

1 VAN NUYS, CALIFORNIA; THURSDAY, APRIL 4, 1996

2 10:45 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: OKAY. THE DEFENDANTS ARE IN COURT

9 WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

10 AND WE'RE READY TO RESUME WITH THE JURY.

11 (THE JURY ENTERS THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: THE JURY IS IN THE COURTROOM.

16 GOOD MORNING, LADIES AND GENTLEMEN.

17 WE'RE READY TO RESUME WITH THE TRIAL. THE

18 WITNESS IS ON THE WITNESS STAND.

19 STATE YOUR NAME FOR THE RECORD, PLEASE.

20 THE WITNESS: WILLIAM VICARY.

21 THE COURT: I WILL REMIND YOU, YOU'RE STILL UNDER

22 OATH.

23 YOU MAY CONTINUE YOUR DIRECT EXAMINATION.

24

25 WILLIAM VICARY,

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

27 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

28

1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. ABRAMSON:

3 Q. DR. VICARY, I WANT TO GO BACK FOR A MOMENT  
4 TO THE CONCLUSIONS THAT YOU DREW ABOUT ERIK MENENDEZ;  
5 HIS PERSONALITY TYPE, HIS CHARACTER TYPE AT THE TIME  
6 WHEN YOU WERE FIRST SEEING HIM IN EARLY '90, OKAY?

7 FOCUSING ON -- I THINK YOU HAVE DESCRIBED  
8 WHAT YOU -- WOULD YOU CALL WHAT YOU'VE DESCRIBED A  
9 VULNERABLE PERSONALITY-TYPE?

10 A. YES.

11 Q. AND WITH RESPECT TO THAT, DID HE PRESENT  
12 HIMSELF TO YOU OVER THE MANY, MANY HOURS YOU TALKED TO  
13 HIM AS A PERSON WITH A GOOD SENSE OF HIMSELF, OR  
14 SELF-CONFIDENCE?

15 A. NO.

16 Q. WOULD YOU DESCRIBE IN THAT REGARD HOW HE  
17 PRESENTED AND HOW YOU SAW HIM?

18 A. AS AN EXTREMELY VULNERABLE AND WEAK  
19 INDIVIDUAL, WHO WAS TERRIFIED, ANXIOUS, EASILY  
20 INTIMIDATED, FRIGHTENED.

21 Q. DID HE -- WAS HE A PERSON WHO INDICATED  
22 THAT HE HAD A GOOD FEELING ABOUT HIMSELF, THOUGHT HE WAS  
23 GOOD AT ANYTHING, SMART AT ANYTHING, COMPETENT AT  
24 ANYTHING?

25 A. NO. HE THOUGHT HE WAS A COMPLETE FAILURE,

26 WORTHLESS, WITHOUT ANY REDEEMING QUALITY WHATSOEVER.

27 Q. HOW OLD WAS HE WHEN YOU FIRST MET HIM?

28 A. NINETEEN.

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1 Q. AND YOU'VE DEALT, OVER THE YEARS, WITH  
2 PATIENTS BOTH IN CUSTODY AND OUT OF CUSTODY; WOULD IT BE  
3 FAIR TO SAY, ADOLESCENT AND OLDER?

4 A. YEAH. MOST OF MY CUSTOMERS, OR PATIENTS,  
5 HAPPEN TO BE YOUNG MEN BEGINNING 12, 13, 14, GOING ALL  
6 THE WAY UP INTO THEIR TWENTIES AND THIRTIES.

7 Q. AND BASED ON YOUR EXPERIENCE, WAS HE A  
8 MATURE 19-YEAR-OLD?

9 A. OH, I THOUGHT HE WAS 19, GOING ON 12 OR 13.

10 Q. IN WHAT WAY WAS HE -- YOU'RE INDICATING  
11 THAT HIS CHRONOLOGICAL AGE AND HIS  
12 PSYCHOLOGICAL-EMOTIONAL AGE WERE VERY DIFFERENT?

13 A. VERY MUCH SO.

14 Q. IN WHAT WAYS WAS HE MORE LIKE 12 OR 13 THAN  
15 19?

16 A. IN JUST ABOUT EVERY WAY YOU CAN THINK. I  
17 MEAN, AT TIMES HE WOULD BE VERY SILLY, FOOLISH. HE  
18 WOULD ACT IMPULSIVELY, KIND OF BE OUT OF CONTROL.

19 Q. AND YOU'RE TALKING ABOUT IN THE JAIL WHEN  
20 YOU'RE TALKING TO HIM?

21 A. YES.

22 Q. DID HE EVER HARM ANYBODY?  
23 A. AT THE JAIL?  
24 Q. YEAH.  
25 A. NO.  
26 Q. DID HE EVER INDICATE ANY DESIRE TO HARM  
27 ANYBODY?  
28 A. I THINK AT THE JAIL THERE WERE ONLY TWO

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1 EPISODES IN THE ENTIRE SIX YEARS WHERE HE GOT ANGRY AT  
2 SOMEBODY.  
3 Q. AND WHO WAS HE ANGRY AT?  
4 A. ONE TIME HE GOT ANGRY AT HIS BROTHER ABOUT  
5 SOMETHING, AND THE OTHER TIME I THINK HE WAS ANGRY  
6 BECAUSE SOMEBODY ON THE SAME MODULE THAT HE LIVED ON WAS  
7 HARASSING HIM AND TORMENTING HIM, PUSHING HIM AROUND.  
8 Q. OKAY. DID YOU CONSIDER HIM -- IS THERE A  
9 DIFFERENCE EMOTIONALLY IN THE ADJUSTMENTS OF A 12 OR  
10 13-YEAR-OLD AND A 19-YEAR-OLD?  
11 A. A WIDE DIFFERENCE.  
12 Q. AND WHAT'S THE DIFFERENCE?  
13 A. USUALLY INDIVIDUALS THAT GET TO BE 18 OR 19  
14 ARE MUCH MORE SERIOUS. THEY'RE MORE FOCUSED. THEY'RE  
15 MORE REALISTIC. THEY'RE MORE CAUTIOUS. THEY'RE MORE  
16 ORGANIZED. THEY'RE THINKING MORE ABOUT PLANNING AHEAD.  
17 WHEREAS, KIDS THAT ARE 12 OR 13 KIND OF

18 LIVE DAY BY DAY, WEEK BY WEEK. YOU KNOW, WE'RE GOING TO  
19 THE BALL GAME. THERE IS A CAMPING TRIP COMING UP ON THE  
20 WEEKEND. WHAT'S FOR DINNER?

21 I MEAN, THESE ARE THE MAJOR ISSUES WHEN  
22 YOU'RE 12 OR 13.

23 WHEN YOU'RE 18 OR 19, YOU HAVE A LOT MORE  
24 ON YOUR MIND. I MEAN, YOUR STUDIES, YOUR VOCATIONAL  
25 FUTURE, YOUR GIRLFRIEND, THAT KIND OF STUFF.

26 Q. WELL, HOW WAS HE, IN THAT SENSE, MORE LIKE  
27 A 12 OR 13-YEAR-OLD, EXCUSE ME, THAN A 19-YEAR-OLD?

28 A. WELL, IT WAS DIFFICULT TO GET HIM TO FOCUS

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1 ON ANY ONE SUBJECT FOR ANY PERIOD OF TIME. I MEAN, HE  
2 JUST KEPT JUMPING FROM ONE TOPIC TO ANOTHER, AND HIS  
3 EMOTIONS WOULD GO UP AND THEY WOULD GO DOWN, AND THEY  
4 WOULD GO UP AND THEY WOULD GO DOWN.

5 SOMETIMES HE WOULD BE CRYING AND DESPERATE,  
6 AND OTHER TIMES, FIVE MINUTES LATER, HE'D BE GIDDY AND  
7 LAUGHING.

8 Q. WAS THAT A PRODUCT JUST OF IMMATURITY, OR  
9 WAS THAT ALSO PART OF HIS MENTAL DISORDER?

10 A. WELL, IT GOT INTERWOVEN WITH HIS MENTAL  
11 DISORDER. I MEAN, THESE ERRATIC CHANGES IN HIS MOOD.  
12 HE WAS STRESSED OUT. HE WAS QUITE ANXIOUS AND DEPRESSED  
13 AS A RESULT OF HIS MENTAL DISORDER.

14 Q. YOU MENTIONED YESTERDAY THAT HE -- HIS  
15 IMPROVEMENT, HIS CHANGES -- AND WOULD YOU CALL THESE  
16 CHANGES MINOR OR MAJOR, OR SOMETHING IN BETWEEN?

17 A. NO. THEY WERE RATHER PROFOUND. THERE ARE  
18 VERY FEW PATIENTS THAT MAKE SUCH A DRAMATIC IMPROVEMENT  
19 IN THEIR MENTAL CONDITION, EVEN OVER A PERIOD OF YEARS.

20 Q. AND HAS HE CONTINUED TO IMPROVE OVER THE  
21 YEARS THAT YOU'VE SEEN HIM?

22 A. I WOULD SAY THAT AS EACH COUPLE OF MONTHS  
23 GOES BY, I AM IMPRESSED THAT HE GETS BETTER AND BETTER,  
24 GETS STRONGER, MORE STABLE, MORE THOUGHTFUL.

25 Q. HE HAS ALSO MATURED, HAS HE NOT?

26 A. YES. AND THAT'S JUST PART OF GETTING  
27 OLDER, FOR MOST INDIVIDUALS.

28 Q. I LOST MY THOUGHT. MEDICATION.

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1 WHAT WOULD HAPPEN IF HE STOPPED RECEIVING  
2 MEDICATION?

3 A. WELL, GIVEN THE STRESSFUL SITUATION NOW,  
4 THAT WOULD BE MALPRACTICE. I DON'T THINK ANYBODY WOULD  
5 TAKE HIM OFF HIS MEDICATION AT THIS POINT.

6 A COUPLE OF MONTHS FROM NOW, THREE OR FOUR  
7 OR FIVE MONTHS FROM NOW, WHEN THINGS KIND OF SETTLE OUT,  
8 I THINK IT WOULD BE REASONABLE TO TAPER HIM OFF AND SEE  
9 WHAT HAPPENS. I WOULD EXPECT THAT YOU PROBABLY COULD

10 CUT THE MEDICATION, AT LEAST BY HALF, AND HE WOULD BE

11 FINE. MAYBE EVEN MORE.

12 I'M A PERSON THAT'S VERY CONSERVATIVE WHEN

13 IT COMES TO MEDICATION. THE BEST MEDICINE IS NO

14 MEDICINE, ALL RIGHT? THE BEST DOSE IS THE SMALLEST

15 DOSE. THE BEST COMBINATION OF MEDICATIONS IS THE FEWEST

16 NUMBER OF MEDICATIONS. SO THAT'S THE GOAL.

17 THE RESEARCH TELLS US THAT YOU HAVE TO BE

18 VERY CAREFUL ABOUT THAT, BECAUSE SOME PEOPLE ARE VERY

19 SENSITIVE, AND THEY GET SICK IF YOU DECREASE THEIR

20 MEDICATION TOO MUCH, OR YOU STOP THEIR MEDICATION.

21 WITH THIS PARTICULAR PATIENT, I WOULD

22 EXPECT THAT IT'S VERY LIKELY THAT EVENTUALLY WE COULD

23 PROBABLY TAPER HIM OFF HIS MEDICATION, AND HE WOULD BE

24 STABLE, AND NOT NEED ANY FURTHER MEDICATION. BUT THERE

25 IS NO WAY TO PREDICT THAT UNTIL WE DO IT.

26 Q. THESE ARE MEDICATIONS, HOWEVER, TO CONTROL

27 ANXIETY AND DEPRESSION, CORRECT?

28 A. THAT'S CORRECT. AND BOTH ANXIETY AND

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1 ESPECIALLY DEPRESSION, HAVE A LIFE OF THEIR OWN,

2 REGARDLESS OF THE SITUATIONAL STRESS. SOME OF THIS IS

3 JUST GENETICS AND JUST BIOLOGY.

4 Q. AND SOME OF IT IS JUST A HISTORY OF ALWAYS

5 BEING ANXIOUS AND DEPRESSED?

6 A. REGARDLESS OF THE SITUATION, YES.

7 Q. BUT WHAT WOULD YOU IMAGINE WOULD BE THE

8 WORST THING THAT WOULD HAPPEN IF HE WENT OFF MEDICATION

9 AND BECAME VERY ANXIOUS AND DEPRESSED?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT HE WOULD BEGIN TO HAVE

13 SYMPTOMS AGAIN, AND THAT HE WOULD ASK FOR HELP, AND HE

14 WOULD GO BACK ON HIS MEDICATION.

15 Q. BY MS. ABRAMSON: BUT SHORT FROM THAT, WHAT

16 I AM TRYING TO GET AT IS, IF YOU TOOK HIM OFF OF

17 MEDICATION, THAT WOULDN'T CHANGE HIS BASIC -- STRIKE

18 THAT.

19 WITHOUT MEDICATION, HE'S ANXIOUS, HE'S

20 DEPRESSED, HE'S SUICIDAL, CORRECT? THAT'S WHAT HE WAS

21 LIKE?

22 A. IF HE REALLY GETS SICK, YES.

23 Q. WE'RE NOT TALKING ABOUT TAKING HIM OFF

24 MEDICATION, HE'S SUDDENLY GOING TO BECOME A DIFFERENT

25 PERSON, SOMEONE WHO IS AGGRESSIVE; FOR EXAMPLE, OR

26 ANGRY?

27 A. NO. NO. HE WOULD GO BACK TO HAVING SOME

28 OF THE SYMPTOMS THAT HE DID BEFORE.

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1 Q. NOW, HAVE YOU -- I THINK YOU TESTIFIED IN



2 THE PREVIOUS PORTION OF THE TRIAL THAT YOU SAW HIM

3 RATHER FREQUENTLY FOR ABOUT THE FIRST YEAR AND A HALF TO

4 TWO YEARS; IS THAT RIGHT?

5 A. ROUGHLY, YES.

6 Q. AND THEN LESS FREQUENTLY, BUT ON A MORE OR

7 LESS REGULAR BASIS SINCE THEN?

8 A. YES.

9 Q. AND HAVE YOU, IN FORMING ASSESSMENTS FOR

10 THIS PHASE OF THE TRIAL, FOCUSED ON HIS POTENTIAL FOR

11 POSITIVE, OR WHAT'S KNOWN AS PRO-SOCIAL ACTIVITY IN

12 PRISON?

13 A. YES.

14 Q. AND WHAT IS YOUR OPINION WITH RESPECT TO

15 HIS POTENTIAL TO DO POSITIVE THINGS, TO MAKE SOME

16 POSITIVE CONTRIBUTION, EVEN IF -- WELL, AS HE WILL BE,

17 HE SPENDS THE REST OF HIS LIFE IN PRISON?

18 A. OH, I THINK THE PROSPECT IS EXCELLENT. I

19 MEAN, THE BEST PREDICTOR OF FUTURE BEHAVIOR IN CUSTODY

20 IS PAST BEHAVIOR IN CUSTODY. AND HE HAS DONE

21 EXCEPTIONALLY WELL AT THE JAIL.

22 HE'S ONE OF THE FEW PRISONERS THAT

23 EVERYBODY SEEMS TO LIKE. THE DEPUTIES LIKE HIM. THE

24 DOCTORS LIKE HIM. THE NURSES LIKE HIM. THE TRUSTEES

25 LIKE HIM. THE OTHER PRISONERS LIKE HIM. EVEN THE REAL

26 BAD GUYS SEEM TO LIKE HIM, AS WELL AS THE GOOD GUYS,

27 AMONG THE PRISONERS. SO HE GETS ALONG WITH EVERYBODY.

28 HE HAS BEEN FUNCTIONING AS KIND OF A

1 TRUSTEE ON HIS FLOOR, WHERE HE MOPS AND CLEANS AND  
2 SOMETIMES HELPS WITH THE LAUNDRY, HELPS SERVE FOOD, THAT  
3 KIND OF THING.

4 HE'S GOT A VERY POSITIVE ATTITUDE. HE  
5 WANTS TO USE HIS TIME CONSTRUCTIVELY BY TAKING  
6 CORRESPONDENCE COURSES, EARNING COLLEGE CREDITS,  
7 HOPEFULLY WORK TOWARDS A COLLEGE DEGREE.

8 HE HAS AN IDEA THAT HE'S GOING TO BE A  
9 WRITER, AND HE'S ALREADY WRITTEN A SCIENCE-FICTION BOOK,  
10 WHICH I'VE READ PART OF, WHICH HE THINKS IS GREAT, AND I  
11 THINK MAYBE ISN'T SO GREAT, BUT THAT'S A DIFFERENCE OF  
12 OPINION HERE.

13 HE ALSO, I THINK --

14 Q. BUT HE MADE THE EFFORT?

15 A. HE DID SOMETHING I'VE NEVER DONE. HE'S  
16 WRITTEN A BOOK, WHICH I GIVE HIM CREDIT FOR. I DON'T  
17 KNOW IF I HAVE THE PATIENCE OR THE PERSERVERANCE TO DO  
18 THAT.

19 SO YOU'RE RIGHT. I THINK HE DESERVES  
20 CREDIT FOR ATTEMPTING THAT.

21 AND MORE IMPORTANTLY, FROM MY POINT OF VIEW  
22 AS A PSYCHIATRIST, HE IS INTERESTED IN REACHING OUT AND  
23 HELPING OTHERS. NOT ONLY THE OTHER PRISONERS, BY  
24 PERHAPS TEACHING THEM AND BEING A ROLE MODEL TO TRY AND  
25 HELP THEM, BUT HE WANTS TO REACH OUT TO THE CHILD-ABUSE  
26 COMMUNITY, AND HE WANTS TO BE AN EXAMPLE OF HOW NOT TO

27 BE, HOW HE WENT WRONG. HE MADE THE WRONG CHOICES. HE  
28 CHOSE THE COURSE OF DESTRUCTION RATHER THAN THE COURSE

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1 OF REACHING OUT FOR HELP, TRYING TO HEAL, TRYING TO  
2 NEGOTIATE.

3 AND HE WOULD LIKE TO COMMUNICATE WITH OTHER  
4 VICTIMS AND TELL THEM TO BE STRONG AND TO ASK FOR HELP  
5 AND NOT KEEP SECRETS, AND HE WOULD LIKE TO DO SOME  
6 WRITING PROGRAMS, OR DO SOME VIDEOTAPES OR SOME  
7 APPEARANCES IN THAT VEIN, TO TRY AND HELP OTHER VICTIMS.

8 MS. ABRAMSON: THANK YOU, DR. VICARY.

9 I HAVE NOTHING FURTHER, YOUR HONOR.

10 THE COURT: CROSS-EXAMINATION.

11 MR. CONN: YES.

12

13 CROSS-EXAMINATION

14 BY MR. CONN:

15 Q. DOCTOR, DID YOU SAY THAT YOU FORMED THE  
16 OPINION THAT ERIK MENENDEZ IS SUFFERING FROM  
17 POST-TRAUMATIC STRESS DISORDER?

18 A. I SAID THAT THAT WOULD BE A REASONABLE  
19 DIAGNOSIS, YES.

20 Q. WELL, WAS THAT YOUR DIAGNOSIS?

21 A. I THINK THAT BASED UPON EVERYTHING THAT I  
22 HAVE LEARNED OVER THE YEARS, THAT THAT WOULD BE A

23 DIAGNOSIS THAT I WOULD MAKE.

24 Q. WELL, WHEN DID YOU FIRST REACH THE  
25 CONCLUSION THAT ERIK MENENDEZ SUFFERS FROM  
26 POST-TRAUMATIC STRESS DISORDER?

27 A. I THINK WHEN I BEGAN LEARNING ABOUT THE  
28 WORK OF DR. WILSON.

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1 Q. NOW, HOW MUCH CONTACT DID YOU HAVE WITH  
2 ERIK MENENDEZ BEFORE YOU BECAME FAMILIAR WITH THE  
3 CONCLUSIONS OF DR. WILSON?

4 A. A GREAT DEAL OF WORK, YEARS OF WORK WITH  
5 ERIK MENENDEZ.

6 Q. AND YOU'VE BEEN A PSYCHIATRIST FOR HOW  
7 LONG?

8 A. TWENTY YEARS.

9 Q. AND PRIOR TO THE TIME THAT DR. WILSON CAME  
10 ON THE CASE -- WHAT IS YOUR UNDERSTANDING AS TO WHEN HE  
11 CAME ON THE CASE?

12 A. I THINK WITHIN THE LAST YEAR.

13 Q. OKAY. AND HOW MANY YEARS HAD YOU BEEN  
14 SEEING ERIK MENENDEZ BEFORE DR. WILSON REACHED HIS  
15 CONCLUSION THAT ERIK MENENDEZ SUFFERS FROM  
16 POST-TRAUMATIC STRESS DISORDER?

17 A. ABOUT FOUR-AND-A-HALF YEARS.

18 Q. FOUR-AND-A-HALF YEARS.

19 NOW, IN THAT FOUR-AND-A-HALF YEARS, AND IN  
20 LIGHT OF YOUR 20 YEARS BACKGROUND AS A PSYCHIATRIST, ARE  
21 YOU TELLING US THAT YOU DID NOT CONCLUDE THAT ERIK  
22 MENENDEZ SUFFERED FROM POST-TRAUMATIC STRESS DISORDER?

23 A. ACTUALLY, I WAS ASKED THAT QUESTION BY  
24 SEVERAL PEOPLE, AND I SAID YOU COULD MAKE THAT  
25 DIAGNOSIS. I SAID THAT I DON'T LIKE TO USE THAT  
26 DIAGNOSIS BECAUSE IT'S TOO TECHNICAL, AND IT'S TOO  
27 FANCY. AND IN FORENSIC CASES IT TENDS TO TURN PEOPLE  
28 OFF, AND THE JURORS ARE SUSPICIOUS OF IT, AND YOU GET A

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1 LOT OF FLAK BY BRINGING THAT IN. IT'S RELATIVELY NEW.  
2 IT'S STILL SOMEWHAT CONTROVERSIAL.

3 I LIKE TO SPEAK IN SIMPLER TERMS ABOUT THE  
4 SYMPTOMS. LET'S TALK ABOUT ANXIETY AND DEPRESSION.  
5 THOSE THINGS HAVE BEEN AROUND SINCE THE BEGINNING OF  
6 TIME. POST-TRAUMATIC STRESS DISORDER IS ONLY WITH US  
7 THE LAST FIVE OR TEN YEARS. A LOT OF PEOPLE ARE NERVOUS  
8 ABOUT IT.

9 Q. SO WHEN YOU SAY YOU DON'T LIKE TO USE IT,  
10 ARE YOU SAYING, DOCTOR, THAT IF YOU FEEL THAT THE  
11 DEFENDANT IS SUFFERING FROM SOMETHING THAT IS LISTED AND  
12 DESCRIBED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF  
13 MENTAL DISORDERS, YOU WILL THEN REFRAIN FROM REACHING  
14 THAT DIAGNOSIS SIMPLY BECAUSE YOU DON'T LIKE TO USE IT?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE IN  
16 CONTENT AND TONE.  
17 THE COURT: OVERRULED.  
18 THE WITNESS: EXACTLY. I DO NOT WANT TO USE  
19 TECHNICAL STUFF THAT'S JUST GOING TO CAUSE CONTROVERSY  
20 AND CONFUSION IN THIS LEGAL AREA, WHEN YOU CAN DESCRIBE  
21 SOMETHING IN SIMPLER, LAY-TYPE TERMS. TO HELL WITH THE  
22 DIAGNOSTIC AND STATISTICAL MANUAL. I WOULD LIKE TO  
23 LEAVE THAT OUT AS MUCH AS POSSIBLE. ONCE WE START  
24 GETTING INTO THAT AND ARGUING ABOUT THAT, LIKE WE'RE  
25 DOING RIGHT NOW, A LOT OF PEOPLE'S EYES START TO GET  
26 GLAZED OVER. WHO CARES? DOES IT REALLY MAKE A  
27 DIFFERENCE?  
28 Q. DOCTOR, WHAT IS THE -- WHAT IS THE PURPOSE

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1 OF THE DSM?  
2 A. THE DIAGNOSTIC MANUAL IS DESIGNED FOR  
3 DOCTORS, PSYCHOLOGISTS AND PSYCHIATRISTS TO TRY AND KEEP  
4 THEIR THINKING STRAIGHT, AND TO PUSH TOWARDS UNIFORMITY  
5 IN DIAGNOSES, NOT ONLY IN TERMS OF TRYING TO FOLLOW THE  
6 SAME PATIENT ALONG OVER TIME FROM DOCTOR TO DOCTOR, BUT  
7 JUST AS IMPORTANTLY, IN TERMS OF RESEARCH.  
8 WHEN WE'RE TALKING ABOUT SCHIZOPHRENICS AND  
9 WE'RE DOING RESEARCH ON THESE FOLKS, LET US BE SURE THAT  
10 WE HAVE THE SAME GROUP OF PEOPLE THAT WE ARE RESEARCHING

11 ON, RATHER THAN I'M GOING TO USE MY DEFINITION FOR  
12 SCHIZOPHRENIA, AND YOU USE YOUR DEFINITION, AND WE'RE  
13 DEALING WITH DIFFERENT GROUPS HERE. WE'VE GOT TO TALK  
14 ABOUT THE SAME PEOPLE IF WE'RE GOING TO DO TRUE  
15 SCIENTIFIC RESEARCH.

16 Q. AND ONCE TWO PSYCHIATRISTS AGREE SOMEONE IS  
17 SUFFERING FROM SCHIZOPHRENIA, IS THERE ANY REASON TO  
18 KEEP IT A SECRET, OR DOES IT MAKE MORE SENSE TO YOU FOR  
19 BOTH PSYCHIATRISTS TO ADMIT: "HEY, HE SUFFERS FROM  
20 SCHIZOPHRENIA, SO LET'S ADMIT IT. LET'S TALK ABOUT IT,  
21 WHETHER WE LIKE THE USE OF THE TERM OR NOT."

22 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE AND  
23 COMPOUND.

24 THE COURT: OVERRULED.

25 THE WITNESS: YES.

26 Q. BY MR. CONN: OKAY. NOW, WHEN IT COMES TO  
27 POST-TRAUMATIC STRESS DISORDER, YOU FEEL DIFFERENTLY.  
28 YOU FEEL THAT IF SOMEONE IS SUFFERING FROM

1 POST-TRAUMATIC STRESS, IT'S BEST NOT TO USE THAT  
2 LANGUAGE, BECAUSE YOU DON'T LIKE TO TELL JURIES ABOUT  
3 P.T.S.D.?

4 A. NO. I WOULD SAY IF DR. WILSON OR DR. HART  
5 OR ANY OTHER WACKY PSYCHIATRISTS GET TOGETHER, THAT WE  
6 WOULD USE THESE TERMS LIKE "P.T.S.D." AND "PARANOID  
7 SCHIZOPHRENIA" AND "BIPOLAR" AND ALL OF THAT. WE ARE  
8 LIKE PRIESTS. WE ALL STICK TOGETHER. WE ALL HAVE THE  
9 SAME LINGO.

10 WHEN YOU COME TO COURT, THAT'S WHEN I HAVE

11 PROBLEMS, OKAY. WHEN YOU START TO SLING THAT LINGO  
12 AROUND IN COURT, IT GOES OVER MOST PEOPLE'S HEADS.  
13 IT'S BETTER IF YOU FORGET ABOUT ALL THAT  
14 JARGON. LET'S TALK ABOUT IT IN VERY SIMPLE, CLEAR  
15 TERMS, OTHERWISE THERE'S CONFUSION. AND WHAT GOOD ARE  
16 THE EXPERTS IF PEOPLE DON'T UNDERSTAND THEM, IF PEOPLE  
17 GET CONFUSED?

18 Q. IS THAT, DOCTOR, BECAUSE YOU DON'T WANT TO  
19 BE PINNED DOWN TO A SPECIFIC DIAGNOSIS, BECAUSE THEN THE  
20 PROSECUTOR CAN LOOK AT THE DSM AND CROSS-EXAMINE YOU ON  
21 WHETHER OR NOT THE DEFENDANT MEETS THE DIAGNOSIS IN  
22 ACCORDANCE WITH THE STANDARDS SET DOWN BY THE AMERICAN  
23 PSYCHIATRIC ASSOCIATION?

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

25 THE COURT: REPHRASE THE QUESTION.

26 MR. CONN: YES.

27 Q. IS THE REASON THAT YOU DON'T LIKE TO USE  
28 THAT DIAGNOSIS, DOCTOR, BECAUSE ONCE YOU USE A

1 DIAGNOSIS, THEN YOU CAN BE CROSS-EXAMINED BY THE  
2 PROSECUTOR AS TO WHETHER OR NOT THE STANDARDS AND THE  
3 SYMPTOMS OF THAT PARTICULAR DIAGNOSIS ARE INDEED  
4 SATISFIED IN THIS PARTICULAR CASE?

5 A. I LOVE IT WHEN THE PROSECUTOR BRINGS OUT  
6 THE DIAGNOSTIC MANUAL, AND THEY HAVE THESE BOARDS WITH  
7 ALL OF THE SYMPTOMS ON IT. I LOVE IT. WE GO OVER IT,  
8 AND WE WILL GO OVER IT SYMPTOM BY SYMPTOM.

9 I WILL BE HAPPY TO DO THAT IN THIS CASE  
10 WITH GENERALIZED ANXIETY DISORDER, POST-TRAUMATIC STRESS



11 DISORDER. YOU PICK IT OUT. THAT'S FINE.  
12 BUT YOU SEE, YOU'RE DOING IT. I'M NOT  
13 DOING IT. I AM NOT FORCING THAT UPON THE JURY. I AM  
14 COMFORTABLE DOING IT THAT WAY, AS OPPOSED TO ME COMING  
15 IN HERE AND PONTIFICATING, AND SAYING: IN MY OPINION  
16 IT'S DA-DA-DA-DA-DA-DA, AND THIS IS THE SYMPTOM AND  
17 THAT'S THE SYMPTOM, AND SO ON AND SO FORTH, WHEN IT  
18 REALLY DOESN'T MAKE A DIFFERENCE, IF IT CAN BE EXPLAINED  
19 IN SIMPLER TERMS.

20 Q. BUT WHETHER OR NOT SOMEONE TRULY SUFFERS  
21 FROM POST-TRAUMATIC STRESS DISORDER SHOULD BE SUBJECT TO  
22 SCRUTINY. WOULDN'T YOU AGREE WITH THAT, DR. VICARY?

23 A. OF COURSE.

24 Q. AND ARE YOU SAYING THAT YOU DON'T LIKE TO  
25 BE SUBJECT TO SCRUTINY IN FRONT OF A JURY?

26 A. NO. I LOVE IT. I LOVE IT.

27 Q. WELL THEN, WHY DO YOU HATE TO COME --

28 MS. ABRAMSON: OBJECTION, YOUR HONOR. LET THE

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1 WITNESS FINISH ANSWERING.

2 THE COURT: HE DID. THAT WAS HIS RESPONSE.

3 YOUR NEXT QUESTION, PLEASE.

4 Q. BY MR. CONN: SO THEN, WHY WERE YOU SO  
5 RETICENT TO COME UP WITH A DIAGNOSIS OF POST-TRAUMATIC  
6 STRESS DISORDER IN THIS CASE?

7 A. BECAUSE I THINK YOU CAN EXPLAIN THE SAME  
8 PHENOMENA IN SIMPLER, PLAINER TERMS.

9 Q. WITHOUT EVER TELLING A JURY AND ADMITTING  
10 IN COURT UNDER OATH THAT SOMEONE SUFFERS FROM  
11 POST-TRAUMATIC STRESS DISORDER?

12 A. YEAH.

13 MS. ABRAMSON: OBJECT TO THE FORM -- I AM GOING  
14 TO OBJECT TO THE FORM OF THE QUESTION AS ARGUMENTATIVE.

15 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

16 THE ANSWER IS STRICKEN.

17 Q. BY MR. CONN: IS THIS SOMETHING YOU OFTEN  
18 DO, DOCTOR, YOU COME UP WITH A DIAGNOSIS AND YOU PREFER  
19 TO TESTIFY IN FRONT OF A JURY IN DESCRIBING THE  
20 SYMPTOMS, WITHOUT EVER REVEALING TO THE JURY WHAT THAT  
21 PERSON TRULY SUFFERS FROM?

22 A. I DO IT ALL THE TIME. FOR EXAMPLE, A LOT  
23 OF TIMES I COME TO COURT AND I SAY: "THIS PERSON IS  
24 CRAZY," AND THEN I TALK ABOUT THE SYMPTOMS. YOU KNOW,  
25 THE PARANOIA, THE HEARING VOICES, THAT KIND OF THING.  
26 AND I NEVER TALK ABOUT WHETHER HE IS SCHIZOPHRENIC OR  
27 HE'S BIPOLAR, OR HE HAS DELUSIONAL DISORDER, OR HE HAS  
28 DEPRESSION WITH PSYCHOTIC BEHAVIOR.

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1 WHY DON'T I DO THAT? BECAUSE WHO CARES;  
2 WHAT DIFFERENCE DOES MAKE?

3 Q. BUT ISN'T THERE A WAY OF TESTING WHETHER OR  
4 NOT YOUR DIAGNOSIS IS CORRECT, DOCTOR?

5 A. WELL, WHEN THE PROSECUTOR SAYS, "IS HE A  
6 SCHIZOPHRENIC?"

7 I SAY, "YES, IN MY OPINION HE IS."

8 AND HE SAYS, "WELL, HOW DO YOU KNOW THAT?"

9 AND I SAY, "WELL, LET'S GO DOWN THE LIST OF  
10 SYMPTOMS HERE."

11 AND THEN WE WILL DO EXACTLY WHAT YOU'RE  
12 SAYING. BUT I DON'T DO THAT INITIALLY, BECAUSE IT  
13 REALLY DOESN'T MAKE A LOT OF DIFFERENCE WHAT LABEL IT IS  
14 WE PUT ON SOMEONE.

15 Q. NOW, IN THIS PARTICULAR CASE, DOCTOR, WHEN  
16 DID YOU FIRST CONCLUDE THAT THE DEFENDANT SUFFERED FROM  
17 POST-TRAUMATIC STRESS DISORDER?

18 A. I THINK THAT I WAS ASKED THAT QUESTION  
19 PROBABLY TWO YEARS, TWO-AND-A-HALF YEARS AGO.

20 Q. BY WHO?

21 A. WAS THAT A REASONABLE DIAGNOSIS?

22 Q. BY WHO?

23 A. I THINK BY SOME OF THE DOCTORS INVOLVED IN  
24 THE CASE.

25 Q. BY WHICH DOCTORS?

26 A. I THINK THE SERIES OF EXPERTS THAT WERE  
27 USED DURING THE FIRST TRIAL.

28 Q. WELL, WHICH ONES WERE THEY?

1 A. DR. HART, DR. BURGESS.

2 Q. SO ARE YOU SAYING THAT YOU TOLD DR. BURGESS  
3 THAT THE DEFENDANT SUFFERS FROM POST-TRAUMATIC STRESS  
4 DISORDER?

5 A. THINK THAT WE HAD A MEETING AT LESLIE  
6 ABRAMSON'S OFFICE, AND THERE WAS SEVERAL EXPERTS THERE.  
7 DR. TYLER, DR. MALONEY.

8 AND WE ALL SAT AROUND THE TABLE, AND THE  
9 QUESTION WAS RAISED: IS THIS CASE AN APPROPRIATE ONE  
10 FOR POST-TRAUMATIC STRESS DISORDER?

11 AND EVERYBODY SAID YES.

12 AND I SAID: "WELL, LET'S BE CAREFUL HERE.  
13 DO WE REALLY NEED TO GO TO THIS LEVEL OF COMPLEXITY  
14 HERE, BECAUSE I THINK THIS IS CONTROVERSIAL, AND THIS  
15 MAY CONFUSE THINGS."

16 AND I WAS OUT-VOTED, AND EVERYBODY SAYS:  
17 "NO, CLEARLY THIS IS A POST-TRAUMATIC STRESS  
18 DISORDER-TYPE OF CASE."

19 AND I AGREE, THAT'S A REASONABLE DIAGNOSIS.

20 Q. ALL RIGHT. WERE YOU AWARE THAT DR. BURGESS  
21 TESTIFIED UNDER OATH?

22 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS. I  
23 AM GOING TO OBJECT ON HEARSAY GROUNDS AND ASK TO BE  
24 HEARD.

25 THE COURT: OVERRULED.

26 Q. BY MR. CONN: ARE YOU AWARE THAT  
27 DR. BURGESS TESTIFIED UNDER OATH IN THE FIRST TRIAL OF

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1 MENTAL DISORDER?

2 A. I READ HER TESTIMONY.

3 Q. AND WASN'T SHE THE WITNESS CALLED BY ERIK  
4 MENENDEZ IN THAT TRIAL WHO TESTIFIED TO ERIK MENENDEZ'  
5 MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME?

6 A. SHE WAS ONE OF THEM, YES.

7 Q. AND ISN'T IT TRUE, THEN, THAT THAT FIRST  
8 JURY IN THAT FIRST TRIAL WERE NEVER TOLD THAT ERIK  
9 MENENDEZ ALLEGEDLY SUFFERED FROM POST-TRAUMATIC STRESS  
10 DISORDER?

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. IMPROPER  
12 QUESTION. NO FOUNDATION.

13 THE COURT: REPHRASE THE QUESTION.

14 Q. BY MR. CONN: ISN'T IT TRUE THAT  
15 POST-TRAUMATIC STRESS DISORDER WAS SOMETHING THAT  
16 WOULD -- SOMEONE CAME UP WITH FOR THE RETRIAL?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR.

18 THE COURT: REPHRASE THE QUESTION.

19 Q. BY MR. CONN: WAS THE CLAIM THAT ERIK  
20 MENENDEZ SUFFERED FROM POST-TRAUMATIC STRESS DISORDER  
21 EVER PRESENTED BY ANY EXPERT IN THE FIRST TRIAL?

22 MS. ABRAMSON: OBJECTION. IMPROPER HEARSAY.

23 THE COURT: AS TO TESTIMONY THIS WITNESS READ, IS

24 THAT WHAT YOU'RE REFERRING TO?

25 MR. CONN: YES.

26 MS. ABRAMSON: IT'S STILL IMPROPER HEARSAY.

27 THE COURT: OVERRULED.

28 THE WITNESS: I HAVE READ THE TESTIMONY OF ALL

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1 THE EXPERTS FROM THE FIRST TRIAL, AND THAT WAS A LONG  
2 TIME AGO.

3 I TAKE YOUR REPRESENTATION TO BE BASICALLY  
4 WHAT MY MEMORY IS, THAT I DON'T REMEMBER A WHOLE LOT OF  
5 TIME AND ENERGY SPENT BY THE EXPERTS IN THE FIRST TRIAL  
6 ON THIS POST-TRAUMATIC STRESS DISORDER, OR A CLUSTER OF  
7 SYMPTOMS THAT WAS ACTUALLY LABELED THAT IN THE FIRST  
8 TRIAL.

9 Q. BY MR. CONN: WELL, IT IS YOUR  
10 UNDERSTANDING, THOUGH, THAT DR. BURGESS SPECIFICALLY  
11 SAID THAT HE DID NOT SUFFER FROM ANY MENTAL DISORDER; IS  
12 THAT CORRECT?

13 A. YEAH. YOU GOT ME THERE. I DON'T REMEMBER  
14 THAT. I ACCEPT YOUR REPRESENTATION AS BEING ACCURATE.

15 Q. ALL RIGHT. WELL, THIS IS TESTIMONY THAT  
16 YOU READ; IS THAT CORRECT?

17 A. YES.

18 MR. CONN: ALL RIGHT. DIRECTING COUNSEL'S  
19 ATTENTION TO --

20 MS. ABRAMSON: WELL, I AM GOING TO OBJECT TO  
21 THIS, YOUR HONOR. I THINK THIS IS IMPROPER IMPEACHMENT  
22 FOR THIS WITNESS.  
23 THE COURT: THERE IS NO BASIS OR FOUNDATION TO  
24 READ THE TESTIMONY. SINCE HE REFERRED TO IT IN HIS  
25 TESTIMONY AND HE RELIED UPON IT, HE CAN BE ASKED ABOUT  
26 IT.  
27 BUT AS FAR AS THE SPECIFICS OF IT, THERE IS  
28 NO REASON OR BASIS FOR READING THE SPECIFICS.

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1 MR. CONN: ALL RIGHT.  
2 Q. LET ME SHOW YOU SOMETHING, AND ASK YOU IF  
3 THIS REFRESHES YOUR RECOLLECTION AS TO WHETHER OR NOT  
4 ANN BURGESS TESTIFIED IN THE FIRST TRIAL THAT ERIK  
5 MENENDEZ DID NOT SUFFER FROM A MENTAL DISORDER OR  
6 DISEASE?  
7 A. THE QUESTION IS: DID YOU EVER DIAGNOSIS  
8 ERIK MENENDEZ AS HAVING ANY KIND OF MENTAL DISORDER OR  
9 MENTAL DISEASE, AND THE ANSWER IS NO, I DID NOT.  
10 Q. OKAY.  
11 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT AND  
12 MOVE TO STRIKE. THAT'S NOT THE SAME QUESTION, YOUR  
13 HONOR. IT'S MISLEADING THE JURY.  
14 THE COURT: OVERRULED.  
15 MR. LEVIN: COULD WE HAVE THE PAGE OF THAT, YOUR

16 HONOR?

17 MR. CONN: YES. PAGE 18,652.

18 Q. DO YOU REMEMBER ANN BURGESS BEING ASKED IN  
19 THAT TRIAL WHETHER OR NOT ERIK MENENDEZ DID IN FACT HAVE  
20 ANY MENTAL DISORDER OR DISEASE?

21 A. AND THE ANSWER IS -- WELL, THIS IS  
22 CONFUSING, BECAUSE HER ANSWER IS: "THAT IS MY OPINION,  
23 YES, THAT HE DID NOT."

24 Q. RIGHT. SO IN OTHER WORDS, ANN BURGESS  
25 TESTIFIED IN THE FIRST TRIAL THAT ERIK MENENDEZ DID NOT  
26 SUFFER FROM ANY MENTAL DISORDER OR DISEASE; IS THAT  
27 CORRECT?

28 A. THAT'S WHAT IT SAYS ON THAT PAGE, YES.

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1 Q. AND NOW YOU'RE SAYING THAT ANN BURGESS TOLD  
2 YOU THAT SHE AGREED THAT HE SUFFERED FROM POST-TRAUMATIC  
3 STRESS DISORDER?

4 A. THAT'S MY MEMORY IN THAT MEETING; THAT THE  
5 CONSENSUS OF THE EXPERTS THAT THERE WAS THAT, THAT WOULD  
6 BE A REASONABLE DIAGNOSIS.

7 Q. WELL, DID THAT MEETING TAKE PLACE BEFORE OR  
8 AFTER SHE -- DO YOU KNOW WHETHER --

9 A. THAT MEETING --

10 Q. ALLOW ME TO FINISH THE QUESTION.

11 A. SURE.



12 Q. DO YOU KNOW WHETHER THAT MEETING TOOK PLACE  
13 BEFORE OR AFTER OCTOBER 20TH OF 1993?

14 A. BEFORE.

15 Q. NOW, HOW LONG AFTER -- YOU WERE A WITNESS  
16 IN THE FIRST TRIAL; IS THAT CORRECT?

17 A. I WAS.

18 Q. OKAY. AND HOW LONG AFTER ANN BURGESS  
19 TESTIFIED IN THE FIRST TRIAL WERE YOU CALLED AS A  
20 WITNESS?

21 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS, YOUR  
22 HONOR. ASK TO APPROACH.

23 THE COURT: ALL RIGHT. SUSTAINED AS TO THE FORM  
24 OF THE QUESTION.

25 MR. CONN: OKAY.

26 Q. DID YOU READ THE TESTIMONY -- THIS  
27 TESTIMONY THAT I JUST SHOWED YOU BEFORE YOU TESTIFIED IN  
28 THE FIRST TRIAL?

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1 MS. ABRAMSON: I AM GOING TO OBJECT AND ASK TO  
2 APPROACH AGAIN CONCERNING ANYTHING THIS WITNESS  
3 TESTIFIED TO IN THE FIRST TRIAL.

4 THE COURT: SUSTAINED.

5 Q. BY MR. CONN: YOU SAID THAT YOU READ THE  
6 TESTIMONY OF ANN BURGESS; IS THAT CORRECT?

7 A. YES, I DID.

8 Q. WHEN DID YOU READ IT?

9 A. BEFORE MY TESTIMONY IN THE FIRST TRIAL.

10 Q. OKAY. SO WHEN YOU BECAME AWARE THAT ANN  
11 BURGESS HAD TESTIFIED UNDER OATH THAT ERIK MENENDEZ DID  
12 NOT SUFFER FROM ANY MENTAL DISORDER OR DISEASE, AND YOU  
13 KNEW THAT SHE HAD PREVIOUSLY TOLD YOU THAT HE SUFFERED  
14 FROM POST-TRAUMATIC STRESS DISORDER, DID YOU BRING THAT  
15 DISCREPANCY TO THE ATTENTION OF ANYONE?

16 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
17 TO THIS. GIVEN THE COURT'S RULINGS IN THE FIRST TRIAL,  
18 THIS IS AN IMPROPER LINE OF QUESTIONING.

19 THE COURT: WELL, THIS WAS NOT THE AREA OF THIS  
20 WITNESS' TESTIMONY IN THE FIRST TRIAL.

21 MS. ABRAMSON: EXACTLY.

22 THE COURT: SO IT WOULD NOT HAVE COME UP DURING  
23 HIS TESTIMONY IN THE FIRST TRIAL.

24 YOU ARE ASKING, EXCLUDING HIS TESTIMONY  
25 FROM THE FIRST TRIAL, WHETHER OR NOT HE BROUGHT IT UP IN  
26 ANY OTHER CONTEXT?

27 MR. CONN: YES, YOUR HONOR.

28 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT AS

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1 HEARSAY.

2 THE COURT: OVERRULED.

3 Q. BY MR. CONN: DID YOU?

4       A.  DID I WHAT?

5       Q.  BRING IT TO THE ATTENTION OF ANYONE THAT  
6 ANN BURGESS, PRIOR TO HER TESTIMONY, AGREED THAT ERIK  
7 MENENDEZ SUFFERS FROM POST-TRAUMATIC STRESS DISORDER,  
8 BUT THEN SHE TESTIFIED UNDER OATH THAT HE DID NOT SUFFER  
9 FROM ANYTHING?

10      MS. ABRAMSON: I AM GOING TO OBJECT TO THAT. SHE  
11 NEVER TESTIFIED HE DIDN'T SUFFER FROM ANYTHING.

12      THE COURT: SUSTAINED AS TO THE FORM OF THE  
13 QUESTION.

14      MR. CONN: THAT HE DID NOT SUFFER FROM ANY MENTAL  
15 DISORDER?

16      MS. ABRAMSON: IN THE DIAGNOSTIC MANUAL AT THAT  
17 TIME?

18      THE COURT: COUNSEL, YOU HAVE AN OBJECTION,  
19 NOT -- THE PURPOSE OF THE OBJECTION IS TO STATE IT TO  
20 THE COURT, NOT TO AMEND THE QUESTION BEING ASKED.

21           WHAT IS YOUR OBJECTION?

22      MS. ABRAMSON: I WOULD OBJECT TO THIS LINE OF  
23 QUESTIONING AS MISLEADING TO THE JURY.

24      THE COURT: THE OBJECTION IS SUSTAINED AS TO THE  
25 FORM OF THE QUESTION. IT'S INCOMPLETE.

26           FIRST OF ALL, I THINK YOU NEED TO ASK A  
27 FOUNDATION AS TO WHETHER THE WITNESS, AT THE TIME HE  
28 READ THE TESTIMONY, WAS AWARE OF THIS PARTICULAR

1 REFERENCE, AND WHETHER IT HAD ANY SIGNIFICANCE TO HIM AT  
2 THE TIME HE READ IT, BEFORE HE WAS CALLED UPON TO  
3 DISCUSS IT WITH ANYBODY.

4 Q. BY MR. CONN: NOW, DOCTOR, WHEN YOU READ  
5 THAT PARTICULAR PASSAGE WHICH I JUST SHOWED TO YOU, DID  
6 IT OCCUR TO YOU AT THAT TIME THAT DR. BURGESS APPEARED  
7 TO BE TAKING A POSITION THAT WAS DIFFERENT THAN THE  
8 POSITION THAT SHE TOOK WHEN YOU HAD A MEETING WITH THE  
9 OTHER MENTAL HEALTH PEOPLE IN THIS CASE?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
11 IRRELEVANT.

12 THE COURT: OVERRULED.

13 THE WITNESS: IT DID NOT OCCUR TO ME WHEN I READ  
14 THAT.

15 Q. BY MR. CONN: AND CAN YOU TELL US WHY IT  
16 DIDN'T OCCUR TO YOU?

17 MS. ABRAMSON: OBJECTION. IRRELEVANT.  
18 IRRELEVANT, AND IT CALLS FOR SPECULATION.

19 THE COURT: IT WOULD SEEM THAT IF IT DIDN'T OCCUR  
20 TO HIM, IT DIDN'T OCCUR TO HIM.

21 Q. BY MR. CONN: WELL, AT ANY TIME, DID IT  
22 OCCUR TO YOU THAT SHE TOLD YOU AT A MEETING HE SUFFERED  
23 FROM POST-TRAUMATIC STRESS DISORDER, AND THEN SHE  
24 TESTIFIED UNDER OATH THAT HE DID NOT SUFFER FROM ANY  
25 MENTAL DISORDER?

26 A. I MAY BE A LITTLE SLOW ON THE UPSWING HERE,  
27 BUT THAT DIDN'T OCCUR TO ME WHEN I READ THROUGH HER  
28 TESTIMONY. I THOUGHT THAT THE SYMPTOMS THAT SHE WAS

1 TALKING ABOUT AND THE INFORMATION THAT SHE WAS PROVIDING  
2 WAS CONSISTENT, AND IT FIT IN WITH ALL THE OTHER DATA IN  
3 THE CASE.

4 YOU'RE POINTING OUT SOMETHING HERE THAT  
5 JUST IN THAT LITTLE SECTION THERE IS SURPRISING, AND IT  
6 DOES SEEM OUT OF SYNC, AND I DON'T HAVE A GOOD ANSWER  
7 FOR THAT AT THIS POINT.

8 WHY THAT DIDN'T OCCUR TO ME, I DON'T KNOW.  
9 I MEAN, I WAS LIKE A LITTLE BEAVER. I WAS GOING THROUGH  
10 THESE TRANSCRIPTS PAGE AFTER PAGE, NIGHT AFTER NIGHT  
11 AFTER NIGHT, BUT THAT SLIPPED BY ME.

12 TAKING IT THE WAY IT STRIKES ME NOW, I  
13 WOULD SAY I DON'T AGREE WITH THAT, ALL RIGHT, AND THAT I  
14 SHOULD HAVE.

15 Q. YOU DON'T AGREE WITH WHAT?

16 A. I DON'T AGREE THAT ERIK MENENDEZ DOES NOT  
17 HAVE A MENTAL ILLNESS OR A MENTAL DISORDER. I THINK  
18 THAT THE VAST MAJORITY OF ALL OF THE DOCTORS THAT HAVE  
19 WORKED WITH HIM, INCLUDING DR. KUNZMAN, THE CHIEF  
20 PSYCHIATRIST AT THE JAIL.

21 Q. I AM NOT ASKING FOR ANOTHER OPINION, I AM  
22 JUST ASKING YOU --

23 MS. ABRAMSON: LET HIM FINISH HIS ANSWER.

24 THE COURT: IT'S GONE ON A LITTLE TOO LONG NOW.

25 THE FOCUS NOW IS TO DR. BURGESS.

26 YOUR NEXT QUESTION.

27 Q. BY MR. CONN: SO IT NEVER OCCURRED TO YOU

28 WHEN YOU READ THIS TRANSCRIPT OF ANN BURGESS THAT SHE

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1 HAD MADE AN INCONSISTENT STATEMENT?

2 A. IT -- I MAY BE WRONG ABOUT THIS, BUT IT

3 DIDN'T OCCUR TO ME THEN.

4 YES, THAT'S RIGHT.

5

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1 Q AND THEN DID YOU TESTIFY ON DIRECT

2 EXAMINATION THAT ERIK MENENDEZ WAS TOO NORMAL?

3 A I SAID THAT MAYBE MYSELF AND THE OTHER

4 PEOPLE THAT HAVE WORKED WITH HIM OVER THE PAST FEW

5 YEARS HAVE OVER-SHOT THE MARK, AND WE HAVE MADE HIM

6 SO RELATIVELY HEALTHY THAT IT'S ACTUALLY HARMED HIM

7 IN HIS CASE. BECAUSE WHEN HE COMES TO THE WITNESS

8 STAND, HE'S SO DRAMATICALLY DIFFERENT THAN HE WAS AT

9 THE TIME OF THE CRIME; THAT PERHAPS PEOPLE GET A

10 MISTAKEN IDEA ABOUT WHO HE IS AND WHAT HE WAS LIKE

11 BACK THEN.

12 Q HE'S UNDER MEDICATION RIGHT NOW, AS HE

13 SITS HERE TODAY; IS THAT CORRECT?

14 A YES.

15 Q AND HE WAS UNDER MEDICATION WHEN HE  
16 TESTIFIED UNDER OATH; IS THAT CORRECT?

17 A YES, HE WAS.

18 Q AND YOU'RE SAYING HE'S TOO NORMAL?

19 A I THINK IT'S RATHER REMARKABLE HOW  
20 NORMAL HE APPEARS, GIVEN THE CONTRAST WITH THE WAY  
21 HE WAS AT THE TIME OF THE CRIMES, AND FOR MONTHS AT  
22 THE JAIL BEFORE HE GOT BETTER.

23 Q NOW, YOU SAID THAT ERIK MENENDEZ NEVER  
24 USED THE TERM "ABUSED" WHEN SPEAKING TO YOU; IS THAT  
25 CORRECT?

26 A I SAID EARLY ON, YES. I THINK LATER,  
27 AFTER HE HAD BEEN CONTAMINATED BY LOTS OF EXPERTS  
28 AND THE ATTORNEYS AS WELL, TALKING ABOUT WHAT

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1 HAPPENED IN TERMS OF MORE MEDICAL-TYPE TERMS, SUCH  
2 AS MOLESTATION AND ABUSE AND THAT KIND OF THING,  
3 THAT HE KIND OF PICKED UP THAT KIND OF LANGUAGE.

4 SO LATER IN MY NOTES I THINK HE DOES USE  
5 THAT TERM. HE DOES USE THE TERM "ABUSE," AND HE  
6 DOES USE THE TERM "MOLESTATION."

7 Q WHETHER OR NOT HE USED THE TERM "ABUSE,"  
8 ERIK MENENDEZ WAS MAKING ALLEGATIONS AGAINST HIS

9 PARENTS THAT HE HAD BEEN ABUSED IN VARIOUS WAYS; IS  
10 THAT CORRECT?

11 A YES.

12 Q AND MS. ABRAMSON SAID TO YOU -- ASKED  
13 YOU WHETHER HE EVER GAVE YOU A LIST OF ALLEGATIONS  
14 OR COMPLAINTS BY HIS PARENTS.

15 DO YOU RECALL HER ASKING YOU THAT?

16 A YES.

17 Q AND IS IT YOUR OPINION THAT -- IS IT  
18 YOUR TESTIMONY THAT HE DID NOT GIVE YOU A LIST OF  
19 ALLEGATIONS OR COMPLAINTS AGAINST HIS PARENTS?

20 A IT NEVER COMES OUT THAT WAY IN MY NOTES,  
21 WHICH YOU HAVE A COPY OF. IT COMES OUT A LITTLE BIT  
22 HERE, AND THEN THERE'S TWO OR THREE MORE PAGES, AND  
23 A LITTLE BIT THERE; AND THEN ANOTHER COUPLE OF WEEKS  
24 GO BY, AND THERE'S A LITTLE BIT MORE HERE; AND THEN  
25 ANOTHER FOUR, FIVE PAGES, AND THEN SOME MORE THERE.

26 IT'S NOT THAT -- LIKE PERHAPS A VERY  
27 BRIGHT PERSON LIKE YOURSELF WOULD SIT DOWN AND SAY  
28 "HEY, LOOK, YOU KNOW, MY FATHER WAS A

1 SON-OF-A-BITCH, AND HERE'S THE REASON WHY." ONE,  
2 TWO, THREE, FOUR, FIVE, SIX.

3 HE NEVER DID THAT.

4 Q ALL RIGHT. SO WHAT YOU'RE SAYING IS HE  
5 DIDN'T SIT DOWN IN ONE SETTING AND GO THROUGH A LIST  
6 OF ALLEGATIONS; IS THAT CORRECT?

7 A YES.



8 Q BUT, NEVERTHELESS, HE MADE ALL SORTS OF  
9 ALLEGATIONS AND COMPLAINTS AGAINST HIS PARENTS. HE  
10 JUST BROKE IT UP AND GAVE YOU A LITTLE BIT OF IT AT  
11 A TIME, YES?

12 A OVER A PERIOD OF SEVERAL YEARS, YES.

13 Q UH-HUH. NOW, YOU SAID THAT ERIK  
14 MENENDEZ TOLD YOU THAT HIS MOTHER WAS A GOOD PERSON?

15 A YES.

16 MS. ABRAMSON: OBJECTION. NEVER MIND.

17 MR. CONN: OKAY.

18 THE WITNESS: HE ALSO HAD A LOT OF NASTY,  
19 NEGATIVE THINGS TO SAY AS WELL.

20 Q BY MR. CONN: AND DID HE TELL YOU HE  
21 COULDN'T STAND BEING AROUND HIS MOTHER AND HE DIDN'T  
22 LOVE HER?

23 A AT TIMES. NOT ONLY HIS MOTHER, BUT HIS  
24 FATHER.

25 Q DID HE TELL YOU THAT DURING THE LAST  
26 MONTH? I'M TALKING NOW ABOUT THE MONTH PRECEDING THE  
27 KILLINGS.

28 DID ERIK MENENDEZ TELL YOU HE COULD NOT

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1 STAND BEING AROUND HIS MOTHER, AND HE DID NOT LOVE  
2 HER?

3       A   YES. I THINK THOSE ARE ACTUAL QUOTES,  
4 TAKEN RIGHT OUT OF MY NOTES.

5       Q   OKAY. AND WHAT WAS THE REASON HE GAVE  
6 YOU FOR NOT LOVING HIS MOTHER IN THAT VERY MONTH  
7 PRECEDING HER MURDER?

8       A   WELL, THIS IS A PROCESS THAT HAD BEEN  
9 GOING ON FOR MANY YEARS. BUT, I MEAN, IT JUST  
10 SEEMED TO ACCELERATE AND GET WORSE; THAT THE MOTHER  
11 SEEMED TO BE TURNING HER BACK ON ERIK, AND DEVOTING  
12 HERSELF COMPLETELY TO WHATEVER THE FATHER WANTED.

13       AND THE MOTHER WAS INCREASINGLY ERRATIC  
14 AND SCREAMING AND YELLING AND THROWING THINGS,  
15 THREATENING TO KILL HERSELF, THREATENING TO KILL THE  
16 FATHER, THREATENING TO KILL THE WHOLE FAMILY.

17       AND ERIK JUST -- HE COULDN'T TAKE IT  
18 ANYMORE. HE COULDN'T STAND IT.

19       Q   ARE YOU SAYING THAT HE ALLEGED IN THE  
20 LAST MONTH SHE WAS THREATENING TO KILL HIM?

21       A   THERE ARE STATEMENTS THAT SHE WAS MAKING  
22 LIKE THAT THAT WERE PART OF THE HISTORY. I'M NOT  
23 SURE IF THEY WERE CONTINUALLY MADE RIGHT UP TO THE  
24 LAST MONTH. I THINK THAT IT WAS EITHER STATEMENTS  
25 LIKE THAT OR STATEMENTS LIKE: "YOU'RE THE CAUSE OF  
26 ALL THE PROBLEMS. I WISH YOU WERE NEVER BORN."

27       Q   I'M ASKING YOU SPECIFICALLY WHAT REASONS  
28 YOU RECALL HE GAVE YOU -- WELL, FIRST OF ALL, DID HE

1 SINGLE OUT THE LAST MONTH IN PARTICULAR AS BEING A  
2 PERIOD OF TIME HE COULDN'T STAND BEING AROUND HIS  
3 MOTHER?

4 A NOT TO SPECIFICALLY SINGLE THAT OUT, I  
5 DON'T THINK.

\*\*

6 Q DO YOU HAVE YOUR NOTES WITH YOU?

7 A YES.

8 Q LET ME DIRECT YOU TO PAGE 35 OF YOUR  
9 NOTES. I'LL DIRECT YOU TO --

10 A YES, HERE. I'VE GOT IT RIGHT IN THE  
11 MIDDLE OF THE PAGE.

12 Q OKAY. CAN YOU TELL US WHAT THAT FIRST  
13 LINE ON TOP THERE SAYS, IN THE MIDDLE OF THE PAGE?

14 A IT SAYS, "LAST MONTH," MEANING, I THINK,  
15 THE LAST MONTH PRIOR TO THE OFFENSES.

16 Q AND COULD YOU READ THE NEXT THREE  
17 LINES.

18 A IT SAYS: "I COULDN'T STAND BEING AROUND  
19 MY MOTHER. I THOUGHT SHE -- I THOUGHT I DIDN'T LOVE  
20 HER."

21 Q IT DOESN'T SAY, "I THOUGHT I DIDN'T LOVE  
22 HER." IT SAYS: "I DIDN'T LOVE HER."

23 MS. ABRAMSON: NO. IT SAYS "THOUGHT DIDN'T  
24 LOVE HER."

25 THE COURT: AGAIN, COUNSEL, DON'T INTERRUPT.

26 IF YOU HAVE AN OBJECTION, STATE YOUR OBJECTION.

27 MS. ABRAMSON: COUNSEL IS MISSTATING WHAT'S

28 IN THE NOTES.

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1 THE WITNESS: THAT'S INTERESTING. IT SAYS

2 "THOUGHT" HERE IN MY NOTES, AND IT DOESN'T SAY IT

3 ON YOUR COPY.

4 SO THIS IS OBVIOUSLY SOMETHING I WROTE

5 WHEN I WAS GOING OVER MY NOTES HERE. ACTUALLY, IT'S

6 A DIFFERENT HANDWRITING. YOU'RE RIGHT. IT

7 SAYS: "DIDN'T LOVE HER. DISAPPOINTED. THOUGHT

8 BEFORE SHE WAS MY WAY OUT."

9 Q WHAT IS A DIFFERENT HANDWRITING?

10 A THIS WORD HERE. YOU SEE? YOU CAN SEE

11 IT'S DIFFERENT. THIS IS SOMETHING THAT I'VE GONE

12 OVER AFTERWARDS.

13 Q IS THAT YOUR HANDWRITING?

14 A YES.

15 Q AND IS THIS YOUR HANDWRITING?

16 A YES.

17 Q SO IT'S ALL YOUR HANDWRITING?

18 A YES.

19 Q SO YOU'RE SAYING SOMETIME LATER YOU

20 WROTE IN THE WORD "THOUGHT"?

21 A RIGHT.

22 Q BUT IN THE COPY THAT WAS PROVIDED TO THE  
23 PROSECUTION, THE WORD "THOUGHT" DOESN'T APPEAR  
24 THERE?

25 A THAT'S CORRECT.

26 Q IS THAT CORRECT?

27 A YES.

28 Q NOW, WHEN DID YOU WRITE IN THE WORD

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1 "THOUGHT"?

2 A I THINK I WAS GOING OVER MY NOTES WITH  
3 DEFENSE COUNSEL, PREPARING TO TESTIFY, AND IT WAS  
4 CONFUSING WHEN IT SAYS "DIDN'T LOVE HER."

5 Q YOU WERE MODIFYING YOUR NOTES WITH  
6 DEFENSE COUNSEL, NOTES OF YOUR ORIGINAL INTERVIEW?

7 A I WAS ADDING THIS WORD BECAUSE IT WAS  
8 CONFUSING AS TO WHAT THIS MEANT, "DIDN'T LOVE HER."

9 Q WHAT OTHER CHANGES DID YOU MAKE IN YOUR  
10 NOTES AS YOU WERE GOING OVER YOUR NOTES WITH DEFENSE  
11 COUNSEL?

12 A WELL, YOU'VE GOT THE COPY THERE. IF  
13 IT'S THE SAME COPY I'VE GOT, YOU COULD GO THROUGH  
14 HERE, AND I DON'T THINK YOU'D FIND MORE THAN MAYBE  
15 FIVE OR SIX CHANGES, INCLUDING THINGS LIKE TAKING

16 THIS GREEN PEN AND CIRCLING SOMETHING, WHICH I DID  
17 DRIVING TO COURT TODAY, BECAUSE I HAVE TO READ THESE  
18 NOTES, BECAUSE I KNOW I'M GOING TO BE CRUCIFIED IF I  
19 DON'T REMEMBER WHAT I WROTE HERE.

20 SO I'M GOING OVER THESE NOTES  
21 CONSTANTLY. I'M NOT CHANGING THE COPIES EVERYBODY  
22 HAS, BUT I'M CHANGING MY NOTES HERE SOMETIMES, LIKE  
23 MAKING A STAR ON THE SIDE, WHICH YOU COULD FIND IF  
24 YOU WENT THROUGH HERE.

25 SOME OF THESE, AS FAR AS IN HERE, ARE  
26 AFTER WE'VE MADE COPIES FOR ALL THE LAWYERS AND THE  
27 JUDGE IN THIS CASE.

28 Q DOCTOR, IF YOU MAKE CHANGES TO YOUR

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1 ORIGINAL NOTES, HOW WILL YOU BE ABLE TO TESTIFY IN  
2 COURT AND DISTINGUISH BETWEEN WHAT ERIK MENENDEZ  
3 SAID AND WHAT YOU LATER ADDED TO YOUR NOTES?

4 A BECAUSE I RARELY, IF EVER, MAKE ANY KIND  
5 OF CHANGE IN THIS. AND WE'VE ALWAYS GOT THE COPY  
6 THAT THE JUDGE HAS AND --

7 THE COURT: I DON'T HAVE A COPY --

8 THE WITNESS: WELL --

9 THE COURT: -- DR. VICARY.

10 THE WITNESS: SORRY YOU'RE LEFT OUT. YOU CAN

11 HAVE ONE.

12 THE COURT: I DON'T WANT ONE.

13 THE WITNESS: I'M SURE IT WOULD BORE YOU.

14 THERE'S A HUNDRED AND TEN PAGES OF NOTES.

15 BUT EVERYBODY GOT THE ORIGINAL COPY. SO

16 THAT WILL NEVER CHANGE, ALL RIGHT? THAT'S PART OF

17 THE RECORD HERE. THERE'S NO LAW THAT SAYS I CAN'T

18 GO THROUGH HERE, STUDYING AND DOING MY HOMEWORK --

19 THAT I CAN'T ADD A LITTLE SOMETHING HERE. LIKE OH,

20 MY GOD, I CAN'T FORGET THIS.

21 LOOK, I'VE GOT SOME PAPER CLIPS IN

22 HERE. THERE'S NO PAPER CLIPS IN YOUR COPY. WHY DO

23 I HAVE THESE? BECAUSE I THINK THESE ARE REALLY

24 CRITICAL AREAS THAT I DON'T WANT TO LEAVE OUT.

25 Q DOCTOR, DO YOU KNOW WHEN YOU TURNED OVER

26 A COPY OF NOTES TO BE PROVIDED TO THE PROSECUTION IN

27 THIS CASE?

28 A GEEZ, THAT WAS A LONG TIME AGO. A YEAR

53884

1 AGO MAYBE.

2 Q AND IN THAT YEAR, DOCTOR, WOULD YOU TELL

3 ME -- GOING THROUGH YOUR NOTES, CAN YOU TELL US HOW

4 MUCH YOU'VE MODIFIED YOUR NOTES OF YOUR INTERVIEW

5 WITH ERIK MENENDEZ?

6 A I WOULD SAY OUT OF THE THOUSANDS AND  
7 THOUSANDS AND THOUSANDS OF HANDWRITTEN NOTES IN  
8 HERE, THERE ARE, PROBABLY, MAYBE A DOZEN LITTLE  
9 MARKS THAT ARE DIFFERENT THAN THAT COPY.

10 Q DO YOU THINK YOU COULD FIND THEM DURING  
11 THE NOON RECESS?

12 A I COULD FIND THEM RIGHT NOW, BECAUSE I  
13 KNOW THE CHANGES THAT --

14 Q WE'LL DO THAT DURING THE NOON RECESS.

15 LET'S GET BACK TO PAGE 35.

16 YOU SAID THAT -- DIRECTING YOUR  
17 ATTENTION NOW TO THE LAST MONTH.

18 YOU SAID THAT HE SPECIFICALLY  
19 DISTINGUISHED THE LAST MONTH AS A PERIOD OF TIME IN  
20 WHICH HE COULDN'T STAND BEING AROUND HIS MOTHER; IS  
21 THAT CORRECT?

22 MS. ABRAMSON: OBJECTION. MISSTATES THE  
23 TESTIMONY.

24 THE COURT: OVERRULED.

25 THE WITNESS: THAT'S WHAT IT SAYS IN MY NOTES  
26 HERE ON PAGE 35.

27 Q BY MR. CONN: OKAY. AND DID YOU MAKE  
28 ANY NOTES HERE AS TO WHY, DURING THAT MONTH IN

1 PARTICULAR, HE COULD NOT STAND BEING AROUND HIS  
2 MOTHER AND HE DID NOT LOVE HIS MOTHER?

3 A ON THIS PARTICULAR PAGE, NO. ON OTHER



4 PAGES, YES.

5 Q DID HE INDICATE RIGHT THERE, IN THAT  
6 VERY SECTION THAT WE ARE REFERRING TO, RIGHT UNDER  
7 THE WORDS: "DIDN'T LOVE HER," THE WORDS:  
8 "DISAPPOINTED. THOUGHT BEFORE SHE WAS MY WAY  
9 OUT."

10 A YES.

11 Q AND DID HE INDICATE TO YOU WHY HE FELT,  
12 DURING THAT LAST MONTH, THAT SHE WAS NO LONGER HIS  
13 WAY OUT?

14 A I THINK THERE WERE SEVERAL REASONS. ONE  
15 IS THAT SHE CONTINUED TO ALLY HERSELF WITH THE  
16 FATHER, AND REFUSE TO CONSIDER A DIVORCE, OR LEAVING  
17 THE FATHER.

18 Q DID HE ALSO TELL YOU THAT HIS FATHER HAD  
19 PUT RESTRICTIONS UPON HIS TENNIS PLAYING, AND HIS  
20 MOTHER DID NOT IN ANY WAY COME TO HIS ASSISTANCE IN  
21 THAT REGARD?

22 A YES. THAT WAS ANOTHER EXAMPLE OF THE  
23 PATTERN THAT HAD BEEN GOING ON FOR MONTHS AND YEARS.

24 Q DID HE TELL YOU THAT FOLLOWING  
25 KALAMAZOO, HIS FATHER SAID HE WAS NOT GOING TO PAY  
26 ANYMORE FOR -- ANYMORE MONEY ON TENNIS?

27 A YES.

28 Q AND THAT HIS FATHER WAS AGAINST HIS

1 ACTING?

2 A YES.

3 Q AND THAT HIS FATHER WAS NOT GOING TO

4 ALLOW HIM TO PLAY TENNIS?

5 A NOT PAY FOR IT, YES.

6 Q LET ME DIRECT YOUR ATTENTION TO PAGE 25

7 OF YOUR NOTES.

8 AND DO YOU SEE HERE UNDER AUGUST -- PAGE

9 25. THAT'S 26.

10 A CAN'T READ MY OWN WRITING HERE. THERE

11 WE GO.

12 Q UNDER AUGUST THE 5TH, DID HE -- DID YOU

13 WRITE -- MAKE NOTE OF HIM SAYING THAT HE WAS NOT

14 ALLOWED TO PLAY TENNIS?

15 A OKAY.

16 Q SO IT'S YOUR UNDERSTANDING THEN, THAT

17 FOLLOWING KALAMAZOO, HIS FATHER WOULD NO LONGER PAY

18 FOR ANYMORE TENNIS, AND HE WAS NOT ALLOWED TO PLAY

19 TENNIS?

20 A THAT'S EXACTLY WHAT IT SAYS IN MY NOTES.

21 Q AND HE LOVED TENNIS, DIDN'T HE?

22 A YES, HE DID.

23 Q AND HE WANTED TO STUDY ACTING, DIDN'T

24 HE?

25 A YES, HE DID.

26 Q AND HIS FATHER TOLD HIM THAT HE WAS TO

27 GO TO COLLEGE OR SUFFER THE CONSEQUENCES?

28 MS. ABRAMSON: OBJECTION. MISSTATES IT.

53887

1 THE COURT: FIRST OF ALL, ARE YOU ASKING, IS  
2 THAT WHAT THE DEFENDANT TOLD THE WITNESS?

3 MR. CONN: YES, YOUR HONOR.

4 THE COURT: REPHRASE THE QUESTION.

5 Q BY MR. CONN: DID ERIK MENENDEZ TELL YOU  
6 THAT HIS FATHER TOLD HIM: "YOU GO TO COLLEGE OR YOU  
7 SUFFER THE CONSEQUENCES"?

8 A I THINK, IN LANGUAGE SIMILAR TO THAT,  
9 YES.

10 Q UH-HUH. AND DID HE INDICATE TO YOU THAT  
11 HE WAS UPSET WITH HIS FATHER ABOUT THE ACTING?

12 A YES.

13 Q CAN YOU TELL US WHAT -- OH, DID HE TELL  
14 YOU THAT HE PLEADED WITH HIS FATHER ABOUT THE  
15 ACTING?

16 A I THINK HE PLEADED WITH HIS FATHER ABOUT  
17 THAT AND LOTS OF OTHER THINGS.

18 Q OKAY. AND THEN DID HE SAY THAT HE  
19 DECIDED TO MOVE OUT?

20 A YES.

21 Q SO ERIK MENENDEZ MADE THE DECISION TO

22 MOVE OUT?

23 A HE WANTED TO, YES.

24 Q AND DID HE TELL YOU THAT HE WANTED TO GO

25 ON A -- HE WANTED TO GO TO A TENNIS CLINIC IN

26 FLORIDA, AND THAT HE WAS NOT PERMITTED TO GO TO THE

27 TENNIS CLINIC IN FLORIDA?

28 A YES.

53888

1 Q THAT HE WAS SUPPOSED TO START THERE ON

2 AUGUST THE 16TH, FOUR DAYS BEFORE THE MURDER?

3 A YES. I THINK THAT'S APPROXIMATELY THE

4 DATE.

5 Q AND HIS FATHER NIXED THE PLANS?

6 A RIGHT.

7 Q AND FOUR DAYS AFTER HIS FATHER -- FOUR

8 DAYS AFTER HE WAS SUPPOSED TO START THE TENNIS

9 CLINIC, HE SHOT HIS FATHER TO DEATH?

10 A YES.

11 MS. ABRAMSON: OBJECTION, YOUR HONOR.

12 IMPROPER QUESTION OF THIS WITNESS.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES.

15 Q BY MR. CONN: AND DID HE TELL YOU THAT

16 HIS FATHER REFUSED TO PAY FOR A TRAINING CAMP AT

17 U.C.L.A.?

18 A YES.

19 Q AND WHEN HIS FATHER REFUSED TO PAY FOR  
20 THAT TRAINING CAMP AT U.C.L.A., HIS FATHER TOLD HIM  
21 THAT HE HAD PLAYED LIKE AN ASS IN KALAMAZOO?

22 A YES.

23 Q AND DID HE TELL YOU THAT HE WANTED TO GO  
24 ON A TOUR, AND HIS FATHER TOLD HIM NO?

25 A YES.

26 Q DID HE TELL YOU THAT HE WANTED TO TAKE A  
27 DRAMA CLASS, AND HIS FATHER TOLD HIM NO?

28 A YES.

53889

1 Q AND DID HE TELL YOU THAT -- THAT HIS  
2 BROTHER TOLD HIM TO WAIT A WEEK, AND HE TOLD HIS  
3 BROTHER: "I CAN'T TAKE ANOTHER WEEK"?

4 MS. TOWERY: OBJECTION. HEARSAY.

5 THE COURT: WHY DON'T YOU GO ON TO SOMETHING  
6 ELSE.

7 SUSTAINED. WE'LL DISCUSS THIS ISSUE  
8 LATER.

9 Q BY MR. CONN: DID HE TELL YOU THAT AFTER  
10 HE SCREWED UP IN KALAMAZOO, HIS FATHER CUT OFF HIS  
11 TRAINING PROGRAM, SOMETHING THAT HE NEEDED TO

12 SUCCEED?

13 A YES.

\*\*

14 Q AND DID HE TELL YOU THAT ONE WEEK PRIOR

15 HE HAD CONVERSATIONS --

16 MS. ABRAMSON: I WOULD ASK COUNSEL TO CITE US

17 TO PAGES, SINCE HE IS SELECTING A FEW WORDS OUT OF

18 110 PAGES.

19 MR. CONN: PAGE 18.

20 Q DID HE TELL YOU THAT ONE WEEK PRIOR HE

21 HAD CONVERSATIONS ABOUT WHAT IT WOULD BE LIKE TO

22 LIVE WITHOUT HIS PARENTS?

23 MS. ABRAMSON: PAGE 18?

24 MR. CONN: YES. PAGE 18.

25 MS. ABRAMSON: NOT MY PAGE 18.

26 MS. TOWERY: OBJECTION, YOUR HONOR. I'D ASK

27 TO BE HEARD.

28 THE WITNESS: I CAN'T SEE IT ON PAGE 18.

53890

1 MAYBE YOU'LL HAVE TO HELP ME HERE.

2 THE WITNESS: YES.

3 MS. ABRAMSON: NEITHER DO I.

4 THE WITNESS: HERE'S 17. YEAH.

5 OKAY. "COULDN'T STAND ANYMORE."

6 MR. CONN: PAGE 18, RIGHT THERE.

7 THE WITNESS: YEAH. HERE IT IS. I DON'T SEE  
8 THIS.

9 Q BY MR. CONN: I WOULD ASK YOU THEN TO  
10 TAKE A LOOK AT WHAT APPEARS ON THIS PAGE 18, AND SEE  
11 IF YOU HAVE THAT SOMEWHERE IN YOUR NOTES.

12 A (WITNESS COMPLIES.) I REMEMBER THIS.  
13 IT SAYS: "ONE WEEK PRIOR." WHAT IT WOULD BE LIKE  
14 WITHOUT THE PARENTS.

15 Q BY MR. CONN: YOU REWROTE PAGE 18 AT  
16 SOME TIME; IS THAT CORRECT?

17 A WELL, EITHER THAT, OR IT'S PAGE 32 IS A  
18 DIFFERENT PAGE. SEE? IT'S THE SAME UP TO HERE AND  
19 DOWN HERE -- WELL, ACTUALLY, LOOK. IT'S THE SAME,  
20 EXCEPT FROM THIS POINT ON.

21 Q YOU TOOK PAGE 18, AND YOU REWROTE A  
22 PORTION OF THAT PAGE, YOU LEFT OUT THE LAST HALF OF  
23 THE PAGE, AND YOU NOW HAVE IN YOUR NOTES --

24 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
25 OBJECT TO THIS.

26 Q BY MR. CONN: -- YOUR REWRITTEN PAGE?

27 THE COURT: FIRST OF ALL, LET'S GET A  
28 CLARIFICATION FROM THE WITNESS, HIS UNDERSTANDING AS

2 Q BY MR. CONN: LET ME ASK YOU THIS,  
3 DOCTOR: DID YOU WRITE BOTH THE PAGE 18 THAT APPEARS  
4 IN FRONT OF YOU AND THE PAGE 18 THAT I HAVE?

5 A YES.

6 AND THE HONEST ANSWER TO THAT IS I DID  
7 REWRITE THIS PAGE, AND I LEFT THAT SECTION OUT AT  
8 THE REQUEST OF DEFENSE COUNSEL.

9 Q WHEN DID DEFENSE COUNSEL ASK YOU TO  
10 REWRITE YOUR NOTES, LEAVING OUT MATERIAL FROM YOUR  
11 NOTES?

12 A IN PREPARATION FOR MY TESTIMONY AT THE  
13 FIRST TRIAL.

14 Q AND WHICH DEFENSE COUNSEL MADE THAT  
15 REQUEST OF YOU?

16 A MS. ABRAMSON.

17 Q AND DID SHE TELL YOU WHY SHE WANTED YOU  
18 TO REWRITE YOUR NOTES?

19 A SHE SAID THIS WAS PREJUDICIAL, AND IT  
20 WAS OUT OF BOUNDS, AND IT WAS NOT NECESSARY.

21 Q AND YOU -- AS YOU REWROTE PAGE 18, YOU  
22 TRIED TO DUPLICATE THE SPACING BETWEEN WORDS IN MUCH  
23 THE SAME WAY THAT THE SPACING BETWEEN WORDS APPEARS  
24 IN THE ORIGINAL PAGE 18?

25 A ESSENTIALLY I JUST COPIED THE PAGE  
26 WITHOUT THIS SECTION BELOW THE GREEN LINE HERE.

27 Q BUT YOU -- WHERE THERE HAPPENS TO BE  
28 ENORMOUS SPACES LIKE BETWEEN THE WORD "TERRY" AND



1 "A" YOU LEFT AN ENORMOUS SPACE.

2 WHERE THERE HAPPENS TO BE SMALL SPACES  
3 BETWEEN WORDS, YOU ONLY LEFT A SMALL SPACE.

4 YOU WERE TRYING TO DUPLICATE THIS AS  
5 MUCH AS POSSIBLE, CORRECT?

6 A YEAH. IT WASN'T NECESSARY. IF WE WERE  
7 GOING TO LEAVE THIS SECTION OFF, WE COULD HAVE JUST  
8 COPIED THE SAME PAGE AND PUT ANOTHER WHITE PIECE OF  
9 PAPER OVER IT. SO WHAT I DID FROM MY OWN MEMORY,  
10 WAS JUST TO DO EVERYTHING I DID, EXCEPT TO LEAVE  
11 THAT SECTION OFF.

12 Q WHY DID YOU FEEL IT WAS NECESSARY TO  
13 DUPLICATE THE SPACES SO THAT YOUR REPRODUCED COPY  
14 WOULD LOOK IDENTICAL TO THE ORIGINAL COPY?

15 A IT WASN'T NECESSARY.

16 Q WELL, WHY DID YOU TAKE THE TIME AND  
17 TROUBLE TO DO THAT?

18 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
19 FORM OF THE QUESTION AS ARGUMENTATIVE.

20 THE COURT: OVERRULED.

21 MS. ABRAMSON: THIS WHOLE AREA IS IRRELEVANT,  
22 SINCE THE PROSECUTION WAS GIVEN A COMPLETE --

23 THE COURT: OVERRULED.

24 MS. ABRAMSON: -- SET OF NOTES.

25 THE COURT: OVERRULED.

26 THE WITNESS: I DIDN'T NEED TO DO THAT. I  
27 JUST FIGURED, IF I WAS GOING TO WRITE THE SAME  
28 THING, I MIGHT AS WELL WRITE ABOUT THE SAME THING,

53893

1 JUST LIKE I DO WHEN I TOOK IT FROM THERE.

2 Q DOCTOR, ISN'T IT TRUE THAT AS YOU WERE  
3 MAKING THAT DUPLICATE COPY, YOU WERE NOT ONLY  
4 COPYING THE MATERIAL, BUT WHAT YOU WERE DOING IS --  
5 DIDN'T YOU TAKE A GREAT DEAL OF TIME AND TROUBLE TO  
6 PUT THE SAME SPACES IN BETWEEN WORDS SO THAT THIS  
7 WOULD LOOK, FROM A DISTANCE, AS IF IT'S THE ORIGINAL  
8 PAGE?

9 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,  
10 YOUR HONOR. IT'S ARGUMENTATIVE. AND ALL OF THIS IS  
11 IRRELEVANT --

12 THE COURT: OVERRULED.

13 MS. ABRAMSON: -- SINCE THE PROSECUTION WAS  
14 GIVEN THE ORIGINAL NOTES.

15 THE COURT: OBJECTION OVERRULED.

16 THE WITNESS: I DIDN'T TAKE A LOT OF TIME AND  
17 ENERGY. I FIGURED, AS LONG AS WE'RE GOING TO HAVE  
18 THE SAME INFORMATION, I JUST -- IT'S THE SAME. WHY  
19 SHOULD I CRAM IT ALL UP TO A LITTLE AREA ON TOP?

20 Q I'M TALKING ABOUT WHY DID YOU TAKE THE

21 TIME AND TROUBLE TO DUPLICATE THE SPACES SO THAT  
22 YOUR COPY WOULD LOOK EXACTLY LIKE THE ORIGINAL?  
23 A I DIDN'T, TO BE HONEST WITH YOU.  
24 Q ARE YOU SAYING IT'S A -- LOOK AT THE  
25 DISTANCE, THE SPACING BETWEEN -- IN THIS SENTENCE,  
26 "AUNT TERRY A HAPPY PERSON." OKAY? LOOK AT THE  
27 SPACING BETWEEN "AUNT" AND "TERRY." THERE'S AN  
28 ENORMOUS SPACE BETWEEN THE WORD "TERRY" AND "A."

53894

1 THERE'S A SHORTER SPACE BETWEEN "A" AND  
2 "HAPPY," AND A SHORTER SPACE BETWEEN "HAPPY" AND  
3 "PERSON."  
4 AND WHEN YOU LOOK AT THIS COPY HERE,  
5 THOSE SPACES ARE IDENTICAL. YOU COULD PROBABLY HOLD  
6 THIS COPY OVER THAT UP TO THE LIGHT, AND THE SPACES  
7 WOULD BE IDENTICAL; IS THAT CORRECT?  
8 MS. ABRAMSON: THIS IS ARGUMENTATIVE AND  
9 IRRELEVANT.  
10 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.  
11 Q BY MR. CONN: COULD YOU TELL US WHY YOU  
12 DUPLICATED THE SPACING IN YOUR COPY SO THAT SPACING  
13 WOULD LOOK IDENTICAL TO YOUR ORIGINAL NOTES?  
14 A I DIDN'T DO THAT ON PURPOSE. I JUST  
15 DECIDED, IF I'M GOING TO DO THE PAGE, I MIGHT AS

16 WELL DO IT ABOUT THE SAME. I MEAN, WHY WOULD I  
17 CHANGE IT? IT DOESN'T MAKE SENSE.

18       THERE MUST HAVE BEEN A REASON, WHEN I  
19 WAS TALKING WITH ERIK, THAT I'M WRITING "AUNT  
20 TERRY." THERE'S A GAP. AND THEN IT SAYS "A HAPPY  
21 PERSON."

22       THIS IS MY SIMPLE MIND AT WORK. WHEN  
23 I'M TAKING NOTES FROM PEOPLE, I HAVE LITTLE HABITS  
24 AND SYSTEMS. IF I STARTED A NEW TOPIC, I'LL START  
25 OVER HERE ON THE RIGHT; AND THEN I'LL START AN  
26 OUTLINE, AND MOVE OVER AND TAKE NOTES UNDERNEATH  
27 IT. THAT RELATES TO THIS TOPIC.

28       IF THERE'S SOME NEW TOPIC THAT COMES

53895

1 OUT, OUT OF SYNC, I'LL MENTION IT UP OVER HERE,  
2 BECAUSE IT'S NOT RELATED TO THE GENERAL FLOW OF  
3 THINGS. THERE'S AN INNER-LOGIC AT WORK.

4       SO THAT, ARROGANTLY, IF I'M GOING TO  
5 COPY A PAGE, I FIGURE, WELL, THERE'S A REASON FOR  
6 THIS SEQUENCE AND THIS ORDER HERE. SO IN RESPECT TO  
7 MYSELF, I WANT TO KEEP IT THE SAME. NOT ANY OTHER  
8 REASON.

9       Q   SO ARE YOU SAYING -- JUST TO UNDERSTAND  
10 YOU -- THE SPACING BETWEEN THESE TWO DOCUMENTS -- IF

11 THE SPACING IS IDENTICAL, IT'S ENTIRELY

12 COINCIDENTAL?

13 A IT'S NOT COINCIDENTAL. I WANT IT TO BE

14 THE SAME BECAUSE I THINK MY NOTES ARE IMPORTANT.

15 AND THERE'S A REASON WHY THERE'S GAPS. ONE ON ONE

16 LINE AND ONE ON ANOTHER LINE. YOU SEE?

17 Q WHY, FOR EXAMPLE, IS IT IMPORTANT IN

18 THIS SENTENCE: "AUNT TERRY, A HAPPY PERSON"?

19 CAN YOU TELL US WHY IT IS IMPORTANT,

20 WHEN YOU ARE REPRODUCING THE SENTENCE: "AUNT TERRY,

21 A HAPPY PERSON," THAT YOU GET THIS LARGE SPACE

22 BETWEEN "TERRY" AND "A" EXACTLY THE SAME AS IN THE

23 ORIGINAL?

24 A OKAY. MY MEMORY IS THAT THIS WAS A NEW

25 SUBJECT THAT COMES UP, IS AUNT TERRY. OKAY? AND

26 HE'S SAYING A LOT OF THINGS ABOUT AUNT TERRY. ALL

27 RIGHT?

28 ONE OF THE THINGS HE SAYS ABOUT AUNT

53896

1 TERRY IS THAT SHE SEEMS LIKE SHE'S A HAPPY PERSON.

2 BUT IT'S NOT A SENTENCE LIKE THAT. IT'S A WHOLE

3 BUNCH OF IDEAS ABOUT AUNT TERRY.

4 SO THIS IS NOT A DIRECT QUOTE HERE.

5 THIS IS AUNT TERRY, THE SUBJECT, SKIP, DAH, DAH,

6 DAH, DAH, A HAPPY PERSON, AMONG MANY THINGS HE SAYS  
7 ABOUT AUNT TERRY.

8 THAT'S WHY -- IT'S NOT THAT THERE'S SOME  
9 SINISTER REASON. THIS IS JUST MY THOUGHT PROCESS AS  
10 I'M TAKING NOTES. AND YOU CAN SEE -- I MEAN, IT'S  
11 THE SAME PATTERN FROM PAGE 1 TO PAGE 110.

12 Q ALL RIGHT. THEN LET'S TALK ABOUT WHAT  
13 YOU DELETED FROM YOUR NOTES, DOCTOR.

14 DID YOU DELETE FROM YOUR NOTES THE  
15 SENTENCE: "ONE WEEK PRIOR, THAT HE WAS TALKIN' ABOUT  
16 WHAT IT WOULD BE LIKE WITHOUT THE PARENTS"?

17 A YES.

18 Q AND DID HE INDICATE WHO HE WAS HAVING  
19 THAT CONVERSATION WITH?

20 MS. TOWERY: OBJECTION.

21 THE COURT: ALL RIGHT. LET'S MOVE ON TO  
22 SOMETHING ELSE, AND WE CAN DISCUSS ALL THESE ISSUES  
23 AT ONCE.

24 OBJECTION SUSTAINED.

25 Q BY MR. CONN: NOW, DID ERIK MENENDEZ  
26 TELL YOU THAT HE WAS WARNED BY HIS FATHER'S  
27 HOMOSEXUAL LOVER THAT HIS PARENTS WERE GOING TO KILL  
28 HIM?

1           IN OTHER WORDS, DID ERIK MENENDEZ TELL  
2 YOU THAT HIS FATHER HAD A HOMOSEXUAL LOVER IN  
3 CALIFORNIA; THAT HOMOSEXUAL LOVER CAME OVER ON  
4 FRIDAY, TWO DAYS BEFORE ERIK MENENDEZ KILLED HIS  
5 PARENTS, AND THAT HIS FATHER'S HOMOSEXUAL LOVER TOLD  
6 HIM THAT DAY THAT HIS MOTHER AND FATHER WERE GOING  
7 TO KILL HIM?

8       A   YES.

9       Q   AND YOU MADE A NOTE OF THAT IN YOUR  
10 NOTES; IS THAT CORRECT?

11      A   YES, I DID.

12      Q   NOW, YOU'VE HAD CONVERSATIONS WITH ERIK  
13 MENENDEZ OVER A LONG PERIOD OF TIME; IS THAT  
14 CORRECT?

15      A   YES.

16      Q   YOU'VE READ HIS TESTIMONY FROM THE FIRST  
17 TRIAL?

18      A   YES.

19      Q   YOU'RE FAMILIAR WITH HIS TESTIMONY FROM  
20 THE RETRIAL?

21      A   YES.

22      Q   AND DID YOU NOTE THAT THIS IS AN  
23 ALLEGATION WHICH HAS NEVER COME UP, EITHER IN THE  
24 FIRST TRIAL, IN THE RETRIAL, OR TO ANY EXPERT  
25 ANYWHERE AT ANY TIME?

26      A   THAT'S CORRECT.

27      Q   AND DID YOU DISCUSS THAT WITH ERIK  
28 MENENDEZ AND SAY TO ERIK MENENDEZ: "HEY, WHAT IS

1 THIS BUSINESS ABOUT YOUR FATHER'S HOMOSEXUAL LOVER  
2 WARNED YOU THAT YOUR PARENTS WERE GOING TO KILL  
3 YOU"?

4 A YES.

5 Q AND WHAT DID HE SAY ABOUT THAT?

6 A THAT'S WHAT HE TOLD ME AT THAT TIME.

7 LATER HE TOLD ME THAT WAS NOT TRUE.

8 Q SO HE TOLD YOU THAT HE HAD PREVIOUSLY  
9 LIED TO YOU?

10 A YES.

11 Q WHEN DID YOU HAVE THIS CONVERSATION WITH  
12 HIM IN WHICH HE WAS TELLING YOU LIES?

13 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
14 FORM OF THE QUESTION.

15 THE COURT: REPHRASE THE QUESTION.

16 Q WHEN DID HE TELL YOU THAT HIS FATHER'S  
17 HOMOSEXUAL LOVER HAD TOLD HIM THAT HIS PARENTS WERE  
18 GOING TO KILL HIM?

19 A I THINK, AS YOU CAN SEE IN MY SHEAF OF  
20 NOTES THERE, THAT COMES ABOUT TWO THIRDS OF THE WAY  
21 INTO MY INTERVIEWS WITH HIM.

22 Q OKAY. WHAT WOULD THAT BE?

23 A THAT WOULD BE PROBABLY A YEAR AND A HALF



24 BEFORE THE FIRST TRIAL.

25 Q SO THAT WOULD BE IN '92?

26 A YES.

27 Q NOW, YOU HAD BEEN SEEING HIM SINCE 1990?

28 A YES.

53899

1 Q SO TWO YEARS AFTER YOU BEGAN SEEING HIM

2 HE WAS ON MEDICATION AT THAT TIME?

3 A YES, HE WAS.

4 Q AND HOW OFTEN -- HOW MANY VISITS HAD YOU

5 HAD WITH HIM, UP UNTIL THE TIME THAT HE TOLD YOU

6 THIS STORY ABOUT HIS FATHER'S HOMOSEXUAL LOVER?

7 A DOZENS AND DOZENS OF VISITS, ALMOST

8 EVERY WEEK.

9 Q AND -- OKAY. SO A HUNDRED TIMES PERHAPS?

10 A IT WOULDN'T BE A HUNDRED TIMES, BUT

11 CLEARLY, AT THAT POINT IT WOULD HAVE BEEN 40 VISITS,

12 MAYBE.

13 Q AND EVEN AFTER -- SO AFTER -- IT WAS YOUR

14 UNDERSTANDING THEN THAT AFTER 40 VISITS WITH HIM

15 DISCUSSING THE FACTS OF THE CRIME WITH YOU, THAT HE

16 HAD TOLD YOU A LIE ABOUT THE CRIME; IS THAT CORRECT?

17 A YES.

18 Q OKAY. AND WHEN WAS IT THAT HE REVEALED

19 TO YOU THAT HE HAD FABRICATED THIS STORY ABOUT A  
20 HOMOSEXUAL LOVER TIPPING HIM OFF THAT HIS PARENTS  
21 WERE GOING TO KILL HIM?

22 A PROBABLY A FEW WEEKS AFTER THAT.

23 Q UH-HUH. AND DID YOU MAKE A NOTE IN YOUR  
24 NOTES, DOCTOR, THAT HE RETRACTED THAT STORY?

25 A IT DOES NOT SPECIFICALLY STATE -- LIKE  
26 ME CROSSING IT OUT OR SAYING "LIE" OR SOMETHING LIKE  
27 THAT? IT WAS -- I WENT BACK AND I SAID: "NOW, LOOK,  
28 IS THIS TRUE, OR ISN'T IT TRUE?"

53900

1 AND HE SAID: "IT'S NOT TRUE."

2 SO THEN I JUST WENT ON FROM THERE.

3 Q I AM ASKING YOU --

4 A IT DOES NOT SAY ANYWHERE IN HERE THAT HE  
5 TOLD ME THAT THAT WAS A LIE.

6 Q OKAY. DOCTOR, YOU'VE CONTINUED TO TAKE  
7 NOTES UP UNTIL WHAT PERIOD OF TIME?

8 A THE LAST PAGE OF NOTES HERE. THIS IS  
9 FROM LAST SATURDAY.

10 Q SO YOU'VE BEEN TAKING NOTES OF YOUR  
11 INTERVIEWS WITH ERIK MENENDEZ EVER SINCE THE TIME  
12 YOU BEGAN VISITING HIM IN COUNTY JAIL; IS THAT  
13 CORRECT?

14 A THAT'S CORRECT.

15 Q RIGHT UP UNTIL LAST SATURDAY; IS THAT  
16 CORRECT?

17 A YES.

18 Q WHAT IS THE REASON FOR TAKING NOTES,  
19 DOCTOR?

20 A TO HELP -- MAINLY, TO HELP MYSELF  
21 REMEMBER.

22 Q IS IT TO RECORD IMPORTANT INFORMATION?

23 A YES.

24 Q AND WHEN ERIK MENENDEZ RETRACTED AN  
25 ALLEGATION AGAINST HIS FATHER THAT HE HAD BEEN  
26 TIPPED OFF PRIOR TO THE MURDER THAT HIS FATHER WAS,  
27 IN FACT, GOING TO KILL HIM, DID YOU TAKE THE TIME  
28 AND TROUBLE TO PUT THAT DOWN IN YOUR NOTES?

53901

1 A NO. I VERY EASILY COULD HAVE TAKEN MY  
2 GREEN PEN AND JUST CROSSED IT OR SAID: "THIS IS A  
3 LIE."

4 WHEN HE MADE THAT ADMISSION TO ME, I  
5 THOUGHT THAT WAS SUFFICIENT, SO I JUST WENT ON.

6 Q DIDN'T YOU THINK THAT WAS SIGNIFICANT,  
7 DOCTOR?

8 A I THOUGHT IT WAS VERY SIGNIFICANT.

9 Q AND SO, WHAT DO YOU NORMALLY WRITE DOWN,  
10 THE SIGNIFICANT THINGS, OR THE NON-SIGNIFICANT  
11 THINGS?

12 A THE SIGNIFICANT THINGS.

13 Q WHY DO YOU WRITE DOWN SIGNIFICANT  
14 THINGS, DOCTOR?

15 A SO I CAN REMEMBER THEM.

16 Q AND DID YOU FEEL THAT WAS SUFFICIENTLY  
17 SIGNIFICANT TO TAKE A MOMENT AND PUT YOUR PEN TO  
18 PAPER AND JOT IT DOWN?

19 A I THOUGHT THAT WAS SO OBVIOUS THAT IT  
20 WAS A LIE, THAT I DIDN'T NEED TO WRITE IT DOWN. I  
21 WOULD NEVER FORGET THAT.

22 Q YOU THOUGHT WHAT WAS SO OBVIOUSLY A LIE?

23 A THE STORY ABOUT THE FATHER'S HOMOSEXUAL  
24 LOVER.

25 Q YOU RECORDED THAT LIE IN YOUR NOTES.

26 A WHEN HE TOLD ME, I THOUGHT THAT WAS  
27 SIGNIFICANT, SO I WROTE IT DOWN.

28 LATER, WHEN I WENT BACK AND CHECKED ON

53902

1 THAT, BECAUSE I THOUGHT THAT WAS IMPORTANT AND  
2 SIGNIFICANT, AND I WAS ASKING PEOPLE ABOUT THAT --  
3 WHEN I WENT BACK, HE ADMITTED IT WAS A LIE.

4            THEN I SAID: "WELL, ALL RIGHT. FORGET

5 IT." SO WE JUST WENT ON.

6        Q    AND WHY DID YOU NOT TAKE ONE MOMENT OF

7 TIME, INsofar AS YOU WERE RECORDING SIGNIFICANT

8 STATEMENTS, AND WRITE DOWN: "I LIED WHEN I TOLD YOU

9 ABOUT MY FATHER'S HOMOSEXUAL RELATIONSHIP"?

10       A    I COULD HAVE.

11       Q    YES, YOU COULD HAVE. THE QUESTION IS:

12 WHY DIDN'T YOU?

13       MS. ABRAMSON: OBJECT TO THE TONE OF VOICE.

14       THE COURT: REPHRASE THE QUESTION.

15       Q    BY MR. CONN: WHY DIDN'T YOU, DOCTOR?

16       A    IT WAS SUCH A DRAMATIC MOMENT, I WOULD

17 NEVER FORGET IT. SO I DIDN'T THINK IT WAS NECESSARY

18 TO WRITE IT DOWN.

19       Q    SO WHAT YOU'RE SAYING IS, YOU DON'T

20 RECORD THE REALLY SIGNIFICANT THINGS, AND YOU DON'T

21 RECORD THE LESS SIGNIFICANT THINGS. YOU ONLY RECORD

22 THE THINGS THAT ARE FAIRLY SIGNIFICANT; IS THAT

23 CORRECT?

24       A    NO, THAT'S NOT CORRECT.

25       Q    WELL, THEN, ARE YOU TELLING US THAT THE

26 REALLY SIGNIFICANT THINGS YOU DO NOT RECORD, BECAUSE

27 YOU'RE CONFIDENT YOU WILL NEVER FORGET THEM?

28       A    WELL, SOME THINGS ARE SO VIVID.

1 I'LL GIVE YOU AN EXAMPLE. LAST SATURDAY  
2 I WAS AT THE JAIL. BEFORE I WENT TO SEE ERIK, I HAD  
3 TO SEE SOME OTHER PRISONER DOWNSTAIRS. THERE WAS  
4 ONE GUY, VERY SICK, VERY AGITATED, VERY PARANOID.  
5 THE MUSCLES IN HIS FACE WERE TWITCHING AND THE  
6 MUSCLES IN HIS ARMS WERE TWITCHING. HE WAS VERY  
7 DIRTY AND DISHEVELED.

8 AND HE STARTED TALKING ABOUT, "YOU  
9 KNOW," HE SAID, "I HAVE AN IDEA ABOUT KILLING  
10 SOMEBODY." AND HE SAYS, "I HATE PSYCHIATRISTS. AND  
11 I FEEL LIKE KILLING SOMEBODY RIGHT NOW."

12 NOW, AT THAT MOMENT THAT WAS VERY  
13 SIGNIFICANT. BUT I DID NOT WRITE THAT DOWN, BECAUSE  
14 I FELT THAT THAT WOULD BE THE KIND OF A THING THAT  
15 WOULD MAYBE PUSH THIS GUY.

16 SO I STOPPED WRITING, I PUT DOWN MY PEN,  
17 AND I SAID, "HEY, I'VE GOT NO PROBLEM HERE. YOU'RE  
18 UPSET. YOU WANT TO STEP OUTSIDE, GO AHEAD."

19 THE GUY JUMPED UP, GOT OUT OF THE BENCH.

20 NOW, AFTER WE GOT THE TRUSTEE TO TAKE  
21 HIM BACK UP TO THE MODULE WHERE HE LIVES, I DID NOT  
22 WRITE THAT DOWN IN MY NOTES, THAT HE HAD THREATENED  
23 TO KILL ME.

24 Q GETTING BACK TO ERIK MENENDEZ --

25 A WHY DIDN'T I DO THAT? BECAUSE IT'S SO  
26 DRAMATIC THAT I WOULD NEVER FORGET THAT WHEN I  
27 DICTATED MY REPORT LATER IN THE WEEK. YOU SEE?

53904

1 THE WEEK CONCERNING THAT INCIDENT?

2 A YES.

3 Q OKAY. DID YOU DICTATE A REPORT ABOUT  
4 THIS INCIDENT, DOCTOR, WHEN HE TOLD YOU THAT HE HAD  
5 PREVIOUSLY LIED TO YOU AND MADE UP A STORY ABOUT HIS  
6 FATHER HAVING A HOMOSEXUAL LOVER?

7 A I HAVE NEVER DICTATED A REPORT IN THIS  
8 CASE. BUT, OBVIOUSLY, IF I EVER DID DICTATE A  
9 REPORT AND I WAS GOING THROUGH EVERYTHING, I CAME  
10 ACROSS THAT IN MY NOTES, I WOULD SAY: "HE TOLD ME  
11 THE FOLLOWING STORY, WHICH HE LATER SAID WAS NOT  
12 TRUE."

13 AND I DON'T HAVE TO REFER TO MY NOTES TO  
14 KNOW IT'S NOT TRUE, BECAUSE HE TOLD ME.

15 Q DOCTOR, CAN YOU THINK OF ANY OTHER  
16 THINGS THAT ERIK MENENDEZ TOLD YOU WHICH WERE SO  
17 SIGNIFICANT THAT YOU DIDN'T EVEN FIND IT NECESSARY  
18 TO WRITE IT DOWN IN YOUR NOTES?

19 A OH, I THINK THERE WERE SEVERAL THINGS  
20 THAT HAPPENED OVER TIME. I CAN'T BE LIKE THE COURT  
21 REPORTER HERE, WHO TAKES DOWN EVERY WORD. I'M NOT  
22 THAT SKILLFUL. I DON'T WRITE THAT FAST.

23 I'M KIND OF DOING MY BEST TO PICK OUT  
24 ITEMS AS WE GO ALONG. I'M SURE THERE'S LOTS OF  
25 THINGS, AS YOU'RE POINTING OUT, THAT ARE VERY  
26 IMPORTANT AND SIGNIFICANT THAT SOMEBODY SITTING NEXT  
27 TO ME WOULD SAY: "WHY, YOU IDIOT. YOU DIDN'T WRITE  
28 THAT DOWN."

53905

1 THERE ARE OTHER THINGS I'M WRITING DOWN  
2 THAT THE PERSON SITTING NEXT TO ME WOULD SAY:  
3 "THAT'S NOT IMPORTANT. WHY ARE YOU WASTING YOUR  
4 TIME? YOU KNOW, YOU SHOULD BE SMARTER."

5 BUT I DO MY BEST.

6 MR. CONN: DID THE COURT WISH TO TAKE A  
7 RECESS AT THIS TIME?

8 THE COURT: OKAY. WE'LL RESUME AT 1:30.

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

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

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-11630

1 VAN NUYS, CALIFORNIA; THURSDAY, APRIL 4, 1996

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6

7 (THE FOLLOWING PROCEEDINGS

8 WERE HELD IN OPEN COURT OUT

9 OF THE PRESENCE OF THE JURY:)

10

11

12 THE COURT: LET ME SEE COUNSEL.

13 (THE FOLLOWING PROCEEDINGS WERE

14 HELD AT THE BENCH:)

15

16 THE COURT: OKAY. OUTSIDE THE THE HEARING OF THE  
17 JURY.

18 THE CLERK INFORMED ME THAT YOU WANTED TO  
19 HAVE A CONFERENCE?

20 MR. GESSLER: YES, YOUR HONOR.

21 FIRST I AM ASKING FOR AN IN CAMERA HEARING  
22 FOR THE DEFENSE TEAM OUTSIDE THE PRESENCE OF THE  
23 DISTRICT ATTORNEY.

24 THE COURT: OKAY.

25 MR. GESSLER: THEN PENDING THE RESULTS OF THAT,  
26 AN IN CAMERA HEARING OUTSIDE THE PRESENCE OF THE PUBLIC.

27 BUT THE FIRST ASPECT COULD REVEAL  
28 CONFIDENTIAL INFORMATION ON BEHALF OF LYLE MENENDEZ THAT

-11629

1 THE DISTRICT ATTORNEY IS NOT ENTITLED TO.

2 THE COURT: OKAY.

3 AND DO YOU WANT YOUR CLIENT PRESENT FOR  
4 THAT OR NOT? CAN WE JUST DO IT RIGHT HERE?

5 MR. GESSLER: I THINK THAT HE SHOULD BE, YOUR  
6 HONOR, BECAUSE THIS IS MORE SERIOUS THAN OUR USUAL. WE  
7 CAN DO IT HERE, IF SOMEBODY CAN STAND WITH THE  
8 DEFENDANT.

9 THE COURT: WELL, IT DOESN'T WORK OUT THAT WAY.

10 IS THIS SOMETHING YOU WANT TO DO NOW?

11 MR. GESSLER: I THINK WE NEED TO DO IT RIGHT

12 AWAY.

13 THE COURT: WE'LL CLEAR THE COURTROOM AND DO

14 THAT, AND PENDING THE THE RESULT, AFTER THAT WE WILL

15 DECIDE ABOUT THE PROCEEDINGS WITH THE PEOPLE OR NOT.

16 OKAY.

17 (THE FOLLOWING PROCEEDINGS.

18 WERE HELD IN OPEN COURT:)

19

20

21 THE COURT: OKAY. WE'LL CLEAR THE COURTROOM FOR

22 A MOMENT, PLEASE.

23 THAT INCLUDES YOU, TOO.

24 THE WITNESS: OKAY. SORRY.

25 DAILY NEWS REPORTER: YOUR HONOR, CAN WE BE HERE

26 AS WELL?

27 THE COURT: OKAY. THE D.A. IS BEING EXCLUDED AS

28 WELL, SO WOULD YOU PREFER TO BE HERE RATHER THAN THE

-11628

1 D.A.? OKAY. WELL, IT WON'T WORK OUT THAT WAY.

2 DAILY NEWS REPORTER: THANK YOU, YOUR HONOR.

3

4 (THE FOLLOWING PROCEEDINGS,

5 PAGES 53909 THROUGH 53962,

6 WERE HELD IN CAMERA, AND

7           SEALED BY ORDER OF THE COURT:)

8  
9           (PROCEEDINGS WERE ADJOURNED AT  
10           3:00 P.M. UNTIL 8:30 A.M. THE  
11           FOLLOWING DAY.)

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           PLAINTIFFS,   )  
  )  
7    )  
          VS.           ) NO. BA 068880  
8    )  
          ERIK GALEN MENENDEZ, AND    )  
9 JOSEPH LYLE MENENDEZ,                )  
  )  
10          DEFENDANTS.   )  
  )

11  
12       REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS  
13               THURSDAY, APRIL 4, 1996  
14               VOLUME 321

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APPEARANCES:  
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

12

LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT

15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON

ATTORNEY AT LAW

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11661 SAN VICENTE BOULEVARD

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LOS ANGELES, CA 90049

20

21

MARY LU MURPHY

22

CSR NO. 5178

MARILYN FADALE,

23

CSR NO. 4547

OFFICIAL REPORTERS

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6

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7

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9

10 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11 VICARY,  
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14

15

16 LEGEND:

17 A = MS. ABRAMSON

C = MR. CONN

18 G = MR. GESSLER

K = MS. TOWERY

19 L = MR. LEVIN

N = MS. NAJERA

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1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.