

1 VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 1, 1996

2 9:30 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE IN

9 COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

10 GOOD MORNING.

11 WE HAVE SOME MATTERS TO DEAL WITH THAT WERE

12 LEFT OVER FROM YESTERDAY AFTERNOON.

13 PEOPLE SUBMITTED A TRANSCRIPT -- REDACTED

14 TRANSCRIPT OF THE TAPE RECORDING, AND THERE WERE SOME

15 OTHER ISSUES AS WELL. ONE OF THEM HAD TO DO WITH THE

16 REFERENCE IN THE DEFENDANT, ERIK MENENDEZ', TESTIMONY

17 ABOUT COMPUTERS AND HIS BROTHER'S AWARENESS OR

18 PARTICIPATION IN COMPUTERS.

19 ANYBODY -- ANY INFORMATION ON THAT?

20 MR. GESSLER: YES, YOUR HONOR.

21 I HAVE CHECKED THE TRANSCRIPT ON THE

22 COMPUTER ASPECT, AND GETTING INTO ERIK'S TESTIMONY --

23 ERIK MENENDEZ' TESTIMONY REGARDING ANY EFFORTS LYLE

24 MENENDEZ MADE TO HAVE SOMEBODY COME AND WIPE THE

25 MACHINE.

26 THERE WERE 10 PAGES OF TESTIMONY THAT I

27 THINK BASICALLY COVER THAT, OR ELEVEN PAGES, 43,809

28 THROUGH 43,819, AND THAT'S IN VOLUME 262.

1 AND AT THIS TIME HE WAS ON THE STAND, AND
2 HIS COUNSEL WAS REPEATEDLY TRYING TO GET ANY INFORMATION
3 FROM HIM CONCERNING WHAT HE KNEW FROM LYLE OR ABOUT
4 LYLE, AND THE -- WHAT THAT WAS ALL ABOUT; THE INCIDENT
5 WITH THE COMPUTER.

6 AND OBJECTIONS BY THE PROSECUTION WERE
7 REPEATEDLY SUSTAINED SO THAT THEY, AT THAT TIME,
8 PREVENTED ANY EFFORT BY ERIK MENENDEZ TO EXPLAIN WHAT HE
9 KNEW ABOUT THAT SITUATION OR THOUGHT HE KNEW.

10 THERE WERE NO QUESTIONS BY THE DISTRICT
11 ATTORNEY ON CROSS-EXAMINATION OF ERIK MENENDEZ ASKING
12 HIM: "DID YOU TELL CRAIG CIGNARELLI AT SOME TIME THAT
13 YOUR BROTHER HAD THE WILL WIPED OFF THE COMPUTER?" OR
14 ANYTHING LIKE THAT. THERE WAS NO CONVERSATION GONE INTO
15 WHATSOEVER ON CROSS-EXAMINATION.

16 I THINK THAT SECTION 770 OF THE EVIDENCE
17 CODE APPLIES. THIS IS ONE IN WHICH BOTH THINGS HAVE
18 OCCURRED. THE WITNESS WAS NOT ASKED THE QUESTION IN
19 ORDER TO GIVE AN ANSWER AND EXPLAIN IT; THAT IS, DID HE
20 TELL CRAIG CIGNARELLI THIS, TO LAY THE FOUNDATION.

21 AND IN FACT HE WAS ALSO PREVENTED FROM
22 EXPLAINING ANY OF THIS INFORMATION THAT HE KNEW OR WHAT
23 HE MIGHT HAVE SAID AFFIRMATIVELY -- NOT JUST NOT GIVEN
24 THE OPPORTUNITY, BUT AFFIRMATIVELY PREVENTED BY THE
25 DISTRICT ATTORNEY FROM EXPLAINING WHAT HE BELIEVED, WHAT

26 INFORMATION HE HAD, WHOM HE GOT IT FROM, AND WHY HE
27 MIGHT HAVE FAILED TO CONVEY IT.
28 SO I FEEL, BECAUSE OF 770 OF THE EVIDENCE

-16549

1 CODE, THAT THIS AREA SHOULD NOT BE GONE INTO BY CRAIG
2 CIGNARELLI. IT IS PARTICULARLY PREJUDICIAL TO LYLE
3 MENENDEZ, WHO WAS NOT THIS DECLARANT TO CRAIG
4 CIGNARELLI.

5 WE CANNOT RECALL ERIK MENENDEZ NOW TO
6 EXPLAIN THAT, AND IT WOULD SEEM AWFULLY WEAK NOW TO A
7 JURY TO RECALL SOMEBODY TO EXPLAIN SOMETHING WHICH, IF
8 HE HAD THE OPPORTUNITY, HE WOULD HAVE EXPLAINED THE
9 FIRST TIME OUT ANYWAY.

10 BUT BE THAT AS IT MAY, 770 NOT ONLY HAS NOT
11 BEEN COMPLIED WITH, IT HAS BEEN FRUSTRATED BY THE
12 EFFORTS MADE BY THE DISTRICT ATTORNEY, AND I DON'T THINK
13 THEREFORE THEY CAN NOW TAKE ADVANTAGE OF THE QUESTIONS
14 THEY ASKED, AND UNDER 770 WHEN ERIK MENENDEZ WAS ON THE
15 STAND, TO BRING IN A STATEMENT HE PURPORTEDLY MADE TO
16 ANOTHER PERSON TO BE PURPORTEDLY USED AGAINST LYLE
17 MENENDEZ.

18 IT IS A VIOLATION UNDER THE CONSTITUTION.
19 IT IS ALSO A VIOLATION OF THE STATE EVIDENCE CODE, OF
20 THE USE OF SECTION 770, AND THE 8TH AND 14TH AMENDMENTS,
21 AND AT THE 6TH AMENDMENT, IN WHICH THE STATE SHOULD FOLLOW

22 ITS OWN RULES, MUST FOLLOW ITS OWN EVIDENTIARY RULES IN
23 A CAPITAL CASE.
24 MR. LEVIN: YOUR HONOR, IF I MIGHT ADD, I DID NOT
25 ASK ERIK MENENDEZ ONE QUESTION ON DIRECT EXAMINATION
26 ABOUT WHETHER OR NOT CRAIG CIGNARELLI WAS PRESENT AT THE
27 TIME THAT THE HAYMANS WERE AT THE HOUSE, DID NOT GO INTO
28 THAT AREA AT ALL.

-16548

1 THERE WAS NO CROSS-EXAMINATION BY MR. CONN
2 ON THE ENTIRE AREA, AND THAT ENTIRE AREA SHOULD NOT BE
3 ALLOWED AT THIS TIME TO GO -- TO BE ALLOWED TO GO INTO
4 WITH THIS WITNESS, IN THAT IT'S NOT IMPEACHING TO
5 ANYTHING THAT WAS DONE DURING THE CASE-IN-CHIEF.
6 AND ADDITIONALLY, IF THE COURT SHOULD ALLOW
7 IT, FOR WHATEVER REASON, WE'RE ASKING YOU TO CONSIDER
8 352 PROBLEMS, IN THAT IN ORDER TO IMPEACH CRAIG
9 CIGNARELLI WE WOULD HAVE TO CALL A DOZEN OR MORE
10 WITNESSES TO COME IN TO TESTIFY -- WELL, PERHAPS SIX OR
11 EIGHT WITNESSES, INCLUDING CASEY WHELAN, HIS MOTHER, HIS
12 SISTER, THE HAYMANS, ALL THE SECURITY GUARDS THAT WERE
13 PRESENT, AND THIS IS -- THIS WOULD BE VERY
14 TIME-CONSUMING, VERY UNNECESSARY AND THE PEOPLE JUST --
15 FOR THE FIRST REASON IS REALLY WHY
16 MR. CIGNARELLI SHOULD NOT BE ALLOWED TO GO INTO THIS AT
17 ALL.

18 THE COURT: OKAY. AND WHAT IS THE PEOPLE'S

19 RESPONSE?

20 MS. NAJERA: YOUR HONOR, MISS TOWERY TOLD ME THIS

21 MORNING ABOUT THESE SECTIONS, AND WE HAD BEEN LOOKING

22 FOR SOMETHING ABOUT THE WILL IN THE COMPUTER, AND I

23 BELIEVE THAT THAT IS THE SITUATION THAT TOOK PLACE IN

24 THE COURSE OF THIS TRIAL.

25 AND AFTER LISTENING TO MR. GESSLER, MY

26 INCLINATION WAS TO STATE THAT WE WOULDN'T GO INTO THAT,

27 AND I WAS GOING TO INTERRUPT MR. LEVIN, BUT I DIDN'T

28 WANT TO.

-16547

1 SO THAT'S OUR POSITION.

2 MS. ABRAMSON: HOW POLITE. OKAY.

3 MS. NAJERA: PERHAPS NEXT TIME I WILL, BUT --

4 MR. LEVIN: WELL, I WILL LET THE PROSECUTION

5 INTERRUPT ME ANY TIME THEY'RE GOING TO SAVE COURT TIME.

6 AND ALSO I WOULD RATHER NOT HAVE TO GO ON THE RECORD FOR

7 THESE THINGS.

8 THE COURT: WELL, THEN, YOU DON'T INTEND TO

9 INTRODUCE ANY EVIDENCE REGARDING THE HAYMANS OR

10 COMPUTERS?

11 MS. NAJERA: THAT'S CORRECT, YOUR HONOR. RIGHT.

12 THE COURT: OKAY. THAT'S ONE ISSUE.

13 ANOTHER ONE HAD TO DO WITH JUST SKIPPING

14 AROUND HERE, OBJECTIONS OR OBSERVATIONS BY MR. GESSLER
15 AND MR. LEVIN YESTERDAY REGARDING LIMITATIONS ON THE USE
16 OF PRIOR INCONSISTENT STATEMENTS OF MR. CIGNARELLI, IF
17 THE DEFENSE ELECTS TO IMPEACH HIM.

18 DOES ANYONE HAVE ANY FURTHER THOUGHTS ON
19 THAT SUBJECT?

20 MR. GESSLER: NO. I THINK WE STATED IT
21 YESTERDAY, THE BEST I CAN, ON THE CONSTITUTIONAL
22 GROUNDS, YOUR HONOR, AND THE CHOICE AS TO WHETHER TO PUT
23 IT ON FOR ALL PURPOSES.

24 THE COURT: WELL, IF YOU DON'T HAVE ANYTHING
25 ELSE --

26 MR. GESSLER: THE COURT IS AWARE OF THE ARGUMENT
27 THEN.

28 THE COURT: LET ME SAY THIS:

-16546

1 CLEARLY WHEN EVIDENCE IS OFFERED BY A
2 PARTY, THAT PARTY CAN LIMIT -- ASK THAT THE USE OF THAT
3 EVIDENCE BE LIMITED FOR A PARTICULAR PURPOSE, AND
4 NORMALLY THE COURT WOULD AGREE WITH THAT LIMITATION.

5 THESE ARE STATEMENTS OFFERED -- I ASSUME IF
6 THEY ARE OFFERED -- AS PRIOR INCONSISTENT STATEMENTS OF
7 THE WITNESS, MR. CIGNARELLI, NOT OF THE DEFENDANT, ERIK
8 MENENDEZ.

9 WE HAVE TWO LEVELS OF HEARSAY HERE. THE

10 FIRST IS DID MR. CIGNARELLI MAKE THESE STATEMENTS
11 OUTSIDE OF COURT, YES OR NO? AND THEN WHAT USE WOULD BE
12 MADE OF THEM IF HE ACKNOWLEDGES THAT HE DID?

13 SO MY VIEW IS, IF THE DEFENSE ELECTS TO
14 CROSS-EXAMINE HIM ON THESE SUBJECTS AND LIMIT THE USE OF
15 PRIOR INCONSISTENT STATEMENTS FOR THE PURPOSE OF
16 IMPEACHMENT, YOU CAN DO THAT.

17 HOWEVER, BY THE SAME TOKEN, IF THE WITNESS
18 ACKNOWLEDGES THAT HE MADE SUCH A PRIOR STATEMENT, THERE
19 IS NOTHING TO PREVENT THE PROSECUTION, THEREAFTER, ON
20 REDIRECT EXAMINATION FROM ASKING THE WITNESS THE SAME
21 QUESTION, AND SEEKING TO IMPEACH THAT WITNESS WITH THAT
22 PRIOR INCONSISTENT STATEMENT, AND IT BEING USED FOR ALL
23 PURPOSES.

24 THERE IS NOTHING THAT WOULD PREVENT THEM
25 FROM DOING THAT.

26 MR. GESSLER: IF THEY WANT TO GO WITH TWO
27 VERSIONS OF THE TRUTH AND LET THE JURY TAKE A VERSION
28 HERE, TAKE A VERSION THERE, UNDER 1235, WHICH I STILL

-16545

1 DON'T AGREE WITH, BUT I IMAGINE THEY COULD DO.

2 BUT MY POINT IS THAT THE DEFENSE SHOULD BE
3 ALLOWED TO -- AND THAT IS, AS YOU SAID, YOU ASK THESE
4 QUESTIONS FOR IMPEACHMENT ONLY. IN OTHER WORDS,
5 MR. LEVIN IN ASKING THESE QUESTIONS CONCERNING --

6 THE COURT: LET ME PUT IT OFF. WHAT I WILL DO IS

7 JUST SAY THIS:

8 IN A NON-ARGUMENTATIVE FASHION, IN A
9 NON-EDITORIALIZED FASHION, MR. LEVIN OR YOU, WHOEVER IT
10 IS THAT IS DOING THE CROSS-EXAMINATION, CAN INDICATE
11 THAT THIS QUESTION AND THE WITNESS' ANSWER TO IT IS NOT
12 OFFERED FOR THE TRUTH OF THE MATTER, JUST FOR THE
13 PURPOSE OF IMPEACHMENT.

14 MR. GESSLER: THAT'S EXACTLY IT.

15 THE COURT: AND WOULD BE RECEIVED FOR THAT
16 PURPOSE.

17 HOWEVER, AS I SAID, IF THE WITNESS
18 ACKNOWLEDGES THAT HE DID MAKE THAT PRIOR STATEMENT, THAT
19 DOES NOT PREVENT THE PROSECUTION FROM GOING BACK OVER
20 THE SAME TERRITORY AND USING IT UNDER CALIFORNIA VERSUS
21 GREEN.

22 MR. GESSLER: WELL, THAT'S A TACTIC IF THEY ELECT
23 TO CHOOSE IT. I AM ONLY CONCERNED RIGHT NOW WITH THE
24 DEFENSE TACTICS, AND WHAT I HAVE CONTROL OVER, AND
25 MR. LEVIN HAS CONTROL OVER. ALL WE CAN DO IS WHAT WE
26 CAN DO, AND WHAT WE WANT TO DO IS LIMIT THOSE QUESTIONS
27 FOR THAT PURPOSE, FOR IMPEACHMENT ONLY.

28 THE COURT: OKAY. ALL RIGHT. THEN THAT'S HOW WE

2 DO THE PEOPLE WISH TO BE HEARD ON THAT ONE?

3 MS. NAJERA: NO, YOUR HONOR.

4 THE COURT: AS FAR AS THE PEOPLE'S OFFER OF
5 EVIDENCE THAT THE DEFENDANT MADE STATEMENTS TO
6 CIGNARELLI THAT HE WAS GOING TO BE AN ACTOR, OR WAS
7 INTERESTED IN BEING AN ACTOR OR A SCREENWRITER, THE
8 QUESTION I HAD YESTERDAY AFTERNOON WAS WHETHER THAT
9 WOULD BE INCONSISTENT TO THE TESTIMONY OF THE DEFENDANT
10 IN THIS PROCEEDING, AND I ASKED FOR A CITATION TO THE
11 TRANSCRIPT OF THE ACTUAL TESTIMONY.

12 MS. NAJERA: YOUR HONOR, I HAVE READ THE
13 TRANSCRIPT. I DON'T HAVE THE PAGE WITH ME, BUT
14 BASICALLY WHAT HE SAYS IS HE TOLD HIM HE WAS GOING TO BE
15 A LOT OF THINGS, AND ONE OF THOSE THINGS WAS AN ACTOR.

16 SO I DON'T BELIEVE IT WOULD BE IMPEACHMENT.

17 THE COURT: ALL RIGHT.

18 MS. ABRAMSON: THIS IS NICE.

19 THE COURT: REGARDING STATEMENTS MADE BY THE
20 DEFENDANT -- ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT
21 TO MR. CIGNARELLI ABOUT OTHER CONVERSATIONS -- OTHER
22 THINGS THAT WERE SAID THAT WEEKEND, SEPARATE AND APART
23 FROM THIS CONVERSATION THAT HE HAS TESTIFIED ABOUT THAT
24 "ALL GREAT LEADERS" -- THESE ARE QUOTES -- "ALL GREAT
25 LEADERS HAVE NO PARENTS," ET CETERA, AND WHATEVER THE
26 OTHER STATEMENTS WERE.

27 MS. ABRAMSON: NEEDED MONDAY TO TO SUCCEED IN
28 LIFE.

1 THE COURT: AND REFERENCE TO JOSE MENENDEZ DYING
2 BEING HIS FINAL LESSON, THINGS OF THAT NATURE, I DON'T
3 SEE HOW THOSE ARE INCRIMINATING OR IMPLICATING OF THE
4 CO-DEFENDANT. THESE ARE STATEMENTS MADE BY THE
5 DEFENDANT, ERIK MENENDEZ. THEY'RE NOT NECESSARILY
6 INCONSISTENT WITH ANY OF THE STATEMENTS MADE IN HIS
7 EXAMINATION THAT TENDS TO BE INCONSISTENT WITH HIS
8 SELF-DESCRIBED STATE OF MIND AFTER THESE EVENTS, AND IT
9 SEEMS TO ME THAT'S WHY THE PEOPLE WERE OFFERING THEM.

10 WHAT IS YOUR RESPONSE TO THAT, MR. LEVIN?

11 MR. LEVIN: WELL, YOUR HONOR, FIRST OF ALL, IT'S
12 NOT IMPEACHMENT. IT DOESN'T GO TO MOTIVE. THERE WAS
13 A -- WHERE THIS CAME OUT WAS DURING THE MARCH 7TH, 1990
14 INTERVIEW, WHICH WAS TAPE-RECORDED, WHEREIN DETECTIVE
15 EDMONDS ASKED THE QUESTION TO MR. CIGNARELLI; DID HE,
16 REFERRING TO ERIK MENENDEZ, SAY WHY THEY HAD DONE THE
17 MURDER?

18 "CIGNARELLI: NO."

19 THEN EDMONDS SAID: "DID HE AT ANY
20 TIME EXPLAIN WHY THEY DID IT, WHY HE DID
21 IT, WHY HE PARTICIPATED?

22 "CIGNARELLI. NOT -- NO. HE DIDN'T
23 REALLY. WHAT HE SAID WAS AFTER, ALL GREAT
24 LEADERS HAD NO PARENTS, AND HE GAVE
25 EXAMPLES, LIKE ALEXANDER THE GREAT AND
26 HITLER, UM, OR THEIR PARENTS HAD DIED, OR

27 THEY LEFT THEIR PARENTS, OR SOMETHING TO
28 THAT EXTENT."

-16542

1 AND THAT'S AT PAGE SIX OF THE TRANSCRIPT.

2 MS. NAJERA: THERE IS ANOTHER LINE TO THAT.

3 MR. LEVIN: "AND, UH, HE NEEDED MONEY."

4 THE POINT IS THAT, FIRST OF ALL, IT'S NOT
5 IMPEACHING. IT'S EXTREMELY VAGUE AND CONFUSING AND
6 MISLEADING. THE JURY COULD TAKE THIS AND DO ALL SORTS
7 OF IMAGINATIONS WITH THIS TYPE OF EVIDENCE.

8 MY CLIENT -- CRAIG CIGNARELLI INVOKING THE
9 NAME OF HITLER TO THE LIPS OF MY CLIENT, THAT'S
10 EXTREMELY PREJUDICIAL. IT DID NOT COME IN IN ANY
11 CONTEXT AT ALL THAT'S RELEVANT TO ANY OF THE ISSUES IN
12 THIS CASE, AND IT WAS IN DIRECT RESPONSE TO A -- TO A
13 QUESTION THAT REALLY DIDN'T HAVE ANYTHING TO DO WITH
14 MOTIVE.

15 THE COURT: AGAIN, WE'RE TALKING ABOUT WHAT HE
16 SAID, WHAT CIGNARELLI SAID TO SOMEONE IN RESPONSE TO A
17 QUESTION.

18 BUT WHAT I WANT TO FOCUS ON, AND WHAT I
19 ASKED YESTERDAY WAS WHAT IT IS THAT CIGNARELLI WILL
20 ACTUALLY TESTIFY ABOUT. I ASKED THE PROSECUTION TO PIN
21 DOWN PRECISELY WHAT IT WAS AND WHEN IT WAS THAT THESE
22 STATEMENTS WERE MADE.

23 MS. ABRAMSON: AND IN WHAT CONTEXT.

24 THE COURT: YES. ARE YOU PREPARED TO DO THAT?

25 MS. NAJERA: YES, YOUR HONOR.

26 I SPOKE TO MR. CIGNARELLI. HE TELLS ME

27 THAT THESE STATEMENTS ALL WERE MADE THE TWO DAYS THAT HE

28 SPENT WITH ERIK MENENDEZ IN SEPTEMBER OF 1989.

-16541

1 HE STATED THAT HE WOULD -- IF ALLOWED TO

2 TESTIFY, HE WOULD TESTIFY THAT ERIK MENENDEZ TOLD HIM

3 THAT ALL GREAT LEADERS HAD NO PARENTS. HE GAVE THE

4 EXAMPLES OF ALEXANDER AND HITLER, AND THAT ERIK NEEDED

5 MONEY TO SUCCEED IN WHAT HE WANTED TO DO IN LIFE, AND

6 THAT DYING WAS HIS FATHER'S FINAL LESSON TO HIM.

7 AND HE BELIEVED THAT ERIK MENENDEZ HAD TOLD

8 HIM -- AND I ASKED HIM THIS -- THAT THEY WOULD INHERIT

9 45-MILLION DOLLARS.

10 THAT WAS WHAT HE TELLS ME HE WILL TESTIFY

11 TO, AND I ASKED HIM ABOUT THESE PARTICULAR STATEMENTS IN

12 THIS TRANSCRIPT.

13 THE COURT: AND WHAT WAS THE NATURE OF THE

14 CONVERSATION THAT PRODUCED THESE STATEMENTS?

15 MS. NAJERA: THEY WERE JUST TALKING ABOUT -- HE

16 DIDN'T HAVE THE DETAILS OF WHAT WAS SAID BEFORE, WHAT

17 WAS SAID AFTER. THESE WERE JUST ALL CONVERSATIONS THAT

18 THEY WERE HAVING OVER THE COURSE OF THE WEEKEND ABOUT

19 THINGS THAT THEY WERE GOING TO DO, THINGS THAT --
20 AFTER -- THESE CONVERSATIONS TOOK PLACE AFTER THE
21 DEFENDANT TOLD HIM ABOUT THE MURDERS.
22 THE COURT: OKAY. WHEN AFTER?
23 MS. NAJERA: HE CANNOT TELL US. AND THE REASON
24 HE CAN'T TELL US WHEN EACH STATEMENT WAS MADE WAS HE
25 BASICALLY TALKED TO HIM THE WHOLE TIME HE WAS THERE.
26 FROM THE TIME HE GOT THERE UNTIL THE TIME HE LEFT, ALL
27 THEY DID WAS SIT AROUND AND TALK, AND THEY STAYED IN FOR
28 DINNER, SO --

-16540

1 THE COURT: AND WHAT IS THE RELEVANCE OF THIS?
2 MS. NAJERA: WELL, I THINK THAT IF THE DEFENDANT,
3 ERIK MENENDEZ, IS STATING THESE FACTS -- OR MAKING THESE
4 STATEMENTS TO HIM AFTER THE MURDERS, AND HE'S TELLING
5 HIM THINGS LIKE HE NEEDS MONEY TO SUCCEED IN LIFE AND
6 ALL OF THAT, THIS ALL GOES TO HIS STATE OF MIND AND WHAT
7 HE WAS THINKING ABOUT WHEN HE COMMITTED THE MURDERS, AND
8 AFTER THE MURDERS, AND WHAT HE THOUGHT HE WOULD GET FROM
9 THESE MURDERS.
10 HE TOLD CRAIG CIGNARELLI THAT HE THOUGHT HE
11 WAS GOING TO GET 80-MILLION DOLLARS. THIS GOES TO HIS
12 STATE OF MIND IF HE THOUGHT HIS FATHER HAD --
13 THE COURT: I THOUGHT YOU SAID 45-MILLION
14 DOLLARS.

15 MS. NAJERA: 45-MILLION DOLLARS EACH, AND HE
16 THOUGHT HIS FATHER HAD 80-MILLION DOLLARS IN A SWISS
17 BANK ACCOUNT.

18 SO I DON'T KNOW WHERE THE OTHER FIVE
19 MILLION CAME FROM, BUT APPARENTLY THIS WAS ERIK
20 MENENDEZ' STATE OF MIND.

21 MR. LEVIN: DON'T FORGET THE 50 MILLION DOLLARS
22 THAT JOSE MENENDEZ HAD FROM THE DRUG DEAL. THAT'S
23 130-MILLION.

24 THE COURT: WHAT ARE YOU TALKING ABOUT,
25 MR. LEVIN?

26 MR. LEVIN: WELL, MR. CIGNARELLI ALSO SAID THAT
27 MR. MENENDEZ WAS INVOLVED IN A 50 MILLION DOLLAR DRUG
28 DEAL, WHICH I SUPPOSE ERIK AND LYLE MENENDEZ MURDERED

-16539

1 THEIR PARENTS SO THAT THEY COULD KEEP THE PROCEEDS OF --
2 NOT ONLY TAKE OVER THE DRUG ORGANIZATION, BUT THEY ALSO
3 WANTED TO KEEP THE PROCEEDS FROM THE SUCCESSFUL DRUG
4 TRANSACTION, AND PERHAPS THAT'S WHY -- THAT'S WHERE THE
5 MONEY WAS, IN THE SWISS ACCOUNT, BECAUSE MR. MENENDEZ,
6 WHO IS WORKING FOR THIS ENTERTAINMENT COMPANY AND HAS --
7 ONE CAN PRESUME HAS LAWYERS AND C.P.A.'S AND THINGS LIKE
8 THAT, WOULD NOT TAKE LEGITIMATE FUNDS AND PUT THEM IN A
9 SWISS ACCOUNT.

10 THIS MUST BE THE MONEY THAT MS. NAJERA IS

11 TALKING ABOUT, THAT I AM SURE MY CLIENT IS GOING TO FLY
12 OFF TO SWITZERLAND TO CLAIM HIS RIGHTS TO THIS MONEY.

13 THE COURT: WAS THAT ALL SAID DURING THE SAME
14 WEEKEND?

15 MR. LEVIN: WELL, IT WAS NOT SAID, YOUR HONOR.
16 IT WAS MR. CIGNARELLI SAYING THIS TO DETECTIVE EDMONDS,
17 AND THIS IS ALL CONTAINED IN THE MARCH 7TH INTERVIEW,
18 WHICH IS ON TAPE.

19 MS. NAJERA: YOUR HONOR, IF I MAY.

20 WHAT WAS SAID DURING THIS INTERVIEW WAS
21 THAT THERE WERE RUMORS THAT MR. MENENDEZ HAD BEEN
22 INVOLVED IN THE DRUG TRADE, BECAUSE HE LIVED IN SUCH A
23 NICE HOUSE, AND EVERYONE THOUGHT HE ONLY MADE A SMALLER
24 AMOUNT OF MONEY THAN HE DID.

25 BUT THAT HAD NOTHING TO DO WITH ANYTHING
26 ERIK MENENDEZ TOLD HIM, AND COUNSEL, I BELIEVE, WILL
27 BEAR THAT OUT. THIS HAS NOTHING TO DO -- WE ARE TALKING
28 APPLES AND ORANGES HERE. THIS HAS NOTHING TO DO WITH

-16538

1 WHAT ERIK MENENDEZ TOLD HIM AT ANY TIME, MUCH LESS ON
2 THAT WEEKEND.

3 MS. ABRAMSON: YOUR HONOR, MAY I ADDRESS THE
4 COURT BRIEFLY ON THIS ISSUE?

5 THE COURT: WELL, I WOULD PREFER NOT TO HAVE
6 DUPLICATION OF ARGUMENT HERE. IF MR. LEVIN IS

7 PRESENTING THIS, THEN PERHAPS HE COULD DO IT.

8 MS. ABRAMSON: WELL, MR. LEVIN IS NOT AS FAMILIAR
9 WITH THE BACKGROUND HERE AS I AM, BUT I WILL TELL HIM.

10 (ATTORNEYS ABRAMSON AND LEVIN
11 CONFER SOTTO VOCE)

12

13 MR. LEVIN: YOUR HONOR, THERE IS AN ADDITIONAL
14 ARGUMENT, AND THAT IS -- IS THAT FIRST OF ALL, THIS IS
15 NOT PART OF THE STATEMENT THAT HAS BEEN OFFERED BY THIS
16 WITNESS OF WHAT HE SAYS OCCURRED AS HE WENT THROUGH THE
17 WALK-THROUGH. THIS IS A DIFFERENT CONVERSATION
18 APPARENTLY THAT OCCURRED LATER ON OVER THE WEEKEND.

19 IN FACT, MR. CIGNARELLI TESTIFIED
20 PREVIOUSLY THAT NOTHING WAS SAID AFTER THIS SO-CALLED
21 WALK-THROUGH, BUT THAT WILL COME OUT IN
22 CROSS-EXAMINATION.

23 HOWEVER, MR. CIGNARELLI IS -- HAS DETAILED
24 THE EXTENT OF THE RELATIONSHIP THAT HE HAD WITH ERIK
25 MENENDEZ;

26 THAT FROM HIS PERCEPTION THEY WERE BEST
27 FRIENDS;

28 THAT THEY KIDDED EACH OTHER ALL THE TIME,

-16537

1 THEY PLAYED MIND GAMES ON EACH OTHER ALL THE TIME, AND
2 THAT WAS PART OF THE TESTIMONY AT THE LAST TRIAL.

3 THIS EVIDENCE IS JUST SO INHERENTLY
4 UNRELIABLE, IT IS SO INHERENTLY PREJUDICIAL. IT'S 1101
5 CHARACTER EVIDENCE AGAINST ERIK MENENDEZ. IT OPENS
6 UP --

7 THE COURT: LET ME STOP YOU HERE. LET ME STOP
8 YOU.

9 AS I VIEW IT, SINCE THE PROSECUTION HAS
10 FAILED TO ESTABLISH ANY CONTEXT IN WHICH THESE
11 STATEMENTS WERE MADE, THEY REALLY HAVE NO MEANING IN THE
12 ABSTRACT, EXCEPT FOR THE DEFENDANT'S STATEMENT THAT HE
13 FELT THAT HE WAS GOING TO INHERIT "X" NUMBER OF DOLLARS,
14 WHICH WOULD BE INCONSISTENT WITH HIS TESTIMONY AND THE
15 TESTIMONY OF OTHER WITNESSES THAT HAVE BEEN PRESENTED
16 HERE, THAT HE HAD A CERTAIN STATE OF MIND AS TO HOW MUCH
17 WAS IN THE ESTATE, AND WHAT HE WAS GOING TO INHERIT.

18 THAT WOULD BE THE ONLY THING I CAN SEE
19 AS -- REGARDLESS OF THE CONTEXT, IF HE MADE A STATEMENT
20 THAT HE THOUGHT HE WAS GOING TO INHERIT "X" NUMBER OF
21 DOLLARS, IT DOESN'T REQUIRE AN EXPLANATION OF ANY
22 FURTHER CONTEXT OF WHAT WAS SAID.

23 MS. ABRAMSON: IT MIGHT HAVE BEEN USEFUL IF MY
24 CLIENT WAS CONFRONTED WITH THAT STATEMENT ON THE WITNESS
25 STAND, BECAUSE IT'S OBVIOUSLY TOTALLY FARCICAL, YOUR
26 HONOR. HE KNOWS -- HE'S BEEN TOLD BY HIS AUNT AND
27 UNCLE, AND HE'S BEEN SHOWN AN ASSET SHEET OF WHAT WE
28 MARKED AS AN EXHIBIT OF WHAT THE MONEY IS IN THAT

1 ACCOUNT.

2 THIS IS OBVIOUSLY EITHER A SILLY BOAST THAT
3 HE SHOULD HAVE BEEN GIVEN AN OPPORTUNITY TO EXPLAIN, OR
4 A FANTASY FROM MR. CIGNARELLI'S EVER FERTILE
5 IMAGINATION.

6 SO I THINK IT IS INHERENTLY UNRELIABLE,
7 PARTICULARLY SINCE HE CAN'T PUT THAT STATEMENT IN
8 CONTEXT EITHER.

9 THE COURT: ALL RIGHT. MY FEELING IS THAT AS FAR
10 AS THE DEFENDANT SAYING HE WOULD INHERIT "X" NUMBER OF
11 DOLLARS, NOT AS TO THE CO-DEFENDANT, BUT IF IT'S LIMITED
12 AS TO WHAT THE DEFENDANT, ERIK MENENDEZ, SAID HE WOULD
13 INHERIT.

14 SO IT WOULD HAVE TO BE LIMITED FOR THAT
15 PURPOSE.

16 MR. GESSLER: MAY THE WITNESS BE INSTRUCTED, YOUR
17 HONOR, BY THE D.A. TO SO LIMIT HIS STATEMENTS?

18 THE COURT: YES. THE PROSECUTION IS TO TELL THE
19 WITNESS THAT IT SHOULD BE LIMITED TO WHAT THE DEFENDANT,
20 ERIK MENENDEZ, SAID.

21 MR. LEVIN: YOUR HONOR, THE OTHER THING, THOUGH,
22 IS IT'S NOT CLEAR THAT THE WITNESS SAID THAT HIS STATE
23 OF MIND THAT HE'S GOING TO INHERIT 45-MILLION IS
24 SOMETHING HE LEARNED AFTER HIS PARENTS DIED OR BEFORE,
25 AND WE WOULD LIKE DISCOVERY OF THAT BEFORE THE WITNESS
26 TAKES THE WITNESS STAND.

27 THE COURT: ALL RIGHT. I HAVE NO KNOWLEDGE AS TO

-16535

1 MS. ABRAMSON: NEITHER DO WE, BUT WE WOULD LIKE
2 TO KNOW.

3 THE COURT: WELL, PERHAPS THE WITNESS DOESN'T
4 KNOW IT. THIS STATEMENT, AS I UNDERSTAND, WAS MADE
5 AFTER THAT WEEKEND.

6 MS. ABRAMSON: THE STATEMENT WAS MADE THAT
7 WEEKEND, BUT WE DON'T KNOW IF THERE WAS ANY
8 EMBELLISHMENT ON THAT STATEMENT, IF THE WITNESS KNEW
9 THAT BEFORE ERIK MENENDEZ KILLED HIS PARENTS OR AFTER.

10 THE COURT: IF YOU HAVE NOT DONE SO, GET SPECIFIC
11 WORDING OF WHAT WAS SAID.

12 MR. LEVIN: YOUR HONOR, IF I COULD -- AND I DON'T
13 MEAN TO INTERRUPT.

14 THE CONTEXT OF THIS MONEY, OF WHICH THE
15 FUND IS ACTUALLY 80-MILLION DOLLARS, BUT SOMEHOW THEY
16 WERE TALKING 40- OR 45-MILLION DOLLARS, CAME DURING THIS
17 INTERVIEW ON MARCH 7TH, AND THEY WERE TALKING ABOUT --
18 DETECTIVE EDMONDS WAS ASKING CIGNARELLI: "WHAT DO YOU
19 FEEL THE MOTIVE WAS FOR THIS, FINANCIAL"?

20 AND THEN HE GOES: "FOR THE KILLING, WAS IT
21 OUT OF ANGER, WAS IT FINANCIAL GAIN?"

22 "THAT'S TOUGH TO ANSWER."

23 THEN THEY START TALKING ABOUT THE MONEY,

24 THIS 80-MILLION DOLLARS, AND HE GOES -- CIGNARELLI SAYS:
25 "I DON'T EVEN KNOW IF THE DETECTIVES KNOW. THEY
26 SUPPOSEDLY HAVE 80-MILLION DOLLARS."
27 MS. ABRAMSON: SUPPOSEDLY.
28 MR. LEVIN: "SITTING IN SWISS ACCOUNTS."

-16534

1 "THE PARENTS" -- THE PARENTS NOW --
2 "THAT THE KIDS NOW HAVE ACCESS TO IT."
3 THIS IS CIGNARELLI SAYING -- HE IS CALLING
4 ERIK MENENDEZ AND LYLE MENENDEZ THE KIDS; THAT "THE KIDS
5 NOW HAVE ACCESS TO IT."
6 "DID THEY EXPLAIN HOW THEY HAVE ACCESS, OR
7 DID ERIK EXPLAIN?
8 "NO.
9 "IS HE THE SOURCE OF THAT INFORMATION?
10 "YES."
11 RON CAROL -- I THINK IT'S RON:
12 "SO WHEN YOU SAY 40-OR 45-MILLION, YOU ARE
13 TALKING ABOUT HIS CUT, OF THE 80-MILLION?
14 "CIGNARELLI: I THINK THEY SAID 90-MILLION
15 TOTAL. THERE IS ABOUT 10-MILLION -- 80-MILLION IN
16 THE SWISS BANK, AND HALF OF 90 IS 45. LET'S BE
17 REAL SPECIFIC ON THIS.
18 "CAROL: DID YOU REALLY THINK HE WAS
19 BLUFFING, OR DID YOU THINK REALLY --

20 "CIGNARELLI: NO. I SUPPOSEDLY BELIEVED
21 IT, ESPECIALLY IF HIS FATHER WAS SUPPOSEDLY
22 FINANCING A 50-MILLION DOLLAR DRUG DEAL."
23 MS. NAJERA: YOU MISREAD THAT, MR. LEVIN.
24 MR. LEVIN: EXCUSE ME, MS. NAJERA.
25 SO THE POINT IS, IF THEY ARE GOING TO START
26 TALKING ABOUT WHAT CIGNARELLI'S STATE OF MIND IS
27 REGARDING THIS MONEY, WE SHOULD CERTAINLY BE ABLE TO GO
28 IN AND SHOW THAT WELL, THIS ISN'T ESTATE MONEY. THE

-16533

1 ONLY ESTATE MONEY CIGNARELLI IS TALKING ABOUT, IS ERIK
2 MENENDEZ SAYING IT IS ABOUT 10-MILLION DOLLARS, AND SO
3 THEY WANT TO INFLATE THE NUMBERS. THE INFLATION COMES
4 FROM THE SWISS BANK ACCOUNT AND THE DRUG DEAL.

5 MS. ABRAMSON: THAT'S INCONSISTENT WITH HIS
6 SAYING ERIK MENENDEZ IS GOING TO INHERIT 45-MILLION
7 DOLLARS. THAT'S NOT WHAT HE'S SAYING HERE. HE IS
8 SAYING HIS IMPRESSION IS HE HAS ACCESS TO IT.

9 THE COURT: AGAIN, I JUST WANT ONE LAWYER ARGUING
10 THIS.

11 MS. ABRAMSON: I AM SORRY, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 WELL, THE PROBLEM IS, AS NOW OUTLINED, HOW
14 DOES THE DEFENSE CROSS-EXAMINE MR. CIGNARELLI ABOUT THIS
15 WITHOUT GETTING INTO ALL THIS EXTRANEIOUS MATERIAL THAT

16 HAS JUST BEEN REFERRED TO?

17 MS. NAJERA: YOUR HONOR, FIRST OF ALL MR. LEVIN

18 DIDN'T READ THIS PROPERLY. HE LEFT -- HE CHANGED ONE
19 WORD IN ONE SENTENCE AND ONE WORD IN ANOTHER SENTENCE.

20 MR. LEVIN: WELL, READ IT.

21 MS. NAJERA: AND THE BOTTOM LINE IS I WILL GIVE
22 YOU THE PAGE TO READ, AND WHAT HE SAYS IN THIS PAGE 26
23 IS THAT HE -- ERIK MENENDEZ TOLD HIM THAT HIS CUT OF
24 90-MILLION DOLLARS WOULD BE 45-MILLION, AND OF THAT
25 90-MILLION, 80-MILLION WAS IN A SWISS ACCOUNT.

26 NOTHING IS SAID ABOUT HOW THAT 80-MILLION
27 GOT INTO A SWISS ACCOUNT.

28 SO NOW FOR COUNSEL FOR THE DEFENSE TO COME

-16532

1 FORWARD AND OUT OF THE CLEAR BLUE SKY SAY, "WELL, WE'RE
2 GOING TO ATTRIBUTE IT TO A MYTHICAL DRUG DEAL."

3 THERE IS NOTHING IN THESE STATEMENTS FROM
4 ERIK MENENDEZ THAT ATTRIBUTE ANY MONEY IN A SWISS
5 ACCOUNT TO A MYTHICAL DRUG DEAL.

6 SO WHY IS IT THAT THEY SHOULD BE ALLOWED TO
7 TESTIFY, OR TO ASK QUESTIONS OF THIS WITNESS WHEN THIS
8 WITNESS NEVER SAID AS TO WHERE THIS 80-MILLION DOLLARS
9 CAME FROM, WHEN THIS WITNESS NEVER SAID THAT ERIK
10 MENENDEZ TOLD HIM WHERE THIS 80-MILLION DOLLARS CAME
11 FROM.

12 THAT IS WHAT I DON'T UNDERSTAND, AND THAT'S
13 WHERE THEIR ARGUMENT FAILS. HOW CAN THEY IMPEACH
14 SOMETHING THAT HE'S NEVER SAID? I COULD UNDERSTAND THEM
15 IMPEACHING --

16 THE COURT: WELL, THE PROBLEM IS THAT WHEN A
17 WITNESS WAS ASKED BY CAROL ON PAGE 26: "DO YOU THINK HE
18 WAS BLUFFING?" OR DO YOU THINK REALLY CIGNARELLI SAID
19 "NO, I REALLY BELIEVE IT," ESPECIALLY IF HIS FATHER WAS
20 SUPPOSEDLY FINANCING A 50-MILLION DOLLAR DRUG DEAL.

21 MS. NAJERA: OKAY.

22 THE COURT: THAT AGAIN -- THE PROBLEM WITH THAT
23 IS IT BRINGS OUT CIGNARELLI'S STATE OF MIND AS TO HOW HE
24 CAME UP WITH THIS AMOUNT, AND WE'RE TALKING ABOUT A
25 CONVERSATION THAT TOOK PLACE SIX YEARS AGO, AND WHETHER
26 OR NOT THE DEFENSE SHOULD BE PERMITTED TO EXAMINE HIM
27 ABOUT THIS PARTICULAR PORTION OF THE STATEMENT HE MADE
28 TO THE D.A. AND THE POLICE IN 1990, SO THAT THEY COULD

-16531

1 ATTACK HIS CREDIBILITY AS TO THE -- HIS -- THE BASIS FOR
2 THIS INFORMATION.

3 IS HE SURMISING THAT THIS WAS THE AMOUNT --
4 OR WAS THIS THE AMOUNT THAT WAS ACTUALLY SAID BY ERIK
5 MENENDEZ?

6 YOU CAN'T SUPPORT THESE THINGS SO THAT IT
7 JUST SAYS 45-MILLION, THAT'S WHAT HE SAID, AND THEN

8 PREVENT THE DEFENSE FROM GOING INTO THE BALANCE OF THIS.

9 SO, I THINK, ONCE YOU GET IN THE AMOUNT,

10 THEN THE DEFENSE IS ENTITLED TO QUESTION THE WITNESS

11 ABOUT HOW HE CAME UP WITH THAT AMOUNT. WAS IT REALLY

12 WHAT THE DEFENDANT SAID TO HIM, OR WAS IT BECAUSE OF

13 THIS ADDITIONAL MATERIAL THAT HE RELATED TO THE DISTRICT

14 ATTORNEY AND THE POLICE IN 1990?

15 MS. NAJERA: WELL, IF WE'RE GOING TO TAKE THAT TO

16 ITS LOGICAL THINKING; IN OTHER WORDS, ANYTHING THAT

17 SHOULD AFFECT HIS MENTAL STATE SHOULD COME IN, THEN IT

18 WOULD APPEAR THE STATEMENTS MADE RIGHT BEFORE THIS

19 STATEMENT, THAT ALL GREAT LEADERS HAVE NO PARENTS, HE

20 NEEDS THE MONEY, ALSO GOES TO HIS MENTAL STATE AS TO

21 WHAT HE'S TALKING ABOUT.

22 THE COURT: WE ARE TALKING ABOUT THIS MONEY

23 AMOUNT. I DON'T KNOW WHEN THOSE OTHER STATEMENTS WERE

24 MADE.

25 MS. NAJERA: THESE STATEMENTS WERE MADE RIGHT

26 BEFORE THAT, AND IF WE'RE EXCISING THIS TRANSCRIPT --

27 THE COURT: WE ARE TALKING ABOUT DIFFERENT

28 THINGS. WE ARE TALKING ABOUT STATEMENTS MADE BY EDMONDS

-16530

1 AND CAROL TO CIGNARELLI, AND YES, IN THAT TRANSCRIPT

2 THESE THINGS WERE SAID BEFORE THE DOLLAR AMOUNTS WERE

3 SAID. THAT'S ONE THING. BUT I DON'T KNOW. AND YOU

4 SAID CIGNARELLI DOESN'T KNOW WHEN MENENDEZ SAID THESE
5 THINGS.

6 THAT'S THE ISSUE. NOT WHEN CIGNARELLI SAID
7 THESE THINGS TO EDMONDS, BUT WHEN ERIK MENENDEZ SAID
8 THESE THINGS, AND THAT'S WHAT YOU SAY YOUR WITNESS CAN'T
9 TESTIFY ABOUT. HE HAS NO RECOLLECTION.

10 SO, THEY'RE DIFFERENT THINGS ALTOGETHER.
11 WHAT I AM TALKING ABOUT IS HOW THE WITNESS CAME UP WITH
12 THIS AMOUNT OF MONEY, AND CERTAINLY THE DEFENSE IS
13 ENTITLED TO EXPLORE HIS CREDIBILITY ON THAT SUBJECT, SO
14 IT BRINGS OUT THIS OTHER BUSINESS.

15 THAT'S ALL I CAN SAY. AND IT DOES SEEM TO
16 BRING OUT A LOT OF PREJUDICIAL MATERIAL AND EXTRANEOUS
17 MATERIAL, AND I THINK IT SHOULD BE EVALUATED ALONG THE
18 LINES OF SECTION 352 AS TO THE PROBATIVE VALUE AND THE
19 PREJUDICIAL EFFECT.

20 SO MY INCLINATION AT THIS POINT IS TO
21 PERMIT THE DEFENSE TO EXPLORE THE TOTALITY OF THIS AS IT
22 WAS EXPLAINED BY CIGNARELLI TO THE D.A. AND TO THE
23 POLICE, AS TO HOW HE ARRIVED AT THIS PARTICULAR AMOUNT
24 OF MONEY.

25 AND SO WITH THAT UNDERSTANDING, IS IT STILL
26 YOUR PURPOSE OF GOING AHEAD WITH THAT?

27 MS. NAJERA: NO.

28 THE COURT: OKAY.

1 THEN LET'S MOVE ON TO THINGS THAT -- WE
2 HAVE THE TAPE RECORDING -- I WANT OT GET TO THAT IN A
3 MINUTE -- BUT THINGS THAT THE DEFENSE OR THE PROSECUTION
4 INDICATED THEY OBJECT TO, THAT THEY DON'T WANT THE
5 DEFENSE TO EXAMINE ON. THEY IDENTIFIED FOUR AREAS.

6 THE FIRST WAS THE RELATIONSHIP OF THE
7 DEFENDANT TO HIS PARENTS THROUGH MR. CIGNARELLI.

8 DID YOU INTEND TO PURSUE THAT?

9 MR. LEVIN: YOUR HONOR, AT THIS TIME I DO NOT
10 BELIEVE THAT IT'S APPROPRIATE FOR THE DEFENSE TO SAY
11 WHAT IT WILL AND WHAT IT WILL NOT CROSS-EXAMINE A
12 WITNESS ON WHO HAS ALREADY BEGUN HIS DIRECT TESTIMONY.

13 IF I DO, AND IF I STATE AT THIS TIME WHAT
14 THE NATURE AND EXTENT OF MY CROSS-EXAMINATION WILL BE
15 WITHOUT HAVING HEARD THE REMAINDER OF MR. CIGNARELLI'S
16 TESTIMONY, I AM DOING TWO THINGS. ONE IS I AM WAIVING
17 VERY IMPORTANT RIGHTS OF MY CLIENT.

18 TWO, I AM TELLING THE PROSECUTION WHAT THE
19 NATURE OF MY CROSS-EXAMINATION IS.

20 THE COURT MAKES 402 RULINGS, AND THEN THE
21 PROSECUTION CAN FIRE PREEMPTIVE STRIKES AND SAY: OKAY.
22 WELL, SINCE MR. LEVIN IS GOING INTO IT, I AM GOING TO DO
23 IT.

24 I WILL TELL THE COURT THAT ANY AREA THAT
25 MS. NAJERA IDENTIFIES THAT REASONABLY IS CONTROVERSIAL
26 OR INADMISSIBLE, BEFORE I GO INTO THEM, I WILL DISCUSS
27 IT WITH THE COURT.

28 THE COURT: OKAY.

1 MR. LEVIN: SO I ASK THAT AT THE CONCLUSION OF
2 HIS DIRECT EXAMINATION, WE TAKE A FEW MINUTES AND I WILL
3 TELL THE COURT.

4 THE COURT: OKAY, THAT'S FINE. I THINK THAT'S
5 ALL THE PROSECUTION WAS ASKING ABOUT.

6 SO THESE FOUR AREAS WILL NOT BE BROUGHT UP
7 UNLESS THERE IS A HEARING PRIOR THERETO:

8 THE DEFENDANT'S RELATIONSHIP WITH HIS
9 PARENTS;

10 THE ALLEGED CONFRONTATION BETWEEN
11 CIGNARELLI AND JOSE MENENDEZ;

12 THIS FAX THAT WAS SENT;

13 AND THE CALABASAS BURGLARIES. NONE OF
14 THOSE WILL BE BROUGHT OUT UNLESS WE HAVE A HEARING
15 FIRST.

16 MS. NAJERA: YOUR HONOR --

17 THE COURT: YES.

18 MS. NAJERA: THE ONLY PROBLEM IS AS TO THE FAX,
19 THE HAMILTON CROMWELL FAX. I WOULD LIKE A RULING ON
20 THAT, WHETHER THE DEFENSE WILL BE ALLOWED TO GO INTO
21 THAT.

22 I CAN GIVE THE COURT AN OFFER OF PROOF AS
23 TO WHAT IT ALL DEALT WITH, AND I THINK THE COURT CAN
24 MAKE SOME INDICATION.

25 THE COURT: WHY DO YOU NEED TO DO THAT NOW?

26 MS. NAJERA: BECAUSE IF THE COURT IS GOING TO
27 ALLOW THE DEFENSE TO GO INTO IT, I NEED TO EXPLAIN THAT.
28 MS. ABRAMSON: YOU CAN EXPLAIN IT ON REDIRECT.

-16527

1 MS. NAJERA: YOUR HONOR --
2 THE COURT: LET'S NOT HAVE THESE LITTLE SIDE
3 CONVERSATIONS. WE STILL HAVE RULES IN THIS COURTROOM
4 THAT ONE LAWYER SPEAKS AT A TIME, AND WE DON'T HAVE
5 EVERY THOUGHT THAT POPS INTO ONE'S HEAD EXPRESSED IN
6 OPEN COURT.
7 YES.
8 MS. NAJERA: AS TO THE HAMILTON CROMWIL FACTS, MY
9 UNDERSTANDING IS THAT AFTER THE WIRE TAP WAS DONE IN
10 NOVEMBER OF 1989, THAT THE FOLLOWING MONTH, IN DECEMBER,
11 THE DEFENSE HAD TOLD MR. CIGNARELLI'S MOTHER THAT HE WAS
12 NOT ATTENDING -- THAT THE POLICE TOLD MR. CIGNARELLI'S
13 MOTHER THAT HE WAS NOT ATTENDING SCHOOL.
14 AS A RESULT, SHE WAS VERY ANGRY WITH HIM,
15 AND HE GOT ANGRY WITH THE POLICE FOR TELLING HER THAT,
16 AND AS A PRANK SENT OFF THIS FAX THAT IS SIGNED
17 "HAMILTON CROMWELL," WHICH, AS YOU KNOW, IS ONE OF THE
18 CHARACTERS IN THE SCREENPLAY.
19 I BELIEVE THAT THAT HAS NO RELEVANCY TO HIS
20 TESTIMONY NOW. THERE HAS NEVER BEEN ANY LINK-UP BETWEEN
21 THIS FAX AND ANY OF THE FACTS THAT WERE PRESENTED.

22 THIS FAX WAS SENT AFTER THE TWO STATEMENTS
23 WERE MADE TO THE POLICE CONCERNING THE STATEMENTS THE
24 DEFENDANT, ERIK MENENDEZ, MADE TO CRAIG CIGNARELLI,
25 WHICH IS WHAT THIS DIRECT TESTIMONY IS ALL ABOUT.

26 THERE WOULD -- THERE IS NOTHING IN THERE
27 THAT GOES TO CHARACTER OR ANYTHING ELSE THAT COULD BE
28 USED TO IMPEACH THIS WITNESS, AND I FEEL THAT, QUITE

-16526

1 FRANKLY, UNDER 352 IT SHOULD BE EXCLUDED.

2 IF IT IS NOT EXCLUDED AND THEY WANT TO GO
3 INTO THAT, THEN EVERYTHING ABOUT HAMILTON CROMWELL AND
4 WHERE THE NAME CAME FROM AND WHERE THE SCREENPLAYS CAME
5 FROM AND EVERYTHING ELSE WOULD BE OPENED, AND THAT DOOR
6 WOULD BE OPENED, AND EVERYTHING WOULD COME IN CONCERNING
7 THAT.

8 THE COURT: OKAY. I AM NOT GOING TO RULE ON THE
9 ISSUE OF THE FAX AT THIS POINT, CONSISTENT WITH WHAT
10 I'VE DONE, UNTIL I HEAR THE NATURE OF THE
11 CROSS-EXAMINATION ON SOME OF THESE AREAS THAT MIGHT BE
12 PREMATURE FOR ME TO RULE. I DON'T SEE ANY REASON TO
13 RULE IN ADVANCE IN A VACUUM ON THESE SUBJECTS.

14 SO I WILL HOLD OFF, AND IF THE DEFENSE
15 SEEKS TO GO INTO THESE AND WASN'T TO MAKE AN OFFER OF
16 PROOF BEFORE THEY CROSS-EXAMINE, THEY CAN DO THAT. IF
17 THEY DON'T WANT TO GO INTO THEM AT ALL, THEN WE DON'T

18 HAVE TO LITIGATE THEM. BUT I DON'T SEE ANY REASON TO
19 RULE ON SOMETHING THAT THE DEFENSE MIGHT NOT SEEK TO
20 UTILIZE.

21 OKAY. THEN LET'S GO TO THE TRANSCRIPT OF
22 THE CONVERSATION AT GLADSTONE'S. THE PROSECUTION HAS
23 PRESENTED ME WITH A REDACTED VERSION. I ASSUME THE
24 DEFENSE HAS IT AS WELL.

25 WHAT DID YOU PROPOSE TO DO WITH THIS?

26 MS. NAJERA: WHAT I PROPOSE TO DO, YOUR HONOR, IS
27 SIMPLY ASK THIS WITNESS -- AND I WILL PROBABLY GIVE HIM
28 A COPY OF THE TRANSCRIPT -- IF HE HAD THE CONVERSATION

-16525

1 WITH ERIK MENENDEZ ON NOVEMBER 29, 1989 AT GLADSTONE'S.

2 "AT THAT TIME DID ERIK MENENDEZ STATE," AND
3 THEN GO INTO EACH AND EVERY LIE THAT THE DEFENDANT
4 STATED.

5 THE COURT: OKAY. MR. LEVIN?

6 MR. LEVIN: YES, YOUR HONOR.

7 AGAIN, PERHAPS HAD CRAIG CIGNARELLI BEEN
8 CALLED AS A WITNESS IN THIS CASE IN THE CASE-IN-CHIEF,
9 THEY WOULD HAVE GREATER LATITUDE AT PRESENTING
10 MR. CIGNARELLI'S STATE OF MIND, OR WHAT HE RECALLS OF
11 THE CONVERSATION, OR WHATEVER.

12 BUT THE POINT IS, THAT THIS IS IN THE
13 REBUTTAL PHASE. NONE OF THIS -- NONE OF THIS MATERIAL

14 IS IMPEACHING TO ANYTHING THAT ERIK MENENDEZ TESTIFIED
15 TO.

16 AND FOR EXAMPLE, MS. NAJERA ASKS THAT THIS
17 COURT ALLOW HER TO QUESTION MR. CIGNARELLI WITH
18 STATEMENTS LIKE BEGINNING -- MY CLIENT SAYING "THERE ARE
19 SO MANY PEOPLE AROUND, LIKE, FUCKING SAYING, WELL, YOU
20 KNOW, YOU KILLED YOUR PARENTS, MORE AND MORE. I'M GOING
21 TO BLOW THE FUCKING -- THE GUY'S BRAINS OUT AFTER I
22 PUBLISH HIS NAME."

23 AND THAT'S WHAT SHE WANTS TO START OFF
24 WITH.

25 ERIK MENENDEZ WAS NEVER ASKED ONE QUESTION
26 CONCERNING THIS SUBJECT MATTER. HE WAS NEVER GIVEN AN
27 OPPORTUNITY TO EXPLAIN IT. HE WAS NEVER ASKED TO ADOPT
28 IT. HE WAS NEVER ASKED TO DENY IT.

-16524

1 THE COURT: WHY ARE THESE THINGS INCONSISTENT
2 WITH THE DEFENDANT'S TESTIMONY, MS. NAJERA?

3 MS. NAJERA: IT'S NOT SO MUCH INCONSISTENT WITH
4 HIS TESTIMONY, AS IT GOES TO THE FACT THAT THEY PUT THE
5 DEFENDANT, ERIK MENENDEZ', CREDIBILITY IN ISSUE WHEN
6 THEY PUT HIM ON THE STAND.

7 THE COURT: ALL RIGHT.

8 MS. NAJERA: AND THE WHOLE ISSUE WITH BOTH HIM
9 AND HIS EXPERT IS HIS CREDIBILITY, AND WE HAVE THE RIGHT

10 TO REBUT HIS CREDIBILITY WITH ANY EVIDENCE WE HAVE, AND
11 THIS IS COMPETENT EVIDENCE TO REBUT HIS CREDIBILITY, AND
12 THAT'S WHAT IT'S BEING OFFERED FOR.

13 THE COURT: WHAT DOES IT DO TO REFUTE HIS
14 CREDIBILITY?

15 MS. NAJERA: WELL, THE FACT HE IS COMING FORWARD.
16 ANY TIME SOMEONE LIES, THAT REFUTES HIS CREDIBILITY. IF
17 THEY ARE TAKING THE STAND UNDER OATH AND TELLING A JURY
18 THAT THEY ARE TELLING THE TRUTH; AND CLEARLY, IF HE WAS
19 LYING HERE, THEY CAN INFER FROM THAT THAT HE WAS LYING
20 ON THE WITNESS STAND. WE ARE ENTITLED TO DO THAT.

21 THE COURT: BUT WE HAVE BEFORE THE JURY THE FACT
22 THAT HE DID LIE, AND WE KNOW THAT FROM THE TWO AUDIO
23 TAPES -- ACTUALLY THREE, INCLUDING THE 911 TAPE, UNLESS
24 YOU HAVE ALL THE WITNESSES WHO TESTIFIED, INCLUDING
25 FAMILY MEMBERS, THAT THE DEFENDANT LIED ABOUT THESE
26 MATTERS.

27 MS. NAJERA: AND WHAT WE HAVE IS THAT HE LIED TO
28 THE POLICE. WE REALLY HAVE -- AS TO FAMILY MEMBERS,

-16523

1 THEY WERE JUST -- WE DON'T REALLY HAVE THAT HE WAS --
2 THAT THEY SAT THERE AND LIED TO THE FAMILY MEMBERS. IT
3 WAS JUST THAT THEY WOULDN'T TALK ABOUT WHAT HAPPENED
4 THERE.

5 THE COURT: I THINK THE DEFENDANT TESTIFIED UNDER

6 OATH THAT HE LIED TO EVERYBODY IN THE WORLD, AND HE
7 DIDN'T TELL ANYBODY OTHER THAN CRAIG CIGNARELLI AND
8 OZIEL.

9 MS. NAJERA: UNDER OATH HE DID NOT TELL US
10 SPECIFIC LIES THAT HE TOLD EVERYBODY. HE JUST SAID "I
11 LIED," AND THAT DOESN'T HAVE THE SAME EFFECT AS WHEN YOU
12 CONFRONT SOMEONE WITH EACH AND EVERY LIE. EACH AND
13 EVERY LIE OBVIOUSLY HAS MORE EFFECT THAN JUST HIM
14 GETTING UP AND SAYING: "I LIED."

15 THAT DOESN'T GO INTO THE DESCRIPTION OF
16 WHAT -- THAT'S LIKE SAYING WE HAVE EVIDENCE THAT JOSE
17 AND KITTY WERE KILLED IN THEIR HOME, WITHOUT GOING INTO
18 DETAILS AS TO HOW THAT HAPPENED.

19 CLEARLY, IT'S TWO DIFFERENT THINGS THERE.
20 IT'S ONE THING FOR HIM TO SAY "I LIED." IT'S QUITE
21 ANOTHER THING TO PRESENT TO THIS JURY ACTUAL LIES, AND
22 THEREIN LIES --

23 MR. LEVIN: AND THEREIN LIES THE MOTIVE.

24 MS. NAJERA: -- LIES THE -- WELL, ABSOLUTELY.
25 THERE IS NOT A QUESTION OF MOTIVE. THE QUESTION I WANT
26 TO GET BEFORE THIS JURY IS THAT THIS DEFENDANT LIED, AND
27 THESE ARE HIS LIES.

28 MR. LEVIN: YOUR HONOR, THEREIN LIES THE MOTIVE

2 ARE VERY CLEAR, AND I DON'T THINK THAT MISS NAJERA
3 RECOGNIZES THAT WHAT SHE IS LIMITED TO DOING IS REFUTING
4 SPECIFIC TESTIMONY THAT HAS IMPEACHMENT VALUE TO WHAT A
5 WITNESS MIGHT COME IN AND SAY OTHERWISE, NOT A GENERAL
6 CHARACTER ASSASSINATION.

7 AND THE PROBLEM HERE IS THAT WHAT SHE
8 WANTS -- SHE DOESN'T WANT TO IMPEACH ANYTHING. SHE JUST
9 WANTS TO NOW TAKE CRAIG CIGNARELLI AND NOW HAVE HIM GO
10 THROUGH EACH AND EVERY STATEMENT THAT ERIK MENENDEZ
11 MADE, AND TRY TO UNDERScore THE FACT THAT HE WAS LYING
12 TO CRAIG CIGNARELLI ON NOVEMBER 29, 1989, NOT THAT ERIK
13 MENENDEZ LIED IN COURT WHEN HE TESTIFIED THIS YEAR, AND
14 THAT HE ADMITTED THAT HE LIED TO CRAIG CIGNARELLI, SO
15 THERE IS NOTHING TO REFUTE.

16 MS. NAJERA: PART OF THE PROBLEM, TOO, YOUR
17 HONOR, IS THAT ERIK MENENDEZ TESTIFIED THAT HE TOLD
18 CRAIG CIGNARELLI ONLY GENERAL THINGS ABOUT THE MURDER,
19 NO DETAILS, AND THEN HE, AT GLADSTONE'S, DENIED IT
20 COMPLETELY.

21 AND I THINK THAT THE GLADSTONE'S TAPE IS
22 SOMETHING I THINK THE DEFENSE IS GOING TO GET INTO,
23 UNLESS MAYBE THE COURT SHOULD BASICALLY MAKE INQUIRY OF
24 THE DEFENSE IF THEY ARE GOING TO GET INTO IT, BECAUSE IF
25 THEY GET INTO IT, OBVIOUSLY THE PEOPLE WILL HAVE A RIGHT
26 TO GET INTO IT.

27 BUT IN ANY EVENT, IT GOES TO HOW -- THIS
28 TAPE, AND THE TAPE I GUESS IN ITS ENTIRETY, THE FACT

1 THAT THE DEFENDANT WOULD TALK SO FREELY TO CRAIG
2 CIGNARELLI SHOWS A LITTLE BIT OF THE NATURE OF THEIR
3 RELATIONSHIP.

4 AND IN ANY EVENT, I GUESS I STILL AM
5 MISSING THE POINT HERE AS TO WHY WE WOULD TRY TO CLOAK
6 THE DEFENDANT IN SOME KIND OF MANTLE OF CREDIBILITY WHEN
7 IN FACT WE HAVE THESE LIES WE CAN PRESENT BEFORE THE
8 JURY.

9 THE COURT: NOBODY IS DOING THAT, CLOAKING HIM IN
10 ANY MANTLE. THE COURT ISN'T DOING THAT BY QUESTIONING
11 THE RELEVANCE OF THIS EVIDENCE.

12 WHY IS -- ANY TIME THE DEFENDANT HAS LIED
13 IN THE PAST, THEN YOU WOULD BE ABLE TO, IF THE DEFENDANT
14 TESTIFIES, SHOULD BE ABLE TO BRING IN LIES THAT HE'S
15 SAID IN THE PAST.

16 MS. NAJERA: THERE ARE TWO POINTS HERE, YOUR
17 HONOR. FIRST OF ALL, OF COURSE, NOT EVERY LIE THAT THE
18 DEFENDANT MADE IN THE PAST WOULD COME IN, BUT OBVIOUSLY
19 LIES ABOUT THE CRIME WOULD COME IN. THAT'S WHAT THE
20 WHOLE POINT OF THIS TRIAL WAS. WE ARE BASICALLY PUTTING
21 ON A TRIAL CONSIDERING THE MURDER OR THE KILLING OF
22 KITTY AND JOSE MENENDEZ, AND THE PROBLEM IS THAT THIS --
23 THE REASON THAT THIS IS SO RELEVANT, THIS GOES TO LIES
24 ABOUT THE CRIME; AND OBVIOUSLY, IF HE IS LYING ABOUT THE
25 CRIME, ANY LIE HE'S EVER TOLD ABOUT THE CRIME SHOULD
26 COME BEFORE THE JURY.

27 SO IN THAT RESPECT, NO. OBVIOUSLY, EVERY
28 LIE HE'S EVER TOLD IS NOT GOING TO COME BEFORE THE JURY,

-16520

1 BUT CERTAINLY EVERY LIE HE HAS TOLD BEFORE ABOUT THE
2 CRIME IS GOING TO COME BEFORE THE JURY.

3 THE COURT: BUT BEAR IN MIND AGAIN THAT THIS
4 IS -- THE DEFENSE IS CORRECT. THIS IS THE REBUTTAL CASE
5 AND NOT THE PEOPLE'S CASE-IN-CHIEF.

6 MS. NAJERA: THERE IS ANOTHER POINT TO THIS,
7 THOUGH, YOUR HONOR.

8 THE COURT: OKAY. GO AHEAD. OKAY.

9 MS. NAJERA: IF THE DEFENSE IS GOING TO CHALLENGE
10 CRAIG CIGNARELLI ON THE STATEMENTS THAT ERIK MENENDEZ --
11 THAT HE REPORTED ERIK MENENDEZ SAID TO HIM, AND SAY IT'S
12 INCONSISTENT WITH THE GLADSTONE'S TAPE WHERE ERIK
13 MENENDEZ DENIED ALL OF THIS, THEN OBVIOUSLY WE WOULD
14 HAVE -- WE HAVE THE RIGHT TO CONFRONT CRAIG CIGNARELLI
15 WITH THE FACT THAT LATER -- ON THE LATER OCCASION AFTER
16 HE HAS SAID THAT ERIK MENENDEZ CONFESSED TO HIM, ERIK
17 MENENDEZ DENIED, AND HAVE HIM EXPLAIN IT ALL.

18 SO IT'S REALLY TWO THEORIES THIS SHOULD
19 COME IN.

20 THE COURT: THERE IS NO DOUBT THAT THE DEFENSE
21 CAN OPEN UP THIS WHOLE AREA BY THEIR EXAMINATION --
22 THEIR CROSS-EXAMINATION OF THE WITNESS AS TO WHAT IT WAS

23 THAT THE DEFENDANT SAID TO CIGNARELLI LATER ON.
24 IT SEEMS TO ME THE ONLY AREA THAT IS
25 RELEVANT IN THIS TAPE IS THAT PORTION THAT REFERS TO THE
26 EARLIER CONVERSATION IN WHICH THE DEFENDANT ADMITTED TO
27 CIGNARELLI HAVING KILLED HIS PARENTS, AND ANY CONTRARY
28 STATEMENTS HE MADE ABOUT THAT DURING THIS CONVERSATION

-16519

1 AT GLADSTONE'S, BECAUSE THAT IS WHAT IS REALLY BEING
2 PRESENTED HERE, PRIOR INCONSISTENT STATEMENTS OF THE
3 DEFENDANT AS TO WHAT HE TOLD CIGNARELLI AT THE HOUSE.
4 AND THIS WOULD BE FURTHER EVIDENCE RELATING
5 TO THAT PARTICULAR CONVERSATION WHERE THE DEFENDANT THEN
6 EITHER ACKNOWLEDGED -- OR WHEN CONFRONTED WITH HAVING
7 MADE THAT STATEMENT, DIDN'T DENY HAVING MADE THE
8 STATEMENT.

9 SO THAT PORTION -- I ZEROED IN ON IT, HAS
10 RELEVANCE TO THE SUBJECT.

11 MS. NAJERA: THAT APPEARS TO BE IN 16 OF 33 WHERE
12 THEY'RE TALKING.

13 MS. NAJERA: IN THE SECOND LINE, I DON'T KNOW IF
14 THE COURT HAS A CLEAN COPY OF THIS. I BELIEVE THE COURT
15 HAS A CLEAN COPY OF THIS TRANSCRIPT.

16 THE COURT: YES.

17 MS. NAJERA: ON A CLEAN COPY OF THIS TRANSCRIPT,
18 YOUR HONOR, ON PAGE 16 OF 33 STARTING WITH CRAIG,

19 "EVERYBODY STILL WONDERS ABOUT ME UP THERE."
20 IT'S ONE, TWO, THREE -- IT'S THE FOURTH
21 LINE DOWN, YOUR HONOR, AND IT WOULD GO FROM THE FOURTH
22 LINE DOWN TO -- IT WOULD GO DOWN TO 18.
23 MR. GESSLER: I'M SORRY, YOUR HONOR. I MISSED
24 THE LINE CITATION.
25 MS. NAJERA: I AM SIMPLY COUNTING DOWN THE
26 NUMBERS, BECAUSE THERE ARE NO NUMBERS.
27 MR. GESSLER: THE PAGE?
28 MS. NAJERA: 16 OF 33.

-16518

1 THE COURT: IS THAT THE ONLY REFERENCE IN THIS?
2 MS. NAJERA: THAT IS THE ONLY REFERENCE TO THAT.
3 THE COURT: OKAY.
4 MR. LEVIN: WHERE DOES SHE WANT TO END?
5 MS. ABRAMSON: "THEY SUSPECT MY BROTHER" IS THE
6 LAST WORDS. THEN HE RECANTS IT.
7 MR. LEVIN: YOUR HONOR, THIS IS NOT IMPEACHMENT
8 TO ANYTHING THAT ERIK MENENDEZ TESTIFIED TO IN THIS
9 TRIAL. THIS HAS NOTHING TO DO WITH ANY FACTS, AS CRAIG
10 CIGNARELLI SAID THAT ERIK MENENDEZ REPORTED TO HIM IN
11 LATE AUGUST OF 1989. THERE IS NOTHING -- THERE IS NOT A
12 REFERENCE AT ALL IN THERE TO WHAT ERIK MENENDEZ SAID.
13 MS. ABRAMSON: AND ERIK MENENDEZ, UNDER OATH,
14 ADMITTED THAT HE LIED TO CRAIG CIGNARELLI; THAT THIS IS

15 ABSOLUTELY CONSISTENT, AND HE ALSO HAD THE OPPORTUNITY
16 TO CONFRONT ERIK MENENDEZ WITH THIS STATEMENT.

17 THE COURT: ALL RIGHT.

18 AS FAR AS THESE ARGUMENTS THAT THE PEOPLE
19 HAVE YET TO CONFRONT THE DEFENDANT WITH, HE IS NOT
20 EXCUSED AS FAR AS THE DEFENSE FOR ERIK MENENDEZ IS
21 CONCERNED, SO UNDER SECTION 770 HE IS CERTAINLY
22 AVAILABLE IF YOU WANT TO CALL HIM TO EXPLAIN THIS.

23 MR. GESSLER: AS TO THE LAST FOUR LINES THERE,
24 YOUR HONOR, WHICH NOW --

25 THE COURT: YES. THAT PART WE WILL TALK ABOUT.

26 BUT THIS PART IS IMPEACHING TO THE EXTENT
27 THAT THE DEFENDANT EXPRESSED CONCERN ABOUT THE FACT THAT
28 HE WAS CONCERNED THAT CIGNARELLI MIGHT HAVE GONE TO THE

-16517

1 POLICE, AND THAT'S CERTAINLY HIS STATE OF MIND DURING
2 THIS INTERVIEW AND CONVERSATION, RATHER, BETWEEN
3 CIGNARELLI AND THE DEFENDANT, AND I THINK IT'S RELEVANT
4 FOR IMPEACHMENT.

5 MR. LEVIN: BUT HOW DOES IT IMPEACH MY CLIENT'S
6 TESTIMONY IN ANY WAY?

7 THE COURT: WELL, YOU PUT YOUR GLOSS ON IT AND
8 YOUR INTERPRETATION, AND YOU WANT THE JURY TO ACCEPT THE
9 DEFENDANT'S VERSION THAT HE TOLD CIGNARELLI: "I DID
10 IT," AND NOTHING ELSE.

11 MR. LEVIN: NO, THAT HE LIED TO CRAIG CIGNARELLI.
12 THE COURT: NO. "FIRST I DID IT, AND THEN I
13 DIDN'T DO IT, AND I WAS LYING." WHATEVER. AND -- OR I
14 WAS JOKING, OR WHATEVER IT WAS. AND THEN IN THAT
15 SITUATION WOULD HE HAVE HAD THE SAME LEVEL OF CONCERN
16 THAT CIGNARELLI WOULD HAVE GONE TO THE POLICE, AS HE
17 WOULD HAVE IF HE HAD GIVEN ALL THE DETAILS THAT
18 CIGNARELLI SAYS HE GAVE.
19 THAT'S A QUESTION OF FACT FOR THE JURY TO
20 EVALUATE AS TO WHY HE WOULD STILL BE CONCERNED IN
21 NOVEMBER OF THAT YEAR ABOUT WHAT HE DID OR DID NOT SAY
22 TO CIGNARELLI IN AUGUST OR SEPTEMBER OF THAT YEAR.
23 THAT'S A SEPARATE ISSUE FROM THE EXPRESSION
24 OF SUSPICION OF THE BROTHER.
25 AND WHAT IS THE PEOPLE'S POSITION AS TO WHY
26 THAT WOULD COME IN?
27 MS. NAJERA: THE LAST TWO LINES?
28 THE COURT: YES -- NO, THE FOUR LINES.

-16516

1 MS. NAJERA: I'M NOT SURE WHICH FOUR LINES THE
2 COURT'S --
3 THE COURT: "BECAUSE I -- I COULD USE THIS, THEY
4 DON'T KNOW WHO, SUSPECT ME, THEY SUSPECT MY BROTHER".
5 "SO DO I.
6 "EVERYONE DOES," ET CETERA.

7 MS. NAJERA: YEAH. THAT WASN'T OFFERED. THE
8 ONLY PART I ENDED IT AT WAS I USED THIS AND ENDED WITH
9 "THEY SUSPECT MY BROTHER".

10 THE COURT: YOU WANT TO GET THAT IN?

11 MS. NAJERA: THAT WAS WHERE I WAS GOING TO END
12 IT, YOUR HONOR.

13 THE COURT: THAT'S WHAT I WAS ASKING. THAT'S
14 WHAT YOU WANT TO GET IN. OKAY.

15 AND YOU WANT TO START WHERE?

16 MS. NAJERA: WITH CRAIG CIGNARELLI SAYING
17 "EVERYBODY STILL WONDERS ABOUT ME UP THERE, AND THAT
18 SEEMS TO START THE WHOLE CONVERSATION.

19 THE COURT: OKAY. AND WHAT IS THE DEFENSE
20 RESPONSE?

21 MR. LEVIN: WELL, YOUR HONOR --

22 MR. GESSLER: "THEY SUSPECT MY BROTHER" IS
23 EXACTLY WHAT SHOULD NOT BE IN HERE. THAT'S IMPACTING ON
24 LYLE MENENDEZ. IT DOESN'T ADD IN ANY WAY TO WHAT ERIK
25 MENENDEZ MIGHT HAVE TOLD THIS WITNESS ABOUT WHAT
26 HAPPENED ON THAT DATE AT THE HOUSE. IT HAS NOTHING TO
27 DO WITH WHETHER OR NOT THE WITNESS IS GOING TO GO TO THE
28 POLICE ON HIM.

-16515

1 IF THAT'S TO COME IN AT ALL, IT SHOULD STOP
2 AT THE LINE BEFORE THAT. "HI, ERIK, AH, ERIK KILLED HIS

3 PARENTS, YEAH."

4 THAT PART'S IN CONTEXT. NOT THE PART "THEY
5 SUSPECT MY BROTHER," OR "BECAUSE I, I COULD USE THIS,
6 THEY DON'T KNOW WHO, SUSPECT ME."

7 THERE'S A WHOLE BUNCH OF UNINTELLIGIBLES IN
8 THAT STATEMENT, TOO.

9 BUT "THEY SUSPECT MY BROTHER" ADDS NOTHING
10 TO THE PURPOSE FOR WHICH THE PROSECUTION IS OSTENSIBLY
11 OFFERING THIS.

12 THE COURT: OKAY. AND WHAT IS YOUR RESPONSE,
13 MISS NAJERA, TO THAT? THAT NUMBER ONE, IT DOESN'T ADD
14 ANYTHING; AND SECONDLY, IT DOES TEND TO IMPLICATE THE
15 CO-DEFENDANT.

16 MS. NAJERA: ACTUALLY, YOUR HONOR, I JUST PUT
17 THAT IN TO SHOW THAT HE WAS CUT OFF, BECAUSE THEY WERE
18 IN THIS CONVERSATION ABOUT IT.

19 BUT ACTUALLY IF WE -- IF I JUST HAVE HIM
20 TESTIFY THAT THE REST WAS UNINTELLIGIBLE AND HE DOESN'T
21 REMEMBER WHAT WAS SAID, WE CAN END IT AT THAT LINE.

22 THE COURT: WHAT LINE?

23 MS. NAJERA: THE LINE: "YEAH, ERIK KILLED HIS
24 PARENTS," AND THE REST IS UNINTELLIGIBLE.

25 THE COURT: THAT'S CIGNARELLI SAYING THAT. WE
26 DON'T HAVE A RESPONSE FROM THE DEFENDANT, SO ERIK --
27 STRIKE THAT -- CRAIG CIGNARELLI NOT SAYING ANYTHING
28 DOESN'T MEAN ANYTHING.

1 MS. NAJERA: THAT'S WHY I PUT THE RESPONSE IN
2 THERE ORIGINALLY.

3 THE COURT: WELL THEN, TAKE THE STATEMENT OF
4 CIGNARELLI OUT, BECAUSE IT DOESN'T ALLEGE ANYTHING.

5 MS. NAJERA: MAY I REREAD THIS FOR A MOMENT, YOUR
6 HONOR?

7 THE COURT: OR YOU CAN GO DOWN, "BECAUSE I -- I
8 COULD USE THIS, THEY DON'T KNOW WHO SUSPECT ME," AND
9 THEN STOP THERE, PERIOD.

10 MS. NAJERA: THAT WOULD DO IT. THAT WOULD DO IT,
11 YOUR HONOR, AND ELIMINATE "THEY SUSPECT MY BROTHER."

12 MS. NAJERA: THAT WOULD DO IT.

13 MR. LEVIN: YOUR HONOR, I AM SORRY. I LOST THE
14 COURT. WHERE DOES THE COURT --

15 THE COURT: STOP AT THE PERIOD BEFORE THE
16 SENTENCE "THEY SUSPECT MY BROTHER". THEN THAT INCLUDES
17 THE DEFENDANT'S RESPONSE WITHOUT REFERENCE TO HIS
18 BROTHER.

19 MR. LEVIN: I WOULD ASK THAT, ALTHOUGH I OBJECT
20 TO THIS PASSAGE BEING UTILIZED, I WOULD ASK THAT IF IT
21 IS UTILIZED, THAT IT BE UTILIZED BY TRANSCRIPT, BECAUSE
22 THE TAPE IS --

23 MS. ABRAMSON: NO, THE OTHER WAY AROUND. THE
24 TRANSCRIPT IS NOT ACCURATE, BECAUSE THERE IS TOO MUCH
25 THAT'S UNINTELLIGIBLE.

26 THE COURT: IF YOU WANT, I WILL BRING THAT
27 PORTION OF THE TAPE AND WE CAN LISTEN TO IT AND SEE IF

-16513

1 UNINTELLIGIBLE. WE CAN DO THAT.

2 YOU KNOW, I HAVEN'T LISTENED TO IT SINCE
3 1993 OR SO, SO I CERTAINLY HAVE NO RECOLLECTION OF THIS.

4 MS. NAJERA: I DON'T -- I BELIEVE THIS PART IS --

5 THE COURT: WELL, I GUESS I HAVE LISTENED TO
6 THIS. YOU GAVE IT TO ME, BUT I COULDN'T UNDERSTAND IT.

7 SO THIS IS PART OF WHAT YOU GAVE ME; IS
8 THAT IT? WAS THIS PART OF WHAT YOU GAVE ME?

9 MS. NAJERA: YES, YOUR HONOR.

10 THE COURT: THEN I COULDN'T UNDERSTAND IT.

11 BUT HERE'S THE TAPE IF YOU WANT TO FIND
12 THAT PORTION OF IT, AND MAYBE WE CAN ISOLATE IT AND SEE
13 IF THERE'S MORE.

14 SO IF YOU WANT TO DO THAT, YOU CAN DO THAT.

15 HOW MUCH MORE DO YOU HAVE THEN ON YOUR
16 DIRECT EXAMINATION OF THE WITNESS?

17 MS. NAJERA: WITH OR WITHOUT THIS TRANSCRIPT?
18 WITHOUT THIS TRANSCRIPT MAYBE 10-MILLION MINUTES.

19 MR. GESSLER: WELL, WE HAVE NOT BEEN PROVIDED
20 WITH WHAT OTHER AREAS MS. NAJERA IS GOING INTO. SHE
21 LEFT YESTERDAY SAYING THAT SHE WAS GOING TO BE BRINGING
22 IN SOMETHING ELSE, ANOTHER STATEMENT OR SOMETHING,
23 BUT --

24 THE COURT: SHE WAS GOING TO IMPEACH HIM WITH A
25 PRIOR INCONSISTENT STATEMENT. SHE SAID SHE WAS GOING TO
26 CONFRONT HIM WITH PRIOR INCONSISTENT STATEMENTS AND SEE
27 IF HE COULD EXPLAIN THEM, YES.
28 THE COURT: WHAT WAS THAT ONE?

-16512

1 MS. NAJERA: THAT WAS AS TO THE DIFFERENCE
2 BETWEEN THE MARCH -- THE STATEMENT IN THE MARCH -- THE
3 NOVEMBER '89 TAPE AND THE MARCH 1990 TAPE.

4 THE COURT: ABOUT WHAT?

5 MS. NAJERA: ABOUT BASICALLY WHETHER HE SHOT HIS
6 MOTHER, OR LYLE SHOT HIS MOTHER.

7 MR. LEVIN: WELL, HOW IS THAT IMPEACHING ERIK
8 MENENDEZ? NOW SHE'S OFFERING A STATEMENT THAT GOES
9 TO -- AND THIS IS PRECISELY WHAT MR. GESSLER WAS
10 ARGUING. SHE PRESENTS A WITNESS THAT SHE CLAIMS IS
11 SOMEHOW IMPEACHING TO ERIK MENENDEZ FOR THE PURPOSE OF
12 REBUTTAL, AND NOW SHE WISHES TO CONFRONT HIM WITH
13 NON-IMPEACHING MATERIAL AND ALLOW THE WITNESS TO EXPLAIN
14 IT, SO IT CAN BE MORE INCRIMINATING AGAINST BOTH
15 DEFENDANTS.

16 THE COURT: WELL, SHE'S SAYING THAT HE MADE A
17 STATEMENT BEFORE COMING TO COURT THAT IS INCONSISTENT
18 WITH HIS TESTIMONY HERE.

19 MR. LEVIN: WELL, FOR HER PURPOSES THAT'S

20 IRRELEVANT, YOUR HONOR. IF IT'S NOT -- IF IT'S NOT
21 INCONSISTENT WITH ERIK MENENDEZ' TESTIMONY, IF IT
22 DOESN'T GO TO IMPEACH ERIK MENENDEZ, IT'S GOING TO
23 IMPEACH CRAIG CIGNARELLI.

24 NOW, HOW CAN THE PROSECUTION'S SO-CALLED
25 IMPEACHMENT OF CRAIG CIGNARELLI IN ANY WAY BE RELEVANT
26 TO IMPEACH THE CREDIBILITY OF ERIK MENENDEZ? IT CAN
27 ONLY BE USED TO HURT THE WITNESS.

28 NOW MR. GESSLER'S POINT IS VERY CLEAR.

-16511

1 THEY WANT TO BRING IN ALL KINDS OF STATEMENTS NOW TO
2 ALLOW THE JURY TO PICK A VERSION. LET HIM EXPLAIN THE
3 MARCH '90 STATEMENT, BECAUSE THAT IS MORE -- THAT IS
4 MORE INCRIMINATING TO LYLE MENENDEZ, MUCH MORE
5 INCRIMINATING TO LYLE MENENDEZ. IN FACT, IN SOME WAYS
6 IT'S MORE INCRIMINATING TO ERIK MENENDEZ, AND THEY WANT
7 TO OFFER IT TO PROVE THE TRUTH OF THE MATTERS ASSERTED.

8 THAT'S PRECISELY WHAT IT IS THEY'RE TRYING
9 TO DO, BUT IT DOESN'T IMPEACH ERIK MENENDEZ. IT
10 IMPEACHES THEIR OWN WITNESS.

11 THE COURT: THAT'S RIGHT. THEY CAN DO THAT.
12 HE'S HERE TO BE CROSS-EXAMINED.

13 MR. LEVIN: WELL, THAT'S MY JOB, AND I THINK ON
14 REDIRECT IF I FAIL TO DO A GOOD ENOUGH JOB IN IMPEACHING
15 THEIR WITNESS, MISS NAJERA CAN STAND UP AND HELP ME, AS

16 SHE HAS BEEN SO GRACIOUS TO DO, AND IMPEACH HIM FOR ME.

17 THE COURT: THEY ARE ALLOWED TO IMPEACH THEIR OWN
18 WITNESS WITH PRIOR INCONSISTENT STATEMENTS. THAT'S THE
19 RULE. I DON'T KNOW WHY YOU'RE ARGUING AGAINST THAT.
20 THAT'S THE RULE.

21 MR. GESSLER: BECAUSE, YOUR HONOR, I AM ARGUING
22 AGAINST -- ON BEHALF OF LYLE MENENDEZ, AS PART OF THE
23 PEOPLE'S CASE-IN-REBUTTAL, REBUTTAL-IN-CHIEF, IF THERE
24 IS SUCH A THING, BECAUSE NOW THEY ARE BRINGING IN A
25 STATEMENT IN REBUTTAL AGAINST LYLE MENENDEZ THROUGH ERIK
26 MENENDEZ, THROUGH THIS WITNESS THAT WAS NOT GONE INTO IN
27 THEIR CASE-IN-CHIEF. HE WAS NOT ASKED -- ERIK MENENDEZ
28 WAS NOT ASKED ABOUT IT WHEN HE WAS CALLED AS A WITNESS

-16510

1 FOR THE DEFENSE, AND IT'S NOW COMING IN, IN ESSENCE,
2 AGAINST LYLE MENENDEZ THROUGH ERIK MENENDEZ ON REBUTTAL,
3 OSTENSIBLY AGAINST WHAT ERIK MENENDEZ SAID ON THE STAND
4 WHEN HE WAS NEVER ASKED ABOUT IT.

5 IT'S ONE THING FOR MR. LEVIN TO IMPEACH THE
6 WITNESS WITH THE FACT HE CAN'T KEEP HIS STORY STRAIGHT
7 AND BRING IT ON FOR IMPEACHMENT ONLY, WHICH WE HAVE
8 TALKED ABOUT.

9 IT'S CERTAINLY SOMETHING ELSE FOR THE
10 PEOPLE TO PUT A SECOND STATEMENT ON NOW, OR A SECOND
11 VERSION OF THE STATEMENT ON AS PART OF THEIR CASE IN

12 REBUTTAL TO GO AGAINST LYLE MENENDEZ AS PART OF WHAT
13 THEY'RE TRYING TO SAY ERIK MENENDEZ SAID.

14 THAT'S SANDBAGGING AGAINST LYLE MENENDEZ.

15 MR. LEVIN: AND ALSO, YOUR HONOR, I WOULD ASK FOR
16 DISCOVERY IN THAT THE PEOPLE HAVE OBVIOUSLY TAKEN
17 MR. CIGNARELLI TO THE WOODPILE, AND THEY HAVE CONFRONTED
18 HIM WITH THESE TWO STATEMENTS, AND THEY HAVE ASKED HIM
19 TO EXPLAIN WHAT IT WAS HE MEANT ABOUT CERTAIN STATEMENTS
20 MADE IN MARCH OF 1990.

21 I HAVE NO STATEMENT FROM CRAIG CIGNARELLI
22 THAT WHERE HE HAS EVER BEEN CONFRONTED WITH AN
23 INCONSISTENT STATEMENT BY THE DISTRICT ATTORNEY'S OFFICE
24 OR THE POLICE DEPARTMENT AND ASKED TO EXPLAIN WHAT HE
25 MEANT.

26 SO RATHER THAN HAVING TO HEAR IT ON DIRECT
27 EXAMINATION, SINCE THIS IS THE PURPOSE FOR MS. NAJERA
28 BRINGING OUT THIS STATEMENT, I ASK THAT THE COURT ORDER

-16509

1 MS. NAJERA PROVIDE TO THE DEFENSE THE DISCOVERY THAT SHE
2 HAS CONCERNING THIS STATEMENT.

3 THE COURT: OKAY.

4 FIRST OF ALL, IN REGARD TO THE OBSERVATIONS
5 AND OBJECTION OF MR. GESSLER, THIS WAS DISCUSSED
6 YESTERDAY, AND I HAVE ALREADY RULED THAT THE GENERAL
7 SUBJECT OF STATEMENTS CIGNARELLI SAYS THAT ERIK MENENDEZ

8 MADE TO HIM AT THE HOUSE IN EARLY SEPTEMBER WAS THE
9 SUBJECT OF CROSS-EXAMINATION OF ERIK MENENDEZ WHILE HE
10 WAS ON THE WITNESS STAND.

11 HE WAS CHARACTERIZED AS A JOINT WITNESS BY
12 BOTH DEFENDANTS TESTIFYING, AND ON BEHALF OF BOTH
13 DEFENDANTS, ERIK MENENDEZ WAS CONFRONTED BY THE ENTIRETY
14 OF THE CONVERSATION THAT HE HAD WITH CIGNARELLI, AND
15 STATED THAT HE ONLY SAID: "I DID IT," AND NOTHING ELSE.

16 AND THE DEFENSE HAD AN OPPORTUNITY TO
17 EXAMINE HIM AS MUCH AS THEY WANTED. BOTH DEFENDANTS,
18 INCLUDING LYLE MENENDEZ, HAD AN OPPORTUNITY TO EXAMINE
19 HIM COMPLETELY ON THAT SUBJECT, AND IF THERE IS SLIGHTLY
20 MORE DETAIL INCLUDED IN THE TESTIMONY OF CIGNARELLI HERE
21 THAN WAS INCLUDED IN THE QUESTIONS ASKED OF
22 MR. CIGNARELLI BY MR. CONN IN CROSS-EXAMINATION -- ASKED
23 OF ERIK MENENDEZ, RATHER, IN CROSS-EXAMINATION ABOUT
24 STATEMENTS OF CIGNARELLI, AS TESTIFIED BY CIGNARELLI IN
25 THE FIRST TRIAL, I DON'T SEE THAT AS A DENIAL OF LYLE
26 MENENDEZ' RIGHT OF CONFRONTATION. I DON'T SEE THIS AS
27 SANDBAGGING. THIS AREA WAS COMPLETELY COVERED. IF A
28 FEW MORE WORDS ARE ADDED, IT WON'T CHANGE THE CONTEXT OF

-16508

1 THE STATEMENTS. CERTAINLY IT IS NOT A DENIAL OF RIGHT
2 TO CONFRONTATION.

3 MR. GESSLER: YOUR HONOR, IF IT WERE A FEW WORDS,

4 SLIGHT CHANGE IN CONTEXT, THAT WOULD BE ONE THING.

5 WHAT HE IS SAYING IS IN ONE STATEMENT HE IS

6 SAYING THAT ERIK MENENDEZ -- LYLE MENENDEZ SAID, "SHOOT

7 MOM," AND ERIK MENENDEZ KILLED MOM, AND IN THE OTHER

8 STATEMENT HE IS SAYING ERIK MENENDEZ SAID: "I COULDN'T

9 SHOOT MOM, SO LYLE MENENDEZ SHOT MOM, AND THEN I SHOT

10 HER TWICE AFTER IT LOOKED LIKE SHE WAS DEAD."

11 NOW THAT'S MORE THAN A SLIGHT CHANGE IN

12 CONTEXT, YOUR HONOR. THAT'S A TOTAL CHANGE IN WHO DID

13 IT, IN EFFECT, FOR THAT PARTICULAR HOMICIDE. IT'S A --

14 THEY CAN'T BE -- BOTH STATEMENTS CAN'T BE TRUE. THEY'RE

15 TOTALLY OPPOSITE TO ONE ANOTHER, AND IT SEEMS TO ME THAT

16 THE PEOPLE CHOSE THE ONE THEY DECIDED TO PUT ON. THEY

17 PUT IT ON VERY CAREFULLY, AND THAT'S DIFFERENCE NOW

18 BETWEEN OUR TESTING THE VERACITY OF THE WITNESS, AS I

19 HAVE SAID, ON CROSS-EXAMINATION, AND FOR IMPEACHMENT

20 ONLY, AND THE PEOPLE PUTTING ON TWO TOTALLY DIFFERENT

21 INCONSISTENT STATEMENTS THAT CANNOT BOTH BE TRUE AND

22 HAVING THEIR VERSION BY THE WITNESS AS TO WHY IT IS

23 TRUE.

24 THE COURT: WELL, THE THING IS THAT YOUR POSITION

25 IS, AND THAT OF THE CO-DEFENDANT, THAT ERIK MENENDEZ

26 ONLY SAID "I DID IT," AND DIDN'T SAY ANYTHING ELSE.

27 SO YOUR POSITION IS THAT EVERYTHING ELSE IS

28 A LIE BY CIGNARELLI, PERIOD. THE ONLY THING ELSE THAT

1 YOUR CLIENT IS ALLEGED TO HAVE SAID, ACCORDING TO HIS
2 TESTIMONY, WAS HOW HE THEORIZED THAT SOMEBODY ELSE MIGHT
3 HAVE DONE THE SHOOTING. BUT AS FAR AS HIS PARTICIPATION
4 IN IT, HE JUST SAID: "I DID IT."

5 MR. GESSLER: I UNDERSTAND.

1 MR. GESSLER: I UNDERSTAND. THERE'S TWO.

2 THE COURT: AND YOU ACCEPTED THAT. THAT WAS
3 HIS TESTIMONY.

4 MR. GESSLER: YES, I DO.

5 THE COURT: IT'S HARD TO VISUALIZE WHAT YOU
6 WOULD HAVE DONE IF THE PROSECUTION ASKED THIS
7 ADDITIONAL QUESTION OF THE DEFENDANT.

8 MR. GESSLER: IT'S ALWAYS HARD TO VISUALIZE
9 WHEN IT DIDN'T HAPPEN. THAT'S WHY WE HAVE
10 PREREQUISITES, HOW THINGS DID HAPPEN.

11 THE COURT: YOU THINK ERIK MENENDEZ WOULD
12 HAVE SAID: YEAH. THAT'S EXACTLY WHAT HAPPENED.
13 LYLE TOLD ME THIS AND I DID IT.

14 THEN YOU WOULD HAVE CROSS-EXAMINED HIM
15 ON IT? WHAT WOULD YOU HAVE DONE?

16 MR. GESSLER: NO, YOUR HONOR. YOU'RE ASKING
17 ME TO GO BACK AND SAY WHAT I WOULD HAVE DONE, WHEN I
18 DIDN'T HAVE THE OPPORTUNITY TO FIND OUT. I DON'T
19 KNOW WHAT I WOULD HAVE DONE, BECAUSE WE DON'T KNOW
20 WHAT THE QUESTION WOULD HAVE BEEN, WHAT THE RESPONSE
21 WOULD HAVE BEEN, OR HOW I WOULD HAVE REACTED TO THAT
22 PARTICULAR RESPONSE.

23 WHAT WE DO KNOW IS WHAT ACTUALLY

24 HAPPENED. WE DO KNOW WHAT THE CROSS-EXAMINATION
25 ACTUALLY WAS. WE DO KNOW THAT THE DISTRICT ATTORNEY
26 SAID HE WOULD ASK QUESTIONS BY SAYING: DID ERIK
27 MENENDEZ -- DID YOU TELL CRAIG CIGNARELLI THE
28 FOLLOWING, AS HE DID WITH THE QUESTIONS THAT SET UP

49031

1 THE VERSION WE HEARD YESTERDAY.

2 YES, WE ARE TAKING THE POSITION THAT
3 ERIK MENENDEZ WAS TELLING THE TRUTH AND CRAIG
4 CIGNARELLI IS OUT IN LEFT FIELD, AND THE NEXT TIME
5 HE'S OUT IN RIGHT FIELD, BECAUSE THESE TWO
6 STATEMENTS ARE SYNTHESIZABLE, IF THAT IS A WORD.

7 I THINK WE'RE ENTITLED TO THE EVIDENCE
8 CODE PROVISIONS AS TO THE PROTECTION OF WHAT THEY
9 WERE GOING TO ASK THIS WITNESS BY HAVING ASKED THE
10 QUESTIONS OF ERIK MENENDEZ; AND PARTICULARLY WHERE
11 WE HAVE TWO 180-DEGREE DIAMETRICALLY OPPOSED
12 STATEMENTS MADE BY THE SAME WITNESS.

13 THE ISSUE, I TAKE IT, IS THIS IS NOT
14 JUST A SIMPLE CHANGE IN CONTENT, YOUR HONOR. IT'S A
15 180-DEGREE CHANGE IN WHAT CRAIG CIGNARELLI IS
16 STATING THAT ERIK MENENDEZ TOLD HIM.

17 THE COURT: OKAY. WELL, MY VIEWS ARE AS I'VE
18 EXPRESSED THEM YESTERDAY.

19 MR. GESSLER: AND MINE.

20 THE COURT: FOR SURE.

21 I VIEW THIS IN THE CONTENT OF A WITNESS
22 CALLED BY BOTH DEFENDANTS AND TESTIFYING ON BEHALF
23 OF BOTH DEFENDANTS WHO'S NOW BEING IMPEACHED AND IS
24 STILL AVAILABLE TO REPUTE THOSE MATTERS.

25 THE ISSUE OF WHAT EXACTLY IT IS THAT HE
26 IS GOING TO SAY, OR YOU'RE GOING TO ASK -- WHAT ARE
27 THE WORDS YOU'RE GOING TO ASK?

28 MS. NAJERA: YOUR HONOR, I'M GOING TO ASK HIM

49032

1 IF, ON THE NOVEMBER 17TH REPORT, HE STATED THAT ERIK
2 HAD TOLD HIM THAT HE HAD BEEN UNABLE TO SHOOT HIS
3 MOTHER AND SHE TRIED TO GET AWAY, AND LYLE SHOT HER,
4 AND THEN HE SHOT HER AFTER LYLE SHOT HER.

5 AND ON MARCH 7TH 1990 HE STATED THAT HE
6 HAD, IN FACT, SHOT HIS MOTHER WHEN SHE STOOD UP.
7 THIS WAS ALL ASKED, YOUR HONOR, IN THE FIRST TRIAL
8 ON PAGE 7804, AND THEN HE'S GOING TO STATE WHAT HE
9 SAID THEN, WHICH WAS, AS FAR AS HE SITS THERE NOW,
10 WHAT HE TESTIFIED TO THEN, WHICH IS WHAT HE
11 TESTIFIED TO NOW IS HIS BEST RECOLLECTION AS HE SITS
12 THERE TODAY; THAT ERIK SHOT HIS MOTHER AFTER SHE
13 STOOD UP.

14 MR. LEVIN: WELL, THAT'S NOT IMPEACHMENT, AND
15 I SUPPOSE CIGNARELLI'S -- MY CONCERN IS --
16 THE COURT: LET ME STOP. ARE YOU THEN GOING
17 TO HAVE DETECTIVE ZOELLER COME UP AND TESTIFY THAT
18 HE SAID THIS ON SOME EARLIER OCCASION? IF YOU'RE
19 NOT, THEN THERE'S NO REASON TO HAVE HIM EXPLAIN
20 SOMETHING, BECAUSE YOU HAVE TO PUT ON WHAT IT IS
21 THAT YOU WANT HIM TO -- OR THE JURY TO ACCEPT AS HIS
22 STATEMENT.

23 MS. NAJERA: WE COULD ASK HIM EVERYTHING
24 ABOUT EVERYTHING HE SAID ON NOVEMBER 17TH, 1989 AND
25 HAVE HIM GO THROUGH IT AND TESTIFY TO EVERYTHING HE
26 SAID ON NOVEMBER 17, 1989; THEN HAVE HIM GO THROUGH
27 EVERYTHING THAT HE SAID MARCH 7TH, 1990 SO THE JURY
28 IS AWARE THAT WE KNOW THERE IS AN INCONSISTENCY

49033

1 THERE.

2 THE COURT: WHY WOULD YOU DO THAT?

3 MS. NAJERA: THIS IS NOT A SURPRISE.

4 THE COURT: WHY ARE YOU DOING THAT?

5 MS. NAJERA: WE COULD DO THAT TO SHOW -- AND
6 THEN ASK HIM: HAVE YOU TESTIFIED TRUTHFULLY IN
7 COURT TODAY.

8 THE COURT: YOU'RE TRYING TO ANTICIPATE THEN

9 THE DEFENSE CROSS-EXAMINATION, IS WHAT YOU'RE

10 SAYING.

11 MS. NAJERA: NO. WHAT I'M TRYING TO DO IS

12 PUT MY WITNESS ON IN A MANNER THAT EXPLAINS -- TO

13 PUT HIS STORY, PUT HIS FACTS BEFORE THE JURY, IN A

14 MANNER THAT SHOWS WE'RE BEING THOROUGH, AND WE ARE

15 AWARE OF EVERYTHING THAT IS OUT THERE, AND HOW HE

16 REACTS TO IT ALL.

17 THE COURT: YOU SAID HE'S GOING TO SAY THAT

18 HIS BEST RECOLLECTION IS THAT ERIK MENENDEZ SHOT HIS

19 MOTHER AS SHE STOOD UP.

20 MS. NAJERA: RIGHT.

21 THE COURT: SO THAT'S HIS BEST RECOLLECTION.

22 THAT'S WHAT YOU'RE GOING TO ARGUE TO THE JURY

23 OCCURRED; IS THAT RIGHT? WHAT IS IT YOU'RE TRYING

24 TO ACCOMPLISH? I STILL DON'T UNDERSTAND WHY YOU

25 WOULD PUT ON OTHER STATEMENTS HE MADE IF YOU'RE NOT

26 GOING TO ARGUE THAT THOSE ARE THE STATEMENTS THAT

27 ERIK MENENDEZ MADE TO HIM.

28 MS. NAJERA: YOUR HONOR, IT IS SOMETHING THAT

49034

1 NEEDS TO BE TAKEN INTO CONSIDERATION, TO SHOW WE'RE

2 NOT TRYING TO HIDE THE BALL TO THE JURY, SINCE THIS

3 IS OUR WITNESS AND WE'RE VOUCHING FOR HIS

4 CREDIBILITY, AND THIS GOES TO HIS CREDIBILITY.

5 THE DEFENSE IS GOING TO TRY TO ATTACK

6 HIS CREDIBILITY BY SHOWING THESE INCONSISTENT

7 STATEMENTS, AND I THINK IT'S VERY DISINGENUOUS OF

8 ANY PROSECUTOR TO PUT A WITNESS UP ON THE STAND AND

9 NOT SHOW EVERYTHING THAT IS OUT THERE THAT IS HIS

10 BAGGAGE.

11 THE COURT: I JUST ASKED YOU THAT. ARE YOU

12 TRYING TO ANTICIPATE THE DEFENSE CROSS-EXAMINATION?

13 THAT'S WHAT I ASKED. THAT'S WHAT YOU'RE DOING.

14 IS THAT WHAT YOU'RE DOING? THAT'S ALL I

15 ASKED YOU. YOU COULD HAVE SAID YES, YOU'RE TRYING

16 TO ANTICIPATE THAT, IF THAT'S WHAT YOU'RE DOING.

17 OBVIOUSLY, IF THE DEFENSE NEVER BROUGHT

18 THEM OUT, OR YOU NEVER BROUGHT THEM OUT, THE JURY

19 WOULD NEVER KNOW ABOUT THEM, AND IT WOULDN'T MATTER.

20 MS. NAJERA: THIS IS TRUE. THIS IS STUFF

21 THAT'S OUT THERE.

22 THE COURT: IT'S NOT OUT THERE UNLESS THEY'RE

23 MADE AWARE OF IT BY YOU OR THE DEFENSE. YOU'RE

24 CONCERNED THE DEFENSE IS GOING TO BRING IT OUT, AND

25 YOU WANT TO BRING IT OUT FIRST.

26 MS. NAJERA: WE'RE GOING TO BRING OUT

27 EVERYTHING WE FEEL CAN BE USED TO ATTACK THIS

28 WITNESS' CREDIBILITY.

1 THE COURT: THEREFORE, YOU ARE ANTICIPATING
2 THE CROSS-EXAMINATION AND TRYING TO DEAL WITH IT
3 DURING YOUR DIRECT. IS THAT WHAT YOU'RE DOING?

4 MS. NAJERA: YOUR HONOR, THAT IS ONE WAY TO
5 CHARACTERIZE IT. BUT THE WAY WE'RE CHARACTERIZING
6 IT IS, WE WANT THE JURY TO BE AWARE OF THIS
7 DEFENDANT (SIC) AND EVERYTHING THAT WOULD OR WOULD
8 NOT ATTACK HIS CREDIBILITY.

9 THE COURT: THE WITNESS.

10 MS. NAJERA: RIGHT.

11 THE COURT: BECAUSE YOU FEEL THAT THE JURY
12 SHOULD KNOW ALL THE INCONSISTENT STATEMENTS HE'S
13 EVER MADE AND ALL THE BAD THINGS HE'S DONE AND
14 EVERYTHING ELSE THAT MIGHT IMPEACH HIM OR WHAT?

15 MS. NAJERA: NOT EVERYTHING HE'S EVER DONE,
16 BUT THAT WHICH AFFECTS HIS TESTIMONY AND THE FACTS
17 THAT HE KNOWS ABOUT THIS CASE.

18 THE COURT: OKAY. SO, IN ESSENCE, THE PEOPLE
19 WISH TO BRING OUT THESE MATTERS TO SHOW THAT THEY
20 AREN'T HIDING THE BALL ON ISSUES THAT WILL BE
21 BROUGHT OUT IN CROSS-EXAMINATION.

22 MR. LEVIN, WHAT IS YOUR RESPONSE TO
23 THAT?

24 MR. LEVIN: I MAY NOT CROSS-EXAMINE THIS
25 WITNESS. I MAY CROSS-EXAMINE THIS WITNESS. I MAY
26 BRING OUT ANYTHING THAT I FEEL IS APPROPRIATE IN THE
27 DEFENSE OF MY CLIENT.

49036

1 WISHES TO FIRE A PREEMPTIVE STRIKE, AND THEY WANT TO
2 BRING ALL THESE PREJUDICIAL MATTERS BEFORE THE JURY.
3 AND THE BOTTOM LINE IS THAT THEY'RE OUT OF
4 SEQUENCE. THEY'RE PUTTING THE CART BEFORE THE
5 HORSE. IF I CHOOSE NOT TO CROSS-EXAMINE
6 MR. CIGNARELLI AT ALL, THESE MATTERS WOULD NEVER
7 HAVE GOTTEN BEFORE THE JURY.

8 SO I THINK THE PROSECUTION IS VERY
9 DISINGENUOUS AS TO THE PURPOSE OF WHAT IT IS THAT
10 THEY WANT TO OFFER OF THIS WITNESS AND THE PURPOSE
11 THAT THEY WANT TO OFFER IT FOR.

12 THE COURT: OKAY. WELL, CLEARLY, YOU'RE NOT
13 ALLOWED TO GO THROUGH AND BRING OUT IN EXAMINATION
14 OF ANY WITNESS ALL HIS OTHER STATEMENTS AND SAY:
15 WELL, ON SUCH AND SUCH A DATE YOU SAID THESE THINGS
16 AND ON ANOTHER DATE YOU SAID THESE THINGS.

17 YOU COULD, IF YOU CHOOSE TO DO SO, ASK
18 THE WITNESS: DID YOU MAKE SOME OTHER STATEMENTS ON
19 OTHER OCCASIONS THAT WERE NOT IDENTICAL TO WHAT
20 YOU'VE SAID HERE AND WHY; BUT TO GO INTO THE
21 SPECIFICS OF IT, I THINK, OPENS THE DOOR TO ALL
22 SORTS OF MATERIAL THAT MIGHT OR MIGHT NOT ARISE.

23 MR. LEVIN: YOUR HONOR, THE "WHY" IS WHAT
24 SCARES ME. I DON'T HAVE ANY DISCOVERY AS TO WHAT IT
25 IS THAT MR. CIGNARELLI WOULD SAY IF ASKED THAT
26 QUESTION; AND OBVIOUSLY, THE PROSECUTION, IN
27 PREPARING MR. CIGNARELLI FOR HIS TESTIMONY, HAS A
28 DEARTH OF INFORMATION.

49037

1 MS. ABRAMSON: A WEALTH.
2 MR. LEVIN: A WEALTH?
3 MS. ABRAMSON: A WEALTH.
4 MR. LEVIN: A WEALTH OF INFORMATION THAT
5 WOULD PERHAPS BETTER PRESENT MR. CIGNARELLI'S
6 CREDIBILITY, AND WE'RE ENTITLED TO THAT.
7 THE COURT: MAYBE YOU'RE RIGHT. THERE IS A
8 DEARTH.
9 MS. ABRAMSON: THAT'S NOT WHAT I MEANT.
10 THE COURT: HAVING WITNESSED THE DIRECT
11 EXAMINATION SO FAR, THERE WAS A DEARTH.
12 MS. NAJERA: NOW THAT WE'RE THROUGH INSULTING
13 ME, LET'S MOVE ON.
14 MS. ABRAMSON: WE WEREN'T INSULTING YOU,
15 CAROL.
16 MS. NAJERA: MY UNDERSTANDING, YOUR HONOR, IS
17 WE HAVE THE RIGHT TO PRESENT TO THE JURY ANYTHING

18 THAT WILL AFFECT THIS WITNESS' CREDIBILITY; AND IF
19 WE ASK HIM A QUESTION LIKE: DID YOU SAY SOMETHING
20 DIFFERENTLY BEFORE AND WHY, THAT DOESN'T REALLY GO
21 INTO WHAT IT IS THAT HE SAID BEFORE AND WHAT IT IS
22 THAT WE'RE TRYING TO TELL THE JURY ABOUT HIS
23 CREDIBILITY.

24 WE HAVE A RIGHT AND DUTY TO PRESENT TO
25 THE JURY EVERYTHING WE KNOW ABOUT THIS WITNESS AND
26 NOT HIDE THE BALL, WHICH IS WHAT WE ARE ATTEMPTING
27 TO DO, WHICH IS WHAT WE ATTEMPT TO DO IN EVERY CASE.

28 AND, QUITE FRANKLY, PROSECUTORS ARE

49038

1 USUALLY CRITICIZED WHEN THEY DON'T DO THAT.

2 NOW, COUNSEL'S OBJECTIONS -- FIRST OF
3 ALL, THERE IS NO LEGAL BASIS TO COUNSEL'S
4 OBJECTIONS. I DON'T REALLY UNDERSTAND WHY THEY FEEL
5 THEY CAN OBJECT TO THE PEOPLE GOING INTO ANYTHING
6 THE DEFENDANT --

7 THE COURT: THE WITNESS.

8 MS. NAJERA: -- THAT GOES TO HIS CREDIBILITY
9 CONCERNING THE DEFENDANT'S STATEMENT. AND I REALLY
10 DON'T UNDERSTAND ASKING HIM: DID YOU SAY SOMETHING
11 DIFFERENT ON A PRIOR OCCASION? GOSH, WHAT WAS IT?
12 NOT EVEN ASKING HIM WHAT WAS IT THAT YOU SAID, BUT

13 DID YOU SAY SOMETHING ON A PRIOR OCCASION; AND IF
14 YOU DID SO, WHY DID YOU SAY IT, IS NOT GOING TO TELL
15 THIS JURY ANYTHING ABOUT WHAT IT IS WE'RE CONCERNED
16 ABOUT, OR WHAT THE PARTICULAR FACTS ARE THAT GO TO
17 HIS CREDIBILITY THAT WE WOULD LIKE TO PRESENT TO
18 THIS JURY AND HAVE HIM EXPLAIN.

19 THE COURT: OKAY. AND YOU'VE IDENTIFIED THE
20 AREAS THAT YOU WANTED TO ASK?

21 MS. NAJERA: THAT'S CORRECT.

22 THE COURT: JUST THAT ONE AREA?

23 MS. NAJERA: YES.

24 THE COURT: WHAT IS HIS EXPLANATION AS TO WHY
25 HE SAID THESE OTHER THINGS?

26 MS. NAJERA: HE'S GOING TO STATE WHAT HE SAID
27 IN HIS PRIOR TESTIMONY, AS HE RECALLS IT NOW, IS
28 THAT LYLE AND ERIK EACH SHOT ONE OF THEIR PARENTS.

49039

1 WITH REGARDS TO THE STATEMENT THAT HE
2 MADE TO THE POLICE, HE DOES NOT KNOW -- HE DOES NOT
3 REMEMBER IT THAT WAY; AND THUS, DOES NOT KNOW -- IF
4 HE SAID THAT, THEN HE WAS WRONG.

5 THE COURT: OKAY.

6 MS. NAJERA: HE DIDN'T REMEMBER SAYING IT.

7 THE COURT: OKAY. IS THIS A TAPED INTERVIEW

8 OR INTERVIEW?

9 MS. NAJERA: NOVEMBER 17TH WAS NOT TAPED.

10 BUT HE DOESN'T SAY HE DIDN'T SAY IT. HE
11 JUST SAYS WHAT HE REMEMBERS NOW IS WHAT HE SAID ON
12 MARCH 7TH, WHICH WAS TAPED, AND HE TESTIFIED TO IN
13 THE FIRST TRIAL, AND WHAT HE TESTIFIED TO NOW.

14 THE COURT: OKAY. BASED UPON THE PEOPLE'S
15 OFFER THAT THIS IS EVIDENCE THAT THEY INTEND TO USE
16 TO BOLSTER THE CREDIBILITY OF THE WITNESS IN
17 ANTICIPATION OF CROSS-EXAMINATION, WHICH THE DEFENSE
18 INDICATES IT INTENDS TO DO. EVEN THOUGH MR. LEVIN
19 SAID HE MIGHT NOT CROSS-EXAMINE, CLEARLY HE WILL.
20 THE PEOPLE ARE ENTITLED TO DO THIS AND BRING OUT THE
21 PRIOR STATEMENT AND HEAD OFF THE TYPE OF ATTACK THAT
22 IS ANTICIPATED HERE. SO --

23 MS. NAJERA: THERE IS --

24 THE COURT: -- THE PEOPLE WILL BE PERMITTED
25 TO DO THAT.

26 MS. NAJERA: THERE IS ANOTHER STATEMENT THAT
27 I JUST REALIZED THAT I HAD INTENDED TO GO INTO, AND
28 I DID NOT MENTION, AND IT'S SOMETHING THAT COUNSEL

49040

1 KNOWS ABOUT.

2 THE COURT: WHAT'S THAT?

3 MS. NAJERA: IN THE NOVEMBER -- THIS WAS
4 TESTIFIED TO IN THE FIRST TRIAL. IN THE NOVEMBER
5 17TH STATEMENT THE DEFENDANT ENDED THE STATEMENT TO
6 THE POLICE SAYING THAT ERIK SAID AFTER THE
7 CONFESSION: IT COULD HAPPEN.

8 ON MARCH 7TH HE EXPLAINED WHAT HE MEANT
9 BY THAT; AND WHAT HE SAID ON THE MARCH 7TH TAPED
10 INTERVIEW IS HE IS THE ONE THAT ADDED THAT
11 STATEMENT, AND HE ADDED IT BECAUSE HE WAS SO -- I'M
12 CHARACTERIZING THIS IN MY OWN WORDS -- THAT HE JUST
13 REALLY -- HE WAS SO AMAZED AND SO SHOCKED THAT ERIK
14 SAID IT, AND HE WAS HIS FRIEND, AND HE DIDN'T REALLY
15 WANT TO HURT HIM.

16 THE COURT: OKAY. WELL, THAT WAS SOMETHING
17 THAT CAME OUT IN THE FIRST TRIAL, AS TO THAT PHRASE,
18 AND WHO SAID IT.

19 MS. NAJERA: THAT IS WHAT I WOULD BE --

20 THE COURT: I HAD THOUGHT YOU WERE GOING TO
21 BRING THAT OUT DURING HIS TESTIMONY YESTERDAY.

22 MS. NAJERA: NO. IT HAPPENED ON A DIFFERENT
23 DAY, SO I'M JUST MOVING ALONG.

24 THE COURT: ALL RIGHT. ANYTHING ELSE?

25 MY CONCERN IS WE DON'T HAVE TOO MUCH,
26 OTHER THAN PERHAPS LISTENING TO THIS TAPE, IF YOU
27 WANT TO DO IT, TO SEE IF THERE'S ANYTHING FURTHER TO
28 CLARIFY ON THAT PAGE 16; THAT THE CROSS IS GOING TO

1 START RATHER QUICKLY HERE, AND YOU'RE GOING TO ASK
2 FOR A RECESS RIGHT AWAY, MR. LEVIN, TO GO INTO THOSE
3 AREAS THAT THE PEOPLE ARE OBJECTING TO.

4 MR. LEVIN: YES, YOUR HONOR. I'M RELYING ON
5 THE PEOPLE'S -- I'M RELYING ON THE GOOD FAITH STATED
6 BY THE PEOPLE THAT THEY'RE NOT GOING TO GO INTO ANY
7 OTHER AREA OR RAISE ANY OTHER ISSUE OTHER THAN WHAT
8 THEY TOLD THE COURT, OR ANY OTHER STATEMENT BY
9 MR. CIGNARELLI.

10 YES, I AM ASKING FOR A BRIEF RECESS SO
11 THAT I COULD THEN ASSESS WHAT IT IS THAT I'M GOING
12 TO GO INTO THAT MS. NAJERA IDENTIFIED AS HER FOUR
13 POINTS.

14 THE COURT: WELL, WHAT I WOULD SUGGEST OR ASK
15 IS, IF YOU COULD GO ONTO EXAMINATION OF THE WITNESS
16 ON OTHER AREAS, IF THERE ARE ANY OTHER AREAS.

17 MR. LEVIN: SURE.

18 THE COURT: BEFORE WE TAKE A RECESS -- I
19 DON'T KNOW IF THERE ARE OR IF THESE ARE THE ONLY
20 THINGS YOU WERE GOING TO COVER. I ASSUME THERE ARE
21 OTHER THINGS.

22 MR. LEVIN: THERE'S A COUPLE OTHER THINGS.

23 THE COURT: WE'LL HOPEFULLY PROCEED WITH
24 THAT.

25 IF YOU WANT TO FIND THAT PORTION OF

26 THE TAPE NOW SO WE COULD LISTEN TO IT, IT WOULD

27 HELP.

28 MS. NAJERA: WE HAVE ANOTHER WITNESS AS WELL

49042

1 WHO FLEW IN FROM THE DEPARTMENT OF MOTOR VEHICLES IN
2 SACRAMENTO THAT WOULD BE VERY SHORT, AND WE WOULD
3 REQUEST TO TAKE THEM OUT OF ORDER.

4 THE COURT: SURE. ARE YOU READY WITH THAT
5 WITNESS? IS THE DEFENSE READY WITH THAT WITNESS?

6 MS. NAJERA: THEY HAVE BEEN PROVIDED WITH
7 COPIES OF CERTIFIED RECORDS.

8 MS. ABRAMSON: I HAVE NO IDEA WHAT THIS
9 WITNESS IS SUPPOSED TO BE TESTIFYING ABOUT.

10 THE COURT: THE PEOPLE INDICATED A COUPLE OF
11 DAYS AGO --

12 MS. ABRAMSON: THEY DIDN'T INDICATE WHAT THE
13 WITNESS WAS GOING TO SAY. I HAVE THE RECORDS --

14 THE COURT: HE'S GOING TO TESTIFY THERE WAS
15 NO DRIVER'S LICENSE OBTAINED IN CALIFORNIA.

16 MS. ABRAMSON: HE CAN'T TESTIFY TO THAT. THE
17 RECORDS DON'T SHOW THAT.

18 THE COURT: THAT'S WHAT THEIR OFFER IS.

19 MS. ABRAMSON: WE OBJECT, THAT THE RECORDS WE
20 HAVE -- BASED ON OTHER RECORDS THAT WE HAVE, PRIOR

21 DMV RECORDS ARE INCOMPLETE. THEY DO NOT INDICATE
22 THAT INFORMATION WHATSOEVER. THEY DON'T COMPORT
23 WITH THE OTHER DMV RECORDS THAT WERE RUN BACK IN
24 1990. WE WERE ALREADY TOLD THAT FILE HAD BEEN
25 PURGED. DETECTIVE ZOELLER SAID THAT WHEN WE WERE
26 TRYING TO PIN DOWN THAT OTHER TRAFFIC TICKET AND THE
27 DATE OF IT WHICH --
28 WE'RE MAKING A 402 MOTION THIS WITNESS --

49043

1 IN FACT, WE'RE MAKING AN 801 MOTION, THE WITNESS
2 DOES NOT HAVE SUFFICIENT INFORMATION TO TESTIFY.
3 THE COURT: WE'LL TAKE HIS TESTIMONY RIGHT
4 NOW THEN AND SEE WHAT HE HAS TO SAY.

5 ARE YOU READY TO PUT HIM ON?

6 MS. NAJERA: CERTAINLY. IT'S A WOMAN.

7 THE COURT: BRING HIM IN.

8 MS. ABRAMSON: IT'S A HER.

9 THE COURT: HER? OKAY.

10

11 JULIE MONTOYA,
12 WAS CALLED AS A WITNESS, UNDER EVIDENCE CODE 402, BY
13 THE PEOPLE, WAS DULY SWORN, AND TESTIFIED AS
14 FOLLOWS:

15 THE CLERK: RAISE YOUR RIGHT HAND TO BE

16 SWORN.

17 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
18 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
19 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
20 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

21 THE WITNESS: I DO.

22 THE CLERK: PLEASE TAKE THE STAND AND STATE
23 YOUR NAME FOR THE RECORD.

24 MS. ABRAMSON: MIGHT I APPROACH THE WITNESS
25 TO SEE IF WE HAVE THE SAME DOCUMENTS SHE HAS?

26 THE COURT: SURE.

27 THE CLERK: PLEASE STATE YOUR NAME FOR THE
28 RECORD.

49044

1 THE WITNESS: MY NAME IS JULIE MONTOYA.

2 THE CLERK: SPELL YOUR LAST NAME, PLEASE.

3 THE WITNESS: M-O-N-T-O-Y-A.

4 MS. ABRAMSON: LET ME JUST COMPARE,
5 MS. MONTOYA, WHAT WE HAVE HERE.

6 (BRIEF PAUSE.)

7

8 MS. ABRAMSON: I'M SORRY, YOUR HONOR, BUT MY
9 PACKAGE OF DOCUMENTS IS IN AN ENTIRELY DIFFERENT
10 ORDER THAN THE WITNESSES. I'M TRYING TO FIGURE OUT

11 IF WE HAVE THE SAME THING. IT'S A LITTLE TOUGH.

12 (BRIEF PAUSE.)

13

14 MS. ABRAMSON: I AM SORRY, YOUR HONOR, BUT

15 THEY'RE NOT IN ANYTHING THE SAME ORDER. SO I HAVE

16 TO HUNT THROUGH TO FIND THE DOCUMENTS.

17 OKAY. I DON'T HAVE THIS DOCUMENT, I

18 DON'T THINK. OH, I HAVE IT HERE.

19 (BRIEF PAUSE.)

20

21 MS. ABRAMSON: OKAY. THANK YOU VERY MUCH.

22 I'M IN A COMPLETELY DIFFERENT ORDER,

23 UNFORTUNATELY.

24 THE COURT: OKAY. YOU MAY EXAMINE THE

25 WITNESS.

26 MS. NAJERA: THANK YOU.

27 /// /// ///

28 DIRECT EXAMINATION

49045

1 BY MS. NAJERA:

2 Q MA'AM, COULD YOU TELL US YOUR

3 OCCUPATION.

4 A I'M A DRIVER'S SAFETY MANAGER FOR THE

5 DEPARTMENT OF MOTOR VEHICLES IN THE LIAISON UNIT.

6 THE COURT: MOVE CLOSER TO THE MICROPHONE.

7 MS. NAJERA: YOUR HONOR, I HAVE A GROUP OF
8 DOCUMENTS THAT WE SUBPOENAED. I WANT TO MARK THEM
9 422, NEXT IN ORDER.

10 THE COURT: 422.

11 Q BY MS. NAJERA: AND, MA'AM, SHOWING YOU
12 422.

13 DO YOU RECOGNIZE WHAT THOSE PAPERS ARE
14 IN THAT PACKET?

15 A YES.

16 Q AND CAN YOU TELL US WHAT THOSE ARE?

17 A THESE ARE OFFICIAL RECORDS OF THE
18 DEPARTMENT OF MOTOR VEHICLES WHICH RELATE TO ERIK
19 MENENDEZ.

20 Q AND DID SOMEONE IN YOUR STAFF BRING
21 THOSE RECORDS TOGETHER?

22 A YES, THEY DID.

23 Q AND WAS THAT MY TRAN?

24 A YES, IT WAS.

25 Q AND THERE'S A PARTICULAR PAGE ON THAT
26 SET OF DOCUMENTS, THE LAST PAGE --

27 MS. NAJERA: YOUR HONOR, I'D LIKE TO MARK
28 THIS 422-A.

1 THE COURT: OKAY.

2 MS. NAJERA: IF I MAY, AND WE ALL HAVE A COPY
3 OF IT. IF I CAN SHOW IT TO COUNSEL.

4 Q SHOWING YOU WHAT HAS BEEN MARKED 422,
5 COULD YOU EXPLAIN WHAT -- 422-A -- COULD YOU EXPLAIN
6 TO US WHAT THAT IS.

7 A THIS IS A PRINTOUT OF ERIK MENENDEZ'
8 DRIVING RECORD, AND IT IS AN OFFICIAL RECORD OF THE
9 DEPARTMENT OF MOTOR VEHICLES.

10 Q AND IS THERE A LINE ON THERE INDICATING
11 SOMETHING CALLED "LATEST A.P.P."?

12 A YES, THERE IS.

13 Q AND CAN YOU TELL THE COURT WHAT THAT
14 MEANS.

15 A THAT PARTICULAR FIELD ON THE PRINTOUT
16 INDICATES THE TYPE OF APPLICATION THAT WAS FILED, OR
17 THE LATEST TYPE OF APPLICATION THAT WAS FILED, BY AN
18 INDIVIDUAL.

19 Q AND ARE THERE THREE CLASSIFICATIONS THAT
20 GO AFTER "LATEST APPLICATION"?

21 A YES.

22 Q AND COULD YOU TELL THE COURT WHAT THOSE
23 THREE ARE?

24 A THE ONLY POSSIBILITIES FOR THAT WOULD BE
25 AN ORIGINAL APPLICATION, A DUPLICATE APPLICATION, OR
26 RENEWAL OF APPLICATION.

27 Q AND WITH REGARDS TO AN ORIGINAL
28 APPLICATION, WOULD THAT MEAN AN APPLICATION THAT'S

1 ORIGINAL; THAT IS, THE FIRST APPLICATION THAT YOU
2 MADE?

3 A THAT'S CORRECT.

4 Q WHAT IS A DUPLICATE APPLICATION?

5 A IF YOUR DRIVER'S LICENSE WAS LOST,
6 STOLEN, MUTILATED, YOU HAVE THE ABILITY IN
7 CALIFORNIA TO APPLY FOR A DUPLICATE LICENSE.

8 Q AND WHAT DOES "RENEWAL" INDICATE?

9 A THAT YOUR LICENSE, THE TERMS OF YOUR
10 LICENSE HAS EXPIRED, AND THAT YOU WILL BE RENEWING
11 YOUR CALIFORNIA DRIVING PRIVILEGE.

12 Q NOW, THIS PARTICULAR APPLICATION THAT
13 GOES TO ERIK GALEN MENENDEZ, STATES THAT -- UNDER
14 LATEST APPLICATION, ORIGINAL.

15 A THAT'S CORRECT.

16 Q AND WHAT DOES THAT MEAN?

17 A THAT MEANS THAT THE ONLY APPLICATION THE
18 DEPARTMENT OF MOTOR VEHICLES HAS RECEIVED FROM ERIK
19 MENENDEZ WAS AN ORIGINAL APPLICATION.

20 Q AND IT IS DATED DECEMBER 18TH, 1986.

21 WHAT DOES THAT MEAN?

22 A THAT WOULD BE THE ISSUANCE DATE OF HIS
23 ORIGINAL CALIFORNIA DRIVER'S LICENSE.

24 Q NOW, IF ERIK GALEN MENENDEZ HAD GONE IN

25 AND ASKED FOR A DUPLICATE DRIVER'S LICENSE, WOULD
26 THAT BE REFLECTIVE IN THIS FORM?
27 A YES, IT WOULD BE. WHEN HE APPLIED FOR A
28 DRIVER'S LICENSE THE RECORD WOULD AUTOMATICALLY BE

49048

1 UPDATED WITH A DUPLICATE ENTRY.

2 Q AND IF THE DEFENDANT HAD APPLIED FOR A
3 DRIVER'S LICENSE IN -- AFTER AUGUST OF 1989, WOULD
4 THE DATE OF ISSUANCE HAVE SOME EFFECT ON WHAT YOU
5 WOULD HAVE SUGGESTED HE DO?

6 A I'M SORRY? COULD YOU REPEAT THAT.

7 Q IF HE HAD APPLIED FOR A DRIVER'S LICENSE
8 IN SEPTEMBER AND HIS DATE OF ISSUANCE WAS DECEMBER,
9 WOULD YOU HAVE SUGGESTED SOMETHING TO HIM ABOUT
10 GETTING A DUPLICATE?

11 A SEPTEMBER OF 19 --

12 Q '89.

13 A '89? BASED ON OUR RECORD, MR. MENENDEZ'
14 DRIVING -- DRIVER'S LICENSE WOULD HAVE EXPIRED IN
15 SEPTEMBER -- EXCUSE ME -- ON NOVEMBER THE 27TH,
16 1989.

17 IF MR. MENENDEZ CAME INTO AN OFFICE OF
18 THE DEPARTMENT OF MOTOR VEHICLES AND APPLIED, OR
19 WANTED TO APPLY FOR A DUPLICATE CALIFORNIA DRIVER'S

20 LICENSE, OUR RECOMMENDATION TO HIM WOULD BE TO RENEW
21 HIS DRIVER'S LICENSE FIRST VERSUS BEING ISSUED A
22 DUPLICATE DRIVER'S LICENSE FOR ONLY A TWO-MONTH
23 PERIOD, SINCE THE RENEWAL DATE WOULD HAVE BEEN
24 NOVEMBER.

25 Q AND IF HE HAD DONE THAT, WOULD THIS
26 THING THAT SAYS "LATEST APPLICATION" REFLECT THAT AS
27 WELL?

28 A IF MR. MENENDEZ APPLIED FOR A DUPLICATE

49049

1 LICENSE, WHEN IT WAS GIVEN TO ONE OF OUR
2 TECHNICIANS, THEY WOULD ENTER IT INTO OUR SYSTEM AND
3 IT WOULD BE UPDATED.

4 MS. ABRAMSON: YOUR HONOR, I'M NOT OBJECTING
5 TO THIS BECAUSE THIS IS A 402, BUT, OBVIOUSLY, THIS
6 IS ALL SPECULATION AND CONJECTURE ON THE PART OF THE
7 WITNESS.

8 THE COURT: THERE HAS TO BE A FOUNDATION AS
9 TO HOW THE WITNESS WOULD KNOW THESE THINGS.

10 Q BY MS. NAJERA: WHEN YOU STATE THAT THIS
11 SAYS ORIGINAL, RENEWAL, OR DUPLICATE, HOW IS IT THAT
12 YOU KNOW THAT?

13 FIRST OF ALL, HOW IS IT THAT THAT
14 INFORMATION GETS ENTERED INTO THIS PRINTOUT?

15 A THE INFORMATION IS ENTERED ONTO THE
16 PRINTOUT WHEN THE PERSON FILES WHATEVER TYPE OF
17 APPLICATION FOR CALIFORNIA LICENSE THAT THEY ARE
18 APPLYING FOR. IT'S ENTERED IN BY A TECHNICIAN IN
19 ONE OF OUR FIELD OFFICES. AND BASICALLY, IT'S
20 ELECTRONICALLY UPDATED ON THE DATA BASE.

21 Q AND WHEN -- CAN YOU EXPLAIN TO THE COURT
22 HOW IT IS THAT WHEN AN APPLICATION IS MADE, WHAT IS
23 THE PROCEDURE IT GOES THROUGH FOR IT TO END UP BEING
24 ENTERED INTO YOUR DATA BASE?

25 A BASICALLY, THE INDIVIDUAL WILL GO INTO A
26 LOCAL FIELD OFFICE, MAKE AN APPLICATION ON A
27 STANDARD APPLICATION. THEY WILL GO TO A TECHNICIAN
28 AT ONE OF OUR WINDOWS. THE TECHNICIAN WILL UPDATE

49050

1 THE INFORMATION FROM THAT APPLICATION ONTO OUR DATA
2 BASE.

3 Q AND IS THIS THE COMMON PROCEDURE OF THE
4 DEPARTMENT OF MOTOR VEHICLES?

5 A AS FAR AS I KNOW, IT'S THE ONLY
6 PROCEDURE THAT WE HAVE.

7 Q AND IS THE POLICY OF THE DEPARTMENT
8 MOTOR VEHICLES TO DO THIS IN THE NORMAL COURSE AND
9 SCOPE OF BUSINESS WITH EVERY APPLICATION?

10 A YES, IT IS.

11 Q AND DOES THAT DOCUMENT REFLECT THAT ANY
12 INFORMATION WAS ENTERED AS TO A CHANGE IN STATUS
13 FROM THE ORIGINAL APPLICATION?

14 A NOT LOOKING AT THIS DOCUMENT, NO.

15 MS. ABRAMSON: I'M SORRY. I DIDN'T HEAR THE
16 LAST QUESTION. COULD I HAVE IT REREAD.

17 THE COURT: YES. THE LAST QUESTION AND
18 ANSWER.

19 (PENDING QUESTION AND ANSWER READ.)

20

21 MS. NAJERA: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: CROSS?

23

24 CROSS-EXAMINATION

25 BY MS. ABRAMSON:

26 Q LET ME SHOW YOU AN EXHIBIT IN THIS TRIAL
27 WHICH HAS BEEN MARKED -- WELL, YEAH. IT'S BEEN
28 MARKED 366.

49051

1 DO YOU RECOGNIZE THAT TYPE OF DOCUMENT?

2 A YES, I DO.

3 Q WHAT IS THAT?

4 A THAT IS WHAT IS KNOWN AS A "LAW

5 ENFORCEMENT PRINTOUT" OR A "CLETS," C-L-E-T-S.

6 Q AND DOES IT CONTAIN A DRIVING RECORD FOR
7 ERIK GALEN MENENDEZ?

8 A YES, IT DOES.

9 Q DOES IT SHOW THE SAME DRIVER'S LICENSE
10 NUMBER FOR THAT INDIVIDUAL AS ON THE DOCUMENT,
11 422-A, THAT YOU'VE BROUGHT TO COURT?

12 A YES, IT DOES.

13 Q SO IT APPEARS TO BE A DRIVING RECORD OF
14 THE SAME INDIVIDUAL AS THE PERSON WHOSE DOCUMENTS
15 YOU HAVE BROUGHT TO COURT?

16 A THAT'S CORRECT.

17 Q CAN YOU EXPLAIN WHY ALL OF THESE -- THIS
18 DRIVING RECORD INFORMATION THAT APPEARS ON THIS
19 EXHIBIT DOES NOT APPEAR ON DOCUMENTS THAT YOU
20 BROUGHT TO COURT?

21 A NO, I CANNOT. I AM NOT AN EXPERT WITH
22 REGARD TO A LAW ENFORCEMENT PRINTOUT, NOR WOULD I
23 QUALIFY AS ONE.

24 Q NOW, THERE'S ONE AND ONLY ONE VIOLATION
25 NOTED ON THE DOCUMENT YOU BROUGHT. AND IF I'M
26 READING THIS THING RIGHT -- AND BELIEVE ME, I'M NOT
27 AN EXPERT IN READING THESE -- AM I CORRECT THAT
28 THERE'S ONLY ONE VIOLATION ON 9/22/89, A CONVICTION

1 OF 4/16/90 THAT SHOWS UP ON 422-A?

2 A AS OF THE DATE OF THE PRINTOUT THAT'S
3 EXHIBIT NUMBER WHATEVER, THE DATE OF THIS PARTICULAR
4 PRINTOUT IS JANUARY THE 17TH, 1996. DEPARTMENT
5 RECORDS WOULD INDICATE THAT THERE'S ONLY ONE
6 VIOLATION AS OF 1986.

7 Q AS YOU CAN SEE IN THE PREVIOUS EXHIBIT,
8 IT SHOWS A WHOLE LOT OF OTHER VIOLATIONS PREDATING
9 THAT 9/2/89 DATE.

10 A THAT'S CORRECT. THE DATE ON THE
11 PRINTOUT YOU'RE REFERRING TO IS MARCH THE 11TH OF
12 1990, APPROXIMATELY SIX YEARS PRIOR.

13 Q AND IT SHOWS A WHOLE BUNCH OF EARLIER
14 ACTIVITIES THAT YOURS NO LONGER SHOWS.

15 A THAT'S CORRECT.

16 Q SO THE RECORDS ARE CHANGED?

17 A RECORDS ARE PURGED WITH OUR DEPARTMENT.

18 Q AH. OKAY.

19 THE COURT: DOES THAT INCLUDE RECORDS
20 REGARDING APPLICATIONS FOR RENEWAL OR REPLACEMENT
21 LICENSES? ARE THEY PURGED?

22 THAT'S THE ISSUE HERE, AS TO WHETHER
23 THAT EXHIBIT YOU HAVE THERE, 422-A, REFLECTS WHAT
24 OCCURRED IN 1989.

25 THE WITNESS: TO MY KNOWLEDGE, YOUR HONOR, AS
26 CUSTODIAN OF RECORDS FOR THE DEPARTMENT OF MOTOR
27 VEHICLES, THE ONLY TIME, IF WE'RE REFERRING STRICTLY

49053

1 INDIVIDUAL FILED FOR A DUPLICATE DRIVER'S LICENSE OR
2 RENEWAL, OR EVEN AN ORIGINAL, AN APPLICATION IS
3 MAINTAINED WITH OUR DEPARTMENT FOR ONLY ONE YEAR.

4 SO IF IT'S NOT COMPLETED WITHIN THAT
5 ONE-YEAR PERIOD OF TIME, IT'S GOING TO DROP OFF THE
6 DRIVING RECORD.

7 THE COURT: WHAT DO YOU MEAN "NOT COMPLETED"?

8 THE WITNESS: IN OTHER WORDS, POSSIBLY YOU
9 WENT IN, YOU FILED AN APPLICATION FOR A CALIFORNIA
10 DRIVER'S LICENSE. YOU NEEDED TO TAKE A DRIVING
11 TEST, A PHOTO, A WRITTEN TEST, AND YOU NEVER CAME
12 BACK IN TO DO THAT, OR COMPLETE THAT APPLICATION;
13 THEN IT WOULD BE PURGED AFTER ONE YEAR.

14 THE COURT: WHAT IF YOU HAD OBTAINED A
15 DUPLICATE LICENSE, WOULD IT BE PURGED AFTER ONE
16 YEAR?

17 THE WITNESS: NO, SIR. IF YOU HAD OBTAINED --
18 GONE TO THE DEPARTMENT OF MOTOR VEHICLES, APPLIED
19 FOR A DUPLICATE LICENSE, BEEN ISSUED A DUPLICATE
20 LICENSE, THAT LATEST APPLICATION STATUS WOULD REMAIN
21 DUPLICATE UNTIL YOU EITHER CAME IN AND RENEWED OR
22 GOT A LICENSE.

23 BECAUSE, FIRST OF ALL, YOU WOULD HAVE
24 YOUR ORIGINAL, AND THEN YOU WOULD HAVE THE
25 DUPLICATE. THE NEXT STEP WOULD HAVE TO BE RENEWAL.
26 THE COURT: WHAT IF THE LICENSE EXPIRED IN
27 THE INTERIM? WOULD THAT RENEWAL DROP OFF AS AN
28 ENTRY ON THE PRINTOUT?

49054

1 THE WITNESS: NO. YOU WOULD HAVE TO COME IN
2 AND RENEW YOUR DRIVER'S LICENSE; AND THEN IT WOULD
3 BE UPDATED WITH A RENEWAL.
4 THE COURT: SO SOME ACTIVITY BY THE LICENSE
5 HOLDER WOULD HAVE TO CAUSE A NEW ENTRY TO BE MADE AS
6 FAR AS THE LAST APPLICATION ENTRY ON THAT DOCUMENT?
7 THE WITNESS: THAT'S CORRECT, SIR.
8 THE COURT: AND UNTIL THAT HAPPENS, IT
9 REMAINS WHATEVER IT WAS, THE LAST ACTIVITY OF THE
10 APPLICANT?
11 THE WITNESS: AT THAT POINT, YES.
12 MS. ABRAMSON: LET ME ASK A HYPOTHETICAL.
13 Q WHAT IF YOU COME IN TO APPLY FOR A
14 DUPLICATE AND YOU HAVE OUTSTANDING TICKETS OR
15 WARRANTS? DMV WON'T ISSUE A RENEWAL AT THAT POINT,
16 WILL THEY?
17 A IF YOU HAVE OUTSTANDING VIOLATIONS, THEY

18 MAY ACCEPT YOUR APPLICATION, BUT NOT ISSUE A
19 LICENSE.

20 Q AND, THEREFORE, THAT APPLICATION COULD
21 DROP OFF AFTER A YEAR, CORRECT?

22 A IF YOU DO NOT COMPLETE YOUR APPLICATION --

23 Q THEY WON'T PROCESS AND ISSUE THE LICENSE
24 UNTIL YOU CLEAR THE WARRANTS AND TICKETS?

25 A THEY WON'T ISSUE A HARD COPY LICENSE,
26 NO.

27 THE COURT: DO THEY GIVE YOU A TEMPORARY?

28 THE WITNESS: NO.

49055

1 THE COURT: SO YOU DON'T GET ANYTHING IF YOU
2 SAY YOU HAVE A LOST LICENSE OR DESTROYED LICENSE,
3 AND YOU COME IN AND SAY: I NEED A DUPLICATE, BUT I
4 HAVE OUTSTANDING WARRANTS?

5 THE WITNESS: WELL --

6 Q BY MS. ABRAMSON: YOU WOULDN'T SAY
7 THAT -- IF A PERSON COMES IN -- LET'S SAY THEY DON'T
8 KNOW THEY HAVE AN OUTSTANDING WARRANT. THEY'RE NOT
9 TAKING CARE OF BUSINESS, WHICH IS TYPICAL?

10 A YES.

11 Q YOU'RE SAYING PEOPLE AREN'T GIVEN A
12 TEMPORARY UNTIL THE HARD COPY COMES IN THE MAIL?

13 A IF YOU HAVE OUTSTANDING VIOLATIONS ON
14 YOUR RECORD, IF YOU HAVE AN OUTSTANDING ACTION ON
15 YOUR RECORD, NO, YOU WILL NOT BE ISSUED A TEMPORARY
16 LICENSE.

17 Q HOW WOULD YOU KNOW AT THE TIME -- WE'RE
18 LIKE -- LET ME --

19 I'M TALKING ABOUT THE TIME YOU COME IN
20 AND FILL OUT THE APPLICATION, OKAY? ARE THEY GOING
21 TO TELL YOU RIGHT THEN AND THERE THAT YOU CAN'T GET
22 IT, OR DOES IT HAVE TO GET RUN AFTER YOU SUBMIT THE
23 APPLICATION?

24 A I CANNOT ANSWER THAT QUESTION.

25 Q SO IT IS -- YOU DON'T KNOW IF THE
26 PRACTICE WAS IN '89 -- IF YOU WENT IN AND APPLIED
27 FOR A DUPLICATE AND THEY ISSUED YOU A TEMPORARY, AND
28 THEN -- WITH THE DMV CHECKING YOUR RECORD AND FINDING

49056

1 YOU HAD OUTSTANDING WARRANTS -- THEN THEY FAILED TO
2 ISSUE THE ACTUAL LICENSE.

3 YOU DON'T KNOW IF THAT COULD HAVE
4 HAPPENED?

5 A I HAVE NO IDEA IF THAT COULD HAPPEN.
6 THAT WOULD NEED TESTIMONY FROM SOMEONE FROM A FIELD
7 OFFICE WHO'S AN EXPERT IN THAT AREA.

8 Q LET ME ASK YOU JUST A COUPLE OF OTHER
9 QUESTIONS HERE THEN.
10 ONE OTHER THING. LET'S SAY YOUR LICENSE
11 WAS UNDER SUSPENSION, AND YOU WENT IN TO TRY TO GET
12 A DUPLICATE.
13 YOU WOULDN'T GET ONE, WOULD YOU?
14 A NO.
15 Q NOW, WHAT DOES "REISSUE FEE REQUIRED"
16 MEAN? IS THAT WHAT THAT SAYS ON THERE, BY THE WAY?
17 A YES, IT DOES.
18 Q WHAT DOES IT MEAN?
19 A IT MEANS THAT AT ONE PARTICULAR TIME
20 THERE WAS A SUSPENSION OR A REVOCATION, AND UNDER
21 CALIFORNIA LAW, TO REISSUE, THE INDIVIDUAL IS
22 REQUIRED TO PAY A REISSUE FEE.
23 Q SO WHENEVER IT WAS SUSPENDED, THE
24 REISSUE FEE WAS NEVER PAID; IS THAT WHAT THAT MEANS?
25 A IN -- REFLECTING THIS PARTICULAR RECORD,
26 YES.
27 Q SO TELL ME WHAT THIS RECORD SHOWS ABOUT
28 WHEN THIS LICENSE WAS SUSPENDED.

49057

1 USE YOURS, BECAUSE YOURS IS IN ORDER AND
2 MINE ARE ALL MIXED UP.

3 WHEN WAS THIS LICENSE SUSPENDED?

4 A THE LICENSE WAS SUSPENDED JUNE 15TH,
5 1990.

6 Q OKAY. WAS IT SUSPENDED PRIOR TO THAT?

7 A NOT ACCORDING TO THIS RECORD.

8 Q ISN'T THIS A NOTICE OF SUSPENSION HERE?

9 A YOU'RE ASKING ME TO LOOK AT THIS
10 RECORD?

11 Q I'M ASKING YOU TO LOOK AT THE WHOLE
12 PILE. I'M REFERRING TO THE RECORD AS THIS WHOLE
13 PILE OF RECORDS.

14 A OH.

15 Q IS THERE A SUSPENSION NOTICE IN THIS
16 FILE, A SUSPENSION IN JUNE OF 1990?

17 A NO.

18 Q AND YET THE PRINTOUT SAYS THERE'S A
19 SUSPENSION IN JUNE OF 1990?

20 A THAT'S CORRECT.

21 Q HOW COULD YOU SUSPEND A LICENSE IN JUNE
22 OF 1990 WHICH EXPIRED ON NOVEMBER 27TH, 1989? I
23 DON'T UNDERSTAND.

24 A IN CALIFORNIA WE CONSIDER IT A PRIVILEGE
25 TO OPERATE A MOTOR VEHICLE. A SUSPENSION IS TAKEN
26 AGAINST THE INDIVIDUAL'S PRIVILEGE TO OPERATE A
27 MOTOR VEHICLE, NOT NECESSARILY THE LICENSE.

28 Q SO HE'S SUSPENDED, EVEN THOUGH HIS

1 LICENSE DOESN'T EXIST. IS THAT WHAT YOU'RE SAYING?

2 A THAT'S CORRECT.

3 Q TELL ME -- THERE IS A SUSPENSION NOTICE

4 IN HERE. WHEN IS IT FROM?

5 A ACCORDING TO THIS PACKAGE, MR. MENENDEZ

6 WAS SUSPENDED -- WE MAILED HIM AN ORDER OF

7 SUSPENSION AND PROBATION. HE WAS SUSPENDED NOVEMBER

8 THE 29TH, 1988 THROUGH MAY THE 28TH OF 1988, AS A

9 CONDITION OF PROBATION. SO HE HAD A SIX-MONTH

10 SUSPENSION. IT'S A PROVISIONAL LICENSE SUSPENSION.

11 Q UH-HUH. IS THERE ANOTHER ORDER OF

12 SUSPENSION DATED SEPTEMBER 9, 1988?

13 A YES, THERE IS.

14 Q AND HOW LONG WAS THAT SUSPENSION FOR?

15 A THAT SUSPENSION WAS UNTIL HE CLEARED UP

16 AN OUTSTANDING VIOLATION ON HIS DRIVING RECORD.

17 Q DO YOU SEE ANY INDICATION OF WHETHER HE

18 CLEARED THAT OUTSTANDING VIOLATION ON HIS DRIVING

19 RECORD?

20 A ACTUALLY, IF YOU WOULD LIKE ME TO

21 REFERENCE --

22 Q NOT FROM THAT ONE. I'M TALKING ABOUT

23 THIS ONE. YOU'VE ALREADY TOLD US YOU'RE NOT AN

24 EXPERT IN READING THOSE OTHER ONES.

25 A NO.

26 Q AND IS THERE -- IS THERE A FORM -- IT'S

27 INSIDE YOUR PACKAGE AS WELL.

28 COULD YOU FIND THIS ONE IN YOUR

49059

1 PACKAGE. I WANT TO GIVE IT A SUB-NUMBER.

2 A (WITNESS COMPLIES.)

3 MS. ABRAMSON: LET ME ASK YOU SOMETHING ABOUT
4 THIS.

5 YOUR HONOR, COULD WE MARK THIS -- IS
6 THIS --

7 MS. NAJERA: 422-B.

8 MS. ABRAMSON: I'D LIKE TO MARK THIS, IF I
9 CAN, FOR IDENTIFICATION: "IMPORTANT NOTICE, SERVICE
10 FOR PROVISIONAL LICENSE, ORDER OF PROBATION AND
11 SUSPENSION."

12 I'D LIKE TO MARK THIS 422-B.

13 LET'S SEE IF I CAN UNDERSTAND THIS.

14 Q NOW, THIS IS A FORM THAT NOTICES A
15 DRIVER THAT THERE IS AN ORDER, AND THAT IN ORDER TO
16 IMPLEMENT AN ORDER OF PROBATION AND SUSPENSION, THE
17 DRIVER HAS TO SEND BACK HIS LICENSE, RIGHT, AND SIGN
18 THE FORM?

19 A CORRECT.

20 Q OKAY. NOW, LET'S SEE. THIS IS DATED,
21 IS IT NOT -- FIRST OF ALL, THERE'S A SIGNATURE DATED

22 2/18/88, CORRECT?

23 A CORRECT.

24 Q AND THAT SIGNATURE PURPORTS TO BE ERIK

25 MENENDEZ?

26 A CORRECT.

27 Q JUST GIVE ME A MOMENT. I WANT TO SEE

28 SOMETHING.

49060

1 ALL RIGHT. AND THAT SIGNATURE DATE IS

2 FEBRUARY 18TH, 1988, CORRECT?

3 A CORRECT.

4 Q AND THERE IS AN EXPLANATION WRITTEN HERE

5 FOR WHY THE LICENSE IS NOT BEING SENT BACK.

6 A CORRECT.

7 Q AND IT READS: "MY WALLET WAS LOST AND I

8 NO LONGER AM IN POSSESSION OF MY DRIVER'S LICENSE."

9 A CORRECT.

10 Q ASSUME, HYPOTHETICALLY, THAT THIS

11 SUSPENSION -- I'M NOT SURE WHICH ONE THIS WAS. I

12 GUESS THIS WAS THE '87 SUSPENSION -- TERMINATED AND

13 NOW HE HAS NOTIFIED THE DMV THAT HE LOST HIS

14 LICENSE, RIGHT?

15 A CORRECT.

16 Q OKAY. SO WHERE IS THE RECORD THAT HE

17 GOT ANOTHER LICENSE ISSUED TO HIM?

18 A ACCORDING TO OUR RECORD, ACCORDING TO
19 THE LATEST RECORD THAT WE HAVE, THIS PRINTOUT HERE,
20 THE ONLY APPLICATION THAT HE FILED WAS AN ORIGINAL
21 APPLICATION IN 1986.

22 Q SO ACCORDING TO YOUR RECORDS, HE NEVER
23 HAD ANOTHER LICENSE REISSUED TO HIM. SO WHEN HE'S
24 BEING SUSPENDED IN '87, WHEN HE'S SUSPENDED IN '88,
25 WHEN HE'S DOING ALL THE DRIVING THAT'S REFLECTED ON
26 THE LAW ENFORCEMENT PRINTOUT, HE NEVER HAS A
27 DUPLICATE LICENSE.

28 IS THAT WHAT YOUR RECORDS READ?

49061

1 A THAT'S CORRECT.

2 Q DO YOU KNOW WHICH SECTION OF THE VEHICLE
3 CODE IS A VIOLATION OF FOR NOT HAVING A LICENSE IN
4 ONE'S POSSESSION?

5 A LET ME LOOK ON THIS RECORD.

6 THE COURT: YOU DON'T HAVE TO ANSWER THAT.

7 MS. ABRAMSON: OKAY. LET ME TALK TO
8 CO-COUNSEL FOR A MOMENT.

9 (ALL DEFENSE COUNSEL CONFER SOTTO
10 VOCE.)

11

12 THE COURT: ANYTHING ELSE?

13 MS. ABRAMSON: NO.

14 THE COURT: ANY REDIRECT?

15

16 REDIRECT EXAMINATION

17 BY MS. NAJERA:

18 Q WITH REGARDS TO THE FEBRUARY 18TH LETTER

19 WHICH HAS BEEN MARKED 422-B, IS THAT A COPY --

20 422-B.

21 NOW, IS THAT A COPY --

22 MS. ABRAMSON: LET ME HELP YOU FIND IT. I

23 DON'T KNOW IF THE WITNESS CAN FIND IT THAT EASILY.

24 Q BY MS. NAJERA: IS THAT A COPY OF A

25 LETTER THAT THE DEPARTMENT OF MOTOR VEHICLES SEND TO

26 INDIVIDUALS TO TELL THEM THAT THEY HAVE TO SURRENDER

27 THEIR DRIVER'S LICENSE?

28 A BASICALLY, WE NOTIFY THE INDIVIDUAL. WE

49062

1 MAIL THEM AN ORDER OF SUSPENSION, REVOCATION AND

2 PROBATION. ALONG WITH THEM WE ALSO -- THIS IS A

3 SERVICE OF ORDER. WE ASK THEM TO SIGN THAT AND

4 RETURN THEIR DRIVER'S LICENSE, AND, GENERALLY, TO

5 PAY A REISSUE FEE AT THE SAME TIME.

6 Q AND OFTEN TIMES DO PEOPLE NOT SURRENDER

7 THEIR LICENSE WITH REGARD TO THAT LETTER?

8 A MORE OFTEN THAN NOT THEY GENERALLY

9 DON'T, NO.

10 Q NOW, IF SOMEONE TESTIFIED UNDER OATH

11 THAT THEY LOST THEIR LICENSE IN THE SPRING OF 1989,

12 AND YET THEY'RE TELLING YOU THEY LOST IT IN FEBRUARY

13 OF 1988, WOULD IT -- LET ME TAKE THAT QUESTION

14 BACK.

15 I'VE GOT A BETTER QUESTION.

16 MS. ABRAMSON: GOOD IDEA.

17 MS. NAJERA: I'VE GOT A BETTER QUESTION.

18 Q THE DEFENDANT, ERIK MENENDEZ' LICENSE

19 WAS SUSPENDED ONCE AGAIN AFTER THIS 422-B; IS THAT

20 RIGHT?

21 A THAT'S CORRECT.

22 Q AND WHEN IT WAS SUSPENDED AFTERWARDS,

23 WAS HE ASKED TO SURRENDER HIS LICENSE ONCE AGAIN?

24 A YES, HE WAS.

25 Q DID HE SURRENDER IT THEN?

26 A THE ONLY ENTRY ON HIS DRIVING RECORD

27 WOULD INDICATE THAT HE HAD INFORMED US PREVIOUSLY

28 THAT HIS DRIVER'S LICENSE WAS LOST.

49063

1 Q SO HE DIDN'T HAVE TO SURRENDER IT?

2 A NO.

3 Q AND THERE IS NO INDICATION THAT HE EVER
4 APPLIED FOR A DUPLICATE LICENSE; IS THAT RIGHT?

5 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT.

6 YOUR HONOR, THIS WITNESS WOULDN'T KNOW
7 THAT NOW.

8 THE COURT: WELL, TO THE EXTENT THAT SHE'S
9 QUALIFIED.

10 YOU MAY ANSWER THE QUESTION.

11 Q BY MS. NAJERA: DOES IT EVER SHOW THAT
12 HE APPLIED FOR A DUPLICATE APPLICATION IN 1988?

13 A THERE IS NO EVIDENCE ON THE LATEST
14 PRINTOUT OF HIS DRIVER'S LICENSE THAT HE HAS EVER
15 APPLIED FOR ANYTHING OTHER THAN AN ORIGINAL DRIVER'S
16 LICENSE.

17 MS. NAJERA: OKAY. I HAVE NOTHING FURTHER.

18 THE COURT: OKAY. YOU MAY STEP DOWN. THANK
19 YOU.

20 ANY FURTHER WITNESSES ON THIS?

21 MS. NAJERA: YOUR HONOR, I DO HAVE ANOTHER
22 WITNESS, MR. DILLON, FROM THE FIELD OFFICE.

23 MS. ABRAMSON: WAIT A MINUTE. MR. DILLON --
24 WE DIDN'T EVEN KNOW THERE WAS ANOTHER WITNESS HERE.
25 WE'VE BEEN GIVEN NO NOTICE OF MR. DILLON, WHO'S BEEN
26 SITTING HERE THROUGH THIS WITNESS' TESTIMONY.

27 THE COURT: SO?

28 MS. ABRAMSON: WE WOULD NOT HAVE ALLOWED THAT

1 HAD WE KNOWN.

2 THE COURT: UNFORTUNATELY, I DIDN'T KNOW
3 EITHER. HE'S HERE AND NOW HE'S GOING TO TESTIFY.

4 MS. ABRAMSON: COULD WE HAVE A BREAK?

5 THE COURT: LET'S FINISH THIS OFF FIRST.

6 OKAY. SIR, STEP FORWARD.

7

8 MICHAEL DILLON,
9 WAS CALLED AS A WITNESS, UNDER EVIDENCE CODE 402, BY
10 THE PEOPLE WAS DULY SWORN, AND TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE TAKE THE STAND AND STATE
12 YOUR NAME FOR THE RECORD.

13 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
14 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
15 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
16 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

17 THE WITNESS: I DO.

18 THE CLERK: PLEASE TAKE THE STAND AND STATE
19 YOUR NAME FOR THE RECORD.

20 THE WITNESS: MICHAEL DILLON, D-I-L-L-O-N.

21

22 DIRECT EXAMINATION

23 BY MS. NAJERA:

24 Q MR. DILLON, WHAT IS YOUR OCCUPATION?

25 A I'M ADMINISTRATIVE MANAGER FOR THE
26 DEPARTMENT OF MOTOR VEHICLES AT THE WINNETKA FIELD
27 OFFICE.

28 Q AND HAVE YOU SEEN THE DOCUMENTATION THAT

49065

1 HAS BEEN MARKED 422?

2 A I BELIEVE SO, YEAH.

3 Q AND CALLING YOUR ATTENTION TO 422-A, IT
4 SHOWS HERE UNDER "LATEST APPLICATION" THE FIELD
5 OFFICE OF "W.K.A."

6 DO YOU SEE THAT?

7 A YES.

8 Q WHAT IS THAT?

9 A W.K.A. IS AN ABBREVIATION FOR WINNETKA
10 FIELD OFFICE.

11 Q AND WITH REGARD TO YOUR DUTIES AT
12 WINNETKA, DO YOU OVERSEE BASICALLY THE RUNNING OF
13 THE OFFICE?

14 A YES.

15 Q AND ARE YOU FAMILIAR WITH THE PROCEDURE
16 OF THE ISSUANCE OF LICENSES?

17 A YES.

18 Q AND SPECIFICALLY, WITH REGARDS TO WHEN
19 AN INDIVIDUAL GOES INTO A FIELD OFFICE TO GET A

20 DUPLICATE LICENSE, IF THAT INDIVIDUAL HAS
21 OUTSTANDING TICKETS, WILL YOUR OFFICE GIVE THEM A
22 TEMPORARY DRIVER'S LICENSE?
23 A NO, THEY WILL NOT.
24 Q AND WILL THEY -- HOW WOULD THEY KNOW
25 THIS PERSON HAS OUTSTANDING TICKETS?
26 A WELL, WHEN YOU RUN THE DRIVER'S LICENSE,
27 SOMEONE FILLS OUT AN APPLICATION. WE'LL RUN THE
28 DRIVER'S LICENSE NUMBER, AND THERE WILL BE A STOP ON

49066

1 THE RECORD. A MESSAGE, INDICATING TO THE TECHNICIAN
2 IF THERE'S AN OUTSTANDING WARRANT, WHERE IT WILL
3 SHOW THAT RIGHT ON THERE.
4 Q WILL THE INDIVIDUAL TELL THE PERSON
5 APPLYING THEY WON'T GET A TEMPORARY LICENSE BECAUSE
6 OF THE PROBLEM?
7 A YES, THEY WILL.
8 Q WILL THEY TELL THEM WHAT THE PROBLEM IS?
9 A YES, THEY WILL. IF IT'S AN OUTSTANDING
10 WARRANT, THEY WILL TELL THEM WHAT THE DOCKET NUMBER
11 IS AND THE COURT TO CLEAR IT UP.
12 Q AND THE INDIVIDUAL WHO APPLIED WILL
13 LEAVE WITHOUT EITHER A CALIFORNIA DRIVER'S LICENSE
14 OR A TEMPORARY LICENSE; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 MS. NAJERA: I HAVE NOTHING FURTHER.

17 THE COURT: CROSS-EXAMINATION?

18

19 CROSS-EXAMINATION

20 BY MS. ABRAMSON:

21 Q THIS IS THE EXHIBIT THAT WAS MARKED

22 366.

23 A OKAY.

24 Q DO YOU SEE THAT ON THIS EXHIBIT, 366,

25 THERE ARE ENTRIES FOR TICKETS IN '88 AND '89? AND

26 DO YOU KNOW WHAT A 40508 IS?

27 A YES.

28 MS. NAJERA: I'M GOING TO OBJECT TO ANY

49067

1 QUESTIONING ABOUT THIS PARTICULAR DOCUMENT. IT'S A

2 POLICE "CLETS" DOCUMENT, AND I DON'T BELIEVE THE

3 DEPARTMENT OF MOTOR VEHICLES HAS ANYTHING TO DO WITH

4 THE GENERATION -- THEY HAVE A LOT TO DO WITH

5 INFORMATION, BUT NOT A WHOLE LOT TO DO WITH THE

6 GENERATION OF THAT INFORMATION.

7 THE COURT: ALL RIGHT. PERHAPS YOU CAN

8 ESTABLISH HIS AWARENESS.

9 MS. ABRAMSON: I'M TRYING TO SEE IF COUNSEL

10 IS RIGHT, WHETHER THEY HAVE A LOT TO DO WITH THE
11 GENERATION OF THIS INFORMATION FROM THEIR
12 COMPUTERS.

13 Q LET ME JUST ASK YOU THIS, TO COMPARE 366
14 WITH 422-A.

15 422-A AND B SHOW, FOR EXAMPLE, THIS
16 40508 THAT APPEARS AS A CITATION 7/7/89, AND A
17 CONVICTION DATE OF 9/29/89.

18 THAT'S A FAILURE TO APPEAR, IS IT NOT?

19 A 40508 IS A FAILURE TO APPEAR, THAT'S
20 CORRECT.

21 Q YOUR RECORDS HERE ONLY SHOW ENTRIES FOR
22 '90 AND '93, CORRECT?

23 A ON THIS PARTICULAR PRINTOUT, YES.

24 Q IS THERE ANY OTHER PRINTOUT THAT BELONGS
25 TO THIS FILE? YOU'RE FREE TO LOOK THROUGH IT.

26 A (WITNESS COMPLIES.) ARE YOU ASKING ME
27 IF THERE'S ANY OTHER PRINTOUT THAT GOES WITH THIS
28 ONE YOU'RE SHOWING ME HERE?

49068

1 Q IS THERE ANY OTHER PRINTOUT THAT SHOWS
2 ADDITIONAL --

3 A THIS PRINTOUT IS COMPLETE.

4 Q IT'S COMPLETE, BUT OBVIOUSLY -- HERE'S A

5 LAW ENFORCEMENT PRINTOUT THAT SHOWS A FAR MORE
6 EXTENSIVE DRIVING RECORD THAN WHAT YOU'RE ABLE TO
7 COME UP WITH NOW?

8 A THAT'S CORRECT.

9 Q YOU CAN'T SAY WHAT THE STATUS OF THIS
10 LICENSE WAS OR WHETHER THERE WERE OUTSTANDING
11 TICKETS OR OUTSTANDING WARRANTS IN AUGUST,
12 SEPTEMBER, OCTOBER, NOVEMBER OR DECEMBER OF 1989,
13 CAN YOU?

14 A NOT BY THIS PARTICULAR PRINTOUT THAT
15 YOU'VE GIVEN ME HERE, NO.

16 Q BY ANYTHING ELSE IN THIS PACKAGE?

17 A NO, THAT'S CORRECT.

18 Q AND IF I WERE TO COME INTO THE DMV AND
19 WANT A RENEWAL OF A LOST OR MUTILATED LICENSE, AND I
20 MAKE MY APPLICATION -- NOW, YOU COULD RUN THEIR
21 COMPUTER IN '89?

22 A OH, YEAH, SURE.

23 Q AND YOU RAN MY LICENSE ON THE COMPUTER,
24 WOULD IT SHOW TICKETS THAT HAD NOT YET GONE TO
25 CONVICTION OR WARRANT?

26 A IF YOU HAVE OUTSTANDING TICKETS, ANY
27 WARRANT, IT WOULD SHOW THAT ON THE RECORD.

28 Q IF I GOT A TICKET TODAY AND WENT TO THE

1 DMV TOMORROW --

2 A UH-HUH.

3 Q -- AND THE TICKET DUE DATE IS THE NEXT
4 MONTH --

5 A UH-HUH.

6 Q -- I GO TO THE DMV TOMORROW, AND I APPLY
7 FOR A DUPLICATE LICENSE.

8 WHAT'S GOING TO SHOW UP ON YOUR
9 COMPUTER?

10 A THAT TICKET -- IF YOU GOT THE TICKET
11 TODAY, IT'S NOT GOING TO SHOW UP TOMORROW.

12 Q IF IT GOES TO WARRANT NEXT WEEK AND THE
13 DMV HASN'T SENT ME MY LICENSE, THAT WILL STOP IT,
14 WON'T IT?

15 A YES. THE TICKET'S ON THE RECORD.

16 Q ONCE IT HITS THE RECORD, IT STOPS; AND
17 IF THE APPLICATION PROCESS IS IN PROCESS, IT WILL
18 STOP, WON'T IT?

19 A UH-HUH.

20 Q YES?

21 A YES.

22 Q BUT WHEN I COME IN AND ASK FOR THE
23 DUPLICATE, DO I GET A TEMPORARY?

24 A IF YOU COME IN AND ASK FOR A DUPLICATE
25 YOU WILL GET A TEMPORARY IF THERE ARE NO STOPS ON
26 THE RECORD.

27 Q RIGHT. AND IF THE STOP COMES AFTER I'VE
28 LEFT, THEN THE PERMANENT WON'T COME?

1 A THAT'S EXACTLY RIGHT.

2 Q AS THE PRIOR WITNESS SAID, EVEN THE FACT
3 THAT AN APPLICATION FOR A DUPLICATE CAME IN, IT WILL
4 BE PURGED AFTER A YEAR?

5 A AN APPLICATION IS GOOD FOR ONE YEAR.

6 Q CORRECT?

7 A UH-HUH, YES.

8 Q SO IF I DON'T CLEAR THAT TICKET WITHIN
9 THAT ONE YEAR, THAT APPLICATION WILL BE PURGED AND
10 THERE WILL NEVER BE A PERMANENT ISSUED?

11 A THAT'S CORRECT.

12 MS. ABRAMSON: I HAVE NOTHING FURTHER.

13 THE COURT: ANYTHING ELSE?

14 MS. NAJERA: ONE QUESTION.

15

16 REDIRECT EXAMINATION

17 BY MS. NAJERA:

18 Q WHAT IS THE LAG TIME BETWEEN WHEN A
19 PERSON GETS A TICKET AND IT SHOWS UP ON THAT THERE?

20 A IT VARIES BETWEEN THE COURT -- I'M NOT AN
21 EMPLOYEE OF THE COURT, BUT IT'S BETWEEN 30 AND 60
22 DAYS IT SHOWS UP.

23 THE COURT: OKAY. ANYTHING ELSE?

24 THANK YOU. YOU MAY STEP DOWN.
25 ALL RIGHT. WE'LL TAKE A RECESS HERE.
26 WE'LL DISCUSS THIS PROPOSED TESTIMONY, AND ALSO,
27 DURING THE RECESS, I'D ASK THAT COUNSEL FIND THE
28 PORTION OF THE TAPE IN QUESTION, AND WE'LL HAVE THE

49071

1 JURY BROUGHT OVER AT 12:00.

2 SO WE'LL RESUME AT 11:30.

3 MR. LEVIN: ARE WE GOING UNTIL 1:30, YOUR
4 HONOR, STRAIGHT THROUGH?

5 THE COURT: 1:00 O'CLOCK.

6 (A RECESS WAS TAKEN FROM
7 11:30 A.M. TO 11:40 A.M.)

-16464

1 THE COURT: WHILE WE'RE WAITING FOR THE
2 DEFENDANTS TO BE BROUGHT OUT, ARE WE READY TO PROCEED?

3 ARE YOU GOING AHEAD WITH THE PEOPLE FROM
4 THE DMV?

5 MR. CONN: YES.

6 MR. LEVIN: YOUR HONOR, I WOULD ASK THAT WE
7 PROCEED WITH MR. CIGNARELLI.

8 FIRST OF ALL, I THINK THAT IT'S UNFAIR IN
9 THAT THE PEOPLE HAVE CALLED MR. CIGNARELLI. THEY HAVE

10 OFFERED VERY DAMAGING INFORMATION TO MY CLIENT, WHICH IS
11 SITTING THERE UNREBUTTED, UNREFUTED, NON-CROSS-EXAMINED,
12 AND WE FEEL THAT THERE IS ABSOLUTELY NO REASON FOR THEM
13 TO TAKE THESE WITNESSES OUT OF ORDER.

14 AND MOREOVER, MS. ABRAMSON IS GOING TO NEED
15 TIME TO --

16 MS. ABRAMSON: I WILL MAKE MY OBJECTIONS TO THE
17 DMV PEOPLE.

18 MR. LEVIN: MS. ABRAMSON WILL ADDRESS THE COURT
19 ON THAT, BUT I THINK THAT WE SHOULD CONTINUE WITH
20 MR. CIGNARELLI, THAT HE'S HERE, AND I ASK THAT HE BE --
21 HIS TESTIMONY CONTINUE.

22 MS. ABRAMSON: AND I OBJECT TO THE TESTIMONY OF
23 THESE PERSONS FROM THE DEPARTMENT OF MOTOR VEHICLES,
24 BECAUSE THE RECORDS THAT THEY ARE RELYING ON ARE
25 UNRELIABLE. THEY ARE INCOMPLETE. THEY DO NOT PROVE
26 WHAT THE PEOPLE OSTENSIBLY SEEK TO PROVE FROM THEM.

27 AND WE THINK THAT THE AURA OF RELIABILITY,
28 A FALSE AURA OF RELIABILITY, WILL BE ATTACHED TO THESE

-16463

1 DOCUMENTS, WHEN WE KNOW THAT THEY AREN'T COMPLETE
2 DOCUMENTS; AND MOREOVER, THESE WITNESSES SHOULD NOT BE
3 PERMITTED TO TESTIFY TO WHAT IS USUALLY DONE BY SOME
4 TECHNICIAN AT THE DMV ENTERING THINGS ON A COMPUTER WHEN
5 WE DO NOT HAVE -- WELL, WE ALL KNOW THAT THE DMV MAKES

6 MISTAKES LIKE ANY OTHER AGENCY, AND HAS THOUSANDS OF
7 EMPLOYEES, AND THEY CAN'T VOUCH FOR WHAT A TECHNICIAN
8 DID OR DIDN'T DO.

9 BUT BEYOND THAT, WE KNOW THAT CERTAIN
10 THINGS ARE PURGED FROM THESE RECORDS, AND THERE IS NO
11 WAY FOR US TO ADEQUATELY REBUT THIS EVIDENCE WITHOUT
12 HAVING ACCESS TO DOCUMENTS AND COMPUTER INFORMATION THAT
13 NO LONGER EXISTS.

14 I DO NOT FEEL THAT THE PROBATIVE VALUE OF
15 THIS EVIDENCE, AND WHATEVER IT'S GOING TO DO,
16 PARTICULARLY WHEN IT CONTAINS A RECITATION IN THERE IN
17 THE HANDWRITING OF MARY LOUISE MENENDEZ, WHICH WE WILL
18 BE ABLE TO PROVE; THAT ERIK MENENDEZ LOST HIS LICENSE.
19 AND WHAT THE RECORDS THEN SEEM TO INDICATE IS HE NEVER
20 GOT ONE BACK, HAS SO LITTLE PROBATIVE VALUE AS TO BE
21 OUTWEIGHED BY ITS PREJUDICIAL IMPACT, AND HAS A TENDENCY
22 TO CONFUSE THE ISSUES OR MISLEAD THE JURY.

23 THE COURT: WHAT IS IT YOU INTEND TO PROVE BY
24 THIS?

25 MR. CONN: I'M SORRY?

26 THE COURT: WHAT IS IT THAT THE TESTIMONY IS
27 INTENDED TO PROVE?

28 MR. CONN: WE WANT TO PROVE THAT ERIK MENENDEZ

1 NEVER HAD HIS LICENSE RENEWED, AS HE INDICATED. HE

2 TESTIFIED THAT HE DID, IN FACT, RECEIVE A NEW CALIFORNIA
3 DRIVER'S LICENSE, AND I THINK THAT WHAT THE TESTIMONY
4 HERE DEMONSTRATES IS THAT THAT COULD NOT HAVE POSSIBLY
5 HAVE HAPPENED.

6 THE COURT: THERE WAS ONE GAP IN THERE AS FAR AS
7 A TEMPORARY LICENSE. IS THERE A RECORD INDICATING THAT
8 HE HAD OUTSTANDING WARRANTS IN THE SYSTEM AT THE TIME
9 FROM AUGUST THE 20TH UNTIL HE WAS ARRESTED?

10 MR. CONN: YES. THERE WAS A WARRANT, I BELIEVE,
11 IN JUNE OF '89 WHICH WAS NEVER CLEARED, SO THAT WOULD
12 HAVE PREVENTED HIM FROM GETTING THE TEMPORARY.

13 MS. ABRAMSON: IT'S NOT IN THE DMV RECORDS, AND I
14 DON'T THINK THAT THAT'S --

15 THE COURT: AS TO THE TIMING OF THE WITNESS'
16 TESTIMONY, IT'S MY UNDERSTANDING THAT AT LEAST ONE OF
17 THEM IS FROM OUT OF TOWN, AND THAT'S WHY THEY WANTED TO
18 CALL THAT WITNESS NOW.

19 MS. NAJERA: FROM SACRAMENTO, YOUR HONOR.

20 THE COURT: THAT'S WHY THEY WERE GOING TO CALL
21 HIM THIS MORNING.

22 MR. LEVIN: WELL, YOUR HONOR, THAT STILL SHOULD
23 NOT OBVIATE MY CLIENT'S RIGHTS WITH RESPECT TO HAVING
24 THE EVIDENCE VIEWED BY THE JURY IN A LOGICAL,
25 PRESENTABLE MANNER THAT'S FAIR TO HIM.

26 THE PEOPLE CHOSE -- THEY ELECTED TO CALL
27 MR. CIGNARELLI, AND THEY PROCEEDED WITH HIM, AND THEY
28 PROCEEDED WITH WHAT I CONSIDERED TO BE VERY, VERY

1 DAMAGING TESTIMONY AGAINST ERIK MENENDEZ.

2 AND THIS TESTIMONY IS JUST SITTING THERE,
3 AND I THINK THAT WE SHOULD FINISH WITH HIM. IF HE WAS
4 JUST ANOTHER WITNESS WHO HAD NOTHING REALLY MUCH TO SAY
5 ON ANY REAL IMPORTANT ISSUE, IT WOULDN'T MATTER.

6 BUT MR. CIGNARELLI IS A VERY IMPORTANT
7 WITNESS TO THE PEOPLE, AND THE INFORMATION THAT HE
8 OFFERED NEEDS TO BE FULLY EXPLORED.

9 THE COURT: YOU MIGHT FORGET THE QUESTIONS YOU
10 WANT TO ASK HIM IF YOU WAIT UNTIL TOMORROW.

11 MR. LEVIN: WELL, THE OTHER THING I AM CONCERNED
12 ABOUT, YOUR HONOR, IS I AM CONCERNED ABOUT THE PEOPLE
13 CONTINUALLY MEETING WITH MR. CIGNARELLI AND TRYING TO
14 SQUEEZE ADDITIONAL INFORMATION OUT OF HIM, AND I THINK
15 THAT'S UNFAIR.

16 MS. ABRAMSON: THERE IS NO PROOF THAT A WARRANT
17 WAS OUT ON AUGUST 20TH, WHATSOEVER. THE LAW ENFORCEMENT
18 RECORD, WHICH WE PREVIOUSLY HAD DIFFICULTY INTERPRETING,
19 INDICATES THAT HE GOT A TICKET ON JULY 7TH, 1989. ONE
20 OF THE PROVISIONS WAS FAILING TO HAVE A LICENSE IN HIS
21 POSSESSION. THERE IS A CONVICTION DATE ON THAT OF
22 SEPTEMBER 20TH, 1989. THAT'S WHEN THE FAILURE TO APPEAR
23 WOULD SHOW UP.

24 SO THERE IS NO INDICATION THAT BETWEEN
25 AUGUST 20TH AND SEPTEMBER 20TH THAT THERE WAS A WARRANT
26 OUT.

27 AND THEN WE HAD THIS WHOLE GO-AROUND ABOUT
28 FAILURES TO APPEAR. THERE IS AN ENTRY OF AUGUST 25TH,

-16460

1 1989, BUT WE KNOW THAT IS NOT A TICKET DATE, AND THERE
2 IS NO INDICATION -- WE DON'T HAVE THE RECORDS TO SHOW
3 WHEN THE FAILURE TO APPEAR ON THAT ONE -- AT LEAST THE
4 PEOPLE HAVE NEVER PROVIDED THE COURT WITH ANY RECORDS TO
5 INDICATE WHEN THE FAILURE TO APPEAR ON THAT ONE WAS
6 ISSUED.

7 THE COURT: LET ME ASK YOU.

8 THERE WAS NO WARRANT IN THE SYSTEM UNTIL
9 SEPTEMBER THE 20TH. COULD HE NOT HAVE RENEWED IT AND
10 NOT HAVE ANY DOCUMENTATION IN THE SYSTEM?

11 MS. NAJERA: YOUR HONOR, THIS DMV PRINTOUT SHOWS
12 THAT AS OF JUNE 25TH, 1989 THERE WAS A WARRANT IN THE
13 SYSTEM.

14 MS. ABRAMSON: NO, IT DOES NOT. THERE IS AN
15 AUGUST DATE, NOT JUNE. IT IS AUGUST 25TH. WE'VE BEEN
16 AROUND THIS BEFORE -- THE DATE OF THE MEMORIAL SERVICE.
17 THE PEOPLE'S ORIGINAL POSITION IS THAT WAS THE DATE HE
18 WAS CITED FOR SOMETHING OR OTHER, BUT IT'S CALLED A
19 "FAILURE TO APPEAR," AND THERE IS NO RECORD THAT THERE
20 WAS A WARRANT ISSUED ON THAT DAY.

21 MS. NAJERA: SO WE HAVE A FAILURE TO APPEAR FROM
22 JUNE 29, 1989 THAT WOULD HAVE BEEN IN THE SYSTEM.

23 MS. ABRAMSON: IT'S NOT JUNE 29TH.
24 THE COURT: LET'S NOT HAVE A DEBATE.
25 MS. ABRAMSON: ALL RIGHT. PEOPLE CANNOT SHOW
26 THAT THERE WAS A WARRANT IN THE SYSTEM BETWEEN AUGUST
27 20TH AND SEPTEMBER 20TH.
28 THE COURT: WHAT I AM GOING TO DO IS -- WE

-16459

1 DISCUSSED THIS BEFORE IN REGARD TO THAT PRINTOUT.
2 IF IT REQUIRES INTERPRETATION FROM
3 SOMEBODY, THEN YOU NEED AN EXPERT TO COME IN AND
4 INTERPRET IT AS FOUNDATION FOR YOUR TESTIMONY HERE THAT
5 IT -- ACCORDING TO YOUR WITNESS, THE DMV
6 REPRESENTATIVE -- IF HE HAD A WARRANT OUTSTANDING, HE
7 COULD HAVE GOTTEN A TEMPORARY LICENSE AND IT WOULD HAVE
8 SHOWED UP IN THAT TELETYPE PRINTOUT.
9 SO I THINK THE PEOPLE HAVE TO ESTABLISH
10 THAT THERE WAS AN OUTSTANDING WARRANT DURING THAT TIME,
11 SO THAT IN THE ORDINARY COURSE OF BUSINESS RESULTED IN
12 NON-ISSUANCE OF A TEMPORARY LICENSE. YOU NEED SOMEBODY
13 TO INTERPRET THAT DMV LAW ENFORCEMENT PRINTOUT.
14 HAVE YOU FOUND THE TAPE, BY THE WAY?
15 MS. NAJERA: YOUR HONOR, THAT IS WHAT I WAS DOING
16 RIGHT NOW, AND I HAVE IT. THAT'S WHAT I WAS TRYING TO
17 DO, IN FACT, WHICH WAS THE REASON I WAS DELAYED HERE.
18 THE COURT: DO YOU WANT TO PLAY IT?

19 MS. NAJERA: I BEG YOUR PARDON?
20 THE COURT: DID YOU WANT TO PLAY IT NOW, OR --
21 MS. NAJERA: NO. I HAVEN'T -- WELL, I AM NOT
22 QUITE SURE. I HAVE NO OBJECTION. I MEAN, I AM NOT
23 QUITE SURE WHAT THE OBJECTION WAS. COUNSEL WANTED IT.
24 THE COURT: WELL, IT'S FINE WITH ME IF YOU WANT
25 TO JUST ASK THE WITNESS DID HE SAY THESE THINGS AS
26 REFLECTED IN THIS TRANSCRIPT, AND JUST READ IT.
27 MS. NAJERA: THAT'S WHAT I WOULD PREFER TO DO. I
28 HAD NEVER INTENDED TO PLAY THE TAPE. I DON'T KNOW WHERE

-16458

1 THEY CAME IN ON THAT.
2 THE COURT: THERE IS ADDITIONAL INFORMATION THAT
3 IS LISTED AS UNINTELLIGIBLE IN THE TRANSCRIPT.
4 MS. NAJERA: THEN THAT'LL BE A GOOD THING.
5 THE COURT: I AM GOING TO ORDER THAT WE NOT
6 PROCEED WITH THE REPRESENTATIVE OF THE DMV UNTIL THE
7 PEOPLE CAN ESTABLISH THE FOUNDATION THAT THERE WAS
8 ACTUALLY A WARRANT OUTSTANDING THAT WOULD HAVE PREVENTED
9 HIM FROM GETTING A TEMPORARY PERMIT OR LICENSE.
10 MS. NAJERA: THAT'S FINE.
11 THE COURT: ALL RIGHT. LET'S PROCEED WITH
12 MR. CIGNARELLI. IS HE HERE?
13 MS. NAJERA: YES.
14 THE COURT: OKAY. WHY DON'T I BRING HIM IN AND

15 GET THE JURY OUT.

16 (THE JURY ENTERS THE COURTROOM AND THE
17 FOLLOWING PROCEEDINGS WERE HELD:)

18

19 THE COURT: AND THE JURY IS IN COURT.

20 GOOD MORNING, LADIES AND GENTLEMEN. WE

21 ACTUALLY TRIED TO TIME IT SO THAT YOU WOULD BE WALKING

22 OVER HERE IN THE RAIN, BUT WE COULDN'T WORK IT OUT THAT

23 WAY. SORRY.

24 SORRY FOR THE DELAY, BUT WE HAD SOME ISSUES

25 THAT THE LAWYERS AND I HAD TO THRASH OUT, AND WE ARE NOW

26 READY TO RESUME, AND WE HAVE THE WITNESS STILL ON THE

27 STAND FROM YESTERDAY.

28 STATE YOUR NAME AGAIN FOR THE RECORD.

-16457

1 THE WITNESS: CRAIG CIGNARELLI.

2 THE COURT: YOU ARE STILL UNDER OATH.

3 YOU MAY CONTINUE YOUR DIRECT EXAMINATION.

4

5 CRAIG CIGNARELLI,

6 PREVIOUSLY CALLED AS A WITNESS BY THE *PEOPLE, HAVING

7 BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED

8 FURTHER AS FOLLOWS:

9

10 DIRECT EXAMINATION (CONTINUED.)

11 BY MS. NAJERA:

12 Q. MR. CIGNARELLI, YOU WERE DISCUSSING
13 YESTERDAY THE STATEMENTS THAT ERIK MENENDEZ MADE TO YOU
14 IN LATE AUGUST CONCERNING THE EVENTS THAT TOOK PLACE AT
15 ELM DRIVE -- OR ELM STREET IN AUGUST OF 1989.

16 SPECIFICALLY, WHEN YOU SPOKE TO ERIK
17 MENENDEZ AND YOU HAD THAT CONVERSATION WITH HIM WHICH
18 YOU TESTIFIED TO ABOUT YESTERDAY TO THIS JURY, DID YOU
19 EVER TALK TO ERIK MENENDEZ ABOUT -- OR DID ERIK MENENDEZ
20 EVER TELL YOU WHETHER, WHEN HE WENT INTO THE DEN, HE WAS
21 SUPPOSED TO SHOOT ANYONE IN PARTICULAR?

22 A. YES.

23 Q. AND WHO WAS HE SUPPOSED TO SHOOT?

24 A. HE SAID: LYLE WAS SUPPOSED TO SHOOT MY
25 DAD, AND I WAS SUPPOSED TO SHOOT MOM.

26 Q. AND DID HE THEN TELL YOU WHETHER OR NOT HE
27 DID SHOOT HIS MOTHER?

28 A. YES.

-16456

1 Q. AND WHAT DID HE TELL YOU?

2 A. HE SAID HE SHOT HIS MOM.

3 Q. AND DID HE SAY THAT LYLE MENENDEZ SHOT HIS
4 FATHER?

5 A. YES.

6 MR. LEVIN: OBJECTION. IT'S ASKED AND ANSWERED

7 YESTERDAY, YOUR HONOR.

8 THE COURT: OVERRULED.

9 YOUR ANSWER?

10 THE WITNESS: YES.

11 Q. BY MS. NAJERA: NOW, AFTER HE TOLD YOU --

12 AFTER HE DESCRIBED TO YOU WHAT HAPPENED IN THE DEN, I

13 UNDERSTAND YOU SPENT SOME MORE TIME WITH HIM; IS THAT

14 RIGHT?

15 A. YES.

16 Q. AND APPROXIMATELY HOW LONG DID YOU STAY

17 WITH HIM?

18 A. I SPENT THAT NIGHT. I STAYED WITH HIM

19 PRETTY MUCH ALL THE NEXT DAY.

20 Q. DID YOU SPEND THE NEXT NIGHT WITH HIM, OR

21 DID YOU GO HOME THE NEXT EVENING?

22 A. I THINK I WENT HOME THE NEXT DAY.

23 Q. AND APART FROM WHAT YOU TESTIFIED TO THE

24 JURY ABOUT YESTERDAY CONCERNING THEIR GOING INTO THE DEN

25 AND SHOOTING THEIR PARENTS, DID YOU AND THE DEFENDANT,

26 ERIK MENENDEZ, DISCUSS ANY MORE ABOUT WHAT WAS DONE IN

27 THE DEN?

28 A. THAT WEEKEND?

-16455

1 Q. RIGHT.

2 A. NO.

3 Q. NOW, ON NOVEMBER 17, 1989, DID YOU HAVE A
4 DISCUSSION WITH SOME POLICE OFFICERS WHO WERE INVOLVED
5 IN THIS CASE?

6 A. YES.

7 Q. AND, SPECIFICALLY, DID YOU HAVE A
8 DISCUSSION WITH DETECTIVE ZOELLER, WHO IS THE
9 INVESTIGATING OFFICER IN THIS CASE?

10 A. I THINK IT WAS ZOELLER AND DETECTIVE
11 LINEHAN.

12 Q. NOW, LET ME ASK YOU, MR. CIGNARELLI:
13 DID YOU CALL THE POLICE AND TELL THEM YOU
14 WANTED TO TALK TO THEM?

15 A. NO.

16 MR. LEVIN: OBJECTION. IT'S VAGUE AS TO TIME.

17 THE COURT: OVERRULED.

18 WHAT WAS YOUR ANSWER?

19 THE WITNESS: NO.

20 Q. BY MS. NAJERA: AND SPECIFICALLY WITH
21 REGARD TO THIS NOVEMBER 17TH CONVERSATION, DID YOU HAVE
22 A MEETING WITH THEM?

23 A. YES.

24 Q. AND WAS THIS A FACE-TO-FACE MEETING?

25 A. YES.

26 Q. DID YOU CALL THEM AND SET UP THIS
27 FACE-TO-FACE MEETING, OR DID THEY CALL YOU AND SET THIS
28 UP?

1 A. THEY CALLED ME.

2 Q. AND PRIOR TO NOVEMBER 17TH, HAD YOU EVER
3 CONTACTED THE POLICE ABOUT THIS INFORMATION?

4 A. NO.

5 Q. HAD THE POLICE IN AUGUST, AFTER THE
6 KILLINGS AT THE MENENDEZ HOME, CONTACTED YOU?

7 A. AFTER.

8 Q. IN AUGUST OF 1989, WERE YOU CONTACTED BY
9 THE POLICE?

10 A. YES.

11 Q. AND WERE YOU TOLD YOU WERE CONTACTED
12 BECAUSE YOU WERE SOMEONE WHO WAS RELATED -- KNEW THE
13 FAMILY?

14 MR. LEVIN: YOUR HONOR, I ASK THAT THE PROSECUTOR
15 NOT STATE HEARSAY INFORMATION WITHOUT A RULING FROM THE
16 COURT.

17 THE COURT: REGARDING WHAT WAS SAID ON THE PHONE
18 CALL OR HOWEVER IT WAS COMMUNICATED, IT'S HEARSAY.

19 SUSTAINED.

20 Q. BY MS. NAJERA: IN AUGUST OF 1989, I
21 UNDERSTAND THE POLICE CONTACTED YOU; IS THAT RIGHT?

22 A. YES.

23 Q. AND THEY -- DID THEY -- AND WHEN THEY
24 CONTACTED YOU AGAIN IN NOVEMBER OF 1989, WAS THAT
25 BECAUSE OF ANYTHING YOU DID?

26 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.

27 THE COURT: SUSTAINED.

28 Q. BY MS. NAJERA: DID YOU CONTACT -- DID YOU

-16453

1 CALL AND LEAVE A MESSAGE THAT YOU WANTED TO TALK TO
2 THEM?

3 A. NO.

4 Q. NOW, WHEN YOU SPOKE TO THEM IN NOVEMBER, ON
5 NOVEMBER 17TH, 1989, DID YOU TELL THE POLICE AT THAT
6 TIME THAT ERIK MENENDEZ HAD TOLD YOU --

7 MR. LEVIN: OBJECTION THAT IT'S LEADING, YOUR
8 HONOR.

9 THE COURT: OVERRULED.

10 MS. NAJERA: THANK YOU.

11 Q. DID YOU TELL THE POLICE AT THAT TIME THAT
12 ERIK MENENDEZ HAD TOLD YOU THAT SOMETIME AFTER THE
13 MURDERS, BUT BEFORE THIS MEETING ON NOVEMBER 17TH --

14 MR. LEVIN: OBJECTION TO THE USE OF THE WORD
15 "MURDERS".

16 THE COURT: REPHRASE THE QUESTION, PLEASE.

17 Q. BY MS. NAJERA: DID THEY TELL YOU -- DID
18 THE POLICE TELL YOU --

19 MR. LEVIN: OBJECTION. WOULD CALL FOR HEARSAY.

20 Q. BY MS. NAJERA: SOMETIME WHEN YOU SPOKE TO
21 THE POLICE ON NOVEMBER 17TH, 1989, DID YOU TELL THEM
22 THAT YOU HAD MET WITH ERIK MENENDEZ AFTER THE EVENTS
23 THAT TOOK PLACE ON AUGUST 20TH, 1989?

24 A. YES.

25 Q. AND DID YOU TELL THE POLICE THAT ERIK

26 MENENDEZ TOLD YOU THAT --

27 MR. LEVIN: YOUR HONOR, I AM SORRY. I WOULD

28 OBJECT TO THE PROSECUTOR LEADING THE WITNESS ON THIS

-16452

1 INFORMATION. HE CAN SAY WHAT HE SAID TO THEM.

2 THE COURT: OVERRULED. THIS HAS TO DO WITH A

3 SPECIFIC PORTION OF A STATEMENT; IS THAT RIGHT?

4 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: OKAY. SO COUNSEL IS ISOLATING ON ONE

6 THING RATHER THAN THE ENTIRETY OF THE CONVERSATIONS.

7 SHE CAN DO THAT.

8 Q. BY MS. NAJERA: NOW, DID YOU TELL THEM THAT

9 ERIK MENENDEZ HAD TOLD YOU ABOUT THE EVENTS THAT TOOK

10 PLACE IN HIS HOME ON AUGUST 20TH, 1989?

11 A. YES.

12 Q. AND WHEN YOU TOLD THEM ABOUT WHAT HAPPENED,

13 DID YOU TELL THEM AT THAT TIME THE EVENTS THAT YOU'VE

14 PRETTY MUCH RELAYED -- THE EVENTS AS YOU HAVE TOLD THIS

15 JURY AND THIS COURT TODAY?

16 MR. LEVIN: OBJECTION. IT'S VAGUE.

17 THE COURT: TODAY OR YESTERDAY ARE YOU TALKING

18 ABOUT?

19 MS. NAJERA: YESTERDAY.

20 THE COURT: OVERRULED.

21 MR. LEVIN: WELL, YOUR HONOR, ALSO ADDITIONALLY,
22 IT WOULD BE CALLING FOR APPARENTLY AN INCONSISTENT
23 STATEMENT, AND THERE IS NO FOUNDATION FOR THAT.

24 THE COURT: OVERRULED.

25 THE WITNESS: COULD YOU REPEAT THE QUESTION? I'M
26 SORRY.

27 MS. NAJERA: CERTAINLY.

28 Q. WHEN YOU SPOKE TO THE POLICE ON NOVEMBER

-16451

1 17TH, 1989, DID YOU TELL THEM -- WHEN WERE YOU TELLING
2 THEM WHAT ERIK MENENDEZ TOLD YOU, DID YOU TELL THEM THE
3 EVENTS THAT YOU HAVE RELATED HERE IN COURT YESTERDAY?

4 A. YES.

5 Q. AND AT THAT TIME DID YOU STATE THAT -- DID
6 YOU TELL THE POLICE THAT WITH REGARDS TO THE SHOOTINGS
7 THAT LYLE MENENDEZ WAS SUPPOSED TO SHOOT HIS FATHER AND
8 ERIK MENENDEZ WAS SUPPOSED TO SHOOT HIS MOTHER, AND THAT
9 ERIK MENENDEZ AT FIRST DIDN'T SHOOT HIS MOTHER; LYLE
10 MENENDEZ SHOT HIS MOTHER FIRST, AND THEN ERIK MENENDEZ
11 SHOT THEIR MOTHER?

12 A. I DON'T REMEMBER. I DON'T KNOW EXACTLY.

13 Q. DO YOU REMEMBER -- DO YOU REMEMBER MAKING A
14 STATEMENT TO THE POLICE ABOUT WHO SHOT WHO IN THE FIRST
15 STATEMENT THAT YOU MADE WITH THEM ON NOVEMBER 17TH,

16 1989?

17 A. YES.

18 Q. AND AT THAT STATEMENT DID YOU TELL THE
19 POLICE THAT ERIK MENENDEZ SAID SOMETHING TO THE EFFECT
20 OF HE WAS UNABLE TO SHOOT HIS MOTHER WHEN SHE TRIED TO
21 GET AWAY, AND SO LYLE SHOT HER?

22 DO YOU REMEMBER MAKING A STATEMENT LIKE
23 THAT?

24 A. I -- I MIGHT HAVE. I DON'T REMEMBER.

25 Q. AND HAVE YOU SEEN A REPORT THAT HAS THAT
26 STATEMENT IN IT?

27 MR. LEVIN: OBJECTION. IT'S IRRELEVANT.

28 THE COURT: OVERRULED.

-16450

1 YOU CAN ANSWER THE QUESTION.

2 THE WITNESS: HAVE I SEEN A REPORT THAT HAS THAT
3 STATEMENT IN IT? YES.

4 Q. BY MS. NAJERA: AND AS YOU SIT HERE TODAY,
5 DO YOU REMEMBER THE STATEMENTS THAT ERIK MENENDEZ MADE
6 TO YOU?

7 A. YES.

8 Q. AND IN THOSE STATEMENTS, DID ERIK MENENDEZ
9 TELL YOU THAT HE SHOT HIS MOTHER?

10 A. YES.

11 Q. DID HE TELL YOU THAT HE SHOT HIS MOTHER

12 AFTER SHE STOOD UP?

13 A. YES.

14 Q. DID HE TELL YOU THAT LYLE MENENDEZ SHOT

15 THEIR FATHER?

16 A. YES.

17 Q. AND WHEN YOU SPOKE TO THE POLICE ON

18 NOVEMBER 17TH, 1989, AFTER YOU TOLD THEM WHAT IT WAS

19 THAT ERIK MENENDEZ HAD TOLD YOU CONCERNING THE SHOOTINGS

20 IN THE DEN, DID YOU TELL THE POLICE THAT ERIK MENENDEZ

21 SAID TO YOU, AFTER HE HAD MADE THESE STATEMENTS TO YOU,

22 THAT IT COULD HAPPEN?

23 A. NO. I THINK I SAID IT COULD HAVE HAPPENED.

24 MR. LEVIN: OBJECTION.

25 THE COURT: WHAT IS YOUR OBJECTION?

26 MR. LEVIN: WITHDRAWN.

27 THE COURT: OKAY. NOW WE HAVE TO HEAR WHAT THE

28 WITNESS SAID.

-16449

1 THE WITNESS: I SAID -- I THINK I SAID NO, IT

2 COULD HAVE HAPPENED.

3 Q. BY MS. NAJERA: AND WHEN YOU SAID THAT TO

4 THE POLICE -- WELL, FIRST OF ALL, DID ERIK MENENDEZ TELL

5 YOU THAT STATEMENT -- DID HE SAY AFTER HE TOLD YOU ABOUT

6 THE SHOOTINGS IN THE DEN AND GOING IN THERE AND ALL OF

7 THESE FACTS THAT YOU'VE TESTIFIED TO, DID HE SAY IT

8 COULD HAVE HAPPENED?

9 A. NO.

10 Q. WHY DID YOU TELL POLICE ON NOVEMBER 17TH,
11 1989 THAT HE SAID THAT?

12 MR. LEVIN: OBJECTION. IT'S IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: THIS WAS MY BEST FRIEND, AND HE HAD
15 JUST TOLD ME HE HAD KILLED HIS PARENTS, AND I DIDN'T
16 WANT TO BE THE ONE TO BRING HIM DOWN. I WASN'T SURE A
17 HUNDRED PERCENT IF I BELIEVED HIM, AND IT WAS A MORALITY
18 ISSUE. I DIDN'T WANT TO BE THE ONE TO DO IT.

19 Q. NOW, AFTER YOU HAD THIS CONVERSATION WITH
20 THE POLICE ON NOVEMBER 17TH, 1989, MOVING FORWARD IN
21 TIME TO MARCH 7TH OF 1990, DID YOU HAVE ANOTHER
22 CONVERSATION WITH THE POLICE?

23 A. YES.

24 Q. AND WHEN YOU HAD THE MARCH 7TH, 1999 (SIC)
25 INTERVIEW WITH THE POLICE, DID YOU ONCE AGAIN DISCUSS
26 WHAT IT WAS THAT ERIK MENENDEZ TOLD YOU ABOUT GOING INTO
27 THE DEN WITH SHOTGUNS AND SHOOTING -- AND THE SHOOTING
28 THAT TOOK PLACE THEN?

-16448

1 A. 1989.

2 THE COURT: WHEN WAS THIS CONVERSATION?

3 THE WITNESS: MARCH 7TH, 1990.

4 THE COURT: MARCH 7TH, 1990?

5 MS. NAJERA: YES.

6 MR. LEVIN: YOUR HONOR, I WOULD OBJECT. THAT'S
7 BEYOND THE OFFER.

8 THE COURT: OVERRULED.

9 THE WITNESS: DID I HAVE A CONVERSATION ON THAT
10 DATE?

11 Q. YES.

12 A. YES.

13 Q. AND THE SECOND PART OF THAT QUESTION WAS
14 DID YOU HAVE A CONVERSATION ABOUT ALL THESE EVENTS?

15 A. YES.

16 Q. AND WHEN YOU WERE QUESTIONED ABOUT WHAT IT
17 WAS ERIK MENENDEZ TOLD YOU, DID YOU TELL THE POLICE
18 AGAIN?

19 A. YES.

20 Q. AND WHEN YOU TALKED TO THE POLICE, DID YOU
21 TELL THEM THE EVENTS AS YOU HAVE RELATED TO THIS JURY
22 YESTERDAY?

23 A. YES.

24 MR. LEVIN: OBJECTION, YOUR HONOR. THAT WOULD
25 CALL FOR A CONCLUSION. IT'S ARGUMENTATIVE AND IT'S ALSO
26 COMPOUND AND VAGUE.

27 THE COURT: SUSTAINED.

28 THE ANSWER IS STRICKEN.

1 Q. BY MS. NAJERA: DID YOU DISCUSS WITH THE
2 POLICE ON MARCH 7TH, 1990 THE SAME THINGS THAT YOU
3 DISCUSSED HERE IN COURT YESTERDAY?

4 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES.

7 Q. BY MS. NAJERA: NOW, WHEN YOU SPOKE TO THE
8 POLICE ON MARCH 7TH, 1990, DID YOU TELL THEM THAT ERIK
9 MENENDEZ TOLD YOU THAT HE HAD SHOT HIS MOTHER AFTER SHE
10 STOOD UP?

11 A. YES.

12 Q. AND AS YOU SIT THERE, DO YOU REMEMBER ERIK
13 MENENDEZ MAKING THAT STATEMENT TO YOU?

14 THE WITNESS: YES.

15 MR. LEVIN: OBJECTION. HE'S BEEN ASKED THAT
16 THREE TIMES.

17 THE COURT: OVERRULED.

18 YOUR ANSWER WAS WHAT?

19 THE WITNESS: YES.

20 Q. BY MS. NAJERA: AND IS THAT WHAT YOU
21 TESTIFIED TO IN THE FIRST TRIAL OF THIS MATTER?

22 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE AND
23 THERE'S NO FOUNDATION.

24 THE COURT: OVERRULED -- NO FOUNDATION, OKAY.
25 SUSTAINED ON THAT GROUND.

26 Q. BY MS. NAJERA: DID YOU TESTIFY IN THE
27 FIRST TRIAL OF THIS MATTER?

28 A. YES.

1 Q. AND WHEN YOU TESTIFIED IN THE FIRST TRIAL
2 OF THIS MATTER, DID YOU DISCUSS THE EVENTS THAT ERIK
3 MENENDEZ RELATED TO YOU?

4 MR. LEVIN: OBJECTION.

5 MS. NAJERA: ABOUT WHAT HAPPENED IN THE DEN?

6 MR. LEVIN: IT'S ARGUMENTATIVE. IT'S HEARSAY.
7 IT'S IRRELEVANT, AND THERE IS NO FOUNDATION.

8 THE COURT: SUSTAINED AT THIS POINT.

9 Q. BY MS. NAJERA: WHEN YOU SPOKE TO THE
10 POLICE ON NOVEMBER 17TH, 1989 AND AGAIN ON MARCH 7TH,
11 1990, YOU TOLD THE POLICE EVERYTHING THAT YOU KNEW ABOUT
12 THESE EVENTS?

13 MR. LEVIN: OBJECTION, YOUR HONOR. THAT'S GOING
14 TO BE COMPOUND. IT'S ARGUMENTATIVE ALREADY AS PHRASED.

15 THE COURT: SUSTAINED.

16 Q. BY MS. NAJERA: WHEN YOU SPOKE -- FIRST
17 WHEN YOU SPOKE TO THE POLICE ON NOVEMBER 17TH, 1989, AT
18 THAT TIME THE DEFENDANT, ERIK MENENDEZ, HAD NOT BEEN
19 ARRESTED; IS THAT RIGHT?

20 A. CORRECT.

21 Q. AND AT THAT TIME HE HAD NOT PUBLICLY STATED
22 THAT HE HAD HAD ANY INVOLVEMENT WITH THE EVENTS ON ELM
23 DRIVE; IS THAT RIGHT?

24 MR. LEVIN: OBJECTION. IT CALLS FOR SPECULATION.

25 THE COURT: SUSTAINED.

26 Q. BY MS. NAJERA: WERE YOU AWARE OF WHETHER
27 OR NOT THE DEFENDANT HAD CONFESSED ON NOVEMBER 17TH,
28 1989?

-16445

1 MR. LEVIN: IT'S IRRELEVANT.

2 MS. NAJERA: TO ANYONE OTHER THAN YOURSELF?

3 THE COURT: IT'S IRRELEVANT.

4 SUSTAINED.

5 Q. BY MS. NAJERA: NOW, WHEN THE DEFENDANT
6 TOLD YOU ABOUT ALL OF THESE EVENTS THAT TOOK PLACE;
7 ABOUT HIS INVOLVEMENT AND ALL THAT TOOK PLACE ON 722 ELM
8 DRIVE, DID YOU RESPOND IN ANY WAY TO WHAT HE TOLD YOU?

9 MR. LEVIN: OBJECTION. IT'S IRRELEVANT. IT'S
10 COMPOUND. IT'S VAGUE AS TO TIME.

11 THE COURT: PERHAPS YOU CAN IDENTIFY WHAT -- WHEN
12 YOU'RE TALKING ABOUT AS FAR AS THE TIME FRAME.

13 Q. BY MS. NAJERA: WHEN YOU SPOKE TO THE
14 DEFENDANT IN LATE AUGUST OR EARLY SEPTEMBER OF 1989 AND
15 HE TOLD YOU THE EVENTS THAT TOOK PLACE IN THE DEN AND
16 YOU WERE IN THE DEN WITH HIM, AND HE WAS TELLING YOU ALL
17 OF HIS INVOLVEMENT IN THIS CRIME, DID HE -- DID YOU
18 RESPOND TO HIM IN ANY WAY?

19 MR. LEVIN: OBJECTION. ASKED AND ANSWERED
20 YESTERDAY.

21 THE COURT: OVERRULED.

22 YOU MAY ANSWER THE QUESTION.
23 THE WITNESS: VERBALLY?
24 Q. BY MS. NAJERA: YES.
25 A. NOT THAT I CAN RECALL, NO. I MEAN, I --
26 MR. LEVIN: OBJECTION, YOUR HONOR. ANYTHING ELSE
27 WOULD BE NONRESPONSIVE.
28 THE WITNESS: I THINK I SAID OKAY.

-16444

1 THE COURT: OVERRULED.
2 Q. BY MS. NAJERA: AND DID YOU REMAIN FRIENDS
3 WITH HIM AFTER THIS?
4 A. YES.
5 MR. LEVIN: OBJECTION, YOUR HONOR. CALLS FOR
6 SPECULATION.
7 THE COURT: OVERRULED.
8 Q. BY MS. NAJERA: AND DID YOU -- DID THE TWO
9 OF YOU REMAIN FRIENDS, IN YOUR MIND -- WELL, WAS THERE
10 ANY TIME AFTER THIS EVENT THAT YOU DID NOT CONSIDER HIM
11 YOUR FRIEND?
12 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S
13 IRRELEVANT.
14 THE COURT: SUSTAINED.
15 Q. BY MS. NAJERA: YOU SAID YESTERDAY THAT YOU
16 FELT THAT YOU AND THE DEFENDANT WERE BEST FRIENDS; IS
17 THAT RIGHT?

18 A. YES.

19 Q. AND DID HE EVER DO ANYTHING TO YOU AFTER
20 YOU TOLD ABOUT --

21 MR. LEVIN: YOUR HONOR, I WOULD OBJECT AND ASK TO
22 APPROACH.

23 THE COURT: ALL RIGHT. WE CAN DO THAT.

24 (THE FOLLOWING PROCEEDINGS WERE HELD
25 OUT OF THE PRESENCE OF THE JURY:)

26

27 THE COURT: OKAY.

28 MR. LEVIN: YOUR HONOR, I RELIED ON THE

-16443

1 PROSECUTOR IN GOOD FAITH THAT THE AREAS THAT THEY SAID
2 TO THIS COURT THEY WERE GOING TO GO INTO WERE THE ONLY
3 AREAS THEY WERE GOING TO GO INTO.

4 THEY HAVE FAR EXPANDED AND EXCEEDED THAT.

5 I AM AT A TREMENDOUS DISADVANTAGE BECAUSE I NOW AM
6 OBJECTING TO THE COURT, AND I NEVER HAD THE BENEFIT OF
7 LITIGATING IT, AS WE WERE THE OTHER ISSUES.

8 THE LAST ISSUE IS THIS LAST QUESTION IS
9 ABSOLUTELY IMPROPER. SHE IS NOW SUGGESTING WITH HER
10 QUESTION THAT MY CLIENT DID SOMETHING TO HIM, AND THERE
11 WAS NO EVIDENCE THAT HE DID.

12 THE COURT: WHAT WAS IT THAT YOU WERE TRYING TO
13 ELICIT?

14 MS. NAJERA: QUITE THE OPPOSITE OF WHAT MR. LEVIN
15 IS SUGGESTING. BASICALLY I AM GOING TO FIND OUT IF
16 THERE WAS ANY REASON HE WOULD HAVE TO LIE NOW. THERE IS
17 NOTHING. HE DIDN'T DO ANYTHING.

18 MR. CONN: IN OTHER WORDS, THEY'VE GOT NO GRUDGE,
19 NO BIAS.

20 MS. NAJERA: IN OTHER WORDS, THEY HAVE HAD NO
21 GRUDGES, NO BIAS, NO FALLING OUT, NO REASON TO LIE.

22 THE COURT: SO YOU EXPECT HIM TO SAY THAT THE
23 DEFENDANT HAS NEVER DONE ANYTHING TO HIM.

24 ARE YOU ABSOLUTELY SURE THAT'S WHAT HE IS
25 GOING TO SAY?

26 MS. NAJERA: I AM. I CAN ASK IT MORE LEADING.

27 THE COURT: WHY DON'T YOU ASK IT IN A LEADING
28 WAY: "DO YOU HAVE ANY REASON TO HOLD A GRUDGE?"

-16442

1 MS. NAJERA: I WILL DO THAT, YOUR HONOR. THAT'S
2 NO PROBLEM. THAT'S HOW THIS IS ENDING.

3 MR. LEVIN: WELL, THAT'S SPECULATION, TOO. HOW
4 DOES SHE KNOW WHAT IT IS THAT MY CLIENT -- HOW HE
5 PERCEIVES HIM? HE CAN SAY, IF THAT'S WHAT YOU WANT,
6 THAT HE DOESN'T HOLD A GRUDGE AGAINST HIM.

7 THE COURT: THAT'S WHAT SHE IS ASKING.

8 MS. NAJERA: THAT'S WHAT I AM GOING TO DO.

9 MR. LEVIN: BUT I WILL ASK IF THERE IS ANYTHING

10 BEYOND THAT QUESTION, WE LITIGATE IT HERE AND NOW.

11 MS. NAJERA: THAT IS WHAT I AM GOING TO ASK HIM
12 ABOUT.

13 THE COURT: I ASSUME THAT YOU ARE GOING TO ASK
14 ABOUT THE CONVERSATION AT GLADSTONE'S, OR YOU ARE NOT
15 GOING TO ASK THAT?

16 MS. NAJERA: NO, THIS WHERE I AM ENDING, AND ALL
17 I AM GOING INTO IS WHETHER OR NOT HE HAS ANY REASON TO
18 LIE ABOUT THIS.

19 MS. ABRAMSON: THEN YOU CAN'T ASK THE WITNESS IF
20 HE HAS A REASON TO LIE. WE CAN GIVE YOU 50 REASONS WHY
21 HE IS LYING.

22 I THINK THIS IS IMPROPER FOR HIM TO BOLSTER
23 HIS OWN CREDIBILITY BEFORE HE IS ATTACKED.

24 MR. CONN: THIS IS THE SAME THING THAT SHE DID
25 WITH HER WITNESS, MARTHA CANO, BY SAYING SHE HAS NO BIAS
26 OR REASON TO LIE.

27 THE COURT: YOU CAN BRING IT OUT.

28 MS. NAJERA: YOUR HONOR, I AM GOING TO GO INTO

-16441

1 GLADSTONE'S BEFORE I GO INTO THIS LINE OF QUESTIONING.

2 THE COURT: ALL RIGHT.

3 (THE FOLLOWING PROCEEDINGS WERE

4 HELD IN OPEN COURT:)

5

6 THE COURT: OKAY. YOU MAY PROCEED.

7 MS. NAJERA: THANK YOU, YOUR HONOR.

8 Q. MR. MENENDEZ --

9 MR. LEVIN: OBJECTION, YOUR HONOR. I BELIEVE SHE
10 HAS THE WRONG PERSON.

11 MS. NAJERA: MY APOLOGIES, YOUR HONOR.

12 Q. MR. CIGNARELLI, ON NOVEMBER 17TH YOU
13 TESTIFIED YOU HAD A -- NOVEMBER 17TH, 1989.

14 MR. LEVIN: OBJECTION, YOUR HONOR, BASED ON WHAT
15 WE JUST DISCUSSED.

16 THE COURT: OKAY. COUNSEL INDICATED SHE WAS
17 GOING INTO THIS OTHER AREA AS YOU WALKED OUT.

18 MS. NAJERA: THANK YOU, YOUR HONOR.

19 Q. SIR, ON NOVEMBER 17TH, 1989, YOU TOLD US
20 THAT YOU HAD A CONVERSATION WITH THE POLICE.

21 NOW, WHAT I WANTED TO ASK YOU IS FOLLOWING
22 THAT, ON NOVEMBER 29TH, 1989, DID YOU HAVE A
23 CONVERSATION WITH THE DEFENDANT, ERIK MENENDEZ?

24 A. YES.

25 Q. AND WAS THIS AT A RESTAURANT CALLED
26 GLADSTONE'S?

27 A. YES.

28 Q. AND THIS WAS -- LET'S SEE.

-16440

1 WAS THIS -- NOW, WHEN YOU HAD THIS

2 CONVERSATION WITH THE DEFENDANT AT GLADSTONE'S, DID
3 YOU -- DID HE ASK YOU WHETHER OR NOT YOU HAD -- OR DID
4 HE MAKE ANY COMMENT ABOUT WHETHER OR NOT YOU HAD TOLD
5 ANYONE ABOUT WHAT HE HAD TOLD YOU BACK ON -- BACK IN
6 LATE SEPTEMBER, EARLY AUGUST OF 1989?

7 A. YES.

8 Q. AND DO YOU REMEMBER AS YOU SIT THERE RIGHT
9 NOW SPECIFICALLY WHAT IT WAS THAT THE DEFENDANT SAID
10 ABOUT THAT?

11 A. HE SAID, "SURELY YOU DIDN'T TELL THE POLICE
12 WHAT I TOLD YOU, DID YOU?"

13 Q. AND WHEN HE SAID THAT, DID HE SAY ANYTHING
14 ELSE?

15 MR. LEVIN: OBJECTION, YOUR HONOR.

16 THE COURT: YOU CAN ANSWER THAT YES OR NO.

17 THE WITNESS: YES.

18 Q. BY MS. NAJERA: AND DID HE SAY SOMETHING --
19 DID HE START TALKING -- GOING INTO THE SUBJECT OF WHAT
20 YOU HAD -- WITHOUT GOING INTO THE SPECIFICS, DID HE
21 START TALKING A LITTLE BIT ABOUT WHETHER OR NOT YOU HAD
22 TOLD THE POLICE ANYTHING ABOUT WHAT HE HAD TOLD YOU?

23 A. I THINK -- YES, I BELIEVE SO.

24 Q. AND SPECIFICALLY DID HE START TALKING ABOUT
25 "LIKE THAT" -- WORDS TO THE EFFECT OF "LIKE THAT, 'CAUSE
26 I MEAN THAT'S " -- AND YOU SAID SOMETHING LIKE "YEAH,
27 THAT'S WHAT I'LL TELL THEM."

28 AND HE SAID "I, I, I WAS" -- AND YOU SAID

1 "HI, ERIK. ERIK KILLED HIS PARENTS, YEAH."

2 IS THAT HOW THE CONVERSATION WENT?

3 A. THERE'S PROBABLY SOME WORDS MISSING IN
4 THERE, BUT I THINK I KNOW WHAT YOU'RE GETTING AT.

5 Q. IS THAT WHAT HE SAID?

6 A. NOBODY TALKS LIKE THAT. I MEAN --

7 Q. WELL, DID YOU HAVE -- WAS THIS CONVERSATION
8 TAPE-RECORDED?

9 A. YES.

10 Q. OKAY. AND WHEN YOU HAD A CONVERSATION --
11 WHEN YOU HAD THIS CONVERSATION, JUST LIMITED NOW -- I
12 JUST WANT TO LIMIT YOU TO WHAT HE SAID, CAN YOU TELL US
13 WHAT IT WAS HE SAID AND YOU SAID AT THAT CONVERSATION?

14 MR. LEVIN: YOUR HONOR, I WOULD OBJECT TO THE
15 FORM OF THAT QUESTION AS VAGUE.

16 THE COURT: WELL, IT WOULD BE VERY DIFFICULT FOR
17 THE WITNESS TO RECALL SPECIFICALLY WHAT YOU HAVE FROM
18 THE MATERIALS YOU HAVE.

19 SO SUSTAINED.

20 Q. BY MS. NAJERA: WHAT I AM ASKING YOU IS
21 WHAT YOU REMEMBER ABOUT WHAT HE SAID TO YOU ABOUT
22 TALKING TO THE POLICE?

23 A. WOULD YOU LIKE ME TO REPEAT THAT?

24 Q. WHATEVER IT IS YOU REMEMBER.

25 A. I REMEMBER HIM SAYING: "SURELY YOU DIDN'T
26 TELL THE POLICE WHAT I TOLD YOU, DID I" -- OR "DID YOU?"

27 AND I SAID "YEAH, LIKE I TOLD THE POLICE
28 THAT."

-16438

1 Q. AND DID YOU HAVE ANY MORE DISCUSSION ON THE
2 SUBJECT?

3 A. I BELIEVE SO, YES.

4 MR. LEVIN: YOUR HONOR, I WOULD OBJECT IN THAT
5 IT'S BEYOND THE SCOPE.

6 THE COURT: OVERRULED.

7 Q. BY MS. NAJERA: AND WHAT ELSE WAS SAID?

8 MR. LEVIN: OBJECTION, YOUR HONOR.

9 THE COURT: WELL, YOU HAVE A TRANSCRIPT THERE,
10 COUNSEL. WHY DON'T YOU JUST REFER TO THAT.

11 Q. BY MS. NAJERA: DID HE -- DID ERIK MENENDEZ
12 OR DID YOU SAY WITH REGARDS TO THIS CONVERSATION
13 SOMETHING TO THE EFFECT OF: "WELL, YOU COULD TELL THE
14 POLICE THAT ERIK KILLED HIS PARENTS," AND DID YOU START
15 TALKING ABOUT WHAT IT WAS THAT ERIK TOLD YOU?

16 MR. LEVIN: OBJECTION, YOUR HONOR. ASSUMES FACTS
17 NOT IN EVIDENCE, AND IT'S IRRELEVANT.

18 THE COURT: SUSTAINED.

19 Q. BY MS. NAJERA: DID ERIK MENENDEZ TELL YOU
20 AT THAT CONVERSATION WHEN YOU ARE TALKING ABOUT WHETHER
21 OR NOT -- WHEN HE WAS ASKING YOU ABOUT WHETHER OR NOT
22 YOU TOLD THE POLICE ANYTHING, SOMETHING TO THE EFFECT OF

23 THE POLICE DON'T KNOW AND THEY SUSPECT HIM?

24 A. YES.

25 Q. AND DID YOU TELL HIM AT THAT TIME THAT YOU
26 HADN'T TOLD THE POLICE, OR DID YOU SAY ANYTHING ABOUT IT
27 ONE WAY OR THE OTHER?

28 A. WELL, I SAID -- WHAT I SAID WAS: "YEAH,

-16437

1 LIKE I TOLD THE POLICE." I SAID IT LIKE THAT.

2 Q. NOW, AFTER YOU HAD THIS CONVERSATION WITH
3 HIM ON NOVEMBER 29TH, 1989, YOU MET AGAIN WITH THE
4 POLICE ON MARCH 7TH; IS THAT RIGHT?

5 A. YES.

6 Q. AND YOU ALSO TESTIFIED IN THE FIRST TRIAL
7 OF THIS MATTER; IS THAT RIGHT?

8 A. YES.

9 Q. AND SINCE -- FROM THE TIME THAT THE
10 DEFENDANT TOLD YOU ABOUT ALL THE EVENTS THAT TOOK PLACE
11 IN THE DEN THAT HE WAS INVOLVED WITH, HAVE YOU -- WELL,
12 AS YOU SIT THERE TODAY, DO YOU HAVE ANY GRUDGES AGAINST
13 THE DEFENDANT?

14 A. I DON'T KNOW IF I NECESSARILY HOLD A
15 GRUDGE. I AM DISAPPOINTED WITH --

16 MR. LEVIN: OBJECTION, YOUR HONOR. THAT'S NOT
17 WHAT WAS REPRESENTED BY COUNSEL. WE ASK TO APPROACH.

18 THE COURT: OVERRULED. BUT THE ANSWER IS

19 STRICKEN.

20 THE JURY IS ADMONISHED TO DISREGARD IT.

21 Q. BY MS. NAJERA: DO YOU HOLD A GRUDGE

22 AGAINST HIM?

23 A. I WOULDN'T SAY IT'S A GRUDGE, NO.

24 Q. DO YOU HAVE ANY REASON HERE WHY -- WELL, DO

25 YOU HAVE ANY REASON TO COME IN AND TELL STORIES ABOUT

26 HIM?

27 A. NO.

28 Q. IS HE A VERY GOOD FRIEND OF YOURS?

-16436

1 MR. LEVIN: OBJECTION, YOUR HONOR.

2 THE COURT: REPHRASE THE QUESTION.

3 Q. BY MS. NAJERA: DO YOU HAVE ANY REASON TO

4 SIT HERE AND LIE ABOUT THE DEFENDANT, ERIK MENENDEZ?

5 A. NO.

6 Q. AND HE WAS YOUR BEST FRIEND, WASN'T HE?

7 A. AT ONE TIME.

8 Q. AND WERE YOU VERY SHOCKED AND SURPRISED

9 WHEN HE TOLD YOU?

10 MR. LEVIN: OBJECTION, YOUR HONOR. IRRELEVANT.

11 THE COURT: SUSTAINED.

12 Q. BY MS. NAJERA: DO YOU STILL CONSIDER HIM A

13 FRIEND?

14 MR. LEVIN: OBJECTION. IT'S IRRELEVANT.

15 THE COURT: OVERRULED.

16 THE WITNESS: NO.

17 Q. BY MS. NAJERA: IS THIS BECAUSE OF ANYTHING
18 THAT HE'S DONE, OR JUST BECAUSE OF WHAT HE'S TOLD YOU?

19 MR. LEVIN: OBJECTION. IRRELEVANT. IT'S
20 IRRELEVANT WHAT HE THINKS NOW, WHAT HE FEELS NOW. ASK
21 TO APPROACH IF THERE IS GOING TO BE ANY ADDITIONAL
22 TESTIMONY.

23 THE COURT: SUSTAINED. BUT I IMAGINE THIS IS AN
24 AREA THAT WILL COME UP AGAIN.

25 MS. NAJERA: I IMAGINE IT WILL, YOUR HONOR. AND
26 WE HAVE NOTHING FURTHER ALONG THESE LINES.

27 THE COURT: OKAY. CROSS-EXAMINATION.

28 OKAY. THE WITNESS NEEDS A SHORT BREAK, SO

-16435

1 WE WILL TAKE A FIVE-MINUTE RECESS, AND WE'LL PICK UP.
2 AS I SAID, WE ARE WORKING UNTIL 1:00 O'CLOCK TODAY, SO
3 WE WILL RESUME AT QUARTER AFTER.

4 OKAY. QUARTER TO 1:00. OKAY. WE WILL BE
5 RESUMING AT QUARTER AFTER.

6 (A RECESS WAS HELD FROM
7 12:05 P.M. TO 12:30 P.M.)

49102

1 (THE FOLLOWING PROCEEDINGS WERE

2 HELD IN OPEN COURT, OUT OF THE
3 PRESENCE OF THE JURY:)

4

5 THE COURT: OKAY. WE'LL HAVE THE JURY COME
6 OUT.

7 LET ME INQUIRE. DO YOU HAVE MS. PISARCIK
8 ALSO AVAILABLE TOMORROW?

9 MS. NAJERA: AVAILABLE TODAY?

10 THE COURT: TOMORROW.

11 MS. NAJERA: YES, YOUR HONOR.

12 BEFORE WE CONTINUE, MR. LEVIN, WHEN HE
13 WAS GOING TO SIDE-BAR -- AND I HEARD IT -- SAID
14 "TERRY, KEEP AN EYE ON THIS GUY," AND I GUESS HE
15 CAME OVER HERE TO TALK TO HER ABOUT THAT.

16 HE SAID IT LOUD ENOUGH FOR PEOPLE IN THE
17 GALLERY TO HEAR. I THINK IT'S REALLY INAPPROPRIATE
18 FOR HIM TO TRY TO COMMUNICATE TO THE JURY IN THAT
19 MANNER.

20 ALSO, WHEN WE WERE THROUGH WITH DIRECT
21 EXAMINATION, MS. ABRAMSON LET OUT THIS BIG SIGH,
22 WHICH I ALSO THINK IS INAPPROPRIATE TO COMMUNICATE
23 TO THE JURY IN THAT MANNER.

24 I'D ASK THAT MR. LEVIN BE ADMONISHED.
25 IT WAS LOUD AND IT WAS OBNOXIOUS.

26 THE COURT: WERE YOU RESPONSIBLE FOR THAT
27 COMMENT, MR. LEVIN?

28 MR. LEVIN: YES, YOUR HONOR. BUT I SAID IT

1 OVER -- WAY OVER BY THE LOCKUP DOOR. WHAT I WANTED
2 TO MAKE SURE IS, I SAW MS. TOWERY LEANING OVER AND
3 TALKING TO OTHER PEOPLE, AND SINCE THE JURY IS HERE
4 IN THE BOX WITH THE WITNESS ON THE STAND, AND THERE
5 WERE PROSECUTORS HERE, I WANTED MS. TOWERY TO PAY
6 ATTENTION TO THE PROCEEDINGS, AND THAT WAS ALL I
7 JUST ASKED. I SAID, "KEEP AN EYE ON THINGS."

8 MS. NAJERA: NO. HE SAID, "KEEP AN EYE ON
9 THIS GUY."

10 MR. LEVIN: I DON'T REMEMBER THE EXACT WORDS
11 I USED. I CERTAINLY DIDN'T SAY IT LOUD ENOUGH SO
12 THE JURY COULD HEAR IT.

13 MS. NAJERA: IT COULD BE HEARD AT THIS END OF
14 THE COURTROOM.

15 THE COURT: ANYBODY INTENT ON COMMUNICATING
16 TO THE JURY SHOULD DO SO IN ARGUMENT AT THE END OF
17 THE CASE. AND IF YOU CANNOT COMPLY WITH THAT SIMPLE
18 RULE OF LAW IN EVERY COURTROOM, RULE OF PROCEDURE IN
19 EVERY COURTROOM, THE COURT WILL TAKE ACTION TO
20 ENSURE THAT YOU COMPLY WITH IT BY IMPOSING
21 APPROPRIATE SANCTIONS.

22 SO THAT IS DIRECTED TO EVERYBODY.

23 MS. TOWERY: JUST SO I CAN PUT MY TWO-CENTS
24 WORTH IN, SINCE I WAS THE RECIPIENT OF THE

25 INSTRUCTION BY MR. LEVIN. I DIDN'T FIND IT
26 PARTICULARLY LOUD. I GOT UP OUT OF MY SEAT AND
27 WALKED OVER TO THE FAR SIDE OF THE CLERK'S DESK AND
28 HE ASKED ME -- MY UNDERSTANDING WAS HE WANTED ME TO

49104

1 KEEP AN EYE ON MR. CIGNARELLI. HE WAS GOING TO BE
2 OUT OF THE COURTROOM, AND MY UNDERSTANDING OF WHAT
3 HE WANTED ME TO DO IS MAKE SURE MR. CIGNARELLI DID
4 NOT ATTEMPT TO COMMUNICATE WITH THE JURY. I DON'T
5 THINK IT WAS LOUD ENOUGH FOR THE JURY TO HEAR, AND I
6 CERTAINLY DON'T THINK THAT WAS MR. LEVIN'S INTENT IN
7 ASKING ME TO DO SO.

8 AS THE COURT KNOWS, FROM MY SEAT, IT'S
9 VERY HARD FOR ME TO SEE THE WITNESS. SO I SIMPLY
10 SWITCHED MY SEAT SO I COULD SEE WHETHER OR NOT THERE
11 WOULD BE ANY ATTEMPT TO COMMUNICATE WITH THE JURY IN
12 THE ABSENCE OF THE COURT AND OTHER COUNSEL.

13 THE COURT: ALL RIGHT. OKAY. I'VE TOLD YOU
14 IN GENERAL WHAT THE RULE IS, AND IF THERE'S A
15 VIOLATION OF THAT RULE -- IT'S A VERY SIMPLE RULE
16 THAT APPLIES TO EVERYBODY; WHETHER IT'S A VERBAL
17 EXPRESSION OR ACTING OUT IN ANY WAY, THE COURT WILL
18 IMPOSE SANCTIONS.

19 ALL RIGHT. LET'S GET THE JURY OUT.

20 (THE JURY ENTERED THE COURTROOM
21 AND THE FOLLOWING PROCEEDINGS
22 WERE HELD:)

23

24 THE COURT: OKAY. THE JURY IS BACK.

25 CROSS-EXAMINATION.

26 MR. LEVIN: THANK YOU, YOUR HONOR.

27 ///

28 ///

49105

1 CROSS-EXAMINATION

2 BY MR. LEVIN:

3 Q MR. CIGNARELLI, AS ERIK MENENDEZ' BEST
4 FRIEND, I TAKE IT LOYALTY IS IMPORTANT TO YOU?

5 A YES, IT IS.

6 Q AND YOU VALUE THE CHARACTER TRAIT OF
7 LOYALTY?

8 A YES, I DO.

9 Q YOU ALSO VALUE THE CHARACTER TRAIT OF
10 INTEGRITY?

11 A YES, I DO.

12 Q IN FACT, YOU ASPIRE ONE DAY, DO YOU NOT,
13 TO BECOME A UNITED STATES SENATOR?

14 A ACTUALLY, AT THIS POINT MY ATTENTION IS

15 CONGRESS AND THEN THE UNITED NATIONS.

16 Q AND YOU, AT LEAST AT ONE POINT, WANTED
17 TO BE IN THE C.I.A., OR DO SOME WORK FOR THE C.I.A.

18 A THAT'S CORRECT.

19 Q AND YOU'VE ALREADY DONE A LITTLE SPYING,
20 HAVEN'T YOU?

21 MS. NAJERA: OBJECTION, YOUR HONOR.

22 IRRELEVANT AND ARGUMENTATIVE.

23 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

24 Q BY MR. LEVIN: IN THIS COURTROOM,
25 MR. CIGNARELLI, YOU'RE ONLY DOING YOUR CIVIC DUTY?

26 A THAT'S CORRECT.

27 Q YOU UNDERSTAND YOUR MORAL OBLIGATION TO
28 TELL THE TRUTH?

49106

1 A YES, I DO.

2 Q AND YOU ARE PERSONALLY DEDICATED TO
3 TELLING THE TRUTH; ISN'T THAT CORRECT?

4 A YES, MR. LEVIN.

5 Q AND THAT WOULD BE DEDICATED TO TELLING
6 THE TRUTH, WHETHER OR NOT YOU WERE UNDER OATH IN A
7 COURTROOM OR WHETHER OR NOT A POLICE OFFICER WAS
8 INVESTIGATING A CRIMINAL CASE, CORRECT?

9 A I'M SORRY. I DON'T UNDERSTAND THE

10 QUESTION.

11 Q WELL, YOU UNDERSTAND, DO YOU NOT, OR YOU
12 HAVE THE INTEGRITY TO TELL THE TRUTH WHEN YOU'RE
13 UNDER OATH IN COURT; ISN'T THIS CORRECT?

14 A YES.

15 Q AND YOU ALSO ARE THE TYPE OF PERSON
16 DEDICATED TO THE TRUTH WITH INTEGRITY, TO TELL THE
17 TRUTH TO THE POLICE DEPARTMENT WHEN THEY ASK YOU
18 QUESTIONS?

19 A YES, MR. LEVIN.

20 MS. NAJERA: OBJECT AS TOO VAGUE AS TO ANY
21 PARTICULAR EVENT OR JUST A TRAIT OF CHARACTER.

22 THE COURT: OVERRULED.

23 THE ANSWER WILL STAND.

24 Q BY MR. LEVIN: SIMILARLY, IF YOU ARE
25 ASKED QUESTIONS NOW ABOUT THIS CASE PUT TO YOU BY
26 DISTRICT ATTORNEYS, YOU'RE GOING TO TELL THEM THE
27 TRUTH, CORRECT?

28 A YES.

49107

1 Q AND THAT'S BECAUSE YOU'RE A MORAL PERSON
2 WITH LOTS OF INTEGRITY, CORRECT?

3 A YES, MR. LEVIN, I WOULD HOPE TO BE.

4 Q AND YOU HAVE NO OTHER REASON FOR

5 TESTIFYING ABOUT WHAT YOU SAY ERIK MENENDEZ TOLD

6 YOU, EXCEPT FOR THE TRUTH, CORRECT?

7 A THAT'S CORRECT.

8 Q AND IT CAUSES YOU TREMENDOUS PAIN TO DO

9 THAT BECAUSE ERIK MENENDEZ IS YOUR VERY BEST FRIEND,

10 OR WAS?

11 A NO. THAT'S NOT WHAT I SAID. I SAID HE

12 WAS.

13 Q OKAY. WELL, HOW MUCH MONEY HAVE YOU

14 MADE SO FAR OFF YOUR BEST FRIEND BY TELLING YOUR

15 STORY?

16 MS. NAJERA: I'M GOING TO OBJECT TO THE FORM

17 OF THE QUESTION, AS TO CONCERNING HIS FRIEND.

18 THE COURT: SUSTAINED.

19 Q BY MR. LEVIN: YOU APPEARED ON

20 "HARD COPY," DID YOU NOT, ON JUNE 10TH, 1994?

21 A THAT'S CORRECT.

22 Q AND YOU HAVE APPEARED ON OTHER

23 TELEVISION INTERVIEWS, TALKING TO PEOPLE ABOUT ERIK

24 MENENDEZ?

25 A I APPEARED ON ONE OTHER.

26 Q ALL RIGHT. AND YOU WERE PAID, WERE YOU

27 NOT, FOR YOUR INTERVIEW WITH "HARD COPY"?

28 A THAT'S CORRECT.

1 Q HOW MUCH DID THEY PAY YOU,
2 MR. CIGNARELLI?

3 A ACTUALLY, I'M NOT ALLOWED TO TELL THAT.
4 I DON'T KNOW --

5 Q YES, YOU ARE, BECAUSE YOU'RE UNDER OATH
6 IN A COURT OF LAW.

7 WOULD YOU TELL THE JURY HOW MUCH MONEY
8 YOU WERE PAID, AND TELL THE TRUTH NOW.

9 A I'M NOT ALLOWED TO TELL THAT UNDER THE
10 TERMS OF THE CONTRACT.

11 MR. LEVIN: MR. CIGNARELLI --

12 THE COURT: YOU HAVE TO ANSWER THE QUESTION.

13 MR. LEVIN: YOU MUST ANSWER THE QUESTION.

14 THE WITNESS: THE TERMS OF THE CONTRACT
15 STATED \$25,000.

16 Q BY MR. LEVIN: SO YOU WERE PAID \$25,000
17 TO MAKE -- TO GIVE AN INTERVIEW ABOUT WHAT YOU KNEW
18 ABOUT THIS CASE, CORRECT?

19 A NO.

20 Q WELL, THAT'S WHAT YOU CONTRACTED FOR,
21 CORRECT?

22 A THAT'S CORRECT.

23 Q AND YOU ALSO HAVE AN ENTERTAINMENT
24 LAWYER, I BELIEVE. IF I'M NOT MISTAKEN, HE HAS A
25 NAME, MR. UNGER; ISN'T THAT CORRECT?

26 A NO.

27 Q WELL, SOMEBODY NEGOTIATED YOUR CONTACT
28 FOR YOU?

1 A NO.

2 Q DID YOU NEGOTIATE YOUR CONTRACT
3 YOURSELF?

4 A YES.

5 Q AND WHO DID YOU NEGOTIATE WITH?

6 MS. NAJERA: OBJECTION. IRRELEVANT.

7 THE COURT: OVERRULED.

8 THE WITNESS: THE PRODUCER OF "HARD COPY.

9 Q BY MR. LEVIN: WHO'S THE PRODUCER OF
10 "HARD COPY"?

11 A LINDA BLUE AND LINDA BELL -- I'M SORRY.

12 LINDA BLUE AND LINDA ELMAN, I THINK HER LAST NAME
13 WAS.

14 Q AND DID THEY CONTACT YOU OR DID YOU
15 CONTACT THEM?

16 A THEY CONTACTED ME.

17 Q WHEN DID THEY FIRST CONTACT YOU,
18 MR. CIGNARELLI?

19 A I DON'T RECALL.

20 Q WHEN WAS IT THAT -- WHEN WAS IT YOU
21 SIGNED YOUR CONTRACT?

22 A I GUESS A COUPLE OF YEARS AGO.

23 Q AND DO YOU STILL HAVE A COPY OF THAT

24 CONTRACT?

25 A I DON'T KNOW. I MAY HAVE.

26 Q YOU KEEP GOOD RECORDS --

27 A I MAY HAVE IT IN THE FILE SOMEWHERE.

28 Q YOU KEEP GOOD RECORDS OF THINGS, DON'T

49110

1 YOU?

2 A ACTUALLY, NO.

3 Q WELL, WOULD YOU HAVE TAKEN THIS CONTRACT

4 AND THROWN IT AWAY?

5 MS. NAJERA: I'M GOING TO OBJECT AS

6 IRRELEVANT.

7 THE WITNESS: PROBABLY NOT.

8 THE COURT: OVERRULED.

9 THE ANSWER WILL STAND.

10 Q BY MR. LEVIN: WHEN YOU COME TO COURT

11 TOMORROW, MR. CIGNARELLI, WILL YOU BRING US THIS

12 CONTRACT?

13 A IF I CAN FIND ONE.

14 Q WHERE DO YOU THINK IT MIGHT BE?

15 A I'VE MOVED SEVERAL TIMES, MR. LEVIN. I

16 DON'T KNOW, TO TELL YOU THE TRUTH.

17 Q DID YOU EVER GIVE IT OR SHOW IT TO

18 MR. CONN OR MS. NAJERA?

19 A I DON'T RECALL DOING SO.

20 Q DID YOU EVER TELL THEM THAT YOU HAD A
21 CONTRACT WITH THE PRODUCERS OF "HARD COPY" OR THE
22 NETWORK?

23 A I DON'T BELIEVE I TOLD MR. CONN OR
24 MS. NAJERA. I BELIEVE I TOLD MR. ZOELLER.

25 Q DID YOU TELL DETECTIVE ZOELLER THAT YOU
26 HAD A CONTRACT TO BE PAID \$25,000 TO TELL THINGS TO
27 THE NEWS NETWORK ABOUT WHAT YOU SAY HAPPENED IN THIS
28 CASE?

49111

1 MS. NAJERA: I'M GOING TO OBJECT. ASSUMES A
2 FACT NOT IN EVIDENCE.

3 THE COURT: SUSTAINED.

4 Q BY MR. LEVIN: WELL, LET ME ASK YOU
5 THIS, MR. CIGNARELLI: WOULD I BE PRESUMPTUOUS IN
6 ASSUMING THAT YOU CONTRACTED -- WHAT NETWORK WAS
7 THAT AGAIN, A.B.C., N.B.C.? IS THERE A NETWORK?

8 A I DON'T KNOW. I CONTRACTED WITH THE
9 SHOW "HARD COPY."

10 Q THE SHOW "HARD COPY." AND I TAKE IT,
11 NOT TO BE TO PRESUMPTUOUS, THAT THEY WERE -- OR YOU
12 EXPECTED TO RECEIVE \$25,000 TO TELL THEM THINGS
13 ABOUT ERIK MENENDEZ?

14 A THAT'S NOT TRUE.

15 Q TO TELL THEM THINGS ABOUT ANYTHING
16 RELATED TO THIS CASE?

17 A THAT'S NOT TRUE.

18 Q SO YOU WERE TALKING ABOUT THE LIFE STORY
19 OF CRAIG CIGNARELLI AND YOUR DESIRE TO BECOME A
20 MEMBER OF THE UNITED STATES CONGRESS?

21 A NO. WHAT -- IN ANSWER TO YOUR QUESTION,
22 YOUR QUESTION THAT YOU ASKED -- THE ANSWER IS IT'S
23 NOT TRUE.

24 Q OKAY. SO THEN, THERE'S ABSOLUTELY NO
25 RELATIONSHIP BETWEEN THE CONTRACT THAT YOU HAD WITH
26 "HARD COPY" AND ANY INFORMATION THAT YOU HAD
27 CONCERNING ERIK MENENDEZ, HIS LIFE, OR WHAT HAPPENED
28 ON AUGUST THE 20TH, 1989?

49112

1 A THERE IS A RELATIONSHIP THERE.

2 Q OH. OKAY. WHAT IS THAT RELATIONSHIP?

3 A I WAS TO TELL THE SHOW WHAT I KNEW,
4 ACCORDING TO THE DICTATES OF THE CONTRACT. THERE
5 WERE SPECIFIC QUESTIONS.

6 Q TO TELL THE SHOW WHAT YOU KNEW.

7 NOW, I TAKE IT, BEFORE THEY WOULD AGREE
8 TO OFFER YOU ANY MONEY AT ALL, THEY WOULD WANT TO

9 KNOW WHAT IT WAS YOU KNEW, CORRECT?

10 A VERY VAGUELY.

11 Q AND WAS THE INFORMATION THAT YOU HAD IN
12 ANY WAY RELATED TO THE AMOUNT OF MONEY THAT THEY
13 WOULD PAY?

14 A YES, DEFINITELY.

15 Q THE JUICIER THE INFORMATION, THE MORE
16 YOU GET?

17 A WRONG.

18 MS. NAJERA: ARGUMENTATIVE.

19 THE COURT: SUSTAINED AS TO THE FORM OF THE
20 QUESTION.

21 Q BY MR. LEVIN: HOW MANY MEETINGS DID YOU
22 HAVE WITH "HARD COPY" BEFORE YOU AGREED AND SIGNED A
23 CONTRACT FOR \$25,000?

24 MS. NAJERA: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 THE WITNESS: ONE, I BELIEVE.

27 Q BY MR. LEVIN: AND WHO WAS PRESENT AT
28 THAT MEETING?

49113

1 A LINDA BLUE AND LINDA ELMAN, I THINK HER
2 NAME IS.

3 Q AND WHO -- AND YOU?

4 A AND ME.

5 Q AND WHO ELSE BESIDES THE THREE OF YOU?

6 A THAT'S IT.

7 Q NO ATTORNEYS?

8 A NOPE.

9 Q YOUR FATHER?

10 A NO.

11 Q AND DID THIS MEETING TAKE PLACE IN 1990?

12 A NO.

13 Q DID IT TAKE PLACE IN 1994?

14 A I BELIEVE IT WAS '94.

15 Q DO YOU KNOW WHAT MONTH?

16 A EARLY 1994.

17 Q NOW, I TAKE IT, MR. CIGNARELLI, THAT

18 WHEN YOU TOLD "HARD COPY" WHAT YOU KNEW, YOU WEREN'T

19 VAGUE AT ALL IN YOUR DESCRIPTION OF WHAT IT WAS YOU

20 CLAIM ERIK MENENDEZ TOLD YOU, CORRECT?

21 A ACTUALLY, YES, I WAS VERY VAGUE.

22 Q AND WERE THEY TAKING NOTES?

23 A WHEN WE NEGOTIATED THE CONTRACT?

24 Q NO. WERE THEY TAKING NOTES WHEN YOU

25 TOLD THEM WHAT YOU KNEW ABOUT THIS CASE, WHAT YOU

26 CLAIM YOU KNEW ABOUT THIS CASE?

27 A NO.

28 Q THEY JUST LISTENED TO YOU?

1 A YES.

2 Q AND HOW DID THE NUMBER \$25,000 GET
3 THROWN OUT?

4 A MAY I DESCRIBE THIS IN FULL DETAIL?

5 Q NO. YOU MAY ANSWER MY QUESTION.

6 MS. NAJERA: I'M GOING TO OBJECT TO MR. LEVIN
7 INTERRUPTING THE WITNESS. AND I'M ALSO GOING TO
8 OBJECT TO HIS TONE.

9 THE COURT: YOU'RE ARGUING WITH THE WITNESS
10 AT THIS POINT.

11 THE WITNESS: I'LL ANSWER YOUR QUESTION.

12 MR. LEVIN: THANK YOU.

13 THE WITNESS: THE NUMBER 25,000 CAME ABOUT
14 BECAUSE --

15 MR. LEVIN: NO. I SAID HOW.

16 MS. NAJERA: OBJECTION, YOUR HONOR. THE
17 WITNESS IS TRYING TO ANSWER THE QUESTION.

18 THE WITNESS: I'M TRYING TO ANSWER YOUR
19 QUESTION.

20 THE COURT: WHY DON'T YOU REPHRASE THE
21 QUESTION.

22 Q BY MR. LEVIN: WHO WAS THE FIRST PERSON
23 THAT SAID THE WORDS "\$25,000"?

24 A "HARD COPY."

25 Q AND WHO FROM "HARD COPY" SAID IT?

26 A I BELIEVE IT WAS LINDA BELL.

27 Q AND WHEN THEY SAID -- OR WHEN LINDA BELL
28 SAID, \$25,000, THAT WAS AFTER YOU TOLD HER WHAT YOU

49115

1 CLAIM IT WAS ERIK MENENDEZ TOLD YOU, CORRECT?

2 A NO.

3 Q THAT WAS AFTER YOU TOLD HER SOMETHING
4 ABOUT YOUR INVOLVEMENT IN THIS CASE?

5 A YES.

6 Q ALL RIGHT. AND RECEIVING THE
7 INFORMATION THAT "HARD COPY" WAS WILLING TO PAY YOU
8 \$25,000, THAT PLEASED YOU, DIDN'T IT?

9 MS. NAJERA: OBJECTION. IRRELEVANT.

10 THE WITNESS: I'M SORRY. "HARD COPY" DID NOT
11 PAY ME \$25,000.

12 MR. LEVIN: THAT WAS MY QUESTION:

13 Q WHEN "HARD COPY" SAID \$25,000
14 MR. CIGNARELLI, IT PLEASED YOU, DIDN'T IT?

15 MS. NAJERA: I'M GOING TO OBJECT AS
16 IRRELEVANT.

17 THE WITNESS: YES, IT DID.

18 THE COURT: OVERRULED.

19 THE WITNESS: I'M SORRY. YES.

20 Q BY MR. LEVIN: AND YOUR STATE OF MIND
21 WAS THAT YOU WERE GOING TO RECEIVE \$25,000 FROM

22 "HARD COPY" TO TALK ABOUT YOUR BEST FRIEND, ERIK

23 MENENDEZ?

24 A THAT'S INCORRECT.

25 Q DID YOU EVER APPEAR ON NATIONAL

26 TELEVISION?

27 A YES.

28 Q AND WAS THAT "HARD COPY"?

49116

1 A YES.

2 Q DID THEY PAY YOU MONEY?

3 A YES.

4 Q HOW MANY OTHER TIMES HAD YOU BEEN PAID

5 FOR ANY INTERVIEWS, WHETHER THEY WERE IN PRINT,

6 RADIO, TELEVISION, MOVIE OF THE WEEK, ANYTHING LIKE

7 THAT?

8 A I RECEIVED ABSOLUTELY NOTHING FROM

9 ANYONE ELSE.

10 Q HAVE YOU EVER DISCUSSED WITH ANYONE THE

11 POSSIBILITY OF YOU BEING INVOLVED IN A MOVIE OF THE

12 WEEK?

13 A NO.

14 Q HAVE YOU EVER BEEN AWARE THAT ON YOUR

15 BEHALF ANY NEGOTIATIONS WERE ONGOING, OR HAVE BEEN

16 ONGOING, CONCERNING A MOVIE OF THE WEEK?

17 MS. NAJERA: I'M GOING TO OBJECT, THAT THIS
18 WITNESS HAS NOT AUTHORIZED ANYONE. ASSUMES FACTS
19 NOT IN EVIDENCE.

20 THE COURT: SUSTAINED.

21 Q BY MR. LEVIN: WELL, ARE YOU AWARE THAT
22 ANYONE IS TALKING ABOUT A MOVIE OF THE WEEK WHERE
23 YOU WOULD GET SOME MONEY?

24 MS. NAJERA: SAME OBJECTION.

25 THE COURT: SUSTAINED.

26 Q BY MR. LEVIN: DO YOU EXPECT TO MAKE ANY
27 MORE MONEY ON THIS CASE?

28 MS. NAJERA: I'M GOING TO OBJECT AS

49117

1 IRRELEVANT.

2 THE COURT: OVERRULED.

3 THE WITNESS: DO I EXPECT TO MAKE ANYMORE
4 MONEY?

5 MR. LEVIN: YES.

6 THE WITNESS: NO.

7 Q BY MR. LEVIN: DO YOU KNOW THAT THERE IS
8 A LAW PRESENTLY IN CALIFORNIA THAT PROHIBITS
9 WITNESSES FROM ACCEPTING MONEY FOR INFORMATION THEY
10 HAVE CONCERNING A CASE?

11 MS. NAJERA: I'M GOING TO OBJECT.

12 THE WITNESS: ACTUALLY, THAT'S WRONG,
13 MR. LEVIN, BECAUSE I HAD THAT LAW OVERTURNED.
14 MS. NAJERA: I'M GOING TO OBJECT. I'M
15 SORRY.
16 THE COURT: OBJECTION?
17 MS. NAJERA: I'M SORRY.
18 THE COURT: OKAY. THE OBJECTION IS
19 WITHDRAWN.
20 MS. NAJERA: I'M GOING TO OBJECT TO ANY
21 QUESTION ABOUT ANY LAWS. THIS ISN'T A LAWYER.
22 THE COURT: OBJECTION SUSTAINED.
23 THE ANSWER'S STRICKEN.
24 Q BY MR. LEVIN: MR. CIGNARELLI, WERE YOU
25 AWARE OF ANY LAW PASSED BY THE LEGISLATURE IN
26 CALIFORNIA CONCERNING -- AND I'LL JUST STATE IT --
27 132.5 OF THE PENAL CODE, THAT WOULD HAVE PROHIBITED
28 A PERSON WHO WAS A WITNESS TO AN EVENT OR

49118

1 OCCURRENCE, THAT HE OR SHE KNOWS OR REASONABLY
2 SHOULD KNOW, IS A CRIME, OR WHO HAS PERSONAL
3 KNOWLEDGE OF FACTS THAT HE OR SHE KNOWS OR
4 REASONABLY SHOULD KNOW, MAY REQUIRE THAT PERSON BE
5 CALLED AS WITNESS IN A CRIMINAL PROSECUTION, SHALL
6 NOT ACCEPT OR RECEIVE, DIRECTLY OR INDIRECTLY, ANY

7 PAYMENT OR BENEFIT IN CONSIDERATION FOR PROVIDING
8 INFORMATION OBTAINED AS A RESULT OF WITNESSING THE
9 EVENT OR OCCURRENCE OR HAVING PERSONAL KNOWLEDGE OF
10 THE FACTS.

11 MS. NAJERA: I'M GOING TO OBJECT, ASK TO
12 APPROACH, AND ASK FOR A STIPULATION (SIC) FROM THE
13 COURT.

14 THE COURT: OKAY. AT THIS POINT THE
15 OBJECTION IS SUSTAINED TO THE QUESTION.

16 MR. LEVIN: OKAY. NEXT QUESTION.

17 Q BY MR. LEVIN: HAVE YOU EVER, BECAUSE OF
18 A DESIRE TO OBTAIN MONEY FOR TALKING ABOUT YOUR BEST
19 FRIEND, EVER SOUGHT TO CHANGE A LAW IN CALIFORNIA
20 THAT WOULD PROHIBIT YOU FROM DOING IT?

21 A NO.

22 MS. NAJERA: I'M GOING TO OBJECT.

23 THE COURT: OVERRULED.

24 THE ANSWER WILL STAND.

25 MS. NAJERA: WITHDRAW THE OBJECTION.

26 THE COURT: THE ANSWER WILL STAND.

27 Q BY MR. LEVIN: IN FACT, MS. ABRAMSON
28 PASSED ME A NOTE -- AND I THOUGH I HEARD IT TOO --

2 A I WAS PART OF A GROUP THAT -- YES. I WAS
3 PART OF A GROUP THAT HAD THAT LAW OVERTURNED
4 AND -- IF I MIGHT EXPLAIN, I WILL ANSWER YOUR
5 QUESTION MORE FULLY.

6 Q AM I NOT BEING CLEAR?

7 MS. NAJERA: HE'S NOT -- ARGUMENTATIVE. AND
8 THE WITNESS IS TRYING TO ANSWER THE QUESTION.

9 THE COURT: LET'S REPHRASE IT, MR. LEVIN.

10 Q BY MR. LEVIN: HAVE YOU EVER BEEN PART
11 OF A GROUP THAT SOUGHT TO HAVE A LAW OVERTURNED IN
12 CALIFORNIA THAT WOULD PROHIBIT PEOPLE FROM MAKING
13 MONEY OFF OF INFORMATION THAT THEY HAVE IN A
14 CRIMINAL PROSECUTION?

15 MS. NAJERA: OBJECT, FIRST TO THE FORM OF THE
16 QUESTION, AND THAT IT'S IRRELEVANT.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES.

19 Q BY MR. LEVIN: AND WAS THAT THE LAW THAT
20 I HAD READ TO YOU BEFORE, PENAL CODE SECTION 132.5?

21 A YES.

22 Q NOW, HAVE YOU, IN YOUR ENTIRE LIFE,
23 MR. CIGNARELLI, EVER SOUGHT OR JOINED A GROUP FOR
24 ANY OTHER LAWSUIT TO OVERTURN ANY OTHER LAW IN THE
25 UNITED STATES OF AMERICA?

26 MS. NAJERA: OBJECTION, IRRELEVANT.

27 THE COURT: OVERRULED.

28 THE WITNESS: IN THE -- I DON'T KNOW HOW TO

1 ANSWER THAT. I MAY HAVE MANY, MANY TIMES.

2 Q BY MR. LEVIN: ARE YOU PART OF SUCH A
3 LAWSUIT THAT YOU MENTIONED BEFORE?

4 A YES, I AM.

5 Q OKAY. AND IS THIS A CONSORTIUM OF SOME
6 TYPE?

7 A COULD YOU DEFINE" CONSORTIUM."

8 Q A GROUP OF PEOPLE DEDICATED, WITH
9 SIMILAR INTERESTS, TO DO SOMETHING.

10 A YES.

11 Q AND WHO ARE THE OTHER PEOPLE THAT ARE
12 PART OF THIS CONSORTIUM?

13 MS. NAJERA: OBJECTION. IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T KNOW. I MEAN, I KNOW A
16 FEW OF THEM.

17 Q BY MR. LEVIN: WHO'S THE LAWYER THAT'S
18 REPRESENTING --

19 MS. NAJERA: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 Q BY MR. LEVIN: DO YOU HAVE A LAWYER?

22 A REPRESENTING ME?

23 Q YEAH.

24 A NO, I DON'T.

25 Q IS THIS BEING UNDERTAKEN BY YOURSELF AS

26 A PERSONAL -- IN PRO PER, JUST DOING IT BY YOURSELF?

27 A NO.

28 Q IS THERE SOMEONE -- IS YOUR NAME IN A

49121

1 CAPTIONED INFORMATION SOMEWHERE, OR COMPLAINT?

2 MS. NAJERA: OBJECTION. IRRELEVANT.

3 THE COURT: REPHRASE THE QUESTION.

4 Q BY MR. LEVIN: NOW, MR. CIGNARELLI, I

5 TAKE IT THAT YOUR INTEREST IN HAVING THIS LAW

6 OVERTURNED WAS SOLELY MOTIVATED BY YOUR DESIRE TO BE

7 FREE FROM THE PENALTIES THAT WOULD ATTACH TO SOMEONE

8 WHO VIOLATED THAT LAW?

9 A MY SOLE PURPOSE WAS NOT THAT, NO.

10 Q WELL, WERE YOU AWARE THAT A VIOLATION OF

11 THAT LAW IS A MISDEMEANOR CRIME AND COULD SEND YOU

12 TO JAIL OR FINE YOU A THOUSAND DOLLARS --

13 MS. NAJERA: YOUR HONOR.

14 MR. LEVIN: -- OR BOTH?

15 MS. NAJERA: I'M GOING TO OBJECT TO ANY

16 IMPLICATION THIS WITNESS HAS COMMITTED A CRIME.

17 THE COURT: SUSTAINED AS TO THE FORM OF THE

18 QUESTION.

19 WHY DON'T YOU GET ON TO SOME OTHER

20 AREAS.

21 Q BY MR. LEVIN: WOULD I BE CORRECT,
22 MR. CIGNARELLI, IN SAYING THAT YOUR INTEREST IN
23 HAVING THAT LAW OVERTURNED WAS IN RELATIONSHIP TO
24 THIS CASE AND YOUR DESIRE TO MAKE AS MUCH MONEY AS
25 YOU COULD OFF OF THE KNOWLEDGE THAT YOU SAY YOU HAVE
26 CONCERNING YOUR BEST FRIEND?
27 A ABSOLUTELY INCORRECT.
28 MS. NAJERA: ASSUMES FACTS -- WITHDRAW THE

49122

1 OBJECTION.
2 Q BY MR. LEVIN: PART OF YOUR CIVIC DUTY
3 ALSO --
4 A I WOULD LOVE TO EXPLAIN IT TO YOU IF YOU
5 WOULD GIVE ME AN OPPORTUNITY, MR. LEVIN.
6 Q MR. CIGNARELLI, YOU TALKED TO POLICE
7 ABOUT YOUR -- ABOUT WHAT IT IS YOU'RE SAYING THAT
8 ERIK MENENDEZ TOLD YOU ON AUGUST THE 24TH, 1989,
9 CORRECT?
10 MS. NAJERA: OBJECTION. ASSUMES FACTS NOT IN
11 EVIDENCE. AUGUST 20TH?
12 THE COURT: SUSTAINED.
13 MR. LEVIN: DIDN'T YOU?
14 THE COURT: THERE'S NO QUESTION PENDING,
15 MR. LEVIN.

16 Q BY MR. LEVIN: WELL, YOU KNOW DETECTIVE

17 ZOELLER, DO YOU NOT?

18 A YES, I DO.

19 Q AND YOU KNOW DETECTIVE LINEHAN, DO YOU

20 NOT?

21 A YES, I DO.

22 Q ARE YOU AWARE THAT ON AUGUST THE 24TH,

23 1989, AT ABOUT 9:15 IN THE EVENING, THE POLICE CAME

24 TO YOUR HOUSE AND SPOKE TO YOUR MOTHER?

25 MS. NAJERA: I'M GOING TO OBJECT. CALLS FOR

26 HEARSAY AND --

27 THE COURT: SUSTAINED.

28 Q BY MR. LEVIN: WELL, DID YOU KNOW THAT

49123

1 ON AUGUST THE 24TH, 1989, AT ABOUT 10:00 O'CLOCK,

2 THE POLICE CAME TO YOUR HOUSE?

3 MS. NAJERA: OBJECTION. CALLS FOR HEARSAY.

4 HE HAS NO PERSONAL KNOWLEDGE.

5 THE COURT: SUSTAINED.

6 ASK WAS HE THERE.

7 MR. LEVIN: I ASKED IF HE WAS THERE AND --

8 THE COURT: YOU DIDN'T ASK THAT.

9 MR. LEVIN: OH. I'M SORRY.

10 Q DO YOU REMEMBER SEEING THE POLICE AT

11 YOUR HOUSE AT APPROXIMATELY 10:00 O'CLOCK ON AUGUST
12 THE 24TH, 1989? YES OR NO?
13 A I DON'T KNOW IF THAT'S THE EXACT DATE,
14 BUT YES, I REMEMBER.
15 Q AND THAT WOULD BE THE FIRST TIME THAT
16 YOU WERE INTERVIEWED BY LES ZOELLER AND DETECTIVE
17 LINEHAN FROM THE BEVERLY HILLS POLICE DEPARTMENT,
18 CORRECT?
19 A THAT'S CORRECT, MR. LEVIN.
20 Q AND THEY WANTED -- AND YOU DIDN'T CALL
21 THEM FOR THAT INTERVIEW, DID YOU?
22 A THAT'S CORRECT.
23 Q AND THEY WANTED TO TALK TO YOU ABOUT
24 WHAT YOU MIGHT HAVE KNOWN ABOUT THIS PARTICULAR
25 CASE, CORRECT?
26 A THAT'S CORRECT.
27 Q NOW, YOU SAID THAT YOU WERE AT ERIK
28 MENENDEZ' HOUSE ON AUGUST -- AT THE END OF AUGUST OR

49124

1 EARLY SEPTEMBER, CORRECT?
2 A CORRECT.
3 MS. NAJERA: ASSUMES FACTS NOT IN EVIDENCE AS
4 TO THE AUGUST 24TH, 1989 REPORT.
5 THE COURT: IT'S UNCLEAR WHAT YOU MEAN NOW.

6 YOU'RE TALKING ABOUT ON AUGUST THE 24TH DID HE SPEAK
7 WITH THE POLICE, AND DID HE TELL THEM CERTAIN
8 THINGS? IS THAT WHAT YOU'RE ASKING?

9 MR. LEVIN: YEAH.

10 THE COURT: PERHAPS YOU CAN CLARIFY THAT.

11 MR. LEVIN: OKAY.

12 Q ON AUGUST THE 24TH, APPROXIMATELY 10:00
13 O'CLOCK AT NIGHT, YOU SPOKE TO THE POLICE ABOUT
14 SEVERAL THINGS ABOUT THIS CASE, CORRECT?

15 MS. NAJERA, I'M REFERRING TO -- YOU CAN
16 COME UP HERE AND LOOK AT MY NOTES, IF YOU WISH.

17 MS. NAJERA: I BELIEVE THE QUESTION WAS: ON
18 AUGUST 24TH, DID HE ASK ABOUT SOMETHING THAT
19 HAPPENED LATE AUGUST.

20 MR. LEVIN: NO, NO. I'M JUST TRYING TO
21 ORIENT YOU.

22 Q YOU SPOKE TO THE POLICE OFFICERS ON
23 AUGUST 24TH, 1989, AT 10:00 CLOCK, ABOUT CERTAIN
24 THINGS YOU KNEW ABOUT THIS CASE, CORRECT?

25 A I BELIEVE IT WAS THE 24TH, YES.

26 Q AND YOU TESTIFIED ON DIRECT EXAMINATION
27 THAT THE VERY FIRST TIME THAT YOU SPOKE TO ERIK
28 MENENDEZ ABOUT WHAT HAD HAPPENED AT HIS HOUSE WAS AT

1 THE END OF AUGUST OR EARLY SEPTEMBER, CORRECT?

2 A THAT'S CORRECT.

3 Q AND THAT'S WHEN ERIK MENENDEZ TOLD YOU
4 THAT THERE WAS SKIN AND BLOOD AND HE TOOK YOU
5 THROUGH A WALK-THROUGH, THAT STUFF, RIGHT?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. NOW, ON AUGUST THE 24TH,
8 1989 YOU TOLD DETECTIVE ZOELLER THAT -- FIRST HE
9 ASKED YOU WHETHER YOU HAD TALKED TO ERIK AND YOU
10 SAID YES, CORRECT?

11 A I DON'T RECALL.

12 Q YOU TOLD DETECTIVE ZOELLER, DID YOU
13 NOT -- HE ASKED YOU WHAT ERIK HAD SAID ABOUT THE
14 CRIME, AND YOU TOLD DETECTIVE ZOELLER THAT ERIK HAD
15 DESCRIBED HIS PARENTS AS THEY WALKED IN; ERIK SAID
16 THAT THEY WERE FULL OF BULLET HOLES, AND THEY LOOKED
17 LIKE SWISS CHEESE.

18 DO YOU REMEMBER TELLING HIM THAT?

19 A YES. I REMEMBER TELLING HIM THAT.

20 Q AND ERIK SAID THAT HIS DAD WAS SHOT IN
21 THE HEAD AND THERE WAS SKIN AND BULLET HOLES
22 EVERYWHERE. "CRAIG SAID THEY DIDN'T TALK ANYMORE
23 ABOUT THE CRIME."

24 ISN'T THAT WHAT YOU TOLD THE POLICE ON
25 AUGUST THE 24TH, 1989?

26 MS. NAJERA: I'M GOING TO OBJECT. I BELIEVE
27 IT MISSTATES THE STATEMENT. "HE" WALKED IN, NOT
28 "THEY" WALKED IN.

1 Q BY MR. LEVIN: ISN'T THAT WHAT YOU TOLD
2 DETECTIVE ZOELLER AUGUST THE 24TH, 1989,
3 MR. CIGNARELLI?

4 A I BELIEVE SO, YES, BUT LIKE I SAID I'M
5 NOT SURE ABOUT THE DATE.

6 Q AND YOU DID NOT TELL DETECTIVE ZOELLER
7 THAT ERIK MENENDEZ HAD TOLD YOU THAT HE HAD DONE
8 ANYTHING, DID YOU?

9 A AUGUST 24TH? NO. HE HADN'T.

10 Q AND YOU HAD -- YOU WERE TRYING TO TELL
11 DETECTIVE ZOELLER THE TRUTH, WEREN'T YOU?

12 A YES.

13 Q AND YOU WERE TRYING TO TELL DETECTIVE
14 ZOELLER THE TRUTH ABOUT WHAT IT WAS ERIK MENENDEZ
15 TOLD YOU, CORRECT?

16 A YES, MR. LEVIN.

17 Q AND ISN'T IT TRUE THAT ALL ERIK MENENDEZ
18 TOLD YOU WAS WHAT HE SAW WHEN HE CAME BACK INTO THE
19 HOUSE AND SAW HIS PARENTS DEAD; ISN'T THAT TRUE?

20 A I BELIEVE THAT'S WHAT I SAID, YES.

21 Q WELL, YOU TESTIFIED THAT ERIK MENENDEZ
22 TOLD YOU IN DETAIL IN A WALK-THROUGH THAT -- HOW HE
23 HAD KILLED HIS PARENTS.

24 ISN'T THAT THE SUBSTANCE OF YOUR
25 TESTIMONY?
26 A I THINK YOU HAVE YOUR DATES MIXED UP.
27 Q I'M ASKING YOU A QUESTION.
28 MS. NAJERA: YOUR HONOR, HE'S NOT LETTING THE

49127

1 WITNESS ANSWER THE QUESTION.
2 Q BY MR. LEVIN: DIDN'T YOU TESTIFY --
3 THE COURT: WE HAVE AN OBJECTION HERE.
4 MS. NAJERA: I BELIEVE THE WITNESS WAS --
5 THE COURT: ARE YOU ASKING HIM ABOUT WHAT HE
6 SAID ON AUGUST THE 24TH OR WHAT HIS TESTIMONY WAS?
7 MR. LEVIN: NO.
8 Q YOUR TESTIMONY HERE TO THIS JURY WAS
9 THAT ERIK MENENDEZ GAVE YOU A WALK-THROUGH, SHOWING
10 YOU -- DETAILING HOW HE KILLED HIS PARENTS?
11 A THAT'S CORRECT.
12 Q THAT'S WHAT YOU WERE TESTIFYING TO?
13 A THAT'S CORRECT.
14 Q NOW, ON AUGUST THE 24TH, WHEN YOU TALKED
15 TO DETECTIVE ZOELLER, YOU DIDN'T SAY A THING ABOUT
16 ERIK MENENDEZ ADMITTING TO YOU OR CONFESSING TO YOU
17 THAT HE EVEN HAD KILLED HIS PARENTS; ISN'T THAT
18 CORRECT?

19 A ABSOLUTELY. HE HADN'T TALKED TO ME YET.

20 Q WELL, THEN, HOW, MR. CIGNARELLI, COULD

21 YOU TELL DETECTIVE ZOELLER THAT ERIK TOLD YOU THERE

22 WAS SKIN AND BLOOD ALL OVER THE ROOM AND BULLET

23 HOLES --

24 A THAT'S WHAT HE HAD TOLD ME.

25 Q YOU JUST TOLD THIS JURY ERIK MENENDEZ

26 HADN'T TALKED TO YOU.

27 A I SAID HE WALKED ME THROUGH THE CRIME

28 SCENE. I'M SORRY. I DIDN'T MEAN HE HADN'T TALKED

49128

1 TO ME.

2 Q MR. CIGNARELLI, YOU JUST TOLD THIS JURY

3 ERIK HADN'T TALKED TO YOU YET. DIDN'T YOU JUST SAY

4 THAT TO THE JURY?

5 A PARDON ME, MR. LEVIN. WHAT I MEANT TO

6 SAY IS HE HADN'T WALKED ME THROUGH THE CRIME SCENE;

7 NOT THAT HE HADN'T TALKED TO ME.

8 Q NOW YOU'RE SAYING THAT ERIK MENENDEZ

9 TALKED TO YOU BEFORE YOU TALKED TO DETECTIVE ZOELLER

10 ON AUGUST THE 24TH, 1989?

11 MS. NAJERA: OBJECTION. ARGUMENTATIVE TO THE

12 FIRST FOUR WORDS.

13 THE COURT: SUSTAINED.

14 MS. NAJERA: THANK YOU.

15 THE COURT: REPHRASE THE QUESTION.

16 Q BY MR. LEVIN: YOU TESTIFIED, ON DIRECT
17 EXAMINATION BY MS. NAJERA, THAT YOU DID NOT TALK TO
18 ERIK MENENDEZ UNTIL AFTER THE KILLINGS, UNTIL AFTER
19 YOU SAW HIM ON AUGUST THE 30TH, OR THE END OF
20 AUGUST, IN THE BEGINNING OF SEPTEMBER; ISN'T THAT
21 CORRECT?

22 MS. NAJERA: OBJECTION. MISSTATES THE
23 TESTIMONY.

24 THE COURT: WHY DON'T YOU REPHRASE THE
25 QUESTION. DID YOU.

26 Q BY MR. LEVIN: DID YOU TESTIFY THAT YOU
27 DID NOT TALK TO ERIK MENENDEZ AFTER -- AFTER THE
28 DEATHS OF HIS PARENTS, UNTIL YOU CAME OVER TO HIS

49129

1 HOUSE? DIDN'T -- DID YOU TESTIFY TO THAT?

2 A I BELIEVE I SAID THAT HE HAD SOMEONE
3 CALL ME AND WE HAD SET UP A TIME FOR ME TO COME DOWN
4 THERE.

5 Q RIGHT. AND SO THE FIRST TIME THAT YOU
6 TALKED TO ERIK MENENDEZ ABOUT THIS CASE WAS WHEN YOU
7 WENT TO THE HOUSE AND HE TOOK YOU THROUGH THE
8 WALK-THROUGH, CORRECT?

9 A NO. I DON'T BELIEVE THAT'S RIGHT.

10 Q DIDN'T YOU TESTIFY TO THAT ON DIRECT
11 EXAMINATION, THAT THE VERY FIRST TIME THAT YOU SAW
12 ERIK MENENDEZ, OR EVEN TALKED TO HIM ABOUT THIS
13 CASE, WAS WHEN YOU WENT OVER TO HIS HOUSE AT THE END
14 OF AUGUST OR EARLY SEPTEMBER?

15 A THE FIRST TIME I SAW ERIK MENENDEZ WAS
16 WHEN I WENT TO HIS HOUSE AT THE END OF AUGUST OR
17 SEPTEMBER, YES.

18 Q NOW, ARE YOU SAYING THAT YOU TALKED TO
19 ERIK MENENDEZ BEFORE YOU WENT TO HIS HOUSE?

20 A YES.

21 Q AND --

22 A I BELIEVE SO. I BELIEVE SO. BUT I
23 CAN'T RECALL WHETHER OR NOT I DID.

24 Q WELL, DID ERIK MENENDEZ CALL YOU OR
25 LEAVE A MESSAGE ON YOUR SERVICE, OR DID YOU CALL
26 HIM?

27 A THE DATE OF THE MURDERS.

28 MR. LEVIN: OBJECTION, YOUR HONOR, WITH

49130

1 RESPECT TO THIS WITNESS CHARACTERIZING THIS AS A
2 MURDER.

3 THE WITNESS: THE DAY OF THE KILLINGS.

4 THE COURT: ALL RIGHT.

5 MR. LEVIN: AND I'D ASK THE COURT TO ADMONISH
6 HIM NOT TO DO IT.

7 THE COURT: YOU CAN REFER TO THE SHOOTINGS.

8 THE WITNESS: THE DAY OF THE SHOOTINGS I
9 CALLED ERIK.

10 Q BY MR. LEVIN: AND HOW WAS IT THAT YOU
11 CAME TO FIND OUT ABOUT THE SHOOTINGS?

12 A I WAS CALLED BY MY TENNIS COACH, OR A
13 TENNIS COACH.

14 Q DOUG DOSS?

15 A YES.

16 Q WELL, DIDN'T YOU TELL THE POLICE --
17 THAT'S WHAT YOU TESTIFIED TO LAST TIME, DIDN'T YOU?

18 A I BELIEVE SO.

19 Q OKAY. WELL, DIDN'T YOU TELL THE POLICE,
20 BACK ON OCTOBER THE 19TH, 1994, YOU HEARD ABOUT THIS
21 CASE WHILE WATCHING THE NEWS WITH STEVE AINBINDER?

22 A AINBINDER (PRONUNCIATION), YES.

23 Q WHICH WAS IT? DID YOU HEAR IT ON THE
24 NEWS, OR DID YOU GET A PHONE CALL FROM DOUG DOSS?

25 A I GOT A PHONE CALL FROM DOSS, AND THEN I
26 WATCHED THE NEWS.

27 Q OKAY. AND FROM THAT YOU CALLED ERIK
28 MENENDEZ, CORRECT?

1 A YES.

2 Q AND YOU DIDN'T SPEAK DIRECTLY WITH HIM,
3 DID YOU?

4 A NO.

5 Q AND DID HE HAVE SOMEONE CALL YOU BACK,
6 OR DID YOU HAVE SOMEONE CALL HIM BACK?

7 A IF I REMEMBER CORRECTLY, HE HAD SOMEONE
8 CALL ME BACK.

9 Q WHO WAS IT?

10 A I DON'T RECALL.

11 Q WHEN WAS IT?

12 A I DON'T RECALL.

13 Q AND FROM THAT CALL-BACK, THAT SOMEONE
14 CALLED YOU, YOU MADE ARRANGEMENTS TO GO TO HIS
15 HOUSE, CORRECT?

16 A I DON'T KNOW IF I MADE ARRANGEMENTS WITH
17 THAT PERSON, OR IF I TALKED TO ERIK AT THAT POINT.

18 Q YOU DON'T KNOW?

19 A NO. I DON'T RECALL.

20 Q OKAY. AND SO SOMEHOW YOU GOT TO HIS
21 HOUSE-- AT LEAST YOU WENT OVER TO HIS HOUSE WITH
22 SOME KIND OF A PREARRANGEMENT?

23 A THAT'S CORRECT.

24 Q AND WHEN YOU WENT TO HIS HOUSE, HE TOOK
25 YOU THROUGH THIS WALK-THROUGH, AND THAT'S WHEN HE
26 TOLD YOU ABOUT THE SKIN AND BLOOD AND ALL THAT
27 STUFF?

49132

1 Q ALL RIGHT. NOW, YOU TOLD THE POLICE, I
2 BELIEVE, BACK ON NOVEMBER 17TH, 1989, THAT ERIK
3 MENENDEZ CONFESSED TO YOU -- WE'RE TALKING ABOUT
4 THIS INTERVIEW IN NOVEMBER -- AND YOU SAT DOWN WITH
5 DETECTIVE ZOELLER, AND YOU UNDERSTOOD THAT DETECTIVE
6 ZOELLER WANTED TO TALK TO YOU ABOUT THIS CASE,
7 CORRECT?

8 A YES.

9 Q AND DETECTIVE ZOELLER -- YOU WERE GOING
10 TO TELL HIM THE TRUTH, CORRECT?

11 A YES.

12 Q AND YOU WERE GOING TO BE AS ACCURATE AS
13 YOU POSSIBLY COULD IN GIVING DETECTIVE ZOELLER THE
14 DETAILS AS YOU RECALLED THEM OCCURRING IN THIS CASE,
15 CORRECT?

16 A YES.

17 Q AND I TAKE IT THAT --

18 A WITH THE STIPULATION --

19 MS. NAJERA: YOUR HONOR, MAY THE WITNESS
20 ANSWER THE QUESTION?

21 MR. LEVIN: IT'S A YES OR NO.

22 THE COURT: YOU CAN FINISH.

23 THE WITNESS: IT'S NOT A YES OR NO.
24 IT'S WITH THE STIPULATION -- LIKE I
25 SAID, THERE'S A PART WHERE I SAID IT COULD HAVE
26 HAPPENED, BECAUSE I DIDN'T WANT TO BE THE ONE TO
27 BRING HIM DOWN AT THAT POINT.
28 Q BY MR. LEVIN: OKAY. YOU TOLD DETECTIVE

49133

1 ZOELLER THAT ERIK MENENDEZ CONFESSED TO YOU ONE
2 MONTH BEFORE NOVEMBER, DIDN'T YOU?

3 A I SAID APPROXIMATELY. I SAID I WASN'T
4 SURE ABOUT THE DATES.

5 Q WELL, YOU ACTUALLY GOT TO OCTOBER THE
6 21ST AND THE 22ND. YOU SAID: IT JUST HAPPENED A
7 MONTH AGO, DETECTIVE ZOELLER.

8 ISN'T THAT WHAT YOU TOLD HIM?

9 A I SAID ABOUT A MONTH AGO, MR. LEVIN.
10 THOUGHT I SAID I WASN'T SURE --

11 MS. NAJERA: CAN THE WITNESS FINISH THE
12 ANSWER.

13 Q BY MR. LEVIN: WHAT'S THE MONTH THAT
14 PRECEDES NOVEMBER, MR. CIGNARELLI?

15 A THAT WOULD BE OCTOBER, MR. LEVIN.

16 Q PARDON ME?

17 A THAT WOULD BE OCTOBER, MR. LEVIN.

18 Q ALL RIGHT. AND DID YOU SAY TO DETECTIVE
19 ZOELLER THAT YOU SPENT THE WEEKEND, OCTOBER 21ST AND
20 22ND, AT ERIK'S HOUSE IN BEVERLY HILLS? DID YOU SAY
21 THAT TO ZOELLER?

22 A I SAID I SPENT A WEEKEND, PROBABLY A
23 MONTH AGO.

24 Q OKAY.

25 A BACK IN BEVERLY HILLS. AGAIN, I'M NOT
26 SURE ABOUT THE DATES.

27 Q WELL, AND THAT WAS IN -- STRIKE THAT.

28 THE COURT: WE'RE GOING TO HAVE TO BREAK

49134

1 ABOUT NOW, MR. LEVIN.

2 MR. LEVIN: OKAY. RIGHT NOW, OR CAN I GO ON
3 FOR FIVE MORE MINUTES?

4 THE COURT: I THINK THE JURORS HAVE TO LEAVE
5 AROUND THIS TIME. WE HAD A COUPLE OF JURORS THAT
6 HAVE MEDICAL APPOINTMENTS.

7 SO WE'LL TAKE OUR RECESS AND RESUME
8 TOMORROW AT 8:30.

9 DON'T DISCUSS THE MATTER WITH ANYONE,
10 AND DON'T FORM ANY FINAL OPINIONS ABOUT THE CASE.
11 DON'T LOOK AT ANY OF THE NEWS COVERAGE IN ANY
12 FASHION. AND WE'LL SEE YOU ALL BACK HERE TOMORROW

13 AT 8:30.

14 (THE JURY ENTERED THE JURY ROOM

15 AND THE FOLLOWING PROCEEDINGS

16 WERE HELD:)

17

18 THE COURT: ALL RIGHT. WHILE WE HAVE SOME

19 TIME HERE, BEFORE WE RECESS...

20 AS FAR AS THOSE AREAS WHERE THE PEOPLE

21 HAD OBJECTIONS, MR. LEVIN, DID YOU INTEND TO GO INTO

22 THOSE AREAS?

23 MR. LEVIN: YES, YOUR HONOR. WHAT I INTEND

24 TO DO --

25 THE BAILIFF: JURORS WALKIN'.

26 (THE JURY EXITED THE COURTROOM AND

27 THE FOLLOWING PROCEEDINGS WERE HELD:)

28

49135

1 THE COURT: OKAY. THE JURORS HAVE LEFT.

2 MR. LEVIN: WELL. THE FIRST AREA WOULD BE

3 THE BURGLARIES. I DO INTEND TO GO INTO -- I'M

4 SORRY -- THE BURGLARY THAT THIS WITNESS WAS INVOLVED

5 IN; AND THAT WOULD HAVE BEEN THE BURGLARY OF THE

6 LIST HOUSE. AND THE EVIDENCE THAT WE HAVE OF THAT

7 IS WITH RESPECT TO MR. CIGNARELLI WRITING IN HIS OWN

8 HANDWRITING, INFORMATION IN A DIARY, THAT HE WRITES:

9 "ERIK AND I SPENT THE NIGHT AT

10 JOHN LISTS'S HOUSE. WHILE HE WAS

11 ASLEEP WE OBTAINED THE COMBINATION TO

12 THE HOUSE SAFE AND OPENED IT."

13 AND GOES ON.

14 THIS GOES INTO -- I DON'T THINK THAT

15 REALLY WE SHOULD BE REQUIRED, AT THIS POINT, TO SAY

16 ANYTHING FURTHER. THIS IS RELEVANT, BUT OBVIOUSLY

17 IT GOES INTO THE NATURE OF THE RELATIONSHIP WITH

18 MR. MENENDEZ. IT SHOWS HIS AMORALITY, AND IT ALSO

19 HAS TO DO WITH WHY HE MAY BE HARBORING A GRUDGE

20 AGAINST MY CLIENT.

21 HE ALSO TURNED HIM IN FOR IT, AND IT

22 JUST SHOWS A PATTERN.

23 THE COURT: WHO TURNED WHO IN?

24 MR. LEVIN: CIGNARELLI TURNED ERIK MENENDEZ

25 IN. IN FACT, ON ONE POINT IN THE TAPE-RECORDED

26 CONVERSATIONS, IN RESPONSE TO -- DETECTIVE EDMONDS

27 WAS ASKING ABOUT HIS INVOLVEMENT IN THE BURGLARY.

28 HE LIES ABOUT IT, AND LIES ABOUT IT TO HIS MOTHER.

49136

1 AND WE CAN IMPEACH HIS CREDIBILITY BY

2 SHOWING HE WAS INVOLVED IN THE BURGLARY. WE HAVE

3 EVIDENCE THAT HE WAS; THAT HE THEN LIED ABOUT IT TO
4 POLICE DURING AN INTERVIEW ABOUT THIS CASE; AND
5 FURTHER, THAT WHEN HE WAS ASKED ABOUT -- WELL, HE
6 WAS ASKED ABOUT HIS INVOLVEMENT IN THE BURGLARY BY
7 DETECTIVE EDMONDS.

8 THERE WAS ANOTHER POINT, TOO. IT JUST
9 FLEW OUT OF MY MIND.

10 ESSENTIALLY, HE BLAMED ERIK MENENDEZ FOR
11 THOSE BURGLARIES -- OH. THIS IS WHAT I WAS GOING TO
12 SAY.

13 HE ADMITTED THAT HE WAS RESPONSIBLE FOR
14 TURNING HIM IN.

15 THE COURT: OKAY. WHAT IS THE PEOPLE'S
16 POSITION?

17 MS. NAJERA: MY CONCERN, YOUR HONOR, IS WE'RE
18 GOING TO TURN THIS INTO A LITTLE TRIAL OF CRAIG
19 CIGNARELLI AND WHETHER OR NOT HE WAS INVOLVED WITH
20 THE CALABASAS BURGLARIES.

21 SPECIFICALLY, WHAT COUNSEL WAS REFERRING
22 TO -- AND I HAVE SOME CONCERNS ABOUT -- MY
23 UNDERSTANDING -- AND UNLESS COUNSEL HAS EVIDENCE TO
24 THE CONTRARY -- IS THAT MR. CIGNARELLI HAS ALWAYS
25 MAINTAINED THAT YES, HE WAS THERE WHEN ERIK MENENDEZ
26 AND HE FOUND THE COMBINATION TO THE SAFE. THAT THEY
27 OPENED THE SAFE; THAT HE DIDN'T TAKE ANYTHING, AND
28 ERIK CAME BACK AND COMMITTED THE CRIME TO PROVE TO

1 LYLE THAT HE COULD DO IT.

2 THAT IS WHAT I BELIEVE IS IN THAT

3 DIARY. IF I'M WRONG, I WILL DEFER TO MR. LEVIN,

4 BUT -- I'M NOT, OR ELSE THEY WOULD BE JUMPING UP

5 TELLING YOU I WAS WRONG ABOUT THAT. THEY DON'T HAVE

6 ANY PROOF CRAIG CIGNARELLI WAS INVOLVED IN THE

7 CALABASAS BURGLARY, AND MY SENSE IS THEY'RE TRYING

8 TO BRING OUT ALL THIS INNUENDO FOR WHAT THEY DON'T

9 HAVE. SOMEHOW THIS IS GOING TO BE TURNED INTO THE

10 TRIAL OF CRAIG CIGNARELLI. I DON'T THINK THAT'S

11 APPROPRIATE. HE COULD --

12 THE REPORTER: MS. NAJERA, YOU'RE GOING TO

13 HAVE TO SLOW DOWN.

14 MS. NAJERA: I'M SORRY.

15 I THINK WITH -- A REAL CONCERN THAT

16 WE'RE GOING TO TURN THIS INTO THE TRIAL OF CRAIG

17 CIGNARELLI, WHETHER OR NOT HE WAS INVOLVED IN THE

18 CALABASAS BURGLARY.

19 THE COURT: WELL, IT DOESN'T, AT THIS STAGE,

20 JUSTIFY THE INTRODUCTION OF EXTRINSIC EVIDENCE ABOUT

21 THOSE EVENTS, BUT CERTAINLY HE CAN BE CROSS-EXAMINED

22 ON THE SUBJECT. WHERE IT LEADS, I CAN'T SAY.

23 CERTAINLY IT'S AN AREA OF PROPER IMPEACHMENT. I'M

24 NOT SAYING WE'RE GOING TO GET INTO OTHER WITNESSES

25 WHO MIGHT HAVE INFORMATION ABOUT THIS, BUT CERTAINLY

26 HE CAN BE EXAMINED ON IT.

27 MS. NAJERA: OKAY.

28 THE COURT: WHAT ELSE DID YOU WANT TO GET

49138

1 INTO, MR. LEVIN?

2 MR. LEVIN: WITH RESPECT TO THE FAX, IN THE
3 LAST TRIAL I BELIEVE MS. ABRAMSON WENT INTO THE FAX,
4 AND -- WITH THE SAME LIMITATIONS, I WOULD SEEK TO
5 OFFER IT.

6 IS THE COURT AWARE OF THE MATERIAL? I
7 HAVE AN EXTRA COPY.

8 THE COURT: I SAW IT A LONG TIME AGO.

9 MR. LEVIN: ESSENTIALLY, THE BACKGROUND OF
10 THIS WAS -- IT CERTAINLY WASN'T A JOKE -- THAT CRAIG
11 CIGNARELLI --

12 HE'S NOT HERE IN THE COURT, IS HE?

13 MS. ABRAMSON: NO.

14 MR. LEVIN: (CONTINUING) SENT A FAX, A RATHER
15 BIZARRE FAX, TO THE BEVERLY HILLS POLICE
16 DEPARTMENT. AND HE DID IT BECAUSE HE ACCUSED
17 DETECTIVE ZOELLER OF BETRAYING HIM, IN THAT CRAIG
18 CIGNARELLI WAS AT LEAST UNDER THE IMPRESSION THAT
19 EVERYTHING THAT HE TOLD THE BEVERLY HILLS POLICE
20 DEPARTMENT CONCERNING HIS KNOWLEDGE OF THIS CASE

21 WOULD BE KEPT COMPLETELY CONFIDENTIAL; AND LATER HE
22 BLAMED THE BEVERLY HILLS POLICE DEPARTMENT FOR
23 TELLING HIS MOTHER. HE BLAMED THE BEVERLY HILLS
24 POLICE DEPARTMENT BECAUSE HE QUIT SCHOOL.

25 AND WHAT HE DID WAS -- IT SHOWS BIAS IN
26 ANY EVENT. WHAT HE DID WAS HE SENT THIS LETTER TO
27 THEM, AND HE SAYS:

28 "YOU ARE NOT TO BE TRUSTED.

49139

1 BETRAYAL SIGNIFIED EVIL."

2 VERY BIZARRE.

3 "AS THEY LOOKED OUT OVER THEIR
4 EMPIRE THEY WERE SADDENED, FOR THERE
5 WERE NO MORE LANDS LEFT TO CONQUER.

6 "LYING IS AN ART --"

7 WHICH HOPEFULLY WE'LL SEE THE
8 BETTER OF.

9 "NECESSITATING TACT NOT, FUELED --
10 SPELLED WRONG.

11 " -- BY GREED. THOU SHALL SUFFER
12 FROM IGNORANCE."

13 THESE ARE THREATS DIRECTED TOWARDS
14 DETECTIVE ZOELLER.

15 IN ANY EVENT, THE ONLY PROBLEM WOULD BE

16 HE SIGNED IT "HAMILTON CROMWELL." AND WHAT THE
17 LIMITATION WAS AT THE LAST TRIAL WAS THAT I BELIEVE
18 THE COURT FOUND IT HAD RELEVANCE AND ADMISSIBILITY,
19 AND DID GO TO THE WITNESS' BIAS. IT MAY TEND TO
20 EXPLAIN THE STATEMENTS THAT HE GAVE TO THE POLICE OR
21 THE BACKGROUND OF HIS RELATIONSHIP WITH THE POLICE,
22 AND EVEN FURTHER WITH MR. MENENDEZ.
23 BUT THE COURT RESTRICTED -- FELT THAT IT
24 DID NOT OPEN THE DOOR TO THE SCREENPLAYS, WHICH, AS
25 THE COURT KNOWS, HAS THE HAMILTON CROMWELL CHARACTER
26 PROMINENTLY DISPLAYED THEREIN.

27

28

-16396

1 THE COURT: I'LL TELL YOU BEFORE I CAN RULE ON
2 THAT WHAT I WOULD NEED IS THE TRANSCRIPT OF THE
3 ARGUMENT, RULING AND TESTIMONY ON THAT SUBJECT FROM THE
4 FIRST TRIAL. I HAVE NO RECOLLECTION OF WHAT THE WITNESS
5 SAID OR ANY OF THE DETAILS OF IT. I DO RECALL THAT
6 DOCUMENT, SEEING IT, BUT I DON'T RECALL THE SPECIFICS OF
7 THE ARGUMENT AND WHY IT WAS RULED ADMISSIBLE AND WHAT
8 LIMITATIONS WERE PLACED ON IT AND WHAT THE WITNESS
9 ACTUALLY SAID. I REALLY DON'T KNOW.

10 MR. LEVIN: I WILL ATTEMPT TO DO THAT.

11 THE COURT: WHY DON'T WE DO THAT FIRST THING

12 TOMORROW MORNING THEN. YOU'RE GOING TO BE GOING WITH
13 YOUR CLIENT THIS AFTERNOON; IS THAT IT, OR SOMEBODY
14 ELSE?

15 MR. LEVIN: YES.

16 MS. ABRAMSON: I AM GOING TO BE AT MY OFFICE
17 STANDING BY.

18 MS. NAJERA: WE HAVE TO GET MOVING SOON.

19 THE COURT: YOU OUGHT TO LEAVE FAIRLY SOON TO GET
20 THAT ACCOMPLISHED THIS AFTERNOON.

21 LET'S FINISH OFF THE REST OF THIS. DON'T
22 GO INTO THE FACTS UNTIL I SEE ALL THE DOCUMENTS AND GET
23 A CHANCE TO REVIEW IT.

24 MR. LEVIN: THE RELATIONSHIP.

25 THE COURT: I WANT TO GET STARTED TOMORROW
26 MORNING WITH THE WITNESS' TESTIMONY WITHOUT ANOTHER
27 HEARING BEFORE WE START.

28 MR. LEVIN: THE THREAT THAT MR. MENENDEZ LEVIED

-16395

1 TOWARDS THIS WITNESS GOES TO HIS BIAS AND GOES TO HIS --
2 JUST HIS OVERALL -- WHO KNOWS HOW THE JURY MIGHT TAKE
3 THAT PARTICULAR THREAT AND TEND TO USE IT, OR COULD USE
4 IT TO EXPLAIN WHAT IT IS THAT HE'S SAYING HERE.

5 AND IT ALSO GOES AS MOTIVE, ACTUALLY WHAT
6 IT WAS IS THAT MR. MENENDEZ DID NOT WANT CRAIG
7 CIGNARELLI AT THE HOUSE AND THREATENED TO KILL HIM, AND

8 THIS ALSO GOES TO THE MOTIVE OF THIS WITNESS TO LIE
9 ABOUT THE BURGLARIES, BUT WE FEEL THAT IT'S RELEVANT ON
10 VARIOUS ISSUES.

11 WHAT HAD HAPPENED WAS MR. MENENDEZ ORDERED
12 ERIK MENENDEZ TO RETURN TO THE HOUSE ONE DAY WHEN HE WAS
13 WITH CRAIG CIGNARELLI, AND I BELIEVE IT WAS STEVE
14 AINBINDER, AND THEY CAME BACK TO THE HOUSE. MR.
15 MENENDEZ WAS ENRAGED; CAME OUTSIDE, POINTED A FINGER AT
16 CRAIG CIGNARELLI, TOLD HIM IF HE EVER CAME BACK AGAIN HE
17 WOULD KILL HIM.

18 STEVE AINBINDER SAW THAT JOSE MENENDEZ HAD
19 A GUN. THE GUN WAS DISPLAYED UNDER HIS ROBE OR UNDER
20 HIS SHIRT.

21 FOLLOWING THAT WE HAVE A SERIES OF EVENTS
22 BY MR. CIGNARELLI WHERE HE IS LYING TO THE POLICE AND
23 THEY'RE CERTAINLY ALL NOT TOGETHER AS BEST FRIENDS
24 ANYMORE, SO IT IMPEACHES WHAT THE PROSECUTION HAS SET UP
25 AS THESE ARE JUST TWO BEST FRIENDS.

26 THE COURT: OKAY. WHAT IS THE PEOPLE'S POSITION?

27 MS. NAJERA: WELL, OUR POSITION, YOUR HONOR, IS
28 THAT THIS GOES TO POSSIBLY BIAS AGAINST MR. MENENDEZ.

-16394

1 BUT WHAT THAT HAS TO DO WITH THE FACTS OF THIS CASE AS
2 THEY HAVE BEEN BROUGHT UP IN THIS CASE, IT SEEMS TO BE
3 COMPLETELY IRRELEVANT.

4 NOW, A MOTIVE TO LIE ABOUT THE BURGLARIES,
5 AGAIN, WE'RE GETTING INTO TURNING THIS INTO A MINI-TRIAL
6 OF CRAIG CIGNARELLI AND WHETHER HE WAS INVOLVED IN THE
7 CALABASAS BURGLARIES, AND I DON'T BELIEVE THAT THAT'S
8 APPROPRIATE IN THIS STAGE IN OUR PROCEEDINGS.

9 THE COURT: MY QUESTION IS HOW DOES THIS SHOW A
10 MOTIVE TO LIE IN THIS TRIAL? WHAT DOES IT SHOW, THIS
11 INCIDENT INVOLVING MR. MENENDEZ?

12 MR. LEVIN: WELL, I THINK THAT -- I THINK THAT --
13 I THINK THAT IT GOES TO HIS MOTIVE. HOW WOULD
14 MR. CIGNARELLI -- THE THREAT THAT WAS LEVELED AGAINST
15 MR. CIGNARELLI BY JOSE MENENDEZ WAS A DIRECT RESULT OF
16 ERIK MENENDEZ TELLING HIS FATHER THAT CRAIG CIGNARELLI
17 WAS INVOLVED, AND IT GIVES THIS WITNESS A MOTIVE TO NOW
18 TRY TO COME IN HERE TO GET EVEN WITH HIM, TO LIE --
19 OTHER THAN TRYING TO GET AS MUCH MONEY AS HE CAN ALONG
20 THE WAY -- BUT IT CERTAINLY GIVES HIM THE MOTIVE TO TRY
21 TO GET EVEN AGAINST MR. MENENDEZ. HE PROBABLY FEARED
22 JOSE MENENDEZ WOULD KILL HIM BASED ON THE THREAT THAT
23 WAS LEVIED AGAINST HIM, AND PERHAPS SUFFERED AN EXTREME
24 AMOUNT OF EMOTIONAL HARDSHIP AS A RESULT OF IT, AND NOW
25 HE HAS A CHANCE TO GET EVEN.

26 THE COURT: HOW DO YOU KNOW -- WHAT EVIDENCE IS
27 THERE THAT MR. MENENDEZ HAD BEEN INFORMED BY YOUR CLIENT
28 OF CIGNARELLI'S INVOLVEMENT?

1 MR. LEVIN: WELL, THERE MAY NOT BE ANY DIRECT
2 EVIDENCE THAT IS IN THE RECORD AT THIS TIME.

3 HOWEVER, THE WITNESS COULD HAVE AND WOULD
4 PROBABLY SAY THAT IT WAS FROM ERIK. I MEAN -- OR BLAMED
5 ERIK MENENDEZ FOR THE THREAT.

6 WE SHOULD BE ALLOWED TO BRING IT OUT AND
7 ASK HIM IF HE IN ANY WAY FEELS THAT ERIK MENENDEZ IS
8 RESPONSIBLE FOR THE THREAT UPON HIS LIFE BY HIS FATHER.

9 THE COURT: WAS HE QUESTIONED ABOUT THIS IN THE
10 FIRST TRIAL?

11 MR. LEVIN: YES.

12 THE COURT: IT SEEMS THIS EVIDENCE CAME OUT IN
13 SOME OTHER CONTEXT OF CHARACTER EVIDENCE OF THE FATHER
14 OR SOMETHING ALONG THOSE LINES.

15 MR. LEVIN: YES. BECAUSE I THINK CIGNARELLI WAS
16 A CASE-IN-CHIEF WITNESS, SO THE RULES WERE A LITTLE
17 DIFFERENT.

18 THE COURT: WHAT DID CIGNARELLI SAY IN THE FIRST
19 TRIAL ABOUT THIS?

20 MR. LEVIN: HE TESTIFIED TO THE THREAT, BUT
21 DIDN'T GO INTO ANY SPECIFIC DETAILS.

22 THE COURT: MY CONCERN, IS I DON'T SEE CONNECTION
23 BETWEEN THIS ACTIVITY OF MR. MENENDEZ AND ANY BIAS THE
24 WITNESS WOULD HAVE AGAINST THE DEFENDANT.

25 MR. LEVIN: THERE IS OTHER EVIDENCE, TOO, WE
26 HAVEN'T GOTTEN INTO, AND THAT IS THAT HE'S TRYING TO
27 PORTRAY HIMSELF AS THIS UPSTANDING, MORAL YOUNG MAN WHO
28 IS JUST DOING HIS CIVIC DUTY, AND IT PAINS HIM TO DO IT

1 AGAINST HIS BEST FRIEND; WHEN, IN FACT, HE WAS NEVER
2 BEST FRIENDS WITH ERIK MENENDEZ. HE DIDN'T EVEN SEE HIM
3 FROM THE TIME THIS THREAT WAS LEVIED UNTIL HE WENT OVER
4 TO HIS HOUSE, AND IT WAS -- AND HE TESTIFIED THAT THERE
5 WAS A SIX-MONTH PERIOD OF TIME, OR EVEN LONGER, THAT HE
6 HAD EVEN SEEN ERIK MENENDEZ.

7 AND WE CONTEND THAT THE REASON FOR THE
8 BREAK-UP OF THE RELATIONSHIP, THAT WAS BROUGHT OUT BY
9 THE PROSECUTION AND POUNDED OVER AND OVER AGAIN, WAS
10 BECAUSE OF THE THREAT BY JOSE MENENDEZ. AND IT
11 CERTAINLY SHOWS THAT THEY WEREN'T BEST FRIENDS AND THAT
12 HE WASN'T ALLOWED OVER AT THE HOUSE, AND HE DIDN'T SEE
13 ERIK MENENDEZ DURING THAT PERIOD OF TIME, AND THIS IS
14 WHY.

15 THE COURT: WELL, THAT WOULD BRING OUT EVIDENCE
16 THAT THE FATHER TOLD HIM NOT TO COME INTO THE HOUSE, OR
17 HE WAS TOLD BY MR. MENENDEZ, IF THAT IS TRUE.

18 BUT THAT DOESN'T GET TO THIS LEVEL OF THIS
19 THREAT AND SEEING GUN AND THINGS OF THAT NATURE. ALL
20 YOU'RE TRYING TO DO IS SHOW THAT HE NEVER HAD A
21 RELATIONSHIP WITH YOUR CLIENT FOR A PERIOD OF TIME, OR
22 DIDN'T HAVE A RELATIONSHIP.

23 MR. LEVIN: I WANT TO IMPEACH THIS CLIENT (SIC)
24 ON HIS BELIEF THAT HE WAS ERIK MENENDEZ' BEST FRIEND.
25 HE WAS NOT HIS BEST FRIEND, AND WE BELIEVE THAT THIS

26 PART OF THAT RELATIONSHIP TENDS TO IMPEACH HIM, AND
27 WOULD EXPLAIN WHY THEY WEREN'T BEST FRIENDS, AND WHY
28 THEY WEREN'T EVEN FRIENDS. AND IT WOULD ALSO EXPLAIN

-16391

1 WHY IT WAS, WHEN HE DOES TESTIFY, THAT HE HASN'T SEEN
2 ERIK MENENDEZ FOR SIX MONTHS; THAT IT WAS NOT JUST TWO
3 KIDS GOING OFF TO COLLEGE. THERE WAS A REASON WHY CRAIG
4 CIGNARELLI AND ERIK MENENDEZ DID NOT REMAIN FRIENDS. I
5 MEAN, ACTUALLY ALL THEY WERE WAS SOCIAL ACQUAINTANCES.
6 HE WASN'T EVEN -- HE WAS A YEAR OLDER THAN HIM AT
7 CALABASAS HIGH SCHOOL WHERE THEY WERE CO-CAPTAINS ON THE
8 TENNIS TEAM FOR A VERY SHORT TIME.

9 THE COURT: AT THIS POINT, FROM WHAT I HAVE
10 HEARD, IT SEEMS TO ME THAT WHAT IS RELEVANT IS THAT HE
11 HADN'T SEEN YOUR CLIENT FOR A PERIOD OF TIME.

12 AS TO THE INCIDENT INVOLVING THE FATHER,
13 UNLESS THERE IS SOME CONNECTION THAT WOULD MAKE SENSE,
14 THAT THAT CAUSED THE WITNESS TO BE BIASED IN SOME
15 FASHION AGAINST THE DEFENDANT, I DON'T SEE IT BEING
16 RELEVANT. IT JUST INTRODUCES AN INCIDENT THAT --
17 INVOLVING A THIRD PARTY.

18 MR. LEVIN: MS. ABRAMSON TENDS TO RECALL THAT
19 PERHAPS THERE IS AN INTERVIEW WHERE HE SAYS HE KNEW THAT
20 THE THREAT WAS RELATED TO IT. I WILL CHECK AGAIN, AND I
21 WILL BRING IT TO THE COURT'S ATTENTION.

22 THE COURT: FIND IT AND CHECK IT, BECAUSE AS OF
23 NOW, I DON'T SEE THAT CONNECTION.
24 MS. ABRAMSON: I THINK HE WOULD SAY, IF HE WERE
25 ASKED, THAT MR. MENENDEZ BLAMED HIM FOR THE BURGLARIES,
26 OR WAS ANGRY WITH HIM FOR TURNING -- IT'S IN THE 11-29
27 TAPES, IT'S IN THAT DISCUSSION, THAT MR. MENENDEZ WAS
28 ANGRY AT CRAIG CIGNARELLI BECAUSE CRAIG RATTED ON ERIK

-16390

1 ABOUT THE BURGLARY WHEN HE WAS INVOLVED IN IT.

2 MS. NAJERA: SOMEHOW I DON'T THINK "RATTED" IS IN
3 THE NOVEMBER 29TH TRANSCRIPT.

4 THE COURT: OKAY. FOR ME TO ASCERTAIN THAT THIS
5 BRINGS FORTH THE TOTALITY OF THE CONVERSATION BETWEEN
6 MR. MENENDEZ AND THE WITNESS, I HAVE TO GET MORE
7 INFORMATION.

8 MS. ABRAMSON: THERE MAY BE AN INDEPENDENT GROUND
9 AS WELL, YOUR HONOR, WHICH IS THE FACT THAT JOSE
10 MENENDEZ THREATENED TO KILL SOMEBODY IN ERIK MENENDEZ'
11 PRESENCE.

12 THE COURT: OKAY. THAT'S EVIDENCE THAT CAN BE
13 BROUGHT OUT IN REBUTTAL, THEN, IF YOU WANT TO CALL HIM
14 BACK. THAT'S A SEPARATE ISSUE.

15 MS. ABRAMSON: CALL HIM BACK NEXT WEEK INSTEAD OF
16 THIS WEEK?

17 THE COURT: YES, IF THAT'S WITHIN THE SCOPE OF

18 THE PEOPLE'S DIRECT. IT'S NOT LIKE HE'S UNAVAILABLE.

19 MS. NAJERA: THAT'S TRUE.

20 MR. LEVIN: AND I THINK THERE WAS ONE OTHER AREA

21 ABOUT RELATIONSHIP OF THE PARENTS OR --

22 MS. NAJERA, COULD YOU REFRESH MY MEMORY?

23 MS. NAJERA: THERE WAS PART OF THE TESTIMONY.

24 THE COURT: THE FIRST THING WAS THE RELATIONSHIP

25 WITH THE DEFENDANT WITH HIS PARENTS.

26 MR. LEVIN: NO, I AM NOT GOING INTO THAT.

27 MS. NAJERA: THAT WAS WHAT IT WAS.

28 THE COURT: ALL RIGHT. THEN WE WILL BE IN

-16389

1 RECESS.

2 AGAIN, WE STILL HAVE EXHIBITS THAT HAVE TO

3 BE REVIEWED. WHO IS DOING THAT?

4 MS. ABRAMSON: EXCUSE ME?

5 THE COURT: WHO IS REVIEWING EXHIBITS?

6 MS. NAJERA: WELL, IT WAS GOING TO BE MYSELF AND

7 MR. LEVIN, BUT WE CAN'T DO THAT.

8 THE COURT: CAN'T DO THAT TODAY, ALL RIGHT.

9 WE WILL BE IN RECESS UNTIL TOMORROW AT

10 8:30.

11 (AT 1:15 P.M. PROCEEDINGS WERE

12 ADJOURNED UNTIL 8:30 A.M THE

13 FOLLOWING DAY)

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

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
6)
7 PLAINTIFFS,)
8)
9 VS.) NO. BA 068880
10)
11 ERIK GALEN MENENDEZ, AND)
12 JOSEPH LYLE MENENDEZ,)
13)
14 DEFENDANTS.)
15)
16)
17)
18)
19)
20)

21 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
22 THURSDAY, FEBRUARY 1, 1996
23 VOLUME 288

24 APPEARANCES:
25 (SEE APPEARANCE PAGE)

26

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9

JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

12

LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT

15

ERIK GALEN MENENDEZ: LESLIE ABRAMSON

ATTORNEY AT LAW

16

4929 WILSHIRE BOULEVARD

SUITE 940

17

LOS ANGELES, CA 90010

18

BARRY LEVIN, ESQ.

11661 SAN VICENTE BOULEVARD

19

LOS ANGELES, CA 90049

20

21

MARY LU MURPHY

22 CSR NO. 5178
23 MARILYN FADALE,
24 CSR NO. 4547
25 OFFICIAL REPORTERS
26
27
28

1 INDEX FOR VOLUME 288 PAGES 48985 THROUGH 49147

2 DAY DATE SESSION PAGE VOL.
3

4 THURSDAY, FEBRUARY 1, 1996 A.M. 48985 288

5

6

PROCEEDINGS

7

8

CHRONOLOGICAL INDEX OF WITNESSES

9

10 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11 MONTOYA,
JULIE

12 (402) 49045-N 49050-A 49061-N 288

13 DILLON,
MICHAEL

14 (402) 49064-N 49066-A 49070-N 288

15 CIGNARELLI,
CRAIG

16 (CON'D) 49079-N 49105-L 288

17

18

LEGEND:

19

A = MS. ABRAMSON

20 C = MR. CONN

G = MR. GESSLER

21 K = MS. TOWERY

L = MR. LEVIN

22 N = MS. NAJERA

23

24

25

26

27

28

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 422- DMV RECORDS 49045 288

422-A DMV RECORDS 49045 288

4 422-B DMV RECORDS 49059 288

