

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4 THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

6 PLAINTIFFS,)

7 VS.) NO. BA 068880

8 ERIK GALEN MENENDEZ, AND)

9 JOSEPH LYLE MENENDEZ,)

10 DEFENDANTS.)

11
12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 FRIDAY, APRIL 12, 1996

14 VOLUME 327

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16
17 APPEARANCES:

18 (SEE APPEARANCE PAGE)

1 APPEARANCES:

2

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

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

13

14

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

18

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

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

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1 VAN NUYS, CALIFORNIA; FRIDAY, APRIL 12, 1996

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (MARY LU MURPHY, OFFICIAL REPORTER.)

7

8 THE COURT: IN THE TRIAL, THE PARTICIPANTS

9 ARE PRESENT.

10 ARE WE READY TO PROCEED?

11 MR. LEVIN: YES, YOUR HONOR.

12 THE COURT: OKAY. LET'S GET THE JURY OUT,

13 PLEASE.

14 (THE JURY ENTERED THE COURTROOM

15 AND THE FOLLOWING PROCEEDINGS

16 WERE HELD:)

17

18 THE COURT: THE JURY IS IN THE JURY BOX.

19 GOOD MORNING, LADIES AND GENTLEMEN.

20 WE'RE READY TO RESUME WITH THE

21 PROCEEDINGS, CONTINUING WITH THE OPENING ARGUMENT ON

22 BEHALF OF ERIK MENENDEZ, BY MR. LEVIN.

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1 OPENING ARGUMENT

2 BY MR. LEVIN:

3 GOOD MORNING, LADIES AND GENTLEMEN.

4 ERIK GALEN MENENDEZ WAS BORN ON NOVEMBER
5 THE 27TH, 1970. HE WAS JUST 18 YEARS OLD WHEN HE
6 KILLED HIS PARENTS. HE HAS BEEN IN THE LOS ANGELES
7 COUNTY JAIL FOR SIX YEARS NOW. HE'S NOW 25.

8 AT BEST, HE WILL NEVER BE RELEASED FROM
9 PRISON. HE WILL REMAIN LOCKED BEHIND BARS FOR THE
10 REST OF HIS LIFE. HE WILL NEVER BE GIVEN A PAROLE
11 HEARING OR A DATE FOR HIS RELEASE. HE WILL DIE IN
12 PRISON.

13 ERIK MENENDEZ WILL SPEND THE REST OF HIS
14 LIFE LOCKED IN A CELL THE SIZE OF YOUR BATHROOM.
15 INSIDE HIS CELL WILL BE A BUNK BED, A --

16 MR. CONN: OBJECTION. THERE'S NO EVIDENCE OF

17 THIS, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 MR. LEVIN: HIS DAILY LIFE WILL BE REGULATED

20 BY PRISON GUARDS, COMPLEX ADMINISTRATIVE RULES.

21 THE SOUNDS HE'S GOING TO HEAR ARE

22 BUZZERS, BELLS, CLANGING CELL DOORS, AND CRYING IN

23 THE NIGHT.

24 HE WILL GET NO SECOND CHANCE. HE WILL

25 SPEND THE NEXT 50 TO 60 YEARS, UNTIL THE DAY HE

26 DIES, LOCKED IN PRISON.

27 HE'S NEVER GOING TO SEE OR EXPERIENCE

28 THE JOYS AND THE FREEDOMS THAT LIFE HAS TO OFFER.

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1 ERIK MENENDEZ WILL NEVER BE ABLE TO

2 VISIT A RESTAURANT OR DRIVE A CAR, RAISE A FAMILY,

3 WALK OUTSIDE IN THE NIGHT. HE MAY VERY WELL NEVER

4 SEE THE MOON OR STARS AGAIN.

5 HE WILL NEVER SEE THE CITY OF LOS

6 ANGELES, OR ANY CITY. HE WILL NEVER WALK ON THE

7 SAND OR SEE THE OCEAN.

8 ALL OF HIS CIVILIAN RIGHTS AND LIBERTIES

9 HAVE BEEN FORFEITED. AFTER THIS TRIAL, HE'LL NEVER

10 AGAIN WEAR CIVILIAN OR STREET CLOTHES.

11 ERIK MENENDEZ MADE A HORRIBLE MISTAKE

12 WHEN HE WAS 18 YEARS OLD. WOULD ANY OF US WANT TO
13 BE JUDGED FOR THE REST OF OUR LIFE BASED ON A
14 DECISION THAT WE MADE WHEN WE WERE 18 YEARS OF AGE?

15 OUR SOCIETY RECOGNIZES THAT AN
16 18-YEAR-OLD LACKS THE MATURITY, THE INTELLIGENCE,
17 AND THE EXPERIENCE TO DO MANY THINGS.

18 THE DAY BEFORE YOU TURN 18 YOU'RE CALLED
19 A MINOR. EVEN AT AGE 18 YOU'RE NOT ALLOWED TO
20 CONSUME ALCOHOL. YOU CANNOT EVEN HAVE CERTAIN JOBS,
21 LIKE BECOME A POLICE OFFICER. NOT TOO LONG AGO YOU
22 COULDN'T EVEN VOTE AT AGE 18.

23 MOST OF US AT 18 WERE STILL IN SCHOOL.
24 WE WERE BEGINNING OUR LIVES. THE ENTIRE PERCEPTION
25 OF OUR WORLD AT AGE 18 WAS VASTLY DIFFERENT THAN IT
26 IS TODAY. WE WERE KIDS. ERIK MENENDEZ WAS A KID
27 WHEN HE KILLED HIS PARENTS.

28 AND IF YOU REMOVED THAT ONE FATEFUL DAY

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1 FROM HIS LIFE, WHAT WOULD YOU BE LEFT WITH?

2 EVEN AT 18 HE WAS AN ACCOMPLISHED TENNIS
3 PLAYER. A STUDENT WHO OVERCAME HIS LEARNING
4 DISABILITIES TO GAIN ADMITTANCE, IF HE WISHED, INTO
5 U.C.L.A. AND U.C. BERKELEY.

6 HE WAS RESPECTFUL, RESPONSIBLE,

7 OBEYDIENT, AND KIND.

8 HIS BIGGEST LOVE WAS OUTDOORS. HE WAS
9 LOYAL AND SENSITIVE TO KIRSTEN SMITH. SHE LOVED
10 HIM. THEY SEEMED SO GOOD FOR EACH OTHER.

11 HAS THE PROSECUTION PROVED TO YOU WHY
12 THIS HAPPENED? HARKEN BACK TO THEIR ARGUMENTS IN
13 THE CLOSING -- OR THE CLOSING ARGUMENT IN THE GUILT
14 PHASE. WHAT DID HE TELL YOU ABOUT WHY THIS
15 OCCURRED?

16 REMEMBER THAT PIECE OF PAPER THAT
17 MR. CONN PUT UP IN HIS CLOSING ARGUMENT, WHERE HE
18 WROTE DOWN: "MOLESTATION, TERRORIZING, PSYCHOLOGICAL
19 ABUSE, MALTREATMENT"?

20 AND THEN HE SAID TO YOU THAT HE
21 EXPECTED, AND HE UNDERSTOOD, THAT MANY OF YOU WOULD
22 BELIEVE THAT IT OCCURRED. AND HE EXPECTED YOU TO GO
23 BACK IN THE JURY ROOM AND TALK ABOUT IT.

24 THEN HE TOLD YOU: PREMEDITATED MURDER,
25 IT REALLY DOESN'T MATTER IN THE GUILT PHASE. HE
26 TOLD YOU THAT YOU COULD RETURN A JUDGMENT OF GUILT,
27 EVEN THOUGH YOU BELIEVED THAT ERIK MENENDEZ WAS
28 MOLESTED, PSYCHOLOGICALLY MALTREATED AND ABUSED HIS

2 THAT WAS THEIR THEORY THEN; AND IT

3 REMAINS THEIR THEORY NOW.

4 THE BOTTOM LINE IS: THEY DO NOT KNOW

5 WHY THIS CRIME OCCURRED. YOU MAY FEEL YOU KNOW.

6 YOU MAY THINK YOU KNOW. BUT UNLESS YOU BASE YOUR

7 OPINION ON WHAT HAS OCCURRED IN THIS COURTROOM, ON

8 THE EVIDENCE THAT WAS PRESENTED TO YOU BY THE

9 PROSECUTION AS TO WHY THIS OCCURRED, YOU'RE

10 GUESSING. YOU'RE SPECULATING, AND YOU CANNOT PUT

11 SOMEONE TO DEATH FOR REJECTING SOMETHING BASED ON

12 GUESSWORK AND SPECULATION.

13 I CAN'T IMAGINE THE FEELING THAT I WOULD

14 HAVE THE NIGHT THEY WOULD STRAP ERIK MENENDEZ TO A

15 GURNEY AT SAN QUENTIN PRISON AND RUN AN I.V. INTO

16 HIS ARM AND RUN FLUID INTO HIS VEINS AND KILL HIM BY

17 LETHAL INJECTION.

18 I KNOW I MIGHT BE MAKING YOU FEEL

19 UNCOMFORTABLE, BUT I THINK THAT YOU WOULD BE INHUMAN

20 IF YOU LACKED THE FEELINGS OF COMPASSION, SYMPATHY,

21 AND MERCY. WOULD YOU FEEL ANY DIFFERENT ON THE

22 NIGHT THEY EXECUTED ERIK MENENDEZ THAN YOU FEEL

23 TODAY? WHY DID THIS HAPPEN? WHAT WENT WRONG?

24 THAT'S WHY YOU CAN'T KILL 'EM.

25 I WANT TO READ YOU THE LAW THAT YOU'RE

26 GOING TO BE RECEIVING IN THIS CASE REGARDING

27 AGGRAVATION. IT SAYS THAT:

28 "AN AGGRAVATING FACTOR IS ANY

1 FACT, CONDITION, OR EVENT ATTENDING
2 THE COMMISSION OF A CRIME WHICH
3 INCREASES ITS GUILT OR ENORMITY, OR
4 ADDS TO THE INJURIOUS CONSEQUENCE,
5 WHICH IS ABOVE AND BEYOND THE ELEMENTS
6 OF THE CRIME ITSELF."

7 YOU CANNOT AGGRAVATE THE CRIME WITH THE
8 CRIME.

9 THINK ABOUT IT. IF SOMEONE IS CONVICTED
10 OF A PREMEDITATED, DELIBERATE MURDER WITH MALICE
11 AFORETHOUGHT, THAT'S ONLY FIRST-DEGREE MURDER. THAT
12 DOESN'T EVEN GET YOU INTO A PENALTY PHASE, BECAUSE
13 YOU HAVE TO HAVE OVER AND ABOVE THAT TO EVEN
14 CONSIDER THE POSSIBLE PUNISHMENT OF LIFE IN PRISON
15 WITHOUT THE POSSIBILITY OF PAROLE.

16 AND YOU HEARD THAT EVEN THE PUNISHMENT
17 FOR FIRST-DEGREE MURDER WAS 25 YEARS TO LIFE.
18 THAT'S A WILLFUL, INTENTIONAL, PREMEDITATED,
19 DELIBERATE MURDER WITH MALICE AFORETHOUGHT. PRETTY
20 BAD. BUT THAT'S 25 YEARS TO LIFE. YOU GET A PAROLE
21 HEARING.

22 IF THERE ARE SPECIAL CIRCUMSTANCES; TWO
23 MURDERS, LYING-IN-WAIT, THEN IT'S A CONSIDERATION
24 FOR THE DEATH PENALTY, BUT THE PENALTY THERE IS NOT

25 LIFE WITH PAROLE. IT'S LIFE IN PRISON WITHOUT THE
26 POSSIBILITY OF PAROLE. IT BECOMES ADDITIONAL
27 PUNISHMENT.

28 NOW, MR. CONN HELD UP SOME CHART HERE,

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1 THIS ONE. AND HE PUT THE WHOLE THING OVER HERE.
2 THAT'S NOT IT. HOW COULD ANYBODY -- HOW COULD
3 ANYBODY WHO'S BEEN CONVICTED OF A FIRST-DEGREE
4 PREMEDITATED, DELIBERATE MURDER WITH SPECIAL
5 CIRCUMSTANCES OF LYING IN WAIT AND TWO MURDERS, PUT
6 ANYTHING OVER HERE?

7 WHAT WOULD A JURY EVER CONSIDER TO
8 OFFSET THE WHOLE THING? WHAT COULD THEY POSSIBLY
9 DO? BRICKS AND FEATHERS? IT'S APPLES AND ORANGES.

10 THIS IS THE WAY IT IS (DRAWING).

11 IT'S A CRUDE SCALE. SORRY.

12 THIS IS THE CRIME. THIS IS WHERE THESE
13 PICTURES GO. YOU SEE THAT? THIS IS AGGRAVATION,
14 AND THIS IS MITIGATION.

15 THAT'S HOW IT WORKS. DO YOU SEE THAT?

16 NOW, WE HAVE BEEN DISCUSSING FACTORS IN
17 MITIGATION, FACTORS IN AGGRAVATION. AND LISTEN TO
18 THE EXPLANATIONS, BUT READ THE LAW, BECAUSE THE
19 FIRST THING THAT YOU HAVE TO UNDERSTAND, IS THAT IN

20 ORDER FOR IT TO BE AGGRAVATING OVER HERE, YOU CAN'T
21 JUST COME UP WITH ANYTHING AND SAY: I THINK THIS IS
22 BAD AND THAT IS BAD. IT'S GOT TO BE LISTED ON THE
23 STATUTORY FACTORS FOR AGGRAVATION.
24 MITIGATION REALLY DOESN'T. IT'S VERY
25 BROAD, VERY BROAD, BECAUSE IT SAYS: ANYTHING THAT
26 GOES TO THE DEFENDANT'S CHARACTER, WHETHER IT'S
27 RELATED TO THE CRIME OR NOT, IS MITIGATING. AND YOU
28 CAN ATTACH WHATEVER WEIGHT AND SIGNIFICANCE TO IT AS

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1 YOU WANT. AND ANY ONE FACTOR FOR YOU (POINTING) OR
2 FOR YOU (POINTING) OR FOR YOU (POINTING) IS
3 SUFFICIENT TO SAY HE LIVES.

4 YOU DON'T HAVE TO BALANCE THIS AND SAY
5 AND HOW MUCH IS IT WORTH BECAUSE HE CONFESSED? OR
6 HOW MUCH IS IT WORTH BECAUSE HE SAVED THE LITTLE
7 GIRL'S LIFE? OR HOW MUCH IS IT WORTH BECAUSE -- ANY
8 ONE OF THEM IS A REASON. DO YOU SEE THAT?

9 ONE OF THE FIRST FACTORS TO CONSIDER IS
10 THAT DETERMINING -- ONE FACTOR TO BE CONSIDERED IN
11 DETERMINING PUNISHMENT IS THE PRESENCE OR ABSENCE OF
12 CRIMINAL ACTIVITY BY ERIK MENENDEZ -- OTHER THAN THE
13 CRIME WHICH HE IS INVOLVED -- WHICH INVOLVED THE USE
14 OR ATTEMPTED USE OF FORCE OR VIOLENCE, OR THE

15 EXPRESS OR IMPLIED THREAT TO USE FORCE OR VIOLENCE.
16 OKAY, WHAT DOES THAT MEAN? IT MEANS HE
17 HAS NEVER COMMITTED A CRIME OF VIOLENCE BEFORE OR
18 EVEN AFTER. IF HE DID, IT'S OVER HERE (POINTING).
19 THAT'S THE PRESENCE.
20 IF HE DIDN'T, IT'S OVER HERE (POINTING).
21 IT'S THE ABSENCE.
22 HE HAS NEVER IN HIS LIFE COMMITTED A
23 CRIME INVOLVING THE USE OF FORCE OR VIOLENCE, OR
24 EVEN -- IT GOES FARTHER -- THE EXPRESS OR IMPLIED
25 THREAT TO USE FORCE OR VIOLENCE. EVEN THREATENING
26 TO USE FORCE OR VIOLENCE.
27 THAT ALONE-- THAT ALONE IS REASON ENOUGH
28 TO SPARE HIM AND SAY HE'S NOT THE WORST OF THE

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1 WORST.
2 I HATE TO KEEP BRINGING UP O.J. SIMPSON,
3 BUT HE BEAT AND ABUSED HIS WIFE THEIR WHOLE
4 RELATIONSHIP AND WAS CONVICTED OF IT, AND HE WAS THE
5 ABUSER. THAT'S WORSE. THAT'S SO MUCH WORSE.
6 ANOTHER FACTOR IS THE PRESENCE OR
7 ABSENCE OF A PRIOR FELONY CONVICTION OTHER THAN THIS
8 CRIME. AGAIN, IN THIS CASE ERIK MENENDEZ HAS NEVER
9 BEEN CONVICTED OF A FELONY. HE HAS NO ADULT

10 CRIMINAL RECORD. THIS IS HIS FIRST OFFENSE.

11 MITIGATION. HE'S NOT A RECIDIVIST.

12 HE'S NOT A CAREER CRIMINAL. HE'S NOT A GANG

13 MEMBER. THAT ALONE IS REASON ENOUGH TO SPARE HIS

14 LIFE AND FOR YOU TO SAY HE'S NOT THE WORST OF THE

15 WORST.

16 AND TOGETHER WITH THE OTHER FACTOR,

17 DOUBLES ITS STRENGTH, FOR TWO STRONG REASONS FOR

18 IMPOSING THE PUNISHMENT OF LIFE IN PRISON WITHOUT

19 THE POSSIBILITY OF PAROLE.

20 ANOTHER FACTOR IS WHETHER THE OFFENSE

21 WAS COMMITTED WHILE DEFENDANT WAS UNDER THE

22 INFLUENCE OF EXTREME MENTAL OR EMOTIONAL

23 DISTURBANCE.

24 WELL, IN THIS CASE ERIK MENENDEZ

25 SUFFERED FROM GENERAL ANXIETY DISORDER AND/OR

26 POST-TRAUMATIC STRESS DISORDER ON AUGUST THE 20TH,

27 1989. THAT EVIDENCE IS SUFFICIENT MITIGATION FOR

28 YOU TO SUPPORT LIFE IN PRISON WITHOUT THE

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1 POSSIBILITY OF PAROLE.

2 NOW, THE PROSECUTOR'S ARGUMENT IS THIS:

3 YOU MUST IGNORE THAT MITIGATION. IT'S MITIGATION,

4 HE'LL STIPULATE, BECAUSE OF SOME TESTIMONY FROM THE

5 FIRST TRIAL. A TRIAL IN WHICH HE DID NOT
6 PARTICIPATE, A TRIAL IN WHICH I DID NOT PARTICIPATE,
7 AND A TRIAL IN WHICH YOU DID NOT PARTICIPATE. A
8 TRIAL IN WHICH 12 JURORS ON EACH -- ON TWO SEPARATE
9 PANELS VOTED FOR MANSLAUGHTER OR SECOND-DEGREE
10 MURDER AND --

11 MR. CONN: OBJECTION. THERE'S NO EVIDENCE OF
12 THAT.

13 THE COURT: SUSTAINED. THAT REMARK IS
14 STRICKEN.

15 LET'S STICK TO WHAT HAS BEEN PRESENTED
16 IN THIS TRIAL, MR. LEVIN, AND NOT TALK ABOUT THINGS
17 THAT ARE BEYOND THE RECORD HERE.

18 MR. LEVIN: I'M SORRY, YOUR HONOR.

19 A HUNG JURY, TWO HUNG JURIES.

20 MR. CONN: OBJECTION. THERE'S NO EVIDENCE
21 FOR THE REASON FOR THE MISTRIAL IN THE FIRST CASE.

22 THE COURT: IT'S BEEN DISCUSSED IN VOIR DIRE
23 AND OTHER ARENAS. SO IT'S PUBLIC KNOWLEDGE THAT
24 THERE WAS A HUNG JURY.

25 MR. LEVIN: THANK YOU.

26 MR. CONN SAYS: REJECT THE TESTIMONY
27 HERE IN THE TRIAL PRESENTED BEFORE YOU BECAUSE OF
28 WHAT HAPPENED IN THE FIRST TRIAL, WHERE BOTH

1 DEFENDANTS RECEIVED HUNG JURIES. AND THAT WAS ON
2 THE SAME EVIDENCE YOU HEARD.

3 MR. CONN: I WOULD ABSOLUTELY OBJECT TO THAT,
4 YOUR HONOR. THERE'S NO EVIDENCE OF WHAT WAS
5 PRESENTED IN THE FIRST TRIAL.

6 MR. LEVIN: I WOULD LIKE TO JUST BE GIVEN THE
7 OPPORTUNITY TO FINISH MY SENTENCE, YOUR HONOR.

8 THE COURT: ALL RIGHT. WELL, AS YOU STARTED,
9 YOU WERE REFERRING TO THE SAME EVIDENCE.

10 MR. LEVIN: NO. I'M GOING TO CLARIFY IT, IF
11 I'M GIVEN THE OPPORTUNITY.

12 THE COURT: GO AHEAD.

13 MR. LEVIN: MAY I HAVE THAT OPPORTUNITY?

14 THE COURT: GO AHEAD AND SEE WHAT YOU CAN DO.

15 MR. LEVIN: (CONTINUING) ON THE SAME EVIDENCE
16 PRESENTED BY THE GOOD DR. VICARY.

17 SO LET'S GET THIS STRAIGHT. THE MORE
18 EVIDENCE THAT YOU HAVE IN FAVOR OF SUPPORTING THE
19 MENTAL CONDITION, THE MORE IT SUPPORTS THE DEATH
20 PENALTY.

21 DIDN'T THEY PAY \$40,000 TO HIRE PARK
22 DIETZ TO EXAMINE THE RECORDS ON THE CASE, SPEND
23 HOURS AND HOURS WITH ERIK MENENDEZ, AND COME INTO
24 THIS COURT TO DEBUNK THE TESTIMONY OF JOHN WILSON,
25 THAT ERIK MENENDEZ SUFFERED FROM POST-TRAUMATIC
26 STRESS DISORDER?

27 AH, NOT TO SAY THAT THERE WAS NOTHING
28 WRONG WITH HIM, BUT TO SAY THAT HE SUFFERED FROM A

1 RECOGNIZED MENTAL DISORDER THAT IS CONTAINED IN THE
2 DIAGNOSTIC AND STATISTICAL MANUAL PRODUCED BY THE
3 AMERICAN PSYCHIATRIC ASSOCIATION THAT IS NAMED,
4 TREATED AND CALLED GENERALIZED ANXIETY DISORDER,
5 THAT HE HAD IT ALL HIS LIFE.

6 NOW, I AGREE WHEN THE PROSECUTOR TOLD
7 YOU THIS: DR. VICARY IS IN ENOUGH TROUBLE THAT HE
8 IS NOT GOING TO LIE ANY FURTHER. YOU HEARD HIM SAY
9 THAT, AND HE KNOWS IT. I KNOW IT, AND YOU KNOW IT.

10 DR. VICARY TOLD YOU TRUTHFULLY THAT ERIK
11 MENENDEZ DID NOT ASK HIS PERMISSION TO CHANGE HIS
12 NOTES. HE TOLD YOU TRUTHFULLY THAT HE DID NOT ASK
13 ERIK MENENDEZ IF IT WAS OKAY TO CHANGE HIS NOTES.
14 AND HE DIDN'T TELL ERIK MENENDEZ THAT HE DID CHANGE
15 HIS NOTES.

16 THEN HE TOLD YOU TRUTHFULLY THAT HE HAD
17 TESTIFIED UNDER OATH TRUTHFULLY IN THE FIRST TRIAL,
18 THIS TRIAL, AND HE WAS TESTIFYING TRUTHFULLY NOW.

19 AND THEN HE SAID THIS, HE SAID: "IF YOU
20 PUT EVERYTHING BACK, IT DOESN'T MAKE A DAMN BIT OF
21 DIFFERENCE."

22 NOW, AFTER ALL THESE HORRIFIC
23 ADMISSIONS, I SAW DR. VICARY WALK RIGHT OUT OF THIS

24 COURTROOM, UNESCORTED, UNHANDCUFFED. IF HE IS
25 GUILTY OF DESTROYING THE ROUGH DRAFT OF A FRAUDULENT
26 DEFENSE, SHOULDN'T HE HAVE A TRIAL FIRST? WHY IS
27 MR. CONN ASKING YOU TO CONVICT DR. VICARY? ARE YOU
28 GOING TO DO THAT? YOU'RE GOING TO CONVICT DR. VICARY?

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1 YOU'RE GOING TO PUT DR. VICARY ON TRIAL?

2 AND IF DR. VICARY DESTROYED THE ROUGH
3 DRAFT OF A FRAUDULENT DEFENSE, ARE YOU GOING TO HEAP
4 ALL THAT ON ERIK MENENDEZ, A PERSON WHO DIDN'T EVEN
5 KNOW WHAT THE PSYCHIATRIST WAS DOING, AND HAVE HIM
6 EXECUTED BASED ON YOUR FINDING OF GUILT AGAINST
7 DR. VICARY?

8 JUST THE THOUGHT OF YOU USING THAT BOGUS
9 DRAMA AS AN AGGRAVATING CIRCUMSTANCE TO JUSTIFY THE
10 DEATH PENALTY IS SCARY, IN A COURTROOM IN THE UNITED
11 STATES OF AMERICA, WHERE YOU ARE INNOCENT UNTIL YOU
12 ARE PROVEN GUILTY.

13 ANOTHER MITIGATING FACTOR, OF COURSE, IS
14 THE AGE OF ERIK MENENDEZ. YOU THINK OF HOW MUCH
15 TIME HE'S GOING TO BE PUNISHED IN PRISON. YOU THINK
16 ABOUT THE FACT THAT ERIK MENENDEZ IS AND HAS BEEN A
17 MODEL -- A MODEL PRISONER, A MODEL INMATE.

18 MR. CONN: OBJECTION. THERE IS NO EVIDENCE

19 OF THAT BEFORE THIS JURY.

20 THE COURT: WELL, THERE HAS BEEN SOME OFFERED
21 THROUGH THE TESTIMONY OF DR. VICARY.

22 SO OVERRULED.

23 MR. LEVIN: THANK YOU.

24 (CONTINUING) AND HE HAS BEEN EVERY
25 SINGLE DAY OF HIS INCARCERATION.

26 HE GETS ALONG WITH ALL THE DEPUTIES AND
27 GUARDS. HE GETS ALONG WITH ALL THE INMATES. IF HE
28 DIDN'T, YOU WOULD HAVE HEARD.

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1 WHERE WERE THE LEGIONS OF DEPUTIES?
2 WHERE WERE THE LEGIONS OF WITNESSES TO COME IN TO
3 ATTACK, BESMIRCH AND DISCREDIT DR. VICARY ON THAT
4 TESTIMONY? NO ONE. DR. VICARY IS IN ENOUGH
5 TROUBLE. HE'S GOING TO TELL YOU THE TRUTH.

6 AND IF THE PROSECUTOR DOESN'T BELIEVE
7 WHAT HE REALLY SAYS TO YOU, HE CAN ATTACK HIM WITH
8 THE DEPUTIES, WITH THE WITNESSES THAT HE DOESN'T
9 HAVE.

10 I'VE BEEN IN MILITARY COMBAT IN VIETNAM,
11 AND I'VE SERVED AS A POLICE OFFICER WITH THE
12 LOS ANGELES POLICE DEPARTMENT.

13 IN WAR AND ON THE STREETS AND IN A

14 COURTROOM THERE EXISTS A CODE OF CONDUCT FOR THE
15 HUMANE TREATMENT OF OUR FELLOWMAN.
16 IN WAR WE CALL THOSE RULES THE GENEVA
17 CONVENTION. THEY PLACE EVEN A LIMIT ON KILLING THE
18 ENEMY. EVEN WHERE THE VERY EXISTENCE OF YOUR
19 CONDUCT IS AT STAKE, YOU CAN'T SHOOT SOMEONE WHO'S
20 SURRENDERING, AND YOU CANNOT WALK ON THE BATTLEFIELD
21 AND SHOOT THE WOUNDED.
22 ON THE STREET A POLICE OFFICER DOESN'T
23 SHOOT THE PURSUED, NO MATTER WHO THE SUSPECT IS, OR
24 HOW GUILTY HE THINKS HE IS.
25 OF COURSE, IT MUST BE NECESSARY FOR YOU
26 TO HAVE ERIK MENENDEZ EXECUTED. WOULD YOU DO IT IF
27 IT WASN'T?
28 THE PROSECUTION WANTS YOU TO APPROACH

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1 THIS TASK WITHOUT ANY PASSION OR FEELING OR
2 EMOTION. THEY WANT YOU TO CONCLUDE THAT ERIK
3 MENENDEZ IS A COLD-BLOODED KILLER. THE JUST REWARD
4 HE HAS EARNED IS THE DEATH PENALTY. THEY'LL ALWAYS
5 SAY THIS IN EVERY DEATH PENALTY CASE. HE SHOWED NO
6 MERCY; HE'S ENTITLED TO NO MERCY. THE VICTIMS GOT
7 NO SECOND CHANCE. THEY'RE DEAD. SO HE MUST DIE.
8 THAT IS REVENGE. ARE YOU A REVENGEFUL JURY?

9 OR MR. CONN'S OTHER ARGUMENT, THAT WE
10 HAVE SO MANY PEOPLE ON DEATH ROW FROM COMPTON THAT
11 LET'S KILL A RICH KID TO SHOW THAT WE'RE EVENLY
12 BALANCED. THINK OF THE RIDICULOUSNESS OF THAT
13 COMMENT.

14 YOU DON'T EVEN GET TO KNOW WHY THOSE
15 PEOPLE ARE ON DEATH ROW. YOU DON'T EVEN KNOW WHO
16 THEY ARE. IF THEY ARE SO MAGNANIMOUS IN THEIR
17 UNDERSTANDING OF POOR PEOPLE -- I THOUGHT I HEARD
18 MR. CONN SAY THAT THAT COULD BE A MITIGATING
19 CIRCUMSTANCE.

20 YOU THINK IN THOSE CASES WHERE SOME POOR
21 GANG MEMBER THAT GREW UP IN A LIFE OF CRIME IN THE
22 INNER CITY OF LOS ANGELES, BECAUSE HE HAD A LIFE OF
23 CRIME, OF GOING BACK TO EARLY, EARLY CHILDHOOD, AND
24 HAS KILLED, NOT ONCE, BUT TWICE, BUT THREE TIMES,
25 HAS BEEN CONVICTED OF CRIME AFTER CRIME AFTER CRIME
26 AFTER CRIME, AND IS JUST A SLIME, A SCUM ON SOCIETY,
27 NEVER DONE ANYTHING GOOD IN HIS ENTIRE LIFE, AND HE
28 GOES IN AND ROBS THAT INNOCENT CLERK IN THE

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1 7-ELEVEN. AND MR. CONN'S GOING TO GET UP AND SAY,
2 "DON'T KILL 'EM. HE'S POOR"?
3 KILL A RICH KID TO BALANCE OUT WHAT?

4 YOU DON'T KNOW WHAT THOSE PEOPLE HAVE DONE. YOU
5 DON'T KNOW WHO THOSE PEOPLE ARE. YOU DON'T KNOW IF
6 THERE'S RICH PEOPLE ON DEATH ROW.

7 IF YOU VOTED FOR THE DEATH PENALTY FOR
8 ANY OF THOSE REASONS, YOU'D BE NO BETTER THAN ERIK
9 MENENDEZ.

10 IN A COURT OF LAW YOU DON'T IMPOSE A
11 DEATH SENTENCE FOR RETALIATION, REVENGE, OR
12 RETRIBUTION.

13 NOW, THERE ARE FEW DECISIONS IN LIFE
14 THAT ARE IRREVERSIBLE. MOST DECISIONS YOU CAN TAKE
15 BACK OR CORRECT IF YOU MAKE A MISTAKE. THIS ONE IS
16 NOT. IF YOU VOTE FOR THE DEATH PENALTY, ERIK
17 MENENDEZ WILL BE EXECUTED. THAT AWESOME POWER THAT
18 I TALKED ABOUT BEFORE IS VERY TEMPORARY. IT ENDS
19 THE SECOND YOU SIGN THE VERDICT FORMS. IF YOU
20 CHANGE YOUR MIND NEXT WEEK, NEXT MONTH, NEXT YEAR,
21 YOU CAN'T CALL UP JUDGE WEISBERG. HE'S NOT GOING TO
22 TAKE YOUR CALL.

23 YOU CAN'T CALL UP DAVID CONN. HE'S NOT
24 GOING TO TAKE YOUR CALL.

25 YOU CAN'T CALL UP THE GOVERNOR. HE'S
26 NOT GOING TO TAKE YOUR CALL.

27 THERE'S NOTHING YOU CAN DO. IT'S DONE.

28 THE PROSECUTION CARES? THEY CARE ABOUT

1 GETTING A DEATH JUDGMENT AND SENTENCE. THAT IS ALL,
2 AND NOTHING ELSE.

3 WHEN I HEARD MR. CONN MAKING HIS
4 EMPTY-CHAIR ARGUMENT, I WAS ASTOUNDED, AND I THOUGHT
5 BACK TO THIS WHOLE -- WELL, ACTUALLY, THE BRIEF
6 TESTIMONY OF DETECTIVE ZOELLER -- IF YOU REMEMBER
7 THIS -- HE GOT ON THE STAND AT THE VERY END OF THE
8 TRIAL, AND HE SAID -- HE SAID: "YOU KNOW," HE SAYS,
9 I'M HERE TO IMPEACH TERRY BARALT BECAUSE I -- THE
10 PROSECUTION TEAM AND I WERE ON" -- I BELIEVE HE SAID
11 IT WAS ON THE EAST COAST. DETECTIVE ZOELLER AND MR.
12 CONN AND MS. NAJERA WERE ON THE EAST COAST TO
13 INTERVIEW MEMBERS OF THE FAMILY, MEMBERS OF THE
14 MENENDEZ FAMILY, ABOUT THE CASE.

15 AND DETECTIVE ZOELLER -- HE DIDN'T DO
16 ANYTHING WRONG -- CALLED HER UP AND SAID: "WE WANT
17 TO TALK TO YOU ABOUT THE CASE."

18 SHE SAID: "I DON'T WANT TO TALK ABOUT
19 THE CASE. BUT I'LL MEET WITH YOU. I'LL TALK WITH
20 YOU."

21 DETECTIVE ZOELLER TOLD DAVID CONN. AND
22 WHAT DID HE SAY? "TELL HER I DON'T WANT TO TALK TO
23 HER. TELL HER I DON'T WANT TO MEET WITH HER."

24 LADIES AND GENTLEMEN, TERRY BARALT IS A
25 VICTIM TOO. SHE IS JOSE MENENDEZ' SISTER. SHE
26 LOVES HIM. COMPASSION? TO MEET WITH TERRY BARALT

27 AND SAY:

28 "I'M SORRY. I KNOW THAT YOU'RE

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1 GOING THROUGH PAIN. I KNOW THAT YOU
2 SUFFER OVER THE LOSS OF YOUR BROTHER.
3 I KNOW AND I UNDERSTAND THAT YOU LOVE
4 ERIK AND LYLE. BUT I'M JUST GOING TO
5 DO MY BEST. I'M GOING TO DO MY BEST
6 TO SEEK JUSTICE, AND I WANT YOU TO
7 KNOW THAT. BECAUSE THAT'S MY JOB."
8 THEY DON'T CARE. THEY DON'T CARE.
9 I LOOK IN ERIK MENENDEZ' EYES AND I
10 DON'T SEE A COLD-BLOODED KILLER. I DON'T SEE
11 DANGER. I ONLY SEE GRIEF AND SADNESS AND PAIN AND
12 REMORSE. BUT I ALSO SEE HOPE. I SEE A MAN WITH
13 REDEEMING QUALITIES, A MAN OF INTELLIGENCE, OF
14 SUBSTANCE AND VALUE. HE'S MY FRIEND. I LIKE HIM.
15 ERIK MENENDEZ WANTS TO LIVE, EVEN IF
16 IT'S IN PRISON FOR THE REST OF HIS LIFE. HE HAS
17 BEEN VIOLENT TO NO ONE, IN ONE OF THE MOST VIOLENT
18 PLACES THAT YOU CAN BE IN. HE WILL HARM NO ONE IN
19 THE FUTURE. HE IS CAPABLE OF CONTRIBUTION TO DO
20 GOOD THINGS IN A BAD PLACE.
21 THERE ARE STILL A LOT OF PEOPLE WHO LOVE

22 HIM, INCLUDING HIS GRANDMOTHER, THE VICTIM'S
23 MOTHER.
24 THE ONE THING THAT ERIK MENENDEZ HAS
25 LEARNED IS HOW TO LOVE. THE ERIK MENENDEZ OF 18
26 YEARS OF AGE, THE ERIK MENENDEZ WHO KILLED HIS
27 PARENTS, NO LONGER EXISTS. HE WANTS YOU TO KNOW HOW
28 SORRY HE IS FOR THE PAIN AND FOR THE AGONY THAT HE

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1 HAS CAUSED, AND HE NOW HOPES THAT THROUGH GOD HE CAN
2 FIND FORGIVENESS AND PEACE.

3 PLEASE, PLEASE SPARE HIM. IT WILL BE A
4 DECISION THAT YOU WILL NEVER, EVER REGRET.

5 THANK YOU.

6 THE COURT: ALL RIGHT. THANK YOU,
7 MR. LEVIN.

8 MS. TOWERY: COULD WE HAVE A FIVE-MINUTE
9 BREAK?

10 THE COURT: YES. YES, SURE.

11 WE'LL TAKE A RECESS SO COUNSEL CAN GET
12 READY FOR THE NEXT ARGUMENT.

13 WE'LL RESUME AT 10 MINUTES AFTER 10:00.

14 DON'T DISCUSS THE MATTER WITH ANYONE,
15 AND DON'T FORM ANY FINAL OPINIONS. WE'LL SEE YOU
16 BACK HERE AT 10 MINUTES AFTER 10:00.

17 (A RECESS WAS TAKEN FROM

18 9:55 TO 10:20 A.M.)

19

20

21

22

23

24

25

26

27

28

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1 THE COURT: OKAY. IN THE TRIAL, WE HAVE

2 EVERYBODY BACK.

3 ARE WE READY?

4 MR. CONN: YES. I DO HAVE SOMETHING I WOULD LIKE

5 TO BRING UP AT THIS TIME.

6 THE COURT: SURE.

7 MR. CONN: THE OTHER DAY COUNSEL, LESLIE

8 ABRAMSON, INDICATED TO THE COURT THAT SHE WOULD LIKE TO

9 ADDRESS THE JURY IN ADDITION TO COUNSEL -- IN ADDITION

10 TO MR. LEVIN ADDRESSING THE JURY. AND, OF COURSE, THERE

11 IS NOTHING IN THE STATUTE THAT PROVIDES FOR THIS.

12 SO WE WOULD LIKE TO KNOW -- WE STILL DON'T

13 KNOW WHAT THE PROPOSAL IS. WE DON'T KNOW WHAT THE

14 PARAMETERS ARE, AND I WOULD LIKE TO KNOW IF WE CAN TAKE

15 THIS OPPORTUNITY TO CLEAR IT UP, PARTICULARLY IN LIGHT

16 OF THE FACT THAT IN MY OPENING ARGUMENT I DID NOT REFER
17 AT ALL TO MS. ABRAMSON AND HER CONNECTION WITH
18 DR. VICARY'S NOTES, AND I DID THAT INTENTIONALLY.

19 SO I WOULD ASK THE COURT, FIRST OF ALL, TO
20 CONSIDER WHETHER OR NOT COUNSEL IS ENTITLED TO ADDRESS
21 THE JURY CONCERNING HER MISCONDUCT, GIVEN THE FACT THAT
22 THE PROSECUTION ELECTED NOT TO EVEN BRING IT UP IN THEIR
23 OPENING ARGUMENT. AND TO TELL YOU THE TRUTH, AS WE NOW
24 STAND, I HAVE NO INTENTION OF MAKING ANY REFERENCE TO IT
25 IN MY CLOSING ARGUMENT.

26 MR. LEVIN: YOU CAN'T.

27 MS. ABRAMSON: THERE IS AN INSTRUCTION THAT SAYS
28 YOU CAN'T.

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1 MR. LEVIN: AND I DIDN'T REFER TO IT.

2 THE COURT: WHAT IS THE PROPOSAL FOR THE ARGUMENT
3 FOR ERIK MENENDEZ?

4 MR. LEVIN: WE'RE NOT CERTAIN, YOUR HONOR. BUT I
5 NEVER SAID ANYTHING ABOUT IT, SO HE CERTAINLY CAN'T
6 REBUT ANYTHING THAT I SAID.

7 THE COURT: WE'RE NOT TALKING ABOUT THAT.

8 WHAT DO YOU PROPOSE TO DO?

9 MR. LEVIN: I DON'T KNOW. I WANT TO WAIT AND SEE
10 HOW MR. CONN ARGUES.

11 THE COURT: WHO IS GOING TO DO IT?

12 MS. ABRAMSON: THE THEORY IS MS. TOWERY IS GOING
13 TO ARGUE, I AM GOING TO ARGUE, AND MR. GESSLER IS GOING
14 TO ARGUE. THAT'S THE THEORY.

15 THE COURT: AND THEN THAT'S THE END OF THE
16 ARGUMENT? YOU ARE NOT ARGUING ANY MORE, MR. LEVIN?

17 MR. LEVIN: PERHAPS I WILL. I DON'T KNOW WHAT
18 MR. CONN IS GOING TO SAY.

19 THE COURT: IT'S NOT GOING TO WORK THAT WAY. THE
20 ONLY ISSUE WAS THAT I WOULD LET MS. ABRAMSON MAKE A
21 BRIEF REMARK REGARDING NOT HOLDING ANYTHING AGAINST HER
22 CLIENT, AND THAT WAS IT.

23 NOW IF YOU'RE CHANGING YOUR TACTICS, AND
24 NOW MS. ABRAMSON IS GOING TO MAKE A CLOSING ARGUMENT,
25 THEN SHE IS GOING TO MAKE A CLOSING ARGUMENT.

26 MR. LEVIN: YOU WOULD THEN BE DENYING THE
27 OPPORTUNITY TO REBUT THE PROSECUTOR'S ARGUMENT.

28 MR. CONN IS ENTITLED TO MAKE ANOTHER

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1 ARGUMENT. IF MR. CONN GETS UP AND SAYS SOMETHING THAT
2 NEEDS REBUTTING OTHER THAN WHAT MS. ABRAMSON'S COMMENT
3 WOULD BE, I'M THE ONE THAT'S GOING TO DO IT.

4 THE COURT: THAT'S WHAT I'M ASKING. IS THAT ALL
5 SHE IS GOING TO DO IS SAY: "DON'T BLAME MY CLIENT," AND
6 THAT'S IT?

7 MR. LEVIN: YES.

8 MS. ABRAMSON: I AM NOT ENTIRELY SURE, YOUR
9 HONOR. BUT IF I GO BEYOND THAT, OBVIOUSLY MR. LEVIN
10 CAN'T GET UP TO DO THE REBUTTAL. HE WILL DO IT. IF WE
11 SEE THAT MR. CONN GETS UP, AND WE FEEL IT NEEDS
12 REBUTTING, MR. LEVIN WILL DO IT.

13 THE COURT: THAT'S FINE. EITHER MS. ABRAMSON IS
14 GOING TO BE LIMITED TO SAYING "DON'T BLAME MY CLIENT,"
15 OR IF SHE GOES BEYOND TAHT, THEN SHE IS GOING TO BE
16 DOING THE FINAL REBUTTAL BY ERIK MENENDEZ. THAT'S IT.

17 MR. LEVIN: I UNDERSTAND.

18 MS. ABRAMSON: THAT'S EXACTLY IT, YOUR HONOR.

19 THE COURT: AND ARE WE READY TO PROCEED? OKAY.

20 LET'S GET THE JURY OUT.

21 (THE JURY ENTERS THE COURTROOM
22 AND THE FOLLOWING PROCEEDINGS
23 WERE HELD:)
24

25 THE COURT: OKAY. WE HAVE THE JURY BACK, AND
26 WE'RE READY TO RESUME OPENING ARGUMENT ON BEHALF OF
27 DEFENDANT, LYLE MENENDEZ, BY MS. TOWERY.

28 MS. TOWERY: THANK YOU.

-10674

1 OPENING ARGUMENT

2 BY MS. TOWERY:

3 GOOD MORNING, LADIES AND GENTLEMEN.

4 THIS IS THE ONLY CHANCE THAT I WILL HAVE TO
5 TALK TO YOU, AND THIS HAS BEEN A LONG AND DIFFICULT
6 TRIAL, AND WE'RE ALL VERY TIRED. AND I DON'T INTEND TO
7 SPEAK TO YOU FOR VERY LONG, BECAUSE I'M NOT AN ELOQUENT
8 SPEAKER LIKE MR. CONN IS. AND UNLIKE MR. LEVIN, I'VE
9 NEVER BEEN ACCUSED OF SPEAKING TOO LOUDLY.

10 BUT I DO HAVE THINGS THAT I WANT AND I NEED
11 TO SAY TO YOU, AND I HOPE THAT YOU WILL LISTEN, BECAUSE
12 WHEN YOU GO BACK INTO THE JURY ROOM TO DELIBERATE IN
13 THIS CASE, YOU WILL BE MAKING THE MOST IMPORTANT
14 DECISION THAT YOU WILL EVER MAKE IN YOUR LIFE. AND THAT
15 DECISION IS WHETHER OR NOT TO TAKE THE LIFE OF ANOTHER
16 HUMAN BEING.

17 AND I AM ASKING YOU TODAY NOT TO DO THAT.
18 I AM ASKING YOU TO LET MY CLIENT, LYLE MENENDEZ, SPEND
19 THE REST OF HIS LIFE IN PRISON, HOWEVER LONG OR SHORT
20 GOD DETERMINES THAT LIFE SHOULD BE.

21 NOW, MR. GESSLER TOLD YOU AT THE BEGINNING
22 OF THIS PHASE OF THE TRIAL ABOUT OUR SADNESS THAT WE'RE
23 HERE TODAY ASKING YOU TO SPARE THE LIFE OF OUR CLIENT.

24 AND MR. GESSLER AND I HAVE KNOWN LYLE
25 MENENDEZ FOR TWO YEARS NOW, AND WE'VE SPENT A LOT OF
26 TIME WITH HIM. AND EVEN THOUGH WE'RE ATTORNEYS AND
27 WE'RE SUPPOSED TO KEEP OUR EMOTIONS INSIDE, WE'RE JUST
28 PEOPLE.

1 BUT WE DO ACCEPT YOUR VERDICT, AND YOU HAVE
2 ALL WORKED VERY HARD, AND YOU'VE ALL BEEN VERY ATTENTIVE
3 THROUGH ALL THESE PROCEEDINGS, AND YOU'VE ALL REACHED
4 YOUR CONCLUSIONS.

5 BUT NOW THAT PART OF THE CASE IS BEHIND US,
6 AND EACH OF US MOVES ON TO SOMETHING ENTIRELY DIFFERENT,
7 AND THAT IS THE QUESTION OF PUNISHMENT, THE QUESTION OF
8 LIFE OR DEATH.

9 NOW, IN OUR COUNTRY WE HAVE DECIDED AS A
10 SOCIETY THAT WE WILL ALLOW THE PENALTY OF DEATH FOR
11 CERTAIN CRIMES, UNDER CERTAIN CIRCUMSTANCES. AND WE
12 LEAVE IT UP TO THE INDIVIDUAL STATES TO DECIDE WHETHER
13 OR NOT THEY WANT TO HAVE THAT OPTION. AND MANY STATES
14 DO NOT.

15 BUT IN OUR STATE, WE HAVE DETERMINED THAT
16 WE WILL HAVE THAT PUNISHMENT ONLY FOR THE WORST OF THE
17 WORST IN OUR SOCIETY.

18 BUT THE STATE DOES NOT REQUIRE THE DEATH
19 PENALTY IN ANY SITUATION. OUR LAW DOES NOT FAVOR DEATH,
20 AND AN EYE FOR AN EYE IS NOT THE LAW OF OUR LAND. OUR
21 LAW SAYS THAT AN EYE FOR AN EYE IS TOO HARSH, AND IT
22 SERVES NO PURPOSE IN OUR SOCIETY. INSTEAD, OUR LAW
23 INCLUDES COMPASSION AND MERCY AS PART OF THE TERRIBLE
24 DECISION THAT YOU'RE CALLED UPON TO MAKE.

25 NOW, THE INSTRUCTIONS THAT THE JUDGE WILL
26 GIVE YOU WHEN WE ARE ALL FINISHED WITH OUR ARGUMENTS ARE
27 VERY STRICT ON WHAT CAN BE CONSIDERED AS AGGRAVATION,
28 BUT THOSE INSTRUCTIONS ARE NOT STRICT AT ALL ABOUT WHAT

1 IS MITIGATION FAVORING LIFE. AND ANYTHING AT ALL THAT
2 YOU BELIEVE IS MITIGATING CAN BE SUFFICIENT FOR YOU TO
3 CHOOSE LIFE OVER DEATH.

4 NOW, IN THE DETERMINATION OF PENALTY, EACH
5 ONE OF US PLAYS A ROLE, AND EACH ONE OF US BEARS A
6 UNIQUE PERSONAL RESPONSIBILITY.

7 AND I SAW A MOVIE RECENTLY ABOUT A MAN ON
8 DEATH ROW ABOUT TO BE EXECUTED, AND THERE IS A SCENE IN
9 THE MOVIE WHERE -- THE LEAD ACTRESS PLAYS A NUN IN THE
10 MOVIE, AND SHE'S VISITING THE MAN, WHO IS ON DEATH ROW
11 IN PRISON, AND SHE FAINTS WHILE SHE IS VISITING HIM.

12 AND SO THEY TAKE HER TO THE PRISON
13 INFIRMARY, AND SHE'S TREATED BY A NURSE IN THE PRISON
14 INFIRMARY. AND THE NURSE IS ABOUT TO GIVE HER A SHOT,
15 AND SHE LOOKS AT THE NURSE AND SHE SAYS: "ARE YOU THE
16 ONE WHO DOES IT?"

17 AND THE NURSE SAYS: "WHAT?"

18 AND THE NUN SAYS: "ARE YOU THE ONE WHO
19 ADMINISTERS THE LETHAL INJECTION IN THE EXECUTIONS?"

20 AND THE NURSE SAYS: "I CAN'T TELL YOU
21 THAT. THAT'S CONFIDENTIAL."

22 AND AT THE END OF THE MOVIE, YOU FIND OUT
23 THAT, IN FACT, THAT NURSE IS THE ONE WHO ADMINISTERS THE
24 LETHAL INJECTIONS.

25 AND THAT SCENE STRUCK ME AS POINTING OUT

26 HOW WE ALL WANT TO MINIMIZE OUR OWN ROLE IN THIS
27 PROCESS, BUT WE CAN'T. EACH ONE OF US HAS A SPECIFIC
28 ROLE AND A SPECIFIC RESPONSIBILITY.

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1 MY ROLE AND MY RESPONSIBILITY IS THAT OF AN
2 ATTORNEY, AS AN ADVOCATE, AND I HAVE TO LIVE WITH MY
3 FAILURES AND MY SHORTCOMINGS. AND IF I AM TOO TIRED TO
4 WORK HARD ENOUGH, AND IF I DON'T PREPARE THE WAY THAT I
5 SHOULD, AND IF I DON'T COMMUNICATE TO YOU IN THE WAY
6 THAT I INTENDED TO, AFTER THIS IS ALL OVER, I'LL HAVE TO
7 LIVE WITH THOSE FAILURES.

8 BUT EACH ONE OF YOU HAS THE MOST DIFFICULT
9 AND IMPORTANT ROLE AND RESPONSIBILITY IN THIS PROCESS,
10 BECAUSE EACH ONE OF YOU HAS THE RESPONSIBILITY TO MAKE
11 THE DECISION BETWEEN LIFE AND DEATH. AND YOU, AND YOU
12 ALONE, ARE THE JUDGE.

13 AND IT'S A RESPONSIBILITY THAT YOU WILL
14 CARRY WITH YOU FROM THIS DAY FORWARD. AND YOU MUST FEEL
15 COMFORTABLE WITH YOUR DECISION ALWAYS, NOT JUST TODAY OR
16 TOMORROW OR NEXT WEEK OR NEXT YEAR, BUT FOR THE REST OF
17 YOUR LIFE. YOU CAN'T CHANGE YOUR MIND.

18 AND YOU CAN'T SAY: MY PERSONAL DECISION
19 DIDN'T MATTER. YOU CAN'T SAY IT WAS ALL OF OUR
20 DECISION, NOT MINE. EACH ONE OF YOU HAS YOUR OWN VOTE,
21 AND YOU MUST EXERCISE IT IN THE WAY THAT YOU ALONE FEEL

22 IS JUST.

23 SO HOW DO YOU GO ABOUT MAKING THAT

24 DECISION?

25 WELL, THE TWO WORST PENALTIES THAT CAN BE

26 IMPOSED UNDER OUR LAW ARE LIFE WITHOUT POSSIBILITY OF

27 PAROLE AND DEATH. AND YOU HAVE ALREADY DETERMINED BY

28 YOUR VERDICT THAT LIFE WITHOUT POSSIBILITY OF PAROLE IS

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1 THE LEAST PUNISHMENT THAT LYLE MENENDEZ COULD RECEIVE.

2 HE IS ALREADY REMOVED FROM SOCIETY FOREVER. AND NOW YOU

3 MUST DECIDE WHETHER THAT'S NOT ENOUGH.

4 THE DEATH PENALTY IS RESERVED ONLY FOR THE

5 WORST OF THE WORST IN OUR SOCIETY. AND YOU MUST NOW

6 DECIDE WHETHER LYLE MENENDEZ IS SUCH A TERRIBLE PERSON

7 THAT THERE IS NO OTHER ANSWER THAN TO TAKE HIS LIFE.

8 NOW, MR. CONN SAYS: LOOK AT WHAT HE DID.

9 CONSIDER THE CIRCUMSTANCES OF THE CRIME TO DECIDE FOR

10 DEATH. HE SAYS IT OUTWEIGHS ALL OF THE MITIGATION

11 THAT'S PRESENTED.

12 AND I AM NOT TELLING YOU THAT IT'S NOT A

13 TERRIBLE THING TO KILL YOUR PARENTS, BECAUSE IT IS. AND

14 I'M NOT SAYING THAT THE RELATIONSHIP BETWEEN LYLE

15 MENENDEZ AND HIS PARENTS JUSTIFIED THIS KILLING, BECAUSE

16 IT DIDN'T.

17 BUT WHEN A TRAGEDY LIKE THIS HAPPENS, WHEN

18 BOTH SONS, 100 PERCENT OF THE CHILDREN IN THIS FAMILY,
19 KILL BOTH PARENTS, DOESN'T IT MAKE YOU ASK YOURSELF WHY?
20 WHAT HAPPENED IN THIS FAMILY? WHAT WENT WRONG? WASN'T
21 THEIR SOMETHING TERRIBLY, HORRIBLY WRONG FOR THIS TO
22 HAVE OCCURRED?

23 NOW, THE FACT THAT IT HAPPENED WE ALL KNOW,
24 AND WE SPENT A MONTH GOING OVER THE CRIME SCENE AND THE
25 PICTURES OF THE CRIME SCENE IN THE GUILT PHASE OF THIS
26 TRIAL. AND THE SHOOTING, IT WAS SOMETHING THAT HAPPENED
27 VERY QUICKLY, AND WAS OVER IN JUST A MOMENT. YOU KNOW
28 THAT FROM THE TESTIMONY OF MRS. KROM AND HER SON.

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1 BUT IT LEFT BEHIND A TERRIBLE PICTURE FOR
2 ALL OF US TO LOOK AT. AND MR. CONN HAS SHOWN YOU THE
3 TERRIBLE PICTURE THAT IT LEFT MANY TIMES DURING THE
4 COURSE OF THIS TRIAL. AND DEATH IS ALWAYS UGLY, AND
5 DEATH IS ALWAYS HARD TO LOOK AT.

6 BUT THE CIRCUMSTANCES OF THIS CRIME IS THE
7 THRESHOLD, THE STARTING POINT FROM WHERE YOU START
8 TODAY. AND IF YOU THINK THAT THIS CRIME IS NOT THE
9 WORST OF THE WORST, YOU'RE FINISHED WITH YOUR JOB, AND
10 YOUR VERDICT IS LIFE WITHOUT POSSIBILITY OF PAROLE.

11 ASK YOURSELVES: HOW DOES IT COMPARE WITH
12 OTHER SPECIAL CIRCUMSTANCE KILLINGS? IS IT WORSE THAN
13 THE KILLING OF A TOTAL STRANGER, AND THEN AFTER TIME FOR

14 REFLECTION, GOING OUT AND KILLING SOMEONE ELSE? IS IT
15 WORSE THAN SOMEONE WHO RAPES AND KILLS A CHILD? IS IT
16 WORST THAN A KILLING WHERE THE VICTIM IS TERRORIZED AND
17 TORTURED BEFORE FINALLY KILLED?

18 IF YOU DON'T THINK THE CRIME ITSELF IN THIS
19 CASE REQUIRES DEATH, YOU NEED GO NO FURTHER IN YOUR
20 ANALYSIS. AND EVEN IF YOU'RE NEUTRAL WHEN DECIDING
21 WHETHER THIS CRIME WAS VERY BAD, IS NOT THE WORST OF THE
22 WORST, THEN YOUR VERDICT WILL BE LIFE WITHOUT
23 POSSIBILITY OF PAROLE.

24 EVEN IF THERE WERE NO MITIGATION AT ALL IN
25 THIS CASE, IF YOU DON'T BELIEVE THAT THE CIRCUMSTANCES
26 OF THIS CRIME CRY OUT FOR DEATH, THEN YOUR VERDICT IS
27 LIFE.

28 BUT THERE IS MUCH MITIGATION IN THIS CASE.

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1 AND I'M NOT TALKING NOW ABOUT JUSTIFICATION OR EXCUSE OR
2 BLAME, BECAUSE YOU HAVE DETERMINED ALL OF THOSE THINGS
3 IN THE PRIOR PHASE OF THIS TRIAL. WHEN WE TALK ABOUT
4 MITIGATION NOW, WE'RE TALKING ABOUT MERCY AND COMPASSION
5 AND SORROW AND UNDERSTANDING, NOT JUSTIFICATION.

6 NOW, THE COURT WILL GIVE YOU AN INSTRUCTION
7 THAT LISTS THE FACTORS THAT YOU'RE TO CONSIDER, AND
8 THOSE FACTORS WILL BE LETTERED A THROUGH K. AND
9 MR. CONN'S CHART THAT HE SHOWED YOU IN HIS ARGUMENT IS

10 DIFFERENT FROM THE INSTRUCTION THAT YOU WILL ACTUALLY
11 RECEIVE. AND THE INSTRUCTION THAT YOU WILL RECEIVE WILL
12 TELL YOU THE THINGS THAT I AM ABOUT TO TELL YOU.

13 NOW, FACTOR A IN THE INSTRUCTION IS THE
14 CIRCUMSTANCES OF THE CRIME. AND ALL OF THE REST OF THE
15 FACTORS, B THROUGH K, CAN ALL BE MITIGATING. NONE ARE
16 AGGRAVATING IN THIS CASE.

17 AND THE FIRST FOUR FACTORS IN THE
18 INSTRUCTION THAT THE JUDGE WILL GIVE YOU, FACTORS A
19 THROUGH D, CAN BE CONSIDERED AGGRAVATION IN OTHER CASES.
20 AND THOSE FOUR FACTORS ARE THE CIRCUMSTANCES OF THE
21 CRIME, OTHER ACTS OR THREATS OF VIOLENCE BY THE
22 DEFENDANT, PRIOR ADULT FELONY CONVICTIONS, AND THE AGE
23 OF THE DEFENDANT AT THE TIME OF THE CRIME.

24 ONLY ONE OF THOSE FOUR FACTORS CAN BE
25 CONSIDERED BY YOU AS AGGRAVATION IN THIS CASE, AND
26 THAT'S CIRCUMSTANCES OF THE CRIME. THE REMAINING THREE
27 POSSIBLE AGGRAVATING FACTORS UNDER THE LAW ARE
28 MITIGATION HERE.

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1 THERE ARE NO OTHER ACTS OR THREATS OF
2 VIOLENCE BY LYLE MENENDEZ, NONE AT ALL. AND THE ABSENCE
3 OF SUCH CONDUCT IS MITIGATION IN THIS CASE.

4 AND THE SAME IS TRUE WITH RESPECT TO ADULT
5 FELONY CONVICTIONS. THERE ARE NONE. AND THAT ABSENCE

6 IS MITIGATION.

7 THIS ISN'T A CASE WHERE A RAPIST GOES OUT
8 AGAIN AND RAPES AND KILLS SOMEONE. THIS ISN'T A CASE
9 WHERE SOMEONE IS RELEASED FROM PRISON AND GOES OUT AND
10 COMMITS A SPECIAL CIRCUMSTANCE MURDER.

11 THE AGE OF THE DEFENDANT AT THE TIME OF THE
12 CRIME IS ALSO MITIGATING HERE, BECAUSE OF YOUTH.

13 AND EVERY ONE OF THE REST OF THE FACTORS IN
14 THE INSTRUCTION YOU WILL RECEIVE, FACTORS E THROUGH K
15 CAN BE MITIGATION, ONLY IF YOU FIND THAT THEY EXIST
16 UNDER THE EVIDENCE.

17 IF YOU FIND THAT ANY OF THOSE FACTORS DON'T
18 EXIST, THEIR ABSENCE IS NOT AGGRAVATION. IT JUST SIMPLY
19 MEANS THEY DON'T APPLY HERE.

20 NOW, I AM NOT GOING TO GO THROUGH ALL OF
21 THE MITIGATING FACTORS IN MY REMARKS TO YOU, BUT I ASK
22 THAT YOU LOOK AT ALL OF THEM, AND SEE IF YOU THINK THAT
23 THEY APPLY. BUT I WANT TO FOCUS ON THREE OF THEM.

24 THE AGE OF LYLE MENENDEZ AT THE TIME OF THE
25 CRIME, AND THAT'S FACTOR D.

26 FACTOR F, WHETHER OR NOT THE VICTIMS WERE
27 PARTICIPANTS IN THE DEFENDANT'S HOMICIDAL ACT, OR
28 CONSENTED TO THE ACT;

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1 AND FACTOR-K, WHICH IN ESSENCE IS ANYTHING

2 ELSE THAT YOU FIND MITIGATING ABOUT LYLE MENENDEZ OR HIS
3 LIFE.

4 WHEN LYLE MENENDEZ WAS 21 YEARS OLD, HE
5 KILLED HIS PARENTS. AND YOUTH IS MITIGATION IN AND OF
6 ITSELF IN THIS CASE. THE LAW DOESN'T PERMIT THE DEATH
7 PENALTY FOR ANYONE UNDER THE AGE OF 18, AND THE LAW
8 UNDERSTANDS THAT MATURITY AND WISDOM AFFECTS HOW PEOPLE
9 ACT AND HOW THEY THINK ABOUT THINGS.

10 AND WE KNOW FROM THE EVIDENCE THAT LYLE
11 MENENDEZ WAS IMMATURE FOR HIS AGE, AND WE KNOW FROM THE
12 EVIDENCE THAT LYLE MENENDEZ LACKED WISDOM. HE DIDN'T
13 DEVELOP AS HE SHOULD HAVE. HE DIDN'T HAVE THE CHANCE TO
14 DEVELOP AS HE SHOULD HAVE.

15 WHY DIDN'T HE? TO ANSWER THAT QUESTION,
16 YOU NEED LOOK AT THE NEXT FACTOR AND THE EVIDENCE
17 PERTAINING TO THAT.

18 THE NEXT FACTOR IS FACTOR F, AND THAT
19 READS: "WHETHER OR NOT THE VICTIMS WERE PARTICIPANTS IN
20 THE DEFENDANT'S HOMICIDAL CONDUCT, OR CONSENTED TO THE
21 HOMICIDAL ACT."

22 NOW, WHEN YOU FIRST READ THAT, YOU THINK
23 ABOUT ASSISTED SUICIDE. BUT THAT'S NOT A SPECIAL
24 CIRCUMSTANCE KILLING. AND MR. CONN MENTIONS SOMEONE
25 KILLING AN ACCOMPLICE IN THE ACT OF COMMITTING A CRIME,
26 AND I SUPPOSE IT COULD APPLY IN THAT SITUATION, IF IT
27 WERE A FIRST-DEGREE MURDER WITH SPECIAL CIRCUMSTANCES.

28 BUT BY THIS FACTOR, THE LAW RECOGNIZES A

1 DISTINCTION BETWEEN A VICTIM WHO INTERACTS WITH A
2 DEFENDANT AND THE INNOCENT STRANGER. AND THERE IS MUCH
3 EVIDENCE BEFORE YOU THAT JOSE AND KITTY MENENDEZ WERE
4 PARTICIPANTS IN WHAT HAPPENED ON AUGUST 20TH, 1989. AND
5 THAT PARTICIPATION WAS UNINTENTIONAL, AND PERHAPS
6 WELL-INTENTIONED.

7 NOW, MR. CONN WILL SAY THAT BY ARGUING THIS
8 FACTOR I AM TRYING TO BLAME THE PARENTS FOR WHAT
9 HAPPENED. AND I'M NOT TALKING ABOUT BLAME, AND I'M NOT
10 TALKING ABOUT RESPONSIBILITY. AND I AM NOT SAYING THAT
11 JOSE AND KITTY MENENDEZ DESERVED TO DIE. OF COURSE THEY
12 DIDN'T.

13 BUT YOU MUST CONSIDER WHETHER OR NOT THE
14 PARENTS' TREATMENT OF THEIR SON, LYLE MENENDEZ, PLAYED A
15 ROLE IN WHAT ULTIMATELY HAPPENED.

16 NOW, IN LOOKING AT THIS FACTOR, YOU NEED TO
17 LOOK AT THE EVIDENCE THAT WAS PRESENTED. AND MR. CONN
18 SAYS THAT ALL OF THE WITNESSES THAT YOU HEARD FROM
19 PRESENT A DISTORTED PICTURE OF THE RELATIONSHIP BETWEEN
20 JOSE AND KITTY MENENDEZ AND THEIR SON, LYLE, AND HE
21 SUGGESTS THAT ALL OF THESE WITNESSES THAT YOU'VE HEARD
22 FROM ARE INTENTIONALLY MISREPRESENTING THAT RELATIONSHIP
23 TO YOU.

24 NOW, WHY WOULD THEY DO THAT? DO YOU REALLY
25 THINK THAT WILLIAM KURTAIN HAS A GRUDGE AGAINST JOSE
26 MENENDEZ, ALMOST 20 YEARS LATER, BECAUSE HE WAS FIRED

27 FROM GIVING TENNIS LESSONS FOR ONE LITTLE BOY?

28 AND THE BARALTS AND FAITH GOLDSMITH LOVED

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1 JOSE AND KITTY MENENDEZ. THEY WERE THEIR BEST FRIENDS.

2 AND THE OTHER FAMILY MEMBERS LOVED THEM AS WELL. AND

3 MOST OF THE OTHER PEOPLE THAT YOU HEARD FROM JUST

4 HAPPENED TO SEE A PORTION OF THE INTERACTION BETWEEN THE

5 PARENTS AND THEIR SON.

6 NOW, MR. CONN DIDN'T PRESENT A SINGLE

7 WITNESS TO CONTRADICT WHAT THEY TOLD YOU. HE DIDN'T

8 BRING IN A SINGLE WITNESS TO TELL YOU ANOTHER SIDE OF

9 THE PARENT-CHILD RELATIONSHIP, AND HE SAYS HE CAN'T DO

10 THAT, BECAUSE TERRY BARALT WON'T COOPERATE WITH HIM.

11 IS TERRY BARALT THE ONLY PERSON WHO EVER

12 CROSSED PATHS WITH THIS FAMILY?

13 MR. CONN SAYS THAT FAITH GOLDSMITH WON'T

14 TALK TO HIM EITHER. BUT YOU KNOW, SHE TOLD YOU IN HER

15 TESTIMONY THAT SHE HAD TO SEARCH HER SOUL BEFORE SHE

16 COULD COME IN HERE AND TESTIFY ABOUT WHAT SHE SAW,

17 BECAUSE SHE FELT DISLOYAL TO HER BELOVED FRIENDS.

18 NO ONE ELSE REFUSED THE PROSECUTION'S

19 EFFORTS TO CONTACT THEM. AREN'T THERE OTHER SOURCES OF

20 INFORMATION? WHERE ARE ALL THE WITNESSES TO DESCRIBE

21 THIS HAPPY AND LOVING FAMILY THAT MR. CONN TELLS US

22 ABOUT?

23 AND BECAUSE THERE AREN'T ANY SUCH
24 WITNESSES, HE TAKES BITS OF TESTIMONY FROM THE PEOPLE
25 THAT YOU DID HEAR FROM THAT HE LIKES, AND HE SAYS THAT'S
26 THE TRUTH. AND THE REST OF THE TESTIMONY, EVEN IF FROM
27 THE SAME WITNESS, HE SAYS IS A LIE.

28 NOW, YOU HEARD THE TESTIMONY FROM THE

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1 WITNESSES THAT MR. GESSLER AND I CALLED. ARE THEY ALL
2 LYING? OR WERE THERE SERIOUS AND LONG-TERM PROBLEMS IN
3 THIS FAMILY THAT THEY SAW PART OF?

4 NOW, I AM NOT ARGUING TO YOU THAT JOSE AND
5 KITTY MENENDEZ WERE BAD PEOPLE. I DIDN'T KNOW THEM.
6 AND THEY WERE LOVED BY MANY OF THE SAME PEOPLE WHO LOVE
7 THEIR SON, LYLE, AND THEY WERE DISLIKED BY OTHER PEOPLE.

8 WHETHER THEY WERE GOOD OR BAD PEOPLE IS NOT
9 THE QUESTION BEFORE YOU. THAT'S NOT WHAT YOU'RE LOOKING
10 AT NOW. YOU'RE LOOKING AT THE RELATIONSHIP BETWEEN THE
11 PARENTS AND THEIR SON.

12 NOW, MANY OF YOU HAVE CHILDREN, AND ALL OF
13 YOU WERE CHILDREN, AND PERHAPS YOU HAVE GOOD CHILDHOOD
14 MEMORIES AND PERHAPS YOU HAVE BAD ONES. BUT IF I FALL
15 DOWN THE STAIRS AND I BREAK MY LEG, AND YOU FALL DOWN
16 THE STAIRS AND YOU TWIST YOUR ANKLE, MY BROKEN LEG
17 DOESN'T CAUSE YOU ANY LESS PAIN.

18 JOSE AND KITTY MENENDEZ WERE NOT NURTURING,

19 CARING, WARM PARENTS. THEY WERE DEMANDING AND EXACTING.
20 THEY WERE PERFECTIONISTS, THEY WERE CRITICAL, AND THEY
21 WERE COMPETITIVE. AND JOSE AND KITTY MENENDEZ SHARED
22 THE SAME PHILOSOPHY IN CHILD-REARING THAT LYLE MENENDEZ
23 HAD TO BE NUMBER ONE. WINNING IS EVERYTHING. TRYING
24 ISN'T GOOD ENOUGH. IF YOU FAIL, YOU AREN'T GOOD ENOUGH.
25 AND BOTH PARENTS EXPECTED MORE FROM LYLE.
26 HE WAS THE FIRSTBORN, THE GOLDEN CHILD. HE MUST BE
27 PERFECT. AND JOSE AND KITTY MENENDEZ WERE WARNED MANY
28 TIMES OVER THE YEARS THAT THAT'S NOT THE WAY TO RAISE

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1 THEIR SON, AND THEY WERE WARNED THAT IT'S DAMAGING AND
2 DESTRUCTIVE TO DEMAND PERFECTION FROM A CHILD.
3 TERRY AND CARLOS BARALT WARNED THEM WHEN
4 LYLE WAS JUST A LITTLE BOY, AND THEY SAID THEY DISAGREED
5 WITH THIS DRIVEN GOAL-ORIENTED CHILD-REARING PHILOSOPHY,
6 AND THEY TOLD JOSE AND KITTY MENENDEZ MANY TIMES THAT
7 THEY NEEDED TO GIVE THEIR CHILD UNCONDITIONAL LOVE AND
8 SUPPORT; THAT LITTLE BOYS ARE NO DIFFERENT FROM LITTLE
9 GIRLS IN THAT WAY. THEY NEED THE SAME THINGS. ONE
10 PARENT, AT LEAST, HAS TO PICK UP THE PIECES AND DRY THE
11 TEARS, AND PROVIDE A SAFE HAVEN FOR THE CHILD.
12 AND FAITH GOLDSMITH ECHOED TERRY AND CARLOS
13 BARALT'S DISAGREEMENT TO BOTH JOSE AND KITTY MENENDEZ.
14 SHE SAID IT SHOULDN'T BE FOCUSED ON RAISING A CHAMPION.

15 SHE SAID LYLE CAN'T WAIT UNTIL COLLEGE TO HAVE FRIENDS.
16 SHE SAID HE WON'T KNOW HOW TO MAKE FRIENDS, OR BE A
17 FRIEND, IF HE WAITS UNTIL THEN. HE WON'T KNOW HOW TO
18 DEVELOP THE SKILLS AND COMPASSION AND UNDERSTANDING
19 NECESSARY TO DEVELOP TRUE FRIENDSHIPS. SHE SAID A CHILD
20 NEEDS TO HAVE FUN AND TO PLAY.

21 AND PETER CANO ALSO WARNED THEM. HE SAID
22 YOU DON'T RAISE A CHILD BY HARSH PUNISHMENT FOR SHOWING
23 EMOTION OR FOR THEIR FAILURES.

24 AND CHARLES WADLINGTON TOLD OF PEOPLE HE
25 KNEW UNDER SIMILAR PRESSURE BY THEIR PARENTS, AND THE
26 PEOPLE HE KNEW, THAT HE SPOKE ABOUT, HAD COMMITTED
27 SUICIDE OR BECOME BULEMIC OR HAD TURNED TO DRUGS OR
28 ALCOHOL.

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1 AND SANDRA SHARP AND ALICIA HERCZ WERE
2 TEACHERS WHO TRIED TO TALK TO JOSE AND KITTY MENENDEZ,
3 AND THEY TRIED TO TELL THEM ABOUT THE THINGS THAT THEY
4 SAW HAPPENING TO LYLE, HIS EXCESSIVE ANXIETY OVER
5 GRADES, HIS FAILURE TO REALLY LEARN, HIS ISOLATION FROM
6 SCHOOL FRIENDS, AND HIS NEED FOR SOMEONE TO TALK TO
7 ABOUT HIS PROBLEMS.

8 AND CARLOS BARALT WARNED JOSE MENENDEZ THAT
9 LYLE COULDN'T MAKE IT AT PRINCETON UNIVERSITY. HE SAID
10 HE DIDN'T HAVE THE BACKGROUND EDUCATION OR THE ACADEMIC

11 DISCIPLINE TO GET THROUGH.

12 BUT ALL OF THESE WARNINGS OVER ALL OF THESE
13 YEARS FELL ON DEAF EARS. NO ONE GOT THROUGH. AND THE
14 PARENTS' PHILOSOPHY WAS ENFORCED FROM THE TIME THAT LYLE
15 MENENDEZ COULD WALK UNTIL AUGUST 20TH, 1989.

16 WILLIAM KURTAIN WAS TERMINATED WHEN HE
17 TRIED TO TELL JOSE MENENDEZ THAT THERE WAS A PROBLEM IN
18 THE PARENTS' TRAINING OF LYLE.

19 AND ROBBIE CLOUSE WAS FIRED WHEN THE
20 PARENTS BELIEVED THAT HIS IDEAS FOR POSSIBILITIES IN
21 LYLE'S FUTURE DIDN'T COINCIDE WITH THEIR PLAN.

22 JOSE AND KITTY MENENDEZ DID HAVE A PLAN FOR
23 LYLE MENENDEZ, AND THEY ENFORCED IT, AND THEY CONTINUED
24 TO ENFORCE IT THOUGHOUT HIS LIFE.

25 JOSE MENENDEZ ANSWERED ON BEHALF OF HIS
26 SON, LYLE, WHEN ALICIA HERCZ'S SON -- EXCUSE ME --
27 ALICIA HERCZ'S HUSBAND WAS ASKING HIM QUESTIONS ABOUT
28 WHAT HIS PLANS FOR THE FUTURE WERE. AND LYLE WAS 18

-10660

1 YEARS OLD AT THAT TIME.

2 AND KITTY MENENDEZ CALLED TERRY BARALT
3 EVERY DAY TO CHECK ON WHAT LYLE WAS DOING WHEN HE WAS AT
4 PRINCETON UNIVERSITY. BUT YOU KNOW, SHE DIDN'T CALL
5 LYLE.

6 THE PARENTS' PLAN WAS ENFORCED EVEN DOWN TO

7 THE GIRLFRIENDS THAT LYLE MENENDEZ HAD. AND APPARENTLY
8 GIRLFRIENDS WERE SOMETHING THAT THEY FELT WERE
9 ACCEPTABLE. AND EVEN THOUGH THEY FELT THAT STACY, HIS
10 HIGH SCHOOL GIRLFRIEND, WAS A DISTRACTION FROM HIS
11 GOALS, THEY DIDN'T REQUIRE HIM TO BREAK UP WITH HER.
12 TERRY BARALT TOLD YOU THAT.

13 AND EVEN THOUGH THEY FELT THAT JAMIE
14 PISARCIK WASN'T GOOD ENOUGH TO MARRY, SHE WAS OKAY TO
15 HAVE AROUND. CARLOS BARALT TOLD YOU THAT.

16 BUT WHEN HE STARTED GOING OUT WITH CHRISTY,
17 THE MODEL, SHE WAS TOTALLY UNACCEPTABLE, AND SO HE
18 WAS -- LYLE MENENDEZ WAS INSTRUCTED TO BREAK UP WITH
19 HER. AND HE OBEYED. PERRY BERMAN TOLD YOU THAT.

20 AND LYLE'S NEXT GIRLFRIEND WAS SELECTED BY
21 JOSE MENENDEZ HIMSELF. HE SELECTED SOMEONE HE FELT WAS
22 SUITABLE, AND THAT WAS CHARMAINE, THE ROSE BOWL QUEEN.
23 PERRY BERMAN TOLD YOU THAT.

24 NOW, JOSE AND KITTY MENENDEZ WERE PROUD,
25 AND SOMETIMES EVEN BOASTFUL OF LYLE MENENDEZ'
26 ACCOMPLISHMENTS. BUT THAT PRIDE AND THAT PRAISE WERE
27 NEVER DIRECTED TOWARDS LYLE. THEY ALWAYS WANTED MORE,
28 NO MATTER HOW MUCH HE GAVE. NO MATTER HOW HARD HE

-10659

1 TRIED, IT WASN'T ENOUGH. JOSE AND KITTY MENENDEZ NEVER
2 GAVE LYLE MENENDEZ, THEIR SON, THE UNCONDITIONAL LOVE

3 THAT PARENTS SHOULD GIVE THEIR CHILDREN. THEY FORGOT TO
4 SHOW AFFECTION. THEY FORGOT TO PROVIDE A SAFE HAVEN.
5 THEY FORGOT TO SHOW HIM THAT THEY LOVED HIM.

6 AND INSTEAD, THEY MADE A COLD AND HARD AND
7 LOVELESS HOME THAT WAS DESCRIBED TO YOU BY DIANE
8 VANDERMOLLEN, BY KATHY SIMONTON, AND BY MARIANNE CANO.

9 EVEN MR. CONN ACKNOWLEDGED THE LACK OF LOVE
10 IN THIS FAMILY IN HIS CLOSING ARGUMENT IN THE GUILT
11 PHASE OF THIS TRIAL. AND AT THAT TIME HE SAID TO YOU:

12 "AND JOSE MENENDEZ WAS ALSO GUILTY.

13 HE WAS -- HE PROVIDED THE MATERIAL NEEDS
14 FOR HIS CHILDREN, AND HE WAS BY AND LARGE
15 AN ABSENT FATHER.

16 "JOSE MENENDEZ WAS OFF SLAYING
17 DRAGONS IN THE BUSINESS WORLD, AND HIS
18 SONS WERE LEFT WITH THE MOTHER. AND HE
19 WAS BY AND LARGE AN ABSENT FATHER.

20 "AND WHEN HE CAME -- WHEN HE CAME
21 BACK AND SPENT TIME WITH THEM AT THEIR
22 SPORTS GAMES, WHAT DID HE DO? HE INSISTED
23 WIN, PREVAIL, ACHIEVE, BE SUCCESSFUL. HE
24 HAD DEMANDS. HE HAD EXPECTATIONS.

25 "WAS THERE LACK OF LOVE? PERHAPS
26 NOT TRUE LOVE, BUT PERHAPS HE WAS JUST TOO
27 BUSY TO EXPRESS THAT LOVE. BUT JOSE
28 MENENDEZ WAS BY AND LARGE AN ABSENT

1 FATHER.

2 "SO WITH AN ABSENT FATHER AND A
3 MOTHER WHO JUST RAN THE HOUSE, AND PERHAPS
4 DIDN'T GIVE THE DEFENDANTS THE LOVE THAT
5 MIGHT BE EXPECTED, WHAT BECAME OF THAT?"

6 NOW, I DON'T KNOW WHAT YOU THINK THE REASON
7 FOR THIS CRIME WAS. IT WAS GREED, FEAR, HATRED, ANGER,
8 SHAME, DESPERATION, OR ALL OF THOSE THINGS. AND IT
9 DOESN'T REALLY MATTER. BECAUSE ANY AND ALL OF THOSE
10 THINGS HAD TO HAVE GROWN OUT OF THE RELATIONSHIP BETWEEN
11 LYLE MENENDEZ AND HIS PARENTS. AND ALL OF THOSE
12 POSSIBLE REASONS TAKE YOU BACK TO LOOK AT THAT
13 RELATIONSHIP, AND ASK YOURSELVES: IF THAT RELATIONSHIP
14 HAD BEEN DIFFERENT, WOULD THIS TRAGEDY HAVE HAPPENED?

15 NOW, THE LAST FACTOR THAT I WANT TO TALK TO
16 YOU ABOUT IS FACTOR K, AND I WILL READ THAT TO YOU.
17 IT'S BEEN READ TO YOU BEFORE, BUT I WILL READ IT TO YOU
18 AGAIN. IT READS:

19 "ANY OTHER CIRCUMSTANCE WHICH
20 EXTENUATES THE GRAVITY OF THE CRIME, EVEN
21 THOUGH IT IS NOT A LEGAL EXCUSE FOR THE
22 CRIME, AND ANY SYMPATHETIC OR OTHER ASPECT
23 OF THE DEFENDANT'S CHARACTER OR RECORD
24 THAT THE DEFENDANT OFFERS AS A BASIS FOR A
25 SENTENCE LESS THAN DEATH, WHETHER OR NOT
26 RELATED TO THE OFFENSE FOR WHICH HE IS ON
27 TRIAL.

-10657

1 INSTRUCTION GIVEN TO YOU IN THE GUILT OR
2 INNOCENCE PHASE OF THIS TRIAL WHICH
3 CONFLICTS WITH THIS PRINCIPLE."

4 NOW, FACTOR K IS A VERY BROAD FACTOR FOR
5 MITIGATION ONLY, AND IT MEANS THAT YOU CAN CONSIDER
6 ANYTHING AND EVERYTHING ABOUT LYLE MENENDEZ AND HIS LIFE
7 THAT YOU CONSIDER MITIGATING. AND ALL OF THE THINGS
8 THAT I JUST TALKED ABOUT WITH RESPECT TO THE LAST FACTOR
9 CAN ALSO BE CONSIDERED UNDER THIS ONE, AND THAT'S
10 BECAUSE JOSE AND KITTY MENENDEZ WERE NOT ONLY THE
11 VICTIMS OF THIS CRIME, BUT ARE ALSO THE MOST IMPORTANT
12 PART OF LYLE MENENDEZ' PAST.

13 NOW I WANT TO TALK TO YOU FOR A MINUTE
14 ABOUT LYLE MENENDEZ AND THE EFFECT THAT HIS UPBRINGING
15 HAD ON HIM.

16 STEVE MOSNER GAVE A VERY COMPELLING
17 DESCRIPTION OF JOSE MENENDEZ' ATTITUDE TOWARDS HIS SON.
18 AND IN RESPONSE TO A QUESTION BY MR. CONN ASKING HIM WHY
19 HE DESCRIBED JOSE MENENDEZ' TREATMENT OF LYLE LIKE A
20 VALUABLE PRODUCT, STEVE MOSNER EXPLAINED:

21 "IT WAS MORE LIKE A POSSESSION; AN
22 ANTIQUE CAR, A THOROUGHBRED RACEHORSE. I
23 FAILED TO SEE -- I FAILED TO SEE THE -- A

24 COMPANIONSHIP AND A LOVE THAT I SAW
25 BETWEEN OTHER FATHERS AND SONS. I SAW
26 ALSO LIKE -- LIKE A -- LIKE LYLE WASN'T
27 VALUED AS A CHILD. HE WAS VALUED AS --
28 AS -- I DON'T WANT TO SAY PRODUCT. AS

-10656

1 SOMETHING I OWN."
2 NOW, MR. CONN SAYS: DON'T CONSIDER THAT.
3 HE SAYS: ONLY CONSIDER THAT JOSE MENENDEZ
4 PULLED LYLE AWAY FROM THE OTHER MEMBERS OF THE SOCCER
5 TEAM AND TOWELED HIM DOWN AT HALF-TIME AND PUT
6 SWEATSUITS ON HIM. AND MR. CONN SAYS THAT SHOWS JOSE
7 MENENDEZ' LOVE FOR HIS SON. AND PERHAPS IT DOES.
8 BUT WHO WAS THERE, MR. CONN OR STEVE
9 MOSNER? MR. MOSNER TOLD YOU THAT HE SAW SOMETHING WRONG
10 WITH THAT RELATIONSHIP, AND HE SAID HE HAD SEEN
11 THOUSANDS OF PARENTS WITH THEIR SONS.
12 THE WITNESSES HAVE TOLD YOU THAT LYLE
13 MENENDEZ HAD TO BE THE PERFECT PROPERTY, THE PERFECT
14 CHILD, THE PERFECT TEENAGER, AND THE PERFECT MAN. HE
15 HAD TO BE THE BEST TENNIS PLAYER, THE BEST SOCCER
16 PLAYER, THE BEST SWIMMER, THE BEST EVERYTHING.
17 AND LYLE MENENDEZ COULDN'T HAVE FRIENDS
18 WHEN HE WAS GROWING UP, BECAUSE THEY WOULD DETER HIM
19 FROM THE GOALS THAT HIS PARENTS HAD SET FOR HIM.

20 FRIENDS WERE COMPETITORS.

21 NOW, MR. CONN SAYS WELL, LYLE MENENDEZ HAD

22 FRIENDS AS A CHILD AND AS A TEENAGER. WHO ARE THEY?

23 STACY FELDMAN WAS THE ONLY FRIEND HE HAD UNTIL COLLEGE.

24 AND I DIDN'T HEAR THE TESTIMONY THAT MR. CONN TALKS

25 ABOUT WHERE LYLE MENENDEZ WAS DRIVING AROUND IN AN ALFA

26 ROMEO WITH HIS ARM AROUND A PRETTY STACY FELDMAN.

27 WHAT I HEARD WAS THAT LYLE AND STACY WERE

28 TWO NEEDY, LONELY KIDS WHO CLUNG TOGETHER IN THE HALLS

-10655

1 OF PRINCETON DAY SCHOOL, AND THE TEACHERS PERMITTED THAT

2 BECAUSE THEY FELT SORRY FOR THEM.

3 LYLE MENENDEZ COULDN'T CRY, HE COULDN'T BE

4 WEAK, HE COULDN'T BE AFRAID, AND HE COULDN'T SHOW

5 EMOTION. FROM THE TIME HE WAS A LITTLE BOY, IT WAS

6 DRILLED INTO HIM: BE A MAN, BE TOUGH AND STRONG.

7 AND PETER CANO'S TESTIMONY WAS A COMPELLING

8 EXAMPLE OF THAT REQUIREMENT OF LYLE.

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1 PETER CANO TOLD YOU THAT LYLE MENENDEZ
2 WET HIS PANTS JUST BECAUSE HIS FATHER SPOKE TO HIM.
3 HE WAS PUNCHED BECAUSE HE SHOWED THAT SIGN OF
4 WEAKNESS, BECAUSE HE SHOWED THAT HE WAS AFRAID, AND
5 HE WAS ONLY FIVE OR SIX YEARS OLD.
6 LYLE NEVER REALLY HAD A CHILDHOOD. HE
7 WAS WORKED AND TRAINED AND DRILLED AND GROOMED FROM
8 THE TIME THAT HE COULD WALK. HE DIDN'T HAVE
9 COMPASSION OR CONSOLATION WHEN HE FAILED OR WAS
10 DISAPPOINTED OR WAS AFRAID.

11 HE DIDN'T HAVE THE CHILDHOOD EXPERIENCES
12 THAT TEACH US FRIENDSHIP AND LOVE AND MATURITY AND
13 RESPECT AND HAPPINESS. HE NEVER WAS TAUGHT WHAT'S
14 TRULY VALUABLE IN LIFE. HE WAS GIVEN MANY THINGS,
15 BUT NOT THE VALUABLE THINGS THAT WE ALL NEED.

16 YOU CAN'T TAKE A CHILD AND OPEN HIM UP
17 AND PULL OUT EVERYTHING THAT HE IS AND PUT INSIDE
18 HIM WHAT YOU WANT HIM TO BE, OR WHAT YOU WANT
19 YOURSELF TO BE. YOU DON'T NEED AN EXPERT TO TELL
20 YOU THESE THINGS.

21 LYLE MENENDEZ WAS EXPECTED TO BE THE
22 PERFECT BEING. THAT WAS DEMANDED OF HIM, AND HE
23 WASN'T. WHAT HE WAS WAS AN ISOLATED AND LONELY AND
24 NEEDY AND SAD CHILD. AND HE GREW TO BE A TEENAGER
25 WHO HAD STUFFED ANIMALS FOR FRIENDS, AND HE GREW TO
26 BE A YOUNG MAN WHO CLUNG TO HIS HIGH SCHOOL
27 GIRLFRIEND, HIS ONLY FRIEND, IN EVERY SPARE MOMENT
28 HE HAD AT SCHOOL.

54883

1 AND WHEN HE WENT TO PRINCETON
2 UNIVERSITY, FAITH GOLDSMITH'S WORDS CAME TRUE. HE
3 DIDN'T KNOW HOW TO FIND TRUE FRIENDSHIP. HE MADE
4 FRIENDS LIKE DONOVAN GOODREAU, WHO LIED TO HIM;
5 GLENN STEVENS, WHO STOLE FROM HIM; AND JAMIE

6 PISARCIK, WHO TOOK THINGS FROM HIM AND ATTENTION
7 FROM HIM AND WAS WILLING TO MARRY HIM. BUT, YOU
8 KNOW, SHE NEVER ONCE SAID SHE LOVED HIM.

9 NOW, I DON'T KNOW IF YOU THINK THAT SOME
10 PEOPLE ARE JUST BORN BAD OR ARE JUST BAD SEEDS,
11 REGARDLESS OF THEIR UPBRINGING. IT'S CLEAR THAT
12 LYLE MENENDEZ WASN'T. HE WAS A GOOD CHILD, A
13 BEAUTIFUL, LOVABLE CHILD THAT ANY PARENT SHOULD BE
14 PROUD TO HAVE. LOOK AT THE PICTURES IN THE JURY
15 ROOM.

16 WHEN HE WAS A TEENAGER, WHO THE OTHER
17 KIDS LIKED, IF ONLY HE HAD TIME FOR THEM.

18 YOU'VE HEARD HIM DESCRIBED AS OBEDIENT
19 AND RESPECTFUL AND POLITE AND SHY. AND HE TRIED
20 HARD TO PLEASE HIS PARENTS AND BE WHAT THEY WANTED
21 HIM TO BE. HE NEVER CRITICIZED THEM. HE NEVER
22 COMPLAINED. HE NEVER TALKED BACK. HE HAD THE
23 POTENTIAL TO BE SUCCESSFUL IN LIFE, TO BE HAPPY AND
24 TO BE PRODUCTIVE. MAYBE NOT IN HIS PARENTS' VIEW,
25 BUT IN MOST PEOPLE'S VIEW OF SUCCESS AND HAPPINESS
26 AND PRODUCTIVITY.

27 THAT THERE'S GOOD IN HIM IS OBVIOUS,
28 FROM THE PEOPLE WHO TESTIFIED IN THIS TRIAL.

1 OTHERWISE, WHY WOULD SO MANY COACHES AND TEACHERS
2 AND FAMILY MEMBERS DROP THEIR BUSY LIVES AND FLY
3 ACROSS THE COUNTRY -- SOMETIMES MORE THAN ONCE -- TO
4 TESTIFY? IT CERTAINLY WASN'T FUN FOR THEM.

5 AND IF HE'S SO BAD, DON'T YOU WONDER WHY
6 THE FAMILY MEMBERS CIRCLED THEIR WAGONS AROUND HIM,
7 LIKE MR. CONN SAID?

8 WHAT LYLE MENENDEZ DID WAS TERRIBLE.
9 BUT IS HE SO TERRIBLE, IS HE SUCH A MENACE TO
10 SOCIETY, THAT DEATH IS YOUR ONLY ANSWER TO HIM?

11 YOU MUST ALSO ASK YOURSELVES WHAT IS THE
12 PURPOSE OF TAKING THE LIFE OF LYLE MENENDEZ? HE
13 CLEARLY ISN'T A DANGER TO SOCIETY. THE ONLY DANGER
14 HE EVER PRESENTED WAS TO HIS PARENTS.

15 AND FAMILY MEMBERS OF LYLE MENENDEZ HAVE
16 ASKED YOU TO SPARE HIM. THEY'VE TOLD YOU AND ASKED
17 YOU NOT TO MAKE THEIR PAIN EVEN GREATER.

18 NOW, I DON'T KNOW HOW YOU FEEL ABOUT THE
19 FAMILY MEMBERS WHO TESTIFIED. MAYBE YOU LIKE ALL OF
20 THEM. MAYBE YOU LIKE SOME OF THEM. MAYBE YOU DON'T
21 LIKE ANY OF THEM. BUT THEY ARE THE PEOPLE IN THIS
22 WORLD WHO WERE AND ARE AFFECTED BY THIS TRAGEDY.
23 AND ASK YOURSELVES, DO THEY DESERVE MORE SUFFERING
24 AND MORE ANGUISH AND MORE PAIN?

25 VENGEANCE IS THE ONLY REASON AT THIS
26 POINT TO IMPOSE THE DEATH PENALTY ON LYLE MENENDEZ.
27 AND MR. CONN WANTS YOU TO AVENGE THE CRIME FOR JOSE
28 AND KITTY MENENDEZ.

1 IS THAT WHAT THEY WOULD WANT? IF THEY
2 TRULY LOVED THEIR SON, AS MR. CONN SAYS, WOULD THEY
3 WANT HIM EXECUTED? AND IF THEY WERE SUCH HARSH
4 PEOPLE AS TO WANT YOU TO IMPOSE THIS ULTIMATE, FINAL
5 PUNISHMENT ON THEIR SON, ISN'T THAT SOMETHING THAT
6 GIVES YOU MORE UNDERSTANDING OF WHAT THE LIFE OF
7 LYLE MENENDEZ WAS LIKE, AND HOW THIS TRAGEDY CAME TO
8 BE?

9 SOON YOU MUST GO INTO THE JURY ROOM TO
10 MAKE YOUR DECISION. AND IN DOING SO, I ASK YOU TO
11 REMEMBER THAT COMPASSION IS NOT APPROVAL, MERCY IS
12 NOT EXCUSE, AND UNDERSTANDING IS NOT JUSTIFICATION.
13 AND I ASK EACH OF YOU TO LOOK IN YOUR OWN HEART FOR
14 SOME COMPASSION AND SOME MERCY AND SOME
15 UNDERSTANDING FOR LYLE MENENDEZ.

16 AND I BELIEVE THAT WHEN YOU DO, YOU'LL
17 FIND THAT HE SHOULD NOT DIE. AND IF YOU ALONE FEEL
18 THAT WAY, HE WILL NOT DIE.

19 THANK YOU.

20 THE COURT: THANK YOU, MS. TOWERY.

21 MR. CONN, ARE YOU READY TO PROCEED?

22 MR. CONN: YES.

23

24 CLOSING ARGUMENT

25 BY MR. CONN:

26 "I MISS MY PARENTS, BUT THEN AGAIN, I

27 MISS MY DOG TOO."

28 REMEMBER THAT? THOSE ARE THE WORDS OF

54886

1 LYLE MENENDEZ. THOSE ARE THE WORDS OF LYLE MENENDEZ

2 ON DECEMBER 11TH, JUST A FEW MONTHS AFTER

3 SLAUGHTERING HIS PARENTS AND SHOOTING THEM IN THE

4 HEAD.

5 HOW DID HE DO THAT? HOW DID HE GET DOWN

6 ON HIS MOTHER LIKE THAT, AFTER HE RAN OUTSIDE AND HE

7 CAME BACK WITH THAT GUN AND HELD THAT GUN DOWN TO

8 HIS MOTHER'S FACE?

9 HOW CLOSE DO YOU HAVE TO GET? HOW CLOSE

10 DO YOU HAVE TO GET TO PUT THE BARREL OF A SHOTGUN UP

11 AGAINST YOUR MOTHER'S CHEEK (DEMONSTRATING), WHEN

12 THE CHEEK IS SIX INCHES OFF THE FLOOR, FOUR INCHES

13 OFF THE FLOOR? HOW DO YOU SLAUGHTER HER LIKE THAT

14 AND PUSH IT DOWN INTO HER FACE LIKE THAT?

15 THAT IS THE MAN I'M ASKING YOU TO

16 SENTENCE TO DEATH; NOT A LITTLE CHILD WITH HIS

17 GIRLFRIEND BACK IN NEW JERSEY, BUT THE COLD-BLOODED

18 KILLER WHO DID THAT TO HIS MOTHER, WHO PUT THAT

19 BARREL TO HER FACE, AND THEN A LITTLE LATER TOLD THE

20 POLICE: "WHOEVER DID THIS SURE WANTED TO MAKE A
21 MESS."
22 THIS IS A COLD-BLOODED KILLER. LOOK
23 INTO HIS EYES. YOU SEE BLACK EYES, DEAD EYES. AND
24 THEY SHOULD BE DEAD, FOR THE HORROR THAT HE
25 COMMITTED, FOR WHAT HE DID TO HIS MOTHER AND TO HIS
26 FATHER.
27 AND HE HAS DEFENSE COUNSEL NOW WHO STAND
28 BEFORE YOU, AND IN A VERY SOFT VOICE TELLS

54887

1 YOU: "THINK ABOUT THE CHILD, THE CHILD INSIDE."
2 WE'RE NOT ASKING YOU TO SENTENCE
3 CHILDREN TO DEATH IN THIS CASE, LADIES AND
4 GENTLEMEN. I'M ASKING YOU TO SENTENCE TO DEATH A
5 21-YEAR-OLD MAN, WHO DROVE DOWN TO SAN DIEGO, AND
6 KNEW WHAT HE WAS GOING TO DO TO HIS MOTHER AND HIS
7 FATHER, AND WHO SAID: "YES, I'M GOING TO DO IT."
8 AND WHO KNEW HE WAS GOING TO SUBJECT HER TO A
9 HORRIBLE AND BRUTAL DEATH AND HE SAID: "YES, I'M
10 GOING TO DO IT."
11 WE'RE NOT PROSECUTING CHILDREN HERE,
12 LADIES AND GENTLEMEN. WE'RE PROSECUTING ADULTS.
13 AND WHEN HE THOUGHT ABOUT IT ON DECEMBER
14 11TH, AND HE SPOKE ABOUT HIS MOTHER AND HIS FATHER:

15 "SURE I MISS THEM, BUT I MISS MY DOG TOO."
16 LIFE GOES ON FOR LYLE MENENDEZ, AND LIFE
17 WENT ON FOR HIM QUICKLY. WITHIN MINUTES OF
18 SLAUGHTERING HIS PARENTS HE WAS IN ALIBI MODE, AND
19 HE WAS TELLING THE POLICE A STORY, A FABRICATED
20 STORY THAT HE PUT TOGETHER TO AVOID PUNISHMENT.
21 THIS MAN DOES NOT DESERVE YOUR MERCY.
22 DON'T THINK OF HIM AS A CHILD. THAT'S WHAT THEY
23 WANT YOU TO THINK. WE WERE ALL CHILDREN ONCE. WE
24 WERE ALL CHILDREN.
25 CHARLES MANSON WAS ONCE A SWEET LITTLE
26 KID. WE WERE ALL CHILDREN ONCE. BUT WE ALL MUST BE
27 HELD ACCOUNTABLE FOR THE CRIMES THAT WE COMMIT.
28 THAT GOES FOR LYLE MENENDEZ.

54888

1 LADIES AND GENTLEMEN, BOTH TERRI TOWERY
2 AND MR. LEVIN STAND BEFORE YOU AND THEY SAY: "WE
3 DON'T KNOW WHY THIS CRIME TOOK PLACE."
4 WELL, WE HEARD WHY THE CRIME TOOK PLACE
5 FROM ERIK MENENDEZ. HE WAS ON THE WITNESS STAND.
6 AND HE TOLD YOU WHY THIS CRIME TOOK PLACE.
7 AND WHAT DID HE TELL YOU? THE BEST LIE
8 HE CAN COME UP WITH, THE ABSOLUTE BEST. IT WAS
9 HONED LIKE A FINE-POINTED KNIFE. HE GAVE IT HIS

10 VERY BEST SHOT, HIS VERY BEST SHOT AT LYING, AND IT
11 DIDN'T WORK. DIDN'T WORK.
12 IT STARTED OUT WITH SEXUAL ABUSE. AND
13 THAT'S WHAT THEY'RE TELLING YOU WHEN THEY TELL YOU:
14 "WE CAN'T TELL YOU WHY THIS CRIME TOOK PLACE"?
15 WHAT THEY'RE REALLY TELLING YOU IS:
16 WELL, WE TRIED TO TELL YOU IT WAS SEXUAL ABUSE, BUT
17 YOU CAUGHT US IN THAT LIE.
18 AND WE TRIED TO TELL YOU THAT THIS WAS
19 THE CONSEQUENCE OF PHYSICAL ABUSE, BUT YOU CAUGHT US
20 IN THAT. THERE REALLY WASN'T MUCH PHYSICAL ABUSE,
21 EXCEPT MAYBE ONE TIME JOSE MENENDEZ STRUCK LYLE
22 MENENDEZ IN THE STOMACH. YOU CAUGHT US IN THAT.
23 AND THEN IN THE PENALTY PHASE WE TRIED
24 TO SHOW IT WAS PSYCHOLOGICAL ABUSE, BUT YOU CAUGHT
25 US IN THAT.
26 SO NOW THAT YOU CAUGHT US IN ALL THE
27 TRAPS THAT WE LAID FOR YOU IN THE GUILT PHASE AND
28 THE PENALTY PHASE, WE'RE OUT OF STORIES. WE DON'T

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1 KNOW WHAT ELSE TO TELL YOU NOW.
2 SO, LET'S JUST SAY: WE DON'T KNOW WHY
3 THIS CRIME TOOK PLACE. MAYBE WE CAN HIDE BEHIND A
4 QUESTION MARK NOW. OKAY? IF THE PHYSICAL ABUSE AND

5 SEXUAL ABUSE AND PSYCHOLOGICAL ABUSE DIDN'T WORK,
6 MAYBE WE CAN HIDE BEHIND A BIG QUESTION MARK RIGHT
7 HERE, BECAUSE WE CAN'T THINK OF ANOTHER LIE. WE RAN
8 OUT OF LIES.

9 ARE YOU GOING TO GIVE THEM REFUGE BEHIND
10 THAT QUESTION MARK, OR ARE YOU GOING TO HOLD THEM
11 ACCOUNTABLE FOR THEIR ACTIONS?

12 JOSE MENENDEZ, MS. TOWERY SAYS, DID NOT
13 GIVE HIS SONS UNCONDITIONAL LOVE.

14 YOU REMEMBER JOSE MENENDEZ AND WHAT HE
15 DID AFTER THE BURGLARIES, AND AFTER THE SUSPENSION
16 FROM PRINCETON, AND AFTER THE ACADEMIC AND
17 DISCIPLINARY PROBLEMS? WHAT DID HE DO? SET UP LYLE
18 MENENDEZ IN PRINCETON, SET HIM UP WITH A CONDO.
19 KITTY MENENDEZ CALLING EVERY DAY CHECKING ON HIM.

20 HOW DO THEY DEFINE UNCONDITIONAL LOVE?
21 WHAT MORE DO YOU WANT FROM PARENTS?

22 DID THEY DISOWN HIM? DID THEY THROW HIM
23 OUT? NO. AFTER ALL THAT HE DID, THEY SET HIM UP IN
24 PRINCETON. THEY TOOK CARE OF HIM. THAT WAS THEIR
25 UNCONDITIONAL LOVE. THEY LOVED THEIR SONS, AND ALL
26 OF THE EVIDENCE IN THIS CASE SHOWS THAT THEY LOVED
27 THEIR SONS.

28 LET ME START WITH SOME OF MR. LEVIN'S

1 ARGUMENT, AND I'LL GET BACK TO MS. TOWERY'S ARGUMENT.

2 MR. LEVIN LIKED TALKING ABOUT O.J.

3 SIMPSON. I GUESS IT'S EASY -- YOU GET MORE MILEAGE

4 BY TALKING ABOUT OTHER CASES THAN TALKING ABOUT THIS

5 CASE.

6 AND HE SAYS TO YOU THAT IN THE

7 O.J. SIMPSON CASE THE DISTRICT ATTORNEY DID NOT SEEK

8 THE DEATH PENALTY. WHAT HE WANTS YOU TO DO, I

9 SUPPOSE, IS HE WANTS YOU TO SAY: WELL, THE DISTRICT

10 ATTORNEY DIDN'T SEEK THE DEATH PENALTY IN THE O.J.

11 CASE; THEREFORE, YOU SHOULD NOT IMPOSE DEATH IN THIS

12 CASE.

13 LADIES AND GENTLEMEN, WHETHER OR NOT WE

14 SEEK THE DEATH PENALTY IN ANOTHER CASE WHICH HAS

15 SUPERFICIAL SIMILARITIES, SUPERFICIAL SIMILARITIES

16 TO THIS CASE, SHOULD NOT CAUSE YOU TO REACH

17 CONCLUSIONS CONCERNING THIS CASE. EACH CASE IS

18 DIFFERENT. EACH CASE HAS TO BE JUDGED ON ITS OWN

19 MERITS.

20 I CAN GET INTO THE FACTS OF THE O.J.

21 CASE, AND I COULD TELL YOU: IS THERE ANY EVIDENCE

22 IN THE O.J. CASE THAT O.J. SIMPSON SPENT THREE DAYS

23 PLANNING THOSE MURDERS, CONSPIRED WITH ANOTHER

24 PERSON FOR THREE DAYS TO COMMIT THOSE MURDERS? NO.

25 MR. LEVIN: OBJECTION, YOUR HONOR. THERE'S

26 BEEN NO EVIDENCE PRESENTED IN THIS CASE CONCERNING

27 THAT.

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1 MR. LEVIN: CONCERNING THE REASONS WHY THEY
2 DIDN'T SEEK DEATH BASED ON WHAT MR. CONN IS TRYING
3 TO --

4 THE COURT: MR. CONN IS NOT SAYING THAT.
5 HE'S REFERRING TO THE REFERENCE YOU MADE TO THE
6 SIMPSON CASE, AND THAT'S IT.

7 MR. CONN: IS THERE ANY EVIDENCE IN THE O.J.
8 CASE THAT HE SPENT THREE DAYS PLANNING THE MURDERS,
9 CONSPIRING THE MURDERS WITH ANOTHER PERSON? NO.
10 NO.

11 IS THERE ANY EVIDENCE THAT THE MURDERS
12 IN THAT CASE WERE FINANCIALLY MOTIVATED? IS THERE
13 ANY EVIDENCE THAT O.J. SIMPSON SET OUT THAT DAY TO
14 KILL TWO PEOPLE? NO.

15 IS THE INFLUENCE OF PASSION AND THE ROLE
16 OF PASSION IN THAT CASE DIFFERENT THAN THE ROLE OF
17 PASSION IN THIS CASE? YES.

18 I CAN GO THROUGH WITH YOU, LADIES AND
19 GENTLEMEN, WHEN IT'S ALL OVER -- MR. LEVIN SAYS
20 HE'LL GIVE YOU HIS PHONE NUMBER. I'LL GIVE YOU MY
21 PHONE NUMBER, AND I'LL GIVE YOU A DOZEN REASONS WHY
22 THE O.J. CASE IS DIFFERENT FROM THIS CASE.

23 THE BOTTOM LINE IS: IS THAT THE REASON
24 WHY YOU SHOULD -- IS THAT THE WAY THAT YOU SHOULD GO
25 ABOUT EVALUATING WHETHER THE DEATH PENALTY IS
26 APPROPRIATE IN A PARTICULAR CASE? SHOULD WE BOTH
27 BRING IN DIFFERENT CASES? MR. LEVIN WILL BRING IN
28 HIS CASE AND LAY OUT THE FACTS TO YOU, AND SAY,

54892

1 "LOOK HOW CLOSELY IT CORRESPONDS TO THIS CASE"?
2 AND I'LL BRING IN ANOTHER CASE, A CASE
3 THAT WE PROSECUTED DOWNTOWN INVOLVING TWO BROTHERS
4 WHO KILLED THEIR PARENTS AND SAY, "LOOK, THIS IS
5 MORE CLOSELY RELATED TO THIS CASE, AND WE DID SEEK
6 THE DEATH PENALTY IN THAT CASE."

7 MS. ABRAMSON: MISSTATES THE PROSECUTION'S
8 DECISION --

9 THE COURT: YOU'RE GOING BEYOND THE RECORD IN
10 THIS CASE, MR. CONN. SO. . .

11 MR. CONN: YES.

12 ALL I'M SAYING IS, WITHOUT REFERRING TO
13 ANY CASES WHATSOEVER, CONSIDER THE PRINCIPLE THAT
14 MR. LEVIN WAS TRULY SUGGESTING TO YOU. HE WAS TRULY
15 SUGGESTING THAT YOU SHOULD MAKE THE DETERMINATION BY
16 COMPARING IT TO OTHER CASES.

17 YOU SHOULD NOT MAKE THE DETERMINATION BY

18 COMPARING IT TO OTHER CASES. YOU HAVE TO MAKE THE
19 DETERMINATION BASED UPON THE FACTS OF THIS CASE.

20 AND IF WE TRIED TO DO THAT, IF WE TRIED
21 TO ANALOGIZE THIS CASE TO ANOTHER CASE AND SAY
22 BECAUSE WE SOUGHT THE DEATH PENALTY IN THAT CASE,
23 AND GOT THE DEATH PENALTY IN THAT CASE, HE WOULD BE
24 THE FIRST ONE TO HOLLER. HE'D BE THE FIRST ONE TO
25 SAY: "HOW CAN A PROSECUTION DO THAT?"

26 EACH CASE IS DIFFERENT. JUDGE THE CASE
27 ON ITS MERITS. DON'T TALK ABOUT OTHER CASES. YET
28 HE'S TRYING TO DO THE VERY SAME THING.

54893

1 THE FACT OF THE MATTER, LADIES AND
2 GENTLEMEN, IS PEOPLE AND RELATIONSHIPS AND
3 SITUATIONS ARE NOT LIKENED TO CHANGEABLE CAR PARTS.
4 YOU JUST CAN'T SUBSTITUTE ONE FOR ANOTHER.

5 ON AUGUST THE 20TH OF 1989 KITTY AND
6 JOSE MENENDEZ WERE SLAUGHTERED BY THEIR OWN SONS,
7 AND THERE WAS NO REASON FOR THAT KILLING. THERE WAS
8 NO GOOD REASON FOR THAT KILLING.

9 AND THERE WILL NEVER BE ANOTHER KITTY
10 MENENDEZ IN THIS WORLD. THERE WILL NEVER BE ANOTHER
11 JOSE MENENDEZ IN THIS WORLD. AND YOU HAVE TO DECIDE
12 THIS CASE ON THE MERITS; NOT BY LOOKING TO OTHER

13 CASES AND SEEING WHAT HAPPENED IN OTHER CASES.

14 HE SAYS -- FOR EXAMPLE, HE SUGGESTS IN

15 HIS ARGUMENT TO YOU THAT PERHAPS THE DEATH PENALTY

16 IS NOT IMPOSED IN PARRICIDE CASES. WELL, IS THIS

17 FUNDAMENTALLY A PARRICIDE CASE, OR IS THIS A

18 MULTIPLE MURDER CASE?

19 LET'S TALK ABOUT THAT. WHAT ARE THE

20 STATISTICS FROM MULTIPLE MURDER CASES? HOW OFTEN IS

21 THE DEATH PENALTY IMPOSED WHEN JURIES ARE FACED WITH

22 DEFENDANTS WHO KILL MORE THAN ONE PERSON? LET'S

23 BRING UP THOSE STATISTICS, MR. LEVIN. I'D LIKE TO

24 SEE THOSE.

25 IS THIS A CASE WHERE THE DEFENDANTS

26 KILLED FOR MONEY AND FOR GREED? LET'S BRING OUT

27 THOSE STATISTICS. THAT'S WHAT I'D LIKE TO SEE THE

28 STATISTICS FOR, JURIES IMPOSING THE DEATH PENALTY

54894

1 FOR PEOPLE WHO KILL FOR SUCH A BASE AND WANTON

2 PURPOSE AS MONEY AND GREED.

3 THIS IS NOT YOUR TYPICAL RUN-OF-THE-MILL

4 SATURDAY-NIGHT-DISPUTE-WITH-FATHER-AND-SOMEONE-ENDS-UP

5 -DEAD-PARRICIDE-CASE. THIS WAS A COLD-BLOODED

6 KILLING OF TWO PEOPLE, OF TWO PARENTS, FOR A BASE

7 AND WANTON MOTIVE FOR THEIR OWN PERSONAL FINANCIAL

8 GAIN.

9 AND FOR THAT REASON, LADIES AND
10 GENTLEMEN, IT IS NOT YOUR ORDINARY PARRICIDE CASE.
11 IF WE COULD FIND A CASE THAT IS
12 IDENTICAL TO THIS CASE -- EVEN IF WE COULD FIND A
13 CASE THAT IS RIGHT DOWN TO THE DETAIL IDENTICAL TO
14 THIS CASE, OR EVEN MORE SEVERE THAN THIS CASE, AND
15 THE DEATH PENALTY WAS NOT IMPOSED IN THAT CASE, WHAT
16 SHOULD YOU DO? SHOULD YOU SAY, WELL, IT WASN'T DONE
17 IN THAT CASE; AND, THEREFORE, I WON'T DO IT IN THIS
18 CASE?

19 LADIES AND GENTLEMEN, WHAT YOU SHOULD DO
20 IN EVERY INDIVIDUAL CASE IS JUSTICE IN THE ONE CASE
21 BEFORE YOU. THE ONLY WAY YOU CAN WORK IN THIS
22 CRIMINAL JUSTICE SYSTEM, WHETHER YOU'RE A JUDGE, OR
23 A PROSECUTOR, OR WHETHER OR NOT YOU'RE A JUROR, IS
24 LIKE THIS.

25 YOU WAKE UP IN THE MORNING AND YOU SAY:
26 I CAN'T CURE ALL THE WRONGS OF THE WORLD. I CAN'T
27 DO THAT. I CAN'T DECIDE ALL OF THE CASES BEING
28 PROSECUTED BY THE CRIMINAL JUSTICE SYSTEM. I CAN'T

54895

1 SEE TO IT THAT EVERY SINGLE CASE IS GOING TO BE
2 DECIDED CORRECTLY, OR HAS BEEN DECIDED CORRECTLY IN

3 THE PAST.

4 BUT WHAT I CAN DO IS THIS: TODAY I AM
5 FACED WITH ONE CASE, AND TODAY I WILL DO JUSTICE IN
6 THAT ONE CASE. THAT'S THE ONLY WAY THE CRIMINAL
7 JUSTICE SYSTEM WORKS. OTHERWISE, YOU'RE CONSTANTLY
8 AVOIDING RESPONSIBILITY, AND YOU'RE POINTING IT
9 ELSEWHERE.

10 WELL, IN THAT OTHER CASE DOWN THE
11 HALLWAY, DID YOU SEE WHAT HAPPENED LAST YEAR, OR
12 THAT OTHER CASE FIVE YEARS AGO, AND YOU'RE BLAMING
13 YOUR DECISION SOMEWHERE ELSE.

14 I ASK YOU, DON'T BLAME YOUR DECISION
15 SOMEWHERE ELSE. TAKE RESPONSIBILITY IN THIS CASE.
16 MAKE A DECISION IN THIS CASE WHICH IS A PROPER
17 DECISION, WHICH IS BASED UPON THE EVIDENCE, AND NOT
18 BY REFERENCE TO OTHER CASES.

19 THERE ARE MANY WAYS THAT THE DEFENSE
20 MIGHT TRY TO ARGUE. LIKE I SAID, THIS IS GOING TO
21 BE MY LAST CHANCE TO SPEAK TO YOU. I DON'T KNOW
22 WHAT THEY'RE GOING TO SAY NEXT.

23 IF THEY GET BACK TO THE O.J. CASE --
24 SINCE MR. LEVIN HAS SUCH A FONDNESS FOR ARGUING THAT
25 CASE -- I HOPE YOU WILL LOOK AT HIM AND THINK TO
26 YOURSELF: WE'RE NOT DECIDING THE O.J. CASE,
27 MR. LEVIN. WE'RE DECIDING THIS CASE BASED UPON THE
28 FACTS OF THIS CASE.

1 AND IF THEY TALK ABOUT ANOTHER CASE, IF
2 THEY TALK ABOUT THERE'S A CASE WHERE SOMEONE ELSE
3 SHOULD HAVE GOTTEN THE DEATH PENALTY, MAYBE HE
4 SHOULD HAVE GOTTEN THE DEATH PENALTY. YOU CAN'T
5 CHANGE THAT. YOU CAN'T CHANGE THAT.

6 LOOK AT CHARLES MANSON. HE DIDN'T GET
7 THE DEATH PENALTY, OR ISN'T FACING THE DEATH PENALTY
8 NOW. WHAT ABOUT CHARLES MANSON? HE DIDN'T GET THE
9 DEATH PENALTY.

10 IT DOESN'T MATTER. YOU MUST DO THE
11 RIGHT THING. PEOPLE GO FREE EVERY DAY. SOMETIMES A
12 GUILTY PERSON IS NOT EVEN CAUGHT AND IS BACK ON THE
13 STREET. YOU CAN'T DO JUSTICE IN THAT CASE, IN THE
14 CHARLES MANSON CASE, OR ANY OTHER CASE. YOU CAN DO
15 JUSTICE IN THIS CASE.

16 AND SO THE ONLY WAY TO DEAL WITH THE
17 CRIMINAL JUSTICE SYSTEM FOR ANY JUDGE, FOR ANY
18 JUROR, FOR ANY PROSECUTOR, IS TO SAY: I DON'T CARE
19 IF JUSTICE WAS DONE IN THE PAST BY MY COLLEAGUES,
20 AND I DON'T CARE IF JUSTICE IS DONE TOMORROW BY MY
21 COLLEAGUES. I CAN'T INFLUENCE THAT OR CONTROL THAT.
22 BUT I AM GOING TO DO JUSTICE IN THIS CASE. SO DON'T
23 TELL ME ABOUT O.J. OR CHARLES MANSON OR ANY OTHER
24 CASE. I'M GOING TO DO THE RIGHT THING.

25 THAT'S WHAT WE ASK YOU TO DO, LADIES AND
26 GENTLEMEN. BASE YOUR DECISION UPON THE LAW AND DO

27 THE RIGHT THING IN THIS CASE.

28 LET'S TALK ABOUT SOME OF THE THINGS THAT

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1 MR. LEVIN SAID.

2 MR. LEVIN SUGGESTED THAT, WELL, ERIK
3 MENENDEZ CONFESSED -- I GUESS TO DR. OZIEL HE'S
4 REFERRING TO -- AND AS A RESULT OF THAT CONFESSION,
5 THAT ULTIMATELY ENDED UP WITH US BEING HERE. HE
6 SEEMS TO SUGGEST THIS AS IF IT IS A MITIGATING
7 FACT.

8 IS THAT TRULY A MITIGATING FACT, LADIES
9 AND GENTLEMEN, THAT ERIK MENENDEZ WENT TO DR. OZIEL
10 AND CONFESSED?

11 WHY DID HE GO TO DR. OZIEL? YOU'LL
12 RECALL MY ARGUMENT FROM THE GUILT PHASE. HE WENT TO
13 DR. OZIEL BECAUSE HE HAD INFORMATION THAT THE
14 L.A. TIMES WAS GOING TO BE RUNNING A STORY ABOUT
15 LYLE MENENDEZ, IMPLICATING HIS BROTHER. HE
16 RECOGNIZED THAT THE LAW MIGHT BE CLOSING IN ON HIM.

17 HE WENT TO DR. OZIEL FOR HIS OWN SELFISH
18 PURPOSES, LADIES AND GENTLEMEN, TO GET A LITTLE
19 SUPPORT, TO FIGURE OUT WHERE HE PROCEEDS FROM HERE,
20 PERHAPS, TO PUT TOGETHER SOME MITIGATING EVIDENCE.
21 THAT'S WHY HE WENT TO DR. OZIEL, FOR HIS OWN SELFISH

22 PURPOSES.

23 AND IF THAT ULTIMATELY TRIPPED HIM UP,
24 LADIES AND GENTLEMEN, IT IS NO DIFFERENT THAN THE
25 KILLER DROPPING HIS IDENTIFICATION AT THE CRIME
26 SCENE. IT'S A PIECE OF EVIDENCE WHICH ULTIMATELY
27 TIED HIM TO THE CRIME. NOT THAT HE WANTED TO; NOT
28 THAT HE WAS SURRENDERING. HE WASN'T VOLUNTEERING OR

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1 GOING TO THE POLICE. IT WASN'T OUT OF THE GOODNESS
2 OF HIS HEART. HE TRIPPED HIM UP. HE MADE A
3 MISTAKE.

4 THAT'S MITIGATING? WHERE'S THE
5 MITIGATION IN THAT? IF ERIK MENENDEZ WENT TO THE
6 POLICE AND SURRENDERED TO THE POLICE AND
7 SAID: "OKAY, LOOK, I KILLED MY PARENTS. I FEEL
8 SORRY. I AM REMORSEFUL," PERHAPS MR. LEVIN COULD
9 POINT TO THAT AND SAY, "HERE'S SOMEONE WHO IS READY
10 TO TAKE RESPONSIBILITY." THAT MIGHT BE HELPFUL.

11 DID THAT HAPPEN IN THIS CASE? NO.

12 WHAT DID ERIK MENENDEZ DO WHEN HE TAKES
13 THE STAND? HE'S STILL LYING. HE LIED IN THE FIRST
14 TRIAL. YOU KNOW THAT BECAUSE I IMPEACHED HIM WITH
15 HIS PRIOR TESTIMONY FROM THE FIRST TRIAL. YOU KNOW
16 WHAT HE BASICALLY TESTIFIED TO IN THE FIRST TRIAL,

17 THE SAME STORY HE TOLD YOU. HE TRIED TO TRICK THAT
18 JURY.

19 HE TALKS ABOUT HIS CONFESSION AS IF IT'S
20 CONTRITE. HE'S SORRY, HE'S REMORSEFUL. HE TRIED TO
21 TRICK THE FIRST JURY JUST LIKE HE TRIED TO TRICK
22 YOU.

23 MS. ABRAMSON: OBJECTION, YOUR HONOR.

24 THE COURT: OVERRULED.

25 MR. CONN: AND HE'S SIMPLY RUN OUT OF
26 TRICKS. SO WHERE'S THE MITIGATION IN THAT?

27 HE STANDS UP HERE AND HE TELLS YOU LIES
28 ABOUT HIS FATHER AND MOTHER. IS THAT MITIGATING?

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1 THERE'S NOTHING MITIGATING ABOUT THAT. MR. LEVIN
2 TRIES TO SQUEEZE MITIGATION OUT OF THAT AND TRIES TO
3 SAY: HAVE SYMPATHY FOR ERIK MENENDEZ BECAUSE HE
4 CONFESSED.

5 MR. MENENDEZ NEVER CONFESSED IN THE TRUE
6 SENSE OF WORD, IN THE SENSE OF ADMITTING TO
7 AUTHORITIES, "YES, I DID IT. THIS IS THE TRUTH, AND
8 NOW I'M READY TO TAKE RESPONSIBILITY." HE HAS NEVER
9 DONE THAT.

10 SO, LADIES AND GENTLEMEN, HE DOESN'T
11 DESERVE YOUR SYMPATHY FOR THAT REASON. ERIK

12 MENENDEZ, THROUGHOUT THE WHOLE GUILT PHASE, WAS
13 TRYING TO AVOID RESPONSIBILITY. AND IT'S JUST HIS
14 UNFORTUNATE LUCK THAT YOU WERE ABLE TO SEE THROUGH
15 HIS LIES, AND YOU WERE ABLE TO SEE THAT HE WAS
16 LYING, AND HE COULD NOT BE BELIEVED.

17 NOW, WHAT THE DEFENSE TRIED TO DO IN
18 THIS CASE IS -- ESSENTIALLY THEY TRIED TO TAKE AWAY
19 FROM ME MY ONE AND ONLY AGGRAVATING FACTOR THAT I'M
20 ARGUING HERE.

21 YOU KNOW, THERE WAS A COUPLE OF
22 MITIGATING FACTORS THAT APPLY IN THIS CASE, LIKE
23 ABSENCE OF PRIOR CRIMINAL CONVICTIONS AND THE
24 ABSENCE OF -- THEY TOOK AWAY MY PHOTOS TOO -- THE
25 ABSENCE OF PRIOR CRIMINAL CONVICTIONS AND PRIOR
26 VIOLENT CONDUCT.

27 AND I INDICATED TO YOU THAT THOSE WERE
28 INDEED FACTORS IN MITIGATION. I CONCEDED THAT IN MY

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1 ARGUMENT. I DIDN'T TRY TO MISCHARACTERIZE IT TO TRY
2 TO KEEP YOU FROM CONSIDERING MITIGATING EVIDENCE.

3 BUT WHAT DID THE DEFENSE DO IN THIS
4 CASE? THEN THEY STAND UP AND THEY'RE TRYING TO TELL
5 YOU THAT THE AGGRAVATING FACTORS OF THE CRIME CANNOT
6 TRULY BE CONSIDERED. THEY'RE TRYING TO TAKE AWAY

7 THE ONE FACTOR THAT -- THE ONE FACTOR THE
8 PROSECUTION RELIES ON, FACTOR A. THEY TRY TO TELL
9 YOU THAT IT'S JUST AN ELEMENT OF THE CRIME. THAT IT
10 IS NOTHING MORE THAN AN ELEMENT OF THE CRIME; AND
11 THEREFORE, EVERYTHING THAT I ARGUED IN AGGRAVATION,
12 THEY'RE TRYING TO TELL YOU, IS NOT TRULY IN
13 AGGRAVATION.

14 WELL, IT'S REALLY UNFORTUNATE, REALLY
15 UNFORTUNATE, TO SEE THEM DO THAT, INSTEAD OF JUST
16 CONCEDING THAT THE AGGRAVATING FACTOR IN THIS CASE
17 IS INDEED AGGRAVATING EVIDENCE.

18 THE INSTRUCTION THAT YOU WILL BE GIVEN
19 BY THE JUDGE IS THAT AGGRAVATING EVIDENCE IS
20 EVIDENCE WHICH GOES BEYOND THE ELEMENTS OF THE
21 CRIME. MR. LEVIN TRIED TO SUGGEST TO YOU --

22 MR. LEVIN: I WOULD OBJECT TO THE PROSECUTION
23 USING ANY EXHIBITS HE'S NOT SHOWN THE DEFENSE.

24 THE OTHER ONE.

25 MS. ABRAMSON: BETTER LATE THAN NEVER.

26 MR. LEVIN: MAY I SEE THAT?

27 MR. CONN: THIS IS THE ONE ALREADY DISPLAYED
28 TO THE JURY.

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1 MR. LEVIN: OKAY.

2 MR. CONN: MR. LEVIN TRIED TO SUGGEST TO YOU
3 THAT THESE HORRIBLE CRIMES BELONG DOWN HERE AND ARE
4 NOT IN AGGRAVATION. YOU CAN'T EVEN CONSIDER THEM AS
5 EVIDENCE IN AGGRAVATION. THAT IS NOT WHAT THE LAW
6 PROVIDES.

7 WHAT THE LAW PROVIDES IS THAT THIS GOES
8 IN THE MIDDLE, ANYTHING BEYOND THE ELEMENTS OF THE
9 CRIME. AND YOU'LL RECALL THE ELEMENTS OF CRIME THAT
10 I DISCUSSED WITH YOU FOR MURDER: THE KILLING OF A
11 HUMAN BEING, THE FACT THAT IT WAS UNLAWFUL, THE FACT
12 THAT IT WAS MALICE AFORETHOUGHT, THESE ARE ELEMENTS
13 OF THE CRIME.

14 MR. LEVIN: MISSTATES THE LAW AND EXCLUDES
15 SPECIAL CIRCUMSTANCES.

16 THE COURT: THERE HASN'T BEEN A COMPLETE
17 STATEMENT OF THE ELEMENTS OF THE CRIME.

18 MR. CONN: HERE, LADIES AND GENTLEMEN, I
19 SUBMIT TO YOU THIS IS SIMPLY -- THIS IS SIMPLY THE
20 CHART THAT I'VE ALREADY DEMONSTRATED TO YOU, THE
21 BLOW-UP CHART. THESE ARE ALL OF THE AGGRAVATING
22 FACTORS WHICH YOU CAN CONSIDER:

23 EXTENSIVE PREMEDITATION AND
24 DELIBERATION, THE MOTIVE; THE FACT THAT IT WAS A
25 CONSPIRACY MOTIVE -- CONSPIRACY MURDER, THE FACT
26 THAT THE VICTIM WAS THE DEFENDANTS' OWN MOTHER, THE
27 BRUTALITY AND PAIN OF THE CRIME; THE FACT THAT THE
28 VICTIMS WERE AMBUSHED IN THEIR OWN HOME; AND THE

1 FACT THAT THE DEFENDANTS, WHEN THEY KILLED THE ONE
2 PARENT, ALSO KILLED THE OTHER PARENT.

3 THOSE ARE ALL AGGRAVATING FACTORS. ALL
4 OF THESE THINGS YOU SEE GO BEYOND THE BARE ELEMENTS
5 OF THE CRIME.

6 SO FOR MR. LEVIN TO SUGGEST TO YOU THAT
7 THESE MURDERS BELONG DOWN HERE, THERE'S NOTHING
8 AGGRAVATING ABOUT THIS CRIME WHATSOEVER, IS
9 ABSOLUTELY A MISSTATEMENT OF THE LAW, AND IT'S AN
10 EFFORT OF THE DEFENSE TO SIMPLY -- TO DEPRIVE THE
11 PROSECUTION FROM ARGUING THE TRUE AGGRAVATING
12 EVIDENCE IN THIS CASE.

13 IF YOU LOOK AT THE INSTRUCTION THAT IS
14 GIVEN TO YOU, THE INSTRUCTION CLEARLY STATES TO YOU
15 THAT YOU SHALL CONSIDER AND TAKE INTO ACCOUNT AND BE
16 GUIDED BY THE FOLLOWING FACTORS: THE CIRCUMSTANCES
17 OF THE CRIME OF WHICH THE DEFENDANT WAS CONVICTED IN
18 THE PRESENT PROCEEDING, AND THE EXISTENCE OF ANY
19 SPECIAL CIRCUMSTANCES FOUND TO BE TRUE.

20 SO HE IS ABSOLUTELY MISLEADING YOU WHEN
21 HE SUGGESTS THAT YOU CANNOT CONSIDER THOSE
22 AGGRAVATING ELEMENTS.

23 MR. LEVIN TRIES TO SUGGEST TO YOU THAT
24 THE TYPE OF ANALYSIS THAT YOU ARE BEING CALLED UPON

25 TO PERFORM HERE IS NOT REALLY SUBJECT TO A LOGICAL
26 ANALYSIS. YOU SEE, THE LAST THING THAT THE DEFENSE
27 WANTS TO DO IS TO HAVE YOU LOOK AT THE LAW IN A
28 RATIONAL WAY, TO EVALUATE THE AGGRAVATING AND

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1 MITIGATING FACTORS IN A RATIONAL WAY.

2 HE SAID IF WE WERE TO DO THAT, WELL, WE
3 COULD JUST HAVE A COMPUTER TO DO THAT. NO, YOU
4 CAN'T HAVE A COMPUTER TO DO THAT, BECAUSE YOU HAVE
5 TO DECIDE HOW MUCH WEIGHT TO GIVE TO ALL THE VARIOUS
6 PIECES OF EVIDENCE IN THIS CASE. THAT IS YOUR JOB.

7 BUT WHAT MR. LEVIN DOESN'T WANT YOU TO
8 DO IS, HE DOES NOT WANT YOU TO EVALUATE IN A LOGICAL
9 AND RATIONAL WAY THE FACT THAT THE HORROR OF THIS
10 CRIME AND ALL OF THE AGGRAVATING CIRCUMSTANCES OF
11 THIS CRIME TRULY DO OUTWEIGH THE MITIGATING EVIDENCE
12 IN THIS CASE.

13 IN FACT, DID HE EVEN TALK ABOUT HIS
14 MITIGATING EVIDENCE WHEN HE STOOD UP AND MADE HIS
15 PRESENTATION TO YOU? I WAS THE ONE WHO TALKED ABOUT
16 THERE WERE 18 WITNESSES. I WAS THE ONE WHO HAD TO
17 GO THROUGH THEM WITNESS BY WITNESS, AND DISCUSS WITH
18 YOU WHY IT WAS THAT NONE OF THAT EVIDENCE WAS REALLY
19 MITIGATING.

20 DID HE EVEN BOTHER TO TALK TO YOU OR
21 PERSUADE YOU AS TO WHAT THOSE WITNESSES HAD TO SAY
22 THAT IS TRULY MITIGATING?
23 THE PROBLEM IS, WHEN YOU TEAR APART WHAT
24 THOSE WITNESSES SAY, AS I DID -- AND I WENT THROUGH
25 THEM -- JESSICA GOLDSMITH, FOR EXAMPLE, LYLE
26 MENENDEZ HANGING FROM THE BANISTER -- DID THAT MAKE
27 ANY SENSE TO YOU?
28 SO MUCH OF WHAT THEIR WITNESSES SAID WAS

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1 UNSUPPORTABLE. AND THAT IS THE REASON WHY THEY DID
2 NOT GO THROUGH THE MITIGATING EVIDENCE IN THIS CASE
3 WITNESS BY WITNESS. YET IT WAS THEIR OWN MITIGATING
4 EVIDENCE. WHY ARE THEY SHYING AWAY FROM IT NOW?
5 BECAUSE SOME OF THOSE WITNESSES MADE SUCH A BAD
6 IMPRESSION. IT IS BECAUSE MUCH OF WHAT THOSE
7 WITNESSES SAID IS, IN FACT, INDEFENSIBLE.

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1 INSTEAD, WHAT THEY SAY IS THAT THE
2 PROSECUTION DID NOT CALL WITNESSES IN THE PENALTY PHASE,
3 DID NOT CALL AS MANY WITNESSES AS THEY DID IN THE
4 PENALTY PHASE. THEY SAY: WHERE IS THE PROSECUTION'S
5 EVIDENCE?

6 THE PROSECUTION'S EVIDENCE, AS I TOLD YOU,
7 LADIES AND GENTLEMEN, IS RIGHT HERE. IT IS THE
8 AGGRAVATION. IT IS THE CRIME ITSELF. AND EVERYTHING
9 LEADING UP TO THAT CRIME, THE HORROR OF THE CRIME, THIS
10 IS THE PROSECUTION'S EVIDENCE.

11 THEN THEY SAY: WELL, WHY DIDN'T THE
12 PROSECUTION CALL WITNESSES CONCERNING THE FAMILY, THE

13 BACKGROUND OF THE FAMILY?

14 AND AS I INDICATED TO YOU, LADIES AND

15 GENTLEMEN, NEITHER SIDE OWNS WITNESSES, OKAY. JUST

16 BECAUSE THEY CALL A WITNESS, THEY CALL TERRY BARALT, IT

17 DOESN'T MEAN THAT THEY OWN TERRY BARALT. NO. A WITNESS

18 HAS CERTAIN INFORMATION, AND YOU CAN CONSIDER THE

19 INFORMATION THAT THAT WITNESS OFFERS FOR WHICHEVER SIDE

20 IT HELPS, AND FOR WHICHEVER SIDE IT HURTS.

21 NOW, SHOULD I RECALL TERRY BARALT AND ASK

22 HER: ISN'T IT TRUE THAT KITTY AND JOSE MENENDEZ WERE

23 GREAT PEOPLE? SHOULD I RECALL HER FOR THAT? NO.

24 BECAUSE SHE ALREADY SAID THAT. THERE IS NO REASON TO

25 RECALL HER FOR THAT.

26 I DIDN'T CALL WITNESSES, LADIES AND

27 GENTLEMEN, BECAUSE I AM TELLING YOU THAT IF YOU LOOK AT

28 WHAT THESE WITNESSES HAD TO SAY, THESE WITNESSES HELPED

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1 THE PROSECUTION MORE THAN THEY HURT THE PROSECUTION.

2 THESE WITNESSES TOLD YOU HOW KITTY MENENDEZ -- FOR

3 EXAMPLE, FAITH GOLDSMITH TALKED ABOUT HOW SHE WAS A

4 SWEET WOMAN, A CARING WOMAN, A GENTLE WOMAN.

5 ALL OF THESE WITNESSES TOLD YOU VERY

6 FAVORABLE ASPECTS OF THE PARENTS. AND SO THERE IS NO

7 REASON FOR ME TO RECALL THEM. THERE IS NO REASON FOR ME

8 TO REPEAT THE EVIDENCE THAT THEY PRESENTED TO YOU.

9 MR. LEVIN SAID THAT WELL, IF YOU FEEL
10 COMPASSION, THIS IS THE TIME FOR TO YOU EXERCISE IT.
11 AND LADIES AND GENTLEMEN, I ASK YOU TO
12 EXERCISE THAT COMPASSION FAIRLY. I ASK YOU TO THINK
13 ABOUT THE VICTIMS IN THIS CASE. IF YOU HAVE COMPASSION,
14 LADIES AND GENTLEMEN, THINK ABOUT THE VICTIMS IN THIS
15 CASE. THINK ABOUT THE HORROR THAT THEY WERE SUBJECTED
16 TO BY THEIR OWN SONS, TO THE BRUTAL SLAUGHTER THAT THEIR
17 SONS SUBJECTED THEM TO. HAVE COMPASSION FOR THEM, TOO,
18 LADIES AND GENTLEMEN.
19 BOTH COUNSEL SEEM TO SUGGEST TO YOU -- I
20 SHOULDN'T SAY SEEM TO SUGGEST TO YOU, THEY OUTRIGHT
21 STATED TO YOU -- THE SYSTEM PREFERS LIFE. THE SYSTEM
22 PREFERS LIFE? YOU WILL LISTEN TO THE JURY INSTRUCTIONS
23 THAT ARE GIVEN TO YOU IN THIS CASE BY THE JUDGE, AND YOU
24 WILL NOT HEAR THAT STATED ANYWHERE.
25 WHAT THE SYSTEM PREFERS, LADIES AND
26 GENTLEMEN, IS A VERY FAIR, CAREFUL EVALUATION OF THE
27 EVIDENCE IN THIS CASE, AND A FAIR APPLICATION OF THE
28 DEATH PENALTY LAW. THAT'S ALL THE SYSTEM ASKS FOR,

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1 LADIES AND GENTLEMEN. AND THEN THE SYSTEM SAYS YOU
2 SHOULD LET THE CHIPS FALL WHERE THEY MAY. AND IF IT
3 HAPPENS TO FALL -- IF IT SO HAPPENS THAT THE EVIDENCE IN
4 AGGRAVATION OUTWEIGHS THE EVIDENCE IN MITIGATION, THEN

5 SO BE IT. YOU CAN'T HELP THAT.

6 YOU SHOULD RECOGNIZE THAT, YOU SHOULD
7 ACCEPT THAT, AND YOU SHOULD RULE ACCORDINGLY, AND FIND
8 THE VERDICT OF DEATH IN THIS CASE.

9 THEY SUGGEST TO YOU, LADIES AND GENTLEMEN,
10 THAT THERE ARE CERTAIN TYPES OF CASES FOR WHICH THE
11 DEATH PENALTY IS WARRANTED. THEY SAY, FOR EXAMPLE,
12 "LET'S THINK ABOUT TORTURE MURDERS, LET'S THINK ABOUT
13 THE KILLING OF MISSING CHILDREN."

14 YES, LADIES AND GENTLEMEN, I AGREE WITH
15 THEM, THAT IN A CASE INVOLVING A TORTURE MURDER, DEATH
16 IS THE APPROPRIATE PUNISHMENT.

17 AND I AGREE WITH THEM THAT IN A CASE
18 INVOLVING THE KILLING OF AN INNOCENT CHILD, DEATH IS THE
19 APPROPRIATE PUNISHMENT.

20 BUT LADIES AND GENTLEMEN, JUST BECAUSE YOU
21 CAN THINK OF CERTAIN CASES IN WHICH IT WOULD BE CLEAR IN
22 YOUR MIND THAT DEATH WOULD BE APPROPRIATE, THAT DOES NOT
23 MEAN THAT DEATH IS NOT APPROPRIATE IN THIS CASE. WHEN
24 YOU LOOK AT THE FACTS OF THIS CASE, WHEN YOU CONSIDER
25 ALL OF THESE FACTORS IN AGGRAVATION, I ASK YOU TO FIND
26 THAT THIS IS IN THAT GROUP OF CASES WHERE DEATH IS THE
27 MOST APPROPRIATE PENALTY.

28 THERE ARE TWO PENALTIES. ONE IS THE

1 LESSER, AND ONE IS THE GREATER. AND WHEN YOU CONSIDER
2 THE FACTS OF THIS CASE IN A FAIR AND OBJECTIVE MANNER,
3 WOULDN'T YOU AGREE THAT THIS IS THE CASE IN WHICH THE
4 GREATER PUNISHMENT IS WARRANTED?

5 A CASE WHERE THERE WAS EXTENSIVE
6 PREMEDITATION, A CASE WHERE THERE WAS KILLING FOR MONEY,
7 A CASE WHERE TWO DEFENDANTS WORKED TOGETHER TO BRING
8 ABOUT THE HORROR THAT TOOK PLACE ON AUGUST THE 20TH OF
9 1989. A CASE, ABOVE ALL, WHERE THE DEFENDANTS KILLED
10 BOTH OF THEIR OWN PARENTS.

11 THAT IS THE SHOCKING REALITY OF THIS CASE,
12 LADIES AND GENTLEMEN, WHICH BRINGS THIS CASE INTO THAT
13 AREA WHERE YOU MUST SAY YES, THIS IS THE CASE WHERE THE
14 GREATER PUNISHMENT IS WARRANTED, NOT THE LESSER
15 PUNISHMENT. THIS IS AMONG THOSE CRIMES WHICH WARRANT
16 THE MORE SEVERE PUNISHMENT. JUST BECAUSE THERE ARE
17 OTHERS, DOESN'T MEAN THIS DOESN'T QUALIFY.

18 ON THE OTHER HAND, HE SAYS: "MR. CONN
19 DOESN'T CARE WHAT YOU DO."

20 YESTERDAY HE SAID: "MR. CONN DOESN'T CARE
21 WHAT YOU DO IN THIS CASE," AND THEN TODAY HE SAYS:
22 "MR. CONN WANTS YOU TO VOTE FOR DEATH."

23 SO WHICH WAS IT? I DON'T THINK IT WAS
24 CLEAR. HE HASN'T MADE UP HIS MIND AS TO WHETHER I CARE
25 OR NOT, SO PERHAPS HE SHOULDN'T SPEAK FOR ME.

26 WHAT I AM ASKING YOU TO DO, LADIES AND
27 GENTLEMEN, IS IMPOSE THE DEATH PENALTY BECAUSE IT IS
28 WARRANTED IN THIS CASE, BECAUSE THE EVIDENCE TRULY

1 SUPPORTS IT; BECAUSE THE DEFENDANTS DID, IN FACT, EARN
2 IT, AND THEY DESERVE IT. THAT IS THE CORRECT VERDICT.
3 THAT IS A VERDICT THAT IS WELL-JUSTIFIED BY THE
4 EVIDENCE, AND THAT IS A VERDICT THAT YOU CAN LIVE WITH.

5 THIS IS SOMETHING THAT MR. LEVIN SUGGESTED
6 TO YOU: SOMETIMES YOU MEET A PERSON, AND YOU THINK
7 YOU'RE GOING TO BE WITH THAT PERSON FOR THE REST OF YOUR
8 LIFE, AND IT DOESN'T WORK OUT. AND YES, MAYBE SOMETIMES
9 THAT HAPPENS.

10 BUT LADIES AND GENTLEMEN, WHEN YOU THINK
11 ABOUT THE FACTS OF THIS CASE, THIS IS A CASE IN WHICH
12 ERIK MENENDEZ TOOK THE STAND, AND HE ADMITTED HE KILLED
13 HIS PARENTS IN THIS BRUTAL, BLOODY SLAUGHTER ON AUGUST
14 THE 20TH OF 1989, AND HIS BROTHER WAS WITH HIM.

15 THERE IS NO DOUBT THAT THESE ARE THE
16 PERSONS WHO DID IT. THERE IS NO DOUBT AS TO THE HORROR
17 OF THE CRIME, AND TO HOW THAT CRIME TOOK PLACE, AND HOW
18 UNNECESSARY THAT CRIME WAS, THE PAIN THAT WAS INVOLVED
19 IN THAT CRIME, AND THE TOTAL WANTON AND BASE REASON FOR
20 THE COMMISSION OF THAT CRIME.

21 FOR ALL OF THOSE REASONS, LADIES AND
22 GENTLEMEN, I SAY TO YOU, YES, THIS IS A CASE IN WHICH
23 YOU CAN SAY: "I FIND THE DEATH PENALTY TO BE WARRANTED.
24 I DISCUSSED IT WITH OTHER MEMBERS OF THE JURY. EACH
25 MEMBER OF THE JURY AGREES WITH ME, AND IT IS A DECISION

26 THAT I CAN LIVE WITH FOR THE REST OF MY LIFE."
27 WE ARE ALL INVOLVED IN THIS PROCESS, AND IT
28 IS AN IMPORTANT PROCESS. AND THE FULL IMPLICATION OF

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1 WHAT I AM ASKING YOU TO DO, I AM ASKING YOU TO SENTENCE
2 TWO HUMAN BEINGS TO DEATH. BUT THAT IS WHAT THE LAW
3 SAYS. THE LAW SAYS THAT UNDER CERTAIN CIRCUMSTANCES,
4 THAT IS JUSTICE. THAT IS WHAT THE PEOPLE OF THIS STATE
5 VOTED FOR. THAT IS WHAT THE PEOPLE OF THIS STATE HAVE
6 REPEATEDLY REQUESTED, THAT IN THE APPROPRIATE CASE,
7 DEATH SHOULD BE IMPOSED.

8 AND YOU HAVE BEEN ELECTED TO DECIDE IN A
9 FAIR WAY WHETHER THIS IS THE APPROPRIATE CASE. NOT TO
10 BE OVERLY GENEROUS JUST BECAUSE YOU HAVE TWO HUMAN
11 BEINGS OVER THERE, AND NO ONE SITTING OVER HERE, BUT TO
12 IMPOSE THE LAW FAIRLY AND RESPONSIBLY.

13 AND I SAY TO YOU, LADIES AND GENTLEMEN,
14 THAT IF YOU EVALUATE THE AGGRAVATING AND MITIGATING
15 ELEMENTS FAIRLY, YOU WILL CONCLUDE THAT THE AGGRAVATION
16 OUTWEIGHS THE MITIGATION, AND IT IS A FAIR AND IMPARTIAL
17 APPLICATION OF THE DEATH PENALTY.

18 THEY RECEIVED A FAIR TRIAL IN THE GUILT
19 PHASE. THEY RECEIVED A FAIR TRIAL IN THE PENALTY PHASE.
20 YOU OWE THEM NOTHING MORE. YOUR COMMITMENT IS NOT TO
21 ERIK MENENDEZ. IT IS NOT TO LYLE MENENDEZ. IT IS TO

22 JUSTICE. YOUR ULTIMATE COMMITMENT IS TO JUSTICE IN THIS
23 CASE, AND I ASK YOU TO KEEP YOUR EYE ON JUSTICE.
24 IN EVALUATING THE WITNESSES, MR. LEVIN
25 ARGUED THAT CERTAIN WITNESSES REFUSED TO TALK TO THE
26 PROSECUTION, AND HE SAYS WHY SHOULD THEY, THEY HAVE A
27 RIGHT NOT TO TALK TO THE PROSECUTION.
28 THAT ENTIRELY MISSES THE POINT, LADIES AND

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1 GENTLEMEN. THE ISSUE IS NOT WHETHER THEY HAVE A RIGHT
2 TO TALK TO THE PROSECUTION OR NOT. CLEARLY, THEY DON'T
3 HAVE TO TALK TO THE PROSECUTION.
4 BUT THEY SHOULD AT LEAST ADMIT WHEN THEY
5 TAKE THE WITNESS STAND: "YES, WE REFUSED TO TALK TO THE
6 PROSECUTION," AND GIVE THE HONEST REASONS WHY.
7 ALL OF MY REMARKS CONCERNING REFUSING TO
8 TALK TO THE PROSECUTION GOES TO THE CREDIBILITY OF THOSE
9 WITNESSES, NOT TO WHETHER OR NOT THEY HAVE A RIGHT TO
10 TALK OR NOT. THEY CAN DO WHATEVER THEY WANT TO DO.
11 BUT AT LEAST WHEN THEY TAKE THE STAND, THEY
12 SHOULD SAY: "YES, I REFUSED TO TALK TO THE PROSECUTION,
13 BECAUSE I WANT TO HELP THE DEFENDANTS. I DON'T WANT
14 THEM TO BE SENTENCED TO DEATH. I DON'T WANT TO PROVIDE
15 THE PROSECUTION WITH INFORMATION. I DON'T WANT TO
16 EXPLAIN TO THE PROSECUTION OFF THE WITNESS STAND WHAT
17 THIS FAMILY WAS REALLY LIKE, BECAUSE THAT MIGHT GIVE THE

18 PROSECUTION TOO MUCH EVIDENCE. THAT MIGHT ASSIST THE
19 PROSECUTION IN SENTENCING THE DEFENDANTS TO DEATH."

20 THEY TELL YOU, LADIES AND GENTLEMEN, THAT
21 SOMETHING WAS WRONG IN THIS HOUSE. AS I INDICATED TO
22 YOU, NOW THAT THEY'VE EXHAUSTED ALL OF THEIR OTHER
23 EXCUSES, THEY HIDE BEHIND THE QUESTION MARK. "SOMETHING
24 WAS WRONG IN THIS HOUSE."

25 YES, SOMETHING WAS WRONG IN THIS HOUSE,
26 LADIES AND GENTLEMEN. WHAT WAS WRONG IN THIS HOUSE WAS
27 THERE WAS A GREAT DEAL OF ANIMOSITY. IT WAS WHAT I
28 ARGUED IN THE GUILT PHASE. THERE WAS ANIMOSITY, THERE

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1 WAS HATRED, THERE WAS ANGER. AND FOR THAT ANGER, THE
2 VICTIMS IN THIS CASE WERE BRUTALLY SLAUGHTERED.

3 BUT IT WAS A COLD-BLOODED KILLING, LADIES
4 AND GENTLEMEN, OF THE DEFENDANTS' OWN PARENTS. AND FOR
5 THAT REASON, BECAUSE OF THE ATROCITY OF THAT CRIME,
6 BECAUSE OF THE HORROR OF THE CRIME, THE ULTIMATE
7 PUNISHMENT IS INDEED WARRANTED IN THIS CASE.

8 AND YET THE DEFENSE, LADIES AND GENTLEMEN,
9 SEEMS AS IF THEY TRULY DON'T WANT TO LET GO OF THE
10 CLAIMS OF SEXUAL ABUSE. DO YOU NOTICE THE WAY THEY KEEP
11 TRYING TO SLIP BACK TO THAT? FOR EXAMPLE, BY SUGGESTING
12 THAT THERE WERE MAGAZINES THAT WERE FOUND, OR THERE WERE
13 VAGUE REFERENCES TO SOMETHING HAPPENING IN THIS HOUSE.

14 THEY SIMPLY DO NOT WANT TO GET AWAY FROM
15 THAT FABRICATED DEFENSE THAT THERE WAS SEXUAL ABUSE. IF
16 THERE IS ANY MILEAGE THAT THEY CAN GET OUT OF THAT, THEY
17 WANT TO GET THE MILEAGE OUT OF THAT.

18 MR. LEVIN THIS MORNING, LADIES AND
19 GENTLEMEN, SAID TO YOU ERIK MENENDEZ WILL NEVER EAT IN A
20 RESTAURANT AGAIN. HE WILL NEVER DRIVE A CAR. HE WILL
21 NEVER WALK OUTSIDE AGAIN AT NIGHT. HE WILL NEVER SEE
22 THE MOON AND THE STARS. HE WILL NEVER SEE THE CITY OF
23 LOS ANGELES.

24 LADIES AND GENTLEMEN, WILL KITTY MENENDEZ
25 AND JOSE MENENDEZ EVER SEE THE MOON AND THE STARS AGAIN?
26 AND THE HORROR OF THAT, LADIES AND GENTLEMEN, IS THAT
27 THEY WERE INNOCENT. THEY WERE KILLED. THEY WERE THE
28 VICTIMS.

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1 IF ERIK MENENDEZ AND LYLE MENENDEZ DO NOT
2 SEE THE MOON AND THE STARS AGAIN, IT IS BECAUSE THEY
3 DROVE DOWN TO SAN DIEGO, KNOWING WHAT THEY WERE DOING,
4 THINKING ABOUT IT ALL THOSE HOURS ON THE FREEWAY. AND
5 THEY BOUGHT SOMETHING, KNOWING WHAT THEY WERE GOING TO
6 DO WITH IT. AND THEY BROUGHT IT BACK, AND THEY LOADED
7 IT, KNOWING WHAT THEY WERE GOING TO DO WITH IT. AND
8 THEY THOUGHT ABOUT IT AND CONSIDERED IT, AND THEY
9 WEIGHED AND THEY EVALUATED THEIR ACTIONS.

10 THAT'S THE REASON WHY THEY MAY NEVER SEE
11 THE MOON AND THE STARS AGAIN.
12 BUT KITTY AND JOSE MENENDEZ, LADIES AND
13 GENTLEMEN, THEY ARE THE VICTIMS IN THIS CASE. THEY ARE
14 THE ONES WHO HAD THEIR LIVES TAKEN AWAY FROM THEM. THE
15 ONLY THING WORSE, LADIES AND GENTLEMEN, THAN TAKING AWAY
16 SOMEONE ELSE'S LIFE, IS TAKING AWAY AN INNOCENT LIFE,
17 AND THEY WERE INNOCENT.
18 WHEN YOU SENTENCE THE DEFENDANTS TO DEATH,
19 LADIES AND GENTLEMEN -- IF THAT IS YOUR CHOICE, AND I
20 ASK YOU TO DO THAT -- YOU ARE ACTING WITH THE POWER OF
21 THE STATE BEHIND YOU. WE HAVE A DEATH PENALTY LAW IN
22 THIS STATE, BECAUSE THE PEOPLE OF THE STATE HAVE
23 DETERMINED THAT THAT IS JUSTICE IN APPROPRIATE CASES.
24 BUT WHAT WAS DONE TO THE VICTIMS, LADIES
25 AND GENTLEMEN, WAS A LAWLESS ACT. THE GREATEST HORROR
26 OF ALL IS THE TAKING AWAY OF AN INNOCENT LIFE, AND THOSE
27 WERE TWO INNOCENT LIVES THAT WERE LOST.
28 THEY TELL YOU THAT NOTHING WILL BRING BACK

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1 THE PARENTS.

2 WELL, LADIES AND GENTLEMEN, THE VICTIMS IN
3 A MURDER CAN NEVER BE BROUGHT BACK. THEY CAN NEVER BE
4 BROUGHT BACK. BUT SHOULD THAT STOP YOU FROM IMPOSING
5 THE DEATH PENALTY? THAT ARGUMENT IS AN ARGUMENT SAYING

6 ESSENTIALLY THAT YOU SHOULD NEVER IMPOSE THE DEATH
7 PENALTY, DON'T FOLLOW THE LAW.

8 THAT'S NOT ONE OF THE AGGRAVATING AND
9 MITIGATING FACTORS IN THIS CASE, THAT THEY CAN NEVER BE
10 BROUGHT BACK. THAT'S BASICALLY SAYING WE SHOULD NOT
11 HAVE A DEATH PENALTY IN THIS STATE.

12 BUT THE FACT OF THE MATTER IS, WE DO HAVE A
13 DEATH PENALTY IN THIS STATE, AND YOU SHOULD IMPOSE IT IN
14 THE APPROPRIATE CASE. IT IS YOUR DUTY. IT IS YOUR
15 SWORN DUTY. EACH ONE OF YOU INDICATED IN YOUR
16 QUESTIONNAIRES IN THE APPROPRIATE CASE IT IS SOMETHING
17 THAT COULD YOU DO.

18 NOW I AM SIMPLY SAYING THAT THE PROSECUTION
19 IN THIS CASE HAS PRESENTED STRONG EVIDENCE OF THE FACT
20 THAT THIS WAS PREMEDITATED MURDER, AND ALL OF THE
21 CIRCUMSTANCES, ALL OF THE AGGRAVATING FACTORS IN THIS
22 CASE.

23 AND FOR THAT REASON, LADIES AND GENTLEMEN,
24 I SUBMIT TO YOU THAT THIS IS THE APPROPRIATE CASE, AND
25 WE ARE CALLING UPON YOU NOW TO EXERCISE THAT OATH THAT
26 YOU TOOK TO APPLY THE LAW FAIRLY AND TO IMPOSE IT IN THE
27 APPROPRIATE CASE.

28 MR. LEVIN TELLS YOU THAT ERIK MENENDEZ MADE

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1 A MISTAKE. HE WAS A KID. HE WAS ONLY 18 YEARS OLD.

2 IT WAS MISTAKE? HE MISUSES THE WORD
3 "MISTAKE," LADIES AND GENTLEMEN. A MISTAKE SUGGESTS
4 SOMETHING VERY DIFFERENT. A MISTAKE SUGGESTS AN ERROR,
5 AN HONEST ERROR.

6 THIS WAS NOT A HONEST ERROR, LADIES AND
7 GENTLEMEN. THIS WAS A COLD-BLOODED DECISION. THIS WAS
8 NOT A MISTAKE. THIS WAS A COLD, CALCULATED
9 DETERMINATION TO PUT BOTH PARENTS TO DEATH. HE MISUSES
10 THE WORD WHEN HE CALLS IT A MISTAKE.

11 AND HE SAID THAT HE DID THIS WHEN HE WAS A
12 KID. WHEN HE WAS KID.

13 WHEN HE TOOK THE STAND AND TESTIFIED IN
14 FRONT OF YOU, LADIES AND GENTLEMEN, HE WASN'T A KID. HE
15 WASN'T A KID WHEN HE KILLED HIS PARENTS. BUT HE
16 CERTAINLY WASN'T A KID IN 1995 WHEN HE STOOD IN FRONT OF
17 YOU ON THE WITNESS STAND.

18 AND DO YOU REMEMBER THE WAY HE GRIMACED
19 AND, "OH, MY MOTHER USED TO SMILE LIKE THIS," AND HE
20 WENT THROUGH ALL THESE FACIAL EXPRESSIONS, AND HE DID
21 THE BEST HE COULD -- THE BEST HE COULD TO TRICK AND
22 DECEIVE YOU.

23 YOU SEE, WHEN MR. LEVIN TELLS YOU HE WAS
24 JUST A KID AT THE TIME, WHAT IS HE TRYING TO SUGGEST?
25 WELL, IT WAS A MISTAKE OF YOUTH, YOU SEE. AND HE IS
26 OLDER NOW, AND HE HAS GOTTEN BEYOND THAT.

27 AND THEIR WITNESSES TRIED TO ESTABLISH
28 THAT. FATHER KEN DEASY TRIED TO ESTABLISH THAT.

1 DR. VICARY TRIED TO ESTABLISH THAT. HE IS OLDER NOW.

2 HE IS MORE MATURE. HE HAS DEVELOPED. LOOK AT THE

3 PROGRESS.

4 LOOK AT WHAT PROGRESS? HE SAT ON THAT

5 WITNESS CHAIR, AND HE TRIED TO TRICK US ALL. WHERE IS

6 THE PROGRESS? THOSE ARE HOLLOW WORDS. IF HE STOOD ON

7 THAT WITNESS CHAIR AND HE TOLD US THE TRUTH, AND IF HE

8 SAID: "OKAY, I KILLED MY PARENTS, AND I WASN'T IN FEAR.

9 WE THOUGHT ABOUT IT. WE DECIDED WE WERE GOING TO DO IT,

10 AND WE WENT DOWN TO SAN DIEGO AND BOUGHT THE GUNS FOR

11 THE PURPOSE OF COMING BACK AND SHOOTING THEM TO DEATH."

12 THEN MAYBE WE COULD SAY ALL RIGHT. MAYBE

13 HE HAS MADE SOME PROGRESS HERE.

14 BUT HE HASN'T MADE ANY PROGRESS, LADIES AND

15 GENTLEMEN. HE WASN'T A KID WHEN HE WAS TRYING TO TRICK

16 US, NOT MANY DAYS AGO ON THAT WITNESS STAND. HE IS NO

17 DIFFERENT THAN WHEN HE EXECUTED HIS PARENTS IN 1989.

18 WHAT INSIGHT DID HE GIVE? ALL THOSE YEARS,

19 LADIES AND GENTLEMEN, ALL THOSE YEARS OF THINKING ABOUT

20 THE HORROR OF WHAT HE DID. HOW WOULD THAT AFFECT YOU,

21 IF YOU SHOT YOUR PARENTS TO DEATH FOR SUCH A BASE AND

22 WANTON REASON BACK IN 1989? DO YOU THINK BY 1995 MAYBE

23 YOU WOULD SAY, "OKAY, ENOUGH IS ENOUGH. WHAT I DID WAS

24 WRONG. LET ME ACCEPT THE RESPONSIBILITY. LET ME ACCEPT

25 THE PUNISHMENT. LET ME TELL THE TRUTH AND GET IT OFF MY

26 BACK ONCE AND FOR ALL. I'LL LIVE UP TO WHAT I DID.

27 I'LL TAKE MY RESPONSIBILITY."

28 BUT, NO. HE WAS NO DIFFERENT IN 1995 THAN

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1 HE WAS IN 1989. SAME OLD TRICK. JUST LIKE HE LIED TO
2 THE POLICE AND LIED TO FRIENDS, TRICKING THE POLICE, HE
3 TRIED TO TRICK YOU.

4 THERE'S BEEN NO PROGRESS, LADIES AND
5 GENTLEMEN. THERE'S BEEN NO PROGRESS WHATSOEVER. WE'RE
6 BACK AT SQUARE ONE. WE'RE BACK IN 1989, TRICK AND
7 DECEIVE. DON'T LET THEM TRY TO CONVINCE YOU THAT
8 THERE'S BEEN PROGRESS HERE.

9 MR. LEVIN, AGAIN MISQUOTING THE
10 PROSECUTION, SAYS MR. CONN STATED THAT HE EXPECTED AND
11 UNDERSTOOD THAT MANY OF YOU WOULD BELIEVE THAT THE ABUSE
12 OCCURRED. I NEVER SUGGESTED THAT IN ANYTHING THAT I
13 SAID.

14 IT HAS BEEN MY POSITION ALL ALONG THAT
15 ABUSE DID NOT OCCUR. THERE WAS NO ABUSE IN THIS CASE,
16 AND THERE IS NO BASIS UPON WHICH YOU SHOULD FIND THAT
17 THERE IS ANY ABUSE IN THIS CASE.

18 WHAT I ARGUED IN THE GUILT PHASE WAS FOR
19 PURPOSES OF REACHING A DETERMINATION OF FIRST-DEGREE
20 MURDER, IT IS ENTIRELY IRRELEVANT.

21 LADIES AND GENTLEMEN, MY POSITION HAS NOT
22 CHANGED. MY POSITION WAS CLEAR THEN, AND IT'S CLEAR

23 NOW. DO NOT BUY INTO THIS ABUSE.

24 WE FINALLY SAW A LITTLE BIT OF THAT WHEN

25 DR. VICARY TOOK THE STAND, AND YOU SAW A LITTLE BIT OF

26 THE DECEPTION THAT WAS GOING ON HERE, THE OBSTRUCTION OF

27 EVIDENCE OF PREMEDITATION.

28 MS. ABRAMSON: OBJECTION, YOUR HONOR.

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1 THE COURT: OVERRULED.

2 MR. CONN: LADIES AND GENTLEMEN, DR. VICARY WAS

3 CAUGHT TRYING TO DECEIVE YOU, TRYING TO TRICK YOU. NO

4 DIFFERENT FROM 1989. THE DECEPTION CONTINUES.

5 THEY TELL YOU, LADIES AND GENTLEMEN, THAT

6 THE DEATH PENALTY IS FOR THE WORST OF THE WORST. YES,

7 THIS CRIME IS THE WORST OF THE WORST, AND YOUR

8 RECOGNITION OF THAT WILL BE REFLECTED, I ASK YOU, IN

9 YOUR VERDICT OF DEATH. YOU WILL BE SAYING THAT YOU

10 RECOGNIZE THE TRUE HORROR OF THIS CRIME, AND YOU ARE

11 GOING TO PUT IT INTO THAT CATEGORY OF A LESSER CRIME --

12 OR THE LESSER PUNISHMENT OF LIFE IMPRISONMENT OR THE

13 GREATER PUNISHMENT OF THE DEATH PENALTY.

14 IT CLEARLY BELONGS IN THE GREATER CATEGORY,

15 BECAUSE IT IS, FOR ALL OF THOSE REASONS STATED, A TRULY

16 SHOCKING OFFENSE AGAINST OUR SOCIETY.

17 AND AS FAR AS THE FAMILY IS CONCERNED, THEY

18 SAY, "WELL, THE FAMILY IS BEHIND THE DEFENDANTS."

19 LADIES AND GENTLEMEN, THE FAMILY'S POINT OF
20 VIEW IS NOT THE ULTIMATE DETERMINATION IN THIS CASE.
21 THIS IS NOT A MINOR DOMESTIC VIOLENCE SITUATION.
22 SOMETIMES YOU WATCH ON T.V., YOU SEE IT ON
23 T.V. SHOWS, THE POLICE GO AND THEY RESPOND TO A LITTLE
24 DOMESTIC DISPUTE, AND THE POLICE SAY TO THE PEOPLE
25 INVOLVED: "DO YOU WANT TO PROSECUTE OR NOT?"
26 AND THEY LEAVE IT UP TO THE VICTIM. AND
27 THEY FEEL IF THERE IS NO CHANCE OF -- IT'S UNLIKELY THAT
28 THERE'S GOING TO BE A REPETITION OF VIOLENCE, AND THE

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1 VICTIM SAYS, "OH, FORGET ABOUT IT. I DON'T WANT TO
2 PROSECUTE."
3 THE POLICE SAY, "OKAY," AND THEY LET IT GO.
4 WELL, THAT MAY BE FINE WHEN YOU'RE DEALING
5 WITH A MINOR DOMESTIC DISPUTE. BUT WHEN YOU GET INTO
6 MORE SERIOUS CRIMES, LADIES AND GENTLEMEN, IT DOESN'T
7 REALLY MATTER WHAT THE VICTIMS WANT. IF YOU GET INTO A
8 SERIOUS CRIME LIKE A BURGLARY, A RESIDENTIAL BURGLARY OR
9 ROBBERY, AND THE VICTIM COMES TO YOU AND SAYS, "WELL, I
10 WORKED IT OUT WITH THE DEFENDANT, AND I REALLY DON'T --
11 I REALLY DON'T CARE ABOUT A PROSECUTION IN THIS CASE."
12 THEN YOU HAVE TO TELL THE VICTIM THE CRIME
13 THAT THE DEFENDANT COMMITTED IS A CRIME AGAINST THE
14 STATE. IT IS AGAINST YOU, BUT IT IS AGAINST THE STATE.

15 YOU MAY HAVE WORKED IT OUT WITH THE BURGLAR WHO LIVES
16 DOWN THE STREET FROM YOU, BUT HE IS GOING TO BREAK INTO
17 OTHER HOMES. HE IS GOING TO BE PROSECUTED. WHETHER YOU
18 LIKE IT OR NOT, WE ARE GOING TO PROSECUTE THIS MAN,
19 BECAUSE THE STATE DEMANDS JUSTICE, AND THE STATE DEMANDS
20 PROTECTION. SO WE ARE GOING TO PROSECUTE HIM.

21 SO IN A SERIOUS CRIME LIKE A BURGLARY, LIKE
22 ROBBERY, IT REALLY DOESN'T MATTER WHAT THE VICTIM
23 THINKS. YOU SHOULD RESPECT THEIR POINT OF VIEW. BUT
24 THE STATE HAS TO PROSECUTE, BECAUSE THE STATE HAS AN
25 INTEREST IN SEEING TO IT THAT JUSTICE WAS DONE FOR THE
26 PROTECTION OF US ALL.

27 AND CERTAINLY WHEN YOU GET INTO A CRIME
28 LIKE MURDER, LADIES AND GENTLEMEN, THE INTERESTS OF THE

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1 STATE IS PARAMOUNT. THEY DO NOT LOOK TO THE SURVIVING
2 FAMILY MEMBERS AND ASK THE SURVIVING FAMILY MEMBERS:
3 "WELL, WHAT DO YOU THINK WE SHOULD DO?" AND JUST GO BY
4 THAT. YOU CAN LISTEN TO THEIR POINT OF VIEW. YOU CAN
5 CONSIDER THEIR POINT OF VIEW FOR WHATEVER IT'S WORTH.

6 BUT ULTIMATELY, LADIES AND GENTLEMEN, YOU
7 MUST MAKE A DECISION WHICH IS TRULY RESPONSIBLE -- AND
8 DON'T JUST YIELD TO ONE FAMILY MEMBER OR THE OTHER
9 FAMILY MEMBER, BECAUSE ONE PERSON LIKES THIS AND ONE
10 PERSON WOULD PREFER THAT. YOU HAVE TO MAKE A

11 DETERMINATION THAT YOU FEEL IN YOUR HEART IS THE CORRECT
12 DETERMINATION.

13 AND HERE, LADIES AND GENTLEMEN, IF YOU
14 APPLY THE LAW FAIRLY, YOU WILL FIND THAT THE AGGRAVATING
15 CIRCUMSTANCES OUTWEIGH THE MITIGATING CIRCUMSTANCES, AND
16 DEATH IS THE APPROPRIATE PUNISHMENT.

17 AND I THINK YOU CAN TELL FROM THE TESTIMONY
18 OF BRIAN ANDERSEN AND MILTON ANDERSEN THAT JUSTICE IN
19 THEIR MINDS WOULD BE SERVED BY THAT VERDICT.

20 MS. ABRAMSON: OBJECTION.

21 THE COURT: OVERRULED.

22 MR. CONN: MR. LEVIN TRIES TO TELL YOU THAT THE
23 FORMER JURY WHO LISTENED TO THIS CASE HUNG UP.

24 WHAT DIFFERENCE DOES MAKE IF ANOTHER JURY
25 HUNG UP? IS HE TRYING TO TELL YOU YOU'RE WRONG? IS HE
26 TRYING TO TELL YOU TO RECONSIDER YOUR VOTE, THAT YOU
27 DIDN'T PROPERLY DECIDE THIS CASE?

28 YOU PROPERLY DECIDED THIS CASE. YOU ARE

-10615

1 THE JURY WHO CORRECTLY EVALUATED THE EVIDENCE. SO IT IS
2 NEITHER HERE NOR THERE WHAT ANOTHER JURY DID.

3 THIS GETS BACK TO THE ARGUMENT THAT I SAID
4 PREVIOUSLY, LADIES AND GENTLEMEN, ABOUT THINKING ABOUT
5 WHAT WAS DONE IN ANOTHER CASE.

6 WELL, WHETHER JUSTICE WAS ACHIEVED IN

7 ANOTHER CASE, OR ANOTHER PRESENTATION OF THE SAME CASE,
8 FOR THAT MATTER, IT MAKES ABSOLUTELY NO DIFFERENCE. YOU
9 MADE THE RIGHT DECISION IN THIS CASE, AND YOU SHOULD
10 ABIDE BY THE CORRECTNESS OF THAT DECISION. DON'T BE
11 INFLUENCED BY WHAT ANOTHER JURY DID OR DID NOT DO.

12 MR. LEVIN TALKS ABOUT THE GENEVA
13 CONVENTION, AND HE SAYS, YOU KNOW, THERE WAS A RULE EVEN
14 FOR SOLDIERS ON THE BATTLEFIELD THAT YOU DO NOT KILL THE
15 WOUNDED.

16 WELL, THAT'S REALLY IRONIC. THAT'S REALLY,
17 TRULY IRONIC TO HEAR MR. LEVIN TALK ABOUT THE RULES OF
18 THE GENEVA CONVENTION, THAT EVEN THE SOLDIER ON THE
19 BATTLEFIELD MUST RECOGNIZE THE FACT THAT WHEN THE ENEMY
20 SOLDIER IS DYING ON THE BATTLEFIELD, HAS BEEN WOUNDED
21 AND IS DYING, IT IS JUST A BASIC RULE OF HUMAN DIGNITY
22 WHICH TRANSCENDS THE RULES OF WAR THAT YOU DO NOT KILL
23 THAT PERSON WHO IS DYING ON THE BATTLEFIELD, SIMPLY
24 BECAUSE YOU CAN.

25 TRULY IRONIC WHEN YOU THINK ABOUT ERIK AND
26 LYLE MENENDEZ GOING OUTSIDE, RELOADING THEIR GUN, AND
27 THEY DO NOT --

28 MS. ABRAMSON: OBJECTION. MISSTATES THE

-10614

1 EVIDENCE.

2 THE COURT: OVERRULED.

3 THIS IS JUST COMMENT ON THE EVIDENCE, AND
4 OBVIOUSLY, AS I HAVE TOLD THE JURY, YOU ARE THE ONES WHO
5 FINALLY DETERMINE THE FACTS OF THIS CASE, AND YOU DECIDE
6 WHAT THE EVIDENCE IS. COUNSEL ARE ONLY COMMENTING ON
7 THE EVIDENCE.

8 MR. CONN: AND THEY TELL YOU, LADIES AND
9 GENTLEMEN, THROUGH THAT TESTIMONY OF ERIK MENENDEZ, WE
10 KNOW THAT ERIK MENENDEZ AND HIS BROTHER, LYLE MENENDEZ,
11 DID NOT EVEN HAVE THE SAME RESPECT FOR THE DIGNITY OF
12 THEIR MOTHER THAT THE SOLDIER ON THE BATTLEFIELD MUST
13 HAVE FOR AN ENEMY SOLDIER DYING. THEY TREATED THEIR
14 MOTHER WORSE THAN THE SOLDIER ON THE BATTLEFIELD TREATS
15 THE ENEMY SOLDIER, BY PUTTING THOSE LAST SHOTS INTO HER
16 FACE AND SLAUGHTERING HER.

17 THAT TELLS YOU SOMETHING ABOUT THE
18 BRUTALITY OF THIS CRIME.

19 MR. LEVIN SAYS THAT I AM ARGUING THAT WE
20 SHOULD KILL RICH KIDS. NUMBER ONE, I'M NOT ARGUING THAT
21 WE SHOULD KILL KIDS AT ALL. AND I AM GLAD WE DON'T HAVE
22 KIDS ON TRIAL HERE. WE HAVE TWO MEN ON TRIAL HERE.

23 BUT I AM NOT SUGGESTING TO YOU, LADIES AND
24 GENTLEMEN, THAT YOU SHOULD SENTENCE THEM TO DEATH
25 BECAUSE THEY COME FROM BEVERLY HILLS. WHAT I AM SAYING
26 IS THAT BECAUSE THEY COME FROM BEVERLY HILLS IS TOTALLY
27 IRRELEVANT. THAT'S THE POINT THAT I AM TRYING TO MAKE.

28 IF YOU CAN TRULY PUT THAT OUT OF YOUR MIND,

1 LADIES AND GENTLEMEN, I THINK THAT YOU WILL RECOGNIZE
2 THE HORROR OF THIS CASE, AND DECIDE THIS -- THE HORROR
3 OF THIS CASE FAIRLY, EVALUATE IT FAIRLY, AND REACH A
4 VERDICT OF DEATH BASED UPON THE HORROR OF THIS CRIME.

5 THE COURT: HOW MUCH LONGER DO YOU THINK YOU'LL
6 BE, MR. CONN?

7 MR. CONN: PROBABLY ANOTHER 15 -- MAYBE 15 OR 20
8 MINUTES.

9 THE COURT: ALL RIGHT.

10 WE WILL BE IN RECESS UNTIL 1:30. DON'T
11 DISCUSS THE MATTER. DON'T FORM ANY FINAL OPINIONS ABOUT
12 IT, AND WE WILL RESUME AT 1:30.

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

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1 VAN NUYS, CALIFORNIA; FRIDAY, APRIL 12, 1996

2 1:50 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 THE COURT: THE RECORD WILL REFLECT THE

9 DEFENDANTS ARE IN COURT. BOTH DEFENDANTS ARE IN

10 COURT WITH THEIR LAWYERS. PEOPLE ARE HERE. THE

11 JURY IS IN THE JURY BOX.

12 AND I THINK I HEARD PEOPLE SAYING GOOD

13 AFTERNOON.

14 THE PROSECUTION MAY CONTINUE ITS

15 ARGUMENT.

16 MR. CONN: THANK YOU.

17 LADIES AND GENTLEMEN, TWO THINGS WERE

18 SAID ABOUT FAMILY MEMBERS IN THIS CASE, THAT THEY

19 ARE SUPPORT FOR THE DEFENDANTS. AND ONE THING THAT

20 WAS SAID ABOUT THEM WAS THE MERE FACT THAT THE

21 FAMILY MEMBERS ARE HERE.

22 AND AS POINTED OUT TO YOU, ULTIMATELY

23 YOU SHOULD NOT BASE YOUR DECISION ABOUT WHAT FAMILY

24 MEMBERS WANT OR PREFER. YOU DON'T DECIDE THIS CASE

25 BY TAKING A HEAD COUNT. YOU ARE ACTING ON BEHALF OF
26 THE PEOPLE OF THE STATE NOW, MAKING A DETERMINATION
27 AS TO THE PENALTY THAT YOU BELIEVE IS APPROPRIATE.
28 THE DEFENSE ARGUED THERE ARE MEMBERS OF

54925

1 THE FAMILY WHO STILL SUPPORT THE DEFENDANTS, AND
2 THAT SUPPORT IS EVIDENCED BY THE FACT THAT YOU SEE
3 CERTAIN PEOPLE IN THE COURTROOM PAYING ATTENTION TO
4 THE PROCEEDINGS, OR PEOPLE HERE WHO CAME AND
5 TESTIFIED ON BEHALF OF THE DEFENDANTS, AND WHO SAID
6 HOW THEY STILL HAVE SOME SUPPORT FOR THEM.

7 BUT, LADIES AND GENTLEMEN, BEAR THIS IN
8 MIND. MERELY BECAUSE SOME MEMBERS OF THE FAMILY
9 SUPPORT THE DEFENDANTS, OR OPPOSE THE DEATH PENALTY
10 IN THIS CASE, SHOULD YOU USE THAT TO MAKE A
11 DETERMINATION OF YOUR OWN DECISION IN THIS CASE?

12 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
13 THAT YOU WOULD EXPECT AS MUCH FROM FAMILY MEMBERS,
14 WOULDN'T YOU? IF YOUR OWN FAMILY MEMBERS WERE ON
15 TRIAL, IF YOUR OWN FAMILY MEMBER WERE BEING TRIED
16 FOR A CAPITAL OFFENSE, DON'T YOU THINK THAT YOU
17 WOULD FEEL SYMPATHY, YOU WOULD FEEL SUPPORT TO THAT
18 FAMILY MEMBER? IT'S UNDERSTANDABLE. IT'S TO BE
19 EXPECTED. ALL THAT TELLS YOU IS THAT PERHAPS YOU

20 WOULD NOT BE A FAIR AND IMPARTIAL PERSON TO ASK
21 CONCERNING THE APPROPRIATENESS OF THE DEATH PENALTY
22 IN THAT PARTICULAR CASE.

23 IF MY OWN SISTER OR BROTHER OR SOMEONE
24 WERE ON TRIAL FOR A CAPITAL OFFENSE, COULD I BE FAIR
25 AND OBJECTIVE? OF COURSE NOT. I WOULD BE OPPOSED
26 TO THE DEATH PENALTY IN THAT CASE TOO. I WOULD NOT
27 BE QUALIFIED TO VOICE AN OPINION CONCERNING THE
28 APPROPRIATENESS OF THE DEATH PENALTY IN THAT CASE.

54926

1 PERHAPS PEOPLE WOULD LISTEN TO MY PLEA.

2 BUT ULTIMATELY I WOULD EXPECT THEM TO
3 REALIZE THAT I AM NOT TRULY FAIR AND IMPARTIAL. I
4 AM BIASED.

5 AND THAT IS THE REASON WHY WE HAVE 12
6 IMPARTIAL JURORS SELECTED TO DECIDE THE CASE, 12
7 PEOPLE WHO ARE NOT IN THE DEFENSE CAMP, WHO ARE NOT
8 PREDISPOSED TOWARD THE DEFENDANTS BECAUSE THEY KNOW
9 THE DEFENDANTS OR HAVE KNOWN THE DEFENDANTS FOR MANY
10 YEARS. YOU ARE THE ONES WHO CAN BE FAIR AND
11 IMPARTIAL.

12 SO MERELY BECAUSE THEY HAVE SOME SUPPORT
13 FROM THEIR FAMILY, DON'T LET THEM TAKE THAT ISSUE
14 AWAY FROM YOU AND LET THEM DECIDE THE ISSUE FOR

15 YOU. IT IS YOUR DUTY, BECAUSE IT IS YOUR
16 RESPONSIBILITY TO BALANCE, NOT ONLY THE INTERESTS
17 AND THE DESIRES OF THE DEFENSE, BUT THE INTERESTS
18 AND THE DESIRES OF THE PEOPLE OF THE STATE OF
19 CALIFORNIA, BASED UPON A FAIR AND CAREFUL
20 APPLICATION OF THE LAW IN THIS CASE.
21 THEY SAY, FOR EXAMPLE, THE GRANDMOTHER
22 STILL SUPPORTS THE DEFENDANTS. WE DON'T KNOW WHAT
23 THE GRANDMOTHER WOULD SAY IF SHE WERE TO TESTIFY.
24 WE HAVE NO TESTIMONY FROM HER. WE KNOW THAT YOU SEE
25 THE GRANDMOTHER -- YOU HAVE SEEN THE GRANDMOTHER IN
26 THE COURTROOM THROUGHOUT THE PROCEEDINGS, THE MOTHER
27 OF JOSE MENENDEZ; AND YET, SHE HAS NEVER BEEN CALLED
28 TO THE WITNESS STAND.

54927

1 WHY IS THAT? YOU DON'T KNOW WHAT SHE
2 THINKS OR WHY SHE HOLDS THE OPINIONS THAT SHE DOES.
3 SHE'S AN OLD WOMAN; OR DOES SHE EVEN REALIZE OR
4 APPRECIATE WHAT'S GOING ON HERE?

5 MR. LEVIN: I WOULD OBJECT TO THAT
6 INSINUATION.

7 THE COURT: OVERRULED. THIS IS JUST
8 ARGUMENT, AND NOTHING MORE.

9 YOU MAY PROCEED.

10 MR. CONN: THANK YOU.

11 WHAT I'M ASKING YOU TO DO IS TO BASE
12 YOUR DECISION UPON THE EVIDENCE THAT HAS BEEN
13 RECEIVED IN THIS TRIAL, AND DON'T ASSUME WHAT WAS
14 SUGGESTED TO YOU BY THE DEFENSE. IT CERTAINLY MAKES
15 YOU WONDER WHY, WITH THE GRANDMOTHER HERE DURING THE
16 ENTIRE PROCEEDINGS, SHE HAS NEVER BEEN CALLED TO
17 THAT WITNESS STAND. WHY IS THAT, LADIES AND
18 GENTLEMEN?

19 DON'T MAKE ASSUMPTIONS ABOUT THE
20 EVIDENCE. BASE IT UPON THE EVIDENCE THAT HAS TRULY
21 BEEN PRESENTED TO YOU.

22 MS. TOWERY ARGUES THAT THE VICTIMS IN
23 THIS CASE, KITTY AND JOSE MENENDEZ, WERE
24 PARTICIPANTS IN THE HOMICIDAL ACT. THAT IS ONE OF
25 THE MITIGATING CIRCUMSTANCES, AND I SUBMIT TO YOU
26 THAT THAT MITIGATING CIRCUMSTANCE DOES NOT APPLY
27 HERE.

28 A PARTICIPANT IN A HOMICIDAL ACT IS A

54928

1 PERSON WHO WILLINGLY, WHO KNOWINGLY PARTICIPATES IN
2 THE ACTUAL EXERCISE OF THE HOMICIDE, THE ACTUAL
3 PERFORMANCE OF THE HOMICIDE. THAT IS A
4 CONSIDERATION THAT MIGHT APPLY TO OTHER

5 CIRCUMSTANCES, TO OTHER CASES, BUT CLEARLY DOESN'T

6 APPLY HERE.

7 THAT IS SIMPLY THE ATTEMPT OF MS. TOWERY

8 TO, ONE MORE TIME, TRY TO PUT THE DEFENDANTS -- THAT

9 IS, TRY TO PUT THE VICTIMS ON TRIAL IN THIS CASE BY

10 SUGGESTING THAT SOMEHOW THEY BROUGHT ABOUT THEIR OWN

11 DEATH.

12 LADIES AND GENTLEMEN, KITTY AND JOSE

13 MENENDEZ DID NOT BRING ABOUT THEIR OWN DEATH, AND

14 THE TIME HAS COME FOR THE DEFENDANTS TO FINALLY TAKE

15 RESPONSIBILITY FOR THAT ACT.

16 MR. LEVIN HAS SUGGESTED, WELL, THE

17 PROSECUTION GOT WHAT HE WANTED. THE PROSECUTION HAS

18 THE MURDER CONVICTION.

19 LADIES AND GENTLEMEN, JUSTICE IS NOT

20 DONE UNTIL THE SENTENCING. THAT IS GOING TO BE THE

21 NEXT HALF OF YOUR DETERMINATION. YOU WILL DETERMINE

22 THE APPROPRIATE SENTENCE IN THIS CASE, AND THEN

23 JUSTICE WILL BE DONE.

24 KITTY AND JOSE MENENDEZ DID NOT BRING

25 ABOUT THEIR DEATH. AND I ASK THAT YOUR VERDICT IN

26 THIS CASE CONCERNING PENALTY REFLECT THAT REALITY.

27 MR. LEVIN ARGUES THAT THE DEATH PENALTY

28 IS VENGEFUL. OF COURSE, HE USES THAT IN A VERY

1 NEGATIVE AND PEJORATIVE WAY. IT IS VENGEFUL AS IF
2 TO SUGGEST IT IS ALWAYS WRONG.

3 BUT, LADIES AND GENTLEMEN, THAT IS NOT
4 THE LAW OF THIS STATE. THE LAW OF THE STATE IS THAT
5 THERE IS A DEATH PENALTY IN THIS CASE -- IN THIS
6 STATE, AND THAT IT IS FAIR IN CERTAIN
7 CIRCUMSTANCES. IT IS NOT VENGEFUL. IT IS JUST, AND
8 IT IS YOUR RESPONSIBILITY TO DETERMINE IF THIS IS
9 ONE OF THE CASES IN WHICH IT IS JUST.

10 DO NOT BE INTIMIDATED BY WHAT IS
11 ESSENTIALLY A SUGGESTION THAT THE DEATH PENALTY IS
12 ALWAYS INAPPROPRIATE BECAUSE IT IS VENGEFUL, IT IS
13 SOMETHING BAD. PEOPLE OF THIS STATE WANT THE DEATH
14 PENALTY, AND THEY HAVE THE DEATH PENALTY. AND I ASK
15 YOU TO APPLY IT IN THE APPROPRIATE CASE. AND I ASK
16 YOU TO FIND THAT THIS IS INDEED THE APPROPRIATE
17 CASE. DO NOT SHY AWAY FROM THAT RESPONSIBILITY TO
18 APPLY THE DEATH PENALTY.

19 NOW, LADIES AND GENTLEMEN, YOU KNOW THAT
20 THE DEFENSE IS GOING TO RELY UPON FACTOR K. WE
21 HEARD A LOT ABOUT FACTOR K, BECAUSE IT RELATES TO
22 SYMPATHETIC ASPECTS OF THE DEFENDANTS CHARACTER OR
23 RECORD.

24 I WOULD ASK YOU TO, FIRST OF ALL, BEAR
25 THAT PHRASE -- TO KEEP THAT PHRASE VERY CLOSE TO
26 YOUR MIND, SYMPATHETIC ASPECTS OF THE DEFENDANTS'
27 CHARACTER OR RECORD; NOT JUST FREE-FLOATING SYMPATHY
28 UNCONNECTED TO ANYTHING.

1 ASK YOURSELF: IS THE SYMPATHY YOU FEEL
2 ROOTED IN THE EVIDENCE? IS IT BASED UPON SPECIFIC
3 THINGS CONCERNING THE DEFENDANTS' CHARACTER OR
4 RECORD? SO CAREFULLY EVALUATE THE EVIDENCE TO SEE
5 IF IT MEETS THAT TEST.

6 LADIES AND GENTLEMEN, I KNOW I AM ASKING
7 YOU TO TAKE THE LIVES OF TWO HUMAN BEINGS. AND IN
8 ANY CASE, IN ANY CASE, YOU ARE GOING TO FIND SOME
9 ASPECTS OF ANY PERSON'S CHARACTER OR RECORD TO HAVE
10 A SYMPATHETIC ELEMENT TO IT. THAT IS NATURAL.

11 LIKE I SAID, WE WERE ALL CHILDREN ONCE.
12 IF WE ALL GO BACK TO OUR CHILDHOOD, YOU CAN FIND
13 SOME SYMPATHETIC ASPECTS OF OUR LIVES. NO MATTER
14 HOW HORRENDOUS THE OFFENSE IS, NO MATTER HOW BAD THE
15 CRIMINAL IS, YOU WILL ALWAYS FIND SOMETHING ABOUT
16 HIS CHILDHOOD OR PAST OR HISTORY THAT HAS A
17 SYMPATHETIC ELEMENT TO IT.

18 BUT I ASK YOU TO BEAR IN MIND THAT YOU
19 ARE TO GIVE IT ONLY THE WEIGHT THAT IT IS DUE. DO
20 NOT GIVE IT UNDUE WEIGHT. DO NOT FOCUS EXCLUSIVELY
21 ON SYMPATHETIC ASPECTS OF THE DEFENDANTS' CHARACTER
22 OR RECORD, BUT FOCUS ALSO ON THE AGGRAVATION IN THIS
23 CASE, ON THE TERRIBLE REALITY THAT TOOK PLACE ON

24 AUGUST THE 20TH OF 1989.

25 ONE OF THE MOST MOVING -- PROBABLY ONE
26 OF THE MOST MOVING AND MEMORABLE AND DESCRIPTIVE
27 MOMENT OF MY OWN LEGAL CAREER WAS WHEN I ONCE HEARD
28 A JUDGE MAKING A SENTENCING DECISION. I'M NOT GOING

54931

1 TO TELL YOU THE FACTS OF THE CASE BECAUSE THEY DON'T
2 MATTER.

3 IN MAKING THE SENTENCING DECISION HE
4 PREFACED IT WITH A REMARK WHICH I HAVE NEVER
5 FORGOTTEN. IT WAS AN IMPORTANT DECISION. IT WAS AN
6 EMOTIONAL DECISION FOR EVERYONE IN THE COURTROOM.
7 AND THE JUDGE, BEFORE MAKING THE DECISION, PREFACED
8 IT THIS WAY:

9 HE SAID: "I WILL CRY IN MY PRIVATE
10 MOMENTS TOO. BUT TODAY I WILL DO MY JOB." AND WHEN
11 I HEARD THOSE WORDS, IT DAWNED ON ME JUST HOW
12 COMPASSIONATE THIS MAN WAS. HE RECOGNIZED THE
13 EMOTIONS OF THE COURTROOM. HE RECOGNIZED THE POWER
14 OF HIS DECISION. HE RECOGNIZED THE IMPLICATIONS OF
15 HIS DECISION. HE RECOGNIZED THAT SOMEONE WOULD BE
16 HURT BY HIS DECISION; AND YET, I ALSO SAW THE
17 STRENGTH AND THE INTEGRITY IN THAT MAN, AND THE
18 INTEGRITY FOR THE CRIMINAL JUSTICE SYSTEM, THAT HE

19 WAS ABLE TO PUT HIS PASSION, HIS COMPASSION IN
20 PERSPECTIVE, AND TO RECOGNIZE HIS OBLIGATION TO DO
21 HIS JOB, AND TO APPLY THE LAW IN A FAIR AND
22 IMPARTIAL WAY, NO MATTER WHAT THE CONSEQUENCE.

23 IS IT DIFFICULT TO SENTENCE SOMEONE TO
24 DEATH? OF COURSE IT IS. IT SHOULD BE DIFFICULT.
25 WE NEVER WANT TO TAKE SOMEONE'S LIFE. BUT JUST AS
26 THAT JUDGE HAD TO MAKE A DIFFICULT DECISION, SO TOO,
27 YOU'RE BEING CALLED UPON TO MAKE A DIFFICULT
28 DECISION.

54932

1 WHAT SHOULD GIVE YOU THE STRENGTH,
2 LADIES AND GENTLEMEN, TO MAKE THAT DECISION, WHICH I
3 ASK TO BE IN FAVOR OF THE DEATH PENALTY, IS THE
4 KNOWLEDGE AND THE CERTAINTY THAT YOU ARE APPLYING
5 THE LAW IN THIS CASE IN A VERY CAREFUL AND PROPER
6 WAY. THE KNOWLEDGE AND THE CERTAINTY THAT THE
7 AGGRAVATING CIRCUMSTANCES DO INDEED OUTWEIGH THE
8 MITIGATING CIRCUMSTANCES, AND THE KNOWLEDGE AND THE
9 CERTAINTY THAT YOUR DECISION IS, IN FACT, THE RIGHT
10 DECISION. AND WITH THAT KNOWLEDGE, AND WITH THAT
11 CERTAINTY, YOU CAN BE STRONG ENOUGH TO MAKE THAT
12 DECISION AND TO SAY: YES, IT IS THE MOST
13 APPROPRIATE PENALTY IN THIS CASE.

14 CRY IN YOUR PRIVATE MOMENTS IF YOU HAVE
15 TO, BUT DO YOUR JOB TODAY.

16 THERE'S A LOT OF GREY AREAS IN OUR
17 SOCIETY. WE ALL LIVE IN GREY AREAS THESE DAYS. AND
18 I DON'T KNOW WHAT HAS BROUGHT THIS ABOUT. PEOPLE
19 SPEAK ABOUT IT SINCE THE 1960'S. PERHAPS WE HAVE
20 LOST OUR WAY. OUR SOCIETY HAS BECOME MORE
21 CONFUSED. WE ARE LOSING OUR VALUES. EVERYTHING IS
22 BECOMING RELATIVE. THINGS ARE BECOMING INCREASINGLY
23 GREY. WE'VE LOST OUR SENSE OF DIRECTION. AND THERE
24 ARE TIMES WHEN WE HAVE TO COME TOGETHER TO FIND A
25 SENSE OF DIRECTION AND ONCE AGAIN ESTABLISH WHO WE
26 ARE AND WHAT IS RIGHT AND WHAT IS WRONG AT A TIME
27 WHEN SO MUCH IN OUR SOCIETY IS UNCLEAR.

28 LADIES AND GENTLEMEN, WE CANNOT CORRECT

54933

1 ALL OF THE RIGHTS AND WRONGS IN OUR SOCIETY, BUT YOU
2 ARE BEING CALLED UPON TO VOICE YOUR OPINION, TO
3 SPEAK FOR OUR SOCIETY IN REGARD TO ONE TRULY
4 ATROCIOUS AND MONSTROUS EVENT, AND IN THIS ONE
5 PARTICULAR CASE, YOU WILL SPEAK FOR OUR SOCIETY AND
6 YOUR VOICE WILL BE HEARD.

7 IN THIS ONE PARTICULAR CASE, LADIES AND
8 GENTLEMEN, YOU WILL DO JUSTICE.

9 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
10 THAT WHEN FACTS ARE THIS STRONG, THAT WHEN TWO
11 DEFENDANTS PLAN TO KILL THEIR OWN PARENTS; WHEN THEY
12 GO OUT OF THEIR WAY TO PURCHASE THE WEAPONS AND
13 THINK ABOUT IT AND PREMEDITATE IT, AND LOAD THOSE
14 WEAPONS, AND SPEND DAYS THINKING ABOUT IT, AND WHEN
15 THEY WAIT FOR THE PERFECT MOMENT TO STRIKE, AND THEY
16 HAVE THE INTENT TO BATHE THEIR PARENTS IN BLOOD, AND
17 THEY COMMIT THAT KILLING IN A BRUTAL AND HORRIFYING
18 WAY, YOU CAN SAY, LADIES AND GENTLEMEN, THAT THIS IS
19 NOT ONE OF THOSE GREY AREAS.

20 THERE MAY BE MANY AREAS IN OUR SOCIETY
21 WHERE OUR CHOICE IS UNCLEAR, WHERE OUR DECISION
22 CANNOT ACCURATELY BE DETERMINED. BUT THIS SHOULD BE
23 ONE AREA WHERE YOU SHOULD SAY: WE DO NOT DO THIS.
24 WE DO NOT APPROVE OF THIS, CONDONE THIS IN ANY WAY.

25 THIS IS ONE OF THE MOST REPREHENSIBLE
26 AND UNSPEAKABLE CRIMES TO COME ALONG IN A LONG TIME,
27 AND THIS IS TRULY DESERVING OF THE ULTIMATE
28 PUNISHMENT.

54934

1 I ASK YOU TO FIND, LADIES AND GENTLEMEN,
2 THAT THIS IS NOT A GREY AREA SUBJECT TO MITIGATION.
3 WE DON'T KNOW WHAT IS RIGHT OR WRONG IN A PARTICULAR

4 CASE. WE SHOULD KNOW EXACTLY WHAT IS RIGHT IN THIS
5 CASE; THAT THIS PARTICULAR MONSTROUS EVENT IS
6 SUBJECT TO THE ULTIMATE PENALTY AND IS TRULY
7 DESERVING OF THE ULTIMATE PENALTY IN THIS ONE
8 PARTICULAR CASE, LADIES AND GENTLEMEN, YOU CAN BE
9 SURE OF IT.

10 LADIES AND GENTLEMEN, IF YOU KEEP IN
11 MIND, WHEN YOU GO BACK AND YOU DELIBERATE ON THE
12 QUESTION OF PENALTY, THE HORROR OF THIS CRIME, AND
13 YOU JUXTAPOSE THAT HORROR WITH THE KNOWLEDGE AND THE
14 CERTAINTY OF THE DEFENDANTS' COLD-BLOODED
15 PREMEDITATION, AND HOW THEY WILLFULLY BROUGHT ABOUT
16 THAT HORROR OF THAT MONSTROUS EVENT, IF YOU CAN BEAR
17 THAT IN MIND THROUGHOUT YOUR DELIBERATIONS, THEN I
18 AM SURE YOU WILL DO THE RIGHT THING.

19 YOU DID YOUR JOB IN THE GUILT PHASE. I
20 ASK YOU NOW TO DO YOUR JOB IN THE PENALTY PHASE.
21 AND I ASK YOU TO RETURN TO THIS COURTROOM WITH DEATH
22 VERDICTS AGAINST BOTH ERIK AND LYLE MENENDEZ FOR THE
23 MURDER OF KITTY AND THE MURDER OF JOSE MENENDEZ.

24 ON BEHALF OF CAROL NAJERA AND MYSELF,
25 THANK YOU. IT HAS BEEN OUR PRIVILEGE TO WORK WITH
26 YOU.

27 THE COURT: ALL RIGHT. THANK YOU. AND ON
28 BEHALF OF ERIK MENENDEZ.

1 CLOSING ARGUMENT

2 BY MR. LEVIN:

3 THERE'S NOTHING WRONG WITH THIS
4 COUNTRY. WE HAVE NOT LOST OUR WAY. THAT FLAG STILL
5 STANDS. I'M PROUD TO BE AN AMERICAN. I'M PROUD TO
6 SEE THE PROGRESS OF OUR COUNTRY. WE ARE AT PEACE.
7 THIS COUNTRY HAS NEVER EXPERIENCED THE KIND OF
8 OPPORTUNITIES, PEACE AROUND THE WORLD THAT WE HAVE
9 AT THIS TIME, SO OUR CHILDREN CAN GROW UP WITHOUT
10 HAVING FEARS OF DEPRESSION AND DISEASES -- WE'RE
11 WORKING ON THAT ONE -- BUT WARS.

12 THEY'RE FREE TO PURSUE THEIR EDUCATION,
13 TO GROW, TO LIVE, ALL THE THINGS THAT ERIK MENENDEZ
14 WILL NEVER SEE.

15 YOU KNOW, THERE'S A SIGN THAT HANGS
16 OUTSIDE THE OFFICE OF THE ATTORNEY GENERAL'S OFFICE
17 OVER IN WASHINGTON, D.C., THE UNITED STATES ATTORNEY
18 GENERAL'S OFFICE, AND IT SAYS ON THAT SIGN, IT
19 SAYS: "THE UNITED STATES OF AMERICA WINS ITS CASES
20 WHEN JUSTICE IS DONE FOR ONE OF ITS CITIZENS."

21 THAT'S WHAT IT SAYS. JUSTICE.

22 NOW, THE PEOPLE OF THE STATE OF
23 CALIFORNIA DON'T SPEAK TO YOU. THE STATE OF
24 CALIFORNIA IS A THING. IT'S A CORPORATION. YOU
25 SPEAK FOR THE PEOPLE OF THE STATE OF CALIFORNIA. WE
26 ARE THE PEOPLE OF THE STATE OF CALIFORNIA.

27 MRS. MENENDEZ IS A PERSON IN THE STATE OF

28 CALIFORNIA.

54936

1 THEY DON'T HAVE THE EXCLUSIVE CORNER ON
2 JUSTICE. DO THEY HAVE A BIAS? PERHAPS. PERHAPS.

3 THIS IS NOT A PERSONALITY CONTEST. YOU
4 DON'T GIVE SOMEONE DEATH BASED ON WHO'S THE MOST
5 PERSUASIVE SPEAKER, OR WHO CAN COME UP WITH THE BEST
6 CUTE LITTLE PHRASE. THAT'S NOT HOW IT WORKS.

7 ERIK MENENDEZ IS A COLD-BLOODED KILLER?
8 WHEN DID HE BECOME A COLD-BLOODED KILLER? WAS HE A
9 SCHOOL-YARD BULLY? DID HE PULL THE WINGS OFF OF
10 INSECTS? DID HE TORTURE SMALL ANIMALS? WAS HE A
11 COLD-BLOODED KILLER WHEN HE WAS WITH KIRSTEN SMITH?
12 THAT GOOFY KID IN THE VIDEOTAPE THAT YOU SAW 11 DAYS
13 BEFORE THE KILLING, IS THAT A COLD-BLOODED KILLER?

14 WHEN? WHEN DID HE BECOME THE COLD-BLOODED KILLER?
15 THE DEFENSE IS NOT CONCEDING THAT ERIK
16 MENENDEZ LIED. I HAVE NO IDEA WHERE THE PROSECUTION
17 GOT THAT IDEA.

18 WHAT DOES A CHILD MOLESTER LOOK LIKE? I
19 DON'T KNOW. WE DO KNOW THAT THAT MAN TOOK LYLE
20 MENENDEZ AT FIVE YEARS OLD, DRAGGED HIM TO HIS ROOM
21 AND BEAT HIM, AND THAT THE PROSECUTOR ADMITS

22 OCCURRED.

23 WHAT ABOUT ALL THE OTHER TIMES THAT ALL
24 OF THE OTHER WITNESSES TESTIFIED THAT ERIK MENENDEZ
25 AND LYLE MENENDEZ WERE DRAGGED TO THEIR ROOMS? DO
26 YOU KNOW WHAT HAPPENED? ERIK MENENDEZ TOLD YOU NO
27 LIES ABOUT HIS PARENTS.

28 WHO WAS ERIK MENENDEZ IN THIS FAMILY?

54937

1 WELL, HE WAS TOLD HE WAS NOT A MENENDEZ. HE WAS
2 CALLED STUPID, DUMMY. HE WAS TOLD HE WAS TOO WEAK,
3 TOO EMOTIONAL, TOO SENSITIVE.

4 HE WAS TOLD HE COULD NEVER BE AS GOOD AS
5 HIS BROTHER LYLE, BUT HE HAD TO BE NO. 1.

6 HE WAS AN ANXIOUS AND NERVOUS CHILD, BUT
7 THAT DIDN'T DETER THE PARENTS FROM HAVING HIM BECOME
8 A SUPER-ACHIEVER.

9 HIS PARENTS WEREN'T IMPRESSED WITH HIS
10 LEARNING DISABILITIES. THEY DEMANDED ONLY GRADES,
11 JUST LIKE ONLY TROPHIES.

12 NO MATTER WHAT LABEL MIGHT STICK ON ERIK
13 MENENDEZ, HE HAD A MENTAL DISORDER, AND WITH THAT
14 MENTAL DISORDER, HE HAD TO ACHIEVE JUST LIKE LYLE
15 MENENDEZ. HE WAS GIVEN NO ALLOWANCE FOR
16 VULNERABILITY.

17 THE STRESS AND THE PRESSURE OF TRYING TO
18 OVERCOME MADE HIS LIFE LIVING HELL. BUT HE NEVER
19 GAVE UP. HE NEVER GAVE UP TRYING TO GET THE LOVE
20 AND GET THEM TO LOVE HIM, AND THAT'S WHAT KEPT HIM
21 IN THE RELATIONSHIP.

22 YOU CAN PROTECT US ALL WITH A PUNISHMENT
23 OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF
24 PAROLE. AND I ASK YOU, IS THAT THE LESSER
25 PUNISHMENT IN THIS CASE? LOOK HOW LONG HE'S GOING
26 TO SPEND IN PRISON. LOOK WHERE HE CAME FROM.
27 BEVERLY HILLS. WELL, ACTUALLY, HE MOVED THERE IN
28 1988. BIG DIFFERENCE.

54938

1 IN LOS ANGELES COUNTY JAIL. ONE OF THE
2 MOST HORRIBLE PLACES AN INMATE CAN BE, WITH ALL THE
3 GANGS AND VIOLENCE AND THE PEOPLE THAT ARE IN THAT
4 JAIL COMING AND GOING EVERY DAY. GOD, WHAT HE MUST
5 HAVE TO GO THROUGH. SIX YEARS. SIX YEARS HE'S BEEN
6 THERE. FROM BEVERLY HILLS. I DON'T KNOW HOW HE
7 SURVIVED. THAT'S WHAT HIS LIFE IS GOING TO BE.

8 MR. CONN SPEAKS OF THE FAMILY MEMBERS,
9 THAT ALL WOULD BE BIASED. OF COURSE THEY WOULD BE
10 BIASED, HE SAYS. BUT THESE ARE ALSO THE VICTIMS'
11 FAMILY. ERIK AND LYLE MENENDEZ ARE THE CHILDREN OF

12 THE FAMILY. THEY'RE ALL THAT'S LEFT. AND IF THEY
13 WANT THEM TO LIVE, YOU SHOULD LET THEM LIVE FOR AS
14 LONG AS THEY CAN.

15 THERE IS NO REASON. THERE IS NO
16 THEORY. THERE'S NO EVIDENCE. THERE'S NO LOGIC TO
17 PUT THEM TO DEATH. NO ONE WANTS THEM TO DIE.

18 I DON'T THINK MRS. MENENDEZ IS AN OLD
19 WOMAN WHO DOESN'T KNOW WHAT SHE WANTS. GOSH, I
20 GUESS WHEN WE GET TO BE A CERTAIN AGE, PERHAPS IT
21 MIGHT LOOK LIKE WE DON'T KNOW WHAT'S GOING ON, BUT I
22 THINK SHE DOES. I THINK SHE DOES. I THINK SHE
23 KNOWS EXACTLY WHERE SHE IS. I THINK SHE KNOWS
24 EXACTLY WHAT'S GOING ON.

25 IF FOR NO OTHER REASON, SPARE ERIK AND
26 LYLE MENENDEZ FOR THE MOTHER OF JOSE MENENDEZ. BUT
27 GOD HELP YOU, DO THE RIGHT THING. DO IT FOR
28 YOURSELVES. DON'T BE PERSUADED BY MERE WORDS. DO

54939

1 WHAT'S IN YOUR HEART. DO WHAT YOU FEEL IS RIGHT AND
2 DO WHAT YOU FEEL IS JUST. AND THEN YOU HAVE SPOKEN
3 FOR YOURSELVES AS INDIVIDUALS, AS ONE OF THE PEOPLE
4 OF THE STATE OF CALIFORNIA.

5 ON BEHALF OF ERIK MENENDEZ AND MY
6 CO-COUNSEL, LESLIE ABRAMSON, WE THANK YOU VERY MUCH

7 FOR YOUR ATTENTION, YOUR DEVOTION TO DUTY, AND WE
8 HOPE -- WE HOPE AND PRAY THAT WHATEVER YOUR DECISION
9 IS, YOU TOO WILL BE ABLE TO LIVE IN PEACE.

10 THANK YOU VERY MUCH.

11 THE COURT: THANK YOU, MR. LEVIN.

12 MR. GESSLER.

13 MR. GESSLER: THANK YOU, YOUR HONOR.

14

15 CLOSING ARGUMENT

16 BY MR. GESSLER:

17 GOOD AFTERNOON, LADIES AND GENTLEMEN.

18 I'M THE LAST ATTORNEY THAT YOU'LL BE

19 HEARING FROM IN THIS MATTER. I WILL TRY NOT TO GO

20 OVER THINGS THAT OTHER PEOPLE HAVE GONE OVER AND

21 THAT YOU'VE ALREADY HEARD, AND I'M NOT GOING TO GO

22 BACK OVER FACTS THAT YOU'RE ALREADY TOTALLY FAMILIAR

23 WITH, EVIDENCE THAT YOU'VE HEARD AND FULLY

24 UNDERSTAND. BUT I WANT TO TALK FOR A FEW MINUTES

25 ABOUT WHAT THIS PENALTY PHASE IS ALL ABOUT.

26 BECAUSE IN HEARING MR. CONN TALK

27 YESTERDAY AND THIS MORNING, AND AGAIN THIS

28 AFTERNOON, WE DIDN'T HAVE THIS LAST THREE WEEKS

54940

1 TOGETHER AT ALL. BECAUSE WE HEARD AGAIN AND AGAIN

2 THE FACTS OF THE CRIME, THE PICTURES OF THE CRIME,
3 THE THINGS THAT WERE TAKEN CARE OF IN MONTHS OF
4 TRIAL.

5 A PENALTY TRIAL IS DIFFERENT. A PENALTY
6 TRIAL IS TRULY THE TRIAL FOR ERIK MENENDEZ AND LYLE
7 MENENDEZ AS TO LIFE OR DEATH. AND IT DEPENDS ON
8 MANY THINGS MORE THAN SIMPLY A REMARK ON THE FACTS
9 OF THE CRIME. THEY'RE OVER AND BEHIND US FROM
10 MONTHS AGO.

11 THIS PHASE IS NOT A REFERENDUM ON
12 ANYBODY. IT'S NOT A REFERENDUM ON DR. BILL VICARY,
13 OR ANY OF THE ATTORNEYS, OR ANYTHING ELSE, OR THE
14 DISTRICT ATTORNEY'S OFFICE, OR MR. CONN. IT IS A
15 DETERMINATION BY YOU AS TO WHETHER OR NOT LYLE
16 MENENDEZ AND ERIK MENENDEZ WILL SUFFER THE VERY
17 TERRIBLE PUNISHMENT FOR WHAT THEY'VE DONE OF LIFE IN
18 PRISON WITHOUT PAROLE, OR WHETHER THEY WILL SUFFER
19 THE TERRIBLE PUNISHMENT OF DEATH AT THE HANDS OF THE
20 STATE.

21 THERE'S A STORY, A SHORT STORY, ABOUT
22 THE OLD WEST AND A MAN WHO RODE INTO TOWN, A
23 STRANGER. HE WAS THIRSTY AND STOPPED AT THE LOCAL
24 SALOON AND SAW A GROUP OF MEN IN THE CORNER. THEY
25 WERE DRINKING AND THEY SAID: "STRANGER, WE'RE
26 CELEBRATING. COME ON OVER AND JOIN US." AND THE
27 STRANGER SAID, "WHAT IS IT THAT YOU'RE CELEBRATING?"

28 THEY SAID, "COME HAVE A DRINK WITH US,

1 BECAUSE TODAY WE HAD THE STRENGTH AND THE COURAGE TO
2 TAKE A MAN OUTSIDE OF TOWN, AND WE VOTED, AND WE
3 HUNG HIM."

4 AND THE STRANGER SAID, "NO, I WON'T HAVE
5 A DRINK WITH YOU FOR THAT."

6 HE TURNED TO WALK AWAY AND THE MEN SAID,
7 "WHY NOT?"

8 AND THE STRANGER SAID, "BECAUSE YOU
9 DIDN'T HAVE THE COURAGE NOT TO."

10 THERE IS NO MORE STRENGTH AND NO MORE
11 COURAGE THAN COMING IN WITH A DEATH VERDICT THAN
12 THERE IS IN COMING IN WITH A VERDICT OF LIFE WITHOUT
13 PAROLE. IT IS A MATTER OF DOING WHAT YOUR HEARTS
14 AND MINDS TELL YOU IN CONFORMITY WITH THE LAWS THAT
15 YOU WILL BE GIVEN BY THE COURT.

16 THERE WAS AN EDITOR A HUNDRED YEARS AGO
17 IN KANSAS. HE'S ANONYMOUS. BUT HE WROTE IN THE
18 NEWSPAPER THE SIMPLE TRUTH, THAT THERE IS SO MUCH
19 GOOD IN THE WORST OF US, AND SO MUCH BAD IN THE BEST
20 OF US, THAT WE MUST BE CAREFUL WHEN SOME OF US HAVE
21 TO JUDGE THE REST OF US.

22 AND THOMAS JEFFERSON 200 YEARS AGO
23 SAID: "UNTIL I AM CONVINCED OF THE INFALLIBILITY OF
24 MAN, I WILL NOT SUPPORT THE PENALTY OF DEATH."

25 AND THERE IS NO INFALLIBILITY OF MAN.

26 WE ARE ALL FALLIBLE.

27 JOSE MENENDEZ AND KITTY MENENDEZ WERE
28 FALLIBLE. LYLE MENENDEZ AND ERIK MENENDEZ ARE

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1 FALLIBLE. WE, AS ATTORNEYS, ARE FALLIBLE; AND SO
2 ARE JURORS, AND ALL OF US IN ALL CAPACITIES OF OUR
3 LIFE. THERE IS NO INFALLIBILITY.

4 YES, WE HAVE A DEATH PENALTY IN
5 CALIFORNIA. WE HAVE STATUTES THAT TALK ABOUT WHEN
6 IT CAN BE IMPOSED AND HOW YOU SHOULD CONSIDER
7 IMPOSING IT. AND WE TRY, BECAUSE OF THE KNOWLEDGE
8 THAT WE LEARN FROM THOMAS JEFFERSON AND OTHER
9 PHILOSOPHERS AND STATESMEN, TO GO VERY SLOW WHEN WE
10 DECIDE: SHOULD SOMEONE LIVE OR DIE AT THE HANDS OF
11 THE STATE?

12 WE TRY OUR BEST TO HAVE SAFEGUARDS, SUCH
13 AS PROTECTING AGAINST HALF TRUTHS.

14 MR. CONN STATED THAT LYLE MENENDEZ TOLD
15 DR. VICARY HE MISSED HIS PARENTS AND HE MISSED HIS
16 DOG. AND THAT'S A HALF TRUTH, BECAUSE THE WHOLE
17 TRUTH -- AND YOU KNOW THIS FROM LISTENING TO THE
18 EVIDENCE -- IS IN THAT WEEK AFTER THESE KILLINGS HE
19 LOST 20 POUNDS WHEN HE WAS AT TERRY BARALT'S. IN
20 PUBLIC HE KEPT UP A FACE OF BEING STOIC, OF BEING,

21 AS HIS FATHER HAD TOLD HIM, QUOTE, A MAN, UNQUOTE.
22 BUT IN PRIVATE HE CRIED ALL NIGHT, ACCORDING TO
23 JAMIE PISARCIK, WHO WAS A PEOPLE'S WITNESS, NOT A
24 DEFENSE WITNESS. AND HE WAS SO MUCH A WRECK OVER
25 THIS THAT THAT'S THE REASON THAT SHE BROKE UP WITH
26 HIM IN JANUARY OF 1990. SHE COULDN'T TAKE IT
27 ANYMORE.
28 AND THE REST OF THE TRUTH, AS WE KNOW

54943

1 IT, IS THAT LYLE MENENDEZ WAS TRAINED BY HIS PARENTS
2 AS A CHILD: DON'T SHOW EMOTION. DON'T CRY. BE A
3 MAN. HE WAS FEAR-TRAINED AT AGE FIVE.
4 PETER CANO HAS TOLD US THAT JUST A LOOK
5 FROM HIS FATHER CAUSED HIM TO WET HIS PANTS ON THE
6 FLOOR; AND IMMEDIATELY IN RETALIATION FOR THAT, JOSE
7 MENENDEZ TOOK HIM INTO THE ROOM AND PUNCHED HIM SO
8 HARD IN THE CHEST AREA THAT HE LOST HIS WIND. THIS
9 IS A FIVE-YEAR-OLD CHILD.
10 I BECAME INCENSED WHEN MR. CONN Demeaned
11 THE ARGUMENT THAT TERRI TOWERY MADE TO YOU THIS
12 MORNING ABOUT LYLE MENENDEZ AND WHAT THESE WITNESSES
13 HAD TO SAY IN HIS CHILDHOOD AND TOSSED IT ALL OFF AS
14 SAYING: "WELL, WE'RE NOT KILLING A CHILD. WE'RE
15 KILLING THE MAN THAT SITS BEFORE YOU NOW."

16 BUT IT'S BEEN SAID, AND WE ALL KNOW IT,
17 THAT THE CHILD IS THE FATHER OF THE MAN. WHAT THAT
18 MEANS IS, OUR CHILDHOOD AND WHAT HAPPENED TO US IS
19 NEVER TOTALLY LEFT BEHIND. IT'S ALWAYS A PART OF
20 US. IT IS A SHAPING PART OF US.
21 THAT'S WHY THESE INCIDENTS WERE BROUGHT
22 TO YOU; NOT TO SAY: TAKE ONE INCIDENT HERE AND ONE
23 INCIDENT THERE THAT HAPPENED TO HIM, AND SAY FOR
24 THAT HIS LIFE SHOULD BE SPARED. BUT THE TOTALITY OF
25 HIS CHILDHOOD AND WHAT HE LEARNED IN HIS CHILDHOOD,
26 AND WHAT HE WAS NOT GIVEN THE OPPORTUNITY TO LEARN
27 IN HIS CHILDHOOD.
28 AND THE OTHER ASPECT THAT WE LEARNED

54944

1 FROM THOMAS JEFFERSON AND THE PHILOSOPHERS IS THAT
2 THE DEATH PENALTY IS NOT JUST GIVEN FOR
3 RETRIBUTION. THERE IS MORE TO LOOK AT THAN SIMPLY
4 THE FACTS OF THE CRIME FOR WHICH A PERSON HAS BEEN
5 CONVICTED. WE HAVE TO LOOK AT THE PERSON TOO.
6 HOW MANY TIMES DID MR. CONN USE THE WORD
7 "SLAUGHTERED" YESTERDAY AND TODAY IN TRYING TO GET
8 YOU TO BRING BACK VERDICTS OF DEATH AS RETRIBUTION
9 FOR WHAT OCCURRED HERE?
10 AND HE SAID THAT THE DEFENSE DOESN'T

11 FAVOR THE LAW, THAT WE WANT YOU TO LOOK AWAY FROM
12 THE LAW. THAT'S NOT TRUE. THE LAW IS THE
13 SAFEGUARD, THE BEST SAFEGUARD THAT WE HAVE TO LOOK
14 TO TO TRY TO DETERMINE WHEN SOMEONE SHOULD LIVE AND
15 WHEN SOMEONE SHOULD DIE.

16 AND, WELL, YOU LISTEN TO ALL THE
17 EVIDENCE AND YOU LOOK IN YOUR HEARTS AND YOU LOOK AT
18 THE LAW, AND YOU EACH COME TO YOUR OWN CONCLUSION.
19 WE FAVOR THE LAW AS IT REALLY IS, AND NOT AS
20 MR. CONN SEEMS TO WISH THAT IT WERE. AND YOU'RE
21 GOING TO HAVE THE OPPORTUNITY TO SEE THE LAW.

22 THE JUDGE WILL READ YOU THE LAW, AND
23 HE'S GOING TO LET YOU TAKE IT INTO THE JURY ROOM SO
24 YOU'LL HAVE IT THERE TO SEE. IT REALLY BOILS DOWN
25 TO TWO VERY IMPORTANT PARTS. ONE IS AN INSTRUCTION
26 THAT WILL HAVE A NUMBER, PROBABLY CALJIC 8.85. BUT
27 IT GOES THROUGH THESE CIRCUMSTANCES IN AGGRAVATION
28 AND IN MITIGATION THAT YOU'VE HEARD SOMETHING ABOUT

54945

1 OVER THE LAST TWO DAYS.

2 AND ONE OF THOSE IS FACTOR A THAT
3 MR. CONN HAS TALKED ABOUT. IT'S THREE LINES.

4 "THE CIRCUMSTANCES OF THE CRIME
5 OF WHICH THE DEFENDANT WAS CONVICTED

6 IN THE PRESENT PROCEEDING AND THE
7 EXISTENCE OF ANY SPECIAL CIRCUMSTANCES
8 FOUND TO BE TRUE."

9 IT IS THERE. IT IS ONE FACTOR IN FOUR
10 PAGES, AND IT ALONE HAS NO MORE VALUE THAN ANY OF
11 THE REST OF THESE FACTORS THAT YOU'LL SEE WHEN YOU
12 READ THE LAW.

13 FACTOR B IS THE PRESENCE OR ABSENCE OF
14 CRIMINAL ACTIVITY BY THE DEFENDANT THAT MS. TOWERY
15 TALKED ABOUT. IT'S HERE. IT'S EQUAL TO A. IT'S
16 THERE FOR YOUR CONSIDERATION, NOT SOMETHING MADE UP
17 BY SOME WIMPY DEFENSE COUNSEL TRYING TO FIND
18 SYMPATHY THAT IS UNDESERVED. IT IS HERE, AND IN THE
19 LAW THAT YOU HAVE SAID YOU WANT TO LOOK TO IN
20 DETERMINING WHAT IS THE RIGHT THING TO DO.

21 AND NEXT TO THAT IS FACTOR C, THE
22 PRESENCE OR ABSENCE OF A PRIOR ADULT FELONY
23 CONVICTION. IT'S THERE.

24 AND FACTOR D, THE AGE OF THE DEFENDANT
25 AT THE TIME OF THE CRIME. THIS IS NOT SOMETHING
26 MADE UP. THIS IS HERE FOR CONSIDERATION. IT IS A
27 FACTOR.

28 AND ALL THE OTHER FACTORS THAT WE'VE

1 TALKED ABOUT, SOME APPLY, SOME DO NOT.

2 THE FINAL ONE, FACTOR K, THAT YOU'VE
3 HEARD ABOUT:

4 "ANY OTHER CIRCUMSTANCE WHICH
5 EXTENUATES THE GRAVITY OF THE CRIME,
6 EVEN THOUGH IT IS NOT A LEGAL EXCUSE
7 FOR THE CRIME, AND ANY SYMPATHETIC OR
8 OTHER ASPECT OF THE DEFENDANT'S
9 CHARACTER OR RECORD."

10 THAT'S HERE. THAT'S IN THE LAW, TO BE
11 CONSIDERED IN LIFE AND DEATH CONSIDERATIONS.

12 "ANY OTHER SYMPATHETIC OR OTHER
13 ASPECT OF THE DEFENDANTS'S CHARACTER
14 OR RECORD THAT THE DEFENDANT OFFERS AS
15 A BASIS FOR A SENTENCE LESS THAN
16 DEATH, WHETHER OR NOT RELATED TO THE
17 OFFENSE FOR WHICH HE IS ON TRIAL."

18 WHAT MS. TOWERY WAS TELLING YOU IS THAT,
19 IN THIS CASE, WHAT WE HAVE TOLD YOU ABOUT THE
20 CHILDHOOD AND LIFE OF LYLE MENENDEZ IS INDEED
21 RELATED. IT IS INDEED A PART OF HIS LIFE. THE
22 VALUES THAT HE LEARNED AS A CHILD: WINNING IS
23 EVERYTHING, THE END JUSTIFIES THE MEANS. YOU KNOW
24 WHO TAUGHT THOSE TO HIM. IT WAS HIS FATHER AND HIS
25 MOTHER WHO TAUGHT THOSE VERY VALUES TO THEIR SONS,
26 AND WHO ARE INDEED THE PEOPLE WHO ARE NOW DECEASED.

27 THIS IS NOT VIOLENCE AT STRANGERS
28 UNDIRECTED. THE PEOPLE WHO DIED IN THIS CASE ARE

1 THE VERY ONES WHO TAUGHT THE VALUES TO THEIR SONS
2 AND WHO HAD THAT RESPONSIBILITY AND THAT OBLIGATION
3 OF PARENTHOOD, TO TEACH THEIR CHILDREN.

4 THIS IS MR. CONN'S SCALE OF JUSTICE THAT
5 HE HAS PRESENTED FOR TWO DAYS TO JUSTIFY SEEKING A
6 LIFE FOR A LIFE IN THIS CASE. IS IT FAIR, GIVEN THE
7 LAW? IS THIS A FAIR REPRESENTATION TO YOU AS JURORS
8 OF THE LAW OF 8.85 AND THE FACTORS IN AGGRAVATION
9 AND MITIGATION AS I'VE READ IT TO YOU, AND AS THE
10 JUDGE WILL READ IT TO YOU, AND AS YOU WILL HAVE?
11 THAT HIS DESIRE AS TO WHAT MITIGATION IS, HIS
12 DEFINITION IS: TOO MUCH TENNIS AND NOT ENOUGH HUGS?

13 WHERE IS THIS FACTOR IN HIS SCALE? NO
14 OTHER VIOLENCE. HE DIDN'T PUT THAT ON THE SCALE.
15 THE LAW PUTS IT ON THE SCALE. IT'S EXTREMELY
16 IMPORTANT. THIS DOESN'T ONLY MEAN NO OTHER VIOLENCE
17 BEFORE THESE HOMICIDE OCCURRED, IT MEANS NO OTHER
18 VIOLENCE BEFORE OR SINCE. THERE IS NOTHING IN LYLE
19 MENENDEZ' 28 YEARS OF ANOTHER ACT OF VIOLENCE,
20 BEFORE THIS KILLING OCCURRED, WHEN HE WAS 21, OR
21 AFTER, DURING THE TIME HE HAS BEEN IN JAIL.

22 AND THAT'S AN IMPORTANT FACTOR BECAUSE
23 IT OUGHT TO BE. IT IS SOMETHING THAT EVERY JUROR

24 WANTS TO KNOW ABOUT WHEN SOMEBODY IS BROUGHT BEFORE
25 THEM FOR PUNISHMENT. WHAT ELSE HAS HE DONE IN HIS
26 LIFE? HAS HE HURT OTHER PEOPLE? DID HE HURT
27 SOMEBODY AND LEARN THE PRICE OF IT, AND THEN COME
28 BACK AND HURT SOMEONE AGAIN?

54948

1 IF THERE WERE ANY SINGLE FACTOR THAT YOU
2 COULD LOOK AT IN A CAPITAL CASE TO GIVE A LOT OF
3 WEIGHT TO AND A LOT OF CONSIDERATION, IT IS PROBABLY
4 THAT ONE, COMPARED TO THE CASES WHERE PEOPLE HAVE
5 LIVED VIOLENT LIVES ALL THEIR LIFE.

6 REMEMBER, IT IS NOT THE DEFENSE WHO
7 FIRST BROUGHT UP OTHER CASES FOR YOUR CONSIDERATION
8 TO COMPARE WITH THIS ONE. IT WAS MR. CONN,
9 YESTERDAY, IN TALKING ABOUT HYPOTHETICAL OTHER CASES
10 AND TRYING TO TELL YOU THAT THIS WAS THE WORST CASE
11 IN THE HISTORY OF HUMANITY.

12 AND YET, IN THIS CASE THERE IS NO OTHER
13 VIOLENCE EVER ON BEHALF OF LYLE MENENDEZ. IT'S NOT
14 ON THE SCALE. AND IF IN FAIRNESS, IF THIS IS A FAIR
15 PROCEEDING IN WHICH YOU ARE BEING TOLD EVERYTHING,
16 AND GIVEN THE LAW AS IT FAIRLY IS, SHOULD THAT NOT
17 BE ON THE SCALE, INSTEAD OF TOO MUCH TENNIS AND NOT
18 ENOUGH HUGS?

19 WHAT ABOUT NO PRIOR FELONIES? I DON'T
20 SEE THAT ON THIS SCALE EITHER. BUT IT'S IN THE LAW,
21 AS YOU'LL BE GIVEN IT. IT IS A FACTOR IN AND OF
22 ITSELF FOR CONSIDERATION. THIS IS NOT A PERSON WHO
23 HAS BEEN TO PRISON AND LEARNED HIS LESSON AND COME
24 BACK OUT. IT IS WORTHY OF CONSIDERATION, NOT
25 BECAUSE I SAY SO. FORGET THAT. I AM A LAWYER. I'M
26 AN ADVOCATE. BECAUSE THE LAW RECOGNIZES THE VALUE
27 OF HUMAN LIFE AND THE DECISION YOU'RE GOING TO MAKE,
28 BECAUSE THE LAW SAYS IT HAS WEIGHT AND SHOULD BE

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1 CONSIDERED.
2 WHAT ABOUT AGE AND LACK OF MATURITY?
3 THAT TOO IS WORTHY OF CONSIDERATION AND OF BEING
4 WEIGHED, BECAUSE THE LAW SAYS THAT AGE IS AN
5 IMPORTANT FACTOR AND MATURITY AND LACK OF MATURITY.
6 AND MS. TOWERY EXPLAINED TO YOU WHY LYLE MENENDEZ AT
7 AGE 21 HAD A TOTAL LACK OF MATURITY. LOOK AT WHO
8 HIS FRIENDS THAT HE FINALLY WAS ABLE TO TRY TO MAKE
9 TURNED OUT TO BE. LOOK AT HIS GIRLFRIEND, JAMIE
10 PISARCIK. HE HAD NO ABILITIES TO MAKE CHOICES IN
11 LIFE, BECAUSE THOSE CHOICES HAD ALWAYS BEEN MADE FOR
12 HIM. HE DIDN'T HAVE THE MATURITY AT AGE 21 THAT WE
13 CAN EXPECT FROM SOMEONE WHO HAD BEEN ALLOWED TO LIVE

14 HIS LIFE.

15 YOU KNOW, THE ONE THAT'S MOST OFFENSIVE
16 IS THIS "TOO MUCH TENNIS." IT'S NOT TOO MUCH TENNIS
17 THAT WAS THE PROBLEM. IT'S TOO MUCH PRESSURE. TOO
18 MUCH PRESSURE TO BE NUMBER ONE FROM THE TIME HE WAS
19 A LITTLE CHILD. TOO MUCH PHILOSOPHY THAT WINNING IS
20 EVERYTHING AND THE END JUSTIFIES THE MEANS, NO
21 MATTER WHAT IT MIGHT BE. THAT'S FACTOR K. THAT'S
22 THE REASON THAT THESE WITNESSES CAME IN FOR LYLE
23 MENENDEZ AND TESTIFIED TO YOU; WHY A SOCCER COACH
24 WOULD COME ACROSS THE COUNTRY.

25 CAN YOU IMAGINE HOW EXCEPTIONAL JOSE
26 MENENDEZ' BEHAVIOR MUST HAVE BEEN FOR A SOCCER COACH
27 TO REMEMBER IT AND COME HERE 18 YEARS LATER?
28 AND THIS IS PRESSURE THAT WAS PUT ON AS

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1 A CHILD. IT'S ONE THING TO BE AN ATHLETE; TENNIS,
2 TEAM SPORTS, WHATEVER IT MIGHT BE. IT'S ONE THING
3 TO BE AN ATHLETE, AND IN COLLEGE PERHAPS TO PLAY FOR
4 A COACH LIKE BOBBIE KNIGHT, WHO'S KNOWN AS A STRICT
5 DISCIPLINARIAN AND WANTS TO WIN. BUT BY THAT TIME
6 YOU'RE FORMED AND YOU HAVE SOME SENSE OF WHO YOU
7 ARE. YOU KNOW YOURSELF AS A PERSON AND YOU KNOW
8 YOUR VALUES.

9 AND EVEN IN HIGH SCHOOL, SOMETIMES THERE
10 WILL BE A COACH THAT WILL PERHAPS VALUE WINNING TOO
11 MUCH. BUT EVEN THEN, AT 15 AND 16, YOU'RE BEGINNING
12 TO HAVE A PRETTY GOOD IDEA OF WHO YOU ARE AND WHAT
13 LIFE SHOULD BE.

14 BUT YOU KNOW, AT AGE NINE, WHEN YOU'RE
15 PLAYING A KIDS' TENNIS TOURNAMENT AND YOU'RE TOLD TO
16 CHEAT, BECAUSE WINNING IS EVERYTHING AND THE END
17 JUSTIFIES THE MEANS, AND WHEN YOUR FATHER INTERFERES
18 AND TRIES TO GET AN OPPONENT DISQUALIFIED, AS BRAD
19 WARNER TOLD YOU; AND WHEN YOU LOSE AND YOUR FATHER
20 KICKS YOU OUT OF THE CAR AND SAYS: "WALK HOME,"
21 YOU'RE NOT EQUIPPED TO TAKE ON THAT KIND PRESSURE
22 WHEN YOU'RE NINE YEARS OF AGE AND TEN YEARS OF AGE.

23 YOU'RE NOT EQUIPPED TO DECIDE A LIFE IN
24 WHICH YOU'VE GOT TO WIN, BECAUSE IF YOU DON'T WIN,
25 IF YOU DON'T BRING HOME THE TROPHY, YOU'RE NOT
26 LOVED, YOU'RE NOT VALUABLE.

27 YOU KNOW, IF MRS. MENENDEZ, MARY LOUISE
28 MENENDEZ, IF SHE HAD LISTENED TO HER GOOD FRIEND,

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1 FAITH GOLDSMITH, ABOUT THE VALUES THAT SHE WAS
2 INSTILLING AND WHETHER OR NOT SHE SHOULD KEEP
3 PUSHING LYLE MENENDEZ INTO THE COLD WATER. IT'S NOT

4 ABOUT COLD WATER. AND IT'S NOT ABOUT WHETHER GIRLS
5 WERE SWIMMING TOO. IT'S ABOUT THE COACH
6 SAYING: "DON'T KEEP PUSHING HIM IN. CAN'T YOU SEE
7 HE'S COLD?"

8 AND MRS. MENENDEZ (SIC) SAYS: "WHAT DO
9 YOU WANT, AN OLYMPIC CHAMPION?" AND MRS. MENENDEZ
10 SAYS, "YES, OF COURSE."

11 IF THEY'D LISTENED TO CARLOS BARALT
12 TELLING THEM THAT THESE VALUES ARE WRONG. IF
13 MRS. OR MR. MENENDEZ HAD LISTENED TO ANY OF THE
14 PEOPLE WHO SAW WHAT WAS HAPPENING, SAW THE
15 DESTRUCTION OF THE SOUL, THE DESTRUCTION OF THE
16 HUMAN BEING BY THIS WINNING IS EVERYTHING, DO YOU
17 THINK WE'D BE HERE NOW? DO YOU THINK THIS TRAGEDY
18 WOULD HAVE OCCURRED?

19 IT MIGHT BE THAT THE WORST THING THAT
20 HAS HAPPENED IN AMERICA IN THE EIGHTIES AND NINETIES
21 IS THIS TERRIBLE THEORY THAT WINNING IS EVERYTHING;
22 THAT NO. 2 DOESN'T COUNT; THAT IF YOU DON'T WIN, YOU
23 HAVE NO VALUE. AND HEARTENINGLY, IN THE RECENT
24 SPORTS SECTION YOU'VE SEEN ARTICLES, SOMETIMES
25 EDITORIALS, BY JIM MURRAY, GOOD SPORTS WRITERS; MIKE
26 DOWNEY, SAYING: "YOU KNOW, WINNING ISN'T
27 EVERYTHING. IT'S DOING THE BEST YOU CAN. THAT'S
28 WHAT COUNTS. THAT'S WHAT'S IMPORTANT IN LIFE."

1 RECENTLY, MICKEY MANTLE DIED. THIS WAS
2 A MAN WHO WAS SHAPED BY HIS FATHER TO BE A BASEBALL
3 PLAYER, AND HE WAS A MARVELOUS BASEBALL PLAYER. HE
4 WAS IN THE HALL OF FAME, A GREAT ATHLETE, A GREAT
5 CAREER; AND HE HAD A MISERABLE LIFE AS AN ALCOHOLIC,
6 WHO ENDED UP, FROM COMPLICATIONS FROM LIVER DISEASE,
7 FROM THE ALCOHOL, IN AN UNTIMELY DEATH.

8 WINNING IS NOT EVERYTHING. LIFE AND
9 VALUES OF LIFE IS WHAT'S IMPORTANT AND WHAT PARENTS
10 TEACH CHILDREN THAT'S IMPORTANT; NOT WINNING IS
11 EVERYTHING.

12 THERE WAS A RECENT BASKETBALL TOURNAMENT
13 FOR ANY SPORTSMAN, THE NCAA, THE COLLEGE
14 CHAMPIONSHIPS IN BASKETBALL. AND KENTUCKY, WHICH IS
15 A MARVELOUS TEAM, WON. THEY BEAT SYRACUSE.
16 NATIONAL TELEVISION. LARGE AUDIENCE. GOOD GAME.
17 KENTUCKY WON.

18 AND THE COACH CAME OUT AFTERWARD, AND
19 THE COACH, JIM BOHEIN (PHONETIC) HE'S GOT KIND OF A
20 REPUTATION AS A WHINER SOMETIMES. BUT HE CAME OUT
21 AND HE SAID, "YOU KNOW, THE KIDS PLAYED GREAT. THEY
22 DIDN'T PLAY PERFECT. THEY WERE FALLIBLE, BUT THEY
23 TRIED HARD AND THEY GAVE A GOOD GAME. AND I'M PROUD
24 OF 'EM."

25 AND THEN AFTERWARD, THE COMMENTATOR -- I
26 DON'T KNOW IF IT WAS BILLY PACKER OR NOT, I DON'T
27 REMEMBER -- BUT HE CAME ON TELEVISION AND HE

28 SAID: "YOU KNOW, SYRACUSE LOST. THEY WERE NO. 2,

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1 NO. 2 OUT OF 64 TEAMS, AND I HOPE THEIR MOM AND
2 THEIR DAD -- AND THEY GO HOME AND THEY SAY: YOU
3 KNOW, I FINISHED NO. 2 OUT OF 64," AND HE SAYS,
4 "I HOPE THEY LIFT HIM ON HIS SHOULDER AND GIVE HIM A
5 PARADE, BECAUSE LOOK HOW HARD HE TRIED AND HOW HARD
6 HE PLAYED."

7 AND THAT'S WHAT IT'S ALL ABOUT IN
8 ATHLETICS, AND THAT'S WHAT IT'S ALL ABOUT IN LIFE.
9 THAT'S THE LESSON TO BE LEARNED.

10 AND FINALLY, MAYBE WE'RE BEGINNING TO
11 LEARN THAT. MAYBE IN A YEAR OR TWO TO COME THE
12 PRESIDENT WILL CALL AT THE END OF THE WORLD SERIES
13 OR THE SUPER BOWL GAME, AND HE'LL CALL THE TEAM THAT
14 LOST AND WAS SECOND AND SAY: "I'M PROUD OF YOU.
15 YOU REALLY DID TRY. YOU DID A FINE GAME. IT'S NOT
16 REALLY WINNING IS EVERYTHING. IT'S TRYING HARD AND
17 DOING SO WELL, AND I'M PROUD OF YOU."

18 THAT'S WHAT IT OUGHT TO BE. YOU WONDER
19 IF MR. MENENDEZ OR MRS. MENENDEZ JUST ONCE
20 SAID: "SON, I'M PROUD OF YOU. YOU DIDN'T WIN, BUT
21 I'M PROUD OF YOU BECAUSE YOU TRIED HARD, AND YOU HAD
22 THE RIGHT VALUES." BUT THAT'S NOT THE WAY IT

23 WORKED. THEY NEVER DID THAT. THEY KEPT
24 SAYING: "YOU GOT TO BE NO. 1."
25 AND THEN THEY THREW HIM INTO PRINCETON
26 UNIVERSITY. ALL OF A SUDDEN HIS TENNIS WAS GONE.
27 ROBBIE CLOUSE WAS THREATENED AND GONE, AND NOW ALL
28 OF A SUDDEN HE'S CHANGING GEARS, AND YOU'RE GOING TO

54954

1 GO TO PRINCETON, BECAUSE THAT'S WHAT DAD WANTS YOU
2 TO DO. THAT'S PRESTIGIOUS. YOU WILL GO TO
3 PRINCETON.

4 NOT LYLE MENENDEZ' IDEA. TERRY BARALT,
5 CARLOS BARALT, THEY TOLD THEM: "HE CAN'T DO IT.
6 YOU'VE SPENT ALL HIS TIME ON TENNIS. YOU'VE TAKEN
7 ALL THAT TIME TO DO HIS WORK. HE CAN'T DO IT. HE'S
8 DESIGNED TO FAIL."

9 BUT YOU'VE GOT TO BE NO. 1. YOU'VE GOT
10 TO MAKE IT. YOU'VE GOT TO SUCCEED. YOU'VE GOT TO
11 MAKE IT THROUGH PRINCETON BECAUSE THAT'S THE
12 MENENDEZ WAY.

13 WHEN YOU LOOK AT THAT, YOU LOOK AT ALL
14 THESE FACTORS THAT THE LAW SAYS ARE TO BE LOOKED AT
15 AND WEIGHED AND CONSIDERED, BUT TOO MUCH PRESSURE TO
16 BE NO. 1, THAT K-FACTOR IS EXTREMELY IMPORTANT,
17 BECAUSE THAT'S WHAT SNAPPED.

18 IF MR. AND MRS. MENENDEZ HAD TAUGHT HIM
19 DIFFERENT VALUES, DO YOU THINK THIS WOULD HAVE
20 HAPPENED?
21 YESTERDAY, BECAUSE THESE THINGS WERE NOT
22 PUT UP ON THE BOARD -- BUT THE DISTRICT ATTORNEY
23 CERTAINLY KNEW THAT THESE WERE IMPORTANT AND A PART
24 OF THE LAW -- HE KEPT HARPING ON THE FACTS OF THE
25 CRIME, AND THEN HE PULLED THE TRUMP. HE BROUGHT OUT
26 THE X-FACTOR THAT ISN'T PART OF THE LAW. TODAY HE
27 RETREATED FROM IT. BUT YESTERDAY HE BROUGHT OUT THE
28 REAL ISSUE THAT HE WANTED TO BRING OUT.

54955

1 WEALTH. AND YESTERDAY HE TOLD YOU ALSO,
2 BUT SAID: LOOK, IF YOU'VE GOT MONEY, IT DOESN'T
3 COUNT. YOU CAN'T HAVE HURT, YOU CAN'T HAVE
4 MITIGATION, BECAUSE THEY WERE WEALTHY AND THEY
5 PLAYED IN A TENNIS CLUB.
6 BECAUSE LYLE MENENDEZ DROVE HIS
7 GIRLFRIEND IN AN ALFA ROM -- ANYWAY, A WEALTHY CAR
8 OF SOME KIND -- DOESN'T MAKE ANY DIFFERENCE IF
9 YOU'RE WITH YOUR GIRLFRIEND IN A CHEVROLET OR AN
10 ALFA ROMEO. IT DOESN'T MAKE A BIT OF DIFFERENCE FOR
11 YOUR NEED AND FOR THE GIRLFRIEND THAT YOU HAVE AND
12 FOR THE HELP YOU NEED.

13 BUT WE HEARD ABOUT COUNTRY CLUBS, AND WE
14 HEARD ABOUT WEALTH, AND WE HEARD ABOUT THE FACT THAT
15 IF YOU'RE WEALTHY, THEN YOU SHOULD GIVE A DEATH
16 PENALTY VERDICT, BECAUSE MITIGATION SHOULD BE
17 RESERVED ONLY FOR PEOPLE OF SOUTH CENTRAL
18 LOS ANGELES OR EAST L.A.

19 YOU CAN HURT WHEN YOU'RE WEALTHY. YOU
20 CAN HURT FROM WHAT YOUR PARENTS TEACH YOU, JUST LIKE
21 YOU CAN ANYPLACE ELSE IN LIFE.

22 THERE WAS A VERY WONDERFUL AND SAD MOVIE
23 SOME YEARS AGO. IT WAS CALLED DEAD POET'S SOCIETY,
24 I THINK. BUT IT DEALT WITH A FAIRLY UPPER CRUST KID
25 GOING TO A PRIVATE SCHOOL. ROBIN WILLIAMS WAS A
26 TEACHER, AND THE MAIN STORY WAS ABOUT HIM, BUT THAT
27 WASN'T WHAT REALLY GOT TO ME. IT WAS ABOUT A KID
28 WHO WAS IN SENIOR YEAR IN HIGH SCHOOL, AND WHAT HE

54956

1 REALLY WANTED WAS TO ACT IN THE SCHOOL PLAY AND
2 MAYBE SEE WHERE IT TOOK HIM. HE WANTED A LIFE OF
3 HIS OWN. AND HIS FATHER WAS A HARD-CHARGING
4 BUSINESSMAN WHO THOUGHT THIS WAS NONSENSE, AND THAT
5 THE ONLY THING THAT COUNTED WAS BUSINESS AND MONEY
6 AND SUCCESS, AND PREVENTED HIM FROM HAVING THE LIFE
7 OF HIS OWN, AND HAVING REAL JOY, AND TAKING PART IN

8 THE PLAY.

9 AND AT THE END THAT YOUNG MAN FOUND A
10 FAMILY GUN AND KILLED HIMSELF.

11 NOW, IN THAT CASE IT WAS A YOUNG MAN,
12 ABOUT 18. HE'S THE ONE WHO WAS DEAD. AND HIS
13 FATHER HAD LIFE WITHOUT PAROLE IN THE SENSE OF
14 KNOWING WHAT HE HAD DONE AND WHAT HE HAD BROUGHT
15 ABOUT.

16 BUT THE POINT ISN'T HOW THE HARM IS
17 DONE, THE POINT IS THAT AS LONG AS YOU'RE GOING TO
18 PUT TOO MUCH PRESSURE ON A KID AND SAY: YOU'VE GOT
19 TO BE NO. 1, AND NOTHING ELSE COUNTS, TREMENDOUS
20 HARM IS THE RESULT. AND IT MIGHT BE INWARD. AND IT
21 MIGHT BE LIKE MICKEY MANTLE, WITH A FAILED LIFE,
22 EVEN THOUGH HE WAS SUCCESSFUL IN ONE ASPECT OF
23 ATHLETICS, OR IT MIGHT BE OUTWARDLY THAT SOMEONE
24 ELSE'S HURT.

25 BUT ALWAYS, WHEN THAT'S THE PHILOSOPHY,
26 SOMEONE IS HURT. IN THIS CASE JOSE MENENDEZ WAS
27 HURT. MRS. MENENDEZ WAS HURT. THEIR FAMILY WAS
28 HURT. LYLE AND ERIK MENENDEZ ARE HURT. AND THE

54957

1 POINT ISN'T THAT IT WAS DIRECTED AT SOMEBODY ELSE,
2 THIS TRAGEDY, RATHER THAN AT HIMSELF. THE POINT IS

3 THAT THE TRAGEDY WAS CAUSED BY THE PARENTS,
4 WELL-MEANING OR NOT, CAUSING THIS PHILOSOPHY AND
5 THIS PRESSURE.

6 AND NOW, AS IS RIGHT FROM YOUR VERDICT,
7 EITHER OF TWO VERDICTS CAN BE GIVEN UNDER THE LAW;
8 LIFE WITHOUT PAROLE, INDEED A TERRIBLE PUNISHMENT;
9 OR DEATH. BUT YOU'VE GOT TO CONSIDER UNDER THE LAW
10 ALL OF THESE THINGS THAT HAPPENED AND NOT JUST
11 PICTURES OF THE CRIME. AND WEALTH, PRIVILEGE,
12 OPPORTUNITIES, WHATEVER THEY WERE, IT'S NOT A
13 FACTOR. IT'S A NOTHING. IT DOESN'T COUNT. IT
14 DOESN'T BELONG HERE.

15 WHAT DOES BELONG HERE IS THE LAW THAT
16 YOU'RE GOING TO BE GIVEN BY THE COURT AND AS I'VE
17 READ TO YOU.

18 YOU HEARD YESTERDAY FROM DAVID CONN
19 AGAIN THAT THIS WAS A TERRIBLE CRIME. NOBODY DOUBTS
20 THAT. EVERY SPECIAL CIRCUMSTANCE MURDER THAT YOU
21 CAN CONCEIVE OF IS A TERRIBLE CRIME. ANY DOUBLE
22 MURDER, CAN YOU CONCEIVE THAT THAT WOULD NOT BE A
23 TERRIBLE CRIME? ANY DOUBLE MURDER, CAN YOU CONCEIVE
24 THAT PEOPLE WOULD NOT BE HURT BY IT, THOSE WHO LOVED
25 THOSE WHO DIED? THAT'S NOT WHAT'S INVOLVED HERE.
26 WE'RE PAST THAT. WE KNOW THAT'S HERE IN ANY CASE.

27 BUT THE LAW DOESN'T SAY BECAUSE THERE
28 WAS TERRIBLE HARM DONE, BECAUSE THERE WAS A DOUBLE

1 MURDER, BECAUSE PEOPLE HAVE BEEN HURT, THAT IT
2 PREFERS DEATH. IT SAYS START AT THAT POINT, AND NOW
3 SEE WHAT'S THERE AND WEIGH EVERYTHING THAT IS BEFORE
4 YOU.

5 HE SAID YESTERDAY WITH A MYTHICAL CASE
6 IN HIS COMPARISON, HE SAID: WHAT IF IT WAS A
7 ROBBERY/MURDER IN LIKE A 7-ELEVEN OR A STORE, AND
8 THE CLERK WAS KILLED BECAUSE HE COULD IDENTIFY OR
9 SHE COULD IDENTIFY THE ROBBER. AND HE SAID: WELL,
10 THAT WOULDN'T BE AS BAD AS THIS CASE IS.

11 DO YOU THINK IF HE WERE PROSECUTING A
12 MONTH FROM NOW A ROBBERY/MURDER OF THAT TYPE WHERE A
13 CLERK, A YOUNG WOMAN CLERK, HAD BEEN KILLED IN ORDER
14 TO PREVENT IDENTIFICATION OF THE ROBBER, THAT HE
15 WOULDN'T BE ARGUING TO A JURY LIKE YOU THAT THAT IS
16 THE WORST CRIME THAT HE'S EVER SEEN -- AND LOOK AT
17 ALL THE AGGRAVATION -- THAT HE WOULDN'T HAVE A
18 PICTURE OF THE CLERK LYING ON THE FLOOR OF THE
19 STORE, AND THAT HE WOULDN'T BRING IN THE PARENTS OF
20 THAT YOUNG LADY AND THE HUSBAND, IF SHE WAS MARRIED,
21 AND THE CHILDREN THAT WERE HURT BY THAT CRIME?

22 YOU CAN'T JUST COMPARE THIS CASE THAT IS
23 BEFORE YOU WITH MYTHICAL CASES SOME PLACE ELSE AND
24 SAY: THIS IS THE WORST CRIME EVER, AND EVERYTHING
25 ELSE IS IRRELEVANT AND INSIGNIFICANT.

26 IF HE WERE PROSECUTING SUSAN SMITH IN
27 SOUTH CAROLINA, WHO DROVE HER TWO CHILDREN INTO A
28 LAKE AND DROWNED THEM AND THEN PRETENDED NOT TO HAVE

54959

1 ANYTHING TO DO WITH IT -- TWO CHILDREN. DO YOU
2 THINK THAT HE WOULD HAVE A BOARD UP THERE SAYING:
3 SOMEONE KILLED THEIR MOTHER, THAT'S WORSE? YOU KNOW
4 HE WOULDN'T.

5 YOU SEE, YOU CAN MAKE UP ANY NUMBER OF
6 FACTS FROM A PARTICULAR CRIME, WHETHER IT'S THIS ONE
7 OR ANY OTHER, AND YOU CAN PUT THEM DOWN THERE AND
8 YOU CAN SAY: FIVE, SIX, OR SEVEN, IT DOESN'T MAKE
9 ANY DIFFERENCE, SAY, LOOK AT THE AGGRAVATION. THIS
10 IS THE WORST CASE YOU WILL EVER HEAR.

11 AND THAT'S WHAT HE'S DONE HERE. BUT YOU
12 CAN'T, IN A VACUUM, COMPARE CASES LIKE THAT. THAT
13 IS WHY THE LAW HAS THESE SAFEGUARDS AND HAS THAT
14 LIST OF ALL THE THINGS THAT YOU CAN TAKE INTO
15 ACCOUNT: THAT CRIME THAT HAS BEEN COMMITTED, THE
16 SPECIAL CIRCUMSTANCES, THAT'S JUST ONE SMALL PART,
17 THREE LINES, AND ALL THE REST HAS TO BE CONSIDERED
18 TOO.

19 THE BACKGROUND OF THE ACCUSED. WHAT
20 ELSE HAS HE DONE THAT'S VIOLENT? WHAT ELSE HAS HE

21 DONE THAT'S A FELONY? WHAT IS HIS AGE? WHAT IS HIS
22 MATURITY? WHAT KIND OF PRESSURES HAS BEEN PUT ON
23 HIM? ALL THOSE THINGS GO INTO THIS. AND THEY MUST
24 GO INTO IT UNDER THE LAW.
25 YOU KNOW, WE DON'T NEED, AND LYLE
26 MENENDEZ DID NOT CALL, ANY PSYCHIATRIST,
27 PSYCHOLOGISTS TO SAY THAT THEY WERE HURT, THEY WERE
28 DAMAGED BY THIS TOO MUCH PRESSURE TO BE NO. 1. YOU

54960

1 KNOW THAT. WE DON'T NEED EXPERTS FOR THAT. THE
2 PEOPLE WHO SAW HARM, THEY CAME; THE COACHES, THE
3 TEACHERS, THE FAMILY, TO TELL YOU THE HARM, THE
4 PHILOSOPHY THAT WAS TAUGHT TO THEM AND THE HARM THAT
5 THAT PHILOSOPHY DID.

6 I MENTIONED THE LAW AS IT REALLY IS.
7 THE OTHER INSTRUCTION YOU'RE GOING TO BE GIVEN
8 THAT'S IMPORTANT ON THE LAW, 8.88, TALKS ABOUT
9 WEIGHING ALL THESE THINGS THAT YOU'VE HEARD ON THIS
10 OTHER INSTRUCTION. AND IT SAYS:

11 "EACH OF YOU -- NOT ALL 12 OF YOU IN
12 TOTAL.

13 "EACH OF YOU INDIVIDUALLY ARE
14 FREE TO ASSIGN WHATEVER MORAL OR
15 SYMPATHETIC VALUE YOU DEEM APPROPRIATE

16 TO EACH AND ALL OF THE VARIOUS FACTORS
17 YOU ARE PERMITTED TO CONSIDER."
18 AND THE FACTORS YOU'RE PERMITTED TO
19 CONSIDER ARE THE ONES ON THE BOARD THERE IN THE
20 INSTRUCTION. IT DOESN'T MEAN YOU MAKE UP 20
21 SUB-PARTS TO ONE OF THE FACTORS. YOU WEIGH THOSE
22 FACTORS THAT THE LAW SAYS ARE APPROPRIATE. THE
23 A-B-C-D-F-K.
24 AND IT SAYS:
25 "TO RETURN A JUDGMENT OF DEATH
26 EACH OF YOU MUST BE PERSUADED THAT THE
27 AGGRAVATING CIRCUMSTANCES ARE SO
28 SUBSTANTIAL IN COMPARISON WITH THE

54961

1 MITIGATING CIRCUMSTANCES, THAT IT
2 WARRANTS DEATH INSTEAD OF LIFE WITH
3 THE POSSIBILITY OF PAROLE."
4 IT DOES NOT SAY: IF THE AGGRAVATION
5 OUTWEIGHS THE MITIGATION, THEN THE LAW SAYS YOU VOTE
6 DEATH. THAT'S NOT WHAT IT SAYS. THE WORDS THAT
7 WERE LEFT OUT IN THE DISTRICT ATTORNEY'S ARGUMENT
8 ARE: "SO SUBSTANTIALY OUTWEIGHS;" THAT THESE
9 FACTORS ARE SO SUBSTANTIAL IN COMPARISON WITH THE
10 MITIGATING CIRCUMSTANCES, THAT IT WARRANTS DEATH.

11 THAT IS WHAT MS. TOWERY WAS SAYING, WHEN
12 IT'S RESERVED FOR THE WORST OF THE WORST, AND THE
13 LAW DOES PREFER LIFE. THAT IS WHY IT REQUIRES A LOT
14 BEFORE YOU FIND SOMEBODY SO IRREDEEMABLE, SO BAD,
15 THAT THERE IS NO ANSWER EXCEPT DEATH.

16 IN MAKING THIS DECISION, WHEN YOU EACH
17 MAKE IT, THERE'S NO PLACE TO RUN. THERE'S NO
18 ABDICATION. YOU CAN'T THINK TO YOURSELF: GOSH, WE
19 MADE ONE HARD DECISION BEFORE. AND I REALLY LIKE
20 AND RESPECT BILL OR JOE OR ANNIE, OR WHOEVER ELSE IS
21 ON THE JURY, BECAUSE THEY MAKE A LOT OF SENSE, AND
22 THEY'RE REALLY THOUGHTFUL, AND I REALLY LIKE THAT
23 PERSON. AND SO, I'M NOT GOING TO MAKE THIS
24 DECISION. I'M GOING TO VOTE THE WAY JOE OR SAM OR
25 ANNIE, OR WHOEVER YOU RESPECT, VOTES.

26 YOU CAN'T DO THAT. YOU CANNOT HIDE
27 BEHIND THE PERSON, EVEN ONE THAT YOU RESPECT AND
28 ADMIRE. THE DECISION IS THAT OF EACH OF YOU. IT

54962

1 SAYS IT THREE TIMES IN THIS INSTRUCTION: EACH OF
2 YOU MUST MAKE THIS DECISION INDEPENDENTLY IN YOUR
3 HEART, WEIGHING EVERYTHING THAT YOU'VE HEARD, AND IN
4 THE LAW, AND ONLY IF ALL 12 OF YOU HAVE EACH MADE AN
5 INDEPENDENT DECISION THAT DEATH IS THE ONLY ANSWER,

6 ONLY THEN, IS THE DEATH PENALTY PROPER.

7 JOHN DUNN SAID MANY YEARS AGO IN A

8 FAIRLY FAMOUS QUOTATION:

9 "NO MAN IS AN ISLAND ENTIRE UNTO

10 HIMSELF. EVERY MAN'S DEATH DIMINISHES

11 ME BECAUSE I AM PART OF MANKIND. ASK

12 NOT FOR WHOM THE BELL TOLLS, IT TOLLS

13 FOR THEE."

14 IT RECOGNIZES IN THE LITERATURE, AS WELL

15 AS WHAT WE HAVE HEARD SAID FROM PHILOSOPHERS AND

16 STATESMAN IN OUR LAW, THE VALUE, THE VALUE OF HUMAN

17 LIFE.

18 YOU'VE HEARD MS. TOWERY TALK ABOUT THE

19 LIFE, THE FAIRLY EMPTY LIFE, THAT LYLE MENENDEZ HAD.

20 AND YOU'VE HEARD THE EVIDENCE THAT HAS BEEN GIVEN

21 AND THE LAW. YOU ASK YOURSELF, AS YOU LOOK AT LYLE

22 MENENDEZ TODAY, IF HE SHOULD SUDDENLY FALL ON THE

23 FLOOR IN A SEIZURE FROM A HEART ATTACK OR A STROKE

24 OR WHATEVER -- BECAUSE YOUNG MEN SUFFER THIS ALSO --

25 IF HE LAY HERE ON THE FLOOR IN A CONVULSION AND

26 NEEDING ATTENTION, WOULD YOU CALL 911? WOULD YOU

27 DIRECT THE PARAMEDICS TO WHERE HE IS FOR HELP?

28 THOSE OF YOU WHO ARE RELIGIOUS, WOULD

1 YOU SAY A PRAYER FOR HIS HEALING, THAT HE'LL BE ALL
2 RIGHT? YOU WOULD NOT STAND IN THE WAY OF THE
3 PARAMEDICS, OR YOU WOULDN'T CARE AT ALL WHAT
4 HAPPENED TO LYLE MENENDEZ.

5 BUT IF YOU DO CARE, IF YOU DO ANY OF
6 THOSE THINGS, YOU'D GET OUT OF THE WAY SO HE CAN BE
7 HELPED, AND YOU WOULD CARE, DOESN'T THAT SHOW THE
8 VALUE THAT YOU'RE PLACING ON LYLE MENENDEZ' LIFE?

9 AND IF YOU CARE FROM THAT, IF HE LIVES
10 OR DIES, DO YOU REALLY THINK THAT YOU CARE SO MUCH
11 THAT LATER ON HE CAN BE TIED DOWN TO A GURNEY AND
12 KILLED BY THE STATE BY AN INJECTION? YOU KNOW NOT.

13 YOU KNOW THAT IT'S BECAUSE YOU DO VALUE
14 LYLE MENENDEZ' LIFE. WHEN YOU THINK THAT YOU WOULD
15 WANT HIM TO HAVE HELP.

16 THE ALTERNATIVE THAT YOU HAVE IS A
17 SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE
18 FOR LYLE MENENDEZ. IT MEANS IN THE YEAR 2,020, IF
19 YOU THINK OF IT, IF ANYBODY LIVES THAT LONG AND
20 LOOKS BACK AND IT'S 2,020, AND LYLE MENENDEZ WILL
21 STILL BE IN PRISON. AND THAT IS FAIR UNDER THE
22 DETERMINATION THAT YOU'VE MADE. HE'LL SPEND THE
23 REST OF HIS LIFE IN PRISON. BUT NOBODY WILL EVER
24 AGAIN SAY: LYLE MENENDEZ, YOU HAVE TO BE NO. 1.

25 I THANK YOU FOR YOUR CONSIDERATION, AND
26 I ASK FOR A LIFE WITHOUT PAROLE SENTENCE.

27 THANK YOU.

28

1 THE COURT: ALL RIGHT. THANK YOU, MR. GESSLER.

2 WE WILL TAKE A RECESS UNTIL 20 MINUTES

3 AFTER 3:00.

4 DON'T DISCUSS THE MATTER WITH ANYONE.

5 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME

6 AT 20 MINUTES AFTER 3:00.

7 (A RECESS WAS TAKEN FROM

8 3:00 P.M. UNTIL 3:20 P.M.)

9

10 THE COURT: OKAY. IN THE TRIAL, THE DEFENDANTS

11 ARE IN COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

12 AS FAR AS THE INSTRUCTIONS ARE CONCERNED, I

13 DID A COUPLE MINOR MODIFICATIONS, SO I'LL LET YOU KNOW.

14 FIRST OF ALL -- THE TWO SPECIAL

15 INSTRUCTIONS THAT WERE REQUESTED BY THE DEFENDANT, ONE

16 OF THE THEM, THE SPECIAL NO. 2, SP-2, THERE IS JUST A

17 TYPO ON THE FIRST LINE. IT SHOULD SAY "OCCURRED

18 EVIDENCE IN THIS CASE THAT," AND SAYS "THE."

19 MS. TOWERY: ARE THESE ONES THAT MR. LEVIN

20 SUBMITTED, YOUR HONOR, THAT WE'RE TALKING ABOUT?

21 THE COURT: YES. IT'S YOUR PACKET. I GAVE IT TO

22 YOU. IT'S JUST AFTER 8.85.

23 MS. TOWERY: OH, I SEE. IT'S CALLED SP-2.

24 MS. NAJERA: THE FIRST LINE SHOULD SAY "THAT"

25 INSTEAD OF "THE."

26 THE COURT: AND THEN ON 8.85 ON THE FOURTH LINE,

27 I JUST REMOVED THE WORD "PREVIOUSLY," SINCE THE

28 INSTRUCTIONS FOLLOWING IT ARE ALSO LIMITING

1 INSTRUCTIONS. SO IT DIDN'T MAKE SENSE TO HAVE THAT WORD
2 IN THERE.

3 THOSE ARE THE ONLY MODIFICATIONS.

4 OKAY. LET'S GET THE JURY OUT, PLEASE.

5

6 (THE JURY ENTERS THE COURTROOM

7 AND THE FOLLOWING PROCEEDINGS

8 WERE HELD:)

9

10 THE COURT: IN THE TRIAL, THE RECORD WILL REFLECT
11 THE DEFENDANTS ARE IN COURT WITH THEIR LAWYERS. THE
12 PEOPLE ARE PRESENT, THE JURY IS IN THE JURY BOX.

13 I WILL NOW INSTRUCT YOU ON THE LAW.

14 (READING:)

15 THE DEFENDANTS IN THIS CASE
16 HAVE BEEN FOUND GUILTY OF MURDER OF THE
17 FIRST DEGREE. THE ALLEGATION THAT THE
18 MURDER WAS COMMITTED UNDER ONE OR MORE OF
19 THE SPECIAL CIRCUMSTANCES HAS BEEN
20 SPECIALLY FOUND TO BE TRUE.

21 IT IS THE LAW OF THIS STATE
22 THAT THE PENALTY FOR A DEFENDANT FOUND
23 GUILTY OF MURDER OF THE FIRST DEGREE SHALL
24 BE DEATH OR CONFINEMENT IN THE STATE

25 PRISON FOR LIFE WITHOUT THE POSSIBILITY OF
26 PAROLE IN ANY CASE IN WHICH THE SPECIAL
27 CIRCUMSTANCES ALLEGED IN THIS CASE HAVE
28 BEEN FOUND SPECIALLY TO BE TRUE.

-10570

1 UNDER THE LAW OF THIS STATE,
2 YOU MUST NOW DETERMINE WHICH OF SAID
3 PENALTIES SHALL BE IMPOSED ON EACH
4 DEFENDANT.

5

6 YOU WILL NOW BE INSTRUCTED AS
7 TO ALL THE LAW THAT APPLIES TO THE PENALTY
8 PHASE OF THIS TRIAL.

9 YOU MUST DETERMINE WHAT THE
10 FACTS ARE FROM THE EVIDENCE RECEIVED
11 DURING THE ENTIRE TRIAL UNLESS YOU ARE
12 INSTRUCTED OTHERWISE. YOU MUST ACCEPT AND
13 FOLLOW THE LAW THAT I SHALL STATE TO YOU.
14 DISREGARD ALL OTHER INSTRUCTIONS GIVEN TO
15 YOU IN OTHER PHASES OF THIS TRIAL.

16 YOU MUST NEITHER BE
17 INFLUENCED BY BIAS OR PREJUDICE AGAINST
18 THE DEFENDANT, NOR SWAYED BY PUBLIC
19 OPINION NOR PUBLIC FEELINGS. BOTH THE
20 PEOPLE AND THE DEFENDANT HAVE A RIGHT TO

21 EXPECT THAT YOU WILL CONSIDER ALL OF THE
22 EVIDENCE, FOLLOW THE LAW, EXERCISE YOUR
23 DISCRETION CONSCIENCIOUSLY AND REACH A
24 JUST VERDICT.

25

26 AT THIS POINT I AM GOING TO REPEAT SOME OF
27 THE INSTRUCTIONS I GAVE YOU DURING THE EARLIER
28 PROCEEDINGS. AND AS COUNSEL INDICATED, ALL OF THESE

-10569

1 INSTRUCTIONS WILL BE GIVEN TO YOU. THE ONES THAT I AM
2 READING TO YOU, WILL BE GIVEN TO YOU IN THEIR WRITTEN
3 FORM.

4 (READING:)

5 IF ANY RULE, DIRECTION OR
6 IDEA IS REPEATED OR STATED IN DIFFERENT
7 WAYS IN THESE INSTRUCTIONS, NO EMPHASIS IS
8 INTENDED AND YOU MUST NOT DRAW ANY
9 INFERENCE BECAUSE OF ITS REPETITION. DO
10 NOT SINGLE OUT ANY PARTICULAR SENTENCE OR
11 ANY INDIVIDUAL POINT OR INSTRUCTION AND
12 IGNORE THE OTHERS. CONSIDER THE
13 INSTRUCTIONS AS A WHOLE AND EACH IN LIGHT
14 OF ALL THE OTHERS.

15 THE ORDER IN WHICH THE
16 INSTRUCTIONS ARE GIVEN HAS NO SIGNIFICANCE

17 AS TO THEIR RELATIVE IMPORTANCE.
18
19 STATEMENTS MADE BY THE
20 ATTORNEYS DURING THE TRIAL ARE NOT
21 EVIDENCE, ALTHOUGH IF THE ATTORNEYS HAVE
22 STIPULATED OR AGREED TO A FACT, YOU MUST
23 REGARD THAT FACT AS CONCLUSIVELY PROVED AS
24 TO THE PARTY OR PARTIES MAKING THE
25 STIPULATION.

26 IF AN OBJECTION WAS SUSTAINED
27 TO A QUESTION, DO NOT GUESS WHAT THE
28 ANSWER MIGHT HAVE BEEN. DO NOT SPECULATE

-10568

1 AS TO THE REASON FOR THE OBJECTION.
2 DO NOT ASSUME TO BE TRUE ANY
3 INSINUATION SUGGESTED BY A QUESTION ASKED
4 A WITNESS. A QUESTION IS NOT EVIDENCE AND
5 MAY BE CONSIDERED ONLY AS IT ENABLES YOU
6 TO UNDERSTAND THE ANSWER.

7 DO NOT CONSIDER FOR ANY
8 PURPOSE ANY OFFER OF EVIDENCE THAT WAS
9 REJECTED, OR ANY EVIDENCE THAT WAS
10 STRICKEN BY THE COURT; TREAT IT AS THOUGH
11 YOU HAD NEVER HEARD OF IT.
12

13 YOU MUST DECIDE ALL QUESTIONS
14 OF FACT IN THIS CASE FROM THE EVIDENCE
15 RECEIVED IN THIS TRIAL AND NOT FROM ANY
16 OTHER SOURCE.

17 YOU MUST NOT MAKE ANY
18 INDEPENDENT INVESTIGATION OF THE FACTS OR
19 THE LAW OR CONSIDER OR DISCUSS THE FACTS
20 AS TO WHICH THERE IS NO EVIDENCE. THIS
21 MEANS, FOR EXAMPLE, THAT YOU MUST NOT ON
22 YOUR OWN VISIT THE SCENE, CONDUCT
23 EXPERIMENTS, OR CONSULT REFERENCE WORKS OR
24 PERSONS FOR ADDITIONAL INFORMATION.

25 YOU MUST NOT DISCUSS THIS
26 CASE WITH ANY OTHER PERSON EXCEPT A FELLOW
27 JUROR, AND YOU MUST NOT DISCUSS THIS WITH
28 A FELLOW JUROR UNTIL THE CASE IS SUBMITTED

-10567

1 TO YOU FOR YOUR DECISION AND ONLY WHEN ALL
2 JURORS ARE PRESENT IN THE JURY ROOM.

3

4 EVIDENCE CONSISTS OF
5 TESTIMONY OF WITNESSES --

6

7 LET ME DISCUSS THAT BRIEFLY WITH YOU NOW.

8 TO EXPAND ON THAT, AND TO FOLLOW UP ON WHAT

9 I'VE ALREADY INSTRUCTED YOU AS TO YOUR CONDUCT DURING
10 DELIBERATIONS, YOU CAN ONLY DELIBERATE WHEN ALL 12
11 JURORS ARE PRESENT IN THE JURY ROOM AT THE SAME TIME.
12 WHEN YOU TAKE BREAKS OR RECESSES, WHEN
13 YOU'RE NOT IN THE JURY ROOM, YOU CANNOT DISCUSS THE CASE
14 AMONG YOURSELVES, EVEN IF ALL 12 OF YOU HAPPEN TO BE
15 PRESENT SOMEWHERE ELSE. THE ONLY TIME YOU CAN DISCUSS
16 THE CASE IS WHEN ALL 12 JURORS ARE PRESENT IN THE JURY
17 ROOM AT THE SAME TIME, AT WHICH TIME YOU MAY RESUME YOUR
18 DELIBERATIONS.

19 SO, AT RECESSES, BREAKS, DO NOT TALK ABOUT
20 THE CASE. OBVIOUSLY, AS I HAVE INSTRUCTED YOU BEFORE,
21 WHEN YOU ARE AWAY FROM DELIBERATIONS, YOU MUST NOT
22 DISCUSS THE CASE WITH ANYONE AT ALL DURING THE TIME YOU
23 REMAIN AS JURORS ON THIS CASE.

24 (READING:)

25 EVIDENCE CONSISTS OF
26 TESTIMONY OF WITNESSES, WRITINGS, MATERIAL
27 OBJECTS, OR ANYTHING PRESENTED TO THE
28 SENSES AND OFFERED TO PROVE THE EXISTENCE

-10566

1 OR NONEXISTENCE OF A FACT.

2 EVIDENCE IS EITHER DIRECT OR
3 CIRCUMSTANCIAL.

4 DIRECT EVIDENCE IS EVIDENCE

5 THAT DIRECTLY PROVES A FACT, WITHOUT THE
6 NECESSITY OF AN INFERENCE. IT IS EVIDENCE
7 WHICH BY ITSELF, IF FOUND TO BE TRUE,
8 ESTABLISHES THAT FACT.

9 CIRCUMSTANCIAL EVIDENCE IS
10 EVIDENCE THAT, IF FOUND TO BE TRUE, PROVES
11 A FACT FROM WHICH AN INFERENCE OF THE
12 EXISTENCE OF ANOTHER FACT MAY BE DRAWN.

13 AN INFERENCE IS A DEDUCTION
14 OF FACT THAT MAY LOGICALLY AND REASONABLY
15 BE DRAWN FROM ANOTHER FACT OR GROUP OF
16 FACTS ESTABLISHED BY THE EVIDENCE.

17 IT IS NOT NECESSARY THAT
18 FACTS BE PROVED BY DIRECT EVIDENCE. THEY
19 MAY BE PROVED ALSO BY CIRCUMSTANCIAL
20 EVIDENCE OR BY A COMBINATION OF DIRECT
21 EVIDENCE AND CIRCUMSTANCIAL EVIDENCE.
22 BOTH DIRECT EVIDENCE AND CIRCUMSTANCIAL
23 EVIDENCE ARE ACCEPTABLE AS A MEANS OF
24 PROOF. NEITHER IS ENTITLED TO ANY GREATER
25 WEIGHT THAN THE OTHER.

26
27 EVERY PERSON WHO TESTIFIES
28 UNDER OATH IS A WITNESS. YOU ARE THE SOLE

1 JUDGES OF THE BELIEVABILITY OF A WITNESS
2 AND THE WEIGHT TO BE GIVEN THE TESTIMONY
3 OF EACH WITNESS.

4 IN DETERMINING THE
5 BELIEVABILITY OF A WITNESS YOU MAY
6 CONSIDER EVERYTHING THAT HAS A TENDENCY IN
7 REASON TO PROVE OR DISPROVE THE
8 TRUTHFULNESS OF THE TESTIMONY OF THE
9 WITNESS, INCLUDING BUT NOT LIMITED TO ANY
10 OF THE FOLLOWING:

11 THE EXTENT OF THE OPPORTUNITY
12 OR THE ABILITY OF THE WITNESS TO SEE OR
13 HEAR OR OTHERWISE BECOME AWARE OF ANY
14 MATTER ABOUT WHICH THE WITNESS HAS
15 TESTIFIED;

16 THE ABILITY OF THE WITNESS TO
17 REMEMBER OR TO COMMUNICATE ANY MATTER
18 ABOUT WHICH THE WITNESS HAS TESTIFIED;

19 THE CHARACTER AND QUALITY OF
20 THAT TESTIMONY;

21 THE Demeanor AND MANNER OF
22 THE WITNESS WHILE TESTIFYING;

23 THE EXISTENCE OR
24 NON-EXISTENCE OF A BIAS, INTEREST, OR
25 OTHER MOTIVE;

26 EVIDENCE OF THE EXISTENCE OR
27 NONEXISTENCE OF ANY FACT TESTIFIED TO BY
28 THE WITNESS;

1 THE ATTITUDE OF THE WITNESS
2 TOWARD THIS ACTION OR TOWARD THE GIVING OF
3 TESTIMONY;

4 A STATEMENT PREVIOUSLY MADE
5 BY THE WITNESS THAT IS CONSISTENT OR
6 INCONSISTENT WITH THE TESTIMONY OF A
7 WITNESS;

8 AN ADMISSION BY THE WITNESS
9 OF UNTRUTHFULNESS.

10
11 DISCREPANCIES IN A WITNESS'
12 TESTIMONY OR BETWEEN HIS OR HER TESTIMONY
13 AND THAT OF OTHERS, IF THERE WERE ANY, DO
14 NOT NECESSARILY MEAN THAT THE WITNESS
15 SHOULD BE DISCREDITED. FAILURE OF
16 RECOLLECTION IS A COMMON EXPERIENCE; AND
17 INNOCENT MISRECOLLECTION IS NOT UNCOMMON.
18 IT IS A FACT, ALSO, THAT TWO PERSONS
19 WITNESSING AN INCIDENT OR A TRANSACTION
20 OFTEN WILL SEE OR HEAR IT DIFFERENTLY.
21 WHETHER A DISCREPANCY PERTAINS TO A FACT
22 OF IMPORTANCE OR ONLY TO A TRIVIAL DETAIL
23 SHOULD BE CONSIDERED IN WEIGHING ITS
24 SIGNIFICANCE.

26 A WITNESS, WHO IS WILLFULLY
27 FALSE IN ONE MATERIAL PART OF HIS OR HER
28 TESTIMONY, IS TO BE DISTRUSTED IN OTHERS.

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1 YOU MAY REJECT THE WHOLE TESTIMONY OF A
2 WITNESS WHO WILLFULLY HAS TESTIFIED
3 FALSELY AS TO A MATERIAL POINT, UNLESS,
4 FROM ALL THE EVIDENCE, YOU BELIEVE THE
5 PROBABILITY OF TRUTH FAVORS HIS OR HER
6 TESTIMONY IN OTHER PARTICULARS.

7

8 YOU SHOULD GIVE THE TESTIMONY
9 OF A SINGLE WITNESS WHATEVER WEIGHT YOU
10 THINK IT DESERVES. HOWEVER, TESTIMONY BY
11 ONE WITNESS WHICH YOU BELIEVE CONCERNING
12 ANY FACT IS SUFFICIENT FOR THE PROOF OF
13 THAT FACT. YOU SHOULD CAREFULLY REVIEW
14 ALL THE EVIDENCE UPON WHICH THE PROOF OF
15 SUCH FACT DEPENDS.

16

17 A PERSON IS QUALIFIED TO
18 TESTIFY AS AN EXPERT IF HE HAS SPECIAL
19 KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR
20 EDUCATION SUFFICIENT TO QUALIFY HIM AS AN
21 EXPERT ON THE SUBJECT TO WHICH HIS

22 TESTIMONY RELATES.
23 A DULY QUALIFIED EXPERT MAY
24 GIVE AN OPINION ON QUESTIONS IN
25 CONTROVERSY AT A TRIAL. TO ASSIST YOU IN
26 DECIDING SUCH QUESTIONS, YOU MAY CONSIDER
27 THE OPINION WITH THE REASONS GIVEN FOR IT,
28 IF ANY, BY THE EXPERT WHO GIVES THE

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1 OPINION. YOU MAY ALSO CONSIDER THE
2 QUALIFICATIONS AND CREDIBILITY OF THE
3 EXPERT.
4 YOU ARE NOT BOUND TO ACCEPT
5 AN EXPERT OPINION AS CONCLUSIVE, BUT
6 SHOULD GIVE TO IT THE WEIGHT TO WHICH YOU
7 FIND IT TO BE ENTITLED. YOU MAY DISREGARD
8 ANY SUCH OPINION IF YOU FIND IT TO BE
9 UNREASONABLE.

10
11 IN DETERMINING THE WEIGHT TO
12 BE GIVEN TO AN OPINION EXPRESSED BY ANY
13 WITNESS WHO DID NOT TESTIFY AS AN EXPERT
14 WITNESS, YOU SHOULD CONSIDER HIS OR HER
15 CREDIBILITY, THE EXTENT OF HIS OR HER
16 OPPORTUNITY TO PERCEIVE THE MATTERS UPON
17 WHICH HIS OR HER OPINION IS BASED, AND THE

18 REASONS, IF ANY, GIVEN FOR IT. YOU ARE
19 NOT REQUIRED TO ACCEPT SUCH AN OPINION BUT
20 SHOULD GIVE IT THE WEIGHT, IF ANY, TO
21 WHICH YOU FIND IT TO BE ENTITLED.

22

23 IN EXAMINING AN EXPERT
24 WITNESS, COUNSEL MAY PROPOUND TO HIM -- TO
25 HIM A TYPE OF QUESTION KNOWN IN THE LAW AS
26 A HYPOTHETICAL QUESTION. BY SUCH A
27 QUESTION THE WITNESS IS ASKED TO ASSUME TO
28 BE TRUE A SET OF FACTS, AND TO GIVE AN

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1 OPINION BASED ON THAT ASSUMPTION.

2 IN PERMITTING SUCH A
3 QUESTION, THE COURT DOES NOT PRESUME, AND
4 DOES NOT NECESSARILY FIND THAT THE ASSUMED
5 FACTS HAVE BEEN PROVED. THE COURT ONLY
6 DETERMINES THAT THESE ASSUMED FACTS ARE
7 WITHIN THE PROBABLE OR POSSIBLE RANGE OF
8 THE EVIDENCE. IT IS FOR YOU, THE JURY, TO
9 FIND FROM ALL OF THE EVIDENCE WHETHER OR
10 NOT THE FACTS ASSUMED IN A HYPOTHETICAL
11 QUESTION HAVE BEEN PROVED. IF YOU SHOULD
12 FIND THAT ANY ASSUMPTION IN SUCH A
13 QUESTION HAS NOT BEEN PROVED, YOU ARE TO

14 DETERMINE THE EFFECT OF THAT FAILURE OF
15 PROOF ON THE VALUE AND WEIGHT OF THE
16 EXPERT OPINION BASED ON THE ASSUMED FACTS.

17

18 I HAVE NOT INTENDED BY
19 ANYTHING I HAVE SAID OR DONE, OR BY ANY
20 QUESTION THAT I MAY HAVE ASKED, OR BY ANY
21 RULING I MAY HAVE MADE, TO INTIMATE OR
22 SUGGEST WHAT YOU SHOULD FIND TO BE THE
23 FACTS, OR THAT I BELIEVE OR DISBELIEVE ANY
24 WITNESS.

25 IF ANYTHING I HAVE DONE OR
26 SAID HAS SEEMED TO SO INDICATE, YOU WILL
27 DISREGARD IT AND FORM YOUR OWN
28 CONCLUSIONS.

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1

2 THE PEOPLE AND THE DEFENDANT
3 ARE ENTITLED TO THE INDIVIDUAL OPINION OF
4 EACH JUROR.

5 EACH OF YOU MUST CONSIDER THE
6 EVIDENCE FOR THE PURPOSE OF REACHING A
7 VERDICT IF YOU CAN DO SO. EACH OF YOU
8 MUST DECIDE THE CASE FOR YOURSELF, BUT
9 SHOULD DO SO ONLY AFTER DISCUSSING THE

10 EVIDENCE AND INSTRUCTIONS WITH THE OTHER
11 JURORS.

12 DO NOT HESITATE TO CHANGE AN
13 OPINION IF YOU ARE CONVINCED IT IS WRONG.
14 HOWEVER, DO NOT DECIDE ANY QUESTION IN A
15 PARTICULAR WAY BECAUSE THE MAJORITY OF THE
16 JURORS, OR ANY OF THEM, FAVOR SUCH A
17 DECISION.

18 DO NOT DECIDE ANY ISSUE IN
19 THIS CASE BY CHANCE, SUCH AS BY THE
20 DRAWING OF LOTS OR BY ANY OTHER CHANCE
21 DETERMINATION.

22
23 THE ATTITUDE AND CONDUCT OF
24 JURORS AT ALL TIMES ARE VERY IMPORTANT.
25 IT IS RARELY HELPFUL FOR A JUROR AT THE
26 BEGINNING OF DELIBERATIONS TO EXPRESS AN
27 EMPHATIC OPINION ON THE CASE OR TO
28 ANNOUNCE A DETERMINATION TO STAND FOR A

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1 CERTAIN VERDICT. WHEN ONE DOES THAT AT
2 THE OUTSET, A SENSE OF PRIDE MAY BE
3 AROUSED, AND ONE MAY HESITATE TO CHANGE A
4 POSITION, EVEN IF IT IS SHOWN TO BE WRONG.
5 REMEMBER THAT YOU ARE NOT PARTISANS OR

6 ADVOCATES IN THIS MATTER. YOU ARE
7 IMPARTIAL JUDGES OF THE FACTS.

8
9 THE INSTRUCTIONS WHICH I AM
10 NOW GIVING TO YOU WILL BE MADE AVAILABLE
11 IN WRITTEN FORM FOR YOUR DELIBERATIONS.
12 THEY MUST NOT BE DEFACED IN ANY WAY.

13 YOU WILL FIND THAT THE
14 INSTRUCTIONS MAY BE TYPED, PRINTED OR
15 HANDWRITTEN. PORTIONS MAY HAVE BEEN ADDED
16 OR DELETED. YOU MUST DISREGARD ANY
17 DELETED PART OF AN INSTRUCTION AND NOT
18 SPECULATE AS TO WHAT IT WAS OR AS TO THE
19 REASON FOR THOSE DELETIONS. YOU ARE NOT
20 TO BE CONCERNED WITH THE REASONS FOR ANY
21 MODIFICATIONS.

22 EVERY PART OF THE TEXT OF AN
23 INSTRUCTION, WHETHER TYPED, PRINTED OR
24 HANDWRITTEN, IS OF EQUAL IMPORTANCE. YOU
25 ARE TO BE GOVERNED ONLY BY THE INSTRUCTION
26 IN ITS FINAL WORDING.

27
28 YOU HAVE BEEN GIVEN AND SOME

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1 OF YOU HAVE BEEN USING NOTEBOOKS

2 THROUGHOUT THE TRIAL. YOU WILL LEAVE
3 THOSE NOTEBOOKS IN THE JURY ROOM WHEN YOU
4 LEAVE AND AT RECESSES.

5 NOTES ARE ONLY AN AID TO
6 MEMORY AND SHOULD NOT TAKE PRECEDENCE OVER
7 INDEPENDENT RECOLLECTION. A JUROR WHO HAS
8 NOT TAKEN NOTES SHOULD RELY ON HIS OR HER
9 INDEPENDENT RECOLLECTION OF THE EVIDENCE
10 AND NOT BE INFLUENCED BY THE FACT THAT
11 OTHER JURORS HAVE TAKEN NOTES. NOTES ARE
12 FOR THE NOTETAKER'S OWN PERSONAL USE IN
13 REFRESHING HIS OR HER RECOLLECTION OF THE
14 EVIDENCE.

15 FINALLY, SHOULD ANY
16 DISCREPANCY EXIST BETWEEN A JUROR'S
17 RECOLLECTION OF THE EVIDENCE AND HIS OR
18 HER NOTES, HE OR SHE MAY REQUEST THAT THE
19 REPORTER READ BACK THE RELEVANT
20 PROCEEDINGS, AND THE TRIAL TRANSCRIPT MUST
21 PREVAIL OVER THE NOTES.

22
23 IN DETERMINING WHICH PENALTY
24 IS TO BE IMPOSED ON EACH DEFENDANT, YOU
25 SHALL CONSIDER ALL OF THE EVIDENCE WHICH
26 HAS BEEN RECEIVED DURING ANY PART OF THE
27 TRIAL OF THIS CASE, SUBJECT TO THE
28 LIMITING INSTRUCTIONS YOU HAVE RECEIVED.

1 YOU SHALL CONSIDER, TAKE INTO ACCOUNT, AND
2 BE GUIDED BY THE FOLLOWING FACTORS, IF
3 APPLICABLE, AS EITHER AN AGGRAVATING OR A
4 MITIGATING FACTOR:

5 (A) THE CIRCUMSTANCES OF THE
6 CRIME OF WHICH THE DEFENDANT WAS CONVICTED
7 IN THE PRESENT PROCEEDING AND THE
8 EXISTENCE OF ANY SPECIAL CIRCUMSTANCES
9 FOUND TO BE TRUE.

10 (B) THE PRESENCE OR ABSENCE
11 OF CRIMINAL ACTIVITY BY THE DEFENDANT,
12 OTHER THAN THE CRIMES FOR WHICH THE
13 DEFENDANT HAS BEEN TRIED IN THE PRESENT
14 PROCEEDINGS, WHICH INVOLVED THE USE OR
15 ATTEMPTED USE OF FORCE OR VIOLENCE OR THE
16 EXPRESS OR IMPLIED THREAT TO USE FORCE OR
17 VIOLENCE.

18 (C) THE PRESENCE OR ABSENCE
19 OF ANY PRIOR ADULT FELONY CONVICTION,
20 OTHER THAN THE CRIMES THE DEFENDANT HAS
21 BEEN TRIED IN THE PRESENT PROCEEDINGS.

22 (D) THE AGE OF THE DEFENDANT
23 AT THE TIME OF THE CRIME.

24
25 NO FACTORS OTHER THAN A, B, C
26 AND/OR D ABOVE, WHICH I READ TO YOU,

27 SHOULD YOU FIND THEM APPLICABLE, CAN BE
28 CONSIDERED BY YOU AS AGGRAVATING

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1 CIRCUMSTANCES IN THIS CASE.

2 THE FOLLOWING FACTORS ARE TO
3 BE CONSIDERED BY YOU, IF APPLICABLE, AS
4 MITIGATING FACTORS:

5 (E) WHETHER OR NOT THE
6 OFFENSE WAS COMMITTED WHILE THE DEFENDANT
7 WAS UNDER THE INFLUENCE OF EXTREME MENTAL
8 OR EMOTIONAL DISTURBANCE.

9 (F) WHETHER OR NOT THE
10 VICTIMS WERE PARTICIPANTS IN THE
11 DEFENDANT'S HOMICIDAL CONDUCT OR CONSENTED
12 TO THE HOMICIDAL ACT.

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

18 (H) WHETHER OR NOT THE
19 DEFENDANT ACTED UNDER EXTREME DURESS OR
20 UNDER THE SUBSTANTIAL DOMINATION OF
21 ANOTHER PERSON.

22 (I) WHETHER OR NOT AT THE

23 TIME OF THE OFFENSE THE CAPACITY OF THE
24 DEFENDANT TO APPRECIATE THE CRIMINALITY OF
25 HIS CONDUCT OR TO CONFORM HIS CONDUCT TO
26 THE REQUIREMENTS OF LAW WAS IMPAIRED AS A
27 RESULT OF MENTAL DISEASE OR DEFECT OR THE
28 EFFECTS OF INTOXICATION.

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1 (J) WHETHER OR NOT THE
2 DEFENDANT WAS AN ACCOMPLICE TO THE OFFENSE
3 AND HIS PARTICIPATION IN THE COMMISSION OF
4 THE OFFENSE WAS RELATIVELY MINOR.

5 (K) ANY OTHER CIRCUMSTANCE
6 WHICH EXTENUATES THE GRAVITY OF THE CRIME,
7 EVEN THOUGH IT IS NOT A LEGAL EXCUSE FOR
8 THE CRIME, AND ANY SYMPATHETIC OR OTHER
9 ASPECT OF THE DEFENDANT'S CHARACTER OR
10 RECORD THAT THE DEFENDANT OFFERS AS A
11 BASIS FOR A SENTENCE LESS THAN DEATH,
12 WHETHER OR NOT RELATED TO THE OFFENSE FOR
13 WHICH HE IS ON TRIAL. YOU MUST DISREGARD
14 ANY JURY INSTRUCTION GIVEN TO YOU IN THE
15 GUILT OR INNOCENCE PHASE OF THIS TRIAL
16 WHICH CONFLICTS WITH THIS PRINCIPLE.

17 THE ABSENCE OF ANY MITIGATING
18 FACTOR LISTED ABOVE MAY NOT BE CONSIDERED

19 AGGRAVATING.

20

21 YOU ARE NOT TO CONSIDER

22 DR. VICARY'S ALTERATION OF HIS NOTES, OR

23 ANY OF HIS REASONS FOR DOING SO, AS A

24 FACTOR IN AGGRAVATION OR AS ADDITIONAL

25 EVIDENCE WEIGHING IN FAVOR OF THE DEATH

26 PENALTY. THESE MATTERS MAY BE CONSIDERED

27 BY YOU ONLY AS THEY MAY RELATE TO THE

28 CREDIBILITY OF THE WITNESS.

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1 MISCONDUCT BY DR. VICARY OR

2 OF ANY COUNSEL, IF YOU BELIEVE IT EXISTS,

3 IS NOT A FACTOR IN AGGRAVATION, AND SHALL

4 NOT BE CONSIDERED BY YOU AS SUCH.

5

6 YOU HAVE HEARD EVIDENCE IN

7 THIS CASE THAT ERIK MENENDEZ WAS THE

8 SUBJECT OF ADJUDICATION IN A JUVENILE

9 COURT PROCEEDING INVOLVING AN ALLEGATION

10 OF BURGLARY. YOU ARE INSTRUCTED THAT THIS

11 EVIDENCE IS NOT TO BE CONSIDERED AS A

12 FACTOR IN AGGRAVATION. NEITHER ERIK

13 MENENDEZ NOR LYLE MENENDEZ HAS EVER BEEN

14 CONVICTED OF A FELONY. SUCH ABSENCE OF A

15 FELONY CONVICTION IS EVIDENCE IN
16 MITIGATION.

17

18 IT IS NOW YOUR DUTY TO
19 DETERMINE WHICH OF THE TWO PENALTIES,
20 DEATH OR CONFINEMENT IN THE STATE PRISON
21 FOR LIFE WITHOUT THE POSSIBILITY OF
22 PAROLE, SHALL BE IMPOSED ON EACH
23 DEFENDANT.

24 AFTER HAVING HEARD ALL OF THE
25 EVIDENCE, AND AFTER HAVING HEARD AND
26 CONSIDERED THE ARGUMENTS OF COUNSEL, YOU
27 SHALL CONSIDER, TAKE INTO ACCOUNT AND BE
28 GUIDED BY THE APPLICABLE FACTORS OF

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1 AGGRAVATING AND MITIGATING CIRCUMSTANCES
2 UPON WHICH YOU HAVE BEEN INSTRUCTED.

3 AN AGGRAVATING FACTOR IS ANY
4 FACT, CONDITION OR EVENT ATTENDING THE
5 COMMISSION OF A CRIME WHICH INCREASES ITS
6 GUILT OR ENORMITY, OR ADDS TO ITS
7 INJURIOUS CONSEQUENCES WHICH IS ABOVE AND
8 BEYOND THE ELEMENTS OF THE CRIME ITSELF.

9 A MITIGATING CIRCUMSTANCE IS
10 ANY FACT, CONDITION OR EVENT WHICH, AS

11 SUCH, DOES NOT CONSTITUTE A JUSTIFICATION
12 OR EXCUSE FOR THE CRIME IN QUESTION, BUT
13 MAY BE CONSIDERED AS AN EXTENUATING
14 CIRCUMSTANCE IN DETERMINING THE
15 APPROPRIATENESS OF THE DEATH PENALTY.

16 THE WEIGHING OF AGGRAVATING
17 AND MITIGATING CIRCUMSTANCES DOES NOT MEAN
18 A MERE MECHANICAL COUNTING OF FACTORS ON
19 EACH SIDE OF AN IMAGINARY SCALE, OR THE
20 ARBITRARY ASSIGNMENT OF WEIGHTS TO ANY OF
21 THEM. EACH OF YOU ARE FREE TO ASSIGN
22 WHATEVER MORAL OR SYMPATHETIC VALUE YOU
23 DEEM APPROPRIATE TO EACH AND ALL OF THE
24 VARIOUS FACTORS YOU ARE PERMITTED TO
25 CONSIDER.

26 IN WEIGHING THE VARIOUS
27 CIRCUMSTANCES, EACH OF YOU DETERMINE UNDER
28 THE RELEVANT EVIDENCE WHICH PENALTY IS

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1 JUSTIFIED AND APPROPRIATE BY CONSIDERING
2 THE TOTALITY OF THE AGGRAVATING
3 CIRCUMSTANCES WITH THE TOTALITY OF THE
4 MITIGATING CIRCUMSTANCES. TO RETURN A
5 JUDGMENT OF DEATH, EACH OF YOU MUST BE
6 PERSUADED THAT THE AGGRAVATING

7 CIRCUMSTANCES ARE SO SUBSTANTIAL IN
8 COMPARISON WITH THE MITIGATING
9 CIRCUMSTANCES THAT IT WARRANTS DEATH
10 INSTEAD OF LIFE WITHOUT PAROLE.

11 IN THIS CASE YOU MUST DECIDE
12 SEPARATELY THE QUESTION OF THE PENALTY AS
13 TO EACH OF THE DEFENDANTS. IF YOU CANNOT
14 AGREE UPON THE PENALTY TO BE INFLICTED
15 UPON BOTH DEFENDANTS, BUT DO AGREE ON THE
16 PENALTY AS TO ONE OF THEM, YOU MUST RENDER
17 A VERDICT AS TO THE ONE ON WHICH YOU DO
18 AGREE.

19 YOU SHALL NOW RETIRE AND
20 SELECT ONE OF YOUR NUMBER TO ACT AS
21 FOREPERSON, WHO WILL PRESIDE OVER YOUR
22 DELIBERATIONS. IN ORDER TO MAKE A
23 DETERMINATION AS TO THE PENALTY, ALL 12
24 JURORS MUST AGREE.

25 ANY VERDICT THAT YOU REACH
26 MUST BE DATED AND SIGNED BY YOUR
27 FOREPERSON ON A FORM THAT WILL BE PROVIDED
28 AND THEN YOU SHALL RETURN WITH IT TO THIS

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1 COURTROOM.

3 THE COURT: ALL RIGHT. WE WILL SWEAR IN THE
4 BAILIFF, AND HE WILL TAKE CHARGE OF THE JURY.

5 ONE ADDITIONAL THING, A REMINDER.

6 AGAIN, DURING BREAKS IN THE TRIAL WHEN
7 YOU'RE AWAY FROM THE JURY ROOM, DURING YOUR
8 DELIBERATIONS, DO NOT PERMIT YOURSELF TO BE EXPOSED TO
9 ANYTHING ABOUT THIS CASE IN ANY FORM, WHETHER IT BE
10 DISCUSSIONS, CONVERSATION, NEWS COVERAGE, ANYTHING
11 WHATSOEVER.

12 REMEMBER, YOUR DECISION MUST BE MADE ONLY
13 ON THE EVIDENCE AND INSTRUCTIONS GIVEN TO YOU, SO PLEASE
14 REMEMBER NOT TO PERMIT YOURSELF TO BE EXPOSED TO
15 ANYTHING OUTSIDE OF THE COURTROOM.

16 ALL RIGHT. WE WILL NOW SWEAR IN THE
17 BAILIFF AND HE WILL TAKE CHARGE OF THE JURY.

18 THE CLERK: DO YOU SOLEMNLY SWEAR THAT YOU WILL
19 TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER, UNTIL
20 OTHERWISE ORDERED BY THE COURT; THAT YOU WILL NOT SPEAK
21 TO THEM YOURSELF, NOR ALLOW ANYONE ELSE TO SPEAK TO THEM
22 UPON ANY MATTER CONNECTED WITH THE CASE, EXCEPT UPON
23 ORDER OF THE COURT, AND WHEN THEY HAVE AGREED UPON A
24 VERDICT, YOU WILL THEM INTO THE COURT.

25 THE BAILIFF: YES.

26 THE CLERK: YOU DO SOLEMNLY SWEAR THAT YOU WILL
27 TAKE CHARGE OF THE ALTERNATE JURORS, AND KEEP THEM APART
28 FROM THE REST OF THE JURY WHILE THEY ARE DELIBERATING ON

1 THE CAUSE, UNTIL OTHERWISE ORDERED BY THE COURT, SO HELP
2 YOU GOD.

3 THE BAILIFF: YES.

4 OKAY. I WANT THE 12 DELIBERATING JURORS TO
5 TAKE THEIR NOTEBOOKS INSIDE THE JURY ROOM, AND I WILL
6 SPEAK WITH YOU IN A MOMENT.

7 THE TWO ALTERNATES, LEAVE YOUR NOTEBOOKS IN
8 YOUR CHAIRS, GO INTO THE JURY ROOM, GET YOUR PERSONAL
9 ARTICLES, AND DEPUTY ERNST WILL COME IN AND GET YOU AND
10 TAKE YOU TO ANOTHER LOCATION.

11 (THE JURY ENTERS THE JURY ROOM
12 TO BEGIN DELIBERATIONS, AND
13 THE FOLLOWING PROCEEDINGS.
14 WERE HELD:)

15

16 THE COURT: OKAY. THE JURY HAS LEFT THE
17 COURTROOM.

18 JUST A COUPLE OF MATTERS HERE. THERE IS
19 THIS ADDITIONAL EXHIBIT LIST.

20 IS THAT THE SUBJECT OF AGREEMENT BY BOTH
21 SIDES?

22 MS. TOWERY: YES, YOUR HONOR.

23 MS. NAJERA: YES, YOUR HONOR.

24 MR. LEVIN: YES YOUR HONOR.

25 THE COURT: OKAY. AND THAT'LL THEN BE PROVIDED
26 TO THE JURY.

27 AND AS FAR AS ADMONITIONS TO THE JURY, ONCE

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1 TODAY, IT IS STIPULATED THERE BE NO NEED FOR FURTHER
2 ADMONITIONS TO THE JURY DURING RECESSES.

3 MR. GESSLER: YES, YOUR HONOR.

4 MS. TOWERY: SO STIPULATED.

5 MS. NAJERA: YES.

6 MR. LEVIN: YES.

7 THE COURT: THEN THAT'S HOW WE'LL PROCEED. AND
8 WE'LL ASK COUNSEL TO MAKE THE SAME CONTACT WITH THE
9 CLERK AND AVAILABILITY FOR RESPONSE AS YOU DID DURING
10 THE GUILT PHASE.

11 WE'RE IN RECESS.

12

13 (AT 4:30 P.M. PROCEEDINGS WERE

14 ADJOURNED UNTIL 8:30 A.M.

15 MONDAY, APRIL 15, 1996)

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9	CLOSING ARGUMENT BY		
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16

17 CHRONOLOGICAL INDEX OF WITNESSES

18 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.
 (NONE THIS VOLUME.)

19

20

21

22

23

24

25 LEGEND:

26 A = MS. ABRAMSON

C = MR. CONN

27 G = MR. GESSLER

K = MS. TOWERY

28 L = MR. LEVIN

N = MS. NAJERA

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.
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