

1 VAN NUYS, CALIFORNIA; WEDNESDAY, DECEMBER 6, 1995

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: ALL RIGHT. WE'LL HAVE THE JURY

7 OUT, PLEASE.

8 (THE JURY ENTERED THE

9 COURTROOM AND THE FOLLOWING

10 PROCEEDINGS WERE HELD:)

11

12 THE COURT: THE JURY IS IN COURT.

13 GOOD MORNING, LADIES AND GENTLEMEN.

14 WE'RE WAITING FOR ONE JUROR. LET THE RECORD REFLECT

15 ALL COUNSEL AND THE DEFENDANTS ARE IN COURT.

16 AND WE'RE NOW READY TO RESUME WITH THE

17 TESTIMONY OF THE WITNESS WHO WAS ON THE WITNESS

18 STAND.

19 WOULD YOU RESUME THE STAND, PLEASE.

20

21 CHARLES V. MORTON,

22 THE WITNESS ON THE STAND AT THE EVENING ADJOURNMENT,

23 HAVING BEEN SWORN, TESTIFIED FURTHER AS FOLLOWS:

24 THE COURT: WOULD YOU STATE YOUR NAME AGAIN

25 FOR THE RECORD.

26 THE WITNESS: YES. CHARLES V. MORTON,

27 M-O-R-T-O-N.

28 THE COURT: ALL RIGHT. YOU'RE STILL UNDER

1 OATH.

2 YOU MAY CONTINUE YOUR

3 CROSS-EXAMINATION.

4

5 CROSS-EXAMINATION (CONTINUED)

6 BY MR. CONN:

7 Q MR. MORTON, I BELIEVE YOU TESTIFIED IN

8 YOUR DIRECT EXAMINATION THAT YOU WERE APPOINTED BY

9 THE COURT; IS THAT CORRECT?

10 A I'M NOT SURE I WAS APPOINTED BY THE

11 COURT.

12 DID I TESTIFY TO THAT?

13 Q I BELIEVE SO.

14 A I BELIEVE THE APPOINTMENT -- MY RELATION

15 WITH MS. ABRAMSON, I WAS HIRED BY HER. I'M NOT SURE

16 OF THE ARRANGEMENTS.

17 Q YOU WEREN'T SUGGESTING BY YOUR TESTIMONY

18 THAT YOU WERE APPOINTED BY THE COURT, THAT YOU WERE

19 SELECTED BY THE COURT; IS THAT CORRECT?

20 A NOT AT ALL.

21 Q WHAT YOU WERE SAYING IS THAT YOU'RE

22 SIMPLY BEING PAID BY THE COURT; IS THAT CORRECT?

23 A THAT'S MY UNDERSTANDING, YES.

24 Q AND YOU'VE BEEN IN COURT WATCHING
25 TESTIMONY OF WITNESSES WHO HAVE BEEN TESTIFYING FOR
26 HOW MANY DAYS NOW?
27 A ABOUT FOUR OR FIVE DAYS, I GUESS.
28 Q WHAT IS THE PURPOSE OF STAYING IN COURT

42868

1 AND LISTENING TO THE TESTIMONY OF WITNESSES?
2 A BASICALLY WAITING TO TESTIFY.
3 Q NOT FOR THE PURPOSE OF HEARING WHAT THEY
4 HAVE TO SAY?
5 A NOT PARTICULARLY, NO.
6 Q AND HOW MUCH ARE YOU BEING PAID FOR YOUR
7 SERVICES?
8 A MY NORMAL RATE IS 180 AN HOUR. I WAS
9 TOLD THAT THAT WOULD NOT -- COULD NOT BE PAID IN THIS
10 CASE AT THIS POINT, AND I ACCEPTED A RATE OF A
11 HUNDRED DOLLARS AN HOUR, BUT I ALSO UNDERSTAND THAT
12 THERE WAS A LIMIT OF ABOUT \$3,700 ON THE CASE. SO
13 I'M NOT SURE.
14 Q YESTERDAY YOU OFFERED A RECONSTRUCTION
15 CONCERNING THE SEQUENCE OF SHOTS AND THE POSITION OF
16 JOSE MENENDEZ AT THE TIME THAT HE WAS SHOT.
17 DO YOU RECALL THAT?
18 A I THINK I -- I DON'T TRY TO DO COMPLETE

19 RECONSTRUCTIONS. I THINK THOSE ARE HAZARDOUS
20 BECAUSE THERE ARE A LOT OF VARIABLES. WHEN YOU LOOK
21 AT A SHOOTING THAT INVOLVES A LARGE NUMBER OF SHOTS,
22 THE POSSIBLE ARRANGEMENTS OF THOSE SHOTS CAN BE IN
23 THE THOUSANDS; AND, IN FACT, IF YOU'RE TALKING ABOUT
24 EIGHT SHOTS, PROBABLY 40,000 AND 10 SHOTS WOULD BE
25 IN THE MILLIONS. SO --

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4
THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
)
6 PLAINTIFFS,)
)
7)
VS.) NO. BA 068880
8)
ERIK GALEN MENENDEZ, AND)
9 JOSEPH LYLE MENENDEZ,)
)
10 DEFENDANTS.)
)

11
12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
13 WEDNESDAY, DECEMBER 6, 1995
14 VOLUME 257
15 PAGES 42866 THROUGH 43102

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APPEARANCES:

(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

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LOS ANGELES, CA 90012

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20

21

ANNAMARIE PAPA
22 CSR NO. 8608
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS

24

25

26

27

28

26 Q I'M --

27 A MAY I FINISH MY ANSWER, PLEASE?

28 Q YES. GO AHEAD.

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2 FOR THE COUNTY OF LOS ANGELES

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

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24

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7

PROCEEDINGS

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25

LEGEND:

26 A = MS. ABRAMSON C = MR. CONN

G = MR. GESSLER L = MR. LEVIN

27 N = MS. NAJERA T = MS. TOWERY

28

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1 A SO I WOULDN'T TRY TO RECONSTRUCT THE
2 INCIDENT HERE. WHAT I'M TRYING TO DO IS GIVE SOME
3 IDEA OF RECONSTRUCTION OF INDIVIDUAL SHOTS.
4 SOMETIMES YOU CAN GET A SUGGESTION OF WHICH ONE CAME
5 BEFORE THE OTHERS, BUT USUALLY THAT'S VERY DIFFICULT
6 TO ASSESS.

7 Q OKAY. I'M JUST TALKING ABOUT WHAT YOU
8 DID HERE IN COURT YESTERDAY.

9 YOU SAID THAT IN YOUR OPINION THE WOUND
10 TO JOSE MENENDEZ' HEAD WAS THE LAST IN THE SEQUENCE
11 OF WOUNDS TO HIM; IS THAT CORRECT?

12 A THAT APPEARS TO BE THE CASE, YES.

13 Q NOW, MATHEMATICALLY, CAN YOU TELL US HOW
14 THAT SETS A LOWER LIMIT TO THE NUMBER OF
15 POSSIBILITIES IN THIS CASE?

16 A NO, I CAN'T.

17 Q YOU ALSO SAID THAT YOU BELIEVE THAT THE
18 WOUNDS TO THE -- TO HIS ARMS AND TO HIS LEG PRECEDED
19 THE WOUND TO HIS HEAD; IS THAT CORRECT?

20 A YES.

21 Q NOW, YOU'RE NOT A PATHOLOGIST, ARE YOU?

22 A NO, I'M NOT.

23 Q YOU'RE NOT A DOCTOR?

24 A NO.

25 Q YOU'RE NOT AN ENGINEER?

26 A NO.

27 Q AND IN FORMING THESE CONCLUSIONS

28 REGARDING THE SEQUENCE OF SHOTS TO JOSE MENENDEZ,

42870

1 AND THE FACT THAT HE WAS ROTATING AT THE TIME THAT
2 HE RECEIVED THESE SHOTS, WHAT EXPERTISE, EXACTLY,
3 ARE YOU RELYING UPON?

4 A I'M RELYING UPON REPORTS THAT WERE
5 WRITTEN BY PATHOLOGISTS, DISCUSSIONS WITH
6 PATHOLOGISTS, DISCUSSION WITH DR. FACKLER.

7 Q I MEAN IN TERMS OF YOUR OWN PERSONAL
8 BACKGROUND, WHAT EXPERTISE DO YOU BRING INTO IT
9 WHICH ALLOWS YOU TO TESTIFY TO THE POSITION OF JOSE
10 MENENDEZ AT THE TIME HE RECEIVED THESE VARIOUS
11 INJURIES TO HIS BODY AS WELL AS THE SEQUENCE OF
12 SHOTS TO HIS BODY?

13 A I HAVE BEEN IN THE FIELD OF
14 CRIMINALISTICS FOR ABOUT 30 YEARS, A LITTLE OVER 30
15 YEARS. I'VE DONE EXAMINATIONS OF PHYSICAL EVIDENCE
16 THAT INVOLVES BLOOD SPATTER PATTERNS, THE APPEARANCE
17 OF WOUNDS, THE APPEARANCE OF SHOTGUN BLASTS, THE
18 EXAMINATION OF CLOTHING AS WELL AS IMAGES ON BODIES
19 FOR THAT PERIOD OF TIME, AND I'VE BEEN INVOLVED IN
20 IT FOR MANY YEARS AND HAVE TAUGHT IN THAT AREA.

21 Q WELL, YOUR EXPERIENCE IN DEALING WITH

22 CLOTHING IN CRIME SCENES DOESN'T HELP YOU VERY MUCH
23 HERE BECAUSE DIDN'T YOU TELL US THAT, IN FACT, YOU
24 CAN'T TELL VERY MUCH FROM THE CLOTHING THAT WAS
25 INVOLVED IN THIS CASE?

26 A WELL, AS A MATTER OF FACT --

27 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

28 THE COURT: OVERRULED.

42871

1 THE WITNESS: AS A MATTER OF FACT, THE FACT
2 THAT I'VE LOOKED AT A LOT OF CLOTHING TOLD US THAT
3 YOU CAN'T TELL MUCH, AND THAT'S SO -- THAT IS, IN
4 FACT, USEFUL INFORMATION. IF SOMEONE CLAIMS THAT
5 YOU CAN TELL SOMETHING FROM IT AND MY EXPERIENCE
6 SHOWS THAT YOU CAN'T, THAT'S USEFUL INFORMATION.

7 Q BY MR. CONN: OKAY. BUT THE FACT THAT
8 YOU HAVE EXPERTISE IN THE FIELD OF LOOKING AT
9 CLOTHING THAT WAS INVOLVED IN A CRIME SCENE, IN THIS
10 PARTICULAR CASE DIDN'T HELP YOU VERY MUCH IN
11 DETERMINING THAT JOSE MENENDEZ WAS TWIRLING AS THESE
12 SHOTS WERE BEING FIRED AT HIM; IS THAT CORRECT?

13 A I NEVER SUGGESTED THAT HE WAS TWIRLING.

14 Q THAT HE WAS ROTATING.

15 A I SUGGESTED THAT THERE'S SOME ROTATIONAL
16 ASPECT TO HIS MOVEMENT, BUT THAT WAS BASED PRIMARILY

17 ON DR. FACKLER'S OBSERVATIONS AND THE APPEARANCE OF
18 HIS FEET AND THE FACT OF THE ORIENTATION THAT HE
19 MUST HAVE BEEN IN.

20 Q WHAT I'M ASKING YOU IS: ARE YOU SIMPLY
21 TELLING US SOMETHING THAT YOU ALREADY HEARD FROM
22 DR. FACKLER OR ARE YOU BRINGING IN SOME PARTICULAR
23 EXPERTISE THAT GOES BEYOND WHAT WE'VE HEARD?

24 MS. ABRAMSON: OBJECTION. COMPOUND.

25 THE COURT: SUSTAINED.

26 Q BY MR. CONN: ARE YOU TELLING US
27 SOMETHING THAT IS BASED UPON YOUR OWN PARTICULAR
28 EXPERTISE?

42872

1 A I THINK I'M BRINGING IN THE FACT OF THE
2 LACK OF EVIDENCE OF BLOW-OUT FROM THE LEG WOUND TO
3 THE LEFT OF MR. MENENDEZ WHILE HE'S SEATED, THE
4 BLOOD SPATTER PATTERN, THAT KIND OF THING.

5 Q OKAY. AND SO, BASICALLY, YOUR EXPERTISE
6 IS REALLY IN THE AREA OF BLOOD SPATTER AS FAR AS
7 YOUR TESTIMONY IS CONCERNED HERE?

8 MS. ABRAMSON: OBJECTION. MISSTATES THE
9 TESTIMONY. ARGUMENTATIVE.

10 THE COURT: IT'S CROSS-EXAMINATION.
11 OVERRULED.

12 THE WITNESS: PARDON ME.

13 AS I'VE INDICATED, IT'S BLOOD SPATTER,
14 WOUND CHARACTERISTICS, PATTERNS OF FIREARMS
15 EVIDENCE, WHETHER IT'S RIFLE BARREL, AMMUNITION OR
16 WHETHER IT'S SHOTGUNS. I'VE DONE MANY, MANY
17 EXPERIMENTS AND TESTS USING VARIOUS FIREARMS AND
18 AMMUNITION TO DETERMINE SUCH THINGS AS FIRING
19 DISTANCE.

20 Q BY MR. CONN: DO YOU FEEL YOU HAVE AS
21 MUCH EXPERIENCE IN FIREARMS AS ANOTHER EXPERT CALLED
22 BY THE DEFENSE, DEPUTY VAN HORN?

23 A I HAVE DIFFERENT KINDS OF EXPERIENCE
24 THAN HE DOES. I PROBABLY HAVE, IN SOME AREAS, MORE
25 EXPERIENCE; IN SOME AREAS, LESS.

26 Q DO YOU FEEL THAT YOU HAVE AS MUCH
27 EXPERIENCE IN IDENTIFYING WOUNDS AS ANOTHER EXPERT
28 CALLED BY THE DEFENSE, DR. FACKLER?

42873

1 A NO. DR. FACKLER HAS MUCH MORE
2 EXPERIENCE IN WOUND EXAMINATION.

3 Q DO YOU FEEL THAT YOU HAVE AS MUCH
4 EXPERIENCE IN BLOOD SPATTER EXAMINATION AS ANOTHER
5 WITNESS CALLED BY THE DEFENSE, MR. LINHART?

6 A I PROBABLY HAVE AS MUCH AS HE DOES.

7 I'VE BEEN DOING THIS FOR LONGER THAN HE HAS AND HAVE
8 BEEN INVOLVED IN BLOOD SPATTER EVER SINCE SOME OF
9 THE EARLY WORK WITH PAUL KIRK IN BERKELEY.

10 Q DID YOU RUN ALL OF YOUR CONCLUSIONS BY
11 MR. LINHART TO SEE IF HE AGREES WITH YOU CONCERNING
12 YOUR ROTATING OF JOSE MENENDEZ WHILE THE SHOTS WERE
13 BEING FIRED AT HIM?

14 A NO, I DID NOT.

15 Q AND IS THERE A REASON WHY YOU DIDN'T
16 DISCUSS THAT WITH A BLOOD SPATTER EXPERT CALLED BY
17 THE DEFENSE IN THIS CASE?

18 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
19 CALLS FOR SPECULATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: NO, THERE'S NO PARTICULAR
22 REASON. I DIDN'T FEEL ANY NEED TO.

23 Q BY MR. CONN: WAS IT BECAUSE YOU
24 REVIEWED HIS '93 REPORT AND REALIZED AFTER REVIEWING
25 HIS REPORT THAT HE SAID THAT THERE ARE ONLY A NUMBER
26 OF CONCLUSIONS THAT CAN BE REACHED IN THIS CASE AND
27 THAT WOULD CAUSE YOU TO BELIEVE THAT YOUR ROTATING
28 THEORY WAS NOT ONE OF THE CONCLUSIONS?

1 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE AND

2 COMPOUND.

3 THE COURT: SUSTAINED. THE QUESTION IS

4 ARGUMENTATIVE.

5 Q BY MR. CONN: DID YOU REVIEW HIS '93

6 REPORT?

7 A YES, I DID.

8 Q WHY?

9 A TO SEE WHAT HE HAD TO SAY.

10 Q OKAY. AND DID YOU FEEL HIS OPINION WAS

11 VALUABLE TO YOU?

12 A I FELT IT WAS VALUABLE, YES.

13 Q AND YOU DIDN'T THINK IT WOULD BE

14 APPROPRIATE FOR YOU TO DISCUSS WITH HIM WHETHER HE

15 AGREED WITH THIS ROTATING THEORY OF JOSE MENENDEZ?

16 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DIDN'T SEE ANY NEED TO, NO.

19 Q BY MR. CONN: AND ALL THE OTHER

20 CONCLUSIONS THAT YOU REACHED CONCERNING JOSE

21 MENENDEZ BEING STANDING AT THE TIME OF THE SHOTS,

22 YOU DIDN'T FEEL THAT IT WOULD BE HELPFUL TO DISCUSS

23 THIS WITH ANOTHER DEFENSE EXPERT CALLED BY THE

24 DEFENSE IN THIS CASE?

25 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 THE WITNESS: NO.

28 Q BY MR. CONN: BUT YOU CONSULTED WITH

1 SOME OTHER EXPERTS IN THIS CASE?

2 A YES.

3 Q HOW'D YOU MAKE THAT DETERMINATION,
4 CONSULT WITH SOME AND NOT WITH OTHERS?

5 A WELL, DR. FACKLER'S EXPERTISE IS
6 PARTICULARLY A SPECIAL EXPERTISE IN THE AREA OF
7 WOUND BALLISTICS, AND I FELT A NEED FOR THAT, THAT
8 CONSULTATION WOULD BE USEFUL. BUT BASICALLY
9 MR. LINHART AND I DO VERY SIMILAR THINGS AND I
10 DIDN'T FEEL IT WAS NECESSARY TO CONSULT WITH HIM.

11 Q IS ONE OF THE REASONS WHY IS BECAUSE YOU
12 REALIZED THAT THE SHERIFF'S DEPARTMENT WAS NOT GOING
13 TO SIGN UP TO YOUR THEORY IN THIS CASE; IS THAT
14 CORRECT?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

16 THE WITNESS: NOT AT ALL.

17 THE COURT: OVERRULED. THE ANSWER WILL
18 STAND.

19 THE WITNESS: I'M SORRY.

20 Q BY MR. CONN: HOW ABOUT DEPUTY
21 VAN HORN? DID YOU MEET WITH DEPUTY VAN HORN FOR THE
22 PURPOSE OF DISCUSSING WITH HIM YOUR THEORY ABOUT HOW
23 YOU CAN ACCURATELY DETERMINE THE DISTANCE FROM WHICH
24 A SHOTGUN IS FIRED BASED UPON THE SHOTGUN SPREADS?

25 A DID I SAY ACCURATELY DETERMINE

26 DISTANCE? I DON'T THINK I SAID THAT.

27 Q BUT YOU SAID THAT YOU CAN GIVE A RANGE;

28 IS THAT CORRECT?

42876

1 A YES.

2 Q BY SO DOING, HE DID PRECISELY WHAT

3 DEPUTY VAN HORN SAID YOU CANNOT DO, AND THAT IS GIVE

4 AN ESTIMATE OF DISTANCE FROM MERELY LOOKING AT THE

5 SPREAD OF A SHOTGUN SPREAD; IS THAT CORRECT?

6 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

7 THE COURT: REPHRASE THE QUESTION, PLEASE.

8 MR. CONN: YES.

9 Q DID YOU REVIEW THE TESTIMONY OF

10 VAN HORN?

11 A YES.

12 Q AND WAS IT YOUR UNDERSTANDING FROM

13 REVIEWING HIS TESTIMONY THAT WHAT HE SAID IS THAT

14 YOU CANNOT LOOK AT A SPREAD OF SHOTGUN PELLETS AND

15 GIVE AN ESTIMATE OF THE DISTANCE FROM WHICH THAT

16 SHOTGUN WAS FIRED WITHOUT HAVING THE BENEFIT OF THE

17 ACTUAL SHOTGUN TO WORK WITH FOR THE PURPOSE OF

18 DUPLICATING THAT TYPE OF A SPREAD?

19 A HE SAID THEIR POLICY WAS NOT TO DO THAT,

20 AND I THINK THERE ARE LEGITIMATE REASONS FOR THAT.

21 BUT I FELT THAT THAT DOESN'T MEAN YOU CAN'T TELL

22 ANYTHING.

23 Q WHY DO YOU THINK THERE'S LEGITIMATE

24 REASONS FOR THAT POLICY?

25 MS. ABRAMSON: OBJECTION, YOUR HONOR.

26 IRRELEVANT.

27 THE COURT: SUSTAINED.

28 Q BY MR. CONN: YOU REALIZE THE

42877

1 LIMITATIONS OF LOOKING AT A SPREAD OF SHOTGUN

2 PELLETS AND GIVING AN ACCURATE DISTANCE CONCERNING

3 WHERE THAT SHOTGUN WAS AT THE TIME IT WAS FIRED?

4 A THAT'S ALWAYS A PROBLEM, YES.

5 Q WHY IS THAT A PROBLEM?

6 A BECAUSE THERE ARE VARIATIONS WITH

7 DIFFERENT AMMUNITION AND DIFFERENT FIREARMS, AND

8 THERE ARE DIFFERENCES IN TARGETS.

9 Q AND YOU UNDERSTOOD THAT BECAUSE OF THAT

10 PROBLEM, THE SHERIFF'S DEPARTMENT WILL NOT EVEN GIVE

11 A RANGE; IS THAT CORRECT?

12 A THEY HAVE A POLICY OF NOT GIVING A

13 RANGE, YES, THAT'S TRUE.

14 Q AND IS IT -- DO YOU FEEL THAT THAT'S AN

15 ARBITRARY POLICY OR THAT'S BASED UPON THE

16 LIMITATIONS OF THE SCIENCE?

17 MS. ABRAMSON: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED.

19 THE WITNESS: IT DEPENDS ON HOW FAR YOU'RE

20 TRYING TO TAKE THE EVIDENCE. I MEAN, CLEARLY, THERE

21 ARE LIMITATIONS ON THE ABILITY TO DEFINE A DISTANCE

22 FROM ANY TEST-FIRINGS YOU DO. THE MORE PRECISELY

23 YOU DUPLICATE THE CONDITIONS, THE BETTER THE RANGE.

24 Q BY MR. CONN: BUT YOU FEEL THAT

25 REGARDLESS OF THE POLICY OF THE SHERIFF'S

26 DEPARTMENT, YOU CAN GIVE A RELIABLE RANGE OF -- AT

27 WHICH A SHOTGUN WAS FIRED; IS THAT CORRECT?

28 A YES.

42878

1 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED. THE ANSWER IS

3 STRICKEN.

4 Q BY MR. CONN: AND DID YOU UNDERSTAND

5 FROM DOCTOR -- DID YOU UNDERSTAND FROM MR. VAN HORN'S

6 TESTIMONY THAT THERE IS SO MUCH VARIATION FROM GUN

7 TO GUN THAT YOU CAN'T EVEN GIVE THIS GENERAL RANGE

8 OR RULE OF THUMB?

9 A YES, THERE'S VARIATION FROM GUN TO GUN,

10 PRIMARILY BARREL LENGTH; AND ALSO, I THINK TO A

11 LARGE EXTENT, FROM THE AMMUNITION.

12 Q AND YOU'RE SAYING YOU DISAGREE WITH
13 HIM. YOU FEEL THAT VAN HORN IS WRONG, THAT YOU CAN,
14 IN FACT, GIVE A RELIABLE RANGE; IS THAT CORRECT?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: I THINK YOU CAN GIVE AN
18 ESTIMATE OF RANGES, YES. THESE THINGS ARE NOT
19 RANDOM IN THE WAY THEY PRODUCE PATTERNS. IF THEY
20 WERE, THEY WOULDN'T BE VERY VALUABLE TO THE USERS.
21 THERE'S A LIMITED -- THEY'RE DESIGNED TO DO A
22 CERTAIN THING AND THAT IS RELATIVELY REPRODUCIBLE.
23 YOU HAVE THE SAME MANUFACTURED WEAPON, SAME BARREL
24 LENGTH, SAME AMMUNITION, AND THAT'S GOING TO BE
25 BETTER THAN USING A DIFFERENT KIND OF AMMUNITION AND
26 A DIFFERENT GUN.

27 Q BY MR. CONN: DID YOU SIT DOWN WITH
28 VAN HORN AND TELL HIM THAT DESPITE HIS YEARS OF

42879

1 EXPERIENCE, HE IS WRONG; HE CAN, IN FACT, GIVE
2 RANGES IN WHICH A SHOTGUN WAS FIRED WITHOUT HAVING
3 THE GUN?

4 A NO, I DID NOT.

5 Q IS THAT BECAUSE YOU KNEW THERE WAS NO

6 WAY HE WAS GOING TO SIGN ON BOARD WITH YOUR THEORY?

7 MS. ABRAMSON: OBJECTION. CALLS FOR

8 SPECULATION.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: NO. THAT'S CLEARLY NOT THE

12 REASON.

13 Q BY MR. CONN: CAN YOU TELL US WHY YOU

14 DIDN'T DO THAT WITH MR. VAN HORN?

15 MS. ABRAMSON: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: I JUST DIDN'T FEEL IT WAS

18 NECESSARY.

19 Q BY MR. CONN: IT WASN'T NECESSARY TO

20 CONSULT WITH A BALLISTICS EXPERT CALLED BY THE

21 DEFENSE THAT MIGHT BE ABLE TO BUTTRESS YOUR

22 TESTIMONY IN THIS CASE?

23 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 Q BY MR. CONN: NOW, YOU CONDUCTED SOME

26 TEST-FIRINGS IN THIS CASE USING A SHOTGUN OTHER THAN

27 THE ONE THAT WAS USED IN THE KILLINGS; IS THAT

28 CORRECT?

1 A THAT'S CORRECT.

2 Q AND HOW MANY SHOTS DID YOU FIRE FROM
3 THAT GUN?

4 A FOUR.

5 Q FOUR SHOTS?

6 A YES.

7 Q IN TOTAL?

8 A NO. ACTUALLY, I FIRED SOME OTHERS.

9 Q AND WHAT ARE THE RESULTS OF THOSE OTHER
10 TESTS?

11 A I HAVE THEM HERE IN MY BRIEFCASE.

12 Q HOW MANY SHOTS DID YOU FIRE ALL TOTAL?

13 A I THINK EIGHT.

14 Q AND THAT WAS YOUR ENTIRE EXPERIMENT IN
15 THIS CASE; IS THAT CORRECT?

16 A I BELIEVE SO, YES.

17 Q AND YOU FELT THAT EIGHT SHOTS ALONE
18 WOULD BE SUFFICIENT TO GIVE SOME ACCURATE RANGE AT
19 WHICH THE SHOTGUN WAS FIRED IN THIS PARTICULAR
20 CASE?

21 A TO GIVE SOME ESTIMATE, YES.

22 Q ARE YOU AWARE OF ANY PUBLISHED REPORTS
23 OF EXPERIMENTATION WITH SHOTGUN SPREADS IN WHICH THE
24 WHOLE EXPERIMENT CONSISTED OF EIGHT SHOTS?

25 A I DON'T RECALL ANY SPECIFICALLY, NO.

26 Q ISN'T IT TRUE THAT IN REGARD TO
27 EXPERIMENTS THAT HAVE BEEN DONE WITH A FIRING OF
28 SHOTGUNS AND SHOTGUN SPREADS, THEY NORMALLY FIRE A

1 LOT MORE THAN EIGHT SHOTS?

2 A THEY MAY. IN MANY CASES YOU DON'T HAVE
3 THE SAME AMMUNITION AND THE SAME -- IN THE CASE, SO
4 YOU MAY NOT HAVE THAT MUCH TO FIRE.

5 Q REGARDLESS OF WHAT TYPE OF AMMUNITION,
6 CAN YOU POINT TO ANY STUDY, ANY PUBLISHED STUDY,
7 CONCERNING THE SPREADS OF SHOTGUN PELLETS IN WHICH
8 ONLY EIGHT SHOTS WERE FIRED?

9 A NO, I CANNOT.

10 Q AND WOULDN'T YOU AGREE THAT WHAT YOU DID
11 IN THIS CASE WAS REALLY NOT VERY SCIENTIFIC, BUT IT
12 WAS JUST TO MAKE A POINT TO THE JURY THAT YOU WANTED
13 TO MAKE TO THEM?

14 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

15 THE COURT: OVERRULED.

16 THE WITNESS: NO. I FELT THAT THIS SHOWED AS
17 MUCH AS I COULD SHOW WITH ANY NUMBER OF
18 EXPERIMENTS. I MEAN, I COULD HAVE DONE A LOT MORE
19 AND STRAIGHTENED OUT THAT CURVE, MADE IT A LITTLE
20 MORE PRECISE, BUT IT STILL ISN'T GOING TO BE BEYOND
21 WHAT I WOULD INCLUDE IN THE ESTIMATE ANYWAY.

22 Q BY MR. CONN: WELL, BUT YOU -- BY DOING A
23 LOT MORE, YOU COULD HAVE MADE A MORE CONVINCING CASE

24 THAT WHEN YOU FIRE A GUN REPEATEDLY, YOU WILL OBTAIN
25 MORE OR LESS THE SAME RESULTS; IS THAT CORRECT?
26 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
27 THE COURT: SUSTAINED AS TO THE FORM OF THE
28 QUESTION.

42882

1 Q BY MR. CONN: IF YOU -- IF YOU HAD FIRED
2 THE GUN MORE, DON'T YOU THINK THAT YOU WOULD HAVE
3 BEEN ABLE TO MAKE A MORE RELIABLE ARGUMENT OR MORE
4 CONVINCING ARGUMENT; THAT IS, IF YOU FIRE A GUN
5 REPEATEDLY YOU WILL OBTAIN THE SAME RESULTS?

6 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

7 THE COURT: OVERRULED.

8 THE WITNESS: THE MORE YOU FIRE, THE MORE
9 CONVINCING YOU CAN BE.

10 Q BY MR. CONN: BUT ALL YOU WANTED TO DO
11 WAS FIRE YOUR FOUR SHOTS, SHOW THAT TO THE JURY AND
12 MAKE YOUR POINT; IS THAT CORRECT?

13 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 Q BY MR. CONN: DID YOU UNDERSTAND THAT
16 THE TESTIMONY OF DR. MC CARTHY WAS THAT HE CONCLUDED
17 THAT THERE IS SO MUCH VARIATION, EVEN WITHIN -- EVEN
18 BY USING A SINGLE SHOTGUN, THAT YOU CAN'T GET VERY

19 RELIABLE INDICATORS OF DISTANCE?

20 A YES. BUT I'D ALSO SEEN HIS RESULTS IN
21 WHICH HE USED DIFFERENT AMMUNITION AND ALSO BOTH
22 DIFFERENT AMMUNITION OF THE FIOCCHI BRAND AND
23 DIFFERENT BRAND AMMUNITION. SO HE DID GET A LOT OF
24 VARIATION. AND I WOULD -- THAT WAS JUST A FOOLISH
25 EXPERIMENT, IN MY VIEW, BECAUSE IT REALLY DIDN'T
26 TEST THE ISSUE IN ANY DETERMINATION OF FIRING
27 DISTANCE.

28 Q OKAY. THE VARIATION THAT HE WAS TALKING

42883

1 ABOUT WAS VARIATION WHICH IS BASED UPON THE GUN
2 INDEPENDENT OF VARIATION AMONG DIFFERENT TYPES OF
3 AMMUNITION; IS THAT CORRECT?

4 A THAT WAS NOT --

5 MS. ABRAMSON: OBJECTION, YOUR HONOR.

6 MISSTATES THE TESTIMONY OF MC CARTHY.

7 THE COURT: OVERRULED.

8 THE WITNESS: THAT WAS NOT MY READING OF WHAT
9 HE SAID. HE CLEARLY HAD FIRED THIS GUN WITH THE
10 WRONG AMMUNITION AND DIFFERENT BRAND AMMUNITION THAT
11 HAD NOTHING TO DO WITH ATTEMPTING TO ESTABLISH A
12 FIRING DISTANCE WITH THIS PARTICULAR GUN AND
13 AMMUNITION.

14 Q BY MR. CONN: AND YOU UNDERSTOOD THAT HE
15 SAID THAT AFTER THAT EXPERIMENT HE DECIDED NOT TO
16 EVEN GO OUT AND GET THE RIGHT EXAMINATION -- THE
17 RIGHT AMMUNITION FOR A PARTICULAR REASON; IS THAT
18 CORRECT?

19 A BECAUSE HE --

20 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
21 OBJECT TO THIS AS HEARSAY. NO FOUNDATION.

22 THE COURT: WELL, IT IS HEARSAY AS FAR AS
23 WHAT DR. MC CARTHY TESTIFIED ABOUT. SO SUSTAINED ON
24 THAT GROUND.

25 Q BY MR. CONN: WELL, DID YOU UNDERSTAND
26 THE TESTIMONY OF DR. MC CARTHY TO BE THAT HE DID NOT
27 GO OUT AND OBTAIN ADDITIONAL AMMUNITION, THE CORRECT
28 AMMUNITION, BECAUSE HE CONCLUDED THAT JUST BASED

42884

1 UPON WHAT HE OBSERVED, THERE WOULD BE SUCH A
2 VARIATION WITHIN A SINGLE SHOTGUN, THE SAME SHOTGUN,
3 THAT OBTAINING THE CORRECT AMMUNITION WOULD BE
4 POINTLESS AT THAT POINT?

5 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.
6 HEARSAY. NO FOUNDATION.

7 THE COURT: WELL, IF -- THE QUESTION IS DID HE
8 HEAR THAT AND IF HE HEARD IT OR NOT, IT'S

9 IRRELEVANT. IF HE AGREES OR DISAGREES WITH THAT,
10 THAT'S A SEPARATE ISSUE. SO YOU HAVE TO REPHRASE
11 THE QUESTION.

12 MR. CONN: ALL RIGHT. THANK YOU.

13 Q WOULD YOU AGREE WITH DR. MC CARTHY'S
14 CONCLUSION THAT IT WOULD BE POINTLESS FOR HIM TO
15 OBTAIN -- IT WOULD HAVE BEEN POINTLESS FOR HIM TO
16 OBTAIN THE CORRECT TYPE OF AMMUNITION BECAUSE THE
17 VARIATION OF SHOTGUN SPREAD IS SO GREAT USING THE
18 SAME TYPE OF AMMUNITION, THAT OBTAINING THE CORRECT
19 AMMUNITION WOULD HAVE BEEN FRUITLESS?

20 A WELL, I DON'T AGREE WITH THAT BECAUSE
21 BASED ON MY EXPERIENCE IT'S NOT TRUE AND HIS OPINION
22 WAS BASED ON SOME FAULTY INITIAL EXPERIMENT.

23 Q AND YOU COULD HAVE DISPROVED THAT THEORY
24 IF YOU HAD CONDUCTED MULTIPLE SHOTS IN THIS CASE AND
25 SHOWN THROUGH YOUR EXPERIMENTATION THAT YOU
26 CONSISTENTLY OBTAINED SIMILAR RESULTS, COULDN'T
27 YOU?

28 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

42885

1 THE COURT: OVERRULED.

2 THE WITNESS: YES, I COULD HAVE.

3 Q BY MR. CONN: AND YOU DIDN'T DO IT?

4 A THAT'S CORRECT.

5 Q NOW, YOU SAID THAT WADDING WAS MISSING
6 FROM THE CRIME SCENE; IS THAT CORRECT?

7 A I BELIEVE SO.

8 Q I'M SORRY?

9 A I BELIEVE SO, YES.

10 Q HOW MUCH WADDING WAS MISSING?

11 A I DON'T KNOW. I DON'T KNOW HOW MANY
12 SHOTS WERE FIRED.

13 Q WELL, WHAT MAKES YOU SAY WADDING WAS
14 MISSING?

15 A BECAUSE I DON'T THINK ALL OF THE WADDING
16 THAT -- OR I DON'T KNOW IF I SAID MISSING, BUT WAS
17 NOT COLLECTED. AS I RECALL THERE WERE A NUMBER OF
18 PLASTIC WADS AND THE NUMBER OF FIBER WADS IS
19 DIFFERENT, I THINK.

20 Q YOU SAID THE NUMBER OF PLASTIC WADS AND
21 THE NUMBER OF OTHER TYPE OF WADS WAS DIFFERENT?

22 A YES.

23 Q WHAT DO YOU MEAN IT WAS DIFFERENT?

24 A I DON'T THINK THE CORRESPONDING NUMBER
25 OF PLASTIC AND FIBER WADS WAS THE SAME.

26 Q WELL, HOW MANY PLASTIC WADS WERE
27 RECOVERED?

28 A I DON'T RECALL. I'D HAVE TO LOOK AT MY

1 NOTES.

2 Q WASN'T IT APPROXIMATELY TWO PLASTIC
3 WADS?

4 MS. ABRAMSON: OBJECTION. THAT MISSTATES THE
5 TESTIMONY.

6 THE COURT: JUST A QUESTION. OVERRULED.

7 THE WITNESS: I DON'T RECALL OFFHAND.

8 Q BY MR. CONN: YOU'RE SAYING THAT BECAUSE
9 THE NUMBER OF PLASTIC WADS DID NOT MATCH THE NUMBER
10 OF FIBER WADS, THAT, THEREFORE, NOT ALL OF THE WADS
11 WERE COLLECTED?

12 A ARE WE TALKING ABOUT THE SHOT CUP WADS
13 OR ALL OF THE PLASTIC WADS FROM BOTH KINDS OF
14 AMMUNITION?

15 Q LET'S BREAK THEM DOWN.

16 WHEN YOU TESTIFIED YESTERDAY THAT SOME
17 OF THE WADDING WAS MISSING FROM THE CRIME SCENE,
18 WHAT WERE YOU REFERRING TO?

19 A I BELIEVE -- I WAS REFERRING TO WADDING
20 FROM THE NO. 4 BUCKSHOT.

21 Q OKAY. AND THAT WADDING IS FIBER OR
22 PLASTIC?

23 A BOTH. THERE ARE TWO SEPARATE KINDS OF
24 WAD.

25 Q AND WHAT -- ON WHAT BASIS DID YOU
26 CONCLUDE THAT SOME OF THE WADDING WAS MISSING?

27 A I BELIEVE I WENT THROUGH AND INVENTORIED

28 ALL OF IT AND I BELIEVE THAT WAS THE RESULT.

42887

1 Q AND HOW DID YOU CONCLUDE FROM THE
2 INVENTORY THAT WADDING WAS MISSING?

3 A WELL, IF IT DOESN'T ADD UP TO THE NUMBER
4 OF ROUNDS THAT WERE FIRED.

5 Q RIGHT. WHAT WERE THE NUMBER OF ROUNDS
6 THAT WERE FIRED?

7 A I DON'T KNOW.

8 Q WELL THEN, HOW DO YOU KNOW THAT SOME
9 WERE MISSING?

10 A IT WAS AT LEAST -- SIX ROUNDS OF
11 AMMUNITION WERE FOUND. IT APPEARS THAT THERE WERE
12 MORE SHOTS FIRED THAN THAT, EXCLUDING THE BIRD SHOT
13 ROUNDS.

14 Q HOW MANY MORE THAN SIX WERE FIRED?

15 A POSSIBLY A COUPLE MORE. MAYBE MORE.

16 Q WHEN YOU SAY POSSIBLY A COUPLE MORE --

17 A MAYBE EIGHT, MAYBE NINE.

18 Q ALL RIGHT. SO YOU'RE SAYING IN THIS
19 CASE EIGHT TO NINE NO. 4 BUCK WAS FIRED AND TWO
20 ROUNDS OF BIRD?

21 A YES.

22 Q SO YOU WOULD PLACE THE TOTAL NUMBER OF

23 SHOTS FIRED ON THIS CASE AS BETWEEN 10 TO 11?

24 A APPROXIMATELY, YES. IT LOOKS LIKE WHAT
25 THE EVIDENCE INDICATES.

26 Q DID THE TESTIMONY OF FACKLER OR WECHT
27 ASSIST YOU IN THAT REGARD?

28 A I BELIEVE SO, YES.

42888

1 Q DO YOU SEE VARIATION BETWEEN YOUR
2 TESTIMONY AND THEIRS IN THAT REGARD?

3 A I DON'T RECALL WHAT THEIR SPECIFIC
4 TESTIMONY WAS.

5 Q NOW, WAS IT YOUR TESTIMONY THAT KITTY
6 MENENDEZ WAS STANDING FOR MOST OF THIS -- FOR
7 NUMEROUS SHOTS TO HER BODY?

8 A I BELIEVE SO, YES.

9 Q AND HOW DID YOU CONCLUDE THAT SHE WAS
10 STANDING FOR NUMEROUS SHOTS TO HER BODY?

11 A WELL, THE BLOOD-DRIP PATTERN ON THE
12 CARPET IN FRONT OF THE SOFA, BETWEEN THE COFFEE
13 TABLE AND THE SOFA, AND THE SHOT THROUGH THE WINDOW,
14 THE EAST DOOR.

15 Q WAS THAT IT?

16 A THOSE ARE THE TWO THAT -- THOSE ARE THE
17 TWO THINGS THAT CLEARLY SHOW THAT SHE WAS STANDING.

18 Q FOR NUMEROUS SHOTS TO THE BODY?

19 A YES.

20 Q THE BLOOD-DRIP PATTERN AND THE DAMAGE TO
21 THE WINDOW?

22 A YES.

23 Q LET'S TAKE THE LATTER FIRST.

24 HOW CAN YOU TELL FROM DAMAGE TO A WINDOW
25 THAT SHE WAS SHOT WHILE STANDING DURING -- FOR
26 NUMEROUS SHOTS TO HER BODY?

27 MS. ABRAMSON: YOUR HONOR, THIS IS ASKED AND
28 ANSWERED YESTERDAY, NUMEROUS TIMES.

42889

1 THE COURT: WELL, IT WAS ASKED IN A DIFFERENT
2 CONTEXT. OVERRULED.

3 THE WITNESS: THAT ONLY ESTABLISHES ONE.

4 Q BY MR. CONN: OKAY. THAT'S ONE SHOT.

5 NOW, TELL US HOW YOU DETERMINE FROM THE
6 BLOOD-DRIP PATTERN ON THE FLOOR ON THE CARPET THAT
7 SHE WAS STANDING FOR NUMEROUS SHOTS TO HER BODY.

8 A I CAN ONLY SAY THAT THERE'S BLOOD DRIPS
9 ON A FAIRLY EXTENSIVE PATTERN SO THAT SHE WAS UP FOR
10 A WHILE.

11 Q OKAY. AND LET ME PUT UP PHOTOGRAPH 37.

12 AND PERHAPS YOU CAN INDICATE, WHAT IS THE PATTERN

13 THAT YOU'RE REFERRING TO THAT CAUSES YOU TO CONCLUDE
14 THAT SHE WAS STANDING FOR NUMEROUS SHOTS TO HER
15 BODY?

16 A WELL, THERE'S A SERIES OF BLOOD DROPS
17 HERE BY THE 15, AND THEN THERE'S A SERIES THAT GO
18 ACROSS HERE. THERE'S SOME HERE. THIS IS BASICALLY
19 ACROSS THE FRONT OF THE COFFEE TABLE, FROM THE
20 LEFT -- FROM THE FORWARD-MOST PART TO THE OTHER END.
21 THERE'S A SERIES OF APPARENT DRIP PATTERNS, AS WELL
22 AS THE ONE THAT GOES RIGHT HERE BETWEEN THE COUCH
23 AND THE COFFEE TABLE; AND THEN THERE'S ONE THAT IS --
24 THAT LOOKS LIKE IT'S BEHIND THE 15.

25 Q SO WHEN YOU SAY THE -- YOU'RE SAYING THAT
26 THERE IS SOME DROPS NEAR THE NO. 15; IS THAT
27 CORRECT?

28 A YES.

42890

1 Q THEN YOU'RE SAYING THAT THERE'S A SERIES
2 OF DROPS ALONG THE COFFEE TABLE FROM THE CLOSEST
3 SIDE TO US TO THE FAR SIDE; IS THAT CORRECT?

4 A YES. AND THEN SOME BETWEEN THOSE TWO
5 RIGHT IN HERE.

6 Q OKAY. ALL RIGHT. THANK YOU. YOU MAY
7 RESUME YOUR SEAT.

8 NOW, YOU'RE SAYING THAT BASED UPON THOSE
9 DROPS, YOU CAN CONCLUDE THAT SHE WAS STANDING FOR
10 NUMEROUS SHOTS TO HER BODY?

11 A WELL, AT LEAST A COUPLE. AT LEAST ONE
12 TO THE LEG AND AT LEAST ONE TO THE ARM, AND POSSIBLY
13 OTHERS.

14 Q OKAY. SO THAT'S WHAT YOU MEANT BY
15 NUMEROUS, THAT SHE WAS STANDING FOR AT LEAST A
16 COUPLE OF SHOTS TO HER BODY?

17 A YES.

18 Q NOW, WHEN YOU SAY STANDING, ARE YOU
19 SAYING THAT SHE WAS NECESSARILY STANDING IN AN
20 UPRIGHT POSITION AS I AM NOW, OR ARE YOU SAYING
21 SIMPLY THAT HER LEG WAS RAISED IN SOME WAY SUCH THAT
22 SOME BLOOD COULD HAVE DRIPPED ON THE FLOOR?

23 A HER LOWER LEG WAS VERTICAL AT SOME
24 POINT.

25 Q SO THAT DOESN'T MEAN THAT SHE WAS
26 STANDING --

27 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

28 THE COURT: REPHRASE THE QUESTION.

42891

1 MR. CONN: YES.

2 Q SO AREN'T YOU SAYING THAT PERHAPS SHE

3 WAS LYING ON HER BACK ON THE FLOOR, HER LEG WAS
4 UPRIGHT IN SOME WAY AND BLOOD DRIPPED ON TO THE
5 CARPET?

6 A NO.

7 Q AND WHY WOULD THAT NOT ACCOUNT FOR THE
8 BLOOD DROPS?

9 A BECAUSE THE BLOOD DROPS ON HER -- IS IT
10 HER -- TAKE A LOOK AT HER PHOTOGRAPH -- ON HER LEFT
11 SHOE SHOWS THAT IT DIDN'T JUST DRIP DOWN WHILE HER
12 LEG WAS VERTICAL. THE UPPER -- THE LOWER LEG WAS
13 VERTICAL, BUT SHE HAD TO BE ABOVE IT SO THE BLOOD
14 WAS DRIPPING DOWN ON TOP OF THAT SHOE.

15 Q OKAY. SO NOW YOU'RE RELYING UPON THE
16 SHOE FOR EVIDENCE THAT SHE WAS STANDING; IS THAT
17 CORRECT?

18 A I'M RELYING ON A LOT OF INFORMATION HERE
19 TO BASICALLY TRY TO PUT TOGETHER CERTAIN ELEMENTS OF
20 THE -- OF A RECONSTRUCTION; NOT A RECONSTRUCTION OF
21 THE WHOLE INCIDENT, BUT INDIVIDUAL ELEMENTS.

22 Q OKAY. NOW, AT THE MOMENT I'M FOCUSING
23 JUST ON WHAT YOU TOLD US PREVIOUSLY; THAT IS, YOU
24 RELIED UPON BLOOD DROPS ON THE CARPET TO CONCLUDE
25 THAT SHE WAS STANDING FOR NUMEROUS SHOTS, WHICH YOU
26 SAID IS NOW TWO SHOTS.

27 MY QUESTION TO YOU IS: COULD NOT HER
28 LEG, IN A RAISED POSITION, WHILE SHE WAS LYING ON

1 HER BACK ON THE FLOOR, ACCOUNT FOR THE BLOOD DROPS
2 TO THE CARPET?

3 A I DON'T BELIEVE SO, BECAUSE SOME OF
4 THOSE ARE UNDER WHERE HER LEG -- HER BLEEDING LEG
5 WOULD HAVE BEEN AND THERE'S BLEEDING ON HER LEG,
6 WHICH YOU DO SEE THAT. BUT THIS LOOKS LIKE THESE
7 CAME BEFORE THAT.

8 Q WHEN YOU SAY THESE CAME BEFORE THAT,
9 WHICH BEFORE?

10 A THE BLOOD DROPLETS IN FRONT OF THE SOFA
11 CAME BEFORE WHAT'S ON THE INNER SIDE OF HER RIGHT
12 LEG, WHICH SUBSEQUENTLY COVERS SOME OF THOSE DROP
13 AREAS.

14 Q ALL RIGHT. SO YOU'RE SAYING THAT THERE
15 ARE SOME BLOOD DROPS ON THE CARPET, WHICH WERE
16 PLACED THERE BEFORE HER BODY WAS LYING ON THAT
17 FLOOR?

18 A YES.

19 Q AND THE BLOOD DROPS THAT YOU'RE
20 REFERRING TO, AREN'T THEY ALONGSIDE THE COFFEE
21 TABLE?

22 A YES.

23 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 Q BY MR. CONN: AND WHEN SHE WAS FOUND,

26 SHOWING YOU 331, WASN'T SHE FOUND CLOSE TO THE

27 SOFA?

28 A YES.

42893

1 Q COULDN'T SHE HAVE DROPPED THOSE BLOOD
2 DROPS ALONG THE SIDE OF THE COFFEE TABLE WHILE SHE
3 WAS LYING ON HER SIDE NEXT TO THE SOFA?

4 A THESE -- I THINK HER LEG COVERS THE
5 NUMBER OF LARGE PERCENTAGE OF THOSE DROPS.

6 Q AT THE MOMENT SHE WAS FOUND?

7 A YES.

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT
9 PHOTOGRAPH. MISSTATES THE TESTIMONY OF WHAT HER
10 POSITION WAS AT THE MOMENT SHE WAS FOUND.

11 THE COURT: OVERRULED.

12 Q BY MR. CONN: YOU UNDERSTOOD THAT SHE
13 WAS FOUND LYING ON HER RIGHT SIDE; IS THAT CORRECT?

14 A YES.

15 Q NOW, DID YOU THINK THAT THIS WAS A
16 MOBILE SITUATION OR THAT THIS WAS A SITUATION IN
17 WHICH THERE WAS -- A STATIC SITUATION?

18 MS. ABRAMSON: ALSO OBJECT TO COUNSEL
19 STANDING NEXT TO THE WITNESS TO QUESTION UNLESS
20 THERE'S A REASON TO BE THERE.

21 THE COURT: ALL RIGHT. HE'S SHOWING HIM A
22 PHOTOGRAPH. OBJECTION OVERRULED.
23 MS. ABRAMSON: I DON'T BELIEVE SO.
24 Q BY MR. CONN: WAS THIS A MOBILE
25 SITUATION OR STATIC SITUATION?
26 A CLEARLY NOT STATIC.
27 Q YOU FELT THAT KITTY MENENDEZ WAS MOVING
28 DURING THE TIME THAT SHE WAS BEING SHOT; IS THAT

42894

1 CORRECT?
2 A YES.
3 Q AND SO WHILE SHE WAS MOVING, COULD SHE
4 NOT HAVE DROPPED THOSE BLOOD DROPS ALONG THE SIDE OF
5 THE COFFEE TABLE HERE PRIOR TO THE TESTIMONY THAT
6 SHE ENDED UP ON HER RIGHT SIDE IN THE WAY THAT SHE
7 WAS FOUND?
8 A YES. I THINK THAT'S WHAT I SAID.
9 Q OKAY. AND SO IN THAT MOVING SITUATION,
10 CAN YOU TELL US FROM WHAT PART OF HER BODY THE BLOOD
11 ALONG THE SIDE OF THE COFFEE TABLE CAME FROM?
12 A NO, I CANNOT. ALTHOUGH THERE IS SOME
13 EVIDENCE OF HER HAND BEING BLOODY AND BLEEDING ON
14 TOP OF THE COFFEE TABLE AND SMEARING ACROSS THE TOP
15 OF THE COFFEE TABLE.

16 Q RIGHT. AND IS THERE ANY BLOOD ALONG THE
17 SIDE OF THE COFFEE TABLE THERE, REFERRING TO THE
18 DROPS ON THE FLOOR, WHICH COULD NOT HAVE BEEN CAUSED
19 BY BLOOD FROM HER HAND?

20 A IT'S OVER ON HER RIGHT SIDE AND SOME OF
21 THESE BLOOD DROPS GO CLEAR OVER TO THE LEFT END OF
22 THE COFFEE TABLE.

23 Q YES.

24 A IF SHE'S GOING TO HAVE THAT FROM HER
25 HAND, THEN SHE WOULD HAVE TO BE OVER WHERE THAT
26 OCCURRED.

27 Q DID YOU RULE THAT OUT? DID YOU CONCLUDE
28 THAT KITTY MENENDEZ NEVER HAD HER RIGHT HAND OVER BY

42895

1 THAT SIDE OF THE COFFEE TABLE?

2 A I COULDN'T. I COULDN'T DO THAT.

3 Q AND BECAUSE YOU CAN'T RULE THAT OUT, YOU
4 CAN'T CONCLUDE THAT ANY OF THOSE BLOOD DROPS CAME
5 FROM HER WHILE SHE WAS STANDING, CAN YOU?

6 A NO. AGAIN, I HAVE THE ISSUE OF THE
7 BLOOD TO THE LEFT FOOT.

8 ARE YOU TALKING ABOUT JUST THOSE BLOOD --

9 Q I'M JUST TALKING ABOUT THE CARPET FOR A
10 MINUTE. WE'LL GET TO THE LEFT FOOT LATER.

11 ON THE CARPET CAN YOU POINT TO ANY OF
12 THOSE BLOOD DROPS AND SAY THAT THEY DEFINITELY CAME
13 FROM HER WHILE SHE WAS STANDING UP RATHER THAN FROM
14 HER RIGHT HAND?

15 A I CAN'T EXCLUDE THE POSSIBILITY OF THEM
16 BEING FROM HER RIGHT HAND, NO.

17 Q AND BECAUSE THEY COULD HAVE COME FROM
18 HER RIGHT HAND YOU CAN'T CONCLUDE THAT SHE WAS
19 NECESSARILY STANDING FOR ANY OF THOSE SHOTS, CAN
20 YOU?

21 A AGAIN, PUTTING TOGETHER ALL OF THE
22 ELEMENTS OF THE BLOOD SPATTER, I WOULD SAY SHE HAS
23 TO BE STANDING BASED ON THAT COMBINATION OF
24 EVIDENCE.

25 Q THAT SHE WAS STANDING FOR HOW MANY
26 SHOTS?

27 A I DON'T KNOW.

28 Q IT COULD HAVE BEEN JUST FOR ONE SHOT; IS

42896

1 THAT CORRECT?

2 A SHE HAS TO HAVE A SHOT TO HER LEG, WHICH
3 CREATES SOME BLEEDING WHILE SHE'S STANDING; AND SHE
4 HAS TO HAVE THE SHOT TO HER ARM WHEN SHE'S
5 STANDING.

6 Q WHY DOES SHE HAVE TO -- YOU'RE SAYING
7 THAT SHE WAS STANDING AFTER SHE RECEIVED THE SHOT TO
8 HER ARM?

9 A I'M SAYING THAT'S WHEN SHE WAS -- WHEN
10 SHE RECEIVED THE SHOT TO THE ARM, SHE WAS STANDING.

11 Q YOU'RE TALKING ABOUT THE SHOT THAT --
12 THROUGH THE BRACELET; IS THAT CORRECT?

13 A THE SHOT THAT WENT THROUGH THE FOREARM
14 AND THE UPPER ARM AND THEN OFF INTO THE DOOR.

15 Q RIGHT. THAT'S THE ONE WE DISCUSSED
16 YESTERDAY.

17 A YES.

18 Q AND YOU'RE SAYING THAT SHE WAS STANDING,
19 THEN, FOR THE SHOT TO THE LEG; IS THAT CORRECT?

20 A SHE MUST HAVE HAD INJURY TO THE LEG
21 BEFORE SHE WAS STANDING OR -- I MEAN, EITHER SHE WAS
22 STANDING WHEN SHE RECEIVED THE INJURY TO THE LEG,
23 WHICH I DON'T THINK IS THE CASE, OR SHE GOT UP TO A
24 STANDING POSITION BECAUSE OF THE VERTICAL DROPPING
25 ON TO HER SHOE.

26 Q ALL RIGHT. NOW, LET'S TURN TO THE
27 VERTICAL DROPPING ON HER SHOE.

28 BUT BEFORE WE TURN THERE, WOULD YOU

1 AGREE THAT ANY OF THE BLOOD ON THE FLOOR COULD HAVE
2 BEEN CAUSED BY BLEEDING FROM HER HAND?

3 A I CAN'T EXCLUDE THAT POSSIBILITY, NO.

4 Q OKAY. SHOWING YOU 331.

5 NOW, ONE OF THE REASONS THAT YOU
6 CONCLUDE SHE WAS STANDING AT THE TIME IS BECAUSE OF
7 BLOOD TO HER LEFT SHOE; IS THAT CORRECT?

8 A YES.

9 Q OKAY. NOW, JUST LOOKING AT THE BLOOD TO
10 THE LEFT SHOE, DO YOU KNOW WHETHER THAT BLOOD IS
11 FROM JOSE MENENDEZ OR KITTY MENENDEZ?

12 A THERE'S NO WAY, WITHOUT ANALYZING IT, TO
13 DETERMINE THAT.

14 Q OKAY. SO YOU MAKE AN ASSUMPTION; IS
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q WHAT IS THE ASSUMPTION THAT YOU CHOSE TO
18 MAKE IN REGARD TO THAT SHOE?

19 A THAT THAT BLOOD CAME FROM HER WOUNDS.

20 Q OKAY. AND YOU MAKE THAT ASSUMPTION
21 BECAUSE YOU FEEL IT'S MORE LIKELY THAN NOT; IS THAT
22 CORRECT?

23 A WELL, IT WOULD BE BASED ON THE FACT THAT
24 THAT BLOOD PATTERN SHOWS BLOOD THAT'S COMING DOWN
25 VERY CLOSE TO THE LEG, PARALLEL TO THE LEG, DROPPING
26 ON THE TOP OF THE ANKLE. AND IT WOULD BE VERY
27 DIFFICULT TO GET JOSE MENENDEZ IN A POSITION WHERE
28 THAT BLOOD WOULD BE DROPPING THERE.

1 Q BECAUSE YOU'RE SAYING THAT YOU SEE WHAT
2 HAPPENS TO BE SOME DRIPPING MARKS ON THE ANKLE HERE;
3 IS THAT CORRECT?

4 A THAT'S CORRECT, AND THE TOE OF THE -- I
5 MEAN, THE TONGUE OF THE SHOE.

6 Q OKAY. NOW, CAN YOU TELL US WHY IT WOULD
7 BE DIFFICULT FOR JOSE MENENDEZ TO GET IN A POSITION
8 SUCH THAT HE MIGHT HAVE DRIPPED A COUPLE OF DROPS OF
9 BLOOD ON HER ANKLE?

10 MS. ABRAMSON: OBJECT TO THE FORM OF THE
11 QUESTION. MISSTATES THE EVIDENCE.

12 THE COURT: OVERRULED.

13 THE WITNESS: CLEARLY, THAT'S MORE THAN A
14 COUPLE OF DROPS. THERE'S NO INDICATION THAT HE WAS
15 EVER ADJACENT TO HER. I DON'T SEE ANY EVIDENCE OF
16 THAT.

17 Q BY MR. CONN: WELL, DIDN'T YOU SAY THIS
18 WAS A CRIME SCENE WHERE THERE WAS AN INFINITE NUMBER
19 OF POSSIBILITY?

20 A PRETTY MUCH, YES.

21 Q AND BECAUSE THERE'S AN INFINITE NUMBER
22 OF POSSIBILITIES, DID YOU REALIZE THAT JOSE
23 MENENDEZ -- OR ISN'T IT YOUR OPINION THAT JOSE
24 MENENDEZ WAS SHOT IN THE ARMS AND IN THE LEG BEFORE

25 HE WAS SHOT IN THE HEAD?

26 A YES.

27 Q AND ISN'T IT POSSIBLE THAT AFTER

28 RECEIVING THOSE SHOTS, JOSE MENENDEZ TOUCHED THOSE

42899

1 WOUNDS?

2 A CLEARLY HE DID TOUCH SOME WOUNDS WITH

3 HIS ARMS.

4 Q ISN'T IT POSSIBLE THAT JOSE MENENDEZ,

5 AFTER TOUCHING THE WOUNDS, AND SITTING IN THE

6 POSITION IN WHICH YOU SAY HE ENDED UP, EXTENDED HIS

7 RIGHT HAND OVER THE SHOE AREA OF KITTY MENENDEZ AND

8 DROPPED SOME BLOOD ON HIS SHOE?

9 A HIS RIGHT HAND DOES NOT HAVE ANY

10 INJURIES.

11 Q SO BECAUSE HIS RIGHT HAND HAD NO

12 INJURIES TO IT, THAT MEANS HIS RIGHT HAND NEVER GOT

13 ANY BLOOD ON IT; IS THAT CORRECT?

14 A NO. IT GOT BLOOD FROM OTHER INJURIES.

15 Q YES. AND ONCE IT GOT THE BLOOD FROM THE

16 OTHER INJURIES, IS IT POSSIBLE THAT HE EXTENDED HIS

17 RIGHT HAND OVER THE AREA TO HER SHOE, DROPPING SOME

18 BLOOD ON TO HER ANKLE?

19 A YOU HAVE A FAIR AMOUNT OF BLOOD DRIPPING

20 ONTO HER ANKLE AND SHOE. YOU WOULD NOT GET -- IF
21 SOMEBODY TOUCHED A WOUND AND HELD IT SOMEWHERE,
22 YOU'RE NOT GOING TO GET THAT BLOOD FLOWING OFF IN
23 THAT MANY DROPS. YOU DON'T GET THAT MUCH BLOOD.

24 Q AT THE MOMENT WE'RE TALKING ABOUT THE
25 ANKLE.

26 IS IT POSSIBLE HE EXTENDED HIS HAND OVER
27 THE ANKLE AND DROPPED SOME BLOOD ON TO THE ANKLE?

28 A I DON'T SEE ANY EVIDENCE THAT THAT WOULD

42900

1 BE THE CASE.

2 Q AND THERE'S NO EVIDENCE THAT THAT DIDN'T
3 HAPPEN; IS THAT CORRECT?

4 A OTHER THAN THE FACT THAT I WOULD NOT
5 EXPECT, BASED ON MY EXPERIENCE WITH BLOOD FLOW AND
6 PATTERN AND HOW IT TRANSFERS, THAT YOU WOULDN'T
7 EXPECT TO SEE THAT MUCH BLOOD DRIPPING OFF OF A HAND
8 THAT'S NOT INJURED OR ON TO A SURFACE.

9 Q OKAY. WHEN YOU SAY THAT MUCH, HOW MUCH
10 BLOOD DO YOU SEE ON HER ANKLE THERE?

11 A I WOULD SAY PROBABLY 10 OR 15 DROPS,
12 SOMETHING LIKE THAT.

13 Q AND YOU'RE SAYING THAT BASED UPON YOUR
14 EXPERIENCE, YOU COULDN'T CONTEMPLATE JOSE MENENDEZ

15 DRIPPING 10 OR 15 DROPS ON HER ANKLE; IS THAT

16 CORRECT?

17 A THAT'S CORRECT, UNLESS THERE WAS A WOUND

18 THAT WAS BLEEDING ON IT.

19 Q NOW, IS THERE ANY REASON TO CONCLUDE

20 THAT WHILE KITTY MENENDEZ WAS LYING ON THE FLOOR,

21 SHE PUT HER OWN HAND, THE ONE THAT WAS SEVERELY SHOT

22 UP, THAT IS HER RIGHT HAND, SOMEWHERE OVER THE AREA

23 OF HER ANKLE AND DROPPED BLOOD FROM HER HAND ON TO

24 HER ANKLE?

25 A IF SHE WERE SITTING ERECT, YES, SHE

26 COULD DO THAT.

27 Q OKAY. SO BECAUSE KITTY MENENDEZ COULD

28 HAVE DRIPPED THE BLOOD FROM HER RIGHT HAND ON TO HER

42901

1 ANKLE, YOU CAN'T NECESSARILY CONCLUDE THAT KITTY

2 MENENDEZ WAS STANDING UP AT THE TIME THAT SHE WAS

3 SHOT CAUSING BLOOD FROM THAT STANDING POSITION TO

4 DRIP ON TO HER ANKLE, CAN YOU?

5 A I CAN'T SAY IT AS AN ABSOLUTE, NO.

6 Q SO WHAT CAN YOU SAY ABOUT IT? MORE

7 PROBABLE THAN NOT?

8 A IN MY OPINION IT LOOKS LIKE THAT IT

9 SUPPORTS THE IDEA THAT SHE WAS STANDING. THERE ARE

10 OTHER POSSIBILITIES.

11 Q RIGHT. IT SUPPORTS THE IDEA, BUT ARE
12 YOU SAYING THAT IT IS MORE PROBABLE THAN NOT OR ARE
13 YOU SAYING IT'S THE MOST REASONABLE PROBABILITY OR
14 ARE YOU SAYING THIS IS JUST ONE POSSIBILITY AMONG
15 MANY?

16 A IT'S ONE THAT HAS SOME SUPPORT IN THE
17 BLOOD PATTERN THAT I SEE.

18 Q ONE AMONG MANY?

19 A YES.

20 Q SO WHEN YOU TESTIFIED YESTERDAY THAT
21 KITTY MENENDEZ WAS, IN YOUR OPINION, STANDING UP FOR
22 NUMEROUS SHOTS, YOU'RE JUST SAYING ONE POSSIBILITY
23 AMONG MANY IS THAT KITTY MENENDEZ WAS STANDING UP
24 FOR NUMEROUS SHOTS, NOT THAT SHE WAS STANDING UP FOR
25 NUMEROUS SHOTS; IS THAT CORRECT?

26 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: THAT'S CORRECT.

42902

1 Q BY MR. CONN: NOW, IS IT YOUR OPINION
2 THAT AFTER SHE RECEIVED SOME SHOTS, ONE OR MORE
3 SHOTS WHILE STANDING UP, THAT SHE FELL TO THE SOFA
4 RATHER THAN THE FLOOR?

5 A I DON'T HAVE ANY IDEA WHETHER SHE FELL
6 TO THE FLOOR OR THE SOFA.

7 Q YOU DON'T KNOW WHETHER SHE WAS EVER ON
8 THE SOFA; IS THAT CORRECT?

9 A I KNOW THAT THERE'S A TRANSFER TO THE
10 SOFA THAT CAME FROM SOME BLOODIED AREA PROBABLY FROM
11 HER.

12 Q THE TRANSFER YOU'RE REFERRING TO, IS
13 THAT THE TRANSFER ON THE CUSHION?

14 A YES.

15 Q NOW, DO YOU BELIEVE THAT ONE POSSIBILITY
16 AMONG MANY IS THAT KITTY MENENDEZ, AFTER RECEIVING A
17 SHOT TO THE LEG, STOOD UP?

18 A YES.

19 Q AND DID YOU LOOK AT THE PHOTOGRAPHS OF
20 THE INJURY TO HER -- THAT IS THE X RAYS OF HER LEG?

21 A YES.

22 Q AND YOU BELIEVE THAT KITTY MENENDEZ,
23 AFTER BEING SHOT IN THE LEG AND RECEIVING MULTIPLE
24 FRACTURES TO THAT LEG, STOOD UP ON IT?

25 MS. ABRAMSON: OBJECT TO THE FORM OF THE
26 QUESTION. MISSTATES THE EVIDENCE.

27 THE COURT: OVERRULED.

28 THE WITNESS: I CAN'T MAKE A JUDGMENT ABOUT

1 THAT. THAT REALLY IS A MEDICAL OPINION WHETHER OR
2 NOT SHE COULD STAND AT THE TIME. THERE'S SOME
3 DISCUSSION WITH DR. FACKLER ABOUT THAT AND HE SEEMED
4 TO INDICATE THAT -- OR DID INDICATE THAT SHE COULD
5 HAVE STOOD ON HER RIGHT LEG WHILE HER LEFT LEG WAS
6 INJURED.

7 Q BY MR. CONN: WELL, I'M ASKING YOU FOR
8 YOUR CONCLUSIONS.

9 ARE YOU SAYING THAT KITTY MENENDEZ STOOD
10 ON ONE OR MORE LEGS AFTER RECEIVING THE MULTIPLE
11 FRACTURES TO HER LEFT LEG?

12 A I CAN'T SAY WHETHER SHE DID BEFORE OR
13 AFTER RECEIVING THE MULTIPLE FRACTURES TO THE LEG.
14 THE INDICATION IS THAT HER -- THERE WAS BLEEDING DOWN
15 ON THE LEFT LEG AND THAT SUGGESTS THAT SHE WAS
16 INJURED TO THE LEFT LEG BEFORE, AND AT SOME TIME WAS
17 STANDING AFTER THAT.

18 Q WELL, AGAIN, YOU'RE STILL SAYING THAT IT
19 IS YOUR BELIEF THAT KITTY MENENDEZ STOOD UP AFTER
20 RECEIVING THE FRACTURES TO THE LEFT LEG?

21 MS. ABRAMSON: OBJECTION. MISSTATES HIS
22 PREVIOUS ANSWER.

23 THE COURT: OVERRULED.

24 THE WITNESS: I BELIEVE, BASED ON WHAT
25 DR. FACKLER SAID, SHE COULD, OF COURSE, YES. I
26 DIDN'T SAY SHE WAS. I SAID SHE COULD HAVE BEEN.

27 Q BY MR. CONN: NOW, DID YOU NOTICE, AS

42904

1 KITTY MENENDEZ DOESN'T HAVE ANY BLOOD ON THE CUFF OF
2 HER LEFT PANTS LEG?

3 A THAT'S CORRECT, THE PART THAT'S SHOWN.

4 Q SO IS IT YOUR OPINION THAT THE BLOOD
5 TRICKLED DOWN FROM THE WOUND SKIPPING OVER THE CUFF
6 AND THEN WENT DOWN HER ANKLE?

7 A IT DID DRIP OFF OF CLOTHING AND THAT I
8 SEE FAIRLY FREQUENTLY, FROM A WOUND AND OFF OF
9 CLOTHING. IT DOESN'T NECESSARILY HAVE TO FLOW DOWN
10 ON THE PATTERN.

11 Q AND DID YOU NOTICE THAT IN REGARD TO THE
12 WOUND TO KITTY'S KNEE, THERE'S A LARGE PART OF HER
13 PANTS ON THE LEFT LEG, IMMEDIATELY BELOW THAT LEFT
14 LEG INJURY, WHICH IS NOT SATURATED WITH BLOOD?

15 A YES.

16 MS. ABRAMSON: WELL, I'M GOING TO OBJECT.
17 VAGUE. THERE'S MORE THAN ONE LEFT LEG INJURY.

18 THE COURT: REPHRASE THE QUESTION.

19 Q BY MR. CONN: REFERRING TO THE LEFT LEG
20 INJURY AROUND THE AREA OF THE KNEE, WHICH WAS --

21 A ARE YOU TALKING ABOUT THE LATERAL INJURY
22 OR THE MEDIAL INJURY?

23 Q MEDIAL INJURY.

24 DO YOU NOTICE THAT BENEATH THAT INJURY

25 THERE IS A LARGE AREA OF HER PANTS OF HER LEFT LEG,

26 WHICH IS NOT SATURATED WITH BLOOD?

27 A YES.

28 Q AND DID YOU CONCLUDE THAT THE BLOOD FROM

42905

1 THAT INJURY DRIPPED AROUND TO THE SIDE OF HER LEG

2 BEFORE COMING DOWN ON TO HER SHOE AND ANKLE?

3 A I'M NOT SUGGESTING THAT IT WAS THAT

4 WOUND AT ALL. I DON'T KNOW.

5 Q WHICH WOUND DO YOU THINK IT WAS THAT

6 DRIPPED THE BLOOD THAT YOU HAVE REFERRED TO ON HER

7 ANKLE AND ON HER SHOE?

8 A I SUSPECT IT WAS MORE LIKELY THE ONE

9 FROM THE -- WELL, IT COULD BE ANY PART OF THE WOUND

10 FROM THE LATERAL SIDE OF HER LEG.

11 Q SO YOU'RE SAYING IT WAS THE LATERAL

12 WOUND, THE ONE TO HER CALF?

13 A I CAN'T SAY DEFINITELY, BUT THAT, TO ME,

14 IS -- APPEARS TO BE THE MOST LIKELY.

15 Q OKAY. AND THEN THAT WOULD BE A WOUND

16 THAT WOULD HAVE -- THAT WOULD BE BLOOD THAT WOULD

17 HAVE SATURATED THE AREA IMMEDIATELY BENEATH THE

18 WOUND, BUT DIDN'T SATURATE THE CUFF; IS THAT

19 CORRECT?

20 A WELL, YOU ACTUALLY HAVE THREE WOUNDS

21 THERE. IF YOU TAKE ALL THREE OF THOSE, THE ONE TO

22 THE LEFT CALF, THE ONE TO THE --

23 MS. ABRAMSON: YOUR HONOR, WITH COUNSEL

24 STANDING THERE I CAN'T HEAR THE WITNESS BECAUSE HE'S

25 TURNED AWAY.

26 THE COURT: IT'S NOT BECAUSE COUNSEL'S

27 STANDING THERE. IT'S BECAUSE THE WITNESS ISN'T

28 SPEAKING LOUDLY ENOUGH.

42906

1 WHY DON'T YOU SPEAK INTO THE MICROPHONE.

2 THE WITNESS: SORRY, YOUR HONOR. THANK YOU.

3 Q BY MR. CONN: SO WHICH WOUND DID YOU

4 SAY, IN YOUR OPINION, DRIPPED THE BLOOD ON TO HER

5 SHOE?

6 A I DON'T HAVE AN OPINION AS TO WHICH

7 WOUNDS DRIPPED BLOOD. I'M JUST SAYING THERE'S BLOOD

8 THAT DRIPPED ON TO HER LEG.

9 Q OKAY. AND THEN WAS IT PART OF YOUR

10 POSITION, OR WAS IT YOUR OPINION IN THIS CASE, THAT

11 SHE RECEIVED ONE OR MORE SHOTS TO THE HEAD AFTER SHE

12 FINALLY ENDED UP ON THE FLOOR?

13 A YES.

14 Q HOW MANY SHOTS?

15 A I'M SORRY. YES. THE TWO BIRD SHOTS, I

16 THINK, WERE ON THE FLOOR.

17 Q AND WHY DO YOU BELIEVE THAT BOTH BIRD

18 SHOTS WERE ON THE FLOOR?

19 A BECAUSE OF THE POSITION OF THE CLOTHING

20 RELATIVE TO THE WOUND ON THE BACK; AND THE FACT THAT

21 SHE ENDS UP THERE.

22 Q WHAT IS IT ABOUT THE POSITION OF THE

23 CLOTHING THAT CAUSES YOU TO CONCLUDE THAT BOTH BIRD

24 SHOTS WERE ON THE FLOOR?

25 A THE SHOT TO THE LEFT SHOULDER, THE

26 CLOTHING IS ALIGNED WELL WITH THE INJURY, AND IF IT

27 HAD OCCURRED WHILE SHE WAS STANDING AND THEN MOVED,

28 I WOULD EXPECT IT WOULD NOT BE AS WELL-ALIGNED.

42907

1 Q AND I BELIEVE YOU SAID THAT THE SHOT TO

2 HER CHEEK WAS THE LAST IN THE SEQUENCE OF SHOTS?

3 A THAT'S MY UNDERSTANDING FROM THE

4 PATHOLOGIST.

5 Q SO IT'S YOUR POSITION IN THIS CASE THAT

6 THE SHOT TO THE CHEEK WAS THE LAST SHOT TO KITTY

7 MENENDEZ AND THE SHOT TO THE SHOULDER AND BEHIND THE

8 LEFT EAR WAS THE NEXT TO THE LAST SHOT; IS THAT

9 CORRECT?

10 A THAT WOULD APPEAR TO BE THE CASE, YES.

11 Q AND THAT -- IN THAT -- TO THAT EXTENT YOU

12 AGREE WITH DR. MC CARTHY, THAT THOSE WERE THE LAST

13 TWO SHOTS FIRED AT KITTY MENENDEZ; IS THAT CORRECT?

14 A I BELIEVE THAT THE PATHOLOGIST BASICALLY

15 ESTABLISHED THAT PRETTY WELL.

16 Q NOW, I BELIEVE THAT YOU SAID THAT YOU

17 FOUND FAULT WITH ROGER MC CARTHY'S CONCLUSION

18 REGARDING THE ENTRANCE AND EXIT WOUND TO THE SHOT

19 THAT WAS IDENTIFIED AS SHOT NO. 7 IN GOLDEN'S

20 REPORT; THAT IS, THE SHOT TO THE UPPER THIGH OF

21 KITTY MENENDEZ; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND YOU BELIEVE THAT DR. MC CARTHY GOT

24 THE ENTRANCE AND THE EXIT TO THAT WOUND REVERSED; IS

25 THAT CORRECT?

26 A YES.

27 Q AND DO YOU REALIZE THAT DR. MC CARTHY

28 RELIED UPON THE CONCLUSION OF DR. GOLDEN REGARDING

42908

1 THE ENTRANCE AND EXIT FOR THAT WOUND?

2 A YES.

3 Q ARE YOU AWARE THAT IN THE ORIGINAL 1989
4 REPORT DESCRIBING THE ENTRANCE AND EXIT TO THAT
5 WOUND, DR. GOLDEN IDENTIFIES IT IN THE SAME WAY THAT
6 IT WAS DESCRIBED BY DR. MC CARTHY; THAT IS, THAT THE
7 ENTRANCE IS ON THE FRONT OF THE LEG, THE FRONT OF
8 THE THIGH, AND THE EXIT IS ON THE BACK OF THE
9 THIGH.

10 A THAT'S CORRECT.

11 Q AND ARE YOU AWARE THAT EVEN IN HIS '95
12 SUPPLEMENT, GOLDEN DOESN'T CHANGE THAT POSITION?

13 A YES. THAT CAUSED ME A GREAT DEAL OF
14 DIFFICULTY. IT WAS ONLY WITH DISCUSSION WITH
15 DR. FACKLER AND HEARING DR. WECHT'S STATEMENT OF
16 WHAT DR. WECHT WAS SAYING THAT I CONCURRED WITH
17 THAT. ALTHOUGH, I HAD PROBLEMS WITH THAT FROM THE
18 BEGINNING. BUT I TENDED TO DEFER TO THE
19 PATHOLOGIST'S OBSERVATIONS.

20 THE PROBLEM I HAD WITH IT WAS IN THE
21 CHARACTER OF WHAT WAS DESCRIBED AS THE ENTRANCE
22 WOUND. WHEN YOU HAVE AN ENTRANCE WOUND AS YOU SAW
23 ON MR. MENENDEZ' LEG, THERE'S EITHER A LARGE HOLE OR
24 IT STARTS SEPARATING OUT INTO INDIVIDUAL PELLETS
25 WHICH HAVE A FAIRLY PREDICTABLE DIAMETER AND
26 CONFIGURATION. AND THIS SEEMED TO BE TOO IRREGULAR
27 TO BE EITHER ONE OF THOSE.

28 Q ALL RIGHT. SO IT'S YOUR UNDERSTANDING

1 THAT EVEN TO THIS DAY THE POSITION OF THE
2 LOS ANGELES CORONER'S OFFICE, AT LEAST ACCORDING TO
3 THEIR OFFICIAL REPORTS, IS THAT THE ENTRY TO THE
4 WOUND, THE ENTRY PART OF THE WOUND, WAS ON THE FRONT
5 AND THE EXIT WAS ON THE BACK; IS THAT CORRECT?

6 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
7 FORM OF THE QUESTION AS CALLING FOR SPECULATION.

8 THE COURT: SUSTAINED. THE OBJECTION'S
9 SUSTAINED. THE ANSWER'S STRICKEN.

10 Q BY MR. CONN: JUST BASED ON THE '89
11 REPORT AND THE '95 SUPPLEMENT, ISN'T IT YOUR
12 UNDERSTANDING THAT THE -- ACCORDING TO THE
13 LOS ANGELES CORONER'S OFFICE, THE ENTRANCE TO THE
14 WOUND IS ON THE FRONT OF THE LEG AND THE EXIT IS TO
15 THE BACK?

16 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.
17 THE CORONER'S OFFICE IS --

18 THE COURT: ALL RIGHT. THE OBJECTION IS THAT
19 THIS IS A REPORT OF ONE PERSON FROM THE CORONER'S
20 OFFICE.

21 MR. CONN: OKAY.

22 Q SO IS IT YOUR UNDERSTANDING THAT
23 DR. GOLDEN, AT LEAST IN ACCORDANCE WITH HIS '89
24 REPORT AND HIS '95 SUPPLEMENT, REFLECTS ONLY IN
25 THOSE TWO REPORTS THAT THE ENTRANCE IS TO THE FRONT
26 OF THE LEG AND THE EXIT IS TO THE BACK?

27 MS. ABRAMSON: I'M GOING TO OBJECT AGAIN,
28 YOUR HONOR. THE '95 REPORT DOESN'T DEAL WITH IT.

42910

1 THE COURT: OVERRULED.

2 THE WITNESS: MY UNDERSTANDING IS THAT
3 DR. GOLDEN'S POSITION WAS THAT THAT WAS THE ENTRANCE
4 WOUND ON THE FRONT OF THE LEG AND HE'S NOT CHANGED
5 THAT POSITION.

6 Q BY MR. CONN: DO YOU FAULT DR. MC CARTHY
7 FOR RELYING UPON THE POSITION OF THE -- OR THE
8 FINDINGS OF THE PATHOLOGIST WHO CONDUCTED THE
9 AUTOPSY IN THIS CASE REGARDING THE EXIT AND THE
10 ENTRANCE FOR THAT WOUND?

11 A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

12 Q YES.

13 DO YOU FAULT DR. MC CARTHY FOR RELYING
14 UPON THE OBSERVATIONS OF THE PATHOLOGIST WHO
15 CONDUCTED THE AUTOPSY, THAT THE ENTRANCE TO THE
16 WOUND WAS THE FRONT OF THE LEG AND THE EXIT TO THE
17 WOUND WAS THE BACK OF THE LEG?

18 A IF HE'S RELYING ON THAT JUDGMENT AND
19 MAKES HIS CONCLUSION ON THAT, THEN IT HAS THE
20 WEAKNESS BUILT INTO THE ASSUMPTIONS OF THE
21 CONCLUSION.

22 Q AND YOU FEEL THAT JUST BY LOOKING AT
23 THAT WOUND YOU'RE ABLE TO TELL, BASED UPON YOUR
24 EXPERIENCE AS A CRIMINALIST, THAT THE ENTRY WAS NOT
25 TO THE FRONT, BUT THAT THE ENTRY WAS TO THE BACK; IS
26 THAT CORRECT?

27 A THE COMBINATION OF THAT AND DR. FACKLER
28 AND DR. WECHT.

42911

1 Q NOW, I BELIEVE THAT YOU TESTIFIED THAT
2 YOU ASSOCIATE THE HOLE IN THE FRENCH DOOR OR ONE OF
3 THE HOLES IN -- ONE OR BOTH OF THE HOLES TO THE
4 FRENCH DOOR WITH A WOUND THAT WAS RECEIVED IN THIS
5 CASE; IS THAT CORRECT?

6 MS. ABRAMSON: OBJECT TO THE -- IT MISSTATES
7 THE TESTIMONY.

8 THE COURT: OVERRULED.

9 THE WITNESS: I DO THINK THAT THE WOUND TO
10 THE EAST DOOR -- I MEAN, THE DAMAGE TO THE EAST DOOR
11 WAS ASSOCIATED WITH THE WOUND. THE DAMAGE TO THE
12 WEST DOOR IS NOT SO CLEAR.

13 Q BY MR. CONN: OKAY. SO LET ME CLARIFY
14 WHAT WE'RE TALKING ABOUT HERE.

15 OKAY. THE EAST DOOR, AS YOU'VE REFERRED
16 TO IT, IS GOING TO BE THIS DOOR CLOSEST TO THIS

17 SIDE?

18 A THAT'S CORRECT.

19 Q AND THE WEST DOOR IS GOING TO BE THAT
20 DOOR OVER THERE; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q NOW, YOU ASSOCIATE THE DAMAGE TO THE
23 EAST DOOR, WHICH THERE WAS THE SMALLER OF THE TWO
24 HOLES, WITH THE WOUND; IS THAT CORRECT?

25 A YES.

26 Q AND IS THAT THE WOUND THAT -- THE INJURY
27 THAT YOU REFERRED TO YESTERDAY WITH THE BRACELET?

28 A YES.

42912

1 Q OKAY. AS FAR AS YOUR TESTIMONY IN
2 REGARD TO THE TUFTING OR THE DAMAGE DONE TO THE TOP
3 OF THE SOFA, YOU ASSOCIATE THAT DAMAGE TO THE SOFA
4 WITH WHICH DEFECT TO THE FRENCH DOORS?

5 A IT APPEARS TO LINE WELL WITH IT, AND I
6 DON'T HAVE ACCURATE DETAILS OF ALL OF THAT AND NOT
7 HAVING SEEN IT OR HAVING ADEQUATE DOCUMENTATION,
8 IT'S HARD TO TELL. BUT IT APPEARS TO BE ASSOCIATED
9 WITH THAT, JUST IN TERMS OF ALIGNMENT.

10 Q WELL, MY QUESTION IS: THE DAMAGE TO THE
11 SOFA APPEARS TO BE ASSOCIATED WITH WHICH HOLE TO THE

12 FRENCH DOORS?

13 A THE WEST DOOR.

14 Q ALL RIGHT. TO THE WEST DOOR?

15 A YES.

16 Q THAT IS THE ONE WHICH IS TO OUR RIGHT,

17 ACCORDING TO THAT ILLUSTRATION; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q OKAY. AND WHEN YOU SAY THAT IT IS

20 ASSOCIATED WITH THAT, WHAT IS THAT BASED UPON?

21 A JUST THE TERMS OF THE ALIGNMENT, THE

22 POSITION RELATIVE TO THE HOLE IN THE DOOR. IN OTHER

23 WORDS, THERE'S SOME EVIDENCE OF PELLETS TRAVELING

24 ACROSS, FRONT TO BACK, ON THE SOFA AND THOSE PELLETS

25 NEED TO GO SOMEWHERE.

26 Q DID YOU NOTICE ANY ANGULATION TO THOSE

27 PELLETS?

28 A NOT PARTICULARLY. THEY LOOK FAIRLY

42913

1 STRAIGHT ACROSS.

2 Q WERE YOU ABLE TO -- WHEN YOU SAY THAT IT

3 LOOKS STRAIGHT ACROSS, ARE YOU SAYING THAT YOU CAN

4 SEE STRAIGHT ANGLES OR ARE YOU SAYING THAT YOU

5 SIMPLY SAW SOME DAMAGE TO THE SOFA AND THERE WAS NO

6 EVIDENCE OF ANGULATION?

7 A I WOULD SAY THE LATTER.

8 Q NO EVIDENCE OF ANGULATION?

9 A RIGHT.

10 Q SO YOU CAN'T TELL BY LOOKING AT THE

11 PHOTOGRAPH OF ANY ANGLE; IS THAT CORRECT?

12 A THERE'S NOT A CLEAR ASSOCIATION OF THAT,

13 NO. WITHOUT BEING ABLE TO PROBE THOSE INDIVIDUAL

14 HOLES, I COULDN'T DO THAT FROM A PHOTOGRAPH.

15 Q OKAY. SO IT -- SO ONE OF THE

16 POSSIBILITIES IN THIS CASE IS THAT THE DAMAGE TO THE

17 SOFA COULD BE ASSOCIATED WITH A SMALLER OF THE TWO

18 HOLES TO THE FRENCH DOORS; THAT IS, THE ONE ON THE

19 EAST SIDE OF THE RESIDENCE?

20 A I DON'T THINK SO BECAUSE OF -- THERE'S THE

21 APPEARANCE OF THE DAMAGE TO THE SLATS IN THE DOOR,

22 IN THE BLINDS, AND ALSO THE POSITION OF THE DAMAGE

23 IN THE DOOR. IT DOES NOT APPEAR TO BE COMING IN AT

24 AN ANGLE LIKE THAT. IN OTHER WORDS, IF IT WERE

25 COMING IN AT THAT SHARP AN ANGLE TO THAT EAST DOOR,

26 YOU'D SEE EVIDENCE OF THAT ON THE SLATS FOR THE

27 BLINDS AND YOU'D SEE IT, I THINK, A DIFFERENT

28 POSITION FOR THE HOLE THROUGH THE GLASS.

42914

1 Q OKAY. NOW, HOW WIDE IS THAT DAMAGE TO

2 THE SOFA CAUSE -- THAT CAUSED THOSE -- THAT CAUSED THE
3 TUFTING?

4 A I CAN'T TELL. IT LOOKS LIKE -- THERE'S
5 NO SCALE IN THE POSITION THAT I CAN SEE. IT LOOKS
6 LIKE IT MIGHT BE SEVERAL INCHES ACROSS.

7 Q NOW, WAS IT YOUR TESTIMONY YESTERDAY
8 THAT JOSE MENENDEZ MIGHT HAVE GOTTEN CAUGHT IN CROSS
9 FIRE?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.
11 THERE'S NO SUCH TESTIMONY.

12 THE COURT: REPHRASE THE QUESTION.

13 Q BY MR. CONN: YES. IS IT YOUR OPINION
14 THAT JOSE MENENDEZ MIGHT HAVE GOTTEN CAUGHT IN CROSS
15 FIRE?

16 A NO. I NEVER STATED THAT.

17 Q YOU SAW NO EVIDENCE OF CROSS FIRE IN
18 THIS CASE?

19 A I'M NOT SURE HOW YOU WANT TO DEFINE
20 CROSS FIRE. I -- YOU KNOW, YOU OBVIOUSLY,
21 APPARENTLY, HAVE TWO PEOPLE SHOOTING TWO SHOTGUNS.
22 I DON'T SEE ANY EVIDENCE OF THE TRAJECTORIES BEING
23 IN OPPOSITE DIRECTIONS FROM THE -- FROM WHAT I SEE
24 HERE, IT COVERS A RANGE OF MAYBE 90 TO A HUNDRED AND
25 SOME DEGREES.

26 Q OKAY. AND LET ME DIRECT YOUR ATTENTION
27 TO ANOTHER SERIES OF PHOTOGRAPHS 304.

28 IN REGARD TO JOSE MENENDEZ, DID YOU

1 INDICATE THAT YOU OBSERVED SOME BLOOD SOMEWHERE NEAR
2 THE BODY OF JOSE MENENDEZ WHICH INDICATED TO YOU
3 THAT HE MIGHT HAVE BEEN STANDING AT THE TIME THAT HE
4 WAS SHOT?

5 A YES.

6 Q AND WHAT BLOOD WERE YOU REFERRING TO?

7 A THAT WAS THE BLOOD FORWARD OF THE ARM OF
8 THE SOFA.

9 Q OKAY. NOW, IN THIS EXHIBIT, IN
10 PHOTOGRAPH F, THERE APPEARS TO BE TWO AREAS CIRCLED.

11 WOULD IT BE THESE AREAS HERE THAT YOU'RE
12 REFERRING TO?

13 A NO. IT WOULD BE THE FORWARD ONE OF
14 THOSE TWO.

15 Q OKAY. IN PHOTOGRAPH G DO YOU SEE ANY
16 BLOOD THERE?

17 A THERE IS THE BLOOD THAT'S SHOWN IN THIS
18 PHOTOGRAPH AND THEN ALSO RIGHT OUT THE PORTION
19 THAT'S BEEN, AS I -- IT'S ACTUALLY CIRCLED IN F, BUT
20 NOT IN G, RIGHT ABOUT HERE.

21 Q OKAY. IS THERE ADDITIONAL BLOOD
22 SOMEWHERE DOWN HERE?

23 A I'VE LOOKED AT THAT PHOTOGRAPH ON THE
24 COMPUTER AND DID NOT SEE ANY EVIDENCE OF BLOOD OUT
25 THERE.

26 Q OKAY. LET ME ASK YOU TO CIRCLE -- IF
27 YOU WOULD TAKE THAT MARKER AND JUST MAKE A CIRCLE
28 AROUND THE BLOOD THAT YOU ARE NOW REFERRING TO.

42916

1 NOW, YOU'VE INDICATED THAT THAT WOULD
2 SUGGEST TO YOU THAT HE WAS STANDING AT THE TIME?

3 A YES.

4 Q AND WHAT IS THE BASIS FOR THAT
5 CONCLUSION?

6 A BECAUSE IT'S OUT FORWARD OF WHERE HIS
7 BODY IS -- WAS ULTIMATELY FOUND; AND FORWARD OF WHERE
8 IT WOULD BE IF HE WERE SEATED ON THE SOFA.

9 Q OKAY. NOW, THAT BLOOD ON THE FLOOR
10 COULD ALSO BE BLOW-OUT FROM HIS LEFT LEG, COULDN'T
11 IT?

12 A NO.

13 Q WHY NOT?

14 A BECAUSE IT'S CLEARLY ROUND DROPS.
15 LOOKING AT THESE ENLARGED ON THE COMPUTER, THESE ARE
16 ROUND DROPS DROPPING DOWN. WHAT YOU'D SEE WITH
17 BLOW-OUT WOULD BE ELONGATED STREAKS OF BLOOD.

18 Q OKAY. AND FROM LOOKING AT THAT
19 PHOTOGRAPH, YOU CAN'T TELL IF THAT BLOOD WAS THE
20 BLOOD OF KITTY MENENDEZ OR JOSE MENENDEZ; IS THAT

21 CORRECT?

22 A THERE'S NO WAY TO CHARACTERIZE THE BLOOD
23 TYPES FROM LOOKING AT IT.

24 Q NOW, DID EITHER OF THE SHOOTERS GET ANY
25 BLOOD ON THEM?

26 A I HAVE NO IDEA.

27 Q AND YOU CAN'T RULE OUT THAT THAT IS
28 BLOOD THAT WAS TRANSFERRED BY THE SHOOTERS EITHER;

42917

1 IS THAT CORRECT?

2 A NO. BLOOD THAT WOULD BE TRANSFERRED TO
3 THE SHOOTERS WOULD NOT BE THE KIND THAT WOULD FORM
4 DROPLETS LIKE THIS. IF THEY GOT ANY ON THEIR
5 CLOTHES OR ON THEIR BODY, IT WOULD TEND TO STAY
6 UNLESS THERE WAS SOME FORCE TO REMOVE IT, AND THAT'S
7 NOT SOMETHING THAT HAPPENS.

8 Q WOULDN'T THAT DEPEND ON HOW MUCH BLOOD
9 THEY GOT ON THEIR BODIES?

10 A YOU'D HAVE TO GET AN AWFUL LOT TO HAVE
11 IT DRIP OFF LIKE THAT.

12 Q RIGHT. AND IF AN OBJECT -- IF THEY
13 TOUCHED AN OBJECT INTO BLOOD AND HELD THAT OBJECT
14 OVER THE SOFA FOR A MOMENT, YOU CAN GET SEVERAL
15 DROPS OF BLOOD ON THE FLOOR; IS THAT CORRECT?

16 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS AS
17 CALLING FOR SPECULATION AND IMPROPER HYPOTHETICAL.
18 THE COURT: OVERRULED.
19 THE WITNESS: IF YOU HAD SOMETHING WITH A
20 LARGE VOLUME OF BLOOD ON IT AND HELD IT OVER SOME
21 OTHER AREA, GRAVITY WOULD PULL THOSE DROPLETS OFF,
22 IF YOU HAVE ENOUGH BLOOD.
23 Q BY MR. CONN: NOW, REGARDING THE SMEARS
24 ON JOSE MENENDEZ, I BELIEVE THAT YOU ALSO INDICATED
25 THAT YOU SAW IN THE VICINITY OF HIS THIGHS SOME
26 BLOOD DROPS AND BLOOD SMEARING; IS THAT CORRECT?
27 A YES.
28 Q ARE YOU SAYING THAT ANY OF THAT BLOOD

42918

1 DROPS AND BLOOD SMEARING PROVIDED EVIDENCE THAT JOSE
2 MENENDEZ WAS STANDING FOR ANY OF THESE SHOTS?
3 A YES.
4 Q AND WHAT EVIDENCE, REFERRING -- LET ME
5 JUST ASK YOU: WHAT EVIDENCE IS THAT THAT YOU'RE
6 REFERRING TO?
7 A THERE ARE SOME BLOOD DROPS THAT YOU CAN
8 SEE THE EDGES OF THAT ARE UNDER HIS RIGHT THIGH; AND
9 WHEN HIS BODY IS REMOVED, YOU CAN SEE THOSE DROPLETS
10 THERE.

11 Q OKAY. NOW, IF YOU CAN GO TO THIS BOARD,
12 WHICH IS MARKED 304, AND INDICATE WHAT IT IS THAT
13 YOU'RE REFERRING TO.

14 A YES. YOU CAN SEE THE EDGES OF SOME
15 HEAVY BLOOD STAINS RIGHT HERE AT THE EDGE OF HIS
16 RIGHT THIGH.

17 Q OKAY.

18 A AND YOU CAN SEE IT DOWN HERE IN C AS
19 WELL.

20 Q HOW MANY DROPS CAN YOU SEE THERE?

21 A YOU CAN ONLY SEE THE EDGES OF WHAT COULD
22 BE -- I MEAN, YOU DON'T KNOW THEY'RE DROPS UNTIL THE
23 BODY IS REMOVED AND YOU CAN ACTUALLY SEE THE SIZE OF
24 THE DROPS.

25 Q OKAY. NOW, ARE THOSE DROPS, THOSE
26 DROPS --

27 THANK YOU. YOU MAY RETURN TO YOUR SEAT
28 FOR A MOMENT.

42919

1 THOSE DROPS THAT YOU'RE REFERRING TO,
2 ARE THOSE DROPS THAT YOU'RE REFERRING TO RIGHT NOW,
3 COULD HAVE BEEN CAUSED WHEN -- IF JOSE MENENDEZ HAD
4 HIS LEG EXTENDED JUST A LITTLE BIT TO THE RIGHT
5 AND -- TO HIS RIGHT AND HAD DROPPED SOME BLOOD FROM

6 HIS HAND ON TO THE SOFA; IS THAT CORRECT?

7 A I'M NOT SURE WHAT YOU'RE -- YOU'RE

8 SAYING IF HIS LEG WAS FURTHER TO THE RIGHT AND HE

9 HAD BLOOD ON HIS HAND, IT WOULD DROP OFF?

10 AGAIN, WE HAVE THE PROBLEM OF THE BLOOD

11 DROPPING OFF. ONCE BLOOD IS ON THERE IN TERMS OF

12 SPATTER OR SMEARS, YOU TEND NOT TO GET SIGNIFICANT

13 DRIPPING OFF BECAUSE IT TENDS TO STAY ATTACHED

14 UNLESS YOU HAVE LARGE VOLUMES, AND TYPICALLY YOU

15 DON'T SEE THAT UNLESS YOU HAVE A WOUND THAT'S

16 ACTUALLY ACTIVELY BLEEDING.

17 Q ALL WE'RE TALKING ABOUT HERE IS NOT

18 LARGE VOLUMES, WE'RE JUST TALKING ABOUT A COUPLE OF

19 DROPS WHICH APPEAR TO BE ALONGSIDE HIS THIGH; IS

20 THAT CORRECT?

21 A RIGHT.

22 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

23 THE COURT: OVERRULED.

24 Q BY MR. CONN: AND IS IT POSSIBLE THAT

25 JOSE MENENDEZ, WITH HIS RIGHT HAND, TOUCHED THE

26 BLOOD AND WITH HIS -- WITH HIS -- WITH HIS RIGHT LEG

27 EXTENDED IT SLIGHTLY OVER TO HIS RIGHT, DROPPED A

28 COUPLE OF DROPS OFF HIS FINGERS ON TO THE SOFA?

1 A THAT'S A POSSIBILITY.

2 Q OKAY. AND HERE'S A PHOTOGRAPH, 331,
3 WHICH DEPICTS THE CUSHION AFTER THE BODY OF JOSE
4 MENENDEZ WAS REMOVED FROM THE CRIME SCENE, RIGHT?

5 A THAT'S CORRECT.

6 Q LET ME PUT THIS UP FOR THE JURY TO SEE.

7 NOW, IN THIS PHOTOGRAPH, ALONG THE FRONT
8 OF THE CUSHION, THERE'S A LONG SMEAR; IS THAT
9 CORRECT?

10 A THAT'S CORRECT.

11 Q AND IS IT YOUR OPINION THAT THAT WAS
12 CAUSED AT THE TIME THAT THE BODY WAS REMOVED?

13 A YES.

14 Q SO YOU AGREE THAT DURING THE REMOVAL OF
15 THE BODY, THAT CUSHION WAS CONTAMINATED SOMEWHAT SO
16 THAT YOU CAN'T TELL FROM LOOKING AT THAT CUSHION
17 WHAT THE CONDITION -- WHAT THE BLOOD SMEARS CONSISTED
18 OF PRIOR TO THE REMOVAL OF THE BODY; IS THAT
19 CORRECT?

20 A IT DOES COMPLICATE THE EVALUATION OF THE
21 BLOOD STAIN, YES.

22 Q OKAY. AND THIS AREA THAT YOU'RE
23 REFERRING TO, WHICH APPEARS TO HAVE SOME BLOOD
24 DROPPINGS, YOU'VE MARKED NO. 2 AND YOU'VE IDENTIFIED
25 IT OVER HERE AS NO. 2; IS THAT CORRECT?

26 A YES.

27 Q AND ARE YOU ABLE TO SEE THAT WHERE THE
28 REMAINDER OF HIS RIGHT THIGH WOULD BE IN THIS

1 PHOTOGRAPH, THERE ARE NO ADDITIONAL DROPPINGS THERE;
2 IS THAT CORRECT?

3 A WELL, I WOULDN'T TRY TO -- I DIDN'T WANT
4 TO INTERPRET THAT, BECAUSE IT DOES OCCUR IN AN AREA
5 OF THE BLOOD SMEARING THAT OCCURS DURING THE BODY
6 REMOVAL. BUT THERE ARE INDICATIONS OF OTHER
7 DROPLETS THERE. WHETHER THOSE OCCURRED DURING THE
8 REMOVAL PROCESS OR WHETHER THEY WERE EARLIER OR NOT,
9 I CANNOT TELL.

10 Q OKAY. BUT AT LEAST JUST BASED UPON WHAT
11 WE CAN SEE FROM THAT PHOTOGRAPH, WE CANNOT SEE ANY
12 OTHER BLOOD DROPPINGS IN THE AREA -- IDENTIFIABLE
13 BLOOD DROPPINGS IN THE AREA WHERE HIS THIGHS WERE
14 POSITIONED; IS THAT CORRECT?

15 A NO, THAT'S NOT TRUE. I JUST INDICATED
16 THAT I DID NOT CHOOSE TO INTERPRET THEM BECAUSE THEY
17 ARE COMPLICATED BY THE SUBSEQUENT REMOVAL
18 CONTAMINATION. BUT THERE ARE INDICATIONS THERE OF
19 OTHER DROPS.

20 Q OKAY. NOW, IS THERE -- AS YOU LOOK AT
21 THAT PHOTOGRAPH THERE, THERE IS A -- DO YOU SEE
22 EVIDENCE OF ANY BLOW-OUT THAT MIGHT HAVE BEEN CAUSED
23 BY THE SHOT TO THE LEFT LEG OF JOSE MENENDEZ?

24 A THE PROBLEM THERE IS YOU HAVE A NUMBER
25 OF THINGS OBVIOUSLY GOING ON ABOUT THAT TIME AND
26 THERE IS A LOT OF BLOOD AND STAINING AND -- ON --
27 THERE'S THE VICTIM, MARY MENENDEZ' LEGS AND CLOTHING
28 WHICH HAVE A VERY COMPLICATED ARRAY OF MATERIAL ON

42922

1 THEM. SO I CAN'T SAY SPECIFICALLY ALL OF THAT WOULD
2 HAVE BEEN THE BLOW-OUT FROM HIS LEG.

3 Q RIGHT. AND YOU CAN'T POINT TO ANYTHING
4 SPECIFIC AND SAY THERE'S THE BLOW-OUT; IS THAT
5 CORRECT?

6 A THAT'S CORRECT.

7 Q AND, IN FACT, WHEN YOU LOOK AT THE --
8 THIS AREA HERE, YOU CAN SEE THAT WHERE JOSE -- AS
9 JOSE SITS ON THE SOFA, YOU ARE ABLE TO SEE A LITTLE
10 BIT OF THE FRONT OF THE CUSHION AND A LITTLE BIT OF
11 THE BACK OF THE CUSHION, OR THE TOP OF THE CUSHION,
12 IN WHICH THERE'S ONLY A FEW DROPS OF BLOOD; IS THAT
13 CORRECT?

14 A YES.

15 Q AND THE -- ONCE HIS BODY IS REMOVED FROM
16 THE CUSHION, YOU CAN SEE THAT THERE IS -- EXCEPT FOR
17 THIS SMEAR CAUSED BY THE REMOVAL OF THE BODY, AN
18 AREA HERE THAT IS RELATIVELY CLEAN; IS THAT

19 CORRECT?

20 A WELL, THERE ARE A NUMBER OF DROPS

21 THERE. I DON'T KNOW IF I'D CALL IT CLEAN. THERE

22 ARE AREAS WHERE THERE'S NO BLOOD DROPS, THAT'S TRUE.

23 Q AND YOU DON'T SEE ANY BLOW-OUT IN ANY OF

24 THIS WHITE AREA WHERE HIS -- WHERE HIS THIGHS HAD

25 BEEN, DO YOU?

26 A I DON'T SEE ANY THAT I WOULD

27 CHARACTERIZE, ALTHOUGH I THINK MR. LINHART SUGGESTED

28 THAT POSSIBILITY.

42923

1 Q NOW, OTHER THAN THOSE BLOOD DROPS WHICH

2 YOU REFERRED TO AS BEING CLOSE TO HIS RIGHT THIGH,

3 DO YOU SEE ANY OTHER EVIDENCE IN THESE PHOTOGRAPHS,

4 THAT IS THE BLOOD DROP EVIDENCE OR THE BLOOD

5 SMEARING EVIDENCE, THAT JOSE MENENDEZ WAS

6 NECESSARILY STANDING AT THE TIME THAT THESE SHOTS

7 WERE INFLICTED?

8 A THE ONLY OTHER THAT I WOULD MENTION,

9 OTHER THAN -- YOU'RE TALKING ABOUT JUST THE SERIES A,

10 B, C?

11 Q WELL, NO. I'M TALKING ABOUT ANY

12 PHOTOGRAPHS OF JOSE SEATED ON THE SOFA.

13 A I WOULD SAY IT'S A COMBINATION OF ALL OF

14 THOSE PHOTOGRAPHS HAVING TO DO WITH THE LACK OF
15 BLOW-OUT ON THE -- TO THE LEFT OF HIM SEATED AND ALSO
16 THE EVIDENCE ON THE SOFA CUSHION.

17 IN ADDITION TO THAT, THERE'S A BLOOD
18 STAIN, IF I MAY POINT TO IT IN PHOTOGRAPH A, THE
19 FRONT OF HIS KNEE, WHICH IS ACTUALLY DRIPPING DOWN
20 FROM THIS AREA RIGHT HERE SHOWING THAT HIS LEG WAS
21 VERTICAL AND BLOOD WOULD BE DRIPPING DOWN AND
22 FLOWING DOWN.

23 Q OKAY. NOW, YOU SEE -- LET ME USE ANOTHER
24 PHOTOGRAPH FOR WHAT YOU'RE TALKING ABOUT NOW. I'LL
25 PUT UP 302, WHICH ALLOWS US TO SEE A POOL OF -- A
26 POOL OF BLOOD IN PHOTOGRAPHS F AND G. THERE'S A
27 POOL OF BLOOD NEAR THE LEFT LEG OF JOSE MENENDEZ; IS
28 THAT CORRECT?

42924

1 A YES.

2 Q AND THAT POOL OF BLOOD COULD HAVE BEEN
3 CAUSED BY BLOOD DRIPPING DOWN FROM THAT LEG WOUND;
4 IS THAT CORRECT?

5 A I'M ASSUMING THAT'S WHAT THAT'S FROM,
6 YES.

7 Q AND THAT DRIPPING DOWN FROM THAT BLOOD
8 OR THAT -- THAT POOL OF BLOOD THERE DOESN'T PROVIDE

9 ANY EVIDENCE AS TO WHETHER HE WAS STANDING OR
10 SITTING AT THE TIME THAT THE SHOT WAS FIRED, DOES
11 IT?

12 A THAT JUST SHOWS HE WAS BLEEDING AFTER HE
13 WAS SEATED.

14 Q OKAY. YOU INDICATED THAT YOU OBSERVED
15 IN THE PHOTOGRAPHS, AND THE POLICE RECORDED, ONE OR
16 MORE WADS THAT WAS FOUND ON THE RIGHT THIGH OF JOSE
17 MENENDEZ; IS THAT CORRECT?

18 A YES.

19 Q AND WAS IT YOUR TESTIMONY THAT IT IS
20 YOUR BELIEF THAT THESE WADS ENTERED HIS SHIRT, FELL
21 OUT OF HIS SHIRT AND ON TO HIS LAP?

22 A THAT COULD VERY WELL BE THEIR SOURCE,
23 YES.

24 Q WHAT WOULD CAUSE YOU TO CONCLUDE THAT --
25 ARE YOU SAYING THAT THESE WADS ALSO PENETRATED THE
26 SHIRT CAUSING THE HOLE IN THE SHIRT?

27 A THEY COULD HAVE. I DIDN'T SAY THEY DID,
28 BUT THEY COULD HAVE.

42925

1 Q BUT IS IT YOUR OPINION THAT THE WAD,
2 ONCE IT PENETRATES THE SHIRT, MAKES A HOLE IN THE
3 SHIRT, THEN WOULD COME OUT OF THE HOLE AND FALL ON

4 TO HIS LAP?

5 A IT EITHER COULD PENETRATE, GET CAUGHT
6 UP. IT'S NOT UNUSUAL FOR IN THESE KIND -- IN
7 SHOOTINGS FOR BULLETS, COMPONENTS OF SHOT SHELLS, TO
8 LOSE JUST ENOUGH ENERGY THAT THEY BASICALLY STOP
9 VERY CLOSE TO THE EXIT WOUND OR IN THE CLOTHING.
10 IT'S NOT UNUSUAL TO FIND THESE FALLING OUT OF
11 CLOTHING.

12 Q OKAY. BUT HERE WE'RE NOT TALKING ABOUT
13 BULLETS. WE'RE TALKING ABOUT A FIBER WADDING; IS
14 THAT CORRECT?

15 A YES.

16 Q AND YOU BELIEVE THAT THE FIBER WADDING
17 MAY HAVE HIT HIS SHIRT AT SUCH EFFICIENT FORCE THAT
18 IT WOULD HAVE TORN THE HOLE IN HIS SHIRT AND THEN
19 AFTER TEARING THE HOLE IN HIS SHIRT DROPPED DOWN ON
20 HIS LAP?

21 A PROBABLY ONLY IN COMBINATION WITH SOME
22 SHOT. IT DOES NOT HAVE THAT MUCH ENERGY.

23 Q IS IT ALSO YOUR POSITION THAT THE
24 ASSOCIATION OF THE WOUND TO KITTY'S BREAST AND THE
25 WOUND TO THE LEFT ELBOW OF JOSE MENENDEZ IS MORE
26 CONSISTENT WITH THE VICTIM STANDING THAN WITH THE
27 VICTIM SITTING?

28 A I BELIEVE SO.

1 Q WHY IS THAT?

2 A BECAUSE THE SPREAD OF THE BREAST WOUND
3 IS SIGNIFICANTLY SMALLER THAN THE APPARENT SPREAD OF
4 THE ELBOW WOUND WHICH WOULD REQUIRE THAT IT BE
5 CLOSER. IF THEY WERE SEATED AND HIS ARM WERE TO HIS
6 LEFT, IT WOULD PUT A FAIRLY SIGNIFICANT DISTANCE
7 BETWEEN HIS -- THE ENTRY ON THE ELBOW AND HER
8 BREAST.

9 Q DID YOU MEASURE THE -- DID YOU MEASURE
10 THE SPACING BETWEEN THE PROJECTILE DEFECTS EITHER ON
11 THE BREAST OR ON THE LEFT ELBOW?

12 A BASICALLY, JUST LOOKING AT IT IN THE
13 PHOTOGRAPHS YOU CAN SEE THAT THE SPREAD -- THE
14 COMPLICATION, OF COURSE, WITH THE LEFT ELBOW IS THAT
15 YOU DON'T KNOW THE POSITION THAT THE WOUND WAS
16 RECEIVED AND THAT CAN AFFECT THE APPEARANCE OF THAT
17 ENTRY WOUND.

18 Q AND BECAUSE YOU DON'T KNOW THE POSITION
19 OF THE ELBOW AND YOU DON'T KNOW HOW MUCH IT WAS
20 FLEXED, YOU CAN'T GIVE ANY RELIABLE ESTIMATE AS TO
21 WHAT THE SPREAD OF THAT SHOT WOULD HAVE BEEN; IS
22 THAT CORRECT?

23 A IT IS A PROBLEM BECAUSE OF THE NATURE OF
24 THE ELBOW AND THE STRETCHABILITY OF THE SKIN IN THAT
25 AREA. IT DOES -- THE SPACING BETWEEN THOSE PELLETS
26 IS SUBSTANTIALLY DIFFERENT THAN YOU SEE IN THE ENTRY
27 WOUND TO THE LEFT BREAST. SO THAT SUGGESTS A

42927

1 KNOW IT SUGGESTS SOME DISTANCE BETWEEN THE TWO.

2 MR. CONN: I HAVE NO FURTHER QUESTIONS, YOUR
3 HONOR.

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

5 WE'LL RESUME AT 20 MINUTES TO THE HOUR. DON'T

6 DISCUSS THE MATTER WITH ANYONE. DON'T FORM ANY
7 FINAL OPINIONS ABOUT IT.

8 (A RECESS WAS TAKEN FROM
9 10:20 A.M. TO 10:55 A.M.)

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42928

1 THE COURT: ALL RIGHT. THE COURT'S IN
2 SESSION. THE CLERK INFORMS ME THERE'S SOMETHING
3 COUNSEL WANTED TO DISCUSS BEFORE WE HAVE THE JURY
4 IN.

5 MS. ABRAMSON: WE DEALT WITH IT JUST NOW.

6 THE COURT: ALL RIGHT. THEN, IF WE'RE READY
7 FOR THE JURY, WE'LL HAVE THE JURY IN.

8 MS. ABRAMSON: YES. THANK YOU, YOUR HONOR.

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

12

13 THE COURT: JURY IS BACK, AND WE'LL NOW HAVE
14 REDIRECT.

15

16 REDIRECT EXAMINATION

17 BY MS. ABRAMSON:

18 Q MR. MORTON, YOU WERE ASKED QUESTIONS ON
19 CROSS-EXAMINATION ABOUT THE OPINION OF TWO EMPLOYEES
20 OF THE SHERIFF'S DEPARTMENT, MR. LINHART AND
21 MR. VAN HORN.

22 DO YOU RECALL THAT?

23 A YES.

24 Q AND YOU'RE AWARE THAT REPORTS FROM
25 DEPUTY VAN HORN AND MR. LINHART HAVE BEEN AVAILABLE
26 IN THIS CASE SINCE 1993, CORRECT?

27 A YES.

28 Q AND IT'S YOUR UNDERSTANDING THE

42929

1 PROSECUTION HAS HAD THOSE REPORTS ALSO?

2 MR. CONN: OBJECTION. LEADING.

3 THE COURT: SUSTAINED.

4 Q BY MS. ABRAMSON: IS IT YOUR
5 UNDERSTANDING THAT THE PROSECUTION HAS HAD THOSE
6 REPORTS?

7 A AS FAR AS I KNOW.

8 Q AND DID YOU HEAR THE TESTIMONY OF BOTH
9 DEPUTY VAN HORN AND DEPUTY LINHART, THAT THEY HAD
10 CONTACT WITH THE PROSECUTION BACK IN 1993?

11 A YES.

12 Q AND IS IT YOUR UNDERSTANDING THAT DEPUTY

13 VAN HORN WAS CALLED AS A WITNESS BY THE PROSECUTION

14 IN THE FIRST TRIAL?

15 MR. CONN: OBJECTION. IRRELEVANT.

16 THE COURT: SUSTAINED.

17 Q BY MS. ABRAMSON: NOW, DID YOU TALK TO

18 DEPUTY VAN HORN YESTERDAY?

19 A YES.

20 Q AND YOU WERE ASKED A SERIES OF QUESTIONS

21 BY MR. CONN ABOUT WHETHER YOU AGREE OR DISAGREE WITH

22 CERTAIN THINGS THAT DEPUTY VAN HORN TESTIFIED TO AND

23 CERTAIN POSITIONS THAT HE TAKES.

24 A YES.

25 Q AND WHEN YOU SPOKE TO DEPUTY VAN HORN

26 YESTERDAY, WERE YOU AND HE IN COMPLETE AGREEMENT

27 THAT MR. MC CARTHY WAS PRODUCING BOGUS SCIENCE IN

28 THIS CASE?

42930

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

2 THE COURT: SUSTAINED.

3 Q BY MS. ABRAMSON: IN YOUR CONVERSATIONS

4 WITH DEPUTY VAN HORN, SINCE HE TESTIFIED, IS THERE

5 ANY AREA OF DISAGREEMENT BETWEEN YOU AND HE

6 CONCERNING WHAT MR. MC CARTHY DID IN THIS CASE?

7 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION

8 AND HEARSAY.

9 THE COURT: SUSTAINED.

10 Q BY MS. ABRAMSON: NOW, WERE YOU PRESENT
11 WHEN MR. LINHART TESTIFIED THAT HE TOO, AS YOU,
12 BELIEVES THAT THE PHYSICAL EVIDENCE IN THIS CASE
13 INDICATES THAT MR. MENENDEZ WAS PROBABLY STANDING
14 WHEN HE GOT THE LEFT LEG WOUND?

15 MR. CONN: OBJECTION. IRRELEVANT AS TO THAT
16 QUESTION.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES.

19 Q BY MS. ABRAMSON: AND YOU HEARD MR. LINHART
20 TESTIFY THAT HE TOO FELT THERE WOULD HAVE HAD TO
21 HAVE BEEN SUBSTANTIAL BLOW-OUT IF MR. MENENDEZ HAD
22 BEEN SEATED IN THE POSITION HE'S SHOWN IN THE
23 PHOTOGRAPHS WHEN HE RECEIVED THE LEG WOUND?

24 MR. CONN: OBJECTION. IRRELEVANT AS TO
25 WHETHER THE WITNESS WAS PRESENT OR NOT IF THAT'S ALL
26 THE QUESTION WAS GOING TO.

27 THE COURT: LET'S FOCUS ON THE ULTIMATE
28 QUESTION HERE.

42931

1 Q BY MS. ABRAMSON: DO YOU AGREE WITH
2 MR. LINHART'S CONCLUSION THAT HAD MR. MENENDEZ BEEN

3 SEATED WHEN HE RECEIVED THAT LEG WOUND, THERE WOULD
4 HAVE BEEN SUBSTANTIAL TISSUE, BLOOD, AND PELLET
5 BLOW-OUT?

6 A YES.

7 Q AND DO YOU AGREE WITH DR. FACKLER WHO
8 SAID THE EXACT SAME THING?

9 A YES.

10 Q DO YOU AGREE WITH DR. WECHT WHO SAID THE
11 EXACT SAME THING?

12 A YES.

13 Q NOW, DO YOU AGREE -- STRIKE THAT.

14 ARE YOU AWARE OF DR. FACKLER'S TESTIMONY
15 TO THE EFFECT THAT FURTHER EVIDENCE THAT
16 MR. MENENDEZ WAS STANDING ON HIS LEFT LEG AFTER HE
17 RECEIVED THE WOUND WAS THE FACT THAT THE BONE HAD
18 FORESHORTENED, INDICATING THERE WAS WEIGHT PLACED ON
19 THE LEG AFTER THE FRACTURE?

20 A YES, I UNDERSTAND THAT.

21 Q AND DOES THAT INFORMATION SUPPORT YOUR
22 OPINION THAT MR. MENENDEZ WAS STANDING WHEN HE
23 RECEIVED THE LEG WOUND?

24 A IT CERTAINLY WOULD BE CORROBORATIVE, BUT
25 I THINK THE OPINION STANDS ALONE.

26 Q SO YOUR OPINION IS BASED ON THINGS IN
27 ADDITION TO THAT, CORRECT?

28 A YES.

1 Q AND APART FROM THAT?

2 A YES.

3 Q THAT DOES CORROBORATE YOUR POSITION

4 THOUGH, DOES IT NOT?

5 A YES.

6 Q AND WITH RESPECT TO PHOTOGRAPH NO. 331

7 THAT'S UP ON THE BOARD IN THE UPPER RIGHT, YOU'VE

8 INDICATED THERE ARE AREAS ON THE CUSHION THAT APPEAR

9 TO BE SMEARS PRODUCED BY THE REMOVING OF THE BODY,

10 CORRECT?

11 A YES.

12 Q IS THAT BECAUSE WHEN YOU COMPARE WHAT

13 YOU CAN SEE IN 331 OF THE COUCH CUSHION WITH WHAT

14 YOU CAN SEE IN 330, THE SMEAR ALONG THE FRONT EDGE

15 IS NOT VISIBLE IN THE PHOTOGRAPH WHEN THE BODY IS

16 THERE?

17 A THAT'S CORRECT.

18 Q IN 331 CAN YOU SEE BENEATH THE SMEAR

19 ANYTHING BY WAY OF BLOOD PATTERN THAT FURTHER

20 SUPPORTS YOUR CONTENTION THAT MR. MENENDEZ WAS

21 STANDING WHEN HE GOT EITHER THE LEG WOUND OR OTHER

22 WOUNDS?

23 A WELL, AS I INDICATED, THERE ARE A NUMBER

24 OF DROPLETS THERE THAT ARE WITHIN THE AREA OF SMEAR,

25 AND THERE'S NO WAY OF TELLING WHETHER THEY GOT THERE

26 BEFORE OR AFTER, BUT THEY COULD VERY WELL HAVE BEEN
27 THERE BEFORE.

28 Q IF THEY WERE THERE BEFORE, THAT WOULD BE

42933

1 FURTHER CORROBORATION THAT HE WAS STANDING WHEN HE
2 RECEIVED ONE OR MORE WOUND?

3 A YES.

4 Q NOW, WITH RESPECT TO MRS. MENENDEZ,
5 CALLING YOUR ATTENTION TO PHOTOGRAPH 15, WHICH IS UP
6 ON THE BOARD.

7 A YES.

8 Q THAT SHOWS SOME OF THE PAPERWORK ON TOP
9 OF THE COFFEE TABLE?

10 A YES.

11 Q IS THERE ANYTHING ON EVEN THE NEWSPAPER,
12 WHICH APPEARS TO BE CLOSE TO THE WEST END OF THE
13 COFFEE TABLE, THAT APPEARS TO BE BLOOD DROPPING FROM
14 ABOVE?

15 A YES.

16 Q AND IF I WERE TO DIRECT YOUR ATTENTION
17 TO THE DIAGRAM THAT'S RIGHT IN FRONT OF YOU ON THE
18 WITNESS STAND, AND IF YOU'D READ THE NUMBER OF THAT
19 EXHIBIT INTO THE RECORD. IT'S ON THE BACK.

20 A THIS IS EXHIBIT NO. 276.

21 Q AND DO YOU RECOGNIZE THAT TO BE A
22 DIAGRAM OF THE CRIME SCENE PREPARED BY THE BEVERLY
23 HILLS POLICE DEPARTMENT?

24 A YES.

25 Q AND DO YOU SEE THAT ON THAT EXHIBIT
26 THERE ARE DIMENSIONS GIVEN FOR VARIOUS ITEMS OF
27 FURNITURE?

28 A YES.

42934

1 Q AND COULD YOU TELL US WHAT'S THE
2 DIMENSION FOR THE LENGTH OF THE COFFEE TABLE?

3 A YES. FIFTY-SIX INCHES.

4 Q AND IN YOUR STUDYING OF THESE
5 PHOTOGRAPHS DID YOU SEE A BLOOD PATTERN THAT APPEARS
6 TO BE DROPS FROM ABOVE ALONG VIRTUALLY THE ENTIRE
7 LENGTH OF THAT COFFEE TABLE ON THE RUG IN FRONT OF
8 IT? IN OTHER WORDS, FOR ABOUT 56 INCHES ALONG THE
9 RUG IN FRONT OF IT, DO YOU SEE THE PATTERNS OF BLOOD
10 DROPS?

11 A YES.

12 Q NOW, MR. CONN ASKED YOU IF IT WAS
13 POSSIBLE THAT THAT ENTIRE LENGTH OF PATTERN OF BLOOD
14 DROPS CAME FROM MRS. MENENDEZ, FOR SOME REASON,
15 MOVING HER RIGHT HAND FIVE FEET OR SIX FEET ALONG

16 THE COFFEE TABLE.

17 DO YOU REMEMBER THOSE QUESTIONS?

18 A YES.

19 Q DOES THAT SEEM LIKE A REASONABLE

20 POSSIBILITY?

21 A I DON'T THINK SO. THERE'S NO

22 CORROBORATING EVIDENCE ON THE COFFEE TABLE; WHEREAS,

23 THERE IS CORROBORATION OF THE SMEARING OF THE HAND

24 AT THE END OF THE COFFEE TABLE.

25 Q I'M NOT SURE I UNDERSTAND YOUR ANSWER.

26 ARE YOU SAYING THAT THERE IS EVIDENCE AT THE END OF

27 THE COFFEE TABLE, THE EAST END, THE RIGHT SIDE OF

28 THE COFFEE TABLE, THAT IS INDICATIVE OF HER SMEARING

42935

1 HER HAND ON THE COFFEE TABLE ITSELF?

2 A YES.

3 Q AND THERE IS NO EVIDENCE OF HER HAND

4 COMING IN CONTACT WITH THE COFFEE TABLE ON THE WEST

5 END?

6 A THAT'S CORRECT.

7 Q SO WITH RESPECT TO THE PATTERNING ON THE

8 COFFEE TABLE, THERE'S NO CORROBORATION THAT SHE WAS

9 MOVING HER RIGHT HAND IN AN EAST TO WEST DIRECTION?

10 A RIGHT. IF THE BLOOD IS GOING DOWN FROM

11 HER BODY ONTO THE CARPET, IT'S NOT GOING TO BE
12 LIKELY TO BE ONTO THE COFFEE TABLE. BUT IF HER HAND
13 IS BLEEDING AND THAT BLOOD SHOWS ON THE COFFEE TABLE
14 ITSELF WHERE IT'S SMEARED, PRESUMABLY THERE WOULD BE
15 SOME PART IN WHICH YOU'D SEE SOME BLOOD DROPS ON THE
16 COFFEE TABLE AS WELL, AND YOU DON'T SEEM TO SEE
17 THOSE.

18 Q THE NOTION THAT SHE JUST MOVED HER HAND
19 FOR SOME UNKNOWN REASON ALONG THE CARPET TO DRIP
20 BLOOD DOESN'T SEEM LIKE A REASONABLE POSSIBILITY?

21 A THAT'S CORRECT.

22 Q MOREOVER, IF YOU LOOK AT 331, THE
23 POSITION OF HER RIGHT LEG IN 331, IS THAT THE
24 POSITION THAT HER LEG WAS ACTUALLY IN AT THE TIME
25 THAT SHE WAS FOUND BY THE POLICE?

26 A NO, IT IS NOT.

27 Q DOES THAT PHOTOGRAPH SHOW THAT
28 MR. MENENDEZ' BODY HAS ALREADY BEEN REMOVED?

42936

1 A YES.

2 Q DOES THAT INDICATE THE CORONER'S
3 REPRESENTATIVES HAD BEEN MOVING THE BODIES?

4 A WELL, SOMEBODY HAD BEEN MOVING THEM,
5 PRESUMABLY THE CORONERS. BUT THERE'S ALSO EARLIER

6 PHOTOGRAPHS THAT WERE TAKEN THAT SHOW THE LEG

7 PROJECTING THROUGH THE COFFEE TABLE.

8 Q CALLING YOUR ATTENTION TO 329 IN THE

9 UPPER LEFT AND EIGHT IN THE LOWER LEFT, CAN YOU SEE

10 IN 329 THAT HER RIGHT LEG IS -- WELL, BETTER TO LOOK

11 AT EIGHT.

12 DO YOU SEE WHERE THE FOOT OF HER RIGHT

13 LEG IS PROJECTING BENEATH THE COFFEE TABLE?

14 A YES.

15 Q THEREFORE, IT WOULD HAVE BEEN TUCKED IN

16 UNDER THE COFFEE TABLE FOR SOME PERIOD OF TIME?

17 A THAT'S ACTUALLY ON TOP OF THE SHELF AT

18 THE BOTTOM OF THE COFFEE TABLE.

19 Q AND DO YOU ALSO NOTICE, IF YOU COMPARE

20 329 TO 331, THAT THE ANGLE OF HER LEFT LEG SEEMS TO

21 BE DIFFERENT IF YOU LOOK AT THAT?

22 A IT'S HARD TO TELL FROM THAT PHOTOGRAPH

23 BECAUSE ALL YOU SEE IS THE HIP. APPEARS TO BE.

24 Q NOW, IF HER RIGHT LEG IS TUCKED

25 UNDERNEATH -- BY THE WAY, DO YOU SEE AN AREA OF

26 SMEARING ON THE BOTTOM SHELF OF THE COFFEE TABLE?

27 A MAY I TAKE A CLOSER LOOK?

28 Q SURE.

1 A ACTUALLY, THEY LOOK LIKE BLOOD DROPS AND
2 POSSIBLY A LITTLE BIT OF SMEARING.

3 Q THERE'S ANOTHER AREA WHERE SOMETHING IS
4 DRIPPING FROM ABOVE?

5 A YES. CLOSE TO WHERE HER HAND IS.

6 Q IS THAT AN AREA WHERE HER HAND COULD
7 HAVE DRIPPED RIGHT ON TO THE COFFEE TABLE?

8 A YES.

9 Q IF HER RIGHT LEG IS TUCKED UNDERNEATH
10 THE COFFEE TABLE, OKAY?

11 A YES.

12 Q CAN YOU ENVISION HER IN THAT POSITION
13 WHERE HER RIGHT LEG IS TUCKED UNDER THE COFFEE
14 TABLE, IS IT LIKELY THAT SHE WOULD THEN SIT UP IN
15 SOME FASHION IN ORDER TO LEAN OVER TO TOUCH HER LEFT
16 SHOE?

17 A WELL, WHAT PEOPLE DO IS HARD TO PREDICT,
18 BUT I WOULDN'T THINK SO.

19 Q ALSO, WITH RESPECT TO ALL THOSE DROPS
20 THAT ARE NEXT TO THE RIGHT LEG AS IT HAS BEEN MOVED
21 ONTO THE CARPET, IS THAT SOME FIVE FEET AWAY FROM
22 WHERE HER RIGHT HAND IS SHOWN IN THE PHOTOGRAPH?

23 A PRETTY CLOSE TO FIVE FEET.

24 Q AND, AGAIN, IF HER RIGHT LEG IS TUCKED
25 UNDER THE COFFEE TABLE, WOULD IT BE A CONTORTING
26 POSITION FOR HER TO BE SITTING UP AND LEANING OVER
27 TO DROP THOSE BLOODS (SIC) BEYOND WHERE HER LEFT LEG
28 IS?

1 A IT WOULD SEEM TO BE.

2 Q NOW, WE TALKED YESTERDAY ABOUT THIS POOL
3 OF BLOOD THAT APPEARS ON THE CARPET IN FRONT OF THE
4 WESTERN CUSHION AS IT APPEARS IN 331.

5 A YES.

6 Q NOW, I WANT TO CALL YOUR ATTENTION TO
7 330. DO YOU SEE THAT SAME POOL OF BLOOD?

8 A YES, I DID.

9 Q IN LOOKING AT IT FROM 330, DOES THERE
10 APPEAR TO BE ANY CONNECTION BETWEEN THAT POOL OF
11 BLOOD AND THE BLEEDING FROM THE CUSHION UNDER
12 MR. MENENDEZ?

13 A NO. IN LOOKING AT THE PHOTOGRAPHS FROM
14 MORE FROM HIS RIGHT SIDE, THERE'S NO EVIDENCE OF A
15 BLOOD FLOW PATTERN ALONG HIS RIGHT LEG.

16 Q SO DOES THAT POOL OF BLOOD THERE
17 INDICATE, AGAIN, THAT SOMEBODY IS ABOVE THAT POOL OF
18 BLOOD BLEEDING?

19 A YES.

20 Q IS THAT POOL OF BLOOD EXPLAINABLE BY
21 BLEEDING -- STRIKE THAT.

22 ANY FLOW PATTERNS ON THE RIGHT SIDE OF
23 MR. MENENDEZ AS HE IS SEATED?

24 A NOT AS HE IS SEATED SHOWN IN THAT

25 PHOTOGRAPH.

26 Q OR IN ANY OF THE OTHER SCENE PHOTOGRAPHS

27 THAT YOU'VE SEEN?

28 A NO.

42939

1 Q DOES THAT SUGGEST, THEREFORE, THAT

2 EITHER HE OR MRS. MENENDEZ WERE STANDING AND THAT

3 BLOOD POOL WAS FORMED BY BLEEDING FROM THEM COMING

4 FROM ABOVE?

5 A COULD BE THAT, OR POSSIBLY HE'S LEANING

6 FORWARD.

7 Q WHEN HE'S LEANING FORWARD, AS YOU

8 DEMONSTRATED, WITH HIS HAND BETWEEN HIS THIGHS?

9 A YES.

10 Q THEN COULD THAT FLOW BE EXPLAINABLE BY

11 THE RIGHT ARM WOUND, THE BACK-TO-FRONT RIGHT ARM

12 WOUND?

13 A I BELIEVE SO.

14 Q AND IN YOUR OPINION, WHEN HE'S LEANING

15 FORWARD AND CAUSES THE SMEARS ON THE INNER THIGHS,

16 THAT'S ALSO AFTER THE LEG WOUND?

17 A YES.

18 Q SO HE'S STILL ALIVE AFTER THE LEG WOUND?

19 A YES.

20 Q NOW, TURNING YOUR ATTENTION, AGAIN, TO
21 15, DOES -- I THINK YOU TESTIFIED YESTERDAY THAT THE
22 BLOOD SMEAR PATTERNS -- STRIKE THAT. THAT THE BLOOD
23 SPATTER PATTERNS ON THE PAPERWORK IN 15 SHOW A
24 VARIETY OF DIRECTIONS.

25 A YES.

26 Q ALL FROM ABOVE, HOWEVER?

27 A ALL FROM ANGLES ABOVE, YES.

28 Q AND DOES THAT VARIETY OF DIRECTIONS OF

42940

1 BLOOD SPATTERING ON TO THE PAPERWORK ON THE COFFEE
2 TABLE SUGGEST MORE THAN ONE SHOT TO THE PERSON
3 STANDING ABOVE FROM WHOM THE BLOOD IS COMING?

4 A IT'S OBVIOUSLY A COMPLEX PATTERN OF
5 MULTIPLE SHOTS.

6 Q AND WAS THAT ONE OF THE PIECES OF
7 EVIDENCE THAT YOU WERE RELYING ON IN FORMING YOUR
8 CONCLUSION THAT MRS. MENENDEZ WAS PROBABLY STANDING
9 FOR A NUMBER OF SHOTS?

10 A YES.

11 Q DO YOU RECALL, MR. MORTON, THAT EVEN
12 DR. MC CARTHY THINKS SHE WAS STANDING FOR NO. 2?

13 A THAT'S MY RECOLLECTION, YES.

14 Q AND IF I WERE TO TELL YOU THAT BOTH --

15 WELL, STRIKE THAT.

16 IF I WERE TO TELL YOU THAT DR. LAWRENCE
17 INDICATED THAT NO. 2, NO. 3, AND NO. 10 WERE
18 ENTIRELY CONSISTENT WITH HER STANDING, DOES THAT
19 FURTHER SUPPORT YOUR NOTION THAT SHE WAS STANDING
20 FOR A NUMBER OF SHOTS?

21 A YES.

22 Q AND IF I WERE TO TELL YOU THAT DR. WECHT
23 TESTIFIED THAT, IN HIS OPINION, 2, 3, AND 10 ALL
24 WERE ONE SHOT, DOES THAT INDICATE THAT THOSE THREE
25 WOUND AREAS MAY HAVE ALL OCCURRED WHILE SHE WAS
26 STANDING?

27 A YES.

28 Q AND, IN YOUR OPINION, IF HIS LEFT ELBOW

42941

1 WOUND AND HER LEFT BREAST WOUND -- THAT'S HIS 4 AND
2 HER 6, IF AFFILIATED, MORE LIKELY OCCURRED WHEN THEY
3 WERE BOTH STANDING, IS THAT ANOTHER WOUND FOR WHICH
4 MRS. MENENDEZ COULD HAVE BEEN STANDING?

5 A YES.

6 Q AND YOU'VE ALREADY INDICATED THAT YOU
7 BELIEVE HER NO. 5, THE DOUBLE RIGHT ARM WOUND, IS
8 AFFILIATED WITH THE EAST DOOR AND THAT THAT OCCURRED
9 WHEN SHE WAS STANDING?

10 A THAT'S CORRECT.

11 Q AND IS IT YOUR OPINION THAT THE BLEEDING
12 THAT YOU SEE ON HER LEFT SHOE AND ON HER LEFT ANKLE
13 IS MOST PROBABLY AFFILIATED WITH THE LATERAL LEFT
14 LEG WOUNDS WHICH ARE NO. 7 AND NO. 9 -- DOES THAT
15 INDICATE THAT AT LEAST AFTER THOSE WERE INFLICTED
16 SHE WAS STANDING?

17 A YES.

18 Q NOW, YOU'VE INDICATED THAT IT IS YOUR
19 OPINION THAT FOR HER WOUNDS 1 AND 2, THE 2 BIRD SHOT
20 WOUNDS, SHE WAS NOT STANDING. SHE WAS IN THE
21 POSITION THAT WE SEE HER IN WHEN THE PHOTOGRAPHS ARE
22 TAKEN.

23 A APPROXIMATELY, YES.

24 Q SO DOES THAT LEAVE ONLY NO. 8, THE
25 IN-AND-OUT WOUND TO HER LEFT LEG, WHICH YOU CANNOT
26 SAY OCCURRED EITHER WHILE SHE WAS STANDING OR THAT
27 SHE STOOD UP AFTER RECEIVING THOSE WOUNDS?

28 A I DON'T THINK -- I'M SORRY. MAYBE I

42942

1 DIDN'T UNDERSTAND THE QUESTION.

2 Q EIGHT IS MEDIAL?

3 A YES.

4 Q THE MORE INNER LEFT LEG WOUNDS?

5 A RIGHT.

6 Q YOU CANNOT SAY SHE WAS STANDING FOR
7 THAT?

8 A THAT'S CORRECT.

9 Q AND YOU CANNOT SAY SHE STOOD UP AFTER
10 RECEIVING THAT?

11 A THAT'S CORRECT.

12 Q SO IS THAT A WOUND THAT COULD HAVE
13 OCCURRED WHILE SHE WAS EITHER LYING ON THE COUCH OR
14 LYING ON THE FLOOR?

15 A YES.

16 Q NOW, THERE IS NO BLOOD SMEARING AT ALL
17 ON THE WEST END OF THE COFFEE TABLE, CORRECT?

18 A THAT'S CORRECT.

19 Q SO THERE'S NO INDICATION THAT SHE AT
20 LEAST TOUCHED THE COFFEE TABLE ON THAT PART WITH HER
21 HAND OR PLACED HER LEG ABOVE IT OR ANYTHING LIKE
22 THAT?

23 A THAT'S CORRECT.

24 Q SO THERE'S NOTHING TO INDICATE THAT THE
25 UPPER PART OF HER BODY WAS ANYWHERE NEAR THE WEST
26 END WHILE SHE WAS DOWN ON THE FLOOR?

27 A THAT'S CORRECT.

28 Q NOW, IS THERE, HOWEVER, A PATTERN THAT

1 TRAVERSES BASICALLY THE ENTIRE LENGTH OF THE COFFEE
2 TABLE ON THE CARPET OF THE TYPE THAT APPEARS TO BE
3 BLOOD DROPPING FROM ABOVE?

4 A YES.

5 Q THIS ENTIRE AREA HERE (POINTING)?

6 A YES.

7 Q AND IF I GIVE YOU A HYPOTHETICAL THAT
8 YOU'RE TALKING ABOUT A SHOOTING THAT TOOK 5 TO 10
9 SECONDS, IS IT A REASONABLE EXPLANATION FOR THE
10 GRAVITY OF THE BLOOD DRIPPING THE ENTIRE LENGTH OF
11 THAT COFFEE TABLE, THAT A PERSON STANDING UP IN THAT
12 AREA MOVED BETWEEN SHOTS OR WHILE --

13 A YES.

14 Q AND MR. MORTON, SINCE NONE OF THE BLOOD
15 WAS TESTED, SO WE CAN'T SAY WITH ANY CERTAINTY WHOSE
16 IS WHOSE, DOES, NEVERTHELESS, THE POSITIONS OF THE
17 BODIES SUGGEST THAT MRS. MENENDEZ' BLOOD WOULD AT
18 LEAST BE ON THE EAST END OF THE CARPET PATTERN?

19 A YES.

20 Q AND CAN YOU SAY WHETHER OR NOT THIS AREA
21 THAT WE SEE IN 331, BLOOD DROPS AND A DIME, THAT
22 THOSE BLOOD DROPS COULD BE FROM HER OR COULD BE FROM
23 HIM?

24 A YES.

25 Q FROM EITHER ONE?

26 A YES.

27 Q BUT WHICHEVER ONE, THEY'RE STANDING UP

42944

1 A YES.

2 Q DO YOU RECALL ANYTHING, EVEN IN THE
3 FAILURE ANALYSIS SCENARIOS, THAT PLACES MRS. MENENDEZ
4 SITTING UP ON THE FLOOR AND LEANING OVER AND
5 TOUCHING HER FEET?

6 A NO.

7 Q NOW, WITH RESPECT TO MRS. MENENDEZ'
8 ABILITY TO STAND UP AFTER RECEIVING THE LATERAL
9 WOUND TO HER LEFT LEG, 9 AND 7, ARE YOU AWARE THAT
10 DR. WECHT TESTIFIED THAT IN HIS OPINION THERE WAS NO
11 FRACTURE OF THE FEMUR CAUSED BY 9 AND 7?

12 A THAT'S MY UNDERSTANDING, YES.

13 Q AND IF THE FEMUR WERE NOT FRACTURED,
14 WOULD THERE BE ANY IMPEDIMENT TO HER NOT ONLY
15 STANDING UP AFTER 9 AND 7, BUT STANDING UP ON HER
16 LEFT LEG?

17 A THAT WOULD BE MORE A MEDICAL OPINION,
18 BUT I CAN'T SEE ANY REASON WHY SHE COULDN'T.

19 Q NOW, WITH RESPECT TO NO. 8, ARE YOU
20 AWARE THAT DR. WECHT TESTIFIED THAT NO. 8 CAUSED
21 FRACTURES, BOTH THE UPPER BONE AND THE LOWER BONE?

22 A YES.

23 Q AND WOULD THAT SEEM TO INDICATE THAT A
24 PERSON WOULD HAVE DIFFICULTY STANDING ON THAT LEG?
25 A I WOULD THINK SO.
26 Q BUT THAT DOESN'T MEAN THEY CAN'T STAND,
27 EVEN THEN, ON THE OTHER LEG?
28 A THAT'S CORRECT.

42945

1 Q NOW, WITH RESPECT TO THE BALLISTIC
2 EVIDENCE AND THE NUMBER OF ROUNDS FIRED, DOES EACH
3 NO. 4 BUCKSHOT, PACKED BY FIOCCHI OF THE TYPE USED
4 HERE AND THAT YOU USED IN YOUR TEST-FIRINGS, CONTAIN
5 ONE PLASTIC AND ONE FIBER WAD?
6 A YES.
7 Q IS IT YOUR RECOLLECTION THAT IN LOOKING
8 OVER THE BALLISTIC EVIDENCE ACTUALLY COLLECTED AND
9 BOOKED BY THE BEVERLY HILLS POLICE DEPARTMENT FROM
10 THE SCENE, THERE WERE NOT AN EQUAL NUMBER OF PLASTIC
11 WADS AS THERE WERE A NUMBER OF PAPER WADS?
12 A THAT'S CORRECT.
13 Q AND IS THAT WHAT LEADS YOU TO BELIEVE
14 THAT SOME PIECES ARE UNACCOUNTED FOR?
15 A YES.
16 Q DO YOU RECALL WHICH THERE WERE MORE OF,
17 PLASTIC OR PAPER?

18 A I DON'T RECALL OFFHAND.

19 Q NOW, DO I NEED TO SHOW YOU ALL 48, OR DO

20 YOU KNOW NOW THAT THERE WERE MORE THAN TWO PLASTIC --

21 THE WADS YOU'RE TALKING ABOUT. THEY'RE ALL THE

22 OVER-POWDER WADS?

23 A YES.

24 Q THERE WERE MORE THAN TWO OVER-POWDER

25 WADS COLLECTED FROM THE SCENE AND FROM THE CORONER'S

26 OFFICE?

27 A YES.

28 Q AND THERE WERE MORE THAN TWO FIBER WADS?

42946

1 A YES.

2 Q THERE WERE ONLY TWO PLASTIC SHOT CUPS?

3 A YES.

4 Q THE SHOT CUPS WERE AFFILIATED WITH THE

5 BIRD SHOT?

6 A THAT'S CORRECT.

7 Q NOW, YOU INDICATED TO MR. CONN THAT YOU

8 HAD DONE ADDITIONAL TEST-FIRINGS IN ADDITION TO THE

9 ONES -- TO THE TARGETS WE SHOWED THE JURY YESTERDAY?

10 A YES.

11 Q WERE THE TARGETS THAT WE SHOWED THE JURY

12 YESTERDAY, HOWEVER, THE ONLY NO. 4 BUCKSHOT DIRECT

13 TARGET ROUNDS THAT YOU DID?

14 A DIRECT TARGET ROUNDS, YES.

15 Q AND THESE WERE THE ROUNDS WHERE YOU
16 WANTED TO SEE IF THERE WAS ANY KIND OF UNIFORMITY IN
17 THE SPREAD PATTERN PRODUCED BY THIS AMMUNITION IN
18 THIS KIND OF GUN?

19 A IT WAS BASICALLY JUST TO GET AN ESTIMATE
20 OF THE DIMENSIONS OF THE SHOT PATTERNS AT THOSE
21 DISTANCES. I WOULD NOT EXPECT MAJOR VARIATIONS FROM
22 THOSE.

23 Q YOU DIDN'T GET ANY -- WELL, STRIKE THAT.

24 YOU'RE AWARE THAT DR. MC CARTHY
25 TEST-FIRED A COMPLETELY -- WINCHESTER AMMUNITION?

26 A YES.

27 Q AND, IN FACT, THE WINCHESTER PATTERNS
28 WERE MORE CONSISTENT THAN THE FIOCCHI PATTERNS HE

42947

1 TESTED?

2 A YES. BECAUSE THEY DIDN'T HAVE SHOT
3 CUPS.

4 Q EVEN HIS TESTS OF WINCHESTER SEEMED TO
5 FOLLOW THE GENERAL RULE OF SPREAD?

6 A MUCH CLOSER, YES.

7 Q WITH RESPECT TO THE OTHER TEST-FIRES,

8 WERE TWO OF THEM THAT YOU DID BIRD SHOT

9 TEST-FIRINGS?

10 A YES.

11 Q AND WHAT WERE THE OTHER TEST -- IN FACT,

12 I HAVE THEM. I DON'T KNOW IF WE NEED TO MARK THEM.

13 ARE THESE THE TWO BIRD SHOT TARGETS THAT

14 YOU DID?

15 A YES.

16 Q YOU REALIZE THE ISSUE HERE, IF THERE ARE

17 ANY ISSUES CONCERNING DISTANCES AND SPREAD, HAVE TO

18 DO WITH THE BUCKSHOT ROUNDS, NOT THE BIRD SHOT

19 ROUNDS?

20 A YES.

21 Q WHAT WERE THE OTHER TEST-FIRINGS THAT

22 YOU DID THAT YOU WERE REFERRING TO IN ANSWER TO

23 MR. CONN'S QUESTIONS?

24 A I DID A COUPLE OF PRELIMINARY FIRINGS

25 INTO A BEEF ROAST TO SEE WHAT KIND OF BLOW-OUT

26 PATTERN YOU MIGHT GET. I WAS A LITTLE -- I WAS MORE

27 THAN A LITTLE CONCERNED THAT THEY WERE NOT TRULY

28 REPRESENTATIVE OF WHAT YOU MIGHT GET. THERE WAS A

42948

1 LOT OF BLOW-OUT, AND I FELT IT PROBABLY WOULD

2 OVERSTATE THE CASE ABOUT HOW MUCH BLOW-OUT YOU'D

3 EXPECT FROM A WOUND LIKE THAT.

4 Q YOU DID SOME TEST-FIRINGS INTO SOME
5 ANIMAL MEAT?

6 A YES.

7 Q AND YOU'RE AWARE THAT PEOPLE WHO DO
8 RESEARCH IN WOUND BALLISTICS DO THAT ALL THE TIME,
9 TEST-FIRE INTO ANIMAL PARTS?

10 A MORE OFTEN THEY TEST-FIRE INTO WHAT IS
11 CALLED BALLISTICS GELATIN. I HAVE DONE IT BEFORE
12 UNDER VARIOUS CONDITIONS TO LOOK AT THE EFFECTS ON
13 PATTERNS. IT IS DONE, BUT IT HAS LIMITED VALUE.

14 Q AND YOU FOUND WHEN YOU DID THESE
15 TEST-FIRINGS INTO THIS ANIMAL PART, THIS BEEF, THAT
16 IT PRODUCED A VERY LARGE AMOUNT OF BLOW-OUT?

17 MR. CONN: OBJECTION. LEADING.

18 MS. ABRAMSON: THAT'S WHAT HE JUST SAID.

19 THE COURT: IT IS LEADING.

20 Q BY MS. ABRAMSON: DID YOU FIND THAT IT
21 PRODUCED A SUBSTANTIAL AMOUNT OF BLOW-OUT?

22 A YES.

23 Q AND COULD YOU HAVE, IF YOU WANTED TO
24 MISLEAD THIS JURY, SIMPLY HAVE PRODUCED THAT AND
25 CLAIMED THAT'S THE KIND OF BLOW OUT ONE COULD HAVE
26 EXPECTED FROM MR. MENENDEZ' LEFT LEG?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OVERRULED.

1 YOU CAN ANSWER THE QUESTION.

2 THE WITNESS: MYSELF PERSONALLY, I COULD NOT.

3 BUT THEORETICALLY ONE COULD, YES.

4 Q BY MS. ABRAMSON: AND WE DID NOT PRESENT

5 IT AS EVIDENCE BECAUSE, IF I UNDERSTAND YOU, YOU

6 THOUGHT THAT THE BLOW-OUT WAS MORE THAN WHAT WOULD

7 HAVE BEEN EXPECTED FROM MR. MENENDEZ' LEFT LEG?

8 A YES. I COULD NOT IN GOOD CONSCIENCE

9 FEEL THAT WOULD BE REPRESENTATIVE.

10 Q NEVERTHELESS, IN LOOKING AT THE

11 PHOTOGRAPHS FROM THIS CRIME SCENE, THE TOTAL ABSENCE

12 OF BLOW-OUT, DID THAT CONFIRM YOUR OPINION

13 CONCERNING MR. MENENDEZ' POSITION WHEN HE GOT THE

14 LEG WOUND?

15 A VERY DEFINITELY.

16 Q THERE WOULD HAVE BEEN OBSERVABLE

17 BLOW-OUT, WOULD THERE NOT?

18 A YES. AND PELLETS.

19 Q WAS THERE EITHER?

20 A I SAW NO EVIDENCE OF THAT.

21 MS. ABRAMSON: NOTHING FURTHER.

22

23 RE CROSS-EXAMINATION

24 BY MR. CONN:

25 Q DO YOU HAVE THE PHOTOGRAPHS OF THE

26 BLOW-OUT WITH YOU?

27 A YES.

28 MR. CONN: LET'S MARK THOSE.

42950

1 MS. ABRAMSON: I WOULD OBJECT THAT THEY'RE
2 IRRELEVANT AND COULD BE MISLEADING.

3 THE COURT: OVERRULED.

4 THE WITNESS: DID YOU WANT JUST THE
5 PHOTOGRAPHS OF THE SECONDARY TARGETS?

6 MR. CONN: ANY PHOTOGRAPHS THAT YOU HAVE OF
7 THE BLOW-OUT.

8 Q OKAY. YOU TOOK A PIECE OF MEAT AND YOU
9 FIRED AT IT FROM WHAT DISTANCE?

10 A EIGHT FEET.

11 Q AND THAT IS, THAT THE FRONT OF THE GUN
12 WAS EIGHT FEET AWAY FROM THIS PIECE OF MEAT; IS THAT
13 CORRECT?

14 A THAT'S CORRECT.

15 Q THEN YOU PUT SOME SORT OF A PAPER OR
16 SCREEN OR SOMETHING BEHIND THE MEAT SO THAT YOU
17 COULD TAKE A PICTURE OF THE BLOW-OUT; IS THAT
18 CORRECT?

19 A IT WAS ACTUALLY A PIECE OF CARDBOARD,
20 SOMEWHAT LIKE WE HAVE HERE IN THESE DISPLAYS, WHITE
21 CARDBOARD. IT WAS PLACED FOUR FEET BEHIND THE

22 TARGET.

23 Q OKAY. AND YOU SAID THAT YOU DID NOT
24 SEEK TO TESTIFY TO THIS BECAUSE IN YOUR OPINION THE
25 BLOW-OUT THAT YOU SEE IN THOSE PHOTOGRAPHS WOULD BE
26 MUCH MORE THAN YOU WOULD EXPECT TO SEE AT THE CRIME
27 SCENE; IS THAT CORRECT?

28 A WELL, I FELT I COULDN'T DEFEND THE

42951

1 POSITION THAT THAT WAS INDICATIVE OF HOW MUCH YOU
2 WOULD SEE. BASED ON OTHER CASES I'VE DONE AND
3 EXPERIENCE IT JUST LOOKED LIKE A LOT OF SPREAD, A
4 LOT OF MATERIAL, AND I DIDN'T KNOW WHETHER THAT HAD
5 TO DO WITH THE CONDITION OF THE MEAT AND THE FACT IT
6 WASN'T AN IN-TACT LEG.

7 Q BUT YOU DID SAY JUST NOW WHAT YOU GOT IN
8 THESE PHOTOGRAPHS, WHAT YOU CAN SEE IN THESE
9 PHOTOGRAPHS, IS MUCH MORE THAN YOU WOULD HAVE
10 EXPECTED TO SEE AT THE CRIME SCENE. WASN'T THAT
11 YOUR TESTIMONY TODAY?

12 A I SAID I WAS AFRAID. I DIDN'T SAY I
13 WOULD NECESSARILY EXPECT IT. I JUST SAID I COULDN'T
14 NECESSARILY DEFEND THAT.

15 MR. CONN: I BELIEVE THE NEXT ONE IS 840.

16 THE COURT: 340.

17 MR. CONN: WE'LL GET THERE.
18 THE COURT: OPTIMIST OR A PESSIMIST?
19 MR. CONN: OKAY. 340 IS A PHOTOGRAPH OF WHAT
20 APPEARS TO BE A LARGE PIECE OF MEAT.
21 341 IS A PHOTOGRAPH OF A PIECE OF MEAT
22 WITH A SCREEN BEHIND IT.
23 MS. ABRAMSON: IT'S NOT A SCREEN, COUNSEL.
24 CARDBOARD.
25 MR. CONN: PIECE OF PAPER BEHIND IT.
26 MS. ABRAMSON: THANK YOU.
27 MR. CONN: 342 IS A PHOTOGRAPH OF THE PAPER.
28 AND 343 IS A SECOND PHOTOGRAPH OF THAT

42952

1 PAPER.
2 Q CAN YOU TELL US WHAT 340 IS?
3 A YES. IT'S SHOWING A SIDE VIEW OF THE
4 PIECE OF MEAT THAT USED, SHOWING THE DIMENSION
5 ACROSS HERE -- TRYING TO GIVE A DIMENSION HERE THAT
6 WOULD BE COMPARABLE TO A THIGH, ROUGHLY, AND THAT'S
7 BASICALLY SHOWING THAT END.
8 Q CAN YOU TELL US WHAT 341 IS.
9 A 341 IS SHOWING THE DIRECTION FROM WHICH
10 THE SHOT WAS FIRED, SHOWING THE AREA THAT I WAS
11 AIMING FOR ON THIS SHOT RIGHT THROUGH THAT AREA.

12 Q BY THAT AREA, CAN YOU DESCRIBE FOR THE

13 RECORD WHAT YOU'RE REFERRING TO?

14 A YES. THERE'S A PIECE OF BOARD HERE

15 BETWEEN THE RULER AND THE MEAT, AND THERE'S A WHITE

16 AREA WITH CONNECTIVE TISSUE, FAT, OVER THE TOP OF

17 THAT, AND IT WOULD BE JUST ABOVE THAT.

18 Q JUST ABOVE THE --

19 A JUST ABOVE THE END OF THE BOARD, YES.

20 Q AND CAN YOU TELL US WHAT 342 AND 343

21 ARE.

22 A YES. THEY WERE TWO SHOTS THAT WERE

23 FIRED. 343 WAS THE FIRST ONE. AND THAT WAS THE

24 FIRST SHOT THAT WAS FIRED; AND THEN THE SECOND

25 SHOT THAT WAS FIRED, 342, ACTUALLY INDICATES IT

26 STRUCK BONE AND SHOWS THE DIMENSIONS OF THE TARGET

27 AND SO FORTH.

28 Q NOW, FOR -- IN BETWEEN THESE TWO SHOTS,

42953

1 THAT IS, 342 AND 342 (SIC), DID YOU CHANGE THE PIECE

2 OF PAPER, OR IS THAT THE SAME PIECE OF CARDBOARD?

3 A IT'S A DIFFERENT PIECE OF PAPER,

4 DIFFERENT CARDBOARD.

5 Q AND YOU SAY THAT THESE PHOTOGRAPHS

6 DEPICT MORE BLOW-OUT THAN YOU WOULD EXPECT TO SEE AT

7 THE CRIME SCENE; IS THAT CORRECT?

8 A WELL, I SAID I COULDN'T DEFEND THAT'S

9 HOW MUCH YOU WOULD SEE. SO I DIDN'T FEEL IT WAS

10 APPROPRIATE.

11 Q THE PART YOU FELT WAS INDEFENDABLE WAS

12 THE FACT YOU SAW MORE BLOOD THAN YOU WOULD EXPECT TO

13 SEE?

14 A IT COULD POTENTIALLY BE MORE BLOW-OUT.

15 MR. CONN: I HAVE NOTHING ELSE.

16

17 FURTHER REDIRECT EXAMINATION

18 BY MS. ABRAMSON:

19 Q DID YOU FIND THAT WHEN THE SHOT HIT THE

20 BONE IT CAUSED EVEN GREATER BLOW-OUT THAN THE ONE

21 THAT DIDN'T?

22 A YES.

23 Q YOU'RE AWARE THAT THE SHOT WITH RESPECT

24 TO MR. MENENDEZ' LEG DID CAUSE THE BONE TO BREAK?

25 A IT'S MY UNDERSTANDING, YES.

26 MS. ABRAMSON: NOTHING FURTHER.

27 MR. CONN: NO FURTHER QUESTIONS.

28 THE COURT: OKAY. ALL RIGHT. YOU MAY STEP

1 DOWN THEN. YOU'RE EXCUSED.

2 THE WITNESS: THANK YOU.

3 THE COURT: YOUR NEXT WITNESS.

4 MS. ABRAMSON: LET ME TAKE DOWN THE
5 EXHIBITS.

6 DO YOU HAVE YOUR NEXT WITNESS HERE?

7 MS. TOWERY: THE DEFENSE CALLS LESLIE
8 GASKILL.

9 THE COURT: AS SOON AS WE GET THESE EXHIBITS
10 DOWN. JUST HOLD ON A SECOND.

11 MS. TOWERY: IF I MAY, YOUR HONOR, I'LL JUST
12 PUT THESE UP.

13 THE COURT: OKAY. STEP FORWARD, PLEASE.

14

15

16 LESLIE ANN GASKILL,
17 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
18 SWORN, AND TESTIFIED AS FOLLOWS:

19 THE COURT: STAND BEHIND THE COURT REPORTER
20 AND RAISE YOUR RIGHT HAND.

21 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
22 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
23 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
24 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

25 THE WITNESS: I DO.

26 THE CLERK: PLEASE TAKE THE STAND AND STATE
27 YOUR NAME FOR THE RECORD.

28 THE WITNESS: LESLIE ANN GASKILL.

1 THE CLERK: SPELL YOUR LAST NAME FOR THE
2 RECORD.

3 THE WITNESS: G-A-S-K-I-L-L.

4 THE COURT: HAVE A SEAT.

5 MS. TOWERY.

6 MS. TOWERY: THANK YOU, YOUR HONOR.

7

8 DIRECT EXAMINATION

9 BY MS. TOWERY:

10 Q MS. GASKILL, DO YOU RECOGNIZE THE TWO
11 YOUNG GENTLEMEN AT COUNSEL TABLE?

12 A YES, I DO.

13 Q DO YOU KNOW THEIR NAMES?

14 A ERIK MENENDEZ AND LYLE MENENDEZ.

15 Q AND ERIK MENENDEZ IS THE GENTLEMAN
16 CLOSEST TO ME?

17 A CORRECT.

18 Q AND THE OTHER GENTLEMAN FURTHER FROM ME
19 IS LYLE MENENDEZ?

20 A CORRECT.

21 Q HOW DO YOU KNOW THESE TWO YOUNG MEN?

22 A I MET THEM ON A FISHING CHARTER THAT WE
23 WERE ALL A PART OF BACK IN 1989.

24 MS. ABRAMSON: WOULD YOU ADJUST THE
25 MICROPHONE.

26 THE COURT: IF YOU WOULD JUST PULL THE MIKE
27 CLOSE TO YOU AND SPEAK RIGHT INTO THE MOUTH PIECE.
28 Q BY MS. TOWERY: YOU SAID?

42956

1 A ON A FISHING CHARTER BACK IN 1989.
2 Q DO YOU RECALL THE SPECIFIC DATE THAT YOU
3 MET THEM?
4 A NO, I DO NOT.
5 Q DO YOU REMEMBER THE DAY OF THE WEEK?
6 A IT WAS A SATURDAY.
7 Q AND BEFORE YOU MET ERIK AND LYLE
8 MENENDEZ ON THE FISHING CHARTER, HAD YOU EVER MET
9 THEM BEFORE?
10 A NO.
11 Q AND HAVE YOU SEEN THEM SINCE?
12 A NO.
13 Q TODAY IN COURT IS THE FIRST TIME YOU'VE
14 SEEN THEM SINCE THAT DAY IN 1989?
15 A CORRECT.
16 Q THE FISHING CHARTER THAT YOU WENT ON,
17 WERE THERE OTHER PEOPLE WHO ACCOMPANIED YOU AND ERIK
18 AND LYLE MENENDEZ ON THAT CHARTER?
19 A YES.
20 Q WHO WERE THOSE PEOPLE?

21 A JOSE MENENDEZ, KITTY MENENDEZ, BOB
22 ANDERSON, AND THE DECKHAND, RICHARD. AND I,
23 UNFORTUNATELY, DON'T REMEMBER HIS LAST NAME.
24 Q WHO WAS BOB ANDERSON?
25 A AT THE TIME THAT WAS MY BOYFRIEND. HE
26 WAS THE CAPTAIN OF THE BOAT.
27 Q HE WAS THE CAPTAIN?
28 A CORRECT.

42957

1 Q AND WERE YOU A PART OF THE CREW ON THAT
2 CHARTER?
3 A NO.
4 Q WHAT IS YOUR OCCUPATION?
5 A I'M IN MORTGAGE BANKING.
6 Q AND WAS THAT YOUR OCCUPATION AT THAT
7 TIME?
8 A NO.
9 Q WHAT WAS YOUR OCCUPATION AT THAT TIME?
10 A I WAS A STUDENT IN SCHOOL WORKING ON A
11 SOCIOLOGY DEGREE.
12 Q DID YOU OBTAIN THAT DEGREE?
13 A YES, I DID.
14 Q HAVE YOU -- WHAT WAS THE PURPOSE OF THE
15 CHARTER, THE BOAT CHARTER?

16 A IT WAS A SHARK FISHING EXCURSION.

17 Q AND HAD YOU EVER BEEN SHARK FISHING
18 BEFORE?

19 A NO.

20 Q AND YOU SAID THAT BOB ANDERSON WAS YOUR
21 BOYFRIEND AT THE TIME; IS THAT RIGHT?

22 A CORRECT.

23 Q DO YOU REMEMBER -- WERE YOU INTRODUCED TO
24 ERIK MENENDEZ, LYLE MENENDEZ, JOSE MENENDEZ, AND
25 KITTY MENENDEZ?

26 A NO.

27 Q AND YOU SUBSEQUENTLY LEARNED THE NAMES
28 OF THE DIFFERENT FAMILY MEMBERS; IS THAT RIGHT?

42958

1 A CORRECT.

2 Q DO YOU KNOW -- DID ALL FOUR OF THE
3 MENENDEZ FAMILY MEMBERS ARRIVE TOGETHER?

4 A YES.

5 Q DO YOU REMEMBER WHAT TIME THEY ARRIVED
6 ON THE CHARTER TRIP?

7 A APPROXIMATELY BETWEEN FOUR AND FIVE P.M.

8 Q AND DO YOU KNOW -- WHERE WAS THE BOAT
9 SAILING FROM, WHAT HARBOR?

10 A IT WAS OUT OF MARINA DEL REY.

11 Q WHEN THE MENENDEZ FAMILY ARRIVED TO GO
12 ON THIS BOAT TRIP, WERE THEY -- DID THEY ARRIVE ON
13 TIME?

14 A NO. THEY WERE LATE.

15 Q DO YOU KNOW HOW LATE?

16 A NOT EXACTLY. THERE HAD BEEN SEVERAL
17 TIME CHANGES DURING THE DAY WITH REGARDS TO WHAT
18 TIME WE WOULD ALL BE MEETING AND LEAVING.

19 Q ALL RIGHT. AND YOU WAITED FOR THEM TO
20 ARRIVE?

21 A CORRECT.

22 Q WHEN THE FAMILY ARRIVED TO GO ON THE
23 BOAT TRIP, HOW WERE THEY DRESSED?

24 A INAPPROPRIATELY, TO GO OUT ON A BOAT.
25 THEY WERE IN SHORTS, LIGHT SWEAT OUTFITS. THEY
26 BROUGHT ALONG A COUPLE OF WHAT LOOKED LIKE NEW
27 JACKETS.

28 Q WHY IS A NEW JACKET INAPPROPRIATE?

42959

1 A ANY TIME YOU GO OUT FISHING ON A BOAT
2 LIKE THAT, BASICALLY, ANYTHING YOU TAKE WILL SMELL
3 LIKE FISH FOR THE REST OF ITS LIFE.

4 Q SO, IN ESSENCE, THEY WERE DRESSED
5 INAPPROPRIATELY BECAUSE THEIR CLOTHING WAS NEW AND

6 TOO LIGHT FOR THE EXCURSION?

7 A CORRECT. IT WAS EVENING TIME WHEN WE
8 WERE MEETING, AND IT GETS VERY, VERY COLD OVER THE
9 WATER AT NIGHT. SO FOR THEM TO BE IN SHORTS WAS A
10 SURPRISE.

11 Q BY THE WAY, YOU SPOKE WITH THE DISTRICT
12 ATTORNEYS HERE IN COURT ABOUT WHAT YOU OBSERVED IN
13 1989, DID YOU NOT?

14 A CORRECT.

15 Q AND YOU ALSO SPOKE WITH DETECTIVE
16 ZOELLER ABOUT WHAT YOU OBSERVED; IS THAT RIGHT?

17 A CORRECT. UH-HUH.

18 Q AND A POLICE REPORT WAS PREPARED,
19 INCLUDING YOUR STATEMENT; IS THAT RIGHT?

20 A CORRECT.

21 Q AND THIS MORNING I SHOWED YOU A COPY OF
22 THAT AND YOU REVIEWED IT; IS THAT RIGHT?

23 A CORRECT. UH-HUH.

24 Q WHEN THE MENENDEZ FAMILY ARRIVED, DID
25 THEY BRING ANYTHING WITH THEM?

26 A THEY HAD BROUGHT A LARGE COOLER WITH
27 FOOD AND DRINKS.

28 Q AND IS THERE ANYTHING THAT YOU RECALL

1 ABOUT THAT COOLER THAT STANDS OUT IN YOUR MIND?

2 A WHEN THEY FIRST BROUGHT IT DOWN THEY HAD
3 PUT IT ON THE DOCK AND THERE WAS SOME CONFUSION
4 ABOUT WHERE TO PUT IT ON THE BOAT, AT WHICH TIME
5 JOSE MENENDEZ DIRECTED BOTH LYLE AND ERIK TO PICK IT
6 UP AND TOLD THEM SPECIFICALLY WHERE TO PUT IT ON THE
7 BOAT AND WHEN TO PICK IT UP AND GAVE THEM DIRECTION,
8 BASICALLY.

9 Q WHAT WAS HIS TONE OF VOICE WHEN HE WAS
10 GIVING THEM DIRECTION ABOUT THE COOLER?

11 MS. NAJERA: OBJECTION. IRRELEVANT.

12 THE COURT: OVERRULED.

13 YOU MAY ANSWER.

14 THE WITNESS: HE WAS VERY DIRECTIVE, SHORT
15 SENTENCES, VERY -- ALMOST BARKING OUT THE
16 DIRECTIONS.

17 MS. NAJERA: I WOULD OBJECT, YOUR HONOR,
18 SPECULATION ON THE PART OF THE WITNESS. MOTION TO
19 STRIKE.

20 THE COURT: OVERRULED. THE ANSWER WILL
21 STAND.

22 Q BY MS. TOWERY: AND DID LYLE AND ERIK
23 MENENDEZ COMPLY WITH HIS DIRECTIONS?

24 A YES.

25 Q AND WHAT WAS THE Demeanor OF LYLE AND
26 ERIK MENENDEZ, IF YOU CAN DESCRIBE IT, WHEN THEY
27 COMPLIED WITH MR. MENENDEZ' ORDERS?

28 MS. NAJERA: OBJECTION. COMPOUND.

1 THE COURT: SUSTAINED.

2 Q BY MS. TOWERY: CAN YOU DESCRIBE THE
3 DEMEANOR OF ERIK MENENDEZ WHEN HE COMPLIED WITH
4 MR. MENENDEZ' ORDERS RESPECTING THE COOLER?

5 A HE WASN'T HAPPY ABOUT IT, BUT HE DID AS
6 HE WAS TOLD.

7 MS. NAJERA: OBJECTION. MOTION TO STRIKE.
8 SPECULATION.

9 THE COURT: SUSTAINED. ANSWER'S STRICKEN.
10 THE JURY IS ADMONISHED TO DISREGARD IT.

11 Q BY MS. TOWERY: DID ERIK MENENDEZ OBEY
12 HIS FATHER'S ORDERS?

13 A YES, HE DID.

14 Q DID LYLE MENENDEZ, LIKEWISE, OBEY HIS
15 FATHER'S ORDERS?

16 A YES, HE DID.

17 Q AND DID YOU MAKE ANY OBSERVATIONS ABOUT
18 THE INTERACTION OF THE MENENDEZ FAMILY AT THE TIME
19 THEY ARRIVED BEFORE THE BOAT TRIP?

20 A THERE SEEMED TO BE SOME TENSION BETWEEN
21 THE FAMILY MEMBERS.

22 Q AND AGAIN, YOU HAD NEVER MET THESE
23 PEOPLE BEFORE; IS THAT RIGHT?

24 A CORRECT.

25 Q AND WHEN YOU WERE PARTICIPATING IN THIS

26 BOAT TRIP THERE WAS NOTHING UNUSUAL ABOUT GOING ON A

27 BOAT TRIP WITH PEOPLE YOU HAD NEVER MET; IS THAT

28 RIGHT? IN OTHER WORDS, NOTHING CAUSED IT TO STAND

42962

1 OUT IN YOUR MIND AT THAT TIME; IS THAT RIGHT?

2 A THE TRIP ITSELF WAS UNUSUAL?

3 Q YES.

4 A NO.

5 Q I HAVE SOME PICTURES THAT I'VE SHOWN YOU

6 AND SHOWN COUNSEL, TWO SMALL PHOTOS THAT I'VE MARKED

7 AS EXHIBITS. I THINK 344?

8 THE COURT: NEXT EXHIBIT IS 344.

9 MS. TOWERY: 344 AND 345. I'D ASK TO

10 APPROACH.

11 THE COURT: YES.

12 MS. TOWERY: I'LL SHOW YOU THESE TWO PICTURES

13 THAT APPEAR TO BE OF A BOAT AND DETECTIVE ZOELLER

14 STANDING IN DIFFERENT AREAS OF THE BOAT.

15 Q DO YOU RECOGNIZE THOSE PICTURES?

16 A YES.

17 MS. TOWERY: AND IF I MAY, YOUR HONOR, IF I

18 CAN MARK THE BLOWUPS ON THE BOARD HERE AS 346, 347,

19 AND 348.

20 Q HAVE YOU ALSO SEEN THESE PHOTOGRAPHS?

21 A YES.

22 Q AND YOU WERE A GUEST, IN ESSENCE, ON THE
23 BOAT AT THAT TIME; IS THAT CORRECT?

24 A CORRECT.

25 Q DID YOU IDENTIFY THE BOAT IN THE
26 PHOTOGRAPHS I'VE JUST SHOWN YOU AND MARKED AS THE
27 SAME BOAT THAT YOU WERE ON IN 1989 ON THAT SATURDAY
28 WITH THE MENENDEZ FAMILY AND THE OTHER PEOPLE YOU'VE

42963

1 DESCRIBED?

2 A I CAN'T BE A HUNDRED PERCENT SURE.

3 Q DOES IT LOOK LIKE THE BOAT YOU WERE ON?

4 A IT LOOKS LIKE THE BOAT. IT WAS THE SAME
5 TYPE OF BOAT.

6 Q WHAT ABOUT THE SIZE, IS IT ABOUT THE
7 SAME SIZE?

8 A SAME SIZE.

9 Q ALL RIGHT. WHEN THE FAMILY -- AT SOME
10 POINT EVERYONE GOT ON THE BOAT, I TAKE IT; IS THAT
11 RIGHT?

12 A CORRECT.

13 Q AND CAN YOU DESCRIBE WHERE THE DIFFERENT

14 MEMBERS OF THE PARTY WENT ON THE BOAT, AND IF -- I

15 DON'T KNOW WHERE THE POINTER WENT. BUT IF YOU WANT

16 TO --

17 THE WITNESS: IS THIS WHAT YOU'RE LOOKING

18 FOR?

19 THE COURT: HERE IT IS OVER HERE.

20 MS. TOWERY: I DON'T KNOW IF YOU CAN REACH

21 FROM THERE. MAYBE YOU JUST WANT TO STEP DOWN.

22 Q YOU MIGHT USE THIS PHOTO. I THINK IT'S

23 THE ONLY ONE OF THE WHOLE BOAT. IF YOU CAN JUST

24 POINT AT THE PORTIONS OF THE BOAT THAT YOU WENT TO

25 WHEN YOU BOARDED THE BOAT.

26 A I STAYED UP AT THE TOP, RIGHT IN THIS

27 AREA. THERE'S TWO SEATS UP HERE (POINTING).

28 Q WHAT DO YOU CALL THAT?

42964

1 A I BELIEVE THEY CALL IT THE FLY BRIDGE.

2 Q THAT'S WHAT YOU CALL IT OR THAT'S WHAT

3 YOU HEARD SOMEONE ELSE DESCRIBE IT AS?

4 A IT'S THE COMMON TERM.

5 Q SO THAT'S WHERE YOU WENT WHEN YOU

6 BOARDED THE BOAT?

7 A CORRECT.

8 Q WHAT ABOUT ERIK MENENDEZ, WHERE DID HE

9 GO UPON BOARDING THE BOAT?

10 A UP TO THE BOW, UP AT THE FRONT, UP HERE.

11 Q WHAT ABOUT LYLE MENENDEZ?

12 A SAME AREA, THE FRONT.

13 Q AND JOSE MENENDEZ, DID HE GO TO A

14 PORTION OF THE BOAT?

15 A HE WAS BACK HERE (POINTING) IN THE BACK.

16 Q AND WHAT ABOUT MRS. MENENDEZ?

17 A SAME. BACK IN THE BACK, IN THE STERN.

18 Q AND MR. ANDERSON?

19 A HE, FOR THE MOST PART, WAS UP AT THE TOP

20 AREA WITH MYSELF, ALTHOUGH HE DID A LOT OF MOVING

21 AROUND.

22 Q AND THE OTHER GENTLEMAN, RICHARD?

23 A HE WAS MOSTLY DOWN IN THIS AREA DOWN IN

24 HERE (POINTING) AS WELL.

25 Q ALL RIGHT. LET ME SHOW YOU -- THIS HAS

26 BEEN MARKED AS EXHIBIT 347.

27 IS THAT THE AREA THAT ERIK AND LYLE

28 MENENDEZ WENT TO WHEN THEY BOARDED THE BOAT?

42965

1 A YES.

2 Q THAT, AGAIN, IS THE SIZE OF THE BOAT

3 THAT YOU WERE ON AND THE SIZE OF THE AREA THAT THEY

4 WERE ON; IS THAT RIGHT?

5 A CORRECT.

6 Q AND IN ORDER TO GET TO THAT PORTION OF
7 THE BOAT OR -- LET ME ASK YOU. HOW DO YOU GET
8 THERE? WHERE DO YOU BOARD FROM?

9 A YOU BOARD ON TO THE BACK OF THE BOAT
10 HERE. AND TO GET UP TO THAT FRONT AREA YOU VERY
11 CAREFULLY STEP ALONG THIS LITTLE RIM AROUND THIS
12 AREA. IT'S REAL NARROW.

13 Q ALL RIGHT. AND WHEN THEY WERE -- WHEN
14 THEY WENT UP TO THE FRONT OF THE BOAT WERE THERE ANY
15 SEATS FOR THEM TO SIT ON?

16 A NO.

17 Q OKAY. NOW, THE FISHING TOOK PLACE IN
18 THE BACK OF THE BOAT; IS THAT RIGHT?

19 A CORRECT. UH-HUH.

20 Q THERE WAS NO FISHING THAT WAS OCCURRING
21 FROM THE FRONT?

22 A CORRECT.

23 Q AND THERE WERE NO FISHING POLES THAT
24 WERE ARRANGED THERE; IS THAT RIGHT?

25 A NO. EVERYTHING WAS IN THE BACK.

26 Q NOW, WHEN THE BOAT LEFT TO GO ON THE
27 TRIP, DO YOU KNOW ABOUT WHAT TIME THE BOAT LEFT THE
28 HARBOR OR LEFT THE DOCK?

1 A SOMEWHERE ABOUT SIX OR SEVEN P.M.

2 Q AND DID ANYTHING HAPPEN WITH RESPECT TO
3 THE MENENDEZ BROTHERS WHEN THE BOAT WAS LEAVING TO
4 GO OUT ON THE FISHING EXCURSION?

5 A WHEN WE REACHED THE EDGE OF THE
6 BREAKWATER WHERE THERE'S CROSS TRAFFIC OF BOATS
7 COMING INTO THE HARBOR AND BOATS LEAVING, THE WATER
8 IS REAL CHOPPY, AND WE TOOK ON A RATHER LARGE WAVE,
9 RIGHT OVER THE FRONT OF THE BOAT.

10 Q WHAT HAPPENED TO THEM?

11 A THEY GOT SOAKED, HEAD TO TOE.

12 Q DID ANYONE ELSE ON THE BOAT GET SOAKED
13 OR JUST THE BROTHERS?

14 A NO. JUST THE BROTHERS.

15 Q AND WERE YOU CONCERNED THAT -- FOR THEIR
16 SAFETY WHEN THE WAVE CAME OVER THE BOAT?

17 A RIGHT. BOB HAD TAKEN THE GAS OFF THE
18 ENGINES AND BASICALLY HAD TO MAKE A CONCERTED EFFORT
19 TO PEER OVER THE FRONT OF THE BOAT TO MAKE SURE THEY
20 WERE BOTH STILL ON BOARD.

21 Q TO MAKE SURE THEY HADN'T BEEN WASHED
22 OVERBOARD?

23 A CORRECT.

24 Q AND THAT WAS AT THE VERY BEGINNING OF
25 THE BOAT TRIP; IS THAT RIGHT?

26 A YES.

27 Q WAS IT STILL LIGHT WHEN THE WAVE CAME

42967

1 A I SEEM TO RECALL IT WAS ABOUT DUSK TIME

2 OR JUST BEFORE DUSK.

3 Q HOW LONG WAS THIS ENTIRE BOAT TRIP?

4 A PROBABLY ABOUT MAYBE SIX -- YOU'RE

5 TALKING FROM WHEN WE LEFT OR WHEN THEY ARRIVED AT

6 THE DOCK?

7 Q FROM THE TIME THEY ARRIVED UNTIL THE

8 TIME YOU RETURNED TO THE DOCK, HOW MUCH TIME?

9 A PROBABLY ABOUT MAYBE SIX OR SEVEN HOURS.

10 Q DO YOU KNOW WHAT TIME YOU GOT BACK TO

11 THE DOCK?

12 A OH, I WANT TO SAY ABOUT ELEVEN OR TWELVE

13 P.M.

14 Q OKAY. AND AFTER YOU LEFT THE BREAKWATER

15 AND THE WAVE WASHED OVER THEM, I ASSUME AT SOME

16 POINT IT GOT DARK; IS THAT RIGHT?

17 A YES, CORRECT.

18 Q AND YOU SAID, I THINK EARLIER, THAT YOU

19 HAD NEVER BEEN SHARK FISHING BEFORE?

20 A CORRECT.

21 Q CAN YOU DESCRIBE IT JUST IN TERMS OF THE

22 PHYSICAL SENSATION OF BEING ON A BOAT IN THE OCEAN

23 IN THE DARK?

24 A THE SHARKS GENERALLY FEED AT NIGHT. OF
25 COURSE, YOU HAVE TO GO OUT AFTER DARK. BASICALLY,
26 YOU DO WHAT'S CALLED CHUMMING, WHICH IS WHERE YOU
27 PUT FISH PARTS OR VARIOUS OTHER THINGS THAT ATTRACT
28 SHARKS, ANYTHING WITH BLOOD IN IT, OVER THE SIDE OF

42968

1 THE BOAT AND KIND OF SIT IN ONE AREA.

2 LIKE I SAID, YOU LEAVE THE LIGHTS LOW
3 BECAUSE SHARKS LIKE THE DARK.

4 Q YOU LEAVE THE LIGHTS LOW ON THE BOAT?

5 A ON THE BOAT, CORRECT.

6 Q WHAT ABOUT OTHER BOATS, ARE THERE --
7 WHEN YOU GO OUT SHARK FISHING ARE THERE LOTS OF
8 OTHER BOATS AROUND DOING THE SAME THING?

9 MS. NAJERA: OBJECTION. IRRELEVANT.

10 THE COURT: OVERRULED.

11 THE WITNESS: GENERALLY, YOU GO OUT TO AN
12 AREA WHERE IT'S DEEP WATER, DEEP COLD WATER, AND
13 THERE'S NOBODY ELSE AROUND. IT'S VERY ISOLATED.

14 Q BY MS. TOWERY: WAS THAT THE CASE ON
15 THIS TRIP, IT WAS ISOLATED?

16 A YES.

17 Q AND THE LIGHTS THAT YOU MENTIONED ON THE

18 BOAT, ARE THOSE ON THE EXTERIOR OF THE BOAT OR ON

19 THE INTERIOR OF THE BOAT? WHERE ARE THEY?

20 A BASICALLY, THEY SHOW ON THE EXTERIOR OF

21 THE BOAT AND THEY'RE SMALL LIGHTS TO KIND OF WARN

22 OTHER BOATS WHEN THEY'RE APPROACHING.

23 Q THOSE LIGHTS ARE DIMMED?

24 A I DON'T BELIEVE THEY'RE NECESSARILY

25 DIMMED, BUT THEY'RE REAL SMALL. IT'S NOT -- IN

26 OTHER WORDS, IT'S NOT -- THE IDEA OF THEM IS NOT TO

27 LIGHT UP A BIG AREA SO YOU CAN SEE EVERYTHING AROUND

28 YOU.

42969

1 Q ALL RIGHT. AND WHAT ABOUT THE SHORE

2 LIGHTS, CAN YOU SEE THE SHORE LIGHTS?

3 A YOU CAN SEE THE SHORE LIGHTS. WE WERE A

4 COUPLE OF MILES, I BELIEVE, OFF SHORE. IT'S HARD TO

5 TELL IN WATER MILES, NAUTICAL MILES.

6 Q WHAT ABOUT THE OCEAN? IS THE OCEAN

7 BLUE?

8 A IT'S VERY DARK, VERY DARK.

9 Q WHAT ABOUT THE TEMPERATURE?

10 A VERY COLD.

11 Q COLDER THAN IT IS ON SHORE?

12 A SHORE? ABSOLUTELY.

13 Q THAT WAS THE CASE, I ASSUME, ON THIS

14 TRIP?

15 A CORRECT.

16 Q NOW, ONCE YOU WENT UP ON THE FLY DECK

17 WHEN YOU BOARDED THE BOAT, DID YOU HAVE

18 CONVERSATIONS WITH THE MEMBERS OF THE MENENDEZ

19 FAMILY ON THE BOAT?

20 A THERE WERE CONVERSATIONS, HOWEVER, I WAS

21 NOT A PART OF THOSE; BEING UP ABOVE, ESPECIALLY WHEN

22 THE ENGINES ARE RUNNING, IT'S ALMOST IMPOSSIBLE TO

23 HEAR CONVERSATIONS FROM BEING SEATED WHERE I WAS UP

24 TOP.

25 Q AND DID YOU REMAIN IN THAT POSITION ON

26 THE BOAT FOR MOST OF THE TRIP?

27 A YES.

28 Q AND WHAT ABOUT ERIK AND LYLE MENENDEZ?

42970

1 YOU SAID THEY WENT TO THE FRONT OR THE BOW OF THE

2 BOAT.

3 A CORRECT.

4 Q WHEN THEY BOARDED, DID THEY REMAIN IN

5 THAT POSITION FOR MOST OF THE TRIP?

6 A YES.

7 Q AND YOU SAID THE ENTIRE TRIP WAS

8 SOMEWHERE IN THE NEIGHBORHOOD OF SIX OR SEVEN HOURS;

9 IS THAT RIGHT?

10 A APPROXIMATELY, YES.

11 Q AFTER THE WAVE WASHED OVER THEM --

12 A UH-HUH.

13 Q -- DID THEY CHANGE CLOTHES OR DO ANYTHING

14 TO SEEK ADDITIONAL CLOTHING BECAUSE OF THE COLD?

15 A AT ONE POINT I DO REMEMBER ERIK COMING

16 BACK AND PICKING UP A JACKET FROM DOWN BELOW. BUT

17 THEY REMAINED AT THE FRONT OF THE BOAT MOST OF THE

18 TIME.

19 Q AFTER HE PICKED UP THE JACKET, DID HE

20 RETURN TO THE FRONT OF THE BOAT?

21 A I BELIEVE SO.

22 Q AND WAS MRS. MENENDEZ IN ANY PARTICULAR

23 PART OF THE BOAT AFTER THE BOAT LEFT THE DOCK?

24 A YES. SHE WAS DOWN BELOW MOST OF THE

25 TIME. SHE WAS NOT FEELING WELL.

26 Q WAS SHE SEASICK?

27 A YES.

28 Q AND WHAT ABOUT MR. MENENDEZ? WHAT WAS

42971

1 HE DOING?

2 A HE PRETTY MUCH STAYED IN THE STERN MOST

3 OF THE TIME, IN THE BACK OF THE BOAT.

4 Q THE STERN IS -- CAN YOU JUST POINT TO
5 THE PORTION THAT'S THE STERN?

6 A SURE. RIGHT HERE (POINTING).

7 Q THAT'S WHERE HE REMAINED FOR MOST OF THE
8 TRIP; IS THAT RIGHT?

9 A CORRECT. UH-HUH.

10 Q WERE ERIK AND LYLE MENENDEZ FISHING WHEN
11 THEY WERE ON THIS TRIP?

12 A NOT PER SE, NO. WHEN YOU FISH FOR
13 SHARKS YOU PUT THE LINES OUT, AND WHEN THEY HOOK UP
14 SOMEONE RUNS OVER AND GRABS THE POLE. IT'S NOT LIKE
15 YOU'RE STANDING THERE WITH THE POLE OR TROLLING OR
16 ANYTHING LIKE THAT.

17 Q WHERE ARE THE LINES HOOKED UP?

18 A IN BACK, IN THE STERN.

19 Q WHERE MR. MENENDEZ WAS?

20 A CORRECT.

21 Q BY THE WAY, IS THAT A SMALL BOAT, IF YOU
22 KNOW? IS THAT A SMALL BOAT OR LARGE BOAT FOR SHARK
23 FISHING?

24 A GENERALLY, FOR A PARTY OF FOUR, THAT
25 WOULD BE A PROPER SIZE VESSEL.

26 Q AND HOW MANY PEOPLE WERE ON THIS BOAT?

27 A WELL, FOR FOUR GUESTS IS WHAT I'M
28 REFERRING TO.

1 Q OKAY. YOU MENTIONED THAT MR. MENENDEZ
2 WAS BARKING ORDERS AT THE MENENDEZ BROTHERS WHEN
3 THEY ARRIVED; IS THAT RIGHT?

4 A CORRECT.

5 MS. NAJERA: OBJECT. MISCHARACTERIZES THE
6 TESTIMONY.

7 THE COURT: WELL, IT WAS IN REFERENCE TO THE
8 FOOD CONTAINER OR THE COOLER, IS THAT WHAT YOU'RE
9 REFERRING TO?

10 Q BY MS. TOWERY: HE BARKED DIRECTIONS TO
11 AT THE BROTHERS WITH RESPECT TO THE COOLER; IS THAT
12 RIGHT?

13 A CORRECT.

14 Q AND AFTER THE BOAT LEFT, DID YOU OBSERVE
15 ANY ADDITIONAL INTERACTION BETWEEN MR. MENENDEZ AND
16 THE MENENDEZ BROTHERS?

17 A THE ONLY OTHER INTERACTION THAT I COULD
18 HEAR FROM WHERE I WAS WAS WHEN THE SHARKS HOOKED UP
19 ON THE LINES AND HE WAS CALLING FOR THEM TO COME TO
20 THE REAR OF THE BOAT AND REEL IN A SHARK.

21 Q AND DID THEY DO THAT WHEN HE TOLD THEM
22 TO?

23 A YES.

24 Q AND WHAT ABOUT MR. MENENDEZ' BEHAVIOR
25 TOWARDS MRS. MENENDEZ, DID YOU SEE THEM INTERACT AT

26 ALL DURING THE BOAT TRIP?

27 A WHEN THEY WERE BOTH IN THE BACK OF THE

28 BOAT WHEN WE WERE INITIALLY LEAVING THE HARBOR AND

42973

1 AT THE VERY END, HE WAS VERY AFFECTIONATE TOWARD

2 HER, HAD HIS ARM AROUND HER.

3 Q HE DIDN'T BARK ANY COMMANDS TO HER?

4 A NO.

5 Q NOW, YOU SAID YOU NOTICED TENSION AMONG

6 THE FAMILY MEMBERS WHEN THEY ARRIVED; IS THAT RIGHT?

7 A CORRECT.

8 Q AND WHAT ABOUT AT THE TIME THAT THE BOAT

9 DOCKED, DID YOU NOTICE THE SAME TENSION, OR HAD IT

10 LESSENERD?

11 A YOU'RE REFERRING TO THE END OF THE TRIP?

12 Q YES.

13 A IT HAD SUBSTANTIALLY LESSENERD. I DIDN'T

14 SENSE ANY TENSION, AS A MATTER OF FACT, AT ALL, WHEN

15 WE RETURNED BACK TO THE DOCK.

16 Q AND WHEN YOU RETURNED TO THE DOCK, WHEN

17 EVERYONE GOT OFF OF THE BOAT, DID YOU HAVE ANY

18 FURTHER CONTACT WITH THE MENENDEZ FAMILY?

19 A NO.

20 Q ONE LAST QUESTION. YOU HAVE BEEN

21 EQUALLY AVAILABLE TO TALK ABOUT WHAT YOU OBSERVED ON
22 THIS TRIP TO BOTH THE PROSECUTION AND THE DEFENSE,
23 HAVE YOU NOT?

24 A THAT'S CORRECT.

25 Q YOU'VE AGREED TO TALK TO BOTH THE
26 PROSECUTION AND DEFENSE ABOUT WHAT YOU SAW; IS THAT
27 RIGHT?

28 A CORRECT.

42974

1 Q AND WHEN YOU DID TALK TO THE PROSECUTORS
2 IN THIS COURTROOM, THE ONES SITTING HERE, DID THEY
3 INDICATE TO YOU THAT YOU WILL NOT BE RECEIVING A
4 SUBPOENA FROM THE PROSECUTION?

5 MS. NAJERA: OBJECTION. IRRELEVANT AND
6 LEADING.

7 THE COURT: SUSTAINED.

8 MS. TOWERY: I HAVE NOTHING FURTHER.

9 THE COURT: ALL RIGHT. WE'LL BE IN RECESS
10 UNTIL 1:30. DON'T DISCUSS THE MATTER WITH ANYONE
11 AND DON'T FORM ANY FINAL OPINIONS IT.

12 WE'LL RESUME AT 1:30.

13 (AT 12:00 NOON PROCEEDINGS WERE

14 ADJOURNED UNTIL 1:30 OF THE SAME DAY.)

1 VAN NUYS, CALIFORNIA; WEDNESDAY, DECEMBER 6, 1995

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: OKAY. EVERYBODY'S PRESENT.

7 MS. TOWERY: YOUR HONOR, I HAD A COUPLE MORE

8 QUESTIONS THAT I JUST THOUGHT OF OVER LUNCH. I

9 THINK THE PEOPLE DON'T MIND IF I REOPEN, WITH THE

10 COURT'S PERMISSION.

11 THE COURT: SURE.

12 ALL RIGHT. LET'S HAVE THE JURY OUT.

13 (THE JURY ENTERED THE

14 COURTROOM AND THE FOLLOWING

15 PROCEEDINGS WERE HELD:)

16

17 THE COURT: THE WITNESS IS STILL ON THE

18 WITNESS STAND.

19 AND WE HAVE FURTHER DIRECT EXAMINATION.

20 MS. TOWERY: THANK YOU, YOUR HONOR.

21

22 DIRECT EXAMINATION (RESUMED)

23 BY MS. TOWERY:

24 Q MS. GASKILL, CAN YOU JUST SHOW THE JURY

25 WITH THE POINTER THE PART OF THE BOAT IN WHICH KITTY

26 MENENDEZ WAS FOR THE MAJORITY OF THE TRIP.

27 A SHE STAYED DOWN BELOW, DOWN IN THE CABIN

28 AREA, DOWN IN HERE.

42976

1 Q OKAY. DO YOU STEP DOWN TO GET DOWN INTO
2 THE CABIN?

3 A YES. IT'S ABOUT TWO STEPS DOWN.

4 Q ALL RIGHT. AND YOU ALSO -- YOU INDICATED
5 THAT YOU REMEMBERED THAT THE TRIP WAS ON A SATURDAY
6 IN 1989, BUT YOU DIDN'T RECALL THE PRECISE DATE.

7 DO YOU REMEMBER IF IT WAS IN AUGUST?

8 A YOU KNOW WHAT, I DON'T. IT'S A LONG
9 TIME AGO.

10 Q ALL RIGHT. WAS IT IN THE SUMMER?

11 A YEAH.

12 Q ALL RIGHT. AND JUST TO PUT IT IN A TIME
13 FRAME, DID YOU FIND OUT SHORTLY AFTER THIS TRIP THAT
14 MR. AND MRS. MENENDEZ HAD BEEN KILLED?

15 A YES.

16 Q AND WAS THAT A DAY LATER OR TWO DAYS
17 LATER?

18 A I BELIEVE IT WOULD HAVE BEEN THE
19 FOLLOWING MONDAY.

20 Q ALL RIGHT. SO YOU WENT ON THE TRIP ON
21 SATURDAY AND THE FOLLOWING MONDAY YOU LEARNED THAT

22 MR. AND MRS. MENENDEZ HAD BEEN KILLED; IS THAT
23 RIGHT?
24 A CORRECT.
25 Q AND YOU LEARNED THAT FROM THE NEWS OR
26 MR. ANDERSON OR BOTH? HOW DID YOU FIND THAT OUT?
27 A ACTUALLY, BOTH.
28 MS. TOWERY: THANK YOU VERY MUCH. NOTHING

42977

1 FURTHER, YOUR HONOR.
2 THE COURT: ALL RIGHT. CROSS-EXAMINATION.
3
4 CROSS-EXAMINATION
5 BY MS. NAJERA:
6 Q GOOD AFTERNOON, MS. GASKILL. I JUST
7 WANT TO CLEAR UP A FEW THINGS WITH YOU.
8 YOU WERE ASKED ON DIRECT WHETHER OR NOT
9 RIGHT WHEN MR. AND MRS. MENENDEZ ARRIVED AND THE
10 DEFENDANTS ARRIVED AT THE DOCK, YOU MENTIONED THAT
11 THERE WAS SOME TENSION THAT YOU NOTICED; IS THAT
12 RIGHT?
13 A CORRECT. MM-HMM.
14 Q AND WOULD YOU DESCRIBE THIS AS THE KIND
15 OF TENSION THAT WOULD BE PRESENT, SAY, IN A
16 SITUATION WHERE THERE WAS A FAMILY OUTING AND THE

17 FATHER TELLS EVERYONE TO BE QUIET AND THEN EVERYONE
18 IS QUIET FOR A WHILE?
19 MS. TOWERY: OBJECTION. COUNSEL'S
20 TESTIFYING.
21 THE COURT: OVERRULED.
22 THE WITNESS: YES, I BELIEVE THAT IS CORRECT,
23 THAT TYPE OF TENSION.
24 Q BY MS. NAJERA: AND BY THE END OF THE
25 TRIP, I BELIEVE YOUR TESTIMONY WAS THAT YOU DIDN'T
26 NOTICE -- THE TENSION BASICALLY DISAPPEARED; IS THAT
27 RIGHT?
28 A CORRECT.

42978

1 Q AND EVENTUALLY THIS TENSION PASSED,
2 EVERYTHING WENT BACK TO NORMAL DURING THE COURSE OF
3 THIS BOAT TRIP; IS THAT RIGHT?
4 A SOMEWHAT NORMAL, YES.
5 Q NOW, YOU ALSO TESTIFIED EARLIER THAT
6 WHEN THEY ARRIVED -- "THEY" BEING KITTY AND JOSE
7 MENENDEZ AND THE DEFENDANTS -- THEY HAD A COOLER AND
8 THEY WERE ALL OUT AT THE DOCK; IS THAT RIGHT?
9 A CORRECT.
10 Q NOW, YOU SAID THAT -- YOU DESCRIBED
11 SOMETHING THAT JOSE MENENDEZ DID AS HE BARKED AT THE

12 DEFENDANTS; IS THAT RIGHT?

13 A CORRECT.

14 Q AND WHEN HE BARKED AT THE DEFENDANTS,
15 WAS IT SOMETHING TO THE EFFECT OF, BASICALLY HE TOLD
16 THEM, PICKUP THAT COOLER AND PUT IT AWAY?

17 A RIGHT. HE WAS BARKING DIRECTIONS AS TO
18 WHERE HE WANTED THINGS MOVED AND WHEN.

19 Q AND WHEN HE WAS -- WE CALL THIS -- OR YOU
20 CHARACTERIZE THIS AS BARKING.

21 WHEN HE WAS SAYING THESE THINGS, WAS HE
22 YELLING?

23 A NO.

24 Q DID HE RAISE HIS VOICE AT ALL?

25 A NOT TO MY RECOLLECTION.

26 Q WAS IT A -- JUST VERY DIRECTED ORDERS ON
27 THINGS THAT THEY NEEDED TO DO TO TAKE THIS BOAT
28 TRIP?

42979

1 A IT WAS VERY DIRECTED, VERY SHORT
2 SENTENCES, VERY TO THE POINT.

3 Q AND BASICALLY WITH REGARDS TO THE
4 DEFENDANTS' DEMEANOR AT THAT TIME, WAS IT BASICALLY
5 THAT THEY DID WHAT THEY WERE TOLD TO DO?

6 A YES.

7 Q AND WAS IT BASICALLY THE TYPE OF
8 DEMEANOR WHERE THEY WERE CONVEYING THAT, FINE,
9 THEY'LL DO IT, BUT THEY DIDN'T REALLY WANT TO DO
10 IT?

11 A YES.

12 Q NOW, YOU STARTED OUT ON THE BOAT TRIP
13 AND YOU TESTIFIED EARLIER THAT MRS. MENENDEZ AND
14 MR. MENENDEZ WERE IN THE BACK OF THE BOAT; THAT IS
15 RIGHT?

16 A CORRECT.

17 Q AND CALLING YOUR ATTENTION TO EXHIBIT
18 348 AND THE POINTER -- WHY DON'T YOU TAKE THE
19 POINTER AND SHOW US WHERE, EXACTLY, THE BACK OF THE
20 BOAT -- BOTH MR. AND MRS. MENENDEZ WERE WHEN THE BOAT
21 STARTED OUT.

22 A HERE IN THE STERN AREA HERE (POINTING).

23 Q AND WERE THERE SEVERAL FISHING POLES
24 BACK THERE AS WELL?

25 A I DON'T RECALL THE EXACT LOCATION OF
26 THEM. THEY WERE PROBABLY SET IN THE -- THERE'S
27 ACTUALLY HOLES ALONG THE SIDING AND THEY WERE
28 PROBABLY SITTING IN THOSE.

42980

1 Q NOW, IS IT FAIR TO SAY THAT

2 MRS. MENENDEZ WASN'T BACK IN THIS STERN AREA FOR A
3 VERY LONG PERIOD OF TIME?

4 A YES.

5 Q SHE WAS ONLY THERE FOR A SHORT TIME
6 BEFORE SHE WENT DOWN STAIRS INTO THE CABIN, THE
7 LOWER CABIN PART OF THE SHIP; IS THAT RIGHT?

8 A CORRECT.

9 Q AND WERE YOU AWARE THAT SHE WENT DOWN
10 THERE BECAUSE SHE WAS FEELING SEASICK?

11 A THAT WAS MY UNDERSTANDING.

12 Q AND WHEN MRS. MENENDEZ WENT DOWN THERE,
13 MR. MENENDEZ STAYED IN THE BACK OF THE BOAT AND
14 FISHED; IS THAT RIGHT?

15 A IT WAS -- ACTUALLY, WE WEREN'T FISHING
16 THE WHOLE TIME, BUT DURING THE DURATION THERE WAS
17 QUITE A LONG PERIOD OF TIME TO GET TO THE POINT
18 WHERE WE ACTUALLY DID THE FISHING AND HE DID STAY IN
19 THE BACK AREA OF THE BOAT.

20 Q NOW, WHILE MRS. MENENDEZ -- AFTER THE
21 BOAT GOT STARTED AND WE HAVE MR. MENENDEZ UP IN THE
22 BACK OF THE BOAT BEFORE MRS. MENENDEZ WENT DOWN TO
23 THE VERY BOTTOM OF THE BOAT, YOU SAID THAT THE
24 DEFENDANTS CAME AROUND TO THE FRONT OF THE BOAT; IS
25 THAT RIGHT SOME?

26 A CORRECT.

27 Q SHOWING YOU EXHIBIT 347 -- JUST ONE
28 MOMENT HERE.

1 SHOWING YOU THE PHOTO THAT'S BEEN MARKED
2 347, WHERE DETECTIVE ZOELLER IS STANDING, IS THIS
3 THE AREA IN FRONT WHERE THE DEFENDANTS WERE?

4 A YES.

5 Q NOW, FOR THE DEFENDANTS TO GET FROM THE
6 BACK OF THE BOAT TO THE FRONT OF THE BOAT, DID THEY
7 GO BY THAT LITTLE -- I'LL CALL IT THE COCKPIT AREA?

8 A YEAH. THERE'S ABOUT A SIX-INCH WIDE
9 PLACE YOU CAN KIND OF SHIMMY ALONG THE SIDE ON THE
10 FRONT.

11 Q AND I BELIEVE YOU TESTIFIED THAT YOU
12 WERE UP THERE AT THE TIME?

13 A I WAS UP AT THE TOP, NOT IN THE FRONT OF
14 THE BOAT, BUT UP ON THE TOP, TOP AREA BY WHERE THE
15 CONTROLS ARE.

16 Q OKAY. WHY DON'T YOU SHOW ME ON THIS
17 PHOTO WHERE YOU WERE.

18 A I WAS UP IN THIS AREA (POINTING) AND THE
19 MENENDEZ BROTHERS WERE IN THE FRONT.

20 Q TO GET TO THE FRONT DID THEY HAVE TO GO
21 AROUND --

22 A YEAH. YOUR FOOTING WOULD BE RIGHT ALONG
23 THIS AREA RIGHT HERE (POINTING).

24 Q THEY PASSED BY YOUR AREA UP HERE; IS
25 THAT RIGHT?

26 A RIGHT.

27 Q AND IS IT FAIR TO SAY THAT NO ONE

28 DIRECTED THE DEFENDANTS TO GO OUT TO THE FRONT OF

42982

1 THE BOAT; IS THAT RIGHT?

2 A NOT TO MY KNOWLEDGE.

3 Q AND TO YOUR KNOWLEDGE THEIR FATHER

4 DIDN'T TELL THEM THEY HAD TO GO STAND IN FRONT OF

5 THE -- AT THE FRONT OF THE BOAT; IS THAT RIGHT?

6 A THAT'S CORRECT.

7 Q AND WHEN THEY WENT TO THE FRONT OF THE

8 BOAT, AND THEY PASSED THE AREA THAT YOU WERE AT, DID

9 EITHER OF THE DEFENDANTS SAY HI TO YOU?

10 A NO.

11 Q DID EITHER OF THE DEFENDANTS EVEN

12 ACKNOWLEDGE YOU?

13 A NO.

14 Q DID THEY GO TO THE FRONT OF THE BOAT AND

15 JUST TALK AMONG THEMSELVES?

16 A I COULDN'T SEE THEM FROM MY VANTAGE

17 POINT. I HAVE NO IDEA WHAT THEY WERE DOING. BUT

18 RIGHT WHEN WE TOOK OFF THEY DID MOVE TO THE FRONT OF

19 THE BOAT.

20 Q AND THEY MOVED TO THE FRONT OF THE BOAT

21 WITHOUT ACKNOWLEDGING YOU OR -- IS IT FAIR TO SAY
22 THEY ALSO DIDN'T ACKNOWLEDGE MR. CAMPBELL, THE
23 DECKHAND?

24 A I DON'T KNOW THE RELATIONSHIP BETWEEN
25 THEM AND MR. CAMPBELL.

26 Q DID YOU EVER SEE THEM SAYING HI TO HIM?

27 A NO.

28 Q DID YOU EVER SEE THEM SAYING HI TO THE

42983

1 BOAT CAPTAIN?

2 A INTRODUCTIONS WERE DONE IN THE BEGINNING
3 AND --

4 Q THAT WAS IT?

5 A TO MY KNOWLEDGE.

6 Q IS IT FAIR TO SAY THAT BASICALLY THE
7 DEFENDANTS WERE SNUBBING EVERYBODY ELSE ON THE
8 BOAT?

9 MS. TOWERY: OBJECTION. CALLS FOR CONCLUSION
10 ON THE PART OF THE WITNESS.

11 THE COURT: SUSTAINED.

12 Q BY MS. NAJERA: AFTER THE DEFENDANTS
13 WENT TO THE FRONT OF THE BOAT, THE BOAT STARTED OUT
14 AND THEY GOT SOAKED; IS THAT RIGHT?

15 A CORRECT.

16 Q AT THAT POINT DID THE PEOPLE UP IN THE
17 FRONT LAUGH?

18 A YES.

19 Q AND AT SOME POINT AFTER THEY GOT WET,
20 DID YOU SEE THE DEFENDANTS WEARING JACKETS?

21 A YES.

22 Q NOW, CALLING YOUR ATTENTION TO THE
23 DEFENDANT, ERIK MENENDEZ, AT SOME POINT HE LEFT THE
24 FRONT OF THE BOAT; IS THAT RIGHT?

25 A CORRECT.

26 Q AND HE WENT TO THE BACK OF THE BOAT; IS
27 THAT RIGHT?

28 A CORRECT.

42984

1 Q AND DID HE ALSO GO DOWN INTO THE LITTLE
2 CABIN UNDERNEATH AREA?

3 A YES.

4 Q AND YOU SAID THAT HE HAD SOME
5 CONVERSATIONS WITH SOME PEOPLE THAT YOU COULDN'T
6 HEAR, BUT YOU SAW HIM HAVE THESE CONVERSATIONS; IS
7 THAT RIGHT?

8 A KITTY MENENDEZ WAS DOWN BELOW AND WHEN I
9 CAME DOWN THEY WERE HAVING A CONVERSATION.

10 Q OKAY. WELL, YOU SAW HIM HAVE SEVERAL

11 CONVERSATIONS WITH SEVERAL PEOPLE; IS THAT A FAIR

12 STATEMENT?

13 A YES.

14 MS. TOWERY: OBJECTION. MISSTATES THE

15 TESTIMONY.

16 THE COURT: OVERRULED.

17 YOUR ANSWER WAS WHAT?

18 THE WITNESS: YES.

19 Q BY MS. TOWERY: AND DURING THE COURSE OF

20 THESE CONVERSATIONS, DID THE DEFENDANT, ERIK

21 MENENDEZ, APPEAR TO BE ENJOYING HIMSELF?

22 A YES.

23 Q NOW, STARTING FIRST WITH THE

24 CONVERSATION YOU OBSERVED BETWEEN THE DEFENDANT,

25 ERIK MENENDEZ, AND HIS MOTHER DOWNSTAIRS, DID YOU GO

26 DOWNSTAIRS AT SOME POINT?

27 A YES.

28 Q AND WHEN YOU WENT DOWN THERE, DID YOU

42985

1 SEE THE DEFENDANT AND HIS MOM THERE?

2 A YES.

3 Q AND WHAT WERE THEY DOING?

4 A I BELIEVE HE WAS GETTING JACKETS OR

5 ADDITIONAL CLOTHING, AND THEY WERE HAVING SOME

6 CONVERSATION WHEN I CAME IN. I DON'T RECALL WHAT

7 THAT WAS.

8 Q AND AT SOME POINT DID -- DID YOU LEAVE

9 THAT AREA?

10 A YES.

11 Q AND DID YOU LEAVE THE DEFENDANT DOWN

12 THERE WITH HIS MOM?

13 A YES.

14 Q ABOUT HOW LONG WAS HE DOWN THERE, DO YOU

15 RECALL?

16 A MAYBE 10 OR 15 MINUTES.

17 Q NOW, APART FROM THIS 10- OR 15-MINUTE

18 CONVERSATION THAT THE DEFENDANT HAD WITH HIS MOTHER

19 DOWNSTAIRS, YOU ALSO SAW HIM TALKING TO HIS FATHER;

20 IS THAT RIGHT?

21 A CORRECT.

22 Q AND SOMETIME DURING THE COURSE OF THIS

23 BOAT TRIP, DID HE COME TO THE BACK OF THE BOAT AND

24 DO SOME FISHING WITH HIS FATHER?

25 A YES.

26 Q DID HE HELP HIS FATHER REEL IN A SHARK?

27 A I BELIEVE SO.

28 Q DO YOU KNOW IF THEY CAUGHT MORE THAN ONE

1 SHARK THAT DAY?

2 A I BELIEVE THEY DID.

3 Q HOW MANY SHARKS DO YOU BELIEVE THEY
4 CAUGHT THAT DAY?

5 A MAYBE THREE. I REALLY DON'T REMEMBER.

6 Q AND DID ERIK MENENDEZ HELP HIS FATHER
7 REEL IN ALL THESE SHARKS?

8 A I DON'T KNOW ABOUT ALL OF THEM, BUT AT
9 SOME POINT HE WAS INVOLVED WITH THAT.

10 Q AND DID YOU ALSO SEE HIM INVOLVED IN A
11 CONVERSATION WITH HIS FATHER?

12 A YES.

13 Q AND DID YOU ALSO SEE A CONVERSATION
14 BETWEEN ERIK MENENDEZ, LYLE MENENDEZ, AND THEIR
15 FATHER?

16 A YES.

17 Q AND AT SOME POINT WHEN YOU SAW THE
18 CONVERSATIONS BETWEEN ERIK MENENDEZ AND HIS FATHER,
19 WHERE WERE THEY? WHERE WERE THEY ON THE BOAT?

20 A IN THE STERN, IN THE BACK.

21 Q THE BACK OF THE BOAT YOU WERE JUST
22 POINTING OUT TO US?

23 A CORRECT.

24 Q SO AT SOME POINT IT'S FAIR TO SAY THE
25 DEFENDANT, ERIK MENENDEZ, LEFT -- CAN YOU SEE WHAT
26 I'M DOING HERE? LEFT THE FRONT OF THE BOAT HERE AND
27 HE CAME BACK HERE AND HE WENT DOWNSTAIRS TO TALK TO
28 HIS MOTHER FOR A LITTLE WHILE AND THEN HE CAME OUT

1 HERE TO THE BACK AND HELPED HIS FATHER REEL IN SOME
2 FISH; IS THAT RIGHT?

3 A THE POINT WHERE HE WENT DOWNSTAIRS AND
4 WAS TALKING WITH HIS MOTHER WAS AT A DIFFERENT TIME
5 THAN WHEN HE WAS STANDING IN THE BACK OF THE BOAT.
6 I DON'T KNOW WHAT OCCURRED BETWEEN THOSE TWO THINGS.

7 Q BUT HE DID ALL THAT?

8 A YES, HE DID ALL THAT AT SOME POINT.

9 Q AT SOME POINT ALSO WHEN HE WAS BACK
10 HERE -- "HE" BEING ERIK MENENDEZ -- WAS BACK HERE
11 WITH LYLE MENENDEZ AND THEIR DAD AND THEY WERE
12 HAVING SOME CONVERSATIONS; IS THAT RIGHT?

13 A CORRECT.

14 Q AND WERE THEY ALSO FISHING AT THE TIME?

15 A I DON'T BELIEVE SO. I BELIEVE THAT WAS
16 WHEN WE WERE HEADED OUT.

17 Q AND AT SOME POINT DID YOU SEE SEALS ON
18 THIS TRIP?

19 A YES.

20 Q AND WHEN THE SEALS WERE SPOTTED, WHERE
21 WERE THE DEFENDANTS?

22 A I BELIEVE THEY WERE UP AT THE FRONT OF
23 THE BOAT AND JOSE WAS IN THE BACK WITH KITTY DOWN

24 BELOW. AND THEY WERE ACTUALLY SEA LIONS AND THEY'RE
25 ON THE BUOYS JUST OUTSIDE OF THE HARBOR.
26 Q WHEN THE SEA LIONS WERE SPOTTED, DID THE
27 DEFENDANT, ERIK MENENDEZ, COME BACK TO THE BACK OF
28 THE BOAT AGAIN?

42988

1 A I BELIEVE SO, YES.
2 Q WAS HE BACK THERE WITH HIS FATHER WHEN
3 THEY WERE ALL WATCHING THE SEA LIONS?
4 A YES.
5 Q AND AT SOME POINT DID THEY CALL FOR
6 THEIR MOM TO JOIN THEM?
7 A YES.
8 Q AND DID LYLE MENENDEZ ALSO JOIN THEM
9 BACK THERE?
10 A YES.
11 Q AND THE DEFENDANT, LYLE MENENDEZ, HE
12 LEFT THE FRONT OF THE BOAT TO GO TO THE BACK OF THE
13 BOAT TO HELP HIS FATHER FISH AND TO LOOK AT THE
14 SEALS; IS THAT RIGHT?
15 A YES, I BELIEVE SO.
16 Q AND DID HE -- IS IT FAIR TO SAY THAT
17 THROUGHOUT THIS WHOLE TRIP HE NEVER SAID A WORD TO
18 YOU?

19 A YES, THAT'S TRUE.

20 Q AND HE NEVER APPEARED PARTICULARLY

21 ANXIOUS OR NERVOUS THROUGHOUT THIS WHOLE TRIP, DID

22 HE?

23 MS. TOWERY: OBJECTION. CALLS FOR

24 SPECULATION. NOT WITHIN THE PERSONAL KNOWLEDGE OF

25 THE WITNESS.

26 THE COURT: SUSTAINED.

27 Q BY MS. NAJERA: DID THE DEFENDANT, LYLE

28 MENENDEZ, APPEAR UNPLEASANT AND UNSOCIABLE

42989

1 THROUGHOUT THIS TRIP?

2 MS. TOWERY: SAME OBJECTION.

3 THE COURT: SUSTAINED.

4 Q BY MS. NAJERA: AT SOME POINT DID LYLE

5 MENENDEZ ALSO HAVE A CONVERSATION WITH THE CAPTAIN,

6 ROBERT ANDERSON?

7 A I BELIEVE SO.

8 Q AND WHERE DID THAT CONVERSATION TAKE

9 PLACE?

10 A PROBABLY IN THE STERN OF THE BOAT. I

11 CAN'T REMEMBER A SPECIFIC CONVERSATION OR SPECIFIC

12 TIME, BUT I KNOW AT SOME POINT HE WAS BACK THERE,

13 LIKE WE SAID, WITH A GROUP OF PEOPLE DISCUSSING --

14 Q SO THAT WOULD BE -- SORRY.

15 SO THAT WOULD BE ANOTHER TIME THAT HE
16 WAS AT THE BACK OF THE BOAT; IS THAT RIGHT?

17 A WE HAD MENTIONED BEFORE THAT HE WAS BACK
18 THERE HAVING A CONVERSATION WITH ERIK AND LYLE AND
19 HIS FATHER, AND I BELIEVE BOB WAS INVOLVED IN THAT.
20 ASIDE FROM THAT, I REALLY DON'T RECALL A SECOND
21 INCIDENT.

22 Q AND ON THE WAY BACK DID EVERYBODY GET
23 SEASICK?

24 A AT SOME POINT EVERYBODY WASN'T FEELING
25 TOO WELL, BUT KITTY WAS DOWN BELOW REALLY NOT
26 FEELING WELL AND JOSE WAS LITERALLY SICK SEVERAL
27 TIMES.

28 Q AND DID -- AND DID THE DEFENDANTS ALSO

42990

1 APPEAR SEASICK?

2 A EITHER COLD, SICK, MISERABLE, I'M NOT
3 SURE WHICH.

4 Q AND THEY WERE ALL --

5 A ALL WERE --

6 Q AND AT THAT TIME, TOWARDS THE END OF THE
7 TRIP WHEN THEY WERE COMING BACK, YOU SAID YOU FELT
8 THAT THE TENSION HAD PRETTY MUCH GONE?

9 A CORRECT.

10 Q AND THEY WERE ALL PRETTY MUCH TOGETHER

11 AND -- IS IT FAIR TO SAY THAT AT SOME POINT OR

12 ANOTHER THEY ALL WENT DOWNSTAIRS AT SOME TIME ON THE

13 TRIP BACK?

14 MS. TOWERY: OBJECTION. COMPOUND. MISSTATES

15 THE TESTIMONY OF THE WITNESS.

16 THE COURT: OVERRULED.

17 THE WITNESS: THEY WERE NOT ALL AT ONE TIME

18 DOWN BELOW, TO MY KNOWLEDGE. THE POINT THEY WERE

19 TOGETHER TO LOOK AT THE SEA LIONS, THEY WERE IN THE

20 STERN OF THE BOAT.

21 Q BY MS. NAJERA: AND THEN AT VARIOUS

22 TIMES DID ONE OR THE OTHER OF THE FAMILY GO

23 DOWNSTAIRS?

24 A I NEVER SAW LYLE AND I NEVER SAW JOSE

25 DOWNSTAIRS.

26 MS. NAJERA: NOTHING FURTHER.

27 THE COURT: REDIRECT.

28 MS. TOWERY: JUST A COUPLE QUESTIONS.

42991

1

2 REDIRECT EXAMINATION

3 BY MS. TOWERY:

4 Q MS. GASKILL, YOU WERE ASKED ABOUT
5 MR. MENENDEZ BARKING DIRECTIONS AT THE BEGINNING OF
6 THE TRIP.

7 WOULD YOU DESCRIBE HIS BEHAVIOR AS
8 DOMINEERING OR HAVE YOU DESCRIBED HIS BEHAVIOR AS
9 DOMINEERING?

10 A YES.

11 MS. NAJERA: OBJECTION. CALLS FOR SPECULATION.

12 THE COURT: SUSTAINED.

13 Q BY MS. TOWERY: WAS YOUR IMPRESSION OF
14 JOSE MENENDEZ' BEHAVIOR TOWARDS HIS SONS WHEN YOU
15 SAW HIM INTERACTING WITH THEM, THAT HE WAS
16 DOMINEERING?

17 MS. NAJERA: OBJECTION. CALLS FOR
18 SPECULATION.

19 THE COURT: SUSTAINED.

20 Q BY MS. TOWERY: YOU WERE ASKED ABOUT THE
21 DEMEANOR OF ERIK AND LYLE MENENDEZ IN RESPONDING TO
22 MR. MENENDEZ' DIRECTIONS.

23 HAVE YOU DESCRIBED THEIR DEMEANOR AS
24 SUBDUED IN THE PAST?

25 A YES.

26 Q NOW, IN TERMS OF THE TRIPS TO THE BACK
27 OF THE BOAT BY ERIK AND LYLE MENENDEZ, YOU SAID THAT
28 ERIK WENT DOWN BELOW TO GET THE JACKET, CORRECT?

1 A CORRECT.

2 Q AND HE WAS DOWN THERE FOR 10 OR 15
3 MINUTES; IS THAT RIGHT?

4 A YES.

5 Q AND YOU ALSO INDICATED THAT ERIK
6 MENENDEZ WENT BACK TO ASSIST IN THE SHARK -- OR
7 REELING IN A SHARK; IS THAT RIGHT?

8 A CORRECT.

9 Q AND WAS THAT BECAUSE HIS FATHER TOLD HIM
10 TO DO THAT?

11 A YES.

12 Q MR. MENENDEZ CALLED TO ERIK MENENDEZ AND
13 TOLD HIM TO COME BACK AND ASSIST; IS THAT CORRECT?

14 MS. NAJERA: OBJECTION. LEADING.

15 THE COURT: OVERRULED.

16 Q BY MS. TOWERY: IS THAT RIGHT?

17 A YES.

18 Q AND WAS THAT IN THIS SAME MANNER IN
19 WHICH HE HAD GIVEN DIRECTION TO HIS SONS BEFORE THE
20 BOAT LEFT THE DOCK?

21 A NOT WITH THE SAME SORT OF DIRECTION. IT
22 WAS MORE OF A "COME BACK AND JOIN IN ON -- THIS IS
23 THE FUN OF THE TRIP," INSTEAD OF MORE DIRECTIVE OF
24 YOU COME BACK HERE AND REEL THIS.

25 Q HE SEEMED EXCITED ABOUT CATCHING THE
26 SHARK?

27 A YES, THERE WAS DEFINITELY SOME

42993

1 Q BUT HE DID INSTRUCT ERIK MENENDEZ TO
2 COME TO THE BACK OF THE BOAT FROM THE FRONT OF THE
3 BOAT; IS THAT RIGHT?

4 A CORRECT.

5 Q AND ERIK WAS AT THE BOW WHEN JOSE
6 MENENDEZ TOLD HIM TO COME BACK?

7 A I BELIEVE SO, YES.

8 Q DID HE INSTRUCT LYLE MENENDEZ TO COME
9 BACK ALSO OR WAS THAT JUST ERIK?

10 A I BELIEVE IT WAS BOTH OF THEM.

11 Q ALL RIGHT. AND AFTER -- AFTER THEY CAME
12 TO THE BACK TO ASSIST IN REELING IN THE SHARK, DO
13 YOU REMEMBER IF THEY RETURNED TO THE FRONT OF THE
14 BOAT?

15 A I BELIEVE THEY DID EVENTUALLY, ALTHOUGH
16 I COULDN'T TELL YOU WHEN THAT HAPPENED.

17 Q IN OTHER WORDS, IS THE LOOKING AT THE
18 SEALS INCIDENT A DIFFERENT INCIDENT FROM THE REELING
19 IN?

20 A YES. THAT WAS MUCH LATER, A COUPLE
21 HOURS LATER.

22 Q AGAIN, TO THE BEST OF YOUR RECOLLECTION,

23 DID JOSE MENENDEZ TELL HIS SONS TO COME BACK TO LOOK

24 AT THE SEALS?

25 A YES.

26 Q AND THEY DID SO; IS THAT RIGHT?

27 A CORRECT.

28 Q AND YOU SAID THAT THE TOTAL TIME THAT

42994

1 THE BOAT TRIP TOOK WAS SIX OR SEVEN HOURS; IS THAT

2 RIGHT?

3 A APPROXIMATELY, YES.

4 Q AND HOW MUCH TIME WOULD YOU SAY THAT

5 ERIK MENENDEZ SPENT EITHER BELOW OR AT THE BACK OF

6 THE BOAT OR ANY OTHER PLACE OTHER THAN THE FRONT OF

7 THE BOAT?

8 A MAYBE ABOUT 45 MINUTES OR SO.

9 Q OKAY. AND THE REST OF THE TIME HE SPENT

10 AT THE FRONT OF THE BOAT AT THE BOW?

11 A MM-HMM. YES.

12 Q AND WHAT ABOUT LYLE MENENDEZ?

13 A LESS TIME, PROBABLY MAYBE 20, 25

14 MINUTES.

15 Q ALL RIGHT. AND HE ALSO SPENT THE

16 REMAINDER OF THE BOAT TRIP AT THE FRONT OF THE BOAT;

17 IS THAT CORRECT?

18 A CORRECT.

19 MS. TOWERY: THANK YOU. I HAVE NOTHING
20 FURTHER.

21 THE COURT: RECROSS.

22 MS. NAJERA: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: OKAY. THANK YOU. YOU MAY STEP
24 DOWN. YOU'RE EXCUSED.

25 NEXT WITNESS.

26 MR. LEVIN: YES, YOUR HONOR. THE DEFENSE
27 CALLS ROBERT ANDERSON.

28 THE COURT: ALL RIGHT. STEP FORWARD,

42995

1 PLEASE. STAND BEHIND THE COURT REPORTER AND FACE
2 THE COURT CLERK OVER HERE AND RAISE YOUR RIGHT
3 HAND.

4

5 ROBERT ANDERSON,
6 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
7 TESTIFIED AS FOLLOWS:

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

12 THE WITNESS: I DO.

13 THE CLERK: PLEASE TAKE THE STAND AND STATE

14 YOUR NAME FOR THE RECORD.

15 THE WITNESS: MY NAME'S ROBERT ANDERSON.

16 THE CLERK: SPELL YOUR LAST NAME, PLEASE.

17 THE WITNESS: A-N-D-E-R-S-O-N.

18 THE COURT: OKAY.

19

20 DIRECT EXAMINATION

21 BY MR. LEVIN:

22 Q MR. ANDERSON, YOU ARE THE BOAT OPERATOR

23 OF A COMPANY CALLED MOTION PICTURE MARINE?

24 A I WAS, YES.

25 MS. NAJERA: OBJECTION. LEADING.

26 THE COURT: OVERRULED.

27 Q BY MR. LEVIN: WHAT DOES MOTION PICTURE

28 MARINE DO?

42996

1 A THEY'RE A MARINE PRODUCTION COMPANY.

2 Q WHAT WAS YOUR OCCUPATION WITH THEM BACK

3 IN 1989?

4 A I -- I HAD MANY JOBS WITH THEM.

5 Q DID YOU HAVE SOMETHING TO DO WITH THE

6 OPERATION OF FISHING CHARTERS?

7 A YES. I WORKED AS A BOAT OPERATOR.

8 Q WHAT DOES A BOAT OPERATOR DO IN

9 RELATIONSHIP TO FISHING CHARTERS?

10 A WELL, I -- BASICALLY, I INSTRUCT THE --

11 WELL, I INITIATE THE PEOPLE TO THE BOAT AND I

12 INSTRUCT THEM WHAT -- TELL THEM WHAT WE'LL BE DOING,

13 INSTRUCT THEM HOW TO FISH, TAKE THEM OUT -- TAKE THEM

14 OUT FISHING; AND I OPERATE THE BOAT DURING THAT TIME

15 AND BRING THEM BACK.

16 Q DIRECTING YOUR ATTENTION BACK TO AUGUST

17 THE 19TH, A SATURDAY, OF 1989, DID YOU OPERATE A

18 SHARK FISHING CHARTER ON THAT DAY?

19 A YES, I DID.

20 Q AND DID YOU GET DIRECTIONS THAT YOU WERE

21 TO MEET SOME PEOPLE DOWN AT A DOCK?

22 A YES, I WAS.

23 Q THE BOAT THAT YOU CONDUCTED THE CHARTER

24 FROM, IS THAT THE PHOTOGRAPH THAT'S DEPICTED IN

25 EXHIBIT, I BELIEVE IT'S 348?

26 A YES.

27 Q AND THE CHARTER, IS THAT OPERATED OUT OF

28 MARINA DEL REY?

42997

1 A YES, IT IS.

2 Q I THINK THIS IS 86.

3 SHOWING YOU A -- LOOKS KIND OF LIKE A
4 THOMAS GUIDE BLOW-UP OF AN AREA OF LOS ANGELES.
5 IS MARINA DEL REY DOWN IN THIS AREA THAT
6 I'M HOLDING MY PEN?

7 A THAT'S CORRECT.

8 Q OKAY. AND ARE YOU FAMILIAR WITH THIS
9 PARTICULAR MAP AT ALL?

10 A SOMEWHAT. IF IT'S OUT OF THE THOMAS
11 GUIDE, YES.

12 Q OKAY. WHAT KIND OF FISHING VESSEL IS
13 THAT?

14 A THIRTY-ONE FOOT BERTRAM.

15 Q NOW, DIRECTING YOUR ATTENTION BACK A
16 COUPLE YEARS AGO, JULY OF 1993, WERE YOU A WITNESS
17 IN THE FIRST TRIAL OF PEOPLE V. MENENDEZ?

18 A YES, I WAS.

19 MS. NAJERA: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED. THE ANSWER WILL
21 STAND.

22 Q BY MR. LEVIN: AND YOU TESTIFIED IN THIS
23 CASE AS A WITNESS CALLED BY THE PROSECUTION?

24 A YES.

25 MS. NAJERA: OBJECTION. IRRELEVANT.

26 THE COURT: OVERRULED. THE ANSWER WILL
27 STAND.

28 Q BY MR. LEVIN: BEFORE TODAY, HAVE YOU

1 BEEN INTERVIEWED BY THE POLICE AND VARIOUS
2 PROSECUTORS CONCERNING WHAT YOU DID AND SAW ON
3 AUGUST THE 19TH, 1989?

4 A YES, I WAS.

5 Q AND DID THAT INCLUDE TALKING TO
6 DETECTIVE ZOELLER WHO'S SEATED RIGHT BEHIND ME?

7 A YES, SIR.

8 Q AND DID YOU TALK TO PREVIOUS PROSECUTORS
9 IN THIS CASE, MS. FERRARO AND MR. KURIYAMA?

10 A YES.

11 Q AND WERE YOU ALSO INTERVIEWED BY
12 MR. CONN AND MS. NAJERA IN THIS CASE?

13 A YES.

14 Q DID YOU DESCRIBE TO THEM WHAT IT WAS YOU
15 SAW AND DID ON AUGUST THE 19TH, 1989?

16 A YES, I DID.

17 Q HAVE YOU DESCRIBED THIS FISHING CHARTER
18 AS RATHER UNUSUAL?

19 A YES, I DID.

20 Q NOW, DIRECTING YOUR ATTENTION BACK TO
21 AUGUST THE 19TH, 1989, SAY SATURDAY, DO YOU RECALL
22 THE TIME THAT IT WAS THAT YOU WERE TO BEGIN THIS
23 PARTICULAR CHARTER?

24 A WE WERE INITIALLY SUPPOSED TO MEET THE
25 FAMILY AT THREE P.M.

26 Q WERE YOU READY TO LEAVE AT THREE P.M.?

27 A YES, WE WERE.

28 Q WHO ELSE WAS THERE WITH YOU?

42999

1 A I HAD A DECKHAND, RICHARD CAMPBELL, AND
2 A FRIEND, LESLIE GASKILL.

3 Q WHO ARRANGED FOR THE DECKHAND?

4 A I DID.

5 Q WHAT WAS THE PURPOSE OF HAVING A
6 DECKHAND?

7 A DURING SHARK FISHING CHARTERS IT'S
8 MANDATORY, BASICALLY, TO HAVE A DECKHAND.

9 Q FOR SAFETY REASONS?

10 A FOR SAFETY REASONS.

11 Q SHARKS CAN BE KIND OF DANGEROUS?

12 A YES.

13 Q WHAT ABOUT MS. GASKILL, DID SHE HAVE ANY
14 DUTIES WITH RESPECT TO ACCOMPANYING YOU ON THIS
15 TRIP?

16 A NO.

17 Q SHE WAS JUST THERE FOR THE RIDE --

18 A THAT'S CORRECT.

19 Q -- TO WATCH?

20 AND WHAT TIME WAS IT THAT THESE -- THAT

21 THE MENENDEZ FAMILY SHOWED UP?

22 A I BELIEVE THEY ACTUALLY SHOWED UP ABOUT
23 4:30.

24 Q AND TAKING A LOOK AT COUNSEL TABLE, DO
25 YOU RECOGNIZE ERIK MENENDEZ SEATED NEXT TO
26 MS. ABRAMSON?

27 A YES.

28 Q DO YOU RECOGNIZE LYLE MENENDEZ SEATED

43000

1 NEXT TO MS. TOWERY AND MR. GESSLER?

2 A YES, I DO.

3 Q WERE THEY ACCOMPANYING THEIR PARENTS,
4 JOSE AND MARY LOUISE MENENDEZ, ON THE 19TH?

5 A YES, SIR.

6 Q IT WAS JUST THE FOUR OF THEM?

7 A THAT'S CORRECT.

8 Q AND THE THREE OF YOU, MS. GASKILL,
9 MR. CAMPBELL AND YOURSELF?

10 A THAT'S CORRECT.

11 Q WERE YOU THE OPERATOR OR THE DRIVER OF
12 THE BOAT?

13 A YES, I WAS.

14 Q DO YOU RECALL ABOUT WHAT TIME IT WAS
15 THAT YOU ACTUALLY DEPARTED THE MARINA?

16 A I THINK IT WOULD HAVE BEEN RIGHT AROUND

17 5:00.

18 Q ABOUT FIVE --

19 A THAT'S WHEN WE LEFT THE DOCK,

20 APPROXIMATELY 5:00; TO ACTUALLY GET OUTSIDE THE

21 MARINA, IT'S PROBABLY 5:30.

22 Q NOW, BEFORE YOU LEFT, WHEN MR. AND

23 MRS. MENENDEZ ARRIVED, DID YOU HAVE A CONVERSATION

24 WITH MRS. MENENDEZ?

25 A YES.

26 Q AND DID MRS. MENENDEZ -- DID YOU

27 INTRODUCE YOURSELF TO HER?

28 A YES, I DID.

43001

1 Q AND DID SHE NOTE THAT BOTH YOU AND HER

2 HAD THE SAME LAST NAME?

3 A YES, SHE DID.

4 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: OVERRULED. THE ANSWER WILL

6 STAND.

7 Q BY MR. LEVIN: WHAT DID SHE SAY WITH

8 RESPECT TO THE SAME LAST NAME THAT YOU HAD IN COMMON

9 WITH HER?

10 A SHE ASKED ME IF IT WAS SPELLED THE SAME

11 WAY, WHETHER IT WAS AN O-N OR E-N AT THE END OF THE
12 NAME.

13 Q AND WHAT DID YOU RESPOND?

14 A I SAID MY NAME IS SPELLED WITH AN O-N.

15 Q DID SHE TELL YOU HOW HER NAME WAS
16 SPELLED?

17 A YES, SHE DID.

18 Q IN THE MANNER IN WHICH SHE RELATED THAT
19 TO YOU, DID IT CAUSE YOU TO FEEL THAT SHE FELT THAT
20 SHE WAS SOMEWHAT SUPERIOR TO YOU?

21 MS. NAJERA: OBJECTION. CALLS FOR
22 SPECULATION.

23 THE COURT: SUSTAINED.

24 Q BY MR. LEVIN: DID SHE MAKE IT CLEAR
25 THAT YOU WERE AN O-N AND SHE WAS AN E-N?

26 THE COURT: AND MR. LEVIN WAS AN I-N?

27 MR. LEVIN: I'M GETTING THAT WAY.

28 THE WITNESS: YES, SHE DID.

43002

1 Q BY MR. LEVIN: DID YOU FORM ANY INITIAL
2 IMPRESSION WITH RESPECT TO HER DEMEANOR WHEN SHE DID
3 THAT?

4 MS. NAJERA: OBJECTION. IRRELEVANT.

5 THE COURT: SUSTAINED.

6 Q BY MR. LEVIN: NOW, DID SHE VOICE ANY

7 CONCERN OVER THE SIZE OF THE VESSEL?

8 A YES, SHE DID.

9 Q WHAT DID SHE SAY WITH RESPECT TO THAT?

10 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.

11 THE COURT: SUSTAINED.

12 Q BY MR. LEVIN: DID MS. MENENDEZ,

13 MRS. MENENDEZ, APPEAR TO BE DISAPPOINTED?

14 MS. NAJERA: OBJECTION. CALLS FOR

15 SPECULATION.

16 Q BY MR. LEVIN: DID MRS. MENENDEZ REQUEST

17 TO KNOW WHO THE OTHER PEOPLE WERE THAT WERE GOING ON

18 THE SHARK-FISHING TRIP?

19 A YES, SHE DID.

20 Q AND HOW DID SHE EXPRESS THAT TO YOU?

21 MS. NAJERA: OBJECTION. CALLS -- IRRELEVANT.

22 THE COURT: YOU'RE ASKING WHAT WORDS DID SHE

23 SAY?

24 MR. LEVIN: WELL, LET ME FIRST SET THIS UP.

25 Q WERE THE DEFENDANTS, LYLE AND ERIK

26 MENENDEZ, ANYWHERE NEAR WHERE YOU WERE WHEN

27 MRS. MENENDEZ EXPRESSED THE CONCERN ABOUT -- OR ASKED

28 YOU ABOUT WHO THE OTHER PEOPLE WERE ON THE

1 SHARK-FISHING TRIP?

2 A I'M SORRY. CAN YOU REPEAT THAT.

3 Q YES. MRS. MENENDEZ EXPRESSED SOME

4 CONCERN THAT THERE WERE PEOPLE OTHER THAN YOURSELF

5 GOING ON THE SHARK-FISHING TRIP?

6 MS. NAJERA: I'M GOING TO OBJECT, YOUR

7 HONOR. MISSTATES THE TESTIMONY.

8 THE COURT: SUSTAINED.

9 Q BY MR. LEVIN: DID MRS. MENENDEZ EXPRESS

10 SOME CONCERN THAT THERE WAS OTHER PEOPLE GOING ON

11 THE SHARK-FISHING TRIP THAT SHE DIDN'T EXPECT TO

12 SEE?

13 MS. NAJERA: OBJECTION. CALLS FOR

14 SPECULATION.

15 THE COURT: SUSTAINED.

16 Q BY MR. LEVIN: DID MRS. MENENDEZ ASK YOU

17 WHO THE OTHER PEOPLE WERE THAT WERE ACCOMPANYING YOU

18 ON THE FISHING TRIP?

19 A YES, SHE DID.

20 Q AND DID SHE EXPRESS SOME SURPRISE TO

21 YOU, OR AT LEAST WHAT YOU FELT TO BE SURPRISE, THAT

22 THERE WERE OTHER PEOPLE THAT WERE GOING ALONG ON THE

23 TRIP?

24 MS. NAJERA: OBJECTION. CALLS FOR

25 SPECULATION AND IS IRRELEVANT.

26 THE COURT: SUSTAINED.

27 Q BY MR. LEVIN: WHEN MRS. MENENDEZ ASKED

28 WHO THE OTHER PEOPLE WERE THAT WERE ACCOMPANYING YOU

1 ON THE TRIP, WAS THE DEFENDANTS -- WERE THE
2 DEFENDANTS ANYWHERE NEAR WHEN SHE MADE THAT
3 STATEMENT TO YOU?

4 A I DON'T RECALL.

5 Q DO YOU RECALL WHEN IT WAS THAT THIS
6 PARTICULAR CONVERSATION TOOK PLACE IN RELATIONSHIP
7 TO WHEN YOU LEFT -- OR WHEN THEY FIRST ARRIVED
8 THERE?

9 A IT WAS JUST MINUTES AFTER THEY ARRIVED.

10 Q NOW, WHEN THEY FIRST GOT ON THE SHIP,
11 DID YOU GIVE THEM A TOUR OF THE BOAT?

12 A YES, I DID.

13 Q DID YOU NOTICE HOW THEY WERE DRESSED?
14 I'M TALKING ABOUT BOTH THE DEFENDANTS AND JOSE AND
15 MRS. MENENDEZ.

16 A I DON'T RECALL HOW MRS. MENENDEZ WAS
17 DRESSED, BUT I -- I DO -- I DO RECALL HOW ERIK AND
18 LYLE AND JOSE WERE DRESSED.

19 Q HOW WERE ERIK AND LYLE MENENDEZ
20 DRESSED?

21 A I BELIEVE THEY WERE WEARING SHORTS.

22 Q HOW WAS MR. MENENDEZ DRESSED?

23 A HE WAS WEARING SHORTS ALSO.

24 Q NOW, WHEN THEY GOT ON THE BOAT AND YOU

25 GAVE THEM A TOUR, DID YOU HAVE ANY CONVERSATION WITH
26 MR. MENENDEZ WITH RESPECT TO WHAT WOULD OCCUR ON THE
27 FISHING TRIP?

28 A YES. I BRIEFED THE FAMILY ABOUT --

43005

1 MS. NAJERA: I'D OBJECT TO ANYTHING BEYOND

2 "YES" AS NONRESPONSIVE.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: WHAT WAS THE WEATHER LIKE

5 ON THAT PARTICULAR DAY?

6 A IT WAS -- IT WAS A WINDY, BRISK WIND,

7 COOL-WIND DAY.

8 Q EVEN THOUGH IT WAS SUMMER, WOULD YOU SAY

9 IT WAS A COLD DAY?

10 A YES, IT WAS A COLD DAY.

11 Q AND HOW WERE THE SEAS ON THAT PARTICULAR

12 DAY? WERE THEY CHOPPY? WERE THEY CALM?

13 A VERY CHOPPY.

14 Q WERE THERE ANY PROBLEMS WITH THE BOAT?

15 A YES, THERE WAS.

16 Q MECHANICALLY?

17 A YES, THERE WAS.

18 Q AND WHAT WAS THE PROBLEM WITH THE BOAT?

19 A ONE OF THE -- WELL, THE STEERING WAS

20 GONE, BASICALLY; AND FROM THE STEERING WHEEL -- AND I
21 HAD TO USE THE ENGINES TO STEER THE BOAT.
22 Q SO YOU WERE UNABLE TO MANEUVER THE BOAT
23 BY WHAT I'M CRUDELY DESCRIBING OR DEMONSTRATING IS A
24 STEERING WHEEL?
25 A THAT'S CORRECT.
26 Q DID IT HAVE A STEERING WHEEL?
27 A YES, IT DID.
28 Q AND THE -- THE PART THAT CONNECTS THE

43006

1 STEERING WHEEL TO, I GUESS IT'S A RUDDER, WAS
2 BROKEN?
3 A THE CABLE WAS BROKEN.
4 MR. CONN: OBJECTION. LEADING.
5 THE COURT: OVERRULED.
6 WHAT WAS YOUR ANSWER?
7 THE WITNESS: THE CABLE WAS BROKEN.
8 Q BY MR. LEVIN: SO YOU WERE ABLE TO
9 MANEUVER THE SHIP BY SOME OTHER MECHANICAL MEANS?
10 A THAT'S CORRECT.
11 Q SORT OF LIKE A THRUST DIFFERENTIAL; IS
12 THAT HOW YOU DID IT?
13 A YES, PUTTING ONE ENGINE IN AND OUT OF
14 GEAR AND VARYING THE SPEED OF THE ENGINES TO STEER

15 IT.

16 Q HOW DO YOU GO RIGHT AND LEFT?

17 A YOU PULL ONE OUT OF GEAR, MAYBE PUT IT
18 IN REVERSE TO TURN, DEPENDS ON HOW TIGHT YOUR TURN
19 IS, AND GIVE A LITTLE MORE GAS TO ONE ENGINE THAN
20 THE OTHER.

21 Q DOES THE OPERATION OF THE BOAT IN THAT
22 MANNER CAUSE IT TO BE, OH, LET'S SAY, MORE UNSTABLE
23 THAN IF YOU WERE ABLE TO USE THE TRADITIONAL WAY OF
24 STEERING IT WITH WHEEL AND RUDDER?

25 A IT'S NOT MORE UNSTABLE, NO.

26 Q IS IT JERKY?

27 A I WOULDN'T EVEN SAY IT'S JERKY. IT'S
28 NOT QUITE AS RESPONSIVE.

43007

1 Q DID YOU TELL THE MENENDEZ FAMILY THAT
2 THE ENGINE -- THAT THE STEERING CABLE WAS BROKEN?

3 A NO. I ACTUALLY DIDN'T FIND OUT MYSELF
4 UNTIL WE LEFT THE DOCK.

5 Q AND AS YOU LEFT THE DOCK WHERE WERE YOU
6 POSITIONED? IF YOU COULD -- IF YOU WANT TO USE THE
7 POINTER.

8 WHERE WERE YOU POSITIONED ON THE BOAT?

9 A I WAS UP ON THE FLY BRIDGE OF THE BOAT

10 AT THE STEERING CONTROLS.

11 Q AND WHERE WAS JOSE MENENDEZ?

12 A AS WE LEFT THE DOCK?

13 Q YES.

14 A AT THE POINT THAT WE LEFT THE DOCK I

15 COULDN'T EXACTLY TELL YA'.

16 Q WHERE WERE LYLE AND ERIK MENENDEZ?

17 A LIKE RIGHT AS WE WERE LEAVING THE DOCK,

18 I COULDN'T TELL YOU THAT EITHER.

19 Q AT SOME POINT IN TIME DID YOU SEE THEM

20 MOVE FORWARD?

21 A YES. WELL, PARDON ME, THAT'S NOT

22 NECESSARILY A TRUE ANSWER. I DIDN'T SEE THEM MOVE

23 FORWARD, BUT I DID NOTE THAT THEY WERE FORWARD. I

24 DON'T RECALL SEEING THEM MOVE FORWARD.

25 Q ALL RIGHT. DO YOU RECOGNIZE THESE

26 PICTURES THAT ARE OF YOUR BOAT WITH DETECTIVE

27 ZOELLER, THE BLOW-UPS?

28 A YES, I DO.

43008

1 Q AT SOME POINT IN TIME DID YOU SEE LYLE

2 AND ERIK MENENDEZ MOVE TO THE FRONT OF THE BOAT?

3 A YES, I DID.

4 Q AND COULD YOU --

5 A WELL, NO. I DIDN'T ACTUALLY -- I DON'T
6 RECALL -- I SAW THEM MOVE TO THE FRONT OF THE BOAT AT
7 DIFFERENT TIMES DURING THE EVENING. BUT THE INITIAL
8 MOVEMENT TO THE FRONT OF THE BOAT, I DON'T RECALL
9 WHEN IT OCCURRED.

10 Q BUT YOU SAW THEM AT THE FRONT OF THE
11 BOAT?

12 A YES, I DID.

13 Q WHERE IS THE FRONT OF THE BOAT? IS THAT
14 WHERE DETECTIVE ZOELLER IS STANDING?

15 A YEAH, THE BOW OF THE BOAT. AND LYLE AND
16 ERIK ACTUALLY HAD THEIR BACKS UP AGAINST THE WINDOW
17 OF THE BOAT.

18 Q NOW, IN THAT -- INSIDE THAT WINDOW AREA,
19 THAT'S THE LOWER CABIN?

20 A THAT'S CORRECT.

21 Q AND THE FLY BRIDGE IS UP ON TOP, KIND OF
22 EVEN WITH DETECTIVE ZOELLER'S SHOULDERS?

23 A YES, SIR.

24 Q THAT'S THE AREA YOU WERE IN?

25 A YES, SIR.

26 Q YOU MAY RESUME YOUR SEAT.

27 SO I TAKE IT THAT FROM YOUR POSITION YOU
28 COULD SEE BOTH LYLE AND ERIK MENENDEZ FROM THE FLY

1 BRIDGE DOWN ON TO THE BOW OF THE BOAT?

2 A YES, SIR.

3 Q DID YOU ALSO HAVE A VIEW OF THE BACK OF

4 THE BOAT OF WHERE JOSE MENENDEZ WAS?

5 A YES, I DID.

6 Q AND HOW -- HOW DOES ONE GET TO THE BOW OF

7 THE BOAT? IS THAT THROUGH THE SIDE AREA, THAT

8 SKINNY RAIL AREA?

9 A YES, SIR, THROUGH THE -- FROM THE GUNNEL

10 RIGHT HERE YOU CLIMB ALONG AND THERE'S HANDRAILS

11 ACROSS HERE. THAT'S A HANDRAIL RIGHT THERE. SO YOU

12 CLIMB AND HOLD THE HANDRAIL ACROSS THE SIDE.

13 Q THAT SKINNY LEDGE IS CALLED A GUNNEL?

14 A YES, SIR.

15 Q IS THERE ANY OTHER WAY TO GET UP TO THE

16 FRONT?

17 A OVER THE TOP OF THE FLY BRIDGE. BUT

18 THAT WAS BLOCKED OFF BY ME.

19 Q NOW, WHEN YOU GAVE THE MENENDEZ FAMILY A

20 TOUR OF THE BOAT, DID YOU TAKE THEM UP TO THAT

21 AREA?

22 A TO THE FLY BRIDGE?

23 Q NO, NOT TO THE FLY BRIDGE, BUT TO THE

24 BOW OF THE BOAT.

25 A NO, I DIDN'T.

26 Q AND SO YOU NEVER SHOWED THEM THAT

27 PARTICULAR AREA, WHERE THEY ENDED UP?

43010

1 Q THEY -- DO YOU KNOW HOW IT WAS THAT THEY
2 WERE ABLE TO FIND THAT AREA BY THEMSELVES?

3 A NO, I DON'T.

4 Q NOW, WHEN YOU LEFT THE HARBOR, DID
5 SOMETHING UNUSUAL HAPPEN WITH RESPECT TO ANOTHER
6 SHIP?

7 A YES.

8 Q WHAT WAS IT THAT HAPPENED?

9 A A LARGE PERSONAL YACHT CAME OUT OF THE --
10 CAME RUNNING DOWN THE HARBOR VERY FAST, LEAVING THE
11 SAME DIRECTION WE WERE, AND IT THREW A LARGE WAKE
12 TOWARDS OUR BOAT.

13 Q HOW LARGE A BOAT WAS THIS?

14 A OH, I'D ESTIMATE BETWEEN A 70- AND
15 90-FOOTER.

16 Q AND THIS WAVE THAT CAME OVER THE BOW OF
17 THE BOAT, WAS THAT AT A TIME WHEN LYLE AND ERIK
18 MENENDEZ WERE THERE?

19 A YES, IT WAS.

20 Q AND DID IT CAUSE THEM TO GET WET?

21 A YES, IT DID.

22 Q SOAKED?

23 A YES.

24 Q DID YOU LAUGH ABOUT THAT?

25 A YES, SIR.

26 Q WHY?

27 A WELL, I WAS JUST -- IT WAS JUST -- YOU

28 KNOW, THE WAY IT HAPPENED -- BECAUSE THEY WERE

43011

1 SITTING AT THE FRONT OF THE BOAT WITH THE WAKE

2 COMING, IT JUST WAS A --

3 Q DID IT HAVE ANYTHING TO DO WITH HOW,

4 FROM YOUR CONTACT WITH JOSE MENENDEZ, OF HOW YOU

5 VIEWED HIM AND HIS FAMILY?

6 MS. NAJERA: I'M GOING TO OBJECT AS LEADING.

7 THE COURT: SUSTAINED.

8 Q BY MR. LEVIN: DID YOU FEEL THAT IT WAS

9 FUNNY BECAUSE OF THE PARTICULAR TYPE OF FAMILY THAT

10 YOU WERE TAKING OUT ON THE CHARTER?

11 MS. NAJERA: OBJECTION. LEADING.

12 THE COURT: SUSTAINED.

13 Q BY MR. LEVIN: WAS THERE ANY OTHER

14 REASON YOU THOUGHT IT WAS FUNNY?

15 A OH, I GUESS BECAUSE -- PROBABLY BECAUSE

16 OF THE FAMILY'S POSITION, YOU KNOW, IT ADDS A LITTLE

17 HUMOR TO IT. IF IT WOULD HAVE BEEN A STAR IN THE

18 FRONT OF THE BOAT AND THE SAME THING WOULD HAVE
19 HAPPENED, YOU KIND OF LAUGH ABOUT IT.
20 Q AND WHEN YOU SAY THE FAMILY POSITION,
21 WHAT DO YOU MEAN MORE SPECIFICALLY?
22 A WELL, THEY'RE --
23 MS. NAJERA: I'M GOING TO OBJECT AS
24 IRRELEVANT.
25 THE COURT: SUSTAINED.
26 Q BY MR. LEVIN: HOW WOULD YOU DESCRIBE --
27 LET ME BACK UP FOR A SECOND.
28 DID YOU KNOW THE PURPOSE OF THIS

43012

1 PARTICULAR FISHING TRIP, WHY IT WAS ARRANGED?
2 A YES. I LEARNED THE PURPOSE OF THE
3 FISHING TRIP.
4 Q WHO TOLD YOU THE PURPOSE OF THE TRIP?
5 A JOSE.
6 Q WHAT DID HE TELL YOU?
7 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.
8 THE COURT: SUSTAINED.
9 Q BY MR. LEVIN: DID WHAT MR. MENENDEZ
10 TELL YOU THE PURPOSE OF THE TRIP WAS CAUSE YOU TO
11 ACT A CERTAIN WAY DURING THE TRIP?
12 IN OTHER WORDS, KNOWING THE PURPOSE OF

13 THE TRIP, CAUSED YOU THEN TO DO CERTAIN THINGS?

14 A YES.

15 MR. LEVIN: YOUR HONOR, I'M NOT OFFERING IT

16 FOR HEARSAY, BUT RATHER FOR STATE OF MIND.

17 THE COURT: WHOSE STATE OF MIND?

18 MR. LEVIN: MR. ANDERSON'S.

19 MS. NAJERA: OBJECTION. IRRELEVANT.

20 THE COURT: IT'S IRRELEVANT. SUSTAINED.

21 Q BY MR. LEVIN: DID YOU ATTEMPT TO

22 EXPLAIN WHAT WAS INVOLVED IN A SHARK-FISHING TRIP TO

23 MR. MENENDEZ?

24 A YES, I DID.

25 Q AND WHAT KNOWLEDGE, IF ANY, DID YOU

26 UNDERSTAND THAT HE HAD WITH RESPECT TO SHARK-FISHING

27 TRIPS?

28 MS. NAJERA: OBJECTION. CALLS FOR

43013

1 SPECULATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: TO MY KNOWLEDGE, HE DIDN'T HAVE

4 ANY EXPERIENCE SHARK FISHING.

5 Q BY MR. LEVIN: AND TO YOUR -- FROM WHAT

6 YOU KNEW DID HE WANT TO LEARN ABOUT IT?

7 MS. NAJERA: I'M GOING TO OBJECT. IT'S GOING

8 TO CALL FOR HEARSAY AND SPECULATION.

9 THE COURT: YOU CAN ANSWER THAT YES OR NO.

10 THE WITNESS: YES.

11 Q BY MR. LEVIN: AND DID MR. MENENDEZ SEEM
12 INTERESTED IN LEARNING ABOUT SHARK FISHING FROM
13 YOU?

14 A AT TIMES.

15 Q AND WAS THIS AFTER YOU WERE OUT ON THE
16 TRIP FOR A PERIOD OF TIME?

17 A I'M SORRY. DID HE SEEM INTERESTED AFTER
18 WE WERE --

19 Q LET ME ASK YOU SOMETHING MORE DIRECTLY.
20 AT SOME POINT IN TIME YOU CAUGHT A
21 SHARK?

22 A THAT'S CORRECT.

23 Q DID YOU CALL MR. MENENDEZ OVER?

24 A YES.

25 Q AND DID YOU CALL HIM OVER FOR SOME
26 SPECIFIC PURPOSE?

27 A WELL, YES. HE -- HE --

28 MS. NAJERA: I'M GOING TO OBJECT TO ANYTHING

43014

1 AFTER "YES" AS NONRESPONSIVE.

2 THE COURT: SUSTAINED.

3 Q BY MR. LEVIN: DID YOU BEGIN TO EXPLAIN
4 TO MR. MENENDEZ HOW OR WHAT IT WAS YOU WERE DOING
5 WITH RESPECT TO LANDING THIS PARTICULAR SHARK?

6 A YES.

7 Q AND WHAT DID HE SAY BACK TO YOU?

8 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.

9 THE COURT: SUSTAINED.

10 Q BY MR. LEVIN: DID YOU FEEL THAT
11 MR. MENENDEZ WAS SOMEWHAT ARROGANT?

12 MS. NAJERA: OBJECTION. CALLS FOR
13 SPECULATION AND IRRELEVANT.

14 THE COURT: SUSTAINED.

15 Q BY MR. LEVIN: LET ME BACK UP TO WHERE
16 IT WAS YOU WENT AND HOW IT WAS YOU ACTUALLY GOT TO
17 THE LOCATION WHERE YOU WERE FISHING FOR SHARKS.

18 DID YOU FIRST GO OUT TO CATCH BAIT?

19 A THAT'S CORRECT.

20 Q AND WHAT KIND OF BAIT IS IT THAT YOU
21 CATCH?

22 A MACKEREL.

23 Q SO THE FIRST THING THAT YOU DO IS FIND A
24 LOCATION TO FISH FOR FRESH BAIT FOR THE SHARKS?

25 A THAT'S CORRECT.

26 Q WHY IS IT THAT YOU WANT FRESH BAIT AND
27 NOT JUST THROW FROZEN FOOD OVER?

28 A THE FRESH MACKEREL PUMP OUT THEIR BLOOD

1 SLOWLY AND IT ATTRACTS THE SHARKS BETTER.

2 Q SO YOU GO TO A SEPARATE LOCATION FOR THE
3 MACKEREL?

4 A YES.

5 Q DID YOU DO THAT IN THIS CASE?

6 A YES, WE DID.

7 Q DID YOU FISH FOR THE MACKEREL?

8 A YES, WE DID.

9 Q DID YOU FIND MACKEREL, CATCH THEM?

10 A YES.

11 Q WHO WAS IT WHO CAUGHT THE MACKEREL?

12 A THE DECKHAND.

13 Q WAS THIS SOMEWHAT UNUSUAL IN THE WAY IN
14 WHICH THESE SHARK-FISHING TRIPS GO IN YOUR PAST
15 EXPERIENCE?

16 MS. NAJERA: OBJECTION. IRRELEVANT.

17 THE COURT: OVERRULED.

18 YOU MAY ANSWER THE QUESTION.

19 THE WITNESS: YES, IT WAS.

20 Q BY MR. LEVIN: WHY WAS IT UNUSUAL?

21 A USUALLY THE CHARTERS CATCH THE BAIT FISH
22 OR...

23 Q WHEN YOU SAY THE CHARTERS, YOU'RE
24 TALKING ABOUT THE PEOPLE WHO WOULD BE LIKE JOSE
25 MENENDEZ, KITTY MENENDEZ, LYLE AND ERIK MENENDEZ?

26 A THAT'S CORRECT.

27 Q AND WOULD YOU SAY THAT THEY DID NOT
28 APPEAR INTERESTED IN THAT PARTICULAR FUNCTION?

43016

1 MS. NAJERA: OBJECTION. CALLS FOR
2 SPECULATION.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: NOW, WHEN WAS THE
5 MACKEREL FISHING IN RELATIONSHIP TO WHEN THE BOW GOT
6 SOAKED WITH THE WAVE?

7 A APPROXIMATELY A HALF HOUR AFTERWARDS.

8 Q WHERE DID LYLE AND ERIK MENENDEZ REMAIN
9 OR GO FROM THE TIME THAT THEY GOT SOAKED WITH THE
10 WAVE?

11 A THROUGH THE WHOLE CHARTER OR --

12 Q NO. AT THAT PARTICULAR TIME.

13 A THEY STAYED ON THE BOW OF THE BOAT.

14 Q AND HOW WOULD YOU DESCRIBE THE WEATHER
15 CONDITIONS AT THAT PARTICULAR TIME?

16 A COLD.

17 Q WERE YOU COLD?

18 A YES.

19 Q AND AT THAT TIME THEY'RE STILL DRESSED
20 IN SHORTS?

21 A YES.

22 Q WHAT KIND OF SHIRTS?
23 A I BELIEVE POLO SHIRTS, BUT I DON'T
24 REMEMBER EXACTLY.
25 Q WERE THEY HUDDLED TOGETHER?
26 A YES.
27 Q DID IT APPEAR TO YOU THEY WERE HUDDLED
28 TOGETHER TO KEEP WARM?

43017

1 A YES.
2 MS. NAJERA: OBJECTION. CALLS FOR
3 SPECULATION AS TO WHY THEY WERE HUDDLED TOGETHER.
4 THE COURT: OVERRULED. THE ANSWER WILL
5 STAND.
6 Q BY MR. LEVIN: WOULD YOU DESCRIBE THE
7 FAMILY OUTING AS SOMEWHAT -- OR THIS FAMILY OUTING AS
8 SOMEWHAT GLOOMY?
9 MS. NAJERA: OBJECTION. CALLS FOR
10 SPECULATION.
11 THE COURT: SUSTAINED.
12 Q BY MR. LEVIN: WOULD YOU DESCRIBE -- OR
13 HAVE YOU DESCRIBED MR. MENENDEZ BEFORE AS BEING
14 SNOOTY?
15 MS. NAJERA: I'M GOING TO OBJECT AS HEARSAY
16 AND IRRELEVANT.

17 THE COURT: SUSTAINED.

18 MS. NAJERA: IT'S NOT A PRIOR --

19 Q BY MR. LEVIN: DID YOU SEE A LOT OF

20 INTERACTION BETWEEN LYLE AND ERIK MENENDEZ AND JOSE

21 MENENDEZ?

22 A NO. THERE WAS VERY LITTLE INTERACTION.

23 Q DID THAT SEEM SOMEWHAT UNUSUAL TO YOU?

24 MS. NAJERA: OBJECTION. CALLS FOR

25 SPECULATION.

26 THE COURT: SUSTAINED.

27 Q BY MR. LEVIN: AFTER YOU -- LET ME ASK

28 YOU: WHEN YOU GO FOR THE MACKEREL, DO YOU HAVE TO

43018

1 ANCHOR?

2 A NO.

3 Q AND WHO WAS IT THAT'S OPERATING THE BOAT

4 AT THAT TIME?

5 A I'M OPERATING THE BOAT.

6 Q SO THE BOAT IS JUST KIND OF FLOATING?

7 DO YOU TURN THE ENGINES OFF?

8 A WE'RE'S TROLLING FOR THE MACKEREL.

9 Q SO ARE YOU ABLE TO LEAVE THE FLY BRIDGE

10 AREA AND GO BACK TO THE AREA OF WHERE DETECTIVE

11 ZOELLER IS STANDING IN THE LOWER PHOTOGRAPH?

12 A YES, I DID DO THAT.

13 Q WHAT DO YOU CALL THAT AREA WHERE

14 DETECTIVE ZOELLER IS STANDING IN THE LOWER BLOW-UP,

15 I BELIEVE IT'S 337?

16 A THAT'S THE DECK.

17 Q THAT'S THE DECK?

18 WHERE ARE THE FISHING POLES IN

19 RELATIONSHIP TO WHERE DETECTIVE ZOELLER IS?

20 A ON THE -- THE POLE HOLDERS ARE ON THE

21 GUNNEL OF THE BOAT.

22 Q ON BOTH SIDES?

23 A ON BOTH SIDES. THERE'S ONE IN THE

24 CENTER, BUT WE WEREN'T USING IT.

25 Q HOW MANY FISHING POLES DID YOU SET OUT

26 FOR THIS PARTICULAR CHARTER?

27 A I DON'T RECALL EXACTLY.

28 Q WOULD IT BE MORE THAN ONE?

43019

1 A YES.

2 Q AND IS THAT BECAUSE IN CASE THE CHARTERS

3 -- IN THIS CASE MR. MENENDEZ AND MRS. MENENDEZ AND

4 LYLE AND ERIK MENENDEZ -- WANT TO MAN THE FISHING

5 POLES THEY CAN?

6 A YES.

7 MS. NAJERA: OBJECTION. LEADING.

8 THE COURT: OVERRULED.

9 Q BY MR. LEVIN: HOW LONG WOULD YOU SAY
10 THE ENTIRE TRIP LASTED?

11 A FROM THE TIME WE LEFT DOCK UNTIL THE
12 TIME WE --

13 Q CAME BACK.

14 A -- CAME BACK? OH, ABOUT SIX AND A HALF
15 HOURS.

16 Q AND DURING THAT TIME YOU WERE CLOSE
17 ENOUGH IN TERMS OF LOCATION TO SEE JOSE MENENDEZ,
18 MARY LOUISE MENENDEZ, LYLE AND ERIK MENENDEZ, PRETTY
19 MUCH THROUGHOUT THE TRIP; IS THAT CORRECT?

20 A EXCEPT FOR KITTY MENENDEZ WHO WAS DOWN
21 BELOW AND SHE WASN'T VISIBLE TO ME MOST OF THE
22 TRIP.

23 Q AND THAT'S BECAUSE YOU WERE UP ON THE
24 FLY BRIDGE?

25 A THAT'S CORRECT.

26 Q AND THAT WOULD BE BELOW YOUR FEET?

27 A YES.

28 Q YOU DON'T KNOW WHAT SHE WAS DOING WHEN

1 SHE WAS IN THE CABIN?

2 A NO.

3 Q OTHER THAN THE CABIN AREA, WERE YOU ABLE
4 TO SEE THE REST OF THE BOAT?

5 A YES.

6 Q SO YOU'RE NOT ABLE TO SEE KITTY MENENDEZ
7 ON THE DECK OR ON THE BOW, SO YOU ASSUME THAT SHE'S
8 DOWN BELOW IN THE CABIN?

9 A YES.

10 Q WAS THAT PRETTY MUCH THROUGH THE ENTIRE
11 TRIP?

12 A YES, IT WAS.

13 Q HOW LONG DID YOU FISH FOR MACKEREL?

14 A PROBABLY JUST ABOUT A HALF AN HOUR.

15 Q AND FOLLOWING CATCHING THE MACKEREL,
16 WHERE DID YOU GO?

17 A WE WENT TO "THE DOMINATOR."

18 Q THAT'S A -- SORRY. GO AHEAD.

19 A IT'S A SUNKEN VESSEL OFF OF REDONDO.

20 Q NEAR REDONDO BEACH PIER?

21 A NEAR THE FIRST POINT PAST THE PIER.

22 Q IS THAT NEAR PALACE VERDES PENINSULA?

23 A YES.

24 Q IS THIS A COMMON SHARK-FISHING SPOT?

25 A YES, IT IS.

26 Q AND I TAKE IT AT THAT POINT IN TIME YOU
27 BEGAN FISHING FOR SHARKS?

28 A YES.

1 Q DO YOU HAVE TO USE DIFFERENT LINES THAN
2 YOU DO FOR THE MACKEREL?

3 A YES.

4 Q AND SO ARE THESE DIFFERENT POLES THAT
5 ARE ALREADY SET UP?

6 A YES. WE HAD POLES SET UP FOR BOTH THE
7 SHARK-FISHING AND THE MACKEREL AND -- YEAH, THEY'RE
8 DIFFERENT SET-UPS ALTOGETHER.

9 Q SO AT THAT POINT IN TIME YOU SET OUT THE
10 SHARK FISHING POLES, AND DID YOU EXPLAIN TO
11 MR. MENENDEZ WHAT IT WAS YOU WERE GOING TO DO?

12 A YES.

13 Q AND DID HE SAY ANYTHING WITH RESPECT TO
14 THAT?

15 A I DON'T RECALL.

16 Q ALL RIGHT. HOW MANY SHARKS DID YOU
17 CATCH?

18 A I BELIEVE WE CAUGHT THREE. TWO OR
19 THREE. I'M NOT SURE WHICH.

20 Q THE INCIDENT THAT -- THIS PARTICULAR
21 INCIDENT THAT YOU DESCRIBED LASTED FOR ABOUT SIX AND
22 A HALF HOURS.

23 WOULD YOU SAY THAT THE DEMEANOR OF THE
24 PARTIES PRETTY MUCH STAYED THE SAME THROUGHOUT THE
25 WHOLE TRIP?

26 A NO. THERE WERE CHANGES. I MEAN, I -- IN
27 GENERAL THEY STAYED THE SAME, BUT THERE WERE TIMES
28 WHEN THE DEMEANOR CHANGED.

43022

1 Q AND WHAT DID IT CHANGE FROM AND WHAT DID
2 IT CHANGE TO?

3 A I THINK WHEN WE CAUGHT THE SHARKS
4 EVERYONE BECAME EXCITED AND I'D SAY WENT FROM QUIET
5 TO BEING MORE TALKATIVE.

6 Q AND WHEN YOU SAY QUIET, DID IT APPEAR TO
7 YOU THAT THEY WEREN'T HAVING A VERY GOOD TIME?

8 MS. NAJERA: OBJECTION. LEADING AND
9 SUGGESTIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. LEVIN: WHAT DO YOU MEAN WHEN YOU
12 SAY THAT THEY APPEARED TO BE QUIET? HOW WOULD YOU
13 DESCRIBE, OH, LET'S SAY, LYLE AND ERIK MENENDEZ'
14 DEMEANOR BEFORE THE SHARK WAS CAUGHT?

15 A I BELIEVE I'D DESCRIBE IT AS STOIC. NOT
16 TALKATIVE. YOU KNOW, TO THEMSELVES, I GUESS.

17 MR. LEVIN: THANK YOU. I HAVE NOTHING
18 FURTHER.

19 THE COURT: CROSS-EXAMINATION.

20

21 CROSS-EXAMINATION

22 BY MS. NAJERA:

23 Q LET'S SEE. MR. ANDERSON, NORMALLY DO
24 YOU TAKE THESE SHARK-FISHING CHARTERS AT TWO
25 PARTICULAR TIMES OF THE DAY?

26 A YES.

27 Q AND IS IT USUALLY VERY, VERY EARLY IN
28 THE MORNING, ABOUT THREE OR FOUR IN THE MORNING, OR

43023

1 IN THE EVENING AROUND 6:00?

2 A YES, THAT'S CORRECT.

3 Q AND DID THE TIME THAT YOU PICKED TO GO
4 OUT WITH THE MENENDEZ FAMILY, WAS THAT KIND OF A
5 COMPROMISE TO EVERYONE'S SCHEDULE?

6 A YES, IT WAS.

7 Q AND WAS IT BETTER TO LEAVE AT 4:30,
8 WHICH IS CLOSER TO 6:00, THAN AT 3:00?

9 A OH, YES. YES.

10 Q SO THE TIME THAT YOU LEFT WAS A BETTER
11 TIME TO LEAVE TO DO THE PARTICULAR KIND OF FUNCTION,
12 THE SHARK FISHING THAT YOU WERE GOING TO DO?

13 A A BETTER TIME FOR THE SHARK FISHING.

14 Q AND WHEN YOU -- WHEN THE MENENDEZ FAMILY
15 ARRIVED, YOU MET THEM ON THE DOCK; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q AND DID YOU INTRODUCE YOURSELF TO THEM?

18 A YES, I DID.

19 Q AND WERE YOU -- DID ONE MEMBER OF THE

20 FAMILY TAKE IT UPON THEMSELVES TO INTRODUCE

21 EVERYBODY?

22 A I DON'T BELIEVE SO. NOT TO MY

23 KNOWLEDGE.

24 Q THEN IS IT FAIR TO SAY --

25 A MY MEMORY.

26 Q SORRY. IS IT FAIR TO SAY EVERYBODY KIND

27 OF CAME AND INTRODUCED THEMSELVES?

28 A GOSH, I REALLY DON'T REMEMBER OFFHAND

43024

1 HOW THAT PART OF THE INTRODUCTION WENT.

2 Q AT SOME POINT YOU WERE INTRODUCED,

3 THOUGH, TO MRS. MENENDEZ; IS THAT RIGHT?

4 A YES.

5 Q AND YOU HAD SOME CONVERSATIONS WITH HER;

6 IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q THE TWO OF YOU CHATTED FOR A PERIOD OF

9 TIME; IS THAT RIGHT?

10 A SHORT PERIOD OF TIME, YES.

11 Q AND DID SHE SEEM LIKE A PLEASANT WOMAN?

12 A I DON'T KNOW.

13 Q WAS SHE PLEASANT AND POLITE TO YOU?

14 MR. LEVIN: OBJECTION. WITNESS DOESN'T HAVE

15 PERSONAL KNOWLEDGE. ALSO VAGUE.

16 THE COURT: WELL, IT IS VAGUE.

17 Q BY MS. NAJERA: WHEN YOU -- WELL, YOU HAD

18 A SHORT CONVERSATION WITH MRS. MENENDEZ; IS THAT

19 RIGHT?

20 A THAT'S CORRECT.

21 Q DID YOU HAVE -- DID YOU HAVE ANY

22 CONVERSATION WITH MR. MENENDEZ?

23 A YES.

24 Q CHAT WITH HIM FOR A LITTLE WHILE OUT ON

25 THE DOCK?

26 A NOT REALLY ON THE DOCK, JUST, ACTUALLY,

27 AS HE GOT ON THE BOAT WE TALKED ABOUT -- THAT'S WHEN

28 I BELIEVE HE TOLD ME WHY HE WAS -- WANTED TO GO ON

43025

1 THE SHARK-FISHING CHARTER.

2 Q NOW, BEFORE THE -- YOU ALL WENT OUT ON

3 THE BOAT, DID YOU SEND THEM TO GO GET A FISHING

4 LICENSE?

5 A YES, YES, I DID.

6 Q AND DID YOU SEND THE WHOLE FAMILY OFF TO
7 GET FISHING LICENSES?

8 A THAT'S RIGHT, YES. FORGOT ABOUT THAT
9 TILL NOW.

10 Q DID THEY ALL GO OFF TOGETHER TO GET
11 THEIR APPROPRIATE PAPERWORK AND FISHING LICENSES?

12 A YES.

13 Q AND AFTER THAT THEY CAME BACK ON BOAT,
14 ON BOARD THE BOAT, AND YOU GAVE THEM AN ORIENTATION
15 OF THE BOAT; IS THAT RIGHT?

16 A YES.

17 Q WHEN YOU WERE GIVING THE ORIENTATION OF
18 THE BOAT, DID MRS. MENENDEZ PAY ATTENTION?

19 MR. LEVIN: OBJECTION. CALLS FOR
20 SPECULATION.

21 THE COURT: SUSTAINED.

22 Q BY MS. NAJERA: WHEN YOU WERE GIVING THE
23 ORIENTATION OF THE BOAT, WERE YOU GIVING IT TO
24 EVERYBODY IN THE FAMILY?

25 A YES, I WAS.

26 Q DID THE DEFENDANTS APPEAR TO BE BORED
27 WITH WHAT YOU WERE SAYING?

28 MR. LEVIN: OBJECTION. CALLS FOR

1 SPECULATION.

2 THE COURT: SUSTAINED.

3 Q BY MS. NAJERA: AFTER YOU GAVE THEM THE
4 ORIENTATION OF THE BOAT, THE LITTLE STATEMENT ABOUT
5 WHAT YOU'D BE DOING, EVERYBODY GOT ON BOARD THE
6 BOAT, I TAKE IT?

7 A ACTUALLY, THEY WERE ON THE BOAT WHILE I
8 WAS DOING THIS. SO I COULD SHOW THEM WHERE THE
9 SAFETY EQUIPMENT WAS AND THE BATHROOM.

10 Q AND HOW LONG BEFORE YOU ACTUALLY TOOK
11 OFF WERE THE DEFENDANTS IN THE BACK OF THE BOAT
12 BEFORE THEY WENT TO THE FRONT OF THE BOAT?

13 A I DON'T RECALL ACTUALLY AT WHAT POINT
14 THEY WENT TO THE FRONT OF THE BOAT. THEY COULD HAVE
15 DONE IT BEFORE WE LEFT DOCK OR RIGHT AFTERWARDS, BUT
16 IT WASN'T -- IT WAS VERY -- YOU KNOW, I SAW THEM AT
17 THE BOW OF THE BOAT A VERY SHORT TIME AFTER WE LEFT
18 THE DOCK.

19 Q SO WHEN YOU SAW THEM IN THE STERN OF THE
20 BOAT BEFORE THEY LEFT THE BOAT, AT THAT TIME WHEN
21 YOU SPOKE TO THEM BEFORE YOU STARTED UP AND
22 EVERYTHING, DID THE DEFENDANT, LYLE MENENDEZ, SEEM
23 INTERESTED IN WHAT YOU WERE SAYING OR DID HE APPEAR
24 NOT TO BE INTERESTED?

25 MR. LEVIN: OBJECTION. CALLS FOR
26 SPECULATION.

27 THE COURT: SUSTAINED.

28 Q BY MS. NAJERA: WELL, IS IT FAIR TO SAY

1 THAT HE DID NOT APPEAR AT THAT TIME PARTICULARLY
2 ANXIOUS?

3 MR. LEVIN: OBJECTION. VAGUE.

4 THE COURT: SUSTAINED.

5 Q BY MS. NAJERA: YOU SAID AT THE START OF
6 THE TRIP THAT YOU THOUGHT THAT THE DEFENDANTS WERE
7 QUIET; IS THAT RIGHT?

8 A I'M SORRY. AT THE START OF THE TRIP?

9 Q RIGHT. YOU SAID THAT THEIR DEMEANOR WAS
10 QUIET; IS THAT RIGHT?

11 A YES, THEY WERE QUIET.

12 Q AND YOU SAID THAT YOU FELT THAT THEY
13 WERE STOIC; IS THAT RIGHT?

14 A YES.

15 Q BY THAT YOU MEAN THAT THEY WEREN'T
16 TALKING TO ANYBODY; IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q AND, IN FACT, THEY WERE BASICALLY
19 SNUBBING EVERYBODY; IS THAT RIGHT?

20 MR. LEVIN: OBJECTION, YOUR HONOR. THAT'S
21 VAGUE.

22 THE COURT: SUSTAINED. CALLS FOR A
23 CONCLUSION ON THE PART OF THE WITNESS.

24 Q BY MS. NAJERA: WERE THEY ACTING LIKE
25 THEY WERE ONLY INTERESTED IN TALKING TO EACH OTHER?
26 MR. LEVIN: OBJECTION. VAGUE. ALSO CALLS
27 FOR A CONCLUSION.
28 THE COURT: SUSTAINED.

43028

1 Q BY MS. NAJERA: THE DEFENDANTS AT
2 SOME POINT WENT TO THE FRONT OF THE BOAT; IS THAT
3 RIGHT?

4 A THAT'S CORRECT.

5 Q AND THEY WERE BY THEMSELVES IN THE FRONT
6 OF THE BOAT; IS THAT RIGHT?

7 A YES.

8 Q AND THEY DIDN'T APPEAR AT THAT TIME TO
9 BE PARTICULARLY INTERESTED IN FISHING; IS THAT
10 RIGHT?

11 MR. LEVIN: OBJECTION. VAGUE. ALSO
12 AMBIGUOUS.

13 THE COURT: OVERRULED ON THOSE GROUNDS.

14 MR. LEVIN: CALLS FOR A CONCLUSION AND
15 SPECULATION.

16 THE COURT: SUSTAINED.

17 Q BY MS. NAJERA: NOW, SOMETIME AFTER
18 EVERYONE GOT -- AFTER THE DEFENDANTS GOT WET, GOT

19 SOAKED IN THE FRONT OF THE BOAT, YOU SAW THE
20 DEFENDANT, ERIK MENENDEZ, LEAVE THE FRONT OF THE
21 BOAT; IS THAT RIGHT?

22 A YES.

23 Q AND HE -- DID HE GO UP TO THAT FLYWHEEL
24 AREA OR FLY BRIDGE AREA?

25 A NO, HE DIDN'T.

26 Q DID HE GO UP PARTIALLY TO LOOK UP THERE?

27 A PARDON ME. AT DIFFERENT TIMES DURING
28 THE NIGHT HE DID. IF YOU'RE TALKING RIGHT AFTER HE

43029

1 GOT WET, WITHIN A SHORT TIME FRAME, NO, HE DIDN'T.

2 Q WHAT I'M SAYING IS SOMETIME AFTER THEY
3 GOT WET, TO PUT IT INTO A TIME FRAME, TIME AFTER --

4 A SHORTLY AFTER THEY GOT WET, NO, HE DID
5 NOT WALK UP TO THE FLY BRIDGE AREA, BUT HE DID WALK
6 TO THE -- DOWN BELOW ACTUALLY.

7 Q HE WENT DOWN BELOW WHERE HIS MOM WAS?

8 A YES.

9 Q AND THEN SOMETIME DURING THE COURSE OF
10 THIS FISHING TRIP, HE WENT UP TO THE FLY BRIDGE
11 AREA; IS THAT RIGHT?

12 A THERE'S NORMALLY A LADDER -- CAN I POINT
13 IT OUT?

14 Q SURE.

15 A THERE'S NORMALLY A LADDER THAT WOULD BE
16 RIGHT HERE (POINTING). AND BECAUSE MY DECKHAND AND
17 MY GUEST WERE UP THERE, AND MYSELF, MOST OF THE
18 TRIP, WHEN PEOPLE WANTED TO TALK TO US, THEY'LL COME
19 UP AND THEY'LL LIKE STEP UP ON THE LADDER AND -- SO,
20 YES, HE DID THAT. IF HE ACTUALLY CAME UP TO THE FLY
21 BRIDGE, I DON'T THINK SO.

22 Q SO HE CAME UP TO -- DID HE APPEAR TO LOOK
23 UP AND SEE WHAT WAS GOING ON AND WHAT IT LOOKED
24 LIKE?

25 MR. LEVIN: OBJECTION. CALLS FOR
26 SPECULATION.

27 THE COURT: SUSTAINED.

28 Q BY MS. NAJERA: DID HE COME UP AND -- DID

43030

1 YOU OBSERVE HIM COMING UP THE LADDER AND LOOKING
2 AROUND UP THERE?

3 MR. LEVIN: OBJECTION. VAGUE, "LOOKING
4 AROUND."

5 THE COURT: OVERRULED.

6 THE WITNESS: I'M NOT SURE IF HE WAS --
7 ACTUALLY OBSERVED HIM LOOKING AROUND UP THERE, BUT
8 HE DID COME UP TO THE LADDER AND WE TALKED ON A

9 COUPLE OCCASIONS.

10 Q BY MS. NAJERA: AND WITH REGARDS TO THE
11 FISHING, AT SOME POINT WERE YOU PRESENT WHEN
12 MR. MENENDEZ CAUGHT A SHARK?

13 A YES.

14 Q AND WAS THAT AT THE POINT WHERE THE
15 DEFENDANT, ERIK MENENDEZ, CAME TO THE BACK OF THE
16 BOAT TO HELP HIM REEL IT IN?

17 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
18 EVIDENCE.

19 THE COURT: OVERRULED.

20 THE WITNESS: OH, ERIK CAME BACK TO THE REAR
21 OF THE BOAT TO WATCH AND I THINK -- WE HAD TO PULL UP
22 THE OTHER LINES THAT ARE THERE, SO I'M NOT SURE IF
23 HE ACTUALLY CAME TO WATCH HIM REEL IT IN OR WE
24 PROBABLY HAD HIM PULLING UP ONE OF THE OTHER LINES
25 THAT WERE IN THE WAY.

26 Q BY MS. NAJERA: SO HE WAS INVOLVED IN
27 THE CATCHING OF THIS FISH OR --

28 A WELL, I GUESS YOU WOULD SAY -- YEAH, I

43031

1 GUESS YOU WOULD SAY HE WAS INVOLVED IN THE CATCHING
2 OF IT; ANY TIME YOU'RE BACK THERE INVOLVED IN
3 PULLING SOMETHING, YOU'RE INVOLVED IN CATCHING THE

4 FISH.

5 Q DID YOU THINK POSSIBLY -- STRIKE THAT.

6 DO YOU RECALL THAT ERIK MENENDEZ WAS
7 ACTUALLY INVOLVED IN THE REELING UP OF A SHARK?

8 A YES.

9 Q AND JOSE MENENDEZ WAS PRESENT AT THE
10 TIME ERIK MENENDEZ WAS REELING UP THE SHARK; IS THAT
11 RIGHT?

12 A YES.

13 Q AND WAS THERE A LOT OF EXCITEMENT WITHIN
14 THE FAMILY WHEN THESE SHARKS WERE CAUGHT?

15 MR. LEVIN: OBJECTION. CALLS FOR
16 SPECULATION.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES, THERE WAS.

19 Q BY MS. NAJERA: EVERYONE SEEM PRETTY
20 HAPPY ABOUT IT?

21 A YES.

22 Q AND AT SOME POINT --

23 A I'D LIKE TO CHANGE THAT. I'D LIKE TO
24 SAY EXCITED, NOT HAPPY. I MEAN, YOU KNOW, IT'S HARD
25 FOR ME TO TELL IF PEOPLE WERE HAPPY, BUT THEY WERE
26 EXCITED ABOUT IT.

27 Q AND YOUR -- HAS SOMEONE TALKED TO YOU
28 ABOUT THIS CASE BEFORE TODAY IN THE -- HAVE ANY OF

1 THE DEFENSE ATTORNEYS TALKED TO YOU ABOUT THIS CASE
2 BEFORE TODAY?

3 A YES.

4 Q DID ANYONE SUGGEST TO YOU WHAT MIGHT BE
5 APPROPRIATE WAYS TO DESCRIBE CERTAIN EVENTS?

6 A NO. I THINK WE TALKED ABOUT MY OWN
7 DESCRIPTIONS OF THE EVENTS.

8 Q AND HAVE THERE BEEN SOME SUGGESTIONS OF
9 PERHAPS THERE'S A BETTER WAY TO DESCRIBE THE EVENTS
10 THAT YOU RELATED TO US?

11 A NO. ACTUALLY, AS YOU'RE ASKING THE
12 QUESTIONS I'M TRYING TO ANSWER AS HONESTLY AS I CAN
13 TO THE QUESTIONS THAT YOU'RE ASKING.

14 Q AND SOMETIME PREVIOUSLY YOU DESCRIBED
15 THIS AS AN EXCITING EVENT WHEN THE SHARK WAS PULLED
16 IN; IS THAT CORRECT?

17 A I'M PRETTY SURE I MUST HAVE, YES.

18 Q AND DO YOU RECALL EVER TELLING US THAT
19 YOU THOUGHT IT WAS A PRETTY HAPPY EVENT?

20 A I DON'T RECALL THAT. DID I -- DID I SAY
21 THAT?

22 Q I'M JUST ASKING YOU IF YOU --

23 A NO.

24 Q AT SOME POINT THERE WERE SEA LIONS THAT
25 YOU ALL SAW WHEN YOU WERE OUT ON THE FISHING BOAT
26 CHARTER?

27 A SEALS, YES.

43033

1 A I BELIEVE THEY WERE SEALS, BUT I CAN --

2 Q AND WHEN THE SEALS WERE SPOTTED, DID
3 EVERYONE COME TO THE BACK OF THE BOAT TO SEE THEM?

4 A YES.

5 Q BY EVERYONE, I'M TALKING ABOUT ERIK AND
6 LYLE MENENDEZ AND THEIR MOTHER AND FATHER.

7 A YES.

8 Q AND WERE YOU BACK THERE TOO?

9 A YES.

10 Q OR WERE YOU UP AT THE FLY BRIDGE?

11 A NO. WE WERE ACTUALLY ANCHORED AT THE
12 TIME. AND QUITE POSSIBLY I WAS UP AT THE FLY BRIDGE
13 PART OF THE TIME AND DOWN BELOW DURING OTHER PARTS
14 OF IT.

15 Q NOW, AT SOME POINT -- WELL, THE BOAT THAT
16 YOU WERE ON, MOTION PICTURE MARINE, THEY DO CHARTER
17 WORK FOR MOVIE COMPANIES, DON'T THEY?

18 A THAT'S CORRECT.

19 Q AND YOU'VE DONE SOME WORK, HAVE YOU NOT,
20 FOR DIFFERENT MOVIES; IS THAT RIGHT?

21 A YES.

22 Q AND YOU WERE INVOLVED WITH YOUR BOAT IN

23 WORKING ON THE MOVIE "TEQUILA SUNRISE"; IS THAT

24 CORRECT?

25 A THAT'S CORRECT.

26 Q AND AT SOME POINT IN THIS CHARTER DID

27 YOU MENTION THIS -- OR YOU DID MENTION THIS TO THE

28 DEFENDANT, ERIK MENENDEZ; IS THAT RIGHT?

43034

1 A YES.

2 Q AND HE APPEARED TO BE VERY INTERESTED IN

3 THIS SUBJECT; IS THAT RIGHT?

4 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.

5 THE COURT: SUSTAINED.

6 Q BY MS. NAJERA: DID HE WANT TO TALK TO

7 YOU ABOUT THIS?

8 MR. LEVIN: OBJECTION. CALLS FOR

9 SPECULATION, WHAT HE WANTED.

10 THE COURT: OVERRULED.

11 THE WITNESS: YES.

12 Q BY MS. NAJERA: DID HE APPEAR TO BE

13 EXCITED ABOUT THIS TOPIC?

14 MR. LEVIN: CALLS FOR SPECULATION.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES.

17 Q BY MS. NAJERA: WOULD YOU SAY VERY

18 EXCITED?

19 A I COULDN'T SAY THAT. I'D SAY VERY

20 INTERESTED. THEY --

21 Q AND WITH REGARDS TO THAT, AT SOME POINT

22 DURING THIS CONVERSATION THAT YOU WERE HAVING WITH

23 ERIK MENENDEZ ABOUT THE MOVIE "TEQUILA SUNRISE," DID

24 HE CALL LYLE MENENDEZ OVER TO TALK TO YOU ABOUT IT

25 AS WELL?

26 A YES.

27 Q DID THE DEFENDANT, LYLE MENENDEZ, COME

28 OVER AND TALK TO YOU ABOUT THIS MOVIE THAT YOU WERE

43035

1 INVOLVED IN?

2 A YES.

3 Q WHERE DID THIS CONVERSATION TAKE PLACE?

4 A THIS HAPPENED WHEN WE WERE SHARK FISHING

5 BY "THE DOMINATOR."

6 Q AND WHERE ON THE BOAT WHEN YOU WERE ALL

7 TALKING ABOUT THIS?

8 A OH, I BELIEVE I WAS -- I BELIEVE I WAS

9 STANDING RIGHT NEXT TO WHERE THE LADDER WOULD

10 NORMALLY BE, AND ERIK AND LYLE WERE PROBABLY

11 STANDING RIGHT NEXT TO ME. THEY WERE ON THE DECK

12 WHERE DETECTIVE ZOELLER IS OR STANDING ON THE

13 GUNNEL.

14 Q AND WHERE WAS JOSE MENENDEZ WHEN YOU
15 WERE HAVING THIS CONVERSATION?

16 A JOSE ACTUALLY HAD GONE DOWN BELOW DECK
17 AND THEN CAME BACK OUT WHEN WE WERE TALKING ABOUT
18 IT.

19 Q AND WHEN YOU WORKED ON THE MOVIE
20 "TEQUILA SUNRISE," YOU HAD AN OPPORTUNITY TO MEET
21 THE ACTOR RAUL JULIA; IS THAT RIGHT?

22 A YES.

23 MR. LEVIN: OBJECTION, YOUR HONOR. THAT'S
24 IRRELEVANT. MOTION TO STRIKE.

25 MS. NAJERA: IT'S FOUNDATIONAL.

26 THE COURT: LET'S GET TO WHAT IT WAS THAT
27 OCCURRED, IF ANYTHING.

28 Q BY MS. NAJERA: DID YOU DESCRIBE HIM AS

43036

1 A LARGE AND CONFIDENT MAN?

2 A SORRY. ARE WE TALKING ABOUT RAUL JULIA?

3 Q YES.

4 MR. LEVIN: OBJECTION. IRRELEVANT.

5 Q BY MS. NAJERA: DID YOU SIMILARLY
6 DESCRIBE JOSE MENENDEZ AS THE SAME TYPE OF PERSON?

7 MR. LEVIN: OBJECTION. IRRELEVANT.

8 THE COURT: OBJECTION SUSTAINED. THE
9 ANSWER'S STRICKEN. OBJECTION SUSTAINED TO THE
10 PREVIOUS QUESTION. THE ANSWER IS STRICKEN.

11 MR. LEVIN: AND ASK THAT THE JURY BE
12 ADMONISHED.

13 THE COURT: JURY'S ADMONISHED TO DISREGARD
14 THE PREVIOUS ANSWER TO THE PREVIOUS QUESTION.

15 Q BY MS. NAJERA: NOW, WHEN THE DEFENDANTS
16 WERE IN THE FRONT OF THE BOAT ON THE TIMES THAT THEY
17 WERE, I BELIEVE COUNSEL ASKED YOU -- YOU USED THE
18 TERM "HUDDLING TOGETHER"; IS THAT RIGHT? DO YOU
19 RECALL HIM USING THE TERM, FIRST OF ALL?

20 A I'M SORRY. DO I RECALL HIM USING THE
21 TERM?

22 Q RIGHT.

23 A NO.

24 Q OKAY. WOULD YOU DESCRIBE THE DEFENDANTS
25 IN THE FRONT OF THE BOAT AS STANDING TOGETHER IN THE
26 FRONT OF THE BOAT?

27 A NO. NO.

28 Q THEY WEREN'T STANDING TOGETHER IN THE

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1 FRONT OF THE BOAT?

2 A AT DIFFERENT TIMES OF THE NIGHT THEY

3 WERE, BUT IF YOU'RE TALKING ABOUT WHILE WE WERE
4 GOING OUT, NO, THEY WEREN'T STANDING TOGETHER IN
5 FRONT OF THE BOAT.

6 Q WERE THEY IN THE FRONT OF THE BOAT WHEN
7 YOU WERE GOING OUT?

8 A YES, THEY WERE.

9 Q WERE THEY LEANING UP AGAINST THE BACK
10 THERE?

11 A THAT'S CORRECT. THEY WERE LEANING
12 AGAINST THE GLASS.

13 Q WERE THEY JUST -- JUST HAD THEIR BACKS TO
14 THE GLASS AND THEY WERE JUST KIND OF LYING ACROSS
15 THE -- LET ME GO UP THERE -- WERE THEY BASICALLY JUST
16 KIND OF LYING AGAINST THE BACK HERE?

17 A YES.

18 Q SO THEIR HEADS CAME TO ABOUT (POINTING) --

19 A NO. IT DOESN'T COME UP THAT HIGH. WHEN
20 YOU SIT DOWN THERE YOU'RE ACTUALLY DOWN -- YOUR
21 HEAD'S DOWN BY THE TOP OF THE GLASS RIGHT THERE.
22 THERE'S A -- THERE'S A LEDGE THAT COMES OUT RIGHT
23 HERE. IT'S NOT VERY VISIBLE. THERE'S A LEDGE THAT
24 COMES OUT HERE, PROBABLY A FOOT AND A HALF LONG, SO
25 THEIR HEADS WOULD BE AROUND THE TOP OF THE GLASS
26 RIGHT HERE.

27 Q WERE THEY STANDING OR SITTING?

28 A NO. THEY WERE SITTING.

1 Q THEY WERE SITTING OUT IN THE FRONT OF
2 THE BOAT THERE?

3 A THAT'S CORRECT.

4 Q DOES THAT AFFORD THE PERSON OR PEOPLE
5 WHO ARE OUT HERE SOME PRIVACY FROM EVERYONE ELSE IN
6 THE BOAT?

7 MR. LEVIN: OBJECTION WITH RESPECT TO
8 PRIVACY. IT'S VAGUE AND ALSO CALLS FOR SPECULATION.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: YES, IT DOES.

12 Q BY MS. NAJERA: AND ALONG WITH AFFORDING
13 THE PEOPLE WHO ARE -- IN THIS CASE THE DEFENDANTS --
14 WHO ARE SITTING OUT IN FRONT OF THE BOAT SOME
15 PRIVACY, IS IT FAIR TO SAY YOU CAN'T HEAR ANY OF THE
16 CONVERSATIONS BETWEEN THE INDIVIDUALS WHO WOULD BE
17 IN THE FRONT OF THE BOAT THERE?

18 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: IT'S VERY DIFFICULT, ESPECIALLY
21 WITH THE ENGINES RUNNING.

22 MS. NAJERA: MAY I JUST HAVE A MOMENT, YOUR
23 HONOR?

24 I HAVE NOTHING FURTHER, YOUR HONOR.

25 THE COURT: REDIRECT.

27 REDIRECT EXAMINATION

28 BY MR. LEVIN:

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1 Q MR. ANDERSON, THAT AREA IN THE FRONT OF
2 THE BOAT ON THE BOW ALSO PROVIDES ONE WITH SOME
3 DEGREE OF SECURITY; ISN'T THAT TRUE?

4 MS. NAJERA: OBJECTION. CALLS FOR
5 SPECULATION AS TO WHAT SECURITY MEANS.

6 THE COURT: DO YOU UNDERSTAND WHAT THAT
7 MEANS?

8 THE WITNESS: YES, I DO.

9 THE COURT: OKAY. YOU CAN ANSWER THE
10 QUESTION.

11 THE WITNESS: YES, IT DOES.

12 Q BY MR. LEVIN: AND THAT'S BECAUSE THE
13 ONLY WAY TO GET BACK THERE WOULD BE TO WALK ON THE
14 NARROW GUNNEL TO GET TO THAT AREA, CORRECT?

15 A IS THAT WHY IT'S SECURE? NO.

16 Q OKAY. WHY IS IT SECURE?

17 A IT'S SECURE BECAUSE THAT'S A -- ALMOST
18 THE CENTER OF THE BOAT RIGHT THERE, JUST A COUPLE
19 FEET BACK AND CENTER LINE OF THE BOAT IS ALWAYS THE
20 MOST SECURE.

21 Q BUT THE ONLY WAY TO GET BACK THERE IS TO
22 WALK ON THAT NARROW GUNNEL ON EITHER SIDE OF THE
23 BOAT TO GET TO THE BOW?

24 A THAT'S RIGHT.

25 Q THAT'S NOT ADVISABLE WHEN THE BOAT IS
26 UNDER WAY IN CHOPPY SEAS.

27 A NO, IT'S NOT, NOT FOR -- NOT FOR
28 NON-EXPERIENCED BOATING PEOPLE, NO.

43040

1 Q WHEN LYLE AND ERIK MENENDEZ WENT UP TO
2 THE BOW OF THE BOAT, THEY DID IT BEFORE THE BOAT
3 TOOK OFF, CORRECT?

4 A I'M NOT SURE IF THEY DID IT -- I'M NOT
5 SURE WHEN EXACTLY THEY MOVED UP. BEFORE WE GOT OUT
6 OF THE HARBOR, SHORTLY AFTER WE WERE AWAY FROM THE
7 DOCK, I SAW THEM AT THE BOW OF THE BOAT.

8 Q NOW, COULD YOU SEE FROM THE FLY BRIDGE
9 DOWN TO, LET'S SAY, THE TOPS OF THEIR HEADS, FROM
10 YOUR POSITION?

11 A BASICALLY. THERE'S A LEDGE RIGHT THERE,
12 SO YOU KIND OF MISS JUST THE TOP OF THE HEAD,
13 DEPENDING ON WHETHER THEY'RE LEANING FORWARD OR NOT.

14 Q SO WHEN YOU'RE UP HERE ON THE FLY
15 BRIDGE, WHERE I'M POINTING WITH MY PEN, AND YOU'RE

16 LOOKING DOWN, ON THIS -- WITH THE POSITION OF THE
17 PEOPLE IN THIS PARTICULAR CASE, LYLE AND ERIK
18 MENENDEZ ARE SOMEWHAT UNDERNEATH THE LEDGE THAT I'M
19 POINTING AT?

20 A YES.

21 Q AND SO BECAUSE OF THE OBSTRUCTION YOU'RE
22 NOT ABLE TO SEE THEIR HEADS CLEARLY, CORRECT?

23 A THAT'S CORRECT.

24 Q SO YOU COULDN'T SEE WHETHER THEY WERE
25 TALKING OR WHAT THEY WERE DOING, COULD YOU?

26 MS. NAJERA: OBJECTION. LEADING.

27 THE COURT: OVERRULED.

28 THE WITNESS: LIKE I SAY, DEPENDING ON

43041

1 WHETHER THEY WERE LEANING FORWARD OR -- SOMETIMES YOU
2 COULD AND SOMETIMES YOU COULDN'T.

3 Q BY MR. LEVIN: BUT YOU'RE NOT PREPARED
4 TO TESTIFY, ARE YOU, THAT YOU SAW THEM, WHAT APPEAR
5 TO BE ENGAGING IN LENGTHY CONVERSATION, BUT YOU JUST
6 DON'T KNOW WHAT THEY SAID?

7 A NO.

8 MS. NAJERA: OBJECTION. LEADING.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: NO.

12 Q BY MR. LEVIN: YOU DON'T KNOW WHAT THEY
13 WERE DOING, CORRECT?

14 A (SHAKES HEAD FROM SIDE TO SIDE.)

15 Q DID YOU EVER SEE LYLE MENENDEZ HANDING
16 ANYTHING TO ERIK MENENDEZ OR DO YOU REMEMBER SEEING
17 THAT?

18 A I DON'T RECALL THAT, NO.

19 Q DID YOU EVER SEE ERIK MENENDEZ HANDING
20 ANYTHING TO LYLE MENENDEZ?

21 A I DON'T RECALL THAT.

22 Q DID YOU EVER SEE LYLE MENENDEZ HOLDING
23 UP A PIECE OF PAPER AND WRITING ON IT AND POINTING
24 TO THINGS IN?

25 A NO. I NEVER SAW THAT.

26 Q DID YOU EVER SEE ERIK MENENDEZ HOLDING
27 UP A PIECE OF PAPER AND WRITING ON IT AND POINTING
28 TO THINGS?

43042

1 A NO, I NEVER SAW THAT.

2 Q NOW, YOU -- MS. NAJERA ASKED YOU A
3 QUESTION ABOUT WHETHER OR NOT WE HAD DISCUSSED THIS
4 CASE.

5 I MET YOU THIS MORNING, DID I NOT?

6 A NOT FOR THE FIRST TIME, NO.

7 Q OKAY. BUT I'D SPOKEN TO YOU BEFORE, BUT

8 I MET YOU IN THE CAFETERIA THIS MORNING?

9 A YES.

10 Q AND OVER THE LUNCH HOUR I HAD AN

11 OPPORTUNITY TO GO TO LUNCH WITH YOU?

12 A THAT'S CORRECT.

13 Q WHO PAID FOR LUNCH?

14 A I DID. MYSELF FOR MY OWN.

15 Q YOU PAID FOR YOUR OWN LUNCH. I PAID FOR

16 MY OWN LUNCH, RIGHT?

17 A THAT'S CORRECT.

18 Q DID YOU DO THAT ON PURPOSE?

19 A YES.

20 Q WHY'D YOU DO THAT?

21 A BECAUSE I DIDN'T WANT TO BE BIASED IN

22 ANY WAY OR SEEM LIKE I WAS BEING BIASED IN ANY WAY.

23 Q DID I ASK YOU TO GO OVER THE TESTIMONY

24 THAT YOU HAD GIVEN THAT WAS REDUCED TO THESE

25 PARTICULAR PAGES?

26 A YES.

27 Q YOU READ YOUR TESTIMONY?

28 A YES.

1 Q DID I ALSO OFFER TO SHOW YOU WHAT WAS
2 PURPORTED TO BE POLICE REPORTS, SUMMARIES OF WHAT
3 YOU TOLD BOTH MR. CONN AND MS. NAJERA AND DETECTIVE
4 ZOELLER AND MR. KURIYAMA AND MS. FERRARO ON PRIOR
5 OCCASIONS?

6 A YES.

7 Q YOU'VE NEVER EVER TOLD THE PROSECUTORS,
8 DID YOU, THAT YOU THOUGHT THAT THIS WAS A HAPPY
9 TRIP, DID YOU?

10 MS. NAJERA: OBJECTION. LEADING.

11 THE COURT: REPHRASE THE QUESTION.

12 Q BY MR. LEVIN: YOU -- MS. NAJERA ASKED
13 YOU IF YOU HAD TOLD THEM BEFORE THAT YOU DESCRIBED
14 THIS AS A HAPPY TRIP.

15 MY QUESTION IS: ISN'T IT TRUE THAT YOU
16 NEVER TOLD MR. CONN, MS. NAJERA, DETECTIVE ZOELLER,
17 MS. FERRARO OR MR. KURIYAMA OR MYSELF, ANYONE, THAT
18 THIS WAS A HAPPY TRIP?

19 MS. NAJERA: MISSTATES THE TESTIMONY OF
20 WHETHER IT WAS A HAPPY TIME PICKING UP THE SHARKS
21 VERSUS A HAPPY TRIP.

22 THE COURT: ALL RIGHT. DON'T ARGUE THE
23 OBJECTION. THE PREVIOUS OBJECTION WAS THAT IT WAS
24 LEADING AND THE WAY YOU PHRASED IT IT'S STILL
25 LEADING.

26

27

28

1 Q DID YOU EVER DESCRIBE THIS BEFORE AS A
2 HAPPY TRIP, BEFORE EVEN TESTIFYING TODAY?

3 A NOT TO MY KNOWLEDGE, NO.

4 Q YOU HAVE DESCRIBED IT AS WEIRD, HAVE YOU
5 NOT?

6 A YES.

7 Q HAVE YOU ALSO DESCRIBED IT AS GLOOMY?

8 A YES.

9 Q AND AS THE ATTITUDE OF MR. MENENDEZ TO
10 BE STOIC?

11 MS. NAJERA: I'M GOING TO OBJECT AS TO THE
12 ATTITUDE OF MR. MENENDEZ.

13 MR. LEVIN: YES.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T RECALL SAYING THAT.

16 Q BY MR. LEVIN: YOU ALSO -- WELL, YOU
17 TESTIFIED TO THAT TODAY. DO YOU REMEMBER?

18 A WELL, I WAS TALKING ABOUT THE BOYS.

19 Q DID YOU EVER USE THE WORD SNOOTY?

20 A WELL, I'VE SEEN IT IN MY TESTIMONY WHERE
21 I USED THE WORD SNOOTY, OR I'VE SEEN IN THE POLICE
22 REPORT THE WORD SNOOTY. BUT I SAID BEFORE, I'M NOT
23 SURE IF I ACTUALLY USED THAT WORD OR IF IT WAS --

24 Q THAT WAS IN RELATIONSHIP TO YOUR

25 DESCRIPTION OF MR. MENENDEZ, CORRECT?

26 MS. NAJERA: I'M GOING TO OBJECT. MISSTATES
27 HIS STATEMENT, THAT IT WAS THE DEFENDANTS.

28 THE COURT: SUSTAINED.

43045

1 Q BY MR. LEVIN: WITH RESPECT TO THE TIME
2 THAT THIS CHARTER WAS SUPPOSED TO GO OUT ORIGINALLY,
3 WHAT TIME WAS THAT ON AUGUST THE 19TH, 1989, THAT
4 SATURDAY?

5 A GOSH, I DON'T REMEMBER THE ORIGINAL
6 TIME. I WANT TO SAY THEY WANTED TO START AT ELEVEN,
7 ELEVEN OR NOON.

8 Q WHAT'S THE BEST TIME TO GO OUT FISHING
9 FOR SHARKS?

10 A WELL, IF YOU LEFT THE DOCK ABOUT THREE
11 OR FOUR A.M. IN THE MORNING OR SIX P.M. AT NIGHT,
12 SOMEWHERE RIGHT AROUND THERE.

13 Q AND IT WAS ORIGINALLY SET FOR ELEVEN?

14 A I BELIEVE SO. I'M NOT REALLY POSITIVE
15 ABOUT THAT. IT WENT THROUGH A COUPLE OF TIME
16 CHANGES.

17 Q AND THE TIME CHANGES THAT IT WENT
18 THROUGH, WAS THAT AS A RESULT OF YOU CHANGING THE
19 TIME?

20 A IT WAS A RESULT OF MY RECOMMENDATIONS OF
21 WHEN TO GO.

22 Q BUT WERE YOU GETTING INSTRUCTIONS THAT
23 THE TIME WOULD CHANGE BECAUSE OF THE UNAVAILABILITY
24 OF MR. MENENDEZ OR THE FAMILY; IN OTHER WORDS, WERE
25 THEY CHANGING THE TIME OR WERE YOU CHANGING THE
26 TIME?

27 A NO. I BELIEVE I WAS TRYING TO CHANGE
28 THE TIME, BUT THERE ENDED UP BEING A COMPROMISE.

43046

1 I'M NOT SURE WHY THERE WAS.

2 Q OKAY. IT WAS ORIGINALLY SET FOR THE
3 MORNING THOUGH, CORRECT?

4 A YES, SIR.

5 Q NOW, MS. NAJERA ASKED YOU BEFORE ABOUT
6 THE FIRST MOMENT WHEN THE PEOPLE CAME UP, THE
7 MENENDEZES CAME UP, AND SHE WAS SUGGESTING THAT --
8 OR AT LEAST ASKING THE QUESTION -- EVERYBODY
9 INTRODUCED THEMSELVES.

10 THAT'S NOT WHAT HAPPENED --

11 MS. NAJERA: OBJECTION. LEADING.

12 THE COURT: SUSTAINED.

13 Q BY MR. LEVIN: DID EVERYONE INTRODUCE
14 THEMSELVES?

15 A I DON'T REMEMBER HOW I ACTUALLY WAS
16 INTRODUCED TO THE MEMBERS OF THE FAMILY.
17 Q WAS -- DID MRS. MENENDEZ EXPRESS SURPRISE
18 THAT MORE -- THAT THERE WERE MORE PEOPLE ON THE BOAT
19 THAN YOURSELF?
20 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.
21 THE COURT: SUSTAINED.
22 MS. ABRAMSON: YOUR HONOR, MAY WE APPROACH?
23 THE COURT: NO.
24 MR. LEVIN: YOUR HONOR, THIS PARTICULAR
25 EVIDENCE IS OFFERED FOR ERIK MENENDEZ' STATE OF
26 MIND.
27 THE COURT: WHICH, THIS LAST QUESTION?
28 MR. LEVIN: THIS AREA THAT I WISH TO GO INTO.

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1 THE COURT: THE LAST QUESTION YOU SAID OR
2 SOMETHING ELSE?
3 MR. LEVIN: THIS LAST QUESTION.
4 THE COURT: IS THERE AN OFFER OF PROOF AS TO
5 WHETHER THIS IS SOMETHING THAT'S GOING TO BE PROVED
6 BY SOME OTHER EVIDENCE?
7 MR. LEVIN: YES.
8 THE COURT: OKAY. THE OBJECTION'S
9 OVERRULED. IT'S NOT BEING RECEIVED FOR THE TRUTH OF

10 ANYTHING THAT'S BEING SAID, ONLY WHAT WAS SAID; NOT

11 A CONCLUSION, BUT JUST WHAT WAS SAID.

12 Q BY MR. LEVIN: MR. ANDERSON, I WANT TO

13 DIRECT YOUR ATTENTION BACK -- THIS WILL BE THE LAST

14 AREA I GO INTO -- BUT DIRECTING YOUR ATTENTION TO THE

15 TIME WHEN MR. MENENDEZ AND MRS. MENENDEZ, BOTH LYLE

16 AND ERIK MENENDEZ FIRST APPROACHED THE BOAT.

17 DID MRS. MENENDEZ EXPRESS TO YOU

18 SURPRISE?

19 THE COURT: AGAIN, YOU'RE ASKING HIM TO FORM

20 SOME SORT OF OPINION.

21 Q BY MR. LEVIN: DID MRS. MENENDEZ ASK YOU

22 ANYTHING AT THAT TIME?

23 A YES, SHE DID.

24 Q AND WHAT DID SHE ASK YOU?

25 A SHE ASKED ME WHO ELSE WAS WITH ME ON THE

26 BOAT.

27 Q AND WHAT DID YOU SAY?

28 A I EXPLAINED IT WAS -- RICHARD CAMPBELL

43048

1 WAS THE DECKHAND, AND LESLIE GASKILL, WHO WAS JUST A

2 GUEST.

3 Q AND DID SHE SAY SOMETHING AFTER THAT

4 WITH RESPECT TO WHAT HER EXPECTATIONS WERE?

5 A WELL, I DON'T RECALL HER EXACT WORDS,
6 BUT YES, SHE EXPECTED JUST ME ABOARD THE BOAT.

7 Q AND DID SHE EXPRESS THAT TO YOU VERBALLY
8 IN A WAY THAT THAT'S WHAT YOU UNDERSTOOD SHE MEANT?

9 A YES.

10 Q AND WHEN SHE SAID THAT, WHERE WAS LYLE
11 AND ERIK MENENDEZ, TO THE BEST OF YOUR ABILITY, IF
12 YOU RECALL?

13 A I BELIEVE AT THAT POINT WE WERE ALL IN
14 BACK DECK OF THE BOAT.

15 Q ALL OF YOU TOGETHER?

16 A YES. EXCEPT FOR RICHARD CAMPBELL AND
17 LESLIE GASKILL, WHO WERE UP ON THE FLY BRIDGE.

18 Q DID SHE ALSO EXPRESS SOME CONCERN ABOUT
19 THE SIZE AND CONFIGURATION OF THE BOAT?

20 MS. NAJERA: OBJECTION TO THE WORD "CONCERN"
21 AND LEADING.

22 THE COURT: SUSTAINED AS TO CALLING FOR A
23 CONCLUSION ON THE PART OF THE WITNESS.

24 Q BY MR. LEVIN: DID SHE ASK YOU OR DID
25 SHE SAY ANYTHING TO YOU ABOUT THE SIZE OF THE BOAT?

26 A YES, SHE DID.

27 Q WHAT DID SHE SAY?

28 A SHE SAID SHE EXPECTED THE BOAT TO BE

1 LARGER.

2 Q WHEN ERIK MENENDEZ CAME UP TO THE FLY
3 BRIDGE TO TALK TO YOU, WHERE WAS JOSE MENENDEZ?

4 A WELL, I BELIEVE I TALKED TO ERIK A FEW
5 TIMES DURING THE TRIP.

6 Q WHEN YOU TALKED TO ERIK MENENDEZ, WAS
7 JOSE MENENDEZ ANYWHERE THERE, NEARBY?

8 A HE WAS EITHER ON THE BACK DECK OF THE
9 BOAT OR DOWN BELOW OR MOVING BETWEEN THE TWO.

10 Q BUT NOT WITH YOU WHEN YOU HAD THE
11 CONVERSATION?

12 MS. NAJERA: OBJECTION. LEADING.

13 THE COURT: SUSTAINED.

14 MR. LEVIN: THANK YOU.

15 I HAVE NOTHING FURTHER.

16 THE COURT: ALL RIGHT. ANYTHING ELSE?

17 MS. NAJERA: YES, YOUR HONOR.

18

19 RECROSS-EXAMINATION

20 BY MS. NAJERA:

21 Q MR. ANDERSON, THE TIMES THAT YOU WERE
22 JUST REFERRING TO TO MR. LEVIN, WHEN YOU SPOKE TO
23 ERIK MENENDEZ, YOU SAID YOU SPOKE TO HIM SEVERAL
24 TIMES; IS THAT RIGHT?

25 A A FEW TIMES.

26 Q A FEW TIMES. AND WHEN YOU SPOKE TO HIM
27 HE WAS IN THE BACK, IN THE STERN AREA; IS THAT

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1 A YES. WELL, HE'D EITHER BE ON TOP OF
2 THE -- WHERE THE LADDER WAS, WHICH IS ON TOP OF AN
3 ENGINE COMPARTMENT, OR IN THE BACK DECK OF THE BOAT
4 IN THE AREA BY WHERE DETECTIVE ZOELLER IS STANDING.

5 Q AND WHEN HE, BEING ERIK MENENDEZ, CAME
6 TO THAT AREA AND SPOKE TO YOU SEVERAL TIMES, THIS
7 WAS NOT IN RESPONSE TO HIS FATHER; IS THAT RIGHT?

8 IN OTHER WORDS, HIS FATHER DIDN'T CALL
9 HIM BACK THERE?

10 A NO.

11 Q AND HE JUST CAME BACK THERE OF HIS OWN
12 ACCORD AND TALKED TO YOU A FEW TIMES?

13 A YES.

14 Q NOW, YOU SAID THAT -- IN RESPONSE TO SOME
15 QUESTIONING -- THAT YOU HAD DESCRIBED THE TRIP AS
16 WEIRD; IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q NOW, WHEN YOU SAY "WEIRD" THAT REALLY
19 DOESN'T TELL US WHAT YOU MEAN.

20 MR. LEVIN: OBJECTION. THAT'S ARGUMENTATIVE.

21 THE COURT: THE REMARK IS STRICKEN.

22 ASK THE QUESTION, PLEASE.

23 MS. NAJERA: THANK YOU, YOUR HONOR.
24 Q WHAT DO YOU MEAN BY WEIRD?
25 A IT WAS DIFFERENT THAN A NORMAL CHARTER
26 IN HOW -- I GUESS HOW THE FAMILY INTERACTED
27 TOGETHER.
28 Q WHEN YOU SAY DIFFERENT FROM A NORMAL

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1 CHARTER, IS IT FAIR TO SAY IT WAS DIFFERENT FROM A
2 NORMAL CARTER BECAUSE THE DEFENDANTS DIDN'T REALLY
3 SEEM ALL THAT INTERESTED IN FISHING?

4 A THAT WAS PART OF IT, YES.

5 Q AND IS IT FAIR TO SAY THAT OFTEN TIMES
6 WHEN FAMILIES PLAN AN OUTING AND BRING THEIR SONS
7 ALONG TO GO FISHING, THAT THEY ARE USUALLY EXCITED
8 ABOUT FISHING?

9 MR. LEVIN: OBJECTION. IRRELEVANT. ALSO
10 VAGUE AND CALLS FOR A CONCLUSION.

11 THE COURT: OVERRULED.

12 YOU CAN ANSWER THE QUESTION.

13 THE WITNESS: SOME PEOPLE ARE FORCED ALONG,
14 AND SO NO, NOT EVERYBODY IS ALWAYS HAPPY TO BE THERE
15 AND BE FISHING.

16 Q BY MS. NAJERA: FOR THE MOST PART,
17 THOUGH, IS IT FAIR TO SAY?

18 A IN GENERAL, MOST PEOPLE ARE HAPPY TO BE
19 THERE AND WANT TO LEARN HOW TO FISH.

20 Q AND IN THIS CASE THE DEFENDANTS WEREN'T
21 INTERESTED IN FISHING; IS THAT FAIR?

22 A IT APPEARED TO ME THEY WEREN'T
23 INTERESTED IN FISHING.

24 Q AND DID THEY APPEAR TO BE BORED WITH THE
25 WHOLE THING?

26 MR. LEVIN: OBJECTION. CALLS FOR
27 SPECULATION.

28 THE COURT: SUSTAINED.

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1 Q BY MS. NAJERA: AND YOU SAID THAT -- YOU
2 SAID THAT YOU DESCRIBED IT, ONCE AGAIN, IN RESPONSE
3 TO MR. LEVIN'S QUESTION, THAT IT WAS GLOOMY. IT WAS
4 A GLOOMY TRIP.

5 IT WAS DARK OUT; IS THAT RIGHT?

6 A I DIDN'T MEAN ABOUT WEATHER, GLOOMY
7 WEATHER. BUT, YES, I FELT IT WAS GLOOMY.

8 Q DID YOU FEEL IT WAS -- THE ENTIRE TRIP
9 WAS GLOOMY OR DO YOU FEEL THAT AT SOME TIMES THINGS --
10 PEOPLE STARTED TO ENJOY THEMSELVES ON THIS TRIP?

11 A NO. AT DIFFERENT TIMES, LIKE I SAID,
12 THE FAMILY APPEARED EXCITED TO ME.

13 Q WHEN YOU SAY IT STARTED OUT GLOOMY, IS
14 IT FAIR TO SAY THAT WHEN IT STARTED OUT PEOPLE
15 WEREN'T AS ENTHUSIASTIC AS THEY WERE WHEN THE SHARKS
16 STARTED GETTING CAUGHT?

17 A THAT'S CORRECT.

18 Q AND IS IT FAIR TO SAY THAT FROM WHAT YOU
19 SAW, THE FAMILY SEEMED TO GET ALONG FINE?

20 MR. LEVIN: OBJECTION. VAGUE AS TO TIME.

21 THE COURT: OVERRULED.

22 THE WITNESS: CAN YOU REPEAT THE QUESTION,
23 PLEASE.

24 MS. NAJERA: OKAY.

25 Q WHEN YOU WENT OUT ON THIS -- WHEN YOU
26 TOOK THE DEFENDANTS AND THEIR MOTHER AND FATHER OUT
27 FOR THIS CHARTER, DID THEY APPEAR TO GET ALONG FINE
28 FOR THE MOST PART?

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1 MR. LEVIN: OBJECTION. CALLS FOR
2 SPECULATION.

3 THE COURT: SUSTAINED.

4 Q BY MS. NAJERA: DID EVERYONE APPEAR
5 FRIENDLY?

6 MR. LEVIN: OBJECTION. CALLS FOR
7 SPECULATION. ALSO VAGUE.

8 THE COURT: OVERRULED.

9 HE CAN ANSWER THE QUESTION.

10 THE WITNESS: I ASSUME YOU'RE TALKING ABOUT
11 TO EACH OTHER AND NOT TO ME?

12 MS. NAJERA: I'M TALKING ABOUT, FIRST OF ALL,
13 TO EACH OTHER.

14 THE WITNESS: YOU KNOW, I'M NOT SURE HOW THEY
15 ACT WHEN THEY'RE FRIENDLY TO EACH OTHER. I DIDN'T
16 KNOW THE FAMILY WELL ENOUGH, BUT...

17 MR. LEVIN: OBJECTION, YOUR HONOR. NO
18 PERSONAL KNOWLEDGE.

19 THE COURT: HE'S GIVEN HIS ANSWER.

20 Q BY MS. NAJERA: MR. ANDERSON, HAVE YOU
21 DESCRIBED THIS -- WHEN MR. LEVIN ASKED YOU ABOUT HOW
22 YOU HAD DESCRIBED THIS IN THE PAST AS UNUSUAL OR
23 STOIC AND GLOOMY TO DISTRICT ATTORNEYS YOU HAD
24 SPOKEN TO PREVIOUSLY, ISN'T IT TRUE YOU ALSO STATED
25 PREVIOUSLY THAT THE FAMILY SEEMED TO GET ALONG FINE
26 AND EVERYBODY WAS REAL FRIENDLY?

27 A I BELIEVE I WAS PROBABLY SAYING THEY
28 WERE REAL FRIENDLY TO ME, YOU KNOW. THEY SEEMED TO

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1 GET ALONG FINE. THERE WAS NO ARGUING. THERE WAS NO
2 YELLING, IF -- TO MAKE ME THINK ANY DIFFERENT THAN

3 THAT.

4 Q AND WITH REGARDS TO THE DEFENDANT, LYLE
5 MENENDEZ, IS IT FAIR TO SAY THAT THERE WAS NOTHING
6 YOU OBSERVED IN HIS DEMEANOR THAT YOU'VE BEEN ASKED
7 ABOUT AND THE BEHAVIOR THAT YOU OBSERVED ON THIS
8 FISHING TRIP THAT WOULD LEAD YOU TO BELIEVE THAT HE
9 WAS FEARFUL IN ANY WAY OF HIS MOTHER?

10 MS. TOWERY: OBJECTION. CALLS FOR
11 SPECULATION. COMPOUND.

12 THE COURT: SUSTAINED.

13 MS. NAJERA: AS TO COMPOUND OR --

14 THE COURT: BOTH.

15 Q BY MS. NAJERA: DID YOU OBSERVE ANYTHING
16 IN THE DEFENDANT -- IN YOUR OBSERVATIONS OF THE
17 DEFENDANT, LYLE MENENDEZ, THAT EVIDENCED ANY KIND OF
18 FEAR OF HIS MOTHER?

19 MS. TOWERY: OBJECTION. CALLS FOR
20 SPECULATION ON THE PART OF THE WITNESS. BEYOND THE
21 SCOPE.

22 THE COURT: SUSTAINED AS TO CALLING FOR A
23 CONCLUSION ON THE PART OF THE WITNESS.

24 Q BY MS. NAJERA: AT ANY TIME IN THIS TRIP
25 DID THE DEFENDANT, LYLE MENENDEZ, APPEAR TO BE
26 AFRAID OF HIS MOTHER OR HIS FATHER?

27 MS. TOWERY: SAME OBJECTION.

28 THE COURT: SUSTAINED.

1 Q BY MS. NAJERA: YOU SAID THAT YOU
2 DIDN'T -- YOU WEREN'T SURE IF THE BOAT WAS IN MOTION
3 WHEN THE DEFENDANTS WALKED TO THE FRONT; IS THAT
4 RIGHT?

5 A THAT'S CORRECT.

6 Q SO IT COULD HAVE BEEN IN MOTION WHEN
7 THEY WALKED TO THE FRONT; IS THAT RIGHT?

8 A YES.

9 MS. TOWERY: OBJECTION. CALLS FOR
10 SPECULATION ON THE PART OF THE WITNESS. NOT WITHIN
11 HIS PERSONAL KNOWLEDGE.

12 THE COURT: OVERRULED. THE ANSWER WILL
13 STAND.

14 Q BY MS. NAJERA: THEY WALKED BACK AND
15 FORTH ON THAT LEDGE SEVERAL TIMES?

16 A THAT'S CORRECT.

17 Q IS IT FAIR TO SAY IT'S NOT -- I DON'T
18 WANT TO DO A DOUBLE NEGATIVE HERE.

19 IT'S NOT UNCOMMON TO HAVE PEOPLE WALK
20 BACK AND FORTH ON THE FRONT OF THE BOAT ON THAT
21 WALKWAY?

22 A NO, IT'S NOT.

23 MS. TOWERY: OBJECTION. IRRELEVANT. CALLS
24 FOR SPECULATION. NOT WITHIN THE PERSONAL KNOWLEDGE
25 OF THE WITNESS.

26 THE COURT: OVERRULED.

27 Q BY MS. NAJERA: HOW FAR IS IT FROM WHERE
28 THEY WERE SEATED IN THE FRONT OF THE BOAT TO THE

43056

1 BACK OF THE BOAT?

2 A I'M SORRY. TO WHICH PART OF THE REAR OF
3 THE BOAT?

4 Q WELL, LET'S SAY THE PART WHERE DETECTIVE
5 ZOELLER IS SHOWN IN THE PHOTOGRAPH.

6 A OH, IT'S ABOUT, APPROXIMATION, PROBABLY
7 11 OR 12 FEET.

8 Q ELEVEN OR TWELVE FEET. AND JOSE
9 MENENDEZ WAS IN THE BACK OF THE STERN MOST OF THE
10 TRIP?

11 A THAT'S CORRECT.

12 Q AND HE WAS APPROXIMATELY IN THE AREA
13 WHERE DETECTIVE ZOELLER IS IN THAT PHOTOGRAPH; IS
14 THAT RIGHT?

15 A YES.

16 Q SO HE WAS ABOUT -- AT THE TIME THAT THE
17 DEFENDANTS WERE IN THE FRONT OF THE BOAT, ABOUT 11
18 OR 12 FEET AWAY FROM THEM; IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q AND WHILE THE DISTANCE WAS ONLY 11 OR 12
21 FEET, BECAUSE OF THE WAY THE BOAT'S SET UP AND THE

22 ENGINE, IF THE DEFENDANTS WERE TALKING OR DOING
23 ANYTHING IN THE FRONT OF THE BOAT, MR. MENENDEZ
24 WOULDN'T BE ABLE TO HEAR THAT; IS THAT A FAIR
25 STATEMENT?

26 MR. LEVIN: OBJECTION. CALLS FOR
27 SPECULATION.

28 THE COURT: DO YOU HAVE AN OPINION ABOUT

43057

1 THAT?

2 THE WITNESS: YES. I DON'T THINK HE'D BE
3 ABLE TO HEAR.

4 Q BY MS. NAJERA: AND WOULD YOU BE ABLE TO
5 HEAR FROM UP THERE?

6 A NO.

7 Q AND WHEN MR. LEVIN WAS ASKING YOU ABOUT
8 THE SECURITY OF THE BOAT, YOU SAID THAT THE FRONT OF
9 THE BOAT IS THE SAFEST PLACE; IS THAT RIGHT?

10 A NO, I DIDN'T. THE CENTER OF THE BOAT.
11 THE CENTER OF THE BOAT IS THE SAFEST PLACE.

12 Q DOES THAT HAVE SOMETHING TO DO WITH IF
13 THE BOAT SINKS?

14 A HAS TO DO WITH THE ROCKING. WHEN YOU'RE
15 IN THE CENTER OF THE BOAT YOU'RE EXPERIENCING LESS
16 ROCKING THAN ANYWHERE ELSE.

17 Q IS THAT A GOOD PLACE TO BE IF YOU'RE

18 PRONE TO SEASICKNESS?

19 A THE BEST PLACE IS, ACTUALLY, IN THE

20 STERN OF THE BOAT, LOOKING OFF TO THE BACK OUT AT

21 THE HORIZON.

22 Q SO WHEN YOU SAID SECURITY, WHAT YOU'RE

23 TALKING ABOUT IS THE ROCKING OF THE BOAT?

24 A YES.

25 MS. NAJERA: I HAVE NOTHING FURTHER, YOUR

26 HONOR.

27 THE COURT: ANYTHING ELSE?

28 MR. LEVIN: VERY BRIEF.

43058

1 FURTHER REDIRECT EXAMINATION

2 BY MR. LEVIN:

3 Q FOR MOST OF THE TRIP, WOULD YOU SAY THAT

4 LYLE MENENDEZ REMAINED IN FRONT OF THE BOAT ON THE

5 BOW?

6 A YES, HE DID.

7 Q AND WHEN I SUGGEST AND YOU ADOPT IT,

8 WHAT DO YOU MEAN IN TERMS OF THE HOURS OF THAT

9 TRIP? HOW MANY HOURS WOULD LYLE MENENDEZ HAVE BEEN

10 AT THE FRONT OF THAT BOAT AT THE BOW?

11 A WELL, IF YOU'RE TALKING ABOUT A TOTAL OF

12 SIX AND A HALF TO SEVEN HOURS, I'D SAY HE WAS

13 PROBABLY AT THE BOW OF THE BOAT SIX HOURS.

14 Q WHAT ABOUT ERIK MENENDEZ?

15 A PROBABLY A TOTAL OF A HALF HOUR TO 45

16 MINUTE LESS.

17 MR. LEVIN: THANK YOU. NOTHING FURTHER.

18 THE COURT: ANYTHING ELSE?

19 MS. NAJERA: I HAVE NOTHING FURTHER, YOUR

20 HONOR.

21 THE COURT: THANK YOU. YOU MAY STEP DOWN.

22 YOU'RE EXCUSED.

23 WE'LL TAKE A RECESS UNTIL 25 MINUTES TO

24 THE HOUR. DON'T DISCUSS THE MATTER WITH ANYONE.

25 DON'T FORM ANY FINAL OPINIONS ABOUT IT.

26 WE'LL ASK THAT COUNSEL REMAIN.

27 (THE JURY EXITED THE COURTROOM AND

28 THE FOLLOWING PROCEEDINGS WERE HELD:)

43059

1 THE COURT: COURT'S STILL IN SESSION.

2 WHO'S YOUR NEXT WITNESS?

3 MR. LEVIN: NEXT WITNESS WILL BE ERIK

4 MENENDEZ, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. LEVIN: WE DO HAVE SOME MOTIONS.

7 THE COURT: MOTIONS WERE FILED TODAY. I'VE
8 READ THEM.

9 FIRST, AS TO THE MOTION FILED ON BEHALF
10 OF THE DEFENDANT, ERIK MENENDEZ, AND THE
11 CODEFENDANT, LYLE MENENDEZ, THAT HAS TO DO WITH
12 CROSS-EXAMINATION.

13 WHY IS ANY OF THIS MATERIAL SUBJECT TO A
14 HEARING AT THIS STAGE?

15 MR. LEVIN: WELL, YOUR HONOR, FOR PURPOSES OF
16 CONDUCTING THE DIRECT EXAMINATION, I'M PUTTING THE
17 COURT AND THE PROSECUTION ON NOTICE THAT I AM NOT
18 GOING TO BE ELICITING ANY OF THE EVIDENCE THAT WE SO
19 OBJECT TO THEM GOING INTO ON CROSS. AND I'M ASKING
20 FOR THE MOTION IN LIMINE AND A RULING FROM THIS
21 COURT SO I WILL KNOW THAT MY TACTIC AND STRATEGY OF
22 NOT ELICITING THAT PARTICULAR EVIDENCE WILL RESULT
23 IN THE PROSECUTION'S BAR FROM GOING INTO IT ON
24 CROSS.

25 IF I GET NO RULING IN LIMINE, OR IF THE
26 COURT DENIES THE MOTION ON LEGAL GROUNDS, THEN MANY
27 OF THOSE AREAS I WILL COVER ON DIRECT. BUT IT IS
28 OUR OPINION THAT THOSE AREAS TO WHICH WE ARE

43060

1 OBJECTING ARE LEGALLY INADMISSIBLE AND BARRED FOR

2 THE REASONS WE STATED IN THE MOVING PAPERS.

3 THE COURT: UNTIL I HEAR THE DIRECT

4 EXAMINATION OF THE WITNESS, I'M IN NO POSITION TO

5 RULE UPON THE SCOPE OF THE CROSS-EXAMINATION; AND,

6 THEREFORE, EACH OF THE MATTERS REFERRED TO IN THIS

7 DOCUMENT WOULD HAVE TO AWAIT THE COMPLETION OF

8 DIRECT EXAMINATION.

9 MR. LEVIN: WELL, WE COULD START WITH AN EASY

10 ONE AND WORK BACKWARDS.

11 I'M NOT GOING TO BE ELICITING ANY

12 FACTUAL DISCUSSION OF THE CALABASAS BURGLARIES.

13 HOWEVER, I WANT TO KNOW THAT THE COURT IS OF THE

14 OPINION AND HAS SO BARRED THE PROSECUTION FROM GOING

15 INTO IT UNLESS SOMETHING HAPPENS ON DIRECT

16 EXAMINATION THAT IT'S ELICITED. I DON'T WANT IT TO

17 APPEAR TO THE JURY THAT WE HAVE SOMEWHAT SANDBAGGED

18 THEM. IF THE COURT SHOULD RULE AGAINST US, I WOULD

19 BRING IT OUT IN THE DIRECT EXAMINATION IN A MANNER

20 THAT I AND MY CLIENT FELT MOST APPROPRIATE.

21 BUT I THINK THAT IT IS AN APPROPRIATE

22 MOTION IN LIMINE AND ONE THAT MUST BE TAKEN UP BY

23 THE COURT SO THAT THE DIRECT EXAMINATION CAN BE

24 CONDUCTED IN A MANNER THAT, YOU KNOW, IS

25 APPROPRIATE; AND THAT ERIK MENENDEZ KNOWS WHAT THE

26 SCOPE OF HIS TESTIMONY WILL BE AND HIS LEGAL RIGHTS.

27 THE COURT: WELL, LET ME HEAR FROM YOU,

28 MR. GESSLER, SINCE YOU'RE STANDING UP.

1 MR. GESSLER: YOUR HONOR, AS TO THE PORTION
2 OF MY MOST INTEREST, WHICH IS THE LO CIGNO-TYPE
3 VIOLATIONS THAT COULD OCCUR IN THIS CASE, THOSE ARE
4 VIOLATIONS, WHETHER IT'S HEARD NOW, WHETHER IT'S
5 HEARD LATER, WHETHER IT'S HEARD EVER, THE RECORD FOR
6 THAT IS SET FORTH IN THE FIRST TRANSCRIPT; AND THERE
7 IS NO WAY THAT THE PEOPLE CAN EVER CLAIM GOOD FAITH
8 THAT THEY BELIEVE ERIK MENENDEZ WOULD ANSWER
9 AFFIRMATIVELY WHEN HE'S ANSWERED NEGATIVELY BEFORE.

10 THE COURT: I DON'T HAVE TO HEAR ANY OF THOSE
11 ISSUES NOW BECAUSE THE DEFENDANT HASN'T EVEN BEEN
12 SUBJECT TO DIRECT EXAMINATION. SO WHY TAKE UP THE
13 TIME NOW?

14 MR. GESSLER: WELL, YOUR HONOR, YOU DON'T
15 HAVE TO HEAR THEM NOW, AND THE PROBLEM IS THAT THOSE
16 PARTICULAR OBJECTIONS ARE WELL TAKEN WHENEVER
17 THEY'RE MADE BECAUSE THEY ARE BASED ON THE KNOWLEDGE
18 OF THIS CASE AND THE KNOWLEDGE OF THE DISTRICT
19 ATTORNEYS AND THE LACK OF GOOD FAITH IN ASKING THOSE
20 QUESTIONS IF THEY ARE NOT PROMISING TO CALL A
21 PARTICULAR REBUTTAL WITNESS.

22 THE COURT: I WANT TO INTERRUPT NOW BECAUSE I
23 DON'T FIND THAT THERE'S ANY REASON TO HOLD A HEARING
24 NOW IF WE'RE APPROACHING THE DIRECT EXAMINATION OF A
25 WITNESS, AND THOSE OBJECTIONS RELATE TO SOLELY

26 CROSS-EXAMINATION.

27 MR. GESSLER: LO CIGNO VIOLATIONS DO, YOUR
28 HONOR. IT IS TO PUT THE DISTRICT ATTORNEY ON NOTICE

43062

1 AS TO THE PARTICULAR LO CIGNO VIOLATIONS THAT I SEE
2 AS BEING POSSIBLE HERE BASED ON THE TRANSCRIPT.
3 THERE ARE OTHERS, AS I'VE SAID. THIS IS NOT
4 EXHAUSTIVE, BUT I THINK THAT THEY SHOULD KNOW THE LO
5 CIGNO RULE THERE AND BE ON NOTICE OF THAT, GIVEN
6 SOME TIME AS TO WHERE I'M CONCERNED -- THAT I'M
7 CONCERNED ABOUT A MISTRIAL IF THAT AREA IS GONE INTO
8 WITHOUT LASIGNO GOOD FAITH.

9 THE COURT: WE'LL KEEP THOSE IN MIND, AND
10 BEFORE CROSS-EXAMINATION, IF NECESSARY, WE'LL DEAL
11 WITH THEM BEFORE THE DEFENDANT'S CROSS-EXAMINED.

12 MR. LEVIN: YOUR HONOR, I'M NOT SURE THAT I
13 MADE IT ENTIRELY CLEAR WITH RESPECT TO STRATEGY.
14 THE STRATEGY EXTENDS TO WHETHER OR NOT ERIK MENENDEZ
15 WOULD EVEN TESTIFY. IF THE PROSECUTION'S GOING TO
16 BE ALLOWED TO GO INTO THE ENTIRETY OF THE AREAS TO
17 WHICH WE OBJECT, WE VERY WELL MAY NOT CALL HIM AS A
18 WITNESS. AND IF HE TESTIFIES AND THESE ITEMS ARE
19 NOT ELICITED AND THE COURT ALLOWS THE PROSECUTION TO
20 THEN CROSS-EXAMINE, WE HAVE, YOU KNOW -- AND

21 MR. MENENDEZ IS BEING PUT IN THIS POSITION WHERE HE
22 TESTIFIES AND TAKES A CHANCE THAT HE WON'T BE
23 CROSS-EXAMINED ON WHAT WE BELIEVE TO BE IRRELEVANT
24 AREAS, AND AREAS THAT THE PROSECUTION SHOULD BE
25 PRECLUDED FROM GOING INTO.

26 SO WE HAVE TO KNOW BEFORE ERIK MENENDEZ
27 TESTIFIES TO DECIDE WHETHER OR NOT HE EVEN WILL
28 TESTIFY.

43063

1 THE COURT: WELL, AS I SAID, THESE ARE AREAS
2 OF CROSS-EXAMINATION, AND I CAN'T RULE UPON THEM
3 UNTIL I HEAR HIS DIRECT EXAMINATION. YOU SAY YOU
4 WON'T BE OPENING THE DOOR TO SOMETHING, BUT THAT'S
5 YOUR VIEW. NOW, UNTIL I HEAR THE QUESTIONS AND THE
6 ANSWERS, I HAVE NO WAY OF EVALUATING WHETHER YOUR
7 VIEW'S THE CORRECT ONE. I CAN'T MAKE A RULING IN
8 THE ABSTRACT.

9 MR. LEVIN: FOR EXAMPLE, THE CALABASAS
10 BURGLARY.

11 THE COURT: AGAIN, YOU SAID YOU'RE NOT GOING
12 TO OPEN THE DOOR. I DON'T KNOW IF YOU WILL OR NOT
13 UNTIL I HEAR THE DIRECT EXAMINATION.

14 MR. LEVIN: BASED ON WHAT THE COURT HAS BEEN
15 EXPOSED TO THUS FAR WITH THE 12/11 TAPE, THERE HAS

16 BEEN SOME INFERENCE BY THE COURT THAT BECAUSE THE
17 CALABASAS THING IS MENTIONED ON THE TAPE, THAT THAT
18 MAY BE SUFFICIENT TO ALLOW THE PROSECUTION TO GO
19 INTO THE AREA, I CAN STATE THAT I AM NOT GOING TO GO
20 INTO THE CALABASAS BURGLARY AT ALL. AND I WANT TO
21 KNOW BEFORE MY CLIENT TESTIFIES WHETHER THE COURT
22 FEELS AT THIS PARTICULAR TIME THERE HAS BEEN
23 SUFFICIENT EVIDENCE, OR FOR ANY REASON THAT'S BEEN
24 PRESENTED AT THIS TRIAL SO FAR, THAT THE PROSECUTION
25 CAN GO INTO IT. IF THE STATE OF THE CASE IS AT THIS
26 PARTICULAR TIME THAT THE CALABASAS BURGLARY IS NOT
27 ADMISSIBLE -- I THINK THAT'S WHAT I'M ASKING THE
28 COURT TO SO INDICATE.

43064

1 THE COURT: I DON'T KNOW WHAT YOUR CLIENT IS
2 GOING TO SAY ABOUT THE CONTENTS OF THE DECEMBER 11TH
3 TAPE, HIS RELATIONSHIP WITH OZIEL, ANY OF THOSE
4 MATTERS. THOSE ARE ALL ISSUES THAT TOUCH UPON THE
5 SUBJECT YOU'RE NOW ASKING THE COURT TO RULE UPON. I
6 CAN'T RULE IN THE ABSTRACT. I HAVE NO WAY OF
7 EVALUATING THAT WITHOUT HAVING HEARD THE TESTIMONY
8 OF YOUR CLIENT.

9 MR. LEVIN: VERY WELL, YOUR HONOR.

10 THE COURT: ANYTHING ELSE THEN BEFORE THE

11 COMMENCEMENT OF THE TESTIMONY OF ERIK MENENDEZ?
12 MR. LEVIN: NO, YOUR HONOR. JUST A LITTLE
13 BREAK.
14 THE COURT: OKAY. YOU HAVE 10 MINUTES HERE.
15 (A RECESS WAS TAKEN FROM
16 3:25 P.M. UNTIL 3:40 P.M.)
17
18 THE COURT: OKAY. ARE WE READY FOR THE
19 JURY?
20 MR. LEVIN: YES.
21 THE COURT: LET'S GET THE JURY OUT, PLEASE.
22 (THE JURY ENTERED THE COURTROOM
23 AND THE FOLLOWING PROCEEDINGS
24 WERE HELD:)
25
26 THE COURT: OKAY. THE JURY IS BACK AND THE
27 DEFENSE MAY CALL THEIR NEXT WITNESS.
28 MR. LEVIN: THE DEFENSE OF ERIK MENENDEZ

43065

1 CALLS ERIK MENENDEZ.
2
3 ERIK GALEN MENENDEZ,
4 WAS CALLED AS A WITNESS ON HIS OWN BEHALF, WAS DULY
5 SWORN, AND TESTIFIED AS FOLLOWS:

6 THE CLERK: RAISE YOUR RIGHT HAND TO BE
7 SWORN.
8 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
9 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
10 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
11 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
12 THE WITNESS: I DO.
13 THE CLERK: PLEASE TAKE THE STAND AND STATE
14 YOUR NAME FOR THE RECORD.
15 THE WITNESS: ERIK GALEN MENENDEZ,
16 M-E-N-E-N-D-E-Z.
17 THE COURT: OKAY. YOU MAY INQUIRE.
18 MR. LEVIN: THANK YOU.
19
20 DIRECT EXAMINATION
21 BY MR. LEVIN:
22 Q MR. MENENDEZ, HOW OLD ARE YOU?
23 A TWENTY-FIVE.
24 Q AND WHAT IS YOUR DATE OF BIRTH?
25 A 11/27/70, NOVEMBER 27TH.
26 Q WHERE IS IT THAT YOU PRESENTLY LIVE?
27 A THE LOS ANGELES COUNTY JAIL.
28 Q AND HOW LONG HAVE YOU BEEN IN THE

1 LOS ANGELES COUNTY JAIL?

2 A FIVE YEARS NINE MONTHS.

3 Q SINCE MARCH OF 1990?

4 A YES.

5 Q AND HOW OLD WERE YOU WHEN YOU WERE PUT
6 IN JAIL?

7 A NINETEEN.

8 Q ARE YOU SICK RIGHT NOW?

9 A NO.

10 Q DO YOU HAVE ANY SKIN DISORDERS?

11 A NO.

12 Q DO YOU HAVE ANY KIND OF COMPREHENSION OR
13 LEARNING DISORDERS?

14 A YES.

15 Q AND WHAT IS IT THAT YOU UNDERSTAND THAT
16 YOU HAVE?

17 A I HAVE AN AUDITORY PROCESSING PROBLEM,
18 DYSLEXIA. I'VE BEEN TOLD I HAVE SOME HEARING
19 PROBLEMS AND ASSORTED THINGS. I'M NOT SURE.

20 Q HAVE YOU BEEN TESTED FOR ALL THESE
21 PARTICULAR DISORDERS?

22 A YES, I HAVE.

23 Q NOW, IN JAIL, DO YOU GET UP INTO THE SUN
24 VERY OFTEN?

25 A NO.

26 Q HOW OFTEN DO YOU GET INTO THE SUNLIGHT?

27 A I DON'T GO INTO THE SUNLIGHT ANYMORE.

28 Q HOW LONG HAS IT BEEN SINCE YOU'VE BEEN

1 IN THE SUNLIGHT?

2 A FOUR MONTHS, FIVE MONTHS.

3 Q NOW, ARE YOU NOW TAKING ANY MEDICATIONS?

4 A YES.

5 Q AND DO YOU SEE ANY DOCTORS AT THIS TIME?

6 A YES.

7 Q WHO IS IT THAT YOU SEE?

8 A DR. VICARY.

9 Q WHAT KIND OF DOCTOR IS DR. VICARY?

10 A HE'S A THERAPIST, PSYCHIATRIST.

11 Q HOW LONG HAVE YOU SEEN DR. VICARY?

12 A SINCE AROUND MAY OF '90.

13 Q AND HAS HE PRESCRIBED FOR YOU ANY
14 MEDICATION THAT YOU ARE PRESENTLY TAKING?

15 A YES.

16 Q WHAT IS THE MEDICATION THAT YOU'RE
17 TAKING?

18 A PAMELOR, INDERAL, AND XANAX.

19 Q WHAT IS IT THAT YOU TAKE THE PAMELOR
20 FOR?

21 A ALLOWING MYSELF TO SLEEP AT NIGHT.

22 Q WHAT ABOUT THE INDERAL?

23 A HYPERANXIETY, I SUPPOSE.

24 Q WHAT ABOUT THE XANAX, WHAT DO TAKE THE
25 XANAX FOR?

26 A BECAUSE I'M A NERVOUS PERSON.

27 Q AND ARE YOU PRESENTLY TAKING YOUR
28 MEDICATION, THAT IS, DID YOU TAKE IT TODAY?

43068

1 A YES.

2 Q YOU'RE SUPPOSED TO TAKE IT EVERY DAY?

3 A YES.

4 Q ARE YOU NERVOUS TODAY?

5 A I'M SCARED.

6 Q HAVE YOU TESTIFIED BEFORE IN THIS CASE
7 AT THE FIRST TRIAL?

8 A YES, I DID.

9 Q AND HOW LONG DID YOU TESTIFY FOR?

10 A TWO WEEKS.

11 Q DURING THAT TWO WEEKS THERE WAS A COURT
12 REPORTER PRESENT JUST LIKE THERE IS HERE TODAY?

13 A SAME ONE.

14 Q AND WERE THERE TRANSCRIPTS PREPARED OF
15 YOUR TESTIMONY?

16 A YES.

17 Q DID THEY COMPRISE ABOUT 1700 PAGES IN
18 THE STACK THAT I'M HOLDING NOW?

19 A YES. I GUESS SO.

20 Q YOU'VE SEEN THIS BEFORE, I TAKE IT?

21 A NOT LIKE THAT, BUT YES, I'VE SEEN MY
22 TRANSCRIPTS.

23 Q AND IN THIS 1700 PAGES YOU'VE PRETTY
24 MUCH DESCRIBED YOUR LIFE AND THE EVENTS OF AUGUST
25 20TH, 1989?

26 A YES.

27 Q WHAT'S THE HIGHEST LEVEL OF FORMAL
28 EDUCATION THAT YOU'VE RECEIVED?

43069

1 A HIGH SCHOOL DIPLOMA.

2 Q WHERE DID YOU GRADUATE FROM HIGH SCHOOL?

3 A BEVERLY HILLS HIGH.

4 Q WAS THAT THE ONLY HIGH SCHOOL THAT YOU
5 WENT TO?

6 A NO.

7 Q HOW MANY HIGH SCHOOLS DID YOU GO TO?

8 A I WENT TO THREE DIFFERENT HIGH SCHOOLS.

9 Q HOW OLD WERE YOU WHEN YOU GRADUATED HIGH
10 SCHOOL?

11 A I WAS 18.

12 Q AND DO YOU RECALL APPROXIMATELY WHAT
13 MONTH AND YEAR IT WAS YOU GRADUATED HIGH SCHOOL?

14 A JUNE OF 1989.

15 Q IN JUNE OF 1989 HOW OLD WERE YOU?

16 A EIGHTEEN.

17 Q AND IN AUGUST OF 1989 HOW OLD WERE YOU?

18 A EIGHTEEN.

19 Q YOU HAVE A BROTHER?

20 A YES.

21 Q AND WHO'S YOUR BROTHER?

22 A LYLE'S MY BROTHER.

23 Q LYLE MENENDEZ, SEATED OVER NEXT TO

24 MS. ABRAMSON?

25 A YES.

26 Q HOW OLD IS LYLE MENENDEZ?

27 A TODAY?

28 Q YES.

43070

1 A TWENTY-SEVEN.

2 Q AND HOW LONG HAS LYLE MENENDEZ BEEN IN

3 LOS ANGELES COUNTY JAIL?

4 A SAME TIME, ABOUT SIX YEARS.

5 Q HOW OLD WAS LYLE MENENDEZ BACK ON AUGUST

6 THE 20TH, 1989?

7 A TWENTY-ONE.

8 Q NOW, DIRECTING YOUR ATTENTION BACK TO

9 WHEN YOU GRADUATED HIGH SCHOOL, WHEN YOU WERE 18

10 YEARS OLD.

11 WAS THIS A HAPPY TIME IN YOUR LIFE?

12 A RELATIVELY SPEAKING.

13 Q AND WHY WOULD YOU SAY IT WAS RELATIVELY

14 HAPPY?

15 A I WAS SOON TO GO AWAY TO COLLEGE.

16 Q BY THE SUMMER OF 1989 HAD YOU BEEN

17 ACCEPTED TO COLLEGE FOR THE FALL OF 1989?

18 A YES, I HAD.

19 Q AND HAD YOU BEEN ACCEPTED TO MORE THAN

20 ONE?

21 A YES.

22 Q HOW MANY COLLEGES WOULD YOU SAY YOU HAD

23 BEEN ACCEPTED TO?

24 A I'M NOT SURE. I WAS ACCEPTED TO THE

25 U.C. SCHOOLS, AND I BELIEVE SOME OUT OF STATE, BUT I

26 DON'T REMEMBER.

27 Q WHAT SCHOOL WAS IT THAT YOU PLANNED ON

28 ATTENDING?

43071

1 A AT WHAT POINT?

2 Q WHAT SCHOOL WAS IT THAT YOU THOUGHT YOU

3 WERE GOING TO BE GOING TO IN THE FALL OF 1989?

4 A U.C.L.A.

5 Q AND WAS THAT THE SCHOOL OF YOUR CHOICE?

6 A NO.

7 Q DID YOU WANT TO GO AWAY TO COLLEGE?

8 A YES.

9 Q DID GOING AWAY TO COLLEGE HAVE ANY
10 PARTICULAR SIGNIFICANCE TO YOU WITH RESPECT TO YOUR
11 LIFE AS IT WAS IN 1989?

12 A YES, IT DID.

13 Q NOW, WAS MARY MENENDEZ, ALSO KNOWN AS
14 KITTY MENENDEZ, YOUR MOTHER?

15 A YES.

16 Q WAS JOSE MENENDEZ YOUR FATHER?

17 A YES, HE WAS.

18 Q IN YOUR FAMILY THERE ARE NO OTHER
19 BROTHERS OR SISTERS, JUST YOU AND LYLE MENENDEZ,
20 CORRECT?

21 A JUST LYLE AND I.

22 Q ON AUGUST THE 20TH, 1989, MR. MENENDEZ,
23 DID YOU KILL YOUR PARENTS?

24 A YES, I DID.

25 Q AND HOW OLD WERE YOU WHEN YOU KILLED
26 YOUR MOTHER AND YOUR FATHER?

27 A I WAS 18.

28 Q HOW OLD WAS LYLE MENENDEZ?

1 A TWENTY-ONE.

2 Q WAS JOSE MENENDEZ A VIOLENT MAN?

3 A SOMETIMES.

4 Q WAS MARY MENENDEZ, YOUR MOTHER, A
5 VIOLENT WOMAN?

6 A SOMETIMES.

7 Q DID YOUR MOTHER HUMILIATE AND DENIGRATE
8 YOU?

9 MR. CONN: OBJECTION. VAGUE AS TO TIME.

10 THE COURT: SUSTAINED.

11 Q BY MR. LEVIN: DID JOSE MENENDEZ
12 SEXUALLY MOLEST YOU?

13 WE NEED AN AUDIBLE ANSWER FOR THE
14 REPORTER.

15 A YES.

16 Q WAS YOUR FATHER A BRUTAL MAN TO YOU
17 DURING YOUR LIFE?

18 MR. CONN: OBJECTION. IRRELEVANT.

19 THE COURT: OVERRULED.

20 THE WITNESS: AT TIMES.

21 Q BY MR. LEVIN: AT TIMES IN YOUR LIFE DID
22 YOUR MOTHER HUMILIATE YOU?

23 MR. CONN: OBJECTION. VAGUE AS TO TIME.

24 THE COURT: OVERRULED.

25 THE WITNESS: SOMETIMES.

26 Q BY MR. LEVIN: DID SHE SOMETIMES DEGRADE
27 YOU?

28 A YES.

43073

1 Q DID YOU KILL YOUR FATHER BECAUSE HE
2 SEXUALLY MOLESTED YOU?

3 A NO.

4 Q DID YOU KILL YOUR PARENTS BECAUSE YOU
5 HATED THEM?

6 A CERTAINLY NOT.

7 Q DID YOU KILL YOUR PARENTS BECAUSE YOU
8 WANTED THEIR MONEY?

9 A NO.

10 Q DID YOU KILL YOUR PARENTS AS AN ACT OF
11 MERCY?

12 A NO.

13 Q WHY, MR. MENENDEZ, DID YOU KILL YOUR
14 MOTHER AND YOUR FATHER?

15 A BECAUSE WE WERE AFRAID.

16 Q WHAT WAS IT YOU WERE AFRAID OF?

17 A I WAS AFRAID OF DYING.

18 Q WHO WERE YOU AFRAID WAS GOING TO KILL
19 YOU?

20 A MY MOM AND MY DAD.

21 Q WHAT CAUSED YOU TO HAVE THAT BELIEF?

22 A MY FATHER TOLD ME SO.

23 Q AND WHAT WAS IT THAT YOUR FATHER TOLD
24 YOU THE REASON WAS THAT HE WAS GOING TO KILL YOU?
25 A BECAUSE MY FATHER WAS AFRAID THAT I WAS
26 GOING TO REVEAL THAT --
27 Q YOU WERE GOING TO REVEAL WHAT?
28 A THAT THERE WAS A SEXUAL RELATIONSHIP

43074

1 BETWEEN HIM AND I.
2 Q DID YOU LOVE YOUR MOTHER?
3 A YES.
4 Q DID YOU LOVE YOUR FATHER?
5 A YES, I DID.
6 Q DID YOU THINK THAT YOUR FATHER LOVED
7 YOU?
8 A HE DID.
9 Q WHEN WAS THE FIRST TIME IN YOUR MEMORY
10 THAT YOUR FATHER EVER TOLD YOU HE LOVED YOU?
11 A WHEN I WAS SIX AND HE WAS IN MY ROOM.
12 Q DID YOUR FATHER TOUCH YOU WHEN YOU WERE
13 SIX?
14 MR. CONN: OBJECTION. IRRELEVANT AS
15 (UNINTELLIGIBLE).
16 THE COURT: I DIDN'T HEAR THE LAST PART.
17 MR. CONN: IRRELEVANT.

18 THE COURT: OVERRULED.

19 THE WITNESS: HE DID.

20 Q BY MR. LEVIN: AND WHERE DID THIS OCCUR?

21 A IN MY BEDROOM.

22 Q HOW DID HE TOUCH YOU?

23 A WITH HIS HANDS, WITH HIS MOUTH.

24 Q NOW, BEFORE HE TOUCHED YOU WITH HIS

25 HANDS AND HIS MOUTH, DID YOUR FATHER EVER, FOR LACK

26 OF A BETTER DESCRIPTION, MASSAGE YOU?

27 A YES.

28 Q WERE YOU, AS A YOUTH, ACTIVE IN ANY KIND

43075

1 OF EXTRACURRICULAR ACTIVITIES?

2 A YES, I WAS.

3 Q AND BACK IN YOUR EARLY CHILDHOOD YEARS,

4 WHAT KIND OF ACTIVITIES WERE YOU INVOLVED IN?

5 A I WAS INVOLVED IN SWIMMING, SOCCER,

6 TENNIS.

7 Q WOULD YOU SAY FOR THE ENTIRETY OF YOUR

8 LIFE, FROM YOUR EARLIEST MEMORY TO THE TIME THAT YOU

9 WERE ARRESTED IN THIS CASE, THAT YOUR LIFE HAS BEEN

10 CONSUMED WITH SPORTS, ATHLETIC TRAINING?

11 A YES.

12 Q AND WAS YOUR FATHER INVOLVED IN YOUR

13 ATHLETIC TRAINING?

14 A YES.

15 Q NOW, GOING BACK TO SOME OF THE EARLIEST
16 MEMORIES YOU HAD IN CONNECTION WITH YOUR ATHLETIC
17 TRAINING, DID YOUR FATHER EVER TOUCH YOUR BODY?

18 A YES, HE DID.

19 Q AND WHAT SPORT WAS HE TOUCHING YOUR BODY
20 IN CONNECTION WITH?

21 A IN SOCCER AND IN SWIMMING.

22 Q HOW OLD WERE YOU DURING THESE EARLY
23 MEMORIES OF YOUR FATHER TOUCHING YOUR BODY DURING
24 SWIMMING AND SOCCER?

25 A I WAS FIVE, SIX.

26 Q AND HOW DID HE TOUCH YOU?

27 A HE WOULD GIVE ME MESSAGES TO LOOSEN MY
28 BODY UP.

43076

1 Q HOW WOULD HE MASSAGE YOUR BODY?

2 A HE WOULD MASSAGE MY THIGHS AND MY CALVES
3 AND MY ARMS.

4 Q AND DID HE DO THIS IN PUBLIC?

5 A YES.

6 Q WERE THEY EXTENDED MESSAGES FOR A LONG
7 PERIOD OF TIME WHEN HE WOULD DO IT? I'M NOT TALKING

8 ABOUT EXTENDED IN PERIOD OF TIME ON A TIME FRAME,
9 BUT WHEN HE WOULD HE DO IT, WOULD IT BE FIVE
10 MINUTES, TEN MINUTES?
11 A TEN MINUTES, FIFTEEN MINUTES.
12 Q AND DID HE DO THIS IN PUBLIC?
13 A YES.
14 Q DID THIS CAUSE YOU TO FEEL SOMEWHAT
15 COMFORTABLE AND ACCUSTOMED TO YOUR FATHER TOUCHING
16 YOUR BODY?
17 A YES.
18 Q NOW, WE'LL GET MORE INTO THIS IN A
19 MOMENT. BUT I WANT TO BACK INTO ANOTHER SUBJECT.
20 BACK OFF THAT FOR A MOMENT.
21 YOU ARE AWARE OF THE INTENSE PUBLICITY
22 THAT THIS CASE HAS BROUGHT?
23 A YES.
24 Q HAVE YOU EVER SIGNED ANY CONTRACTS FOR
25 YOUR LIFE STORY?
26 A NO.
27 Q WILL YOU?
28 A I DON'T THINK SO.

43077

1 Q HAVE YOU EVER WRITTEN ANY BOOKS ABOUT
2 THIS CASE?

3 A NO.

4 Q ANY BOOKS BEEN WRITTEN ABOUT YOU THAT
5 YOU HAD ANYTHING TO DO WITH?

6 A NO.

7 Q HAVE YOU RECEIVED ANY MONEY FROM ANY
8 BOOKS OR MOVIES OR ANY TABLOIDS THAT WANT YOUR STORY
9 IN CONNECTION WITH THIS CASE?

10 A NO.

11 Q HAVE YOU EVER EVEN GIVEN AN INTERVIEW TO
12 ANYONE FROM THE MEDIA IN THIS CASE?

13 A NO.

14 Q NOW, AT SOME POINT IN TIME -- AND YOU
15 INDICATED BEFORE THAT IT WAS MARCH OF 1990 THAT YOU
16 WERE ARRESTED; IS THAT CORRECT?

17 A YES.

18 Q DID YOU LEARN AT SOME POINT IN TIME THAT
19 THE POLICE HAD ARRESTED YOUR BROTHER?

20 A YES, I DID.

21 Q WHEN WAS THAT, ABOUT THE SAME TIME,
22 WITHIN A FEW DAYS?

23 A EITHER LATER THAT DAY OR THE NEXT
24 MORNING.

25 Q WHERE WERE YOU WHEN YOU HEARD THIS
26 INFORMATION?

27 A I WAS IN ISRAEL.

28 Q AND WHAT WERE YOU DOING IN ISRAEL?

1 A PLAYING TENNIS.

2 Q WAS IT A FORMAL TOURNAMENT OF SOME SORT?

3 A IT WAS A TOURNAMENT ON THE CIRCUIT PRO
4 TOUR.

5 Q WERE YOU WITH SOMEONE IN ISRAEL?

6 A MY COACH, MARK HEFFERNAN.

7 Q WAS THERE ANY SECRET THAT YOU WERE
8 EITHER GOING TO ISRAEL OR WERE IN ISRAEL?

9 A NO.

10 Q AND DID YOU HAVE A VALID PASSPORT?

11 A YES.

12 Q HOW WAS IT THAT YOU LEARNED YOUR BROTHER
13 HAD BEEN ARRESTED?

14 A MY ROOMMATE WAS A FRIEND OF MINE, CALLED
15 ME AND TOLD ME.

16 Q DID YOU KNOW WHAT YOUR BROTHER WAS
17 ARRESTED FOR?

18 A YES.

19 Q WAS IT CLEAR THAT YOUR BROTHER HAD BEEN
20 ARRESTED FOR THE KILLING OF YOUR PARENTS?

21 A YES.

22 Q DID YOU KNOW WHAT THE CHARGES WERE?

23 A THAT WE HAD KILLED OUR PARENTS.

24 Q DID YOU KNOW THAT THE PROSECUTOR OF
25 LOS ANGELES COUNTY WAS ACCUSING YOU OF MURDER?

26 A YES.

27 Q AND ACCUSING YOUR BROTHER OF MURDER?

28 A YES.

43079

1 Q DID YOU ALSO KNOW THAT THEY WERE GOING
2 TO SEEK THE DEATH PENALTY?

3 A I LEARNED THAT IN LONDON.

4 Q AND THIS IS DURING THE SAME PERIOD OF
5 TIME THAT YOU'RE IN ISRAEL, ABOUT A COUPLE OF DAYS
6 LATER OR SO?

7 A I IMMEDIATELY FLEW TO LONDON.

8 Q NOW, DID IT OCCUR TO YOU, WHEN YOU
9 LEARNED THAT YOUR BROTHER HAD BEEN ARRESTED, THAT
10 THE PROSECUTOR WAS GOING TO CHARGE YOU WITH MURDER
11 AND THAT THEY WERE GOING TO SEEK THE DEATH PENALTY --
12 DID IT OCCUR TO YOU TO RUN AWAY AND NOT FACE TRIAL?

13 A NO.

14 Q DID IT EVER OCCUR TO YOU TO SEEK SOME
15 KIND OF PROTECTION OR ASYLUM FROM THE COUNTRY OF
16 ISRAEL?

17 A I WANTED TO BE WITH MY BROTHER.

18 Q DID IT OCCUR TO YOU TO TAKE YOUR
19 PASSPORT AND USE THE AIRPORT IN ISRAEL AND FLY OUT
20 ON EL AL TO ANY COUNTRY YOU WANTED TO IN THE WORLD?

21 A NO.

22 Q DID YOU EVER ATTEMPT TO -- STRIKE THAT.

23 WHERE DID YOU GO WHEN YOU LEARNED THAT
24 YOUR BROTHER HAD BEEN ARRESTED AND YOU WERE IN
25 ISRAEL?

26 A I TOOK THE FIRST FLIGHT OUT I COULD TO
27 LONDON.

28 Q AND WHAT WAS YOUR PURPOSE IN GOING TO

43080

1 LONDON?

2 A WAS THE QUICKEST WAY BACK TO THE U.S.

3 Q WHAT DID YOU DO ONCE YOU GOT TO LONDON?

4 A GOT OFF THE PLANE.

5 Q LET ME ASK YOU ANOTHER QUESTION.

6 DID YOU TAKE A ROUTE AS DIRECTLY AS YOU
7 COULD FROM ISRAEL TO LOS ANGELES?

8 A FROM ISRAEL TO LOS ANGELES? NO. I FLEW
9 TO LONDON, TO MIAMI, AND THEN I MET DETECTIVE
10 ZOELLER AT THE LOS ANGELES AIRPORT.

11 Q OKAY. SO WHAT I MEANT BY ASKING YOU DID
12 YOU TAKE A DIRECT ROUTE -- YOU WERE INTENDING ON
13 FLYING FROM ISRAEL TO LOS ANGELES. THAT'S THE
14 STOPOVERS TO GET THERE?

15 A YES.

16 Q SO YOU FLEW FROM ISRAEL TO LONDON TO

17 MIAMI TO LOS ANGELES?

18 A WELL, I FLEW TO MIAMI FOR OTHER

19 REASONS. MY AUNT WAS THERE AND SHE FLEW BACK WITH

20 ME TO LOS ANGELES.

21 Q AND WHEN YOU GOT TO LOS ANGELES, WHO

22 GREETED YOU AT THE AIRPORT?

23 A DETECTIVE ZOELLER AND DETECTIVE LINEHAN.

24 Q DID YOU EXPECT TO BE ARRESTED WHEN YOU

25 GOT OFF THE PLANE?

26 A YES.

27 Q DID YOU STATE ANY CONDITIONS TO THE

28 DETECTIVES, LIKE LET ME GO HOME AND HAVE SOME ORANGE

43081

1 JUICE, OR LET ME GO HOME AND MAKE A PHONE CALL, OR

2 LET ME TALK TO MY GRANDMOTHER, ANYTHING LIKE THAT?

3 A NO.

4 Q DID YOU GO DIRECTLY TO JAIL?

5 A YES.

6 MR. LEVIN: I HAVE A COUPLE OF DIAGRAMS HERE,

7 148 AND 149.

8 MAY I STAY UP HERE TO USE THESE CHARTS?

9 MS. ABRAMSON: MR. LEVIN, ARE THOSE THE OLD

10 NUMBERS?

11 MR. LEVIN: YES, THEY ARE.
12 YOUR HONOR, I WOULD ASK THAT WHAT HAS
13 BEEN PREVIOUSLY MARKED AS 148, WHICH HAS SEVERAL
14 PHOTOGRAPHS OF THE MENENDEZ FAMILY HOUSES, BE MARKED
15 NEXT IN ORDER.
16 THE COURT: 349 IS THE NEXT EXHIBIT NUMBER.
17 MR. LEVIN: AND I ASK THAT WHAT HAS BEEN
18 PREVIOUSLY MARKED AS 149 BE MARKED IN THIS TRIAL AS
19 350. IT'S A CONTINUATION OF FAMILY HOUSES.
20 MAY I BRIEFLY STAY UP HERE, YOUR HONOR?
21 THE COURT: YES.
22 Q BY MR. LEVIN: MR. MENENDEZ, WHERE WAS
23 IT YOU WERE BORN?
24 MR. CONN: OBJECTION. IRRELEVANT.
25 THE COURT: SUSTAINED.
26 Q BY MR. LEVIN: WHERE IS YOUR FIRST
27 RECOLLECTION OF WHERE YOU WERE LIVING WHEN YOUR
28 FATHER TOUCHED YOU IN A SEXUAL WAY?

43082

1 MR. CONN: OBJECTION. IRRELEVANT.
2 THE COURT: OVERRULED.
3 THE WITNESS: I WAS IN MONSEY (POINTING).
4 Q BY MR. LEVIN: WHEN YOU POINTED TO
5 MONSEY YOU POINTED TO THE FOURTH PICTURE DOWN,

6 MONSEY, NEW YORK?

7 A YES.

8 Q IS THAT CORRECT?

9 AND THE PHOTOGRAPH THAT'S BEEN DEPICTED

10 -- AND I'M MARKING THEM VERTICALLY DOWN FROM A TO E

11 -- YOU POINTED TO THE PHOTOGRAPH I'VE JUST MARKED

12 AS D; IS THAT CORRECT?

13 A YES.

14 Q AND IS THAT THE HOUSE YOU LIVED IN FROM

15 1972 TO 1977?

16 A YES.

17 Q PRIOR TO THAT DID YOU LIVE IN ILLINOIS

18 IN HINSDALE?

19 A YES.

20 Q AND PRIOR TO THAT WERE YOU BORN IN CEDAR

21 GROVE, NEW JERSEY?

22 A YES.

23 Q THAT'S PHOTOGRAPH -- THE HOUSE IN C?

24 HINSDALE -- I'M SORRY. B IS CEDAR GROVE AND C IS

25 HINSDALE?

26 A YES.

27 Q AND DID YOU LEAVE MONSEY, NEW YORK IN

28 1977 AND MOVE TO PRINCETON JUNCTION, NEW JERSEY, THE

1 MILL ROAD HOUSE?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: FOR WHAT PERIOD OF TIME

5 DID YOUR FATHER SEXUALLY MOLEST YOU?

6 A UNTIL I WAS 18.

7 Q FROM AGES SIX TO EIGHTEEN YOUR FATHER

8 SEXUALLY MOLESTED YOU?

9 A YES.

10 Q AND DID HE MOLEST YOU IN THE FAMILY

11 HOMES?

12 A YES.

13 Q AND SO HE SEXUALLY MOLESTED YOU IN THE

14 HOME IN MONSEY; IS THAT CORRECT?

15 A YES.

16 Q DID HE SEXUALLY MOLEST YOU IN THE NEXT

17 HOUSE YOU LIVED IN?

18 A YES.

19 Q WHERE WAS THE NEXT HOUSE THAT YOU MOVED

20 TO?

21 A NORTH MILL ROAD.

22 Q IS THAT THE HOUSE DEPICTED IN PHOTOGRAPH

23 NO. E, PRINCETON JUNCTION, NEW JERSEY, THE MILL ROAD

24 HOUSE, '77 TO '78?

25 A YES.

26 Q IN 1978 DID YOU MOVE TO A HOUSE IN

27 PRINCETON, NEW JERSEY, WHERE YOUR FATHER SEXUALLY

28 MOLESTED YOU?

1 A YES.

2 Q WAS THAT HOUSE SECLUDED IN THE WOODS OR
3 BY TREES?

4 A IT WAS A LITTLE WAYS BACK FROM THE
5 PROPERTY AND THERE WERE TREES IN FRONT OF IT AND
6 SURROUNDING IT.

7 Q IS THAT THE HOUSE DEPICTED IN "A"?

8 A YES.

9 Q AND DID YOU MOVE IN 1986 TO A HOUSE ON
10 MOUNTAIN AVENUE, PRINCETON ESTATE, NEW JERSEY?

11 A YES.

12 Q IS THAT THE HOUSE IN B?

13 A YES.

14 Q AND LATER, DID YOU MOVE TO CALIFORNIA?

15 A YES.

16 Q WAS THAT 1986, TO CALABASAS?

17 A YES.

18 Q AND DID YOU LIVE IN SOME APARTMENTS
19 BEFORE YOU MOVED INTO A HOUSE?

20 A THE OAKWOOD APARTMENTS.

21 Q AND DID YOU AT SOME POINT LIVE AT PARK
22 LIVORNO IN CALABASAS?

23 A YES.

24 Q THAT'S THE HOUSE IN C?

25 A YES.

26 Q AND THEN DID YOU MOVE TO BEVERLY HILLS
27 IN 1988?

28 A YES. 1988.

43085

1 Q IS THAT THE HOUSE IN D?

2 A YES.

3 Q WHEN IS THE FIRST MEMORY YOU HAVE OF
4 YOUR FATHER SEXUALLY MOLESTING YOU?

5 A IN MONSEY, NEW YORK.

6 Q AND CAN YOU RELATE WHAT IT IS THAT YOU
7 RECALL THAT YOUR FATHER DID?

8 A HE HAD ME LAY DOWN ON MY BED IN MY
9 UNDERWEAR, AND WOULD MASSAGE MY BODY.

10 Q HE HAD YOU LAY DOWN ON THE BED AND HE
11 MASSAGED YOUR BODY?

12 A YES.

13 Q HOW DID HE MASSAGE YOUR BODY?

14 MR. CONN: OBJECTION. IRRELEVANT.

15 THE COURT: OVERRULED.

16 THE WITNESS: WITH HIS HANDS.

17 Q BY MR. LEVIN: WERE YOU CLOTHED?

18 A I HAD MY UNDERWEAR ON.

19 Q WERE YOU ALONE?

20 A YES.

21 Q JUST YOU AND YOUR FATHER?

22 A YES.

23 Q WAS ANYONE ELSE IN THE HOUSE WHEN IT

24 TOOK PLACE?

25 A SOMETIMES.

26 Q THIS PARTICULAR OCCASION, DO YOU

27 REMEMBER IF ANYONE ELSE WAS IN THE HOUSE?

28 A NO.

43086

1 Q AND HOW DID HE MASSAGE YOUR BODY? DID

2 HE RUB YOU ALL OVER?

3 A HE RUBBED MY CALVES AND MY THIGHS AND MY

4 BACK.

5 Q DID HE TOUCH YOUR PENIS?

6 A NOT THAT TIME.

7 Q DID YOU ENJOY THE MESSAGES BY YOUR

8 FATHER?

9 A YES, I DID.

10 Q HOW LONG OF A PERIOD OF TIME DID THESE

11 MESSAGES CONTINUE?

12 A WHEN?

13 Q TALKING ABOUT THE EARLY YEARS WHEN YOUR

14 FATHER MASSAGED YOU WITH YOUR UNDERWEAR ON.

15 A OH, I DON'T REALLY DISTINGUISH THE TIME
16 WHEN I HAD MY UNDERWEAR ON AND WHEN IT CAME OFF.
17 VERY OFTEN.

18 Q WAS THERE A TIME WHEN YOUR UNDERWEAR
19 WERE NOT ON?

20 A YES.

21 Q AND HOW WAS IT THAT YOUR UNDERWEAR WAS
22 TAKEN OFF?

23 A MY FATHER WOULD HAVE ME TAKE OFF MY
24 UNDERWEAR.

25 Q WOULD HE TELL YOU TO TAKE OFF YOUR
26 UNDERWEAR?

27 A YES.

28 Q AND DID YOU COMPLY?

43087

1 A YES.

2 Q DID HE TELL YOU TO DO ANYTHING AFTER YOU
3 TOOK OFF YOUR UNDERWEAR?

4 MR. CONN: OBJECTION. VAGUE AS TO TIME.

5 THE COURT: SUSTAINED.

6 Q BY MR. LEVIN: HOW OLD WERE YOU, THE
7 FIRST REMEMBRANCE YOU HAVE OF YOUR FATHER TELLING
8 YOU TO TAKE OFF YOUR UNDERWEAR?

9 A I WAS SIX.

10 Q AND DID YOU COMPLY WITH THAT, WITH YOUR
11 FATHER TELLING YOU?

12 A OF COURSE.

13 Q WHAT HAPPENED AFTER YOU TOOK OFF YOUR
14 UNDERWEAR?

15 MR. CONN: OBJECTION. VAGUE AS TO TIME.

16 THE COURT: REFERRING AGAIN TO THE SAME
17 INCIDENT?

18 MR. LEVIN: YES, YOUR HONOR.

19 THE COURT: OVERRULED.

20 THE WITNESS: I'M SORRY.

21 Q BY MR. LEVIN: DID YOUR FATHER TOUCH
22 YOU?

23 A YES.

24 Q AND HOW DID HE TOUCH YOU?

25 A AT FIRST WITH HIS HANDS.

26 Q AND WHERE DID HE TOUCH YOU?

27 A TOUCHED MY BACK AND MY THIGHS AND THEN
28 HE HAD ME TURN OVER.

43088

1 Q WHAT DID HE DO WHEN HE TOLD YOU TO TURN
2 OVER?

3 A HE TOUCHED MY GENITALS.

4 Q YOUR PENIS?

5 A YES.

6 Q HOW DID HE TOUCH YOUR PENIS?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: OVERRULED.

9 THE WITNESS: WITH HIS HANDS, WITH HIS MOUTH.

10 Q BY MR. LEVIN: HOW DID HE MAKE YOU FEEL?

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: OVERRULED.

13 THE WITNESS: MADE ME FEEL THAT HE LOVED ME.

14 Q BY MR. LEVIN: WHY WOULD YOU FEEL AT SIX

15 YEARS OLD THAT YOUR FATHER LOVED YOU WHEN HE TOUCHED

16 YOUR PENIS WITH HIS HANDS AND MOUTH?

17 A HE TOLD ME THIS WAS LOVE.

18 Q HOW DID HE EXPRESS IT TO YOU,

19 MR. MENENDEZ?

20 A HE WAS KIND AND HE WAS GENTLE. HE WAS

21 PATIENT AND HE LOVED ME.

22 Q WAS HE KIND AND GENTLE AND PATIENT AT

23 THIS TIME TO YOU OUTSIDE THE BEDROOM?

24 A NO.

25 Q HOW DID HE TREAT YOU OUTSIDE THE

26 BEDROOM?

27 MR. CONN: OBJECTION. VAGUE AS TO TIME.

28 MR. LEVIN: I'M REFERRING TO THIS PERIOD OF

1 TIME WHEN YOU ARE SIX YEARS OLD, IN THE VERY
2 BEGINNING STAGES, WHEN YOUR FATHER WAS TOUCHING YOU
3 AND THE WAY THAT YOU DESCRIBED IT.

4 THE WITNESS: HE WOULD BE MEAN.

5 Q BY MR. LEVIN: HOW WOULD HE BE MEAN?

6 A IN DIFFERENT WAYS. BY THE WAY HE'D TALK
7 TO ME SOMETIMES, THE WAY HE HIT ME. WHEN HE USED
8 HIS BELT ON ME, IN DIFFERENT WAYS.

9 Q NOW, UP TO THE TIME THAT YOU FELT THAT
10 YOUR FATHER NOW LOVED YOU BECAUSE OF THE EVENTS THAT
11 YOU JUST DESCRIBED IN THE BEDROOM, YOU ARE
12 DESCRIBING YOUR FATHER IN A WAY THAT IS DIFFERENT
13 THAN THE WAY HE WAS IN THE BEDROOM; IS THAT RIGHT?

14 A YES.

15 Q AND FROM YOUR EARLIEST REMEMBRANCE OF
16 YOUR FATHER, HOW WAS HE TO YOU?

17 A HE WAS NOT ALWAYS KIND.

18 Q AND IN WHAT WAYS WAS HE NOT KIND?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 Q BY MR. LEVIN: DURING THE TIME WHEN --
22 DURING YOUR EARLY CHILDHOOD YEARS, WERE YOU ACTIVE
23 IN SPORTS AT THAT TIME?

24 A YES.

25 Q AND WHAT SPORTS WERE YOU ACTIVE IN ABOUT
26 THE TIME YOU WERE SIX OR SO?

27 A I BELIEVE I WAS ACTIVE IN ALL THREE,

43090

1 TIME SOCCER AS WELL.

2 Q AND WHAT WAS THE FIRST SPORT THAT YOU
3 REMEMBER PARTICIPATING IN?

4 MR. CONN: OBJECTION. IRRELEVANT.

5 THE COURT: SUSTAINED.

6 Q BY MR. LEVIN: HOW WOULD YOU DESCRIBE
7 YOUR LIFE DURING YOUR EARLY CHILDHOOD YEARS?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: IT'S VAGUE.

10 Q BY MR. LEVIN: WAS YOUR DAD MEAN TO YOU
11 OUTSIDE THE BEDROOM?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: HE'S ALREADY TESTIFIED ABOUT
14 THAT.

15 Q BY MR. LEVIN: AND YOU SAID THAT HE HIT
16 YOU?

17 A YES.

18 Q FOR WHAT KIND OF THINGS DID YOUR FATHER
19 HIT YOU?

20 MR. CONN: OBJECTION. IRRELEVANT.

21 THE COURT: OVERRULED.

22 THE WITNESS: I DIDN'T HEAR.

23 Q BY MR. LEVIN: WHAT KIND OF THINGS DID
24 YOUR FATHER HIT YOU FOR DURING YOUR VERY EARLY
25 CHILDHOOD YEARS?

26 A CRYING, NOT DOING WELL ENOUGH IN SPORTS,
27 THOSE SORTS OF THINGS.

28 Q AND WHEN YOU SAY HIT, MR. MENENDEZ, WHAT

43091

1 DO YOU MEAN? BE MORE DESCRIPTIVE.

2 A HE WOULD SLAP ME IF I WAS IN THE LIVING
3 ROOM, PUNCH ME, HE'D DRAG ME INTO THE BEDROOM, HIT
4 ME WITH HIS BELT IF I WAS IN MY BEDROOM.

5 Q DID HE CALL YOU NAMES?

6 A YES.

7 Q WHAT KIND OF NAMES DID HE CALL YOU?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: SUSTAINED.

10 (ATTORNEYS LEVIN AND ABRAMSON
11 CONFER SOTTO VOCE.)

12

13 MR. LEVIN: I JUST NEED ONE MOMENT, YOUR
14 HONOR.

15 MS. ABRAMSON: DID YOU PULL IT ALREADY,
16 MR. LEVIN?

17 MR. LEVIN: I THINK TERRY MAY HAVE.

18 I CAN GO ON TO SOMETHING ELSE.

19 MS. ABRAMSON: HERE IT IS. YOU WANT TO

20 REMARK IT?

21 MR. LEVIN: YES.

22 YOUR HONOR, I HAVE A DOCUMENT. IT'S A

23 CARD, A XEROX OF A CARD THAT'S BEEN PREVIOUSLY

24 MARKED AS 266. I ASK THAT IT BE MARKED 351 IN THIS

25 TRIAL.

26 THE COURT: 351.

27 MR. LEVIN: THANK YOU.

28 Q DURING YOUR EARLY CHILDHOOD YEARS,

43092

1 MR. MENENDEZ, DID YOU CRY A LOT?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: DID YOUR PARENTS -- YOUR

5 HONOR, I'D LIKE TO BE HEARD. PERHAPS WE COULD BREAK

6 AT 4:25 SO I COULD BE HEARD.

7 THE COURT: OKAY. SURE.

8 Q BY MR. LEVIN: DID YOUR FATHER REACT

9 VIOLENTLY TO ANY PARTICULAR THING THAT YOU DID AS A

10 YOUNG CHILD?

11 A HE HATED IT WHEN I CRIED.

12 Q AND WHY DID YOU CRY?

13 A MOSTLY BECAUSE I WAS AFRAID IN SOME
14 WAY. EITHER HE YELLED OR IF HE HIT ME I USUALLY
15 CRIED, OR IF HE HIT MY MOTHER OR MY BROTHER, OR
16 SOMETIMES THE SITUATIONS AS A CHILD, I JUST REMEMBER
17 BEING SCARED; AND THERE WAS A LOT OF CONFUSION THAT
18 I HAD, AND SO I'D CRY SOMETIMES.

19 Q DID YOUR FATHER INDICATE TO YOU THAT
20 CRYING WAS A SIGN OF WEAKNESS?

21 A YES.

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED. THE ANSWER WILL
24 STAND.

25 THE WITNESS: YES.

26 Q BY MR. LEVIN: AND DO YOU RECALL AT A
27 VERY EARLY TIME IN YOUR LIFE GETTING A CARD FROM
28 YOUR FATHER FROM HAMBURG, GERMANY?

43093

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: ALL RIGHT. WE'LL TAKE OUR RECESS
3 AT THIS POINT AND WE'LL RESUME AT 8:30 TOMORROW.

4 DON'T DISCUSS THE MATTER WITH ANYONE.

5 DON'T FORM ANY FINAL OPINION ABOUT IT. WE'LL RESUME
6 TOMORROW AT 8:30.

7 (THE JURY EXITED THE COURTROOM AND

8 THE FOLLOWING PROCEEDINGS WERE HELD:)

9

10 THE COURT: THE DEFENDANT MAY RESUME HIS SEAT
11 AT COUNSEL TABLE.

12 OKAY. THE JURY HAS LEFT. WE HAD A
13 QUESTION AND AN OBJECTION.

14 MR. LEVIN: YES. YOUR HONOR, I WISH TO
15 ELICIT FROM THIS WITNESS ALL HIS FEELINGS WHICH
16 SUPPORT THAT WHICH THE EXPERTS WILL TESTIFY TO ARE
17 FEAR-INDUCING FACTORS, SUCH AS INCIDENTS WHERE
18 MR. MENENDEZ IS SUBJECTED TO NAME-CALLING,
19 DENIGRATING ACTIVITY FROM A VERY, VERY EARLY TIME IN
20 HIS LIFE.

21 THE EXPERTS WHO HAVE EXAMINED ERIK
22 MENENDEZ AND WHO HAVE FAMILIARITY IN THIS FIELD WILL
23 TESTIFY THAT THESE PARTICULAR TYPES OF ACTIVITIES
24 ARE FEAR-INDUCING ACTIVITIES IN A PERSON, AND THEY
25 DON'T GO AWAY. AND IF SOME ARBITRARY LINE IS DRAWN
26 WHERE MR. MENENDEZ IS NOT FULLY ABLE TO PUT ON HIS
27 DEFENSE BY SHOWING ALL THOSE FACTS WHICH THE EXPERTS
28 WILL TIE INTO FEAR AT A LATER TIME IN HIS LIFE, THEN

43094

1 HE'S BEING PRECLUDED FROM PUTTING ON A DEFENSE; AND
2 MOREOVER, THE PROSECUTORS HAVE STATED THEY'RE GOING

3 TO BE PUTTING ON AN EXPERT, AND I'M CERTAIN THEIR
4 EXPERT IS GOING TO GET UP AND TESTIFY THERE'S
5 INSUFFICIENT EVIDENCE THAT'S BEEN PUT IN THE
6 RECORD.

7 MOREOVER FROM THAT, MR. MENENDEZ IS
8 ENTITLED TO TESTIFY TO ALL THOSE SPECIFIC INCIDENTS,
9 ALL THE BEHAVIORS THAT HAVE BEEN EXHIBITED BY BOTH
10 HIS MOTHER AND HIS FATHER THAT HAVE A DIRECT BEARING
11 ON HIS FEAR THAT HE HAD WHICH RELATED TO THE
12 KILLINGS ON AUGUST 20TH.

13 THE COURT: YOU MEAN ANYTHING HE COULD
14 REMEMBER THAT ONE OF YOUR EXPERTS SAYS HE CONSIDERS
15 AS A FACTOR AS A BASIS FOR AN OPINION YOUR CLIENT
16 SHOULD BE PERMITTED TO TESTIFY ABOUT? IS THAT YOUR
17 POSITION?

18 MR. LEVIN: ANYTHING THAT HAPPENED TO
19 MR. MENENDEZ IN HIS LIFE THAT FORMED THE BASIS OF
20 THE OVERALL FEAR IS RELEVANT. AND THOSE SPECIFIC
21 THINGS WHICH FORM THE BASIS OF THE OVERALL FEAR ARE
22 BEHAVIORS THAT HAVE BEEN EXHIBITED BY JOSE MENENDEZ
23 SPECIFICALLY, OF DENIGRATING ACTIVITY,
24 NAME-CALLING. IT GOES BEYOND BEATINGS AND HITTINGS,
25 AND SEXUAL MOLESTATION. IT GOES INTO THE
26 PSYCHOLOGICAL ABUSE AND THE WAY HE WAS TREATED, THE
27 WAY ERIK MENENDEZ VIEWED HIMSELF IN HIS LIFE, WHAT
28 HE THOUGHT OF HIMSELF, AND WHAT HE -- HOW CONFUSED HE

1 WAS WHEN HIS FATHER BEGAN THESE SO-CALLED NICE ACTS
2 IN THE BEDROOM AT SIX YEARS OLD.

3 IT WAS EXTREMELY CONFUSING TO ERIK
4 MENENDEZ; AND MOREOVER, EXTREMELY ENJOYABLE, BECAUSE
5 IT WAS SO DIFFERENT FROM THE WAY HE WAS TREATED
6 OUTSIDE THE BEDROOM. AND TO LATER EXPLAIN THE
7 EVENTS THAT OCCUR IN HIS LIFE, TO GIVE MEANING AND
8 COLOR AND SIGNIFICANCE TO THE TRUTH, HE MUST BE ABLE
9 TO ESTABLISH AS A FOUNDATION HOW THE MOLESTATION
10 TOOK PLACE IN THE BEDROOM AND HOW IT CONTRASTED WITH
11 HIS TREATMENT OUTSIDE THE BEDROOM. IT'S ALL
12 RELATED.

13 THE COURT: OKAY. HOW LONG DOES THAT TAKE?
14 DOES IT TAKE MORE THAN TWO OR THREE SENTENCES TO
15 DESCRIBE THE CONTRAST BETWEEN ONE AND THE OTHER?

16 MR. LEVIN: I CAN'T SAY TWO OR THREE
17 SENTENCES.

18 THE COURT: WHAT YOU'VE TOLD ME IS YOU
19 PROPOSE TO INTRODUCE EVERYTHING YOUR CLIENT
20 REMEMBERS, BASICALLY.

21 MR. LEVIN: NOT EVERYTHING THAT HE REMEMBERS,
22 YOUR HONOR. EVERYTHING THAT HAS A SPECIFIC BEARING
23 ON THE WAY IN WHICH HE WAS TREATED OUTSIDE THE
24 BEDROOM. I'M NOT GOING TO BE TALKING ABOUT HOW MANY
25 SOCCER GAMES DID YOU PLAY IN 1976. THAT'S NOT WHAT
26 I'M INTERESTED IN. THAT'S NOT WHAT THE EXPERTS ARE

27 INTERESTED IN. BUT THE WAY IN WHICH JOSE MENENDEZ
28 DOMINATED, CONTROLLED, TERRORIZED ERIK MENENDEZ WAS

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1 ALL PART OF AN OVERALL -- IT'S ALL PART OF WHAT CHILD
2 MOLESTERS DO. FIRST SEDUCING AND BEGINNING
3 SEDUCTION ACTIVITY, THE RUBBING, THE BEHAVIOR IN
4 PUBLIC SO THAT ERIK MENENDEZ WILL FEEL COMFORTABLE
5 WITH HIS FATHER'S TOUCH.

6 FOLLOWING THAT, THERE IS -- THERE IS
7 BEHAVIORS THAT OCCUR IN THE BEDROOM THAT ARE SO
8 DIFFERENT FROM THE BEHAVIORS PURPOSELY INFLICTED
9 UPON HIM OUTSIDE THE BEDROOM; AND ERIK MENENDEZ
10 SHOULD BE AFFORDED THE OPPORTUNITY TO TALK ABOUT HOW
11 THOSE -- OR HOW IT WAS HE WAS TREATED OUTSIDE THE
12 BEDROOM SO THAT WE CAN DEMONSTRATE THE THINGS I'VE
13 SAID BEFORE.

14 THAT'S THE PURPOSE OF ELICITING -- IN
15 TERMS OF TIME, THERE ISN'T A LOT OF TIME THAT'S
16 GOING TO BE REQUIRED TO ELICIT THIS KIND OF
17 TESTIMONY. BUT IT REQUIRES ERIK MENENDEZ TO BE ABLE
18 TO DESCRIBE HIS FEELINGS AND DESCRIBE THE MANNER IN
19 WHICH HE WAS TREATED. THAT'S THE ESSENCE OF WHAT
20 I'M TRYING TO BRING OUT.

21 THE COURT: OKAY. WHAT IS THE PEOPLE'S

22 RESPONSE?

23 MS. ABRAMSON: COULD I ADD SOMETHING, YOUR
24 HONOR?

25 THE COURT: ONE LAWYER PER SIDE ON THIS
26 MATTER.

27 MR. CONN: WE FILED A MOTION WITH THE COURT
28 IN RESPONSE TO THIS ISSUE ANTICIPATING THAT THE

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1 DEFENSE WOULD WANT TO GET INTO HIS TESTIMONY IN THE
2 SAME WAY THAT THEY DID IN THE FIRST TRIAL. AND OUR
3 POSITION IS THAT, ALTHOUGH MR. LEVIN WANTS TO
4 PRESENT A BROAD PSYCHOLOGICAL PROFILE THROUGH THE
5 TESTIMONY OF THE DEFENDANTS, THE ULTIMATE ISSUE
6 BEFORE THE TRIER OF FACT IS NOT HIS BROAD
7 PSYCHOLOGICAL STATE. IT'S SIMPLY WHETHER THE
8 DEFENDANT WAS IN FEAR AT THE TIME HE KILLED HIS
9 PARENTS, AND WHAT WAS THE REASON FOR THAT FEAR.

10 SO I DON'T THINK HE SHOULD BE PERMITTED
11 TO PRESENT A BROAD PSYCHOLOGICAL PROFILE OF WHAT
12 MIGHT IN GENERAL, OR THEORETICALLY, PROVIDE A BASIS
13 FOR FEAR. THE ISSUE IS WHAT DID CAUSE THE FEAR?

14 NOW, IT'S OUR POSITION THAT THE
15 DEFENDANT SHOULD BE PERMITTED TO TESTIFY TO WHY HE
16 WAS AFRAID OF HIS PARENTS, AND THE COURT SHOULD

17 GRANT HIM SUBSTANTIAL LEEWAY AS FAR AS TESTIFYING TO
18 PRECISELY WHY HE WAS IN FEAR OF HIS PARENTS. BUT IT
19 IS NECESSARY, WE BELIEVE, TO LINK THE TESTIMONY OR
20 TO LINK THAT EVIDENCE THROUGH THE TESTIMONY OF THE
21 DEFENDANTS AND NOT JUST TO ALLOW THESE NEBULOUS
22 VAGUE REFERENCES TO THE PARENTS WHICH MAY OR MAY NOT
23 BE LINKED UP DOWN THE ROAD. I MEAN, WE REALLY DON'T
24 KNOW. IT'S INCUMBENT UPON COUNSEL TO DEMONSTRATE
25 THE RELEVANCE OF THIS EVIDENCE BEFORE IT IS
26 PRESENTED.

27 SO I WOULD SUBMIT AT THIS TIME THAT
28 UNLESS THE DEFENDANT IS GOING TO TESTIFY THAT THIS

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1 IS WHY HE WAS AFRAID OF HIS PARENTS AT THE TIME THAT
2 HE KILLED THEM, COUNSEL SHOULD NOT BE PERMITTED TO
3 INQUIRE INTO THESE AREAS. ALL HE HAS TO DO IS ASK
4 HIS CLIENT: WHY DID YOU KILL YOUR PARENTS? AND
5 STARTING FROM THAT REFERENCE POINT THE DEFENDANT
6 SHOULD BE PERMITTED TO ANSWER THAT QUESTION, AND THE
7 COURT CAN THEN, BASED UPON HIS ANSWER TO THAT
8 QUESTION, EVALUATE THE LENGTH AND NATURE OF THE
9 TESTIMONY UNDER EVIDENCE CODE SECTION 352. BUT I
10 DON'T THINK THAT THE COURT SHOULD JUST ALLOW
11 REFERENCE TO SUCH ACCUSATIONS THAT HE CARES TO MAKE

12 AGAINST HIS PARENTS BEFORE HE LINKS IT UP.

13 MR. LEVIN: YOUR HONOR, BRIEFLY. THERE ARE
14 TWO COMPONENTS TO THIS TESTIMONY, TWO -- I SEE TWO
15 DIFFERENT TRACKS THAT THE EVIDENCE GOES ALONG. ONE
16 IS THAT IT MAY -- IT DOES TEND TO EXPLAIN ERIK
17 MENENDEZ' STATE OF MIND ON AUGUST 20TH, 1989; AND
18 SPECIFICALLY, THE EVENTS OF THE LAST WEEK AND WHAT
19 MR. MENENDEZ FELT AND HOW HE INTERPRETED THE CUES
20 THAT HE VIEWED AND THAT HE SAW.

21 THE SECOND TRACK THAT THIS EVIDENCE IS
22 RELEVANT TO IS MENTAL STATE, AND WE ARE PRESENTING A
23 MENTAL STATE DEFENSE IN THIS CASE. WE'RE GOING TO
24 SHOW THROUGH EXPERT TESTIMONY THAT THE DOMINATION
25 AND CONTROL OF BOTH JOSE AND KITTY MENENDEZ, IN BOTH
26 SEXUAL WAYS FOR JOSE MENENDEZ, AND PSYCHOLOGICAL
27 WAYS ON BOTH JOSE MENENDEZ AND MRS. MENENDEZ,
28 EXPLAINS THE FEAR THAT MR. MENENDEZ HAD AND WHY HE

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1 FELT HE HAD NO ALTERNATIVES AND WHY IT WAS THAT HE
2 RESORTED TO THE KILLING OF HIS PARENTS.

3 IN ORDER TO EXPLAIN THE MENTAL STATE
4 PRONG OF THE RELEVANCY OF THIS EVIDENCE WE MUST BE
5 ALLOWED TO PUT INTO THE RECORD THOSE FACTUAL -- FIRST
6 OF ALL, THE STATE OF MIND OF MR. MENENDEZ WITH

7 RESPECT TO HOW HIS FATHER TREATED HIM; BUT ALSO,
8 SPECIFIC INCIDENTS THAT SUPPORT HIS FEELINGS, SO
9 THAT HIS DEFENSE CAN BE FULLY PRESENTED TO THE JURY.

10 THE COURT: OF COURSE, THE STATE OF MIND
11 YOU'RE TALKING ABOUT IS THE STATE OF MIND OF 1989,
12 NOT AS A CHILD. SO THE FOCUS HAS TO BE ON THAT TO
13 START WITH.

14 MR. LEVIN: WELL, HE'S SUFFERING FROM A
15 CONDITION CALLED POST-TRAUMATIC STRESS DISORDER.
16 POST-TRAUMATIC STRESS DISORDER BY ITS VERY NATURE
17 RELATES TO SPECIFIC STRESS DISORDERS THAT ARE
18 PRODUCED AT A TIME IN THE PAST OR OVER A PERIOD OF
19 TIME. IT COULD BE A SINGLE EVENT OR A MULTITUDE OF
20 EVENTS. IN THIS CASE THE POST IN THE POST-TRAUMATIC
21 STRESS ARE THOSE STRESSORS SUFFERED BY ERIK MENENDEZ
22 THROUGHOUT THE ENTIRETY OF HIS LIFE. ALTHOUGH IT'S
23 NOT NECESSARY TO -- STRIKE THAT.

24 WHAT I'M TRYING TO SAY, YOUR HONOR, IS
25 THAT THE EXPERTS THAT ARE GOING TO TESTIFY IN THIS
26 CASE, SPECIFICALLY DR. WILSON, IS GOING TO TESTIFY
27 THAT THOSE EVENTS THAT IMPACTED ERIK MENENDEZ' STATE
28 OF MIND, THOSE PARTICULAR EVENTS AND TREATMENT THAT

2 THE TYPE AND CHARACTER THAT HE USED TO FORM HIS
3 OPINION THAT ERIK MENENDEZ SUFFERED FROM A MENTAL
4 DISORDER AT THE TIME OF THE KILLING ON AUGUST THE
5 20TH, 1989.

6 AND SO THAT'S SPECIFICALLY WHY WE WANT
7 TO BRING THIS EVIDENCE IN. WITHOUT IT, A
8 SIGNIFICANT PORTION OF DR. WILSON'S TESTIMONY WILL
9 HAVE -- WILL MAKE NO SENSE.

10 THE COURT: WHAT PRECISELY DID YOU PROPOSE TO
11 BRING IN?

12 MR. LEVIN: WELL, I WAS NOT GOING VERY MUCH
13 FARTHER THAN WHERE I WAS GOING WITH THE QUESTIONS
14 THAT WERE -- THE COURT SUSTAINED. I'M NOT PROPOSING
15 TO BRING IN A MULTITUDE OF SPECIFIC INCIDENTS THAT
16 ARE -- THAT WOULD WASTE COURT TIME OR TAKE UP COURT
17 TIME, UNDUE COURT TIME.

18 THE COURT: WHAT ARE YOU PROPOSING? WHAT IS
19 IT YOU'RE GOING TO ASK?

20 MR. LEVIN: I'M GOING TO ASK HIM ABOUT HIS
21 BEHAVIOR, HOW HE VIEWED HIS LIFE OUTSIDE THE
22 BEDROOM. WHAT WAS IT? HOW DID HIS FATHER TREAT HIM
23 OUTSIDE THE BEDROOM? AND WHAT DID HE DO TO HIM
24 OUTSIDE THE BEDROOM? THOSE KINDS OF THINGS THAT
25 CAUSED HIM TO FEEL THAT I AM NOW RECEIVING LOVE AND
26 AFFECTION AND IT FEELS SO GOOD, IN CONTRAST WITH
27 WHAT I PROPOSE TO BRING IN. I DON'T WANT TO LEAVE
28 IT SITTING IN A VOID.

1 THE COURT: AGAIN, WHAT DID YOU PROPOSE TO
2 BRING IN AS FAR AS THE SPECIFIC ACTS?

3 MR. LEVIN: EXACTLY? THE QUESTIONS THAT I'D
4 ASKED, THAT WAS IT; WHERE I WAS TALKING ABOUT
5 DENIGRATING, NAME-CALLING, THE KIND OF NAMES THAT
6 HIS FATHER CALLED HIM, THE KIND OF NAMES THAT HIS
7 MOTHER CALLED HIM, THE WAY IN WHICH HE VIEWED
8 HIMSELF, THE KIND OF THINGS THAT HIS FATHER TOLD
9 HIM, THAT HE WAS A SISSY, A COWARD; THOSE KINDS OF
10 ADJECTIVES THAT WERE USED CONSTANTLY THROUGHOUT HIS
11 LIFE.

12 THE COURT: ABOUT FIVE QUESTIONS YOU WERE
13 GOING TO ASK ON THE SUBJECT? IS THAT WHAT YOU'RE
14 SAYING?

15 MR. LEVIN: YES.

16 THE COURT: THOSE FIVE YOU'VE JUST
17 ENUMERATED?

18 MR. LEVIN: THE SAME QUESTIONS, YES.

19 THE COURT: PEOPLE WISH TO BE HEARD ON THAT?

20 MR. CONN: NO, YOUR HONOR.

21 THE COURT: TO THE EXTENT OF THOSE QUESTIONS,
22 AND IF WE DON'T GO INTO A LONG LITANY OF DESCRIBING
23 DIFFERENT EVENTS AND THINGS OF THAT NATURE, THEN
24 I'LL PERMIT THOSE BRIEF QUESTIONS.

25 MR. LEVIN: OKAY. THANK YOU, YOUR HONOR.

26 THE COURT: WE'LL BE IN RECESS UNTIL TOMORROW

27 AT 8:30.

28 (AT 4:40 P.M. PROCEEDINGS WERE

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1 ADJOURNED UNTIL 8:30 A.M. THE

2 FOLLOWING DAY.)

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