

1 VAN NUYS, CALIFORNIA; FRIDAY, DECEMBER 15, 1995

2 10:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (PAGES 44045 THROUGH 44065 WERE

7 SEALED BY ORDER OF THE COURT.)

8

9 (THE FOLLOWING PROCEEDINGS WERE

10 HELD IN OPEN COURT OUT OF THE

11 PRESENCE OF THE JURY:)

12

13 THE COURT: OKAY. WE ARE IN SESSION WITHOUT

14 THE JURY. THE DEFENDANTS AND COUNSEL ARE PRESENT.

15 AND WE'LL DISCUSS SOME ISSUES THAT WE CAN DISCUSS IN

16 THE ABSENCE OF THE JURY, THINGS THAT HAVE BEEN

17 PENDING THAT WE HAVEN'T HAD A CHANCE TO DEAL WITH.

18 THERE IS A MOTION PENDING, FILED BY THE

19 DEFENSE, TO LIMIT THE CROSS-EXAMINATION. IT WAS

20 FILED ON DECEMBER THE 6TH, AND I'VE READ IT. SO

21 LET'S JUST GO THROUGH IT.

22 WHAT IS THE PEOPLE'S RESPONSE?

23 MR. CONN: WELL, IT'S OUR POSITION THAT WE

24 SHOULD BE PERMITTED TO EXAMINE THE DEFENDANT IN

25 REGARD TO THE AREAS INDICATED. I THINK THAT THESE

26 ARE AREAS IN WHICH THE DEFENDANT SHOULD BE

27 QUESTIONED SO WE CAN ASCERTAIN IN THIS TRIAL WHAT

28 HIS POSITION IS.

1 I DON'T THINK THAT WE CAN CONCLUDE,  
2 BASED IN PART ON HIS FORMER TESTIMONY ALONE, THAT  
3 HIS ANSWERS ARE NECESSARILY GOING TO BE DIFFERENT.  
4 AND THE CASES CITED BY COUNSEL, IT SEEMS TO ME,  
5 STAND FOR THE PROPOSITION THAT INQUIRY INTO SUCH  
6 AREAS SHOULD NOT BE MADE WHERE THE PROSECUTION WOULD  
7 BE PRECLUDED FROM CALLING THE PERSON AS A WITNESS TO  
8 REBUT THE TESTIMONY GIVEN -- GIVEN AT TRIAL.

9 BUT I DON'T THINK THAT THAT IS THE CASE  
10 WITH DR. OZIEL. ALTHOUGH IT WAS OUR POSITION IN OUR  
11 CASE-IN-CHIEF THAT WE DID NOT INTEND TO CALL HIM AS  
12 PART OF OUR CASE IN CHIEF, I BELIEVE THAT WE SHOULD  
13 BE PERMITTED TO EXAMINE THE DEFENDANT IN REGARD TO  
14 THESE AREAS SO THAT WE CAN MAKE A DETERMINATION AS  
15 TO WHETHER OR NOT WE INTEND TO CALL HIM IN OUR  
16 REBUTTAL CASE; AND DEPENDING UPON THE NATURE OF HIS  
17 TESTIMONY, WE MAY DECIDE THAT THAT IS AN APPROPRIATE  
18 THING TO DO.

19 CASES CITED BY COUNSEL SEEM TO STAND FOR  
20 THE PROPOSITION THAT WHERE THERE'S NO WITNESS  
21 AVAILABLE AND THERE'S NO WAY THAT THE PROSECUTION  
22 CAN REBUT SUCH TESTIMONY, THEN THE PROSECUTION  
23 CANNOT IN GOOD FAITH ASK THE QUESTIONS. BUT THAT IS

24 NOT THE CASE HERE. AND AS FAR AS THE --

25 THE COURT: WELL, LET'S STICK TO THAT ONE

26 THEN.

27 ARE YOU GOING TO GO ON TO ONE OF THE

28 OTHER OBJECTIONS TO SOME OTHER TYPE OF EVIDENCE?

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1 MR. CONN: NO. JUST RELATED TO THAT IS THE

2 RELATED ISSUE OF -- WHAT WE'LL DO -- WE'LL JUST STICK

3 TO THAT FOR THE MOMENT.

4 THE COURT: OKAY. WHAT IS THE DEFENSE

5 RESPONSE?

6 MS. ABRAMSON: WELL, THE RESPONSE IS

7 TWO-FOLD.

8 NUMBER ONE, APPARENTLY THE PEOPLE ARE

9 NOT SAYING THAT THEY DO INTEND TO CALL DR. OZIEL IN

10 REBUTTAL. THEY DO NOT HAVE A RIGHT TO SANDBAG A

11 CONFESSION, TO BEGIN WITH. THEY COULD HAVE CALLED

12 DR. OZIEL TO BRING OUT THESE MATTERS THAT ERIK

13 MENENDEZ DENIED EVER SAYING TO DR. OZIEL IN THE

14 FIRST TRIAL AND CHOSE NOT TO DO SO.

15 WHAT THEY APPARENTLY WANT TO DO IS

16 CONFRONT ERIK MENENDEZ WITH STATEMENTS THAT THEY

17 KNOW HE DENIES MAKING AND NEVER CALL DR. OZIEL, JUST

18 GET THE INFORMATION IN FRONT OF THE JURY. THEY

19 ALREADY KNOW WHAT MATTERS IT IS HE DENIED AND WOULD  
20 DENY AGAIN. THEY HAVE NO REASON TO BELIEVE HE  
21 WOULDN'T DENY THEM AGAIN. SO THEIR STATEMENT THAT  
22 THEY HAVE NOT YET MADE A DECISION TO CALL DR. OZIEL  
23 IS A THINLY VEILED, I THINK, SUGGESTION THAT THEY  
24 HAVE NO INTENTION WHATSOEVER OF CALLING HIM.

25 AND SINCE THEY'RE NOT GOING TO CALL  
26 HIM -- AND SHOULD HAVE CALLED HIM IF THEY WANTED THIS  
27 CONFESSORIAL MATERIAL IN THEIR CASE-IN-CHIEF -- THEY  
28 SHOULD NOT BE PERMITTED TO BRING UP MATTERS THAT

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1 ONLY DR. OZIEL WOULD TESTIFY TO, THAT ERIK MENENDEZ  
2 HAS AND DOES DENY. AND I'LL MAKE AN OFFER OF PROOF  
3 HE WOULD AGAIN DENY THE SAME THINGS HE DENIED WITH  
4 RESPECT TO STATEMENTS THAT DR. OZIEL CLAIMED HE MADE  
5 IN THIS TRIAL AS IN THE FIRST TRIAL.

6 AND THEY SIMPLY SHOULDN'T BE ALLOWED TO  
7 SHIELD THE JURY OR SHIELD THEIR CASE FROM THE  
8 EXAMINATION OF DR. OZIEL'S HIGHLY QUESTIONABLE  
9 CREDIBILITY BY SIMPLY USING HIS INFORMATION AND  
10 CONFRONTING OUR CLIENT WITH THESE FALSE CONFESSORIAL  
11 MATERIALS IN THE WAY THEY PROPOSE.

12 IT'S VERY OBVIOUS WHAT THEIR TRIAL  
13 TACTICS WERE. OZIEL WAS A VERY BAD WITNESS FOR

14 THEM. THEY DON'T WANT HIM BEFORE THE JURY. AND SO  
15 THEY THINK THEY CAN USE HIS MATERIAL IN THIS BACK  
16 HAND WAY. AND I THINK THE LAW'S OTHERWISE; THEY CAN  
17 NOT.

18 THE COURT: AS FAR AS THE ISSUE OF SO-CALLED  
19 SANDBAGGING, THE PEOPLE DID NOT INTRODUCE DURING  
20 THEIR CASE-IN-CHIEF THE OCTOBER 31ST OR NOVEMBER 2ND  
21 CONVERSATIONS. THEY ONLY INTRODUCED A  
22 TAPE-RECORDING OF A CONVERSATION BETWEEN OZIEL AND  
23 THE DEFENDANTS, THE DATE OF WHICH WAS NOT PRECISELY  
24 ESTABLISHED BY THE PROSECUTION. AND ONE OF THE  
25 THINGS THE DEFENSE OBJECTED TO IN REGARDS TO THAT  
26 TAPE WAS THAT PEOPLE WOULDN'T BE ABLE TO ESTABLISH  
27 IT, BUT THE DEFENSE COOPERATED AND ESTABLISHED THAT  
28 DATE, DECEMBER 11TH, IN THE DEFENSE CASE, BUT WENT

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1 FURTHER THAN CONFRONTING THE DECEMBER 11TH TAPE AND  
2 INTRODUCED EVIDENCE OF CONVERSATIONS THAT OCCURRED  
3 BETWEEN OZIEL AND THE DEFENDANTS ON OCTOBER THE 31ST  
4 AND NOVEMBER THE 2ND. TO SAY NOW THAT THE PEOPLE  
5 CAN'T QUESTION THE DEFENDANT ABOUT THOSE DATES  
6 BECAUSE IT WOULD BE SANDBAGGING WOULD --

7 MS. ABRAMSON: THAT'S NOT WHAT WE'RE SAYING.

8 THE COURT: -- BE CONTRARY TO COMMON SENSE.

9 THEY CERTAINLY CAN. AND TO SAY THAT THEY ARE  
10 CONFINED ONLY TO WHAT THE DEFENDANT TESTIFIES ON  
11 DIRECT EXAMINATION AND CAN'T GO BEYOND IT, WOULD  
12 DENY THE PEOPLE OF THE RIGHT TO CROSS-EXAMINE THE  
13 DEFENDANT. TO SAY HE COULD -- THE DEFENDANT CAN SAY  
14 THESE THINGS AND THE PEOPLE CAN'T CHALLENGE IT,  
15 THEY'RE JUST STUCK WITH WHAT HE SAYS, WOULD DENY THE  
16 PEOPLE THE RIGHT OF CROSS-EXAMINATION.

17 MS. ABRAMSON: WE'RE NOT SAYING THAT, YOUR  
18 HONOR.

19 THE COURT: WELL, YOU ARGUE SANDBAGGING, AND  
20 CLEARLY IT WOULDN'T BE SANDBAGGING. THAT'S MY FIRST  
21 RESPONSE TO YOUR FIRST ARGUMENT.

22 MS. ABRAMSON: WELL, WITH RESPECT TO THE  
23 THINGS THAT ERIK MENENDEZ DENIED OR THAT THE -- OR  
24 THAT HE HASN'T TOUCHED UPON AT ALL IN HIS TESTIMONY,  
25 KNOWING THAT HE DENIED THEM, KNOWING HE WILL DENY  
26 THEM, AND HAVING NO INTENTION OF CALLING THE WITNESS  
27 OR INTRODUCING THOSE MATTERS IN THEIR CASE-IN-CHIEF,  
28 I THINK THAT IS SANDBAGGING.

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1 THE COURT: NO, THAT'S NOT SANDBAGGING.  
2 THAT'S JUST YOUR ARGUMENT THAT SUCH QUESTIONS  
3 WOULDN'T BE ASKED IN GOOD FAITH.

4 MS. ABRAMSON: ALL RIGHT. THAT'S THE SECOND  
5 ARGUMENT.

6 THE COURT: THAT THEY WOULDN'T HAVE A GOOD  
7 FAITH INTENT TO PROVE UP BY DIRECT EVIDENCE THE  
8 BASES OF THEIR QUESTIONS ASKED ON CROSS-EXAMINATION.

9 OTHER THAN THE PEOPLE'S POSITION THAT  
10 THE DEFENDANT MIGHT CHANGE HIS TESTIMONY FROM THE  
11 FIRST TRIAL, MR. CONN, GOING BEYOND THAT, IS  
12 DR. OZIEL A WITNESS WHO IS AVAILABLE TO TESTIFY?

13 MR. CONN: YES. IT'S MY UNDERSTANDING THAT  
14 HE IS AVAILABLE. AND WE, IN FACT, SPOKE TO HIS  
15 ATTORNEY NOT TOO LONG AGO WHO INQUIRED AS TO WHETHER  
16 WE WERE, IN FACT, GOING TO USE HIM, AND WE SAID  
17 THAT'S STILL UP IN THE AIR. WE HAVEN'T RULED IT OUT  
18 ONE WAY OR THE OTHER, EITHER IN THIS PHASE OF THE  
19 TRIAL OR THE PENALTY PHASE OF THE TRIAL. SO HE IS  
20 SOMEONE WHO IS AVAILABLE TO TESTIFY.

21 THE COURT: ALL RIGHT. WHAT I WOULD INDICATE  
22 IS THIS: IF HE IS -- IF QUESTIONS ARE GOING TO BE  
23 ASKED OF THE WITNESS, THE DEFENDANT, BASED UPON  
24 STATEMENTS OR TESTIMONY OF OZIEL WHICH WAS DENIED BY  
25 THE DEFENDANT IN THE FIRST TRIAL, THAT HE DENIED  
26 MAKING THOSE STATEMENTS, THE PEOPLE MUST BE IN A  
27 POSITION OF INDICATING THAT THEY ARE, ALTHOUGH NOT  
28 COMMITTING TO CALLING OZIEL, IN A POSITION TO CALL

1 HIM AND PROVE UP THE BASES OF THESE THINGS. I DON'T  
2 THINK THERE'S ANY LAW THAT REQUIRES THE PEOPLE TO  
3 MAKE ANY CONTRACTUAL OBLIGATIONS IN REGARD TO THAT,  
4 BUT THEY HAVE TO HAVE A GOOD-FAITH BELIEF THAT THEY  
5 COULD PROVE UP THE BASES OF THE QUESTIONS THAT ARE  
6 ASKED. AND THAT'S REALLY THE ONLY --

7 MS. ABRAMSON: I THINK IT GOES BEYOND THAT.

8 THE COURT: -- RULE. THE RULE IS NOT ONE THAT  
9 THEY HAVE TO PROVE UP THE BASES OF EVERYTHING THAT'S  
10 ASKED, BUT THEY CAN PROVE IT UP. IT'S NOT A  
11 SITUATION WHERE THESE ARE THINGS THAT THEY COULD  
12 NEVER PROVE OR THAT THEY, FOR SOME EVIDENTIARY RULE  
13 OR LEGAL RULE OR EXCLUSION, ARE PREVENTED FROM  
14 PROVING UP.

15 MS. ABRAMSON: WE DISAGREE, YOUR HONOR. WE  
16 BELIEVE THAT IF THEY DON'T THEN CALL OZIEL TO PROVE  
17 THESE THINGS UP, THAT ALL OF THAT TESTIMONY, AT THE  
18 VERY LEAST, SHOULD BE STRICKEN. BUT WORSE THAN  
19 THAT, THAT THE HARM'S ALREADY BEEN DONE.

20 WHAT THE COURT IS SAYING, YEAH, THEY  
21 COULD SUBPOENA HIM, BUT I GUARANTEE YOU THEY NEVER  
22 WILL, AND YET THEY CAN PROCEED NOW AND ASK THESE  
23 QUESTIONS THAT THEY CAN NEVER PROVE UP AND SIMPLY  
24 GET THE OZIEL ALLEGATIONS IN FRONT OF THE JURY WITH  
25 NO SANCTION FOR WHEN THEY DON'T PROVE IT UP, WHICH  
26 THEY WON'T.

27 SO, I MEAN, THERE HAS TO BE A SANCTION



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1 MEASURE THEIR GOOD FAITH. IF OUR CLIENT DENIES,  
2 JUST AS HE DID THE FIRST TIME, AND THEY DON'T CALL  
3 THE WITNESS, IT SHOWS WHAT A SHAM THE WHOLE NOTION  
4 OF HAVING A GOOD-FAITH INTENTION OF PROVING IT UP  
5 IS.

6 MR. GESSLER: I'D LIKE TO BE HEARD, SINCE  
7 HE'S A WITNESS FOR THE DEFENSE.

8 PEOPLE VERSUS LOCIGNO ITSELF, AND THE  
9 HOLDING OF LOCIGNO, GOES BEYOND JUST WHETHER THERE'S  
10 A BELIEF ON THE PART OF THE PROSECUTION THAT FACTS  
11 COULD BE PROVED. THE NEXT SENTENCE IS: "AND A  
12 PURPOSE TO PROVE THEM IF THEIR EXISTENCE SHOULD BE  
13 DENIED."

14 NOW, THE PURPOSE TO PROVE THEM IS VERY  
15 IMPORTANT HERE, AS MS. ABRAMSON SAID; OTHERWISE,  
16 ASKING THE QUESTIONS AND SAYING OH, WELL, TACTICALLY  
17 WE DECIDED NOT TO PROVE IT UP BECAUSE THERE WERE  
18 ONLY 20 ANSWERS OF NO, THAT'S EXACTLY A VIOLATION OF  
19 THE LOCIGNO CASE ITSELF, BECAUSE THEY DON'T HAVE THE  
20 PURPOSE TO PROVE THEM IF THEIR EXISTENCE SHOULD BE  
21 DENIED. AND WE HAVE SHOWN THAT THE EXISTENCE,  
22 AGAIN, WAS DENIED BEFORE AND CERTAINLY WILL BE

23 DENIED AGAIN; MOST PARTICULARLY, THE BILLIONAIRE  
24 BOYS CLUB, WHICH IS THE MOST BLATANT EXAMPLE.  
25 MS. ABRAMSON: I THINK THAT'S ANOTHER ISSUE.  
26 I THINK THAT'S AN 1101-TYPE ISSUE COMPLETELY  
27 SEPARATE AND APART FROM THIS.  
28 THE COURT: LET'S FOCUS ON --

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1 MR. GESSLER: IT MIGHT BE, BUT I'M NOT  
2 WILLING TO SEPARATE IT FROM THIS ARGUMENT. I THINK  
3 IT'S ALSO A VERY BAD LOCIGNO VIOLATION AND SERIES OF  
4 VIOLATIONS SHOULD THOSE QUESTIONS BE ASKED AGAIN IN  
5 ANY WAY SIMILAR TO WHAT THEY WERE ASKED LAST TIME.  
6 THE WAGNER CASE, WHICH IS THE SUPREME  
7 COURT CASE, ALSO SHOWS EXACTLY WHAT WE'RE TALKING  
8 ABOUT HERE, THAT THE PROSECUTOR THERE JUST WANTED TO  
9 MAKE THE JURY BELIEVE THE FACTS EXISTED BY INFERENCE  
10 AND BY INSINUATIONS AND SUGGESTIONS, AND NOT BY  
11 PUTTING ON PROOF OF THE FACTS WHICH WERE DENIED.  
12 AND I THINK THIS NOT ONLY IS STATE LAW BUT RISES TO  
13 DUE PROCESS IF A CASE IS TRIED IN THIS WAY; THAT  
14 IT'S A VIOLATION OF FEDERAL DUE PROCESS ALSO FOR THE  
15 DISTRICT ATTORNEY TO INSINUATE THINGS WHEN THEY DO  
16 NOT HAVE A CLEAR PURPOSE TO BE CARRIED OUT TO THEN  
17 BRING IN THE WITNESS AND PROVE THE OPPOSITE.

18 MS. ABRAMSON: JUST ANOTHER NOTE ON THE  
19 BILLIONAIRE BOYS CLUB MATTER, YOUR HONOR. I DON'T  
20 BELIEVE EVEN DR. OZIEL CAN PROVE UP WHAT THAT MEANS.  
21 THE COURT: NO. HE JUST TESTIFIED TO THE  
22 INITIALS B.B.C.  
23 MS. ABRAMSON: EXACTLY.  
24 THE COURT: AND DIDN'T KNOW THE SIGNIFICANCE  
25 OF IT.  
26 MS. ABRAMSON: EXACTLY.  
27 THE COURT: THAT'S A SEPARATE ISSUE.  
28 WHAT IS YOUR RESPONSE, MR. CONN?

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1 MR. CONN: WELL, I THINK THAT -- I THINK  
2 PERHAPS THIS DEPENDS ON HOW THE QUESTION IS ASKED.  
3 IT'S ONE THING TO SUGGEST: ISN'T IT TRUE THAT YOU  
4 TOLD DR. OZIEL THE FOLLOWING? I THINK IT'S  
5 DIFFERENT TO SIMPLY ASK THE WITNESS, DID YOU TELL  
6 OZIEL, AND INQUIRE INTO THE SUBJECT MATTER OF THE  
7 PARTICULAR ISSUE. I THINK IT'S -- WHILE PERHAPS --  
8 THE FORMER MIGHT BE SUBJECT TO GREATER CRITICISM, I  
9 DON'T SEE THAT THE SAME PROBLEM EXISTS WHEN YOU  
10 SIMPLY ASK THE DEFENDANT WHETHER, IN FACT, HE TOLD  
11 SOMETHING TO ANOTHER PERSON.  
12 THE COURT: WHAT I'M GOING TO DO, BEFORE THE

13 PEOPLE GET INTO SUCH INQUIRY REGARDING QUESTIONS ON  
14 WHAT THE DEFENDANT MIGHT HAVE SAID TO OZIEL OR WHAT  
15 OZIEL SAYS HE SAID TO HIM, IS REQUIRE THAT THE  
16 PROSECUTION SHOW THAT OZIEL IS UNDER SUBPOENA, NOT  
17 JUST THAT YOU'VE SPOKEN TO HIS LAWYER; AND THAT HE  
18 IS READILY AVAILABLE TO TESTIFY.

19       AND I WILL REVIEW AGAIN THE LOCIGNO  
20 CASE. I CERTAINLY BELIEVE THERE IS GREAT LATITUDE  
21 IN THE SCOPE OF CROSS-EXAMINATION OF A DEFENDANT WHO  
22 TESTIFIES AND THE COURT DOES NOT INTEND TO RESTRICT  
23 THAT SCOPE. BY THE SAME TOKEN, THERE ARE  
24 CONSTITUTIONAL LIMITATIONS. AND BEFORE WE GET OFF  
25 ON THIS INQUIRY, I WANT TO FIRST ESTABLISH THAT  
26 OZIEL IS SUBPOENAED AND READY AS A WITNESS TO  
27 TESTIFY IN REBUTTAL, AND THEN I'LL HEAR FURTHER FROM  
28 THE PARTIES; AND ALSO I'LL REVIEW THE LOCIGNO CASE,

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1 WHICH IS A CASE FROM THE COURT OF APPEAL, ALTHOUGH  
2 THE DEFENSE CITES THE WAGNER CASE AS WELL.

3       AND I ASSUME THERE IS NO CASE ON POINT  
4 ON THIS SUBJECT, DIRECTLY ON POINT.

5       MR. GESSLER: I THINK LOCIGNO IS DIRECTLY ON  
6 POINT. EVEN THOUGH IT WAS THE STAR WITNESS AND NOT  
7 THE DEFENDANT HIMSELF, IT WAS OBVIOUSLY THE PERSON

8 THE PROSECUTORS WERE AFTER. I THINK THE HOLDING OF  
9 THAT -- I HAVE THE CAL REPORTER BOOK BECAUSE THAT'S  
10 WHAT WE HAVE OUT HERE. IN THE CAL REPORTER IT'S  
11 14 CAL.RPTR. 372 IS THE HOLDING, WHICH I READ TO THE  
12 COURT, ALTHOUGH THE WHOLE CASE DISCUSSES THE PROBLEM  
13 HERE OF THE PROSECUTORIAL MISCONDUCT IN TRYING SOME  
14 WITNESS BY INSINUATION.

15 IN WAGNER IT WAS THE DEFENDANT WHO WAS  
16 ON THE STAND AND BEING ASKED THE QUESTIONS AS THOUGH  
17 THEY WERE TRUE, AND REALLY LOST HIS RIGHT TO A FAIR  
18 TRIAL BECAUSE THERE WAS NO PROOF OF THE --

19 THE COURT: WAS THAT PROOF AVAILABLE?

20 MR. GESSLER: AS FAR AS I KNOW IT WAS, IF IT  
21 HAD BEEN TRUE, YOUR HONOR. I MEAN, IT --

22 THE COURT: THAT'S WHAT I'M SAYING. THERE  
23 ARE CASES THAT STAND FOR THE PROPOSITION THAT THE  
24 PROSECUTOR CAN'T ASK A WITNESS, ISN'T IT TRUE THAT  
25 SUCH AND SUCH HAPPENED, AND THE PROSECUTION IS NOT  
26 IN A POSITION TO EVER PROVE THAT THAT SUCH AND SUCH  
27 EVER HAPPENED. WE'RE IN A POSITION HERE WHERE  
28 APPARENTLY THEY HAVE A WITNESS UNDER SUBPOENA WHO

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1 COULD TESTIFY TO ALL OF THE THINGS THAT WERE THEN  
2 ASKED OF YOUR CLIENT.

3           SO AS I'M SAYING, IS THERE A CASE  
4 SPECIFICALLY ON POINT THAT STANDS FOR THIS  
5 PROPOSITION THAT YOU'RE NOW TALKING ABOUT?

6       MR. GESSLER: WELL, I THINK THE CLOSEST WE  
7 HAVE IS WAGNER. IT DOESN'T SHOW THAT THEY WERE  
8 PRECLUDED FROM PROVING THIS. THEY WERE -- THEY WERE  
9 PUTTING THESE STATEMENTS ON. AS I RECALL, IT WAS  
10 SOME THINGS IN ALASKA -- YES, AT PAGE 616 IN WAGNER  
11 THEY'RE TALKING ABOUT THE QUESTIONS ABOUT:

12           "ISN'T IT TRUE, MR. WAGNER, THEN  
13       IN ALASKA YOU WERE NOT ONLY IN THE  
14       BUSINESS OF PUTTING UP FENCES, BUT IN  
15       THIS BUSINESS OF FURNISHING COCAINE  
16       FOR SALE; AND, IN FACT, THAT YOU HAVE  
17       SOLD HEROIN?"

18           AS FAR AS I KNOW, THEY MUST HAVE BEEN  
19 ABLE TO PROVE THOSE UP TO EVEN GET PAST THE FIRST  
20 HURDLE OF GOOD FAITH, WHICH WAS EVEN BEFORE LOCIGNO,  
21 THAT YOU MUST BELIEVE THE FACT EXISTED.

22       THE COURT: OKAY. WELL, I'LL REVIEW THOSE  
23 CASES. AND IF THE PEOPLE HAVE ANY CASES ON THAT  
24 SUBJECT, I'LL WANT TO SEE THEM AS WELL.

25       MR. GESSLER: THE HURDLE I STILL DON'T  
26 UNDERSTAND. AND I UNDERSTAND THE COURT IS LOOKING  
27 AS TO WHETHER THERE'S A DISTINCTION HERE AND THE  
28 ABILITY TO PROVE --

1 THE COURT: YES.

2 MR. GESSLER: -- VERSUS SIMPLY NOT USE OF IT.

3 THE COURT: IF THEY HAVE THE ABSOLUTE ABILITY  
4 TO PROVE UP THE SOURCE OF EVERY QUESTION THEY ASK  
5 AND THEN THEY QUESTION A WITNESS AND THEY JUST ELECT  
6 NOT TO PUT ON THE SOURCE WITNESS TO PROVE UP THE  
7 FACTS --

8 MR. GESSLER: HOW DOES THAT MAKE A DIFFERENCE  
9 IN THE EYES OF THE JURY OR THE PROPRIETY OF THE  
10 QUESTIONS IF THEY DECIDE NOT TO BRING THE PERSON  
11 IN?

12 THE COURT: BECAUSE IT'S A GOOD-FAITH ISSUE  
13 AS TO -- THE GOOD FAITH IS THE TEST OF WHETHER YOU  
14 COULD PROVE IT UP.

15 MR. GESSLER: IT WAS BEFORE LOCIGNO. BUT  
16 LOCIGNO SAYS WITH THE INTENTION TO PROVE IT UP.  
17 THAT'S WHAT THEY DON'T HAVE, THE INTENTION TO PROVE  
18 IT UP.

19 THE COURT: HOW COULD I MAKE THAT  
20 DETERMINATION? IF THEY HAVE A WITNESS UNDER  
21 SUBPOENA, HOW COULD I SAY THEY DON'T HAVE THE  
22 INTENTION TO PROVE IT UP? THEY MAKE A TRIAL  
23 TACTICAL DECISION ONE WAY OR ANOTHER AFTER THE  
24 WITNESS HAS FINISHED HIS EXAMINATION.

25 MR. GESSLER: YOU MEAN THEY MAKE A TRIAL

26 TACTICAL DECISION AFTER ALL THE INSINUATION AND  
27 DAMAGE HAS BEEN DONE IN THE EYES OF THE JURY, WITH  
28 ALL OF THE QUESTIONS THAT WERE ANSWERED NO, MAKING

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1 THE JURY FEEL THAT SOMEWHERE OUT THERE THERE'S  
2 SOMEBODY TO PROVE IT UP, AND THEN THEY SAY WE GOT  
3 THE MISSION ACCOMPLISHED, NOW WE'RE NOT GOING TO  
4 CALL THE WITNESS WHO IS OUT OF STATE?

5 THE COURT: I UNDERSTAND THAT ARGUMENT. I'M  
6 NOT DISPUTING THAT PERHAPS THAT'S THE LAW. BUT IS  
7 THERE A CASE THAT SAYS THAT?

8 MR. GESSLER: I THINK LOCIGNO SAYS THAT, YOUR  
9 HONOR, AND I THINK WAGNER SAYS THAT.

10 NOW, THERE'S NO -- THERE'S NO CASE WITH A  
11 FACT SITUATION THAT'S IDENTICAL TO THIS WHERE  
12 THERE'S A DEFENDANT WHO TESTIFIED --

13 THE COURT: IT'S NOT THAT UNUSUAL IF YOU HAVE  
14 A SITUATION WHERE THE WITNESS IS IN THE HALLWAY AND  
15 YOU ASK A WHOLE SERIES OF QUESTIONS OF THE  
16 DEFENDANT, BASED UPON WHAT THAT WITNESS WOULD  
17 TESTIFY ABOUT, THE WITNESS IN THE HALLWAY WOULD  
18 TESTIFY ABOUT, AND YOU GET A LOT OF DENIALS FROM THE  
19 DEFENDANT AND THEN YOU NEVER CALL THE WITNESS IN THE  
20 HALLWAY. IT SEEMS TO ME THAT THAT'S NOT SUCH AN



21 UNUSUAL FACTUAL CONTEXT THAT YOU COULD VISUALIZE  
22 THAT HAPPENING IN MANY TRIALS.  
23 SO THE QUESTION IS: ARE THERE CASES  
24 DEALING WITH THAT SUBJECT, NOT A SITUATION WHERE THE  
25 ISSUE IS, YOU KNOW, COULD THE PROSECUTION EVER HAVE  
26 REALLY PROVED IT OR NOT?  
27 MS. ABRAMSON: I THINK ABOUT WHEN YOU'RE  
28 TALKING ABOUT A DEFENDANT'S CONFESSION, THAT THE

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1 PEOPLE WERE IN A POSITION TO PROVE IN THEIR  
2 CASE-IN-CHIEF AND THEN THEY CHOOSE TO DO IT IN THIS  
3 BACK-DOORWAY, I THINK THE COURT HAS TO SEE THROUGH  
4 THE RUSE. I MEAN, IT'S ONE THING TO SAY THERE'S A  
5 WITNESS IN THE HALLWAY WHO ONCE BOUGHT HEROIN.  
6 MS. ABRAMSON: WELL, IT'S ANOTHER THING WHEN  
7 THE WITNESS IS IN THE HALLWAY, WHEN WE HAVE A TAPE  
8 THAT THIS WITNESS PARTICIPATED IN, WHEN THE PEOPLE  
9 ELECTED NOT TO CALL HIM BECAUSE HE HAS CREDIBILITY  
10 PROBLEMS AND WE KNOW WHY, AND THEN BE ABLE TO SLIME  
11 IN THIS INCREDIBLE WITNESS' STATEMENTS WITHOUT EVER  
12 HAVING TO TEST HIS CREDIBILITY. I THINK IT'S A  
13 COMPLETELY DIFFERENT SITUATION WHEN IT'S A  
14 DEFENDANT-CONFESSION, UNDER THIS SET OF  
15 CIRCUMSTANCES, WHERE THIS WITNESS HAS ALREADY

16 TESTIFIED ONCE BEFORE AND THE PEOPLE HAVE ELECTED  
17 NOT TO CALL HIM BECAUSE HE'S NOT BELIEVABLE.  
18 SO HOW CAN IT EVER BE GOOD FAITH TO ASK  
19 A WITNESS OR DEFENDANT ABOUT CONFSSIONAL MATERIAL  
20 TO DR. OZIEL WHEN THEY HAVE ALREADY MADE A JUDGMENT  
21 THAT DR. OZIEL'S CREDIBILITY IS SO COMPROMISED THAT  
22 THEY WOULDN'T CALL THEIR CHIEF CONFESSION WITNESS IN  
23 THEIR CASE-IN-CHIEF?  
24 I MEAN, I THINK YOU DO HAVE TO LOOK AT  
25 WHAT'S GOING ON SUBLIMINALLY. AND AT LEAST, YOUR  
26 HONOR, INDICATE THAT IF THE COURT'S GOING TO ALLOW  
27 THEM TO ASK THESE QUESTIONS AND THEN THEY DON'T CALL  
28 OZIEL, THERE HAS TO BE A SANCTION.

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1 MR. GESSLER: AND I THINK, YOUR HONOR, ALSO,  
2 THAT THE -- OBVIOUSLY, THE THEME THAT RUNS THROUGH  
3 LOCIGNO AND WAGNER IS THAT SPECIAL CREDIBILITY THAT  
4 PROSECUTORS CARRY WITH THE JURORS, THAT A  
5 PROSECUTOR -- A DEFENSE COUNSEL MIGHT DO ANYTHING IN  
6 THEIR EYES -- AND WE GOT A LOT OF THAT IN THE  
7 QUESTIONNAIRES -- BUT A PROSECUTOR WOULDN'T DO  
8 THAT. A PROSECUTOR WOULD ONLY ASK A QUESTION IF HE  
9 COULD PROVE IT UP AND THEN SOME TERRIBLE CALAMITY  
10 OUT THERE HAS PREVENTED HIM FROM DOING IT. BUT THEY

11 KNOW THAT THIS MR. CONN AND MS. NAJERA, BEING SUCH  
12 NICE PEOPLE AND MEMBERS OF THE STATE,  
13 REPRESENTATIVES OF THE COUNTY PROSECUTORS, WOULD  
14 NEVER ASK A QUESTION LIKE THAT IF THEY DON'T BELIEVE  
15 IT WAS TRUE AND KNOW IT WAS TRUE. THEY DON'T EVEN  
16 HAVE TO WINK AT THE JURY IN ORDER TO GET THAT  
17 ACROSS. IT'S INHERENT IN THE ROLE THAT THEY PLAY IN  
18 THE COURTROOM IN THE EYES OF THE JURY.

19 AND THAT'S WHY BOTH THESE CASES SAY THAT  
20 THIS TYPE ACTIVITY, THIS TYPE INNUENDO, IS NOT THE  
21 WAY TO TRY A CASE; THAT IT'S A VIOLATION, IN MY  
22 VIEW, OF DUE PROCESS TO ALLOW IT TO HAPPEN.

23 THE COURT: OKAY.

24 MS. ABRAMSON: ALSO, HOW DO WE ATTACK OZIEL'S  
25 CREDIBILITY WHEN THEY'VE PUT IN THIS EVIDENCE BY  
26 INNUENDO AND QUESTION AND THEY'VE NEVER BEEN FORCED  
27 TO CALL HIM?

28 THE COURT: OKAY. SO YOUR PROPOSAL IS, FIRST

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1 OF ALL, THAT IT NOT BE PERMITTED.

2 MS. ABRAMSON: EXACTLY.

3 THE COURT: BUT IF IT IS PERMITTED AND THEN  
4 THE PEOPLE DON'T BRING OZIEL IN, THAT THE QUESTIONS  
5 AND ANSWERS BE STRICKEN.

6 MS. ABRAMSON: BEYOND THAT. THAT THE JURY BE  
7 TOLD THAT THOSE THINGS NEVER, IN FACT, WERE SAID.  
8 IN OTHER WORDS, UNDERMINE -- REALLY REVERSE THE  
9 DAMAGE TO SAY THAT HE NEVER DID SAY THOSE THINGS.

10 MR. GESSLER: MY POSITION GOES FARTHER THAN  
11 THAT. MY POSITION IS I'D BE ASKING FOR A MISTRIAL.  
12 THAT'S THE REMEDY OF LOCIGNO AND THAT'S WHAT I'D BE  
13 ASKING ON BEHALF OF LYLE MENENDEZ.

14 THE COURT: OKAY. ALL RIGHT. THOSE ARE THE  
15 POSITIONS OF THE DEFENSE. I'VE HEARD THE  
16 PROSECUTION'S RESPONSE. I HAVEN'T SEEN ANY CASE LAW  
17 CITED BY THE PROSECUTION ON THIS SUBJECT WHATSOEVER,  
18 ALTHOUGH THE PROSECUTION HAS FILED BRIEFS ON ALL  
19 SORTS OF OTHER ISSUES.

20 SO BEFORE THIS QUESTIONING IS PERMITTED,  
21 THE PROSECUTION IS, NUMBER ONE, TO HAVE OZIEL UNDER  
22 SUBPOENA; AND NUMBER TWO, TO PROVIDE THE COURT WITH  
23 ANY CASE LAW ON THIS SUBJECT; AND THREE, TO REQUEST  
24 A HEARING AND HAVE THE COURT MAKE A FINAL RULING  
25 BEFORE THE QUESTIONS MAY BE ASKED REGARDING THE  
26 MATERIALS THAT ARE CONTAINED IN THE DEFENDANT'S  
27 MOTION ON PAGES 5 AND 6 AND 7, UP TO LINE 14, WHICH  
28 THE DEFENSE ASSERTS WERE ALL DENIED BY THE DEFENDANT

1 IN HIS TESTIMONY, ALTHOUGH TESTIFIED TO BY OZIEL.

2 AND THE PAGES HERE IN YOUR BRIEF, THESE  
3 ARE REFERENCES TO THE DEFENDANT'S DENIALS; IS THAT  
4 IT?

5 MR. GESSLER: THAT'S CORRECT, YOUR HONOR. I  
6 WENT THROUGH, AND TO THE BEST OF MY ABILITY, GAVE  
7 THE PAGE AND LINE FOR THE DENIAL. IN SOME INSTANCES  
8 IT GOES THREE OR FOUR PAGES, BUT IT'S CLEAR IN THE  
9 THREE OR FOUR PAGES, WITH THE OBJECTIONS AND  
10 COLLOQUY, THAT IT IS A DENIAL.

11 THE COURT: OKAY.

12 MR. CONN: THE COURT IS NOT RULING, THOUGH,  
13 THAT THE PEOPLE CANNOT EXAMINE THE WITNESS  
14 CONCERNING STATEMENTS HE MADE TO DR. OZIEL WHICH HE  
15 CONCEDED THAT HE MADE TO DR. OZIEL, I TAKE IT, AS  
16 WELL AS WE DON'T AGREE THAT IN REGARD TO EACH AND  
17 EVERY ONE OF THESE ITEMS THAT THE DEFENSE HAS  
18 ACCURATELY RECORDED HIS -- THE DEFENDANT'S POSITION  
19 CONCERNING THESE ITEMS. I KNOW AT LEAST IN ONE OR  
20 MORE AREAS THE DEFENDANT SAID, WELL, I DIDN'T SAY  
21 THAT, BUT I SAID SOMETHING SIMILAR TO THAT. SO IT  
22 WOULD SEEM TO ME THAT WE SHOULD BE ABLE TO QUESTION  
23 THE DEFENDANT REGARDING SUCH STATEMENTS AND HAVE HIM  
24 CLARIFY FOR THE JURY, ALTHOUGH HE DIDN'T SAY THOSE  
25 PRECISE WORDS, WHAT HE DID SAY CONCERNING THAT  
26 ISSUE?

27 THE COURT: WELL, OBVIOUSLY, I HAVEN'T  
28 REFERRED BACK TO THE TRANSCRIPT OF THE TESTIMONY AND

1 COMPARED THE BRIEF FILED BY THE DEFENSE TO THE  
2 TRANSCRIPT. IF YOU HAVE A DISPUTE ABOUT IT,  
3 CERTAINLY YOU CAN BRING IT TO MY ATTENTION AND WE  
4 CAN LITIGATE IT.

5 ALSO, CLEARLY, THOSE THINGS THAT THE  
6 DEFENDANT DID NOT DENY ARE OPEN FOR QUESTIONING AND  
7 EXAMINATION.

8 MR. GESSLER: I DID SEE SOME THINGS, SOME OF  
9 WHAT MR. CONN SAID, WHERE HE SAID SOMETHING SIMILAR  
10 TO THAT. I DO NOT BELIEVE I INCLUDED THOSE IN THE  
11 BRIEF HERE. BUT IF THERE ARE SOME THAT MR. CONN  
12 TAKES ISSUE AND CAN SHOW ME PAGES AND LINES, I WOULD  
13 APPRECIATE HIM GIVING ME NOTICE OF THAT ALSO SO THAT  
14 I CAN LOOK AT THEM AND COMPARE THEM TO WHAT I GAVE  
15 TO THE COURT.

16 MR. CONN: WELL, AGAIN, I DON'T THINK IT  
17 SHOULD BE THE PROSECUTION'S OBLIGATION TO ADVISE THE  
18 DEFENSE OF EVERY PRIOR AREA OF TESTIMONY OF THE  
19 DEFENDANT THAT WE INTEND TO INQUIRE INTO WHEN, IN  
20 FACT, THE DEFENDANT, BY HIS OWN CONCESSION IN THAT  
21 TESTIMONY, SAYS, YES, I DID SAY SOMETHING LIKE  
22 THAT. I THINK IF THE DEFENDANT IN HIS PRIOR  
23 TESTIMONY SAID YES, I DID SAY SOMETHING CONCERNING  
24 THAT TO DR. OZIEL, THEN WE SHOULD BE ABLE TO

25 ESTABLISH -- WE SHOULD BE ABLE TO QUESTION HIM ABOUT  
26 THAT AND SAY, WELL, PRECISELY WHAT DID YOU SAY TO  
27 DR. OZIEL CONCERNING THAT ISSUE?

28 MR. GESSLER: I THINK, YOUR HONOR, SINCE I

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1 HAVE CITED, TO THE BEST OF MY ABILITY, CHAPTER AND  
2 VERSE TO THE COURT AND TO OPPOSING COUNSEL, THAT  
3 IT'S ONLY COURTESY THAT IF HE TAKES ISSUE AND HAS  
4 SOME OTHER PLACE IN THE TRANSCRIPT THAT HE BELIEVES  
5 PUTS A DIFFERENT COLORATION ON IT, THAT I BE GIVEN  
6 NOTICE AS TO WHERE HE IS RELYING ON AS I HAVE GIVEN  
7 HIM NOTICE OF WHAT I'M RELYING ON.

8 THE COURT: WELL, THE ISSUE BECOMES ONE OF  
9 NOT NOTICE TO COUNSEL BUT NOTICE TO THE WITNESS AND  
10 IMPAIRMENT OF THE RIGHT OF CROSS-EXAMINATION BY NOT  
11 BEING ABLE TO CONFRONT THE WITNESS ON THE WITNESS  
12 STAND, BUT GIVING ADVANCE NOTICE FOR THE WITNESS TO  
13 PREPARE A RESPONSE.

14 MR. GESSLER: I DON'T CARE ABOUT OTHER ISSUES  
15 IN THERE. BUT IF HE IS SAYING THAT I AM WRONG ON  
16 ONE OF THE ISSUES I HAVE HERE, I THINK THAT HE  
17 SHOULD SHOW ME SOMETHING THAT --

18 MS. ABRAMSON: SHOW THE COURT.

19 MR. GESSLER: -- IS DIFFERENT.

20 THE COURT: I THINK, PERHAPS, IF THERE IS  
21 ANYTHING HERE THAT IS ENUMERATED BY MR. GESSLER THAT  
22 YOU FEEL THE DEFENDANT HAS ACKNOWLEDGED, IN SO MANY  
23 WORDS, HAVING SAID TO OZIEL, AND YOU'RE DISPUTING  
24 MR. GESSLER'S ANALYSIS, THEN BEFORE THE QUESTION IS  
25 ASKED, YOU SHOULD PROVIDE IT TO THE COURT, NOT TO  
26 OPPOSING COUNSEL, AT THIS POINT, SO THEN THE COURT  
27 WOULD REVIEW IT WITHOUT FORCING THE CROSS-EXAMINER  
28 TO TIP HIS HAND PREMATURELY TO A WITNESS.

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1 MR. GESSLER: THAT'S FAIR, YOUR HONOR. AND  
2 THEN, AGAIN, HE STILL WILL HAVE TO, I TAKE IT,  
3 LICENSE AND VERSE IF HE'S TO CROSS-EXAMINE ON IT.

4 THE COURT: WELL, ONCE I LOOK AT IT, IF I  
5 RULE IT'S PROPER, THEN THE QUESTIONS CAN BE ASKED IN  
6 THE SAME WAY AS ANY OTHER QUESTION; IF HE'S QUOTING  
7 FROM A PORTION OF THE TRANSCRIPT, THEN HE'LL REFER  
8 TO IT.

9 MR. GESSLER: ALL RIGHT.

10 MS. TOWERY: SO THAT WOULD BE AN EX-PARTE  
11 SUBMISSION?

12 THE COURT: YES, JUST TO PRESERVE THE RIGHT  
13 OF CROSS-EXAMINATION HERE AND NOT UNDULY CURTAIL IT,  
14 IF THERE IS SOMETHING THAT THEY CAN ASK THAT COVERS



15 THE SAME AREA THAT MR. GESSLER ENUMERATES HERE.

16 BUT, AGAIN, GOING BACK TO THE OVERRIDING  
17 ISSUE OF WHETHER THESE QUESTIONS CAN BE ASKED,  
18 ASSUMING THE DEFENDANT HAS MADE DENIALS IN HIS  
19 EARLIER TESTIMONY, THEN NONE OF THOSE QUESTIONS WILL  
20 BE ASKED TILL THERE'S A HEARING, AND I EXPECT IF THE  
21 PROSECUTION HAS ANY CASE LAW THAT DEALS WITH THIS  
22 SUBJECT, THAT YOU WILL PROVIDE IT TO ME BY MONDAY  
23 MORNING.

24 MR. CONN: YES.

25 THE COURT: ALL RIGHT. LET'S THEN MOVE ON TO  
26 OTHER FACETS OF THE DEFENSE OBJECTION.

27 MS. ABRAMSON: CAN WE DEAL WITH THE  
28 BILLIONAIRE BOYS CLUB THING RIGHT OFF THE BAT?

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1 THE COURT: WELL, THAT'S ONLY REFERRED TO IN  
2 QUESTIONS THAT ARE SUBJECT TO OZIEL. IT DOESN'T  
3 HAVE ANY RELEVANCE OTHERWISE.

4 DID YOU INTEND TO GO INTO THE  
5 BILLIONAIRE BOYS CLUB OTHER THAN THROUGH OZIEL'S  
6 TESTIMONY?

7 MS. ABRAMSON: WELL, FIRST OF ALL, OZIEL  
8 NEVER TESTIFIED TO BILLIONAIRE BOYS CLUB.

9 THE COURT: I KNOW THAT. WE ALREADY SAID

10 THAT.

11 MR. CONN: OFFHAND, I BELIEVE THAT WE  
12 INTENDED TO DO IT ONLY THROUGH -- NO, ACTUALLY, THERE  
13 IS ANOTHER WAY OF GETTING TO THE BILLIONAIRE BOYS  
14 CLUB, AND THAT IS TO CONVERSATIONS THE DEFENDANT HAD  
15 WITH CRAIG CIGNARELLI. I BELIEVE HE INDICATED -- IN  
16 THE FIRST TRIAL HE INDICATED THAT HE HAD  
17 CONVERSATIONS WITH CRAIG CIGNARELLI ABOUT SETTING UP  
18 A -- SOME SORT OF A BUSINESS IN WHICH EACH OF THE  
19 PARTICIPANTS -- AND THERE WOULD BE FOUR IN NUMBER --  
20 WOULD BE ABLE TO EARN ONE TO TWO MILLION DOLLARS PER  
21 YEAR, AND HE ACKNOWLEDGED THAT THIS IDEA WAS SIMILAR  
22 TO THE CONCEPT OF THE BILLIONAIRE BOYS CLUB.

23 MS. ABRAMSON: SO WHAT? MY RESPONSE TO THAT  
24 IS: SO WHAT? HOW IS THAT RELEVANT TO ANYTHING?  
25 OBVIOUSLY, THE PEOPLE ARE GOING TO TRY TO LINK THAT  
26 BY TELLING THE JURY THAT B.B.C., AS FAR AS -- IN THIS  
27 CONVOLUTED WAY, WITHOUT DR. OZIEL TESTIFYING, TO  
28 CONFRONT MY CLIENT --

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1 THE COURT: WAIT, WAIT. YOU DON'T KNOW THAT  
2 BECAUSE --

3 MS. ABRAMSON: TRUST ME.

4 THE COURT: -- THE SUBJECT MATTERS INVOLVING

5 OZIEL, IT'S BEEN RULED AT THIS POINT NOT ADMISSIBLE  
6 UNLESS THERE'S A RULING CONTRARY.

7 MS. ABRAMSON: BUT BEYOND THAT, THE WHOLE  
8 CONCEPT OF -- THE COURT MAY RECALL WE WERE NOT  
9 ALLOWED TO ASK BRIAN ESLAMINIA ABOUT HIS BROTHER AND  
10 WHAT HIS BROTHER WAS DOING IN PRISON AND WHAT THE  
11 CIRCUMSTANCES WERE AND THERE WERE NO QUESTIONS OF  
12 HIM ABOUT -- I THINK HE WAS -- THERE WAS ONE QUESTION  
13 THE PROSECUTION ASKED HIM ABOUT WHETHER HE EVER  
14 DISCUSSED HIS BROTHER'S MURDER WITH ERIK MENENDEZ,  
15 AND HE SAID -- OR WHETHER HE HAD EVER SEEN A MOVIE  
16 MADE -- WITHOUT IDENTIFYING WHAT CASE IT WAS, HE WAS  
17 ASKED WHETHER HE HAD EVER SEEN OR DISCUSSED A MOVIE  
18 MADE ABOUT HIS FAMILY WITH ERIK MENENDEZ AND HE SAID  
19 NO. BUT WE WERE NOT PERMITTED TO TALK TO HIM IN ANY  
20 DETAIL ABOUT WHAT HIS BROTHER WAS DOING IN PRISON.  
21 BUT WHAT THE PEOPLE WOULD NOW LIKE TO DO IS TO USE  
22 THIS B.B.C. FROM DR. OZIEL, WHICH DR. OZIEL DOESN'T  
23 KNOW THE MEANING OF, LINK IT UP WITH THIS  
24 CONVERSATION WITH CRAIG CIGNARELLI, WHERE IT WAS  
25 CRAIG CIGNARELLI WHO SAYS ON THE TAPE, "LIKE THE  
26 BILLIONAIRE BOYS CLUB," NOT ERIK MENENDEZ; AND THEN  
27 NO DOUBT TRY TO BRING IN MOVIE LISTINGS TO SHOW WHEN  
28 THE BILLIONAIRE BOYS CLUB -- THIS IS JUST EXACTLY

1 WHERE WE RAN AGROUND IN THE LAST TRIAL.

2       AND WE OBJECT TO THAT WHOLE THING AS  
3 IRRELEVANT UNDER 352, UNDULY PREJUDICIAL; THAT THEY  
4 CANNOT PROVE THAT THAT'S WHAT WAS SAID TO DR. OZIEL  
5 BECAUSE HE DOESN'T EVEN HAVE THE INFORMATION; THAT  
6 TALKING ON NOVEMBER -- WAS IT 29TH? -- TO CRAIG  
7 CIGNARELLI ABOUT SETTING UP A BUSINESS IN THE  
8 CONTEXT OF HAVING JUST TALKED ABOUT A SCREENPLAY IS  
9 NOT RELEVANT TO ANYTHING IN THIS CASE. THE ONLY  
10 POTENTIAL RELEVANCE IS IF ERIK MENENDEZ HAD TOLD --  
11 ADMITS THAT HE TOLD DR. OZIEL THAT THE IDEA FOR  
12 THIS -- FOR KILLING HIS PARENTS CAME FROM WATCHING A  
13 MOVIE, A THING THAT HE HAS ALWAYS DENIED, AND WHAT  
14 MOVIE, IT WAS HAS NEVER BEEN PROVABLE THROUGH  
15 DR. OZIEL.

16       SO TO BOOTSTRAP THAT HE KNEW ABOUT  
17 SOMETHING CALLED "THE BILLIONAIRE BOYS CLUB" OR  
18 THOUGHT ABOUT A BUSINESS WITH SUCH -- BASED ON THAT  
19 ACTIVITY, AND BOOTSTRAP THAT BACK TO GIVE MEANING TO  
20 WHAT THE NON-APPEARING DR. OZIEL CLAIMS WAS TOLD TO  
21 HIM, IS UNDULY PREJUDICIAL WITH VERY LITTLE  
22 PROBATIVE VALUE; NONE, IN FACT. AND WE WOULD OBJECT  
23 TO ANY OF THAT SUBJECT MATTER BEING GONE INTO,  
24 PARTICULARLY GIVEN THE WAY THAT WE WERE PRECLUDED  
25 FROM ELICITING FROM BRIAN ESLAMINIA, WHICH I WOULD  
26 HAVE ELICITED, HAD I BEEN PERMITTED, THAT HIS  
27 BROTHER KILLED HIS FATHER; THAT HE BELIEVED HIS

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1 THE MOVIES THAT WERE MADE; THAT HE KNOWS FOR A FACT  
2 THAT ERIK MENENDEZ NEVER SAW SUCH A MOVIE BECAUSE  
3 THEY DISCUSSED IT AFTER THE TIME OF ERIK'S PARENTS  
4 BEING KILLED. THE MOVIE WAS BEING RERUN AND BRIAN  
5 ESLAMINIA WAS COMPLAINING ABOUT HOW INACCURATE IT  
6 WAS AND HAD A CONVERSATION WITH ERIK MENENDEZ WHERE  
7 ERIK INDICATED HE HAD NEVER SEEN SUCH A MOVIE. AND  
8 NONE OF THAT WAS GONE INTO WITH HIM, AND I DON'T SEE  
9 THAT IT -- AND THAT'S WHAT WE'D BE IN A POSITION TO  
10 PROVE TO SHOW THAT OZIEL'S INFORMATION WAS FAULTY,  
11 IF THAT'S WHAT HIS INFORMATION WAS.

12 THE COURT: ALL RIGHT. WELL, FIRST OF ALL,  
13 OBVIOUSLY, MOST OF WHAT YOU'RE TALKING ABOUT  
14 INVOLVING MR. ESLAMINIA IS IRRELEVANT AND DOESN'T  
15 HAVE ANYTHING TO DO WITH HIS TESTIMONY, AND THAT'S  
16 WHY IT WAS NOT PERMITTED.

17 MS. ABRAMSON: I'M ONLY INDICATING AS AN  
18 OFFER OF PROOF, YOUR HONOR.

19 THE COURT: OTHER THAN WHATEVER YOUR CLIENT  
20 MIGHT HAVE TOLD HIM ABOUT HAVING OR NOT HAVING SEEN  
21 A MOVIE, THE REST OF WHAT YOU SAID ABOUT ESLAMINIA  
22 IS TOTALLY IRRELEVANT AND HAS NO APPLICATION

23 WHATSOEVER TO THIS CURRENT DISCUSSION. I DON'T KNOW  
24 WHY YOU BROUGHT IT UP.  
25 BUT AS FAR AS THE B.B.C. AND REFERENCE  
26 TO THE MOVIE, FIRST OF ALL, I DON'T RECALL THAT THIS  
27 WAS REFERRED TO IN CIGNARELLI'S TESTIMONY. I THINK  
28 IT CAME OUT MORE IN CROSS-EXAMINATION OF THE

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1 DEFENDANT OR PLAYING OF THE TAPE-RECORDING OF THE  
2 CONVERSATION BETWEEN CIGNARELLI AND THE DEFENDANT AT  
3 THE RESTAURANT.

4 MS. ABRAMSON: I THINK THE TAPE -- THAT  
5 PORTION OF THE TAPE, IN FACT, WAS NOT PLAYED. IN  
6 FACT, WE NEVER PLAYED THE TAPE, YOUR HONOR, BECAUSE  
7 IT WAS SO HARD TO EDIT.

8 THE COURT: OKAY. WELL, SOMETHING CAME OUT  
9 TOWARDS THE END OF THE TRIAL ABOUT IT, WHETHER --

10 ARE YOU SAYING THE DEFENDANT TESTIFIED  
11 ABOUT THAT, MR. CONN?

12 MR. CONN: YES. I --

13 MS. ABRAMSON: HE WAS CROSS-EXAMINED.

14 MR. CONN: MY NOTES INDICATE THAT ON  
15 CROSS-EXAMINATION --

16 MS. ABRAMSON: OVER OBJECTION.

17 MR. CONN: -- AT THE VERY END OF HIS

18 TESTIMONY. IF WE HAVE VOLUME 104.  
19 MS. ABRAMSON: YOU HAVE A PAGE CITE?  
20 MR. CONN: YES. MAY I SEE IT?  
21 MS. ABRAMSON: WHY DON'T YOU TELL US AND  
22 WE'LL SEE IT WITH YOU.  
23 WHAT WAS THE PAGE CITE?  
24 MR. CONN: AT 17287.  
25 (PAUSE IN PROCEEDINGS.)  
26 MR. LEVIN: 285, LINE 6.  
27 MS. ABRAMSON: WELL, NO, IT COMES OUT HERE.  
28 17287.

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1 THIS HAD TO DO WITH CROSS-EXAMINATION BY  
2 MR. KURIYAMA CONCERNING PART OF THE CONVERSATION  
3 BETWEEN ERIK MENENDEZ AND CRAIG CIGNARELLI.  
4 MR. KURIYAMA WAS ASKING HIM ABOUT WANTING TO FORM A  
5 GROUP OF PEOPLE; AND IT WAS CRAIG CIGNARELLI SAYING  
6 TO ERIK MENENDEZ -- AND THIS IS WHAT MR. KURIYAMA  
7 ASKED: "DO YOU RECALL CRAIG CIGNARELLI SAYING TO  
8 YOU 'KIND OF LIKE IN B.B.C.'?"  
9 AND THEN ERIK MENENDEZ WAS ASKED ABOUT  
10 HIS ANSWER ON THAT TAPE, "KIND OF LIKE IN B.B.C.,"  
11 BUT THAT, YOU KNOW, IT'S JUST EVERYBODY WHERE -- HE  
12 WAS ASKED IF HE MADE THAT STATEMENT ON THE TAPE.

13 MR. LEVIN: LOOK AT 291.

14 MS. ABRAMSON: WAIT. IT GOES ON. THEN 287,

15 MR. KURIYAMA ASKED: "WHAT DID YOU MEAN BY THE

16 B.B.C.?"

17 THERE WAS AN OBJECTION. OVERRULED.

18 THE WITNESS SAID: "THAT'S WHAT CRAIG

19 SAID."

20 AND THEN HE ASKED AGAIN: "WHAT DO YOU

21 MEAN BY THAT?"

22 AND THEN THE WITNESS SAID: "THE

23 BILLIONAIRE BOYS CLUB."

24 AND YOU AGREED WITH HIM. "THIS IS LIKE

25 THE B.B.C.? WHAT DO YOU MEAN BY THAT?" HE'S TRYING

26 TO GET THE DEFINITION OF B.B.C.

27 AND THEN HE -- ON -- WHAT WAS ON 17291?

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1 MR. LEVIN: LOOK AT LINE 25.  
2 MS. ABRAMSON: OKAY. THOSE ARE THE

3 REFERENCES, YOUR HONOR. SO THAT'S HOW IT CAME OUT  
4 IN CROSS-EXAMINATION, HAVING TO DO WITH THE PORTION  
5 OF THIS TAPE-RECORDED CONVERSATION WITH CRAIG  
6 CIGNARELLI.

7 MR. CONN: SO THE SUM AND SUBSTANCE IS THAT  
8 CRAIG CIGNARELLI ESSENTIALLY -- THIS PLAN THAT YOU  
9 HAVE ABOUT FOUR PEOPLE GETTING TOGETHER AND MAKING  
10 ONE OR TWO MILLION DOLLARS A YEAR, IS THAT KIND OF  
11 LIKE THE B.B.C? AND THE DEFENDANT ACKNOWLEDGING,  
12 "YEAH." THAT'S LIKE THE B.B.C."

13 SO HERE WE HAVE THE DEFENDANT WHO KILLS  
14 HIS PARENTS AND GETS HIS MONEY AND -- GETS THEIR  
15 MONEY AND INTENDS TO SET UP SOMETHING LIKE THE  
16 B.B.C.

17 MS. ABRAMSON: SO WHAT IS MY RESPONSE? FIRST  
18 OF ALL, HE DIDN'T GET THEIR MONEY; AND SECOND OF  
19 ALL, SO WHAT?

20 THE COURT: ALL RIGHT. WHAT IS THE RELEVANCE  
21 OF THIS? AS FAR AS REFERENCE TO THE B.B.C, MR. CONN?

22 MR. CONN: WELL, I THINK THAT, AGAIN, IT GOES  
23 TO THE MOTIVE FOR THE DEFENDANT TO COMMIT THIS  
24 CRIME. IF HE'S ACKNOWLEDGING TO CRAIG CIGNARELLI  
25 SOMETIME AFTER THE KILLING THAT ONE OF HIS PLANS IS  
26 THAT HE IS THINKING OF FORMING A GROUP OF FOUR  
27 PEOPLE AND THEY'RE GOING TO MAKE ONE TO \$2,000,000 A  
28 YEAR BASED UPON A CONCEPT SIMILAR TO THE B.B.C.

1 THE COURT: WHAT CONCEPT WAS THAT?

2 MR. CONN: WELL, I THINK THAT'S SUGGESTIVE OF  
3 CROSS-EXAMINATION. THIS IS THE DEFENDANT'S WORDS,  
4 "LIKE THE B.B.C."

5 SO THE QUESTION THEN IS: WHAT WAS THE  
6 DEFENDANT REFERRING TO WHEN HE INDICATED THAT HE HAD  
7 A PLAN OF SETTING UP SOMETHING SIMILAR TO THE B.B.C.

8 MS. ABRAMSON: THAT'S SLIDING OFF THE WANTING  
9 TO ASK ABOUT IT WITH RESPECT TO DR. OZIEL. IF THEY  
10 WANT TO ASK HIM: DID YOU ON NOVEMBER 29TH HAVE A  
11 FANTASY IDEA OR HAVE AN IDEA ABOUT SETTING UP A  
12 BUSINESS WITH FOUR OF YOUR FRIENDS, FINE.

13 BUT THERE'S NOTHING RELEVANT ABOUT  
14 B.B.C. I MEAN, NOBODY EVEN KNOWS WHAT THE B.B.C --  
15 SUPPOSED B.B.C WAS DOING --

16 THE COURT: ALL RIGHT. TO THE EXTENT THAT  
17 THERE WAS SOMETHING -- THIS IS NOT A SITUATION WHERE  
18 THE PROSECUTION COMES OUT OF THE BLUE AND SAYS OH,  
19 THERE ARE FOUR OF YOU YOUNG MEN, YOU WANTED TO DO  
20 SOMETHING. ISN'T THAT LIKE THE B.B.C? AND THEN  
21 CONFRONTING A WITNESS OR A DEFENDANT ON THE WITNESS  
22 STAND WITH THAT. THIS IS A SITUATION WHERE THE  
23 DEFENDANT AND HIS FRIENDS WERE USING THE WORDS, THE  
24 LETTERS, SO I AGREE WITH THE PROSECUTION THAT  
25 THEY'RE ENTITLED TO ASK THE DEFENDANT WHAT DID YOU  
26 MEAN BY THAT.

27 MS. ABRAMSON: EXCEPT THAT IS THE CASE --  
28 THE COURT: WHAT HIS ANSWER IS HIS ANSWER

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1 IS. BUT HE'S CERTAINLY ENTITLED TO ASK THAT.

2 MS. ABRAMSON: BUT, YOU KNOW, IT OPENS UP THE  
3 NOTION -- THAT'S ANOTHER MURDER CASE. WE DON'T KNOW  
4 WHAT THIS JURY KNOWS ABOUT THAT MURDER CASE. IT'S  
5 NOT JUST AN INVESTMENT CLUB. SO IT HAS PREJUDICIAL  
6 IMPORT WHICH IS NOT RELEVANT.

7 THE COURT: I'M NOT GOING TO LET THE  
8 PROSECUTION GO INTO THEIR UNDERSTANDING OF THE  
9 B.B.C.

10 MS. ABRAMSON: YOU DON'T HAVE TO. WE DON'T  
11 KNOW WHAT THE JURY UNDERSTOOD ABOUT IT. THAT'S THE  
12 PROBLEM.

13 THE COURT: WELL, THE DEFENDANT USED THAT AND  
14 HE'S GOING TO HAVE TO EXPLAIN WHAT HE MEANT BY IT.

15 THE ONLY THING THAT WOULD APPEAR TO BE  
16 RELEVANT BASED ON THIS NEW OFFER THAT IT GOES TO  
17 MOTIVE IS THAT HE WANTED TO SET UP A BUSINESS, THAT  
18 IT TOOK MONEY TO INVEST IN IT. BUT WHETHER IT'S  
19 LIKE THE B.B.C. OR NOT LIKE THE B.B.C. HAS NO  
20 RELEVANCE EXCEPT TO PAINT HIM WITH THE BRUSH OF  
21 OTHER MURDERS. THAT'S WHAT THE PURPOSE IS, TO SAY

22 BECAUSE CRAIG CIGNARELLI USED THE WORD AND ERIK SAID  
23 YEAH, LIKE THAT, BUT NOT LIKE THAT; THAT HE THEN HAS  
24 TO EXPLAIN AND HAS TO BE PAINTED WITH THE BRUSH OF  
25 THE BILLIONAIRE BOYS CLUB.  
26 THE COURT: NOW YOU ARE MOVING FROM THE  
27 OBJECTION OF SO WHAT TO THE OBJECTION OF UNDUE  
28 PREJUDICE?

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1 MS. ABRAMSON: IT'S BOTH, YOUR HONOR. THE SO  
2 WHAT IS THE RELEVANCE PART OF THE UNDUE PREJUDICE  
3 ANALYSIS UNDER 352. FIRST YOU HAVE TO LOOK AT THE  
4 RELEVANCE, OR IS IT SO WHAT AND THEN YOU HAVE TO  
5 BALANCE THE RELEVANCE?  
6 THE COURT: IT IS A WHAT, NOT A SO WHAT.  
7 MR. GESSLER: NOW THAT IT'S A WHAT...  
8 MS. ABRAMSON: HOW HEAVY A WHAT IS IT? IS IT  
9 A HUNDRED-WHAT OR A 24-WHAT NOW?  
10 MR. GESSLER: I'D LIKE TO BE HEARD, YOUR  
11 HONOR.  
12 THE COURT: YES, MR. GESSLER:  
13 MR. GESSLER: UNDER 352, WHICH COUNSEL POINTS  
14 OUT, IT HAS A LOT OF CONNOTATION BECAUSE OF THE  
15 MOVIE AND PUBLICITY GIVEN IT. THIS IS OBVIOUSLY TWO  
16 MONTHS AFTER THE HOMICIDES HERE SO THERE'S NO --

17 THREE MONTHS. THERE'S NO PART OF BEING LIKE B.B.C.  
18 OR NOT BEING LIKE B.B.C., WHICH INCLUDES KILLING  
19 YOUR PARENTS. THEY'VE ALREADY BEEN DEAD. AND  
20 THAT'S THE MAJOR CONNOTATION B.B.C. CARRIES, IS  
21 KILLING SOMEBODY'S PARENTS. THAT IS NOT -- YOU  
22 KNOW, THE PREJUDICE HERE OF THAT CONNOTATION TO THE  
23 JURY, "OF LIKE B.B.C.," I THINK OUTWEIGHS ANY  
24 PROBATIVE VALUE THAT THE COURT FOUND ON THE  
25 RELEVANCE.

26 THE COURT: I MUST HAVE THOUGHT DIFFERENTLY  
27 IN THE FIRST TRIAL BECAUSE IT APPARENTLY CAME IN.

28 MR. GESSLER: IT CAME IN BECAUSE THERE HAD

44098

1 BEEN SO MUCH TALK ABOUT THE B.B.C. IN OTHER CONTEXTS  
2 IN THE FIRST TRIAL FROM OZIEL AS TO WHETHER IT MEANT  
3 BRITISH BROADCASTING COMPANY OR -- NONE OF THAT IS  
4 HERE.

5 THE COURT: I DO RECALL. I WAS JUST JOKING.  
6 THERE WAS THAT PART OF IT THAT TIED IN TO OZIEL'S  
7 TESTIMONY.

8 MR. GESSLER: WE DO HAVE A CODEFENDANT HERE.  
9 I DON'T REMEMBER IF THAT PART OF ERIK MENENDEZ'  
10 TESTIMONY WAS BEFORE BOTH JURIES OR JUST HIS OWN.

11 THE COURT: ALL OF CIGNARELLI WAS ONLY IN

12 FRONT OF HIS JURY.

13 MR. GESSLER: WE ALSO HAVE THAT ASPECT WITH  
14 LYLE MENENDEZ BEFORE THIS PARTICULAR JURY.

15 THE COURT: ALL RIGHT. HOW DO YOU DEAL WITH  
16 THAT, MR. CONN, ASSUMING ERIK MENENDEZ MAKES  
17 WHATEVER EXPLANATIONS HE GIVES TO B.B.C., AND WE  
18 HAVE TO ASSUME HE'S NOT GOING TO SAY A GROUP OF  
19 YOUNG MEN PLANNING TO KILL PEOPLE AND KILL THEIR  
20 PARENTS AND THINGS OF THAT NATURE; BUT SOMETHING  
21 SUCH AS INVESTING IN WHATEVER THEY WERE INVESTING  
22 IN, WHATEVER THEY WERE DOING.

23 NOW, HOW DO YOU INSURE THAT THE JURY  
24 DOESN'T DRAW THE PREJUDICIAL INFERENCE THAT THE  
25 B.B.C. IS A GROUP OF MURDERING YOUNG MEN?

26 MR. CONN: WE HAVE NO INDICATION AT THIS  
27 POINT THAT THE JURY IS GOING TO DRAW SUCH AN  
28 INFERENCE. THERE IS NO INDICATION THE JURY HAS ANY

44099

1 KNOWLEDGE OF THIS AREA WHATSOEVER. I'M SURE THEY'RE  
2 GOING TO BE GUIDED BY THE LIMITATIONS WHICH ARE --  
3 COME OUT THROUGH THE EVIDENCE. IN OTHER WORDS, IF  
4 THE DEFENDANT INDICATES THAT IT HAS NOTHING DO WITH  
5 A GROUP OF MURDERING YOUNG MEN, IT SIMPLY HAS  
6 SOMETHING TO DO WITH A GROUP OF INVESTING YOUNG MEN,

7 AND NOTHING MORE IS SAID ABOUT IT, THEN THERE IS NO  
8 REASON FOR THE JURY TO MAKE THE LINK AND SAY: JUST  
9 BECAUSE THE DEFENDANT WAS USING THAT AS A MODEL FOR  
10 HIS INVESTMENT ACTIVITIES, THAT, THEREFORE, HE WAS  
11 ALSO INTENDING TO KILL HIS PARENTS BASED UPON THE  
12 CRIMINAL ACTIVITIES OF THE PEOPLE WHO WERE INVOLVED  
13 IN THAT SEPARATE INCIDENT.

14 SO I DON'T THINK SIMPLY BECAUSE THE  
15 DEFENDANT MIGHT REFER TO THAT GROUP NECESSARILY  
16 MEANS THAT HE INCORPORATES ALL OF THEIR IDEAS.

17 THE COURT: WELL, THE ONLY REASON YOU WOULD  
18 BE ASKING IT WOULD BE WITH THE HOPE THAT HE WOULD  
19 SAY SOMETHING LIKE THAT. IF HE DIDN'T SAY SOMETHING  
20 ALONG THE LINES YOU'RE TALKING ABOUT, THAT THIS WAS  
21 A GROUP OF -- I WAS TALKING WITH MY FRIENDS ABOUT  
22 BEING INVOLVED IN A GROUP OF HIGH-ROLLING KIDS WHO  
23 WERE OUT THERE KILLING THEIR PARENTS AND KILLING  
24 OTHER PEOPLE, IF HE DIDN'T SAY THAT, WHAT IS THE  
25 RELEVANCE OF HIS REFERENCE TO B.B.C.?

26 WELL, AGAIN, I GUESS THE MAIN PROBLEM I  
27 HAVE IS WE CAN'T ANTICIPATE IN A VACUUM AS TO  
28 EXACTLY HOW HE'S GOING TO RESPOND AND WHAT FOLLOW-UP

44100

1 QUESTIONS I MAY HAVE IN THIS AREA. AND WE CAN'T



2 DRAW AN OUTLINE OF LET'S GIVE THE DEFENDANT THE  
3 BENEFIT OF THE DOUBT AS TO HOW HE'S GOING TO ANSWER,  
4 NOT ONLY THAT QUESTION, BUT EVERY FOLLOW-UP QUESTION  
5 THAT THE PROSECUTOR MIGHT ASK DEPENDENT UPON THAT  
6 QUESTION. BASED UPON THE BENEFIT OF THE DOUBT IN  
7 REGARD TO ALL THAT ENTIRE LINE OF QUESTIONING, WHERE  
8 ARE WE GOING TO BE? WE REALLY CAN'T DO THIS IN A  
9 VACUUM.

10 IT SEEMS TO ME THAT IF THE DEFENDANT  
11 SAID IN HIS PRIOR TESTIMONY THAT HE, IN FACT, WAS  
12 PLANNING SOMETHING ALONG THE LINES OF THE B.B.C.,  
13 AND HE WAS GOING TO USE HIS MONEY TO SET UP  
14 SOMETHING LIKE THAT, THAT I'M ENTITLED TO ASK THE  
15 QUESTION IN THAT AREA. AND THEN WE'LL SEE WHERE WE  
16 GO FROM THERE. PERHAPS, DEPENDING UPON THE ANSWERS  
17 THAT ARE GIVEN, THE DEFENDANT MAY ANSWER IN A WAY  
18 THAT IS BENEFICIAL TO HIM; PERHAPS HE WON'T ANSWER  
19 IN A WAY THAT IS BENEFICIAL TO HIM. PERHAPS I'LL  
20 COME UP WITH A QUESTION THAT WILL MAKE IT MORE  
21 RELEVANT THAN WE CAN ANTICIPATE AT THIS TIME.

22 ALL I'M SAYING IS I DON'T THINK WE CAN  
23 DECIDE IN A VACUUM WHERE WE'RE GOING TO GO AT THIS  
24 POINT. THE QUESTION BEFORE US RIGHT NOW IS CAN THE  
25 PROSECUTOR ASK HIM WHAT HE MEANT; AND SINCE HE  
26 TESTIFIED TO IT PREVIOUSLY, IT SEEMS TO ME THE  
27 PROSECUTION SHOULD BE ABLE TO ASK THAT.

28 MS. ABRAMSON: OBVIOUSLY, WHAT MR. CONN IS

1 SAYING IS NOTHING. HE DOESN'T KNOW WHAT THE JURY  
2 KNOWS ABOUT THIS AND HE OBVIOUSLY INTENDS TO ASK  
3 QUESTIONS ABOUT THE MURDEROUS YOUNG MEN IN THE  
4 BILLIONAIRE BOYS CLUB. THAT'S COMPLETELY  
5 PREJUDICIAL AND INADMISSIBLE. IT'S RIDICULOUS THAT  
6 HE'S ARGUING THIS EXCEPT TO SIGNAL TO THE JURY  
7 B.B.C. AND HOPE THEY REMEMBER THAT THIS IS A GROUP  
8 OF PEOPLE WHO MURDERED. THEY SPECIFICALLY WANT TO  
9 TRY TO BRING OUT THE INFERENCE THAT WHEN CRAIG  
10 CIGNARELLI SAID "LIKE THE B.B.C.," AND ERIK MENENDEZ  
11 SAID "SOMETHING LIKE IT," THAT HE HAD IN MIND  
12 MURDER. AND THAT'S ABSOLUTELY IMPERMISSIBLE.

13 MR. CONN: THERE IS NO REASON THE JURY WOULD  
14 SAY THAT BECAUSE HE INTENDED TO MODEL SOME  
15 INVESTMENT ACTIVITY BASED UPON B.B.C. THAT,  
16 THEREFORE, HE INTENDED TO COMMIT THE FURTHER  
17 MURDERS.

18 MS. ABRAMSON: EXACTLY.

19 MR. CONN: THAT'S NOT THE ISSUE BEFORE US.  
20 THE ISSUE IS WHY WAS THE DEFENDANT PLANNING TO DO  
21 SOMETHING COMPARABLE TO THE B.B.C. AND WHAT  
22 SPECIFICALLY DID HE MEAN BY THAT? AND I THINK THAT  
23 IS A LEGITIMATE AREA OF EXAMINATION, SINCE THESE ARE  
24 HIS WORDS. HE WAS THE ONE -- THIS IS HIS IDEA, NOT  
25 OURS. THIS IS HIS IDEA. IF HE SAID I INTEND TO DO

26 SOMETHING LIKE SOME OTHER CRIMINAL AGENCY, WE COULD  
27 ASK HIM WHAT DID YOU MEAN BY THAT? MAYBE YOU  
28 INTENDED TO INCORPORATE THE ACTIVITIES OF THAT

44102

1 AGENCY. MAYBE YOU DIDN'T. WHAT WAS IT ABOUT THAT  
2 CRIMINAL AGENCY THAT CAUSED YOU TO WANT TO MODEL  
3 YOURSELF AFTER THEM? IT'S HIS WORDS. WE SHOULD BE  
4 ABLE TO ASK HIM WHAT HE MEANS.

5 THE COURT: YOU'RE SAYING IF THE CONVERSATION  
6 WAS "JUST LIKE THE MAFIA"?

7 MR. CONN: EXACTLY.

8 THE COURT: THEN YOU WOULD ASK WHY DID YOU  
9 SAY THAT, OR WHAT DID YOU MEAN BY THAT?

10 MR. CONN: EXACTLY. HE COULD SAY THE ONLY  
11 ASPECT ABOUT THE MAFIA THAT I WAS GOING TO IMITATE  
12 WAS THEIR -- IS THEIR INVESTMENT GENIUS, NOT THEIR  
13 CRIMINAL TENDENCIES; AND THAT'S THE END OF IT. BUT  
14 SINCE -- SINCE HE BROUGHT IT UP, AND SINCE HE SAID I  
15 INTEND TO DO SOMETHING LIKE THE MAFIA WITH SOME  
16 OTHER CRIMINAL AGENCY, WE SHOULD BE ABLE TO ASK WHAT  
17 DID YOU MEAN BY THAT.

18 THE COURT: LET US HEAR A RESPONSE.

19 MR. GESSLER: I THINK WE KNOW FROM WHAT

20 MR. CONN HAS SAID THAT WILL NOT BE THE END OF IT.

21 ALL WE WERE GOING TO DO IS TO INVEST IN STOCKS AND  
22 BONDS AND USE THE SAME BROKER THEY DID, OR SOMETHING  
23 LIKE THAT. THAT WILL NOT BE THE END OF MR. CONN'S  
24 QUESTIONING. HE WILL SAY: WERE YOU GOING TO KILL  
25 PEOPLE? WERE YOU GOING TO DO OTHER ACTIVITIES LIKE  
26 THE MEMBERS OF THE BILLIONAIRE BOYS CLUB? AND GET  
27 US OFF ON A REAL TANGENT, ALL OF WHICH WOULD BE 352;  
28 AND THE HARM WOULD BE IN THE ASKING OF THE QUESTION,

44103

1 NOT THE COURT THEN SUSTAINING AN OBJECTION AND  
2 SAYING DISREGARD IT.

3 AND SO THAT I THINK THIS WHOLE AREA IS  
4 352, USING THE INITIALS B.B.C. AT ALL. CERTAINLY,  
5 ANY FOLLOW-UP QUESTIONS ARE 352, AND IT CERTAINLY IS  
6 PREJUDICIAL TO LYLE MENENDEZ IN THIS CONTEXT BEYOND  
7 ANY POSSIBLE PROBATIVE VALUE TO HIM.

8 MS. ABRAMSON: FIRST OF ALL, IN THE CONTEXT  
9 OF A CONFESSION THAT THEY'RE CONFRONTING MY CLIENT  
10 WITH PIECES OF, IT'S CLEAR THEY'RE JUST TALKING  
11 ABOUT PEOPLE INVESTING MONEY, FOUR FRIENDS, TRUSTED  
12 FRIENDS, INVESTING MONEY TOGETHER. THERE IS NO  
13 SUGGESTION OF ANYTHING ELSE. SO NOTHING ADDS TO  
14 THAT INTENTIONALITY ON THE PART OF MY CLIENT BY  
15 ADDING IN B.B.C. EXCEPT THIS MURDEROUS SIDE; AND I

16 CONTEND THAT "MAFIA" IS EVEN MORE CLEARLY A PURELY  
17 CRIMINAL ENTERPRISE AND THAT IT WOULD BE  
18 OBJECTIONABLE EVEN IF THE DEFENDANT HAD SAID CLEARLY  
19 "MAFIA," BECAUSE FUTURE CRIMES OR ACTIVITY TO  
20 COMMIT FUTURE CRIMES, WHETHER THE DEFENDANT  
21 INDICATES IT OR NOT, JUST LIKE A PRIOR CRIMINAL  
22 RECORD, IS NOT IPSO FACTO ADMISSIBLE.

23         ON THE CONTRARY. THE BASIC RULE IS THEY  
24 ARE NOT ADMISSIBLE UNDER 1101 AND THERE HAS TO BE  
25 SOME EXCEPTION TO ADMIT THEM.

26         SO I MEAN, TO SHOW THAT THIS IS A WAY TO  
27 GET INTO OTHER CRIMINAL ACTIVITY, IT'S ABSOLUTELY  
28 IMPERMISSIBLE. IT HAS NO VALUE TO THE PROSECUTION,

44104

1 EXCEPT AN IMPERMISSIBLE VALUE, TO CONJURE UP  
2 THEORIES OF MURDER AND THEN TO TRY TO CONNECT THAT  
3 BACK -- WE STILL HAVEN'T HEARD WHERE WE STAND ON THE  
4 B.B.C. REFERENCE BY DR. OZIEL, WHICH HE DIDN'T KNOW  
5 THE MEANING OF.

6         BUT THAT'S WHAT THEY WANT TO DO, IS LINK  
7 THE TWO TOGETHER FOR MURDER PURPOSES, NOT FOR STOCKS  
8 AND BONDS PURPOSES.

9         THE COURT: ALL RIGHT. ANYTHING ELSE?

10        MS. ABRAMSON: NO.

11 THE COURT: ALL RIGHT. IN THIS SITUATION,  
12 SHE WHO ARGUED LAST ARGUED BEST, AS FAR AS THIS  
13 ISSUE IS CONCERNED AT THIS POINT. UNDER 352, THE  
14 EVIDENCE REALLY HAS PROBATIVE VALUE, BUT IS SUBJECT  
15 TO MISINTERPRETATION BY THE JURY AND POTENTIAL FOR  
16 PREJUDICE IN THAT THE JURY WOULD RELATE IT TO THEIR  
17 UNDERSTANDING OF WHAT THE B.B.C., BILLIONAIRE BOYS  
18 CLUB, WAS AND WOULD BE A POTENTIAL CONFUSION AND  
19 POTENTIALLY PREJUDICIAL; AND THE PROBATIVE VALUE IS  
20 SUBSTANTIALLY OUTWEIGHED BY ITS POTENTIAL FOR  
21 PREJUDICE. THE COURT ANALYZED IT DIFFERENTLY IN THE  
22 FIRST TRIAL, AS MR. GESSLER CORRECTLY POINTS OUT,  
23 BECAUSE THERE WAS THE PREDICATE OF REFERENCE TO  
24 B.B.C. IN OZIEL'S TESTIMONY AND A TIE-IN AND  
25 CONNECTION BY THAT TESTIMONY BEING ATTRIBUTED --  
26 REFERENCE TO THE B.B.C. THROUGH OZIEL'S TESTIMONY  
27 BEING THE GENESIS OF THE PLAN TO KILL THE PARENTS,  
28 AND THEN THERE WAS, THROUGHOUT THE FIRST TRIAL,

44105

1 FURTHER EFFORTS BY THE PROSECUTION CULMINATING IN  
2 SOME TESTIMONY BY DETECTIVE ZOELLER ABOUT THE B.B.C.  
3 AND THE MOVIE. AND ALL OF THAT WAS A PREDICATE FOR  
4 THE TYPE OF QUESTIONING THAT DID COME IN DURING THE  
5 CROSS-EXAMINATION OF THE DEFENDANT, ALTHOUGH PERHAPS

6 ZOELLER'S TESTIMONY CAME IN AFTER THE DEFENDANT HAD  
7 COMPLETED HIS EXAMINATION. BUT THERE WAS THE  
8 PREDICATE OF OZIEL'S TESTIMONY BEFORE THAT.

9 SO, CERTAINLY, REFERENCE TO THE PLANS TO  
10 SPEND AND INVEST AND THINGS OF THAT NATURE, BUT AT  
11 THIS POINT I DON'T SEE THE PROBATIVE VALUE  
12 OUTWEIGHING THE POTENTIAL PREJUDICE IN REFERENCE TO  
13 THE B.B.C., SO THE PROSECUTION WON'T BE ABLE TO USE  
14 THAT AT THIS STAGE. I'M NOT PRECLUDING IT FROM  
15 BEING BROUGHT UP IF OZIEL AND HIS TESTIMONY IS  
16 PRESENTED, OBVIOUSLY.

17 ALL RIGHT. WHAT ELSE THEN?

18 MR. GESSLER: YOUR HONOR, AT THIS POINT ERIK  
19 MENENDEZ IS REQUESTING A FIVE-MINUTE RESTROOM BREAK.

20 THE COURT: OKAY. AND WE'LL RESUME AT  
21 11:30.

22 MS. ABRAMSON: THE NEXT ITEM WOULD BE ON  
23 PAGE 8, YOUR HONOR, THE MATTERS THAT THE COURT HAD  
24 LIMITED IN THE FIRST TRIAL UNDER 402, VIS-A-VIS WHAT  
25 OZIEL HIMSELF COULDN'T TESTIFY TO.

26 (A RECESS WAS TAKEN FROM  
27 11:15 A.M. TO 11:40 A.M.)

28

1 THE COURT: LET'S RESUME WITH THE HEARING.

2 WHAT WAS THE NEXT ITEM THAT THE DEFENSE  
3 WANTED TO ARGUE?

4 MS. ABRAMSON: THE NEXT ITEM, YOUR HONOR, HAD  
5 TO DO WITH WHAT'S ON PAGE 8, ROMAN NUMERAL THREE.  
6 THE PROSECUTION SHOULD BE PRECLUDED FROM ASKING ON  
7 CROSS-EXAMINATION QUESTIONS WHICH THE PROSECUTION  
8 WAS NOT PERMITTED TO ASK DR. OZIEL AT THE LAST  
9 TRIAL.

10 IF THE PEOPLE DON'T INTEND TO GO INTO  
11 THOSE THINGS, THAT WAS THE SUBJECT MATTER -- IT WAS  
12 THE END RESULT OF A LENGTHY 402 HEARING WE DID WITH  
13 RESPECT TO DR. OZIEL'S TESTIMONY, WHERE THE COURT  
14 MADE CERTAIN RULINGS PRETRIAL ABOUT THINGS THAT  
15 APPEAR IN HIS NOTES THAT HE WAS NOT PERMITTED TO  
16 TESTIFY TO AT THE TRIAL AND THEN THERE WAS -- THAT  
17 INCLUDED THAT SOCIOPATH DISCUSSION THAT WE DO CITE,  
18 SPECIFICALLY, IN THE MOVING PAPERS.

19 I APOLOGIZE THAT I DON'T HAVE BEFORE ME  
20 THE TRANSCRIPT OF THAT 402 FOR EACH AND EVERY LINE  
21 THAT THE COURT RULED THEY COULDN'T USE. BUT MY  
22 VAGUE RECOLLECTION IS THERE WERE ONLY FOUR OR FIVE  
23 ITEMS IN THE OZIEL NOTES. ONE OF THEM HAD TO DO --  
24 THE COURT MAY RECALL, WE TOOK LIVE TESTIMONY FROM  
25 DR. OZIEL FOR CLARIFICATION ON SOME OF THOSE  
26 THINGS. ONE OF THEM HAD TO DO WITH AN OPINION THAT  
27 HE PUT IN THE NOTES --

28 THE COURT: LET'S STOP. ARE YOU GOING TO



1 BRING THIS OUT?

2 MR. CONN: I DON'T THINK IT'S NECESSARY TO  
3 GET INTO THE WORD "SOCIOPATH" AS FAR AS  
4 CROSS-EXAMINATION OF THE DEFENDANT IS CONCERNED.

5 MS. ABRAMSON: THAT'S FINE. WITH RESPECT TO  
6 THE OTHER MATTERS, I DON'T KNOW WHAT THE PEOPLE'S  
7 POSITION IS. FOR EXAMPLE, THERE WAS THAT  
8 SPECULATION BY DR. OZIEL THAT -- HAVING TO DO WITH  
9 LYLE THINKING THAT THE KING WAS DEAD, AND HE WAS  
10 GOING TO BE THE KING. I DON'T KNOW IF THE COURT  
11 RECALLS THAT.

12 THE COURT: WHERE IS THAT IN YOUR MOTION?

13 MS. ABRAMSON: IT'S NOT SPECIFICALLY LAID  
14 OUT. BUT IT'S IN THE HEARING THAT WE HAD WITH  
15 DR. OZIEL. THE COURT RULED -- WE ARE ASSUMING THE  
16 PEOPLE ARE AWARE OF THE COURT'S PRIOR RULINGS  
17 LIMITING EVIDENCE. THE COURT RULED DR. OZIEL  
18 TESTIFIED THAT WAS JUST HIS THOUGHT. IT WAS NOTHING  
19 THAT THE DEFENDANT SAID.

20 THE COURT: ULTIMATELY, IT CAME IN TOWARDS  
21 THE END OF THE TRIAL.

22 MS. ABRAMSON: NO. THAT DIDN'T COME IN.

23 THE COURT: YEAH. IT DID. DURING THE

24 TESTIMONY OF ONE OF THE DEFENDANTS IT CAME IN, THE  
25 SOCIOPATH CAME IN.  
26 MS. ABRAMSON: I'M NOT TALKING ABOUT  
27 SOCIOPATH. I'M TALKING ABOUT KILLING THE KING. HE  
28 WAS NOW KING. I THINK THAT WAS IN THE NOTES OF

44108

1 NOVEMBER 2ND. THE COURT RULED THAT OZIEL COULDN'T  
2 TESTIFY TO THAT.

3 THERE WAS INFORMATION --

4 THE COURT: THAT I DON'T RECALL.

5 ARE YOU BRINGING THAT OUT?

6 MR. CONN: NO. I WASN'T PLANNING ON BRINGING  
7 OUT ANYTHING ABOUT THE KING.

8 MS. ABRAMSON: IF THE PEOPLE ARE GOING TO  
9 LIMIT ANY QUESTIONING THAT THEY CHOOSE, WHETHER THEY  
10 HAVE THE COURT'S AUTHORITY OR NOT AT THIS POINT, IF  
11 THE PEOPLE ARE GOING TO LIMIT QUESTIONING OF OUR  
12 CLIENT BASED ON WHAT OZIEL ACTUALLY TESTIFIED THAT  
13 WAS NOT OBJECTED TO AND STRICKEN, THEN WE'RE FINE.  
14 IT HAS TO DO WITH THINGS THAT THE COURT HAD RULED  
15 BEFORE THE LAST TRIAL THEY COULD NOT ELICIT AND DID  
16 NOT ELICIT FROM DR. OZIEL, THAT THIS PARTICULAR  
17 PARAGRAPH APPLIES. SO IF THEY ARE SELF-LIMITED TO  
18 WHAT HE TESTIFIED TO, WE DON'T HAVE THIS PROBLEM.

19 MR. CONN: WELL, I DON'T KNOW PRECISELY WHAT  
20 COUNSEL IS REFERRING TO.

21 THE COURT: I DON'T EITHER, BECAUSE WE'RE  
22 TALKING ABOUT OZIEL POSSIBLY NOT BEING A WITNESS.  
23 SO WE'RE TALKING ABOUT CROSS-EXAMINATION OF THE  
24 DEFENDANT.

25 MS. ABRAMSON: YES. AND WHAT I'M SAYING IS  
26 THEY SHOULD NOT BE ABLE TO CONFRONT THE DEFENDANT  
27 WITH NOTES, OZIEL'S NOTES THAT THIS COURT PREVIOUSLY  
28 RULED EVEN OZIEL COULDN'T TESTIFY TO. THAT'S WHAT

44109

1 I'M TALKING ABOUT. AND IF -- WHAT I WILL DO IS I  
2 WILL PULL OUT THOSE TRANSCRIPTS AND GIVE THE COURT  
3 THE SPECIFICS ON MONDAY.

4 THE COURT: ALL RIGHT.

5 MS. ABRAMSON: IF THE PEOPLE WERE AWARE OF  
6 THIS AND JUST COULD INDICATE NO, WE'RE NOT GOING  
7 INTO THAT, FINE. SINCE THEY'RE NOT SAYING THAT,  
8 I'LL HAVE TO PULL IT OUT.

9 THE COURT: I HAVE NO RECOLLECTION OF THE  
10 HEARING, EVEN AS FAR AS WHAT THE ISSUES WERE THAT  
11 YOU ARE REFERRING TO.

12 MS. ABRAMSON: I KNOW WHAT THAT'S LIKE,  
13 THERE'S SO MUCH.

14 THE COURT: I JUST DON'T HAVE ANY  
15 RECOLLECTION OF IT. SO IT OCCURRED BEFORE OZIEL'S  
16 TESTIMONY? I JUST DON'T RECALL WHAT IT WAS THAT HE  
17 WAS NOT PERMITTED TO DISCLOSE IN HIS TESTIMONY THAT  
18 THEN NEVER WAS PRESENTED.

19 MS. ABRAMSON: I THINK IT'S IN VOLUME 58.  
20 I'LL PULL IT OUT.

21 THE COURT: WHAT IS THE NEXT ISSUE HERE?

22 MS. ABRAMSON: THE NEXT ISSUE HAD TO DO WITH  
23 THE PROSECUTION SHOULDN'T BE ALLOWED TO ASK  
24 QUESTIONS ABOUT HOW MUCH TIME MR. MENENDEZ SPENT  
25 PREPARING FOR HIS TESTIMONY, WORKING WITH HIS  
26 COUNSEL OR WITH HIS EXPERTS, BECAUSE IT WOULD -- THE  
27 ONLY PURPOSE THEY'D HAVE IN DOING IT IS AN IMPROPER  
28 PURPOSE. IT SUGGESTS COLLUSION AND FABRICATION WITH

44110

1 EXPERTS OR ATTORNEYS, AND THAT INVADES THE  
2 ATTORNEY-CLIENT PRIVILEGE AND HIS CONSTITUTIONAL  
3 RIGHT OF COUNSEL AND THAT SORT OF THING.

4 THE COURT: WHAT IS THE PEOPLE'S POSITION ON  
5 THAT?

6 MR. CONN: WELL, I DIDN'T NECESSARILY INTEND  
7 TO INQUIRE INTO SPECIFIC PREPARATION WITH COUNSEL.  
8 BUT I THINK I CAN COME UP WITH SOME QUESTIONS

9 CONCERNING WHETHER OR NOT HE DID, IN FACT, PREPARE  
10 FOR HIS TESTIMONY.

11 MS. ABRAMSON: WELL, I DON'T THINK IT'S  
12 APPROPRIATE EVEN TO ASK HIM; OBVIOUSLY, HE'S  
13 PREPARED. EVERY WITNESS IS PREPARED. I DON'T THINK  
14 IT'S RELEVANT TO ASK SOMEONE IF YOU'RE PREPARED FOR  
15 YOUR TESTIMONY. AND WHAT DOES "PREPARE" MEAN AND  
16 WHAT'S THE RELEVANCE OF IT?

17 THE COURT: WELL, IT DEPENDS ON THE QUESTION,  
18 TYPE OF QUESTION THAT'S ASKED. WHEN THIS ISSUE  
19 AROSE IN THE FIRST TRIAL THE PROBLEM I SAW WAS THE  
20 PEOPLE'S PROPOSAL JUST ASKED HOW MUCH TIME DID YOU  
21 SPEND PREPARING, AND IT WAS AMBIGUOUS WHAT IS MEANT  
22 BY "PREPARING." IN THEORY, EVERY TIME THE DEFENDANT  
23 HAS MET WITH ANY LAWYER IT'S PREPARATION. SO IT  
24 WOULD BE MEANINGLESS REALLY, ALSO. THE PEOPLE WOULD  
25 BE STUCK WITH WHATEVER ANSWER THE DEFENDANT GAVE AT  
26 THE TIME. I SPENT 50,000 HOURS OR FIVE HOURS  
27 PREPARING. THE PEOPLE HAVE NO WAY OF REFUTING THAT,  
28 REALLY.

44111

1 BUT AS FAR AS WHAT HE DID AND MATERIALS  
2 HE READ AND WITNESSES HE SPOKE WITH, THINGS OF THAT  
3 NATURE, CERTAINLY I DON'T SEE HOW THAT COULD BE ANY

4 DIFFERENT THAN ANY OTHER WITNESS AS FAR AS

5 CROSS-EXAMINATION.

6 MS. ABRAMSON: THEY'RE PRIVILEGE ISSUES.

7 THE COURT: THAT'S NOT PRIVILEGE, WHO HE

8 SPEAKS WITH. IT'S THE CONTENT OF THE COMMUNICATION,

9 NOT THE FACT THERE WAS CONTACT.

10 MS. ABRAMSON: THE OTHER CONCERN WE HAVE IS

11 NOT SPECIFIED IN THE MOTION. AS THE COURT MAY

12 RECALL IN THE PREVIOUS TRIAL, THE PROSECUTION TRIED

13 TO IMPLICATE MR. MONES SOMEHOW AND MR. MONES' BOOK,

14 AND WE WOULD OBJECT. AND THE COURT RULED THAT THOSE

15 MATTERS WERE NOT APPROPRIATELY GONE INTO BY THE

16 PROSECUTION. MR. MONES WAS A LAWYER FOR THE DEFENSE

17 AND COVERED BY THE ATTORNEY-CLIENT PRIVILEGE. THE

18 PEOPLE HAVE NO EVIDENCE WHATSOEVER CONCERNING HIS

19 BOOK. THE COURT WAS EVEN GIVEN A COPY OF THE BOOK

20 TO PERUSE IT.

21 WE WOULD OBJECT TO ANY REFERENCE TO

22 MR. MONES OR HIS BOOK.

23 THE COURT: DID YOU INTEND TO REFER TO

24 MR. MONES?

25 MR. CONN: IF HE WAS ONE OF THE WITNESSES HE

26 MET WITH IN PREPARATION FOR HIS TESTIMONY, THAT IS

27 SOMETHING THAT WOULD COME UP.

28 THE COURT: MR. MONES WAS A LAWYER.

1 MR. CONN: I'M NOT SURE THAT WAS HIS CAPACITY  
2 WHEN HE MET WITH THE DEFENDANT, IF HE WAS MEETING AS  
3 AN ATTORNEY. I DON'T THINK HE WAS HIS ATTORNEY AT  
4 THE TIME.

5 THE COURT: WELL, NOT AN ATTORNEY IN COURT,  
6 BUT RETAINED AS COUNSEL, OR REPRESENTED TO THE COURT  
7 AS THAT, AT LEAST AT SOME POINT IN THE PAST, THAT HE  
8 WAS RETAINED AS COUNSEL.

9 MS. ABRAMSON: CORRECT.

10 MR. CONN: WELL, IF I'M PRECLUDED I WON'T DO  
11 THAT.

12 THE COURT: CERTAINLY, WITH REFERENCE TO  
13 WITNESSES HE HAS SPOKEN WITH AND MATERIALS HE'S  
14 REVIEWED AND ALL SORTS OF THINGS, IT'S ALL SUBJECT  
15 TO CROSS-EXAMINATION.

16 MS. ABRAMSON: BUT NOT CONFERENCES WITH HIS  
17 LAWYERS, YOUR HONOR.

18 THE COURT: NOT THE CONTENT OF ANY  
19 COMMUNICATIONS WITH HIS COUNSEL.

20 MS. ABRAMSON: WELL, EVEN TALKING ABOUT  
21 MEETING WITH MR. MONES HAS NO RELEVANCE OR MEANING  
22 UNLESS THEY'RE THEN GOING TO TRY TO BOOTSTRAP INTO  
23 MR. MONES' AREA OF EXPERTISE.

24 THE COURT: WE'RE NOT TALKING ABOUT  
25 MR. MONES. HE'S NOT GOING TO REFER TO MR. MONES. IN  
26 GENERAL, THE FACT HE'S SPOKEN WITH COUNSEL --

27 MS. ABRAMSON: I THINK IT RAISES AN INFERENCE

44113

1 TALK TO HIS LAWYERS AS OFTEN AS HE LIKES.

2 THE COURT: THERE'S NO INFERENCE OF  
3 WRONGDOING.

4 MS. ABRAMSON: WHAT'S THE RELEVANCE?

5 THE COURT: THE RELEVANCE IS HE SPOKE TO HIS  
6 LAWYER. THAT'S ALL.

7 MS. ABRAMSON: EVERYBODY SPEAKS TO THEIR  
8 LAWYERS. THAT'S NOT RELEVANT.

9 THE COURT: THAT'S WHY IT'S NOT THE SUBJECT  
10 OF A CLAIM OF CONFIDENTIALITY. IT'S NOT AN  
11 INFRINGEMENT OF HIS 6TH AMENDMENT RIGHT.

12 MS. ABRAMSON: IT CAN LEAD TO AN IMPROPER  
13 INFERENCE THAT SOMEHOW THERE'S SOME WRONGDOING.

14 THE COURT: HE'S ALREADY SAID HE'S SPOKEN TO  
15 YOU. HE'S REFERRED TO YOU SEVERAL TIMES. WHAT DOES  
16 THAT PROVE?

17 MS. ABRAMSON: THE REASON HE INDICATED THAT  
18 HE SPOKE TO ME AND TOLD ME SOMETHING EARLY IN THE  
19 GENESIS OF THE CASE IS ONE THING. TO ASK HOW MANY  
20 TIMES DID YOU MEET WITH YOUR LAWYERS OR WHEN DID YOU  
21 MEET WITH YOUR LAWYERS OR HOW MUCH PREPARATION TIME,  
22 I THINK THAT'S TO SUGGEST SOMETHING WRONG, WHEN HE



23 HAS AN ABSOLUTE CONSTITUTIONAL RIGHT TO MEET WITH  
24 HIS LAWYERS AND HIS LAWYERS HAVE AN ABSOLUTE  
25 CONSTITUTIONAL OBLIGATION TO PROVIDE EFFECTIVE  
26 ASSISTANCE BY MAKING SURE THAT ANY WITNESSES,  
27 INCLUDING THE DEFENDANTS, ARE PREPARED BEFORE THEY  
28 TESTIFY.

44114

1 THE ONLY REASON THE PROSECUTION WOULD  
2 ELICIT THIS IS TO SUGGEST, IMPROPERLY, THAT THERE'S  
3 SOMETHING WITH WRONG SPENDING A LOT OF TIME  
4 PREPARING SOMEBODY TO TESTIFY. AND THAT'S WHY WE  
5 THINK NONE OF THIS SHOULD BE GONE INTO.

6 THE COURT: MR. GESSLER.

7 MR. GESSLER: I AGREE, YOUR HONOR, ON BEHALF  
8 OF LYLE MENENDEZ, AS TO THE WITNESS, ERIK MENENDEZ,  
9 THAT INQUIRY SHOULD NOT BE ALLOWED TO BE GONE INTO  
10 BY THE PROSECUTION AS TO WHAT ATTORNEYS HE SPOKE TO,  
11 THE AMOUNT OF TIME HE SPOKE WITH THEM, MUCH LESS, OF  
12 COURSE, THE SUBJECT MATTER THAT WAS COVERED, BECAUSE  
13 AGAIN, THE ONLY POSSIBLE RELEVANCE COULD BE THAT  
14 THERE WAS SOMETHING IMPROPER IN SPENDING "X" NUMBER  
15 OF HOURS WITH YOUR LAWYERS, ALMOST CAUSING THE  
16 LAWYER TO GET UP ON THE STAND AND SAY: NO, IT  
17 WASN'T IMPROPER AT ALL; WHICH, OF COURSE, WE CAN'T

18 DO.

19 I THINK IT'S A VIOLATION OF THE 6TH  
20 AMENDMENT TO ALLOW THEM TO ASK THAT PARTICULAR  
21 QUESTION AS TO THE AMOUNT OF TIME AND LAWYERS THAT  
22 THEY ACTUALLY SPOKE WITH, AS WELL AS THE  
23 ATTORNEY-CLIENT PRIVILEGE.

24 MS. ABRAMSON: WHAT I THINK IT DOES IS PUTS  
25 LAWYERS -- THIS KIND OF NOTION PUTS LAWYERS IN THE  
26 UNTENABLE POSITION OF WHERE YOU DON'T PREPARE YOUR  
27 CLIENTS SO THE INFERENCE CAN'T BE RAISED THAT THEIR  
28 TESTIMONY IS REHEARSED OR FABRICATED, AND THAT

44115

1 VIOLATES YOUR OBLIGATION OF EFFECTIVE ASSISTANCE OF  
2 COUNSEL TO YOUR CLIENT.

3 THE COURT: YOU MADE THAT ARGUMENT IN THE  
4 FIRST TRIAL. THAT'S A BOGUS ARGUMENT. THAT'S NOT  
5 GOING TO INHIBIT ANYBODY FROM DOING THEIR WORK.

6 MS. ABRAMSON: I DON'T KNOW IF IT'S BOGUS.

7 THE COURT: IT'S BOGUS. JUST BECAUSE YOU  
8 REFER TO THE CONSTITUTION AND AN ATTORNEY, LINK THEM  
9 TOGETHER, THAT DOESN'T NECESSARILY MAKE A VALID  
10 ARGUMENT.

11 MS. ABRAMSON: THE POINT IS THAT IF YOU DON'T  
12 PREPARE YOUR CLIENT IN ORDER TO PROTECT HIM FROM

13 THESE KINDS OF THINGS, YOU'VE FAILED IN YOUR  
14 OBLIGATION; AND IF YOU DO, IT'S ALWAYS THE LAWYER'S  
15 CHOICE, NEVER THE CLIENT, HOW MUCH PREPARATION  
16 YOU'RE GOING TO PUT IN. THEN YOUR CLIENT GETS  
17 PENALIZED FOR THE FACT THAT YOU SPENT TIME PREPARING  
18 HIM.

19 SO WHAT'S THE ULTIMATE RELEVANCE OF THE  
20 FACT THAT HE'S PREPARED? MR. CONN ASKED YESTERDAY  
21 REPEATEDLY WHETHER IN SIX YEARS HE'S HAD TIME TO  
22 THINK OF THINGS. THAT'S A TOTALLY RHETORICAL  
23 ARGUMENTATIVE QUESTION -- IN SIX YEARS WE ALL HAVE  
24 TIME TO THINK OF THINGS -- UNTIL HE GOT THAT POINT  
25 ACROSS. BUT TO IMPLICATE THE LAWYERS SOMEHOW IN IT,  
26 I THINK RAISES IMPERMISSIBLE INFERENCES.

27 THE COURT: WELL, AS I SAID THE FIRST TIME,  
28 THE REFERENCE TO THE WORD "PREPARATION" AND WHAT DID

44116

1 YOU DO TO PREPARE AND HOW LONG DID YOU PREPARE HAS  
2 WITHIN IT AMBIGUITY, BECAUSE ANYTHING THE DEFENDANT  
3 DOES IN SPEAKING WITH ANYBODY, HIS LAWYERS OR  
4 OTHERS, CAN BE REGARDED AS PREPARATION. SO JUST  
5 ASKING THE QUESTION: WHAT HAVE YOU DONE TO PREPARE  
6 IS A MEANINGLESS QUESTION. THE PROSECUTION IS NOT  
7 PERMITTED TO INQUIRE INTO SUBJECT MATTERS OF

8 CONVERSATIONS WITH COUNSEL THAT WOULD INFRINGE UPON  
9 THE ATTORNEY-CLIENT PRIVILEGE.

10 AS FAR AS THE MEETINGS, THE FACT THAT HE  
11 HAS SPOKEN WITH HIS ATTORNEY BEFORE HE TESTIFIED, I  
12 DON'T THINK THAT IS INVASION OF THE RIGHT OF  
13 ATTORNEY-CLIENT PRIVILEGE OR IN ANY WAY INFRINGING  
14 ON ANY CONSTITUTIONAL RIGHT OR RIGHT OF  
15 COMMUNICATION IN PRIVATE WITH COUNSEL.

16 MS. ABRAMSON: DOES IT INFRINGE IF THEY ASK  
17 IN THESE -- DID YOU MEET WITH COUNSEL BEFORE YOU  
18 TESTIFIED? AND WAS YOUR TESTIMONY DISCUSSED?  
19 THAT'S INFRINGING ON IT RIGHT THERE. THAT TALKS  
20 ABOUT WHAT THE SUBJECT MATTER OF THE DISCUSSION WAS.

21 THE COURT: OKAY.

22 MS. ABRAMSON: IF THEY CAN'T ASK THAT  
23 QUESTION, THEN WHAT'S THE RELEVANCE OF: DID YOU  
24 MEET WITH YOUR LAWYER?

25 THE COURT: LISTEN, WE'RE SPENDING A LOT OF  
26 TIME ARGUING OVER SOMETHING THAT IS GOING TO BE  
27 OBVIOUS TO THE JURY ANYWAY. THE FACT THE  
28 PROSECUTION ASKS THAT QUESTION IS NOT PREJUDICIAL

44117

1 AND DOESN'T INFRINGE ON ANY RIGHT OF THE DEFENDANT  
2 TO ASK WHETHER YOU MET WITH YOUR LAWYERS BEFORE YOU

3 TESTIFIED. THE JURY SEES THESE MEETINGS DURING THE  
4 COURSE OF EXAMINATION WHEN COUNSEL GOES UP AND  
5 WHISPERS TO THEIR CLIENT ON THE WITNESS STAND. IT'S  
6 HARDLY A SECRET. I DON'T SEE THIS AS NEEDING  
7 FURTHER DISCUSSION.

8 AS FAR AS THE OTHER OBJECTIONS HERE,  
9 WHAT ELSE?

10 MS. ABRAMSON: THERE'S TWO OTHER THINGS THAT  
11 AREN'T WRITTEN HERE, YOUR HONOR, SINCE THE COURT'S  
12 ALREADY RULED ON THE BURGLARIES. NUMBER ONE HAS TO  
13 DO WITH MR. CIGNARELLI. AND WE DON'T KNOW IF  
14 MR. CIGNARELLI IS UNDER SUBPOENA OR NOT. MY LAST  
15 INTELLIGENCE ON THAT ISSUE WAS THAT HE WAS NOT, AND  
16 WE WOULD OBJECT TO ANY CROSS-EXAMINATION OF ERIK  
17 MENENDEZ CONCERNING ANY STATEMENTS EITHER MADE TO  
18 CIGNARELLI DIRECTLY, OSTENSIBLY, OR ANYTHING ON THAT  
19 TAPE. WE DID NOT PRESENT IN DIRECT EXAMINATION  
20 ANYTHING HAVING TO DO WITH STATEMENTS MADE TO  
21 MR. CIGNARELLI OR MEETING WITH MR. CIGNARELLI. WE  
22 HAVEN'T OPENED ANY DOORS ON THAT.

23 THE COURT: WHAT IS YOUR POSITION ON THAT,  
24 MR. CONN?

25 MR. CONN: I THINK THAT THE PROSECUTION CAN  
26 PROPERLY ASK THE DEFENDANT ABOUT MATTERS RELATING TO  
27 MR. CIGNARELLI, INCLUDING CONVERSATIONS WITH  
28 MR. CIGNARELLI. WHETHER OR NOT WE SERVE HIM WITH A

1 SUBPOENA AT THIS POINT IS NOT THE ISSUE. HE'S A  
2 COOPERATIVE WITNESS. WE HAVE NO PROBLEM WITH  
3 GETTING HIM INTO COURT AND WE COULD SUBPOENA HIM IF  
4 THAT'S NECESSARY.

5 THE FACT THAT COUNSEL DID NOT CHOOSE TO  
6 GO INTO THOSE MATTERS WITH HIM DOESN'T PROVE THAT WE  
7 DON'T HAVE A LEGITIMATE AREA OF IMPEACHMENT  
8 CONCERNING MR. CIGNARELLI.

9 THE COURT: WELL, ARE YOU INDICATING THAT YOU  
10 WOULD BE GOING INTO CONVERSATIONS CIGNARELLI HAD  
11 WITH THE DEFENDANT, QUESTIONING THE DEFENDANT ABOUT  
12 THAT?

13 MR. CONN: YES.

14 THE COURT: ALL RIGHT. THIS FALLS WITHIN THE  
15 SAME CATEGORY AS THE OZIEL TESTIMONY THAT WE  
16 DISCUSSED EARLIER, DOES IT NOT?

17 MR. CONN: YES. WE COULD SUBPOENA HIM TOO.

18 THE COURT: WELL, I WANT HIM UNDER SUBPOENA  
19 BEFORE QUESTIONS ARE ASKED, NUMBER ONE.

20 NUMBER TWO, LIKEWISE, BEFORE YOU ASKED  
21 ABOUT STATEMENTS MADE TO CIGNARELLI, A BRIEF FILED  
22 BY THE PROSECUTION ON THIS SUBJECT, SO THAT IF YOU  
23 ULTIMATELY DO NOT CALL CIGNARELLI AS A WITNESS, THEN  
24 I WANT TO BE IN A POSITION TO EVALUATE THE DEFENSE  
25 INDICATED-OBJECTIONS OR REQUESTS FOR REMEDY, WHETHER

26 IT BE MISTRIAL OR SOME LESSER SANCTION.

27 MS. ABRAMSON: THE OTHER MATTER TOO, YOUR

28 HONOR, IS ABOVE AND BEYOND THAT, WITH RESPECT TO THE

44119

1 TAPE-RECORDED CONVERSATION THERE WAS A GREAT DEAL OF

2 LITIGATION AND NEGOTIATION AT THE LAST TRIAL.

3 THERE'S MANY THINGS ON THAT TAPE THAT WERE RULED

4 INADMISSIBLE IN THE LAST TRIAL, AND I WANT TO KNOW

5 IF THE PEOPLE ARE GOING TO CHOOSE TO ABIDE BY THE

6 COURT'S PRIOR RULINGS, IF THEY'RE ALLOWED AT ANY

7 TIME TO GO INTO WHAT'S ON THAT TAPE; WHETHER THEY

8 ARE INTENDING TO GO BEYOND WHAT WAS PERMITTED IN THE

9 LAST TRIAL TO BE QUESTIONED OF MR. MENENDEZ

10 CONCERNING THAT CONVERSATION.

11 THE COURT: WELL, CERTAINLY, THE CONTENT OF

12 THE TAPE-RECORDING, TO THE EXTENT THAT IT WAS RULED

13 ADMISSIBLE IN THE FIRST TRIAL, SINCE IT HAS HIS

14 VOICE ON IT, THE DEFENDANT'S OWN VOICE, DOESN'T

15 SUFFER FROM THE SAME PROBLEMS AS QUESTIONING THE

16 DEFENDANT ABOUT THINGS THAT CIGNARELLI TESTIFIED TO

17 IN THE FIRST TRIAL.

18 SO AS FAR AS GOING BEYOND MATTERS THAT

19 THE COURT RULED WERE ADMISSIBLE, DID YOU INTEND TO

20 DO THAT, MR. CONN?

21 MR. CONN: OFFHAND, I'D HAVE TO CHECK MY  
22 NOTES TO SEE WHAT WAS RULED INADMISSIBLE. SO I  
23 CAN'T REALLY SAY WHETHER -- INADMISSIBLE AS A MATTER  
24 OF CROSS-EXAMINATION YOU MEAN, AS OPPOSED TO OUR  
25 CASE-IN-CHIEF?

26 THE COURT: YES. CROSS-EXAMINATION.

27 MS. ABRAMSON: THERE WAS MATERIAL THAT WAS  
28 INADMISSIBLE ON CROSS-EXAMINATION, INCLUDING

44120

1 SCREENPLAY MATERIAL AND OTHER CONVERSATIONS.  
2 THERE'S CONVERSATIONS ABOUT LYLE, AND CRAIG  
3 CIGNARELLI BEING AFRAID OF LYLE, THAT I THINK NEED  
4 TO BE LITIGATED BEFORE ANY OF THAT IS GONE INTO.

5 MR. CONN: YES. WE INTEND TO GO INTO SOME OF  
6 THAT MATERIAL.

7 THE COURT: OKAY. SO ANYTHING THAT WAS THE  
8 SUBJECT OF A RULING OF THE COURT IN THE FIRST TRIAL  
9 RULING IT NOT ADMISSIBLE WOULD NOT BE PERMITTED HERE  
10 UNLESS YOU REQUEST A HEARING AND ONE IS CONDUCTED  
11 BEFORE YOU ASK THE QUESTIONS.

12 MS. ABRAMSON: I THINK CO-COUNSEL NOW HAVE  
13 OBJECTIONS, YOUR HONOR, BECAUSE THAT TAPE NEVER CAME  
14 IN IN FRONT OF A LYLE MENENDEZ JURY; AND THERE WERE  
15 MATERIALS HAVING TO DO WITH LYLE THAT I CAN'T



16 REMEMBER NOW IF THEY WERE EXCISED OR NOT. BUT I

17 THINK --

18 MR. GESSLER: MUCH OF IT WAS; AT LEAST SOME

19 OF IT WAS EXCISED, HAVING TO DO WITH LYLE. THE REST

20 DID NOT GO INTO A MOTION CONCERNING LYLE, BECAUSE AS

21 COUNSEL SAYS, IT WASN'T COMING BEFORE HIS JURY

22 ANYWAY.

23 THE COURT: ALL RIGHT. WELL, IF THERE ARE

24 REFERENCES TO THE CODEFENDANT THAT ARE BROUGHT OUT

25 IN MATERIALS INVOLVING CIGNARELLI, THESE

26 TAPE-RECORDED CONVERSATIONS, AGAIN, THE PROSECUTION

27 IS TO GIVE NOTICE TO THE DEFENSE BEFORE QUESTIONS

28 ARE ASKED.

44121

1 MS. ABRAMSON: THE OTHER THING TOO, YOUR

2 HONOR, IS JUST A GENERAL HEARSAY OBJECTION TO THAT

3 TAPE-RECORDING. THERE'S NOTHING CONFSSIONAL ON

4 THAT TAPE. THE ONLY THING ON THAT TAPE THAT MIGHT

5 RISE TO THAT LEVEL IS AN ACKNOWLEDGMENT BY ERIK

6 MENENDEZ THAT HE MADE SOME KIND OF ADMISSION TO

7 CIGNARELLI IN THE PAST AND THEN HIS STATEMENT ON

8 THAT TAPE THAT IT WASN'T TRUE.

9 AND OTHER THAN THAT, THE DISCUSSIONS

10 REALLY DON'T RISE TO THE NOTION OF ADMISSION OR

11 CONFESSION SO AS TO MEET AN EXCEPTION TO THE HEARSAY  
12 RULE, WHETHER IT'S BEING USED ON CROSS-EXAMINATION,  
13 DIRECT EXAMINATION, OR ANY OTHER WAY.

14 THE COURT: ALL RIGHT. I CAN'T --

15 MS. ABRAMSON: I THINK THE ONLY REASON SOME  
16 OF IT CAME IN LAST TIME WAS BECAUSE OF ERIK  
17 MENENDEZ' TESTIMONY CONCERNING STATEMENTS MADE TO  
18 CRAIG CIGNARELLI BECAUSE CRAIG CIGNARELLI WAS CALLED  
19 AS A WITNESS IN THE PEOPLE'S CASE-IN-CHIEF. I MEAN,  
20 AS THE COURT KNOWS, THINGS BECOME RELEVANT BASED ON  
21 THINGS THAT HAVE PRECEDED THEM IN THE CASE. SINCE  
22 THE ONLY REFERENCE TO CIGNARELLI THAT'S BEEN MADE IN  
23 THIS TRIAL IS THAT HE'S A BURGLAR, THAT DOES NOT  
24 MAKE THE MATTERS ON THAT TAPE ADMISSIBLE IN THE SAME  
25 WAY, EVEN THOSE THAT WERE ADMISSIBLE.

26 THE COURT: I THOUGHT THIS WAS A GRAND THEFT.

27 MS. ABRAMSON: WE'VE BEEN TALKING ABOUT IT AS  
28 BURGLARY.

44122

1 THE COURT: I SEE.

2 MS. ABRAMSON: WE'LL JUST CALL HIM A THIEF.  
3 MY CLIENT'S A THIEF; HE'S A THIEF TOO.

4 THE COURT: I CAN'T RULE IN THE ABSTRACT ON  
5 THESE MATERIALS UNLESS I HEAR WHAT THE QUESTIONS ARE

6 ON CIGNARELLI.

7 WHAT ELSE? YOU HAD SOMETHING ELSE?

8 MS. ABRAMSON: YES. THE OTHER THING IS --

9 TWO MORE THINGS. NUMBER ONE --

10 THE COURT: WE'RE GOING TO DO THIS AT 1:30.

11 MS. ABRAMSON: WE ARE? IT COULD BE REAL

12 FAST.

13 THE COURT: 1:30. I ALSO WANT TO DISCUSS

14 FINALIZING THINGS WITH MR. RAND.

15 MS. ABRAMSON: EXACTLY.

16 THE COURT: AND ALSO FIND OUT WHAT THE

17 PEOPLE'S CURRENT POSITION IS ON A PSYCHIATRIC

18 EXAMINATION OF THE DEFENDANT, SO WE CAN PERHAPS

19 DISCUSS THAT THIS AFTERNOON.

20 MS. ABRAMSON: THE OTHER THING IS THE

21 SHOTGUN. WE WANT TO TALK ABOUT TRYING TO PUT IT IN

22 HIS HAND.

23 (AT 12:00 NOON PROCEEDINGS WERE

24 ADJOURNED UNTIL 1:30 P.M. OF THE

25 SAME DAY.)

1 VAN NUYS, CALIFORNIA; FRIDAY, DECEMBER 15, 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. ARE WE READY TO RESUME?

11 MR. LEVIN: YES, YOUR HONOR.

12 THE COURT: WHAT IS IT YOU WANT TO TALK ABOUT  
13 NOW? ANY PARTICULAR PRIORITY OF THINGS?

14 MS. ABRAMSON: JUDGE, I WANT TO ASK YOU A  
15 QUESTION TO SEE IF YOUR MEMORY IS BETTER THAN MINE.

16 I COULDN'T FIND THAT WE HAD EVER MARKED  
17 AN AUTHORIZED VERSION, AN AGREED-UPON VERSION, OF  
18 THE 11-29 TAPE TRANSCRIPT. I KNOW THERE HAD BEEN  
19 RULINGS ABOUT WHAT PARTS OF IT WERE ADMISSIBLE AND  
20 WHAT PARTS WEREN'T. I KNOW THERE WAS A LOT OF  
21 NEGOTIATING BETWEEN MS. MORRISSEY AND MR. KURIYAMA  
22 TO COME UP WITH A FINAL AGREED-UPON VERSION, BUT I  
23 CAN'T FIND IT ON THE EXHIBIT LIST IF THERE EVER WAS.

24 THE COURT: IF IT'S NOT ON THE LIST, THEN I  
25 HAVE NO --

26 MS. ABRAMSON: YOU HAVE NO RECOLLECTION OF  
27 IT?

28 THE COURT: SOMEONE PROVIDED ME WITH A COPY

44124

1 OF IT ON MORE THAN ONE OCCASION, BECAUSE I MISPLACED  
2 ONE. BUT I DON'T KNOW IF IT WAS MARKED AS AN  
3 EXHIBIT.

4 MS. ABRAMSON: SEE, THE PEOPLE HAD -- THIS

5 PROSECUTION TEAM HAD PROFFERED IT, BUT I DON'T  
6 RECALL NOW IF THE VERSION THEY PROFFERED WAS THE  
7 ORIGINAL VERSION WITH ALL EXCLUDED THINGS IN IT OR  
8 WAS THE VERSION FOLLOWING THE COURT'S RULING. SO  
9 I'LL JUST HAVE TO FIND ONE OVER THE WEEKEND AND SEE  
10 IF I CAN FIND THAT FINAL AGREED-UPON VERSION.

11 THE COURT: I REALLY --

12 MS. ABRAMSON: I KNOW, AND I DON'T REMEMBER  
13 NOW THE EXTENT TO WHICH CIGNARELLI WAS ASKED ABOUT  
14 IT WHEN HE TESTIFIED.

15 THE COURT: THERE WAS SOME QUESTIONING OF IT.

16 MS. ABRAMSON: THERE WAS SOME QUESTIONING OF  
17 HIM AND THEN THERE WAS SOME QUESTIONING OF DETECTIVE  
18 ZOELLER ABOUT IT AS WELL.

19 THE COURT: AND OF YOUR CLIENT AS WELL.

20 MS. ABRAMSON: YEAH.

21 THE COURT: OKAY. LET'S THEN MOVE -- WHAT  
22 ELSE THEN IN REGARD TO THE MOTION TO LIMIT THE SCOPE  
23 OF THE PROSECUTION'S EXAMINATION?

24 MS. ABRAMSON: THE NO SHOTGUN DISPLAY  
25 ARGUMENT.

26 THE COURT: WHAT IS THE ARGUMENT?

27 MS. ABRAMSON: THE ARGUMENT IS --

28 THE COURT: LET'S GO THE OTHER WAY.

1 DO THE PEOPLE PROPOSE TO DO THIS IN ANY  
2 WAY?

3 MR. CONN: YES, YOUR HONOR.

4 MS. ABRAMSON: DO I KNOW WHAT HE THINKS OR  
5 NOT?

6 THE COURT: OKAY. WHAT IS YOUR ARGUMENT?

7 MS. ABRAMSON: WE THINK IT'S UNDULY  
8 PREJUDICIAL FOR A NUMBER OF REASONS.

9 FIRST OF ALL, THIS ISN'T THE GUN THAT  
10 WAS USED.

11 SECOND OF ALL, THERE'S BEEN NO ISSUE  
12 RAISED ABOUT WHETHER HE DID FIRE THE GUN, COULD LOAD  
13 THE GUN, DID LOAD THE GUN. THERE'S BEEN NO  
14 TECHNICAL ISSUES OFFERED BY THE DEFENSE, AND THERE  
15 IS SIMPLY NOTHING RELEVANT TO BE PROVEN BY HAVING  
16 HIM DO ANYTHING WITH THAT GUN. ITS ONLY PURPOSE  
17 WOULD BE A PREJUDICIAL PURPOSE TO GIVE THE JURY A  
18 VISION OF HIM HOLDING SUCH A GUN, AND THERE'S  
19 ABSOLUTELY NO RELEVANT PURPOSE FOR USING IT. AND  
20 IT'S SOLELY TO MAKE HIM LOOK LIKE A BAD PERSON AND A  
21 THREATENING AND SCARY PERSON BY HOLDING THE GUN.

22 THE COURT: OKAY. PEOPLE'S RESPONSE.

23 MR. CONN: WELL, I DON'T WANT TO BE IN A  
24 POSITION WHERE I HAVE TO REVEAL EVERY QUESTION I'M  
25 GOING TO ASK THE DEFENDANT ON CROSS-EXAMINATION  
26 BEFORE I BEGIN MY CROSS-EXAMINATION. BUT OBVIOUSLY  
27 THIS IS A CASE IN WHICH THE DEFENDANT USED A

44126

1 PARTICULAR WAY. HE TESTIFIED THAT HE WENT INTO A  
2 ROOM. HE WAS FIRING. HE WAS LOADING AND  
3 UNLOADING. AND SO ON AND SO FORTH. SO HE TOLD US A  
4 GREAT DEAL ABOUT WHAT HE DID WITH A SHOTGUN THAT WAS  
5 IDENTICAL TO THIS.

6       SO JUST BASED UPON THAT I CAN THINK OF A  
7 NUMBER OF QUESTIONS I CAN ASK HIM CONCERNING THE  
8 OPERATION OF THAT SHOTGUN AND HOW HE USED IT ON THAT  
9 PARTICULAR DAY, AND HE COULD INDICATE FOR THE JURY  
10 BY HOLDING THE SHOTGUN AND BY IDENTIFYING HIS  
11 ACTIONS AND HIS MOVEMENTS WHAT IT WAS THAT HAPPENED  
12 ON THAT DAY. AND I THINK THAT -- I DON'T KNOW THAT  
13 IT'S NECESSARY TO GET INTO THE DETAILS OF THAT, BUT  
14 GIVEN THE FACT THAT IT WAS THE DEFENDANT WHO USED  
15 THE SHOTGUN AND THIS IS A SIMILAR, IF NOT IDENTICAL  
16 SHOTGUN, I DON'T SEE HOW THE DEFENDANT CAN CLAIM  
17 PREJUDICE WHEN HE WAS THE ONE WHO PURCHASED AND USED  
18 THE SHOTGUN LIKE THIS TO KILL HIS PARENTS. I JUST  
19 DON'T SEE ANY BASIS FOR THE PREJUDICE.

20       MS. ABRAMSON: WELL, I MEAN, IT HAS  
21 ABSOLUTELY NO RELEVANCE. THERE'S NO ISSUE THAT  
22 HAVING HIM HANDLE THAT GUN IS GOING TO ILLUMINATE.

23 THERE'S NOTHING IN ISSUE ABOUT IT. MOREOVER, THAT  
24 IS NOT THE GUN. THERE HAS BEEN NO FOUNDATION LAID  
25 THAT THIS GUN OPERATES IN PRECISELY THE SAME WAY AS  
26 THE GUN. WE, IN FACT, KNOW THAT THIS GUN'S  
27 DEFECTIVE; QUITE THE CONTRARY TO THE IMPLICATION.  
28 AND THERE IS NO RELEVANT PURPOSE TO HAVE THE

44127

1 DEFENDANT HANDLE IT EXCEPT TO PREJUDICE HIM IN THE  
2 EYES OF THE JURY. AND UNDER 352, IF FOR NO OTHER  
3 REASON, I CAN SEE NO RELEVANCE. BUT EVEN IF THERE  
4 WAS SOME MARGINAL RELEVANCE, HE HASN'T DENIED THAT  
5 HE DID IT -- HE HASN'T DENIED THAT HE COULD MAKE THE  
6 GUN FUNCTION. THE PREJUDICIAL IMPACT OF THAT  
7 DISPLAY OUTWEIGHS ANY PROBATIVE VALUE OF HAVING HIM  
8 DANCE AROUND WITH IT.

9 I MEAN, THE COURT DIDN'T EVEN WANT ME TO  
10 HANDLE THE SHOTGUN. I MEAN, I CAN UNDERSTAND, I'M A  
11 LITTLE WILD AND RECKLESS, BUT IT WASN'T LOADED. BUT  
12 THE COURT DIDN'T WANT ME TO HANDLE IT AND I THINK  
13 IT'S ABSOLUTELY INAPPROPRIATE TO HAVE THE DEFENDANT  
14 DO SO. THAT'S NOT HIS GUN.

15 THE COURT: OBVIOUSLY, THE HANDLING OF THE  
16 GUN BY COUNSEL AND HANDLING IT FOR A PARTICULAR  
17 PURPOSE, DEMONSTRATIVE PURPOSE, OF A WITNESS IS



18 DIFFERENT. FOR COUNSEL TO JUST WALK AROUND WITH IT  
19 FOR NO REASON DOESN'T ACCOMPLISH ANYTHING, DOESN'T  
20 FORWARD THE PROGRESS OF THE TRIAL.

21 THE ISSUE IS WHETHER OR NOT THIS WOULD  
22 BE APPROPRIATE FOR DEMONSTRATIVE EVIDENCE.

23 THE COURT HAS ALREADY RULED, AND WE'VE  
24 HAD IT ON THE RECORD ON SEVERAL OCCASIONS, THAT THE  
25 WEAPON IN QUESTION IS SUBSTANTIALLY SIMILAR TO THE  
26 WEAPON PURCHASED BY THE DEFENDANTS; AND, THEREFORE,  
27 THE OBJECTION THAT IT'S NOT THE ACTUAL GUN FAILS  
28 BECAUSE IT IS SUBSTANTIALLY SIMILAR. THE DEFECT, AS

44128

1 I UNDERSTAND IT, HAS BEEN CURED. THE DEFECT HAD TO  
2 DO WITH THE PLACEMENT OF THE DOWEL IN THE RECEPTACLE  
3 THAT HELD THE CARTRIDGES, CASINGS, MORE THAN THE TWO  
4 CASINGS THAT ARE AUTHORIZED BY THE DEPARTMENT OF  
5 FISH AND GAME. THAT, APPARENTLY, HAS BEEN  
6 REPAIRED. IT DEPENDS ON THE NATURE OF THE  
7 DEMONSTRATION AS FAR AS THE RELEVANCE.

8 MS. ABRAMSON: WELL, UNDER THE --

9 THE COURT: AS FAR AS THE -- I CAN SEE WHERE  
10 CERTAIN MATTERS CAN CLEARLY BE RELEVANT AS FAR AS  
11 THE WEAPON. AS FAR AS EJECTION PATTERNS AND THINGS  
12 OF THAT SORT, AS TO HOW THE SHELL CASINGS EJECT FROM

13 THE WEAPON, THERE IS NO WAY OF ESTABLISHING THAT ANY  
14 DEMONSTRATION HERE IN COURT WOULD BE SUBSTANTIALLY  
15 SIMILAR TO THE WEAPON IN QUESTION OR THAT WOULD  
16 RELATE TO THE SPECIFICS OF THE WEAPON USED.

17 DID YOU INTEND TO GO INTO THE EJECTION  
18 PATTERNS AND HOW THE SHELL CASINGS WERE EJECTED FROM  
19 THIS PARTICULAR WEAPON?

20 MR. CONN: NO, YOUR HONOR, I DID NOT.

21 MS. ABRAMSON: NOTHING ELSE WOULD MAKE ANY  
22 SENSE EITHER. THEY'RE NOT GOING TO HAND HIM  
23 AMMUNITION. IF THAT WERE AN ISSUE THAT WOULD BE  
24 INAPPROPRIATE. THE DUMMIES MC CARTHY BROUGHT STICK  
25 IN THE GUN. THEY'RE NOT USEFUL. THERE'S NOTHING HE  
26 COULD DO WITH THAT GUN.

27 MOREOVER, WE WOULD OBJECT TO HAVING HIM  
28 DO ANYTHING WITH IT AS AN IMPROPER DEMONSTRATION OR

44129

1 IMPROPER EXPERIMENT. WE'RE NOT UNDER THE SAME  
2 CIRCUMSTANCES.

3 THE COURT: WELL, I'M NOT CONTEMPLATING AN  
4 EXPERIMENT AT THIS POINT, BUT AS DEMONSTRATIVE  
5 EVIDENCE, I THINK UNDER APPROPRIATE CIRCUMSTANCES,  
6 DEPENDING ON THE NATURE OF THE QUESTIONS, IT COULD  
7 BE USED. SO I'M NOT GOING TO FORECLOSE IT AT THIS

8 POINT.

9 MS. ABRAMSON: I CAN'T IMAGINE ANYTHING THAT  
10 WOULD BE RELEVANT OTHER THAN HANDING HIM THE GUN TO  
11 POSE. THERE. HE CAN'T LOAD IT. HE CAN'T EJECT  
12 ANYTHING. HE CAN'T FIRE IT. HE CAN'T DO ANY OF THE  
13 THINGS THAT MIGHT BE RELEVANT JUST BECAUSE OF THE  
14 CIRCUMSTANCES. AND TO TRY TO MAKE HIM DO ANY OF  
15 THOSE THINGS WOULD BE AN IMPROPER EXPERIMENT UNDER  
16 NOT-SIMILAR CIRCUMSTANCES.

17 THE COURT: WELL, IT DEPENDS ON WHAT IS  
18 DONE. AND I'M NOT GOING TO RULE ON IT AT THIS  
19 POINT. BUT I THINK AS A GENERAL PRINCIPLE,  
20 DEMONSTRATIVE EVIDENCE IS PERMISSIBLE AND THIS IS A  
21 PIECE OF DEMONSTRATIVE EVIDENCE.

22 MS. ABRAMSON: IT'S NOT JUST AN ORDINARY  
23 PIECE OF DEMONSTRATIVE EVIDENCE, YOUR HONOR. I WANT  
24 THE COURT TO ADDRESS THE EMOTIONAL IMPACT OF THIS  
25 EVIDENCE, WHICH IS THE ONLY REASON THE PEOPLE WOULD  
26 BE HANDING HIM THIS GUN. IT'S NOT FOR DEMONSTRATIVE  
27 PURPOSES. THEY KNOW HOW THE GUN WORKS AND THEY CAN  
28 FIGURE OUT THE VARIOUS WAYS THE GUN CAN BE HELD.

44130

1 THE ISSUE IS WHAT IS THE REAL PURPOSE OF PUTTING  
2 THAT GUN IN THIS DEFENDANT'S HANDS SIX YEARS LATER.

3 THE COURT: I'LL HAVE TO HEAR AS THE  
4 QUESTIONS ARE ASKED AS FAR AS THE RELEVANCE OF IT.  
5 I DON'T SEE THE PREJUDICE. I DON'T SEE THAT THERE'S  
6 ANY PREJUDICIAL IMPACT BY THE DEFENDANT HOLDING THE  
7 WEAPON.

8 SO IN RESPONSE TO YOUR REQUEST, THE  
9 COURT'S POSITION IS I DON'T SEE THE PREJUDICE.

10 MR. LEVIN: YOUR HONOR, I'M ASKING THEN THIS  
11 COURT ALLOW MYSELF AND MY CLIENT TO HAVE THE SHOTGUN  
12 TO BE ABLE TO, BEFORE MR. CONN --

13 THE COURT: YES. I'LL LET YOU HAVE ACCESS TO  
14 IT SOMETIME TODAY.

15 MR. LEVIN: WITH MY CLIENT.

16 THE COURT: YES. SOMETIME TODAY WE'LL LET  
17 YOU HAVE ACCESS TO IT IN THE COURTROOM IN A PRIVATE  
18 SITUATION.

19 MR. LEVIN: THANK YOU.

20 THE COURT: OKAY. WHAT'S THE NEXT ISSUE?

21 MS. ABRAMSON: THE BOB RAND MANUSCRIPT.

22 WE'RE UNCLEAR AS TO WHETHER MR. CONN WAS  
23 INDICATING YESTERDAY HE DIDN'T INTEND TO USE  
24 ANYTHING FROM IT AT ALL OR WASN'T INTENDING TO USE  
25 IT YESTERDAY AFTERNOON.

26 WE STILL NEED A HEARING ON WHETHER  
27 THAT'S USABLE, GIVEN THE FACT THAT -- I HAVE NO IDEA  
28 WHAT PART OF THAT MANUSCRIPT THE PEOPLE MIGHT BE

1 CONTEMPLATING USING, BUT THE REAL PROBLEM IS  
2 WHATEVER THEY TRY TO USE, WE CAN'T TEST THE  
3 AUTHENTICITY BECAUSE MR. RAND'S ASSERTING THE  
4 SHIELD.

5 THE COURT: ALL RIGHT. DID YOU INTEND TO USE  
6 THE MANUSCRIPT IN YOUR CROSS-EXAMINATION OF THE  
7 DEFENDANT?

8 MR. CONN: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. AS FAR AS THE  
10 PROTECTIVE ORDER PROPOSED BY MR. RAND'S COUNSEL,  
11 I'VE READ AND CONSIDERED IT. I WANT TO HEAR ANY  
12 OBJECTIONS BY EITHER SIDE. I THINK THE DEFENSE HAD  
13 NO OBJECTIONS. THE PEOPLE HAD AN OBJECTION.

14 WHAT PRECISELY IS YOUR OBJECTION,  
15 MR. CONN?

16 MR. CONN: WELL, I THINK THAT THE PRIMARY  
17 FOCUS OF THE PROTECTIVE ORDER SHOULD SIMPLY BE THAT  
18 WE DON'T DISSEMINATE THE MANUSCRIPT TO OUTSIDE  
19 SOURCES.

20 SO I THINK THAT IF THE COURT IS GOING TO  
21 ISSUE ANY RULING WHATSOEVER CONCERNING THAT  
22 MANUSCRIPT, THE ONLY ORDER THAT THE COURT SHOULD  
23 ISSUE IS THAT THIS MANUSCRIPT SHOULD NOT BE  
24 DISTRIBUTED. THAT'S THE SOLE ISSUE BEFORE THE  
25 COURT, IT SEEMS TO ME.

26 AND I THINK THAT THAT IS ADEQUATELY

27 COVERED IN PARAGRAPH ONE. I DON'T SEE THE NECESSITY  
28 FOR ANY OF THE OTHER PARAGRAPHS.

44132

1 THE COURT: WELL, IF YOU OR THE DEFENSE  
2 PROPOSES TO USE IT IN SOME FASHION DURING THE TRIAL,  
3 THE STIPULATION OR THE ORDER, PROTECTIVE ORDER, ALSO  
4 INDICATES THAT YOU SHOULD MAKE SUCH A DISCLOSURE TO  
5 THE COURT PRIOR TO DOING SO.

6 WHAT IS YOUR OBJECTION TO THAT?

7 MR. CONN: WELL, I DON'T REALLY HAVE AN  
8 OBJECTION TO THAT AS FAR AS THIS COURT IS  
9 CONCERNED.

10 I'M JUST WONDERING WHY IT'S NECESSARY  
11 FOR THIS PRIVATE PARTY TO BE ASKING THE COURT TO  
12 SIGN AN ORDER CONCERNING HOW THAT IS TO BE USED IN  
13 THIS COURT. IF THE COURT WISHES THE PEOPLE TO  
14 ADVISE THE COURT AS TO ANY USE THAT WE INTEND OF THE  
15 MANUSCRIPT PRIOR TO ITS USE, I HAVE NO PROBLEM WITH  
16 THAT. I'M JUST -- I JUST QUESTION WHY A PRIVATE  
17 PARTY IS ASKING THIS COURT TO -- FOR AN ORDER TO THAT  
18 EFFECT.

19 THE COURT: OKAY. WELL, I HAVE NO PROBLEM  
20 WITH IT, AND I'LL SIGN IT.

21 I HAVE A LITTLE TROUBLE WITH SOME OF THE

22 REMARKS OF COUNSEL BECAUSE YOU TALK ABOUT DOUBLE  
23 STANDARDS OCCASIONALLY IN THE COURT PROCEEDINGS.  
24 AND I RECALL SPECIFICALLY THE DEFENSE ARGUING TO THE  
25 COURT THAT IF THERE WAS SOMETHING IN MR. RAND'S BOOK  
26 THAT COULD BE USEFUL IN IMPEACHING THE WITNESS,  
27 MR. RAND WOULD DO THE RIGHT THING AND BE  
28 COOPERATIVE. BUT YOU WERE SAYING JUST THE OPPOSITE

44133

1 IN RESPONSE TO IF THE D.A. WAS TO USE IT.

2 MS. ABRAMSON: ALL I KNOW IS WHAT MR. RAND  
3 HAS SAID, WHICH IS THAT HE'S ASSERTING THE SHIELD AS  
4 TO THE MANUSCRIPT; AND I HAVE NEVER GONE INTO THE  
5 SPECIFICS AS TO WHETHER HE WOULD OR WOULDN'T WAIVE  
6 IT FOR ANYTHING BECAUSE THERE'S NOTHING IN THE  
7 MANUSCRIPT THAT WE INTEND TO USE. ALL I KNOW IS  
8 HIS --

9 THE COURT: THAT WASN'T YOUR EXPECTATION  
10 THOUGH WHEN YOU MADE THAT STATEMENT TO ME EARLIER.

11 MS. ABRAMSON: EXCUSE ME?

12 THE COURT: IT WASN'T YOUR EXPECTATION WHEN  
13 YOU MADE THAT STATEMENT EARLIER. YOU FELT THAT  
14 MR. RAND WOULD DO THE RIGHT THING.

15 MS. ABRAMSON: WELL, HE'S NOT DOING THE RIGHT  
16 THING.

17 THE COURT: I WANT TO KNOW IF THERE'S SOME  
18 UNDERSTANDING THAT YOU HAVE WITH MR. RAND THAT YOU  
19 CAN USE THAT MANUSCRIPT.

20 MS. ABRAMSON: WE HAVE NO INTENTION OF USING  
21 IT.

22 THE COURT: NO, NO. IS THERE AN  
23 UNDERSTANDING BETWEEN YOU AND MR. RAND THAT YOU  
24 COULD USE IT IF THERE WAS A QUESTION OF IMPEACHING  
25 THE WITNESS?

26 MS. ABRAMSON: NOT THAT I KNOW OF.

27 MR. GESSLER: ONLY TO THE EXTENT FROM THE  
28 LAST TRIAL, YOUR HONOR.

44134

1 THE COURT: WHAT DO YOU MEAN?

2 MR. GESSLER: NO, IT'S NOT THE MANUSCRIPT.

3 MS. ABRAMSON: AS THE COURT KNOWS, THERE WERE  
4 CERTAIN THINGS THAT HE PUBLISHED -- THERE'S CERTAIN  
5 THINGS THAT HE PUBLISHED IN THE PAST THAT WERE FOUND  
6 BY THE COURT NOT TO BE INCLUDED IN THE SHIELD HAVING  
7 TO DO WITH THE DONOVAN GOODREAU ISSUE AND SOME  
8 DONOVAN GOODREAU TAPES.

9 THE COURT: I RECALL THAT. I'M JUST ASKING  
10 IS THAT WHAT YOU WERE REFERRING TO OR ARE YOU  
11 REFERRING TO SOME OTHER INCIDENT THAT HAS YET TO



12 OCCUR IN WHICH A WITNESS WOULD TESTIFY IN A WAY  
13 CONTRARY TO STATEMENTS MADE TO MR. RAND AND THEN YOU  
14 WOULD PROPOSE TO CALL MR. RAND AND YOU HAVE SOME  
15 EXPECTATION OR UNDERSTANDING WITH HIM THAT HE WOULD  
16 COOPERATE?

17 MS. ABRAMSON: YOU KNOW, YOUR HONOR, TO TELL  
18 YOU THE TRUTH, I DON'T KNOW WHAT I WAS THINKING OF  
19 WHEN I SAID THAT TO THE COURT. RIGHT NOW WE HAVE --  
20 I'LL TELL YOU THAT RIGHT NOW WE HAVE NO INTENTION OF  
21 USING ANYTHING FROM THAT MANUSCRIPT. I'LL GO ONE  
22 STEP FURTHER AND TELL THE COURT I'VE NEVER READ IT.  
23 SO I CAN'T TELL YOU THERE'S ANYTHING IN THERE I WANT  
24 TO USE. THOSE WHO HAVE READ IT HAVE NOT INDICATED  
25 TO ME THAT THERE'S ANYTHING IN THERE WE WANT TO  
26 USE. AND I HONESTLY CANNOT REMEMBER WHAT I HAD IN  
27 MIND WHEN I MADE THAT STATEMENT TO THE COURT BECAUSE  
28 THIS IS ALL BECOMING A JUMBLE AT THIS POINT. I CAN

44135

1 BARELY KEEP TRACK OF WHAT WE'RE DOING TODAY.

2 SO I WAS NOT INTENDING TO MISLEAD THE  
3 COURT, AND I'M SURE I HAD SOMETHING IN MIND IF I  
4 SAID THAT, BUT I CAN'T REMEMBER WHAT IT WAS.

5 ALL I KNOW IS THAT FOR THE PAST SEVERAL  
6 MONTHS WE'VE HAD NO INTENTION OF --

7 THE COURT: I'LL JUST QUOTE YOU SO YOU'LL  
8 REMEMBER.

9 MS. ABRAMSON: EXCUSE ME?

10 THE COURT: I'LL QUOTE YOU.

11 MS. ABRAMSON: YOU DON'T HAVE TO QUOTE ME.

12 THE COURT: THIS IS AT 35955.

13 "IF THE WITNESS ADMITS" --

14 MS. ABRAMSON: WHAT DAY WAS THIS?

15 THE COURT: "IF THE WITNESS ADMITS" -- THIS IS  
16 UNUSUAL. I GET TO QUOTE YOU.

17 "IF THE WITNESS ADMITS, WE GET  
18 THE IMPEACHMENT FROM MR. RAND, BUT  
19 MR. RAND IS NOT A WITNESS. NOW, IF  
20 THE WITNESS DENIES, THEN I HAVE TO GO  
21 TO MR. RAND AND ASK HIM, BASED ON HIS  
22 CONSCIENCE, WILL YOU COME FORWARD WITH  
23 THIS INSTEAD OF ASSERTING THE SHEILD  
24 IN THE INTEREST OF JUSTICE SO THIS  
25 WITNESS DOESN'T GET AWAY WITH LYING?  
26 AND I KNOW MR. RAND. I THINK IF THAT  
27 SCENARIO -- IF THAT SCENARIO UNFOLDED  
28 IN THIS ROOM HE WOULD DO THE HONEST

44136

1 AND HONORABLE THING."

2 MS. ABRAMSON: OKAY.

3 THE COURT: MR. RAND, STAND UP AND TAKE A  
4 BOW.

5 MS. ABRAMSON: SEE, I WAS -- SOMETIMES YOU  
6 TELL -- IT'S LIKE WHAT YOU DO WITH CHILDREN. YOU  
7 TELL THEM YOU HAVE HIGH EXPECTATIONS FOR THEIR  
8 BEHAVIOR AND HOPE THEY WILL CONFORM TO YOUR  
9 EXPECTATIONS. BUT I HAD NO -- I HAVE NO SECRET DEAL.

10 THE COURT: I'LL KEEP THAT IN MIND THE NEXT  
11 TIME I HEAR SOME PRAISE, WHATEVER LITTLE I HEAR,  
12 FROM COUNSEL TABLE, WHICH I HAVEN'T HEARD MUCH  
13 LATELY.

14 LET'S GO ON TO THE NEXT ISSUE.

15 MR. LEVIN: YOUR HONOR, BEFORE WE DO, MAY I  
16 REVISIT --

17 MS. ABRAMSON: THAT WAS BEFORE HE GOT MIXED  
18 UP WITH HIS LAWYER, WASN'T IT? NO, NO, I'M  
19 KIDDING. I HAD NOTHING SPECIFIC IN MIND, YOUR  
20 HONOR.

21 MR. LEVIN: THERE ARE A COUPLE OF ISSUES THAT  
22 AS MS. ABRAMSON WAS DEALING WITH THIS OTHER ISSUE I  
23 WAS THINKING ABOUT.

24 ONE IS THAT THIS SHOTGUN CAN BE RENDERED  
25 IN A MANNER THAT IT COULD NOT POSSIBLY WORK, IT  
26 COULD NOT POSSIBLY BE A DANGEROUS WEAPON, IT WOULD  
27 NOT BE A THREAT TO ANY DEPUTIES OR ANY COURT  
28 PERSONNEL, SO THAT IF ERIK MENENDEZ IS REQUIRED TO

1 HANDLE IT, IT'S NOT AS THOUGH HE'S HOLDING A LIVE  
2 SHOTGUN.

3 I'M CONCERNED ABOUT THE SECURITY IN THE  
4 COURTROOM, WHAT'S GOING TO HAPPEN WITH THE  
5 DEPUTIES. ARE THEY GOING TO POSITION THEMSELVES TO  
6 LEAVE AN ADDITIONAL INFERENCE OR TO GIVE AN  
7 ADDITIONAL INFERENCE TO THE JURY THAT ERIK MENENDEZ  
8 HOLDING A SHOTGUN IS MORE DANGEROUS THAN HE IS JUST  
9 AS HE'S SITTING THERE TESTIFYING?

10 AND SINCE THERE ARE WAYS IN WHICH A  
11 BARREL CAN BE PLUGGED BY WELDING IT, FIRING  
12 MECHANISMS CAN BE ALTERED, SO THAT ALL IT IS, THEN,  
13 IS A -- IS A DEMONSTRATIVE PIECE OF EVIDENCE THAT THE  
14 COURT FEELS IT IS, IT WOULDN'T REQUIRE, PERHAPS, THE  
15 SHERIFF'S DEPARTMENT TO DO ANYTHING SPECIAL, AND  
16 THEY COULD REMAIN IN THEIR PLACES AND DO WHAT THEY  
17 NORMALLY DO.

18 THE COURT: WELL, IF YOU CAN ALTER THE FIRING  
19 MECHANISM, THE FIRING PIN, IN SUCH A WAY THAT IT  
20 WON'T OPERATE, THAT'S FINE. BUT I THINK THE -- THE  
21 OTHER PORTIONS OF THE WEAPON WOULD STILL HAVE TO  
22 OPERATE AS FAR AS THE EJECTING THE SHELLS AND THE  
23 MECHANISM ITSELF THAT PUSHES SHELLS INTO THE  
24 CHAMBER, THAT SORT OF THING.

25 MR. LEVIN: WELL, WHAT I WOULD SUGGEST IS

26 THAT -- IT'S HIGHLY UNUSUAL. I'VE NEVER SEEN IT  
27 DONE IN ANY HOMICIDE PROSECUTION I'VE BEEN INVOLVED  
28 IN WITH THE PROSECUTORS HANDING A WEAPON TO A

44138

1 DEFENDANT. BUT SINCE IT IS THE SHERIFF'S DEPARTMENT  
2 THAT IS PROVIDING THE SECURITY, AND THEY DO HAVE  
3 FIREARMS AND BALLISTICS EXPERTS, THEY COULD HAVE ONE  
4 COME DOWN AND REMOVE THE FIRING PIN SO THAT THE  
5 DEPUTIES HERE ARE ASSURED THAT THAT WEAPON CANNOT  
6 AND COULD NOT BE FIRED; AND IT COULD BE  
7 DEMONSTRATED, I THINK, IN SUCH A FASHION WHERE THE  
8 JURY DOESN'T GET SOME INFERENCE THAT ERIK MENENDEZ  
9 NOW HOLDING THE SHOTGUN IS --

10 MS. ABRAMSON: DEPUTY WOLF IS INDICATING IN  
11 HIS OPINION IT WOULD STILL BE A -- REQUIRE CERTAIN  
12 SECURITY PROCEDURES.

13 MR. LEVIN: IF THAT'S THE SITUATION, I THINK  
14 BEFORE WE GO FORWARD WITH THE SHOTGUN, THE DEFENSE  
15 WANTS TO KNOW WHAT ADDITIONAL SECURITY WOULD BE  
16 REQUIRED TO DO THIS DEMONSTRATION, BECAUSE THAT'S A  
17 SEPARATE ISSUE.

18 THE COURT: WE'LL WORK IT OUT.

19 MR. LEVIN: WELL, I -- I'M VERY CONCERNED,  
20 YOUR HONOR.

21 THE COURT: IT'LL BE WORKED OUT.

22 OKAY. WHAT ELSE?

23 MS. ABRAMSON: IT JUST SHOULD BE ADDED TO THE  
24 COURT'S 352 ANALYSIS THAT TO GIVE THE DEFENDANT SUCH  
25 A WEAPON IS GOING TO MAKE THE SHERIFF'S DEPUTIES DO  
26 CERTAIN THINGS THAT ARE GOING TO GIVE THE JURY THE  
27 IMPRESSION THAT MY CLIENT'S DANGEROUS, AND THAT  
28 SHOULD GO INTO THE MIX.

44139

1 IN ANY EVENT, IF I'M UNDERSTANDING RIGHT  
2 WHAT THE PROCEDURE WOULD BE -- OR I WOULD ASK THE  
3 COURT TO REQUIRE THAT BEFORE THE PROSECUTION ASKS  
4 FOR THE WEAPON UP OR TRIES TO HAND IT TO OUR CLIENT,  
5 THAT WE HAVE SOME NOTICE OF WHAT IT IS THEY'RE  
6 PROPOSING TO DO.

7 THE COURT: WELL, IT COULD BE PREFACED BY  
8 SOME QUESTIONS BEFORE MR. CONN ASKS FOR THE WEAPON  
9 TO BE BROUGHT UP, SOME QUESTIONS OF YOUR CLIENT.

10 MS. ABRAMSON: I'M SURE IT WILL BE, BUT  
11 BEFORE HE THEN CALLS FOR HIM TO HANDLE IT --

12 MR. LEVIN: FURTHER, I THINK HE WOULD BE  
13 REQUIRED TO LAY A FOUNDATION THAT THAT WHICH HE  
14 DESIRES TO DO CAN BE DONE BY THE WITNESS. IF HE IS  
15 TRYING TO GET THE WITNESS TO DEMONSTRATE HOW THE

16 WEAPON OPERATES, PERHAPS --

17 THE COURT: LET'S NOT GET INTO THE DETAILS OF  
18 IT BECAUSE AT THIS POINT YOUR EXAMPLES MIGHT NOT BE  
19 ANYTHING TO DO WITH WHAT HE PROPOSES. SO I DON'T  
20 WANT TO GET ANY FURTHER ALONG. IT DOESN'T REALLY  
21 HELP US.

22 OKAY. WHAT ELSE?

23 MS. ABRAMSON: THAT WAS OUR LAUNDRY LIST,  
24 JUDGE.

25 THE COURT: OKAY. THEN WE DEALT WITH -- I'M  
26 GOING TO SIGN THAT PROTECTIVE ORDER INVOLVING  
27 MR. RAND'S BOOK OR MANUSCRIPT. IT'S A FAX COPY THAT  
28 I HAVE.

44140

1 WHAT IS THE PEOPLE'S CURRENT POSITION IN  
2 REGARD TO A PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION  
3 OF THE DEFENDANTS?

4 MR. CONN: WELL, ONCE AGAIN, WE HAVE BEEN  
5 PROPOSING THAT THE COURT ORDER THAT THE DEFENDANTS  
6 SUBMIT TO A PSYCHIATRIC EVALUATION, AND IT'S MY  
7 UNDERSTANDING, AT LEAST AT THIS POINT, THAT IT'S  
8 ONLY THE DEFENDANT, ERIK MENENDEZ, WHO'S TESTIFYING  
9 AND THAT ONLY HE IS GOING TO BE CALLING AN EXPERT ON  
10 HIS BEHALF. UNLESS THERE'S AN INDICATION TO THE

11 CONTRARY, WE'LL RENEW THAT REQUEST AT THIS TIME ONLY  
12 AS FAR AS ERIK MENENDEZ.  
13 THE COURT: OKAY. AND WHAT IS THE DEFENSE  
14 POSITION AS FAR AS ERIK MENENDEZ?  
15 MS. ABRAMSON: WELL, I'M NOT SURE WHAT THE  
16 PEOPLE ARE RENEWING. THE REQUEST IS ALREADY ON THE  
17 TABLE.  
18 THE COURT: ALL RIGHT. NOW THE TIMING OF IT.  
19 MS. ABRAMSON: WELL, WE THINK THAT IT'S NOT  
20 RIPE UNTIL AFTER OUR EXPERT TESTIFIES, IF HE  
21 TESTIFIES.  
22 THE COURT: IS THERE SOME DOUBT THAT YOUR  
23 EXPERT IS GOING TO TESTIFY?  
24 MS. ABRAMSON: YOU NEVER KNOW TILL THE END.  
25 THE COURT: IS THERE SOME REAL CONCERN THAT  
26 YOU'RE NOT GOING TO CALL HIM?  
27 MS. ABRAMSON: I DON'T KNOW WHAT'S GOING TO  
28 DEVELOP ON CROSS-EXAMINATION, BUT RIGHT NOW IT IS MY

44141

1 PLAN TO CALL HIM, AS THE COURT KNOWS. BUT UNTIL HE  
2 DOES TESTIFY TO STATE OF MIND AND TO PSYCHOLOGICAL  
3 SPECIFICS, I DON'T BELIEVE THE PEOPLE HAVE A RIGHT  
4 TO HAVE MY CLIENT EXAMINED.  
5 THE COURT: WELL, WE'RE NOW AT A STAGE WHERE



6 WE'RE GOING TO HAVE A RECESS OF ONE WEEK AND MY  
7 THOUGHT IS THAT THAT WOULD BE AN APPROPRIATE TIME TO  
8 DO THIS.

9 MS. ABRAMSON: WELL, IT MIGHT BE CONVENIENT,  
10 BUT I DO NOT BELIEVE LEGALLY IT IS APPROPRIATE.

11 MOREOVER, WE'RE STILL IN THE POSITION  
12 THAT WE ARE REQUESTING THAT ANY SUCH PSYCHOLOGICAL  
13 EXAMINATION AS ORDERED, THAT THE ORDER INCLUDE THE  
14 RIGHT FOR COUNSEL FOR THE DEFENDANT TO BE PRESENT  
15 BEFORE OUR EXPERT, DR. VICARY TO BE PRESENT, AND FOR  
16 IT TO BE VIDEOTAPED.

17 AND I WOULD SIMPLY POINT OUT THAT IN THE  
18 MOST COMMON AREA OF LITIGATION WHERE THERE IS EXPERT  
19 EXAMINATION BY THE OPPOSING SIDE, WHICH IS IN CIVIL  
20 LITIGATION, COUNSEL FOR THE EXAMINEE IS ROUTINELY  
21 PRESENT. EXPERTS FOR THE EXAMINEE ARE ROUTINELY  
22 PRESENT. AND WE THINK IN A DEATH PENALTY CASE, WHEN  
23 THE EXPERT INVOLVED HAS ALREADY GONE PUBLIC,  
24 DISMISSING OUR DEFENSE IN PRINT AS BEING, QUOTE,  
25 NOVEL, WHEN THAT EXPERT HAS -- WE DO READ A FEW  
26 THINGS HERE AND THERE.

27 THE COURT: I WAS JUST REACTING TO THE WAY  
28 YOUR VOICE RISES AND --

1 MS. ABRAMSON: IT ALWAYS RISES WHEN I GET  
2 GOING, YOU KNOW.

3 THE COURT: SORT OF LIKE PUSHING A BUTTON OR  
4 SOMETHING.

5 MS. ABRAMSON: IT'S THE WIND UP BUTTON. I  
6 CAN'T STAY AT THAT PITCH ALL THE TIME, I'M SURE  
7 YOU'RE HAPPY TO HEAR, WHEN IT GETS GOING.

8 WE THINK DR. DIETZ IS EXTREMELY BIASED,  
9 COMING INTO THIS BIASED. HE HAS EXPRESSED BIAS TO  
10 ME ON THE PHONE WHEN I TALKED TO HIM ABOUT THIS CASE  
11 SOME MONTHS AGO. WE KNOW THAT HE'S A HIT MAN FOR  
12 THE PROSECUTION IN THAT SENSE. THERE'S NO GAME  
13 ABOUT THAT. THEY DIDN'T PICK HIM BECAUSE HE'S AN  
14 EXPERT IN CHILD ABUSE. HE HAS NO BACKGROUND IN IT  
15 AT ALL. AND WE KNOW THAT HIS OPINION IS A FOREGONE  
16 CONCLUSION. SO WE'D LIKE TO AT LEAST TRY TO LEVEL  
17 THE PLAYING FIELD. I'D LIKE TO BE IN A POSITION  
18 WHERE MY CLIENT IS, IN FACT, EXAMINED BY DR. DIETZ.  
19 BUT I WANT IT UNDER CIRCUMSTANCES WHERE WE CAN KNOW  
20 PRECISELY WHAT HE DID AND WHERE HE IS CONSTRAINED  
21 FROM DOING ANYTHING INAPPROPRIATE.

22 AND THE ONLY WAY TO ASSURE THAT, WITH  
23 SOMEONE COMING INTO A CASE, WITH AS MUCH FACTUAL  
24 INFORMATION OUT THERE SO THAT HE COULD HAVE  
25 PRE-FORMULATED BELIEFS AND IN MY OPINION DOES, IS IF  
26 SUCH AN ORDER WERE TO INCLUDE THE RIGHT OF COUNSEL  
27 AND THE DEFENSE EXPERT TO BE PRESENT AND A  
28 REQUIREMENT THAT THE EXAMINATION BE VIDEOTAPED,

1 WHICH THE SHERIFF'S DEPARTMENT CAN ARRANGE. WE HAVE  
2 EXPLORED THIS.

3 BUT IN ANY EVENT, WE STILL DON'T THINK  
4 IT'S APPROPRIATE THAT IT BE DONE UNTIL AFTER WE HAVE  
5 TENDERED OUR TESTIMONY.

6 AND, IN FACT, IT DOESN'T REALLY MAKE ANY  
7 SENSE FOR DR. DIETZ TO BE DOING THIS UNTIL OUR  
8 EXPERT HAS TESTIFIED, SINCE HE WOULD NOT KNOW WHAT  
9 ARE THE AREAS TO EXPLORE THAT MIGHT SUPPORT -- OR  
10 THAT OUR EXPERT IS CLAIMING SUPPORTS HIS OPINION,  
11 UNTIL HE HEARS THAT OPINION.

12 BUT ANYWAY, THAT'S OUR CURRENT THINKING  
13 ON THE DR. DIETZ ISSUE.

14 THE COURT: WHAT IS THE PEOPLE'S RESPONSE?

15 MR. CONN: YES. AT THIS TIME, I WOULDN'T  
16 OPPOSE THE VIDEOTAPING OF THE INTERVIEW. IT'S MY  
17 UNDERSTANDING THAT PARK DIETZ WAS INTERESTED IN  
18 DOING THAT HIMSELF. SO I'LL DISCUSS THIS FURTHER  
19 WITH PARK DIETZ. BUT AT LEAST AT THIS TIME I DON'T  
20 OPPOSE THAT.

21 I WILL OPPOSE, HOWEVER, THE ARGUMENT OF  
22 COUNSEL THAT SHE AND A DEFENSE EXPERT SHOULD BE  
23 PRESENT AT THE TIME OF THE INTERVIEW. THERE'S NO

24 RIGHT TO HAVE COUNSEL OR A DEFENSE EXPERT PRESENT  
25 DURING THAT INTERVIEW.  
26 THE COURT: IN MC PETERS WHAT WAS THE ORDER?  
27 DID THE ORDER CONTEMPLATE COUNSEL BEING PRESENT?  
28 MS. ABRAMSON: I DON'T KNOW. I DON'T HAVE

44144

1 THAT WITH ME, IN FRONT OF ME RIGHT NOW. I DIDN'T  
2 KNOW THIS WAS COMING UP TODAY, SO I HONESTLY CAN'T  
3 ANSWER THAT QUESTION.

4 MR. GESSLER: I'M NOT -- I'VE READ MC PETERS A  
5 COUPLE OF TIMES BUT NOT FOR TODAY. I CAN'T REMEMBER  
6 IF THAT ISSUE AROSE IN THAT CONTEXT, YOUR HONOR. WE  
7 CAN -- AS TO WHETHER OR NOT COUNSEL REQUESTED TO BE  
8 PRESENT OR...

9 (PAUSE IN PROCEEDINGS.)

10

11 THE COURT: WELL, I'M LOOKING AT THE  
12 MC PETERS CASE. IT DOESN'T TALK ABOUT THE ISSUES  
13 RAISED BY COUNSEL HERE. IT'S JUST A COURT REFUSAL  
14 BY THE DEFENDANT. IT SEEMS TO ME THERE MIGHT BE  
15 OTHER CASES.

16 ALTHOUGH I'VE RAISED THE ISSUE NOW, I  
17 DO IT BECAUSE OF THE WEEK BETWEEN CHRISTMAS AND  
18 NEW YEAR'S WHEN THE COURT IS NOT IN SESSION. I

19 HAVEN'T REVIEWED THE CASES EITHER, SINCE WE HAD OUR  
20 EARLIER HEARING; ALTHOUGH THERE HAS BEEN FURTHER  
21 LITIGATION IN THE 9TH CIRCUIT ON THIS SUBJECT, ALSO  
22 APPROVING THE GOVERNMENT'S RIGHT TO HAVE THESE  
23 EXAMINATIONS PRIOR TO TRIAL, AS I RECALL IN THE 9TH  
24 CIRCUIT CASE.

25 MR. GESSLER: WAS THAT A REVIEW OF A STATE  
26 COURT CASE OR FEDERAL COURT CASE?

27 THE COURT: IT WAS A FEDERAL CASE.

28 WHAT I'LL DO IS ASK THAT COUNSEL REVIEW

44145

1 THE CASES AND THE BRIEFS, SINCE YOU WEREN'T AWARE  
2 THAT I WAS GOING TO BRING THIS SUBJECT UP, AND STATE  
3 TO THE COURT ANY AUTHORITY FOR THE PROPOSITION, PRO  
4 OR CON, TO THE PROPOSITION THAT DEFENSE COUNSEL HAS  
5 A RIGHT TO BE PRESENT FOR THE EXAMINATION. I  
6 BELIEVE THERE IS CASE LAW ON THAT.

7 AS FAR AS THE TIMING OF IT, I THINK  
8 WE'RE GETTING CLOSE ENOUGH TO THE POINT WHEN SUCH AN  
9 ORDER CAN BE MADE SINCE THE DEFENDANT HAS ALREADY  
10 TESTIFIED AS TO A MENTAL STATE.

11 MS. ABRAMSON: BUT HE HASN'T TESTIFIED TO ANY  
12 MENTAL CONDITION. ALL HE TALKED ABOUT WAS FEAR, AND  
13 I DON'T THINK THEY HAVE A RIGHT TO A PSYCHIATRIC

14 EXAMINATION OF THE DEFENDANT WHO TESTIFIES TO FEAR.  
15 THE ONLY THING THAT GIVES THEM THE RIGHT TO THE  
16 EXAMINATION IS THE DEFENDANT PROFFERING EXPERT  
17 TESTIMONY, AND THAT HASN'T HAPPENED YET.

18 THE COURT: RIGHT. WELL, AS I SAID, WE'RE  
19 GETTING TO THE POINT NOW WHERE THE ISSUE IS RIPE.

20 SO WHAT I'LL DO IS DEAL WITH THE  
21 SPECIFICS OF YOUR OBJECTIONS OR YOUR --

22 MS. ABRAMSON: WE STILL HAVE NEVER BEEN GIVEN  
23 A SPECIFIC -- WE HAVE NOTHING IN WRITING FROM  
24 DR. DIETZ. WE HAVE NO IDEA WHAT MATERIALS HE'S BEEN  
25 FURNISHED WITH. WE HAVE NO REPORT, PRELIMINARY OR  
26 OTHERWISE.

27 THE COURT: GO AHEAD.

28 MS. ABRAMSON: AND WE HAVE NEVER BEEN TOLD

44146

1 WHAT EXACTLY HE'S SUPPOSED TO BE EVALUATING THE  
2 DEFENDANT FOR.

3 SO I DON'T THINK THE PEOPLE HAVE YET  
4 COMPLIED WITH WHAT I THINK ARE MINIMAL NEEDS OF  
5 DISCOVERY HERE SO THAT I CAN MAKE THE INFORMED  
6 DECISION OF WHETHER TO ADVISE MY CLIENT TO COOPERATE  
7 WITH SUCH AN EXAMINATION OR NOT.

8 THE COURT: AS I SAID, I'LL GIVE YOU TIME TO

9 REVIEW YOUR BRIEFS SINCE -- AGAIN, THAT BASICALLY  
10 GETS TO AN ISSUE OF THE DEFENSE HAVING A VETO POWER  
11 ON THE SUBJECT JUST BY SAYING I DON'T LIKE THE WAY  
12 THIS DOCTOR SAYS SOMETHING IN A -- ONE OF HIS  
13 RESPONSES TO MY INQUIRY OR I JUST DON'T FEEL QUITE  
14 RIGHT ABOUT IT. SO IT'S REALLY MY DECISION AND NOT  
15 MY CLIENT'S DECISION, AND IT'S A RIGHT OF COUNSEL  
16 ISSUE, AND, THEREFORE, CAN'T BE COMMENTED ON. I CAN  
17 SEE THOSE THINGS HAPPENING, AND I JUST -- I DON'T  
18 THINK THOSE ARE GOING TO BE OBSTACLES TO THE COURT  
19 MAKING AN ORDER, THAT YOU FEEL THAT YOU NEED MORE  
20 INFORMATION AND WHAT EXACTLY HE'S GOING TO ASK AND  
21 HOW HE'S GOING TO ASK IT. I DON'T THINK THOSE ARE  
22 PROPER SUBJECTS FOR THE COURT IN MAKING ITS RULING,  
23 THAT YOU HAVE THESE ISSUES THAT YOU WANT TO IDENTIFY  
24 FIRST. I DON'T THINK THAT WOULD FORECLOSE THE COURT  
25 MAKING AN ORDER.

26 MS. ABRAMSON: I DON'T THINK ORDINARILY IT  
27 WOULD, BUT IN THE CIRCUMSTANCES OF THIS CASE, YOUR  
28 HONOR, WHERE YOU KNOW THERE'S BEEN EXTREME

44147

1 CONTROVERSY, AN ENORMOUS AMOUNT OF PUBLICITY ABOUT  
2 THE DEFENSE IN THIS CASE AND SOME OF THE ISSUES THAT  
3 WERE RAISED, DR. DIETZ IS A PERSON OF TREMENDOUS

4 CONTROVERSY, WHO HAS HIS OWN ASSERTION WITH A  
5 TREMENDOUS AMOUNT OF PUBLICITY. HE HAS NO  
6 EXPERIENCE IN THIS AREA, BUT HE IS THE PEOPLE'S  
7 CHOICE. HE IS THE PEOPLE'S CHOICE BECAUSE HE'S  
8 USUALLY THE PROSECUTION'S CHOICE IN HIGH-PROFILE  
9 CASES. AND I THINK IT'S VERY OBVIOUS WHY THEY'VE  
10 CHOSEN HIM.

11       AND WE SHOULD AT LEAST -- I MEAN, I'M NOT  
12 SAYING THAT IT'S -- THE COURT HAS TO PROVIDE ME WITH  
13 THIS INFORMATION BEFORE IT CAN MAKE AN ORDER, BUT  
14 I'M JUST TRYING TO BE CANDID WITH THE COURT THAT  
15 UNLESS WE HAVE SOME IDEA OF WHERE DR. DIETZ THINKS  
16 HE'S GOING AND SOME RIGHT TO BE PRESENT TO MAKE SURE  
17 THAT HE GOES IN LEGITIMATE WAYS, I'LL ADVISE MY  
18 CLIENT NOT TO COOPERATE. AND I DON'T REALLY WANT TO  
19 HAVE TO DO THAT. I'D MUCH RATHER THAT HE BE  
20 EVALUATED AND THEN DR. DIETZ CAN TELL US WHAT WE  
21 ALREADY KNOWS, BUT I'D AT LEAST LIKE TO SHOW THAT HE  
22 MADE HIM AVAILABLE AND BE ABLE TO HAVE USEFUL  
23 INFORMATION ABOUT THE METHODOLOGY USED AND ANY BODY  
24 LANGUAGE THAT DR. DIETZ DISPLAYED AND OTHER THINGS  
25 THAT CANNOT MERELY BE CAPTURED ON VIDEOTAPE WITH  
26 WHICH TO IMPEACH THE OPINION THAT HE IS INVARIABLY  
27 GOING TO COME UP WITH. SO, I MEAN, THAT'S WHAT I'M  
28 TRYING TO PUT IN THE MIX HERE.



1 I MEAN, I REALIZE THE COURT DOESN'T NEED  
2 MY AGREEMENT TO HAVE THE EVALUATION BEFORE THE COURT  
3 CAN ORDER IT. BUT I THINK UNDER THE CIRCUMSTANCES  
4 OF THIS CASE, THAT THE PEOPLE, PERHAPS, SHOULD HAVE  
5 TO COMPLY WITH THESE REQUESTS.

6 THE COURT: OKAY. I DON'T, QUITE FRANKLY,  
7 THINK THOSE ARE GOING TO BE PERSUASIVE; OTHERWISE,  
8 AS I SAID, THE DEFENSE WOULD HAVE A VETO AND THAT'S  
9 NOT THE ISSUE.

10 THE ISSUE IS NOT IF THE PEOPLE HAVE A  
11 RIGHT, IT'S A QUESTION OF WHEN THEY CAN DO IT. AND  
12 IT'S UP TO THEM TO MAKE THEIR SELECTION OF THE  
13 WITNESS, AND BEFORE THE WITNESS TESTIFIES, YOU HAVE  
14 A FULL RIGHT TO DISCOVERY. THAT DISCOVERY DOESN'T  
15 RELATE TO SELECTION OF THE EXPERT OR THE COURT  
16 MAKING AN ORDER. I'M JUST CONCERNED -- WE'VE LOST A  
17 LOT OF TIME IN THIS TRIAL DUE TO ILLNESS OF VARIOUS  
18 PARTICIPANTS AND WE'RE STILL A GOOD DISTANCE AWAY  
19 FROM COMPLETING THE TRIAL, AND AN EXAMINATION TAKES  
20 TIME, AND WE DO HAVE TIME BETWEEN CHRISTMAS AND  
21 NEW YEAR'S.

22 SO I WOULD LIKE TO, IF IT'S LEGALLY  
23 APPROPRIATE TO DO SO, TO MAKE THE ORDER BEFORE WE  
24 TAKE THE RECESS FOR THAT BREAK.

25 I'LL GIVE YOU A CHANCE TO REVIEW YOUR  
26 MATERIALS AND COME BACK EARLY NEXT WEEK AND WE CAN  
27 RESOLVE IT.

44149

1 WANT TO TALK ABOUT?

2 MR. CONN: THERE IS THE ISSUE OF THE AMOUNT  
3 OF LOSS IN THE TWO BURGLARIES.

4 THE COURT: WELL, PERHAPS YOU FOLKS CAN WORK  
5 OUT -- THE DEFENSE DISPUTES THE AMOUNT. I THINK YOU  
6 CAN COME UP WITH A RANGE THAT WOULDN'T BE IN  
7 CONTROVERSY HERE. I DON'T THINK IT'S SUCH A BIG  
8 ISSUE.

9 MS. ABRAMSON: I THINK THE WHOLE ISSUE OF THE  
10 NUMBER IS IN CONTROVERSY. MY CLIENT TESTIFIED TO  
11 WHAT WAS TAKEN. HE INDICATED THAT IT WAS  
12 SUBSTANTIAL, THAT HE KNEW IT WAS SUBSTANTIAL. I  
13 DON'T UNDERSTAND WHY THE PEOPLE NEED TO PROVE A  
14 DOLLAR AMOUNT WHEN I CAN'T -- WHAT ARE WE GOING TO  
15 DO, GUESS THAT THESE PEOPLE INFLATED FIFTY PERCENT  
16 VERSUS A HUNDRED PERCENT? I DON'T UNDERSTAND WHY  
17 IT'S RELEVANT. I MEAN, AT THIS POINT THEY'VE GOT  
18 WHAT THEY NEEDED. THIS ISN'T IS A CHILDISH PRANK OR  
19 A -- WHICH IS WHAT THE COURT INDICATED WOULD HAVE  
20 BEEN A VALID CONCERN. HE WENT THROUGH THE WHOLE  
21 LAUNDRY LIST OF WHAT WAS TAKEN. I DON'T EVEN SEE  
22 WHY THE NUMBER MATTERS.

23 THE COURT: WELL, WE DID HAVE REFERENCE TO A  
24 CERTAIN DOLLAR AMOUNT, DID WE NOT, IN REGARD TO  
25 CASH?

26 MR. CONN: ALL WE HAD IS \$1,000. WE'RE  
27 TALKING ABOUT -- IN THE LIST BURGLARY ALONE WE'RE  
28 TALKING ABOUT \$102,000; AND SO FAR -- AND SO WHAT WE

44150

1 HAVE IS \$1,000 WORTH OF CASH AND SOME JEWELRY IN A  
2 SUBSTANTIAL AMOUNT. WELL, SUBSTANTIAL IS RELEVANT.  
3 WHAT DOES THAT MEAN? \$500 WORTH OF JEWELRY OR  
4 \$1,000 WORTH OF JEWELRY. THE JURY MAY BE THINKING  
5 IT WAS A \$2,000 BURGLARY WHEN IT WAS A HUNDRED  
6 THOUSAND DOLLARS.

7 MS. ABRAMSON: WELL, THAT'S --

8 MR. CONN: I WOULD PROPOSE THAT IF NO  
9 AGREEMENT CAN BE REACHED CONCERNING THAT, THAT IN  
10 OUR REBUTTAL CASE WE SIMPLY BE PERMITTED TO CALL  
11 SOMEONE FROM THE LIST FAMILY AND FROM THE GINSBERG  
12 FAMILY.

13 MS. ABRAMSON: THE WHOLE POINT OF THIS IS  
14 THAT IT WAS -- IT'S COMING IN UNDER THE NOTION THAT  
15 THIS IS RELEVANT TO EXPLAIN THE RELATIONSHIP BETWEEN  
16 ERIK MENENDEZ AND HIS PARENTS. SO IT DOESN'T MAKE  
17 ANY DIFFERENCE WHAT THE AMOUNT OR VALUE OF THESE

18 PEOPLE'S JEWELRY WAS, SINCE THEY GOT IT ALL BACK  
19 ANYWAY; AND THERE'S NO WAY TO PROVE WHAT THE VALUE  
20 IS. WHAT ARE WE GOING TO DO, HAVE A CONTEST OVER  
21 THE JEWELRY? I MEAN, IT SEEMS TO ME THAT THAT IS A  
22 USELESS PURSUIT. IF COUNSEL WANTS TO LOOK IN THE  
23 BURGLARY REPORTS THEY'LL SEE THAT A THOUSAND DOLLARS  
24 IS ACCURATE AS TO WHAT KIND OF CASH WAS IN THE SAFE  
25 AS TO THE LIST HOME.  
26         AND AS FAR AS THE VALUE OF THE JEWELRY  
27 IS CONCERNED, THERE'S NO WAY TO LITIGATE THAT NOW.  
28 BUT I DON'T SEE WHY IT MATTERS. MY CLIENT SAID

44151

1 SUBSTANTIAL. HE TESTIFIED TO SPECIFIC ITEMS TAKEN  
2 FROM THE GINSBERG HOME: SILVERWARE, CHINA, PLATES,  
3 SOLO -- I MEAN, ALL THOSE THINGS, WHICH I THINK  
4 IMPRESSES THE JURY THAT IT WAS A SUBSTANTIAL  
5 BURGLARY.  
6         THE FACT OF THE MATTER IS THE LIST  
7 BURGLARY WAS -- STARTED OUT AS SOMETHING OF A PRANK,  
8 AND, THEREFORE, WAS NOT AS INTENSIVE IN THE TYPE OF  
9 THINGS TAKEN. BUT BEYOND THAT, REMEMBER, ALL OF  
10 THIS IS SUPPOSED TO BE ADMITTED BECAUSE IT MEANS  
11 THAT MY CLIENT DID SOMETHING BAD AND THERE WAS  
12 CONFLICT WITH HIS FAMILY. THE AMOUNT SHOULDN'T MAKE

13 A DIFFERENCE ON THAT.

14 MR. GESSLER: I JOIN IN THAT ON BEHALF OF  
15 LYLE MENENDEZ, YOUR HONOR, AS TO THE BURGLARY  
16 ADMITTED AS TO HIM; AND FOR THE SAME PURPOSE, THAT  
17 IT WAS TO SHOW THE RELATIONSHIP BETWEEN HIM AND HIS  
18 PARENTS. THE ESSENCE OF THAT IS SHOWN IN THE  
19 DR. OZIEL TAPE OF DECEMBER 11TH IN THE TWO COMMENTS  
20 MADE ABOUT THAT PARTICULAR CALABASAS INCIDENT, AS IT  
21 IS CALLED, AND THE REACTION THAT THEIR FATHER AND  
22 MOTHER HAD CONCERNING IT. IT REALLY MAKES NO  
23 DIFFERENCE WHAT THE AMOUNT OF MONEY TAKEN WAS. WE  
24 KNOW THE REACTION OF THE PARENTS AND THAT WAS THE  
25 LIMITED VALUE THE EVIDENCE WAS GIVEN COMING IN.

26 SO IT WOULD SEEM THAT THE AMOUNT OF THE  
27 BURGLARY IS SIMPLY NON-RELEVANT TO THE RELATIONSHIP  
28 BETWEEN THE YOUNG MEN AND THEIR PARENTS. AND IF IT

44152

1 HAS ANY RELEVANCE AT ALL, IT WOULD SEEM TO BE  
2 SUBSTANTIALLY OUTWEIGHED BY ITS PREJUDICIAL VALUE  
3 HERE. THE PREJUDICE OUTWEIGHS THE PROBATIVE VALUE.  
4 THE PREJUDICE BEING JUST HOW MUCH MONEY THEY TOOK,  
5 WHICH DOESN'T REALLY ADD TO THE RELATIONSHIP BETWEEN  
6 THEM AND THEIR PARENTS.

7 MS. ABRAMSON: I THINK THE MORE -- FRANKLY,

8 THE WAY TO CUT THROUGH ALL THIS, THE MORE  
9 SIGNIFICANT NUMBER, IF THERE IS A SIGNIFICANT  
10 NUMBER, IS THE AMOUNT OF RESTITUTION, NOT THE AMOUNT  
11 OF --

12 THE COURT: WELL, I WAS GOING TO ASK IF  
13 SOMEONE KNOWS HOW MUCH RESTITUTION -- THAT'S NOT THE  
14 SIGNIFICANT ISSUE, BUT IS AN ISSUE, SINCE THE FATHER  
15 HAD TO PAY THAT BACK.

16 ANYONE KNOW HOW MUCH THE RESTITUTION  
17 WAS?

18 MS. ABRAMSON: WE DO.

19 THE COURT: HOW MUCH?

20 MS. ABRAMSON: I'LL BE WILLING TO SHARE IF  
21 THE PEOPLE WOULD TRADE THAT NUMBER FOR THESE OTHER  
22 NUMBERS AND STOP THIS ARGUMENT.

23 ACCORDING TO MY CLIENT IT WAS ABOUT  
24 \$12,000 -- ACCORDING TO LYLE MENENDEZ'  
25 UNDERSTANDING.

26 THE COURT: ANYWAY, LET'S HEAR THE PEOPLE'S  
27 RESPONSE.

28 MS. ABRAMSON: I THINK I CAN FIND AN ACTUAL

44153

1 NUMBER IN A FILE MR. CHALEFF TURNED OVER TO ME. HE  
2 HANDLED THE NEGOTIATION.

3 THE COURT: OKAY.

4 MR. CONN: I THINK THAT COUNSEL'S OVERLOOKING  
5 THE REAL ISSUE HERE.

6 THE REAL ISSUE HERE IS SUPPOSED TO BE  
7 THE MATTER IN WHICH THIS MAY HAVE AFFECTED THE  
8 RELATIONSHIP AND THE MATTER DEPENDS UPON THE NATURE  
9 OF THE ALLEGATION AND WHAT WAS THE APPARENT LOSS.

10 COUNSEL IS -- IS ARGUING THAT THE  
11 ULTIMATE ISSUE IS THE TRUE VALUE OF THE JEWELRY.  
12 THAT'S REALLY NOT THE ULTIMATE ISSUE. THE ULTIMATE  
13 ISSUE HERE IS THAT THERE WAS AN ALLEGATION AGAINST  
14 THE DEFENDANT THAT THE DEFENDANT HAD BEEN INVOLVED  
15 IN A BURGLARY WHICH, AS FAR AS THE LIST CASE IS  
16 CONCERNED, INVOLVED THE LOSS IN EXCESS OF \$100,000.  
17 THAT IS THE FACT. AND THAT IS WHAT JOSE MENENDEZ  
18 APPARENTLY KNEW. THAT IS WHAT IS INDICATED IN THE  
19 POLICE REPORT AND THAT IS WHAT WOULD HAVE AFFECTED  
20 THE RELATIONSHIP, THE BELIEF AND THE UNDERSTANDING  
21 THAT THIS DEFENDANT WAS INVOLVED IN A BURGLARY IN  
22 WHICH THE LOSS WAS IN EXCESS OF A HUNDRED THOUSAND  
23 DOLLARS. SO WHETHER THAT WAS AN INFLATED AMOUNT OR  
24 NOT, THAT COULD ALWAYS BE ARGUED. YOU KNOW, THERE'S  
25 NOTHING TO PRECLUDE COUNSEL FROM ARGUING THAT THAT  
26 WAS AN INFLATED VALUE, AND PERHAPS AN ASTUTE  
27 BUSINESSMAN SUCH AS JOSE MENENDEZ WOULD HAVE KNOWN  
28 THAT IT WAS AN INFLATED VALUE. ALL OF THOSE ARE

1 VALID ARGUMENTS THAT CAN BE MADE.

2 THE BOTTOM LINE IS THIS IS WHAT WAS  
3 APPARENT. THIS IS THE NATURE OF THE ALLEGATION AND  
4 THAT IS WHAT AFFECTED THE STATE OF MIND. SO I THINK  
5 THAT THAT VALUE SHOULD COME IN WHETHER OR NOT IT WAS  
6 INFLATED AND COUNSEL CAN ARGUE TO THE CONTRARY.  
7 WE'RE NOT ARGUING IT FOR THE TRUTH. WE'RE NOT  
8 ARGUING THAT THE ACTUAL LOSS IN THIS CASE WAS A  
9 HUNDRED THOUSAND DOLLARS. AND PERHAPS IT CAN EVEN  
10 COME IN WITH A LIMITING INSTRUCTION TO THAT EFFECT,  
11 THAT IT IS NOT BEING OFFERED TO SHOW THAT THE TRUE  
12 LOSS WAS A HUNDRED THOUSAND DOLLARS, ONLY THAT THAT  
13 WAS THE ALLEGATION IN THIS CASE, AN ALLEGATION TO  
14 WHICH THE DEFENDANTS ULTIMATELY PLED GUILTY.

15 MS. ABRAMSON: WELL, FIRST OF ALL, THAT HAS --  
16 IS SO RIFE WITH SPECULATION IT SHOWS WHY, FRANKLY,  
17 YOUR HONOR, IN SPITE OF THE COURT'S  
18 RULINGS -- I'M NOT TRYING TO BE CONTRARY TODAY. I  
19 NEVER -- I STILL DON'T UNDERSTAND HOW THIS EVIDENCE  
20 IS SUPPOSED TO SOMEHOW TELL US WHAT PEOPLE WERE  
21 THINKING, WHETHER IT'S MR. AND MRS. MENENDEZ OR, FOR  
22 THAT MATTER, OUR CLIENTS AT THE TIME.

23 AND HERE IS THE PROSECUTION OFFERING A  
24 PURELY SPECULATIVE ARGUMENT, THAT IT MADE A  
25 DIFFERENCE TO MR. MENENDEZ, THAT THE ALLEGATION WAS



26 100,000 RATHER THAN 60,000 OR 50,000 OR WHATEVER  
27 ELSE IT COULD HAVE BEEN. AND THE PEOPLE HAVE  
28 ABSOLUTELY NO EVIDENCE WHATSOEVER TO SHOW HOW

44155

1 MR. MENENDEZ REACTED TO THIS, OTHER THAN INFORMATION  
2 THAT CAME FROM THE DEFENDANTS TO BEGIN WITH, BECAUSE  
3 THE FAMILY NEVER TOLD ANYONE ABOUT THIS. THIS WAS  
4 PART OF THEIR SECRECY AND THEIR PRIVACY. THEY DON'T  
5 HAVE ANY EVIDENCE THAT IT MATTERED TO MR. MENENDEZ  
6 THAT IT WAS 100,000 OR 200,000 OR A MILLION. ALL  
7 WE -- AND YET WE'RE SUPPOSED TO DRAW SPECULATIVE  
8 INFERENCES THAT BECAUSE IT WAS MORE MONEY, WHAT? HE  
9 WAS MADDER WITH HIS SONS OR HE DISAPPROVED OF THEM  
10 MORE OR HE THOUGHT THEY WERE EVEN STUPIDER FOR NOT  
11 HAVING GOTTEN AWAY IT OR WHAT? IT'S PURELY  
12 SPECULATIVE. THAT'S WHY THE ACTUAL AMOUNT DOESN'T  
13 MEAN ANYTHING.

14       NOW, IF AN AMOUNT MIGHT HAVE MEANING IT  
15 MIGHT BE THE AMOUNT HE HAD TO FORK OVER. IT SEEMS  
16 TO ME THAT THAT MIGHT BE. IT'S SPECULATIVE, BUT  
17 THAT MIGHT HAVE MORE PROBATIVE VALUE, WHAT HE HAD TO  
18 ACTUALLY PAY OUT OF POCKET.

19       AND THE OTHER REASON THAT THIS  
20 SUPPOSEDLY IS RELEVANT, THE BURGLARY EVIDENCE, IS

21 BECAUSE IT'S WHAT LED THEM TO GO SEE DR. OZIEL, AND  
22 THAT DOESN'T DEPEND ON A DOLLAR AMOUNT EITHER. BUT  
23 WE'RE OFF IN SPECULATION LAND. THEY DON'T HAVE ANY  
24 WITNESSES TO SAY -- THEY DON'T EVEN KNOW HOW THE  
25 BURGLARY INFORMATION UNFOLDED. THEY DON'T KNOW THAT  
26 MR. MENENDEZ EVEN KNEW WHAT THOSE NUMBERS WERE.  
27 THEY DON'T KNOW WHETHER HE HAD COPIES OF THE POLICE  
28 REPORT. AND THERE'S NO REASON TO BELIEVE HE DID.

44156

1 HE HIRED A LAWYER. THE LAWYER HAD THE POLICE  
2 REPORTS. THE LAWYER MAY HAVE GONE OVER WHAT THESE  
3 AMOUNTS WERE. AND IT'S THE LAWYER WHO WOULD HAVE  
4 TOLD MR. MENENDEZ -- AND I KNOW, AS AN OFFER OF  
5 PROOF, THAT THE LAWYER WAS IN CONTACT WITH THE  
6 SHERIFF'S DEPARTMENT AND THE VICTIMS OF THE  
7 BURGLARIES TO FIGURE OUT WHAT THE ACTUAL LOSS WAS,  
8 AND IT'S THE LAWYER WHO NEGOTIATED RETURNING WHAT MY  
9 CLIENT'S ALREADY TESTIFIED WAS A U-HALL TRUCK WORTH  
10 OF MERCHANDIZE TO THE MALIBU STATION SO THE VICTIMS  
11 COULD GET IT. SO IT'S JUST THE WILDEST SPECULATION  
12 TO ASSUME THAT MR. MENENDEZ EVEN KNEW THE SPECIFIC  
13 ALLEGATION.

14 AND WHEN MY CLIENT AGREED TO 654  
15 PROBATION IN JUVENILE COURT, HE WAS NOT RESPONDING

16 TO A PETITION THAT LAID OUT THE DOLLAR AMOUNT AS  
17 MOST BURGLARY PETITIONS DO. SO HE CAN'T SAY THAT MY  
18 CLIENT ADMITTED THAT THAT WAS THE AMOUNT THAT WAS  
19 TAKEN BECAUSE HE DIDN'T.

20 MR. GESSLER: FURTHER, ON BEHALF OF LYLE  
21 MENENDEZ, YOUR HONOR, DEFENDANTS DID NOT PLEAD  
22 GUILTY TO SOMETHING. HE HAS NOT ADMITTED THE AMOUNT  
23 OF LOSS ON ANYTHING THAT HE TOOK PART IN.

24 AND, AGAIN, I AGREE WITH MS. ABRAMSON,  
25 IF THERE IS ANY PROBATIVE VALUE TO AN AMOUNT HERE,  
26 IT WOULD BE THE OUT-OF-POCKET LOSS TO MR. MENENDEZ  
27 AS TO HOW MAD HE WOULD GET. I MEAN, HE MIGHT BE  
28 MADDER IF YOU PAY OUT \$12,000 THAN IF YOU PAY OUT

44157

1 \$1,000, BUT YOU MIGHT BE HOPPING MAD IF YOU PAY  
2 \$100,000. BUT THE REAL THING THAT MAKES YOU MAD IS  
3 HOW DEEP YOU HAVE TO DIG. THAT MIGHT HAVE SOME  
4 PROBATIVE VALUE. I DON'T SEE THAT ANYTHING ELSE  
5 DOES. AND IT WOULD BE, AGAIN, OUTWEIGHED BY THE  
6 PREJUDICE.

7 THE COURT: ALL RIGHT. WE HAD SIMILAR  
8 DISCUSSIONS, PERHAPS NOT AS PROTRACTED, YESTERDAY ON  
9 THE SAME SUBJECT. THE AMOUNT WILL NEVER REALLY BE  
10 DETERMINED. I AGREE WITH THE PROSECUTION THAT THERE

11 IS A REPORTED AMOUNT AND PERHAPS THAT AMOUNT WAS  
12 COMMUNICATED TO MR. MENENDEZ, BUT WE REALLY DON'T  
13 KNOW THAT, AS TO THE AMOUNT THAT WAS IN THE POLICE  
14 REPORT. ALL WE KNOW IS THAT'S WHAT WAS IN THE  
15 POLICE REPORT, THE AMOUNT OF VALUE THAT THE VICTIMS  
16 PLACED ON THEIR LOSS.

17       WHAT I WOULD SUGGEST IS IF THE DEFENSE  
18 HAS SOME WAY OF VERIFYING THE AMOUNT OF RESTITUTION,  
19 SUCH AS A FILE THAT HAS SOME DOCUMENTATION  
20 REFLECTING THE AMOUNT OF RESTITUTION MADE BY  
21 MR. MENENDEZ, THAT THAT BE PRODUCED SO THAT AT THE  
22 VERY LEAST THAT AMOUNT CAN BE BROUGHT BEFORE THE  
23 JURY AND IT WOULD BE CLEAR, WHATEVER THAT AMOUNT IS,  
24 THAT THERE WAS A SUBSTANTIAL LOSS ABOVE THAT WHICH  
25 WAS DEALT WITH RETURN OF PROPERTY, AND THE PROPERTY  
26 HAS BEEN IDENTIFIED, WHATEVER THE PROPERTY IS.

27       MS. ABRAMSON: WELL, THERE'S ANOTHER WAY, OF  
28 COURSE. I MEAN, I'LL LOOK BACK AT MR. CHALEFF'S --

44158

1 WHAT I HAVE IS OBVIOUSLY A PRIVILEGED FILE, BUT I'M  
2 WILLING TO GO INTO IT TO RESOLVE THIS ISSUE. I'LL  
3 LOOK BACK THROUGH MR. CHALEFF'S FILE. HE MAY  
4 ACTUALLY HAVE A COPY OF CHECKS IN THERE, AND HE MAY  
5 IF NOT -- I THINK HE MIGHT HAVE MADE THE PAYMENT FROM

6 HIS TRUST ACCOUNT. HE MAY HAVE THOSE RECORDS. THE  
7 OTHER WAY, OF COURSE, TO FIND OUT IS FOR THE  
8 PROSECUTION TO CALL THEM UP AND ASK THEM.

9 THE COURT: OBVIOUSLY.

10 MS. ABRAMSON: SINCE THEY GOT THE MONEY.

11 THE COURT: OBVIOUSLY.

12 MS. ABRAMSON: BUT I'LL LOOK THROUGH THE FILE

13 TO SEE IF I HAVE THE DOCUMENTATION THERE OR IF

14 MR. CHALEFF CAN PROVIDE ME WITH IT BY MONDAY AND

15 THEN WE'LL AT LEAST HAVE THAT NUMBER.

16 THE COURT: ALL RIGHT. I WOULD LIKE TO GET

17 THAT ISSUE RESOLVED. IT'S CONSUMED MUCH TOO MUCH

18 TIME FOR THE VERY LITTLE VALUE IT HAS. SO OTHER

19 THAN HEARING WHAT THE AMOUNT IS, I DON'T ANTICIPATE

20 HAVING MUCH MORE CONVERSATION ON THE SUBJECT.

21 ANYTHING ELSE NOW?

22 ANYTHING? ANY ISSUES?

23 ALL RIGHT. SO ON MONDAY THE PROSECUTION

24 IS GOING TO FILE YOUR POSITION ON -- OR ANY CASE

25 AUTHORITY DEALING WITH QUESTIONING OF THE DEFENDANTS

26 ABOUT STATEMENTS HE MADE TO CIGNARELLI AND OZIEL

27 WITHOUT YOUR ULTIMATELY CALLING CIGNARELLI OR

28 OZIEL.

1 THE DEFENSE INDICATED IT WILL FILE A  
2 BRIEF ON MONDAY DEALING WITH THE PROPOSAL OF ERIK  
3 MENENDEZ TO PRESENT THE TESTIMONY OF LYLE MENENDEZ  
4 FROM THE FIRST TRIAL, AND AUTHORITY FOR THAT  
5 PROPOSITION, SOMETHING THAT THE DEFENSE BROUGHT UP  
6 THIS MORNING IS A POSSIBLE EVENT.

7 AND THE COURT INDICATED THAT IT WOULD  
8 EXPECT THE PROSECUTION TO BE PREPARED WITH A  
9 RESPONSE AUTHORITY DEALING WITH THE GENERAL SUBJECT  
10 AND THE SPECIFICS OF BOTH THE ADMISSIBILITY OF THIS  
11 EVIDENCE AND THE NATURE OF ITS PRESENTATION, IF IT  
12 IS ADMISSIBLE.

13 THERE WAS SOME DISCUSSION ABOUT THE  
14 DEFENSE WANTING TO LIMIT THE TESTIMONY OF LYLE  
15 MENENDEZ, NOT OFFERING ALL OF IT, ONLY PORTIONS THAT  
16 DON'T RELATE TO -- OR EXCLUDING MATTERS THAT RELATE  
17 TO DR. OZIEL THAT RELATE TO OZIEL'S TESTIMONY THAT  
18 HAS NOT BEEN PRESENTED TO THIS JURY, AND WHETHER OR  
19 NOT SUCH CAN PROPERLY OCCUR, EDITING OUT PORTIONS OF  
20 THE TESTIMONY FROM THE FIRST PROCEEDING.

21 SO THOSE THINGS SHOULD BE PRESENTED TO  
22 THE COURT ON MONDAY, SINCE THEY HAVE SOME IMPACT ON  
23 SCHEDULING.

24 MS. ABRAMSON: ALSO, YOUR HONOR, THE  
25 IMPEACHMENT ISSUES, WHETHER IF WE WERE TO OFFER HIS  
26 TESTIMONY IN WHOLE OR IN PART, THE ALLOWABLE SCOPE  
27 OF IMPEACHMENT WHICH WE --

28 THE COURT: WELL, YOU WERE GOING TO BRIEF

1 THAT.

2 MS. ABRAMSON: WE ARE GOING TO BRIEF THAT,  
3 BUT THE PEOPLE MAY WANT TO BE PREPARED TO MAKE THEIR  
4 ARGUMENTS.

5 THE COURT: WE HAD SOME DISCUSSION ABOUT THAT  
6 SCOPE OF 1202 OF THE EVIDENCE CODE, IMPEACHMENT OF  
7 THE DECLARANT WHO DOES NOT TESTIFY BEFORE THE JURY  
8 AND HAS TESTIFIED IN FORMER PROCEEDINGS.

9 OKAY. ANYTHING ELSE NOW?

10 MR. LEVIN: IS THE COURT GOING TO ALLOW  
11 DEFENSE COUNSEL TO SEE THE SHOTGUN?

12 THE COURT: YES.

13 MS. NAJERA: YOUR HONOR, QUESTION AS TO THE  
14 BRIEF CONCERNING LYLE MENENDEZ' TAPED TESTIMONY, OUR  
15 UNDERSTANDING IS THAT THE DEFENSE WILL BE FILING ONE  
16 ON MONDAY. IS THE COURT EXPECTING US TO HAVE A  
17 RESPONSE ALSO FILED BY MONDAY --

18 THE COURT: NO. I THINK YOU'RE ENTITLED TO  
19 SEE WHAT THEY HAVE, BUT YOU CAN ANTICIPATE AND DO  
20 YOUR OWN INDEPENDENT RESEARCH ON THE SUBJECT AND BE  
21 READY TO GET ONE IN SHORT TERM. YOU DON'T HAVE TO  
22 WAIT A WEEK.

23 MS. NAJERA: I'M SAYING WE WON'T HAVE ONE  
24 READY BY MONDAY.

25 THE COURT: NO. I DON'T EXPECT YOU TO HAVE  
26 ONE UNTIL THEY FILE THEIRS. BUT I THINK YOU COULD  
27 CERTAINLY GET YOUR RESEARCH DONE AND GET READY TO  
28 GET IT QUICKLY.

44161

1 ALL RIGHT. WE'LL BE IN RECESS THEN  
2 UNTIL MONDAY AT 8:30.  
3 (AT 2:35 P.M., AN ADJOURNMENT  
4 WAS TAKEN UNTIL MONDAY,  
5 DECEMBER 18, 1995, AT 8:30 A.M.)