

1 VAN NUYS, CALIFORNIA; THURSDAY, DECEMBER 14, 1995

2 9:15 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE

8 PRESENCE OF THE JURY:)

9

10 THE COURT: IN THE TRIAL, THE DEFENDANTS AND

11 THEIR COUNSEL AND THE PROSECUTORS ARE PRESENT.

12 GOOD MORNING.

13 IS THERE SOMETHING YOU WANTED TO TALK

14 ABOUT?

15 MR. LEVIN: YES, YOUR HONOR.

16 WE HAVE PRESENTED THE COURT WITH A

17 REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE

18 REQUESTING THE DMV RECORD. I ASSUME THE COURT'S

19 BEEN HANDED IT?

20 THE COURT: I HAVE AND I LEFT IT IN CHAMBERS.

21 DO YOU HAVE ANOTHER COPY?

22 MR. LEVIN: CERTAINLY.

23 (PAUSE IN PROCEEDINGS.)

24

25 THE COURT: YES, I'VE SEEN IT.

26 MR. LEVIN: WE ARE REQUESTING THAT THE COURT

27 TAKE JUDICIAL NOTICE OF THE REQUEST JUST HANDED TO

28 THE COURT, AND AS SOON AS THE JURY COMES OUT MAKE

1 THAT ADMONITION OR GIVE THAT ADMONITION.

2 THE COURT: PEOPLE WISH TO BE HEARD FURTHER?

3 MS. NAJERA: YES, YOUR HONOR. I WAS GIVEN

4 THAT ADMONITION THIS MORNING AND THERE WAS A CHANGE

5 THAT THE PEOPLE WANTED TO SUGGEST. I WAS WORKING ON

6 THAT CHANGE THIS MORNING, AS COUNSEL KNOWS. I

7 WANTED TIME TO MAKE A XEROX COPY FOR COUNSEL, BUT

8 COUNSEL WANTED TO DO THIS HEARING FIRST THING. SO I

9 HAVE A COPY. I'D LIKE THE COURT TO PERUSE IT OR I

10 COULD READ IT ON THE RECORD.

11 THE COURT: WHY DON'T YOU SHOW IT TO

12 COUNSEL.

13 MS. NAJERA: I'LL DO THAT.

14 (PAUSE IN PROCEEDINGS.)

15

16 MR. LEVIN: YOUR HONOR, WE OBJECT TO THE

17 PEOPLE'S LENGTHY DISSERTATION REGARDING THE

18 COURT'S -- WE BELIEVE THAT WHAT THE PROSECUTION WANTS

19 THE COURT TO DO IS GO FAR BEYOND, NUMBER ONE, WHAT

20 THE DEFENSE WISHES TO OFFER DURING THIS PART OF THE

21 EXAMINATION --

22 THE COURT: LET ME SEE IT SO I KNOW.

23 MS. NAJERA: YOUR HONOR, I'M ALSO HANDING YOU

24 A COPY OF THE ACTUAL PRINTOUT, THE EXHIBIT IN
25 QUESTION.
26 THE COURT: ALL RIGHT. SO BASICALLY YOUR
27 OBJECTION IS THAT YOU DON'T NECESSARILY HAVE AN
28 OBJECTION TO THE COURT TAKING JUDICIAL NOTICE OF

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1 THIS, BUT OBJECT TO IT BEING DONE AT THIS STAGE; IS
2 THAT WHAT YOU'RE SAYING?

3 MR. LEVIN: WELL, THAT'S PART OF IT.

4 FIRST OF ALL, THE REQUEST FOR JUDICIAL
5 NOTICE IS ON A SPECIFIC ITEM OF EVIDENCE THAT HAS
6 NOT BEEN INTRODUCED IN THIS TRIAL. THE ITEMS THAT
7 THE PROSECUTION ARE SEEKING THE COURT TO TAKE
8 JUDICIAL NOTICE OF ARE THINGS THAT HAVE BEEN ADDUCED
9 AT TRIAL; THEREFORE, IT IS UNNECESSARY FOR THE COURT
10 TO TAKE JUDICIAL NOTICE OF ANY ISSUE UPON WHICH THE
11 JURY HAS ALREADY HEARD EVIDENCE. THEY DO NOT NEED
12 THIS.

13 AND SO AT THIS POINT IN TIME, THE ONLY
14 THING THAT WE ARE REQUESTING THE COURT TAKE JUDICIAL
15 NOTICE ON IS THE ITEM WHICH WE HAVE DESIGNATED IN
16 OUR ADMONITION. IF AT A LATER TIME, FOR SOME
17 REASON, THE PROSECUTION WANTS TO GO INTO AN
18 ADDITIONAL ADMONITION THAT THE COURT SHOULD GIVE, I

19 MEAN, I WOULD BE PREPARED TO ARGUE IT AT THAT TIME.
20 BUT I DON'T THINK IT'S PROPER FOR THE PROSECUTION
21 TO -- WHAT IS A PROPER REQUEST FOR THE COURT TO TAKE
22 JUDICIAL NOTICE OF, ADD THINGS TO IT TO, ONE, WATER
23 IT DOWN; AND TWO, MISLEAD THE JURY WITH RESPECT TO
24 OTHER ITEMS THAT THEY WISH TO HAVE THE JURY HEAR.
25 THE COURT: YOU COVERED A LOT OF TERRITORY IN
26 THAT. BUT, BASICALLY, YOUR OBJECTION IS THAT THIS
27 IS MATERIAL THAT IF IT'S BROUGHT OUT SHOULD BE
28 BROUGHT OUT DURING CROSS-EXAMINATION OR THE

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1 PEOPLE'S -- OR MORE APPROPRIATELY, THE PEOPLE'S
2 REBUTTAL RATHER THAN AT THIS STAGE?
3 MR. LEVIN: THAT'S CORRECT, YOUR HONOR.
4 THE COURT: AND THAT YOUR REQUEST FOR
5 JUDICIAL NOTICE IS A LIMITED REQUEST TO A CERTAIN
6 MATTER AND NOTHING BEYOND IT.
7 MR. LEVIN: YES, YOUR HONOR, MUCH BETTER
8 SAID.
9 THE COURT: AS FAR AS THE ADDITIONAL THINGS
10 THAT THE PEOPLE ARE REQUESTING FOR JUDICIAL NOTICE,
11 I HAVEN'T COMPARED THEM TO THE DMV PRINTOUT. FROM
12 THE FACE OF IT I DON'T SEE HOW THIS INFORMATION
13 DIFFERS FROM THAT WHICH THE DEFENSE IS REQUESTING

14 JUDICIAL NOTICE, EXCEPT FOR THE FACT THAT AT THIS
15 POINT I'M DEALING WITH THE DEFENSE REQUEST FOR
16 JUDICIAL NOTICE; AND AT A LATER TIME, IF THE
17 PROSECUTION MAKES A SIMILAR REQUEST, IT WOULD HAVE
18 TO BE DEALT WITH IN A SIMILAR FASHION, TAKING NOTICE
19 OF WHATEVER IS CONTAINED WITHIN THAT PARTICULAR
20 EXHIBIT.

21 SO IF IT'S IN THE PEOPLE'S CASE, OR AT
22 SOME OTHER STAGE, THEN IT CAN BE DEALT WITH AGAIN.

23 SO I'LL JUST DEFER THE PEOPLE'S REQUEST
24 AND RETURN IT TO THE PROSECUTION WITH THE
25 UNDERSTANDING THAT THEY CAN MAKE THEIR REQUEST WHEN
26 IT'S THEIR OPPORTUNITY TO PRESENT EVIDENCE. WE'RE
27 NOW DEALING WITH THE DEFENSE PRESENTATION OF
28 EVIDENCE.

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1 SO THE COURT WILL TAKE JUDICIAL NOTICE
2 OF THAT WHICH HAS BEEN REQUESTED.

3 AND BEFORE WE HAVE THE JURY OUT, ONE
4 ADDITIONAL THING, THE ISSUE RELATING TO MR. RAND'S
5 BOOK, I'VE NOW RECEIVED THE STIPULATION AND IT WAS
6 PROVIDED TO THE PROSECUTION AS WELL.

7 ANY FURTHER COMMENT BEFORE WE RESOLVE
8 THAT ISSUE ONCE AND FOR ALL?

9 MR. CONN: YES. WE STILL OBJECT TO THE LAST
10 THREE SECTIONS. I THINK IT'S ENUMERATED ONE, TWO,
11 THREE, AND FOUR. WE WOULD OBJECT TO THE LAST THREE
12 PARAGRAPHS. I DON'T THINK THAT IT IS NECESSARY TO
13 INCLUDE THOSE PARAGRAPHS IN THIS PARTICULAR COURT
14 ORDER.

15 THE CONCERN OF MR. RAND SEEMS TO BE, AND
16 SHOULD BE ADDRESSED, TO WHETHER WE ARE DISSEMINATING
17 HIS MATERIAL OUTSIDE OF COURT, WHETHER WE ARE
18 HANDING OUT COPIES AND SO FORTH OF HIS BOOK OUTSIDE
19 THE COURT. WE HAVE NO INTENTION TO DO SO. OUR
20 INTENTION IS GOING TO BE FOR USE IN COURT, IF,
21 INDEED, SOMETHING FROM THAT NEEDS TO BE USED OR IF
22 IT COINCIDES WITH SOMETHING THAT WE'RE GOING TO USE
23 ANYWAY IN COURT.

24 SO WE WOULD OBJECT TO SECTIONS TWO,
25 THREE AND FOUR.

26 MS. ABRAMSON: OUR PROBLEM, YOUR HONOR, IS
27 THE PEOPLE HAD STATED MONTHS AGO THAT THEY WEREN'T
28 GOING TO USE ANY PART OF THAT MANUSCRIPT AND THEY

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1 STILL HAVEN'T DESIGNATED WHAT PART THEY THINK THEY
2 HAVE A RIGHT TO USE.

3 THE COURT: OKAY. WELL, AT THIS POINT WHAT

4 I'M GOING TO DO IS ORDER THE PROSECUTION -- AND THIS
5 WAS DONE BEFORE. IT WAS MY UNDERSTANDING THAT THE
6 DOCUMENT WAS GOING TO BE PROVIDED TO THE DEFENSE.

7 MS. ABRAMSON: WE DID GET THE DOCUMENT.

8 THE COURT: WHEN DID YOU GET IT?

9 MS. ABRAMSON: WE DID GET THE DOCUMENT. I
10 MISSPOKE YESTERDAY.

11 THE COURT: YOU'VE HAD IT SINCE THAT HEARING?

12 MS. ABRAMSON: WE HAD IT SOME WEEKS AFTER
13 THAT HEARING, BUT WE DO HAVE THAT DOCUMENT. THE
14 PROBLEM IS THE DOCUMENT IS 2,000 PAGES LONG.

15 THE COURT: YOU HAVE IT. SO I DON'T HAVE TO
16 WORRY ABOUT THIS PARTICULAR PROTECTIVE ORDER AT THIS
17 MOMENT.

18 MS. ABRAMSON: YOU'RE GOING TO HAVE TO WORRY
19 ABOUT IT --

20 THE COURT: I THOUGHT YOU WERE WORRYING ABOUT
21 NOT HAVING IT.

22 MS. ABRAMSON: WE DO HAVE THE DOCUMENT.

23 THE QUESTION IS, THE PEOPLE HAVE NOW
24 STATED, FOR THE FIRST TIME, THAT THEY HAVE SOME
25 INTENTION OF USING PART OF THE DOCUMENT, AND WE'RE
26 GOING TO OBJECT TO THEM USING ANY PART OF THE
27 DOCUMENT SINCE MR. RAND IS ASSERTING THE SHIELD WITH
28 RESPECT TO THIS MANUSCRIPT.

1 SO IF -- MY GUESS IS THEY'RE GOING TO TRY
2 TO USE THE DOCUMENT TO CROSS-EXAMINE MY CLIENT, AND
3 WE HAVE, BASED ON A MANUSCRIPT, THE AUTHOR OF WHICH
4 IS NOT CROSS-EXAMINABLE OR CALLABLE ON THESE ISSUES
5 BECAUSE HE'S ASSERTING THE SHIELD.

6 WE CAN GET TO THAT WHEN WE DO THE 402'S
7 ABOUT WHAT THEY CAN CROSS-EXAMINE MY CLIENT ABOUT.

8 THE COURT: OKAY. WE CAN BRING THAT UP.

9 MR. GESSLER: JUST TO ADD, WE'RE ALSO
10 OBJECTING ON THE GROUND OF OUTRAGEOUS GOVERNMENT
11 CONDUCT, THAT, IN EFFECT, THEY'RE SEEKING TO USE A
12 DOCUMENT THAT IS STOLEN, AT LEAST IN THE SENSE OF
13 LITERARY PROPERTY, AND A CONTINUING OFFENSE OF
14 CONCEALING AND USING THE STOLEN PROPERTY WITHOUT THE
15 CONSENT OF THE OWNER WHO DISTRIBUTED IT FOR LIMITED
16 PURPOSES TO LIMITED PEOPLE.

17 SO THAT'S AN ADDITIONAL GROUND,
18 CONSTITUTIONAL GROUND, AS WELL AS THE ONE ABOUT THE
19 INABILITY TO PROVE UP THE FACTS; AND SHOULD THERE BE
20 A NEGATIVE ANSWER UNDER THE LOCIGNO CASES THAT HAVE
21 ALREADY BEEN GIVEN TO THE COURT.

22 THE COURT: WE CAN COVER ALL THAT GROUND IN
23 THE HEARING WE DEFERRED UNTIL AFTER THE DIRECT
24 EXAMINATION.

25 MR. LEVIN: YOUR HONOR, I HAVE A COUPLE OF
26 OTHER POINTS I WANT TO BRING UP WITH THE COURT.

27 I ESTIMATE THAT I HAVE APPROXIMATELY AN

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1 DIRECT EXAMINATION OF ERIK MENENDEZ.

2 I THEN REQUEST THAT MR. GESSLER BE GIVEN
3 THE OPPORTUNITY, BEFORE CROSS-EXAMINATION, TO PLAY
4 THE VIDEOTAPE AND BRIEFLY QUESTION ERIK MENENDEZ
5 REGARDING THE ISSUE THAT OCCURRED IN THE LIMOUSINE.

6 THE COURT: SURE.

7 MR. LEVIN: AND BEFORE I OFFICIALLY COMPLETE
8 MY DIRECT EXAMINATION, I WOULD LIKE TO BE HEARD WITH
9 RESPECT TO THE SCOPE OF THE CROSS-EXAMINATION THAT
10 WILL BE ALLOWED BY THE PEOPLE IN THIS CASE,
11 SPECIFICALLY CONCERNING THE ISSUES THAT WE RAISED IN
12 OUR MOVING PAPERS.

13 THE COURT: WE ALREADY SAID WE'RE GOING TO
14 HAVE A HEARING.

15 MR. LEVIN: BUT THE REASON I WANT TO DO IT
16 BEFORE -- WHEN I'M DONE WITH MY QUESTIONING IS
17 BECAUSE I -- IF THE COURT ALLOWS CERTAIN ISSUES TO BE
18 GONE INTO BY THE PROSECUTION, I WOULD WISH TO BRING
19 THEM OUT ON THE DIRECT EXAMINATION. I'LL --

20 THE COURT: OKAY. WE'LL DISCUSS THAT
21 BEFORE -- WE'LL DISCUSS WHETHER WE'LL HOLD THAT
22 HEARING BEFORE YOU FINISH YOUR DIRECT BEFORE WE HOLD

23 THAT HEARING. SO I JUST DON'T WANT TO WASTE ANY
24 MORE TIME.
25 MR. LEVIN: HOW WILL WE DO THAT, YOUR HONOR?
26 MS. ABRAMSON: WE'LL TAKE A RECESS.
27 MR. LEVIN: CAN I GIVE SOME SIGNAL TO THE
28 COURT?

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1 THE COURT: YES.
2 MR. LEVIN: THE OTHER THING IS, YOUR HONOR, I
3 HAVE THE TAPE, THE DECEMBER 11TH, 1989 TAPE, CUED UP
4 TO A CERTAIN POINT, AND I DO INTEND TO PLAY THAT TO
5 THE JURY. SO I WANTED TO INFORM MR. CONN AND THE
6 COURT THAT'S THE PURPOSE OF THE TAPE-RECORDER AND
7 THAT'S WHAT IT'S FOR. IT'S FROM THE -- PARDON ME?
8 MS. ABRAMSON: DO YOU WANT TO HAVE THE
9 TRANSCRIPTS --
10 THE COURT: LET ME ASK YOU, WOULDN'T IT BE
11 BETTER JUST TO PLAY THE WHOLE THING AGAIN SINCE IT'S
12 BEEN SO LONG SINCE THE JURY HEARD IT?
13 MR. LEVIN: PERHAPS, YOUR HONOR.
14 THE COURT: IT JUST SEEMS EASIER THAT WAY AND
15 THEY'LL REMEMBER IT. I DON'T KNOW.
16 MR. LEVIN: PERHAPS IF MR. CONN WISHES TO DO
17 THAT. I DON'T REALLY WANT TO DO THAT AT THIS

18 POINT.

19 THE COURT: THAT'S UP TO YOU. YOU CAN DO IT
20 ANY WAY YOU WANT. IT JUST SEEMS TO ME THAT IT'S
21 BEEN A LONG TIME SINCE THEY HEARD IT. THEY PROBABLY
22 DON'T REMEMBER.

23 MR. LEVIN: I AGREE. I AGREE. I DIDN'T
24 CONSIDER THAT, BUT AT THIS POINT I'D JUST LIKE TO
25 PLAY ONE PARTICULAR PORTION.

26 THE COURT: FINE. FINE.

27 ANYTHING ELSE?

28 MR. LEVIN: THAT'S IT.

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1 THE COURT: OKAY. LET'S GET THE JURY OUT.

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

5

6 THE COURT: THE JURY IS IN COURT. GOOD
7 MORNING, LADIES AND GENTLEMEN.

8 WE'RE READY TO RESUME WITH THE TESTIMONY
9 OF THE DEFENDANT, ERIK MENENDEZ, WHO IS ON THE
10 WITNESS STAND.

11 BEFORE WE PROCEED WITH THAT, COUNSEL FOR
12 THE DEFENDANT, ERIK MENENDEZ, HAS REQUESTED THAT THE

13 COURT TAKE JUDICIAL NOTICE OF SOME THINGS, SO I'LL

14 DO THAT.

15 AND THE COURT TAKES JUDICIAL NOTICE,

16 WHICH MEANS THAT THIS IS A FACT THAT IS ESTABLISHED

17 BY THE FACT THAT I'M TAKING NOTICE OF IT, AND IT'S

18 PROVED BY THAT.

19 THE COURT TAKES JUDICIAL NOTICE OF

20 RECORDS OF THE CALIFORNIA DEPARTMENT OF MOTOR

21 VEHICLES STATING THAT ON JULY THE 7TH, 1989, ERIK

22 MENENDEZ WAS CITED FOR DRIVING WITHOUT A VALID

23 CALIFORNIA DRIVER'S LICENSE IN HIS POSSESSION, A

24 VIOLATION OF CALIFORNIA VEHICLE CODE SECTION 12951.

25 THAT IS THE EXTENT OF THE NOTICE AT THIS

26 POINT.

27 ALL RIGHT. YOU MAY PROCEED.

28 MR. LEVIN: THANK YOU.

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1 ERIK GALEN MENENDEZ,

2 THE WITNESS AT TIME OF ADJOURNMENT, RESUMED THE

3 STAND AND TESTIFIED FURTHER AS FOLLOWS:

4

5 DIRECT EXAMINATION (CONTINUED)

6 BY MR. LEVIN:

7 Q MR. MENENDEZ, WE LEFT OFF YESTERDAY

8 TALKING ABOUT THE CONVERSATIONS THAT YOU HAD WITH
9 DR. JEROME OZIEL ON OCTOBER THE 31ST, 1989.

10 AT THAT TIME, DID DR. OZIEL TELL YOU WHY
11 HE THOUGHT YOU HAD KILLED YOUR PARENTS?

12 A YES.

13 Q DID HE CHARACTERIZE YOUR FATHER BY USING
14 ANY PARTICULAR TERMS?

15 A YES.

16 Q DID HE CALL HIM EXTRAORDINARILY
17 CONTROLLING?

18 MR. CONN: OBJECTION. LEADING.

19 THE COURT: SUSTAINED.

20 Q BY MR. LEVIN: HOW DID HE CHARACTERIZE
21 YOUR FATHER ON OCTOBER 31ST, 1989?

22 A AS A CONTROLLING PERSON TO THE EXTREME,
23 DOMINATING, FEROCIOUS; DIFFERENT ADJECTIVES SUCH AS
24 THOSE.

25 Q DID YOU TELL DR. OZIEL THESE THINGS?

26 A NO.

27 Q DID DR. OZIEL RENDER AN OPINION TO YOU
28 CONCERNING HOW DIFFICULT IT WOULD BE FOR YOU TO LIVE

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1 UNDER THOSE CIRCUMSTANCES?

2 A YES.

3 Q WHAT DID HE SAY?

4 A HE SAID THAT IT WAS CIRCUMSTANCES THAT
5 WERE IMPOSSIBLE TO LIVE UNDER.

6 Q DID YOU RESPOND TO DR. OZIEL WHEN HE WAS
7 TALKING ABOUT YOUR FATHER THIS WAY?

8 A I SUPPOSE I DID, I GUESS. I WAS CRYING
9 A LOT AT THE TIME AND HE WAS ASKING ME WHY AND I WAS
10 WAITING FOR LYLE TO COME. I WAS SAYING I DON'T KNOW
11 WHY. I DON'T KNOW WHY IT HAPPENED. AND HE STARTED
12 TALKING ABOUT MY PARENTS IN GENERAL, WHAT THEIR
13 PERSONALITY TYPES WERE, AND THAT'S HOW IT GOT
14 WHITTLED DOWN TO REASONS.

15 Q DID HE SAY THINGS ABOUT YOUR MOTHER?

16 A YES.

17 Q AND YESTERDAY YOU TESTIFIED THAT HE SAID
18 SOMETHING ABOUT YOUR MOTHER THAT YOU LIKED.

19 A YES.

20 Q WHAT WAS THAT?

21 A HE SAID THAT SHE WAS -- HAD A MISERABLE
22 LIFE; THAT SHE WAS EXTREMELY SUICIDAL AND WASN'T A
23 HAPPY PERSON WHO WANTED TO LIVE.

24 AND WHAT I MEAN BY I LIKED THAT WAS THAT
25 IT WAS A VERY -- IT WAS COMFORTING TO ME TO THINK
26 THAT MY MOTHER DIDN'T WANT TO LIVE ANYWAY, BECAUSE I
27 HAD KILLED HER, AND TO THINK THAT SHE DIDN'T WANT TO
28 BE ALIVE ANYWAY WAS, IN A WEIRD WAY, COMFORTING.

1 Q DID YOU THINK OR HAVE THE THOUGHT,
2 BEFORE YOU KILLED YOUR PARENTS, THAT YOUR MOTHER DID
3 NOT WANT TO LIVE?

4 A NO. SHE WAS NO LONGER SUICIDAL AT THAT
5 POINT.

6 Q WHEN WAS SHE SUICIDAL?

7 A 1986, '87, WHEN WE FIRST MOVED OUT TO
8 CALIFORNIA.

9 Q WAS SHE SUICIDAL IN 1989?

10 A NO.

11 Q DID DR. OZIEL EVER EXPRESS ANY INTEREST
12 IN HOW MUCH MONEY YOU MAY RECEIVE FROM THE ESTATE?

13 A YES.

14 Q DID HE DO THAT BEFORE LYLE MENENDEZ GOT
15 TO THE OFFICE?

16 A WELL, HE ACTUALLY DID THAT AT THE
17 MEMORIAL SERVICE TWO MONTHS BEFORE.

18 Q WHAT WAS IT THAT DR. OZIEL SAID TO YOU
19 ABOUT ANY INTEREST HE HAD WITH RESPECT TO THE
20 ESTATE?

21 A AT THE MEMORIAL SERVICE?

22 Q YES.

23 A THERE WAS DISCUSSION AT THE TIME OF WHO
24 WOULD BE THE PROBATE ATTORNEY. HE SAID THAT HE HAD
25 A GOOD ATTORNEY WHO WAS A FRIEND OF HIS THAT WE

26 SHOULD USE. HE SAID THAT WE SHOULDN'T USE THE
27 PROBATE ATTORNEY THAT MY UNCLE CARLOS WAS GOING TO
28 HIRE, THAT HE WAS TOO YOUNG, AND JUST THAT THERE

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1 WERE A LOT OF BUSINESSES AND INVESTMENTS THAT WE
2 COULD DO THAT WE WOULDN'T -- HE WOULDN'T LEAVE US OUT
3 THERE NOT KNOWING WHAT TO DO WITH THE MONEY; THAT HE
4 HAD A LOT OF WAYS TO HELP US.

5 Q DID HE ACTUALLY SHOW YOU BUSINESS CARDS
6 THAT AFFILIATED HIM TO CERTAIN BUSINESSES OTHER THAN
7 BEING A PSYCHO -- PSYCHOLOGIST?

8 A HE DID THAT ON THE 2ND OF NOVEMBER. HE
9 SHOWED US SEVERAL OF HIS BUSINESS CARDS.

10 Q BY THE WAY, DID YOU RECEIVE A BILL FOR
11 DR. OZIEL ATTENDING THE MEMORIAL SERVICE IN
12 CALIFORNIA?

13 A NO, NOT RIGHT AWAY.

14 Q BUT DID HE BILL YOU FOR THIS TIME?

15 MR. CONN: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: YEAH. AFTER I WENT TO SEE HIM
18 ON OCTOBER 31ST HE BILLED ME.

19 Q BY MR. LEVIN: AND THAT WAS FOR WHAT?

20 A THREE THOUSAND, THREE THOUSAND-FIVE

21 HUNDRED.

22 Q THAT INCLUDED THE ATTENDANCE AT THE
23 MEMORIAL SERVICE?

24 A YES, THAT'S WHAT IT WAS FOR.

25 Q DID DR. OZIEL TELL YOU DURING THIS TIME
26 THAT HE WAS ON PROBATION FOR HAVING TAKEN ADVANTAGE
27 OF ANOTHER PATIENT?

28 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

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1 IRRELEVANT.

2 THE COURT: OVERRULED.

3 THE WITNESS: NO, HE DIDN'T TELL ME THAT.

4 Q BY MR. LEVIN: DID HE TELL YOU THAT IT
5 WAS IMPROPER FOR A PSYCHOLOGIST TO GO INTO BUSINESS
6 OR ENTER --

7 MR. CONN: I WOULD OBJECT TO ALL THESE
8 QUESTIONS BEING ASKED IN BAD FAITH, YOUR HONOR.

9 THE COURT: SUSTAINED AT THIS POINT.

10 Q BY MR. LEVIN: DID DR. OZIEL TELL YOU
11 HOW MUCH MONEY HE THOUGHT YOU WOULD INHERIT FROM
12 THIS ESTATE?

13 A YES. IT WAS DISCUSSED. HE HAD READ IT
14 IN THE PAPER. AND THE FIGURE, \$14 MILLION, WAS
15 BEING TALKED ABOUT.

16 Q DID YOU TELL DR. OZIEL THAT YOU THOUGHT

17 YOU WERE GOING TO INHERIT \$14 MILLION?

18 A NO.

19 Q DID DR. OZIEL -- I JUST WANT TO STAY WITH

20 THE BUSINESS FOR A MOMENT, EVEN THOUGH WE MAY BE

21 GOING TO A LATER CONVERSATION -- SHOW YOU BUSINESS

22 CARDS THAT INDICATED THAT HE HAD BUSINESSES FOR YOU

23 TO INVEST IN?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE WITNESS: YES.

26 THE COURT: OVERRULED.

27 Q BY MR. LEVIN: AND WHAT BUSINESSES DID

28 DR. OZIEL HAVE?

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1 A IT WAS A BUSINESS CALLED AUTOMAX THAT HE

2 HAD. I REMEMBER THAT ONE SPECIFICALLY. SEVERAL

3 OTHER BUSINESSES THAT HE WAS BEGINNING TO DEVELOP

4 THAT HE NEEDED INVESTMENTS FOR THAT HE THOUGHT WAS A

5 GREAT IDEA THAT COULD BENEFIT BOTH OF US, HIM AND

6 OURSELVES.

7 Q DID HE TELL YOU THAT HE WANTED YOU TO

8 INVEST IN HIS BUSINESS?

9 A TOLD ME THAT THAT WOULD MAKE HIM FEEL

10 MORE COMFORTABLE WITH THE RELATIONSHIP.

11 Q LYLE MENENDEZ DID ARRIVE ON OCTOBER THE
12 31ST AT THE OFFICE OF DR. JEROME OZIEL?

13 A YES.

14 Q AND WAS THERE A CONVERSATION IN YOUR
15 PRESENCE BETWEEN LYLE MENENDEZ, DR. OZIEL, AND
16 YOURSELF?

17 A YES.

18 Q WHAT WAS THE SUBSTANCE OF THAT
19 CONVERSATION?

20 A THAT LYLE DIDN'T WANT TO BE THERE; THAT
21 LYLE DIDN'T KNOW WHAT I HAD TOLD DR. OZIEL ABOUT US
22 BEING RESPONSIBLE FOR MY PARENTS' DEATHS; THAT LYLE
23 DIDN'T WANT TO TALK TO DR. OZIEL UNTIL HE FOUND OUT
24 FROM ME HOW MUCH I HAD TOLD HIM AND WHAT I HAD TOLD
25 HIM, AND THAT -- THAT LYLE -- HE WAS HURT THAT I HAD
26 GONE TO DR. OZIEL AND WAS UNABLE TO GO TO HIM.

27 Q HOW DID YOU FEEL AT THAT POINT ABOUT YOU
28 TELLING DR. OZIEL, YOU CONFESSING TO DR. OZIEL, THAT

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1 YOU HAD KILLED YOUR PARENTS?

2 A I REALIZED, AS SOON AS DR. OZIEL HAD
3 CALLED LYLE, THAT I HAD BETRAYED LYLE'S TRUST, AND I
4 WISHED THAT I HADN'T AT THAT POINT. BUT WHEN LYLE
5 WAS IN THE OFFICE, THIS WAS AN OVERWHELMING WEIGHT,

6 THIS KNOWLEDGE OF NOT BEING ABLE TO TELL ANYONE, AND
7 I NEEDED TO TELL SOMEONE, AND I WAS HOPING THAT LYLE
8 WOULD BE ABLE TO TALK TO DR. OZIEL AS WELL. BUT HE
9 WAS VERY RESISTANT BECAUSE HE DIDN'T KNOW WHAT I HAD
10 TOLD DR. OZIEL.

11 Q DID DR. OZIEL, IN YOUR PRESENCE, TRY TO
12 GET LYLE MENENDEZ TO TALK ABOUT THE KILLING OF YOUR
13 PARENTS?

14 A YES.

15 Q DID LYLE MENENDEZ CONFESS TO KILLING
16 YOUR PARENTS TO DR. OZIEL?

17 A ON WHAT DAY?

18 Q AT THAT TIME?

19 A NO.

20 Q DID LYLE MENENDEZ THREATEN, IN ANY WAY,
21 TO HARM DR. OZIEL?

22 A NO.

23 Q DID DR. OZIEL SAY THAT HE FELT THAT HE
24 WAS THREATENED?

25 A HE SAID THAT HE FELT EITHER THREATENED
26 OR VERY UNCOMFORTABLE HAVING THIS KNOWLEDGE ALONE,
27 AT ONE POINT HE SAID THAT, TRYING TO GET LYLE TO
28 OPEN UP AND TALK TO HIM. AND LYLE SIMPLY DID NOT

1 I WANT TO REVEAL ANYTHING MORE THAN I HAD, BECAUSE HE
2 DIDN'T KNOW HOW MANY -- HOW MUCH I HAD TOLD HIM.

3 Q AT SOME POINT DID YOU RUN OUT OF
4 DR. OZIEL'S OFFICE?

5 A I RAN OUT CRYING.

6 Q WHY?

7 A BECAUSE LYLE AND I NEEDED HELP AND -- AND
8 I UNDERSTOOD WHY LYLE DIDN'T WANT TO TALK TO
9 DR. OZIEL, BUT I NEEDED TO TALK TO SOMEONE, AND I --
10 IT WAS TOO FRUSTRATING FOR ME. THE BARRIERS
11 COULDN'T BE BROKEN. AND I RAN OUT SAYING, I DON'T
12 WANT ANYTHING TO DO WITH IT ANYMORE, CRYING, OR
13 SOMETHING ALONG THOSE LINES.

14 Q DID DR. OZIEL EVER TALK TO YOU ON THAT
15 DAY ABOUT THE FACT YOU FELT DEPRESSED AND SUICIDAL?

16 A HE NEVER GOT BACK TO THAT.

17 Q WAS LYLE MENENDEZ ANGRY WITH YOU FOR
18 TELLING DR. OZIEL?

19 A I DON'T KNOW IF ANGER'S THE RIGHT WORD.
20 I -- I KNOW HE FELT VERY HURT THAT I HAD GONE TO
21 DR. OZIEL INSTEAD OF HIM AND WE TALKED ABOUT THAT
22 AFTERWARDS.

23 Q NOW, DID DR. OZIEL -- WHERE DID YOU GO,
24 BY THE WAY, WHEN YOU LEFT THE OFFICE?

25 A DOWN TO MY JEEP.

26 Q DID ANYONE ELSE COME TO WHERE YOU WERE
27 DOWN AT YOUR JEEP?

28 A DR. OZIEL AND LYLE, A FEW MINUTES LATER,

1 CAME WALKING TOWARDS THE JEEP TALKING.

2 Q WAS THERE A DISCUSSION ABOUT MEETING
3 WITH DR. OZIEL AGAIN?

4 A YES.

5 Q AND DID DR. OZIEL AT THAT TIME SAY
6 ANYTHING ABOUT GOING TO THE POLICE?

7 A NO.

8 Q WHAT DID DR. OZIEL SAY ABOUT YOU
9 RETURNING TO HIS OFFICE?

10 A THAT HE WANTED US TO RETURN ON NOVEMBER
11 2ND, WHICH WAS THE DAY AFTER THE NEXT DAY, SO WE
12 COULD TALK FURTHER.

13 Q DID YOU AGREE TO COME BACK AND TALK TO
14 HIM?

15 A YES, WE AGREED.

16 Q WHY?

17 A I DON'T KNOW.

18 Q DID YOU AND LYLE MENENDEZ, FOLLOWING
19 OCTOBER 31ST AT DR. OZIEL'S OFFICE, HAVE A
20 DISCUSSION ABOUT WHAT YOU WOULD TELL DR. OZIEL?

21 A A DISCUSSION ABOUT MORE THAN THAT, BUT
22 THAT WAS PART OF THE DISCUSSION.

23 Q WHAT WAS IT THAT YOU AND LYLE MENENDEZ
24 DISCUSSED FOLLOWING LEAVING DR. OZIEL'S OFFICE?

25 A WE GOT BACK TO THE BEVERLY HILLS HOUSE.
26 HE WANTED TO KNOW WHAT I HAD TOLD DR. OZIEL
27 SPECIFICALLY, IF I HAD TOLD HIM ABOUT ANY OF THE
28 SEX, AND I TOLD HIM THAT I HADN'T.

43868

1 AND HE WANTED TO KNOW, BASICALLY, WHAT I
2 HAD TOLD HIM. AND I TOLD HIM THAT I HADN'T HAD TIME
3 TO TELL HIM MUCH AND THAT -- I GAVE HIM THE FACTS
4 THAT I HAD TOLD DR. OZIEL.

5 AND WE DISCUSSED WHAT TO DO. I
6 SUGGESTED THAT MAYBE WE SHOULD TELL DR. OZIEL
7 EVERYTHING, THE TRUTH OF WHAT HAPPENED, SO THAT HE
8 WOULDN'T NO LONGER FEEL UNCOMFORTABLE KNOWING THE
9 INFORMATION. LYLE THOUGHT THAT WAS A HORRIBLE IDEA,
10 AND I PROMISED NOT TO TELL. AND I WASN'T SO KEEN ON
11 TELLING ANYWAY, BUT THAT WAS DISCUSSED.

12 IT WAS ALSO DISCUSSED THAT WE WOULD GO
13 BACK TO HIM NOVEMBER 2ND, BASICALLY FOR DAMAGE
14 CONTROL, TO SEE HOW DR. OZIEL WAS FEELING AND I -- I
15 TOLD LYLE THAT I NEEDED TO TALK TO SOMEONE, SO HE
16 SAID THAT WE COULD TALK ABOUT OUR FAMILY, THE FIGHTS
17 IN THE FAMILY, A LOT OF THE FAMILY PROBLEMS, MOM'S
18 SUICIDES, AND -- AND THAT I COULD TALK ABOUT THAT, IF
19 THAT WAS COMFORTING, AND WHAT I NEEDED. LYLE WANTED

20 TO HELP ME, AND SO HE AGREED TO GO BACK FOR ALL

21 THOSE REASONS.

22 Q DID YOU RETURN ON NOVEMBER THE 2ND,

23 1989?

24 A YES.

25 Q DID DR. OZIEL -- AND WHEN YOU -- WHEN YOU

26 RETURNED, DID YOU RETURN WITH LYLE MENENDEZ AS

27 WELL?

28 A YES.

43869

1 Q WAS THERE A DISCUSSION BETWEEN

2 DR. OZIEL, LYLE MENENDEZ, AND YOURSELF ON THAT DAY?

3 A YES.

4 Q DID DR. OZIEL SAY ANYTHING ABOUT GOING

5 TO THE POLICE?

6 A YES.

7 Q WHAT DID HE SAY?

8 A HE SAID THAT HE COULD GO TO THE POLICE

9 AND REVEAL THIS INFORMATION. HE SAID THAT HE HAD

10 NOTES AND -- NOTES OF THE SESSION IN SAFETY DEPOSIT

11 BOXES. HE SAID THAT HE FELT UNCOMFORTABLE AND --

12 AND THAT HE WAS THE ONLY ONE THAT KNEW THIS

13 INFORMATION; AND BASICALLY THAT'S WHAT HE SAID ABOUT

14 THAT.

15 Q DID HE SAY THAT HE WANTED TO MAKE A
16 TAPE?

17 A AT SOME POINT HE SAID THAT. I DON'T
18 REMEMBER IF IT WAS DURING THAT SESSION.

19 Q WHAT DID HE --

20 A I THINK IT WAS.

21 Q WHAT DID HE SAY TO YOU ABOUT MAKING A
22 TAPE?

23 A THAT HE WANTED TO GET MY BROTHER'S AND
24 MY VOICES ON TAPE ADMITTING TO THE KILLING.

25 Q WHY?

26 A BECAUSE IT WOULD MAKE HIM FEEL MUCH MORE
27 COMFORTABLE THAT WE HAD, I GUESS, TRUSTED HIM; THAT
28 HE WOULD NO LONGER NEED OR WANT TO GO TO THE POLICE;

43870

1 THAT IT COULD BE USED, HE SAID, TO REFLECT UPON WHEN
2 HE'S NOT WITH LYLE AND I IN LISTENING TO WHAT WE
3 SAID ON THE TAPE.

4 Q NOW, ALL THESE THINGS YOU'RE SAYING
5 ABOUT DR. OZIEL, IS HE ALIVE TODAY TO COME IN HERE
6 AND REFUTE ANY OF THESE THINGS?

7 A YES.

8 MR. CONN: OBJECTION. CALLS FOR
9 SPECULATION. NO PERSONAL KNOWLEDGE. NO

10 FOUNDATION.

11 THE COURT: WELL, AS FAR AS YOU KNOW, YOU CAN
12 PHRASE IT THAT WAY.

13 THE OBJECTION'S SUSTAINED. THE ANSWER
14 IS STRICKEN.

15 Q BY MR. LEVIN: DO YOU KNOW IF DR. OZIEL
16 IS ALIVE TODAY?

17 A I THINK DETECTIVE ZOELLER TESTIFIED THAT
18 HE WAS.

19 Q DO YOU KNOW WHERE HE IS?

20 A NO.

21 Q ARE YOU AWARE OF ANY REASON WHY
22 DR. OZIEL COULD NOT COME INTO THIS COURT AND
23 TESTIFY?

24 MR. CONN: OBJECTION. IRRELEVANT AS TO WHAT
25 REASONS THIS WITNESS WOULD POINT TO.

26 THE COURT: SUSTAINED.

27 Q BY MR. LEVIN: DID DR. OZIEL, WHEN HE
28 TOLD YOU HE WAS GOING TO GO TO THE POLICE, TELL YOU

43871

1 SOMETHING LIKE, I'LL COME TO COURT AND TESTIFY
2 AGAINST YOU, DENY ALL THIS?

3 A HE DIDN'T SAY HE WAS GOING TO GO TO THE
4 POLICE. HE SAID THAT HE COULD GO TO THE POLICE AND

5 THAT IT WAS SOME -- FOR LYLE AND I TO MAKE HIM FEEL
6 MORE COMFORTABLE IN ORDER FOR HIM NOT TO GO TO THE
7 POLICE.

8 Q BUT DID HE EVER TELL YOU THAT HE WOULD
9 OR WOULD NOT COME TO COURT?

10 A TRIAL -- A TRIAL WAS NEVER DISCUSSED,
11 COURT WAS NEVER DISCUSSED.

12 Q HE TESTIFIED IN THE LAST TRIAL, DID HE
13 NOT?

14 A YES, HE DID.

15 Q FOR MANY, MANY DAYS?

16 A SEVEN.

17 Q DID DR. OZIEL SAY ON NOVEMBER 2ND
18 ANYTHING ABOUT CONTINUING A RELATIONSHIP WITH YOU
19 AND LYLE MENENDEZ FOR ANY PERIOD OF TIME?

20 A YES.

21 Q AND WHAT WAS THE NATURE OF THE
22 RELATIONSHIP THAT DR. OZIEL WANTED TO CONTINUE WITH
23 YOU AND LYLE MENENDEZ?

24 A HE TALKED ABOUT IT AT SOME POINT IN THE
25 MIDDLE OF THE SESSION, AT THE END OF THE SESSION,
26 THAT THE BEST THING WOULD BE WHEN WE DO INHERIT,
27 THAT WE WERE TO INVEST TOGETHER, AND THAT WOULD
28 BENEFIT HIM AND US; THAT I NEEDED THERAPY BECAUSE OF

1 HOW I WAS FEELING AND THAT HE COULD HELP ME AT THE
2 SAME TIME WITH THAT; AND THAT US REMAINING CLOSE
3 WOULD BE THE BEST SITUATION NOW THAT IT WAS ONLY THE
4 THREE OF US THAT KNEW THAT LYLE AND I WERE
5 RESPONSIBLE.

6 Q DID YOU GO TO DR. OZIEL TO ENTER INTO A
7 BUSINESS RELATIONSHIP WITH HIM?

8 A NO.

9 Q DID YOU GO TO DR. JEROME OZIEL TO HAVE
10 HIM ASSIST YOU IN HOW BEST TO INVEST YOUR MONEY?

11 A NO.

12 Q DID YOU GO TO DR. OZIEL FOR ANY
13 FINANCIAL ADVICE?

14 A NO.

15 Q DID YOU THINK THAT IT WAS A GOOD IDEA
16 WITH RESPECT TO INVESTING IN BUSINESS WITH
17 DR. OZIEL? DID YOU LIKE THAT? DID YOU THINK THAT
18 WAS SOMETHING THAT YOU WANTED TO DO?

19 A ALL I KNEW WAS THAT I WAS IN PAIN AND I
20 NEEDED HELP, AND THAT THIS MAN WAS, IN MY VIEW, THE
21 ONLY ONE I THOUGHT MIGHT BE ABLE TO DO THAT NOW THAT
22 HE -- NOW THAT HE KNEW THAT I WAS RESPONSIBLE. AND
23 IF HE WANTED TO -- IF HE WANTED TO GO INTO
24 INVESTMENTS AND TO HAVE CAPITAL TO DO THAT FROM US,
25 IT DIDN'T MATTER SO MUCH TO ME. I DIDN'T -- IT'S
26 NOT WHY I WENT TO HIM. IT'S NOT WHY I WAS THERE. A
27 MILLION PEOPLE WERE TELLING ME WHAT TO DO WITH MY

43873

1 GOING TO HAVE TO HAPPEN FROM WHAT DR. OZIEL WAS
2 TELLING ME ABOUT.

3 Q DID YOU MAKE A DECISION ABOUT WHETHER OR
4 NOT YOU WOULD TELL DR. OZIEL THAT YOUR FATHER HAD
5 BEEN MOLESTING YOU, RAPING YOU, BRUTALIZING YOU, FOR
6 12 YEARS?

7 A YES.

8 Q WHAT WAS THE DECISION THAT YOU MADE?

9 A THAT IT WAS BEST NOT TO TALK ABOUT
10 THAT.

11 Q WHY NOT?

12 A BECAUSE LYLE FELT EXTREMELY STRONGLY ON
13 THE ISSUE. IT WAS SOMETHING THAT I WAS ASHAMED OF,
14 AND I GUESS BECAUSE I HAD A NEED TO TELL HIM THAT I
15 KILLED MY PARENTS, BUT I DID NOT HAVE A NEED TO --
16 NOR DID I FEEL GUILTY ABOUT THE FACT THAT HE HAD
17 DONE THESE THINGS TO ME.

18 Q APPROXIMATELY HOW LONG WERE YOU WITH
19 DR. OZIEL AND LYLE MENENDEZ ON NOVEMBER 2ND, 1989?

20 A I DON'T REMEMBER. TWO HOURS. AN HOUR
21 AND A HALF.

22 Q WAS THERE ANY OTHER CONVERSATION OR

23 DISCUSSION ON ANY OTHER TOPIC THAT YOU HAVE NOT
24 RELATED TO THE JURY?
25 A WE TALKED ABOUT MY MOTHER'S DEPRESSION.
26 HE KEPT ASKING ME WHY I THINK I DID IT. I SAID I
27 DIDN'T KNOW. HE SAID THAT HE WOULDN'T EXPECT ME TO
28 KNOW; THAT I NEEDED TO DO EXTENSIVE THERAPY,

43874

1 POSSIBLY HYPNOTISM TO GO BACK. AND THAT'S PRETTY
2 MUCH WHAT WE TALKED ABOUT.

3 Q AT SOME POINT IN TIME YOU AND LYLE
4 MENENDEZ LEFT DR. OZIEL'S OFFICE?

5 A YES.

6 Q AND DID YOU HAVE AN ARRANGEMENT TO
7 RETURN ON ANY PARTICULAR DAY?

8 A NO.

9 Q HOW WAS IT LEFT WITH RESPECT TO YOUR
10 FUTURE DEALINGS WITH DR. OZIEL WHEN YOU LEFT ON THE
11 2ND OF NOVEMBER?

12 A WELL, I KNEW THAT IT WAS SEVERAL MONTHS
13 OFF BEFORE THE ESTATE WOULD MATURE TO THE POINT
14 WHERE ANYONE INHERITED, AND HE KNEW THAT I WAS GOING
15 AWAY FOR A WEEK. SO I THINK IT WAS JUST ARRANGED
16 THAT I WOULD CALL HIM, OR MY BROTHER WOULD CALL HIM,
17 IN A WEEK, WEEK AND A HALF.

18 Q DID YOU CALL DR. OZIEL AFTER NOVEMBER

19 2ND, 1989?

20 A NO.

21 Q TO YOUR KNOWLEDGE, DID LYLE MENENDEZ

22 CALL DR. OZIEL AFTER THAT DATE?

23 A YOU MEAN BEFORE HE CALLED ME?

24 Q YES.

25 A NO.

26 Q DID YOU RECEIVE A CALL FROM DR. OZIEL

27 FOLLOWING NOVEMBER 2ND, 1989?

28 A YES.

43875

1 Q APPROXIMATELY WHEN DID YOU RECEIVE THAT

2 TELEPHONE CALL?

3 A OVER THANKSGIVING BREAK AT MY AUNT

4 TERRY'S.

5 Q THE END OF NOVEMBER?

6 A YES.

7 Q WAS IT INTO DECEMBER YET?

8 A I REMEMBER THAT I WAS AT MY -- MY AUNT

9 TERRY'S WHEN I RECEIVED THE CALL FROM DR. OZIEL.

10 Q DID SOMEONE -- DID YOU ANSWER THE PHONE

11 OR DID SOMEBODY TELL YOU YOU GOT A CALL FROM

12 DR. JEROME OZIEL?

13 A I BELIEVE MY -- EITHER MY COUSIN OR MY
14 AUNT TOLD ME. SOMEBODY TOLD ME. I JUST REMEMBER
15 GETTING THE PHONE.
16 Q AND WHAT DID DR. OZIEL TELL YOU IN THIS
17 TELEPHONE CONVERSATION?
18 A THAT IT HAD BEEN THREE WEEKS SINCE LYLE
19 OR I HAD SEEN HIM; THAT MADE HIM FEEL UNCOMFORTABLE;
20 AND THAT IT WASN'T IN MY BROTHER'S OR MY BEST
21 INTEREST FOR HIM TO FEEL UNSATISFIED, UNCOMFORTABLE
22 WITH THE SITUATION, AND THAT I SHOULD COME BACK TO
23 LOS ANGELES AND TALK WITH HIM.
24 Q DID YOU KNOW IF DR. OZIEL HAD REVEALED
25 THE SUBSTANCE OF YOUR CONFESSION TO THE POLICE AT
26 THIS POINT?
27 A AT THIS POINT, HE HAD NOT.
28 Q DID YOU KNOW IF DOCTOR -- DID YOU KNOW IF

43876

1 DR. OZIEL HAD TOLD HIS GIRLFRIEND, JUDALON SMYTH,
2 THAT YOU HAD CONFESSED TO HIM?
3 A AT THAT POINT, I DID NOT KNOW THAT.
4 Q DID YOU AT A LATER TIME RETURN TO
5 DR. OZIEL'S OFFICE?
6 A YES. EVENTUALLY LYLE AND I HAD TALKED
7 TO DR. OZIEL AGAIN AND IT WAS ARRANGED FOR LYLE AND

8 I TO COME THERE IN DECEMBER AND WE -- WE WENT THERE

9 DECEMBER 8TH OR DECEMBER 6TH.

10 Q WHAT HAPPENED ON DECEMBER 6TH OR

11 DECEMBER 8TH?

12 A DR. OZIEL TOLD US THAT HE WANTED TO MAKE

13 THIS TAPE AND THAT -- AND THAT WAS AGREED UPON AND WE

14 AGREED TO COME BACK ON DECEMBER 11TH TO MAKE THE

15 TAPE.

16 Q WHAT DO YOU RECALL DR. OZIEL TELLING YOU

17 ABOUT THE MAKING OF THE TAPE ON THE 6TH OR THE 8TH

18 OR SO OF DECEMBER?

19 A JUST THAT HE WANTED TO GET OUR VOICES ON

20 TAPE TALKING ABOUT MY FAMILY LIFE AND THE FACT THAT

21 WE HAD KILLED OUR PARENTS.

22 Q DID HE TELL YOU THAT HE HAD SIMILAR

23 SITUATIONS WITH OTHER PATIENTS WHERE HE HAD DONE THE

24 SAME THING?

25 A I DIDN'T KNOW AT THAT TIME, NO.

26 Q DID YOU ULTIMATELY RETURN ON DECEMBER

27 11TH?

28 A YES.

43877

1 Q AND DID YOU RETURN WITH LYLE MENENDEZ?

2 A YES.

3 Q DID YOU TALK TO DR. OZIEL ON THAT DAY --

4 A YES.

5 Q -- DECEMBER 11TH?

6 AND IS THAT THE TAPE-RECORDED
7 CONVERSATION THAT THE JURY HAS ALREADY HEARD?

8 A RIGHT.

9 Q NOW, WAS THERE A CONVERSATION THAT
10 OCCURRED BEFORE DR. OZIEL TURNED ON THE TAPE?

11 A YES.

12 Q HOW LONG HAD YOU BEEN IN HIS OFFICE
13 BEFORE THE TAPE WAS TURNED ON?

14 A HE BEGAN TAPING AN HOUR AFTER WE GOT
15 THERE.

16 Q HOW LONG WERE YOU IN DR. OZIEL'S OFFICE
17 ON DECEMBER 11TH, 1989?

18 A THREE HOURS, FOUR HOURS.

19 Q AND THE TAPE THAT WE HEARD IS
20 APPROXIMATELY AN HOUR. IS THAT THE RECOLLECTION
21 THAT YOU HAVE OF THE PERIOD OF TIME FROM DR. OZIEL
22 TURNING ON THE TAPE TO TURNING IT OFF?

23 A I REMEMBER HIM PUTTING SEVERAL TAPES
24 INTO THE TAPE-RECORDER, AND TAPING AT ONE POINT,
25 STOPPING THE TAPE. IT HAPPENED FOR LONGER THAN AN
26 HOUR.

27 Q YOU SAW DR. OZIEL PLACING MORE THAN ONE
28 TAPE INTO THE RECORDER WHILE YOU TALKED?

1 A YES.

2 Q DO YOU KNOW WHERE THOSE TAPES ARE?

3 A NO, I HAVE NO IDEA.

4 Q WHAT WAS THE SUBSTANCE OF THE

5 CONVERSATION THAT TOOK PLACE WITH DR. OZIEL BEFORE

6 HE TURNED ON THE TAPE?

7 A WE TALKED ABOUT WHAT WAS HAPPENING, WHAT

8 LYLE WAS DOING IN HIS LIFE, WHAT I WAS DOING IN MY

9 LIFE, UP TO THAT POINT. WE TALKED ABOUT HOW THE

10 ESTATE WAS PROGRESSING. AND I REMEMBER WE TALKED

11 ABOUT THE FACT THAT LYLE WAS NOT GOING TO BECOME

12 EXECUTOR OF THE ESTATE AND DR. OZIEL WAS ADVISING

13 THAT HE SHOULD BECOME EXECUTOR.

14 I REMEMBER WE DISCUSSED -- WHEN THAT

15 WOULD UNFOLD AND THEN WE STARTED DISCUSSING THE FACT

16 THAT HE WANTED TO MAKE THIS TAPE AND WHAT HE WANTED

17 US TO BASICALLY TALK ABOUT ON THE TAPE, FAMILY

18 EXPERIENCES AND SO ON.

19 Q WHAT WAS YOUR STATE OF MIND,

20 MR. MENENDEZ, WITH RESPECT TO THIS CONVERSATION WITH

21 DR. OZIEL? DID YOU WANT TO MAKE THIS TAPE?

22 A NO.

23 Q DID YOU WANT TO REMAIN IN DR. OZIEL'S

24 OFFICE FOR ANY LONGER THAN YOU HAD TO?

25 A I DIDN'T WANT TO MAKE THE TAPE. I

26 WANTED TO TALK ABOUT MY NOT WANTING TO LIVE, WHICH

27 WAS MOST IMPORTANT TO ME. I WANTED TO EASE THE
28 PAIN. AND THAT'S WHAT I WANTED TO TALK ABOUT.

43879

1 Q DID YOU KNOW THAT IT WAS IMPORTANT TO
2 ALLOW DR. OZIEL TO MAKE THE TAPE, FOR HIM?

3 A YES. I THINK IT WAS HIS PRIMARY CONCERN
4 AT THE TIME.

5 Q NOW, DID DR. OZIEL TALK ABOUT HIS
6 THEORIES ABOUT WHY YOU KILLED YOUR PARENTS?

7 A HE TALKED ABOUT THAT ON THE 31ST, 2ND,
8 THE 11TH.

9 Q AND DID HE TALK TO YOU ABOUT THAT BEFORE
10 HE TURNED ON THE TAPE?

11 A YES.

12 Q DID YOU CONTRADICT DR. OZIEL AND TELL
13 HIM NO, THAT'S NOT CORRECT?

14 A I -- NO, I GUESS NOT.

15 Q WHY NOT?

16 A THE IDEA THAT MY MOTHER WANTED TO DIE
17 WAS A VERY NICE THOUGHT AT THE TIME, THAT MAYBE SHE
18 DIDN'T WANT TO LIVE ANYWAY, AND JUST MADE ME -- I
19 DON'T KNOW HOW TO EXPRESS IT. FOR SOME REASON IT
20 BROUGHT A SENSE OF -- LESSENERED SOME OF THE SADNESS.

21 Q WELL, HAD YOU DECIDED, MR. MENENDEZ,

22 BEFORE YOU WENT ON TAPE, THAT YOU WERE NOT GOING TO
23 TELL DR. OZIEL ABOUT THE MOLESTATION?
24 A LYLE AND I HAD TALKED ABOUT THAT AGAIN
25 AFTER WE HAD SEEN DR. OZIEL ON THE 8TH OR THE 6TH,
26 WHEN WE FOUND OUT IT WAS GOING TO BE ON TAPE.
27 AGAIN, I THOUGHT THAT MAYBE WE SHOULD TELL HIM
28 EVERYTHING. AND LYLE WAS FIRM THAT WE'LL JUST MAKE

43880

1 THE TAPE, GIVE HIM WHAT HE WANTS, AND HE DIDN'T WANT
2 TO OPEN WHAT HE CALLED PANDORA'S BOX IN TERMS OF
3 GOING INTO EVERYTHING ABOUT THE FAMILY.

4 Q NOW, WAS THERE A DISCUSSION ON THE TAPE
5 ABOUT YOUR MOTHER BEING SUICIDAL AND THE LETTER THAT
6 YOU FOUND, I BELIEVE IT WAS IN '87?

7 A '86 OR '87, YES.

8 Q AND WAS THIS DR. OZIEL TALKING ABOUT
9 YOUR MOTHER'S DEPRESSION AND SUICIDE THOUGHTS?

10 A IT WAS DR. OZIEL TALKING ABOUT IT; MY
11 BROTHER AND I TALKING ABOUT THAT SHE WAS VERY
12 SUICIDAL AND HAD TRIED TO KILL HERSELF IN '86 AND
13 '.

14 Q DID DR. OZIEL CONNECT YOUR MOTHER'S
15 EMOTIONAL STATE FROM '86 AND '87 TO HER DEATH IN
16 1989?

17 A YES.

18 Q AND HOW DID HE DO THAT?

19 A HE KNEW THAT SHE HAD TRIED TO COMMIT
20 SUICIDE IN '86 AND '87 AND FELT THAT THAT MUST HAVE
21 BEEN HOW SHE WAS FEELING IN 1989. AND -- I MEAN,
22 AGAIN, WE DIDN'T CONTRADICT THAT AND TELL HIM THAT
23 THAT'S NOT TRUE. SO IT WAS -- IT WAS A STRONG
24 FEELING OF HOW HE FELT FROM TALKING TO MY MOTHER
25 HIMSELF AND FROM LYLE AND I SIGNING ON TO IT.

26 Q WAS THERE A DISCUSSION THAT YOU AND LYLE
27 MENENDEZ WERE TRYING TO HELP YOUR MOTHER DEAL WITH
28 YOUR FATHER'S INFIDELITY?

43881

1 A YOU TALKING ABOUT ON THE TAPE?

2 Q YES.

3 A THERE WAS A CONVERSATION. WE TALKED
4 ABOUT THE TIME WHEN I FOUND THE LETTER AND MY
5 BROTHER HAD -- WE WERE WORRIED THAT MOM MIGHT KILL
6 HERSELF AND LYLE WENT AND TALKED TO MY MOTHER.

7 Q WAS THAT TRUE?

8 A YES.

9 Q WHAT WAS IT THAT YOU AND LYLE MENENDEZ
10 TALKED TO YOUR MOTHER ABOUT?

11 A TALKED ABOUT THE FACT THAT IF SHE WANTED

12 TO DIVORCE DAD WE WOULD MOVE BACK TO NEW JERSEY WITH
13 HER AND THAT WE WOULD -- WE WOULD SUPPORT HER ALL THE
14 WAY AND THAT WE -- WE REALLY WANTED HER IN OUR LIVES;
15 AND THAT -- THAT, YOU KNOW, THERE WOULDN'T BE A BIG
16 BLOW-UP OVER -- I WAS 16 AT THE TIME -- WHO WOULD
17 GET ME OR NOT GET ME, AND THAT I WOULD ALWAYS GO
18 WITH MY MOTHER. AND WE AGREED FOR LYLE TO TALK TO
19 HER ABOUT ALL THOSE ISSUES.

20 Q DID DR. OZIEL TALK ABOUT YOUR PARENTS,
21 SPECIFICALLY YOUR FATHER, IN SOME TERMS THAT YOU
22 JUST DIDN'T WANT TO HEAR?

23 A YES.

24 Q AND WHAT TERMS WAS IT THAT DR. OZIEL --
25 OR HOW WAS DR. OZIEL PORTRAYING YOUR FATHER IN A WAY
26 THAT YOU DIDN'T WANT TO HEAR IT?

27 A HE SAID THAT MY FATHER WAS SADISTIC, IN
28 SOME WAYS EVIL, CONTROLLING, EXTREMELY DOMINATING,

43882

1 AND TREATED MY BROTHER AND I -- I DON'T REMEMBER THE
2 WORD HE USED -- LIKE ROBOTS.

3 Q DID DR. OZIEL INFER TO YOU THAT YOUR
4 FATHER DID VERY BAD THINGS AND DID NOT DESERVE TO
5 LIVE?

6 A BASICALLY THAT'S WHAT HE WAS SAYING.

7 Q DID YOU SIGN ON TO THAT THEORY AND AGREE
8 WITH IT?

9 A NO.

10 Q WHY NOT?

11 A AGAIN, ARE YOU REFERRING TO WHAT I SAID
12 ON THE TAPE OR BEFORE THE TAPE OR AFTER THE TAPE WAS
13 PLAYED?

14 Q WELL, ON TAPE.

15 A ON TAPE I REMEMBER HIM TALKING ABOUT
16 THESE THINGS AND ME NOT BEING ABLE TO HEAR IT
17 ANYMORE, NOT WANTING TO HEAR IT ANYMORE, AND FEELING
18 LIKE WHAT YOU WERE SAYING, THAT BECAUSE MY DAD DID
19 BAD THINGS OR MY MOTHER DID BAD THINGS, THAT THEY
20 DESERVED TO DIE. THESE THINGS WERE JUST NOT TRUE.
21 AND I JUST DIDN'T WANT TO HEAR IT ANYMORE AND TOLD
22 HIM THAT.

23 Q DID YOU HAVE A REACTION TO HEARING
24 DR. OZIEL TALK ABOUT YOUR FATHER THAT WAY?

25 A YES.

26 Q DID YOU EXPRESS THAT EVEN ON TAPE?

27 A YES.

28 Q DID YOU REPEATEDLY TELL DR. OZIEL THAT

43883

1 YOU HAD NO CHOICE BUT TO KILL YOUR PARENTS?

2 A YES.

3 Q DID DR. OZIEL MENTION SOMEWHERE ON THE
4 TAPE THAT YOUR MOTHER HAD BEEN TOTALLY BRUTALIZED BY
5 YOUR FATHER?

6 A I RECALL THAT.

7 Q DID YOU TELL DR. OZIEL THAT YOUR MOTHER
8 HAD BEEN TOTALLY BRUTALIZED BY YOUR FATHER?

9 A NO.

10 Q DID DR. OZIEL TALK TO YOU ON THE TAPE
11 ABOUT THE FACT THAT YOU HAD BEEN DISINHERITED?

12 A YES.

13 Q I JUST WANT TO CLEAR ONE THING UP, TO GO
14 BACK FOR A MOMENT.

15 HAD YOU LEARNED FROM SOME PARTICULAR
16 SOURCE THAT YOU WEREN'T DISINHERITED?

17 A I LEARNED -- EVENTUALLY IT BECAME KNOWN
18 THAT THERE WAS NO NEW WILL FOUND. I HAD A
19 DISCUSSION WITH MY UNCLE CARLOS ABOUT IT, MY AUNT
20 MARTA, MY AUNT TERRY.

21 Q WHAT DID AUNT MARTA TELL YOU?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

23 THE COURT: AT WHAT TIME?

24 MR. LEVIN: CONCERNING --

25 Q WHEN DID THIS CONVERSATION TAKE PLACE?

26 A AROUND WEDNESDAY AFTER MY PARENTS DIED,
27 TWO DAYS AFTER THEY DIED.

28 Q WHAT DID AUNT MARTA TELL YOU WITH

1 RESPECT TO YOU BEING IN THE WILL?

2 A WELL, SHE TOLD US -- SHE WAS BASICALLY
3 GOING THROUGH MY FATHER'S FINANCES AND WAS TELLING
4 US HOW MUCH MONEY SHE THOUGHT WAS IN THE ESTATE.
5 SHE WAS TELLING US ABOUT DIFFERENT INSURANCE
6 POLICIES THAT MY FATHER HAD.

7 AND I TOLD HER THAT I WASN'T GOING TO BE
8 IN THE WILL; THAT THERE WAS A WILL THAT MY FATHER
9 HAD MADE.

10 AND SHE TOLD ME THAT, NO, THAT I'M GOING
11 TO BE IN THE WILL AND THAT THIS IS WHAT'S GOING TO
12 BE IN THE ESTATE. AND THE NUMBERS -- I THINK THE
13 NUMBERS WERE 14, 15 MILLION.

14 AND I TOLD HER THAT THE \$5 MILLION
15 INSURANCE POLICY, THAT MY FATHER HAD NOT TAKEN
16 THAT. HE WAS GOING TO TAKE THAT IN SEPTEMBER.

17 JUST GOING BACK AND FORTH ABOUT HER
18 INSISTING AND ME DENYING IT.

19 Q MR. MENENDEZ, I WANT TO PLAY A PORTION
20 OF THE DECEMBER 11TH --

21 THE COURT: IF YOU'RE GOING TO DO THAT, LET'S
22 TAKE THE BREAK BEFORE WE GET INTO PLAYING THE TAPE
23 AND WE'LL DO THAT AT 10:30.

24 DON'T DISCUSS THE MATTER WITH ANYONE.
25 DON'T FORM ANY FINAL OPINIONS ABOUT IT AND WE'LL

26 RESUME AT 10:30.

27 (A RECESS WAS TAKEN FROM
28 10:05 A.M. TO 10:40 A.M.)

43885

1 THE COURT: OKAY. EVERYONE IS PRESENT.

2 LET'S HAVE THE JURY OUT.

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

6

7 THE COURT: LET'S RESUME WITH THE DIRECT
8 EXAMINATION.

9 MR. LEVIN: MR. MENENDEZ, I'M GOING TO PLAY A
10 PORTION OF THE CONVERSATION FROM DECEMBER 11TH, THEN
11 ASK YOU A FEW QUESTIONS.

12 (PORTION OF TAPE PLAYED.)

13

14 Q BY MR. LEVIN: IS THAT THE VOICE OF
15 DR. OZIEL?

16 A YES.

17 (PORTION OF TAPE PLAYED.)

18

19 Q BY MR. LEVIN: DID YOU HEAR THAT
20 PASSAGE, MR. MENENDEZ?

21 A YES.

22 Q DID YOU TELL DR. OZIEL THAT YOUR PARENTS
23 WERE RUTHLESS?

24 A NO.

25 Q WAS THAT HIS TERM?

26 A FROM KNOWING MY PARENTS HE CAME TO HIS
27 OWN CONCLUSIONS.

28 Q DID YOU TELL HIM THAT YOU WERE ALSO LIKE

43886

1 AN AUTOMATON?

2 A HE SAID AUTOMATON (PRONUNCIATION).

3 Q AUTOMATON?

4 A NO.

5 (PORTION OF TAPE PLAYED.)

6

7 Q BY MR. LEVIN: MR. MENENDEZ, WAS THAT
8 YOUR VOICE ON THE TAPE?

9 A YES.

10 Q WAS THAT YOUR VOICE SAYING "I DON'T LIKE
11 HEARING IT"?

12 A YES.

13 Q WHAT WAS IT THAT YOU DIDN'T WANT TO
14 HEAR?

15 A DR. OZIEL DESCRIBE MY FATHER IN THIS

16 WAY, HIM SAY THESE THINGS ABOUT HIM THAT -- YOU KNOW,
17 WHETHER TRUE OR NOT, I DIDN'T WANT TO HEAR, I DIDN'T
18 LIKE HEARING. AND BY THIS POINT ON THE TAPE THEY
19 HAD TALKED FOR SO LONG THAT I JUST DIDN'T LIKE
20 HEARING IT.

21 Q NOW, THE THINGS THAT DR. OZIEL WAS
22 SAYING ABOUT YOUR FATHER AND YOUR MOTHER, WERE THEY
23 TRUE?

24 A SOME OF THE THINGS WERE TRUE.

25 Q WHY DIDN'T YOU WANT TO HEAR THEM?

26 A BECAUSE -- I MEAN, I HAD SUCH HORRIBLE
27 GUILT OVER WHAT I HAD DONE AND I DIDN'T GO THERE TO
28 START TALKING BADLY ABOUT MY FATHER AND LISTING ALL

43887

1 THE BAD THINGS THAT HE HAD DONE. I JUST WANTED TO
2 DEAL WITH THE PAIN THAT I HAD AND I DIDN'T WANT TO
3 HEAR HIM SAY THAT THEY DESERVED TO DIE OR WE WERE
4 SOMEHOW JUSTIFIED BECAUSE OF THE BAD THINGS THAT
5 THEY HAD DONE, AND THAT'S WHAT WAS -- I FELT WAS
6 BEING SAID AND I DIDN'T WANT TO TALK ABOUT THESE
7 THINGS. AND I HAD TOLD HIM THAT BEFORE.

8 MR. LEVIN: I'D LIKE TO CONTINUE.

9 (PORTION OF TAPE PLAYED.)

10

11 Q BY MR. LEVIN: MR. MENENDEZ, AGAIN, IS

12 THAT YOUR VOICE?

13 A YES.

14 Q YOU INDICATED TO DR. OZIEL THAT YOU

15 DIDN'T WANT TO HEAR ANYTHING ABOUT THEM. "IT

16 DOESN'T MATTER WHAT THEY WERE OR WHAT THEY ACTUALLY

17 WERE, WHETHER IT'S A FANTASY OR IT WASN'T."

18 WHAT DID YOU MEAN BY THAT?

19 A WHETHER THE THINGS THAT DR. OZIEL WAS

20 SAYING WERE TRUE OR NOT DIDN'T MAKE A DIFFERENCE IN

21 MY MIND. I LOVED MY PARENTS AND I DIDN'T WANT TO

22 HEAR THESE THINGS.

23 Q YOU STATED SEVERAL TIMES: I HAD NO

24 CHOICE. I WOULD HAVE TAKEN ANY OTHER CHOICE. I

25 REGRET IT. I MAY NOT HAVE HAD A CHOICE. I REGRET

26 IT NOW.

27 WHAT DID YOU MEAN BY THAT?

28 A JUST THAT -- WHAT I WAS SAYING BEFORE

43888

1 ABOUT THEY DID THESE BAD THINGS AND, THEREFORE, THEY

2 DESERVED TO DIE, AND IT JUST WASN'T TRUE.

3 AND I WAS -- I WAS STARTING TO CRY AND

4 I -- I DIDN'T WANT TO TELL THEM THE TRUTH, BUT I

5 DIDN'T WANT -- I DIDN'T WANT HIM TO THINK THAT THESE

6 THINGS -- I COULDN'T -- I COULDN'T LET HIM THINK THAT
7 THESE THINGS WERE TRUE. I DON'T KNOW WHY. I WAS
8 OPENING UP TO THAT POINT, BUT THERE WAS JUST A LOT
9 OF GUILT AND I JUST -- I JUST WAS -- HAD BROKEN DOWN
10 TO THAT POINT WHERE I COULDN'T TAKE IT ANYMORE AND I
11 -- I COULDN'T HEAR THESE THINGS ANYMORE AND THAT'S
12 WHY I SAID THAT.

13 Q AT THE TIME YOU KILLED YOUR MOTHER AND
14 FATHER, DID YOU FEEL THAT YOU HAD A CHOICE?

15 A NO.

16 (PORTION OF TAPE PLAYED.)

17

18 THE WITNESS: I CAN'T UNDERSTAND WHAT'S BEING
19 SAID.

20 MR. LEVIN: I'M SORRY?

21 THE WITNESS: I CAN'T UNDERSTAND WHAT'S BEING
22 SAID ON THE TAPE.

23 MR. LEVIN: ALL RIGHT. I CAN READ IT FROM
24 THE TRANSCRIPT IF IT'S UNCLEAR. IT'S AS CLEAR AS WE
25 HAVE.

26 (PORTION OF TAPE PLAYED.)

27

28 Q BY MR. LEVIN: MR. MENENDEZ, IS THAT YOU

1 TALKING TO DR. OZIEL?

2 A YES.

3 Q YOU INDICATED ON THE -- OR IN THIS

4 CONVERSATION THAT -- SOMETHING ABOUT IT WAS A

5 MISCONCEPTION IN THE FAMILY AND NO ONE ELSE.

6 WHAT DID YOU MEAN BY THAT?

7 A JUST THAT NO ONE -- MY FAMILY WORKED

8 BEHIND CLOSED DOORS; THAT NO ONE KNEW WHAT WAS --

9 WHAT WAS THE -- THE FAMILY WAS REALLY LIKE, AND THE

10 IMAGE WAS ALL A MISCONCEPTION.

11 Q AND YOU MENTIONED SOMETHING ABOUT IT WAS

12 ALWAYS TAKE -- YOU -- AND SOMEBODY WOULD BE YELLING

13 AND SCREAMING. IT WAS ALWAYS TAKING PLACE

14 DOWNSTAIRS.

15 WHAT WERE YOU TALKING ABOUT THERE?

16 A THE FIGHTING, THE HITTING.

17 Q YOU MENTIONED "AND FINDING BLOOD ON THE

18 BED."

19 WHAT WERE YOU REFERRING TO THERE?

20 A FINDING BLOOD ON MY MOM'S PILLOW OR ON

21 THE SHEETS, DIFFERENT PLACES.

22 Q YOU MENTIONED YOU HATE HIM FOR THAT.

23 YOU LOVE HIM. IT WAS SOMETHING THAT WAS BEYOND

24 CONTROL.

25 THEN DR. OZIEL ASKED YOU: WHAT WAS

26 BEYOND CONTROL, THAT YOU HAD TO KILL THEM?

27 YOU SAID: EVENTUALLY IT HAD TO HAPPEN.

28 IT WAS BASICALLY RUINING MY LIFE.

1 WHAT ARE YOU REFERRING TO?

2 A THE SEX BETWEEN DAD AND I.

3 MR. LEVIN: I JUST HAVE A LITTLE MORE OF THE
4 TAPE I'D LIKE TO PLAY.

5 (PORTION OF TAPE PLAYED.)

6

7 Q BY MR. LEVIN: IS THAT YOUR VOICE AND
8 DR. OZIEL, MR. MENENDEZ?

9 A YES.

10 Q DID DR. OZIEL SAY TO YOU THAT YOUR
11 MOTHER HAD CALLED HIM?

12 A YES.

13 Q AND DID HE TELL YOU THAT SHE CALLED AND
14 TOLD HIM ABOUT YOUR DAD DISINHERITING YOU?

15 A THAT IS WHAT HE SAID ON THE TAPE.

16 Q DID HE ALSO SAY THAT BECAUSE -- YOUR
17 MOTHER SAID BECAUSE HE DIDN'T LIKE HOW YOU WERE
18 BEHAVING AND HE THOUGHT YOU WEREN'T BEING RESPECTFUL
19 ENOUGH, BUT THAT YOUR FATHER COULDN'T TELL YOU WHY?

20 A RIGHT.

21

22

23

24

25

26

27

28

43891

1 Q AND DR. OZIEL INDICATED THAT HE TOLD YOU
2 WHAT YOUR MOTHER HAD COMMUNICATED TO HIM.

3 DID DR. OZIEL, ON A PREVIOUS OCCASION,
4 TELL YOU THAT?

5 A YES.

6 Q YOU INDICATED IN THIS PORTION OF THE
7 CONVERSATION THAT YOU COULDN'T GET CLOSE TO EITHER
8 ONE OF YOUR PARENTS.

9 WHAT DID YOU MEAN BY THAT?

10 A NEVER HAD THERE BEEN BRIDGE OF
11 COMMUNICATION. I THINK I SAID THAT WE KEEP IT
12 INSIDE AND THAT'S WHAT WE WERE TAUGHT TO DO. YOUR
13 FEELINGS, HOW YOU FEEL ABOUT EACH OTHER AND YOUR
14 EMOTIONS, YOU DON'T EXPRESS.

15 Q DID YOU TALK TO OZIEL ABOUT THE
16 INHERITANCE, THE MONEY THAT HE NOW KNEW THAT YOU
17 WERE GOING TO RECEIVE?

18 A YES.

19 Q AND DID HE TELL YOU ON TAPE THAT HE
20 UNDERSTOOD THAT YOU HAD PROBLEMS BECAUSE YOU DID NOT
21 WANT ANYTHING TO DO WITH THE MONEY?

22 A I NEED TO SEE WHAT YOU'RE LOOKING AT.

23 Q PARDON ME?

24 A I NEED TO SEE WHAT YOU'RE LOOKING AT.

25 Q AS I'M CUING UP THE TAPE, I'LL SHOW YOU
26 PAGE 29 OF THE TRANSCRIPT AND ASK YOU TO LOOK AT THE
27 YELLOW PORTION.

28 A YES.

43892

1 Q NOW, DO YOU REMEMBER A PORTION OF THE
2 CONVERSATION WITH DR. OZIEL WHERE YOU TALKED ABOUT
3 THE MONEY?

4 A YES.

5 Q AND WAS DR. OZIEL TALKING TO YOU?

6 A HE WAS TALKING TO MY BROTHER AND I AT
7 THAT POINT.

8 Q WHAT WAS IT THAT HE TOLD YOU THAT HE
9 UNDERSTOOD WITH RESPECT TO THE MONEY AND HOW YOU
10 WOULD DEAL WITH IT?

11 A HE WAS JUST RELAYING TO MY BROTHER THAT
12 I HAD TOLD HIM BEFORE THAT I HAD A LOT OF PROBLEMS
13 WITH THE FACT THAT I WAS INHERITING THIS MONEY, AND

14 THAT I WASN'T SURE THAT I WANTED ANYTHING TO DO WITH
15 IT, AND THAT IT MADE ME FEEL EVEN MORE GUILTY, THE
16 FACT THAT I WAS GETTING THE MONEY. HE WAS JUST
17 TELLING THAT TO LYLE.

18 Q NOW, MR. MENENDEZ, FOLLOWING THIS
19 DISCUSSION IN DECEMBER, JUMPING FORWARD A FEW MONTHS
20 LATER, IN MARCH, MARCH 11TH OF 1988 -- I'M SORRY --
21 MARCH 11TH OF 1990, YOU VOLUNTARILY SURRENDERED
22 YOURSELF TO THE AUTHORITIES CONCERNING THIS CASE,
23 DID YOU NOT?

24 A YES.

25 Q AND YOU'VE TESTIFIED TO YOU BEING IN
26 ISRAEL AND RECEIVING INFORMATION AND RETURNING,
27 CORRECT?

28 A RIGHT.

43893

1 Q AND FOLLOWING YOUR RETURN TO LOS ANGELES
2 AND BEING ARRESTED, YOU WERE TAKEN TO THE
3 LOS ANGELES COUNTY JAIL?

4 A YES.

5 Q AND THAT'S WHERE YOU REMAINED
6 CONTINUOUSLY SINCE THEN TILL NOW?

7 A MARCH OF '90.

8 Q AT SOME POINT IN TIME DID YOU MAKE A

9 DECISION TO TALK TO SOMEONE ABOUT THE FACT THAT YOUR
10 FATHER HAD SEXUALLY BRUTALIZED YOU FOR 12 YEARS?

11 A I -- YES.

12 Q WHEN WAS IT THAT YOU MADE THAT DECISION?

13 A IN APRIL OR MAY OF 1990 IS WHEN I FIRST
14 DECIDED THAT I WANTED TO TELL PEOPLE THESE THINGS.

15 Q AND PRIOR TO THAT WERE YOU -- OR WHAT WAS
16 YOUR STATE OF MIND WITH RESPECT TO REVEALING THE
17 FACT THAT YOU HAD BEEN MOLESTED?

18 A THAT I DIDN'T WANT TO SAY THESE THINGS,
19 THAT I DIDN'T WANT TO TALK ABOUT MY FATHER THIS WAY;
20 AND EVEN THEN I STILL DIDN'T WANT TO, BUT THERE WAS
21 SUCH -- I FELT SUCH ISOLATION AND LONELINESS IN JAIL,
22 THAT I NEEDED TO GET CLOSER. I NEEDED TO FIND SOME
23 LOVE.

24 Q DID YOU HAVE ANY DISCUSSION WITH YOUR
25 BROTHER CONCERNING THIS ISSUE?

26 A YES.

27 Q APPROXIMATELY HOW MANY DISCUSSIONS DID
28 YOU HAVE?

43894

1 A AT THAT TIME MANY -- NOT SO MANY
2 DISCUSSIONS, BECAUSE WE HAD DIFFICULTY TALKING, BUT
3 WE WOULD WRITE TO EACH OTHER.

4 Q AND DID LYLE MENENDEZ TELL YOU WHAT HE
5 WANTED TO DO WITH RESPECT TO REVEALING THE FACT THAT
6 YOU HAD BEEN MOLESTED?

7 A YES.

8 Q AND WHAT DID HE TELL YOU?

9 A THAT HE WOULD RATHER DIE OR ESCAPE THAN
10 REVEAL THE MOLESTATION; THAT HE AND I NOW CARRIED MY
11 DAD'S NAME AND MY DAD'S PRIDE, AND THAT WE HAD
12 ALREADY DISAPPOINTED DAD ONCE; AND THAT TO TELL THE
13 WORLD THAT WE HAD DONE THIS AND THAT THE REASON --
14 AND TO TALK ABOUT THE SEX, THE MOLESTATION, WOULD BE
15 TO DESTROY DAD COMPLETELY. AND HE WORKED VERY HARD
16 AT CONVINCING ME NOT TO.

17 Q TO WHOM DID YOU FIRST REVEAL THAT YOU
18 HAD BEEN SEXUALLY MOLESTED BY YOUR FATHER?

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 THE COURT: OVERRULED.

21 THE WITNESS: FATHER KEN.

22 Q BY MR. LEVIN: WHEN YOU SAY "FATHER KEN,"
23 IS HE SITTING IN COURT TODAY?

24 A YES.

25 Q IS THAT FATHER KEN DEASY, THE PRIEST IN
26 THE SECOND ROW TO YOUR LEFT?

27 A YES.

28 Q WHERE WAS IT THAT YOU CONFESSED TO HIM

1 AS TO -- WELL, FIRST OF ALL, DID YOU TELL HIM -- WHAT

2 DID YOU TELL HIM?

3 A I TOLD HIM THAT --

4 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: SUSTAINED.

6 Q BY MR. LEVIN: DID YOU TELL HIM WHY YOU

7 KILLED YOUR PARENTS?

8 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

9 IRRELEVANT.

10 THE COURT: SUSTAINED.

11 Q BY MR. LEVIN: FOLLOWING THIS REVELATION

12 TO FATHER KEN, DID YOU TELL OTHER PEOPLE?

13 A EITHER THE SAME DAY OR WITHIN THE SAME

14 GROUP OF DAYS, I HAD BEEN TALKING TO DR. VICARY.

15 MY BROTHER WANTED TO TELL MY GRANDMOTHER

16 BEFORE WE TOLD ANY OF THE OTHER RELATIVES.

17 MR. CONN: OBJECTION. NONRESPONSIVE.

18 THE COURT: AFTER THE NAME VICARY, EVERYTHING

19 ELSE IS NONRESPONSIVE AND IS STRICKEN.

20 Q BY MR. LEVIN: WHO DID YOU TELL?

21 A MY GRANDMOTHER, AUNT JOAN, MY AUNT

22 TERRY, UNCLE CARLOS, MY AUNT MARTA.

23 Q WHY DID YOU TELL THEM?

24 A THEY HAD A RIGHT TO KNOW.

25 Q WHO'S BRIAN ESLAMINIA?

26 A SOMEONE WHO -- A FRIEND OF MINE THAT --

27 HAD ONCE BEEN A FRIEND OF MINE.

28 Q WAS HE A CLOSE FRIEND?

43896

1 A I DON'T KNOW IF HE HAD BEEN CLOSE. HE
2 WAS A FRIEND.

3 Q FROM HIGH SCHOOL?

4 A YES.

5 Q DID HE VISIT YOU IN JAIL?

6 A YES.

7 Q DID HE VISIT YOUR BROTHER LYLE IN JAIL?

8 A YES.

9 Q DID YOUR BROTHER MENTION TO YOU AT SOME
10 POINT IN TIME THAT BRIAN ESLAMINIA COULD BE A GOOD
11 WITNESS FOR HIM?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

13 THE COURT: OVERRULED.

14 THE WITNESS: HE -- LYLE WAS TALKING ABOUT HOW
15 HE WOULD DO ANYTHING NOT TO HAVE TO TALK ABOUT THE
16 MOLESTATION IN THE TRIAL. AND AT ONE POINT HE
17 MENTIONED MAYBE BRIAN COULD HELP HIM AVOID THAT.

18 Q BY MR. LEVIN: DID HE TELL YOU ANY
19 SPECIFICS OR DETAILS AS TO HOW?

20 A NO.

21 Q DID YOU RESPOND TO LYLE MENENDEZ GIVING
22 YOU THAT INFORMATION?

23 A IT WAS A VERY FRUSTRATING PERIOD BETWEEN
24 LYLE AND I; HIM BEING SO ADAMANT ABOUT WANTING TO
25 PROTECT DAD IN THAT WAY, AND WE WEREN'T NEXT TO EACH
26 OTHER IN THE JAIL. SO IT WAS VERY DIFFICULT TO TALK
27 TO HIM MUCH. I WAS VERY ANGRY WITH HIM; FRUSTRATED
28 THAT -- AND TOLD HIM THAT IT MADE NO SENSE THAT HE

43897

1 WOULD HAVE TO DO THIS, AND IT'S NOT SOMETHING HE
2 WANTED TO DO, BUT THERE REALLY WAS NO OTHER --

3 Q DID YOU TELL HIM TO SEE SOMEONE?

4 A I ASKED FATHER KEN TO TALK TO LYLE
5 MORE. HE STARTED COMING DOWN EVERY WEEKEND. HE
6 SAID EVERYONE DEALS WITH THEIR PAST AND PAIN AT
7 THEIR OWN SPEED. FATHER KEN TOLD ME TO GIVE HIM
8 SOME TIME AND PATIENCE AND HE WOULD EVENTUALLY COME
9 TO HIS OWN.

10 Q DID LYLE EVER TELL YOU THAT HE WAS GOING
11 TO TELL THE TRUTH AND NOT USE BRIAN ESLAMINIA IN THE
12 MANNER OR WHATEVER MANNER THAT HE WAS?

13 A SEVERAL MONTHS LATER WE HAD A VERY HEART
14 TO HEART CONVERSATION AND HE TOLD ME THAT HE HAD
15 DECIDED TO CALL BRIAN AND TELL HIM THAT LYLE WOULD
16 BE TAKING -- THAT HE WOULD BE TAKING THE STAND.

17 Q NOW, IN YOUR FIRST TRIAL, WHICH OCCURRED

18 BACK IN 1993, WAS BRIAN ESLAMINIA EVER CALLED AS A

19 WITNESS FOR OR BY THE DEFENSE?

20 A NO.

21 Q WAS -- YOU HEARD IN COURT, DID YOU NOT,

22 THE CONTENTS OF BRIAN ESLAMINIA'S LETTER THAT YOUR

23 BROTHER WROTE TO HIM?

24 A YES.

25 Q WAS ANYTHING THAT WAS CONTAINED IN THAT

26 LETTER EVER USED IN THE DEFENSE IN ANY WAY AT ANY

27 TIME CONCERNING THIS CASE?

28 A NO.

43898

1 Q MR. MENENDEZ, DO YOU FEEL THAT YOU WERE

2 JUSTIFIED IN KILLING YOUR PARENTS?

3 A I WAS NOT.

4 Q WERE YOU IN FEAR WHEN YOU KILLED THEM?

5 A YES.

6 Q WHY DID YOU KILL THEM?

7 A BECAUSE I THOUGHT THAT THEY WERE GOING

8 TO KILL ME.

9 Q WHY THEN DON'T YOU THINK THAT YOU WERE

10 JUSTIFIED IN KILLING THEM?

11 A BECAUSE THEY'RE MY PARENTS. THERE WERE

12 NO GUNS IN THAT ROOM, AND I REALIZE THAT NOW, AND IT

13 WAS A HORRIBLE MISTAKE.

14 MR. CONN: YOUR HONOR, CAN WE ASK THE WITNESS
15 TO SPEAK UP. I CAN'T HEAR THE WITNESS SPEAK.

16 THE WITNESS: IT WAS AN AWFUL MISTAKE AND I
17 WAS NOT -- I DID THE WRONG THING.

18 MR. LEVIN: YOUR HONOR, I WOULD LIKE JUST A
19 FEW MOMENTS TO CONFER WITH THE COURT AND COUNSEL AT
20 THIS TIME.

21 THE COURT: OKAY. WE'LL TAKE A BREAK WITH
22 THE JURY. WE'LL ASK YOU TO GO IN THE JURY ROOM.
23 THE LAWYERS AND I WILL TALK ABOUT SOME MATTERS, AND
24 WHEN WE'RE FINISHED, HOPEFULLY BEFORE THE LUNCH
25 HOUR, WE'LL HAVE YOU COME BACK.

26 (THE JURY EXITED THE COURTROOM AND
27 THE FOLLOWING PROCEEDINGS WERE HELD:)

28 /// /// ///

43899

1 THE COURT: YOU MAY RETURN TO COUNSEL TABLE.

2 OKAY. THE JURY HAS LEFT.

3 MR. LEVIN: YOUR HONOR, AT THIS TIME THE
4 DEFENSE HAS NO FURTHER QUESTIONS OF ERIK MENENDEZ
5 DEPENDENT UPON THE SCOPE OF THE ALLOWABLE CROSS. I
6 WOULD LIKE TO HAVE THE COURT AT THIS TIME CONSIDER
7 THE MOTION THAT'S BEEN FILED ON BEHALF OF ERIK

8 MENENDEZ CONCERNING -- AND LYLE MENENDEZ -- CONCERNING
9 WHETHER OR NOT THE PROSECUTION WOULD BE ENTITLED TO
10 GO INTO THE CALABASAS BURGLARY JUVENILE
11 ADJUDICATION; REGARDING THE CONFESSION BY CRAIG
12 CIGNARELLI, WHICH HAS NOT BEEN GONE INTO BY THE
13 DEFENSE; AND LIMITATIONS THAT THE DEFENSE FEEL ARE
14 APPROPRIATE TO BE PLACED ON THE PROSECUTION
15 CONCERNING DR. OZIEL'S TESTIMONY FROM THE PRIOR --
16 PARDON ME?

17 MS. ABRAMSON: CLAIMS.

18 MR. LEVIN: CLAIMS. SORRY. CLAIMS MADE
19 DURING FORMER TESTIMONY TO WHICH ERIK MENENDEZ HAS
20 STAUNCHLY AND CONSISTENTLY ALWAYS DENIED BEING; THE
21 B.B.C ISSUE CONCERNING THE PERFECT CRIME ISSUE;
22 CONCERNING DR. OZIEL'S MURDER/MANSLAUGHTER
23 DISTINCTION. THOSE THINGS HAVE NOT BEEN GONE INTO
24 ON DIRECT EXAMINATION.

25 UNLESS THE PROSECUTION'S GOING TO CALL
26 DR. OZIEL, THEY SHOULD BE PRECLUDED FROM GOING INTO
27 THESE AREAS AND MAKING IT APPEAR THAT ERIK MENENDEZ
28 SAID THESE THINGS IN THE PAST WHEN THEY KNOW THAT

43900

1 THEY CANNOT PROVE THEM THROUGH ANY SOURCE.

2 THE COURT: OKAY. LET ME FIRST HEAR THE

3 PROSECUTION'S RESPONSE TO CONDUCTING THIS HEARING

4 NOW BEFORE THE DEFENSE HAS COMPLETED ITS DIRECT

5 EXAMINATION.

6 MR. CONN: YES. AT THIS TIME I THINK THAT

7 IT'S PREMATURE BECAUSE THE DEFENSE SHOULD MAKE AN

8 ELECTION AT THIS POINT CONCERNING THE AREAS IN WHICH

9 THEY WANT TO INQUIRE INTO. AND AT THAT POINT WE

10 WOULD THEN MAKE AN ELECTION AS TO WHAT WE'RE GOING

11 TO CROSS-EXAMINE THE DEFENDANT ON. IT'S A STRATEGICAL

12 DECISION ON THE PART OF THE PROSECUTION, DEPENDING

13 UPON THE AREAS THAT THE DEFENSE CHOOSES TO GO INTO.

14 AND I DON'T THINK THAT THEY CAN HAVE THE COURT RULE

15 AS TO WHAT THE PROSECUTION CAN AND CANNOT GET INTO

16 AND THEN DECIDE, BASED UPON THAT, HOW THEY'RE GOING

17 TO PRESENT THEIR DEFENSE, ANYMORE THAN WE CAN ASK

18 THE COURT TO RULE AS TO WHAT IS ADMISSIBLE IN THE

19 DEFENSE, AND BASED UPON THOSE RULINGS, STRUCTURE OUR

20 CASE-IN-CHIEF AROUND THAT.

21 SO I WOULD SUBMIT THAT IT IS SIMPLY

22 PREMATURE FOR THE COURT TO MAKE THE RULING AT THIS

23 TIME. WE, FRANKLY, HAVEN'T DECIDED HOW MANY OF

24 THESE AREAS WE'RE GOING TO GET INTO. SOME OF IT MAY

25 BE NECESSARY, SOME OF IT MAY NOT BE NECESSARY,

26 DEPENDING UPON ANSWERS GIVEN BY THE DEFENDANTS.

27 SO I WOULD ASK THAT WE NOT GET INTO IT

28 AT THIS TIME. WHEN WE REACH THE POINT WHERE IT

1 APPEARS WE'RE GETTING CLOSE TO SOME OF THE ISSUES IN
2 HERE, PERHAPS I COULD RAISE THE ISSUE AT THAT TIME
3 AND WE COULD ADDRESS IT.

4 MR. LEVIN: YOUR HONOR, THAT'S PRECISELY THE
5 PURPOSE OF 402 MOTIONS IN LIMINE, TO ALLOW THE COURT
6 TO MAKE CERTAIN DECISIONS IN LIMINE, AND THAT'S
7 PRECISELY WHAT WE'RE ASKING. THE COURT INDICATED
8 BEFORE THAT IT COULD NOT MAKE ANY FINDINGS OR
9 INDICATE ANY RULINGS UNTIL IT'S HEARD THE DIRECT
10 EXAMINATION. I HAVE NOW CONDUCTED WHAT HAS BEEN A
11 DIRECT EXAMINATION, PROBABLY THE MOTHER OF ALL
12 DIRECT EXAMINATIONS, OVER SEVEN COURT DAYS.

13 THE COURT: IT REALLY HASN'T BEEN AS LONG --
14 IT'S OVER SEVEN DAYS. WE HAD A LOT OF HALF DAYS IN
15 THERE. IT REALLY WASN'T THAT --

16 MS. ABRAMSON: IT'S ONLY THE AUNT OF ALL --

17 MR. LEVIN: IT'S THE GREAT AUNT.

18 IN ANY EVENT, I HAVE NO FURTHER
19 QUESTIONS. THE COURT CAN CERTAINLY MAKE OR ISSUE A
20 RULING WITH RESPECT TO MANY OF THESE ISSUES. ERIK
21 MENENDEZ SHOULD BE GIVEN THE OPPORTUNITY TO EXPLAIN
22 THE CALABASAS BURGLARIES IF THE COURT FEELS THAT
23 THERE HAS BEEN SOMETHING THAT HAS BEEN DONE THAT
24 OPENED THE DOOR TO THEM. BUT WE FEEL THAT IT WOULD
25 BE UNFAIR TO ALLOW THE PROSECUTION TO, FOR THE FIRST

26 TIME, ASK THE QUESTION; AND THEN THE DEFENSE MAKES
27 THE OBJECTION, OR WE HAVE TO WASTE COURT TIME AND
28 APPROACH THE SIDE-BAR. THERE'S NOTHING THAT'S GOING

43902

1 TO CHANGE WITH RESPECT TO THE CALABASAS BURGLARY
2 ISSUE. EITHER THE JUVENILE ADJUDICATION IS
3 ADMISSIBLE OR IT'S NOT ADMISSIBLE. AND WE FEEL THAT
4 THE COURT, AT LEAST ON THAT ISSUE, SHOULD CONSIDER
5 THAT AT THIS TIME.

6 THE COURT: ALL RIGHT. I'VE BEEN THINKING
7 ABOUT THAT, OF ALL THE MATTERS THAT YOU RAISED, AND
8 REALLY, THAT IS THE ONLY ONE THAT RELATES TO AN
9 ISSUE THAT MIGHT WELL BE DEALT WITH BEFORE THE
10 DEFENSE HAS COMPLETED ITS DIRECT EXAMINATION.

11 THE REASON WHY THE CALABASAS BURGLARY
12 CAME IN DURING THE FIRST TRIAL HAD TO DO WITH THE
13 RELATIONSHIP OF THE DEFENDANTS TO THEIR FATHER AND
14 THE RELATIONSHIP OF THE DEFENDANTS TO OZIEL. AND
15 CERTAINLY BOTH THOSE ISSUES ARE NOW BEFORE THE
16 JURY.

17 THERE'S A SECONDARY MATTER AS WELL, AND
18 THAT HAS TO DO WITH THE CONTENTS OF THE DECEMBER
19 11TH TAPE. AT THE TIME THAT ISSUE WAS ADDRESSED,
20 THE ISSUE OF THE CALABASAS BURGLARY, DURING THE

21 FIRST TRIAL, THE COURT HAD NOT LISTENED TO THAT
22 TAPE. THE TAPE HAD NOT BEEN PLAYED FOR THE JURY.
23 IT HAD NOT BEEN RULED ADMISSIBLE AT THAT POINT.
24 THERE IS REFERENCE ON THAT TAPE TO THE
25 INCIDENT AND THE DISAPPROVAL OF THE FATHER; AND
26 CERTAINLY, A GREAT DEAL OF THE DEFENSE HAS FOCUSED
27 ON THE RELATIONSHIP OF THE FATHER WITH THE
28 DEFENDANT, THE TESTIMONY OF THE DEFENDANT, ON THAT

43903

1 SUBJECT, THE WAY THE FATHER TREATED HIM, AND THE
2 REASONS FOR THAT TREATMENT.

3 SO, CERTAINLY, THAT FACET OF THE COURT'S
4 REASON FOR RULING THE MATTER ADMISSIBLE IS
5 HEIGHTENED BY THE FACT THAT THE TAPE-RECORDING IS
6 NOW BEFORE THE JURY.

7 MR. LEVIN: YOUR HONOR, THE PEOPLE ADDUCED
8 THAT EVIDENCE OVER THE DEFENSE OBJECTION.

9 THE COURT: I UNDERSTAND THAT.

10 MR. LEVIN: WELL, THAT DOESN'T MAKE A
11 PREJUDICIAL JUVENILE ADJUDICATION OR CONVICTION, IF
12 IT WAS, ADMISSIBLE BECAUSE THE PEOPLE, OVER THE
13 OBJECTION OF THE DEFENSE, LAID THE ISSUE BEFORE THE
14 COURT. IT'S ONLY WHEN THE DEFENSE ADDUCES SOME
15 RELEVANT EVIDENCE, BY WHICH THE PEOPLE CAN THEN

16 ATTACK, IF IT'S CREDIBILITY; IF CHARACTER WITNESSES
17 ARE CALLED, THOSE KINDS OF TRADITIONAL THINGS
18 OFFERED BY THE DEFENSE. THERE'S NO LAW I'M AWARE OF
19 WHERE THE PEOPLE CAN OPEN UP ON THEIR OWN
20 PREJUDICIAL EVIDENCE THAT --

21 THE COURT: IT'S NOT A DOOR BEING OPENED.
22 IT'S A PIECE OF EVIDENCE THAT'S OTHERWISE
23 ADMISSIBLE, AND IT RELATES TO THIS ISSUE THAT WE'RE
24 NOW TALKING ABOUT, THE CALABASAS BURGLARIES.

25 MR. LEVIN: WHAT EVIDENCE IS THERE THAT THE
26 PEOPLE CAN OFFER THIS COURT THAT WOULD LEAD TO THE
27 INFERENCES THAT THEY WISH THE JURY TO DEDUCE FROM
28 THE BRINGING IN OF THIS EVIDENCE? NOTHING. ALL

43904

1 THEY CAN DO -- AND THE ONLY REASON THEY WANT TO
2 BRING IT IN HIS TO SHOW THAT ERIK MENENDEZ AND LYLE
3 MENENDEZ ARE BAD PEOPLE.
4 AND THE POINT IS, THAT YOU HAVE THE
5 TAPE, NUMBER ONE, THAT SHOWS DR. OZIEL SAYING ON THE
6 TAPE THAT THE FATHER HAD DISINHERITED ERIK MENENDEZ
7 BECAUSE HE DISAPPROVED OF HIM BECAUSE HE WAS
8 DISRESPECTFUL, BUT COULDN'T TELL ERIK MENENDEZ WHY.
9 THAT'S THE FIRST POINT.

10 THE SECOND POINT IS CARLOS BARALT

11 TESTIFIED IN THIS TRIAL THAT JOSE MENENDEZ TOLD HIM
12 THAT HE HAD DISINHERITED THEM BUT DIDN'T TELL CARLOS
13 BARALT WHY.

14 THERE IS NO WITNESS, THERE'S NO
15 DOCUMENT, THERE IS NO EVIDENCE THAT THE PEOPLE CAN
16 BRING TO THIS COURT TO IN ANY WAY PROVE THAT WHICH
17 INFERENCE THEY WISH TO SHOW THE JURY; THAT THE
18 DISSENTION, THE PROBLEMS THAT JOSE MENENDEZ WAS
19 HAVING WITH ERIK MENENDEZ, WAS BASED ON THE
20 CALABASAS BURGLARY. THEY JUST DON'T HAVE IT.

21 (ATTORNEYS ABRAMSON AND LEVIN
22 CONFER SOTTO VOCE.)

23

24 MR. LEVIN: PRECISELY. EVEN IF THEY COULD,
25 WHAT IS THE RELEVANCE? THERE'S NO RELEVANCE TO IT,
26 EVEN IF THEY COULD. BUT THEY DON'T HAVE ANY PROOF
27 OF IT.

28 THERE'S EVIDENCE THAT THE FATHER --

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1 THE COURT: PROOF OF WHAT? YOU'RE CARRYING
2 ON A CONVERSATION WITH MS. ABRAMSON, A CONTINUATION
3 OF THAT CONVERSATION AND I DON'T --

4 MR. LEVIN: I THINK THE ARGUMENT THAT
5 MS. ABRAMSON IS CUING ME IN ON HAS TO DO WITH THE

6 RELEVANCY OF THAT PARTICULAR EVIDENCE COMING IN.
7 EVEN IF THE PEOPLE, HYPOTHETICALLY, HAD EVIDENCE
8 THAT THEY COULD SUBSTANTIATE THAT THAT'S WHY THE
9 FATHER WAS -- OR DISAPPROVED OF ERIK MENENDEZ, WHAT
10 DOES IT TEND TO SHOW? WHAT DOES -- WHAT DOES IT TEND
11 TO ADD TO THE CASE? THE PREJUDICE IS THAT ERIK
12 MENENDEZ IS A BAD PERSON, HE'S AN EVIL PERSON, THAT
13 HE HAS NO CREDIBILITY. I MEAN, THE PEOPLE WANT TO
14 DESTROY THE ENTIRE CREDIBILITY OF ERIK MENENDEZ FROM
15 A JUVENILE ADJUDICATION. THAT'S PRECISELY WHAT THE
16 LAW HAS IN MIND WHEN IT TELLS THE COURTS THAT THEY
17 SHOULD CONSIDER VERY CAREFULLY BEFORE THESE ISSUES
18 ARE EVER GONE INTO, AND THAT'S THE PREJUDICIAL
19 IMPACT THAT WE SEEK TO AVOID. THERE IS NO LAW THAT
20 WOULD JUSTIFY THE PEOPLE TO BRING IN THIS JUVENILE
21 ADJUDICATION, OTHER THAN THE REFERENCE THAT IS ON
22 THE 12/11 TAPE, THAT THEY BROUGHT IN, AND THAT IT IS
23 NOT MENTIONED ON THE TAPE ABOUT THE CALABASAS
24 BURGLARY. ALL IT TALKS ABOUT IS THE CALABASAS
25 INCIDENT, WHICH THE JURY CAN, IF THEY ARE GOING TO
26 QUESTION WHAT THE CALABASAS INCIDENT COULD POSSIBLY
27 REFER TO, THERE'S BEEN TESTIMONY ABOUT THE GANG
28 INCIDENT IN CALABASAS. THERE'S NOTHING IN THIS

1 TRIAL THAT IS CONFUSING ABOUT THAT PARTICULAR
2 INNOCUOUS PASSAGE CONTAINED IN THE TAPE. IT IS NOT
3 GONE INTO. IT IS NOT FOCUSED ON BY DR. OZIEL AS A
4 REASON FOR ANY PROBLEMS BETWEEN THE FAMILY AND ERIK
5 AND LYLE MENENDEZ. IT'S NOT DISCUSSED IN THAT
6 CONTEXT.

7 MS. ABRAMSON: YOUR HONOR, COULD I BE HEARD,
8 BECAUSE I HAVE A DIFFERENT FACTUAL KNOWLEDGE THAN
9 MR. LEVIN?

10 THE COURT: CERTAINLY.

11 MS. ABRAMSON: YOUR HONOR, THE OTHER THING IS
12 THERE'S NO INDICATION THAT THE CONVERSATION THAT
13 DR. OZIEL RELATED TO ERIK MENENDEZ THAT HE,
14 DR. OZIEL, HAD WITH MRS. MENENDEZ CONCERNING THE
15 FATHER DISINHERITING HAPPENED AT ANY TIME RELEVANT
16 TO THE BURGLARIES. IN FACT, I THINK DR. OZIEL
17 TESTIFIED AT THE FIRST TRIAL THAT THAT WAS SOMETHING
18 DR. OZIEL -- FIRST OF ALL, AS THE COURT KNOWS,
19 DR. OZIEL OCCURRED IN THEIR LIVES AFTER THE
20 BURGLARIES WERE LONG OVER. BUT I BELIEVE DR. OZIEL
21 TESTIFIED THAT CONVERSATION WITH MRS. MENENDEZ WAS
22 IN MAY OF 1989. SO THIS INFORMATION ABOUT
23 DISINHERITING IS NOT CHRONOLOGICALLY LINKED TO THE
24 BURGLARIES; AND IT IS LINKED TO WHAT ERIK MENENDEZ
25 TESTIFIED TO IN THIS TRIAL AND THE LAST TRIAL, THAT
26 HIS FAILURE TO REPORT HIS TENNIS PRACTICES, HIS
27 FAILING TO TALK TO -- ANSWER HIS FATHER'S QUESTIONS
28 AT THE DINNER TABLE, IS WHAT PROVOKED THIS

1 DISINHERITING/DISOWNING STATEMENT.

2 SO THERE IS NO FACTUAL LINKAGE BETWEEN
3 THE ACTION BY THE FATHER AND THE BURGLARIES.

4 BUT JUDGE, EVEN IF THERE WAS, WHAT'S
5 RELEVANT ABOUT THIS? THE FACT IS THAT THE
6 DEFENDANTS WERE TOLD THAT THEIR FATHER DID OR WAS
7 GOING TO DISINHERIT, NOT WHY. WHY HE WAS GOING TO
8 DISINHERIT THEM HAS NOTHING WHATSOEVER TO DO WITH
9 WHETHER THEY KILLED THEIR PARENTS FOR MONEY. ALL OF
10 THIS IS ONLY RELEVANT BECAUSE THE PEOPLE HAVE A
11 MOTIVE THEORY BASED ON MONEY, WHICH WE ARE
12 CHALLENGING BY SHOWING OUR CLIENTS' STATE OF MIND,
13 THAT THEY WOULD NOT BENEFIT FINANCIALLY IN THE DEATH
14 OF THEIR PARENTS.

15 OKAY. MOREOVER, THE SUPPOSED CALABASAS
16 INCIDENT THAT'S MENTIONED ON THE DECEMBER 11TH
17 TAPE -- I MEAN, I CANNOT UNDERSTAND HOW, BECAUSE THE
18 PEOPLE CHOSE TO PUT IN A PIECE OF EVIDENCE THAT USES
19 THE WORD "CALABASAS," THAT SOMEHOW THAT GIVES THEM A
20 RIGHT TO EXPLAIN WHAT THEY THINK LYLE MENENDEZ MEANT
21 WHEN HE'S THE ONE WHO MENTIONED CALABASAS THING ON
22 THAT TAPE, NOT ERIK MENENDEZ, TO BEGIN WITH; AND
23 THIS IS THE ERIK MENENDEZ DEFENSE.

24 WHEN THERE IS NOTHING THAT THOSE

25 BURGLARIES TELL US THAT ADVANCES ANY THEORY IN THIS
26 CASE OTHER THAN THE PEOPLE'S DESIRE TO ATTACK ERIK
27 MENENDEZ' CREDIBILITY.

28 AND I WOULD ALSO REMIND THIS COURT THAT

43908

1 UNDER THE STATEMENT THAT THE COURT WAS NOT ALLOWING,
2 QUOTE, CHARACTER ASSASSINATION OF THE VICTIMS IN
3 THIS CASE, THE COURT HAS NOT ALLOWED US TO PUT ON
4 THE LYING, THE CHEATING, AND THE TRAINING AT LYING
5 AND CHEATING THAT THESE PARENTS DID, BOTH WITH
6 RESPECT TO THEIR OWN AFFAIRS AND IN TRAINING THEIR
7 CHILDREN. THESE WERE PEOPLE THAT THE COURT KNOWS
8 FROM THE FIRST TRIAL LIED ROUTINELY, PARTICULARLY
9 THE MOTHER, ABOUT EVERYTHING; THAT TOLD THEIR
10 CHILDREN TO LIE AND CHEAT AND STEAL, BUT WIN.

11 SO I DON'T UNDERSTAND THE BALANCE HERE,
12 HOW A CRIMINAL DEFENDANT IS ALLOWED TO BE CONFRONTED
13 WITH A BURGLARY IN JUVENILE COURT BECAUSE THAT'S
14 WHAT MADE HIM GO TO A THERAPIST. SO WHAT? WHAT
15 DIFFERENCE DOES IT MAKE WHY HE WENT TO A THERAPIST?
16 ALL THAT'S REALLY RELEVANT HERE IS THE
17 TAPE-RECORDING HE MADE WITH THAT THERAPIST IN
18 DECEMBER. BUT SOMEHOW THAT'S ADMISSIBLE. BUT THE
19 FACT IT'S HIS PARENTS WHO TRAINED HIM TO LIE AND

20 CHEAT AND STEAL IS NOT SOMEHOW ANOTHER FACET OF THE
21 RELATIONSHIP THAT WOULD BE ILLUMINATED BY
22 INFORMATION? I MEAN, SINCE THE COURT IS NOT
23 ALLOWING US TO BRING IN WHO TAUGHT HIM HOW TO LIE
24 AND CHEAT AND STEAL, I DON'T THINK THAT THE PEOPLE
25 HAVE A RIGHT TO SHOW THAT -- PARTICULARLY IF IT'S FOR
26 THE INFERENCE THAT THE COURT SUGGESTED -- BECAUSE
27 THEY PARTICIPATED IN A BURGLARY THAT MEANS THEIR
28 PARENTS WERE SHOCKED AND OFFENDED. THAT GIVES THE

43909

1 IMPLICATION THAT THESE PARENTS WERE MORAL, WHICH WE
2 DON'T HAPPEN TO BELIEVE IS TRUE OR PROVABLE IN THE
3 ABSTRACT OR ABSOLUTE. THE INFERENCE IS SUPPOSED TO
4 BE THESE PARENTS WERE SO OFFENDED BY THE IMMORALITY
5 OF THEIR CHILDREN THAT THEY SENT THEM TO A
6 THERAPIST? WHEN WE KNOW THESE PARENTS WERE HIGHLY
7 IMMORAL THEMSELVES IN MANY WAYS, AND TOTALLY
8 DISHONEST IN EVERY WAY.

9 SO IT SEEMS TO ME THAT WE'RE COMPLETELY
10 SKEWING THE ISSUES HERE BY ALLOWING IN THIS JUVENILE
11 BURGLARY EVIDENCE WHEN IT DOES NOT PROVE ANY
12 CONTENTION IN THIS CASE, AND GIVES A FALSE
13 IMPRESSION THAT MY CLIENT IS SOMEHOW A THIEF AND
14 DISHONEST, WHILE WE'VE NOT BEEN PERMITTED TO SHOW

15 THE DISHONESTY OF THE PARENTS.

16 THE COURT: OKAY. DID YOU WISH TO BE HEARD,
17 MR. GESSLER?

18 MR. GESSLER: WELL, I JOIN IN EVERYTHING THAT
19 HAS BEEN SAID CONCERNING THE WITNESS, ERIK MENENDEZ,
20 AND ALSO SHARE SOME DISCOMFORT HERE THAT IF THAT IS
21 GONE INTO IN ANY WAY CONCERNING ERIK, THAT IT COULD
22 COME OVER ON TO LYLE AS TO ONE OF THOSE BURGLARIES
23 AS TO CERTAIN FACTS. AND I THINK THERE ARE
24 DIFFERENT CONSIDERATIONS INVOLVED HERE.

25 SO UNDER 352, ALSO, I THINK THAT THE
26 PREJUDICIAL EFFECT ON LYLE MENENDEZ OF GETTING INTO
27 ANY OF THESE BURGLARIES ON A THEORY AGAINST ERIK
28 MENENDEZ WOULD BE PREJUDICIAL TO HIS CASE.

43910

1 THE COURT: OKAY. LET ME HEAR THE PEOPLE'S
2 RESPONSE.

3 MS. ABRAMSON: ONE OTHER THING, YOUR HONOR.
4 UNDER 1101 THERE'S SUPPOSED TO BE ONLY CERTAIN
5 EXCEPTIONAL CIRCUMSTANCES WHERE PRIOR CRIMINAL
6 ACTIVITY OF A DEFENDANT IS ADMISSIBLE. AND I DON'T
7 SEE THAT THESE BURGLARIES FIT ANY OF THOSE STATED
8 EXCEPTIONS.

9 THE COURT: OKAY. PEOPLE'S RESPONSE?

10 MR. CONN: YES. ONCE AGAIN, I THINK THAT THE
11 BURGLARIES -- EVIDENCE CONCERNING THE BURGLARIES ARE
12 JUST INEXTRICABLY INTERTWINED WITH THE RELATIONSHIP
13 BETWEEN JOSE MENENDEZ AND THE DEFENDANTS, AS WELL AS
14 THE RELATIONSHIP BETWEEN DR. OZIEL AND THE
15 DEFENDANTS. CRITICAL TO ANY EVALUATION OF
16 CONVERSATIONS THAT THE DEFENDANTS HAD WITH DR. OZIEL
17 IS GOING TO BE THE VERY FOUNDATIONAL ISSUE OF WHY
18 THEY WERE THERE IN THE FIRST PLACE. IT IS
19 INEVITABLE THAT THE DEFENDANTS MUST BE ASKED WHY
20 THEY WENT TO SEE DR. OZIEL SO THE JURY CAN HAVE SOME
21 FOUNDATION UPON WHICH THEY CAN EVALUATE ALL THIS
22 TESTIMONY. YOU CAN'T CONCEAL THAT PIECE OF THE
23 PUZZLE. IT'S MUCH TOO VALUABLE AND PROBATIVE TO
24 SIMPLY HIDE IT FROM THEM.

25 AND ALSO, IT GOES TO THE RELATIONSHIP
26 BETWEEN THE DEFENDANTS AND THEIR FATHER. THEIR
27 FATHER KNEW ABOUT THE BURGLARIES. THERE'S NO SECRET
28 HE WAS INVOLVED IN THE RESOLUTION OF THAT MATTER;

43911

1 THAT THEY OBTAINED AN ATTORNEY TO ASSIST THEM IN THE
2 RESOLUTION OF THAT MATTER; THAT AN ATTORNEY
3 REPRESENTED THEM, WAS BEING PAID BY JOSE MENENDEZ TO
4 RESOLVE THE MATTER; AND THAT THAT WAS A MAJOR SOURCE

5 OF DISAPPOINTMENT FOR JOSE MENENDEZ.

6 I DON'T SEE HOW THE DEFENDANT CAN STAND
7 UP THERE AND TELL THIS JURY, WELL, I HAVE NO IDEA
8 WHY MY FATHER WANTED TO DISINHERIT ME. MAYBE IT HAD
9 SOMETHING TO DO WITH THE FACT I WASN'T PLAYING
10 TENNIS VERY WELL; WHEN, IN FACT, WE ALL KNOW THAT
11 JOSE MENENDEZ WAS UPSET ABOUT THE BURGLARIES. AND
12 THIS IS SOMETHING THAT ULTIMATELY LED TO HIS
13 DECISION TO DISINHERIT THEM. I THINK IT IS SIMPLY
14 TOO CLOSELY TIED TO THE DEFENDANTS' EVIDENCE AS
15 PRESENTED BY THEM, EVEN DURING THIS TRIAL, THAT WE
16 SIMPLY CAN'T IGNORE IT AND IT SHOULD BE ADMITTED.

17 MS. ABRAMSON: THE PEOPLE HAVE A VERY STRANGE
18 NOTION HERE THAT THEY HAVE A RIGHT TO INQUIRE INTO
19 CONVERSATIONS THAT ERIK MENENDEZ HAD WHEN HE FIRST
20 WENT TO SEE DR. OZIEL CONCERNING THESE BURGLARIES.
21 ANY SUCH CONVERSATIONS ARE PRIVILEGED. THEIR
22 PRIVILEGE HAS ALWAYS BEEN MAINTAINED WITH RESPECT TO
23 ANY SUCH INFORMATION. WE REASSERT THAT PRIVILEGE.
24 HE HAS A RIGHT TO CLAIM THAT PRIVILEGE, THE
25 PSYCHOTHERAPIST-PATIENT PRIVILEGE, FOR ANYTHING HE
26 SAID TO DR. OZIEL PRIOR TO OCTOBER 31ST, 1989. THE
27 PEOPLE HAVE NEVER SOUGHT -- RECOGNIZING THEY COULD
28 NEVER PREVAIL -- TO GO INTO THOSE CONVERSATIONS, AND

1 THEY HAVE ABSOLUTELY NO RIGHT TO DO SO. SO IT ISN'T
2 TRUE THAT BRINGING IN THE BURGLARY ISSUE SOMEHOW
3 SPINS OFF OF THE CONVERSATIONS WITH DR. OZIEL. THE
4 CONVERSATIONS WITH DR. OZIEL, THE CONTENTS OF WHICH
5 HAS BEEN GONE INTO HERE, ARE ONLY THE ONES THAT THIS
6 COURT AND THE CALIFORNIA SUPREME COURT HAVE RULED
7 WERE NOT PRIVILEGED. BUT ANYTHING THAT HE SAID TO --
8 ANYTHING THAT ERIK MENENDEZ SAID TO DR. OZIEL PRIOR
9 TO THAT IS STILL CONFIDENTIAL. WE ASSERT THE
10 PRIVILEGE NOW.

11 THE PEOPLE DON'T HAVE A RIGHT TO ASK
12 THOSE QUESTIONS WHEN THEY KNOW A PRIVILEGE IS GOING
13 TO BE ASSERTED ON THE WITNESS STAND, AND THAT'S JUST
14 A FICTION. WITH RESPECT -- THAT THAT'S -- THAT THEY
15 HAVE THAT RIGHT, AND THAT'S WHY THE BURGLARY SHOULD
16 COME IN, BECAUSE IT HAS TO DO WITH CONVERSATIONS,
17 PRIOR CONVERSATIONS WITH DR. OZIEL.

18 MOREOVER, FOR MR. CONN TO SAY WE KNOW
19 JOSE MENENDEZ WAS DISAPPOINTED WITH HIS SONS BECAUSE
20 OF THE BURGLARY -- HOW DO WE KNOW THIS? FROM THE
21 ETHER? THERE'S NO WITNESS WHO HAS SO TESTIFIED.

22 IN FACT, WHAT WE KNOW IS THAT THIS
23 FAMILY NEVER TOLD ANYBODY ABOUT THE BURGLARIES; AND
24 THEREFORE, NEVER EXPRESSED TO ANYBODY DISAPPOINTMENT
25 WITH THEIR SONS ABOUT THE BURGLARIES BECAUSE, LIKE
26 EVERY OTHER NEGATIVE THING ABOUT THIS FAMILY, THEY
27 HID IT AND KEPT IT SECRET.

43913

1 MENENDEZ WAS SAYING HE WAS GOING TO DISINHERIT HIS
2 SONS. THE ONLY IDEA THAT ERIK HAD IS WHAT HIS
3 FATHER TOLD HIM. AND WHAT WE KNOW IS HE DIDN'T
4 THREATEN TO DISINHERIT THEM BECAUSE OF THE
5 BURGLARIES. HIS ANGER OVER THE BURGLARY WAS THAT
6 THEY DIDN'T GET AWAY WITH IT; THAT THEY DIDN'T DO IT
7 SMART ENOUGH. THAT WAS THE KIND OF DISCUSSION HE
8 HAD WITH HIM ABOUT THE BURGLARIES. NO MORAL
9 JUDGMENTS ABOUT STEALING.

10 SO I THINK THAT WE'RE PROCEEDING HERE
11 WITH A SERIES OF UNPROVABLE FICTIONS ON THE PART OF
12 THE PROSECUTION, WHILE IGNORING AN ENTIRE HISTORY OF
13 CASES TALKING ABOUT THE DANGER OF ALLOWING IN PRIOR
14 CRIMINAL ACTS AGAINST A DEFENDANT UNLESS IT
15 SPECIFICALLY FITS AN EXCEPTION TO THE PROHIBITION
16 AGAINST DOING SO AND IN ORDER TO ILLUMINATE THE
17 RELATIONSHIP BETWEEN THE PEOPLE INVOLVED IN THE
18 CASE. AND THERE DOES NOT SEEM TO BE JUSTIFICATION
19 WHEN THIS COURT HAS SEVERELY LIMITED THE KIND OF
20 EVIDENCE THAT THE DEFENSE IS ALLOWED TO PUT IN IN
21 THIS CASE TO TOTALLY ILLUMINATE THE RELATIONSHIP
22 BETWEEN THE DEFENDANTS AND THE DECEDENTS BY

23 PROHIBITING US ON THE BASIS OF REMOTENESS, OR ON THE
24 COURT'S ASSESSMENT OF RELEVANCE, FROM INTRODUCING
25 ALL KINDS OF EVIDENCE THAT CONSTITUTES PSYCHOLOGICAL
26 MALTREATMENT IN THIS CASE OR TRAINING -- HARSH AND
27 CRUEL TRAINING IN THIS CASE.

28 SO TO ALLOW THE PEOPLE FREE REIGN TO

43914

1 BRING IN PRIOR CRIMINAL ACTIVITY UNDER THE RUBRIC OF
2 EXPLORING THE RELATIONSHIP AND NOT TO LET US BRING
3 IN TREATMENT BY THE PARENTS TOWARDS THE DEFENDANTS,
4 YOU KNOW, IS JUST UTTERLY UNFAIR.

5 MR. GESSLER: YOUR HONOR, UNFORTUNATELY, MY
6 FEARS THAT I EXPRESSED EARLIER UNDER 352 REGARDING
7 THE USE OF THIS, DIRECTLY OR INDIRECTLY AGAINST LYLE
8 MENENDEZ, HAVE BEEN BROUGHT TO REALITY BY THE
9 PROSECUTOR'S ARGUMENT.

10 TWICE HE SAID: FIRST, IT'S IMPORTANT AS
11 TO WHY THE DEFENDANTS WERE THERE IN THE FIRST
12 PLACE. THE DEFENDANTS WERE NOT THERE IN THE FIRST
13 PLACE. DEFENDANT ERIK MENENDEZ WAS THERE IN THE
14 FIRST PLACE. DEFENDANT ERIK MENENDEZ IS THE ONE WHO
15 CONFESSED TO DR. OZIEL; AND DEFENDANT LYLE MENENDEZ
16 ONLY CAME ON THE SCENE AFTER THIS HAD HAPPENED AT
17 THE REQUEST OF DR. OZIEL. HE WAS NOT THERE

18 CONCERNING ANY BURGLARIES BY ERIK OR ANYONE ELSE.

19 AND THE SECOND ASPECT WAS THAT HE SAID
20 THAT THIS SHOWS THE RELATIONSHIP BETWEEN THE
21 DEFENDANTS, IN THE PLURAL, AND THEIR FATHER.

22 IN REALITY, THE ONLY PASSAGE THAT I CAN
23 RECALL FROM THIS PARTICULAR TAPE IS AT PAGE 15, AND
24 IT SAID -- LYLE MENENDEZ BROUGHT UP THE ISSUE BY
25 SAYING OH, SURE. HE EVEN TOLD ERIK THAT THE
26 CALABASAS ISSUE AND THE WAY HE HANDLED IT -- HE
27 HANDLED IT TERRIBLY. IF HE WERE IN CHARGE OF IT, HE
28 COULD HAVE HANDLED IT WAY BETTER THAN ERIK.

43915

1 NOW, THIS HAS NOTHING TO DO WITH SAYING
2 HE COULD HAVE HANDLED IT BETTER THAN US OR HANDLED
3 IT BETTER THAN ME, OR HE COULD HAVE DONE A BETTER
4 JOB. IT'S, AGAIN, STRICTLY BETWEEN, IN THAT
5 CONVERSATION, LYLE MENENDEZ RELATING HIS FATHER'S
6 VIEWS TOWARD ERIK MENENDEZ ON THIS ISSUE.

7 SO I'M VERY CONCERNED NOW, HAVING HEARD
8 THE PEOPLE'S ARGUMENT, THAT THAT'S EXACTLY WHAT THEY
9 WANT TO DO, IS TO LUMP THESE PARTICULAR INCIDENTS
10 INTO PROOF AGAINST BOTH LYLE AND ERIK MENENDEZ, AND
11 I THINK UNJUSTLY SO.

12 THE COURT: WHAT IS THE PEOPLE'S RESPONSE,

13 NUMBER ONE, TO THE DEFENSE OBSERVATION THAT THE
14 SESSIONS WITH DR. OZIEL BEFORE OCTOBER 31ST ARE
15 STILL PRIVILEGED; AND SECONDLY, THE OBJECTIONS OF
16 LYLE MENENDEZ?

17 MR. CONN: YES. WELL, I WOULD SUBMIT THAT
18 THE SESSIONS BEFORE ARE NO LONGER PRIVILEGED. THE
19 DEFENSE THEMSELVES, DURING THEIR EXAMINATION OF THIS
20 WITNESS, ASKED THE WITNESS ABOUT THE NATURE OF THE
21 RELATIONSHIP BETWEEN HIMSELF AND DR. OZIEL. THIS IS
22 SOMETHING THEY ELICITED. THIS IS SOMETHING THAT
23 THEY BROUGHT OUT. NOW THAT THEY BROUGHT THAT OUT,
24 THEY'RE NOW TAKING THE POSITION THAT WE CANNOT ASK
25 FOLLOW-UP QUESTIONS CONCERNING THE NATURE OF THAT
26 RELATIONSHIP. I THINK THAT IT IS IMPOSSIBLE TO
27 CONDUCT CROSS-EXAMINATION INTO THE NATURE OF THE
28 RELATIONSHIP BETWEEN ERIK MENENDEZ AND DR. OZIEL IN

43916

1 RESPONSE TO QUESTIONS ASKED BY THE DEFENSE UNLESS WE
2 ARE PERMITTED TO ASK THE DEFENDANT WHY HE WAS THERE
3 IN THE FIRST PLACE.

4 THE JURY CANNOT APPROPRIATELY EVALUATE
5 WHETHER OR NOT THE ALLEGATIONS THAT HE IS MAKING
6 CONCERNING THAT RELATIONSHIP AND HIS FEELINGS
7 TOWARDS DR. OZIEL AND THE RELATIONSHIP OF TRUST

8 BETWEEN THEM AND THE FACT THE RELATIONSHIP EXISTED --
9 THEY CANNOT DECIDE THIS IN A VACUUM. THE QUESTIONS
10 CONCERNING LYLE MENENDEZ -- THE PEOPLE SHOULD BE
11 PERMITTED AT THIS POINT TO INQUIRE AS TO LYLE
12 MENENDEZ' PRESENCE AT EACH OF THE SESSIONS THAT WERE
13 CONDUCTED; THAT IS, THE OCTOBER 31ST SESSION AND THE
14 NOVEMBER --

15 THE COURT: I'M TALKING ABOUT THE OBJECTION
16 BY LYLE MENENDEZ TO REFERENCES TO ANY PARTICIPATION
17 HE HAD IN THE BURGLARIES IN CALABASAS.

18 MR. CONN: WELL, I THINK THAT THE BURGLARIES
19 ARE, IN FACT, RELEVANT TO ESTABLISH THE NATURE OF
20 THE RELATIONSHIP BETWEEN JOSE MENENDEZ AND THE
21 DEFENDANTS, ONCE AGAIN, AND THE NATURE OF THE
22 RELATIONSHIP BETWEEN DR. OZIEL AND THE DEFENDANTS.
23 AND JUST AS ERIK MENENDEZ COULD BE CROSS-EXAMINED ON
24 ANY MATTER WHICH HAPPENS TO IMPLICATE LYLE MENENDEZ,
25 I COULD QUESTION HIM ABOUT THE EVENT THAT HAPPENED
26 ON TUESDAY PRECEDING THE KILLING. AND SOME OF THAT
27 IS GOING TO IMPLICATE LYLE MENENDEZ. I CAN QUESTION
28 HIM ABOUT EVENTS THAT HAPPENED ON WEDNESDAY AND

43917

1 THURSDAY AND FRIDAY AND ALL OF THOSE.

2 THE COURT: WE'RE TALKING ABOUT REFERENCES TO

3 ANOTHER CRIME THAT HAS OCCURRED SEVERAL YEARS
4 BEFORE, A COUPLE OF YEARS BEFORE. SO WE'RE NOT
5 TALKING ABOUT EVIDENCE RELATING TO THIS CRIME.

6 MR. CONN: OKAY. WELL, THE ULTIMATE ISSUE IS
7 DOES IT BEAR UPON THE FACTS OF THE CASE BEFORE THE
8 JURY, AND TO WHAT EXTENT DOES IT BEAR UPON THE FACTS
9 OF THE CASE BEFORE THE JURY? IS IT, IN FACT,
10 RELEVANT, AND IS EVIDENCE CODE SECTION 352 SATISFIED
11 BY THAT INQUIRY? AND I WOULD SUBMIT THAT IT IS
12 RELEVANT, AND EVIDENCE CODE SECTION 352 IS
13 SATISFIED, BECAUSE IT EXPLAINS TO THE JURY THE
14 REASONS WHY JOSE MENENDEZ WAS DISSATISFIED WITH HIS
15 SONS.

16 IT'S MY UNDERSTANDING, FROM READING THE
17 TRANSCRIPT, THAT THE DEFENDANT, LYLE MENENDEZ, WAS,
18 IN FACT, INVOLVED IN THE BURGLARIES. THIS IS
19 SOMETHING THAT ERIK MENENDEZ TESTIFIED TO IN THE
20 FIRST TRIAL AND THIS IS SOMETHING THAT THE PEOPLE
21 SHOULD BE ABLE TO BRING OUT BECAUSE IT RELATES TO
22 THE TESTIMONY OF ERIK MENENDEZ. IT IS RELEVANT TO
23 HIS TESTIMONY. IT SATISFIES EVIDENCE CODE SECTION
24 350 AND 352 AS FAR AS ERIK MENENDEZ IS CONCERNED.
25 BUT IT ALSO SATISFIES EVIDENCE CODE SECTION 350 AND
26 352 AS FAR AS LYLE MENENDEZ IS CONCERNED, BECAUSE IT
27 RELATES TO HIS RELATIONSHIP WITH HIS FATHER OF WHICH
28 ERIK MENENDEZ HAD PERSONAL KNOWLEDGE. SO JUST

1 BECAUSE IT RELATES TO A PRIOR CRIME, THAT IS NOT A
2 BASIS TO EXCLUDE IT. THE EVIDENCE CODE SPECIFICALLY
3 PROVIDES THAT EVIDENCE OF PRIOR MISCONDUCT IS
4 ADMISSIBLE UNLESS IT IS OFFERED SOLELY TO SHOW
5 PROPENSITY. HERE WE ARE NOT OFFERING EVIDENCE OF
6 PRIOR CRIMES FOR THE PURPOSE OF SHOWING PROPENSITY.
7 WE ARE NOT OFFERING IT TO IMPEACH LYLE MENENDEZ. WE
8 ARE OFFERING IT ONLY FOR THE PURPOSE OF SHOWING THE
9 RELATIONSHIP BETWEEN JOSE MENENDEZ AND LYLE
10 MENENDEZ. AND IT WOULD TEND TO EXPLAIN WHY JOSE
11 MENENDEZ WAS SO UPSET WITH LYLE MENENDEZ AND WHY HE
12 WANTED TO CUT HIM OUT OF THE WILL.

13 SO FOR THAT REASON, I BELIEVE THAT 350
14 AND 352 IS SATISFIED, AND IT IS ADMISSIBLE AGAINST
15 BOTH DEFENDANTS.

16 THE COURT: OKAY. ANY FURTHER RESPONSE?

17 MR. GESSLER: WE'LL SUBMIT IT.

18 THE COURT: ALL RIGHT. FIRST OF ALL, AS
19 OBSERVED, THIS EVIDENCE DID COME IN IN THE FIRST
20 TRIAL. SO WHAT WE'RE DOING NOW IS LISTENING TO AND
21 EVALUATING THE DEFENSE OBJECTION TO IT.

22 THE DEFENSE POSITION, BASICALLY, IS THAT
23 THE COURT WAS WRONG IN THE FIRST TRIAL; AND
24 SECONDLY, THAT THE CIRCUMSTANCES ARE DIFFERENT THIS
25 TIME AROUND, AND THAT THE ISSUES ARE DIFFERENT;
26 THEREFORE, THE EVIDENCE SHOULDN'T COME IN.

27 JUST SOME PRELIMINARY REMARKS. THE
28 COURT, FIRST OF ALL, IS EVALUATING AND WEIGHING THIS

43919

1 OFFER OF EVIDENCE UNDER SECTION 352 OF THE EVIDENCE
2 CODE, IN EVALUATING THE PROBATIVE VALUE OF THE
3 EVIDENCE AGAINST ITS POTENTIAL FOR PREJUDICE OR FOR
4 UNDUE CONSUMPTION OF TIME OR POTENTIAL TO CONFUSE
5 ISSUES, AS WELL AS UNDER SECTION 1101 OF THE
6 EVIDENCE CODE; AND THERE HAVE BEEN REMARKS MADE THAT
7 THE COURT HAS OVERLY RESTRICTED THE DEFENSE IN ITS
8 PRESENTATION OF EVIDENCE OF THE CHARACTER OF THE
9 DECEDENTS IN THIS CASE.

10 AND MY RESPONSE IS THAT I'M REMINDED,
11 REALLY, OF THE LAWYERLY LAMENT OF "WHAT HAVE YOU
12 DONE FOR ME IN THE LAST FIVE MINUTES," BASICALLY,
13 BECAUSE YOU HAVEN'T BEEN LISTENING CAREFULLY TO THE
14 EXAMINATION OF ERIK MENENDEZ SO FAR IF YOU THINK THE
15 COURT HAS LIMITED THE EXTENT OF THE -- OR OVERLY
16 LIMITED OR SEVERELY LIMITED THE EXTENT OF THE
17 NEGATIVE EVIDENCE OFFERED RELATING TO THE DECEDENTS
18 IN THIS CASE. THERE HAS BEEN A SUBSTANTIAL AMOUNT
19 OF EVIDENCE OFFERED SO FAR THAT HAS BEEN PRESENTED
20 AND THE COURT HAS REVIEWED THAT OFFER OF EVIDENCE ON
21 THE BASIS OF ITS PROBATIVE VALUE. AFTER OBJECTIONS

22 WERE MADE BY THE PROSECUTION, THE COURT PERMITTED
23 SOME OF THAT EVIDENCE IN OVER -- MUCH OF THE EVIDENCE
24 IN OVER OBJECTION; AND, QUITE FRANKLY, AFTER THE
25 EVIDENCE WAS RECEIVED, I HAD VERY GREAT CONCERN
26 ABOUT THE CORRECTNESS OF THE DECISION, BECAUSE
27 HAVING HEARD IT, HAVING HEARD THE SPECIFIC ANSWER TO
28 SOME OF THOSE QUESTIONS, IT DIDN'T MEET THE OFFER OF

43920

1 PROOF AS TO WHY THE EVIDENCE WAS OFFERED AS
2 RELEVANT. BUT IT'S THERE. IT'S BEEN OFFERED AND
3 THE COURT IS SATISFIED THAT OVERALL THE RULINGS WERE
4 CORRECT, AND THAT THE DEFENSE HAS QUITE ADEQUATELY
5 SO FAR -- AND I'M SURE THERE'S MORE TO COME -- THE
6 DEFENSE HAS BEEN PERMITTED TO PUT ON THIS EVIDENCE
7 FOR A PARTICULAR PURPOSE.

8 THAT PURPOSE IS TO ESTABLISH, IF THE
9 DEFENSE CAN DO SO, A STATE OF MIND OF ACTUAL FEAR AT
10 THE TIME THE KILLING OCCURRED. IT WAS LIMITED FOR
11 THAT PURPOSE, OFFERED FOR THAT PURPOSE. THAT WAS
12 THE REASON FOR IT BEING RECEIVED. NORMALLY THAT
13 EVIDENCE WOULDN'T BE RECEIVED IN THIS TRIAL, BUT FOR
14 THE FACT THAT THERE WAS A PARTICULAR PURPOSE FOR IT
15 BEING RECEIVED. AND NOW WE'RE TALKING ABOUT ANOTHER
16 PARTICULAR PIECE OF EVIDENCE THAT IS BEING OFFERED

17 FOR A PARTICULAR PURPOSE. NORMALLY, THE DEFENSE IS
18 CORRECT. EVIDENCE OF OTHER CRIMES IS NOT RECEIVED
19 AND SHOULDN'T BE RECEIVED UNLESS THERE'S A REAL GOOD
20 REASON FOR IT TO BE RECEIVED. AND THAT IS WHAT
21 WE'VE BEEN HEARING DEBATED HERE, AS TO WHETHER OR
22 NOT THERE IS A REALLY GOOD REASON WHY THIS EVIDENCE
23 SHOULD BE RECEIVED. IT WAS RECEIVED, AS I SAID,
24 DURING THE FIRST TRIAL. AND WHEN I TALK ABOUT A
25 REALLY GOOD REASON, I'M TALKING ABOUT ITS PROBATIVE
26 VALUE AND THEN OF WEIGHING IT AGAINST THE POTENTIAL
27 FOR PREJUDICE AND POTENTIAL TO CONFUSE THE ISSUES IN
28 THIS PARTICULAR CASE.

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1 AS FAR AS THE PROBATIVE VALUE, NUMBER
2 ONE, AS IT DID IN THE FIRST TRIAL, IT DOES EXPLAIN
3 THE NATURE OF THE RELATIONSHIP OF THE DEFENDANT AND
4 HIS FATHER.

5 MS. ABRAMSON: HOW DOES --

6 THE COURT: I'M RULING RIGHT NOW, ACTUALLY,
7 NOT ASKING FOR ANY COMMENT.

8 MS. ABRAMSON: I JUST WANTED TO --

9 THE COURT: NO, YOU'RE NOT. I'M JUST MAKING
10 MY RULING. I'M MAKING MY RULING, AND THE RULING IS
11 THAT IT TENDS TO EXPLAIN THE RELATIONSHIP OF THE

12 DEFENDANT AND HIS FATHER. THE DEFENSE HAS SOUGHT TO
13 INTRODUCE A PARTICULAR REASON OR MOTIVATION FOR THAT
14 RELATIONSHIP, CERTAIN FOUNDATION FOR THAT
15 RELATIONSHIP; AND THIS CERTAINLY IS A RELEVANT PART
16 OF THAT RELATIONSHIP AND THE FATHER'S REACTION TO
17 IT, AS EXPLAINED BY LYLE MENENDEZ AND ADOPTED BY
18 ERIK MENENDEZ ON THE DECEMBER 11TH TAPE, IS RELEVANT
19 EVIDENCE THAT THE JURY HAS A RIGHT TO EVALUATE IN
20 DETERMINING THE CREDIBILITY OF ERIK MENENDEZ AS TO
21 WHY HIS FATHER FELT THE WAY HE DID ABOUT HIM, AND
22 WHY HIS FATHER REACTED THE WAY HE DID TO HIM AND
23 VARIOUS OF THE INCIDENTS THAT HAVE BEEN DESCRIBED,
24 AS WELL AS THE ISSUE OF DISINHERITANCE.

25 THE JURY HAS A RIGHT TO MAKE THAT
26 DECISION AND NOT RELY UPON THE ORAL ARGUMENT OF
27 COUNSEL, BUT THE EVALUATION OF THE TOTALITY OF THE
28 EVIDENCE THAT WILL BE PRESENTED.

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1 ALSO, THE INITIAL CONTACT WITH OZIEL --
2 NOT THE CONTENT OF COMMUNICATIONS WITH OZIEL, BUT
3 WHY IT WAS THAT OZIEL WAS SEEING ERIK MENENDEZ, THAT
4 WAS BECAUSE OF THE PROBATION GRANT IN JUVENILE
5 COURT, AS A RESULT OF THE ADJUDICATION RELATING TO
6 THE CALABASAS BURGLARY.

7 MS. ABRAMSON: THAT'S INACCURATE, YOUR HONOR.

8 THAT'S NOT WHY IT WAS. THERE WAS NO PROBATION GRANT
9 REQUIRING THAT HE SEE --

10 THE COURT: IT WAS CERTAINLY RELATED TO IT.

11 MS. ABRAMSON: HE WAS REFERRED --

12 THE COURT: THE POINT OF THE OVERALL
13 EVALUATION, WHETHER IT WAS DONE PRIOR TO THE COURT
14 DISPOSITION HEARING, OR SUBSEQUENT TO IT, IT WAS
15 BECAUSE OF THAT, AND TO EITHER SUPPORT A
16 PRESENTATION TO THE JUVENILE COURT IN HOPES OF
17 GETTING LENIENCY, OR AS PART OF THE PROBATIONARY
18 GRANT. IT CERTAINLY WAS INTERTWINED WITH THE
19 JUVENILE ADJUDICATION.

20 AS FAR AS THE POTENTIAL PREJUDICE, YES,
21 THERE IS SOME PREJUDICE INVOLVED IN THE JURY HEARING
22 THAT THE DEFENDANT HAD BEEN INVOLVED IN A BURGLARY
23 AS A JUVENILE. BUT IN THE OVERALL BALANCING OF
24 THESE MATTERS, THE COURT FINDS THAT THE PROBATIVE
25 VALUE OF THIS EVIDENCE SUBSTANTIALLY OUTWEIGHS ANY
26 POTENTIAL PREJUDICE OR CONFUSION OF ISSUES.

27 AS FAR AS LYLE MENENDEZ IS CONCERNED,
28 HIS ARGUMENT IS THAT HE HASN'T TAKEN THE WITNESS

1 STAND AND HE HASN'T OPENED THIS UP. THE ONLY WAY

2 IT'S BEEN OPENED UP IS THROUGH THE TESTIMONY OF THE
3 CODEFENDANT EXPLAINING THE RELATIONSHIP OF THE
4 DEFENDANTS TO THE FATHER, AND ALSO BY THE PLAYING OF
5 THE DECEMBER 11TH TAPE. THAT'S EVIDENCE. THAT'S
6 EVIDENCE THAT'S BEEN RECEIVED. AND WHETHER IT WAS
7 OVER THE DEFENSE OBJECTION OR NOT, IT'S EVIDENCE
8 THAT IS PART OF THE OVERALL PICTURE HERE THAT WOULD
9 HAVE TO BE EXPLORED DURING CROSS-EXAMINATION. THIS
10 IS SOMETHING THAT THE DEFENSE HASN'T TOUCHED ON IN
11 ITS DIRECT EXAMINATION OF ERIK MENENDEZ SO FAR IN
12 REGARD TO THAT PARTICULAR REFERENCE BY LYLE MENENDEZ
13 ADOPTED BY ERIK MENENDEZ.

14 NOW, WHETHER OR NOT THE DEFENSE HAD JUST
15 INTENDED TO ABANDON THAT ALTOGETHER, I DON'T KNOW.

16 DID YOU EXPECT, MR. LEVIN, THAT THE
17 PEOPLE WOULDN'T ASK ANY QUESTIONS ABOUT THAT?

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

19 THE COURT: THE CALABASAS REFERENCE.

20 MR. LEVIN: YES. THAT WAS OUR BELIEF. OUR
21 STAUNCH BELIEF WAS THAT THIS EVIDENCE WAS
22 INADMISSIBLE.

23 I THINK THERE'S ANOTHER PRONG TO THIS.
24 YOU'RE REFERRING TO THE BURGLARY, I TAKE IT?

25 THE COURT: THE CALABASAS REFERENCE.

26 MS. ABRAMSON: JUST A MOMENT.

27 (ATTORNEYS ABRAMSON AND LEVIN

28 CONFER SOTTO VOCE.)

1 MR. LEVIN: I REALLY DIDN'T KNOW WHAT THE
2 PEOPLE'S INTENTIONS WERE CONCERNING WHAT IS ON THE
3 TAPE. IT IS NOT MY CLIENT SPEAKING, AND I AM
4 UNCLEAR AS TO WHAT LYLE MENENDEZ WAS TALKING ABOUT,
5 WHETHER HE WAS TALKING ABOUT THE GANG INCIDENT,
6 WHETHER HIS -- WHEN HE WAS TALKING ABOUT HIS
7 FATHER'S REACTION, WAS THAT A COMBINATION OF FACTORS
8 THAT INCLUDED THE FACT THAT HIS FATHER HAD BEEN
9 CAUGHT CHEATING ON HIS WIFE AND THAT THERE WAS A LOT
10 OF PROBLEMS WITH HER? I JUST COULDN'T TELL FROM
11 LISTENING TO THE TAPE. I DID NOT DRAW ANY KIND OF
12 AN INFERENCE THAT WHAT WAS DISCUSSED, WHAT LIMITED
13 DISCUSSION THERE WAS IN THE TAPE, REFERRED TO THE
14 CALABASAS BURGLARIES.

15 BUT I THINK THERE'S AN ADDITIONAL
16 INQUIRY THAT THE DEFENSE MUST REQUEST OF THE COURT,
17 AND THAT CONCERNS THE SCOPE OF THE ALLOWABLE
18 INFORMATION THAT THE PROSECUTION COULD GO INTO
19 CONCERNING THIS INCIDENT. CAN THEY TALK ABOUT THE
20 FACTS OF IT? CAN THEY TALK ABOUT THE DETAILS ABOUT
21 IT? CAN THEY TALK ABOUT THERE WAS A CONVICTION?
22 CAN THEY TALK ABOUT HOW MUCH MONEY WAS TAKEN? THERE
23 HAS TO BE SOME POINT AT WHICH -- EVEN A CASE WHERE
24 THESE THINGS ARE ALLOWED, THEY'RE VERY LIMITED IN
25 SCOPE AS IT RELATES TO THE RELEVANCE THAT THE COURT

26 FINDS THE EVIDENCE HAS. AND BEFORE I CAN PROCEED
27 WITH MR. MENENDEZ AND BRINGING IT OUT, I NEED -- I AM
28 OBJECTING NOT ONLY TO THE INTRODUCTION OF THE

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1 EVIDENCE, BUT I AM OBJECTING TO THE SCOPE OF THIS
2 PARTICULAR EVIDENCE AS BEING AS LIMITED AS POSSIBLE
3 TO THE PURPOSE FOR WHICH THE COURT FINDS IT
4 RELEVANT.

5 THE COURT: ALL RIGHT. LET ME FINISH OFF
6 WITH MY REMARKS IN RELATIONSHIP TO LYLE MENENDEZ AT
7 THIS POINT.

8 THERE HAS BEEN REFERENCE MADE TO THE
9 FACT THAT ERIK MENENDEZ IS NOT JUST A WITNESS FOR
10 ERIK MENENDEZ, BUT IS A WITNESS FOR LYLE MENENDEZ AS
11 WELL. THAT'S BEEN STATED BY THE DEFENSE FOR LYLE
12 MENENDEZ. IT SEEMS TO ME THAT THE PROBATIVE -- AND
13 HE HAS BEEN TESTIFYING ABOUT THE RELATIONSHIP OF
14 LYLE MENENDEZ TO HIS FATHER AND NOT JUST OF ERIK
15 MENENDEZ TO HIS FATHER. IT'S BEEN RELATED PRIMARILY
16 TO DRAWING DISTINCTIONS BETWEEN THE TWO, BUT BY
17 DRAWING THOSE DISTINCTIONS IT HAS SET FORTH THE
18 RELATIONSHIP AND MOTIVATIONS OF ONE INDIVIDUAL IN
19 VIEW OF THE OTHER.

20 SO, AGAIN, IT SEEMS TO ME THAT THE

21 PROBATIVE VALUE OF THE EVIDENCE AS TO LYLE MENENDEZ
22 SUBSTANTIALLY OUTWEIGHS ANY POTENTIAL PREJUDICE AS
23 WELL, AND THAT REFERENCE -- THE FACT THAT HE IS
24 MAKING REFERENCE ON THIS TAPE TO THIS PARTICULAR
25 INCIDENT, AND MR. LEVIN'S INQUIRY AS TO WHAT IT WAS
26 LYLE MENENDEZ MEANT BY THAT, THAT'S CERTAINLY AN
27 APPROPRIATE INQUIRY TO BE MADE OF ERIK MENENDEZ;
28 WHETHER IT'S DONE BY YOU OR BY THE PROSECUTOR,

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1 THAT'S FOR YOU TO DECIDE. BUT I THINK THE PROBATIVE
2 VALUE OF THE EVIDENCE EXPLAINING THE RELATIONSHIPS
3 AND THE NATURE OF LYLE MENENDEZ' RELATIONSHIP WITH
4 OZIEL AS WELL, THE PROBATIVE VALUE SUBSTANTIALLY
5 OUTWEIGHS ANY POTENTIAL PREJUDICE.

6 AS FAR AS THE SCOPE OF THE INQUIRY INTO
7 THE BURGLARIES, THAT WAS DISCUSSED SEVERAL TIMES
8 DURING THE FIRST TRIAL. AT ONE POINT THERE WAS A
9 STIPULATION ARRIVED AT BY COUNSEL. I DON'T HAVE A
10 CLEAR RECOLLECTION OF THE SPECIFICS OF THAT
11 STIPULATION, BUT THERE WAS SUCH. IT'S IN THE
12 RECORD. I SUPPOSE YOU HAVE IT. IF YOU WANT TO
13 BRING THAT TO MY ATTENTION AND REFRESH MY
14 RECOLLECTION AS TO WHAT IT WAS THAT WAS BROUGHT OUT
15 IN THE FIRST PROCEEDING AS TO WHETHER OR NOT THAT

16 SHOULD AGAIN BE THE GUIDELINES FOR THIS EVIDENCE.

17 MR. GESSLER.

18 MR. GESSLER: I'M NOT ASKING WHAT THE COURT'S
19 DONE FOR ME IN THE LAST FIVE MINUTES. TEN MINUTES
20 IS GOOD ENOUGH.

21 THE COURT: OKAY.

22 MR. GESSLER: BUT THIS IS A VERY IMPORTANT
23 ISSUE.

24 THE COURT: YES. CERTAINLY.

25 MR. GESSLER: I DON'T WANT TO BEAT IT TO
26 DEATH, BUT THE COURT MENTIONED THAT IN THE TRIAL THE
27 BURGLARY EVIDENCE DID COME IN. THAT IS TRUE, BUT MY
28 RECOLLECTION IS, IN THE FIRST TRIAL IT CAME IN

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1 BEFORE ERIK'S JURY ONLY, AND VERY LATE IN THE
2 PROCEEDING; AND I BELIEVE IT CAME INTO LYLE'S JURY
3 ONLY AFTER DR. CONTE TESTIFIED, OR AS HE WAS ON THE
4 STAND.

5 THE COURT: YES. I RECALL THAT.

6 MR. GESSLER: IN THE FIRST TRIAL, UP TO THAT
7 POINT, LYLE MENENDEZ' OBJECTION BEFORE HIS JURY TO
8 THE BURGLARY EVIDENCE HAD BEEN SUSTAINED.

9 I REALIZE THIS IS THIS TRIAL; THAT WAS
10 THEN, THIS IS NOW, BUT IT DOES SHOW THE FLEXIBILITY

11 THAT CAN BE AFFORDED TO THE PROSECUTION WHEN YOU
12 HAVE TWO TRIALS WHEN THEY WANT TO GET CERTAIN
13 EVIDENCE IN WITHOUT HURTING THE SECOND DEFENDANT.
14 GIVEN THE COURT'S RULINGS, I THEN RENEW
15 MY MOTION FOR A SEVERANCE FOR LYLE MENENDEZ FOR A
16 SEPARATE JURY TRIAL IN WHICH EVIDENCE WILL NOT COME
17 FORWARD BASED UPON BRUTON, THE 6TH AMENDMENT, THE
18 8TH AMENDMENT AND THE 14TH AMENDMENT RIGHTS, AS WELL
19 AS STATE LAW, ARANDA, AND SO FORTH; THAT ALTHOUGH
20 IT'S NOT A STATEMENT NECESSARILY OF ANOTHER
21 DEFENDANT, THE SAME DUE PROCESS RULES, I THINK, AS
22 THE COURT HAS SAID, APPLY WHEN WE HAVE A JOINT TRIAL
23 OVER OUR OWN OBJECTION.

24 AND SECONDLY, IF ANY SUCH EVIDENCE IS
25 GOING TO COME IN, I WOULD ASK TIME THAT WE CAN FIND
26 THAT STIPULATION AND LOOK AT THAT AS TO WHETHER IT
27 COULD NOT -- IT CERTAINLY WOULD NOT TAKE AWAY MY
28 MOTION OR ANYTHING I'VE SAID UNDER 352 -- BUT IF

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1 DAMAGE IS GOING TO COME, HOPEFULLY OBVIATE THE
2 DAMAGE TO THE EXTENT THAT WE CAN.
3 THE COURT: I DON'T THINK IT WAS OFFERED AS
4 TO YOUR CLIENT. I THINK IT WAS ONLY OFFERED AS TO
5 THE CODEFENDANT.

6 MS. ABRAMSON: I DON'T THINK SO. I HAVE

7 FOUND IT. WOULD --

8 MR. GESSLER: I'D ALSO ASK THAT A LIMITING

9 INSTRUCTION BE DEVISED AS TO HOW THIS EVIDENCE IS

10 COMING IN, IN WHATEVER FORM IT DOES COME IN.

11 THE COURT: I'D CERTAINLY BE MORE THAN HAPPY

12 TO DO THAT. I DON'T RECALL IF WE DID THAT IN THE

13 FIRST TRIAL, IF THERE WAS A LIMITING INSTRUCTION,

14 QUITE FRANKLY.

15 MS. ABRAMSON: TWO DIFFERENT JURIES. IT

16 DOESN'T MATTER.

17 THE COURT: IT STILL WOULD BE A LIMITING

18 INSTRUCTION AS TO ITS USE BY THE JURY; THOUGH I

19 DON'T RECALL IF THERE WAS OR NOT. WE CAN REVIEW THE

20 INSTRUCTIONS.

21 WHAT IS THE PEOPLE'S POSITION AS TO HOW

22 FAR YOU CAN EXPLORE THIS BURGLARY ISSUE SINCE THE

23 FACTS OF THE BURGLARY AND THE DETAILS OF IT AREN'T

24 SIGNIFICANT, ONLY AS IT RELATES TO THE RELATIONSHIP --

25 OR AS TO OZIEL AND HIS PARTICIPATION IN THIS WHOLE

26 THING?

27 MR. CONN: I WASN'T NECESSARILY INTENDING TO

28 GET INTO ALL OF THE DETAILS. I WASN'T INTENDING TO

1 GET INTO ITEMIZATION OF THE LOSS FROM EACH BURGLARY;
2 HOWEVER, I THINK THAT THE NATURE OF THE INQUIRY IS
3 GOING TO BE DEPENDENT SOMEWHAT UPON THE
4 CROSS-EXAMINATION AND THE ANSWERS GIVEN BY THE
5 DEFENDANT CONCERNING THE NATURE OF THE INCIDENT.

6 WE KNOW NOW THAT THE DEFENDANT WAS
7 TRYING TO MINIMIZE THIS INCIDENT IN FRONT OF THIS
8 JURY, AND HE WAS TRYING TO MAKE IT SEEM AS IF IT WAS
9 REALLY BECAUSE I WAS PLAYING SO BAD TENNIS THAT MY
10 FATHER WAS GOING TO DISINHERIT ME. THAT IS WHAT HE
11 HAD TESTIFIED TO HERE IN COURT.

12 SO I THINK THE FACT THAT THERE WAS SUCH
13 A LOSS AS WAS INVOLVED IN THIS CASE AND THE FACT
14 THAT THERE WAS AN ARREST AND A PROSECUTION FOR THESE
15 INCIDENTS, IS SOMETHING THAT MUST BE BROUGHT OUT TO
16 THE JURY SO THAT THEY GET A SENSE OF THE
17 SIGNIFICANCE OF THE INCIDENT.

18 THE COURT: I THINK ALL THAT WAS PART OF THE
19 STIPULATION, IF I'M NOT MISTAKEN, AS TO THE AMOUNT
20 OF LOSS AND THE TYPE OF PROPERTY TAKEN, AND THAT
21 THERE WAS AN ADJUDICATION.

22 MS. ABRAMSON: THERE WAS, JUDGE.

23 THE COURT: OR A JUVENILE COURT PROCEEDING.
24 IT'S MY RECOLLECTION THERE WAS.

25 I'LL LET YOU FIND IT AND WE CAN RESUME
26 THIS AT 1:30.

27 MR. CONN: OKAY.

28 THE COURT: BUT MY RECOLLECTION IS THAT WE

1 WENT THROUGH ALL OF THIS IN THE FIRST TRIAL AND
2 FINALLY WORKED IT OUT TO THE POINT OF A STIPULATION
3 AS TO WHAT THE FACTS WERE THAT COULD BE BROUGHT
4 BEFORE THE JURY.

5 IN REGARDS TO MR. GESSLER'S REMARKS AS
6 FAR AS THE TIMING OF THINGS IN THE FIRST TRIAL AND
7 WHY THIS TRIAL WOULD BE DIFFERENT THAN THE FIRST
8 TRIAL, AGAIN, I HARKEN BACK TO MY EARLY REMARKS THAT
9 THIS CASE IS DIFFERENT BECAUSE THE DECEMBER 11TH
10 TAPE IS PART OF THE EVIDENCE OFFERED AT THE EARLY
11 STAGE OF THE PROSECUTION, RATHER THAN BEING
12 INTRODUCED ONLY AFTER THE DEFENSE HAD RESTED IN THE
13 FIRST TRIAL, OR ALMOST AT THE TIME THEY RESTED, WHEN
14 THE DEFENSE OFFERED IT.

15 MR. GESSLER: ONE FURTHER THING. I DO NEED A
16 RULING ON MY SEVERANCE MOTION UNDER THE STATE AND
17 FEDERAL CONSTITUTION.

18 THE COURT: THAT MOTION IS DENIED.

19 MR. GESSLER: THANK YOU, YOUR HONOR.

20 THE COURT: I JUST WANT TO LET THE JURY GO IF
21 THEY'RE READY.

22 MS. ABRAMSON: THERE WAS SOME DISCUSSION AT
23 THE LAST TRIAL ABOUT GETTING INTO SPECIFICS AFTER WE

24 HAD A STIPULATION. WITHOUT -- WITHOUT HAVING TO
25 READ ALL THIS STUFF...
26 THE COURT: LET'S FIRST FIND THE STIPULATION.
27 MS. ABRAMSON: VOLUME 103 OCTOBER 8, '93,
28 SOMEWHERE IN THE ZONE OF 17190 ON I THINK -- WE HAVE

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1 A LONG DRAWN OUT HAGGLE ABOUT IT HERE.
2 THE COURT: THERE WAS ACTUALLY A STIPULATION.
3 MS. ABRAMSON: THE STIPULATION WAS EARLIER.
4 THIS IS COMING UP, JUST AS THIS IS NOW, JUST BEFORE
5 THE CROSS-EXAMINATION BY MR. KURIYAMA. AND WE WERE
6 TALKING ABOUT WHETHER THEY COULD GET INTO
7 SPECIFICS. AND THERE'S SOME QUOTATIONS HERE FROM
8 THE STIPULATION, BUT THE WHOLE THING ISN'T LAID OUT
9 HERE.
10 THE COURT: I JUST THOUGHT -- I THOUGHT THE
11 STIPULATION CAME IN LATER AFTER HE TESTIFIED.
12 MS. ABRAMSON: NO. I THINK IT CAME IN
13 EARLIER, BEFORE HE TESTIFIED. SO I'M TRYING -- HE
14 READS PART -- MR. KURIYAMA READS PART OF THE
15 STIPULATION TO MY CLIENT WHEN HE'S ON THE WITNESS
16 STAND. BUT IT SEEMS TO ME WE -- WE MIGHT HAVE MARKED
17 IT AS AN EXHIBIT.
18 THE BAILIFF: THE JURY IS COMING THROUGH.

19 THE COURT: DO THE PEOPLE HAVE ANY REFERENCE
20 TO THAT?
21 MS. NAJERA: NO, YOUR HONOR. WHERE IT WAS
22 DISCUSSED, AND THAT WAS IN VOLUME 108, THE ACTUAL
23 STIPULATION. THE DISCUSSION OF WHAT WAS --
24 MS. ABRAMSON: WHEN WAS IT READ ON THE
25 RECORD?
26 MS. NAJERA: THAT'S THE QUESTION.
27 MR. CONN: WE WILL LOOK FOR IT DURING THE
28 NOON HOUR.

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1 THE COURT: I DON'T THINK IT WAS AN EXHIBIT.
2 I WOULD BE SURPRISED IF IT WAS.
3 LET'S TAKE OUR RECESS UNTIL 1:30. WHEN
4 YOU FIND IT, LET'S REVIEW IT.
5 (AT 12:00 NOON PROCEEDINGS WERE
6 ADJOURNED UNTIL 1:30 P.M. OF THE
7 SAME DAY.)
1 VAN NUYS, CALIFORNIA; THURSDAY, DECEMBER 14, 1995
2 1:45 P.M.
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE
4 (APPEARANCES AS HERETOFORE NOTED.)
5
6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE
8 PRESENCE OF THE JURY:)

9

10 THE COURT: OKAY. WE'RE BACK WITHOUT THE
11 JURY.

12 ARE YOU READY TO CONTINUE?

13 MR. LEVIN: YES, YOUR HONOR. WE HAVE LOCATED
14 THE STIPULATION THAT HAD BEEN ENTERED INTO EVIDENCE
15 IN THE PREVIOUS TRIAL. IT APPEARS AT VOLUME 69,
16 PAGES 11138 TO 11139. I BELIEVE WE CAN SPRING LOOSE
17 AN EXTRA COPY FOR THE COURT.

18 AND BASED ON THE COURT'S RULING, OVER
19 OUR OBJECTION, WE WOULD ASK THAT THIS STIPULATION,
20 AT AN APPROPRIATE TIME, BE READ TO THE JURY.

21 MR. CONN: I DON'T KNOW WHY COUNSEL'S ASKING
22 THAT THE STIPULATION BE READ TO THE JURY WHEN I JUST
23 ADVISED COUNSEL TWO MINUTES AGO THAT WE DON'T CARE
24 TO ENTER INTO THIS STIPULATION. THE PROBLEM WITH
25 THE STIPULATION --

26 THE COURT: LET ME FIRST READ IT SO I CAN
27 REMEMBER EXACTLY WHAT IT SAID.

28 (PAUSE IN PROCEEDINGS.)

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1 THE COURT: OKAY.

2 MR. CONN: YES. WE DON'T CARE TO ENTER INTO
3 THE STIPULATION BECAUSE THE STIPULATION DOESN'T EVEN
4 MAKE REFERENCE TO THE FACT THAT IT'S A RESIDENTIAL
5 BURGLARY. EVEN ERIK MENENDEZ IN HIS TESTIMONY ON
6 CROSS-EXAMINATION REPEATEDLY REFERRED TO THE
7 INCIDENT AS A RESIDENTIAL BURGLARY.

8 I THINK IF THERE IS GOING TO BE A
9 STIPULATION, THE STIPULATION SHOULD INCLUDE THE FACT
10 THAT THE DEFENDANT WAS PROSECUTED -- OF COURSE,
11 THERE'S NO REFERENCE TO A PROSECUTION IN THE
12 STIPULATION EITHER. SO I THINK IF A STIPULATION IS
13 TO BE WORKED OUT, THE STIPULATION WOULD NECESSARILY
14 HAVE TO ENTAIL SOMETHING CONCERNING THE FACT THAT HE
15 WAS PROSECUTED FOR TWO RESIDENTIAL BURGLARIES AND
16 THAT THE ADJUDICATIONS WERE SUSTAINED CONCERNING
17 THOSE PROSECUTIONS.

18 MR. LEVIN: YOUR HONOR, WE ARE ASKING THE
19 COURT TO LIMIT THE SCOPE, WITH RESPECT TO THE
20 INTRODUCTION OF THIS EVIDENCE, TO THE MOST MINIMAL
21 AMOUNT OF DETAIL WITH RESPECT TO THE OFFER OF PROOF
22 MADE BY THE PEOPLE, AND WE BELIEVE THE INFORMATION
23 CONTAINED IN THE STIPULATION IS BROAD ENOUGH TO GO
24 ALONG WITH THAT OFFER OF PROOF MADE BY MR. CONN, AND
25 TO GO ANY FURTHER WOULD BE IMPROPER.

26 (ATTORNEYS ABRAMSON AND LEVIN
27 CONFERRING SOTTO VOCE.)

28

1 MR. LEVIN: AND WITH RESPECT TO THE
2 PROSECUTION, THAT THE JUVENILE ADJUDICATION WAS
3 SUSTAINED AT SOME POINT, IT'S IRRELEVANT. IT CAN'T
4 BE USED AS A PRIOR FELONY CONVICTION IN ANY EVENT,
5 AND SERVES NOTHING WITH RESPECT TO THE STATED OFFER
6 OF PROOF BY THE PEOPLE.

7 SO WE ASK THAT THE PEOPLE BE LIMITED --
8 IF THE PEOPLE DO NOT WANT TO ENTER INTO THE PRECISE
9 STIPULATION THAT THEY ENTERED INTO IN THE PREVIOUS
10 TRIAL, THAT THEY BE LIMITED IN SCOPE TO THE PRECISE
11 INFORMATION AS DETAILED IN THE STIPULATION.

12 MR. CONN: WHETHER OR NOT IT CAN BE USED AS A
13 PRIOR FELONY CONVICTION IS NEITHER HERE NOR THERE.
14 THE ISSUE THAT WE ARE CONCERNED WITH IS THE NATURE
15 OF THE OFFENSE COMMITTED BY THE DEFENDANT AND THE
16 IMPACT THAT IT HAD UPON HIS FATHER, HIS RELATIONSHIP
17 WITH HIS FATHER, AND WHETHER OR NOT HIS FATHER WAS
18 INCLINED TO DISINHERIT HIM AS A RESULT OF THIS
19 EMBARRASSING INCIDENT.

20 ON THE ONE HAND THE DEFENSE TALKS ABOUT
21 HOW THE FAMILY WAS SO PREOCCUPIED WITH IMAGE AND HOW
22 TESTIMONY CONCERNING THEIR PREOCCUPATION WITH IMAGE
23 AND MATTERS THAT WOULD AFFECT THE FAMILY IMAGE IS
24 SOMETHING WHICH MUST BE BROUGHT OUT.

25 ON THE OTHER HAND, WHEN HERE WE HAVE

26 WHAT IS CLEARLY A FINDING OF GUILT, HOWEVER YOU WANT
27 TO CALL IT -- WHETHER IT'S IN ADULT COURT OR WHETHER
28 IT'S IN JUVENILE COURT, IT IS STILL A FINDING OF

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1 GUILT FOR TWO VERY SERIOUS OFFENSES, TWO RESIDENTIAL
2 BURGLARIES. NOT ONLY DOESN'T THE STIPULATION
3 CONTAIN A REFERENCE TO THE FACT THAT THERE WAS AN
4 ADJUDICATION AGAINST HIM, NOT ONLY DOESN'T IT
5 CONTAIN THE FACT THAT THESE ARE RESIDENTIAL
6 BURGLARIES THAT WE ARE TALKING ABOUT, BUT IT DOESN'T
7 EVEN HAVE ANY REFERENCE TO THE VALUE OF THE PROPERTY
8 INVOLVED.

9 SO ALL OF THESE ARE MATTERS THAT GO TO
10 THE SIGNIFICANCE OF THE INCIDENT, AND I THINK THAT
11 IS IMPORTANT TO GIVE THE JURY SOME SENSE, JUST SOME
12 IDEA OF THE SIGNIFICANCE OF THE IDEA, AND THIS
13 PARTICULAR STIPULATION DOES JUST THE CONTRARY. THIS
14 STIPULATION MINIMIZES THE INCIDENT AND DISTORTS IT.

15 MS. ABRAMSON: YOUR HONOR, MR. LEVIN IS
16 DEFERRING TO ME TO RESPOND SINCE I HAVE A BETTER
17 COMMAND OF THE FACTS OF THIS.

18 APPARENTLY, THE PEOPLE DON'T HAVE THE
19 JUVENILE FILE TO PROVE ANYTHING UP HERE BECAUSE THEN
20 MR. CONN WOULD KNOW THAT HE IS MISSPEAKING WHAT

21 HAPPENED THERE.

22 WHAT WAS EVENTUALLY FILED, I BELIEVE, OR
23 WHAT MR. MENENDEZ ADMITTED TO IN A NEGOTIATED
24 DISPOSITION, WAS ONE COUNT OF BURGLARY AND ONE COUNT
25 OF GRAND THEFT. THE COURT MAY RECALL THE FIRST OF
26 THESE SO-CALLED BURGLARIES WASN'T A BURGLARY. IT
27 WAS A GRAND THEFT SINCE HE WAS ALREADY INSIDE THE
28 PREMISES SLEEPING OVER AT THE LIST HOME WHEN HE AND

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1 CRAIG CIGNARELLI TOGETHER FOUND THIS SAME
2 COMBINATION, TOGETHER OPENED THE SAFE AND TOGETHER
3 SPLIT THE PROCEEDS. AND IT WAS RESOLVED UNDER 654
4 OF THE WELFARE AND INSTITUTIONS CODE, WHICH IS A
5 SUMMARY -- A SIX-MONTH SUMMARY-TYPE PROBATION BY WAY
6 OF A DISPOSITION THAT ACTUALLY CHARLES ENGLISH
7 WORKED OUT FOR HIM, SO THAT THEY WEREN'T
8 FIRST-DEGREE BURGLARY CONVICTIONS UNDER THE JUVENILE
9 CODE UNDER 601, I THINK, WELFARE AND INSTITUTIONS
10 CODE. ONE OF THEM WASN'T EVEN A BURGLARY, IT WAS A
11 THEFT.

12 I BELIEVE IN THE LAST -- I BELIEVE THIS
13 INDICATES THAT THE PARENTS HAD TO MAKE RESTITUTION,
14 AND I BELIEVE WE DID LITIGATE THE FIRST TIME AROUND,
15 UNDER A 352 ANALYSIS, THE AMOUNT TAKEN -- GIVEN THE

16 FACT THAT THE AMOUNT TAKEN, THAT MUCH OF IT WAS
17 RETURNED EVEN BEFORE THE DEFENDANTS WERE ACCUSED OF
18 OR SUSPECTED OF THESE THEFTS, THERE WAS TESTIMONY
19 AND IT WAS VERIFIED IN THE POLICE REPORTS OF THE
20 SHERIFF'S DEPARTMENT THAT JEWELRY HAD BEEN PUT BACK
21 AND THAT JEWELRY FROM THE SECOND EVENT WAS COMINGLED
22 WITH JEWELRY FROM THE FIRST EVENT AND THAT'S HOW THE
23 POLICE KNEW THEY WERE LINKED.

24 IF THEY WANT TO TALK ABOUT THE TOTAL
25 AMOUNT OF THE VALUE OF THE PROPERTY, THESE WERE
26 CLAIMS MADE BY THE THEFT VICTIMS, NEVER
27 SUBSTANTIATED. THE PROPERTY WAS RETURNED. I THINK
28 THERE WAS A RESTITUTION CASH PAYMENT FOR SOME

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1 PROPERTY THAT HAD EITHER BEEN LOST OR THE STUFF, FOR
2 EXAMPLE, THAT WAS GIVEN TO THE --

3 THE COURT: RESTITUTION ISN'T THE ISSUE. THE
4 ISSUE IS HOW MUCH WAS TAKEN, NOT SO MUCH --

5 MS. ABRAMSON: THE FACT IS HOW MUCH WAS
6 TAKEN. IT'S NOT AS IF IT WAS TAKEN IN CASH; THINGS
7 WERE TAKEN, THE VALUE OF WHICH WAS NEVER REALLY
8 JUDICIALLY DETERMINED SINCE IT WAS RETURNED.

9 THE COURT: RIGHT. WE DON'T HAVE TO BE
10 PRECISE, BUT SOME APPROXIMATION BY THE VICTIMS AS TO

11 HOW MUCH WAS TAKEN.

12 MS. ABRAMSON: WHY IS THAT RELEVANT?

13 THE COURT: TO INDICATE THIS WAS NOT JUST A
14 JUVENILE PRANK. THIS WAS A SERIOUS THEFT OF OTHER
15 PEOPLE'S BELONGINGS THAT --

16 MS. ABRAMSON: WELL, WE SAID NUMEROUS
17 ARTICLES WERE TAKEN. THAT'S IN THERE. AND ERIK
18 MENENDEZ IS GOING TO TESTIFY THAT JEWELRY WAS TAKEN
19 AND THEN RETURNED SO THAT WE'RE NOT TALKING ABOUT
20 LITTLE THINGS. IT'S JUST THE DOLLAR VALUE -- FIRST
21 OF ALL, IT'S NOT -- WE DON'T AGREE TO IT. WE DON'T
22 KNOW WHAT IT REALLY WAS. IT'S NEVER BEEN
23 LITIGATED. WE KNOW HOW MUCH WAS PAID BECAUSE CASH
24 WAS TAKEN AND THE CASH WAS SPENT BY MRS. MENENDEZ,
25 SPENT BY CRAIG CIGNARELLI AND SPENT, PRESUMABLY, BY
26 LYLE MENENDEZ. SO THERE WAS A RESTITUTION PAYMENT
27 TO EQUALIZE THAT. BUT I DON'T THINK IT'S
28 APPROPRIATE TO GET INTO ALL OF THESE DETAILS OR ELSE

43939

1 WE'RE LITIGATING THE VALUE OF THIS PROPERTY.

2 THE COURT: BELIEVE ME, I DON'T WANT TO GET
3 INTO THE LITIGATION OF THESE OTHER CRIMES AS TO WHAT
4 EXACTLY HAPPENED, HOW IT HAPPENED AND HOW MUCH WAS
5 TAKEN IN DETAIL. BUT THERE IS -- ONCE THE COURT HAS

6 MADE ITS RULING THAT THIS IS ADMISSIBLE EVIDENCE,
7 THERE'S A NEED TO DEAL WITH IT IN SOME WAY THAT IS
8 FAIR FOR BOTH SIDES.

9 THE PURPOSE OF THE STIPULATION WAS SO
10 THAT THE FACTS WOULD BE PRESENTED TO THE JURY
11 WITHOUT THE NEED FOR WITNESSES TO BE BROUGHT IN TO
12 TESTIFY ABOUT WHAT WOULD AMOUNT TO TESTIMONY ABOUT
13 OTHER CRIMES, WHICH WASN'T NECESSARY.

14 SO IF THIS CAN BE REFINED IN SOME WAY TO
15 SATISFY BOTH SIDES, THAT'S -- THAT WOULD BE
16 SATISFACTORY TO THE COURT. THE FACT THAT THE
17 PROSECUTORS IN THE FIRST TRIAL AGREED TO THIS
18 PARTICULAR LANGUAGE DOESN'T MEAN THAT THESE
19 PROSECUTORS HAVE TO AGREE TO THE EXACT SAME
20 LANGUAGE. THE GENERAL NATURE OF THIS SETS FORTH THE
21 FACTS AS THEY OCCURRED AND AS IT WERE KNOWN AND
22 PROVABLE BY THE PROSECUTION. THAT'S WHY THE
23 PROSECUTION AGREED TO THIS STIPULATION. THEY WERE
24 BOUND BY CERTAIN LIMITATIONS ON THEIR PROOF ANYWAY,
25 AS FAR AS WHAT THEY COULD PROVE.

26 MS. ABRAMSON: I THINK THIS SHOWS, YOUR
27 HONOR --

28 THE COURT: AS FAR AS THE JUVENILE

1 PROCEEDING, AS TO THE ULTIMATE RESOLUTION OF IT, I
2 DON'T THINK THAT'S SIGNIFICANT. BUT THE FACT THAT
3 IT DID RESULT IN A JUVENILE COURT PROCEEDING CAN BE
4 BROUGHT OUT. NOW, AS FAR AS HOW IT WAS RESOLVED, I
5 DON'T THINK THAT'S RELEVANT OR PROBATIVE OF
6 ANYTHING, BUT THE FACT THERE WAS SUCH.

7 MS. ABRAMSON: JUDGE, IN ANSWER -- THE COURT
8 WAS THINKING EXACTLY THE SAME WAY, APPARENTLY, IN
9 THE FIRST TRIAL ABOUT INDICATING THAT, YOU KNOW, THE
10 FACT THAT IT WAS A SIGNIFICANT AMOUNT OF PROPERTY
11 AND THAT'S WHY WE PUT IN WHAT WAS REMOVED.

12 THE COURT: YES, I KNOW THAT, TO IDENTIFY
13 WHAT THE ITEMS WERE.

14 MS. ABRAMSON: TO SHOW IT WAS SIGNIFICANT. A
15 VCR, CHINA, COMBINATION SAFE, SILVERWARE, SOLOFLEX,
16 IBM COMPUTER. THIS SHOWS IT'S NOT A TEENAGE PRANK.
17 SO I DON'T KNOW WHY THE PEOPLE SHOULD HAVE A RIGHT
18 TO GO INTO WHAT THE VALUE OF THESE THINGS ARE. I
19 THINK JUST READING IT YOU CAN SEE IT'S A SIGNIFICANT
20 BURGLARY.

21 THE COURT: YES. I DON'T RECALL HOW MUCH WAS
22 REPORTED IN THE FIRST LIST BURGLARY. I REALLY DON'T
23 HAVE A RECOLLECTION OF THE AMOUNT THAT THEY
24 REPORTED. THEY INDICATE SO MUCH MONEY AND JEWELRY
25 WAS TAKEN.

26 MS. ABRAMSON: IT WAS MONEY AND JEWELRY.
27 THAT'S WHAT WE SAY.

28 THE COURT: THEY MUST HAVE PUT A DOLLAR

1 AMOUNT ON IT WHEN THEY REPORTED IT TO THE POLICE. I
2 DON'T HAVE THOSE REPORTS IN FRONT OF ME.

3 MS. ABRAMSON: I THINK THEY GOT EVERYTHING
4 BACK.

5 THE COURT: WE'RE NOT TALKING ABOUT WHAT THEY
6 GOT BACK, BUT WHAT WAS TAKEN. THAT'S THE STARTING
7 POINT.

8 SO IF THERE WAS A PARTICULAR AMOUNT THAT
9 WAS IDENTIFIED, I DON'T SEE A PROBLEM IN IDENTIFYING
10 IT.

11 MS. ABRAMSON: WELL, WE DO. WE OBJECT TO
12 THAT AMOUNT BECAUSE THE AMOUNT WAS NEVER LITIGATED.
13 WE'RE NOT GOING TO STIPULATE TO THESE INFLATED
14 NUMBERS SO THEY CAN MAKE THEIR INSURANCE CLAIMS.

15 THE COURT: WELL, WE CAN ATTACK EVERYBODY IN
16 THE WORLD. LET'S GET BEYOND IT AND GET THIS DOWN
17 AND SEE IF WE CAN RESOLVE IT. I DON'T THINK IT
18 SHOULD BE THAT BIG OF A DEAL NOW TO IRON OUT THE
19 SMALL DETAILS OF THIS.

20 MS. ABRAMSON: THIS SAYS WHAT WAS TAKEN,
21 JUDGE. I DON'T KNOW WHAT ELSE TO ADD. THEY WANT
22 THE NUMBERS BECAUSE IT SOUNDS DRAMATIC. WE DON'T
23 BELIEVE THE NUMBER IS SIGNIFICANT, AND THAT'S WHAT

24 IT'S COMING DOWN TO.

25 THE COURT: I CAN'T ANSWER IF IT'S

26 SIGNIFICANT OR NOT UNTIL I SEE WHAT THE NUMBERS

27 WERE, QUITE FRANKLY.

28 MS. ABRAMSON: THEY WERE VERY HIGH NUMBERS.

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1 THE COURT: I'D HAVE TO SEE IT AND SEE HOW

2 IT'S REPORTED, IF IT'S IN THE REPORTS. I DON'T KNOW

3 IF THE PEOPLE ARE IN A POSITION TO PROVE IT UP RIGHT

4 NOW ANYWAY.

5 MR. CONN: WELL, WE WEREN'T NECESSARILY GOING

6 TO GET INTO IT RIGHT OFF THE BAT WITH THE WITNESS,

7 BUT JUST FROM REVIEWING THE REPORTS HERE, I BELIEVE

8 THE LOSS IN ONE WAS \$102,000 THE LOSS IN THE OTHER

9 WAS \$34,000 FOR \$136,000.

10 THE COURT: WHICH WAS WHICH? WHICH WAS --

11 THESE ARE, AGAIN, REPORTED AMOUNTS.

12 MS. ABRAMSON: YES. AND THESE WERE NOT WHAT

13 THEY WERE ACTUALLY --

14 MR. CONN: THE GINSBERG WAS \$34,000 AND THE

15 LIST BURGLARY WAS \$102,000.

16 MS. ABRAMSON: NO. NO WAY. WE'D NEVER AGREE

17 TO THOSE NUMBERS. THEY'RE COMPLETELY INFLATED.

18 THE COURT: WITHOUT GETTING INTO NUMBERS,

19 WHAT THE COURT -- BEFORE THAT SUBJECT IS ADDRESSED,
20 WE WOULD HAVE A FURTHER HEARING.
21 BUT, IN GENERAL, THE COURT FEELS THAT
22 THE NATURE OF THE INQUIRY SHOULD BE CONFINED TO THE
23 CONTENTS OF THE STIPULATION. DOESN'T HAVE TO BE
24 PRECISE, DOESN'T HAVE TO BE CONFINED TO EACH OF
25 THOSE WORDS AND NO OTHERS, WITH THE EXPANSION THAT
26 IT WOULD INCLUDE THE FACT THAT IT DID RESULT IN
27 JUVENILE COURT PROCEEDINGS INVOLVING ERIK MENENDEZ.
28 THE OUTCOME OF THOSE PROCEEDINGS ARE NOT RELEVANT,

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1 BUT THE NATURE OF THE MATERIAL HERE, AND THE
2 STIPULATION, I THINK, IS THE BALLPARK OUTLINE OF
3 WHAT IT IS THAT WOULD BE THE SUBJECT OF INQUIRY.
4 AND BEFORE THE PEOPLE BRING OUT DOLLAR AMOUNTS, WE
5 WOULD HAVE FURTHER DISCUSSION ON THAT, IF THEY
6 CHOOSE TO DO THAT.

7 MR. CONN: WELL, AS FAR AS IT BEING
8 RESIDENTIAL BURGLARIES.

9 THE COURT: IT SAYS RESIDENCE, SO IT'S A
10 RESIDENTIAL BURGLARY. WHAT DO YOU WANT?

11 MS. ABRAMSON: HE WANTS YOU TO TAKE JUDICIAL
12 NOTICE OF THE PENAL CODE, YOUR HONOR.

13 THE COURT: IT'S CLEAR THAT YOU COULD REFER

14 TO IT OR EITHER SIDE CAN REFER TO IT AS A BURGLARY
15 OF A RESIDENCE. THAT'S WHAT IT WAS.
16 MS. ABRAMSON: YOUR HONOR, JUST SO THE COURT
17 KNOWS HOW THIS IS GOING TO COME ABOUT RIGHT NOW WITH
18 ERIK MENENDEZ, AND IT'S ANOTHER MATTER THAT NEEDS TO
19 BE DEALT WITH. THE COURT MAY RECALL THERE WAS A
20 PIECE OF THE SEPTEMBER 17TH TAPE OF ERIK MENENDEZ'
21 STATEMENT TO DETECTIVE ZOELLER THAT THE PEOPLE
22 EDITED OUT THAT WE WANTED PUT BACK IN, AND WE'RE
23 PREPARED TO -- WE PREPARED A SET OF TRANSCRIPTS OF
24 THOSE PAGES THAT THE PEOPLE HAD REMOVED, AND THOSE
25 PAGES SPECIFICALLY RELATED TO THE COMMUNITY SERVICE
26 WORK THAT ERIK MENENDEZ DID AS A CONSEQUENCE OF THE
27 JUVENILE PROCEEDINGS.
28 THE COURT: RIGHT.

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1 MS. ABRAMSON: SO, WE OBVIOUSLY ARE GOING TO
2 BRING OUT ANYWAY THAT THERE WERE JUVENILE
3 PROCEEDINGS.
4 AND WHAT WE WOULD PROPOSE TO DO WITH
5 ERIK MENENDEZ NOW --
6 THE COURT: THAT WAS PART OF WHAT WE HAD BEEN
7 HOLDING OFF BECAUSE THE PEOPLE WANTED THAT IN AND
8 YOU DIDN'T.

9 MS. ABRAMSON: NO, NO. WE WANTED IT IN.
10 THE COURT: YOU DIDN'T WANT THE REFERENCE TO
11 THE BURGLARIES AS TO THE GENESIS OF THE DEEDS.
12 MS. ABRAMSON: SINCE THE COURT HAS RULED,
13 WE'RE GOING TO SOLVE THAT PROBLEM NOW.
14 AND WHAT MR. LEVIN IS GOING TO DO IS GO
15 OVER THIS PART OF THE 17TH SEPTEMBER TAPE WITH OUR
16 CLIENT, ASK HIM WHAT THIS CHARITABLE WORK WAS
17 RELATED TO, THAT IT WAS COMMUNITY SERVICE --
18 THE COURT: ACTUALLY, I THINK I HAVE ONE OF
19 THE EXHIBITS IN CHAMBERS THAT HAS TO DO WITH THAT,
20 THE TRANSCRIPT.
21 MS. ABRAMSON: I HAVE IT RIGHT HERE, JUDGE,
22 THE PAGES OF THE TRANSCRIPT.
23 THE COURT: I MEAN, I ACTUALLY HAVE THE
24 EXHIBIT FROM THE FIRST TRIAL THAT WAS USED.
25 MS. ABRAMSON: THE EXHIBIT FROM THE FIRST
26 TRIAL THAT WAS USED. I DON'T KNOW WHAT THE COURT
27 MEANS.
28 THE COURT: THERE WAS A TRANSCRIPT OF THAT

43945

1 PARTICULAR PORTION.

2 MS. ABRAMSON: I HAVE IT RIGHT HERE.

3 THE COURT: I'M SAYING IT ISN'T THE EXHIBIT,

4 THE ACTUAL EXHIBIT THAT WAS RECEIVED.

5 MS. ABRAMSON: I DON'T THINK IT WAS SEPARATED
6 OUT THE FIRST TIME.

7 MS. NAJERA: IT WAS.

8 THE COURT: IT'S ON MY DESK, SO I HAVE IT.

9 MS. ABRAMSON: IN ANY EVENT, WE HAVE IT
10 HERE. IT'S THE AGREED-UPON TRANSCRIPT. WE JUST
11 TOOK THESE PAGES OUT OF THE AGREED-UPON TRANSCRIPT,
12 AND WE HAVE COPIES FOR THE JURY OF THOSE PAGES, AND
13 THAT'S HOW WE WERE GOING TO BACK INTO, IF YOU WILL --

14 THE COURT: SUGARCOAT IT ANY WAY YOU WANT.

15 MS. ABRAMSON: THANK YOU, JUDGE.

16 HE WAS GOING TO BACK INTO THE BURGLARIES
17 ON THE SEPTEMBER 17TH TAPE.

18 MR. LEVIN: YOUR HONOR, MAY I HAVE ONE
19 MINUTE?

20 THE COURT: YES. I'M GOING TO GET THAT
21 EXHIBIT FROM MY CHAMBERS ANYWAY.

22 MR. GESSLER.

23 MR. GESSLER: YOUR HONOR, AS TO LYLE
24 MENENDEZ, WHO I STILL BELIEVE IS IN A SOMEWHAT
25 DIFFERENT POSITION, BUT THE COURT HAS INDICATED THAT
26 THE INFORMATION CONCERNING HIS PARTICIPATION, AS I
27 UNDERSTAND IT, IN THE SECOND BURGLARY, IS FAIR GAME
28 FOR CROSS-EXAMINATION OF ERIK MENENDEZ.

1 THE COURT: I BELIEVE IT COULD BE BROUGHT OUT
2 DURING ERIK MENENDEZ' TESTIMONY THAT HIS BROTHER WAS
3 INVOLVED.

4 MR. GESSLER: THAT'S WHAT I WANTED TO KNOW.

5 THE COURT: YES.

6 MR. GESSLER: BECAUSE I DON'T WANT TO
7 STIPULATE THE HOUSE AWAY AND THEN END UP IN FEDERAL
8 COURT FIVE YEARS FROM NOW EXPLAINING WHY I DID THAT.

9 THE COURT: THAT'S PART OF THE COURT'S
10 RULING.

11 MR. GESSLER: ALL RIGHT. AS TO THE SECOND
12 PARAGRAPH OF THIS --

13 THE COURT: THERE MIGHT NOT BE A NEED FOR A
14 STIPULATION. IT MIGHT COME OUT DURING TESTIMONY.

15 SO AT THIS POINT I DON'T KNOW IF WE
16 REALLY HAVE TO TALK ABOUT THE SPECIFICS OF A
17 STIPULATION.

18 MR. GESSLER: WELL, MY INTEREST WAS IN THE
19 LIMITING ASPECT TO WHICH IT GOES, THAT I WOULD LIKE
20 THE JURY TO BE ADMONISHED AT THE TIME THAT IT COMES
21 UP CONCERNING MY CLIENT AS TO THE LIMITED PURPOSE
22 FOR WHICH IT CAN BE USED.

23 MY UNDERSTANDING OF THE COURT'S RULING
24 IS THAT THE LIMITED PURPOSE IS TO SHOW THE
25 RELATIONSHIP BETWEEN LYLE MENENDEZ AND HIS FATHER AS
26 IT CONCERNS THIS BURGLARY; AND ANY, I GUESS,
27 CLARIFICATION THAT MIGHT MAKE OF THE CALABASAS

43947

1 THAT WAS --

2 THE COURT: AND ALSO THE RELATIONSHIP OF YOUR
3 CLIENT WITH OZIEL, WITH THE EXCEPTION THERE IS
4 EVIDENCE SO FAR THAT WILL BE DEVELOPED --

5 MR. GESSLER: AS TO DISINHERITING.

6 THE COURT: WELL, ANYTHING THAT MIGHT COME
7 OUT DURING THE TRIAL OF ERIK MENENDEZ REGARDING -- I
8 DON'T KNOW WHAT THE EXTENT OF THAT EXAMINATION WILL
9 BE NOW, AS FAR AS HIS RELATIONSHIP WITH OZIEL, THE
10 EXISTING RELATIONSHIP BEFORE OCTOBER 31ST AND YOUR
11 CLIENT'S RELATIONSHIP WITH OZIEL. THERE MIGHT BE
12 SOME OF THAT BROUGHT OUT. I DON'T KNOW.

13 MR. GESSLER: MAY I HAVE JUST A MOMENT, YOUR
14 HONOR?

15 THE COURT: YES.

16 YES.

17 MR. GESSLER: I WOULD JUST ASK, YOUR HONOR,
18 THAT ALONG WITH THAT LIMITED PURPOSE THAT THE COURT
19 HAS ANNOUNCED, THAT THE JURY BE TOLD THAT THIS IS
20 NOT IN ANY WAY TO BE CONSIDERED FOR CRIMINAL
21 PROPENSITY OR PROPENSITY -- I DON'T KNOW IF THEY'LL
22 KNOW "PROPENSITY," BUT FOR -- WHAT'S A SYNONYM FOR

23 PROPENSITY?

24 THE COURT: WHY DON'T YOU WRITE SOMETHING OUT
25 AND SHOW IT TO COUNSEL AND WE'LL DISCUSS IT AGAIN.

26 WHILE THEY'RE LOOKING FOR THE TAPE, YOU CAN DO
27 THAT. AND I'M GOING TO GET THAT TRANSCRIPT.

28 (PAUSE IN PROCEEDINGS.)

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1 THE COURT: I HAVE EXHIBIT 131 FROM THE FIRST
2 TRIAL.

3 MS. ABRAMSON: CAN I SEE IT, JUDGE?

4 THE COURT: SO ARE WE READY?

5 MR. LEVIN: WE'RE JUST TRYING TO CUE UP THE
6 TAPE, YOUR HONOR. JUST WANT ONE MINUTE --

7 MS. ABRAMSON: THIS IS THE ONE -- I SEE.

8 JUDGE, YOUR VERSION, THAT'S WHAT'S DIFFERENT. THE
9 ONE FROM THE FIRST TRIAL WAS AFTER A RULING THAT
10 CALABASAS WAS ADMISSIBLE, SO -- WHICH HAS BEEN EDITED
11 OUT OF THIS VERSION, BECAUSE WE PREPARED THESE WAY
12 BACK BEFORE --

13 THE COURT: RIGHT.

14 MS. ABRAMSON: SO --

15 THE COURT: WELL, I JUST WANTED YOU TO HAVE
16 IT. THE CLERK, ACTUALLY, SHOULD HAVE IT, BECAUSE
17 IT'S -- IT SHOULD BE IN HER POSSESSION.

18 THE COURT: OKAY. MR. GESSLER IS WORKING UP
19 A MODIFICATION OF 2.50.
20 AT WHAT POINT DO YOU WANT TO DO THAT?
21 DO YOU WANT TO DO IT NOW OR ONCE YOU'VE FINISHED AND
22 WE'VE HAD A CHANCE TO TALK ABOUT IT?
23 MR. GESSLER: I'D LIKE TO FINISH IT AND TALK
24 ABOUT IT.
25 THE COURT: OKAY. IS THERE ANY PROBLEM GOING
26 AHEAD WITH THE TESTIMONY NOW AND THEN COMING BACK?
27 MR. GESSLER: I DON'T THINK SO, BECAUSE I
28 DON'T THINK THAT STIPULATION WILL BE GIVEN RIGHT

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1 OFF, WILL IT? WHEN DID YOU PLAN TO ENTER INTO THE
2 STIPULATION, BARRY?
3 THE COURT: THERE'S NOT GOING TO BE A
4 STIPULATION. IT'S BY TESTIMONY, AS I UNDERSTAND
5 IT.
6 MR. LEVIN: AS I UNDERSTAND IT, THE COURT'S
7 RULING, WITH RESPECT TO THE SCOPE OF THIS EVIDENCE,
8 IS LIMITED TO WHAT'S CONTAINED IN THE STIPULATION,
9 BUT JUST TO ADD THAT THERE HAS BEEN A JUVENILE
10 PROCEEDING AS A RESULT OF THAT.
11 THE COURT: WITH THE UNDERSTANDING THAT IF
12 THE PEOPLE WANT TO GO INTO THE DOLLAR AMOUNT, WE'LL

13 HAVE FURTHER DISCUSSION OF IT BEFORE THEY DO, WITH
14 FURTHER UNDERSTANDING THAT THE EXACT WORDS OF THAT
15 STIPULATION ARE NOT THE LIMITATION OF WHAT EXACTLY
16 THE PEOPLE CAN SAY.

17 MR. LEVIN: YES, YOUR HONOR.

18 THE COURT: OR ASK ABOUT -- THEY'RE NOT
19 CONFINED TO THE EXACT WORDS.

20 ALL RIGHT. THEN LET'S PROCEED.

21 MS. ABRAMSON: WE'RE WAITING FOR THE TAPE,
22 YOUR HONOR, JUST ONE MOMENT. WE'RE SCANNING IT.

23 (PAUSE IN PROCEEDINGS.)

24

25 MS. ABRAMSON: I'M TAKING THIS EXHIBIT OUT OF
26 THE COURTROOM.

27 (PAUSE IN PROCEEDINGS.)

28

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1 THE COURT: OKAY. ARE WE READY TO GO?

2 MR. LEVIN: YOUR HONOR, I JUST WANT TO DO A
3 LITTLE SOUND CHECK. ONE SECOND.

4 (PAUSE IN PROCEEDINGS.)

5

6 MR. LEVIN: IT'S NOT AUDIBLE.

7 THE COURT: LET'S JUST PROCEED THEN AND YOU

8 CAN JUST READ IT.

9 MS. ABRAMSON: YOU CAN PLAY THE TAPE, BUT
10 JUST READ IT, SO THE JURY REALLY KNOWS THERE'S A
11 TAPE.

12 MR. LEVIN: YOUR HONOR, I'M READY. SORRY.

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

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

17
18 THE COURT: THE JURY IS BACK. SORRY FOR THE
19 DELAY, BUT THERE'S MATTERS THAT THE LAWYERS AND I
20 HAD TO DISCUSS, AND MORE LIKELY THAN NOT WE'LL BE
21 DOING THAT AGAIN THIS AFTERNOON; HOPEFULLY NOT FOR
22 AS LONG A PERIOD OF TIME, BUT WE MIGHT HAVE TO TAKE
23 ANOTHER BREAK AND HAVE SOME MORE DISCUSSIONS.

24 WE'RE READY TO PROCEED AT THIS POINT
25 WITH FURTHER DIRECT EXAMINATION.

26 MR. LEVIN: THANK YOU, YOUR HONOR.

27 YOUR HONOR, AT THIS TIME I HAVE TWO
28 ITEMS THAT I REQUEST TO MARK AS EXHIBITS. THE FIRST

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1 IS A TAPE. IT WAS PREVIOUSLY MARKED AS EXHIBIT 130
2 IN THE PREVIOUS TRIAL. I ASK THAT IT BE MARKED

3 EXHIBIT 369.

4 THE COURT: 369.

5 MR. LEVIN: THE SECOND IS A TRANSCRIPT OF THE
6 WORDS OF THAT TAPE. IT WAS PREVIOUSLY MARKED IN THE
7 FIRST TRIAL AS EXHIBIT 131. I ASK THAT IT BE MARKED
8 EXHIBIT 370 IN THIS TRIAL.

9 THE COURT: 370.

10

11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. LEVIN:

13 Q MR. MENENDEZ, DID YOU JUST ATTEMPT TO
14 LISTEN TO WHAT HAS BEEN MARKED EXHIBIT 369, A TAPE?

15 A YES.

16 Q I'M JUST -- DID YOU DETERMINE THAT IT WAS
17 DIFFICULT TO DISCERN THE WORDS?

18 A VERY.

19 Q NOW, WITH RESPECT TO THAT PARTICULAR
20 TAPE, IS THAT PART OF A CONVERSATION THAT OCCURRED
21 WITH YOU AND THE POLICE?

22 A MY CONVERSATION WITH DETECTIVE ZOELLER
23 ON SEPTEMBER 17TH.

24 Q 1989?

25 A YES.

26 Q WOULD YOU JUST LISTEN TO A FEW OF THE
27 WORDS ON THE TAPE SO THAT I CAN ASK YOU IF THAT'S
28 YOUR VOICE, UNDERSTANDING IT'S DIFFICULT TO HEAR.

1 (EXHIBIT 369 WAS PLAYED.)

2

3 Q BY MR. LEVIN: MR. MENENDEZ, COULD YOU
4 DISCERN YOUR VOICE ON THAT TAPE?

5 A YES.

6 Q AND COULD YOU HEAR THE VOICE OF ANYONE
7 ELSE ON THAT TAPE?

8 A DETECTIVE ZOELLER.

9 Q NOW, THIS CONVERSATION TOOK PLACE DURING
10 THE INTERVIEW WITH YOU AND THE POLICE WHEN YOU WERE
11 IN NEW JERSEY, CRANBERRY, NEW JERSEY?

12 A YES.

13 Q I WANT TO READ YOU A TRANSCRIPT OF THAT
14 PORTION OF THE TAPE AND THEN ASK YOU A FEW QUESTIONS
15 ABOUT IT.

16 "DETECTIVE LINEHAN: I UNDERSTAND
17 YOU AND LYLE WERE INVOLVED IN SOME
18 CHARITY WORK OF SOME SORT.

19 "MENENDEZ: YES. THAT WAS GREAT,
20 AH, DOWN ON VENICE BEACH. I WORKED
21 WITH THE HOMELESS AND WE DID GREAT. I
22 WISH I WOULD HAVE BEEN ABLE TO WORK
23 WITH THEM A LOT CLOSER.

24 "DETECTIVE LINEHAN: WHAT AGENCY
25 WAS THAT?

26 "ANSWER: ST. JOSEPH'S CENTER.
27 "DETECTIVE: SANTA MONICA?
28 "ANSWER: YEAH. IT WAS IN SANTA

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1 MONICA. THIS WAS SOMETHING I'M GOING
2 TO PURSUE. I'VE BEEN TALKING TO A
3 FEW -- THE PRIESTS, FATHERS OR
4 REVERENDS, OR WHOEVER I CAN TALK TO,
5 TO FIND OUT WHAT I CAN DO ABOUT
6 HELPING PEOPLE LIKE THAT, NOT THAT
7 I'VE -- I HAD A PLAN OF WHAT I WANTED
8 TO DO, BUT FROM THAT I HEAR THESE
9 THINGS ARE TOO EXPENSIVE. IT DEALS
10 WITH THE HOMELESS.

11 "DETECTIVE: YEAH.

12 "ANSWER: AND THAT'S SOMETHING
13 THAT I WANTED TO SET UP, BUT, YEAH.

14 "DETECTIVE: AND HOW DID THAT --
15 HOW DID THAT DEVELOP, THE CHARITY
16 WORK? WAS IT BECAUSE OF THE CALABASAS
17 THING?

18 "ERIK MENENDEZ: AH, IT WAS. IT
19 WAS BECAUSE OF THE CALABASAS THING.
20 BUT, YOU KNOW, MY LAWYER SUGGESTED AND

21 SOON -- BUT THAT -- THAT WAS THE
22 REASON. BUT IT WAS JUST -- YOU EVER
23 HELP PEOPLE LIKE THAT BEFORE?
24 "DETECTIVE: JUST IN WHAT WE DO
25 AND, YOU KNOW --
26 "ANSWER: YEAH. YEAH, I KNOW. I
27 KNOW WHAT YOU'RE SAYING.
28 "DETECTIVE: YOU KNOW, ALTHOUGH

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1 IT SEEMS LIKE WE MAY BE ON THE OTHER
2 SIDE, WE DO HELP 'EM.
3 "ERIK MENENDEZ: NO, NO.
4 "DETECTIVE: YOU KNOW, QUITE A
5 FEW TIMES TOO.
6 "ERIK MENENDEZ: YEAH, BUT -- BUT
7 PEOPLE THAT ARE REALLY NEEDY.
8 "DETECTIVE: YEAH.
9 "ERIK MENENDEZ: AH, I NEVER, I
10 NEVER -- I NEVER FELT LIKE THAT. AH,
11 IT'S AMAZING. IT'S AMAZING HOW IT
12 GOES TO YOUR HEART.
13 "DETECTIVE: YEAH.
14 "ERIK: TO SEE PEOPLE LIKE THAT
15 AND, AH, SO -- I MEAN, ANY PEOPLE, ANY

16 PEOPLE THAT I SEE I JUST -- I WAS
17 FRIENDS. I DON'T KNOW. WHEN I WAS
18 YOUNG I USED TO LOVE EVERYTHING. I
19 COULDN'T BREAK A BRANCH OFF A TREE, A
20 LEAF OFF A TREE OR SOMETHING. I USED
21 TO LOVE EVERYTHING. I WOULDN'T WANT
22 TO HURT ANYTHING. AND, AH, IT SEEMS
23 AS ONE GETS OLDER THEY HAVE TO
24 EXPERIENCE THINGS AND LIFE IS COLDER.
25 BUT HELPING PEOPLE LIKE THAT, IT
26 JUST."
27 MR. MENENDEZ, IS THAT AN ACCURATE
28 RECOUNTING OF THAT PORTION OF THE CONVERSATION THAT

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1 YOU HAD WITH DETECTIVE ZOELLER ON THE 17TH OF
2 SEPTEMBER, 1989?

3 A YES.

4 Q NOW, WHAT WERE YOU REFERRING TO WHEN YOU
5 TOLD HIM THAT WHEN YOU WERE YOUNG YOU USED TO LOVE
6 EVERYTHING?

7 A JUST HOW MUCH I ENJOYED LIVING OUTSIDE
8 OF MY -- WHEN I WAS OUTSIDE THE HOME AND GOT TO PLAY
9 IN NATURE AND THE GRASS AND THE TREES AND IT SEEMED
10 LIKE A VERY INNOCENT TIME.

11 Q WHAT DID YOU MEAN BY IT THAT YOU USED TO
12 LOVE IT?

13 A I WAS JUST TALKING ABOUT AS YOU GROW UP
14 IN LIFE, AND CHILDHOOD IS OFTEN VERY ROUGH, AND YOU
15 EXPERIENCE THINGS AND YOU LEARN THINGS THAT ARE --
16 THAT ARE PAINFUL AND THAT YOU BECOME -- YOU HAVE TO
17 ADAPT AND, I GUESS, LEARN TO LIVE WITH IT AND IT
18 MAKES YOU A COLDER PERSON THAN YOU WERE WHEN YOU
19 WERE A CHILD.

20 Q WHEN YOU HAD MENTIONED TO HIM THAT YOU
21 COULDN'T BREAK A BRANCH OFF A TREE, A LEAF OFF A
22 TREE OR SOMETHING, YOU WOULDN'T WANT TO HURT
23 ANYTHING, WHAT WERE YOU TALKING ABOUT?

24 A JUST NATURE. I LOVE NATURE. AND JUST --
25 I ENJOYED BEING WITH NATURE.

26 Q NOW, YOU INDICATED THAT YOU -- THERE WAS
27 SOME REFERENCE IN THIS ON THE CALABASAS THING.

28 DO YOU RECALL THAT?

43956

1 A YES.

2 Q AND DURING THE DECEMBER 11TH, 1989
3 CONVERSATION WITH DETECTIVE ZOELLER THERE WAS TALK
4 ABOUT THE CALABASAS ISSUE.

5 DO YOU REMEMBER THAT?

6 A YOU MEAN WITH DR. OZIEL.

7 Q I'M SORRY. WITH DR. OZIEL.

8 A YES. CALABASAS ISSUE IS MENTIONED IN

9 THERE THREE OR FOUR TIMES.

10 Q NOW, WERE THERE TWO THINGS THAT OCCURRED

11 IN CALABASAS, WHEN YOU LIVED THERE, OF

12 SIGNIFICANCE?

13 A YES.

14 Q AND WAS ONE THE INCIDENT THAT YOU

15 TESTIFIED TO WHERE YOU WERE BEATEN UP BY A GANG?

16 A YES.

17 Q WAS THERE ANOTHER THING WHERE YOU DID

18 SOMETHING REALLY WRONG?

19 A THE BURGLARIES.

20 Q AND WHEN DID YOU COMMIT THE BURGLARIES?

21 A THE SUMMER OF 1988.

22 Q HOW MANY BURGLARIES WERE THERE?

23 A TWO.

24 Q AS TO THE FIRST BURGLARY, DID YOU COMMIT

25 THAT BY YOURSELF?

26 A NO.

27 Q WHO WAS WITH YOU?

28 A CRAIG CIGNARELLI.

1 Q WHO IS CRAIG CIGNARELLI?

2 A HE WAS A FRIEND OF MINE.

3 Q AND WHAT DID YOU AND YOUR FRIEND DO WITH
4 RESPECT TO -- STRIKE THAT.

5 DID YOU, WITH YOUR FRIEND -- WERE YOU AT
6 YOUR -- WERE YOU AT ANOTHER FRIEND'S HOUSE?

7 A YES.

8 Q AND WHO WAS THAT OTHER FRIEND YOU WERE
9 AT? WHOSE HOUSE?

10 A JOHN LIST.

11 Q AND WHILE INSIDE YOUR FRIEND'S HOUSE,
12 DID YOU AND CRAIG CIGNARELLI TAKE SOME THINGS?

13 A WE WERE LOOKING FOR SOMETHING, FOUND
14 SOMETHING ELSE, WHICH LED US TO WHAT YOU WERE
15 TALKING ABOUT.

16 Q WHAT WAS IT THAT YOU TOOK FROM THAT
17 HOUSE, WHAT KINDS OF ITEMS?

18 A JEWELRY. CASH.

19 Q DID YOU LATER TELL YOUR BROTHER LYLE
20 MENENDEZ?

21 A YES.

22 Q AND DID YOU COMMIT A SECOND BURGLARY?

23 A YES.

24 Q WITH WHOM DID YOU COMMIT THE SECOND
25 BURGLARY?

26 A MY BROTHER.

27 Q AND WHOSE LOCATION DID YOU BURGLARIZE?

28 A THE HOME OF THE GINSBERGS.

1 Q WHAT DID YOU TAKE FROM THE GINSBERGS'
2 HOUSE?

3 A SOLOFLEX MACHINE, COMPUTER, SAFE,
4 PLATES, CUPS, SOME JEWELRY. THERE'S OTHER THINGS
5 THAT ARE MENTIONED. I NO LONGER REMEMBER.

6 Q DID YOU EVER SPEND ANY OF THE MONEY THAT
7 YOU STOLE?

8 A NO.

9 Q DID YOU EVER SELL ANY OF THE ITEMS THAT
10 YOU TOOK?

11 A NO.

12 Q DID YOU RETURN THE ITEMS THAT YOU TOOK
13 IN SOME FASHION?

14 A EVERYTHING WAS RETURNED.

15 Q AND HOW WAS IT RETURNED?

16 A I TURNED MYSELF INTO THE POLICE AND A
17 U-HAUL TRUCK WHICH WAS BROUGHT -- EVERYTHING WAS
18 BROUGHT BACK.

19 Q DID YOU ATTEMPT TO RETURN SOME OF THE
20 PROPERTY DIRECTLY TO THE HOME THAT YOU HAD TAKEN IT
21 FROM?

22 A AFTER -- AFTER WE TOOK THE STUFF, WE
23 WANTED TO -- BASICALLY WE WANTED TO RETURN IT, AND
24 THERE WAS A LOT OF PRESSURES IN TERMS OF THAT THERE

25 HAD BEEN -- BEFORE IT HAD BEEN FOUND OUT, MY BROTHER
26 WASN'T INVOLVED IN THE FIRST BURGLARY, AND BY
27 ACCIDENT WHAT JEWELRY FROM THE SECOND HOUSE BACK
28 INTO THE SAFE OF THE FIRST HOUSE, NOT REALIZING THAT

43959

1 IT WAS THE WRONG JEWELRY, AND PUT IT BACK INTO THE
2 SAFE. SO WHEN THEY GOT HOME THEY FOUND OUT THAT
3 THERE WAS DIFFERENT JEWELRY IN THE SAFE THAN HAD
4 BEEN THERE WHEN THEY LEFT, AND THE TWO INCIDENTS
5 WERE THEN CONNECTED AND IT BECAME AN EVEN LARGER
6 PROBLEM.

7 Q AND AFTER YOU TURNED YOURSELF IN TO THE
8 POLICE, DID YOU -- YOU WERE A JUVENILE AT THE TIME?

9 A YES.

10 Q HOW OLD WERE YOU?

11 A I WAS 17.

12 Q AND WHEN DID THESE BURGLARIES OCCUR?

13 A JULY OF 1988.

14 Q ONE YEAR BEFORE THE DEATH OF YOUR
15 PARENTS?

16 A YES.

17 Q AFTER YOU TURNED YOURSELF IN, WAS THERE
18 A REQUIREMENT FOR YOU TO APPEAR BEFORE SOME SORT OF
19 A JUVENILE COURT?

20 A YES.

21 Q AND DID YOU ADMIT THAT YOU WERE GUILTY
22 OF THOSE OFFENSES IN SOME FASHION?

23 A YES.

24 Q AND AS A RESULT OF THAT, DID YOU -- DID
25 YOU GO TO JAIL?

26 A NO.

27 Q DID THEY SEND YOU TO A JUVENILE
28 DETENTION HOME OF SOME SORT?

43960

1 A NO.

2 Q DID YOU DO SOME CHARITY WORK?

3 A I WAS PUT ON SIX MONTHS PROBATION. I
4 WAS DOING CHARITY WORK, YES.

5 Q AND IS THAT THE CHARITY WORK THAT YOU'RE
6 REFERRING TO WHEN YOU TALKED ABOUT THE HOMELESS TO
7 DETECTIVE ZOELLER?

8 A YES.

9 Q DID YOU DO EVERYTHING THAT WAS REQUIRED
10 OF YOU BY THE COURT WITH REGARD TO THIS PARTICULAR
11 CASE?

12 A YES.

13 Q AND DID YOU TALK TO DETECTIVE ZOELLER ON
14 THE 17TH OF SEPTEMBER, 1989, ABOUT THE DISPOSITION

15 OF THOSE BURGLARIES?

16 A YES.

17 Q HE WAS AWARE OF THEM?

18 A YES.

19 Q DID YOU TALK TO DR. OZIEL AT ANY TIME

20 ABOUT THOSE BURGLARIES?

21 A WHEN WE WERE --

22 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. CAN I

23 HAVE A MOMENT?

24 THE COURT: YES.

25 (ATTORNEYS ABRAMSON AND LEVIN

26 CONFERRING SOTTO VOCE.)

27

28 MR. LEVIN: STRIKE THAT.

43961

1 Q DID YOU --

2 THE COURT: WAIT. WAIT. DID YOU WANT TO

3 RETRACT THAT QUESTION?

4 MR. LEVIN: YES, I DO, YOUR HONOR.

5 THE COURT: ALL RIGHT. THE ANSWER AND THE

6 QUESTION ARE STRICKEN.

7 Q BY MR. LEVIN: DID YOU AT SOME POINT IN

8 TIME SEE DR. OZIEL AS A RESULT OF THESE BURGLARIES?

9 A YES.

10 Q AND IS THAT WHAT DR. OZIEL WAS TALKING
11 ABOUT ON THE DECEMBER 11TH -- OR DURING THE DECEMBER
12 11TH, 1989 CONVERSATION? WAS HE TALKING ABOUT, WHEN
13 HE SAID THE CALABASAS THING OR -- I WON'T -- I DON'T
14 WANT TO RIGHT NOW IDENTIFY WHO WAS TALKING, BUT
15 THERE WAS THE CALABASAS THING BROUGHT UP, THE
16 CALABASAS ISSUE.

17 IS THAT WHAT WAS BEING TALKED ABOUT IN
18 THAT CONVERSATION?

19 A YES.

20 Q NOW, ON DECEMBER 11TH, 1989, WAS
21 DR. OZIEL TALKING ABOUT YOUR FATHER'S REACTION TO
22 YOU BEING INVOLVED IN THE CALABASAS THEFTS?

23 A MY BROTHER AND DR. OZIEL WERE DISCUSSING
24 IT BACK AND FORTH.

25 Q WHAT WAS YOUR FATHER'S REACTION WITH
26 RESPECT TO THOSE THEFTS?

27 A HE WAS UPSET IN TERMS OF HOW IT CAME TO
28 RESULT. HE FELT THAT WE DIDN'T DO IT WELL ENOUGH.

43962

1 HE WAS ANGRY THAT EMOTIONS GOT INVOLVED AND THAT
2 SOMETHING WAS RETURNED IN WHICH CASE A SUSPICION
3 CAME TO ME AND I ADMITTED -- HE WAS VERY ANGRY ABOUT
4 THE WAY IT HAPPENED AND -- NOT SO MUCH THE WAY IT

5 HAPPENED, BUT JUST THAT WE DIDN'T DO IT WELL ENOUGH
6 TO WHERE WE GOT CAUGHT AND AS A RESULT OF GETTING
7 CAUGHT, THERE MIGHT BE A SCANDAL AND IT COULD TAINT
8 HIS POLITICAL IMAGE.

9 Q WAS YOUR FATHER -- OR DID YOUR FATHER
10 EVER EXPRESS ANY ANGER WITH YOU OVER THE FACT THAT
11 YOU HAD COMMITTED THESE THEFTS?

12 A THE WAY IN WHICH THEY WERE COMMITTED, IN
13 TERMS OF GETTING CAUGHT.

14 Q IT WAS ALWAYS EXPRESSED TO YOU HIS
15 DISSATISFACTION WAS IN THE WAY YOU WERE -- BECAUSE
16 YOU GOT CAUGHT?

17 A BECAUSE OF THE RESULT OF WHAT WOULD
18 HAPPEN SINCE WE GOT CAUGHT.

19 Q WAS HE EVER UPSET IN ANY WAY REGARDING
20 THE MORALITY OF STEALING?

21 A NO.

22 Q WAS THAT INCONSISTENT WITH YOUR FATHER'S
23 VIEWS CONCERNING STEALING AND LYING AND CHEATING?

24 A NO.

25 Q HAD YOU BEEN BROUGHT UP TO -- IN SUCH A
26 MANNER THAT CHEATING WAS PART OF YOUR UPBRINGING BY
27 YOUR FATHER?

28 A CHEATING. STEALING. HE WAS TALKING

1 ABOUT ON THE TENNIS COURT OR ON BUSINESS WITH
2 PEOPLE, ANYTHING THAT YOU MUST DO TO SUCCEED IS
3 JUSTIFIABLE IN HIS EYES.

4 Q DID YOUR FATHER TEACH YOU HOW TO CHEAT
5 AT TENNIS?

6 A YES.

7 Q AND HOW -- WHAT IS YOUR EARLIEST MEMORY
8 OF YOUR FATHER TEACHING YOU HOW TO CHEAT AT TENNIS?

9 MR. CONN: OBJECTION. IRRELEVANT.

10 THE COURT: WELL, I'LL OVERRULE IT ON
11 RELEVANCY GROUNDS, BUT LET'S SEE IF YOU CAN MAKE IT
12 RATHER BRIEF.

13 MR. LEVIN: I WILL, YOUR HONOR.

14 THE COURT: OKAY. OVERRULED.

15 THE WITNESS: HE WOULD GIVE US HAND SIGNALS
16 IN THE -- WHEN I PLAYED TENNIS TO WHERE IF HE FELT
17 THAT A BALL THAT THE OPPONENT CALLED OUT WAS IN OR
18 HE FELT THAT IT WAS AN IMPORTANT POINT THAT I NEEDED
19 TO WIN IT, HE WOULD GIVE ME A SIGNAL AND THAT MEANT
20 THAT I WAS SUPPOSED TO CALL A BALL AT AN OPPORTUNE
21 TIME, AT AN IMPORTANT POINT, THAT LANDED IN THE
22 MIDDLE OF THE COURT WHERE IT WAS OBVIOUS. I WAS
23 SUPPOSED TO CALL THAT BALL OUT SO THAT THE PLAYER
24 WOULD BASICALLY GO CRAZY KNOWING THAT THE BALL WAS
25 OBVIOUSLY IN, AND IT WOULD MENTALLY DESTROY THE
26 PLAYER AND AT THE SAME TIME AS WINNING THE POINT.

27 THESE ARE THE THINGS THAT WOULD HAPPEN.

43964

1 OR WHATEVER YOU CALL THEM, PEOPLE WHO WOULD BE
2 REFEREEING A TENNIS MATCH?

3 A THE HONOR SYSTEM WAS USED AS A JUVENILE
4 TENNIS PLAYER.

5 Q SO THERE WAS NO ONE LIKE A REFEREE AT
6 THE TENNIS COURT?

7 A THERE WAS THE TOURNAMENT UMPIRE IN
8 WHICH, IF HE FELT SOMEONE WAS CHEATING, YOU COULD
9 REQUEST FOR A LINES PERSON, BUT USUALLY NOT.

10 Q WHERE WOULD YOUR FATHER BE WHEN HE WOULD
11 GIVE YOU THESE SIGNALS?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: HE WOULD BE AT STRATEGIC
15 POINTS. HE WOULD WALK AROUND OR BE IN THE BALCONIES
16 SO THAT I COULD ALWAYS -- I COULD ALWAYS SEE HIM.

17 Q BY MR. LEVIN: AND THIS -- THESE SIGNALS
18 THAT HE WOULD GIVE YOU, WERE THESE SIGNALS THAT HE
19 GAVE YOU IN TENNIS THROUGHOUT YOUR TENNIS LIFE,
20 THROUGHOUT YOUR CAREER AS A TENNIS PLAYER?

21 A YES.

22 Q IT WENT FROM YOUR EARLY YEARS THROUGHOUT

23 YOUR TEENAGE YEARS?

24 A YES.

25 Q WHAT KIND OF HAND SIGNALS DID HE HAVE?

26 CAN YOU SHOW US?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OKAY. LET'S -- AS I SAID, LET'S

43965

1 MAKE IT BRIEF HERE ON THAT SUBJECT.

2 DO YOU NEED SOME WATER OR DO YOU HAVE

3 IT?

4 MS. ABRAMSON: I NEED A MOMENT, YOUR HONOR.

5 (ATTORNEYS ABRAMSON AND LEVIN

6 CONFERRING SOTTO VOCE.)

7

8 Q BY MR. LEVIN: DID YOUR FATHER HAVE

9 ANYTHING TO DO WITH YOUR SCHOOLWORK?

10 A YES.

11 Q DID YOUR MOTHER HAVE ANYTHING TO DO WITH

12 YOUR SCHOOLWORK?

13 A YES.

14 Q DID YOUR MOTHER HAVE ANYTHING TO DO WITH

15 YOU CHEATING --

16 MR. CONN: OBJECTION. IRRELEVANT.

17 Q BY MR. LEVIN: -- AT SCHOOLWORK?

18 MR. CONN: OBJECTION. IRRELEVANT.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES.

21 Q BY MR. LEVIN: HOW DID YOUR MOTHER -- IN

22 WHAT WAY DID SHE INVOLVE HERSELF IN YOU CHEATING IN

23 YOUR SCHOOLWORK?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 THE WITNESS: SHE FELT THAT THE GRADES WERE

27 MORE IMPORTANT THAN THE INFORMATION, AND SO IF I

28 WASN'T ABLE TO DO AN ASSIGNMENT RIGHT, AND AFTER

43966

1 BEING OUT OF THE CLOSET I COULDN'T STILL DO IT

2 RIGHT, FINALLY, IN THE END SHE'D DO IT FOR ME; OR IF

3 I WAS ABLE TO GET A TEST FROM ONE OF THE OTHER KIDS

4 THAT WE WERE GOING TO TAKE, SHE WOULD DO THE TEST

5 FOR ME.

6 Q BY MR. LEVIN: HOW ABOUT YOUR FATHER?

7 DID YOUR FATHER HAVE ANYTHING TO DO WITH YOU

8 CHEATING AT SCHOOLWORK?

9 A WORKED IN THE SAME WAY.

10 Q DID YOUR MOTHER EVER ASSIST YOU IN

11 GETTING A PHONEY IDENTIFICATION CARD?

12 A YES.

13 Q WAS IT A CALIFORNIA IDENTIFICATION

14 CARD?

15 A YES.

16 Q HOW DID SHE DO THAT?

17 A SHE FIDGETED WITH THE NUMBERS AND

18 XEROXED IT IN A WAY WHERE IT CHANGED THE CARD.

19 Q WAS THERE -- WAS IT EVER BROUGHT TO YOUR

20 ATTENTION, MR. MENENDEZ, THAT YOUR SCHOOLWORK THAT

21 YOU TURNED IN WAS DIFFERENT THAN THE TYPE OF WORK

22 THAT YOU DID IN CLASS?

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: SUSTAINED.

25 Q BY MR. LEVIN: WAS IT EVER BROUGHT TO

26 YOUR ATTENTION BY ANY OF YOUR TEACHERS THAT THEY

27 WERE AWARE THAT YOUR MOTHER AND FATHER WERE DOING

28 YOUR SCHOOLWORK?

43967

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: SUSTAINED. THE ANSWER'S STRICKEN.

3 Q BY MR. LEVIN: WERE THERE TIMES WHEN

4 YOUR MOTHER WAS -- HAD TALKED TO ANY OF YOUR TEACHERS

5 CONCERNING YOUR SCHOOLWORK?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: SUSTAINED.

8 Q BY MR. LEVIN: WITH RESPECT TO THE --

9 WITH THE THINGS THAT YOU HAD TAKEN IN THESE THEFTS,

10 YOU INDICATED THAT YOU TOOK SOME MONEY?

11 A YES.

12 Q WHAT DID YOU DO WITH THE MONEY?

13 A THE PORTION OF THE MONEY THAT WE THOUGHT

14 WE HAD TAKEN FROM THE SAFE WAS RETURNED. THE OTHER

15 MONEY MY MOTHER AND MY FATHER FOUND, WHICH IS HOW IT

16 ALL UNFOLDED.

17 Q AND WHEN THIS MONEY WAS FOUND, WHAT

18 HAPPENED TO IT?

19 A IT WAS SPENT.

20 Q WHO SPENT THE MONEY?

21 A MY MOTHER.

22 MR. LEVIN: YOUR HONOR, IF I MIGHT JUST HAVE

23 A MOMENT.

24 THE COURT: SURE.

25 (ATTORNEYS ABRAMSON AND LEVIN

26 CONFERRING SOTTO VOCE.)

27

28 Q BY MR. LEVIN: MR. MENENDEZ, DESPITE THE

43968

1 FACT THAT YOUR FATHER ENCOURAGED YOU TO CHEAT DURING

2 TENNIS, DID YOU WANT TO?

3 A NO.

4 Q HOW DID YOU FEEL ABOUT HAVING TO FOLLOW
5 YOUR FATHER'S HAND SIGNALS AND CHEAT AT TENNIS?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: OVERRULED.

8 THE WITNESS: BECAUSE YOU'D HAVE TO CALL THE
9 BALL OUT IN AN OBVIOUS WAY. THERE WERE OFTEN 50 OR
10 A HUNDRED SPECTATORS --

11 MR. CONN: OBJECTION. NONRESPONSIVE.

12 THE COURT: SUSTAINED. THE ANSWER'S STRICKEN.

13 Q BY MR. LEVIN: HOW DID YOU FEEL?

14 A I WAS EMBARRASSED.

15 Q BEFORE WHEN YOU RELATED INCIDENTS
16 CONCERNING YOUR FATHER'S REACTION TO YOU NOT
17 FOLLOWING HAND SIGNALS, WERE THESE THE HAND SIGNALS
18 YOU WERE TALKING ABOUT?

19 A YES.

20 MR. LEVIN: THANK YOU, YOUR HONOR. I HAVE
21 NOTHING FURTHER.

22 THE COURT: OKAY. MR. GESSLER.

23 MR. GESSLER: THANK YOU, YOUR HONOR.

24

25 CROSS-EXAMINATION

26 BY MR. GESSLER:

27 Q MR. MENENDEZ, THESE TENNIS SIGNALS THAT
28 YOU'VE TOLD US ABOUT FROM YOUR FATHER, DID HE DO THE

1 SAME THING WITH LYLE, TO YOUR KNOWLEDGE?

2 A YES.

3 Q AND DID HE TEACH HIM THE SAME WAY, AS TO
4 WHAT THEY WERE USED FOR IN TENNIS MATCHES?

5 A HE DID IT IN TENNIS, IN BUSINESS, AND IN
6 MORE THINGS WITH LYLE, TECHNIQUES TO TAKE ADVANTAGE
7 AND THAT TYPE.

8 Q TO YOUR KNOWLEDGE, DID YOUR FATHER AND
9 MOTHER ALSO HELP LYLE WITH HIS HOMEWORK OR DO HIS
10 HOMEWORK FOR HIM?

11 A YES.

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: SUSTAINED. THE ANSWER'S
14 STRICKEN.

15 Q BY MR. GESSLER: DID YOUR FATHER HAVE A
16 MOTTO CONCERNING WINING?

17 A YES.

18 Q WHAT WAS THAT?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 Q BY MR. GESSLER: MR. MENENDEZ, DID YOUR
22 FATHER EVER TELL YOU WHY HE FELT IT WAS ALL RIGHT
23 FOR YOU TO CHEAT IN TENNIS?

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 YOU CAN ANSWER THE QUESTION.

27 THE WITNESS: YES.

28 Q BY MR. GESSLER: WHY WAS THAT?

43970

1 A BECAUSE THE MOST IMPORTANT PART WAS
2 WINNING THE MATCH. THERE'S NO POINT IN BEING A GOOD
3 LOSER.

4 Q AND HE EXPRESSED THAT ON MANY OCCASIONS
5 TO YOU?

6 A YES.

7 Q DID HE ALSO EXPRESS IT TO LYLE IN YOUR
8 PRESENCE?

9 A MOSTLY HE EXPRESSED IT TO LYLE AND I WAS
10 LISTENING.

11 Q NOW, JUST ONE MORE AREA.
12 DIRECTING YOUR ATTENTION TO THE MEMORIAL
13 SERVICE THAT WAS HELD IN CALIFORNIA.

14 WHERE WAS THAT HELD?

15 A AT THE ACTOR'S GUILD OR SCREEN ACTOR'S
16 GUILD OR DIRECTOR'S GUILD. ONE OF THE GUILDS.

17 Q DO YOU REMEMBER WHEN THAT WAS?

18 A ON FRIDAY THE 25TH OF AUGUST, 1989.

19 Q WHEN YOU LEFT THAT SERVICE, IS THAT WHEN
20 YOU WENT IN A LIMOUSINE WITH YOUR BROTHER AND WITH
21 MARZI EISENBERG?

22 A YES.

23 Q AND DO YOU REMEMBER HOW LONG THAT RIDE
24 WAS THAT YOU WERE IN THE LIMOUSINE TOGETHER?

25 A FIVE MINUTES.

26 Q WHERE WERE YOU SEATED IN THE LIMOUSINE?

27 A I WAS SEATED WITH MY BACK AGAINST THE
28 DIVIDER; MY BROTHER AND MARZI WERE SITTING IN FRONT

43971

1 OF ME.

2 Q SO YOU WERE ALL -- WERE YOU ALL IN THE
3 SAME COMPARTMENT OF THE LIMOUSINE OR WERE YOU
4 SEPARATED BY SOME GLASS ENCLOSURE?

5 A NO. WE WERE IN THE SAME SMALL
6 COMPARTMENT.

7 Q WAS THERE CONVERSATION DURING THAT
8 FIVE-MINUTE RIDE THAT YOU RECALL?

9 A I DON'T THINK THERE WAS MUCH. IT WAS A
10 VERY SOMBER PERIOD.

11 Q SPECIFICALLY, WAS THERE ANY CONVERSATION
12 BETWEEN MARZI EISENBERG AND YOUR BROTHER LYLE
13 CONCERNING LYLE WEARING HIS FATHER'S SHOES?

14 A NO.

15 Q DO YOU RECALL WHAT KIND OF SHOES YOUR
16 BROTHER HAD ON THAT DAY?

17 A YES.

18 Q WHAT WERE THEY?

19 A BOOTS.

20 Q AND THESE BOOTS, DID THEY HAVE ANY

21 TASSELS ON THEM?

22 A NO.

23 Q DID THEY LOOK LIKE REGULAR BOOTS, SHORT

24 BOOTS?

25 A THEY WERE BOOTS.

26 Q NOW, HAVE YOU SEEN A VIDEOTAPE

27 CONCERNING YOU AND YOUR BROTHER LYLE MENENDEZ

28 OUTSIDE THAT MEMORIAL SERVICE?

43972

1 A YES.

2 Q YOU'VE SEEN THAT HERE IN COURT IN A

3 HEARING?

4 A JUST THE CLIPS THAT WERE SHOWN.

5 Q ALL RIGHT. AND DO YOU RECOGNIZE WHERE

6 YOU WERE AT THAT TIME; THAT IS, WHERE THAT WAS

7 TAKEN?

8 A YES.

9 Q WHERE WAS THAT?

10 A AT THE -- I THINK IT WAS THE DIRECTOR'S

11 GUILD.

12 Q ALL RIGHT. IT WAS OUT HERE THOUGH?
13 A IN CALIFORNIA.
14 Q AND IS THAT THE MEMORIAL SERVICE THAT
15 YOU'VE TOLD US ABOUT THAT YOU AND YOUR BROTHER LEFT
16 WITH MARZI EISENBERG?
17 A RIGHT.
18 Q NOW, DO YOU KNOW WHETHER OR NOT THESE
19 BOOTS WERE LYLE'S OR WHETHER THEY WERE YOUR
20 FATHER'S?
21 A THEY WERE LYLE'S.
22 MR. GESSLER: YOUR HONOR, I'D LIKE, AT THIS
23 TIME, TO PLAY EXHIBIT 368, WHICH IS THE ONE THAT THE
24 WITNESS --
25 THE COURT: IS IT ALL CUED UP AND READY TO GO?
26 MR. GESSLER: IT'S ALL CUED UP.
27 THE COURT: I WONDER IF WE COULD HAVE LYLE
28 MENENDEZ STEP DOWN SO THE JURORS --

43973

1 THE COURT: YOU MEAN ERIK MENENDEZ?
2 MR. GESSLER: ERIK MENENDEZ. I'M SORRY.
3 THE COURT: HE CAN STAY WHERE HE IS.
4 FIRST OF ALL, LET ME INQUIRE, CAN
5 EVERYBODY SEE THE SCREEN FROM WHERE YOU ARE?
6 WE'LL DIM THE LIGHTS A LITTLE BIT SO YOU

7 CAN GET A BETTER VIEW OF IT.

8 (EXHIBIT 368 WAS PLAYED.)

9

10 THE COURT: OKAY. THAT TAPE HAS BEEN PLAYED.

11 Q BY MR. GESSLER: MR. MENENDEZ, NOW THAT

12 YOU'VE VIEWED EXHIBIT 368 AGAIN, THE TAPE, DOES THAT

13 SHOW THE BOOTS THAT YOUR BROTHER WAS WEARING THE DAY

14 OF THE MEMORIAL SERVICE?

15 A YES.

16 Q AND DID YOU SEE THE CLOSE-UP SHOTS, THE

17 ZOOM SHOTS, SUCH AS THEY WERE, OF HIS BOOTS?

18 A YES.

19 Q DID THEY SHOW ANY TASSELS ON THEM

20 WHATSOEVER?

21 A NO.

22 Q DO YOU KNOW WHETHER OR NOT YOUR

23 BROTHER'S FEET ARE LARGER OR SMALLER THAN YOUR

24 FATHER'S?

25 A THEY'RE SLIGHTLY LARGER THAN MY

26 FATHER'S.

27 MR. GESSLER: THANK YOU. I HAVE NOTHING

28 FURTHER, YOUR HONOR.

43974

1 THE COURT: OKAY. WE'LL TAKE A RECESS UNTIL

2 FIVE MINUTES AFTER THREE.

3 AND DON'T DISCUSS THE MATTER WITH
4 ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT IT.
5 WE'LL RESUME AT FIVE AFTER THREE.

6 WE'LL ASK THAT COUNSEL REMAIN SO THAT WE
7 CAN DISCUSS A FEW MATTERS.

8 (THE JURY EXITED THE
9 COURTROOM AND THE FOLLOWING
10 PROCEEDINGS WERE HELD:)

11

12 THE COURT: ALL RIGHT. BEFORE
13 CROSS-EXAMINATION, THE DEFENSE HAD FILED A MOTION
14 WITH RESPECT TO THE SCOPE OF THE PEOPLE'S CROSS.
15 THIS WAS FILED BEFORE THE DIRECT EXAMINATION.

16 MS. ABRAMSON: BEFORE WE GET TO THAT, JUDGE,
17 THIS IS A HAND SIGNAL INDICATING THAT I WILL NEED A
18 BRIEF RECESS SOMEWHERE. DO YOU WANT TO DO IT NOW
19 AND HAVE US COME BACK? SOMETIMES THESE DISCUSSIONS
20 GO THROUGH THE WHOLE RECESS.

21 THE COURT: LET'S SEE IF WE CAN GET THESE
22 THINGS RESOLVED MORE EXPEDITIOUSLY AND YOU CAN HAVE
23 YOUR BREAK.

24 MS. ABRAMSON: AND I CAN DO TWO DIFFERENT
25 HAND SIGNALS, I CAN DO A THANK YOU HAND SIGNAL --

26 THE COURT: FIRST OF ALL, WITHOUT GETTING
27 INTO THE DETAIL OF THE MOTION FILED BY THE DEFENSE,
28 DID YOU INTEND TO GO INTO THE TYPES OF THINGS THAT

1 ARE THE SUBJECT OF THEIR OBJECTIONS DURING THE
2 AFTERNOON SESSION?

3 MR. CONN: NO. IF WE'RE REFERRING TO THE
4 OZIEL MATERIAL, I WASN'T NECESSARILY PLANNING ON
5 GOING INTO THE OZIEL MATERIAL THIS AFTERNOON.

6 THE COURT: OKAY. THEY REFER TO OZIEL AND
7 ALSO I BELIEVE THE CIGNARELLI AND TO -- MAYBE NOT IN
8 THE WRITTEN MOTION, BUT IN ORAL ARGUMENT THEY REFER
9 TO CIGNARELLI. I THINK IT'S ALSO REFERRED TO IN THE
10 WRITTEN MOTION.

11 MR. CONN: NO. I DON'T NEED TO GET INTO
12 CIGNARELLI THIS AFTERNOON EITHER.

13 THE COURT: ALL RIGHT. SO I'M GOING TO
14 DEFER, THEN, ANY HEARING ON THESE MATTERS UNTIL WE
15 HAVE AN APPROPRIATE TIME TO TAKE A BREAK AND DEAL
16 WITH IT.

17 AND THERE'S ALSO REFERENCE TO SOME ORAL
18 DISCUSSIONS TO THE MANUSCRIPT PREPARED BY MR. RAND.

19 DID YOU INTEND TO USE ANY MATERIAL IN
20 THAT MANUSCRIPT THAT PURPORTS TO BE -- I DON'T KNOW
21 IF THERE IS -- PURPORTS TO BE INTERVIEWS WITH ERIK
22 MENENDEZ THAT WOULD THEN BE SUBJECT TO YOUR USING TO
23 IMPEACH THE DEFENDANT?

24 MR. CONN: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. AND --

26 MR. LEVIN: THERE IS AN ADDITIONAL MOTION
27 THAT WAS FILED, YOUR HONOR.
28 THE COURT: YES.

43976

1 MR. LEVIN: WITH RESPECT TO A MOTION FOR THE
2 COURT TO PRECLUDE THE PROSECUTION FROM PUTTING IN
3 THE HANDS OF ERIK MENENDEZ THE SHOTGUN, THE
4 ILLUSTRATION SHOTGUN THAT THEY'VE UTILIZED.

5 THE COURT: I HAVEN'T SEEN THAT ONE.

6 MR. LEVIN: I BELIEVE THAT WAS FILED --

7 THE COURT: YOU FILED A MOTION?

8 MS. NAJERA: WE HAVEN'T SEEN IT EITHER, YOUR
9 HONOR.

10 MR. LEVIN: WELL, YOUR HONOR --

11 MS. ABRAMSON: DID YOU FILE IT?

12 MR. LEVIN: THERE ARE EITHER FOUR OR NONE
13 FILED, IT LOOKS LIKE.

14 YOUR HONOR, I DO MAKE THAT MOTION, THAT
15 IF THE PROSECUTION INTENDS TO DO SO -- I HAVE NO
16 IDEA THAT THEY DO -- THAT THEY BE PRECLUDED FROM
17 ASKING ERIK MENENDEZ TO IN ANY MANNER HANDLE THE
18 SHOTGUN, HOLD THE SHOTGUN, OR USE IT IN ANY
19 DEMONSTRATION IN FRONT OF THIS JURY.

20 THE COURT: WELL, ARE YOU PROPOSING TO DO

21 THAT DURING THIS AFTERNOON'S SESSION?

22 MR. CONN: NOT THIS AFTERNOON, YOUR HONOR.

23 THE COURT: OKAY. BEFORE YOU DO THAT, LET ME
24 KNOW AND WE'LL DISCUSS IT. JUST LET ME KNOW SO WE
25 CAN RESOLVE IT FOR --

26 MS. ABRAMSON: CAN WE ASK WHAT OUTRAGEOUS
27 THING HE IS GOING TO DO THIS AFTERNOON?

28 MR. LEVIN: HE DIDN'T KNOW UNTIL I TOLD HIM.

43977

1 THE COURT: YOU CAN SIT HERE AND PONDER IT,
2 IF YOU WANT.

3 MS. ABRAMSON: I'D RATHER TAKE A RECESS.

4 THE COURT: WE'LL TAKE A RECESS UNTIL 3:00.

5 MS. ABRAMSON: THANK YOU.

6 (A RECESS WAS TAKEN FROM
7 2:50 P.M. TO 3:07 P.M.)

8

9 THE COURT: ALL RIGHT. WE'RE READY TO
10 RESUME.

11 MR. GESSLER: YOUR HONOR, WE DID PROPOSE A
12 LIMITATION TO THE BURGLARY EVIDENCE CONCERNING LYLE
13 MENENDEZ. I GAVE IT TO MS. NAJERA. I DON'T KNOW IF
14 MR. CONN HAS HAD A CHANCE TO SEE IT. I WOULD LIKE
15 TO HAVE IT GIVEN AT THIS TIME. IT'S BASICALLY, "THE

16 EVIDENCE OF INVOLVEMENT OF THE DEFENDANT, LYLE
17 MENENDEZ, ON A BURGLARY OCCURRING JULY 14TH, 1988 IS
18 ADMITTED AGAINST LYLE MENENDEZ FOR THE LIMITED
19 PURPOSE OF EXPLAINING THE RELATIONSHIP BETWEEN LYLE
20 MENENDEZ AND HIS PARENTS," WHICH, I BELIEVE, STATES
21 THE PURPOSE THE COURT GAVE IT.

22 THE COURT: PEOPLE WISH TO BE HEARD?

23 MR. CONN: WELL, I THINK THAT THIS PARTICULAR
24 PHRASING MIGHT EMBODY THE CONCEPT BUT DOESN'T MEAN
25 IT'S GOING TO BE ARGUED THIS WAY. I THINK WE'LL
26 NEED SOME MORE TIME TO WORK OUT THE EXACT WORDING
27 FOR THE PURPOSE FOR WHICH IT'S LIMITED. I DON'T
28 THINK IT'S NECESSARY TO GIVE A LIMITING INSTRUCTION

43978

1 AT THIS POINT. THE FACT OF THE MATTER IS THAT THE
2 EVIDENCE IS ADMISSIBLE AND THE COURT CAN DECIDE AT
3 ANY TIME DURING THE COURSE OF THE TRIAL, EVEN AT THE
4 END OF THE TRIAL, TO DECIDE WHAT LIMITING
5 INSTRUCTION TO GIVE CONCERNING THIS PIECE OF
6 EVIDENCE.

7 MR. GESSLER: I THINK, YOUR HONOR, THAT A
8 LIMITING INSTRUCTION IS PROPER AT THE TIME THAT THE
9 EVIDENCE IS GIVEN, NOT JUST AT THE END OF THE TRIAL,
10 SOMETIMES A MONTH LATER WHEN THE JURY WONDERS WHAT

11 IT WAS ALL ABOUT. I DON'T WANT THEM PONDERING FOR A
12 MONTH OR SIX WEEKS SOME OTHER PURPOSE FOR THIS
13 EVIDENCE.

14 THE COURT: WELL, ARE YOU QUARRELLING WITH
15 THIS AS A LIMITATION ON THE EVIDENCE AT THIS POINT?

16 MR. CONN: WELL, I THINK PERHAPS THE EXACT
17 WORDING I MIGHT QUARREL WITH. I HAVE TO THINK
18 THROUGH EXACTLY HOW IT IS GOING TO BE USED AND HOW
19 IT IS GOING TO BE ARGUED.

20 I THINK IF WE'RE GOING TO LIMIT IT, THE
21 KEY IS THAT IT IS NOT BEING OFFERED TO SHOW THAT HE
22 HAD PROPENSITY TO COMMIT BURGLARIES OR PROPENSITY TO
23 COMMIT CRIMES. THAT'S THE LIMITATION. I DON'T
24 THINK THAT IT'S NECESSARY TO EXPRESS IT IN TERMS OF
25 WHAT IT IS OFFERED TO PROVE AS OPPOSED TO WHAT IT
26 MAY NOT BE CONSIDERED FOR.

27 THE COURT: WELL, THE INSTRUCTION, 2.50, HAS
28 WITHIN IT LIMITATIONS UPON THE USE OF SUCH EVIDENCE;

43979

1 THAT IS, NORMALLY THE WAY THIS TYPE OF EVIDENCE IS
2 RECEIVED IS WITH A LIMITING INSTRUCTION.

3 SO MY QUESTION OF YOU IS, AT THIS POINT,
4 WITH THE UNDERSTANDING THAT THE COURT WILL COUCH
5 THIS LIMITING -- THIS INSTRUCTION WITH THE REMINDER

6 TO THE JURY THAT THE COURT WILL GIVE THE
7 INSTRUCTIONS AT THE END OF THE CASE, WHICH WILL
8 ENCOMPASS ALL THE RULES, WHICH CERTAINLY CAN
9 CONTEMPLATE MODIFICATIONS OF THIS PARTICULAR
10 INSTRUCTION I THINK AT THE END OF THE TRIAL, WHAT IS
11 THE HARM IN GIVING THIS INSTRUCTION AT THIS POINT?

12 MR. CONN: WELL, NO. PROVIDED THERE CAN BE
13 SOME MODIFICATIONS AT THE END OF THE TRIAL, I DON'T
14 HAVE ANY PROBLEM WITH THIS PARTICULAR WORDING AT
15 THIS TIME.

16 THE COURT: IT'S CERTAINLY OPEN TO
17 MODIFICATION IF THERE IS A BASIS FOR MODIFICATION.
18 I'M NOT SAYING THERE WILL BE, BUT CERTAINLY THERE
19 COULD BE.

20 MR. LEVIN: YOUR HONOR, ERIK MENENDEZ ALSO
21 JOINS IN ON THE REQUEST, THE SAME LIMITATION ALSO
22 APPLIES TO HIM.

23 THE COURT: AND YOU'RE ASKING THAT THE
24 INSTRUCTION BE READ AS READ BY MR. GESSLER?

25 MR. LEVIN: YES.

26 THE COURT: WITH THE ADDITION OF YOUR
27 CLIENT'S NAME.

28 MS. ABRAMSON: ALSO WITH THE ADDITION OF OUR

1 CLIENT'S PRIOR OFFENSE. THERE ARE TWO OFFENSES WITH
2 RESPECT TO ERIK MENENDEZ, ONLY ONE WITH RESPECT TO
3 LYLE.

4 THE COURT: ALL RIGHT. WITH THAT
5 MODIFICATION, WITH THE UNDERSTANDING THAT I'LL TELL
6 THE JURY THAT THE INSTRUCTIONS IN THEIR FINAL FORM
7 WON'T BE GIVEN TO THEM UNTIL THE END OF THE TRIAL,
8 SUBJECT TO MODIFICATIONS AT THE END OF THE TRIAL.

9 SO IF YOU WANT TO GIVE ME THAT. I
10 DIDN'T WRITE DOWN WHAT YOU SAID.

11 MR. GESSLER: I HAVE THE COPY I GAVE TO THE
12 DISTRICT ATTORNEY THAT'S A LITTLE MORE READABLE.

13 MS. TOWERY: I CAN PROBABLY GIVE IT TO THE
14 CLERK TO PRINT IT.

15 THE COURT: IT DOESN'T MATTER. I CAN READ
16 IT.

17 MS. ABRAMSON: I WANT TO ADD THE MODIFICATION
18 FOR ERIK.

19 THE COURT: I'LL JUST SAY THE DEFENDANTS AND
20 BURGLARIES PLURAL. DOES THAT SATISFY? OR I'LL
21 MENTION THEM BOTH BY NAME, BOTH DEFENDANTS BY NAME.

22 MS. TOWERY: YOU COULD SAY, YOUR HONOR, YOU
23 COULD SAY LYLE AND ERIK MENENDEZ IN BURGLARY OR
24 BURGLARIES OCCURRING IN JULY, 1988.

25 THE COURT: IS THAT AGREEABLE?

26 MR. GESSLER: YES.

27 MR. LEVIN: YES, SIR.

28 THE COURT: WITH THE UNDERSTANDING, AGAIN,

1 I'LL PREFACE IT WITH THE REMARK ABOUT FINAL
2 INSTRUCTIONS.

3 LET'S GET THE JURY OUT.

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

7

8 THE COURT: OKAY. THE JURY IS BACK AND WE'LL
9 RESUME NOW WITH THE TESTIMONY OF THE DEFENDANT, ERIK
10 MENENDEZ.

11 BEFORE THE BEGINNING OF THE
12 CROSS-EXAMINATION, LET ME JUST GIVE YOU AN
13 INSTRUCTION.

14 THROUGHOUT THE COURSE OF THE TRIAL,
15 OCCASIONALLY I'VE GIVEN YOU INSTRUCTIONS ON THE LAW
16 OR LIMITATIONS ON THE USE OF SOME EVIDENCE. MANY OF
17 THESE INSTRUCTIONS WILL BE GIVEN TO YOU AT THE END
18 OF THE TRIAL, AND WHEN THAT DOES OCCUR, THE LANGUAGE
19 MIGHT BE DIFFERENT. THE FINAL INSTRUCTIONS THE
20 COURT GIVES YOU AT THE END OF THE CASE ARE THE
21 INSTRUCTIONS ON THE LAW THAT BIND YOU IN YOUR
22 DELIBERATIONS. BUT AT THIS POINT I WANT TO GIVE YOU
23 A LIMITATION ON THE -- ON SOME OF THE EVIDENCE THAT

24 HAS BEEN RECEIVED.

25 THE EVIDENCE OF INVOLVEMENT OF THE
26 DEFENDANT, LYLE MENENDEZ, IN A BURGLARY AND ERIK
27 MENENDEZ IN BURGLARIES IN JULY OF 1988 IS ADMITTED
28 AGAINST THE DEFENDANTS FOR THE LIMITED PURPOSE OF

43982

1 EXPLAINING THE RELATIONSHIP BETWEEN THE DEFENDANTS,
2 ERIK AND LYLE MENENDEZ, AND THEIR PARENTS.

3 ALL RIGHT. WE'LL NOW PROCEED WITH THE
4 CROSS-EXAMINATION OF THE DEFENDANT, ERIK MENENDEZ.

5 MR. CONN: THANK YOU.

6

7 CROSS-EXAMINATION

8 BY MR. CONN:

9 Q MR. MENENDEZ, ONE YEAR BEFORE YOU SHOT
10 YOUR PARENTS TO DEATH, YOU COMMITTED TWO RESIDENTIAL
11 BURGLARIES; IS THAT CORRECT?

12 A RIGHT.

13 Q AND THE TARGETS OF THE BURGLARIES WERE
14 THE HOMES OF FRIENDS; IS THAT CORRECT?

15 A YES.

16 Q AND YOU TOLD US THAT SOMETIME FOLLOWING
17 THOSE BURGLARIES YOU BEGAN WORKING WITH THE
18 HOMELESS; IS THAT CORRECT?

19 A I DID.

20 Q NOW, YOU WEREN'T WORKING WITH THE

21 HOMELESS BEFORE YOU BROKE INTO -- BEFORE YOU BURGLED

22 THE HOMES OF FRIENDS, DID YOU?

23 A NO.

24 Q SO THIS WORKING WITH THE HOMELESS WAS A

25 CONSEQUENCE OF THE BURGLARIES; IS THAT CORRECT?

26 A RIGHT.

27 Q AND THAT WAS A CONDITION OF THE

28 DISPOSITION THAT WAS ARRIVED AT IN THAT CASE; IS

43983

1 THAT CORRECT?

2 A NO.

3 Q IT WASN'T?

4 A NO.

5 Q WHAT WAS IT?

6 A IT WAS SOMETHING THAT WE THOUGHT THAT WE

7 SHOULD DO AND THAT THE JUDGE WOULD REALIZE THAT THIS

8 WAS SOMETHING THAT WE THOUGHT WE DID WRONG AND THAT

9 WE UNDERSTOOD THAT WHAT WE DID WAS WRONG.

10 Q THIS WAS SOMETHING THAT WAS BROUGHT TO

11 THE ATTENTION OF THE JUDGE; IS THAT CORRECT?

12 A RIGHT.

13 Q SO IT WOULD AFFECT THE SENTENCING THAT

14 THE JUDGE GIVES YOU; IS THAT CORRECT?

15 MR. LEVIN: OBJECTION. CALLS FOR

16 SPECULATION.

17 THE COURT: WELL, IT GOES TO HIS STATE OF

18 MIND.

19 IT WILL BE RECEIVED FOR THAT LIMITED

20 PURPOSE.

21 THE WITNESS: YES.

22 Q BY MR. CONN: SO IT WAS DESIGNED TO SHOW

23 THE JUDGE THAT YOU COULD BE REHABILITATED,

24 ESSENTIALLY; IS THAT CORRECT?

25 MR. LEVIN: OBJECTION. CALLS FOR

26 SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: NO.

43984

1 Q BY MR. CONN: THEN WHAT WAS THE PURPOSE

2 OF IT?

3 A TO HELP EXPRESS TO THE JUDGE THAT I WAS

4 SORRY FOR WHAT I DID AND THAT I WISHED THAT I HAD

5 NOT DONE THIS, AND THAT I WAS GOING TO GIVE BACK TO

6 THE COMMUNITY.

7 Q AND DID YOU FEEL BAD ABOUT THAT CRIME,

8 MR. MENENDEZ?

9 A YES.

10 Q DID YOU FEEL BAD ABOUT BOTH OF THOSE
11 BURGLARIES?

12 A YES.

13 Q DID IT MAKE YOU SAD WHEN YOU THOUGHT
14 ABOUT THEM?

15 MR. LEVIN: OBJECTION --

16 THE WITNESS: MORE EMBARRASSED.

17 MR. LEVIN: STRIKE THAT.

18 Q BY MR. CONN: WHY WERE YOU EMBARRASSED?

19 A BECAUSE IT WAS A STUPID THING TO DO AND
20 IT'S EMBARRASSING TO HEAR.

21 Q WHAT WAS IT THAT YOU TOOK FROM THE FIRST
22 BURGLARY, THE LIST BURGLARY?

23 A JEWELRY. MONEY.

24 Q DO YOU KNOW HOW MUCH MONEY YOU TOOK?

25 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
26 OBJECT.

27 MR. LEVIN: YES, YOUR HONOR. THERE HAD BEEN
28 LIMITATIONS. WE'D ASK TO APPROACH.

43985

1 MR. CONN: I'M JUST ASKING THE WITNESS AT
2 THIS POINT.

3 THE COURT: OVERRULED. HE CAN ASK HIM.

4 THE WITNESS: THOUSAND DOLLARS.

5 Q BY MR. CONN: AND DO YOU KNOW HOW MUCH

6 JEWELRY YOU TOOK?

7 A NOT ALL OF IT. HALF OF IT. SOMEWHERE

8 AROUND THERE.

9 Q YOU TOOK HALF THE JEWELRY AND HALF THE

10 JEWELRY WENT TO SOMEONE ELSE?

11 A NO. NO.

12 Q WHAT DO YOU MEAN YOU TOOK HALF OF IT?

13 A WE DIDN'T REMOVE ALL THE JEWELRY FROM

14 THE SAFE.

15 Q AND DO YOU HAVE ANY IDEA HOW MUCH THAT

16 JEWELRY WAS WORTH?

17 A I'M SURE IT WAS WORTH A LOT OF MONEY.

18 Q AND THEN SOMETIME LATER YOU COMMITTED A

19 SECOND BURGLARY AT THE RESIDENCE OF THE GINSBERGS?

20 A YES.

21 Q AND WHAT DID YOU TAKE FROM THAT

22 LOCATION?

23 A SOLOFLEX MACHINE, COMPUTER, SAFE,

24 POTTERY, DISHES.

25 Q CHINA?

26 A CHINA.

27 Q SILVERWARE?

28 A YES.

1 Q VCR?

2 A YES.

3 Q JEWELRY?

4 A YES.

5 Q AND DO YOU KNOW HOW MUCH THAT LOSS WAS

6 IN THAT CASE?

7 A A LOT, I'M SURE.

8 Q WHAT DO YOU MEAN BY A LOT?

9 A I'M SURE THAT IT WAS A LOT OF MONEY. I

10 KNOW THAT IT WAS PURPORTED TO BE A LOT OF MONEY. I

11 DIDN'T KNOW THE EXACT FIGURES.

12 Q NOW, YOU'RE SAYING THAT YOU COMMITTED

13 THE FIRST BURGLARY WITH CRAIG CIGNARELLI?

14 A YES.

15 Q AND IS THAT WHAT YOU TOLD THE POLICE?

16 A NO. I TOLD THE POLICE THAT I DID IT

17 MYSELF.

18 Q BUT BEFORE YOU ADMITTED TO THE POLICE

19 THAT YOU DID IT YOURSELF, DID YOU TELL THE POLICE

20 THAT YOU WERE WITH SOMEONE ELSE THAT NIGHT?

21 A I WAS SLEEPING OVER AT MY FRIEND'S HOUSE

22 AND WHILE I WAS SLEEPING OVER, THIS IS WHEN IT

23 HAPPENED. I WAS -- IT WAS A SLEEP-OVER.

24 Q ARE YOU REFERRING TO THE LIST BURGLARY?

25 A EXACTLY.

26 Q AND HOW FAR -- HOW LONG BEFORE THE

27 GINSBERG BURGLARY WAS THE LIST BURGLARY?

43987

1 Q AND DID YOU TELL THE POLICE THAT YOU
2 WERE WITH SOMEONE BY THE NAME OF ANDY PIERCE AT THE
3 TIME OF THE GINSBERG BURGLARY AND THAT YOU WERE AT
4 THE MOVIES?

5 A I DON'T REMEMBER WHAT I TOLD THE
6 POLICE.

7 Q DO YOU REMEMBER SPEAKING TO THE POLICE
8 ON AUGUST THE 18TH OF 1988?

9 A IS THAT WHEN I HAD TOLD THEM THAT I DID
10 IT?

11 Q BEFORE YOU SURRENDERED IN SEPTEMBER -- ON
12 SEPTEMBER THE 16TH OF 1988, DID YOU SPEAK TO THE
13 POLICE ON AUGUST THE 18TH OF 1988?

14 A I'M SORRY. I HAVE -- I DIDN'T KNOW THAT
15 I -- I DIDN'T REMEMBER THAT I HAD SPOKEN WITH THE
16 POLICE BEFORE THAT.

17 Q YOU DON'T REMEMBER LYING TO THE POLICE
18 AND TELLING THE POLICE THAT YOU WERE AT THE MOVIES?

19 MR. LEVIN: YOUR HONOR, THERE'S AN
20 OBJECTION. WE'D ASK TO APPROACH.

21 THE COURT: OKAY. WE'LL HAVE A BRIEF
22 CONFERENCE.

23 (THE FOLLOWING PROCEEDINGS
24 WERE HELD OUTSIDE THE
25 PRESENCE OF THE JURY:)
26
27 MS. ABRAMSON: WHAT YOU'RE READING IS A
28 STATEMENT FROM THE WITNESS.

43988

1 MR. CONN: I'M READING A STATEMENT FROM THE
2 NOTES OF A POLICE OFFICER.

3 MS. ABRAMSON: INTERVIEW WITH A WITNESS.

4 MR. CONN: I BELIEVE IT'S A POLICE OFFICER'S
5 NOTES.

6 THE COURT: OKAY. IS THIS A STATEMENT OF THE
7 DEFENDANT SPEAKING TO THE POLICE OR IS THIS A
8 STATEMENT OF SOMEONE ELSE TALKING TO THE POLICE?

9 MS. ABRAMSON: THIS IS EXACTLY WHAT WE
10 LITIGATED IN THE FIRST TRIAL, JUDGE.

11 THE COURT: WAIT, WAIT, WAIT. LET'S --

12 MS. ABRAMSON: IT'S A HEARSAY STATEMENT FROM
13 A WITNESS CLAIMING THAT HE HEARD THAT THE DEFENDANT
14 WAS CLAIMING THAT HE WAS WITH ANDY PIERCE AT A
15 MOVIE. IT'S A THIRDHAND STATEMENT. WE LITIGATED
16 THIS IN THE FIRST TRIAL AND THE COURT KEPT IT OUT.
17 AND THIS IS A BAD-FAITH MOVE BY THE PROSECUTION.

18 MS. NAJERA: I HAVE TO GET MY NOTES. THERE
19 IT IS.
20 MR. CONN: IT SAYS HERE: "ERIK CLAIMS THAT
21 HE AND ANDY PIERCE WERE AT THE MOVIES ON" --
22 MS. ABRAMSON: THIS IS A WITNESS STATEMENT.
23 MR. CONN: SO HE SAID IT TO A WITNESS.
24 MS. ABRAMSON: HE DIDN'T SAY IT TO A WITNESS.
25 THE COURT: WAIT. WAIT. BOTH OF YOU STOP
26 ARGUING AMONG YOURSELVES AND AT THE TOP OF YOUR
27 VOICE.
28 MS. ABRAMSON: SORRY, YOUR HONOR.

43989

1 THE COURT: THE QUESTION IS WHETHER OR NOT
2 THIS IS A STATEMENT OF THE DEFENDANT TO THE POLICE
3 AND --
4 MS. ABRAMSON: IT IS NOT.
5 THE COURT: PART OF THE PROBLEM WITH THE
6 EVIDENCE IN THE FIRST TRIAL ON THIS SUBJECT WAS THAT
7 THERE WERE PROBLEMS WITH PROOF; THAT THERE WERE
8 PROBLEMS WITH WHAT THE PEOPLE COULD ACTUALLY PROVE.
9 THAT WAS ONE OF THE REASONS FOR THE STIPULATION, AND
10 SOME OF THIS -- I DON'T RECALL THE SPECIFICS OF IT --
11 HAD TO DO WITH JUST THIS SORT OF THING, AS TO
12 WHETHER OR NOT THIS WAS A STATEMENT MADE TO THE

13 POLICE OR BY SOMEONE ELSE.

14 MS. ABRAMSON: YOUR HONOR, MY UNDERSTANDING
15 IS THIS IS EITHER MR. GINSBERG OR MR. LIST TELLING
16 THE POLICE THAT HE HAD HEARD THAT ERIK HAD SAID THAT
17 HE WAS WITH ANDY PIERCE AT THE MOVIES.

18 AND IF YOU TURN BACK TO THE PREVIOUS
19 PAGE, MAYBE YOU'LL BE ABLE TO SEE WHAT YOU'RE
20 LOOKING AT.

21 THIS WAS NEVER AN INTERVIEW WITH MY
22 CLIENT. THIS WAS THIRDHAND HEARSAY. WE HAD EXACTLY
23 THIS LITIGATION AT SIDE-BAR IN THE FIRST TRIAL AND
24 THE COURT RULED THAT THEY COULD NOT CONFRONT MY
25 CLIENT WITH THIS. IT WAS THIRDHAND HEARSAY.

26 NOW, MR. CONN HAS TO KNOW WHAT IT IS
27 HE'S GOT THERE, SINCE HE HAS THE INVESTIGATING
28 OFFICERS ON HIS REBUTTAL WITNESS LIST. AND I THINK

43990

1 THIS IS A BAD-FAITH SET OF QUESTIONS. THAT'S
2 PROSECUTORIAL MISCONDUCT.

3 THE COURT: MR. CONN.

4 MR. CONN: WELL, THIS IS THE CASE WORKSHEET.
5 I DIDN'T INTERVIEW THE WITNESS CONCERNING THIS
6 PARTICULAR ENTRY. SO IF THAT'S THE CASE, THEN THE
7 ANSWER TO THE QUESTION IS, NO, I DIDN'T SAY THAT TO

8 THE POLICE.

9 MS. ABRAMSON: THEN YOU DON'T HAVE A RIGHT TO
10 ASK IT.

11 MR. CONN: I ASKED IT IN GOOD FAITH. IT SAYS
12 RIGHT HERE.

13 THE COURT: AGAIN, BE QUIET. DON'T SPEAK IN
14 THAT TONE OF VOICE OR WE WON'T HAVE A HEARING.

15 MS. ABRAMSON: JUDGE, I ASK THE COURT TO LOOK
16 AT THE FIRST TWO WORDS THAT ARE ON THAT NOTATION.
17 WHAT DO THEY SAY?

18 THE COURT: WHICH NOTATION?

19 MS. ABRAMSON: THE VERY TOP OF THE PAGE WHERE
20 IT SAYS INDICATE TIME 8:18. WHAT ARE THE FIRST TWO
21 WORDS?

22 THE COURT: I DON'T HAVE TO BE A PARROT.

23 MS. ABRAMSON: "MR. LIST."

24 THE COURT: IT APPEARS IT'S A CONVERSATION
25 WITH MR. LIST.

26 MS. ABRAMSON: MR. LIST.

27 MS. NAJERA: NO, NO.

28 THE COURT: OR IT COULD BE A REFERENCE.

43991

1 MS. NAJERA: THAT'S MY BOOK.

2 THE COURT: IT COULD BE A REFERENCE TO THE

3 FACT THAT THAT WAS A LIST BURGLARY.

4 MS. NAJERA: EXACTLY.

5 MS. ABRAMSON: IT'S MR. LIST.

6 THE COURT: LET ME STOP THIS BECAUSE WE'RE
7 GETTING INTO SOMETHING THAT AT THIS POINT, IF THE
8 PEOPLE WANT TO PURSUE IT, WE'LL HOLD A HEARING, BUT
9 NOT RIGHT NOW. I'LL SUSTAIN THE OBJECTION.

10 MS. ABRAMSON: STRIKE THE QUESTION.

11 THE COURT: THE OBJECTION -- I DON'T KNOW IF
12 THERE WAS AN OBJECTION.

13 MS. ABRAMSON: YOU BET.

14 MR. LEVIN: YES, THERE WAS, YOUR HONOR.

15 THE COURT: LET'S HAVE THE RECORD READ BACK
16 AND WE'LL DEAL WITH IT THAT WAY; AND IF IT IS TO BE
17 PURSUED, WE'LL DEAL WITH IT AT SOME TIME.

18 (THE RECORD WAS READ AS FOLLOWS:

19 "QUESTION: BEFORE YOU
20 SURRENDERED IN SEPTEMBER -- ON
21 SEPTEMBER THE 16TH OF 1988, DID YOU
22 SPEAK TO THE POLICE ON AUGUST THE 18TH
23 OF 1988?

24 "ANSWER: I'M SORRY. I HAVE -- I
25 DIDN'T KNOW THAT I -- I DIDN'T REMEMBER
26 THAT I HAD SPOKEN WITH THE POLICE
27 BEFORE THAT.

28 "QUESTION: YOU DON'T REMEMBER

1 LYING TO THE POLICE AND TELLING THE
2 POLICE THAT YOU WERE AT THE MOVIES?")

3

4 MS. ABRAMSON: YOUR HONOR, WE HAD ESTABLISHED
5 THE RECORD -- WE HAD ESTABLISHED ON THE RECORD AT THE
6 LAST TRIAL THAT THE PEOPLE ACKNOWLEDGED THAT WAS AN
7 INTERVIEW WITH MR. LIST, JUST AS IT READS THERE.
8 THERE'S NO INDICATION THAT ERIK MENENDEZ SPOKE TO
9 THE POLICE ABOUT THIS THING AT ALL IN AUGUST. SO
10 THIS WAS JUST A BAD-FAITH QUESTION.

11 AND WE WOULD ASK THE COURT TO STRIKE
12 BOTH THE -- THIS QUESTION, THE PRECEDING QUESTION,
13 THE ANSWERS, TO ADMONISH THE JURY THAT THERE WAS NO
14 CONTACT BETWEEN ERIK MENENDEZ AND THE POLICE ON
15 AUGUST 18TH, 1988.

16 THE COURT: OKAY. AS FAR AS THE LATTER, I
17 DON'T KNOW IF I CAN DO THAT BECAUSE I REALLY DON'T
18 KNOW IF THERE WAS OR WASN'T.

19 MS. ABRAMSON: THERE'S NO EVIDENCE THAT THERE
20 WAS.

21 THE COURT: I'M GOING TO STRIKE BOTH
22 QUESTIONS AND ANSWERS.

23 MR. GESSLER: WE WOULD JOIN IN ASKING FOR A
24 BURTON ADMONITION, YOUR HONOR, THAT THERE IS NO
25 EVIDENCE THAT ANY SUCH CONVERSATION TOOK PLACE.

26 MS. ABRAMSON: HE'S SUGGESTING HE LIED.
27 MR. GESSLER: TO TAKE AWAY THE ADVERSE
28 INFERENCE THAT HAS BEEN DRAWN BY ASKING THE

43993

1 QUESTION.

2 THE COURT: OKAY. I'LL DO THAT WITH THE
3 UNDERSTANDING THAT IF THE PEOPLE CAN ESTABLISH THERE
4 IS SOME EVIDENCE, THEY'LL BRING IT OUT.

5 MS. ABRAMSON: SURE. SURE.

6 I WANT TO TELL MY CLIENT, YOUR HONOR,
7 WHAT THE RULING IS.

8 THE COURT: OKAY.

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43994

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

4

5 THE COURT: WE'RE NOW GOING TO RESUME.
6 BEFORE WE DO THAT, THE OBJECTION IS SUSTAINED TO THE
7 LAST QUESTION AND ANSWER, AND THE PREVIOUS QUESTION
8 TO THAT IS ALSO SUBJECT TO AN OBJECTION AND THAT
9 OBJECTION'S SUSTAINED AND THAT ANSWER'S STRICKEN.
10 BOTH QUESTIONS AND ANSWERS ARE STRICKEN.

11 THERE IS NO EVIDENCE THAT THE DEFENDANT
12 WAS IN A POSITION OR DID SPEAK WITH THE POLICE
13 BEFORE HE SURRENDERED AS HE DESCRIBED TO THE POLICE
14 IN REGARD TO THE BURGLARY.

15 YOU MAY CONTINUE YOUR CROSS-EXAMINATION.

16 Q BY MR. CONN: YOU SURRENDERED TO THE
17 POLICE ON SEPTEMBER THE 16TH OF 1988; IS THAT
18 CORRECT?

19 A YES.

20 Q AND THAT WAS MORE THAN TWO MONTHS AFTER
21 YOU COMMITTED THESE RESIDENTIAL BURGLARIES?

22 A ABOUT TWO MONTHS.

23 Q AND AT THE TIME THAT YOU SURRENDERED
24 WERE YOU ACCOMPANIED BY SOMEONE?

25 A MY FATHER, MY ATTORNEY.

26 Q AND IS THAT BECAUSE YOU WENT TO YOUR
27 FATHER AND YOU ADMITTED TO YOUR FATHER THAT YOU HAD
28 COMMITTED TWO RESIDENTIAL BURGLARIES?

43995

1 A I DON'T REMEMBER HOW IT CAME OUT. I
2 THINK -- I THINK HE CAME TO ME. I TOLD HIM THAT IT
3 WAS TRUE. HE GOT AN ATTORNEY. WE TOLD THE POLICE.

4 Q SO YOU ADMITTED YOU WERE INVOLVED IN
5 THESE BURGLARIES TO YOUR FATHER ONLY AFTER YOUR
6 FATHER CONFRONTED YOU; IS THAT CORRECT?

7 A YES.

8 Q AND WHO DID YOU COMMIT THE SECOND
9 BURGLARY WITH?

10 A LYLE.

11 Q YOUR BROTHER --

12 A YES.

13 Q -- HELPED YOU BURGLE THE HOME OF THE
14 GINSBERG FAMILY?

15 A YES.

16 Q WAS THERE AN ADJUDICATION IN COURT,
17 JUVENILE COURT, CONCERNING THESE MATTERS?

18 A I DON'T KNOW WHAT ADJUDICATION MEANS.

19 Q SOME TYPE OF PROCEEDING IN COURT?

20 A YES.

21 Q AND WHAT WAS THE RESULT OF THAT?

22 A I RECEIVED SIX MONTHS PROBATION.

23 Q AND AT THE TIME YOU RECEIVED THAT
24 SENTENCE IT WAS UNDERSTOOD THAT YOU WOULD BE WORKING
25 WITH THE HOMELESS; IS THAT CORRECT?

26 A NO.

27 Q WHEN WAS IT UNDERSTOOD THAT YOU WOULD BE
28 WORKING WITH THE HOMELESS?

43996

1 A IT WAS UNDERSTOOD THAT I WAS WORKING
2 WITH THEM AT THAT POINT. I DID NOT HAVE TO WORK
3 WITH THEM AFTERWARDS. IT HAPPENED, BUT IT WAS NOT A
4 PART OF THE AGREEMENT.

5 Q SO YOUR FATHER GOT YOU A LAWYER?

6 A YES.

7 Q AND DID YOUR FATHER ALSO PAY THE
8 RESTITUTION IN THIS CASE?

9 A YES.

10 Q AND YOUR FATHER GOT YOU OUT OF TROUBLE,
11 DIDN'T HE?

12 MR. LEVIN: OBJECTION, YOUR HONOR. CALLS FOR
13 SPECULATION. HE DIDN'T GET HIM OUT OF ANY TROUBLE.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T KNOW WHAT YOU MEAN BY
16 THAT.

17 Q BY MR. CONN: DIDN'T YOUR FATHER HELP
18 YOU RESOLVE THIS MATTER?

19 A YES.

20 Q AND NOW YOU ACCUSE YOUR FATHER OF
21 SPENDING THE MONEY OBTAINED FROM THAT BURGLARY; IS
22 THAT CORRECT?

23 A NO.

24 Q WHAT BECAME OF THE MONEY FROM THAT
25 BURGLARY?

26 A EVERYTHING WAS RETURNED.

27 Q DIDN'T YOU SAY --

28 A ALL RESTITUTION, ALL THE PROPERTY WAS

1 RETURNED.

2 Q DIDN'T YOU SAY THAT YOUR FATHER SPENT
3 SOME MONEY?

4 A MY MOTHER DID.

5 Q JUST YOUR MOTHER SPENT THE MONEY?

6 A I DIDN'T SEE ANYONE ELSE SPEND IT.

7 Q I'M SORRY?

8 A I DID NOT SEE MY FATHER SPEND IT.

9 Q YOU SAW YOUR MOTHER SPEND IT?

10 A YES.

11 Q AND YOUR FATHER MADE GOOD THAT MONEY?

12 A YES.

13 Q DO YOU KNOW HOW MUCH YOUR FATHER PAID TO
14 RESOLVE THIS MATTER FOR YOU?

15 A HE DID NOT DISCUSS IT WITH ME.

16 Q AND YOU ACCUSE YOUR FATHER OF GIVING YOU
17 HAND SIGNALS; IS THAT CORRECT?

18 A HE DID.

19 Q YOU BLAME YOUR FATHER FOR THIS BURGLARY,
20 MR. MENENDEZ?

21 A NOT IN ANY WAY.

22 Q ISN'T THAT WHAT YOU WERE TRYING TO
23 SUGGEST TO THE JURY, THAT SOMEHOW YOU WERE TAUGHT TO
24 CHEAT BY YOUR FATHER AND, THEREFORE, YOUR FATHER IS
25 SOMEHOW RESPONSIBLE FOR THIS -- THESE BURGLARIES?

26 A MY FATHER IS NOT RESPONSIBLE FOR THESE
27 BURGLARIES.

28 Q IS HE RESPONSIBLE FOR HIS DEATH IN ANY

1 WAY?

2 A I'M RESPONSIBLE FOR HIS DEATH.

3 Q AND HE IS NOT, CORRECT?

4 A YES.

5 Q AND YOUR MOTHER IS NOT, CORRECT?

6 A SHE IS NOT.

7 Q AND YOUR BROTHER IS RESPONSIBLE ALONG
8 WITH YOU; IS THAT CORRECT?

9 A YES.

10 Q NOW, WOULD YOU CALL YOURSELF A TRUTHFUL
11 PERSON, MR. MENENDEZ?

12 A I HAVE TRIED TO BE TRUTHFUL HERE IN
13 COURT.

14 Q ONLY IN COURT?

15 A I TRY TO BE A TRUTHFUL PERSON THESE
16 DAYS. I WORK AT IT.

17 Q WHEN YOU SAY "THESE DAYS," YOU MEAN
18 STARTING WHEN?

19 A SINCE I'VE BEEN WORKING WITH LESLIE AND
20 FATHER KEN, MY FAMILY THAT'S GOTTEN CLOSE TO ME,
21 I'VE -- I BELIEVE THAT I AM.

22 Q YOU MEAN AFTER YOUR ARREST?

23 A RIGHT.

24 Q BEFORE YOUR ARREST YOU WEREN'T TRYING TO

25 BE TRUTHFUL, WERE YOU?

26 MR. LEVIN: OBJECTION. VAGUE.

27 THE COURT: OVERRULED.

28 THE WITNESS: YOU MEAN IN TERMS OF NOT

43999

1 TELLING ANYONE THAT I WAS RESPONSIBLE FOR MY

2 PARENTS' DEATHS?

3 Q MR. CONN: NO. I'M TALKING ABOUT

4 TELLING PEOPLE THAT YOU WERE NOT RESPONSIBLE FOR

5 YOUR PARENTS' DEATHS.

6 A RIGHT.

7 Q ISN'T THAT WHAT YOU DID?

8 A YES.

9 Q DID YOU TELL A LOT OF LIES ABOUT THIS

10 CASE, MR. MENENDEZ?

11 MR. LEVIN: OBJECTION. VAGUE.

12 THE COURT: OVERRULED.

13 THE WITNESS: WHAT DO YOU MEAN?

14 Q BY MR. CONN: DID YOU LIE ABOUT YOUR

15 INVOLVEMENT IN THIS INCIDENT, MR. MENENDEZ?

16 A YES.

17 Q AND YOU LIED FROM AUGUST THE 20TH OF

18 1989 UP UNTIL THE TIME THAT YOU WERE ARRESTED; IS

19 THAT CORRECT?

20 A WHENEVER ANYONE BROUGHT UP THE DEATH OF
21 MY PARENTS I WAS NOT GOING TO TELL THEM THAT I WAS
22 INVOLVED.

23 Q NOT ONLY WOULDN'T YOU TELL THEM THAT YOU
24 WERE NOT INVOLVED, BUT -- NOT ONLY WOULDN'T YOU TELL
25 THEM THAT YOU WEREN'T INVOLVED, YOU TOLD THEM YOU
26 WERE NOT INVOLVED; IS THAT CORRECT?

27 A RIGHT.

28 Q AND YOU DID THAT TO AVOID PUNISHMENT AND

44000

1 RESPONSIBILITY; IS THAT CORRECT?

2 MR. LEVIN: OBJECTION. IT'S COMPOUND.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES.

5 Q BY MR. CONN: AND YOU NOT ONLY LIED ON
6 YOUR OWN, BUT YOU ALSO CONSPIRED WITH YOUR BROTHER
7 LYLE MENENDEZ TO LIE AND DECEIVE LAW ENFORCEMENT
8 AUTHORITIES; IS THAT CORRECT?

9 A YOU MEAN TO TELL THE POLICE THAT WE HAD
10 NOT DONE IT? YES.

11 Q AND YOUR LIES CONCERNING THIS INCIDENT
12 BEGAN BEFORE THE 911 CALL; IS THAT CORRECT?

13 A ON THE WAY DRIVING HOME TO CALL 911.

14 Q THAT'S WHEN YOU AND YOUR BROTHER BEGAN

15 TO CONSPIRE TO DECEIVE THE POLICE; IS THAT CORRECT?

16 A YES.

17 Q AND YOU WORKED OUT A SERIES OF LIES THAT

18 YOU WERE GOING TO TELL THE POLICE ON THE WAY HOME,

19 CORRECT?

20 A YES.

21 Q AND YOU REACHED AN AGREEMENT TO TELL

22 THOSE LIES SO THAT BOTH YOU AND YOUR BROTHER WOULD

23 NOT BE HELD RESPONSIBLE FOR THIS CRIME; IS THAT

24 CORRECT?

25 A YES.

26 Q AND YOU PURSUED THOSE LIES WITH SERGEANT

27 EDMONDS THAT DAY; IS THAT CORRECT?

28 A YES.

44001

1 Q AND WHAT LIES DID YOU TELL DETECTIVE

2 EDMONDS?

3 A THAT MY BROTHER AND I WERE NOT

4 RESPONSIBLE FOR MY PARENTS' DEATH; THAT I PARKED MY

5 CAR IN THE BACK OF MY HOUSE, AND WE LEFT FROM THERE;

6 THAT WE HAD LEFT THE HOME BEFORE 10:00; AND HAD SEEN

7 THE MOVIE "BATMAN"; THAT THE REASON WE ARRIVED HOME

8 WAS TO GET AN I.D.

9 AND I'M NOT SURE WHAT ELSE I TOLD HIM.

10 Q THOSE WERE ALL LIES; IS THAT CORRECT?
11 A THOSE ARE LIES.
12 Q AND WERE YOU CRYING WHEN YOU WERE LYING
13 TO DETECTIVE EDMONDS?
14 A NO.
15 Q WERE YOU CRYING DURING THAT INTERVIEW?
16 A AT THE END I BEGAN TO CRY.
17 Q SO ARE YOU SAYING THAT FIRST YOU WERE
18 LYING AND THEN YOU BEGAN TO CRY TOWARD THE END OF
19 THE INTERVIEW?
20 A YES.
21 Q AND WHEN YOU LIED TO DETECTIVE EDMONDS,
22 DID YOU TRY TO POINT THE FINGER AT OTHER PERSONS WHO
23 MIGHT BE RESPONSIBLE FOR THIS CRIME?
24 A NO.
25 Q DO YOU RECALL BEING ASKED BY DETECTIVE
26 EDMONDS WHETHER YOU HAD ANY IDEA WHO MIGHT HAVE DONE
27 THIS CRIME?
28 A VAGUELY, I RECALL THOSE QUESTIONS BEING

44002

1 ASKED.

2 Q AND DO YOU RECALL ANSWERING SOMETHING TO
3 THE EFFECT OF --
4 MR. LEVIN: THE LINE AND PAGE, PLEASE?

5 MR. CONN: PAGE 3, LINE 3.

6 MR. LEVIN: MAY I HAVE A MOMENT? YOUR HONOR,
7 THAT'S NOT IMPEACHMENT WITH RESPECT TO COUNSEL'S
8 PROFFER. I'D ASK THE COURT TO TAKE A LOOK AT THE
9 PASSAGE.

10 THE COURT: I DON'T SEEM TO HAVE THAT
11 PARTICULAR TRANSCRIPT HERE.

12 MS. ABRAMSON: LINE 3, YOUR HONOR.

13 (BAILIFF HANDING PAGE TO THE COURT.)

14

15 THE COURT: WELL, OVERRULED ON THAT GROUND;
16 AND ALSO ON THE GROUND THAT THE CONVERSATION WITH
17 EDMONDS WAS COVERED ON DIRECT EXAMINATION.

18 Q BY MR. CONN: DO YOU RECALL TELLING
19 DETECTIVE EDMONDS WHEN HE ASKED YOU IF YOU HAVE ANY
20 IDEAS WHO MAY HAVE COMMITTED THIS CRIME, SAYING
21 SOMETHING TO THE EFFECT OF: MY FAMILY HAS NO
22 ENEMIES, BUT MY DAD DOESN'T HAVE A LOT OF FRIENDS IN
23 HIS BUSINESS?

24 MR. LEVIN: YOUR HONOR, THERE'S AN
25 OBJECTION. COUNSEL DID NOT READ IT CORRECTLY.

26 MR. CONN: I THINK THAT'S AN ISSUE IN
27 DISPUTE. I'M ASKING THE WITNESS WHAT HE SAID.

28 THE COURT: OVERRULED.

1 MR. LEVIN: HE DID NOT INCLUDE THE FIRST WORD
2 THAT'S ON HIS OWN TRANSCRIPT.

3 THE COURT: WHY DON'T YOU READ IT OVER
4 AGAIN.

5 MR. CONN: YES.

6 Q DO YOU RECALL SAYING IN RESPONSE TO THE
7 QUESTION: DO YOU HAVE ANY IDEA WHO MAY HAVE DONE
8 THIS? SOMETHING TO THE EFFECT OF: NO. MY FAMILY
9 HAS NO ENEMIES, BUT MY DAD DOESN'T HAVE A LOT OF
10 FRIENDS, BUT, YOU KNOW, IN HIS BUSINESS... "

11 A COULD I SEE WHAT YOU'RE LOOKING AT?

12 VAGUELY, I REMEMBER SAYING SOMETHING
13 ALONG THAT LINE. WHETHER IT'S MY DAD DOESN'T HAVE
14 OR MY DAD DOES HAVE A LOT OF FRIENDS, I DON'T
15 REMEMBER WHAT I SAID.

16 Q UH-HUH. AND WHAT YOU WERE REFERRING TO
17 WAS YOUR FATHER'S BUSINESS; IS THAT CORRECT?

18 A YES.

19 Q WHEN YOU WERE ASKED BY DETECTIVE EDMONDS
20 IF YOU HAD ANY IDEA WHO MAY HAVE DONE THIS, YOU MADE
21 REFERENCE TO YOUR FATHER'S BUSINESS; IS THAT
22 CORRECT?

23 A I SAID NO, MY FATHER HAS NO ENEMIES.

24 Q AND YOU WENT ON TO SAY --

25 A THAT'S WHAT I DON'T KNOW. EITHER HE
26 DOESN'T HAVE A LOT OF FRIENDS OR HE HAS A LOT OF
27 FRIENDS.

44004

1 TO YOUR FATHER'S BUSINESS, MR. MENENDEZ?

2 A NO, I CAN'T.

3 Q DO YOU REALIZE THAT YOUR FATHER HAD SOME
4 DEALINGS WITH PEOPLE WHO WERE ALLEGEDLY ASSOCIATED
5 WITH ORGANIZED CRIME?

6 A HE DID.

7 Q AND YOU KNEW THAT, DIDN'T YOU?

8 A YES.

9 Q AND THAT'S THE REASON WHY YOU WERE
10 DIRECTING YOUR -- OR DIRECTING THE POLICE TO YOUR
11 FATHER'S BUSINESS; IS THAT CORRECT?

12 MR. LEVIN: YOUR HONOR, THAT'S NOT A PROPER
13 CHARACTERIZATION. ASSUMES FACTS NOT IN EVIDENCE AND
14 THAT'S NOT WHAT THE WITNESS SAID.

15 THE COURT: OVERRULED.

16 THE WITNESS: I WAS NOT TRYING TO POINT THE
17 FINGER AT MY FATHER'S BUSINESS TO THE POLICE.

18 Q BY MR. CONN: THEN WHY DID YOU BRING UP
19 YOUR FATHER'S BUSINESS WHEN THE POLICE ASKED YOU DO
20 YOU HAVE ANY IDEA WHO MAY HAVE DONE THIS?

21 A I DON'T KNOW WHAT I SAID THERE, BUT THAT
22 I KNOW I WAS TRYING TO TELL THEM -- I DIDN'T KNOW HOW

23 I WAS GOING TO ANSWER THE QUESTION THAT NIGHT. AND

24 I SAID MY FATHER HAS NO ENEMIES. AND WHAT I SAID

25 AFTER THAT I DON'T KNOW.

26 Q YOU LISTENED TO THE TAPE HERE IN COURT,

27 DIDN'T YOU?

28 A YES.

44005

1 Q AND AFTER LISTENING TO THE TAPE AND

2 AFTER HEARING YOURSELF IN YOUR OWN WORDS MAKE

3 REFERENCE TO YOUR FATHER'S BUSINESS, DID IT HELP YOU

4 RECALL WHY YOU WERE DIRECTING THE POLICE TO YOUR

5 FATHER'S BUSINESS?

6 A I WAS NOT DIRECTING THE POLICE TO MY

7 FATHER'S BUSINESS, BUT I KNOW THAT I SAID THOSE

8 WORDS. I DON'T KNOW WHAT I WAS REFERRING TO.

9 Q AND FOLLOWING THOSE WORDS YOU SAID

10 SOMETHING TO THE EFFECT OF: UH, MY BROTHER MAY

11 KNOW. DO YOU RECALL THOSE WORDS?

12 A I BELIEVE I SAID THOSE WORDS.

13 Q AND WHAT YOU WERE SAYING AT THAT TIME IS

14 THAT YOUR BROTHER, WHO WAS GOING TO COME IN RIGHT

15 AFTER YOU AND SPEAK TO THE POLICE, WAS GOING TO FILL

16 IN THE DETAILS; IS THAT CORRECT?

17 A NO. NO. I JUST SAID THAT MY BROTHER

18 MAY KNOW BECAUSE I DIDN'T KNOW HOW TO ANSWER HIS
19 QUESTION WHEN HE ASKED ME WHO MIGHT HAVE DONE THIS.
20 I WAS -- I WASN'T EXPECTING IT, AND I HADN'T THOUGHT
21 ABOUT IT.

22 Q BUT YOU SAID MY BROTHER MAY KNOW RIGHT
23 AFTER YOU MADE REFERENCE TO YOUR FATHER'S BUSINESS;
24 IS THAT CORRECT?

25 A APPARENTLY.

26 Q AND IS THAT BECAUSE WHEN YOU AND YOUR
27 BROTHER LYLE MENENDEZ WERE DRIVING AROUND AND
28 THINKING ABOUT WHAT YOU'RE GOING TO TELL THE POLICE,

44006

1 YOU ALSO DECIDED TO POINT THE FINGER AT PEOPLE
2 ASSOCIATED WITH YOUR FATHER'S BUSINESS?

3 A NO.

4 Q YOU ALSO -- YOU LIED WHEN YOU TOLD
5 DETECTIVE EDMONDS THAT YOU LEFT YOUR HOME AT ABOUT
6 8:00; IS THAT CORRECT?

7 A RIGHT.

8 Q YOU LIED WHEN YOU TOLD DETECTIVE EDMONDS
9 THAT YOU GOT TO THE MOVIES ABOUT 8:15; IS THAT
10 CORRECT?

11 A I DON'T REMEMBER SAYING IT, BUT THAT'S
12 WHAT I WAS TRYING TO PORTRAY.

13 Q AND YOU UNDERSTOOD THAT DETECTIVE
14 EDMONDS WAS SEEKING INFORMATION THAT WOULD HELP THEM
15 SOLVE THIS CRIME; IS THAT CORRECT?

16 A YES.

17 Q AND YOU HAD NO INTENTION OF PROVIDING
18 THEM WITH ANY INFORMATION THAT WOULD HELP THEM DO
19 THAT; IS THAT CORRECT?

20 A THAT'S RIGHT.

21 Q AND HE SPECIFICALLY ASKED YOU: "CAN YOU
22 THINK OF ANYTHING ELSE THAT'S GOING TO HELP US?"

23 AND YOU SAID: "I CAN'T HELP YOU. I
24 DON'T KNOW."

25 IS THAT CORRECT?

26 A RIGHT.

27 Q AND THAT WAS A LIE WHEN YOU SAID "I
28 DON'T KNOW," WASN'T IT?

44007

1 A IT WAS.

2 Q AND YOU ALSO LIED TO DETECTIVE EDMONDS
3 WHEN YOU PRETENDED TO NOT KNOW WHETHER OR NOT YOUR
4 PARENTS WERE DEAD; IS THAT CORRECT?

5 A NO. I KNOW WHAT YOU'RE REFERRING TO. I
6 INTELLECTUALLY KNEW THEY WERE DEAD. EMOTIONALLY I
7 COULD NOT ACCEPT IT, AND I ASKED THE QUESTION. I

8 NEEDED TO HEAR IT FROM HIM. I WAS HAVING TROUBLE

9 BELIEVING IT.

10 Q WELL, YOU INTERVIEWED WITH DETECTIVE
11 EDMONDS AT ABOUT 1:20 IN THE MORNING, DIDN'T YOU?

12 A YES.

13 Q AND THAT WAS ABOUT THREE HOURS AFTER YOU
14 SHOT YOUR PARENTS TO DEATH; IS THAT CORRECT?

15 A YES.

16 Q NOW, WHEN YOU WERE DRIVING AROUND WITH
17 LYLE ALL THAT TIME, DID YOU KEEP TURNING TO LYLE
18 MENENDEZ AND SAY TO LYLE MENENDEZ: ARE THEY DEAD?

19 A NO.

20 Q DID YOU EVER ONCE TURN TO YOUR BROTHER
21 DURING THAT CAR TRIP AND SAY: ARE THEY DEAD?

22 A I DON'T REMEMBER DOING SO.

23 Q WELL, WHEN YOU GOT BACK TO YOUR HOUSE
24 AND YOU LOOKED AT YOUR DEAD PARENTS SITTING THERE IN
25 THE DEN, AND AFTER LYLE MENENDEZ CALLED THE POLICE,
26 DID YOU AT THAT TIME SAY TO LYLE MENENDEZ: DO YOU
27 THINK THEY'RE DEAD, LYLE?

28 A NO.

44008

1 Q YOU WAITED UNTIL YOU SAT DOWN WITH A LAW
2 ENFORCEMENT OFFICER TO HAVE THIS DOUBT IN YOUR MIND

3 ABOUT WHETHER OR NOT THEY WERE DEAD?

4 A I WASN'T PLANNING ON SAYING IT. IT'S
5 SOMETHING THAT I JUST SAID BECAUSE EMOTIONALLY I
6 WAS -- IT'S HARD TO EXPLAIN WHAT I WAS FEELING. IT
7 WAS JUST A DISBELIEF THAT THIS COULD BE HAPPENING.

8 Q WHAT YOU WERE DOING WAS PRETENDING THAT
9 YOU DIDN'T KNOW WHETHER THEY WERE DEAD OR NOT; IS
10 THAT CORRECT, MR. MENENDEZ?

11 A NO. I HAD TOLD DETECTIVE EDMONDS THAT I
12 WAS THE ONE THAT FOUND MY PARENTS. CLEARLY, I KNEW
13 THAT THEY WERE DEAD. BUT EMOTIONALLY I JUST HAD
14 DIFFICULTY ACCEPTING IT.

15 Q AND THE LIES CONTINUED WHEN YOU SPOKE TO
16 DETECTIVE ZOELLER IN SEPTEMBER OF 1989; IS THAT
17 CORRECT?

18 A YES.

19 Q IN FACT, YOU LIED TO THE POLICE AT EVERY
20 CHANCE -- EVERY OPPORTUNITY YOU HAD, DIDN'T YOU?

21 A WHEN IT CONCERNED ME BEING RESPONSIBLE
22 FOR THIS I DID.

23 Q DETECTIVE ZOELLER TOLD YOU WHEN HE CAME
24 TO SEE YOU IN NEW JERSEY OR WHEN HE SPOKE TO YOU IN
25 NEW JERSEY ON SEPTEMBER THE 17TH OF 1989 THAT WE
26 WANT TO BE HONEST WITH YOU AND WE WANT YOU TO BE
27 HONEST WITH US, DIDN'T HE?

28 MR. LEVIN: YOUR HONOR, MAY I HAVE THE PAGE

1 AND LINE DESIGNATION?

2 MR. CONN: PAGE 5, LINE 8.

3 THE WITNESS: I REMEMBER HIM SAYING THAT.

4 Q BY MR. CONN: AND WHEN HE SAID THAT TO
5 YOU DID YOU DECIDE AT THAT POINT NOW IS THE TIME TO
6 FINALLY TELL THE TRUTH ABOUT THIS INCIDENT AND BE
7 HONEST WITH THE POLICE?

8 A NO.

9 Q AND THE REASON WHY YOU DIDN'T DO IT IS
10 BECAUSE YOU SAID TO YOURSELF: THEY DON'T HAVE
11 EVIDENCE ON ME YET; ISN'T THAT CORRECT?

12 A I DIDN'T WANT TO GO TO JAIL AND I KNEW
13 IF I TOLD DETECTIVE ZOELLER THAT I HAD DONE THIS, I
14 WOULD BE.

15 Q SO YOU WERE TRYING TO AVOID
16 RESPONSIBILITY IN SEPTEMBER OF 1989; IS THAT
17 CORRECT?

18 A YES.

19 Q AND YOU TOLD DETECTIVE ZOELLER IN
20 SEPTEMBER OF 1989 THAT YOU CAME HOME, YOU FOUND YOUR
21 PARENTS DEAD IN THE DEN; IS THAT CORRECT?

22 A YES.

23 Q THAT WAS A LIE; IS THAT CORRECT?

24 A I TOLD HIM BEFORE THAT I HAD NOT KILLED
25 THEM, AND THAT WAS THE LIE.

26 Q UH-HUH. YOU TOLD DETECTIVE ZOELLER THAT

27 YOU WERE LOOKING AT THE SHOT TO THE LEFT THIGH OF
28 YOUR FATHER AND YOU WERE WONDERING WHAT KIND OF GUN

44010

1 HAD BEEN USED TO COMMIT THAT WOUND; IS THAT CORRECT?

2 A I SAID THAT TO HIM.

3 Q IS THAT TRUE, THAT YOU LOOKED AT THE
4 WOUND TO THE LEFT THIGH OF YOUR FATHER AND YOU
5 WONDERED WHAT KIND OF GUN HAD BEEN USED TO COMMIT
6 THAT WOUND?

7 A I REMEMBER VIVIDLY THE WOUND TO HIS
8 THIGH AND THE DISBELIEF, AMAZEMENT THAT SO MUCH
9 DAMAGE COULD BE DONE BY THE SHOT; AND THAT'S WHAT I
10 WAS REFERRING TO.

11 Q THAT'S NOT THE QUESTION I ASKED. WHAT I
12 ASKED WAS: WHEN YOU SAID TO DETECTIVE ZOELLER: I
13 WAS WONDERING WHAT KIND OF GUN -- DID YOU SAY THAT
14 BECAUSE WHEN YOU SAW THE WOUND TO YOUR FATHER'S LEG,
15 YOU TRULY WONDERED WHAT TYPE OF GUN HAD BEEN USED TO
16 INFLECT THAT WOUND?

17 A NO.

18 Q SO YOU WERE LYING TO DETECTIVE ZOELLER
19 WHEN YOU SAID THAT; IS THAT CORRECT?

20 A YES.

21 Q WHY WERE YOU EMBELLISHING LIKE THAT AND

22 TELLING DETECTIVE ZOELLER HOW YOU WERE WONDERING
23 WHAT TYPE OF GUN HAD BEEN USED TO SHOOT YOUR FATHER
24 IN THE LEG?

25 A I NEEDED TO TALK TO SOMEONE, AND I WAS
26 TALKING TO -- I WOULD BRING OUT DIFFERENT THINGS IN
27 DIFFERENT CONVERSATIONS. I DIDN'T EVEN KNOW I WAS
28 GOING TO BRING THEM OUT. AND THAT -- THE IMAGE OF

44011

1 HIS THIGH AND THE IMAGE OF HIS HEAD, THE IMAGE OF
2 HIM SITTING ON THE COUCH, I COULD NOT GET OUT OF MY
3 MIND. AND I WANTED TO TALK TO HIM ABOUT HOW A GUN
4 COULD DO SO MUCH DAMAGE; AND, YET, I DIDN'T WANT TO
5 TELL HIM I DID IT.

6 Q I'M NOT ASKING YOU --

7 MR. LEVIN: I WOULD ASK THAT THE WITNESS BE
8 ALLOWED TO FINISH HIS ANSWER. HE'S BEING --

9 THE COURT: YES.

10 THE WITNESS: I DIDN'T WANT TO TELL HIM THAT
11 I HAD DONE THIS, AND SO I BROUGHT IT OUT; WHY
12 EXACTLY, I CAN'T ANSWER.

13 Q BY MR. CONN: ASIDE FROM THE FACT THAT
14 YOU NEEDED TO TALK TO SOMEONE, THE QUESTION THAT I
15 ASKED YOU WAS WHY YOU NEEDED TO LIE TO DETECTIVE
16 ZOELLER ABOUT WONDERING WHAT TYPE OF GUN HAD BEEN

17 USED TO COMMIT THAT INJURY?

18 A I DID -- I DID NOT NEED TO.

19 Q YOU DID NO -- SORRY?

20 A I DID NOT NEED TO LIE ABOUT THAT.

21 Q YOU TOLD DETECTIVE ZOELLER THAT YOU WENT

22 TO AN 8:00 SHOW, DIDN'T YOU?

23 A YES.

24 Q THAT WAS A LIE?

25 A YES.

26 Q YOU TOLD DETECTIVE ZOELLER THAT YOU SAW

27 ", " AND THAT WAS A LIE?

28 A YES.

44012

1 Q AND YOU TOLD DETECTIVE ZOELLER THAT YOU

2 WERE LOOKING FOR THE SANTA MONICA WINE-TASTING

3 FESTIVAL DOWNTOWN ON 3RD AND 4TH STREETS; IS THAT

4 CORRECT?

5 A I DON'T REMEMBER.

6 Q DID YOU EVER LOOK FOR THE "TASTE OF

7 L.A." FESTIVAL ON 3RD AND 4TH STREET DOWNTOWN?

8 A AT FIRST I HAD THOUGHT THAT IT WAS

9 DOWNTOWN WHEN LYLE SAID 3RD AND 4TH STREET. HE SAID

10 IT WAS IN SANTA MONICA.

11 Q ARE YOU SAYING THAT YOU DROVE DOWN

12 TOWARDS 3RD AND 4TH STREET AND GOT LOST?

13 A NO.

14 Q SO WERE YOU LYING TO DETECTIVE ZOELLER

15 WHEN YOU SAID THAT?

16 A IF I SAID IT, THEN I WAS LYING.

17 Q DID YOU TELL DETECTIVE ZOELLER ON THAT

18 OCCASION THAT LYLE MENENDEZ HAS THE TICKET STUBS TO

19 THE MOVIES?

20 A I DON'T REMEMBER SAYING THAT.

21 Q LET ME SHOW YOU --

22 MR. LEVIN: PAGE, COUNSEL?

23 MR. CONN: PAGE 29, LINE 20.

24 THE WITNESS: YEAH. I WAS SAYING THEY COULD

25 BE IN THE CAR. I WAS SAYING THAT LYLE HAS THEM,

26 YES.

27 Q BY MR. CONN: WHAT BECAME OF THE TICKET

28 STUBS, MR. MENENDEZ?

44013

1 A I RIPPED THEM UP AND I THOUGHT I HAD

2 THROWN THEM OUT THE WINDOW. I MAY HAVE LEFT THEM IN

3 THE CAR AND GATHERED THEM THE NEXT MORNING.

4 Q SO YOU KNEW WHEN YOU SPOKE TO DETECTIVE

5 ZOELLER ON SEPTEMBER THE 17TH OF 1989 THAT LYLE

6 MENENDEZ DIDN'T HAVE THE TICKET STUBS, DIDN'T YOU?

7 A YES.

8 Q SO THAT WAS A LIE TO; IS THAT CORRECT?

9 A YES.

10 Q SO YOU TOLD DETECTIVE ZOELLER A LOT OF
11 LIES ON SEPTEMBER 17TH, DIDN'T YOU?

12 A YES.

13 Q YOU LIED TO OTHER PEOPLE AS WELL, DIDN'T
14 YOU?

15 A MOST SPECIFICALLY MY FAMILY.

16 Q WHO DID YOU LIE TO IN YOUR FAMILY?

17 A I DIDN'T WANT TO TELL MY FAMILY THAT I
18 HAD -- I WAS RESPONSIBLE. I DON'T THINK THEY EVER
19 ASKED ME DID YOU DO THIS.

20 Q WHAT YOU TOLD THEM WAS YOU CAME HOME AND
21 YOU FOUND YOUR PARENTS IN THAT CONDITION; IS THAT
22 CORRECT?

23 A RIGHT.

24 Q AND THAT WAS A LIE?

25 A YES.

26 Q WHO DID YOU TELL THAT LIE TO?

27 A I DON'T BELIEVE MANY PEOPLE IN MY FAMILY
28 ASKED ME ABOUT IT. BUT WHOEVER DID, I WOULD HAVE

2 Q YOU LED EVERYONE IN YOUR FAMILY TO
3 BELIEVE THAT YOU WERE NOT RESPONSIBLE; IS THAT
4 CORRECT?

5 A RIGHT.

6 Q AND YOU LIED TO FRIENDS AS WELL?

7 A WHOEVER ASKED ME ABOUT THAT NIGHT.

8 Q WERE YOU INTERVIEWED BY REPORTERS?

9 A JOHN JOHNSON, RON SOBLE.

10 Q AND YOU LIED TO THEM AS WELL, DIDN'T
11 YOU?

12 A YES.

13 Q DID YOU LIE TO PEOPLE IN YOUR FATHER'S
14 BUSINESS?

15 A WHOEVER WOULD ASK ME ABOUT THAT NIGHT I
16 WOULD EITHER SAY I DON'T WANT TO TALK ABOUT IT OR
17 NOT TELL THEM THAT I WAS RESPONSIBLE.

18 Q AND YOU CALLED MARK HEFFERNAN THAT NIGHT
19 BECAUSE HE WAS A CLOSE FRIEND OF YOURS; IS THAT
20 CORRECT?

21 A I DON'T KNOW IF HE WAS A CLOSE FRIEND,
22 BUT HE WAS A FRIEND WHO WAS A GOOD GUY.

23 Q AND YOU LIED TO HIM TOO, DIDN'T YOU?

24 A YES.

25 Q AND YOUR UNCLE CARLOS BARALT WAS ONE OF
26 THE EXECUTORS OF THE ESTATE; IS THAT CORRECT?

27 A YES.

28 Q AND YOU WANTED TO COLLECT UNDER THE WILL

1 AND UNDER THE INSURANCE POLICY; IS THAT CORRECT?

2 A I HAD A LOT OF GOING BACK AND FORTH
3 ABOUT THAT. I CERTAINLY DID NOT TELL HIM THAT I DID
4 NOT WANT TO COLLECT.

5 Q WHAT DO YOU MEAN YOU HAD A LOT OF GOING
6 BACK AND FORTH ABOUT THAT?

7 A I HAD A LOT OF GUILT ABOUT RECEIVING
8 THIS MONEY AND IT LED TO A LOT OF DEPRESSION, AND I
9 JUST WASN'T SURE WHAT I SHOULD DO WITH IT.

10 Q WELL, AFTER YOU KEPT GOING BACK AND
11 FORTH WITH ALL OF THIS GUILT, MR. MENENDEZ, WHAT
12 SIDE OF THE LINE DID YOU FINALLY END UP ON; YOU TOOK
13 THE MONEY OR YOU DIDN'T TAKE IT?

14 A I NEVER GOT THE MONEY FROM THE ESTATE.
15 THE INSURANCE MONEY I RECEIVED.

16 Q BUT YOU LED PEOPLE TO BELIEVE THAT YOU
17 WERE ENTITLED; IS THAT CORRECT?

18 A YES.

19 Q AND YOU SPENT A LOT OF MONEY, DIDN'T
20 YOU?

21 A I DID.

22 Q YOU DIDN'T REJECT ANY MONEY, DID YOU?

23 A NO.

24 Q AND, IN FACT, WITHIN A FEW MINUTES OF
25 SHOOTING YOUR PARENTS TO DEATH YOU WERE TALKING

26 ABOUT TRICKING PERRY BERMAN TO MEET UP WITH YOU AND
27 YOUR BROTHER SOMEPLACE; IS THAT CORRECT?
28 A WHAT ARE YOU REFERRING TO?

44016

1 Q WELL, WEREN'T YOU GOING TO MEET UP WITH
2 PERRY BERMAN SOMETIME THAT NIGHT AFTER SHOOTING YOUR
3 PARENTS TO DEATH?

4 A WE WERE TRYING DESPERATELY TO FIND HIM
5 TO -- SO WE COULD SAY WE WERE WITH HIM. I BELIEVE
6 LYLE CALLED HIM THAT NIGHT.

7 Q AND YOU WERE GOING TO TRICK HIM INTO
8 GOING WITH YOU TO YOUR HOME; IS THAT CORRECT?

9 A I WASN'T THERE WHEN LYLE MADE THE PHONE
10 CALL.

11 Q I'M TALKING ABOUT WHAT YOU AND YOUR
12 BROTHER DISCUSSED AS YOU WERE DECIDING HOW YOU WERE
13 GOING TO HANDLE YOURSELVES THAT EVENING.

14 DID YOU DECIDE THAT YOU WERE GOING TO
15 TRICK PERRY BERMAN INTO THINKING THAT NOTHING WAS
16 WRONG SO THAT YOU COULD BRING HIM TO YOUR HOME AND
17 HE COULD BE PRESENT WHEN YOU AND YOUR BROTHER FOUND
18 THE BODIES OF YOUR PARENTS?

19 A NO. THERE WASN'T A LOT OF DISCUSSION.
20 THINGS WERE JUST DONE OFF THE CUFF, TRYING TO --

21 TRYING TO CREATE SOME TYPE OF ALIBI THAT WE HAD NOT
22 DONE THIS. LYLE DIDN'T DISCUSS WITH ME WHAT HE WAS
23 GOING TO TELL PERRY OR NOT.

24 Q YOU DIDN'T KNOW YOU WERE GOING TO MEET
25 UP WITH PERRY BERMAN THAT NIGHT?

26 A I KNOW THAT LYLE ASKED PERRY TO MEET US
27 AT THE CHEESECAKE FACTORY WHEN WE WERE IN SANTA
28 MONICA, AND THAT I WOULDN'T BE ABLE TO MEET WITH

44017

1 HIM.

2 Q AFTER YOU SHOT YOUR PARENTS TO DEATH YOU
3 DECIDED TO MAKE CONTACT WITH PERRY BERMAN; ISN'T
4 THAT CORRECT?

5 A YES.

6 Q WHAT WAS THE PURPOSE OF MAKING CONTACT
7 WITH PERRY BERMAN?

8 A TO TRY TO HAVE SOMEPLACE WHERE WE COULD
9 SAY WE WERE WHEN THE POLICE ASKED US.

10 Q AND YOU WERE GOING TO SPEND THE EVENING
11 SITTING DOWN AT A RESTAURANT SOMEWHERE WITH PERRY
12 BERMAN; IS THAT CORRECT?

13 A THAT WAS THE IDEA. IT SIMPLY -- WE
14 WEREN'T IN ANY EMOTIONAL CONDITION TO DO THAT.

15 Q AT ONE POINT YOU FELT THAT YOU WERE IN

16 AN EMOTIONAL CONDITION TO CARRY THAT OFF, DIDN'T

17 YOU?

18 A YES.

19 Q AND BECAUSE YOU FELT THAT YOU WERE IN AN

20 EMOTIONAL CONDITION TO CARRY THAT OFF, YOU AND LYLE

21 AGREED THAT THAT'S WHAT SHOULD HAPPEN; HE SHOULD

22 CONTACT PERRY BERMAN AND TRY TO GET TOGETHER WITH

23 HIM; IS THAT CORRECT?

24 A LYLE DIDN'T DISCUSS IT WITH ME. HE WENT

25 IN TO SEE IF PERRY WAS STILL AT THE CIVIC CENTER.

26 HE DIDN'T FIND HIM, SO HE CALLED PERRY ON HIS OWN,

27 TRYING TO GET PERRY TO MEET WITH US SO WE COULD AT

28 LEAST SAY WE MET WITH PERRY THAT NIGHT.

44018

1 Q UH-HUH. AND IT WAS YOUR UNDERSTANDING

2 WHEN YOU WENT IN TO MEET WITH PERRY BERMAN THAT YOU

3 WERE GOING TO SIT DOWN SOMEWHERE WITH PERRY BERMAN

4 AND HE WAS GOING TO BE YOUR ALIBI WITNESS; IS THAT

5 CORRECT?

6 A I DON'T KNOW WE WERE GOING TO SIT DOWN

7 WITH HIM OR JUST BE THERE. I THINK THEY WERE

8 STAND-UP TABLES WHERE YOU WALKED AROUND. I DIDN'T

9 GO IN, SO I COULD ONLY SEE THROUGH THE FENCE.

10 CERTAINLY, WE WERE GOING TO TRY TO MEET UP WITH

11 PERRY.

12 Q YOU FELT YOU COULD SIT THERE ALL NIGHT
13 AND PRETEND NOTHING WAS WRONG SO PERRY BERMAN COULD
14 THEN BE AN ALIBI WITNESS OF SORTS?

15 A IT BECAME CLEAR THAT WE COULD NOT DO
16 THAT.

17 Q I'M NOT TALKING ABOUT WHEN IT BECAME
18 CLEAR. I'M SAYING AT SOME POINT, WASN'T THAT THE
19 PLAN, THAT YOU FELT YOU WERE CAPABLE OF SITTING DOWN
20 WITH PERRY BERMAN AND SPENDING ALL NIGHT WITH HIM SO
21 HE COULD BE YOUR ALIBI WITNESS OF SORTS?

22 A I'M NOT SURE I THOUGHT ABOUT THESE
23 THINGS. WE JUST TRIED TO GET TO PERRY. I DIDN'T
24 THINK ABOUT WHETHER OR NOT I COULD SIT DOWN AND MEET
25 WITH HIM. HAD I THOUGHT ABOUT IT I PROBABLY WOULD
26 HAVE REALIZED THAT I COULDN'T HAVE --

27 Q GO AHEAD.

28 A BUT ESSENTIALLY, YES.

44019

1 Q ARE YOU SAYING THAT PERRY -- YOU DID NOT
2 DISCUSS WITH LYLE MENENDEZ WHILE YOU WERE DRIVING
3 AROUND IN THE CAR THE FACT THAT YOU AND LYLE
4 MENENDEZ AND PERRY BERMAN WERE GOING TO SIT DOWN
5 SOMEWHERE?

6 A AFTER HE CALLED PERRY, MY BROTHER TOLD
7 ME THAT THE IDEA WAS TO MEET PERRY AT THE CHEESECAKE
8 FACTORY AND WE REALIZED THAT WASN'T GOING TO BE ABLE
9 TO HAPPEN.

10 Q I'M NOT TALKING ABOUT AFTER HE CALLED
11 PERRY BERMAN. I'M TALKING ABOUT BEFORE HE CALLED
12 PERRY BERMAN, DID YOU AND YOUR BROTHER HAVE ANY
13 DISCUSSION ABOUT THE FACT THAT YOU AND LYLE MENENDEZ
14 AND PERRY BERMAN WOULD MEET SOMEWHERE AND SIT DOWN
15 AND HE WOULD BE AN ALIBI WITNESS OF SORTS?

16 A NO.

17 Q YOU DID NOT DISCUSS THAT?

18 A WE NEVER DISCUSSED SITTING DOWN WITH
19 PERRY.

20 Q YOU NEVER DISCUSSED WHAT?

21 A SITTING DOWN WITH PERRY AND HAVING
22 DINNER BEFORE LYLE CALLED PERRY.

23 Q YOU DIDN'T KNOW THAT YOU WERE GOING TO
24 MEET WITH PERRY BERMAN UNTIL AFTER YOUR BROTHER
25 CALLED PERRY BERMAN?

26 A WE WERE TRYING TO MEET WITH PERRY THAT
27 NIGHT.

28 Q TO DO WHAT?

1 A I DIDN'T KNOW. WE JUST WENT OVER THERE
2 TO MEET WITH HIM SO WE COULD SAY WE WERE WITH HIM.
3 I DIDN'T KNOW WHAT WE WERE GOING TO DO. WE HADN'T
4 THOUGHT ABOUT -- I JUST HADN'T THOUGHT ABOUT IT.

5 Q YOU WERE GOING TO MEET WITH PERRY
6 BERMAN?

7 A YES.

8 Q AND YOU KNEW YOU WERE GOING TO MEET WITH
9 PERRY BERMAN?

10 A YES.

11 Q AND BEFORE LYLE WENT TO MAKE THAT PHONE
12 CALL YOU DIDN'T SAY TO LYLE MENENDEZ: I DON'T FEEL
13 I'M EMOTIONALLY CAPABLE OF HANDLING IT. I DON'T
14 WANT TO MEET WITH HIM OR DON'T MAKE THE CALL, DID
15 YOU?

16 A HE TOLD ME TO STAY IN THE CAR BECAUSE I
17 HAD ALREADY BEGUN TO CRY.

18 Q THE QUESTION IS: DID YOU EVER TELL YOUR
19 BROTHER BEFORE HE GOT OUT OF THE CAR: LYLE, I CAN'T
20 MEET WITH ANYONE TONIGHT BECAUSE I'M SO DISTRAUGHT?

21 A NO.

22 Q AND THAT IS BECAUSE YOU FELT, AT SOME
23 POINT IN THAT CAR, THAT YOU WERE CAPABLE OF PULLING
24 THAT OFF; IS THAT CORRECT?

25 A I'M NOT SURE THESE THOUGHTS WENT THROUGH
26 MY MIND. I DON'T REMEMBER THINKING THEM. I JUST
27 REMEMBER LYLE SAYING YOU DON'T LOOK WELL. DON'T GO
28 IN. I'LL GO IN AND TRY TO FIND PERRY.

1 Q ARE YOU SAYING THAT THE PLAN TO HAVE
2 PERRY BERMAN COME TO YOUR HOUSE AND BE PRESENT WHEN
3 THE BODIES WERE DISCOVERED WAS A PLAN OF LYLE
4 MENENDEZ AND YOU HAD NOTHING TO DO WITH THAT PLAN?

5 A I DON'T KNOW THE CONVERSATION THAT LYLE
6 HAD WITH PERRY. I WASN'T THERE. I KNOW THAT HE
7 ASKED PERRY TO MEET HIM AT THE HOUSE; AT LEAST I
8 THINK THAT'S WHAT HE ASKED HIM. PERRY SAID NO.
9 LET'S MEET AT THE CHEESECAKE FACTORY. SO LYLE SAID
10 OKAY, WE'LL BE THERE.

11 Q SO YOU'RE SAYING YOU HAD NOTHING TO DO
12 WITH ANY PLAN THAT LYLE MENENDEZ HAD TO MEET PERRY
13 BERMAN AT YOUR HOME; IS THAT CORRECT?

14 A RIGHT.

15 Q NOW, YOU SAID THAT YOU DIDN'T LIE TO
16 YOUR FAMILY ABOUT THIS INCIDENT BECAUSE YOU DIDN'T
17 WANT TO LET THEM DOWN; IS THAT WHAT YOU SAID?

18 A I DID LIE TO THEM.

19 Q WELL, YOU DIDN'T WANT TO TELL THEM THE
20 TRUTH BECAUSE YOU FELT YOU WOULD BE LETTING THEM
21 DOWN; IS THAT CORRECT?

22 A I WOULD BE.

23 Q AND THAT WAS YOUR CHOICE OF WORDS, THAT

24 YOU WOULD BE LETTING THEM DOWN IF YOU TOLD THEM THE
25 TRUTH; IS THAT CORRECT?
26 A CERTAINLY.
27 Q AND DIDN'T YOU FEEL THAT YOU LET YOUR
28 FAMILY DOWN THE DAY THAT YOU SHOT YOUR MOTHER AND

44022

1 FATHER TO DEATH?

2 A I DIDN'T THINK ABOUT IT UNTIL THE NEXT
3 DAY WHEN I KNEW THAT THEY'D BE COMING AND I REALIZED
4 HOW THIS WOULD AFFECT THEM.

5 Q WELL, I'M TALKING ABOUT YOUR TESTIMONY
6 HERE IN COURT WAS THAT SOMETIME AFTER THE INCIDENT
7 YOU FELT THAT YOU COULDN'T TELL YOUR FAMILY THE
8 TRUTH BECAUSE YOU WOULD BE LETTING THEM DOWN; IS
9 THAT CORRECT?

10 A YES.

11 Q SOMETIME AFTER THE INCIDENT DID IT OCCUR
12 TO YOU THAT YOU HAD ALREADY LET YOUR FAMILY DOWN THE
13 MOMENT THAT YOU DECIDED TO SHOOT YOUR PARENTS TO
14 DEATH?

15 MR. LEVIN: OBJECTION.

16 THE WITNESS: YES.

17 MR. LEVIN: ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE ANSWER -- WHAT WAS YOUR ANSWER?
20 THE WITNESS: THE ANSWER WAS YES.
21 THE COURT: THAT ANSWER WILL STAND.
22 Q BY MR. CONN: NOW, YOU DIDN'T WANT TO
23 TELL THEM ABOUT THAT -- YOU DIDN'T WANT TO TELL THEM
24 THE TRUTH BECAUSE YOU FELT SO MUCH COMPASSION FOR
25 HOW THEY WOULD FEEL LEARNING THAT YOU AND YOUR
26 BROTHER HAD SHOT YOUR PARENTS TO DEATH; IS THAT
27 CORRECT?
28 A JUST THAT I DIDN'T WANT THEM TO KNOW

44023

1 THAT LYLE AND I HAD DONE THIS. I DIDN'T WANT TO
2 TALKING ABOUT WHY THIS HAD HAPPENED, AND IT JUST
3 WASN'T SOMETHING THAT I WANTED TO GO THROUGH,
4 ESPECIALLY WITH MY GRANDMOTHER MOTHER AND MY AUNTS.
5 Q ARE YOU SAYING THAT YOU WERE CONCERNED
6 THAT THEY WOULD BE HURT TO LEARN THAT YOU AND YOUR
7 BROTHER HAD SHOT YOUR PARENTS TO DEATH?
8 A THEY WERE VERY HURT WHEN I TOLD THEM IN
9 JAIL.
10 Q AND BECAUSE -- IT IS BECAUSE OF THE
11 COMPASSION THAT YOU HAVE FOR YOUR FAMILY THAT YOU
12 DID NOT WANT TO REVEAL THE TRUTH TO THEM; IS THAT
13 CORRECT?

14 A THAT WAS A GREAT PART OF IT.

15 Q DID YOU SHOW COMPASSION TO YOUR MOTHER
16 BEFORE YOU SHOT HER TO DEATH ON AUGUST THE 20TH OF
17 1989?

18 A I WAS AFRAID. I DIDN'T THINK ABOUT
19 COMPASSION.

20 Q YOU DIDN'T THINK ABOUT COMPASSION AT ALL
21 WHEN IT CAME TO YOUR MOTHER; IS THAT CORRECT?

22 A I LOVED MY MOTHER VERY MUCH.

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

24 THE WITNESS: THAT NIGHT IT -- I WAS JUST
25 PANICKED AND I DIDN'T THINK ABOUT COMPASSION.

26 Q BY MR. CONN: YOU DIDN'T TAKE TIME TO
27 THINK ABOUT COMPASSION, DID YOU?

28 A NO.

44024

1 Q DID YOU SHOW ANY COMPASSION FOR YOUR
2 FATHER BEFORE YOU SHOT HIM TO DEATH ON AUGUST THE
3 20TH OF 1989?

4 A NO.

5 Q YOU HAVE SO MUCH COMPASSION FOR YOUR
6 GRANDMOTHER, MR. MENENDEZ, CAN YOU TELL US WHY YOU
7 DECIDED TO SHOOT HER SON TO DEATH?

8 A BECAUSE I WAS AFRAID THAT HE WAS GOING

9 TO KILL ME AND THAT HE WAS GOING TO COME UP TO MY
10 ROOM. MY COMPASSION FOR MY GRANDMOTHER AND MY LOVE
11 FOR HER HAD NOTHING TO DO WITH MY RELATIONSHIP WITH
12 MY FATHER.

13 Q DID YOU FEEL ENOUGH COMPASSION FOR YOUR
14 GRANDMOTHER TO MOVE OUT OF THE HOUSE AND GET AWAY
15 FROM YOUR FATHER AND YOUR MOTHER BEFORE YOU WERE IN
16 A SITUATION IN WHICH YOU CHOSE TO SHOOT THEM TO
17 DEATH?

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q BY MR. CONN: NOW, YOU SAID THAT YOU DID
21 NOT TELL SERGEANT EDMONDS THE TRUTH IN THIS CASE AND
22 YOU GAVE TWO REASONS FOR THAT; AND ONE WAS THAT YOU
23 DIDN'T WANT TO GO TO JAIL, AND THE OTHER REASON THAT
24 YOU GAVE WAS THAT SERGEANT EDMONDS WAS SUCH A NICE
25 GUY THAT YOU COULDN'T BRING YOURSELF TO TELL HIM.

26 IS THAT WHAT YOU SAID?

27 A THAT'S TRUE.

28 Q HOW LONG HAD YOU KNOWN SERGEANT EDMONDS

44025

1 AS OF 1:20 IN THE MORNING ON AUGUST THE 21ST OF
2 1989?

3 A I MET HIM THAT NIGHT.

4 Q HOW MANY MINUTES BEFORE HE INTERVIEWED

5 YOU DID YOU MEET HIM?

6 A I DON'T REMEMBER.

7 Q AND YOU FEEL THAT YOU ARE SUCH A WARM

8 AND COMPASSIONATE PERSON THAT YOU DIDN'T WANT TO

9 CAUSE GRIEF TO A HOMICIDE DETECTIVE THAT YOU HAD MET

10 A FEW MINUTES EARLIER?

11 A IT WASN'T THAT I WAS GOING TO CAUSE HIM

12 GRIEF. SERGEANT EDMONDS IS A GOOD PERSON, AND HE

13 TREATED ME VERY KINDLY, AND HE WAS VERY WARM WITH ME

14 THAT NIGHT; AND THAT'S NOT THE PRIMARY REASON WHY I

15 DIDN'T TELL HIM THAT I WAS RESPONSIBLE. BUT IT JUST

16 MADE ME FEEL WORSE THAT I HAD TO LIE TO HIM BECAUSE

17 HE WAS JUST A NICE GUY.

18 Q THAT REASON IS FAR FROM THE PRIMARY

19 REASON, WOULDN'T YOU AGREE, MR. MENENDEZ?

20 A I DON'T KNOW WHAT YOU MEAN BY FAR, BUT

21 CERTAINLY BEFORE I MET HIM I DIDN'T KNOW WHO HE WAS,

22 AND I DIDN'T WANT TO TELL THE POLICE THAT NIGHT THAT

23 I WAS RESPONSIBLE. NO. THAT WASN'T THE PRIMARY

24 REASON.

25 Q LET ME EXPLAIN TO YOU WHAT I MEAN BY THE

26 PRIMARY REASON. ARE YOU SUGGESTING THAT THERE WERE

27 TWO COMPETING REASONS WHY YOU DIDN'T TELL SERGEANT

28 EDMONDS THE TRUTH WAS BECAUSE YOU DIDN'T WANT TO BE

1 PUNISHED; AND THE OTHER WAS BECAUSE HE WAS SUCH A
2 NICE GUY?

3 A NO. I'M NOT TRYING TO SUGGEST THAT.

4 Q AND YOU TRICKED AND MANIPULATED
5 DETECTIVE EDMONDS INTO BELIEVING YOU; IS THAT
6 CORRECT?

7 MR. LEVIN: OBJECTION. ARGUMENTATIVE AND
8 COMPOUND.

9 THE COURT: CALLS FOR A CONCLUSION ON THE
10 PART OF THE WITNESS.

11 OBJECTION SUSTAINED.

12 Q BY MR. CONN: AND YOU DECIDED TO LIE TO
13 DETECTIVE EDMONDS; IS THAT CORRECT?

14 A YES.

15 Q NOW, YOU WERE ABLE TO CONVINCE NOT ONLY
16 THE POLICE, BUT ALL OF YOUR FRIENDS AND FAMILY
17 MEMBERS THAT YOU WERE NOT INVOLVED IN THE KILLING OF
18 YOUR PARENTS; IS THAT CORRECT?

19 A MY FAMILY MEMBERS, MY FRIENDS, DID NOT
20 SUSPECT THAT I WAS INVOLVED IN THE KILLINGS.

21 Q AND YOU CONDUCTED YOURSELF IN SUCH A
22 MANNER THAT YOU GAVE THEM NO REASON TO SUSPECT YOU;
23 IS THAT CORRECT?

24 A I DON'T KNOW WHAT YOU MEAN BY THAT. I
25 CERTAINLY DIDN'T COME OUT AND SAY THAT I WAS
26 RESPONSIBLE.

27 Q WELL, YOU PRETENDED TO BE REMORSEFUL,

44027

1 A I WAS VERY REMORSEFUL.

2 Q ABOUT WHAT?

3 A ABOUT THE FACT THAT I HAD KILLED THEM.

4 Q YOU NEVER EXPRESSED -- YOU NEVER MADE ANY
5 ADMISSIONS TO YOUR FAMILY MEMBERS OF RESPONSIBILITY,
6 DID YOU?

7 A NO.

8 Q AND NO PERSON CLOSE TO YOU ACCUSED YOU
9 OF LYING; IS THAT CORRECT?

10 A THEY DIDN'T ACCUSE ME OF DOING THIS
11 CRIME.

12 Q NOW, YOU'RE WILLING TO LIE WHEN IT
13 CONCERNS YOUR BEST INTEREST WEREN'T YOU?

14 A AT THE TIME I DIDN'T WANT TO GO TO JAIL,
15 AND I WAS GOING TO --

16 Q WHEN YOU SAY AT THAT TIME -- WERE YOU
17 FINISHED WITH YOUR ANSWER?

18 A YES, I AM.

19 Q WHEN YOU SAY "AT THE TIME," WHAT TIME
20 PERIOD ARE YOU REFERRING TO?

21 A BETWEEN AUGUST AND MARCH.

22 Q SO YOU'RE TALKING ABOUT A

23 SIX-AND-A-HALF-MONTH PERIOD WHEN YOU WERE --

24 A BEFORE I WAS ARRESTED.

25 Q ARE YOU'RE SAYING THAT ONCE THERE WAS

26 SUFFICIENT EVIDENCE TO ARREST YOU AND PROSECUTE YOU,

27 THEN YOU WERE NO LONGER WILLING TO LIE TO AVOID

28 PUNISHMENT?

44028

1 A BEFORE I WAS ARRESTED I HAD A GREAT NEED

2 TO TELL PEOPLE THIS. I TOLD DR. OZIEL. I TOLD MY

3 ATTORNEYS IMMEDIATELY AFTER I WAS ARRESTED. I

4 NEEDED TO GET THIS OFF MY CHEST. GETTING ARRESTED

5 IN SOME WAYS WAS A RELIEF BECAUSE OF THE PRESSURE

6 THAT IT TOOK TO -- THE ISOLATION THAT ME KNOWING THAT

7 I HAD DONE THIS AND NO ONE KNOWING THAT I HAD DONE

8 THIS BROUGHT A GREAT ISOLATION FROM MY FAMILY AND MY

9 FRIENDS.

10 Q ARE YOU SAYING THAT BEING IN CUSTODY IS

11 A RELIEF?

12 A IN SOME WAYS IT WAS A GREAT RELIEF FOR

13 ME.

14 Q IS THAT WHERE YOU WANT TO STAY, IN

15 CUSTODY?

16 A NO. I WOULD LIKE TO GO HOME.

17 Q AND SO YOUR DESIRE TO AVOID PUNISHMENT

18 IS EQUALLY AS GREAT TODAY AS IT WAS BACK IN 1989 AND
19 1990 WHEN YOU WERE LYING TO EVERYONE THAT YOU CAME
20 INTO CONTACT WITH; IS THAT CORRECT?

21 A DESIRE TO AVOID PUNISHMENT? THAT'S WHY
22 I'M HERE TODAY. I'VE BEEN IN JAIL FOR SIX YEARS,
23 AND I WILL BE PUNISHED FOR THE REST OF MY LIFE. I
24 THINK THAT -- I DON'T KNOW HOW TO ANSWER THE
25 QUESTION.

26 Q WHAT I'M SAYING IS, IS YOUR DESIRE TO
27 AVOID INCARCERATION AS GREAT TODAY AS IT WAS BACK IN
28 1989 AND 1990?

44029

1 A BACK IN '89 AND '90 I DIDN'T KNOW WHAT
2 JAIL WAS LIKE, AND -- I DON'T WANT TO BE IN PRISON
3 ANYMORE, IF THAT'S WHAT YOU'RE ASKING, YES.

4 Q SO WOULD YOU SAY THAT YOUR DESIRE TO
5 AVOID INCARCERATION IS JUST AS GREAT TODAY AS IT WAS
6 BACK IN 1989 AND 1990 WHEN YOU WERE TELLING LIES?

7 MR. LEVIN: YOUR HONOR, IT'S BEEN ASKED AND
8 ANSWERED.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T KNOW HOW TO ANSWER THAT
11 QUESTION. I'M NOT -- I DON'T THINK THE SAME WAY
12 THAT I DID BACK THEN. MY UNDERSTANDING OF THE

13 PEOPLE THAT I HAVE IN MY LIFE IS VERY DIFFERENT, AND
14 I DON'T WANT TO BE IN PRISON ANYMORE. IT'S A BAD
15 PLACE, AND I DON'T WANT TO SPEND THE REST OF MY LIFE
16 IN JAIL.

17 Q BY MR. CONN: ARE YOU SAYING THAT YOU NO
18 LONGER HAVE A MOTIVE TO LIE?

19 A I'M NOT LYING.

20 Q I'M ASKING YOU ABOUT YOUR MOTIVE,
21 MR. MENENDEZ.

22 MR. LEVIN: OBJECTION, YOUR HONOR. MOTIVE
23 FOR WHAT?

24 THE COURT: I THINK IT'S CLEAR FROM THE
25 NATURE OF THE QUESTION WHAT HE'S ASKING ABOUT.

26 OVERRULED.

27 DO YOU UNDERSTAND THE QUESTION?

28 THE WITNESS: I'VE FORGOTTEN IT.

44030

1 Q BY MR. CONN: ARE YOU SAYING THAT YOU NO
2 LONGER HAVE A MOTIVE TO LIE, MR. MENENDEZ?

3 A I DON'T KNOW WHAT YOU MEAN BY MOTIVE.
4 YOU MEAN IS MY LIFE AT STAKE? AM I FACING THE DEATH
5 PENALTY? I MEAN, I'M NOT LYING HERE, AND I'VE TRIED
6 TO BE AS TRUTHFUL AS I COULD BE. AND THAT'S ALL I
7 CAN SAY.

8 Q NOW -- AND DURING THE SIX MONTHS --
9 DURING THAT SIX-MONTH PERIOD OF TIME BETWEEN THE
10 TIME OF THE KILLINGS AND THE TIME OF YOUR ARREST IN
11 THIS CASE, DID YOU MAKE ANY CLAIMS OF SEXUAL AND
12 PHYSICAL ABUSE AGAINST YOUR PARENTS?

13 A I WOULD NOT HAVE DONE THAT.

14 Q YOU DID NOT DO THAT; IS THAT CORRECT?

15 A I DID NOT.

16 Q THAT WAS MY QUESTION. THE CLAIMS OF
17 ABUSE BEGAN ONLY AFTER YOU WERE NO LONGER CLAIMING
18 YOU HAD NO RESPONSIBILITY FOR THE KILLINGS; IS THAT
19 CORRECT?

20 MR. LEVIN: OBJECTION TO THE USE OF THE TERM
21 "ABUSE." IT'S VAGUE. IT'S NOT BEEN USED.

22 THE COURT: OVERRULED.

23 DO YOU RECALL THE QUESTION?

24 THE WITNESS: NO.

25 Q BY MR. CONN: WELL, DURING THE -- DURING
26 THAT SIX-MONTH TIME PERIOD BETWEEN YOUR -- BETWEEN
27 THE KILLINGS AND THE ARREST, THE ONLY LIE THAT YOU
28 TOLD WAS ABOUT BEING INVOLVED IN THESE KILLINGS; IS

44031

1 THAT CORRECT?

2 A YES, ESSENTIALLY.

3 Q AND THEN SOMETIME AFTER YOU WERE
4 ARRESTED IT BECAME CLEAR TO YOU THAT THE PROSECUTION
5 HAD A CASE AGAINST YOU; IS THAT CORRECT?

6 MR. LEVIN: OBJECTION. CALLS FOR
7 SPECULATION.

8 THE COURT: GOES TO HIS STATE OF MIND.

9 OVERRULED.

10 THE WITNESS: I KNEW THAT I WAS RESPONSIBLE,
11 AND I WAS ARRESTED. CLEARLY.

12 Q BY MR. CONN: AND DID YOU DECIDE AT THAT
13 POINT TO SWITCH FROM AN I-DIDN'T-DO-IT DEFENSE TO A
14 MY-PARENTS-BROUGHT-THIS-ON DEFENSE?

15 MR. LEVIN: OBJECTION, YOUR HONOR.
16 ARGUMENTATIVE.

17 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

18 Q BY MR. CONN: DID YOU DECIDE AT THAT
19 POINT THAT YOU WERE GOING TO START MAKING CLAIMS OF
20 ABUSE AGAINST YOUR PARENTS?

21 A I DON'T KNOW WHEN A PERSON DECIDES TO
22 START MAKING CLAIMS. WHAT HAPPENS TO A PERSON IN
23 THEIR LIFE IS CERTAINLY THEIR LIFE. THIS WAS A
24 TREMENDOUS STRUGGLE BETWEEN MYSELF AND MY BROTHER,
25 WHETHER OR NOT WE WOULD EVEN GO FORTH WITH THIS
26 TRIAL. AND IT WASN'T A QUICK DECISION TO TELL
27 PEOPLE WHAT HAPPENED IN OUR LIVES. MY BROTHER
28 FOUGHT AGAINST IT FOR A VERY LONG TIME, AND THESE

1 ARE NOT EASY THINGS TO TALK ABOUT; AND THESE AREN'T
2 EASY THINGS TO COME TO TERMS WITH, THE FACT THAT
3 YOU'RE GOING TO HAVE TO TELL PEOPLE.

4 Q WHEN THE TIME CAME FOR YOU TO POINT THE
5 FINGER AT YOUR PARENTS AND START ACCUSING THEM OF
6 MISCONDUCT, THAT'S SOMETHING YOU WERE WILLING TO DO,
7 WEREN'T YOU, MR. MENENDEZ?

8 A MORE SO AGAINST MY FATHER I WAS WILLING
9 TO, YES.

10 Q BUT YOU DID IT AGAINST YOUR MOTHER TOO,
11 DIDN'T YOU?

12 A I'VE TRIED TO TELL WHAT HAPPENED IN MY
13 LIFE.

14 Q AND GIVEN YOUR HISTORY OF LYING BEFORE
15 THE TIME OF YOUR ARREST, WOULD YOU BE WILLING TO LIE
16 UNDER OATH?

17 A I'M NOT WILLING.

18 MR. LEVIN: OBJECTION. THE QUESTION IS
19 ARGUMENTATIVE WITH RESPECT TO HISTORY.

20 THE COURT: OBJECTION SUSTAINED.

21 REPHRASE THE QUESTION. THE ANSWER'S
22 STRICKEN.

23 Q BY MR. CONN: DO YOU FEEL YOU'RE CAPABLE
24 OF LYING UNDER OATH, MR. MENENDEZ?

25 A I KNOW THAT I'M A DIFFERENT PERSON. I

26 KNOW THAT I HAVE LEARNED A LOT AND I HAVE A GREAT
27 MANY PEOPLE, ALMOST ALL OF MY FAMILY THAT LOVES ME
28 NOW, AND I KNOW THAT I NO LONGER HAVE A NEED TO LIE;

44033

1 WHETHER OR NOT PEOPLE WILL UNDERSTAND WHAT HAPPENED,
2 I DON'T KNOW. I NEVER BELIEVED THAT THE POLICE
3 WOULD WHEN I WAS FREE. AND I DON'T KNOW WHAT WILL
4 HAPPEN TO MY BROTHER AND I. BUT I'M NOT GOING TO
5 LIE. AND ONCE WE MADE THAT DECISION, IT BECAME VERY
6 CLEAR THAT THE TRIAL WAS GOING TO COME ABOUT AND I
7 WASN'T GOING --

8 Q LET ME GET RIGHT TO THE POINT. DO YOU
9 FEEL YOU'RE CAPABLE OF LYING UNDER OATH?

10 MR. LEVIN: OBJECTION. IT'S BEEN ASKED AND
11 ANSWERED. IT DOESN'T NEED TO BE REPEATED.

12 THE COURT: OVERRULED.

13 THE WITNESS: I SUPPOSE THAT I AM CAPABLE.

14 Q BY MR. CONN: AND TO YOU, IS THERE ANY
15 MORAL DIFFERENCE BETWEEN LYING UNDER OATH AND LYING
16 OUT THERE ON THE STREET BETWEEN AUGUST OF '89 AND
17 MARCH OF 1990?

18 A THERE'S A BIG DIFFERENCE.

19 Q WHAT IS THE DIFFERENCE TO YOU,
20 MR. MENENDEZ?

21 A THE DIFFERENCE WAS THAT -- IS THAT I DID
22 NOT BELIEVE FOR A MOMENT THAT THE POLICE WOULD
23 UNDERSTAND WHAT HAPPENED TO ME IN THAT LAST WEEK,
24 WHAT HAPPENED TO MY BROTHER, AND WHY THIS OCCURRED.
25 I DIDN'T -- I DIDN'T -- I DIDN'T KNOW WHAT THE LAWS
26 WERE. ALL I KNEW IS THAT I HAD KILLED MY PARENTS
27 AND I WAS GOING TO GO TO JAIL NO MATTER WHAT.
28 I'M NOW SAYING THAT I DID DO IT. I'M

44034

1 NOW ADMITTING THESE THINGS, AND I'VE ADMITTED THE
2 BAD THINGS THAT I'VE DONE AND THE GOOD THINGS THAT
3 I'VE DONE. BUT I HAVE NO MORE NEED AND NO MORE
4 BURDEN TO LIE.

5 Q WHAT DO YOU MEAN WHEN YOU SAY YOU DIDN'T
6 KNOW WHAT THE LAWS WERE?

7 A I DIDN'T KNOW THERE'S A DIFFERENCE
8 BETWEEN -- I NEVER HEARD OF THE WORD "MANSLAUGHTER"
9 IN TERMS OF THE LAW OR MURDER OR FIRST OR SECOND OR
10 NOT GUILTY. ALL I KNEW IS THAT I HAD KILLED MY
11 PARENTS AND I HAD DONE AN AWFUL THING, AND I WAS
12 GOING TO GO TO JAIL.

13 Q NOW THAT YOU KNOW WHAT THE LAW IS, DO
14 YOU FEEL YOU HAVE A LITTLE MORE WIGGLE ROOM THERE?

15 MR. LEVIN: OBJECTION. CALLS FOR

16 SPECULATION. ALSO VAGUE.

17 THE COURT: ALL RIGHT.

18 DO YOU UNDERSTAND THE QUESTION?

19 THE WITNESS: I THINK I UNDERSTAND THE
20 QUESTION.

21 THE COURT: YOUR ANSWER?

22 THE WITNESS: I KNOW WHAT HAPPENED TO ME. I
23 KNOW WHAT OCCURRED THAT WEEKEND. AND THE
24 PARTICULARITIES ABOUT THE LAW I DON'T UNDERSTAND.
25 BUT -- I'M FORGETTING THE QUESTION.

26 MR. CONN: I'LL WITHDRAW THE QUESTION.

27 Q ONCE YOU'VE COMMITTED THE ACT OF
28 SHOOTING YOUR OWN PARENTS TO DEATH, MR. MENENDEZ,

44035

1 DID THE OATH OF TELLING THE TRUTH HAVE ANY MEANING
2 TO YOU?

3 MR. LEVIN: OBJECTION, YOUR HONOR.
4 ARGUMENTATIVE.

5 THE WITNESS: I NEVER THOUGHT ABOUT IT.

6 THE COURT: OVERRULED. THE ANSWER WILL
7 STAND.

8 Q BY MR. CONN: NOW, THAT NIGHT OF AUGUST
9 THE 20TH OF 1989, YOU AND YOUR BROTHER WERE ABLE TO
10 COME UP WITH AN ALIBI WITHIN MINUTES OF SHOOTING

11 YOUR PARENTS TO DEATH; IS THAT CORRECT?

12 A YOU MEAN BE ABLE TO SAY THAT WE WERE AT

13 THE MOVIES?

14 Q WELL, THIS ALIBI ABOUT "TASTE OF L.A."

15 BEING AT THE MOVIES, WHERE YOU HAD BEEN, GOING TO

16 AND FROM THE MOVIES, YOU PUT ALL OF THAT TOGETHER

17 WITHIN MINUTES OF SHOOTING YOUR PARENTS TO DEATH; IS

18 THAT CORRECT?

19 A BEFORE WE GOT BACK TO THE HOUSE THAT

20 NIGHT, YES.

21 Q AND HOW MUCH TIME WAS THAT?

22 A AN HOUR AND A HALF.

23 Q AND THAT STORY THAT YOU PUT TOGETHER WAS

24 CONVINCING ENOUGH FOR YOU TO PERSUADE AN EXPERIENCED

25 HOMICIDE DETECTIVE, SERGEANT EDMONDS, THAT YOU WERE

26 NOT INVOLVED IN THIS CASE?

27 MR. LEVIN: OBJECTION. CALLS FOR

28 SPECULATION, WHAT WAS IN SERGEANT EDMONDS' MIND.

44036

1 THE COURT: SUSTAINED.

2 Q BY MR. CONN: WITH THAT ALIBI YOU WERE

3 ABLE TO WALK OUT OF THE POLICE STATION THAT NIGHT;

4 IS THAT CORRECT?

5 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION

6 AS TO WHY THEY LET HIM GO.

7 THE COURT: THAT'S NOT THE QUESTION.

8 OBJECTION OVERRULED.

9 THE WITNESS: I WAS NOT ARRESTED THAT NIGHT.

10 Q BY MR. CONN: AND THAT LIE ABOUT WHERE
11 YOU HAD BEEN WAS BACKED UP WITH PHONE RECORDS,
12 DOCUMENTING A PHONE CALL TO PERRY BERMAN FROM A
13 SPECIFIC LOCATION, WASN'T IT?

14 MR. LEVIN: OBJECTION. CALLS FOR
15 SPECULATION. ASSUMES FACTS NOT IN EVIDENCE.

16 THE COURT: WHY DON'T YOU REPHRASE THE
17 QUESTION.

18 MR. CONN: YES.

19 Q AND DID YOU KNOW AT THE TIME THAT THIS
20 LIE YOU WERE TELLING TO SERGEANT EDMONDS COULD BE
21 SUPPORTED BY PHONE RECORDS THAT -- DID YOU KNOW ABOUT
22 A PHONE CALL THAT YOUR BROTHER MADE FROM A TELEPHONE
23 BOOTH?

24 A I DON'T UNDERSTAND HOW THAT -- I DON'T
25 UNDERSTAND HOW THAT GOES TOGETHER.

26 Q DID YOU KNOW THAT YOUR BROTHER HAD MADE
27 A TELEPHONE CALL TO PERRY BERMAN?

28 A YES.

1 Q AND DID YOU KNOW THAT YOUR BROTHER HAD
2 MADE A CHARGE CALL?

3 A I DIDN'T KNOW AT THE TIME, BUT STILL, IT
4 WAS AFTER -- OVER AN HOUR AFTER MY PARENTS HAD DIED.
5 I DON'T KNOW HOW THAT WOULD SUPPORT ME NOT BEING
6 THERE WHEN THEY DIED.

7 Q IT PUTS YOU AT A LOCATION AWAY FROM YOUR
8 HOME SOMETIME SHORTLY AFTER THE SHOOTING; IS THAT
9 CORRECT?

10 MR. LEVIN: OBJECTION. ARGUMENTATIVE WITH
11 RESPECT TO "SHORTLY."

12 THE COURT: OVERRULED.

13 THE WITNESS: I HADN'T THOUGHT ABOUT IT AT
14 THAT TIME.

15 Q BY MR. CONN: AND DID YOU KNOW WHETHER
16 THE POLICE WERE GOING TO BE ABLE TO PINPOINT THE
17 SHOOTING DOWN TO THE PRECISE MOMENT OF THE SHOOTING?

18 A I HAD NOT THOUGHT ABOUT THAT EITHER.

19 Q AND DID YOU ALSO KNOW THAT THIS ALIBI
20 THAT YOU WERE TELLING SERGEANT BERMAN (SIC) ABOUT
21 WOULD BE BACKED UP BY THE TESTIMONY OF PERRY BERMAN,
22 THAT AT LEAST YOU AND YOUR BROTHER WERE --

23 MR. LEVIN: OBJECT TO THE FORM OF THE
24 QUESTION THAT HE ALSO KNEW. HE DID NOT STATE HE
25 KNEW THE --

26 THE COURT: WITH THAT MODIFICATION, DO YOU
27 RECALL THE QUESTION?

28 THE WITNESS: NO, I DON'T.

1 THE COURT: REPHRASE IT.

2 Q BY MR. CONN: DO YOU KNOW AT THE TIME
3 THAT YOU SPOKE TO DETECTIVE EDMONDS THAT THIS ALIBI
4 THAT YOU WERE TELLING HIM WOULD BE AT LEAST
5 SUPPORTED BY PERRY BERMAN WHO WOULD BE ABLE TO SAY
6 THAT YOUR BROTHER WAS TRYING TO CONTACT HIM THAT
7 NIGHT?

8 A I REALLY HADN'T THOUGHT ABOUT THAT
9 EITHER.

10 Q AND IN THAT PERIOD OF TIME, FROM THE
11 TIME THAT YOU SHOT YOUR PARENTS TO DEATH, TO THE
12 TIME THAT YOU SPOKE TO DETECTIVE EDMONDS, YOU CAME
13 UP WITH AN ALIBI THAT YOU USED TO CONVINCE, NOT ONLY
14 THE POLICE, BUT ALSO FRIENDS AND FAMILY; IS THAT
15 CORRECT?

16 MR. LEVIN: YOUR HONOR, OBJECTION. CALLS FOR
17 SPECULATION WITH RESPECT TO OTHERS, HOW THEY FELT.

18 THE COURT: I BELIEVE THE WITNESS HAS ALREADY
19 TESTIFIED ABOUT THAT HIMSELF, SO OVERRULED.

20 THE WITNESS: I DIDN'T SERIOUSLY BELIEVE THAT
21 THERE WAS A HIGH LIKELIHOOD OF US NOT GETTING
22 ARRESTED THAT NIGHT. WE HAD APPARENTLY BEEN
23 SUPPOSED TO HAVE MET A FRIEND INSIDE A MOVIE THEATER
24 THAT WE DIDN'T SHOW UP FOR; WE WERE SUPPOSED TO MEET

25 PERRY AT 10:15; WE WERE AN HOUR LATE THERE. I
26 DIDN'T BELIEVE -- I WASN'T EVEN SURE WHETHER OR NOT I
27 COULD HOLD UP ON BEING INTERVIEWED BY THE
28 DETECTIVES.

44039

1 WE WERE JUST PUTTING THINGS TOGETHER AS
2 WE CAME TO THEM. I THOUGHT THE ALIBI WAS PRETTY
3 WEAK, BUT IT WAS THE ONLY ONE I COULD GIVE, AND I
4 DON'T THINK IT FOOLED DETECTIVE ZOELLER FOR MORE
5 THAN A COUPLE OF DAYS.

6 Q BY MR. CONN: WHAT I'M ASKING YOU IS,
7 THAT ALIBI THAT YOU CAME UP WITH WITHIN A VERY SHORT
8 TIME OF SHOOTING YOUR PARENTS TO DEATH WAS ONE THAT
9 YOU USED FOR THE NEXT SIX MONTHS; ISN'T THAT
10 CORRECT?

11 A YES.

12 Q NOW, SINCE THE TIME THAT YOU FIRST TOLD
13 THIS STORY -- WELL, SINE THE TIME OF YOUR ARREST,
14 HOW MUCH TIME HAVE YOU HAD TO COLLECT YOUR THOUGHTS
15 ABOUT THE NATURE OF THE RELATIONSHIP BETWEEN
16 YOURSELF AND YOUR PARENTS?

17 A I BEGAN TELLING MY -- BEGAN TELLING
18 LESLIE IMMEDIATELY AFTER I WAS ARRESTED.

19 Q BY MR. CONN: MY QUESTION IS NOT WHEN

20 YOU BEGAN TELLING YOUR COUNSEL THAT. MY QUESTION
21 IS: HOW MUCH TIME HAVE YOU HAD SINCE THE TIME OF
22 YOUR ARREST TO COLLECT YOUR THOUGHTS CONCERNING THE
23 NATURE OF THE RELATIONSHIP BETWEEN YOURSELVES AND
24 YOUR PARENTS?

25 MR. LEVIN: YOUR HONOR, IT'S VAGUE. IT'S
26 IRRELEVANT AND IT'S ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: I'VE BEEN IN JAIL SIX YEARS.

44040

1 Q BY MR. CONN: AND DURING THAT TIME
2 YOU'VE HAD PLENTY OF TIME TO THINK ABOUT THE REASONS
3 YOU WERE GOING TO GIVE TO THIS JURY FOR KILLING YOUR
4 PARENTS; IS THAT CORRECT?

5 A NO, SIR. APART FROM STRUGGLING WITH MY
6 BROTHER, I KNEW IN -- WITHIN MONTHS THAT THIS WAS
7 GOING TO HAVE TO COME OUT, AND THAT I HAD AT THAT
8 POINT DECIDED THAT THE BEST THING TO DO WAS TO TELL
9 OUR RELATIVES AND FACE THE FACT THAT THERE WASN'T
10 GOING TO BE ANY REAL OPTION OVER WHO KILLED MY
11 PARENTS. AND I WAS GOING TO HAVE TO ADMIT TO WHAT
12 HAPPENED.

13 Q ARE YOU SAYING THAT YOU DIDN'T HAVE
14 PLENTY OF OPPORTUNITY TO THINK ABOUT THESE

15 ALLEGATIONS OF ABUSE THAT YOU HAVE LEVELED AGAINST
16 YOUR PARENTS IN THIS TRIAL, MR. MENENDEZ?

17 A I DON'T KNOW WHAT YOU MEAN BY PLENTY OF
18 OPPORTUNITIES. I WAS IN JAIL FOR MANY YEARS BEFORE
19 THE FIRST TRIAL; ANOTHER TWO YEARS AFTER THE FIRST
20 TRIAL. BUT THESE THINGS THAT I'VE TOLD HERE IN
21 COURT ARE NOTHING NEW TO MY FAMILY, TO LESLIE,
22 FATHER KEN. I'VE SAID THE SAME THINGS SINCE THE
23 BEGINNING.

24 Q ONCE AGAIN, MR. MENENDEZ, TO THE
25 QUESTION: DID YOU HAVE PLENTY OF TIME TO THINK
26 ABOUT THE VARIOUS CHARGES THAT YOU WERE GOING TO
27 MAKE AGAINST YOUR PARENTS IN THIS TRIAL, YES OR NO?
28 MR. LEVIN: YOUR HONOR, THAT QUESTION HAS

44041

1 ALREADY BEEN ASKED AND ANSWERED AND IT CANNOT BE
2 ANSWERED YES OR NO. THE WITNESS ANSWERED.

3 THE COURT: IT CAN BE ANSWERED YES OR NO.

4 THE WITNESS: I SUPPOSE HAD I WANTED TO WAIT
5 THREE YEARS BEFORE TELLING ANYONE WHAT HAD HAPPENED,
6 THE ANSWER WOULD BE YES. BUT I DIDN'T THINK ABOUT
7 THAT.

8 Q BY MR. CONN: WHEN WAS THE FIRST TIME
9 YOU TOLD A JURY ABOUT THESE ALLEGATIONS,

10 MR. MENENDEZ?

11 A I TESTIFIED IN SEPTEMBER OF '93.

12 Q THAT WAS THE FIRST TIME YOU PUBLICLY
13 STATED THESE ALLEGATIONS AGAINST YOUR PARENTS; IS
14 THAT CORRECT?

15 A ASIDE FROM VERY CLOSE FRIENDS AND
16 FAMILY, YES.

17 Q SO YOU HAD FROM 1990 TO 1993 TO GET THE
18 STORY STRAIGHT ABOUT EVERYTHING THAT YOU WANTED TO
19 ACCUSE YOUR PARENTS OF; IS THAT CORRECT?

20 MR. LEVIN: OBJECTION. ARGUMENTATIVE, YOUR
21 HONOR.

22 THE COURT: OVERRULED.

23 THE WITNESS: I DON'T WANT TO BE HERE. I
24 DON'T WANT TO BE --

25 MR. CONN: I'D MAKE A MOTION TO STRIKE.

26 MR. LEVIN: OBJECTION, YOUR HONOR.

27 MR. CONN: NONRESPONSIVE.

28 MR. LEVIN: HE'S ENTITLED TO ANSWER.

44042

1 THE COURT: IT IS NONRESPONSIVE. THE
2 QUESTION IS AS TO THE AMOUNT OF TIME.

3 THE WITNESS: YES.

4 MR. CONN: I'M SORRY?

5 THE WITNESS: YES.

6 Q BY MR. CONN: AND YOUR GOAL DURING THESE
7 YEARS OF REFLECTION ABOUT WHAT YOU WERE GOING TO
8 TESTIFY TO, DID YOU DECIDE THAT YOU WANTED TO AVOID
9 PUNISHMENT IF YOU COULD?

10 MR. LEVIN: OBJECTION, YOUR HONOR, WITH
11 RESPECT TO COUNSEL'S CHARACTERIZATION OF REFLECTION
12 OF WHAT HE'S GOING TO TESTIFY TO. IT'S
13 ARGUMENTATIVE.

14 THE COURT: LET'S NOT PURSUE IT ANY FURTHER.

15 OBJECTION SUSTAINED.

16 YOU MAY REPHRASE THE QUESTION.

17 Q BY MR. CONN: YES. DURING THESE THREE
18 YEARS WHEN YOU WERE THINKING ABOUT WHAT YOU WERE
19 GOING TO TELL TO THE JURY WHEN YOU FINALLY FACED THE
20 JURY --

21 MR. LEVIN: OBJECTION, YOUR HONOR. SAME
22 QUESTION.

23 THE COURT: WHY DON'T YOU REPHRASE THE
24 QUESTION.

25 Q BY MR. CONN: DURING THE THREE YEARS,
26 FROM 1990, THE TIME OF YOUR ARREST UNTIL YOU FIRST
27 SAW A JURY IN 1993, DID YOU THINK ABOUT WHAT YOU
28 WERE GOING TO TELL THE JURY CONCERNING YOUR PARENTS?

1 A I THOUGHT ABOUT IT A GREAT DEAL. I HAD
2 MANY CONFLICTIONS IN TELLING A LOT OF THINGS THAT
3 HAPPENED TO ME, AND THROUGH THREE, NOW SIX YEARS OF
4 THERAPY, I'VE TALKED ABOUT IT EVERY WEEK.

5 Q AND DURING THAT PERIOD OF TIME DID YOU
6 HAVE A GOAL OF AVOIDING OR MINIMIZING PUNISHMENT IF
7 YOU COULD?

8 A I DON'T THINK IT'S A MATTER OF AVOIDING
9 PUNISHMENT. I THINK IT'S A MATTER OF ACCEPTING IT.

10 Q DID YOU HAVE A GOAL OF MINIMIZING
11 PUNISHMENT IF YOU COULD?

12 A I WOULD HAVE PREFERRED TO GO TO A TRIAL
13 WHERE I SAID THAT I WAS NOT RESPONSIBLE, OR AT LEAST
14 DIDN'T TESTIFY, AND BE ABLE TO ASSUME I WAS NOT
15 RESPONSIBLE. I WOULD DEFINITELY PREFER NOT TO HAVE
16 TO SAY THESE THINGS.

17 Q YOU WOULD PREFER A MANSLAUGHTER OVER A
18 MURDER CONVICTION, WOULDN'T YOU?

19 A A MURDER CONVICTION WOULD PUT ME JAIL
20 FOR THE REST OF MY LIFE, AND I DON'T WANT THAT.

21 Q AND YOU WANT A MANSLAUGHTER INSTEAD; IS
22 THAT CORRECT?

23 A IT'S THE ONLY WAY I CAN GO HOME.

24 Q THAT'S YOUR GOAL AS YOU'RE SITTING HERE
25 TODAY; IS THAT CORRECT?

26 A YES.

27 MR. CONN: WOULD BE A GOOD TIME, YOUR HONOR.

44044

1 8:30.

2 DON'T DISCUSS THE CASE WITH ANYONE.

3 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T LOOK

4 AT ANY OF THE NEWS COVERAGE.

5 WE'LL SEE YOU ALL BACK HERE TOMORROW AT

6 8:30.

7 (THE JURY EXITED THE COURTROOM AND

8 THE FOLLOWING PROCEEDINGS WERE HELD:)

9

10 THE COURT: WE'LL BE IN RECESS UNTIL TOMORROW

11 AT 8:30.

12 ONE THING, WITH WITNESSES IN THE FUTURE,

13 MR. MENENDEZ, WHEN YOU REFER TO YOUR LAWYERS OR

14 ANYBODY ELSE INVOLVED IN THIS CASE, USE THEIR PROPER

15 NAME, NOT THEIR FIRST NAME.

16 THE WITNESS: OH. I'M SORRY.

17 THE COURT: WE'LL BE IN RECESS UNTIL TOMORROW

18 AT 8:30.

19 (AT 4:30 P.M. PROCEEDINGS WERE

20 ADJOURNED UNTIL 8:30 A.M. OF THE

21 FOLLOWING DAY.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4 THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

6 PLAINTIFFS,)

7 VS.) NO. BA 068880

8 ERIK GALEN MENENDEZ, AND)

9 JOSEPH LYLE MENENDEZ,)

10 DEFENDANTS.)

11
12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 THURSDAY, DECEMBER 14, 1995

14 VOLUME 263

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21 APPEARANCES:

22 (SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9

JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

12

LOS ANGELES, CA 90012

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14

FOR THE DEFENDANT

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LOS ANGELES, CA 90049

20

21

ANNAMARIE PAPA

22 CSR NO. 8608
23 MARILYN FADALE,
24 CSR NO. 4547
25 OFFICIAL REPORTERS
26
27
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LEGEND:
A = MS. ABRAMSON C = MR. CONN
G = MR. GESSLER L = MR. LEVIN
N = MS. NAJERA T = MS. TOWERY

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