

1 VAN NUYS, CALIFORNIA; THURSDAY, DECEMBER 7, 1995

2 9:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: IN THE TRIAL, EVERYONE IS

7 PRESENT.

8 ARE YOU READY TO PROCEED WITH THE JURY?

9 MR. LEVIN: YES, YOUR HONOR.

10 THE COURT: OKAY. I'VE BEEN INFORMED THAT

11 ONE OF THE JURORS IS FEELING ILL, AND WE HAVE BEEN

12 SCHEDULED TO RECESS AT 2:30 TO ACCOMMODATE ANOTHER

13 JUROR'S APPOINTMENT. SO BECAUSE OF THE CONDITION OF

14 THE OTHER JUROR WHO'S FEELING ILL TODAY, WE'LL BE

15 RECESSING AT NOON.

16 MR. LEVIN: VERY WELL.

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

18 (THE JURY ENTERED THE COURTROOM

19 AND THE FOLLOWING PROCEEDINGS

20 WERE HELD:)

21

22 THE COURT: THE JURY IS IN COURT.

23 GOOD MORNING, LADIES AND GENTLEMEN.

24 WE'RE GOING TO RESUME WITH THE TRIAL AND

25 TESTIMONY OF THE DEFENDANT, ERIK MENENDEZ.

26 WOULD YOU GET BACK ON THE WITNESS STAND,

27 PLEASE.

28

1 ERIK GALEN MENENDEZ,
2 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE
3 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

4

5 THE COURT: WE'LL CONTINUE WITH THE DIRECT
6 EXAMINATION.

7 MR. LEVIN: THANK YOU, YOUR HONOR.

8

9

10 DIRECT EXAMINATION (CONTINUED)

11 BY MR. LEVIN:

12 Q YESTERDAY, MR. MENENDEZ, I ASKED YOU A
13 QUESTION ABOUT YOUR LIFE AS IT WAS OUTSIDE THE
14 BEDROOM WITH YOUR FATHER. YOU HAD INDICATED THAT IT
15 WAS DIFFERENT THAN THE TREATMENT THAT YOU RECEIVED
16 FROM HIM WHILE IN THE BEDROOM DURING THOSE EARLY
17 CHILDHOOD YEARS.

18 DID YOUR FATHER, OUTSIDE THE BEDROOM
19 DURING THOSE YEARS, CALL YOU CERTAIN NAMES?

20 A YES.

21 Q AND HOW DID HE REFER TO YOU?

22 A IN THE NAMES THAT HE CALLED ME?

23 Q YES.

24 A SOMETIMES HE WOULD CALL ME A SISSY OR
25 COWARD OR THAT I WASN'T WORTHY TO BE HIS SON OR I
26 WASN'T A MENENDEZ. THINGS OF THAT SORT.
27 Q YOU INDICATED THAT CERTAIN THINGS MIGHT
28 OCCUR IF YOU CRIED.

43105

1 A YES.
2 Q WHAT WOULD MAKE YOU CRY IN THOSE EARLY
3 YEARS?
4 A CONFUSION, THE FEAR THAT I USUALLY GOT.
5 I GOT FRIGHTENED WHEN THERE WAS A LOT OF CHAOS IN
6 THE HOUSE AND PEOPLE WERE YELLING AND SCREAMING OR
7 DAD WAS HITTING SOMEBODY OR JUST YELLING; AND I
8 DIDN'T UNDERSTAND, AND SO I WOULD GET SCARED AND
9 SOMETIMES I WOULD CRY.
10 Q COULD YOU TELL YOUR FATHER WHEN YOU WERE
11 AFRAID, THAT YOU WERE AFRAID?
12 A NO.
13 Q IF YOU DID, WHAT WOULD HAPPEN?
14 A FEAR, HE CONSIDERED A GREAT WEAKNESS,
15 AND HE DIDN'T WANT ME EVER TO BE AFRAID; AND SO HE
16 WOULD USUALLY EITHER YELL OR PUNISH ME IN SOME WAY,
17 YELL AT ME FOR BEING AFRAID.
18 Q YESTERDAY I LEFT OFF SHOWING YOU EXHIBIT

19 351. I'D LIKE YOU TO TAKE A LOOK AT IT FOR A
20 MOMENT.

21 DO YOU RECOGNIZE EXHIBIT 351?

22 A YES.

23 Q IS THAT A CARD FROM YOUR FATHER TO YOU?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: LET ME SEE THE CARD.

26 OVERRULED.

27 THE WITNESS: YES, IT IS.

28 Q BY MR. LEVIN: AND WHEN DO YOU RECALL

43106

1 RECEIVING THAT CARD?

2 A WHEN I WAS STILL IN MONSEY.

3 Q AT THAT TIME WAS YOUR FATHER OUT OF THE
4 COUNTRY?

5 A YES.

6 Q AND THAT CARD, HOW DOES IT ADDRESS YOU
7 IN THE CARD? WHAT DOES IT SAY?

8 A "DEAR ERICK."

9 Q ERIK. HOW DO YOU SPELL YOUR NAME?

10 A E-R-I-K.

11 Q DO YOU RECOGNIZE YOUR FATHER'S
12 HANDWRITING ON EXHIBIT 351?

13 A YES.

14 Q HOW DID YOUR FATHER WRITE YOUR NAME IN
15 THAT CARD?
16 A E-R-I-C-K.
17 Q IS THAT HOW YOU SPELL YOUR NAME?
18 A NO.
19 Q IS THAT HOW YOU EVER SPELLED YOUR NAME?
20 A NO.
21 Q DOES YOUR FATHER REFER TO YOUR CRYING IN
22 THAT CARD?
23 A YES.
24 Q WHAT DOES HE SAY? READ IT.
25 A "DEAR ERICK: I TRUST THAT YOU ARE NOT
26 CRYING MUCH."
27 Q THANK YOU.
28 THAT'S WHAT YOUR FATHER WROTE YOU FROM

43107

1 HAMBURG, GERMANY?
2 A YES.
3 Q YOU INDICATED THAT IT WAS JUST AROUND
4 YOUR -- OR JUST AROUND WHEN YOU TURNED SIX THAT THE
5 MOLESTATION BETWEEN -- THE MOLESTATION BY YOUR FATHER
6 BEGAN.
7 DO YOU RECALL THAT TESTIMONY YESTERDAY?
8 A YES.

9 Q DID YOUR FATHER EVER TAKE PICTURES OF
10 YOU?
11 A YES.
12 Q AND DID YOUR FATHER EVER TAKE PICTURES
13 OF YOU NUDE?
14 A YES.
15 Q DID ANYONE ELSE EVER TAKE PICTURES OF
16 YOU NUDE?
17 A NOT THAT I KNOW OF.
18 Q DID YOUR FATHER TAKE PICTURES OF LYLE
19 MENENDEZ, YOUR BROTHER, NUDE?
20 A YES.
21 Q DID YOU SEE HIM TAKING PICTURES OF YOUR
22 BROTHER LYLE MENENDEZ NUDE?
23 A YES.
24 Q AND WOULD HE ASK YOU TO DO ANYTHING LIKE
25 POSING, ANYTHING SPECIAL WHEN HE TOOK A PICTURE OF
26 YOU NUDE?
27 A SOMETIMES.
28 MR. LEVIN: YOUR HONOR, I HAVE TWO SMALL

43108

1 PHOTOGRAPHS. THE FIRST ONE HAS BEEN MARKED
2 PREVIOUSLY 221-B, AND I WOULD ASK THAT IT BE MARKED --
3 I BELIEVE WE'RE AT 352?

4 THE COURT: 352. EACH ONE YOU'RE MARKING

5 SEPARATELY?

6 MR. LEVIN: I HAVE TWO AND TWO BLOWUPS OF

7 EACH ONE. SO PERHAPS -- THE SMALL PHOTOGRAPH I'M

8 ASKING BE MARKED 352 AND THE BLOW-UP, WHICH

9 PREVIOUSLY WAS MARKED 223, COULD THAT BE MARKED

10 352-A?

11 THE COURT: YES.

12 MR. LEVIN: I HAVE ANOTHER SMALL PHOTOGRAPH

13 THAT HAS BEEN PREVIOUSLY MARKED 221-H. I ASK THAT

14 IT BE MARKED 353; AND THE BLOW-UP I ASK BE MARKED

15 353-A.

16 THE COURT: ALL RIGHT.

17 MR. LEVIN: COUNSEL?

18 Q MR. MENENDEZ, SHOWING YOU TWO

19 PHOTOGRAPHS; FIRST, 353, DO YOU RECOGNIZE THAT

20 PHOTOGRAPH?

21 A YES.

22 Q IS THAT A PHOTOGRAPH TYPICAL OF THE TYPE

23 YOUR FATHER TOOK OF YOU?

24 A SOMETIMES.

25 Q AND I NOTICE IN THAT PHOTOGRAPH THAT

26 YOUR HEAD IS NOT SHOWING; IS THAT CORRECT?

27 A YES.

28 Q HOW DO YOU KNOW THAT THAT'S YOU?

1 A BECAUSE OF MY BIRTHMARK.

2 Q YOU HAVE A BIRTHMARK ON YOUR RIGHT
3 WRIST?

4 A YES.

5 Q DOES THAT BIRTHMARK SHOW IN THE
6 PHOTOGRAPH?

7 A YES.

8 Q WOULD YOU SHOW THE JURY FROM WHERE
9 YOU'RE SEATED THE BIRTHMARK.

10 A (WITNESS COMPLIES.)

11 Q I SEE IT'S ON THE TOP OF YOUR RIGHT
12 WRIST, JUST BENEATH YOUR HAND.

13 A YES.

14 Q HAVE YOU HAD THAT ALL YOUR LIFE?

15 A YES.

16 Q SHOWING YOU WHAT'S BEEN MARKED 352, DO
17 YOU RECOGNIZE THAT PHOTOGRAPH?

18 A YES.

19 Q WHO'S IN THAT PHOTOGRAPH?

20 A I BELIEVE IT'S LYLE.

21 Q AND IS THAT THE KIND OF PHOTOGRAPH YOUR
22 FATHER WOULD TAKE OF YOUR BROTHER LYLE?

23 A SOMETIMES.

24 Q I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED
25 353-A. IS THAT A BLOW-UP OF 353?

26 A YES.

27 Q AND IN PHOTOGRAPH 353-A, ALTHOUGH IT'S

43110

1 THAT YOU'RE REFERRING TO THAT YOU SHOWED THE JURY,
2 YOUR RIGHT WRIST?

3 A YES.

4 Q SHOWING YOU 352-A, IS THAT THE BLOW-UP
5 OF 352?

6 A YES.

7 Q THAT'S YOUR BROTHER LYLE MENENDEZ?

8 THE COURT: WHAT'S YOUR ANSWER?

9 THE WITNESS: YES.

10 Q BY MR. LEVIN: YOU INDICATED YESTERDAY
11 THAT YOUR FATHER WAS NICE TO YOU IN THE BEDROOM.
12 HOW WAS HE NICE TO YOU? THIS IS DURING THIS EARLY
13 CHILDHOOD YEARS AT ABOUT SIX YEARS OLD.

14 A HE WAS GENTLE. HIS WORDS WERE SOFTER.
15 HIS TONE WAS KINDER, AND I FELT LOVE FROM HIS
16 EXPRESSIONS.

17 Q WERE YOU THINKING THAT IT WAS WRONG AT
18 THAT TIME?

19 A THAT WHAT WAS WRONG?

20 Q THAT YOUR FATHER WAS HAVING SEX WITH
21 YOU.

22 A WELL, HE WASN'T HAVING SEX WITH ME AT

23 THAT TIME.

24 Q BUT WHEN YOUR FATHER STARTED TO MASSAGE
25 YOU IN THE WAY THAT YOU DESCRIBED YESTERDAY, DID YOU
26 THINK THAT THAT WAS WRONG?

27 A NO.

28 Q WHEN YOU SAID THAT HE MASSAGED YOU WITH

43111

1 HIS MOUTH, WOULD YOU BE MORE SPECIFIC. WHAT DID HE
2 DO WITH HIS MOUTH?

3 A HE MASSAGED MY PENIS.

4 Q PUT HIS MOUTH OVER YOUR PENIS?

5 A YES.

6 Q HOW DID THAT MAKE YOU FEEL?

7 A UNEASY, EXPOSED, COLD. BUT I JUST
8 ASSUMED THAT I WOULD GET USED TO IT, AND I DID; AND
9 EVENTUALLY IT MADE ME FEEL WARM.

10 Q DID YOU THINK OF RUNNING AWAY?

11 A NO.

12 Q DID YOU THINK OF TELLING ANYONE?

13 A NO.

14 Q DID YOU LIKE IT?

15 A SOMETIMES.

16 Q DID YOU THINK OF WAYS TO END WHAT YOUR
17 FATHER WAS DOING AT THAT TIME?

18 A NO.

19 Q YOU ALSO HAVE GOOD MEMORIES ABOUT YOUR
20 FATHER?

21 A YES.

22 Q DO YOU RECALL DURING THOSE EARLY YEARS
23 WHEN YOUR FATHER WAS IN YOUR BEDROOM, WAS THIS AT A
24 TIME WHEN YOUR BROTHER LYLE MENENDEZ WAS IN THE
25 HOUSE?

26 A HE WAS LIVING AT THE HOUSE.

27 Q BUT WAS HE HOME WHEN YOUR FATHER WOULD
28 DO THESE THINGS WITH YOU?

43112

1 A OFTEN.

2 Q WAS HE GONE SOMETIMES?

3 A SOMETIMES.

4 Q AND WAS THE DOOR OF YOUR BEDROOM OPENED
5 OR CLOSED?

6 A IT WAS ALWAYS CLOSED.

7 Q WAS YOUR MOTHER HOME AT THIS TIME?

8 A SOMETIMES.

9 Q WAS YOUR FATHER -- WOULD YOU DESCRIBE HIM
10 AS A BUSY MAN?

11 A OH, YES.

12 Q DID HE GET LOTS OF TELEPHONE CALLS AT

13 HOME ALL THE TIME?

14 A YES.

15 Q WAS THERE EVER A TIME WHEN YOUR DAD WAS

16 ALONE IN THE ROOM WITH YOU WHERE YOUR MOTHER

17 INTERRUPTED HIM?

18 A NOT THAT I REMEMBER.

19 Q WAS THERE EVER A TIME WHEN LYLE MENENDEZ

20 CAME UP TO THE BEDROOM TO SEE WHAT YOU WERE DOING?

21 A NO.

22 Q WAS THERE EVER A TIME WHEN YOUR FATHER

23 WAS TOLD THAT HE HAD A TELEPHONE CALL OR A VISITOR

24 BY YOUR MOTHER WHEN HE WAS ALONE IN THE BEDROOM WITH

25 YOU?

26 A NO.

27 Q WERE THERE TIMES WHEN YOU SAW YOUR

28 FATHER ALONE IN THE BEDROOM WITH YOUR BROTHER LYLE

43113

1 MENENDEZ?

2 A I DON'T UNDERSTAND.

3 Q WHERE YOU KNEW THAT YOUR FATHER WAS IN

4 THE BEDROOM WITH LYLE MENENDEZ DURING YOUR EARLY

5 YEARS.

6 A YES.

7 Q WERE THERE TIMES WHEN YOU KNEW THAT?

8 A YES.

9 Q WERE YOU TOLD ANYTHING ABOUT GOING NEAR
10 THE ROOM AT THAT TIME?

11 A WELL, THERE WAS A FAMILY RULE THAT WHEN
12 MY FATHER WAS IN THE BEDROOM WITH EITHER OF US, THAT
13 WE WEREN'T EVEN SUPPOSED TO GO DOWN THE HALLWAY
14 TOWARD THE DOOR.

15 Q AND DURING THOSE TIMES THAT YOUR FATHER
16 WAS ALONE IN THE BEDROOM WITH YOUR BROTHER LYLE
17 MENENDEZ, DID YOU GO INTO THE ROOM?

18 A NO.

19 Q DID YOUR FATHER TELL YOU DURING THESE
20 EARLY YEARS NOT FOR YOU -- DID HE EXPLAIN TO YOU WHY
21 HE WAS DOING TO YOU WHAT HE WAS DOING?

22 A YES.

23 Q WHAT WAS IT THAT HE TOLD YOU?

24 A HE TOLD ME THAT IT WAS A WAY TO RELEASE
25 THE TENSION AND THE KNOTS IN YOUR MUSCLES WHEN YOU
26 GOT WORKED UP FROM SPORTS AND ANXIETY, AND IT WAS
27 JUST A WAY TO RELAX.

28 Q AND DID YOU BELIEVE THAT TO BE TRUE?

43114

1 A YES.

2 Q WAS THERE A TIME WHERE YOUR FATHER ASKED

3 YOU TO TOUCH HIM AND MASSAGE HIM?

4 A YES.

5 Q AND APPROXIMATELY HOW OLD WERE YOU WHEN
6 THAT OCCURRED?

7 A I WAS STILL IN MONSEY, SO I -- I CAN'T
8 TELL HOW FAR INTO IT, MAYBE THE SAME YEAR.

9 Q CAN YOU ESTIMATE THE FREQUENCY OF WHICH
10 YOUR FATHER MADE THESE BEDROOM VISITS TO YOU DURING
11 THESE EARLY CHILDHOOD YEARS?

12 A TWO, THREE TIMES IN A MONTH, SOMETIMES
13 NOT FOR A MONTH.

14 Q SOMETIMES MORE?

15 A NOT MUCH MORE.

16 Q BUT IT WAS BASICALLY TWO TO THREE TIMES
17 A MONTH?

18 A AVERAGED OUT, I GUESS, ABOUT THAT.

19 Q DID YOU KNOW IN ADVANCE WHEN YOUR FATHER
20 WOULD COME TO YOUR ROOM?

21 A NO.

22 Q WAS IT GENERALLY DURING THE WEEK OR THE
23 WEEKEND?

24 A IT WAS GENERALLY DURING THE WEEKEND.
25 SOMETIMES IF HE GOT BACK FROM A BUSINESS TRIP HE
26 WOULD COME IN.

27 Q AND WAS IT DURING THE DAY OR DURING THE
28 NIGHT?

1 A ON THE WEEKDAYS IT WAS ALWAYS DURING THE
2 NIGHT. ON THE WEEKEND IT WAS USUALLY IN THE
3 AFTERNOON.

4 Q DID YOU SHARE A ROOM WITH YOUR BROTHER
5 LYLE MENENDEZ AT THAT TIME?

6 A YES.

7 Q AND THE TIME THAT YOUR FATHER WAS ALONE
8 IN THE BEDROOM WITH YOU, THERE WAS NOT A TIME WHEN
9 LYLE MENENDEZ WAS IN THAT ROOM?

10 A DURING MASSAGE, NO.

11 Q IN OTHER WORDS, YOU WERE ALONE WITH YOUR
12 FATHER IN THE BEDROOM THAT YOU SHARED WITH LYLE
13 MENENDEZ?

14 A YES.

15 Q WHAT WAS IT THAT YOUR FATHER ASKED YOU
16 TO DO WHEN YOU UNDERSTOOD HE WANTED YOU TO MASSAGE
17 HIM?

18 A HE'D LAY DOWN ON MY BED WITH HIS
19 UNDERWEAR ON AND I MASSAGED HIS THIGHS AND HIS
20 CALVES AND HIS BACK IN A SIMILAR WAY THAT HE DID TO
21 ME.

22 Q IN A SIMILAR WAY THAT HE DID TO YOU
23 BEFORE HE TOLD YOU TO TAKE OFF YOUR UNDERWEAR?

24 A YES.

25 Q AND FOR HOW LONG OF A PERIOD DID IT GO

26 ON WHERE YOUR FATHER WOULD ASK YOU TO MASSAGE HIM IN
27 THE WAY THAT YOU JUST DESCRIBED?
28 A I DON'T KNOW HOW LONG. I KNOW THAT IT

43116

1 CHANGED IN THE NORTH MILL HOUSE.

2 Q APPROXIMATELY HOW OLD WERE YOU WHEN YOU
3 MOVED TO THE NORTH MILL HOUSE?

4 A I WAS LIVING THERE WHEN I WAS SEVEN.

5 Q DID YOU HAVE YOUR OWN ROOM AT THE NORTH
6 MILL HOUSE, OR DID YOU SHARE A ROOM WITH YOUR
7 BROTHER LYLE MENENDEZ?

8 A NO. I THINK I HAD MY OWN ROOM.

9 Q WHERE WAS YOUR ROOM IN RELATIONSHIP TO
10 YOUR PARENTS' ROOM IN THE NORTH MILL HOUSE, IF YOU
11 RECALL?

12 A I DON'T UNDERSTAND.

13 Q YOUR PARENTS HAD A BEDROOM IN NORTH
14 MILL. I WAS JUST WONDERING IF YOU RECALLED WHERE
15 YOUR ROOM WAS IN RELATIONSHIP TO THEIRS. JUST RIGHT
16 NEXT DOOR, DOWN THE HALL, A DIFFERENT FLOOR?

17 A I BELIEVE IT WAS ON THE SAME FLOOR.

18 Q YOU SAID THAT IT CHANGED WHEN YOU MOVED
19 TO THE NORTH MILL HOUSE. HOW DID IT CHANGE?

20 MR. CONN: OBJECTION. IRRELEVANT.

21 THE COURT: OVERRULED.
22 THE WITNESS: DAD TOOK OFF HIS UNDERWEAR AND
23 TOLD ME TO MASSAGE HIS FRONT SIDE.
24 Q BY MR. LEVIN: AND DID YOU BEGIN TO
25 MASSAGE HIS FRONT SIDE?
26 A YES.
27 Q WHERE DID YOU TOUCH HIM?
28 A ON HIS CALVES, ON HIS THIGHS, AND I

43117

1 DIDN'T WANT TO TOUCH HIM NEAR HIS PENIS, SO I MOVED
2 UP TO HIS STOMACH.
3 Q DID HE SAY ANYTHING TO YOU OR GIVE YOU
4 ANY DIRECTIONS WITH RESPECT TO WHERE HE WANTED YOU
5 TO MASSAGE HIM?
6 A HE JUST SAID NO.
7 Q NO, MEANING WHAT TO YOU?
8 A MEANING THAT HE WANTED ME TO TOUCH HIS
9 PENIS.
10 Q SO AS YOU SKIPPED OVER HIS PENIS OR HIS
11 GENTLE, HE SAID NO?
12 A YES.
13 Q DID YOU UNDERSTAND WHAT HE MEANT BY
14 THAT?
15 A YES.

16 Q WHAT DID YOU DO?

17 A I STARTED TO TOUCH HIS PENIS AND MASSAGE

18 IT IN THE WAY HE DID ME.

19 Q WAS HIS PENIS ERECT?

20 A YES.

21 Q DID HE GIVE YOU INSTRUCTIONS AND

22 DIRECTIONS AS TO HOW HE WANTED YOU TO MASSAGE HIS

23 PENIS?

24 A NO.

25 Q YOU JUST MASSAGED IT?

26 A YES.

27 Q THE WAY HE MASSAGED YOU?

28 A YES.

43118

1 Q HOW DID HE REACT TO THE MESSAGE THAT YOU

2 GAVE HIM?

3 A SOMETIMES HE WOULD GRUNT. AT ONE POINT

4 HE TOOK MY HAIR IN HIS HANDS AND WANTED ME TO

5 MASSAGE HIS PENIS WITH MY MOUTH.

6 Q APPROXIMATELY HOW MUCH TIME WOULD YOU

7 SAY ELAPSED BETWEEN THE TIME THAT -- WE'RE TALKING

8 ABOUT THE NORTH MILL HOUSE -- WHERE YOU MASSAGED HIM

9 WITH HIS UNDERPANTS ON, HIS UNDERPANTS WERE TAKEN

10 OFF, AND YOU MASSAGED HIS PENIS, AND NOW HE WANTS

11 YOU TO MASSAGE HIS PENIS WITH YOUR MOUTH? HOW MUCH

12 TIME ARE WE TALKING ABOUT?

13 A I DON'T REMEMBER.

14 Q DO YOU REMEMBER ABOUT HOW OLD YOU WERE?

15 A I WAS SEVEN.

16 Q AND DID YOU MASSAGE YOUR FATHER'S PENIS

17 WITH YOUR MOUTH?

18 A YES.

19 Q DID YOU DO TO YOUR FATHER WHAT HE HAD

20 DONE TO YOU?

21 A I TRIED.

22 Q HOW DID THAT MAKE YOU FEEL?

23 A SCARED ME. MADE ME FEEL FRIGHTENED. IT

24 WAS DIFFICULT FOR ME.

25 Q HOW LONG DID THAT GO ON? I'M TALKING

26 ABOUT WHILE YOU WERE AT THE NORTH MILL HOUSE -- THOSE

27 KINDS OF MESSAGES, ORAL COPULATION BETWEEN YOUR

28 FATHER AND YOURSELF?

43119

1 A IT CONTINUED ON UNTIL WE MOVED TO

2 PENNINGTON.

3 Q HOW OLD WERE YOU WHEN YOU MOVED TO

4 PENNINGTON?

5 A I KNOW I WAS IN PENNINGTON WHEN I WAS

6 EIGHT YEARS OLD.

7 Q WAS THERE A TIME WHEN YOUR FATHER DID
8 ANYTHING WITH RESPECT TO FORCE WHILE YOU MASSAGED
9 HIS PENIS WITH YOUR MOUTH?

10 A YES.

11 Q AND WHERE DID THAT HAPPEN?

12 A NORTH MILL HOUSE.

13 Q WHAT WAS IT THAT YOUR FATHER DID TO YOU?

14 A HE HAD HIS HANDS ON MY HEAD AND WAS
15 TRYING TO PUT HIS PENIS FURTHER IN MY MOUTH AND I
16 GAGGED, AND WE TRIED SEVERAL TIMES, AND HE SAID IT
17 WAS OKAY.

18 Q AND WHEN YOU GAGGED, MR. MENENDEZ, DID
19 HE ALLOW YOU TO BREATHE AND STOP?

20 A YES.

21 Q DID HE FORCE YOU TO ORALLY COPULATE HIM
22 AT THAT TIME?

23 A WITH HIS HANDS OR WITH HIS WORDS?

24 Q WITH HIS HANDS.

25 A YES.

26 Q DID HE FORCE YOU WITH HIS WORDS?

27 A NO.

28 Q DID YOU THINK ABOUT TELLING YOUR FATHER

1 NO, I'M NOT GOING TO DO THIS ANYMORE?

2 A NO.

3 Q BY THAT TIME IN YOUR LIFE WE YOU AFRAID

4 OF YOUR FATHER?

5 A YES.

6 Q WHEN IS YOUR FIRST MEMORY OF FEAR OF

7 YOUR FATHER?

8 A IN THE SWIMMING POOL AT THE RAMAPO CLUB.

9 Q WHEN YOU SAY AT THE SWIMMING POOL AT THE

10 RAMAPO CLUB, ABOUT HOW OLD WERE YOU AT THAT TIME?

11 A I WAS SIX.

12 Q AND WAS THERE A PARTICULAR INCIDENT THAT

13 CAUSED YOU TO FEAR YOUR FATHER, CAUSED YOU TO

14 REMEMBER THIS AS YOUR FIRST -- THE FIRST TIME THAT

15 YOU FEARED HIM?

16 A YES.

17 Q WHAT WAS IT THAT CAUSED YOU TO FEAR YOUR

18 FATHER AT THAT TIME?

19 A IT WAS THE BREATHING EXERCISES THAT HE

20 WOULD HAVE ME DO IN THE POOL.

21 Q WHEN YOU SAY BREATHING EXERCISES, WERE

22 YOU IN SOME SORT OF FORMAL OR SWIMMING PROGRAM?

23 A YES.

24 Q HOW OLD WERE YOU WHEN YOU STARTED A

25 FORMAL SWIMMING PROGRAM?

26 A I DON'T REMEMBER. I DON'T REMEMBER NOT

27 BEING IN ONE.

28 Q WAS YOUR FATHER AND YOUR MOTHER INVOLVED

1 IN YOUR FORMAL SWIMMING PROGRAM?

2 A YES.

3 Q DID YOUR FATHER PARTICIPATE IN YOUR
4 TRAINING FOR SWIMMING?

5 A YES.

6 Q WAS HE A SWIMMER?

7 A OH, YEAH. HE WAS AN OLYMPIC SWIMMER.

8 Q WERE THERE -- WAS YOUR FAMILY REplete
9 WITH OLYMPIC-QUALITY SWIMMERS?

10 A MY GRANDMOTHER, MY AUNT, SOME OTHER
11 RELATIVES.

12 Q YOU LOOKED OVER IN THE COURTROOM.
13 YOU'RE REFERRING TO YOUR GRANDMOTHER SEATED IN THE
14 SECOND ROW TO YOUR LEFT --

15 A YES.

16 Q -- AT THE END. AND WHAT WAS IT THAT YOUR
17 FATHER DID DURING SWIMMING TRAINING THAT CAUSED YOU
18 TO FEAR HIM? YOU SAID BREATHING EXERCISES. COULD
19 YOU BE MORE SPECIFIC.

20 A HE WOULD GRAB MY HAIR AND HE WOULD DUNK
21 ME UNDER THE WATER. AND THEN HE WOULD HOLD ME DOWN
22 THERE FOR 20 OR 30 SECONDS, OR HOWEVER LONG, AND
23 THEN HE WOULD LIFT ME UP; AND I WOULD BREATHE REAL
24 QUICKLY OR CRY OUT, AND THEN HE'D DUNK ME UNDER FOR

25 THE SAME AMOUNT OF TIME.

26 Q WAS THIS A PLAYFUL EXPERIENCE AS YOU
27 UNDERSTOOD IT?

28 A NO.

43122

1 Q WAS IT A TIME WHERE YOU AND YOUR FATHER
2 WERE IN THE SWIMMING POOL HAVING FUN?

3 A NO.

4 Q HOW WOULD YOU CHARACTERIZE THIS INCIDENT
5 WITH YOUR FATHER? WAS IT PART OF SWIMMING TRAINING?

6 A YES.

7 Q WAS IT SERIOUS --

8 A IT WAS ALWAYS SERIOUS.

9 Q -- TO YOU?

10 AND WHEN HE DUNKED YOU UNDER THE WATER,
11 WOULD HE HOLD YOU THERE UNTIL YOU STRUGGLED AND HE
12 WOULD BRING YOU UP, OR WOULD HE HOLD YOU THERE UNTIL
13 HE WANTED TO BRING YOU UP?

14 A I THINK A LITTLE OF BOTH. HE WANTED ME
15 TO STRUGGLE, AND HE WANTED ME TO FIGHT. AND I WOULD
16 GRAB HIS HANDS AND I WOULD TRY TO PULL HIS HAND OFF;
17 OR SOMETIMES HE WOULD DRAG ME DOWN TO THE BOTTOM OF
18 THE POOL AND I WOULD HAVE TO STRUGGLE PAST HIM TO
19 GET UP TO THE WATER TOP. AND IT WAS A WAY OF

20 EXERTING ENERGY AND USING UP OXYGEN AT THE SAME
21 TIME, AND THAT'S WHAT HE WANTED ME TO DO.
22 Q WAS YOUR FATHER A STRONG AND POWERFUL
23 MAN PHYSICALLY?
24 A YES.
25 Q HOW OFTEN WOULD HE HOLD YOU UNDER WATER
26 IN THE WAY THAT YOU JUST DESCRIBED?
27 A OFTEN.
28 Q AND WHEN HE DID THAT DID YOU THINK THAT

43123

1 ANYTHING WAS GOING TO HAPPEN TO YOU?
2 A AT -- SOMETIMES I THOUGHT I WAS GOING TO
3 DIE. I DIDN'T HAVE ANY OXYGEN, AND I IMMEDIATELY
4 GOT SCARED THAT HE WAS GOING TO KILL ME
5 ACCIDENTALLY, AND THAT HE DIDN'T REALIZE THAT I
6 REALLY, REALLY NEEDED AIR, AND IT WAS FRIGHTENING.
7 Q DID HE -- WERE YOU THE ONLY ONE THAT YOUR
8 FATHER TRAINED IN THIS FASHION?
9 A NO. HE DID SO WITH MY BROTHER AS WELL.
10 Q AND DID YOU SEE THE WAY THAT HE TRAINED
11 YOUR BROTHER LYLE MENENDEZ?
12 A YES.
13 Q DID THAT CAUSE YOU ANY FEAR IN WATCHING
14 THE RELATIONSHIP BETWEEN YOUR FATHER AND YOUR

15 BROTHER LYLE MENENDEZ?

16 A WELL, I KNEW THAT I WAS UP NEXT, AND I
17 ALSO KNEW THAT IF HE TREATED LYLE -- AND LYLE WAS
18 REALLY STRUGGLING -- THEN I WAS GOING TO DEFINITELY
19 STRUGGLE.

20 Q IN THOSE EARLY YEARS, MR. MENENDEZ, HOW
21 DID YOU VIEW YOUR CHILDHOOD, IF YOU WERE ASKED TO
22 DESCRIBE IT?

23 A CHAOTIC. THERE WAS A LOT OF CONFUSION.
24 IT WAS CRUEL AT TIMES.

25 Q WERE YOU A SCARED CHILD?

26 A YES.

27 Q WHAT KIND OF RELATIONSHIP DID YOU HAVE
28 WITH YOUR BROTHER LYLE MENENDEZ AT THAT TIME?

43124

1 A I DIDN'T HAVE THE RELATIONSHIP THAT WE
2 DO NOW OR ONE THAT WE DEVELOPED. WE WERE NOT AS
3 CLOSE.

4 Q DO YOU LOVE YOUR BROTHER?

5 A VERY MUCH.

6 Q DURING THOSE EARLY YEARS HOW DID YOU
7 VIEW YOUR BROTHER?

8 A I VIEWED HIM AS -- HE WAS MY OLDER
9 BROTHER. I MEAN, HE WAS STRONGER. HE WAS BETTER

10 LOOKING. HE WAS MORE INTELLIGENT. HE WAS -- HAD
11 MORE COURAGE THAN I DID, AND JUST GENERALLY, I
12 LOOKED UP TO HIM.

13 Q AS YOU VIEWED YOUR LIFE AS A CHILD, DID
14 YOUR FATHER TREAT YOUR BROTHER LYLE MENENDEZ
15 DIFFERENTLY IN CERTAIN RESPECTS?

16 A IN MOST RESPECTS.

17 Q AND IN WHAT WAY DID YOU VIEW THE
18 TREATMENT OF YOUR FATHER TOWARDS LYLE MENENDEZ?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 Q BY MR. LEVIN: WITH RESPECT TO YOUR
22 BROTHER LYLE MENENDEZ, DID HE EVER USE ANY FORCE ON
23 YOU?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: WHY DON'T YOU BE MORE SPECIFIC.

26 MR. LEVIN: ALL RIGHT.

27 Q DURING YOUR EARLY CHILDHOOD YEARS WHEN
28 YOUR FATHER FIRST TOUCHED YOUR PENIS, TOUCHED YOUR

43125

1 PRIVATE PARTS, WAS THAT THE FIRST TIME THAT ANY
2 PERSON HAD EVER TOUCHED YOU IN THAT WAY?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: OVERRULED.

5 THE WITNESS: NO.

6 Q BY MR. LEVIN: WHO WAS THE FIRST PERSON
7 THAT EVER TOUCHED YOU IN A SEXUAL WAY OR TOUCHED
8 YOUR PRIVATE PARTS?

9 A LYLE.

10 Q WHEN DID THAT HAPPEN?

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: OVERRULED.

13 THE WITNESS: BEFORE MY 6TH BIRTHDAY. I WAS
14 FIVE.

15 Q BY MR. LEVIN: THAT'S WHEN YOU WERE
16 LIVING IN MONSEY?

17 A YES.

18 Q AND DO YOU RECALL A SPECIFIC INCIDENT
19 WHERE THIS OCCURRED?

20 A YES.

21 Q DID YOU LIVE NEAR A WOODED AREA?

22 A YEAH. WE LIVED ON THE CORNER OF A
23 FOREST.

24 Q DID YOU LIKE THE WOODS?

25 MR. CONN: OBJECTION. IRRELEVANT.

26 THE COURT: SUSTAINED.

27 Q BY MR. LEVIN: WHAT WAS IT THAT YOUR
28 BROTHER DID TO YOU?

1 A HE WOULD TAKE ME OUT INTO THE FOREST AND
2 HAVE ME UNBUCKLE MY PANTS OR MY SHORTS AND PULL THEM
3 DOWN TO MY ANKLES, AND HE WOULD TOUCH ME. AND I
4 REMEMBER HIM PUTTING A TOOTHBRUSH INSIDE OF ME.

5 Q WHEN YOU SAY THAT HE PUT A TOOTHBRUSH
6 INSIDE OF YOU, WHAT ARE YOU REFERRING TO?

7 A HE WOULD HAVE ME KNEEL AND BEND OVER AND
8 HE WOULD PUSH A TOOTHBRUSH INSIDE OF ME AND PULL IT
9 OUT, PUSH IT BACK IN.

10 Q INSIDE YOUR ANUS?

11 A YES.

12 Q DID IT HURT?

13 A NOT REALLY.

14 Q DID YOU KNOW WHY HE WAS DOING THAT TO
15 YOU?

16 A NO.

17 Q HOW OFTEN DID THAT HAPPEN?

18 A SEVEN, EIGHT TIMES THAT I REMEMBER.

19 Q AND DID IT STOP AT SOME POINT IN TIME?

20 A YES.

21 Q HOW OLD WERE YOU WHEN IT STOPPED?

22 A IT WAS BEFORE I WAS SIX.

23 Q DID YOU FEEL CLOSE TO YOUR BROTHER AT
24 THAT TIME?

25 A NO.

26 Q DID YOU TELL YOUR MOTHER OR YOUR FATHER
27 WHAT YOUR BROTHER LYLE MENENDEZ HAD DONE TO YOU?

43127

1 Q WHY NOT?

2 A I WAS EMBARRASSED. I DIDN'T UNDERSTAND
3 WHAT IT MEANT, AND I WASN'T SURE HOW TO FEEL ABOUT
4 IT, AND I JUST -- I DIDN'T.

5 Q SO YOU DIDN'T TELL THEM?

6 A NO.

7 Q I WANT TO GO BACK --

8 MR. LEVIN: YOUR HONOR, I HAVE AN EXHIBIT.
9 IT'S A PHOTOGRAPH PREVIOUSLY MARKED EXHIBIT 153.
10 AND I WOULD ASK THAT IT BE MARKED EXHIBIT 354 HERE.

11 THE COURT: 354.

12 MR. CONN: I WOULD OBJECT AT THIS TIME AND
13 ASK TO BE HEARD.

14 THE COURT: ALL RIGHT. WHY DON'T YOU PASS
15 THAT EXHIBIT UP TO ME.

16 (COURT EXAMINING PHOTOGRAPH.)

17

18 THE COURT: OBJECTION SUSTAINED.

19 Q BY MR. LEVIN: I WANT TO MOVE A LITTLE
20 BIT FORWARD IN YOUR LIFE, STAYING IN YOUR EARLY
21 CHILDHOOD YEARS, BUT DIRECTING YOU TO WHEN YOU LIVED
22 IN PENNINGTON, AND ASK YOU IF WHILE YOU LIVED IN

23 PENNINGTON YOU HAD YOUR OWN ROOM?

24 A YES, I DID.

25 Q AND DID THE THINGS THAT YOU PREVIOUSLY

26 DESCRIBED CONTINUE WITH YOUR FATHER IN THE

27 PENNINGTON HOUSE?

28 A YES.

43128

1 Q WAS THERE A TIME WHERE YOUR FATHER

2 EJACULATED?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

6 Q BY MR. LEVIN: AND DID THIS OCCUR FIRST

7 WHEN YOU WERE AT THE PENNINGTON HOUSE?

8 A YES.

9 Q COULD YOU DESCRIBE WHAT YOU REMEMBER

10 HAPPENING WHEN YOU RECALL NOW THAT YOUR FATHER FIRST

11 EJACULATED?

12 A I JUST RECALL MY FATHER BEING ON MY BED

13 AND ME MASSAGING HIM WITH MY MOUTH, AND AT SOME

14 POINT HIM GRUNTING AND PUSHING ME AWAY, AND I

15 THOUGHT HE WAS PEEING, URINATING, AND FLUID CAME OUT

16 OF HIM, AND WENT OVER A TOWEL THAT HE HAD.

17 Q WHERE -- AND DID THIS HAPPEN WHEN YOU

18 WERE DOING SOMETHING TO HIM?

19 A YES.

20 Q WHAT WAS IT YOU WERE DOING TO HIM WHEN

21 HE EJACULATED?

22 A I WAS MASSAGING HIM WITH MY MOUTH.

23 Q AND DID HE EJACULATE IN YOUR MOUTH?

24 A NO.

25 Q WHERE DID HE EJACULATE?

26 A ON A TOWEL THAT HE HAD.

27 Q AND DID YOUR FATHER SAY ANYTHING TO YOU

28 AFTER HE EJACULATED?

43129

1 A YEAH.

2 Q WHAT WAS IT THAT HE SAID TO YOU?

3 A HE RUFFLED MY HAIR AND SAID THAT I WAS A

4 GOOD BOY AND THAT THAT WAS THE HEIGHT OF RELEASING

5 THE STRESS AND HOW TO RELAX AND THAT WAS THE

6 PURPOSE.

7 Q DID YOU THINK THAT YOUR FATHER WANTED TO

8 HURT YOU DURING THIS TIME?

9 A NO.

10 Q WAS THERE A TIME FOLLOWING THIS INCIDENT

11 WHERE YOUR FATHER ASKED YOU TO USE SOMETHING ON

12 YOURSELF?

13 A YES.

14 Q WHAT WAS IT THAT HE ASKED YOU TO USE ON
15 YOURSELF?

16 A IT WAS A WOODEN OBJECT WITH A KNOB ON
17 THE END AND A LONG WHITE OBJECT.

18 Q WHAT WAS IT THAT HE WANTED YOU TO DO
19 WITH THIS OBJECT?

20 A HE WANTED ME TO PRACTICE PUTTING IT IN
21 MYSELF SO THAT IT WOULD BE EASIER IN TIME.

22 Q AND WHEN YOU SAY PUT IT IN YOURSELF,
23 WHERE WAS IT THAT HE WANTED YOU TO PUT IT?

24 A IN MY BUTT.

25 Q AND WHEN YOU SAY THAT IN TIME IT WOULD
26 BE EASIER, WHAT DID YOU THINK WOULD BE EASIER?

27 A HE HAD TRIED AT THE TIME, TIMES BEFORE,
28 TO PUSH HIS PENIS INSIDE OF ME AND IT HURT TOO MUCH,

43130

1 AND SO HE STOPPED. AND HE WAS KIND ABOUT IT AND HE
2 WANTED ME TO USE THESE TOOLS TO HELP MYSELF.

3 Q WHERE DID IT FIRST OCCUR, AND
4 APPROXIMATELY HOW OLD WERE YOU, WHEN YOUR FATHER
5 FIRST ATTEMPTED ANAL PENETRATION ON YOU?

6 A I WAS -- I WAS IN THE 5TH GRADE IN MY
7 BEDROOM AT PENNINGTON.

8 Q YOU ACTUALLY DID THE 5TH GRADE TWICE,
9 DIDN'T YOU?

10 A YES.

11 Q YOU DID IT ONCE AT A PUBLIC SCHOOL?

12 A YES.

13 Q AND THE SECOND TIME WHERE?

14 A PRINCETON DAY SCHOOL.

15 Q NOW, WHEN THIS OCCURRED, YOU SAID IT
16 CAUSED YOU, OR DID YOU SAY THAT IT CAUSED YOU PAIN?

17 A YES.

18 Q HOW DID IT MAKE YOU FEEL?

19 A IT HURT ME AND I WAS -- IT MADE ME VERY
20 CONFUSED. THINGS HADN'T HURT BEFORE THEN, AND I
21 JUST FELT THAT IT WAS SOMETHING THAT I NEEDED TO
22 OVERCOME, AND THAT I WOULD GET USED TO IT AND THAT I
23 WOULD -- IT WOULD BE NATURAL AGAIN SOON.

24 Q DID YOU EVER USE THE TOOL IN THE MANNER
25 THAT YOUR FATHER REQUESTED?

26 A NO.

27 Q WHY NOT?

28 A WHEN I -- WHEN HE HAD ME BEND OVER MY

43131

1 FOOTBOARD I FELT VERY EXPOSED, AND EVERY TIME THAT I
2 THOUGHT ABOUT IT I JUST FELT THIS FEELING OF BEING

3 EXPOSED, AND THE AIR, IT'S COLD, AND I DIDN'T WANT
4 TO DO IT. I JUST -- I WANTED TO PLEASE DAD, BUT I
5 DIDN'T WANT TO DO IT.

6 Q DID YOUR FATHER EVER SUCCEED IN HAVING
7 ANAL INTERCOURSE WITH YOU?

8 A YES.

9 Q FOLLOWING THE FIRST ATTEMPT WHERE HE WAS
10 UNSUCCESSFUL, HOW LONG OF A PERIOD OF TIME ELAPSED
11 BEFORE HE WAS SUCCESSFUL?

12 A ABOUT A YEAR AND A HALF, TWO YEARS.

13 Q WHEN HE WAS SUCCESSFUL IN HAVING ANAL
14 INTERCOURSE WITH YOU, DID HE COMPLETELY PENETRATE
15 YOUR ANUS WITH HIS PENIS?

16 A YES.

17 Q DID IT HURT?

18 A YES.

19 Q DID YOU CRY OUT IN PAIN?

20 A YES.

21 Q WHAT, IF ANYTHING, DID YOUR FATHER DO IN
22 RESPONSE TO YOUR CRY OF PAIN?

23 A HE CONTINUED.

24 Q CONTINUED WHAT?

25 A PUSHING HIMSELF INSIDE OF ME.

26 Q HOW OFTEN DID THIS OCCUR?

27 A NOT OFTEN.

28 Q NOW, DID YOU EVER NOTICE DURING THOSE

1 YEARS THAT THERE WOULD BE FLUID OR LEAKAGE FROM YOUR
2 ANUS FOLLOWING THIS WITH YOUR FATHER?

3 A YES.

4 Q YOU WORE UNDERWEAR?

5 A YES.

6 Q JOCKEY-TYPE SHORTS?

7 A FRUIT OF THE LOOM.

8 Q WHO DID YOUR LAUNDRY?

9 A MY MOM.

10 Q DID YOUR MOTHER EVER CONFRONT YOU OR ASK
11 YOU ABOUT ANY STAINS THAT MIGHT HAVE BEEN IN YOUR
12 SHORTS?

13 A NO.

14 Q DID ANY OF THESE ACTS WITH YOUR FATHER
15 CAUSE YOU TO VOMIT?

16 A YES.

17 Q AND WHAT KIND OF ACTS WOULD CAUSE YOU TO
18 VOMIT?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 THE WITNESS: WHEN I WAS ON MY KNEES AND HE
22 WOULD HAVE ME MASSAGE HIM ON MY KNEES, I WOULD VOMIT
23 AFTERWARDS.

24 ONE TIME WHEN I WAS HAVING SEX WITH HIM,
25 JUST WHEN I FELT REALLY ICKY AND DIRTY, BAD TASTE,
26 THOSE TIMES.

27 Q BY MR. LEVIN: AND WHEN ON THOSE

28 OCCASIONS THAT YOU VOMITED, MR. MENENDEZ, WHERE IS

43133

1 IT THAT YOU WOULD VOMIT?

2 A IN MY BATHROOM, EVERY TIME BUT ONCE THAT

3 I REMEMBER.

4 Q WHERE WAS YOUR BATHROOM IN RELATIONSHIP

5 TO YOUR BEDROOM? WE'RE TALKING ABOUT THE PENNINGTON

6 HOUSE?

7 A YES.

8 Q WHERE WAS THE BATHROOM IN RELATIONSHIP

9 TO YOUR BEDROOM?

10 A TEN FEET AWAY.

11 Q WAS THIS A TWO-STORY HOUSE OR A

12 ONE-STORY HOUSE?

13 A THREE STORIES.

14 Q AND WAS YOUR MOTHER EVER HOME WHEN YOU

15 VOMITED?

16 A YES.

17 Q DID YOUR MOTHER EVER COME TO YOU, COME

18 TO YOUR AID OR ASSISTANCE, FOLLOWING A TIME WHEN YOU

19 VOMITED IN THE BATHROOM?

20 A YOU MEAN AFTER THESE TIMES, OR WHEN I

21 WAS SICK?

22 Q AFTER THESE TIMES.

23 A NO.

24 Q HAD YOUR MOTHER EVER COME TO YOUR AID

25 AND ASSISTANCE WHEN YOU VOMITED WHEN YOU WERE SICK?

26 A I REMEMBER HAVING THE STOMACH FLU AND

27 BEING UP ALL NIGHT AND SOMETIMES -- SHE WOULDN'T

28 STAY WITH ME, BUT SHE'D BE IN. SHE'D CHECK IN ON ME

43134

1 EVERY SO OFTEN.

2 Q AND WOULD THERE BE TIMES DURING -- OR

3 WOULD THERE BE ANY TIME WHEN YOU WERE SICK AND YOU

4 VOMITED WHERE YOUR MOTHER WOULD APPEAR TO OFFER YOU

5 SOME ASSISTANCE?

6 A YES.

7 Q ON ANY OCCASION WHERE YOU VOMITED

8 FOLLOWING AN ACT OF ORAL SEX WITH YOUR FATHER, DID

9 YOUR MOTHER APPEAR?

10 A NO.

11 Q WAS SHE EVER HOME DURING THOSE THINGS,

12 DURING THOSE TIMES?

13 A YES.

14 Q DID SHE EVER ASK YOU WHY YOU HAD

15 VOMITED?

16 A NO.

17 Q DID THESE ACTS THAT YOU'VE DESCRIBED

18 EVER OCCUR BEFORE DINNER?

19 A YES.

20 Q BUT AROUND DINNER TIME?

21 A SOMETIMES.

22 Q WAS IT A FAMILY -- SORT OF A FAMILY

23 REQUIREMENT THAT THE FAMILY HAVE DINNER TOGETHER?

24 A ALWAYS. ALMOST ALWAYS.

25 Q AND DID THAT MEAN THAT YOU AND LYLE

26 MENENDEZ AND YOUR MOTHER AND YOUR FATHER WOULD HAVE

27 DINNER TOGETHER GENERALLY?

28 A YES.

43135

1 Q YOU WOULDN'T LIKE EAT IN SHIFTS?

2 A NO.

3 Q WHAT TIME WOULD YOU USUALLY HAVE DINNER?

4 A WHATEVER TIME MY FATHER ARRIVED HOME.

5 NORMALLY WE WOULDN'T BE HOME FROM TENNIS PRACTICE

6 UNTIL ABOUT EIGHT. MY DAD USUALLY ARRIVED HALF HOUR

7 AFTERWARDS. SOMETIMES HE ARRIVED AT TEN AND WE HAD

8 DINNER THEN. WHENEVER HE GOT HOME, IN BETWEEN THOSE

9 TIMES.

10 Q WERE THERE EVER TIMES WHEN, FOLLOWING AN

11 ACT OF ORAL COPULATION BETWEEN YOU AND YOUR FATHER,

12 WHERE YOU JUST DIDN'T GO TO DINNER?

13 A AT TIMES HE TOLD ME NOT TO GO

14 DOWNSTAIRS.

15 Q AND WHY DIDN'T HE WANT YOU TO GO

16 DOWNSTAIRS?

17 A EITHER I'D BE CRYING, OR A LOT OF TIMES

18 WHEN I GOT SCARED I TREMBLED, AND I WOULD BE

19 TREMBLING. AND DIANE WAS LIVING AT THE HOUSE FOR A

20 WHILE, AND HE DIDN'T WANT ME TO GO DOWNSTAIRS.

21 Q DIANE IS DIANE VANDERMOLLEN?

22 A YES.

23 Q WHAT RELATIONSHIP IS SHE TO YOU?

24 A SHE'S MY FIRST COUSIN.

25 Q AND WHEN WAS IT THAT SHE WOULD STAY AT

26 YOUR HOUSE? THIS WAS AT THE PENNINGTON HOUSE?

27 A YES.

28 Q WHEN YOU SAY STAY, SHE LIVED THERE FOR A

43136

1 PERIOD OF TIME?

2 A YES.

3 Q HOW OLD WAS SHE?

4 A I BELIEVE SHE WAS IN HER EARLY

5 TWENTIES. SHE WAS A GROWN-UP AT THE TIME TO ME. SO

6 I DON'T REALLY KNOW.

7 Q SO SHE WAS QUITE A BIT OLDER THAN YOU?

8 A TEN, TWELVE YEARS OLDER THAN ME.

9 Q NOW -- SO THERE WERE INSTANCES AND TIMES

10 WHEN YOU DID NOT GO TO DINNER?

11 A YES.

12 Q DID YOUR MOTHER EVER COME TO YOU DURING

13 THOSE TIMES TO FIND OUT WHY YOU WEREN'T COMING TO

14 DINNER?

15 A NOT THAT I REMEMBER.

16 Q DID YOUR MOTHER EVER ASK YOU THE NEXT

17 TIME SHE SAW YOU WHY YOU HAD NOT COME FOR DINNER?

18 A NO. MY FATHER SAID I WASN'T GOING TO

19 DINNER, AND THAT WAS -- THAT WAS THE WAY IT WAS.

20 Q NOW, I WANT TO ASK YOU A FEW QUESTIONS

21 ABOUT YOUR MOTHER.

22 DID YOU LOVE YOUR MOTHER?

23 A YES.

24 Q WHAT -- HOW WOULD YOU DESCRIBE -- AND I

25 WANT TO GO BACK TO THESE EARLY YEARS -- YOUR

26 RELATIONSHIP WITH YOUR MOTHER.

27 HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP

28 WITH HER?

43137

1 A I HAD A CLOSE RELATIONSHIP, I SUPPOSE.

2 I LOVED HER AND I CLUNG ON TO HER A LOT, AND I

3 WANTED TO BE WITH HER.

4 Q DID YOUR MOTHER HAVE ANY PET NAMES FOR

5 YOU?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: SUSTAINED.

8 Q BY MR. LEVIN: HOW DID YOUR MOTHER REFER

9 TO YOU THROUGHOUT YOUR ENTIRE CHILDHOOD?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: ONE NAME?

12 MR. LEVIN: YES.

13 THE COURT: OVERRULED.

14 THE WITNESS: SHE ONLY REFERRED TO ME AS

15 ERIK.

16 Q BY MR. LEVIN: SHE NEVER CALLED YOU

17 ANYTHING OTHER THAN ERIK?

18 A NO.

19 Q WHAT WOULD YOU SAY WAS THE BEST THING

20 ABOUT YOUR MOTHER?

21 A HER SMILE.

22 Q WAS THAT IMPORTANT TO YOU TO SEE HER

23 SMILE?

24 A YES.

25 Q DID YOU TRY TO GET HER TO SMILE?

26 A ALL THE TIME.

27 Q AND WERE YOU SUCCESSFUL?

28 A SOMETIMES.

1 Q WERE THERE TIMES WHEN YOUR MOTHER WOULD
2 INDICATE TO YOU THAT SHE WOULD TELL YOUR FATHER
3 THINGS THAT YOU WERE DOING THAT SHE DIDN'T LIKE?

4 MR. CONN: OBJECTION. IRRELEVANT.

5 THE COURT: SUSTAINED.

6 Q BY MR. LEVIN: DID YOU FEAR YOUR
7 MOTHER?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 Q BY MR. LEVIN: WHAT IS YOUR EARLIEST
12 REMEMBRANCE OF FEAR OF YOUR MOTHER?

13 MR. CONN: OBJECTION. IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: WHEN I WAS -- WHEN I WAS AT THE
16 SWIMMING POOL AND I WAS -- THE WATER WAS COLD AND I
17 WAS -- I DIDN'T WANT TO GO BACK IN THE POOL AND I WAS
18 TIRED. IT WAS AFTER PRACTICE AND SHE -- I WAS
19 CRYING, AND SHE WAS TELLING ME IF I DIDN'T GET BACK
20 IN THE POOL SHE WOULD TELL MY FATHER.

21 Q BY MR. LEVIN: NOW, POOL PRACTICE, WAS
22 THAT A FORMAL TRAINING-TYPE OF FORMAL PROGRAM THAT
23 YOU WERE INVOLVED IN?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: IF IT'S VERY LIMITED AND ON THIS
26 SUBJECT.
27 MR. LEVIN: VERY.
28 THE COURT: OVERRULED.

43139

1 THE WITNESS: YES.
2 Q BY MR. LEVIN: WHO WOULD TAKE YOU TO THE
3 POOL PRACTICE?
4 A ON THE WEEKDAYS MY MOTHER.
5 Q THESE WERE POOL SWIM MEETS WITH OTHER
6 CHILDREN THAT STARTED AT A CERTAIN TIME AND ENDED AT
7 A CERTAIN TIME?
8 A YES. THE SWIM MEETS MY FATHER WOULD
9 GENERALLY TAKE ME TO, HE'D ALWAYS TAKE ME TO, BUT
10 PRACTICES MY MOTHER WOULD DRIVE ME THERE AND
11 SOMETIMES STAY WITH ME AND THEN SOMETIMES PICK ME
12 UP.
13 Q AFTER THE PRACTICE WOULD ALL THE
14 CHILDREN LEAVE?
15 MR. CONN: OBJECTION. IRRELEVANT.
16 THE COURT: LET'S JUST GET TO IT, PLEASE.
17 Q BY MR. LEVIN: AFTER THE PRACTICE WAS
18 OVER WERE YOU ALLOWED TO JUST GET OUT OF THE POOL
19 AND GO HOME?

20 A NO.

21 Q WHAT DID YOU HAVE TO DO AFTER POOL

22 PRACTICE?

23 A MY FATHER HAD ALWAYS GAVE MY MOTHER A

24 LIST OF LAPS, CERTAIN DIFFERENT TYPES OF STROKES,

25 WHETHER IT BE THE BREAST STROKE OR FREE-STYLE OR

26 WORKING MY FEET OR KICKING. AND THERE WAS CERTAIN

27 LAPS THAT I WOULD HAVE TO DO THAT SHE WOULD HAVE

28 WRITTEN DOWN FOR ME.

43140

1 Q WOULD SHE FOLLOW THE LIST?

2 MR. CONN: OBJECTION. RELEVANCE.

3 THE COURT: IT WAS PREMISED ON A QUESTION

4 ASKED ABOUT FEAR. SO LET'S GET TO THAT POINT.

5 Q BY MR. LEVIN: WHAT WAS IT ABOUT THE WAY

6 IN WHICH YOU PERFORMED AT THESE SWIMMING PRACTICES

7 THAT CAUSED YOU TO FEAR YOUR MOTHER?

8 A WHEN I WAS TOO COLD OR WHEN I WAS TIRED

9 AND I WAS RESISTANT TO GOING AND CONTINUING ON IN

10 THE LAPS, IF SHE TOLD MY FATHER I WOULD GET BEATEN;

11 AND SO I WAS SCARED OF HER TELLING MY FATHER.

12 Q AND HOW WOULD SHE CONVEY TO YOU THAT SHE

13 WOULD TELL YOUR FATHER? WHAT WOULD SHE SAY TO YOU?

14 A SHE TOLD ME THAT IT'S OKAY. I DIDN'T

15 HAVE TO GO IN THE WATER, THAT SHE WOULD HAVE MY
16 FATHER DEAL WITH ME. AND I WOULD SAY NO, NO. I'LL
17 GO IN THE WATER.
18 AND THEN I WOULD -- I WOULD BE SLOW AND
19 SHE SAID, NO. LET'S JUST GO. AND I WOULD PULL HER
20 BACK, AND I'D SAY NO, AND I'D JUMP IN THE WATER IF
21 SHE WAS LEAVING SO SHE WOULDN'T BE ABLE TO TELL MY
22 FATHER THAT I DIDN'T FINISH THE LAPS.
23 Q DID YOU FEEL THAT YOU COULD TELL YOUR
24 MOTHER WHEN YOU WERE EXHAUSTED?
25 A IT WASN'T A GOOD IDEA.
26 Q WHAT WOULD HAPPEN IF YOU DID?
27 A THERE WAS ALWAYS THE POSSIBILITY THAT
28 SHE WOULD TELL MY FATHER.

43141

1 Q DID YOUR MOTHER EVER REQUIRE YOU TO
2 WRITE A LIST AS A YOUNG CHILD OF THINGS THAT SHE WAS
3 GOING TO SHOW YOUR FATHER?
4 MR. CONN: OBJECTION. IRRELEVANT.
5 THE COURT: BE MORE SPECIFIC.
6 Q BY MR. LEVIN: DID YOUR FATHER EVER --
7 WAS YOUR FATHER EVER VIOLENT TO YOU FOLLOWING --
8 FOLLOWING THE READING OF A LIST THAT YOUR MOTHER
9 MADE YOU PREPARE TO SHOW HIM?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES.

13 Q BY MR. LEVIN: AND WHAT TYPICAL -- ON

14 WHAT KIND OF A TYPICAL DAY OR WHAT WOULD BE

15 HAPPENING WHERE YOUR MOTHER WOULD TYPICALLY REQUIRE

16 YOU TO WRITE SUCH A LIST?

17 A GENERALLY -- GENERALLY IT HAD TO DO WITH

18 SPORTS. BUT OTHER TIMES, IF SHE WAS AFRAID THAT SHE

19 WOULD GET IN TROUBLE IF I HADN'T FINISHED THINGS,

20 SHE WOULD HAVE ME SIT DOWN AND WRITE OUT THE THINGS

21 THAT I DIDN'T DO THAT DAY OR DID WRONG.

22 Q YOU SAY SHE WOULD GET IN TROUBLE. WHAT

23 DO YOU MEAN?

24 A SOMETIMES, ESPECIALLY DURING TIMES THAT

25 I WAS TRYING TO GET INTO P.D.S., IF I FAILED CLASS

26 OR IF I DID POORLY AT A SWIM MEET AND DIDN'T WIN THE

27 MEET, HE WOULD BLAME HER, SINCE SHE WAS IN CHARGE OF

28 MY TRAINING AND MY SCHOOLING, AND HE WAS CRUEL WITH

43142

1 HER.

2 Q WHEN YOU SAY P.D.S. ARE YOU REFERRING TO

3 PRINCETON DAY SCHOOL?

4 A YES.

5 Q THAT'S WHERE YOU WENT TO SCHOOL FROM THE
6 5TH GRADE UNTIL YOU ACTUALLY MOVED TO CALIFORNIA,
7 CORRECT?

8 A YES.

9 Q LYLE MENENDEZ, HE WENT THERE TOO?

10 A YES.

11 MR. LEVIN: YOUR HONOR, I HAVE A DOCUMENT
12 THAT'S BEEN PREVIOUSLY MARKED AS EXHIBIT 274. I ASK
13 THAT IT BE MARKED EXHIBIT 355.

14 THE COURT: 355.

15 MR. CONN: I WOULD OBJECT ON THE GROUNDS OF
16 RELEVANCE AND FOUNDATION.

17 THE COURT: OKAY. LET'S TAKE A RECESS HERE,
18 AND WE'LL RESUME WITH THE JURY AT 25 MINUTES TO THE
19 HOUR.

20 DON'T DISCUSS THE MATTER WITH ANYONE AND
21 DON'T FORM ANY FINAL OPINIONS ABOUT IT.

22 (THE JURY EXITED THE COURTROOM AND
23 THE FOLLOWING PROCEEDINGS WERE HELD:)

24

25 THE COURT: WE'LL RESUME WITH COUNSEL IN 10
26 MINUTES.

27 (A RECESS WAS AT 10:15 A.M.
28 TO 10:40 A.M.)

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

4
5 THE COURT: OKAY. THERE WAS AN OBJECTION TO
6 355.

7 WHAT WAS YOUR OBJECTION, MR. CONN?

8 MR. CONN: YES. WE WOULD OBJECT TO -- WE
9 WOULD OBJECT TO THE DOCUMENT AS BEING IRRELEVANT AND
10 MOVE UNDER EVIDENCE CODE 352 TO EXCLUDE IT AS BEING
11 MORE TIME-CONSUMING AND NON-PROBATIVE OF THE ISSUES
12 THAN RELEVANT.

13 THE COURT: OKAY. MAY I SEE IT?

14 MR. LEVIN: YES, YOUR HONOR.

15 (PAUSE IN PROCEEDINGS.)
16

17 THE COURT: AND WHAT IS YOUR OFFER OF PROOF
18 AS TO THE RELEVANCE, MR. LEVIN?

19 MR. LEVIN: YES, YOUR HONOR. THE OFFER OF
20 PROOF WITH RESPECT TO THAT DOCUMENT IS IT
21 CORROBORATES THE TESTIMONY -- FIRST, IT CORROBORATES
22 THE TESTIMONY OF ERIK MENENDEZ THAT HIS MOTHER
23 REQUIRED HIM TO WRITE OUT A LIST OF THINGS THAT HE
24 DID WRONG AS A CHILD; THAT THAT LIST SERVED AS A
25 BASIS OF PUNISHMENT THAT HE RECEIVED FROM HIS
26 FATHER; THAT HIS STATE OF MIND WAS THAT WHEN HE
27 CREATED SUCH A LIST THAT IT CAUSED HIM GREAT FEAR
28 BECAUSE HE KNEW THAT THE RESULT WAS GOING TO BE THAT

1 HIS MOTHER, AS AN ACCOMPLICE IN HIS FATHER'S
2 BRUTALITY, WOULD TRANSMIT THAT LIST, AND HE WOULD
3 TESTIFY THAT THAT LIST DID LEAD TO VIOLENCE BEING
4 INFLICTED UPON HIM BY HIS FATHER.

5 THE COURT: THIS PARTICULAR LIST?

6 MR. LEVIN: YES, AND ANY LIST THAT HE
7 CREATED.

8 THE COURT: THIS PARTICULAR LIST?

9 MR. LEVIN: I WOULD NEED TO INQUIRE, BUT I
10 BELIEVE SO, YES.

11 THE COURT: THAT'S HOW I INTERPRET YOUR
12 REMARKS. YOU SAID THIS LIST.

13 MR. LEVIN: I BELIEVE SO, YOUR HONOR.

14 THE COURT: OKAY. IF IT CAN BE CONNECTED TO
15 THIS PARTICULAR DOCUMENT, THEN THE OBJECTION WILL BE
16 OVERRULED.

17 AS FAR AS EXHIBIT 354, THE PHOTOGRAPH,
18 WHAT WAS THE RELEVANCE OF THIS?

19 MR. LEVIN: THAT PHOTOGRAPH IS OF THE
20 LOCATION WHERE ERIK MENENDEZ RESIDED IN THE WOODS.
21 IT IS A PHOTOGRAPHIC ILLUSTRATION OF A LOCATION OR
22 NEAR THE LOCATION WHERE LYLE MENENDEZ MOLESTED HIM
23 IN THE MANNER THAT HE DESCRIBED.

24 IT SERVES TO ILLUSTRATE HIS TESTIMONY
25 WITH RESPECT TO THE GEOGRAPHIC LOCATION AND THE TYPE
26 OF AREA THAT HE LIVED IN WHEN HE TESTIFIED THAT HE
27 LIVED IN THE WOODS. I DO NOT SEEK TO OFFER ANY
28 OTHER PHOTOGRAPH WITH RESPECT TO THAT ISSUE.

43145

1 THE COURT: WHAT ISSUE?

2 MR. LEVIN: THE ISSUE OF THE WOODS, WHERE HE
3 LIVED, AND THE FACT THAT IN THE WOODS IT WAS LYLE
4 MENENDEZ THAT TOOK HIM IN THE WOODS IN A REMOTE AREA
5 AND MOLESTED HIM.

6 THE COURT: IS THIS A PHOTOGRAPH DEPICTING A
7 MOLESTATION BY LYLE MENENDEZ OF ERIK MENENDEZ?

8 MR. LEVIN: OF COURSE NOT, YOUR HONOR, NO,
9 IT'S NOT. IT'S A PHOTOGRAPH OF THE AREA, OF THE
10 SPECIFIC AREA OF THE LOCATION; AND IT ALSO SERVES TO
11 EXPLAIN AND CORROBORATE THE FACT THAT ERIK MENENDEZ
12 DID LIVE IN SUCH A REMOTE AREA AND THAT THIS IS THE
13 LOCATION WHERE IT TOOK PLACE.

14 THE COURT: AND THE PEOPLE'S POSITION?

15 MR. CONN: YES. I THINK THAT THIS IS JUST
16 ANOTHER ATTEMPT TO PUT BEFORE THE JURY CHILDHOOD
17 PHOTOGRAPHS. I DON'T THINK THAT THERE'S A DISPUTE
18 HERE THAT THE DEFENDANT LIVED IN A WOODY AREA. I

19 THINK ONE OF THE OTHER PHOTOGRAPHS SHOWS THAT
20 SURROUNDING THE HOUSE THERE APPEARS TO BE TREES. SO
21 I DON'T THINK THAT WE NEED TO PRESENT TO THE JURY A
22 PHOTOGRAPH OF TREES TO PROVE TO THE JURY THAT THERE
23 WERE, INDEED, TREES NEAR THE HOUSE. IF SO, THAT'S
24 ALREADY BEEN DEMONSTRATED THROUGH ANOTHER EXHIBIT.
25 THIS IS JUST A BACK DOORWAY OF GETTING
26 IN CHILDHOOD PHOTOGRAPHS WHICH WE OBJECTED TO. WE
27 FILED A MOTION WITH THE COURT TO EXCLUDE SUCH
28 PHOTOGRAPHS. AND IF NECESSARY, TO INCLUDE ANOTHER

43146

1 PHOTOGRAPH OF THE TREES, MAYBE WE CAN CROP THE
2 PHOTOGRAPH AND JUST PUT IN THE SIDE OF THE
3 PHOTOGRAPH THAT SHOWS A COUPLE OF TREES AND CUT OUT
4 THE PORTION THAT SHOWS THE DEFENDANTS AS CHILDREN,
5 WHICH IS REALLY WHAT THEY WANT BEFORE THE JURY.

6 THE COURT: WELL, THE COURT IS FACED HERE
7 WITH NOT JUST THIS ONE EXHIBIT, BUT I ASSUME THERE
8 ARE OTHER EXHIBITS OF OTHER PHOTOGRAPHS THAT YOU
9 PROPOSE TO OFFER AS WELL, MR. LEVIN.

10 MR. LEVIN: YES, THERE ARE, YOUR HONOR.

11 THE COURT: THE DEFENDANTS AS THEY -- AS THEY
12 WERE DEPICTED AS CHILDREN; IS THAT CORRECT?

13 MR. LEVIN: WELL, THE PHOTOGRAPHS THAT I HAVE

14 SELECTED ARE NOT JUST PHOTOGRAPHS OF THE FAMILY OR
15 FAMILY PORTRAITS OF ERIK OR LYLE MENENDEZ, BUT
16 PHOTOGRAPHS WHICH TEND TO EXPLAIN OR ILLUSTRATE A
17 PARTICULAR POINT THAT THE WITNESS MAKES.

18 FOR EXAMPLE, THE NEXT PHOTOGRAPH THAT I
19 AM GOING TO ATTEMPT TO USE OR SEEK TO USE IS A
20 PHOTOGRAPH OF ERIK MENENDEZ AS A YOUNG CHILD WHEREIN
21 HE IS STANDING NEXT TO HIS FATHER HANGING FROM A
22 CHIN-UP BAR DURING THE TRAINING THAT HIS FATHER
23 WOULD CAUSE HIM TO GO THROUGH. AND, IN FACT, IN
24 EVEN ONE OF THE PHOTOGRAPHS IT LOOKS LIKE ERIK
25 MENENDEZ IS LOSING HIS GRIP AND FALLING WHERE HIS
26 FATHER IS NOT -- IS INTENTLY WATCHING BUT NOT GOING
27 TO DO ANYTHING TO TRY TO CATCH HIM. AND THIS IS THE
28 TYPE OF FEAR-INDUCING BEHAVIOR THAT CAUSED ERIK

43147

1 MENENDEZ TO FEAR HIS FATHER. AND IT'S THE TYPE OF
2 EVIDENCE THAT THE EXPERTS --

3 FIRST OF ALL, THE EXPERTS HAVE SEEN THIS
4 PARTICULAR PHOTOGRAPH AND THE EXPERTS WILL ALSO
5 TESTIFY THAT THIS IS THE TYPE OF ACTIVITY WHICH
6 LATER CAUSED MR. MENENDEZ TO FEAR HIS FATHER.

7 MR. CONN: AGAIN, I WOULD OBJECT TO THAT.
8 THE ISSUE BEFORE THE COURT IS NOT SO MUCH WHETHER

9 THE DEFENDANT AT ANY MOMENT IN HIS LIFE MAY HAVE
10 FEARED SOMETHING THAT HIS FATHER WAS ABOUT TO DO,
11 BUT WHETHER HE FEARED THAT HIS FATHER WAS GOING TO
12 KILL HIM ON AUGUST THE 20TH OF 1989, AND I DON'T
13 THINK THAT THE DEFENSE SHOULD BE ABLE TO PUT IN -- OR
14 PRESENT INCIDENT AFTER INCIDENT IN WHICH THE
15 DEFENDANT MAY HAVE HAD A MOMENTARY FEAR OF SOMETHING
16 THAT HIS FATHER WAS DOING OR WAS GOING TO DO, MUCH
17 LESS PHOTOGRAPHS WHICH REALLY DON'T CORROBORATE WHAT
18 COUNSEL IS SAYING.

19 SO I THINK THAT, ONCE AGAIN, WHAT WE ARE
20 SEEING IN REGARD TO THESE PHOTOGRAPHS IS SIMPLY MORE
21 CHILDHOOD PHOTOGRAPHS, WHICH ARE REALLY NOT
22 PROBATIVE OF THE ULTIMATE ISSUE IN THIS CASE.

23 THE COURT: WELL, TWO OBSERVATIONS.

24 ONE, THE PEOPLE THEMSELVES SOUGHT TO USE
25 PHOTOGRAPHS TO DEPICT CERTAIN POST-CRIME ACTIVITIES
26 OF THE DEFENDANTS, SUCH AS DEPICTING ITEMS THAT THEY
27 PURCHASED AFTER THEIR PARENTS WERE KILLED, AND THE
28 COURT RULED THAT IT WAS RELEVANT EVIDENCE,

43148

1 DEMONSTRATIVE EVIDENCE, TO SHOW CERTAIN THINGS.

2 AND WHAT THE DEFENSE IS ARGUING IS THAT

3 THIS IS DEMONSTRATIVE EVIDENCE ANALOGOUS TO THAT

4 WHICH THE PROSECUTION SOUGHT WHICH IS RECEIVED IN
5 EVIDENCE AND IS BEFORE THE JURY. THAT'S AN
6 OBSERVATION. THE COURT HAS THAT IN MIND.

7 BUT ALSO, THE COURT IS CONCERNED ABOUT
8 THE NATURE OF THE EXAMINATION OF THE EXTENT OF IT.

9 HOW LONG IS IT THAT YOU PROPOSE TO
10 QUESTION YOUR CLIENT ABOUT THESE EVENTS WHICH ARE
11 REMOTE IN TIME FROM THE INCIDENTS OF AUGUST THE
12 20TH, 1989?

13 MR. LEVIN: YOUR HONOR, I HEAR THIS COURT
14 LOUD AND CLEAR, AND IN TERMS OF TIME, I CAN'T TELL
15 YOU WITH GREAT SPECIFICITY, BUT I AM VERY CONCERNED
16 ABOUT THIS ISSUE AND I AM GOING TO MOVE INTO A LATER
17 AREA SHORTLY, PROBABLY NO LONGER THAN 30 MINUTES,
18 THEN WE MOVE INTO A DIFFERENT AREA WHERE DIFFERENT
19 EVENTS OCCURRED IN MR. MENENDEZ' LIFE THAT I DON'T
20 FEEL WILL BE AS CONTROVERSIAL. BUT THESE EVENTS ARE
21 EXTREMELY IMPORTANT TO GIVE SOME MEANING TO THE
22 STATE OF MIND THAT ERIK MENENDEZ LATER DEVELOPED
23 WITH RESPECT TO THOSE EVENTS THAT OCCURRED. BUT I
24 DON'T EXPECT TO BE LONG IN THIS AREA; AS I STATED,
25 PERHAPS 30 MINUTES, PERHAPS LESS.

26 THE COURT: WELL, BUT YOU'VE ALREADY SPENT
27 QUITE A BIT OF TIME.

28 THERE ARE SEVERAL ISSUES HERE AND WE

1 DISCUSSED THEM BEFORE. THEY'RE SEPARATE ISSUES.

2 ONE HAS TO DO WITH THE ALLEGATION OF
3 SEXUAL ABUSE, AND THAT IS RELATED TO THE DEFENDANT'S
4 VERSION OF THE EVENTS OF AUGUST THE 20TH OF 1989,
5 THE SEQUENCE OF EVENTS THAT THEY'VE DESCRIBED IN
6 THEIR PREVIOUS TESTIMONY, AND AS THAT'S ALREADY BEEN
7 REFERRED TO BY THIS WITNESS IN HIS TESTIMONY.

8 AND THERE'S AN ISSUE OF WHETHER OR NOT
9 THAT SEXUAL MOLESTATION EVER OCCURRED IN THE PAST OR
10 DID OCCUR AT OR NEAR THE TIME OF THE EVENTS OF
11 AUGUST THE 20TH. AND THE PEOPLE, APPARENTLY, ARE
12 DISPUTING THAT.

13 SO THE DEFENSE HAS BEEN GIVEN AND WILL
14 BE GIVEN SUBSTANTIAL OPPORTUNITY, AS MUCH AS
15 NECESSARY, TO ESTABLISH, IF THE DEFENSE CAN
16 ESTABLISH, THAT THOSE EVENTS OCCURRED, BECAUSE IT
17 PLAYS A FACTUAL ROLE IN THE EVENTS OF AUGUST THE
18 20TH. THAT'S AN ISSUE.

19 THE OTHER ISSUE RELATES TO THE MENTAL
20 STATE OF THE DEFENDANTS -- OR THIS WITNESS, RATHER,
21 AT THE TIME OF THE KILLING OF THE PARENTS, AND THE
22 MENTAL STATE THAT HAS BEEN PUT FORTH IS OUT OF FEAR,
23 AND HIS STATED FEAR OF HIS PARENTS AT THE TIME HE
24 PARTICIPATED IN THEIR KILLING.

25 THE FEAR THAT YOU ARE NOW DESCRIBING HAS
26 NOT BEEN RELATED BY THIS WITNESS TO HIS STATE OF

27 MIND OF FEAR ON AUGUST THE 20TH. YOU ARE INDICATING
28 TO ME THAT THERE IS SOME TESTIMONY FORTHCOMING FROM

43150

1 A WITNESS CALLED BY THE DEFENSE, AN EXPERT WITNESS,
2 WHO WILL RELATE THIS AS PART OF AN OVERALL HISTORY
3 OF THE DEFENDANT, THIS WITNESS WHO -- AND THE EXPERT
4 WILL DESCRIBE THAT HISTORY ALONG WITH HIS CLINICAL
5 EXAMINATION OF THE DEFENDANT AS A BASIS FOR AN
6 OPINION THAT, ACCORDING TO YOUR OFFER OF PROOF AND
7 WHAT WE HAD IN A PREVIOUS HEARING IN THIS COURT,
8 THAT THE DEFENDANT SUFFERED FROM A CONDITION
9 DESCRIBED AS POST-TRAUMATIC STRESS DISORDER.

10 IS THAT RIGHT?

11 MR. LEVIN: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: AND THERE WILL BE SOME EVIDENCE
13 OFFERED, WHICH IS STILL TO BE DEFINED AS FAR AS THE
14 EXTENT OF IT, BY THE EXPERT WITNESS AS TO THE IMPACT
15 OF SUCH A CONDITION ON A PERSON'S STATE OF FEAR OR
16 MISPERCEPTION OF EVENTS, THINGS OF THAT NATURE. BUT
17 THAT'S A HISTORY THAT THE WITNESS WILL BE
18 CONSIDERING, AND THAT'S DIFFERENT THAN THE
19 DEFENDANT'S TESTIMONY OF FEAR ITSELF.

20 UNLESS HE'S CONNECTING IT TO HIS STATE
21 OF MIND ON AUGUST THE 20TH, ALL OF WHICH YOU'RE

22 PRESENTING IS A HISTORY THAT SOME OTHER WITNESS USES
23 IN ORDER TO FORM AN OPINION AND NOTHING MORE.
24 MR. LEVIN: IT IS MORE, YOUR HONOR.
25 THE COURT: WHAT ELSE COULD IT POSSIBLY BE?
26 MR. LEVIN: IT IS THE BASIS OF THE DIAGNOSTIC
27 CRITERIA AS STATED IN THE DSM-IV-R CONCERNING THOSE
28 TYPES OF EVENTS, THOSE TYPES OF LIFE EXPERIENCES,

43151

1 THOSE KINDS OF HUMAN BEHAVIORS TO WHICH ONE IS
2 SUBJECT, THAT WOULD CAUSE A CERTAIN STATE OF MIND
3 THAT WILL BE EXPLAINED BY THE EXPERTS AS BEING A
4 MENTAL DISORDER, IN THIS CASE POST-TRAUMATIC STRESS
5 DISORDER. IT IS NOT A HISTORY. IT IS TO SHOW THAT
6 THESE EVENTS OCCURRED.
7 FOR EXAMPLE, IF DR. WILSON TESTIFIES
8 THAT ERIK MENENDEZ SUFFERS FROM POST-TRAUMATIC
9 STRESS DISORDER, HE IS THEN GOING TO EXPLAIN WHAT
10 POST-TRAUMATIC STRESS DISORDER IS, AND HE'S GOING TO
11 EXPLAIN THE RELEVANT AND REQUIRED CRITERIA AS IT
12 EXISTS IN THE DIAGNOSTIC AND STATISTICAL MANUAL USED
13 BY THE AMERICAN PSYCHIATRIC ASSOCIATION.
14 PART OF, AND IMPORTANT TO, AN
15 EXPLANATION OF THE DEVELOPMENT OF THAT DISORDER IS
16 NOT MERELY PRESENTING A HISTORY OF ERIK MENENDEZ,

17 BUT TO BE ABLE TO EXPLAIN THOSE EVENTS IN A
18 PSYCHOLOGICAL CONTEXT OF HOW THE PERCEPTIONS OF
19 MR. MENENDEZ, OR HOW THE PERCEPTIONS OF A PERSON
20 WHO'S BEEN EXPOSED TO THESE KINDS OF LIFE
21 EXPERIENCES, GIVEN THE THINGS THAT HAVE HAPPENED,
22 WOULD RESPOND TO CERTAIN EVENTS, AND THOSE EVENTS IN
23 THIS CASE WOULD BE THE EVENTS OF AUGUST THE 20TH AND
24 THE PRECEDING WEEK.

25 THE COURT: THAT'S NOT THE OFFER THAT THE
26 COURT RULED UPON IN THE 801 HEARING. THIS IS NOT
27 PROFILE EVIDENCE.

28 FIRST OF ALL, AS I INDICATED IN EARLIER

43152

1 DISCUSSIONS, YOU START WITH THE DEFENDANT'S
2 TESTIMONY OF HIS STATE OF MIND. THE EXPERT
3 TESTIMONY, IF IT'S RECEIVED, IS OFFERED TO
4 CORROBORATE THAT STATE OF MIND. IT CANNOT PROVE HIS
5 STATE OF MIND; ALL IT CAN DO IS CORROBORATE. THIS
6 IS NOT A TRIAL TO PROVE WHETHER OR NOT THE DEFENDANT
7 SUFFERS FROM OR DID SUFFER FROM POST-TRAUMATIC
8 STRESS DISORDER. THAT'S NOT THIS TRIAL. THIS TRIAL
9 RELATES TO WHAT OCCURRED ON AUGUST THE 20TH AND HIS
10 STATE OF MIND ON AUGUST THE 20TH. STATE OF MIND IS
11 NOT DEFINED AS POST-TRAUMATIC STRESS DISORDER

12 BECAUSE NO EXPERT CAN SAY SOMEBODY SUFFERING FROM
13 POST-TRAUMATIC STRESS DISORDER HAD A PARTICULAR
14 STATE OF MIND ON ANY PARTICULAR DATE. IT'S WHAT HE
15 HAD IN HIS STATE OF MIND AT THE TIME HE KILLED HIS
16 PARENTS.

17 MR. LEVIN: AND THAT STATE OF MIND IS FEAR,
18 AND THE FEAR-EVOKING PASSIONS CAME FROM A MISREADING
19 AND A MISPERCEPTION OF CERTAIN EVENTS THAT
20 TRANSPIRED IN THE PRECEDING WEEK. THE WAY IN WHICH
21 MR. MENENDEZ VIEWED HIS WORLD AT 18 YEARS OLD,
22 DURING THAT PRECEDING WEEK ON AUGUST THE 20TH, 1989,
23 IS AND MUST BE EXPLAINED IN A PSYCHOLOGICAL CONTEXT
24 SO THAT THE JURY CAN UNDERSTAND THE NATURE OF THE
25 DEFENSE; THAT IS, THAT IF, IN FACT, MR. AND
26 MRS. MENENDEZ WERE NOT PLANNING TO ACTUALLY KILL
27 MR. MENENDEZ, THAT HIS STATE OF MIND, ALTHOUGH IT
28 MAY BE UNREASONABLE, WAS IN GOOD FAITH, AND BASED ON

43153

1 THE FACT THAT HIS READING OF THESE CUES, HIS ABILITY
2 TO READ THESE CUES, HOW A PERSON WITH THE MENTAL
3 DISORDER POSSESSED BY ERIK MENENDEZ WOULD REACT FROM
4 CERTAIN INCIDENTS THAT OCCURRED AT CRITICAL STAGES
5 IN HIS LIFE, AND CAUSED AN INDIVIDUAL TO READ THOSE
6 CUES IN THAT WAY. WITHOUT THIS KIND OF TESTIMONY,

7 THE JURY COULD CONCLUDE THAT ERIK MENENDEZ ACTED
8 UNREASONABLY AND NOT IN GOOD FAITH.

9 THE COURT: WELL, THE QUESTION OF
10 REASONABLENESS IS ONE THAT WE'VE HAD DISCUSSIONS ON,
11 AS WE'VE ALSO DISCUSSED THE SUBJECT THAT YOU'VE JUST
12 REFERRED TO; THAT IS THE BASIS OF THE COURT'S RULING
13 THAT THE EXPERT TESTIMONY CAN BE PRESENTED.

14 BUT THE BASIS, ALSO, OF THE COURT'S
15 RULING WAS THAT IT IS CORROBORATIVE OF THE TESTIMONY
16 OF THE DEFENDANT, AND AS WE GO BACK IN TIME TO THESE
17 REMOTE EVENTS, AS THEY ARE MORE REMOTE, THE
18 PROBATIVE VALUE OF THEM BECOMES LESS AND THE
19 PROBATIVE VALUE IS LESS BECAUSE IT IS ONLY A BASIS
20 FOR THE EXPERT OPINION WHICH IS ONLY CORROBORATIVE
21 OF THE DEFENDANT'S TESTIMONY. SO WE START FIRST
22 WITH HIS TESTIMONY, THE DEFENDANT'S TESTIMONY, THEN
23 YOU GO BACK FROM THAT TO THESE OTHER ANTECEDENT
24 EVENTS. AND THE LONGER WE SPEND ON THESE EARLY
25 TIMES, THE MORE REMOTE THEY ARE, THE LESS PROBATIVE
26 THEY ARE.

27 AND THAT'S HOW I ANALYZE THIS. I SAID
28 THIS BEFORE. THIS IS NOTHING NEW. THIS IS HOW I

2 SPENDING A LOT OF TIME ON THIS. I'M NOT CONCERNED
3 SO MUCH AT THIS POINT ABOUT THE CONSUMPTION OF TIME
4 BUT THE POTENTIAL OF CONFUSION OF ISSUES, BECAUSE WE
5 GET MIRED IN THE EARLY EVENTS OF CHILDHOOD ABOUT
6 WHETHER SOMEONE DID OR DID NOT WRITE A LIST OR DID
7 OR DID NOT TAKE A PARTICULAR LESSON, AND THE FOCUS
8 OF THIS TRIAL IS NO LONGER ON THE ISSUES THAT ARE TO
9 BE DECIDED BY THE JURY BUT ON REALLY IRRELEVANT
10 MATTERS.

11 MR. LEVIN: WELL, THE LIST IS CRITICAL, YOUR
12 HONOR, FOR THE REASON THAT IT SHOWS THAT ERIK
13 MENENDEZ VIEWED HIS MOTHER AS AN ACCOMPLICE IN HIS
14 FATHER'S BRUTALITY. AND THIS WE WANT TO EXPLAIN TO
15 THE JURY THAT ERIK MENENDEZ FEARED BOTH HIS MOTHER
16 AND FATHER, FEARED THEM TOGETHER AND FEARED THEM
17 SEPARATELY. AND THIS LIST IS A CRITICAL PIECE OF
18 EVIDENCE IN EXPLAINING THE WAY IN WHICH ERIK
19 MENENDEZ FEARED HIS MOTHER. IT'S A DIFFERENT --
20 DIFFERENT FROM THE TESTIMONY THAT'S ALREADY BEEN
21 ELICITED WITH RESPECT TO JOSE MENENDEZ.

22 BUT I AM NOT GOING TO -- I AM MINDFUL OF
23 THE COURT'S COMMENTS, AND I DON'T WANT TO RUN AFOUL
24 OF HOW THE COURT VIEWS THESE ISSUES. BUT I DO NEED
25 SOME TIME AND SOME LEEWAY TO EXAMINE ERIK MENENDEZ
26 ON THESE EARLY YEARS, AND I DON'T THINK IT WILL TAKE
27 ANY LONGER THAN 20 OR 30 MINUTES, AND IT WILL NOT BE
28 IN A MANNER THAT CREATES CONFUSION.

1 THE COURT: WELL, THE CONFUSION IS THAT IT'S
2 A DISTRACTION FROM THE FOCAL POINT OF THE TRIAL. NO
3 ONE WILL BE CONFUSED ABOUT A DESCRIPTION OF AN EVENT
4 THAT OCCURRED WHEN THE DEFENDANT WAS 10 YEARS OLD.
5 WE CAN UNDERSTAND THAT EVENT. BUT WHEN WE SPEND
6 TIME FOCUSING ON THAT EVENT TO THE DETRIMENT OF
7 FOCUSING ON THE ISSUES IN THIS CASE, THEN THAT'S THE
8 POTENTIAL FOR CONFUSION.

9 MR. LEVIN: I UNDERSTAND, YOUR HONOR. BUT
10 WHAT THE EXPERTS WILL TESTIFY TO IS THAT THE
11 DEVELOPMENT YEARS ARE CRITICAL TO AN ASSESSMENT, AN
12 OVERALL ASSESSMENT, OF THE TYPE OF MENTAL STATE, THE
13 TYPE OF FEAR, THAT THIS WITNESS HAD; AND TO
14 UNDERSTAND THAT FEAR IT HAS TO BE PLACED IN THE
15 CONTEXT OF CERTAIN EXPERIENCES THAT HE HAS BEEN
16 SUBJECT TO THROUGHOUT HIS LIFE, AND THESE ARE THE
17 FEAR COMPONENTS WHICH WE ARE TRYING TO DEMONSTRATE
18 IN THE MANNER THAT WE'RE DOING.

19 THE COURT: ALL RIGHT. AS FAR AS THE
20 PHOTOGRAPH 354, I DON'T FIND THAT THERE'S ANY
21 PROBATIVE VALUE IN IT; AND, THEREFORE, ON GROUNDS OF
22 RELEVANCE, THE OBJECTION IS SUSTAINED.

23 AS FAR AS THE LIST, 355, IF HE CAN
24 IDENTIFY THAT WITH SPECIFICITY AS A DOCUMENT THAT
25 WAS FEAR-INDUCING IN RELATIONSHIP TO HIS MOTHER AND

26 THAT PRODUCED SOME REACTION BY HIS FATHER, THEN I'LL
27 OVERRULE THE OBJECTION.
28 MR. LEVIN: THANK YOU.

43156

1 THE COURT: ALL RIGHT. LET'S GET THE JURY
2 OUT.

3 (THE JURY ENTERED THE
4 COURTROOM AND THE FOLLOWING
5 PROCEEDINGS WERE HELD:)

6
7 THE COURT: OKAY. THE JURY IS BACK. YOU MAY
8 CONTINUE YOUR DIRECT EXAMINATION.

9 MR. LEVIN: THANK YOU. YOUR HONOR, I HAVE A
10 KODAK COLOR PRINT ENVELOPE WITH SOME WRITING ON THE
11 OUTSIDE. IT HAS BEEN PREVIOUSLY MARKED AS EXHIBIT
12 219, AND I ASK THAT IT AND ITS CONTENTS BE MARKED
13 EXHIBIT 356.

14 THE COURT: 356.

15 MR. LEVIN: AND I ALSO HAVE A -- LOOKS LIKE A
16 PROOF SHEET OF SOME PHOTOGRAPHS THAT'S BEEN
17 PREVIOUSLY MARKED AS 234. I ASK THAT THIS DOCUMENT
18 BE MARKED EXHIBIT 357.

19 THE COURT: 357.

20 Q BY MR. LEVIN: MR. MENENDEZ, I'D LIKE

21 YOU TO TAKE A LOOK AT WHAT'S JUST BEEN MARKED AS 356
22 AND ASK YOU TO TAKE PARTICULAR NOTE OF THE WRITING
23 THAT APPEARS ON THE OUTSIDE OF THAT DOCUMENT.

24 DO YOU SEE THAT WRITING?

25 A YES.

26 Q DO YOU RECOGNIZE WHOSE WRITING THAT IS?

27 A YES.

28 Q WHOSE WRITING IS THAT?

43157

1 A MY MOTHER'S.

2 Q DOES YOUR NAME APPEAR IN YOUR MOTHER'S
3 HANDWRITING?

4 A YES, IT DOES.

5 Q WHAT DOES IT SAY?

6 A IT SAYS: "ERIK'S BIRTHDAY, NOVEMBER
7 1976."

8 Q NOW, WOULD YOU TURN TO THE REAR OR TURN
9 THE ENVELOPE OVER.

10 DO YOU SEE A STICKER WITH A NAME ON IT?

11 A YES.

12 Q AND A RECEIPT?

13 A YES.

14 Q WHAT DOES THE RECEIPT SAY?

15 YES, THIS ONE. DOES IT HAVE YOUR NAME

16 ON IT?

17 A "MENENDEZ, 4 HARLOW LANE, MONSEY,
18 NEW YORK."

19 Q AND IS THAT WHERE YOU RESIDED DURING
20 YOUR -- IS THAT AN AREA YOU'RE FAMILIAR WITH AT YOUR
21 6TH BIRTHDAY?

22 A IT WAS MY HOME IN MONSEY.

23 Q AND I WANT YOU TO OPEN UP THE ENVELOPE
24 AND REMOVE THE CONTENTS.

25 DO YOU SEE SOME NEGATIVES IN THERE?

26 A YES.

27 Q WOULD YOU REMOVE THEM.

28 YOU'VE SEEN THOSE NEGATIVES BEFORE,

43158

1 HAVEN'T YOU?

2 A I'M NOT SURE IF I SAW THE NEGATIVES.

3 I'VE SEEN THE PICTURES.

4 Q DO YOU REC -- CAN YOU TAKE A LOOK AT THE
5 NEGATIVES, HOLD IT UP TO THE LIGHT AND SEE IF YOU
6 CAN TELL WHAT'S ON THEM.

7 A THAT PHOTO (POINTING).

8 Q WHEN YOU SAY "THAT PHOTO" AND YOU
9 POINTED, ARE YOU REFERRING TO THE PHOTOGRAPHS THAT
10 HAVE BEEN PREVIOUSLY MARKED AS 353, 353-A, 352 AND

11 352-A?

12 A YES.

13 Q AND ARE THERE OTHER PHOTOGRAPHS ON THAT
14 NEGATIVE STRIP AS WELL?

15 A YES.

16 Q WHAT ARE THOSE PHOTOGRAPHS OF?

17 A MY DOG TRISTESSE, MY FATHER, SOME
18 CHILDREN.

19 Q NOW, TAKE A LOOK AT WHAT'S BEEN MARKED
20 AS 357.

21 DOES THAT LOOK LIKE A PROOF SHEET OF THE
22 PHOTOGRAPHS THAT ARE ON THE NEGATIVES?

23 A YES.

24 Q AND DO YOU SEE ON THE PROOF SHEET THE
25 PHOTOGRAPHS THAT HAVE BEEN PREVIOUSLY MARKED AS 352
26 AND 353?

27 A YES.

28 Q INCLUDING ON THAT -- ON THAT PHOTO STRIP

43159

1 DO YOU SEE THE OTHER PHOTOGRAPHS OF CHILDREN FROM
2 YOUR 6TH BIRTHDAY PARTY?

3 A YES.

4 Q NOW, MR. MENENDEZ, BEFORE THE BREAK WE
5 WERE TALKING ABOUT A LIST.

6 WAS THERE A TIME OR WAS THERE SEVERAL
7 TIMES IN YOUR LIFE WHERE YOUR MOTHER WOULD REQUIRE
8 YOU TO WRITE DOWN A LIST OF THINGS THAT YOU HAD DONE
9 WRONG THAT DAY?

10 A YES.

11 Q AND DID YOU UNDERSTAND WHY YOU WERE
12 WRITING THAT LIST, MAKING THAT LIST?

13 A YES.

14 Q WHAT DID YOU UNDERSTAND YOU WERE WRITING
15 THAT LIST FOR?

16 A SO THAT I WOULD PRESENT IT TO MY FATHER
17 WHEN HE ARRIVED HOME FOR MY MOTHER.

18 Q AND WAS IT CLEAR TO YOU THAT YOUR MOTHER
19 KNEW THAT THE PRESENTATION OF THAT LIST TO YOUR
20 MOTHER -- OR TO YOUR FATHER, WOULD RESULT IN
21 SOMETHING HAPPENING TO YOU?

22 A YES.

23 Q AND WHAT WAS IT THAT WOULD HAPPEN TO YOU
24 TYPICALLY UPON PRESENTING A LIST OF THIS TYPE?

25 A I WOULD GET HIT OR BEATEN IN SOME WAY OR
26 YELLED AT.

27 Q I HAVE A LIST THAT'S BEEN -- OR A PIECE
28 OF PAPER THAT'S BEEN PREVIOUSLY MARKED 355. I'D

1 LIKE YOU TO TAKE A LOOK AT IT.

2 JUST LOOK AT IT AND READ IT TO

3 YOURSELF.

4 FIRST OF ALL, IS THAT YOUR WRITING ON

5 THAT PARTICULAR DOCUMENT?

6 A WHEN I WAS YOUNGER.

7 Q IS THAT THE TYPE OF LIST THAT YOU WOULD

8 BE TOLD BY YOUR MOTHER TO CREATE TO PRESENT TO YOUR

9 FATHER?

10 A YES.

11 Q DO YOU REMEMBER THAT PARTICULAR LIST?

12 A LISTS OF THIS NATURE.

13 Q AND WHAT KINDS OF THINGS ARE ON THAT

14 LIST?

15 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

16 INADEQUATE FOUNDATION.

17 THE COURT: I DIDN'T HEAR THE LATTER PART.

18 MR. CONN: INADEQUATE FOUNDATION.

19 THE COURT: WELL, FIRST OF ALL, THE LIST IS

20 THERE. IT DOESN'T HAVE TO BE READ. BUT AS FAR AS

21 THE FOUNDATION, SUSTAINED.

22 Q BY MR. LEVIN: THE THINGS ON THAT LIST,

23 ARE THEY THINGS THAT YOU WERE TOLD TO WRITE DOWN?

24 A YES.

25 Q AND WHO TOLD YOU TO WRITE THEM DOWN?

26 A MY MOTHER DID.

27 Q WAS THERE EVER A TIME IN YOUR LIFE WHERE

28 YOU WROTE A LIST SUCH AS EXHIBIT 355 WHERE YOU

1 DIDN'T PRESENT IT TO YOUR FATHER?

2 A NO.

3 Q WAS THERE EVER A TIME THAT YOU WROTE A
4 LIST LIKE EXHIBIT 355 WHEN YOU PRESENTED IT TO YOUR
5 FATHER AND YOU WEREN'T BEATEN?

6 A BEATEN HOW?

7 Q OR HIT.

8 A ALMOST ALWAYS I WAS AT LEAST HIT.

9 Q WERE YOU -- WAS THERE EVER A TIME WHEN
10 YOU CREATED A LIST SUCH AS EXHIBIT 355 WHERE YOU
11 DIDN'T HAVE FEAR?

12 A NO.

13 Q AND WHO DID YOU FEAR WHEN YOU WROTE A
14 LIST SUCH AS EXHIBIT 355?

15 A MY FATHER.

16 Q IS EXHIBIT 355 -- AND CAN YOU TELL FROM
17 THE HANDWRITING ON THAT LIST APPROXIMATELY HOW OLD
18 YOU WERE WHEN YOU WROTE THOSE THINGS?

19 A SEVEN. EIGHT. NINE. SIX.

20 Q CAN YOU SAY WITH AS MUCH DEGREE OF
21 CERTAINTY AS YOU CAN AT THIS TIME, THAT EXHIBIT 355
22 WAS, IN FACT, A LIST THAT YOU PRESENTED TO YOUR
23 FATHER?

24 A IT WAS.

25 Q AND WOULD THAT LIST HAVE CAUSED YOU TO
26 BE AFRAID OF HIM?

27 A YES.

28 Q WHAT KINDS OF THINGS ARE ON THAT LIST?

43162

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
2 INADEQUATE FOUNDATION.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER THE QUESTION.

5 THE WITNESS: TIMES WHEN I WAS IN MY -- WHEN I
6 WAS IN MAMA'S CAR COMPLAINING ABOUT FOOD OR WHEN I
7 WOULDN'T GO TO SLEEP ON TIME, WHEN I --

8 Q BY MR. LEVIN: HOW DOES THE LIST START
9 AT THE TOP?

10 A "WHAT ERIK DID."

11 Q AND IS THERE NUMBERS, ITEMS?

12 A NINE NUMBERS.

13 Q WHAT'S THE FIRST ONE?

14 A "AT HOME ERIK WOULD NOT EAT ON TIME."

15 Q WHAT'S THE SECOND NUMBER?

16 A "AT HOME ERIK WOULD NOT GO TO SLEEP OR
17 GET HIS PAJAMAS ON."

18 Q WHAT'S NO. 3?

19 A IN MAMA'S CAR WE WENT TO -- I'M NOT SURE
20 WHAT THAT SAYS -- BUT "ERIK WAS COMPLAINING ABOUT
21 ONIONS ON HIS HAMBURGER."
22 Q WHO'S MAMA?
23 A MAMA?
24 Q WHO'S MAMA?
25 A MAMA'S MY GRANDMOTHER.
26 Q WHAT'S ITEM NO. 5?
27 A "AT MAMA'S HOUSE ERIK WAS COMPLAINING
28 ABOUT THE TAPE-RECORDER."

43163

1 Q OKAY. WHAT'S NO. 5? THAT WAS FOUR.
2 A I'M SORRY.
3 Q WHAT'S NO. 5?
4 A "I TOLD ERIK NOT TO READ A LETTER LOTS
5 OF TIMES BUT HE STILL READ IT."
6 Q WHAT'S NO. 6?
7 A "AT MAMA'S HE WENT TO SLEEP FINE."
8 Q SEVEN?
9 A "AT HOME ERIK WOULD NOT EAT HIS
10 SPINACH."
11 Q EIGHT?
12 A "AT THE STORE ERIK WANTED TO STEAL."
13 Q NINE?

14 A "AT HOME ERIK WOULD NOT EAT TUNA."

15 Q HOW OFTEN WOULD YOU BE REQUIRED TO MAKE

16 A LIST LIKE THAT UP?

17 A OFTEN.

18 Q I WANT TO ASK YOU A COUPLE OF QUESTIONS,

19 A COUPLE OF MORE QUESTIONS ABOUT SOME OF THE EARLY

20 TIMES IN WHICH YOU FEARED YOUR FATHER.

21 WERE ALL THE OCCURRENCES THAT CAUSED YOU

22 TO FEAR YOUR FATHER THINGS THAT HE DID TO YOU OR DID

23 THEY INVOLVE YOUR BROTHER?

24 A OFTEN THEY INVOLVED MY BROTHER.

25 Q WHAT KINDS OF THINGS WOULD YOUR FATHER

26 DO TO YOUR BROTHER THAT WOULD CAUSE YOU TO FEAR YOUR

27 FATHER?

28 A HE WOULD YELL AT MY BROTHER, HIT MY

43164

1 BROTHER, WHIP MY BROTHER. THINGS LIKE THAT.

2 Q DID YOU KNOW WHAT YOUR BROTHER HAD DONE

3 TO RECEIVE THAT KIND OF TREATMENT?

4 A IT WAS OFTEN RANDOM, IN THE HOUSE.

5 SOMETIMES YOU WERE HIT BECAUSE HE WAS IN A BAD MOOD

6 OR BECAUSE MY MOTHER HAD SAID SOMETHING TO HIM.

7 SOMETIMES YOU DIDN'T KNOW WHY. SOMETIMES I KNEW

8 WHY. A LOT OF MEMORIES I HAVE ARE JUST OF THE SOUND

9 OF THE HITTING AND NOT SO MUCH WHAT TRANSPIRED

10 BEFORE.

11 Q NOW, YOU DESCRIBED BEFORE EVENTS THAT

12 OCCURRED WHILE YOU WERE SWIMMING THAT CAUSED YOU TO

13 FEAR YOUR FATHER.

14 WERE THERE OTHER THINGS THAT YOUR FATHER

15 DID DURING OTHER SPORTING EVENTS THAT CAUSED YOU TO

16 FEAR HIM?

17 A YES.

18 Q WHAT EVENTS -- WHAT TYPE OF ATHLETIC

19 EVENTS COME TO YOUR MIND?

20 A SOCCER, TENNIS.

21 Q WHAT WOULD YOUR FATHER DO DURING YOUR

22 SOCCER THAT WOULD CAUSE YOU FEAR?

23 MR. CONN: OBJECTION. VAGUE AS TO TIME.

24 THE COURT: SUSTAINED.

25 Q BY MR. LEVIN: HOW OLD WERE YOU WHEN YOU

26 PLAYED SOCCER?

27 A SIX, SEVEN, EIGHT, NINE, TEN, ELEVEN.

28 Q AND WAS IT FORMAL-TYPE SOCCER WHERE YOU

43165

1 COMPETED WITH OTHER CHILDREN?

2 A THERE WERE TWO DIFFERENT LEAGUES. THE

3 LOCAL LEAGUE AND THEN THE ALL-STAR LEAGUE, AND I

4 WOULD COMPETE ON BOTH.

5 Q WOULD YOUR FATHER PARTICIPATE IN YOUR
6 SOCCER MEETS?

7 A YES.

8 Q WOULD HE PARTICIPATE IN YOUR SOCCER
9 PRACTICE?

10 A YES.

11 Q WOULD YOUR MOTHER PARTICIPATE IN SOCCER
12 PRACTICE?

13 A GENERALLY NOT.

14 Q DID YOUR FATHER HAVE A REGIMEN WITH
15 RESPECT TO HOW IT WAS YOU WERE TO TRAIN FOR SOCCER?

16 A I DON'T UNDERSTAND.

17 Q ALL RIGHT. LET ME ASK YOU WHAT YOUR
18 FATHER DID, IN THE EARLIEST REMEMBRANCE OF FEAR,
19 WITH RESPECT TO YOUR SOCCER TRAINING.

20 MR. CONN: OBJECTION. VAGUE AS TO TIME.

21 THE COURT: OVERRULED.

22 THE WITNESS: DURING A GAME, WHEN A GAME WAS
23 BEING PLAYED, AND I WAS RUNNING ALONG THE FIELD, HE
24 WOULD STEP IN AND HE WOULD GRAB ME AND HE WOULD YELL
25 AT ME AND TELL ME WHAT I SHOULD BE DOING AND HE
26 WOULD PUT ME BACK IN THE GAME. AND THESE SORTS OF
27 THINGS DURING GAMES. I WOULD BE AFRAID OF NOT DOING
28 WHAT HE ASKED RIGHT.

1 Q BY MR. LEVIN: WERE THERE SOCCER COACHES
2 AT THAT TIME?

3 A YES.

4 Q AND DID YOU EVER SEE A SOCCER COACH EVER
5 INTERFERE WITH YOUR FATHER COMING OUT ON TO THE
6 FIELD AND GRABBING YOU IN THE MANNER YOU JUST
7 DESCRIBED?

8 A NOBODY EVER INTERFERED WITH MY FATHER.

9 Q WOULD YOUR FATHER COME RIGHT ON TO THE
10 FIELD?

11 A NO. HE WOULD -- WELL, HE'D STEP A LITTLE
12 BIT ON TO THE FIELD, BUT HE WOULDN'T WALK OUT INTO
13 THE MIDDLE OF THE FIELD. GENERALLY, IF I WAS
14 PLAYING LEFT-WING OR FULL-BACK AND LEFT POSITION OR
15 IN THE RIGHT POSITION, NEAR THE SIDELINES.

16 I REMEMBER ONE TIME MY BROTHER WAS
17 RUNNING UP THE FIELD AND HE REACHED HIS HAND OUT AND
18 GRABBED HIM BY THE SHIRT AND PULLED HIM, AND IT WAS
19 WHEN WE WERE CLOSE IN PROXIMITY TO HIM.

20 Q WERE YOU ABLE TO SEE THAT, YOUR FATHER
21 GRABBING LYLE MENENDEZ?

22 A YES.

23 Q WHAT DID HE DO WHEN HE GRABBED HIM?

24 A HE WOULD SHAKE HIM AND YELL AND TELL HIM
25 WHAT HE WAS DOING WRONG AND WHAT HE WANTED HIM TO DO
26 AND HOW HE WANTED HIM TO DEFEND WHEN A MAN WOULD
27 COME OVER WITH A BALL AND HOW HE WANTED HIM TO SCORE

43167

1 Q AFTER SOCCER WAS OVER, DID YOU GO

2 SOMEWHERE?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: SUSTAINED.

5 Q BY MR. LEVIN: DID YOU HAVE LOTS OF

6 FRIENDS DURING THIS PERIOD OF TIME IN YOUR LIFE?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: OVERRULED.

9 THE WITNESS: NO.

10 Q BY MR. LEVIN: WERE YOU ALLOWED TO BRING

11 OTHER CHILDREN OVER TO YOUR HOUSE?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: SUSTAINED.

14 Q BY MR. LEVIN: DID YOUR FATHER TELL YOU

15 ANYTHING WITH RESPECT TO YOUR -- WELL, FIRST OF ALL,

16 DID YOU WANT FRIENDS?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: SUSTAINED.

19 Q BY MR. LEVIN: DID YOUR FATHER TELL YOU

20 ANYTHING ABOUT YOU HAVING FRIENDS AS A CHILD?

21 MR. CONN: OBJECTION. IRRELEVANT.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES.

24 Q BY MR. LEVIN: WHAT DID HE TELL YOU?

25 A HE TOLD ME THAT I WAS NOT TO MAKE

26 FRIENDS, THAT FRIENDS -- HE HAD DIFFERENT QUOTES THAT

27 HE WOULD USE ABOUT WHY I SHOULD AVOID FRIENDSHIPS,

28 CERTAINLY IN SPORTS. NEVER HAVE FRIENDS. AND WHAT

43168

1 FRIENDS WERE A SIGN OF AND SO ON.

2 Q WHAT WERE FRIENDS A SIGN OF, ACCORDING

3 TO YOUR FATHER?

4 A WEAKNESS, VULNERABILITY. HE WAS A MAN

5 WHO STOOD BY HIMSELF AND ALONE WITH NO CLOSE

6 FRIENDS, AND THAT'S HOW HE FELT THAT A PERSON SHOULD

7 LIVE HIS LIFE.

8 Q WELL, HOW WAS IT THAT YOU UNDERSTOOD

9 THAT HAVING A FRIEND WOULD BE A SIGN OF WEAKNESS AS

10 YOUR FATHER RELATED IT TO YOU?

11 A WELL, HE TOLD ME THAT I SHOULD ALWAYS

12 BEWARE OF FRIENDS, AND THAT YOU SHOULD WORRY ABOUT

13 THE FORCES IN LIFE THAT WILL BRING YOU DOWN AND

14 SOMETIMES THEY'RE GOING TO BE DISGUISED AS A

15 HANDSHAKE OR A FRIEND, AND THAT YOU SHOULD NEVER

16 TRUST ANYONE, INCLUDING HIM.

17 Q HOW DID HE RELATE THAT TO YOU, ABOUT NOT

18 TRUSTING EVEN HIM?

19 A HE WOULD DO EXERCISES, EITHER WHERE I
20 WAS JUMPING OFF A COUNTER OR WHERE I WAS HOLDING ON
21 TO A ROPE THAT HE WAS HOLDING, AND HE WOULD HAVE ME
22 DO THE EXERCISE OVER AND OVER WHERE HE PROTECTED ME
23 AND HE'D GRAB ME. IF I JUMPED OFF A COUNTER, HE'D
24 GRAB ME. IF I WAS ON A ROPE, HE'D MAKE SURE I
25 WOULDN'T FALL. AND I WOULD DO IT SEVERAL TIMES IN A
26 ROW AND THEN ON THE -- WHAT HE WANTED TO BE THE FINAL
27 TIME, I WOULD JUMP OFF THE COUNTER AND I WOULD HIT
28 THE GROUND OR I WOULD HOLD ON TO THE ROPE AND HE

43169

1 WOULD LET IT DROP AND I WOULD FALL TO THE GROUND,
2 AND HE WOULD TELL ME NEVER TO TRUST ANYONE, EVEN
3 YOUR FATHER.

4 Q WHAT'S YOUR EARLIEST REMEMBRANCE OF YOUR
5 FATHER DOING THIS TYPE OF ACTIVITY WITH YOU?

6 A FROM THE TIME I WAS IN MONSEY.

7 MR. LEVIN: YOUR HONOR, I HAVE A PHOTOGRAPH
8 THAT'S BEEN PREVIOUSLY MARKED EXHIBIT 180. I ASK
9 THAT IT BE MARKED EXHIBIT 358.

10 THE COURT: 358.

11 MR. CONN: I WOULD OBJECT ON GROUNDS OF
12 RELEVANCE AND 352.

13 THE COURT: ALL RIGHT. LET ME SEE IT,

14 PLEASE.

15 (PAUSE IN PROCEEDINGS.)

16

17 THE COURT: ALL RIGHT. OBJECTION OVERRULED.

18 Q BY MR. LEVIN: SHOWING YOU THE

19 PHOTOGRAPH THAT'S BEEN PREVIOUSLY MARKED AS EXHIBIT

20 358, DO YOU RECOGNIZE WHO IS DEPICTED IN THAT

21 PHOTOGRAPH?

22 A YES.

23 Q WHO IS DEPICTED IN THAT PHOTOGRAPH?

24 A MYSELF AND MY FATHER.

25 Q AND YOUR FATHER IS THE FIGURE IN THE

26 LOWER LEFT-HAND CORNER?

27 A YES.

28 Q WHAT ARE YOU DOING?

43170

1 A I'M HOLDING ON TO A BAR CRYING.

2 Q WAS THAT THE TYPE OF ACTIVITY THAT YOUR

3 FATHER WOULD SUBJECT YOU TO EVEN AT A VERY EARLY

4 AGE?

5 A FROM BEFORE I CAN REMEMBER.

6 Q WAS THIS THE KIND OF ACTIVITY THAT LED

7 TO YOUR FATHER TELLING YOU, AS HE LET YOU FALL TO

8 THE GROUND, NOT EVEN TO TRUST HIM?

9 A YES.

10 Q DID YOU LEARN NOT TO TRUST HIM?

11 A I DID NOT TRUST HIM.

12 Q DID YOU DO WHAT HE TOLD YOU TO DO?

13 A ALWAYS.

14 Q DID YOUR FATHER EVER THREATEN YOU?

15 A YES.

16 Q WHAT DID HE THREATEN YOU -- OR WHAT DID

17 HE THREATEN TO DO, TYPICAL KINDS OF THINGS?

18 A THREATENED TO HIT ME. HE THREATENED TO

19 HURT MY DOG. HE THREATENED TO NOT HAVE ME EAT

20 DINNER. HE THREATENED ME IN WHATEVER MANNER. WHEN

21 I GOT OLDER, THREATS BECAME DIFFERENT, BUT EARLIER

22 IN LIFE IT WAS GENERALLY JUST TO BE MEAN.

23 Q WAS YOUR FATHER THE KIND OF PERSON THAT

24 MADE GOOD ON HIS THREATS?

25 A YES.

26 Q AND WAS THAT WHAT YOU CAME TO BELIEVE?

27 A YES.

28 Q NOW, WITH RESPECT TO FRIENDS, DID THE

43171

1 FRIENDS HAVE -- THE FACT THAT YOU WERE TOLD THAT

2 FRIENDS WERE A SIGN OF WEAKNESS, WERE YOU TOLD NOT

3 TO HAVE ANY FRIENDS?

4 A YES.

5 Q DID YOU TRY TO HAVE ANY FRIENDS?

6 A I WANTED FRIENDS.

7 Q DID YOU HAVE ANY FRIENDS AT THE TIME

8 YOUR FATHER MOLESTED YOU?

9 A I HAD -- WHAT DO YOU MEAN BY FRIENDS?

10 KIDS THAT I KNEW OR KIDS THAT I WOULD INVITE OVER TO

11 MY HOUSE?

12 Q DO YOU HAVE A REMEMBRANCE OF ANY

13 PARTICULAR CHILD THAT YOU WANTED TO GET CLOSE TO?

14 A YES.

15 Q AND WHO COMES TO MIND?

16 A THERE WAS A KID NAMED TOMMY WHO LIVED IN

17 MY NEIGHBORHOOD WHO WAS THE ONLY KID I KNEW; A KID

18 NAMED VICTOR WHEN I WAS IN FOURTH GRADE; A GIRL

19 NAMED BETH WHEN I WAS IN FIFTH GRADE.

20 Q WERE YOU ABLE TO HAVE VICTOR OVER TO

21 YOUR HOUSE?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: NO.

25 Q BY MR. LEVIN: WHY NOT?

26 A I DIDN'T WANT TO INVITE MY FRIENDS OVER

27 TO THE HOUSE. I WAS VERY UNCOMFORTABLE DOING THAT

28 AND I WAS AFRAID FOR THEM. I WAS AFRAID FOR MYSELF

1 IF -- IT WAS A VERY -- THERE WAS ALWAYS A LOT OF
2 PRESSURE AND INTENSITY IN MY HOUSE AND INVITING
3 PEOPLE OVER WOULD PUT YOU AT RISK TO ANYTHING. AND
4 SO I JUST GENERALLY TRIED TO KEEP MY FRIENDS OUTSIDE
5 THE HOUSE, AND PARTLY BECAUSE I DIDN'T WANT MY
6 FATHER TO KNOW THAT I WAS FRIENDS WITH THIS PERSON
7 OR THAT PERSON AT SCHOOL.

8 Q BY MR. LEVIN: WHY WOULDN'T YOU WANT
9 YOUR FATHER TO KNOW WHO YOU WERE FRIENDS WITH?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: BECAUSE HE DID NOT WANT ME TO
13 HAVE ANY CLOSE RELATIONSHIPS.

14 Q BY MR. LEVIN: DO YOU KNOW WHY HE DIDN'T
15 WANT YOU TO HAVE ANY CLOSE RELATIONSHIPS?

16 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

17 THE COURT: SUSTAINED.

18 Q BY MR. LEVIN: DID HE EVER TELL YOU THAT
19 YOU WERE NOT TO TELL ANYONE ABOUT THE FACT THAT HE
20 WAS HAVING ORAL SEX WITH YOU AND ANAL SEX WITH YOU,
21 AND THAT YOU WERE DOING THINGS TO HIM?

22 A YES.

23 Q AND HOW DID HE CONVEY THAT TO YOU?

24 A EARLY ON HE SIMPLY TOLD ME THAT IF I
25 TOLD ANYONE ABOUT WHAT WAS HAPPENING IN THE BEDROOM,

26 THAT IT WOULD STOP, AND THAT IT WOULD NO LONGER
27 CONTINUE AND THAT I WOULD NO LONGER GET ATTENTION
28 FROM HIM. AND LATER ON THAT CHANGED.

43173

1 Q AND WHEN YOU SAY EARLY ON THAT IT WOULD
2 STOP, WHAT PUT IT IN A TIME FRAME ABOUT YOUR AGE?
3 IS THIS EARLY CHILDHOOD?

4 A WELL, FROM WHEN I WAS SIX UNTIL I WAS
5 ELEVEN.

6 Q NOW, AT 11 YEARS OLD THINGS REALLY
7 CHANGED FOR YOU, DIDN'T THEY?

8 A YES.

9 Q DID YOUR FATHER EVER TELL YOU THAT HE
10 WAS DOING THESE SEXUAL THINGS WITH YOU FOR A
11 PARTICULAR REASON?

12 A WELL, HE WOULD -- OFTEN HE WOULD GIVE ME
13 LECTURES OR SPEECHES WHEN HE WAS IN MY BEDROOM
14 ABOUT -- ABOUT THE BONDING THAT A FATHER-SON WOULD
15 HAVE AND HE WOULD RELATE IT TO ANCIENT TIMES AND HE
16 WOULD GO ON WITH STORIES, FUN STORIES, EXCITING
17 STORIES, BRAVE STORIES OF OTHER PEOPLE IN THE SAME
18 TYPE OF ACTIVITY.

19 Q HOW WAS IT RELATED TO YOU? I MEAN, WHEN
20 YOU SAY HE WOULD TELL YOU STORIES, WHAT THINGS WOULD

21 HE TELL YOU?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: HE WOULD TELL ME THAT THIS WAS

25 A NATURAL THING. HE WOULD TELL ME ABOUT THE TIMES

26 WITH THE ROMANS AND THE GREEKS AND HOW BEFORE BATTLE

27 THEY WOULD BOND TOGETHER OR THE FATHER AND THE SON

28 WOULD BOND TOGETHER; AND THEY WOULD SHARE A TIME OF

43174

1 PEACE TOGETHER WITH ONE ANOTHER AND THEN THEY WOULD

2 GO OFF AND DIE IN BATTLE OR THEY WOULD GO OFF AND

3 FIGHT.

4 Q BY MR. LEVIN: WAS THIS BEFORE HE WOULD

5 TOUCH YOU ON THAT PARTICULAR SESSION THAT HE WOULD

6 TALK?

7 A OR AFTER.

8 Q NOW, DID YOU PARTICIPATE IN

9 CONVERSATIONS WITH YOUR FATHER DURING THE TIMES HE

10 WOULD COME TO YOU IN YOUR BEDROOM?

11 A NO.

12 Q WHY NOT?

13 A IF HE ASKED ME A QUESTION, I WOULD

14 ANSWER HIM. BUT SILENCE WAS -- I WOULD SAY THE MOST

15 IMPORTANT RULE IN THE BEDROOM, AND HE BELIEVED THAT

16 SILENCE WAS SOMETHING THAT A MAN -- IF A MAN HAD, HE
17 HAD GREAT POWER, THE ABILITY TO REMAIN SILENT, AND I
18 WOULDN'T BE ALLOWED TO SPEAK UNLESS HE ASKED ME A
19 QUESTION.

20 Q HOW LONG WOULD THESE SESSIONS WITH YOUR
21 FATHER LAST TYPICALLY?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: WHAT ARE YOU REFERRING TO?

24 Q BY MR. LEVIN: I'M REFERRING TO THE
25 TIMES THAT YOUR FATHER WOULD COME TO YOUR BEDROOM
26 AND TOUCH YOU.

27 A TWENTY, THIRTY MINUTES. SOMETIMES
28 LONGER.

43175

1 Q DID IT LATER DRAW OUT INTO LONGER
2 SESSIONS?

3 A YES.

4 Q DID IT LATER DRAW OUT INTO MORE COMPLEX
5 SITUATIONS FOR YOU, RITUALISTIC, THINGS LIKE THAT?

6 A YES.

7 Q YOU TESTIFIED BEFORE THAT YOU HAD BEEN
8 MOLESTED BY YOUR FATHER FOR 12 YEARS.

9 DID YOU FIND THAT DURING THIS 12 YEARS
10 THAT YOU COULD SEE CERTAIN REPETITIVE TYPES OF

11 CONTACTS OR CONDUCT THAT YOUR FATHER WOULD DO?

12 A YES.

13 Q AND CERTAIN THINGS THAT HE LIKED TO DO,

14 CERTAIN --

15 A NORMALLY --

16 Q -- SEXUAL PREFERENCES THAT YOUR FATHER

17 ENJOYED, THAT HE LIKED?

18 A YES.

19 Q AND DID YOU COME TO GIVE THESE NAMES?

20 MR. CONN: OBJECTION. IRRELEVANT AND 352.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 Q BY MR. LEVIN: NOW, THE TYPE OF SEX THAT

24 YOU DESCRIBED BEFORE, DID YOU LATER COME TO GIVE

25 THAT A NAME?

26 A WHAT ARE YOU REFERRING TO?

27 Q WHEN YOUR FATHER WOULD ASK YOU TO ORALLY

28 COPULATE HIM, DID YOU LATER COME TO GIVE THAT SOME

43176

1 KIND OF A NAME?

2 A YES.

3 Q WHAT WAS THE NAME THAT YOU GAVE IT?

4 A NICE SEX.

5 Q WHAT OTHER KINDS OF SEX DID YOU COME TO

6 NAME?

7 A KNEES. ROUGH SEX. ACTUAL SEX.

8 Q WAS THERE A PERIOD OF TIME WHERE THE
9 SEXUAL ACTIVITY THAT YOU WERE HAVING WITH YOUR
10 FATHER CHANGED FROM THE WAY IT WAS TO SOMETHING
11 ENTIRELY DIFFERENT?

12 A YES.

13 Q AND WHAT POINT IN TIME IN YOUR LIFE WAS
14 THAT?

15 A WHEN I WAS 11.

16 Q DID ANYTHING HAPPEN AT THAT PARTICULAR --
17 AT THAT PRECISE TIME IN YOUR LIFE THAT CAUSED YOU TO
18 BELIEVE THAT YOU WERE AT FAULT FOR THE CHANGE IN
19 BEHAVIOR?

20 A YES.

21 Q AND WHAT WAS THE BEHAVIOR THAT YOUR
22 FATHER NOW EXHIBITED WITH YOU AT 11 YEARS OLD THAT
23 HE HAD NOT BEFORE?

24 MR. CONN: OBJECTION. IRRELEVANT AND 352.

25 THE COURT: OVERRULED.

26 THE WITNESS: YOU'RE ASKING FOR THE FIRST
27 TIME OR GENERALLY?

28 Q BY MR. LEVIN: THE FIRST TIME.

1 A HE HAD ME GET DOWN ON MY KNEES AND

2 MESSAGE HIM.

3 Q HE HAD YOU GET DOWN ON YOUR KNEES AND

4 MESSAGE HIM WHERE?

5 A HIS PENIS.

6 Q AND HOW WERE YOU TO MESSAGE HIS PENIS?

7 A MY MOUTH.

8 Q HAD YOU DONE THAT BEFORE?

9 A YES.

10 Q HAD YOU DONE THAT MANY TIMES BEFORE?

11 A YES.

12 Q AND HAD YOU DONE IT TO THE POINT WHERE

13 HE HAD EJACULATED BEFORE?

14 A YES.

15 Q AND HAD EJACULATED IN A TOWEL BEFORE?

16 A YES.

17 Q HAD HE ALWAYS EJACULATED IN A TOWEL

18 BEFORE?

19 A A TOWEL OR A SHEET.

20 Q WAS HE ALWAYS NICE TO YOU AND KIND TO

21 YOU BEFORE?

22 A YES.

23 Q WHAT WAS DIFFERENT ABOUT THIS PARTICULAR

24 TIME?

25 A HE'D JUST BEEN HAVING A FIGHT WITH MY

26 MOTHER AND HE WAS -- THERE WAS A LOT OF SCREAMING

27 DOWNSTAIRS, AND HE CAME UP. HE WAS VERY ANGRY AND

28 HE WAS YELLING AT ME AND SLAPPING ME AND WAS

1 COMPLETELY DIFFERENT THAN HE HAD EVER BEEN BEFORE.

2 Q AND ON THIS PARTICULAR OCCURRENCE,

3 MR. MENENDEZ, HOW DID HE TREAT YOU IN THE BEDROOM,

4 SEXUALLY?

5 A HE WAS NOT NICE TO ME.

6 Q WHAT DID HE DO THAT WASN'T NICE TO YOU?

7 A JUST -- GENERALLY WHEN MY FATHER WOULD

8 COME INTO THE BEDROOM, EVERYTHING WAS NICE.

9 SOMETIMES A LOOK SCARED ME, BUT GENERALLY HE WOULD

10 SAY NICE THINGS AND HE WOULD ACT KINDLY AND IF

11 SOMETHING HURT ME HE WOULD STOP. AND THEN THIS TIME

12 IN THE MOOD, IN THE RAGE HE WAS IN, NOTHING I SAID

13 MATTERED AND HE WAS -- IT WAS VERY CONFUSING. HE

14 WOULD TELL ME TO KNEEL DOWN IN A CERTAIN POSITION

15 AND THEN HE WOULD HIT ME AND I WOULD FALL OFF MY

16 BED, AND HE WOULD TELL ME TO KNEEL DOWN AGAIN. AND

17 I WAS JUST GOING WITH THE FLOW BECAUSE I DIDN'T KNOW

18 WHAT HE WANTED, AND IT WAS A FRIGHTENING TIME.

19 Q DID THIS CONTINUE, THIS TYPE OF

20 BEHAVIOR?

21 A YES.

22 Q AND DID -- WAS THERE A TIME WHEN YOUR

23 FATHER NO LONGER EJACULATED IN A TOWEL OR A SHEET?

24 A YOU MEAN SOMETIMES HE WOULDN'T AND

25 SOMETIMES HE WOULD --

26 Q DO YOU RECALL THE FIRST TIME IT WAS

27 WHERE YOUR FATHER EJACULATED AND IT WAS NOT IN A

28 TOWEL OR IN A SHEET?

43179

1 A YES.

2 Q WHERE WAS IT?

3 A IT WAS IN MY MOUTH.

4 Q AND WHEN WAS THAT?

5 A IN MY BEDROOM WHEN I WAS 11.

6 Q WAS THIS AT THE TIME WHEN YOUR FATHER'S

7 BEHAVIOR HAD CHANGED?

8 MR. CONN: OBJECTION. IRRELEVANT. EVIDENCE

9 CODE SECTION 352.

10 THE COURT: OVERRULED.

11 THE WITNESS: YES.

12 Q BY MR. LEVIN: WHAT DO YOU REMEMBER

13 ABOUT THIS PARTICULAR OCCURRENCE?

14 A THAT HE -- HE WAS ARGUING WITH MY

15 MOTHER. I HEARD THE FOOTSTEPS COMING.

16 MR. CONN: I'M GOING TO ASK FOR A RECESS,

17 YOUR HONOR, IF THE WITNESS CANNOT CONTINUE AT THIS

18 POINT.

19 MR. LEVIN: I THINK HE CAN CONTINUE.

20 DO YOU FEEL LIKE YOU CAN CONTINUE,
21 MR. MENENDEZ?
22 THE WITNESS: HE THREW OPEN MY DOOR.
23 MR. CONN: YOUR HONOR, I'LL ASK FOR A RECESS
24 REGARDLESS OF COUNSEL'S POSITION.
25 THE COURT: WELL, IF THE WITNESS CAN CONTINUE
26 WITH HIS TESTIMONY, THEN WE'LL PROCEED.
27 Q BY MR. LEVIN: MR. MENENDEZ, DO YOU
28 FEEL -- THESE THINGS AREN'T EASY FOR YOU TO TALK

43180

1 ABOUT?
2 MR. CONN: OBJECTION. LEADING.
3 THE WITNESS: NO.
4 THE COURT: OVERRULED. THE ANSWER WILL
5 STAND.
6 Q BY MR. LEVIN: DO YOU WANT TO TALK ABOUT
7 THESE THINGS?
8 MR. CONN: OBJECTION. IRRELEVANT.
9 THE COURT: OVERRULED.
10 THE WITNESS: NO.
11 Q BY MR. LEVIN: DO YOU ALWAYS REACT IN A
12 SIMILAR MANNER THAT YOU ARE NOW WHEN YOU TALK ABOUT
13 THESE THINGS?
14 MR. CONN: OBJECTION. VAGUE AS TO ALWAYS.

15 THE COURT: OVERRULED.

16 THE WITNESS: NO. SOMETIMES I'M ALONE IN MY
17 ROOM OR IN THE CELL AT THE JAIL AND I REMEMBER BACK
18 AND SOMETIMES I DON'T CRY.

19 MR. CONN: OBJECTION. NONRESPONSIVE. MOTION
20 TO STRIKE.

21 THE COURT: ALL RIGHT. SUSTAINED. THE
22 ANSWER IS STRICKEN AS NONRESPONSIVE.

23 Q BY MR. LEVIN: DO YOU FEEL THAT YOU CAN
24 CONTINUE YOUR TESTIMONY?

25 A YES.

26 MR. CONN: OBJECTION. IRRELEVANT AS TO WHAT
27 THE WITNESS BELIEVES, YOUR HONOR.

28 THE COURT: OVERRULED. LET'S PROCEED.

43181

1 Q BY MR. LEVIN: DO YOU WANT TO CONTINUE?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: LET'S JUST GO AHEAD.

4 Q BY MR. LEVIN: ALL RIGHT. MR. MENENDEZ,
5 I KNOW IT'S DIFFICULT --

6 MR. CONN: OBJECTION. THAT'S AN ARGUMENT.
7 I'LL MAKE A MOTION TO STRIKE.

8 THE COURT: ALL RIGHT. LET'S JUST ASK THE
9 NEXT QUESTION.

10 Q BY MR. LEVIN: I WANT YOU TO THINK BACK

11 AND I WANT YOU TO RECALL THAT INCIDENT AS BEST YOU

12 CAN AND RELATE IT TO THE JURY.

13 A MY DAD THREW OPEN THE DOOR TO THE ROOM

14 AND TOLD ME TO KNEEL DOWN IN MY BED, AND I DID SO.

15 HE CAME OVER TO ME AND HE HIT ME, AND I WENT OFF MY

16 BED AND HIT THE WALL. AND HE TOLD ME TO KNEEL DOWN

17 ON THE FLOOR AND HE WAS UNBUCKLING HIS PANTS, AND HE

18 PULLED OUT HIS PENIS AND HE GRABBED MY HEAD AND I

19 STARTED MASSAGING HIS PENIS WITH MY MOUTH.

20 Q HOW DID HE GRAB YOUR HEAD?

21 A WITH HIS HAND ON MY HEAD.

22 Q DID HE DIRECT YOUR HEAD TO ANY

23 PARTICULAR LOCATION?

24 A TOWARDS HIM.

25 Q WAS HIS PENIS ERECT?

26 A YES.

27 Q DID YOU KNOW WHAT HE WAS GOING TO HAVE

28 YOU DO?

43182

1 A BEFORE, NO.

2 Q DID YOU TRY TO RESIST HIM?

3 A NO.

4 Q WHY NOT?

5 A BECAUSE IF I RESISTED, I WAS JUST AFRAID
6 THAT IT WOULD GET WORSE AND I -- I NEVER RESISTED
7 ANYTHING THAT MY FATHER DID IN THOSE YEARS.

8 Q HOW DID YOU FEEL AT THAT TIME?

9 MR. CONN: OBJECTION. IRRELEVANT.

10 THE COURT: OVERRULED.

11 THE WITNESS: I WAS FRIGHTENED.

12 Q BY MR. LEVIN: WHAT DID YOU DO?

13 A I DID WHAT HE ASKED ME TO DO AND THAT'S
14 WHAT I DID.

15 Q DID HE EJACULATE?

16 A AT ONE POINT HE DID AND I TRIED TO PULL
17 AWAY AND HE HELD ME THERE.

18 Q HELD YOU WHERE?

19 A HE HELD HIS PENIS IN MY MOUTH.

20 Q WHERE DID HE EJACULATE?

21 A IN MY MOUTH.

22 Q WHAT DID YOU DO?

23 A I WAS CRYING.

24 Q DID HE TELL YOU THEN TO DO ANYTHING?

25 A HE SHOVED ME AWAY.

26 Q WHAT DID YOU DO WHEN HE SHOVED YOU
27 AWAY?

28 A I WAS CRYING AND I STAYED IN THE CORNER

1 AND HE BEGAN YELLING AT ME.

2 Q HE WAS UPSET WITH YOU?

3 A THE WHOLE INCIDENT HE WAS UPSET. HE HAD
4 BEEN SLAPPING ME AND JUST ANGRY, UNLIKE HE HAD EVER
5 BEEN BEFORE.

6 Q DID HE SAY ANYTHING TO YOU THAT YOU EVEN
7 NOW REMEMBER?

8 A YES.

9 Q WHAT WAS IT HE SAID?

10 A HE SAID: WHY CAN'T YOU BE LIKE YOUR
11 BROTHER? WHY DO YOU ALWAYS HAVE TO CRY? YOU'RE NOT
12 GOOD ENOUGH TO BE A MENENDEZ. YOU'LL GET USED TO
13 IT. THINGS LIKE THAT.

14 Q AND WHAT DID YOU DO FOLLOWING THAT ACT?
15 DID YOU GO TO THE BATHROOM?

16 A I THREW UP.

17 Q WAS YOUR MOTHER HOME AT THE TIME?

18 A YES.

19 Q DID SHE COME UPSTAIRS?

20 A NO.

21 Q DID YOU BLAME YOURSELF FOR THIS CHANGE
22 IN YOUR FATHER'S BEHAVIOR?

23 A YES.

24 Q WHY DID YOU BLAME YOURSELF?

25 MR. CONN: OBJECTION. IRRELEVANT UNDER
26 EVIDENCE CODE SECTION 352.

27 THE COURT: OVERRULED.

43184

1 MYSELF. I FELT THAT MY DAD WAS ANGRY AT ME. IT
2 CONTINUED ON LIKE THAT AND I JUST THOUGHT THAT
3 OBVIOUSLY I HAD DONE SOMETHING WRONG TO UPSET HIM.

4 Q BY MR. LEVIN: WAS THERE ANY PARTICULAR
5 EVENT THAT WAS SIGNIFICANT IN YOUR LIFE THAT CAME
6 JUST BEFORE THIS CHANGE IN YOUR FATHER'S SEXUAL
7 BEHAVIOR WITH YOU?

8 A YES.

9 Q AND WHAT WAS THAT?

10 A I STOPPED SWIMMING AND I STOPPED PLAYING
11 SOCCER AND I STARTED PLAYING TENNIS FULL TIME.

12 Q WHY DID YOU START PLAYING TENNIS FULL
13 TIME?

14 A I HAD COME OF AGE AND IT WAS TIME TO
15 CHOOSE A SPORT.

16 Q WHEN YOU SAY IT WAS TIME TO CHOOSE A
17 SPORT, DID SOMEONE REQUIRE YOU TO CHOOSE A SPORT?

18 A MY FATHER.

19 Q DID YOU HAVE A CHOICE WHETHER OR NOT TO
20 PARTICIPATE IN SPORTS AT ALL?

21 A NO.

22 Q AND WHAT WAS IT THAT WAS PRESENTED TO

23 YOU?

24 A IT WAS PRESENTED WITH ME -- TO ME THAT I
25 WAS TO CHOOSE ONE OF THE SPORTS, AND I THOUGHT THAT
26 HE WANTED ME TO PICK TENNIS. LYLE BEGAN PLAYING
27 TENNIS FULL TIME, SO I PICKED TENNIS.

28 Q DID YOUR FATHER EXPRESS ANY

43185

1 DISAPPOINTMENT THAT YOU PICKED TENNIS?

2 A NOT AT THE TIME VERBALLY, NO.

3 Q DID YOU THINK THAT YOUR FATHER'S
4 BEHAVIOR IN THE BEDROOM AS IT CHANGED HAD SOME
5 RELATIONSHIP TO THE SPORT THAT YOU PICKED?

6 A YES.

7 Q WHY?

8 A BECAUSE HE WAS MEAN AND HE WAS SUDDENLY
9 CRUEL, AND THE ONLY GOOD TIME I GOT TO SPEND WITH
10 HIM WAS IN MY BEDROOM. AND SO I WAS DESPERATELY
11 SEARCHING FOR A REASON AND A WAY TO CHANGE IT BACK;
12 AND I THOUGHT THAT MAYBE HE REALLY WANTED ME TO
13 REALLY PICK SWIMMING BECAUSE HE HAD BEEN A SWIMMER
14 AND BECAUSE MY GRANDMOTHER HAD BEEN A SWIMMER AND
15 SWIMMING WAS IN THE FAMILY.

16 Q SO WHY DIDN'T YOU JUST QUIT TENNIS AND
17 START SWIMMING?

18 A IT JUST WASN'T LIKE THAT.
19 Q WHY NOT?
20 A BECAUSE I DIDN'T -- I DIDN'T HAVE -- I
21 DON'T KNOW. I WAS -- I WAS -- I DIDN'T HAVE THE LINE
22 OF COMMUNICATION. I WASN'T ABLE TO TALK TO MY DAD
23 AND SIT DOWN AND SAY, IF YOU DON'T WANT ME TO PICK
24 TENNIS, I'LL SWIM. I DIDN'T TALK TO MY DAD IN THAT
25 WAY.
26 Q DURING THIS PERIOD OF TIME, WHAT GRADE
27 WERE YOU IN AT 11 YEARS OLD?
28 A I WAS IN -- I WAS IN 5TH GRADE AGAIN.

43186

1 Q WHEN YOU SAY 5TH GRADE AGAIN, THIS IS
2 THE TIME YOU REPEATED THE 5TH GRADE?
3 A YES.
4 Q AND YOU REPEATED IT AT P.D.S.?
5 A NO. I -- I TRANSFERRED -- I WAS IN 5TH
6 GRADE AT HOPEWELL AND THEN I STAYED BACK AND RETOOK
7 5TH GRADE AT P.D.S.
8 Q AND HOW WELL OR HOW WERE YOU DOING IN
9 SCHOOL AT THIS TIME?
10 MR. CONN: OBJECTION. IRRELEVANT.
11 THE COURT: SUSTAINED.
12 Q BY MR. LEVIN: AS A RESULT OF THE

13 MOLESTATION, THE ACTS YOU WERE HAVING WITH YOUR
14 FATHER, THE FEAR YOU HAD THAT YOU'VE DESCRIBED, DID
15 THAT LEAVE YOU ONCE YOU LEFT THE BEDROOM?

16 MR. CONN: OBJECTION. VAGUE.

17 THE COURT: REPHRASE THE QUESTION.

18 MR. LEVIN: YES.

19 Q YOU EXPRESSED THE FACT THAT YOU
20 DEVELOPED FEAR OF YOUR FATHER; IS THAT CORRECT?

21 A I HAD FEAR OF MY FATHER FROM BEFORE
22 THAT.

23 Q AND DID YOU ONLY FEAR YOUR FATHER WHEN
24 YOU WERE IN THE BEDROOM?

25 A NO.

26 Q DID YOU EVER THINK OF THE ACTS OF SEX
27 THAT YOUR FATHER WAS HAVING WITH YOU OUTSIDE THE
28 BEDROOM?

43187

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: SUSTAINED.

3 Q BY MR. LEVIN: DID YOU EVER FEAR WHEN
4 THE NEXT TIME YOUR FATHER WOULD VISIT YOU IN YOUR
5 ROOM?

6 A YES.

7 Q DID YOU EVER FIND THAT YOU WERE HAVING

8 TROUBLE CONCENTRATING IN SCHOOL --

9 MR. CONN: OBJECTION.

10 Q BY MR. LEVIN: -- BECAUSE OF THE FEAR OF
11 YOUR FATHER?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES.

15 Q BY MR. LEVIN: AND WHAT, IF ANYTHING,
16 WOULD THAT CAUSE YOU TO DO?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED.

19 THE WITNESS: I WOULD BLANK OUT OR SPACE OUT
20 ON THE TENNIS COURT OR WITH MY FRIEND OR IN SCHOOL.
21 SOMETIMES IT CAUSED PROBLEMS BECAUSE I WAS IN THE
22 MIDDLE OF A TEST OR A TEACHER WAS SPEAKING TO ME.
23 BUT I -- I TRIED TO STAY FOCUSED.

24 Q BY MR. LEVIN: MR. MENENDEZ, AREN'T YOUR
25 SCHOOL RECORDS JUST FILLED WITH SUCH INCIDENTS OF --

26 MR. CONN: OBJECTION. LEADING AND
27 ARGUMENTATIVE.

28 THE COURT: SUSTAINED.

43188

1 Q BY MR. LEVIN: HAVE TEACHERS BROUGHT TO
2 YOUR ATTENTION YOUR CONCENTRATION PROBLEM?

3 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
4 IRRELEVANT.

5 THE COURT: CAN YOU BE MORE SPECIFIC AS TO
6 HOW YOU MEAN BROUGHT TO HIS ATTENTION.

7 Q BY MR. LEVIN: DID YOU EVER TELL A
8 TEACHER IN SCHOOL -- OR LET ME ASK YOU THIS: HAD IT
9 EVER BEEN BROUGHT TO YOUR ATTENTION BY A TEACHER
10 DURING THE 5TH GRADE AT P.D.S. THAT YOU WERE NOT
11 PAYING ATTENTION?

12 MR. CONN: OBJECTION. IRRELEVANT. 352.

13 THE COURT: IN WHAT WAY DID THIS OCCUR? BE
14 MORE SPECIFIC.

15 Q BY MR. LEVIN: DURING A SPECIFIC TIME
16 WHEN YOU WOULD SPACE OUT AND LOSE YOUR CONCENTRATION
17 AS A RESULT OF THE FEAR OF YOUR FATHER AND THINKING
18 ABOUT HIM, DID YOU EVER HAVE A TEACHER CONFRONT YOU
19 AND ASK YOU WHAT WAS WRONG?

20 MR. CONN: OBJECTION. IRRELEVANT AND 352.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES, MANY TIMES.

23 Q BY MR. LEVIN: AND DID YOU EVER REPORT
24 TO THE TEACHER WHAT YOUR FATHER WAS DOING TO YOU?

25 A NO, OF COURSE NOT.

26 Q WHY NOT?

27 A A WHOLE NUMBER OF REASONS. I DIDN'T
28 WANT TO GET MY DAD IN TROUBLE. IT WAS -- IT WAS A

1 LITTLE EMBARRASSING AT THAT POINT. I WAS AFRAID OF
2 WHAT MY DAD WOULD DO.

3 Q AS A RESULT OF THE CHANGE IN YOUR
4 FATHER'S BEHAVIOR, DID YOU TRY TO DO SOMETHING TO
5 CHANGE YOUR FATHER'S BEHAVIOR BACK TO THE WAY IT WAS
6 BEFORE IT BECAME VIOLENT?

7 A YES.

8 Q WHAT DID YOU TRY TO DO?

9 A I DIDN'T -- I DIDN'T REALLY KNOW WHAT WAS
10 CAUSING HIM TO BE ANGRY AT ME, SO I JUST TRIED TO DO
11 EVERYTHING RIGHT. I TRIED TO TRY HARD ON THE TENNIS
12 COURT. I -- I REALLY TRIED HARD TO IMPROVE MY
13 GRADES. I TRIED TO -- GENERALLY TO GET HIM TO
14 APPROVE OF ME SO HE WOULD BE HAPPY WITH ME.

15 Q TRY TO BE PERFECT IN EVERY WAY?

16 A YES.

17 Q WERE YOU SUCCESSFUL?

18 A NO.

19 Q DID YOUR FATHER REACT -- DID YOU HAVE
20 SOME SUCCESS AT ACHIEVING SOME DEGREE OF BETTERING
21 YOURSELF IN SCHOOL AND IN TENNIS AND THOSE KINDS OF
22 THINGS?

23 A I -- MY GRADES WENT UP AND MY RANKING IN
24 TENNIS IMPROVED.

25 Q DID YOUR FATHER RESPOND FAVORABLY TO
26 THOSE THINGS?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OVERRULED.

43190

1 THE WITNESS: I LEARNED WHEN I WAS 12 OR 13
2 THAT HE COULD CARE LESS ABOUT MY GRADES IN SCHOOL.
3 BUT IN TENNIS HE WAS HAPPY THAT I WAS IMPROVING IN
4 THE RANKINGS AND HE WANTED ME TO BE NO. 1 IN THE
5 MIDDLE STATES, AND SO I WAS MOVING UP THE LADDER AND
6 SO HE WAS HAPPY ABOUT THAT.

7 Q BY MR. LEVIN: NOW, DURING THIS PERIOD
8 OF TIME AROUND 11 YEARS OLD OR SO, WAS YOUR MOTHER
9 ASSISTING YOU WITH HELPING GETTING YOUR GRADES UP?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: ELEVEN, NO. I HAD -- I HAD DONE
13 A LOT OF TRAINING WITH MY MOTHER FROM SEVEN TO NINE
14 AND SEVERAL ATTEMPTS TO GET INTO P.D.S. AND HAD
15 CONTINUED ON AGAIN WHEN I WAS -- WHEN I WAS BEGINNING
16 TO HAVE PROBLEMS. A LOT OF TEACHERS COMPLAINING
17 ABOUT MY NOT HAVING -- NOT BEING ABLE TO CONCENTRATE
18 AND DOING POORLY IN SCHOOL IN 6TH GRADE.

19 Q BY MR. LEVIN: WELL, WAS IT IMPORTANT TO
20 YOUR MOTHER, AS YOU PERCEIVED HER, THAT YOU GET INTO
21 P.D.S.?

22 A IT WAS VERY IMPORTANT.
23 Q WHY?
24 A P.D.S. WAS A PRESTIGIOUS SCHOOL AND IN
25 NEW JERSEY IT WAS ONE OF THE BETTER SCHOOLS IN THE --
26 WELL, I DON'T KNOW IF IT WAS BETTER SCHOOLS IN THE
27 COUNTRY. THEY -- I WAS TOLD THAT IT WAS CERTAINLY
28 ONE OF THE BETTER SCHOOLS IN NEW JERSEY AND A LOT OF

43191

1 WEALTHY KIDS WENT TO THE SCHOOL, A LOT -- IT WAS A
2 GOOD-NAMED SCHOOL TO BE GOING TO AND IT WAS A GOOD
3 SCHOOL IN TERMS OF EDUCATION.

4 Q AND DID YOUR MOTHER MAKE IT CLEAR TO YOU
5 THAT SHE WANTED YOU TO GO TO P.D.S.?

6 MR. CONN: OBJECTION. IRRELEVANT. 352.

7 THE COURT: WELL, HE'S ALREADY ASKED THIS IN
8 A DIFFERENT WAY WITHOUT OBJECTION, SO OVERRULED.

9 THE WITNESS: YES.

10 Q BY MR. LEVIN: DID YOU HAVE ANY FEAR
11 THAT SOMETHING BAD WOULD HAPPEN IF YOU DIDN'T GET
12 INTO P.D.S.?

13 MR. CONN: OBJECTION. IRRELEVANT, THAT TYPE
14 OF FEAR.

15 THE COURT: REPHRASE THE QUESTION.

16 Q BY MR. LEVIN: DID YOU UNDERSTAND THAT --

17 DID YOU THINK YOU HAD A CHOICE TO GO TO P.D.S.?

18 MR. CONN: OBJECTION. IRRELEVANT.

19 THE COURT: OVERRULED.

20 THE WITNESS: WELL, I FAILED TO GET INTO

21 P.D.S. SEVERAL TIMES, BUT -- YOU MEAN IN TERMS OF

22 APPLYING TO P.D.S.?

23 MR. LEVIN: YES.

24 THE WITNESS: NO, I DIDN'T HAVE A CHOICE.

25 Q BY MR. LEVIN: WHO MADE IT CLEAR THAT

26 YOU DIDN'T HAVE A CHOICE?

27 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

28 EVIDENCE.

43192

1 THE COURT: SUSTAINED.

2 Q BY MR. LEVIN: WHY DID YOU FEEL YOU

3 DIDN'T HAVE A CHOICE?

4 A I WAS TOLD THAT I WAS GOING TO BE GOING

5 TO P.D.S. AND SO I -- I DON'T UNDERSTAND. I DIDN'T

6 HAVE A CHOICE.

7 Q UPON YOUR FAILING TO GET INTO P.D.S.

8 DURING THE TIME THAT YOU JUST INDICATED, DID YOUR

9 MOTHER CALL YOU ANY NAMES?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES.

13 Q BY MR. LEVIN: WHAT DID SHE CALL YOU?

14 A SHE WOULD CALL ME STUPID, TELL ME THAT I
15 WAS BORN DUMB. AT THE TIME I REALLY WANTED TO GET
16 INTO IT FOR HER BECAUSE IF --

17 MR. CONN: OBJECTION. NONRESPONSIVE. MOTION
18 TO STRIKE.

19 THE COURT: SUSTAINED AFTER REFERENCE TO THE
20 NAME THAT HE WAS CALLED. EVERYTHING ELSE IS
21 STRICKEN.

22 Q BY MR. LEVIN: WERE YOU EVER TOLD DURING
23 THESE EARLY YEARS, OR AT LEAST WHEN YOU WERE -- WHEN
24 YOU REPEATED 5TH GRADE, THAT YOU HAD DYSLEXIA?

25 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

26 THE COURT: SUSTAINED.

27 Q BY MR. LEVIN: WERE YOU EVER TOLD OR DID
28 YOU EVER FEEL THAT YOU HAD PROBLEMS COMPREHENDING

43193

1 CERTAIN SCHOOLWORK?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: DID YOU EVER RECEIVE ANY
5 SPECIAL EDUCATION, SPECIAL TRAINING, OTHER THAN THE
6 NORMAL CLASSES THAT YOU ATTENDED?

7 MR. CONN: OBJECTION. IRRELEVANT. 352.

8 THE COURT: SUSTAINED.

9 MR. LEVIN: YOUR HONOR, THIS WOULD BE A GOOD
10 TIME TO BREAK. I KNOW IT'S A FEW MINUTES EARLY, BUT
11 I DO WANT TO GO INTO A NEW AREA.

12 THE COURT: OKAY. WE'LL TAKE OUR RECESS THEN
13 AND WE'LL ACCOMMODATE THE SCHEDULE OF THE JURY.
14 WE'LL RESUME TOMORROW AT 8:30.

15 DON'T DISCUSS THE MATTER WITH ANYONE.
16 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL ASK
17 THAT YOU RETURN SO WE CAN START TOMORROW AT 8:30.

18 (THE JURY EXITED THE
19 COURTROOM AND THE FOLLOWING
20 PROCEEDINGS WERE HELD:)

21

22 THE COURT: ALL RIGHT. WHAT IS THE NEXT AREA
23 YOU'RE GOING INTO, MR. LEVIN?

24 MR. LEVIN: I'M NOT CERTAIN, YOUR HONOR, BUT
25 IT'S JUST GOING TO BE A DIFFERENT AREA. I HAVE A
26 VARIETY OF CHOICES AND TOPICS AND I NEED TO CONFER
27 WITH MY CLIENT.

28 THE COURT: ALL RIGHT. KEEP IN MIND OUR

2 TESTIMONY AND --

3 (JURY EXITING THE JURY ROOM.)

4

5 THE COURT: -- THE ISSUE OF REMOTENESS THAT

6 WE'VE DISCUSSED.

7 ANYTHING ELSE AT THIS POINT THAT COUNSEL

8 WISH TO BRING TO THE COURT'S ATTENTION BEFORE WE

9 TAKE OUR RECESS TILL TOMORROW?

10 MR. LEVIN: NO, YOUR HONOR.

11 MR. GESSLER: NO, YOUR HONOR.

12 THE COURT: OKAY. I WOULD ASK THAT IF YOU

13 HAVE EXHIBITS THAT YOU PROPOSE TO USE DURING THE

14 EXAMINATION OF YOUR CLIENT, THAT YOU SHOW THEM TO

15 THE PROSECUTOR AHEAD OF TIME, IF YOU HAVEN'T DONE

16 SO, SO THAT WE DON'T HAVE THESE INTERRUPTIONS DURING

17 THE TESTIMONY. IF THERE ARE SPECIFIC OBJECTIONS TO

18 EXHIBITS, THAT WE CAN ADDRESS THOSE PRIOR TO THE

19 JURY COMING IN THE BOX.

20 MR. CONN: YES, YOUR HONOR.

21 AND, IN FACT, IF I COULD ADD TO THAT.

22 THERE WAS THE RULE DURING THE PROSECUTION'S

23 CASE-IN-CHIEF THAT WE HAD TO SHOW THE DEFENSE THE

24 EXHIBITS ONE DAY BEFORE WE INTENDED TO USE THEM. I

25 WOULD ASK ALSO THAT COUNSEL GIVE US ONE-DAY NOTICE.

26 MS. ABRAMSON: YOUR HONOR, THEY'VE ALL BEEN

27 IN EVIDENCE SITTING HERE FOR TWO YEARS.

28 THE COURT: THAT'S NOT THE POINT. THEY HAVE

1 NO IDEA WHICH ONES YOU'RE GOING TO USE --

2 MS. ABRAMSON: THEY'RE SITTING IN THE BOX.

3 THE COURT: -- VERSUS WHICH ONES YOU'RE NOT
4 GOING TO USE. IF YOU HAVE THEM, IF YOU HAVE THEM
5 OUT, THEN MAKE SURE THEY'RE AVAILABLE TO THE
6 PROSECUTORS SO THEY CAN VIEW THEM AND WE CAN HAVE
7 ANY HEARINGS THAT ARE NECESSARY IN THAT REGARD.

8 ALL RIGHT. THEN WE'LL BE IN RECESS
9 UNTIL TOMORROW AT 8:30. IF THERE ARE SPECIFIC
10 OBJECTIONS TO THESE EXHIBITS, WE'LL TAKE THOSE UP AT
11 THAT TIME.

12 I HAVE ONE MATTER I WANT TO DISCUSS WITH
13 THE DEFENSE, AN EX-PARTE MATTER, SO WE'LL CLEAR THE
14 COURTROOM FOR THAT PURPOSE.

15 (PAGES 43196 THROUGH 43200 WERE
16 SEALED BY ORDER OF THE COURT.)

17

18 (AT 12:00 P.M., AN ADJOURNMENT

19 WAS TAKEN UNTIL FRIDAY,

20 DECEMBER 8, 1995, AT 8:30 A.M.)

	DAY	DATE	SESSION	PAGE	VOL.
3	<hr/>				
4	THURSDAY,	DECEMBER 7, 1995	A.M.	43103	258
5					
6					
7	PROCEEDINGS				
8					
9					
10	CHRONOLOGICAL INDEX OF WITNESSES				
11					
12	WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.				
13	MENENDEZ,				
14	ERIK GALEN				
15	(CONT'D) 43104-L				
16	258				
17					
18	LEGEND:				
19	A = MS. ABRAMSON C = MR. CONN				
20	G = MR. GESSLER L = MR. LEVIN				
21	N = MS. NAJERA T = MS. TOWERY				
22					
23					
24					
25					
26					
27					
28					

1 EXHIBITS INDEX

2 EXHIBITS:	MARKED	RECEIVED	VOL.
3 352- PHOTOGRAPH			
4 (PREVIOUSLY EX. 221-B)	43108		258
5 352-A BLOWUP PHOTO			
6 (PREVIOUSLY EX. 233)	43108		258
7 353- PHOTOGRAPH	43108		258
8 353-A BLOWUP PHOTOGRAPH	43108		258
9 354- PHOTOGRAPH			
10 (PREVIOUSLY EX. 153)	43127		258
11 355- LIST	43142		258
12 356- KODAK ENVELOPE W/			
13 CONTENTS			
(PREVIOUSLY EX. 219)	43156		258
14 357- PROOF SHEET			
15 (PREVIOUSLY EX. 234)	43156		258