

1 VAN NUYS, CALIFORNIA; THURSDAY, APRIL 11, 1996

2 9:28 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: WE'RE BACK IN TRIAL. DEFENDANTS ARE
9 IN COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

10 ANY MATTERS BEFORE WE START?

11 MR. LEVIN: YES, YOUR HONOR. I WOULD WISH TO
12 RETRACE OUR FOOTSTEPS AND GO BACK TO THE 8.85
13 INSTRUCTION THAT WAS PROPOSED. I BELIEVE THAT
14 MR. GESSLER HAD ASKED FOR IT.

15 I APOLOGIZE TO THE COURT. I HAD NOT -- IN
16 FACT, BY MY ARGUMENTS BEFORE, I THINK IT WAS QUITE
17 OBVIOUS THAT I HAD NOT HAD -- I DID NOT LOOK AT THIS
18 INSTRUCTION CAREFULLY, BECAUSE I WAS ARGUING A PORTION
19 THAT APPEARED IN CALJIC, AND I NEVER ACTUALLY LOOKED AT
20 THIS CLOSELY UNTIL TODAY, WHEN I HAD TIME TO CONSIDER
21 IT.

22 I DISAGREE WITH THIS INSTRUCTION WITH
23 RESPECT TO FACTOR D THAT IS PLACED IN THE SECTION THAT
24 SAYS: "YOU SHALL CONSIDER AS AGGRAVATING OR
25 MITIGATING," AND FACTOR D DELINEATES THE AGE OF THE
26 DEFENDANT AT THE TIME OF THE CRIME.

27 THE INSTRUCTION, AS WRITTEN, MANDATES THE
28 JURY TO CONSIDER THE AGE OF ERIK MENENDEZ WHEN HE WAS 18

1 YEARS OLD AS A POSSIBLE FACTOR IN AGGRAVATION.

2 IN THAT AGE CAN BE CONSIDERED A FACTOR IN
3 AGGRAVATION; FOR EXAMPLE, IF A SUSPECT OR A DEFENDANT
4 COMMITS A CRIME WHEN HE'S 65 OR 70, AND THE JURY FEELS
5 THAT LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE
6 JUST ISN'T ENOUGH FOR THE CRIME THAT HE WAS CONVICTED
7 OF, PERHAPS THEY COULD THINK THAT THAT IS MORE
8 APPROPRIATE.

9 BUT THERE IS NO CIRCUMSTANCE IN THIS CASE
10 WHERE AN 18-YEAR-OLD, WHO HAS COMMITTED A CRIME FOR
11 WHICH THE DEATH PENALTY IS POSSIBLE, CAN SUCH AGE BE
12 CONSIDERED AS A FACTOR -- A STATUTORY FACTOR IN
13 AGGRAVATION.

14 AND I ASK THAT THAT FACTOR BE REMOVED AND
15 PLACED DOWN BELOW, WHERE IT TALKS ABOUT, "THE FOLLOWING
16 FACTORS ARE TO BE CONSIDERED BY YOU, IF APPLICABLE, AS
17 MITIGATING FACTORS ONLY."

18 THE COURT: OKAY.

19 DID YOU WISH TO BE HEARD, MR. GESSLER?
20 YOU'RE THE ONE THAT PREPARED THIS INSTRUCTION.

21 MR. GESSLER: YOUR HONOR, I WOULD STAND BY THE
22 INSTRUCTION I GAVE AS, I BELIEVE, A GENERAL STATEMENT OF
23 THE LAW AS IT STANDS AND WHAT THE INSTRUCTION IS MEANT
24 TO BE, AND I WILL STAND BY WHAT I HAVE PRESENTED.

25 THE COURT: PEOPLE WISH TO BE HEARD?

26 MR. CONN: I AGREE WITH MR. GESSLER.

27 MR. LEVIN: WELL THEN, YOUR HONOR, LET

28 MR. GESSLER HAVE IT AS AN AGGRAVATING FACTOR FOR HIS

-10884

1 21-YEAR-OLD CLIENT, AND LET US HAVE IT AS A FACTOR IN

2 MITIGATION FOR OUR 18-YEAR-OLD CLIENT.

3 MR. GESSLER: I AM NOT CLAIMING IT AS AN

4 AGGRAVATING FACTOR, YOUR HONOR. IT IS AGGRAVATING OR

5 MITIGATING, AND THE FACTORS ARE APPLIED TO THE CASE IN

6 GENERAL.

7 THE COURT: I THINK THE LAW IS CLEAR THAT IT

8 COULD BE EITHER/OR. IT'S UP TO THE JURY TO EVALUATE THE

9 EVIDENCE AND THE LAW, AND APPLY IT AS THEY CHOOSE. IT

10 COULD BE EITHER AN AGGRAVATING OR MITIGATING FACTOR.

11 MR. LEVIN: I THINK, YOUR HONOR, IT COULD BE AN

12 AGGRAVATING OR MITIGATING CIRCUMSTANCE, DEPENDING ON THE

13 FACTS OF THE CRIME, THE FACT OF THE AGE OF THE DEFENDANT

14 AT THE TIME OF THE CRIME.

15 MY ARGUMENT IS THAT IF THE FACTS OF THE

16 CASE ARE, AS THEY ARE HERE, THAT THE DEFENDANT WAS 18

17 YEARS OLD AT THE TIME OF THE CRIME, HIS AGE CANNOT --

18 CANNOT POSSIBLY BE CONSIDERED -- EVEN CONSIDERED BY THE

19 JURY AS A FACTOR IN AGGRAVATION.

20 THE COURT: WHAT AUTHORITY DO YOU HAVE FOR THAT

21 PROPOSITION? DO YOU HAVE ANY CASE THAT SAYS THAT?

22 MR. LEVIN: YES, YOUR HONOR. I WOULD SAY THAT IF
23 THERE IS ANYTHING TO THE CONTRARY, THAT THIS JURY
24 INSTRUCTION IS UNCONSTITUTIONAL, AND THAT IT WOULD
25 DEPRIVE ERIK MENENDEZ OF A FAIR TRIAL. IT WOULD BE IN
26 VIOLATION OF HIS 5TH, 6TH, 8TH AND 14TH AMENDMENTS TO
27 THE UNITED STATES CONSTITUTION. I THINK THAT'S
28 AUTHORITY ENOUGH.

-10883

1 THIS IS THE ONLY FACTOR THAT DOESN'T TALK
2 ABOUT THE CIRCUMSTANCES OF THE CRIME, ANY EMOTIONAL
3 DISORDER, MOTIVE, ANYTHING TO DO WITH ANY OTHER
4 CIRCUMSTANCE, EXCEPT THE PASSAGE OF TIME.

5 EIGHTEEN YEARS PASSED AT THE TIME THAT ERIK
6 MENENDEZ COMMITTED THIS CRIME. HOW COULD THAT POSSIBLY
7 BE CONSIDERED ON ITS OWN AS A POSSIBILITY OF AN
8 AGGRAVATING FACTOR?

9 THE COURT: OKAY.

10 MR. LEVIN: AND IF THAT'S WHAT THE LAW IS IN THE
11 STATE OF CALIFORNIA AT THIS TIME, THAT LAW IS
12 UNCONSTITUTIONAL.

13 MR. GESSLER STANDS IN A DIFFERENT POSITION,
14 ACCORDING TO HIS TRIAL STRATEGY, AND HIS CLIENT IS
15 OLDER. AND IF HE FEELS THAT THE JURY SHOULD BE ALLOWED
16 TO CONSIDER -- AND HE WANTS TO CONCEDE THAT, THAT THE
17 JURY COULD CONSIDER FOR LYLE MENENDEZ THAT IT COULD EVEN

18 BE A STATUTORY FACTOR IN AGGRAVATION FOR HIS 21-YEAR-OLD
19 CLIENT -- THAT CAN BE HIS STRATEGY.
20 OUR STRATEGY IS THAT IT IS NOT THE LAW, AND
21 THAT IF THE COURT ALLOWS THIS INSTRUCTION TO BE GIVEN AS
22 IT IS REQUESTED BY MR. GESSLER, IT CAN ERRONEOUSLY CAUSE
23 THE JURY TO SPECULATE AND INFER THAT AS A FACTOR IN
24 AGGRAVATION, OR DISREGARD THE ARGUMENT MADE BY COUNSEL
25 IN MITIGATION, AND I WOULD SUBMIT TO THIS COURT -- WELL,
26 STRIKE THAT.
27 THE COURT: MR. GESSLER, WHAT IS THE CASE -- I
28 CAN'T FIND IT FROM MY INITIAL SEARCH HERE OF IT -- THAT

-10882

1 AGE CAN BE A FACTOR EITHER OF AGGRAVATION OR MITIGATION?
2 MR. GESSLER: YOUR HONOR, I DON'T HAVE THE CASE
3 NAME. I KNOW THAT THE LAST FOUR OR FIVE CASES HAVE SAID
4 THAT AGE IS A METONYM -- WHICH IS A WORD I HAVE NEVER
5 BEFORE HEARD UNTIL I READ IT -- CASES SAYING THAT AGE
6 CAN BASICALLY BE CONSIDERED EITHER WAY.
7 BEFORE THAT, UNDER DAVENPORT, I THINK THAT
8 AGE WAS CONSIDERED TO BE MITIGATING ONLY, AND COULD NOT
9 BE AGGRAVATING. BUT THEY JUST SAID METONYM, AND LET IT
10 GO AT THAT.
11 I CAN'T TELL YOU -- I KNOW THERE ARE CASES
12 THAT SAY THAT, YOUR HONOR. I DISAGREE WITH THEM, BUT I
13 KNOW THEY'RE THERE.

14 THE COURT: YES. I JUST CAN'T REMEMBER THE NAME
15 OF THE CASE. I JUST CAN'T REMEMBER IT OFF THE TOP. I
16 DIDN'T KNOW MR. LEVIN WAS GOING TO MAKE THIS ARGUMENT.

17 OKAY. I HEAR YOUR ARGUMENT, MR. LEVIN, BUT
18 THE LAW IS CONTRARY, AND THE INSTRUCTION AS PRESENTED
19 HERE IS APPROPRIATE.

20 MR. LEVIN: WELL, YOUR HONOR, I WOULD ASK FOR THE
21 OPPORTUNITY TO TAKE A MOMENT TO CHECK THAT CASE. I
22 BELIEVE THAT THE UNITED STATES SUPREME COURT HAS
23 INDICATED THAT YOUTH IS A FACTOR IN MITIGATION; THAT
24 WHEN THEY DECIDED THAT AND OVERTURNED THE PRINCIPLE IN
25 DAVENPORT, THAT THEY WERE TALKING ABOUT AGGRAVATING --
26 OR AGE AS AN AGGRAVATING CIRCUMSTANCE COULD BE WHERE THE
27 DEFENDANT IS OLDER. IT HAS NOTHING TO DO WITH THE
28 DEFENDANT'S CONDUCT AT ALL.

-10881

1 THE COURT: OKAY. THEN YOU WANT TO FIND A CASE.

2 WHAT ELSE IS IT THAT YOU WANTED TO BRING TO
3 MY ATTENTION, SOME OTHER ISSUES?

4 MS. ABRAMSON: WE HAD SOME CONCERNS ABOUT WHAT
5 THE PROSECUTION WANTED TO USE IN ARGUMENT.

6 BUT ALSO, YOUR HONOR, WITH RESPECT TO THE
7 VERDICT FORMS, WE ARE REQUESTING THAT SINCE THE LAW IN
8 ITS WISDOM FAVORS LIFE OVER DEATH, THAT THE VERDICT
9 FORMS SHOULD BE REWORDED SO THAT THE LIFE WITHOUT

10 POSSIBILITY OF PAROLE OPTION PRECEDES DEATH.

11 THE COURT: OKAY. I WILL HAVE THE CLERK DO THAT.

12 MS. ABRAMSON: THANK YOU, YOUR HONOR.

13 MR. GESSLER: I HAVE AN ADDITIONAL OBJECTION TO

14 THE VERDICT FORMS, YOUR HONOR, WHICH IS THAT THE COURT

15 HAS PREPARED A VERDICT FORM FOR EACH OF THE COUNTS; THAT

16 IS COUNT 1 AND COUNT 2; GIVING THE JURY AN OPTION, I

17 GUESS, TO FIND LIFE UNDER ONE AND DEATH UNDER THE OTHER.

18 MY OBJECTION COMES UNDER FEDERAL GROUNDS.

19 THERE IS NO CASE SPECIFICALLY ON POINT, BECAUSE ONE HAS

20 NOT YET REACHED THE UNITED STATES SUPREME COURT TO MAKE

21 THAT DECISION.

22 BUT SUMNER VERSUS SHUMAN, LOCKETT VERSUS

23 OHIO, ALL OF THE DEATH PENALTY CASES THAT HAVE BEEN

24 CONSIDERED BY THE HIGH COURT, EMPHASIZE THE FACT THAT

25 THERE ARE TWO BASIC THINGS FOR THE JURY TO CONSIDER.

26 ONE IS CIRCUMSTANCES OF THE CRIME, THE OTHER IS THE

27 INDIVIDUAL.

28 NOW, THE CALIFORNIA STATUTE DOES ALLOW THE

-10880

1 JURORS TO DO THAT. BUT OUR LAW IN CALIFORNIA, WHEN IT

2 TALKS ABOUT CIRCUMSTANCES OF THE CRIME, MEANS ALL OF THE

3 CIRCUMSTANCES GOING INTO THE MURDER, WHETHER IT IS

4 FIRST-DEGREE MURDER AND WHETHER IT IS SPECIAL

5 CIRCUMSTANCES MURDER. AND THE INSTRUCTION THE COURT

6 WILL READ TELLS THEM THAT, THAT AGGRAVATING IS OVER AND
7 BEYOND THE CIRCUMSTANCES OF THE CRIME AND SPECIAL
8 CIRCUMSTANCES FOUND TO BE TRUE.

9 SINCE HERE THE BASIS -- ONE OF THE TWO
10 REASONS WHY WE ARE HERE IN A PENALTY TRIAL IS THAT THERE
11 WAS MULTIPLE MURDER, OR TWO MURDERS. THEN THAT SHOULD
12 BE THE CIRCUMSTANCE OF THE CRIME, AND THE SPECIAL
13 CIRCUMSTANCE THAT THE JURY CONSIDERS IN THAT WHOLE MIX,
14 TO COMPARE WITH THE DEFENDANT HIMSELF, AND WHATEVER IS
15 PRESENTED IN MITIGATION OR AGGRAVATION FOR THE
16 INDIVIDUAL.

17 TO GIVE TWO VERDICTS, ONE FOR JOSE MENENDEZ
18 AND ONE FOR MARY LOUISE MENENDEZ, EMPHASIZES THE CRIME
19 AT THE EXPENSE OF THE INDIVIDUAL. IT MAGNIFIES THE
20 FACTS OF ONE CRIME VERSUS THE FACTS OF ANOTHER CRIME, OR
21 EMPHASIZES THE CHARACTER OR STATUS OF THE VICTIM AT THE
22 EXPENSE OF THAT OF THE DEFENDANT WHO WAS ON TRIAL FOR
23 HIS LIFE.

24 AND THAT IS NOT WHAT THE UNITED STATES
25 SUPREME COURT MEANS IN LOCKETT AND IN SUMNER VERSUS
26 SHUMAN WHEN IT SAYS YOU CAN'T HAVE AN AUTOMATIC DEATH
27 PENALTY, AND THAT YOU MUST GIVE THE INDIVIDUAL AND THE
28 BACKGROUND AND ALL OF THE FACTS CONSIDERING THE

1 INDIVIDUAL FAIR CONSIDERATION.

2 SO I THINK THAT TO HAVE TWO VERDICTS, ONE
3 FOR MARY LOUISE AND ONE FOR JOSE, IS WRONG UNDER THE
4 UNITED STATES CONSTITUTION AND CASES THAT INTERPRET IT,
5 ESPECIALLY UNDER THE 8TH AMENDMENT, AS WELL AS THE 14TH
6 AMENDMENT, THE 6TH AMENDMENT; AND IT IS ALSO WRONG IN
7 EMPHASIZING THE FACTS OF THE CASE.

8 AND WHEN PAYNE VERSUS TENNESSEE CAME OUT
9 AUTHORIZING VICTIM IMPACT TO BECOME PART OF THE
10 CIRCUMSTANCES OF THE CASE, IT TOOK PAINS TO POINT OUT
11 THAT THE TRIAL WAS NOT TO CENTER ON THE VICTIM OR THE
12 FACTS OF THE LOSS OR THE CIRCUMSTANCES. IT WAS ONLY ONE
13 CIRCUMSTANCE AMONG MANY.

14 TO DIFFERENTIATE THESE TWO VICTIMS,
15 PARTICULARLY WHERE THERE HAS BEEN PERHAPS EVEN A
16 DIFFERENCE IN THE SIDES OF THE FAMILY WHO HAVE COME
17 FORWARD, ONE FOR THE DEFENSE, WHERE IT WAS JOSE
18 MENENDEZ' FAMILY, AND THE TWO WITNESSES WHO TESTIFIED
19 FOR THE PROSECUTION FROM MARY LOUISE MENENDEZ' FAMILY,
20 IS TO DO WHAT PAYNE SAYS IT IS NOT MEANT TO DO; THAT IS,
21 TO EMPHASIZE ONE VICTIM EVEN OVER ANOTHER, INSTEAD OF
22 LOOKING AT THE WHOLE MIX OF THE CIRCUMSTANCES OF THE
23 CRIME, AND THE WHOLE MIX AS TO THE INDIVIDUAL BEFORE THE
24 JURY, AND LET THEM MAKE THE DETERMINATION BASED ON THAT.

25 MS. ABRAMSON: WE JOIN IN THAT ARGUMENT, YOUR
26 HONOR, IN ALL OF ITS PARTICULARS.

27 THE COURT: AND WHAT IS THE PEOPLE'S POSITION?

28 MR. CONN: YES. I THINK THAT THE COURT CORRECTLY

1 IS PROVIDING THAT THE JURY CAN SELECT TWO SEPARATE
2 PUNISHMENTS, ONE FOR EACH OF THE TWO COUNTS. THE
3 INSTRUCTION TO THE JURY; THAT IS, THE FORM TO THE JURY,
4 CORRECTLY SUGGESTS THAT TWO CRIMES WERE COMMITTED. TWO
5 VICTIMS ARE DEAD.

6 THE JURY SHOULD PROPERLY BE INSTRUCTED TO
7 IDENTIFY WHAT THEY BELIEVE TO BE THE PUNISHMENT FOR THE
8 MURDER OF EACH OF THE VICTIMS IN THIS CASE, AND I THINK
9 THAT IS WELL-PROVIDED FOR IN THE CASE LAW.

10 THE COURT: WELL, CLEARLY THE JURY HAS A RIGHT
11 AND OBLIGATION TO DECIDE THE PUNISHMENT FOR EACH OF THE
12 TWO CRIMES FOR WHICH THE DEFENDANT HAS BEEN CONVICTED
13 AND IS SUBJECT TO THIS PENALTY HEARING, AND THE ONLY WAY
14 THE JURY CAN DO THAT IS TO DEAL WITH IT ONE COUNT AT A
15 TIME, AND ADDRESS APPROPRIATELY THE PUNISHMENT AS TO
16 EACH VICTIM, AND THE VERDICT THAT WAS REACHED AS TO EACH
17 VICTIM, TAKING INTO CONSIDERATION THE FACTORS IN
18 AGGRAVATION AND MITIGATION.

19 BUT CLEARLY THE LAW OF THIS STATE IS THAT
20 WHEN THERE ARE MULTIPLE VERDICTS OF GUILT FOR THE CRIME
21 OF MURDER WITH A SPECIAL CIRCUMSTANCE, THE JURY IS TO BE
22 GIVEN VERDICT FORMS AS TO EACH COUNT, AND I THINK IT'S
23 PROPER.

24 MR. GESSLER: THAT'S THE LAW OF THE STATE, YOUR
25 HONOR, BUT I AM TALKING ABOUT THE FEDERAL LAW AND THE
26 CONSTITUTION OF THE UNITED STATES, WHICH SUPERSEDES THE

27 STATE LAW, AND WHICH MUST BE TAKEN INTO ACCOUNT BY THE
28 COURT IN DETERMINING WHAT THE JURY SHOULD HEAR, AND WHAT

-10877

1 THEY RECEIVE AS VERDICTS, AND HOW THEIR DELIBERATIONS
2 SHOULD BE GUIDED; WHICH IS, I THINK, TOWARD THE
3 INDIVIDUAL THAT IS BEING PLACED BEFORE THEM, AND HIS
4 LIFE OR DEATH.

5 SO I MAKE MY MOTION, AND MY ARGUMENT IS
6 BASED ON THE UNITED STATES CONSTITUTION, YOUR HONOR, AND
7 ITS APPLICATION TO THIS COURT.

8 THE COURT: OKAY. ALL RIGHT. I UNDERSTAND.

9 YOUR MOTION IS DENIED. YOUR REQUEST FOR
10 ONE VERDICT FORM IS DENIED.

11 MR. GESSLER: ADDITIONALLY, YOUR HONOR, I HAVE
12 OBJECTION TO SOME OF THE PROPOSED CHARTS BY THE
13 PROSECUTION THAT THEY INTEND TO USE, AND PARTICULARLY
14 THAT REGARDING AGGRAVATING FACTORS.

15 THERE ARE CERTAIN THINGS SET FORTH. FOR
16 INSTANCE, I THINK THEY HAVE THEM LISTED AS SEVEN.

17 AGGRAVATING FACTOR NO. 6 IS: "THE VICTIM
18 WAS AMBUSHED IN HER OWN HOME," WHICH IS IN ESSENCE
19 LYING-IN-WAIT, ONE OF THE SPECIAL CIRCUMSTANCES THAT HAS
20 BROUGHT US THIS FAR.

21 AND THE OTHER IS "THE DEFENDANT ALSO
22 MURDERED FATHER," ANOTHER SPECIAL CIRCUMSTANCE OF

23 MULTIPLE MURDER WHICH HAS BROUGHT US THIS FAR.
24 THOSE ARE NOT AGGRAVATING FACTORS, YOUR
25 HONOR. BUT AGAIN, AS I HAVE MENTIONED, THE COURT IS
26 TELLING THEM THAT AGGRAVATING FACTORS ARE OVER AND
27 BEYOND THE CRIMES AND SPECIAL CIRCUMSTANCES WHICH HAS
28 BROUGHT US HERE.

-10876

1 THERE IS NO PRESUMPTION OF DEATH SIMPLY
2 BECAUSE THERE IS A SPECIAL CIRCUMSTANCE THAT HAS BEEN
3 FOUND TRUE.

4 THE COURT: WELL, CERTAINLY AS FAR AS FACTOR
5 NO. 4 THERE, OR -- I'M SORRY, NO. 6, THE ONE ABOUT THE
6 HOME, A CIRCUMSTANCE -- A SPECIAL CIRCUMSTANCE OF
7 LYING-IN-WAIT DOESN'T INCORPORATE A DWELLING OF THE
8 VICTIM.

9 SO CLEARLY, IF THE PEOPLE ARE ARGUING THAT
10 THIS OCCURRED IN THE VICTIM'S OWN HOME, THAT COULD BE A
11 FACTOR THE JURY COULD CONSIDER AS A CIRCUMSTANCE OF THE
12 CRIME. THAT GOES ABOVE AND BEYOND THE SPECIAL
13 CIRCUMSTANCE OF LYING-IN-WAIT. THE VICTIM COULD HAVE
14 BEEN ANYWHERE, BUT SHE HAPPENED TO BE IN HER OWN HOME.

15 MR. GESSLER: SHE COULD HAVE BEEN IN HER
16 DRIVEWAY, AND THEY WOULD HAVE PUT IT UP THERE AS AN
17 AGGRAVATING CIRCUMSTANCE, OR THE GROCERY STORE, AND THEY
18 WOULD HAVE PUT IT UP THERE AS AN AGGRAVATING

19 CIRCUMSTANCE.

20 BUT IT HAS NO RELEVANCE AS TO THE PLACE IN

21 THIS CASE WHERE THE PERSON IS KILLED.

22 THE COURT: I THINK IT DOES, BECAUSE SOMEONE

23 FEELS MORE SECURE IN THEIR HOME, AND THE SANCTITY OF THE

24 HOME, OR THINGS OF THAT NATURE; WHERE YOU COULD BE

25 SITTING IN A CAR AND IT COULD BE A DRIVE-BY SITUATION,

26 WHICH COULD BE CHARACTERIZED AS LYING-IN-WAIT, WHICH

27 MIGHT HAVE DIFFERENT CONSIDERATIONS AND DIFFERENT

28 IMPACT, AS FAR AS WHETHER IT IS AGGRAVATING.

-10875

1 I THINK CERTAINLY THAT SOMETHING THAT

2 OCCURRED IN ONE'S OWN HOME IS A FACTOR THAT CAN BE

3 CONSIDERED. IT GOES BEYOND THE SPECIAL CIRCUMSTANCE OF

4 LYING-IN-WAIT.

5 MR. GESSLER: THEN WE GET DOWN TO NO. 7, YOUR

6 HONOR, WHICH IS THE FACT OF MULTIPLE MURDER.

7 THE COURT: WHAT IS THE PEOPLE'S RESPONSE TO

8 THAT?

9 MR. CONN: FACTOR A IS THE SPECIAL CIRCUMSTANCE

10 IS A FACTOR IN AGGRAVATION. IT SPECIFICALLY PROVIDES

11 THE SPECIAL CIRCUMSTANCE IS A FACTOR IN AGGRAVATION.

12 LYING-IN-WAIT IS A FACTOR IN AGGRAVATION. MULTIPLE

13 MURDER IS A FACTOR IN AGGRAVATION.

14 MR. GESSLER: I THINK --

15 MS. ABRAMSON: ONLY THE EXISTENCE OF IT IS THE

16 FACTOR, BUT NOT THE SPECIFICS OF IT.

17 THE COURT: WELL, THE SPECIFICS OF THE FACT THAT

18 HE CHOSE TO KILL HIS FATHER VERSUS SOME STRANGER IS A

19 FACTOR, TOO.

20 MR. GESSLER: WELL, IT MAY BE, YOUR HONOR, WHICH

21 COMES OUT AGAIN IN JOSE MENENDEZ, WHEN HE'S TALKING

22 ABOUT FACTORS IN AGGRAVATION; AND THERE HE HAS IT THAT

23 HE KILLED HIS OWN MOTHER, AND THEN ANOTHER AGGRAVATION

24 IS HE ALSO MURDERED HIS MOTHER.

25 THIS IS BOOTSTRAPPING AND TAKING THE

26 SPECIAL CIRCUMSTANCES AS THOUGH THEY WOULD AGGRAVATE

27 OVER AND BEYOND THE CRIME WHICH BROUGHT US HERE. AND

28 THE COURT WILL REMEMBER THE LANGUAGE OF 8.88, TALKING

-10874

1 ABOUT IT HAS TO BE OVER AND BEYOND THE CRIME. AND THE

2 PART OF THE CRIME WHICH BRINGS US HERE IS THE SPECIAL

3 CIRCUMSTANCES. BUT FOR THE SPECIAL CIRCUMSTANCES, WE

4 WOULD NOT BE HERE.

5 THIS IS AN EFFORT BY THE PROSECUTION TO

6 PRESUME DEATH BECAUSE SPECIAL CIRCUMSTANCES EXISTED IN

7 THIS CASE, AND THAT IS UNCONSTITUTIONAL UNDER THE

8 FEDERAL CONSTITUTION, AND THE CASES THAT WE TALKED ABOUT

9 YESTERDAY WHEN WE TALKED ABOUT INSTRUCTIONS.

10 MS. ABRAMSON: YOUR HONOR, I WOULD ALSO OBJECT

11 THAT THE CONSPIRACY ADDS NOTHING AGGRAVATING OVER AND
12 ABOVE THE CONCEPT OF PREMEDITATION AND DELIBERATION,
13 WHICH IS A -- PREMEDITATION AND DELIBERATION.

14 THE COURT: SURE IT DOES. AN INDIVIDUAL CAN
15 PREMEDITATE AND DELIBERATE, BUT WHEN HE DOES SO WITH
16 SOMEONE ELSE AND CONSPIRES TO COMMIT A CRIME, THAT'S
17 CERTAINLY AGGRAVATION.

18 MS. ABRAMSON: I WOULD THINK --

19 THE COURT: WHAT WE'RE REALLY TALKING ABOUT HERE
20 IS ARGUMENT, AND NOT WHAT INSTRUCTIONS THE COURT GIVES.
21 THIS IS PURE ARGUMENT, NOTHING ELSE.

22 MR. GESSLER: IT'S PURE ARGUMENT, YOUR HONOR, BUT
23 PURE ARGUMENT CANNOT BE MISLEADING TO THE JURY AS TO
24 THEIR DUTY, OR AS TO THE FACTORS TO BE CONSIDERED; NOR
25 CAN IT SUGGEST A PRESUMPTION THAT DEATH IS PROPER
26 BECAUSE OF SPECIAL CIRCUMSTANCES THAT BROUGHT US HERE.

27 THAT'S UNDER ADAMSON AND THE FEDERAL CASES
28 THAT WE TALKED ABOUT YESTERDAY, AND UNDER STATE LAW, AND

-10873

1 THE CASE I REFERRED TO THE COURT, I THINK IT WAS
2 DANIELS. BUT IT'S IN THE RECORD FROM YESTERDAY, THE
3 QUOTATION THAT I READ TO THE COURT.

4 MS. ABRAMSON: I WOULD ALSO POINT OUT, YOUR
5 HONOR, THAT THERE IS NO EVIDENCE OF PAIN IN THIS CASE.
6 THERE HASN'T BEEN ANY SUGGESTION OF PAIN WITH RESPECT TO

7 MR. MENENDEZ, AND YET THEY USE THAT THERE AS WELL.

8 THE COURT: THEY'RE ENTITLED TO ARGUE. WHAT

9 YOU'RE SAYING IS THAT I SHOULD FORECLOSE ARGUMENT.

10 MS. ABRAMSON: UNLESS THERE IS FACTS TO SUPPORT

11 IT, AT LEAST.

12 THE COURT: ALL RIGHT. WITHIN THE BROAD RANGE OF

13 THE EVIDENCE PRESENTED, CERTAINLY THAT IS SOMETHING THAT

14 CAN BE ARGUED.

15 MR. GESSLER: BUT I'M NOT TALKING ABOUT FACTS,

16 YOUR HONOR. I AM TALKING ABOUT A MISLEADING OF THE JURY

17 INTO THINKING THAT THE SPECIAL CIRCUMSTANCES ALONE ARE

18 ENOUGH TO PRESUME DEATH, THAT THEY ARE AGGRAVATING.

19 THE COURT: I AGREE IT HAS TO BE MORE THAN JUST

20 THE SPECIAL CIRCUMSTANCE ITSELF. AND WHAT I SEE HERE IS

21 JUST THAT. THE PEOPLE ARE ARGUING BEYOND THE SPECIAL

22 CIRCUMSTANCE TO THE SPECIFIC FACTS OF THIS CASE, WHICH

23 GO BEYOND THE BARE BONES SPECIAL CIRCUMSTANCE, JUST FROM

24 WHAT I SEE HERE.

25 I HAVEN'T HEARD THE ARGUMENT YET, BUT THE

26 RECORD SHOULD REFLECT THAT MR. GESSLER IS HOLDING UP A

27 LARGE CHART SHOWING DIFFERENT THINGS THAT I ASSUME WAS

28 PREPARED BY THE PROSECUTION.

-10872

1 AS I SEE IT HERE, THERE IS NOTHING IMPROPER

2 WITH THOSE CHARTS.

3 AS FAR AS THE ARGUMENT IS CONCERNED, I
4 AGREE, IF THE ONLY ARGUMENT IS THIS IS A SPECIAL
5 CIRCUMSTANCE, AND THAT'S THE REASON WHY THERE IS
6 AGGRAVATION, THAT WOULD STAND ALONE. IF THAT'S THE ONLY
7 ARGUMENT, THAT WOULD NOT BE APPROPRIATE.

8 BUT WHEN ONE GOES TO THE FACTS, AND BEYOND
9 THAT TO THE FACTS SUPPORTING THE SPECIAL CIRCUMSTANCE,
10 AND THE FACTS OF EACH CASE ARE DIFFERENT, AND IT GOES
11 BEYOND JUST THE FINDING OF THE SPECIAL CIRCUMSTANCE TO
12 THE UNIQUE FACTS OF THE CASE, THEN THAT'S CERTAINLY
13 PROPER ARGUMENT.

14 I WOULD ASK THE CLERK TO FIND OR GET FOR ME
15 VOLUME 4 OF CALIFORNIA 4TH REPORTS. 4 CAL.4TH.

16 AND PEOPLE VERSUS HAWTHORNE, WHICH
17 ACCORDING TO MY NOTES SAYS THAT THE DEFENDANT'S YOUTH IS
18 NOT NECESSARILY A MITIGATING FACTOR IN A DEATH PENALTY
19 CASE.

20 SO I WILL LOOK AT THAT AND SEE WHAT THAT
21 SAYS IN REGARD TO THE ARGUMENT OF MR. LEVIN.

22 MR. GESSLER: THE LAST OBJECTION I HAVE, YOUR
23 HONOR, IS PROPOSED IN THE CHART BY THE PEOPLE IN
24 "PENALTY FACTORS FOR CONSIDERATION," IS AN UNDERLINING
25 IN FACTOR B, IN WHICH THEY UNDERLINE "CRIMINAL ACTIVITY
26 BY THE DEFENDANT," AND THAT IS NOT THE ESSENCE OF FACTOR
27 B.

28 THE ESSENCE IS THAT IT INVOLVED VIOLENCE OR

1 THE THREAT OF VIOLENCE. THAT IS WHAT DISTINGUISHES IT
2 AS A FACTOR. IT IS NOT TO BE CONFUSED WITH THE JUVENILE
3 BURGLARIES THAT WERE DONE.

4 THE COURT: WELL, THAT WAS PROPOSED BY MR. LEVIN
5 IN AN INSTRUCTION THAT HE SUBMITTED THIS MORNING. I
6 DON'T KNOW IF YOU SAW IT. THAT WAS RELATED TO THE
7 CODEFENDANT.

8 MR. GESSLER: I DID SEE IT, AND I KNOW IT
9 DISTINGUISHES THAT, AND I AGREE WITH IT.

10 HOWEVER, EVEN IN THE ABSTRACT, THE
11 UNDERLINING OF "CRIMINAL ACTIVITY" IS TO MISLEAD THE
12 JURY AS TO THE REASON THAT FACTOR B IS A PART OF THE
13 CODE. IT IS THE CRIMINAL ACTIVITY -- NOT CRIMINAL
14 ACTIVITY, BUT THE VIOLENCE THAT IS CONSIDERED IN FACTOR
15 B, AND TO UNDERLINE "CRIMINAL ACTIVITY," I THINK, IS
16 MISLEADING TO THOSE WHO VIEW THIS AND LEARN THEIR BEST
17 BY READING.

18 THE COURT: OKAY. MR. CONN?

19 MR. CONN: MAY I HAVE JUST A MOMENT?

20 WE'RE GOING TO POINT OUT TO THE JURY THAT
21 THIS IS A MITIGATING FACTOR IN THIS PARTICULAR COUNT, SO
22 COUNSEL, YOU DON'T HAVE TO WORRY ABOUT IT.

23 MR. GESSLER: THE LAST THING I WOULD DO, YOUR
24 HONOR -- I DON'T KNOW IF THIS IS IN THE MIND OF THE
25 PROSECUTOR, OR EVEN OF CO-COUNSEL -- BUT I WOULD ASK
26 THAT THERE BE NO COMPARISON MADE BETWEEN THE AGES OF
27 LYLE MENENDEZ AND ERIK MENENDEZ AS A FACTOR FOR AGE.

-10870

1 ALL OTHER PEOPLE, AND NOT JUST AGAINST EACH OTHER. THIS
2 IS NOT A UNIVERSE OF TWO IN DECIDING WHAT IS AGGRAVATING
3 OR MITIGATING.

4 THE COURT: OKAY.

5 DID YOU INTEND TO DO THAT, MR. CONN?

6 MR. CONN: IT ALL COMES DOWN TO THE WORDING. HOW
7 COULD YOU POINT OUT THAT THE ONE DEFENDANT WAS 18 AND
8 THE OTHER DEFENDANT WAS 21 WITHOUT SUGGESTING THAT ONE
9 DEFENDANT WAS THREE YEARS OLDER THAN THE OTHER
10 DEFENDANT? HOW CAN YOU DO THAT?

11 I THINK THAT IT'S INEVITABLE THAT THE JURY
12 IS GOING TO REACH THEIR OWN CONCLUSIONS CONCERNING HOW
13 MUCH WEIGHT SHOULD BE GIVEN TO THE FACT THAT ONE
14 DEFENDANT WAS 18 AND ONE DEFENDANT WAS 21, REGARDLESS OF
15 HOW YOU PHRASE IT.

16 THE COURT: BUT YOU'RE NOT GOING TO SIT THERE AND
17 COMPARE THE TWO, AND USE THAT AS A FACTOR IN AGGRAVATION
18 FOR ONE VERSUS THE OTHER?

19 MR. CONN: NO. I'M NOT GOING TO SAY THAT ONE
20 DESERVES IT SIMPLY BECAUSE HE'S THREE YEARS OLDER THAN
21 THE OTHER ONE.

22 MR. GESSLER: NOT "SIMPLY BECAUSE," BUT ALL
23 BECAUSE, YOUR HONOR. THE COMPARISON OF TWO FOR LIFE AND

24 DEATH IS NOT WHAT THIS PENALTY TRIAL IS ABOUT, AND IS
25 ONE OF THE REASONS I OBJECTED TO BEING JOINED IN THE
26 FIRST PLACE, BECAUSE THE UNIVERSE IS TWO, PARTICULARLY
27 WHERE IT'S TWO BROTHERS, AND THAT'S PURSUANT TO BOTH
28 FEDERAL LAW AND STATE LAW. THEY ARE EACH TO BE JUDGED

-10869

1 INDIVIDUALLY BY THE JURY.

2 YES, THERE ARE FACTORS TO BE TAKEN IN
3 AGGRAVATION AS TO THEIR PARTS IN THE CRIME, BUT NOT
4 "HE'S 21, THEREFORE HE GETS AGGRAVATION," NOR ANYTHING
5 CONCERNING IT JUST BETWEEN THE TWO.

6 THE COURT: RIGHT. WELL, I INFER FROM WHAT
7 MR. CONN SAID HE'S NOT GOING TO DO THAT; IS THAT
8 CORRECT?

9 MR. CONN: RIGHT. I UNDERSTAND WHAT COUNSEL IS
10 SAYING. BUT WHAT I'M SAYING IS WE COME DOWN TO A
11 SEMANTICAL PROBLEM AS TO HOW TO PHRASE THAT.

12 THE COURT: RIGHT. RIGHT.

13 MR. CONN: I THINK I UNDERSTAND WHAT MR. GESSLER
14 IS SAYING, AND I DON'T INTEND TO SAY: BY VIRTUE OF THE
15 FACT THAT ONE DEFENDANT IS THREE YEARS OLDER, THEREFORE,
16 HE DESERVES THE DEATH PENALTY. I AM NOT GOING TO SAY
17 THAT.

18 MR. GESSLER: I DON'T MEAN IN EXACTLY THOSE
19 WORDS, BUT I MEAN INFERRING THAT TO THE JURY, YOUR

20 HONOR, AS A COMPARISON OF THE TWO, WHICH IS IMPROPER TO
21 MAKE.

22 THE COURT: WELL, I DON'T INFER FROM WHAT
23 MR. CONN IS SAYING HE IS COMPARING THE TWO AS TO THEIR
24 AGE, AND THAT IS WHAT YOU'RE ARGUING, THAT IT'S WRONG TO
25 COMPARE THE TWO IN ANY WAY, OTHER THAN AS THE CRIME
26 ITSELF HAS UNFOLDED, AND FOR THE ONE SUB FACTOR THERE AS
27 TO WHO IS LESS INVOLVED.

28 OTHER THAN THAT, THE COMPARISON OF THE TWO

-10868

1 IS TOTALLY IRRELEVANT IN THIS TRIAL.

2 THE COURT: OKAY.

3 MR. GESSLER: EACH MUST BE JUDGED INDIVIDUALLY.

4 THE COURT: I DON'T INFER THAT MR. CONN IS SAYING
5 OTHERWISE, ARE YOU, MR. CONN?

6 MR. CONN: NO, I'M NOT.

7 THE COURT: OKAY.

8 MR. CONN: AND AS FAR AS THE AGE ISSUE, JUDGE, WE
9 DO HAVE SOME CASE LAW ON THAT.

10 THE COURT: WELL, I AM LOOKING AT HAWTHORNE,
11 WHICH IS --

12 MR. LEVIN: THAT'S A GANG CASE, YOUR HONOR?

13 THE COURT: I'M SORRY?

14 MR. LEVIN: WAS THAT A GANG CASE?

15 THE COURT: IT COULD HAVE BEEN, YES.

16 (COURT READING)

17

18 THE COURT: OKAY. I HAVE READ IT. I WILL
19 CERTAINLY GIVE MR. LEVIN A CHANCE TO READ IT AS WELL.

20 DID YOU HAVE OTHER CASES BESIDES HAWTHORNE?

21 MR. CONN: THEY ARE OLDER CASES, BUT IT IS WHERE
22 THE SUPREME COURT CLEARLY SAYS IT CAN BE AGGRAVATING OR
23 MITIGATING.

24 THE COURT: DID YOU READ THIS, MR. LEVIN?

25 MR. LEVIN: I THINK I HAVE READ IT, BUT I WOULD
26 JUST LIKE TO REFRESH MY MEMORY. THAT'S WHERE THERE WAS
27 EVIDENCE WHERE HIS YOUTH WOULD -- IN PRISON HE WAS A
28 PRETTY BAD GUY, AND THEY HAD ALL KINDS OF EVIDENCE THAT

-10867

1 HIS CONTINUED INCARCERATION FOR THAT PERIOD OF TIME
2 WOULD CAUSE PROBLEMS.

3 THE COURT: ANYWAY, YOU CAN READ THE CASE.

4 MR. LEVIN: YES, YOUR HONOR.

5 I WOULD STATE THAT HAWTHORNE SUPPORTS OUR
6 POSITION, IT DOESN'T DETRACT FROM IT. THAT WAS A CASE
7 WHERE, AS I RECALL IT, THE DEFENDANT WAS 22 YEARS OLD AT
8 THE TIME HE COMMITTED HIS CRIME. HE WAS IN A GANG. HE
9 WAS -- IT WAS ARGUED -- OR THE PROSECUTOR ARGUED, GIVEN
10 HIS BACKGROUND, THAT HE WAS VERY STREET SMART. HE WAS
11 NOT A KID.

12 THERE WAS NO OBJECTION MADE BY THE DEFENSE,
13 WHICH I AM OBJECTING TO ANY SUCH REFERENCE BY MR. CONN.

14 THE COURT: WELL, THE COURT WENT BEYOND THE FACT
15 THERE WAS NO OBJECTION TO AN ANALYSIS OF THE ISSUE.

16 MR. LEVIN: BUT THE POINT IS THAT INFERENCE THAT
17 AGE COULD BE AN AGGRAVATION IN HAWTHORNE WAS A
18 REFLECTION OF THE UNDERSTANDING THAT A PERSON WHO IS IN
19 A GANG, OR WHO WOULD CAUSE TROUBLE IN PRISON, THAT COULD
20 BE AN AGGRAVATING FACTOR FOR SO MANY YEARS; TO HOW SUCH
21 A DANGER, OR HORRIBLE INDIVIDUAL, THAT THAT COULD BE A
22 FACTOR IN AGGRAVATION.

23 IN THIS CASE, DR. VICARY TESTIFIED THAT
24 ERIK MENENDEZ GETS ALONG WITH EVERYONE; THE DEPUTIES,
25 THE OTHER INMATES, THE DANGEROUS ONES, THE NICE ONES.

26 MR. CONN WAS FREE TO PUT ON ANY DEPUTY THAT
27 HE COULD HAVE FOUND, FOR SIX YEARS OF INCARCERATION, TO
28 STATE OTHERWISE. HE DID NOT DO ANYTHING ABOUT THAT,

-10866

1 BECAUSE THERE ISN'T ANY EVIDENCE TO THAT. HE STIPULATED
2 TO THAT FACT AS TRUE.

3 SO WE HAVE A SITUATION WHERE ERIK MENENDEZ
4 WAS 18 YEARS OLD. HE HAS NO RECORD OF VIOLENCE, NO
5 CRIMINAL HISTORY AT ALL, EXCEPT FOR THE JUVENILE
6 ADJUDICATION, WHICH WE HAVE HEARD. HE IS NOT IN A GANG.
7 HE'S CAUSED NO PROBLEM IN PRISON. IN FACT, EVIDENCE TO

8 THE CONTRARY.

9 THERE IS ABSOLUTELY NOTHING IN THIS CASE,
10 NOTHING. THERE COULD NOT BE AN INDIVIDUAL CLEANER THAN
11 ERIK MENENDEZ WAS AT THE TIME OF THIS OFFENSE, BUT FOR
12 THE JUVENILE ADJUDICATION.

13 THE COURT: OKAY. NOW YOU'RE ARGUING TO THE
14 FACTS RATHER THAN THE LAW.

15 MR. LEVIN: OKAY. THEN IF THE COURT DISAGREES
16 WITH ME --

17 THE COURT: ALL THE COURT WOULD BE DOING IS
18 INSTRUCTING UPON APPLICABLE FACTORS IN AGGRAVATION AND
19 MITIGATION. IT'S FOR THE TRIER OF FACT TO MAKE THOSE
20 DETERMINATIONS. THE LAW IS QUITE CLEAR THAT ALL THE
21 COURT HAS TO DO IS GIVE 8.85 IN AN UNMODIFIED VERSION
22 AND NOTHING ELSE, AND THAT'S IT. I DON'T HAVE TO USE
23 THE MODIFICATION PREPARED BY THE DEFENDANT. I JUST GIVE
24 THE STANDARD 8.85, AND THAT'S IT.

25 MR. LEVIN: WELL, WE ARE ENTITLED TO PINPOINT
26 INSTRUCTIONS.

27 THE COURT: NO, YOU'RE NOT.

28 MR. LEVIN: WELL, WE ARE ENTITLED TO ASK FOR

-10865

1 THEM.

2 THE COURT: 8.85 IS STANDARD, AND THERE IS
3 NOTHING MORE REQUIRED FOR ME TO DO THAN JUST GIVE THAT,

4 AND I AM JUST REQUIRED TO READ OFF ALL THE STANDARDS,
5 THE APPLICABLE FACTORS, AND IT IS FOR THE JURY TO DECIDE
6 WHAT'S APPLICABLE AND NOT APPLICABLE.

7 MR. LEVIN: WELL, I DON'T WANT TO IRRITATE THE
8 COURT.

9 THE COURT: IT'S NOT A QUESTION OF IRRITATION.
10 THAT IS THE LAW. THAT'S ALL I AM REQUIRED TO DO.

11 MR. LEVIN: I UNDERSTAND THAT.

12 THE COURT: SO NOW THE DEFENSE FOR ONE DEFENDANT
13 HAS OFFERED A VERSION WHICH THAT DEFENDANT ADVISES IS
14 CONSISTENT WITH THE LAW. THE PEOPLE HAVE AGREED TO IT.
15 THEY DIDN'T HAVE TO AGREE TO DO IT EITHER. THEY COULD
16 HAVE STOOD BY THE STANDARD 8.85.

17 SO NOW YOU'RE GOING BEYOND IT TO ARGUING
18 SOMETHING THAT IS CONTRARY TO THE CURRENT LAW OF THE
19 STATE.

20 MR. LEVIN: WELL, I THINK THE CURRENT LAW OF THE
21 STATE, WHICH WE FOLLOW IN CALIFORNIA IS BASED ON PEOPLE
22 V. HAWTHORNE, WHICH IS DISTINGUISHABLE FROM THE FACTS
23 OF THIS CASE.

24 THE COURT: HAWTHORNE IS JUST THE MOST RECENT
25 CASE ON IT. IT DISCUSSES ALL THESE OTHER CASES THAT
26 COVER THE SAME AREA.

27 MR. LEVIN: MY REQUEST IS THAT THERE ARE NO FACTS
28 IN THIS PARTICULAR CASE THAT WOULD JUSTIFY ERIK

1 MENENDEZ' AGE TO BE USED AS A FACTOR IN AGGRAVATION, AND
2 I WOULD ASK FOR A PINPOINT INSTRUCTION TO STATE THAT:
3 "THE FACT THAT ERIK MENENDEZ WAS 18 YEARS OLD AT THE
4 TIME OF THIS CRIME MAY BE CONSIDERED BY YOU ONLY AS A
5 CIRCUMSTANCE IN MITIGATION."

6 THE COURT: OKAY. THAT REQUEST IS DENIED.

7 MR. LEVIN: THANK YOU.

8 MS. ABRAMSON: YOUR HONOR, WE NEED A BRIEF BREAK
9 BEFORE WE START.

10 THE COURT: YES. I HAVE ASKED THE CLERK TO TELL
11 COUNSEL THAT WE NEED AN ADDITIONAL EXHIBIT LIST TO
12 SUPPLEMENT THE ONE THAT WAS PREPARED FOR THE GUILT PHASE
13 TO INCORPORATE THE PENALTY PHASE EVIDENCE. SO IF YOU
14 COULD WORK ON THAT TODAY SO WE CAN GET IT.

15 THE OTHER INSTRUCTION SUBMITTED BY ERIK
16 MENENDEZ THIS MORNING, WHAT IS THE RESPONSE FROM THE
17 PROSECUTION AND THE CODEFENDANT?

18 I DON'T KNOW IF YOU WANTED THAT ALSO FOR
19 YOUR CLIENT, MR. GESSLER. THERE HAS BEEN SOME REFERENCE
20 TO HIS INVOLVEMENT.

21 MR. GESSLER: I REALIZE THAT. I AGREE WITH THE
22 INSTRUCTION, YOUR HONOR. I WOULD ASK THAT IT BE GIVEN
23 BY US ALSO.

24 THE COURT: IT MIGHT HAVE TO BE MODIFIED, BECAUSE
25 IT TALKS ABOUT A JUVENILE COURT ADJUDICATION. THERE
26 MIGHT BE SOME LANGUAGE YOU MIGHT WANT TO ADD TO IT.

27 MR. GESSLER: I THINK WE COULD ADD A COUPLE OF
28 WORDS TO IT, I THINK, TO CLARIFY THAT IT APPLIES TO

1 BOTH, BECAUSE, IN ESSENCE, NEITHER HAS A FELONY
2 CONVICTION.

3 THE COURT: OKAY. IF YOU WANT TO ADD SOMETHING
4 TO IT, THEN WE CAN GET TO IT TODAY.

5 MS. ABRAMSON: I THINK WE SHOULD ALSO ADD
6 LANGUAGE, YOUR HONOR, THAT IT WAS NOT A CRIME INVOLVING
7 FORCE OR VIOLENCE; THAT IT'S NOT CRIMINAL ACTIVITY
8 INVOLVING FORCE OR VIOLENCE, OR A PRIOR FELONY.

9 THE COURT: HOWEVER YOU WANT TO PHRASE IT. IF
10 YOU WANT TO WORK ON IT A LITTLE BIT TODAY, YOU CAN
11 CERTAINLY DO THAT. THE PEOPLE ARE SAYING THIS IS A
12 FACTOR IN MITIGATION ANYWAY, AS FAR AS THE ABSENCE OF
13 CRIMINAL ACTIVITY.

14 SO GIVE ME SOME MODIFICATION TO THIS, AND I
15 WILL LOOK AT THE FINAL VERSION.

16 MR. GESSLER: WE WILL DO THAT AT THE RECESS, IF I
17 MAY.

18 THE COURT: SURE. SURE.

19 ANYTHING ELSE BEFORE WE TAKE A SHORT BREAK
20 AND START WITH ARGUMENT BEFORE THE JURY?

21 LET'S TAKE A RECESS UNTIL TEN AFTER THE
22 HOUR, AT WHICH TIME WE WILL START WITH THE JURY.

23 I WILL NEED THE BOOK BACK.

24 (A RECESS WAS TAKEN FROM

25 10:00 A.M. TO 10:20 A.M.)

26

27 THE COURT: WE'RE READY TO PROCEED.

28 I RECEIVED THE PROPOSED INSTRUCTION FROM

-10862

1 MR. GESSLER.

2 DID YOU SEE IT, MR. CONN?

3 MS. NAJERA: NO, WE HAVE NOT SEEN IT. HE DIDN'T
4 GIVE US A COPY.

5 MR. GESSLER: I AM SORRY. I JUST ADDED A COUPLE
6 OF WORDS.

7 THE COURT: PASS IT OVER TO SEE IF THEY HAVE ANY
8 OBJECTION, OR IF CODEFENDANT HAS ANY OBJECTION.

9 MS. ABRAMSON: I THOUGHT WE WERE GOING TO ADD "NO
10 CRIMINAL ACTIVITY," CHARLIE.

11 MR. GESSLER: I AM SORRY. WHAT?

12 MS. ABRAMSON: I THOUGHT WE WERE ALSO GOING TO
13 SAY "CANNOT CONSTITUTE CRIMINAL ACTIVITY."

14 MR. CONN: MY PROBLEM IS, I JUST DON'T SEE WHY
15 THEY ARE ENTITLED TO IT. I THINK THAT THE INSTRUCTIONS
16 WHICH ARE BEING GIVEN TO THE JURY ARE SUFFICIENTLY CLEAR
17 FOR COUNSEL TO MAKE THIS ARGUMENT; AND, IN FACT, I EVEN
18 INDICATED THAT I AM GOING TO CONCEDE THAT THE MERE FACT
19 OF THE -- THAT THERE IS NO EVIDENCE WHICH ESTABLISHES
20 FACTOR B AS A FACTOR IN AGGRAVATION.

21 SO I JUST DON'T SEE WHY IT'S NECESSARY FOR

22 THEM TO GET A JURY INSTRUCTION CONCERNING THIS ISSUE.
23 THE COURT: ALL RIGHT.
24 THE COURT FEELS THAT SINCE THIS EVIDENCE OF
25 THE BURGLARIES WAS ADMITTED FOR A LIMITED PURPOSE IN THE
26 GUILT PHASE OF THE TRIAL, THERE SHOULD BE A SPECIAL
27 INSTRUCTION TO DEAL WITH IT IN THE PENALTY PHASE. AND
28 UNLESS YOU CAN FIND SOME DEFECT IN THIS PARTICULAR

-10861

1 INSTRUCTION AS PHRASED, I WILL GIVE IT.
2 ALL RIGHT. SO LET'S GET THE JURY OUT,
3 PLEASE.
4 (THE JURY ENTERS THE COURTROOM
5 AND THE FOLLOWING PROCEEDINGS
6 WERE HELD:)
7
8 THE COURT: THE JURY IS IN THE JURY BOX.
9 GOOD MORNING, LADIES AND GENTLEMEN.
10 AND WE ARE READY TO PROCEED WITH THE TRIAL.
11 WE'RE AT THAT STAGE AT WHICH -- OR DURING WHICH THE
12 PARTIES WILL PRESENT THEIR ARGUMENT. AND AT THIS STAGE,
13 FIRST THE PROSECUTION WILL PRESENT ARGUMENT IN REGARD TO
14 THE SUBJECT OF PUNISHMENT.
15 ALL RIGHT, MR. CONN.
16 MR. CONN: THANK YOU.
17

18 OPENING ARGUMENT

19 BY MR. CONN:

20 GOOD MORNING, LADIES AND GENTLEMEN.

21 THIS WILL BE MY FIRST OF TWO ARGUMENTS THAT

22 I WILL BE PERMITTED TO MAKE TO YOU. YOU WILL LEARN FROM

23 THE PROCEDURE HERE THAT AFTER I ARGUE, THE DEFENSE WILL

24 GO, AND AFTER I GET A CHANCE TO RESPOND TO THEIR

25 ARGUMENT, THE DEFENSE WILL THEN HAVE ANOTHER OPPORTUNITY

26 TO ARGUE TO YOU.

27 AND THAT IS DIFFERENT, YOU WILL RECALL,

28 FROM WHAT HAPPENED IN THE GUILT PHASE OF THE TRIAL. IN

-10860

1 THE GUILT PHASE OF THE TRIAL, I HAD THE FINAL ARGUMENT.

2 AND IN THE GUILT PHASE OF THE TRIAL, HOWEVER, I HAD THE

3 BURDEN OF PROOF. IT WAS MY RESPONSIBILITY TO CONVINCE

4 YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS WERE

5 GUILTY OF FIRST-DEGREE MURDER.

6 NOW THE DIFFERENCE HERE, AND IT'S VERY

7 IMPORTANT, IS THAT THE PROSECUTION DOES NOT HAVE THE

8 BURDEN OF PROOF. NEITHER SIDE HAS THE BURDEN OF PROOF.

9 YOU ARE GOING TO BE THE ONES WHO WILL MAKE A

10 DETERMINATION AS TO THE APPROPRIATE PENALTY IN THIS

11 CASE, AND IT IS NOT MY JOB TO CONVINCE YOU THAT ONE

12 PENALTY IS MORE APPROPRIATE THAN THE OTHER. IT IS NOT

13 THE DEFENSE'S JOB TO CONVINCE YOU THAT ONE PENALTY IS

14 MORE APPROPRIATE THAN THE OTHER.

15 YOU WILL BE GIVEN INSTRUCTIONS AS TO HOW

16 YOU ARE GOING TO MAKE THAT DETERMINATION, AS TO WHAT

17 SHOULD GUIDE YOU IN MAKING THAT DETERMINATION, AND THE

18 CIRCUMSTANCES UNDER WHICH YOU CAN MAKE A DETERMINATION

19 AS TO A FINDING OF DEATH IN THIS CASE.

20 BUT NEITHER SIDE HAS THE RESPONSIBILITY OF

21 CONVINCING YOU OR CARRYING A BURDEN IN THAT REGARD. IT

22 IS IMPORTANT THAT YOU UNDERSTAND THAT, AND DON'T BE

23 MISLED INTO THINKING THAT THE PROSECUTION DOES HAVE THE

24 BURDEN OF PROOF. THERE WAS SOMETHING THAT WAS SAID IN

25 OPENING STATEMENTS THAT PERHAPS MIGHT HAVE SUGGESTED

26 THAT.

27 YOU WILL RECALL THAT LESLIE ABRAMSON

28 SUGGESTED IN THE OPENING STATEMENT -- SHE USED THE

-10859

1 WORDS: "THE ONLY QUESTION TO BE DETERMINED IN THIS

2 PENALTY TRIAL IS WHETHER IT IS NECESSARY TO IMPOSE THE

3 DEATH PENALTY."

4 AND THE PROBLEM THAT I HAVE WITH THAT

5 LANGUAGE IS THAT IT SEEMS TO SUGGEST THAT YOU SHOULD

6 ONLY IMPOSE THE DEATH PENALTY WHERE IT IS NECESSARY TO

7 DO SO.

8 WELL, WHEN IS IT EVER NECESSARY TO IMPOSE

9 THE DEATH PENALTY? YOU SEE, YOUR JOB IS TO DETERMINE

10 THE PUNISHMENT THAT YOU FEEL IS APPROPRIATE IN THIS
11 CASE, THAT YOU FEEL IS FAIR, THAT YOU FEEL IS THE JUST
12 PUNISHMENT IN THIS CASE. NOT WHETHER IT'S NECESSARY OR
13 NOT. IF THE TEST WAS NECESSITY, PERHAPS THERE SHOULDN'T
14 BE A DEATH PENALTY. MAYBE IT WOULD NEVER BE NECESSARY.

15 BUT IF THE TEST IS FAIRNESS, IF THE TEST IS
16 JUSTICE, THEN I ASK YOU TO IMPOSE THE DEATH PENALTY IN
17 THIS PARTICULAR CASE; AND THAT IS, IN FACT, THE TEST IN
18 THIS STATE.

19 ANOTHER THING THAT WAS SAID IN OPENING
20 STATEMENT WHICH PERHAPS MIGHT HAVE MISLED YOU IN REGARD
21 TO THE PENALTY PHASE PROCESS IS WHEN LESLIE ABRAMSON
22 INDICATED: "YOU ALL KNOW THAT RIGHT NOW, IF THIS WHOLE
23 PROCEEDING ENDED TODAY, AND THE JUDGE WERE TO SENTENCE
24 ERIK MENENDEZ, HIS SENTENCE WOULD BE LIFE IMPRISONMENT
25 WITHOUT THE POSSIBILITY OF PAROLE. THAT IS WHAT WAS
26 DECIDED BY YOUR PREVIOUS VERDICT."

27 AND ONCE AGAIN, I THINK THAT THAT STATEMENT
28 IS A DISTORTION OF THE PENALTY PHASE PROCESS, BECAUSE AS

-10858

1 WE ALL KNOW, THE DEATH PENALTY PROCEEDING DID NOT END
2 THAT DAY. SO YOU WOULD NEVER BE ASKED AT THAT POINT TO
3 DECIDE THE QUESTION OF PENALTY.

4 BUT IF YOU WERE TO DECIDE THE QUESTION OF
5 PENALTY, YOUR RESPONSIBILITY WOULD HAVE BEEN THE SAME

6 BACK THEN AS YOUR RESPONSIBILITY IS TODAY. YOU WILL
7 LEARN WHAT THAT RESPONSIBILITY IS. IT IS TO TAKE WHAT
8 IS CALLED THE "AGGRAVATING CIRCUMSTANCES," AND TO TAKE
9 WHAT IS CALLED THE "MITIGATING CIRCUMSTANCES," AND TO
10 WEIGH THOSE CIRCUMSTANCES.

11 AND IF THE DEATH PENALTY PROCEDURE -- IF
12 THE PENALTY PHASE HAD ENDED THAT VERY DAY WHEN YOU CAME
13 BACK WITH YOUR VERDICT, YOU WOULD HAVE BEEN GIVEN THE
14 SAME INSTRUCTIONS THAT YOU'RE GOING TO BE GIVEN TODAY.
15 YOU WOULD HAVE GONE BACK INTO THAT JURY ROOM, AND YOU
16 COULD HAVE COME BACK WITH A DEATH VERDICT.

17 SO LADIES AND GENTLEMEN, DON'T THINK THAT
18 THE PROSECUTION HAD AN OBLIGATION IN THE PENALTY PHASE
19 TO PUT ON MORE AND ADDITIONAL EVIDENCE OTHER THAN WHAT
20 WE ALREADY PRESENTED IN THE GUILT PHASE.

21 YOU WILL LEARN THAT THE PROSECUTION IS
22 RELYING UPON THE CIRCUMSTANCES OF THE MURDER; THAT IS,
23 THE AGGRAVATING CIRCUMSTANCES OF THE MURDER, AND ALL OF
24 THE AGGRAVATING CIRCUMSTANCES CONCERNING THE SPECIAL
25 CIRCUMSTANCES. AND IT IS UPON THAT EVIDENCE THAT YOU
26 MAY PROPERLY DETERMINE THAT THE DEATH PENALTY IS INDEED
27 THE MOST APPROPRIATE PENALTY IN THIS CASE.

28 LADIES AND GENTLEMEN, I ASK YOU, ONCE

1 AGAIN, TO FOLLOW THE LAW IN REACHING YOUR DECISION IN

2 REGARD TO THE QUESTION OF PENALTY, JUST AS I ASKED YOU
3 IN THE GUILT PHASE TO FOLLOW THE LAW IN REACHING YOUR
4 DECISION CONCERNING THE QUESTION OF GUILT, AND THE
5 DEGREE OF RESPONSIBILITY, BECAUSE THE LAW DOES PROVIDE
6 YOU WITH GUIDANCE. AND I ASK YOU TO FIND, BASED UPON
7 THE GUIDANCE THAT WILL BE GIVEN TO YOU BY THE JUDGE IN
8 THE JURY INSTRUCTIONS, THAT THE DEATH PENALTY IS THE
9 APPROPRIATE PENALTY.

10 SO LET'S TAKE A LOOK AT EXACTLY WHAT THE
11 LAW DOES, IN FACT, PROVIDE CONCERNING THE MANNER IN
12 WHICH YOU GO ABOUT MAKING THE DETERMINATION AS TO
13 PENALTY IN THIS CASE.

14 THERE ARE, AS I INDICATED, WHAT IS CALLED
15 AGGRAVATING AND MITIGATING FACTORS. AND THE LAW
16 PROVIDES THAT YOU SHALL BE GUIDED BY THESE FACTORS IN
17 MAKING THE DEATH PENALTY DETERMINATION.

18 AND SO THAT'S WHAT I ASK YOU TO DO. NOT
19 MAKE IT HAPHAZARDLY OR RANDOMLY, BUT BE GUIDED, AS THE
20 LAW REQUIRES YOU, BY THE AGGRAVATING AND MITIGATING
21 CIRCUMSTANCES.

22 WHAT EVIDENCE ARE YOU TO CONSIDER IN MAKING
23 THAT DETERMINATION? WELL, YOU WILL LEARN THAT YOU ARE
24 TO CONSIDER ALL OF THE EVIDENCE PRESENTED IN THIS TRIAL.
25 NOT JUST THE EVIDENCE PRESENTED IN THE PENALTY PHASE,
26 BUT THE EVIDENCE PRESENTED IN THE GUILT PHASE AS WELL.

27 AND FINALLY, WHAT IS YOUR DUTY? TO CONDUCT
28 THAT BALANCING TEST THAT I INDICATED, OF WEIGHING THE

1 AGGRAVATING CIRCUMSTANCES AGAINST THE MITIGATING
2 CIRCUMSTANCES.

3 AND WHEN CAN YOU IMPOSE THE DEATH PENALTY?
4 HERE IS WHAT THE LAW SAYS.

5 "IN ORDER FOR YOU TO RETURN A
6 JUDGMENT OF DEATH, YOU MUST BE PERSUADED
7 THAT THE AGGRAVATING CIRCUMSTANCES ARE SO
8 SUBSTANTIAL IN COMPARISON WITH THE
9 MITIGATING CIRCUMSTANCES, THAT IT WARRANTS
10 DEATH INSTEAD OF LIFE WITHOUT PAROLE."

11 AND THAT'S THE FINDING THAT WE'RE GOING TO
12 ASK YOU TO MAKE IN THIS CASE, THAT THE AGGRAVATING
13 CIRCUMSTANCES ARE SO SUBSTANTIAL WHEN COMPARED WITH THE
14 MITIGATING CIRCUMSTANCES.

15 AND SO AS SOON AS I FINISH DISCUSSING THE
16 LAW, I WILL BE GOING OVER WITH YOU THE MITIGATING
17 CIRCUMSTANCES IN THIS CASE, AS WELL AS THE AGGRAVATING
18 CIRCUMSTANCES IN THIS CASE.

19 BUT WHAT IS AN AGGRAVATING FACTOR?

20 WELL, THE LAW DEFINES WHAT IS MEANT BY
21 AGGRAVATING FACTOR, AND IT DEFINES IT AS:

22 "ANY FACT, CONDITION OR EVENT
23 ATTENDING THE COMMISSION OF A CRIME WHICH
24 INCREASES ITS GUILT OR ENORMITY, OR ADDS
25 TO ITS INJURIOUS CONSEQUENCES, WHICH IS
26 ABOVE AND BEYOND THE ELEMENTS OF THE CRIME

27 ITSELF."

28 SO IN OTHER WORDS, YOU LOOK FIRST AT WHAT

-10855

1 IT IS THAT BROUGHT US HERE.

2 WELL, WHAT BROUGHT US HERE IS SIMPLY THE
3 FACT THAT THE DEFENDANTS KILLED THEIR PARENTS. BUT
4 BEYOND THAT, YOU CAN LOOK TO THE CIRCUMSTANCES OF THE
5 CRIME, EVERYTHING CONCERNING THAT CRIME; EVERY FACT,
6 EVERY CONDITION, EVERY EVENT WHICH AGGRAVATES THE
7 SITUATION, WHICH MAKES THE CRIME MORE ENORMOUS, WHICH
8 AGGRAVATES THE CRIME ITSELF.

9 YOU LOOK, FOR EXAMPLE, TO THE AMOUNT OF
10 PREMEDITATION. AND I WILL BE GOING THROUGH A NUMBER OF
11 FACTORS WITH YOU, WHICH I WILL SUGGEST TO YOU ARE
12 INDICATIVE OF AGGRAVATING CIRCUMSTANCES CONCERNING THE
13 COMMISSION OF THE CRIME.

14 FOR EXAMPLE, THE AMOUNT OF PREMEDITATION.
15 WHETHER YOU KILL A PERSON FOLLOWING TWO MINUTES OF
16 PREMEDITATION, OR WHETHER YOU KILL A PERSON FOLLOWING
17 THREE DAYS OF PREMEDITATION, CERTAINLY MAKES A BIG
18 DIFFERENCE.

19 I THINK YOU WOULD ALL AGREE THAT SOMEONE
20 WHO WOULD ACTUALLY CONTEMPLATE FOR THREE DAYS: I AM
21 GOING TO DO IT. I AM GOING TO DO IT. I AM GOING TO DO
22 IT, IS CERTAINLY MORE SUBJECT TO CONDEMNATION THAN A

23 PERSON WHO GIVES IT TWO MINUTES OF THOUGHT, TWO MINUTES
24 OF PREMEDITATION, AND IN THAT TWO MINUTES CONDUCTS THAT
25 BALANCING TEST.

26 BUT IT IS A FAR DIFFERENT STORY WHEN A
27 PERSON DOES THAT FOR SEVERAL DAYS, AND REALLY MULLS IT
28 OVER AND REALLY GIVES IT THAT MUCH THOUGHT.

-10854

1 SO THAT, FOR EXAMPLE, IS ONE OF THE
2 CIRCUMSTANCES THAT YOU CAN CONSIDER IN AGGRAVATION IN
3 THIS CASE. I WILL BE GOING THROUGH A NUMBER OF FACTORS
4 WHICH I WILL ASK YOU TO FIND TO BE THE AGGRAVATING
5 FACTORS.

6 BEFORE I GET INTO ALL THESE AGGRAVATING
7 FACTORS, I AM GOING TO FOCUS FIRST ON WHAT THE DEFENSE
8 SEEMS TO RELY UPON AS MITIGATION IN THIS CASE. AND
9 ESSENTIALLY MY POSITION TO YOU CONCERNING THE MITIGATION
10 IS THAT WHEN YOU LOOK AT MUCH OF THE MATERIAL PRESENTED
11 TO YOU BY THE DEFENSE IN THIS CASE, IT ACTUALLY ISN'T
12 MITIGATING.

13 BEAR IN MIND THAT THE COURT IS NOT GOING TO
14 TELL YOU WHAT IS MITIGATING. IS IT MITIGATING THAT LYLE
15 MENENDEZ DIDN'T WANT TO GO INTO A SWIMMING POOL WHEN HE
16 WAS 10 YEARS OLD? YOU ARE THE ONES WHO DECIDE WHAT IS A
17 MITIGATING FACTOR AND WHAT IS NOT A MITIGATING FACTOR.
18 YOU WILL BE GIVEN THE DEFINITION.

19 THE DEFINITION OF A MITIGATING FACTOR IS:
20 "ANY FACT, CONDITION OR EVENT
21 WHICH, AS SUCH, DOES NOT CONSTITUTE A
22 JUSTIFICATION OR EXCUSE FOR THE CRIME IN
23 QUESTION, BUT MAY BE CONSIDERED AS AN
24 EXTENUATING CIRCUMSTANCE IN DETERMINING
25 THE APPROPRIATENESS OF THE DEATH PENALTY."
26 SO YOU'RE GOING TO ASK YOURSELF: IS THIS
27 PARTICULAR FACT, OR THIS EVENT THAT WE WERE TOLD BY THE
28 DEFENSE THROUGH THEIR WITNESSES, IS THIS SOMETHING WHICH

-10853

1 EXTENUATES THE GRAVITY OF THE CRIME?
2 THAT'S THE FIRST QUESTION. DOES IT REALLY
3 EXTENUATE THE GRAVITY OF THE CRIME?
4 AND THE NEXT QUESTION IS GOING TO BE: IF
5 INDEED IT DOES EXTENUATE THE GRAVITY OF THE CRIME IN
6 SOME WAY, HOW MUCH WEIGHT SHOULD I GIVE TO THAT? SHOULD
7 I ATTACH A LOT OF WEIGHT? SHOULD I SAY THAT THE
8 DEFENDANTS DO NOT DESERVE THE DEATH PENALTY SIMPLY
9 BECAUSE OF THAT FACT?
10 SO YOU SHOULD BE ASKING YOURSELF THOSE
11 QUESTIONS. DOES IT EXTENUATE THE GRAVITY OF THE CRIME,
12 AND HOW MUCH WEIGHT? AND YOU ARE THE JUDGES OF THAT.
13 MERELY BECAUSE SOMETHING COMES INTO EVIDENCE SIMPLY
14 MEANS THAT IT IS -- IT IS ADMISSIBLE, IT IS RELEVANT.

15 IT SATISFIES THE RULES OF EVIDENCE, BUT IT DOESN'T MEAN
16 THAT YOU SHOULD NECESSARILY GIVE WEIGHT TO IT.
17 SO WHAT I'M GOING TO DO NOW IS I AM GOING
18 TO DIRECT YOUR ATTENTION TO SOME OF THE CIRCUMSTANCES IN
19 AGGRAVATION AND MITIGATION, THE FACTORS THAT YOU'RE
20 GOING TO BE ASKED TO CONSIDER. AND YOU'RE GOING TO HAVE
21 TO DECIDE FOR YOURSELF WHICH OF THESE FACTORS DO YOU
22 THINK REALLY APPLIES TO THIS CASE.
23 BECAUSE JUST AS YOU ARE INSTRUCTED IN THE
24 GUILT PHASE THAT NOT ALL RULES OF LAW WHICH WILL BE
25 GIVEN TO YOU NECESSARILY APPLY, YOU DETERMINE WHICH ONES
26 APPLY. SO, TOO, IN REGARD TO THE FACTORS YOU HAVE TO
27 ASK YOURSELF: IS THERE REALLY ANY EVIDENCE WHICH
28 SUPPORTS THIS PARTICULAR FACTOR? AND IF THERE IS NO

-10852

1 EVIDENCE TO SUPPORT THAT FACTOR, THEN YOU SHOULD THROW
2 THAT FACTOR OUT. IT SIMPLY DOESN'T APPLY TO THE CASE.
3 ALL RIGHT.
4 SO LET ME PUT ON THE BOARD NOW -- AND YOU
5 WILL BE GIVEN THESE INSTRUCTIONS, SO DON'T WORRY ABOUT
6 GETTING EVERY SINGLE WORD OF THEM -- BUT I THINK THIS
7 WILL JUST HIGHLIGHT FOR YOU SOME OF THE KEY
8 CONSIDERATIONS THAT YOU WILL BE FOCUSING ON DURING THE
9 COURSE OF MY ARGUMENTS, AND THE ARGUMENTS OF THE
10 DEFENSE.

11 NOW, THE LAW PROVIDES THAT:
12 "IN DETERMINING WHICH PENALTY IS TO
13 BE IMPOSED ON EACH DEFENDANT, YOU SHALL
14 CONSIDER ALL OF THE EVIDENCE WHICH HAS
15 BEEN RECEIVED DURING ANY PART OF THE TRIAL
16 IN THIS CASE. YOU SHALL CONSIDER, TAKE
17 INTO ACCOUNT, AND BE GUIDED BY THE
18 FOLLOWING FACTORS, IF APPLICABLE."
19 SO, THAT'S THE KEY. YOU HAVE TO DECIDE
20 DOES IT APPLY IN THIS PARTICULAR CASE, OR IS THAT A
21 FACTOR WHICH PERHAPS JUST PERTAINS TO DIFFERENT CASES,
22 AND NOT THIS ONE.
23 FACTOR A. "THE CIRCUMSTANCES OF THE CRIME
24 OF WHICH THE DEFENDANT WAS CONVICTED IN THE PRESENT
25 PROCEEDING, AND THE EXISTENCE OF ANY SPECIAL
26 CIRCUMSTANCES FOUND TO BE TRUE."
27 AND AS I INDICATED TO YOU, LADIES AND
28 GENTLEMEN, THIS IS THE FACTOR THAT THE PROSECUTION IS

-10851

1 GOING TO BE RELYING UPON EXCLUSIVELY. THIS IS THE --
2 THIS IS, FOR US, THE KEY FACTOR, BECAUSE WE ARE GOING TO
3 BE FOCUSING UPON THE CIRCUMSTANCES OF THE CRIME, THE
4 AGGRAVATING CIRCUMSTANCES OF THAT CRIME, AND THE
5 AGGRAVATING ASPECTS OF THE SPECIAL CIRCUMSTANCES.
6 SO I WOULD SUBMIT TO YOU THAT THAT

7 CERTAINLY APPLIES. THIS IS THE MURDER OF KITTY AND JOSE
8 MENENDEZ, AND ALL OF THE AGGRAVATING ELEMENTS OF THOSE
9 MURDERS.

10 FACTOR B.

11 "IS THE PRESENCE OR ABSENCE OF
12 CRIMINAL ACTIVITY BY THE DEFENDANT, OTHER
13 THAN THE CRIMES FOR WHICH THE DEFENDANT
14 HAS BEEN TRIED IN THE PRESENT PROCEEDING,
15 WHICH INVOLVES THE USE OR ATTEMPTED USE OF
16 FORCE OR VIOLENCE, OR THE EXPRESS OR
17 IMPLIED THREAT TO USE FORCE OR VIOLENCE."

18 NOW, YOU KNOW THAT IN THIS CASE I HAVE NO
19 EVIDENCE THAT ERIK OR LYLE MENENDEZ WERE PREVIOUSLY
20 INVOLVED IN ANY VIOLENT CRIMES SO I WOULD NOT --

21 MR. LEVIN: I WOULD OBJECT, YOUR HONOR, TO THE
22 PROSECUTOR'S INSINUATION THAT THERE MIGHT BE SOME.
23 THERE IS NONE.

24 THE COURT: HE IS NOT MAKING THAT INSINUATION.
25 THERE IS NONE. THAT IS WHAT MR. CONN JUST SAID.

26 MR. LEVIN: THANK YOU.

27 MR. CONN: THERE IS NO EVIDENCE THAT ERIK OR LYLE
28 MENENDEZ WAS INVOLVED IN ANY PRIOR VIOLENT CRIMES.

-10850

1 SO THIS IS NOT A FACTOR IN AGGRAVATION. IT
2 IS A FACTOR IN MITIGATION. IT IS SOMETHING YOU CAN

3 CONSIDER IN MITIGATION, BECAUSE IT DOES SAY THAT YOU CAN
4 CONSIDER THE ABSENCE OF PRIOR CRIMINAL ACTIVITY AS A
5 FACTOR IN MITIGATION.

6 SO THAT IS SOMETHING FOR THE BENEFIT OF THE
7 DEFENDANTS THAT YOU CAN TAKE INTO CONSIDERATION. GIVE
8 IT THE WEIGHT TO WHICH YOU THINK IT IS ENTITLED, THE
9 FACT THAT THEY HAVE NOT PREVIOUSLY BEEN INVOLVED IN
10 PRIOR CRIMINAL ACTIVITY.

11 NOW, FACTOR C ON THIS CHART, AND THE --
12 DON'T WORRY ABOUT THE LETTERING. THE LETTERING MIGHT BE
13 DIFFERENT FROM WHAT WILL BE ULTIMATELY GIVEN TO YOU, BUT
14 THE PRINCIPLES ARE THE SAME.

15 FACTOR C.

16 "THE PRESENCE OR ABSENCE OF ANY
17 PRIOR FELONY CONVICTION, OTHER THAN THE
18 CRIMES FOR WHICH DEFENDANT HAS BEEN TRIED
19 IN THE PRESENT PROCEEDINGS."

20 NOW, YOU KNOW THAT THE DEFENDANTS WERE
21 INVOLVED IN THAT BURGLARY INCIDENT, AND ERIK MENENDEZ
22 DID HAVE A JUVENILE PROCEEDING AGAINST HIM. BUT THAT
23 DOESN'T QUALIFY FOR THIS, BECAUSE THAT PERTAINS TO PRIOR
24 FELONY CONVICTIONS, AND THAT WASN'T A FELONY CONVICTION.
25 THAT WAS A JUVENILE ADJUDICATION. THIS IS NOT A FACTOR
26 IN AGGRAVATION. AND BECAUSE IT DOES SAY YOU CAN
27 CONSIDER THE PRESENCE OR ABSENCE OF SUCH PRIOR FELONY
28 CONVICTIONS, YOU CAN CONSIDER THIS AS A FACTOR IN

1 MITIGATION.

2 SO ONCE AGAIN, THIS IS SOMETHING THAT
3 BENEFITS THE DEFENDANTS. YOU CAN CONSIDER THIS AS A
4 FACTOR IN MITIGATION. LET ME MAKE A CHECK MARK. ON
5 THIS ONE, (B), IT IS SOMETHING YOU CAN CONSIDER TO THEIR
6 BENEFIT. (C) IS SOMETHING YOU CAN CONSIDER TO THEIR
7 BENEFIT.

8 NOW, FACTOR D.

9 "WHETHER OR NOT THE OFFENSE WAS
10 COMMITTED WHILE THE DEFENDANT WAS UNDER
11 THE INFLUENCE OF EXTREME MENTAL OR
12 EMOTIONAL DISTURBANCE."

13 NOW, LADIES AND GENTLEMEN, I AM GOING TO
14 ASK YOU TO FIND THAT THIS DOES NOT APPLY TO THIS CASE.
15 THERE IS NO EVIDENCE, I SUBMIT TO YOU, THAT EITHER ERIK
16 OR LYLE MENENDEZ COMMITTED THE CRIMES WHILE THEY WERE
17 UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL
18 DISTURBANCE.

19 AND I WOULD LIKE TO DIGRESS JUST A BIT NOW,
20 BEFORE I GET BACK INTO THE REMAINING FACTS, BY TALKING
21 ABOUT P.T.S.D. AND GENERALIZED ANXIETY DISORDER.

22 WE LEARNED A VERY INTERESTING THING FROM
23 DR. VICARY WHEN HE WAS ON THE STAND, OR YOU LEARNED A
24 VERY INTERESTING THING FROM DR. VICARY, AND THAT IS THAT
25 IN THE FIRST TRIAL THERE WAS APPARENTLY A WITNESS BY THE
26 NAME OF DR. ANN BURGESS.

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

-10848

1 THE COURT: WHAT IS THE BASIS OF YOUR OBJECTION?

2 MS. ABRAMSON: THAT IT WAS HEARSAY AND NOT
3 ADMISSIBLE FOR TRUTH, BUT ONLY TO CHALLENGE DR. VICARY'S
4 OPINION AND CREDIBILITY.

5 THE COURT: I WOULD SAY THAT'S WHAT IT'S BEING
6 OFFERED FOR IN THIS ARGUMENT.

7 IS THAT CORRECT, MR. CONN?

8 MR. CONN: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 MR. CONN: WHAT I AM ASKING YOU TO FIND IS THERE
11 ISN'T ANY EVIDENCE THAT ERIK MENENDEZ SUFFERED FROM A
12 SERIOUS MENTAL DISORDER IN THIS CASE. AND ONE OF THE
13 REASONS THAT YOU SHOULD FIND THAT IS BECAUSE HIS OPINION
14 IS SUSPECT FOR THE FOLLOWING REASON:

15 HE TOLD YOU THAT IN THE FIRST TRIAL DR. ANN
16 BURGESS -- THAT WAS THE DEFENDANT'S EXPERT IN THE FIRST
17 TRIAL. THIS IS BEFORE --

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. THESE ARE
19 FACTS BEYOND THE RECORD.

20 THE COURT: OVERRULED. IT CAME OUT DURING
21 DR. VICARY'S TESTIMONY.

22 MR. CONN: DR. VICARY TESTIFIED THAT ANN BURGESS
23 WAS THE EXPERT WITNESS FOR ERIK MENENDEZ IN THE FIRST

24 TRIAL, AND HE SAID THAT ANN BURGESS TESTIFIED THAT ERIK
25 MENENDEZ DID NOT SUFFER FROM ANY MENTAL DISORDER.
26 NOW WE HAVE A RETRIAL. AND WHAT HAPPENS IN
27 THE RETRIAL? NOW, IN THE RETRIAL, DR. WILSON COMES
28 ALONG, AND DR. WILSON TESTIFIES --

-10847

1 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
2 TO THIS, AND ASK TO BE HEARD.

3 THE COURT: OVERRULED.

4 MR. CONN: IN THE RETRIAL, DR. WILSON COMES
5 ALONG, AND DR. WILSON SAYS ERIK MENENDEZ SUFFERS FROM
6 POST-TRAUMATIC STRESS DISORDER? I MEAN, WHERE DOES THAT
7 COME OUT? OUT OF THE CLEAR BLUE.

8 IN THE FIRST TRIAL, A JURY IS TOLD ERIK
9 MENENDEZ DOES NOT SUFFER FROM ANY MENTAL DISORDER. AND
10 IN THE RETRIAL, DR. VICARY NOW TAKES THE STAND AND SAYS
11 HE SUFFERED FROM A VERY SERIOUS MENTAL DISORDER.

12 IS THE TRUTH THAT FLEXIBLE, LADIES AND
13 GENTLEMEN? HOW CAN THAT HAPPEN? I MEAN, HOW CAN THAT
14 HAPPEN? IN ONE TRIAL THERE IS A MENTAL DISORDER, IN THE
15 NEXT TRIAL --

16 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
17 MISSTATES THE TESTIMONY OF OTHER PERSONS IN THE FIRST
18 TRIAL.

19 THE COURT: OVERRULED. OVERRULED.

20 MR. CONN: LADIES AND GENTLEMEN, BASED UPON THAT
21 ALONE, YOU SHOULD FIND DR. VICARY'S TESTIMONY THAT ERIK
22 MENENDEZ SUFFERED FROM POST-TRAUMATIC STRESS DISORDER
23 EXTREMELY SUSPECT, AND YOU SHOULD ALSO FIND DR. WILSON'S
24 TESTIMONY THAT ERIK MENENDEZ SUFFERS FROM P.T.S.D.
25 EXTREMELY SUSPECT, WHEN THEIR OWN EXPERT SAID HE DID NOT
26 SUFFER FROM ANYTHING.

27 SO, THEN WE TURN TO PARK DIETZ. WHAT DID
28 PARK DIETZ SAY? HE SAID THAT ERIK MENENDEZ SUFFERED

-10846

1 FROM GENERALIZED ANXIETY DISORDER.

2 THEN AGAIN, ARE WE TALKING HERE ABOUT AN
3 EXTREME MENTAL OR EMOTIONAL DISTURBANCE? I THINK THAT
4 DR. DIETZ PROPERLY EXPLAINED THE NATURE OF GENERALIZED
5 ANXIETY DISORDER. IT'S SOMETHING THAT I ARGUED IN THE
6 GUILT PHASE, AND I WON'T REPEAT ALL OF THOSE ARGUMENTS
7 HERE, EXCEPT TO SAY THAT IT IS SIMPLY ANXIETY. THAT'S
8 ALL IT IS, IT'S ANXIETY.

9 AND EVEN IF P.T.S.D. DID APPLY TO THIS
10 CASE, IT IS JUST STRESS, AND THE EFFECTS OF STRESS.

11 SO WE ARE NOT TALKING ABOUT AN EXTREME
12 MENTAL OR EMOTIONAL DISTURBANCE. THIS REALLY APPLIES TO
13 A CASE WHERE SOMEONE IS REALLY PSYCHOTIC OR HAS GREAT
14 DELUSIONS OF REALITY -- SUFFERING FROM DELUSIONS OF
15 REALITY, AND SO FORTH.

16 SO I WOULD ASK YOU TO FIND THAT THIS FACTOR
17 DOES NOT APPLY TO THIS CASE.
18 THE NEXT FACTOR THAT YOU MAY CONSIDER IS
19 WHETHER OR NOT THE VICTIM WAS A PARTICIPANT IN THE
20 DEFENDANT'S HOMICIDAL CONDUCT, OR CONSENTED TO THE
21 HOMICIDAL ACT.
22 YOU CAN IMAGINE SITUATIONS -- BECAUSE BEAR
23 IN MIND THESE FACTORS ARE NOT DRAFTED FOR THIS
24 PARTICULAR CASE. THIS WAS NOT DRAFTED FOR THE MENENDEZ
25 CASE. THESE ARE JUST THE FACTORS THAT ARE GIVEN IN A
26 DEATH PENALTY CASE.
27 SO YOU CAN IMAGINE OTHER CASES WHERE
28 PERHAPS THAT MIGHT BE APPLICABLE, WHERE THE VICTIM WAS

-10845

1 INVOLVED IN THE CRIME ITSELF. IF ERIK MENENDEZ KILLED
2 LYLE MENENDEZ OR SOMETHING IN THE COMMISSION OF THE
3 CRIME, THEN YOU COULD SAY, "WELL, THAT VICTIM, LYLE
4 MENENDEZ, WAS A PARTICIPANT TO THE CRIME."
5 SO THAT'S SOMETHING THAT MIGHT APPLY TO
6 ANOTHER CASE, BUT IT DOESN'T APPLY HERE. KITTY AND JOSE
7 MENENDEZ WERE NOT A PARTICIPANT TO DEFENDANTS' HOMICIDAL
8 CONDUCT IN ANY WAY, NOR DID THEY CONSENT IN ANY WAY TO
9 THE HOMICIDAL ACT.
10 SO I WILL ASK YOU TO FIND THAT THAT FACTOR
11 DOESN'T APPLY TO THIS CASE.

12 "WHETHER OR NOT THE OFFENSE
13 WAS COMMITTED UNDER CIRCUMSTANCES WHICH
14 THE DEFENDANT REASONABLY BELIEVED TO BE A
15 MORAL JUSTIFICATION OR EXTENUATION FOR HIS
16 CONDUCT."

17 NOW, WE ALREADY HEARD THE CLAIM OF THE
18 DEFENDANT MENENDEZ -- ERIK MENENDEZ -- THAT HE KILLED IN
19 FEAR. I THINK BY YOUR VERDICTS OF FIRST-DEGREE MURDER,
20 YOU REJECTED THAT CLAIM.

21 I ASK YOU TO FIND THAT THERE IS NO MORAL
22 JUSTIFICATION OR EXTENUATION FOR HIS CONDUCT WHATSOEVER.
23 THIS WAS A COLD-BLOODED KILLING. IT WAS FIRST-DEGREE
24 MURDER. THAT FACTOR DOES NOT APPLY TO THIS CASE.

25 "WHETHER OR NOT THE DEFENDANT ACTED UNDER
26 EXTREME DURESS, OR UNDER THE SUBSTANTIAL DOMINATION OF
27 ANOTHER PERSON."

28 IF THIS WERE A CASE WHERE LYLE MENENDEZ WAS

-10844

1 FORCING ERIK MENENDEZ TO COMMIT THIS CRIME, WHERE ERIK
2 MENENDEZ WAS ACTING UNDER THE DOMINATION OF THIS
3 BROTHER, WHERE ONE BROTHER WAS THREATENING THE OTHER
4 BROTHER, "YOU DO THIS OR ELSE," THAT TYPE OF DURESS,
5 THEN YOU COULD FIND THAT THIS IS SOMETHING TO BE TAKEN
6 INTO CONSIDERATION IN DECIDING WHETHER OR NOT THE
7 DEFENDANTS SHOULD RECEIVE THE DEATH PENALTY.

1 BUT IN THIS CASE, LADIES AND GENTLEMEN.
2 THERE IS NO EVIDENCE WHATSOEVER OF DURESS. THERE IS
3 NO EVIDENCE WHATSOEVER THAT ONE DEFENDANT WAS ACTING
4 UNDER THE SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

5 SO AGAIN, I ASK YOU TO FIND THAT THIS
6 FACTOR DOES NOT APPLY. SO I ASK YOU TO FIND ALL
7 THOSE FOUR FACTORS MIGHT BE VERY RELEVANT IN SOME
8 OTHER CASE, BUT NOT IN THIS PARTICULAR CASE.

9 THE NEXT FACTOR IS WHETHER OR NOT AT THE
10 TIME OF THE OFFENSE THE CAPACITY OF THE DEFENDANT TO
11 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO
12 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
13 IMPAIRED AS A RESULT OF MENTAL DISEASE OR THE
14 DEFECTS -- OR DEFECTS, OR THE EFFECTS OF
15 INTOXICATION.

16 NOW, THERE IS NO EVIDENCE THAT EITHER
17 DEFENDANT WAS INTOXICATED AT THE TIME OF THE CRIME.
18 THAT DOESN'T APPLY TO THIS CASE.

19 AND ONCE AGAIN, WAS HIS CAPACITY
20 IMPAIRED AS A RESULT OF MENTAL DISEASE? WELL, EVEN
21 IF YOU LOOK AT GENERALIZED ANXIETY DISORDER AND
22 CONSIDER THAT AS A MENTAL DISEASE, WAS HIS CAPACITY
23 IMPAIRED SUCH THAT HE COULD NOT APPRECIATE THE
24 CRIMINALITY OF HIS CONDUCT? I WOULD ASK YOU TO FIND
25 THAT IS NOT THE CASE HERE.

26 YOU CAN CONSIDER, ONCE AGAIN, CERTAIN
27 TYPES OF -- YOU CAN CONCEIVE OF, I SHOULD SAY,
28 CERTAIN TYPES OF MENTAL DISEASES IN WHICH THE

54694

1 CAPACITY OF THE DEFENDANT WOULD BE IMPAIRED TO THAT
2 EXTENT.

3 ONCE AGAIN, GETTING TO A SITUATION WHERE
4 THE DEFENDANT IS PSYCHOTIC, WHERE HE'S SUFFERING
5 FROM DELUSIONAL STATES, WHERE HE DOESN'T REALLY
6 UNDERSTAND WHAT HE'S DOING, OR FULLY APPRECIATE WHAT
7 HE'S DOING, THAT WOULD BE A RELEVANT FACTOR.

8 THAT IS NOT THE CASE HERE. THE
9 DEFENDANTS KNEW THEY WERE SHOOTING THEIR PARENTS TO
10 DEATH. THEIR CAPACITY TO APPRECIATE THE CRIMINALITY
11 OF THEIR CONDUCT WAS NOT IMPAIRED; NOR WAS THEIR
12 CAPACITY OR THEIR ABILITY TO CONFORM THEIR CONDUCT
13 TO THE REQUIREMENTS OF LAW IMPAIRED AS A RESULT OF
14 SUCH MENTAL DISEASE.

15 AS I ARGUED IN THE GUILT PHASE, AND I'LL
16 REPEAT BRIEFLY HERE, GENERAL ANXIETY DISORDER DOES
17 NOT MAKE YOU KILL PEOPLE. IT JUST MAKES YOU
18 ANXIOUS.

19 I WOULD ASK YOU TO FIND, LADIES AND
20 GENTLEMEN, THAT NEITHER DEFENDANT IN THIS CASE WAS

21 SUFFERING FROM ANY MENTAL DISEASE OR DEFECT, OR OF
22 THE EFFECTS OF INTOXICATION WHICH IMPAIRED THEIR
23 CAPACITY TO APPRECIATE THE CRIMINALITY OF THEIR
24 CONDUCT, OR THEIR ABILITY TO CONFORM THEIR CONDUCT
25 TO THE REQUIREMENTS OF LAW.

26 SO I ASK YOU TO FIND THAT THAT FACTOR
27 SIMPLY DOESN'T APPLY TO THIS CASE. IT MIGHT BE
28 APPROPRIATE IN OTHER CASES, BUT NOT HERE.

54695

1 AGE OF THE DEFENDANT AT THE TIME OF THE
2 CRIME.

3 NOW, AS FAR AS THE AGE OF THE DEFENDANT
4 AT THE TIME OF THE CRIME IS CONCERNED, THIS IS
5 SOMETHING WHICH YOU CAN GIVE THE WEIGHT TO WHICH YOU
6 FEEL IS APPROPRIATE, BECAUSE THE AGE OF THE
7 DEFENDANT REFERS NOT SO MUCH JUST TO CHRONOLOGICAL
8 AGE, BUT IT REFERS TO THE MATURITY, TO THE
9 SOPHISTICATION, TO THE EXPERIENCE OF THE DEFENDANT,
10 WHICH IS RELATED TO HIS CHRONOLOGICAL AGE.

11 MR. LEVIN: I WOULD OBJECT. THAT'S A
12 MISSTATEMENT OF THE LAW.

13 THE COURT: OVERRULED.

14 MR. CONN: SO YOU CAN DECIDE IN REGARD TO
15 THIS FACTOR TO GIVE IT AS MUCH WEIGHT AS YOU FEEL

16 APPROPRIATE, EITHER AS AGGRAVATING OR AS

17 MITIGATING.

18 WHAT I'D ASK YOU TO FIND, LADIES AND

19 GENTLEMEN, IS THAT BOTH OF THE DEFENDANTS IN THIS

20 CASE WERE OLD ENOUGH TO APPRECIATE EXACTLY WHAT THEY

21 WERE DOING. THEY WERE WORLDLY ENOUGH. THEY HAD

22 BEEN AROUND ENOUGH. THEY UNDERSTOOD WHAT THEY WERE

23 DOING.

24 ERIK MENENDEZ WAS 18 YEARS OLD AT THE

25 TIME OF THE COMMISSION OF THE CRIME. LYLE MENENDEZ

26 WAS 21 YEARS OLD AT THE TIME OF THE COMMISSION OF

27 THE CRIME. THESE WERE NOT TWO YOUNG MEN WHO LIVED

28 THEIR LIVES IN A CLOSET SOMEWHERE.

54696

1 YOU CAN IMAGINE IF SOMEONE IS TRULY VERY

2 YOUNG AND INEXPERIENCED, WHO NEVER GOT OUT OF THE

3 HOUSE, NEVER REALLY KNEW THE WORLD IN ANY

4 APPRECIABLE WAY, YOU COULD FIND SOME MITIGATING

5 ASPECT OF THAT TYPE OF CONFINED EXPERIENCE.

6 THAT IS NOT THE CASE WITH THESE TWO

7 DEFENDANTS. THESE TWO DEFENDANTS WERE TAUGHT BY

8 THEIR FATHER: "YOU ARE A MENENDEZ. YOU ARE

9 SUPERIOR."

10 AND THEY LIVED THEIR LIFE THAT WAY.

11 THEY LIVED THEIR LIFE ON THE TENNIS COURTS, WINNING
12 IN COMPETITION, TRAVELING AROUND, TRAVELING AROUND
13 THE COUNTRY AND WINNING WHEREVER THEY WENT.

14 YOU KNOW THAT LYLE MENENDEZ SPENT A
15 GREAT DEAL OF TIME, WITHIN THE LAST THREE YEARS --
16 BEFORE HE MURDERED HIS PARENTS, HE SPENT TIME IN
17 EUROPE, SPENT TIME TRAVELING AROUND THE UNITED
18 STATES, SPENT TIME IN AUSTRALIA, LIVING OFF ON HIS
19 OWN.

20 WE'RE NOT TALKING ABOUT TWO YOUNG MEN
21 WITH SHELTERED EXISTENCES, WHO BY VIRTUE OF THAT
22 SHELTERED EXISTENCE FAILED TO APPRECIATE IN ANY WAY
23 WHAT THEY WERE DOING. THESE DEFENDANTS WERE OLD
24 ENOUGH. THEY KNEW WHAT THEY WERE DOING, AND THEY
25 MADE THE CONSCIOUS, DELIBERATE CHOICES, IN AN
26 ARROGANT AND SELF-SERVING WAY, TO KILL THEIR
27 PARENTS.

28 AND I WOULD SUBMIT TO YOU, LADIES AND

54697

1 GENTLEMEN, THAT THIS PARTICULAR FACTOR SHOULD NOT IN
2 ANY WAY BE MITIGATING IN THIS PARTICULAR CASE. SO
3 IT'S -- I'LL PUT A CHECK MARK BECAUSE IT'S RELEVANT.
4 AGE IS ALWAYS RELEVANT.

5 BUT AS I SAID, YOU DECIDE WHAT WEIGHT,

6 IF ANYTHING, YOU'RE GOING TO GIVE TO IT. I ASK YOU
7 TO FIND IT DOES NOT IN ANY WAY MITIGATE THE ACTIONS
8 OF THE DEFENDANTS.

9 NEXT, WHETHER OR NOT THE DEFENDANT WAS
10 AN ACCOMPLICE TO THE OFFENSE AND HIS PARTICIPATION
11 IN THE COMMISSION OF THE OFFENSE WAS RELATIVELY
12 MINOR.

13 NOW, THAT WOULD APPLY WHERE ONE
14 DEFENDANT, FOR EXAMPLE, PLAYED A PREDOMINANT ROLE, A
15 LEADING ROLE, AND THE OTHER ONE PLAYED A VERY MINOR
16 ROLE, JUST AS AN ACCOMPLICE. BUT THAT'S NOT THE
17 CASE HERE, LADIES AND GENTLEMEN.

18 ERIK MENENDEZ AND LYLE MENENDEZ BOTH
19 WENT INTO THAT DEN AND BOTH PARTICIPATED IN SHOOTING
20 THEIR PARENTS TO DEATH. BOTH OF THEM FIRED THE
21 ROUNDS OR FIRED THE SHOTS THAT KILLED THEIR
22 PARENTS. BOTH OF THEM WERE INVOLVED IN THE PROCESS
23 OF GOING OUTSIDE FOR THE RELOAD TO ENABLE LYLE
24 MENENDEZ TO COME BACK INSIDE AND FIRE THE FINAL
25 LETHAL SHOT TO THE FACE OF THEIR MOTHER.

26 SO, LADIES AND GENTLEMEN, THIS IS NOT A
27 CASE IN WHICH ONE DEFENDANT WAS A MERE ACCOMPLICE TO
28 THE OFFENSE. YOU MIGHT FIND IT IN ANOTHER CASE, IF

1 YOU HAVE ONE GUY, THE GETAWAY DRIVER, WHO JUST SAT
2 IN THE CAR, AND THE OTHER ONE COMMITTED THE CRIME.
3 THE GETAWAY DRIVER IS JUST AN ACCOMPLICE. HE
4 DOESN'T DESERVE THE DEATH PENALTY.

5 THAT'S NOT THE CASE HERE. THESE TWO
6 DEFENDANTS PERSONALLY SHOT THEIR FATHER AND MOTHER
7 TO DEATH. NEITHER ONE WAS JUST AN ACCOMPLICE. BOTH
8 OF THEM PLAYED MAJOR ROLES IN THE COMMISSION OF THE
9 OFFENSE.

10 SO I WOULD ASK YOU TO FIND THAT THIS
11 FACTOR SIMPLY DOESN'T APPLY TO THIS PARTICULAR
12 CASE.

13 AND FINALLY, FACTOR K IS A FACTOR JUST
14 AS -- THE PROSECUTION, I INDICATED, ALWAYS RELIES ON
15 FACTOR A, THE CIRCUMSTANCES OF THE CRIME OF WHICH
16 THE DEFENDANT HAS COMMITTED, AND THE SPECIAL
17 CIRCUMSTANCES.

18 FACTOR K IS SOMETHING THAT A DEFENSE CAN
19 ALWAYS RELY ON AND IS ALSO APPLICABLE. IT'S KIND OF
20 LIKE THE CATCH-ALL. YOU'LL FIND THAT THE DEFENSE IS
21 INDEED RELYING ON THIS FACTOR MORE THAN ANY OTHER
22 FACTOR, BECAUSE IT'S SO BROAD. IT SAYS:

23 "ANY OTHER CIRCUMSTANCES WHICH
24 EXTENUATES THE GRAVITY OF THE CRIME,
25 EVEN THOUGH IT IS NOT A LEGAL EXCUSE
26 FOR THE CRIME; AND ANY SYMPATHETIC OR
27 OTHER ASPECT OF THE DEFENDANT'S
28 CHARACTER OR RECORD THAT THE DEFENDANT

1 OFFERS AS A BASIS FOR A SENTENCE LESS
2 THAN DEATH, WHETHER OR NOT RELATED TO
3 THE OFFENSE FOR WHICH HE IS ON TRIAL.

4 "YOU MUST DISREGARD ANY JURY
5 INSTRUCTION GIVEN TO YOU IN THE GUILT
6 OR INNOCENCE PHASE OF THIS TRIAL WHICH
7 CONFLICTS WITH THIS PRINCIPLE."

8 ESSENTIALLY, IT'S SAYING ANY
9 CIRCUMSTANCE WHICH EXTENUATES THE GRAVITY, AND
10 THAT'S WHAT YOU'RE GOING TO HAVE TO DECIDE.

11 WE KNOW THAT THEY PRESENTED A LOT OF
12 BACKGROUND EVIDENCE CONCERNING THEIR CHILDHOOD AND
13 THE RELATIONSHIP BETWEEN THEMSELVES AND THEIR
14 PARENTS. BUT YOU'RE GOING TO HAVE TO ASK YOURSELF,
15 AS I PREVIOUSLY INDICATED, DO THOSE FACTS, DO THOSE
16 CONDITIONS, AND DO THOSE EVENTS TRULY EXTENUATE THE
17 GRAVITY OF THE CRIME, OR IS IT SIMPLY BACKGROUND,
18 SUCH AS MANY OF US HAVE BEEN SUBJECTED TO THROUGHOUT
19 OUR OWN LIVES? SOMETHING WE'VE ALL DONE.

20 YOU CAN ALSO CONSIDER ANY SYMPATHETIC OR
21 OTHER ASPECT OF THE DEFENDANT'S CHARACTER OR
22 RECORD.

23 ONCE AGAIN, YOU DECIDE WHAT IS

24 SYMPATHETIC OR NOT, AND YOU DECIDE HOW MUCH WEIGHT
25 TO GIVE TO IT IN THE OVERALL SCHEME OF THINGS WHEN
26 YOU CONDUCT THIS BALANCING THAT YOU'RE GOING TO
27 CONDUCT.

28 SO THOSE ESSENTIALLY, LADIES AND

54700

1 GENTLEMEN, ARE THE AGGRAVATING AND MITIGATING
2 FACTORS THAT YOU WILL BE CONSIDERING, WITH THE
3 PROSECUTION RELYING PRIMARILY ON THE CIRCUMSTANCES
4 OF THE CRIME AND THE SPECIAL CIRCUMSTANCES; AND THE
5 DEFENSE RELYING UPON THIS BROAD CATEGORY OF ANYTHING
6 THAT EXTENUATES THE GRAVITY OF THE CRIME.

7 AND YOU'RE GOING TO WEIGH AND CONSIDER
8 THAT EVIDENCE. AND WHAT I'M GOING TO ASK YOU TO
9 FIND, LADIES AND GENTLEMEN, IS THAT THE AGGRAVATING
10 ASPECTS OF THE MURDER IN THIS CASE, OF THE TWO
11 MURDERS IN THIS CASE, WERE JUST SO HORRENDOUS, JUST
12 SO SHOCKING, JUST SO BRUTAL, AND JUST SO
13 AGGRAVATING, THAT THEY DO IN FACT OUTWEIGH ALL OF
14 THE EVIDENCE PRESENTED BY THE DEFENSE IN MITIGATION;
15 THAT MUCH OF THE EVIDENCE PRESENTED BY
16 THE DEFENSE IN MITIGATION ARE CIRCUMSTANCES THAT ALL
17 CHILDREN GO THROUGH; THAT THESE DEFENDANTS DID NOT
18 LEAD A TRULY DEPRIVED EXISTENCE.

19 IN FACT, TO THE CONTRARY. THESE
20 DEFENDANTS GREW UP WITH A SILVER SPOON, AND THERE'S
21 NOTHING TRULY MITIGATING ABOUT THEIR BACKGROUND.
22 AND IF INDEED YOU FIND ANYTHING TO BE MITIGATING, IT
23 SIMPLY SHOULDN'T BE GIVEN THAT MUCH WEIGHT.
24 I'M GOING TO ASK YOU TO FIND, LADIES AND
25 GENTLEMEN, THAT WHEN YOU REALLY LOOK AT THE NATURE
26 OF THE MITIGATING EVIDENCE THAT WAS PRESENTED IN
27 THIS CASE -- AND I'LL BE GOING THROUGH A LIST OF 18
28 WITNESSES CALLED BY THE DEFENSE -- AND I'LL BE GOING

54701

1 OVER THEIR TESTIMONY IN DETAIL WITH YOU TO SHOW YOU
2 THAT ALL THIS MITIGATING EVIDENCE DOESN'T ADD UP TO
3 A HILL OF BEANS.

4 WHAT I'M GOING TO ASK YOU TO FIND,
5 LADIES AND GENTLEMEN, IS THAT ESSENTIALLY WHAT IT
6 REALLY COMES DOWN TO IS -- IN REFERENCE TO SO MANY
7 WITNESSES IS: OUR FATHER ASKED US TO PLAY TOO MUCH
8 TENNIS.

9 HOW MANY WITNESSES DID WE HEAR THAT WERE
10 CALLED BEFORE YOU WHO ESSENTIALLY SAID THAT? THEIR
11 FATHER MADE THEM PLAY TENNIS. THEIR FATHER MADE
12 THEM PRACTICE. IN THEIR EFFORTS TO FIND SOME WAY TO
13 PUT THEIR PARENTS DOWN, TO ATTACK THEIR FATHER, TO

14 ATTACK THEIR MOTHER -- BECAUSE THAT'S ESSENTIALLY
15 WHAT THE MITIGATING EVIDENCE WAS IN THIS CASE -- AS
16 IN THE GUILT PHASE, WHERE THE ATTACK WAS UPON THE
17 PARENTS IN TERMS OF SEXUAL ABUSE, FALSE ALLEGATIONS
18 OF SEXUAL ABUSE, AND EXAGGERATED CLAIMS OF PHYSICAL
19 ABUSE, SO TOO, THE TRIAL OF KITTY AND JOSE MENENDEZ
20 CONTINUED IN THE PENALTY PHASE.

21 WHAT WE SAW IN THE PENALTY PHASE ARE NOW
22 NEW ALLEGATIONS. PSYCHOLOGICAL ABUSE. THAT BECAME
23 THE NEW BATTLE GROUND. NO LONGER PHYSICAL AND
24 SEXUAL ABUSE. NOW IT'S PSYCHOLOGICAL ABUSE. BUT
25 IT'S ALL DONE FOR THE SAME REASON, TO GET YOU TO
26 HATE THESE PARENTS. TO SAY: GEE, WHAT TERRIBLE
27 PARENTS THEY WERE, SO YOU WILL SOMEHOW FIND THEIR
28 DEATH TO BE MITIGATING, SO YOU WILL SOMEHOW SAY TO

54702

1 YOURSELF: THEY DESERVE IT, AND THEY HAD IT COMING.
2 BUT WHEN YOU ACTUALLY LOOK AT THAT
3 MITIGATING EVIDENCE, LADIES AND GENTLEMEN, MOST OF
4 IT IS TRIVIA, AND MOST OF IT IS DISTORTIONS OF WHAT
5 ACTUALLY TOOK PLACE. AND I WILL BE GOING THROUGH IT
6 DETAIL BY DETAIL WITH YOU TO MAKE THE POINTS I AM
7 NOW SUGGESTING TO YOU.
8 SO MANY WITNESSES CAME BEFORE YOU AND

9 SAID: TOO MUCH SWIMMING. WE DIDN'T WANT TO GO IN
10 THAT POOL. OUR FATHER MADE US SWIM IN THAT COLD
11 POOL. TOO MUCH SOCCER. HE WOULD RUN UP AND DOWN
12 THE SOCCER FIELD AND TELL ME TO KEEP PLAYING.

13 THAT WAS THE TYPE OF EVIDENCE THAT WAS
14 PRESENTED TO YOU. TOO MUCH TENNIS.

15 AND THEN LACK OF AFFECTION. THAT WAS
16 CLAIMED BY THE DEFENSE. I'M GOING TO GET INTO LACK
17 OF AFFECTION TO SHOW YOU HOW JUST THE OPPOSITE WAS
18 PRESENTED.

19 BUT ESSENTIALLY THAT WAS THE CLAIM. TOO
20 MUCH TENNIS AND NOT ENOUGH AFFECTION. THAT'S
21 ESSENTIALLY THE HEART AND SOUL OF THE MITIGATING
22 CASE?

23 YOU'RE GOING TO HAVE TO ASK YOURSELF,
24 LADIES AND GENTLEMEN, DOES THAT TRULY OUTWEIGH THE
25 EVIDENCE IN AGGRAVATION IN THIS CASE? THAT'S THE
26 BALANCING YOU'RE GOING TO HAVE TO CONDUCT, LADIES
27 AND GENTLEMEN. IT'S GOING TO LOOK SOMETHING LIKE
28 THIS:

54703

1 IF YOU IMAGINE THE SCALES OF JUSTICE
2 HERE, THE SCALES OF JUSTICE IN WHICH YOU ARE GOING
3 TO WEIGH THE AGGRAVATION AGAINST THE MITIGATION.

4 THAT IS WHAT YOU'RE GOING TO HAVE TO CONSIDER,
5 LADIES AND GENTLEMEN, THE HORROR OF THAT CRIME, THE
6 BRUTALITY OF THAT CRIME, THE PREMEDITATION OF THAT
7 CRIME. THAT IS THE EVIDENCE IN AGGRAVATION IN THIS
8 CASE.

9 AND I WOULD SUBMIT TO YOU, THAT CLEARLY
10 OUTWEIGHS THE TRIVIA AND DISTORTION THAT WAS
11 PRESENTED BY THE OTHER SIDE, WHICH CAN BE SUMMED --
12 AND I'VE SUMMED IT UP HERE -- AS "TOO MUCH TENNIS,
13 NOT ENOUGH HUGS."

14 IS THAT MITIGATION? YOU ASK YOURSELVES,
15 LADIES AND GENTLEMEN. YOU ASK YOURSELVES IF THAT IS
16 TRULY MITIGATION, AND IF THAT OUTWEIGHS THE
17 BRUTALITY AND THE HORROR OF AUGUST 20TH, 1989 AND
18 THE EVENTS LEADING UP TO THAT.

19 SO LET'S TURN NOW TO SOME OF THE
20 EVIDENCE IN MITIGATION. I'M GOING TO PUT ON THE
21 BOARD AT THIS TIME ALL OF THE WITNESSES THAT WERE
22 CALLED BY THE DEFENSE IN THIS PENALTY PHASE, AND GO
23 THROUGH THEIR EFFORTS TO PUT KITTY AND JOSE MENENDEZ
24 ON TRIAL IN THIS PROCEEDING, AND TO POINT OUT HOW
25 INEFFECTIVE THEY WERE IN DOING THAT.

26 BECAUSE SOME OF THESE WITNESSES, LADIES
27 AND GENTLEMEN, ARE RELATED TO KITTY AND JOSE
28 MENENDEZ. AND VERY OFTEN THEY WERE SIMPLY STUCK

1 WITH THE TRUTH, AS MUCH AS THEY WANTED TO DISTORT
2 IT, AS MUCH AS THEY HAD THEIR OWN AGENDA, AS THE
3 VERY FIRST WITNESS HERE TOLD US. SHE HAD HER OWN
4 AGENDA.

5 TERRY BARALT. SHE USED THOSE WORDS.
6 SHE ACCUSED ME OF HAVING AN AGENDA, AND SHE HAD HER
7 OWN AGENDA. HER AGENDA WAS TO HELP THE DEFENDANTS,
8 TO KEEP THEM FROM GETTING THE DEATH PENALTY. AND
9 THAT'S A BIASED WITNESS.

10 WHEN A WITNESS COMES INTO THE COURTROOM
11 AND TELLS YOU: "I HAVE AN AGENDA," I WOULD SUBMIT
12 THAT IS CERTAINLY A BIASED WITNESS. THAT'S
13 SOMETHING TO BE TAKEN INTO CONSIDERATION AS YOU
14 EVALUATE HER TESTIMONY.

15 WHAT SHOULD ALSO BE TAKEN INTO
16 CONSIDERATION AS YOU EVALUATE HER TESTIMONY IS THE
17 FACT THAT SHE REFUSED TO TALK TO PROSECUTORS. YOU
18 WILL RECALL THAT SHE ADMITTED THAT WHEN -- THAT WHEN
19 I WENT TO THE EAST COAST AND WANTED TO INTERVIEW
20 HER, SHE REFUSED. SHE DISTORTED THAT SOMEWHAT. WE
21 KNOW THAT NOW FROM DETECTIVE ZOELLER. SHE MADE IT
22 SOUND AS IF, "I WAS TOLD THE PROSECUTOR JUST WANTED
23 TO HAVE A DRINK WITH ME."

24 DETECTIVE ZOELLER MADE IT VERY CLEAR IN
25 HIS TESTIMONY THAT WE DIDN'T GO TO THE EAST COAST TO
26 HAVE A DRINK WITH TERRY BARALT. WE WENT TO THE EAST
27 COAST TO TALK TO HER ABOUT THE BACKGROUND OF ERIK

54705

1 TALK TO US. SHE EVEN INDICATED IT IN HER
2 TESTIMONY. SHE SAID: "AT THIS MOMENT I HAVE NO
3 INCLINATION TO SPEAK TO THE PROSECUTION."

4 SO IT'S VERY CLEAR, LADIES AND
5 GENTLEMEN, THAT SOME OF THE WITNESSES IN THIS CASE --
6 AND WE SAW MORE OF THEM IN THE GUILT PHASE -- THEY
7 CIRCLED THE WAGONS ESSENTIALLY. THEY HAVE NO
8 INTEREST IN HELPING THE PROSECUTION, NO INTEREST IN
9 LETTING THE CHIPS FALL WHERE THEY MAY. THAT IS WHAT
10 WITNESSES SHOULD DO. THEY DON'T WANT TO DO THAT.

11 OF COURSE, THAT PUTS THE PROSECUTION IN
12 A VERY DIFFICULT POSITION, BECAUSE YOU CAN IMAGINE,
13 LADIES AND GENTLEMEN, WHEN THE PROSECUTION WANTS TO
14 PRESENT TO A JURY WHAT WAS IT ABOUT THE VICTIMS IN
15 THIS CASE, WHAT WAS IT ABOUT THEIR LIVES THAT WAS
16 WORTHWHILE, THAT WAS VALUABLE, THAT MADE THEIR LIVES
17 PRECIOUS? HOW CAN THE PROSECUTION DO THAT WHEN THE
18 VICTIMS' OWN FAMILY HAVE CIRCLED THE WAGONS AND WILL
19 NOT ALLOW THE PROSECUTION TO ENTER?

20 IT'S AN UNUSUAL SITUATION, BECAUSE YOU
21 HAVE TWO DEFENDANTS WHO KILLED THEIR OWN PARENTS.
22 VERY UNUSUAL SITUATION.

23 NOW, WE WERE ABLE TO MITIGATE THAT
24 SOMEWHAT WHEN WE CALLED THE OTHER SIDE OF THE
25 FAMILY. WE CALLED THE ANDERSENS, WHO SPOKE TO YOU
26 ABOUT THE PRECIOUSNESS OF THEIR SISTER'S LIFE TO
27 THEM AND THE IMPACT IT HAD UPON THEM.
28 BUT YOU CAN SEE HOW MARTA CANO, TERRY

54706

1 BARALT, ALAN ANDERSEN, ALL OF THOSE PEOPLE HAVE NO
2 INTEREST IN ASSISTING THE PROSECUTION IN ANY WAY.
3 NEVERTHELESS, ALTHOUGH THEY DIDN'T WANT
4 TO HELP THE PROSECUTION, THOSE VERY SAME WITNESSES
5 PROVIDED YOU WITH VERY INSIGHTFUL INFORMATION
6 CONCERNING THE VICTIMS OF THIS CASE, LIKE IT OR
7 NOT. THEY DIDN'T WANT TO DO IT, BUT LIKE IT OR NOT,
8 THEY DID IT.

9 I'LL BE QUOTING FROM THE TESTIMONY OF
10 SOME OF THOSE WITNESSES WHICH REVEALS TO YOU THINGS
11 THAT UNDERMINE THE DEFENSE IN THIS CASE, THINGS
12 WHICH SUGGEST TO YOU VERY CLEARLY THAT THE VICTIMS
13 IN THIS CASE, KITTY AND JOSE MENENDEZ, HAVE INDEED
14 BEEN MISCHARACTERIZED IN REGARD TO THEIR BEHAVIOR
15 TOWARDS THE DEFENDANTS; AND THAT THEY WERE IN FACT
16 GOOD PEOPLE.

17 TERRY BARALT SAID IT HERSELF IN HER

18 TESTIMONY. DO YOU RECALL WHAT SHE SAID? SHE DIDN'T
19 WANT TO SAY IT. SHE DOESN'T SAY THIS ON DIRECT
20 EXAMINATION, BUT IT JUST SLIPPED OUT IN
21 CROSS-EXAMINATION.

22 SHE SAID: "THEY WERE GREAT
23 PEOPLE," SHE SAID, "THAT MADE A
24 MISTAKE RAISING THEIR KIDS. THAT WAS
25 THEIR PROBLEM, NOT MINE. BUT I LOVE
26 THEM."

27 BEAR THAT IN MIND, LADIES AND GENTLEMEN,
28 BECAUSE ONE THING THAT BOTH SIDES AGREE IN THIS

54707

1 CASE, IS THAT TERRY BARALT PROBABLY KNEW KITTY AND
2 JOSE MENENDEZ BETTER THAN ANYONE.

3 LOOK AT THE TREMENDOUS AMOUNT OF TIME
4 THAT SHE HAD ASSOCIATING WITH THIS FAMILY, FROM 1960
5 OR SO UP UNTIL 1989. SHE KNEW THIS FAMILY OVER A
6 29-YEAR TIME PERIOD AND SAW THEM INTERACT. SO SHE
7 WAS A PERSON WHO TRULY KNEW KITTY AND JOSE
8 MENENDEZ.

9 NOW, THE EXPERT IN THIS CASE, DR. HART,
10 WHEN HE WAS CALLED, HE TRIED TO POINT TO SOME OF THE
11 WITNESSES WHO DIDN'T KNOW THE FAMILY AS WELL.

12 ALAN ANDERSEN, WHO WOULD JUST SEE THEM

13 DURING SUMMERS. WHY? BECAUSE ALAN ANDERSEN HAD A
14 LOT OF VERY BAD THINGS TO SAY ABOUT THE FAMILY. HE
15 WAS A KID AT THE TIME. HOW MUCH CAN HE REMEMBER
16 FROM WHAT HAPPENED DURING THAT TIME PERIOD? I ASK
17 YOU TO RELY ON A RESPONSIBLE ADULT AND HER
18 RECOLLECTION OF KITTY AND JOSE MENENDEZ.

19 AND SHE SAID: "THEY WERE GREAT PEOPLE."
20 IT'S UNFORTUNATE. IF THEY WEREN'T REALLY CIRCLING
21 THE WAGONS, PERHAPS I'D BE ABLE TO PENETRATE THAT A
22 LITTLE BIT MORE, AND I'D BE ABLE TO FIND OUT A
23 LITTLE MORE ABOUT WHY THEY WERE GREAT PEOPLE. SHE
24 WON'T LET ME INTO THAT CIRCLE OF WAGONS;
25 NEVERTHELESS, SHE SLIPPED AND TOLD US.

26 SHE SAID, FOR EXAMPLE, OF JOSE MENENDEZ:

27 "HE WAS CHARISMATIC AND GENTLE WITH ME."

28 IS THIS A PERSON WHO WAS SO BRUTAL AS

54708

1 THE DEFENSE CHARACTERIZES HIM? SHE SAID HE WAS
2 ALWAYS GENTLE WITH HER.

3 KITTY MENENDEZ SHE DESCRIBED AS BRIGHT,
4 WITTY, PLEASANT. "I LOVED HER," SHE SAID, "AND SHE
5 LOVED ME."

6 LADIES AND GENTLEMEN, THE MOST
7 INTERESTING THING ABOUT THIS PENALTY PHASE CASE THAT

8 WAS PRESENTED TO YOU BY THE DEFENSE -- AND WE SAW A
9 LITTLE BIT IN THE GUILT PHASE AS WELL -- IT'S LIKE A
10 HOUSE OF CARDS.

11 YOU KNOW, IF YOU TAKE A DECK OF CARDS
12 AND YOU STACK THEM UP SO -- IN A CERTAIN WAY ON THE
13 TABLE SO THAT YOU ONLY SEE THE BACKSIDE OF THE
14 CARDS, YOU CAN'T TELL IF THERE'S ANY NUMBERS ON THE
15 INSIDE OF THE CARDS. YOU CAN'T TELL IF THERE'S
16 CLUBS OR SPADES OR DIAMONDS OR HEARTS. ALL YOU
17 WOULD SEE IS THE OUTSIDE PATTERN.

18 THAT'S EXACTLY THE WAY THIS PENALTY
19 PHASE EVIDENCE WAS STRUCTURED. IN FACT, THAT IS THE
20 WAY THE ENTIRE DEFENSE WAS STRUCTURED. THEY WANTED
21 YOU TO SEE ONE SPECIFIC SIDE OF THIS FAMILY, ALL
22 NEGATIVE.

23 SO WHAT THEY WOULD DO IS CALL A WITNESS
24 TO TESTIFY TO ONE NEGATIVE ASPECT. YOU KNOW, IF YOU
25 LISTEN CAREFULLY TO THE TESTIMONY OF THAT WITNESS,
26 AND IF YOU QUESTION THAT WITNESS IN REGARDS TO OTHER
27 ASPECTS, YOU GET CONTRADICTORY INFORMATION.

28 SO YOU HAVE WITNESS "A" TELLING US THAT

54709

1 KITTY WAS TERRIBLE, BUT JOSE WAS OKAY. AND YOU GET
2 WITNESS "B" TELLING US JUST THE OPPOSITE.

3 AND SO, AS WE GO THROUGH THE WITNESSES,
4 THAT'S THE PATTERN YOU'RE GOING TO SEE, THAT THESE
5 WITNESSES WERE ALL ACROSS THE BOARD, AND THESE
6 WITNESSES SAID AS MANY FAVORABLE THINGS -- IN
7 BALANCE, IF YOU WANT TO TOTAL IT ALL UP, THESE
8 WITNESSES SAID AS MANY FAVORABLE THINGS ABOUT KITTY
9 AND JOSE MENENDEZ THEN THEY SAID NEGATIVE, IF NOT
10 MORE FAVORABLE.

11 I WOULD SUBMIT TO YOU, IF YOU THEN FOCUS
12 ON WHO WERE THE PEOPLE WHO REALLY KNEW THE FAMILY,
13 YOU'RE GOING TO FIND THAT THERE'S MUCH MORE
14 FAVORABLE THINGS SAID ABOUT KITTY AND JOSE MENENDEZ
15 THAN UNFAVORABLE, BECAUSE WHO KNEW THE FAMILY?

16 TERRY BARALT KNEW THE FAMILY VERY WELL.
17 FAITH GOLDSMITH WAS A VERY CLOSE FRIEND TO KITTY
18 MENENDEZ. SHE KNEW WHAT KITTY MENENDEZ WAS LIKE.

19 THEN THEY CALL IN A COACH WHO WAS FIRED
20 TO SAY: "OH, KITTY MENENDEZ WAS A BAD PERSON. SHE
21 TREATED ME LIKE A SLAVE."

22 HOW MUCH CONTACT DID THIS COACH HAVE
23 WITH KITTY MENENDEZ? ARE WE GOING TO BELIEVE SHE IS
24 A BAD PERSON, WHEN TERRY BARALT SAID: "I KNEW HER
25 FOR 29 YEARS AND I LOVED HER AND SHE LOVED ME."

26 YOU SEE? THEY'LL GO FOR ANYTHING THAT
27 HELPS THEM. THEY FIND A DISGRUNTLED COACH, BRING
28 HIM IN, AND PUT HIM ON THE STAND.

1 IF THEY FIND A TEACHER WHO FELT A LITTLE
2 INTIMIDATED AT ONE TIME IN HER LIFE BECAUSE OF THE
3 WAY KITTY AND JOSE MENENDEZ INTERACTED WITH HER,
4 THEY BRING HER IN AND THROW HER UP ON THE STAND TO
5 GIVE HER DISTORTED VERSION OF THAT FAMILY.

6 LADIES AND GENTLEMEN, IF YOU SORT OUT
7 WHO KNOWS WHAT, WHICH OF THESE WITNESSES REALLY KNEW
8 THE FAMILY, YOU SHOULD CONCLUDE WHAT TERRY BARALT
9 CONCLUDED, THAT JOSE AND KITTY MENENDEZ WERE GREAT
10 PEOPLE, AND THERE'S NO GETTING AROUND THAT.

11 WHAT DID SHE SAY ABOUT JOSE MENENDEZ?

12 "THEY HAD A WAY OF LOVING THOSE
13 KIDS. THE FACT THAT JOSE'S OBSESSION
14 WAS WITH THESE KIDS, HIS SUPPORT, THAT
15 WAS HIS WAY OF LOVING. THAT WAS HIS
16 WAY OF SHOWING IT. I WISH HE HADN'T
17 LOVED THEM THAT MUCH."

18 SHE TALKS HERE ABOUT THE FACT SHE KNEW
19 JOSE MENENDEZ LOVED HIS SONS. WHO KNOWS BETTER THAN
20 TERRY BARALT? THERE'S NO ONE WHO KNOWS THAT BETTER
21 THAN TERRY BARALT.

22 DR. HART COMES IN HERE, AND HE'S GOING
23 TO TAKE THE STAND AS AN EXPERT WITNESS IN
24 PSYCHOLOGICAL MALTREATMENT, AND HE'S GOING TO TELL
25 US THAT JOSE MENENDEZ DIDN'T LOVE HIS SONS? WHERE

26 DOES HE GET OFF DOING THAT? WHAT DID HE DO? HE
27 WENT TO COLLEGE AND TOOK "LOVE 101," AND HE'S GOING
28 TO TELL US WHETHER OR NOT JOSE MENENDEZ LOVED HIS

54711

1 SONS?

2 TERRY BARALT KNOWS WHETHER OR NOT JOSE
3 MENENDEZ LOVED HIS SONS, AND SHE SAID HE DID. DON'T
4 LISTEN TO DR. HART.

5 WHAT DID TERRY BARALT SAY ABOUT KITTY
6 MENENDEZ?

7 "THAT WAS HER WAY OF LOVING. SHE
8 WAS SHOWING LOVE THAT WAY. THE KIDS
9 WOULD FEEL ASPHYXIATED, BUT THAT WAS
10 THE KIDS' PROBLEM. THAT DIDN'T MEAN
11 SHE DIDN'T LOVE THEM."

12 SHE WAS SPEAKING ABOUT THE WAY SHE WOULD
13 RELATE TOWARD HER CHILDREN. THERE'S NO DOUBT IN
14 TERRY BARALT'S MIND THAT KITTY MENENDEZ LOVED HER
15 SONS.

16 LADIES AND GENTLEMEN, IF YOU FIND THAT
17 PEOPLE SUCH AS TERRY BARALT BELIEVED THAT, THERE'S
18 NO BASIS UPON WHICH YOU CAN TRULY REACH A CONTRARY
19 CONCLUSION BASED UPON THE TESTIMONY OF WHO DIDN'T --
20 OF WITNESSES WHO DIDN'T HAVE NEARLY AS MUCH CONTACT

21 WITH THE FAMILY.

22 SHE TALKED ABOUT HOW "ALL OF MY KIDS AND
23 MY HUSBAND LOVED JOSE." WHY WAS HE LOVED SO MUCH IF
24 THIS MAN WAS SUCH A TERRIBLE MONSTER, AS THE DEFENSE
25 WOULD ASK YOU TO BELIEVE? WHY IS IT THAT "ALL OF MY
26 KIDS," SHE SAID, "AND MY HUSBAND LOVED JOSE"?

27 THE DEFENSE WOULD HAVE YOU BELIEVE THAT
28 THE PARENTS RULED WITH AN IRON FIST, PARTICULARLY

54712

1 JOSE MENENDEZ; THAT THESE DEFENDANTS DIDN'T HAVE
2 ROOM TO BREATHE; THAT THEY WERE JUST LOCKED IN TO
3 THE DEMANDS OF JOSE MENENDEZ.

4 IS THAT REALLY THE CASE, LADIES AND
5 GENTLEMEN? THAT'S WHAT THIS WITNESS TRIES TO
6 SUGGEST.

7 SHE SAID THAT THE PARENTS COMPLAINED, IN
8 REGARDS TO LYLE MENENDEZ, THAT HIS GIRLFRIEND WAS A
9 DISTRACTION. THEY DIDN'T LIKE THAT RELATIONSHIP.

10 WELL, LADIES AND GENTLEMEN, WHY DIDN'T
11 THE RELATIONSHIP END, IF THE PARENTS WANTED TO PUT
12 AN END TO IT?

13 IT WAS JUST LIKE LYLE MENENDEZ'
14 SPENDING. IT WAS SOMETHING OVER WHICH THE PARENTS
15 SIMPLY HAD NO CONTROL. LYLE MENENDEZ DID EXACTLY

16 WHAT HE WANTED TO DO. HE SPENT WHAT HE WANTED TO
17 SPENT (SIC). HE WENT OUT WITH WHOEVER HE WANTED TO
18 GO OUT WITH.

19 THESE PARENTS DID NOT RULE WITH AN IRON
20 FIST. IF ANYTHING, IT WAS THE SONS WHO MADE SUCH
21 DECISIONS CONCERNING THEIR LIVES. AND THE
22 ALLEGATION THAT THE PARENTS CONTROLLED THEM, TO THE
23 EXTENT THAT THE DEFENSE IS ALLEGING, IS ABSOLUTELY
24 FALSE AND CONTRADICTED BY THE EVIDENCE IN THIS
25 CASE.

26 THAT RELATIONSHIP WITH STACY THAT WAS
27 REFERRED TO DURING THE WITNESS' TESTIMONY LASTED
28 UNTIL IT NATURALLY BROKE UP. THE PARENTS HAD NO

54713

1 INFLUENCE IN BREAKING THAT RELATIONSHIP UP.

2 THEY WANTED TO PORTRAY KITTY MENENDEZ
3 AND JOSE MENENDEZ AS BEING TOTALLY LACKING IN
4 AFFECTION. THIS NOT AN AFFECTIONATE FAMILY, THEY
5 SAID. EVEN IN THE PENALTY PHASE OPENING STATEMENT
6 WE HEARD THAT. THIS IS NOT AN AFFECTIONATE FAMILY.
7 BUT THE EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN,
8 PROVED JUST THE CONTRARY, THAT THIS FAMILY WAS
9 INDEED AFFECTIONATE.

10 EVEN TERRY BARALT WOULDN'T ADMIT THAT.

11 TERRY BARALT SAID, "KITTY MENENDEZ WAS AFFECTIONATE
12 WITH MY DAUGHTERS," AND THAT ALONE SHOULD HAVE
13 CAUSED SOME SUSPICION CONCERNING THE ALLEGATION THAT
14 THIS WAS NOT AN AFFECTIONATE FAMILY. HOW CAN IT BE
15 THAT KITTY MENENDEZ IS SO AFFECTIONATE WITH HER
16 DAUGHTERS?

17 SHE EVEN DESCRIBED KITTY MENENDEZ AS
18 BEING AFFECTIONATE TOWARDS ANIMALS, AND THEN NOT
19 AFFECTIONATE WHATSOEVER CONCERNING HER SONS? THAT
20 DOESN'T MAKE ANY SENSE WHATSOEVER. HOW CAN A WOMAN
21 BE AFFECTIONATE WITH ANIMALS, AFFECTIONATE WITH HER
22 NIECES, AND TOTALLY UNAFFECTIONATE TOWARD HER OWN
23 SONS?

24 THAT RIGHT THERE SHOULD HAVE BEEN A
25 LITTLE SIGNAL. WAIT A MINUTE. SOMETHING IS WRONG
26 HERE. WE'RE NOT GETTING THE WHOLE PICTURE.

27 FINALLY, IT TOOK SOMEONE LIKE KIRSTEN
28 SMITH TO TAKE THE STAND AND SAY THEY KISSED ALL THE

54714

1 TIME. WASN'T THAT INTERESTING, MAKING THIS ARGUMENT
2 ABOUT THIS WAS NOT AN AFFECTIONATE FAMILY? WE
3 FINALLY GET KIRSTEN SMITH ON CROSS-EXAMINATION -- OF
4 COURSE, YOU'D NEVER HEAR THIS ON DIRECT EXAMINATION --
5 BUT ON CROSS-EXAMINATION, KIRSTEN SMITH SAID THEY

6 KISSED ALL THE TIME. THAT WAS THEIR WAY, EVEN FOR
7 GOING TO THE MOVIES.

8 ERIK MENENDEZ WOULD GO OUT TO THE MOVIES
9 AND TAKE KIRSTEN SMITH WITH HIM, AND KITTY WOULD BE
10 KISSING ERIK GOOD-BYE, AND ERIK WOULD BE KISSING HIS
11 MOTHER GOOD-BYE, AND THERE WOULD BE KISSING ALL OVER
12 THE PLACE.

13 IS THAT THE TYPE OF PICTURE THEY WERE
14 PRESENTING TO YOU? THEY WERE TRYING TO PRESENT TO
15 YOU A DISTORTION.

16 WE GOT EVEN GREATER CONFIRMATION OF THAT
17 WHEN WE LISTENED TO THE TESTIMONY OF FAITH
18 GOLDSMITH, BECAUSE REMEMBER, THEN THEY TRIED TO
19 SUGGEST, OKAY, YOU GOT US. THEY DID KISS, BUT THEY
20 DIDN'T HUG.

21 OKAY. THAT WAS A FALL-BACK POSITION.
22 YOU GOT US ON KISSING. LET'S HIDE BEHIND THE
23 HUGGING. NO HUGGING IN THIS FAMILY NOW.

24 THEN WE HEARD THE TESTIMONY OF FAITH
25 GOLDSMITH, AND SHE SAID: "I REMEMBER JOSE MENENDEZ
26 HUGGING AND KISSING HIS SONS."

27 WELL, LADIES AND GENTLEMEN, HOW DO THEY
28 GET LACK OF AFFECTION OUT OF ALL THIS? NOW WE'VE

1 GOT THEM KISSING AND HUGGING TOO. SO NOW THEY HAVE
2 TO FIND A NEW REFUGE.

3 SO THEIR LATEST CLAIM IS WELL, THEY
4 KISSED, BUT DON'T ATTACH MUCH MEANING TO IT, BECAUSE
5 IT WAS JUST A SALUTE. THAT'S THE WORD THAT MARTA
6 CANO USED. "IT WAS JUST A SALUTE."

7 I MEAN, YOU CAN SEE THE DESPERATION IN
8 THIS DEFENSE, HOW, IN AN EFFORT TO SHOW THAT THIS
9 FAMILY WAS NOT AFFECTIONATE, THEY'LL RESORT DEEPER
10 AND DEEPER, BEHIND MORE RIDICULOUS PROPOSITIONS FOR
11 YOU TO CONCLUDE THAT THIS FAMILY IS NOT AFFECTIONATE.

12 WHEN YOU LISTEN TO ALL THE HUGGING AND
13 KISSING GOING ON IN THIS FAMILY, YOU PROBABLY FEEL
14 SOME OF YOUR OWN FAMILY IS NOT EVEN THAT
15 AFFECTIONATE; AND STILL, THEY TRY TO FIND A WAY TO
16 SAY: OH, NO. IT DIDN'T COUNT, BECAUSE THE KIDS
17 MUST HAVE REALIZED THAT THE PARENTS DIDN'T TRULY
18 MEAN IT.

19 HOW CAN SHE SAY THAT? HOW CAN MARTA
20 CANO TAKE THIS WITNESS STAND AND SAY ERIK AND LYLE
21 MENENDEZ DIDN'T REGARD THEIR PARENTS AS BEING
22 AFFECTIONATE?

23 DID THE KISS COME WITH A WAIVER? WELL,
24 I'M KISSING YOU, BUT DON'T READ INTO THIS. DON'T
25 MISCONSTRUE IT. DON'T THINK I REALLY LIKE YOU OR
26 LOVE YOU.

27 IT'S RIDICULOUS. TYPICAL OF THE
28 RIDICULOUS TESTIMONY THAT WAS PRESENTED DURING THIS

1 DEFENSE.

2 TERRY BARALT EXAGGERATED. SHE
3 EXAGGERATED HER TESTIMONY, ONCE AGAIN, BECAUSE OF
4 THE AGENDA, BECAUSE OF WHAT SHE IS HERE TO DO. SHE
5 HAS TO FIND SOME WAY TO PUT DOWN THE PARENTS. SO
6 SHE EXAGGERATED CERTAIN THINGS.

7 SHE TALKED, FOR EXAMPLE, ABOUT KITTY
8 MENENDEZ GETTING LOST IN THE MALL WITH HER SONS.
9 HER SONS WOULD GET LOST, AND THEN SHE WOULD HAVE TO
10 BE PAGED, AND SHE MADE IT SOUND LIKE WHAT CONSTANTLY
11 HAPPENED IS HER SONS WOULD GET LOST. KITTY MENENDEZ
12 WOULD BE PAGED, AND SHE WOULD RESPOND TO IT.

13 AND I ASKED HER HOW OFTEN THIS HAPPENED,
14 AND SHE SAID IT HAPPENED ALL THE TIME. EVERY TIME
15 WE WENT TO THE MALL IT HAPPENED. THIS WAS LIKE A
16 CONSTANT THAT WENT ON ALL THE TIME.

17 THEN I POINTED OUT THAT IN THE FIRST
18 TRIAL, DIDN'T YOU SAY IT ONLY HAPPENED ONCE IN YOUR
19 WHOLE LIFE, THAT KITTY MENENDEZ WAS PAGED? AND WHAT
20 DID SHE SAY? CAUGHT IN AN OBVIOUS LIE. SUCH A
21 CLEAR AND SIMPLE OBVIOUS LIE. WHAT COULD SHE SAY?

22 "THE NUMBER DOESN'T COUNT, MR. CONN."

23 YES, IT DOES COUNT. YES, IT DOES
24 COUNT.

25 THEY'RE TRYING TO SUGGEST TO YOU THAT
26 THIS WAS HABITUAL, ROUTINE BEHAVIOR. THIS IS THE
27 WAY KITTY MENENDEZ TREATED HER SONS; THAT SHE
28 IGNORED THEM, LET THEM GET LOST, ALLOWED THEM TO

54717

1 ENTER INTO DANGEROUS SITUATIONS. THEN WHEN YOU CATCH
2 THEM IN A CLEAR LIE ON THIS WITNESS STAND, A CLEAR
3 DISTORTION, SHE SAYS: "OH, THE NUMBER DOESN'T
4 COUNT. WHAT DIFFERENCES DOES IT MAKE? IT HAPPENED
5 ONCE."

6 NO. THE POINT IS, IF YOU'RE LYING ABOUT
7 THE NUMBER, ABOUT HOW OFTEN IT HAPPENED, HOW DO WE
8 KNOW IF YOU'RE TELLING US THE TRUTH ABOUT WHETHER IT
9 HAPPENED, OR THE NATURE OF THE TRUE INSTANCE?

10 WHAT REALLY HAPPENED? IS IT TRULY THAT
11 THEY WERE LOST IN THE MALL, OR WAS IT TRULY, AS THE
12 OTHER WITNESSES SUGGESTED? WHEN THEY WERE YOUNG
13 THEY WERE NOISY, WILD, AND RAMBUNCTIOUS LITTLE
14 KIDS. THAT'S WHAT THEY WERE. AND THEY WERE HARD TO
15 CONTROL. WE LEARNED THAT FROM LATER WITNESSES.
16 THEY'D RUN AROUND ALL OVER THE PLACE IN THE
17 SUPERMARKETS AND IN SHOPPING MALLS.

18 ONE WITNESS EVEN TALKED ABOUT HOW THEY
19 WOULD GO OVER TO PEOPLE IN CHINESE RESTAURANTS AND

20 START EATING THE FOOD OFF THEIR PLATE.

21 THEY WOULD GO INTO THE PUBLIC BATHROOMS

22 AND CLIMB ON THE STALLS AND BE THROWN OUT OF THERE.

23 THEY'D GO INTO THE SUPERMARKET AND RUN OUT OF

24 CONTROL.

25 AT FAMILY GATHERINGS, EVEN THOUGH THE

26 FAMILY MEMBERS FELT THE FAMILY SHOULD SET LIMITS,

27 JOSE AND KITTY MENENDEZ WOULDN'T SET LIMITS. NO

28 LIMITS WERE SET. THEY JUST WENT CRAZY.

54718

1 I SUBMIT, PROBABLY WHAT HAPPENED IN

2 REGARD TO EACH OF THESE ONE OR MORE MALL INCIDENTS --

3 ALL WE KNOW NOW IS THAT ONE INCIDENT OCCURRED WHERE

4 ERIK AND LYLE MENENDEZ WERE RUNNING AROUND RAISING

5 HAVOC IN THE SHOPPING MALL.

6 MS. ABRAMSON: OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED.

8 MR. CONN: AND FINALLY SOMEONE WORKING THERE

9 PICKED THEM UP AND CALLED SECURITY, AND KITTY

10 MENENDEZ PROBABLY SAID, "YEAH. LEAVE THEM THERE.

11 AT LEAST NOW THEY'RE NOT GOING TO BE INTERRUPTING

12 THE SHOPPING FOR NOW." THAT'S ONE WAY OF CONFINING

13 THEM, ONE WAY OF KEEPING THEM FROM RUNNING AROUND.

14 SHE DISTORTED THAT INCIDENT. SHE LIED

15 ABOUT THAT. SHE LIED ABOUT THE NUMBER OF TIMES THIS
16 HAPPENED AND THE SEVERITY OF THIS INCIDENT.

17 THEY WANT YOU TO BELIEVE THAT ERIK
18 MENENDEZ OR THAT LYLE MENENDEZ WAS VERY LONELY.
19 THAT WAS ANOTHER THEME, ONE OF THE SYMPATHETIC
20 THEMES THEY'RE GOING TO IN THIS CASE, THAT THEY WERE
21 LONELY PEOPLE. ERIK AND LYLE MENENDEZ, LONELY
22 PEOPLE.

23 BUT IF YOU TAKE A LOOK, LADIES AND
24 GENTLEMEN, ABOUT AT WHAT THEIR ACTUAL ACTIVITIES
25 WERE, I THINK YOU'LL CONCLUDE THAT THESE TWO
26 DEFENDANTS WERE NOT LONELY. THAT THEY HAD FRIENDS.
27 THEY LIKE WITNESSES TO MAKE BROAD STATEMENTS, BROAD,
28 GENERALIZED, SWEEPING STATEMENTS, SUCH AS: "OH, THEY

54719

1 DIDN'T HAVE ANY FRIENDS."

2 WHAT DO YOU MEAN, THEY DIDN'T HAVE ANY
3 FRIENDS? SHOULD WE GO THROUGH THE LIST OF THE NAMES
4 WE HEARD THROUGHOUT THE COURSE OF THIS PROCEEDING
5 WHICH TOTALLY IMPEACHES THE SUGGESTION THAT THEY HAD
6 NO FRIENDS?

7 LYLE MENENDEZ. LYLE MENENDEZ, HE HAD A
8 THREE-YEAR ONGOING RELATIONSHIP WITH HIS GIRLFRIEND,
9 STACY. AND THEY WANT US TO BELIEVE, WELL, SEE, HE

10 WAS SUCH A LONELY GUY THAT HE JUST HAD THIS ONE
11 GIRLFRIEND FOR THREE YEARS WHEN HE WAS A TEENAGER.
12 I BET THERE'S A LOT OF LONELY TEENAGERS
13 WHO WISH THEY HAD A STEADY GIRLFRIEND FOR THREE
14 YEARS. AND WE ARE TO BELIEVE THAT HE IS A
15 SYMPATHETIC, LONELY GUY BECAUSE HE ONLY HAS A
16 GIRLFRIEND AND ONGOING RELATIONSHIP FOR THREE
17 YEARS?
18 HOW ABOUT ALL THOSE PEOPLE OUT THERE WHO
19 DON'T HAVE ANY RELATIONSHIP, WHO ARE HANGING AROUND
20 THE JERKS AT THE GYM, RATHER THAN HANGING AROUND
21 WITH THEIR GIRLFRIENDS? HE'S A GUY DRIVING AROUND
22 WITH AN ALFA ROMEO, WITH A PRETTY GIRL FOR THREE
23 YEARS STRAIGHT, AND WE'RE SUPPOSED TO THINK HE'S A
24 LONELY GUY? THIS IS THE GUY THAT ALL THE GUYS BACK
25 AT THE GYM THINK GEE, I WISH I WAS IN HIS SHOES,
26 DRIVING AROUND WITH THE ALFA ROMEO AND A PRETTY
27 GIRLFRIEND. HE'S LONELY? HOW COULD HE BE LONELY?
28 AND THEN HE SAYS: BOY, HE WAS REALLY

54720

1 BUSTED UP OVER THAT RELATIONSHIP, WHEN THAT CAME TO
2 AN END, AND THEN HE WAS LONELY AGAIN. HE WAS LONELY
3 FOR 30 DAYS. AND THEN HE HAD ANOTHER GIRLFRIEND IN
4 30 DAYS. THAT'S NOT BAD.

5 WHAT WOULD YOU RATHER DO? HANG AROUND
6 WITH THREE OR FOUR GUYS PLAYING BASKETBALL, OR HAVE
7 A GIRLFRIEND, A STEADY RELATIONSHIP, ONE AFTER THE
8 OTHER?

9 SO I DON'T KNOW HOW THEY GET LYLE
10 MENENDEZ, THE LONELY YOUNG MAN, OUT OF THAT.

11 OTHER NAMES COME UP. DONOVAN GOODREAU.
12 GLENN STEVENS. COLE KRUEGER WAS THE NAME THAT CAME
13 UP IN THE GUILT PHASE. PEOPLE WHO WERE OLD FRIENDS
14 OF LYLE MENENDEZ. LYLE MENENDEZ WAS NOT A LONELY
15 MAN. LYLE MENENDEZ HAD ENOUGH FRIENDS.

16 AND, OF COURSE, BEING OFF ON HIS OWN AND
17 TRAVELING AROUND IN EUROPE ON HIS OWN FOR THE BETTER
18 PART OF THREE YEARS BEFORE THE KILLINGS. HE WAS NOT
19 A LONELY YOUNG MAN.

20 ERIK MENENDEZ, THEY TRIED TO PORTRAY HIM
21 AS ANOTHER LONELY YOUNG MAN. HE WAS SO LONELY. HE
22 WAS LONELY. WHAT ABOUT BRENDAN MALYK, CHRIS SEMROD?

23 AND CHRIS SEMROD SPOKE ABOUT ERIK
24 MENENDEZ', QUOTE, CLIQUE AT SCHOOL, WHICH INCLUDED
25 MATT MILLER, DAVE MRAOVITCH.

26 AND THEN WE KNOW WHEN HE CAME OUT HERE
27 TO CALIFORNIA, WHO DID HE HAVE? KIRSTEN SMITH, JOHN
28 LIST, THE GINSBERG BOY, WHATEVER HIS NAME WAS; AND

1 CRAIG CIGNARELLI WAS HIS BEST FRIEND THAT HE HUNG
2 AROUND WITH, SPENT A TREMENDOUS AMOUNT OF TIME
3 WITH.

4 HOW MUCH TIME DID HE SPEND WITH KIRSTEN
5 SMITH? SHE SAID THAT PROVIDED THEY WEREN'T IN
6 TENNIS PRACTICE OR SOMETHING, THEY WOULD GET
7 TOGETHER EVERY WEEKEND.

8 SO THESE ARE NOT TWO LONELY YOUNG MEN.
9 YOU HAVE TO DISTINGUISH, LADIES AND GENTLEMEN,
10 BETWEEN THEIR LIFE WHEN THEY WERE BOYS, YOUNG BOYS,
11 AND THEIR LIFE WHEN THEY GOT OLDER, IN THEIR TEEN
12 YEARS; AND ERIK MENENDEZ CAME TO CALIFORNIA AND LYLE
13 MENENDEZ STAYED BACK IN PRINCETON. IT WAS TOTALLY
14 DIFFERENT.

15 YOU KNOW, THEY KIND OF GLOSSED THAT
16 OVER. THEY SAY, FOR EXAMPLE, WELL, ISN'T IT TRUE
17 THAT WHEN THEY WERE LITTLE BOYS THEY WERE TOLD THAT
18 THEY COULDN'T GO OUTSIDE OF THE YARD, AND THEY HAD
19 TO STAY IN THE YARD, AND THEY COULDN'T LEAVE THAT
20 YARD AND GO TO THE NEIGHBOR'S HOUSE?

21 WELL, ISN'T THAT WHAT WE ALL TELL OUR
22 KIDS? STAY WHERE I CAN SEE YOU? HERE WE HAVE GOOD
23 BEHAVIOR ON THE PART OF THE KITTY MENENDEZ, TELLING
24 HER SON: STAY WHERE I CAN SEE YOU. STAY IN THE
25 YARD. DON'T LEAVE. DON'T GO RUNNING AROUND THE
26 NEIGHBORHOOD WHERE I CAN'T SEE YOU.

27 AGAIN, THIS IS SUPPOSED TO BE BAD

54722

1 DEFENSE IS INTENT ON FINDING A NEGATIVE SIDE TO IT.

2 IF KITTY MENENDEZ ALLOWS HER SONS TO RUN
3 AROUND, OH, THAT SHOWS SHE WANTED TO LOSE HER KIDS.
4 SHE DOESN'T CARE FOR THEM. AND IF SHE TELLS THE
5 KIDS: STAY WHERE I CAN SEE YOU, THAT SHOWS SHE'S A
6 BAD PARENT, BECAUSE SHE DIDN'T WANT THEM TO RUN
7 AROUND.

8 THAT'S THE HOUSE OF CARDS I'M TALKING
9 ABOUT. YOU SEE? THAT'S WHAT THIS WHOLE DEFENSE IS,
10 A DISTORTION, ONE-SIDED PRESENTATION OF LIFE IN THE
11 MENENDEZ HOME.

12 THIS WITNESS WOULD HAVE US BELIEVE THAT
13 KITTY MENENDEZ WAS ABUSIVE BECAUSE SHE LEFT TO GO
14 SEARCHING FOR A HOME, LEAVING ERIK MENENDEZ WHEN HE
15 WAS AN INFANT. AND ERIK MENENDEZ HAD SUCH A HARD
16 TIME ADJUSTING TO KITTY MENENDEZ' ABSENCE.

17 WELL, LADIES AND GENTLEMEN, DON'T YOU
18 THINK THAT PERHAPS THAT WAS A VERY CONSIDERATE THING
19 FOR KITTY MENENDEZ TO DO? IF SHE'S GOING TO BE
20 SEARCHING AROUND FOR A HOME IN ANOTHER STATE,
21 ACTIVELY INVOLVED, LOOKING FOR A HOME, DOES SHE WANT
22 TO BE TAKING THE INFANT THROUGH ALL OF THAT

23 TRANSPORTATION? OR ISN'T IT BETTER TO LEAVE THE
24 INFANT WITH A RELATIVE?
25 AND WHAT DID KITTY MENENDEZ DO? SHE
26 CALLED EVERY SINGLE DAY -- EVERY SINGLE DAY -- TO
27 CHECK ON HOW ERIK MENENDEZ WAS DOING. AND WHEN SHE
28 LEARNED THAT ERIK MENENDEZ WAS REALLY HAVING A HARD

54723

1 TIME, WHAT DID SHE DO? SHE FORGOT ABOUT THE HOME
2 AND SHE WENT BACK TO BE WITH ERIK MENENDEZ.
3 WHAT DOES THAT SHOW YOU? IT SHOWS YOU A
4 CONSIDERATE AND CONCERNED MOTHER. YOU KNOW WHAT'S
5 REALLY INTERESTING ABOUT THAT STORY? BECAUSE YOU
6 CAN COMPARE, WELL, WHAT HAPPENED?
7 FAST FORWARD ABOUT 16 YEARS LATER. LYLE
8 MENENDEZ IS AT PRINCETON. WE KNOW HE ALREADY HAD A
9 PROBLEM IN THE FIRST SEMESTER AT PRINCETON. AND NOW
10 KITTY MENENDEZ IS CONCERNED IF THERE'S GOING TO BE A
11 REPETITION OF HIS PERFORMANCE AT PRINCETON, IF HE'S
12 GOING TO HAVE A HARD TIME. WHAT DOES SHE DO? EVERY
13 SINGLE DAY SHE CALLS TERRY BARALT WHILE LYLE
14 MENENDEZ WAS IN PRINCETON TO CHECK ON HOW LYLE
15 MENENDEZ IS DOING. CAN YOU IMAGINE THAT? TAKE TWO
16 SECONDS TO CONSIDER THAT. EVERY SINGLE DAY SHE
17 CALLED FROM CALIFORNIA TO PRINCETON TO FIND OUT HOW

18 HE WAS DOING.

19 WHAT DOES THAT TELL YOU ABOUT THIS

20 MOTHER? WHAT DOES THAT TELL YOU? IF SHE WAS DOING

21 THAT FOR ERIK MENENDEZ WHEN HE WAS AN INFANT, AND IF

22 SHE WAS DOING THAT FOR LYLE MENENDEZ WHEN HE WAS IN

23 COLLEGE, WHAT DO YOU THINK SHE WAS DOING ALL IN

24 BETWEEN?

25 THAT TELLS YOU THAT THIS WAS A CONCERNED

26 MOTHER WHO CARED TREMENDOUSLY ABOUT HER SONS AND WAS

27 CONSTANTLY WATCHING OUT FOR THEM. THAT TELLS YOU

28 ABOUT WHY SHE DID ERIK MENENDEZ' HOMEWORK AND WHY

54724

1 SHE FILLED OUT HIS APPLICATIONS AND WHY SHE DROVE

2 THEM EVERYWHERE AND WHY SHE VIRTUALLY GAVE UP HER

3 LIFE, LITERALLY AND FIGURATIVELY, FOR THE DEFENDANTS

4 IN THIS CASE. SHE SACRIFICED HER LIFE.

5 THEY POINT TO TRIVIA, EVERY SINGLE

6 LITTLE TRIVIAL INCIDENT IN WHICH SOME NEGATIVE

7 INFERENCE CAN BE DRAWN. LET'S TALK ABOUT A COUPLE

8 OF THE INSTANCES OF TRIVIA.

9 HOW ABOUT THE ONE WHERE ERIK MENENDEZ IS

10 AFRAID TO GO ON THE RIDE IN THE AMUSEMENT PARK? AND

11 WHAT DID THIS WITNESS SAY? THAT SHE EMBARRASSED

12 ERIK MENENDEZ BECAUSE HE WAS AFRAID TO GO ON THE

13 RIDE. AND SHE TALKED ABOUT OH, HOW CRUEL THAT WAS
14 TO EMBARRASS ERIK MENENDEZ.

15 BUT WHAT WAS THE BOTTOM LINE OF THAT
16 STORY? HOW DID THAT END UP? ERIK MENENDEZ SAID:
17 "I DON'T WANT TO GO ON THAT RIDE." AND DID KITTY
18 MENENDEZ FORCE HIM TO GO ON THAT RIDE? NO.

19 AS YOUNG AS HE WAS, HE TOLD HIS MOTHER,
20 "I'M NOT GOING ON THAT RIDE" AND THAT WAS THE END OF
21 IT. HE DIDN'T GO ON THAT RIDE.

22 SO, AGAIN, LET'S TAKE THAT INCIDENT AND
23 LET'S SCRAPE OUT THE NEGATIVE SIDE. THAT'S EXACTLY
24 WHAT THEY'RE DOING. LET'S FIND SOMETHING NEGATIVE
25 IN THAT INCIDENT.

26 JUST LIKE LYLE MENENDEZ, LYLE MENENDEZ
27 WITH THE SWIMMING.

28 DO YOU RECALL THAT? THIS WAS ANOTHER

54725

1 STORY ABOUT LYLE MENENDEZ WHEN HE WAS -- HE DIDN'T
2 WANT TO GO IN THE COLD SWIMMING POOL, AND KITTY
3 MENENDEZ SUPPOSEDLY EMBARRASSED HIM BY TELLING HIM
4 TO GO INTO THE SWIMMING POOL. WELL, WE LEARNED -- I
5 THINK IT WAS FAITH GOLDSMITH WHO TOLD US -- THAT
6 STORY. FAITH GOLDSMITH SAID HER OWN LITTLE GIRLS
7 WERE SWIMMING AROUND IN THE SWIMMING POOL.

8 ARE WE TALKING ABOUT A VERY UNUSUAL
9 CONDITION HERE, SOMETHING WHERE THE WATER WAS TRULY
10 ICE WATER, AND SHE WAS SUBJECTING HIM TO SOMETHING
11 THAT NO OTHER KIDS WERE BEING SUBJECTED TO?

12 SHE JUST WANTED HIM TO GO IN THE
13 SWIMMING POOL AND SWIM AROUND WITH THE OTHER LITTLE
14 GIRLS IN THE SWIMMING POOL. HE CRIED AND CRIED AND
15 WOULDN'T DO IT. SIMPLY BECAUSE SHE KEPT TELLING HIM
16 TO DO THAT AND MADE HIM GO IN THE POOL AND GET WET
17 LIKE THE OTHER LITTLE GIRLS, SHE'S AN ABUSIVE
18 MOTHER? HOW DO YOU GET AN ABUSIVE MOTHER OUT OF
19 THAT?

20 IT'S TRIVIA LIKE THAT THEY TRY TO BUILD
21 A DEFENSE CASE OUT OF, AND THEY TRY TO SUGGEST THAT
22 SOMEHOW KITTY HAD IT COMING. SHE HAD IT COMING.
23 SHE DESERVED TO BE SHOT IN THE FACE?

24 BUT TERRY BARALT DOES KNOW THE FOCUS OF
25 THE PENALTY PHASE, AND THAT'S WHY, WHEN I ASKED HER
26 ABOUT: WELL, LET'S TALK ABOUT PHYSICAL ABUSE.

27 "DID YOU SEE ANY PHYSICAL ABUSE?"

28 AND SHE ADMITTED SHE SAW NO PHYSICAL

54726

1 ABUSE. BUT SHE SAID, "BUT PSYCHOLOGICAL ABUSE,
2 MR. CONN. THAT CAN BE EVEN WORSE."

3 YOU SEE? SHE KNOWS THE FOCUS. SHE
4 KNOWS THE GAME PLAN HERE. SHE VOLUNTEERED THAT TO
5 ME; THAT THE PSYCHOLOGICAL ABUSE IS WHAT'S REALLY
6 IMPORTANT HERE. SHE SAID THAT CAN BE EVEN WORSE
7 THAN PHYSICAL ABUSE.

8 I FELL FOR THE BAIT. I SAID: "OKAY.
9 TELL US WHAT PSYCHOLOGICAL ABUSE YOU'RE TALKING
10 ABOUT."

11 "WELL, THERE WAS JUST PSYCHOLOGICAL
12 ABUSE," SHE SAID.

13 I SAID: "NO. TELL US NOW. YOU BROUGHT
14 IT UP. TELL US WHAT YOU MEAN BY PSYCHOLOGICAL
15 ABUSE. HOW WAS JOSE MENENDEZ PSYCHOLOGICALLY
16 ABUSIVE TOWARDS HIS SONS?"

17 AND DO YOU RECALL THAT THE ONLY THING
18 SHE COULD COME UP WITH WAS: "WELL, UM, JOSE
19 MENENDEZ TOLD HIS SONS TO BE TOUGH."

20 THAT'S IT? YOU WATCH THE FAMILY
21 INTERACT FOR HOW MANY YEARS? HOW MANY DECADES ARE
22 WE TALKING ABOUT HERE? EVER SINCE LYLE MENENDEZ WAS
23 BORN SHE'S BEEN WATCHING THIS FAMILY INTERACT. AND
24 WHEN I ASK HER: "TELL US WHAT THE PSYCHOLOGICAL
25 ABUSE IS," ALL SHE CAN COME UP WITH IS HE TOLD HIS
26 SONS TO BE TOUGH?

27 SHE WHO KNOWS THIS FAMILY BETTER THAN
28 ANYONE, BETTER THAN ANY OF THOSE OTHER 17 WITNESSES

1 ON THE CHART?

2 AND SHE SAID: "I CAN'T THINK OF ANY
3 OTHER." THAT'S A QUOTE.

4 I SAID: "ALL RIGHT. LET'S TURN TO
5 KITTY MENENDEZ. HOW WAS SHE PSYCHOLOGICALLY ABUSIVE
6 TOWARDS HER SONS?"

7 "ANSWER: WELL, SHE WOULD SAY THAT, TO
8 ERIK MENENDEZ, FOR EXAMPLE, YOU ARE BEING A CRY
9 BABY. YOU ACTED STUPIDLY. AND SHE WASN'T
10 CONSOLING."

11 "CAN YOU THINK OF ANYTHING ELSE?"

12 "I CAN'T THINK OF ANYTHING ELSE."

13 IN ALL OF THESE YEARS OF INTERACTION?

14 LADIES AND GENTLEMEN, I ASK YOU TO READ
15 IN BETWEEN THE LINES OF WHAT ALL OF THESE WITNESSES
16 ARE SAYING, AND I THINK YOU CAN GET A VERY CLEAR
17 PICTURE THAT THEY WERE NOT PSYCHOLOGICALLY ABUSIVE
18 TOWARD THEIR SONS.

19 WE'LL GET TO THE TESTIMONY OF DR. HART
20 WHEN HE DRAWS A DISTINCTION BETWEEN SOMEONE WHO'S
21 PSYCHOLOGICALLY ABUSIVE OR A PARENT WHO'S JUST
22 RESPONSIBLE FOR WHAT COULD BE CALLED INADEQUATE
23 PARENTING, OR INSENSITIVE PARENTING, OR WHATEVER
24 TERM. HE USED SOMETHING. WE'RE PROBABLY ALL GUILTY
25 OF THAT AT TIMES. NONE OF US ARE PERFECT. I
26 THINK THAT'S FREQUENTLY WHAT WAS TRUE TOO WITH KITTY

27 AND JOSE MENENDEZ. THEY, LIKE US, WERE NOT PERFECT
28 PARENTS.

54728

1 THEN ERIK MENENDEZ -- SHE DESCRIBED HIM
2 IN HIS EARLY YOUTH AS HAVING A SUNNY DISPOSITION UP
3 UNTIL THE TIME HE BECAME A TEENAGER. A SUNNY
4 DISPOSITION. ISN'T THAT INTERESTING? BECAUSE IN
5 THE GUILT PHASE WE HEARD THE TESTIMONY OF
6 DR. WILSON, AND HE SPOKE ABOUT HOW ERIK MENENDEZ
7 WENT THROUGH THIS RADICAL PERSONALITY CHANGE.

8 DO YOU RECALL THAT? ABOUT THE AGE OF
9 SIX. THAT'S WHY, HE SAID: "I KNEW HE MUST HAVE BEEN
10 ABUSED BY HIS FATHER, AND HE WAS SUFFERING FROM
11 POST-TRAUMATIC STRESS DISORDER, BECAUSE HE WENT
12 THROUGH THIS RADICAL PERSONALITY CHANGE."

13 I THINK HE RELIED PRIMARILY ON ALAN
14 ANDERSEN, WHO HAD VISITED FOR A COUPLE OF SUMMERS.
15 THAT'S WHO HE WAS RELYING ON.

16 WHO ARE YOU GOING TO RELY UPON IN YOUR
17 EVALUATION OF WHETHER OR NOT THERE WAS A RADICAL
18 PERSONALITY CHANGE? ALAN ANDERSEN, WHO HIMSELF WAS
19 A YOUTH AT THE TIME? OR TERRY BARALT, WHO SAID HE
20 HAD A SUNNY DISPOSITION UP UNTIL THE TIME HE BECAME
21 A TEENAGER? I WOULD SUBMIT TO YOU THAT THE

22 EVALUATION OF TERRY BARALT IS MUCH MORE RELIABLE.

23 AND THEN WE TURN TO: "WELL, WHAT DO YOU
24 MEAN UP UNTIL THE TIME HE BECAME A TEENAGER?
25 GENERALLY, WHAT HAPPENED THEN?"

26 EVEN THEN SHE SIMPLY SAID: "HE BECAME
27 INTROSPECTIVE AND QUIET."

28 WELL, WHAT DOES THAT TELL US? DOES THAT

54729

1 TELL US SOMETHING? SO HE'S INTROSPECTIVE AND
2 QUIET. SO WHAT. DOES THAT MEAN HE SUFFERED SOME
3 TRAUMA? THERE ARE A LOT OF PEOPLE 13, 14, AND 15
4 YEARS OLD WHO ARE INTROSPECTIVE AND QUIET. THAT
5 DOESN'T TELL US ANYTHING ABOUT HIM.

6 DID TERRY BARALT REALLY GET TO SEE HIM
7 INTERACT WITH HIS FRIENDS A GREAT DEAL? I'LL TURN
8 TO THE TESTIMONY OF CHRIS SEMROD IN A LITTLE BIT.

9 CHRIS SEMROD DESCRIBES HIM AS BEING JUST
10 LIKE AN ORDINARY TEENAGER. CHRIS SEMROD DESCRIBED
11 HIM AT THE AGES OF 14 AND 15.

12 BEAR IN MIND, THIS IS WHEN TERRY BARALT
13 SAID HE WAS INTROSPECTIVE AND QUIET. CHRIS SEMROD
14 DESCRIBED HIM AS RUNNING UP AND DOWN THE HALLWAYS,
15 BEING THE CLASS CLOWN, ENERGETIC, ALWAYS MAKING
16 PEOPLE LAUGH, ARTICULATE, HAVING ALL OF HIS DUCKS IN

17 A ROW. BEING "VERY TOGETHER" WAS THE PHRASE THAT HE
18 USED.

19 SO CHRIS SEMROD TOTALLY CONTRADICTS THIS
20 THEORY OF TERRY BARALT THAT HE WAS INTROSPECTIVE AND
21 QUIET. DOES THAT SOUND LIKE AN INTROSPECTIVE AND
22 QUIET PERSON TO YOU, THE CLASS CLOWN?

23 I SUBMIT TO YOU THAT WHEN HE WAS AT HOME
24 WITH HIS AUNT TERRY, HE PROBABLY APPEARED TO BE
25 INTROSPECTIVE AND QUIET. BUT WHEN HE GOT BACK
26 TOGETHER WITH THE TEENAGERS BACK AT SCHOOL, HE WAS
27 THE CLASS CLOWN, RUNNING UP AND DOWN THE HALLWAYS
28 AND BEING THE TYPICAL TEENAGER.

54730

1 SO MUCH FOR TERRY BARALT.
2 THEN IT WAS TIME FOR A DISGRUNTLED COACH
3 TO TAKE THE STAND, SO THEY CALLED WILLIAM KURTAIN.
4 WILLIAM KURTAIN SAID: "JOSE MENENDEZ FIRED ME."
5 THAT PROBABLY SHOULD HAVE BEEN THE FIRST QUESTION TO
6 HIM. OF COURSE, THAT WASN'T THE FIRST QUESTION TO
7 HIM PRESENTED BY THE DEFENSE, BUT IT SHOULD HAVE
8 BEEN, BECAUSE THAT WOULD HAVE PUT ALL OF HIS
9 TESTIMONY IN PROPER PERSPECTIVE, SO WE'LL KNOW WHERE
10 HE'S COMING FROM.

11 OBVIOUSLY, HE DIDN'T LIKE JOSE

12 MENENDEZ. HE SAID THAT JOSE MENENDEZ WOULD COME
13 ON -- TO THE COURT, AND HE WOULD INTERRUPT THE
14 LESSON, AND HE WOULD TELL HIM: "HIT THE BALL TO ME,
15 BECAUSE I'M THEN GOING TO HIT THE BALL TO MY SON AND
16 SHOW MY SON HOW TO HIT THE BALL." AND HE DESCRIBED
17 THIS AS VERY INSULTING BEHAVIOR.

18 SO YOU COULD SEE HE WAS OFFENDED BY
19 THIS, BECAUSE HE FELT HE WAS THE COACH, AND HE
20 SHOULDN'T HAVE A PARENT DO THIS, AND HE RESENTED
21 THIS. AND THIS RESENTMENT MUST HAVE GONE ON FOR
22 SEVERAL YEARS. HIS ANGER MUST HAVE BEEN SEETHING
23 FOR SEVERAL YEARS, BECAUSE DID HE QUIT THE FIRST
24 TIME THIS HAPPENED? NO. HE SAID THIS WENT ON RIGHT
25 FROM THE START OF THE RELATIONSHIP; AND YET HE
26 CONTINUED TO WORK FOR JOSE MENENDEZ FOR THREE
27 YEARS. SO YOU CAN IMAGINE THREE YEARS OF HAVING A
28 PARENT TELL YOU: "THROW THE BALL TO ME." OBVIOUSLY

54731

1 HE'S GOING TO BE SEETHING AND HAVE A VERY STRONG
2 RESENTMENT TOWARD JOSE MENENDEZ.

3 COULD HE POINT TO SOMETHING TOWARD JOSE
4 MENENDEZ THAT WAS IMPROPER OR INAPPROPRIATE? NO.
5 HE DESCRIBED JOSE MENENDEZ AS CORDIAL. DO YOU
6 RECALL THAT TESTIMONY? HE WAS CORDIAL TOWARD HIM AT

7 ALL TIMES. HE JUST DISAGREED WITH THE FACT THAT HE
8 WAS INTERFERING WITH THE LESSON.

9 AND FINALLY, HE GAVE JOSE MENENDEZ AN
10 ULTIMATUM. HE SAID: "EITHER YOU DO THE TRAINING OR
11 I DO THE TRAINING," AND JOSE MENENDEZ SAID: "WELL,
12 YOU GOT IT. YOU'RE OUT OF HERE."

13 JOSE MENENDEZ DIDN'T NEED HIM TO DO THE
14 TRAINING. AND THAT WAS THE END OF THEIR
15 RELATIONSHIP.

16 SO WHAT WAS THE PURPOSE OF THIS
17 TESTIMONY? TO BASICALLY SAY "TOO MUCH TENNIS." HE
18 WAS ONE OF THE TOO-MUCH-TENNIS WITNESSES
19 ESSENTIALLY. JOSE MENENDEZ WAS MAKING ERIK MENENDEZ
20 PLAY TOO MUCH TENNIS, AND I GUESS HE ALSO TOLD HIM --
21 INTERFERED IN THE LESSON. SO I GUESS WE'RE SUPPOSED
22 TO HATE JOSE MENENDEZ BECAUSE JOSE MENENDEZ WANTED
23 TO TAKE AN ACTIVE ROLE IN TRAINING HIS SONS
24 REGARDING HOW TO PLAY TENNIS. I GUESS THAT'S THE
25 PURPOSE OF THIS WITNESS.

26 I WOULD ASK YOURSELF: ARE YOU REALLY
27 GOING TO HATE JOSE MENENDEZ FOR THAT REASON?

28 AND THEN, OF COURSE, HE HAD A FEW BAD

1 WORDS TO SAY ABOUT KITTY MENENDEZ. HE SAID SHE HAD

2 A LIST FROM JOSE ABOUT THINGS THAT WOULD HAVE TO BE
3 DONE, AND HE WOULD HAVE TO FOLLOW THAT LIST.
4 ONCE AGAIN, WE'RE JUST TALKING ABOUT WHO
5 WAS GOING TO CONTROL THE LESSON HERE. HE FELT HE
6 SHOULD CONTROL THE LESSON, AND JOSE MENENDEZ THOUGHT
7 HE SHOULD CONTROL THE LESSON. THAT'S FINE. AND
8 THERE'S NOTHING WRONG WITH HAVING THAT OPINION.
9 IT'S TOO BAD HE JUST WASN'T UP FRONT WITH JOSE
10 MENENDEZ AT THE START OF THE RELATIONSHIP, AND HE
11 WOULDN'T BE A PENALTY PHASE WITNESS TODAY. IF HE
12 WOULD HAVE JUST TOLD HIM: I'M THE COACH AND I'M NOT
13 GOING TO ENGAGE IN THIS RELATIONSHIP WITH YOU, THAT
14 WOULD HAVE ENDED IT.

15 BUT HE SEEMS TO BE OFFENDED BY KITTY
16 BECAUSE SHE HAD A LIST OF THINGS TO DO ON THE TENNIS
17 COURT.

18 WHAT ELSE DID HE SAY ABOUT KITTY THAT
19 GAVE US A LITTLE INSIGHT INTO KITTY MENENDEZ? THAT
20 SHE SAT THERE AND WATCHED THE WHOLE LESSON. HE SAID
21 MOST PARENTS GET BORED OR READ OR WATCH TV. NOT
22 KITTY MENENDEZ. KITTY MENENDEZ WOULD BE THERE THE
23 WHOLE TIME, AND SHE WOULD BE ACTIVELY INTERESTED IN
24 WATCHING THE LESSON, WHAT WAS GOING ON.

25 ONCE AGAIN, WHAT IS THE IMPRESSION THAT
26 YOU GET FROM THESE PEOPLE? CONCERNED PARENTS,
27 INVOLVED PARENTS. THESE ARE NOT NEGLECTFUL PARENTS.
28 THEY WERE OVERLY-CONCERNED, OVERLY-INVOLVED WITH

1 THEIR SONS. SO THIS WITNESS HAD NOTHING IN
2 MITIGATION TO SAY.

3 IF YOU FEEL JOSE MENENDEZ BEING BOSSY ON
4 A TENNIS COURT IS MITIGATION, IT'S SIMPLY NOT.
5 THAT'S NOT MITIGATION.

6 CHARLES WADLINGTON WAS ANOTHER COACH
7 WITH AN ATTITUDE CALLED BY THE DEFENSE; AND AGAIN,
8 HE WAS CALLED TO TESTIFY THAT THERE WAS EXCESSIVE
9 TRAINING FROM JOSE MENENDEZ. BUT, YOU KNOW THE
10 INTERESTING THING ABOUT MR. WADLINGTON? DO YOU
11 RECALL THAT HE SAID THAT HIS OWN FATHER TRAINED HIM
12 HARDER THAN ERIK AND LYLE MENENDEZ WERE TRAINED?
13 ISN'T THAT WHAT IT REALLY TAKES IF YOU WANT TO
14 COMPETE NATIONALLY, IF YOU WANT TO BE A CHAMPION AND
15 WIN ALL THE AWARDS? DON'T YOU REALLY HAVE TO TRAIN
16 VERY HARD?

17 AND YET HE SAID THAT HE TRAINED HARDER,
18 HE WORKED HARDER, HE RAN MORE, HE HIT MORE BALLS,
19 AND HE HAD MORE PHYSICAL TRAINING THAN THE
20 DEFENDANTS.

21 SO WAS THIS REALLY ALL THAT EXCESSIVE?
22 YOU HEARD A TERM IN THIS TRIAL THAT PROBABLY MAY
23 HAVE COME AS NEWS TO YOU. I KNOW IT CAME AS NEWS TO
24 ME. TENNIS PARENTS. WHAT IS A "TENNIS PARENT"?

25 AND IT WAS KIRSTEN SMITH WHO TOLD US A

26 LITTLE BIT ABOUT WHAT THE TENNIS PARENT IS. THE
27 TENNIS PARENT IS A PERSON WHO BECOMES OBSESSED WITH
28 THE GAME, EXTREMELY INVOLVED, OVERLY INVOLVED TO THE

54734

1 POINT WHERE THE PARENT IS PUSHING THE CHILD OR
2 PRESSURING THE CHILD TO PLAY TOO MUCH TENNIS. THE
3 PARENT LIVES THROUGH THE CHILD TO A CERTAIN EXTENT.
4 GETS GRATIFICATION FROM THE CHILD'S VICTORY. THAT
5 IS THE TENNIS PARENT.

6 BUT IS THE TENNIS PARENT ALL THAT RARE?
7 KIRSTEN SMITH SAID: "I KNOW A LOT OF TENNIS
8 PARENTS." SO IT'S NOT ALL THAT RARE. AND ISN'T
9 THAT WHAT YOU HAVE TO DO IN ORDER FOR SOMEONE TO
10 BECOME A CHAMPION? DON'T THEY HAVE TO TRAIN A GREAT
11 DEAL?

12 LADIES AND GENTLEMEN, CHARLES WADLINGTON
13 TRAINED MORE THAN THESE DEFENDANTS EVER TRAINED, AND
14 I DON'T THINK HE ENDED UP KILLING HIS PARENTS.

15 HE SAID HE DISAGREED WITH THE PHILOSOPHY
16 OF JOSE MENENDEZ, THAT WINNING IS EVERYTHING, AND HE
17 WENT AND TOLD JOSE THAT, AND THEY HAD A FALLING
18 OUT. YOU CAN UNDERSTAND JOSE MENENDEZ' LACK OF
19 INTEREST IN THIS WITNESS' OPINION CONCERNING WHETHER
20 WINNING IS EVERYTHING. JOSE MENENDEZ WAS A TOP

21 EXECUTIVE, VERY SUCCESSFUL MAN, AND HE HAS A TENNIS
22 COACH TELLING HIM THAT WINNING IS NOT EVERYTHING?
23 WHO'S HE TO SAY? ARE WE GETTING INTO VALUES? WE'RE
24 GOING TO COMPARE HIS VALUES VERSUS JOSE MENENDEZ'
25 VALUES. AND JOSE MENENDEZ IS A BAD PERSON BECAUSE
26 HE SEES THE WORLD DIFFERENTLY. HE VALUES THE WORLD
27 DIFFERENTLY.
28 IS THAT WHAT A PENALTY PHASE IS ALL

54735

1 ABOUT? IS THIS EVIDENCE IN MITIGATION? I DON'T
2 THINK THAT WINNING IS EVERYTHING, BUT JOSE MENENDEZ
3 DID. HOW IS THAT MITIGATION? THIS IS NOT EVIDENCE
4 IN MITIGATION.

5 CHARLES WADLINGTON, HE MUST HAVE -- HIS
6 ANIMOSITY MUST HAVE BEEN BREWING FOR SOME TIME. HE
7 CONTINUED TO COACH THE DEFENDANTS FOR FIVE YEARS.
8 AND ULTIMATELY WHO TRIED TO CONTROL WHO IN THIS
9 RELATIONSHIP? NOT ONLY DID HE JUST DROP OUT OF THE
10 COACHING RELATIONSHIP, HE SAID: "I TOLD JOSE TO
11 JUST SIT OVER THERE. YOU BE THE PARENT, AND I'LL BE
12 THE COACH."

13 WHO'S HE TO SAY THAT? HAS NO RIGHT TO
14 SAY THAT TO JOSE MENENDEZ. HE CAN SAY: "I DON'T
15 WANT TO ENGAGE IN THIS RELATIONSHIP ANYMORE. I AM

16 NOT GOING TO PARTICIPATE IN WHAT YOU HAVE IN MIND."
17 BUT WHO'S HE TO TELL JOSE MENENDEZ TO NOT INTERFERE
18 WITH YOUR SON'S COACHING? SOUNDS LIKE HE WAS TRYING
19 TO CONTROL THE RELATIONSHIP MORE THAN JOSE
20 MENENDEZ.
21 HE'S ANGRY AT KITTY MENENDEZ. AND WHY?
22 KITTY MENENDEZ, HE SAID, TREATED HIM LIKE A SLAVE.
23 AND YOU KNOW HOW THE DEFENSE ELICITED THAT? THEY
24 WANTED YOU TO HEAR THE FACT THAT KITTY MENENDEZ
25 TREATED HIM LIKE A SLAVE. BUT, THEN AGAIN, YOU HEAR
26 FROM PEOPLE LIKE TERRY BARALT, SUCH FAVORABLE THINGS
27 ABOUT KITTY MENENDEZ, OR FAITH GOLDSMITH, HER BEST
28 FRIEND.

54736

1 FAITH GOLDSMITH. WHAT DOES SHE SAY
2 ABOUT KITTY MENENDEZ? KITTY MENENDEZ WAS KIND,
3 GENEROUS, PLEASANT, A VERY SWEET LADY, A FUN PERSON,
4 A GOOD FRIEND.
5 AND KIRSTEN SMITH SAID: "SHE CARED ABOUT
6 MY FEELINGS."
7 SO WHO ARE YOU GOING TO BELIEVE? HER
8 BEST FRIEND, AND THE WOMAN WHO KNEW HER FOR 29
9 YEARS, TERRY BARALT; OR ARE YOU GOING TO BELIEVE THE
10 DISGRUNTLED COACH WHO SAID: "SHE TREATED ME LIKE A

11 SLAVE"?

12 CLEARLY, ALL THEY HAD WAS THIS EMPLOYER/
13 EMPLOYEE RELATIONSHIP. THAT DOESN'T STOP THIS
14 DEFENSE FROM PUTTING THAT WITNESS ON THE STAND. IF
15 THEY CAN SQUEEZE A BAD WORD OUT OF A WITNESS, THAT
16 DOESN'T STOP THEM. THEY'LL PUT THAT WITNESS UP
17 HERE, UP ON THE STAND, AND HAVE THEM SAY A FEW BAD
18 WORDS ABOUT KITTY MENENDEZ, EVEN THOUGH HE VIRTUALLY
19 HAD NO CONTACT WITH HER COMPARED TO SOME OF THESE
20 OTHER WITNESSES.

21 HE SAID THAT HE WAS REQUIRED TO TRAIN
22 THE DEFENDANTS WHEN THEY WERE SICK, WHEN THEY WERE
23 EXHAUSTED. BUT IF IT WERE SO TERRIBLE, IF THIS WAS
24 SO CRUEL, THEN WHY DID HE DO IT?

25 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
26 THAT ALL OF US GO TO WORK SOMETIMES WHEN WE HAVE A
27 LITTLE FLU. I KNOW YOU DID DURING THIS TRIAL. YOU
28 HAVE A LITTLE FLU. YOU HAVE A COLD. YOU STILL GO

54737

1 TO WORK. SOME PEOPLE STILL PLAY TENNIS, EVEN THOUGH
2 THEY HAVE A LITTLE FLU, OR A LITTLE BIT OF A COLD.
3 DOESN'T STOP US.

4 AND YET, THEY WANT TO SQUEEZE THAT --
5 THEY WANT TO SQUEEZE THAT FACT AND GET MORE

6 ALLEGATIONS AGAINST THE PARENTS OUT OF THAT FACT.

7 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
8 THAT WADLINGTON SAID THAT HE NEVER FELT THAT HE WAS
9 BEING CRUEL TOWARDS THE DEFENDANTS, BECAUSE HE DID
10 NOT DO ANYTHING CRUEL. AND HE IS ACTIVELY INVOLVED
11 NOW IN SQUEEZING CRUELTY OUT OF HIS PRIOR BEHAVIOR
12 WITH THE DEFENDANTS.

13 FAITH GOLDSMITH, OF COURSE, IS ANOTHER
14 BIASED WITNESS WHO, JUST LIKE TERRY BARALT, HAS NO
15 INTEREST WHATSOEVER IN TALKING TO THE PROSECUTION.
16 BUT THIS WITNESS LIED ABOUT IT. TERRY BARALT HAS
17 CHARACTERIZED IT A LITTLE BIT BY SAYING: "THE
18 PROSECUTOR JUST WANTED TO HAVE A DRINK WITH ME."

19 FAITH GOLDSMITH LIED ABOUT IT BECAUSE
20 DETECTIVE ZOELLER CALLED HER IN NEW YORK AND SAID:
21 "THE PROSECUTORS ARE HERE AND WANT TO TALK TO YOU."

22 AND SHE SAID: "I HAVE NO INTEREST IN
23 TALKING TO THE PROSECUTION."

24 BUT THEN SHE TAKES THE WITNESS STAND AND
25 SHE DENIES THAT. "OH, I DON'T REMEMBER GETTING A
26 CALL FROM DETECTIVE ZOELLER."

27 WELL, THAT'S A LIE. DON'T YOU THINK YOU
28 WOULD REMEMBER THAT? IF YOU TESTIFIED IN A CASE

1 LIKE THIS, THE MENENDEZ CASE, A TELEVISED CASE AND
2 ALL OF THAT, YOU GET A CALL FROM THE INVESTIGATOR,
3 "THE PROSECUTOR'S IN TOWN AND WANTS TO TALK TO YOU,"
4 AND YOU DON'T REMEMBER THAT TELEPHONE CALL? OKAY.
5 WE KNOW THAT FAITH GOLDSMITH IS LYING.
6 SHE IS THE FRIEND OF KITTY MENENDEZ, AND
7 SHE IS HERE TO, ONCE AGAIN, UNFORTUNATELY, SLANDER
8 KITTY MENENDEZ FOR THE PURPOSE OF HELPING THE
9 DEFENDANTS SOMEWHAT. SO SHE WILL DESCRIBE DANGEROUS
10 SITUATIONS TO ASSIST THEM.
11 SHE SPOKE ABOUT HOW LYLE MENENDEZ,
12 WALKING ON THE LEDGE, WAS A DANGEROUS SITUATION THAT
13 KITTY MENENDEZ APPARENTLY ALLOWED.
14 KEEP IN MIND THAT FAITH GOLDSMITH DID
15 NOT HAVE ANY SONS. TERRY BARALT, WHO ALSO DESCRIBED
16 DANGEROUS SITUATIONS, DID NOT HAVE ANY SONS. AND
17 THESE TWO DEFENDANTS WERE -- IT WAS FAITH GOLDSMITH
18 WHO USED THE TERM "WILD AND RAMBUNCTIOUS."
19 SO WHILE FAITH GOLDSMITH NEVER HAD THAT
20 SITUATION OF THE SONS CLIMBING OVER ALL -- OVER THIS
21 AND OVER THAT; AND TERRY BARALT MAY NOT HAVE BEEN
22 FACED WITH THAT SITUATION, KITTY MENENDEZ WAS FACED
23 WITH THAT SITUATION.
24 BOYS ARE DIFFERENT FROM GIRLS WHEN THEY
25 ARE YOUNG. THEY DO BEHAVE DIFFERENTLY. THEY DO
26 FEEL THEY HAVE SOMETHING TO PROVE. THEY WANT TO
27 CLIMB ON THIS AND JUMP OFF THAT. THAT'S THE WAY
28 LITTLE BOYS ARE. THEY ARE DIFFERENT THAN LITTLE

1 GIRLS. AND THESE TWO DEFENDANTS, IN PARTICULAR,
2 WERE WILD AND RAMBUNCTIOUS.

3 AND SO, AT THE VERY TIME WE HAVE LYLE
4 MENENDEZ WALKING ON THIS LEDGE, WE ALSO KNOW ABOUT
5 THE SAME TIME PERIOD HE'S CLIMBING ON THE ROOF,
6 GOING IN THROUGH THE BEDROOM, THROUGH THE ROOF.
7 ANOTHER WITNESS TOLD US ABOUT THAT.

8 KITTY MENENDEZ SAID: "HE WILL NOT
9 FALL. DON'T WORRY ABOUT HIM." AND WAS KITTY
10 MENENDEZ RIGHT? SHE WAS RIGHT. SO WHO'S TO SAY
11 THIS IS SUCH A TERRIBLE, DANGEROUS SITUATION? LYLE
12 MENENDEZ DID NOT FALL.

13 SHE TOLD US ABOUT A SIMILAR STORY IN
14 WHICH JOSE MENENDEZ SUPPOSEDLY LEFT HIS SON IN THE
15 CEMETERY. SHE SAID THAT SHE CONFIRMED THIS WITH
16 JOSE MENENDEZ. SHE WENT TO JOSE MENENDEZ AND SHE
17 ASKED HIM ABOUT THIS STORY, AND HE SAID IT WAS
18 TRUE.

19 THEN I ASKED HER -- YOU LEARNED IT HERE
20 IN COURT -- THAT I HAD A CONVERSATION WITH HER
21 OUTSIDE IN THE HALLWAY IN THE COMPANY OF DETECTIVE
22 ZOELLER. AND I ASKED HER ABOUT THIS NEW ALLEGATION,
23 BECAUSE SHE ADMITTED THAT SHE HAD ONLY RECENTLY

24 CLAIMED THAT SHE HAD THIS CONVERSATION WITH JOSE
25 MENENDEZ.

26 I SAID: "WHEN DID YOU FIRST TELL THIS
27 CONVERSATION TO THE DEFENSE?"

28 AND IN THE HALLWAY SHE TOLD ME, IN THE

54740

1 PRESENCE OF DETECTIVE ZOELLER: "I DON'T REMEMBER
2 WHEN I TOLD THEM."

3 SHE WAS ASKED: "YOU DON'T REMEMBER WHEN
4 YOU REPORTED THIS INCIDENT TO THE DEFENSE?"

5 AND SHE SAID NO, SHE DOESN'T REMEMBER
6 WHEN SHE REPORTED THIS TO THE DEFENSE.

7 SHE WALKED DOWN THE HALLWAY, SPOKE TO
8 LESLIE ABRAMSON, CAME BACK WITH LESLIE ABRAMSON,
9 THEN SHE REMEMBERED.

10 SO, LADIES AND GENTLEMEN, BEAR IN MIND,
11 FAITH GOLDSMITH IS A BIASED WITNESS, AND THERE'S
12 REASON TO QUESTION HER CREDIBILITY.

13 ERIK MENENDEZ, SHE SAID, WAS LEFT ON THE
14 HIGHWAY, APPARENTLY, OR WALKED OUT OF THE REALTY
15 OFFICE AND WANDERED OFF IN THE HIGHWAY. WE DON'T
16 HAVE THAT WITNESS WHO PICKED UP ERIK MENENDEZ. WE
17 DON'T KNOW EXACTLY WHERE ERIK MENENDEZ WAS IN
18 REFERENCE TO THAT HIGHWAY. ALL SHE KNOWS IS SOMEONE

19 WALKED IN WITH ERIK MENENDEZ.

20 DO WE KNOW HOW LONG HE WAS OUT OF THAT
21 ROOM? DO WE KNOW WHETHER KITTY MENENDEZ WAS REALLY
22 NEGLECTFUL IN THIS REGARD? WE SIMPLY DON'T HAVE ALL
23 THE FACTS.

24 ONE OF THE MOST QUESTIONABLE THINGS
25 ABOUT THE TESTIMONY OF FAITH GOLDSMITH WAS IN REGARD
26 TO THIS BRAND NEW MEMORY OF HERS OF AN INCIDENT TO
27 HELP ERIK MENENDEZ. SHE TOLD US THAT ERIK MENENDEZ
28 SEEMINGLY RESCUES HER DAUGHTER WHEN HER DAUGHTER

54741

1 WENT FACE DOWN IN THE WATER IN THE WADING POOL.
2 THERE WAS NINE INCHES OF WATER, SHE SAID. HER
3 DAUGHTER WAS ABOUT THREE YEARS OLD. ERIK MENENDEZ
4 WAS ABOUT FOUR YEARS OLD.

5 SHE LEFT HER DAUGHTER IN THE WATER. WHY
6 SHE WOULD DO THAT IS ANYONE'S GUESS. I WOULD SUBMIT
7 TO YOU THIS IS A STORY THAT SHE TOTALLY MADE UP.
8 SHE WOULD NOT LEAVE HER DAUGHTER IN NINE INCHES OF
9 WATER, ANYMORE THAN SHE WOULD LEAVE HER DAUGHTER IN
10 NINE INCHES OF WATER IN THE BATHTUB.

11 WHEN SHE CAME BACK SHE SAID THE ADULTS
12 WERE ABOUT TO REACH FOR THE CHILD, BUT ERIK MENENDEZ
13 WAS THE FIRST ONE TO GRAB THE CHILD. SO ERIK

14 MENENDEZ IS A HERO. FINALLY, WE GET A PIECE OF

15 MITIGATING EVIDENCE. ERIK MENENDEZ IS A HERO.

16 WHEN DID THIS COME ABOUT? SHE SAID SHE

17 JUST REMEMBERED IT THE OTHER DAY. I THINK THIS WAS

18 THE ONE SHE JUST REMEMBERED THE NIGHT BEFORE. ISN'T

19 THAT CONVENIENT?

20 LOOK AT THE NUMBER OF TIMES SHE WAS

21 INTERVIEWED BY THE DEFENSE. SHE WAS INTERVIEWED IN

22 1991. SHE WAS INTERVIEWED IN 1992. SHE WAS

23 INTERVIEWED AT LEAST TWO OTHER TIMES BY DEFENSE

24 INVESTIGATORS OR DEFENSE ATTORNEYS.

25 SHE ALSO SAID SHE SPOKE TO A DEFENSE

26 EXPERT. SHE ALSO TESTIFIED IN THE FIRST TRIAL IN

27 1993. AND KNOWING THAT THIS IS A CAPITAL CASE,

28 KNOWING THAT THE DEFENDANT IS SUBJECT TO THE DEATH

54742

1 PENALTY, SHE NEVER REMEMBERED THAT ERIK MENENDEZ

2 RESCUED HER DAUGHTER? HOW COULD YOU NOT REMEMBER

3 THAT. IF SOMEONE RESCUED YOUR DAUGHTER, WOULDN'T

4 THAT BE THE FIRST THING THAT WOULD COME TO MIND?

5 GEE, HE'S FACING THE DEATH PENALTY FOR

6 MURDER. WELL, I REMEMBER WHEN HE RESCUED MY

7 DAUGHTER A LONG TIME AGO. I TOLD YOU IN THE GUILT

8 PHASE THAT NECESSITY IS THE MOTHER OF INVENTION.

9 FAITH GOLDSMITH DECIDED AT SOME POINT IN TIME THAT
10 IT SURE WOULD BE NICE TO HELP OUT ERIK MENENDEZ.
11 AND SHE CAME UP WITH A NICE LITTLE STORY, JUST IN
12 THE NICK OF TIME. JUST BEFORE SHE TOOK THAT WITNESS
13 STAND SHE RECALLED THIS STORY.

14 WE LEARNED FROM FAITH GOLDSMITH THAT THE
15 PARENTS WERE IN FACT TOO LENIENT TOWARD THEIR SONS,
16 AND SHE EXPRESSED THAT OPINION. SHE SAID THEY
17 FAILED TO DISCIPLINE THEIR SONS, "EVEN WHEN
18 DISCIPLINE WAS CALLED FOR." THOSE WERE HER WORDS.

19 AND SHE WAS THE ONE WHO GAVE US THE
20 EXAMPLE OF EATING SOMEONE ELSE'S FOOD AT THE CHINESE
21 RESTAURANT, OR THE BATHROOM INCIDENT, OR RUNNING
22 AROUND IN THE SUPERMARKET, TO THE POINT WHERE AN
23 ANNOUNCEMENT HAD TO BE MADE AT THE SUPERMARKET TO
24 COME AND PICK UP YOUR CHILDREN, JUST LIKE AT THE
25 MALL.

26 FROM THAT I THINK YOU SHOULD CONCLUDE
27 THAT THESE TWO DEFENDANTS WERE SIMPLY YOUTHS THAT
28 WERE DIFFICULT TO CONTROL.

54743

1 AFTER WE HEARD FROM FAITH, WE HEARD FROM
2 JESSICA. LET ME SKIP DOWN TO HER. JESSICA
3 GOLDSMITH. SHE ONLY RECALLED ONE INCIDENT. THE

4 SINGLE INCIDENT OF LYLE MENENDEZ HANGING FROM SOME
5 SORT OF A BALCONY, AND JOSE MENENDEZ WAS KIND OF
6 JABBING HIM IN HIS STOMACH OR CHEST AREA. BUT WHAT
7 DID SHE DESCRIBE? THE JABBING WAS WITH OUTSTRETCHED
8 FINGERS. AND IT WAS ONLY ONE OR TWO TIMES INTO THE
9 CHEST OR STOMACH AREA (DEMONSTRATING) LIKE THAT.
10 AND SHE SAID LYLE MENENDEZ WAS CRYING AND WANTED TO
11 GET DOWN, AND JOSE MENENDEZ DIDN'T LET HIM DOWN.

12 LADIES AND GENTLEMEN, WHAT'S AMAZING
13 ABOUT THIS STORY IS, FIRST OF ALL, THIS WITNESS WAS
14 ONLY EIGHT YEARS OLD AT THE TIME SHE OBSERVED THIS.
15 SO BEAR IN MIND HOW ACCURATE IS THIS REPORTING, IF
16 YOU HAVE SOMEONE ONLY EIGHT YEARS OLD AT THE TIME
17 THIS INCIDENT TOOK PLACE?

18 WHAT IS REALLY UNUSUAL ABOUT THIS STORY
19 IS THAT LYLE MENENDEZ WAS NINE YEARS OLD AT THE
20 TIME, AND SHE SAID THE DROP WOULD HAVE BEEN THREE
21 FEET FROM HIS FEET, THREE FEET AWAY. THAT WAS THE
22 DROP. AND YET HE WAS UP THERE CRYING BECAUSE HE
23 COULDN'T GET DOWN.

24 DOES THAT MAKE SENSE TO YOU? THIS IS
25 THE SAME WILD AND RAMBUNCTIOUS YOUNG MAN WHO NEAR
26 THE SAME TIME PERIOD WAS WALKING ON A BALCONY LEDGE,
27 A 12-FOOT DROP, AND WAS NOT AFRAID OF THAT
28 APPARENTLY.

1 HE WAS CLIMBING ON A ROOF TOP TO GET
2 INTO HIS BEDROOM, AND HE WAS NOT AFRAID OF THAT
3 APPARENTLY.

4 AND NOW, HE'S AFRAID OF A THREE-FOOT
5 DROP AND HE'S CRYING? "HELP, DADDY. I'M GOING TO
6 HURT MYSELF IF I FALL THREE FEET." THE STORY JUST
7 DOESN'T MAKE SENSE, LADIES AND GENTLEMEN. DOESN'T
8 MAKE SENSE.

9 IT SOUNDS TO ME LIKE EITHER SHE DOESN'T
10 REMEMBER HOW THIS EVENT STARTED OR HOW IT ENDED.

11 HAVE YOU EVER BEEN IN A SITUATION --
12 EVERYONE HAS CHILDREN. SOMETIMES KIDS WANT
13 ATTENTION AND THEY EXAGGERATE THINGS AND GET A
14 LITTLE CARRIED AWAY. SHE WAS EIGHT YEARS OLD AT THE
15 TIME. IT SOUNDS MORE LIKE LYLE MENENDEZ WAS MAKING
16 A BIG FUSS AND WANTED A LITTLE ATTENTION. JOSE GAVE
17 HIM A LITTLE ATTENTION, AND SHE MISINTERPRETED THE
18 ENTIRE INCIDENT. TO BELIEVE THAT LYLE MENENDEZ, AT
19 THE AGE OF NINE, WAS AFRAID OF THAT THREE-FOOT DROP
20 IS JUST RIDICULOUS. THAT'S ALL SHE HAD TO SAY.

21 BONNIE HUNTER TESTIFIED, 9TH-GRADE
22 ENGLISH TEACHER FOR ERIK MENENDEZ. I WOULD SUBMIT
23 TO YOU THAT THE TEACHERS IN THIS CASE WERE BASICALLY
24 WELL-INTENTIONED PEOPLE WHO CAME HERE WITH NO AXE TO
25 GRIND. BUT LOOK AT THE INFORMATION THEY PROVIDED.
26 VERY SYMPATHETIC-TYPE INFORMATION, WHICH PERHAPS
27 GIVES MORE CREDIT TO THE DEFENDANTS THAN CREDIT IS

54745

1 DID YOU NOTICE THE WAY THAT EVERYTHING
2 WAS EXPRESSED IN TERMS OF THE INABILITY OF THE
3 DEFENDANT, NEVER PUTTING RESPONSIBILITY TOWARD THE
4 DEFENDANT. BUT HE WAS UNABLE. NOT THAT HE
5 REFUSED. HE FAILED TO DO THIS, OR HE REFUSED TO DO
6 THIS. BUT HE WAS UNABLE. NO MATTER WHAT THE ISSUE
7 WAS, IT WAS ALWAYS STRUCTURED IN TERMS OF GIVING THE
8 DEFENDANT THE BENEFIT OF THE DOUBT.

9 HE DIDN'T -- DID SHE EVER SAY HE DIDN'T
10 FOLLOW DIRECTIONS? NO. IT WAS HE WAS UNABLE TO
11 FOLLOW DIRECTIONS.

12 DID SHE EVER SAY HE DIDN'T ORGANIZE
13 HIMSELF, DIDN'T ORGANIZE HIS WORK? NO. HE WAS
14 UNABLE TO DO SO.

15 HE DIDN'T COME TO CLASS AS DIRECTED.
16 WHEN I WAS IN SCHOOL THAT WAS CALLED SKIPPING
17 CLASS. THIS WITNESS CALLS IT UNABLE TO COME TO
18 CLASS, OR UNABLE TO FOLLOW DIRECTIONS.

19 UNABLE TO MEET DEADLINES. WHEN I WAS IN
20 SCHOOL THAT USED TO BE CALLED NOT DOING YOUR
21 HOMEWORK. SHE CALLS IT UNABLE TO MEET DEADLINES.

22 HE DID POORLY IN QUIZZES. WHEN I WAS IN

23 SCHOOL THEY USED TO CALL THAT BLOWING A QUIZ.
24 THEN EVEN FROM THIS WITNESS WE LEARNED
25 ABOUT PLAGIARISM AND LYING. PERHAPS THAT SHOULD
26 HAVE TIPPED HER OFF AS TO WHAT ERIK MENENDEZ WAS
27 TRULY LIKE.
28 SHE SAID SHE CAUGHT HIM PLAGIARIZING

54746

1 FROM THE WORLD BOOK ENCYCLOPEDIA. WHEN SHE
2 CONFRONTED ERIK MENENDEZ, WHAT DID HE DO? HE LIED
3 ABOUT IT. AND THEN SHE GATHERED EVIDENCE TO
4 CONFRONT HIM WITH IT, AND ONCE SHE GATHERED THE
5 EVIDENCE AND CONFRONTED HIM WITH IT, WHAT DID HE
6 DO? AGAIN, HE WAS JUST SILENT. HE REFUSED TO ADMIT
7 THAT HE WAS RESPONSIBLE FOR THIS.
8 SO SHE FOUND IT NECESSARY TO ARRANGE A
9 MEETING WITH THE PARENTS, WITH KITTY MENENDEZ. AND
10 KITTY MENENDEZ CAME IN AND SAID: "THIS CAN'T
11 POSSIBLY BE TRUE. MY SON WOULDN'T DO SOMETHING LIKE
12 THAT."
13 WHAT DOES THAT TELL YOU? IT TELLS YOU
14 THAT EVEN AFTER KITTY MENENDEZ COMES IN, UP UNTIL
15 THAT TIME, ERIK MENENDEZ STILL DOESN'T EVEN TELL HIS
16 MOTHER THE TRUTH. SHE HAD TO CONFRONT KITTY
17 MENENDEZ WITH THE EVIDENCE BEFORE KITTY MENENDEZ

18 SAID: "OH, YES, YOU'RE RIGHT. HE DID PLAGIARIZE

19 THIS.

20 NOT ONLY DOES ERIK MENENDEZ LIE TO THE

21 TEACHER, HE LIES TO HIS MOTHER. HE NEVER TELLS THE

22 TRUTH.

23 IT ALSO SHOWS YOU KITTY MENENDEZ WAS THE

24 PROTECTIVE MOTHER, ALWAYS GIVING HER SON THE BENEFIT

25 OF THE DOUBT. DON'T ACCUSE MY SON. MY SON WOULDN'T

26 DO THAT. ALWAYS COMES TO HIS RESCUE, CONSISTENT

27 WITH THESE PARENTS. WHETHER IT'S GETTING THEM OUT

28 OF TROUBLE WHEN THEY START COMMITTING RESIDENTIAL

54747

1 BURGLARIES, GETTING THEM OUT OF TROUBLE WHEN THEY'RE

2 PLAGIARIZING -- SOMETHING APPARENTLY BOTH OF THEM

3 HAVE A TENDENCY TO DO -- THE PARENTS ALWAYS COME TO

4 THE RESCUE TIME AND TIME AGAIN.

5 BONNIE HUNTER DIDN'T HAVE MUCH MORE TO

6 SAY OTHER THAN THAT.

7 ALAN ANDERSEN WAS RECALLED IN THE

8 PENALTY CONCERNING TWO INCIDENTS: THE

9 BICYCLE-RIDING INCIDENT, AND THE SECOND WAS THE

10 SWOLLEN SHOULDER -- SWOLLEN SHOULDER STORY.

11 THE BICYCLE RIDING INCIDENT IS, I

12 SUPPOSE, TO CAUSE US TO CONCLUDE THAT JOSE MENENDEZ

13 WAS AN ABUSIVE FATHER.

14 LADIES AND GENTLEMEN, DOESN'T IT SHOW A
15 FATHER WHO SPENDS AN ENORMOUS AMOUNT OF TIME WITH
16 HIS SON, TEACHING THEM SWIMMING, ALL OF THOSE
17 SWIMMING LESSONS; TEACHING THEM BREATHING LESSONS,
18 TEACHING THEM SOCCER, RUNNING UP AND DOWN THE
19 SIDELINES DURING THE SOCCER GAME. ALL OF THE TIME
20 HE SPENT WITH TENNIS WITH THEM, MORNINGS AND NIGHTS.
21 ALL OF HIS FREE TIME TEACHING THEM NOW HOW TO RIDE A
22 BICYCLE.

23 WHAT IT SHOWS IS A MAN WHO'S
24 TREMENDOUSLY INTERESTED IN HIS SONS AND WHO WANTED
25 THEM TO DO WELL AND WANTED THEM TO SUCCEED IN
26 SPORTS, IN PLAY, IN BICYCLE-RIDING, IN THEIR
27 CAREERS, AND IN EVERYTHING ELSE. AND YET THEY
28 SQUEEZE THAT INCIDENT WITH ALLEGATIONS OF ABUSE.

54748

1 OH, HE MADE HIM RIDE THAT BICYCLE.
2 WELL, SOMETIMES YOU DO HAVE TO PICK UP A CHILD AND
3 PUT THE CHILD BACK ON THE BIKE AND ENCOURAGE THE
4 CHILD TO GIVE IT ONE MORE TRY. AND ALL WE HAVE IS
5 ALAN ANDERSEN NOW TO TELL US HOW ABUSIVE THAT
6 SITUATION WAS. WE DON'T HAVE JOSE MENENDEZ HERE TO
7 TELL US HIS SIDE OF THE STORY, AND WHETHER HE TRULY

8 SAW ERIK MENENDEZ' BLEEDING FROM THE LEG AND
9 INSISTED THAT HE RIDE THE BIKE AGAIN. WE'RE TALKING
10 ABOUT THE ALLEGATIONS OF ALAN ANDERSEN.
11 IN BETWEEN THE LINES, LADIES AND
12 GENTLEMEN, THE PICTURE IS VERY CLEAR, A CONCERNED
13 FATHER.
14 THE SWOLLEN SHOULDER. TO SHOW THAT JOSE
15 MENENDEZ WAS SO ABUSIVE, HE SAID HE MADE LYLE
16 MENENDEZ PLAY TENNIS, EVEN THOUGH HIS SHOULDER WAS
17 VISIBLY SWOLLEN. AND THIS WITNESS CLAIMS HE CAN SEE
18 THIS FROM THE OTHER TENNIS COURT? HE'S ON THE OTHER
19 TENNIS COURT. SO HE ESTIMATES THE DISTANCE -- I
20 THINK YOU CAN ESTIMATE THE DISTANCE TO BE ABOUT 30
21 FEET. HE SAID IT WAS THE EQUIVALENT OF A FULL
22 LENGTH OF THE TENNIS COURT.
23 FROM 30 FEET AWAY, HE CAN SEE THAT LYLE
24 MENENDEZ' SHOULDER IS SWOLLEN? DO YOU THINK YOU CAN
25 REALLY DO THAT? DO YOU THINK YOU CAN REALLY SEE A
26 SHOULDER THAT SWOLLEN 30 FEET AWAY?
27 I WOULD SUBMIT TO YOU, LADIES AND
28 GENTLEMEN, ALAN ANDERSEN IS EXAGGERATING AND LYING

54749

1 TO YOU A LITTLE BIT, JUST LIKE HE DID IN THE GUILT
2 PHASE. HE STILL REMEMBERS THAT MONEY HE GOT FROM

3 LYLE MENENDEZ, AND HE'S PAYING OFF THAT DEBT.

4 IF JOSE MENENDEZ WAS SO CONCERNED ABOUT
5 HIS SONS THAT HE WOULD HAVE THEM ON A SPECIAL DIET
6 AND WAS ENCOURAGING THEM TO PLAY TENNIS TO BE
7 CHAMPIONS, DO YOU THINK HE REALLY WOULD HAVE PUSHED
8 THEM TO THE POINT THEY WOULD HAVE SUFFERED SOME
9 PHYSICAL INJURY?

10 SANDRA SHARP WAS THE NEXT WITNESS WHO
11 TESTIFIED THAT SHE WAS A SPANISH TEACHER FOR LYLE
12 MENENDEZ IN 7TH AND 10TH GRADE. AND SHE WAS ALSO
13 THE SPANISH TEACHER FOR ERIK MENENDEZ TOO.

14 AGAIN, SHE PUTS THINGS -- SHE PHRASES
15 THINGS IN TERMS OF GIVING THE DEFENDANT THE BENEFIT
16 OF THE DOUBT, THAT HE WAS -- THAT HE CRIED IN
17 CLASS. SHE SAID SHE OFFERED HIM EXTRA HELP, BUT HE
18 NEVER TOOK HER UP ON IT.

19 IF ERIK MENENDEZ WAS TRULY CONCERNED
20 ABOUT HIS GRADES SO MUCH, TRULY CONCERNED ABOUT
21 LEARNING, WHY DIDN'T HE EVER TAKE HER UP ON THAT?

22 SHE SAID HE HAD CONCENTRATION PROBLEMS.
23 WHEN I WAS YOUNG THEY USED TO CALL IT NOT PAYING
24 ATTENTION. HERE SHE CALLS IT CONCENTRATION
25 PROBLEMS. SHE EXAGGERATED HER STORY, EVEN THOUGH,
26 NO DOUBT, SHE WAS WELL-INTENTIONED.

27 SHE SAID SHE WROTE COUNTLESS INTERIM
28 REPORTS ABOUT THE DEFENDANT WHICH WERE NOT RESPONDED

1 TO THAT MADE REFERENCE TO THE DIFFICULTIES ERIK
2 MENENDEZ WAS HAVING.

3 AND CAROL NAJERA CROSS-EXAMINED HER, AND
4 ON THAT CROSS-EXAMINATION SHE CONCEDED: "WELL,
5 ACTUALLY, I ONLY WROTE FOUR INTERIM REPORTS, NOT
6 COUNTLESS; AND YES, ONLY ONE OF THOSE REPORTS NOTED
7 THE DIFFICULTIES THAT ERIK MENENDEZ WAS HAVING."

8 SO IS THIS A MOTHER WHO WAS TRULY
9 NEGLECTFUL, WHO WAS GETTING ALL OF THESE REPORTS AND
10 DID NOTHING ABOUT IT, OR WAS IT THAT SHE RECEIVED
11 ONLY ONE REPORT; AND THEN DESPITE THE SUGGESTION
12 THAT KITTY MENENDEZ MAY HAVE LEFT ERIK MENENDEZ BACK
13 IN THE 5TH GRADE, SHE ALSO SAID THAT P.D.S.,
14 PRINCETON DAY SCHOOL, MADE A DETERMINATION THAT ERIK
15 MENENDEZ HAD TO START IN THE 5TH GRADE IF HE WAS TO
16 BE TRANSFERRED TO P.D.S. FROM PUBLIC SCHOOL.

17 THEN WE HAVE A ALICIA HERCZ. AND ALICIA
18 HERCZ TESTIFIED THAT SHE IS -- SHE WAS A NEIGHBOR TO
19 THE FAMILY, AS WELL AS A TEACHER FOR LYLE MENENDEZ.
20 AND SHE RECALLS TWO UNUSUAL VISITS TO HER OFFICE.
21 LYLE MENENDEZ, SHE SAID, TWICE CAME TO HER OFFICE
22 AND JUST SAT THERE. THAT'S ALL. JUST SAT THERE.

23 WHAT ARE WE SUPPOSED TO CONCLUDE FROM THIS, BECAUSE
24 LYLE MENENDEZ SAT IN HER OFFICE ON TWO OCCASIONS?
25 SO WHAT? HE DIDN'T TALK TO HER. HE JUST SAT

26 THERE. SO WHAT?

27 WHATEVER HIS REASONS FOR DOING THAT, WE

28 HAVE NO BASIS TO REACH ANY CONCLUSIONS CONCERNING

54751

1 THAT, BECAUSE WE DON'T KNOW WHY HE DID THAT. THE

2 DEFENSE MAY ASK YOU TO SPECULATE AS TO THE

3 SIGNIFICANCE OF THAT.

4 AND THEN SHE RECALLS WHEN HER HUSBAND

5 WAS TALKING TO LYLE MENENDEZ, OR ATTEMPTING TO SPEAK

6 TO HIM, JOSE MENENDEZ WAS DOING ALL THE TALKING AND

7 KEPT RESPONDING FOR LYLE MENENDEZ. IS THAT ALL THAT

8 UNCOMMON WHEN AN ADULT QUESTIONS A CHILD ABOUT: SO

9 WHAT IS IN YOUR FUTURE? THE FATHER INTERVENES AND

10 SAYS: WELL, HE'S PLANNING THIS AND PLANNING THAT.

11 TRIVIA LIKE THAT. IT'S TRIVIA LIKE THIS

12 THAT THE DEFENSE IS BASED ON. AND THEN THE BOAT

13 INCIDENT. SHE RECALLS THAT ERIK MENENDEZ HAD TO GO

14 LOOK FOR THE BOAT FOLLOWING THE 4TH OF JULY WEEKEND

15 IN WHICH A NUMBER OF BOATS, INCLUDING THE ONE FROM

16 THE MENENDEZ FAMILY, HAD BEEN LOST IN A STORM.

17 THIS IS PORTRAYED AS IF IT'S A

18 HORRENDOUS, TERRIBLE ABUSIVE PARENT THAT WOULD MAKE

19 ERIK MENENDEZ LOOK FOR THE BOAT. ERIK MENENDEZ, I

20 BELIEVE SHE SAID, WAS 14 YEARS OLD AT THE TIME.

21 FOURTEEN YEARS OLD, AND HE HAS TO GO UP AND DOWN THE
22 LAKE AND LOOK FOR THE BOAT. WHAT IS SO ABUSIVE
23 ABOUT THAT, FOLLOWING THE 4TH OF JULY WEEKEND? SHE
24 SAID, OH, OF COURSE, HE WAS COLD AND TIRED.
25 HOW COLD DOES IT GET ON THE 4TH OF JULY
26 WEEKEND? HE'S COLD AND TIRED LOOKING FOR A BOAT?
27 WHY IS THAT SO ABUSIVE? IF IT WAS HIS
28 RESPONSIBILITY TO TIE UP THE BOAT -- AND THAT'S KIND

54752

1 OF THE SUGGESTION THAT KIND OF FILTERS THROUGH THE
2 STORY -- AND IF HE DIDN'T TIE IT UP RIGHT, WHAT IS
3 WRONG WITH THE MOTHER TELLING HIM: "YOU WERE
4 SUPPOSED TO TIE UP THE BOAT. YOU DIDN'T DO IT
5 RIGHT. NOW YOU GO OUT AND FIND THE BOAT AND BRING
6 IT BACK."

7 WHAT IS SO ABUSIVE ABOUT THAT? SHE
8 SAID: "WELL, BECAUSE OTHER FAMILIES LOST THEIR
9 BOATS. AND I TRIED TO EXPLAIN TO KITTY THAT IT
10 WASN'T THEIR FAULT."

11 MAYBE THEY DIDN'T TIE UP THEIR BOATS
12 EITHER. MAYBE SOMEBODY IN THEIR FAMILY SHOULD TAKE
13 RESPONSIBILITY.

14 WHAT IS SO ABUSIVE ABOUT THAT? THIS IS
15 STRETCHING THE LIMIT TO FIND ABUSE, LADIES AND

16 GENTLEMEN.

17 DOES THE COURT WISH TO BREAK AT THIS
18 TIME?

19 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS.
20 WE'LL RESUME AT 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 WERE
25 ADJOURNED UNTIL 1:30 P.M. OF THE
26 SAME DAY:)
27

-10783

1 VAN NUYS, CALIFORNIA; THURSDAY, APRIL 11, 1996
2 1:50 P.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. LET'S PROCEED WITH THE JURY,
9 PLEASE.

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

13
14 THE COURT: THE JURY IS BACK IN COURT. THE
15 DEFENDANTS ARE IN COURT WITH THEIR LAWYERS. THE PEOPLE

16 ARE PRESENT.

17 AND WE WILL CONTINUE WITH THE ARGUMENT.

18 MR. CONN: THANK YOU.

19 LADIES AND GENTLEMEN, I THINK THAT WHEN WE
20 BROKE FOR LUNCH I GOT THROUGH ABOUT HALF OF THE DEFENSE
21 WITNESSES THAT WERE CALLED IN THIS CASE, AND THAT BRINGS
22 US TO KIRSTEN SMITH.

23 SHE TESTIFIED THAT SHE WAS VERY FOND OF
24 KITTY MENENDEZ. KITTY MENENDEZ WAS A PERSON WHO CARED
25 ABOUT HER FEELINGS. APPARENTLY KITTY MENENDEZ WANTED
26 ERIK MENENDEZ TO HAVE RELATIONSHIPS, AND PUSHED ERIK
27 MENENDEZ INTO HAVING A RELATIONSHIP WITH A WOMAN, AND
28 WITH KIRSTEN SMITH IN PARTICULAR.

-10782

1 AND THIS GOES CONTRARY TO WHAT THE EXPERT
2 TESTIFIED HERE, DR. HART, WHO SAID THAT THE -- ONE OF
3 THE TYPES OF PSYCHOLOGICAL MALTREATMENT THAT HE OBSERVED
4 IN THIS FAMILY, HE CLAIMED, WAS THAT THERE WAS ISOLATING
5 BEHAVIOR.

6 WELL, THE TESTIMONY OF KIRSTEN SMITH
7 REFUTES THAT. IT TENDS TO SHOW THAT THESE WERE NOT
8 PARENTS WHO WERE TRYING TO ISOLATE THEIR SONS FROM
9 OUTSIDE RELATIONSHIPS. OF COURSE, THEY COULDN'T ISOLATE
10 LYLE MENENDEZ AT ALL FROM AN OUTSIDE RELATIONSHIP,
11 BECAUSE LYLE MENENDEZ WAS LIVING ON THE EAST COAST

12 DURING AT LEAST A YEAR AND A HALF OF THE LAST THREE
13 YEARS BEFORE THE KILLING OF THE PARENTS. AND ERIK
14 MENENDEZ CERTAINLY WAS -- DID NOT HAVE HIS RELATIONSHIPS
15 CURTAILED IN ANY WAY. HE SPENT ALL OF HIS FREE TIME
16 WITH CRAIG CIGNARELLI OR KIRSTEN.

17 SO I WOULD SUBMIT TO YOU THAT KITTY
18 MENENDEZ WENT OUT OF HER WAY TO FOSTER THESE
19 RELATIONSHIPS.

20 KIRSTEN SMITH TESTIFIED HOW WHEN ERIK
21 MENENDEZ WAS GOING TO TAKE HER OUT ON A DATE, KITTY
22 MENENDEZ WOULD SAY, "DO YOU HAVE ENOUGH MONEY?"

23 AND EVEN IF ERIK MENENDEZ SAID, "SURE, I
24 HAVE ENOUGH MONEY," KITTY MENENDEZ WOULD SAY. "HERE.
25 HERE'S ANOTHER TWENTY," AND GIVE HIM EXTRA MONEY JUST TO
26 ENCOURAGE THIS RELATIONSHIP.

27 WE KNOW THAT FROM KIRSTEN SMITH ERIK
28 MENENDEZ ENJOYED PLAYING TENNIS. SO MUCH HAS BEEN MADE

-10781

1 BY THE DEFENSE CONCERNING THE TENNIS PLAYING IN THIS
2 CASE, ABOUT HOW THE DEFENDANTS WERE FORCED INTO THIS
3 TENNIS-PLAYING SITUATION.

4 BUT WE KNOW THAT THE FIRST THING THAT ERIK
5 MENENDEZ DID AFTER HE KILLED HIS PARENTS WAS HE FORGOT
6 ABOUT HIS EDUCATION AND HE WENT FULL-TIME PLAYING
7 TENNIS. SO OBVIOUSLY HE LOVED THE GAME; HE WANTED TO

8 PLAY THE GAME. AND THIS IS CONSISTENT WITH WHAT WE HEAR
9 FROM KIRSTEN.

10 I SPECIFICALLY ASKED HER: "DID YOU EVER
11 HEAR THE DEFENDANT COMPLAIN ABOUT TENNIS, ABOUT THE
12 AMOUNT OF TIME THAT HE HAD TO SPEND PLAYING THE GAME, OR
13 THE AMOUNT OF TIME HE PRACTICED?"

14 SHE NEVER HEARD ANY COMPLAINTS. SHE SAID
15 THAT THEY WERE CLOSE, THAT THEY SHARED ALL OF THEIR
16 FEELINGS. YET HE NEVER EXPRESSED ANY RESENTMENT OR
17 ANGER ABOUT THE TIME THAT HE HAD TO PLAY TENNIS.

18 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
19 THAT ALL OF THE COMPLAINTS OF THE DEFENSE ABOUT THE
20 AMOUNT OF TIME THE DEFENDANTS PLAYED TENNIS ARE SIMPLY
21 UNWARRANTED, BECAUSE TENNIS WAS SOMETHING THAT
22 APPARENTLY BOTH DEFENDANTS WANTED TO DO, AND MADE NO
23 COMPLAINTS WHATSOEVER AT ANY TIME.

24 AND THEN WE HAVE THE TESTIMONY OF MARIANNE
25 CANO. MARIANNE CANO DIDN'T TESTIFY TO A LOT OF THINGS.
26 SHE TALKED PRIMARILY ABOUT A SINGLE INCIDENT IN WHICH
27 SHE HEARD A -- SOME CRITICISM OF ERIK MENENDEZ AT THE
28 DINNER TABLE FOR THE WAY HE PLAYED TENNIS THAT

-10780

1 PARTICULAR DAY.

2 AND SHE ALSO HEARD -- OR SHE ALSO SAT DOWN
3 WITH JOSE MENENDEZ AND KITTY MENENDEZ AND HAD

4 CONVERSATIONS ABOUT HER INTERVIEWING, BECAUSE AT THE
5 TIME SHE WAS SEEKING A JOB IN THE AREA.

6 AND FIRST OF ALL, WHAT I THINK HER
7 TESTIMONY UNDERSCORES IS THE GENEROSITY OF THE PARENTS.
8 ONCE AGAIN, WE SEE KITTY AND JOSE MENENDEZ OPENING UP
9 THEIR HOME TO THE RELATIVES, TO COUSINS, NIECES, TO
10 NEPHEWS WHO WANTED TO LIVE IN THE HOME, WHO WANTED TO
11 STAY IN THE HOME FOR A PERIOD OF TIME.

12 HERE WE HAVE YET ANOTHER COUSIN WHO SPENT
13 TIME IN THE HOME FOR SEVERAL MONTHS. WHY? SIMPLY
14 BECAUSE THESE WERE GENEROUS PARENTS WHO ALWAYS HAD THEIR
15 DOOR OPEN TO OTHER RELATIVES, WHICH GOES CONTRARY, NOT
16 ONLY TO THE NOTION THAT THEY WERE SECRETIVE PARENTS WHO
17 DIDN'T WANT THE OUTSIDE WORLD LOOKING IN, IT ALSO GOES
18 CONTRARY TO THE CRITICISMS OF JOSE MENENDEZ AND KITTY
19 MENENDEZ AS SELFISH PEOPLE.

20 AND WE KNOW FROM THE TESTIMONY OF MARIANNE
21 CANO THAT JOSE MENENDEZ AND KITTY MENENDEZ TOOK THE TIME
22 AND THE TROUBLE TO SPEND TIME WITH HER, TO GIVE HER
23 ADVICE, AND TO ASSIST HER IN THE INTERVIEWING PROCESS.

24 YET THIS IS THE VERY TYPE OF THING THAT
25 THEY TAKE, AND THEY TRY TO FIND SOMETHING NEGATIVE IN
26 EVERY SINGLE POSITIVE THING THAT JOSE AND KITTY MENENDEZ
27 DID, EITHER WITH THEIR OWN CHILDREN, OR WITH OTHER
28 PEOPLE. THE DEFENSE TAKES IT, TWISTS IT AROUND, AND

1 PORTRAYS IT UNFAIRLY AS SOMETHING NEGATIVE.

2 CAN THERE BE ANY DOUBT THAT JOSE MENENDEZ
3 AND KITTY MENENDEZ WERE TRYING TO GIVE MARIANNE CANO
4 SOME CONSTRUCTIVE ADVICE? HE IS THE CHIEF EXECUTIVE
5 OFFICER FOR MAJOR CORPORATIONS. HE KNOWS ABOUT THE
6 BUSINESS WORLD. HE CAN HELP THIS WOMAN. HE SITS DOWN
7 WITH HER, AND HE DISCUSSES WITH HER HER INTERVIEWING
8 TECHNIQUES AND HOW SHE CAN IMPROVE HER PERFORMANCE.

9 AND WHAT DOES SHE DO? SHE COMES IN HERE
10 AND CRITICIZES HIM, AND MAKES IT SEEM LIKE HE IS A
11 MONSTER. BECAUSE OF WHAT? THE TONE OF VOICE? THE WAY
12 HE TALKED TO HER?

13 AND I EVEN TRIED TO PIN HER DOWN AND SAY,
14 "WHAT WAS IT? WHAT WAS IT THAT HE DID THAT WAS SO
15 WRONG?"

16 AND SHE SAID, "WELL, IT WAS JUST THE WAY HE
17 SAID IT. IT WAS INTIMIDATING."

18 "WELL, WHAT WAS IT?" I SAID. "WHAT WAS SO
19 INTIMIDATING?"

20 "WELL, IT WAS JUST THE WAY HE SAID: 'HOW
21 CAN THAT BE HELPFUL?'" CONCERNING SOMETHING SHE DID
22 DURING HER INTERVIEW. THAT'S IT. "HOW CAN THAT BE
23 HELPFUL?"

24 AND FOR THAT SHE COMES IN HERE AND PORTRAYS
25 JOSE MENENDEZ AS A MONSTER. IS THAT CRITICISM
26 WARRANTED?

27 AGAIN, LADIES AND GENTLEMEN, WE SEE THIS
28 TIME AND TIME AGAIN FROM ALL THESE DEFENSE WITNESSES.

1 THEY TAKE THE LITTLE, ISOLATED INCIDENTS WHICH SHOULD
2 NOT BE SUBJECT TO CRITICISM, AND THEY DISTORT IT TO MAKE
3 IT SEEM LIKE A NEGATIVE THING.

4 AND THEN THE CRITICISM OF ERIK MENENDEZ FOR
5 HIS PERFORMANCE THAT DAY PLAYING TENNIS. SHE HAD NO
6 IDEA ABOUT ERIK MENENDEZ' PERFORMANCE IN TENNIS; HOW
7 WELL HE PLAYED, HOW WELL HE SHOULD BE PLAYING. DID HE
8 REALLY THROW THE GAME? WAS HIS MIND IN IT? MAYBE HE
9 WAS SUBJECT TO SOME CRITICISM THAT PARTICULAR DAY.
10 MAYBE HE REALLY WAS PERFORMING POORLY. WE HEARD ABOUT
11 HIS PERFORMANCE ON THE TENNIS COURT FROM ANOTHER
12 WITNESS, THAT SAID HE THREW RACKETS AND ALL OF THAT.

13 WE DON'T KNOW WHAT HE DID ON THE TENNIS
14 COURT THAT DAY. WE DO KNOW, ACCORDING TO THAT WITNESS,
15 THAT KITTY MENENDEZ WOULD COME TO HIS SUPPORT SOMETIMES
16 IF JOSE MENENDEZ WAS BEING CRITICAL. SHE SAID KITTY
17 MENENDEZ WOULD SOMETIMES COME TO HIS SUPPORT, AND
18 SUPPORT HIS ACTIVITIES, OR SUPPORT ERIK MENENDEZ.

19 BUT ON THIS PARTICULAR DAY, KITTY MENENDEZ,
20 WHO HAD WATCHED THE PERFORMANCE, ALLOWED JOSE MENENDEZ
21 TO CRITICIZE HER SON.

22 SO WHAT IS THE BIG DEAL HERE? MAYBE HE
23 DESERVED CRITICISM. AND EVEN IF HE DIDN'T DESERVE
24 CRITICISM, WHAT IS THE BIG DEAL? IS THIS MITIGATING
25 EVIDENCE? IS THIS THE BEST HE CAN COME UP WITH?

27 CANO, AND THEY'RE ASKING YOU TO GIVE THE DEFENDANT LIFE
28 WITHOUT POSSIBILITY OF PAROLE AS PUNISHMENT INSTEAD OF

-10777

1 DEATH FOR THESE TWO HORRENDOUS CRIMES BECAUSE OF WHAT?
2 JOSE MENENDEZ CRITICIZED ERIK MENENDEZ AT THE DINNER
3 TABLE.

4 PETER CANO WAS CALLED TO TESTIFY TO A
5 SINGLE INCIDENT CONCERNING JOSE MENENDEZ STRIKING HIS
6 SON, LYLE MENENDEZ, IN THE STOMACH. AND IT'S VERY
7 INTERESTING THAT IN ALL OF THE WITNESSES IN THE GUILT
8 PHASE, YOU HEARD IN THE GUILT PHASE OF ALL OF THE
9 ALLEGATIONS OF PHYSICAL ABUSE CONCERNING ERIK MENENDEZ,
10 AND WE KNOW WHAT THAT CONSISTED OF, IT WAS VIRTUALLY
11 NOTHING.

12 NOW, IN THIS PHASE, WE HEARD ALLEGATIONS
13 CONCERNING LYLE MENENDEZ. AND WHAT DID WE HEAR?
14 BASICALLY TWO ISOLATED INSTANCES.

15 WE HEARD ONE INCIDENT FROM JESSICA
16 GOLDSMITH ABOUT THE JABBING IN THE CHEST AREA WITH
17 OUTSTRETCHED FINGERS, WHICH I SUBMIT TO YOU IS PROBABLY
18 MORE FOOLING AROUND THAN A NATURAL STRIKE. AND THEN WE
19 HEARD OF THIS ONE INCIDENT.

20 AND LADIES AND GENTLEMEN, IF THIS IS
21 TRUE -- IF THIS IS A TRUE INCIDENT, THEN I WOULD AGREE

22 THAT THIS IS AN UNACCEPTABLE FORM OF PUNISHMENT. IF
23 JOSE MENENDEZ STRUCK HIS SON LIKE THAT FOR URINATING ON
24 THE FLOOR IN THE CHEST OR THE STOMACH, CLEARLY, THAT'S
25 NOT PROPER DISCIPLINE FOR A CHILD. THAT WAS AN IMPROPER
26 WAY TO STRIKE A CHILD, GRANTED, AND I WOULD NOT DEFEND
27 THAT TYPE OF BEHAVIOR IN A MINUTE.

28 BUT LADIES AND GENTLEMEN, AS YOU LOOK AT

-10776

1 THAT INCIDENT, I ASK YOU TO CONSIDER TWO THINGS. NUMBER
2 ONE, JUST HOW ISOLATED THIS IS. ARE THERE ANY OTHER
3 ALLEGATIONS OF PHYSICAL ABUSE BY JOSE MENENDEZ? LOOK AT
4 ALL OF THE RELATIVES WHO CAME IN HERE WHO WERE CLOSE TO
5 JOSE MENENDEZ AND WHO SAID THEY NEVER, EVER, OBSERVED
6 JOSE MENENDEZ RAISING HIS HAND TO HIS CHILDREN.

7 AND ALSO CONSIDER, LADIES AND GENTLEMEN,
8 HOW HARD WAS THIS ALLEGED BLOW? EVEN IF IT WAS WRONG,
9 JOSE MENENDEZ SHOULD NOT HAVE STRUCK HIS SON THAT WAY,
10 IF INDEED HE DID DO THAT. HOW HARD WAS THAT BLOW?

11 WE HAVE A FIVE-YEAR-OLD CHILD WHO JOSE
12 MENENDEZ IS STANDING IN FRONT OF, AND HE HITS HIM IN THE
13 CHEST OR THE STOMACH AREA. DID THE CHILD FALL DOWN?
14 DID THE CHILD DOUBLE OVER? DID THE CHILD VOMIT? WHAT
15 HAPPENED? HE SAID LYLE MENENDEZ JUST STOOD THERE AND HE
16 JUST TOOK IT.

17 WELL, LADIES AND GENTLEMEN, ALTHOUGH IT

18 MIGHT HAVE BEEN A WRONGFUL BLOW, ALTHOUGH IT MIGHT BE
19 WRONG FOR A PARENT TO STRIKE A CHILD IN THAT WAY,
20 CLEARLY, JOSE MENENDEZ WAS NOT INTENDING TO REALLY HURT
21 THE CHILD, BECAUSE IF SOMEONE THAT SIZE -- IF JOSE
22 MENENDEZ WERE TO HIT A FIVE-YEAR-OLD CHILD, THAT CHILD
23 WOULD BE FLAT ON THE GROUND.

24 SO CLEARLY, WHILE IT MIGHT HAVE BEEN
25 INAPPROPRIATE, HE WAS NOT INTENDING TO HURT HIM.

26 AND THEN FINALLY CONSIDER WHAT IS THE
27 RELATIVE SIGNIFICANCE OF THAT EVENT IN THE OVERALL
28 SCHEME OF THINGS.

-10775

1 YOU ARE HERE TO DECIDE WHETHER THESE
2 DEFENDANTS SHOULD RECEIVE THE DEATH PENALTY FOR WHAT
3 THEY DID TO THEIR PARENTS ON AUGUST THE 20TH OF 1989,
4 AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT WHILE IT
5 MAY NOT BE NICE TO STRIKE A CHILD THAT WAY, THAT DOES
6 NOT IN ANY WAY WARRANT THE IMPOSITION OF LIFE WITHOUT
7 POSSIBILITY OF PAROLE, BASED UPON A SINGLE INCIDENT SUCH
8 AS THAT.

9 WE TURN TO CHRIS SEMROD. AND CHRIS SEMROD
10 WAS A PERSON WHO, I THINK, AGAIN, HELPED THE PROSECUTION
11 MORE THAN HE INTENDED TO, BECAUSE HE OBVIOUSLY CAME IN
12 HERE INTENDING TO HELP THE DEFENDANT, AND TOLD US ABOUT
13 ERIK MENENDEZ AT THE AGE OF 14 OR 15. AND WHAT HE SAID

14 IN HIS TESTIMONY WERE THINGS THAT HAD A TENDENCY TO
15 REFUTE SEVERAL OF THE WITNESSES WHO TESTIFIED IN THIS
16 CASE.

17 HE DESCRIBED, AS I PREVIOUSLY INDICATED,
18 ERIK MENENDEZ AS SOMEONE WHO WAS -- SOMEONE WHO WAS VERY
19 ACTIVE, WHO SEEMED TO HAVE -- WHO WAS A CLASS CLOWN, WHO
20 KEPT PEOPLE LAUGHING, AND WHO APPEARED TO BE SOMEWHAT,
21 TO HIM, WELL-ADJUSTED.

22 IN FACT, WHAT HE SAID -- YOU MAY RECALL THE
23 SPECIFIC QUOTE THAT HE SAID, WHICH I HAVE NOTED HERE:

24 "ASIDE FROM TENNIS," HE SAID, "I WOULD SAY THAT HE,"
25 ERIK MENENDEZ, "WAS A NORMAL KID."

26 THAT WAS SAID BY CHRIS SEMROD IN DESCRIBING
27 HOW ERIK MENENDEZ APPEARED TO HIM IN THE WAY THAT HE
28 RELATED TO OTHER PEOPLE.

-10774

1 AND SO AS MUCH AS THEY WANT TO PORTRAY ERIK
2 MENENDEZ IN THIS CASE AS SOMEONE WHO HAD A VERY ISOLATED
3 EXISTENCE OR DEPRIVED CHILDHOOD IN SOME WAY, IN THE
4 SENSE THAT HE WAS KEPT FROM FRIENDS, IT DIDN'T APPEAR TO
5 BE THAT WAY AT ALL, LADIES AND GENTLEMEN. HERE WAS A
6 PERSON WHO SPENT TIME WITH HIM AND WHO KNOWS BETTER.

7 WHAT ELSE DID CHRIS SEMROD HAVE TO SAY?

8 WELL, HE SPOKE ABOUT HOW THERE WAS A
9 PORNOGRAPHIC VIDEO THAT WAS LEFT SOMEWHERE IN THE HOUSE,

10 AND HE HAD ACCESS TO THAT PORNOGRAPHIC VIDEO. AND I
11 DON'T KNOW WHAT THEY'RE ATTEMPTING TO PROVE BY THIS.
12 JOSE MENENDEZ WAS IN THE VIDEO BUSINESS, SO WHO KNOWS
13 WHY HE HAD THAT VIDEO THERE?

14 AND THE IMPORTANT THING IS THAT THIS
15 WITNESS RECOGNIZED THAT HE DIDN'T HAVE PERMISSION TO
16 WATCH THAT VIDEO. IT WASN'T AS IF THESE TAPES WERE LEFT
17 AROUND FOR THE SONS TO WATCH. BECAUSE WHAT DID HE DO?
18 DID HE FEEL COMFORTABLE WATCHING IT IN THE HOME? NO.
19 HE SAYS HE TOOK THAT VIDEO AND TOOK IT HOME TO WATCH IT.
20 HE DIDN'T WANT TO ADMIT IT, BUT IT CAME OUT IN SO MANY
21 WORDS, THAT HE DIDN'T FEEL HE HAD A RIGHT, OR WAS FREE
22 TO WATCH IT IN THE MENENDEZ HOME.

23 SO IT'S NOT AS IF THESE TAPES WERE BEING
24 LEFT AROUND WITH THE INTENTION OF THE PARENTS THAT THESE
25 DEFENDANTS WATCH THESE TAPES. THERE IS NO EVIDENCE OF
26 THAT. IN FACT, THIS WITNESS SAID THAT HE DOESN'T KNOW
27 HOW LONG THAT TAPE WAS THERE, OR WHETHER THERE WERE ANY
28 OTHER VIDEOTAPES.

-10773

1 SO ONCE AGAIN, THIS IS NOT MITIGATING
2 EVIDENCE.

3 BUT HE DID TAKE THE TIME AND THE TROUBLE TO
4 CALL KITTY MENENDEZ A NAG. YOU MAY RECALL THAT.
5 APPARENTLY HE DIDN'T CARE TOO MUCH FOR KITTY MENENDEZ.

6 AND I ASKED HIM: "WHY WAS SHE A NAG? WHAT
7 WAS IT ABOUT KITTY MENENDEZ THAT IN YOUR MIND MADE HER A
8 NAG?"

9 AND HE SAID: "WELL, IT WAS JUST THAT EVERY
10 TIME WE GOT TOGETHER, I WOULD HEAR HIS MOTHER NAG HIM."

11 AND I SAID: "ABOUT WHAT? WAS WHAT IT?"

12 AND DO YOU REMEMBER THE TWO THINGS THAT HE
13 CAME UP WITH? WELL, HIS HOMEWORK, AND WHETHER HE PICKED
14 UP HIS TENNIS GEAR.

15 SO IS THAT IT? ERIK MENENDEZ' FULL
16 RESPONSIBILITIES IN LIFE: NUMBER ONE, DO YOUR OWN
17 HOMEWORK; AND NUMBER TWO, PICK UP YOUR TENNIS GEAR. AND
18 THAT'S SOMETHING THAT HE CAN'T EVEN GET DONE; THAT
19 REQUIRES HIS MOTHER TIME AND TIME AGAIN TO TELL HIM:
20 "DO YOUR HOMEWORK. DO YOUR HOMEWORK. PICK UP YOUR
21 TENNIS GEAR." THAT'S IT. NOT ASKING VERY MUCH OF
22 SOMEONE TO DO THEIR OWN HOMEWORK OR PICK UP THEIR TENNIS
23 GEAR.

24 AND YOU KNOW, HERE WE HAVE A DIFFERENT
25 PICTURE OF KITTY MENENDEZ. BECAUSE WEREN'T THEY TRYING
26 TO TELL US THAT KITTY MENENDEZ WAS THE PERSON WHO DID
27 ALL OF ERIK MENENDEZ' HOMEWORK? AND YET, HERE WE HAVE
28 THIS WITNESS TELLING US THAT THE ONE THING THAT KITTY

2 IN FACT, YOU MIGHT EVEN WONDER WHETHER HE
3 WAS EXAGGERATING, BECAUSE HE MADE IT SOUND LIKE EVERY
4 SINGLE TIME HE WAS TOGETHER WITH ERIK MENENDEZ, AND
5 EVERY SINGLE TIME THEY GOT TOGETHER IN THE CAR WITH THE
6 MOTHER, ON EVERY SINGLE OCCASION THE MOTHER WOULD SAY:
7 "HAVE YOU DONE YOUR HOMEWORK? HAVE YOU DONE YOUR
8 HOMEWORK?"

9 LADIES AND GENTLEMEN, IF KITTY MENENDEZ WAS
10 DOING HIS HOMEWORK, AFTER NAGGING HIM ALL THE TIME TO DO
11 HIS OWN HOMEWORK, I SUBMIT TO YOU SHE DID IT FOR ONE
12 REASON, AND FOR ONE REASON ONLY. AND THAT IS BECAUSE
13 ERIK MENENDEZ WOULDN'T BOTHER TO DO HIS OWN HOMEWORK.

14 AND AGAIN, IS SHE A BAD MOTHER FOR THIS?
15 SHE SHOULD BE SHOT BECAUSE SHE HELPED HER SON DO HIS
16 HOMEWORK WHEN HE WOULDN'T DO HIS OWN HOMEWORK?

17 HE DESCRIBED ERIK MENENDEZ AS ESSENTIALLY A
18 NORMAL KID. THOSE WERE THE WORDS OUT OF HIS MOUTH.

19 OF COURSE, ON REDIRECT LESLIE ABRAMSON
20 QUESTIONED HIM, AND PRESSED HIM, AND SAID DON'T YOU
21 RECALL THIS, AND DON'T YOU RECALL THAT.

22 AND IN RESPONSE TO LESLIE ABRAMSON, HE SAID
23 YES, HE WAS THIS AND HE WAS THAT.

24 AND SHE KEPT SUGGESTING THINGS TO HIM, AND
25 HE KEPT SAYING YES, YES.

26 BUT WHEN HE WAS LEFT TO HIS OWN WORDS, WHEN
27 HE WAS LEFT TO HIS OWN EXPLANATION, WHAT DID HE SAY?
28 ERIK MENENDEZ WAS A NORMAL KID.

1 LESLIE ABRAMSON SAID TO HIM: "ARE YOU
2 SAYING THAT RUNNING DOWN THE HALLS AND SMOKING IS MATURE
3 BEHAVIOR?"

4 AND HE SAID IT WAS TYPICAL, WHICH IS
5 APPROPRIATE. THESE WERE YOUNG, 14-YEAR-OLD KIDS. WHAT
6 IS SO WRONG WITH THAT?

7 AND THEN HE SAID YES, HE HEARD KITTY
8 MENENDEZ YELL AT ERIK MENENDEZ. BUT HE SAID IT WAS
9 NOTHING OUT OF THE NORM. THOSE WERE HIS WORDS THAT HE
10 PREVIOUSLY TESTIFIED TO AND ADMITTED HERE.

11 SO AGAIN, THE EFFORTS TO PORTRAY THE FAMILY
12 AS HIGHLY UNUSUAL SIMPLY WERE NOT ACHIEVED WITH THE
13 TESTIMONY OF CHRIS SEMROD.

14 STEVE MOSNER, YOU WILL RECALL, WAS ANOTHER
15 COACH. THIS WAS A SOCCER COACH WHO COACHED LYLE
16 MENENDEZ, AND I GUESS HE WAS CALLED TO CRITICIZE JOSE
17 MENENDEZ AS BEING THE OVERLY-INVOLVED PARENT, AND I
18 GUESS NOW JOSE MENENDEZ IS SUBJECT TO CRITICISM BECAUSE
19 HE RAN UP AND DOWN THE SIDELINES TELLING HIS SON: "GET
20 THE BALL, GET THE BALL."

21 OBVIOUSLY HE WANTED HIS SON TO DO WELL.
22 OBVIOUSLY HE WANTED HIS SON TO ACHIEVE SUCCESS IN THIS
23 SPORT, AS WELL AS OTHERS.

24 HE CRITICIZED THAT BY SAYING: "WELL,
25 SOCCER IS A TEAM GAME, AND IN A TEAM GAME, YOU SHOULD
26 HAVE THAT. SOMETIMES IT'S BETTER TO GO WITH A TEAM

27 STRATEGY RATHER THAN TO FOCUS ON ONE INDIVIDUAL AND MAKE
28 HIM THE STAR."

-10770

1 WELL, OBVIOUSLY, JOSE MENENDEZ DIDN'T CARE
2 TOO MUCH FOR THE TEAM. HE WANTED HIS SON TO BE THE
3 STAR. AND IS HE TO BE FAULTED OR HATED FOR THAT?

4 ONCE AGAIN, I SPOKE TO YOU ABOUT THE
5 INVOLVEMENT WITH HIS SONS, AND I THINK THE TESTIMONY OF
6 STEVE MOSNER REALLY UNDERSCORED THAT INVOLVEMENT,
7 BECAUSE STEVE MOSNER SPOKE ABOUT HOW JOSE MENENDEZ WOULD
8 ATTEND MORE PRACTICES THAN ANY OTHER PARENT. HE WAS
9 MORE ACTIVELY INVOLVED IN THE GAME THAN ANY OTHER
10 PARENT. HE STAYED LONGER DURING PRACTICE THAN ANY OTHER
11 PARENT.

12 SO ONCE AGAIN, YOU SEE TIME AND AGAIN THE
13 ACTIVE INVOLVEMENT, THE CONCERN OF JOSE MENENDEZ FOR HIS
14 SONS.

15 IN FACT, HE EVEN DID SOMETHING ELSE THAT
16 STOOD OUT IN MR. MOSNER'S MIND, SOMETHING THAT WAS VERY
17 UNUSUAL; THAT EVEN DURING THE BREAKS JOSE MENENDEZ WOULD
18 GO TO HIS SON WITH A TOWEL, AND HE WOULD WIPE THE SWEAT
19 OFF HIM, AND HE WOULD PUT ON HIS SWEATS TO KEEP HIM
20 WARM. THEY WERE ONLY BREAKING FOR A FEW MINUTES.

21 HOW MANY OTHER PARENTS DID THAT? HOW MANY
22 OTHER PARENTS TOOK THE TIME AND THE TROUBLE AND THE

23 INTEREST IN THEIR CHILDREN TO SHOW THAT TYPE OF
24 AFFECTION AND CONCERN FOR THEM? HE DOESN'T RECALL
25 ANYONE ELSE DOING THAT.
26 JOSE MENENDEZ WAS UNIQUE AND SPECIAL IN
27 THAT WAY, WHICH REFLECTS THE LOVE THAT HE HAD FOR HIS
28 SON.

-10769

1 AND YET, LIKE SO MANY WITNESSES, HE WANTS
2 TO GIVE THAT A NEGATIVE SPIN. HE WANTS TO COME IN HERE
3 AND SAY THAT THAT IS SOMETHING NEGATIVE, SO HE USES
4 WORDS LIKE "HE TREATED HIM LIKE A RACEHORSE," OR "HE
5 TREATED HIM LIKE A PIECE OF PROPERTY."

6 LADIES AND GENTLEMEN, HE HAS NO EVIDENCE TO
7 SUPPORT THAT. WHAT HE OBSERVED, HE TOLD YOU. AND THE
8 REST IS JUST A VALUE JUDGMENT ON HIS PART, WHICH IS NOT
9 SUPPORTED BY THE EVIDENCE. ALL HE CAN TELL YOU IS THAT
10 JOSE MENENDEZ APPEARED TO CARE FOR HIS SONS, AND TOOK
11 GOOD CARE OF HIS SONS, AND THERE IS NO REASON WHY WE
12 SHOULD DRAW NEGATIVE INFERENCES FROM THAT, REGARDLESS OF
13 THE MOTIVATION OF THIS PARTICULAR WITNESS TO TRY TO SEEK
14 YOU TO DRAW NEGATIVE CONCLUSIONS FROM THAT.

15 MARTHA CANO IS A PERSON WHO OBVIOUSLY KNOWS
16 A LOT ABOUT JOSE MENENDEZ, BECAUSE SHE IS HIS SISTER.

17 BUT MARTHA CANO, BEAR IN MIND, DOES NOT
18 HAVE THE KIND OF CONTACT THAT TERRY BARALT HAS, BECAUSE

19 MARTHA CANO LIVED IN FLORIDA, AND SHE SIMPLY DOESN'T
20 HAVE THE THE EXTENSIVE CONTACT WITH THE FAMILY OVER THE
21 YEARS LIKE TERRY BARALT HAD.

22 AND MARTHA CANO COMES IN HERE AND TELLS YOU
23 THAT THE KISS TO THE CHEEK IS JUST A SALUTE, AND YOU
24 SHOULD DISREGARD IT.

25 THERE IS NO BASIS TO DO THAT. BUT SHE SAYS
26 GOOD THINGS ABOUT JOSE MENENDEZ, NOT THAT SHE WANTS TO,
27 AND I THINK IT'S VERY CLEAR THAT SHE ALSO HAD AN AGENDA,
28 JUST LIKE TERRY BARALT HAS AN AGENDA.

-10768

1 YET SHE ADMITS THAT SHE LOVED JOSE
2 MENENDEZ, AND ADMITS THAT HE WAS VERY GOOD TO HER. SHE
3 SAID HE WAS SELF-DISCIPLINED AND SHE LOVED HIM FOR HIS
4 ACHIEVEMENTS, HIS INTELLIGENCE, HIS WIT, AND HIS
5 CONTROL, AND SAID THAT SHE LOOKED UP TO HIM ALL THE
6 TIME, AND SO DID OTHERS.

7 SHE SAID THAT SHE LOVED KITTY MENENDEZ, AND
8 SHE SAID THAT KITTY MENENDEZ WAS GOOD. NOT ONLY TO
9 MARTHA CANO, BUT ALSO TO MARTHA CANO'S DAUGHTERS.

10 SO ONCE AGAIN, IN BETWEEN THE CONDEMNATION,
11 WHICH ARE IN LARGE PART UNWARRANTED, WHAT WE SEE IS THE
12 PRAISE OF THE FAMILY IN BETWEEN THE LINES, THE PRAISE
13 FOR KITTY AND JOSE MENENDEZ.

14 AND SHE ADMITS, AS SHE MUST ADMIT, THAT

15 KITTY AND JOSE MENENDEZ LOVED THEIR SONS. SHE SAW THEM
16 INTERACT OVER THE YEARS, AND SHE CONCEDED THAT. BUT SHE
17 OVERSTATES HER CASE AT TIMES. SHE OVERSTATES HER
18 CRITICISM OF JOSE MENENDEZ WHEN SHE SAYS, FOR EXAMPLE,
19 JOSE MENENDEZ WAS VERBALLY ABUSIVE WITH EVERYONE.

20 WELL, WE KNOW THAT'S NOT RIGHT. WE KNOW
21 THAT'S WRONG. TERRY BARALT CAME IN HERE AND SAID: "HE
22 NEVER WAS VERBALLY ABUSIVE TO ME. HE MIGHT HAVE BEEN
23 THAT WAY WITH SOME OTHER PEOPLE, BUT NEVER WITH ME."

24 AND WHEN THESE PEOPLE SPOKE ABOUT THEIR
25 DAUGHTERS AND HOW JOSE MENENDEZ WAS WITH THEIR
26 DAUGHTERS, IT WAS ALWAYS VERY FLOWING AND WITH VERY
27 LOVING PHRASES ABOUT HOW HE TREATED THEM SO KINDLY AND
28 NICELY AT ALL TIMES.

-10767

1 SO CLEARLY, MARTHA CANO WAS OVERSTATING HER
2 CASE WHEN SHE SAYS HE WAS VERBALLY ABUSIVE WITH
3 EVERYONE.

4 THEY WANT YOU TO BELIEVE -- MARTHA CANO
5 WANTS YOU TO BELIEVE THAT KITTY MENENDEZ WAS NEGLECTFUL,
6 NEGLECTFUL FOR HER LEAVING ERIK MENENDEZ HOME WITH A
7 FEVER OF A HUNDRED THREE WHILE SHE WENT SHOPPING.

8 LADIES AND GENTLEMEN, IF THERE WAS REALLY A
9 PROBLEM, IF THE CHILD WAS REALLY SICK, IF HE WAS REALLY
10 THAT SICK AND THERE WAS CONCERN ABOUT HIS WELFARE, WHY

11 DIDN'T THIS WITNESS STAY HOME? THIS WITNESS
12 MISCHARACTERIZED INCIDENTS. AND I WILL BE GETTING INTO
13 THE MALL INCIDENTS, WHICH SHE GROSSLY MISCHARACTERIZED,
14 SIMPLY TO PORTRAY KITTY MENENDEZ IN A NEGATIVE LIGHT.
15 SHE SAID, FOR EXAMPLE, CONCERNING THE MALL,
16 JUST IN EXACTLY THE SAME WAY AS MIRROR TESTIMONY TO
17 TERRY BARALT; SHE, TOO, EXAGGERATED THE NATURE OF THE
18 INCIDENTS AT THE MALL, HOW OFTEN THEY OCCURRED, AND WHAT
19 THEY CONSISTED OF. SHE MADE IT SOUND LIKE EVERY TIME
20 SHE WENT TO THE MALL, THE DEFENDANTS WOULD GET LOST.
21 KITTY MENENDEZ WOULD HAVE TO BE PAGED, AND SHE WOULD
22 HAVE TO GO AND GET HER SONS, BUT SOMETIMES WOULD
23 CONTINUE WITH HER SHOPPING RATHER THAN GO GET HER SONS.
24 SHE SAID THAT THEY GOT LOST EVERY TIME THEY
25 WENT OUT. BUT THEN WHEN YOU PIN HER DOWN, WHAT DID SHE
26 SAY? "WELL, ACTUALLY, I REMEMBER KITTY MENENDEZ WAS
27 ONLY PAGED TWICE."
28 AND THEN SHE SAID, "WELL -- AND THAT'S ONLY

-10766

1 BECAUSE ON ALL OF THE OTHER OCCASIONS THEY WERE NOT LOST
2 FOR A LONG PERIOD OF TIME."
3 WELL, IN MUCH THE SAME WAY THAT WE STARTED
4 WITH TERRY BARALT, AND WE GOT TO THIS BROAD ALLEGATION
5 ABOUT THIS HAPPENING ALL THE TIME, AND THEN WE PINNED IT
6 DOWN TO JUST ONE INCIDENT.

7 THE SAME IS TRUE WITH MARTHA CANO. WE
8 STARTED OUT WITH BROAD ALLEGATIONS, AND WE EXPLORED THEM
9 FOR A FEW MINUTES, AND WE FIND OUT OH, GUESS WHAT? THIS
10 ONLY HAPPENED A COUPLE OF TIMES.

11 AGAIN, EXAGGERATIONS MADE ON BEHALF OF THE
12 DEFENDANTS.

13 AND WHY DIDN'T MARTHA GO AND PICK UP HER
14 SONS, IF INDEED THE SONS HAD BEEN FOUND, PICKED UP BY
15 SECURITY AND THE PAGE, "COME AND GET YOUR SONS, ERIK AND
16 LYLE"?

17 IF SHE WAS SO CONCERNED ABOUT ERIK AND LYLE
18 MENENDEZ, WHY DIDN'T SHE JUST SAY: "KITTY, I AM GOING
19 TO GO AND PICK UP THE BOYS. SEE YOU LATER"?

20 AND SHE OFFERED -- SHE APPARENTLY DIDN'T
21 EXPECT THE QUESTION, AND SHE OFFERED A SERIES OF FLIMSY
22 ANSWERS TO THAT. YOU CAN TELL SHE'S THINKING OFF THE
23 TOP OF HER HEAD AND TRYING TO COME UP WITH EXCUSES AS
24 SHE IS SITTING ON THE WITNESS STAND RIGHT IN FRONT OF
25 US.

26 "WELL, IT'S VERY HARD. THEY'RE NOT GOING
27 TO GIVE ME CHILDREN THAT ARE NOT MINE."

28 WHY WOULDN'T THEY? IF THIS IS THEIR AUNT,

-10765

1 AND SHE SAID, "I AM HERE WITH THEM, GIVE ME THE
2 CHILDREN," WHY WOULDN'T THEY TURN OVER THE CHILDREN TO

3 THE AUNT? SUPPOSE THEY HAD GONE SHOPPING WITH THE AUNT.

4 OBVIOUSLY THEY WOULD TURN OVER THE CHILDREN TO THE AUNT.

5 SO CLEARLY, THAT'S A FLIMSY EXCUSE.

6 THEN SHE SAID, WHEN PRESSED ON THAT ISSUE,

7 SHE SAID: "WELL, I THOUGHT THAT KITTY WAS GOING TO STOP

8 HER SHOPPING AT ANY TIME, THAT'S WHY." THAT'S WHY SHE

9 DIDN'T GO TO KEEP THE DEFENDANTS COMPANY WHILE THEY WERE

10 WAITING.

11 CLEARLY, IF YOU SEE THAT TIME IS PASSING

12 AND YOU ARE TRULY CONCERNED ABOUT THEIR SAFETY, TRULY

13 CONCERNED ABOUT THEIR STATE OF MIND, YOU WOULD LEAVE AND

14 SPEND TIME WITH THEM. SHE DIDN'T DO THAT.

15 AND THEN, ALTHOUGH SHE CLAIMS THAT THE MALL

16 WAS JUST FILLED WITH DANGERS AND SHE WAS EXTREMELY

17 CONCERNED FOR THEIR SAFETY, I SAID: "DID YOU EVER STOP

18 YOUR OWN -- DURING THE TIME PERIOD THAT THEY WERE LOST,

19 DID YOU STOP YOUR OWN SHOPPING AND GO AND LOOK FOR THEM?

20 WHY NOT?"

21 "WELL, I WAS UNCOMFORTABLE. KITTY WOULD

22 RIDICULE ME IF I DID THAT."

23 IF SHE WAS TRULY CONCERNED THAT HER NEPHEWS

24 WERE IN DANGER, SHE IS GOING TO BE CONCERNED ABOUT KITTY

25 RIDICULING HER? OBVIOUSLY NOT.

26 AND THEN WHEN PRESSED ON THAT ISSUE AGAIN,

27 SHE SAID: "WELL, WHERE ARE YOU GOING TO LOOK? THE MALL

28 IS A BIG PLACE."

1 CAN YOU IMAGINE YOUR OWN SONS, YOUR OWN
2 CHILDREN, YOUR OWN NEPHEWS BEING LOST IN A MALL, AND YOU
3 WERE TRULY CONCERNED ABOUT THEIR SAFETY, AND YOU DON'T
4 GO LOOK FOR THEM, BECAUSE THE MALL IS A BIG PLACE AND
5 YOU DON'T KNOW WHERE TO START? THAT'S ABSOLUTELY
6 ABSURD. SHE IS JUST THINKING OFF THE TOP OF HER HEAD.
7 SHE DOESN'T HAVE A GOOD ANSWER TO THESE QUESTIONS, AND
8 YOU SAW HOW SILLY HER ANSWERS WERE.

9 AND SHE SAID: "WELL, ALTHOUGH I DIDN'T GO
10 LOOKING FOR THEM, AT LEAST I STOPPED SHOPPING."

11 I GUESS THAT'S A FORM OF PROTEST TO KITTY
12 MENENDEZ, SHE STOPPED SHOPPING, UNLIKE KITTY MENENDEZ.

13 SO AGAIN, SHE'S TRYING TO DRAW SOME
14 DISTINCTION TO CRITICIZE KITTY MENENDEZ.

15 AND THEN WE GET TO DR. HART.

16 AND DR. HART WE KNOW IS A SELF-PROCLAIMED
17 PSYCHOLOGICAL MALTREATMENT EXPERT. WHAT IS THAT? WHAT
18 IS A PSYCHOLOGICAL MALTREATMENT EXPERT? IS THIS A
19 DIAGNOSIS? CAN YOU FIND THIS IN THE DIAGNOSTIC AND
20 STATISTICAL MANUAL OF MENTAL DISORDERS? NO. WE KNOW
21 THAT. HE SAID IT IS NOT A DIAGNOSTIC CLASSIFICATION.

22 WELL, IF IT IS NOT A DIAGNOSTIC
23 CLASSIFICATION OF A MENTAL DISORDER, THEN WHAT IS IT?
24 THEN IT'S JUST A CLASSIFICATION. IT'S JUST A
25 CLASSIFICATION THAT HE CAME UP WITH. MISTREATMENT. I
26 AM GOING TO CLASSIFY ALL THE CATEGORIES OF MISTREATMENT.

27 WELL, WHO ARE YOU TO CLASSIFY MISTREATMENT?

-10763

1 MISTREATMENT?

2 BECAUSE THE PROBLEM WITH MISTREATMENT, AS I
3 SUGGESTED IN ONE EVERY MY QUESTIONS, IT'S KIND OF LIKE
4 BEAUTY. BEAUTY IS IN THE EYE OF THE BEHOLDER. WHO CAN
5 SAY WHAT IS A GOOD MOVIE AND WHAT IS A BAD MOVIE? WE
6 ALL HAVE OUR OWN INDIVIDUAL OPINIONS. AND MUCH CAN BE
7 SAID ABOUT THE MISTREATMENT.

8 SO WHAT IS EXCESSIVE TENNIS? WHEN DOES
9 TENNIS BECOME EXCESSIVE? WHEN DOES IT BECOME
10 MISTREATMENT? SUPPOSE YOUR SON WANTS TO BE A NATIONAL
11 CHAMPION? SUPPOSE YOUR SON LOVES THE GAME, AND YOU PLAY
12 WITH HIM IN THE MORNING, AND YOU PLAY WITH HIM IN THE
13 AFTERNOON. IS THAT MISTREATMENT? BY WHOSE STANDARD?

14 BY WHAT STANDARD? YOU SEE, THIS IS TOTALLY
15 ARBITRARY. THAT'S TH PROBLEM WITH A SELF-PROCLAIMED
16 EXPERT LIKE THIS PROFESSING TO BE AN EXPERT IN
17 MISTREATMENT. HE IS NO MORE BETTER QUALIFIED TO SAY
18 WHAT IS MISTREATMENT THAN ANY ONE OF YOU.

19 SO DON'T FALL FOR THE WAY THAT THEY DRESS
20 UP ALLEGATIONS OF MISTREATMENT THROUGH AN EXPERT SIMPLY
21 BECAUSE HE HAS A PH.D, AND SO HE KNOWS BETTER THAN US
22 WHAT IS MISTREATMENT, OR HE KNOWS BETTER THAN US WHAT IS
23 LOVE.

24 THAT WAS PART OF HIS TESTIMONY, TOO. HE
25 CAN TELL US THAT JOSE MENENDEZ OR KITTY MENENDEZ DID NOT
26 LOVE THEIR CHILDREN, WHEN THEIR OWN BROTHERS AND SISTERS
27 BELIEVE THAT THEY DID, IN FACT, LOVE THEIR CHILDREN. HE
28 HAS NO RIGHT. HE HAS NO RIGHT, AND NO TRAINING, AND NO

-10762

1 QUALIFICATIONS TO TALK ABOUT LOVE ANY MORE THAN ANYONE
2 IN THIS ROOM.

3 AND WHAT DOES HE RELY UPON? WELL,
4 OBVIOUSLY HE'S RELYING A GREAT DEAL UPON THE TESTIMONY
5 OF ERIK MENENDEZ. BUT THEN HE WAS TOLD -- "WELL, I WAS
6 TOLD BY DEFENSE ATTORNEYS TO EVEN PUT THAT OUT OF MY
7 MIND. JUST RELY UPON OTHERS IN FORMING MY VARIOUS
8 CONCLUSIONS."

9 WELL, IF HE DOES THAT, THEN WHO IS HE
10 RELYING UPON? IS HE RELYING UPON DISGRUNTLED COACHES
11 WHO WERE FIRED BY ERIK MENENDEZ -- WHO WERE FIRED BY
12 JOSE MENENDEZ, AND WHO HAVE AN AXE TO GRIND. IS HE
13 RELYING UPON DISGRUNTLED COACHES WHO WERE INSULTED BY
14 JOSE MENENDEZ, BECAUSE THEY HAD TO PITCH BALLS TO HIM
15 WHILE HE WAS TEACHING HIS SONS HOW TO PLAY TENNIS, AND
16 WHO WERE STILL SMARTING FROM THIS DAMAGE TO THEIR EGOS
17 YEARS AFTER THE INCIDENT?

18 IS HE RELYING UPON TEACHERS WHO FELT
19 INTIMIDATED BECAUSE KITTY AND JOSE MENENDEZ WOULD

20 SQUEEZE THEM A LITTLE BIT TO GET BETTER GRADES FOR THEIR
21 SONS?
22 WELL, IF YOU CONNECT THE EXPERT WITH ALL
23 THE NECESSARY WITNESSES WHO HAVE AXES TO GRIND AND WHO
24 DIDN'T CARE TOO MUCH FOR JOSE MENENDEZ, THEN GUESS WHAT
25 YOU'RE GOING TO GET? YOU'RE GOING TO GET A PRETTY
26 NEGATIVE EXPERT OPINION ABOUT JOSE MENENDEZ.
27 IS HE RELYING UPON TROUBLED COUSINS WHO
28 WERE SENT TO THE MENENDEZ HOME LIKE IT WAS SOME KIND OF

-10761

1 A HALFWAY HOUSE? IS HE RELYING UPON COUSINS WHO
2 RECEIVED USED CARS OR THOUSANDS OF DOLLARS FROM THE
3 DEFENDANTS, AND WHO NOW FEEL INDEBTED TO THEM? AND IS
4 HE RELYING UPON AUNTS OF THE DEFENDANTS WHO ADMIT THAT
5 THEY HAVE AN AGENDA IN THIS COURTROOM?
6 SO I SUBMIT TO YOU, LADIES AND GENTLEMEN,
7 JUNK IN AND JUNK OUT. IF YOU PUT BIASED TESTIMONY -- IF
8 YOU FEED BIASED TESTIMONY TO A WITNESS, AN EXPERT
9 WITNESS, WHAT YOU'RE GOING TO GET OUT IS A BIASED
10 OPINION.
11 BUT YOU KNOW, IF HE WAS TRULY AND FAIRLY
12 RELYING UPON THE TESTIMONY OF THESE BIASED WITNESSES, HE
13 COULDN'T BE CRITICIZED AS MUCH AS HE REALLY SHOULD BE
14 CRITICIZED, BECAUSE EVEN APART FROM THE BIASED
15 WITNESSES, I THINK IT'S VERY CLEAR THAT DR. HART IS NOT

16 A NEUTRAL WITNESS. HE IS A PERSON WHO WAS CONSULTED,
17 OBVIOUSLY, FOR THE PURPOSE OF FINDING PSYCHOLOGICAL
18 ABUSE. THAT IS HIS EXPERTISE. HE IS PAID \$24,000, AND
19 WHAT DO YOU THINK HE'S GOING TO COME UP WITH? HE'S
20 GOING TO COME UP WITH PSYCHOLOGICAL ABUSE.
21 AND HIS LACK OF OBJECTIVITY WAS
22 DEMONSTRATED IN SOME OF THE OPINIONS THAT HE HELD. LOOK
23 HOW FAR HE WENT TO FIND ABUSE IN EVERY SINGLE CATEGORY
24 OF PSYCHOLOGICAL MALTREATMENT. AND IN SOME OF THE
25 INSTANCES IT WAS JUST AMAZING THE WAY HE WOULD JUST
26 STRETCH IT, AND DISTORT FACTS, TO COME UP WITH
27 PSYCHOLOGICAL MALTREATMENT.
28 TAKE, FOR EXAMPLE, THE CATEGORY OF

-10760

1 EDUCATIONAL ASSISTANCE. IT IS HIS OPINION THAT THE
2 DEFENDANTS NOT ONLY RECEIVED INADEQUATE EDUCATIONAL
3 ASSISTANCE; THAT IS, ERIK MENENDEZ, BUT THAT ERIK
4 MENENDEZ WAS ACTUALLY PSYCHOLOGICALLY MALTREATED, NO
5 LESS. PSYCHOLOGICALLY MALTREATED BY THE LACK OF
6 EDUCATIONAL ASSISTANCE THAT HE RECEIVED.
7 I MEAN, STOP AND THINK ABOUT THIS FOR A
8 SECOND. ERIK MENENDEZ WENT TO EXCLUSIVE, PRIVATE
9 SCHOOLS. WE KNOW THAT. WE KNOW THAT P.D.S. WAS ONE OF
10 THE BEST SCHOOLS, SOME OF THE WITNESSES SAID, IN THE
11 AREA.

12 HE WAS TAKEN FOR EVALUATION TO THE LEWIS
13 SCHOOL FOR TREATMENT AND EVALUATION WHEN PROBLEMS WERE
14 DETECTED CONCERNING HIS LEARNING ABILITIES.

15 HE RECEIVED PRIVATE TUTORIAL LESSONS FROM
16 NORMAN PULS.

17 KITTY MENENDEZ ASSISTED HIM WITH HIS
18 HOMEWORK; AND ACCORDING TO SOME PEOPLE, DID ALL OF HIS
19 HOMEWORK. KITTY MENENDEZ WOULD EVEN TRY TO GET
20 EXAMINATION ANSWERS, SUPPOSEDLY, TO ASSIST HIM IN HIS
21 SUCCESS IN SCHOOL. SHE LATER IN LIFE FILLED OUT COLLEGE
22 APPLICATIONS AND WROTE HIS ESSAYS, ALL DESIGNED TO HELP
23 HIM, ALL DESIGNED TO GET HIM INTO SCHOOL, AND TO GET HIM
24 THROUGH SCHOOL, AND TO GET HIM GOOD GRADES.

25 AND IN THE END, WHAT BECAME OF ALL OF THOSE
26 EFFORTS ON HER PART? ERIK MENENDEZ GOT INTO U.C.L.A.
27 AND WAS ACCEPTED INTO BERKELEY.

28 AND DESPITE ALL OF THAT, DR. HART COMES IN

-10759

1 HERE AND TELLS US THAT HE WAS PSYCHOLOGICALLY MALTREATED
2 BY THE LACK OF EDUCATIONAL ASSISTANCE FROM HIS PARENTS?

3 WHAT A GROSS MISSTATEMENT AND DISTORTION OF
4 THE FACTS.

5 THE ISOLATION CATEGORY IS ANOTHER CATEGORY
6 WHERE HE GOES WAY OUT OF HIS WAY TO TRY AND FIND
7 ISOLATION, BECAUSE THAT IS ONE OF HIS SIX CATEGORIES

8 THAT HE HAS COME UP WITH IN THE PAST, AND HE DOESN'T
9 WANT TO SHOW THAT ERIK MENENDEZ DOESN'T FIT INTO ONE OF
10 THESE CATEGORIES. SO HE WILL STRETCH AND SQUEEZE THOSE
11 FACTS, HOWEVER HE CAN, TO PUT ERIK MENENDEZ INTO THOSE
12 CATEGORIES.

13 WHAT WE NOW KNOW, AS I PREVIOUSLY
14 DISCUSSED, IS ERIK MENENDEZ WAS NOT ISOLATED AT ALL. HE
15 WAS FREE TO COME AND GO AS HE PLEASED IN HIS TEENAGE
16 YEARS IN CALIFORNIA. CRAIG CIGNARELLI KNOWS THAT, HE
17 TESTIFIED TO THAT, AND WE HEARD THAT FROM KIRSTEN SMITH
18 AS WELL.

19 ACTUALLY, WHAT HE'S TRYING DO IS JUST
20 DISTORT THE NATURE OF THE FAMILY ROLE TO SUPPORT THE
21 THEORY OF THE DEFENSE.

22 I ASKED HIM, FOR EXAMPLE, ABOUT THE
23 TROPHIES ON THE WALL, BECAUSE HE WAS OF THE OPINION THAT
24 YOU HAVE TO GIVE A CHILD WORK THAT THEY CAN BE
25 PRODUCTIVE WITH, SUCCESSFUL WITH, THAT WILL INCREASE
26 THEIR SELF-ESTEEM AND INCREASE THEIR SENSE OF
27 CONFIDENCE.

28 AND IT'S AMAZING WHEN YOU LOOK AT THE

-10758

1 PHOTOGRAPH OF THE DEN WITH ALL OF THOSE TROPHIES ON THE
2 WALL. YOU CAN SEE IN THE DEN THERE MUST BE 50 TROPHIES
3 UP THERE. OF COURSE, TYPICAL OF DR. HART, HE WILL

4 UNDERESTIMATE THE NUMBER. HE TAKES A LOOK AT THE
5 PHOTOGRAPH AND HE SAYS: "WELL, IT LOOKS LIKE 30 TO ME."
6 BUT HE DOESN'T CARE ABOUT THOSE TROPHIES,
7 AND HE DOESN'T CARE ABOUT WHAT THAT ACHIEVEMENT DID FOR
8 THE SELF-ESTEEM OF ERIK MENENDEZ. IT MUST BE FANTASTIC,
9 IF YOU CAN IMAGINE, TO TRAVEL AROUND THE COUNTRY AND WIN
10 TOURNAMENTS AT DIFFERENT PLACES IN THE COUNTRY, TO HAVE
11 THE CONFIDENCE AND ABILITY TO ACHIEVE THAT. WHAT A
12 GREAT ACHIEVEMENT, TO BE THAT AGE, TO BE A YOUNG
13 TEENAGER, TO HAVE TROPHIES DISPLAYED IN YOUR DEN, TO
14 HAVE YOUR FATHER DISPLAYING ALL THOSE TROPHIES, AND TO
15 KNOW THE PRIDE THAT GOES INTO THAT, AND THAT THE FAMILY
16 DISPLAYS IN THAT.
17 ISN'T THAT WHAT HE IS HERE TO TESTIFY TO,
18 ERIK MENENDEZ' SELF-ESTEEM? WHEN I PINNED HIM DOWN:
19 "DO YOU KNOW HOW MANY OF THOSE
20 TROPHIES BELONG TO ERIK MENENDEZ?
21 "NO.
22 "DID YOU EVER TRY TO FIND OUT?
23 "NO.
24 "DO YOU KNOW WHAT SPORTS THEY'RE
25 FOR?
26 "NO.
27 "DO YOU KNOW HOW MANY TOURNAMENTS
28 THEY'RE FROM?

1 "NO.

2 "DO YOU KNOW HOW MANY TIMES HE CAME
3 IN FROM ANOTHER STATE, FLYING IN WITH A
4 TROPHY IN HAND?

5 "NO."

6 IT DOESN'T SUPPORT HIS THEORY OF THE CASE.

7 HE IS HERE TO SUPPORT LACK OF SELF-ESTEEM. HE IS NOT
8 FAIRLY AND OBJECTIVELY LOOKING AT THE EVIDENCE IN THIS
9 CASE. WHAT THIS EVIDENCE SHOULD SHOW IS THAT THERE WAS
10 MORE THAN SUFFICIENT REASON FOR ERIK MENENDEZ AND LYLE
11 MENENDEZ TO HAVE SUFFICIENT SELF-ESTEEM AND SUFFICIENT
12 CONFIDENCE TO BE ABLE TO FUNCTION WELL.

13 AND THEY DID FUNCTION WELL; WELL ENOUGH TO
14 DO ALL OF THE THINGS THEY DID, INCLUDING GO SHOPPING FOR
15 SHOTGUNS TO KILL THEIR PARENTS. WHO ELSE WOULD HAVE THE
16 SELF-CONFIDENCE TO PULL OFF SOMETHING LIKE THAT?

17 AND THEN HE WOULD HAVE US BELIEVE THAT, IN
18 ONE OF HIS GROSS GENERALIZATIONS -- ONE OF HIS GROSS
19 OVERSTATEMENTS IN SUPPORT OF HIS THEORIES -- HE SAID
20 THAT KITTY AND JOSE MENENDEZ WERE IN TOTAL CONTROL OVER
21 THEIR SONS' LIVES.

22 HOW COULD THEY POSSIBLY BE IN TOTAL CONTROL
23 OVER THEIR SONS' LIVES, WHEN WE KNOW THAT THEY CAN'T
24 EVEN STOP LYLE MENENDEZ FROM DATING CERTAIN WOMEN WHO
25 THEY ABSOLUTELY WANTED HIM TO HAVE NOTHING TO DO WITH?
26 THEY DON'T EVEN TOUCH HIM. THEY DON'T INTERFERE WITH
27 IT. HE DID WHAT HE WANTED.

28 THEY COULDN'T CONTROL HIS SPENDING. IT WAS

1 OUT OF HAND. WE KNOW IT WAS OUT OF HAND FROM CARLOS
2 BARALT IN THE GUILT PHASE, WHEN HE TOLD US HOW HE KNEW
3 THAT THE SPENDING WAS OUT OF HAND, AND JOSE MENENDEZ
4 SPOKE TO HIM ABOUT THAT. THEY COULDN'T STOP HIM. THEY
5 COULDN'T STOP LYLE MENENDEZ.

6 THEY COULDN'T STOP LYLE MENENDEZ FROM
7 SCREWING UP SO BADLY AT PRINCETON WITH HIS ACADEMIC
8 PROBLEMS AND HIS DISCIPLINARY PROBLEMS.

9 THESE DEFENDANTS WERE OUT OF CONTROL. THEY
10 COULDN'T STOP THE DEFENDANTS FROM PURCHASING WEAPONS AND
11 AMMUNITION TO KILL THEM, ANYMORE THAN THEY COULD STOP
12 THE DEFENDANTS FROM COMMITTING RESIDENTIAL BURGLARIES.

13 LADIES AND GENTLEMEN, JUST AS THE
14 DEFENDANTS WERE, FROM A VERY YOUNG AGE, WILD, NOISY AND
15 RAMBUNCTIOUS YOUNG CHILDREN -- WHICH WE KNOW FROM FAITH
16 GOLDSMITH -- THEY GREW UP TO BE EXACTLY THE SAME WAY,
17 OUT OF CONTROL. THE FAMILY DID NOT SET LIMITS. KITTY
18 AND JOSE MENENDEZ NEVER SET ACCEPTABLE LIMITS ON THESE
19 TWO DEFENDANTS. JUST AS FREELY AS THEY RAN IN THROUGH
20 FAMILY GATHERINGS UNDISCIPLINED, UNCONTROLLED, THEY RAN
21 TO SAN DIEGO, PURCHASED SHOTGUNS, AND THEY WERE
22 COMMITTING RESIDENTIAL BURGLARIES. THEY WERE OUT OF
23 CONTROL.

24 AND WE SEE THAT IN THE TESTIMONY --

25 MS. ABRAMSON: OBJECTION, YOUR HONOR.

26 THE COURT: THE LEGAL BASIS OF YOUR OBJECTION?

27 MS. ABRAMSON: THAT EVIDENCE WAS LIMITED FOR A

28 SPECIFIC PURPOSE IN THE GUILT PHASE, AND HAS NO

-10755

1 RELEVANCE TO THIS AT ALL.

2 THE COURT: OVERRULED.

3 MR. CONN: AND WE KNOW FROM THE DECEMBER 11 TAPE

4 HOW JOSE MENENDEZ FELT WHEN HE SAW THAT HIS SONS WERE

5 OUT OF CONTROL. WE KNOW FROM THE DECEMBER 11 TAPE THAT

6 JOSE MENENDEZ BROKE DOWN AND CRIED WHEN HE LEARNED ABOUT

7 HIS SON'S SUSPENSION FROM PRINCETON, AND WE KNOW THAT

8 JOSE MENENDEZ BROKE DOWN AND CRIED WHEN HE LEARNED THAT

9 HIS SONS HAD BEEN INVOLVED IN THE RESIDENTIAL

10 BURGLARIES.

11 LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT

12 JOSE MENENDEZ KNEW HIS SONS WERE OUT OF CONTROL. HE

13 KNEW THAT THERE WAS NO WAY HE COULD CONTROL THEM, AND

14 ALL HE COULD DO WAS CRY.

15 AND IT WAS HIS FAILURE TO SET LIMITS, TO

16 PROPERLY DISCIPLINE THEM WHEN THEY WERE YOUNG, THAT LED

17 TO THE DEVELOPMENT OF TWO YOUNG MEN WHO FELT THAT THEY

18 WERE ABOVE THE RULES, BEYOND THE LAW, AND CAPABLE OF

19 ANYTHING.

20 WHEN YOU LOOK AT THE TESTIMONY OF DR. HART

21 AND WHAT HE HAD TO PRESENT, LADIES AND GENTLEMEN, I

22 THINK IT CAN ONLY BE CHARACTERIZED PROPERLY AS A COUNTRY
23 CLUB ABUSE DEFENSE. AFTER ALL, WHAT WAS THE ABUSE HERE?
24 TOO MUCH TENNIS AND NOT ENOUGH HUGS?
25 YOU KNOW, IF YOU LOOK AT THE BACKGROUND OF
26 SOMEONE IN A DEATH PENALTY CASE SUCH AS THIS, AND YOU
27 LOOK AT THE BACKGROUND OF SOMEONE WHO TRULY COMES FROM
28 AN ABUSED BACKGROUND, WHO TRULY LED A LIFE WHERE HE WAS

-10754

1 NOT ABLE TO SEE BEYOND HIS IMMEDIATE DOORSTEP, A TRULY
2 SHELTERED LIFE -- IF YOU TAKE SOMEONE FROM A POOR
3 COMMUNITY, WHO GREW UP UNDER VERY EXTREME HARDSHIP,
4 PERHAPS YOU CAN FIND THAT IN CERTAIN CIRCUMSTANCES THEY
5 SUFFERED SUCH ABUSE THAT THAT TYPE OF ABUSE STRUCTURED
6 THEIR MIND IN SUCH A WAY THAT THEY KNEW NOTHING BUT WHAT
7 THEY INFLICTED UPON OTHERS.

8 YOU CAN CONTEMPLATE PEOPLE WHO GROW UP IN
9 VERY POOR SITUATIONS WHO KNOW NOTHING BUT VIOLENCE, AND
10 WHO KNOW NOTHING BUT STEALING AND CRIME.

11 AND PERHAPS IN THOSE RARE SITUATIONS YOU
12 CAN SAY YES, THERE IS SOMETHING ABOUT THEIR BACKGROUND
13 WHICH IS TRULY MITIGATING, WHICH WE WILL ACCEPT AS
14 MITIGATING, AND WHICH WE WILL GIVE WEIGHT TO.

15 BUT LADIES AND GENTLEMEN, WHAT THE DEFENSE
16 IS DOING IN THEIR CASE, IN THIS CASE, IS -- IT'S ALMOST
17 AS IF IT'S DRAFTED OUT OF PAPER. WELL, ABUSE IS ABUSE

18 IS ABUSE. ABUSE IN A COUNTRY CLUB IS JUST LIKE ABUSE IN
19 THE GHETTO. IF THE PEOPLE IN A GHETTO HAVE A HARD TIME,
20 THEN THE PEOPLE IN THE COUNTRY CLUB HAVE A HARD TIME.
21 THEREFORE THEY, TOO, DESERVE MITIGATION.

22 NO, LADIES AND GENTLEMEN. IT DOESN'T
23 FOLLOW. THERE IS NO MITIGATION IN THIS CASE. TOO MUCH
24 TENNIS IS NOT ENOUGH REASON TO KILL YOUR PARENTS. THESE
25 DEFENDANTS DID NOT LIVE SHELTERED LIVES WHERE THEY COULD
26 NOT SEE BEYOND THEIR OWN DOORSTEPS; PARTICULARLY LYLE
27 MENENDEZ, WHO TRAVELED AROUND THIS COUNTRY.
28 THERE IS NOTHING ABOUT THEIR BACKGROUND.

-10753

1 THERE IS NOTHING ABOUT THEIR GROWING UP THAT CAUSES THEM
2 TO SEE THE WORLD IN SUCH A RESTRICTIVE MANNER THAT THEY
3 COULD NOT UNDERSTAND OR FULLY APPRECIATE THE NATURE OF
4 THE VIOLENCE THAT THEY WERE AFFLICTING UPON THEIR
5 PARENTS. THEY FULLY UNDERSTOOD IT.

6 AND YOU SHOULD REJECT THIS COUNTRY CLUB
7 ABUSE EXCUSE MITIGATION DEFENSE THAT HAS BEEN PRESENTED
8 TO YOU IN THE PENALTY PHASE OF THIS CASE.

9 AND THEN WE COME TO THE TESTIMONY OF FATHER
10 DEASY.

11 AND ONCE AGAIN, LADIES AND GENTLEMEN, TALK
12 ABOUT THE DISTORTIONS. THE DISTORTION ON TOP OF
13 DISTORTIONS THAT HAS BEEN PRESENTED TO YOU IN THIS CASE.

14 I RECALL TESTIMONY FROM THE GUILT PHASE
15 ABOUT HOW JOSE MENENDEZ WOULD MOCK ERIK MENENDEZ ABOUT
16 HIS RELIGION. DO YOU REMEMBER THAT? ERIK MENENDEZ
17 TESTIFIED TO THAT ON DIRECT EXAMINATION. SOMETHING
18 ABOUT HIS FATHER MOCKING HIM FOR HIS RELIGION.

19 SO WE WERE LEFT TO BELIEVE, WHO IS JOSE
20 MENENDEZ THEN? HE IS SOME SORT OF AN ATHEIST, AGNOSTIC.
21 WHO KNOWS? WHO MOCKS HIS OWN SON WHO ACCEPTS GOD, YOU
22 KNOW. HOW DEROGATORY OF JOSE MENENDEZ. WHAT A TERRIBLE
23 THING.

24 AND WE WERE ALL LEFT WITH THAT IMPRESSION,
25 WEREN'T WE? IT WASN'T RELEVANT TO YOUR DECISION OF
26 FIRST-DEGREE MURDER, BUT THAT'S THE IMPRESSION WE WERE
27 LEFT WITH.

28 AND THEN WE LISTEN TO FATHER DEASY, AND

-10752

1 WHAT DOES HE TELL US? HE KNOWS JOSE AND KITTY MENENDEZ
2 FROM CHURCH. WE LEARN DURING THE PENALTY PHASE THAT
3 JOSE MENENDEZ AND KITTY MENENDEZ HAD THEIR SONS
4 BAPTIZED. THEY MADE THEIR COMMUNION. THEY MADE THEIR
5 CONFIRMATION. OBVIOUSLY, THEY WERE PARENTS WHO WERE
6 ACTIVELY INVOLVED IN THE SPIRITUAL DEVELOPMENT OF THEIR
7 SONS.

8 WE DIDN'T GET THAT IMPRESSION IN THE GUILT
9 PHASE. FAR DIFFERENT STORY IN THE PENALTY PHASE, WHEN

10 WE START TO EXPLORE THE BACKGROUND A LITTLE BIT. AND
11 FATHER DEASY SAYS HE KNOWS JOSE MENENDEZ FROM CHURCH.
12 HE SAYS OVER A TWO-MONTH PERIOD, I BELIEVE HE SAID, HE
13 REMEMBERS SEEING JOSE MENENDEZ IN CHURCH ON AT LEAST
14 FOUR OCCASIONS. AND HE SAID YOU WOULD ALWAYS RECOGNIZE
15 THE MENENDEZ FAMILY, BECAUSE THERE WAS JOSE MENENDEZ IN
16 A SUIT AND TIE SITTING IN CHURCH.

17 WHAT A DIFFERENT PICTURE WE FINALLY GET.

18 JOSE MENENDEZ WAS NOT WHATEVER THEY WERE TRYING TO
19 CHARACTERIZE HIM AS IN THE GUILT PHASE. HE IS A PERSON,
20 OBVIOUSLY, WHO HAD SOME CONCERN FOR RELIGION. NOT THAT
21 THAT SHOULD BE IMPORTANT, BUT IT'S JUST ILLUSTRATIVE OF
22 THE WAY THEY TRIED TO DEFAME THE PARENTS THROUGHOUT THIS
23 ENTIRE PROCEEDING WITHOUT JUSTIFICATION.

24 AND I SUPPOSE ONE OF THE MAIN REASONS WHY
25 THEY CALLED FATHER DEASY WAS TO TRY TO SUGGEST THAT ERIK
26 MENENDEZ IS REACHING OUT FOR GOD NOW, AND WE ARE
27 SUPPOSED TO FEEL THAT HE IS CLOSE TO GOD, AND HE HAS
28 SOME SPIRITUAL ENLIGHTENMENT HERE, AND WE ARE SUPPOSED

-10751

1 TO GIVE HIM MERCY, OR SHOW HIM MERCY FOR A REASON.

2 WELL, THE MOST INTERESTING THING THAT CAME
3 TO LIGHT THROUGH FATHER DEASY IS THAT, OBVIOUSLY, ERIK
4 MENENDEZ STILL HASN'T EVEN ADMITTED TO HIS
5 RESPONSIBILITY IN THIS CASE TO FATHER DEASY. HE TOLD

6 FATHER DEASY THE SAME LIE THAT HE TOLD YOU; THAT HE
7 KILLED HIS PARENTS BECAUSE HE WAS IN FEAR THAT THEY WERE
8 GOING TO KILL HIM AT THAT VERY MOMENT.

9 WELL, LADIES AND GENTLEMEN, BEFORE YOU GET
10 CLOSE TO GOD, DON'T YOU THINK YOU SHOULD START TELLING
11 GOD THE TRUTH?

12 THAT IS EXACTLY WHAT THEY ARE SEEKING TO DO
13 HERE, CLAIM SPIRITUAL ENLIGHTENMENT, CLAIM SPIRITUAL
14 DEVELOPMENT, WHILE SHOWING AT THE SAME TIME HE IS STILL
15 LYING TO THE PRIEST, JUST LIKE HE'S LYING TO YOU.

16 ERIK MENENDEZ HAS NEVER, IN HIS INVOLVEMENT
17 WITH FATHER DEASY, ACCEPTED FULL RESPONSIBILITY FOR
18 THESE KILLINGS, OR HE WOULD HAVE TOLD HIM THE TRUTH. HE
19 WILL LIE ABOUT THIS UNTIL THE DAY HE DIES.

20 AND THEN WE HEARD FROM DR. VICARY. AND THE
21 DEFENSE ENDED WITH A BANG WITH DR. VICARY.

22 DR. VICARY DESTROYED 10 PAGES OF HIS NOTES.
23 AND IT'S VERY CLEAR FROM THE TESTIMONY OF DR. VICARY WHY
24 HE DID IT. HE DID IT BECAUSE IT HURT ERIK MENENDEZ.

25 WHEN YOU LOOK AT THE NATURE OF THOSE NOTES,
26 WHEN YOU LOOK AT WHAT WAS DESTROYED, HE DESTROYED IT FOR
27 ONE REASON ONLY, BECAUSE IT WAS INDICATIVE OF
28 PREMEDITATION, AND HE DID NOT WANT TO GET THAT EVIDENCE

-10750

1 OF PREMEDITATION BEFORE A JURY.

2 AND WHAT YOU SAW AND WHAT YOU SAW EXPOSED
3 RIGHT IN FRONT OF YOUR EYES WAS THE CORRUPTION OF THE
4 CRIMINAL JUSTICE SYSTEM, BECAUSE WHEN SOMEONE LIKE HIM
5 CAN TAKE THE STAND AFTER DESTROYING HIS NOTES, AND SIT
6 THERE AND PRETEND IN FRONT OF THE FIRST JURY, AND THEN
7 IN FRONT OF YOU, THAT THESE ARE, IN FACT, HIS NOTES OF
8 ERIK MENENDEZ, IS A TOTAL AND ABSOLUTE FRAUD UPON THE
9 CRIMINAL JUSTICE SYSTEM.

10 AND WHAT YOU SAW IN THIS COURTROOM -- AND
11 TO SEE IT EXPOSED LIKE THAT -- IS NOTHING LESS THAN
12 AMAZING; TO SEE HIM ACTUALLY ADMIT ON THE WITNESS STAND:
13 "YES, I DESTROYED MY NOTES."

14 AND HE SAID THAT HE DESTROYED HIS NOTES FOR
15 TWO REASONS. NUMBER ONE, HE WANTED TO DESTROY EVIDENCE
16 OF THE STATEMENTS; AND SECONDLY, HE WANTED TO CONCEAL
17 THE FACT THAT THEY WERE -- THAT THE NOTES WERE, IN FACT,
18 MODIFIED. SO HE WANTED TO TRICK PEOPLE.

19 AND I ESSENTIALLY ASKED HIM: "WASN'T IT
20 YOUR INTENTION TO CAUSE THE JURY TO CONCLUDE THAT THESE
21 WERE, IN FACT, THE NOTES?"

22 AND HE ADMITTED TO THAT. HE IS IN DEEP
23 ENOUGH TROUBLE NOW THAT HE'S NOT GOING TO LIE ANY
24 FURTHER.

25 SO HE ADMITTED TO HIS CORRUPT INTENTION,
26 AND ADMITTED TO YOU THAT HE IS CONCERNED ABOUT THE
27 POSSIBILITY OF CRIMINAL PROSECUTION FOR WHAT HE HAS
28 ALREADY DONE. HE ADMITTED THAT HE HAD NEVER DONE -- IN

1 THE HISTORY OF HIS CAREER -- HE HAD NEVER DONE ANYTHING
2 LIKE THIS BEFORE. HE ADMITTED THAT HE HAD ETHICAL
3 CONCERNS. HE ADMITTED TO YOU THAT IT WAS ABSOLUTELY
4 WRONG, AND HE NOW RECOGNIZES THAT AND CONCEDES THAT.

5 HE KNEW THE NOTES WERE GOING TO BE
6 PRESENTED IN A COURTROOM, AND THAT THEY WERE GOING TO BE
7 REPRESENTED AS IF THEY WERE THE ORIGINALS, AND HE
8 PREVIOUSLY TESTIFIED CONCERNING THOSE NOTES ON THE PRIOR
9 OCCASION.

10 AND THEN IN ONE OF THE MOST SELF-SERVING
11 LINES OF INQUIRY THAT YOU WILL EVER SEE, MR. LEVIN THEN
12 QUESTIONS HIM AND SAYS: "WELL, WOULD YOUR OPINION BE
13 WRONG, EVEN IF YOU INCLUDE THAT DELETED MATERIAL -- IF
14 YOU INCLUDE THAT DELETED MATERIAL BACK INTO YOUR NOTES?
15 WOULD YOU CHANGE YOUR OPINIONS IN ANY WAY?"

16 AND HE SAID: "ABSOLUTELY NOT. I WOULD NOT
17 CHANGE MY OPINION."

18 HIS OPINION IS NO LONGER AN ISSUE HERE.
19 HIS OPINION ISN'T WORTH THE PAPER IT'S WRITTEN ON.

20 THE POINT OF HIS TESTIMONY, OR THE POINT
21 THAT WE SHOULD GET FROM ALL OF THIS, IS THAT HE WAS
22 PLAYING JUDGE AND JURY. HE WAS PLAYING -- HE WAS
23 PLAYING FINAL ARBITER IN DETERMINING WHAT THE TRUTH IS
24 IN THIS CASE, AND HE HAS NO RIGHT TO DO THAT.

25 HE HAS NO RIGHT TO DESTROY EVIDENCE. HE
26 HAS NO RIGHT TO CHANGE EVIDENCE, AND HE HAS NO RIGHT TO

27 TRICK A JURY AND DECEIVE A JURY, AND CORRUPT THE
28 CRIMINAL JUSTICE SYSTEM, AND YOU SHOULDN'T CARE WHAT HIS

-10748

1 OPINION IS AT THIS POINT.

2 NOW, LET'S TURN TO LOOK AT SOME OF THE
3 THINGS THAT HE WANTED DELETED, EVIDENCE THAT WAS GOING
4 TO BE DESTROYED.

5 HE SAID ONE WEEK PRIOR -- ONE WEEK -- ERIK
6 MENENDEZ TOLD HIM THAT ONE WEEK PRIOR TO THE KILLINGS HE
7 TALKED TO HIS BROTHER, LYLE MENENDEZ, ABOUT WHAT LIFE
8 WOULD BE LIKE WITHOUT THE PARENTS.

9 EVIDENCE SUGGESTIVE OF PREMEDITATION, AND
10 HE DESTROYED THAT.

11 HE SAID THAT HIS -- ERIK MENENDEZ TOLD HIM
12 THAT: "MY BROTHER TOLD ME TO WAIT ANOTHER WEEK, AND I
13 TOLD MY BROTHER I COULD NOT WAIT A ANOTHER WEEK."

14 THAT EVIDENCE WAS DESTROYED. THAT
15 STATEMENT WAS DESTROYED.

16 A NOTATION IN HIS NOTES, ERIK MENENDEZ SAID
17 SOMETHING ABOUT KNOWING THAT HE HATED HIS MOTHER. THAT
18 EVIDENCE WAS DESTROYED.

19 ERIK MENENDEZ SAID THAT ONE WEEK PRIOR HIS
20 FEELINGS WERE THAT: "I HATE THIS WOMAN. I HATE THIS
21 MAN. THEY ARE NOT MY PARENTS, AND I WANT THEM OUT OF MY
22 LIFE."

23 DR. VICARY DESTROYED THAT EVIDENCE. AND
24 YOU COULD SEE WHY. YOU COULD SEE THE PATTERN. ANY JURY
25 LISTENING TO THIS CASE WOULD FIND THAT TO BE SIGNIFICANT
26 INFORMATION INDICATIVE OF PREMEDITATION.
27 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
28 DR. VICARY DID NOT WANT ERIK MENENDEZ CONVICTED, AND HE

-10747

1 WAS GOING TO DO WHATEVER HE COULD TO SEE TO IT THAT HE
2 WAS NOT CONVICTED.
3 AND THEN IN ONE OF THE MOST IMPORTANT
4 DELETIONS FROM HIS NOTES WAS A STORY OF THE HOMOSEXUAL
5 LOVER. JOSE MENENDEZ HAD A HOMOSEXUAL LOVER WHO CAME TO
6 VISIT ERIK MENENDEZ, ERIK MENENDEZ CLAIMED, ON THE
7 FRIDAY PRECEDING THE KILLINGS. THAT WOULD BE THE DAY IN
8 WHICH THEY WENT SHOPPING FOR THE SHOTGUNS. AND THE
9 HOMOSEXUAL LOVER TIPPED OFF ERIK AND LYLE MENENDEZ THAT
10 HIS PARENTS WERE GOING TO KILL THEM.

11 NOW, LADIES AND GENTLEMEN, THIS WAS A ROUGH
12 DRAFT OF THE FRAUDULENT DEFENSE THAT WAS PRESENTED TO
13 YOU IN THE GUILT PHASE. THIS WAS A ROUGH DRAFT. ERIK
14 MENENDEZ IS WORKING THROUGH THE CONCEPTS HERE. HE IS
15 PLAYING WITH THE IDEAS.

16 "LET ME SEE. I WENT TO SAN DIEGO ON
17 FRIDAY. I PURCHASED THE GUNS. HOW DO I GET AROUND
18 THAT? OH, I KNOW. FRIDAY MORNING BEFORE I GO TO SAN

19 DIEGO, SOMEONE COMES AND SAYS: 'YOUR PARENTS ARE GOING
20 TO KILL YOU.' THAT EXPLAINS WHY I HAVE TO GO THAT DAY
21 TO PURCHASE THE SHOTGUNS."

22 ROUGH DRAFTS OF THE FRAUDULENT DEFENSE.

23 EVIDENCE DESTROYED BY DR. VICARY.

24 LADIES AND GENTLEMEN, DR. VICARY NOT ONLY
25 LACKED IN CREDIBILITY, DR. VICARY SHOULD NEVER BE CALLED
26 AS A WITNESS AGAIN IN ANY PROCEEDING.

27 LADIES AND GENTLEMEN, THAT IS THE DEFENSE
28 EVIDENCE IN THIS CASE. THAT IS THE EVIDENCE IN

-10746

1 MITIGATION.

2 AND I ASK YOU, ONCE AGAIN, AS YOU LOOK TO
3 THIS EVIDENCE, ASK YOURSELF IF THIS IS REALLY EVIDENCE
4 IN MITIGATION THAT WARRANTS A SENTENCE OF ANYTHING LESS
5 THAN DEATH.

6 I TOLD YOU ABOUT THE BALANCING TEST THAT
7 YOU WILL CONDUCT IN THIS CASE, AND I ASK YOU TO FIND
8 THAT THE MITIGATION PRESENTED BY THE DEFENSE DOES NOT
9 WARRANT A SENTENCE OF ANYTHING LESS THAN DEATH, BECAUSE
10 WHAT WE HAVE HERE, LADIES AND GENTLEMEN, ARE THE BRUTAL
11 KILLINGS OF KITTY AND JOSE MENENDEZ. AND YOU HAVE TO
12 WEIGH THE EVIDENCE OF THAT BRUTALITY AGAINST THIS
13 EVIDENCE THAT I JUST DISCUSSED WITH YOU, THIS EVIDENCE
14 THAT WAS PRESENTED TO YOU BY THE DEFENSE.

15 WE HAD THE FAMILIES OF JOSE AND KITTY
16 MENENDEZ SPEAK TO YOU ABOUT THEIR LIVES, THE VALUE OF
17 THEIR LIVES, THE DECENCY OF THEIR LIVES, AND WHAT THEY
18 DID FOR THEIR CHILDREN.

19 AND I ASK YOU, LADIES AND GENTLEMEN, DO YOU
20 THINK THAT THE COUNTRY CLUB DEFENSE THAT WAS PRESENTED
21 TO YOU IN THIS CASE OUTWEIGHS THE HORROR OF AUGUST THE
22 20TH OF 1989, AND THE AGGRAVATING CIRCUMSTANCES RELATING
23 TO THAT KILLING?

24 WHAT IS IT ABOUT -- WHAT IS IT ABOUT THAT
25 CRIME, LADIES AND GENTLEMEN, THAT IS AGGRAVATING? I
26 HAVE DISCUSSED THE MITIGATING ASPECTS, BUT NOW I WOULD
27 LIKE TO DISCUSS SOME OF THE AGGRAVATING ASPECTS OF THIS
28 CRIME.

-10745

1 I TOLD YOU ABOUT THE DEFINITION OF
2 AGGRAVATION, AND HERE I HAVE TAKEN THAT DEFINITION AND I
3 HAVE MODIFIED THE WORDS TO CORRESPOND -- TO TRACK MORE
4 CLOSELY THE SPECIFIC ALLEGATIONS IN THIS CASE CONCERNING
5 KITTY AND JOSE MENENDEZ, AND HERE'S WHAT WE HAVE.

6 AN AGGRAVATING FACTOR, LADIES AND
7 GENTLEMEN, IS ANY FACT, CONDITION OR EVENT ATTENDING THE
8 MURDER OF KITTY MENENDEZ WHICH INCREASES THE GUILT OR
9 ENORMITY OF THAT MURDER, OR ADDS TO ITS INJURIOUS
10 CONSEQUENCES, WHICH IS ABOVE AND BEYOND THE ELEMENTS OF

11 THE MURDER ITSELF.

12 SO LADIES AND GENTLEMEN, YOU CAN CONSIDER
13 ANYTHING THAT YOU REGARD AS INCREASING THE ENORMITY OF
14 THAT MURDER AS AN AGGRAVATING FACTOR IN THIS CASE.

15 BUT I'VE COME UP WITH SEVERAL WHICH I WOULD
16 LIKE YOU TO CONSIDER, AND ASK YOU TO FIND THAT THESE ARE
17 IN FACT AGGRAVATING FACTORS RELATING TO THAT MURDER.

18 EXTENSIVE PREMEDITATION AND DELIBERATION.

19 LADIES AND GENTLEMEN, IT MAKES A DIFFERENCE
20 AS TO WHETHER YOU PREMEDITATE THE KILLING OF ANOTHER
21 HUMAN BEING FOR TWO MINUTES, OR WHETHER YOU PREMEDITATE
22 THE KILLING OF ANOTHER HUMAN BEING FOR THREE DAYS, OR
23 FOR SEVEN DAYS, BECAUSE THAT IS SOMETHING THAT -- THAT
24 DIFFERENCE TELLS YOU SOMETHING ABOUT THE PERSON
25 COMMITTING THE CRIME.

26 A PERSON WHO WOULD PREMEDITATE THE KILLING
27 OF THEIR OWN MOTHER AND THEIR OWN FATHER FOR THREE DAYS,
28 OR FOR SEVEN DAYS, IS RIGHTFULLY SUBJECT TO MUCH MORE

-10744

1 CONDEMNATION THAN A PERSON WHO PREMEDITATES IN SEVERAL
2 MINUTES AND COMMITS THE CRIME.

3 I TOLD YOU ABOUT PREMEDITATION. I TOLD YOU
4 HOW QUICKLY PREMEDITATION CAN TAKE PLACE. IT CAN OCCUR
5 VERY QUICKLY. AND YOU FOUND THIS TO BE A FIRST-DEGREE
6 MURDER, AND I ASK YOU TO FIND THAT IN FACT THE EVIDENCE

7 IN THIS CASE INDICATES THAT THE DEFENDANTS PREMEDITATED
8 THIS CRIME FOR A CONSIDERABLE PERIOD OF TIME.

9 WE CAN GO BY THE -- IF WE GO BY THE NOTES,
10 THE DESTROYED NOTES OF DR. VICARY, I THINK THERE IS
11 EVIDENCE THERE SUGGESTING THAT PERHAPS THEY BEGAN
12 THINKING ABOUT THIS AS MUCH AS A WEEK BEFORE THE KILLING
13 ACTUALLY TOOK PLACE. THAT'S WHEN THEY BEGAN TO THINK
14 ABOUT LIFE WITHOUT THE PARENTS. THAT'S WHEN ERIK
15 MENENDEZ SAID HE CAN NO LONGER STAND TO BE AROUND HIS
16 PARENTS.

17 BUT AT THE VERY LEAST, LADIES AND
18 GENTLEMEN, I WOULD ASK YOU TO FIND THAT THE ACTUAL
19 PREMEDITATION AND DELIBERATION BEGAN THAT FRIDAY
20 MORNING, THE MORNING THAT THE DEFENDANTS DECIDED THAT
21 THEY WERE GOING TO GO DOWN TO SAN DIEGO THAT DAY; AND
22 PURCHASE THE SHOTGUNS TO KILL THEIR PARENTS. AND THAT
23 PREMEDITATION AND DELIBERATION CONTINUED FROM FRIDAY
24 MORNING UP UNTIL SUNDAY NIGHT WHEN THEY SHOT THEIR
25 PARENTS TO DEATH.

26 YOU KNOW, WHEN THE DEFENSE ARGUES THIS CASE
27 TO YOU, LADIES AND GENTLEMEN, YOU KNOW WHAT THEY'RE
28 GOING TO ARGUE. THEY'RE GOING TO ARGUE THAT THIS IS A

-10743

1 CRIME THAT TOOK PLACE IN THE SPACE OF A FEW MINUTES.

2 DO YOU REMEMBER IN THE GUILT PHASE THEY

3 SUGGESTED THAT WHEN THEY SAID: "HOW MUCH TIME DOES IT
4 TAKE TO RUN OUTSIDE AND GET YOUR GUN, AND COME BACK
5 INSIDE AND SHOOT THE PARENTS TO DEATH? ONLY A FEW
6 MINUTES."

7 BUT LADIES AND GENTLEMEN OF THE JURY, THIS
8 CRIME DID NOT TAKE PLACE IN A FEW MINUTES. THIS CRIME
9 TOOK PLACE AT LEAST OVER A SPACE OF SEVERAL DAYS,
10 BECAUSE EVERY SINGLE THING THAT THE DEFENDANTS -- EVERY
11 SINGLE THING THAT THE DEFENDANTS DID TOWARD MURDERING
12 THEIR PARENTS WAS AN AFFIRMATION OF THEIR INTENT TO
13 SUBJECT THEIR PARENTS -- TO SUBJECT THEIR PARENTS TO
14 THIS HORRIBLE AND BRUTAL CRIME.

15 WHEN THEY DECIDED ON FRIDAY THAT THEY WERE
16 GOING TO GO SHOPPING FOR GUNS, THEY WERE SAYING YES TO
17 THE HORROR THAT YOU SEE IN THESE PHOTOGRAPHS. THIS
18 HORROR, THESE HORRIBLY BRUTAL PHOTOGRAPHS OF THE PARENTS
19 SHOT TO DEATH, THEY WERE CONTEMPLATING SOMETHING LIKE
20 THAT IN THEIR MIND AND THEY WERE SAYING: "YES, LET'S DO
21 IT."

22 THEY DIDN'T KNOW THEY WERE GOING TO SHOOT
23 KITTY MENENDEZ IN THE LEFT CHEEK OR THE RIGHT CHEEK
24 PERHAPS, BUT THEY KNEW THEY WERE GOING TO GET SHOTGUNS
25 AND THEY WERE GOING TO USE THESE SHOTGUNS ON THEIR OWN
26 PARENTS. AND FRIDAY THEY SAID: "YES, LET'S DO IT.
27 LET'S GET THOSE SHOTGUNS."

28 PICTURE THEM DRIVING DOWN TO SAN DIEGO,

1 KNOWING ALL THE WHILE WHAT THEY'RE DOING, WHERE THEY'RE
2 GOING, WHAT THEY'RE GOING TO BUY, WHAT THEY'RE GOING TO
3 DO WITH WHAT THEY'RE GOING TO BUY.

4 HOW COULD YOU MAKE THAT TRIP? HOW COULD
5 YOU MAKE THAT TRIP, LADIES AND GENTLEMEN? WOULDN'T YOU
6 WANT TO TURN AROUND? "HOLD IT. LET'S TURN THIS CAR
7 AROUND. CAN I REALLY DO THIS, GO OUT OF TOWN AND
8 PURCHASE SHOTGUNS AND COME BACK AND SHOOT MY PARENTS TO
9 DEATH? TURN THE CAR AROUND."

10 BUT NO. "YES, LET'S DO IT." AND THEY GOT
11 DOWN TO SAN DIEGO AND THEY PURCHASED THE GUNS.

12 "YES, LET'S DO IT." AND THEY LOAD UP THOSE
13 GUNS.

14 "YES, LET'S DO IT." AND THEY CAME BACK.

15 AND THEN ON SATURDAY MORNING, THEY WENT OUT
16 AND THEY PURCHASED NEW AMMUNITION, MORE LETHAL
17 AMMUNITION, AFTER HAVING THE NIGHT THINK ABOUT IT.

18 AS LYLE MENENDEZ SAYS ON THE TAPE: "I
19 WOULDN'T EVEN INFLUENCE MY BROTHER IN THIS REGARD. I
20 WANTED HIM TO HAVE A COUPLE OF DAYS TO THINK ABOUT IT."

21 BECAUSE IT'S ALWAYS GOOD TO HAVE A GOOD
22 NIGHT'S SLEEP OVER SOMETHING. YOU HAVE A GOOD NIGHT'S
23 SLEEP, YOU THINK ABOUT IT. SOMETIMES YOU'RE GOING TO
24 BUY A HOUSE, MAKE AN IMPORTANT DECISION IN YOUR LIFE.
25 YOU GET A GOOD NIGHT'S SLEEP OVER IT.

26 THE NEXT MORNING YOU THINK, "WHAT WAS I
27 THINKING ABOUT? I NEVER COULD HAVE DONE THAT."

-10741

1 AND WOKE UP ON SATURDAY AND SAID, "YES, LET'S DO IT."
2 THINK ABOUT THE HORRIBLE ACT THEY WERE CONTEMPLATING AT
3 THAT PERIOD OF TIME WHEN THEY SAID YES, AND THEY DECIDED
4 THEY WERE GOING TO DO IT.

5 AND THEY HAD A GOOD NIGHT'S SLEEP ON
6 SATURDAY NIGHT, AND WOKE UP AND SAID: "YES, LET'S DO
7 IT." THIS CRIME DIDN'T TAKE PLACE IN A FEW MINUTES.

8 THE DEFENSE IS GOING TO ASK YOU TO JUDGE
9 THE DEFENDANTS LIKE THIS WAS A LAPSE OF JUDGMENT IN A
10 FEW MINUTES. NO. THIS WAS A COLD, CALCULATED DECISION
11 MADE OVER SEVERAL DAYS, AND THEY WERE CHOOSING DEATH
12 EACH AND EVERY TIME.

13 THEY CHOSE DEATH FRIDAY WHEN THEY WENT
14 SHOPPING FOR THOSE GUNS. THEY CHOSE DEATH ON SATURDAY
15 WHEN THEY WENT OUT TO GET MORE AMMUNITION. AND THEY
16 CHOSE DEATH ON SUNDAY WHEN THEY SHOT THEIR PARENTS TO
17 DEATH. AND NOW THEY'RE GOING TO ASK YOU: DON'T CHOOSE
18 DEATH FOR US. SHOW US MERCY.

19 LADIES AND GENTLEMEN, THEY DESERVE THE
20 DEATH PENALTY. THEY EARNED THE DEATH PENALTY. THEY
21 CHOSE DEATH FRIDAY, SATURDAY, AND SUNDAY, KNOWING THE
22 HORROR OF THE CRIME IN THEIR MINDS.

23 SO CONSIDER THE AMOUNT OF PREMEDITATION AND

24 DELIBERATION, LADIES AND GENTLEMEN. AND WHEN YOU
25 BALANCE THOSE SCALES OF JUSTICE, MAKE SURE YOU CONSIDER,
26 ALONG WITH THOSE GORY PHOTOGRAPHS OF KITTY AND JOSE
27 MENENDEZ, THE AMOUNT OF TIME AND THOUGHT AND ENERGY THAT
28 WENT INTO THE DEFENDANTS' MINDS WHEN THEY CHOSE THAT

-10740

1 COURSE OF CONDUCT.

2 AND THEN WE CONSIDER MOTIVE. THE FINANCIAL
3 INDEPENDENCE.

4 HERE WE ADDRESS THE QUESTIONS OF WHY THEY
5 KILLED THEIR PARENTS. YOU KNOW, THERE'S A LOT OF
6 REASONS TO KILL, LADIES AND GENTLEMEN OF THE JURY.

7 SOMETIMES THERE CAN BE PROVOCATION.

8 SOMETIMES THERE CAN BE REASONS FOR KILLING. AND
9 SOMETIMES, EVEN WHEN THE CRIME IS A FIRST-DEGREE MURDER,
10 THERE CAN BE SOME -- I DON'T WANT TO USE THE WORD "GOOD
11 REASON," BUT SOME MITIGATING ASPECTS OF THAT KILLING.

12 IT CAN BE IN A CASE OF TRUE ABUSE. A TRUE,
13 ONGOING ABUSIVE RELATIONSHIP OVER WHICH THERE IS REALLY
14 NO RECOURSE, WHEN SOMEONE MIGHT SAY, FOR EXAMPLE, "THIS
15 IS A SITUATION IN WHICH WE HAVE TO KILL, BECAUSE THIS
16 REALLY IS GOING TO CONTINUE. AND THERE REALLY IS NO WAY
17 OUT."

18 YOU CAN CONTEMPLATE THE ABUSED WIFE, OR
19 SOMEONE WHO WAS TRULY IN A SITUATION WHERE SHE DECIDES

20 THAT SHE HAS TO KILL BECAUSE OF AN ONGOING PHYSICAL
21 RELATIONSHIP WHICH IS NOT GOING TO END, AND SHE DOESN'T
22 REALLY, TRULY SEE A WAY OUT, AND SHE IS TRULY HELPLESS.
23 AND PERHAPS UNDER THOSE CIRCUMSTANCES YOU CAN SAY:
24 "YES, THERE IS MITIGATING ASPECTS TO THIS KILLING."

25 LADIES AND GENTLEMEN, THESE WERE TWO
26 HEALTHY YOUNG MEN WHO WERE NOT BEING ABUSED, I WOULD
27 SUBMIT TO YOU, AND THERE IS NO "GOOD REASON" OR
28 MITIGATING REASONS FOR THIS MURDER.

-10739

1 IT CANNOT BE EXPLAINED OR JUSTIFIED OR
2 MITIGATED IN ANY WAY. THESE DEFENDANTS KILLED THEIR
3 PARENTS BECAUSE THEY WANTED MONEY, BECAUSE THEY WANTED
4 INDEPENDENCE. THEY WANTED FINANCIAL INDEPENDENCE. THEY
5 WANTED TO HAVE THEIR OWN FREEDOM, THERE OWN POWER, WITH
6 MONEY IN THEIR POCKETS.

7 AND THAT'S THE KEY, MONEY IN THEIR POCKETS.
8 BECAUSE THEY COULD HAVE HAD ALL THE FREEDOM THEY WANTED
9 BY JUST WALKING OUT THE DOOR. WE KNOW THAT FROM THE
10 DECEMBER 11 TAPE WHERE LYLE MENENDEZ OR ERIK MENENDEZ
11 SPEAKS ABOUT THEIR MOTHER SAYING: "IF YOU WANT TO, JUST
12 GO." THEY COULD HAVE LEFT.

13 BUT IT WAS THE MONEY, LADIES AND GENTLEMEN.
14 THE MONEY AND THE POWER WAS AT THE ROOT OF THIS CRIME.
15 AND TO THINK THAT THESE DEFENDANTS COULD DO SOMETHING

16 THIS HORRIBLE, THIS UNSPEAKABLE TO THEIR OWN PARENTS FOR
17 REASONS OF MONEY, LADIES AND GENTLEMEN, IS AN
18 AGGRAVATING FACTOR. YOU CAN CONSIDER THIS, AND YOU
19 SHOULD CONSIDER THIS, I SUBMIT, AS A BASIS FOR THE
20 IMPOSITION OF THE DEATH PENALTY HERE.

21 BOTH OF THESE -- BOTH OF THESE FACTORS, 1
22 AND 2 -- AS ALL THE REST -- THEY ARE FACTS, THEY ARE
23 CONDITIONS, THEY ARE EVENTS WHICH INCREASE THE ENOMITY
24 OF THE MURDER. AND YOU SHOULD CONSIDER THAT, AND YOU
25 SHOULD PROPERLY BASE A DEATH JUDGMENT UPON THIS.

26 IT WAS A CONSPIRACY MURDER.

27 YOU KNOW, SOMETIMES, LADIES AND GENTLEMEN,
28 WHEN WE'RE LEFT ALONE BY OURSELVES WITHOUT A SOUNDING

-10738

1 BOARD, SOMEONE TO RUN SOME IDEAS OFF, WE CAN COME UP
2 WITH SOME PRETTY CRAZY THINGS.

3 SOMETIMES WE GET TOGETHER WITH ANOTHER
4 PERSON, WE TALK ABOUT IT. AND WE THINK "WELL, MAYBE
5 THAT DOESN'T MAKE SO MUCH SENSE AFTER ALL. I HAD A
6 WILD, IRRESPONSIBLE THOUGHT IN MY MIND, AND NOW THAT WE
7 TALKED ABOUT IT A LITTLE BIT, I GOT THAT OUT OF MY
8 SYSTEM. IT WAS A STUPID IDEA, FORGET ABOUT IT."

9 WHEN A PERSON COMMITS A CRIME ALONE,
10 SOMETIMES THAT'S WHAT HAPPENS. HE'S LEFT ON HIS OWN.
11 HE IS LEFT TO SORT OF STEW IN HIS OWN MIND. AND AS HE'S

12 STEWING IN HIS OWN MIND, THERE'S NO ONE THERE TO KIND OF
13 CORRECT HIM, TO KIND OF RECTIFY IT, TO SPEAK OUT LOUD.
14 SOMETIMES JUST SPEAKING OUT LOUD, TO
15 ACTUALLY VOICE WHAT YOU'RE GOING TO DO, PUTS A LITTLE
16 REALITY IN YOUR MIND. YOU GET AN IDEA YOU WANT TO DO
17 SOMETHING, AND THEN YOU ACTUALLY START TO TELL SOMEBODY
18 ABOUT IT, MAYBE TELL YOUR SPOUSE ABOUT IT, AND START TO
19 SAY IT, AND YOU FEEL A LITTLE SILLY BECAUSE JUST SAYING
20 IT, JUST BRINGING THE WORDS OUT, JUST MAKES IT KIND OF
21 SOUND SILLY OR IRRESPONSIBLE. SOMETIMES JUST SPEAKING
22 TO A PERSON DOES THAT.

23 HERE WHAT DO WE HAVE, LADIES AND GENTLEMEN?
24 WE HAVE TWO PERSONS WORKING TOGETHER AS SOUNDING BOARDS
25 REINFORCING EACH OTHER, BUILDING EACH OTHER UP,
26 BEGINNING THE CONFIRMATION AND RECONFIRMATION. TOGETHER
27 THESE TWO DEFENDANTS ARE DISCUSSING OUT LOUD WITH THEIR
28 VOICES, THEIR IDEAS.

-10737

1 AND AS THEY DISCUSS IT ALOUD, ARE THEY
2 REPELLED? DO THEY CALL IT OFF? DO THEY SAY: "NO, WE
3 CAN'T DO THIS?"
4 TO THE CONTRARY, LADIES AND GENTLEMEN.
5 THESE TWO DEFENDANTS WORKED TOGETHER. THEY ARE NOT
6 DETERRED IN ANY WAY FROM COMMITTING THESE HORRIBLE,
7 UNSPEAKABLE ACTS. THEY DECIDE: YES, LET'S DO IT. YES,

8 LET'S GO DOWN. THEY DRIVE DOWN TOGETHER. THEY COMMIT
9 THESE HORRIBLE PREPARATIONS TOGETHER, PURCHASING THE
10 GUNS AND PURCHASING THE AMMUNITION.
11 THIS WAS A CONSPIRACY, A CRIMINAL
12 CONSPIRACY WHICH INCREASED THE DANGER AND THE THREAT TO
13 THE VICTIMS, AND EVENTUALLY RESULTED IN THE DEATH OF THE
14 VICTIMS.
15 THE VICTIM WAS THE DEFENDANTS' OWN MOTHER,
16 AND THIS I CANNOT OVER-EMPHASIZE. ALL SOCIETIES, ALL
17 CIVILIZED SOCIETIES, SAY HONOR THY MOTHER AND THY
18 FATHER. AND TO KILL YOUR OWN MOTHER IS AN INJUSTICE, A
19 HORROR, AN UNSPEAKABLE ACT AGAINST ANY SOCIETY, ANY
20 CIVILIZED -- EVEN UNCIVILIZED SOCIETIES RESPECT THIS
21 PRINCIPLE OF HONORING YOUR MOTHER AND YOUR FATHER.
22 FOR THE DEFENDANTS TO KILL THEIR OWN MOTHER
23 IS JUST AN UNSPEAKABLE CRIME AGAINST SOCIETY, AND YOUR
24 VERDICT SHOULD REFLECT YOUR RECOGNITION OF THAT FACT, OF
25 JUST WHAT AN UNSPEAKABLE CRIME THIS IS.
26 YOU WILL BE ASKED TO CONSIDER TWO
27 PENALTIES, THE LESSER PENALTY AND THE GREATER. AND
28 THERE'S NO DOUBT THAT THE DEATH PENALTY IS THE GREATER

-10736

1 PENALTY. THERE IS NO GETTING AROUND THAT. THAT IS THE
2 GREATER PENALTY. AND EACH OF YOU TOOK AN OATH, THAT IN
3 THE APPROPRIATE CASE, YOU WOULD IMPOSE THE APPROPRIATE

4 PENALTY, THE PENALTY THAT TRULY FITS THE CRIME, AND YOU
5 HAVE AN OBLIGATION TO FULFILL THAT DUTY.

6 YOU KNOW, LADIES AND GENTLEMEN, SOMETIMES I
7 WISH THAT IF SPACE PERMITTED THERE WOULD BE ANOTHER
8 CHAIR HERE NEXT TO MS. NAJERA AND I DURING THE
9 PRESENTATION OF THIS CASE, JUST TO REMIND THE JURY THAT
10 WE HAVE A CLIENT. AND YOU HAVE AN OBLIGATION TO THIS
11 CLIENT, JUST AS MUCH AS YOU HAVE AN OBLIGATION TO THAT
12 SIDE OF THE TABLE.

13 ON THAT SIDE OF THE TABLE YOU SEE TWO HUMAN
14 BEINGS. YOU SEE ERIK AND LYLE MENENDEZ. AND YOU CAN
15 SAY: "WELL, THEY ARE ALIVE. THEY ARE LIVE PEOPLE, AND
16 I HAVE TO BE FAIR TO THEM, AND I WANT TO DO THE RIGHT
17 THING AS TO THEM.

18 "BUT ON THIS SIDE OF THE TABLE WE JUST HAVE
19 MR. CONN AND MS. NAJERA, AND WE'RE NOT GOING TO HURT
20 ANYONE IF WE GIVE LIFE WITHOUT THE POSSIBILITY OF
21 PAROLE. NO ONE'S GETTING HURT. WE'RE NOT HURTING
22 MR. CONN AND MS. NAJERA. BUT IF WE GIVE DEATH, WE'LL BE
23 HURTING THE DEFENDANTS.

24 SO WHY NOT BE MR. NICE GUY IN ALL CASES,
25 AND WHY NOT JUST GIVE EVERYONE LIFE WITHOUT POSSIBILITY
26 OF PAROLE IN EVERY CASE?

27 WELL, THERE IS A REASON, LADIES AND
28 GENTLEMEN. THERE IS A REASON.

1 BECAUSE YOU TOOK AN OATH TO FOLLOW THE LAW
2 AND REACH A JUST DECISION. AND OUR CLIENT IS THE PEOPLE
3 OF THE STATE OF CALIFORNIA, AND OUR CLIENT REPRESENTS --
4 THIS CHAIR FOR OUR CLIENT REPRESENTS AN ENORMOUS AMOUNT
5 OF PEOPLE IN THIS STATE WHO ASK THAT JUSTICE BE DONE.
6 YOUR OBLIGATION IS TO BOTH SIDES.

7 THE FIRST THING THE JUDGE LEARNS WHEN HE
8 TAKES THE BENCH IS THAT YOU CAN'T BE MR. NICE GUY. YOU
9 CAN'T JUST PICK AND CHOOSE WHO YOU LIKE, AND WHO YOU
10 WANT TO BE GENEROUS WITH. THE ONLY WAY YOU CAN BE FAIR
11 TO BOTH SIDES IN ANY LITIGATION IS TO FOLLOW THE LAW, TO
12 RECOGNIZE THE RIGHTS OF BOTH SIDES, AND TO FOLLOW THE
13 LAW. AND IF THE LAW REQUIRES A PARTICULAR VERDICT, YOU
14 REACH THAT PARTICULAR VERDICT, REGARDLESS OF WHO IT
15 HELPS AND WHO IT HURTS.

16 AND SO, LADIES AND GENTLEMEN, I ASK YOU TO
17 RECOGNIZE THAT MY CLIENT IS THE PEOPLE OF THE STATE OF
18 CALIFORNIA, AND IF THE VERDICT IN THIS CASE CALLS FOR
19 DEATH, THEN YOU CAN AND YOU SHOULD IMPOSE THE DEATH
20 PENALTY, AND DON'T JUST GIVE THE DEFENDANTS A BREAK
21 BECAUSE IT'S THE NICE THING TO DO; BECAUSE YOU WILL BE
22 DENYING JUSTICE IN THIS CASE. IF THE FACTS OF THIS CASE
23 TRULY WARRANT THE DEATH PENALTY, YOU SHOULD IMPOSE THE
24 DEATH PENALTY.

25 SO I ASK YOU TO BALANCE THE AGGRAVATION
26 AGAINST THAT MITIGATION, AND IF YOU CONCLUDE THAT THE
27 AGGRAVATION OUTWEIGHS THE MITIGATION SUBSTANTIALLY, THEN
28 YOU SHOULD, LADIES AND GENTLEMEN, IMPOSE THE DEATH

1 PENALTY IN THIS CASE.

2 KILLING HIS OWN MOTHER IS SUCH A VIOLATION
3 OF OUR SOCIETY AND OUR ETHICAL CODES, OUR PRINCIPLES.
4 IT'S ONE OF THE MOST HORRENDOUS MURDERS IMAGINABLE. AND
5 IF YOU'RE GOING TO DECIDE THAT THE LESSER CRIMES DO NOT
6 DESERVE THE DEATH PENALTY AND THE GREATER CRIMES DO,
7 THEN CLEARLY, ISN'T THIS ONE OF THE GREATER CRIMES?
8 ISN'T THIS THE TYPE OF CRIME THAT TRULY DESERVES THE
9 DEATH PENALTY? NOT ALL MURDERS DO. BUT ISN'T THIS ONE?
10 WHEN YOU LOOK AT THE AGGRAVATING FACTORS IN THIS CASE,
11 ISN'T THIS REALLY AMONG THE WORST?

12 YOU CAN THINK OF SERIAL KILLERS, YES.
13 SERIAL KILLERS MAY BE ONE OF THE TYPES OF PERSONS THAT
14 YOU WOULD WANT TO IMPOSE THE DEATH PENALTY UPON.

15 BUT ISN'T THIS REALLY AS HORRENDOUS? ISN'T
16 THE CRIME AGAINST OUR SOCIETY JUST AS GREAT HERE?

17 THERE MAY BE SITUATIONS, LADIES AND
18 GENTLEMEN, WHERE YOU COULD THINK OF MITIGATING FACTORS
19 AND YOU WOULD NOT IMPOSE THE DEATH PENALTY, A PERSON WHO
20 COMMITS A MURDER AND -- DURING A BURGLARY, FOR EXAMPLE.
21 DIDN'T INTEND TO HURT ANYONE, BUT IT JUST SO HAPPENS
22 DURING THAT BURGLARY HE ENDS UP KILLING SOMEONE.

23 MAYBE HE DIDN'T EVEN BRING A GUN WITH HIM
24 TO COMMIT THE BURGLARY. DIDN'T WANT TO HURT ANYONE.
25 BUT ON HIS WAY OUT OF THE BURGLARY HE KILLS SOMEONE.

26 DIDN'T IMAGINE IT. HE MIGHT BE ELIGIBLE FOR THE DEATH
27 PENALTY.

28 IN THAT CASE, LADIES AND GENTLEMEN, YOU

-10733

1 COULD SAY THERE IS REALLY MITIGATING FACTORS HERE.
2 YES, HE'S ELIGIBLE FOR THE DEATH PENALTY, BUT HE DIDN'T
3 SET OUT TO HURT ANYONE, AND YOU DON'T FIND DEATH IS
4 APPROPRIATE IN THIS CASE.
5 OR THE PERSON DURING THE ROBBERY, THE
6 ROBBERY OF THE 7-ELEVEN. MAYBE HE REALLY NEEDS THE
7 MONEY, DOESN'T REALLY PLAN ON KILLING ANYONE. BUT IN A
8 MOMENT, MAKES A BAD DECISION AND SHOOTS THAT CLERK SO HE
9 CAN'T BE IDENTIFIED. THINGS GO AWRY. JUST DIDN'T PLAN
10 IT THAT WAY, IT HAPPENED. AND AGAIN, YOU MIGHT BE ABLE
11 TO SAY THAT THIS IS A SITUATION WHERE MAYBE SOME MERCY
12 SHOULD BE SHOWN.

13 BUT LADIES AND GENTLEMEN, THIS IS NOT THAT
14 CASE. THIS IS A HORRENDOUS CASE. THIS IS A VERY
15 UNUSUAL MURDER CASE, FOR ALL OF THESE REASONS THAT I
16 HAVE INDICATED HERE. THIS IS A CASE WHERE THESE
17 DEFENDANTS SET OUT FOR DAYS TO KILL, SET OUT TO DO IT
18 FOR MONEY, PLANNED IT TOGETHER, IMPLEMENTED IT TOGETHER,
19 AND KILLED THEIR OWN MOTHER.

20 YOUR ACCEPTANCE OF A DEATH VERDICT IN THIS
21 CASE WILL REFLECT YOUR RECOGNITION OF JUST HOW HORRIBLE

22 THIS CRIME IS; OF JUST WHAT A CRIME -- TREMENDOUS CRIME
23 AGAINST OUR SOCIETY THIS CASE IS.
24 THE BRUTALITY AND PAIN OF THE MURDER IS
25 ANOTHER FACTOR IN AGGRAVATION THAT I ASK YOU TO CONSIDER
26 BECAUSE OF THE WAY THE MURDER WAS CARRIED OUT.
27 THERE IS A LOT OF WAYS TO KILL PEOPLE.
28 PEOPLE CAN BE KILLED BY -- IN A QUICK FASHION, IN A SLOW

-10732

1 FASHION, BY A VERY VIOLENT MEANS OR BY LESS VIOLENT
2 MEANS. THINK ABOUT THE WAY THAT THE DEFENDANTS DID THIS
3 CRIME, AND YOU KNOW -- YOU KNOW WHAT'S SO COMPELLING
4 WHEN YOU CONSIDER THIS FACTOR, LADIES AND GENTLEMEN?
5 THINK OF THE STATEMENT OF LYLE MENENDEZ THAT VERY NIGHT
6 WHEN HE IS INTERVIEWED AT THE POLICE STATION, AND HE
7 SAID: "WHOEVER COMMITTED THIS CRIME SURE WANTED TO MAKE
8 A MESS." WANTED TO MAKE A MESS.

9 WHEN YOU LOOK AT THOSE HORRIBLE, GORY
10 PHOTOGRAPHS, LADIES AND GENTLEMEN, AND YOU THINK ABOUT
11 LYLE MENENDEZ' ADMISSION, THAT HE WANTED TO MAKE A MESS.
12 THAT TELLS YOU SO MUCH ABOUT THE BRUTALITY OF THIS
13 CRIME, AND THE BRUTALITIES OF HIS OWN MIND, TO EVEN BE
14 ABLE TO DO SOMETHING LIKE THIS.

15 AND THE PAIN. HOW MUCH PAIN WAS KITTY
16 MENENDEZ IN WHEN THE DEFENDANTS WENT OUT TO RELOAD?
17 YOU SAW THE SKELETAL DIAGRAM OF THE BONES

18 IN HER BODY, AND THE WAY THEY WERE BLOWN TO BITS BY THE
19 SHOTS, AND THE INJURIES TO THE EXTERIOR OF HER BODY, TO
20 HER FLESH.

21 THINK OF THE TREMENDOUS PAIN THAT THAT
22 WOMAN WAS IN. YOU CAN CONSIDER THAT, BECAUSE THE
23 DEFENDANTS INTENTIONALLY INFLICTED THAT. YOU SHOULD
24 CONSIDER THAT. YOU MUST CONSIDER THAT.

25 AND CONSIDER THE PSYCHOLOGICAL PAIN, THE
26 THOUGHT IN HER OWN MIND THAT THIS WAS HER SON; HER SONS
27 SHOOTING HER TO DEATH AFTER SHE HAD SEEN HER HUSBAND
28 BEING KILLED RIGHT IN FRONT OF HER. AND HER SONS THEN

-10731

1 GO OUTSIDE TO RELOAD, AND TO COME BACK AND TO KILL HER.

2 THINK OF THE PSYCHOLOGICAL PAIN. THAT
3 SPEAKS OF THE BRUTALITY OF THIS CRIME, AND THAT IS A
4 FACTOR IN AGGRAVATION.

5 TO BE AMBUSHED IN YOUR OWN HOME. YOU KNOW,
6 WHEN YOU LOOK AT KITTY MENENDEZ AND SHE GETS OFF THAT
7 PLANE IN THAT VIDEO, AND SHE SAYS SOMETHING LIKE, "HERE
8 WE ARE, SAFE AT HOME." SAFE AT HOME. THAT IS THE
9 PRESUMPTION, SAFE AT HOME.

10 IN THIS CASE, THERE WAS NO SAFETY IN THE
11 HOME. OF ALL THE PLACES, AND OF ALL THE TIMES THE
12 DEFENDANTS HAD TO SELECT WHEN THEY WERE GOING TO EXECUTE
13 THEIR PARENTS, THEY CHOSE THEIR PARENTS AT A TIME WHEN

14 THEY WERE RELAXING COMFORTABLY IN THEIR HOME, AND
15 MURDERED THEM.

16 THE CIRCUMSTANCES OF THE CRIME IS SOMETHING
17 YOU MAY CONSIDER, AND YOU SHOULD CONSIDER, IN DECIDING
18 THE PENALTY TO BE IMPOSED IN THIS CASE.

19 AND THEN, LADIES AND GENTLEMEN, YOU MUST
20 CONSIDER THE FACT THAT WHEN YOU ARE SELECTING WHAT
21 PENALTY TO THE DEFENDANTS DESERVE FOR THE MURDER OF
22 THEIR MOTHER, AN AGGRAVATING FACTOR TO THAT CRIME --
23 BECAUSE BEAR IN MIND, YOU ARE GOING TO BE ASKED TO MAKE
24 TWO SENTENCES. YOU ARE GOING TO BE ASKED TO DECIDE TWO
25 SENTENCES FOR EACH DEFENDANT; WHAT SENTENCE SHOULD THEY
26 RECEIVE FOR THE MURDER OF THEIR MOTHER? WHAT SENTENCE
27 SHOULD THEY RECEIVE FOR THE MURDER OF THEIR FATHER?
28 AND WHEN YOU CONSIDER WHICH SENTENCE THEY

-10730

1 SHOULD RECEIVE FOR THE MURDER OF THEIR MOTHER, ONE OF
2 THE FACTORS IN AGGRAVATION THAT YOU MAY CONSIDER IS
3 AGGRAVATING ASPECTS OF THE SPECIAL CIRCUMSTANCES; IN
4 OTHER WORDS, THEY ALSO KILLED THEIR OWN FATHER ON TOP OF
5 THAT.
6

54807

1 SO IN WEIGHING THE CRIME FOR THE MOTHER

2 ALONE, THE KILLING OF THE MOTHER ALONE, YOU CAN
3 CONSIDER, NOT ONLY IS THIS JUST ONE MURDER, BUT
4 THERE WAS ANOTHER MURDER, THE MURDER OF THEIR OWN
5 FATHER ON TOP OF THAT. THAT IS A TREMENDOUSLY
6 POWERFUL AND AGGRAVATING CIRCUMSTANCE.

7 AND IN MUCH THE SAME WAY, LADIES AND
8 GENTLEMEN, I CAN GO THROUGH -- BUT I WON'T. DON'T
9 FEEL YOU HAVE TO COPY THIS. THIS IS A DUPLICATE,
10 AGGRAVATING FACTORS TO THE MURDER OF JOSE MENENDEZ.

11 I CAN GO THROUGH THE SAME ANALYSIS.
12 YOU'RE GOING TO BE ASKED TO COME UP WITH TWO
13 VERDICTS FOR EACH DEFENDANT; A VERDICT FOR COUNT 1
14 AND A VERDICT FOR COUNT 2. AND I CAN GO THROUGH THE
15 SAME FACTORS WITH YOU AND SAY: IN REGARD TO THE
16 MURDER OF JOSE MENENDEZ, LOOK AT ALL THOSE
17 AGGRAVATING FACTORS. AND FOR ALL OF THESE
18 AGGRAVATING FACTORS, YOU SHOULD IMPOSE THE DEATH
19 PENALTY AGAINST EACH DEFENDANT FOR THE MURDER OF
20 JOSE MENENDEZ.

21 YOU'LL HAVE TO CONSIDER THE SENTENCE OF
22 EACH DEFENDANT INDIVIDUALLY, LADIES AND GENTLEMEN.
23 AND YOU COULD THEORETICALLY IMPOSE THE DEATH PENALTY
24 FOR ONE DEFENDANT AND NOT THE OTHER, JUST AS YOU
25 COULD THEORETICALLY IMPOSE THE DEATH PENALTY FOR THE
26 KILLING ON ONE COUNT, BUT NOT THE OTHER.

27 SO, FOR EXAMPLE, YOU CAN IMPOSE THE
28 DEATH PENALTY FOR THE MURDER OF KITTY MENENDEZ, LIFE

1 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE FOR THE
2 MURDER OF JOSE MENENDEZ.

3 YOU CAN IMPOSE THE DEATH PENALTY FOR ONE
4 DEFENDANT, AND NOT FOR THE OTHER DEFENDANT.

5 LADIES AND GENTLEMEN, I ASK YOU TO
6 IMPOSE, HOWEVER, THE DEATH PENALTY AS TO EACH
7 DEFENDANT FOR BOTH OF THE MURDERS THAT THEY
8 COMMITTED. I SUBMIT TO YOU THAT IS THE MOST
9 RATIONAL AND THE MOST LOGICAL DECISION THAT YOU CAN
10 MAKE, AND THAT THE EVIDENCE IN THIS CASE CLEARLY
11 WARRANTS THAT CONCLUSION ON YOUR PART.

12 I ASK YOU TO FIND THAT IF YOU CAREFULLY
13 BALANCE EACH OF THE AGGRAVATING FACTORS THAT I
14 MENTIONED TO YOU AGAINST THE COUNTRY CLUB DEFENSE
15 THAT WAS PRESENTED TO YOU BY THE DEFENDANTS, THERE
16 IS TRULY NO SIGNIFICANT MITIGATING EVIDENCE IN THIS
17 CASE. AND THAT WHATEVER EVIDENCE YOU DO FIND ON
18 THIS SIDE OF THE SCALE IS SIMPLY NOT WORTHY OF VERY
19 MUCH WEIGHT.

20 IT'S KIND OF LIKE WEIGHING BRICKS AND
21 FEATHERS. THESE ARE THE BRICKS, LADIES AND
22 GENTLEMEN, OVER HERE. THE HORROR OF THAT CRIME ARE
23 THE BRICKS WHICH TILT THE SCALES THAT WAY; AGAINST
24 THE FEATHERS OVER HERE OF TOO MUCH TENNIS AND NOT

25 ENOUGH HUGS.

26 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
27 THAT IS A FAIR APPLICATION OF THE DEATH PENALTY IN
28 THIS CASE, AND THERE SHOULD BE A FAIR APPLICATION OF

54809

1 THE DEATH PENALTY IN THIS CASE, BECAUSE THE DEATH
2 PENALTY MAY OFTEN BE IMPOSED UPON THE POOR IN OUR
3 SOCIETY.

4 IT MAY BE THAT THE DEATH PENALTY IS
5 IMPOSED SOMETIMES FOR PEOPLE WHO LIVE IN COMPTON OR
6 EAST LOS ANGELES. IT WAS NEVER INTENDED THAT WAY.
7 IT WAS INTENDED TO BE EVENLY IMPOSED, REGARDLESS OF
8 WHETHER YOU COME FROM COMPTON OR YOU COME FROM EAST
9 LOS ANGELES OR YOU COME FROM BEVERLY HILLS. YOU ARE
10 SUBJECT TO THE DEATH PENALTY IF THE AGGRAVATING
11 CIRCUMSTANCES OUTWEIGH THE MITIGATING CIRCUMSTANCES.

12 AND IF WE ARE TO HAVE A FAIR APPLICATION
13 OF THE DEATH PENALTY IN THIS CASE, LADIES AND
14 GENTLEMEN, THEN I ASK YOU TO RECOGNIZE THE
15 AGGRAVATING FACTORS THAT I'VE IDENTIFIED, AND TO
16 RECOGNIZE THAT THOSE AGGRAVATING FACTORS DO INDEED
17 OUTWEIGH THE MITIGATING EVIDENCE IN THIS CASE. AND
18 FOR THAT REASON, IF WE ARE TO IMPOSE THE DEATH
19 PENALTY FAIRLY IN OUR SOCIETY, IT SHOULD BE IMPOSED

20 IN THIS CASE. IF NOT IN THIS CASE, THEN IN WHAT

21 CASE?

22 JUSTICE WILL NEVER BE DONE IN OUR

23 SOCIETY, LADIES AND GENTLEMEN, UNLESS THOSE WHO

24 ADMINISTER THE JUSTICE FEEL THE PAIN OF THOSE WHO

25 HAVE SUFFERED THE LOSS.

26 YOU'VE HEARD THE TESTIMONY OF MILTON

27 ANDERSEN AND HIS BROTHER, BRIAN ANDERSEN, WHO GREW

28 UP WITH KITTY MENENDEZ AND WHO DEEPLY FEEL THE LOSS

54810

1 OF THEIR SISTER.

2 YOU HEARD HIM SPEAK ABOUT HOW HE WAKES

3 UP AT NIGHT SCREAMING AT THE THOUGHT OF WHAT THESE

4 DEFENDANTS DID TO HIS SISTER. IF YOU UNDERSTAND

5 THAT PAIN, AND IF YOU UNDERSTAND THAT LOSS, THEN YOU

6 WILL APPRECIATE THAT THE DEATH PENALTY IS THE MOST

7 APPROPRIATE PENALTY IN THIS CASE.

8 ERIK AND LYLE MENENDEZ EARNED THAT

9 PENALTY. YOU'RE NOT GIVING THEM ANYTHING THAT THEY

10 DIDN'T EARN. THEY DESERVE THE DEATH PENALTY, AND I

11 ASK YOU, ON BEHALF OF THE PEOPLE OF THE STATE OF

12 CALIFORNIA TO SENTENCE THE DEFENDANTS TO DEATH.

13 THANK YOU VERY MUCH.

14 THE COURT: ALL RIGHT. THANK YOU. WE'LL BE

15 IN RECESS UNTIL 3:30, AT WHICH TIME WE'LL RESUME.

16 DON'T DISCUSS THE MATTER WITH ANYONE.

17 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL

18 RESUME AT 3:30.

19 (A RECESS WAS TAKEN FROM

20 3:10 UNTIL 3:35 P.M.)

21

22 THE COURT: EVERYBODY IS BACK. WHO'S GOING

23 TO GO FIRST HERE?

24 MR. LEVIN: I AM, YOUR HONOR.

25 THE COURT: OKAY. LET'S HAVE THE JURY OUT.

26 (THE JURY ENTERS THE COURTROOM,

27 AND THE FOLLOWING PROCEEDINGS

28 WERE HELD:)

54811

1

2 THE COURT: OKAY. THE JURY IS BACK.

3 AND WE'LL RESUME WITH THE ARGUMENT.

4 AT THIS POINT, ARGUMENT ON BEHALF OF

5 ERIK MENENDEZ BY MR. LEVIN.

6 MR. LEVIN: THANK YOU, YOUR HONOR.

7

8 CLOSING ARGUMENT

9 BY MR. LEVIN:

10 GOOD AFTERNOON, LADIES AND GENTLEMEN.
11 I WILL ADMIT TO YOU THAT I AM
12 TERRIFIED. I'M SCARED. I'M AFRAID THAT YOU WON'T
13 LISTEN TO ME. I'M AFRAID THAT YOU WON'T HEAR MY
14 WORDS. I'M AFRAID THAT YOU WON'T UNDERSTAND WHAT
15 I'M ABOUT TO SAY TO YOU.
16 THIS IS THE MOST IMPORTANT JOB THAT A
17 LAWYER, OR ANY HUMAN BEING, COULD EVER DO, TO STAND
18 IN FRONT OF 12 ORDINARY CITIZENS AND BE ENTRUSTED
19 WITH THE RESPONSIBILITY OF PLEADING FOR SOMEONE'S
20 LIFE. AND I LOOK AT YOU, AND I'M JUST IN AWE AND
21 AMAZEMENT AT THE POWER AND THE AWESOME
22 RESPONSIBILITY THAT YOU HAVE, THE POWER TO TAKE
23 SOMEONE'S LIFE. IT'S ABSOLUTELY EXTRAORDINARY.
24 I CAN THINK OF NO OTHER CIRCUMSTANCE
25 THAT WOULD ALLOW FOR SUCH A THING TO OCCUR, AND I'M
26 SCARED. YOU SHOULD BE SCARED. YOU SHOULD BE
27 TERRIFIED BECAUSE YOU HAVE TO MAKE THE DECISION.
28 EACH AND EVERY ONE OF YOU HAS TO MAKE

54812

1 THE MOST IMPORTANT DECISION THAT YOU COULD EVER MAKE
2 FOR THE REST OF YOUR LIFE.
3 SOME OF YOU ARE MARRIED. SOME OF YOU
4 ARE DIVORCED OR SEPARATED. WHEN YOU MET YOUR SPOUSE

5 YOU THOUGHT: I'M DOING THE RIGHT THING. I'M DOING
6 A GREAT THING. THIS PERSON HAS SHOWN ME THAT WE
7 WILL GO THROUGH THE REST OF OUR LIVES AND LIVE
8 HAPPILY EVER AFTER.

9 A FEW YEARS LATER THINGS GO WRONG. YOU
10 REALIZE YOU MADE A MISTAKE. YOU WERE POSITIVE WHEN
11 YOU MADE THE DECISION, BUT SOMETHING HAPPENED.

12 NO ONE KNOWS. NO ONE KNOWS WITH WHAT
13 DEGREE OF CERTAINTY YOU SHOULD HAVE BEFORE YOU JUDGE
14 SOMEONE TO DEATH.

15 AND I HAVE A RIGHT TO BE SCARED? I HAVE
16 NO RIGHT TO BE SCARED.

17 I MAY BE SCARED BECAUSE THE MEDIA IS
18 HERE, AND THEY'RE GOING TO WRITE STORIES ABOUT, OH,
19 MR. CONN'S PERFORMANCE OR MY PERFORMANCE, OR HOW
20 WELL WE DID IN FRONT OF THE JURY, OR THE COLOR OF MY
21 SUIT, OR THE COLOR OF MY TIE.

22 BUT WE DON'T MAKE THIS DECISION, LADIES
23 AND GENTLEMEN. YOU MAKE THE DECISION. AND YOU
24 DON'T MAKE IT AS A GROUP. YOU MAKE IT. AND YOU
25 MAKE IT. AND ANY ONE OF YOU, ANY SINGLE ONE OF YOU
26 CAN SPARE ERIK MENENDEZ' LIFE JUST BY SAYING, "I'M
27 JUST NOT THAT SURE."

28 I SAT HERE AND LISTENED TO MR. CONN'S

1 ARGUMENT, AND I HAD THIS ALL WRITTEN OUT, WHERE I
2 WAS GOING TO START. AND SO MANY THINGS CAME TO MY
3 MIND AND TO MY HEART. AND I SAID, "YOU KNOW, DAMN,
4 HE'S GOOD." WITH WORDS.

5 AND I STARTED TO THINK: HOW SHOULD I
6 START? HOW SHOULD I DEFUSE THE EMOTION THAT I KNOW
7 YOU'RE SITTING HERE WITH? AND I WAS TERRIFIED
8 LISTENING TO THIS TALK BECAUSE HE SOUNDED SO GOOD.
9 AND I LOOKED OVER AT MR. CONN, AND I WAS THINKING:
10 ISN'T HE FROM THE SAME PROSECUTOR'S OFFICE, ISN'T HE
11 FROM THE SAME PLACE THAT FELT THAT WHOEVER IT WAS
12 THAT MURDERED NICOLE SIMPSON AND RONALD BROWN
13 SHOULDN'T EVEN BEEN ELIGIBLE FOR THE DEATH PENALTY?

14 THEY BELIEVED THAT O.J. SIMPSON WAS
15 GUILTY. O.J. SIMPSON WAS WEALTHY. THEY THOUGHT IT
16 WITH ALL THEIR HEARTS.

17 WHAT DID RON GOLDMAN DO? WHAT DID
18 NICOLE DO? THEY BELIEVED THAT THAT DEATH DIDN'T
19 TAKE TWO MINUTES OR A WEEK TO PREMEDITATE. THEIR
20 THEORY WAS THAT O.J. SIMPSON KILLED HER OVER THE
21 COURSE OF A LIFETIME, BY BEATING HER AND SUBJECTING
22 HER TO ABUSE, AND THEN KILLING HER, SLASHING HER
23 THROAT WITH A KNIFE? TALK ABOUT PAIN AND HORROR AND
24 SUFFERING.

25 WHAT ABOUT POOR RON GOLDMAN? SLASHED TO
26 DEATH LIKE A DOG. BUT, WAIT. LET'S PUT IT IN
27 PERSPECTIVE. IT'S NOT A MATTER OF DID HE GET
28 ACQUITTED. THAT'S NOT THE ISSUE. WE'RE TALKING

1 ABOUT HIM TELLING YOU WITH A STRAIGHT FACE THAT THIS
2 KILLING IS SO DARN BAD, IT'S SO HORRIBLE, THAT OF
3 ALL THE PEOPLE THAT HAVE EVER COMMITTED A CRIME,
4 ERIK MENENDEZ MUST DIE. YOU HAVE NO OTHER CHOICE.
5 HE EARNED IT. GIVE IT TO HIM.

6 WHAT ABOUT O.J.? HE'S NOT EVEN ELIGIBLE
7 FOR CONSIDERATION OF THE DEATH PENALTY.

8 AND THAT'S WHAT MS. ABRAMSON WAS SORT OF
9 SAYING BEFORE IN HER OPENING WHEN SHE SAID: WHEN
10 YOU SIGN THE VERDICT FORM, YOU ARE SAYING LIFE
11 WITHOUT THE POSSIBILITY OF PAROLE. WHAT SHE MEANT
12 WAS THAT AS SOON AS YOU FOUND FIRST-DEGREE
13 PREMEDITATED MURDER, AS SOON AS YOU FOUND THAT FACT
14 TO BE TRUE, YOU THEN LOOKED AND SAID, WELL, ARE
15 THERE SPECIAL CIRCUMSTANCES? LYING IN WAIT. TWO
16 MURDERS. YOU CHECKED THOSE TO BE TRUE. THOSE ARE
17 CALLED SPECIAL CIRCUMSTANCES.

18 ONCE YOU FOUND THEM TO BE TRUE, ERIK
19 MENENDEZ GOT LIFE IN PRISON WITHOUT THE POSSIBILITY
20 OF PAROLE. THAT'S WHAT SHE WAS TALKING ABOUT.
21 THAT'S WHAT WOULD HAVE HAPPENED TO O.J.

22 THERE WOULDN'T HAVE BEEN A PENALTY PHASE
23 AT ALL. THERE WOULDN'T HAVE BEEN THE CONSIDERATION

24 OF THE DEATH PENALTY.

25 SO BEFORE YOU SENTENCE SOMEONE TO DEATH
26 ON THE SLICK WORDS OF A HAND-PICKED PROSECUTOR FOR
27 THIS CASE, YOU THINK ABOUT IT, AND YOU USE YOUR OWN
28 JUDGMENT, BECAUSE THIS IS A DECISION YOU HAVE TO

54815

1 LIVE WITH FOR THE REST OF YOUR LIFE. I'VE JUST
2 GOTTA' TALK.

3 HUM. I WAS GOING TO SAY THIS: I CANNOT
4 TELL YOU HOW INADEQUATE I FEEL TO TRY TO FIND THE
5 RIGHT WORDS THAT MIGHT APPEAL TO YOU.

6 AND THEN I WAS GOING TO START OFF BY
7 SAYING: IF I HAVE SAID OR DONE ANYTHING DURING THIS
8 TRIAL TO OFFEND YOU, OR IF I SHOULD SAY ANYTHING
9 DURING THESE CLOSING REMARKS THAT YOU FIND
10 DISCOMFORTING, PLEASE MARK IT AGAINST ME, BECAUSE
11 I'VE BEEN TOLD THAT SOMETIMES I GET A LITTLE LOUD,
12 AND SOMETIMES I GET A LITTLE INTIMIDATING. BUT I
13 WANT YOU TO UNDERSTAND THAT FROM MY PERSPECTIVE I'VE
14 GOT TO BE ME. I CAN'T SHUT DOWN AND BE SOMEONE
15 ELSE. I CAN'T TRY TO FIT INTO SOMEBODY ELSE'S MOLD
16 OR PERSONALITY.

17 AND IF YOU DON'T LIKE ME, HOLD IT
18 AGAINST ME. I'LL GIVE YOU MY PHONE NUMBER WHEN THIS

19 IS OVER, AND CALL ME AND TELL ME WHAT YOU THINK OF
20 ME. BUT, FOR GOD'S SAKE, DON'T HOLD IT AGAINST ERIK
21 MENENDEZ.

22 NOW, BACK IN THE GUILT PHASE YOU ^
23 SPOKE BY YOUR VERDICTS. AND I RESPECT AND I ACCEPT
24 WHAT YOU DID. I UNDERSTAND THAT YOU SAID MY CLIENT
25 WAS GUILTY OF FIRST-DEGREE MURDER, CONSPIRACY, THE
26 SPECIAL CIRCUMSTANCES ARE TRUE. I UNDERSTAND THAT.

27 I'M NOT HERE TO TELL YOU THAT YOU WERE
28 WRONG, OR EVEN SUGGEST THAT YOU WERE WRONG. BUT

54816

1 WHAT MR. CONN IS TRYING TO TELL YOU TO DO IS KILL
2 ' BECAUSE THEY'RE REALLY, REALLY GUILTY.

3 DO YOU SEE THAT? HE PUT THIS UP AND HE
4 WENT OVER EVERY WITNESS AND SAID, OH, YOU KNOW,
5 TERRY BARALT SAID SOMETHING, AND FATHER DEASY SAID
6 SOMETHING, AND HE LIED. AS THOUGH, IF YOU WERE TO
7 FIND THAT ALL THESE WITNESSES WERE IMPEACHED BY
8 PLAYING SOME KIND OF A SHELL GAME.

9 YOU KNOW THAT LITTLE GAME WHERE YOU PUT
10 THE SHELL OR THE PEA UNDER THE THING AND YOU MOVE IT
11 AROUND?

12 AND IF TERRY BARALT SAID SOMETHING
13 INCONSISTENT WITH MARIANNE CANO, AND PETER CANO SAID

14 SOMETHING THAT REALLY WASN'T TOO BAD ABOUT PUNCHING
15 A FIVE-YEAR OLD IN THE STOMACH, AND A TEACHER COMES
16 IN AND TRIES TO GIVE SOMETHING ABOUT AN INCIDENT,
17 AND YOU TRY TO PUT THOSE ASIDE.

18 I KNOW WHAT YOU WERE THINKING. YOU WERE
19 THINKING: THAT'S AGGRAVATION. IT MEANS NOTHING.
20 IT'S PART OF HIS FEATHERS.

21 YOU HAVE TO UNDERSTAND THAT YOU'RE
22 GUIDED BY RULES IN THIS SYSTEM. WHAT IS IT THAT WE
23 REALLY WANT TO DO HERE? WHAT IS IT THAT WE REALLY,
24 REALLY WANT TO DO BEFORE YOU USE THAT AWESOME POWER
25 AND RESPONSIBILITY THAT YOU HAVE? WHAT WE WANT TO
26 BE ASSURED OF IN THIS STATE IS THAT YOU'RE FAIR,
27 THAT YOU'RE HONEST, THAT YOU'RE JUST, THAT YOU'RE
28 NOT ARBITRARY, THAT YOU FOLLOW THE RULES.

54817

1 AND THE RULES THAT YOU GET IN A PENALTY
2 PHASE WILL GUIDE YOU AND ASSIST YOU IN DETERMINING
3 WHAT IS AGGRAVATION, WHAT IS MITIGATION. AND THE
4 SIMPLIST WAY OF LOOKING AT IT IS TO UNDERSTAND THAT
5 IN ORDER TO BE AGGRAVATION, IT HAS TO BE OVER AND
6 ABOVE THE ELEMENTS OF THE CRIME.

7 WHAT ARE THE ELEMENTS OF THE CRIME THAT
8 YOU HAVE FOUND ERIK MENENDEZ GUILTY OF? SOMETIMES

9 IT'S BETTER TO LOOK AT SOMETHING THAT IS NOT AN
10 ELEMENT SO YOU CAN SEE WHAT I'M TALKING ABOUT.

11 REMEMBER, MR. CONN TOLD YOU: I DON'T
12 HAVE TO PROVE MOTIVE. THAT'S AN EXAMPLE. MOTIVE.
13 WHY DID THIS HAPPEN? WE'LL TALK ABOUT THAT IN A
14 MINUTE. BUT I'M JUST TRYING TO GIVE YOU AN EXAMPLE
15 OF WHAT YOU'RE TO LOOK AT IN AGGRAVATION. NOT
16 WHETHER THERE WAS REALLY, REALLY, REALLY, REALLY,
17 REALLY PREMEDITATION. YOU'VE ALREADY FOUND THAT.
18 YOU'VE ALREADY FOUND THAT.

19 THAT'S NOT AGGRAVATING THE CRIME.
20 NOTHING THAT HE SAID WAS AGGRAVATION OF THE CRIME.
21 HE WAS ARGUING THE CRIME. AND HE WANTS YOU TO
22 DISREGARD EVERY OTHER POSSIBLE OR CONCEIVABLE REASON
23 FOR SPARING THE LIFE OF A FELLOW HUMAN BEING? IT'S
24 HIS JOB.

25 THE TASK OF GOING ABOUT TO DO THIS, IT
26 CANNOT COME FROM ANGER. YOU CAN'T BE MAD AT ERIK
27 MENENDEZ AND GIVE HIM DEATH.

28 YOU CAN'T HATE ERIK MENENDEZ AND GIVE

54818

1 HIM DEATH.

2 YOU CAN'T GIVE HIM DEATH OUT OF SPITE OR
3 REVENGE OR RETRIBUTION. THOSE ARE NOT PROPER

4 CONSIDERATIONS FOR YOU TO IMPOSE THE SENTENCE OF
5 DEATH; NOR IS THE APPROACH OF A MECHANICAL TALLYING
6 OR WEIGHING, LIKE MR. CONN WANTS YOU THINKING OF
7 BRICKS AND FEATHERS OR OTHER THINGS, TO SAY: WELL,
8 I WAS AN ACCOUNTANT, AND THEY TOLD ME THAT I CAN USE
9 THIS BALANCE SHEET. AND WE CAN FIGURE OUT THIS
10 PROBLEM BECAUSE THESE ARE AGGRAVATING CIRCUMSTANCES;
11 THESE ARE FACTORS IN MITIGATION. AND LET'S ADD 'EM
12 UP. AND OOH, LOOK. THERE IS ONE MORE FACTOR IN
13 AGGRAVATION. BINGO. DEATH PENALTY.

14 IF THAT WERE THE CASE, DO WE NEED YOU?
15 DO WE? AND DO WE NEED 12 OF YOU? WE JUST NEED ONE
16 COMPUTER. THAT WILL WORK. PUT IN THE INFORMATION,
17 HIT THE ENTER BUTTON, AND POOF, THE DEFENDANT GETS
18 WHAT COMES OUT. IT DOESN'T WORK THAT WAY.

19 WHY 12 OF YOU? WHY 12 OF YOU TO
20 DECIDE? BECAUSE EACH ONE OF YOU HAVE DIFFERENT LIFE
21 EXPERIENCES, AND EACH ONE OF YOU HAVE DIFFERENT
22 FEELINGS AND EMOTIONS, AND EACH ONE OF YOU HAS THE
23 RIGHT, THE OBLIGATION, THE DUTY, TO USE YOUR
24 FEELINGS OF COMPASSION, TO USE YOUR FEELINGS OF
25 JUSTICE, AND TO USE THE FEELINGS THAT YOU HAVE
26 INSIDE YOU TO DECIDE WHAT'S APPROPRIATE, BECAUSE
27 THIS IS A DECISION YOU HAVE TO LIVE WITH FOR THE
28 REST OF YOUR LIFE.

1 YOU CAN BE FIRM, BUT COMPASSIONATE. YOU
2 CAN BE STRONG AND MERCIFUL. YOU CAN BE
3 UNDERSTANDING AND SYMPATHETIC.

4 THESE ARE NOT STRENGTHS, LADIES AND
5 GENTLEMEN -- THESE ARE STRENGTHS. THESE ARE NOT
6 WEAKNESSES.

7 HAVE YOU EVER HEARD OF A GREAT LEADER
8 THAT LACKED COMPASSION OR MERCY OR UNDERSTANDING OR
9 SYMPATHY? WHAT WOULD YOU HAVE?

10 AND YOU ARE LEADERS. YOU'RE LEADERS OF
11 ERIK MENENDEZ' LIFE. AND IF YOU FEEL ANY
12 COMPASSION, THIS IS THE TIME TO USE IT. IF YOU FEEL
13 ANY MERCY, THIS IS THE TIME TO USE IT.

14 IF YOU GO BACK THERE AND YOU GET
15 TOGETHER AND YOU ARE DISAGREEING, AND YOU START
16 ARGUING ABOUT WHY YOU FEEL THE WAY YOU FEEL, YOU ARE
17 DISRESPECTING -- YOU ARE DISRESPECTING THE
18 COMPASSION, THE SYMPATHY THAT THE PERSON THAT IS
19 EXPRESSING THEIR OPINION IS ENTITLED TO BY LAW.

20 THIS IS NOT -- YOU SEE -- YOU SEE, YOU ARE
21 TOLD IN THE GUILT PHASE -- AND THIS IS THE MOST
22 CRITICAL ASPECT OF THIS PHASE, BECAUSE THIS IS
23 EMOTIONAL. YOU HAVE A RIGHT TO USE THESE EMOTIONS.
24 BUT YOU WERE TOLD IN THE GUILT PHASE: YOU CAN'T USE
25 SYMPATHY. AND YOU CAN'T USE PASSION. AND YOU CAN'T
26 USE ANGER. AND YOU CAN'T USE THIS, AND YOU CAN'T --

27 EVERYTHING EMOTIONAL. YOU HAD TO BE DISPASSIONATE.

28 YOU HAD TO DECIDE IT ON THE LAW. AND YOU DID THAT.

54820

1 YOU FOLLOWED THAT INSTRUCTION.

2 SO I HAVE TO KNOW THAT YOU'RE GOING TO
3 FOLLOW THE NEW INSTRUCTION, THE INSTRUCTION THAT THE
4 PEOPLE JUST TOTALLY WANT YOU TO IGNORE.

5 THE ONE INSTRUCTION THAT, I SUPPOSE, IN
6 THIS CASE MUCH CAN BE SPOKEN TO -- ALTHOUGH THERE'S
7 OTHER FACTORS IN MITIGATION -- THERE'S ONE
8 INSTRUCTION THAT SAYS:

9 "ANY SYMPATHETIC FACTOR OF THE
10 DEFENDANT'S CHARACTER THAT WOULD
11 JUSTIFY LIFE IN PRISON WITHOUT THE
12 POSSIBILITY OF PAROLE, EVEN IF IT'S
13 NOT RELATED TO THE CRIME."

14 ANYTHING CAN JUSTIFY LIFE, AND DO YOU
15 KNOW WHY? BECAUSE THE SYSTEM PREFERS LIFE. IT
16 REALLY, REALLY DOES.

17 YOU SHOULDN'T KILL ERIK MENENDEZ,
18 BECAUSE YOU DON'T HAVE TO. YOU'LL BE PROTECTING NO
19 ONE. YOU'LL BE APPEASING NO ONE.

20 THE LAW EMPOWERS YOU, THE JURY, TO
21 DECIDE AMONG ALL THOSE ELIGIBLE FOR THE DEATH

22 PENALTY WHO SHOULD LIVE AND WHO SHOULD DIE. THE
23 PROBLEM IS, IS THAT YOU ONLY KNOW OF ONE CASE, THIS
24 ONE. SO HOW DO YOU KNOW WHO, AMONG THOSE ELIGIBLE,
25 SHOULD LIVE AND SHOULD DIE? AND THAT'S WHERE THE
26 PROSECUTION'S GOT THE ADVANTAGE.

27 BECAUSE HE COULD GET UP HERE, KNOWING
28 THAT THIS IS THE ONLY CASE YOU'VE EVER SEEN --

54821

1 PERHAPS THAT OTHER ONE THAT I TALKED ABOUT -- BUT
2 YOU DON'T KNOW FROM THEIR OFFICE WHO THEY DECIDE
3 SHOULD BE AMONG THOSE ELIGIBLE FOR THE DEATH
4 PENALTY. YOU DON'T KNOW IT.

5 AND YOU DON'T KNOW FROM THOSE ELIGIBLE
6 FOR THE DEATH PENALTY WHO GETS IT. YOU DON'T.

7 SO THIS CASE LOOKS LIKE SUCH A
8 HORRENDOUS CRIME TO YOU. AND I UNDERSTAND THAT'S
9 HOW YOU FEEL.

10 THE BURGLAR, MR. CONN'S EXAMPLE, THAT
11 MURDERED THE PERSON IN THE HOUSE. WHAT WOULD
12 MR. CONN ARGUE IF HE WAS ON THAT CASE?

13 OR THE CLERK THAT MIGHT HAVE A WIFE AND
14 CHILD AT HOME THAT WAS JUST WORKING AT THE 7-ELEVEN,
15 MINDING HIS OWN BUSINESS, AND THE DRUG-CRAZED ROBBER
16 CAME IN AND TOOK HIS LIFE. HAD A RECORD ALL HIS

17 LIFE, NEVER HAD ANY REGARD FOR HUMAN DIGNITY IN HIS
18 LIFE, NEVER DID ANYTHING IN HIS LIFE.
19 WHAT WOULD HE ARGUE IN THAT CASE? BUT
20 YOU DON'T KNOW. YOU ONLY GET TO KNOW ABOUT THIS
21 ONE. AND THAT'S WHERE MY HEART POURS OUT TO YOU.
22 BECAUSE AFTER YOU MAKE YOUR DECISION YOU'LL GET TO
23 KNOW, IF YOU'RE INTERESTED, AND ONE DAY YOU MAY SAY
24 TO YOURSELF: "GOD, THAT GUY IN RIVERSIDE THAT
25 MURDERED 14 PEOPLE, HE GOT LIFE." OR "I DIDN'T KNOW
26 THAT VERY, VERY FEW PARRICIDE CASES EVER RESULT IN
27 EVEN A MURDER CONVICTION. I DIDN'T KNOW THAT."
28 THEY CALL IT "PARRICIDE." IT'S GOT A

54822

1 NAME. THE KILLING OF YOUR PARENTS.
2 BUT WHO SHOULD GET THE DEATH PENALTY IF
3 WE'RE TALKING IN GENERALITIES, TRYING TO
4 COMMUNICATE, WITHOUT CITING CASES OR THINGS THAT ARE
5 BEYOND MY KNOWLEDGE EVEN, TO SOME AGREE, BECAUSE I
6 DON'T MAKE THESE DECISIONS AS TO WHO SHOULD BE
7 ELIGIBLE FOR THE DEATH PENALTY. THAT COMES FROM
8 WITHIN THE ADMINISTRATIVE BUREAUCRACY OF THEIR
9 OFFICE. THEY DECIDE ELIGIBILITY. THAT'S ALL. JUST
10 CHECKING A BOX AND SENDING A PIECE OF PAPER DOWN TO
11 THE COURT.

12 MR. CONN: I WILL OBJECT TO THIS. THERE'S NO

13 EVIDENCE OF THAT, YOUR HONOR.

14 THE COURT: OVERRULED.

15 MR. LEVIN: THANK YOU, YOUR HONOR.

16 THE DEATH PENALTY SHOULD BE GIVEN TO THE

17 MOST VICIOUS AND DANGEROUS. IT SHOULD BE GIVEN TO

18 PROTECT THE OFFICERS WHO MUST GUARD A LIFER AND TO

19 THE OTHER INMATES WHO THAT PERSON MUST LIVE AMONG.

20 A DEATH SENTENCE SHOULD BE GIVEN FOR THOSE WITH A

21 HISTORY OF VIOLENCE AND CRIME, THOSE WHOSE LIFE HAS

22 BEEN CONSUMED WITH HATE, EVIL, AND JUST A GENERAL

23 DISRESPECT FOR HUMANITY.

24 THE DEATH PENALTY IS RESERVED FOR THOSE

25 WHO HAVE NO REMORSE FOR THEIR CRIMES OR COMPASSION

26 FOR THOSE LEFT BEHIND TO SUFFER.

27 THE ANDERSENS. I'VE GOT TO BRING

28 SOMETHING UP TO YOU, BECAUSE I WAS SITTING THERE AND

54823

1 MY HEART POURED OUT TO THEM. I HAD TOLD ERIK

2 MENENDEZ BEFORE THEY TESTIFIED, I SAID: "LOOK,

3 DON'T CRY. PLEASE TRY HARD. HOLD YOUR EMOTIONS. I

4 THINK THEY WOULD WANT THAT. DON'T DISTRACT

5 ANYTHING. PLEASE TRY. PLEASE."

6 AND I WAS SITTING THERE RIGHT NEXT TO

7 HIM, AND I LOOKED OVER AT YOU, AND I THOUGHT THREE
8 OR FOUR OF YOU LOOKED AT HIM WHEN MILTON ANDERSEN
9 STARTED TO SOB.

10 AND I SAID, "OH, MY GOD. WHAT HAVE I
11 DONE?" HAVE I INTERFERED WITH YOU MAKING SOME TYPE
12 OF A DETERMINATION ON REMORSE? HAVE I, AS HIS
13 LAWYER, GIVEN HIM SOME ADVICE THAT YOU AS A JUROR
14 MIGHT TAKE AS A LACK OF REMORSE AND USE IT AGAINST
15 HIM?

16 IF THAT HAPPENED, I DEEPLY AND SINCERELY
17 APOLOGIZE. AND AGAIN, HOLD IT AGAINST ME, BUT DON'T
18 HOLD IT AGAINST ERIK MENENDEZ.

19 THE DEATH PENALTY IS FOR THOSE WHO HAVE
20 MURDERED INNOCENT CHILDREN.

21 SEXUAL SADISTS WHO MURDER THEIR VICTIMS,
22 DELIGHTING IN THEIR TERROR AND FEAR.

23 THOSE WHO MURDER POLICE OFFICERS IN THE
24 PERFORMANCE OF THEIR DUTIES.

25 THOSE WHO TORTURE THEIR VICTIMS WITH AN
26 INTENTION TO INFLICT PAIN AND SUFFERING.

27 AND SERIAL KILLERS, WHO SELECT RANDOM
28 VICTIMS TO QUENCH THEIR PERSISTENT THURST FOR

54824

1 MURDER.

2 NOW, YOU WILL BE PROVIDED WITH A LIST OF
3 STATUTORY FACTORS IN AGGRAVATION, AND THESE
4 GUIDELINES, AS I HAVE EXPLAINED TO YOU, ARE AN
5 ATTEMPT TO ASSESS THE IMPOSITION OF THE DEATH
6 PENALTY, SO THAT AMONG THOSE ELIGIBLE, THERE WILL BE
7 SOME CONSISTENCY. AND THERE WILL NOT BE AN
8 ARBITRARY RESULT, WITH THE INTENTION OF HAVING THOSE
9 EXECUTED WHO ARE THE WORST OF THE WORST.

10 NOW, NO EVIDENCE AT ALL CAN BE USED IN
11 AGGRAVATION TO SUPPORT A DEATH SENTENCE UNLESS IT IS
12 LISTED IN THIS INSTRUCTION. AND ALL THE FACTORS IN
13 MITIGATION MUST BE CONSIDERED BY YOU DURING YOUR
14 DELIBERATIONS.

15 IF THERE'S A LACK OF AGGRAVATION -- I'M
16 SORRY -- A LACK OF MITIGATION, IT DOES NOT EQUAL
17 AGGRAVATION.

18 SO, FOR EXAMPLE, IF YOU SHOULD LOOK AT A
19 FACTOR THAT'S LISTED THERE, AND YOU THINK IT'S
20 IRRELEVANT, IT JUST DOESN'T APPLY. YOU THINK IT IS
21 RELEVANT -- THE POINT IS, IS THAT IT CAN'T BE USED
22 AS AN AGGRAVATING FACTOR BECAUSE YOU FIND IT DOESN'T
23 EXIST.

24 NOW, WHAT ARE FACTORS IN AGGRAVATION?
25 WHAT ARE FACTORS IN MITIGATION? WHAT DOES IT MEAN?

26 WELL, SIMPLY PUT, LAWFUL FACTORS IN
27 AGGRAVATION CAN -- THEY DON'T DO. THEY CAN. AND
28 THEY ONLY CAN IF YOU FIND THAT IT DOES.

1 IT CAN INCREASE THE ENORMITY OF THE
2 CRIME, WHILE EVIDENCE IN MITIGATION, OR EVEN THE
3 ABSENCE OF AGGRAVATION, SHALL BE CONSIDERED BY YOU
4 TO JUSTIFY THE PUNISHMENT OF LIFE IN PRISON WITHOUT
5 THE POSSIBILITY OF PAROLE.

6 KEEP IN MIND -- REMEMBER, WHEN WE BEGAN
7 THIS PENALTY PHASE AND THE PROSECUTION WAS ASKED
8 WHAT EVIDENCE THAT IT WISHED TO PRESENT DURING ITS
9 DIRECT, DURING ITS OPPORTUNITY TO PRESENT
10 AGGRAVATION? THEY STOOD UP AND SAID: "WE HAVE
11 NONE. WE HAVE NONE. WE REST. WE STOP. WE'RE JUST
12 GOING TO ARGUE THE CRIME."

13 THAT'S WHAT THEY TOLD YOU.

14 BUT, NOW, MR. CONN IS TAKING THE ENTIRE
15 DEFENSE PRESENTATION OF MITIGATION AND HOPING THAT
16 YOU USE IT IN AGGRAVATION. CAN'T DO IT.

17 NOW, YOU ARE FREE TO ASSIGN WHATEVER
18 MORAL OR SYMPATHETIC VALUE YOU DEEM APPROPRIATE TO
19 EACH OF THESE FACTORS. YOU ARE FREE TO CONSIDER ANY
20 OF THESE FACTORS ALONE, ANY -- YOU KNOW, THIS -- I'VE
21 GOT TO COMMENT ON THE BABY, ON JOY GOLDSMITH.
22 THAT'S AN EXAMPLE OF A SINGLE INCIDENT THAT WOULD
23 JUSTIFY IMPOSING A LIFE SENTENCE.

24 TO JUST, IN YOUR MIND, SAY: YOU KNOW,
25 YOU GAVE LIFE. YOU ALLOWED LIFE TO CONTINUE, AND

26 FOR THAT I'M GOING TO SPARE YOUR LIFE.
27 THAT ALONE. THAT ONE LITTLE THING. IS
28 IT LITTLE? IT'S LITTLE BECAUSE IT CAME IN QUICKLY.

54826

1 MR. CONN KNOWS THAT. SO HE'S GOT TO
2 CALL THE OTHER A LIAR.
3 NOW, WHAT MOTHER WOULD CONJURE UP THE
4 IMAGE OF HER LITTLE THREE-YEAR-OLD GIRL LYING FACE
5 DOWN IN A POOL OF WATER? WHAT MOTHER WOULD DO THAT
6 IF IT WASN'T TRUE? TO JUST SAY IT IN PASSING TO TRY
7 TO HELP ERIK MENENDEZ? HOW CRUEL AND HORRIBLE A
8 PERSON WOULD FAITH GOLDSMITH BE? IT'S SO
9 MIND-BOGGLING TO EVEN IMAGINE THAT THEY'RE GOING TO
10 SIT HERE AND CALL HER A LIAR. I HAVE PAIN FOR
11 THEM. BECAUSE IF THAT'S WHAT IT IS, IF THAT'S WHAT
12 IT TAKES TO OBTAIN A JUDGMENT, FOR JUST SOME LAWYER
13 TO GET UP AND SAY, "SHE LIED. I FIND SHE LIED."
14 SO, THEREFORE, JUST KIND OF PUT IT ASIDE. THE
15 LITTLE GIRL, THE STORY, IT DIDN'T HAPPEN."
16 WHAT IF IT DID? WHAT IF THAT LITTLE
17 GIRL, WHEN SHE GETS A LITTLE BIT OLDER, CALLS ONE OF
18 YOU UP AND SAYS: "IT HAPPENED. I WAS THERE."
19 BUT I SUPPOSE THE POINT IS, IF YOU'RE
20 GOING TO SEEK TO HAVE SOMEONE EXECUTED, YOU'RE GOING

21 TO DO IT ON THE ABSOLUTE BEST EVIDENCE THAT YOU CAN
22 FIND. I MEAN, WE'RE TALKING ABOUT LIFE OR DEATH.
23 SO BEFORE YOU JUST SAY: "SHE'S A LIAR," MAYBE YOU
24 SHOULD BRING IN SOME WITNESSES TO TALK ABOUT THE BAD
25 CHARACTER OF FAITH GOLDSMITH; THAT SHE'S LIED; THAT
26 SHE'S COMMITTED CRIMES; THAT SHE CAN'T BE TRUSTED.
27 THEY HAD THE OPPORTUNITY TO DO THAT.
28 THIS IS A CASE WHERE LIFE AND DEATH IS AT STAKE.

54827

1 AND THEY WANT YOU TO MAKE THIS DECISION
2 AND FEEL GOOD ABOUT IT FOR THE REST OF YOUR LIVES.
3 CAN YOU LOOK AT MR. CONN? ARE YOU AFRAID TO LOOK AT
4 HIM AND LOOK HIM IN THE EYE AND SAY: I WANTED TO
5 SEE SOME MORE EVIDENCE. WHAT'S WRONG WITH THAT?
6 WIN OR LOSE, HE GOES BACK TO HIS OFFICE. GETS
7 ANOTHER CASE. HE DOESN'T CARE WHAT YOU DO.
8 WHY? WHY DIDN'T HE BRING IN SOME
9 WITNESSES? OR HE'S SITTING HERE TALKING ABOUT WE'RE
10 VICTIM-BASHING, VICTIM-BASHING, SO EVERYTHING --
11 THIS IS A GOOD ONE.
12 SO EVERYTHING THE DEFENSE SAYS BAD ABOUT
13 JOSE AND KITTY MENENDEZ, THEY HIDE BEHIND
14 VICTIM-BASHING. THEY PUT UP THIS SHIELD AND SAY:
15 YOU CAN'T SAY ANYTHING BAD ABOUT THE VICTIMS. YOU

16 CAN'T POINT OUT HIS LIFE, BECAUSE IF YOU DO, WE'RE
17 GOING TO MAKE YOU FEEL BAD. WE'RE GOING TO SHOW
18 THOSE BLOODY, GORY PICTURES, AND WE'RE GOING TO SHOW
19 HOW BAD HE IS, BECAUSE HE WANTS TO COME IN AND TELL
20 YOU WHAT HAPPENED TO HIM THROUGHOUT HIS LIFE. BUT
21 HE'S VICTIM-BASHING.

22 SO THEY SAY: WE PUT ON EVIDENCE, AND
23 YOU'RE SUPPOSED TO HATE JOSE MENENDEZ? AND WE PUT
24 ON EVIDENCE AND YOU'RE SUPPOSED TO HATE KITTY
25 MENENDEZ? DON'T YOU SEE WHAT THEY'RE DOING?
26 THEY'RE DOING IT IN REVERSE. THEY'RE DOING IT
27 THEMSELVES. THEY'RE TELLING YOU: IF YOU LIKE JOSE
28 MENENDEZ, IF YOU LIKE KITTY MENENDEZ, YOU'VE GOTTA'

54828

1 KILL 'EM.

2 CAN YOU SEE IT? THAT'S WHAT THEY WANT.
3 THAT'S THE EMOTION THAT THEY'RE STIRRING UP. IT'S A
4 REFERENDUM ON THE PARENTS. IF WE SAY SOMETHING
5 ABOUT THEM, THAT IS CATEGORIZED AS BAD, WE'RE
6 BASHING THE VICTIMS, OF COURSE. AND SO, THEY'RE
7 ALREADY DEAD. AND HOW CAN WE DO THIS? WE'RE JUST
8 TRYING TO TELL YOU THE TRUTH. AND IF THE TRUTH IS
9 THAT JOSE MENENDEZ PUNCHED LYLE MENENDEZ IN THE
10 STOMACH, HE DID IT.

11 IF THE TRUTH IS THAT THEY TREATED ERIK
12 MENENDEZ LIKE A RACE HORSE AND A POSSESSION ALL HIS
13 LIFE, THAT'S THE TRUTH.
14 NOW, IF IT ISN'T THE TRUTH, AND IF THIS
15 WAS OZZIE AND HARRIET, WHY DIDN'T THEY BRING IN
16 WITNESSES? I MEAN, THINK ABOUT IT JUST FOR A
17 MOMENT.
18 ERIK MENENDEZ WAS NEVER EVER MOLESTED.
19 HE WAS NEVER EVER SUBJECTED TO PSYCHOLOGICAL ABUSE.
20 HE HAD THE ABSOLUTE BEST LIFE THAT ANYONE COULD
21 HAVE. I MEAN, HE'S FROM BEVERLY HILLS. HE'S
22 WEALTHY. HE HAS OPPORTUNITY. HE HAS EVERYTHING
23 HUMANLY POSSIBLE AVAILABLE TO HIM. AND THE PARENTS
24 ARE JUST SO WONDERFUL. THEY ARE THE ABSOLUTE
25 EPITOME OF THE BEST PARENTS THAT YOU COULD EVER
26 IMAGINE.
27 WHERE WERE THE WITNESSES? MR. CONN, WHY
28 DIDN'T YOU BRING THEM IN? NOT ONE. I MEAN, DIDN'T

54829

1 JOSE MENENDEZ HAVE ANY FRIENDS? DOESN'T HE HAVE ANY
2 BUSINESS ASSOCIATES THAT ARE GOING TO ATTEST TO HIS
3 DEDICATION AND SKILL AND HONESTY AND INTEGRITY AND
4 PARENT-REARING ABILITIES?
5 WHAT ABOUT KITTY MENENDEZ? DOESN'T SHE

6 HAVE ANY FRIENDS? YEAH. WE BROUGHT IN HER BEST

7 FRIEND, BUT THAT WASN'T GOOD ENOUGH FOR THEM. FAITH

8 GOLDSMITH. SHE'S A LIAR. HER BEST FRIEND IS A

9 LIAR.

10 HE SAVED THE LIFE OF KITTY MENENDEZ'

11 BEST FRIEND. SO KILL 'EM. BECAUSE WE BROUGHT HER

12 IN.

13 BUT, NO, MR. CONN, NONE OF THIS

14 HAPPENED. THIS IS ALL GARBAGE. IT'S BEEN MADE UP

15 BY THE DEFENSE. BUT IF IT'S ALL MADE UP, WHAT WAS

16 IT? WHAT ARE YOU LEFT WITH? DEDUCT EVERYTHING

17 WE'VE DONE SINCE WHENEVER WE STARTED THIS TRIAL.

18 TAKE IT ALL AWAY. THROW IT DOWN ON THE GROUND, AND

19 WHAT ARE YOU LEFT WITH?

20 DO YOU KNOW WHAT HAPPENED? DID THEY

21 PROVE IT TO YOU? BUT BETTER YET, DID THEY HAVE THE

22 OPPORTUNITY TO PROVE IT TO YOU?

23 THIS IS A COURT OF LAW. THEY HAVE

24 INVESTIGATED THIS CASE FOR SEVEN YEARS NON STOP.

25 THEY HAVE POURED MORE RESOURCES INTO THIS CASE THAN

26 ANY PROSECUTION EVER IN THE HISTORY OF LOS ANGELES

27 COUNTY'S PROSECUTION BACKGROUND.

28 MR. CONN: I WOULD OBJECT TO THAT. THERE'S

1 NO EVIDENCE OF THAT, YOUR HONOR.

2 THE COURT: WELL, THERE HAS BEEN NO EVIDENCE
3 RELATING TO THAT, MR. LEVIN. PERHAPS YOU CAN
4 REPHRASE YOUR REMARKS.

5 MR. LEVIN: THEY HAVE UTILIZED COMPANIES
6 CALLED DECISION QUEST.

7 MR. CONN: OBJECTION. THERE'S NO EVIDENCE OF
8 THAT.

9 MR. LEVIN: YES, THERE IS.

10 THE COURT: OVERRULED.

11 MR. LEVIN: THEY HAVE PUT TOGETHER FANCY
12 CHARTS AND DIAGRAMS. THEY HAVE ENLISTED JURY
13 CONSULTANT EXPERTS.

14 MR. CONN: OBJECTION, THERE'S NO --

15 THE COURT: SUSTAINED AS TO REFERENCE TO
16 CONSULTANTS, MR. LEVIN.

17 MR. LEVIN: THEY HAVE A TEAM OF MINIONS THAT
18 SIT IN COURT EVERY DAY. THIS WHOLE SECTION IS THE
19 PROSECUTION TEAM, THE ONES THAT YOU SEE EVERY DAY.
20 THEY SHEPHERD IN REPORTS AND DOCUMENTS AND INTERVIEW
21 PEOPLE, AND RUN OUT AND GET THINGS AND COME BACK.
22 THEY HAVE EVERY POSSIBLE CONCEIVABLE TOOL AT THEIR
23 DISPOSAL TO BRING YOU EVERY FACT IN THIS CASE. THEY
24 DIDN'T BECAUSE IT DOESN'T EXIST.

25 YOU KNOW, AT THIS MOMENT, I STAND IN
26 ERIK MENENDEZ' SHOES. AND FOR BETTER OR WORSE,
27 RIGHT NOW, I'M ALL HE HAS. AND IF I HAVE FAILED
28 HIM, OR IF I DO FAIL HIM, IT'S GOING TO BE IN MY

1 INABILITY TO SHOW YOU WHY I CARE FOR HIM SO DEEPLY;
2 TO HAVE SHOWN YOU HOW MUCH HE WANTS TO LIVE, EVEN IF
3 IT'S IN PRISON FOR THE REST OF HIS LIFE. IF I
4 FAILED HIM IN ANY WAY, IT'S TO HAVE FAILED TO SHOW
5 YOU HOW MUCH HE HAS GROWN FROM AN 18-YEAR-OLD KID
6 WHO MADE A DREADFUL, TERRIBLE MISTAKE, TO WHAT HE IS
7 TODAY.

8 HE WAS GRIEF-STRICKEN FOLLOWING THE
9 CRIME. HE CONFESSED, TURNED HIMSELF IN, AND
10 SUBMITTED HIMSELF TO THIS PROSECUTION.

11 HAD ERIK MENENDEZ NOT CONFESSED, THERE
12 WOULD HAVE BEEN INSUFFICIENT EVIDENCE TO EVEN OBTAIN
13 A CONVICTION. THINK ABOUT IT. THERE WAS NO
14 PHYSICAL EVIDENCE FOUND AT THE SCENE THAT WOULD HAVE
15 CONNECTED HIM TO THE CRIME.

16 THERE WERE NO WEAPONS RECOVERED THAT
17 WOULD CONNECT ERIK MENENDEZ TO THIS CRIME.

18 THERE WERE NO EYEWITNESSES TO THIS
19 CRIME.

20 THERE WAS NO INDEPENDENT PROOF,
21 SCIENTIFIC OR PHYSICAL, TO THIS CRIME THAT POINTED
22 TO ERIK MENENDEZ.

23 YOU WOULD HAVE NEVER KNOWN, NO ONE WOULD

24 HAVE, WHATEVER IT WAS THAT HAPPENED IN THAT DEN, IF
25 ERIK MENENDEZ HAD NOT CONFESSED.
26 NOW, THAT SHOULD COUNT FOR SOMETHING.
27 THE FAMILY HAS GOT CLOSURE, KNOWLEDGE OF WHAT TOOK
28 THE LIVES OF THEIR LOVED ONE.

54832

1 THE PROSECUTION HAS ITS CONVICTION.
2 JUSTICE HAS BEEN DONE. ENOUGH IS
3 ENOUGH. LIFE IN PRISON WITHOUT THE POSSIBILITY OF
4 PAROLE IS PUNISHMENT ENOUGH.
5 ALSO CONSIDER THIS: ERIK MENENDEZ
6 TURNED HIMSELF INTO THE POLICE BY VOLUNTARILY FLYING
7 FROM ISRAEL TO LOS ANGELES.
8 NOW, YOU HAVE ALL HEARD OF CASES WHERE
9 COUNTRIES WITHOUT CAPITAL PUNISHMENT HAVE REFUSED TO
10 EXTRADITE SOMEONE BACK TO THE UNITED STATES TO BE
11 PROSECUTED FOR A CRIME WHICH COULD GET THE DEATH
12 PENALTY. CANADA'S ONE. SO ERIK MENENDEZ COULD HAVE
13 FLOWN TO CANADA AND SAID: "I AIN'T COMING BACK
14 UNLESS YOU DON'T SEEK THE DEATH PENALTY."
15 THAT'S ALL HE HAD TO DO. IF THERE'S A
16 MESSAGE HERE, LADIES AND GENTLEMEN, THE MESSAGE
17 SHOULD BE: THAT IF YOU DO SOMETHING TERRIBLY WRONG,
18 HORRIBLY WRONG, YOU CONFESS, YOU VOLUNTARILY TURN

19 YOURSELF IN WITH NO STRINGS ATTACHED, TO FACE THE
20 CONSEQUENCES, IT WILL BE A VERY, VERY, VERY STRONG
21 FACTOR TO SPARE YOUR LIFE.

22 AND HE DID ALL OF THIS. HE DID ALL OF
23 THIS WHILE HE WAS CLOAKED WITH THE PRESUMPTION OF
24 INNOCENCE.

25 NOW, AS A SOCIETY WE WANT TO ENCOURAGE,
26 NOT DISCOURAGE, PEOPLE FROM CONFESSING THEIR CRIMES
27 AND PEACEFULLY TURNING THEMSELVES IN. MURDER AND
28 CAPITAL PUNISHMENT ARE NOT OPPOSITES THAT CANCEL

54833

1 EACH OTHER OUT. YOU CANNOT BRING BACK JOSE AND
2 KITTY MENENDEZ BY KILLING THEIR SONS. YOU'RE ONLY
3 GOING TO ADD TO THE GRIEF.

4 NOW, AS I GAZE UPON YOU I GET CERTAIN
5 FEELINGS, AND ONE OF THEM IS THAT YOU'RE LOOKING TO
6 ME, OR LOOKING AT ME AND THINKING THAT BECAUSE I
7 REPRESENT HIM AND BECAUSE I'VE BEEN WITH HIM FOR A
8 LONG TIME, AND BECAUSE I'VE HAD TIME TO STUDY
9 DOCUMENTS AND TESTIMONY AND READ REPORTS, THAT I
10 KNOW WHAT HIS LIFE WAS LIKE AND WHAT LED UP TO THE
11 EVENTS OF AUGUST THE 20TH, 1989. I DON'T. I DON'T
12 KNOW ANYMORE THAN YOU KNOW, AND THE DISTRICT
13 ATTORNEY DOESN'T KNOW.

14 BUT WHAT I DO KNOW IS THAT SOMETHING WAS
15 TERRIBLY WRONG INSIDE THIS FAMILY.
16 THE PROSECUTION IS STILL TRYING THE
17 GUILT PHASE. THEY'RE STILL TRYING TO PROVE TO YOU
18 THAN HE'S GUILTY.
19 THERE ISN'T ONE THING THAT THE
20 PROSECUTION SAID THAT WOULD JUSTIFY A DEATH SENTENCE
21 HERE. THE FACT THAT PEOPLE LAWFULLY REFUSE TO TALK
22 TO HIM. COME ON. THAT MEANS SOMETHING?
23 IF I TOOK HIS WALLET AWAY -- HE'S GOT A
24 LITTLE BADGE THAT SAYS "DISTRICT ATTORNEY -- DEPUTY
25 DISTRICT ATTORNEY, COUNTY OF LOS ANGELES," AND I
26 TOOK IT AND I SET IT DOWN, HE'S JUST A MAN. HE
27 DOESN'T HAVE ANY SPECIAL POWER OR RIGHT THAT TERRY
28 BARALT OR ANYBODY ELSE MUST TALK TO; OR WHEN YOU GET

54834

1 ZOELLERIZED, WHERE DETECTIVE ZOELLER COMES UP AND
2 SAYS: "I'M FROM THE BEVERLY HILLS POLICE DEPARTMENT
3 AND I'M INVESTIGATING A MURDER HERE, LADIES AND
4 GENTLEMEN, AND I WOULD LIKE TO TALK TO YOU."
5 AND YOU SAY: "NO. I DON'T WANT TO TALK
6 TO YOU."
7 THAT'S BEING ZOELLERIZED. AND DETECTIVE
8 ZOELLER COMES IN AND GETS UP ON THE WITNESS STAND,

9 AND TELLS YOU THAT THEY WOULDN'T TALK. THAT MEANS
10 THAT THEY HAD SOMETHING TO HIDE. AND IF YOU DON'T
11 TALK TO HIM, YOU GOTTA' BE BAD, YOU GOTTA' BE EVIL.

12 YOU DON'T HAVE TO TALK, AND YOU
13 SHOULDN'T HAVE TO TALK IF YOU DON'T WANT TO. WHO'S
14 HE? WHY SHOULD I HAVE TO TALK TO HIM? OR A COP, IF
15 I DON'T WANT TO? THEY DIDN'T DO ANYTHING WRONG.
16 THEY HAVE THE RIGHT, AND IT DOESN'T MEAN THEY'RE
17 LYING. IF YOU THOUGHT IT, STOP IT. THIS IS
18 AMERICA.

19 HE'S ONLY A PERSON. LOOK AT 'EM. HE'S
20 NOT SPECIAL. HE DOESN'T HAVE SPECIAL POWER AND
21 AUTHORITY, THAT IF HE COMES UP TO ANYONE ON THE
22 STREET AND SAYS: "I'M DETECTIVE ZOELLER, I WOULD
23 LIKE TO TALK TO YOU." IF YOU SAY, "GEES, I'M BUSY,"
24 OR "I JUST DON'T WANT TO," THAT THAT'S GOING TO
25 AFFECT THE LIFE OF SOMEBODY ELSE.

26 I'M SORRY. IT DON'T MEAN NOTHIN'.

27 SO, WHAT IS HE SAYING? I, AS THE
28 REPRESENTATIVE OF THE PEOPLE OF THE STATE OF

54835

1 CALIFORNIA, COULD NOT OBTAIN SUFFICIENT AGGRAVATION
2 TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY
3 AGAINST ERIK MENENDEZ. AND YOU SHOULD FEEL SORRY

4 FOR ME BECAUSE THE FAMILY WANTS HIM TO LIVE, BECAUSE
5 EVERYBODY, EVERYBODY PUT THEIR WAGONS AROUND HIM,
6 YOU SEE.

7 HERE'S THE ANALOGY. WE'RE GOING TO PLAY
8 COWBOYS AND INDIANS NOW. HE'S IN THE MIDDLE, AND
9 THE FAMILY IS AROUND HIM. AND HE'S THE INDIAN
10 THAT'S TRYING TO GET IN TO KILL 'EM. YOU SEE IT?
11 HE'S GOT A RAIDING PARTY. THEY'VE GOT PAINT ALL
12 OVER THEIR FACES, AND THEY'VE GOT TO GET TO HIM, BUT
13 THEY CAN'T BECAUSE THE FAMILY IS PROTECTING HIM.

14 THAT'S NOT FAIR, IS IT? WELL, WHO
15 CARES, BECAUSE SYMPATHY FOR THE PROSECUTOR IS NOT A
16 STATUTORY FACTOR IN AGGRAVATION TO JUSTIFY THE DEATH
17 PENALTY AGAINST HIM.

18 YOU KNOW WHAT? IF THEY'RE AROUND HIM,
19 THERE'S GOT TO BE A PRETTY GOOD REASON.

20 YOU KNOW, THE OTHER THING IS, IS THAT
21 WHEN I WAS WATCHING AND LISTENING AND TRYING TO
22 FIGURE OUT WHAT IS THEIR THEORY, THE FACT IS THIS:
23 THE PROSECUTION IS TELLING YOU THAT ANYONE THAT
24 LOVED JOSE MENENDEZ AND ANYONE THAT LOVED KITTY
25 MENENDEZ AND ANYONE THAT LOVED ERIK MENENDEZ AND
26 ANYONE THAT LOVED LYLE MENENDEZ, THEY'RE DISLOYAL.
27 THEY HAVE GOT TO PICK. YOU GOTTA' PICK. YOU GOTTA'
28 SAY: I LOVE JOSE MENENDEZ.

1 SO, THEREFORE, I MUST HATE ERIK

2 MENENDEZ.

3 I LOVE KITTY MENENDEZ, SO, THEREFORE, I

4 MUST HATE LYLE MENENDEZ.

5 IF YOU LOVE/HATE, YOU MUST KILL.

6 WHY CAN'T YOU LOVE ALL FOUR? AND WHAT'S

7 SO WRONG ABOUT THAT? AND SO, WHY IS MR. CONN SO

8 OFFENDED BY THE FACT THAT TERRY BARALT SO

9 PASSIONATELY WANTS BOTH ERIK AND LYLE MENENDEZ TO

10 LIVE? WHAT IS THE MESSAGE? SHE LOVED THEM. SO WHO

11 ARE YOU APPEASING? WHO ARE YOU PROTECTING?

12 OH, I SUPPOSE THAT WHAT'S GOING ON

13 HERE -- THAT THIS IS A GIANT CONSPIRACY, THAT

14 EVERYONE WHO HAS COME INTO THIS CASE IS A LIAR.

15 EVERYONE IS SUPPRESSING INFORMATION TO JUSTIFY A

16 DEATH SENTENCE, AND THOSE WHO DO HAVE ANY DEGREE OF

17 RELIABILITY OR CREDIBILITY -- I THINK HE SAID ONE OF

18 THE WITNESSES I PUT ON, BARBARA HUNTER, WAS,

19 ACCORDING TO HER TESTIMONY, TO MAKE IT LOOK LIKE

20 IT'S BETTER THAN HE LIKES IT TO BE.

21 SO THE PROSECUTION ARGUES THERE'S NO

22 EVIDENCE TO HATE JOSE AND KITTY MENENDEZ. THAT IS

23 TO SAY, IF YOU LIKE THEM, YOU SHOULD HAVE ERIK

24 MENENDEZ EXECUTED.

25 NOW, WHAT DOES HE USE FOR AGGRAVATION?

26 WHOSE TESTIMONY, AND WHOSE EVIDENCE IS HE RELYING ON

27 THE VERY MOST TO SHOW THAT THIS IS THE MOST HORRIBLE

54837

1 LET ME SEE. IT'S HIM. IT'S ERIK MENENDEZ.

2 THE RELOAD. WHERE DID IT COME FROM? HE
3 TOLD YOU. EVERYTHING THAT THE PROSECUTION'S TELLING
4 YOU ABOUT, THE HORRIBLE THIS AND THAT, IT CAME FROM
5 HIM.

6 IS THAT A FAIR MATCH RIGHT HERE?
7 THERE'S A STRING THAT'S ATTACHED RIGHT HERE
8 (INDICATING) TO ERIK MENENDEZ. AND MR. CONN IS
9 PULLING HIM, AND HE'S SAYING: "KILL 'EM, KILL 'EM,
10 KILL 'EM, BECAUSE OF EVERYTHING HE TOLD YOU."

11 OH, BUT HE'S A LIAR. HE LIED TO YOU.
12 HE LIED TO FATHER DEASY. HE'S LYING TODAY. HE
13 WASN'T ABUSED. HE WASN'T MOLESTED. TOO MUCH
14 TENNIS. TOO LITTLE HUGS. MAKES ME SICK.

15 AND I KNOW THE PRESS IS GOING TO REPORT
16 THAT, BECAUSE THEY ALL SIT AROUND AND PLAY GAMES.
17 THE GLOVE DOESN'T FIT, SO ACQUIT.

18 COME ON. THIS IS A DEATH PENALTY CASE.
19 FANCY LITTLE SAYINGS DOESN'T MAKE IT. WHAT THE HELL
20 DOES THAT MEAN?

21 SO... KILL 'EM, BECAUSE HE TELLS YOU
22 THE TRUTH. BUT DON'T SPARE 'EM BECAUSE HE'S LYING.

23 WHICH IS IT, MR. CONN? SHOULD WE BELIEVE ERIK
24 MENENDEZ OR SHOULD WE NOT?
25 MR. CONN, IF WE ARE TO BELIEVE ERIK
26 MENENDEZ, WHAT ARE WE SUPPOSED TO BELIEVE? ONLY THE
27 BAD STUFF? OKAY. THROW IT OUT. THROW OUT ALL HIS
28 TESTIMONY. ERIK MENENDEZ IS A LIAR. HE LIED TO YOU

54838

1 ABOUT BEING MOLESTED. HE MUST HAVE FIGURED OUT A
2 WAY TO COME UP WITH MEDICAL REPORTS TO SHOW THAT
3 SOME OBJECT WAS STUFFED DOWN HIS THROAT TWICE THAT
4 WAS CONSISTENT WITH BEING A PENIS.
5 HE MUST HAVE FIGURED OUT A WAY HOW TO
6 TAKE A COUPLE OF PICTURES OF HIMSELF IN PERFECT
7 FOCUS, BOTH MISSING HEADS, PERFECTLY POSED, ONE OF
8 THEM IN A BATHTUB WITH TOTALLY CLEAR WATER. LOOK AT
9 HIM. HE MADE IT ALL UP.
10 FOUND A FEW WITNESSES TO COME IN AND
11 COMMIT PERJURY. THAT THERE WERE SOME MAGAZINES THAT
12 WERE LAYING AROUND THAT WOULD DEPICT CONDUCT THAT
13 ONE COULD ATTRIBUTE TO JOSE MENENDEZ AS BEING
14 CIRCUMSTANTIAL EVIDENCE THAT HE'S A MOLESTER.
15 THROW IT ALL OUT. TAKE IT AWAY. BURN
16 IT. WHAT'VE YOU GOT LEFT? BE FAIR. BE FAIR.
17 CONSIDER IT ALL OR CONSIDER NONE OF IT.

18 YOU GOT NOTHIN'. NOTHIN' BUT THE 12/11
19 TAPE.
20 WHAT DOES THAT TELL YOU? CAN YOU FIGURE
21 OUT WHAT HAPPENED FROM THE 12/11 TAPE? I MEAN,
22 WITHOUT ERIK MENENDEZ' TESTIMONY, THERE'S NOTHIN'.
23 MR. LEVIN: YOUR HONOR, I AM NOT GOING TO
24 FINISH UNLESS THE COURT ALLOWS ME TO GO LONG BEYOND
25 4:30. I THINK I'VE GOT ABOUT 30 MINUTES LEFT, BUT I
26 DON'T WANT TO ENTER THIS AREA UNLESS I --
27 THE COURT: WE'LL RESUME TOMORROW.
28 MR. LEVIN: I WILL SEE YOU FIRST THING IN THE

54839

1 MORNING.
2 THE COURT: AGAIN, DON'T DISCUSS THE MATTER
3 WITH ANYONE, AND DON'T FORM ANY FINAL OPINIONS ABOUT
4 IT.
5 DON'T PERMIT YOURSELF TO BE EXPOSED TO
6 ANYTHING ABOUT THIS CASE IN ANY FORM WHATSOEVER
7 OUTSIDE OF THE COURTROOM. AND WE'LL SEE YOU BACK
8 HERE TOMORROW AT 8:30.
9 ALL RIGHT. WE'RE IN RECESS UNTIL
10 TOMORROW AT 8:30.
11 (AT 4:30 P.M. PROCEEDINGS WERE ADJOURNED
12 UNTIL 8:30 A.M. THE FOLLOWING DAY.)

