

1 VAN NUYS, CALIFORNIA; TUESDAY, FEBRUARY 6, 1995

2 9:15 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (MARY LU MURPHY, OFFICIAL REPORTER.)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD IN OPEN COURT, OUT OF THE

10 PRESENCE OF THE JURY:)

11

12 THE COURT: GOOD MORNING.

13 MS. ABRAMSON: GOOD MORNING, YOUR HONOR.

14 MS. NAJERA: GOOD MORNING.

15 THE COURT: DO YOU HAVE SOME MATTERS YOU WANT

16 TO TALK ABOUT?

17 MS. ABRAMSON: I WANT TO TALK TO THE COURT

18 ABOUT DR. DIETZ AND SOME ISSUES SURROUNDING HIM. WE

19 HAD A MEETING YESTERDAY WHICH MR. CONN CUT SHORT

20 BEFORE WE WERE FINISHED.

21 WE'RE STILL NOT ENTIRELY CLEAR ON WHAT

22 DR. DIETZ IS RELYING ON OR WILL TESTIFY TO. IN

23 FACT, MOST OF THE CONVERSATION WE HAD WITH HIM HE

24 SAID: "WELL, I'M NOT GOING TO BE OFFERING OPINIONS

25 ON MOTIVE, ON FEAR." IT'S REALLY UNCLEAR WHAT HE IS

26 GOING TO BE OFFERING OPINIONS ON.

27 BUT WHAT DID OCCUR DURING THE MEETING

28 WAS WE FINALLY GOT A CHANCE, BECAUSE DR. DIETZ HAD

1 THEM, TO TAKE A LOOK AT THE SPECIFIC MATERIALS, OR  
2 AT LEAST THE POLICE REPORTS THAT HAD BEEN TURNED  
3 OVER TO HIM.

4 AND BASED ON WHAT HE WAS GIVEN, AND  
5 THEREFORE, WHAT THE SCOPE OF HIS POSSIBLE RELIANCE  
6 ON MATERIALS ARE, COUPLED WITH WHAT HE SAID HE  
7 HASN'T READ AND ISN'T GOING TO READ, OR WON'T HAVE  
8 THE TIME TO READ, WE ARE OBJECTING TO HIS TESTIMONY  
9 UNDER 801.

10 AND WE ALSO HAVE 402 CONCERNS OF A  
11 RATHER SERIOUS NATURE.

12 HE SEEMS TO HAVE BEEN PROVIDED,  
13 AMAZINGLY, WITH PRECISELY THAT INFORMATION THAT IS  
14 NOT ADMISSIBLE, THAT HAS NOT BEEN TESTIFIED TO, THAT  
15 IS IN THE LEAST RELIABLE FORM, CONCERNING A SELECTED  
16 NUMBER OF WITNESSES; AND WE BELIEVE UNDER 801, THAT  
17 THOSE ARE NOT THE TYPES OF MATERIALS THAT AN EXPERT  
18 CAN OR SHOULD ORDINARILY RELY UPON.

19 WE ARE ASKING FOR A HEARING TOMORROW  
20 UNDER 801, AT WHICH WE WILL CALL ONE OR MORE  
21 WITNESSES AS WELL. BUT WE THINK THAT WHAT'S  
22 HAPPENING HERE IS THE IMPROPER USE OF AN EXPERT  
23 WITNESS IN ORDER TO INJECT FACTS INTO THE CASE THAT  
24 DON'T OTHERWISE BELONG THERE, AND PURPOSEFULLY

25 LIMITING THE EXPERT'S ACCESS TO MATERIALS -- OR THE  
26 EXPERT'S OWN CHOICE.

27 FOR EXAMPLE, HE WILL NOT READ ANY OF THE  
28 DEFENSE MATERIALS SUBMITTED TO HIM, CLAIMING HE

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1 DOESN'T HAVE TIME; AND HE HAS NOT AND WILL NOT READ  
2 ANY OF THE TESTIMONY OF THE DEFENSE EXPERTS FROM THE  
3 FIRST TRIAL, FOR UNKNOWN REASONS, EVEN THOUGH HE  
4 ADMITS HE'S BEEN INVOLVED IN THE CASE FOR MANY  
5 MONTHS, AND HAS HAD A LOT OF STUFF FOR A LONG TIME.

6 WE WOULD LIKE TO HAVE SUCH A HEARING  
7 UNDER 801 TOMORROW.

8 I THINK MR. GESSLER HAS SOME ADDITIONAL  
9 CONCERNS.

10 MR. GESSLER: WE ARE JOINING IN ON THAT  
11 MOTION, AND ALSO ON PEOPLE VERSUS ANDERSON GROUNDS.

12 A LARGE PART OF THE MATERIAL FURNISHED  
13 TO DR. DIETZ, AND WHICH HE HIGHLIGHTED, CONCERNS  
14 LYLE MENENDEZ, NOT ERIK MENENDEZ, IN MATERIAL THAT  
15 HAS NOT COME BEFORE THE COURT, NOR BEFORE THE JURY.  
16 A LOT OF IT IS AFFIDAVITS FOR SEARCH WARRANTS. A  
17 LOT OF IT IS MATERIAL ON JUDALON SMYTH CONCERNING  
18 PURPORTED THREATS SHE OVERHEARD, BUT HAS NOT  
19 TESTIFIED TO IN THIS COURT, NOR BEEN SUBJECT TO

20 CROSS-EXAMINATION; THE THREAT PURPORTEDLY COMING  
21 FROM LYLE MENENDEZ TO DR. OZIEL.  
22       THERE IS A GREAT DEAL OF MATERIAL OF  
23 THIS TYPE, AND WE ARE VERY CONCERNED THAT ANY DIRECT  
24 EVIDENCE PRESENTED BY THE PEOPLE, OR ANY  
25 CROSS-EXAMINATION IN ORDER TO CLARIFY THE BASIS UPON  
26 WHICH HE IS RELYING ON THIS OPINION, IS GOING TO  
27 IMPACT LYLE MENENDEZ' RIGHT, WHO HAS NOT CALLED AN  
28 EXPERT OR PUT HIS MENTAL CONDITION IN ISSUE, OTHER

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1 THAN THAT OF NORMAL FEAR, AND A NOTION OF  
2 MANSLAUGHTER.

3       SO I THINK THERE'S A BIG PROBLEM THERE  
4 THAT NEEDS TO BE SORTED OUT ALSO. WE ARE WORKING ON  
5 THE EXACT MATERIAL TODAY BECAUSE WE JUST RECEIVED IT  
6 LAST NIGHT. SO I CAN'T DELINEATE IT ALL TO THE  
7 COURT AT THIS TIME. I WILL BE ABLE TO TOMORROW.

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

9       MR. CONN: FIRST OF ALL, I DON'T THINK IT'S  
10 FAIR TO -- FOR COUNSEL TO SAY I CUT SHORT THE  
11 MEETING. WE GOT THERE -- DR. DIETZ WAS HERE FROM  
12 4:30 YESTERDAY, AND WE WENT TILL 6:45. SO THEY  
13 HAD -- BY THE TIME THEY FINALLY GOT THERE IT WAS  
14 ABOUT 5:00 O'CLOCK.

15       WE WENT ALMOST TWO FULL HOURS, AND I

16 SAID HALFWAY THROUGH: LET'S SET A TIME. LET'S MAKE  
17 THIS REASONABLE. EVERYBODY WANTS TO GET OUT AT A  
18 REASONABLE TIME TODAY. AND, OF COURSE, DEFENSE  
19 COUNSEL WAS TOTALLY UNWILLING TO TALK TIME. NO, WE  
20 DON'T WANT TO TALK ABOUT TIME. WE'RE JUST GOING TO  
21 KEEP GOING AND GOING; AND THEN EVENTUALLY, WHEN THE  
22 D.A. SAYS THAT'S ENOUGH, OF COURSE, THE DEFENSE IS  
23 GOING TO COME TO COURT AND COMPLAIN.

24 WE HAD APPROXIMATELY ONE HOUR AND  
25 FORTY-FIVE MINUTES WITH HIM. I DON'T THINK IT COULD  
26 FAIRLY BE SAID THAT THE PROSECUTION CUT THE MEETING  
27 SHORT.

28 THEY'VE HAD A FULL OPPORTUNITY TO SPEAK

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1 TO PARK DIETZ AT THIS POINT, WHICH IS MORE --  
2 THEY'VE HAD MORE TIME WITH HIM THAN WE HAD WITH  
3 DR. WILSON BEFORE HE TESTIFIED. WE HAD ONE HOUR  
4 WITH DR. WILSON. GRANTED, WE COULD HAVE HAD MORE.  
5 WE COULD HAVE HAD MORE. THAT WAS SUFFICIENT IN  
6 ORDER TO MOVE THIS TRIAL ALONG, TO GET SOME IDEA OF  
7 WHAT DR. WILSON WAS GOING TO BE TESTIFYING TO AND TO  
8 PREPARE OURSELVES TO CROSS-EXAMINE.

9 I THINK THAT DEFENSE HAS NOW HAD THE  
10 SAME OPPORTUNITY, IN THE AMOUNT OF TIME THAT THEY'VE

11 HAD, TO EXAMINE DR. WILSON -- DR. DIETZ.  
12 WE HAVE TO BEAR IN MIND THAT DR. DIETZ  
13 IS A REBUTTAL WITNESS. IT IS NOT AS IF WE ARE  
14 PRESENTING A WITNESS AS PART OF OUR CASE, AND THEY  
15 HAVE NO IDEA WHAT THIS WITNESS IS GOING TO BE  
16 TALKING ABOUT. HE IS SIMPLY A REBUTTAL WITNESS.  
17 THEY'VE HAD AN OPPORTUNITY NOW TO  
18 EXAMINE HIM. HE INDICATED YESTERDAY IN THE  
19 INTERVIEW THAT WE HAD WITH HIM WHAT HIS DIAGNOSIS OF  
20 THE DEFENDANT IS, AND THAT IS WHAT HE'S GOING TO BE  
21 TESTIFYING TO.  
22 MUCH OF THE UNCERTAINTY THAT THEY'RE  
23 TALKING ABOUT IS THEY TRIED TO PIN HIM DOWN, NOT  
24 ONLY AS AN EXPERT, BUT AS AN ATTORNEY. "WELL, WHAT  
25 DO YOU THINK IS ADMISSIBLE? WHAT ARE YOU GOING TO  
26 BE TESTIFYING TO?"  
27 HE CAN'T ANSWER THOSE QUESTIONS. HE  
28 TOLD COUNSEL WHAT HIS OPINION IS IN THIS CASE, AND

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1 HE ALSO DISCUSSED SOME OF THE VARIOUS CONCEPTS TO  
2 WHICH DR. WILSON TESTIFIED; THAT IS, HYPERVIGILANCE,  
3 LEARNED HELPLESSNESS, ALL THOSE VARIOUS CONCEPTS FOR  
4 WHICH WE WANT TO NOW CALL A WITNESS AND EXPLAIN  
5 THOSE CONCEPTS TO THE JURY. THAT'S WHAT HE'S GOING  
6 TO BE TESTIFYING TO AS TO HIS DIAGNOSIS OF THE

7 DEFENDANT. WHY HE REJECTED P.T.S.D., WHY HE  
8 REJECTED BATTERED-PERSON'S SYNDROME; AND THEN HE'S  
9 GOING TO RESPOND TO SOME OF THE VARIOUS THINGS THAT  
10 DR. WILSON SAID DURING THE COURSE OF HIS TESTIMONY.

11 SO WE HAVE A VERY GOOD IDEA OF WHAT  
12 DR. DIETZ IS GOING TO BE TESTIFYING TO. AND ALL  
13 THEY WANT NOW IS FURTHER OPPORTUNITY TO EXAMINE HIM  
14 TO CROSS-EXAMINE HIM AND TO HAVE MORE AND MORE  
15 DISCOVERY. I THINK THEY'VE HAD SUFFICIENT DISCOVERY  
16 AT THIS POINT AS TO WHAT HE'S GOING TO BE TESTIFYING  
17 TO, AND THERE'S NO NEED TO HAVE AN 801 HEARING AT  
18 THIS POINT.

19 THEY ARGUE THAT DR. DIETZ HAS NOT  
20 REVIEWED CERTAIN MATERIAL. DR. DIETZ SPENT  
21 APPROXIMATELY 50 HOURS ON THIS CASE, HE INFORMED US  
22 YESTERDAY. NOW, HE IS NOT LIKE THEIR PRIVATE  
23 WITNESSES WHO WORK FOR \$25 AN HOUR AND COULD DEVOTE  
24 HALF HIS LIFE TO THIS CASE LIKE DR. WILSON.  
25 DR. DIETZ HAS A PRACTICE INDEPENDENT OF THIS CASE,  
26 AND WE CAN'T AFFORD TO PAY HIM AN ENORMOUS AMOUNT OF  
27 MONEY SO HE CAN READ THESE DOCUMENTS FOR ALL  
28 ETERNITY.

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1 WITH 50 HOURS OF PREPARATION TIME IN

2 THIS CASE, INCLUDING 16 HOURS OF PERSONALLY  
3 INTERVIEWING THE DEFENDANT, DR. DIETZ IS MORE THAN  
4 PREPARED TO GIVE AN OPINION CONCERNING THE  
5 DEFENDANT, HIS DIAGNOSIS, AND HIS MENTAL STATE AT  
6 THE TIME OF THE COMMISSION OF THE CRIME, AS WELL AS  
7 TO REBUT SOME OF THE VARIOUS CONCEPTS TO WHICH  
8 DR. WILSON GAVE HIS OWN SPIN.

9 THE COURT: LET ME STOP HERE.

10 FIRST OF ALL, AS FAR AS DR. DIETZ NOT  
11 HAVING REVIEWED CERTAIN MATERIALS, THAT IS A SUBJECT  
12 OF CROSS-EXAMINATION AND ATTACK ON HIS CREDIBILITY.  
13 I DON'T SEE THAT AS A BASIS FOR A HEARING TO BE  
14 CONDUCTED BEFORE HIS TESTIMONY. HOWEVER, THE  
15 DEFENSE ALLUDES TO MATERIAL THAT HE DID CONSIDER  
16 THAT HAS NOT BEEN ADMITTED IN THIS TRIAL, AND THE  
17 ADMISSIBILITY OF WHICH HAS NOT BEEN RESOLVED, AND/OR  
18 MATERIALS THAT WOULD IMPLICATE THE CODEFENDANT IN A  
19 NEGATIVE FASHION, AND WOULD INFRINGE ON HIS RIGHTS.

20 WHAT IS YOUR RESPONSE TO THAT?

21 MR. CONN: WELL, HE WILL NOT BE TESTIFYING IN  
22 ANY WAY OR GIVING AN OPINION CONCERNING LYLE  
23 MENENDEZ. SO TO THE EXTENT THAT THE REPORTS CONTAIN  
24 SOME NEGATIVE INFORMATION ABOUT LYLE MENENDEZ, AND  
25 IT'S SIMPLY PART OF THE BACKGROUND REPORTS IN THIS  
26 CASE, THE POLICE REPORTS WHICH WE GAVE TO HIM A LONG  
27 TIME AGO. TO THE EXTENT THERE IS SOMETHING IN THERE  
28 WHICH NEGATIVELY IMPACTS ON LYLE MENENDEZ, I DON'T



1 SEE HOW THAT IS GOING TO PREJUDICE THE DEFENDANT,  
2 BECAUSE HE IS NOT GOING TO BE STATING AN OPINION AS  
3 FAR AS LYLE MENENDEZ IS CONCERNED. HE IS SIMPLY  
4 GOING TO BE STATING AN OPINION CONCERNING ERIK  
5 MENENDEZ AND HIS STATE OF MIND AT THE TIME OF THE  
6 COMMISSION OF THE CRIME.

7 THE COURT: IS HE GOING TO REFER TO THE  
8 CONTENTS OF THIS MATERIAL THAT MIGHT HAVE NEGATIVE  
9 INFORMATION ABOUT LYLE MENENDEZ?

10 MR. CONN: NO. NO. I HAVE NO INTENTION OF  
11 ASKING HIM ABOUT ANYTHING NEGATIVE CONCERNING LYLE  
12 MENENDEZ. AND THE ONLY OTHER REMARK THAT APPEARED  
13 IN THE REPORTS THAT THEY'RE RELYING UPON WAS THERE  
14 WAS A REFERENCE TO JUDALON SMYTH IN ONE OF THE  
15 REPORTS. AND THAT CAME UP DURING THE CONVERSATION,  
16 AND DEFENSE IS MAKING IT SEEM AS IF THERE IS NOW A  
17 MOUNTAIN OF INFORMATION OUT THERE THAT HE SHOULD NOT  
18 BE RELYING UPON.

19 HIS OPINION IS NOT BASED ON THAT  
20 REFERENCE TO JUDALON SMYTH THAT CAME UP IN THE  
21 CONVERSATION YESTERDAY. HIS OPINION IS BASED UPON  
22 THE VARIOUS MATERIALS THAT WE SUBMITTED TO HIM WHICH  
23 CONSISTED OF THE DECEMBER 11TH TAPE, THE TESTIMONY  
24 OF ERIK MENENDEZ IN THIS TRIAL, HIS INTERVIEWS WITH  
25 ERIK MENENDEZ, AND ALL OF THE OTHER MATERIAL WHICH

26 THE JURY HAS BEEN EXPOSED TO.

27 MR. GESSLER: YOUR HONOR, THE JUDALON SMYTH

28 MATERIAL APPEARED AT LEAST THREE PLACES; ONE, A

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1 REPORT FROM JUDALON SMYTH ON A POLICE REPORT; AND  
2 TWO MORE TIMES IN DETECTIVE ZOELLER'S AFFIDAVITS FOR  
3 SEARCH WARRANTS RELYING UPON JUDALON SMYTH. AND IN  
4 THESE CASES IT WAS FILLED OUT WITH A HIGHLIGHTER,  
5 WHICH DR. DIETZ HIMSELF SAID HE PUT ON THERE.

6 I HAVE TO THINK IT WAS GIVEN TO HIM FOR  
7 A PURPOSE, AND HE IS RELYING UPON IT FOR SOMETHING.  
8 GRANTED, HE MIGHT NOT STATE AN OPINION CONCERNING  
9 LYLE MENENDEZ, BUT IN STATING AN OPINION CONCERNING  
10 ERIK MENENDEZ, WHATEVER HE SAYS THAT HE'S REVIEWED  
11 ABOUT LYLE MENENDEZ THAT HELPS FORM THAT OPINION  
12 IMPACTS NEGATIVELY ON LYLE MENENDEZ, AND UNDER  
13 ANDERSON I DON'T THINK THAT CAN COME IN.

14 THE COURT: WELL, AS I UNDERSTAND IT, HE'S  
15 NOT GOING TO RELY UPON ANY OF THE INFORMATION  
16 RELATING TO LYLE MENENDEZ IN EXPRESSING AN OPINION  
17 AS TO THE DIAGNOSIS OF ERIK MENENDEZ.

18 IS THAT WHAT YOU'RE SAYING?

19 MR. CONN: YES.

20 MR. GESSLER: THAT'S NOT WHAT HE STATED TO ME  
21 AT THE END OF THE EVENING.

22 I SAID: "DID YOU HIGHLIGHT THIS?"  
23 AND HE SAID: "YES."  
24 AND I SAID: "ARE YOU RELYING ON  
25 THIS IN YOUR OPINION?"  
26 AND HE SAID: "YES, I AM, IF IT'S  
27 HIGHLIGHTED. GO THROUGH IT WITH ME  
28 ONE BY ONE AS TO WHICH I AM RELYING ON

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1 THAT'S HIGHLIGHTED THERE AND WHICH IS  
2 NOT."  
3 I SPECIFICALLY MENTIONED THE MATERIAL  
4 CONCERNING LYLE MENENDEZ, BECAUSE THAT WAS MY  
5 CONCERN. I'M NOT QUITE SO SURE THAT HE'S DIVORCING  
6 THAT FROM ANY OPINION HE'S GIVING CONCERNING ERIK  
7 MENENDEZ. IN FACT, HE STATED TO THE CONTRARY.  
8 THE COURT: THERE ARE TWO WAYS OF DEALING  
9 WITH THIS. EITHER TAKE TESTIMONY FROM DIETZ THAT HE  
10 DID RELY UPON, OR HAVE HIM SUBMIT SOMETHING IN  
11 WRITING, INDICATING THAT HE'S NOT GOING TO RELY ON  
12 THESE MATTERS. I WILL SUBMIT SOMETHING IN WRITING.  
13 THE COURT: FROM HIM?  
14 MR. CONN: YES. FROM HIM.  
15 MR. GESSLER: FROM HIM. THAT HE IS NOT  
16 RELYING UPON THE REFERENCES TO JUDALON SMYTH.

17 MR. GESSLER: ANYTHING -- MORE THAN THAT.  
18 THERE'S BURGLARIES. THERE'S SOMETHING PINNING OFF  
19 ONE OF THE BURGLARIES ON LYLE MENENDEZ THAT HAS BEEN  
20 TESTIFIED CONCERNING ERIK MENENDEZ. THERE'S A LOT  
21 MORE NEGATIVE THINGS IN THERE THAN JUST JUDALON  
22 SMYTH.

23 I NEED SOMETHING TO SHOW THAT NONE OF  
24 THIS, CONCERNING LYLE MENENDEZ THAT'S NOT BEEN  
25 PRESENTED IN THE COURT, IS GOING TO BE A PART OF HIS  
26 OPINION.

27 MS. ABRAMSON: YOUR HONOR, I THINK IT GOES  
28 BEYOND THIS, THOUGH.

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1 AS AN EXAMPLE, I'VE WATCHED THE TAPED  
2 INTERVIEW WITH MY CLIENT, AND I SAW REPEATEDLY HOW  
3 DR. DIETZ CONFRONTED MY CLIENT WITH INFORMATION THAT  
4 HAS ALREADY BEEN DETERMINED TO BE COMPLETELY  
5 UNRELIABLE IN THIS COURT IN THIS TRIAL AND IN THE  
6 PREVIOUS TRIAL, INFORMATION THAT THIS COURT  
7 EXCLUDED, THAT WAS -- THAT NO ONE EVER OFFERED.

8 LET ME JUST GIVE YOU AN EXAMPLE.

9 DR. DIETZ WAS GIVEN THE MARCH 7TH, '90  
10 POLICE REPORT SUMMARY OF CRAIG CIGNARELLI'S  
11 STATEMENT, AND THAT SUMMARY SAYS THAT CRAIG  
12 CIGNARELLI SAID ERIK MENENDEZ DID IT FOR THE MONEY.

13           NOW, WE HAD HEARINGS ON THAT HERE  
14 RECENTLY. "DID IT FOR MONEY," AND "BECAUSE ALL  
15 GREAT LEADERS HAVE NO PARENTS." THAT WHOLE STRING  
16 OF THINGS THAT THE PEOPLE OFFERED AND THAT THE COURT  
17 REFUSED TO ALLOW IN BECAUSE THEY WERE ABSOLUTELY  
18 UNRELIABLE. THEY WEREN'T RELEVANT. THEY COULDN'T  
19 BE TIED TO MOTIVE INFORMATION; AND YET THERE'S  
20 DR. DIETZ CONFRONTING ERIK MENENDEZ WITH IT? WHY?  
21 BECAUSE HE WASN'T GIVEN THE TRANSCRIPT OF THE 3/7  
22 CONVERSATION. HE WAS JUST GIVEN THE ERRONEOUS  
23 POLICE REPORT.

24           HE HAS NOT READ THE TESTIMONY OF A  
25 SINGLE WITNESS IN THIS TRIAL OR THE LAST TRIAL,  
26 EXCEPT FOR ERIK MENENDEZ, NOT ONE. HE HAS NOT -- HE  
27 DOESN'T HAVE -- HE NEVER READ OZIEL. HE HAS NO IDEA  
28 OF THE ENORMOUS CONFLICTS BETWEEN THE JUDALON SMYTH

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1 VERSION OF THE WORLD AND THE OZIEL VERSION;  
2 PARTICULARLY WITH RESPECT -- I'LL REMIND THE COURT --  
3 JUDALON SMYTH TOLD THE POLICE THAT SHE OVERHEARD  
4 LYLE MENENDEZ SPECIFICALLY SAYING: "NOW, WE'RE GOING  
5 TO HAVE TO KILL DR. OZIEL."

6           AND ERIK MENENDEZ SAYING: "I CAN'T KILL  
7 ANYONE ELSE."

8           THIS COURT KNOWS, OR PERHAPS DOESN'T  
9 REMEMBER, BUT WAS HERE WHEN DR. OZIEL TESTIFIED,  
10 THOSE THINGS WERE NEVER SAID; AND HE WAS IN THE  
11 ROOM. AND GOODNESS KNOWS, YOU KNOW, IN OUR  
12 IMPRESSION HE'S MADE UP A LOT OF THINGS; THAT HE  
13 DIDN'T MAKE UP. AND YET HERE IS DR. DIETZ BEING  
14 GIVEN HAND-SELECTED LITTLE POISON PILLS, IF YOU  
15 WILL, BY THE PROSECUTION OF UNRELIABLE, UNPROVEN,  
16 UNCONFRONTED INFORMATION, AND HE'S USING IT  
17 THROUGHOUT HIS INTERVIEW PROCESS WITH MY CLIENT.

18           NOW, I'VE HEARD WHAT MR. CONN SAYS THAT  
19 DR. DIETZ IS GOING TO TESTIFY TO AS TO WHY HE  
20 REJECTED P.T.S.D. HE TOLD US YESTERDAY ON TAPE HE  
21 CANNOT DISPUTE P.T.S.D. IN REGARD TO SEXUAL  
22 MOLESTATION. HE CANNOT SAY WHETHER HE DOES OR  
23 DOESN'T SUFFER FROM P.T.S.D.

24           SO NOW I'M HEARING, FOR THE FIRST TIME,  
25 THAT HE'S GOING TO SAY HE REJECTS P.T.S.D., WHEN HE  
26 TOLD US OTHERWISE.

27           HE ALSO TOLD US HE CANNOT SAY THAT ERIK  
28 MENENDEZ WAS NOT SEXUALLY MOLESTED, WHICH, OF

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1 COURSE, HE CAN'T SAY ONE WAY OR THE OTHER UNDER  
2 SECTION 29. BUT WE ARE STILL -- AND IT WAS NOT ME  
3 ASKING DR. DIETZ WHAT'S ADMISSIBLE. IT'S DR. DIETZ

4 SAYING: I CAN'T -- I QUOTE. HE'S SAYS: "I'M NOT

5 ALLOWED TO SAY THEY HAVE FEAR OR NOT."

6 HE VOLUNTEERED. HE VOLUNTEERED, AFTER

7 GIVING US A LONG DISSERTATION ON THE STATE OF MIND

8 OF BOTH ERIK AND LYLE MENENDEZ CONCERNING THEIR

9 MOTHER AND FATHER, AND HIS SPECULATIONS ON WHY THIS

10 KILLING OCCURRED. HE SAID: "OF COURSE, I'M NOT

11 GOING TO TESTIFY AS TO MOTIVE."

12 SO I HAVEN'T A CLUE, APART FROM SOME

13 NOTES THAT HE GAVE US THAT INDICATED WHY HE

14 DISAGREES WITH MY CLIENT BEING HYPERVIGILANT OR MY

15 CLIENT DEMONSTRATING LEARNED HELPLESSNESS THE DAYS

16 BEFORE THE HOMICIDES. APART FROM THAT, GIVEN WHAT

17 HE'S TOLD ME HE ISN'T GOING TO BE DOING, I HAVEN'T A

18 CLUE WHAT HE'S GOING TO BE TESTIFYING TO. IF THAT'S

19 ALL HE'S GOING TO SAY, FINE. BUT WE'RE -- I'M

20 HEARING TWO COMPLETELY DIFFERENT THINGS.

21 AS FAR AS MENTAL STATE AT THE TIME OF

22 COMMISSION, HE REALLY -- WE ASKED HIM ABOUT THAT

23 YESTERDAY. AND ALL HE SAID WAS HE DIDN'T BELIEVE

24 THAT MY CLIENT WAS IN THE THROWS OF LEARNED

25 HELPLESSNESS, AS HE PUT IT, OR HYPERVIGILANCE, AND

26 THAT'S ALL WE'VE HEARD ABOUT WHAT HIS OPINION IS.

27 AND WE'RE ENTITLED TO MORE THAN THAT BEFORE A

28 WITNESS TAKES THE STAND, IF HE'S GOING TO OFFER SUCH

1 AN OPINION, UNLESS THAT'S IT. THAT'S WHAT WE WERE  
2 ASKING AND --

3 THE COURT: IS THIS WITNESS GOING TO TESTIFY  
4 THAT HE DISAGREES WITH THE DIAGNOSIS OF  
5 POST-TRAUMATIC STRESS DISORDER OR BATTERED-PERSON'S  
6 SYNDROME, AS YOU INDICATE?

7 MR. CONN: WHAT HE'S GOING TO SAY -- I THINK  
8 WHAT COUNSEL IS SAYING -- AND IS PRETTY MUCH THE  
9 SAME THING I'M SAYING -- IT DEPENDS ON WHAT KIND OF  
10 SPIN COUNSEL IS TRYING TO GIVE IT.

11 ESSENTIALLY, HE SAID HE CANNOT GO ALONG  
12 WITH A DIAGNOSIS OF POST-TRAUMATIC STRESS DISORDER  
13 BECAUSE THAT COMES DOWN TO ESSENTIALLY A CREDIBILITY  
14 DETERMINATION AS TO WHETHER OR NOT THE DEFENDANT  
15 SUFFERED FROM THE CLAIMED STRESS.

16 SO, ESSENTIALLY, WHAT HE TOLD US IS WHAT  
17 WE HEARD IN THESE HEARINGS THAT WE CONDUCTED IN THIS  
18 COURT MANY MONTHS AGO; THAT IS, THERE'S NO  
19 SCIENTIFIC WAY TO DETERMINE WHETHER OR NOT A PERSON  
20 HAS BEEN MOLESTED. WHAT IT REALLY COMES DOWN TO IS  
21 YOU BELIEVE IT OR YOU DON'T BELIEVE IT.

22 BASED UPON THAT, HE FEELS HE CANNOT COME  
23 UP WITH A DIAGNOSIS OF POST-TRAUMATIC STRESS  
24 DISORDER IN THIS CASE. SO HE WILL TESTIFY TO HIS  
25 OWN DIAGNOSIS AND -- BUT THE PROBLEM WITH OBJECTION  
26 BEING MADE BY DEFENSE COUNSEL AT THIS POINT IS THAT  
27 THEY ARE BEING NON-SPECIFIC AS TO PRECISELY WHAT IT



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1 THE COURT: WHAT I'M GOING TO DO IS HAVE THE  
2 DEFENSE ENUMERATE IN WRITING BY NOON TODAY --

3 MS. ABRAMSON: UH-HUH.

4 THE COURT: -- WHAT IT IS THAT YOU FEEL IS  
5 UNRELIABLE OR INADMISSIBLE MATERIAL THAT DR. DIETZ  
6 INDICATED HE WAS RELYING UPON, AND THEN GET A  
7 WRITTEN RESPONSE FROM DR. DIETZ THIS AFTERNOON BY  
8 4:30, INDICATING WHETHER OR NOT HE IS RELYING UPON  
9 THAT MATERIAL; AND IF THERE IS SUCH A DISCREPANCY  
10 BETWEEN WHAT YOU'RE OBJECTING TO AND WHAT HE'S  
11 RELYING UPON, THEN WE'LL HAVE TO DEAL WITH IT  
12 TOMORROW MORNING. THAT WILL GIVE DEFENSE TIME TO  
13 ENUMERATE WHAT IT IS THAT YOU RECALL FROM HIS NOTES  
14 AND THE INTERVIEWS AND THINGS OF THAT NATURE, AND  
15 GIVE THE PEOPLE A CHANCE TO COMMUNICATE WITH  
16 DR. DIETZ WITH HIS RESPONSE.

17 ALSO, TODAY, AS I UNDERSTAND IT, WE JUST  
18 HAVE MS. PISARCIK. TODAY, WITH COUNSEL WHO ARE NOT  
19 OTHERWISE ENGAGED WITH DR. DIETZ -- WHICH I ASSUME  
20 WILL BE MS. TOWERY AND MR. LEVIN AND MS. NAJERA --  
21 YOU COULD DEAL WITH EXHIBITS TODAY AND SEE IF WE CAN  
22 RESOLVE ALL EXHIBITS THAT ARE IN DISPUTE.

23 MR. GESSLER: I WOULD ASK IF THAT COULD BE  
24 POSTPONED 'TIL THIS AFTERNOON, BECAUSE I WOULD LIKE  
25 MS. TOWERY'S ASSISTANCE IN DEVELOPING THIS PAPER BY  
26 NOON.  
27 THE COURT: OKAY. WELL, MS. NAJERA AND  
28 MR. LEVIN COULD PERHAPS WORK ON EXHIBITS AS WELL AS

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1 ALSO THIS TAPE, THE DECEMBER 11TH TAPE. THERE WAS  
2 SOME DISPUTE AS TO CERTAIN MATTERS CONCERNING THAT.

3 MR. LEVIN: YOUR HONOR, YESTERDAY I GOT A FAX  
4 FROM THE 9TH CIRCUIT, AND THEY PUT THE HEARING BACK  
5 ON CALENDAR FOR FRIDAY. I WAS NOTIFIED BEFORE,  
6 ALTHOUGH IT'S SCHEDULED FOR 9:00, THAT THEY TAKE THE  
7 ORAL ARGUMENTS IN THE ORDER THAT THEY APPEAR ON  
8 CALENDAR, AND I WAS LAST, MY CASE.

9 I WROTE A LETTER TO THE 9TH CIRCUIT  
10 ASKING THAT THEY TAKE MY MATTER FIRST. I WAS  
11 WONDERING IF A CALL FROM THIS COURT MIGHT ASSIST ME.

12 THE COURT: WHO ARE THE JUDGES INVOLVED?

13 MR. LEVIN: BEEZER, B-E-E-Z-E-R, BRUNETTI AND  
14 NOONAN, WITH TWO O'S.

15 THE COURT: I'LL HAVE THE CLERK CALL THE  
16 CLERK THERE. GIVE HER THE NUMBER AND --

17 THERE WAS SOME INDICATION THAT YOU COULD  
18 PROCEED WITHOUT MR. LEVIN ON FRIDAY ANYWAY.

19 MR. LEVIN: WELL, FRIDAY, IF WE PROCEED ON  
20 SCHEDULE, THERE WILL BE WITNESSES HERE THAT I'M  
21 PUTTING ON.

22 THE COURT: YOU MEAN REBUTTAL WITNESSES,  
23 SURREBUTTAL?

24 MS. ABRAMSON: WE DON'T KNOW YET.

25 MR. LEVIN: THE PEOPLE HAVE THEIR EXPERT  
26 FRIDAY ALSO.

27 MS. ABRAMSON: WE'RE OBJECTING TO HIM. WE  
28 STILL DON'T HAVE WHAT WE CONSIDER ANYTHING TO BE

49601

1 LIKE ADEQUATE DISCOVERY ON DR. RESTAK.

2 THE COURT: IT SEEMS TO ME THAT THE TESTIMONY  
3 PROPOSED FROM DR. RESTAK COULD BE INCORPORATED INTO  
4 DR. DIETZ, BECAUSE WILSON TESTIFIED ABOUT MATTERS OF  
5 WHICH HE DOESN'T HAVE PERSONAL KNOWLEDGE. HE WAS  
6 JUST REPORTING WHAT RESEARCH MATERIALS SAID, AND  
7 HE'S NOT A MEDICAL DOCTOR. DR. DIETZ IS A MEDICAL  
8 DOCTOR. HE PERHAPS COULD COVER THE SAME TERRITORY,  
9 AND IF THERE'S A FURTHER DISPUTE IN SURREBUTTAL,  
10 THEN IT CAN BE DEALT WITH THEN.

11 THAT'S UP TO COUNSEL TO THINK ABOUT  
12 FURTHER.

13 LET'S GET THIS MATTER RESOLVED NOW. BUT

14 I DO WANT TO GO AS FAR WITH THE TESTIMONY, GET THE  
15 JURY DEALT WITH. BUT I WANT TO TAKE ADVANTAGE OF  
16 THE TIME TODAY AND RESOLVE AS MUCH OF THE EXHIBITS  
17 AND THE DECEMBER 11TH TAPE AS WELL, SO WE CAN BE IN  
18 A POSITION TO HAVE AS LITTLE DEAD TIME AS POSSIBLE.

19 OKAY. LET'S GET THE JURY OVER.

20 (A RECESS WAS TAKEN FROM

21 9:35 A.M. TO 9:50 A.M.)

22

23 THE COURT: OKAY. WE'LL HAVE THE JURY OUT,  
24 PLEASE.

25 (THE JURY ENTERED THE COURTROOM

26 AND THE FOLLOWING PROCEEDINGS

27 WERE HELD:)

28

49602

1 THE COURT: IN THE TRIAL, THE JURY IS IN  
2 COURT.

3 GOOD MORNING, LADIES AND GENTLEMEN.

4 WHAT'S GOING TO HAPPEN TODAY

5 SCHEDULE-WISE IS THAT WE'RE GOING TO FINISH WITH

6 THIS WITNESS AND THEN TAKE A BREAK, AS FAR AS THE

7 JURY IS CONCERNED. THE BALANCE OF THE DAY WILL BE

8 USED BY THE LAWYERS TO WORK ON REVIEWING ALL THE

9 EXHIBITS THAT HAVE BEEN UTILIZED DURING THE COURSE

10 OF THE TRIAL AND PREPARE FOR THE BALANCE OF THE  
11 TRIAL.

12 UNFORTUNATELY, IT HAS TO BE DONE IN  
13 COURT WHERE THE EXHIBITS ARE, SO IT TAKES A LITTLE  
14 WHILE TO DO THAT, AND WE CAN'T DO THAT WHILE THE  
15 JURY IS HERE. WE'LL DO THAT TODAY AND PICK UP AGAIN  
16 TOMORROW WITH MORE TESTIMONY. I WANTED TO FINISH  
17 OFF WITH THIS WITNESS SO WE COULD AT LEAST GET THAT  
18 PART OF THE TRIAL COMPLETED.

19 SO YOU MAY CONTINUE YOUR CROSS-EXAMINATION.

20

21 JAMIE PISARCIK,  
22 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE  
23 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

24

25 THE COURT: THE WITNESS IS ON THE WITNESS  
26 STAND.

27 WOULD YOU STATE YOUR NAME AGAIN FOR THE  
28 RECORD.

49603

1 THE WITNESS: JAMIE PISARCIK.

2 THE COURT: OKAY. YOU'RE STILL UNDER OATH.

3

4 CROSS-EXAMINATION (CONTINUED)

5 BY MS. ABRAMSON:

6 Q MS. PISARCIK, IS IT YOUR CLAIM THAT THE  
7 REASON WHY YOU MENTIONED, IN THE FIRST TRIAL  
8 INITIALLY, THAT YOU THOUGHT THIS PARTICULAR VISIT TO  
9 CALIFORNIA IN WHICH ERIK MENENDEZ MADE THESE  
10 STATEMENTS TO YOU WAS IN THE SUMMER OR SPRING, WAS  
11 BECAUSE, IN YOUR MEMORY, IT WAS SUMMER OR  
12 SPRING-LIKE WEATHER?

13 MS. NAJERA: OBJECTION. ASKED AND ANSWERED.

14 THE COURT: OVERRULED.

15 THE WITNESS: I ANSWERED THAT QUESTION  
16 BECAUSE THE WEATHER WAS MILD OUT HERE.

17 Q BY MS. ABRAMSON: NOW, WHAT WAS THE NAME  
18 OF THE STREET THAT THE MENENDEZ HOUSE IN BEVERLY  
19 HILLS WAS ON?

20 A ELM.

21 Q ELM WHAT?

22 A ELM STREET, ELM DRIVE.

23 Q WHICH WAS IT?

24 A ELM DRIVE, I BELIEVE.

25 Q AND DOES ELM DRIVE HAVE TREES?

26 A YES, IT DOES.

27 Q AND DOES ELM DRIVE HAVE ELM TREES?

28 A I BELIEVE THAT'S WHY IT'S CALLED ELM

1 STREET, ELM DRIVE.

2 Q AND WHAT HAPPENS TO ELM TREES IN THE  
3 WINTER TIME?

4 A TREES LOSE THEIR LEAVES.

5 Q EVEN IN CALIFORNIA?

6 A YES.

7 MS. ABRAMSON: YOUR HONOR, I HAVE EXHIBIT 1,  
8 WHICH IS DOWN HERE.

9 Q MS. PISARCIK DO YOU RECOGNIZE THESE FOUR  
10 PHOTOGRAPHS TO BE DIFFERENT ANGLE SHOTS OF THE HOUSE  
11 ON ELM DRIVE WHERE THE MENENDEZ FAMILY LIVES?

12 A YES, MA'AM.

13 Q DO YOU SEE THE LINE OF TREES ON THE  
14 STREET?

15 A YES, I DO.

16 Q ARE THEY ALL BARE?

17 A YES, THEY ARE RIGHT THERE.

18 Q DO YOU HAVE ANY RECOLLECTION AS TO  
19 WHETHER OR NOT, WHEN YOU WERE HERE FOR THIS  
20 PARTICULAR TRIP, THE TREES WERE BARE OR NOT BARE?

21 A I REALLY WASN'T PAYING ATTENTION TO  
22 TREES.

23 Q NOW, YOU TESTIFIED THAT YOU THOUGHT YOU  
24 HAD GONE BY -- YOU WERE GOING PAST ERIK MENENDEZ'  
25 ROOM JUST BEFORE THIS CONVERSATION OCCURRED; IS THAT  
26 CORRECT?

27 A YES, THAT IS CORRECT.

28 Q WHERE WAS HIS ROOM IN THAT HOUSE?

1 A IT WAS ON THE SECOND FLOOR.

2 Q AND WHAT ROOM WAS IT NEXT TO, IF ANY?

3 A THERE WAS A GUEST ROOM CLOSER TO THE  
4 STREET IN FRONT OF THE HOUSE. THERE WAS ALSO  
5 ANOTHER GUEST ROOM ACROSS FROM THAT GUEST ROOM, AND  
6 THEN IT WAS BEHIND HIS ROOM. FURTHER WAS MR. AND  
7 MRS. MENENDEZ' BEDROOM.

8 Q UH-HUH. WHERE WERE YOU COMING FROM  
9 BEFORE YOU PASSED BY HIS ROOM?

10 A I REALLY DON'T RECALL.

11 Q ISN'T IT TRUE, MS. PISARCIK, THAT IN  
12 ORDER TO GET TO HIS ROOM YOU HAVE TO PURPOSELY WALK  
13 ALONG A WALKWAY THAT LEADS TO NOTHING BUT HIS ROOM?

14 A NO, THAT IS NOT CORRECT.

15 MS. ABRAMSON: MR. LEVIN, WHERE'S THOSE LARGE  
16 PHOTOS?

17 Q IS IT YOUR TESTIMONY THAT THE ENTRANCE  
18 TO HIS ROOM IS ALONG THE SAME CORRIDOR AS THE  
19 ENTRANCE TO HIS PARENTS' ROOM?

20 A WELL, WHEN YOU COME UP THE STAIRS, YOU  
21 WOULD DIRECTLY GO IN HIS PARENTS' ROOM. THEN AS I  
22 SAID, IT WAS HIS ROOM; AND THEN SEVERAL OTHER GUEST  
23 ROOMS THAT WERE IN THE FRONT OF THE HOUSE.

24 MS. ABRAMSON: ALL RIGHT. LET ME HAVE THE



25 CHART FIRST OF THE SECOND FLOOR, MR. LEVIN.

26 Q MS. PISARCIK, WOULD YOU TAKE A LOOK AT  
27 THAT, WHICH IS 6.

28 A YES.

49606

1 Q AND DO YOU RECOGNIZE THAT TO SHOW THE  
2 FLOOR PLAN OF THE SECOND FLOOR OF THE MENENDEZ HOME  
3 ON ELM DRIVE?

4 A CORRECT.

5 Q DO YOU UNDERSTAND THE GREY-BLACK AREA IS  
6 THE STAIRCASE?

7 A YES, I DO.

8 Q AND WHEN ONE IS COMING UP FROM  
9 DOWNSTAIRS, THE STAIRS FIRST GO IN THIS DIRECTION  
10 (POINTING). THEN THERE'S A LANDING, AND THEN IT  
11 GOES STRAIGHT UP, CORRECT?

12 A CORRECT.

13 Q AND WHEN YOU GO STRAIGHT UP AND YOU MAKE  
14 A RIGHT, YOU GO INTO THE MASTER BEDROOM?

15 A YES, THAT'S CORRECT.

16 Q DID YOU GO INTO THE MASTER BEDROOM ON  
17 THIS OCCASION?

18 A I DO NOT RECALL.

19 Q IN ORDER TO GET TO ERIK MENENDEZ'

20 BEDROOM YOU HAVE TO GO LEFT, CORRECT?

21 A YES, THAT'S CORRECT.

22 Q THEN YOU HAVE TO WALK ACROSSED THIS  
23 WALKWAY, CORRECT?

24 A YES, MA'AM.

25 Q WHICH LEADS TO HIS BEDROOM?

26 A CORRECT.

27 Q NOW, THIS HERE, BEDROOM 3, IS A GUEST  
28 ROOM?

49607

1 A YES, IT IS.

2 Q WAS ANYBODY STAYING THERE?

3 A I DO NOT RECALL.

4 Q AND DO YOU RECALL WHICH BEDROOM ED FENNO  
5 OCCUPIED?

6 A I BELIEVE, IN THAT DIAGRAM, BEDROOM 5.

7 Q THIS WAS THE SO-CALLED "GREY BEDROOM"?

8 A YES, THAT'S CORRECT.

9 Q SO TO GO FROM ED FENNO'S BEDROOM, TO GO  
10 DOWNSTAIRS, YOU DON'T HAVE TO WALK PAST ERIK  
11 MENENDEZ' DOOR, CORRECT?

12 A I DON'T RECALL EXACTLY.

13 Q LOOK AT THE FLOOR PLAN. TO GO FROM HERE  
14 TO THERE (POINTING), YOU NEED NOT GO HERE  
15 (POINTING), CORRECT?

16 A NO, BUT YOU COULD GO THERE.

17 Q YOU COULD GO THERE IF YOU HAD SOME

18 REASON TO GO OVER TO ERIK MENENDEZ' BEDROOM.

19 A OR TO BEDROOM 3 OR TO THE CLOSET OR TO

20 BEDROOM 2.

21 Q THE CLOSET IS INSIDE BEDROOM 3, CORRECT?

22 A CORRECT.

23 Q DID YOU KEEP YOUR CLOTHES IN THE CLOSET?

24 A I HAVE STAYED IN BEDROOM 3 YES, I HAVE.

25 Q ON THIS TRIP?

26 A I DON'T RECALL.

27 Q DIDN'T YOU ALREADY TESTIFY IN THE

28 PREVIOUS TRIAL THAT ON THIS TRIP YOU STAYED WITH

49608

1 LYLE IN THE GUESTHOUSE?

2 A I SAID I COULD HAVE, YES.

3 Q WELL, DID YOU OR DIDN'T YOU?

4 A I DON'T REMEMBER, MS. ABRAMSON, IF IT

5 WAS EXACTLY THAT TRIP. LYLE AND I MAINLY DID STAY

6 IN THE GUEST ROOM. I HAD STAYED IN BEDROOM 3 --

7 WHAT IS BEDROOM 3.

8 Q THE GUEST ROOM?

9 A I'M SORRY. THE GUESTHOUSE.

10 Q LET ME SHOW YOU THIS PHOTOGRAPH THAT'S

11 BEEN MARKED SOMETHING OR ANOTHER. 387.

12 DO YOU RECOGNIZE THIS?

13 A YES, I DO.

14 Q IS THIS THE GREY ROOM DOOR RIGHT THERE?

15 A YES.

16 Q TO GO TO ERIK MENENDEZ' BEDROOM YOU HAVE

17 TO WALK ALONG THIS WALKWAY, WHICH IS OPEN ON EITHER

18 SIDE ON BOTH SIDES?

19 A YES, CORRECT.

20 Q OKAY. NOW, THIS IS THE TRIP, IS IT NOT,

21 IN WHICH YOU CLAIM YOU WENT TO THE PLAY WITH LYLE

22 MENENDEZ, CORRECT?

23 A YES, THAT IS CORRECT.

24 Q YOU WENT ONLY WITH LYLE MENENDEZ, RIGHT?

25 A AS I REMEMBER IT, YES.

26 Q AND THIS PLAY STANDS OUT IN YOUR MIND

27 BECAUSE SOME OF YOUR FAVORITE ACTORS WERE IN IT,

28 CORRECT?

49609

1 A YES.

2 Q AND THE NIGHT OF THE PLAY -- WAS IT AT

3 NIGHT, BY THE WAY?

4 A YES, IT WAS.

5 Q AND THAT STANDS OUT IN YOUR MIND, RIGHT?

6 A I REMEMBER GOING TO THE PLAY, YES, I DO.

7 Q DID YOU EAT OUT THAT NIGHT?

8 A I DO NOT KNOW.

9 Q DID YOU GO BACK TO THE ELM DRIVE

10 LOCATION WITH LYLE MENENDEZ AFTER THE PLAY?

11 A I DON'T RECALL EXACTLY WHAT WE DID AFTER

12 THE PLAY.

13 Q DID YOU LIKE THE PLAY?

14 A YES, I DID.

15 Q DID YOU DISCUSS THE PLAY?

16 A I'M SURE WE DID, BUT I DO NOT RECALL THE

17 ACTUAL DISCUSSION.

18 Q AND YOU DON'T RECALL WHAT YOU DID AFTER

19 THE PLAY?

20 A NO. I'M SORRY, I DON'T.

21 Q YOU DON'T RECALL GOING BACK TO THIS

22 HOUSE, RIGHT?

23 MS. NAJERA: OBJECTION. ASKED AND ANSWERED.

24 THE COURT: OVERRULED.

25 THE WITNESS: I'M ASSUMING I DID, BUT THAT IS

26 AN ASSUMPTION.

27 Q BY MS. ABRAMSON: YOU DON'T RECALL

28 GOING --

1 MS. NAJERA: OBJECTION. MOTION TO STRIKE.

2 THE COURT: OBJECTION SUSTAINED.

3 THE ANSWER IS STRICKEN.

4 Q BY MS. ABRAMSON: YOU DON'T RECALL GOING  
5 INTO THE GUESTHOUSE WITH LYLE MENENDEZ; IS THAT  
6 RIGHT?

7 A CORRECT.

8 Q YOU DON'T RECALL GOING TO SLEEP WITH  
9 HIM?

10 A NO, I DO NOT.

11 Q OR NOT GOING TO SLEEP WITH HIM, AS THE  
12 CASE MAY HAVE BEEN.

13 A THAT'S CORRECT.

14 Q NOW, YOU WANT TO CHANGE YOUR TESTIMONY  
15 NOW AND SAY THAT YOU WERE STAYING IN BEDROOM 3 AND  
16 YOU WERE ACTUALLY ON YOUR WAY TO YOUR ROOM WHEN YOU  
17 HAD THE CONVERSATION WITH ERIK MENENDEZ?

18 MS. NAJERA: YOUR HONOR, I'D OBJECT. THAT'S  
19 ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 Q BY MS. ABRAMSON: ARE YOU NOW TESTIFYING  
22 THAT YOU WERE REALLY STAYING IN BEDROOM 3; AND,  
23 THEREFORE, YOU WERE GOING TO YOUR OWN ROOM BEFORE  
24 YOU HAD THIS CONVERSATION WITH ERIK MENENDEZ?

25 A I'M TESTIFYING THAT I DON'T RECALL.

26 Q DO YOU RECALL TELLING DETECTIVE ZOELLER,  
27 IN YOUR MOST RECENT STATEMENT, THAT YOU MIGHT HAVE  
28 BEEN HAVING A CHAT WITH ED BEFORE YOU SAW ERIK

1 MENENDEZ?

2 A YES, I MAY HAVE -- YOU KNOW, I WAS IN  
3 THE UPSTAIRS OF THE MENENDEZ HOUSE MANY, MANY TIMES  
4 DOING MANY THINGS. SO I REALLY DON'T RECALL.

5 MS. ABRAMSON: MOVE TO STRIKE THAT, YOUR  
6 HONOR, AS NONRESPONSIVE.

7 THE COURT: OVERRULED.

8 THE ANSWER WILL STAND.

9 Q BY MS. ABRAMSON: WELL, I'M ASKING YOU  
10 NOW IF YOU RECALL, DID YOU TALK TO ED BEFORE YOU  
11 WENT OVER TO ERIK'S BEDROOM?

12 A I DON'T REMEMBER EXACTLY, MS. ABRAMSON.  
13 I'M SORRY.

14 Q YOU MIGHT HAVE?

15 A AS I JUST SAID, I MAY HAVE -- I DID A  
16 MILLION DIFFERENT THINGS IN THAT HOUSE, SO -- IT'S  
17 NOT LIKE I TRIPPED AND FELL DOWNSTAIRS AND  
18 REMEMBERED THAT RIGHT BEFORE OR AFTER, YOU KNOW.  
19 THERE'S NOTHING THAT MONUMENTAL THAT WOULD HAVE MADE  
20 ME REMEMBER IT, OTHER THAN THE CONVERSATION I HAD  
21 WITH ERIK.

22 Q THE CONVERSATION WITH ERIK WAS SO  
23 MONUMENTAL THAT YOU REMEMBERED IT FOREVER; IS THAT  
24 CORRECT?

25 MS. NAJERA: OBJECTION. ARGUMENTATIVE.

26 THE COURT: SUSTAINED.

27 Q BY MS. ABRAMSON: WHAT WAS ERIK WEARING  
28 DURING THIS CONVERSATION?

49612

1 A I DON'T REMEMBER.

2 Q WHAT WERE YOU WEARING?

3 A I DO NOT RECALL.

4 Q AND WHAT WAS HE DOING WHEN -- I TAKE IT,  
5 YOU WERE APPROACHING HIS DOOR ON YOUR OWN. HE  
6 DIDN'T CALL OUT TO YOU?

7 A NO.

8 Q IS THAT CORRECT?

9 A THAT IS CORRECT.

10 Q SO YOU APPROACHED HIS DOOR; AND WHAT WAS  
11 HE DOING WHEN YOU FIRST LAID EYES ON HIM?

12 A I THINK I TESTIFIED THAT HE WAS SITTING  
13 AT HIS DESK, AND IT SEEMED TO ME HE WAS WRITING OR  
14 READING.

15 Q WHICH DESK?

16 A IN HIS ROOM.

17 Q WHERE WAS THE DESK IN HIS ROOM?

18 A IN THE KIND OF -- THERE'S LIKE AN ALCOVE  
19 KIND OF CORNER BY THE WINDOW.

20 Q THERE'S AN ALCOVE BY THE WINDOW?

21 A IT'S A LITTLE OPENING BY THE WINDOW,



22 LIKE RIGHT BY THAT ONE WINDOW RIGHT THERE  
23 (POINTING). IT DOESN'T SHOW IT THERE, BUT IT WAS  
24 KIND OF LIKE RECESSED, I GUESS IS THE WAY I  
25 REMEMBERED IT, OR THE WAY I REMEMBER IT.  
26 Q YOU'RE SAYING THERE IS A RECESS BY --  
27 LET ME GUIDE YOU ON THIS THING. THE LITTLE BLUE  
28 THINGS ARE WINDOWS.

49613

1 A THAT'S WHAT I ASSUMED.  
2 Q SO THERE'S A RECESS BY ONE OF THESE BLUE  
3 THINGS?  
4 A IF I REMEMBER CORRECTLY, OR MAYBE IT WAS  
5 JUST THE WINDOW THAT I REMEMBER HIS WINDOW BEING BY,  
6 SO IT SEEMS LIKE IT WAS OPEN.  
7 Q WHICH WINDOW WAS THE DESK BY?  
8 A I BELIEVE IT WAS BY THE FIRST WINDOW.  
9 IT'S HARD TO TELL.  
10 Q THIS ONE (POINTING)?  
11 A NO. ON THIS SIDE.  
12 Q THIS ONE?  
13 A NO. ON THIS SIDE OF THE FIRST WINDOW;  
14 IN BETWEEN THE TWO.  
15 Q IT'S MUCH BETTER, SINCE IT'S YOUR  
16 MEMORY, THAT YOU POINT.

17 A IN BETWEEN THE TWO WINDOWS WOULD BE TO  
18 MY BEST RECOLLECTION.

19 Q THIS DESK IS ON THIS SIDE OF THE ROOM,  
20 WHICH IS, I THINK, THE EAST SIDE OF THE ROOM,  
21 CORRECT?

22 A YES.

23 Q SO YOU HAD TO ACTUALLY ENTER THE ROOM  
24 BEFORE YOU COULD SEE HIM SITTING THERE, DIDN'T YOU?

25 A WELL, THE WAY THE DOOR IS SITUATED, YOU  
26 COULD ACTUALLY BE IN THE DOORWAY TO SEE HIM.

27 Q WELL, WERE YOU IN THE DOORWAY TO SEE  
28 HIM, OR DID YOU HAVE TO ENTER THE ROOM TO SEE HIM?

49614

1 A I BELIEVE I WAS JUST IN THE DOORWAY.

2 Q AND HE SEEMED TO BE WRITING?

3 A CORRECT, OR READING.

4 Q OR DOING SOMETHING?

5 A AGAIN, WE WERE TALKING SO...

6 Q NOW, IS IT YOUR TESTIMONY THAT AT THIS  
7 POINT, IN 1996, YOU NOW REMEMBER THE WORDS THAT YOU  
8 SAID TO HIM BEFORE HE SAID ANYTHING TO YOU?

9 MS. NAJERA: OBJECTION. MISSTATES THE  
10 TESTIMONY.

11 THE COURT: OVERRULED.

12 THE WITNESS: COULD YOU REPEAT THAT

13 QUESTION. I DON'T THINK I UNDERSTAND.

14 Q BY MS. ABRAMSON: IS IT YOUR TESTIMONY  
15 AT THE PRESENT TIME THAT YOU CAN REMEMBER WHAT YOU  
16 SAID TO ERIK MENENDEZ BEFORE HE MADE THIS REMARK  
17 ABOUT LYLE'S HAIR?

18 A NO. IT'S NOT MY TESTIMONY.

19 Q SO YOU CAN'T REMEMBER WHAT, IF ANYTHING,  
20 YOU SAID; IS THAT CORRECT?

21 A AS I TESTIFIED BEFORE, I BELIEVE IT WAS  
22 JUST SMALL TALK. HI, HOW ARE YOU DOING?

23 I THINK I SAID THAT YESTERDAY.

24 Q WELL, MS. PISARCIK, I'M NOT ASKING YOU  
25 WHAT YOU SAID BEFORE. I'M JUST ASKING YOU IF YOU  
26 REMEMBER.

27 DO YOU UNDERSTAND?

28 MS. NAJERA: I'D OBJECT TO COUNSEL'S

49615

1 COMMENTS.

2 THE COURT: JUST ASK A QUESTION, PLEASE.

3 Q BY MS. ABRAMSON: NOT JUST WITH RESPECT  
4 TO WHAT YOU TESTIFIED TO, BUT TO WHAT YOU NOW  
5 REMEMBER, DO YOU REMEMBER SPECIFICALLY REMEMBER ANY  
6 WORDS THAT YOU SAID TO ERIK MENENDEZ BEFORE HE MADE  
7 THIS STATEMENT YOU'VE ATTRIBUTED TO HIM?

8 A NOT SPECIFICALLY, NO.

9 Q AND DO YOU REMEMBER WHAT HIS FIRST WORDS  
10 WERE TO YOU?

11 A NOT SPECIFICALLY, NO.

12 Q IN FACT, DO YOU REMEMBER SPECIFICALLY  
13 ANY OF HIS WORDS?

14 A JUST -- JUST AS TO WHAT I STATED  
15 YESTERDAY, AS FAR AS HIM BEING SURPRISED THAT LYLE'S  
16 HAIR WAS SO PERFECT AND NOW HE KNEW WHY.

17 Q AND THOSE ARE HIS EXACT WORDS. I'M  
18 SURPRISED. "NOW I KNOW WHY LYLE'S HAIR IS SO  
19 PERFECT"?

20 A THAT WAS THE -- YES -- THE IDEA HE WAS  
21 CONVEYING TO ME, CORRECT.

22 Q I'M SURPRISED. "NOW I KNOW WHY LYLE'S  
23 HAIR IS SO PERFECT"?

24 A YES.

25 Q WHERE WAS LYLE WHEN YOU WERE IN THE  
26 HOUSE AND ERIK MENENDEZ WAS MAKING THIS STATEMENT TO  
27 YOU?

28 A I DO NOT KNOW.

49616

1 Q AND DID YOU THEN GO BACK AND HAVE A  
2 CONVERSATION WITH LYLE MENENDEZ ABOUT THE FACT THAT  
3 HIS BROTHER NOW KNEW THAT HE HAD -- WAS WEARING A

4 HAIRPIECE?

5 A I DON'T REMEMBER.

6 Q NOW, DID YOU EVER HAVE A CONVERSATION  
7 WITH ERIK MENENDEZ AGAIN, PARTICULARLY DURING THE  
8 TIME YOU WERE LIVING NEXT DOOR TO HIM IN THE MARINA  
9 CITY CLUB, ABOUT HOW IT WAS THAT HE LEARNED THAT  
10 LYLE HAD THAT HAIRPIECE?

11 A NOT THAT I RECALL; NOT SPECIFICALLY, NO.

12 Q DO YOU RECALL HAVING ANY CONVERSATIONS  
13 ABOUT ERIK MENENDEZ AT THE MARINA CITY CLUB  
14 CONCERNING LYLE'S HAIR?

15 MS. NAJERA: I'M GOING TO OBJECT. VAGUE.

16 THE COURT: OVERRULED.

17 THE WITNESS: ABOUT ERIK MENENDEZ?

18 MS. ABRAMSON: NO.

19 THE WITNESS: THAT'S WHAT YOU JUST SAID. I'M  
20 SORRY.

21 MS. ABRAMSON: NO.

22 Q I SAID: DO YOU HAVE ANY RECOLLECTION OF  
23 HAVING A CONVERSATION WITH ERIK MENENDEZ AT THE  
24 MARINA CITY CLUB ABOUT LYLE'S HAIR?

25 A NOT THAT STANDS OUT IN MY MIND LIKE THAT  
26 CONVERSATION DID, NO.

27 Q BUT YOU COULD HAVE HAD SUCH  
28 CONVERSATIONS; IS THAT YOUR TESTIMONY?

1       A    I DON'T RECALL.

2       Q    NOW, ONE OF THE OTHER THINGS THAT STANDS  
3 OUT IN YOUR MIND, I GATHER, IS THAT THIS TRIP DURING  
4 WHICH THESE WORDS WERE SPOKEN, WAS THE TRIP DURING  
5 WHICH YOU WENT TO THE PLAY; IS THAT RIGHT?

6       A    YES, THAT IS CORRECT.

7       Q    AND YOU'RE ABSOLUTELY CERTAIN ABOUT  
8 THAT; IS THAT CORRECT?

9       A    YES, I AM.

10      MS. ABRAMSON: CALLING THE COURT AND  
11 COUNSEL'S ATTENTION TO PAGE 22,394 OF THE FIRST  
12 TRIAL, I INTEND TO READ FROM LINE 11 ON THAT PAGE,  
13 SKIPPING OVER OBJECTIONS, TO 22,396, THE LAST LINE.

14      MS. NAJERA: TO -296, LINE?

15      MS. ABRAMSON: THE LAST LINE.

16      MS. NAJERA: NO OBJECTION.

17      MS. ABRAMSON:

18           "QUESTION: NOW, IS IT YOUR  
19 TESTIMONY THAT THE ONLY EVENT THAT YOU  
20 RECALL OCCURRING DURING THIS TRIP,  
21 WHERE YOU CLAIM THIS CONVERSATION  
22 OCCURRED, WAS THAT YOU WENT TO THE  
23 THEATRE?

24           "ANSWER: THAT IS SOMETHING THAT  
25 I DO REMEMBER FROM THAT TRIP, YES.

26           "QUESTION: YOU REMEMBER THAT  
27 FROM THAT PARTICULAR TRIP?

49618

1 THAT PARTICULAR TRIP. I DO REMEMBER  
2 SEEING A PLAY WHEN I WAS WITH LYLE ON  
3 ONE OF MY TRIPS.

4 "QUESTION: IS THE SEEING OF THE  
5 PLAY AN EVENT THAT YOU ARE SURE  
6 OCCURRED DURING THE SAME TRIP AS THE  
7 CONVERSATION YOU CLAIM YOU HAD WITH  
8 ERIK?

9 "ANSWER: IT COULD HAVE BEEN."  
10 LINE 12, COUNSEL.

11 "QUESTION: YESTERDAY YOU  
12 TESTIFIED THAT DURING THE SAME TRIP  
13 YOU WENT TO THE THEATRE.

14 "WOULD YOU LIKE TO AMEND THAT  
15 TESTIMONY?

16 "ANSWER: IT -- I COULD -- LYLE  
17 AND I COULD HAVE SEEN IT DURING THAT  
18 TRIP, YES, THAT IS TRUE.

19 "QUESTION: BUT YOU COULD HAVE  
20 SEEN IT DURING A DIFFERENT TRIP,  
21 RIGHT?

22 "ANSWER: IF I WAS OUT HERE

23 DURING -- YOU KNOW, A DIFFERENT TIME  
24 WHEN THAT PLAY WAS RUNNING, YEAH,  
25 MAYBE.  
26 "QUESTION: WELL, WHEN WAS THE  
27 PLAY RUNNING?  
28 "ANSWER: WELL, OBVIOUSLY, WHEN I

49619

1 WAS OUT HERE."  
2 GOING TO LINE 2 OF THE NEXT PAGE:  
3 "QUESTION: HOW MANY TIMES WERE  
4 YOU OUT HERE IN 1988-1989?  
5 "ANSWER: MANY TIMES.  
6 "QUESTION: SO DURING WHICH TIME  
7 DID YOU SEE THE PLAY?  
8 "ANSWER: I BELIEVE IT WAS AROUND  
9 THAT TIME.  
10 "QUESTION: WHEN WAS THAT TIME?  
11 "ANSWER: THE TIME OF WHAT? WHAT  
12 ARE YOU ASKING ABOUT?  
13 "QUESTION: WHEN YOU SAID YOU  
14 BELIEVE IT WAS THAT TIME, WHAT DID YOU  
15 MEAN BY 'THAT TIME'?  
16 "ANSWER: WHEN I WAS OUT HERE.  
17 "QUESTION: MS. PISARCIK, YOU  
18 SAID YOU WERE OUT HERE MORE THAN ONE



19 TIME; IS THAT RIGHT?  
20 "ANSWER: CORRECT, YES.  
21 "QUESTION: YOU'RE SURE ABOUT  
22 THAT, ARE YOU NOT?  
23 "ANSWER: YES, I AM.  
24 "QUESTION: AND ARE YOU CERTAIN  
25 THAT DURING ONE OF THESE TRIPS OUT  
26 HERE YOU WENT TO THIS PLAY?  
27 "ANSWER: CORRECT.  
28 "QUESTION: YOU'RE SURE OF THAT?

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1 "ANSWER: YES, I AM.  
2 "QUESTION: NO DOUBT IN YOUR  
3 MIND?  
4 "ANSWER: YES.  
5 "QUESTION: OKAY. DO YOU KNOW  
6 WHAT MONTH IT WAS WHEN YOU WENT TO THE  
7 PLAY?  
8 "ANSWER: NOT EXACTLY, I DO NOT."  
9 I HAVE NOTHING FURTHER, YOUR HONOR.  
10 THE COURT: ANY REDIRECT?  
11 MS. NAJERA: CERTAINLY, YOUR HONOR.  
12  
13

14 REDIRECT EXAMINATION

15 BY MS. NAJERA:

16 Q MS. PISARCIK, JUST GOING ON A LITTLE BIT

17 FURTHER, THE VERY NEXT LINE FROM WHERE MS. ABRAMSON

18 LEFT OFF, WERE YOU ASKED THE QUESTION:

19 "QUESTION: WHEN YOU SAY 'NOT

20 EXACTLY,' DO YOU HAVE SOME IDEA OR DO

21 YOU HAVE NO IDEA WHEN?

22 "ANSWER: I HAVE AN APPROXIMATE

23 TIME. I MEAN, IT COULD HAVE BEEN

24 CHRISTMAS TIME. IT COULD HAVE BEEN

25 JANUARY. IT COULD HAVE BEEN, YOU

26 KNOW, WHENEVER I WAS OUT HERE.

27 "QUESTION: WERE YOU OUT HERE

28 CHRISTMAS TIME?

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1 "ANSWER: I BELIEVE I WAS OUT

2 HERE AROUND CHRISTMAS TIME."

3 MS. ABRAMSON: I'M GOING. NO

4 FOUNDATION.

5 THE COURT: HOW MUCH FARTHER ARE YOU GOING TO

6 READ?

7 MS. NAJERA: THAT'S THE END OF IT.

8 THE COURT: OVERRULED.

9 Q BY MS. NAJERA: DID YOU TESTIFY TO THAT

10 IN THE FIRST TRIAL?

11 A YES, I DID.

12 Q NOW, PRIOR TO NOVEMBER, 1993 WHEN YOU  
13 WERE ASKED IN THE FIRST TRIAL AND YOU TESTIFIED  
14 THAT -- AND YOU TESTIFIED WHEN YOU WERE OUT HERE AND  
15 WHEN YOU HAD THIS CONVERSATION WITH ERIK MENENDEZ,  
16 DID YOU -- WELL, LET ME ASK YOU, FIRST OF ALL, WAS  
17 THE EXACT DATE AND MONTH WHEN YOU HAD THIS  
18 CONVERSATION WITH ERIK MENENDEZ CONCERNING LYLE  
19 MENENDEZ' HAIRPIECE IMPORTANT TO YOU?

20 A NO, NOT AT ALL.

21 Q HAD YOU EVER THOUGHT ABOUT THIS IN TERMS  
22 OF WHEN IT TOOK PLACE --

23 A NO.

24 Q -- BEFORE YOU WERE ASKED ABOUT IT?

25 A NO.

26 Q AND DID YOU DO THE BEST YOU COULD IN THE  
27 FIRST TRIAL TO TRY TO REMEMBER WHEN IT WAS?

28 MS. ABRAMSON: OBJECTION. YOUR HONOR,

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1 LEADING AND SUGGESTIVE.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, I DID.

4 Q BY MS. NAJERA: WERE YOU SURE OF THE

5 DATE WHEN THIS CONVERSATION TOOK PLACE DURING THE  
6 FIRST TRIAL?

7 A NO, I WAS NOT. I REMEMBER THE  
8 CONVERSATION.

9 Q AND DID YOU STATE THAT ON SEVERAL  
10 OCCASIONS WHEN YOU TESTIFIED DURING THE FIRST TRIAL?

11 A YES, I DID.

12 Q IN FACT, DID YOU STATE THAT AT ONE TIME  
13 OR ANOTHER TO EVERY ATTORNEY WHO QUESTIONED YOU  
14 DURING THE FIRST TRIAL?

15 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT'S  
16 IMPROPER. NO FOUNDATION. HEARSAY.

17 THE COURT: REPHRASE THE QUESTION, PLEASE.

18 Q BY MS. NAJERA: DO YOU RECALL BEING  
19 ASKED QUESTIONS BY MORE THAN ONE ATTORNEY?

20 A YES.

21 Q AND DID YOU EVER TELL ANY OF THE  
22 ATTORNEYS THE EXACT DATE?

23 A NO, I DID NOT.

24 Q DID YOU TELL EVERY ATTORNEY THAT YOU  
25 WEREN'T SURE?

26 A YES.

27 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR  
28 HONOR. FIRST OF ALL, THAT'S IMPROPER REHABILITATION

1 AND -- I THINK IT'S IMPROPER TO SUMMARIZE A HUNDRED  
2 PAGES OF TESTIMONY THAT WAY. IT'S NOT ACCURATE.

3 THE COURT: WELL, IT'S HER RECOLLECTION OF  
4 HER TESTIMONY.

5 OVERRULED.

6 MS. NAJERA: THANK YOU, YOUR HONOR.

7 Q DID YOU TESTIFY IN THE FIRST TRIAL, IN  
8 RESPONSE TO QUESTIONS BY MS. ABRAMSON, THAT WHEN YOU  
9 HAD THIS CONVERSATION WITH ERIK MENENDEZ, IT WAS  
10 DURING THE TRIP THAT YOU SAW "HURLEY-BURLEY"?

11 A YES, I DID.

12 Q AND DURING THAT FIRST TRIAL, WERE YOU  
13 SHOWN ANYTHING TO HELP YOU REFRESH YOUR RECOLLECTION  
14 AS TO WHEN "HURLEY-BURLEY" WAS PLAYING?

15 A NO.

16 Q AND BEFORE YOU TESTIFIED IN THIS TRIAL,  
17 WERE YOU SHOWN SOMETHING TO HELP YOU REFRESH YOUR  
18 RECOLLECTION?

19 A YES.

20 Q AND IS IT THE BEST OF YOUR RECOLLECTION  
21 THAT IN CHRISTMAS OF 1988 YOU CAME OUT TO  
22 CALIFORNIA, AND YOU SAW THE PLAY "HURLEY-BURLEY"?

23 A YES, THAT IS CORRECT.

24 Q AND WAS IT DURING THIS TIME THAT YOU HAD  
25 A CONVERSATION WITH ERIK MENENDEZ CONCERNING LYLE  
26 MENENDEZ' HAIRPIECE?

27 A YES.

1 MS. NAJERA: I HAVE NOTHING FURTHER.

2 THE COURT: ANYTHING ELSE?

3

4 RECROSS-EXAMINATION

5 BY MS. ABRAMSON:

6 Q. ARE YOU RETRACTING WHAT YOU SAID AT THE  
7 LAST TRIAL THAT YOU WERE OUT HERE MANY TIMES IN '88 AND  
8 '89?

9 A. OUT HERE IN CALIFORNIA?

10 Q. YEAH, HERE, SOUTHERN CALIFORNIA?

11 A. I DON'T -- AM I RETRACTING THAT?

12 Q. YES. I JUST READ THAT TO YOU, DID I NOT?

13 A. YES, I BELIEVE YOU DID.

14 Q. AND I READ TO YOU THAT AT THE PREVIOUS  
15 TRIAL YOU SAID IT WAS ON ONE OF YOUR TRIPS IN LATE '88  
16 AND '89 THAT YOU WENT AND SAW A PLAY, CORRECT?

17 A. BUT WHEN THE MENENDEZES LIVED IN THE ELM  
18 HOUSE WAS FROM OCTOBER, SO IT REALLY COULD HAVE BEEN  
19 OCTOBER ON. THAT'S WHEN THEY MOVED INTO THE HOUSE.

20 SO OCTOBER, NOVEMBER AND DECEMBER.

21 Q. OH, BUT YOU KNEW AT THE LAST TRIAL THAT WE  
22 WERE TALKING ABOUT TIMES THAT YOU COULD HAVE BEEN HERE  
23 WHEN THIS CONVERSATION TOOK PLACE, DIDN'T YOU?

24 MS. NAJERA: OBJECTION. ARGUMENTATIVE AND  
25 ASSUMES A FACT NOT IN EVIDENCE.

26 THE COURT: OVERRULED.

27 THE WITNESS: COULD YOU REPEAT THAT, PLEASE.

28 Q. BY MS. ABRAMSON: YOU KNEW WHEN YOU WERE

1 BEING QUESTIONED BY MISS LANSING AND MYSELF AT THE LAST  
2 TRIAL THAT WE WERE ASKING YOU ABOUT TRIPS HERE WHEN THIS  
3 CONVERSATION COULD HAVE TAKEN PLACE, CORRECT?

4 A. YES, THAT IS CORRECT.

5 Q. AND YOU ALWAYS -- WELL, EVER SINCE YOU  
6 FIRST CAME UP WITH THIS RECOLLECTION --

7 MS. NAJERA: YOUR HONOR, I WOULD OBJECT TO  
8 COUNSEL'S STATEMENT AS ARGUMENTATIVE.

9 MS. ABRAMSON: I HAVEN'T FINISHED.

10 MS. NAJERA: I OBJECT TO THAT PART OF THE  
11 STATEMENT.

12 THE COURT: WHY DON'T YOU START OVER AGAIN.

13 Q. BY MS. ABRAMSON: THE FIRST TIME YOU EVER  
14 MENTIONED THIS SUPPOSED CONVERSATION WAS NOVEMBER 2ND,  
15 1993, CORRECT?

16 A. YES, IT WAS.

17 Q. AND FROM THAT TIME TO THIS YOU HAVE ALWAYS  
18 SAID THE CONVERSATION TOOK PLACE IN ERIK MENENDEZ'  
19 BEDROOM IN THE ELM DRIVE HOUSE, CORRECT?

20 A. THAT IS CORRECT.

21 Q. SO, YOU KNEW AT THE PREVIOUS TRIAL THAT IF  
22 WE WERE TALKING ABOUT TRIPS DURING WHICH YOU COULD HAVE  
23 HAD THIS CONVERSATION IN ERIK MENENDEZ' BEDROOM, WE WERE  
24 TALKING ABOUT TRIPS DURING THE TIME THAT THE FAMILY  
25 LIVED IN THIS HOUSE, CORRECT?

26 A. THAT IS CORRECT.  
27 MS. ABRAMSON: I HAVE NOTHING FURTHER.  
28 THE COURT: ANYTHING ELSE?

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1 MS. NAJERA: I HAVE NOTHING.  
2 THE COURT: OKAY. THANK YOU. YOU MAY STEP DOWN.  
3 LET ME SEE COUNSEL -- WELL, INSTEAD OF  
4 THAT, LET'S HAVE THE JURY GO IN THE JURY ROOM JUST FOR A  
5 COUPLE OF MINUTES. I WANT TO TALK TO THE LAWYERS ABOUT  
6 SCHEDULING, AND WE WILL HAVE YOU COME OUT AND EXCUSE YOU  
7 FOR THE BALANCE OF THE DAY.  
8 (JURY ENTERS THE JURY ROOM  
9 AND THE FOLLOWING PROCEEDINGS  
10 WERE HELD:)  
11  
12 THE COURT: ALL RIGHT. THE JURY HAS LEFT.  
13 I JUST WANTED TO GET A LITTLE FEEDBACK FROM  
14 COUNSEL ON THE REMAINDER OF THE TRIAL HERE.  
15 MS. ABRAMSON: I WANTED TO MAKE A REQUEST, YOUR  
16 HONOR, WITH RESPECT TO TIMING FOR THE JURY TOMORROW, IF  
17 I COULD.  
18 THE COURT: BEFORE WE GET TO THE SPECIFIC TIME  
19 FOR TOMORROW, I WANT TO FIND OUT, THE PEOPLE HAVE  
20 DR. DIETZ AND POSSIBLY THIS OTHER DOCTOR, AND YOU WOULD  
21 EXPECT TO COMPLETE YOUR YOUR CASE BY THE END OF THIS



22 WEEK?

23 MR. CONN: YES, YOUR HONOR.

24 THE COURT: OKAY. AND HOW MANY WITNESSES DOES

25 THE DEFENSE HAVE IN REBUTTAL?

26 MS. ABRAMSON: I HAVE TO DO A COUNT, YOUR HONOR.

27 GIVE ME MINUTE.

28 RIGHT NOW IT LOOKS LIKE EIGHT, YOUR HONOR.

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1 THE COURT: AND WHO ARE THEY?

2 MS. ABRAMSON: YOU WANT TO KNOW WHO THEY ARE?

3 WE'RE SUPPOSED TO SHOW OUR CARDS THIS EARLY IN THE GAME?

4 I CAN TELL YOU WHO SOME OF THEM ARE.

5 THE COURT: WHO ARE THEY?

6 MS. ABRAMSON: KATHERINE BULOW-COHEN. DOUG DOSS.

7 TWO PEOPLE FROM THE CHARITY IN SANTA BARBARA. ED FENNO,

8 TERRY BARALT, DR. VICARY, DR. WILSON AND A

9 METEOROLOGIST.

10 THE COURT: WHO IS BULOW-COHEN?

11 MS. ABRAMSON: CASEY WHELAN'S MOTHER, TO WHOM

12 CRAIG CIGNARELLI MADE STATEMENTS.

13 THE COURT: I JUST FORGOT HER NAME.

14 AND IF THE PEOPLE REST BY THE END OF THIS

15 WEEK, YOU WOULD BE --

16 MS. ABRAMSON: OH, I'M SORRY. I FORGOT. THERE

17 IS ANOTHER PERSON. LINDA ELMAN.

18 THE COURT: WHO IS THAT?

19 MS. ABRAMSON: SHE IS THE EXECUTIVE PRODUCER OF  
20 "HARD COPY", AND SHE IS COMING IN FRIDAY MORNING, YOUR  
21 HONOR. THAT'S THE ONLY DAY WE CAN GET HER. SHE'S BEEN  
22 OUT TRAVELING. SHE IS GOING TO BE HERE THEN, AND THEN  
23 SHE IS GOING TO BE GONE AGAIN. SO WE ARE GOING TO ASK  
24 THE COURT FOR LEAVE TO PUT HER ON.

25 THE COURT: AND YOU EXPECT THEN FROM THIS OFFER  
26 THAT YOU WOULD BE THROUGH BY THE END OF NEXT WEEK?

27 MS. ABRAMSON: CLOSE, YES. MOST OF THESE  
28 WITNESSES ARE VERY BRIEF. I THINK DR. VICARY WILL BE

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1 EXTENSIVE; DR. WILSON SHORTER.

2 THE COURT: WELL, JUST FROM WHO YOU IDENTIFIED  
3 HERE, IT DOESN'T SEEM LIKE IT WOULD TAKE MORE THAN THREE  
4 OR FOUR DAYS TO FINISH.

5 MS. ABRAMSON: PROBABLY NOT.

6 THE COURT: YES. AT THIS POINT DOES THE  
7 PROSECUTION ANTICIPATE ANY ADDITIONAL REBUTTAL TO THAT?

8 MR. CONN: WE WOULD OBJECT TO THE CALLING OF SOME  
9 OF THESE WITNESSES, IN PARTICULAR DR. VICARY AND  
10 DR. WILSON. I THINK THAT -- AND WE WOULD ALSO LIKE AN  
11 OFFER OF PROOF AS TO THE REMAINDER.

12 THE COURT: OKAY. WE CAN DISCUSS THAT. I JUST  
13 WANTED TO FIND OUT, ASSUMING EVERYBODY TESTIFIED HERE,

14 WOULD YOU BE PUTTING ON ANY LENGTHY REBUTTAL TO THAT?

15 MR. CONN: I THINK THEN WE WOULD CONSIDER WHETHER  
16 WE WANT TO CALL ADDITIONAL MENTAL HEALTH EXPERTS IN  
17 RESPONSE TO THOSE CALLED BY THE DEFENSE.

18 THE COURT: OKAY.

19 MS. ABRAMSON: I THOUGHT WE ALREADY HAD A HEARING  
20 ON WHY I COULDN'T CALL VICARY IN MY CASE-IN-CHIEF. BUT  
21 IF THE PEOPLE CALL DIETZ, AND GO INTO MATTERS HAVING --

22 THE COURT: I DON'T WANT TO GET INTO THE MERITS  
23 OF EVERYTHING. I WAS TRYING TO GET A SCHEDULE HERE SO I  
24 CAN GIVE THE JURY SOME IDEA.

25 MS. ABRAMSON: NOW WITH RESPECT TO TOMORROW, YOUR  
26 HONOR, I WOULD LIKE TO HAVE MY FULL DAY, AS THE PEOPLE  
27 HAD, TO PREPARE FOR THEIR MENTAL HEALTH WITNESS,  
28 FOLLOWING A LATE-NIGHT INTERVIEW WITH HIM.

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1 THEY WERE GIVEN A FULL DAY AFTER THEY  
2 TALKED TO DR. WILSON AND HAD HIS NOTES. THEY DIDN'T USE  
3 IT FOR FURTHER INTERVIEWING.

4 NOW I HAVE TO SPEND BETWEEN NOW UNTIL NOON  
5 PREPARING OBJECTIONS TO THE MATERIALS THAT THEY  
6 SUBMITTED TO DR. DIETZ, AND I WOULD LIKE TO HAVE MY DAY.  
7 I HAVE A LOT OF MATERIALS TO STILL GO OVER.

8 SO I WOULD ASK IF THE COURT COULD SEE ITS  
9 WAY CLEAR TO HAVE THE JURY COME BACK TOMORROW AFTERNOON

10 TO START DR. DIETZ.

11 THE COURT: WELL, I WOULD BE RELUCTANT DO THAT,  
12 BECAUSE WE HAVE A SITUATION THURSDAY AND FRIDAY, SHORT  
13 DAYS BOTH AFTERNOONS, AND --

14 MS. ABRAMSON: THAT DOESN'T HELP MY PREPARATION  
15 TIME. THAT'S WHAT I NEED.

16 THE COURT: I UNDERSTAND. BUT IT DOES CUT BACK  
17 ON THE AMOUNT OF TIME FOR THE COMPLETION OF THE TRIAL,  
18 AND I UNDERSTAND YOUR PROBLEM.

19 MS. ABRAMSON: IT DOESN'T MOVE YOU, HOWEVER,  
20 OBVIOUSLY.

21 THE COURT: WELL, YOU DID HAVE SOME TIME LAST  
22 NIGHT AFTER THE MEETING TO WORK ON IT AS WELL. SO I  
23 THINK TOMORROW, WITH THE UNDERSTANDING THAT IT COULD  
24 VERY WELL BE THAT --

25 MS. ABRAMSON: WELL, THEY DID, TOO.

26 THE COURT: WELL, YOU WERE THE BENEFICIARY OF THE  
27 FACT THAT THE PEOPLE -- THERE WAS A GAP OF ONE DAY  
28 BEFORE WILSON TESTIFIED. YOU HAD THE BENEFICIARY OF

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1 THAT AS WELL, TO PREPARE FOR HIS TESTIMONY. SO IT  
2 WORKED BOTH WAYS.

3 MS. ABRAMSON: AND SO THEY WILL BE THE  
4 BENEFICIARY AS WELL.

5 THE COURT: I UNDERSTAND THAT. BUT WE HAVE TO

6 KEEP THE TRIAL IN PROGRESS, AND I THINK CONSIDERING THE  
7 FACT THE JURY IS HERE FOR JUST A SHORT TIME TODAY, AND  
8 THE AMOUNT OF MATERIAL -- YOU HAVE HAD THE MATERIALS,  
9 SOME MATERIAL FROM DR. DIETZ AHEAD OF TIME, THE  
10 VIDEOTAPES, AND THERE MIGHT BE SOME HEARINGS INVOLVING  
11 HIS TESTIMONY TOMORROW MORNING, DEPENDING ON WHAT  
12 DEVELOPS WITH THE REFINEMENT OF WHAT HE'S GOING TO  
13 CONSIDER AND HIS OPINIONS.

14 I JUST DON'T THINK WE CAN EXCUSE THE JURY  
15 FOR TOMORROW MORNING.

16 SO WE WILL HAVE THEM COME OUT, PLEASE.

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

20

21 THE COURT: OKAY. WE ARE NOW BACK IN SESSION.

22 I WAS TALKING TO THE LAWYERS ABOUT THE  
23 REMAINDER OF THE TRIAL, JUST TRYING TO GET AN ESTIMATE  
24 AS TO WHEN ALL THE EVIDENCE WILL BE PRESENTED, AND THE  
25 CASE WILL BE IN A POSITION TO BE SUBMITTED TO THE JURY  
26 TO DECIDE, AND IT SEEMS THAT IT'S POSSIBLE BY THE END OF  
27 NEXT WEEK THE EVIDENCE PHASE WILL BE OVER. IT MIGHT  
28 SPILL OVER A LITTLE BIT INTO THE WEEK OF THE 20TH OF

-15905

1 FEBRUARY, BUT WE'RE GETTING FAIRLY CLOSE NOW TO THE END

2 OF THE PRESENTATION OF THE EVIDENCE, AND THEN, AS I HAVE  
3 DISCUSSED IN EARLIER CONVERSATIONS WITH YOU ABOUT THE  
4 PROCEDURES OF THE CASE, AFTER THE EVIDENCE IS PRESENTED,  
5 THEN THE LAWYERS ARGUE THE CASE, AND THEN I WILL  
6 INSTRUCT YOU ON THE LAW, AND YOU WILL GO IN TO  
7 DELIBERATE.

8 SO WE ARE GETTING FAIRLY CLOSE TO THE END  
9 OF THE EVIDENCE PHASE OF THIS TRIAL.

10 AS I INDICATED THIS MORNING, WE HAVE SOME  
11 MATTERS THAT HAVE TO BE DEALT WITH. SOME OF THEM WILL  
12 BE DEALT WITH IN COURT, AND SOME REQUIRE THE LAWYERS TO  
13 BE OUTSIDE THE COURT TO DEAL WITH CERTAIN MATTERS  
14 RELATING TO UPCOMING EVIDENCE AND TESTIMONY IN THE  
15 TRIAL, AND UNFORTUNATELY IT WILL PREVENT US FROM  
16 PROCEEDING TODAY FURTHER WITH YOU, BUT WE WILL RESUME  
17 TOMORROW.

18 WHEN YOU COME IN TOMORROW, IT'S POSSIBLE  
19 THAT THERE WILL BE SOME MATTERS THAT THE LAWYERS AND I  
20 WILL HAVE TO DEAL WITH IN THE MORNING FOR A SHORT PERIOD  
21 OF TIME, HOPEFULLY NOT TOO LONG.

22 BUT WITH THE OFF-CHANCE THAT WE MIGHT BE  
23 ABLE TO PROCEED WITH YOU FIRST THING IN THE MORNING, I  
24 WILL ASK THAT YOU RETURN TOMORROW AT 8:30.

25 DON'T DISCUSS THE MATTER WITH ANYONE.  
26 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T PERMIT  
27 YOURSELVES TO BE EXPOSED TO ANYTHING ABOUT THIS CASE  
28 OUTSIDE THE COURTROOM, AND WE WILL SEE YOU ALL BACK HERE

1 TOMORROW AT 8:30.

2 (THE JURY EXITS THE COURTROOM

3 AND THE FOLLOWING PROCEEDINGS

4 WERE HELD:)

5

6 THE COURT: OKAY. AS FAR AS DISCUSSION OF

7 EXHIBITS THEN, I WILL ASK THAT COUNSEL BEGIN THIS

8 MORNING AND WORK ON IT THROUGHOUT THE DAY WITH THE CLERK

9 AND AMONG YOURSELVES DISCUSSING EXHIBITS. THOSE THAT

10 ARE NOT SUBJECT TO OBJECTION -- THOSE THAT ARE SUBJECT

11 TO OBJECTION, ISOLATE THOSE SO THAT WE CAN DEAL WITH

12 THOSE, AS WELL AS THE DECEMBER 11TH TAPE.

13 YOU INDICATED THERE WERE CERTAIN PORTIONS

14 THAT WERE IN DISPUTE. I THINK YOU HAVE A COPY OF THE

15 TRANSCRIPT. IF YOU CAN FIND THOSE PORTIONS FOR ME, IT

16 WOULD HELP ME, AND WE CAN EITHER DO IT IN OPEN COURT OR

17 I CAN DO IT IN CHAMBERS.

18 MS. TOWERY: YOUR HONOR, I THINK WE HAVE ALREADY

19 REACHED AN IMPASSE BETWEEN THE TWO SIDES IN TERMS OF

20 ABILITY TO AGREE ON WHAT THE TAPE SAYS.

21 THE COURT: OKAY.

22 MS. TOWERY: AND --

23 THE COURT: IF YOU COULD THEN FIND ON THE TAPE

24 THOSE PORTIONS THAT ARE IN DISPUTE, AND IF THOSE AREAS

25 WHERE YOU'RE IN DISAGREEMENT ARE ALREADY IDENTIFIED IN

26 THE DOCUMENT YOU GAVE ME BEFORE, THEN --

27 MS. TOWERY: RIGHT.

28 THE COURT: -- I COULD JUST LISTEN TO THOSE.

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1 MS. TOWERY: THAT'S FINE. THERE ARE VERY FEW  
2 AREAS, SO WE CAN JUST CUE THE TAPE UP FOR THE COURT.

3 THE COURT: JUST GIVE ME THE COUNTER NUMBERS OR  
4 WHATEVER IT IS, SO I CAN FIND IT. WHATEVER YOU WANT TO  
5 DO IN OPEN COURT, THAT'S FINE.

6 MS. TOWERY: IT'S FINE WITH US THAT WE JUST  
7 SUBMIT THE COUNTER NUMBER, IF THAT'S AGREEABLE WITH THE  
8 DISTRICT ATTORNEY.

9 THE BAILIFF: THE JURY IS READY.

10 THE COURT: OKAY. AS LONG AS THE COUNTER NUMBER  
11 CORRESPONDS WITH WHAT YOU GIVE ME.

12 WE WILL BE IN RECESS THEN.

13 (A RECESS WAS TAKEN FROM

14 10:30 A.M. TO 11:50 A.M.)

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

4

5 THE COURT: IN THE TRIAL, WITHOUT THE JURY,  
6 THE LAWYERS ARE HERE.



7 MS. ABRAMSON: OUR HOMEWORK ASSIGNMENT.  
8 WE'VE BEGUN GOING THROUGH THE MATERIALS DILIGENTLY  
9 SINCE WE LEFT COURT, AND WE'RE THROUGH PROBABLY LESS  
10 THAN A FOURTH OF THEM.

11 AND WHAT I'M DOING IS -- WHAT WE HAVE TO  
12 DO IS FIRST LOOK AT WHAT DR. DIETZ HIGHLIGHTED --  
13 WE'RE IGNORING ANYTHING HE DIDN'T -- FIGURE OUT IF  
14 IT'S IN EVIDENCE OR NOT; AND IF IT ISN'T IN  
15 EVIDENCE, OR IS OTHERWISE OBJECTIONABLE, I'M WRITING  
16 IT ALL OUT SO THE COURT CAN KNOW OUR SPECIFIC  
17 OBJECTION.

18 THIS IS GOING TO TAKE ALL DAY. AND SO I  
19 JUST WANT THE COURT TO KNOW IT'S GOING TO TAKE ALL  
20 DAY. IT'S TAKING THE DAY I'M SUPPOSED TO BE  
21 PREPARING.

22 AND WHAT'S EMERGING IS JUST TO WHAT  
23 EXTENT THIS WITNESS WAS GIVEN TOTALLY UNRELIABLE  
24 INFORMATION.

25 JUST AS AN EXAMPLE, YOUR HONOR, WHICH IS  
26 WHY I'M RENEWING A REQUEST THAT WE DO AN -- APART  
27 FROM JUDALON SMYTH AND ALL THE MADNESS OF WHAT SHE  
28 HAD -- JUST AS AN EXAMPLE. THEY GAVE -- THE

2 VERY EARLY REPORTS IN THE CASE -- GAVE THEM A SEARCH  
3 WARRANT AFFIDAVIT IN WHICH THEY INCLUDED INFORMATION  
4 FROM A YOUNG MAN NAMED GREG GUEST, WHO WAS A FRIEND  
5 OF LYLE MENENDEZ AT PRINCETON. AND GREG GUEST  
6 CLAIMED -- WHICH WE THINK TURNED OUT TO BE A HOAX --  
7 THAT HE FOUND A .12-GAUGE EXPENDED SHOTGUN SHELL IN  
8 LYLE MENENDEZ' JEAN JACKET.

9 NOW, WHAT IS NOT INCLUDED IN THAT  
10 AFFIDAVIT, YOUR HONOR, IS THE FACT THAT THE SHELL  
11 WAS EXAMINED BY FIREARM'S PEOPLE AND WAS DETERMINED  
12 TO BE THE WRONG KIND OF AMMUNITION, NOT CONNECTED  
13 WITH THIS CASE. AND HERE'S DR. DIETZ BEING LED INTO  
14 RELYING ON THIS. THIS IS HIGHLIGHTED. I'M NOT  
15 QUOTING ANYTHING HE DIDN'T HIGHLIGHT.

16 THEN THERE'S AN ATTRIBUTION OF A  
17 STATEMENT IN THE SAME SEARCH WARRANT WHICH THE  
18 DOCTOR HIGHLIGHTED TO GLENN STEVENS.

19 "LYLE TOLD HIM THAT LYLE MENENDEZ  
20 TESTIFIED TO A SECOND WILL IN THE  
21 PARENTS' COMPUTER AND HIRED AN EXPERT  
22 TO ERASE A SECOND WILL WHICH WOULD NOT  
23 BENEFIT HIM."

24 WE'RE NOT TALKING HERE ABOUT 59  
25 CHARACTERS ON A SCREEN, BUT A WILL.

26 THEN JOAN WHITE IS ALSO INCLUDED AND  
27 HIGHLIGHTED BY THE DOCTOR ON THIS SEARCH WARRANT.

28 "LYLE COMMITTED THE RESIDENTIAL

1 BURGLARY AND ERIK TOOK THE RAP FOR  
2 HIM.

3 "LYLE WAS FIRED AT JOSE MENENDEZ'  
4 SUGGESTION AFTER HIS SUPERVISOR  
5 COMPLAINED OF LYLE'S POOR WORK  
6 PERFORMANCE."

7 NOW, I CAN TELL YOU THAT I KNOW THE  
8 IMPORTANCE OF THESE THINGS TO DR. DIETZ, BECAUSE HE  
9 PREPARED A SERIES OF NOTES, AND ONE OF THESE SERIES  
10 OF NOTES HAS TO DO WITH MOTIVE; AND HE INCLUDED THIS  
11 FACT, FOR EXAMPLE: THAT -- THIS SUPPOSED FACT THAT  
12 LYLE WAS FIRED BY HIS FATHER AS PART OF LYLE  
13 MENENDEZ' MOTIVE TO KILL.

14 THE COURT: WELL, I ASSUME THAT DR. DIETZ IS  
15 NOT GOING TO TESTIFY ABOUT MOTIVE, SINCE THAT WOULD  
16 NOT BE A PROVINCE OF AN EXPERT WITNESS.

17 MS. ABRAMSON: OH, I AGREE ENTIRELY.

18 THE COURT: WHY DO WE WORRY ABOUT THESE  
19 THINGS? HE'S NOT GOING TO BE TALKING ABOUT LYLE  
20 MENENDEZ AT ALL, AS I UNDERSTAND IT.

21 MR. GESSLER: WELL --

22 MS. ABRAMSON: BUT THE PROBLEM IS, HOW DO WE  
23 NOW GO BACK AND ERASE HIS MIND WHEN WHAT WE'RE  
24 SEEING IS AN ENORMOUS AMOUNT OF THIS MATERIAL IS NOT  
25 IN EVIDENCE, IS NOT RELIABLE, AND THAT'S WHAT HE'S

26 BEEN SATURATED WITH SINCE MAY OF '95, SINCE THEY  
27 FIRST STARTED SUBMITTING --  
28 THE COURT: HE'S A PROFESSIONAL. HE CAN

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1 SEGREGATE THOSE THINGS HE CAN CONSIDER FROM THOSE HE  
2 CAN'T.

3 AS I UNDERSTAND IT, HE'S GOING TO  
4 BASICALLY RELY UPON HIS EXAMINATION OF THE DEFENDANT  
5 AND MATERIALS THAT ARE NOT IN CONTROVERSY.

6 MS. ABRAMSON: I DON'T KNOW WHAT THEY WOULD  
7 BE YET.

8 MR. GESSLER: THE EXAMINATION OF THE  
9 CO-DEFENDANT AND THE QUESTIONS THAT WERE ASKED COME  
10 DIRECTLY FROM THIS (INDICATING).

11 MS. ABRAMSON: FROM THIS (INDICATING).

12 MR. GESSLER: (CONTINUING) WHICH WE ARE GOING  
13 THROUGH AND GIVING TO THE COURT; THAT IS, TESTIMONY  
14 THAT HAS NEVER COME UP IN THE TRIAL; THINGS THAT  
15 JUDALON SMYTH REPORTED, OR THAT SUPPOSEDLY WENT TO  
16 OZIEL THROUGH JUDALON SMYTH, OR THIRD-PARTY  
17 STATEMENTS CONCERNING LYLE'S ACTIVITIES IN  
18 SUPPOSEDLY SELLING DRUGS BACK IN TRENTON, NEW JERSEY.

19 ALL OF THIS WAS GONE INTO IN THE  
20 EXAMINATION OF ERIK MENENDEZ AND WAS THE MATERIAL  
21 USED BY DR. DIETZ. SO IF ANY OPINIONS HE HAS

22 CONCERNING ERIK MENENDEZ ARE BASED ON THIS ONE-SIDED  
23 BIASED MATERIAL, MUCH OF WHICH IS UNTRUE, AND MOST  
24 OF WHICH HAS NOT BEEN BROUGHT OUT IN THE COURT  
25 ITSELF, I CAN'T SEE ANYBODY DIVORCING THEIR OPINION  
26 OF ERIK MENENDEZ AND WHAT HE WAS SUFFERING FROM,  
27 FROM THE UNDERLYING MATERIAL UPON WHICH THEY  
28 QUESTIONED HIM.

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1 AND THAT IS THE FALSE PREMISE FROM WHICH  
2 HE WAS LED TO START BY THE DISTRICT ATTORNEY IN THE  
3 SELECTED MATERIAL WHICH THEY GAVE DR. DIETZ.  
4 MS. ABRAMSON: IT WASN'T AS IF THEY GAVE HIM --  
5 I DON'T KNOW IF THE COURT REMEMBERS WAY, WAY BACK,  
6 BUT AT ONE POINT MRS. BOZANICH REORGANIZED ALL THE  
7 EARLY POLICE REPORTS IN THE CASE AND PUT THEM IN  
8 WHAT WAS CALLED THE "P-FILE" AND THAT'S WHAT THESE  
9 DOCUMENTS ARE BEING DROWN OUT OF. INSTEAD OF JUST  
10 TURNING OVER THE WHOLE INVESTIGATIVE FILE, THEY  
11 PULLED OUT THESE SELECTED REPORTS THAT BEAR ON THEIR  
12 THEORY OF THE CASE, EVEN IF THEY WERE NEVER ABLE TO  
13 PROVE IT UP.  
14 SO, I MEAN, I KNOW WHAT THE COURT IS  
15 SAYING, BUT I DO THINK WE NEED A FAIRLY DETAILED  
16 EXAMINATION OF DR. DIETZ NOW TO SEE HOW HE WOULD

17 PROPOSE -- FIRST OF ALL, TO LET HIM KNOW WHAT HE  
18 CAN'T RELY ON, AND SEE WHETHER HE FEELS HE THEN HAS  
19 ENOUGH INFORMATION TO FORM ANY OPINIONS.  
20 WHAT HE INDICATED LAST NIGHT IS THAT HIS  
21 INTERVIEWS WITH THE DEFENDANT DOESN'T EVEN AMOUNT TO  
22 MUCH EXCEPT THAT IT ALLOWED HIM TO DIAGNOSE MY  
23 CLIENT WITH A GENERAL ANXIETY DISORDER; THAT  
24 BASICALLY WHAT HE WAS RELYING ON, AS FAR AS A  
25 RECITATION SPECIFICALLY OF MY CLIENT'S VERSION OF  
26 THE FACTS, WAS HIS SWORN TESTIMONY.  
27 BUT THEN IN HIS NOTES HE PULLS IN ALL  
28 THIS INFORMATION FROM THESE REPORTS THAT HAS NEVER

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1 BEEN IN EVIDENCE TO DISPUTE MY CLIENT'S TESTIMONY.  
2 MR. GESSLER: HE ALSO STATED, YOUR HONOR,  
3 THAT IT WAS HIS OPINION HE WAS ENTITLED TO RELY UPON  
4 EVERYTHING THAT HAD BEEN GIVEN TO HIM, WHETHER IN  
5 COURT OR NOT.  
6 THE COURT: OKAY. WHAT IS THE PEOPLE'S  
7 RESPONSE TO THIS?  
8 MR. CONN: WELL, I THINK THAT DR. DIETZ IS  
9 GOING TO RELY PRIMARILY UPON HIS INTERVIEW WITH THE  
10 DEFENDANT AND THE DEFENDANT'S TESTIMONY HERE IN  
11 TRIAL. THAT'S PRIMARILY WHAT HIS OPINION IS BASED  
12 UPON. NOW, HE'S BEEN GIVEN SOME ADDITIONAL POLICE

13 REPORTS AND BACKGROUND MATERIAL, AND THAT IS  
14 SOMETHING THAT HE HAS REVIEWED. BUT THAT'S NOT TO  
15 SAY HE IS NECESSARILY BASING HIS OPINION ON THAT.  
16 I DON'T THINK THERE'S ANY ONE FACT OR  
17 SERIES OF FACTS THAT ARE CONTAINED INSIDE THAT  
18 MATERIAL THAT WOULD CAUSE HIM TO CHANGE HIS OPINION  
19 AS TO THE DIAGNOSIS OF THE DEFENDANT. EVERYTHING  
20 THAT THEY'RE REFERRING TO RELATES TO LYLE MENENDEZ,  
21 ARE THINGS THAT REALLY DO NOT SEEM TO BEAR  
22 WHATSOEVER ON THE DIAGNOSIS OF THE DEFENDANT.

23 SO I ALSO AGREE WITH THE COURT, THAT WE  
24 ARE NOT GOING TO BE PRESENTING A MOTIVE. THIS IS  
25 SOMETHING THAT COUNSEL WISHES TO GO INTO. AND WHEN  
26 SHE WAS EXAMINING THE WITNESS YESTERDAY IN REGARD TO  
27 MATTERS SUCH AS MOTIVE -- AND WE'RE NOT GOING TO BE  
28 CALLING HIM FOR THAT PURPOSE, NOR TO TESTIFY IN

49641

1 REGARD TO LYLE MENENDEZ IN ANY, WAY, SHAPE OR FORM.

2 SO I THINK THERE'S SUFFICIENT MATERIAL  
3 THAT HE HAS BEEN PROVIDED, INCLUDING THE INTERVIEWS  
4 OF THE DEFENDANT AND THE PRIOR TESTIMONY, THAT  
5 WARRANT HIM TO PRESENT HIS OPINION BEFORE THIS JURY.

6 MR. GESSLER: YOUR HONOR, IF IT DIDN'T MAKE  
7 ANY DIFFERENCE, WHY DID HE HIGHLIGHT IT? HE WENT

8 THROUGH A LOT OF WORK TO HIGHLIGHT THESE PAGES. I  
9 CAN HOLD IT UP TO THE COURT AND SHOW THE AMOUNT OF  
10 HIGHLIGHTING THAT IS DONE.

11 THIS, FOR INSTANCE, IS JUDALON SMYTH.

12 NOW, HE DIDN'T GO TO ALL THAT WORK JUST TO EXERCISE  
13 WITH HIS PEN.

14 MS. ABRAMSON: I CAN TELL THE COURT I'VE  
15 WATCHED THE VIDEOTAPE. HE USED THE JUDALON SMYTH  
16 INFORMATION OVER AND OVER AND OVER AGAIN IN HIS  
17 INTERVIEWS WITH MY CLIENT. HE USED OTHER -- I  
18 COULDN'T FIGURE OUT AT SOME POINT -- WHERE IS HE  
19 GETTING THIS STUFF FROM? AND THEN I REALIZED --  
20 MAINLY BECAUSE MY CLIENT REMEMBERED AND SAID TO HIM  
21 ON THE TAPE: YOU'RE QUOTING FROM JUDALON SMYTH, BUT  
22 DON'T YOU KNOW THIS AND DON'T YOU KNOW THAT? AND IT  
23 WAS JUST INCREDIBLE HOW MUCH NON-EVIDENTIARY  
24 INFORMATION -- IN FACT, I'D SAY THE BULK OF HIS  
25 QUESTIONING OF MY CLIENT, WHEN HE'S CONFRONTING HIM  
26 WITH SO-CALLED FACTS, HAS STUFF THAT'S NEVER BEEN  
27 PRESENTED TO THIS JURY.

28 THE COURT: LET ME SUGGEST THAT INSTEAD OF,

49642

1 AT THIS POINT, PUTTING DOWN YOUR SUMMARY AND YOUR  
2 ARGUMENT ABOUT WHY CERTAIN THINGS SHOULDN'T BE  
3 RELIED ON, IF YOU JUST EXPEDITE IT AS QUICKLY AS



4 POSSIBLE TO GET A LIST OF THOSE THINGS YOU'RE

5 OBJECTING TO.

6 MS. ABRAMSON: WE ARE.

7 THE COURT: GET IT TO HIM AS SOON AS

8 POSSIBLE. IF YOU WANT TO SUPPLEMENT IT WITH

9 SOMETHING ELSE YOU WANT TO GIVE ME, THAT'S FINE.

10 THE EARLIER YOU GET IT TO HIM SO HE CAN SAY: I AM

11 EXCLUDING ALL OF THIS MATERIAL AND I BASE MY OPINION

12 ONLY ON X, Y, AND Z, THEN WE HAVE A BASIS FOR A

13 DISCUSSION.

14 MS. ABRAMSON: LET ME SUGGEST THIS, YOUR

15 HONOR. WHAT I'M TRYING TO DO IS, I'M TRYING TO LIST

16 THE SPECIFIC INFORMATION SO THAT WE CAN COMMUNICATE

17 ADEQUATELY WITH YOU. HOW ABOUT IF WE DO THIS: IF

18 WE TAKE THESE HIGHLIGHTED REPORTS AND MARK IN RED

19 WHAT WE'RE OBJECTING TO, AND LET THE PROSECUTION GET

20 SOMEBODY TO TAKE THIS DOWN TO NEWPORT BEACH SO

21 DR. DIETZ CAN SEE SPECIFICALLY WHAT WE'RE OBJECTING

22 TO. AND IF HE'S NOT RELYING ON ANY OF THE THINGS

23 THAT WE'VE BRACKETED IN RED, FINE.

24 THE COURT: JUST DO IT SOME WAY YOU CAN FAX

25 IT TO HIM.

26 MS. ABRAMSON: WELL, I CAN'T FAX IT. IT'S

27 HUGE.

28 MR. GESSLER: THIS IS JUST A PORTION OF IT.

1 WE'RE TALKING ABOUT AN INCH-AND-A-HALF-THICK STACK.

2 THE COURT: I CAN'T IMAGINE HOW THIS WITNESS

3 WOULD BE RELYING ON JUDALON SMYTH FOR ANYTHING IN

4 HIS TESTIMONY, AND CERTAINLY WE'RE NOT GOING TO, AT

5 THIS STAGE OF THE TRIAL, GET INTO ALL SORTS OF

6 EXTRANEOUS MATTERS THAT THIS JURY KNOWS NOTHING

7 ABOUT, AND --

8 MS. ABRAMSON: HARD TO UNDERSTAND.

9 THE COURT: -- TOUCH ON ALL THESE ISSUES THAT

10 COULD ONLY OPEN UP A LOT OF TESTIMONY AND EVIDENCE

11 THAT SHOULD NEVER BE GONE INTO AT THIS STAGE OF THE

12 TRIAL.

13 MS. ABRAMSON: BASED UPON WHAT HAS TRANSPIRED

14 SO FAR, YOU HAVE TO WONDER WHY THEY TURNED IT OVER,

15 AND THE REASON WHY THEY TURNED IT OVER IS BECAUSE

16 JUDALON SMYTH MADE CLAIMS EARLY ON, THAT EVEN OZIEL

17 COULDN'T SUBSTANTIATE, THAT MAKE OUR CLIENTS LOOK

18 HORRENDOUS.

19 THE COURT: IT SEEMS TO ME YOU CAN -- JUST AS

20 FAR AS SMYTH IS CONCERNED -- SAY YOUR POSITION IS

21 NOTHING -- I CAN'T VISUALIZE HOW HE CAN RELY ON

22 ANYTHING SHE SAYS AS A BASIS FOR AN OPINION.

23 MR. GESSLER: HE CAN'T LEGALLY.

24 THE COURT: OR ANY OTHER WAY.

25 MR. GESSLER: FOR ANY OPINION HE'S LABORING

26 ON THE DECEMBER 11TH TAPE, WHICH HE GAVE RATHER

27 FREELY LAST NIGHT, WOULD CERTAINLY SEEM TO BE

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1 GIVEN, FOR SOME REASON.

2 MS. ABRAMSON: THAT'S INFORMATION FROM  
3 JUDALON SMYTH THAT WAS NEVER PROVEN UP, EVEN IN THE  
4 PREVIOUS TRIAL -- THAT DR. OZIEL TOLD HER THAT  
5 ANOTHER MEETING WAS SET UP WHERE DR. OZIEL TOLD THE  
6 BOYS THAT HE COULD ASSIST THEM IN FABRICATING A  
7 FALSE DEFENSE BY ESTABLISHING, IN ANY SUBSEQUENT  
8 TRIAL, THAT HE WAS TREATING THE BOYS FOR ALLEGED  
9 ABUSE THEY SUFFERED FROM THEIR FATHER; IN FACT,  
10 THERE WAS NO SUCH ABUSE, AND THIS WAS KNOWN TO  
11 DR. OZIEL. BUT IT WAS TOLD TO THE BOYS TO PROTECT  
12 DR. OZIEL FROM THE BOYS AND ANY FUTURE VIOLENCE THEY  
13 MAY INFLICT ON HIM, HIS FRIENDS, OR RELATIVES.

14 THE DOCTOR TOLD THE BOYS IT WAS  
15 NECESSARY FOR HIM TO MAKE A RECORD OF THEIR  
16 PARTICIPATION IN THE CRIME SO IT COULD BE PRESENTED  
17 AS EVIDENCE FOR ANY FUTURE TRIAL FOR THEIR DEFENSE.

18 I COULDN'T FIGURE OUT, WHEN MR. CONN WAS  
19 CROSS-EXAMINING MY CLIENT, WHERE HE WAS GETTING SOME  
20 OF HIS QUESTIONS FROM. NOW I KNOW, HAVING REVIEWED  
21 THIS FOR THE FIRST TIME IN FIVE YEARS. IT'S ALL  
22 FROM THIS JUDALON SMYTH NONSENSE, THAT EVEN SHE

23 DIDN'T ADMIT IN THE PREVIOUS TRIAL; AND NONE OF THIS  
24 ISSUE ABOUT MAKING THE TAPE WAS EVER LITIGATED IN  
25 THE FIRST TRIAL. AND THE ONLY EVIDENCE CONCERNING  
26 IT THAT THE PEOPLE CHOSE TO ALLOW IN THIS TRIAL WAS  
27 ERIK MENENDEZ' TESTIMONY.

28 BUT YOU CAN SEE HOW -- AND THERE IS

49645

1 DR. DIETZ ON HIS VIDEOTAPES ASKING MY CLIENT  
2 REPEATEDLY: "DID OZIEL SAY HE WOULD HELP YOU CREATE  
3 A DEFENSE?"

4 "DID OZIEL SAY HE WOULD FABRICATE A  
5 DEFENSE FOR YOU?"

6 "I CAN'T BELIEVE YOUR EXPLANATIONS FOR  
7 WHY YOU MADE THE DECEMBER 11 TAPE."

8 THE COURT: THE COURT ISSUED THAT ORDER FOR  
9 FINDINGS OF FACT ON THAT TAPE. IN THE ORDER THE  
10 COURT MADE SOME STATEMENT ABOUT THAT VERY ISSUE.

11 MS. ABRAMSON: I DON'T BELIEVE THE COURT MADE  
12 A RULING THAT DR. OZIEL WAS HELPING TO FABRICATE A  
13 DEFENSE.

14 THE COURT: NO. I DIDN'T SAY THAT.

15 MS. ABRAMSON: I KNOW YOU DIDN'T.

16 THE COURT: BUT THE BOTTOM -- THE LAST ENTRY  
17 ON MY FINDINGS OF FACT, DATED JULY THE 29TH OF 1994,  
18 STATES:

19 "THE COURT FURTHER FINDS THAT THE  
20 DEFENDANTS AND CHALEFF CONTEMPLATED  
21 THAT A RECORD OF THERAPY SESSION COULD  
22 POSSIBLY BE OF USE TO THEM IN DEFENSE  
23 OF A CRIMINAL CHARGE IF ONE WAS LATER  
24 FILED AGAINST THE DEFENDANTS."  
25 MS. ABRAMSON: THAT'S NOT AT ALL WHAT THIS  
26 SAYS, AND I CAN ASSURE YOU, DR. DIETZ DIDN'T GET  
27 YOUR FINDINGS OF FACT. WHAT HE GOT WAS THE JUDALON  
28 SMYTH VERSION OF THE TRUTH.

49646

1 MR. GESSLER: THAT'S DIFFERENT FROM SAYING HE  
2 COULD ASSIST HIM IN FABRICATING A FALSE DEFENSE,  
3 YOUR HONOR.

4 THE COURT: RIGHT. WELL --

5 MS. ABRAMSON: WHAT I WILL DO, YOUR HONOR --

6 THE COURT: NUMBER ONE, DOES THE PROSECUTION  
7 ENVISION THAT DR. DIETZ WILL, IN HIS TESTIMONY, RELY  
8 UPON JUDALON SMYTH AT ALL?

9 MR. CONN: NO, YOUR HONOR.

10 MS. ABRAMSON: I BELIEVE THERE'S ANOTHER  
11 ISSUE HERE, AND THAT ISSUE IS WHETHER DR. DIETZ IS  
12 GOING TO TRY TO AUTHENTICATE THE CREDIBILITY OR THE  
13 BELIEVABILITY OR THE RELIABILITY OF THE 12/11 TAPE

14 WHEN WE WERE PREVENTED FROM PRESENTING --  
15 THE COURT: THAT'S A QUESTION I HAD, SINCE  
16 YOU BROUGHT IT UP.  
17 MS. ABRAMSON: RIGHT.  
18 THE COURT: DO THE PEOPLE INTEND TO GO INTO  
19 THAT TAPE AT ALL?  
20 MR. CONN: NO. I DON'T INTEND TO GO INTO THE  
21 DECEMBER 11 TAPE.  
22 THE COURT: WHY DON'T YOU COMPLETE YOUR LIST.  
23 MS. ABRAMSON: YOU WANT A LIST?  
24 THE COURT: WHICHEVER WAY IS THE MOST  
25 EFFICIENT WAY OF GETTING IT TO DR. DIETZ SO HE CAN  
26 KNOW WHAT IT IS THAT IS OBJECTED TO; NOT NECESSARILY  
27 THAT -- YOUR POSITION MIGHT NOT BE THE ONE THAT WILL  
28 ULTIMATELY BE THE ONE THAT THE COURT WILL ADOPT.

49647

1 BUT AT LEAST IT WILL --  
2 MS. ABRAMSON: WE'RE BEING VERY  
3 STRAIGHTFORWARD. WE'RE TALKING ABOUT THINGS WHERE  
4 WITNESSES DIDN'T TESTIFY.  
5 THE COURT: I'M NOT DISPUTING YOU. I'M JUST  
6 SAYING, IF THERE'S A DISPUTE, I HAVE NO WAY OF  
7 KNOWING HOW IT WILL BE RESOLVED BECAUSE I DON'T  
8 REALLY KNOW WHAT ALL THE MATERIAL IS, OTHER THAN  
9 WHAT YOU'VE SAID.

10 MS. ABRAMSON: WE'RE GOING TO GIVE YOU A COPY  
11 OF THE HIGHLIGHTED PORTIONS JUST AS WE GOT IT FROM  
12 HIM.

13 THE COURT: WORK IT OUT THE BEST WAY YOU CAN,  
14 HOW TO GET IT TO DR. DIETZ SO HE CAN EVALUATE IT,  
15 AND THEN RESPOND.

16 MR. GESSLER: I THINK THE IDEA ABOUT MARKING  
17 IT IN RED IN THE MARGIN AND BLOCKING OUT WITH  
18 BRACKETS THE PARTS THAT WE ARE OBJECTING TO, WITHOUT  
19 NECESSARILY STATING TO DR. DIETZ THE REASONS FOR OUR  
20 OBJECTION. THE COURT IS AWARE OF THEM. AND THEN  
21 TURNING OVER A COPY TO THE COURT OF WHAT WE HAVE  
22 SENT TO DR. DIETZ.

23 IF THE COURT WOULD ALLOW US TO NOT PUT  
24 IT IN A FORMAL WRITTEN DOCUMENT BECAUSE OF THE TIME  
25 CONSUMED.

26 THE COURT: YES. MY QUESTION IS: HOW ARE  
27 YOU GOING TO GET IT TO DIETZ?

28 MR. GESSLER: WE'LL FIGURE OUT A WAY, I

49648

1 GUESS.

2 MS. ABRAMSON: ARE YOU GOING TO BE TAKING  
3 SOMETHING DOWN? IF YOU WANT TO FAX IT I'LL GIVE IT  
4 TO YOU.

5 MS. NAJERA: CAN YOU SEND IT TO DIETZ?  
6 YOU'VE GOT IT. WE DON'T HAVE IT. CAN YOU FAX IT TO  
7 DR. DIETZ?  
8 THE COURT: THEY'RE SAYING IT'S TOO MANY  
9 PAGES. HE MAY NOT HAVE A MACHINE THAT WILL --  
10 MR. GESSLER: WE WILL TRY TO FIGURE OUT A WAY  
11 TO GET IT TO HIM, YOUR HONOR --  
12 MS. ABRAMSON: WELL --  
13 THE COURT: -- SO HE CAN EVALUATE IT SO HE  
14 CAN RESPOND.  
15 MR. GESSLER: WALTER LIVES IN ORANGE COUNTY.  
16 WE'LL TRY TO WORK ON THAT. MAYBE HE CAN BRING IT TO  
17 DR. DIETZ.  
18 IF WE REACH AN IMPASSE, WE'LL CALL THE  
19 COURT AND CALL DAVID.  
20 THE COURT: I'LL BE HERE ALL AFTERNOON.  
21 MS. ABRAMSON: THANK YOU, JUDGE.  
22 MS. NAJERA: MR. LEVIN ISN'T HERE. WE WERE  
23 GOING TO DETERMINE WHAT HE WERE GOING TO OBJECT TO.  
24 THERE WAS SOME THINGS WE NEEDED TO LOOK UP ON THE  
25 COMPUTER. I DON'T THINK WE'LL BE READY TO ARGUE,  
26 BUT WE CAN GIVE YOU A LIST OF EVERYTHING AND WHAT  
27 THE ISSUES ARE.  
28 THE COURT: IF YOU BOTH ARE NOT READY TO



1 ARGUE, WE WON'T ARGUE. AT LEAST GO THROUGH IT ALL  
2 SO WE CAN ISOLATE WHAT'S IN DISPUTE.  
3 MS. NAJERA: THAT WE CAN DO.  
4 THE COURT: CITE ME TO THE TRANSCRIPTS.  
5 MS. NAJERA: THAT'S WHAT WE NEED TO DO THIS  
6 AFTERNOON. THAT'S WHY WE CAN'T ARGUE IT.  
7 (AT 12:10 P.M. PROCEEDINGS WERE  
8 ADJOURNED.)

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  
5 THE PEOPLE OF THE STATE OF )  
6 CALIFORNIA, )  
7 )  
8 PLAINTIFFS, )  
9 )  
10 VS. ) NO. BA 068880  
11 )  
12 ERIK GALEN MENENDEZ, AND )  
13 JOSEPH LYLE MENENDEZ, )  
14 )  
15 DEFENDANTS. )  
16 )

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS  
13 TUESDAY, FEBRUARY 6, 1996  
14 VOLUME 291  
15  
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APPEARANCES:

(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

4

BY: DAVID CONN, DEPUTY

5

AND

6

CAROL NAJERA, DEPUTY

7

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210 WEST TEMPLE STREET

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LOS ANGELES, CA 90012

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FOR THE DEFENDANT

JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

24

PUBLIC DEFENDER

25

BY: CHARLES GESSLER, DEPUTY

26

AND

27

TERRI TOWERY, DEPUTY

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29

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210 WEST TEMPLE  
LOS ANGELES, CA 90012

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PROCEEDINGS

7

8

CHRONOLOGICAL INDEX OF WITNESSES

9

10 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11

PISARCIK,

12 JAMIE

(CONT'D) 49603-A 49620-N 49624-A 291

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LEGEND:

24

A = MS. ABRAMSON

25 C = MR. CONN

G = MR. GESSLER

26 K = MS. TOWERY

L = MR. LEVIN

27 N = MS. NAJERA

28

2 EXHIBITS: MARKED RECEIVED VOL.  
(NONE MARKED THIS VOLUME.)

3