WAS INTENTIONAL ON HER PART?

5 A. IT WAS NEGLECTFUL ON HER PART. IT WASN'T  
6 AS THOUGH SHE DECIDED -- I MEAN, I HAVE NO INFORMATION  
7 TO INDICATE THAT HER DECISION WAS "I SHALL LET MY CHILD  
8 RUN AROUND IN THE TRAFFIC," BUT THAT INSTEAD, THAT IT  
9 WAS NOT IMPORTANT TO HER AT THAT POINT TO WATCH HIM IN

10 WHAT WAS THE DANGEROUS SITUATION.

11 Q. ANY OTHER INCIDENTS IN WHICH YOU FELT THAT  
12 SHE PUT HER SON IN DANGEROUS SITUATIONS?

13 A. THERE ARE REPORTS OF HER HAVING LEFT HIM  
14 HOME ALONE WHEN HE WAS YOUNG, AND HIM BECOMING QUITE  
15 FRIGHTENED AND HAVING TO CALL SOMEONE. I THINK ONCE IT  
16 WAS HIS AUNT, AND A COUSIN CAME OVER TO WATCH OVER HIM.

17 Q. NOW, YOU SAID THAT ERIK MENENDEZ HAS  
18 CHANGED OVER THE YEARS?

19 A. YOU MEAN IN HIS DEVELOPMENT HAS HE CHANGED?

20 Q. DURING YOUR CONTACT WITH HIM, I BELIEVE YOU  
21 TESTIFIED THAT ERIK MENENDEZ CHANGED.

22 A. YES. I HAVE NOTICED CHANGES IN HIM OVER  
23 THE YEARS.

24 Q. HOW HAS HE CHANGED?

25 A. WELL, WHAT I FIND IS THAT HE'S MORE  
26 ARTICULATE. HE SEEMS TO BE -- TO ORGANIZE HIS THOUGHTS  
27 BETTER AND BETTER. HE SEEMS TO BE MORE COMFORTABLE  
28 EXPRESSING HIS THOUGHTS. HE SEEMS TO BE FOCUSING MORE

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1 AND MORE ON THE KIND OF LIFE -- THE KIND OF GOOD THINGS  
2 HE CAN DO WITH HIS LIFE.

3 Q. NOW, DID YOU FIND THAT HE HAS BECOME MORE  
4 TRUTHFUL OVER THE YEARS?

5 MS. ABRAMSON: OBJECTION, YOUR HONOR.

6 THE COURT: SUSTAINED.

7 Q. BY MR. CONN: NOW, YOU SAID THAT THE  
8 PARENTS WERE IN TOTAL CONTROL OVER THEIR SONS; IS THAT  
9 CORRECT?

10 A. NO ONE IS IN TOTAL CONTROL OF SOMEONE ELSE.  
11 BUT THEY APPROACHED A VERY HIGH LEVEL OF THAT CONTROL  
12 OVER THEIR SONS, YES.

13 Q. OKAY. WAS IT YOUR UNDERSTANDING THAT JOSE  
14 MENENDEZ DIDN'T WANT HIS SON, LYLE MENENDEZ, TO BE  
15 DATING CERTAIN GIRLFRIENDS?

16 MS. TOWERY: OBJECTION. BEYOND THE SCOPE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. CONN: DO YOU THINK THAT THE PARENTS  
19 WERE CONTROLLING THEIR SON, ERIK MENENDEZ, WHEN THEIR  
20 SON, ERIK MENENDEZ, WAS OUT COMMITTING BURGLARIES?

21 MS. ABRAMSON: OBJECTION, YOUR HONOR.

22 THE COURT: IT'S BEYOND THE SCOPE OF THE  
23 EXAMINATION.

24 NEXT QUESTION, PLEASE.

25 Q. BY MR. CONN: DID YOU SEE AREAS WHERE THE  
26 PARENTS WERE NOT IN COMPLETE CONTROL?

27 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT AS  
28 VAGUE.

1 THE COURT: DO YOU UNDERSTAND THE QUESTION?

2 THE WITNESS: I THINK SO.

3 THE COURT: OKAY. YOU CAN ANSWER IT THEN.

4 THE WITNESS: I SAW AREAS IN WHICH THEY DIDN'T  
5 EXERT ABSOLUTE CONTROL, SOME THAT YOU MENTIONED EARLIER,  
6 WHEN HE WOULD BE ABLE TO GET IN HIS CAR AND DRIVE  
7 SOMEWHERE; WHEN HE WOULD BE PRACTICING ALONE.  
8 CERTAINLY, DURING THE DAY WHEN HE WAS AT SCHOOL THEY  
9 WEREN'T THERE, EVEN THOUGH THEY HAD A LONG PATTERN OF  
10 DEVELOPING ASSIGNMENTS FOR HIM, DIRECTIONS FOR HIM, WHAT  
11 HE WAS TO DO ALL DAY LONG.

12 THE CONTROL WAS FROM MORE OF A DISTANCE.  
13 BUT THEY WERE NOT PHYSICALLY THERE CONTROLLING HIS EVERY  
14 MOVEMENT.

15 Q. AND DID YOU FEEL THAT THERE WERE INSTANCES  
16 WHERE ERIK MENENDEZ WAS SOMEWHAT OUT OF CONTROL?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR.

18 THE COURT: REPHRASE THE QUESTION AS TO WHAT IS  
19 MEANT BY "OUT OF CONTROL."

20 MR. CONN: YES.

21 Q. DID YOU FEEL THAT ERIK MENENDEZ -- WERE  
22 THERE OCCASIONS IN WHICH HE WAS DOING THINGS THAT WOULD  
23 BE VERY CONTRARY TO THE WISHES OF THE PARENTS?

24 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT AS  
25 CALLS FOR SPECULATION, AND I WOULD ASK FOR AN OFFER,  
26 YOUR HONOR.

27 THE COURT: DO YOU UNDERSTAND THE QUESTION?  
28 WE'LL START WITH THAT.

1 THE WITNESS: I'M NOT SURE THAT I DO.

2 THE COURT: THEN REPHRASE THE QUESTION.

3 Q. BY MR. CONN: ARE YOU AWARE OF ANY EVIDENCE  
4 THAT THERE WERE TIMES WHEN ERIK MENENDEZ ENGAGED IN  
5 BEHAVIOR THAT WAS NOT -- THAT WAS DONE WITHOUT THE  
6 APPROVAL OF THE PARENTS, SERIOUS BEHAVIOR DONE WITHOUT  
7 THE APPROVAL OF THE PARENTS?

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THE FORM OF  
9 THE QUESTION UNDER 352, AND OTHER PRINCIPLES, AND I  
10 WOULD ASK FOR AN OFFER, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 WELL, THE QUESTION IS WHETHER OR NOT HE IS  
13 AWARE OF INSTANCES WHERE ERIK MENENDEZ WAS ACTING IN A  
14 WAY INCONSISTENT WITH THE CONTROLLING BEHAVIOR THAT HE  
15 HAS DESCRIBED ON THE PART OF THE PARENTS.

16 MR. CONN: YES, YOUR HONOR.

17 THE COURT: DO YOU UNDERSTAND THAT?

18 THE WITNESS: YES. YES, I UNDERSTAND THAT.

19 THE COURT: WHAT IS YOUR ANSWER?

20 THE WITNESS: SO THE -- YES, I THINK THERE WERE  
21 TIMES THAT HE ACTED IN WAYS THAT WERE NOT EXACTLY THE  
22 WAY HIS PARENTS WANTED HIM TO ACT.

23 Q. BY MR. CONN: AND WHAT TYPE OF INSTANCES  
24 COME TO MIND?

25 MS. ABRAMSON: I AM GOING TO OBJECT UNDER 352,  
26 YOUR HONOR.

27 THE COURT: OVERRULED.

28 THE WITNESS: WELL, THE BURGLARIES YOU MENTIONED

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1 COME INTO MIND.

2 Q. BY MR. CONN: ANYTHING ELSE?

3 A. I AM SURE THERE ARE WERE TIMES -- OR I  
4 BELIEVE THERE WERE TIMES WHEN, TO KEEP FROM BEING  
5 PUNISHED OR EXPERIENCING THE WRATH OF HIS PARENTS, HE  
6 TRIED TO KEEP FROM TELLING HIM SOMETHING THAT HE HADN'T  
7 DONE AS WELL AS HE SHOULD HAVE DONE.

8 I KNOW HE WAS TERRIBLY ANXIOUS ABOUT HIS  
9 GRADES IN SCHOOL, FOR EXAMPLE, AND WOULD BREAK DOWN  
10 CRYING REPEATEDLY. AND I BELIEVE THAT THERE WERE TIMES  
11 WHEN HE TRIED TO KEEP THEM FROM KNOWING HOW HE'D BEEN  
12 DOING.

13 Q. ANYTHING ELSE COME TO MIND?

14 A. I BELIEVE THERE WAS A TIME WHEN HIS MOTHER  
15 TRIED TO GET HIM TO LIE ABOUT THE FACT THAT SHE HAD HAD  
16 AN ACCIDENT WITH THE CAR, AND SHE WANTED HIM TO TELL HIS  
17 FATHER THAT HE HAD DONE IT, AND HE DIDN'T DO IT, HE  
18 WOULDN'T DO IT.

19 THAT'S -- NO OTHER ONES COME TO MIND  
20 IMMEDIATELY.

21 Q. NOW, YOU RELIED UPON VARIOUS  
22 REPRESENTATIONS MADE TO YOU BY MEMBERS OF THE FAMILY IN

23 FORMING YOUR OPINIONS; IS THAT CORRECT?

24 MS. ABRAMSON: OBJECT TO THE FORM OF THE

25 QUESTION. MISSTATES HIS TESTIMONY.

26 THE COURT: YOU CAN ANSWER THE QUESTION.

27 THE WITNESS: SAY IT ONE MORE TIME, WOULD YOU.

28 MR. CONN: YES.

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1 Q. YOU RELIED UPON VARIOUS STATEMENTS MADE BY  
2 MEMBERS OF THE EXTENDED FAMILY IN REACHING THE VARIOUS  
3 CONCLUSIONS THAT YOU HAVE; IS THAT CORRECT?

4 A. THOSE WERE AMONG THE STATEMENTS.

5 Q. AND ARE YOU AWARE THAT VARIOUS FAMILY  
6 MEMBERS HAVE REFUSED TO COOPERATE WITH THE PROSECUTION  
7 AND INTERVIEW WITH THE PROSECUTION; IS THAT CORRECT?

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THE FORM OF  
9 THE QUESTION, YOUR HONOR. IT'S IRRELEVANT. MISSTATES  
10 THE TESTIMONY.

11 THE COURT: WELL, THIS PARTICULAR QUESTION IS.  
12 THE INFORMATION THAT YOU ARE TRYING TO ELICIT FROM THIS  
13 QUESTION IS IRRELEVANT.

14 PERHAPS YOU CAN REPHRASE.

15 Q. BY MR. CONN: WELL, DID YOU SENSE ANY BIAS  
16 ON THE PART OF THE WITNESSES WHO PROVIDED INFORMATION TO  
17 YOU THAT MIGHT INDICATE TO YOU THAT THEY ARE FAVORABLY  
18 DISPOSED TOWARD THE DEFENDANTS, AND NOT INCLINED TO GIVE



19 YOU A REALLY TRUE, ACCURATE PICTURE OF WHAT THAT FAMILY  
20 WAS ALL ABOUT?

21 MS. ABRAMSON: OBJECTION, YOUR HONOR.

22 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

23 Q. BY MR. CONN: OKAY.

24 DID YOU NOTE, DOCTOR, ANY BIAS OR ANY  
25 LEANING ON THE PART OF ANY OF THE WITNESSES THAT YOU  
26 INTERVIEWED, OR ANY OF THE WITNESSES WHOSE TRANSCRIPTS  
27 YOU READ?

28 A. I -- PROBABLY MORE THAN THAT. I RECOGNIZED

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1 A REAL STRUGGLE FOR HOW TO DEAL WITH THE CATASTROPHE IN  
2 THEIR FAMILY, AND ATTEMPTS TO TRY TO BE FAIR TO PEOPLE;  
3 PEOPLE ON ALL SIDES OF THE ISSUE.

4 I DON'T REMEMBER HAVING A FEELING THAT A  
5 PARTICULAR -- THAT SOMEONE I HAD A CHANCE TO TALK TO HAD  
6 A PARTICULARLY STRONG BIAS THAT WOULD HAVE DISTORTED  
7 THEIR PERSPECTIVE.

8 Q. SO, IN ALL OF -- YOU'RE TELLING US, DOCTOR,  
9 THAT IN ALL THE TRANSCRIPTS YOU READ -- AND YOU ALSO  
10 FOLLOWED THIS PROCEEDING, THIS TRIAL, BOTH THE GUILT  
11 PHASE AND THE PENALTY PHASE?

12 A. YES.

13 Q. AND IN ALL OF THAT MATERIAL, YOU DIDN'T SEE  
14 ANY BIAS ON THE PART OF ANY WITNESSES FOR THE DEFENSE;

15 IS THAT CORRECT?

16 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
17 TO THE FORM OF THE QUESTION CONCERNING READING  
18 TRANSCRIPTS.

19 THE COURT: WELL, IN FORMING OPINIONS ABOUT THIS  
20 CASE.

21 YOU HAVE TO REPHRASE THE QUESTION, AS FAR  
22 AS HOW HE APPROACHED IT.

23 MR. CONN: YES. YES.

24 Q. IN REACHING THE OPINIONS THAT YOU DID, YOU  
25 RELIED UPON STATEMENTS MADE BY WITNESSES, EITHER  
26 PERSONALLY TO YOU, OR IN TESTIMONY, AND YOU REVIEWED  
27 THAT TESTIMONY; IS THAT CORRECT?

28 A. THAT'S CORRECT.

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1 Q. AND THE TESTIMONY THAT YOU REVIEWED  
2 INCLUDED TESTIMONY FROM THE FIRST TRIAL, AS WELL AS  
3 TESTIMONY FROM THE GUILT PHASE OF THIS PROCEEDING; IS  
4 THAT CORRECT?

5 A. YES.

6 Q. IT ALSO INCLUDED TESTIMONY DURING THE  
7 PENALTY PHASE OF THIS PROCEEDING; IS THAT CORRECT?

8 A. WHAT I HAD THAT WAS AVAILABLE TO ME, YES.

9 Q. AND YOU EVEN SAT IN THE AUDIENCE AND  
10 LISTENED TO THE TESTIMONY OF SOME OF THOSE WITNESSES

11 DURING THE PENALTY PHASE; IS THAT CORRECT?

12 A. YES.

13 Q. WHICH WITNESSES DID YOU LISTEN TO?

14 A. I HAD A CHANCE TO LISTEN TO KIRSTEN SMITH,

15 TO MARIANNE CANO, AND TO PART OF PETER CANO'S

16 PRESENTATION.

17 Q. AND WERE YOU AWARE THAT TERRY BARALT

18 INDICATED IN HER TESTIMONY THAT SHE HAS AN AGENDA THAT

19 THE DEFENDANTS NOT BE SENTENCED TO DEATH?

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

21 TO THAT AS IRRELEVANT.

22 THE COURT: WELL, OVERRULED TO THE -- OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 ARE YOU AWARE OF THAT TESTIMONY?

25 THE WITNESS: THAT SHE SAID SHE HAD AN AGENDA?

26 THAT PART I DIDN'T REMEMBER SPECIFICALLY.

27 BUT THERE ARE, CERTAINLY, IN TALKING WITH PEOPLE AND IN

28 READING THE TESTIMONY, YOU WOULD GET THE SENSE THAT

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1 THERE WERE SOME PEOPLE WHO FELT STRONGLY ABOUT WHAT THEY

2 HAD SEEN, AND WHAT'S RIGHT AND WRONG, AND THEY WERE

3 TRYING TO SEE THAT THAT WAS RESPECTED, YES. AND THAT

4 WOULD HAVE TO BE CONSIDERED.

5 Q. WELL, WHAT I'M ASKING YOU IS: DID YOU SEE

6 ANY EVIDENCE OF BIAS ON ANY OF THESE WITNESSES?

7 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT, YOUR  
8 HONOR. IT'S NOT FOR HIM TO SAY WHETHER WITNESSES WHO  
9 TESTIFIED ARE BIASED.

10 THE COURT: OKAY. RIGHT.

11 THE ISSUE REALLY IS WHETHER OR NOT THIS  
12 WITNESS DISCOUNTED OR REJECTED ANY OF THE INFORMATION  
13 THAT HE CONSIDERED BECAUSE OF HIS APPRAISAL OF IT AS TO  
14 BIAS OR THINGS OF THAT NATURE.

15 MR. CONN: OKAY.

16 Q. DID YOU REJECT TESTIMONY OF ANY WITNESS, OR  
17 ANY PART OF THE TESTIMONY OF ANY WITNESS, BECAUSE IT  
18 APPEARED TO YOU THAT THE PERSON MIGHT BE BIASED?

19 A. I DIDN'T REJECT, OUT OF HAND, WHAT THE  
20 WITNESSES PRESENTED. WHAT I LOOKED FOR WERE THE COMMON  
21 THEMES, THE DEGREE TO WHICH WHAT PEOPLE SAW WAS  
22 CONSISTENT, AND -- YES. SO THAT WAS MY ATTITUDE.

23 Q. SO YOU ACCEPTED ALL THE TESTIMONY, YOU  
24 INCORPORATED ALL OF THE TESTIMONY --

25 A. I CONSIDERED ALL THE TESTIMONY.

26 Q. ALLOW ME TO FINISH.

27 A. CERTAINLY.

28 Q. YOU ACCEPTED ALL OF THAT TESTIMONY, AND YOU

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1 INCORPORATED ALL OF THAT TESTIMONY INTO YOUR OPINIONS;  
2 IS THAT CORRECT?

3       A.  I CONSIDERED ALL OF THAT TESTIMONY, AND  
4 THEN I INCORPORATED IT IN MY OPINIONS AS IT -- AS THERE  
5 WERE PATTERNS THAT WERE CONSISTENT.

6       Q.  BECAUSE YOU FOUND THAT TESTIMONY TO BE  
7 RELIABLE; IS THAT CORRECT?

8       A.  I FOUND ITS RELATIONSHIP WITH -- OH, WHEN I  
9 FOUND IT IN RELATIONSHIP TO OTHER TESTIMONY TO BE  
10 CREDIBLE, THEN I INCORPORATED IT.

11      Q.  NOW, WHEN KITTY MENENDEZ -- WAS IT YOUR  
12 UNDERSTANDING THAT KITTY MENENDEZ WAS THE ONE WHO  
13 BROUGHT ERIK MENENDEZ TO THE LEWIS SCHOOL?

14      A.  YES.

15      Q.  AND DID YOU REVIEW THOSE RECORDS?

16      A.  YES.

17      Q.  AND DID IT INDICATE TO YOU WHO IT WAS AT  
18 THE LEWIS SCHOOL WHO DISCUSSED WITH KITTY MENENDEZ WHAT  
19 MIGHT BE APPROPRIATE OR HELPFUL FOR ERIK MENENDEZ  
20 INSOFAR AS TREATMENT IS CONCERNED?

21      A.  WELL, MY MEMORY FOR IT IS THAT SHE -- IS  
22 THAT THE FIRST LINE OF COMMUNICATION WAS WITH MARCIA  
23 LEWIS. HOW MANY OTHER PEOPLE SHE TALKED TO WHILE SHE  
24 WAS THERE, I'M NOT SURE.

25      Q.  WHAT DO YOU MEAN BY THE FIRST LINE OF  
26 COMMUNICATION?

27      A.  THAT MARCIA LEWIS WAS THE PERSON THAT  
28 WAS -- THAT TALKED WITH HER ABOUT THE SCHOOL.

1 Q. AND THE -- THE RECORDS DO NOT REFLECT WHAT  
2 SPECIFICALLY WAS TOLD TO KITTY MENENDEZ CONCERNING THE  
3 NECESSITY FOR THE TREATMENT, THE COST OF THE TREATMENT,  
4 OR WHETHER ANY OF THESE PROBLEMS MIGHT RESOLVE  
5 THEMSELVES WITH OR WITHOUT TREATMENT, DO THEY?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S AN  
7 IMPROPER QUESTION.

8 THE COURT: OVERRULED.

9 THE WITNESS: THE RECORD, AS I REMEMBER IT,  
10 INDICATED THAT -- DESCRIBED THE -- SOME OF THE ASPECTS  
11 OF THE COMMUNICATION WITH KITTY MENENDEZ, AND THAT SHE  
12 SEEMED TO BE GREATLY UPSET.

13 Q. THAT'S NOT WHAT I'M ASKING YOU, DOCTOR.  
14 DID YOU UNDERSTAND THE QUESTION I ASKED YOU?

15 A. DID THE RECORD FROM THE PRESCRIPTION --

16 MS. ABRAMSON: MAY THE WITNESS BE ALLOWED TO  
17 ANSWER?

18 MR. CONN: I WOULD ASK THAT THE WITNESS BE  
19 ADMONISHED TO ANSWER THE QUESTION.

20 THE COURT: HE WASN'T RESPONDING TO THE QUESTION.

21 BASICALLY, THE QUESTION HAD TO DO WITH DID  
22 THE RECORDS CONTAIN DETAIL OF THE CONVERSATION BETWEEN  
23 MRS. MENENDEZ AND MRS. LEWIS?

24 THE WITNESS: YES. YES, IT DID. IT DID HAVE  
25 DETAILS OF THE CONVERSATION BETWEEN THE TWO OF THEM,  
26 THAT'S RIGHT.

27 Q. BY MR. CONN: MY QUESTION IS THIS:

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1 APPROPRIATE FOR ERIK MENENDEZ, DO THE RECORDS REFLECT  
2 WHAT KITTY MENENDEZ WAS ADVISED OF INsofar AS THAT  
3 TREATMENT IS CONCERNED; THAT IS, THE NECESSITY FOR THE  
4 TREATMENT, THE COST OF THE TREATMENT, AND WHETHER OR NOT  
5 ANY OF THOSE PROBLEMS WOULD RESOLVE THEMSELVES IF THAT  
6 TREATMENT WERE NOT GIVEN?

7 A. I DON'T BELIEVE THAT THAT RECORD THAT WAS  
8 AVAILABLE TO ME HAD A PRESCRIPTION IN IT.

9 Q. AND YOU KNOW OF NO OTHER PERSON WHO MAY  
10 HAVE DISCUSSED THOSE ISSUES WITH KITTY MENENDEZ OTHER  
11 THAN THE OWNER OF THE SCHOOL; IS THAT CORRECT?

12 YOU'RE NOT AWARE OF CONVERSATIONS WITH  
13 KITTY MENENDEZ OTHER THAN WITH THAT ONE PERSON; IS THAT  
14 CORRECT?

15 A. DID ANYONE ELSE HAVE A CONVERSATION WITH  
16 HER?

17 Q. YOU'RE NOT AWARE OF ANY OTHER  
18 CONVERSATIONS?

19 A. NO, I AM NOT AWARE OF THEM.

20 Q. NOW, IT WAS YOUR UNDERSTANDING THAT ERIK  
21 MENENDEZ FOUND A SUICIDE LETTER WRITTEN BY HIS MOTHER;  
22 IS THAT CORRECT?

23 A. THAT'S MY UNDERSTANDING.

24 Q. WAS IT YOUR UNDERSTANDING THAT SHE LEFT  
25 THIS OUT IN PLAIN SIGHT IN ORDER THAT HER SON WOULD FIND  
26 THAT?  
27 A. IT'S MY UNDERSTANDING THAT IT WAS IN SOME  
28 SORT OF BUREAU OR DRESSER DRAWER.

-11800

1 Q. AND WHERE WAS THAT DRESSER?  
2 A. I BELIEVE IT WAS IN HER ROOM.  
3 Q. AND DO YOU KNOW WHAT ERIK MENENDEZ WAS  
4 DOING GOING THROUGH THAT DRESSER?  
5 A. WHY HE WAS GOING THROUGH THAT DRESSER  
6 DRAWER?  
7 Q. YES.  
8 A. NO, I DON'T REMEMBER WHY HE WAS GOING  
9 THROUGH IT AT THE TIME.  
10 Q. SO IT WASN'T YOUR UNDERSTANDING THAT KITTY  
11 MENENDEZ JUST LEFT THIS OUT IN PLAIN VIEW FOR HER SONS  
12 TO FIND; IS THAT CORRECT?  
13 A. IT WAS NOT LEFT OUT IN PLAIN VIEW, IS MY  
14 UNDERSTANDING.  
15 Q. NOW, WAS IT YOUR UNDERSTANDING THAT ERIK  
16 MENENDEZ, IN HIS TEENAGE YEARS, WAS ISOLATED FROM OTHER  
17 FRIENDS?  
18 MS. ABRAMSON: YOUR HONOR, THIS WAS ASKED AND  
19 ANSWERED.



20 THE COURT: IS THIS A DIFFERENT TIME FRAME THAN  
21 YOU WERE REFERRING TO IN YOUR EXAMINATION THIS MORNING?  
22 MR. CONN: YES, IT IS.  
23 Q. I AM REFERRING TO IN THE TIME PRECEDING HIS  
24 ARRIVAL IN CALIFORNIA, WAS IT YOUR UNDERSTANDING THAT  
25 ERIK MENENDEZ WAS ISOLATED DURING THOSE YEARS?  
26 A. WHEN HE WAS AT P.D.S., FOR EXAMPLE?  
27 Q. YES.  
28 A. PRINCETON DAY SCHOOL?

-11799

1 Q. THE TEENAGE YEARS AT P.D.S.  
2 A. HIS -- DURING THAT TIME HE WAS, AS I  
3 UNDERSTAND IT, AN OUTSIDER WITHIN THE SCHOOL, AND THAT  
4 HE HAD A VERY TIGHT AND VERY BUSY SCHEDULE THAT WOULD  
5 HAVE KEPT HIM FROM BEING ABLE TO SPEND MUCH TIME WITH  
6 THOSE STUDENTS OUTSIDE THE SCHOOL.  
7 Q. WASN'T IT YOUR UNDERSTANDING THAT HE SPENT  
8 A LOT OF TIME WITH CHRIS SEMROD DURING THAT TIME?  
9 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
10 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.  
11 THE COURT: OVERRULED.  
12 THE WITNESS: YES. IT'S MY UNDERSTANDING THAT HE  
13 SPENT TIME WITH CHRIS, BUT NOT A GREAT DEAL OF TIME.  
14 THAT CHRIS, IN FACT, WOULD HAVE LIKED TO HAVE SPENT MUCH  
15 MORE TIME WITH HIM THAN WAS POSSIBLE TO DO.

16 Q. BY MR. CONN: AND WAS IT YOUR UNDERSTANDING  
17 THAT, ACCORDING TO CHRIS SEMROD, ERIK MENENDEZ HAD A  
18 CLIQUE OF FRIENDS AT SCHOOL WHICH INCLUDED MATT MILLER  
19 AND DAVE MRAOVITCH?

20 A. IT WAS MY UNDERSTANDING THAT THOSE WERE  
21 ACQUAINTANCES, BUT THAT IN ACTUALITY THAT HE WAS OUTSIDE  
22 OF THAT GROUP AND THAT -- AND WITH CHRIS.

23 Q. WELL, DID YOU UNDERSTAND THAT CHRIS SEMROD  
24 SAID THAT: "THAT WAS MORE HIS CLIQUE THAN MINE;" THAT  
25 CHRIS SEMROD WAS OUTSIDE OF THAT PARTICULAR CLIQUE, ERIK  
26 MENENDEZ WAS NOT?

27 A. NO, I DIDN'T UNDERSTAND THAT.

28 MS. ABRAMSON: WELL, I'M GOING TO OBJECT TO THE

-11798

1 FORM OF THE QUESTION. MISSTATES THE TESTIMONY.

2 THE COURT: OVERRULED.

3 Q. BY MR. CONN: THAT IS NOT SOMETHING YOU  
4 WERE AWARE OF?

5 A. NO, I DIDN'T UNDERSTAND THAT. I WAS NOT  
6 AWARE OF THAT.

7 Q. AND ARE YOU AWARE OF THE TESTIMONY OF CHRIS  
8 SEMROD, THAT ASIDE FROM ERIK MENENDEZ' TENNIS, HE WAS  
9 PRETTY MUCH A NORMAL KID?

10 A. NO, I'M NOT AWARE OF THAT TESTIMONY.

11 Q. I BELIEVE THAT YOU SAID THAT YOU WERE --

12 YOU WERE ASKED TO REMOVE FROM YOUR CONSIDERATION AS PART  
13 OF YOUR TESTIMONY -- YESTERDAY YOU TESTIFIED ON DIRECT  
14 EXAMINATION THAT YOU WERE ASKED TO REMOVE FROM YOUR  
15 CONSIDERATION AS PART OF YOUR TESTIMONY ALLEGATIONS OF  
16 SEXUAL MALTREATMENT; IS THAT CORRECT?

17 A. YES. TO CONSIDER THE TREATMENT OF ERIK  
18 MENENDEZ WITHOUT CONSIDERING THE SEXUAL ABUSE, TO SET  
19 THAT ASIDE AS ONE WAY TO CONSIDER IT, YES.

20 Q. BUT THEN THIS MORNING YOU TESTIFIED THAT  
21 THERE WAS EVIDENCE OF SEXUAL MOLESTATION HERE; IS THAT  
22 CORRECT?

23 A. I DIDN'T TESTIFY TO THAT, TO MY KNOWLEDGE,  
24 THIS MORNING. I -- WELL --

25 Q. WERE YOU ASKED TO SET ASIDE AND NOT  
26 CONSIDER AS PART OF YOUR OPINION ALLEGATIONS MADE TO YOU  
27 BY ERIK MENENDEZ WHICH IS NOT CORROBORATED BY OTHER  
28 EVIDENCE?

-11797

1 A. YES.

2 Q. NOT LIMITED TO SEXUAL MOLESTATION, BUT  
3 INCLUDING ANY OTHER TYPES OF ALLEGATIONS THAT HE MADE  
4 AGAINST HIS PARENTS?

5 A. YES.

6 MS. ABRAMSON: OBJECTION.

7 WELL, EXCUSE ME. I AM OBJECTING TO THIS ON

8 HEARSAY GROUNDS, AND ON RELEVANCY GROUNDS.

9 THE COURT: OVERRULED.

10 MS. ABRAMSON: AND IT'S ARGUMENTATIVE, YOUR  
11 HONOR.

12 THE COURT: OVERRULED.

13 MR. CONN: LET ME HAVE JUST ONE MOMENT, YOUR  
14 HONOR.

15 Q. NOW, DR. HART, YOU SAID THAT ON THE ONE  
16 HAND, CERTAIN CONDUCT OR BEHAVIOR ON THE PART OF PARENTS  
17 COULD CONSTITUTE PSYCHOLOGICAL MALTREATMENT, AND YOU  
18 SAID ON THE OTHER HAND, WHERE SUCH INSTANCES OR SEVERITY  
19 OF THAT BEHAVIOR DO NOT RISE TO A SUFFICIENTLY HIGH  
20 LEVEL, THAT IT WILL -- THAT IT MAY BE DEEMED MISGUIDED  
21 OR POORLY CONCEIVED PARENTING; IS THAT CORRECT?

22 A. YES.

23 Q. AND YOU SAID THAT THERE ARE GUIDELINES OF  
24 PSYCHOLOGICAL MALTREATMENT NOW THAT WERE DRAFTED 12  
25 YEARS AGO?

26 A. NO.

27 Q. ARE THERE GUIDELINES FOR DETERMINING WHEN  
28 THERE IS PSYCHOLOGICAL MALTREATMENT AS OPPOSED TO

-11796

1 MISGUIDED OR POORLY CONCEIVED PARENTING?

2 A. WELL, THEY COULD BE CONCEIVED IN THAT WAY.

3 THERE ARE GUIDELINES FOR MAKING -- FOR DOING EVALUATIONS

4 AND MAKING DETERMINATIONS OF PSYCHOLOGICAL MALTREATMENT.

5 AND IF THOSE STANDARDS WEREN'T MET, THEN THEY WOULD FALL

6 OUTSIDE OF THOSE.

7 Q. AND WHAT ARE THOSE GUIDELINES?

8 A. THEY ARE THE AMERICAN PROFESSIONAL SOCIETY

9 ON ABUSE OF CHILDREN'S GUIDELINES.

10 Q. DO YOU HAVE THOSE GUIDELINES WITH YOU

11 TODAY?

12 A. NO, I DON'T.

13 Q. WELL, IF I WANTED TO RATE A PARTICULAR TYPE

14 OF BEHAVIOR; FOR EXAMPLE, WHETHER OR NOT TENNIS PLAYING

15 WAS EXCESSIVE OR NOT, WHAT WOULD THOSE GUIDELINES REVEAL

16 TO ME BY WHICH I COULD MAKE A DETERMINATION IN MY OWN

17 MIND AS TO WHETHER SUCH TENNIS PLAYING CONSTITUTED

18 PSYCHOLOGICAL MALTREATMENT, OR SIMPLY MISGUIDED OR

19 POORLY CONCEIVED PARENTING?

20 A. WELL, YOU WOULD BE LOOKING AT THE DEGREE TO

21 WHICH THAT TENNIS PLAYING WAS TAKING UP MORE OF THE

22 CHILD'S LIFE THAN IT SHOULD; INTERFERING WITH OTHER

23 ASPECTS OF GROWTH, WAS PUTTING PRESSURE ON THAT CHILD

24 BEYOND WHAT THE CHILD SHOULD BE EXPERIENCING; WAS A WAY

25 OF MEETING SOMEONE ELSE'S NEEDS OTHER THAN THE CHILD.

26 Q. WELL, MY QUESTION --

27 A. AND SUCH AS THAT.

28 Q. MY QUESTION TO YOU IS: DO THE GUIDELINES

1 SPECIFICALLY SAY THAT?

2 A. ABOUT TENNIS PLAYING?

3 Q. NO, ABOUT HOW YOU EVALUATE WHETHER

4 PARTICULAR BEHAVIOR CONSTITUTES PSYCHOLOGICAL

5 MALTREATMENT, OR SIMPLY MISGUIDED OR POORLY CONCEIVED

6 PARENTING?

7 A. THE GUIDELINES INDICATE TO YOU WHAT THE

8 BASIC CATEGORY IS, WHAT THE SUB CATEGORIES ARE; THAT

9 THERE SHOULD BE EXTREME -- THAT FOR IT TO BE

10 PSYCHOLOGICAL MALTREATMENT, IT MUST EITHER BE A SINGLE

11 OR MORE THAN ONE EXTREME INCIDENT, OR A PATTERN OF SUCH

12 CONDITIONS, AND THAT IT HAS RELEVANCE FOR THE

13 DEVELOPMENTAL PERIOD FOR THE CHILD; THAT IT IS -- THAT

14 IT WOULD HAVE IMPACT ON OR BE MEANINGFUL FOR THE

15 PARTICULAR DEVELOPMENTAL ISSUES OF THE CHILD.

16 SO THAT'S THE PROCESS.

17 Q. HOW EXTENSIVE ARE THESE GUIDELINES THAT

18 YOU'RE TALKING ABOUT?

19 IS THIS AN ENTIRE MANUAL THAT GIVES YOU A

20 DETAILED ANALYSIS OF HOW TO DETERMINE WHETHER A

21 PARTICULAR BEHAVIOR CONSTITUTES PSYCHOLOGICAL TREATMENT,

22 IS THIS A ONE-PAGE GUIDELINE, OR IS IT A PARAGRAPH?

23 A. YES. I AM TRYING TO REMEMBER THE EXACT

24 NUMBER OF PAGES. I THINK IT MUST BE ABOUT 10 TO 12

25 PAGES.

26 AND SO THERE ARE SECTIONS IN IT WHICH

27 DEFINE THE AREA, WHICH GIVE A HISTORY OF THE AREA, WHICH

28 INDICATE THE -- WHAT PSYCHOLOGICAL MALTREATMENT IS, WHAT

1 THE CATEGORIES ARE, WHAT KIND OF DEVELOPMENTAL ISSUES  
2 SHOULD BE CONSIDERED, WHAT KIND OF IMPACT MIGHT BE  
3 EXPECTED, WHAT TO LOOK FOR.

4 THAT GIVES YOU GUIDANCE IN TERMS OF THE WAY  
5 THAT INFORMATION SHOULD BE GATHERED, THE KIND OF SOURCES  
6 OF INFORMATION, AND WHICH GIVE YOU INDICATIONS OF WHAT  
7 KIND OF ISSUES TO CONSIDER IN MAKING DECISIONS, AND THEN  
8 HOW TO COMMUNICATE THOSE DECISIONS.

9 Q. AND BEFORE YOU CAME HERE TODAY YOU KNEW YOU  
10 WOULD BE TESTIFYING IN REGARD TO THE ALLEGED  
11 PSYCHOLOGICAL MALTREATMENT OF ERIK MENENDEZ; IS THAT  
12 CORRECT?

13 A. YES.

14 Q. AND IS THERE A REASON WHY YOU DIDN'T BRING  
15 THESE GUIDELINES WITH YOU SO WE COULD TAKE A LOOK AT  
16 THEM?

17 MS. ABRAMSON: I AM GOING TO OBJECT TO THE  
18 QUESTION, YOUR HONOR, AS ARGUMENTATIVE. THE PEOPLE HAD  
19 THE OPPORTUNITY TO QUESTION THIS WITNESS.

20 THE COURT: OVERRULED, COUNSEL.

21 YOU ARE NOT TO ARGUE THE OBJECTION. YOUR  
22 OBJECTION ON THE GROUNDS THAT IT'S ARGUMENTATIVE IS  
23 OVERRULED.

24 THE WITNESS: WELL, I DID NOT NEED TO HAVE THE  
25 GUIDELINES IN MY OWN HAND, AND IT WAS MY UNDERSTANDING

26 THAT THE GUIDELINES HAD BEEN PRESENTED TO THE COURT SOME  
27 LONG TIME AGO.

28 IF I WAS WRONG ON THAT, THEN IT WOULD HAVE

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1 BEEN A GOOD IDEA TO BRING THEM, TO PUT THEM IN YOUR  
2 HANDS.

3 Q. BY MR. CONN: AND SO WHEN YOU EVALUATE A  
4 PARTICULAR SITUATION TO DETERMINE WHETHER OR NOT IT  
5 CONSTITUTES PSYCHOLOGICAL MALTREATMENT, OR SIMPLY  
6 MISGUIDED OR POORLY CONCEIVED PARENTING, WHAT DO THE  
7 GUIDELINES SAY HOW YOU GO ABOUT DOING THAT, REGARDLESS  
8 OF THE TYPE OF BEHAVIOR IT IS?

9 A. HOW YOU GO ABOUT GATHERING EVIDENCE, THE  
10 INFORMATION YOU NEED?

11 Q. NO. WHAT IS THE STANDARD BY WHICH YOU  
12 APPLY -- WITHOUT ME GIVING YOU A SPECIFIC EXAMPLE OF A  
13 SPECIFIC TYPE OF BEHAVIOR, IS THERE A GENERAL PRINCIPLE  
14 THAT APPLIES BY WHICH YOU DETERMINE WHETHER OR NOT A  
15 PARTICULAR BEHAVIOR OR PATTERN OF BEHAVIOR CONSTITUTES  
16 PSYCHOLOGICAL MALTREATMENT, OR SIMPLY MISGUIDED OR  
17 POORLY CONCEIVED PARENTING?

18 A. WELL, YES. IN FACT, THERE ARE A SERIES OF  
19 THOSE PRINCIPLES OF WHAT WOULD BE STANDARDS OR GUIDES TO  
20 FOLLOW, AND THEY'RE THE ONES THAT WE WERE DISCUSSING  
21 EARLIER WHEN WE WERE TALKING ABOUT THE -- THE MASS OF



22 THE INCIDENTS, THE NUMBER OF FORMS; MORE THAN ONE TYPE  
23 BEING MORE SEVERE THAN LESS THAN ONE, OR THAN ONE.  
24 WHEN YOU'RE LOOKING AT THE -- WHEN YOU  
25 CONSIDER THE DEGREE WHICH THESE OCCUR ACROSS -- OR  
26 PSYCHOLOGICAL MALTREATMENT CONDITIONS OCCUR ACROSS  
27 DEVELOPMENTAL PERIODS, THE DEGREE WHICH THEY -- THE  
28 PARTICULAR KIND OF PSYCHOLOGICAL MALTREATMENT OCCURRING

-11792

1 IS RELEVANT TO THE DEVELOPMENTAL TASKS OR PERIOD FOR  
2 THAT CHILD, AND THE DEGREE WHICH THERE IS EVIDENCE OR  
3 THERE ARE CONDITIONS -- THE CHILD EXPRESSES OR EXHIBITS  
4 CONDITIONS WHICH ARE KNOWN TO BE ASSOCIATED WITH  
5 PSYCHOLOGICAL MALTREATMENT AS IMPACT.

6 LET'S SEE. I THINK THAT PRETTY WELL COVERS  
7 IT.

8 Q. BUT THOSE GUIDELINES ARE NOT SPECIFIC  
9 ENOUGH, SUCH THAT IN ALL SITUATIONS A CLINICIAN OR  
10 SOMEONE LOOKING AT THAT WOULD AGREE AS TO WHAT  
11 CONSTITUTES -- AS TO WHETHER A SPECIFIC BEHAVIOR OR  
12 PATTERN OF BEHAVIOR CONSTITUTES PSYCHOLOGICAL  
13 MALTREATMENT, OR SIMPLY MISGUIDED OR POORLY CONCEIVED  
14 PARENTING; IS THAT CORRECT?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE. CALLS  
16 FOR SPECULATION.

17 THE COURT: OVERRULED.

18 THE WITNESS: THOSE GUIDELINES ARE SUFFICIENT SO  
19 THAT CLINICIANS OR SPECIALISTS WHO KNOW THIS AREA SHOULD  
20 BE ABLE TO REACH COMMON OR SIMILIAR CONCLUSIONS BASED ON  
21 THAT EVIDENCE, YES.

22 MR. CONN: I HAVE NO FURTHER QUESTIONS, YOUR  
23 HONOR.

24 THE COURT: ANY REDIRECT EXAMINATION?

25

26

27 ///

28 ///

-11791

1 REDIRECT EXAMINATION

2 BY MS. ABRAMSON:

3 Q. DO YOU REMEMBER TERRY BARALT TESTIFIED SHE  
4 THOUGHT THAT HER BROTHER MENTALLY ABUSED HIS SONS?

5 DO YOU REMEMBER THAT?

6 A. YES.

7 Q. SHE THOUGHT THEY WERE PSYCHOLOGICALLY  
8 MALTREATED, CORRECT?

9 A. YES.

10 Q. DO YOU THINK MR. CONN WANTS YOU TO IGNORE  
11 THAT PART OF HER TESTIMONY, AND COME TO THE CONCLUSION  
12 THAT SHE'S BIASED?

13 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION AS

14 TO WHAT MR. CONN WANTS.

15 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

16 Q. BY MS. ABRAMSON: DO YOU REMEMBER MR. CONN  
17 ASKING YOU IF MS. BARALT HAD TESTIFIED THAT HER BROTHER  
18 AND SISTER-IN-LAW LOVED THEIR SONS?

19 A. YES.

20 Q. DO YOU GET THE FEELING THAT'S THE PART OF  
21 HER TESTIMONY HE WANTS YOU TO BELIEVE?

22 MR. CONN: OBJECTION AS TO WHAT MR. CONN --

23 THE COURT: COUNSEL, AGAIN, LET'S NOT ASK  
24 QUESTIONS ABOUT WHAT THIS WITNESS THINKS YOU OR THE  
25 PROSECUTOR WANTS HIM TO BELIEVE.

26 Q. BY MS. ABRAMSON: DO YOU REMEMBER THAT  
27 MRS. BARALT TESTIFIED THAT SHE THOUGHT HER BROTHER AND  
28 SISTER-IN-LAW LOVED THEIR CHILDREN IN THEIR WAY?

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1 A. YES.

2 Q. AND THAT SHE DISAGREED WITH THEIR METHODS  
3 OF PARENTING?

4 A. YES.

5 Q. AND SHE TRIED TO TELL HER BROTHER AND  
6 SISTER-IN-LAW THAT?

7 A. YES.

8 Q. DO YOU REMEMBER MARTHA CANO TESTIFIED THAT  
9 FROM THEIR EARLIEST AGES SHE THOUGHT THAT HER BROTHER

10 AND SISTER-IN-LAW WERE TREATING THEIR CHILDREN WRONG?

11 A. YES.

12 Q. AND SHE AND HER HUSBAND TRIED TO INTERCEDE?

13 A. YES.

14 Q. AND WERE REBUFFED AND TOLD THAT THEY DIDN'T

15 KNOW WHAT THEY WERE TALKING ABOUT?

16 A. YES.

17 Q. DO YOU REMEMBER FAITH GOLDSMITH TESTIFYING

18 THAT SHE THOUGHT MR. AND MRS. MENENDEZ WERE MISGUIDED IN

19 THEIR VALUES AND IN HOW THEY WERE RAISING THEIR SONS?

20 A. YES.

21 Q. BUT MRS. MENENDEZ AND MR. MENENDEZ WOULD

22 HEAR NONE OF IT?

23 A. YES.

24 Q. DO YOU REMEMBER HER STATEMENTS THAT

25 MR. AND MRS. MENENDEZ BOTH THOUGHT THEY COULD RAISE

26 PERFECT CHILDREN?

27 A. YES.

28 Q. AND THEY WOULD EXPECT THEIR CHILDREN TO BE

-11789

1 PERFECT?

2 A. YES.

3 Q. THAT THEY COULDN'T POSSIBLY HAVE CHILDREN

4 WHO HAD LEARNING DISABILITIES?

5 A. YES.

6 Q. THAT THEY COULDN'T POSSIBLY HAVE CHILDREN  
7 WHO WEREN'T PERFECT ATHLETES?  
8 MR. CONN: I WOULD OBJECT AS LEADING, AND UNLESS  
9 IT'S FOUNDATIONAL, HIS RECOLLECTION OF THESE INCIDENTS  
10 IS IRRELEVANT.

11 THE COURT: ALL RIGHT.

12 WELL, IT IS LEADING AS PHRASED.

13 Q. BY MS. ABRAMSON: DO YOU REMEMBER  
14 MRS. GOLDSMITH TALKING ABOUT CONVERSATIONS THAT SHE HAD  
15 WITH MR. AND MRS. MENENDEZ ABOUT THEIR EXPECTATIONS OF  
16 PERFECTION?

17 MR. CONN: OBJECTION AS IRRELEVANT, UNLESS IT'S  
18 FOUNDATIONAL TO ANOTHER QUESTION.

19 MS. ABRAMSON: IT WILL BE.

20 THE WITNESS: YES -- SORRY.

21 THE COURT: YOU CAN ANSWER THE QUESTION.

22 YOUR ANSWER IS YES.

23 ALL RIGHT. YOUR NEXT QUESTION, PLEASE.

24 Q. BY MS. ABRAMSON: NOW, IS THE FACT THAT  
25 PEOPLE WERE ATTEMPTING TO CORRECT THE PARENTING THAT  
26 MR. AND MRS. MENENDEZ WERE DOING, SUGGESTIVE TO YOU THAT  
27 MR. AND MRS. MENENDEZ' PARENTING WAS OBVIOUSLY  
28 ERRONEOUS?

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1 MR. CONN: OBJECTION AS ARGUMENTATIVE.

2 THE COURT: IT'S LEADING.

3 MS. ABRAMSON: WELL, THIS IS AN EXPERT, YOUR  
4 HONOR. I THOUGHT I COULD LEAD AN EXPERT.

5 THE COURT: IT'S STILL LEADING. THE WAY YOU  
6 PHRASE THESE QUESTIONS, MOST OF THEM ARE LEADING.

7 ASK HIS OPINION RATHER THAN YOURS.

8 Q. BY MS. ABRAMSON: DID YOU PLACE ANY  
9 IMPORTANCE ON THE FACT THAT THESE PEOPLE WERE TRYING TO  
10 INTERVENE WITH MR. AND MRS. MENENDEZ?

11 A. AND OTHERS COULD BE ADDED. CERTAINLY COACH  
12 WADLINGTON HAD A SIMILAR OPINION THAT WHAT WAS BEING  
13 DONE WAS WRONG.

14 AND IT'S THE KIND OF THING I TALKED ABOUT  
15 AT THE VERY BEGINNING OF MY TESTIMONY; THAT GOOD  
16 PARENTING AMOUNTS TO, IN MANY WAYS, CORRECTING YOUR  
17 ERRORS AND RECOGNIZING THEM.

18 AND THERE WERE THESE NUMEROUS OCCASIONS ON  
19 WHICH PEOPLE WERE CONCERNED AND DISTURBED BY THE  
20 TREATMENT THAT WAS OCCURRING, IN WHICH THEY TRIED TO  
21 COMMUNICATE THAT AND TO LET THE MENENDEZES, OR MR. AND  
22 MRS. MENENDEZ KNOW THAT THEY FELT THIS WASN'T RIGHT, AND  
23 THAT THEY SHOULD CHANGE.

24 Q. IS IT UNUSUAL -- WELL, STRIKE THAT.

25 WITH RESPECT TO THE RESEARCH IN CHILD  
26 ABUSE, IS ONE OF THE PROBLEMS WITH DETECTING CHILD ABUSE  
27 THE FACT THAT PEOPLE TEND NOT TO WANT TO BUTT INTO OTHER  
28 FAMILIES' BUSINESS?

1     A.  YES, VERY MUCH SO. FAMILY PRIVACY BECOMES  
2 VALUED BEYOND THE WELFARE OF CHILDREN, AND THAT PEOPLE,  
3 BECAUSE OF THAT, AND BECAUSE OF THEIR OWN DISCOMFORT,  
4 FEAR OF BEING EMBARRASSED, OF BEING TURNED AWAY ANGRILY  
5 AND SO ON, TEND NOT TO ACT IN THOSE AREAS TO THE DEGREE  
6 THEY SHOULD.

7     Q.  SO, IS IT UNUSUAL TO YOU, IN EXAMINING A  
8 FAMILY HISTORY, TO SEE SO MANY INSTANCES WHERE PEOPLE  
9 TRIED, HOWEVER FEEBLY, TO INTERVENE?

10    A.  I WAS SURPRISED TO LEARN THAT THERE WERE SO  
11 MANY OCCASIONS ON WHICH PEOPLE HAD ACTUALLY TRIED.

12    Q.  AND WAS IT TELLING TO YOU THAT THOSE  
13 EFFORTS WERE CONSISTENTLY REBUFFED?

14    A.  YES. IT INDICATED THAT THERE WAS -- OR  
15 SUGGESTED THAT THERE WAS ONLY ONE RIGHT WAY, AND THAT  
16 THAT WAS THE WAY THAT THE MENENDEZ PARENTS HAD CHOSEN IN  
17 THEIR MINDS WAS THE ONE WAY.

18    Q.  DID THAT APPEAR -- DID IT APPEAR TO YOU  
19 THAT MR. AND MRS. MENENDEZ WERE RIGID IN THEIR THINKING  
20 ABOUT HOW TO RAISE CHILDREN?

21    A.  YES.

22    Q.  WITH RESPECT TO WHETHER OR NOT THE CHILD  
23 SUFFERS, DOES IT REALLY MATTER, DR. HART, WHETHER OR NOT  
24 PARENTS DEEP DOWN INSIDE LOVE THEIR KIDS OR NOT?

25    A.  IF IT DOESN'T SHOW IN THEIR BEHAVIOR TOWARD  
26 THEIR CHILDREN, IT ISN'T GOING TO MATTER.

27 Q. AND DOES A CHILD KNOW THAT A PARENT LOVES  
28 THEM IF THE PARENT GIVES NO SIGN OF THAT AFFECTION?

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1 A. NO.

2 Q. IS DRIVING YOUR CHILDREN FROM ONE TENNIS  
3 PRO TO ANOTHER TENNIS PRO, TO ANOTHER COMPETITION, GOING  
4 TO BE INTERPRETED BY CHILDREN NECESSARILY AS A SIGN OF  
5 LOVE?

6 A. NO.

7 Q. IS TELLING YOUR CHILD, EVEN WHEN THEY WIN A  
8 TROPHY, THAT THEY COULD HAVE DONE BETTER, GOING TO BE  
9 INTERPRETED BY THAT CHILD AS A SIGN OF LOVE?

10 A. NO. AND THAT KIND OF PROBLEM HAS BEEN  
11 DESCRIBED OVER AND OVER AGAIN AS IT'S NEVER GOOD ENOUGH.

12 Q. IS STANDING BEHIND YOUR  
13 17-AND-A-HALF-YEAR-OLD SON WHILE HE'S PRACTICING TENNIS  
14 AT YOUR HOUSE, AND MISSING THE OPPORTUNITY TO GO OUT  
15 WITH HIS GIRLFRIEND, AND CORRECTING HIS EVERY MOVE,  
16 GOING TO BE INTERPRETED BY THAT CHILD AS A SIGN OF LOVE?

17 A. NO.

18 Q. IS THE MERE FACT THAT YOUR PARENT IS THERE  
19 ALL THE TIME CRITICIZING AND CORRECTING AND  
20 INSTRUCTING -- ARE YOU GOING TO TAKE THAT TO MEAN:  
21 "GEE, HE MUST REALLY CARE ABOUT ME," OR IS THAT GOING TO  
22 FEEL LIKE SOMETHING OTHER THAN LOVE?



23 THE COURT: OKAY. THAT'S ASKING FOR SPECULATION.

24 WHY DON'T YOU REPHRASE THE QUESTION.

25 Q. BY MS. ABRAMSON: DOES THE MERE PRESENCE OF  
26 A PARENT, IF THAT PARENT IS BEING NEGATIVE TOWARDS A  
27 CHILD, COMMUNICATE LOVE TO THE CHILD?

28 A. NO.

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1 Q. DO YOU REMEMBER TERRY BARALT'S TESTIMONY  
2 THAT WHAT SHE WAS TALKING ABOUT WHEN SHE SAID SHE  
3 THOUGHT HER BROTHER LOVED HIS SONS, TO HER THE EVIDENCE  
4 WAS THAT HE FOCUSED ALL HIS ATTENTION ON THEM?

5 A. YES.

6 Q. AND DO YOU REMEMBER HER TESTIMONY THAT TO  
7 HER THE EVIDENCE THAT MRS. MENENDEZ LOVED HER SONS WAS  
8 THAT SHE DROVE THEM PLACES?

9 A. YES.

10 Q. NOW, YOU'RE AWARE, ARE YOU NOT, THAT MR.  
11 AND MRS. BARALT AND OTHER MEMBERS OF THE FAMILY WERE  
12 INTERVIEWED STARTING BACK IN 1991?

13 A. THAT'S MY MEMORY, THAT IT STARTED VERY  
14 EARLY.

15 Q. AND BASED ON THOSE INTERVIEWS AND THEIR  
16 PREVIOUS TESTIMONY, DID YOU FORM THE OPINION THAT THEY  
17 LOVED JOSE AND KITTY MENENDEZ, THE FAMILY MEMBERS?

18 A. OH, THE FAMILY MEMBERS? YES.

19 Q. AND THEY ALSO OFFERED THE OPINION, DID THEY  
20 NOT, THROUGHOUT, THAT ERIK AND LYLE MENENDEZ LOVED JOSE  
21 AND KITTY MENENDEZ?

22 A. YES.

23 Q. AND THAT WAS THE OPINION OF EVERY FAMILY  
24 MEMBER, WAS IT NOT?

25 A. TO MY MEMORY, THAT WAS CONSISTENT.

26 Q. AND WAS IT YOUR OPINION THAT THIS WHOLE  
27 CATASTROPHE, IF YOU WILL, CONCERNING THIS FAMILY, CAUSED  
28 ENORMOUS EMOTIONAL PAIN FOR THE MEMBERS OF THIS FAMILY?

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1 MR. CONN: OBJECTION. IRRELEVANT AND BEYOND THE  
2 SCOPE.

3 THE COURT: THE PURPOSE OF THIS INQUIRY IS WHAT?

4 MS. ABRAMSON: WITH RESPECT TO INTERPRETING THE  
5 TESTIMONY AT THIS PENALTY PHASE OF MRS. BARALT.

6 THE COURT: AS TO WHETHER HE EXPLORED ISSUES OF  
7 BIAS IN EVALUATING THIS?

8 MS. ABRAMSON: YES.

9 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION.

10 MS. ABRAMSON: ALL RIGHT.

11 Q. WAS IT -- IN YOUR OPINION, DR. HART, WITH  
12 RESPECT TO MARTHA CANO AND TERRY BARALT, AND SOME OF THE  
13 OTHER MEMBERS OF THE MENENDEZ FAMILY, AND EVEN JOAN  
14 VANDERMOLLEN, DID YOU FORM THE OPINION THAT THOSE MEMBERS

15 OF THE FAMILY LOVED BOTH THE VICTIMS AND THE DEFENDANTS?

16 A. THAT WAS MY FEELING, MY IMPRESSION.

17 Q. AND DID THEY FEEL VERY TORN ALL THE WAY  
18 THROUGH THESE PROCEEDINGS?

19 A. THAT WAS MY BELIEF, YES. THAT WAS MY  
20 UNDERSTANDING, AS I LOOKED AT THAT INFORMATION.

21 Q. AND DID THEY HAVE -- EXPRESS TO YOU THE  
22 SENSE THAT THEY CANNOT BRING BACK THOSE THAT ARE GONE,  
23 AND THEY WANT TO KEEP THOSE THAT ARE ALIVE THAT THEY  
24 STILL LOVE?

25 A. I HAVE HEARD THAT EXPRESSED, YES.

26 Q. AND DO THOSE FEELINGS, AS MADE KNOWN TO  
27 YOU, MEAN THAT THE MEMBERS OF THE FAMILY WHO HAVE  
28 TESTIFIED ON BEHALF OF ERIK AND LYLE MENENDEZ, ARE

-11783

1 LYING?

2 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

3 THE COURT: REPHRASE THE QUESTION.

4 Q. BY MS. ABRAMSON: DOES THAT MEAN TO YOU  
5 THEY'RE BIASED IN A WAY THAT MAKES THEIR INFORMATION  
6 UNRELIABLE TO YOU?

7 A. NO.

8 Q. DOES IT, IN FACT, WHEN THEY INDICATE THAT  
9 THEY CARED ABOUT ALL PARTIES IN THIS FAMILY, SUPPORT  
10 THEIR RELIABILITY WHEN THEY TELL YOU WHAT THEY SAW?

11 A. WELL, IT SOUNDS AS THOUGH THEY ARE TRYING  
12 TO BE FAIR, TO BE HONEST ABOUT WHAT THEY HAVE KNOWN AND  
13 WHAT THEY FELT.

14 Q. YOU'RE NOT A PROFESSIONAL WITNESS; IS THAT  
15 FAIR TO SAY?

16 A. IT'S FAIR TO SAY.

17 Q. YOU DON'T TESTIFY IN COURT, THAT IS NOT  
18 YOUR TRAINING?

19 A. ONLY THOSE, YOU KNOW, VERY FEW TIMES THAT  
20 I'VE MENTIONED.

21 Q. THAT'S NOT HOW YOU MAKE YOUR LIVING?

22 A. NO.

23 Q. AND I TAKE IT AT \$30 AN HOUR, IT WOULDN'T  
24 BE MUCH OF A LIVING IF IT WAS?

25 A. THAT'S CORRECT.

26 Q. YOU'VE NEVER CHARGED \$400 AN HOUR, HAVE  
27 YOU?

28 MR. CONN: OBJECTION. IRRELEVANT.

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1 THE COURT: SUSTAINED.

2 Q. BY MS. ABRAMSON: IS IT FAIR TO SAY THAT  
3 YOUR PRINCIPLE -- THE PRINCIPLE HATS THAT YOU WEAR IS AS  
4 A RESEARCHER IN THIS AREA AND AS A TEACHER?

5 A. YES. RESEARCHER AND TEACHER, COMBINED WITH  
6 SERVICE IN TERMS OF INFORMING PEOPLE AND HELPING.

7 Q. AND THE EFFORTS TO INFORM; THAT HAS TO DO  
8 WITH THE VARIOUS COMMITTEES THAT YOU BELONG TO, AND  
9 DEVELOPING PUBLIC POLICY STATEMENTS, STATEMENTS TO BE --  
10 TO TRY TO EDUCATE THE PUBLIC ABOUT WHAT REALLY IS CHILD  
11 ABUSE?

12 A. THAT'S RIGHT.

13 Q. DO YOU REMEMBER A BUMPER STICKER SOME YEARS  
14 BACK, DR. HART, THAT USED TO READ: "HAVE YOU HUGGED  
15 YOUR KID TODAY"?

16 MR. CONN: OBJECTION. IRRELEVANT.

17 THE COURT: SUSTAINED.

18 Q. BY MS. ABRAMSON: DOES -- LET ME JUST ASK  
19 YOU, THE EXPRESSION "HAVE YOU HUGGED YOUR KID TODAY?"  
20 DOES IT REFLECT AN ACCEPTED PSYCHOLOGICAL REALITY ABOUT  
21 WHAT CHILDREN NEED?

22 A. YES. IT'S THE POWER IN SIMPLY -- THERE IS  
23 POWER IN STATING THAT SO SIMPLY, BECAUSE MOST PEOPLE GET  
24 IT. THEY KNOW THAT'S WHAT THEY NEED, AND THEY KNOW  
25 THAT'S WHAT THEIR CHILDREN NEED, THAT KIND OF AFFECTION  
26 AND CARING.

27 Q. MOST PEOPLE GET THAT IT IS NOT HELPFUL TO  
28 CHILDREN TO DEMAND AND INSIST THAT THEY GET GRADES WHEN

-11781

1 THEY DON'T UNDERSTAND THE COURSE MATERIAL?

2 A. YES.

3 Q. DO MOST PEOPLE GET THAT IT WOULD BE WRONG  
4 TO STEAL THE PLACEMENT TESTS FOR SCHOOL AND TRY TO GET  
5 YOUR KID INTO A CLASS WHERE THEY REALLY CAN'T COMPETE  
6 WITH THE WORKLOAD?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: SUSTAINED

9 Q. BY MS. ABRAMSON: ARE YOU AWARE OF THE  
10 INFORMATION FROM MRS. GOLDSMITH THAT MRS. MENENDEZ  
11 WANTED TO GET HER HANDS ON THE STANDARDIZED CLASS  
12 PLACEMENT TESTS FOR NEW JERSEY SO SHE COULD GET HER KIDS  
13 INTO A HIGHER CLASS THAN THEIR ABILITIES COULD GET THEM?

14 A. YES, I'M AWARE OF THAT. IT'S -- IT'S A  
15 VERY STRONG EXAMPLE OF AN END JUSTIFIES THE MEANS WAY OF  
16 LIFE, WITH THE END NOT HAVING THE TRUE INTEGRITY BY THE  
17 TIME YOU GET THERE.

18 Q. BEYOND THAT, IF YOU GOT A CHILD INTO A  
19 CLASS THAT THEY DIDN'T BELONG IN, WHAT'S GOING TO HAPPEN  
20 TO THAT KID IN THAT CLASS?

21 A. OH, THE CHILD IS GOING TO BE VERY LIKELY  
22 UNDER VERY STRONG PRESSURE TO BECOME ANXIOUS, TO DOUBT  
23 HIMSELF.

24 Q. HOW ABOUT FAILING?

25 A. YES, THAT'S -- THAT'S VERY PROBABLY GOING  
26 TO HAPPEN.

27 Q. IF YOU PUSH A KID, YOU GIVE A KID FALSE  
28 CREDENTIALS, PUT THEM IN A SCHOOL THEY DON'T BELONG IN,

1 OR PUT THEM IN A CLASS THEY DON'T BELONG IN, THE  
2 LIKELIHOOD IS THEY'RE GOING TO FALL ON THEIR FACE,  
3 CORRECT?

4 A. YES.

5 Q. IS THERE A LIKELIHOOD THAT'S GOING TO MAKE  
6 THEM FEEL GOOD ABOUT THEMSELF IF THEY DO THAT?

7 A. NO.

8 Q. WITH RESPECT TO ERIK MENENDEZ'S EDUCATION,  
9 IS THE INFORMATION YOU HAVE THAT HE WAS DOING RATHER  
10 WELL AT PUBLIC SCHOOL, AT HOPEWELL VALLEY SCHOOL?

11 A. THAT'S MY MEMORY FOR THE SCHOOLING BEFORE  
12 HE WENT TO P.D.S.

13 Q. AND THAT FOR FOUR YEARS RUNNING HIS PARENTS  
14 TRIED TO GET P.D.S. TO ACCEPT HIM?

15 A. THAT'S MY UNDERSTANDING.

16 Q. AND FOR FOUR YEARS RUNNING, P.D.S. TOLD  
17 THEM HE WOULDN'T DO WELL IN THEIR SCHOOL?

18 A. YES.

19 Q. AND ARE YOU AWARE OF INFORMATION FROM DIANE  
20 VANDERMOLLEN THAT MRS. MENENDEZ DRILLED ERIK AND TIMED  
21 HIM WITH A STOPWATCH AND YELLED AND SCREAMED AT HIM, AND  
22 HIT HIM UPSIDE THE HEAD, IN TRYING TO GET HIM UP TO  
23 SNUFF?

24 A. YES.

25 Q. TO PASS THE P.D.S. ENTRANCE EXAM?

26 A. YES.

27 Q. WAS IT OF ANY REAL BENEFIT TO ERIK MENENDEZ

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1 A. NO, I DON'T THINK IT WAS. I THINK IT PUT  
2 HIM THROUGH A MISERABLE EXPERIENCE.

3 Q. AND HE DIDN'T DO NEARLY AS WELL AS HE WAS  
4 DOING IN PUBLIC SCHOOL, DID HE?

5 A. THAT'S RIGHT.

6 Q. YOU'RE AWARE OF THE OPINION OF P.D.S., AND  
7 THE OPINION OF VARIOUS P.D.S. TEACHERS, THAT THE SCHOOL  
8 WAS TOO COMPETITIVE FOR HIM, AND WOULD MAKE HIM FEEL  
9 LIKE A FAILURE?

10 A. YES.

11 Q. AND DID YOU UNDERSTAND THAT THE MOTIVATION  
12 OF MR. AND MRS. MENENDEZ TO PUT HIM INTO P.D.S. WAS  
13 BECAUSE IT WOULD GIVE THEM PRESTIGE?

14 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

15 THE COURT: REPHRASE THE QUESTION.

16 Q. BY MS. ABRAMSON: ARE YOU AWARE OF  
17 INFORMATION CONCERNING WHY IT IS HIS PARENTS WERE SO  
18 INSISTENT THAT HE BE IN A SCHOOL WHERE HE WOULDN'T DO  
19 VERY WELL?

20 A. YEAH. THAT WAS MY INTERPRETATION OF THAT  
21 INFORMATION.

22 MR. CONN: OBJECTION. CALLS FOR SPECULATION. NO  
23 FOUNDATION.



24 THE COURT: THIS WAS COVERED ON THE  
25 CROSS-EXAMINATION, SO IT'S A PROPER AREA OF INQUIRY.  
26 YOUR UNDERSTANDING WAS WHAT? YOU SAID THAT  
27 WAS YOUR UNDERSTANDING. WHAT WAS THAT?  
28 THE WITNESS: THAT THEY CONSIDERED P.D.S. TO BE A

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1 PRESTIGIOUS SCHOOL, AND THAT THAT WOULD BE THE VALUE OF  
2 HAVING HIM THERE.

3 Q. AND DO YOU UNDERSTAND FROM THE MATERIALS,  
4 AND PARTICULARLY TESTIMONY PREVIOUSLY BY CARLOS BARALT,  
5 THAT MR. MENENDEZ' PHILOSOPHY WAS THAT YOU GO TO GREAT  
6 SCHOOLS SO YOU CAN MAKE GOOD CONTACTS FOR YOUR FUTURE  
7 BUSINESS LIFE?

8 A. YES.

9 Q. AND HE NEVER SHOWED PLACING ANY PARTICULAR  
10 VALUE ON WHETHER THE CHILDREN LEARNED ANYTHING?

11 A. YES.

12 Q. THAT GRADES WERE NECESSARY ONLY BECAUSE  
13 THEY MOVE YOU UP TO THE NEXT LEVEL WHERE YOU COULD GET  
14 INTO THE NEXT PRESTIGIOUS INSTITUTION?

15 A. THAT WAS MY UNDERSTANDING OF THE OVERALL  
16 PATTERN FOR EDUCATION.

17 Q. IS THERE SOME UNDERSTANDING OF HOW CHILDREN  
18 FEEL WHEN THEY GET GRADES THEY DON'T DESERVE, OR WIND UP  
19 IN SITUATIONS WHERE THEY GET PRESTIGE WHEN THEY DON'T

20 HAVE REAL ACCOMPLISHMENT?

21 A. WELL, IT'S AN EMPTY SORT OF AN ACHIEVEMENT.

22 YOU WOULD FEEL LIKE A CHEATER, LIKE SOMEONE WHO REALLY  
23 DIDN'T HAVE THE CONFIDENCE. HE DIDN'T DESERVE IT.

24 OVER AND OVER AGAIN PSYCHOLOGISTS HAVE  
25 INDICATED THAT REAL -- THAT A SENSE OF ACHIEVEMENT MUST  
26 HAVE REAL SUBSTANCE TO IT; THAT IT CANNOT BE PHONY AND  
27 EMPTY; THAT THE CHILD NEEDS TO KNOW THAT HE REALLY DID  
28 SOMETHING.

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1 Q. SO FEELING LIKE A FRAUD ISN'T A  
2 PARTICULARLY GOOD FEELING, IS IT?

3 A. NO.

4 Q. AND CHILDREN WHO FEEL THAT WAY ARE IN  
5 CONSTANT FEAR, ARE THEY NOT, THAT THEY'RE GOING TO BE  
6 FOUND OUT?

7 A. YES. CHILDREN WOULD TEND TO BE IN FEAR  
8 THAT THEY'RE GOING TO BE FOUND OUT; THAT THEY'RE GOING  
9 TO BE DISCOVERED EVENTUALLY, NOT TO HAVE -- NOT TO BE  
10 ABLE TO DO WHAT THEY APPEARED TO HAVE DONE.

11 Q. AND THAT PEOPLE MIGHT ONLY BE ACCEPTING  
12 THEM BECAUSE OF SOME FALSE CREDENTIALS AND NOT THE  
13 GENUINE THING ABOUT WHO THEY ARE?

14 A. IT'S NOT THEM, IT'S THE CREDENTIALS.

15 Q. AND WITH RESPECT TO WINNING TROPHIES, IF I

16 WERE TO TELL THAT YOU ERIK MENENDEZ COMPETED IN, ON  
17 AVERAGE, 25 TOURNAMENTS A YEAR, AND IF YOU COULD JUST  
18 AVERAGE THOSE 30 TROPHIES YOU SAW AS 15 BELONGING TO  
19 HIM, DOESN'T SOUND LIKE HE WAS WINNING MOST OF THE TIME,  
20 DOES IT?

21 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
22 EVIDENCE.

23 THE COURT: REPHRASE THE QUESTION.

24 Q. BY MS. ABRAMSON: OKAY. I WILL JUST GIVE  
25 YOU A HYPOTHETICAL.

26 HYPOTHETICALLY, HE COMPETED IN 25 SEPARATE  
27 TOURNAMENTS A YEAR, STARTING AT THE AGE OF 12 THROUGH  
28 18, OKAY.

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1 AND IF WE ALSO INDICATE THAT 15, OR SAY  
2 ROUGHLY HALF OF THE TROPHIES MR. CONN SHOWED YOU WERE  
3 HIS, RATHER THAN HIS BROTHER'S, THAT WOULDN'T SOUND LIKE  
4 HE WAS WINNING MOST OF THE TIME, WOULD IT?

5 MR. CONN: OBJECTION. IMPROPER HYPOTHETICAL NOT  
6 SUPPORTED BY FACTS IN EVIDENCE, AND IT CALLS FOR  
7 SPECULATION.

8 THE COURT: IT DOESN'T REQUIRE THIS WITNESS TO  
9 ANSWER THE QUESTION. IT'S NOT A SUBJECT THAT REQUIRES  
10 THAT EXPERTISE.

11 Q. BY MS. ABRAMSON: YOU TESTIFIED YOU ASSUMED

12 HE WAS WINNING MOST OF THE TIME.

13 DO YOU HAVE ANY BASIS FOR THAT ASSUMPTION,

14 DR. HART?

15 A. NO. I DIDN'T HAVE THE NUMBER OF

16 TOURNAMENTS THAT HE HAD PLAYED IN, OR AN EXACT NUMBER

17 OF -- OTHER THAN OUR SPECULATION OF HOW MANY OF THOSE

18 TROPHIES ON THE BOOK CASE WERE HIS.

19 Q. SO YOU REALLY DON'T KNOW IF HE WAS WINNING

20 MORE OFTEN THAN LOSING, OR LOSING MORE OFTEN THAN

21 WINNING?

22 A. NO, I DIDN'T -- I DIDN'T REALLY KNOW THAT.

23 I MADE AN ASSUMPTION, THAT WITH HIS TALENT AND SO ON,

24 THAT HE MIGHT BE WINNING MORE THAN HE WAS LOSING.

25 Q. OKAY. BUT YOU DON'T KNOW THAT THAT'S TRUE?

26 A. NO, I DON'T KNOW THAT THAT'S TRUE.

27 Q. AND DO YOU KNOW WHETHER OR NOT IT'S TRUE

28 THAT EVEN WHEN HE WON, HE WAS DERIDED FOR HIS

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1 PERFORMANCE AND WAS TOLD HE COULD HAVE DONE BETTER?

2 A. YES. I HAVE THAT INFORMATION, THAT THAT

3 KIND OF THING HAPPENED.

4 Q. AND DO YOU ALSO HAVE INFORMATION THAT IF HE

5 DID WIN, THEN HE WAS EXPECTED TO DO EVEN BETTER NEXT

6 TIME AROUND, TO WIN A HIGHER LEVEL OF TOURNAMENT?

7 A. WELL, IT SEEMS TO ME THE ENTIRE PROCESS WAS

8 ONE OF MOVING UP SOME KIND OF A PYRAMID TO A HIGHER

9 LEVEL AND A HIGHER LEVEL.

10 Q. DO YOU REMEMBER PREVIOUS TESTIMONY BY DIANE

11 VANDERMOLEN IN STATEMENTS AND INTERVIEWS THAT IT

12 APPEARED TO HER THAT EVERY TIME THE CHILDREN WOULD

13 ACHIEVE A CERTAIN LEVEL, THE ANTE WAS RAISED WAY UP, SO

14 THEY COULD NEVER GET A SENSE THAT THEY HAD EVERY

15 ACCOMPLISHED ANY OF THE GOALS THEIR PARENTS SET FOR

16 THEM?

17 A. I THINK I REMEMBER SOMETHING LIKE THAT.

18 Q. BASED ON THE RESEARCH THAT YOU'RE AWARE OF,

19 WHEN FAMILIES ARE INVESTIGATED, WHEN THERE IS

20 ALLEGATIONS OF ABUSE, DO MANY, MANY ABUSIVE PARENTS

21 CLAIM THEY LOVE THEIR KIDS?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: SUSTAINED. SUSTAINED.

24 Q. BY MS. ABRAMSON: CAN YOU LOVE CHILDREN AND

25 RUIN THEM?

26 A. WELL, I THINK YOU CAN THINK THAT YOU LOVE

27 CHILDREN AND RUIN THEM.

28 Q. CAN YOU LOVE CHILDREN AND ABUSE THEM?

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1 A. I THINK THERE ARE PARENTS WHO LOVE THEIR

2 CHILDREN WHO ABUSE THEM.

3 Q. CAN YOU LOVE CHILDREN AND MOLEST THEM?

4 A. I THINK THAT'S EVEN POSSIBLE.

5 Q. WE'RE NOT TALKING ABOUT NECESSARILY HEALTHY  
6 LOVE, ARE WE?

7 A. NO. NO. IT'S SOME KIND OF DISTORTION OF  
8 WHAT WE WOULD THINK OF AS HEALTHY LOVE. BUT THE PERSON  
9 COULD CERTAINLY HAVE THE FEELING THAT HE OR SHE LOVES  
10 THIS PERSON.

11 Q. OR BELIEVES THAT THEY DO?

12 A. OR BELIEVES IT, YEAH.

13 Q. ARE THERE SOME PEOPLE WHO ARE SIMPLY NOT  
14 EQUIPPED TO BE GOOD PARENTS?

15 A. YES. THAT'S MY POINT OF VIEW. I THINK  
16 IT'S A POINT OF VIEW HELD BY MANY.

17 Q. AND IS IT ALSO YOUR POINT OF VIEW THAT  
18 OFTEN THAT IS TRUE BECAUSE OF THE DYSFUNCTIONALITY OF  
19 THEIR OWN FAMILIES?

20 MR. CONN: OBJECTION. IRRELEVANT.

21 THE COURT: SUSTAINED.

22 Q. BY MS. ABRAMSON: ARE THERE PEOPLE WHO  
23 HAVEN'T LEARNED PROPER PARENTING MODELING?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: SUSTAINED.

26 Q. BY MS. ABRAMSON: ARE THERE PEOPLE WHO ARE  
27 SO NARCISSISTIC THAT THEY REALLY CAN'T LOVE ANYTHING  
28 OUTSIDE OF THEMSELVES?

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: SUSTAINED.

3 Q. BY MS. ABRAMSON: IN YOUR OPINION, WAS  
4 MR. MENENDEZ RATHER NARCISSISTIC?

5 MR. CONN: OBJECTION. IRRELEVANT.

6 THE COURT: SUSTAINED.

7 Q. BY MS. ABRAMSON: NOW, WITH RESPECT TO THE  
8 LEWIS SCHOOL, BASED ON YOUR READING OF -- FIRST OF ALL,  
9 YOUR HONOR, I THINK THAT I FAILED TO MARK THAT FILE,  
10 WHICH I WOULD LIKE TO MARK AT THIS TIME.

11 THE COURT: WE'RE AT 460.

12 MS. ABRAMSON: I THINK THIS HAS BEEN PREVIOUSLY  
13 IDENTIFIED TO THE COURT AS ERIK MENENDEZ' FILE FROM THE  
14 LEWIS SCHOOL.

15 Q. AND HAVE YOU EXAMINED AT VARIOUS TIMES THE  
16 CONTENTS OF THAT FOLDER?

17 A. YES. IN A FOLDER THAT HAS INCREASED IN  
18 SIZE ACROSS THAT TIME, YES.

19 Q. ALL RIGHT.

20 YOU SAW THAT THIS WAS BROUGHT TO THE COURT  
21 YESTERDAY?

22 A. THAT'S CORRECT.

23 Q. FROM NEW JERSEY?

24 A. YES.

25 Q. AND YOU HAD SEEN SOME OF THE DOCUMENTS THAT  
26 ARE IN THAT FOLDER EARLIER, AND THEN YOU SAW SOME  
27 ADDITIONAL ONES YESTERDAY?

28 A. YES, THAT'S RIGHT.

1 Q. AND DOES THAT FOLDER CONTAIN THE TESTS THAT  
2 WERE ADMINISTERED TO ERIK MENENDEZ, AS WELL AS THE  
3 ANALYSIS OF THOSE TESTS?

4 A. I BELIEVE IT DOES.

5 Q. AND DOES IT ALSO CONTAIN A SERIES OF NOTES  
6 CALLED "INITIAL CONTACT", THAT CONSISTED OF TWO PAGES?

7 A. THOSE ARE -- WELL, LET ME FIND THEM.

8 Q. THEY'RE RIGHT THERE.

9 A. HERE THEY ARE.

10 Q. AND DOES IT ALSO CONTAIN ANOTHER PAGE  
11 THAT'S CALLED "EDUCATIONAL SCREENING SUMMARY EVALUATION  
12 AND ANALYSIS"?

13 A. IT DOES.

14 Q. AND IN READING THOSE MATERIALS, DOES IT  
15 APPEAR THAT MRS. MENENDEZ CAME IN AND REQUESTED THE  
16 SERVICES OF THE LEWIS SCHOOL AND WAS TOLD -- FOR  
17 TUTORING SERVICES FOR ERIK IN TWO PARTICULAR SUBJECTS,  
18 MATH AND ENGLISH?

19 A. YES.

20 Q. AND DOES IT INDICATE THAT MRS. MENENDEZ WAS  
21 TOLD THAT NONE OF THE SERVICES OF THE SCHOOL COULD BE  
22 PROVIDED UNLESS AND UNTIL ERIK MENENDEZ WAS EVALUATED,  
23 SINCE THEY WERE NOT A TUTORIAL SERVICE, BUT A SCHOOL FOR  
24 THE LEARNING DISABLED?

25 A. THAT STATEMENT IS MADE VERY CLEARLY AT THE



26 BEGINNING.

27 Q. AND IS IT FURTHER INDICATED IN THESE NOTES

28 THAT ERIK -- THAT THE SCHOOL DID NOT GET PERMISSION TO

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1 DO THE FULL EVALUATION ON ERIK MENENDEZ?

2 A. YES.

3 Q. THAT THEY DID ENROLL HIM FOR LIKE A

4 FOUR-WEEK PERIOD FOR THE SUMMER-STUDY PROGRAM?

5 A. I BELIEVE SO. I'M NOT FINDING THAT

6 IMMEDIATELY, BUT THAT WAS MY MEMORY.

7 Q. WHY DON'T YOU LOOK AT PARAGRAPH 14 ON

8 PAGE 2 OF THE INITIAL CONTACT?

9 A. I SEE IT.

10 Q. YOU DON'T HAVE TO READ IT OUT LOUD. DON'T

11 VOCALIZE THE ALPHABET.

12 OKAY. DOES IT APPEAR, IN FACT, THAT THERE

13 IS NEVER ANOTHER CONFERENCE WITH MRS. MENENDEZ AFTER THE

14 PARTIAL TEST RESULTS COME BACK?

15 A. THAT'S -- YEAH, THAT'S MY INTERPRETATION OF

16 WHAT I HAVE HERE, THAT THERE WAS NONE.

17 Q. AND ISN'T IT TRUE ALSO THAT THERE DOES NOT

18 APPEAR TO BE ANY INQUIRY BY MRS. MENENDEZ CONCERNING

19 WHAT THE RESULTS OF ANY OF THESE TESTS WERE?

20 A. I KNOW OF NONE.

21 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

22 THE COURT: SUSTAINED.

23 Q. BY MS. ABRAMSON: IS THERE ANYTHING IN  
24 THESE NOTES THAT SHOW THAT AFTER THE INITIAL ENROLLMENT  
25 AND THIS PARTIAL SCREENING, THAT MRS. MENENDEZ EVER  
26 CONTACTED THE SCHOOL AGAIN TO SAY "WELL, HOW'D HE DO?  
27 IS HE DISABLED? ARE THERE PROBLEMS?"

28 A. I HAVEN'T FOUND ANYTHING THAT INDICATES

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1 THAT.

2 Q. AND, IN FACT, IS THERE AN INDICATION THAT  
3 DURING THE THIRD WEEK OF JULY, 1986, MR. MENENDEZ  
4 RETURNED A CALL AND TOLD THE -- STRIKE THAT.

5 THAT MR. MENENDEZ RETURNED A CALL TO MARCIA  
6 LEWIS; THAT MARCIA LEWIS WANTED TO DISCUSS WITH  
7 MR. MENENDEZ THE RESULTS OF ERIK'S SCREENING; THE FACT  
8 THAT THE TESTING WAS INCOMPLETE, AND THE POSSIBILITY OF  
9 IMPLEMENTING ONGOING ACADEMIC SUPPORT FOR HIS SON, AND  
10 THAT MR. MENENDEZ COMMUNICATED THAT HE THOUGHT THE LEWIS  
11 SCHOOL WAS JUST A TUTORIAL SERVICE?

12 A. WELL, I REMEMBER READING THAT, BUT I'M NOT  
13 FINDING IT RIGHT NOW.

14 Q. WELL, LET ME SHOW IT TO YOU.

15 A. OH, OVER HERE. OKAY.

16 Q. YOU'VE READ MANY, MANY THOUSANDS OF PAGES  
17 OF THINGS ON THIS, HAVE YOU NOT, DR. HART?

18 A. IT MUST BE, YES.

19 Q. AND YOU DO HAVE ANOTHER LIFE APART FROM  
20 THIS CASE, UNLIKE SOME OF US?

21 MR. CONN: OBJECTION.

22 THE WITNESS: SOMETIMES.

23 THE COURT: YOUR NEXT QUESTION, PLEASE.

24 MS. ABRAMSON: OKAY.

25 Q. DO YOU SEE THE INFORMATION I'VE JUST  
26 INDICATED?

27 A. YES. YES, I DO. YES. THE STATEMENTS THAT  
28 YOU'VE JUST MADE ARE THE -- REPRESENT THE STATEMENTS

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1 THAT I'M FINDING IN HERE.

2 Q. AND DOES IT ALSO INDICATE THAT MR. MENENDEZ  
3 MADE IT CLEAR THAT A WRITTEN REPORT FROM THE SCHOOL WAS  
4 UNNECESSARY, AND THAT HE WAS NOT INTERESTED IN HAVING  
5 ERIK TESTED FURTHER?

6 A. YES.

7 Q. AND DOES IT ALSO INDICATE THAT  
8 MRS. MENENDEZ HAD VERBALLY AGREED TO FURTHER TESTING  
9 WHEN MRS. LEWIS FIRST SPOKE TO HER?

10 A. YES.

11 Q. BUT NO SUCH TESTING WAS EVER AUTHORIZED?

12 A. SHE DID AGREE, ACCORDING TO THIS.

13 Q. VERBALLY?

14 A. YES.

15 Q. IT WAS ALSO MADE CLEAR TO MR. AND

16 MRS. MENENDEZ THAT THEY HAD TO COMPLETE THE PARENT

17 QUESTIONNAIRE FOR THE REST OF THE TESTING -- THE PARENT

18 HISTORY FORM AND QUESTIONNAIRES, AND THEY WERE NEVER

19 COMPLETED OR RETURNED TO THE SCHOOL.

20 A. THAT'S WHAT IT SAYS.

21 Q. AND THEN YOU'RE AWARE OF ALL THE RECORDS OF

22 ERIK MENENDEZ'S SCHOOLING AFTER HE GOT TO CALIFORNIA?

23 A. YES.

24 Q. AND THERE IS NO INDICATION, IS THERE, THAT

25 HE WAS EVER TESTED AGAIN, OR GIVEN ANY KIND OF REMEDIAL

26 INSTRUCTION?

27 A. NO. I FOUND NOTHING TO INDICATE THAT.

28 Q. IN FACT, DO YOU RECALL WHAT WAS THE ONLY

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1 INDICATION THAT ANYONE WHO TAUGHT ERIK MENENDEZ IN

2 CALIFORNIA WAS EVER TOLD ABOUT ANY LEARNING DISABILITY

3 WAS?

4 DO YOU REMEMBER WHAT THAT WAS?

5 A. I THINK -- AS I RECALL -- AS I REMEMBER, IT

6 WAS TOLD TO ONE OF HIS TEACHERS WHEN HE WAS A SENIOR,

7 MRS. GUZMAN (SIC), IF I AM PRONOUNCING IT CORRECTLY.

8 Q. BARBARA ZUSSMAN?

9 A. THAT'S RIGHT.

10 Q. DR. BARBARA ZUSSMAN.

11 IS IT YOUR UNDERSTANDING THAT BARBARA

12 ZUSSMAN WAS A TEACHER OF ERIK MENENDEZ' AT BEVERLY HILLS

13 HIGH SCHOOL?

14 A. YES.

15 Q. AND WAS IT YOUR UNDERSTANDING THAT IN -- AT

16 THE END OF THE YEAR, 1989, IN RESPONSE TO A STATEMENT BY

17 DR. ZUSSMAN, MRS. MENENDEZ SAID: "OH, WELL, HE'S

18 DYSLEXIC"?

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

20 IRRELEVANT.

21 THE COURT: SUSTAINED.

22 Q. BY MS. ABRAMSON: ARE YOU AWARE OF A

23 STATEMENT BY MRS. MENENDEZ TO DR. ZUSSMAN CONCERNING

24 ERIK BEING DYSLEXIC?

25 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

26 IRRELEVANT.

27 THE COURT: AT WHAT POINT, WHILE HE WAS STILL

28 BEING EDUCATED, OR AFTER HE HAD GRADUATED?

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1 MS. ABRAMSON: WHILE HE WAS STILL IN SCHOOL.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, I REMEMBER A STATEMENT OF THAT

4 TYPE BEING MADE.

5 Q. BY MS. ABRAMSON: AND THAT STATEMENT WAS

6 MADE DURING A PARENT-TEACHER CONFERENCE AT THE END OF  
7 THE SCHOOL YEAR OF 1989?

8 A. THAT'S MY MEMORY, THAT IT WAS TOWARD THE  
9 END OF THE SCHOOL YEAR, AND YES.

10 Q. AND THAT THAT WAS THE ONLY REFERENCE MADE  
11 TO ANY TEACHER OR SCHOOL IN CALIFORNIA IN REFERENCE TO  
12 ERIK MENENDEZ HAVING LEARNING DISABILITIES?

13 A. THE ONLY ONE I KNOW OF.

14

15

16

17

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28

1 Q NOW, DID YOU AT SOME POINT, DR. HART,  
2 COMPILE A LIST OF INCIDENTS OF PSYCHOLOGICAL  
3 MALTREATMENT OF ERIK MENENDEZ?

4 A YES.

5 Q AND DID THAT LIST OVER A HUNDRED AND  
6 FORTY SEPARATE ITEMS?

7 A THE NUMBER WAS AROUND THAT, YES. I  
8 CAN'T REMEMBER.

9 Q SOMEWHERE AROUND THERE?

10 A IT WAS AROUND A HUNDRED AND FIFTY, A  
11 HUNDRED AND FORTY.

12 Q DID YOU THEN REVIEW THAT LIST AND TAKE  
13 OUT ANYTHING THAT DEPENDED ON ERIK MENENDEZ'  
14 CREDIBILITY, PUT THAT ISSUE ASIDE?

15 A YES. KEPT ONLY ITEMS WHICH HAD SOME  
16 CORROBORATION FROM OTHER PARTIES, THIRD PARTIES.

17 Q OTHER PARTIES, ONE OR MORE OTHER  
18 PARTIES --

19 A RIGHT.

20 Q -- SAW OR OBSERVED OR HEARD OR KNEW  
21 ABOUT SOMETHING?

22 A YES.

23 Q AND WAS THE LIST STILL OVER A HUNDRED  
24 ITEMS?

25 A YES. THAT'S MY MEMORY.

26 Q AND WAS IT YOUR UNDERSTANDING THAT THIS  
27 WAS INCLUSIVE, THESE WERE THE ONLY BAD THINGS THAT  
28 EVER HAPPENED?

1 A NO. IT WOULDN'T BE MY UNDERSTANDING.  
2 MY UNDERSTANDING WOULD BE THOSE WERE THE ONES THAT  
3 SOMEBODY KNEW SOMETHING ABOUT, HAD BEEN OBSERVED.

4 Q AND REMEMBERED?

5 A YES. AND REMEMBERED.

6 Q DO CHILDREN REMEMBER EVERY ROTTEN THING  
7 THAT'S DONE TO THEM?

8 A CERTAINLY NOT; AND LESS LIKELY TOO, I  
9 SUPPOSE, THE MORE THEY EXPERIENCE IT, IT BECOMES  
10 MORE A PART OF LIFE.

11 Q AND WITH RESPECT TO YOUR CONVERSATIONS  
12 WITH ERIK MENENDEZ, DID YOU PRESENT HIM WITH  
13 INFORMATION ABOUT INCIDENTS THAT OTHER PEOPLE SAW  
14 THAT HE JUST DIDN'T REMEMBER?

15 A YES.

16 Q AND HE DIDN'T ADOPT WHAT OTHER PEOPLE  
17 SAW AND CLAIMED THAT HE REMEMBERED IT, DID HE?

18 A NO, HE DIDN'T.

19 Q ONE OTHER THING I WANT TO DEAL WITH.

20 I ASKED YOU TO DO AN ASSESSMENT OF THE  
21 SEVERITY OF THE PSYCHOLOGICAL MALTREATMENT THAT ERIK  
22 MENENDEZ ENDURED AS A CHILD WITHOUT REFERENCE TO THE  
23 SEXUAL MOLESTATION, CORRECT?



24 A YES.

25 Q I DIDN'T TELL YOU THE SEXUAL MOLESTATION  
26 WASN'T TRUE, DID I?

27 A NO.

28 Q AND YOU DIDN'T FORM THAT OPINION, DID

53772

1 YOU?

2 A NO.

3 Q IT WAS SIMPLY TO SHOW THAT THE  
4 SURROUNDING ENVIRONMENT ALL BY ITSELF WAS HARMFUL?

5 A YES.

6 Q IF, IN FACT, SEXUAL MOLESTATION HAD  
7 NEVER HAPPENED TO HIM, HE WOULD NEVERTHELESS, IN ALL  
8 LIKELIHOOD, HAVE BEEN SERIOUSLY DAMAGED BY ALL THE  
9 REST OF IT?

10 MR. CONN: OBJECTION. LEADING.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: DID YOU FORM THE  
13 OPINION ABOUT WHETHER, IF SEXUAL MOLESTATION HAD  
14 NEVER HAPPENED TO HIM, WOULD HE HAVE BEEN SERIOUSLY  
15 DAMAGED BY ALL THE REST?

16 A YES.

17 Q IS TREATING A CHILD LIKE A RACEHORSE, A  
18 LOVING KIND OF PARENTING?

19 A I SUPPOSE IT WOULD DEPEND ON HOW YOU  
20 TREATED YOUR RACEHORSE. IF YOUR RACEHORSE IS BEING  
21 SIMPLY CONDITIONED FOR RUNNING TO WIN PRIZES FOR  
22 YOU, THAT WOULD NOT -- IT WOULDN'T BE A LOVING  
23 RELATIONSHIP; AND, OF COURSE, HUMAN BEINGS TAKE MUCH  
24 MORE THAN RACEHORSES TAKE TO UNDERSTAND THAT THEY'RE  
25 LOVED.

26 Q WE DON'T USUALLY THINK OF ASKING A  
27 RACEHORSE IF THEY WANT TO RUN?  
28 THE COURT: OKAY. LET'S GET ON TO SOMETHING

53773

1 ELSE, PLEASE.

2 Q BY MS. ABRAMSON: YOU WERE ASKED BY  
3 MR. CONN HOW TO EXPLAIN THE FACT THAT ERIK MENENDEZ  
4 WAS ACCEPTED AT COLLEGE.

5 DO YOU RECALL THOSE QUESTIONS?

6 A YES.

7 Q IS THERE -- DID YOU DETECT A PATTERN  
8 THROUGHOUT THE MATERIALS THAT INDICATED THAT ERIK  
9 MENENDEZ IS AN EXTREMELY HARD WORKER?

10 A YES.

11 Q AND WAS IT YOUR UNDERSTANDING THAT HIS  
12 SCORES ON THE S.A.T.'S WERE REALLY QUITE HIGH?

13 A YES. THAT'S MY UNDERSTANDING.

14 Q AND WAS IT YOUR UNDERSTANDING THAT AT  
15 THE TIME THAT HE APPLIED, IN 1989, HE WOULD HAVE HAD  
16 A BETTER CHANCE OF ACCEPTANCE AT THE UNIVERSITY OF  
17 CALIFORNIA DESIGNATED AS A HISPANIC STUDENT THAN AS  
18 AN ANGLO ONE?

19 A THAT WOULD BE MY EXPECTATION.

20 Q AND IT IS YOUR UNDERSTANDING, IS IT NOT,  
21 THAT HIS APPLICATION TO U.C. (SIC) DID SO DESIGNATE  
22 HIM AS CUBAN-AMERICAN?

23 A YES.

24 Q WHICH, IN FACT, IS WHAT HE IS?

25 A YES.

26 Q IS THE FACT THAT, IN YOUR OPINION, ERIK  
27 MENENDEZ IS REASONABLY INTELLIGENT -- DOES THAT, IN  
28 YOUR OPINION, MEAN THAT HE IS CAPABLE OF GROWTH AND

53774

1 CHANGE MORE THAN SOMEONE WHO, LET'S SAY, WAS LESS  
2 INTELLIGENT?

3 A HAS LESS INTELLIGENCE. YES.

4 Q IS THE FACT THAT HE HAS ALWAYS BEEN A  
5 HARD WORKER AN INDICATION THAT HE IS A PERSON WHO  
6 COULD GROW, COULD CHANGE, COULD PRODUCE EVEN UNDER  
7 DIFFICULT CIRCUMSTANCES?

8 A YES. THE FACT THAT HE'S A HARD WORKER

9 MEANS THAT HE WOULD BE MORE LIKELY TO TAKE ADVANTAGE  
10 OF OPPORTUNITIES TO GROW, TO IMPROVE.

11 MS. ABRAMSON: I HAVE NOTHING FURTHER.

12 THE COURT: ANY FURTHER CROSS?

13 MR. CONN: NO.

14 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU  
15 MAY STEP DOWN. YOU'RE EXCUSED.

16 ALL RIGHT. WE'LL TAKE A RECESS AND  
17 WE'LL RESUME AT 20 MINUTES AFTER THE HOUR.

18 DON'T DISCUSS THE CASE, AND DON'T FORM  
19 ANY FINAL OPINIONS ABOUT IT, AND WE'LL RESUME IN 15  
20 MINUTES.

21 MS. ABRAMSON: I'M SORRY, YOUR HONOR. ONE  
22 OTHER MATTER.

23 THE COURT: WHAT'S THAT?

24 MS. ABRAMSON: THE GUIDELINES.

25 (A RECESS WAS TAKEN FROM  
26 3:05 P.M. TO 3:30 P.M.)

27

28 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE

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1 IN COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

2 ARE WE READY TO PROCEED?

3 MS. ABRAMSON: I WANT TO PUT DR. HART BACK ON

4 JUST TO MARK THE GUIDELINES.

5 THE COURT: OKAY. LET'S GET THE JURY OUT,  
6 PLEASE.

7 (THE JURY ENTERS THE COURTROOM  
8 AND THE FOLLOWING PROCEEDINGS  
9 WERE HELD:)

10

11 THE COURT: THE JURY IS BACK.

12 YOU MAY PROCEED WITH YOUR WITNESS.

13 OKAY. THE WITNESS IS BACK ON THE  
14 WITNESS STAND.

15 MS. ABRAMSON: THANK YOU.

16 Q DR. HART --

17 I HAVE A DOCUMENT, YOUR HONOR, I'D LIKE  
18 TO MARK 461 ENTITLED "APSAC PRACTICE GUIDELINES."

19 THE COURT: ALL RIGHT.

20 Q BY MS. ABRAMSON: DR. HART, DO YOU  
21 RECOGNIZE THAT DOCUMENT?

22 A YES.

23 Q IS THAT A COPY OF THE GUIDELINES FOR  
24 ASSESSING SUSPECTED PSYCHOLOGICAL MALTREATMENT IN  
25 CHILDREN AND ADOLESCENTS THAT YOU WERE TESTIFYING  
26 ABOUT?

27 A YES. YES, IT IS.

28 MS. ABRAMSON: I HAVE NOTHING FURTHER.

1 THE COURT: OKAY. ANYTHING ELSE?

2 MR. CONN: NOTHING FURTHER.

3 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU  
4 MAY STEP DOWN.

5 OKAY. DON'T GO AWAY WITH THAT. THAT'S  
6 AN EXHIBIT.

7 MS. ABRAMSON: YOU KEEP DOING THAT. LET ME  
8 HAVE THAT.

9 THANK YOU.

10 THE COURT: AND YOUR NEXT WITNESS.

11 MS. ABRAMSON: KENNETH DEASY.

12

13 KENNETH DEASY,  
14 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN,  
15 AND TESTIFIED AS FOLLOWS:

16 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
17 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING  
18 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE  
19 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

20 THE WITNESS: I CERTAINLY DO.

21 THE CLERK: THANK YOU. PLEASE TAKE THE STAND  
22 AND STATE YOUR NAME FOR THE RECORD.

23 THE WITNESS: MY NAME IS FATHER KENNETH,  
24 H-AS-IN-HERBERT, DEASY, D-E-A-S-Y.

25 THE CLERK: THANK YOU.

26 ///

27 ///

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1            DIRECT EXAMINATION

2 BY MS. ABRAMSON:

3        Q    FATHER DEASY, YOU ARE A CLERGYMAN?

4        A    I'M A CATHOLIC PRIEST.

5        Q    HOW LONG HAVE YOU BEEN A CATHOLIC  
6 PRIEST?

7        A    THIS IS MY EIGHTH YEAR.

8        Q    AND ARE YOU CURRENTLY THE PASTOR OF A  
9 PARTICULAR CHURCH?

10       A    I WAS JUST APPOINTED PASTOR OF  
11 ST. AGATHA'S, EFFECTIVE JULY 1ST. I'M IN RESIDENCE  
12 NOW THERE AS THE ADMINISTRATOR.

13       Q    AND IN 1988 WERE YOU AN ASSOCIATE PASTOR  
14 AT A CHURCH IN THE SAN FERNANDO VALLEY?

15       A    YES, I WAS. I WAS THE ASSOCIATE PASTOR  
16 OF ST. BERNADINE OF SIENNA, A PARISH IN WOODLAND  
17 HILLS, ON CALVERT AND VALLEY CIRCLE.

18       Q    AND AT SOME POINT WHEN YOU WERE ASSIGNED  
19 TO ST. BERNADINE'S, DID YOU MAKE THE ACQUAINTANCE OF  
20 MR. AND MRS. MENENDEZ?

21       A    YES, I DID.

22       Q    AND DID THEY APPROACH YOU?

23 A YES, THEY DID.

24 Q AND PRIOR TO THE TIME WHEN THEY  
25 APPROACHED YOU, HAD YOU EVER SEEN THEM BEFORE?

26 A NO, I HADN'T.

27 Q WAS THE TIME THAT THEY APPROACHED YOU  
28 THE FIRST TIME YOU HAD EVER SEEN THEM AT YOUR

53778

1 CHURCH?

2 A YES, IT WAS.

3 Q AND AFTER MR. AND MRS. MENENDEZ  
4 APPROACHED YOU AT THAT CHURCH, DID YOU MEET ERIK AND  
5 LYLE MENENDEZ?

6 A YES, I DID.

7 Q AND DID YOU MEET ERIK -- DID YOU TALK TO  
8 ERIK AND LYLE MENENDEZ ON A COUPLE OF OCCASIONS?

9 A YES, I DID. I TALKED TO THEM PRIVATELY  
10 IN MY OFFICE.

11 Q AND SHORTLY AFTER THAT DID THE FAMILY  
12 BASICALLY DISAPPEAR?

13 A YES, THEY DID.

14 Q AND DID YOU KNOW AT THAT TIME WHETHER OR  
15 NOT THE FAMILY HAD MOVED OUT OF THE VALLEY AND INTO  
16 BEVERLY HILLS?

17 A NO IDEA. THEY WERE REMOVED FROM MY



18 MEMORY. WASN'T AN ISSUE. I MET THEM ONCE A FEW  
19 TIMES. LIFE WENT ON.

20 Q SO THIS FAMILY APPEARED AND THIS FAMILY  
21 DISAPPEARED?

22 A YEAH. YEAH.

23 Q AND AT SOME POINT DID YOU HEAR ABOUT THE  
24 DEATHS OF MR. AND MRS. MENENDEZ?

25 A YES, I DID.

26 Q AND AT THAT TIME, WHEN YOU FIRST HEARD  
27 ABOUT THEIR DEATHS, DID YOU CONNECT THEM WITH THAT  
28 FAMILY THAT YOU HAD FLEETINGLY MET?

53779

1 A NO, I DIDN'T.

2 Q SUBSEQUENT TO THAT, TO THE TIME WHEN YOU  
3 HEARD ABOUT THE MENENDEZ HOMICIDES, DID YOU RECEIVE  
4 A TELEPHONE MESSAGE FROM A WOMAN NAMED MARTA CANO?

5 A I DID.

6 Q AND DID YOU RETURN HER CALL AT SOME  
7 POINT?

8 A AT SOME POINT I DID, YES.

9 Q AND DID YOU LEARN FROM HER THAT SHE WAS  
10 THE AUNT OF ONE OF THE TWO YOUNG MEN YOU HAD MET  
11 FROM THAT FAMILY BACK AT ST. BERNADINE'S?

12 A THE AUNT OF BOTH.

13 Q RIGHT. AND WAS SHE RELAYING A MESSAGE

14 TO YOU THAT ERIK MENENDEZ WISHED TO SEE YOU?

15 A YES, SHE WAS.

16 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

17 THE COURT: OVERRULED.

18 Q BY MS. ABRAMSON: AND WAS THIS MESSAGE

19 THAT YOU RECEIVED FROM MRS. CANO SHORTLY AFTER ERIK

20 MENENDEZ HAD BEEN ARRESTED?

21 A WITHIN THE WEEK.

22 Q AND AFTER RECEIVING THAT MESSAGE FROM

23 MRS. CANO, DID YOU GO TO THE LOS ANGELES COUNTY JAIL

24 TO MEET WITH ERIK MENENDEZ?

25 A YES, I DID. THAT WAS MY FIRST TIME

26 THERE.

27 Q FIRST TIME YOU HAD EVER BEEN TO THAT

28 JAIL?

53780

1 A EVER BEEN IN COUNTY JAIL. I'D BEEN

2 INVOLVED IN DETENTION WORK FOR THE LAST TWO YEARS AT

3 JUVENILE DETENTION FACILITIES AS AN EXTRA THING,

4 CAMP MILLER AND CAMP KILPATRICK, JUVENILE HALL

5 SYLMAR, JUVENILE HALL DOWNTOWN. I HAD NEVER BEEN TO

6 MEN'S CENTRAL JAIL. SO I HAD NO IDEA HOW TO GET IN.

7 Q AND JUST CONCERNING THIS DETENTION WORK,

8 YOU WOULD VISIT VARIOUS JUVENILES WHO WERE BEING  
9 HELD IN CUSTODY AT THESE VARIOUS DETENTION  
10 FACILITIES?

11 A IT'S MY EXTRA THING. IT'S DEFINITELY  
12 NOT A HOBBY. IT'S A REAL PASSION OF MINE, A LOVE OF  
13 MINE, VISITING DETAINED YOUTH.

14 Q AND GIVING THEM RELIGIOUS COUNSELING AND  
15 MORAL SUPPORT?

16 A CONSISTENT FRIENDSHIP, ALSO WHEN THEY  
17 GET OUT. THAT'S BEEN THE RECENT CHALLENGE, WHEN  
18 THEY GET OUT. WHEN YOU'RE BACK OUT IN THE WORLD  
19 IT'S RATHER DISTRACTING TO FALL BACK INTO THINGS,  
20 AND I HAVE TRIED TO TAKE ONE OR TWO OR THREE UNDER  
21 MY WING AND TRY TO, YOU KNOW, BE WITH THEM, SUPPORT  
22 THEM, NOT JUST PROVIDE FOR THEM. THEY HAD THAT.  
23 BUT SOMEONE SO LISTEN TO THEM AND TALK TO THEM AND  
24 DIRECT THEM, TO KIND OF GET THEM GOING AGAIN.

25 Q AND TO ADJUST TO LIFE AND REMAIN FREE?

26 A FROM PROBLEMS.

27 Q ANTISOCIAL BEHAVIOR AND PROBLEMS?

28 A YEAH. TRY TO TEACH REAL FAMILY, AS

53781

1 OPPOSED TO GANGS.

2 Q NOW, WITH RESPECT TO ERIK MENENDEZ,

3 AFTER THE FIRST TIME THAT YOU WENT TO THE  
4 LOS ANGELES COUNTY JAIL TO MEET WITH HIM, WERE THERE  
5 OTHER OCCASIONS WHEN YOU MET WITH HIM? DID YOU KEEP  
6 GOING WAS THE QUESTION.

7 A OH. YEAH. ABSOLUTELY. YEAH. I'VE  
8 BEEN WITH ERIK MENENDEZ FOR SIX AND A HALF YEARS,  
9 SEVEN CHRISTMASES. THIS WILL BE THE SEVENTH EASTER.

10 Q AND HAVE YOU MET WITH HIM REGULARLY AT  
11 THE JAIL, OR MORE OR LESS REGULARLY?

12 A YES, I HAVE. ONCE I FIGURED OUT HOW TO  
13 GET IN. THANKS TO SISTER ELIZABETH AND TEACHING ME  
14 THE ROUTINE OF GOING TO THE ATTORNEY ROOM AND THINGS  
15 LIKE THAT; AND FOR AN EXTREME AMOUNT OF PATIENCE AND  
16 WAITING, I FINALLY GOT INTO THE SYSTEM.

17 AS A MATTER OF FACT, I'M A REGULAR  
18 VOLUNTEER THERE NOW, TRY TO BE NOW, WITH FATHER  
19 GEORGE HORAN AT THE CHAPLAIN'S OFFICE THERE.

20 Q MY QUEST WAS, YOU KEPT ON GOING TO SEE  
21 ERIK MENENDEZ, CORRECT?

22 A YES.

23 Q NOW YOU'RE VISITING WITH OTHER INMATES  
24 AS WELL?

25 A MORE SO IN DETENTION NOW. I HAVE GONE  
26 BACK AND DONE GOOD FRIDAY SERVICES, LIKE IS COMING  
27 UP, AND SPECIAL COUNSELING SERVICES; AND NOW THAT  
28 I'M IN A NEW PARISH, I CAN GO BACK AND SPEND MORE

1 TIME.

2 Q YOU ALSO MENTIONED THAT THERE IS A  
3 REGULAR CHAPLAIN ASSIGNED TO THE LOS ANGELES COUNTY  
4 JAIL?

5 A THERE'S A CATHOLIC CHAPLAINCY OFFICE  
6 THERE.

7 Q FATHER GEORGE, WHO'S THE REGULAR  
8 CHAPLAIN, IS IN THE AUDIENCE?

9 A FATHER GEORGE IS ONE OF THEM, ONE OF THE  
10 CHAPLAINS.

11 Q FOR THE PAST SIX YEARS OR SO THAT YOU'VE  
12 BEEN VISITING ERIK MENENDEZ, THAT WAS NOT IN A ROLE  
13 THAT WAS ASSIGNED TO YOU BY YOUR SUPERIOR?

14 A NOT AT ALL, NOT AT ALL. IT WAS  
15 DIFFICULT TO FIT IN. IT WAS TOUGH TO MAKE THE TIME.

16 Q HOW FREQUENTLY HAVE YOU BEEN SEEING HIM  
17 OVER THESE SIX YEARS ON AVERAGE?

18 A AT THE MONTHLY; AT THE MOST, SOMETIMES  
19 THREE TIMES A MONTH.

20 Q NOW, FATHER DEASY, THERE IS A SACRAMENT  
21 OF CONFESSION WITHIN THE CATHOLIC CHURCH, IS THERE  
22 NOT?

23 A YES, THERE IS.

24 Q AND YOU ARE PROHIBITED AS A ROMAN  
25 CATHOLIC PRIEST FROM EVER REVEALING, NOT ONLY THE

26 CONTENTS OF WHAT IS SAID TO YOU DURING CONFESSION,  
27 BUT EVEN WHETHER OR NOT YOU HAVE PARTICIPATED IN  
28 THAT SACRAMENT WITH THE PARTICULAR PERSON; IS THAT

53783

1 TRUE?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. AND YOU UNDERSTAND THAT I'M  
4 NOT GOING TO ASK YOU ABOUT ANYTHING THAT MAY HAVE  
5 HAPPENED WITHIN THE CONTEXT OF THAT SACRAMENT OF  
6 CONFESSION, RIGHT?

7 A I WOULDN'T RESPOND EVEN IF YOU DID,  
8 YEAH.

9 Q HAVE YOU HAD NUMEROUS DISCUSSIONS WITH  
10 ERIK MENENDEZ THAT WERE NOT COVERED BY THE  
11 PENITENT-PRIEST PRIVILEGE OF THE SACRAMENT OF  
12 CONFESSION?

13 A A SIX-AND-A-HALF-YEAR LONG CONFESSION  
14 WOULD BE A LITTLE ROUGH.

15 Q SO YOU'VE TALKED TO HIM A LOT OUTSIDE OF  
16 THAT FORMAL STRUCTURE?

17 A IF I WAS VISITING YOU AT COUNTY JAIL AND  
18 I HAD HEARD YOUR CONFESSION, IT WOULD TAKE MAYBE 20  
19 MINUTES, IF AN HOUR.

20 THE COURT: YOU DON'T KNOW MS. ABRAMSON.

21 (LAUGHTER).  
22 LET'S GO ON TO SOMETHING ELSE.  
23 THE WITNESS: THEN THERE'S YOURSELF.  
24 MS. ABRAMSON: THANK YOU, JUDGE, FOR THAT  
25 VOTE OF EXTREME CONFIDENCE.  
26 THE COURT: I'VE BEEN WAITING FOR FIVE  
27 MONTHS.  
28 (LAUGHTER)

53784

1  
2 MS. ABRAMSON: IS THAT WHAT YOU WERE WAITING  
3 FOR? I SHOULD HAVE LET YOU DO THAT A LONG TIME AGO.  
4 THE COURT: YOUR NEXT QUESTION.  
5 Q BY MS. ABRAMSON: OKAY. LET ME ASK YOU  
6 THIS, FATHER DEASY.  
7 WHEN YOU FIRST STARTED VISITING ERIK  
8 MENENDEZ, DID HE HAVE A DIFFERENT DEMEANOR AND DID  
9 HE CONVEY, THROUGH HIS DEMEANOR, A PARTICULAR  
10 EMOTIONAL STATE THAT WAS OBSERVABLE TO YOU?  
11 A WHEN I FIRST OBSERVED ERIK IN THE  
12 ATTORNEY ROOM HE WAS VERY SENSITIVE. AS SOON AS HE  
13 SAW ME HE STARTED TO CRY, AND OPENLY, AND WAS VERY  
14 EMBARRASSED ABOUT THAT; AND, OF COURSE, THE NATURAL  
15 REACTION FOR ME IS TO REACH OUT TO TRY TO COMFORT

16 THE PERSON, AND I'M NOT ALLOWED TO DO THAT IN THE  
17 ATTORNEY ROOM.

18 SO IT WAS DIFFICULT. AND THE MORE I  
19 COULDN'T RESPOND, THE MORE HE BEGAN TO CRY. AND HE  
20 WAS JUST VERY, VERY GLAD THAT I CAME.

21 AND THAT'S THE EXTENT OF IT AT THAT  
22 TIME, AT THAT FIRST MEETING.

23 Q AND WERE THERE SUBSEQUENT MEETINGS WHERE  
24 HE WAS ALSO VERY EMOTIONAL?

25 A YES, THERE WERE.

26 Q AND DID YOU DETERMINE WHAT WAS THE  
27 FEELING, OR WHAT WAS BOTHERING HIM THAT WAS MAKING  
28 HIM CRY SO?

53785

1 A HE WAS SCARED. VERY MUCH ALONE. I  
2 THINK HE WAS OVERWHELMED AT THE FACT THAT PERHAPS --  
3 A NEW RELATIONSHIP IN HIS LIFE OF SOME SORT, BECAUSE  
4 I, IN MEETING WITH HIM THE FIRST TIME, WAS SAYING --  
5 I TOLD HIM WHY I WAS THERE. I WAS THERE BECAUSE HE  
6 ASKED ME TO COME. I WAS NOT THERE TO ASK WHETHER HE  
7 DID IT OR DIDN'T DO IT.

8 IT'S NOT AN ISSUE FOR ME OR MY FATHER IN  
9 THIS REGARD. WHEN SOMEONE IS IN PRISON YOU VISIT  
10 THEM, GUILTY OR NOT. THERE'S STILL MERCY AND LOVE;



11 AND OBVIOUSLY, NOT CONDONING THE CRIME.

12 THE MORE I WOULD TALK ABOUT THAT I JUST

13 WANT TO BE PRESENT, I WANT TO BE HERE FOR YOU. TELL

14 ME WHAT YOU WANT TO TELL ME, WHAT YOU DON'T WANT,

15 THAT SEEMED TO TOUCH HIM RATHER DEEPLY.

16 Q DID HE AT SOME POINT DURING THESE

17 CONVERSATIONS TELL YOU THAT HE HAD KILLED HIS

18 PARENTS?

19 A IN SIX AND A HALF YEARS? DID HE AT SOME

20 POINT --

21 Q WELL, DID EARLY ON OR -- I DON'T KNOW

22 WHEN -- BUT DID HE TELL YOU THAT HE KILLED HIS

23 PARENTS?

24 A EVENTUALLY HE DID TELL ME, IN A CASUAL

25 CONVERSATION, THAT HE DID KILL HIS PARENTS, YEAH.

26 Q AND WHEN HE TALKED ABOUT THAT, DID HE

27 CRY THEN AS WELL?

28 A VERY MUCH SO. AS A MATTER OF FACT, THAT

53786

1 WAS ABOUT THE END OF THE CONVERSATION, UNTIL OUR

2 NEXT VISIT. I HAD TO GO. IT WAS VERY -- HE WAS

3 CRYING A LOT AND -- JUST CRYING A LOT. FELT BADLY.

4 ASKING, DOES GOD FORGIVE ME? DOES MY MOM AND DAD

5 FORGIVE ME? DA-DAH, DA-DAH, DA-DAH, DA-DAH, AND I

6 WAS JUST LISTENING, BEING PRESENT, BEING

7 COMFORTING.

8 WE WERE IN A PRIVATE ROOM, SO I WAS ABLE

9 TO REACH OUT AND GRAB HIS ARM, AND VERY COMFORTING

10 TO HIM. AND WE WENT ON THEN, AT ANOTHER VISIT, AT

11 SOME OTHER TIME, TO DEAL WITH IT MORE SPECIFICALLY.

12 Q DO YOU REMEMBER WHEN IT WAS, WHAT WEEK

13 OR MONTH IT WAS AFTER YOU FIRST STARTED VISITING

14 HIM, THAT YOU HAD THAT FIRST CONVERSATION ABOUT

15 KILLING HIS PARENTS AND HIS CONCERNS ABOUT

16 FORGIVENESS?

17 A IT WAS RATHER QUICKLY. THE SENSE AND

18 NEED TO TALK -- THE SENSE AND THE NEED TO TRUST

19 SEEMED TO HAPPEN RATHER QUICKLY ONCE THAT HAPPENED.

20 AND SINCE THAT HAS HAPPENED, THERE HAS BEEN

21 OPENNESS.

22 Q AND WHEN YOU SAY "RATHER QUICKLY," WOULD

23 THAT HAVE BEEN ONE OF YOUR FIRST FEW VISITS?

24 A DEFINE FEW. I'M SORRY. AFTER LISTENING

25 ALL DAY, I'M SKEPTICAL OF SAYING ANYTHING.

26 Q JUST RELAX.

27 A FEW WOULD BE THE FIRST THREE TO FIVE.

28 A YEAH. YES.

1 Q AND HAVE YOU CONTINUED TO TALK WITH HIM  
2 ABOUT -- WELL, FIRST OF ALL, HAVE YOU TALKED WITH HIM  
3 ABOUT SPIRITUAL AND RELIGIOUS MATTERS OVER THE  
4 COURSE OF THESE SIX YEARS?

5 A I SURE HOPE SO. I HAVE NO OTHER REASON  
6 TO GO. I'M NOT THERE FOR THE FOOD.

7 WE DID QUITE A BIT; MORE SO THAN I CAN  
8 GET SOMETIMES FROM THE AVERAGE PERSON. VERY OPEN AS  
9 TO LEARN, TO WONDER, ASKS A LOT OF QUESTIONS. A LOT  
10 OF QUESTIONS AT FIRST.

11 NOW SOMETIMES I THINK I'M ASKING HIM  
12 SOME QUESTIONS. HE READS A LOT.

13 Q WAS HE ASKING QUESTIONS ABOUT  
14 CATHOLICISM, ASKING QUESTIONS ABOUT PEOPLE'S  
15 RELATIONSHIP TO GOD, ASKING QUESTIONS ABOUT MERCY  
16 FORGIVENESS?

17 A HE WASN'T TALKING SO MUCH ABOUT  
18 RELIGION, BUT TALKING ABOUT SPIRITUALITY.

19 SOMETIMES I THINK WE CONFUSE THE TWO.  
20 PEOPLE CAN BE VERY RELIGIOUS AND NOT HAVE A  
21 SPIRITUAL LIFE. THEY CAN KNOW RELIGION BACKWARDS  
22 AND FORWARDS AND PERHAPS NOT KNOW THE LORD, AND  
23 VICE-VERSA.

24 I THINK, IN THIS CASE, HE WASN'T LOOKING  
25 FOR THE AFFIRMATION OR CONDEMNATION OF RELIGION, AS  
26 MUCH AS IN REGARDS TO GOD AND WHO'S GOD? AND WHY IS  
27 GOD? AND WHICH ULTIMATELY CAME TO WHAT IS LOVE?

28 Q AND IS THIS SOMETHING THAT SEEMED TO

1 PREOCCUPY A LOT OF HIS THOUGHTS, THOUGHTS ABOUT GOD  
2 AND HIS RELATIONSHIP TO GOD?

3 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

4 THE COURT: OVERRULED.

5 MS. ABRAMSON: YOU CAN ANSWER.

6 THE WITNESS: YES. WE TALK ABOUT THAT, BUT  
7 NOT JUST LIKE GOD OUT THERE. IT'S GOD IN HERE  
8 (INDICATING), IN RELATIONSHIPS ESPECIALLY, IN  
9 FORGIVENESS. EVEN MORE SO IN RECONCILIATION. YOU  
10 KNOW, THE DIFFERENCE -- FORGIVENESS IS, YOU KNOW,  
11 I'M SORRY.

12 RECONCILIATION IS CAN THE RELATIONSHIP  
13 BE WHERE IT IS AFTER THE FACT? I MEAN, EVEN THOUGH  
14 I SAID I'M SORRY, AND I HOPE YOU FORGIVE ME, ARE WE  
15 STILL IN THE SAME RELATIONSHIP? AM I STILL YOUR  
16 SON? DOES GOD STILL LOVE ME? DOES HE HOLD IT  
17 AGAINST ME? THAT TYPE OF STUFF. YEAH.

18 Q SO THESE DISCUSSIONS ABOUT FORGIVENESS  
19 AND RECONCILIATION, HE IS CONCERNED WITH GOD'S  
20 FORGIVENESS AND RECONCILING HIM TO HAVE A  
21 RELATIONSHIP WITH GOD WHERE GOD'S ACCEPTING HIM?

22 A I THINK WHEN I GO TO JAIL, IN GENERAL,  
23 WHERE MOST PEOPLE THERE ARE, YOU KNOW, GUILTY OR  
24 FEELING CONDEMNED OR WAITING TO BE, I THINK IT'S

25 REALLY IMPORTANT -- AT LEAST FOR MY FAITH -- IS TO  
26 BRING A MESSAGE OF: YOU'RE GUILTY, BUT YOU CAN  
27 STILL GROW.  
28       THERE'S STILL GROWTH. THERE'S STILL --

53789

1 THE CHURCH WORD IS CONVERSION. THERE'S STILL  
2 REALIZATION OF THE POTENTIAL ONE HAS WITHIN THEM,  
3 WHICH I THINK IS BASICALLY GOOD FOR ALL OF US.  
4       WE GET DISTRACTED OR MESSED UP OR SICK,  
5 AND SOMETIMES IT'S NOT JUST THE OBJECTIVE ACT. IT'S  
6 LIKE IN THE INTERNAL ACT, WHAT MAKES A PERSON DO  
7 WHAT THEY DO, AND JUST TRYING TO LET HIM VENT THE  
8 PAIN OF WHAT HE DID, EVEN THOUGH, TO THIS DAY, I  
9 STILL CAN'T ENVISION HIM DOING THAT.  
10       BUT THAT'S NOT HERE NOR THERE. I'M  
11 SORRY. BUT...

12     Q   DOES HE VENT -- DOES HE TALK ABOUT THE  
13 PAIN THAT HE EXPERIENCES FOR HAVING DONE THIS?

14     A   OH, YEAH. YEAH. ABSOLUTELY.

15     Q   HAVE YOU TRIED TO CONVINCE HIM OR  
16 PERSUADE HIM THAT GOD HAS FORGIVEN HIM?

17     A   I'VE TRIED TO DISCUSS WITH HIM THAT  
18 GOD'S FORGIVENESS -- DON'T LIMIT GOD'S FORGIVENESS  
19 TO OUR INABILITY TO FORGIVE ONE ANOTHER. DON'T

20 TRANSFER OUR OWN ANGER, OUR OWN PREJUDICES ONTO GOD,  
21 WHO'S UNCONDITIONAL LOVE.  
22 OF COURSE, YOU CAN HEAR THAT, AND THAT'S  
23 WORDS. SO WHAT I HAVE TRIED TO DO, AT HIS  
24 INVITATION, AS I PERCEIVED WHAT HE WAS ASKING FOR,  
25 IS THERE A POSSIBILITY OF -- DON'T JUST SAY OKAY,  
26 GOD FORGIVES ME. THAT'S THE RIGHT TEXTBOOK ANSWER,  
27 AND WALK AWAY, YOU KNOW. TOUCH ME IN THE MORNING.  
28 BOOM.

53790

1 IT'S MORE, WILL YOU STILL BE  
2 CONSISTENT? WILL YOU STILL BELIEVE IN ME?  
3 SO HE WAS LOOKING FOR BELIEF IN GOD, BUT  
4 ALSO, I THINK, JUST SOMEONE ELSE TO BELIEVE IN AND  
5 GET NOTHING IN RETURN.  
6 Q AND THAT SOMEONE ELSE WAS YOU?  
7 A I HAVE BEEN TOLD THAT BY HIM, YEAH.  
8 Q AND DO YOU BELIEVE HE'S STILL IN THE  
9 PROCESS OF ACCEPTING THE CONCEPT THAT GOD WOULD  
10 FORGIVE HIM?  
11 A GOD AND US.  
12 Q AND IS HE CONCERNED -- AND I THINK  
13 YOU'VE MENTIONED THIS -- IS HE TRYING TO FIND SOME  
14 WAY TO BELIEVE THAT HIS MOTHER AND FATHER FORGIVE

15 HIM?

16 A DEFINITELY. PAINFULLY. DEFINITELY.

17 MS. ABRAMSON: I HAVE NOTHING FURTHER.

18 THE COURT: CROSS-EXAMINATION?

19

20 CROSS-EXAMINATION

21 BY MR. CONN:

22 Q WHEN WAS THE FIRST TIME THAT YOU HAD  
23 CONTACT WITH THE MENENDEZ FAMILY?

24 A 1988, AROUND THERE. I DON'T KNOW THE  
25 EXACT DATE. I WAS AT ST. BERNADINE'S.

26 Q WHAT WAS THE CIRCUMSTANCES OF THAT  
27 CONTACT?

28 A THEY WERE AT CHURCH. MR. AND MRS.

53791

1 MENENDEZ WERE FIRST AT CHURCH.

2 Q HOW OFTEN DID YOU SEE THEM IN CHURCH?

3 A FOUR TIMES. THEY'RE EASY TO PICK OUT,  
4 THE FOUR OR FIVE TIMES. THEY WORE A SUIT AND TIE.

5 Q FOUR OR FIVE TIMES IN 1988?

6 A I THINK SO, YEAH. TWO MONTHS MAYBE.

7 Q AND WHEN THEY ATTENDED CHURCH, DID THEY  
8 ATTEND CHURCH WITH THEIR SONS?

9 A UH-HUH.

10 Q SO THE FOUR OF THEM WOULD GO TO CHURCH

11 TOGETHER?

12 A I MET THEM -- THE FIRST TIME THEY WERE

13 BY THEMSELVES, AND THEN THE REST OF THE TIMES THEY

14 WERE TOGETHER WITH BOTH BOYS, YEAH.

15 Q AND DID YOU MEET ERIK MENENDEZ AT THAT

16 TIME, IN 1988 -- WERE YOU INTRODUCED TO HIM?

17 A UH-HUH.

18 Q AND DID HE EVER HAVE ANY CONTACT WITH

19 YOU IN 1988 OR 1989, OTHER THAN SEEING YOU IN CHURCH

20 ON THOSE FOUR OCCASIONS?

21 A THAT'S IT. UNTIL JAIL.

22 Q AND THEN IT WAS A WEEK AFTER HIS ARREST

23 THAT MARTA CANO CONTACTED YOU AND SAID THAT HE

24 WANTED TO TALK TO YOU; IS THAT CORRECT?

25 A APPROXIMATELY A WEEK, YEAH.

26 Q AND YOU DISCUSSED WITH HIM, YOU SAID,

27 HIS PAIN OVER WHAT HE DID OUTSIDE THE CONFESSIONAL

28 SETTING; IS THAT CORRECT?

53792

1 A ABSOLUTELY.

2 Q AND DID HE TELL YOU WHY HE KILLED HIS

3 PARENTS?

4 A EVENTUALLY.



5 Q WHAT DID HE TELL YOU?

6 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
7 OBJECT. THIS IS BEYOND THE SCOPE.

8 THE COURT: OVERRULED.

9 THE WITNESS: HE EVENTUALLY TOLD ME THAT HE  
10 HAD BEEN AFRAID OF HIS PARENTS; THAT HE HAD BEEN  
11 HURT BY HIS PARENTS; THAT HE HAD BEEN MOLESTED BY  
12 HIS PARENTS, HIS FATHER. EXCUSE ME.

13 Q BY MR. CONN: AND DID HE TELL YOU THAT  
14 BEFORE HE TESTIFIED IN THIS CASE, OR AFTER HE  
15 TESTIFIED?

16 A OH, WAY BEFORE, YEARS BEFORE.

17 Q AND DID YOU TELL HIM, BEFORE HE  
18 TESTIFIED, THAT HE SHOULD TELL THE TRUTH WHEN HE  
19 TESTIFIES?

20 A ABSOLUTELY.

21 Q AND SINCE THE TIME OF HIS TESTIMONY, ARE  
22 YOU STILL CONTINUING TO MEET WITH HIM?

23 A UH-HUH. ABSOLUTELY.

24 Q AND HAS HE EVER CHANGED HIS STORY AS TO  
25 WHY HE KILLED HIS PARENTS?

26 A NEVER. BUT THAT'S NOT WHAT WE'VE ALWAYS  
27 TALKED ABOUT EITHER. WE DON'T GO BACK TO THAT A  
28 LOT. YOU KNOW, I MEAN, WE DON'T GO BACK TO THAT A

1 LOT. WE TALK ABOUT EXISTING IN JAIL. WHAT IS LIFE?

2 WHAT IS FRIENDSHIP? IS THERE DIGNITY IN PRISON? IS

3 THERE SOME TYPE OF DIGNITY HE CAN BRING TO HIS WOUND

4 AND HELP OTHERS? IS THERE A POSSIBILITY OF

5 HEALING? IS THERE A POSSIBILITY OF ACCEPTING?

6 OH, YEAH. WHY GO BACK THERE? WE DON'T

7 GO BACK THERE A LOT.

8 IN REGARDS TO WHAT'S A MUTUAL GOD? WHAT

9 IS FRIENDSHIP? WHAT IS DIGNITY AND POVERTY? WHAT

10 IS PRAYER? WHAT IS LOVE? WE SPEND -- I GOT A LITTLE

11 KICK OUT OF TALKING -- LISTENING TO THE DISCUSSION

12 ABOUT LOVE EARLIER, AS IF IT WAS JUST BLANKET, LIKE

13 EVERYONE GETS LOVE THE SAME WAY.

14 Q MY QUESTION IS ONLY WHAT HE SAID

15 REGARDING THE KILLING IN THIS CASE.

16 A YEAH.

17 Q DID HE INDICATE TO YOU THAT HE WAS

18 AFRAID THAT HIS PARENTS WERE GOING TO KILL HIM AT

19 THE MOMENT THAT HE SHOT HIS PARENTS?

20 A YES, HE DID.

21 Q ESSENTIALLY, WHAT YOU'RE SAYING IS THAT

22 EVEN IN HIS PRIVATE MOMENTS WITH YOU, HE REPEATED TO

23 YOU THE SAME STORY THAT HE TOLD TO THIS JURY?

24 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,

25 YOUR HONOR.

26 THE COURT: CALLS FOR A CONCLUSION ON THE

27 PART OF THE WITNESS.

53794

1 Q BY MR. CONN: WERE YOU PRESENT DURING  
2 HIS TESTIMONY IN COURT?

3 A SOME OF IT.

4 Q AND DID YOU HEAR HIS BASIC STORY AS TO  
5 WHY HE KILLED HIS PARENTS?

6 A NOT NECESSARILY IN COURT. SOME OF IT.

7 Q BUT --

8 A YOU KNOW, I'VE BEEN LIVING WITH THIS FOR  
9 SO LONG, I DON'T KNOW WHAT I'VE HEARD IN COURT AND  
10 WHAT I HAVEN'T HEARD IN COURT.

11 Q I'M ONLY ASKING YOU ABOUT ONE ASPECT OF  
12 HIS TESTIMONY; THAT IS, THE REASON WHY HE KILLED HIS  
13 PARENTS.

14 IS IT YOUR TESTIMONY THAT EVEN IN  
15 PRIVATE MOMENTS WITH YOU, THE STORY THAT HE GAVE FOR  
16 KILLING HIS PARENTS IS THE SAME STORY THAT HE GAVE  
17 TO THIS JURY?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
19 FOR SPECULATION AS TO WHAT HE GAVE. HE TESTIFIED  
20 FOR 15 DAYS.

21 THE COURT: SUSTAINED AS TO THE FORM OF THE  
22 QUESTION.

23 WE DON'T HAVE A FOUNDATION TO THIS  
24 WITNESS' OPINION.  
25 Q BY MR. CONN: DID YOU HEAR THAT PORTION  
26 OF HIS TESTIMONY IN WHICH ERIK MENENDEZ SAID THAT ON  
27 AUGUST THE 20TH OF 1989 HE KILLED HIS PARENTS  
28 BECAUSE HE BELIEVED THAT AT ANY MOMENT HIS PARENTS

53795

1 WERE GOING TO KILL HIM?

2 A I CANNOT RECALL NECESSARILY BEING  
3 PRESENT IN THIS ROOM AND HEARING THAT TESTIMONY.

4 Q IS THAT YOUR UNDERSTANDING OF WHAT HE  
5 TESTIFIED TO?

6 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,  
7 YOUR HONOR. IT'S IRRELEVANT WHAT HIS UNDERSTANDING  
8 WAS OF WHAT HE TESTIFIED TO.

9 THE COURT: SUSTAINED.

10 Q BY MR. CONN: IS IT YOUR TESTIMONY THAT  
11 ERIK MENENDEZ HAS ALWAYS MAINTAINED TO YOU THAT HE  
12 KILLED HIS PARENTS ON AUGUST THE 20TH OF 1989  
13 BECAUSE HE FEARED THAT AT ANY MOMENT HIS PARENTS  
14 WERE GOING TO KILL HIM?

15 A WHEN I MET ERIK MENENDEZ I TOLD HIM FROM  
16 DAY ONE: THERE'S NO REASON NOT TO BE OPEN WITH ME.  
17 THERE'S NO REASON TO LIE TO ME, BECAUSE WHEN IT

18 COMES TO THE TRIAL PART OF IT, I'M NOT GOING TO SAY  
19 ANYTHING.  
20 AS A MATTER OF FACT, I'M SURPRISED I'M  
21 EVEN SITTING HERE TODAY. THERE WAS ABSOLUTELY NO  
22 REASON THAT ANYONE SAY ANYTHING TO ME THAT'S NOT THE  
23 TRUTH.  
24 THAT WAS THE DEAL. HASN'T BEEN TILL  
25 RECENTLY I'VE CHANGED MY MIND, SINCE THE VERDICT.  
26 SINCE THAT TIME, THERE'S NO REASON -- AND OBVIOUSLY  
27 THE COURT -- OR THE THINGS THAT HAVE COME ON --  
28 THE COURT: YOU'RE REALLY NOT RESPONDING TO

53796

1 THE QUESTION. LET'S HAVE THE QUESTION READ BACK.  
2 WHY DON'T YOU JUST ANSWER THE QUESTION,  
3 OR YOU CAN REPEAT IT IF YOU WISH.  
4 LET'S HAVE IT READ.  
5 MR. CONN: YES.  
6 Q MY QUESTION TO YOU IS: IS IT YOUR  
7 TESTIMONY THAT ERIK MENENDEZ, IN HIS CONVERSATIONS  
8 WITH YOU, HAS ALWAYS MAINTAINED THAT THE REASON WHY  
9 HE KILLED HIS PARENTS ON AUGUST THE 20TH OF 1989 IS  
10 BECAUSE HE BELIEVED THAT HIS FATHER AND MOTHER WERE  
11 ABOUT TO KILL HIM AT THAT VERY MOMENT?  
12 A WHAT I'M TESTIFYING IS THAT ERIK

13 MENENDEZ FEARED FOR HIS LIFE BECAUSE OF A HISTORY OF  
14 MOLESTATION AND ABUSE, EMOTIONAL AND PHYSICAL.

15 THE COURT: ARE YOU TESTIFYING THAT'S WHAT HE  
16 TOLD YOU? THAT'S THE QUESTION. WAIT. STOP FOR A  
17 SECOND. JUST STOP. LISTEN TO THE QUESTION.

18 THE ANSWER'S STRICKEN.

19 IT'S A VERY SIMPLE QUESTION. THE  
20 QUESTION IS WHAT IT WAS THAT ERIK MENENDEZ TOLD YOU  
21 WAS THE REASON WHY HE KILLED HIS PARENTS. THAT'S  
22 THE QUESTION.

23 THE WITNESS: OKAY.

24 THE COURT: HAS IT ALWAYS BEEN THE SAME?

25 THE WITNESS: YES, IT HAS BEEN.

26 Q BY MR. CONN: CAN YOU TELL US WHAT THAT  
27 IS?

28 A OKAY. IT WAS BECAUSE HE WAS BEING HURT,

53797

1 MOLESTED, ABUSED, BY HIS PARENTS, EMOTIONALLY AND  
2 PHYSICAL, NOT GREED.

3 Q DID HE EVER INDICATE TO YOU THAT THE  
4 REASON WHY HE KILLED HIS PARENTS WAS BECAUSE HE  
5 FEARED AT THAT VERY MOMENT THAT HIS PARENTS WERE  
6 ABOUT TO KILL HIM?

7 A AT THAT VERY MOMENT?

8 Q YES.

9 A I CAN'T RECALL. I GUESS SO. YEAH.

10 I'VE JUST -- I'VE NEVER SAT IN FRONT OF HIM AND  
11 DRILLED HIM, YOU KNOW. I SAT AND I LISTENED; AND  
12 FRANKLY, YOU KNOW, I'M NOT A RECORDER.

13 AGAIN, IF IT'S AT THAT MOMENT,  
14 INSTANTANEOUS, BA-BOOM, NO.

15 EVENTUALLY, AS TIME WENT ON WE TALKED  
16 ABOUT THINGS MORE. THAT IS WHAT I AM TESTIFYING TO;  
17 THAT IN TIME, AS I LEARNED IT, HE UNFORTUNATELY  
18 KILLED HIS PARENTS BECAUSE HE FEARED HIS LIFE.

19 Q BUT HE DIDN'T FEAR HIS LIFE AT THAT  
20 MOMENT; IS THAT WHAT YOU'RE SAYING? HE NEVER  
21 CLAIMED TO YOU THAT HE KILLED HIS PARENTS BECAUSE HE  
22 FEARED HIS LIFE WAS ABOUT TO BE TAKEN AT THAT  
23 MOMENT?

24 A YES. I'M SAYING HE HAS, BUT IT WASN'T  
25 IMMEDIATE, I MEAN, IN MY RECOLLECTION OF IT ALL.

26 THE COURT: WHAT WASN'T IMMEDIATE?

27 THE WITNESS: LIKE THE FIRST TIME WE MEET AND  
28 I SAY EVERYTHING AT ONCE. IT WAS A LONG

53798

1 BLOSSOMING. IT WASN'T JUST AN OFF-THE-CUFF FRANK  
2 STATEMENT. IT WASN'T A TESTIMONY. IT WAS A LONG,

3 LONG CONVERSATION, AFTER WHICH -- WITH QUESTIONS  
4 BEING ASKED, CRYING, SYMPATHY, TRYING TO AFFIRM I'M  
5 HEARING HIM; THAT EVENTUALLY IN THAT CONVERSATION HE  
6 HAD FEARED FOR HIS LIFE AT THAT MOMENT.

7 Q BY MR. CONN: AND THAT THE WAY HE HAS --  
8 HE NEVER CHANGED FROM THAT STORY, FROM THE TIME HE  
9 TOLD YOU THAT?

10 A NO.

11 Q EITHER BEFORE OR AFTER HIS TESTIMONY, HE  
12 HAS ALWAYS STUCK TO THAT STORY; IS THAT CORRECT?

13 A I HAVEN'T TALKED TO HIM ABOUT IT AFTER  
14 HIS TESTIMONY.

15 MR. CONN: THANK YOU.

16 I HAVE NO FURTHER QUESTIONS.

17 THE COURT: ANYTHING ELSE?

18 MS. ABRAMSON: YES. JUST BRIEFLY.

19

20 REDIRECT EXAMINATION

21 BY MS. ABRAMSON:

22 Q HE NEVER DESCRIBED TO YOU, DID HE,  
23 FATHER DEASY, ALL THE CIRCUMSTANCES THAT OCCURRED  
24 DURING THE WEEKS AND MONTHS AND DAYS BEFORE HIS  
25 PARENTS WERE KILLED, DID HE?

26 A I HAD LEARNED ABOUT THEM. I DON'T KNOW  
27 IF EXACTLY HE TOLD ME.

28 Q WELL, THIS WHOLE TRIAL WAS TELEVISED AND



1 PUBLICIZED LAST TIME?

2 A YEAH.

3 Q I DO WANT YOU TO FOCUS ON --

4 A WE DID TALK ABOUT -- EVERYTHING I HEARD

5 OR READ OR SAW, ON THE TELEPHONE, WE TALKED ABOUT

6 IT.

7 Q HE WASN'T TRYING TO GIVE YOU A

8 BLOW-BY-BLOW OF EVERYTHING THAT HAPPENED?

9 A NOT AT ALL.

10 Q AND YOU NEVER TAKE NOTES?

11 A NO.

12 Q AND HE WASN'T TRYING TO TELL YOU ABOUT

13 ANY PARTICULAR FACT OR FACTS?

14 MR. CONN: OBJECTION.

15 THE COURT: SUSTAINED.

16 Q BY MS. ABRAMSON: WAS HE TRYING TO

17 PERSUADE YOU OF ANYTHING?

18 THE COURT: REPHRASE THE QUESTION.

19 Q BY MS. ABRAMSON: DID HE SEEM, IN THE

20 WAY HE SPOKE TO YOU, THAT HE WAS TRYING TO CONVINCE

21 OR PERSUADE YOU OF ANYTHING?

22 A NEVER.

23 Q TO THE BEST OF YOUR RECOLLECTION, WHEN

24 YOU DID TALK ABOUT THIS, HE TOLD YOU THAT AT THE

25 TIME HE KILLED HIS PARENTS HE WAS IN FEAR FOR HIS

26 LIFE FROM THEM?

27 A CORRECT.

28 Q AND HE'S NEVER BEEN INCONSISTENT?

53800

1 A NEVER, NOT ONCE.

2 Q AND YOU BELIEVE HIM, DON'T YOU?

3 A VERY MUCH SO.

4 MS. ABRAMSON: NOTHING FURTHER. --

5 THE COURT: ANYTHING ELSE?

6 MR. CONN: NO, YOUR HONOR.

7 THE COURT: OKAY. THANK YOU, SIR. YOU MAY  
8 STEP DOWN.

9 YOUR NEXT WITNESS.

10 MS. ABRAMSON: DR. VICARY.

11 THE COURT: IS HE HERE?

12 MS. ABRAMSON: YES.

13 THE COURT: OKAY.

14 MS. ABRAMSON: NO. I WAS GOING TO CALL HIM  
15 AND HE'S NOT HERE.

16 THE COURT: I DON'T KNOW. I HAVEN'T SEEN  
17 HIM.

18 MS. ABRAMSON: HE'S OUTSIDE. I'LL GET HIM.

19

20 WILLIAM VICARY,

21 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN,

22 AND TESTIFIED AS FOLLOWS:

23 THE CLERK: RAISE YOUR RIGHT HAND TO BE  
24 SWORN.

25 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY  
26 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS  
27 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
28 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

53801

1 THE WITNESS: I DO.

2 THE CLERK: PLEASE BE SEATED.

3 PLEASE TAKE THE STAND AND STATE YOUR  
4 NAME FOR THE RECORD.

5 THE WITNESS: WILLIAM VICARY, V-I-C-A-R-Y.

6 THE CLERK: THANK YOU.

7

8 DIRECT EXAMINATION

9 BY MS. ABRAMSON:

10 Q DR. VICARY, PREVIOUSLY WE'VE GONE  
11 THROUGH YOUR CREDENTIALS, BUT JUST TO REMIND THE  
12 JURY OF YOUR OCCUPATION.

13 A I'M A PSYCHIATRIST, SPECIALIZING IN  
14 LEGAL OR FORENSIC PSYCHIATRY.

15 Q AND YOU HAVE BEEN A PSYCHIATRIST FOR  
16 ERIK MENENDEZ FOR HOW LONG?

17 A SINCE JUNE OF 1990.

18 Q AND WOULD YOU DESCRIBE FOR THE JURY WHAT  
19 YOU OBSERVED AS A PSYCHIATRIST WHEN YOU FIRST  
20 STARTED SEEING AND TREATING ERIK MENENDEZ.

21 A SYMPTOMS OF ANXIETY AND DEPRESSION  
22 PRIMARILY.

23 Q AND HOW WOULD YOU CHARACTERIZE THOSE  
24 SYMPTOMS ON A SCALE OF MILD TO SEVERE?

25 A THEY WERE MODERATE TO SEVERE.

26 Q AND WHAT DO SYMPTOMS ANXIETY AND  
27 DEPRESSION -- WHAT CAN THEY LOOK LIKE? WHAT DID YOU  
28 SEE?

53802

1 A TREMBLING, NOT BEING ABLE TO SLEEP,  
2 UNCONTROLLABLE TEARFUL EPISODES, SUICIDAL IDEAS,  
3 NIGHTMARES, IDEAS THAT PEOPLE WERE PERSECUTING HIM,  
4 AND SO FORTH. THAT WOULD CARRY OVER FROM HIS  
5 DREAMS.

6 HEARING HIS PARENTS' VOICES AT NIGHT IN  
7 HIS CELL.

8 Q AND DID YOU MAKE A DETERMINATION AT THAT  
9 TIME THAT HE NEEDED SOME MEDICAL -- MEDICATION  
10 ASSISTANCE TO DEAL WITH ALL THESE SYMPTOMS?

11 A YES. I THOUGHT THAT HE WAS ON THE VERGE

12 OF A NERVOUS BREAKDOWN, AND THAT HE HAD TO BE PLACED  
13 ON MEDICATION.

14 Q WHAT'S A NERVOUS BREAKDOWN?

15 A WELL, THAT'S A FANCY WAY -- OR A NOT A  
16 FANCY WAY, BUT A SIMPLE WAY OF DESCRIBING SOMEBODY  
17 GOING OVER THE EDGE, HAVING WHAT WE CALL A PSYCHOTIC  
18 BREAK.

19 WHEN YOU HAVE A PSYCHOTIC BREAK AND YOU  
20 LOSE TOUCH WITH REALITY, YOU HAVE TO BE  
21 HOSPITALIZED.

22 Q AND YOU FELT THERE WAS A CHANCE THAT  
23 THAT WAS GOING TO HAPPEN TO HIM?

24 A YEAH. IT ALREADY SEEMED TO BE  
25 HAPPENING.

26 Q AND DID YOU HAVE AN OPINION AS TO WHAT  
27 WAS CAUSING HIS EXTREME MENTAL CONDITION?

28 A IT WAS MY HUNCH AT THE BEGINNING THAT IT

53803

1 WAS PRIMARILY JUST THE CIRCUMSTANCES OF HIM BEING IN  
2 THE JAIL AND BEING CHARGED WITH CAPITAL MURDER.

3 Q AND DID THAT REMAIN YOUR SUSPICION?

4 A I ALWAYS BELIEVED THAT THAT WAS PART OF  
5 THE STORY. INFORMATION CAME OUT LATER THAT SEEMED  
6 TO INDICATE THAT HE HAD BEEN HAVING TROUBLES,

7 SERIOUS SYMPTOMS FOR MANY, MANY YEARS. IT WASN'T  
8 JUST MY SEEING HIM AT THAT PARTICULAR TIME AT THE  
9 JAIL, BUT THAT HE HAD -- FOR EXAMPLE, HE HAD BEEN  
10 HAVING IDEAS ABOUT KILLING HIMSELF FOR YEARS. HE  
11 HAD BEEN HAVING DIFFICULTY SLEEPING, ANXIETY.

12 Q NOW, YOU'RE FAMILIAR WITH DR. JOHN  
13 WILSON AND THE DIAGNOSIS THAT HE FORMULATED WITH  
14 RESPECT TO ERIK MENENDEZ?

15 A YES.

16 Q AND DO YOU AGREE WITH DR. WILSON'S  
17 DIAGNOSIS THAT ERIK MENENDEZ IS SUFFERING FROM  
18 POST-TRAUMATIC STRESS DISORDER?

19 A YES. GIVEN ALL OF THE HISTORY IN THE  
20 CASE, I WOULD SAY THAT THAT'S A REASONABLE  
21 DIAGNOSIS.

22 Q AND GIVEN ALL THE SYMPTOMS THAT YOU SAW,  
23 AND HAVE CONTINUED TO SEE AND DEAL WITH OVER THE  
24 YEARS, IS THE SYMPTOMATOLOGY THAT YOU'RE AWARE OF  
25 CONSISTENT WITH POST-TRAUMATIC STRESS DISORDER?

26 A YES.

27 Q AND HOW MANY HOURS HAVE YOU SPENT WITH  
28 ERIK MENENDEZ?

53804

1 A OH, A TOTAL, PROBABLY A HUNDRED AND

2 TWENTY-FIVE, HUNDRED AND THIRTY HOURS.

3 Q AND OVER THAT HUNDRED AND TWENTY-FIVE TO  
4 HUNDRED AND THIRTY HOURS HAVE YOU TALKED ABOUT  
5 THINGS OTHER THAN THE KILLING OF HIS PARENTS?

6 A OF COURSE.

7 Q AND HAVE YOU TALKED ABOUT THAT, HOWEVER,  
8 AS WELL?

9 A YES.

10 Q AND WHEN -- STRIKE THAT.

11 WHEN YOU FIRST STARTED SEEING ERIK  
12 MENENDEZ, WAS THE PURPOSE AT THAT TIME TO EVALUATE  
13 HIS MENTAL CONDITION, FIND OUT DID HE HAVE A MENTAL  
14 DISORDER OR A MENTAL ILLNESS, WHAT IT WAS AND WHAT  
15 MIGHT BE NEEDED FOR TREATMENT?

16 A THAT'S TRUE ANY TIME A PSYCHIATRIST  
17 ENCOUNTERS A PATIENT.

18 Q IN ADDITION TO THAT GOAL OF EVALUATING,  
19 THOUGH, DID YOU, SUBSEQUENT TO THAT, START TO  
20 ACTUALLY GIVE HIM THERAPY, WHICH IS A DIFFERENT  
21 FUNCTION, CORRECT?

22 A YES.

23 Q AND WHAT WAS THE REASON WHY -- YOUR  
24 UNDERSTANDING -- YOU WERE GOING TO GIVE HIM THERAPY?

25 A BECAUSE HE NEEDED IT, AND IT WAS THOUGHT  
26 THAT I WOULD BE AN APPROPRIATE PERSON TO DO THAT.

27 Q AND HOW DID HE NEED IT? WHY DID HE NEED  
28 IT?

1       A   WELL, HE WAS VERY SICK. WITHOUT REGULAR  
2 VISITS AND MEDICATION SUPERVISION, I THINK THAT HE  
3 WOULD EVENTUALLY HAVE TO BE TRANSFERRED TO THE  
4 PSYCHIATRIC HOSPITAL SECTION AT THE JAIL.

5       Q   NOW, HE HAS BEEN ON MEDICATION SINCE  
6 JUNE OF 1990?

7       A   YES. AROUND THAT TIME I PRESCRIBED  
8 MEDICATION, AND HE'S STILL ON SEVERAL MEDICATIONS  
9 CURRENTLY.

10      Q   AND THE LAST TIME THAT YOU SAW HIM WAS  
11 WHEN?

12      A   LAST SATURDAY AFTERNOON.

13      Q   AND IS IT YOUR BELIEF THAT HE WILL HAVE  
14 TO REMAIN ON MEDICATION FOR SOME TIME IN THE FUTURE?

15      A   YES.

16      Q   AND IS THE NEED FOR MEDICATION -- WELL,  
17 WHY DOES HE STILL NEED MEDICATION?

18      A   BECAUSE WITHOUT IT HE WOULD PROBABLY  
19 FALL APART, AND HE'D GET VERY SICK.

20      Q   SO HE STILL SUFFERS FROM A MENTAL  
21 DISORDER, DOES HE NOT?

22      A   YES, HE DOES; A VERY SERIOUS MENTAL  
23 DISORDER.

24      Q   TELL ME HOW, DR. VICARY, SOMEONE



25 SUFFERING FROM A VERY SERIOUS MENTAL DISORDER CAN  
26 NEVERTHELESS TESTIFY FOR 15 DAYS IN A CAPITAL TRIAL  
27 AND NOT BE A BLITHERING IDIOT?  
28 A WELL, ONE REASON IS HE'S BEEN ON QUITE A

53806

1 BIT OF MEDICATION THAT HOLDS HIM TOGETHER.

2 ANOTHER REASON IS THAT HE'S HAD A LOT OF  
3 TREATMENT. HE'S HAD A LOT OF COUNSELING. I'VE  
4 WORKED WITH HIM. THERE HAVE BEEN OTHER EXPERTS THAT  
5 HAVE WORKED WITH HIM, THAT HAVE COUNSELED HIM.

6 THE PSYCHIATRIST THAT'S THE CHIEF AT THE  
7 JAIL HAS HAD MANY VISITS WITH HIM.

8 HE HAS ALSO HAD A GREAT DEAL OF SUPPORT  
9 FROM HIS EXTENDED FAMILY, FROM FRIENDS, REGULAR  
10 VISITS BY A CATHOLIC PRIEST, REGULAR PHONE CALLS  
11 WITH THE FATHER OF A FORMER GIRLFRIEND, WHO'S A  
12 COLLEGE PROFESSOR.

13 AND I THINK THAT HE HAS BEEN RE-PARENTED  
14 BY LESLIE ABRAMSON, WHO HAS GOTTEN TO BE VERY CLOSE  
15 TO HIM AND HAS BEEN VERY SUPPORTIVE AND SYMPATHETIC,  
16 AND ALWAYS THERE FOR HIM, OVER A VERY LONG PERIOD OF  
17 TIME.

18 Q WHAT DOES REPARENTING MEAN?

19 A THE HISTORY IN THIS CASE IS THAT THERE

20 IS A TREMENDOUS AMOUNT OF ABUSE THAT ERIK HAS  
21 SUFFERED AT THE HANDS OF BOTH HIS MOTHER AND HIS  
22 FATHER. AND THAT HE NEVER REALLY DID HAVE A STABLE,  
23 NURTURING, AFFECTIONATE, SUPPORTIVE PARENT.  
24 AND BECAUSE OF ALL THE ABUSE, HE HAD A  
25 WHOLE CLUSTER OF SYMPTOMS OVER TIME, AND TROUBLES;  
26 AND HE BASICALLY WAS GETTING WORSE AND WORSE AND  
27 WORSE, TO THE POINT THAT HE HOPED HE WOULD DIE. HE  
28 COULDN'T STAND ANY MORE OF THE PAIN, AND HE FELT

53807

1 THAT IT WAS HIS FAULT, AND THAT HE WAS WORTHLESS AND  
2 THAT HE WAS STUPID AND THAT HE WOULD NEVER AMOUNT TO  
3 ANYTHING, AND THAT MAYBE IF HE WAS KILLED, THAT  
4 SOMEBODY WOULD SAY SOMETHING NICE ABOUT HIM.

5 Q AND THAT WAS A SET OF THOUGHTS THAT HE  
6 WAS EXPERIENCING AT WHAT POINT IN HIS LIFE?

7 A IN THE YEARS AND MONTHS PRIOR TO THE  
8 HOMICIDES.

9 Q OKAY.

10 A SO THE POINT I'M TRYING MAKE IS THAT HE  
11 NEVER REALLY HAD THE KIND OF PARENTING THAT, PRAISE  
12 GOD, MOST OF US HAVE HAD.

13 THEN IN COMES SOMEONE INTO THE PICTURE  
14 THAT REALLY CARES ABOUT HIM, THAT SEES HIM ALMOST

15 EVERY DAY, WEEK AFTER WEEK, MONTH AFTER MONTH, HAS  
16 LONG CONVERSATIONS, IS VERY SUPPORTIVE, AND THIS  
17 GOES ON FOR A PERIOD OF YEARS.

18 SO THAT, LIKE IT OR NOT, I THINK THAT  
19 YOU BECAME A SURROGATE PARENT FOR ERIK; AND LIKE I  
20 SAY, HE TOOK THAT NURTURING AND HE GOT STRONGER. HE  
21 GOT MORE ASSERTIVE, LESS OUT OF CONTROL, LESS  
22 EMOTIONAL, MORE REFLECTIVE.

23 IN FACT, MAYBE MYSELF AND YOU AND THE  
24 OTHER PEOPLE THAT HAVE WORKED WITH ERIK OVER THE  
25 PAST SIX YEARS OVER-DID IT, AND WE MADE HIM TOO  
26 NORMAL, TO THE EXTENT THAT HE COULD COME HERE ON THE  
27 WITNESS STAND AND TAKE DAY AFTER DAY AFTER DAY OF  
28 VERY TOUGH QUESTIONING, NOT ONLY FROM THE LAWYERS

53808

1 FOR THE DEFENSE, BUT FROM THE PROSECUTION; AND HE  
2 APPEARS LIKE A NORMAL GUY, WITHOUT ALL THAT MANY  
3 PROBLEMS.

4 Q BUT HE ISN'T, IS HE?

5 A HE IS NOT THAT WAY. AND IF WE TOOK AWAY  
6 HIS MEDICATION, AND WE TOOK AWAY HIS REPARENTING AND  
7 ALL THE TREATMENT THAT HE'S HAD, YOU WOULD SEE A  
8 DRAMATICALLY DIFFERENT PERSON.

9 Q YOU TALKED ABOUT HIS BEING OUT OF

10 CONTROL. WAS THAT SOMETHING -- OUT OF CONTROL

11 EMOTIONALLY -- WAS THAT SOMETHING THAT YOU SAW IN

12 THE BEGINNING WHEN YOU STARTED WITH HIM?

13 A YES. IT WAS VERY FRUSTRATING TO ME. I

14 WAS TRYING TO GET INFORMATION FOR HIM -- FROM HIM,

15 AND HE WOULD BE CRYING ONE MINUTE, LAUGHING AND

16 GIDDY THE NEXT MINUTE, TREMBLING, CHEWS HIS

17 FINGERNAILS CONSTANTLY, NOT THINKING IN A

18 CONSISTENT, LOGICAL MANNER, BOUNCING FROM SUBJECT TO

19 SUBJECT.

20 AND IT SEEMED, IF I TRIED TO PUSH HIM,

21 OR I TRIED TO STRUCTURE HIM, THAT HE, LIKE A SEA

22 ANEMONE. I MEAN, YOU'D TOUCH IT, AND IT WOULD JUST

23 COLLAPSE, AND YOU COULDN'T GET ANY INFORMATION OUT

24 OF HIM. WE'D HAVE TO STOP.

25 SO I LEARNED OVER THE WEEKS AND MONTHS

26 THAT THE LESS I PUSHED, THE MORE I GOT. SO I DID

27 WHAT I RARELY DO AS A FORENSIC-TYPE OF

28 PSYCHIATRIST. I DON'T KNOW -- BEING A TREATING

53809

1 DOCTOR -- I DON'T HAVE THE PATIENCE FOR THAT. I

2 DON'T HAVE THE ABILITY TO KIND OF JUST SIT AND KEEP

3 QUIET FOR LONG A PERIOD. I LEARNED TO SHUT UP AND

4 JUST LISTEN TO THE PATIENT.

5           AND EVENTUALLY, HE BECAME MORE  
6 COMFORTABLE, HE FELT LESS THREATENED, HE TRUSTED ME  
7 MORE, AND HE PROVIDED MORE AND MORE INFORMATION.

8       Q   DID HE TELL YOU, IN 1990, THAT HE HAD  
9 BEEN MOLESTED BY HIS FATHER?

10      A   NO, HE DID NOT.

11      Q   WHEN DID HE TELL YOU THAT?

12      A   IT TOOK A PERIOD --

13      Q   LET ME BACK UP. I DON'T THINK YOU HEARD  
14 THE QUESTION. RATHER THAN GO BACK AND FIX IT, YOUR  
15 NOTES INDICATE, DO THEY NOT, THAT AT THE VERY  
16 BEGINNING HE DIDN'T TELL YOU ABOUT BEING MOLESTED BY  
17 HIS FATHER.

18           HE WAS TALKING APPARENTLY ABOUT HOW  
19 BADLY HE FELT ABOUT KILLING HIS PARENTS, CORRECT?

20      A   YES.

21      Q   AT SOME POINT WHILE I WAS ON VACATION --  
22 DO YOU REMEMBER THAT?

23      A   YES.

24      Q   HE TOLD YOU ABOUT IT?

25      A   HE DIDN'T TELL ME THE STORY. HE ONLY  
26 MENTIONED A LITTLE BIT. HE MENTIONED THAT HIS  
27 MOTHER HAD KNOWN HE WAS BEING MOLESTED.

28           THAT'S THE FIRST TIME HE EVER SAID

1 ANYTHING ABOUT THAT. AND THAT WAS APPROXIMATELY  
2 FOUR MONTHS AFTER I FIRST STARTED SEEING HIM.

3 Q THAT WAS IN LATE AUGUST, 1990, WAS IT  
4 NOT?

5 A YES.

6 Q I HAVE MY PLANE TICKET TO PROVE IT.

7 AND I WAS OUT OF THE COUNTRY AT THE  
8 TIME, CORRECT?

9 A YES.

10 Q AND DO YOU RECALL, I CAME BACK FROM THAT  
11 VACATION AND YOU TOLD ME THAT HE HAD STARTED TO  
12 REVEAL, IN A VERY TENTATIVE WAY, INFORMATION ABOUT  
13 SEXUAL ABUSE?

14 A CORRECT.

15 Q NOW, DR. VICARY, DID HE REVEAL TO YOU IN  
16 YOUR DISCUSSIONS WITH HIM HOW HE FELT ABOUT WHAT HE  
17 HAD DONE?

18 A YES.

19 Q AND APART FROM WHAT HE SAID ABOUT HOW HE  
20 FELT, COULD YOU, AS A PSYCHIATRIST, FORM CERTAIN  
21 OPINIONS AND CONCLUSIONS ABOUT HOW HE FELT ABOUT  
22 WHAT HE HAD DONE?

23 A YES.

24 Q AND WHAT WERE YOUR OPINIONS AND  
25 CONCLUSIONS ABOUT HOW HE FELT ABOUT WHAT HE HAD  
26 DONE?

27 A HE FELT TERRIBLE. HE REGRETTED IT  
28 WITHIN A RELATIVELY SHORT PERIOD AFTER THE CRIME

1 ITSELF.

2 Q LIKE MINUTES?

3 A YES. AND IT CONTINUED TO HAUNT HIM AND  
4 TORMENT HIM, AND HE SUFFERED GRIEF AND SELF-LOATHING  
5 AND HATRED, AND IT WAS A SECRET THAT WAS JUST  
6 TWISTING INSIDE OF HIM THAT EVENTUALLY BECAME  
7 UNBEARABLE.

8 Q THE FACT THAT HE HAD KILLED HIS PARENTS  
9 WAS THE SECRET THAT WAS UNBEARABLE?

10 A THAT -- YES.

11 Q AND WAS IT YOUR UNDERSTANDING, IN  
12 TALKING TO HIM AND IN REVIEWING MATERIALS IN THIS  
13 CASE, THAT HE WENT TO SEE DR. OZIEL BECAUSE THIS  
14 SECRET WAS UNBEARABLE?

15 A HE THOUGHT THAT UNLESS HE REACHED OUT  
16 AND TOLD SOMEBODY, THAT HE WAS GOING TO KILL  
17 HIMSELF.

18 Q DR. VICARY, IN TALKING TO YOU OVER THE  
19 YEARS, HAS ERIK MENENDEZ DISCUSSED WITH YOU -- DO YOU  
20 KNOW HIS FAMILY HISTORY, GROWING UP, WHAT HIS  
21 CHILDHOOD WAS LIKE, WHAT HIS FEELINGS ABOUT HIS  
22 PARENTS WERE AT VARIOUS STAGES OF HIS LIFE?

23 A YES, HE HAS.

24 Q AND DID HE EVER USE THE TERM THAT HE WAS  
25 ABUSED?

26 A I DON'T THINK THAT TERM WAS PART OF HIS  
27 VOCABULARY. I THINK LATER IN THE TREATMENT, THAT HE  
28 DID MAKE SOME STATEMENTS ABOUT NOT BEING ABLE TO

53812

1 TAKE THE ABUSE ANYMORE.

2 Q DID HE EVER COMPLAIN TO YOU OR -- WELL,  
3 WHY DON'T YOU TELL US THIS: HOW DID NEGATIVE THINGS  
4 ABOUT HIS PARENTS COME OUT IN THE COURSE OF YOUR  
5 TALKING TO HIM?

6 A A LITTLE BIT AT A TIME. ALWAYS PREFACED  
7 OR FOLLOWED BY STATEMENTS ABOUT HOW HE LOVED THEM  
8 AND HOW MUCH HE RESPECTED THEM AND HOW HE TRIED TO  
9 FORGET THE BAD THINGS THAT WERE HAPPENING IN THE  
10 FAMILY AND THINK ABOUT THE GOOD THINGS.

11 Q THAT'S WHAT HE WAS DOING NOW, AS HE WAS  
12 TALKING TO YOU, OR SINCE THEY WERE DEAD?

13 A HE HAD BEEN DOING THAT, NOT ONLY WHEN HE  
14 WAS TALKING WITH ME, BUT HE HAD TRIED TO DO THAT  
15 DURING HIS LIFE AS A WAY TO SURVIVE.

16 Q TO NOT FOCUS ON THE BAD THINGS?

17 A CORRECT. TO FOCUS ON THE GOOD THINGS  
18 AND TO HOPE THAT THINGS WOULD GET BETTER.



19 Q DID HE EVER PRESENT YOU WITH A LIST OF  
20 ALLEGATIONS OR COMPLAINTS AGAINST HIS PARENTS?

21 A NO.

22 Q DID HE EVER TRY TO PERSUADE YOU THAT HE  
23 HAD BEEN ABUSED BY THEM?

24 A NO. THAT WAS THE PECULIAR BEWILDERING  
25 THING THAT STRUCK ME DURING THE BEGINNING OF THE  
26 COUNSELING WITH HIM, IS THAT HERE HE HAD BEEN  
27 RESPONSIBLE FOR KILLING HIS TWO PARENTS, AND HE WAS  
28 TELLING ME HOW GREAT HIS FATHER WAS AND HOW HIS

53813

1 MOTHER WAS ALSO A GOOD PERSON, BUT THAT SHE JUST  
2 KIND OF WAS BEATEN DOWN AND SHE FELL APART BECAUSE  
3 OF WHAT WAS GOING ON BETWEEN HER AND THE FATHER.

4 Q AND WHEN MORE AND MORE DETAIL ABOUT HIS  
5 DAILY LIFE WITH HIS PARENTS CAME OUT, WERE YOU  
6 POINTING OUT TO HIM THAT THINGS THEY WERE DOING  
7 CONSTITUTE ABUSE?

8 A NO. THAT'S NOT MY JOB.

9 Q OKAY.

10 A I JUST TOOK THE INFORMATION.

11 Q DID HE SEEM TO THINK THAT HIS LIFE WITH  
12 HIS PARENTS WAS THE NORMAL LIFE THAT CHILDREN HAVE?

13 A HE DID FOR MANY YEARS. BUT AS THE

14 MONTHS AND THE YEARS ROLLED BY HE BEGAN TO REALIZE  
15 THAT SOMETHING WAS WRONG, VERY WRONG, AND THAT HE  
16 WAS HAVING MORE AND MORE DISCOMFORT AND PAIN, AND HE  
17 JUST COULDN'T TAKE IT ANYMORE.

18 Q NOW, YOU'RE TALKING ABOUT BEFORE HIS  
19 PARENTS WERE KILLED.

20 I'M TALKING ABOUT THIS: DURING THE  
21 COURSE OF YOUR TALKING TO HIM AFTER THIS OCCURRED,  
22 DID YOU SEE A GROWING AWARENESS ON HIS PART THAT  
23 THINGS THAT HIS PARENTS DID TO HIM, APART FROM  
24 MOLESTATION, WERE NOT NORMAL?

25 A OH, YES. I THINK AS PART OF HIS  
26 TREATMENT HE BEGAN TO SEE THAT MANY OF THE THINGS  
27 THAT HE THOUGHT WERE LOVING AND SUPPORTIVE -- AT  
28 LEAST HE WAS TOLD THAT BY HIS PARENTS AS THEY WERE

53814

1 SLAPPING HIM OR YELLING AT HIM OR DOING ONE THING OR  
2 ANOTHER TO HIM -- THAT THIS WAS NOT NORMAL. THIS  
3 WAS HURTING HIM, AND THAT THIS WAS PART OF A PATTERN  
4 THAT REVEALED WHY HE WAS FALLING APART OVER THE  
5 MONTHS AND YEARS.

6 Q DR. VICARY, YOU HAVE, AS A FORENSIC  
7 PSYCHIATRIST -- HAVE YOU BEEN INVOLVED IN NUMEROUS  
8 HOMICIDE CASES?

9 A YES, I HAVE.

10 Q AND HAVE YOU BEEN INVOLVED IN NUMEROUS  
11 CASES IN WHICH THERE WERE PENALTY TRIALS?

12 A YES.

13 Q AND ARE YOU AWARE -- YOU'RE A LAWYER AS  
14 WELL AS A DOCTOR, CORRECT?

15 A YES.

16 Q ARE YOU AWARE OF THOSE -- WELL, ARE YOU  
17 AWARE OF THE CONCEPT OF MITIGATION?

18 A YES.

19 Q DO YOU, IN ASSESSING ERIK MENENDEZ IN  
20 THIS CASE -- DO YOU HAVE AN OPINION ABOUT CERTAIN  
21 THINGS IN HIS NATURE AND HIS BACKGROUND THAT ARE IN  
22 YOUR OPINION MITIGATING?

23 MR. CONN: OBJECTION. CALLS FOR A LEGAL  
24 CONCLUSION.

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: ARE THERE FACTORS IN  
27 HIS BACKGROUND AND IN HIS PERSONALITY THAT YOU  
28 BELIEVE ARE SIGNIFICANT?

53815

1 A YES.

2 Q AND COULD YOU TELL US WHAT THEY ARE.

3 A WELL, ACTUALLY, I COULD MAKE A LIST OF

4 THEM. THERE'S ONLY FIVE. YOU WANT ME TO MAKE A  
5 LIST?

6 MR. CONN: I WOULD OBJECT TO THIS AS NOT  
7 PROPER EXPERT OPINION FROM THIS WITNESS.

8 THE COURT: WELL, IT'S VAGUE AS TO WHAT IT IS  
9 THAT IS SIGNIFICANT.

10 THE OBJECTION'S SUSTAINED.

11 YOUR NEXT QUESTION, PLEASE.

12 MS. ABRAMSON: SIGNIFICANT IN DEFINING WHO  
13 ERIK MENENDEZ IS RIGHT NOW.

14 MR. CONN: OBJECTION. NOT PROPER EXPERT  
15 OPINION FROM THIS WITNESS.

16 THE COURT: THAT'S VAGUE.

17 MS. ABRAMSON: ALL RIGHT. LET'S DO IT THIS  
18 WAY.

19 Q DID YOU DETERMINE, AS A FORENSIC  
20 PSYCHIATRIST, THAT ERIK MENENDEZ HAD A TRAUMATIC  
21 FAMILY BACKGROUND?

22 A YES.

23 Q AND JUST BRIEFLY -- BECAUSE THE JURY HAS  
24 HEARD A GREAT DEAL ABOUT THIS -- IN YOUR OPINION,  
25 WHAT ARE THE SPECIFICS -- STRIKE THAT.

26 WHAT ARE THE CHARACTERISTICS OF THAT  
27 TRAUMATIC FAMILY BACKGROUND?

28 A THAT THE FATHER WAS SADISTIC,

1 OVERBEARING, DOMINATING, PHYSICALLY, PSYCHOLOGICALLY  
2 AND SEXUALLY ABUSIVE TO ERIK.

3 THE MOTHER WAS DEPRESSED, SUICIDAL,  
4 ERRATIC, OUT OF CONTROL, NEGLECTFUL EARLY ON, AND  
5 PSYCHOLOGICALLY, VERBALLY, AND PHYSICALLY ABUSIVE IN  
6 HER OWN RIGHT; THAT SHE HAD LINKED TOGETHER WITH THE  
7 FATHER OVER THE YEARS, WAS AWARE OF THE ABUSE,  
8 INCLUDING THE SEXUAL ABUSE, AND DECIDED TO CLOSE HER  
9 EYES IN ORDER TO PROTECT THE MARRIAGE AND TO SAVE  
10 HERSELF.

11 Q OKAY. ANY OTHER SIGNIFICANT THINGS YOU  
12 FEEL YOU NEED TO SAY ABOUT HIS TRAUMATIC FAMILY  
13 BACKGROUND?

14 A WELL, I AM TRYING TO BE BRIEF AND TO THE  
15 POINT. I THINK THAT SAYS IT PRETTY CLEARLY.

16 Q YOU'RE AWARE OF DR. HART'S ASSESSMENT OF  
17 THIS FAMILY FOR PSYCHOLOGICAL MALTREATMENT?

18 A YES, I AM.

19 Q AND YOU ACCEPT THE CONCEPT, DO YOU NOT,  
20 DR. VICARY, THAT THERE IS SUCH A THING AS  
21 PSYCHOLOGICAL MALTREATMENT OF CHILDREN?

22 A YES.

23 Q AND THAT IT CAN CAUSE GRAVE HARM?

24 A YES.

25 Q NOW, IN YOUR OPINION, AT THIS POINT IN  
26 TIME, IS ERIK MENENDEZ SUFFERING FROM A MENTAL

27 DISORDER?

28 A YES, HE IS.

53817

1 Q WAS HE SUFFERING FROM A MENTAL DISORDER  
2 AT THE TIME THESE HOMICIDES OCCURRED?

3 A YES.

4 Q WAS HE SUFFERING FROM A MENTAL DISORDER  
5 FOR SOME YEARS BEFORE THE HOMICIDES OCCURRED?

6 A YES.

7 Q NOW, DID YOU REVIEW THE TESTIMONY IN  
8 THIS TRIAL OF DR. PARK DIETZ?

9 A YES, I DID.

10 Q AND DO YOU RECALL DR. DIETZ MADE  
11 REFERENCE TO WHAT HE CALLED CERTAIN PERSONALITY  
12 TRAITS OF ERIK MENENDEZ?

13 A YES.

14 Q AND HE WAS BASING THAT ON SOME 15 HOURS  
15 OF INTERVIEWS?

16 A YES.

17 Q AND YOU'VE INTERVIEWED ERIK MENENDEZ FOR  
18 A HUNDRED AND FIFTY -- OR A HUNDRED AND THIRTY  
19 HOURS?

20 STRIKE THAT.

21 A YES.

22 Q AND COULD YOU DESCRIBE FOR US,  
23 DR. VICARY, WHAT YOU THINK ARE THE SIGNIFICANT  
24 PERSONALITY TRAITS OF THIS YOUNG MAN THAT YOU'VE  
25 BEEN TREATING FOR SIX YEARS.  
26 A THAT HE TENDS TO BE DEPENDENT,  
27 SUGGESTIBLE, EXCESSIVELY EMOTIONAL, IMMATURE; LESS  
28 SO NOW, BY FAR, THAN AT THE BEGINNING, BECAUSE OF

53818

1 HIS TREATMENT AND HIS RE-PARENTING.

2 Q WHAT ABOUT HIS VULNERABILITY TO  
3 VICTIMIZATION?

4 A HE IS A VERY GOOD VICTIM BECAUSE OF  
5 THESE PERSONALITY TRAITS.

6 Q WHAT DOES THAT MEAN? WHAT IS IT TO BE A  
7 GOOD VICTIM?

8 A WELL, THE PERPETRATORS GRAVITATE TOWARDS  
9 INDIVIDUALS LIKE ERIK THAT HAVE THESE KINDS OF  
10 PERSONALITY CHARACTERISTICS, BECAUSE THEY TEND TO BE  
11 WEAK. THEY TEND TO TRUST. THEY TEND TO DO WHAT  
12 AUTHORITY FIGURES TELL THEM TO DO. WHEN THEY'RE  
13 TOLD TO SHUT UP AND NOT TELL ANYBODY, THEY KEEP  
14 THEIR MOUTH SHUT.

15 THEY TEND TO KIND OF SUFFER INSIDE.  
16 THEY DEVELOP SYMPTOMS OF DEPRESSION AND THEY CAN BE

17 VERY SELF-DESTRUCTIVE AND HAVE SUICIDAL IDEAS,  
18 RATHER THAN TO FIGHT BACK, HIT BACK, TELL SOMEBODY,  
19 SCREAM AND COMPLAIN, CAUSE TROUBLE.

20 YOU DON'T WANT THAT KIND OF VICTIM.  
21 THAT'S A BAD VICTIM. THAT KIND OF VICTIM GETS YOU  
22 IN TROUBLE. THAT KIND VICTIM CAN GET YOU ARRESTED  
23 AND SENT TO JAIL.

24 SO YOU WANT TO FIND A WEAK PERSON, A  
25 SUGGESTIBLE PERSON, A TRUSTING PERSON.

26 Q AND WITH RESPECT TO HIS FATHER, DO YOU  
27 HAVE AN OPINION OF WHETHER ERIK MENENDEZ WAS  
28 PRECISELY THAT KIND OF VICTIM?

53819

1 A YES. HE AND HIS FATHER WERE A GOOD FIT  
2 IN TERMS OF VICTIMIZER AND VICTIM.

3 Q NOW, YOU HAVE ALSO, DR. VICARY, BEEN  
4 INVOLVED IN A RELATIVELY LARGE NUMBER OF CASES IN  
5 WHICH CHILDREN HAVE KILLED THEIR PARENTS?

6 A YES, I HAVE.

7 Q THEY'RE AREN'T THAT MANY OF THOSE CASES  
8 IN ANY GIVEN YEAR; WOULD THAT BE A FAIR STATEMENT?

9 A WELL, SURPRISINGLY, AROUND ONE PERCENT,  
10 OR A HALF OF ONE PERCENT OF ALL HOMICIDES.

11 SO IT'S A RELATIVELY SMALL NUMBER. BUT



12 GIVEN THE THOUSANDS AND THOUSANDS OF HOMICIDES, YOU  
13 CAN SEE THAT THERE ARE A SIGNIFICANT NUMBER, EVEN  
14 THOUGH IT'S ONLY ONE PERCENT.

15 Q DOES IT AVERAGE ABOUT 300 A YEAR?

16 A IN THE UNITED STATES?

17 Q YES.

18 A YES.

19 Q AND AS COMPARED WITH ABOUT 3000 CASES OF  
20 PARENTS KILLING CHILDREN A YEAR?

21 MR. CONN: OBJECTION. IRRELEVANT.

22 THE COURT: SUSTAINED.

23 Q BY MS. ABRAMSON: AND WITH RESPECT TO  
24 THOSE PARRICIDE CASES WITH WHICH YOU ARE FAMILIAR,  
25 IS IT COMMON THAT, IN THOSE CASES, THERE HAVE BEEN A  
26 DOCUMENTED HISTORY OF ABUSE OF SOME SORT?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: SUSTAINED.

53820

1 Q BY MS. ABRAMSON: DO VICTIMS STAY  
2 PASSIVE VICTIMS NECESSARILY FOREVER?

3 MR. CONN: OBJECTION. VAGUE AND IRRELEVANT.

4 THE COURT: PERHAPS YOU CAN REPHRASE THE  
5 QUESTION.

6 MS. ABRAMSON: ALL RIGHT.

7 Q YOU'VE INDICATED THAT ERIK MENENDEZ WAS  
8 THE TYPE OF PERSON WHO -- WOULD PASSIVE BE A GOOD  
9 WORD FOR HIM AS WELL?

10 A YES.

11 Q SOMEONE WHO WOULD TAKE VICTIMIZATION AND  
12 TURN IT INWARD?

13 A YES.

14 Q IN YOUR OPINION, DID HE REACH A POINT IN  
15 HIS LIFE WHEN HE COULDN'T TAKE IT ANYMORE?

16 A YES.

17 Q IS THAT A COMMON PHENOMENA AMONG ABUSED  
18 ADOLESCENTS?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 YOU CAN ANSWER THE QUESTION.

22 THE WITNESS: IN SOME CASES, YES.

23 Q BY MS. ABRAMSON: IS THAT A COMMON  
24 PHENOMENON AMONG ABUSED ADOLESCENTS WHO ULTIMATELY  
25 KILL THEIR ABUSERS?

26 A YES, I WOULD SAY THE MAJORITY OF CASES.

27 Q AND ARE THERE DEVELOPMENTAL REASONS,  
28 BEING THE NATURE OF ADOLESCENCE, THAT HELPS ONE

2 HAVE BEEN ABUSED, EVEN FOR A LONG TIME, JUST CAN'T

3 KEEP IT TOGETHER ANYMORE?

4 A THERE ARE SEVERAL REASONS. ONE IS THAT

5 THEY ARE JUST GETTING STRONGER. THEY ARE NOW AT A

6 POINT THAT PHYSICALLY THEY CAN FIGHT BACK, STRIKE

7 BACK. THEY'RE INTELLECTUALLY MORE MATURE. THEY

8 HAVE A GREATER PERSPECTIVE AND AWARENESS OF WHAT'S

9 GOING ON.

10 Q SO THEY UNDERSTAND THAT THEY'RE BEING

11 ABUSED?

12 A YES.

13 Q SO --

14 A AND THERE IS ALSO THE PROCESS THAT'S A

15 NATURAL PART OF ADOLESCENCE, WHERE YOU'RE TRYING TO

16 ESTABLISH YOUR INDEPENDENCE FROM YOUR PARENTS.

17 Q OKAY.

18 THE COURT: HOW MUCH LONGER DO YOU THINK

19 YOU'LL BE?

20 MS. ABRAMSON: A LITTLE BIT LONGER, YOUR

21 HONOR. AND I WOULD -- SINCE HE WON'T BE FINISHED

22 TODAY, I WOULD LIKE TO RECESS.

23 THE COURT: OKAY. WE'LL RECESS UNTIL

24 TOMORROW.

25 THE JURY IS EXCUSED UNTIL TOMORROW AT

26 8:30. DON'T DISCUSS THE --

27 MR. LEVIN: 10:30.

28 MS. ABRAMSON: 10:30.

1 THE COURT: I'M SORRY. I'M SORRY. 10:30.  
2 SORRY. ONE JUROR HAS SOME APPOINTMENTS TOMORROW.  
3 SO 10:30.

4 DON'T DISCUSS THE MATTER WITH ANYONE,  
5 AND DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T  
6 DISCUSS THE CASE WITH ANYONE AT ALL. DON'T PERMIT  
7 YOURSELF TO BE EXPOSED TO ANYTHING ABOUT THE CASE  
8 OUTSIDE THE COURTROOM, AND WE'LL SEE YOU ALL BACK  
9 HERE TOMORROW AT 10:30.

10 MS. ABRAMSON: YOUR HONOR, COULD THE COURT  
11 REMAIN?

12 THE COURT: YES.

13 (THE JURY ENTERED THE JURY ROOM  
14 AND THE FOLLOWING PROCEEDINGS  
15 WERE HELD:)

16

17 THE COURT: ALL RIGHT. THE JURY HAS LEFT.

18 THERE'S SOMETHING COUNSEL WANTED TO  
19 DISCUSS?

20 MS. ABRAMSON: YES, YOUR HONOR.

21 GIVEN THE FACT THAT WE'RE GOING TO --  
22 THIS IS OUR LAST WITNESS, AND I'M GOING TO BE  
23 RESTING, HOPEFULLY, TOMORROW MORNING.

24 BEFORE I DO THAT, THE PEOPLE HAVE NAMED  
25 TWO WITNESSES IN REBUTTAL, AND WE WOULD LIKE AN

26 OFFER OF PROOF. BECAUSE IN OUR VIEW, BASED UPON THE  
27 DISCOVERY THAT'S BEEN GIVEN OVER THE COURSE OF THIS  
28 CASE, NEITHER OF THOSE WITNESSES HAVE RELEVANT OR

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1 APPROPRIATE EVIDENCE TO GIVE AT THIS STAGE OF THE  
2 PENALTY TRIAL.

3 SO WE'D LIKE TO KNOW WHAT IT IS THEY  
4 THINK THEY CAN DO.

5 THE COURT: ARE THE PEOPLE IN A POSITION TO  
6 DO THAT?

7 MR. CONN: YES. IN REGARD TO BRIAN AND  
8 MILTON ANDERSEN, WE ARE GOING TO QUESTION THEM ABOUT  
9 THEIR VIEWS REGARDING THE APPROPRIATENESS OF THE  
10 DEATH PENALTY IN THIS CASE, IN REBUTTAL TO THE  
11 OPINION ELICITED BY THE DEFENSE CONCERNING THE VIEW  
12 OF OTHER WITNESSES' ATTITUDES TOWARDS THE DEATH  
13 PENALTY IN THIS CASE.

14 WE ALSO WISH TO --

15 THE COURT: OKAY. HOLD ON A SECOND.

16 (THE JURY EXITED THE COURTROOM AND  
17 THE FOLLOWING PROCEEDINGS WERE HELD:)

18

19 MR. CONN: WE WILL ALSO BE SEEKING THE  
20 KALAMAZOO VIDEOTAPE THAT WE WISHED TO INTRODUCE IN

21 OUR CASE-IN-CHIEF. I THINK MORE THAN EVER THAT TAPE  
22 IS RELEVANT, BECAUSE IT DEMONSTRATES AND SHEDS A  
23 GREAT DEAL OF LIGHT UPON THE RELATIONSHIP BETWEEN  
24 THE DEFENDANT, ERIK MENENDEZ, AND HIS PARENTS.

25 AND WE WILL ALSO BE CALLING DETECTIVE  
26 ZOELLER, JUST TO REBUT ONE OF THE WITNESSES WHO  
27 TESTIFIED REGARDING CONTACT, TO THE EXTENT TO  
28 WHICH -- I THINK IT WAS TERRY BARALT -- TO IMPEACH

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1 TERRY BARALT CONCERNING THE NATURE OF THE CONTACT  
2 AND THE EFFORTS OF DETECTIVE ZOELLER TO HAVE HER  
3 MEET WITH THE PROSECUTORS IN THIS CASE.

4 THE COURT: OKAY.

5 MS. ABRAMSON: WELL, WE THINK THAT THE REASON  
6 THEY'RE CALLING BRIAN AND MILTON ANDERSEN -- THE  
7 REASON THE PEOPLE HAVE PROPOSED -- IS ABSOLUTELY  
8 PROHIBITED -- IS IT BROOKS? BOOTH?

9 MR. GESSLER: YOUR HONOR, BOOTH VERSUS  
10 MARYLAND STILL IS THE LAW AS TO A MEMBER OF THE  
11 VICTIM'S FAMILY FOR THE PROSECUTION EXPRESSING THEIR  
12 VIEW AS TO WHETHER OR NOT SOMEBODY SHOULD LIVE OR  
13 DIE.

14 THE DEFENSE EVIDENCE THAT WE PRESENTED  
15 BY THE FAMILY MEMBERS, SO FAR AS WAS ALLOWED BY THE

16 COURT -- I BELIEVE TERRY BARALT, AND TO AN EXTENT  
17 MARTA CANO -- WAS ONLY AS TO THE IMPACT IT WOULD  
18 HAVE -- THE DEATH OF THE DEFENDANTS WOULD HAVE ON  
19 THOSE PARTICULAR INDIVIDUALS. THAT'S NOT THE SAME  
20 AS SAYING THAT SOMEBODY FROM THE VICTIM'S FAMILY CAN  
21 COME IN AND SAY: "IT'S MY VIEW THAT I WANT THE DEATH  
22 PENALTY."

23       SECONDLY, BRIAN ANDERSEN AND MILTON  
24 ANDERSEN -- BEING RELATED TO MRS. MENENDEZ -- WE  
25 HAVE NOT CALLED ANYBODY FROM THAT SIDE OF THE FAMILY  
26 IN THIS PENALTY PHASE TO EXPRESS A VIEW AS TO WHAT  
27 THE IMPACT OF EITHER LYLE MENENDEZ OR ERIK MENENDEZ'  
28 DEATH WOULD BE ON THAT BRANCH OF THE FAMILY.

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1       THIS IS SANDBAGGING. IF THEY FELT THAT  
2 THEY HAD VICTIM IMPACT EVIDENCE THAT WAS RELEVANT,  
3 MATERIAL AND ADMISSIBLE, THEN THAT IS A PART, UNDER  
4 THE LAW, OF CIRCUMSTANCES OF THE CASE THAT IS  
5 PRESENTED IN THE PEOPLE'S CASE-IN-CHIEF.

6       AS TO THOSE TWO WITNESSES, THIS IS NOT  
7 PROPER REBUTTAL TO WHAT WE HAVE PUT ON. IT IS  
8 SOMETHING THAT THEY WERE OBLIGATED TO PUT ON IN  
9 THEIR CASE-IN-CHIEF, OR NOT AT ALL.

10       SO I THINK ON BOTH THOSE THEORIES, BOTH

11 THAT IT IS NOW TOO LATE, AND IT SHOULD HAVE BEEN PUT  
12 ON IN THEIR CASE-IN-CHIEF.

13 AND SECONDLY, IT DOES NOT REBUT ANY  
14 EVIDENCE THAT WE HAVE PUT ON FROM THE JOSE MENENDEZ  
15 SIDE OF THE FAMILY AS TO THE IMPACT IT WOULD HAVE ON  
16 THOSE PEOPLE, THAT THIS SHOULD NOT BE ALLOWED.

17 AND THIRDLY, UNDER BOOTH VERSUS MARYLAND  
18 IT IS NOT A PROPER OPINION FOR THEM TO SAY THAT THEY  
19 WANT THE DEATH PENALTY ON EITHER OF THESE TWO YOUNG  
20 MEN.

21 PAYNE VERSUS TENNESSEE, WHICH IS THE  
22 VICTIM IMPACT CASE, SPECIFICALLY SAID WE ARE NOT  
23 GOING TO DEAL WITH THAT PART OF BOOTH VERSUS  
24 MARYLAND, WHICH LEAVES INTACT THE RULE THAT A FAMILY  
25 MEMBER CANNOT COME IN AND SAY: "IT'S MY OPINION THEY  
26 SHOULD RECEIVE DEATH."

27 MS. ABRAMSON: OR "MY HEART WILL BREAK UNLESS  
28 YOU FRY MY NEPHEWS." THAT DOES NOT SEEM TO BE PART

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1 OF WHAT'S PERMITTED. IT'S NOT REALLY VICTIM  
2 IMPACT. IN FACT, FOR THEM TO COME IN NOW AND SAY  
3 WHAT THE LOSS HAS BEEN LIKE FOR THEM -- I JOIN IN  
4 MR. GESSLER'S ARGUMENT THAT THAT'S SANDBAGGING.

5 THAT WAS APPROPRIATE TO DO, IF AT ALL,



6 IN THE PEOPLE'S CASE-IN-CHIEF IN THE PENALTY PHASE.

7 NOW, WITH RESPECT TO THE OTHER THING, IF  
8 YOU WANT TO HEAR THE KALAMAZOO VIDEOTAPE IT IS  
9 UTTERLY IRRELEVANT. PROVES ABSOLUTELY NOTHING. IF  
10 THEY FELT THAT IT WAS RELEVANT TO VICTIM IMPACT, IT  
11 SHOULD HAVE BEEN PRESENTED IN THEIR CASE-IN-CHIEF.

12 AND THE PEOPLE HAVE MADE NO OFFER OF  
13 WHAT IT IS THAT'S SUPPOSEDLY ON THIS VIDEOTAPE.  
14 THIS IS MRS. MENENDEZ. IT'S NOT CLEAR AT WHAT  
15 TIME -- WHO'S HOLDING THE CAMERA. IT'S CLEAR THAT  
16 MRS. MENENDEZ IS PLAYING WITH THIS CAMERA THAT WAS  
17 THE SOURCE OF SO MUCH LITIGATION IN THIS CASE.

18 THE PEOPLE HAVE NOT PINPOINTED WHY  
19 PLAYING THAT VIDEOTAPE HAS ANY PROBATIVE VALUE  
20 WHATSOEVER. AND WE BELIEVE IT'S NOTHING MORE THAN A  
21 BID FOR SYMPATHY BY SHOWING THE VICTIMS IN LIFE,  
22 WHICH THE PEOPLE ALREADY DID BY WAY OF PUTTING IN  
23 PHOTOGRAPHS.

24

25

26

27

28

-11709

1 THE COURT: ALL RIGHT. AS TO THE ISSUE OF

2 TESTIMONY OF THE TWO BROTHERS OF MRS. MENENDEZ, AS TO  
3 ADMISSIBILITY OF THEIR OPINION AS TO WHAT THE  
4 APPROPRIATE PENALTY SHOULD BE, WHAT IS YOUR POSITION,  
5 MR. CONN, AS TO THE AUTHORITY FOR THAT?

6 MR. CONN: WELL, I THINK THAT IT'S APPROPRIATE  
7 REBUTTAL EVIDENCE, BECAUSE THE DEFENSE PRESENTED  
8 EVIDENCE THAT FAMILY MEMBERS WOULD BE DEVASTATED IF THE  
9 DEATH PENALTY WERE TO BE GIVEN IN THIS CASE.

10 WELL, AS BRIAN ANDERSEN AND MILTON ANDERSEN  
11 ARE RELATIVES OF KITTY AND JOSE MENENDEZ, THEY ARE ALSO  
12 RELATIVES OF ERIK AND LYLE MENENDEZ.

13 SO I THINK THAT PROPER REBUTTAL EVIDENCE,  
14 SINCE THE DEFENSE HAS PRESENTED EVIDENCE THAT FAMILY  
15 MEMBERS WOULD BE DEVASTATED, IS THAT FAMILY MEMBERS WILL  
16 NOT BE DEVASTATED BY THE IMPOSITION OF THE DEATH PENALTY  
17 IN THIS CASE, BECAUSE OF THE LOSS TO THE FAMILY; THAT IT  
18 IS A FAIR AND APPROPRIATE PENALTY IN THIS CASE.

19 SO I THINK THAT THIS IS DIRECT REBUTTAL TO  
20 WHAT THEY PRESENTED. IT'S THE EXACT FLIP-SIDE OF THE  
21 SAME COIN.

22 THE COURT: WELL, IT'S ONE THING TO SAY ONE WOULD  
23 NOT BE DEVASTATED. IT'S SOMETHING ELSE TO SAY THAT ONE,  
24 THIS IS THE APPROPRIATE PUNISHMENT, NUMBER ONE.

25 AND NUMBER TWO, THERE IS AN OBVIOUS  
26 DISTINCTION BETWEEN EXPRESSIONS OF THE IMPACT OF THE  
27 DEATH OF THE VICTIMS ON THE FAMILY OF THE VICTIM, AND  
28 THE EXPRESSION OF OPINIONS AS TO THE APPROPRIATENESS OF

1 THE PENALTY.

2 SO THERE ARE DIFFERENT FEATURES OF THIS  
3 OFFER THAT YOU'RE MAKING HERE. ONE IS JUST STRICTLY  
4 VICTIM IMPACT, AND THEN YOU'RE SUGGESTING WE GO BEYOND  
5 THAT, TWO LEVELS:

6 ONE, WHETHER OR NOT THE TWO INDIVIDUALS WHO  
7 WOULD TESTIFY AS MEMBERS OF THE VICTIMS' AND THE  
8 DEFENDANTS' FAMILY WOULD BE DEVASTATED.

9 IN THIS REGARD, THEY WOULD BE TESTIFYING --  
10 I SUPPOSE THE PEOPLE'S OFFER IS -- AS MEMBERS OF THE  
11 VICTIM'S FAMILY, THAT THEY WOULDN'T BE DEVASTATED BY THE  
12 IMPOSITION OF THE DEATH PENALTY.

13 AND THEN SECONDLY WHETHER OR NOT THERE IS  
14 THE APPROPRIATENESS OF THE DEATH PENALTY IN THIS  
15 PARTICULAR CASE. WE MIGHT BE SPLITTING HAIRS HERE, BUT  
16 THERE IS A DISTINCTION BETWEEN THOSE OPINIONS.

17 MR. CONN: WELL, I WOULD ASK THAT THE COURT  
18 ALLOW -- I THINK IT'S DIFFERENT WAYS OF LOOKING AT THE  
19 SAME PRESENTATION OF EVIDENCE, PERHAPS DEPENDING UPON  
20 THE CHOICE OF WORDS.

21 BUT I THINK THAT IT IS APPROPRIATE REBUTTAL  
22 FOR THE PROSECUTION TO BE PERMITTED TO CALL FAMILY  
23 MEMBERS TO TESTIFY IN REGARD TO THE DEATH PENALTY, THE  
24 APPLICATION OF THE DEATH PENALTY IN THIS PARTICULAR  
25 CASE, AND IT CAN BE LOOKED AT SEVERAL DIFFERENT WAYS.

26 THE COURT: FIRST OF ALL, LET ME ASK YOU THIS --

27 AND I DON'T HAVE A CLEAR RECOLLECTION OF IT -- BUT MY

28 INCLINATION IS, FROM WHAT OCCURRED DURING THE

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1 EXAMINATION OF MRS. CANO AND MRS. BARALT, MY  
2 RECOLLECTION IS THAT THEIR OPINION AS TO WHAT THE  
3 APPROPRIATE PUNISHMENT SHOULD BE, THAT SPECIFIC OPINION  
4 AND THEIR ARTICULATION OF IT, MORE ON BEHALF OF  
5 MRS. BARALT PERHAPS THAN MRS. CANO, BUT I BELIEVE AS TO  
6 BOTH, CAME OUT DURING CROSS-EXAMINATION, NOT DURING THE  
7 DIRECT OR REDIRECT EXAMINATION.

8 I COULD BE WRONG. PERHAPS IT WAS PICKED UP  
9 AGAIN ON REDIRECT.

10 BUT MY RECOLLECTION IS THAT, ESPECIALLY AS  
11 TO MRS. BARALT, MOST OF THAT CAME OUT DURING  
12 CROSS-EXAMINATION BY YOU.

13 PERHAPS YOU CAN FOCUS OR DIRECT MY  
14 ATTENTION TO THE SPECIFIC PORTIONS OF THE TRANSCRIPT IN  
15 WHICH THE DEFENSE BROUGHT THAT OUT ON THEIR OWN AS TO  
16 WHAT THOSE WITNESSES FELT WAS THE APPROPRIATE PUNISHMENT  
17 VERSUS HOW IT WAS BROUGHT OUT DURING CROSS-EXAMINATION.

18 AND IF IT WAS BROUGHT OUT DURING  
19 CROSS-EXAMINATION, THAT DOESN'T MEAN THAT THE DEFENSE  
20 HAS OPENED THE DOOR TO REBUTTAL ON THAT. THAT WAS JUST  
21 AN AREA THAT YOU BROUGHT OUT ON YOUR OWN.

22 MR. CONN: I WOULD AGREE WITH THE COURT IF THAT

23 WAS THE CASE, BUT I KNOW THIS WAS SOMETHING THEY BROUGHT  
24 OUT. I SPECIFICALLY OBJECTED.

25 THE COURT: YOU OBJECTED TO WHETHER THE FAMILY  
26 WOULD BE DEVASTATED, OR HOW THE IMPACT OF THE DEATH  
27 PENALTY WOULD BE ON THE FAMILY, AND I INDICATED AT THE  
28 TIME THERE WERE TWO CASES, CALIFORNIA CASES THAT

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1 INDICATED THAT THAT AREA OF INQUIRY WAS UNDECIDED BY THE  
2 CALIFORNIA SUPREME COURT AS TO WHETHER OR NOT IT WAS  
3 ADMISSIBLE.

4 THE SUPREME COURT HAD NOT ADDRESSD THAT  
5 ISSUE, AND I SAID -- I TOLD YOU THERE WAS ONE CASE,  
6 PEOPLE VERSUS COOPER, AND THAT'S AT 53 CAL.3D 844, AND  
7 IT'S FOOTNOTE 14, WHICH -- AND THE SAME ISSUE WAS  
8 ADDRESSED IN PEOPLE VERSUS FIERRO AT 1 CAL.4TH 173 AT  
9 PAGE 241.

10 AND BOTH OF THOSE CASES BASICALLY INDICATE  
11 THAT THE IMPACT OF THE DEATH PENALTY ON THE DEFENDANT'S  
12 FAMILY WAS AN OPEN QUESTION. AND BEING AN OPEN  
13 QUESTION, I FELT SINCE THE SUPREME COURT HAD NOT SAID IT  
14 WASN'T APPROPRIATE IN THOSE CASES WHERE THOSE QUESTIONS  
15 HAD BEEN ASKED, AND THE EVIDENCE WAS INTRODUCED, MY  
16 FEELING WAS THAT IT WAS APPROPRIATE FOR THE DEFENSE TO  
17 BE PERMITTED TO BRING THAT OUT DURING THIS TRIAL.

18 MY QUESTION OF YOU IS WHETHER OR NOT THE

19 QUESTIONS WENT FARTHER THAN THAT, AS TO WHAT SHOULD BE  
20 THE APPROPRIATE PUNISHMENT.

21 AS I SAID BEFORE, WE'RE REALLY SPLITTING  
22 HAIRS HERE, BECAUSE IF SOMEONE SAYS: "WE WOULD BE  
23 DEVASTATED BY THE IMPOSITION OF DEATH," THAT CLEARLY  
24 CARRIES WITH IT THE INFERENCE THAT ONE IS ASKING THE  
25 JURY NOT TO IMPOSE THE DEATH PENALTY. BUT THERE IS A  
26 SLIGHT DISTINCTION THERE ANYWAY.

27 MY QUESTION IS WHETHER OR NOT THE NEXT STEP  
28 OF EXPRESSING AN OPINION AS TO WHAT THE PUNISHMENT

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1 SHOULD BE CAME DURING THE EXAMINATION OF THE PROSECUTION  
2 RATHER THAN BY THE DEFENSE.

3 GENERALLY IN RESPONSE TO THE DEFENSE  
4 ARGUMENTS, IT'S MY ANALYSIS THAT WHAT HAS OCCURRED  
5 DURING THE PENALTY PHASE SO FAR, THAT THIS IS  
6 APPROPRIATE REBUTTAL EVIDENCE IN GENERAL.

7 I DON'T SEE HOW IT COULD NOT BE. YOU BRING  
8 IN MEMBERS OF THE DEFENDANT'S FAMILY, YOU SAY THAT THIS  
9 IS THE VIEW OF THE FAMILY, AND THEN YOU SPLIT IT DOWN  
10 THE MIDDLE AND SAY, "WELL, WE'RE ONLY TALKING ABOUT  
11 ONE-HALF THE FAMILY, AND NOT THE OTHER HALF." I THINK  
12 THAT THIS IS CLEARLY PROPER REBUTTAL.

13 MS. ABRAMSON: JUDGE, I THINK THIS IS ERROR OF  
14 CONSTITUTIONAL DIMENSIONS, BECAUSE THEY'RE NOT BRINGING

15 IN THE DEFENDANT'S -- FIRST OF ALL, I THINK IT WOULD BE  
16 INAPPROPRIATE AGGRAVATING -- AND EVEN INAPPROPRIATE  
17 REBUTTAL FOR THEM TO REACH OUT AND FIND OTHER MEMBERS OF  
18 THE DEFENDANT'S FAMILY IN A CASE WHERE THE VICTIMS WERE  
19 NOT MEMBERS OF THE DEFENDANT'S FAMILY, TO COME ONTO THE  
20 STAND AND SAY THEY'D BE UNHAPPY WITH AN L-WOP, WHICH IS  
21 WHAT THE QUESTIONING IS.

22 THAT WOULD BE ABSOLUTELY INAPPROPRIATE IN A  
23 DEATH CASE TO BRING ON, YOU KNOW, THE DISGRUNTLED SECOND  
24 COUSIN OF SOME CRIMINAL DEFENDANT TO SAY HOW UNHAPPY HE  
25 WOULD BE WITH AN L-WOP, WHICH IS SAYING "I WANT DEATH."

26 I THINK IT'S CLEAR THAT'S NOT ADMISSIBLE.  
27 WELL, IT DOESN'T GET ANYMORE ADMISSIBLE, AND IT DOESN'T  
28 GET ANYMORE --

-11704

1 THE COURT: I AM TALKING ABOUT VICTIM IMPACT  
2 TESTIMONY, NUMBER ONE, WHICH IS CLEARLY ADMISSIBLE.

3 MS. ABRAMSON: IN THEIR CASE-IN-CHIEF, WHICH THEY  
4 DID NOT PUT ON.

5 THE COURT: I HAVE RULED NOW THAT BASED UPON THE  
6 DEFENSE PROFFER OF EVIDENCE, YOU CHOSE TO PUT ON THE  
7 EVIDENCE OF IMPACT --

8 MS. ABRAMSON: OKAY. THAT'S --

9 THE COURT: LET ME FINISH.

10 MS. ABRAMSON: YOU DON'T LET ME FINISH.

11 THE COURT: LET ME FINISH. LET ME FINISH.

12 MS. ABRAMSON: YOU NEVER LET ME FINISH.

13 THE COURT: THAT'S FINE. THAT'S MY ROLE, TO  
14 INTERRUPT COUNSEL, AND YOUR ROLE IS TO LISTEN TO THE  
15 COURT RULE.

16 AND THIS IS AN AREA THAT WAS OPENED UP BY  
17 THE DEFENSE IN THE PENALTY PHASE, AND VICTIM IMPACT  
18 EVIDENCE IS NOW ADMISSIBLE BY THE PROSECUTION IN  
19 REBUTTAL.

20 MS. ABRAMSON: THAT'S NOT THE OFFER.

21 THE COURT: NOW WE'RE TALKING ABOUT THE EXTENT OF  
22 IT, AND THAT'S WHAT WE'RE TALKING ABOUT IT. THAT'S  
23 WHERE IT GOES.

24 MS. ABRAMSON: JUDGE, THEY DIDN'T TALK ABOUT  
25 VICTIM IMPACT. THEY DIDN'T SAY THEY'RE CALLING THESE  
26 WITNESSES TO SAY WHAT THE EFFECT OF THE DEATH OF THE  
27 VICTIM WAS ON THEM. THEY'RE CALLING THEM TO FIND OUT  
28 WHAT THE PARTICULAR IMPACT OF A PARTICULAR SENTENCE ON

-11703

1 THE DEFENDANTS WOULD BE ON THEM, AND THAT IS NOT VICTIM  
2 IMPACT EVIDENCE.

3 THE COURT: WELL, THE UNFORTUNATE ASPECT OF THIS  
4 WAS THE DEFENSE CHOSE TO BRING OUT THIS EVIDENCE ITSELF  
5 DURING ITS PRESENTATION AS TO THE IMPACT ON THE  
6 DEFENDANTS' FAMILY OF HOW DEVASTATED THE DEFENDANTS'



7 FAMILY WOULD BE BY THE IMPOSITION OF THE DEATH PENALTY.

8 MS. ABRAMSON: THAT'S NOT VICTIM IMPACT.

9 THE COURT: NO, BUT YOU'VE GONE BEYOND VICTIM  
10 IMPACT, AND YOU'VE GONE ON TO AN IMPACT ON THE  
11 DEFENDANTS' FAMILY. NO ONE FORCED YOU TO DO THIS. THIS  
12 WAS AN AREA YOU CHOSE.

13 MS. ABRAMSON: I UNDERSTAND THAT, BUT THAT  
14 DOESN'T GIVE THEM A RIGHT TO PROVE THAT KIND OF THING  
15 UP.

16 THE COURT: THEY CAN REFUTE THAT.

17 LET'S ASSUME THERE IS ANOTHER MEMBER OF THE  
18 DEFENDANT'S FAMILY THAT WOULD SAY JUST THE OPPOSITE.

19 MS. ABRAMSON: NO. BOOTH SAYS THE PROSECUTION  
20 CANNOT PUT PEOPLE ON TO SAY THEY NEED THE DEATH PENALTY.

21 THE COURT: BOOTH SAYS THAT IN REGARD TO REBUTTAL  
22 EVIDENCE, AFTER EVIDENCE SUCH AS THIS HAS BEEN  
23 INTRODUCED BY THE DEFENSE.

24 MS. ABRAMSON: I DON'T THINK IT MAKES THE  
25 SLIGHTEST BIT OF DIFFERENCE.

26 FIRST OF ALL, YOUR HONOR, LET'S STAY ON ONE  
27 LINE AT A TIME.

28 THE COURT: LET'S ASK MR. GESSLER.

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1 DO YOU HAVE A CASE WHERE THE DEFENSE HAS  
2 PRESENTED EVIDENCE OF THE IMPACT OF IMPOSITION OF THE

3 DEATH PENALTY ON THE DEFENDANT'S FAMILY, AND THE PEOPLE  
4 HAVE SOUGHT TO INTRODUCE CONTRARY EVIDENCE TO REBUT  
5 THAT?

6 MR. GESSLER: AS FAR AS I KNOW, THERE IS NO SUCH  
7 CASE, YOUR HONOR, BECAUSE IT HASN'T BEEN RAISED INTO A  
8 PROPER COURT OF APPEAL. IT HAS NOT OCCURRED.

9 THE COURT: OKAY.

10 MR. GESSLER: HOWEVER, I WOULD LIKE TO BE HEARD  
11 BRIEFLY ON THIS AGAIN.

12 I THINK WHAT THE WITNESSES SAID, BOTH TERRY  
13 BARALT AND MARTA CANO -- AND THOSE WERE THE ONLY TWO YOU  
14 ALLOWED. AS I RECALL, WE WERE GOING TO ASK A FRIEND,  
15 AND YOU PRECLUDED THAT, AND SAID IT COULD ONLY GO TO THE  
16 FAMILY MEMBERS. I THINK WE WERE GOING TO ASK FAITH  
17 GOLDSMITH, OR ONE OF THE OTHER WITNESSES.

18 THE COURT: THAT'S RIGHT.

19 MR. GESSLER: AND THE COURT PRECLUDED THAT.

20 THE COURT: THAT'S RIGHT.

21 MR. GESSLER: SO THE ONLY TWO TIMES IT HAS COME  
22 UP IN FRONT OF THE JURY AS RELEVANT AND ADMISSIBLE  
23 EVIDENCE IS TERRY BARALT AND MARTA CANO. I BELIEVE THAT  
24 IS THE ONLY TWO WITNESSES THAT HAPPENED.

25 THE COURT: RIGHT.

26 MR. GESSLER: WE DID NOT ASK ALAN ANDERSEN.

27 THE COURT: YOU'RE RIGHT. JUST THOSE TWO.

28 MR. GESSLER: AND I BELIEVE IN EACH CASE, EITHER

1 IT WAS LIMITED BY THE QUESTION, OR BY THE COURT, TO THE  
2 EFFECT IT WOULD HAVE ON THAT PERSON'S FAMILY; THAT IS,  
3 ON TERRY BARALT'S FAMILY AND MARTA CANO'S FAMILY, NOT  
4 QUOTE "THE FAMILY," HOWEVER LARGE AND EXTENDED THAT  
5 MIGHT BE.

6 AND SO I THINK THAT'S THE ESSENCE OF THE  
7 OBJECTION THAT I WAS MAKING, AS TO WHETHER THIS IS  
8 PROPER REBUTTAL, FOR THE PEOPLE TO NOW BRING UP WHAT  
9 WE'D CALL VICTIM IMPACT THROUGH ANOTHER BRANCH OF THE  
10 FAMILY THAT THEY COULD HAVE BROUGHT UP ON DIRECT, IF  
11 THEY WERE GOING TO PUT IT ON. IT IS NOT REBUTTAL TO THE  
12 IMPACT THAT IT WOULD HAVE ON TERRY BARALT'S FAMILY, NOR  
13 ON MARTA CANO'S FAMILY, WHICH IS WHAT WE PUT ON.

14 MS. ABRAMSON: I THINK THERE IS A DISTINCTION  
15 BASED ON THE ROLE, IF YOU WILL, IN THE MENENDEZ FAMILY  
16 OF JOSE MENENDEZ. WE CHOSE TO PUT ON THAT KIND OF  
17 EVIDENCE ONLY THROUGH MEMBERS OF HIS FAMILY, GIVEN HIS  
18 ROLE AS AN ABUSER IN REFERENCE TO HIS OWN CHILDREN.

19 IT'S AN ENTIRELY DIFFERENT THING. AND WE  
20 HAVE NOT PUT ON A WITNESS -- THOUGH WE HAVE ONE WHO  
21 WOULD HAVE TESTIFIED, IF WE HAD CHOSEN TO DO IT -- ON  
22 THE IMPACT ON HER, A MEMBER OF MRS. MENENDEZ' FAMILY, IF  
23 THE DEFENDANTS WERE GIVEN THE DEATH PENALTY.

24 AND WE PURPOSELY DIDN'T CALL THAT WITNESS  
25 SO AS NOT TO OPEN THE DOOR OF THE IMPACT ON  
26 MRS. MENENDEZ'S FAMILY MEMBERS.

27 MY CONCERN, YOUR HONOR, IS THAT WE SEEM TO

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1 THE RIGHT OF A PROSECUTOR TO CALL A MEMBER OF THE  
2 DEFENDANT'S FAMILY TO TALK ABOUT IMPACT OF A PARTICULAR  
3 SENTENCE. THAT'S A COMPLETELY DIFFERENT ISSUE THAN  
4 VICTIM IMPACT.

5 THE COURT: I AGREE. I AGREE.

6 NUMBER ONE, FIRST, JUST TO REPEAT, THE  
7 VICTIM IMPACT EVIDENCE IS CLEARLY, IN MY VIEW, PROPER  
8 REBUTTAL IN THIS CASE.

9 THE DEFENSE HAS INTRODUCED -- AND I DON'T  
10 CARE IF IT WAS ONE SIDE OF THE FAMILY OR THE OTHER SIDE.  
11 THE DEFENSE HAS INTRODUCED EVIDENCE ABOUT HOW THE DEATHS  
12 OF THE VICTIMS AND THE ARREST OF THE DEFENDANTS, EVEN  
13 THE VERDICT OF THE JURY, HAD AN IMPACT ON THE FAMILY OF  
14 THE DEFENDANT.

15 AND I THINK THE PROSECUTION HAS A RIGHT TO  
16 PUT ON EVIDENCE AT THIS STAGE, REBUTTAL EVIDENCE ON THAT  
17 SUBJECT, AND THESE TWO INDIVIDUALS WOULD BE APPROPRIATE  
18 ON THAT ISSUE.

19 MS. ABRAMSON: WELL, HOW DO WE ENVISION --

20 THE COURT: NOW WE'RE GOING BEYOND THAT, AND I  
21 DISAGREE WITH YOU, QUITE CLEARLY.

22 JUST LIMITING IT TO WHAT MR. GESSLER SAID,  
23 IT SEEMS TO ME TO BE CONTRARY TO COMMON SENSE THAT IF A

24 DEFENDANT OFFERS EVIDENCE OF THE IMPACT OF THE  
25 IMPOSITION OF THE DEATH PENALTY ON HIS FAMILY -- AND  
26 LET'S ASSUME THAT THERE IS JUST A FAMILY SEPARATE FROM  
27 THE VICTIM, AND NO RELATIONSHIP TO THE VICTIM AT ALL --  
28 THAT IT WOULD BE PROPER FOR THE PROSECUTION TO OFFER

-11699

1 CONTRARY EVIDENCE FROM MEMBERS OF THAT SAME FAMILY,  
2 ESPECIALLY WHEN SOMEBODY SPEAKS AS A SPOKESPERSON FOR  
3 THE WHOLE FAMILY. WE HAD MRS. CANO -- MRS. BARALT SPEAK  
4 AS THE SPOKESPERSON FOR THE WHOLE FAMILY.

5 MS. ABRAMSON: FOR HER DAUGHTERS.

6 THE COURT: SHE WAS SET UP AS THE SPOKESPERSON  
7 FOR THE ENTIRE FAMILY.

8 MS. ABRAMSON: NO, YOUR HONOR. NO.

9 MS. TOWERY: NO. HER HUSBAND AND DAUGHTERS AND  
10 MOTHER.

11 MS. ABRAMSON: THAT'S ALL SHE SPOKE FOR.

12 THE COURT: SHE SPOKE AS SPOKESPERSON FOR THE  
13 ENTIRE FAMILY.

14 MS. TOWERY: NO SHE WASN'T. JUST FOR HER FAMILY.

15 MR. GESSLER: FOR HER FAMILY, YOUR HONOR. THAT'S  
16 CLEAR THAT'S WHAT IT WAS, HER FAMILY.

17 MS. ABRAMSON: YOUR HONOR, THERE ARE DISTINCTIONS  
18 IN THE LAW IN THIS AREA WHERE THE DEFENSE IS ENTITLED TO  
19 DO THINGS THE PROSECUTION IS NOT. THAT'S WHY THEY ARE

20 LIMITED IN THEIR CASE-IN-CHIEF TO STATUTORY AGGRAVATION,  
21 WHEREAS THE SCOPE OF MITIGATION IS CONSIDERED BROADER.  
22 THE COURT: AND THEN THEY ARE AUTHORIZED TO  
23 INTRODUCE REBUTTAL EVIDENCE. THAT'S WHAT WE'RE TALKING  
24 ABOUT.

25 MS. ABRAMSON: BUT REBUTTAL EVIDENCE WHERE YOU  
26 PUT SOMEONE ON TO SAY "I WANT THEM DEAD," IS STILL  
27 UNCONSTITUTIONAL, NO MATTER WHAT STAGE OF A PENALTY  
28 PHASE IT COMES TO.

-11698

1 IF THE IMPACT IS GOING TO BE "WHAT IS THE  
2 IMPACT OF THE DEATH OF YOUR SISTER ON YOU," THAT'S ONE  
3 THING.

4 BUT TO GO FURTHER AND SAY "HOW WOULD YOU  
5 FEEL IF THE DEFENDANTS DON'T GET THE DEATH PENALTY," I  
6 THINK THAT'S ABSOLUTELY INAPPROPRIATE.

7 THE COURT: ALL RIGHT. WELL, THAT'S THE ISSUE  
8 THAT WE'VE BEEN DISCUSSING.

9 AND WHAT I WILL DO -- FIRST OF ALL, DO YOU  
10 HAVE ANYTHING FURTHER YOU WANTED TO SAY ON THAT SUBJECT?

11 MR. CONN: NO, YOUR HONOR.

12 THE COURT: I WOULD REQUEST THAT THE DEFENSE  
13 PROVIDE THE COURT WITH BOOTH VERSUS MARYLAND AND PAYNE  
14 VERSUS TENNESSEE, AND ANY OTHER CASES THAT DEAL WITH  
15 THAT SPECIFIC SUBJECT AT 8:30 TOMORROW MORNING.

16 I HAVE NOT SEEN THIS, FIRST OF ALL.  
17 AND BEYOND THAT, MY VIEW IS THAT THE --  
18 I'VE SAID THIS SEVERAL TIMES NOW -- THE PURE VICTIM  
19 IMPACT TESTIMONY IS ADMISSIBLE IN REBUTTAL BASED UPON  
20 WHAT HAS BEEN PRESENTED DURING THE DEFENSE EVIDENCE IN  
21 THIS CASE. WE'RE ONLY GOING NOW TO THE SUBJECT OF WHAT,  
22 IF ANYTHING, CAN BE PRESENTED BY THE PROSECUTION BEYOND  
23 THAT, AND I WILL REVIEW THOSE CASES AND HEAR THE  
24 AUTHORITIES THAT EITHER OF THE PARTIES HAVE ON THAT  
25 SUBJECT.

26 AND AS FAR AS THE VIDEOTAPE IS CONCERNED --

27 MS. ABRAMSON: DOES IT HAVE TO BE AT 8:30 VERSUS  
28 9:00, YOUR HONOR, SINCE THERE'S NO JURY HERE UNTIL

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1 10:30?

2 THE COURT: I WOULD LIKE IT HERE AT 8:30.

3 SOMEBODY CAN BRING IT IN.

4 MS. ABRAMSON: OKAY.

5 THE COURT: AS FAR AS THE VIDEOTAPE IS CONCERNED,  
6 I HAVEN'T SEEN IT. I DON'T HAVE ANY IDEA WHAT IT SHOWS,  
7 OR ANYTHING ABOUT IT. SOMEONE IS GOING TO HAVE TO MAKE  
8 IT AVAILABLE SO I CAN SEE IT.

9 DO YOU HAVE IT?

10 MS. NAJERA: YES.

11 MR. CONN: YES. WE WILL DO THAT IN THE MORNING,

12 YOUR HONOR.

13 THE COURT: YOU DON'T HAVE IT NOW?

14 MS. NAJERA: WE DO. WE HAVE IT NOW. DOES THE  
15 COURT HAVE A VIDEOTAPE MACHINE?

16 THE COURT: WELL, I CAN TAKE IT HOME AND LOOK AT  
17 IT. HOW LONG IS IT?

18 MS. NAJERA: IT'S ABOUT 15 MINUTES, YOUR HONOR.

19 THE COURT: AND SOMEONE IS HERE -- WOULD BE HERE  
20 TO TESTIFY AS TO A FOUNDATION FOR IT THAT WAS PRESENT  
21 WHEN IT WAS MADE?

22 MR. CONN: YES. BRIAN ANDERSEN IS PRESENT.

23 MS. NAJERA: HE IS IN IT, IN FACT.

24 THE COURT: AND THAT'S THE TOTALITY OF THE  
25 EVIDENCE TO BE OFFERED BY THE PROSECUTION IN REBUTTAL;  
26 IS THAT RIGHT?

27 MR. CONN: YES.

28 MS. NAJERA: YES.

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1 MS. ABRAMSON: WELL, I JUST WANT TO MAKE SURE  
2 THAT'S THE TOTALITY; THAT THEY'RE NOT ALSO GOING TO TRY  
3 TO TESTIFY TO OTHER BEHAVIORS OF ANY KIND BETWEEN THE  
4 VICTIMS AND THE DEFENDANTS AT ANY TIME. THAT'S NOT WHAT  
5 I'M HEARING THEY'RE OFFERING, AND I WANT TO MAKE SURE  
6 THAT'S RIGHT.

7 MR. CONN: THAT IS CORRECT.



8 MS. NAJERA: THAT IS CORRECT.

9 THE COURT: OKAY.

10 MR. GESSLER: YOUR HONOR, I STILL -- IN THE OFFER  
11 OF PROOF I HEARD ABOUT THEY'RE GOING TO ASK FOR THE  
12 DEATH PENALTY OR WHATEVER, WHICH WE'RE STILL TALKING  
13 ABOUT.

14 BUT I HAVE NOT HEARD ANY OFFER OF PROOF OF  
15 VICTIM IMPACT IN THE TRADITIONAL SENSE THAT THAT'S GOING  
16 TO BE OFFERED, AND I DON'T THINK -- I'D LIKE TO FIRST  
17 HEAR WHAT IT IS, SO THE COURT CAN DECIDE WHETHER THAT'S  
18 REBUTTAL, BECAUSE ALL THE WITNESSES WE PUT ON ALSO SAID  
19 THERE WAS VICTIM IMPACT. THEY HAD TERRIBLE LOSSES.

20 SO I'M NOT SURE THAT ANOTHER TERRIBLE LOSS  
21 IS REBUTTAL TO THE TERRIBLE LOSSES THAT WE BROUGHT OUT  
22 OURSELF.

23 BUT I WOULD LIKE TO HEAR, AND I THINK WE'RE  
24 ENTITLED TO HEAR, AN OFFER OF PROOF SO THAT WE'RE ABLE  
25 TO GO GET, IF NECESSARY, CONTROVERTING WITNESSES ON THAT  
26 VERY POINT.

27 THE COURT: OKAY.

28 MR. GESSLER: IN ADDITION, OF COURSE, WE WOULD

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1 THEN HAVE TO ASK THE COURT FOR FUNDS TO BRING IN THE  
2 OTHER MEMBERS OF THIS PARTICULAR FAMILY TO COME BACK AND  
3 TALK TO THE COURT, IF THIS IS OFFERED, AND SAY SIMPLY --

4 THE COURT: YOU HAVE ONE HERE, RIGHT BEHIND YOU.

5 MR. GESSLER: WE HAVE ONE, JOAN VANDERMOLLEN. WE

6 DON'T HAVE DIANE VANERMOLLEN. WE DON'T HAVE --

7 MS. ABRAMSON: WE DON'T HAVE KAREN. WE DON'T

8 HAVE KATHY.

9 THE COURT: I DON'T THINK THIS OPENS THE DOOR TO

10 EVERY MEMBER OF THE FAMILY. WE HAVE SOMEBODY HERE WHO

11 CNA EXPRESS HER VIEW.

12 MS. ABRAMSON: WHY LIMIT IT? THESE ARE THE TWO

13 BROTHERS. THE PEOPLE ARE BRINGING THEM IN SOLELY FOR

14 THIS NEGATIVE PURPOSE, AND WE CAN SHOW THAT EVERY OTHER

15 MEMBER OF THE FAMILY --

16 THE COURT: IS HAPPY ABOUT THE DEATH OF THE

17 VICTIMS?

18 MS. ABRAMSON: WE'RE NOT CONCERNED ABOUT THAT.

19 WE'RE TALKING ABOUT WANTING THE DEATH PENALTY PART.

20 THE COURT: WE'RE TALKING ABOUT THE FIRST ASPECT

21 THAT MR. GESSLER WAS TALKING ABOUT, AS I UNDERSTAND IT.

22 MR. GESSLER: I WAS TALKING ABOUT BOTH, YOUR

23 HONOR. AND NO, NOBODY WAS HAPPY OVER THE DEATHS OF THE

24 VICTIMS, AND I DOUBT THAT ANYBODY WOULD SAY THAT THERE

25 WAS SUCH A WITNESS TO BE BROUGHT IN. THAT WOULD BE

26 GHOULISH, AND CERTAINLY NOT OUR INTENT

27 WHAT I'M SAYING IS UNTIL WE HAVE AN OFFER

28 OF PROOF AS TO THE VICTIM IMPACT ON MILTON ANDERSEN AND

1 BRIAN ANDERSEN, AND HOW THIS WILL BE SHOWN, I DON'T  
2 THINK THE COURT CAN PROPERLY DECIDE IF IT'S REBUTTAL TO  
3 WHAT WE PUT ON, IN WHICH TERRY BARALT SAID SHE WAS  
4 DEVASTATED BY THE DEATHS, AND MARTA CANO DID, TOO.

5 THE COURT: OKAY. WHAT IS YOUR OFFER THEN?

6 MR. CONN: MAY I HAVE JUST A MOMENT?

7 MR. GESSLER: I RECOGNIZE, YOUR HONOR, IT'S TWO  
8 SEPARATE COMPARTMENTS, AND I'M TRYING TO DEAL WITH IT AS  
9 TWO SEPARATE COMPARTMENTS.

10 MR. CONN: YOUR HONOR, MY -- THE QUESTIONS THAT  
11 I'M GOING PUT TO MILTON ANDERSEN AND BRIAN ANDERSEN ARE  
12 GOING TO BE BASED UPON QUESTIONS THAT COUNSEL ASKED OF  
13 THEIR WITNESSES, SIMPLY, BECAUSE IT IS GOING TO BE  
14 REBUTTAL. IT'S GOING TO BE NOTHING MORE THAN REBUTTAL.

15 SO I HAVEN'T FORMULATED THE EXACT  
16 QUESTIONS, BUT IT IS GOING TO BE BASED ON -- THEY'RE  
17 GOING TO BE MIRROR IMAGES OF THEIR QUESTIONS.

18 THE COURT: LET'S DO IT THIS WAY THEN.

19 8:30 TOMORROW MORNING YOU SUBMIT TO THE  
20 COURT A COPY OF THE TRANSCRIPTS -- THOSE PAGES, NOT THE  
21 ENTIRE TRANSCRIPT -- THOSE PAGES FROM THE TESTIMONY OF  
22 THE DEFENSE WITNESSES ON THAT SUBJECT -- ON ALL THESE  
23 SUBJECTS. FIRST THE IMPACT ON THE VICTIM'S FAMILY, AND  
24 SECONDLY, THE IMPACT OR THE IMPACT OF THE DEATH PENALTY,  
25 OKAY?

26 MR. CONN: OKAY.

27 AS FAR AS SCHEDULING, THERE IS JUST ONE  
28 ADDITIONAL MATTER.

1 MS. ABRAMSON: I JUST HAVE ONE OTHER QUESTION. I  
2 MEAN, I WANT TO KNOW WHAT THE WITNESSES ARE GOING TO  
3 SAY.

4 THE COURT: WE HAVE TO SEE WHAT THE QUESTIONS ARE  
5 BEFORE WE GET TO THE ANSWERS.

6 MS. TOWERY: CAN WE BE GIVEN COPIES OF THE  
7 TRANSCRIPTS THAT ARE SUBMITTED TO THE COURT?

8 THE COURT: YES. 8:30, BOTH SIDES.

9 MR. CONN: AS FAR AS SCHEDULING IS CONCERNED,  
10 WE'VE BEEN IN TOUCH WITH BRIAN ANDERSEN. OF COURSE, WE  
11 DIDN'T KNOW WHEN THE DEFENSE WAS GOING TO REST. AND WE  
12 CAN GET MILTON ANDERSEN, AND, OF COURSE, DETECTIVE  
13 ZOELLER IS AVAILABLE FOR THIS FRIDAY.

14 WE DO HAVE A PROBLEM, THOUGH, HOWEVER, WITH  
15 BRIAN ANDERSEN.

16 THE COURT: TOMORROW IS THURSDAY.

17 MS. ABRAMSON: TOMORROW IS THURSDAY.

18 MR. CONN: RIGHT. RIGHT. WHAT I'M SAYING, I  
19 DON'T KNOW THAT WE CAN GET MILTON ANDERSEN BY TOMORROW.  
20 WE CAN GET MILTON ANDERSEN HERE ON FRIDAY, AND WE COULD  
21 HAVE BRIAN ANDERSEN HERE BY MONDAY.

22 MS. ABRAMSON: FORGET IT.

23 MR. CONN: WE WON'T BE ABLE TO GET HIM HERE  
24 BEFORE THAT.

25 THE COURT: FIRST OF ALL, LET ME SEE WHAT IT IS

26 YOU PROPOSE TO ASK OF THESE INDIVIDUALS.

27 AND SO THIS VIDEOTAPE IS REALLY SOMETHING

28 THAT CAN ONLY BE AUTHENTICATED BY SOMEBODY THAT'S NOT

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1 AVAILABLE UNTIL MONDAY?

2 MR. CONN: CORRECT.

3 MS. ABRAMSON: RIGHT.

4 THE COURT: ALL RIGHT. THEN THERE IS NO NEED FOR

5 ME TO LOOK AT IT TONIGHT, SINCE IT CAN'T BE USED.

6 MS. ABRAMSON: I THINK YOU MAY AS WELL SEE IT,

7 JUDGE, SO YOU CAN DECIDE.

8 THE COURT: WELL, I DON'T SEE ANY REASON TO LOOK

9 AT IT RIGHT NOW. I WILL LOOK AT IT TOMORROW.

10 MR. GESSLER: ONE FURTHER MATTER, YOUR HONOR, WE

11 HAVE LEFT, BECAUSE WE WANTED TO WORK WITH THE JURY

12 TODAY, AND THAT IS THE "NATIONAL ENQUIRER" ARTICLE

13 SUBMITTED TO THE COURT.

14 THE COURT: WE WILL TALK ABOUT THAT.

15 MR. GESSLER: BUT I WOULD ALSO LIKE TO HAVE IT

16 MARKED AS AN EXHIBIT, BECAUSE WE HAVEN'T DONE ANYTHING

17 BUT GIVE IT TO THE COURT TO READ.

18 THE COURT: YES.

19 MR. GESSLER: TO SHOW THAT WE BROUGHT IT TO THE

20 ATTENTION OF THE COURT TODAY.

21 THE COURT: RIGHT.

22 MR. GESSLER: IT IS THE SIDE BAR PORTION WE ARE  
23 CONCERNED WITH.

24 THE COURT: LET'S STOP FOR A SECOND, AND WE WILL  
25 CLEAR THE COURTROOM, PLEASE.

26 THE BAILIFF: PLEASE CLEAR THE COURTROOM.

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1 (THE FOLLOWING PAGES, 53846  
2 THROUGH 53848, WERE HELD IN  
3 CAMERA AND ORDERED SEALED  
4 BY THE COURT:)

5

6

7 (PROCEEDINGS WERE ADJOURNED  
8 AT 5:05 P.M UNTIL 8:30 A.M.  
9 THE FOLLOWING DAY.)

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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, )  
6 )  
7 PLAINTIFFS, )  
8 )  
9 VS. ) NO. BA 068880  
10 )  
11 ERIK GALEN MENENDEZ, AND )  
12 JOSEPH LYLE MENENDEZ, )  
13 )  
14 DEFENDANTS. )  
15 )

16 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 WEDNESDAY, APRIL 3, 1996

14 VOLUME 320

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19

APPEARANCES:  
20 (SEE APPEARANCE PAGE)

21

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23 CSR NO. 4547  
OFFICIAL REPORTERS

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G = MR. GESSLER				
K = MS. TOWERY				
L = MR. LEVIN				
N = MS. NAJERA				

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