

1 VAN NUYS, CALIFORNIA; TUESDAY, DECEMBER 5, 1995

2 9:10 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: IN THE TRIAL, EVERYONE IS PRESENT.

9 ARE WE READY TO RESUME?

10 MS. ABRAMSON: YES, YOUR HONOR.

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

12 (THE JURY ENTERS THE COURTROOM AND THE

13 FOLLOWING PROCEEDINGS WERE HELD:)

14

15 THE COURT: THE JURY IS IN COURT. GOOD MORNING,

16 LADIES AND GENTLEMEN.

17 WE ARE READY RESUME WITH THE TRIAL. THE

18 DEFENSE WILL BE RECALLING THE WITNESS WHO WAS ON THE

19 STAND BEFORE.

20 MS. ABRAMSON: YES. WE RECALL CHARLES MORTON.

21

22 CHARLES MORTON,

23 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN

24 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED

25 FURTHER AS FOLLOWS:

26

27 THE COURT: MR. MORTON, YOU WERE ON THE STAND ON

28 FRIDAY. I WILL REMIND YOU YOU ARE STILL UNDER OATH.

1 PLEASE STATE YOUR NAME FOR THE RECORD.

2 THE WITNESS: CHARLES V. MORTON, M-O-R-T-O-N.

3 THE COURT: YOU MAY CONTINUE YOUR DIRECT
4 EXAMINATION.

5

6 DIRECT EXAMINATION (CONTINUED)

7 BY MS. ABRAMSON:

8 Q. MR. MORTON, YOU PREVIOUSLY TESTIFIED THAT
9 YOU HAVE BEEN WORKING ON THIS CASE SINCE 1992, AND YOU
10 HAVE HAD AN OPPORTUNITY TO EXAMINE ALL OF THE
11 PHOTOGRAPHS AND TO EXAMINE ALL OF THE PHYSICAL EVIDENCE
12 THAT WAS COLLECTED FROM THE SCENE AND AT THE CORONER'S
13 OFFICE, CORRECT?

14 A. TO THE BEST OF MY KNOWLEDGE, YES.

15 Q. ALL RIGHT. NOW, YOU HAVE ALSO TESTIFIED
16 THAT YOU PURCHASED AN IDENTICAL MOSSBERG 50406 SHOTGUN
17 AND IDENTICAL AMMUNITION.

18 DID YOU CONDUCT A SERIES OF TEST-FIRINGS AT
19 VARIOUS DISTANCES WITH THAT FIREARM AND WITH THAT
20 IDENTICAL AMMUNITION?

21 A. YES, I DID.

22 Q. AND WHAT WAS YOUR PURPOSE IN CONDUCTING
23 THOSE TEST-FIRINGS?

24 A. JUST TO GET A ROUGH IDEA OF THE SPREAD AT
25 VARIOUS TARGET DISTANCES, AND ALSO TO TRY RESOLVE AN

26 ISSUE THAT CAME UP BETWEEN THE DIFFERENCE BETWEEN MY
27 OBSERVATIONS AND THOSE OF MR. MCCARTHY IN TERMS OF SHOT
28 PATTERN.

-22798

1 Q. OKAY. AND CAN YOU TELL US WHAT YOU MEAN BY
2 DIFFERENCES BETWEEN YOURSELF AND MR. MCCARTHY VIS-A-VIS
3 SHOT PATTERN?

4 A. YES. THE FIRST INFORMATION THAT I HAD
5 RECEIVED WAS THAT HE HAD USED THE FIOCCHI NO. 4 BUCKSHOT
6 FOR HIS TESTS, AND HIS TEST PATTERNS WERE SIGNIFICANTLY
7 SMALLER THAN MINE. THAT WAS BEFORE WE HAD DETERMINED
8 THAT HE HAD ACTUALLY USED AN AMMUNITION THAT HAD SHOT
9 CUPS RATHER THAN THOSE WITHOUT.

10 Q. AND IN ADDITION DID YOU LEARN THAT THE
11 AMMUNITION HE USED ALSO WAS COPPER-PLATED?

12 A. YES.

13 Q. AND DOES THE COPPER-PLATING ALSO MAKE A
14 DIFFERENCE IN THE SIZE OF THE HOLES THAT THE PELLETS
15 WILL MAKE WHEN THEY GO THROUGH A PAPER TARGET?

16 A. NEVER LOOKED AT THAT CRITICALLY. I
17 WOULDN'T THINK THAT THEY WOULD MAKE MUCH DIFFERENCE.

18 Q. OKAY. BUT YOU RECEIVED XEROX COPIES, DID
19 YOU NOT, OF TARGETS THAT DR. MC CARTHY HAD MADE?

20 A. YES.

21 Q. AND WERE THOSE -- AND DID YOU THEN DO

22 TEST-FIRINGS TO SEE WHETHER YOU WOULD HAVE PATTERNS

23 SIMILAR TO THE ONES HE WAS HAVING?

24 A. YES.

25 Q. AND YOU FOUND THAT THERE WAS A SIGNIFICANT

26 DIFFERENCE -- WHEN YOU SAY IN THE SIZE, IN THE SIZE OF

27 WHAT?

28 A. THE SPREAD OF THE PATTERN AT VARIOUS

-22797

1 DISTANCES.

2 Q. AND WHOSE SPREAD WAS LARGER AT VARIOUS

3 DIFFERENCES, HIS USING THE WRONG AMMO OR YOURS USING THE

4 RIGHT ONE?

5 A. MINE WAS LARGER.

6 Q. AND DID YOU BRING WITH YOU TO COURT TODAY

7 THE TARGETS THAT YOU CREATED IN THESE TEST FIRES?

8 A. YES, I DID.

9 Q. AND DID YOU ALSO, AFTER HAVING DONE THESE

10 TEST-FIRINGS, DID YOU PREPARE A GRAPH?

11 A. YES.

12 Q. THAT SHOWS THE RANGE -- THE SPREAD PATTERN

13 OF THE FIRING WITH THE GUN THAT YOU HAD AND THE

14 AMMUNITION THAT YOU USED?

15 A. YES.

16 Q. WOULD YOU TAKE THOSE THINGS OUT, AND WE

17 WILL MARK THEM.

18 I HAVE -- YOU HAVE GIVEN ME FOUR ACTUAL
19 TARGETS WITH HOLES IN THEM?
20 A. YES.
21 Q. AND THEY ARE AT DIFFERENT DISTANCES?
22 A. YES.
23 Q. OKAY. WELL THEN, LET'S MARK THEM -- YOUR
24 HONOR, DO YOU THINK WE SHOULD MARK THEM INDIVIDUALLY OR
25 WITH SUB-LETTERS?
26 THE COURT: WHICHEVER WAY YOU PREFER.
27 MS. ABRAMSON: OKAY. I THINK WE'LL
28 DO THEM ALL AS ONE. IS NEXT 335, YOUR HONOR?

-22796

1 THE COURT: YES.
2 MS. ABRAMSON: OKAY. THE ONE THAT INDICATES SIX
3 FEET, FIOCCHI NO. 4 WE'LL MARK 335-A.
4 THE ONE THAT SAYS 4 BUCKSHOT, NINE FEET,
5 WE'LL MARK 335-B.
6 THE ONE THAT SAYS 12 FEET, FIOCCHI NO. 4
7 BUCKSHOT, WE'LL MARK 335-C.
8 AND THE ONE THAT SAYS NO. 4 BUCKSHOT, 15
9 FEET, WE'LL MARK 335-D.
10 AND THEN THE BUCKSHOT SPREAD CHART THAT YOU
11 HAVE MADE WE WILL MARK, WITH THE COURT'S PERMISSION,
12 336, AND WE'LL PUT THIS UP. WE USED TO HAVE AN ENVELOPE
13 WITH A BUNCH MORE AROUND HERE A FEW DAYS AGO.

14 Q. NOW MR. MORTON, WERE YOU IN COURT WHEN

15 DEPUTY VAN HORN TESTIFIED?

16 A. YES, I WAS.

17 Q. AND DID YOU HEAR DEPUTY VAN HORN'S

18 TESTIMONY THAT WITH RESPECT TO THE SHERIFF'S DEPARTMENT,

19 THEY ARE LOATHE TO GIVE ANY KIND OF DISTANCE INFORMATION

20 UNLESS THEY HAVE THE IDENTICAL GUN THAT WAS USED?

21 A. THE IDENTICAL GUN AND THE IDENTICAL

22 AMMUNITION, YES.

23 Q. AND WITH RESPECT TO THE TEST-FIRINGS THAT

24 YOU DID, DID YOU DO THAT SO THAT YOU COULD SAY WITH ANY

25 CERTAINTY AT THE PRECISE RANGE AT WHICH ANY OF THE

26 WOUNDS IN THIS CASE WERE INFLICTED?

27 A. NO. ANY TIME YOU DO TEST-FIRINGS, THE

28 FURTHER AWAY YOU GET FROM THE ACTUAL AMMUNITION AND

-22795

1 WEAPON, THE MORE QUESTIONABLE IT REMAINS ABOUT THE

2 ACCURACY OF THOSE DETERMINATIONS.

3 Q. SO WHY DID YOU BOTHER DOING TEST FIRES IF

4 YOU CAN'T GIVE SPECIFIC AND ACCURATE DISTANCE

5 DETERMINATIONS?

6 A. THEY CAN GIVE YOU A ROUGH APPROXIMATION OF

7 A DISTANCE, AND THE PURPOSE OF THIS -- WITH HAVING THE

8 SAME WEAPON OR THE SAME MODEL WEAPON, THE SAME BARREL

9 LENGTH, THE SAME AMMUNITION, THAT GETS AS CLOSE TO

10 DUPLICATING THE ORIGINAL AS POSSIBLE.

11 Q. WITHOUT HAVING THE ORIGINAL GUN?

12 A. YES.

13 Q. AND DID YOU FIND IN YOUR TEST-FIRINGS

14 WHETHER THERE WAS A CONSISTENCY TO THE SPREADING OF THE

15 SHOTGUN PELLETS AS YOU DID YOUR TEST-FIRINGS?

16 A. WELL, I DID A LIMITED NUMBER OF TESTS, BUT

17 I DID GENERATE A PATTERN THAT SHOWED THAT IT HAD AN

18 INCREASE OF ABOUT SIX FEET, OR AT SIX FEET YOU GET ABOUT

19 A ONE-INCH INCREASE IN PATTERN SIZE FOR EACH YARD, WHICH

20 IS PRETTY CLOSE TO WHAT IS TYPICALLY STATED AS A GENERAL

21 RULE IN SHOT PATTERNS, WHICH IS VALID OVER A FAIRLY --

22 YOU KNOW, OVER A LIMITED RANGE, VERY CLOSE. THAT DOES

23 NOT SET AS WELL, BECAUSE THE PATTERN STAYS MUCH TIGHTER

24 AND HAS MINOR VARIATIONS OUT TO ABOUT SIX FEET, MAYBE

25 FOUR TO SIX FEET, SO THAT YOU DO HAVE SOME -- YOU DO

26 HAVE SOME IDEA OF THE DISTANCE. AT THE CLOSER DISTANCE

27 IS WHAT YOU TYPICALLY RELY ON IS THE POWDER PATTERN.

28 Q. IF I UNDERSTAND YOU, WHAT YOU'RE SAYING IS

-22794

1 UNDER SIX FEET YOU CANNOT PREDICT THE EXACT SPREAD AT

2 THE CLOSER DISTANCES?

3 A. WELL, YOU NEVER TRY TO PREDICT THE EXACT

4 SPREAD AT ANY DISTANCE. YOU ARE ONLY TRYING TO

5 ESTABLISH A RANGE THAT'S REASONABLE FOR THAT PARTICULAR

6 SPREAD.

7 IN ORDER TO DO THAT, YOU LOOK AT NOT ONLY
8 THE OVERALL SPREAD, BUT THE SEPARATION OF PELLETS WITHIN
9 THE SPREAD, AND OF COURSE THE MORE YOU HAVE OF THAT
10 PATTERN, THE MORE ACCURATE CAN BE YOUR ESTIMATE OF THE
11 DISTANCE.

12 Q. AND YOU HAVE MORE PATTERN WHEN YOU GET
13 BEYOND SIX FEET, BECAUSE THAT'S WHEN THEY REALLY START
14 TO SPREAD, CORRECT?

15 A. YOU GET MORE VARIATION BEYOND SIX FEET,
16 YES.

17 Q. WELL, YOU HEARD DEPUTY VAN HORN TESTIFY
18 THAT THE RULE THAT YOU HAVE REFERRED TO, THE ONE INCH
19 PER YARD RULE, IS A RULE THAT YOU'VE STATED THAT ONLY
20 APPLIES AFTER THE POINT WHEN YOU GET TO WHERE THE
21 PELLETS HAVE STARTED TO SPREAD FROM THAT CENTRAL
22 CLUSTER?

23 A. YES.

24 Q. AND THAT'S WHAT YOU'RE SAYING AS WELL?

25 A. YES.

26 Q. AND THIS IS A RULE OF THUMB, A GENERAL
27 RULE. WHERE IS THIS GENERAL RULE STATED, OR WHO
28 PROMULGATES THIS GENERAL RULE THAT BEYOND SIX FEET YOU

1 CAN EXPECT THE DIAMETER OF THE SPREAD TO INCREASE BY ONE

2 INCH FOR EACH YARD AWAY FROM THE MUZZLE OF THE GUN?

3 A. IT'S BEEN A LONG TIME SINCE I LOOKED IN THE

4 VARIOUS TEXTBOOKS. I THINK SAUTERMAN, O'CONNELL AND

5 POSSIBLY OSTERMAN AND HENRY.

6 Q. I WASN'T BEING THAT SPECIFIC. IT'S IN THE

7 TEXTBOOKS?

8 A. YES.

9 Q. HAVING TO DO WITH SHOTGUNS AND FIRING AND

10 BALLISTICS, THE BALLISTICS TEXTBOOKS?

11 A. BUT YOU HAVE TO BE CAREFUL OF THAT. AGAIN,

12 IT CAN BE AFFECTED SIGNIFICANTLY BY THE SPECIFIC

13 AMMUNITION; FOR EXAMPLE, IN THIS CASE THAT RULE

14 BASICALLY WAS DEVELOPED BEFORE THE SHOT CUPS BECAME

15 COMMON, AND THOSE SHOT CUPS TEND TO KEEP A MUCH TIGHTER

16 PATTERN.

17 Q. SO USING SHOT CUP AMMUNITION, IT DOESN'T

18 FIT THIS GENERAL RULE?

19 A. THAT'S CORRECT.

20 Q. IS THAT RIGHT?

21 BUT THE AMMUNITION YOU USED WAS NOT SHOT

22 CUP, IT WAS THE SAME EXACT AMMUNITION THAT WAS USED IN

23 THIS CASE, CORRECT?

24 A. THAT'S MY UNDERSTANDING, YES.

25 Q. AND THE SPREAD PATTERNS THAT YOU FOUND DID

26 APPEAR TO FOLLOW THAT GENERAL RULE?

27 A. YES.

28 Q. AND THE CHART IS HARD TO SEE, BECAUSE IT'S

1 ON -- MAYBE IT WOULD BE EASIER IF WE DID ONE ON REVERSE
2 IMAGE WHERE IT'S WHITE. DIDN'T YOU SEND ME A COPY OF
3 THAT?

4 A. I DID SEND YOU A COPY.

5 Q. BUT I DON'T THINK I HAD ONE WITH TWO LINES.

6 A. NO, IT'S JUST ONE. WHAT THOSE TWO LINES
7 SHOW IS JUST THE ESTIMATE OF THE DIAMETER FOR A
8 PARTICULAR CHART OR PATTERN.

9 Q. WHY DON'T YOU SEE IF YOU CAN GO OVER THE
10 LINES IN PURPLE OR MAYBE RED, IT MIGHT STAND OUT MORE.
11 FROM BACK THERE I CAN'T SEE THE LINES AT ALL, THAT'S MY
12 POINT.

13 A. (WITNESS COMPLIES.)

14 Q. NOW, WHAT DO THE TWO LINES REPRESENT? WHAT
15 DOES THE TOP LINE REPRESENT?

16 A. WELL, THE VERTICAL AXIS SHOWS THE SPREAD IN
17 INCHES, AND THE HORIZONTAL AXIS SHOWS THE DISTANCE IN
18 FEET.

19 SO YOU HAVE SIX FEET, NINE FEET, TWELVE
20 FEET AND FIFTEEN FEET; AND THEN YOU HAVE ZERO INCHES,
21 ONE, TWO, THREE, FOUR, FIVE, SIX INCHES.

22 Q. AND THE SIX INCHES IS THE DIAMETER
23 END-TO-END OF THE SPREAD PATTERN?

24 A. MAYBE IF I SHOWED ON A PARTICULAR SPREAD
25 PATTERN IT WOULD HELP GET ACROSS THE IDEA OF WHAT WE'RE
26 LOOKING AT HERE.

27 Q. SHOULD WE PUT THESE UP?

28 A. YES.

-22791

1 Q. NOW I NEED THE PACKAGE OF -- ALL RIGHT.

2 A. I THINK WE BETTER HAVE THIS ONE UP HERE.

3 Q. HERE IS A BUNCH OF PINS.

4 SO WHY DON'T YOU DESCRIBE -- YOU HAVE GOT
5 THEM IN ORDER OF SIX FEET, NINE FEET, TWELVE FEET,
6 FIFTEEN FEET.

7 A. YES. IF, GOING FROM LEFT TO RIGHT, WE HAVE
8 SIX FEET, NINE FEET, TWELVE FEET, FIFTEEN FEET, AND WHAT
9 YOU TRY TO DO IS USE BOTH THE DIAMETER OF THE SHOT
10 PATTERN AS WELL AS THE DISTRIBUTION OF PELLETS TO TRY TO
11 ASSESS WHAT IS A REASONABLE FIRING DISTANCE FOR ANY
12 GIVEN PATTERN.

13 AS YOU CAN SEE HERE, AS YOU GO INCREASING
14 DISTANCES FROM YOUR TARGET YOU HAVE GREATER AND GREATER
15 SPREAD, TO A POINT WHERE YOU HAVE IT -- AT SIX FEET YOU
16 STILL HAVE THE MAJORITY OF THE PELLETS FORMING ONE
17 SINGLE HOLE WITH SOME SCALLOPING AROUND THE ENDS, OR A
18 COOKIE -- WHAT'S CALLED A COOKIE-CUTTER EFFECT AROUND
19 THE EDGES, AND THEN A COUPLE OF ISOLATED PELLETS, OR
20 SEVERAL ISOLATED PELLETS.

21 Q. AND WHAT ARE THE DIAMETERS OR THE SPREAD
22 WIDTH AT SIX FEET OF THAT PATTERN?

23 A. IT GOES FROM A LITTLE UNDER TWO INCHES TO

24 ABOUT TWO INCHES.

25 Q. OKAY. GO ON.

26 A. AT NINE FEET YOU CAN SEE WHERE THERE'S MORE

27 SEPARATION OF INDIVIDUAL PELLETS, AND THEN YOU ALSO

28 HAVE -- STILL HAVE A MAJOR HOLE. THAT'S PARTIALLY DUE

-22790

1 TO PELLET CONCENTRATION AND PARTIALLY DUE TO THE FACT

2 THAT THE WADDING GOES THROUGH THE TARGET. IT STILL HAS

3 NOT DROPPED AWAY.

4 BECAUSE OF THE LIGHTNESS OF THE WADDING,

5 BOTH THE PAPER-TYPE WAD AND THE FIBER WAD AND THE

6 PLASTIC WAD, BECAUSE THEY'RE LIGHTER THAN THE PELLETS

7 AND LARGER, THEY HAVE POORER AERODYNAMICS AND ARE

8 LIGHTER IN WEIGHT, SO THEY TEND TO DROP AWAY SOONER JUST

9 DUE TO GRAVITY.

10 Q. SO YOU CAN HAVE -- LET'S SAY AT THAT NINE

11 FOOT TARGET, LET'S SAY INSTEAD OF FIRING INTO PAPER, IF

12 THIS WERE NINE FEET AWAY SHOOTING AT A PERSON, WOULD YOU

13 EXPECT THE WADDING TO GO IN AS PART OF THE PATTERN THE

14 WAY THOSE INDIVIDUAL SATELLITE PELLETS WOULD BE EXPECTED

15 TO GO IN?

16 A. THAT'S A GOOD QUESTION. I AM NOT SURE I

17 CAN ANSWER THAT.

18 Q. OKAY. WHY DON'T YOU GO ON TO THE NEXT ONE,

19 THE 12-FOOT ONE.

20 A. THE NEXT ONE AT 12 FEET SHOWS MUCH GREATER
21 SEPARATION, AND ACTUALLY STILL THE WADDING, AT LEAST
22 PART OF THE WADDING STILL IN THE CENTER OR CLOSE TO THE
23 CENTER OF THE OVERALL PATTERN. SO AT LEAST ONE OF THESE
24 PELLETS -- WADDING WENT THROUGH OR CONTINUED ON WITH THE
25 MAJOR -- WITH THE PELLETS THEMSELVES.

26 AT 15 FEET THE ONE ON THE RIGHT YOU HAVE --
27 YOU CAN SEE WHERE THE WADDING HAS SEPARATED OUT A LITTLE
28 BIT MORE, AND YOU CAN SEE SEPARATE ENTRIES WITH TWO

-22789

1 DIFFERENT -- OF TWO DIFFERENT WADDINGS.

2 Q. AND WHAT DID YOU FIND TO BE THE DIAMETERS
3 OF THE SHOT SPREAD AT -- ON NINE FEET, TWELVE FEET AND
4 FIFTEEN FEET?

5 A. AT NINE FEET, AGAIN, VERY CLOSE TO THREE --
6 I SHOULD SAY CLOSE TO THREE INCHES; WHICH IS THREE
7 YARDS, NINE FEET, ROUGHLY A LITTLE BIT UNDER NINE FEET
8 TO A LITTLE BIT ABOVE NINE FEET.

9 AT 12 FEET, ABOUT FOUR INCHES, PLUS OR
10 MINUS A LITTLE BIT.

11 Q. NOW ARE YOU PREPARED TO TELL US WHAT THE
12 TWO LINES REPRESENT, BECAUSE YOU ONLY DID ONE OF EACH
13 DISTANCE. SO WHY ARE THERE TWO LINES?

14 A. AS YOU CAN SEE, TRYING TO MEASURE THE

15 DIAMETER OF THIS, IT'S NOT A NICE ROUND CIRCLE. IT HAS
16 SOME IRREGULARITIES TO IT.
17 SO YOU CAN LOOK ACROSS THIS WAY AND HAVE A
18 LITTLE BIT -- THIS SPREAD HERE, FROM HERE TO HERE, WOULD
19 BE GREATER THAN THE SPREAD ACROSS HERE (INDICATING).
20 WHAT I'VE TRIED TO DO IS GIVE AN IDEA OF HOW MUCH --
21 THERE IS A LITTLE BIT OF VARIATION EVEN IN ONE
22 INDIVIDUAL SHOT.

23 Q. SO ONE LINE INDICATES THE VERTICAL -- YOU
24 KNOW, ONE AXIS TO MEASURE THE DIAMETER, AND THE SECOND
25 LINE GIVES A SECOND AXIS TO MEASURE THE DIAMETER SO YOU
26 ARE ABLE TO GET BOTH?

27 A. ESSENTIALLY IT'S LIKE LOOKING AT THE
28 MINIMUM AND MAXIMUM DIAMETER. THE LOWER LINE WOULD BE

-22788

1 THE MINIMUM DIAMETER, THE UPPER LINE WOULD BE THE
2 MAXIMUM DIAMETER.

3 Q. ALL RIGHT.

4 DID THESE TEST-FIRINGS THAT YOU DID ASSIST
5 YOU IN ANY WAY IN TRYING TO DETERMINE WHETHER, FOR
6 EXAMPLE, CERTAIN OF THE WOUNDS HERE MIGHT HAVE BEEN
7 AFFILIATED WITH OTHER WOUNDS AND GENERAL DISTANCES FOR
8 ANY OF THESE WOUNDS?

9 A. THEY GAVE A LITTLE BIT OF ASSISTANCE, BUT
10 THERE IS SO MUCH VARIATION. IN ADDITION TO THE

11 VARIATION THAT YOU SEE HERE -- WELL, LET ME ADD ONE MORE
12 THING ABOUT THESE TARGETS IN TERMS OF HOW YOU CAN USE
13 THEM FOR INTERPRETATION. WE ARE NOT JUST LOOKING AT
14 DIAMETER, BUT YOU HAVE TO BE CAREFUL WHEN YOU'RE LOOKING
15 AT PORTION PATTERNS, BECAUSE IN ANY GIVEN CASE YOU COULD
16 HAVE QUITE SIGNIFICANTLY DIFFERENT PATTERNS RESULTING AT
17 ANY GIVEN DISTANCE.

18 FOR EXAMPLE, IF YOU WILL NOTICE THIS ONE AT
19 NINE FEET, IF YOU WERE TO JUST LOOK AT THIS PORTION OF
20 THE PATTERN, THEY ARE FAIRLY SEPARATED. IF YOU LOOK AT
21 THIS PORTION OF THE PATTERN, YOU HAVE ONE, TWO, THREE,
22 FOUR, FIVE, SIX PELLETS RIGHT IN A VERY SHORT, LIMITED
23 AREA.

24 SO YOU HAVE THAT KIND OF VARIATION. AGAIN
25 AT 12 FEET YOU SEE A SIMILAR KIND OF THING, A VERY TIGHT
26 PATTERN HERE, A MUCH MORE SPREAD PATTERN OVERALL HERE ON
27 THE LEFT (INDICATING).

28 Q. YOU ARE TALKING ABOUT THE DISTANCE BETWEEN

-22787

1 INDIVIDUAL PELLETS?

2 A. RIGHT.

3 Q. BECAUSE AT 12 FEET IT APPEARS THAT THE
4 MAJORITY OF THE PELLETS ARE INDIVIDUALLY SEPARATED OUT,
5 SO THAT IF THEY IMPACT YOU CAN SEE THE INDIVIDUAL
6 PELLETS THEMSELF?

7 A. THAT'S CORRECT.

8 Q. OKAY.

9 A. AND SO YOU CAN SEE IN THIS SITUATION RIGHT

10 HERE, YOU HAVE ALMOST TWO INCHES SEPARATING THESE

11 PELLETS, AND YET RIGHT HERE YOU HAVE FOUR PELLETS WITHIN

12 ONE INCH.

13 Q. OKAY.

14 A. SO WHENEVER YOU START LOOKING AT A PORTION

15 OF A PATTERN, IT INCREASES THE PROBLEMS IN TERMS OF

16 TRYING TO ASSESS DISTANCE.

17 Q. AND WITH 15 FEET THERE ALSO SEEMS TO BE

18 SOME SERIES OF GAP THERE; IN OTHER WORDS, THERE SEEMS TO

19 BE AN AREA WHERE THERE ARE NO PELLETS AT ALL, WHEREAS IN

20 THE SURROUNDING AREAS THERE ARE PELLETS CLOSE ENOUGH TO

21 HAVE FILLED THAT SPACE?

22 A. THAT'S CORRECT.

23 Q. OKAY.

24 A. AND THEN IF I MIGHT ADD, IN ADDITION TO

25 THAT YOU HAVE THE PROBLEM OF THE TARGET ITSELF. IN

26 OTHER WORDS, THESE ARE NICE, FLAT TARGETS, WHEREAS

27 TYPICALLY SOMETHING THAT'S BEING STRUCK IN A SHOOTING

28 HAS A NON-FLAT SURFACE.

-22786

1 IN OTHER WORDS, SOMETIMES IT'S STRAIGHT TO

2 A FLAT CHEST OR SOMETHING LIKE THAT, BUT MOST OF THE

3 TIME IT'S PART OF AN ARM OR SOME IRREGULAR SURFACE, OR
4 ROUNDED SURFACE WHICH MAY PRESENT A DIFFERENT TARGET.

5 Q. DID YOU SPEND ANY TIME TRYING TO ANALYZE
6 WHAT HAS BEEN CHARACTERIZED IN THIS CASE AS A ROUND THAT
7 MISSED, I THINK IS THE WORD THAT WAS USED, AND WENT
8 THROUGH THE WEST WINDOW, THE WEST FRENCH DOOR, ONE OF
9 THE WINDOWS IN THE WEST FRENCH DOOR?

10 A. YES.

11 Q. AND DID YOU DISCERN EVIDENCE THAT INDICATES
12 THAT IT IS POSSIBLE OR EVEN PROBABLE THAT THAT ROUND
13 THAT WENT THROUGH THAT WINDOW WAS NOT A FULL ROUND THAT
14 MISSED?

15 A. THERE IS ON THE BACK OF THE SOFA A SERIES
16 OF DISRUPTIONS THAT IT'S HARD TO EVALUATE FROM THE
17 PHOTOGRAPHS, BUT CLEARLY THEY LOOK LIKE DISRUPTIONS THAT
18 COULD BE PART OF A SHOT PATTERN THAT APPEARS TO LINE UP
19 RELATIVELY WELL WITH THAT HOLE IN THE WINDOW.

20 Q. OKAY. AND IS THERE ANY BLOOD EVIDENCE THAT
21 SUGGESTS THAT THAT HOLE IN THE WINDOW MAY HAVE BEEN
22 AFFILIATED WITH A WOUND RATHER THAN A MISSED ROUND?

23 A. THERE IS BLOOD -- APPARENT BLOOD ON THE
24 SOFA IN THAT AREA THAT LOOKS LIKE IT MIGHT BE. HOWEVER,
25 AS IS TRUE WITH MUCH OF THIS SCENE, THE OVERLAPPING --
26 POTENTIALLY OVERLAPPING BLOOD PATTERNS MAKE IT DIFFICULT
27 TO ASSESS WHAT IS ASSOCIATED WITH WHICH SHOT.

28 Q. OKAY. WOULD YOU SHOW US, THOUGH, ON THE

1 PHOTOGRAPHS WHAT YOU MEAN BY DEFECTS IN THE BACK OF THE
2 SOFA AND HOW THEY COULD RELATE TO THE HOLE IN THE
3 WINDOW.

4 A. YES. THE AREA THAT I AM TALKING ABOUT HERE
5 IS THIS DISPLAY BOARD NUMBER THREE. I DON'T KNOW IF
6 THAT'S HOW YOU ARE REFERRING TO THESE.

7 Q. NO. IT SHOULD HAVE AN EVIDENCE NUMBER ON
8 IT.

9 A. EVIDENCE NUMBER IS 302. 302. IN THE
10 CENTER OF THIS BOARD, THE BOTTOM PHOTOGRAPH IN THE
11 CENTER --

12 Q. LET'S SUB NUMBER, BECAUSE OTHERWISE -- I AM
13 GOING TO DO IT. I AM GOING TO MARK THE TWO ON THE LEFT
14 ROW A AND B, THE THREE UP THE MIDDLE C, D, AND E, AND
15 THE TWO ON THE RIGHT F AND G.

16 AND I WOULD ALSO ASK YOU IF YOU COULD CLIP
17 IT TO THE TOP OF THIS SO THAT THE JURY HAS AN IDEA OF
18 WHAT WE ARE TALKING ABOUT, WHAT THE WINDOWS LOOK LIKE
19 FROM THE OUTSIDE.

20 A. IS THIS SOMETHING I AM GOING TO PULL APART
21 IF I TAKE THIS OFF HERE?

22 Q. NO. ALL RIGHT. NOW WE'RE SECURE.

23 A. OKAY. WHAT WE'RE TALKING ABOUT IS THIS
24 HOLE HERE, THE PHOTOGRAPH THAT'S BEEN CLIPPED TO THE
25 TOP. DOES IT HAVE A NUMBER?

26 Q. YES.

27 A. THIS WOULD BE --

28 Q. THIS IS COMPLICATED, BECAUSE THIS -- YES,

-22784

1 THAT'S THE ONLY ONE ON THIS. THAT'S NO. 17.

2 A. EXHIBIT NO. 17 SHOWS A PHOTOGRAPH FROM THE
3 OUTSIDE, SHOWING TWO AREAS OF THE GLASS DOOR THAT HAVE
4 SHOTS THROUGH THEM.

5 THE ONE ON THE LEFT WHICH WE WILL REFER TO
6 IS THE WEST DOOR, AND THE ONE ON THE RIGHT, THIS WOULD
7 BE THE SOUTH WALL OF THE LIVING ROOM, OR THE ROOM WHERE
8 THIS OCCURRED. THIS IS THE EAST DOOR. BOTH OF THOSE
9 HAVE SHOT PATTERNS THROUGH THEM, THE -- WHAT LOOKS TO BE
10 ASSOCIATED WITH THIS PELLET PATTERN, AND --

11 Q. THIS BEING THE WEST DOOR?

12 A. THE WEST DOOR.

13 Q. OKAY.

14 A. IS SHOWN AT THE TOP OF THE SOFA IN
15 PHOTOGRAPH 302, PHOTOGRAPH A, AND --

16 Q. WOULD YOU CIRCLE THOSE WITH ONE OF THE
17 COLORED MARKERS, MR. MORTON. IT IS VERY HARD, I CAN
18 TELL YOU, FROM BACK HERE TO SEE. IF YOU NEED ONE --
19 HERE. I CAN GIVE YOU THIS RED ONE I AM HOLDING IN MY
20 HAND. THERE IS ALSO A BLACK ONE LURKING ABOUT. WE'RE
21 VERY LOW TECH AROUND HERE. THERE'S A GOOD ONE.

22 A. IT MAY GO -- ON PHOTOGRAPH A, IT MAY GO
23 DOWN AS FAR AS VERY CLOSE TO THE BOTTOM OF THE

24 PHOTOGRAPH, BUT THE AREA I AM GOING TO CIRCLE
25 INCORPORATES MOST OF THE LOWER HALF OF THE PHOTOGRAPH ON
26 THAT -- THE BACK OF THE SOFA. YOU WILL NOTICE THERE ARE
27 VARIOUS TUFTS THAT SHOW IRREGULARITIES IN THE SURFACE OF
28 THAT, AND THAT'S SHOWN IN A NUMBER OF PHOTOGRAPHS.

-22783

1 IN PHOTOGRAPH E, AGAIN I WOULD CIRCLE IT,
2 IT SHOWS A PORTION OF THAT, APPARENTLY AGAIN SHOWING THE
3 TUFTING OF THE FIBERS IN THAT AREA RIGHT THERE. I
4 CIRCLED THAT.

5 Q. WHY DON'T YOU LOOK AT B. I THINK B ALSO
6 SHOWS IT. THAT'S THE LEFT-HAND COLUMN, THE SECOND
7 PHOTOGRAPH.

8 A. YES. B SHOWS IT AS WELL, AND IT ALSO SHOWS
9 THE APPARENT BLOOD SPATTER ASSOCIATED WITH IT AS WELL.

10 Q. SO ASSUMING HYPOTHETICALLY -- OR ASSUMING
11 BASED ON YOUR HYPOTHESIS THAT THOSE AREAS THAT YOU HAVE
12 CIRCLED THAT SHOW TUFTING, IT'S TEARS IN THE FABRIC OF
13 THE COUCH IS WHAT YOU'RE TALKING ABOUT?

14 A. YES.

15 Q. FIBERS THAT HAVE BEEN LIFTED UP?

16 A. YES, AND BROKEN.

17 Q. AND ARE -- IS THE APPEARANCE OF THOSE
18 FIBERS IN THOSE PHOTOGRAPHS THAT YOU HAVE CIRCLED
19 CONSISTENT WITH PELLET IMPACTS?

20 A. THEY APPEAR TO BE. THE QUALITY -- YOU
21 KNOW, THE DETAIL SHOWN IN THOSE PHOTOGRAPHS IS DIFFICULT
22 TO ASSESS, BUT IT APPEARS TO BE COMPATIBLE WITH THAT. I
23 WOULD ACTUALLY WANT TO SEE THE SOFA AND CHECK FOR LEAD
24 AND THAT KIND OF THING, BUT THAT'S NOT POSSIBLE.

25 Q. YOU UNDERSTAND THAT THOSE PHOTOGRAPHS A AND
26 B AND E ARE ENLARGEMENTS OF WHAT'S UP ON THE BOARD, AN
27 ENLARGEMENT PRINTED FROM A PHOTOGRAPH THAT SHOWS A GREAT
28 DEAL MORE THAN WHAT'S IN THESE?

-22782

1 A. YES.

2 Q. SO YOU STARTED OUT WITH A REALLY SMALL
3 PHOTOGRAPH, AND ONLY UNDER ENLARGEMENT CAN YOU ACTUALLY
4 SEE THESE DEFECTS, CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND SO DOES IT APPEAR FROM THE TUFTING ON
7 THAT -- THAT'S THE TOP OF THE BACK OF THE SOFA -- THAT A
8 NUMBER OF PELLETS HAD SOME CONTACT WITH THE TOP OF THAT
9 SOFA?

10 A. YES.

11 Q. AND IS IT YOUR EVALUATION, LOOKING AT THE
12 PHOTOGRAPHS, THAT THERE ALSO APPEARS TO BE SOME BLOOD
13 SPATTER IN THE AREA THAT COULD BE AFFILIATED WITH THE
14 SAME ROUND THAT'S CAUSING THE TUFTING ON THE TOP OF THE
15 SOFA?

16 A. THAT'S CORRECT.

17 Q. AND YOU HAVE EXAMINED THE PHOTOGRAPHS AND
18 THERE ARE OTHERS -- IN FACT, I THINK DOWN HERE ON BOARD
19 FIVE?

20 WELL, THAT'S THE WRONG DOOR. THERE ARE
21 SOME OTHER ENLARGED PHOTOGRAPHS THAT ARE CLOSE-UPS OF
22 THIS HOLE THAT'S IN THE WEST DOOR, AND YOU HAVE EXAMINED
23 THOSE PHOTOGRAPHS, HAVE YOU NOT?

24 A. I HAVE.

25 Q. THIS IS THE OTHER DOOR.

26 THERE HAS BEEN TESTIMONY THAT THE SHAPE OR
27 SIZE OF THAT HOLE INDICATES THAT A FULL ROUND WENT
28 THROUGH.

-22781

1 DO YOU BELIEVE THE EVIDENCE SUPPORTS THAT
2 CONCLUSION?

3 A. I DON'T BELIEVE THERE'S ANY WAY TO SAY ONE
4 WAY OR THE OTHER. THE HOLE THROUGH THE GLASS AND THE
5 FRAMING IN THE DOOR AND THE GLASS FRAMES ARE ALL
6 DAMAGED, AND THEY -- PRIOR TO THAT THE PORTION OF SHOT
7 THAT STRIKES IT, OR IF IT IS A FULL SHOT, STRIKES SOME
8 SLATS IN THE BLINDS, AND SO IT HAS ALREADY BEEN AFFECTED
9 BY INITIAL IMPACT WITH THE BLINDS AND POSSIBLY THE TOP
10 OF THE SOFA AND POSSIBLY EVEN SOMETHING BEFORE THAT.

11 SO --

12 Q. AND WHEN A COLUMN OF SHOT IMPACTS AN
13 INTERMEDIATE TARGET SUCH AS THE TOP OF THE SOFA OR THE
14 BLINDS, WHAT EFFECT DOES THAT HAVE ON THE SHAPE OF THE
15 PATTERN?

16 A. IT TENDS TO SPREAD THE PATTERN OUT. YOU
17 GET WHAT'S CALLED A BILLIARD BALL EFFECT. THE FIRST
18 PELLETS THAT STRIKE THE OBJECT TEND TO SLOW DOWN OR GET
19 KNOCKED OUT OF ALIGNMENT AND BUMP INTO ADJACENT PELLETS,
20 AND SO YOU GET SOME OF WHAT'S CALLED BILLIARD BALL
21 EFFECT.

22 Q. AND WOULD THAT EXPLAIN THE -- IS THAT LIKE
23 DEFLECTION?

24 A. YES.

25 Q. AND IS DEFLECTION CAUSED BY HITTING THINGS
26 LIKE THE WOODEN SLATS, THE WOODEN FRAME OF THE WINDOW,
27 THE TOP OF THE COUCH?

28 A. YES.

-22780

1 Q. AND DOES THAT -- DOES THE FACT THAT THE
2 HOLE IS NOT A PERFECT, ROUND HOLE, IS SORT OF A MORE
3 IRREGULAR OVAL, DOES THAT HAVE SIGNIFICANCE TO YOU ON
4 THE ISSUE OF DEFLECTION?

5 A. YES. I WOULD NOT TRY TO INTERPRET AN ANGLE
6 OF THAT SHOT BASED ON THE CONFIGURATION OF THAT HOLE
7 BECAUSE OF THE PROBLEM OF DEFLECTION AND PRIOR POTENTIAL

8 INTERFERENCE WITH THAT SHOT COLUMN.

9 Q. NOW, YOU'RE AWARE OF THE FACT THAT ROGER
10 MCCARTHY DID IN FACT CLAIM THAT THE REASON THE HOLE IS
11 OVAL IS BECAUSE IT WAS SHOT ON THE BIAS, AND SO HE WAS
12 PREDICTING AN ANGLE TO EXPLAIN THE IRREGULAR SHAPE OF
13 THE HOLE.

14 A. YES.

15 Q. AND IF I UNDERSTAND YOU, YOU'RE SAYING THE
16 IRREGULAR SHAPE OF THE HOLE IS TRACED TO WHAT YOU -- AT
17 LEAST THE SLATS WHICH YOU CAN SEE IT WENT THROUGH?

18 A. THAT'S THE POTENTIAL SOURCE OF THAT
19 IRREGULARITY, YES.

20 Q. SO IS IT YOUR OPINION THAT LESS THAN OR
21 THAT IT IS -- THERE IS A REASONABLE POSSIBILITY THAT
22 LESS THAN A FULL ROUND ACTUALLY WENT THROUGH THAT
23 WINDOW?

24 A. POTENTIALLY IT COULD HAVE, YES. I SEE NO
25 CLEAR ARGUMENT THAT IT MUST HAVE BEEN A FULL ROUND.

26 Q. AND IS IT THEN YOUR HYPOTHESIS OR YOUR
27 CONCLUSION THAT PART OF THAT ROUND COULD HAVE STRUCK ONE
28 OF THE DECEDENTS, CAUSING ONE OF THE MANY WOUNDS THAT WE

-22779

1 HAVE BEEN LOOKING AT AND DISCUSSING HERE IT SEEMS
2 FOREVER, FOR WEEKS?

3 A. YES, I BELIEVE IT COULD.

4 Q. OKAY. I WANTED TO SHOW YOU -- NOW,
5 DR. MC CARTHY CLAIMED THAT SUPPORT FOR HIS THESIS THAT
6 THIS CAME IN AT A BIAS ANGLE WAS BECAUSE THERE ARE
7 PELLET MARKS ON THE TREE THAT IS I THINK 31 FEET AWAY
8 FROM THAT WEST WINDOW HOLE.

9 A. YES.

10 Q. LET ME SHOW YOU WHAT DR. MC CARTHY MARKED
11 WHILE HE WAS HERE.

12 THIS IS EXHIBIT 8. AND YOU WEREN'T HERE,
13 SO I HAVE TO TELL YOU WHAT HE WAS DOING. HE CIRCLED THE
14 HOLE IN THE WINDOW AND THEN HE CIRCLED -- BOY, THE GLARE
15 IS BAD TODAY. HE CIRCLED AN AREA ON THE TOP OF THE SOFA
16 THAT HE FEELS WAS THE ZONE OF TRAJECTORY.

17 DO YOU SEE THAT?

18 A. YES.

19 Q. AND CAN YOU SEE ADJACENT TO THE CIRCLE THAT
20 HE MADE ON THE TOP OF THE SOFA THE VERY TUFTING THAT YOU
21 HAVE BEEN TALKING ABOUT HERE?

22 A. YES.

23 Q. I WILL PUT THIS BACK UP.

24 NOW BASED ON YOUR EXAMINATION OF ALL OF THE
25 PHOTOGRAPHS, INCLUDING THE PHOTOGRAPHS OF THE TREE,
26 APPROXIMATELY HOW MANY PELLET STRIKES APPEAR ON THAT
27 TREE?

28 A. IT'S HARD FOR ME TO TELL WHICH ARE PELLET

1 STRIKES OBVIOUSLY, BUT IT LOOKS LIKE THERE MIGHT BE
2 ABOUT SIX.

3 Q. AND WOULD THAT BE CONSISTENT WITH A FULL
4 ROUND BEING FIRED DIRECTLY IN THE DIRECTION OF THAT
5 TREE?

6 A. NO.

7 Q. AND HOW WOULD YOU ACCOUNT FOR ANY OF THE
8 PELLETS COMING THROUGH THAT HOLE STRIKING THAT TREE?
9 THE TREE IS OFF -- LET ME ASK YOU THIS.

10 DR. MC CARTHY'S THESIS WAS SINCE THE TREE
11 IS, YOU KNOW, OFF TO THE LEFT AND THE HOLE IS HERE, THAT
12 THE HOLE HAD TO BE MADE FROM THE BACK OF THE ROOM AT AN
13 ANGLE IN ORDER FOR THE PELLETS TO GO TOWARDS THE TREE,
14 SIMPLE GEOMETRY I THINK HE CALLED IT.

15 MR. CONN: OBJECTION. ARGUMENTATIVE AS TO THE
16 FORM OF THE QUESTION. MOTION TO STRIKE.

17 THE COURT: SUSTAINED. REPHRASE THE QUESTION,
18 PLEASE.

19 Q. BY MS. ABRAMSON: HIS THESIS WAS HE DREW A
20 DIRECT STRAIGHT LINE FROM AN AREA, AN ANGLE THAT HE
21 CLAIMS WOULD CAUSE A BIAS-SHAPED HOLE DIRECTLY TO THE
22 TREE.

23 YOU ARE FAMILIAR WITH THAT TESTIMONY?

24 A. YES.

25 Q. YOU ARE SAYING THAT THE TRAJECTORY WAS MUCH
26 MORE STRAIGHT ON TOWARDS THE WINDOW OR -- YEAH, IN ORDER
27 TO --

28 A. IT WOULD APPEAR TO BE BASED ON THE DAMAGE

1 ON THE SOFA, YES.

2 Q. BASED ON THE TUFTING?

3 A. YES.

4 Q. SO HOW DO YOU GO FROM A TRAJECTORY THAT'S
5 MORE STRAIGHT ON TO THE WINDOW TO SIX PELLETS WINDING UP
6 TO THE EAST IN THE TRUNK OF THE TREE?

7 A. WELL, YOU HAVE TO TAKE INTO ACCOUNT THE
8 DISTANCE FROM THE SOUTH WALL TO THE TREE IS ABOUT 31
9 FEET, ACCORDING TO WHAT WAS MEASURED, I BELIEVE, BY THE
10 BEVERLY HILLS POLICE DEPARTMENT. AND AT THAT DISTANCE,
11 THAT'S ABOUT TEN YARDS, YOU CAN EXPECT MAYBE A 10-INCH
12 PATTERN IF IT WERE UNINTERRUPTED.

13 BUT WITH THE --

14 Q. AGAIN, WHEN YOU'RE TALKING ABOUT PATTERN,
15 YOU'RE TALKING ABOUT THE SPREAD OF THE PELLET PATTERN?

16 A. THE SPREAD OF THE PELLET PATTERN, CORRECT.

17 HOWEVER, IF YOU HAVE AN INTERVENING TARGET,
18 EACH TIME IT HITS AN INTERVENING TARGET THERE IS
19 POTENTIAL FOR DEFLECTION, AND THAT DEFLECTION CAN RESULT
20 IN SOME DEVIATION AND SIGNIFICANT DEVIATION.

21 AND IF YOU LOOK AT THAT -- THAT DISTANCE OF
22 31 FEET AND THE FACT THAT THE TREE OVERALL WHERE THE
23 SHOT -- WHERE THE APPARENT PELLET STRIKES ARE IS ABOUT
24 13 -- I THINK 13 FEET, SEVEN INCHES WAS WHAT WAS
25 MEASURED.

26 Q. THIRTEEN FEET, SEVEN INCHES FROM WHAT?

27 A. FROM THE LINE OF THE TRAJECTORY

28 PERPENDICULAR TO THE DOOR.

-22776

1 Q. SO, IT'S 13 FEET TO THE LEFT?

2 A. IN OTHER WORDS, IT WOULD BE TO THE EAST.

3 THE TREE'S IMPACT AREA IS ABOUT 13 FEET, SEVEN INCHES

4 EAST OF THE HOLE THROUGH THE DOOR.

5 Q. OKAY.

6 A. SO BASICALLY WHAT YOU'RE DOING IS A

7 GEOMETRY OF WHAT THAT ANGLE IS, AND THAT COMES TO UNDER

8 A 25-DEGREE ANGLE, AND IT MAY BE THAT WHAT WE'RE SEEING

9 HERE IS SOME DEFLECTION THAT RESULTS IN THAT KIND OF

10 ANGLE DEFLECTION.

11 WITHOUT DOING A RATHER SUBSTANTIAL NUMBER

12 OF EXPERIMENTS TRYING TO DUPLICATE TO SOME EXTENT THE

13 CONDITIONS THAT EXISTED HERE, I THINK IT WOULD BE VERY

14 RISKY TO SUGGEST THAT THAT COULD NOT BE DUE TO

15 DEFLECTION.

16 Q. SO, IN YOUR OPINION THERE IS A -- THERE IS

17 A REASONABLE HYPOTHESIS THAT THE MARKS ON THE TREE WERE

18 DUE TO DEFLECTION FROM A SHOT THAT STARTED OUT INSIDE

19 THE ROOM AS PRETTY MUCH STRAIGHT ON THE WINDOW?

20 A. YES.

21 Q. NOW, I WANT TO TALK -- JUMP AHEAD HERE

22 ABOUT WHAT'S ON THE NEXT BOARD, WHICH IS EXHIBIT 303.
23 WHEN YOU FIRST -- IT'S GOING TO HAPPEN
24 SOONER OR LATER, IT'S INEVITABLE. WHY DON'T YOU COME
25 DOWN AND HELP ME, AND I'LL JUST GET THIS ONE CLIPPED UP.
26 NOW WE'RE SECURED, OKAY.
27 WHEN YOU TESTIFIED LAST THURSDAY, YOU
28 INDICATED THAT YOU HAD EXAMINED PIECES OF A WHITE

-22775

1 PLASTIC BRACELET, AND YOU HAD TALKED ABOUT THE FACT THAT
2 THERE WERE THREE EXHIBIT NUMBERS, EACH OF WHICH
3 CONTAINED ONE OR MORE PIECES OF THE WHOLE PLASTIC
4 BRACELET.

5 DO YOU REMEMBER THAT TESTIMONY?

6 A. YES.

7 Q. AND THAT BOARD 303, DOES THAT SHOW AN
8 ENLARGEMENT -- A GROUP OF EXHIBITS THAT THE BEVERLY
9 HILLS POLICE DEPARTMENT LABELED 21?

10 A. YES.

11 Q. AND WHAT WAS CONTAINED WITHIN 21?

12 A. THERE WAS WADDING, A PELLET AND FRAGMENTS
13 OF A PLASTIC BRACELET.

14 Q. FRAGMENTS OR FRAGMENT?

15 A. I HAVE FORGOTTEN NOW WHICH ONE HAD THE
16 FRAGMENTS. ONE OF THE TWO, FIVE OR 21 HAD TWO
17 FRAGMENTS.

18 Q. LET ME GET THEM FOR YOU. IT MIGHT BE

19 EASIER.

20 A. FIVE WAS TWO FRAGMENTS. TWENTY-ONE WAS

21 ONE.

22 Q. AND DOES THAT BOARD 303 ALSO SHOW THE

23 EXHIBIT CALLED FIVE, WHICH WAS BRACELET PARTS ON THE

24 COUCH?

25 A. YES.

26 Q. AND IN FACT IN -- IF YOU TAKE A LOOK AT --

27 OKAY. I AM GOING TO SUB-LETTER THESE PHOTOGRAPHS ON

28 303.

-22774

1 THE ONE PHOTOGRAPH IN THE LEFT COLUMN WILL

2 BE A. THE NEXT COLUMN IS B, C AND D, AND IN DESCENDING

3 ORDER. THE NEXT E, F AND G; AND THE LAST THREE H, I

4 AND J.

5 AND I'D LIKE TO CALL YOUR ATTENTION TO J.

6 J REPRESENTS THE BRACELET -- AT LEAST ONE

7 PIECE OF THE BRACELET YOU SEE IN THE PHOTOGRAPH THAT'S

8 FOUND ON THE COUCH ADJACENT TO -- YOU CAN SEE FROM HERE

9 RIGHT NEXT TO MR. MENENDEZ, CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND DOES J ALSO SHOW A PLASTIC OR POWDER

12 WAD?

13 A. YES.

14 Q. AND DOES 21 HAVE A PAPER SPACER WAD, A
15 PELLET AND ANOTHER PIECE OF THE BRACELET?
16 A. YES.
17 Q. AND WAS THE THIRD PIECE OF THE BRACELET
18 LOCATED BEHIND THE EAST SIDE OF THE COUCH, RIGHT AT THE
19 FOOT OF THE BOOKCASE?
20 A. YES.
21 Q. AND WAS THAT CALLED 16?
22 A. THAT'S CORRECT.
23 Q. AND CAN YOU SEE 16 IN C AND D ON THIS
24 CHART, PHOTOGRAPH C AND D?
25 A. YES.
26 Q. NOW, IN THE CENTER OF THIS BOARD 303 ARE
27 THE FAILURE ANALYSIS ILLUSTRATIONS, F AND G, THAT
28 PURPORT TO SHOW THE INJURY TO THE RIGHT ARM, WHERE WE

-22773

1 HAVE REASON TO BELIEVE THE BRACELET WAS, AS OCCURRING
2 WHILE MRS. MENENDEZ WAS LYING FLAT ON HER BACK ON THE
3 FLOOR.
4 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
5 EVIDENCE, THAT THE BRACELET WAS ON THE RIGHT ARM.
6 THE COURT: WELL, LET'S REPHRASE IT.
7 Q. BY MS. ABRAMSON: DID YOU NOTE IN THE
8 PHOTOGRAPHS THAT MRS. MENENDEZ IS WEARING A WATCH ON HER
9 LEFT ARM?

10 A. I DON'T RECALL SEEING THAT.

11 Q. WELL, I WILL SHOW YOU ONE LATER.

12 IN ANY EVENT, WE KNOW THAT MRS. MENENDEZ

13 HAS A FOREARM AND A HAND INJURY BOTH TO HER RIGHT ARM.

14 A. THAT'S CORRECT.

15 Q. BOTH ARE SEVERE INJURIES?

16 A. YES.

17 Q. BOTH INDICATE DIRECT CONTACT HIT BY

18 PELLETS?

19 A. YES.

20 Q. NOW, WITH RESPECT TO THE TWO ILLUSTRATIONS

21 F AND G, THEY PURPORT TO SHOW HER RECEIVING WOUNDS TO

22 HER RIGHT ARM WHILE LYING ON THE FLOOR, CORRECT?

23 A. YES.

24 Q. AND, IN FACT, THERE IS TWO DIFFERENT SHOTS

25 THAT DR. MC CARTHY OPINES OCCURRED TO MRS. MENENDEZ'

26 RIGHT ARM WHILE LYING ON THE FLOOR. THIS ONE WHICH WAS

27 DR. GOLDEN'S NO. 5, AND ALSO THE ONE THAT INJURES HER

28 HAND, WHICH WAS DR. GOLDEN'S NO. 3.

-22772

1 DO YOU REMEMBER THAT?

2 A. YES.

3 Q. IN YOUR OPINION, MR. MORTON, DID THE DOUBLE

4 SHOT TO HER RIGHT ARM, THAT HIT THE FOREARM OF HER RIGHT

5 ARM, OCCUR WHILE SHE WAS LYING ON THE GROUND, AS

6 DR. MC CARTHY ILLUSTRATES IT?

7 A. I KNOW -- I SEE NO EVIDENCE IN THE SCENE TO
8 SUPPORT THAT, AND THERE IS SUBSTANTIAL EVIDENCE IN THE
9 SCENE TO SUPPORT THAT IT OCCURRED WHILE SHE WAS EITHER
10 STANDING OR CLOSE TO STANDING, BASED ON THE LOCATION OF
11 THE BRACELET PARTS, THE WADDING, THE PELLETS, THE SPREAD
12 OF THE DAMAGE TO THE SLATS OF THE BLINDS IN THAT EAST
13 DOOR, AND THE DAMAGE TO THE WINDOW.

14 Q. OKAY. YOU AFFILIATE WHATEVER HIT THE ARM
15 THAT HAD THE BRACELET WITH THE HOLE IN THE EAST DOOR,
16 CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND YOU SAID THE SPREAD. IN ADDITION TO
19 THE -- WHATEVER CAUSED THE HOLE IN THAT DOOR, IS THERE
20 EVIDENCE OF PELLETS STRIKING IN THAT AREA OF THE EAST
21 DOOR?

22 A. YES.

23 Q. AND WHAT BEARS THE EVIDENCE OF PELLETS
24 STRIKING THAT EAST DOOR?

25 A. THE SLATS IN THE BLINDS INSIDE THE DOOR.

26 Q. AND ARE THOSE HOLES IN THE BLINDS, THE
27 WOODEN SLATS OF THE BLINDS, VISIBLE EVEN IN PHOTOGRAPH
28 303-A?

-22771

1 A. THEY ARE NOT WELL DOCUMENTED IN

2 PHOTOGRAPHS, BUT A FEW OF THEM ARE, YES.

3 Q. AND THEY CAN BE SEEN IN EVERY PHOTOGRAPH
4 YOU HAVE EXAMINED THAT SHOWS THAT EAST DOOR?

5 A. I BELIEVE SO.

6 Q. AND ARE YOU, BASED ON YOUR HAVING READ
7 PRIOR TESTIMONY, ARE YOU AWARE OF THE FACT THAT
8 DR. MC CARTHY HAD NO EXPLANATION FOR ANY OF THAT DAMAGE
9 TO THE EAST DOOR?

10 A. THAT'S MY UNDERSTANDING.

11 Q. NOW, WHAT -- CAN YOU EXPLAIN TO THE JURY
12 WHAT EVIDENCE -- WHY THE EVIDENCE THAT APPEARS AS THE
13 CLUSTER OF 21 AND 5 AND 16 SUPPORTS THE OPINION THAT
14 MRS. MENENDEZ WAS STANDING UP WHEN SHE RECEIVED A SHOT
15 TO AN ARM THAT HIT THAT BRACELET?

16 A. WELL, THE -- THERE WAS CLEAR EVIDENCE OF
17 IMPACT TO THE BRACELET, A PORTION OF WHICH WAS MISSING,
18 SMALL FRAGMENT MISSING, AND THEN THERE WAS LEAD RESIDUE
19 AT THE APPARENT IMPACT POINT.

20 Q. OKAY. WHY DON'T YOU GO ON AND LET ME TAKE
21 THESE THINGS OUT.

22 IS THERE SOME HUMAN FLUID EVIDENCE AT THE
23 SITE OF 21 THAT ALSO SUPPORTS THE NOTION THAT A SHOT
24 THAT IMPACTED A PERSON CAME THAT WAY?

25 A. YES. THERE IS ALSO BLOOD SPATTER --
26 APPARENT BLOOD SPATTER. AGAIN, WITHOUT HAVING ACTUALLY
27 BEEN AT THE SCENE OR HAD ACCESS TO COLLECTED SAMPLES
28 FROM THOSE, YOU ARE MAKING SOME ASSUMPTIONS, BUT THEY

1 SEEM PRETTY REASONABLE, THAT THIS IS BLOOD SPATTER THAT
2 IS ASSOCIATED, THE PATTERN THAT'S THERE IS ASSOCIATED
3 WITH THE -- OR IS ON THE BLINDS IN THE AREA OF THIS
4 IMPACT.

5 Q. AND APART FROM THE BLOOD ON THE BLINDS, IS
6 THERE EVEN BLOOD SPATTER CLOSE TO WHERE THE BRACELET
7 PIECE IN 21 IS FOUND ON THE FLOOR?

8 A. YES.

9 Q. AND IS THAT SPATTER THAT COULD HAVE DROPPED
10 DOWN FROM THE BLINDS ABOVE?

11 A. EITHER THAT, OR IT COULD BE THAT THE
12 TRAJECTORY WAS SUFFICIENTLY LOW THAT THIS SPATTER
13 OCCURRED AND JUST IS DIRECT SPATTER.

14 Q. AND CAN YOU POINT, IN FACT, ON H TO ANY
15 AREA OF BLOOD SPATTER THAT'S OBSERVABLE AT THE BASE OF
16 THAT EAST DOOR?

17 A. THERE'S SOME RIGHT HERE.

18 Q. THIS IS WHAT HAS NOW BEEN NUMBERED 48.

19 DO YOU RECOGNIZE ANY OF THE HANDWRITING ON
20 THAT ENVELOPE?

21 A. MY CASE NUMBER AND INITIALS ARE ON THIS
22 SEAL.

23 Q. AND IS THAT WHAT YOU DO WHENEVER YOU
24 EXAMINE A PIECE OF PHYSICAL EVIDENCE, YOU PUT YOUR
25 INITIALS AND YOUR CASE NUMBER ON THE ENVELOPE THAT
26 CONTAINS THE EVIDENCE?

27 A. YES.

28 Q. AND WHAT IS -- YOU CAN OPEN THAT UP. I

-22769

1 THINK WE SHOULD GET A LETTER OPENER OR SOMETHING, IF YOU
2 HAVE ONE. YOU DON'T HAVE A KNIFE BECAUSE OF THE METAL
3 DETECTOR.

4 THE COURT: JUST RIP IT OPEN.

5 THE WITNESS: THIS IS ITEM 16. IT'S A PORTION OF
6 THE BRACELET.

7 Q. BY MS. ABRAMSON: AND WERE YOU ABLE IN
8 EXAMINING THAT IN CONJUNCTION WITH FIVE AND WITH 21 TO
9 FIT THE PIECES OF THE BRACELET TOGETHER TO MAKE ALMOST A
10 WHOLE BRACELET?

11 A. IT MADE A COMPLETE BRACELET, EXCEPT FOR A
12 VERY SMALL FRAGMENT ADJACENT TO THE LEAD WIPE.

13 Q. THE LEAD WIPE WAS ON WHICH PIECE, DO YOU
14 REMEMBER?

15 A. TWENTY-ONE.

16 Q. AND HANDING YOU AN ENVELOPE THAT'S BEEN
17 MARKED HERE 48-B, DOES THAT ALSO HAVE YOUR INITIALS AND
18 YOUR CASE NUMBER ON IT?

19 A. IT DOES.

20 Q. AND IN FACT YOU HAVE EXAMINED THAT MORE
21 THAN ONCE, HAVE YOU NOT?

22 A. YES, I HAVE.

23 Q. AND YOU ARE REMOVING AN INNER ENVELOPE.

24 LET'S PUT ONE BACK BEFORE YOU TAKE THE OTHER OUT.

25 A. THIS IS ITEM 21-C, ONE OF THE THREE ITEMS

26 COLLECTED AS GROUP 21, WHICH WAS LEAD PELLET, FIBER WAD

27 AND BRACELET FRAGMENT.

28 Q. THE LEAD PELLET AND THE FIBER WAD ARE

-22768

1 OBSERVABLE IN THIS INTERIOR PLASTIC ENVELOPE?

2 A. YES.

3 Q. FIBER WAD AND PELLETS?

4 A. YES.

5 Q. OKAY. AND NOW YOU'RE HOLDING -- THIS IS

6 THE PART THAT HAS WHAT APPEARS TO BE A LEAD WIPE.

7 A. YES, THAT'S CORRECT.

8 Q. DOES THE LEAD WIPE ALSO APPEAR TO HAVE SORT

9 OF A SEMI-CIRCULAR SHAPE?

10 A. YES.

11 Q. AS IF A PELLET CAME IN CONTACT WITH IT?

12 A. IT COULD BE.

13 Q. IT COULD BE BECAUSE OF THE CONFIGURATION OF

14 THE BRACELET ITSELF?

15 A. I'M NOT SURE WHAT THE SOURCE OF THAT IS.

16 Q. ALL RIGHT. AND SHOWING YOU 48-G, DOES THIS

17 CONTAIN THE TWO PIECES OF BRACELET THAT WERE LABELED

18 FIVE?

19 A. YES.

20 Q. AND DID YOU FIT TOGETHER THE EDGE WHERE YOU
21 SAW THE LEAD WIPE ON 21 WITH THOSE PIECES OF FIVE?

22 A. I WAS PARTICULARLY INTERESTED TO MAKE
23 SURE -- WELL, TO TRY TO DETERMINE WHETHER OR NOT THE
24 LEAD WIPE WHICH WAS ON 21 WOULD APPEAR ON THE ADJACENT
25 AREA.

26 IN OTHER WORDS, IF YOU FIT SOMETHING
27 TOGETHER AND THERE IS A RESIDUE THAT GOES RIGHT UP TO
28 THE EDGE, AND THEN THE OTHER ONE HAS NOTHING, THAT

-22767

1 SUGGESTS THAT THOSE -- THAT THAT CONTAMINATION OCCURRED
2 AFTER THE SPLIT OCCURRED. IF THEY ARE ON BOTH SIDES,
3 THEN THAT CONFIRMS THAT THEY ARE -- AND THEY MATCH, IT
4 SHOWS -- IT CONFIRMS THAT THEY ARE PART OF A TRANSFER
5 THAT OCCURRED BEFORE THE BREAK TOOK PLACE.

6 BUT WHAT HAPPENED, IN LOOKING AT THAT, IT
7 WAS CLEAR THAT THAT FRAGMENT HAD BEEN BROKEN AWAY AND
8 LOST.

9 Q. BUT IT -- THE FRAGMENT THAT WAS IMMEDIATELY
10 ADJACENT SEEMED TO BE BLOWN OUT?

11 A. THAT'S CORRECT.

12 Q. AND DID THAT SUPPORT THE NOTION THAT THAT
13 AREA HAD BEEN DIRECTLY HIT WITH PELLETS?

14 A. YES.

15 Q. SO IT DID CONFIRM, EVEN THOUGH IN A
16 DIFFERENT WAY, WHAT YOU WERE LOOKING FOR?
17 A. YES.
18 Q. AND THEN OF COURSE YOU DID A TEST AND YOU
19 DID CONFIRM THAT THE WIPE WAS LEAD?
20 MR. CONN: OBJECTION. LEADING.
21 THE COURT: SUSTAINED.
22 Q. BY MS. ABRAMSON: YOU HAVE ALREADY
23 TESTIFIED TO THIS ON THURSDAY, CORRECT?
24 A. YES.
25 MR. CONN: OBJECTION. ASKED AND ANSWERED.
26 THE COURT: ALL RIGHT. SUSTAINED.
27 Q. BY MS. ABRAMSON: DID YOU DO A TEST ON THE
28 PIECE OF 21 THAT APPEARED TO YOU TO HAVE A LEAD SWIPE ON

-22766

1 IT, OR WIPE ON IT?
2 A. YES.
3 Q. AND WHAT WAS THE RESULT OF THAT TEST?
4 A. POSITIVE TEST FOR LEAD.
5 Q. NOW, YOU INDICATED WHEN YOU TESTIFIED ON
6 THURSDAY THAT -- AND THIS WAS ONE OF THE THINGS WHERE
7 YOU FELT YOU HAD A CONFIDENCE IN THE CONCLUSION THAT YOU
8 COULD AT LEAST POSITION MRS. MENENDEZ WHEN SHE RECEIVED
9 THE SHOTS TO HER RIGHT ARM.
10 A. VERY ROUGHLY, YES.

11 Q. AND ONE OF THE OTHER THINGS THAT YOU SAID
12 YOU HAD FORMED A DEFINITE CONCLUSION ABOUT WAS THE FACT
13 THAT MR. MENENDEZ WAS STANDING WHEN HE RECEIVED THE LEFT
14 LEG WOUNDS, CORRECT?

15 A. YES.

16 Q. IF WE COULD TAKE THIS DOWN.

17 A. DO YOU WANT NO. 7 UP?

18 Q. IT REALLY ISN'T NO. 7. THAT'S THE LABEL.

19 A. 304?

20 Q. YES. NOW, 304 HAS A NUMBER OF
21 ENLARGEMENTS, DOES IT NOT, OF BOTH MR. MENENDEZ'
22 POSITION AS FOUND ON THE SOFA, AND THE AREA OF THE RUG
23 AND THE SOFA IMMEDIATELY WEST OF HIM, CORRECT?

24 A. YES.

25 Q. AND DID YOU SELECT THESE PHOTOGRAPHS TO BE
26 ENLARGED TO ILLUSTRATE SOME OPINIONS AND CONCLUSIONS
27 THAT YOU HAD FORMED?

28 A. YES.

-22765

1 Q. AND WHAT OPINIONS AND CONCLUSIONS, IF YOU
2 COULD TELL US, DO THESE PHOTOGRAPHS ILLUSTRATE, AND WHY
3 DON'T WE START WITH -- START WITH A.

4 WHAT'S THE SIGNIFICANCE OF PHOTOGRAPH A,
5 THE ONE THAT SIMPLY SHOWS THE LEG IN THE POSITION IN
6 WHICH THE POLICE FOUND IT?

7 A. YES. IT SHOWS PART OF THE INFORMATION THAT
8 IS THE BASIS FOR MY OPINION THAT THE -- THAT THE SHOT
9 DID NOT OCCUR WHILE HE IS IN A SEATED POSITION, AND THAT
10 IS -- THAT CONSISTS OF NO SPATTER ON THE FRONT OF THE
11 ARM AREA OF THE SOFA ADJACENT TO WHERE THE EXIT WOUND
12 IS.

13 Q. COULD YOU POINT TO THAT AREA WHILE YOU ARE
14 DESCRIBING THAT.

15 A. THAT WOULD BE THIS AREA RIGHT HERE IS CLEAN
16 OF ANY SPRAY FROM THIS EXIT WOUND (INDICATING).

17 IN ADDITION TO THAT, THERE ARE SEVERAL
18 DROPS OF BLOOD, APPARENT BLOOD UNDER THE LEG, WHICH SHOW
19 THERE WAS SOME DRIPPING OF BLOOD BEFORE HE WAS IN A
20 SEATED POSITION, AND THAT'S SHOWN IN THOSE TWO.

21 IN ADDITION, THERE IS SOME INDICATION OF
22 HIS LEG RUBBING UP AGAINST HIS ARM, OR BOTH ARMS RUBBING
23 UP AGAINST THE LEG.

24 Q. CAN YOU SEE THAT IN A, OR IS THAT SOMETHING
25 THAT B ILLUSTRATES?

26 A. B ILLUSTRATES IT SOMEWHAT BETTER, AND IT
27 SHOWS THE DROP UNDER THE LEG HERE, AND IT SHOWS THE
28 SMEARING ON WHAT'S CALLED THE ULNAR SIDE OF THE LEFT

-22764

1 HAND AND ARM, THE LOWER ARM AND THE LEFT-HAND. THE
2 ULNAR BONE IS ON THIS SIDE. I KNOW MORE FROM

3 FINGERPRINTS THAN FROM --

4 Q. WELL, WHAT IS THE SIGNIFICANCE OF THE FACT
5 THAT THERE -- WELL, FIRST OF ALL, YOU SAID IT WAS
6 SMEARED.

7 HOW DO YOU -- HOW CAN YOU TELL THAT THIS
8 BLOOD -- YOU'RE TALKING ABOUT THIS HERE (INDICATING)?

9 A. RIGHT ALONG THE EDGE HERE (INDICATING).

10 Q. IN FACT, IN C CAN YOU SEE THAT AREA ALSO?

11 A. YES. IT SHOWS IT RIGHT ALONG HERE, THE
12 LOWER ARM AND THE SIDE OF THE PALM.

13 Q. AND HOW CAN YOU DISTINGUISH WHAT APPEARS TO
14 BE BLOOD IN THOSE TWO LOCATIONS AS SMEAR VERSUS SAY
15 DRIP?

16 A. IN BLOOD SPATTER ANALYSIS YOU DO A LOT OF
17 EXPERIMENTS TO LOOK AT WHAT BLOOD LOOKS LIKE UNDER
18 VARIOUS CONDITIONS, AND BLOOD DRIPPING OR DROPS HAVE A
19 DISTINCTIVE PATTERN, AND YOU CAN SEE TO SOME EXTENT
20 SOME, IF NOT DROPS, BUT SPATTER, WHERE INDIVIDUAL
21 DROPLETS ARE ON THE LEFT ARM IN THIS AREA.

22 THIS IS VERY TYPICAL OF A SMEAR. IN OTHER
23 WORDS, IT HAS BLOOD ON IT, OR HAS COME IN CONTACT WITH
24 SOMETHING WITH BLOOD ON IT, WIPING ACROSS, LEAVING A
25 FAIRLY UNIFORM PATTERN RATHER THAN ISOLATED DROPS.

26 Q. AND WHAT IS THE SIGNIFICANCE OF THE FACT
27 THAT THERE IS SMEARED BLOOD ALONG THE SIDE OF HIS ARM?
28 HOW IS THAT SIGNIFICANT ON THE ISSUE OF, FIRST OF ALL,

1 WHETHER MR. MENENDEZ WAS SEATED WHEN HE RECEIVED THAT
2 WOUND; AND SECOND, WHETHER MR. MENENDEZ WAS ALIVE AT THE
3 TIME HE RECEIVED THAT LEG WOUND AND PERHAPS THEREAFTER?

4 A. WELL, I THINK IT SHOWS THAT THAT ARM MUST
5 HAVE BEEN DOWN, AND YOU CAN SEE SMEARS ON THE SIDE OF
6 THIS LEFT LEG AS WELL ON THE INNER THIGH, AND GOING DOWN
7 INTO THIS AREA (INDICATING), YOU SEE SOME SMEARING,
8 INDICATING THAT THIS ARM HAS BEEN WELL DOWN ON THAT LEG.
9 I DON'T KNOW WHAT OTHER PORTION OF THE BODY COULD BE THE
10 SOURCE OF THAT KIND OF SMEARING.

11 IN ADDITION TO THAT, YOU HAVE A -- WHAT
12 APPEARS TO BE A DRIP PATTERN HERE WHICH IS GOING DOWN.

13 Q. HERE IS WHERE, MR. MORTON?

14 A. SORRY. ON THE FRONT OF THE -- THE FRONT
15 MEDIAL SIDE -- INNER SIDE OF THE LEFT KNEE. THERE IS A
16 WHAT LOOKS LIKE DRIP PATTERN GOING DOWN.

17 Q. WELL, THE DRIP PATTERN HAS SIGNIFICANCE
18 VIS-A-VIS THE FACT THAT IT APPEARS THAT IT DRIPPED OUT
19 OF THE ENTRY WOUND?

20 A. RIGHT.

21 Q. AND THAT WOULD INDICATE, FOR THE DRIP TO
22 COME OUT OF THE ENTRY WOUND, THAT HE WOULD HAVE TO BE
23 STANDING?

24 A. THAT'S CORRECT.

25 Q. HOWEVER, I WANT TO STICK WITH THE HAND FOR
26 THE MOMENT.

27 CAN YOU ENVISION A POSITION THAT

28 MR. MENENDEZ COULD HAVE BEEN IN, IN WHICH TO HAVE THAT

-22762

1 TRANSFER OF BLOOD FROM THE LEG WOUND TO THE SIDE OF HIS
2 HAND?

3 A. YES. HE WOULD HAVE TO HAVE BEEN LEANED
4 FORWARD SIGNIFICANTLY AND THE ARM DOWN BETWEEN THE LEG.

5 Q. WHILE SEATED?

6 A. RIGHT.

7 Q. AND IS IT YOUR OPINION THAT HE RECEIVED THE
8 LEG WOUND STANDING AND THEN WAS SEATED ON THE COUCH
9 LEANING FORWARD AND THEN PULLED HIMSELF UP TO RECEIVE
10 THE HEAD WOUND?

11 MR. CONN: OBJECTION. LEADING.

12 THE COURT: SUSTAINED.

13 MS. ABRAMSON: OKAY. DID YOU HAVE AN OPINION AS
14 TO -- ASSUMING THAT AT SOME POINT MR. MENENDEZ IS DOING
15 WHAT YOU JUST DESCRIBED, HE IS LEANING FORWARD AND THE
16 HAND IS ON THE INNER THIGH AND THE BLOOD IS SMEARED --

17 MR. CONN: OBJECTION. LEADING.

18 THE COURT: OVERRULED.

19 Q. BY MS. ABRAMSON: IT IS YOUR OPINION THAT
20 OBVIOUSLY HE IS ALIVE WHEN HE IS DOING THAT, CORRECT?

21 A. YES.

22 Q. AND YOU DON'T DISPUTE THAT AFTER THE HEAD
23 WOUND HE IS NO LONGER ALIVE, CORRECT?

24 A. I WOULDN'T ARGUE THAT.

25 Q. AND YOU DON'T DISPUTE THAT FOR THE HEAD

26 WOUND -- WELL, FOR HIM TO WIND UP IN THE POSITION THAT

27 HE'S IN, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT AT

28 THE TIME HE RECEIVED THE HEAD WOUND HE HAD TO BE MORE

-22761

1 ERECT THAN THIS POSITION YOU HAVE SHOWN, LEANING FORWARD

2 WITH THE HAND INSIDE THE THIGH?

3 A. I CAN'T SAY WHAT POSITION HE WAS IN EXACTLY

4 WHEN THAT HEAD WOUND OCCURRED. OBVIOUSLY IF HE WERE

5 DOWN IN THE LOWER POSITION, HE COULDN'T BRING HIMSELF

6 BACK UP TO THE POSITION HE IS FINALLY FOUND IN AFTER

7 THAT HEAD WOUND.

8 Q. BUT YOU DO -- IT IS YOUR OPINION THAT THE

9 BODY HAD TO COME BACK UP TO GET THE HEAD WOUND, CORRECT?

10 A. I DON'T --

11 MR. CONN: OBJECTION. LEADING.

12 THE COURT: SUSTAINED.

13 Q. BY MS. ABRAMSON: WELL, DO YOU HAVE AN

14 OPINION AS TO WHAT MOVEMENT MIGHT HAVE OCCURRED AFTER

15 THE TIME WHEN THE LEFT-HAND CREATED THIS SMEAR WOUND ON

16 THE OUTER -- THE ULNAR SIDE OF THE LEFT HAND AND ARM?

17 A. THE BODY HAD TO COME BACK UP.

18 Q. AND COULD YOU DEMONSTRATE WHAT IN YOUR

19 OPINION HAPPENED OR COULD HAVE HAPPENED. JUST SHOW US

20 WHAT YOU MEAN BY IN TERMS OF "UP".

21 A. SOMETHING LIKE THIS, AND THEN LIKE THIS

22 (INDICATING), WITH THE HANDS DOWN INTO THE LAP.

23 Q. AND IF HE HAD HAD THE HANDS BENEATH THE

24 THIGHS AS YOU HAVE SHOWN AND THEN CAME UP, THEN HIS

25 HANDS WOULD WIND UP, ACCORDING TO YOUR THESIS, IN THE

26 POSITION THAT WE SEE THEM IN, CORRECT?

27 A. YES.

28 Q. AND THE BACK AND SHOULDERS WOULD HAVE WOUND

-22760

1 UP IN THE POSITION THAT WE SEE THEM IN.

2 MR. CONN: OBJECTION. LEADING.

3 THE COURT: SUSTAINED.

4 Q. BY MS. ABRAMSON: WOULD THE BACK AND

5 SHOULDERS HAVE WOUND UP IN THE POSITION THAT WE SEE THEM

6 IN IN THE PHOTOGRAPHS TAKEN OF MR. MENENDEZ' BODY WHEN

7 THE POLICE GOT THERE?

8 A. THEY COULD, YES.

9 Q. BASED ON WHAT YOU JUST DEMONSTRATED.

10 A. YES.

11 Q. NOW, YOU INDICATED THAT THERE IS -- THAT

12 THERE IS THIS SMEARING ON THE LEFT ARM AND SMEARING

13 INSIDE THE LEFT THIGH.

14 IS THERE ALSO SIMILAR APPEARANCE WITH

15 RESPECT TO HIS INNER RIGHT THIGH?

16 A. YES, THERE IS SOME SMEARING ON THE INNER
17 RIGHT THIGH, AND I'M NOT SURE IF IT SHOWS ON HIS RIGHT
18 HAND.

19 Q. IS THERE A PHOTOGRAPH THAT SUFFICIENTLY
20 VISUALIZES THE RIGHT HAND TO SEE IF A SUFFICIENTLY
21 SIMILAR SMEAR PATTERN ALONG THE RIGHT HAND WAS
22 SUFFICIENT AS THERE IS ON THE LEFT HAND?

23 A. RIGHT NOW I DON'T RECALL.

24 Q. BUT THE PATTERN OF SMEAR INSIDE THE
25 RIGHT -- WELL, STRIKE THAT.

26 IS THE PATTERN OF SMEAR INSIDE THE RIGHT
27 THIGH SIMILAR TO THE PATTERN OF SMEAR INSIDE THE LEFT
28 THIGH, SO THAT IT COULD HAVE BEEN CAUSED BY SIMILAR

-22759

1 MOVEMENT OF THE OTHER HAND?

2 A. IT'S JUST MUCH LESS EXTENSIVE.

3 Q. THERE IS LESS BLOOD SMEARED ON THE INNER
4 RIGHT THIGH?

5 A. YES.

6 Q. AND MORE BLOOD ON THE INNER LEFT THIGH?

7 A. THAT'S CORRECT.

8 Q. DOES THAT CONTRIBUTE TO YOUR OPINION THAT
9 THE SOURCE OF BLOOD FOR THE SMEAR ON HIS LEFT-HAND IS
10 THE LEG WOUND ITSELF?

11 A. YES.

12 Q. YOU ARE AWARE, ARE YOU NOT, THAT THERE IS

13 MASS INJURY TO HIS LEFT ELBOW?

14 A. YES.

15 Q. COULD THAT HAVE BEEN THE SOURCE OF BLOOD

16 FOR THE SMEARS THAT YOU SEE?

17 A. IT SEEMS TO BE RATHER DISTANT FOR THAT, AND

18 IT'S NOT DIRECTLY ASSOCIATED WITH THE BROAD SMEARING

19 THAT WE SEE HERE.

20 Q. AND YOU ARE AWARE, ARE YOU NOT, THAT HE HAD

21 VERY EXTENSIVE INJURY FROM BACK TO FRONT OF THE RIGHT

22 UPPER ARM?

23 A. THAT'S CORRECT.

24 Q. WOULD IT MAKE SENSE THAT THAT COULD BE THE

25 SOURCE OF BLOOD ON THE INNER RIGHT THIGH?

26 A. IT COULD POSSIBLY BE THE SOURCE OF IT.

27 NO, I SUSPECT IT'S NOT THE SOURCE OF IT,

28 BECAUSE THAT WOULD OCCUR -- UNLESS IT'S SECONDARY TO

-22758

1 SOME BLEEDING ON THE CHEST, OR IN THAT AREA, THEN -- IT

2 SEEMS LIKELY THAT IT'S ASSOCIATED WITH THE LEFT THIGH.

3 Q. SO -- WITH THE WHAT?

4 A. IT SEEMS UNLIKELY THAT IT'S ASSOCIATED WITH

5 THE BLOOD SMEARS ON THE LEFT THIGH AND THE ARM, THE

6 RIGHT ARM.

7 Q. NO. I ASKED YOU WHETHER OR NOT THE

8 SMEARING INSIDE THE RIGHT THIGH -- I AM LOOKING FOR THE
9 SOURCE OF BLOOD. THE SOURCE OF BLOOD HERE (INDICATING).

10 A. YES.

11 Q. YOU HAVE TOLD US THIS IS A SMEAR, CORRECT?

12 A. YES.

13 Q. THERE IS -- CAN YOU SEE WHAT APPEARS TO BE
14 BLOOD ON HIS RIGHT HAND?

15 A. YES.

16 Q. AND DO YOU HAVE AN OPINION -- STRIKE THAT.

17 YOU INDICATED THAT THE SMEARING ON THE LEFT
18 THIGH YOU BELIEVE IS AFFILIATED WITH THE WOUNDS AND THE
19 HAND COMING IN CONTACT WITH IT?

20 A. YES.

21 Q. DO YOU HAVE AN OPINION AS TO WHAT THE
22 SOURCE OF THE SMEARED BLOOD ON THE RIGHT THIGH IS,
23 THAT'S THE QUESTION.

24 A. YES. IT WOULD APPEAR TO BE THE RESULT OF
25 WOUNDS TO THE RIGHT SIDE, AND IN LEANING FORWARD OVERALL
26 THE RIGHT LEG.

27 Q. SO YOU DO ASSOCIATE THIS WITH THE RIGHT ARM
28 WOUNDS; THAT'S THE WOUND TO THE RIGHT SIDE, YOU MEAN?

-22757

1 A. YES.

2 Q. THAT'S THE ONLY WOUND HE HAS ABOVE THAT TO
3 THE RIGHT SIDE, ISN'T IT?

4 A. THAT AND THE WOUND TO THE HEAD.

5 Q. BUT YOU DON'T BELIEVE HE IS LEANING FORWARD

6 AFTER THE WOUND TO THE HEAD, DO YOU?

7 A. NO.

8 THE COURT: ALL RIGHT. LET'S TAKE OUR RECESS,

9 AND WE WILL RESUME AT 10:30.

10

11 (A RECESS WAS TAKEN FROM

12 10:15 A.M. TO 10:35 A.M.)

1 THE COURT: OKAY. WE'LL RESUME. WE'LL BE

2 BREAKING AROUND 11:30.

3 (THE JURY ENTERED THE

4 COURTROOM AND THE FOLLOWING

5 PROCEEDINGS WERE HELD:)

6

7 THE COURT: ALL RIGHT. WE'LL NOW RESUME.

8 MS. ABRAMSON: THANK YOU, YOUR HONOR.

9 Q MR. MORTON, WE WERE EXAMINING THE

10 PHOTOGRAPHS THAT ARE PART OF EXHIBIT 304.

11 A YES.

12 Q AND YOU'VE INDICATED THE SIGNIFICANCE OF

13 THE SMEARING INSIDE EACH OF MR. MENENDEZ' THIGHS AND

14 ALONG THE SIDE OF HIS LEFT HAND.

15 CALLING YOUR ATTENTION TO PHOTOGRAPH

16 304-B, IS -- AND C -- IS THERE SOME BLOOD SPATTER

17 EVIDENCE IN THOSE PHOTOGRAPHS INDICATIVE OF

18 MR. MENENDEZ BEING -- STANDING UP AT SOME POINT IN

19 FRONT OF THE COUCH?

20 A YES. THERE'S SOME BLOOD DROPS THAT ARE

21 ACTUALLY UNDER HIS LEG, HIS RIGHT LEG, AND YOU CAN
22 SEE THE EDGES OF THEM IN PHOTOGRAPH C. AND THERE'S
23 ANOTHER PHOTOGRAPH WHERE HE IS NO LONGER SEATED THAT
24 SHOWS FULLY WHERE THOSE DROPS ARE.

25 Q LET ME SHOW YOU 331, ASK YOU TO PUT THAT
26 UP IN THE CENTER.

27 IS 331 THE PHOTOGRAPH THAT SHOWS THAT
28 MORE FULLY?

42781

1 A YES.

2 Q FIRST, WOULD YOU LOOK AT THE PHOTOGRAPH
3 THAT IS PART OF 304 AND POINT OUT TO THE JURY WHERE
4 THESE DROPS ARE THAT ARE UNDER THE LEG.

5 A YES. FOR REFERENCE PURPOSES YOU CAN SEE
6 THIS DROP RIGHT HERE AT THE FRONT EDGE, THE LEADING
7 EDGE OF THE CUSHION, WHICH IS ASSOCIATED WITH SOME
8 WIPING. IN OTHER WORDS, THERE'S A DROP THERE THAT
9 SUBSEQUENTLY HAS BEEN EITHER PART OF A DROP THAT HAS
10 BEEN WIPED AND SMEARED UP HERE OR WHICH WAS SMEARED
11 POSSIBLY BY OTHER BLOOD-STAINED AREA. BUT IT'S
12 PARTLY A DROP AND PARTLY A SMEAR. AND, TOO, AS YOU
13 LOOK AT PHOTOGRAPH B TO THE LEFT OF THAT, RIGHT
14 UNDER THE EDGE OF THE LEG, YOU'LL SEE SOME DARK
15 AREA, AND THAT IS APPARENT BLOOD STAINING WHICH

16 CORRESPONDS TO THIS AREA TO THE LEFT AS YOU'RE
17 LOOKING AT THE PHOTOGRAPH.
18 Q 331?
19 A EXHIBIT 331.
20 Q LET'S DO THIS, IF WE CAN, SO THAT LATER
21 ON, SOMETIME FROM NOW WHEN THE JURY'S LOOKING AT
22 THESE, THEY'LL KNOW WHAT YOU'RE TALKING ABOUT.
23 THERE'S A BIG BLACK --
24 A I HAVE A MARKER HERE.
25 Q THE BIG BLACK ONE? OKAY.
26 LET'S DO THIS. THE REFERENCE BLOOD
27 STAIN THAT YOU SAY IS -- APPEARS TO BE A DROP THAT
28 WAS THEN SMEARED, WHY DON'T YOU CIRCLE THAT ON 331

42782

1 AND ON B AND PUT THE NUMBER "1" NEXT TO IT AND
2 THAT'S THE REFERENCE DROP.
3 A I'VE CIRCLED -- ON B I'VE CIRCLED THE
4 AREA THAT'S THE REFERENCE AND PUT A "1" ACTUALLY
5 WITHIN THE CIRCLE.
6 Q WOULD YOU DO THE SAME ON 331.
7 A YOU SAID THIS IS 331?
8 Q THAT'S NO. 331. JUST PUT A "1" IN THAT
9 SAME CIRCLE.
10 NOW, THE BLOOD DROPS UNDER HIS LEG ON

11 304-B, WOULD YOU CIRCLE THAT AREA AND PUT A "2."

12 A YES. THEY ARE -- THEY SHOW PARTIALLY

13 UNDER THE LEG.

14 Q WELL, IF YOU WANT TO DO IT WITH AN ARROW

15 ON IT, WHICHEVER WORKS BEST.

16 A I'LL PUT A "2" AND A LINE GOING TO THAT

17 ONE.

18 Q NOW, ON 331 YOU CAN VISUALIZE THAT AREA

19 BETTER, CAN YOU NOT?

20 A YES.

21 Q WOULD YOU THEREFORE, AGAIN, DO A LINE

22 AND A "2" TO THE BLOOD DROPS THAT WERE UNDER HIS LEG

23 THAT ARE PERCEPTIBLE IN B.

24 A YES. I PUT A "2" ADJACENT TO THAT

25 CIRCLE.

26 Q WHAT IS THE SIGNIFICANCE OF THE FACT

27 THAT THERE ARE -- WHEN YOU SAY BLOOD DROPS, WHAT DO

28 YOU MEAN BY DROPS?

42783

1 A YES. YOU CAN DISTINGUISH DROPS, BLOOD

2 DROPS, DUE TO GRAVITY OF A PARTICULAR SIZE AS

3 DISTINGUISHED FROM SPATTER WHERE THERE IS SOME FORCE

4 APPLIED AND IT HAS TO OVERCOME THE SURFACE TENSION

5 OF THE DROP TO GET TO THE SMALLER SIZES, AND THAT

6 CAN BE DONE THROUGH A NUMBER OF WAYS, EITHER BY
7 IMPACT OR BY MOTION SUCH AS A WIPING EFFECT WITH THE
8 HAND OR SOMETHING LIKE THAT.

9 Q AND WHAT ARE THE -- WHAT YOU DESCRIBED
10 AS -- THAT BOTH ONE AND TWO WERE DROPS RATHER THAN
11 SMEARS OR SPATTERS?

12 A WELL, THEY LOOK LIKE DROPS WHICH HAVE
13 BEEN SMEARED. THEY'RE VERY HEAVY IN APPEARANCE AND
14 THEY SHOW A RATHER DARK COLOR SHOWING THAT THEY'RE
15 DROPS.

16 Q ARE THEY CONSISTENT WITH DROPPING
17 STRAIGHT DOWN, GRAVITY DROPS THAT THEN ARE EITHER
18 SAT ON OR SOMETHING COMES UP AGAINST THEM AND SMEARS
19 THEM?

20 A YES.

21 Q SO THEY ARE THE GRAVITY-TYPE DROPS?

22 A YES.

23 Q AND WHAT DOES THE FACT THAT THEY'RE
24 GRAVITY-TYPE DROPS THERE SIGNIFY WITH RESPECT TO
25 MR. MENENDEZ' POSITION AT SOME POINT AFTER HE HAD
26 BEEN SHOT?

27 A THAT THERE WAS BLOOD ON THE SOFA BEFORE
28 HE WAS SEATED.

1 Q SO THAT INDICATES HE HAD TO BE ALIVE,

2 DID HE NOT, BEFORE HE WAS SEATED?

3 A YEAH.

4 Q AND, THEREFORE, THE NOTION THAT HE

5 RECEIVED THE LEG WOUND WHILE SEATED AND DEAD IS

6 INCONSISTENT WITH THAT?

7 A YES.

8 Q NOW, IF YOU COULD AT LEAST BACK UP A

9 LITTLE BIT. THERE ARE THREE PHOTOGRAPHS ON THE

10 RIGHT SIDE OF 304, F --

11 A F, G AND H.

12 Q GOOD. THANK YOU.

13 AND WHAT DID THOSE -- WHAT'S THE

14 SIGNIFICANCE OF WHAT'S DEPICTED IN THOSE

15 PHOTOGRAPHS, WHICH IS MAINLY THE CARPETING TO THE

16 RIGHT OF THE COUCH AS WE LOOK AT THE PHOTOGRAPHS?

17 A YES. I DID A VERY DETAILED SURVEY OF

18 THESE, USING PHOTO SHOP AND LOOKING AT THE

19 PHOTOGRAPHS AS WELL, AND FOUND THAT THIS AREA OUT

20 HERE WHERE ANY BLOW-OUT FROM THIS EXIT WOUND ON THE

21 THIGH WOULD HAVE BEEN, AND I DON'T SEE ANY EVIDENCE

22 OF EITHER THE PELLETS OR ANY BLOWN OUT TISSUE OR

23 BLOOD THAT I WOULD HAVE EXPECTED TO SEE IF THAT, IN

24 FACT -- HE WERE, IN FACT, IN THAT POSITION WHEN THAT

25 OCCURRED.

26 Q AND DOES THE APPEARANCE OF THE WOUNDS TO

27 YOU SUGGEST WHETHER OR NOT A FULL OR CLOSE TO FULL

28 ROUND APPEARS TO HAVE CREATED THOSE ENTRY AND EXIT

1 WOUNDS?

2 A IT WOULD APPEAR TO BE A FULL ROUND.

3 Q AND IF IT WERE AS IT APPEARS, A FULL
4 ROUND, WOULD YOU EXPECT TO SEE SIGNIFICANT PELLET
5 AND HUMAN TISSUE BLOW-OUT?

6 A YES.

7 Q NOW, DO THOSE -- DOES PHOTOGRAPH F SHOW
8 SOMETHING ELSE BY WAY OF BLOOD DROPPINGS THAT
9 SUGGESTS THAT MR. MENENDEZ WAS STANDING UP IN FRONT
10 OF THE COUCH AT SOME POINT AFTER HE WAS SHOT?

11 A YES.

12 Q AND, AGAIN, IF YOU HAVE THE MARKER,
13 COULD YOU FIRST POINT AND DESCRIBE WHAT IT IS YOU
14 SEE THERE THAT SUGGESTS THAT AND THEN CIRCLE THEM.

15 A YES. THERE ARE A SERIES OF SEVERAL
16 DROPS HERE OUT IN FRONT OF THE ARM AREA OF THE SOFA
17 ON THE CARPET, AND THEY ARE OUT BEYOND THE AREA
18 WHERE HIS BODY IS LOCATED. AND THESE ARE DROPS DOWN
19 FROM -- APPARENTLY FROM A WOUND.

20 Q GRAVITY DROPS, CIRCULAR DROPS?

21 A YES.

22 Q OKAY. AND IS THERE ONE SUCH AREA
23 VISIBLE IN THAT PHOTOGRAPH OR MORE THAN ONE?

24 A ONE AREA.

25 Q AND CAN YOU CIRCLE THAT AREA ON THAT

26 PHOTOGRAPH.

27 A YES. I CIRCLED IT ON F.

28 Q AND CAN YOU APPROXIMATE HOW FAR FROM THE

42786

1 COUCH ITSELF THAT AREA OF GRAVITY BLOOD DROPS LIE.

2 A THERE ISN'T A GOOD SCALE THERE. THE

3 SCALE IS ACTUALLY CLOSER HERE. IT LOOKS LIKE IT'S

4 SOMETHING ON THE ORDER OF SIX TO TEN INCHES, BUT

5 THAT'S A ROUGH ESTIMATE.

6 Q IS THERE ANOTHER AREA CLOSER IN HERE

7 WHERE THERE ARE INDIVIDUAL DROPS AS COMPARED TO THE

8 LITTLE POOL OF BLOOD?

9 A YES.

10 Q IN FACT, ON THIS PHOTOGRAPH, H, DO YOU

11 ALSO SEE A SERIES OF INDIVIDUAL DROPS, BOTH IN THE

12 AREA YOU CIRCLED AND AROUND THE POOL OF BLOOD?

13 A YES.

14 Q AND DO THOSE INDIVIDUAL -- WERE YOU HERE

15 WHEN MR. LINHART TESTIFIED THAT HE BELIEVED THOSE

16 DROPS ALSO INDICATED THAT MR. MENENDEZ WAS IN A

17 DIFFERENT POSITION THAN DEPICTED ON THE SOFA AFTER

18 HE HAD BEEN SHOT?

19 A YES.

20 Q AND DO YOU AGREE WITH MR. LINHART'S

21 ASSESSMENT?

22 A YES.

23 Q SO WOULD YOU CIRCLE THOSE AREAS ALSO ON

24 BOTH OF THOSE PHOTOGRAPHS THAT SHOW AREAS OF

25 INDIVIDUAL GRAVITY-TYPE DROPS.

26 A I'VE CIRCLED THAT ON BOTH F AND G.

27 Q OKAY. NOW, JUST LOOKING AT 331 FOR A

28 MOMENT, THAT LARGE PHOTOGRAPH.

42787

1 A YES.

2 Q DO THERE APPEAR TO BE CIRCULAR AREAS ON

3 THE TOP OF THE COUCH CUSHION IN THAT PHOTOGRAPH

4 TAKEN AFTER MR. MENENDEZ' BODY WAS REMOVED?

5 A YES. THEY'RE A SERIES, AGAIN, THAT

6 WOULD BE UNDER HIS LEG THAT APPEAR ON THE UPPER

7 SURFACE OF THE SOFA CUSHION BUT HAVE SUBSEQUENTLY

8 BEEN SMEARED BY BLOOD APPARENTLY DURING THE

9 REMOVAL.

10 Q IS -- DO YOU HAVE ANY OPINION ABOUT

11 WHETHER OR NOT THOSE HAVE ANY SIGNIFICANCE VIS-A-VIS

12 WHETHER HE WAS STANDING AND, THEREFORE, ALIVE AT THE

13 POINT WHEN HE RECEIVED THE LEG WOUND?

14 A THEY WOULD CERTAINLY SUGGEST THAT THEY

15 WERE PART OF A DROP PATTERN THAT RESULTED WHILE HE
16 WAS ALIVE STANDING, BUT WITH THE SMEARING OVER THEM,
17 IT'S A LITTLE HARD TO SAY.

18 Q OKAY. YOU CAN RESUME YOUR SEAT. OH,
19 YOU KNOW WHAT, YOU CAN'T. YOU HAVE TO HELP ME GET
20 THIS DOWN FOR THE MOMENT AND WE'LL HOLD ON TO IT FOR
21 LATER. JUST PUT IT HERE FOR NOW.

22 LET ME JUST MAKE SURE OF ONE THING,
23 MR. MORTON.

24 HAVE WE DISCUSSED BY NOW THE
25 SIGNIFICANCE OF THE IMAGES DEPICTED IN ALL THESE
26 PHOTOGRAPHS?

27 A YES, I BELIEVE SO.

28 Q OKAY. ONE THING. EXCUSE ME. DO YOU

42788

1 KNOW WHAT THIS CIRCULAR DISK APPEARING OBJECT IS ON
2 MR. MENENDEZ' RIGHT THIGH?

3 A THAT'S A FIBER WAD.

4 Q IS THAT HOW IT WAS DESCRIBED BY THE
5 BEVERLY HILLS POLICE DEPARTMENT?

6 A YES.

7 Q DID YOU EXAMINE THAT FIBER WAD WHEN YOU
8 EXAMINED ALL OF THE BALLISTIC EVIDENCE?

9 A YES, I DID.

10 Q WOULD YOU CIRCLE ON THAT PHOTOGRAPH THAT
11 FIBER WAD.

12 A YES. I'LL CIRCLE IT. THAT'S ON B.

13 Q OR DO AN ARROW. IT MIGHT BE EASIER TO
14 SHOW.

15 A I'LL PUT AN ARROW AND PUT "FW" FOR FIBER
16 WAD.

17 Q OKAY. IS THAT FIBER WAD ALSO
18 OBSERVABLE, WITHOUT HAVING TO CIRCLE IT AGAIN, IN C?

19 A YES.

20 Q RIGHT AT THE EDGE OF THE SHORTS?

21 A THAT'S CORRECT.

22 Q AND ARE YOU AWARE, ACCORDING TO THE
23 BEVERLY HILLS PROPERTY REPORT, THAT THERE'S ANOTHER
24 WAD ALSO ON HIS RIGHT LEG, BUT IT'S NOT EASY TO SEE
25 BECAUSE IT'S ON TOP OF THE DARK SHORTS?

26 A YES.

27 Q SO THERE'S TWO WADS ON HIS RIGHT LEG,
28 CORRECT?

42789

1 A YES.

2 Q AND THIS IS 295.

3 YOU CAN RESUME YOUR SEAT RIGHT NOW,

4 MR. MORTON.

5 NOW, 295 IS A SERIES OF PHOTOGRAPHS
6 SURROUNDING THE ILLUSTRATIONS THAT FAILURE ANALYSIS
7 MADE OF THEIR HYPOTHETICAL SHOT NO. 1, CORRECT?

8 A YES.

9 Q YOU HAVE EXAMINED THESE ILLUSTRATIONS
10 AND THE REPORT THAT DESCRIBED THE HYPOTHESES THAT
11 WENT INTO THAT ILLUSTRATION, HAVE YOU NOT?

12 A YES, I HAVE.

13 Q DO YOU AGREE WITH THAT ILLUSTRATION?

14 A NO, I DO NOT.

15 Q AND HOW MANY SPECIFICS DO YOU DISAGREE
16 WITH THAT ILLUSTRATION?

17 A I HAVEN'T CATEGORIZED THE NUMBER, BUT
18 THERE ARE A NUMBER OF PROBLEMS WITH IT.

19 Q AND WOULD YOU DESCRIBE WHAT THE PROBLEMS
20 ARE WITH IT.

21 WELL, WHEN I SAY PROBLEMS, DOES THE
22 PHYSICAL EVIDENCE SUPPORT OR CONTRADICT WHAT'S
23 DEPICTED IN THAT ILLUSTRATION OR THOSE
24 ILLUSTRATIONS?

25 A I THINK THERE'S SUBSTANTIAL EVIDENCE TO
26 CONTRADICT IT.

27 Q AND WOULD YOU TELL US WHAT IS THE
28 SUBSTANTIAL EVIDENCE THAT CONTRADICTS THAT

1 ILLUSTRATION OF ONE AS FAILURE ANALYSIS CATEGORIZED

2 IT.

3 A WELL, PRIMARILY THE PATHOLOGIST'S

4 DESCRIPTION OF THE ENTRY WOUND TO THE BACK OF THE

5 RIGHT ARM, THE LATERAL SIDE OF THE RIGHT ARM.

6 THAT'S ONE OF THE MAIN THINGS. AND IT APPEARS TO

7 BE -- IN MY EXPERIENCE, THE APPEARANCE SUPPORTS THE

8 IDEA THAT THAT'S ENTRY ON THE LATERAL REAR AREA OF

9 THE RIGHT ARM EXITING ACROSS THE CHEST. AND THAT'S

10 CONFIRMED BY THE APPEARANCE OF THE BLOOD SPATTER,

11 BLOOD SPRAY FROM THAT WOUND, WHICH APPEARS ON BOTH

12 THE SHIRT AND THE LEFT ARM OF MR. MENENDEZ.

13 Q NOW, YOU EXAMINED, DID YOU NOT,

14 MR. MENENDEZ' SHIRT MORE THAN ONCE?

15 A YES, I DID.

16 Q AND DOES THERE APPEAR TO BE AN AREA WITH

17 TWO LARGE AND ONE SMALLER HOLE ON THAT SHIRT?

18 A THERE ARE ACTUALLY A NUMBER OF DIFFERENT

19 HOLES IN THE SHIRT.

20 Q I MEAN ON THE FRONT OF THE SHIRT.

21 A ON THE FRONT OF THE SHIRT, THERE ARE A

22 COUPLE OF LARGE HOLES AND I THINK ONE OR TWO SMALLER

23 ONES.

24 Q AND DO YOU HAVE AN OPINION AS TO WHETHER

25 OR NOT THOSE LARGE HOLES COULD HAVE ANY CONNECTION

26 TO THE TWO WADS THAT WE JUST DISCUSSED THAT WERE

27 SITTING ON MR. MENENDEZ' RIGHT LEG?

28 A YES, THEY COULD -- THOSE HOLES COULD

42791

1 RELATE TO THE WADS OR THE PELLETS THAT PASSED
2 THROUGH THAT RIGHT ARM.

3 Q AND PASSED THROUGH IN WHICH DIRECTION?

4 A FROM MR. MENENDEZ' RIGHT TO LEFT.

5 Q AND IS THAT SOMETHING THAT YOU'VE COME
6 UPON IN THE PAST WHERE WADS FROM A SHOTGUN ROUND CAN
7 GET CAUGHT UP IN CLOTHING AND THEN DROP OUT?

8 A WADS, BULLETS, CART -- YOU KNOW,
9 FRAGMENTS OF PELLETS. ANY OF THOSE THINGS CAN GET
10 CAUGHT UP AND DROP OFF LATER.

11 Q IF THE HOLE IN MR. MENENDEZ' SHIRT IS ON
12 THE RIGHT SIDE OF THE SHIRT, WOULD THAT BE
13 CONSISTENT WITH WADDING GETTING -- GOING THROUGH
14 THERE AND GETTING CAUGHT UP AND THEN DROPPING DOWN
15 ON THE RIGHT SIDE OF HIS BODY?

16 A COULD BE WADDING, COULD BE PELLETS,
17 COULD BE TISSUE.

18 Q OKAY. BUT THE QUESTION WAS WADDING.
19 LET'S DO ONE THING AT A TIME.

20 IS IT CONSISTENT WITH WADS DROPPING DOWN
21 ON TO THE RIGHT SIDE OF HIS LEG?

22 A YES.

23 Q NOW, THE HOLES THAT YOU SAW IN THE
24 SHIRT, ARE THEY THE KIND OF HOLES YOU WOULD EXPECT
25 TO BE MADE BY ACTUAL PELLETS GOING ACROSS THE CHEST
26 AREA OF THE SHIRT FROM LEFT TO RIGHT?

27 A NO.

28 Q NOW, YOU SAID YOU ALSO -- YOU EXAMINED

42792

1 THE SHIRT FOR THE FIRST TIME IN WHAT YEAR?

2 A 1983.

3 Q NOT '83.

4 A '93. I'M SORRY.

5 Q AND ARE YOU FAMILIAR WITH THE TESTIMONY
6 OF DR. LAWRENCE CONCERNING HOLES IN THE SHIRT, IN
7 THE CUFF AREA OF THE RIGHT SLEEVE?

8 A YES.

9 Q AND DO YOU AGREE OR DISAGREE -- WELL,
10 FIRST OF ALL, YOU RECALL DR. LAWRENCE INDICATED HE
11 WAS NOT A FIBER EXPERT?

12 A YES.

13 Q ARE YOU A FIBER EXPERT?

14 A YES.

15 Q HAVE YOU EXAMINED -- WELL, HOW MANY
16 PIECES OF FIBER EVIDENCE OVER THE YEARS HAVE YOU
17 EXAMINED FOR THE PURPOSE OF TRYING TO DETERMINE

18 DIRECTION OF THE CAUSATIVE FACTOR OF HOLES?

19 A I'VE LOOKED AT MANY HUNDREDS OF

20 GARMENTS. INTERPRETATIONS OF TRYING TO ESTABLISH

21 DIRECTION, THAT'S ALMOST NEVER POSSIBLE. SOMETIMES

22 A PATHOLOGIST WHO SEES THE WOUND IN ITS ORIGINAL

23 POSITION CAN MAKE SOME JUDGMENT ABOUT THAT BECAUSE

24 THE FIBERS ARE ACTUALLY INTO THE WOUND. BUT TRYING

25 TO DO IT FROM THE CLOTHING HAS BEEN, IN MY

26 EXPERIENCE, IMPOSSIBLE ALMOST ALWAYS.

27 Q AND WITH RESPECT TO THIS CLOTHING, THIS

28 SHIRT, AT THE TIME THAT YOU SAW IT, DID YOU SEE

42793

1 ANYTHING THAT SUGGESTED A DIRECTION TO THOSE HOLES?

2 A NO.

3 Q AND WHEN YOU FIRST EXAMINED THE SHIRT,

4 WHAT CONDITION WAS IT IN EVEN BACK IN '93?

5 A IT WAS HEAVILY BLOOD-SOAKED AND

6 TISSUE-SOAKED.

7 Q AND WAS IT NICELY PRESSED OR ON A HANGER

8 OR BOXED OR ANYTHING LIKE THAT?

9 A NO. IT WAS IN A BAG.

10 Q HOW WAS IT IN THE BAG?

11 A JUST ROLLED UP IN THE BAG. NO

12 PARTICULAR WAY.

13 Q AND DO YOU KNOW WHAT PARTICULAR WAY IT
14 WAS FIRST STORED WHEN IT WAS -- AFTER ITS REMOVAL
15 FROM MR. MENENDEZ' BODY?

16 A NO.

17 Q ARE THERE ANY RECORDS TO SHOW THAT ANY
18 CARE WAS EVER TAKEN TO PRESERVE THE CONDITION OF
19 THAT SHIRT?

20 A NO, OTHER THAN DRYING IT AND PUTTING IT
21 IN A BAG.

22 Q AND DO YOU HAVE ANY OPINION ABOUT WHAT
23 HAPPENS TO THE -- OR COULD HAPPEN TO THE DIRECTION OF
24 CLOTHING FIBERS DURING THE DRYING PROCESS WHEN
25 THEY'RE SOAKED WITH BODILY FLUIDS AND BLOOD?

26 A YES. WHEN SOMETHING DRIES WITH LIQUID
27 ON IT LIKE THAT, LIKE BLOOD, IT TENDS TO DRY
28 NON-UNIFORMITY. THERE'S A CAPILLARY ATTRACTION,

42794

1 BASICALLY, AS THE LIQUIDS TEND TO FLOW TO THE AREAS
2 THAT ARE DRYING FAST. SO YOU GET SOME CHANGES IN
3 THE CONFIGURATION OF THE FIBERS AT THE AREA OF THE
4 DEFECT, AND THEY COMPLICATE ANY ATTEMPT TO ASSESS
5 WHAT DIRECTION OF TRAVEL IS.

6 Q SO WOULD IT BE FAIR TO SAY, MR. MORTON,
7 THAT YOU DIDN'T SEE ANYTHING IN THE CONDITION OF THE

8 SHIRT THAT INDICATED THAT THE PELLET HOLES AT THE
9 BACK OF THE SLEEVE WERE EXIT HOLES OR ENTRY HOLES
10 EITHER WAY?

11 A THAT'S CORRECT.

12 Q DOES THE FACT, HOWEVER, THAT THERE ARE
13 INDIVIDUAL HOLES SUGGEST AN ENTRY RATHER THAN AN
14 EXIT WOUND?

15 A GENERALLY THAT'S WHERE YOU SEE THEM,
16 YES.

17 Q WE WERE TALKING ABOUT THE HYPOTHETICAL
18 NO. 1 HERE, AND YOU SAID YOU HAD DISAGREEMENTS WITH
19 IT. YOU MENTIONED THE ARM.

20 IF THE ARM IS AS YOU AND OTHER EXPERTS
21 HAVE DESCRIBED HERE, THE ENTRY TO THE BACK AND THE
22 EXIT TO THE FRONT, DOES THAT MEAN THAT NO. 1 IS
23 ACTUALLY TRYING TO AFFILIATE SHOTS COMING FROM TWO
24 DIFFERENT DIRECTIONS?

25 A YES.

26 Q AND WITH RESPECT TO THE DEPICTION OF THE
27 SHOT TO MR. MENENDEZ' LEFT ELBOW, DO YOU HAVE
28 OPINIONS THAT INDICATE THAT THAT'S ERRONEOUS, THE

42795

1 WAY IT'S DEPICTED THERE?

2 A YES.

3 Q AND WHAT ARE THOSE OPINIONS BASED ON?

4 A THE -- IF THE SHOT TO THE LEFT ELBOW

5 OCCURRED AS SHOWN IN THE DIAGRAM, I WOULD EXPECT,

6 YOU KNOW, THE ARM MIGHT HAVE DROPPED DOWN AND

7 KNOCKED THE TV REMOTE OFF THE ARM OF THE SOFA.

8 Q WOULD YOU ALSO EXPECT, GIVEN THE SPREAD

9 PATTERN ON THAT ELBOW, THAT IF IT WAS NEAR THE

10 REMOTE, THE REMOTE WOULD HAVE BEEN HIT?

11 A I CAN'T SAY BECAUSE I DON'T KNOW HOW

12 CLOSE IT WOULD HAVE BEEN.

13 Q OKAY. NOW, IN YOUR OPINION -- WELL,

14 STRIKE THAT.

15 YOU UNDERSTAND THAT NO. 1 ALSO ATTEMPTS

16 TO AFFILIATE THE BREAST WOUND TO MRS. MENENDEZ, THE

17 LEFT BREAST WOUND?

18 A YES.

19 Q AND, IN YOUR OPINION, COULD THAT BREAST

20 WOUND HAVE BEEN CAUSED BY A SHOT COLUMN -- TO USE THE

21 MC CARTHY THESIS HERE, THIS IS SUPPOSED TO BE A --

22 YOU UNDERSTAND THIS IS SUPPOSED TO BE AN ENTRY

23 WOUND, ACCORDING TO HIS THESIS, OF THIS DIMENSION

24 AND CONFIGURATION?

25 A YES.

26 Q AND THE BACK IS SUPPOSED TO BE AN EXIT

27 WOUND?

28 A THAT'S CORRECT.

1 Q AND THEN WHATEVER'S COMING OUT OF THERE
2 IS SUPPOSED TO HAVE GONE INTO HER LEFT BREAST?

3 A THAT'S CORRECT.

4 Q THE PATTERN ON HER LEFT BREAST, IS THAT
5 INCONSISTENT WITH THAT THESIS?

6 A TYPICALLY, WHEN SOME -- WHEN SHOT PELLETS
7 GO THROUGH, THEY SPREAD OUT, THEY START SPREADING
8 OUT, AND SO YOU'D HAVE A -- I WOULD EXPECT TO SEE A
9 BIGGER SPREAD.

10 Q AND IS THERE A CERTAIN AMOUNT OF
11 UNIFORMITY IN THE SPACING OF THE PELLETS ON THE LEFT
12 BREAST WOUND THAT'S INCONSISTENT WITH IT HAVING GONE
13 THROUGH AND BROKEN A HUMERUS BEFORE THEN?

14 A YES.

15 Q NOW, DID YOU EXAMINE -- YOU SAID YOU
16 EXAMINED THE CLOTHING. WAS ONE OF THE ITEMS THAT
17 YOU EXAMINED THE BRA?

18 A YES.

19 Q AND DID YOU DO SOMETHING WITH THE BRA
20 AND THEN PHOTOGRAPH IT THAT SUGGESTED THE DIRECTION
21 OF THE PELLETS COMING INTO THAT LEFT BREAST?

22 A I PHOTOGRAPHED IT AND SHOWED ITS
23 APPEARANCE. I DON'T KNOW THAT I COULD USE THAT
24 PRECISELY TO DETERMINE THE DIRECTION. THE
25 PATHOLOGIST WOULD HAVE TO DEFINE BASED ON THE
26 APPEARANCE OF THE ENTRY AND THEN WHERE THEY ENDED

27 UP.

28 Q THE QUESTION WAS, THOUGH: ARE THE ENTRY

42797

1 HOLES THAT YOU SAW ON THE BRA THAT YOU ILLUSTRATED
2 IN YOUR PHOTOGRAPH ON THE FRONT OF THE BRA RATHER
3 THAN ON THE LATERAL ASPECT OF IT?

4 A THEY ARE ON THE LEFT FRONT.

5 Q DO YOU HAVE THE PHOTOGRAPH WITH YOU THAT
6 YOU MADE OF THE BRA?

7 A YES, I DO.

8 Q AND BEFORE TAKING THE PHOTO, DID YOU DO
9 SOMETHING TO THE BRA SO THAT YOU COULD HAVE A
10 MEANINGFUL PICTURE?

11 A YES. I PUT IT ON A BALLOON THAT WAS
12 BLOWN UP.

13 Q A BLOWN-UP BALLOON?

14 A YES.

15 Q A COLORED BALLOON?

16 A YES.

17 Q SO YOU COULD SEE THE BALLOON THROUGH THE
18 HOLES?

19 A YES. IT'S GREEN.

20 Q ALL RIGHT. IS THAT ALL BRA?

21 A YES.

22 Q MAYBE WE SHOULD JUST KEEP IT ON THE
23 SHEET.
24 THERE'S A SHEET OF PHOTOGRAPHS, YOUR
25 HONOR, IN THE PLAS- --
26 MR. CONN: I HAVE NOT SEEN THIS, YOUR HONOR.
27 MAY I SEE THIS?
28 MS. ABRAMSON: CERTAINLY.

42798

1 THE COURT: WE'RE AT 337.
2 MS. ABRAMSON: YES, YOUR HONOR. THANK YOU.
3 THERE ARE -- LET ME JUST INDICATE WHAT
4 337 IS, YOUR HONOR. FIVE PHOTOGRAPHS MOUNTED IN A
5 PLASTIC SLEEVE.
6 Q AND ON THE FRONT SURFACE, WHAT ARE WE
7 SEEING? WHAT DO THE THREE PHOTOGRAPHS DEPICT?
8 A THEY BASICALLY SHOW THE STRAP AT THE
9 BOTTOM OF THE BRA, THE CENTER FRONT STRAP, AND THEN
10 THE FRONT OF THE BRA. AND ONE OF THEM WAS TAKEN
11 FROM A LOWER ANGLE, THE ONE ADJACENT TO IT IS TAKEN
12 AT A LITTLE HIGHER ANGLE.
13 Q AND THEN ON THE REVERSE SIDE WE'RE
14 SEEING TWO MORE PHOTOGRAPHS OF THE BRA?
15 A YES. BASICALLY SIMILAR PHOTOGRAPHS
16 TAKEN FROM ABOUT DIRECTLY FROM THE FRONT.

17 Q AND THE GREEN THING THAT'S SHOWING

18 THROUGH THIS IS THE BALLOON?

19 A THAT'S CORRECT.

20 Q AND THAT ALLOWS ONE TO SEE EXACTLY WHERE

21 THE HOLES ARE?

22 A YES.

23 Q AND AREN'T THERE SOME HOLES, ESPECIALLY

24 THIS ONE, THAT APPEARS TO BE ACTUALLY TO THE RIGHT

25 OF THE CENTER OF THE CUP OF THE BRA?

26 A YES.

27 Q SO NOT ALL THE PELLETS ARE ACTUALLY ON

28 THE LEFT SIDE. SOME OF THEM ARE ACTUALLY -- OR AT

42799

1 LEAST ONE IS TO THE RIGHT OF THE MIDLINE --

2 MR. CONN: OBJECTION. LEADING.

3 THE COURT: SUSTAINED. OBJECTION SUSTAINED.

4 Q BY MS. ABRAMSON: CAN YOU TELL US WITH

5 RESPECT TO THE MIDLINE OF THE BRA CUP -- I'M GOING TO

6 CIRCLE THIS ONE THAT I'M ASKING ABOUT.

7 IS THAT A PELLET DEFECT, FIRST OF ALL?

8 A YES.

9 Q WHERE IS THAT WITH RESPECT TO THE

10 MIDLINE OF THE CUP?

11 A IT LOOKS FAIRLY CLOSE TO THE MIDLINE OR

12 POSSIBLY TO THE MEDIAL OF IT, TOWARD THE RIGHT.

13 Q TO THE RIGHT?

14 A YEAH.

15 Q IS THERE ANYTHING ELSE ABOUT -- WELL,

16 FIRST OF ALL, WITH RESPECT TO THE ASSOCIATION OF

17 WOUNDS, IN YOUR ANALYSIS OF THIS PHYSICAL EVIDENCE,

18 CAN YOU HYPOTHESIZE THE POSSIBLE ASSOCIATION OF

19 CERTAIN WOUNDS ON MR. MENENDEZ' BODY WITH CERTAIN

20 WOUNDS ON MRS. MENENDEZ' BODY?

21 A YOU CAN HYPOTHESIZE IT. I DON'T KNOW

22 HOW STRONGLY YOU CAN SUPPORT IT. YOU CAN

23 HYPOTHESIZE THE LEFT ELBOW WOUND WITH THE LEFT

24 BREAST WOUND.

25 Q OKAY. THEY'RE NOT INCONSISTENT; IS THAT

26 CORRECT?

27 A RIGHT.

28 Q ASSUMING THERE IS AN ASSOCIATION BETWEEN

42800

1 THE LEFT ELBOW WOUND TO MR. MENENDEZ AND THE LEFT

2 BREAST WOUND TO MRS. MENENDEZ, IS IT MORE REASONABLE

3 OR LESS REASONABLE, IN YOUR OPINION, THAT THAT

4 SHARED WOUND OCCURRED WHEN THEY WERE BOTH STANDING

5 VERSUS BOTH SITTING?

6 A MORE CONSISTENT WITH THEM BOTH

7 STANDING.

8 Q AND IF THERE'S ANY AFFILIATION, YOU'RE
9 AWARE THAT MR. MENENDEZ HAS SOME INJURIES TO THE
10 DORSAL ASPECT OF THE RIGHT FOREARM?

11 A YES.

12 Q AND IF THERE'S ANY AFFILIATION BETWEEN
13 THOSE INJURIES, SAY, AND MRS. MENENDEZ' LEFT BREAST,
14 IS THAT MORE CONSISTENT WITH THEM STANDING OR
15 SITTING OR DOES THAT ONE NOT MATTER?

16 A I CAN'T TELL.

17 Q NOW, IS THERE EVIDENCE OF BLOOD SPATTER
18 AND OTHER EVIDENCE THAT INDICATES THAT MRS. MENENDEZ
19 WAS STANDING AT A TIME AFTER SHE RECEIVED A WOUND OR
20 WOUNDS TO HER LEFT LEG?

21 A YES.

22 Q LET ME SHOW YOU, FIRST OF ALL, THE BAG
23 THAT'S BEEN MARKED 66.

24 ARE YOU FAMILIAR WITH -- I HAVEN'T
25 CHECKED TO SEE IF IT'S THE RIGHT BAG. YES.

26 YOU'RE REMOVING TWO ITEMS FROM THAT
27 BAG. WOULD YOU DESCRIBE FOR THE RECORD WHAT THEY
28 ARE.

42801

1 A YES. THEY'RE A PAIR OF SHOES.

2 Q AND HAVE YOU EXAMINED THESE? THESE ARE
3 WHITE TENNIS SHOES?

4 A WHITE CANVAS.

5 Q AND IS YOUR UNDERSTANDING, AS IS
6 DEPICTED IN 331, AS TO WHOSE TENNIS SHOES THEY ARE?

7 A YES.

8 Q AND WHOSE ARE THEY?

9 A MRS. MENENDEZ'.

10 Q AND ARE THERE MARKS ON THOSE SHOES THAT
11 YOU CAN ALSO SEE IN THE PHOTOGRAPH, 331?

12 A YES.

13 Q DO YOU HAVE AN OPINION AS TO WHAT THOSE
14 MARKS ARE?

15 A YES. COMBINED THEY'RE -- THERE ARE BLOOD
16 STAINS THAT ARE -- SHOW THAT SHE WAS -- THAT THE LEG
17 WAS VERTICAL AT THAT TIME THEY DRIPPED DOWN.
18 THERE'S DRIPS DOWN ON THE LEFT SIDE, LATERAL SIDE,
19 AND THEN ACROSS THE FRONT OF THE TOP OF THE LEFT
20 SHOE.

21 THERE'S ALSO ONE ON THE MEDIAL SIDE BACK
22 NEAR THE ANKLE THAT GOES STRAIGHT DOWN.

23 IN ADDITION TO THAT --

24 Q MEDIAL SIDE OF THE LEFT SHOE?

25 A OF THE LEFT SHOE. ALL TALKING ABOUT THE
26 LEFT SHOE.

27 THERE'S ALSO BLOOD DROPS ON THE TOP OF
28 THE TONGUE, WHICH IS VERY CLOSE TO THE LEG, WOULD BE

1 CLOSE TO THE SURFACE OF THE LEG, AND WOULD BE
2 DIFFICULT TO GET DROPS UNLESS THEY STRIKE THE LEG OR
3 COME FROM THE LEG.

4 Q OKAY. SO YOU'RE SAYING THAT THOSE DROPS
5 ON THE TONGUE INDICATE THAT THE SOURCE OF THE BLOOD
6 IS THE LEG?

7 A YES.

8 Q LET ME ASK YOU A HYPOTHETICAL QUESTION.
9 IS THE PATTERN OF BLOOD THAT APPEARS,
10 PARTICULARLY ON THE LEFT SHOE, CONSISTENT WITH --
11 COULD BE IT COMING FROM A WOUND TO HER LEFT BREAST?

12 A SOME OF IT COULD, BUT IT WOULD SEEM TO
13 BE THAT BLOOD FROM HER LEFT BREAST WOULD EITHER BE
14 INTERRUPTED BY HER LEG OR WOULD BE OUT IN FRONT OF
15 HER.

16 Q IS THERE EVIDENCE, BY THE WAY -- YOU
17 JUST HELD UP 331 AGAIN -- OF BLOOD DROPS THAT -- IF
18 YOU ASSUME MRS. MENENDEZ IS STANDING IN FRONT OF THE
19 SECOND CUSHION ON THE COUCH, IS THERE BLOOD DROP --
20 OR IN THAT AREA, IS THERE BLOOD-DROP EVIDENCE
21 AFFILIATED WITH HER POSITION OR POSITIONS BEHIND THE
22 COFFEE TABLE?

23 A YES. THERE'S QUITE AN EXTENSIVE SERIES
24 OF BLOOD DROPS THAT GO ACROSS THE FRONT OF THE

25 COFFEE TABLE.

26 Q AND DO THOSE SUGGEST A PARTICULAR

27 POSITION FOR HER?

28 A JUST THAT SHE WAS DRIPPING BLOOD DOWN ON

42803

1 TO THE FLOOR, EITHER FROM -- I CAN'T TELL WHICH

2 WOUNDS THOSE WOULD COME FROM.

3 Q BUT FROM ABOVE?

4 A YES.

5 Q SHE'S NOT MAKING THOSE DRIPS WHILE SHE'S

6 LYING ON THE FLOOR?

7 A NO.

8 Q AND WITH RESPECT TO THE SHOES AS -- IN

9 AFFILIATION WITH HER LEG, DOES 331 SHOW STAIN

10 PATTERNS ON HER LEG THAT HELP FORM YOUR OPINION AS

11 TO WHETHER OR NOT SHE WAS STANDING UP AFTER SHE

12 RECEIVED LEG WOUNDS?

13 A YES.

14 Q LET'S PUT 331 UP SO YOU CAN ILLUSTRATE

15 THAT.

16 WOULD YOU TELL US WHAT YOU CAN SEE IN

17 331 THAT INDICATES THAT SHE WAS STANDING UP AFTER

18 SHE RECEIVED LEG WOUNDS.

19 A IF SHE WAS STANDING, HER LEG WAS

20 VERTICAL, THE BLOOD DROPS ON THE FRONT OF THE ANKLE,
21 RIGHT HERE, THAT LEAD DOWN TO THE TOP OF THE TONGUE
22 THAT I'VE ALREADY MENTIONED, THE BLOOD DROPS ON THE
23 SIDE AND THE BLOOD DROPS ACROSS THE TOP ALL WOULD BE
24 COMING FROM ABOVE. AND IN THIS POSITION THE BLOOD
25 WOULD NOT FLOW DOWN IN THAT DIRECTION. THERE'S NO
26 DIRECT FLOW HERE. SO THIS WOULD BE DRIPPING DOWN.

27 Q YOU'RE SAYING IN THIS POSITION, YOU MEAN
28 IN THE POSITION IN WHICH THE LEG IS SHOWN IN 331, IT

42804

1 COULD NOT HAVE CAUSED THOSE DROPS ON THE SHOE?

2 A THAT'S CORRECT.

3 Q WHY IS THAT?

4 A BECAUSE THAT BLOOD WOULD EITHER FLOW
5 DOWN THE LEG OR DRIP DOWN OFF OF THE LEG; AND IT'S
6 NOT COMING THIS DIRECTION.

7 Q YOU MEAN THE BLOOD THAT -- WHAT APPEARS
8 TO BE THE BLOODY AREA ON THE LEFT LEG IMMEDIATELY
9 ABOVE WOULD NOT -- WELL, FIRST OF ALL, IS THERE ANY
10 CONTIGUOUS PATTERN OF BLOOD FROM THIS BLOODY AREA --
11 I MEAN, IS THERE AN AREA HERE THAT HAS NOTHING ON
12 IT?

13 A YES, THAT'S CORRECT.

14 Q OKAY. AND SO IF THE STAINING ON THE

15 SHOE WAS CAUSED WHEN THE LEG WAS MORE OR LESS IN
16 THAT POSITION, WOULD YOU EXPECT SOME CONNECTION,
17 SOME STAINING IN THAT AREA?

18 A YEAH.

19 Q SO DOES IT APPEAR THAT -- WELL, LET ME
20 ASK YOU A HYPOTHETICAL.

21 LET'S SAY, HYPOTHETICALLY, SHE WAS SHOT
22 IN THAT LEG AND THEN STOOD UP AND THE CUFF OF THE
23 PANT WAS DOWN AROUND THE ANKLE AND THEN WOUND UP
24 DOWN ON HER RIGHT SIDE PULLING THE CUFF OF THE PANT
25 LEG UP.

26 IS THE PATTERN THAT YOU SEE THERE
27 CONSISTENT WITH THAT HYPOTHETICAL?

28 A YES.

42805

1 Q NOW, WITH RESPECT TO THE RIGHT LEG, DOES
2 THERE ALSO APPEAR TO BE A PATTERN THERE THAT SHOWS
3 THAT THE PANT LEG HAS MOVED AFTER DEPOSITING BLOOD?

4 A YES. THERE'S -- WELL, THERE'S A SMEAR
5 ACROSS THE BACK OF THE RIGHT LEG.

6 Q AND DOES THERE ALSO APPEAR TO BE BLOOD
7 DROPS OR ACCUMULATION OF BLOOD TOWARDS THE BOTTOM OF
8 THAT SMEAR?

9 A THERE'S A BLOOD DROP ON THE SIDE OF

10 THE -- JUST THE REAR OF THE ANKLE AND LOOKS LIKE

11 THERE'S ALSO BLOOD ON THE RIGHT LEG, DROPS.

12 Q ARE YOU AWARE OF ANY WOUNDS ON HER RIGHT

13 LEG?

14 A NO.

15 Q DO YOU HAVE ANY OPINION AS TO WHAT'S THE

16 SOURCE OF THE BLOOD STAINING THAT APPEARS TO RUN THE

17 WHOLE LENGTH OF THE RIGHT LEG?

18 A IT WOULD SEEM TO BE FROM THE WOUNDS TO

19 THE LEFT LEG.

20 Q AND IN DISCUSSING THE WOUNDS TO THE LEFT

21 LEG -- I THINK THAT BRINGS US TO 8.

22 DOES 8 DEPICT ONE OF THE WOUNDS TO HER

23 LEFT LEG, THE ONE THAT DR. GOLDEN CALLED NO. 7?

24 A YES.

25 Q YOU TESTIFIED ON THURSDAY THAT ALTHOUGH

26 YOU DID CONSULT WITH DR. FACKLER ABOUT THAT WOUND,

27 YOU HAD SOME TENTATIVE OPINION ABOUT THE DIRECTION --

28 SOME TENTATIVE INCONSISTENCY ABOUT THE DIRECTION AS

42806

1 DESCRIBED BY DR. GOLDEN?

2 A YES.

3 Q AND YOU'RE AWARE NOW OF DR. FACKLER'S

4 TESTIMONY. AND, HYPOTHETICALLY, IF I WERE TO TELL

5 YOU THAT DR. WECHT ALSO TESTIFIED THAT THE LOWER
6 WOUND, AS IT APPEARS IN F ON THAT -- I THINK THAT'S
7 319 -- 219. NO. 319, 319-F, THAT THE LOWER WOUND,
8 THIS ONE, IS THE ENTRY AND THE INDIVIDUAL MARKS
9 ABOVE ARE THE EXIT, IS THAT CONSISTENT WITH WHAT
10 YOUR INITIAL OPINION WAS?

11 A YES. WELL, I DON'T KNOW ABOUT INITIAL
12 OPINION. I FIRST -- YOU KNOW, I GENERALLY TEND TO
13 DEFER TO THE PATHOLOGIST BECAUSE HE ACTUALLY LOOKED
14 AT -- THE ONE WHO DID THE AUTOPSY BECAUSE HE ACTUALLY
15 SAW THESE THINGS IN REAL DETAIL. BUT THE
16 APPEARANCE -- SO I'VE CONSIDERED THE POSSIBILITY THAT
17 THAT WAS AN ENTRANCE AND EXIT AND HIS DISCUSSION OF
18 THE EDGES OF THE WOUND SUGGESTED THAT THAT WAS AN
19 EXIT.

20 BUT THE MORE I LOOKED AT IT, THE MORE I
21 REALIZED THAT THAT PATTERN THAT HE WAS CALLING AN
22 ENTRANCE WAS TOO IRREGULAR FOR A DIRECT SHOT FROM A
23 SHOTGUN. IT WOULD EITHER BE A ROUNDER HOLE WITH
24 SOME SCALLOPING AROUND THE EDGES OR A MORE UNIFORM
25 SERIES OF HOLES.

26 Q IN OTHER WORDS, THE HOLES WOULD BE MORE
27 SIMILAR IN SIZE TO EACH OTHER?

28 A RIGHT.

1 Q SUCH AS WE SAW ON YOUR TARGETS?

2 A THAT'S CORRECT.

3 Q THAT THE PELLET HOLES FOR EACH
4 INDIVIDUAL PELLET ARE THE SAME SIZE?

5 A YES.

6 Q AND THEN YOU LEARNED OF DR. FACKLER AND
7 DR. WECHT'S OPINIONS ABOUT THIS?

8 A YES.

9 MR. CONN: OBJECTION. LEADING.

10 THE COURT: SUSTAINED. THE ANSWER'S
11 STRICKEN.

12 Q BY MS. ABRAMSON: DID YOU LEARN THEN OF
13 DR. FACKLER -- WELL, FIRST OF ALL, DID YOU DISCUSS
14 THIS WOUND DIRECTLY WITH DR. FACKLER?

15 A YES.

16 Q AND DID YOU LEARN OF HIS OPINION OF IT?

17 A YES.

18 Q AND THEN DID YOU SUBSEQUENTLY LEARN THAT
19 DR. WECHT ALSO SHARED THAT OPINION?

20 A THAT WAS MY UNDERSTANDING, YES.

21 Q NOW, IS IT ALSO YOUR UNDERSTANDING THAT
22 BOTH DR. FACKLER AND DR. WECHT AND HE -- WELL, LET'S
23 START WITH THEM -- DR. FACKLER AND DR. WECHT HAVE
24 THE OPINION THAT THIS WOUND NO. 7 MAY BE AFFILIATED
25 WITH THE GUTTER WOUND ON HER LEFT CALF, NO. 9?

26 A YES, I DID BECOME AWARE OF THAT.

27 Q AND DO YOU AGREE WITH THAT, THAT THEY
28 MAY BE AFFILIATED?

1 A I DON'T SEE ANYTHING THAT WOULD REFUTE
2 THAT.

3 Q NOW, WITH RESPECT TO NO. 8, YOU'RE AWARE
4 THAT THERE IS A WOUND CALLED NO. 8?

5 A YES.

6 Q OH, BY THE WAY, IF 7 IS AS YOU BELIEVE
7 IT IS, AND DR. FACKLER AND DR. WECHT, DOES THAT MEAN
8 THAT C AND D ARE BACKWARDS, THE WHOLE TRAJECTORY IS
9 BACKWARDS?

10 A YES.

11 Q THOSE ARE THE ILLUSTRATIONS, CORRECT?

12 A THAT'S CORRECT.

13 Q NOW, YOU'RE AWARE OF A WOUND THAT'S
14 CALLED NO. 8 TO MRS. MENENDEZ' LEFT LEG?

15 A YES.

16 Q AND DO YOU RECALL WHETHER OR NOT NO. 8,
17 AS COMPARED TO NO. 7 -- WELL, NO. 7 IS ON THE LATERAL
18 SIDE OF THE BODY, THE ENTRANCE WOUND, CORRECT?

19 A CORRECT.

20 Q AND DO YOU KNOW IF NO. 8 IS ON THE
21 MEDIAL SIDE OF THE BODY OR NOT?

22 A THAT'S MY UNDERSTANDING, YES.

23 Q SO THAT'S MORE ON THE INSIDE?

24 A YES.

25 Q AND WHEN WE WERE TALKING BEFORE IN
26 REFERENCE TO 331 -- IN FACT, I CAN SHOW YOU THE
27 BOTTOM OF THE FEET, WHICH IS -- THIS IS 332.

28 BY THE WAY, DOES 332 ALSO SHOW THE

42809

1 STAINING ON THE SHOES AND THE DROPS OF BLOOD?

2 A YES.

3 Q AND WERE YOU HERE WHEN MR. LINHART
4 CIRCLED THOSE AREAS?

5 A YES.

6 Q AND CALLING YOUR ATTENTION TO ALL THIS --
7 THESE DOTS AND THINGS THAT ARE IN 332, WHAT DO THOSE
8 APPEAR TO BE?

9 A BLOOD DROPS.

10 Q AND DO THEY APPEAR TO BE THE GRAVITY
11 KIND OR THE PROJECTILE KIND?

12 A PRIMARILY GRAVITY, BUT SOME OF THEM
13 COULD BE SMALLER DUE TO A LITTLE BIT OF PROJECTION;
14 IN OTHER WORDS, MOVEMENT OF THE LEG IF THE LEG WERE
15 TO BUMP, SOMETHING THAT WOULD GIVE A LITTLE MORE
16 VELOCITY THAN JUST GRAVITY.

17 Q WITH RESPECT TO BOTH OF THOSE, DO THEY
18 SUGGEST THAT WHOEVER'S DOING THIS BLEEDING -- AND

19 THIS IS -- WELL, STRIKE THAT.

20 IS THIS IN DIRECT PROXIMITY TO

21 MRS. MENENDEZ' BODY?

22 A YES.

23 Q AND DO THE SHAPE OF THOSE DROPS INDICATE

24 THAT SOMEONE IS BLEEDING WHILE STANDING UP?

25 A SOME OF THEM DO, YES.

26 Q WHICH MEANS SOMEONE IS STANDING UP AFTER

27 BEING SHOT FOR SOME PERIOD OF TIME FOR THIS BLOOD TO

28 DROP?

42810

1 A YES.

2 Q NOW, IN YOUR OPINION, MR. MORTON, IS THE

3 BLOOD SPATTER EVIDENCE THAT YOU SEE WITH RESPECT TO

4 MRS. MENENDEZ, DOES IT SUGGEST TO YOU WHETHER OR NOT

5 SHE RECEIVED NUMEROUS WOUNDS WHILE STANDING UP

6 VERSUS NUMEROUS WOUNDS WHILE LYING DOWN?

7 A YES. I WOULD SAY THE EVIDENCE SUPPORTS

8 THE STANDING HYPOTHESIS MORE THAN THE NUMEROUS

9 WOUNDS BEING WHILE SHE'S DOWN.

10 Q AND DOES THAT HAVE TO DO WITH THESE

11 DROPS ON THE -- THAT WE'VE SEEN ON THE SHOES AND THE

12 LEG AND THE CARPET?

13 A THAT AND THE SHOT THROUGH THE DOOR.

14 Q AND IS THERE ALSO AREAS ON THE COFFEE

15 TABLE -- I'LL SHOW YOU WHAT'S BEEN MARKED 15.

16 A YES.

17 Q AND ARE THERE A VARIETY OF BLOOD SPATTER

18 PATTERNS THAT APPEAR ON THE COFFEE TABLE?

19 A YES. THERE ARE BLOOD SPATTERS THAT GO

20 OFF IN A NUMBER OF DIFFERENT DIRECTIONS, AS WELL AS

21 A RATHER HEAVY SMEAR AT THE CORNER OF THE LOWER --

22 SHOWN IN THE LOWER RIGHT-HAND CORNER OF THIS

23 EXHIBIT.

24 Q WHEN YOU SAY THERE'S SPATTERS THAT GO

25 OFF IN DIFFERENT DIRECTIONS, WHAT DO YOU MEAN?

26 A YES. IF YOU'LL NOTICE ON THE ENVELOPES

27 AND THE FILE FOLDERS THAT ARE HERE, THERE ARE SOME

28 BLOOD DROPLETS GOING IN WHAT WOULD BE -- IF YOU USE

42811

1 A CLOCK FACE, SOME GOING TO ABOUT ONE O'CLOCK, THIS

2 ONE GOING TO ABOUT THREE O'CLOCK, THIS ONE GOING

3 BACK UP TOWARD MORE ELEVEN O'CLOCK. THERE'S JUST A

4 WIDE ARRAY OF DIRECTIONS OF THESE SHOWING THAT THERE

5 WAS -- EITHER THAT THESE HAD BEEN MOVED AT VARIOUS

6 TIMES OR THAT THEY WERE DIFFERENT DIRECTIONS THAT

7 THESE BLOOD STAINS WERE COMING IN.

8 Q AND WOULD THAT INDICATE A -- WOULD THAT

9 SUPPORT THE NOTION THAT THERE'S A VARIETY OF SHOTS

10 THAT ARE CAUSING THAT BLOOD?

11 A THAT AND POSSIBLY SOME MOVEMENT OF THESE

12 OBJECTS IN BETWEEN, YES.

13 Q AND MOVEMENT -- HOW ABOUT MOVEMENT OF THE

14 PERSON BEING SHOT?

15 A YES.

16 Q NOW, IS THERE ALSO, TO YOUR

17 RECOLLECTION, A NUMBER OF PIECES OF PAPER, ALSO

18 ENVELOPES AND OTHER THINGS, THAT WIND UP ON THE

19 FLOOR NEXT TO MRS. MENENDEZ' BODY?

20 A YES.

21 Q AND DO THOSE PIECES OF PAPER ALSO HAVE

22 BLOOD SPATTER EVIDENCE ON THEM?

23 A YES, THEY DO.

24 Q AND DO THOSE BLOOD SPATTERS HAVE ONE

25 DIRECTIONALITY OR A NUMBER OF DIRECTIONS?

26 A MY RECOLLECTION IS THAT THEY'RE MULTIPLE

27 DIRECTIONS.

28 Q AND IS THE POSITION -- ARE THERE ALSO

42812

1 PIECES OF PAPER ON THE FLOOR THAT HAVE WHAT LOOK

2 LIKE NOT DROPS BUT ACTUAL SMEARS?

3 A I DON'T RECALL RIGHT OFFHAND. IF YOU

4 HAVE THAT PHOTOGRAPH.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED 7 AND

6 CALL YOUR ATTENTION TO THIS AREA HERE.

7 A THERE'S FAIRLY HEAVY BLOOD FLOW THERE,

8 WHICH MAY BE ASSOCIATED WITH THE BLOOD FLOW THAT'S

9 ON THE CORNER OF THE TABLE. I WOULDN'T CALL IT

10 SMEARS, BUT A LARGE QUANTITY OF BLOOD. IT MAY BE

11 PARTIALLY SMEARED, BUT THE VOLUME IS SO LARGE THAT

12 YOU CAN'T TELL HOW THAT GOT THERE. BUT IT'S NOT

13 JUST A MATTER OF A SERIES OF DROPS. IT LOOKS LIKE A

14 VERY BLOODY OBJECT WAS BEING RUBBED ON THE SURFACE

15 AS IT LOOKS LIKE ON THE COFFEE TABLE.

16 Q YES. YOU WERE SAYING THE COFFEE TABLE

17 APPEARS TO BE FLOW RATHER THAN SMEAR. I WANT TO PUT

18 THE COFFEE TABLE ONE UP, IF I CAN.

19 A THIS SHOWS A FAIRLY SUBSTANTIAL AMOUNT

20 OF BLOOD THAT'S BEEN WIPED AROUND. I SUSPECT THAT

21 THIS IS FROM HER BLOODY RIGHT HAND COMING IN

22 CONTACT. THERE'S A LARGE SOURCE OF BLOOD AND THEN

23 THERE'S MOVEMENT IN CONTACT WITH THE COFFEE TABLE.

24 Q AND THERE'S NOTHING IN THE ILLUSTRATIONS

25 FROM FAILURE ANALYSIS THAT EXPLAINS HER RIGHT HAND

26 COMING IN CONTACT WITH THAT COFFEE TABLE, IS THERE?

27 A THAT'S CORRECT.

28 Q IN FACT, THERE'S NOTHING IN THAT

1 ILLUSTRATION THAT WOULD EXPLAIN ALL OF THE BLOOD
2 SPATTER AND SMEARING ON THAT END OF THE COFFEE
3 TABLE.

4 A THAT'S CORRECT.

5 Q IS THERE ALSO A BLOOD STAIN OF SOME KIND
6 DOWN ON THIS EDGE OF THE COFFEE TABLE RIGHT HERE?

7 A YES.

8 Q WHAT TYPE OF A BLOOD STAIN IS THAT?

9 A THAT LOOKS TO BE A SMEAR.

10 Q SO SOMETHING CAME IN CONTACT WITH THE
11 EDGE OF THAT EDGE OF THE TABLE?

12 A YES.

13 Q AND CAN YOU DETERMINE WHAT IT IS OR NOT?

14 A NO. IT COULD BE SOME OF THE PAPER THAT
15 ENDS UP ON THE FLOOR. IT CAN BE A HAND.

16 Q WITH RESPECT TO THE PAPER ENDING UP ON
17 THE FLOOR, IS THE APPEARANCE OF THE SPATTERS ON THE
18 PAPER CONSISTENT WITH THE HYPOTHESIS THAT IT COULD
19 HAVE OBTAINED THE BLOOD SPATTERS WHILE THE PAPERS
20 WERE UP ON THE COFFEE TABLE AND THEN THEY WERE
21 PUSHED OFF?

22 A YES.

23 Q NOW, CALLING YOUR ATTENTION TO 319-B,
24 WHICH IS -- OR RATHER 319-A AND -B, IF YOU WILL.

25 A YES.

26 Q COULD YOU DESCRIBE WHAT THE BLOOD STAINS

27 IN B, WHICH IS THE COUCH CUSHION, WHAT TYPE OF STAIN
28 THAT IS.

42814

1 A THOSE ARE SMEARS.

2 Q AND WHAT CAN CAUSE SMEARS WITH THAT
3 APPEARANCE? OR WHAT RELATIVE TO THIS INCIDENT SCENE
4 COULD CAUSE THAT?

5 A ANY BLOODY OBJECT THAT WIPES ACROSS THAT
6 SURFACE.

7 Q NOW, IS THAT -- DO YOU KNOW WHAT THE
8 CONCEPT OF MISTING IS?

9 A YES, CERTAINLY.

10 Q AND WOULD YOU DESCRIBE WHAT MISTING IS,
11 WHEN THAT'S PROPERLY USED.

12 A MISTING IS THE -- BASICALLY, WHAT YOU GET
13 WHEN YOU SEE ATOMIZED BLOOD; THAT IS, BLOOD THAT IS
14 SO -- RECEIVES SUCH ENERGY, TYPICALLY IN FIREARMS
15 CASES; OR YOU CAN GET IT IF SOMEONE IS BLEEDING AND
16 THEN COUGHING BLOOD, YOU CAN GET THE SPRAY THAT
17 RESULTS, SORT OF LIKE AN AEROSOL. AND WHAT HAPPENS
18 IS THAT FORMS A VERY FINE SPRAY PATTERN, AND IT'S A
19 VERY CHARACTERISTIC PATTERN WHERE YOU HAVE HIGH
20 VELOCITY.

21 Q IS THAT WHAT THAT STAIN IS IN 319-B?

22 A CLEARLY NOT, NO.

23 Q DID YOU FIND ANY EVIDENCE OF AEROSOL

24 SPRAY OR MISTING ANYWHERE IN THIS CRIME SCENE?

25 A THERE'S SOME FINE SPATTER THAT GOES

26 ACROSS THAT PILLOW THAT'S ON THE SOFA. I'M NOT SURE

27 I'D CALL IT AEROSOL, BUT IT'S GETTING PRETTY SMALL

28 AND IS THAT KIND OF SPRAY THAT YOU GET FROM PRETTY

42815

1 HIGH VELOCITY.

2 Q AND THAT'S ON WHICH PILLOW ON THE SOFA?

3 A THAT'S THE ONE THAT'S SHOWN BETWEEN THE

4 TWO NUMBER STANDS, FOUR AND SIX UP ON THIS AREA UP

5 HERE.

6 Q IS THERE A SERIES OF SPATTER AREAS ON

7 THAT PILLOW?

8 A YES.

9 Q WERE YOU ABLE, IN EXAMINING THOSE

10 SPATTERS IN THE PHOTOGRAPHS, TO MAKE ANY

11 DETERMINATION ABOUT DIRECTION OF ANY OF THOSE

12 SPATTERS?

13 A NO. IT HAS A GENERAL APPEARANCE, AS IF

14 IT'S GOING IN THIS DIRECTION, BUT I WOULD HESITATE

15 TO BE VERY SPECIFIC ABOUT THAT BECAUSE OF THE NATURE

16 OF THE PHOTOGRAPHS.

17 Q IF IT WERE GOING IN THAT DIRECTION, AND
18 THE DIRECTION YOU POINTED WAS AS WE'RE LOOKING AT
19 THE PHOTOGRAPH FROM RIGHT TO LEFT, IF WE ORIENT
20 MR. MENENDEZ AT THE TIME HE RECEIVED HIS HEAD WOUND
21 ON THE SOFA, IT WOULD BE FROM HIS LEFT TO RIGHT,
22 CORRECT?

23 A YES.

24 Q COULD THAT SPATTER THEN BE AFFILIATED
25 WITH THE HEAD WOUND TO MR. MENENDEZ?

26 A IT COULD POSSIBLY BE ASSOCIATED WITH
27 THAT WOUND, COULD BE POSSIBLY ASSOCIATED WITH THE
28 RIGHT TO LEFT WOUND THAT GOES ACROSS HIS BODY,

42816

1 ACROSS HIS SHIRT.

2 Q IF HE IS STANDING IN FRONT OF THE
3 COUCH?

4 A YES.

5 Q COULDN'T BE ASSOCIATED WITH THAT IF HE'S
6 ON THE COUCH?

7 A NO.

8 Q ALL RIGHT. NOW, SPEAKING -- WELL, IT'S
9 11:30, YOUR HONOR.

10 THE COURT: ALL RIGHT. WE'LL TAKE OUR RECESS
11 UNTIL 1:30. DON'T DISCUSS THE MATTER WITH ANYONE.

12 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL

13 RESUME AT 1:30.

14 (THE JURY EXITED THE

15 COURTROOM AND THE FOLLOWING

16 PROCEEDINGS WERE HELD:)

17

18 THE COURT: WE HAVE A JUROR WHO'S NOT FEELING

19 WELL. THAT'S WHY WE'RE TAKING EXTRA TIME.

20 HOW MUCH LONGER DO YOU THINK YOU'LL BE

21 ON YOUR DIRECT EXAMINATION?

22 MS. ABRAMSON: NOT VERY MUCH LONGER. TEN OR

23 FIFTEEN MINUTES.

24 THE COURT: ANY ESTIMATE NOW ON CROSS?

25 MR. CONN: I THINK THE REMAINDER OF THE

26 AFTERNOON. HOPEFULLY WE'LL FINISH TODAY.

27 THE COURT: ALL RIGHT. AS SOON AS THE JURY

28 IS CLEARED, I WANT THE COURTROOM CLEARED TO TALK TO

42817

1 COUNSEL ABOUT SOMETHING.

2 (PAGES 42818 THROUGH 42820 WERE

3 SEALED BY ORDER OF THE COURT.)

4

5

6 (AT 11:40 A.M. THE NOON

7 RECESS WAS TAKEN UNTIL
8 1:30 P.M. OF THE SAME DAY.)

-22715

1 VAN NUYS CALIFORNIA; TUESDAY, DECEMBER 5, 1995

2 1:45 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: ALL RIGHT. EVERYONE IS PRESENT.

9 LET'S GET THE JURY OUT, PLEASE.

10 (THE JURY ENTERS THE COURTROOM AND THE

11 FOLLOWING PROCEEDINGS WERE HELD:)

12

13 THE COURT: ALL RIGHT. THE JURY IS BACK AND WE

14 WILL RESUME WITH THE DIRECT EXAMINATION OF THE WITNESS.

15 MS. ABRAMSON: THANK YOU.

16

17 DIRECT EXAMINATION (CONT'D)

18 BY MS. ABRAMSON:

19 Q. DR. MORTON, IN YOUR EXAMINATION OF THE

20 WHITE TENNIS SHOES -- I JUST NEED TO READ OFF THE

21 EXHIBIT NUMBER, LOOK AT THE LABEL.

22 A. SIXTY-SIX.

23 Q. YOU HAVE DESCRIBED TO US THE BLOOD SPATTER

24 AND DROP PATTERN ON THE TOP OF THE SHOES.

25 DID YOU NOTICE ANY BLOOD STAINING ON THE

26 BOTTOM OF THE SHOES?

27 A. THERE IS BLOOD SMEARING ON THE BOTTOM OF
28 THE RIGHT SHOE.

-22714

1 Q. AND IS THERE ANY WHAT APPEARS TO BE BLOOD
2 SMEARING ON THE BOTTOM OF THE LEFT SHOE AS WELL?

3 A. LOOKS LIKE THERE MIGHT BE A LITTLE TOWARD
4 THE HEEL -- ON THE BACK OF THE HEEL.

5 Q. IS THERE MORE BLOOD SMEARING ON THE BOTTOM
6 OF THE RIGHT SHOE THAN THE LEFT SHOE?

7 A. SUBSTANTIALLY MORE.

8 Q. AND DO YOU HAVE AN OPINION AS TO HOW BLOOD
9 IN THAT CONDITION COULD HAVE GOTTEN ON THE BOTTOM OF
10 THOSE SHOES, PARTICULARLY THE RIGHT ONE?

11 A. LOOKS TO BE A SMEAR FROM SOMETHING LIKE
12 STEPPING ON CARPET WITH BLOOD STAINS ON IT.

13 Q. AND COULD YOU DETERMINE ANYPLACE ON THE
14 CARPET, FROM YOUR OBSERVATION OF THE PHOTOGRAPHS, WHERE
15 A BLOODY SHOE PRINT OF ANY KIND APPEARS?

16 A. NO.

17 Q. AND HOW DO YOU EXPLAIN THEN THE NOTION THAT
18 SHE STEPPED IN BLOOD ON THE CARPET BUT THERE'S NO BLOODY
19 SHOE PRINT?

20 A. THERE IS QUITE A LARGE BLOOD STAIN IN THE
21 AREA UNDER HER BODY THAT IS BASICALLY OBLITERATED, SO I

22 REALLY CAN'T TELL. IT MAY HAVE BEEN THERE AND BEEN
23 OBLITERATED, OR IT MAY BE UNCLEAR ENOUGH THAT YOU CAN'T
24 IDENTIFY IT AS A SHOE STAIN.

25 Q. BUT LOOKING AT THAT AREA IN THE PHOTOGRAPHS
26 AFTER THE BODY IS REMOVED, YOU CAN VISUALIZE THAT AREA,
27 CORRECT?

28 A. YES.

-22713

1 Q. IS THERE ANY WAY TO SEE PARTICULAR PATTERNS
2 IN THAT AREA?

3 A. I DID NOT DETECT ANY.

4 Q. NOW, IS THERE AN AREA OF BLOOD DROPPING AND
5 POOLING THAT'S VISIBLE IN THE PHOTOGRAPH THAT'S UP THERE
6 NOW, THE ONE WHERE YOU CIRCLED THE BLOOD SPOTS NEAR TO
7 MR. MENENDEZ' LEG, 331, THAT ALSO WAS TOTALLY
8 UNEXPLAINED IN THE FAILURE ANALYSIS ILLUSTRATIONS AND
9 THEORIES?

10 A. YES.

11 Q. AND CALLING YOUR ATTENTION TO THIS AREA
12 HERE, THIS ROUND AREA, DOES THAT APPEAR TO BE BLOOD
13 STAIN?

14 A. IT DOES.

15 Q. AND DOES IT APPEAR TO BE A BLOOD STAIN OF
16 ONE OR MORE TYPES?

17 A. I AM ASSUMING YOU MEAN PHYSICAL TYPE RATHER

18 THAN --

19 Q. I DON'T MEAN TYPE OF BLOOD. I MEAN IS IT

20 POOLING, SPATTER? IS IT GRAVITY DROPS, SMEARING, THAT

21 SORT OF THING.

22 A. IT LOOKS LIKE THERE IS AN ACCUMULATION OF

23 BLOOD DROPS FORMING A SMALL POOL.

24 Q. NOW, HAVE YOU BEEN EXAMINING PHOTOGRAPHS --

25 SCENE PHOTOGRAPHS TO SEE IF YOU COULD DETERMINE THE

26 SOURCE OF THAT POOL AND DROPS OF BLOOD?

27 A. YES.

28 Q. AND IS THERE ANY LINE; FOR EXAMPLE, DIRECT

-22712

1 LINE FROM SAY THE COUCH THAT WOULD INDICATE THAT THIS

2 POOL OF BLOOD IS MERELY DRIPPED FROM THE COUCH?

3 A. WELL, IT LOOKS LIKE THAT'S A POSSIBILITY.

4 IT IS NOT CLEAR FROM EXAMINATION OF PHOTOGRAPHS WHETHER

5 THERE WAS AN ACCUMULATION OF BLOOD. THERE IS A LARGE

6 POOL OF BLOOD APPARENTLY FROM THE RIGHT ARM AND HEAD

7 THAT CUMULATES NEXT TO HIS RIGHT SIDE AND FLOWS OVER THE

8 SIDE OF THE CUSHION. WHETHER OR NOT WHEN IT'S

9 COMPRESSED DOWN THAT WOULD ALLOW BLOOD TO FLOW OVER THE

10 END AND DROP THERE, IT LOOKS LIKE A POSSIBILITY, BUT OF

11 COURSE I CAN'T TELL WHETHER IT'S HIS BLOOD OR HER BLOOD.

12 Q. WELL, IN LOOKING AT THE OTHER PHOTOGRAPHS,

13 THOUGH, DO YOU SEE ANY PLACE? THERE ARE PHOTOGRAPHS

14 WHERE THE BODY IS REMOVED AND THE LEG ISN'T THERE,
15 CORRECT?
16 A. YES.
17 Q. INCLUDING THIS ONE?
18 A. YES.
19 Q. AND THERE DOES NOT APPEAR TO BE A DIRECT
20 LINE DOWN TO THAT POOL, DOES THERE?
21 MR. CONN: OBJECTION. LEADING AND ARGUMENTATIVE.
22 THE COURT: SUSTAINED. REPHRASE THE QUESTION.
23 Q. BY MS. ABRAMSON: CAN YOU ACTUALLY SEE A
24 DIRECT LINE OF DRIP FROM THAT AREA?
25 A. NO.
26 Q. AND DID YOU PULL SOME OTHER PHOTOGRAPHS,
27 SOME SMALL ONES THAT -- FIRST OF ALL, LET'S ESTABLISH
28 WAS THAT DRIP POOL AREA THERE BEFORE MR. MENENDEZ' BODY

-22711

1 WAS MOVED?
2 A. YES.
3 Q. SO THAT WOULD ELIMINATE THE NOTION THAT
4 THIS AREA WAS SOMEHOW CREATED AS HIS BODY WAS BEING
5 MOVED?
6 A. THAT'S CORRECT.
7 Q. AND WOULD YOU GIVE ME THOSE THREE
8 PHOTOGRAPHS. RATHER THAN MARK ALL THREE, DO THESE TWO
9 SMALL PHOTOGRAPHS EACH SHOW THAT POOL OF BLOOD?

10 A. YES.

11 Q. OKAY. IS THE NEXT NUMBER --

12 THE COURT: 338.

13 MS. ABRAMSON: THANK YOU. I'LL MARK 338 THE

14 PHOTOGRAPH THAT SHOWS NUMBERS ON THE COUCH. I WILL SHOW

15 THESE COUNSEL IN A MOMENT, AND 339 IS A SIMILAR VIEW

16 THAT DOES NOT HAVE NUMBERS ON THE COUCH. THESE TWO.

17 AND WOULD YOU CIRCLE WITH MAYBE THE RED

18 MARKER, MR. MORTON, THE POOL OF BLOOD DROPS THAT APPEAR

19 IN THIS -- THESE TWO PHOTOGRAPHS WHILE THE BODY IS STILL

20 ON THE COUCH.

21 A. YES (INDICATING).

22 Q. NOW, IF THERE IS NO DIRECT -- WELL, IF

23 THERE IS NO CONNECTION BETWEEN THIS POOL OF BLOOD

24 DROPLETS AND THE BLOOD THAT'S ON THE COUCH CUSHION,

25 COULD THAT THEN SUGGEST THAT SOMEONE WAS STANDING OR

26 LEANING OVER THAT AREA AND BLOOD WAS SIMPLY BLOWN OUT OF

27 A WOUND THERE?

28 A. THAT COULD BE FROM -- YOU SAY BLOWN OUT

-22710

1 RATHER THAN JUST DRIPPING OUT?

2 Q. WELL, I DON'T KNOW. COULD IT BE BLOWN OUT

3 OR JUST DRIPPING?

4 A. I DON'T THINK BLOWN OUT. DOESN'T SEEM TO

5 HAVE AN EXPLOSIVE OR DIRECTIONAL PATTERN. IT SEEMS TO

6 BE DROPS, AND THEN SOME DIRECTIONAL SECONDARY DROPLETS.
7 AS YOU GET BLOOD DROPPING INTO BLOOD, YOU GET SECONDARY
8 DROPLETS AT A LOW ANGLE.

9 Q. LIKE SPLASHES?

10 A. RIGHT.

11 Q. SO THERE APPEARS TO BE AN AREA OVER WHICH
12 SOMEONE WAS BLEEDING AT SOME PERIOD OF TIME?

13 A. YES.

14 Q. NOW, I WANT TO SHOW YOU THIS PHOTOGRAPH,
15 WHICH HAS PREVIOUSLY BEEN MARKED 329, AND WE CAN TAKE
16 DOWN THE BIG BOARD NOW.

17 NOW, YOU HAVE INDICATED, MR. MORTON, A
18 POSSIBLE EXPLANATION FOR HOW MR. MENENDEZ' HANDS WOUND
19 UP IN THE POSITION THAT WE SEE THEM IN IN ALL THE
20 PHOTOGRAPHS THAT SHOW THAT PORTION OF HIS BODY.

21 A. YES.

22 Q. I DID THIS BEFORE, READING OFF THE LABELS.

23 I AM NOW PUTTING UP EXHIBIT 8 AND A CLOSER
24 VIEW OF THE -- BASICALLY FROM A SIMILAR ANGLE, WHICH IS
25 EXHIBIT 329, AND DO THOSE TWO PHOTOGRAPHS SHOW THE
26 PARTICULAR POSITION THAT MR. MENENDEZ' FEET WERE IN AT
27 THE TIME THE PHOTOGRAPHS WERE TAKEN?

28 A. YES.

-22709

1 Q. AND IS THERE SOMETHING IN YOUR OPINION

2 THAT'S UNUSUAL ABOUT THE POSITION OF THE FEET?

3 A. YES. THEY'RE BOTH ON THE SIDES, THE

4 LATERAL SIDES OF THE FEET, RESTING ON THE LATERAL SIDES.

5 Q. AND SOME MONTHS AGO DID YOU, IN REVIEWING

6 ALL THESE PHOTOGRAPHS, DID A POSSIBLE EXPLANATION FOR

7 HIS FEET BEING IN THAT POSITION OCCUR TO YOU?

8 A. I THINK WE ACTUALLY DISCUSSED THAT EVEN

9 BACK IN '93.

10 Q. OKAY. SO, IT WAS SOME YEARS AGO?

11 A. YES.

12 Q. IT WAS BEFORE YOU HEARD ANYTHING ABOUT

13 FAILURE ANALYSIS HAVING ANYTHING TO DO WITH THIS CASE?

14 A. YES.

15 Q. WAS IT BEFORE YOU EVER TALKED TO

16 DR. FACKLER ABOUT THIS CASE?

17 A. YES.

18 Q. BEFORE YOU BECAME AWARE OF -- WELL, BEFORE

19 DR. WECHT WAS IN ANY WAY INVOLVED IN THIS CASE?

20 A. THAT'S CORRECT.

21 Q. AND THIS WAS SOMETHING THAT YOU FIGURED OUT

22 JUST LOOKING AT THE PHOTOGRAPHS YOURSELF, RIGHT?

23 MR. CONN: OBJECTION. LEADING.

24 THE COURT: SUSTAINED.

25 Q. BY MS. ABRAMSON: WAS THIS SOMETHING YOU

26 FIGURED OUT ON YOUR OWN?

27 A. YES.

28 Q. AND CAN -- I THINK YOU HAVE ALREADY

1 TESTIFIED THAT -- WELL, LET ME ASK YOU THIS.

2 IN YOUR OPINION COULD MR. MENENDEZ HAVE
3 RECEIVED ALL OF WOUNDS THAT ARE LATER OBSERVED ON HIS
4 BODY, WITH THE EXCEPTION OF THE HEAD WOUND, WHILE HE WAS
5 STANDING UP?

6 A. I BELIEVE SO.

7 Q. AND DO YOU BELIEVE THAT'S WHAT HAPPENED?

8 A. YES.

9 Q. AND IS THERE -- DO YOU HAVE IN MIND A
10 SCENARIO IN WHICH HE RECEIVED THOSE WOUNDS AND ROTATED
11 HIS BODY IN SUCH A WAY AS TO RESULT IN HIM SEATED ON THE
12 COUCH, AS WE SEE HIM IN THOSE PHOTOGRAPHS, WITH HIS FEET
13 IN THAT PARTICULAR POSITION?

14 A. YES.

15 Q. OKAY. I WOULD ASK YOU -- I REALIZE WE
16 DON'T HAVE A COUCH AND WE DON'T WANT PEOPLE TO FALL, BUT
17 COULD YOU INDICATE TO THE JURY WHAT THIS SCENARIO WOULD
18 BE SIMILAR TO?

19 A. MAY I TAKE THIS CHAIR BACK HERE RATHER THAN
20 FALL BACK OVER?

21 THE COURT: GO AHEAD.

22 THE WITNESS: IF YOU'RE STANDING FACING THE SOFA,
23 AND YOU'RE SHOT IN THIS LEG AND ROTATE LIKE THAT, YOUR
24 FEET END UP IN PRETTY MUCH THE POSITION SHOWN IN THE
25 PHOTOGRAPHS.

26 Q. BY MS. ABRAMSON: AND THAT JUST REQUIRES A

27 CLOCKWISE ROTATION?

28 A. THAT'S CORRECT.

-22707

1 Q. NOW, WOULD YOU STAND UP AGAIN AND WOULD YOU
2 PRESENT YOUR BACK TOWARDS ME AS YOU DID BEFORE,
3 PRETENDING THAT'S THE SOFA.

4 FIRST OF ALL, YOU'RE AWARE OF THE FACT IN
5 THIS CASE THERE ARE TWO GUNS AND TWO PEOPLE SHOOTING
6 THEM, CORRECT?

7 A. YES.

8 Q. IS THERE ANYTHING IN THE PHYSICAL EVIDENCE
9 THAT PREVENTS MR. MENENDEZ BEING HIT SIMULTANEOUSLY BY
10 TWO DIFFERENT GUNS?

11 A. NO.

12 Q. IS THERE ANYTHING IN THE PHYSICAL EVIDENCE
13 THAT PREVENTS HIS BEING HIT IN THE LEFT ELBOW WITH ONE
14 GUN AND THE RIGHT ARM WITH ANOTHER?

15 A. NO.

16 Q. AND IN YOUR SCENARIO THAT YOU HAVE JUST
17 SHOWN US IN THIS ROTATION, IS IT YOUR OPINION THAT HE IS
18 HIT IN BOTH THE RIGHT ARM AND THE LEFT ARM?

19 THE COURT: CAN YOU ANSWER THESE QUESTIONS BETTER
20 WHEN YOU'RE NOT FACING HER?

21 THE WITNESS: I THOUGHT I WAS ASKED TO STAND IN
22 THE CORNER. I THOUGHT I HAD DONE SOMETHING WRONG.

23 Q. BY MS. ABRAMSON: WE WERE GOING TO SEND YOU
24 TO THE GREEK ISLAND WHERE ELVIS IS. OKAY.
25 THE REASON WAS TO VISUALIZE THE BACK. IF
26 THE BACK WERE PRESENTING ITSELF TOWARDS THE GUNS, THEN
27 BOTH OF THOSE ARM WOUNDS COULD HAVE OCCURRED
28 SIMULTANEOUSLY OR NEARLY SIMULTANEOUSLY, COULD THEY NOT?

-22706

1 A. YOU'RE TALKING ABOUT THE WOUND TO THE BACK
2 OF THE RIGHT ARM?
3 Q. YES.
4 A. AND THE LEFT ELBOW?
5 Q. YES.
6 A. YES.
7 Q. AND IN THIS --
8 A. OR THEY COULD HAVE BEEN IN SEQUENCE.
9 Q. OR THEY COULD HAVE BEEN IN SEQUENCE.
10 AND THE LEG WOUNDS, IF WE ARE TALKING ABOUT
11 RAPID FIRING, IS IT NECESSARY THAT THE LEG WOUNDS BE IN
12 A PARTICULAR SEQUENCE VIS-A-VIS THE ARM WOUNDS?
13 A. NO. I THINK THE LEFT ELBOW, THE RIGHT ARM
14 WOUNDS, THE LEFT ELBOW -- IF YOU ARE FACING THIS WAY,
15 YOU WOULD NEED TO HAVE THE SHOOTER OFF IN THIS DIRECTION
16 OR ROTATING AROUND. IF YOU'RE ROTATING CLOCKWISE AND
17 YOU HAVE THIS SHOT HERE, YOU COULD --
18 Q. HERE BEING THE RIGHT ARM?

19 A. THAT'S CORRECT.
20 Q. OKAY. GO ON.
21 A. THEN YOU COULD HAVE SOME ROTATION THIS WAY,
22 OR YOU COULD HAVE ROTATION AS HE GOES DOWN, ARM GOES UP,
23 AND A SHOT COMES FROM THIS DIRECTION.
24 SO THERE IS AN ARRAY OF POSSIBILITIES.
25 Q. AND FOR THE LEG WOUND TO HAVE OCCURRED WITH
26 THE WAY YOU ENVISION THIS, STARTING OUT FACING THE
27 COUCH --
28 A. YES.

-22705

1 Q. ALL THAT'S NECESSARY FOR THAT LEG WOUND FOR
2 HIS FEET TO WIND UP IN THE FINAL POSITION, IS ALL THAT
3 IS NECESSARY THAT THE LEFT LEG BE IN FRONT OF THE RIGHT?
4 MR. CONN: OBJECTION. LEADING.
5 THE COURT: OVERRULED.
6 THE WITNESS: YES, THAT'S CORRECT.
7 Q. BY MS. ABRAMSON: THE SHOT HAS TO CLEAR THE
8 RIGHT LEG, FOR ONE THING?
9 A. THAT'S CORRECT.
10 A. BUT ALSO BASED ON THE WAY THE FEET WIND UP,
11 DON'T THEY WIND UP -- THE LEFT LEG STARTS OUT IN FRONT
12 AND THEN THEY REVERSE POSITIONS. YOU DON'T DO IT IN
13 HIGH HEELS, OKAY.
14 NOW, BASED ON -- YOU CAN RESUME -- YOU AND

15 YOUR CHAIR CAN RESUME THE WITNESS STAND.

16 NOW, TURNING TO MRS. MENENDEZ, BASED ON ALL
17 THE PHYSICAL EVIDENCE AND BLOOD SPATTER EVIDENCE AND
18 PICTURES OF THE WOUNDS THAT YOU EXAMINED, I WANT TO
19 POSIT A HYPOTHETICAL TO YOU AND ASK YOU IF THE
20 HYPOTHETICAL IS CONSISTENT WITH THE PHYSICAL EVIDENCE,
21 AND THE HYPOTHETICAL IS AS FOLLOWS:

22 THAT SHE IS STANDING WHEN THE SHOOTING
23 BEGINS;

24 THAT SHE IS HIT IN THE RIGHT FACE, RIGHT
25 CLAVICLE/MANDIBLE, RIGHT ARM, LEFT BREAST, ALL WHILE
26 STANDING;

27 THAT SHE SLUMPS IN SOME FASHION ONTO PART
28 OF THE COUCH WHERE SHE RECEIVES THE WOUNDS TO THE LEFT

-22704

1 LEG, AND THEN SHE IS DOWN ON THE GROUND WHEN SHE
2 RECEIVES THE WOUNDS TO THE LEFT SHOULDER, LEFT CHEEK.

3 IS THERE ANYTHING IN THE PHYSICAL EVIDENCE
4 THAT'S INCONSISTENT WITH THAT HYPOTHETICAL SCENARIO?

5 A. THE ONE THING THAT GIVES ME A LITTLE BIT OF
6 A PROBLEM WITH THAT IS THE EVIDENCE OF HER BEING ERECT
7 AFTER ONE OF THE LEG WOUNDS.

8 Q. I DON'T HAVE HER ERECT AFTER THE LEG
9 WOUNDS -- OH, YOU BELIEVE THAT SHE WOULD BE?

10 A. YES, SHE WOULD BE. I THINK THERE IS SOME

11 INDICATION OF THAT FROM THE BLOOD ON HER LEFT SHOE.

12 Q. THEN LET ME AMEND THE HYPOTHETICAL THAT SHE
13 IS SLUMPED ON THE COUCH, GETS UP AND THEN GOES DOWN.

14 A. YES.

15 Q. NOW, THERE IS -- I WANT TO BRING OUT THE
16 CHART OF THE DEN WHICH IS EXHIBIT 24. GOOD, OKAY. WHY
17 DON'T YOU STAY HERE, MR. MORTON, SO YOU CAN SEE, BECAUSE
18 THIS ISN'T DRAWN IN VERY DARK.

19 BY WAY OF A HYPOTHETICAL VIS-A-VIS THE
20 MOVEMENTS AND DIRECTION OF FIRE OF THE SHOOTERS IN THIS
21 CASE, OKAY --

22 A. YEAH.

23 Q. I AM GOING TO OFFER YOU A HYPOTHETICAL
24 WHERE ERIK AND LYLE MENENDEZ ENTER THE DEN THROUGH THESE
25 DOORS, THE MAIN ENTRANCE DOORS;

26 WHERE ONE OF THEM, ERIK MENENDEZ, STARTS
27 FIRING SHORTLY -- VERY CLOSE TO INSIDE THE DOORS, AND
28 THE DIRECTION OF FIRE IS TOWARDS JOSE MENENDEZ AND MARY

-22703

1 LOUISE MENENDEZ, BOTH OF WHOM ARE STANDING.

2 HE FIRES IN THAT DIRECTION AS HE TRAVERSES
3 FROM WEST TO EAST, WINDING UP IN A FINAL POSITION ACROSS
4 FROM THE COFFEE TABLE, NOT CLEAR OF THE COFFEE TABLE,
5 AND ACROSS THE PATH THAT HE TRAVERSES, HIS DIRECTION OF
6 FIRE IS IN THE GENERAL DIRECTION TOWARDS BOTH JOSE AND

7 MARY LOUISE MENENDEZ, WHO ARE IN THIS AREA STANDING, OR
8 STANDING OR GOING UP OR GOING DOWN IN FRONT OF THE
9 COUCH, OKAY. THAT'S HIS DIRECTION.

10 AND A SECOND PART OF THE HYPOTHETICAL IS
11 LYLE MENENDEZ COMING THROUGH THE SAME DOOR, AND THERE IS
12 COMMENCING FIRE IN THE SAME DIRECTION TOWARDS JOSE AND
13 MARY LOUISE MENENDEZ, BUT HE IS GOING IN THIS DIRECTION
14 TO ARRIVE AT THE SIDE OF THE COUCH WHERE THE HEAD WOUND
15 TO JOSE MENENDEZ IS ADMINISTERED, AND HE IS FIRING
16 ACROSS FROM WEST TO EAST TOWARDS MARY LOUISE MENENDEZ'
17 POSITION.

18 NOW, THE QUESTION IS, GIVEN THE LIMITATIONS
19 OF THIS PHYSICAL EVIDENCE, NEVERTHELESS IS THERE
20 ANYTHING IN THIS PHYSICAL EVIDENCE THAT IS INCONSISTENT
21 WITH THAT SCENARIO?

22 A. THE ONLY ONE THAT SEEMS INCONSISTENT IS THE
23 FINAL -- OR WHAT APPEARS TO BE THE FINAL SHOT -- BIRD
24 SHOT TO THE CHEEK, CONTACT SHOT.

25 Q. THAT'S NOT PART OF THIS PARTICULAR
26 SCENARIO. THAT'S SOMETHING THAT HAPPENS AFTER THIS
27 SCENARIO IS COMPLETE.

28 A. OTHER THAN THAT, IT APPEARS CONSISTENT WITH

-22702

1 THOSE GENERAL POSITIONS.

2 MS. ABRAMSON: THANK YOU.

3 I HAVE NOTHING FURTHER.

4 THE COURT: OKAY. CROSS-EXAMINATION.

5 MR. CONN: YES.

6

7 CROSS-EXAMINATION

8 BY MR. CONN:

9 Q. IS IT -- DID YOU TESTIFY THAT IT IS YOUR

10 OPINION THAT JOSE MENENDEZ RECEIVED ALL OF THE WOUNDS TO

11 HIS BODY WHILE STANDING, WITH THE EXCEPTION OF THE HEAD

12 WOUND?

13 A. I SAID THEY ARE CONSISTENT WITH THAT, YES.

14 Q. SO THAT IS NOT YOUR OPINION THAT HE

15 RECEIVED ALL WOUNDS TO HIS BODY WHILE STANDING, WITH THE

16 EXCEPTION OF THE HEAD WOUND, YOU'RE JUST SAYING THAT IS

17 A POSSIBILITY?

18 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE, YOUR

19 HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: IT LOOKS LIKE THE MOST REASONABLE

22 POSSIBILITY. THE ONE EXCEPTION I WOULD SAY MIGHT BE THE

23 LEFT ELBOW WOUND.

24 Q. BY MR. CONN: DID YOU SAY A FEW MOMENTS AGO

25 ON DIRECT EXAMINATION THAT YOU BELIEVE THAT HE RECEIVED

26 ALL WOUNDS TO THE BODY WHILE STANDING, WITH THE

27 EXCEPTION OF THE HEAD WOUND?

28 A. YES.

1 Q. AND IS THAT YOUR OPINION?

2 A. YES.

3 Q. BUT NOW YOU'RE SAYING IT IS NOT A MERE
4 POSSIBILITY, BUT THAT IS IN FACT WHAT HAPPENED IN THIS
5 CASE?

6 A. NO, I'M NOT SAYING WHAT HAS HAPPENED. I'M
7 SAYING I THINK THAT'S THE MOST LIKELY POSSIBILITY.

8 Q. YOU ARE NOT SAYING IT HAPPENED IN THIS
9 CASE?

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

12 THE COURT: REPHRASE THE QUESTION.

13 Q. BY MR. CONN: YES.

14 ARE YOU SAYING THAT THAT HAPPENED IN THIS
15 CASE, OR IT DIDN'T HAPPEN IN THIS CASE?

16 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

17 THE COURT: OVERRULED.

18 THE WITNESS: I AM SAYING THAT'S MY BEST --
19 THAT'S THE BEST RECONSTRUCTION OF THAT ASPECT OF IT I
20 COULD COME UP WITH BASED ON THE EVIDENCE THAT I SEE.

21 Q. BY MR. CONN: AND BECAUSE THAT IS THE BEST
22 YOU CAN COME UP WITH, I AM ASKING YOU TO WHAT DEGREE OF
23 CERTAINTY YOU ARE SAYING THAT THAT HAPPENED. ARE YOU
24 SAYING IT IS A POSSIBILITY, OR ARE YOU SAYING THAT THAT
25 HAPPENED?

26 A. I AM SAYING IT'S LIKELY IT HAPPENED THAT
27 WAY, MORE LIKELY THAN NOT.

-22700

1 JOSE MENENDEZ RECEIVED ALL OF THE WOUNDS TO HIS ARMS
2 WHILE STANDING?

3 A. THE WOUND TO THE RIGHT ARM CLEARLY COULD
4 NOT HAVE TAKEN PLACE WHILE HE WAS ON THE SOFA WITH THE
5 DIRECTION OF TRAVEL OF THAT WOUND. THERE IS NO EVIDENCE
6 OF THE KIND OF SPATTER THAT WOULD COME FROM THAT WOUND
7 ON THE SOFA WHERE HE WOULD BE SITTING.

8 THE WOUND TO HIS LEG -- HIS LEFT LEG WOULD
9 OCCUR WHILE HE IS STANDING, BECAUSE THERE IS NO EVIDENCE
10 OF SPATTER OFF TO THE OTHER SIDE OF HIS LEG. I DON'T
11 SEE ANY WAY HE COULD BE SITTING FOR THAT WOUND.

12 Q. WHAT ABOUT THE WOUND TO HIS LEFT ARM?

13 A. THE WOUND -- AS I ALREADY INDICATED, THE
14 POSSIBILITY OF HIS ARM BEING RAISED HIGH ENOUGH WHERE IT
15 WOULD NOT HAVE ANY EFFECT ON ANYTHING ELSE, IT COULD
16 HAVE BEEN STRUCK THERE, YES.

17 Q. SO NOW YOU'RE SAYING THAT IT'S POSSIBLE
18 THAT THE WOUND TO THE LEFT ARM COULD HAVE BEEN WHILE HE
19 WAS SEATED?

20 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 Q. BY MR. CONN: SO IS IT MORE PROBABLE THAN

24 NOT THAT THE WOUND TO THE LEFT ARM WAS WHEN HE WAS
25 SEATED OR WHEN HE WAS STANDING?

26 A. I CAN'T REALLY GIVE A PROBABILITY TO THAT
27 ONE.

28 Q. DIDN'T YOU JUST TELL US A FEW MOMENTS AGO

-22699

1 THAT IN YOUR OPINION ALL OF THE WOUNDS THAT HE RECEIVED
2 TO HIS BODY, WITH THE EXCEPTION OF THE HEAD WOUND, WAS
3 MORE PROBABLY THAN NOT WHILE HE WAS STANDING?

4 A. YES.

5 Q. BUT NOW YOU'RE SAYING THAT THAT RULE
6 DOESN'T APPLY TO THE WOUND TO THE LEFT ARM?

7 A. NO.

8 Q. YOU'RE NOT SAYING THAT?

9 A. NO.

10 Q. YOU'RE SAYING THAT IT IS MORE PROBABLE THAN
11 NOT THAT HE WAS STANDING WHILE HE RECEIVED THE WOUND TO
12 THE LEFT ARM?

13 A. IF YOU LOOK AT THIS AS A DYNAMIC EVENT,
14 THAT SEEMS LIKE A MORE LIKELY POSSIBILITY, YES.

15 Q. AND WHY IS IT MORE PROBABLE THAN NOT THAT
16 HE RECEIVED THE WOUND TO THE LEFT ARM WHILE HE WAS
17 STANDING?

18 A. BECAUSE IT WOULD OCCUR LATER IN THE
19 INCIDENT BECAUSE OF THE DIRECTION OF TRAVEL OF THE LEG

20 WOUND AND THE WOUND TO THE RIGHT SIDE, AND THAT WOULD
21 PUT HIM IN SOME MOVING POSITION BEFORE HE GETS THE LEFT
22 ARM SHOT.

23 Q. HOW CAN YOU CONCLUDE IT WOULD OCCUR MORE
24 LATER IN THE INCIDENT?

25 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 THE WITNESS: BECAUSE HE IS FACING THE SOFA EARLY
28 WHEN HE GETS THE FIRST SHOTS, AND HAS TO ROTATE. THERE

-22698

1 IS NO EVIDENCE OFF TO HIS LEFT INDICATING THAT THIS SHOT
2 WENT FROM HIS LEFT TO HIS RIGHT, OUT TO THE RIGHT OF HIM
3 IF HE WAS FACING THE SOFA.

4 Q. MR. MORTON, AREN'T YOU DOING EXACTLY WHAT
5 YOU ACCUSE DR. MC CARTHY OF DOING, WHICH IS COMING UP
6 WITH A SCENARIO IN YOUR MIND AND SAYING THAT THAT IS
7 MORE LIKELY THAN NOT, ALTHOUGH THERE ARE MANY OTHER
8 POSSIBILITIES?

9 A. I AM TRYING TO GIVE YOU THE BEST ESTIMATE
10 OF EACH OF THE INDIVIDUAL ONES, NOT TRYING TO
11 RECONSTRUCT THE WHOLE INCIDENT.

12 Q. SO, THE SHOT CAME TO THE LEFT ARM WHILE HE
13 WAS STANDING, BECAUSE IT HAD TO HAVE COME AFTER HE WAS
14 FACING THE SOFA; IS THAT WHAT YOU'RE TELLING US?

15 A. NO.

16 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
17 TO THE TONE OF COUNSEL AS ARGUMENTATIVE, AND THE WORDS
18 AS ARGUMENTATIVE.

19 THE COURT: OVERRULED AT THIS POINT.

20 THE WITNESS: NO. WHAT I AM SAYING IS THAT IN
21 ORDER TO GET THE ARM OUT WHERE IT WOULD BE IN A POSITION
22 WHERE THE PELLETS WOULD GO BY IT, THE REMAINING THAT
23 DIDN'T HIT IT, YOU HAVE TO -- YOU NEED TO SEE SOMETHING
24 THAT SHOWS YOU WHAT THAT DIRECTION IS.

25 I KNOW I TALKED ABOUT THE FACT YOU HAVE A
26 PATH THROUGH A BODY AND THEN YOU HAVE SOME INDICATION OF
27 WHERE IT STRIKES, AND THERE IS NO INDICATION OF IT
28 STRIKING OFF TO HIS RIGHT IF HE IS FACING THE SOFA.

-22697

1 SO THAT WOUND NEEDS TO COME AROUND THE
2 OTHER DIRECTION WHERE MOST OF THE EVIDENCE ENDS UP.

3 Q. THERE IS NO INDICATION THAT HE WAS -- THAT
4 THE PELLETS WENT TO THE RIGHT IF HE WAS FACING THE SOFA;
5 IS THAT WHAT YOU SAID?

6 A. I DON'T SEE ANY INDICATION OF IT.

7 Q. WHAT MAKES YOU CONCLUDE THAT HE WAS FACING
8 THE SOFA AT THE TIME THAT HE RECEIVED THE SHOT TO THE
9 LEFT ELBOW?

10 A. I DON'T BELIEVE HE WAS. WHAT I AM SAYING
11 IS I EXCLUDE THAT POSSIBILITY, BECAUSE THERE IS NOTHING

12 OFF TO HIS RIGHT, AND WHAT I AM SUGGESTING IS HE HAD TO
13 HAVE ROTATED AROUND, AND THAT SHOT WAS RECEIVED AS HIS
14 ELBOW WAS FACING OFF IN THE DIRECTION TOWARDS THE
15 ENTRANCE OR SOMEWHERE OFF IN THAT DIRECTION.

16 Q. WHEN YOU SAY "BY HIS RIGHT", WHAT ARE YOU
17 REFERRING TO? WHAT PART OF THE ROOM ARE YOU REFERRING
18 TO?

19 A. DEPENDS ON WHICH POINT IN TIME YOU'RE
20 TALKING ABOUT. WHEN HE IS FACING THE SOFA HIS RIGHT
21 WOULD BE OFF THIS WAY (INDICATING). IF HE IS TURNED
22 AROUND IN THE DIRECTION HE IS SEATED, HIS RIGHT WOULD BE
23 THE OTHER DIRECTION.

24 Q. WHERE WAS HE FACING WHEN HE RECEIVED THE
25 SHOT TO THE LEFT ELBOW?

26 A. I DON'T KNOW.

27 Q. WELL, WHERE ARE YOU ASSUMING, FOR PURPOSES
28 OF YOUR RECONSTRUCTION, THAT HE WAS FACING WHEN HE

-22696

1 RECEIVED THE SHOT TO THE ELBOW?

2 A. SOMEWHERE IN THE ARC BETWEEN -- MAY I?

3 Q. YES.

4 A. SOMEWHERE IN THE ARC BETWEEN HIS LEFT AND
5 STRAIGHT AHEAD.

6 Q. ALL RIGHT. SINCE HIS LEFT IS CHANGING, WHY
7 DON'T WE USE WEST AND EAST.

8 WEST IS TO THE LEFT SIDE OF THE DIAGRAM; IS
9 THAT CORRECT?

10 A. CORRECT.

11 Q. SO YOU'RE SAYING THAT WHEN HE WAS SHOT IN
12 THE ELBOW HE WAS FACING SOMEWHERE BETWEEN WEST AND
13 NORTH?

14 A. BASED ON THE LIMITED INFORMATION AVAILABLE,
15 THAT LOOKS TO BE THE CASE, YES.

16 Q. AND THAT IS BECAUSE OF WHAT?

17 A. BECAUSE THERE IS NO -- THERE ISN'T EVIDENCE
18 OFF IN THIS DIRECTION. IN OTHER WORDS, THE EVIDENCE OF
19 SPRAY, SPATTER, ALL OF THAT IS OFF IN THIS DIRECTION.
20 THINGS END UP OVER HERE. THIS ALL ENDS UP IN THIS
21 DIRECTION.

22 SO IF THERE IS ANYTHING COMING THROUGH
23 HERE, WHETHER IT'S LEFT-OVER PELLETS THAT HAVEN'T STRUCK
24 ANYTHING, THEY ALL APPEAR TO STRIKE SOMEWHERE IN THIS
25 DIRECTION, IN THIS ARC.

26 Q. DON'T YOU ALSO HAVE PELLETS GOING INTO THE
27 FRENCH DOORS BEHIND THE SOFA?

28 A. YES.

-22695

1 Q. AND COULDN'T HE BE FACING, FOR EXAMPLE --
2 COULDN'T HE BE FACING EAST WITH HIS ARM IN THIS
3 POSITION, AS I AM NOW SHOWING YOU, SUCH THAT SOME OF THE

4 PELLETS STRUCK HIS LEFT ELBOW AND THEN WENT INTO THE

5 SHUTTERS, WHICH WOULD BE DOWN HERE?

6 A. YES.

7 Q. OKAY. SO THEN HE DIDN'T HAVE TO BE FACING

8 WEST OR NORTH, DID HE, HE COULD HAVE BEEN FACING EAST?

9 A. RIGHT. BUT I AM TALKING ABOUT WHERE THE

10 SHOOTER IS. I AM TALKING ABOUT THE SHOOTER. HE WAS

11 SHOT FROM THIS ANGLE. HE COULD HAVE BEEN ROTATED TOWARD

12 THE EAST.

13 Q. MY QUESTION IS WHERE WAS JOSE MENENDEZ

14 FACING WHEN HE RECEIVED THE SHOT TO THE LEFT ELBOW?

15 A. I DO NOT KNOW.

16 Q. AND YOU DON'T KNOW WHETHER HE WAS SEATED OR

17 STANDING, DO YOU?

18 A. I CAN'T BE ABSOLUTELY SURE, NO. I THINK HE

19 WAS PROBABLY -- HE MAY HAVE BEEN ON HIS WAY DOWN. THAT

20 MAY BE PART OF THE SHOT THAT GOES OUT OVER THE SOFA, I

21 DON'T KNOW.

22 Q. YOU MAY RETURN TO YOUR SEAT.

23 A. THANK YOU.

24 Q. ASIDE FROM HIM MAYBE BEING ON THE WAY DOWN,

25 HOW DID YOU CONCLUDE HE WASN'T SITTING DOWN AT THE TIME

26 HE RECEIVED THAT SHOT TO THE ELBOW?

27 A. I'M SORRY?

28 Q. WHAT MAKES YOU CONCLUDE HE WASN'T SEATED ON

1 THE SOFA AT THE TIME HE RECEIVED THE SHOT TO THE ELBOW?

2 A. BECAUSE BY THE TIME HE BECAME SEATED, HE

3 WOULD HAVE ROTATED ALL THE WAY AROUND, AND HIS ELBOW

4 PROBABLY WOULD HAVE BEEN EITHER ON THE -- ON THE ARM OF

5 THE SOFA OR BELOW IT.

6 Q. ARE YOU CONCLUDING HE HAD TO HAVE BEEN IN

7 THIS DROPPING POSITION PRIOR TO BEING SHOT IN THE LEFT

8 ELBOW?

9 A. YES.

10 Q. WHY?

11 A. BECAUSE THERE IS NO EVIDENCE -- AS I HAVE

12 INDICATED, THERE IS NO EVIDENCE OFF TO THE WEST.

13 Q. ALL RIGHT. IN YOUR OPINION WHAT WAS THE

14 FIRST SHOT FIRED AT JOSE MENENDEZ?

15 A. I DON'T KNOW. IT LOOKS LIKE IT WAS

16 PROBABLY EITHER THE LEG OR THE RIGHT SIDE.

17 Q. OKAY. IT WAS THE -- AND BY THE RIGHT SIDE

18 YOU ARE REFERRING TO?

19 A. HIS RIGHT -- THE BACK OF HIS RIGHT ARM.

20 Q. ONE OF THOSE TWO WOUNDS CAME FIRST; IS THAT

21 CORRECT?

22 A. IT'S POSSIBLE THAT HE COULD HAVE BEEN

23 ROTATED AROUND SO THAT HIS LEFT ARM WAS FACING OFF, AND

24 THAT COULD HAVE BEEN FIRST.

25 Q. OKAY. SO YOU DON'T KNOW WHAT SHOT CAME

26 FIRST; HIS LEFT ARM, HIS RIGHT ARM OR HIS LEG; IS THAT

27 CORRECT?

28 A. THAT'S CORRECT.

1 Q. AND THEN YOU CAN'T SAY THAT ONE IS MORE
2 PROBABLE THAN THE OTHER, CAN YOU?

3 A. NO.

4 Q. AND YOU CAN'T SAY THAT IT'S MORE PROBABLE
5 THAT HE WAS STANDING THAN HE WAS SEATED WHEN HE RECEIVED
6 THOSE WOUNDS, CAN YOU?

7 A. WHICH WOUNDS?

8 Q. THOSE THREE WOUNDS TO HIS ARMS AND TO HIS
9 LEG?

10 A. I CAN.

11 Q. AND THAT IS BECAUSE YOU ENVISION A SCENARIO
12 IN WHICH HE WAS ROTATING IN A CIRCLE AS HE WAS RECEIVING
13 THESE INJURIES?

14 A. WELL, IT'S BASED ON PHYSICAL EVIDENCE THAT
15 HAS TO DO WITH THE DIRECTION OF THOSE SHOTS. CLEARLY
16 THE SHOT TO HIS LEFT LEG DOES NOT GO TOWARD THE WEST.
17 THERE IS NO EVIDENCE OF THAT. WE HAVE LOOKED -- YOU
18 KNOW, IN ALL DETAIL AND THERE IS NO BLOW-OUT FROM THAT
19 WOUND, SO THAT MUST BE OFF IN THE OTHER DIRECTION.

20 THE WOUND TO THE RIGHT, HE NEEDS TO BE --
21 THAT SHOT OCCURS AND SHOWS SPATTER THAT GOES ACROSS HIS
22 CHEST. MATERIAL COMES OUT THE SHIRT AND SPATTER GOES
23 ONTO HIS LEFT ARM. THERE IS NO COMPARABLE PATTERN ON
24 THE SOFA TO HIS LEFT.

25 Q. YOU DON'T KNOW THAT THAT SPATTER IS FROM

26 JOSE MENENDEZ OR IF THAT SPATTER IS FROM KITTY MENENDEZ,
27 DO YOU?
28 A. NO. THAT WAS NEVER ANALYZED OR COLLECTED.

-22692

1 Q. RIGHT. SO SINCE YOU CAN'T DETERMINE IF
2 THAT WAS THE SPATTER OF JOSE MENENDEZ OR KITTY MENENDEZ,
3 WHY THEN ARE YOU ASSUMING THAT THAT WAS THE SPATTER OF
4 JOSE MENENDEZ?

5 A. BECAUSE OF THE TIGHT PATTERN OF THAT
6 SPATTER ON THE LEFT ARM, IT HAS TO COME FROM A FAIRLY
7 CLOSE DISTANCE. SO THE CHANCES ARE MUCH BETTER THAT
8 IT'S FROM HIM THAN IT IS FROM HER.

9 Q. AND ISN'T IT POSSIBLE, IF YOU ENVISION A
10 CHANGING SITUATION HERE WHERE THE VICTIMS ARE MOBILE,
11 THAT KITTY MENENDEZ MIGHT HAVE BEEN CLOSE TO HIM WHEN
12 SHE WAS SHOT AND HE RECEIVED THAT SPATTER FROM HER?

13 A. THAT'S A POSSIBILITY, YES.

14 Q. SO THEN WHY DO YOU REJECT THAT POSSIBILITY
15 AND SAY IT'S MORE PROBABLE THAN NOT THAT IT WAS SPATTER
16 FROM JOSE MENENDEZ?

17 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DON'T BELIEVE I REJECTED THE
20 HYPOTHESIS. I JUST SAID IT'S MORE LIKELY THE OTHER
21 BECAUSE OF THE EVIDENCE THAT'S THERE.

22 Q. BY MR. CONN: AND WHY IS IT MORE LIKELY
23 THAN NOT?
24 MS. ABRAMSON: OBJECTION. ASKED AND ANSWERED.
25 THE COURT: OVERRULED.
26 THE WITNESS: AS I SAID, THE TIGHTNESS OF THE
27 PATTERN ON THE ARM ASSOCIATED WITH THE SPRAY THAT GOES
28 ACROSS HIS SHIRT.

-22691

1 Q. BY MR. CONN: WHEN YOU'RE SAYING ASSOCIATE,
2 YOU'RE SAYING "I ASSOCIATE -- I CONCLUDE IT CAME FROM
3 THAT ARM," THAT'S WHAT YOU MEAN BY ASSOCIATE?
4 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
5 THE COURT: SUSTAINED AS PHRASED.
6 Q. BY MR. CONN: WHEN YOU SAY "ASSOCIATED",
7 ARE YOU SAYING YOU ASSOCIATE THE SPATTER ON HIS SHIRT TO
8 THE WOUND TO HIS RIGHT ARM?
9 A. WHAT I AM SAYING IS THE TOTALITY OF THE
10 PATTERN OF THE SHOT THROUGH THE RIGHT ARM, THE SPRAY
11 ACROSS THE CHEST ALL IS QUITE COMPATIBLE WITH THAT ONE
12 DIRECTION OF TRAVEL. YOU CAN HYPOTHEZIZE THAT THERE
13 WOULD BE A LOT OF OTHER POSSIBILITIES, AND I CAN'T
14 EXCLUDE ALL OF THOSE.
15 Q. RIGHT. AND IT'S EQUALLY POSSIBLE THAT
16 KITTY MENENDEZ WAS STANDING NEARBY WHEN SHE WAS SHOT AND
17 THAT IS SPATTER FROM HER; IS THAT CORRECT?

18 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: IT COULD BE.

21 Q. BY MR. CONN: AND BECAUSE IT'S EQUALLY

22 POSSIBLE, HOW CAN YOU SAY THAT ONE SCENARIO IS MORE

23 PROBABLE THAN THE OTHER?

24 A. I DON'T THINK I SAID IT WAS EQUALLY

25 POSSIBLE. I SAID IT IS POSSIBLE.

26 Q. IS IT EQUALLY POSSIBLE?

27 A. I DON'T KNOW. I CAN'T GIVE NUMBERS, BUT I

28 THINK IT'S MORE LIKELY BASED ON THE TOTALITY OF THAT

-22690

1 PATTERN THAT THAT'S ASSOCIATED WITH THAT WOUND.

2 Q. AREN'T YOU MAKING AN ASSUMPTION THERE?

3 A. WELL, YOU'RE ALWAYS MAKING SOME ASSUMPTIONS

4 WHEN YOU EXAMINE EVIDENCE, AND ASSOCIATIONS, UNLESS YOU

5 HAVE DONE A VERY THOROUGH ANALYSIS OF ALL OF THE BLOOD

6 DROPLETS. I MEAN, YOU CAN HAVE SOME -- YOU KNOW, THERE

7 COMES A POINT AT WHICH YOU LOOK AT WHAT YOU SEE AND WHAT

8 THE RESULTS ARE AND TRY TO COME UP WITH THE BEST

9 CONCLUSION.

10 Q. OKAY. AND SO IN THIS SCENARIO WHAT YOU

11 THINK IS MORE LIKELY THAN POSSIBLE, JOSE MENENDEZ WAS

12 SPINNING AROUND AS HE RECEIVED THESE WOUNDS?

13 A. I THINK I SAID ROTATING. I DON'T KNOW

14 THAT -- SPINNING IMPLIES SPEED.

15 Q. SHOTGUN WOUNDS DON'T MAKE A PERSON ROTATE,
16 DO THEY?

17 A. NO. WELL, LET'S PUT IT THIS WAY.

18 THEY DON'T -- BY THE FORCE OF THEIR ENERGY
19 THEY DON'T, BUT BY THE FACT THAT THEY'RE COMING AT YOU
20 MIGHT MAKE YOU ROTATE.

21 Q. OKAY. AND WHAT CAUSED YOU TO CONCLUDE THAT
22 HE WAS ROTATING WHILE HE RECEIVED THESE WOUNDS TO THE
23 BODY?

24 A. JUST THE EVIDENCE OF THE FEET.

25 Q. SO, YOU HYPOTHESIZE THAT HE WAS STANDING IN
26 FRONT OF THE SOFA WHEN HE RECEIVED ALL OF THE SHOTS TO
27 HIS ARMS AND TO HIS LEG; IS THAT CORRECT?

28 A. NO, THAT'S NOT WHAT I SAID.

-22689

1 Q. THEN WHERE WAS HE STANDING?

2 A. THE -- HE WAS STANDING AND THEN ROTATING --
3 HE WAS FACING THE SOFA WITH THE RIGHT SHOT AND THE LEG
4 SHOT, AND THEN ROTATED AROUND FACING THE OTHER WAY WHEN
5 THE LEFT SHOT OCCURRED.

6 Q. ALL RIGHT. PERHAPS YOU CAN -- WITHOUT
7 SAYING "THIS WAY" OR "THAT WAY", MAYBE YOU CAN INDICATE
8 ON THE DIAGRAM.

9 A. OKAY. IN OTHER WORDS, HE IS STANDING

10 FACING THE SOFA. SHOT TO RIGHT ARM, SHOT TO THE LEFT
11 LEG; ROTATES, AND SOMEWHERE THROUGH THIS ARC GETS THE
12 SHOT THROUGH THE LEFT ELBOW.

13 Q. OKAY. IN THAT SEQUENCE; RIGHT ARM, LEFT
14 LEG AND THEN LEFT ELBOW; IS THAT CORRECT?

15 A. NO. I AM NOT SUGGESTING THAT IT WAS
16 NECESSARILY RIGHT ARM, LEFT LEG OR LEFT LEG, RIGHT ARM.
17 WHEN YOU TALK ABOUT THESE, YOU SORT OF HAVE TO PUT THEM
18 IN ORDER. IT DOESN'T MEAN I AM EXPRESSING AN OPINION
19 THAT THAT'S NECESSARILY THE ORDER THAT THEY WERE.

20 Q. SO YOU ARE -- AREN'T YOU EXPRESSING AN
21 OPINION THAT THIS IS THE MOST LIKELY SCENARIO, ACCORDING
22 TO YOU, MORE PROBABLE THAN THAT?

23 A. BUT YOU'RE SAYING --

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

25 THE COURT: OVERRULED.

26 THE WITNESS: BUT YOU'RE SAYING RIGHT ARM, LEFT
27 LEG. THERE IS NO WAY I CAN SAY RIGHT ARM, LEFT LEG, OR
28 LEFT LEG, RIGHT ARM. I HAVE NO WAY OF KNOWING WHICH OF

-22688

1 THOSE IS FIRST.

2 Q. BY MR. CONN: WELL, ARE YOU GIVING AN
3 OPINION THAT ONE IS MORE PROBABLE THAN NOT?

4 A. NO.

5 Q. YOU ARE JUST SAYING THAT THESE ARE VARIOUS

6 POSSIBILITIES, AND NO ONE IS MORE PROBABLE THAN THE

7 OTHER?

8 A. THAT'S RIGHT. THERE IS NO WAY I CAN

9 DISTINGUISH WHETHER THIS ARM WOUND CAME BEFORE THE

10 LEG WOUND, OR WHETHER THIS LEG WOUND CAME BEFORE THE ARM

11 WOUND. NO WAY.

12 Q. OF THE THREE, ARE YOU SAYING THAT ANY ONE

13 IS MORE PROBABLE THAN NOT IN TERMS OF SEQUENCE?

14 MS. ABRAMSON: OBJECTION. VAGUE, YOUR HONOR.

15 THE COURT: DID YOU UNDERSTAND THE QUESTION?

16 THE WITNESS: OF THOSE THREE -- I THINK I

17 UNDERSTAND THE QUESTION.

18 THE COURT: OKAY.

19 THE WITNESS: THE TWO -- THE WOUND TO THE LEG AND

20 THE WOUND TO THE RIGHT ARM, I HAVE NO WAY OF DETERMINING

21 WHICH ONE OF THOSE MIGHT HAVE COME FIRST.

22 IT SEEMS REASONABLE THAT THE LEFT ARM SHOT,

23 SINCE THERE IS NO EVIDENCE OF THAT SHOT GOING OFF TO THE

24 RIGHT, AND IT HAS POTENTIAL FOR BEING INVOLVED IN

25 ANOTHER STRIKE IN THE SCENE AFTERWARDS, OF A PART OF

26 THIS HITTING HIS ARM. IT'S MORE LIKELY HE HAS COME

27 AROUND BY THEN, AND THAT SHOT IS RECEIVED AFTER HE IS

28 ROTATED AROUND.

-22687

1 SO HE PUTS IT IN AN ARC WHERE THAT SHOT

2 COULD COME OFF TO HIS RIGHT AS HE IS FACING AWAY FROM
3 THE SOFA.

4 Q. BY MR. CONN: ALL RIGHT. YOU MAY RETURN TO
5 YOUR SEAT FOR A MOMENT. THANK YOU.

6 SO NOW, AS PART OF THIS SCENARIO, THE FIRST
7 TWO SHOTS WERE THE SHOTS TO THE RIGHT ARM AND TO THE
8 LEFT LEG.

9 DID YOU FORM AN OPINION AS TO WHY HE WOULD
10 HAVE BEEN ROTATING DURING THE SHOT TO THE LEFT LEG?

11 A. I TEND NOT TO TRY TO DETERMINE WHY PEOPLE
12 DO THINGS IN CRIME SCENES. I -- MY EXPERIENCE HAS BEEN
13 YOU HAVE SOMETHING GOING ON THAT NONE OF US REALLY HAS
14 ANY EXPERIENCE WITH, WITH HOW PEOPLE REACT UNDER THESE
15 CONDITIONS. SO I DON'T TRY TO MAKE A JUDGMENT ABOUT
16 THAT.

17 Q. BUT YOU ARE MAKING AN ASSUMPTION THAT HE
18 WAS ROTATING DURING THESE SHOTS BEING FIRED AT HIM,
19 CORRECT?

20 A. YES.

21 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

22 THE COURT: OVERRULED. THE ANSWER WILL STAND.

23 Q. BY MR. CONN: AND BEFORE YOU CAN CONCLUDE
24 THAT A MAN IS STANDING THERE ROTATING WHILE SOMEONE IS
25 FIRING SHOTS AT HIM, DON'T YOU EVEN STOP TO ASK YOURSELF
26 "WHY WOULD THIS GUY BE ROTATING IN THE FIRST PLACE"?

27 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

28 THE COURT: OVERRULED.

1 THE WITNESS: NO, I DON'T.

2 Q. BY MR. CONN: YOU JUST SAY THAT "ROTATING
3 WORKS, SO I'LL GO WITH ROTATING"?

4 A. I WILL JUST SAY THAT THE PHYSICAL EVIDENCE
5 INDICATES THAT, AND THAT SEEMS A REASONABLE THING TO
6 HAVE HAPPENED.

7 Q. SO THE ROTATION IS JUST BASED ON THE FACT
8 THAT HIS FEET ARE IN THAT POSITION IN WHICH WE SEE HIS
9 FEET, CORRECT?

10 A. WELL, YOU COULD HAVE HIM TAKE MINCING
11 LITTLE STEPS AS HE ROTATES AROUND, BUT I DON'T THINK IF
12 HE HAS AN INJURY TO HIS LEG HE IS GOING TO BE DOING MUCH
13 STEPPING OR WALKING. BUT THAT'S A MEDICAL OPINION, AND
14 IT'S NOT APPROPRIATE FOR ME TO GET INTO THAT.

15 WHAT I AM SAYING IS IF HE WERE TO RECEIVE A
16 SHOT IN THE LEG AND ROTATE, HE WOULD END UP IN THIS
17 POSITION.

18 Q. OKAY. NOW, IF THE FIRST SHOT -- YOU SAID
19 THAT THE FIRST SHOT MIGHT HAVE BEEN THE SHOT TO THE BACK
20 OF THE ARM; IS THAT CORRECT?

21 A. YES.

22 Q. NOW, IF THE FIRST SHOT WAS THE SHOT TO THE
23 BACK OF THE ARM, THAT MEANS THAT HE WOULD HAVE BEEN
24 FACING THE SOFA AT THE TIME THAT THE SHOT WAS FIRED; IS
25 THAT CORRECT?

26 A. THAT'S CORRECT.

27 Q. OKAY. NOW, DID YOU COME ACROSS ANY
28 EVIDENCE IN THIS CASE THAT HE WAS FACING THE SOFA AT THE

-22685

1 TIME THAT THE SHOT WAS FIRED?

2 A. YES. I HAVE -- AS I HAVE INDICATED, THE
3 DIRECTION OF TRAVEL OF THE SHOT TO THE LEFT LEG AND THE
4 SPRAY THAT'S ON THE PILLOW MAY BE ASSOCIATED WITH THAT
5 WOUND, AND YOU ALSO HAVE SOME BLOOD DROPS AS HE IS
6 FACING THE SOFA. THERE IS SOME BLOOD DROPS THERE THAT
7 ARE NOT EXPLAINED BY THE BLOOD FROM HIS LEFT LEG, WHICH
8 MAY BE FROM BLOOD FROM HIS RIGHT SIDE, OR IT MAY BE
9 BLOOD FROM HIS LEFT ELBOW AS HE ROTATES AROUND. THERE
10 IS SOME BLOOD DROPS THAT ARE OUT TOO FAR FROM THE SOFA
11 TO BE ASSOCIATED WITH THE LEG WOUND.

12 Q. WHAT DOES BLOOD DROPS ON THE FLOOR HAVE TO
13 DO WITH FACING THE SOFA?

14 A. THE BLOOD DROPS -- IF HE WERE JUST SEATED
15 THERE THE WHOLE TIME?

16 Q. I AM NOT ASKING IF HE WAS SEATED THERE THE
17 WHOLE TIME.

18 MS. ABRAMSON: EXCUSE ME. YOUR HONOR, HE
19 INTERRUPTED THE WITNESS' ANSWER.

20 THE COURT: HAD YOU FINISHED YOUR ANSWER?

21 THE WITNESS: NO, I HAD NOT.

22 THE COURT: GO AHEAD.

23 THE WITNESS: IF HE HAD BEEN SEATED THE WHOLE
24 TIME, THERE IS NO EXPLANATION FOR THE BLOOD DROPS THAT
25 ARE OUT IN FRONT OF THE ARM OF THE SOFA. THEY ARE TOO
26 FAR AWAY FROM THE LEG. THEY DON'T FIT.
27 YOU HAVE SOME BLOOD DROPS THERE THAT
28 MR. LINHART TALKED ABOUT AND I TALKED ABOUT THAT REQUIRE

-22684

1 SOME SOURCE OF BLOOD DROPPING FROM ABOVE. THAT COULD BE
2 EXPLAINED BY HIM STANDING IN FRONT OF THE SOFA AND BLOOD
3 DROPPING FROM POSSIBLY THIS WOUND, OR AS HE ROTATED
4 AROUND, THIS LEFT ARM DRIPPING BLOOD BEFORE HE GOES
5 DOWN. IT COULD BE EITHER ONE OF THOSE.

6 Q. SO YOU'RE SAYING THAT BECAUSE YOU HAVE --
7 BECAUSE YOU SEE BLOOD DROPS ON THE FLOOR IN A PARTICULAR
8 LOCATION AND -- YOU DON'T KNOW WHOSE BLOOD THAT IS, BY
9 THE WAY, DO YOU?

10 A. THAT'S CORRECT.

11 Q. THAT THOSE BLOOD DROPS ARE TO YOU EVIDENCE
12 THAT HE WAS FACING THE SOFA AT THE TIME THAT THE SHOTS
13 WERE FIRED?

14 A. YES. BUT THE BASIS FOR THAT IS PRIMARILY
15 THE SHOT THROUGH THE LEG, AND HAVING NO EVIDENCE OFF TO
16 HIS RIGHT AS HE IS FACING -- PARDON ME, OFF TO HIS LEFT
17 AS HE IS SEATED THERE. THAT'S THE PRIMARY REASON FOR
18 THAT.

19 Q. OKAY.

20 NOW, YOU THINK THAT PERHAPS AFTER HE WAS
21 SHOT IN THE BACK OF THE RIGHT ARM WHILE HE WAS FACING
22 THE SOFA, WAS HE ROTATING IN YOUR VIEW AT THAT POINT IN
23 TIME?

24 A. HE COULD HAVE BEEN ROTATING. THESE ARE
25 DYNAMIC EVENTS, AS I HAVE SAID GENERALLY, AND I DON'T
26 KNOW WHETHER HE WAS ROTATING ONE WAY OR THE OTHER AT THE
27 TIME THAT THAT OCCURRED. I DON'T HAVE ANY KNOWLEDGE OF
28 THAT.

-22683

1 ALL I KNOW IS WHEN IT -- WHEN THE SHOT
2 HITS, SOMETHING HAPPENS, AND I HAVE NO WAY OF KNOWING
3 WHAT KIND OF MOVEMENTS MIGHT HAVE BEEN TAKING PLACE
4 BEFORE OR AFTER.

5 Q. AND SO IF THE SHOT TO THE RIGHT ARM WAS THE
6 FIRST SHOT, ARE YOU SAYING THAT THEN HE BEGAN ROTATING
7 AFTER THAT WHILE -- WHEN HE WAS SHOT IN THE LEFT LEG?

8 A. I DON'T KNOW WHETHER THAT OCCURRED AS HE
9 WAS ROTATING, BEFORE HE STARTED ROTATING. I HAVE NO WAY
10 OF KNOWING.

11 Q. BUT YOU CONSIDER THIS AS A POSSIBILITY?
12 DID YOU EVER STOP TO ASK WHY HE WOULD BE ROTATING FROM
13 THE FIRST SHOT TO THE LEFT ARM -- TO THE RIGHT ARM?

14 MS. ABRAMSON: OBJECTION. ASKED AND ANSWERED.

15 THE COURT: OVERRULED.

16 THE WITNESS: AS I HAVE ALREADY INDICATED, I

17 GENERALLY TRY -- DO NOT TRY TO DETERMINE WHY PEOPLE DO

18 THINGS. IN THESE SITUATIONS I HAVE BEEN -- YOU KNOW,

19 PEOPLE DO THINGS THAT ARE UNEXPECTED BECAUSE THEY ARE --

20 THEY HAVE A PARTICULAR MIND SET THAT I CAN'T GET INTO,

21 AND THAT INCLUDES THE SHOOTERS AS WELL AS THE PERSON

22 BEING SHOT AT. SO I DO NOT ATTEMPT TO DO THAT.

23 Q. OKAY. OKAY.

24 SO FOR KITTY MENENDEZ NOW, I BELIEVE THAT

25 YOU INDICATED THAT KITTY MENENDEZ WAS STANDING FOR -- OR

26 THAT SHE RECEIVED NUMEROUS WOUNDS WHILE SHE WAS STANDING

27 UP.

28 A. THE EVIDENCE THAT I SEE INDICATES SHE WAS

-22682

1 STANDING FOR A PORTION OF HER WOUNDS. I CAN'T SAY WHAT

2 NUMBER.

3 Q. AND WHY WAS SHE -- AND WHAT DO YOU MEAN BY

4 A PORTION OF HER WOUNDS?

5 A. WELL, IN FACT I CAN'T EVEN SAY SHE WAS

6 STANDING. SHE WAS UP TO THE POINT WHERE HER ARM WOULD

7 BE -- WHERE SHE COULD GET A SHOT TO THE ARM THAT GOES

8 THROUGH THE WINDOW, THE EAST DOOR.

9 Q. YOU ARE SAYING THAT THE SHOT THAT WENT

10 THROUGH THE WINDOW WAS PART OF THE SAME SHOT THAT STRUCK

11 HER IN HER RIGHT ARM?

12 A. I BELIEVE IT WAS, YES.

13 Q. AND WHAT IS YOUR EVIDENCE OF THAT?

14 A. THE LOCATION OF THE PIECES OF THE BRACELET

15 AND THE SHOT WADDING THAT IS ASSOCIATED WITH THOSE

16 PIECES OF BRACELET.

17 Q. AND WHAT IS IT ABOUT THE LOCATION OF THE

18 PIECES OF THE BRACELET THAT CAUSES YOU TO CONCLUDE THAT

19 SHE WAS STANDING WHEN SHE WAS SHOT IN THE RIGHT ARM?

20 A. BECAUSE THE PIECES OF BRACELET END UP NEAR

21 THE HOLE, AND THERE IS A LARGE SPREAD TO THAT SHOT

22 PATTERN WHICH SHOWS THAT IT HAS GONE THROUGH SOMETHING

23 BEFORE IT STRUCK THAT POSITION. IT'S NOT A COMPLETE

24 PATTERN THAT WE CAN SEE, AND IT'S SPREAD ENOUGH THAT IT

25 SHOWS THAT IT STRUCK SOMETHING FIRST.

26 SO THE COMBINATION OF THOSE FACTORS LEADS

27 ME TO BELIEVE THAT THAT SHOT THAT WENT THROUGH TOOK OUT

28 HER BRACELET, HER ARM, AND HER UPPER ARM, ENDED UP GOING

-22681

1 THROUGH THAT DOOR.

2 Q. OKAY. NOW, ONCE AGAIN AREN'T YOU MAKING

3 ASSUMPTIONS ABOUT WHERE HER BRACELET WAS AT THE TIME OF

4 THE SHOOTING?

5 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES. I AM ASSUMING IT WAS ON HER
8 ARM.

9 Q. BY MR. CONN: AND WHAT IS YOUR
10 ASSUMPTION -- WHAT IS THE BASIS FOR THAT ASSUMPTION?

11 A. WELL, THAT'S A REASONABLE PLACE FOR IT. IT
12 HAS BLOOD ON IT.

13 Q. DO YOU THINK IT IS SCIENTIFIC --

14 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR HONOR.

15 I AM NOT SURE THE WITNESS HAD FINISHED HIS ANSWER.

16 THE COURT: HAD YOU DONE SO?

17 THE WITNESS: I HAD FINISHED MY ANSWER.

18 THE COURT: YOU MAY CONTINUE.

19 MS. ABRAMSON: I'M SORRY.

20 Q. BY MR. CONN: DO YOU THINK IT IS A PROPER
21 SCIENTIFIC APPROACH TO REACH CONCLUSIONS BASED ON
22 ASSUMPTIONS SUCH AS ASSUMPTIONS THAT IT'S A REASONABLE
23 PLACE FOR THE BRACELET TO BE?

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES. I MEAN, YOU MAKE CERTAIN
27 ASSUMPTIONS IN THESE EXAMINATIONS.

28 Q. BY MR. CONN: AND AREN'T THERE AN INFINITE

-22680

1 NUMBER OF PLACES WHERE THAT BRACELET MIGHT HAVE BEEN AT
2 THE TIME OF THE SHOOTING?

3 A. I SUPPOSE SHE COULD HAVE BEEN HOLDING IT UP
4 AS A TARGET, BUT I DON'T THINK THAT'S A REASONABLE
5 LIKELIHOOD.

6 Q. OR SHE COULD HAVE TAKEN IT OFF AND RESTED
7 IT ON THE SOFA SOMEWHERE?

8 A. YOU HAVE -- IT HAS TO BE HELD IN A POSITION
9 THAT WOULD ALLOW IT TO BE FRACTURED THE WAY IT'S
10 FRACTURED. IF IT WAS ON THE SOFA, THERE IS NO EVIDENCE
11 THAT THERE WAS A SHOT THAT WOULD HAVE TAKEN OUT THAT
12 BRACELET, AND FROM WHAT I SEE IN THE EVIDENCE THERE.

13 Q. YOU'RE SAYING THAT IN ORDER TO BE FRACTURED
14 THE WAY IT WAS FRACTURED IT HAD TO BE HELD IN A CERTAIN
15 CONFIGURATION?

16 A. NO. BUT IF IT WAS STRUCK LIKE THAT, THERE
17 HAS TO BE SOME AREA WHERE THE SHOT TRAVELS TO DO THAT.
18 IN OTHER WORDS, YOU DON'T JUST HAVE AN ISOLATED PELLET
19 HITTING THAT AND BREAKING THAT AND TOSSING IT OFF IN ALL
20 DIRECTIONS.

21 Q. WHY NOT?

22 A. YOU JUST DON'T. I DON'T THINK THERE IS
23 ENOUGH ENERGY FROM THAT TO DO THAT.

24 Q. SO HAVE YOU FORMED AN OPINION CONCERNING
25 THE NUMBER OF PELLETS THAT STRUCK THIS BRACELET?

26 A. I THINK IT WAS MORE THAN ONE. I THINK THERE
27 WAS ENOUGH STRIKING THIS THAT TOOK OUT A SECTION OF
28 THAT. I DON'T THINK ONE PELLET WOULD DO THAT.

1 Q. AND DO YOU HAVE EVIDENCE OF THAT, PHYSICAL
2 EVIDENCE THAT IT WAS MORE THAN ONE PELLET?

3 A. I HAVE A REASONABLE-SIZED CHUNK OUT OF IT.

4 Q. WHEN YOU SAY YOU HAVE A REASONABLE-SIZED
5 CHUNK, ARE YOU SAYING THAT -- WHAT DO YOU MEAN?

6 A. I'M SAYING THERE IS A CHUNK MISSING OUT OF
7 THE BRACELET, AND I DON'T THINK THAT THAT WOULD BE JUST
8 THE RESULT OF ONE PELLET STRIKING IT.

9 Q. HOW DO YOU KNOW?

10 A. I DON'T KNOW. I AM ONLY SAYING MY OPINION
11 IS I DON'T THINK THAT'S THE CASE.

12 Q. WHAT ARE THE VELOCITIES OF THOSE PELLETS
13 COMING OUT OF THE SHOTGUN?

14 A. THEY'RE OVER A THOUSAND FEET PER SECOND.

15 Q. AND THAT'S NOT ENOUGH FOR ONE PELLET COMING
16 AT A THOUSAND FEET PER SECOND TO BREAK A PLASTIC
17 BRACELET?

18 A. IT COULD BREAK IT, YES.

19 Q. AND CAN IT MAKE IT FLY IN A ROOM?

20 A. WELL, IT CAN FLY -- IT CAN BREAK AND CAUSE
21 IT TO BE -- YOU KNOW, TO GO IN DIFFERENT DIRECTIONS, BUT
22 ONE PELLET IS NOT GOING TO SEND IT IN THAT -- I DON'T
23 THINK IN THE SPREAD THAT YOU SEE THERE.

24 Q. AND WHAT DO YOU BASE THAT ON?

25 A. EXPERIENCE.

26 Q. WHAT, SHOOTING BRACELETS?

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

-22678

1 THE COURT: REPHRASE THE QUESTION, PLEASE.

2 Q. BY MR. CONN: IS THE EXPERIENCE YOU'RE

3 REFERRING TO EXPERIENCE SHOOTING PLASTIC BRACELETS?

4 A. NO.

5 Q. THEN EXPERIENCE DOING WHAT?

6 A. BASICALLY MY EXPERIENCE WITH SHOTGUN BLASTS

7 AND INJURIES AND SHOOTING TARGETS. BASICALLY DIFFERENT

8 ITEMS.

9 Q. SO WHERE IN THE ROOM WAS THE BRACELET AT

10 THE TIME THAT THE SHOT WAS FIRED STRIKING THE BRACELET?

11 A. WHERE WAS IT IN THE ROOM?

12 Q. YES.

13 A. I BELIEVE IT WAS ON HER WRIST, AND HER

14 WRIST WAS IN A LINE WITH THE HOLE IN THE EAST DOOR.

15 Q. WHICH HOLE ARE YOU REFERRING TO?

16 A. THE ONE IN THE EAST DOOR.

17 Q. IN THE GLASS?

18 A. YES.

19 Q. ON THE SOUTH?

20 A. EAST DOOR, SOUTH WALL, AND THAT WOULD --

21 Q. OKAY. SO YOU'RE SAYING THAT HER -- THE

22 BRACELET WAS LINED UP IN THE SAME TRAJECTORY WITH THAT

23 HOLE AT THE TIME THAT THE SHOT WAS FIRED STRIKING THAT

24 BRACELET?

25 A. I THINK THAT'S A REASONABLE INTERPRETATION
26 OF THE EVIDENCE THAT WE SEE HERE, YES.

27 Q. AND HOW DO YOU CONCLUDE THAT IT WAS LINED
28 UP IN THE SAME TRAJECTORY?

-22677

1 A. BECAUSE IT ENDS UP YOU HAVE A SPREAD
2 PATTERN ON THE WINDOW AND THE BLINDS WHICH SHOWS THAT
3 THAT PATTERN HAS BEEN INTERRUPTED BY SOMETHING. THERE
4 IS BLOOD SPRAY THERE. THERE IS BLOOD ON THE FLOOR.
5 THERE IS PELLETS THERE. THERE IS WADDING THERE, AND
6 THERE'S PIECES OF BRACELET THERE, AND ALL OF THESE
7 THINGS COMBINED LEAD ME TO BELIEVE THAT THAT WAS WHAT
8 OCCURRED.

9 Q. WELL, THERE WAS PIECES OF BRACELET IN
10 DIFFERENT PARTS OF THE ROOM; IS THAT CORRECT?

11 A. YES.

12 Q. IN FACT, ON THIS BOARD THAT WE HAVE HERE,
13 IT SHOWS THAT HERE OVER BY THE DOOR -- I THINK THIS IS
14 WHERE YOU ARE REFERRING TO.

15 A. THAT'S CORRECT.

16 Q. WHERE A PIECE OF THE BRACELET WAS FOUND; IS
17 THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. THERE WERE TWO PIECES OF BRACELET FOUND

20 OVER HERE BY JOSE MENENDEZ; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND THERE WAS ANOTHER PIECE OF THE BRACELET

23 FOUND OVER HERE WHERE THE NO. 16 IS; IS THAT CORRECT?

24 A. YES.

25 Q. SO YOU HAVE BRACELET FOUND IN THREE PLACES

26 IN THE ROOM; IS THAT CORRECT?

27 A. YES.

28 Q. AND YOU ARE CONCLUDING, THOUGH, THAT A SHOT

-22676

1 HIT THE BRACELET, THE TRAJECTORY HIT THE BRACELET AND

2 WAS FIRED IN THE SAME PATH TO LINE UP WITH THIS AREA

3 NEAR THE DOOR WHERE THE PORTION OF THE BRACELET WAS

4 FOUND?

5 A. YES.

6 Q. AND THAT IS SIMPLY BASED UPON THE FACT THAT

7 THERE IS ALSO SOME BREAKAGE OF THE GLASS THERE AS WELL

8 AS SOME BLOOD?

9 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE,

10 MISSTATES THE TESTIMONY.

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT AND THE PELLET HOLES IN THE

13 BLINDS, YES.

14 Q. BY MR. CONN: AND WHY DO YOU ASSOCIATE THE

15 SHOT TO THOSE GLASS DOORS WITH THE BRACELET?

16 MS. ABRAMSON: OBJECTION, YOUR HONOR. ASKED AND
17 ANSWERED, AND MISSTATES THE TESTIMONY.
18 THE COURT: OVERRULED.
19 MS. ABRAMSON: YOUR HONOR, I'D LIKE TO BE HEARD.
20 THE COURT: NO. OVERRULED.
21 THE WITNESS: I THINK I HAVE EXPRESSED IT
22 ALREADY. THERE IS THE SPREAD OF PELLETS IN THE BLIND,
23 THE SPREAD OF -- THE DAMAGE THROUGH THE GLASS, THE PIECE
24 OF BRACELET WITH LEAD ON IT, THE WADDING, THE PELLETS
25 ALL IN THAT AREA, AND BLOOD SPRAY IN THAT AREA AS WELL.
26 Q. BY MR. CONN: ARE YOU ASSUMING THAT A PIECE
27 OF THE BRACELET WOULD NECESSARILY FOLLOW THE PATH OF THE
28 PELLETS THAT STRUCK IT?

-22675

1 A. NO, OBVIOUSLY ALL OF IT DOESN'T, BUT I AM
2 SAYING THAT'S A GOOD INDICATION THAT IT MAY HAVE BEEN
3 ASSOCIATED WITH THAT SERIES OF PELLET HOLES AND THE HOLE
4 THROUGH THE GLASS. ONE OF THEM ENDS UP TO THE RIGHT
5 WITH SOME WADDING, ONE OF THEM ENDS UP TO THE LEFT, AND
6 ONE ENDS UP IN THE CENTER.
7 I THINK IT'S A REASONABLE ASSUMPTION THAT
8 THAT SHOT TOOK SOME MATERIAL FROM HER ARM, AND PELLETS,
9 AND WENT THROUGH THAT WINDOW, AND A PIECE OF THE
10 BRACELET ENDED UP THERE.
11 Q. WELL, WHY IS THAT ANY MORE REASONABLE THAN

12 THE BRACELET WAS ON THE SOFA AT THE TIME THAT A SHOT,
13 ONE OR MORE PELLETS, STRIKE IT, BROKE IT, AND CAUSED IT
14 TO FLY TO DIFFERENT PARTS OF THE ROOM?

15 A. THE -- WHERE DID THE PELLET GO FROM THERE?

16 I MEAN, IF IT STRUCK THAT, I WOULD WANT TO SEE SOME
17 EVIDENCE THAT THERE WAS A STRIKE TO THAT.

18 IN OTHER WORDS, YOU WOULD HAVE TO HIT IT
19 JUST RIGHT, AND THEN THOSE WOULD ALL HAVE TO GO -- YOU
20 KNOW, I JUST DON'T THINK THAT'S A REASONABLE
21 POSSIBILITY.

22 Q. WHY?

23 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
24 AS ARGUMENTATIVE. MOREOVER, IT'S AN IMPROPER
25 HYPOTHETICAL.

26 THE COURT: OVERRULED.

27 THE WITNESS: JUST MY OPINION BASED ON, YOU KNOW,
28 THE OVERALL INTERPRETATION, THE SPATTER PATTERN, THE

-22674

1 PELLET PATTERN AND WHERE THAT BRACELET WAS LIKELY TO
2 HAVE BEEN.

3 Q. BY MR. CONN: NOW, YOU ALSO FORMED THE
4 OPINION THAT KITTY MENENDEZ WAS STANDING, OR AT LEAST
5 BENT HER LEG IN AN UPRIGHT POSITION FOR ONE OR MORE
6 SHOTS TO HER BODY; IS THAT CORRECT?

7 A. SHE WAS BLEEDING AFTER SHE WAS STRUCK.

8 WHAT I SAID WAS SHE WAS UP AT SOME TIME, BECAUSE THERE
9 IS BLOOD ON THE BOTTOM OF HER RIGHT SHOE AND THERE IS
10 BLOOD DRIPPING DOWN ON HER LEFT SHOE.

11 Q. ALL RIGHT. LET ME TURN TO THAT PHOTOGRAPH.

12 JUROR: COULD WE HAVE HIM PULL THE MICROPHONE UP
13 CLOSER SO WE CAN HEAR HIM BETTER?

14 THE COURT: SURE. PLEASE PULL THAT MICROPHONE
15 CLOSER TO YOU.

16 JUROR: THANK YOU.

17 Q. BY MR. CONN: I'M PUTTING UP BOARD 331 ON
18 THE LEFT HAND SIDE, 332 ON THE RIGHT HAND SIDE.

19 NOW, YOU ARE SAYING THAT SOMETIME AFTER
20 KITTY MENENDEZ RECEIVED AN INJURY TO HER BODY THIS LEG
21 WAS IN AN UPRIGHT POSITION, WHICH WOULD ACCOUNT FOR THE
22 BLOOD ON HER SHOE; IS THAT CORRECT?

23 A. YES. YOU HAVE BLOOD COMING DOWN FROM ABOVE
24 ON HER, THE FORWARD PART OF HER ANKLE AND ON THE TOP OF
25 THE SHOE ITSELF.

26 Q. ARE YOU MAKING AN ASSUMPTION AS TO WHOSE
27 BLOOD THAT IS ON HER SHOE?

28 A. YEAH. I WOULD ASSUME THAT THAT'S HER

-22673

1 BLOOD.

2 Q. AND WHAT IS THE BASIS FOR THAT ASSUMPTION?

3 A. JUST THAT IT'S CLOSE BY WHERE SHE IS.

4 Q. OKAY. BUT THERE IS NOTHING EXCLUDING THE
5 POSSIBILITY THAT THAT WAS THE BLOOD OF JOSE MENENDEZ; IS
6 THAT CORRECT?

7 A. THAT'S CORRECT.

8 THE COURT: OKAY. LET'S TAKE OUR RECESS AT THIS
9 POINT.

10 MS. ABRAMSON: FOR THE AFTERNOON OR FOR THE DAY?

11 THE COURT: WE WILL SEE.

12 MS. ABRAMSON: OKAY.

13 THE COURT: DON'T DISCUSS THE MATTER WITH ANYONE.
14 DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE WILL GET
15 SOME MORE INFORMATION.

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

18

19 THE COURT: ALL RIGHT. WE WILL RESUME TOMORROW
20 AT 8:30. LET'S FIRST -- WE'LL TAKE A RECESS. LET'S
21 CLEAR THE COURTROOM FOR A MOMENT, PLEASE.

22 THE BAILIFF: PLEASE CLEAR THE COURTROOM.

23 DO YOU WANT TO US TAKE THE JURORS OUT, YOUR
24 HONOR?

25 THE COURT: ONE SECOND.

26 (BRIEF PAUSE)

27

28 THE COURT: CAN WE JUST INQUIRE WHETHER SHE FEELS

1 THAT SHE WOULD BE ABLE TO MAKE IT TOMORROW, OR SHE IS
2 SURE SHE CAN'T, OR SOMETHING ALONG THOSE LINES.

3 THE BAILIFF: OKAY.

4 (BRIEF PAUSE)

5

6 THE BAILIFF: SHE SAYS SHE IS ABOUT 90 PERCENT
7 SURE THAT SHE CAN MAKE IT TOMORROW.

8 THE COURT: OKAY. THEN WE WILL RESUME TOMORROW
9 AT 8:30. THANK YOU.

10 OKAY. THE JURORS HAVE LEFT. ANYTHING
11 COUNSEL WANT TO DISCUSS BEFORE WE TAKE OUR BREAK?

12 MS. ABRAMSON: YEAH. WE WANT TO HAVE SOME IDEA
13 OF HOW MUCH LONGER MR. CONN THINKS HE IS GOING TO BE
14 CROSS-EXAMINING MR. MORTON, SO WE CAN DECIDE WHAT TO DO
15 WITH OUR CIVILIAN WITNESSES WHO ARE NEXT IN ORDER.

16 THE COURT: WELL, HE INDICATED HE WOULD BE
17 FINISHED TODAY, SO I IMAGINE ANOTHER HOUR OR SO.

18 MR. CONN: I THINK AN HOUR, HOUR AND A HALF.
19 SOMETHING LIKE THAT.

20 MS. ABRAMSON: THEN WE WILL HAVE THEM COME AT
21 10:30 OR 11:00.

22 THE COURT: LET'S HAVE THEM EARLY ENOUGH SO WE
23 DON'T HAVE ANY DOWN TIME. THEY HAVE TO BE HERE ANYWAY,
24 SO IT'S GOING TO RUIN THEIR DAY WHATEVER TIME IT IS.

25 ALL RIGHT. ANYTHING ELSE NOW?

26 MS. ABRAMSON: NO, YOUR HONOR.

27 THE COURT: OKAY. THEN WE WILL BE IN RECESS
28 UNTIL TOMORROW AT 8:30.

(AT 2:50 P.M. PROCEEDINGS WERE
ADJOURNED UNTIL THE FOLLOWING DAY)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

PLAINTIFFS,)

VS.) NO. BA 068880

ERIK GALEN MENENDEZ, AND)
JOSEPH LYLE MENENDEZ,)

DEFENDANTS.)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 5, 1995

VOLUME 256

PAGES 42736 THROUGH 42865

(PAGES 42818 THROUGH 42820 WERE SEALED.)

20

21

APPEARANCES:

22 (SEE APPEARANCE PAGE)

23

24

25

26

27

28

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

12

LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT

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

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

20

21

ANNAMARIE PAPA
22 CSR NO. 8608
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS

1 INDEX FOR VOLUME 256 PAGES 42736 THROUGH 42865

2

DAY	DATE	SESSION	PAGE	VOL.
-----	------	---------	------	------

3

4	TUESDAY, DECEMBER 5, 1995	A.M.	42736	256
	TUESDAY, DECEMBER 5, 1995	P.M.	42821	256

5

6

7

PROCEEDINGS

8

9

10

CHRONOLOGICAL INDEX OF WITNESSES

11

12 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

13 MORTON,
CHARLES V.

14 (CONT'D) 42737-A 256
(CONT'D) 42821-A 42834-C 256

15

16

17

18

19

20

21

LEGEND:

22 A = MS. ABRAMSON C = MR. CONN

G = MR. GESSLER L = MR. LEVIN

23 N = MS. NAJERA T = MS. TOWERY

24

25

26

27

28

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 335A- TEST-FIRE @
SIX FEET 42740 256

4
335B- TEST-FIRE @
5 NINE FEET 42740 256

6 335C- TEST-FIRE @
TWELVE FEET 42740 256

7
335D- TEST-FIRE @
8 FIFTEEN FEET 42740 256

9 336- BUCKSHOT SPREAD
CHART 42740 256

10
337- FIVE PHOTOS 42798 256

11
338- PHOTOGRAPH 42825 256

12			
	339- PHOTOGRAPH	42825	256
13			