

1 VAN NUYS, CALIFORNIA; MONDAY, DECEMBER 4, 1995

2 9:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE

8 PRESENCE OF THE JURY:)

9

10 THE COURT: IN THE TRIAL, EVERYBODY IS

11 PRESENT. MORNING TO YOU ALL.

12 READY FOR THE JURY?

13 MR. CONN: ONE ISSUE. YOUR HONOR, AGAIN, I

14 OBJECT TO THE PODIUM BEING WHERE IT IS. NOW,

15 COUNSEL KEEPS MOVING IT FURTHER AND FURTHER CLOSER

16 TO ME. I CAN'T SEE THIS JURY AT ALL.

17 THE COURT: ALL YOU HAVE TO DO IS SAY

18 SOMETHING?

19 MR. CONN: I TOLD COUNSEL. SHE SAID SHE'S

20 GOING TO MOVE IT LATER. I DON'T WANT TO SEE --

21 THE COURT: MOVE IT. MOVE IT NOW. IT'S NOT

22 A BIG DEAL.

23 MS. ABRAMSON: I SAID I WANTED TO LET THE

24 WITNESS GO BY AND I'D MOVE IT BACK. THAT'S EXACTLY

25 WHAT I TOLD HIM.

26 THE COURT: WHY DON'T YOU MOVE IT NOW. IT'S

27 NOT A BIG DEAL.

28 (ATTORNEY ABRAMSON MOVES PODIUM.)

1 MR. CONN: I OBJECT. I OBJECT TO THIS,
 2 BEING -- IT'S PRACTICALLY TOUCHING MY LEFT ELBOW. I
 3 FEEL CRAMPED IN HERE. WE HAVE VERY LITTLE SPACE
 4 HERE AS IT IS. SHE HAS IT RUBBING UP AGAINST MY
 5 LEFT ELBOW.

6 MS. ABRAMSON: I WOULDN'T WANT TO TOUCH HIS
 7 LEFT ELBOW. I'LL WAIT UNTIL THE WITNESS GOES BY AND
 8 I'LL MOVE IT.

9 THE COURT: OKAY. THEN WE'LL DEAL WITH IT AT
 10 A RECESS, IF NOT.

11 MS. ABRAMSON: YES, YOUR HONOR.

12 THE COURT: ARE WE READY TO PROCEED?

13 MS. ABRAMSON: YES, YOUR HONOR.

14 THE COURT: LET'S GET THE JURY OUT, PLEASE.

15 (THE JURY ENTERED THE
 16 COURTROOM AND THE FOLLOWING
 17 PROCEEDINGS WERE HELD:)

18

19 THE COURT: JURY'S IN COURT. GOOD MORNING,
 20 LADIES AND GENTLEMEN.

21 WE'RE READY TO RESUME WITH THE TRIAL.

22 WE'LL PICK UP WITH A WITNESS WHO WAS ON THE WITNESS
 23 STAND AND THEN WE HAD TO BREAK.

24 MS. ABRAMSON: WE RECALL DR. CYRIL WECHT.
25 THE COURT: LET'S GIVE YOU THE OATH AGAIN
26 SINCE IT'S BEEN A WEEK SINCE YOU WERE ON THE WITNESS
27 STAND; SEE IF YOU REMEMBER IT.
28

42561

1 / / /

2 DR. CYRIL H. WECHT,
3 RESUMED THE STAND, WAS SWORN AND TESTIFIED FURTHER
4 AS FOLLOWS:

5 THE CLERK: YOU DO SOLEMNLY SWEAR THE
6 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
7 BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE
8 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

9 THE WITNESS: I DO.

10 THE CLERK: PLEASE TAKE THE STAND AND STATE
11 YOUR NAME FOR THE RECORD.

12 THE WITNESS: CYRIL H. WECHT.

13 THE COURT: OKAY. IF YOU CAN SPELL YOUR LAST
14 NAME FOR US ONCE MORE, PLEASE.

15 THE WITNESS: W-E-C-H-T.

16 THE COURT: OKAY. YOU MAY CONTINUE YOUR
17 DIRECT EXAMINATION.

18 MS. ABRAMSON: THANK YOU, YOUR HONOR.

19

20 DIRECT EXAMINATION (RESUMED)

21 BY MS. ABRAMSON:

22 Q DR. WECHT, WHEN WE BROKE YOU HAD BEEN

23 EXPLAINING TO THE JURY SOME OF YOUR BACKGROUND AND

24 EXPERIENCE, AND I WANTED TO PICK UP WITH THAT IN

25 THIS REGARD.

26 YOU TESTIFIED TO A VERY LARGE NUMBER OF

27 AUTOPSIES THAT YOU PERSONALLY HAVE PERFORMED AND

28 SOME 30,000 ADDITIONAL ONES THAT YOU HAVE SIGNED OFF

42562

1 ON.

2 CAN YOU GIVE US AN APPROXIMATION OF HOW

3 MANY AUTOPSIES YOU HAVE PERFORMED INVOLVING GUNSHOT

4 WOUNDS.

5 A I WOULD SAY PROBABLY SOMEWHERE AROUND A

6 THOUSAND.

7 Q AND WOULD THAT BE TYPICAL, THAT WITH THE

8 13,000 AUTOPSIES YOU HAVE PERFORMED, ONE THOUSAND OF

9 THEM WOULD BE GUNSHOT WOUNDS?

10 A YES. THAT'S AN ESTIMATED FIGURE. I

11 THINK IT'S A REASONABLE APPROXIMATION. I DON'T KEEP

12 TRACK OF THESE THINGS BY CATEGORY.

13 Q FOR MOST PATHOLOGISTS, INCLUDING --

14 STRIKE THAT.

15 FOR MOST FORENSIC PATHOLOGISTS,
16 INCLUDING THOSE WHO SERVE AS COUNTY CORONERS, WHAT
17 ARE THE VAST MAJORITY OF THE AUTOPSY -- WITH RESPECT
18 TO CAUSE OF DEATH, WHAT ARE THE VAST MAJORITY OF
19 THOSE CASES?

20 A YOU MEAN THAT CORONERS AND MEDICAL
21 EXAMINERS DO?

22 Q YES.

23 A HEART ATTACKS.

24 Q SO THEY'RE DEATHS BY NATURAL CAUSES?

25 A YES.

26 Q AND WHAT'S THE SECOND LARGEST CATEGORY?

27 A ACCIDENTS, MOTOR VEHICULAR BEING THE
28 LARGEST NUMBER WITHIN THE ACCIDENTAL GROUPING.

42563

1 Q AND AFTER ACCIDENTS, WHAT WOULD YOU SAY
2 IS THE NEXT LARGEST?

3 A SUICIDES.

4 Q AND ARE HOMICIDES THEN EVEN FEWER IN
5 NUMBER THAN SUICIDES TYPICALLY?

6 A YES. THE NUMBERS ARE FAIRLY CLOSE
7 BETWEEN SUICIDES AND HOMICIDES IN THE U.S., NOT A
8 BIG DIFFERENCE BETWEEN THE TWO. AND IT VARIES A

9 LITTLE FROM ONE COMMUNITY TO ANOTHER.

10 Q AMONG THE HOMICIDES, WHAT PERCENTAGE,
11 GENERALLY, IF YOU HAVE THAT IN MIND, ARE GUNSHOT
12 HOMICIDES VERSUS STRANGULATION OR STABBING OR
13 POISONING OR ANY NUMBER OF OTHER THINGS?

14 A PROBABLY ABOUT 75 PERCENT ARE GUNSHOT
15 WOUNDS AMONG HOMICIDES IN THE UNITED STATES.

16 Q NOW, AMONG THE ONE THOUSAND ESTIMATED
17 GUNSHOT WOUND -- THESE ARE THE AUTOPSIES THAT YOU
18 PERFORMED YOURSELF?

19 A YES.

20 Q OF THE 30,000 THAT YOU REVIEWED AND
21 SIGNED OFF ON, DO YOU HAVE ANY IDEA HOW MANY OF
22 THOSE WERE GUNSHOT WOUNDS?

23 A WELL, PROBABLY ANY -- PROBABLY SOMEWHERE
24 MORE THAN 10 PERCENT. I'D SAY ROUGHLY 3,500 TO
25 4,000. THAT'S MORE OF A SELECT GROUP, TO SOME
26 EXTENT. CONSULTATIONS OBVIOUSLY COME IN BECAUSE
27 THEY HAVE SOME PROBLEMS AND YOU USUALLY DON'T HAVE
28 PROBLEMS IF YOU'VE GOT SOMEONE WHO DIED OF A HEART

42564

1 ATTACK OR HAD CANCER OR A STROKE. SO I WOULD SAY
2 MAYBE ABOUT 3,500 TO 4,000, SOMETHING LIKE THAT.

3 Q ALL RIGHT. AND HOW MANY SHOTGUN WOUND

4 AUTOPSIES HAVE YOU PERSONALLY PERFORMED?

5 A I WOULD JUST SAY APPROXIMATELY 100, OR
6 MAYBE ABOUT ONE-TENTH OF THE TOTAL GUNSHOT WOUND
7 CASES HAVE INVOLVED SHOTGUNS, SOMETHING LIKE THAT.

8 Q AND DO YOU --

9 A I THINK THAT'S A REASONABLE NUMBER.

10 PLEASE KEEP IN MIND THAT THESE GO BACK
11 NOW -- ALL THESE NUMBERS ARE APPLICABLE, FOR ME, TO
12 A 34-YEAR PERIOD. IN FACT, A LITTLE BIT MORE
13 BECAUSE I HAD A FEW SUCH CASES WHEN I WAS IN THE AIR
14 FORCE, NOT MANY, BUT A FEW, THAT WE DID ON BASE.
15 BUT 34 YEARS IS THE PERIOD OF TIME I'M TALKING
16 ABOUT.

17 Q AND ARE SHOTGUN WOUND FIREARM HOMICIDES
18 LESS THAN 50 PERCENT OF ALL THE FIREARM HOMICIDES?

19 A OH, YES, I THINK UNQUESTIONABLY IN ANY
20 JURISDICTION IN THIS COUNTRY.

21 Q AND IS THE MOST FREQUENT FIREARM INJURY
22 HANDGUN INJURY?

23 A YES.

24 Q AND IN YOUR OPINION, DR. WECHT, DOES IT
25 TAKE HANDS-ON OR PERSONAL OBSERVATION FAMILIARITY
26 WITH SHOTGUN WOUNDS IN ORDER TO BE ABLE TO RELIABLY
27 DESCRIBE ENTRIES AND EXITS FROM SHOTGUN WOUND
28 ENTRIES?

1 A YES. THAT'S THE NATURE OF FORENSIC
2 PATHOLOGY. IT'S NO DIFFERENT THAN ANY OTHER
3 SPECIALTY. YOU CAN'T DO HEART SURGERY UNLESS YOU'VE
4 TAKEN A RESIDENCY AND TRAINING IN CARDIOVASCULAR
5 SURGERY. AND YOU DON'T DO BRAIN SURGERY UNLESS
6 YOU'RE TRAINED IN NEUROSURGERY. IF YOU'RE TALKING
7 ABOUT GUNSHOT WOUNDS EXIT, ENTRANCE DETERMINATION,
8 DETERMINATION OF DEPTH, LETHALITY, SEQUENCE, SO ON
9 AND SO FORTH, YOU'RE TALKING ABOUT FORENSIC
10 PATHOLOGY.

11 Q AND WHAT IS THE ADVANTAGE TO HAVING
12 ACTUALLY SEEN THESE WOUNDS RATHER THAN JUST READ
13 ABOUT THEM IN BOOKS?

14 A WELL, PICTURES ARE FINE, AND SOME
15 PICTURES ARE WONDERFUL, BUT IT'S LIKE ANYTHING ELSE,
16 YOU'VE GOT TO ACTUALLY SEE IT IN ORDER TO UNDERSTAND
17 IT. AND YOU LEARN AS YOU GO ALONG. THAT'S WHY
18 FORENSIC PATHOLOGY HAS THAT ADDITIONAL TRAINING
19 PERIOD OVER AND ABOVE REGULAR PATHOLOGY. MOST
20 PEOPLE WHO TRAIN IN PATHOLOGY IN THIS COUNTRY NEVER
21 SEE A GUNSHOT WOUND CASE BECAUSE BY LAW IT'S GOING
22 TO BE A CORONER OR MEDICAL EXAMINER'S CASE AND IT'S
23 GOING TO BE TAKEN FROM THEM.

24 Q SO YOU DON'T SEE IT IN PRIVATE HOSPITAL
25 WORK?

26 A NO.

27 Q AND YOU DON'T SEE IT IN PRIVATE

42566

1 POINT TO ACT AS CORONER OR MEDICAL EXAMINER?

2 A THAT'S CORRECT.

3 Q AND FOR SOMEONE TRAINING TO BECOME A
4 FORENSIC PATHOLOGIST, ARE THERE CERTAIN CORONER'S
5 OFFICES AROUND THE COUNTRY THAT CONDUCT INTERNSHIPS,
6 BASICALLY, OR TRAINING PROGRAMS FOR THOSE PEOPLE WHO
7 ARE INTERESTED IN -- FOR PATHOLOGISTS WHO WANT TO BE
8 TOO?

9 A YES. THEY'RE CALLED RESIDENCIES OR
10 FELLOWSHIPS BECAUSE THEY USUALLY ARE
11 POST-RESIDENCY. AND THE ANSWER IS THAT THERE ARE, I
12 DON'T KNOW, MAYBE ABOUT A DOZEN AND A HALF
13 ACCREDITED OFFICES FOR SUCH TRAINING PROGRAMS.

14 Q AND IS THE LOS ANGELES COUNTY CORONER'S
15 OFFICE ONE OF THEM?

16 A YES.

17 Q SAN FRANCISCO?

18 A YES.

19 Q NEW YORK CITY?

20 A YES.

21 Q OTHER PLACES AROUND THE COUNTRY?

22 A YES, INCLUDING OUR FACILITY, ALLEGHENY

23 COUNTY, PITTSBURGH, PHILADELPHIA, DETROIT, MIAMI,
24 ATLANTA, DALLAS, HOUSTON, SAN DIEGO, SEATTLE,
25 CHICAGO. YOU KNOW, LARGER AREAS FOR THE MOST PART.

26 Q AND, TYPICALLY, IF SOMEONE WHO IS A
27 PATHOLOGIST WANTS TO BE A FORENSIC PATHOLOGIST,
28 WOULD THEY OBTAIN ONE OF THESE FELLOWSHIPS -- STRIKE

42567

1 THAT.

2 HOW LONG IS THE TRAINING PERIOD? HOW
3 LONG ARE THESE FELLOWSHIPS?

4 A IT'S ONE FULL YEAR AFTER THREE OR FOUR
5 YEARS OF BASIC TRAINING IN PATHOLOGY.

6 Q AND, TYPICALLY, IF SOMEONE WANTED TO
7 BECOME A FORENSIC PATHOLOGIST, THEY WOULD OBTAIN ONE
8 OF THESE FELLOWSHIPS AND SPEND A YEAR IN ONE OF
9 THESE OFFICES?

10 A YES. YOU MUST DO SO IN ORDER TO BE
11 QUALIFIED TO TAKE THE NATIONAL EXAMINATION.

12 Q WHAT ABOUT SOMEONE -- I'M SORRY?

13 A I WAS JUST GOING TO SAY, YOU CAN'T BE
14 ADMITTED TO TAKE THE EXAMINATION UNLESS YOU HAD SUCH
15 A TRAINING PROGRAM.

16 WHEN IT WAS FIRST ESTABLISHED, THE
17 AMERICAN BOARD OF PATHOLOGY SUBSECTION OF FORENSIC

18 PATHOLOGY, SOME PEOPLE WERE ADMITTED TO TAKE THE
19 EXAMINATION BASED UPON THAT EXPERIENCE. THAT
20 CONTINUED FOR SOME YEARS. TO MY KNOWLEDGE, YOU NOW
21 HAVE TO TAKE A FELLOWSHIP IN ORDER TO BE ADMITTED TO
22 THE EXAMINATION.

23 Q ARE YOU FAMILIAR WITH THE TESTIMONY OF
24 DR. LAWRENCE CONCERNING HOW HE OBTAINED HIS FORENSIC
25 PATHOLOGY TRAINING?

26 A I READ HIS TESTIMONY.

27 Q I REFRESH YOUR RECOLLECTION. HE SAID HE
28 SPENT A MONTH OR TWO --

42568

1 A IN DIFFERENT PLACES IN THE SUMMERTIME OR
2 SOMETHING LIKE THAT.

3 Q YEAH.

4 A WELL, I -- I'VE NEVER HEARD OF THAT, BUT
5 I -- I MEAN, I HAVE NO PROBLEM IF THE AMERICAN BOARD
6 OF PATHOLOGY ACCEPTED IT. IT'S UP TO THEM. AND I
7 HAVEN'T HEARD OF SUCH A STAGGERED PROGRAM. BUT IT'S
8 PERHAPS A NICE WAY TO DO IT WHILE MAINTAINING YOUR
9 OWN PRACTICE IN GOING OFF A MONTH, USING YOUR
10 VACATION TIME, OR SO ON. THERE'S NOTHING WRONG WITH
11 THAT.

12 Q IN ORDER TO GET ONE OF THESE FELLOWSHIPS

13 WHERE A LARGE CORONER'S OFFICE AGREES TO TRAIN YOU
14 FOR A YEAR, ARE THOSE COMPETITIVE POSITIONS?
15 A YES, THEY ARE. MORE SO IN RECENT YEARS
16 BECAUSE OF WHAT'S BEEN HAPPENING IN MEDICINE. BUT,
17 YES, THE BETTER PROGRAMS ARE COMPETITIVE. IT'S NOT
18 LIKE SOME OF THE RESIDENCIES IN OPHTHALMOLOGY AND
19 ORTHOPEDIC SURGERY WHICH LEAD TO MAJOR INCOMES. BUT
20 THERE'S SOME COMPETITION.
21 Q SO YOU HAVE TO BE ACCEPTED. YOU CAN'T
22 JUST SHOW UP AND SAY I WANT TO HANG AROUND WITH YOU
23 GUYS OR I WANT TO TRAIN WITH YOU?
24 A THAT'S CORRECT.
25 Q NOW, HAVE YOU, OVER THE COURSE OF YOUR
26 YEARS AS A FORENSIC PATHOLOGIST, BOTH WHEN YOU WERE
27 A CORONER FOR 10 YEARS IN ALLEGHENY COUNTY AND IN
28 YOUR PRIVATE CONSULTING CAPACITY, HAVE YOU

42569

1 PARTICIPATED IN TRYING TO FIGURE OUT CONCERNING
2 GUNSHOT WOUND CASES, WHAT HAPPENED, HOW THE WOUNDS
3 WERE INFLICTED, THE RELATIVE POSITIONS OF THE PERSON
4 INFLICTING THE WOUND AND THE DECEDENT, THE LOCATIONS
5 OF THESE PEOPLE, THE ANGLES OF A SHOT OR SHOTS, THE
6 SEQUENCE OF SHOTS, HAVE YOU PARTICIPATED IN SUCH
7 EXERCISES?

8 A YES. BY DEFINITION YOU WOULD ATTEMPT TO
9 DO SO TO SOME EXTENT IN ANY KIND OF A GUNSHOT WOUND
10 CASE, EVEN IF YOU -- YOU BELIEVE IT'S A SUICIDE. YOU
11 DON'T HAVE MANY PROBLEMS OR ANY PROBLEMS IN THE
12 MAJORITY OF CASES. BUT YOU HAVE TO HAVE SOME IDEA
13 AND COME UP WITH SOME THOUGHTS WHICH ARE THEN
14 RECORDED, AND IN CASES OF KNOWN SUSPECTED OR ALLEGED
15 HOMICIDES OR ACCIDENTAL SHOOTINGS TRANSMITTED TO
16 POLICE OFFICERS, HOMICIDE DETECTIVES AND OTHER
17 INVESTIGATIVE AGENCIES.

18 Q WELL, LET'S SAY, FOR EXAMPLE, YOU'RE
19 DEALING WITH A SUICIDE, AND LET'S SAY IT'S JUST A
20 ONE-SHOT SUICIDE. WHAT KIND OF INFORMATION
21 ROUTINELY WOULD A FORENSIC PATHOLOGIST TRY TO FIGURE
22 OUT ABOUT THAT?

23 A WELL, YOU'D WANT TO KNOW AS MUCH AS YOU
24 COULD ABOUT THE SCENE TO MAKE SURE THAT THERE WAS
25 NOTHING THAT WAS ATYPICAL OR INCONSISTENT WITH A
26 SELF-INFLICTED SHOT. THEN YOU WANT TO TAKE THAT
27 INFORMATION AND CORRELATE IT WITH YOUR AUTOPSY
28 FINDINGS.

42570

1 THE --

2 Q LET ME INTERJECT A QUESTION.

3 FOR EXAMPLE, IF IT'S A SUSPECTED
4 SUICIDE, DO YOU LOOK TO SEE IF THE PLACE WHERE THE
5 WOUND IS AND GIVEN WHATEVER WEAPON IS SUSPECTED, IF
6 IT'S PHYSICALLY POSSIBLE THAT THE PERSON COULD HAVE
7 DONE THIS, PARTICULARLY PHYSICALLY POSSIBLE IN THE
8 PARTICULAR PLACE WHERE THE BODY WAS LOCATED?

9 A YES.

10 Q THAT'S THE KIND OF THING YOU WOULD
11 ROUTINELY DO?

12 A YES.

13 Q AND IT -- DO FORENSIC PATHOLOGISTS
14 ROUTINELY INDICATE IN THEIR REPORTS THE INTERNAL
15 TRAJECTORY OF A WOUND; FOR EXAMPLE, WHEN A
16 PATHOLOGIST TALKS ABOUT A WOUND BEING FRONT TO BACK
17 OR LEFT TO RIGHT OR UPWARD OR DOWNWARD, THEY'RE
18 TALKING ABOUT THE WOUND PATH INSIDE THE BODY,
19 CORRECT?

20 A YES, AS WELL AS THE LOCATIONS OF THE
21 WOUNDS EXTERNALLY.

22 Q NOW, NONE OF THAT INFORMATION, THE EXACT
23 LOCATION OF THE WOUND EXTERNALLY, NOR THE
24 TRAJECTORY, IS NECESSARILY REQUIRED TO GIVE A CAUSE
25 OF DEATH; I MEAN, YOU COULD SAY GUNSHOT WOUND, YOU
26 KNOW, CAUSING DEATH WITHOUT GOING THROUGH ALL THAT,
27 CORRECT?

28 A THAT'S CORRECT. AND IN SOME

1 JURISDICTIONS, FOR EXAMPLE, SUICIDES MAY NOT BE
2 AUTOPSIED IF YOU'RE SATISFIED AND THE POLICE ARE
3 SATISFIED. SO YOU MAY NOTE WHERE THE WOUNDS ARE AND
4 NOT DO AN EXAMINATION. AND THERE'S NO PROBLEM WITH
5 THAT IF THAT'S THE POLICY.

6 IF YOU HAVE A WOUND, LET'S SAY, THROUGH
7 THE ROOF OF THE MOUTH AND IT'S COME OUT THE BACK OF
8 THE HEAD AND IT'S THE POLICY OF THE OFFICE NOT TO DO
9 SUICIDES, AND EVERYTHING IS IN ORDER, THE PERSON
10 SHOT THEMSELVES BEHIND LOCKED DOORS, LEFT A NOTE,
11 POLICE ARE SATISFIED, THEN YOU DON'T HAVE TO DO THE
12 AUTOPSY. YOU WOULD WITHDRAW BLOOD FOR TOXICOLOGICAL
13 ANALYSES BECAUSE SOMETIMES THAT'S IMPORTANT. BUT
14 THESE ARE POLICY DECISIONS THAT VARY SOMEWHAT FROM
15 ONE OFFICE TO ANOTHER. IF IT'S A KNOWN, SUSPECTED,
16 OR ALLEGED HOMICIDE, THEN AS FAR AS I'M CONCERNED,
17 UNIVERSAL FORENSIC PATHOLOGY DICTATES THAT THE
18 AUTOPSY BE DONE.

19 Q AND THAT IF YOU'RE DOING THE AUTOPSY,
20 THAT YOU MAKE NOTE OF THESE TRAJECTORY THINGS
21 BECAUSE THEY MAY BE AN ISSUE ULTIMATELY IN ANSWERING
22 THE QUESTION OF WHAT HAPPENED?

23 A YES.

24 Q SO YOU HAVE PARTICIPATED IN THAT INQUIRY
25 MANY, MANY TIMES, I TAKE IT?

26 A YES.

27 Q AND ARE SOME EVENTS INVOLVING GUNSHOT

28 WOUND KILLINGS, FOR SOME OF THOSE EVENTS HAVE YOU

42572

1 BEEN IN A POSITION WHERE YOU COULD ANSWER THE
2 QUESTION OR COME CLOSE TO A PERFECT ANSWER TO THE
3 QUESTION, WHAT HAPPENED?

4 A YES. SOMETIMES PERFECT -- I DON'T KNOW
5 WHAT YOU MEAN BY PERFECT. BUT WHERE YOU COULD
6 DEFINITELY --

7 Q LET'S SAY WITH REASONABLE SCIENTIFIC
8 CERTAINTY.

9 A YES. YES. OR DEFINITELY ASCERTAIN
10 WHAT HAPPENED, YES. I WOULD SAY IN THE MAJORITY OF
11 CASES YOU CAN DO SO, ESPECIALLY THEN IF YOU HAVE
12 SOME INFORMATION FROM YOUR OWN OFFICE INVESTIGATORS
13 AND FROM THE HOMICIDE DETECTIVES.

14 Q SO IN ORDER TO DO THAT, TO TRY TO ANSWER
15 THE QUESTION OF WHAT HAPPENED, YOU HAVE TO GET -- YOU
16 HAVE TO WORK WITH THE INVESTIGATORS AND GET
17 INFORMATION DIRECTLY FROM THEM ORDINARILY?

18 A YES. KEEP IN MIND THAT SOME CASES
19 NOBODY KNOWS ANYTHING. SO THEN YOU'RE STUCK WITH
20 THE BODY AND SOME SCENE INVESTIGATION, WHICH MAY OR

21 MAY NOT BE HELPFUL. BUT --

22 Q HAVE YOU PERSONALLY GONE TO CRIME SCENES
23 AS PART OF YOUR FUNCTION AS A FORENSIC PATHOLOGIST?

24 A YES.

25 Q HOW DOES THAT -- IS THIS TYPICAL IN
26 ALLEGHENY COUNTY, THAT THE CORONER'S CALLED OUT TO A
27 CRIME SCENE AND AN ACTUAL DOCTOR, YOURSELF, GOES?

28 A NO, NOT IN EVERY CASE. THERE ARE A FEW

42573

1 JURISDICTIONS WHERE THAT IS DONE, BUT IN MOST
2 JURISDICTIONS IN THE UNITED STATES, IT'S PROVED TO
3 BE SIMPLY UNFEASIBLE, IMPRACTICAL, BECAUSE OF
4 PERSONNEL DEMANDS. UNLIKE JACK KLUGMAN PLAYING
5 QUINCY, YOU DON'T JUST HAVE ONE CASE AND TRAIPSE ALL
6 OVER AMERICA WHILE EVERYBODY BACK AT THE RANCH IS
7 TAKING CARE OF EVERYTHING ELSE. YOU'VE GOT A WORK
8 LOAD OF CASES.

9 SO THE ANSWER IS YOU GO WHEN THE POLICE,
10 HOMICIDE DETECTIVES, WOULD LIKE YOU TO GO. YOU GO
11 BECAUSE YOU'RE CONCERNED ABOUT THAT CASE BASED UPON
12 PRELIMINARY INFORMATION RECEIVED BY YOUR OFFICE.
13 YOU GO BECAUSE OF THE SOCIETAL CONCERNS. IT COULD
14 BE SOMETHING LIKE A POLICE SHOOTING. IT COULD BE A
15 MATTER THAT COULD PROVOKE A RACIAL CONFRONTATION OR

16 SO ON. YOU HAVE TO KEEP IN MIND WHEN YOU'RE A
17 MEDICAL EXAMINER OR CORONER THAT YOU HAVE A
18 GOVERNMENTAL SOCIETAL ROLE. YOU'RE MORE THAN JUST A
19 PATHOLOGIST WORKING IN A HOSPITAL. SO YOU PLAY THAT
20 BY EAR.

21 BUT THE ANSWER TO YOUR QUESTION SIMPLY
22 IS NO, I DO NOT GO, AND IT HAS NEVER BEEN A POLICY
23 OF THE OFFICE WHEN I WAS THERE, TO GO TO EACH AND
24 EVERY DEATH SCENE.

25 Q HOW MANY HAVE YOU GONE TO?

26 A WELL, SEVERAL HUNDRED OF ALL KINDS; AND
27 GUNSHOT WOUND CASES, BOTH OF MY OWN AND CASES WHERE
28 I'VE GONE IN LATER HAVING BEEN CONSULTED BY AN

42574

1 AGENCY OR AN ATTORNEY. I WOULD SAY PROBABLY ABOUT A
2 HUNDRED, SOMETHING LIKE THAT.

3 Q AND HAS THAT BEEN IMPORTANT IN YOUR -- IN
4 THOSE CASES WHERE YOU WERE ABLE, WITH A REASONABLE
5 DEGREE OF SCIENTIFIC CERTAINTY, TO ANSWER THE
6 QUESTION WHAT HAPPENED, HAS IT BEEN IMPORTANT THAT
7 YOU WERE ABLE TO GO TO THE ACTUAL CRIME SCENE IN
8 THOSE CASES?

9 A YES. SOMETIMES IT PROVED TO BE
10 FRUITLESS. SOMETIMES IT PROVED TO BE REDUNDANT.

11 BUT I WOULD SAY THE MAJORITY OF TIMES I FELT I

12 LEARNED SOMETHING.

13 Q NOW, WITH RESPECT TO THIS CASE,

14 DR. WECHT, DID YOU HAVE AND HAVE YOU HAD FOR SOME

15 MONTHS COPIES OF THE AUTOPSY REPORTS AND THE

16 AMENDMENTS TO THE AUTOPSY REPORTS THAT WERE PREPARED

17 BY DR. GOLDEN OF THE L.A. COUNTY CORONER'S OFFICE?

18 A YES, I HAVE.

19 MS. ABRAMSON: YOUR HONOR, AT THIS TIME, IT

20 HASN'T BEEN DONE YET, I WOULD LIKE TO MARK -- WHAT I

21 WOULD LIKE TO DO IS I WOULD LIKE TO MARK THE

22 REPORTS, STARTING WITH THE REPORTS ON MARY L.

23 MENENDEZ. I'D LIKE TO MARK THE ACTUAL REPORT, I

24 BELIEVE THE NEXT NUMBER IS 334-A.

25 THE COURT: I SHOW 333. DO YOU HAVE

26 SOMETHING ON 333?

27 MS. ABRAMSON: 333. ALL RIGHT.

28 WHAT I'D LIKE TO DO IS MARK THE MAIN

42575

1 REPORT, THE ONE THAT

2 WAS -- I JUST WANT TO GET THE SIGN-IN DATES. THE

3 ONE THAT WAS SIGNED OFF ON OCTOBER 13TH, 1989, AS

4 333-A.

5 I WOULD LIKE THEN TO MARK THE FIRST --

6 THE SUPPLEMENTAL REPORT AS IT WAS CALLED, WHICH WAS
7 SIGNED OFF ON AUGUST 11TH, 1992, 333-B; AND THE
8 SUPPLEMENTAL REPORT THAT WAS SIGNED ON SEPTEMBER
9 25TH, 1995, 333-C.

10 THEN I'D LIKE TO MARK THE REPORTS
11 DEALING WITH JOSE MENENDEZ, JOSE E. MENENDEZ, AS
12 334-A FOR THE MAIN REPORT SIGNED OFF IN OCTOBER OF
13 1989; AND THE SUPPLEMENTAL REPORT OF SEPTEMBER 25TH,
14 1995 -- THERE'S NO '92 AMENDMENT FOR HIS -- AS 334-B.

15 AND I'D LIKE TO JUST APPROACH THE
16 WITNESS AND SHOW HIM THESE EXHIBITS AND ASK IF THESE
17 APPEAR TO BE COPIES OF THE SAME AUTOPSY REPORTS AND
18 SUPPLEMENTS THAT HE HAS REVIEWED.

19 THE WITNESS: YES.

20 Q BY MS. ABRAMSON: BASED ON YOUR
21 EXPERIENCE, DR. WECHT, WOULD YOU CHARACTERIZE THE
22 AUTOPSIES THAT WERE PERFORMED HERE WITH RESPECT TO
23 HOW COMPLEX OR DIFFICULT THEY APPEAR TO BE FROM THE
24 PHOTOGRAPHS AND THE DESCRIPTIONS?

25 A I WOULD CONSIDER THESE TO BE COMPLEX
26 CASES BY VIRTUE OF THE MULTIPLE SHOTGUN BLASTS, THE
27 MULTIPLICITY OF THE WOUNDS, THE EXTENSIVE NATURE OF
28 THE INJURIES.

1 Q AND IN ADDITION TO THOSE REPORTS, DID
2 YOU REVIEW CLOSE TO 200 PHOTOGRAPHS OF THE CRIME
3 SCENE AND OF THE DECEDENTS?

4 A I DID NOT MAKE NOTE, AT LEAST AS I
5 RECALL TODAY, OF THE NUMBER, BUT IT CERTAINLY SEEMS
6 LIKE THERE WERE A COUPLE HUNDRED. I'VE SEEN
7 DIFFERENT SETS OF PHOTOS, AND I REALLY DON'T KNOW
8 HOW MANY WERE IN ANY PACKET. BUT I KNOW THAT THERE
9 HAVE BEEN MORE THAN A COUPLE HUNDRED ALL TOLLED.

10 Q OF THE -- JUST OF THE SCENE OF THE
11 SHOOTING AND OF THE DECEDENTS?

12 A YES. THERE WERE AN AWFUL LOT OF THEM.

13 Q DID YOU ALSO REVIEW THE TESTIMONY OF
14 DR. GOLDEN FROM THE PREVIOUS TRIALS?

15 A YES, I DID.

16 Q AND HAVE YOU ALSO READ THE TESTIMONY IN
17 THIS CASE, IN THIS TRIAL, OF DR. ROBERT LAWRENCE OF
18 DR. ROGER MC CARTHY, OF DR. MARTIN FACKLER?

19 A YES.

20 Q DID YOU ALSO CONSULT BRIEFLY WITH
21 DR. FACKLER WHEN BOTH OF YOU WERE IN LOS ANGELES ON
22 THE SAME DAY --

23 A YES.

24 Q -- ABOUT A WEEK AND A HALF AGO?

25 A BRIEFLY AT YOUR OFFICE TWO WEEKS AGO
26 YESTERDAY.

27 Q OKAY. BASED ON YOUR EXPERIENCE OVER THE
28 YEARS AND ALL THE CASES THAT YOU HAVE WORKED ON,

1 DR. WECHT, AND ALL OF YOUR KNOWLEDGE ABOUT FORENSIC
2 PATHOLOGY, DO YOU BELIEVE THAT THE EVENTS THAT
3 OCCURRED HERE THAT RESULTED IN THE WOUNDS TO THESE
4 DECEDENTS CAN BE SO-CALLED RECONSTRUCTED TO ANY
5 LEVEL OF SCIENTIFIC RELIABILITY?

6 A NO, WITH A COUPLE OF EXCEPTIONS. I
7 BELIEVE I CAN DETERMINE WHICH MOST PROBABLY WERE THE
8 FINAL WOUNDS TO MR. MENENDEZ AND MRS. MENENDEZ. BUT
9 AS FAR AS PUTTING THINGS TOGETHER AND ASCERTAINING A
10 SEQUENCE WITH THESE MULTIPLE SHOTGUN WOUNDS, NO, I
11 COULD NOT DO SO.

12 Q THAT'S 'CAUSE YOU'RE NOT TALENTED
13 ENOUGH; IS THAT WHY?

14 A WELL, I THINK I -- YOU KNOW, I'VE
15 AVERAGE COMPETENCE AND EXPERIENCE IN FORENSIC
16 PATHOLOGY. I JUST DON'T SEE HOW IT CAN BE DONE.
17 AND I WOULD NOT ATTEMPT TO DO SO. I WOULD TRY TO
18 RESPOND TO ANY QUESTIONS THE HOMICIDE DETECTIVES
19 MIGHT HAVE, AND I WOULD CERTAINLY REVIEW WITH THEM
20 THINGS; AND THIS IS A CASE THAT YOU VERY LIKELY
21 WOULD GO TO THE SCENE, ESPECIALLY IF YOU WERE
22 ASKED. I THINK I WOULD PROBABLY GO TO THE SCENE IF
23 I WEREN'T ASKED.

24 Q IF YOU HAD BEEN HERE?

25 A IF I HAD BEEN HERE, YES, OF COURSE.
26 BUT EVEN ALLOWING FOR THAT, THE ANSWER
27 IS NO, I COULD NOT -- I CANNOT PUT THIS TOGETHER FOR
28 YOU AND TELL YOU THE ORDER OF THE SHOTS AND OTHER

42578

1 THINGS RELATED TO THAT, EXCEPT I DO HAVE OPINIONS AS
2 TO WHICH WERE THE MOST PROBABLY FINAL SHOTS THAT
3 THESE TWO PEOPLE SUSTAINED.

4 Q AND DO YOU THINK THERE'S ENOUGH
5 INFORMATION OR EVIDENCE HERE TO DETERMINE WHAT
6 POSITIONS EACH OR BOTH OF THE DECEDENTS WERE IN
7 RELATIVE TO EACH OR EITHER OF THE GUNS THAT WERE
8 USED FOR YOU TO BE ABLE TO DETERMINE SUCH THINGS AS
9 WHO WAS WHERE WHEN ANY PARTICULAR SHOT WAS FIRED?

10 A I BELIEVE I COULD PROBABLY MAKE SOME
11 EDUCATED DETERMINATIONS. MIGHT PREFER TO USE THE
12 PHRASE EDUCATED GUESSES, I WOULDN'T BE INSULTED,
13 WITH REGARD TO, YOU KNOW, SOME OF THE WOUNDS IF I'M
14 TOLD ANY OTHER THINGS. AGAIN, PHOTOS AND EVEN SCENE
15 INVESTIGATION, ON-SITE EXAMINATION. BUT, OTHERWISE,
16 I DO NOT BELIEVE THAT IT WOULD BE REASONABLE TO
17 ATTEMPT TO DO SO.

18 PLEASE KEEP IN MIND AS PART OF MY
19 ANSWER, SO THAT YOU WILL UNDERSTAND, YOU'RE NOT

20 TALKING ABOUT AN IMMOBILE STATIC SITUATION. A
21 SHOOTING IS A DYNAMIC MOBILE SITUATION. MULTIPLE
22 GUNSHOT WOUNDS OF PEOPLE WHO ARE CONSCIOUS AND
23 ALIVE, WHO ARE NOT UNDER THE INFLUENCE OF DRUGS, WHO
24 HAVE NOT BEEN RENDERED UNCONSCIOUS BY HAVING BEEN
25 BASHED OVER THE HEAD OR SO ON, OR HAVING BEEN FOUND
26 ASLEEP, NONE OF WHICH, TO MY KNOWLEDGE, IS
27 APPLICABLE IN THIS CASE. AND IT'S MY UNDERSTANDING
28 THAT THERE ARE TWO PEOPLE WHO HAVE DONE THE

42579

1 SHOOTING, AND THERE ARE TWO PEOPLE WE KNOW WHO ARE
2 DEAD. AND IT'S MY UNDERSTANDING THAT THE TWO PEOPLE
3 WHO ARE DEAD WERE ALIVE AND CONSCIOUS WHEN THIS
4 OCCURRED. I'M NOT AWARE OF ANY DIFFERENCE OF
5 OPINION IN THAT REGARD. AND YOU HAVE, THEN, FOUR
6 PEOPLE IN A ROOM WITH SHOTS BEING FIRED.

7 AND I HAVE NO WAY OF KNOWING EXACTLY HOW
8 SOMEBODY MOVED WHEN THEY SHOT TO THEIR RIGHT OR TO
9 THEIR LEFT, WHETHER THEY CROUCHED OR KNEELED OR
10 STOOD STRAIGHT UP CONSTANTLY. AND, OF COURSE, KEEP
11 IN MIND THAT CAN CHANGE FROM ONE SHOT TO THE OTHER.
12 IT'S NOT LIKE YOU HAVE A FIXED POSITION.

13 AND I HAVE NO WAY OF KNOWING THE TWO
14 PEOPLE WHO ARE BEING SHOT, WHAT THEIR EFFORTS WERE

15 TO GET OUT OF THE WAY OR WHAT THEIR INVOLUNTARY
16 MOVEMENTS WERE THEN WHEN THEY WERE STRUCK BY
17 BLASTS. THERE'S A LOT OF KINETIC ENERGY ASSOCIATED
18 WITH A SHOTGUN BLAST. AND THEN YOU HAVE THE
19 FALLING, DUCKING, TWISTING, TURNING, ALL OF WHICH
20 COME INTO PLAY.

21 SO IT IS FOR ALL OF THOSE REASONS THAT I
22 FIND ANY EFFORT TO RECONSTRUCT, TO SIMULATE, THIS
23 SHOOTING TO BE DOOMED TO FAILURE. IT'S NOT A MATTER
24 OF, I THINK, WHO IS BRIGHTER OR SO ON. I CANNOT
25 SPEAK FOR, OBVIOUSLY, THE WORLD OF FORENSIC
26 PATHOLOGY, BUT I THINK I HAVE SOME IDEA OF THESE
27 KINDS OF CASES GENERALLY, AND I CAN REPRESENT,
28 SPEAKING FOR MYSELF, THAT I HAVE NEVER SEEN AN

42580

1 ATTEMPT MADE TO RECONSTRUCT WITH SPECIFICITY THE
2 SEQUENCE OF SHOTS AND THE LOCATION OF TWO SHOOTERS
3 AND TWO PEOPLE WHO ARE BEING SHOT FROM ONE SHOT TO
4 ANOTHER.

5 Q SO YOU'VE NEVER HEARD OF THIS TRYING TO
6 BE DONE AT ANY TIME BEFORE?

7 A I HAVE NEVER EXPERIENCED IT, NO.

8 Q AND APART FROM YOU PERSONALLY BEING
9 INVOLVED IN IT, YOU ARE VERY ACTIVE IN FORENSIC

10 PATHOLOGY, ORGANIZATIONS AND GROUPS AND EDUCATIONAL
11 PROGRAMS, ARE YOU NOT?

12 A YES, I HAVE BEEN, FOR MORE THAN THREE
13 DECADES IN THIS COUNTRY, AND IN INTERNATIONAL
14 ORGANIZATIONS; AND AS A MEMBER OF AN EDITORIAL BOARD
15 OF ABOUT 20 OR MORE NATIONAL AND INTERNATIONAL
16 FORENSIC -- SCIENTIFIC FORENSIC PATHOLOGY
17 PUBLICATIONS, REVIEWING ARTICLES AND THEN GETTING
18 THOSE JOURNALS AND SO ON. I DO NOT RECALL EVER
19 HAVING SEEN A CASE WITH WOUNDS IN EXCESS OF 10 OR
20 12, INVOLVING TWO PEOPLE AND TWO SHOOTERS, WHERE
21 SOMEBODY HAS PUT EVERYTHING TOGETHER. SOMETIMES YOU
22 HAVE EYEWITNESSES.

23 Q AND YOU STILL CAN'T PUT IT TOGETHER?

24 A AND EVEN THEN YOU'VE GOT A PROBLEM. AND
25 WE ALL KNOW ABOUT EYEWITNESS TESTIMONY. WE'VE HEARD
26 ENOUGH ABOUT THAT IN THE WORLD OF FICTION TO KNOW
27 THAT THAT'S NOT AS RELIABLE. BUT -- AS ONE MIGHT
28 THINK.

42581

1 BUT IN THE ABSENCE OF EYEWITNESSES, I
2 WON'T REPEAT WHAT I'VE SAID. MY ANSWER IS AS I'VE
3 GIVEN.

4 Q WHAT I'D LIKE TO DO NOW, THOUGH, IS TURN

5 TO SOME OF THE SPECIFIC WOUNDS THAT WERE INVOLVED,
6 THAT THE DECEDENTS IN THIS CASE SUSTAINED, SO WE CAN
7 GET THE BENEFIT OF YOUR OPINION CONCERNING CERTAIN
8 ISSUES THAT THERE HAS BEEN SOME INCONSISTENT
9 TESTIMONY ON IN THIS CASE.

10 AND WHAT I'D LIKE TO DO, WHAT'S UP ON
11 THE BOARD RIGHT NOW, THAT'S EXHIBIT 295, AND THAT
12 SHOWS A SERIES OF PHOTOGRAPHS OF MAINLY
13 MR. MENENDEZ, BUT ALSO ONE PHOTOGRAPH OF
14 MRS. MENENDEZ. AND THIS HAS TO DO WITH ROGER
15 MC CARTHY'S ILLUSTRATION OF A HYPOTHETICAL
16 SHOT NO. 1.

17 FIRST OF ALL, I WANT TO TURN YOUR
18 ATTENTION TO WHAT DR. GOLDEN LABELED, SOMEWHAT
19 CONFUSEDLY, WOUNDS NO. 2 AND WOUNDS NO. 3, HAVING TO
20 DO WITH MR. MENENDEZ' UPPER RIGHT ARM.

21 YOU'RE FAMILIAR WITH THE AMENDMENT THAT
22 DR. GOLDEN WROTE IN 1995 INDICATING A LATERAL
23 ENTRANCE WOUND AND A MEDIAL EXIT WOUND FOR WOUND
24 NO. 3; IS THAT RIGHT?

25 A YES.

26 Q NOW, FIRST OF ALL, IF YOU TAKE A LOOK AT
27 295, THERE IS -- I DON'T KNOW IF YOU CAN SEE THE
28 SUBLETTERING, BUT THERE IS A PHOTOGRAPH THAT'S

1 LETTERED B, WHICH IS THIS ONE HERE.

2 AND DOES THAT, FIRST OF ALL, SHOW THE

3 EXIT WOUNDS FOR WOUND NO. 3?

4 A YES, I BELIEVE THAT IT DOES, BASED UPON

5 DR. GOLDEN'S AMENDED DESCRIPTION OF THAT WOUND, THE

6 AMENDATION OF AUGUST '95, I THINK THAT'S THE DATE.

7 Q SEPTEMBER?

8 A SEPTEMBER, I'M SORRY. EVERYTHING ELSE

9 WAS AUGUST. THIS ONE WAS SEPTEMBER, RIGHT.

10 Q NOW, DR. GOLDEN DESCRIBED THIS LARGE

11 DEFECT -- YOU'RE CHECKING THE DATE, DOCTOR?

12 A YES. YOU -- DOESN'T MAKE A DIFFERENCE,

13 BUT I -- IT SHOWS HERE 25TH DAY SEPTEMBER, '95.

14 CORRECT. THANK YOU.

15 Q OKAY. SO WE CAN AGREE WITH THE DATE?

16 A YES.

17 Q WHAT DR. GOLDEN IS DESCRIBING THERE IS

18 THIS EXIT WOUND THAT APPEARS AT THE UPPER OF THE TWO

19 APPARENT WOUND SITES ON THE INNER OR MEDIAL ASPECT

20 OF THE ARM, THE RIGHT ARM, CORRECT?

21 A YES.

22 Q NOW, DID DR. GOLDEN, IN HIS ORIGINAL

23 REPORT, WHEN HE TALKED ABOUT INDIVIDUAL SATELLITE

24 DEFECTS, CAN YOU SEE THOSE INDIVIDUAL DEFECTS IN

25 295-B?

26 A YES.

27 Q AND DID DR. GOLDEN INDICATE WHETHER

42583

1 OPINION, AT THAT TIME, IN THE ORIGINAL REPORT,
2 ENTRANCES OR EXITS, OR WAS THAT LEFT OPEN?

3 I THINK THEY APPEAR IN THE '89 REPORT AS
4 PART OF HIS THEN DESCRIPTION OF NO. 3.

5 A YES. THAT'S EXACTLY WHAT I'M LOOKING
6 AT, AND I HAVE THAT IN FRONT OF ME. HE TALKS ABOUT
7 THE INDIVIDUAL PELLET WOUNDS. BUT YOU ASKED ME --

8 Q DOES HE DESIGNATE THEM?

9 A DOES HE DESIGNATE THEM AS TO ENTRANCE OR
10 EXIT?

11 WITH REGARD TO THE INDIVIDUAL PELLET
12 WOUNDS THAT WE SEE IN THAT PHOTO, MY ANSWER TO YOUR
13 QUESTION IS THAT I DO NOT SEE IN HIS ORIGINAL 1989
14 AUTOPSY REPORT A SPECIFIC DESIGNATION AS TO WHETHER
15 THEY ARE ENTRANCE OR EXIT. AND I'M LOOKING AT THE
16 DESCRIPTION OF HIS WOUND NO. 3 ON PAGES 5 AND 6 OF
17 THAT AUTOPSY REPORT.

18 Q WHEN YOU'RE DEALING WITH SHOTGUN PELLET
19 WOUNDS, DR. WECHT, AND YOU'RE DEALING SPECIFICALLY
20 WITH SO-CALLED SATELLITE WOUNDS, INDIVIDUAL DEFECTS,
21 IS IT SOMEWHAT DIFFICULT TO DETERMINE WHETHER AN
22 INDIVIDUAL PELLET-SIZED DEFECT IS AN ENTRANCE OR AN

23 EXIT?

24 A YES, IT IS.

25 Q NOW, WITH RESPECT TO THIS PARTICULAR

26 WOUND THAT WE SEE ON 295-B -- WELL, FIRST OF ALL, DID

27 YOU HAVE AVAILABLE TO YOU COPIES OF THE X RAYS AND

28 PHOTOGRAPHS OF THE X RAYS OF THIS LIMB OF

42584

1 MR. MENENDEZ' RIGHT ARM?

2 A YES.

3 Q AND IN EXAMINING THE NATURE -- THERE'S

4 RATHER DRAMATIC BONE FRACTURE IN THERE, IS THERE

5 NOT?

6 A YES.

7 Q DID YOU FORM AN OPINION CONCERNING

8 WHETHER OR NOT THOSE INDIVIDUAL SATELLITE DEFECTS

9 MAY, THEMSELVES, BE EXIT WOUNDS?

10 A MY OPINION IS THAT THEY COULD BE

11 SATELLITE EXIT WOUNDS.

12 Q AND WOULD THAT -- EXIT WOUNDS FROM WHAT

13 ENTRY?

14 A WELL, YOU HAVE SOME WOUND HERE, WHICH

15 IS, TO THE BEST OF MY ABILITY TO UNDERSTAND

16 DR. GOLDEN'S AUTOPSY PRESENTATION, WOUND NO. 3.

17 YOU ALSO HAVE A WOUND NO. 2, WHICH IS

18 LOWER DOWN, NOT SHOWN IN THIS PICTURE, AND THAT
19 WOUND GOES THROUGH THE UPPER PORTION OF THE FOREARM
20 TOWARD THE CREASE IN FRONT OF THE ELBOW KNOWN AS THE
21 ANTECUBITAL FOSSA. SO YOU'VE GOT TWO THINGS TO
22 CONSIDER HERE.

23 I BELIEVE THAT SHOWS WOUNDS COULD BE
24 SATELLITE EXIT WOUNDS THAT -- OR CLOSE TO THE LARGE
25 GAPING LACERATION, WHICH IS THE EXIT WOUND BY THE
26 AXILLA, THE ARMPIT. IT IS POSSIBLE THAT THEY COULD
27 BE RELATED TO SOME -- TO -- TO WOUND NO. 2, AND IT
28 WOULD BE SOME EXIT WOUNDS OF WOUND NO. 2. IT'S NOT

42585

1 POSSIBLE TO BE CERTAIN. BUT THAT WOULD BE --
2 MY FIRST CHOICE WOULD BE THAT THEY ARE
3 ADDITIONAL EXIT WOUNDS OF NO. 3 BECAUSE THEY ARE
4 CLOSE TO THE LARGE EXIT WOUND AND BECAUSE THE
5 HUMERUS WAS SHATTERED. WHEN THE HUMERUS WAS
6 SHATTERED, THERE CERTAINLY WOULD HAVE BEEN SOME
7 GREATER DISPERSAL OF THE PELLETS. AND THEN YOU
8 HAVE -- YOU CAN HAVE INDIVIDUAL PELLETS EMERGING
9 THROUGH THEIR OWN EXIT SITES, NOT REMAINING WITH THE
10 BODY OF PELLETS THAT MAKES THE LARGER EXIT WOUND
11 SHOWN IN THAT PICTURE.

12 Q OKAY. BUT WHAT YOU HAVEN'T TOLD US YET,

13 AND THIS IS FOR CLARITY, YOU'RE SAYING THAT BOTH THE
14 LARGE DEFECT NEAR THE ARMPIT, THE AXILLA, AND THE
15 INDIVIDUAL SATELLITES, COULD ALL BE COMING FROM THAT
16 BIG ENTRY WOUND ON THE LATERAL ASPECT OF THE UPPER
17 ARM, CORRECT?

18 A OH, YES. YOU HAVEN'T ASKED ME ABOUT THE
19 ENTRANCE WOUND AND THAT'S WHY I HAVEN'T SAID
20 ANYTHING ABOUT IT.

21 Q SORRY.

22 A THE ANSWER IS YES, THE EXIT WOUND SHOWN
23 IN THAT PICTURE IS THE EXIT WOUND OF THE LARGE
24 ENTRANCE WOUND WHICH DR. GOLDEN DESCRIBED IN THE
25 POSTERIOR LATERAL PORTION OF THE UPPER RIGHT ARM.
26 POSTERIOR IS BACK AND LATERAL TO THE SIDE. SO WHEN
27 YOU COME AROUND THE SIDE TO THE BACK, WE SAY
28 POSTERIORLATERAL. WE SOMETIMES JUXTAPOSE THOSE TWO

42586

1 ANATOMICAL TERMS OR OTHER ANATOMICAL TERMS IF IT'S
2 NOT PURELY BACK OR FRONT OR SO ON.

3 SO THE ENTRANCE WOUND, WHICH HE
4 DESCRIBES IN HIS SUPPLEMENTAL REPORT OF SEPTEMBER
5 ' ON THE FIRST PAGE OF THAT REPORT, IS, INDEED,
6 LOCATED ON THE LATERAL POSTERIOR ASPECT OF THE RIGHT
7 UPPER ARM. AND HE DESCRIBES IT AS APPROXIMATELY TWO

8 INCHES IN MAXIMAL DIAMETER. SO THAT, IN MY OPINION,
9 IS THE ENTRANCE WOUND.

10 IN OTHER WORDS, I AGREE WITH
11 DR. GOLDEN'S INTERPRETATION OF THAT WOUND AS
12 CLARIFIED BY HIM IN HIS SUPPLEMENTAL REPORT OF
13 SEPTEMBER '95. THE WOUND ENTERED ESSENTIALLY IN THE
14 BACK OF THE RIGHT UPPER ARM, WENT THROUGH, EXITED,
15 ESSENTIALLY, IN THE FRONT, MORE TOWARD THE TRUNK WE
16 CALL MEDIAL, WHICH MEANS CLOSER TO THE MIDLINE OF
17 THE BODY. AND IT MADE THAT BIG GAPING DEFECT THAT
18 YOU SEE JUST DOWN FROM THE ARMPIT.

19 Q NOW, ARE YOU SAYING YOU'RE ABSOLUTELY
20 POSITIVE THAT THE SATELLITE DEFECTS ARE EXITS OR ARE
21 YOU SAYING THAT IS ONE REASONABLE LIKELIHOOD?

22 A THE LATTER. IT'S ONE REASONABLE
23 LIKELIHOOD, WITH REGARD TO THE SMALL PELLET WOUNDS.
24 AND I BELIEVE IT'S A VERY REASONABLE CONJECTURE.
25 BUT I CANNOT STATE THAT WITH THE SAME DEGREE OF
26 CERTAINTY THAT I CAN WITH REGARD TO THE LARGE EXIT
27 WOUND SEEN IN THAT PICTURE, NOR WITH THE DEGREE OF
28 CERTAINTY THAT I CAN ASCRIBE TO THE ENTRANCE WOUND,

42587

1 WHICH IS BACK AROUND THE UPPER RIGHT ARM.

2 Q IN ANY EVENT, THOUGH, DR. WECHT, IS IT

3 YOUR OPINION THAT IT IS UTTERLY ERRONEOUS TO CALL
4 THIS LARGE DEFECT AN ENTRANCE WOUND?

5 A OH, YES, ABSOLUTELY. THE WOUND AROUND
6 THE BACK PART OF THE ARM IS SIGNIFICANTLY SMALLER.
7 THAT WOUND, I'VE ALREADY TOLD YOU, IS ABOUT TWO
8 INCHES. THE WOUND THAT YOU ARE LOOKING AT THERE
9 MEASURED SIX BY FOUR INCHES. SO YOU DON'T HAVE A
10 WOUND GOING IN MAKING THIS BIG HOLE AND THEN COMING
11 BACK TOGETHER AND MAKING A SMALLER HOLE. THAT IS
12 ANTITHETICAL. IT IS DIRECTLY CONTRARY TO WHAT TAKES
13 PLACE WITH SHOTGUN BLASTS.

14 Q SO THE EXITS TEND TO BE LARGER THAN THE
15 ENTRANCES?

16 A YES. AND THAT'S A VERY TYPICAL KIND OF
17 AN EXIT WOUND. IT IS LARGE. IT IS IRREGULAR.

18 SEE, YOU'RE NOT GOING TO GET A WOUND
19 LIKE THAT WHERE THE ENTRANCE IS THAT BIG; THE
20 ENTRANCE WOUND IS ESSENTIALLY THE SIZE OF THE BORE
21 OF THE WEAPON. IT'LL BE A LITTLE BIT BIGGER AS IT
22 COMES OUT BECAUSE WHEN IT GOES BACK FURTHER, THEN
23 YOU GET PELLET DISTRIBUTION AND YOU MAY NOT HAVE A
24 SINGLE LARGE ENTRANCE HOLE AT ALL. SO YOU CAN'T GET
25 A HOLE LIKE THAT THAT IS ENTRANCE, IT IS FAR TOO
26 BIG. IT FITS VERY WELL WITH THE SIGNIFICANTLY
27 SMALLER WOUND THAT DR. GOLDEN TELLS US ABOUT LOCATED
28 ON THE POSTEROLATERAL ASPECT OF THE RIGHT UPPER

1 ARM.

2 Q OKAY. BUT THERE'S NOTHING IN WHAT
3 YOU'VE SEEN THAT RULES OUT THE POSSIBILITY THAT THE
4 SATELLITE DEFECTS ARE ALSO EXITS FROM THAT SAME
5 TWO-INCH ENTRY HOLE ON THE BACK?

6 A THAT'S CORRECT. AND I THINK, AMONG THE
7 CHOICES AVAILABLE TO ME, THAT WOULD BE MY FIRST
8 CHOICE. I JUST WANT TO SAY THAT I CAN'T BE
9 ABSOLUTELY CERTAIN SINCE HE DID NOT TRACE THEM OUT.

10 Q HE DIDN'T TRACE THAT WOUND -- THOSE
11 DEFECTS INDIVIDUALLY FROM WHAT YOU CAN GATHER?

12 A NO, NOT FROM WHAT I CAN SEE.

13 Q ARE YOU AWARE ALSO -- LET ME SHOW YOU THE
14 NEXT BOARD FOR A MOMENT. THIS IS 301.

15 YOU'VE SEEN THE ONE AND ONLY PHOTOGRAPH,
16 HAVE YOU NOT, THAT SHOWS WHAT APPEAR TO BE FOUR --
17 THE PELLET DEFECTS ON MR. MENENDEZ' RIGHT FOREARM,
18 ON THE DORSAL ASPECT?

19 A YES.

20 Q YOU'RE AWARE THAT WHEN DR. GOLDEN
21 AMENDED HIS DESCRIPTION OF WOUND 3 IN 1995; HE
22 DELETED ALL REFERENCE TO THESE PELLET DEFECTS?

23 A YES. IF YOU TAKE HIS WORDS VERBATIM,
24 THEN HE SEES CERTAIN PHOTOGRAPHS AND THE ANSWER,
25 THEN, IS YES, THAT'S CORRECT.

26 Q HE DELETED THIS ONE AND HE DIDN'T

27 REWRITE ANY DESCRIPTION OF WHAT THESE DEFECTS WERE,
28 WHETHER THEY WERE ENTRANCES OR EXITS OR WHETHER HE

42589

1 HAD EVER TRACED THE TRACK BETWEEN THOSE AND ANYTHING
2 ELSE, CORRECT?

3 A THAT IS CORRECT, HE DID NOT.

4 Q AND WOULD YOU EVER CONSIDER TRYING TO
5 RECONSTRUCT A SHOOTING WHEN THERE ARE WOUNDS
6 APPARENT IN PHOTOGRAPHS THAT ARE BASICALLY
7 UNEXPLAINED BY THE CORONER'S PROTOCOL, BY THE
8 AUTOPSY REPORT?

9 A NO. THE ABSENCE OF DETAILED DESCRIPTION
10 AND ANATOMICAL DISSECTION, AND THEN SOME DEGREE OF
11 RELATIVE INCONSISTENCY OR DIFFERENCE BETWEEN AN
12 ORIGINAL REPORT AND AN AMENDED REPORT, ALL OF THESE
13 THINGS OBVIOUSLY ADD TO THE DIFFICULTY, PROVIDE
14 FURTHER CONSTERNATION AND GIVE YOU GREATER PAUSE IN
15 TRYING TO RECONSTRUCT WITH SPECIFICITY, WITH
16 PRECISION.

17 Q NOW, CONCERNING ANOTHER ASPECT OF THIS
18 WOUND NO. 3, DOES DR. GOLDEN, IN HIS -- I THINK HE
19 CLARIFIES IN HIS AMENDMENT, DOES HE DETERMINE THAT
20 THERE IS A CONNECTION BETWEEN THE WOUND IN THE UPPER
21 RIGHT ARM AND THE BRUISE OR ABRASION PATTERN,

22 WHICHEVER WORD HE USES, ON MR. MENENDEZ' RIGHT

23 CHEST?

24 A YES, HE DOES.

25 Q AND DO YOU, DR. WECHT, CONNECT THOSE TWO

26 WOUNDS?

27 A YES, I DO.

28 Q AND WHY IS IT THAT YOU BELIEVE NO. 6 --

42590

1 I BELIEVE HE CALLS THE PATTERN OF MARKS ON THE RIGHT

2 CHEST -- IS AFFILIATED WITH NO. 3? HOW DID THOSE

3 MARKS GET ON HIS CHEST, IN YOUR OPINION?

4 A THE MARKS ON THE PICTURE IN THE UPPER

5 LEFT CORNER OF THIS BOARD --

6 Q THAT'S 295-A.

7 A I'M SORRY?

8 Q 295-A.

9 A YOU'VE GOT BETTER EYES THAN I DO.

10 Q NO. I MARKED IT.

11 A I CAN SEE IT'S 295.

12 WHICH CONSTITUTE DR. GOLDEN'S WOUND

13 NO. 6 IN THE ORIGINAL AUTOPSY REPORT OF 1989. HE

14 REFERS TO THOSE INJURIES AS NO. 6.

15 IN MY OPINION, THEY ARE DEFINITELY

16 RELATED TO WOUND NO. 3 OF MR. MENENDEZ. AGAIN,

17 THESE NUMBERS REFER TO DR. GOLDEN'S ORIGINAL AUTOPSY
18 REPORT.

19 YOU ASKED ME WHY. THEY ARE BRUISES AND
20 ABRASIONS. THEY ARE NOT PERFORATING OR PENETRATING
21 WOUNDS. THEY INDICATE THAT SOMETHING HAS IMPACTED
22 AGAINST THE CHEST.

23 IF YOU JUST TAKE YOUR RIGHT ARM AND YOU
24 MOVE IT IN TO YOUR RIGHT CHEST, AND YOU KEEP IN MIND
25 THAT A BIG BLAST IS COMING OUT FROM THE
26 ANTERIOMEDIAL ASPECT OF THE RIGHT UPPER ARM DOWN
27 FROM THE ARMPIT, YOU'LL SEE THAT THAT COMES RIGHT
28 THERE ACROSS THAT PORTION OF THE CHEST, WHICH WHAT

42591

1 YOU'RE LOOKING AT IS THE EXPLOSIVE EVULSIVE EFFECT
2 OF THE EXIT WOUNDS NO. 3 COMING ON TO THE RIGHT
3 CHEST. AND YOU HAVE THE SOFT TISSUES BURSTING OUT.
4 YOU HAVE THE BONE ITSELF POSSIBLY BURSTING OUT IN A
5 MILLISECOND, AND SO ON, THAT IMPACTS AGAINST THE
6 RIGHT CHEST AND GIVES YOU THOSE CONSTITUTIONS AND
7 ABRASIONS.

8 AND YOU SEE SOMETIME UNINVOLVED AREAS,
9 WHICH APPARENTLY SOMEONE HAS ATTEMPTED TO REFER TO
10 THROUGH THE USE OF RED-COLORED ARROWS, AND THAT
11 WOULD GO ALONG WITH PROBABLY SOME LITTLE BUNCHING OF

12 THE CLOTHING THAT GAVE THAT KIND OF LIMITED
13 INTERSPERSED PROTECTION TO THE EPIDERMIS, THE OUTER
14 PORTION OF THE SKIN.

15 BUT THAT'S JUST SO OBVIOUS, AND I CONCUR
16 COMPLETELY WITH DR. GOLDEN WHO SO STATES IN HIS
17 SUPPLEMENTAL REPORT.

18 Q NOW, WHEN YOU SAY SOME CUSHIONING, IN
19 OTHER WORDS -- SOME BUNCHING, RATHER, THE CLOTHING --
20 YOU'RE TALKING HERE ABOUT THE IMPACT OF TISSUE,
21 WHETHER IT'S MUSCLE OR WITH BONE UNDERLYING, THAT
22 IT'S REALLY THE BANGING OF THE ARM AGAINST THE CHEST
23 THAT CALLS --

24 MR. CONN: OBJECTION. LEADING.

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: ARE YOU SAYING THAT'S
27 WHAT CAUSED THESE BRUISES ARE HUMAN TISSUE VERSUS
28 PELLETS, FOR EXAMPLE?

42592

1 A YES. IT IS THE IMPACT OF THE ARM, AS I
2 HAVE ATTEMPTED TO EXPLAIN, SMASHING UP AGAINST THE
3 RIGHT UPPER ANTERIOR CHEST WALL.

4 Q NOW, ARE YOU FAMILIAR WITH
5 DR. LAWRENCE'S THESIS THAT THESE WOUNDS ARE CAUSED
6 BY PELLETS SOMEHOW GRABBING HOLD OF THE SHIRT AND

7 CAUSING A SHIRT BURN ON THIS SIDE OF THE CHEST

8 WALL?

9 A YES. I READ THAT.

10 Q AND DID YOU ALSO TAKE A LOOK AT THE

11 SHIRT WHEN YOU WERE HERE LAST TIME?

12 A YES. YOU SHOWED THAT TO ME.

13 Q AND WHAT IS YOUR OPINION CONCERNING THAT

14 THESIS THAT DR. LAWRENCE SUGGESTED?

15 A I DISAGREE COMPLETELY. I HAVE NEVER

16 HEARD OF ANYTHING LIKE THAT. THE GARMENT BEING

17 PULLED AS A RESULT OF THE FORCE OF A GUNSHOT WOUND

18 CROSS THE SKIN IS GOING TO PRODUCE CONSTITUTIONS AND

19 ABRASIONS OF THAT MAGNITUDE. I JUST -- I CAN'T -- I

20 CAN'T REALLY GRASP WHAT HE'S BASING THAT ON. I

21 DISAGREE WITH HIM.

22 Q DOESN'T SEEM RATIONAL TO YOU?

23 A WELL, RATIONAL -- I DISAGREE WITH HIM. I

24 DON'T UNDERSTAND THE PHYSICAL ANATOMICAL BASIS FOR

25 THAT.

26 Q OKAY. CAN YOU THINK OF ANY PHYSICAL OR

27 ANATOMICAL BASIS FOR THAT?

28 A YES. THE IMPACT OF THE RIGHT UPPER ARM

42593

1 AS A RESULT OF THE SHOTGUN BLAST THROUGH THE ARM

2 SMASHING THE RIGHT UPPER ARM AGAINST THE CHEST WALL.

3 Q NO. MY QUESTION HAD TO DO WITH

4 DR. LAWRENCE. CAN YOU THINK OF ANY LAWS OF PHYSICS

5 OR LAWS OF ANATOMY THAT WOULD SUPPORT WHAT

6 DR. LAWRENCE IS SAYING?

7 A NO. I CAN SEE IF YOU HAD A GARMENT THAT

8 MAYBE HAD A METALLIC BUTTON OR SOMETHING HARD

9 PLASTIC OR SO ON IT MAKING A SCRATCH MARK, A LINEAR

10 ABRASION, SURE, THAT'S WITHIN THE REALM OF

11 POSSIBILITY.

12 BUT JUST LOOK AT WHAT YOU HAVE THERE,

13 YOU HAVE LARGE AREAS OF BRUISING, THAT'S WHAT THEY

14 ARE. CONSTITUTIONS ARE BRUISES. ABRASIONS ARE

15 SCRATCH MARKS. THERE'S NOTHING LINEAR. THERE'S

16 NOTHING THAT IS PATTERNED. THESE ARE LARGER

17 SUPERFICIAL INJURIES INVOLVING THE EPIDERMIS. THEY

18 ARE NOT PERFORATING OR PENETRATING WOUNDS.

19 THERE'S THE OTHER THING, TOO, THAT FITS

20 IN WITH WHAT I'M SAYING THAT, YOU KNOW, THESE

21 INDICATE SOMETHING OF WHAT WE CALL BLUNT-FORCE

22 TRAUMATIC NATURE.

23 Q WHAT DOES BLUNT-FORCE TRAUMA MEAN? I

24 KNOW WHAT IT MEANS, BUT EXPLAIN TO THE JURY.

25 A NO, I UNDERSTAND. I UNDERSTAND.

26 BLUNT-FORCE TRAUMA IS THE APPLICATION OF

27 FORCE FROM ANY KIND OF AN OBJECT AGAINST THE BODY

28 THAT DOES NOT PRODUCE A PENETRATING OR PERFORATING

1 WOUND. IT MAY LEAD TO A BRUISE, AN ABRASION. IT
2 MAY LEAD TO A DEEP LACERATION. IT CAN BE ANYTHING.
3 A PIECE OF WOOD. A PIECE OF METAL. MY FIST.
4 TYPEWRITER. THE JUDGE'S GAVEL. ANYTHING. MOTOR
5 VEHICULAR ACCIDENT TRAUMA. ANY OF THAT IS WHAT WE
6 CALL BLUNT-FORCE TRAUMA.

7 Q AND IS THAT IN CONTRAST TO
8 PROJECTILE-TRAUMA, WHICH IS PENETRATING OR STABBING
9 TRAUMA, WHICH IS PENETRATING?

10 A YES, THAT IS CORRECT.

11 Q NOW, BASED ON YOUR REVIEW OF THE SCENE
12 PHOTOGRAPHS, DO YOU HAVE AN OPINION, DR. WECHT, AS
13 TO WHETHER OR NOT THIS WOUND COMBINATION THAT WE'VE
14 BEEN TALKING ABOUT, NO. 3 AND NO. 6, COULD HAVE
15 OCCURRED WHILE MR. MENENDEZ WAS SEATED AS SHOWN IN
16 THE CARTOON ILLUSTRATION THAT'S ON THAT BOARD?

17 MR. CONN: OBJECTION. ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE WITNESS: YOU'RE ASKING ME -- TALKING
20 ABOUT THE GUNSHOT WOUND NO. 3 AND THE INJURIES ON
21 THE CHEST, DR. GOLDEN'S NO. 6, WHETHER THEY COULD
22 HAVE BEEN SUSTAINED WHILE HE WAS SITTING OR
23 STANDING? THAT'S YOUR QUESTION?

24 Q BY MS. ABRAMSON: WELL, THAT'S -- I WAS
25 STARTING WITH SITTING THE WAY HE'S SHOWN IN THE

26 CARTOON ILLUSTRATION.

27 A OH, IN THAT -- I'M SORRY. IN THE TWO
28 PICTURES IN THE MIDDLE OF THIS EXHIBIT, 295? IS

42595

1 THAT WHAT YOU'RE ASKING ME?

2 Q RIGHT. STARTING WITH THAT.

3 FIRST OF ALL, DO YOU UNDERSTAND WHAT
4 THESE PICTURES ARE SUPPOSED TO BE SHOWING?

5 A YES. I'M SORRY. GO AHEAD.

6 Q THEY'RE SHOWING AN INJURY COMING FROM
7 RIGHT TO LEFT. THEY'RE SHOWING THIS AREA AS AN
8 INJURY AREA.

9 A YOU DIDN'T ASK ME THAT. I'M WELL AWARE
10 OF DR. MC CARTHY'S RECONSTRUCTION AND TESTIMONY ON
11 THAT. AND I'M WELL AWARE OF DR. MC CARTHY'S
12 CORRELATION OF THE INJURIES ON MR. MENENDEZ' RIGHT
13 ARM WITH THE INJURIES OF HIS LEFT ELBOW. BUT I
14 DIDN'T WANT TO JUMP AHEAD OF YOUR QUESTION. YOU
15 ASKED ME ONLY -- YOU WERE JUST ASKING ME, AS I
16 UNDERSTOOD IT, ABOUT THE WOUNDS ON THE RIGHT ARM AND
17 CHEST.

18 Q LET'S START WITH THIS.

19 HERE'S A PHOTOGRAPH OF MR. MENENDEZ, ONE
20 OF MANY WHICH I BELIEVE YOU'VE HAD, WHICH IS D,

21 SHOWING HIS POSITION ON THE COUCH AND THE POSITION

22 OF HIS RIGHT ARM. OKAY?

23 A YES.

24 Q IN YOUR OPINION, COULD HE HAVE GOTTEN

25 THESE WOUNDS IN HIS RIGHT ARM WHILE IN THAT

26 POSITION?

27 A NO. I THINK IT WOULD HAVE BEEN VERY

28 DIFFICULT TO GET THOSE WOUNDS WHILE HE WAS IN THAT

42596

1 POSITION, BECAUSE OF THE POSITION THAT A SHOOTER

2 WOULD HAVE HAD TO HAVE HAD AND THEN BECAUSE OF THE

3 DIRECTIONALITY OF THE BLOOD SPATTERS THAT MOVE

4 ACROSS THE CHEST FROM RIGHT TO LEFT. SO I THINK

5 THAT IT WOULD HAVE BEEN VERY, VERY DIFFICULT, QUITE

6 CONTORTED.

7 Q IN FACT, YOU TALKED ABOUT BLOOD SPATTERS

8 AND YOU CAN SEE -- YOU SEE THESE THREE PHOTOGRAPHS

9 THAT ARE SUBLABELED H, I AND J?

10 A YES.

11 Q AND THEY SHOW BLOOD SPATTERS ON THE LEFT

12 SIDE OF MR. MENENDEZ' SHIRT?

13 A YES.

14 Q THOSE SPATTERS SHOW A CERTAIN DIRECTION?

15 A YES.

16 Q IS THAT DIRECTION CONSISTENT WITH WHAT
17 YOU HAVE SAID ABOUT THIS WOUND AS BEING AN EXIT
18 WOUND?

19 A YES.

20 Q NOW, JUST MOVING ON TO THE -- IN E AND F
21 ON 295 WE HAVE THE CARTOON ILLUSTRATIONS OF --

22 MR. CONN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: REFER TO THEM AS ILLUSTRATIONS
24 RATHER THAN CHARACTERIZING THEM.

25 MS. ABRAMSON: I WANT TO MAKE SURE THEY'RE
26 NOT --

27 THE COURT: THEY'RE ILLUSTRATIONS. WE CAN
28 SEE WHAT THEY ARE.

42597

1 Q BY MS. ABRAMSON: ON THIS ILLUSTRATION
2 YOU SEE THERE'S A LINING UP, IF YOU WILL, OF A WOUND
3 TO MR. MENENDEZ' LEFT ELBOW AND THEN A HYPOTHETICAL
4 ENTRY WOUND ON HIS RIGHT INNER ARM.

5 DO YOU HAVE AN OPINION --

6 A YES, I SEE THAT.

7 Q -- AS TO WHETHER THERE IS ANY
8 RELATIONSHIP, BASED ON THE MEDICAL EVIDENCE, BETWEEN
9 THE WOUND PATTERN ON MR. MENENDEZ' LEFT ELBOW AND
10 THE WOUND ON HIS UPPER RIGHT ARM?

11 A YES, I HAVE AN OPINION.

12 Q AND WHAT IS THAT OPINION?

13 A THERE IS NO RELATIONSHIP WHATSOEVER
14 BETWEEN MR. MENENDEZ' LEFT ELBOW WOUND NO. 4 IN
15 DR. GOLDEN'S AUTOPSY REPORT AND MR. MENENDEZ' WOUNDS
16 TO 2 AND 3 OR 2 OR JUST 3.

17 Q AND WHY IS THAT?

18 A YOU HAVE -- OH, I'M SORRY. THAT IS THE
19 ANSWER TO YOUR QUESTION.

20 Q WHY IS THAT?

21 A THE WOUND TO THE ELBOW, NO. 4, CONSISTS
22 OF MULTIPLE INDIVIDUAL PELLET DEFECTS. YOU ALREADY
23 HAVE THE BLAST DISPERSING WHEN IT HITS THE LEFT
24 ELBOW. THERE'S NO WAY IN THE WORLD THAT THE
25 PELLETS, WHICH ARE MOVING IN CONICAL FASHION
26 OUTWARD, ARE GOING TO THEN COME BACK TOGETHER IN
27 CONSOLIDATED FASHION AND MAKE A SINGULAR LARGE
28 DEFECT IN THE INNER ASPECT OF THE RIGHT ARM.

42598

1 THERE'S NO WAY IN THE WORLD THAT ANY SHOTGUN BLAST
2 IS GOING TO DISPERSE AND THEN COME BACK.

3 YOU CAN HAVE SOMETHING THAT CAUSES
4 GREATER DISPERSAL, AN INTERMEDIATE TARGET OR SO ON.
5 BUT YOU CAN'T HAVE A DISPERSING AND THEN COMING BACK

6 TOGETHER IN REVERSE CONICAL FASHION LIKE GOING BACK
7 TO THE BOTTOM OF THE ICE CREAM CONE. THERE'S NO WAY
8 IN THE WORLD YOU CAN HAVE A SHOT STRIKING HIS LEFT
9 ELBOW, PRODUCING MULTIPLE PELLET WOUNDS, AND THEN
10 CONTINUING ON TO MAKE A DEFINITIVE WOUND OF SIX BY
11 FOUR DIMENSIONS ON THE UPPER INNER ASPECT OF HIS
12 RIGHT ARM, WHICH IS SEEN IN THE MIDDLE PHOTO ON THE
13 FAR RIGHT -- FAR LEFT COLUMN.

14 Q WHAT ABOUT THE INDIVIDUAL SATELLITE
15 DEFECTS ON THE INNER RIGHT ARM, IF THOSE WERE
16 ENTRANCE?

17 A THAT'S A POSSIBILITY THAT SOME OF THE
18 PELLETS FROM THE LEFT ELBOW COULD HAVE GONE OVER AND
19 MADE SOME ENTRANCE HOLES IN THE UPPER RIGHT ARM.
20 THAT'S POSSIBLE.

21 YOU SEE, YOU GET INTO ALL THESE
22 DISPERSAL PATTERNS AND YOU SIMPLY CAN'T KNOW EXACTLY
23 WHAT THEY ARE, BECAUSE WHEN YOU'RE DETERMINING
24 DISPERSAL PATTERNS, YOU CAN ONLY DO SO IF YOU HAVE
25 THE VERY WEAPON WHICH IS KNOWN OR BELIEVED TO HAVE
26 BEEN USED WITH THE EXACT AMMUNITION TO REPRODUCE
27 IT. AND YOU THEN HAVE TO HAVE THE AUTOPSY FINDINGS
28 WITH PRECISE MEASUREMENTS, THE DIAMETER OF THE

1 DISPERSAL PATTERN, THE NUMBER OF PELLET WOUNDS, THE
2 LOCATION OF THE INJURIES, THE PRESENCE OF PELLETS OR
3 WADDING IN THE BODY, AND SO ON. YOU NEED ALL OF
4 THOSE THINGS TO ATTEMPT TO PUT THINGS TOGETHER. YOU
5 CAN'T JUST DO THIS EVEN WITH ANOTHER WEAPON OF AN
6 IDENTICAL MODEL. THEY CAN VARY FROM ONE IDENTICAL
7 MODEL TO THE OTHER. THAT'S VERY CLEAR AND IT IS
8 WELL-DOCUMENTED IN THE FORENSIC PATHOLOGY LITERATURE
9 ON SHOTGUN WOUNDS. IT HAS TO BE THAT WEAPON WITH
10 THAT EXACT BORE, EITHER FULL CHOKE, MODIFIED CHOKE,
11 IMPROVED CYLINDER, CYLINDER BORE RANGING FROM THE
12 TIGHTEST CONSTRICTION TO NO CONSTRICTION, AND YOU
13 HAVE TO HAVE PRECISE MEASUREMENTS AT AUTOPSY.

14 AND EVEN THEN YOU HAVE TO BE CAREFUL.
15 WE MEASURE WITH THE BODY IN THE ANATOMICAL
16 POSITION. SO WHAT IS THE PRECISE MEASUREMENT? IF
17 MY ARM IS THIS WAY AT THE AUTOPSY TABLE THEN THE
18 DIAMETER IS X INCHES. IF MY ARM IN REAL LIFE WHEN I
19 HAD BEEN SHOT HAD BEEN LIKE THIS, THEN THE DIAMETER
20 IS Y INCHES. YOU'VE GOT TO BE VERY CAREFUL ABOUT
21 THESE THINGS. AND THERE'S SO MANY VARIABLES.

22 AND ON X RAYS YOU HAVE WHAT IS CALLED
23 THE BILLIARD BALL EFFECT. THEY GO IN MAYBE CLUMPED
24 TOGETHER AND THEN THEY SMASH INTO EACH OTHER LIKE
25 BILLIARD BALLS WHEN YOU USE YOUR CUE BALL AND BREAK
26 THE RACK, BOOM, THEY GO ALL OVER THE TABLE AND SO
27 ON. DID YOU BREAK THE -- COULD YOU HAVE BROKEN IT
28 FROM TWO FEET AWAY OR FOUR FEET AWAY OR,

1 THEORETICALLY, IF THERE WAS A BILLIARD TABLE 20 FEET
2 LONG, COULD YOU HAVE DONE IT THEN? AND THE ANSWER
3 IS YES.

4 SO YOU CAN'T EVEN RECONSTRUCT IN A KIND
5 OF A ANATOMICALLY RETROGRADE FASHION WORKING BACK
6 OUT TO THE SKIN FROM THE X RAYS BECAUSE OF THAT
7 BILLIARD BALL EFFECT.

8 IT'S A NIGHTMARE.

9 THE COURT: OKAY. LET'S TAKE OUR RECESS HERE
10 AND YOU CAN --

11 MS. ABRAMSON: CAN I ASK ONE QUESTION ABOUT
12 THE NIGHTMARE?

13 THE COURT: YES.

14 Q BY MS. ABRAMSON: WHAT YOU'RE SAYING IS
15 YOU CAN'T ALWAYS TELL THE TRAJECTORY COMING IN BY
16 WHAT THE DISPERSAL PATTERN INSIDE THE BODY IS
17 BECAUSE THEY HIT -- THE PELLETS HIT EACH OTHER?

18 A YOU CAN DETERMINE TRAJECTORY TO SOME
19 EXTENT, SURE, FRONT TO BACK, RIGHT TO LEFT, AND SO
20 ON, BUT YOU CAN'T BE PRECISE. AND YOU HAVE TO KEEP
21 IN MIND, TOO, THE DIFFERENT POSITIONS OF THE BODY.

22 SO THE ANSWER IS SOMETIMES YOU CAN'T
23 EVEN BE SURE OF TRAJECTORY. IF YOU SHOOT ME IN THE

24 HEAD FACE ON, THAT'S ONE TRAJECTORY. WHAT IF I HAVE
25 MY HEAD TURNED THIS WAY, TURNED TO HIS HONOR, AND
26 YOU SHOOT ME? WHEN I'M LYING ON THE AUTOPSY TABLE
27 YOU'RE NOT GOING TO GET A TRUE PICTURE OF HOW YOU
28 SHOT ME BECAUSE I'VE GOT MY HEAD TURNED 90 DEGREES.

42601

1 ARMS AND LEGS AND SO ON. THE VARIATIONS, NOT QUITE
2 INFINITESIMAL, BUT ARE MULTIPLE.

3 MS. ABRAMSON: THANK YOU.

4 THE COURT: OKAY. WE'LL TAKE A RECESS.

5 WE'LL RESUME AT 20 MINUTES TO THE HOUR.

6 DON'T DISCUSS THE MATTER AMONG
7 YOURSELVES OR WITH ANYONE ELSE. DON'T FORM ANY
8 FINAL OPINIONS ABOUT IT. WE'LL RESUME IN 20
9 MINUTES.

10 (A RECESS WAS TAKEN FROM

11 10:20 A.M. TO 10:50 A.M.)

12

13

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42602

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD IN OPEN COURT, OUT OF THE
3 PRESENCE OF THE JURY:)

4

5 THE COURT: WITHOUT THE JURY PRESENT.
6 EVERYONE ELSE IS HERE.

7 MS. ABRAMSON: WE GOT A QUESTION, OR A COUPLE
8 OF QUESTIONS FROM ONE OF THE JURORS, YOUR HONOR.

9 THE COURT: YES.

10 MS. ABRAMSON: I'LL DEAL WITH THE SPECIFIC
11 FACT-BASED QUESTION IN EXAMINING THIS WITNESS. I'LL
12 TRY TO ANSWER THAT PART OF THE QUESTION FOR THE JURY
13 CONCERNING WHAT WOUNDS ARE DISSECTED AND WHAT WOUNDS

14 ARE NOT.

15 THE WHAT CONSTITUTES AN EXPERT, WHAT WE
16 WOULD REQUEST IS THAT THE COURT AT SOME APPROPRIATE
17 MOMENT TELL THE JURY THAT AT THE END OF THE CASE
18 THEY WILL BE INSTRUCTED ON EXPERT TESTIMONY AND HOW
19 TO EVALUATE IT --

20 THE COURT: WELL --

21 MS. ABRAMSON: -- IF YOU'RE INCLINED TO
22 RESPOND.

23 THE COURT: I DON'T KNOW IF THAT'S EXACTLY
24 WHAT IT IS THAT THE WITNESS WAS, OR THE JUROR WAS
25 ASKING.

26 DID THE PEOPLE WISH TO HAVE ANY
27 SUGGESTIONS ON THIS?

28 MR. CONN: NO. I THINK THAT -- I HAVE NO

42603

1 OBJECTION TO DOING IT THE WAY THAT COUNSEL IS
2 PROPOSING.

3 THE COURT: ALL RIGHT. LET'S GET THE JURY
4 OUT.

5 (THE JURY ENTERED THE COURTROOM
6 AND THE FOLLOWING PROCEEDINGS
7 WERE HELD:)

8

9 THE COURT: ALL RIGHT. THE JURORS ARE BACK
10 AND WE'LL RESUME WITH THE TESTIMONY.
11 WE HAD ONE OF THE JURORS SUBMIT ONE OR
12 TWO QUESTIONS, AND ONE OF THEM HAD TO DO WITH A
13 QUESTION OF WHAT IS AN EXPERT, OR DEFINING AN
14 EXPERT, SOMETHING OF THAT NATURE. THAT AREA IS
15 COVERED IN THE COURT'S INSTRUCTIONS WHICH I'LL GIVE
16 YOU AT THE END OF THE TRIAL, DEFINING WHAT AN EXPERT
17 WITNESS IS AND HOW YOU EVALUATE AN EXPERT'S
18 TESTIMONY VERSUS OTHER WITNESSES. AND THAT WILL BE
19 COVERED IN THE COURT'S INSTRUCTIONS AT THE END OF
20 CASE.

21 ALL RIGHT. YOU MAY PROCEED WITH YOUR
22 DIRECT EXAMINATION OF THE WITNESS.

23 MS. ABRAMSON: THANK YOU, YOUR HONOR.

24 Q DR. WECHT, I WANT TO HAVE YOU COMPARE
25 AND CONTRAST, IF YOU WILL, TWO PHOTOGRAPHS THAT SHOW
26 THE MEDIAL ASPECT OF MR. MENENDEZ' RIGHT ARM. THE
27 FIRST IS THE ONE WE WERE TALKING ABOUT BEFORE,
28 295-B, WHICH IS HERE ON THE LOWER BOARD, THE

42604

1 PHOTOGRAPH THAT WE WERE SAYING, FROM ITS APPEARANCE
2 AND THE DESCRIPTION IN THE AUTOPSY REPORT, IS THE
3 WAY THAT THAT WOUND APPEARS IN 295-B, THE WAY IT

4 APPEARED BEFORE ANY DISSECTION WAS DONE.

5 A YES, I WOULD SAY IT DOES.

6 Q AND COMPARING THAT, IF YOU WILL, TO
7 301-C, WHICH IS THIS PHOTOGRAPH UP HERE IN THE
8 MIDDLE, DOES THE WOUND APPEAR DIFFERENTLY IN THAT
9 PHOTOGRAPH?

10 A YES, IT DOES. IT APPEARS TO HAVE BEEN
11 EXTENDED. AND IT IS MY IMPRESSION AND MY INFERENCE
12 THAT IT HAS BEEN DISSECTED AND MADE LARGER BY THE
13 ACTUAL INCISING THROUGH THE AREA BY THE PATHOLOGIST.

14 Q THANK YOU.

15 EVEN BEFORE THAT MEDIAL ASPECT EXIT
16 WOUND WAS DISSECTED, IS IT YOUR OPINION THAT IT WAS
17 A RATHER LARGE WOUND?

18 A YES, IT IS.

19 Q AND IT'S LARGER BY FAR THAN THE ENTRY
20 WOUND ON THIS SIDE OF THE ARM?

21 A YES. MAY I REPEAT, ONCE AGAIN, THE
22 ENTRANCE WOUND ON THE POST-LATERAL ASPECT, THE OUTER
23 AREA, IS APPROXIMATELY TWO INCHES IN MAXIMAL
24 DIAMETER, THE EXACT WORDS OF DR. GOLDEN; AND THE
25 WOUND ON THE INNER OR MEDIAL ASPECT IS SIX BY FOUR
26 INCHES.

27 SO IT IS CONSIDERABLY LARGER, THE EXIT
28 WOUND, WHICH IS TYPICAL FOR A SHOTGUN BLAST.

1 Q NOW, CALLING YOUR ATTENTION TO 301, THE
2 BOARD THAT'S NOW UP THERE, CAN YOU SEE ON THAT BOARD
3 THE PHOTOGRAPH THAT IS LABELED "F," WHICH IS THE
4 SINGLE PHOTOGRAPH ON THE RIGHT-HAND SIDE SHOWING THE
5 ELBOW?

6 A YES, I CAN SEE IT.

7 Q CAN YOU TELL -- STRIKE THAT.

8 BASED ON THE PHOTOGRAPH AND THE
9 DESCRIPTION OF THAT WOUND THAT DR. GOLDEN GAVE, IS
10 THERE ANY WAY TO KNOW WHETHER OR NOT AT THE TIME
11 THOSE INDIVIDUAL PELLET DEFECTS WERE MADE ON THE
12 LEFT ELBOW, IF THE ARM WERE BENT OR THE ARM WERE
13 STRAIGHT OR WHAT POSITION THE ARM WAS IN?

14 A NO. LOOKING AT THE PICTURE, REREADING,
15 AGAIN, THE DESCRIPTION, I CAN'T TELL YOU THE EXACT
16 POSITION OF THE LEFT ELBOW. COULD HAVE BEEN FULLY
17 EXTENDED, IT COULD HAVE BEEN PARTIALLY FLEXED OR
18 COMPLETELY FLEXED. I CAN'T TELL YOU.

19 Q OKAY. NOW, WITH RESPECT TO THE FACT
20 THAT THAT LEFT ELBOW HAS A SPREAD PATTERN, I CALL
21 YOUR ATTENTION NOW TO THE PHOTOGRAPH IN THE MIDDLE
22 OF 301, WHICH IS 301-D.

23 DO YOU RECOGNIZE THAT TO BE AN
24 ENLARGEMENT OF THE SCENE PHOTOGRAPH, THE ONLY
25 PHOTOGRAPH THAT SHOWS SOME FOREARM PELLET DEFECTS ON
26 MR. MENENDEZ' RIGHT ARM?

27 A YES.

42606

1 SHOWS A SPREAD PATTERN -- WELL, FIRST OF ALL, DOES
2 THAT RIGHT FOREARM SHOW A SPREAD PATTERN?

3 A YES. THOSE ARE INDIVIDUAL PELLET
4 WOUNDS.

5 Q AND THE FACT THAT THE LEFT ELBOW SHOWS
6 INDIVIDUALLY PELLET WOUNDS, IS IT POSSIBLE THAT
7 THOSE TWO WOUNDS ARE AFFILIATED?

8 A YES. THAT'S A POSSIBILITY.

9 Q AND CALLING YOUR ATTENTION TO THE
10 PHOTOGRAPHS THAT HAVE BEEN MARKED A AND B ON 301,
11 THE ONES THAT SHOW MRS. MENENDEZ' LEFT BREAST AND
12 FOREARM, BASED ON THE FACT THAT THOSE ARE A SPREAD
13 PATTERN, IS IT POSSIBLE THAT THOSE WOUNDS ARE
14 AFFILIATED WITH THE LEFT ELBOW, THE LEFT ELBOW AND
15 RIGHT FOREARM, OR THE RIGHT FOREARM?

16 A YES. AND WITH MRS. MENENDEZ' INJURIES,
17 PELLET WOUNDS OF THE LEFT BREAST, DR. GOLDEN'S WOUND
18 NO. 6 OF HER AUTOPSY REPORT, THE ANSWER TO YOUR
19 QUESTION IS YES. THAT'S ANOTHER POSSIBILITY.

20 Q AND IS THERE ANYTHING IN THE NATURE OF
21 THE WOUND TO MR. MENENDEZ' LEFT ELBOW, TO HIS RIGHT
22 FOREARM, OR TO MRS. MENENDEZ' LEFT BREAST/LEFT

23 FOREARM, THAT INDICATES THAT THEY WERE SEATED WHEN
24 THEY GOT THOSE WOUNDS VERSUS STANDING?
25 A WELL, FIRST OF ALL, THERE'S NOTHING
26 ABOUT THEM FROM THE WOUNDS THEMSELVES THAT TELL ME
27 THAT THEY WERE SITTING OR STANDING.
28 I THEN GO TO THE PICTURES OF THE SCENE

42607

1 AND LOOK AT THE COUCH, SPECIFICALLY THE ARMREST,
2 WHERE MR. MENENDEZ WOULD HAVE HAD TO HAVE HAD HIS
3 ARM. AND I SEE THAT COUCH, THAT PORTION OF THE
4 COUCH, AND A TELEVISION CHANGER, A SLENDER
5 RECTANGULAR-SHAPED TYPICAL TV CHANGER, AND FIND NO
6 EVIDENCE IN ANY OF THE DESCRIPTIONS, NOR DO I SEE IN
7 ANY OF THE PICTURES OF THE COUCH, THAT SHOW ANY KIND
8 OF A SHOTGUN PELLET DISPERSAL PATTERN.
9 THEREFORE, I FIND IT EXTREMELY HARD TO
10 UNDERSTAND HOW HE COULD HAVE GOTTEN THOSE WOUNDS OF
11 HIS LEFT ELBOW WHILE HE WOULD HAVE BEEN SITTING IN
12 THAT LOCATION. OBVIOUSLY, IF THE ARM WAS DOWN LOW,
13 BELOW THE ARMREST, THEN WE KNOW HE COULDN'T HAVE
14 GOTTEN IT. SO IT HAS TO BE A LITTLE BIT UP. AND IF
15 YOU HAVE A DISPERSAL PATTERN, THAT IS ALREADY
16 OCCURRING BY THE TIME IT HITS THE LEFT ELBOW. THEN,
17 BY DEFINITION, AFTER THE SHOTGUN BLAST YOU HAVE TO

18 HAVE SOME CONICAL DISTRIBUTION OF PELLETS A LITTLE
19 BIT UP, A LITTLE BIT DOWN, A LITTLE BIT LEFT. AND
20 THERE'S NOTHING AT ALL TO INDICATE SUCH AN IMPACT
21 AGAINST THE ARMREST OF THE COUCH ON ITS RIGHT SIDE
22 AS YOU LOOK AT IT, LEFT SIDE OF THE COUCH AS
23 MR. MENENDEZ WOULD HAVE BEEN SITTING; NOR HAVE I
24 SEEN ANY REFERENCE TO ANY PELLETS HAVING STRUCK THE
25 TV CHANGER.

26 Q OKAY. NOW, IS THERE ANYTHING ABOUT
27 THESE WOUNDS THAT MAKE IT INCONSISTENT THAT AT THE
28 TIME THAT THEY WERE INFLICTED BOTH MR. AND MRS.

42608

1 MENENDEZ WERE STANDING IN SOME POSITION RELATIVE TO
2 EACH OTHER TO SHARE THIS -- THE SHOTGUN ROUND THAT
3 GOT HIM IN THE LEFT ELBOW AND THE RIGHT FOREARM AND
4 HER ON THE LEFT SIDE?

5 A NO. I CAN'T THINK OF ANYTHING THAT'S
6 INCONSISTENT WITH THEIR HAVING BEEN STANDING, AND IN
7 FACT, IT'S HIGHLY UNLIKELY THAT THEY WERE SITTING;
8 AND THEREFORE, YOU'RE REALLY DEALING WITH THEM
9 STANDING.

10 Q AND IS IT TRUE THAT THERE'S A GREAT DEAL
11 MORE POTENTIAL VARIATIONS IN THEIR RELATIVE
12 POSITIONS, VIS-A-VIS EACH OTHER, AND IN THEIR

13 RELATIVE POSITIONS WITH RESPECT TO THE GUNS IF
14 THEY'RE STANDING?
15 MR. CONN: OBJECTION. LEADING.
16 THE COURT: OVERRULED.
17 THE WITNESS: THE ANSWER'S YES. JUST KEEP IN
18 MIND THE MOVEMENT FROM STANDING -- FROM SITTING TO
19 STANDING. NOW I'M STANDING, NOW I'M SITTING. HOW
20 ABOUT THE DISTANCE THAT I TRAVERSED TO GET TO THIS
21 STRAIGHT UPRIGHT POSITION? IF YOU WANT TO DO IT
22 INCH BY INCH, SIX-INCH INCREMENTS, YOU KNOW, YOU
23 JUST -- YOU'VE GOT ALL KINDS OF -- DO I GET UP BY
24 PUSHING DOWN ON THE ARMREST? DO I GET UP BY PUSHING
25 INTO THE COUCH WITH MY RIGHT -- WITH THE PALM OF MY
26 RIGHT HAND?
27 THIS IS WHAT I MEANT BY A MOBILE DYNAMIC
28 SITUATION. THERE'S NO WAY IN THE WORLD TO KNOW WHAT

42609

1 SOMEBODY WAS DOING AT THAT PRECISE FRACTION OF A
2 SECOND WHEN THE SHOT WAS FIRED.
3 Q BY MS. ABRAMSON: I WANT TO TURN YOUR
4 ATTENTION NOW TO ANOTHER WOUND THAT YOU'VE EXAMINED,
5 AND I BELIEVE FORMED AN OPINION ABOUT. AND THAT'S A
6 WOUND THAT DR. GOLDEN CALLS NO. 5, TO MR. MENENDEZ'
7 LEFT THIGH.

8 FIRST OF ALL, WITH RESPECT TO THAT LEG
9 WOUND, DID YOU FORM AN OPINION AS TO WHETHER THAT
10 WAS AN ANTEMORTEM VERSUS POSTMORTEM WOUND?

11 A YES, I HAVE AN OPINION.

12 Q AND WHAT IS YOUR OPINION?

13 A IN MY OPINION THAT IS AN ANTEMORTEM
14 WOUND.

15 Q AND DO YOU HAVE AN OPINION AS TO WHETHER
16 OR NOT MR. MENENDEZ WAS IN THE POSITION IN WHICH HE
17 IS FOUND BY THE POLICE AND IS SHOWN IN THE
18 PHOTOGRAPHS THAT ARE ON CHART 304 AND ARE
19 DEMONSTRATED IN PHOTOS A, B, C, AND F, ON 304, AT
20 THE TIME WHEN THAT WOUND WAS INFLICTED?

21 A YES, I HAVE AN OPINION.

22 Q WHAT IS YOUR OPINION ON THAT?

23 A IN MY OPINION, MR. MENENDEZ WAS NOT
24 SEATED, AS HIS BODY IS SHOWN IN THOSE PHOTOS, WHEN
25 THAT WOUND WAS SUSTAINED.

26 Q AND WITH RESPECT TO THE LEG WOUNDS IN
27 THAT AREA OF THE LEG, ARE THERE ARTERIES, VARIOUS
28 PARTS OF, IF YOU WILL, THE FEMORAL ARTERIAL SYSTEM,

42610

1 THAT ARE IN THE GENERAL AREA OF THE FEMUR BONE?

2 A YES. THE FEMORAL ARTERY, WHICH IS A

3 GOOD-SIZE ARTERY THAT COMES DOWN FROM THE GROIN
4 AREA, INGUINAL CANAL AND PROCEEDS -- IT MOVES
5 SOMEWHAT MEDIALY AS IT PROCEEDS DOWNWARD. AND IN
6 THAT AREA IT'S PRETTY MUCH ALONGSIDE THE MEDIAL OR
7 INNER ASPECT OF THE FEMUR, THE LARGE BONE THAT GOES
8 FROM THE HIP TO THE KNEE.

9 SO, YOU WOULD HAVE SOME AREA THERE, IF
10 THE ARTERY HAD NOT BEEN EXAMINED AS IT WAS BY
11 DR. GOLDEN, THAT WOULD HAVE BEEN SEEN BY HIM IN
12 EXAMINING THAT WOUND. IT'S SOMETHING, IN OTHER
13 WORDS, THAT WOULD HAVE BEEN READILY OBSERVABLE. AND
14 I'M TOLD IN THE AMENDED REPORT OF SEPTEMBER 1995,
15 SECOND PAGE, THAT DR. GOLDEN DISSECTED THE AREA, THE
16 WOUND PATH AND THE FEMORAL FRACTURE, AND NO
17 PERFORATIONS WERE EVIDENT.

18 SO I BELIEVE THAT HAD THAT ARTERY BEEN
19 PERFORATED, WE WOULD HAVE KNOWN ABOUT IT.

20 IN THE ABSENCE OF PERFORATION OF THE
21 ARTERY, YOU'RE NOT GOING TO GET A GREAT DEAL OF
22 BLEEDING. YOU WILL GET SOME HEMORRHAGING,
23 OBVIOUSLY, FROM SMALLER VESSELS; AND DR. GOLDEN SO
24 DESCRIBED THAT IN HIS ORIGINAL AUTOPSY REPORT IN
25 WOUND NO. 5, PAGE 7, WHERE HE STATES: "THERE IS
26 HEMORRHAGING ALONG THE ENTIRE WOUND PATH, AS WELL AS
27 THE FRACTURE DESCRIBED ABOVE."

28 SO WE HAVE HEMORRHAGING, AND IT WAS

1 CONSIDERED BY DR. GOLDEN TO BE AN ANTEMORTEM WOUND
2 IN HIS COVERING NOTATION. I BELIEVE THAT IT WAS AN
3 ANTEMORTEM WOUND, AND THE REASON THERE WAS NOT MORE
4 EXTENSIVE HEMORRHAGING IS BECAUSE THE ARTERY WAS NOT
5 PERFORATED. IT HAS A LOT OF RESILIENCY, A LOT OF
6 TENSILE FLEXIBILITY. MR. MENENDEZ, A RELATIVELY
7 YOUNG MAN, 45, DID NOT HAVE A LOT OF ARTERIOCLEROSIS,
8 AND VESSELS LIKE THAT CAN REMAIN INTACT. THE BLAST
9 EFFECT CAN SIMPLY PUSH THEM ASIDE. THEY HAVE THE
10 ABILITY TO MOVE. THEY'RE NOT RIGID LIKE A BONE.

11 Q THEY'RE ELASTIC?

12 A YES. ELASTICITY IS A BETTER TERM THAN
13 THE ONE THAT I USED. IN FACT, PART OF THE INNER
14 LINING IS CALLED THE LACTIC LAMINA.

15 Q AND IN YOUR EXPERIENCE, UNLESS THE
16 ARTERY TAKES A DIRECT HIT, IS PERFORATED, IT DOES
17 NOT TEAR JUST BECAUSE A SHOTGUN BLAST HAS PASSED
18 NEARBY?

19 A IT MAY NOT. I WOULD NOT STATE IT AS YOU
20 DID. A HUNDRED OUT OF A HUNDRED IT'S NOT GOING TO.
21 BUT IT'S NOT AT ALL RARE OR INFREQUENT THAT IT WILL
22 NOT LACERATE BECAUSE OF THAT ABILITY TO HAVE ELASTIC
23 DISPLACEMENT AND RECOIL.

24 Q AND IF YOU DISSECT DOWN TO THE BREAK-IN,
25 THE FEMUR, AS DR. GOLDEN DID, HAD THE ARTERY BEEN

26 LACERATED, WOULD THAT HAVE BEEN EASILY OBSERVABLE TO
27 HIM?

28 A OH, YES. THERE'S NO QUESTION THAT IT

42612

1 WOULD HAVE BEEN SOMETHING THAT HE WOULD HAVE SEEN.

2 Q NOW, IS THERE SOMETHING ABOUT THE SCENE,
3 THE WAY IT APPEARS, THAT SUPPORTS YOUR CONCLUSION
4 THAT MR. MENENDEZ WAS NOT SEATED THERE WHEN THAT LEG
5 WOUND OCCURRED?

6 A YES, THERE IS.

7 Q AND WHAT IS THAT?

8 A FIRST OF ALL, I WANT TO SAY THAT THE TWO
9 MIDDLE DIAGRAMS ARE NOT CORRECT BECAUSE THEY SHOW A
10 DOWNWARD ANGLE, WHICH IS SIMPLY NOT WHAT WAS
11 MEASURED. THERE'S ONLY A DIFFERENCE OF ONE INCH
12 BETWEEN THE ENTRANCE ON MR. MENENDEZ' LEFT THIGH,
13 INNER OR MEDIAL ASPECT, AND THE EXIT WOUND ON THE
14 LATERAL ASPECT OF HIS LEFT THIGH, A ONE-INCH
15 DIFFERENCE.

16 YOU CAN SEE, LOOKING AT THE GREEN ROD,
17 THE GREEN LINE THAT HAS BEEN PLACED THERE BY, I
18 BELIEVE, BY DR. MC CARTHY OR HIS COLLEAGUES, AND YOU
19 SEE A DOWNWARD ANGLE, THAT SIMPLY IS NOT WHAT WAS
20 MEASURED BY DR. GOLDEN.

21 SO THEN YOU GET INTO THE QUESTION, WELL,
22 HOW COULD THAT SHOT BE FIRED BY SOMEBODY SITTING
23 BEHIND IF YOU DON'T HAVE THAT KIND OF A DOWNWARD
24 ANGLE? IT'S NOT SO EASY.
25 AGAIN, I CAN'T SAY IT'S NOT POSSIBLE,
26 BUT IT SURE WOULD REQUIRE SOME CONTORTION, BECAUSE
27 YOU HAVE A HORIZONTAL WOUND.
28 SO IT'S NOT A MATTER OF SOMEBODY BEING

42613

1 IN BACK OF THE COUCH AND SHOOTING DOWNWARD, BECAUSE
2 YOU DON'T HAVE THAT DOWNWARD TRAJECTORY. YOU DON'T
3 HAVE THAT ANGLE OF DECLINATION.

4 ANOTHER THING IS A BLAST -- LOOKING AT
5 THE WOUND THAT YOU SEE ON MR. MENENDEZ, TOP RIGHT
6 CORNER F, YOU CAN SEE A LITTLE BIT OF IT, TOP LEFT
7 CORNER A; AND YOU CAN SEE, WELL, THAT'S IT. PRETTY
8 MUCH ON THESE -- ON THIS SET OF PHOTOS.

9 Q LET ME STOP YOU FOR A MOMENT. THERE ARE
10 MANY, MANY OTHER PHOTOS.

11 A I DON'T NEED THEM TO MAKE MY OPINION.

12 Q I KNOW. BUT IT SHOW BOTH SIDES OF THIS
13 PARTICULAR WOUND?

14 A IF I MAY CONTINUE, WHAT I WANT TO SAY
15 IS, AGAIN, YOU HAVE A WOUND THAT IS BEING BLASTED

16 OUTWARD, AND THE WOUND GOING IN WAS MEASURED AT
17 ABOUT THREE-BY-THREE; AND THE EXIT WOUND WAS
18 MEASURED AT ABOUT FOUR-BY-THREE.

19 SO IT'S A SIGNIFICANT WOUND, AND IT'S
20 BLOWING OUT SOFT TISSUE. WELL, WHERE IS THE SOFT
21 TISSUE? WHERE IS THE BLOOD? WHERE IS THE TISSUE?
22 WHERE ARE THE PELLETS? THE PELLETS HAD NOT
23 DISBURSED PRIOR TO ENTRANCE.

24 HERE YOU HAVE A CONSOLIDATED WOUND AND
25 THE PELLETS STICK TOGETHER, GOING THROUGH THE THIGH,
26 AND THEY COME OUT MAKING ONE EXIT WOUND.

27 NOW, THEY COME OUT AND YOU'VE GOT ALL
28 THOSE PELLETS. WELL, WHERE ARE THE PELLETS -- I

42614

1 DON'T FIND ANY REFERENCE TO PELLETS HAVING BEEN
2 FOUND IN THAT AREA.

3 IF YOU DRAW A STRAIGHT LINE ON A
4 SOMEWHAT OF A DIAGONAL OVER TO THE RIGHT OF THE
5 COUCH AS WE LOOK AT IT, TO THE LEFT, WHERE WAS
6 MR. MENENDEZ AS HE SAT ON IT? IF HE HAD BEEN
7 SITTING THERE, WHERE IS SOME TISSUE? WHERE IS SOME
8 BLOOD SPATTERING? THIS IS A VERY FORCEFUL WOUND.

9 AND I THINK THEN THAT IT IS EXTREMELY
10 UNLIKELY, BASED UPON ALL OF THESE THINGS THAT I'VE

11 TALKED ABOUT, YOU KNOW -- I'M TEMPTED TO SAY JUST
12 NOT PHYSICALLY POSSIBLE -- FOR HIM TO HAVE HAD THAT
13 WOUND SUSTAINED SITTING ON THE COUCH IN THE POSITION
14 IN WHICH WE SEE HIS BODY IN THESE PHOTOS AND OTHERS
15 THAT THE LADIES AND GENTLEMEN OF THE JURY HAVE SEEN.

16 Q NOW, I WANT TO GO TO THE NEXT BOARD AND
17 TALK ABOUT THE WOUND THAT DR. GOLDEN CALLED NO. 7 TO
18 MRS. MENENDEZ. THIS IS EXHIBIT 319.

19 LET ME ASK YOU, FIRST OF ALL, IF YOU
20 HAVE AN OPINION WITH RESPECT TO NO. 7, AS YOU CAN
21 SEE IT BEING BOTH ASPECTS OF IT IN 319-F, THE
22 PHOTOGRAPH IN THE UPPER RIGHT COLUMN, DO YOU HAVE AN
23 OPINION WITH RESPECT TO WHICH OF THOSE TWO WOUND
24 AREAS WAS THE ENTRY AND WHICH WAS THE EXIT?

25 A YES, I DO.

26 Q AND WITH RESPECT TO THAT OPINION, IS
27 THAT OPINION IN CONFLICT WITH THE OPINION THAT
28 APPEARS IN THE AUTOPSY REPORT OF DR. GOLDEN?

42615

1 A YES. MINE IS ESSENTIALLY THE REVERSE OF
2 WHAT DR. GOLDEN'S OPINION IS IN THE AUTOPSY REPORT
3 UNDER HIS DESCRIPTION OF WOUND NO. 7, PAGE 8 OF HIS
4 ORIGINAL AUTOPSY ON MRS. MENENDEZ.

5 Q AND WHICH OF THOSE CITES THAT APPEAR IN

6 PHOTOGRAPH 319-F DO YOU BELIEVE IS THE ENTRY WOUND?

7 THE WITNESS: UNDER -- MAY I SIR?

8 THE COURT: PLEASE.

9 THE WITNESS: THE WOUNDS HERE ON THE OUTER OR
10 LATERAL ASPECT AND SOMEWHAT LOWER DOWN OF
11 MRS. MENENDEZ' LEFT THIGH IS THE WOUND OF ENTRANCE.
12 THE WOUND WITH THE BODY, AGAIN, IN THE ANATOMICAL
13 POSITION, MOVED UPWARD AND MORE TOWARD THE FRONT,
14 PRODUCING SEVERAL EXIT WOUNDS.

15 DR. GOLDEN, IN MY OPINION, HAS THAT
16 REVERSED. HE CALLED THE UPPER WOUND A MORE MEDIAL
17 WOUND OF ENTRANCE, AND HE CALLED THE WOUND MORE
18 LATERAL AND LOWER DOWN A WOUND OF EXIT. IT'S THE
19 OPPOSITE. THE WOUND WAS CAUSED BY THE BLAST GOING
20 IN, MAKING A LARGE DEFECT, AND THEN MAKING MULTIPLE
21 EXIT WOUNDS. THAT'S WHAT HAPPENS.

22 YOU DON'T HAVE -- AGAIN, CONSISTENT WITH
23 WHAT WE TALKED ABOUT BEFORE IN THE CONTEXT OF
24 ANOTHER WOUND ON MR. MENENDEZ, YOU DON'T HAVE
25 MULTIPLE PELLETS GOING IN, PRODUCING SEVERAL CITES
26 OF ENTRANCE, AND THEN COMING BACK TOGETHER AGAIN
27 PRODUCING ONE EXIT DEFECT.

28 Q BY MS. ABRAMSON: AND BASED ON THE

1 MEASUREMENT DESCRIPTION THAT DR. GOLDEN GAVE, WHICH
2 MAY NOT BE TOTALLY OBSERVABLE IN THE PHOTOGRAPH, WAS
3 THAT ENTIRE AREA ON THE TOP WHERE THERE ARE
4 INDIVIDUAL DEFECTS, A LARGER AREA THAN THE DIAMETERS
5 OF THE AREA ON THE BOTTOM THAT YOU ARE SAYING IS THE
6 ENTRANCE WOUND?

7 A THE ANSWER IS YES. HE TELLS US THAT
8 WHAT HE CALLED THE ENTRANCE WOUND WAS LOCATED 24 TO
9 27 INCHES FROM THE LEFT HEEL. SO THAT GIVES YOU A
10 THREE-INCH SPAN.

11 HE TELLS US WHAT HE CALLED EXIT WAS 20
12 AND A HALF TO 23 INCHES, WHICH IS TWO AND A HALF
13 INCHES.

14 SO THE AREA COVERED BY THE MULTIPLE
15 INJURIES OF THE UPPER INNER ASPECT OF THE LEFT THIGH
16 COVERS A REGION THAT WAS SOMEWHAT LARGER THAN THE
17 MEASURED SINGLE WOUND SOMEWHAT LOWER DOWN AND MORE
18 LATERAL ON MRS. MENENDEZ' LEFT THIGH.

19 Q AND SO DOES YOUR OPINION THAT THE LOWER
20 ONE IS CLEARLY THE ENTRANCE AND THE UPPER WOUNDS ARE
21 EXIT, THAT'S CONSISTENT WITH THE GENERAL RULE THAT
22 THE EXIT WILL BE OVER A LARGER AREA THAN THE
23 ENTRANCE?

24 A YES. AND, MORE IMPORTANTLY, IS THE FACT
25 THAT YOU'VE GOT MULTIPLE WOUNDS OF EXIT, OF
26 INDIVIDUAL PELLETS, OR EVEN SMALLER CONGLOMERATES,
27 PELLETS, PRODUCING THE EXIT WOUND HIGHER UP, AND
28 YOU'VE GOT THE ENTRANCE WOUNDS LOWER DOWN WHEN ALL

1 THE PELLETS WERE STILL TOGETHER.

2 Q NOW, DID YOU -- IN ADDITION TO FORMING
3 AN OPINION ABOUT THE ENTRY AND EXIT OF NO. 7, DID
4 YOU ANALYZE THREE WOUNDS THAT DR. GOLDEN NUMBERED ON
5 MRS. MENENDEZ AS 7, THIS ONE; 8, WHICH IS A SERIES
6 OF IN AND OUT AND IN AND OUT, AGAIN, BELOW AND ABOVE
7 THE KNEE WOUND; AND 9, WHAT HE CALLS A GRAZE OR
8 GUTTER WOUND TO HER LEFT CALF.

9 A YES, I DID.

10 Q AND DID YOU FIND, OR DO YOU HAVE AN
11 OPINION AS TO WHETHER ANY OF THOSE WOUNDS ARE
12 AFFILIATED, ANY OF THOSE SEPARATELY NUMBERED WOUNDS,
13 ARE AFFILIATED, POTENTIALLY AFFILIATED, WITH EACH
14 OTHER?

15 A YES. I DO BELIEVE SO.

16 Q AND WHICH WOUNDS DO YOU BELIEVE ARE
17 AFFILIATED, IN OTHER WORDS, ARE PART OF A SINGLE
18 ROUND OF AMMUNITION FIRED?

19 A I BELIEVE THERE'S A STRONG PROBABILITY
20 THAT MRS. MENENDEZ' WOUND 9 AND 7, AS NUMBERED BY
21 DR. GOLDEN, WERE RELATED. I THINK THAT THE WOUNDS
22 ENTERED FURTHER DOWN ON THE LEFT CALF, GIVING WHAT
23 HE, DR. GOLDEN, REFERRED TO AS A GRAZE OR GUTTER
24 WOUND, AND THEN PROCEEDED ON UPWARD AND ENTERED INTO

25 THE WOUND OF THE LATERAL LOWER ASPECT OF THE LEFT
26 THIGH, AND CONTINUED UP AS WE HAVE TALKED.
27 I THINK THAT WOUND 9 AND 7 -- IN THAT
28 ORDER -- AND I GIVE THEM IN THAT ORDER BECAUSE I

42618

1 THINK 9 OCCURRED FIRST, AND THE SHOTGUN BLAST
2 CONTINUING UPWARD, PRODUCING WOUND NO. 7.

3 Q OKAY. NOW, WITH RESPECT TO 7 -- WELL,
4 STRIKE THAT.

5 ON THE X RAY, AND BASED ON A DESCRIPTION
6 BY DR. GOLDEN, IS THERE ONE OR MORE FRACTURES OF
7 MRS. MENENDEZ' LEFT FEMUR?

8 A YES. THE FEMUR HAD A FRACTURE, THE LEFT
9 FEMUR.

10 Q AND DO YOU HAVE ANY OPINIONS ABOUT --
11 RELATIVE TO WOUND 8, THE ONE THAT GOES IN AND OUT
12 AND IN AND OUT AGAIN, AND WOUND 7, AS TO WHICH OF
13 THOSE TWO CAUSED THE FRACTURE OF THE FEMUR?

14 A IN MY OPINION IT SEEMS MORE LIKELY,
15 GIVEN THE ANATOMICAL LOCATION OF THESE WOUNDS, THAT
16 THE FRACTURE OF THE LEFT FEMUR, THE DISTAL THIRD,
17 DOWN TOWARD THE KNEE JOINT, WAS SUSTAINED WHEN
18 MRS. MENENDEZ WAS SHOT WITH WOUND NO. 8. THAT'S THE
19 IN AND OUT THROUGH THE KNEE AREA, THE POPLITEAL,

20 WHICH IS THE BACK OF THE KNEE, AND THEN BACK IN

21 AGAIN. THAT SEEMS TO FIT MORE LIKELY.

22 Q ALL RIGHT. NOW, I JUST WANT TO TALK

23 ABOUT SOME OF THE OTHER WOUNDS, USING DR. GOLDEN'S

24 NUMBERING SYSTEM, THAT MRS. MENENDEZ SUSTAINED

25 WITHOUT PULLING OUT ALL THE PHOTOGRAPHS AT THIS

26 POINT.

27 FIRST OF ALL, YOU'RE FAMILIAR WITH THE

28 WOUNDS THAT DR. GOLDEN CALLS 2 AND 3 TO THE RIGHT

42619

1 SIDE OF MRS. MENENDEZ' FACE AND THE COLLARBONE

2 AREA?

3 A YES, I AM.

4 Q AND WITH RESPECT TO THOSE TWO WOUNDS, IN

5 YOUR OPINION, IS IT POSSIBLE THAT BOTH OF THOSE

6 WOUND AREAS ON THE RIGHT SIDE OF HER FACE WERE

7 CAUSED BY THE SAME ROUND OF AMMUNITION?

8 A THAT IS A POSSIBILITY. I CANNOT EXCLUDE

9 NOR INCLUDE, WITH REASONABLE MEDICAL CERTAINTY, BUT

10 I THINK THAT IT IS QUITE REASONABLE TO PUT THOSE TWO

11 WOUNDS TOGETHER AS HAVING BEEN SUSTAINED IN THE SAME

12 SHOTGUN BLAST. I CANNOT BE SUFFICIENTLY CERTAIN TO

13 STATE IT WITH REASONABLE MEDICAL CERTAINTY OR

14 REASONABLE MEDICAL PROBABILITY, BUT IT IS SOMETHING

15 THAT WOULD HAVE TO BE CONSIDERED. AGAIN, YOU KNOW,
16 IT'S JUST INDICATIVE OF WHAT I'VE BEEN TRYING TO
17 CONVEY, THAT YOU'VE GOT TO BE VERY CAREFUL, AND SOME
18 THINGS JUST ARE NOT SUSCEPTIBLE TO DEFINITIVE
19 ANALYSIS.

20 Q AND WITH RESPECT TO YOUR OPINION THAT
21 THAT'S A LIKELY POSSIBILITY, HAVE YOU RELIED TO ANY
22 EXTENT ON THE TESTIMONY OF DR. GOLDEN FROM THE FIRST
23 TRIAL WHERE HE ALSO INDICATED THAT THOSE WOUNDS
24 COULD HAVE BEEN CAUSED BY THE SAME BLAST?

25 A WELL, I'M AWARE OF THAT. I CAN'T SAY I
26 RELIED ON IT. IT WAS HELPFUL, BUT, YOU KNOW, I'VE
27 GOT TO BE CONSISTENT WITH MYSELF TOO. I CAN'T --
28 WHERE HE AGREES WITH SOMETHING THAT I'VE SAID OR

42620

1 VICE VERSA, EVERYTHING IS FINE; WHERE I DISAGREE,
2 THEN IT'S NOT SO FINE. HE HAS HIS OPINION, AND I
3 THINK IT'S IMPORTANT TO ME -- I NEVER DISREGARD THE
4 OPINIONS OF ANOTHER FORENSIC PATHOLOGIST WHO HAS
5 DONE THE AUTOPSY. I THINK IT'S IMPORTANT TO KNOW
6 WHAT SHE OR HE OPINED, ANALYZED AT THE TIME. BUT
7 I'M AWARE THAT HE EXPRESSED THAT SAME DEGREE OF
8 CONCERN AND HAD SOME PAUSE, AS I HAVE EXPRESSED.

9 Q ALL RIGHT. NOW, DO YOU ALSO AFFILIATE

10 WITH 2 AND 3 -- OR POTENTIALLY AFFILIATED WITH 2 AND

11 3, NO. 10, WHICH IS THE WOUND ON HER RIGHT HAND?

12 A YES, I DO. NOW, HERE I STATE WITH VERY

13 STRONG REASONABLE MEDICAL CERTAINTY THAT WOUND

14 NO. 10, MRS. MENENDEZ' WOUND OF THE RIGHT HAND,

15 AGAIN, USING DR. GOLDEN'S NUMBERED SEQUENCE, WAS

16 ASSOCIATED WITH WOUNDS 3 AND/OR 2 OF MRS. MENENDEZ.

17 OBVIOUSLY, IF 2 AND 3 WERE ONE WOUND, 10 GOES WITH 2

18 AND 3; IF 2 AND 3 ARE DIFFERENT WOUNDS, THEN HER

19 WOUND NO. 10 OF THE RIGHT HAND COULD HAVE BEEN

20 ASSOCIATED WITH EITHER.

21 I WOULD KIND OF LEAN TOWARD WOUND NO. 3,

22 IF WE SEPARATE 2 AND 3 AS SEPARATE WOUNDS, AS

23 INDIVIDUAL WOUNDS. THEN I THINK HER RIGHT HAND

24 INJURY, NO. 10, MOST PROBABLY WAS A WOUND THAT CAME

25 AS THE FIRST PART OF THE CONTINUING BLAST TO THE

26 RIGHT SIDE OF HIS FACE, WHICH DR. GOLDEN LABELED AS

27 NO. 3.

28 Q NOW, WITH RESPECT TO --

42621

1 A CLASSICAL DEFENSIVE TYPE OF POSTURE.

2 Q HAVING THE HANDS UP NEAR THE FACE?

3 A YEAH. SURE.

4 Q NOW, HAVING DESCRIBED -- WELL, STRIKE

5 THAT.

6 DO YOU HAVE AN OPINION CONCERNING THE
7 SEVERITY OR LETHALITY, IF YOU WILL, OF WOUNDS 2 AND
8 3, WHETHER THEY OCCURRED TOGETHER OR SEPARATELY?

9 A WELL, I BELIEVE THAT WOUND NO. 2 WOULD
10 MOST LIKELY HAVE BEEN A FATAL WOUND, AND I BELIEVE
11 THAT WOUND NO. 3, IF IT WERE SEPARATE, MOST LIKELY
12 WOULD HAVE BEEN A FATAL WOUND. SO --

13 Q ARE THERE -- I DON'T MEAN TO INTERRUPT
14 YOU.

15 A NO. I'M FINISHED.

16 Q ARE THERE VITAL STRUCTURES IN THE
17 CLAVICLE AREA, JUST THAT AREA ALONE, THAT COULD
18 CAUSE DEATH?

19 A WELL, THERE ARE, BUT I CAN'T CONJECTURE
20 ON THAT BECAUSE WE DON'T HAVE ANY DISCUSSION OF
21 LACERATIONS OF THE MAJOR BRANCHES. THE ANSWER TO
22 YOUR QUESTION IS YES.

23 AS THE AORTA, THE GREAT ARTERY, COMES UP
24 FROM THE HEART IT BRANCHES OFF, AND YOU'VE GOT THE
25 BRANCHING OVER TO THE SHOULDER AND ARM. THE
26 SUBCLAVIAN IS THE COMMON CAROTID GOING UP INTO THE
27 NECK, AND SO ON; AND THE BRANCHING, THE COMMON
28 CAROTID IS DOWN AROUND THERE. YOU COULD HAVE THOSE

1 LACERATED. HE DOESN'T DESCRIBE THAT. YOU DON'T
2 HAVE TO GET INTO THAT BECAUSE YOU'VE GOT THESE
3 PELLETS BACK INSIDE THE CRANIAL VAULT INSIDE THE
4 BRAIN. IT'S AN ADMIXTURE OF 2 AND 3 AND NO. 1, WITH
5 THE BIRD SHOT ON THE LEFT SIDE. SO YOU GOT A
6 MIXTURE OF BIRD SHOT AND BUCKSHOT. BUCKSHOT COMES
7 FROM 2 AND 3; BIRD SHOT COMES FROM 1, AND YOU'VE GOT
8 BOTH OF THEM PRESENT INSIDE THE CRANIAL VAULT
9 INVOLVING THE BRAIN.

10 SO I DON'T SEE HOW ANYBODY COULD CLEAVE
11 ONE OUT FROM THE OTHER.

12 Q OKAY. DID YOU -- HOW FAR -- YOU SAID
13 EARLIER THAT YOU THOUGHT YOU COULD, AT LEAST WITH
14 RESPECT TO SEQUENCING, DETERMINE WHICH WOUND TO EACH
15 OF THE DECEDENTS WAS THE LAST.

16 DO YOU RECALL THAT?

17 A YES, I DID SAY THAT.

18 Q AND WITH RESPECT TO MRS. MENENDEZ, WHICH
19 WOUND, IN YOUR OPINION WAS THE LAST?

20 A NO. 1 OF THE LEFT CHEEK AREA.

21 Q AND ASSUMING NO. 1 WAS LAST, I TAKE IT
22 THAT MEANS THAT 2 AND 3 HAPPENED FIRST, BEFORE THAT?

23 A NOT FIRST, BUT LET'S SAY BEFORE.

24 Q BEFORE THAT?

25 A BEFORE THAT, YEAH. BECAUSE I DON'T KNOW
26 IF THEY HAPPENED FIRST.

27 Q I KNOW. I DON'T MEAN FIRST EVER. I

42623

1 A YES.

2 Q AND THE QUESTION WAS -- FORGET NO. 1.

3 LET'S ASSUME NO. 1 NEVER HAPPENED. WERE 2 AND 3 BY
4 THEMSELVES FATAL?

5 A OH. YES. THERE'S NO WAY SHE COULD HAVE
6 BEEN SALVAGED IF 2 OR 3 WERE SEPARATE OR 2 AND 3
7 COMBINED.

8 Q NOW, WITH RESPECT TO NO. 1 TO THE LEFT
9 CHEEK, WAS THERE SOMETHING DIFFERENT ABOUT THAT
10 WOUND WITH RESPECT TO -- IN YOUR OPINION, BASED ON
11 LOOKING AT IT, AND ALSO BASED ON THE AMENDMENT THAT
12 DR. GOLDEN FILED IN SEPTEMBER OF 1995, AS COMPARED
13 TO THE OTHER WOUNDS TO MRS. MENENDEZ, WAS THAT WOUND
14 DIFFERENT ON THE ISSUE OF WHETHER IT WAS BEFORE
15 DEATH, DURING DEATH, OR AFTER DEATH?

16 A IT APPEARS THAT THAT WOUND OCCURRED
17 AROUND THE TIME OF DEATH. THAT'S A PERIOD OF TIME
18 THAT WE REFER TO AS PERIMORTEM, WHICH MEANS AROUND
19 DEATH. IT'S POSSIBLE IT WAS POSTMORTEM, BECAUSE
20 YOU'RE NOT SEEING AS MUCH HEMORRHAGING IN THAT AREA
21 AS WE MIGHT EXPECT TO HAVE FOUND.

22 ALSO, BECAUSE IT COMES AFTER 2 AND 3,

23 AND WAS A CONTACT WOUND, THEN, AS WE'VE ALREADY
24 DISCUSSED, SINCE 2 AND/OR 3 WOULD HAVE BEEN FATAL,
25 THEN IT FOLLOWS THAT WHAT DR. MENENDEZ -- DR. GOLDEN
26 CALLED WOUND NO. 1 OF THE LEFT CHEEK AREA, WAS
27 INFLECTED AS MRS. MENENDEZ WAS DYING OR ALREADY
28 DEAD.

42624

1 Q NOW, GIVEN THE DIRECTION OF WOUNDS
2 NO. 2 AND 3, AS DESCRIBED BY DR. GOLDEN AND FROM
3 WHAT YOU COULD SEE IN THE PHOTOGRAPHS, IS THE
4 DIRECTION AND THE PLACEMENT OF THE WOUND SITES IN
5 2 AND 3 ENTIRELY CONSISTENT WITH MRS. MENENDEZ
6 STANDING UP WHEN SHE RECEIVED 2, 3, AND 10?

7 A OH, YES. DEFINITELY. QUITE CONSISTENT.

8 Q NOW, DR. WECHT, IN FORENSIC PATHOLOGY --
9 STRIKE THAT.

10 LET ME JUST ASK YOU ONE OTHER QUESTION.
11 THIS IS EXHIBIT NO. 11.

12 I'VE SHOWN YOU THIS PHOTOGRAPH BRIEFLY
13 BEFORE WHEN YOU FIRST CAME, TRYING TO TESTIFY,
14 CORRECT?

15 A YES.

16 Q AND ARE YOU AWARE THAT DR. LAWRENCE
17 BROUGHT THAT PHOTOGRAPH AND TESTIFIED THAT WHEN HE

18 FIRST OBSERVED THE WOUND THAT IS DEPICTED IN 211 HE
19 BELIEVED THAT IT WAS A POSTMORTEM WOUND, AND THAT
20 ONLY AFTER HE PERFORMED HIS AUTOPSY DID HE COME TO
21 UNDERSTAND THAT THAT WAS THE CAUSE OF DEATH; AND
22 THEREFORE, IT HAD TO BE AN ANTEMORTEM WOUND?

23 DO YOU REMEMBER THAT TESTIMONY OF HIS?

24 A YES, I DO.

25 Q IS THERE ANYTHING ABOUT THE WAY THAT
26 WOUND APPEARS THAT WOULD LEAD YOU TO EVEN CONSIDER
27 THAT IT WAS A POSTMORTEM WOUND?

28 A NO. TO ME IT LOOKS LIKE A WOUND THAT I

42625

1 WOULD CONSIDER, FOR OPENERS, IS AN ANTEMORTEM WOUND.
2 IT'S HEMORRHAGIC. TISSUES ARE GLISTENING. NOTHING
3 HERE THAT IS INCONSISTENT WITH OR -- INCONSISTENT
4 WITH ITS BEING ANTEMORTEM; NOTHING HERE THAT IS
5 INDICATIVE OR SUGGESTIVE OF ITS BEING POSTMORTEM.

6 Q NOW, IN FORENSIC PATHOLOGY, IN YOUR
7 EXPERIENCE IN THAT FIELD, YOU HAVE HAD THE
8 OPPORTUNITY, HAVE YOU NOT, TO SEE IN PERSON AND IN
9 PHOTOGRAPHS, MANY, MANY CRIME SCENES, CORRECT?

10 A YES.

11 Q AND YOU HAVE SEEN MANY, MANY CRIME
12 SCENES WHERE THERE HAVE BEEN NUMEROUS ROUNDS FIRED,

13 CORRECT?

14 A YES. I'VE NEVER SEEN ONE WITH AS MANY
15 ROUNDS FIRED AS HERE, BUT CERTAINLY I'VE SEEN
16 SEVERAL WHICH HAVE HAD MULTIPLE ROUNDS FIRED. THERE
17 HAVE BEEN SEVERAL.

18 Q AND BASED ON -- OR WHEN CONSIDERING THE
19 NUMBER OF ROUNDS FIRED THAT INVOLVE VITAL AREAS OF
20 THE BODY, IS THERE A CONCEPT THAT YOU HAVE REFERRED
21 TO AND DO REFER TO CALLED OVERKILL?

22 A YES. IT'S A KIND OF A SEMI-TECHNICAL,
23 SOMEWHAT DESCRIPTIVE TERM THAT WE USE IN FORENSIC
24 PATHOLOGY. IT'S NOT LIMITED TO GUNSHOT WOUND
25 CASES. YOU SEE IT WITH STAB WOUND CASES AND BLUNT
26 FORCE INJURIES. IT SIMPLY MEANS THAT --

27 MR. CONN: OBJECTION. NO FOUNDATION.
28 IRRELEVANT.

42626

1 THE COURT: NO FOUNDATION AND?

2 MR. CONN: NO FOUNDATION AND IRRELEVANT.

3 MS. ABRAMSON: THE WITNESS IS ANSWERING THE
4 QUESTION. MAY HE BE PERMITTED TO ANSWER?

5 THE COURT: ARE YOU REFERRING TO A
6 DESCRIPTION OF WOUNDS IN CONNECTION WITH THIS
7 CONCEPT OF OVERKILL?

8 THE WITNESS: YES, YOUR HONOR.

9 THE COURT: YOU'RE NOT REFERRING TO THE STATE

10 OF MIND OF THE PERPETRATOR OF THE CRIME?

11 THE WITNESS: NO, YOUR HONOR.

12 THE COURT: OVERRULED.

13 Q BY MS. ABRAMSON: ARE THERE SITUATIONS

14 WHERE YOU SEE MORE WOUNDS THAN, ACTUALLY, IN ANY WAY

15 ARE REQUIRED TO BRING ABOUT DEATH?

16 A YES.

17 Q AND YOU SEE THAT NOT JUST IN SHOOTINGS,

18 BUT OFTEN IN STAB WOUND CASES AND BLUNT FORCE TRAUMA

19 CASES?

20 A YES.

21 Q AND IN SHOOTING CASES WHERE YOU SEE

22 OVERKILL, DOES THAT TEND TO BE A DISTRIBUTION OF

23 WOUND AREAS OVER A RANDOM -- WHAT APPEAR TO BE

24 RANDOM PARTS OF THE BODY?

25 MR. CONN: OBJECTION. IRRELEVANT. NO

26 FOUNDATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: YES, YOU SEE THAT. AND ALSO,

42627

1 BY THE WAY, WITH STAB WOUNDS AND BLUNT FORCE

2 INJURIES, WHICH BRINGS YOU BACK TO SOMETHING WHICH

3 WE TALKED ABOUT, THE DYNAMIC MOBILITY OF A SITUATION
4 IN WHICH A VICTIM, IF NOT SLEEPING, UNCONSCIOUS,
5 DRUGGED, OR INCAPACITATED, IS OBVIOUSLY GOING TO DO
6 WHAT ANY HUMAN BEING IS GOING TO ATTEMPT, TO EVADE,
7 TO LESSEN THE IMPACT, TO GET AWAY FROM THE
8 ASSAILANT; AND SOME MOVEMENT ON THE PART OF THE
9 ASSAILANT, OBVIOUSLY, IN RESPONSE TO THOSE EVASIVE
10 ACTIONS BY THE VICTIM.

11 SO YOU JUST DON'T KNOW HOW THINGS ARE.
12 EVEN IF YOU KNEW, EVEN IF YOU COULD HAVE HAD A
13 PICTURE TAKEN AT THE VERY OUTSET AND SHOWN TO YOU
14 AND, YOU KNOW -- JUST HYPOTHETICAL OF COURSE -- THAT
15 THIS IS THE WAY IT ALL STARTED, AND THEN YOU WIND UP
16 LATER WITH MULTIPLE WOUNDS AND INJURIES. SO HOW DO
17 YOU GO BACK TO THAT?

18 A COUPLE OF THINGS YOU MIGHT BE ABLE TO
19 DO. BUT TO GO FROM THAT ONE AND TO FOLLOW EACH AND
20 EVERY ONE THEREAFTER, AND SO ON, IS IMPOSSIBLE.

21 Q BY MS. ABRAMSON: NOW, ONE OTHER
22 QUESTION. WE'VE ESTABLISHED WHICH ONE OF THE WOUNDS
23 TO MRS. MENENDEZ YOU BELIEVE WAS THE LAST.

24 WHICH ONE OF THE WOUNDS TO MR. MENENDEZ
25 DO YOU BELIEVE WAS THE LAST?

26 A I BELIEVE THAT THE WOUND THAT HE
27 SUSTAINED TO THE BACK OF HIS HEAD, WHICH DR. GOLDEN
28 REFERRED TO IN HIS ORIGINAL AUTOPSY REPORT AS WOUND

1 NO. 1 ON PAGE 3, SHOTGUN WOUND NO. 1, I BELIEVE THAT
2 THAT WAS THE LAST WOUND THAT MR. MENENDEZ SUFFERED.

3 Q AND ONE OTHER QUESTION, DR. WECHT. WITH
4 RESPECT TO MR. MENENDEZ' SHIRT, YOU SAID YOU LOOKED
5 AT IT.

6 IN YOUR OPINION, LOOKING AT THAT SHIRT
7 AT THIS POINT IN TIME, DOES THAT HAVE ANY USE
8 WHATSOEVER IN TRYING TO DETERMINE THE NATURE OF THE
9 WOUNDS OR THE DIRECTION OF ANY WOUNDS OR THE
10 DIRECTION OF ANY FIRE?

11 A NO. IT WOULD BE OF SOME VALUE MAYBE IN
12 TRYING TO TALK ABOUT THE NATURE OF A WOUND. YOU
13 MIGHT STILL BE ABLE TO SAY, GEE, IT'S CONSISTENT
14 WITH A GUNSHOT WOUND. BUT IN TERMS OF THE
15 DIRECTION, I WOULD SAY NO. THE DRYING, THE EFFECT
16 OF THE DRYING OF THE BLOOD ON THE FIBERS, THE SHIRT
17 HAVING BEEN FOLDED, UNFOLDED, COMPRESSED, LAID OUT
18 AND SO ON, IN MY OPINION, ALL OF THOSE PHYSICAL
19 EVENTS, SOME THAT WOULD JUST HAVE OCCURRED
20 UNKNOWNLY AND IN AN UNCONTROLLED FASHION; OTHERS
21 THAT TOOK PLACE BECAUSE OF THE NECESSARY MANEUVERS
22 ENTAILED IN ITS EXAMINATION, WOULD MAKE AN
23 EXAMINATION MANY YEARS LATER OF THE SHIRT FOR
24 PURPOSES OF TRYING TO DETERMINE DIRECTION OF THE
25 SHOT THROUGH THE SHIRT, SCIENTIFICALLY IMPLAUSIBLE,
26 INVALID.

27 MS. ABRAMSON: THANK YOU.

28 I HAVE NOTHING FURTHER, YOUR HONOR.

42629

1 THE COURT: OKAY.

2 CROSS-EXAMINATION?

3 MR. CONN: YES.

4

5 CROSS-EXAMINATION

6 BY MR. CONN:

7 Q DOCTOR, CAN YOU TELL US HOW MANY SHOTGUN

8 WOUNDS YOU'VE OBSERVED, HOW MANY AUTOPSIES THAT YOU

9 HAVE DONE CONCERNING SHOTGUN WOUNDS?

10 A OH. I WOULD JUST ESTIMATE MAYBE ABOUT A

11 HUNDRED, OVER A PERIOD OF 34 YEARS, ACTUALLY, 35

12 PLUS, BECAUSE I SAW A COUPLE OF THEM IN THE AIR

13 FORCE.

14 BUT ANYWAY, OVER ABOUT THREE AND A HALF

15 DECADES, MAYBE A HUNDRED.

16 Q YOU SAID YOU NEVER SAW ONE LIKE THIS

17 BEFORE, CONCERNING NUMBER OF SHOTS FIRED?

18 A THAT'S CORRECT.

19 Q AND CAN YOU TELL US WHAT WAS THE LARGEST

20 NUMBER OF SHOTS FIRED THAT YOU EVER OBSERVED IN

21 AUTOPSIES IN WHICH YOU'VE PERSONALLY CONDUCTED THE

22 AUTOPSIES?

23 A I THINK THERE WAS ONE WITH FIVE TO SIX

24 SHOTGUN BLASTS; AND THEN A FEW WITH TWO, THREE, OR

25 FOUR. SOMETHING LIKE THAT.

26 Q SO, WOULD YOU SAY THAT MOST OF THE CASES

27 THAT YOU'VE WORKED ON INVOLVING SHOTGUN WOUNDS WERE

28 SINGLE SHOTS?

42630

1 A YES. I WOULD SAY THE MAJORITY WERE

2 SINGLE.

3 Q AND YOU'VE ONLY HANDLED A HANDFUL OF

4 CASES INVOLVING MULTIPLE SHOTGUN WOUNDS?

5 A WELL, I WOULD SAY MORE THAN A HANDFUL.

6 I DON'T KNOW HOW MANY. PROBABLY ABOUT 20 OR 25 OF

7 THE APPROXIMATE 100 MIGHT HAVE BEEN MORE THAN ONE.

8 SO I DON'T KNOW WHAT YOU MEAN BY HANDFUL. BUT I

9 WOULD AGREE THAT IT WOULD HAVE BEEN A SMALLER

10 PORTION OF THE TOTAL NUMBER OF SHOTGUN CASES THAT

11 I'VE HAD.

12 Q AND NOW, YOU DON'T DISAGREE WITH THE

13 NOTION THAT IN SOME CASES A RECONSTRUCTION CAN BE

14 DONE; SEQUENCE OF WOUNDS CAN BE DETERMINED, DO YOU?

15 A IT DEPENDS THEN ON HOW YOU DEFINE THAT.

16 IF YOU'RE ASKING ME IS IT POSSIBLE IN SOME INSTANCES

17 WHERE YOU'VE GOT A COUPLE OR THREE SHOTS, AND, YOU
18 KNOW, A FAIR AMOUNT ABOUT THE SCENE AND SO ON, I
19 THINK THAT IN MANY OF THOSE CASES IT IS POSSIBLE.

20 BUT IF YOU THEN TALK ABOUT THE
21 CIRCUMSTANCES OF THIS CASE, WITH TWO SHOOTERS AND
22 TWO VICTIMS AND A DOZEN OR MORE SHOTS, THEN IT IS MY
23 OPINION THAT SUCH A PREMISE IS NOT PLAUSIBLE.

24 Q SO YOU'RE JUST SAYING, IN THIS CASE YOU
25 CAN'T DO A RECONSTRUCTION, NOT THAT YOU COULDN'T DO
26 IT IN OTHER CASES; IS THAT CORRECT?

27 A YES. IN OTHER CASES, WITH A MUCH
28 SMALLER NUMBER OF SHOTS, WITH ONE SHOOTER, AND ONE

42631

1 VICTIM, AND MORE PRECISE EXAMINATION PERHAPS, I
2 THINK THAT IN SOME OF THOSE INSTANCES IT COULD BE
3 DONE.

4 Q AND WHAT WOULD YOU SAY IS THE MAXIMUM
5 NUMBER OF SHOTS TO A SINGLE VICTIM FOR WHICH YOU
6 COULD DO A RECONSTRUCTION?

7 A I DON'T HAVE A SPECIAL NUMBER. I REALLY
8 DON'T KNOW. I THINK, CERTAINLY, ONCE YOU GET PAST
9 THREE OR FOUR SHOTS; AGAIN, WITH A VICTIM WHO WAS
10 ABLE TO MOVE, THEN YOU'RE INTO A VERY, VERY TENUOUS
11 RECONSTRUCTIVE-TYPE OF ANALYSIS.

12 Q WELL, DO YOU MEAN THREE OR FOUR SHOTS OR
13 THREE OR FOUR WOUNDS?

14 A WELL, I MEANT THEM SYNONYMOUSLY. I
15 DIDN'T MEAN ENTRANCE -- ENTRANCE AND EXIT WOULD BE
16 ONE WOUND IN THE STATEMENT I JUST MADE. SAY SHOTS
17 THEN, FOR CLARIFICATION. THANK YOU.

18 SO I WOULD SAY THAT IF SOMEBODY HAS BEEN
19 SHOT MORE THAN THREE OR FOUR TIMES, THEN I WOULD
20 HAVE A VERY DIFFICULT TIME, IF THAT PERSON HAD NOT
21 BEEN RESTRAINED OR INCAPACITATED.

22 Q NOW, IN YOUR OPINION HOW MANY TIMES WAS
23 JOSE MENENDEZ SHOT?

24 A I THINK MR. MENENDEZ WAS SHOT DEFINITELY
25 ONCE IN THE BACK OF THE HEAD, WHICH WAS THE LAST
26 SHOT; DEFINITELY ONCE IN THE LEFT LEG, WHICH IS THE
27 SECOND SHOT; AND THE LEFT ELBOW, WHICH IS A THIRD
28 SHOT; AND TWO SHOTS IN THE ARM. BUT THERE'S A

42632

1 POSSIBILITY -- SO THE ANSWER TO YOUR QUESTION, SIR,
2 IS DEFINITELY FOUR AND POSSIBLY FIVE.

3 Q OKAY. AND BEFORE THE FOUR THAT YOU'RE
4 REFERRING TO AS DEFINITE WOULD BE THE SHOT OF THE
5 BACK OF THE HEAD, THE SHOT TO THE LEG, THE SHOT TO
6 THE RIGHT ARM, AND THE SHOT TO THE LEFT ARM; IS THAT

7 CORRECT?

8 A YES. THAT'S CORRECT. AND THOSE ARE THE
9 FOUR. AND IF YOU SEPARATE WOUNDS 2 AND 3, AS
10 NUMBERED BY DR. GOLDEN ON MR. MENENDEZ' RIGHT ARM,
11 THEN THAT'S WHAT GIVES YOU FIVE.

12 Q OKAY. ALL RIGHT. LET'S FOCUS A LITTLE
13 BIT ON THE SHOTS TO THE RIGHT ARM OF JOSE MENENDEZ.

14 I BELIEVE THAT YOU INDICATED THAT
15 DR. GOLDEN DESCRIBED AS GUNSHOT WOUND NO. 3 THE SIX
16 PELLET DEFECTS TO THE INSIDE OF THE RIGHT ARM; IS
17 THAT CORRECT?

18 A WOULD YOU ASK THAT ONCE AGAIN, PLEASE.

19 Q YES. I BELIEVE THAT YOU TESTIFIED ON
20 DIRECT EXAMINATION THAT DR. GOLDEN DESCRIBED AS
21 GUNSHOT WOUND NO. 3 THE SIX PELLET DEFECTS TO THE
22 INSIDE OF THE RIGHT ARM; IS THAT CORRECT?

23 A NO, I DO NOT RECALL SAYING THAT. IN
24 TALKING ABOUT NO. 3, WE TALKED ABOUT THE ENTRANCE IN
25 THE POSTERIOR LATERAL ASPECT AND THE EXIT ON THE
26 MEDIAL ASPECT OF THE RIGHT UPPER ARM. AND THEN WE
27 TALKED A LITTLE BIT ABOUT THOSE ADDITIONAL SMALLER
28 ADJACENT SITES, AS TO WHETHER THEY COULD HAVE BEEN

42633

1 SOME SUPPLEMENTAL EXIT WOUNDS FOR NO. 3. I DON'T

2 RECALL TALKING ABOUT PELLET WOUNDS BEING WOUNDS OF
3 ENTRANCE FOR NO. 3.

4 Q LET ME PUT UP ON THE BOARD THE WOUND
5 THAT I'M REFERRING TO SO THAT WE CAN TAKE A LOOK AT
6 IT AS WE SPEAK.

7 I'M PUTTING ON THE BOARD EXHIBIT
8 NO. 295.

9 DIRECTING YOUR ATTENTION TO THE PELLET
10 DEFECTS THAT APPEAR IN PHOTOGRAPH B, WHICH ARE THESE
11 SIX PELLET DEFECTS IN THE INSIDE OF THE RIGHT ARM.

12 CAN YOU TELL ME, ACCORDING TO DR.
13 GOLDEN'S NUMBERING SYSTEM, HOW HE IDENTIFIES THAT
14 PARTICULAR WOUND?

15 A WELL, HE IDENTIFIES THE LARGE DEFECT
16 THAT YOU SEE AS A WOUND OF EXIT. BUT I THINK YOU
17 ASKED ME ABOUT THE SMALLER WOUNDS; IS THAT CORRECT?

18 Q YES, SIR. I'M CONCERNED ABOUT THE
19 SMALLER PELLET DEFECTS.

20 A IN HIS ORIGINAL AUTOPSY REPORT HE TALKS
21 ABOUT MULTIPLE INDIVIDUAL PELLET WOUNDS ON THE
22 DORSAL ASPECT. IN HIS AMENDED REPORT OF SEPTEMBER
23 25TH, 1995 HE DELETES THAT AND HE TALKS ONLY ABOUT
24 THE LARGE DEFECT ON THE POSTERIOR LATERAL ASPECT OF
25 THE UPPER RIGHT ARM AS BEING THE WOUND OF ENTRANCE.

26 Q THAT WOUND THAT WE'RE TALKING ABOUT
27 AT -- THOSE ARE NOT ON THE DORSAL ASPECT?

28 A NO. I WOULD SAY THOSE ARE ESSENTIALLY

1 ANTERIOR, PRETTY MUCH ANTERIOR, WITH THE ARM IN THE
2 ANATOMICAL POSITION.

3 Q GETTING BACK TO MY ORIGINAL QUESTION,
4 CAN YOU TELL US, ACCORDING TO HIS NUMBERING SYSTEM,
5 HOW HE IDENTIFIES THAT PARTICULAR WOUND THERE?

6 A WELL, I WOULD SAY HE DOESN'T TELL US
7 ABOUT THOSE IN HIS ORIGINAL AUTOPSY REPORT BECAUSE
8 HE TALKS, IN HIS ORIGINAL AUTOPSY REPORT, OF
9 MULTIPLE INDIVIDUAL PELLET WOUNDS ON THE DORSAL
10 ASPECT.

11 AS YOU HAVE JUST POINTED OUT WITH YOUR
12 PREVIOUS QUESTION, WE'RE NOT LOOKING AT THE DORSAL
13 ASPECT. WE'RE LOOKING ANTERIOR ASPECT. SO I WOULD
14 SAY, AS I READ THROUGH HIS REPORT OF '89, THAT THOSE
15 SPECIFIC SATELLITE DEFECTS ARE NOT REFERRED TO.

16 Q ALL RIGHT. SO IF HE DOESN'T REFER TO
17 THAT PARTICULAR WOUND, DOES HE AT LEAST REFER TO THE
18 WOUND WHICH YOU SAID IS THE ENTRY WOUND TO GUNSHOT
19 WOUND NO. 3, THAT IS, THE WOUND ON THE BACK PORTION
20 OF THE RIGHT ARM?

21 A IN HIS ORIGINAL REPORT HE DID NOT. IN
22 HIS AMENDED REPORT HE DESCRIBES IT AND TELLS US THAT
23 IT WAS ABOUT TWO INCHES IN DIAMETER.

24 Q SO IS IT YOUR TESTIMONY, THEN, THAT IN
25 HIS '89 REPORT HE FAILED TO MAKE REFERENCE TO THIS

26 WOUND TO THE INSIDE OF THE RIGHT ARM, AS WELL AS TO

27 A WOUND TO THE BACKSIDE OF THAT ARM?

28 A NO. HE DID MAKE REFERENCE IN HIS

42635

1 ORIGINAL REPORT TO THE LARGE WOUND ON THE MEDIAL
2 ASPECT. THAT WAS SPECIFICALLY REFERRED TO AS SIX BY
3 FOUR INCHES, WHICH IS THE SAME MEASUREMENT HE GIVES
4 US IN HIS AMENDED REPORT OF '95.

5 SO THAT WOUND, THE LARGE ONE THAT WE SEE
6 JUST BELOW THE RIGHT ARMPIT, IS THE SAME DESCRIBED
7 BY DR. GOLDEN IN '89, AS IT WAS REFERRED TO IN HIS
8 AMENDED REPORT OF '95. YOU'LL SEE EXACTLY THOSE
9 SAME MEASUREMENTS.

10 Q I'M NOT TALKING ABOUT THAT.

11 A OH. YOU'RE NOT TALKING ABOUT THAT?

12 Q NO. I'M ASKING YOU, ACCORDING TO YOUR
13 UNDERSTANDING OF THE REPORT OF DR. GOLDEN, HIS 1989
14 REPORT FAILED TO MENTION BOTH THE SATELLITE DEFECTS
15 THAT APPEAR ON THE INSIDE OF THE RIGHT ARM, AS WELL
16 AS THE SMALLER TWO-BY-TWO OR MAXIMAL DIAMETER OF TWO
17 INCHES, WHICH HE NOW DESCRIBES IN HIS '95 REPORT AS
18 BEING ON THE BACK OF THAT ARM?

19 MS. ABRAMSON: I'M GOING TO OBJECT AS
20 COMPOUND, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: THAT IS CORRECT.

23 Q BY MR. CONN: SO HE FAILED TO MENTION

24 TWO OF THE THREE WOUNDS TO THE RIGHT ARM; IS THAT

25 YOUR UNDERSTANDING?

26 A IN THE ORIGINAL AUTOPSY REPORT, WE DON'T

27 HAVE THE DESCRIPTION OF THAT TWO-INCH DIAMETER

28 ENTRANCE WOUND AND THE POSTERIOR LATERAL OR REAR

42636

1 POSITION OF THE UPPER ARM. AND I DON'T SEE A

2 MENTION OF INDIVIDUAL PELLET WOUNDS, ANTERIORLY

3 ADJACENT TO THE LARGE EXIT WOUNDS ON THE MEDIAL

4 ASPECT OF THE RIGHT UPPER ARM.

5 Q ARE YOU SURE YOU'RE NOT CONFUSING WOUND

6 NO. 2 WITH WOUND NO. 3?

7 A YOU'RE ASKING ME ABOUT THREE; IS THAT

8 CORRECT?

9 Q I'M ASKING YOU IF HE DESCRIBED ANYWHERE

10 IN HIS RECORD --

11 A WELL, I WAS DESCRIBING NO. 3. I'M

12 SORRY. I THOUGHT THAT YOU SAID NO. 3.

13 NOW, LOOKING AT THE NO. 2 WOUND IN THE

14 '89 REPORT, HERE HE TALKS ABOUT PELLET WOUNDS BELOW

15 THE RIGHT SHOULDER LEVEL, AND THOSE COULD BE THE

16 SMALL SEPARATE WOUNDS THAT WE SEE ADJACENT TO THE
17 LARGE DEFECT. I'M LOOKING AT HIS MEASUREMENTS. HE
18 SAYS THEY'RE LOCATED IN A SPREAD OF 12 TO 17 INCHES
19 BELOW THE TOP OF THE SHOULDER. THAT'S WHAT GIVES ME
20 PAUSE, BECAUSE THAT DOESN'T LOOK TO ME LIKE IT'S 12
21 TO 17 INCHES, A FOOT TO A FOOT AND A HALF.

22 AND HE ALSO TALKS ABOUT THE ANTECUBITAL
23 FOSSA, WHICH IS THE CREASE IN FRONT OF OUR ELBOW.

24 SO, THE ONLY ANSWER I CAN GIVE IS IT IS
25 POSSIBLE IN HIS ORIGINAL DESCRIPTION OF WOUND
26 NO. 2 ON PAGE 4 OF HIS AUTOPSY REPORT, THAT THE
27 PELLET WOUNDS REFERRED TO THERE ARE THE PELLET
28 WOUNDS THAT WE CAN SEE IN THE MIDDLE PICTURE IN THE

42637

1 FAR LEFT COLUMN.

2 Q WELL, HOW FAR WOULD YOU SAY THOSE PELLET
3 WOUNDS, THOSE INDIVIDUAL DEFECTS IN PHOTOGRAPH B,
4 WOULD BE FROM THE SHOULDER?

5 A IT'S HARD TO SAY FOR SURE BECAUSE OF THE
6 DEFORMITY CAUSED BY THE FRACTURE OF THE HUMERUS. IT
7 IS POSSIBLE THAT THEY COULD BE THE ONES THAT HE IS
8 REFERRING TO, ALLOWING FOR THAT DEFORMITY. IT IS
9 POSSIBLE THAT THEY WOULD FALL WITHIN THAT RANGE OF
10 12 TO 17 INCHES DOWN FROM THE TOP OF THE SHOULDER.

11 Q NOW, ISN'T -- WOULDN'T IT BE CORRECT TO
12 SAY THAT IN HIS ORIGINAL 1989 REPORT
13 DR. GOLDEN GAVE THE OPINION THAT THE LARGE DEFECT
14 APPEARING ON THIS ARM, HIS RIGHT ARM, MIGHT BE THE
15 EXIT WOUND TO THOSE INDIVIDUAL PELLET DEFECTS WHICH
16 HE DESCRIBED AS SHOTGUN WOUND NO. 2?

17 A HE SAYS ABOUT THAT WOUND, AFTER GIVING
18 SIX-BY-FOUR MEASUREMENTS:

19 "THIS APPEARS TO BE RELATED TO
20 ONE OF THE SHOTGUN WOUNDS OF THE RIGHT
21 UPPER EXTREMITY, EITHER 2 OR 3,
22 LIKEWISE CONFIRMING THAT THE
23 TRAJECTORY IS DISTAL PROXIMAL AND
24 LATERAL MEDIAL."

25 I THINK THAT'S WHAT YOU'RE ASKING ME
26 ABOUT.

27 Q THAT'S CORRECT.

28 A YES. THAT'S WHAT HE SAYS. RIGHT.

42638

1 Q SO HE TOOK THE OPINION THAT THAT LARGE
2 DEFECT, WHICH WE SEE HERE IN PHOTOGRAPH B, COULD BE
3 THE EXIT OF THIS WOUND THAT WE SEE IMMEDIATELY BELOW
4 IT?

5 A WELL, HE SAYS THAT IT COULD BE ONE OR

6 THE OTHER. IT'S HARD FOR ME TO SEE HOW THAT COULD
7 BE. HERE AGAIN, YOU'VE GOT INDIVIDUAL PELLET
8 WOUNDS; AND THEN THEY'RE NOT GOING TO THEN GET
9 TOGETHER AND MAKE ONE SIX-BY-FOUR INCH DEFECT.

10 YOU ASKED ME WHAT DID HE SAY, AND THE
11 ANSWER IS HE SAYS THAT THAT LARGE DEFECT WE SEE IN
12 THAT PICTURE MIGHT BE RELATED TO WOUNDS 2 OR 3.

13 Q OKAY. BUT THEN IF THAT COULD POSSIBLY
14 BE THE EXIT TO WOUND NO. 2, WHEN HE DESCRIBES THESE
15 PELLET DEFECTS AS WOUND NO. 2 CAN YOU TELL US WHAT
16 HE DESCRIBES AS WOUND NO. 3?

17 MS. ABRAMSON: YOUR HONOR, AT THIS POINT I'M
18 GOING TO OBJECT. THIS IS IRRELEVANT.

19 THE COURT: OVERRULED.

20 THE WITNESS: THE ONLY THING I CAN TELL YOU
21 IS WHAT WE'VE TALKED ABOUT WITH WOUND NO. 3, WHEN HE
22 TALKED ABOUT PELLET WOUNDS ON THE DORSAL ASPECT. I
23 JUST -- I CAN'T BE SURE. I CAN ONLY GO BY HIS
24 AMENDED REPORT OF SIX YEARS LATER, IN WHICH I ASSUME
25 THAT HE RE-ANALYZED, RE-STUDIED AND SET FORTH WHAT
26 HE CONSIDERED TO BE A CORRECTED OR REVISED
27 PRESENTATION OF THE ACTUAL WOUNDS.

28 Q BY MR. CONN: WELL, I'M JUST ASKING YOU

1 FOR THE MOMENT WHAT HE DESCRIBED AS WOUND NO. 3 IN
2 THE '89 REPORT, SUCH THAT THIS LARGE WOUND HERE
3 WHICH WE ARE LOOKING AT COULD BE AN EXIT TO OR AN
4 EXIT FROM?

5 MS. ABRAMSON: ASKED AND ANSWERED, YOUR
6 HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: HE DESCRIBES IT CLEARLY IN THE
9 '89 REPORT AS AN EXIT WOUND. YOU ASKED ME TO WHAT
10 DOES HE CONNECT IT? YOU'VE ASKED ME IN PART, IN AN
11 EARLIER QUESTION, AND I SAID THAT HE SET FORTH THE
12 FACT IT COULD BE ASSOCIATED WITH WOUND 2 OR 3. IF
13 HE'S TALKING ABOUT 2, THEN HE'S TALKING ABOUT PELLET
14 WOUNDS THAT WE SEE THERE; AND IF HE'S TALKING ABOUT
15 WOUND NO. 3, THEN HE'S TALKING ABOUT PELLET WOUNDS
16 WE DO NOT SEE ON THESE PICTURES, WHICH ARE LOCATED
17 AROUND THE BACK OF THE ARM, IF WE GO BY WHAT DR.
18 GOLDEN SET FORTH IN HIS '89 REPORT.

19 Q BY MR. CONN: WELL, WHERE IN HIS '89
20 REPORT DOES DR. GOLDEN SAY THAT THIS LARGE DEFECT
21 WHICH WE ARE LOOKING AT HERE COULD BE AN EXIT WOUND
22 TO THE WOUND ON THE BACK OF THE ARM?

23 A OH, THAT'S WHAT WE JUST READ A LITTLE
24 BIT AGO. I'LL REPEAT IT. ON PAGE 6 OF THE FINAL
25 PORTION OF HIS DISCUSSION OF WOUND NO. 3, AFTER
26 STATING THAT THAT'S AN EXIT WOUND AND TELLING US IT
27 MEASURES SIX BY FOUR INCHES HE SAYS:

28 "THIS APPEARS --"

1 THAT LARGE DEFECT THERE BELOW THE
2 RIGHT ARMPIT --

3 "THIS APPEARS TO BE RELATED TO
4 ONE OF THE SHOTGUN WOUNDS OF THE RIGHT
5 UPPER EXTREMITY, EITHER 2 OR 3."

6 Q YES, AND WHAT IS WOUND NO. 3?

7 A THAT'S WHAT I JUST SAID. THE ONLY -- IN
8 HIS WOUND 3 IN '89 HE TALKS ABOUT PELLET WOUNDS ON
9 THE DORSAL ASPECT OF THE RIGHT UPPER ARM.

10 Q OF THE DORSAL ASPECT OF THE RIGHT UPPER
11 ARM. ARE YOU CERTAIN ABOUT THAT?

12 A WELL, HE SAID -- HE SAYS RIGHT FOREARM.
13 DORSAL ASPECT OF THE RIGHT FOREARM IN THERE. THAT'S
14 BEEN CORRECTED, IS MY UNDERSTANDING --

15 Q WELL --

16 A I'M SORRY.

17 Q JUST REFERRING TO HIS REPORT --

18 A ALL RIGHT.

19 Q -- HE SAID THAT THIS WOUND HERE, THIS
20 LARGE WOUND COULD BE THE EXIT WOUND TO A WOUND IN
21 HIS FOREARM; IS THAT CORRECT?

22 A THAT'S WHAT HE SAID, YES, IN '89.

23 Q AND LET ME SHOW YOU A PHOTOGRAPH --

24 A BUT YOU SEE THE MEASUREMENT DOESN'T FIT.
25 Q WHY IS IT THE MEASUREMENT DOESN'T FIT?
26 A BECAUSE WE JUST TALKED ABOUT HIS
27 LOCATION OF THOSE PELLET WOUNDS THAT YOU SEE IN THE
28 MIDDLE PHOTO, BETWEEN 12 TO 17 INCHES, AND NOW

42641

1 THAT'S CLEARLY ABOVE THE FOREARM. AND NOW HE TALKS
2 ABOUT THE FOREARM AND HE GIVES US A MEASUREMENT OF
3 14 AND A HALF INCHES BELOW THE TOP OF THE SHOULDER.

4 SO HE'S GOT THE FOREARM AT AN ANATOMICAL
5 PLACE HIGHER UP THAN THOSE INJURIES WE SEE WHICH ARE
6 CLEARLY ON THE RIGHT UPPER ARM.

7 Q DIDN'T YOU JUST TELL US THAT THESE
8 INDIVIDUAL PELLET DEFECTS IN B COULD BE GUNSHOT
9 WOUND NO. 2?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.
11 MISSTATES THE TESTIMONY.

12 THE COURT: YOU'RE ASKING DID HE SAY THAT
13 THAT'S WHAT DR. GOLDEN REPORTED IN HIS ORIGINAL
14 REPORT?

15 MR. CONN: YES.

16 THE COURT: THAT'S THE QUESTION.

17 THE WITNESS: NO. NO. WE DIDN'T -- NO. WE
18 WERE TALKING BEFORE ABOUT 3, AND ABOUT DR. GOLDEN --

19 YOU'RE ASKING ME IN HIS '89 REPORT ARE THOSE PELLET
20 WOUNDS THAT WE SEE THERE POSSIBLY THE WOUNDS TO
21 WHICH DR. GOLDEN REFERS IN HIS DESCRIPTION OF WOUND
22 NO. 2?

23 MR. CONN: CORRECT. THAT'S MY QUESTION.

24 THE WITNESS: THE ANSWER IS YES. AS I SAID,
25 THAT COULD BE WHAT HE'S REFERRING TO IN HIS WOUND
26 NO. 2. THAT'S RIGHT.

27 MR. CONN: OKAY.

28 Q NOW, ASSUMING THAT THIS IS WHAT DR. GOLDEN

42642

1 IS REFERRING TO AS WOUND NO. 2, HE INDICATES THAT
2 THIS EXIT WOUND, THIS LARGE WOUND, IS AN EXIT TO
3 EITHER WOUND NO. 2 WHICH, AS YOU SAID, MIGHT BE THE
4 WOUND TO THE INNER RIGHT ARM.

5 A MIGHT BE.

6 Q OR WOUND NO. 3; IS THAT CORRECT?

7 A THAT'S WHAT HE SAID, THAT'S RIGHT.

8 Q WHAT IS WOUND NO. 3, ACCORDING TO THE
9 '89 REPORT?

10 MS. ABRAMSON: YOUR HONOR, THIS HAS BEEN
11 ASKED AND ANSWERED.

12 THE COURT: OVERRULED.

13 MS. ABRAMSON: THE REPORT SPEAKS FOR ITSELF.

14 THE COURT: OVERRULED.

15 THE WITNESS: HE REFERS TO MULTIPLE

16 INDIVIDUAL PELLET WOUNDS ON THE DORSAL ASPECT OF THE

17 RIGHT FOREARM.

18 MR. CONN: OKAY.

19 Q HE DESCRIBES WOUND NO. 3 AS CONSISTING

20 OF A WOUND ON THE RIGHT FOREARM; IS THAT CORRECT?

21 A THAT'S RIGHT, IN THE '89.

22 Q AND THEN IN '95 HE DELETED ALL REFERENCE

23 TO THAT FOREARM ALTOGETHER; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q OKAY. NOW, IS IT YOUR OPINION THAT

26 DR. GOLDEN IS CORRECT, THAT THE LARGE WOUND THAT WE

27 ARE LOOKING AT IN PHOTOGRAPH B, COULD BE AN EXIT

28 WOUND TO THE PELLET DEFECTS THAT WE SEE ON THE

42643

1 INSIDE OF THE RIGHT FOREARM?

2 A NO. IN MY OPINION IT COULD NOT BE.

3 Q IS IT YOUR OPINION THAT THE EXIT WOUND

4 WHICH WE ARE LOOKING AT IN PHOTOGRAPH B COULD BE AN

5 EXIT WOUND TO PELLETS WHICH ENTERED THE RIGHT

6 FOREARM OF JOSE MENENDEZ?

7 A NO.

8 Q SO YOU DISAGREE SIGNIFICANTLY WITH MANY

9 OF THE OPINIONS OF DR. GOLDEN; IS THAT CORRECT?

10 A YES, I DO DISAGREE WITH SEVERAL OF HIS
11 OPINIONS. BUT I DO WANT TO SAY, RELEVANT TO YOUR
12 QUESTION AND THIS COMMENT, THAT DR. GOLDEN DID AMEND
13 HIS WRITTEN REPORT. SO MANY OF THE DIFFERENCES
14 REFERABLE TO HIS ORIGINAL DESCRIPTIONS OF WOUNDS 2
15 AND 3 ARE OBTIATED. THEY ARE NO LONGER IN THE POT
16 OR FORMULA TO BE CONSIDERED.

17 SO THERE'S MUCH LESS DISAGREEMENT BASED
18 UPON HIS AMENDED REPORT OF '95 WHICH, AS YOU KNOW, I
19 HAD NOTHING TO DO WITH. I NEVER SPOKE WITH DR. GOLDEN.
20 SO I HAD NO INFLUENCE ON HIM WHATSOEVER. I KNOW
21 NOTHING ABOUT IT. I'M JUST SAYING THAT THERE'S FAR
22 LESS DIFFERENCE.

23 Q YOU NEVER SPOKE DIRECTLY WITH
24 DR. GOLDEN; IS THAT WHAT YOU'RE TELLING US?

25 A THAT'S CORRECT.

26 Q WHO HAVE YOU CONFERRED WITH?

27 A MS. ABRAMSON --

28 MS. ABRAMSON: I'M GOING TO OBJECT AS

42644

1 IRRELEVANT AND CALLING FOR HEARSAY.

2 THE COURT: OVERRULED.

3 THE WITNESS: ATTORNEY ABRAMSON AND THAT'S

4 ALL. VERY BRIEFLY, A COUPLE OF SUNDAYS AGO, FOR A
5 FEW MINUTES WITH DR. FACKLER. THAT'S ALL.

6 Q BY MR. CONN: OKAY. AND YOU'VE ACCUSED
7 DR. GOLDEN IN THE PAST OF MAKING UNFORGIVABLE
8 MISTAKES IN HIS AUTOPSIES, HAVEN'T YOU?

9 MS. ABRAMSON: OBJECTION. IRRELEVANT AND NO
10 FOUNDATION.

11 THE COURT: ARE YOU TALKING ABOUT THIS
12 PARTICULAR AUTOPSY?

13 MR. CONN: NO. ANOTHER ONE.

14 THE COURT: OVERRULED. SUSTAINED RATHER.
15 I'M SORRY.

16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

17 THE COURT: OBJECTION SUSTAINED.

18 Q BY MR. CONN: IN THIS CASE, DR. GOLDEN'S
19 ORIGINAL '89 AUTOPSY AS REFLECTED IN HIS REPORT, IS
20 A BIT OF A MESS, ISN'T IT?

21 A THERE ARE SOME THINGS WHICH ARE
22 CONFUSING AND SOME THINGS WHICH HAD TO BE REVISED,
23 WHICH HE DID. THERE ARE OTHER THINGS WHICH I
24 DISAGREE WITH. IT WAS A COMPLEX CASE. AND
25 BASICALLY, WE KNOW WHERE THE WOUNDS ARE. AND I
26 THINK THAT HE APPROACHED IT AS A FORENSIC
27 PATHOLOGIST WOULD DO; SOMEBODY -- TWO PEOPLE DEAD OF
28 MULTIPLE SHOTGUN WOUNDS. AND I THINK IT'S JUST A

1 STRAIGHTFORWARD PRESENTATION OF THESE WOUNDS AND
2 THEIR LOCATIONS.

3 Q WELL, EVEN AFTER WRITING THE '92
4 AMENDMENT AND WRITING THE '95 AMENDMENT, WOULDN'T
5 YOU AGREE THAT THE REPORTS OF DR. GOLDEN ARE STILL
6 SOMEWHAT UNRELIABLE?

7 A I WOULD AGREE THAT THERE ARE PORTIONS OF
8 THE AUTOPSY REPORT, EVEN FOLLOWING THE TWO
9 AMENDATIONS (SIC), THAT LEAVE US SOMEWHAT CONFUSED.
10 WE DON'T HAVE A CLEAR DEFINITIVE PICTURE, THAT IS
11 CORRECT.

12 Q ONE OF THE REASONS WHY WE DON'T HAVE A
13 CLEAR DEFINITIVE PICTURE IS BECAUSE WE DON'T KNOW
14 WHAT HE DID WITH THE WOUNDS THAT HE PREVIOUSLY SAID
15 EXISTED IN THE RIGHT FOREARM OF JOSE MENENDEZ; IS
16 THAT CORRECT?

17 A THAT'S ONE THING, YES.

18 Q AND DID YOU ALSO NOTICE THAT IN HIS
19 REPORT HE DESCRIBED RECOVERING 15 INDIVIDUAL LEAD
20 PELLETS FROM THE FOREARM OF JOSE MENENDEZ, OR ALONG
21 THE PATH OF THE FOREARM OF JOSE MENENDEZ?

22 A YES. AND THEN I UNDERSTAND THAT HE
23 CHANGED THAT TO TWO PELLETS. BUT YOU'RE CORRECT, IN
24 '89 HE SAID 15 PELLETS.

25 Q SO HE DESCRIBED -- PREVIOUSLY DESCRIBED
26 WOUNDS WHICH HE IS NO LONGER CONFIRMING THE
27 EXISTENCE OF AND PREVIOUSLY DESCRIBED SHOTGUN

42646

1 OF; IS THAT CORRECT?

2 A YES.

3 Q DID YOU LOOK AT ALL OF THE ORIGINAL
4 AUTOPSY PHOTOGRAPHS TAKEN BY THE CORONER'S OFFICE IN
5 THIS CASE?

6 A YES, I BELIEVE I HAVE.

7 Q DO YOU KNOW IF THEY WERE TAKEN BY THE
8 CORONER'S OFFICE OR IF THEY WERE TAKEN BY THE
9 BEVERLY HILLS POLICE DEPARTMENT?

10 A I THOUGHT THERE WERE TWO SETS OF PHOTOS,
11 FROM THE POLICE AND THE CORONER'S OFFICE. OR WERE
12 THERE TWO SETS WITH THE BODIES THERE? ONE BY THE
13 CORONERS AND ONE BY THE POLICE. SEEMS TO ME THERE
14 MIGHT HAVE BEEN TWO SEPARATE SETS. I VOICE THAT
15 WITH HESITATION.

16 Q DO YOU KNOW WHETHER ANY OF THE
17 PHOTOGRAPHS IN THIS CASE WERE LOST BY THE CORONER'S
18 OFFICE?

19 A THAT I DO NOT KNOW.

20 Q AND DO YOU KNOW WHETHER THE X RAYS IN
21 THIS CASE WERE LOST BY THE CORONER'S OFFICE?

22 A THAT I HAVE BEEN TOLD HAPPENED.

23 SOMEBODY LOST THE ORIGINAL X RAYS, AND THEY HAVE
24 THE -- WHAT, THE ORIGINAL REPRODUCTIONS OR
25 SOMETHING, YES.

26 Q YOU HAVEN'T LOOKED AT THE ORIGINAL
27 X RAYS IN THIS CASE BECAUSE THEY WERE LOST; IS THAT
28 YOUR UNDERSTANDING?

42647

1 A THAT'S CORRECT. I HAVE SEEN COPIES.
2 THEY SEEM TO BE PRETTY GOOD.

3 Q AND YOU'RE AWARE THAT THE AUTOPSY
4 REPORTS IN THIS CASE WEREN'T WRITTEN UNTIL ALMOST
5 TWO MONTHS AFTER THE AUTOPSY?

6 A LET'S SEE. I DON'T KNOW THAT
7 INDEPENDENTLY I CAN RECALL. I'M TRYING TO SEE -- IN
8 THE AUTOPSY REPORT -- THE AUTOPSY REPORT TELLS US
9 WHEN HE DID IT. HOLD ON PLEASE. LET ME SEE IF
10 THERE'S A DATE AT THE END. I DON'T MEAN TO
11 QUESTION -- IF YOU KNOW THAT IT WAS TWO MONTHS LATER,
12 I ACCEPT THAT. I JUST DON'T KNOW THE DATES.

13 HERE. HOLD ON. I'M SORRY. I SEE IT.
14 HERE'S THE DATE I WAS LOOKING FOR. IT SAYS OCTOBER
15 13TH, '89. LET ME GET MY DATES RIGHT. AND HE DID
16 THE AUTOPSY ON AUGUST 23RD, '89; IS THAT CORRECT?

17 Q YES.

18 A THAT WOULD BE A LITTLE LESS THAN TWO
19 MONTHS. PROBABLY ABOUT SEVEN WEEKS, I GUESS,
20 SOMETHING LIKE THAT.

21 Q AND YOU'RE LOOKING AT THE AUTOPSY REPORT
22 FOR WHICH VICTIM IN THIS CASE?

23 A THAT WAS JOSE THAT I JUST REFERRED TO.

24 Q DIRECTING YOUR ATTENTION TO THE AUTOPSY
25 REPORT FOR MARY MENENDEZ, PAGE 15.

26 A THAT ONE IS SIGNED OUT ON THE SAME DATE
27 OF OCTOBER 13TH, '89.

28 Q OKAY. SO WOULD YOU SAY THAT IS STANDARD

42648

1 PRACTICE AMONG PATHOLOGISTS, TO WRITE THEIR AUTOPSY
2 REPORTS ALMOST TWO MONTHS AFTER CONDUCTING AN
3 AUTOPSY?

4 A WELL, YOU ARE DRAWING A CONCLUSION WHICH
5 MAY OR MAY NOT BE CORRECT. BUT I THINK IT'S
6 PROBABLY NOT CORRECT. WHEN YOU SAY TO WRITE IT, I
7 DOUBT VERY MUCH THAT HE WROTE IT ON THE DAY THAT HE
8 SIGNED OFF ON IT. I WOULD BELIEVE THAT HE DICTATED
9 IT AND THEN PROBABLY WORKED AT IT, AND SO ON, AND
10 THEN RELEASED IT. I CAN'T TELL YOU
11 ADMINISTRATIVELY, YOU KNOW, WHAT HAPPENS IN THAT
12 OFFICE.

13 I WILL SAY SEVEN WEEKS IS A FAIRLY LONG
14 TIME, BUT I HAVE SOME KNOWLEDGE OF THE CASE LOAD OF
15 THE LOS ANGELES COUNTY CORONER'S OFFICE, JUST
16 GENERALLY, THE NUMBER OF BODIES THAT THEY HAVE AND
17 SO ON. SO I'M NOT REALLY SURPRISED.

18 Q THE AUTOPSIES IN THIS CASE WERE
19 CONDUCTED ON WHAT DATE?

20 A AUGUST 23RD OF '89, BOTH OF THEM.

21 Q AND IT'S YOUR UNDERSTANDING THAT THE
22 KILLINGS IN THIS CASE TOOK PLACE ON WHAT DATE?

23 A I THINK ON AUGUST 20TH.

24 Q SO WOULD THAT DELAY, APPROXIMATELY A
25 TWO-DAY DELAY, MORE THAN 48-HOUR DELAY FROM THE TIME
26 OF THE KILLING, BE STANDARD PRACTICE AMONG
27 PATHOLOGISTS TO CONDUCT SUCH AN AUTOPSY AFTER SUCH A
28 DELAY?

42649

1 A THE ANSWER IS -- AND I DON'T MEAN TO BE
2 FACETIOUS, HUMOROUS OR INSULTING TO YOU GOOD FOLKS
3 OUT HERE, BUT THE ANSWER HONESTLY IS NO. THE ONLY
4 PLACE I KNOW OF IS IN LOS ANGELES. BUT IT'S AN
5 HONEST ANSWER.

6 THE COURT: LET'S TAKE OUR RECESS. AND WE'LL
7 RESUME AT 1:30. DON'T DISCUSS THE MATTER WITH

8 ANYONE OR FORM ANY FINAL OPINIONS ABOUT IT. WE'LL

9 RESUME AT 1:30.

10 (AT 12:03 P.M. PROCEEDINGS WERE
11 ADJOURNED UNTIL 1:30 P.M. OF THE
12 SAME DAY.)

42650

1 VAN NUYS, CALIFORNIA; MONDAY, DECEMBER 4, 1995

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: OKAY. ARE WE READY TO PROCEED
7 WITH THE JURY?

8 MR. CONN: YES.

9 THE COURT: LET'S DO IT.

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

13

14 THE COURT: OKAY. THE JURY IS ALL HERE. AND
15 WE'RE READY TO RESUME WITH THE CROSS-EXAMINATION OF
16 THE WITNESS.

17 MR. CONN: THANK YOU.

18

19 CROSS-EXAMINATION (RESUMED)

20 BY MR. CONN:

21 Q NOW, DOCTOR, DID YOU ALSO MAKE A
22 DETERMINATION AS TO THE NUMBER OF WOUNDS INFLICTED
23 ON THE BODY OF MARY MENENDEZ?

24 A YES. I BELIEVE THAT SHE SUSTAINED
25 DEFINITELY NINE WOUNDS AND POSSIBLY TEN.

26 Q AND ARE THOSE --

27 A I MEAN GUNSHOT -- YOU KNOW, SEPARATE
28 GUNSHOT BLASTS.

42651

1 Q OKAY. AND YOU SAID THAT JOSE MENENDEZ
2 RECEIVED APPROXIMATELY FOUR TO FIVE SEPARATE GUNSHOT
3 WOUNDS?

4 A WELL, DEFINITELY FOUR AND POSSIBLY
5 FIVE.

6 Q OKAY. ARE YOU COUNTING -- WHEN YOU GIVE
7 AN ESTIMATE OF NINE TO TEN SHOTGUN BLASTS, ARE YOU
8 SAYING THAT THOSE WERE SEPARATE SHOTGUN BLASTS TO
9 WOUNDS WHICH YOU DO NOT ASSOCIATE WITH EACH OTHER
10 OR --

11 A YES, THAT'S CORRECT. RIGHT. I'M NOT
12 TALKING ABOUT, YOU KNOW, REENTRANCE OR EXIT OR
13 ANYTHING LIKE THAT. I'M TALKING ABOUT SEPARATE
14 GUNSHOT BLASTS WITH AN ENTRANCE POINT, WHATEVER, YOU
15 KNOW, MAY HAVE HAPPENED THEREAFTER, RIGHT.

16 Q AND DO YOU ASSOCIATE ANY OF THE WOUNDS
17 TO THE BODY OF JOSE MENENDEZ WITH THE WOUNDS
18 RECEIVED TO MARY MENENDEZ?

19 A THAT'S A POSSIBILITY. IT -- IT IS A
20 POSSIBILITY WITH ONE OR TWO OF THE WOUNDS.

21 Q SO IF WE TOTAL THE MINIMUM NUMBER OF
22 WOUNDS TO MARY MENENDEZ AND JOSE MENENDEZ, AS WELL
23 AS TOTAL YOUR MAXIMUM, WE WOULD BE TOTALING NINE
24 PLUS FOUR, I BELIEVE, FOR A MINIMUM, AND TEN PLUS
25 FIVE FOR A MAXIMUM; IS THAT CORRECT?

26 A NO. FOR A MAXIMUM NINE AND -- NO. FOR A
27 MAXIMUM, IN MY OPINION, EIGHT AND FIVE; EIGHT IN
28 MRS. MENENDEZ AND FIVE IN MR. MENENDEZ FOR A

42652

1 MAXIMUM. AND FOR A MINIMUM, SEVEN AND FOUR; AND IF
2 ONE OF THOSE WAS SHARED, THEN IT WOULD BE TEN FOR A
3 MINIMUM.

4 SO TEN, I'D SAY, FOR A MINIMUM AND FIVE
5 AND EIGHT, 13, FOR A MAXIMUM.

6 Q ALL RIGHT. SO THAT WOULD BE YOUR TOTAL
7 OF THE NUMBER OF SHOTGUN BLASTS THAT WERE FIRED IN
8 THAT ROOM, 10 TO 13?

9 A THAT'S CORRECT.

10 Q AND THAT'S JUST HITS. ARE YOU --

11 A NO, NO. WAIT A MINUTE. I KNOW THERE
12 WAS ONE THROUGH THE DOOR ON TO A TREE. I'M NOT
13 COUNTING THAT.

14 Q OKAY. NOW, IN LOOKING AT THESE WOUNDS --
15 YOU'VE GIVEN OPINIONS, LET'S JUST USE AS AN EXAMPLE,
16 THE WOUND TO THE RIGHT ARM OF JOSE MENENDEZ, WHICH
17 APPEARS IN EXHIBIT 295 IN PHOTO B.

18 YOU'VE INDICATED THAT, FOR EXAMPLE, THAT
19 WOUND IS, IN YOUR OPINION, THE LARGE
20 SIX-BY-FOUR-INCH DEFECT, AN EXIT WOUND.

21 CAN YOU TELL US HOW YOU MAKE A
22 DETERMINATION AS TO WHETHER A WOUND IS AN EXIT OR AN
23 ENTRANCE?

24 A ITS RELATIONSHIP TO A WOUND OF ENTRANCE,
25 ITS RELATIVE SIZE, THE PERCEIVED OR LOGICALLY
26 ASCERTAINED TRAJECTORY, AND SOMETIMES, IF NECESSARY,
27 DISSECTION FROM ONE POINT TO THE OTHER. USUALLY
28 YOU'RE ABLE TO MAKE THE DETERMINATION WITHOUT LAYING

42653

1 EVERYTHING OPEN, BUT SOMETIMES YOU MIGHT WANT TO DO
2 THAT.

3 Q OKAY. ALL RIGHT. SO, FOR EXAMPLE, WE
4 HAD THE OPINION -- WELL, LET ME ASK YOU THIS: AS FAR
5 AS THE WOUND WHICH DR. GOLDEN HAS DELETED FROM HIS

6 ' REPORT, AND THAT IS A WOUND TO THE DORSAL
7 ASPECT OF THE RIGHT FOREARM, I BELIEVE THAT -- YOU
8 INDICATED IN YOUR REPORT THAT YOU DO NOT ASSOCIATE
9 THAT WITH ANY OTHER WOUND; IS THAT CORRECT?

10 A I THINK THAT WE HAD TALKED EARLIER TODAY
11 ABOUT THE FACT THAT IT COULD BE RELATED TO SOMETHING
12 THAT WE SEE HIGHER UP IN THE ARM; NAMELY, THAT LARGE
13 DEFECT BENEATH THE RIGHT ARMPIT. THAT'S A
14 POSSIBILITY. BUT IT'S SOMETHING THAT I CAN'T STATE
15 WITH REASONABLE MEDICAL CERTAINTY. I STILL BELIEVE
16 THAT THE DEFECT THAT WE SEE THERE IN THE MIDDLE
17 PICTURE IN THE FAR LEFT COLUMN IS EXIT. AND THE
18 WOUND DESCRIBED BY DR. GOLDEN IN HIS AMENDED REPORT
19 ON THE POSTEROLATERAL ASPECT OF THE UPPER ARM WAS
20 ENTRANCE.

21 AND BY THE WAY, I SEE THAT HE IS,
22 INDEED, PROBING THAT ON -- ON THAT PICTURE DOWN
23 THERE, THE BOARD THAT IS RESTING ON THE FLOOR, THE
24 TOP PICTURE, IN THE MIDDLE COLUMN, HE'S SHOWING US A
25 PROBE --

26 Q YOU'RE IDENTIFYING 301 FOR
27 IDENTIFICATION, PHOTOGRAPH C; IS THAT CORRECT?

28 A YES, THAT IS CORRECT. LOOKS TO ME LIKE

1 HE'S GOT A WOUND THERE THAT WOULD FIT THAT
2 TWO-BY-TWO WOUND THAT HE TALKS ABOUT IN HIS AMENDED
3 REPORT, BUT WHICH HE HAD NOT MENTIONED IN HIS '89
4 REPORT.

5 Q OKAY. BUT MY QUESTION FOR THE MOMENT IS
6 SIMPLY FOCUSED ON THE WOUND TO THE DORSAL ASPECT OF
7 THE RIGHT FOREARM --

8 A THE ONLY ONE THAT WE SEE THERE IN THE
9 MIDDLE?

10 Q WELL, I DON'T KNOW WHICH ONE YOU'RE --
11 LET ME DIRECT YOUR ATTENTION TO -- ARE YOU TALKING
12 ABOUT D?

13 A YES.

14 Q OF 301?

15 A YEAH, YEAH. RIGHT.

16 Q ARE YOU REFERRING TO MARKS THAT APPEAR
17 HERE IN THE -- WHAT APPEARS TO BE THE FOREARM?

18 A WELL, I WAS ASKING YOU. I'M SORRY. IT
19 WAS YOUR QUESTION. I DIDN'T MEAN TO INTERRUPT YOU.
20 I JUST WANTED TO MAKE SURE THAT I WAS LOOKING AT THE
21 RIGHT PICTURE.

22 Q YES. WELL, I WAS REFERRING TO A WOUND
23 DESCRIBED BY DR. GOLDEN, NOT NECESSARILY ANYTHING
24 THAT APPEARS IN THE PHOTOGRAPHS, UNLESS YOU AGREE
25 THAT THAT IS THE WOUND THAT WAS DESCRIBED BY
26 DR. GOLDEN.

27 A WELL, THAT'S THE DORSAL ASPECT OF THE
28 FOREARM. THAT'S ALL I CAN TELL YOU.

1 Q BUT YOU DO KNOW IN THE '95 REPORT, FOR
2 WHATEVER REASON, DR. GOLDEN ELIMINATES ALL REFERENCE
3 TO THAT WOUND AS EXISTING; IS THAT CORRECT?

4 A THAT'S CORRECT. HE SAYS TO DELETE THE
5 FIRST FOUR PHOTOGRAPHS AND SO ON, YEAH.

6 Q SO NOW IN YOUR REVIEW OF THE MATERIALS
7 IN THIS CASE, IS IT YOUR TESTIMONY THAT THAT WOUND,
8 IF SUCH A WOUND EXISTS, COULD BE ASSOCIATED WITH THE
9 WOUND THAT APPEARS IN 295, PHOTOGRAPH B, AS THE
10 ENTRY -- AS THE PELLETS -- PELLET DEFECTS TO THE INNER
11 PART OF THE RIGHT ARM?

12 A THAT WOULD BE MY SECOND POSSIBILITY.
13 THE MORE LIKELY POSSIBILITY IS, AS I STATED EARLIER,
14 THAT THOSE REPRESENT SOME SATELLITE EXIT WOUNDS
15 ADJACENT TO THE LARGE EXIT WOUND BENEATH THE RIGHT
16 ARMPIT.

17 ANOTHER POSSIBILITY IS THAT SOME OF THE
18 PELLETS THAT WENT UP THROUGH THE DORSAL SURFACE OF
19 THE RIGHT FOREARM COULD HAVE TRAVERSED THROUGH THE
20 TISSUES AND EXITED THERE. WE JUST DON'T KNOW
21 BECAUSE THEY WERE NOT LAID OPEN.

22 Q OKAY. NOW, IF YOU DO ASSOCIATE -- TO THE
23 EXTENT THAT YOU DO ASSOCIATE, AS A POSSIBILITY, THE

24 WOUND, IF ONE EXISTS, TO THE DORSAL ASPECT OF THE
25 RIGHT FOREARM, WITH THE INDIVIDUAL PELLET DEFECTS
26 THAT APPEAR ON THE INSIDE OF THE RIGHT ARM, WHICH
27 WOULD YOU ATTRIBUTE AS THE ENTRY AND WHICH WOULD YOU
28 ATTRIBUTE AS THE EXIT?

42656

1 A WELL, UNDER THAT SECOND POSSIBILITY,
2 WHICH I GIVE LESS CREDENCE TO, I WOULD BELIEVE THAT
3 THE WOUNDS ON THE DORSAL SURFACE OF THE FOREARM THAT
4 WE SEE IN THE MIDDLE PICTURE OF 1-B IS THAT -- IS
5 THAT --

6 Q THAT'S 301, PHOTOGRAPH C -- PHOTOGRAPH D.

7 A THAT MIDDLE PICTURE IN THE MIDDLE
8 COLUMN, THAT THEY WOULD MOST LIKELY BE ENTRANCE.
9 AND THEN IF -- UNDER -- UNDER THE SECOND POSSIBILITY,
10 IN RESPONSE TO YOUR QUESTION, THEN THE WOUNDS THAT
11 APPEAR TO BE ADJACENT TO THE LARGE DEFECT BENEATH
12 THE RIGHT ARMPIT WOULD BE EXIT.

13 Q OKAY. NOW, IS THERE -- HOW ABOUT VICE
14 VERSA? IS THAT ALSO A POSSIBILITY, THAT SOMEHOW
15 JOSE MENENDEZ WAS SHOT ON THE INSIDE OF HIS RIGHT
16 ARM AND THE PELLETS EXITED ON THE DORSAL ASPECT OF
17 THE RIGHT FOREARM?

18 A THAT DOESN'T SEEM VERY LIKELY

19 CONSIDERING THE POSITION OF THE BODY.

20 FIRST OF ALL, IN A STANDING POSITION

21 IT'S, OF COURSE, IMPOSSIBLE UNLESS YOU HAVE, YOU

22 KNOW, SOMEBODY WHO IS ELEVATED. IF HE -- AND I DO

23 BELIEVE THAT HE WAS STANDING. SO IT'S HARD FOR ME

24 TO CONCEIVE HOW THAT COULD HAVE HAPPENED.

25 Q NOW, IN MAKING THAT DETERMINATION AS TO

26 THOSE TWO QUESTIONS THAT I ASKED YOU, WERE YOU ABLE

27 TO LOOK AT THE WOUND, FOR EXAMPLE, AND JUST LOOKING

28 AT THAT WOUND SAY VISUALLY LOOKING AT THAT

42657

1 PHOTOGRAPH THAT APPEARS TO ME TO BE AN ENTRY OR AN

2 EXIT?

3 A I CANNOT.

4 Q AND WHY IS THAT?

5 A BECAUSE PELLET WOUNDS OF ENTRANCE AND

6 EXIT CAN BE VERY SIMILAR ON PHOTOGRAPHS OF THIS

7 NATURE. THEY BOTH WILL HAVE A PUNCTATE APPEARANCE,

8 THE SIZE WILL BE RELATIVELY THE SAME. SO IT'S NOT

9 POSSIBLE IN THIS KIND OF A PICTURE. IT MIGHT BE

10 POSSIBLE WITH VERY CLOSE PICTURES SHOWING DETAILS OF

11 THE EDGES AND SO ON TO MAKE THAT DIFFERENTIATION.

12 BUT I CANNOT TELL FROM THESE PICTURES.

13 Q ALL RIGHT. LET ME ASK YOU THE SAME

14 QUESTION IN REGARD TO THE LARGE DEFECT THAT HAS BEEN
15 DESCRIBED AS SIX BY FOUR INCHES IN SIZE APPEARING ON
16 THE RIGHT ARM OF JOSE MENENDEZ.

17 ARE YOU ABLE TO LOOK AT THAT WOUND AND
18 SAY JUST BY THE WAY THAT WOUND APPEARS TO ME, I CAN
19 DETERMINE THAT THAT APPEARS TO BE AN ENTRY OR AN
20 EXIT?

21 A YES, I CAN, BECAUSE IT WOULD HAVE TO BE
22 A WOUND OF PRETTY CLOSE CONTACT; OTHERWISE, YOU'D
23 HAVE SOME DISPERSAL. AND SECONDLY, IF IT IS THEN
24 CLOSE CONTACT, I WOULD EXPECT TO SEE MORE BLACKENING
25 AND SEARING OF THE EDGES. AND THIRDLY, AS I
26 MENTIONED BEFORE, ITS SIZE IS SUCH THAT IT IS
27 INCONSISTENT WITH ENTRANCE.

28 WHEN YOU HAVE A CONTACT OR NEAR CONTACT

42658

1 WOUND, THE WOUND IS JUST A LITTLE BIT BIGGER THAN
2 THE ACTUAL BORE WITH A CYLINDER. IT COULD BE MAYBE
3 A QUARTER OF AN INCH TO A HALF AN INCH BIGGER.

4 SO IF YOU HAVE A BORE THAT IS ABOUT A
5 LITTLE LESS THAN THREE QUARTERS OF AN INCH, THIS
6 COULD BE ABOUT AN INCH AND A QUARTER MAYBE, MAYBE AN
7 INCH AND A HALF. THERE'S NO WAY THAT I CAN SEE A
8 SIX-BY-FOUR WOUND.

9 Q OKAY. SO HAVE YOU CONSIDERED IN THAT,
10 IN FORMING THAT OPINION, THAT AN ARM COULD BE HELD
11 AT AN ANGLE, AND IF THAT ARM IS HELD AT AN ANGLE AND
12 THE SHOT COLUMN WERE TO STRIKE THE BOTTOM PORTION OF
13 THE ARM, THAT THE ENTRY -- THAT THE SHOT COULD CAUSE
14 AN ENTRY THERE AND ALSO EXIT IN A SMALLER PORTION OF
15 THE TOP PART OF THE ARM AFTER STRIKING A BONE?

16 A WELL, THAT'S POSSIBLE. I BELIEVE HE
17 TALKED ABOUT FRACTURES OF THE RIGHT RADIUS AND ULNA,
18 THE TWO BONES THAT GO FROM THE ELBOW TO THE WRIST.
19 AND WE KNOW ABOUT THE FRACTURE IN THE HUMERUS. IT
20 IS ANOTHER SCENARIO, IF THE ARM WERE HELD THUSLY,
21 FOR THE PELLETS TO HAVE GONE IN TO THE DORSAL OR
22 BACK PORTION OF THE RIGHT FOREARM AND TO HAVE MOVED
23 UPWARD MAKING THOSE SMALL HOLES BY LARGE DEFECT.
24 THAT'S WHY I SAY THAT'S ANOTHER POSSIBILITY THAT I
25 MUST CONSIDER.

26 Q ALL RIGHT. NOW, WHEN -- LOOKING AT THAT
27 WOUND ONCE AGAIN THAT WE'RE STILL TALKING ABOUT IN
28 PHOTOGRAPH B OF 295, THE FACT THAT THERE ARE

42659

1 INDIVIDUAL PELLET DEFECTS WHICH ARE SEPARATE FROM
2 THE LARGE SIX-BY-FOUR-INCH DEFECT, IN THAT
3 PHOTOGRAPH, WOULD YOU SAY THAT BECAUSE THESE ARE TWO

4 DIFFERENT KINDS OF WOUNDS, THAT IS A LARGE SINGLE
5 DEFECT AND AN INDIVIDUAL SATELLITE -- OR INDIVIDUAL
6 DEFECTS, THAT THOSE DEFECTS COULD NOT BE
7 SATELLITES -- SATELLITE ENTRY TO THAT WOUND, IF THAT
8 WOUND WERE AN ENTRY?

9 A YES, THAT IS CORRECT. IF YOU HAVE AN
10 ENTRY -- IF THAT, YOU KNOW, JUST HYPOTHETICALLY
11 SPEAKING, TO RESPOND TO YOUR QUESTION, IF THAT WERE
12 AN ENTRY, THEN IT IS OF SUCH A SIZE THAT THE PELLET
13 DISPERSAL PATTERN WOULD BE QUITE DIFFERENT. YOU
14 WOULD NOT HAVE SUCH A LARGE WOUND.

15 AS A MATTER OF FACT, WHEN YOU COME BACK
16 TO A POINT THAT PERMITS DISPERSAL OF PELLETS, THEN
17 THE MEASURE ENTRY POINT, IF THERE STILL BE ONE, AND
18 THERE CAN BE ONE, WOULD BE CONSIDERABLY SMALLER.

19 Q OKAY. BUT HAVE YOU CONSIDERED THE
20 POSSIBILITY IN REVIEWING THAT WOUND, THAT THE ARM
21 COULD HAVE BEEN AT AN ANGLE SUCH THAT WHILE THE --
22 WHILE MOST OF THE COLUMN MIGHT HAVE ENTERED INTO --
23 MOST OF THE SHOT COLUMN MIGHT HAVE ENTERED INTO THE
24 LARGE DEFECT, THE ARM WAS AT SUCH AN ANGLE TO THAT
25 SHOT COLUMN THAT AT THE MOMENT THE COLUMN STRUCK THE
26 ARM, THESE INDIVIDUAL PELLET DEFECTS MIGHT HAVE BEEN
27 CLOSER TO THE BULK OF THE SHOT COLUMN THAN WOULD
28 APPEAR BY LOOKING AT THE ARM IN THAT PHOTOGRAPH?

1 A I DON'T SEE HOW THEY COULD BE CLOSER
2 BECAUSE THAT'S NOT A PART OF THE ANATOMY THAT ALLOWS
3 CLOSER JUXTAPOSITION BY VIRTUE OF BENDING THE ARM IN
4 ANY WAY. THE DISTANCE THAT YOU SEE BETWEEN THE EDGE
5 OF THE WOUND AND THE SMALLER DEFECTS WOULD REMAIN
6 THE SAME. THERE'S NO WAY THAT COULD CHANGE BY
7 EXTENDING OR FLEXING THE ARM. IT'S JUST NOT NEAR A
8 JOINT. AND, OF COURSE, THE OTHER POINT THAT I MADE
9 BEFORE STILL DOESN'T GO AWAY; NAMELY, THE LARGE SIZE
10 OF THAT DEFECT.

11 Q WELL, PERHAPS I CAN ILLUSTRATE FOR YOU
12 WHAT I'M TALKING ABOUT. LET ME SEE IF I CAN PUT A
13 PIECE OF PAPER HERE.

14 ONE WAY THAT A -- IF WE CAN IMAGINE AN
15 ARM HELD OPEN -- IF A SHOT COLUMN WERE TO STRIKE AN
16 ARM IN THE AREA OF THE -- WHERE THE ARM IS BENT, IT
17 MIGHT STRIKE, AS I AM INDICATING --

18 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
19 OBJECT TO COUNSEL BASICALLY TESTIFYING. I MEAN,
20 HE'S DRAWING HIS OWN --

21 THE COURT: SO FAR HE HASN'T ASKED A
22 QUESTION. SO UNTIL HE DOES, THE OBJECTION'S
23 OVERRULED AND WE'LL WAIT FOR THE QUESTION.

24 Q BY MR. CONN: LET ME SHOW YOU THE
25 DRAWING OF TWO ARMS. ON THE TOP WILL BE NO. 1, ON
26 THE BOTTOM WILL BE A SECOND.

27 WHAT I'M SEEKING TO DO IN THESE

42661

1 VERY WELL, IS TO ASK YOU TO ENVISION AN ARM BENT,
2 AND BECAUSE THE ARM IS BENT, THAT THE SHOT COLUMN --
3 THE SATELLITE PELLETS IN THE SHOT COLUMN MIGHT -- LET
4 ME REPHRASE THAT.

5 THE SPREAD OF THE SHOT COLUMN MIGHT VARY
6 WHEN IT HITS THE ARM, DEPENDING UPON WHETHER OR NOT
7 THE ARM IS BENT; IS THAT CORRECT?

8 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
9 ASSUMES FACTS NOT IN EVIDENCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: YES, AROUND THE ANTECUBITAL
12 FOSSA, THAT CREASE IN FRONT OF THE ELBOW, THERE CAN
13 BE SOME DIFFERENCE IN THE DISPERSAL PATTERN IF THE
14 ARM IS BENT.

15 Q BY MR. CONN: OKAY. SO, FOR EXAMPLE, IF
16 THE ARM WERE FULLY EXTENDED, YOU MIGHT EXPECT TO SEE
17 A SHOT COLUMN WHICH WOULD ONLY IMPACT UPON A
18 RELATIVELY SMALL PORTION OF THAT ARM; WHEREAS IF THE
19 ARM IS, IN FACT, BENT, WHAT YOU MIGHT EXPECT TO SEE,
20 ONCE THAT ARM IS FULLY EXTENDED, AFTER THE SHOT,
21 WHAT APPEARS TO BE WIDER SPREAD OF THE SHOT COLUMN;
22 IS THAT CORRECT?

23 A WELL, THAT'S -- YES, I SEE WHAT YOU'RE --
24 THAT'S CONCEIVABLE AS YOU UNFOLD THE -- OR EXTEND,
25 EXTEND AN ARM THAT HAD BEEN FLEXED WHEN SHOT SO THAT
26 NOW THE DIMENSIONS, THE VERTICAL DIMENSION APPEARS
27 TO BE LARGER THAN IT ACTUALLY WAS WHEN THE ARM WAS
28 FLEXED. THAT, INDEED, IS A POSSIBILITY.

42662

1 THE ONLY THING IS THAT YOU SHOULD BE
2 ABLE, THEN, TO SEE SOME LACK OF SYMMETRY IF THE ARM
3 HAD BEEN FLEXED WHEN YOU THEN EXTEND IT AS OPPOSED
4 TO CONJECTURING THAT THE ARM HAD BEEN EXTENDED WHEN
5 SHOT. THERE WOULD NOT BE THE UNIFORMITY OF PELLET
6 DISTRIBUTION, OR THERE MIGHT BE A GREATER
7 CONCENTRATION AT A PARTICULAR POINT IN THAT FOLD.
8 YOU SHOULD BE ABLE TO SEE SOME DIFFERENCE IN THE
9 EXPECTED PATTERNS IN A FLEXION-TYPE INJURY TO THE
10 ANTECUBITAL FOSSA AS OPPOSED TO A HYPER-FULLY
11 EXTENDED ANTECUBITAL FOSSA INJURY.

12 Q ALL RIGHT. LET ME DIRECT YOUR ATTENTION
13 NOW BACK TO THE PHOTOGRAPH THAT WE HAD BEEN
14 DISCUSSING PREVIOUSLY, THAT IS 295-B. THE INJURY TO
15 THE RIGHT ARM IS, IN FACT, AN INJURY WHICH HAS BOTH
16 A LARGE DEFECT AS WELL AS INDIVIDUAL SATELLITE
17 DEFECTS; IS THAT CORRECT?

18 A YES.

19 Q AND ISN'T IT ALSO POSSIBLE THAT IF THE
20 VICTIM IN THIS CASE WERE TO HAVE THAT ARM EXTENDED
21 TOWARD THE SHOOTER SOMEHOW, THAT THAT MIGHT ACCOUNT
22 FOR A SHOT COLUMN WHICH WOULD BE CLUSTERED IN LARGE
23 PART CAUSING A LARGE SAT -- CAUSING ONE LARGE DEFECT,
24 BUT THAT ONCE THAT ARM WAS FULLY EXTENDED AFTER THE
25 SHOOTING, YOU MIGHT SEE SATELLITE DEFECTS APPEARING
26 TO BE SOME DISTANCE AWAY FROM THE PRIMARY THRUST OF
27 THE SHOT COLUMN?

28 A NO. I WOULD NOT AGREE WITH THAT. BUT

42663

1 YOU SEE, YOUR EARLIER QUESTION HAD TO DO WITH PELLET
2 DISPERSAL PATTERN. THIS ONE NOW GETS BACK TO A
3 SINGLE LARGE DEFECT. AND THE KIND OF GUNSHOT BLAST
4 IMPACT THAT YOU ASK ABOUT WOULD NOT PRODUCE THAT
5 KIND OF DIFFERENCE, WHETHER THE ARM HAD BEEN
6 EXTENDED OR FLEXED INsofar AS THAT LARGE DEFECT IS
7 CONCERNED.

8 Q WHY IS THAT?

9 A BECAUSE YOU CAN'T CHANGE IT -- YOU CAN
10 CHANGE THE APPEARANCE OF A DISPERSAL PATTERN AT SOME
11 CREASE OR FOLD, BUT YOU CAN'T CHANGE THE APPEARANCE
12 OF A LARGE SINGLE WOUND OF ENTRANCE BECAUSE IT JUST

13 ALTER -- IT IS NOT ALTERED IN THAT FASHION BY VIRTUE
14 OF EXTENSION AND FLEXION. YOU CAN EXTEND THE ARM
15 AND FLEX AN ARM. THAT INDEED MAKES A DIFFERENCE
16 WITH MY ANTECUBITAL FOSSA AS I BEND THE ELBOW. BUT
17 EXTENDING THE ARM THUSLY, FLEXING THE ARM, RAISING
18 IT AND SO ON, THAT'S NOT GOING TO CHANGE THAT DEFECT
19 IN HERE BECAUSE, FIRST OF ALL, IT'S NOT AT A JOINT;
20 IT'S BELOW THE ARMPIT. AND SECONDLY, IT DOESN'T
21 MAKE ANY DIFFERENCE WHAT THE ANGLE WOULD BE, IT'S
22 NOT GOING TO GIVE YOU A SIX-BY-FOUR DEFECT. IN MY
23 OPINION, THAT HAS TO BE AN EXIT WOUND.

24 Q OKAY. JUST LOOKING AT THE SIZE OF THAT
25 WOUND, WHICH HAS BEEN DESCRIBED AS A
26 SIX-BY-FOUR-INCH DEFECT, CAN YOU TELL US HOW MANY
27 PELLETS PASSED THROUGH THAT WOUND?

28 A NO, I CANNOT, EXCEPT I KNOW, OF COURSE,

42664

1 THAT FOUR BUCKSHOT WAS USED; THERE'S 27 PELLETS IN A
2 SHELL. SO IF -- IF A FEW OF THE ONES THAT WE SEE,
3 THE SMALLER WOUNDS, ARE PELLETS, ABOUT FIVE OR SIX
4 OF THEM, THEN WE'RE TALKING ABOUT 21 OR SO GOING
5 THROUGH THE WOUND. BUT IT COULD BE LESS. THERE
6 COULD BE SOME STILL IN THE ARM. I JUST DON'T KNOW
7 EXACTLY. BUT ONE WOULD JUST HAVE TO SUBTRACT FROM

8 THE 27 THAT ONE STARTS WITH.

9 Q YES, BUT WHAT I'M ASKING YOU IS BASED

10 UPON YOUR MEDICAL EXPERIENCE, JUST LOOK LOOKING AT

11 THE WOUND, FORGET ABOUT THE SUBTRACTION, CAN YOU SAY

12 THAT IN ORDER FOR A WOUND LIKE THAT TO BE CAUSED, I

13 CAN TELL YOU THAT THERE MUST HAVE BEEN SO MANY

14 PELLETS?

15 A OH, NO, NO, I CAN'T DO THAT.

16 Q WHY IS THAT?

17 A I COULDN'T TELL YOU EXACTLY WHAT GAUGE

18 SHOTGUN HAD BEEN USED HERE IF I DIDN'T KNOW THAT

19 FROM OTHER INFORMATION, .12 GAUGE, .14 OR .16

20 GAUGE. I COULDN'T TELL YOU THAT IT WAS FOUR

21 BUCKSHOT VERSUS THREE OR FIVE. I HAVE TO KNOW SOME

22 ADDITIONAL INFORMATION FROM THE CRIMINALIST PEOPLE

23 WHO COLLECTED MATERIALS AT THE SCENE AND STUDIED

24 THEM AND SO ON. I CAN'T MAKE THAT DIFFERENTIATION

25 BY LOOKING AT THE PICTURES OR BY SEEING THE WOUNDS

26 ON THE BODY.

27 Q OKAY. WELL, WHAT I'M ASKING YOU -- AND

28 I'M SURE THE JURY MAY BE WONDERING IS --

42665

1 MS. ABRAMSON: OBJECT TO THE FORM OF THE

2 QUESTION AND MOVE TO STRIKE COUNSEL'S COMMENTS.

3 THE COURT: ALL RIGHT. REPHRASE THE
4 QUESTION. THE OBJECTION'S SUSTAINED. THE COMMENT
5 IS STRICKEN.

6 Q BY MR. CONN: WHEN YOU LOOK AT A WOUND
7 SUCH AS THIS, IN ORDER FOR A WOUND SUCH AS THIS TO
8 HAVE OCCURRED, ARE YOU SAYING THAT SINCE WE SEE NO
9 SKIN WHATSOEVER IN THAT WOUND, THAT, THEREFORE, THE
10 PELLETS TO HAVE CAUSED SUCH A WOUND MUST HAVE FILLED
11 UP ALL OF THE SPACE FOR WHICH -- IN WHICH WE DO NOT
12 SEE SKIN?

13 DO YOU UNDERSTAND WHAT I'M SAYING?

14 A WELL, I THINK I DO. BUT YOU SEE, IT
15 DOESN'T QUITE WORK THAT WAY. IT'S A -- IT'S A BLAST
16 EFFECT. IT'S THE DISTRIBUTION OF THE KINETIC ENERGY
17 OF THE BLAST, THE VELOCITY TIMES -- SQUARED TIMES THE
18 MASS GIVING YOU THE KINETIC ENERGY, AND IT IS THAT
19 KINETIC ENERGY THAT BLOWS OUT TISSUES. IT'S NOT
20 RELATED TO THE NUMBER OF INDIVIDUAL PELLETS.

21 FOR EXAMPLE, IF YOU TAKE SOMEONE WHO'S
22 SHOT WITH A .38 OR .45 HANDGUN, YOU GET AN EXIT
23 WOUND THAT IS SO MUCH BIGGER THAN THE BULLET ITSELF;
24 THAT'S THE BLAST EFFECT, THAT'S THE KINETIC ENERGY,
25 KINETIC ENERGY WHICH IS EXPANDING AS THE BULLET
26 MOVED FORWARD.

27 IN THIS CASE, SHOTGUN PELLETS
28 COLLECTIVELY ACTING AS A MISSILE, BUT I CAN'T TELL

1 YOU -- IT'S NOT A MATTER OF YOU LAY OUT THE NUMBER
2 OF PELLETS AND THAT COVERS A CERTAIN TOPOGRAPHICAL
3 AREA. DOESN'T WORK THAT WAY.

4 Q SO WHAT YOU'RE SAYING IS THAT ALTHOUGH A
5 COLUMN OF SHOT BLAST OF PELLETS MAY HAVE GONE
6 THROUGH THAT PARTICULAR WOUND, EVEN IF THOSE PELLETS
7 DIDN'T ACCOUNT FOR EVERY SPACE FOR WHICH THE TISSUE
8 IS MISSING, THE FORCE OF THAT BLAST WOULD SORT OF
9 RIP OUT THE SKIN IN BETWEEN AS WELL; IS THAT
10 CORRECT?

11 A YES. THE BLAST GOES AHEAD AND IT TEARS
12 OUT SUBCUTANEOUS FAT, MUSCLE, FASCIA AND SKIN.

13 Q OKAY. NOW, WHEN YOU SEE A WOUND -- AND
14 I'M NOT REFERRING TO THIS WOUND NECESSARILY, BUT
15 WHEN YOU SEE A WOUND SUCH AS THE WOUND IN 295-B, AND
16 YOU SEE THAT IN ADDITION TO -- OR IMMEDIATELY
17 ADJACENT TO A LARGE DEFECT THERE ARE INDIVIDUAL
18 PELLET WOUNDS, IS IT POSSIBLE THAT THAT WOUND COULD
19 HAVE ALL BEEN CAUSED BY A SINGLE ENTRY SHOT TO THE
20 BODY?

21 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
22 OBJECT. THIS HAS BEEN ASKED AND ANSWERED.

23 THE WITNESS: NO, UNLESS --

24 THE COURT: OVERRULED.

25 YOU CAN ANSWER THE QUESTION.

26 THE WITNESS: UNLESS I AM MISSING SOMETHING.
27 I -- I'M, YOU KNOW, INTERPRETING YOUR QUESTION TO BE
28 THE ONE THAT YOU'VE ASKED ME BEFORE AND MY ANSWER IS

42667

1 THE SAME FOR THE REASONS THAT I GAVE: THE SIZE, THE
2 ABSENCE OF A SEARING EFFECT, THE ABSENCE OF SOILING
3 OR CARBONACEOUS DEPOSIT. SO FOR ALL THOSE REASONS,
4 IT JUST DOES NOT APPEAR TO BE A ROUND OF ENTRANCE.

5 Q BY MR. CONN: ALL RIGHT. NOW, LET ME
6 DIRECT YOUR ATTENTION TO THE PHOTOGRAPH ON EXHIBIT
7 301.

8 HERE WE HAVE A PHOTOGRAPH OF -- HERE WE
9 HAVE A PHOTOGRAPH OF THE BACK SIDE OF THE ARM OF
10 JOSE MENENDEZ IN PHOTOGRAPH D, AND -- BY THE WAY, LET
11 ME HAND YOU THE POINTER.

12 IF YOU CAN TELL US --

13 A HERE'S A POINTER HERE.

14 Q IF YOU CAN TELL US WHERE THE ELBOW WOULD
15 BE ON THAT PHOTOGRAPH.

16 A LOOKS TO ME HERE. HERE. HERE'S THE
17 ELBOW PROMONTORY, RIGHT HERE, RIGHT HERE.

18 Q THERE APPEARS TO BE A BUMP ON THE ARM
19 RIGHT HERE, BUT THAT'S NOT THE ELBOW, THAT'S THE
20 BREAK IN THE ARM; IS THAT CORRECT?

21 A YEAH. YEAH. I THINK THAT THAT IS THE
22 FRACTURE -- SEE, THIS -- THIS PROMONTORY HERE HAS TO
23 BE ELBOW, AND THIS WOUND UP HERE -- IT FITS THE
24 RELATIONSHIP BETWEEN THE TWO.

25 I THINK THAT WHAT IT DOES INDEED IS
26 APPEAR TO BE SWELLING, I WOULD AGREE WITH YOU, MOST
27 LIKELY RELATED TO THE FRACTURE.

28 Q NOW, PHOTOGRAPH NUMBER E IS A BLOWUP OF

42668

1 THE SAME PHOTOGRAPH WE'RE LOOKING AT IN D; IS THAT
2 CORRECT?

3 A YES, IT IS, AND HERE IS WHERE I THINK
4 THE ELBOW IS. AND HERE, AGAIN, THAT AREA WHICH IS
5 PROBABLY SOFT TISSUE DAMAGE AND FRACTURE OF THE
6 HUMERUS.

7 Q NOW, DOES THIS PHOTOGRAPH ALSO SHOW WHAT
8 YOU ARE SAYING IS THE ENTRY WOUND; THAT IS, THIS
9 LARGE HOLE ON THE LEFT? IS THAT WHAT YOU WERE
10 CALLING THE ENTRY WOUND FOR THAT SHOT?

11 A WELL, THIS -- NO. THIS NOW IS BEHIND THE
12 SMALLER PELLET WOUNDS. SO THIS LOOKS LIKE IT
13 PROBABLY IS THAT TWO-INCH WOUND OF ENTRANCE ON THE
14 DORSAL ASPECT. YOU SEE, YOU COME UP FROM THE ELBOW,
15 YOU'RE ON THE DORSAL OR POSTERIOR ASPECT. AND THEN

16 WE HAVE THESE AND THEN IT WOULD APPEAR THAT THE
17 LARGER DEFECT IS OBSCURED FROM OUR VISION IN THIS
18 PICTURE BY THE T-SHIRT.

19 Q OKAY. BUT SURROUNDING THAT -- IF THIS
20 IS, INDEED, THE TWO-INCH DEFECT, SURROUNDING THAT
21 DEFECT DO YOU SEE INDIVIDUAL SATELLITE PELLET
22 DEFECTS?

23 A YES. THERE ARE SOME SATELLITE DEFECTS,
24 SURE.

25 Q CAN YOU TELL US WHY IT IS THAT YOU WOULD
26 SAY THAT THAT COULD BE AN ENTRY WOUND WHEN IT HAS
27 BOTH THE LARGE ENTRY AS WELL AS INDIVIDUAL SATELLITE
28 DEFECTS; WHEREAS IN RESPONSE -- IN CONCERNING THE

42669

1 WOUND TO THE INSIDE OF THE ARM, WE SAW BOTH
2 INDIVIDUAL SATELLITE DEFECTS AS WELL AS A LARGE
3 DEFECT AND YOU SAID THAT THAT COULD NOT BE THE ENTRY
4 WOUND?

5 A WELL, THE -- FIRST OF ALL, THERE APPEARS
6 TO ME TO BE SOME BLACK CARBONACEOUS MATERIAL IN THIS
7 WOUND, SOME AREAS OF DEFINITE BLACKENING THAT WOULD
8 BE CONSISTENT WITH CARBONACEOUS MATERIAL. THAT'S
9 ONE THING.

10 AND THEN THE SECOND THING IS, OF COURSE,

11 THE CORRELATION BETWEEN THAT WOUND AND THE ONE ON
12 THE INNER ASPECT OF THE ARM.

13 YOU HAVE TO RELATE ENTRANCE TO EXIT IN
14 TERMS OF WHERE THEY'RE LOCATED AND IN TERMS OF
15 SIZE. THESE ARE ALL MATTERS OF ANALYSIS AND
16 PROFESSIONAL JUDGMENT BY A FORENSIC PATHOLOGIST.

17 Q OKAY. NOW, THE BLACKENING THAT YOU'RE
18 REFERRING TO, ARE YOU SAYING THAT THAT WOULD BE
19 CONSISTENT WITH SOME SOOT OR SOMETHING FROM THE
20 BLAST?

21 A YES. IT WOULD BE CONSISTENT WITH WHAT
22 WE CALL SOOT OR SOILING.

23 Q NOW, DID DR. GOLDEN, IN HIS 1989 REPORT,
24 INDICATE THAT HE OBSERVED WHAT YOU ARE NOW
25 INDICATING THAT YOU OBSERVED IN REGARD TO THAT
26 PARTICULAR WOUND?

27 A NO, HE DID NOT.

28 Q ALL RIGHT. TURNING TO THE -- WELL,

42670

1 STAYING WITH THIS SAME WOUND FOR A WHILE, IT'S YOUR
2 OPINION, THEN, THAT THE WOUND TO THE RIGHT ARM OF
3 JOSE MENENDEZ WAS CAUSED BY A SHOT TO THE REAR OF
4 THE ARM AND EXITING THROUGH THE FRONT OF THE ARM; IS
5 THAT CORRECT?

6 A YES.

7 Q AND IS IT YOUR OPINION TO --

8 A WELL, THE FRONT ANTROMEDIAL, RIGHT, THE
9 FRONT ON THE INNER ASPECT, RIGHT.

10 Q AND THAT WOUND IS -- IT'S YOUR OPINION
11 THAT THE WAY THAT JOSE MENENDEZ GOT THOSE MARKS TO
12 HIS CHEST -- FIRST LET ME ASK YOU ABOUT THOSE MARKS
13 TO HIS CHEST.

14 DID YOU DESCRIBE THOSE AS BEING BOTH
15 ABRASIONS AND CONTUSIONS?

16 A YES, I WOULD CALL THOSE CONTUSIONS AND
17 ABRASIONS, RIGHT. BRUISES AND SUPERFICIAL DIFFUSE
18 SCRATCH MARKS.

19 Q OKAY. NOW, WHAT IS THE DIFFERENCE
20 BETWEEN CONTUSIONS AND ABRASIONS?

21 A ABRASION IS A SUPERFICIAL SCRATCH MARK
22 WHICH GOES THROUGH THE OUTER LAYER OF THE EPIDERMIS
23 AND DOES NOT GO DEEPLY THROUGH THE DERMIS. IF IT
24 WENT ALL THE WAY THROUGH THE DERMIS INTO THE FAT,
25 THEN IT WOULD BE CALLED A LACERATION.

26 A BRUISE IS SOMETHING THAT DOES NOT
27 ACTUALLY CAUSE A BREAK IN THE SKIN LAYER; IT IS AN
28 IMPACT KIND OF INJURY WHICH CAUSES SOME TINY BLOOD

1 VESSELS BENEATH THE SKIN SURFACE TO BREAK AND TO
2 BLEED AND IT IS A COLLECTION OF BLOOD THAT GIVES YOU
3 THE BLUE-BLACK, REDDISH-BLACK, PURPLISH-RED
4 DISCOLORATION THAT WE CALL A BRUISE. A CONTUSION IS
5 NOTHING MORE THAN A BRUISE.

6 Q NOW, HOW CAN YOU TELL THE DIFFERENCE
7 BETWEEN THE TWO?

8 A WELL, THE -- THE APPEARANCE IS SIMPLY
9 THAT OF A BRUISE AND A CONTUSION, AND HERE YOU EVEN
10 SEE -- LOOK, YOU CAN SEE VERY CLEARLY, VERY CLEARLY,
11 THE REDDISH-PURPLE DISCOLORATION AT THE EDGES OF
12 THESE AREAS. THAT, BY DEFINITION -- YOU CAN EVEN
13 SEE IT MORE FAINTLY HERE. THAT, BY DEFINITION, IS A
14 BRUISE. AND THE AREAS THAT WOULD ONLY HAVE A LOSS
15 OF THE OUTER EPIDERMIS GIVING YOU THAT EXPOSED
16 APPEARANCE LIKE A BRUSH BURN IF I WENT SLIDING
17 ACROSS THIS CARPET WITH A BARE KNEE EXPOSED, THAT'S
18 THE KIND OF THING THAT I WOULD GET THERE.

19 SO IT'S A COMBINATION OF A CONTUSION AND
20 ABRASION.

21 Q WELL, HOW MUCH OF THAT WOUND -- WE'RE
22 LOOKING AT WHAT APPEARS TO BE A LARGE AREA.

23 HOW MUCH OF THAT WOUND WOULD YOU SAY
24 DOES, IN FACT, HAVE ABRASIONS?

25 A OH, I THINK THE DARK REDDISH AREAS ARE A
26 COMBINATION OF ABRASION AND WITH SOME UNDERLYING
27 BRUISING.

28 IF YOU WERE TO CUT INTO IT, WHICH HADN'T

1 BEEN DONE, I DON'T BELIEVE, THEN YOU PROBABLY WOULD
2 FIND THAT THERE IS SOME BLOOD IN THE UNDERLYING
3 SUBCUTANEOUS TISSUE. NOT A LOT. SO THAT'S WHY YOU
4 PROBABLY HAVE A COMBINATION OF A BRUISE AND AN
5 ABRASION.

6 Q SO ARE YOU SAYING THAT ALL OF THE DARK
7 RED AREAS THAT WE SEE THERE ARE ALL PARTLY
8 ABRASIONS?

9 A OH, THEY DEFINITELY HAVE AN ABRADED
10 ASPECT EXTERNALLY. THERE'S NO QUESTION THAT BY
11 DEFINITION WHEN YOU HAVE A SKINNING OF THE OUTER
12 SURFACE, THAT'S AN ABRASION.

13 AND IF, IN MY ANALOGY, I FALL ON THE
14 CARPET RUNNING AROUND HERE PLAYING BASKETBALL AND I
15 SLIP AND TAKE A GOOD FALL AND SLIDE, I'M GOING TO
16 HAVE THE ABRASION FROM THE SURFACE OF THE CARPET AND
17 I'M ALSO PROBABLY GOING TO HAVE SOME BRUISING FROM
18 THE IMPACT.

19 SO I CAN'T TELL YOU HOW MUCH BRUISING
20 THERE IS. IT DOESN'T MAKE ANY DIFFERENCE TO ME.
21 THESE ARE CLEARLY WOUNDS OF SOME KIND OF SECONDARY
22 IMPACT; AND THEY HAVE NOTHING TO DO WITH THE PELLETS
23 THEMSELVES.

24 Q OKAY. SO WHAT YOU'RE DESCRIBING IN YOUR

25 EXAMPLE ABOUT SLIDING ACROSS THE CARPET IS TWO
26 SURFACES BRUSHING UP AGAINST EACH OTHER RAPIDLY; IS
27 THAT CORRECT?
28 A YES, WITH SOME IMPACT.

42673

1 HERE WE HAVE THE TWO SURFACES COMING UP
2 AGAINST EACH OTHER AND WE HAVE THE IMPACT AS THE ARM
3 IS THRUST IN A MILLISECOND. THAT ENERGY FORCE IS
4 TREMENDOUS. AND IT JUST SMASHES UP AGAINST THE
5 CHEST, AND BECAUSE IT IS ROUGH AND EXPOSED AND MIGHT
6 HAVE EVEN HAD, POSSIBLY, EVEN A LITTLE BIT OF THE
7 BONE -- THESE THINGS CAN ONLY BE PHOTOGRAPHED WITH
8 SPECIAL CAMERAS THAT THEY -- THEY TAKE PLACE IN
9 LITERALLY MILLISECONDS -- YOU CAN HAVE EVEN SOME
10 SUPERFICIAL SCRAPE AND SOME ABRASION. AND THAT'S
11 WHAT GIVES YOU THE APPEARANCE.

12 IF YOU JUST TAKE THAT ARM, IF WE HAD A --
13 A BODY IN AN ANATOMY LAB OR WE HAD A GOOD MANNEQUIN
14 WHICH COULD DEMONSTRATE THIS, IF YOU TAKE IT OVER
15 YOU'LL SEE. I CAN SHOW IT HERE. YOU CAN SEE
16 EXACTLY. HERE IT IS, ANTRONMIEDIAL DOWN FROM THE
17 ARMPIT, BRING IT OVER TO THE CHEST AND YOU'LL SEE
18 IT'S EXACTLY THERE IN THE REGION OF THE RIGHT
19 NIPPLE.

20 Q OKAY. IN THE EXAMPLE THAT YOU'RE GIVING
21 US RIGHT THERE, WITH YOUR ARM ACROSS YOUR CHEST,
22 YOU'RE TALKING ABOUT THE ENTRY FOR THE SHOT BEING
23 SOMEWHERE HERE IN THE BACK OF THE ARM; IS THAT
24 CORRECT?

25 A YES, THAT'S RIGHT.

26 Q AND THEN THE EXIT BEING RIGHT HERE IN
27 THE INSIDE OF THE ARM; IS THAT CORRECT?

28 A YES, THAT'S RIGHT.

42674

1 Q WOULDN'T THAT INDICATE TO YOU THAT THAT
2 MAN WOULD BE SHOT IN THE CHEST?

3 A NO, NO, NO, NO. IT DOESN'T -- FIRST OF
4 ALL, YOU -- WHEN HE'S SHOT, I HAVE NO REASON -- I
5 DON'T KNOW EXACTLY WHAT POSITION HE WAS IN, BUT I
6 DON'T THINK THAT THE ARM WAS THIS WAY. IF IT WERE
7 HERE AND THE SHOT CAME IN THUSLY, INDEED, YOU COULD
8 GET SOME ENTRANCE INTO THE CHEST.

9 HOWEVER, IF THE ARM IS JUST HERE OR IT
10 IS FLEXED OR IT'S JUST STRAIGHT ON DOWN, THE IMPACT
11 COMES IN. BUT THE ARM WAS NOT JUXTAPOSED TO THE
12 CHEST AT THE MOMENT THAT THE SHOTGUN BLAST WAS
13 INCURRED. IT SMASHED AGAINST THERE. SO YOU DON'T
14 HAVE THE PELLETS GOING IN.

15 AS A MATTER OF FACT, ONE PELLET WAS
16 FOUND ONE INCH TO THE RIGHT OF THE MIDLINE BENEATH
17 THE SKIN IN THE STERNAL AREA. WE DO HAVE ONE PELLET
18 THERE. BUT IT IS NOT THE NATURE OF PELLETS, THEY
19 DON'T HAVE THE KIND OF FORCE, TO REENTER AND GO
20 THROUGH SOFT TISSUES TO ANY GREAT EXTENT.

21 SO I DO NOT HAVE ANY PROBLEM IN
22 UNDERSTANDING HOW THIS WOULD HAVE HAPPENED WITHOUT
23 HAVING ANY OF THE PELLETS GOING BACK INTO THE
24 CHEST.

25 Q WELL, IN THE EXAMPLE THAT YOU JUST GAVE
26 OF THE ARM BEING THRUST; THAT IS, HANGING FIRST
27 LOOSE AT THE SIDE AND THEN BEING THRUST AGAINST THE
28 CHEST, YOU'RE SAYING AFTER THE PELLETS HAD PASSED

42675

1 THROUGH THEN THE ARM WOULD THEN BANG AGAINST THE
2 CHEST; IS THAT WHAT YOU'RE SAYING?

3 A YES.

4 Q ARE YOU CONTEMPLATING THAT ONE OF THOSE
5 PELLETS, AFTER PASSING THROUGH THE ARM, WOULD MAKE A
6 LEFT TURN AND GO INTO THE CHEST?

7 A NO, NO, NO. IT DOESN'T MAKE A LEFT
8 TURN. THE ARM IS HERE AND IT'S SHOT AND THEN YOU
9 HAVE JUST THE PELLET THAT IS THE MOST INTERNALLY

10 DIRECTED THEN STRIKING THAT PORTION AND ENTERING IN
11 THERE.

12 REMEMBER, TOO, WITH ALL SHOTGUN BLASTS
13 WE ALSO HAVE WHAT ARE CALLED FLIERS. A FLIER IS A
14 PELLET THAT GOES A LITTLE ASTRAY. IT DOESN'T STAY
15 UP WITH THE HERD. IT KIND OF WANDERS OFF BY
16 ITSELF. AND YOU ALWAYS HAVE THAT. SO THAT'S NO
17 PROBLEM WHATSOEVER.

18 AND REMEMBER, IN ANY -- IN ANY DISPERSAL
19 OF THE PELLETS, SOMEBODY'S IN THE MIDDLE, SOMEBODY'S
20 ON THE BOTTOM AND SOMEBODY'S ON THE TOP AND
21 SOMEBODY'S OUT HERE AND SOMEBODY'S ON THE INSIDE.
22 SO ONE PELLET GOT IN HERE. THAT'S NOT HARD TO
23 UNDERSTAND.

24 Q OKAY. IF THE ARM WERE AS YOU WERE
25 INDICATING, THAT IS, JUST LOOSE AT THE SIDE, AND THE
26 SHOT WERE TO GO FROM THE BACK OF THE ARM IN THROUGH
27 THE FRONT OF THE ARM, WOULDN'T THAT HAVE A TENDENCY
28 TO PUSH THE ARM IN THE DIRECTION OF THE SHOT RATHER

42676

1 THAN AWAY FROM THE SHOT AND INTO THE CHEST?

2 A NO. I CAN'T TELL YOU HOW THE PERSON
3 WOULD MOVE. THERE'S NO WAY TO KNOW THAT. THE ARM
4 WOULD MOST LIKELY MOVE WHETHER THE PERSON WOULD MOVE

5 THE WHOLE ARM OR WHETHER THERE WOULD BE SOME FLEXION
6 OF THE ELBOW. I DON'T THINK ANYBODY KNOWS THAT AND
7 THERE'S NO WAY TO DO AN EXPERIMENT ON THAT.

8 Q ISN'T IT YOUR UNDERSTANDING, THOUGH, AS
9 A MATTER OF PHYSICS -- I KNOW YOU'RE NOT AN
10 ENGINEER, BUT AS A MATTER OF PHYSICS, WOULDN'T -- IF
11 YOU IMPART A FORCE IN A SPECIFIC DIRECTION, ISN'T
12 THERE A TENDENCY TO MAKE THE OBJECT THAT IS STRUCK
13 TRAVEL IN THE SAME DIRECTION UNLESS THERE'S A REASON
14 TO BE THROWN IN A DIFFERENT OBJECTION?

15 A SURE.

16 MS. ABRAMSON: OBJECTION. WELL, I'M GOING TO
17 OBJECT TO THAT AS IRRELEVANT UNLESS THE OBJECT WE'RE
18 TALKING ABOUT IS PART OF THE HUMAN BODY.

19 THE COURT: OVERRULED.

20 THE WITNESS: THAT'S ONE, I THINK, OF THE
21 BASIC NEWTONIAN PRINCIPLES OF LAWS OF PHYSICS;
22 HOWEVER, YOU SEE, WHEN YOU DEAL WITH THESE THINGS ON
23 A PURELY ENGINEERING BASIS, YOU'RE FORGETTING THAT
24 THE HUMAN BODY HAS MOVEMENT AT JOINTS AND YOU'RE
25 FORGETTING THAT THE HUMAN BODY HAS MOVEMENT THAT IS
26 CONTROLLED VOLUNTARILY OR EVEN INVOLUNTARILY BY THE
27 PARASYMPATHETIC NERVOUS SYSTEM.

28 SO, YOU KNOW, THAT'S THE PROBLEM IN

1 TRYING TO DEAL WITH SOMETHING LIKE THIS FROM A
2 PURELY MECHANICAL ENGINEERING OR PHYSICIST
3 STANDPOINT. SOME OF THE CONCEPTS, INDEED, ARE
4 APPLICABLE AND RELEVANT, BUT YOU HAVE TO THEN FACTOR
5 IN THE BIOLOGICAL ELEMENT, THE ENTIRE NEUROMUSCULAR
6 SYSTEM AND SO ON, ALL OF THE VOLUNTARY AND
7 INVOLUNTARILY REFLEXIVE ASPECTS OF IT, AS WELL AS
8 WHAT SOMEBODY SETS OUT TO DO IN THIS KIND OF A
9 SITUATION.

10 AND HERE, YOU KNOW, SIR NEWTON AND
11 OTHERS JUST NEVER DEALT WITH THOSE THINGS. THEY
12 DEALT WITH STATIONARY OBJECTS MOVING IN A CERTAIN
13 FASHION WHEN OTHER OBJECTS STRIKE THEM OR ARE STRUCK
14 BY A MOVING OBJECT, AND THAT'S JUST A VERY DIFFERENT
15 SITUATION.

16 Q BY MR. CONN: ALL RIGHT. NOW, IN THIS
17 SITUATION THAT YOU'RE CONTEMPLATING HERE, ARE YOU
18 CONTEMPLATING THAT THE ARM WOULD STRIKE ONCE AGAINST
19 THE CHEST OR MORE THAN ONCE AGAINST THE CHEST?

20 A I THINK ONCE. I HAVE NO REASON TO
21 BELIEVE IT WAS ANY KIND OF A FLAPPING MOTION.
22 NOTHING HERE THAT WOULD HAVE CAUSED THAT TO OCCUR.
23 I THINK THAT THIS WAS AN IMPACT OF THE ARM UP
24 AGAINST THE CHEST.

25 Q AND YOU MADE REFERENCE TO THE FACT THAT
26 DR. GOLDEN INDICATED IN HIS '95 SUPPLEMENT THAT
27 THE -- HE DOES, INDEED, ASSOCIATE THE WOUND TO THE

42678

1 SHOTGUN WOUND NO. 3 TO THE RIGHT ARM; IS THAT

2 CORRECT?

3 A YES, HE DOES.

4 Q ALTHOUGH DOESN'T HE ACTUALLY -- DOESN'T

5 HE ACTUALLY SAY THAT THAT SHOTGUN WOUND NO. 3 MAY BE

6 RELATED TO THAT WOUND TO THE CHEST?

7 A YEAH, MAY BE RELATED TO SHOTGUN WOUND

8 NO. 6 BELOW, INDICATING THAT THERE'S ENTRY AND EXIT

9 THROUGH THE RIGHT UPPER ARM AND REENTRY FROM RIGHT

10 TO LEFT CAUSING THE GRAZE WOUNDS OF THE RIGHT UPPER

11 CHEST AND SO ON. THAT'S RIGHT. HE SAYS MAYBE. AND

12 IN MY OPINION, WITH REASONABLE MEDICAL CERTAINTY,

13 THAT'S WHAT HAPPENED.

14 Q NOW, AS FAR AS THE BLOOD SPATTER TO THE

15 SHIRT OF JOSE MENENDEZ, I BELIEVE THAT YOU INDICATED

16 THAT THE DIRECTIONALITY, I THINK THAT WAS YOUR WORD,

17 DIRECTIONALITY OF THAT BLOOD SPATTER WAS, AS WE'RE

18 LOOKING AT THIS PHOTOGRAPH IN 295, 295-I, FROM THE

19 LEFT TO THE RIGHT IN THE PHOTOGRAPH; IS THAT

20 CORRECT?

21 A YES, IN THE PHOTOGRAPH, FROM

22 MR. MENENDEZ' RIGHT TO HIS LEFT. AS WE LOOK AT THE

23 PHOTOGRAPHS, FROM OUR LEFT TO OUR RIGHT.

24 Q OKAY. BUT YOU DON'T KNOW FROM LOOKING

25 AT THAT PHOTOGRAPH WHETHER THE BLOOD, THOSE

26 PARTICULAR SPATTERS, WAS THE BLOOD OF JOSE MENENDEZ

27 OR THE BLOOD OF MARY MENENDEZ; IS THAT CORRECT?

28 A THAT'S CORRECT. IF YOU'RE ASKING ME WAS

42679

1 THAT BLOOD TYPED BY THE CRIME LAB TO DIFFERENTIATE

2 BETWEEN THE TWO PEOPLE WHO WERE NOT, THE ANSWER IS

3 NO, TO MY KNOWLEDGE NONE OF THE BLOOD SPATTERS

4 WERE.

5 Q OKAY. AND JUST BASED UPON YOUR OWN

6 EXPERIENCE IN LOOKING AT THE PHOTOGRAPHS, YOU CAN'T

7 TELL US WHETHER THAT BLOOD WAS THE BLOOD OF JOSE

8 MENENDEZ OR MARY MENENDEZ; IS THAT CORRECT?

9 A WELL, IN LOOKING AT THE BLOOD, OBVIOUSLY

10 THE ANSWER IS I CAN'T DIFFERENTIATE BLOOD.

11 BUT LOOKING AT THE SHIRT AND LOOKING AT

12 THE WOUNDS, I HAVE NO REASON TO DOUBT THAT IT WAS

13 FROM MR. MENENDEZ. I -- YOU KNOW, IF THERE WERE ANY

14 QUESTIONS ABOUT WHOSE BLOOD, THAT WAS SOMETHING FOR

15 THE CRIME LAB PEOPLE TO HAVE DONE.

16 Q NOW, YOU SAID THAT -- IS IT YOUR

17 TESTIMONY THAT YOU ASSOCIATE THE WOUND TO THE LEFT

18 ELBOW OR POSSIBLY ASSOCIATE THE WOUND TO THE LEFT
19 ELBOW OF JOSE MENENDEZ WITH THE WOUND TO THE BREAST
20 OF MARY MENENDEZ?

21 A I SAID THAT'S ONE POSSIBILITY. I CAN'T
22 STATE THAT WITH REASONABLE MEDICAL CERTAINTY, BUT
23 IT, INDEED, IS ONE PLAUSIBLE SCENARIO FOR THOSE TWO
24 WOUNDS. I JUST DON'T KNOW.

25 Q AND YOU -- I BELIEVE YOU SAID THAT YOU
26 DISAGREE THAT THE SHOT TO THE LEFT ELBOW OF JOSE
27 MENENDEZ COULD ALSO HAVE CAUSED THE SHOT TO THE
28 RIGHT ARM OF JOSE MENENDEZ BECAUSE THE SHOT COLUMN,

42680

1 I BELIEVE YOU SAID, ONCE IT HAS BEEN DISPERSED, IS
2 NOT GOING TO GROUP TOGETHER AGAIN AND STRIKE THE
3 RIGHT ARM OF JOSE MENENDEZ; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q WAS IT YOUR UNDERSTANDING, BASED UPON
6 THE TESTIMONY OF DR. MC CARTHY, THAT THAT WAS -- THAT
7 IS WHAT HE WAS SAYING, THAT THAT IS WHAT HAPPENED IN
8 THIS CASE?

9 A I'M TRYING TO REMEMBER HOW DR. MC CARTHY
10 PUT IT WHEN HE WAS ASKED ON CROSS-EXAMINATION. I
11 THINK HE -- I'M NOT SURE WHAT HIS EXACT ANSWER WAS,
12 SOMETHING ABOUT ONE PORTION OF IT COULD HAVE SPREAD

13 AND ANOTHER PORTION COULD HAVE STAYED TOGETHER OR
14 SOMETHING LIKE THAT. THAT'S THE BEST OF MY
15 RECOLLECTION.

16 Q WELL, IS IT POSSIBLE, IS IT POSSIBLE
17 THAT SOME OF THE SHOT WHICH STRUCK THE LEFT ARM OF --
18 OR SOME OF THE SHOT THAT MISSED THE LEFT ELBOW OF
19 JOSE MENENDEZ PASSED -- WENT ON TO STRIKE THE RIGHT
20 ARM OF JOSE MENENDEZ CAUSING THE LARGE DEFECT IN THE
21 RIGHT ARM OF JOSE MENENDEZ?

22 A NO, NO, IT'S NOT. YOU SEE, IF YOU HAVE
23 THE DISPERSAL PATTERN HERE AT THE LEFT ELBOW, THEN
24 YOU'VE ALREADY -- YOU'RE ALREADY DEALING WITH
25 SOMETHING THAT HAS BEEN FIRED, YOU KNOW, FROM SOME
26 DISTANCE. I DON'T WANT TO GET INTO EXACT, BUT YOU
27 KNOW, INTERMEDIATE, YOU KNOW. USUALLY WITH
28 DISPERSAL PATTERN WE'RE TALKING ABOUT NINE, TEN

42681

1 FEET, SOMEWHERE LIKE THAT.

2 SO, ANYWAY, YOU GOT THAT DISPERSAL
3 PATTERN HERE. SEE, THERE'S NO WAY THAT YOU CAN HAVE
4 SUCH A BIG DEFECT OVER HERE. AGAIN, I DON'T WANT TO
5 REPEAT EVERYTHING THAT I SAID. NUMBER ONE, YOU'RE
6 NOT GOING TO GET THAT KIND OF A DEFECT AT ALL.
7 NUMBER TWO, YOU'RE CERTAINLY NOT GOING TO GET IT

8 FROM SOME DISTANCE BECAUSE WHERE YOU HAVE DISPERSAL
9 BUT YOU STILL HAVE SOME ENTRANCE WOUND OF SOME SIZE,
10 IT'S GOING TO BE SMALLER. IT'S NOT GOING TO BE
11 BIGGER. YOU'LL STILL HAVE A CLUSTER OF THE PELLETS
12 REMAINING TOGETHER TO GIVE YOU SOME IRREGULARLY
13 SHAPED HOLE; COULD BE HALF AN INCH, THREE QUARTERS
14 OF AN INCH, AN INCH OR SO ON ALONG WITH SOME
15 SATELLITE DISPERSAL. THAT, INDEED, IS POSSIBLE.
16 BUT YOU'RE NOT GOING TO GET DISPERSAL AND A BIG
17 GAPING DEFECT. THAT'S JUST NOT THE WAY THE SHOTGUN
18 BLASTS WORK.

19 Q OKAY. NOW, AS FAR AS THE DISPERSAL TO
20 THE LEFT ARM OF -- THE LEFT ELBOW OF JOSE MENENDEZ,
21 DO YOU KNOW WHAT WAS THE AREA IN WHICH THAT
22 PARTICULAR SPREAD ENCOMPASSED?

23 A YOU MEAN AREA OF HIS ANATOMY OR AREA OF
24 THE ROOM OR -- I DON'T KNOW WHAT YOU MEAN.

25 Q NO, NO. I'M TALKING ABOUT FOR THE SHOT
26 THAT STRUCK THE LEFT ELBOW OF JOSE MENENDEZ, DO YOU
27 KNOW HOW WIDE ON HIS ELBOW THAT DISPERSAL WAS?

28 A HE TELLS US, DR. GOLDEN, FROM 14 INCHES

42682

1 BELOW THE TOP OF THE SHOULDER TO 15 AND ONE HALF
2 INCHES BELOW THE TOP OF THE SHOULDER. SO WE HAVE A

3 SPREAD OF AN INCH AND A HALF AS HE -- THEN HE SAYS
4 BELOW THAT, THE APPROXIMATE SPREAD OF THE DEFECTS
5 ARE TWO TO -- TWO TO ONE AND A HALF INCHES. SO GOING
6 WITH WHAT HE TELLS US, THERE ARE -- ONE AND A HALF
7 TO TWO INCHES IS THE SPREAD THAT HE MEASURED.

8 Q OKAY. THE APPROXIMATE SPREAD OF THE
9 DEFECTS YOU'RE READING ON PAGE 6?

10 A YES.

11 Q APPROXIMATE SPREAD OF THE DEFECTS ARE
12 TWO TO ONE AND A HALF INCHES?

13 A YES.

14 Q I BELIEVE YOU INDICATED THAT BASED UPON
15 YOUR VIEW OF THAT WOUND, YOUR UNDERSTANDING OF THAT
16 WOUND, THAT THAT WAS FIRED FROM A DISTANCE OF NINE
17 TO TEN FEET; IS THAT WHAT YOU WERE SAYING?

18 A WELL, TO GET THAT KIND OF DISPERSAL
19 PATTERN WITH A SPREAD OF A COUPLE INCHES, COULD BE A
20 LITTLE BIT LESS. IT'S AN INTERMEDIATE WOUND. I'D
21 SAY YOU'RE CERTAINLY TALKING IN EXCESS OF SIX FEET.
22 THAT WOULD BE A MINIMUM. AND THEN MORE AND MORE
23 LIKELY AROUND EIGHT OR NINE. IT'S SOMETHING LIKE
24 THAT.

25 Q BEFORE YOU FORMED AN OPINION CONCERNING
26 THE DISTANCE AT WHICH THAT SHOT MIGHT HAVE BEEN
27 FIRED, IN ORDER TO FORM AN OPINION THAT YOU DO NOT
28 ASSOCIATE IT WITH THE WOUND TO THE RIGHT ARM OF JOSE

1 MENENDEZ, DID YOU CONSULT WITH AN EXPERT IN SHOTGUNS
2 SUCH AS DWIGHT VAN HORN?

3 A I HAVE NOT CONSULTED WITH MR. VAN HORN.
4 I HAVE MY OWN EXPERIENCE TO DEAL WITH IN TERMS OF
5 SHOTGUN WOUND DISPERSAL PATTERNS AND MY OWN
6 KNOWLEDGE OF THE FORENSIC PATHOLOGY LITERATURE ON
7 SHOTGUNS.

8 AS I SAID BEFORE, EACH AND EVERY WEAPON
9 HAS TO BE CHECKED ITSELF IF YOU WANT TO KNOW MORE
10 PRECISELY ABOUT THAT PARTICULAR WEAPON. I'M JUST
11 GIVING YOU GENERALITIES, AND THAT'S WHY I SAY, YOU
12 KNOW, SIX TO EIGHT FEET OR SO ON. I'M NOT TELLING
13 YOU EXACTLY TO THE FOOT. BUT IF YOU'RE GOING TO GET
14 DISPERSAL PATTERN, THEN, YOU KNOW, YOU'RE USUALLY
15 BEYOND SIX FEET.

16 Q AND THE -- SO AMONG THE EXPERTS THAT YOU
17 CONSULTED IN THIS CASE, YOU WERE NOT ASKED TO
18 CONSULT WITH DWIGHT VAN HORN IN PARTICULAR; IS THAT
19 CORRECT?

20 A NO. I --

21 Q AND YOU MADE NO EFFORT TO DO SO?

22 A I WAS NOT ASKED TO AND I DID NOT CALL
23 MR. VAN HORN.

24 Q AND ARE YOU -- DID YOU READ THE TESTIMONY
25 OF MR. VAN HORN?

26 A NO, I HAVE NOT.

27 Q AND WOULD YOU DISAGREE WITH THE OPINION
28 OF MR. VAN HORN CALLED BY THE DEFENSE THAT IF HE

42684

1 WERE TO BE SHOWN A SHOTGUN PATTERN AND HE DIDN'T
2 HAVE THE SAME GUN AND THE SAME AMMUNITION, THE ONLY
3 THING HE WOULD TELL YOU ABOUT THAT PARTICULAR SPREAD
4 IS THAT IT WASN'T A CONTACT WOUND AND HE WOULDN'T
5 VENTURE AN OPINION FURTHER THAN THAT?

6 A NOT TOO DIFFERENT THAN WHAT I'VE SAID.
7 I'VE SAID SEVERAL TIMES TODAY THAT YOU HAVE TO KNOW
8 THAT EXACT WEAPON, NOT EVEN A SIMILAR MODEL. I'VE
9 SAID THE SAME THING. BUT I'M JUST MAYBE GOING A
10 LITTLE BIT FURTHER. AND I THINK IF YOU HAD -- WERE
11 TO ASK MR. VAN HORN, HE WOULD GO A LITTLE FURTHER IN
12 SAYING THAT HE CAN SAY THAT IT'S NOT CONTACT. BUT
13 THE ONLY THING I'M SAYING IS THAT WE'RE BEYOND TWO,
14 THREE FEET WHERE YOU GET SOME SCALLOPING OF THE
15 EDGES BUT YOU STILL HAVE ONE HOLE, AND YOU GOT
16 SATELLITE WOUNDS OR INDIVIDUAL PELLET DISPERSAL
17 PATTERN. SO THAT'S ALL I'M SAYING. SIX FEET, SEVEN
18 FEET, EIGHT FEET. SOMETHING LIKE THAT. I'M NOT
19 BEING PRECISE. I VERY MUCH AGREE WITH THE BASIC
20 PREMISE THAT YOU'VE GOT TO HAVE THAT VERY WEAPON IN
21 QUESTION.

22 Q BUT UNLIKE MR. VAN HORN, WHO WOULD NOT
23 GIVE SIX FEET, SEVEN FEET OR NINE FEET, YOU FEEL
24 THAT YOU HAVE THE EXPERIENCE TO DO THAT; IS THAT
25 CORRECT?

26 A I WOULD SAY --

27 MS. ABRAMSON: ARGUMENTATIVE.

28 THE COURT: SUSTAINED TO THE FORM OF THE

42685

1 QUESTION.

2 Q BY MR. CONN: LET ME ASK YOU THIS: AS
3 FAR AS THE WOUND THAT WAS TO THE RIGHT ARM OF JOSE
4 MENENDEZ, THAT WOUND WAS MEASURED TO BE SIX INCHES
5 BY FOUR INCHES IN SIZE; IS THAT CORRECT?

6 A THE EXIT WOUND BELOW THE RIGHT ARMPIT,
7 YES.

8 Q OKAY. AND THE ENTRY, WHAT IS NOW
9 DESCRIBED IN 1995 AS THE ENTRY, WAS NOT IDENTIFIED
10 IN ANY WAY IN THE '89 REPORT; IS THAT CORRECT?

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. THIS
12 HAS BEEN ASKED AND ANSWERED.

13 THE COURT: OVERRULED.

14 YOU CAN ANSWER THE QUESTION.

15 THE WITNESS: THE -- AS YOU HAD ASKED ME
16 BEFORE, IT IS NOT SPECIFICALLY REFERRED TO, THAT'S

17 RIGHT, IN THE WRITTEN REPORT. WE HAVE ONLY THE

18 PICTURE.

19 Q BY MR. CONN: NOW, YOU FOUND SOME OF THE

20 OBSERVATIONS OF DR. GOLDEN TO BE UNRELIABLE TO THE

21 EXTENT THAT HE LATER CHANGED SOME OF HIS

22 OBSERVATIONS AND CONCLUSIONS IN HIS AMENDMENTS; IS

23 THAT CORRECT?

24 MS. ABRAMSON: OBJECTION. COMPOUND.

25 MISSTATES THE WITNESS' TESTIMONY.

26 THE COURT: OVERRULED.

27 THE WITNESS: YES, HE DID CHANGE THINGS.

28 Q BY MR. CONN: OKAY. AND HE NOW

42686

1 DESCRIBES THAT IN ADDITION TO THE SIX-BY-FOUR-INCH

2 WOUND, THAT THERE IS A WOUND WHICH HE NOW SAYS IS

3 TWO INCHES IN MAXIMAL DIAMETER; IS THAT CORRECT?

4 A YES, MAXIMAL DIMENSION, I THINK HE SAID.

5 Q SO MAXIMAL DIAMETER MEANS THAT NO SIZE

6 OR -- NO MATTER HOW YOU MEASURE THAT WOUND, AT NO

7 PLACE IS IT MORE THAN TWO INCHES LONG; IS THAT

8 CORRECT?

9 A YES, THAT'S THE WAY I WOULD INTERPRET

10 THAT LANGUAGE.

11 Q OKAY. BUT DO YOU KNOW THAT WHEN HE MADE

12 THAT MEASUREMENT, JUST FROM READING THE '89 REPORT,
13 YOU DON'T KNOW WHETHER THAT SIX-BY-FOUR INCH
14 MEASUREMENT WHICH HE MADE IN THE '89 REPORT INCLUDED
15 THE WOUND WHICH HE NOW DESCRIBES AS TWO INCHES IN
16 MAXIMAL DIAMETER, DO YOU?

17 A OH, I DO KNOW THAT BECAUSE HE MAKES IT
18 VERY CLEAR IN HIS '89 ORIGINAL REPORT THAT THE
19 SIX-BY-FOUR WOUND IS ADJACENT TO THE AXILLA AND ON
20 THE MEDIAL ASPECT. THAT'S VERY CLEAR. MEDIAL BY
21 THE RIGHT ARMPIT IS QUITE DIFFERENT FROM
22 DORSOLATERAL, YOU KNOW. IT'S NOT EVEN CLOSE.

23 Q SO DO YOU THINK THAT IN 1989 HE JUST
24 DIDN'T LOOK TO THE BACK OF THE MAN'S ARM?

25 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
26 OBJECT. IT CALLS FOR SPECULATION.

27 THE COURT: SUSTAINED.

28 Q BY MR. CONN: IN REVIEWING THE REPORTS

42687

1 OF DR. GOLDEN, DO YOU FEEL THAT YOU'VE HAD SOME
2 DIFFICULTY DECIDING WHAT YOU CAN TRULY RELY UPON AND
3 WHAT YOU CAN'T RELY UPON?

4 A IN A --

5 MS. ABRAMSON: OBJECTION, YOUR HONOR.

6 THE COURT: WHAT WAS THE OBJECTION?

7 MS. ABRAMSON: IT'S VAGUE AND IT CALLS FOR
8 SPECULATION.

9 THE COURT: AS FAR AS VAGUENESS, DO YOU
10 UNDERSTAND THE QUESTION?

11 THE WITNESS: I THINK SO, YOUR HONOR.

12 THE COURT: OKAY. OBJECTION OVERRULED.

13 THE WITNESS: THERE ARE SOME THINGS IN
14 DR. GOLDEN'S REPORT THAT ARE NOT SUBJECT TO A CLEAR
15 PRECISE UNDERSTANDING. THERE'S SOME THINGS THAT ARE
16 NOT STATED WITH CLARITY, YES, I THINK THAT'S OBVIOUS
17 TO ANYBODY WHO HAS READ THESE. I DON'T SEE HOW YOU
18 CAN DENY THAT.

19 BUT I THINK THAT WE HAVE ENOUGH TO GO ON
20 HERE. IT ISN'T LIKE HE DIDN'T KNOW WHAT HE WAS
21 DOING. HE DID THE AUTOPSY, IDENTIFIED THE WOUNDS
22 AND SO ON. HE MADE SOME ERRORS. YES, I DON'T KNOW,
23 BUT HE DID. BUT I THINK WE CAN, YOU KNOW, PRETTY
24 MUCH PUT THIS TOGETHER IN TERMS OF KNOWING THAT TWO
25 PEOPLE WERE SHOT SEVERAL TIMES AND THAT IT'S
26 IMPOSSIBLE TO BE SURE ABOUT THE SEQUENCE AND ABOUT
27 THE LOCATIONS OF THESE PEOPLE AND THE SHOOTERS AND
28 SO ON. I DON'T THINK THAT THAT THOUGHT EVER ENTERED

42688

1 HIS MIND; AND IT WOULD NOT HAVE ENTERED MY MIND IF I

2 WERE DOING THESE CASES.

3 Q BY MR. CONN: NOW, IN REGARD TO THE LEG
4 WOUND OF JOSE MENENDEZ, I BELIEVE THAT YOU INDICATED
5 IT WAS YOUR OPINION THAT JOSE MENENDEZ WAS NOT
6 SEATED AT THE TIME OF THAT WOUND; IS THAT CORRECT?

7 A YES.

8 Q NOW, YOU ALSO INDICATED THAT THE LAST
9 WOUND RECEIVED TO THE BODY OF JOSE MENENDEZ, IN YOUR
10 VIEW, WAS THE HEAD WOUND; IS THAT CORRECT?

11 A YES.

12 Q CAN YOU TELL US ANY MORE ABOUT THE
13 SEQUENCING TO THE WOUNDS OF JOSE MENENDEZ OTHER THAN
14 THAT HE WAS STANDING AND SOMETIME THEREAFTER -- THAT
15 IS, THAT HE RECEIVED THE LEG WOUND WHILE HE WAS
16 STANDING AND SOMETIME THEREAFTER RECEIVED THE HEAD
17 WOUND?

18 A WELL, I THINK -- YOU'VE ANSWERED YOUR
19 QUESTION IN POSING IT TO ME, THAT I THINK THE LEG
20 WOUND OCCURRED BEFORE THE HEAD WOUND.

21 Q RIGHT.

22 A IF I UNDERSTAND WHAT YOU'RE SAYING.

23 Q YES. BUT WHAT I'M ASKING YOU IS: IN
24 ADDITION TO THAT CONCLUSION, DID YOU DRAW ANY MORE
25 CONCLUSIONS CONCERNING THE WOUNDS TO JOSE MENENDEZ?

26 A OH, YOU MEAN THE OTHER WOUNDS?

27 Q YES.

28 A I -- I THINK MOST LIKELY THE LEG WOUND

1 WAS THE NEXT TO THE LAST WOUND. I THINK HE PROBABLY
2 WOULD HAVE SPUN AROUND THEN AND WOUND UP ON THE
3 COUCH WHEREUPON HE WAS SHOT IN THE HEAD. I THINK
4 THAT'S MOST LIKELY.

5 Q SO YOU'RE SAYING THAT FIRST JOSE
6 MENENDEZ RECEIVED THE WOUNDS TO HIS ARMS AND THEN HE
7 RECEIVED THE WOUND TO THE LEG AND THEN HE RECEIVED
8 THE WOUND TO THE HEAD?

9 A I THINK IT'S MOST LIKELY THAT THE
10 SEQUENCE WAS SOMETHING LIKE THAT, YES. WHICH OF THE
11 ARM WOUNDS, 2 OR 3 OR 4, THE LEFT ELBOW WOUND, WHAT
12 THAT SEQUENCE WAS, I HAVE NO WAY OF KNOWING. BUT I
13 THINK MOST LIKELY THE LEFT LOWER THIGH WOUND
14 PRECEDED THE FINAL HEAD WOUND.

15 Q AND WHY DO YOU PLACE THE WOUND TO THE
16 LEG AFTER THE WOUNDS TO THE ARMS?

17 A WELL, BECAUSE I THINK THAT THE WOUNDS TO
18 THE ARMS WERE SUSTAINED WHILE HE WAS STANDING; AND I
19 THINK WHEN HE WAS SHOT IN THE LEG HE WOULD NOT HAVE
20 BEEN ABLE TO REMAIN STANDING VERY LONG. I THINK
21 THAT SHOT WOULD HAVE CAUSED HIM TO FALL OVER. IN
22 THIS CASE IT APPEARS THAT IT COULD HAVE CAUSED HIM
23 TO SPIN AROUND, RESULTING IN HIS SITTING DOWN WITH
24 WHAT APPEARS TO BE A SOMEWHAT AWKWARD POSITION OF
25 THE FEET. IT JUST SEEMS TO FIT.

26 Q NOW, ISN'T IT EQUALLY LIKELY, IN YOUR
27 POINT OF VIEW, THAT ONCE HE WAS SHOT IN THE LEG, HE
28 FELL DOWN ON THE SOFA AND WHILE SEATED ON THE SOFA

42690

1 HE RAISED HIS ARMS IN A PROTECTIVE FASHION AND
2 RECEIVED THE SHOTS TO HIS ARMS?

3 A WELL, NO, BECAUSE WE'VE ALREADY TALKED
4 ABOUT THE TRAJECTORY OF THE WOUNDS THROUGH THE RIGHT
5 ARM ACROSS THE CHEST. AND WE'VE ALREADY TALKED
6 ABOUT THE WOUND THROUGH THE THIGH AND THE ABSENCE OF
7 TISSUE AND PELLETS ON THE FLOOR.

8 SO FOR ALL THOSE REASONS THAT WE
9 DISCUSSED PREVIOUSLY, I DO NOT BELIEVE THAT THAT
10 SCENARIO WOULD BE WORKABLE.

11 Q ARE YOU SAYING THAT THE TRAJECTORY TO
12 THE ARMS AND ACROSS THE CHEST WAS SUCH THAT HE WAS
13 NECESSARILY STANDING AT THE TIME THAT THE WOUND WAS
14 RECEIVED?

15 A WELL, THE BIG PROBLEM YOU HAVE WITH HIM
16 SITTING IS THIS: IF HE'S SHOT IN THE BACK OF THE
17 ARM AND HE'S SITTING ON THE COUCH, IT'S JUST HARD
18 FOR ME TO IMAGINE HOW THE GUN WOULD COME IN OVER THE
19 TOP OF THE COUCH AND MANAGE TO SHOOT HIM; AND
20 THERE'S NO DOWNWARD TRAJECTORY. THE SHOT IS THUS

21 AND IT GOES ACROSS THE CHEST AS WE HAVE BEEN TALKING
22 ABOUT FOR SOME TIME. IF HE'S JUST SITTING ON THE
23 COUCH, IT'S HARD FOR ME TO SEE HOW THE GUN COULD
24 HAVE GOTTEN IN THERE WITH THAT KIND OF AN ANGLE. I
25 CAN'T RULE OUT COMPLETELY THE POSSIBILITY OF HIS
26 HAVING BEEN SITTING, BUT IT JUST DOESN'T SEEM
27 LIKELY. THE OTHER THING IS, OF COURSE, IF HE WERE
28 SITTING, THEN HERE AGAIN, WHERE ARE THE PELLETS

42691

1 ALONG THE INSIDE OF THE COUCH, THE LEFT SIDE OF
2 MR. MENENDEZ AS HE SAT ON IT, THE RIGHT SIDE AS WE
3 VIEW IT? IF HE HAD BEEN SITTING AND THE SHOT
4 SOMEHOW DID MANAGE TO COME IN TO THE BACK OF THE ARM
5 AND THEN OUT THE ANTRMEDIAL ASPECT OF THE ARM AND
6 ACROSS THE CHEST, I WOULD EXPECT TO SEE SOME BLOOD,
7 SOME PELLETS, SOME TISSUES, OVER ON THE INSIDE OF
8 THE LEFT ARMREST AND INSIDE OF THE LEFT LATERAL
9 PORTION OF THE COUCH, AND I'M NOT AWARE OF THOSE
10 FINDINGS HAVING BEEN MADE BY THE POLICE OFFICER.

11 Q WELL, YOU WOULD EXPECT TO SEE IT ONLY IF
12 THE TRAJECTORY LINED UP SUCH THAT THE SHOT HITTING
13 THE RIGHT ARM WOULD BE ON AN AXIS WHICH WOULD
14 TERMINATE INTO THE COUCH; IS THAT CORRECT?

15 A WELL, YES, THAT'S CORRECT.

16 Q YOU ARE AWARE OF THE FACT THAT THERE WAS
17 BLOOD ON THE FLOOR IN FRONT OF THE SOFA; IS THAT
18 CORRECT?

19 A YES, AND THAT BLOOD SEEMS TO BE COMING
20 DOWN PRETTY MUCH FROM WHERE MR. MENENDEZ WOULD
21 LIKELY HAVE BEEN STANDING WHEN HE WAS SHOT IN THE
22 LEG OR -- AND/OR EVEN FROM THE LEFT ELBOW WOUND OR SO
23 ON. IT WOULD SEEM TO FIT WITH HIS HAVING BEEN
24 STANDING THERE. THEY APPEAR TO BE RIGHT THERE
25 RATHER THAN OFF ON AN ANGLE WITH A SHOT THAT IS
26 MOVING WITH THAT KIND OF A TRAJECTORY THAT WOULD BE
27 POSTULATED NECESSARILY IF YOU WERE TO SURMISE THAT
28 HE WAS SITTING WHEN SHOT IN THE LEG.

42692

1 Q WELL, ACCORDING TO YOUR UNDERSTANDING OF
2 THIS CRIME SCENE, WHICH YOU DESCRIBED AS A MOBILE
3 CRIME SCENE AND IN WHICH THERE ARE INFINITE NUMBER
4 OF VARIABLES, COULDN'T JOSE MENENDEZ, FOR EXAMPLE,
5 AFTER BEING -- AFTER SEATED -- SEATING HIMSELF DOWN,
6 HAVING BEEN SHOT IN THE LEG, HAVE LEANED FORWARD
7 SUCH THAT THE SHOT TO THE BACK OF THE ARM -- THERE
8 WAS A TRAJECTORY WHICH LINED UP FROM THE SHOT TO THE
9 BACK OF THE ARM DOWN TO ONE OF THE MORE -- ONE OR
10 MORE OF THE BLOOD STAINS ON THE FLOOR, AND THAT

11 COULD ACCOUNT FOR THE SHOT TO THE ARM?

12 A WELL, THE PROBLEM THAT YOU HAVE WITH
13 THAT, REMEMBER, REMAINS FROM OUR EARLIER DISCUSSION,
14 THAT IF YOU TALK ABOUT MR. MENENDEZ HAVING BEEN SHOT
15 AS HE SAT ON THE COUCH THROUGH THE LEFT THIGH, YOU
16 STILL HAVE THAT VERY BIG QUESTION OF WHERE DID THE
17 PELLETS AND TISSUE GO IF YOU JUST CONTINUE WITH A
18 STRAIGHT LINE ON OFF FROM THE LATERAL OUTSIDE ASPECT
19 OF THE THIGH. YOU'VE GOT TO WIND UP WITH SOME
20 PELLETS, SOME BLOOD, SOME TISSUE, OFF OF THAT ANGLE,
21 AND IT JUST ISN'T THERE IN ANY OF THE PICTURES THAT
22 I'VE SEEN.

23 Q RIGHT.

24 A SO THAT, THEN, YOU KNOW, SEE, KNOCKS OUT
25 OF THE BOX THE COMPONENT OF YOUR QUESTION, WHY
26 COULDN'T IT HAVE HAPPENED THAT WAY, BECAUSE WE CAN'T
27 GET PAST THAT LEG WOUND TO THEN TALK ABOUT WELL,
28 WOULDN'T THAT THEN -- OR COULD THAT NOT HAVE MOVED

42693

1 HIM FORWARD AND COULD HE NOT THEN HAVE BEEN SHOT IN
2 THE RIGHT ARM. WE STILL HAVE THE QUESTION OF THE
3 DISPERSAL OF THOSE PELLETS AND THAT BLOOD ON OVER TO
4 THE LEFT SIDE OF THE COUCH, THE INNER ASPECT OF THE
5 ARMREST AND SO ON. WE STILL HAVE THAT PROBLEM. SO

6 THAT -- WELL, THAT'S MY ANSWER.

7 Q WHAT I'M SAYING, DOCTOR, IS ASSUMING
8 YOU'RE CORRECT, ASSUMING THAT THE FIRST SHOT WAS TO
9 THE LEG, ASSUMING THAT HE WAS STANDING WHEN THAT
10 SHOT WAS RECEIVED, ISN'T IT POSSIBLE THAT ONCE HE
11 THEN COLLAPSED ON TO THE SOFA, THAT HE WAS SHOT IN
12 THE BACK OF THE ARM IN SUCH A WAY THAT THE
13 TRAJECTORY LINED UP STRIKING HIM THROUGH THE ARM AND
14 DEPOSITING SOME OF THE BLOOD THAT IS ON THE FLOOR
15 BECAUSE THERE ARE SO MANY VARIABLES HERE HE MIGHT
16 HAVE BEEN LEANING OVER WHEN HE RECEIVED THAT SHOT TO
17 THE BACK OF THE ARM?

18 A I SEE YOUR POINT. YOU'RE TALKING ABOUT
19 IF HE WERE SHOT IN THE LEFT THIGH WHILE STANDING AND
20 THEN HE CAME TO BE SITTING, COULD HE NOT HAVE BEEN
21 SLUMPED FORWARD IN SUCH A WAY --

22 Q SURE. EXACTLY.

23 A -- THAT THE SHOT IN THE ARM WENT
24 THROUGH. THAT'S -- YOU KNOW, THAT'S A POSSIBILITY I
25 CANNOT COMPLETELY RULE OUT. AND WE STILL -- OKAY.
26 WELL, THE LEFT ELBOW IS ANOTHER SHOT WHICH COULD
27 HAVE BEEN -- MOST LIKELY WAS SUSTAINED BEFORE THAT,
28 THEN, WHEN HE WAS STANDING. THAT'S ANOTHER

1 VARIATION ON THE THEME. I THINK THAT I WOULD HAVE
2 TO SAY THAT THAT FALLS WITHIN THE REALM OF
3 POSSIBILITY. HE'S SHOT IN THE THIGH, THEN HE FALLS
4 ON TO THE -- SPINS, FALLS BACK ON TO THE SOFA,
5 SOMEWHAT LEAN FORWARD, SHOT IN THE ARM AND THEN HE'S
6 SHOT IN THE HEAD. I CAN'T RULE THAT OUT COMPLETELY,
7 NO.

8 Q LET ME SHOW YOU THE PHOTOGRAPH THAT HAS
9 BEEN MARKED AS 183 WHICH SHOWS THE SHOT TO THE ARM
10 OF JOSE MENENDEZ; AND IT SHOWS BOTH IN THAT
11 PHOTOGRAPH, I BELIEVE WHAT YOU DESCRIBED AS THE
12 ENTRY WOUND, AS WELL AS THE EXIT WOUND TO THE RIGHT
13 ARM OF JOSE MENENDEZ; IS THAT CORRECT?

14 A YES.

15 Q AND WHEN DR. GOLDEN, WHEN HE WROTE HIS
16 ' AMENDMENT IN WHICH HE NOW IDENTIFIES THE -- WHAT
17 HE NOW CALLS THE ENTRANCE DEFECT TO THAT ARM, DOES
18 HE INDICATE THE DISTANCE OF THAT ARM FROM THE TOP OF
19 THE RIGHT SHOULDER?

20 A YES. HE SAYS SIX TO SEVEN INCHES BELOW
21 THE TOP OF THE RIGHT SHOULDER.

22 Q OKAY. IN THE '89 REPORT WHEN DR. GOLDEN
23 DESCRIBED THE WOUND THAT IS SIX BY FOUR INCHES IN
24 SIZE, WHICH HE DID ON PAGE 6 OF HIS '89 REPORT, DID
25 HE DESCRIBE HOW FAR THAT WAS FROM THE TOP OF THE
26 SHOULDER?

27 A NINE TO FOURTEEN INCHES BELOW THE TOP OF
28 THE SHOULDER.

1 Q WOULD THOSE TWO MEASUREMENTS INDICATE TO
2 YOU THAT THERE WAS SOME ANGULATION TO THAT
3 PARTICULAR WOUND?

4 A YES. SIX TO SEVEN INCHES AND THEN NINE
5 TO FOURTEEN. AGAIN, WITH THE BODY IN THE ANATOMICAL
6 POSITION THERE WOULD BE SOME DOWNWARD TRAJECTORY.

7 Q ALL RIGHT. SO WOULD THAT INDICATE TO
8 YOU, THEN, THAT THIS WOUND ON THE BACK OF HIS ARM,
9 WHETHER THAT WOUND IS THE ENTRY OR THE EXIT, THAT
10 THAT WOUND WAS, IN FACT, HIGHER UP AND CLOSER TO THE
11 SHOULDER THAN THE LARGE WOUND WHICH IS CLOSER TO THE
12 INSIDE OF THE FOREARM?

13 A YES. IT COULD HAVE BEEN. BUT I JUST
14 WANT TO SHARE THE DIFFICULTY. WATCH. WATCH THIS,
15 PLEASE. SEE, LIKE THIS, LIKE THIS, AS I'M LYING ON
16 THE AUTOPSY TABLE, THE ANSWER TO YOUR QUESTION IS
17 YES. SIX IS CLOSER THAN NINE COMING DOWN FROM THE
18 SHOULDER, OF COURSE.

19 BUT NOW WATCH, WATCH WHAT HAPPENS. NOW,
20 YOU SEE IT BECOMES A DIFFERENT MEASUREMENT WITH THE
21 WHAT WE CALL ADDUCTION, BRINGING IN OF AN EXTREMITY
22 TOWARD THE TRUNK. WE CALL THAT ADDUCTION. AS YOU
23 HAVE THAT MOVEMENT, THEN YOU CHANGE THE LOCATION.

24 SO I'M JUST -- YOU KNOW, I DON'T MEAN TO
25 QUIBBLE, BELIEVE ME.
26 AGAIN, THE ANSWER TO YOUR QUESTION IS
27 COULD THERE HAVE BEEN A DOWNWARD ANGLE? YES,
28 BECAUSE SIX INCHES BELOW IS HIGHER THAN NINE

42696

1 INCHES. BUT CAN I SAY FOR SURE? AND I CAN'T SAY
2 FOR SURE BECAUSE I JUST DON'T KNOW HOW THE ARM WAS
3 MOVING.

4 Q AND IF -- IF THAT ARM WERE TILTED IN SUCH
5 A WAY THAT IT WAS POINTED TOWARD THE SHOOTER AND IT
6 WAS, IN FACT, AN ENTRY ON THE INSIDE OF THE ARM,
7 THAT WOULD ALSO ACT FOR THAT SAME ANGLE; IS THAT
8 CORRECT?

9 A WELL, SEE, YOU'RE BACK TO -- IF IT WERE
10 AN ENTRY, AND YOU KNOW --

11 Q IN YOUR OPINION IT'S NOT AN ENTRY. I'M
12 JUST ASKING YOU ABOUT THE ANGLE.

13 A RIGHT. RIGHT.

14 Q NOW, FOR THE LEG WOUND TO JOSE MENENDEZ,
15 I BELIEVE YOU SAID THAT THE -- NO INJURY TO THE
16 FEMORAL ARTERY WAS NOTED IN THE REPORTS OF
17 DR. GOLDEN; IS THAT CORRECT?

18 A YES, THAT'S CORRECT. EITHER IN THE '89

19 REPORT OR IN -- WITH MORE SPECIFICITY BY WAY OF
20 RULING OUT SUCH AN INJURY IN HIS '95 AMENDED
21 REPORT.

22 Q IN FACT, DR. GOLDEN DID NOT DISSECT THE
23 FEMORAL ARTERY; IS THAT CORRECT?

24 A WELL, HE SAYS THAT HE -- HE REFERS TO THE
25 SUPERFICIAL FEMORAL ARTERY, AND HE SAYS HE DID NOT
26 DISSECT THE DEEP FEMORAL ARTERY.

27 Q AND WHAT IS THE DIFFERENCE BETWEEN THE
28 SUPERFICIAL FEMORAL ARTERY AND THE DEEP FEMORAL

42697

1 ARTERY?

2 A WELL, YOU KNOW, I DON'T WANT TO GET INTO
3 PICKING ON LITTLE MATTERS. THERE REALLY AREN'T SUCH
4 TERMS. WE HAVE OTHER NAMES FOR THOSE BRANCHES, BUT
5 I THINK I KNOW WHAT HE'S TALKING ABOUT. SUPERFICIAL
6 IS MORE, YOU KNOW, OUT TOWARDS THE OUTER ASPECT OF
7 THE LEG AND THE DEEPER IS MORE INTERNALLY. SO
8 THAT'S THE DIFFERENCE.

9 Q OKAY. SO YOU WOULD AGREE THAT HE USED
10 INCORRECT TERMS?

11 A WELL, HE -- HE'S USING ANATOMICAL TERMS
12 OF SUPERFICIAL AND DEEP, AND THAT'S OKAY. I --
13 IT'S -- IT'S EASY TO FOLLOW HIM. I MEAN, IT'S JUST

14 NOT THE PRECISE TERMS OF, YOU KNOW, GRAY'S ANATOMY,
15 BUT THAT'S OKAY. I UNDERSTAND. AND I'M NOT
16 DISAGREEING WITH HIM OR WITH THE POINT THAT YOU ASK
17 ABOUT. HE DID NOT DISSECT THE DEEP FEMORAL ARTERY.

18 Q AND, IN FACT, ISN'T IT -- DIDN'T HE WRITE
19 THAT ALTHOUGH THE FEMORAL -- THE FEMORAL ARTERY
20 INJURY WAS UNLIKELY, IT WAS POSSIBLE BECAUSE OF THE
21 SCATTER OF THE SHOT?

22 A HE SAID, YEAH, THOUGH -- UNLIKELY THOUGH
23 POSSIBLE, THAT'S CORRECT.

24 Q AND ONE OF THE REASONS WHY YOU SAID THAT
25 THIS WAS NOT A -- ONE OF THE REASONS WHY YOU
26 CONCLUDED THAT THIS WAS AN -- THAT THIS WAS AN
27 ANTEMORTEM WOUND WAS BECAUSE OF THE BLEEDING INTO
28 THE WOUND; IS THAT CORRECT?

42698

1 A YES. AND LET ME TELL YOU ANOTHER REASON
2 TOO, IS BECAUSE I DO BELIEVE HIS HEAD WOUND WAS HIS
3 FINAL SHOT. HIS OTHER WOUNDS WOULD NOT HAVE BEEN
4 FATAL. THE WOUNDS OF THE ARMS, THE TWO ON THE RIGHT
5 ARM, ENTRANCE, EXIT, HAVE IT ANY WAY FOR THE PURPOSE
6 OF THIS POINT THAT I WANT TO MAKE NOW, AND THE LEFT
7 ELBOW, NONE OF THAT WOULD HAVE KILLED HIM. IF HE
8 WOULD HAVE BEEN LYING THERE FOR HOURS UNATTENDED, HE

9 MIGHT HAVE BLED TO DEATH. BUT, YOU KNOW, MEDICAL
10 CARE, WHAT DAMAGE THERE MIGHT HAVE BEEN TO THE ARMS
11 OF A PERMANENT NATURE IS ANOTHER MATTER. BUT THEY
12 WERE NOT FATAL WOUNDS. THE FATAL WOUND WAS THE HEAD
13 WOUND. SO I -- YOU KNOW, THAT'S ANOTHER REASON WHY
14 I BELIEVE THAT THE LEG WOUND WAS ANTEMORTEM. BUT HE
15 DOES DESCRIBE HEMORRHAGE ALONG THE ENTIRE WOUND PATH
16 AND HE'S VERY SPECIFIC IN THAT. HEMORRHAGE IS
17 SOMETHING THAT YOU CAN SEE AND NOTE. AND HE TELLS
18 US THAT IN HIS ORIGINAL AUTOPSY REPORT IN HIS
19 DESCRIPTION OF NO. 5, THE LEFT THIGH WOUND.

20 Q WELL, DR. GOLDEN ALSO DESCRIBED
21 HEMORRHAGE ALONG THE ENTIRE WOUND PATH FOR ANOTHER
22 WOUND TO THE BODY OF KITTY MENENDEZ, AND THEN IN
23 1995 TOOK THAT BACK; IS THAT CORRECT?

24 A YES. HE REVISED THAT. THAT'S CORRECT.
25 WE ALL KNOW THAT HE HAS REVISED THINGS, BUT HE'S NOT
26 REVISED THINGS ON MR. MENENDEZ' LEFT THIGH WOUND.

27 Q RIGHT. WELL, THOUGH, HE HASN'T -- SO FAR
28 HE HASN'T REVISED THAT?

42699

1 A SO FAR. WELL, NOW'S A GOOD TIME TO HAVE
2 DONE IT, RIGHT.

3 Q BUT, I MEAN, IF HE REVISES -- IF HE

4 REVISES ONE WOUND BY SAYING PREVIOUSLY THAT THERE
5 WAS HEMORRHAGING ALONG THE ENTIRE WOUND PATH AND NOW
6 HE SAYS THAT THAT WOUND WAS PERIMORTEM DESPITE HIS
7 OBSERVATIONS, HOW DO YOU KNOW WHEN TO RELY UPON HIS
8 OBSERVATIONS OF HEMORRHAGING ALONG THE ENTIRE WOUND
9 PATH AND WHEN NOT TO RELY UPON HIS OBSERVATIONS
10 CONCERNING --

11 A WELL, YOU KNOW, I UNDERSTAND YOUR POINT,
12 AND THE ONLY ANSWER I COULD GIVE YOU IS THAT I --
13 YOU KNOW, I SEE -- HE -- YOU KNOW, TO HIS CREDIT, HE
14 DID NOT HESITATE TO MAKE THESE AMENDMENTS IN '92 AND
15 ', YOU KNOW. I THINK SOME PEOPLE WOULD HAVE BEEN
16 TOO PROUD OR COWARDLY TO HAVE DONE IT. HE DID MAKE
17 THE AMENDMENTS.

18 SO, YOU KNOW, I THINK IT'S JUST AS
19 REASONABLE TO SAY, HEY, HE MADE THE AMENDMENTS THAT
20 HE FELT HE WANTED TO AND HE DID NOT MAKE OTHER
21 AMENDMENTS. I MEAN, WHAT DIFFERENCE WOULD IT HAVE
22 MADE TO HIM THEN IF HE HAD CHANGED HIS MIND TOO
23 ABOUT MRS. MENENDEZ' OTHER WOUND? SO HE STOPPED
24 WHERE HE STOPPED. AND I GUESS HE STOPPED WHERE HE
25 STOPPED BECAUSE THOSE ARE THE ONLY AMENDMENTS HE
26 WANTED TO MAKE.

27

28

1 Q AND I BELIEVE THAT YOU SAID THAT IN
2 DOING AN AUTOPSY ON THE LEFT LEG OF JOSE MENENDEZ,
3 THAT THE FEMORAL ARTERY IS SOMETHING THAT WOULD HAVE
4 BEEN OBSERVABLE TO DR. GOLDEN; IS THAT WHAT YOU
5 SAID?

6 A YES. I THINK THAT IT SHOULD HAVE BEEN
7 OBSERVABLE TO HIM, WITH THE LEG EXPOSED AS IT WAS IN
8 THE FRACTURES; WITH A LITTLE BIT OF DISSECTION, I
9 THINK THAT HE COULD HAVE SEEN IT. I THINK THAT HE
10 WOULD HAVE SEEN IT.

11 Q AND I THINK YOU SAID HIS FAILURE TO NOTE
12 ANY INJURY TO THE FEMORAL ARTERY IS AN INDICATION TO
13 YOU THERE WAS NO INJURY TO THE FEMORAL ARTERY; IS
14 THAT?

15 A YES, THAT'S RIGHT. WHEN HE SAYS
16 DISSECTION, WE KNOW THAT THE ARTERY HAS A COURSE OF
17 SEVERAL INCHES. IT'S NOT JUST A SMALL VESSEL. AND
18 I THINK WHEN HE SAID IT WASN'T DISSECTED HE MIGHT
19 HAVE BEEN SAYING HE DIDN'T DISSECT IT ALONG ITS
20 ENTIRE ROUTE. I THINK HE WOULD HAVE SEEN IT IN THE
21 AREA WHERE THE FRACTURE OF THE FEMUR HAD OCCURRED.

22 Q WOULD YOU ALSO CONCLUDE HIS FAILURE TO
23 INCLUDE A TWO-INCH WOUND TO THE BACK OF JOSE
24 MENENDEZ' RIGHT ARM IS AN INDICATION HE DIDN'T SEE
25 SUCH A WOUND EITHER?

26 MS. ABRAMSON: OBJECTION, YOUR HONOR.
27 ARGUMENTATIVE. ASSUMES FACTS NOT IN EVIDENCE.

42701

1 OF THE WITNESS.

2 MS. ABRAMSON: YES.

3 THE COURT: OBJECTION SUSTAINED.

4 Q BY MR. CONN: NOW, SO IS IT YOUR
5 OPINION, THEN, THAT WHEN JOSE MENENDEZ WAS SHOT IN
6 THE LEFT LEG, THAT WOULD MAKE HIM SPIN AROUND AND
7 THEN COME TO BE SEATED IN THE POSITION THAT HE
8 APPEARS IN THOSE PHOTOGRAPHS?

9 A IN THIS PARTICULAR CASE, BASED UPON
10 WHERE WE SEE HIM AT REST FINALLY, THAT IS MY
11 OPINION, WITH REASONABLE MEDICAL CERTAINTY. I
12 WOULDN'T TELL YOU, ABSENT THAT INFORMATION OF THE
13 PICTURE DEPICTION IN THIS CASE, THAT I WOULD PREDICT
14 THAT A PERSON WOULD MOVE IN THAT FASHION. I WOULD
15 SAY THAT IT IS CERTAINLY LOGICAL, WITHIN THE REALM
16 OF PHYSICAL POSSIBILITY, THAT A PERSON WOULD MOVE,
17 COULD MOVE IN THAT FASHION.

18 AND SO I BELIEVE THAT WHAT SEEMS TO FIT
19 HERE IS THAT HE DOES SPIN AROUND IN A KIND OF A
20 CLOCKWISE POSITION AND WOUND UP SITTING ON THE
21 COUCH.

22 Q BUT ARE YOU SAYING THAT IT WOULD HAPPEN

23 ONLY -- ARE YOU SAYING THAT IT MAY HAVE HAPPENED IN
24 THIS CASE ONLY BECAUSE YOU NEED TO EXPLAIN HOW
25 SOMEHOW HE ENDED UP ON THE SOFA, OR ARE YOU SAYING
26 THAT A SHOTGUN BLAST TO THE LEFT LEG HAS A TENDENCY
27 TO MAKE PEOPLE SPIN?
28 MS. ABRAMSON: I'M GOING TO OBJECT AS

42702

1 COMPOUND.
2 THE COURT: OVERRULED.
3 THE WITNESS: I'M NOT SAYING THE LATTER. IN
4 FACT, I THOUGHT I HAD EXPRESSED THAT. I'M SORRY IF
5 I DIDN'T MAKE IT CLEAR.
6 I HAD SAID THAT I CANNOT TELL YOU THAT
7 WHEN SOMEBODY IS SHOT IN THE LEFT THIGH THAT THEY
8 WILL SPIN IN A CERTAIN DIRECTION, NO. THEY MAY FALL
9 TO THE LEFT OR THE RIGHT, FRONT OR BACK. NO. I
10 CAN'T TELL THAT. I DID SAY, WITH ALL OF THE
11 INFORMATION THAT WE HAVE HERE, AND THE PICTURES THAT
12 SHOW HIS FINAL POSITION AND SO ON, THAT IS MY
13 SURMISAL.
14 Q BY MR. CONN: OKAY. WHAT I'M ASKING YOU
15 IS: ARE YOU SAYING THAT ONLY BECAUSE YOU NEED TO
16 EXPLAIN HOW HE WAS SHOT IN THE LEFT LEG AND ENDED UP
17 ON THE SOFA, OR ARE YOU SAYING THERE'S SOMETHING

18 ABOUT THE WOUND ITSELF, SOME EVIDENCE ABOUT THE
19 WOUND WHICH CAUSES YOU TO CONCLUDE THAT IT WOULD
20 MAKE HIM SPIN?

21 A WHEN YOU SAY I NEED TO... I DON'T NEED
22 TO DO ANYTHING HERE, BECAUSE I AM NOT ATTEMPTING TO
23 PUT TOGETHER A SCENARIO; INASMUCH AS I DO NOT
24 BELIEVE HE WAS SITTING WHEN HE WAS SHOT IN HIS LEFT
25 THIGH, I THEREFORE BELIEVE HE WAS STANDING. AND IF
26 HE WAS STANDING, THEN WHAT HAPPENED TO HIM?

27 WELL, HE THEN WOUND UP SITTING, AND HE
28 WAS SHOT IN THE HEAD; AND THAT'S HOW I ARRIVE AT

42703

1 THAT.

2 SO, YES. THAT'S MY LOGICAL
3 RETROSPECTIVE ANALYSIS OF WHAT MOST LIKELY HAPPENED
4 WITH REGARD TO THE LEG WOUND AND HIS FINAL POSITION
5 ON THE COUCH.

6 Q WOULDN'T THE WOUND TO THE LEFT LEG BE --
7 OR ISN'T THE WOUND TO THE LEFT LEG SEVERE ENOUGH
8 THAT IT WOULD, RATHER, HAVE A TENDENCY TO MAKE A
9 PERSON IMMEDIATELY COLLAPSE RATHER THAN CONTINUE TO
10 SPIN ON THAT LEG?

11 A NO. NOT NECESSARILY. YOU COULD EVEN
12 HOBBLE ON IT IF YOU FELT YOU HAD TO, DRAGGING IT

13 ALONG, OR YOU JUST MIGHT CAVE IN. A STRONG BIG MAN
14 CAN CERTAINLY STAND ON ONE LEG AND MOVE A LITTLE
15 BIT. I JUST CAN'T TELL YOU EXACTLY WHAT WOULD HAVE
16 HAPPENED; AND AGAIN, I FREELY AND READILY ADMIT THAT
17 I PUT IT TOGETHER BASED UPON HIS FINAL RESTING
18 PLACE.

19 HAD HE BEEN LYING ON THE FLOOR, I
20 WOULDN'T HAVE HAD ANY PROBLEM UNDERSTANDING THAT
21 EITHER, THAT THAT'S -- HE WAS SHOT AND THEN COLLAPSED
22 TO THE FLOOR.

23 Q NOW, CONCERNING THE TRAJECTORY OF THE
24 ILLUSTRATION WHICH DEPICTS THE SHOT -- DEPICTS THE
25 SHOT TO THE LEFT LEG, I BELIEVE THAT YOU SAID THAT
26 YOU DISAGREED WITH THE ILLUSTRATION WHICH DEPICTS
27 THE SHOT TO THE LEFT LEG.

28 LET ME SHOW YOU SHOT 7-A, WHICH IS 262.

42704

1 I BELIEVE THAT YOU SAID THAT YOU
2 DISAGREED WITH THAT PICTURE AS DEPICTED THERE
3 BECAUSE THERE WAS NO SIGNIFICANT ANGULATION TO THAT
4 WOUND; IS THAT CORRECT?

5 A YES. THERE'S A ONE-INCH DIFFERENCE AS
6 MEASURED BY DR. GOLDEN AT AUTOPSY.

7 Q SO WOULD THAT ONE-INCH DIFFERENCE

8 BETWEEN THE ENTRY WOUND -- THE ENTRY PART OF THE
9 WOUND AND THE EXIT PART OF THE WOUND -- INDICATE TO
10 YOU THAT THERE WAS SOME ANGULATION, OR WOULD THAT
11 INDICATE TO YOU THAT THERE WAS NO ANGULATION?

12 A WELL, JUST TAKE IT AS IT IS, AS A
13 ONE-INCH DIFFERENCE THAT'S AN ANGULATION OF MAYBE A
14 COUPLE OF DEGREES.

15 Q AND DO YOU KNOW IF THAT COUPLE OF
16 DEGREES WOULD PLACE THE SHOOTER SOMEWHAT CLOSER TO
17 THE COFFEE TABLE OR CLOSER TOWARD THE FRENCH DOORS
18 IN THAT ROOM?

19 A OH, I CAN'T BEGIN TO THINK THE SHOOTER
20 COULD HAVE BEEN OVER HERE TOWARD THE FRONT OF US, AS
21 WE ALL LOOK AT THIS PICTURE. THE SHOOTER COULD HAVE
22 BEEN BEHIND, BUT ON A MORE EVEN ANGLE.

23 BUT, AGAIN WE KEEP COMING BACK TO WHERE
24 ARE THE PELLETS, AND WHERE ARE THE TISSUE, IF HE HAD
25 BEEN SHOT WHILE SITTING? THAT'S REALLY WHAT IT
26 COMES DOWN TO.

27 IF YOU WANT TO, AGAIN, JUST TALK
28 HYPOTHETICALLY, WHAT IF HE WERE SHOT WHEN SITTING?

42705

1 WHERE MIGHT THE SHOOTER HAVE BEEN? AND I WOULD JUST
2 SAY IT'S PHYSICALLY POSSIBLE THE SHOOTER COULD HAVE

3 BEEN ON THIS SIDE OF THE COUCH, TO THE RIGHT SIDE,
4 AS WE ALL LOOK AT IT, OR BEHIND THE COUCH TO THE
5 LEFT OF THIS PICTURE AS WE ALL LOOK AT IT.

6 I CAN'T BE SURE. I JUST DO NOT ACCEPT
7 THE FACT THAT HE WAS SITTING WHEN HE WAS SHOT IN THE
8 LEFT THIGH.

9 Q OKAY. AND IN YOUR -- LET ME SHOW YOU
10 ANOTHER PHOTOGRAPH.

11 SHOWING YOU THE PHOTOGRAPH THAT HAS BEEN
12 MARKED AS 299. IN YOUR CONSIDERATION OF THE
13 EVIDENCE IN THIS CASE AND YOUR CONCLUSION THAT JOSE
14 MENENDEZ WAS MOST PROBABLY SHOT WHILE HE WAS
15 STANDING UP, WERE YOU MADE AWARE OF THE FACT THAT
16 THERE WAS SOME HUMAN TISSUE THAT WAS --

17 MS. ABRAMSON: OBJECTION, YOUR HONOR.

18 THE COURT: THE NATURE OF THE OBJECTION?

19 MS. ABRAMSON: THERE'S NO FOUNDATION FOR THAT
20 HYPOTHETICAL.

21 THE COURT: OVERRULED.

22 Q BY MR. CONN: WERE YOU MADE AWARE OF THE
23 FACT THAT THERE WAS SOME HUMAN TISSUE THAT WAS FOUND
24 IN THE AREA INDICATED IN THIS PHOTOGRAPH NEAR THE
25 FRENCH DOOR OR NEAR THE ENTRY DOORS?

26 A I'M AWARE SOMETHING WAS FOUND THERE. TO
27 MY KNOWLEDGE, IT WAS NOT TAKEN IN AND EXAMINED BY A
28 PATHOLOGIST, GROSSLY OR MICROSCOPICALLY. SO I DON'T

1 KNOW THAT IT WAS HUMAN TISSUE. I'M AWARE THAT
2 SOMETHING WAS FOUND THERE, AND I THINK I'VE SEEN
3 MAYBE THIS PICTURE, OR ANOTHER ONE WHERE SOMEONE HAS
4 CIRCLED SOMETHING. I JUST DON'T KNOW WHAT IT WAS.

5 IT'S MY UNDERSTANDING THAT ONE OF THE
6 DETECTIVES OR POLICE OFFICERS OR SOMEBODY SAID THAT
7 HE THOUGHT IT MIGHT HAVE BEEN TISSUE, BUT NOBODY
8 TOOK IT IN AND HAD IT EXAMINED BY DR. GOLDEN OR HIS
9 COLLEAGUES AT THE MEDICAL EXAMINER'S OFFICE.

10 Q OKAY. NOW, ASSUMING FOR A MOMENT THAT
11 WHAT WAS OBSERVED AT THE LOCATION WAS, IN FACT,
12 TISSUE, IN YOUR OPINION, AND DIRECTING YOUR
13 ATTENTION BACK TO THE SHOT 7-A, WOULD YOU SAY THAT
14 SUCH HUMAN TISSUE IN THAT AREA OF THE ROOM WOULD BE
15 CONSISTENT WITH A BLOW-OUT THAT YOU SAID YOU WOULD
16 EXPECT IF JOSE MENENDEZ WAS SHOT IN THAT SEATED
17 POSITION?

18 A I WOULD SAY THAT IT WOULD BE CONSISTENT,
19 BUT NOT SUFFICIENT. IT WOULD BE CONSISTENT IN TERMS
20 OF ITS LOCATION; BUT ACTUALLY, I THINK, IT
21 EMPHASIZES AND BUTTRESSES MY POINT, THAT IF YOU HAVE
22 THEN EVULSION OF THAT LEFT THIGH, AS YOU WOULD HAVE
23 HAD WITH THE DISPERSAL OF PELLETS, AND BLOOD AND
24 TISSUE, THAT IF YOU GOT ONE PIECE OUT THERE, YOU
25 SURE WOULD HAVE HAD MORE OF A PATTERN. YOU'RE NOT

26 JUST GOING TO HAVE ONE ISOLATED PIECE OUT THERE BY
27 ITSELF.
28 SO THIS IS A SITUATION THAT WE SOMETIMES

42707

1 SAY IN THE VERNACULAR WHERE THE EXCEPTION PROVES THE
2 RULE. IF INDEED IT WAS TISSUE, THEN I THINK IT GOES
3 ALONG WITH MY POINT THAT IT SURE WASN'T ENOUGH TO
4 EXPLAIN ALL THAT WOULD HAVE HAPPENED AS THAT LEFT
5 THIGH EVULSED OUTWARD.

6 Q ONE OF THE REASONS YOU'RE SAYING THAT
7 YOU WOULD EXPECT MORE IS BECAUSE YOU'VE CONCLUDED
8 THAT THAT WAS AN ANTEMORTEM WOUND; IS THAT CORRECT?

9 A WELL, NO. THE EXPLOSION AND AVULSION
10 AND EXTRUSION OF TISSUE WOULD HAVE NOTHING TO DO
11 WITH ANTEMORTEM VERSUS POSTMORTEM. THAT'S GOING TO
12 HAPPEN EVEN IF SOMEBODY IS DEAD FOR A COUPLE OF
13 SECONDS. ANTEMORTEM HAS TO DO WITH HEMORRHAGING TO
14 SOME EXTENT. YOU'RE STILL GOING TO HAVE SOME BLOOD
15 IN THE VESSELS. THE TISSUES ARE STILL GOING TO BE
16 DISPERSED. YOU'RE NOT SHOOTING AT SOMEBODY WHO'S
17 MUMMIFIED. TISSUES ARE STILL VITAL, THE SAME AS
18 THEY ARE 30 OR 20 OR 15 OR 10 SECONDS BEFORE. THAT
19 DOESN'T MAKE ANY DIFFERENCE FOR THIS PURPOSE, AND
20 THE PELLET DISPERSAL PATTERN. SO IT REALLY DOESN'T

21 CHANGE.

22 Q JUST FROM LOOKING AT THAT WOUND ALONE
23 YOU CAN CONCLUDE ON THE BASIS OF THAT YOU WOULD
24 EXPECT TO SEE HUGE GOBS OF BODY MATERIALS SOMEWHERE
25 ALONG THE TRAJECTORY OF THE WOUND?

26 A I DIDN'T SAY HUGE GOBS. I WOULD EXPECT
27 TO SEE SOME PIECES OF TISSUE, SOME BLOOD SPATTERING,
28 AND SOME PELLET DISPERSALS.

42708

1 Q OKAY.

2 THE COURT: LET'S TAKE OUR RECESS HERE AND
3 WE'LL RESUME AT 3:30.

4 DON'T DISCUSS THE MATTER WITH ANYONE OR
5 FORM ANY FINAL OPINIONS IT. WE'LL RESUME AT 3:30.

6 (A RECESS WAS TAKEN FROM
7 3:14 P.M. TO 3:40 P.M.)

8
9 THE COURT: OKAY. THE JURY IS BACK.

10 YOU MAY CONTINUE YOUR CROSS-EXAMINATION.

11 MR. CONN: YES. THANK YOU.

12 Q DOCTOR, I BELIEVE WHEN WE BROKE YOU WERE
13 SAYING THAT ONE OF THE REASONS WHY YOU CONCLUDED
14 THAT JOSE MENENDEZ WAS NOT SEATED IN THE POSITION IN
15 WHICH HE WAS FOUND WHEN HE RECEIVED THE SHOT TO HIS

16 LEFT LEG WAS BECAUSE YOU WOULD EXPECT TO FIND SOME
17 MORE BLOW-OUT ON THE FLOOR THAN WAS ACTUALLY FOUND;
18 IS THAT CORRECT?

19 A THAT'S RIGHT. TISSUE, BLOOD, DISPERSAL
20 OF PELLETS.

21 Q WOULD YOU EXPECT TO FIND BOTH TISSUE AND
22 BLOOD OR BLOOD ALONE?

23 A I WOULD EXPECT TO SEE AT LEAST A COUPLE
24 OR A FEW SMALL PIECES OF TISSUE, NOT NECESSARILY
25 LARGE MASSES. I CERTAINLY WOULD EXPECT TO SEE SOME
26 BLOOD.

27 Q NOW, AS FAR AS THE PELLETS ARE
28 CONCERNED, LET ME ASK YOU THIS: WHAT POSITION DO

42709

1 YOU SUGGEST THAT HIS LEG WAS IN AT THE TIME HE
2 RECEIVED THAT WOUND?

3 A I DO NOT KNOW, OTHER THAN I BELIEVE HE
4 WAS NOT SITTING. I HAVE NO WAY OF KNOWING EXACTLY
5 WHERE HE WAS. SO I THINK HE WAS SOMEWHERE IN FRONT
6 OF THE COUCH AND NOT FAR FROM THE AREA OF THE COUCH
7 WHERE HE FINALLY WAS FOUND AFTER HAVING RECEIVED THE
8 HEAD WOUND.

9 Q WOULD YOU DISAGREE THAT IF HE WERE SHOT
10 WHILE HE WAS STANDING IN FRONT OF THE COUCH, HE MUST

11 HAVE BEEN SHOT STANDING DIRECTLY IN FRONT OF THE
12 COUCH IN ORDER TO FALL DOWN IN THE POSITION THAT HE
13 IS INDICATED HERE IN THIS PHOTOGRAPH?

14 A WELL, MORE OR LESS. I CAN'T SAY
15 DIRECTLY. AGAIN, A PERSON CAN HOBBLE. A PERSON --
16 MIDDLE-AGE MAN OF GOOD STRENGTH, YOU CAN HAVE SOME
17 MOVEMENT. WE'RE NOT TALKING ABOUT MOVING YARDS OR
18 ANYTHING. BUT AS FAR AS A COUPLE OF FEW INCHES OR
19 SEVERAL INCHES, A FOOT OR SO, THAT'S NOT PRECLUDED
20 BY VIRTUE OF A FRACTURE.

21 Q IF HE WERE FAR FROM THE SOFA AT THE TIME
22 THAT HE WAS SHOT IN THE LEG, WOULD YOU EXPECT THEN
23 YOU WOULD FIND SOME BLOW-OUT IN SOME AREA OF THE
24 ROOM WHICH YOU DO NOT SEE IN ANY OF THE CRIME-SCENE
25 PHOTOGRAPHS?

26 A WELL, I WOULD EXPECT THERE TO BE SOME
27 BLOOD AND SOME PELLET DISPERSION, YES, WHATEVER
28 ELSE. THE SAME THING WOULD BE TRUE, CERTAINLY, IF

42710

1 HE WERE STANDING; THAT I HAVE POSTULATED HE WAS
2 SITTING. I DON'T KNOW WHERE EVERYTHING WAS FOUND IN
3 THIS ROOM. I DO KNOW THAT LESS THAN HALF THE
4 PELLETS THAT ARE BELIEVED TO HAVE BEEN FIRED WERE
5 RECOVERED, BLOOD WAS NOT IDENTIFIED IN DIFFERENT

6 PLACES, AND SO ON. THINGS THAT ARE THOUGHT MIGHT
7 HAVE BEEN TISSUE WERE NOT SUBMITTED FOR EXAMINATION
8 AS TISSUE SPECIMENS. I JUST DON'T KNOW A LOT OF
9 THINGS.

10 Q WERE YOU ABLE TO SEE ANY TISSUE OR BLOOD
11 IN THAT ROOM WHICH IS CONSISTENT WITH TISSUE AND
12 BLOOD THAT MIGHT HAVE BEEN BLOWN OUT OF THE LEFT LEG
13 OF JOSE MENENDEZ AFTER HE RECEIVED THAT SHOT?

14 A NO. I HAVE NOT SEEN ANYTHING THAT I CAN
15 POINT TO ON THE PICTURES.

16 Q BASED UPON YOUR REVIEW OF THE MATERIAL
17 THEN, WHERE DO YOU BELIEVE HE WAS STANDING AT THE
18 TIME THAT THIS SHOT WAS FIRED?

19 A I DO NOT KNOW.

20 MS. ABRAMSON: ASKED AND ANSWERED.

21 THE WITNESS: JUST AS I'VE SAID.

22 THE COURT: HE'S ANSWERED IT. HE DOESN'T
23 KNOW.

24 MR. CONN: OKAY.

25 Q WAS IT YOUR UNDERSTANDING, IN YOUR
26 REVIEW OF THE MATERIAL, THAT NOT ALL THE PELLETS
27 WERE RECOVERED BY THE POLICE?

28 A THAT IS MY UNDERSTANDING.

1 Q NOW, IN TERMS OF THE AMOUNT OF BLOW-OUT
2 THAT YOU WOULD EXPECT, I WOULD LIKE TO SHOW YOU TWO
3 PHOTOGRAPHS; ONE THAT HAS BEEN MARKED 182, DEPICTING
4 THE WOUND TO THE LEFT LEG OF JOSE MENENDEZ; AND 189,
5 DEPICTING THE LEFT LEG OF KITTY MENENDEZ.

6 YOU'VE SEEN THOSE PHOTOGRAPHS BEFORE?

7 A YES.

8 Q AND WOULD YOU AGREE THAT BOTH OF THOSE
9 PHOTOGRAPHS DEPICT SEVERE WOUNDS TO THE LEFT LEGS OF
10 EACH OF THE VICTIMS IN THIS CASE?

11 A YES.

12 Q AND WOULD YOU ALSO EXPECT TO FIND SOME
13 BLOW-OUT FROM THE LEFT LEG OF KITTY MENENDEZ?

14 A YES. SOME BLOOD, MAYBE SOME PIECES OF
15 TISSUE, AND SOME PELLET FROM THE DISPERSAL OF THE
16 SHOTGUN WOUND.

17 Q LET ME PUT THOSE TWO PHOTOGRAPHS ON THE
18 BOARD FOR THE JURY.

19 NOW, DIRECTING YOUR ATTENTION TO SOME OF
20 THE CRIME-SCENE PHOTOGRAPHS THAT HAVE BEEN MARKED
21 WHICH DEPICT THE ROOM AFTER THE BODIES HAVE BEEN
22 REMOVED. DIRECTING YOUR ATTENTION TO 37 AND 75.

23 HAVE YOU EXAMINED THESE PHOTOGRAPHS TO
24 SEE IF YOU CAN LOCATE SOME OF THE BLOW-OUT THAT YOU
25 MIGHT EXPECT TO FIND FROM THE WOUNDS TO THE LEFT LEG
26 OF MARY MENENDEZ?

27 A I'VE LOOKED AT THESE PICTURES. I DON'T
28 KNOW WHAT YOU MEAN BY EXAMINE THEM. I HAVE SEEN

1 THESE, AND I CAN'T TELL YOU SPECIFICALLY WHAT'S
2 HERE. AS YOU CAN SEE, THE FURNITURE HAS NOT BEEN
3 MOVED VERY MUCH, AND I DON'T KNOW WHAT KIND OF A
4 VACUUM-SWEEPING WAS PERFORMED OR A METICULOUS
5 EYE-HAND SEARCH WAS CONDUCTED. I HAVE NO WAY OF
6 KNOWING.

7 Q I MEAN, IN EXAMINING THOSE PHOTOGRAPHS,
8 WHICH WERE APPARENTLY FILMED AFTER THE BODIES HAD
9 BEEN REMOVED, DO YOU SEE ANY EVIDENCE OF BLOW-OUT
10 FROM THE LEFT LEG OF KITTY MENENDEZ?

11 A WELL, WHEN YOU SAY BLOW-OUT, THERE
12 SHOULD BE SMALL PIECES OF TISSUE ADMIXED WITH SOME
13 OF THE HEAVIER BLOOD STAINS. I HAVE NO WAY OF
14 DETERMINING THAT. I SEE A COUPLE OF LITTLE LIGHT
15 SPOTS THAT CAN BE TISSUE. I JUST CAN'T BE CERTAIN.
16 SOMETHING ON THE COUCH THAT COULD BE TISSUE. I JUST
17 DON'T KNOW FOR SURE.

18 Q OKAY. SO YOU CAN'T POINT TO ANYTHING
19 SPECIFIC IN THESE PHOTOGRAPHS AND SAY THAT THERE YOU
20 SEE SOMETHING THAT IS CONSISTENT WITH BLOW-OUT FROM
21 THE BODY OF KITTY MENENDEZ SUCH THAT YOU WOULD
22 EXPECT TO FIND SOMETHING SIMILAR IN REGARD TO
23 BLOW-OUT FROM THE LEFT LEG OF JOSE MENENDEZ; IS THAT
24 CORRECT?

25 A WELL, THAT'S CORRECT. THIS IS NOT A
26 DETAILED CRIME-SCENE ANALYSIS.
27 Q AND YOU'VE WORKED OVER THE COURSE OF
28 YOUR CAREER AS A PATHOLOGIST PERFORMING AUTOPSIES

42713

1 ONCE THEY HAVE BEEN REMOVED FROM THE CRIME SCENE; IS
2 THAT CORRECT?

3 A YES. AND AS HAS BEEN ASKED EARLIER, ON
4 SOME INSTANCES I HAVE GONE TO THE SCENE BEFORE THE
5 BODIES HAVE BEEN MOVED. IN MOST OF THE CASES I HAVE
6 SEEN THE BODIES AFTER THEY HAVE BEEN BROUGHT TO THE
7 MORGUE.

8 Q AND DO YOU RECALL HOW MANY CRIME SCENES
9 YOU WENT TO THAT SPECIFICALLY INVOLVED SHOTGUN
10 WOUNDS AND BLOW-OUT FROM SHOTGUN WOUNDS?

11 A I'D ESTIMATED, I THINK, MAYBE ABOUT A
12 HUNDRED OR SO TO TWO HUNDRED, POSSIBLY, OF GUNSHOT
13 WOUNDS. HOW MANY WERE SHOTGUNS? PROBABLY MAYBE
14 LIKE A DOZEN AND A HALF TO TWO DOZEN, SOMETHING LIKE
15 THAT.

16 Q NOW, YOU'VE ALSO INDICATED THAT IN YOUR
17 OPINION THE FRACTURE THAT RESULTED TO THE LEFT LEG
18 OF MARY MENENDEZ WOULD HAVE RESULTED, FROM WHAT
19 DR. GOLDEN DESCRIBED, AS SHOT OR WOUND NO. 8, RATHER

20 THAN WOUND NO. 7; IS THAT CORRECT?

21 A YES. I SAID THAT I LEANED TOWARD THAT.

22 I CANNOT RULE OUT THAT IT WAS FROM 7, BUT I SAID I

23 LEANED TOWARD THE LIKELIHOOD AS BEING GREATER FROM

24 WOUND NO. 8.

25 Q OKAY. SHOWING YOU THE PHOTOGRAPH OF THE

26 X RAY THAT HAS BEEN MARKED 168, DO YOU SEE THE

27 FRACTURE THAT YOU'RE REFERRING TO IN THAT

28 PHOTOGRAPH?

42714

1 A YES, I DO.

2 Q IN FACT, WASN'T THERE MULTIPLE FRACTURES

3 TO THAT LEG?

4 A WELL, WHEN YOU SAY MULTIPLE, YOU MEAN

5 ARE THERE MORE THAN TWO SEGMENTS? IS THAT WHAT

6 YOU'RE SAYING?

7 Q YES?

8 A THERE APPEAR TO BE THREE SEGMENTS OF THE

9 FEMUR, THAT IS, THE LARGE UPPER PORTION; THEN A PART

10 THAT HAS BEEN KIND OF DISRUPTED, AND THEN THE

11 SHORTER DISTAL PORTION THAT GOES DOWN TO THE KNEE

12 JOINT.

13 Q OKAY. HERE'S ANOTHER PHOTOGRAPH THAT

14 HAS BEEN MARKED 178; AND DOES THAT DEPICT THE SAME

15 LEG, SHOWING THE LOWER PORTION OF THE LEG?

16 A YES, IT DOES.

17 Q OKAY. AND IN TOTAL, CAN YOU TELL US THE

18 TOTAL NUMBER OF DIFFERENT LOCATIONS THAT THE LEG WAS

19 ACTUALLY BROKEN?

20 A WELL, IT'S ONLY BROKEN AT ONE POINT IN

21 THE DISTAL THIRD OF THE FEMUR; AND THEN THERE IS A

22 FRACTURE OF THE PROXIMAL THIRD OF THE TIBIA, THE

23 LARGER OF THE TWO BONES THAT GO DOWN FROM THE KNEE

24 TO THE ANKLE, THOSE TWO FRACTURE CITES.

25 THERE ARE SOME -- THAT I'VE ALREADY

26 SAID -- ONE PIECE OF THE FEMUR HAS BEEN DISLODGED,

27 AND THE TIBIA -- I SEE ABOUT THREE OR FOUR SMALLER

28 PIECES.

42715

1 Q WHY DON'T WE PUT THAT UP ON THE BOARD SO

2 WE CAN SHOW THE JURY WHAT YOU'RE TALKING ABOUT.

3 IF I PUT ONE OVER THE OTHER, THAT WOULD

4 TEND TO SHOW THE ENTIRE LEG; IS THAT CORRECT, SORT

5 OF LIKE THAT?

6 A SURE. YOU CAN DO THAT, YES.

7 Q OKAY.

8 A RIGHT.

9 Q WHAT WE ARE -- ARE WE LOOKING AT, IN

10 THIS TOP PHOTOGRAPH, A PIECE OF BONE THAT HAS
11 TOTALLY BEEN BROKEN AWAY FROM THE UPPER AND LOWER
12 PORTION?

13 A IT'S -- WELL, YES. IT LOOKS LIKE IT'S
14 STILL ATTACHED PROXIMALLY TO THE UPPER PART IN ONE
15 FOCAL POINT, AND IT APPEARS TO HAVE BEEN BROKEN AWAY
16 FROM THE DISTAL PORTION. SO YOU'RE SEEING THE TWO
17 PARTS OF THE FEMUR WITH THAT ANGULATED PORTION
18 DISLODGED.

19 Q BASICALLY, WHAT YOU'RE SAYING IS THAT
20 IT'S BROKEN HERE AND HERE (POINTING); IS THAT
21 CORRECT?

22 A YES, THAT'S CORRECT.

23 Q OKAY. AND THEN THIS AREA HERE
24 (POINTING), WHERE THESE TWO PHOTOGRAPHS MEET, IS
25 WHERE THE KNEE IS; IS THAT CORRECT?

26 A YES.

27 Q AND THEN IT'S ALSO FRACTURED DOWN HERE?

28 A OF THE TIBIA, THE LARGER -- YOU SEE THE

42716

1 WIDER OF THE TWO BONES OVER TO YOUR LEFT IS THE
2 TIBIA, AND YOU CAN SEE THAT'S BROKEN.

3 Q SO WE CAN ACTUALLY COUNT THREE BREAKS OR
4 FRACTURES; IS THAT CORRECT, ONE, TWO, AND THREE?

5 A YES, THAT'S RIGHT. THE FEMUR, TWO, AND
6 THE TIBIA.

7 Q NOW, CAN YOU TELL JUST FROM LOOKING AT
8 THAT WHETHER ALL OF THOSE WERE CAUSED BY THE SAME
9 SHOT OR WHETHER ONE OR MORE OF THEM MIGHT HAVE BEEN
10 CAUSED BY ONE OF THE OTHER SHOTS THAT STRUCK THE
11 LEG?

12 A I COULD NOT TELL YOU IF THEY ALL WERE
13 CAUSED BY 8. I BELIEVE IT'S NOT LIKELY THAT THE
14 TIBIAL FRACTURE WAS CAUSED BY 7. SO YOU COULD HAVE
15 7 AND 8, BOTH PRODUCING FRACTURES. YOU COULD HAVE
16 ALL THE FRACTURES CAUSED BY NO. 8. BUT I DON'T
17 THINK YOU COULD HAVE ALL THOSE FRACTURES CAUSED BY
18 NO. 7.

19 Q SO IT COULD --

20 A ONE OR MORE MIGHT HAVE BEEN CAUSED BY 7
21 AND ONE OR MORE MIGHT HAVE BEEN CAUSED BY SHOT 8.
22 THE FEMORAL FRACTURE COULD HAVE BEEN CAUSED BY 7.
23 THE FEMORAL FRACTURE COULD HAVE BEEN CAUSED BY 8;
24 AND THE TIBIAL FRACTURE COULD HAVE BEEN CAUSED BY 8.

25 Q OKAY. AND IN YOUR OPINION, WOULD A
26 PERSON BE ABLE TO KEEP STANDING ON THAT LEG ONCE A
27 PERSON RECEIVED ONE OF THOSE FRACTURES TO THE LEG?

28 A NO, NOT FOR ANY PERIOD BEYOND A COUPLE

1 OF SECONDS. I MEAN, IF YOU HAD SOMETHING TO LEAN ON
2 OR AGAINST, USING THEN THE RIGHT LEG -- BUT IF
3 YOU'RE ASKING ME COULD YOU STAND ON THAT LEFT LEG
4 TOO, THE ANSWER IS NO, YOU COULDN'T STAND ON THAT
5 LEFT LEG BEYOND, YOU KNOW, A COUPLE OF SECONDS.

6 Q SHOWING YOU THE X RAYS OF THE LEFT LEG
7 OF JOSE MENENDEZ, DOES THAT ALSO DEPICT A FRACTURE
8 WHICH RESULTED FROM THAT SHOT TO HIS LEFT LEG?

9 A YES, THAT'S CORRECT.

10 Q AND IN YOUR OPINION, IS THIS THE TYPE OF
11 FRACTURE THAT ONE COULD CONTINUE TO STAND ON FOR ANY
12 PERIOD OF TIME AFTER ONE RECEIVED THAT FRACTURE?

13 A HERE, I KNOW THERE'S A LITTLE LESS
14 DISLODGEEMENT. YOU WOULDN'T BE ABLE TO STAND ON IT
15 LONG. YOU MIGHT BE ABLE TO STAND ON IT FOR A COUPLE
16 OF FEW SECONDS. A MAN MR. MENENDEZ' SIZE, STRONG
17 MAN WITH GOOD MUSCULATURE AND A STRONG RIGHT LEG,
18 COULD HAVE REMAINED STANDING FOR A COUPLE OF FEW
19 SECONDS IF HE WERE BALANCING HIMSELF. BUT YOU WOULD
20 NOT BE ABLE TO STAND ON IT DIRECTLY PUTTING WEIGHT
21 ON IT, AND YOU COULD NOT AMBULATE ON IT.

22 Q NOW, IF MARY MENENDEZ WERE TO HAVE
23 RECEIVED THE SHOTS TO THE LEG, ONE OR MORE SHOTS TO
24 THE LEG, YOU DO NOT ANTICIPATE THAT SHE WOULD HAVE
25 REMAINED STANDING TO RECEIVE OTHER SHOTS TO THE
26 UPPER TORSO AFTER RECEIVING THOSE SHOTS TO THE LEG,
27 DO YOU?

42718

1 TIMING. MY UNDERSTANDING -- AND I HAVE NOT DEALT
2 WITH THE TIMING OF THIS -- BUT I DO KNOW THAT WHICH
3 I BELIEVE IS NOT IN CONTENTION; THAT TWO PEOPLE WERE
4 SHOOTING; AND THAT THE SHOOTING TOOK PLACE IN A VERY
5 SHORT PERIOD OF TIME; AND THE SHOOTING WAS GOING ON
6 ESSENTIALLY SIMULTANEOUSLY.

7 SO WHEN YOU ASK ME: COULD SOMEONE HAVE
8 SUSTAINED OTHER WOUNDS, YOU COULD HAVE THAT WOUND
9 AND THEN AT THE SAME TIME, OR ANY FRACTION OF A
10 SECOND HAVE ANOTHER WOUND, AND THEN ANOTHER SECOND
11 OR TWO ANOTHER ONE. SO YOU'RE TALKING ABOUT A VERY
12 TIGHT PERIOD OF TIME.

13 AGAIN, I DON'T THINK YOU COULD STAND ON
14 THAT LEG BEYOND A COUPLE OR A FEW SECONDS, UNLESS
15 YOU WERE BALANCING YOURSELF IN SOME FASHION ON YOUR
16 GOOD LEG. AND I DON'T BELIEVE YOU COULD AMBULATE
17 WITHOUT HOBBLING, DRAGGING IT, IN CRIPPLED FASHION.

18 BUT WITHIN A COUPLE OF SECONDS OR SO,
19 WITH TWO PEOPLE SHOOTING, COULD YOU HAVE RECEIVED
20 ANOTHER WOUND AFTER HAVING RECEIVED THAT LEG WOUND?
21 THE ANSWER IS YES.

22 Q NOW, IN ORDER FOR THAT WOUND TO TAKE

23 PLACE, I BELIEVE THAT YOU INDICATED THAT YOU AGREED
24 WITH -- THAT ONE OF THE WOUNDS, SHOT 8, MAY HAVE
25 ENTERED THE BOTTOM OF THE LEFT LEG, PASSED THROUGH
26 AROUND THE KNEE AREA, AND ENTERED THROUGH THE TOP OF
27 THE LEFT LEG.

28 A WENT OUT THE POPLITEAL SPACE AND BACK ON

42719

1 THE TOP, HIGHER UP ON THE POPLITEAL SPACE.

2 Q IN ORDER FOR THAT WOUND TO TAKE PLACE
3 WHILE IN A STANDING POSITION, THE VICTIM IN THIS
4 CASE WOULD HAVE HAD TO HAVE HAD HER LEG IN SOME SORT
5 OF A POSITION LIKE THIS (DEMONSTRATING); IS THAT
6 CORRECT?

7 A YES. I THINK THAT THAT WOUND, WITH THE
8 ENTRANCE AND RE-ENTRANCE AND THE BENDING OF THE
9 KNEE, APPEARS TO STRONGLY SUGGEST THAT SHE WOULD
10 HAVE BEEN IN SOME KIND OF A SEMI-RECLINING POSITION,
11 OR THE LEG WOULD HAVE BEEN BENT SOMEWHAT AS YOU JUST
12 SHOWED, BUT NOT STANDING.

13 IN OTHER WORDS, IF YOU WERE LYING DOWN
14 KIND OF ON YOUR SIDE, YOUR RIGHT SIDE, WITH YOUR
15 LEFT LEG HIGHER UP AND BENT, AS YOU ATTEMPTED TO
16 SHOW IT, THAT IS WHAT, YOU KNOW, SEEMS TO MAKE A LOT
17 OF SENSE HERE AS A DISTINCT POSSIBILITY.

18 Q IT WOULD ALSO BE CONSISTENT WITH HER
19 COMPLETELY LYING ON THE FLOOR ON HER BACK; IS THAT
20 CORRECT?

21 A IT COULD DONE. I'M JUST THINKING MORE
22 AT AN ANGLE, IF SOMEBODY IS SHOOTING DOWNWARD,
23 BECAUSE THERE'S NOT A BACK-TO-FRONT DIRECTION, AS
24 WE'RE TOLD BY DR. GOLDEN. JUST SEEMS TO ME THAT
25 IT'S LIKELY THAT IT WOULD BE A LITTLE BIT HIGHER, SO
26 THAT YOU WOULD NOT HAVE THE SIDE-TO-SIDE OR
27 BACK-TO-FRONT ANGULARITY THEY THAT YOU WOULD HAVE TO
28 A GREATER DEGREE IF THE PERSON WERE DOWN ON THE

42720

1 FLOOR AND THE SHOOTER WAS SHOOTING AT THE PERSON
2 DOWN ON THE FLOOR. JUST SEEMS TO FIT MORE WITH
3 SOMEBODY ON THE COUCH, PROBABLY A LITTLE BIT HIGHER
4 UP.

5 BUT I CAN'T RULE OUT THAT POSSIBILITY.
6 WITH THAT LEG BENT IN THAT POSITION, THAT'S
7 POSSIBLE.

8 Q THE WOUND WE'RE TALKING ABOUT HERE IS
9 THIS WOUND DEPICTED IN 189; IS THAT CORRECT?

10 A YES, THAT'S CORRECT.

11 Q YOU'RE SAYING THIS WOUND IS MORE
12 CONSISTENT WITH THE VICTIM IN THIS CASE BEING ON THE

13 SOFA AT THE TIME THAT THE SHOT IS FIRED?

14 A I SAID THAT'S ONE POSSIBLE SCENARIO,
15 WITH THE LEG BENT IN SUCH A WAY THAT YOU COULD GET
16 THE ENTRANCE-EXIT AND RE-ENTRANCE, AND THAT IS
17 CONSISTENT WITH MRS. MENENDEZ HAVING BEEN LYING ON
18 THE COUCH IN A KIND OF A SEMI-RECLINING POSITION,
19 WITH THAT LEFT LEG SOMEWHAT BENT AT THE KNEE.

20 Q BUT THAT POSSIBILITY IS NO MORE LIKELY
21 THAN MRS. MENENDEZ LYING ON HER BACK ON THE FLOOR;
22 IS THAT CORRECT?

23 A WELL, FIRST OF ALL, IT WOULDN'T HAVE
24 BEEN ON HER BACK, I DON'T THINK. IT WOULD HAVE BEEN
25 MORE OR LESS ON HER RIGHT SIDE.

26 AND SECONDLY, THE ANSWER IS, IN PART,
27 WHAT I SAID BEFORE, ABOUT THE ANGLE. THERE'S A
28 GREATER ANGLE AS YOU SHOOT DOWN THAN WHEN YOU SHOOT

42721

1 SOMEBODY WHO'S ELEVATED HIGHER ON THE COUCH. IT'S
2 WHAT I SAID BEFORE. BUT I CANNOT RULE IT OUT. IT
3 WOULD DEPEND ON EXACTLY HER POSITION, THE EXACT
4 POSITION OF THE SHOOTER. IT KEEPS COMING BACK TO
5 WHAT I SAID BEFORE. THERE ARE DIFFERENT SCENARIOS
6 POSSIBLE HERE.

7 Q NOW, YOU ALSO SAID THAT SHOT -- YOU WOULD

8 LINK TOGETHER SHOT, RATHER, WOUND 7 AND WOUND 9
9 DESCRIBED BY DR. GOLDEN, WHICH IS THE WOUND TO THE
10 CALF AND THE WOUND TO THE LEFT THIGH OF KITTY
11 MENENDEZ; IS THAT CORRECT?

12 A I SAID THAT THAT WAS A POSSIBILITY THAT
13 INDEED I WOULD CONSIDER. I CAN'T STATE THAT WITH
14 ABSOLUTE CERTAINTY OR WITH REASONABLE MEDICAL
15 PROBABILITY. BUT I THINK THAT IT IS SOMETHING THAT
16 IS QUITE REASONABLE THAT WOULD HAVE TO BE CONSIDERED
17 HERE.

18 Q OKAY. AND THE SHOT THAT WE HAVE JUST
19 FINISHED TALKING ABOUT, THAT IS THE ONE THAT WENT
20 THROUGH THE KNEE AREA, I BELIEVE AS DEPICTED IN AN
21 ILLUSTRATION THAT HAS BEEN MARKED SHOT 10B.

22 YOU SAID THAT IF THIS ILLUSTRATION -- AS
23 I UNDERSTAND YOUR TESTIMONY, IF MARY MENENDEZ WERE
24 TO BE MORE ON HER RIGHT SIDE AT THE TIME THAT THIS
25 PARTICULAR SHOT WAS INFLICTED, THEN YOU WOULD NOT
26 NECESSARILY -- YOU WOULD NOT DISAGREE WITH THAT
27 ILLUSTRATION AS DEPICTING ONE OF THE SHOTS IN THIS
28 CASE, WOULD YOU?

42722

1 A WELL, I'LL REPEAT WHAT I SAID. THAT I
2 CANNOT RULE OUT THE POSSIBILITY. BUT AGAIN, IF YOU

3 JUST THINK OF THIS AS A SHOT COMING IN TO SOMEBODY
4 LYING DOWN, AND LOOKING AT WHAT IS DEPICTED HERE,
5 THEN YOU HAVE TO, I BELIEVE, SPECULATE THAT THE
6 SHOOTER IS IN A CROUCHED POSITION; NOT IMPOSSIBLE,
7 BUT I'M SAYING THAT IF MRS. MENENDEZ WERE HIGHER UP
8 ON THE COUCH, YOU COULD HAVE A TRAJECTORY VERY
9 SIMILAR TO THAT WITHOUT THE SHOOTER BENDING DOWN IN
10 A CROUCHED POSITION.

11 SO THAT WHICH IS POSSIBLE IS ONE THING.
12 THAT WHICH IS MORE LIKELY AND REASONABLE IS ANOTHER.

13 Q WELL, RATHER THAN THE SHOOTER BEING IN A
14 CROUCH POSITION, COULDN'T THE SHOOTER ALSO BE
15 HOLDING THE GUN ALONGSIDE HIS WAIST, AS I AM DOING
16 NOW?

17 A SURE. THE LOWER THE GUN IS, THE MORE
18 YOU TAKE CARE OF THAT. IF YOU POSTULATE THAT
19 SOMEBODY'S HOLDING THE GUN AND SHOOTING DOWN HERE,
20 THAT DECREASES THE ANGLE TO WHICH I WAS REFERRING.
21 THAT'S RIGHT. IF YOU THINK THAT'S MORE LIKELY THAN
22 HOLDING THE GUN AND SHOOTING IT IN THIS FASHION, I
23 CAN'T ARGUE WITH YOU. IT'S JUST A MATTER, AGAIN, OF
24 POSSIBLE VARIATIONS ON THE THEME. I HAVE NO WAY OF
25 KNOWING THIS. I HAVE NO WAY OF KNOWING THAT THIS IS
26 ANYMORE CORRECT THAN SOME VARIATION ON THAT.

27 PLEASE -- I'M SORRY. I DON'T WANT TO
28 INTERRUPT YOU. BUT JUST ONE MORE -- PLEASE KEEP IN

1 MIND THAT BETWEEN POSITIONS A AND B YOU HAVE ANOTHER
2 RANGE WITH SOMEBODY MOVING, FALLING, DUCKING,
3 TWISTING, JERKING. YOU SEE WHAT I MEAN?

4 SO WHILE YOU'RE TALKING ABOUT A COUPLE
5 OF FEET, YOU'RE TALKING ABOUT NOT ONLY POSITION ONE
6 AND POSITION TWO, BUT YOU REALLY ARE THEN TALKING
7 ABOUT VARIOUS GRADATIONS BETWEEN THOSE TWO
8 POSITIONS.

9 Q NOW, WHEN YOU REFER TO LINKING TOGETHER
10 WOUND 7 AND WOUND 9, AS DESCRIBED BY DR. GOLDEN,
11 WHICH IS THE WOUND TO THE CALF AND THE WOUND TO THE
12 UPPER THIGH WHICH YOU ARE REFERRING TO, THEN AS A
13 TRAJECTORY WHICH IS VERY SIMILAR TO THE WOUND WHICH
14 HAS BEEN DESCRIBED AS WOUND 8, WHICH IS ILLUSTRATED
15 IN SHOT 10-B, AND THAT IS A WOUND OR A COMBINATION
16 OF WOUNDS IN WHICH THE TRAJECTORY IS SOMEWHAT
17 PARALLEL TO THE OTHER; IS THAT CORRECT?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR.
19 MISSTATES THE EVIDENCE. ASSUMES FACTS NOT IN
20 EVIDENCE AND IS ARGUMENTATIVE.

21 THE COURT: OVERRULED.

22 THE WITNESS: THERE IS SOME SIMILARITY. I
23 WOULDN'T SAY PARALLEL. BUT I WOULD AGREE WITH YOU,
24 THERE WOULD BE SOME SIMILARITY IN THE DIRECTION OF
25 THE WOUNDS. THERE WOULD BE MORE OF AN UPWARD
26 DIRECTION FROM 9 TO 7 THAN IN 8. BUT THEY ARE NOT

27 DISSIMILAR. THERE IS SOME SIMILARITY OF THE

28 DIRECTION OR TRAJECTORY.

42724

1 Q BY MR. CONN: WOULD IT ALSO BE YOUR
2 OPINION THEN THAT FOR THAT PARTICULAR SHOT, THAT
3 MARY MENENDEZ MAY HAVE REMAINED ON THE COUCH WITH
4 HER LEG EXTENDED IN THE SAME WAY THAT YOU HAD
5 PREVIOUSLY REFERRED, IN WHICH SHE JUST KEPT HER LEG
6 UP IN THAT POSITION WHILE TWO SHOTS WERE FIRED INTO
7 HER LEG, ONE GOING THROUGH THE TOP FORWARD AND THE
8 OTHER LOWER INTO THE CALF, AND THEN INTO THE THIGH?

9 A YES. SHE COULD HAVE BEEN IN THE SAME
10 RECLINING POSITION ON THE COUCH WHEN WOUND 8 WAS
11 INFLICTED AND WHEN WOUND 9 ON INTO 7 WERE INFLICTED.

12 Q AND DID YOU SEE ANY BLOW-OUT ON THE
13 COUCH THAT WOULD BE CONSISTENT WITH THE THEORY THAT
14 ALL OF THESE SHOTS TO HER LEG WERE OCCURRING WHILE
15 SHE WAS ON THE SOFA?

16 A THE ANSWER IS, AS I'VE SAID BEFORE, I
17 DON'T KNOW WHAT WAS FOUND BECAUSE THERE IS NO
18 DETAILED CRIME-SCENE ANALYSIS. THERE IS BLOOD
19 STAINING; AND WHETHER THERE WAS A SMALL PIECE OF
20 TISSUE, WHETHER THERE WERE SMALL FRAGMENTS OF TISSUE
21 ADMIXED WITH THE BLOOD, I DO NOT KNOW. THE COLOR OF

22 THE COUCH MAKES IT EVEN MORE DIFFICULT TO DISCERN
23 THAN ON THESE PHOTOS.
24 Q WELL, IN LOOKING AT THE PHOTOGRAPH THAT
25 HAS BEEN MARKED AS 75 FOR IDENTIFICATION, DID YOU
26 SEE ANY BLOW-OUT ON THIS SOFA HERE THAT WOULD HAVE
27 BEEN CONSISTENT WITH ALL OF THE BLOW-OUT THAT YOU'RE
28 SAYING SHE MAY HAVE RECEIVED TO THESE WOUNDS TO HER

42725

1 LEG?

2 A WELL, AGAIN, THE ANSWER IS AS I'VE GIVEN
3 YOU. I DON'T KNOW WHAT'S ON THE COUCH. YOU CAN SEE
4 THAT THERE ARE SEVERAL PILLOWS THERE. I HAVE NO WAY
5 OF KNOWING WHAT IS ON OR BENEATH OR BEHIND THOSE
6 PILLOWS. I SEE SOME BLOOD STAINS ON THE COUCH. I
7 DO NOT KNOW WHAT IS MIXED WITH THEM. I SEE A FAIR
8 AMOUNT OF BLOOD THEN ON THE FLOOR; AND REMEMBER
9 THIS, KEEP THIS IN MIND; THAT IF SHE IS LYING THERE,
10 AND IF THE LEFT LEG IS UPWARD AND IT IS SOMEWHAT
11 OVER THE EDGE OF THE COUCH, AND THAT IS THE WAY IN
12 WHICH SHE IS SHOT, THAT'S THE POSITION IN WHICH
13 SHE'S SHOT. THEN YOU COULD HAVE MUCH OF THE BLAST
14 EFFECT THEN GOING ON DOWN SO THAT VERY DENSE HEAVY
15 AREA OF DISCOLORATION, WHICH IS BLOOD, AND THERE
16 COULD HAVE BEEN SMALL PIECES OF TISSUE ADMIXED WITH

17 THAT BLOOD; THEN THAT INDEED COULD EXPLAIN SOME OF
18 THE WOUND RAMIFICATIONS FOR THOSE.

19 I JUST CANNOT TELL YOU BECAUSE YOU DON'T
20 HAVE A DETAILED CRIME-SCENE ANALYSIS THAT GOES
21 CUSHION BY CUSHION, PILLOW BY PILLOW, POINT BY
22 POINT, AND WHICH TALKS ABOUT TISSUE BEING PRESENT,
23 TISSUE BEING FOUND, TISSUE BEING REMOVED; EVEN WHERE
24 WE SEE THINGS WHICH MAY BE TISSUE, WE DON'T KNOW, I
25 DON'T KNOW FROM THE RECORDS I'VE STUDIED WHAT
26 HAPPENED TO THAT.

27 Q WOULD YOU AGREE, DOCTOR, THAT AT LEAST
28 IN LOOKING AT THE PHOTOGRAPHS THAT WERE TAKEN OF

42726

1 THIS CRIME SCENE, YOU DO NOT SEE ANY LARGE PIECES OF
2 TISSUE OR ANY LARGE AREAS OF BLOOD-POOLING ANYWHERE
3 IN THE SOFA, BUT YOU DO SEE SUCH POOLING ON THE
4 FLOOR?

5 A I AGREE. I DON'T SEE ANY, EXCEPT WHERE
6 MR. MENENDEZ WAS SITTING, THERE'S A LARGE POOL OF
7 DRIED BLOOD. THE REST OF THE COUCH DOES NOT SHOW
8 ANY EXTENSIVE STAINS. BUT AGAIN, WHAT I'M TALKING
9 ABOUT HERE WOULD BE SMALL PIECES OF TISSUE, MOSTLY
10 SUBCUTANEOUS FAT OR SMALL PIECES OF MUSCLE. I'M NOT
11 TALKING ABOUT LARGE MASSES OF TISSUE.

12 Q WELL, DOCTOR, IN YOUR TESTIMONY YOU
13 TALKED ABOUT THE LIKELIHOOD OF HOW VARIOUS THINGS
14 HAPPEN. WOULDN'T YOU AGREE THAT IN LIGHT OF THE
15 FACT THAT THERE IS NOT VERY MUCH POOLING OF BLOOD ON
16 THE SOFA AND THERE'S NO VISIBLE PIECES OF TISSUE,
17 AND CONSIDERING THE FACT THAT THERE IS SUCH BLOOD ON
18 THE FLOOR WHERE THE BODY OF KITTY MENENDEZ WAS
19 FOUND, ISN'T IT MORE LIKELY THAT SHE RECEIVED BOTH
20 OF THOSE SHOTS TO HER LEG WHILE HER LEG WAS RESTING
21 ON THE FLOOR, THAN IF SHE WAS LEANING AGAINST THE
22 SOFA OR KEEPING HER LEG IN THE SAME POSITION WHILE
23 SHE WAS BEING BLASTED IN THE INSIDE OF THE LEG?

24 MS. ABRAMSON: I'M GOING TO OBJECT.
25 ARGUMENTATIVE. COMPOUND.

26 THE COURT: OVERRULED.

27 THE WITNESS: NO. I DON'T AGREE. I THINK
28 THAT SHE COULD HAVE BEEN IN EITHER POSITION, FOR THE

42727

1 REASON THAT I'VE GIVEN; NAMELY, THE ANGULARITY. I
2 THINK IT'S VERY LIKELY THAT SHE WAS ON THE COUCH.
3 SHE COULD HAVE BEEN LYING ON THE FLOOR WHEN SHE
4 RECEIVED THOSE WOUNDS, BUT SHE COULD HAVE BEEN ON
5 THE EDGE OF THE COUCH, WITH THE LEG EVEN OVER THE
6 EDGE, SO TO SPEAK; AND THEN SHE COULD HAVE FALLEN TO

7 THE FLOOR.

8 ANY OF THESE ARE POSSIBLE, AND I CANNOT
9 RULE OUT CERTAIN THINGS AS A MATTER OF PHYSICAL
10 IMPOSSIBILITY.

11 Q BY MR. CONN: 197 DEPICTS A PHOTOGRAPH
12 SHOWING THE WOUNDS TO THE RIGHT ARM OF KITTY
13 MENENDEZ, AND I BELIEVE YOU INDICATED IN YOUR
14 TESTIMONY THAT YOU ASSOCIATE THOSE TWO WOUNDS TO THE
15 RIGHT ARM OF KITTY MENENDEZ AS POSSIBLY BEING PART
16 OF THE SAME SHOT; IS THAT CORRECT?

17 A YES. I DO BELIEVE THAT THEY WERE PART
18 OF THE SAME SHOT.

19 Q I BELIEVE YOU ALSO INDICATED THAT IN
20 YOUR OPINION KITTY MENENDEZ MAY HAVE RECEIVED THAT
21 WOUND WHILE SHE WAS STANDING UP; THAT IS, THESE TWO
22 WOUNDS HERE. SHE MAY HAVE RECEIVED THAT WHILE SHE
23 WAS STANDING?

24 MS. ABRAMSON: I'M GOING TO OBJECT. THERE
25 WAS NO SUCH QUESTION POSED TO THIS WITNESS. BEYOND
26 THE SCOPE OF DIRECT.

27 THE COURT: OVERRULED AS TO BEYOND THE SCOPE.

28 REPHRASE THE QUESTION.

42728

1 Q BY MR. CONN: YES. IS IT YOUR OPINION,

2 DOCTOR, THAT THAT WOUND MIGHT HAVE BEEN INFLICTED
3 WHILE KITTY MENENDEZ WAS STANDING UP?

4 A WE HAVEN'T TALKED ABOUT THAT. AS
5 MRS. MENENDEZ WOUND NO. 5, I BELIEVE THAT THOSE TWO
6 WOUNDS THAT WE SEE ARE PART OF ONE SHOTGUN BLAST,
7 AND I THINK THAT MOST LIKELY SHE WAS STANDING UP.

8 Q OKAY. IN ORDER FOR -- IN ORDER FOR HER
9 TO RECEIVE THAT WOUND TO THE FOREARM AND THEN THAT
10 WOUND TO THE UPPER ARM, CAN YOU TELL US WHERE THE
11 SHOOTER WOULD HAVE TO BE IN ORDER FOR THAT
12 TRAJECTORY TO WORK OUT?

13 A I CAN'T TELL YOU EXACTLY WHERE THE
14 SHOOTER WOULD HAVE TO BE. IT WOULD DEPEND ON HOW
15 MRS. MENENDEZ WAS POSITIONED, HOW THE ARM WAS
16 POSITIONED. IT LOOKS, MOST LIKELY, LIKE THE ARM WAS
17 PROBABLY FLEXED AT THE ELBOW. BUT EXACTLY WHERE SHE
18 WAS IN RELATIONSHIP TO THE SHOOTER, I CAN'T TELL
19 YOU.

20 Q WOULD YOU AGREE THAT IN ORDER FOR THESE
21 WOUNDS TO LINE UP, THE SHOT MUST BE FIRED IN A
22 POSITION UPWARDS TOWARD HER BODY AS I AM NOW
23 INDICATING WITH MY PEN?

24 A NO, NOT NECESSARILY. IF HER ARM IS UP
25 THUSLY, A KIND OF A PROTECTIVE-DEFENSIVE POSITION,
26 THEN YOU DON'T HAVE MUCH OF AN UPWARD -- YOU GOT ONE
27 PART HERE AND ONE PART HERE. IT'S PRETTY MUCH ON A
28 LEVEL. THAT'S THE PROBLEM THAT YOU HAVE. YOU CAN

1 MOVE THAT ARM. SOMEBODY IS SHOOTING AT ME. I DON'T
2 KNOW WHAT I'M GOING TO BE DOING. YELLING,
3 SCREAMING, RUN. MY ARM IS THIS WAY (INDICATING).
4 MY ARM IS THIS WAY. THERE'S NOBODY IN THE WORLD
5 THAT KNOWS THAT.

6 THAT'S THE ABSURDITY OF ATTEMPTING TO
7 COME IN WITH DRAWINGS AND DIAGRAMS TO PRETEND
8 THERE'S A WAY OF KNOWING THROUGH FORENSIC
9 PATHOLOGICAL LITERATURE, HUMAN BEING EXPERIMENTS, OR
10 SO ON, HOW A PERSON MOVES WHEN THEY'RE SHOT AND HOW
11 A PERSON REACTS WHEN THEY ARE BEING SHOT AT.
12 THERE'S NOBODY IN THE WORLD THAT KNOWS THAT.

13 Q SHOWING YOU PHOTOS 194 AND 199, I
14 BELIEVE THAT YOU INDICATED THAT YOU WOULD LINK THE
15 WOUND TO THE EYE, OR POSSIBLY ASSOCIATE THE WOUND TO
16 THE RIGHT EYE OF KITTY MENENDEZ, WHICH IS DEPICTED
17 IN 194, WITH THE WOUND TO THE CLAVICLE AND THE
18 MANDIBLE, WHICH IS DEPICTED IN 199.

19 A I SAID THAT WAS A POSSIBILITY. HER
20 WOUND 2 AND 3, I CANNOT STATE WITH REASONABLE
21 MEDICAL CERTAINTY, BUT I THINK THAT'S SOMETHING TO
22 BE CONSIDERED.

23 Q OKAY. NOW, IN ORDER TO LINK THOSE TWO
24 WOUNDS --

25 A OR THEY COULD BE SEPARATE.

26 Q OKAY. IN ORDER TO LINK THOSE TWO WOUNDS
27 THOUGH, WOULDN'T YOU SAY THAT -- CAN YOU TELL US
28 ANYTHING ABOUT THE TRAJECTORY BY WHICH YOU MIGHT BE

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1 ABLE TO SHOOT OR HIT THE VICTIM IN THIS CASE, BOTH
2 IN THE MANDIBLE, IN THE CLAVICLE, AND THE MANDIBLE
3 AND IN THE RIGHT EYE AS WELL?

4 A IF YOU HAVE YOUR HEAD DOWN THUSLY, YOU
5 WILL SEE THAT THE CLAVICLE, WHICH IS THE COLLARBONE,
6 THE MANDIBLE, WHICH IS THE LOWER JAW BONE, YOU WILL
7 SEE THAT THEY ARE VERY, THEN, CLOSE TO EACH OTHER;
8 AND YOUR EYE THEN COMES DOWN PRETTY CLOSE TOO
9 (DEMONSTRATING).

10 SO THAT'S ALL I'M SAYING. IT IS A
11 POSSIBILITY. BUT THEY COULD WELL BE TWO SEPARATE
12 WOUNDS. I DON'T KNOW. AND I HAVE NO PROBLEM IN
13 THEIR BEING TWO SEPARATE WOUNDS. I JUST SAID THAT
14 IT'S A POSSIBLE CONSIDERATION TO CONTEMPLATE THAT
15 THEY COULD HAVE BEEN PART OF THE ONE SHOTGUN BLAST.
16 IT'S NOT -- FOR ME IT'S NOT A PROBLEM OF ANY MOMENT
17 OR CONCERN.

18 Q WHEN YOU CONSIDER THE SPREAD PATTERN OF
19 THE SHOTGUN BLAST THAT WOULD INFLICT ALL OF THOSE
20 WOUNDS TOGETHER, DO YOU SEE A DIFFICULTY WITH THAT

21 SCENARIO IN LIGHT OF THE FACT THAT THERE APPEARS TO
22 BE SORT OF A TIGHT GROUPING AROUND THE EYE; AND THEN
23 THERE IS VERY LITTLE INJURY AROUND THE CHEEK. AND
24 THEN THERE IS INJURY TO BOTH THE CLAVICLE AND
25 MANDIBLE AREA, WITH THAT UNHARMED AREA OF THE CHEEK
26 IN BETWEEN.

27 A YOU MAKE A GOOD POINT. AND THE ONLY
28 POSSIBLE EXPLANATION TO THAT IS, AGAIN, IF THE FACE

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1 IS DOWN TOWARDS THE SHOULDER AREA, THEN YOU COULD
2 HAVE SOME PROTECTION FOR THE CHEEK AREA, WITH MORE
3 DAMAGE TO THE MANDIBLE AND TO THE EYE, WITH SOME
4 PROTECTION OF THE CHEEK AREA. BUT IT COULD ONLY BE
5 EXPLAINED IN THAT FASHION, AND THAT WOULD BE THE
6 STRONGEST ARGUMENT WHY THEY WOULD NOT BE PART OF THE
7 SAME WOUND, THE FACT THAT YOU HAVE A RELATIVELY
8 SPARED AREA OF THE RIGHT CHEEK.

9 Q OKAY. WELL, DOCTOR, IF, IN FACT, HER
10 FACE WAS IN THAT DOWN POSITION AS YOU HAVE JUST
11 INDICATED, SO HER CHEEK IS NEXT TO HER RIGHT
12 SHOULDER, IS IT YOUR TESTIMONY THAT IT WOULD BE YET
13 ANOTHER SHOT THAT SHE COULD HAVE RECEIVED WHILE SHE
14 WAS IN THE STANDING POSITION?

15 A SURE. IF SHE'S INJURED AND WOUNDED AND

16 SHE'S SLUMPING OR FALLING AND AT THAT PRECISE MOMENT

17 SHE'S STRUCK AGAIN, SURE.

18 Q CAN YOU TELL US HOW THE SHOOTER WOULD

19 HAVE POSITIONED HIMSELF SO AS TO SHOOT HER HERE IN

20 THE CLAVICLE AND THEN IN THE MANDIBLE, ALL IN THE

21 EYE AREA AT THE SAME TIME?

22 A JUST STRAIGHT ON. THERE'S NO CONTORTION

23 INVOLVED IN THAT. SOMEBODY AT THAT LEVEL AND IN

24 THAT POSITION, AND YOU JUST SHOOT THEM. YOUR GUN

25 COULD BE HELD ANYWHERE, I THINK, PROBABLY BETWEEN

26 YOUR OWN LOWER SHOULDER AND WASTE AREA.

27 Q NOW, YOU SAID THAT THE LAST WOUND TO

28 KITTY MENENDEZ WAS THE WOUND TO THE RIGHT CHEEK; IS

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1 THAT CORRECT?

2 A NO, SIR. THE LEFT CHEEK.

3 Q LEFT CHEEK. I'M SORRY.

4 A NO. 1, AS DESCRIBED BY DR. GOLDEN.

5 Q AND YOU CONCLUDED THAT THAT WAS THE LAST

6 WOUND RECEIVED BASED UPON WHAT EVIDENCE?

7 A WELL, I BELIEVE THAT THE OTHER WOUNDS

8 CLEARLY WERE INCURRED BEFORE, AND I BELIEVE THAT THE

9 WOUND TO THE LEFT CHEEK IS THE ONE THAT DID THE MOST

10 PENETRATING DAMAGE AND WOULD HAVE BEEN THE MOST

11 RAPIDLY LETHAL WOUND; AND THEN, BASED UPON
12 DR. GOLDEN'S SUPPLEMENTAL REPORT OF 1995, SEPTEMBER
13 15TH, 1995, HE TALKS ABOUT A LACK OF REACTION,
14 PARENTHESIS, HEMORRHAGING, END OF PARENTHESIS.

15 BASED UPON THAT OBSERVATION, WHICH I
16 THINK IS QUITE IMPORTANT, I WOULD CONCUR, THAT THAT
17 WOUND IS PROBABLY PERIMORTEM, AROUND THE TIME OF
18 DEATH. SO IT JUST FITS IN.

19 ALSO, COMING IN ON THE LEFT SIDE, AND
20 SHE IS ON THE GROUND AND SO ON. IT FITS IN WITH IT
21 BEING THE LAST WOUND.

22 Q AND ALL OF THE OTHER WOUNDS THAT SHE
23 RECEIVED WERE ANTEMORTEM; IS THAT CORRECT?

24 A I DO BELIEVE THEY WERE.

25 MR. CONN: THANK YOU.

26 I NO FURTHER QUESTIONS.

27 THE COURT: ANY REDIRECT?

28 MS. ABRAMSON: JUST ONE QUESTION. I REALIZE

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1 IT'S LATE IN THE DAY.

2

3 REDIRECT EXAMINATION

4 BY MS. ABRAMSON:

5 Q DR. WECHT, IN YOUR REPORT YOU AFFILIATED

6 THE HAND WOUND, THE RIGHT-HAND WOUND OF

7 MRS. MENENDEZ TO 2 OR 3.

8 A YES. I SAID MOST LIKELY 3, OR POSSIBLY

9 2; OR 2; AND IF 2 AND 3 WERE FROM THE SAME ORIGIN,

10 THEN IT WOULD BE 2, 2 AND 3.

11 THE HAND WOUND THAT YOU REFERRED TO,

12 MRS. ABRAMSON, IS WOUND NO. 10, JUST SO EVERYBODY

13 WILL HAVE IT FOR THE RECORD. NOT THE ARM WOUND, NO.

14 5, BUT THE HAND WOUND, BLASTING THE RIGHT THUMB, NO.

15 10.

16 Q YES. I KNOW.

17 A I'M NOT TELLING YOU. I JUST --

18 Q YOU'RE RIGHT.

19 A YOU WANT TO REFER TO THIS ON THE RECORD.

20 Q HERE'S MY QUESTION THOUGH.

21 COULD THE HAND PLACEMENT UP NEAR THE

22 CHEEK ACCOUNT FOR THAT AREA OF THE CHEEK ON THE

23 RIGHT SIDE THAT DOESN'T HAVE PELLETS?

24 A YES. VERY GOOD. YES. A HAND IN THAT

25 AREA WOULD FIT IN TO GIVE YOU THE PROTECTION OF THE

26 RIGHT CHEEK AREA. THAT'S ANOTHER SCENARIO.

27 AGAIN, I'M NOT SAYING AH, THAT'S THE

28 ANSWER. IT IS ANOTHER EXPLANATION OF A PHYSICAL

1 POSSIBILITY, YES INDEED.

2 COULD SOMEBODY BRING THEIR HAND TO THEIR
3 FACE WHEN THEY KNOW THEY'RE GOING TO BE SHOT,
4 THEY'RE BEING SHOT AT? THE ANSWER IS YES.

5 MS. ABRAMSON: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ANYTHING ELSE?

7 MR. CONN: NO FURTHER QUESTIONS.

8 THE COURT: OKAY. THANK YOU. YOU MAY STEP
9 DOWN. YOU'RE EXCUSED.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU.

12 ALL RIGHT. WE'LL BE IN RECESS UNTIL
13 TOMORROW AT 8:30. DON'T DISCUSS THE MATTER WITH
14 ANYONE. DON'T FORM ANY FINAL OPINIONS IT. WE'LL
15 SEE YOU ALL BACK HERE TOMORROW AT 8:30.

16 (THE JURY EXITED THE COURTROOM AND
17 THE FOLLOWING PROCEEDINGS WERE HELD:)

18

19 THE COURT: WHO'S YOUR WITNESS TOMORROW
20 MORNING?

21 MS. ABRAMSON: MR. MORTON, YOUR HONOR. HE'S
22 COMING IN TONIGHT. OKAY. AND THEN ON WEDNESDAY
23 MORNING WE HAVE WHAT WE'VE COME TO CALL THE BOAT
24 PEOPLE; AND THEN WE'RE GOING TO NEED SOME, I
25 BELIEVE, EXTENSIVE 402 HEARINGS, VIS-A-VIS ERIK
26 MENENDEZ AND WHAT THE PEOPLE CAN PROPERLY
27 CROSS-EXAMINE HIM ON. WE'RE PREPARING SOME WRITTEN
28 MATERIAL FOR THE COURT'S ENJOYMENT ON THAT ISSUE.

1 THE COURT: OKAY. WE'LL BE IN RECESS UNTIL
2 TOMORROW MORNING.

3 (AT 4:23 P.M. PROCEEDINGS WERE
4 ADJOURNED UNTIL 8:30 A.M. THE
5 FOLLOWING DAY.)

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

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
6)
7 PLAINTIFFS,)
8)
9 VS.) NO. BA 068880
10)
11 ERIK GALEN MENENDEZ, AND)
12 JOSEPH LYLE MENENDEZ,)
13)
14 DEFENDANTS.)
15)

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
13 MONDAY, DECEMBER 4, 1995
14 VOLUME 255
15 PAGES 42559 THROUGH 42735

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APPEARANCES:
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2
3 FOR THE PEOPLE: GIL GARCETTI
4 DISTRICT ATTORNEY
5 BY: DAVID CONN, DEPUTY
6 AND
7 CAROL NAJERA, DEPUTY
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10 LOS ANGELES, CA 90012

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9 FOR THE DEFENDANT
10 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
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AND
TERRI TOWERY, DEPUTY
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CSR NO. 8608
MARILYN FADALE,
CSR NO. 4547
OFFICIAL REPORTERS

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LEGEND:

22 A = MS. ABRAMSON C = MR. CONN
G = MR. GESSLER L = MR. LEVIN
23 N = MS. NAJERA T = MS. TOWERY

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