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VAN NUYS, CALIFORNIA; WEDNESDAY, FEBRUARY 7, 1996

10:00 A.M. DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE (APPEARANCES AS HERETOFORE NOTED.) (MARILYN A. FADALE, OFFICIAL REPORTER.)

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

THE COURT: IN THE TRIAL, THE DEFENDANT, LYLE MENENDEZ, IS HERE. THE CODEFENDANT, ERIK MENENDEZ, IS NOT. HE'S BEEN REPORTED TO BE ILL AND STILL AT THE JAIL. AND IT'S ALSO BEEN INDICATED THAT COUNSEL HAS STATED THAT YOU DON'T WANT TO WAIVE YOUR CLIENT'S APPEARANCE FOR ANY MATTERS.

MS. ABRAMSON: I CONSIDERED IT, BUT I THINK

MR. GESSLER AND MR. KRSTJULA, WHO I DISCUSSED IT WITH, THINK THAT IT WOULDN'T BE ADVISABLE TO MAKE THAT RECORD ABOUT THESE ISSUES. IT MIGHT BE A CHALLENGEABLE RECORD, SINCE THEY ARE TESTING HIM AT THE JAIL AND HE'S APPARENTLY -- I DON'T KNOW THE

LEVEL OF HIS ILLNESS AND WHAT THE VALIDITY OF SUCH A WAIVER MAY BE. MOREOVER, MR. GESSLER FEELS THESE 402 OR 801 ISSUES HAVING TO DO WITH DR. DIETZ ARE TOO CRUCIAL, AND THERE MIGHT BE A PROBLEM LATER. SO I THINK MAYBE I SHOULDN'T. I DID THINK OF IT BUT...

THE COURT: OKAY. WELL, CERTAINLY, WITHOUT A WAIVER, THERE'S NOT TOO MUCH WE CAN DO OF SUBSTANCE. THERE ARE SOME MATTERS WE CAN DEAL WITH, HOWEVER. FIRST OF ALL, LET'S DISCUSS THE SITUATION OF SCHEDULING. DO YOU HAVE YOUR WITNESS HERE?

MR. CONN: YES, YOUR HONOR.

THE COURT: OKAY. AND HAVE YOU DISCUSSED WITH YOUR WITNESS THE OBJECTIONS LODGED BY THE DEFENSE TO MATERIALS THAT HE HAS PREVIOUSLY INDICATED THAT HE CONSIDERED IN HIS EVALUATION OF THE DEFENDANT, ERIK MENENDEZ?

MR. CONN: YES, YOUR HONOR. I'VE DISCUSSED THE MATTER WITH DR. DIETZ, AND HE HAS INDICATED THAT HIS DIAGNOSIS CONCERNING THE DEFENDANT IS NOT DEPENDENT UPON THAT MATERIAL. SO IT WOULD NOT BE NECESSARY FOR HIM TO MAKE REFERENCE TO THOSE AREAS TO WHICH COUNSEL OBJECTS IN EXPRESSING A BASIS FOR HIS OPINION.

MS. ABRAMSON: WELL, MY UNDERSTANDING IS HE'S GOING TO DO MORE THAN JUST GIVE A DIAGNOSIS. FIRST OF ALL, I CAN'T IMAGINE THAT GIVING HIS DIAGNOSIS WOULD TAKE MORE THAN THREE MINUTES, AND MR. CONN INDICATES HIS EXAMINATION OF THE WITNESS WILL TAKE TWO TO THREE HOURS. SO I SUSPECT HE IS GOING TO TRY TO DO SOME LEVEL OF

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FACTUAL ANALYSIS -- WE ARE GOING TO OBJECT TO A GOOD DEAL OF THAT, BUT SOME LEVEL OF FACTUAL ANALYSIS --

SO IT'S IMPORTANT TO KNOW WHAT THE SOURCE OF HIS FACTS ARE.

THE COURT: WHEN YOU TALK ABOUT "FACTS," YOU'RE TALKING ABOUT THE RECITATION OF EVENTS PRESENTED BY THE DEFENDANT IN HIS TESTIMONY?

MS. ABRAMSON: WELL, I THINK THAT DR. DIETZ PERHAPS IS PLANNING ON GIVING HIS SPIN ON THAT RECITATION OF EVENTS. I MEAN, WE WOULD OBJECT UNDER SECTION 29 TO THAT BEING DONE, BUT I'M SURE THAT HE'S GOING TO MAKE REFERENCE TO SOME FACTS BEARING ON HIS NON-DIAGNOSIS, THE LACK OF P.T.S.D., IF YOU WILL, AND THE LACK OF HYPERVIGILANCE THAT HE HAS EXPRESSED TO US AND THE LACK OF LEARNED HELPLESSNESS.

HE HAS GIVEN EXAMPLES, BOTH IN OUR INTERVIEW AND SOME NOTES HE KINDLY SHARED WITH US, OF ACTS OR STATEMENTS OF MENTAL STATE BY MY CLIENT THAT HE BELIEVES ARE INCONSISTENT WITH CERTAIN STATES. AND IN HIS NOTES, AT LEAST, HE REFERS TO MATTERS EXTRANEEOUS, EXTERNAL TO MY CLIENT'S TESTIMONY, IN SUPPORT OF HIS OPINIONS THAT MY CLIENT DID NOT SUFFER FROM LEARNED HELPLESSNESS AND WAS NOT HYPERVIGILANT.

I CAN GO THROUGH SOME OF THOSE OPINIONS IN HIS NOTES AND INDICATE WHAT OUR OBJECTIONS TO THEM ARE. I THINK SOME OF THEM, AT LEAST, THE COURT

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WOULD NOT PERMIT TESTIMONY ON, AS IT GOES TO ULTIMATE ISSUES OF FACT. I'M SURE HE'S GOING TO GO BEYOND SAYING HIS DIAGNOSIS OF GENERAL ANXIETY DISORDER.

THE COURT: WHEN YOU REFER TO ACTS EXTRANEEOUS TO THE DEFENDANT'S TESTIMONY, WHAT DO YOU MEAN?

MS. ABRAMSON: WELL, LET ME PULL OUT -- I'M SORRY, YOUR HONOR.

THE COURT: THE PURPOSE OF THESE DISCUSSIONS IS JUST TO PROVIDE ME WITH SOME INDICATION OF OUR SCHEDULING NEEDS HERE, TO THE EXTENT OF THE HEARINGS THAT MIGHT BE REQUIRED BEFORE THE WITNESS TESTIFIES. I'M NOT GOING INTO THE SUBSTANCE OF THESE ISSUES.

MS. ABRAMSON: JUST AN EXAMPLE -- I'M TRYING NOT TO GET INTO ALL THIS DETAIL.

THE COURT: HAS THE WITNESS BEEN PROVIDED WITH THE ENTIRETY OF THE DEFENDANT'S TESTIMONY FROM THIS TRIAL?

MR. CONN: YES, YOUR HONOR.

THE COURT: AND IS HE GOING TO RELY UPON THAT

AS PART OF THE BASIS FOR HIS OPINIONS?

MR. CONN: YES, YOUR HONOR.

THE COURT: AND IS HIS TESTIMONY GOING TO REFER TO FACTS OR INFORMATION OTHER THAN THAT WHICH WAS PROVIDED BY THE DEFENDANT IN HIS TESTIMONY?

MR. CONN: WELL, THERE WILL BE ADDITIONAL INFORMATION WHICH WAS PROVIDED TO HIM, SUCH AS

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THE -- WELL, HE HAS HIS INTERVIEWS WITH THE DEFENDANT, WHICH HE WILL BE RELYING UPON HEAVILY; AND ALSO OTHER INFORMATION, AS REFLECTED IN TRANSCRIPTS AND REPORTS GIVEN TO HIM TO WHICH THE DEFENSE HAS NOT OBJECTED TO.

6WE PROVIDED THE DEFENSE WITH A LIST OF THINGS THAT WERE PROVIDED TO DR. DIETZ, AND THEY HAD AN OPPORTUNITY TO DISCUSS WITH HIM WHAT HE HAS REVIEWED AND HAS NOT REVIEWED; AND SO, THEY DO HAVE THAT INFORMATION BEFORE THEM.

AS I INDICATED, WITH THE EXCEPTION OF THE THINGS THAT -- TO WHICH COUNSEL OBJECTS AND WE SAID IT IS NOT NECESSARY FOR HIM TO RELY UPON IT IN EXPRESSING HIS OPINION -- HE WON'T BE RELYING UPON THE OTHER INFORMATION.

MS. ABRAMSON: WE HAVE --

THE COURT: AS FAR AS THOSE MATTERS, YOU SAY IT'S NOT NECESSARY FOR HIM TO RELY UPON, CAN YOU STATE THAT WHETHER ON DIRECT OR CROSS-EXAMINATION THE WITNESS WILL INDICATE THAT HE WILL NOT RELY UPON THOSE MATTERS OR CONSIDER THEM IN FORMING ANY OPINIONS OR EXPRESSING HIS VIEWS IN HIS TESTIMONY?

MR. CONN: YES. THAT IS CORRECT. I CAN SO STATE THAT.

MS. ABRAMSON: WELL, YOUR HONOR, WE HAVEN'T INDICATED THAT WE AGREE HE IS ENTITLED TO RELY UPON ALL THE OTHER MATERIALS THAT WERE SUBMITTED TO HIM EITHER, NOR HAVE WE DETERMINED DEFINITELY WHICH OF

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THOSE OTHER MATERIALS HE IS, IN FACT, RELYING ON.

2FOR EXAMPLE, MR. CONN INDICATED THAT HE'S NOT GOING TO, QUOTE, GET INTO THE 12/11 TAPE WITH THE WITNESS; THAT THE WITNESS IS NOT GOING TO MAKE REFERENCE TO IT. THE WITNESS WASN'T PRESENT WHEN HE MADE THAT REPRESENTATION, BUT WE WOULD OBJECT TO ANY REFERENCE TO IT, SINCE WE WERE NOT PERMITTED WITH OUR EXPERT WITNESS TO DISCUSS THAT TAPE.

THERE'S ALSO PHOTOGRAPHS OF MY CLIENT THAT WERE GIVEN TO THE WITNESS, TAKEN BY THIS PHOTOGRAPHER IN NEW ORLEANS. THE COURT MAY RECALL THIS BUBBLE OF AN ISSUE COMING UP IN THE LAST TRIAL, WHICH WERE NEVER ADMISSIBLE IN THE LAST TRIAL. WE HAVEN'T DETERMINED WHETHER OR NOT THE WITNESS IS RELYING FOR ANYTHING ON THOSE.

THE COURT: WELL, THIS IS A PERFECT OPPORTUNITY FOR YOU TO MEET AND CONFER FURTHER WITH THE WITNESS --

MS. ABRAMSON: I WOULD BE HAPPY TO.

THE COURT: -- AND DETERMINE THESE ISSUES, SO THAT ANY DISPUTES CAN BE IDENTIFIED.

MS. ABRAMSON: BE HAPPY TO DO THAT, YOUR HONOR. IN FACT, I WOULD LIKE THE OPPORTUNITY TO DO THAT.

THERE ARE SOME THINGS THAT HE MENTIONED IN THE NOTES THAT I WOULD LIKE TO SEE THAT CLEARLY ARE DEPENDENT UPON SOME OF THE MATERIAL THAT WE

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OBJECTED TO YESTERDAY, ALTHOUGH IT'S IN HIS NOTES UNDER THE TITLE OF "MOTIVES," ALTHOUGH HE SAYS HE'S NOT GOING TO BE TESTIFYING ABOUT MOTIVES. I WANT TO MAKE SURE HE'S NOT MAKING REFERENCE TO SOME OF THESE THINGS WHICH WERE, IN FACT, FALSE FACTS THAT WERE CONTAINED IN THE MATERIALS THAT HE HAD BEEN PRESENTED WITH.

8SO I WOULD -- I'D BE VERY HAPPY TO SIT DOWN WITH THE WITNESS FOR A WHILE NOW AND GO OVER THE BASIS FOR SOME OF THE NOTES -- I DON'T KNOW IF THEY'RE REALLY HIS CONCLUSIONS -- BUT NOTES HE TURNED OVER TO US, SO I CAN BE SATISFIED THAT HE IS NOT RELYING ON ANYTHING BEYOND MY CLIENT'S TESTIMONY AND INTERVIEW.

THE COURT: HE CERTAINLY HAS A RIGHT TO RELY ON OTHER EVIDENCE THAT WASN'T IN DISPUTE.

MS. ABRAMSON: HE WASN'T GIVEN MUCH OTHER EVIDENCE THAT WASN'T IN DISPUTE.

THE COURT: I ASSUME HE WAS GIVEN SOME INFORMATION ABOUT THE CRIME SCENE.

MS. ABRAMSON: HE WAS GIVEN SOME INFORMATION CONCERNING WITNESS PERRY BERMAN, WITNESS HOWARD WITKIN, WITNESS CRAIG CIGNARELLI.

THE COURT: I'M NOT TALKING ABOUT THOSE THINGS THAT YOU DID NOT OBJECT TO IN THE MATERIALS THAT WERE PROVIDED TO HIM.

MS. ABRAMSON: RIGHT.

THE COURT: SO THERE'S MORE THAN JUST YOUR

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CLIENT'S STATEMENT AND HIS TESTIMONY, OR HIS INTERVIEW AND HIS TESTIMONY.

MS. ABRAMSON: GOING OVER THE LIST WITH RESPECT TO THINGS HE COULD RELY ON, THERE ARE THE AUDIO INTERVIEWS OF MY CLIENT OF 8/21, 9/17, AND 12/11, 1989.

7THERE'S THE CRIME SCENE VIDEO.

8I'M JUST LOOKING DOWN THE LIST OF THINGS WE WERE GIVEN.
MY CLIENT'S TESTIMONY AND CRIME SCENE PHOTOGRAPHS, THAT I SUPPOSE HE COULD BE RELYING ON. THE OTHER THINGS, SUCH AS THE PEOPLE'S MOTION TO EXCLUDE EXPERT TESTIMONY, I ASSUME HE WOULDN'T RELY ON.
THERE'S SOME RESEARCH MATERIALS WE WERE GIVEN. HE OBVIOUSLY COULD RELY ON THOSE. HE'S PREVIOUSLY TOLD US HE DIDN'T READ SOME OF THE THINGS THAT WERE SUBMITTED TO HIM.

THE COURT: LET ME INTERRUPT YOU FOR A MINUTE.

MS. ABRAMSON: I'LL JUST GO OVER THEM.

THE COURT: WE'LL DISCHARGE THE JURY AND INFORM THEM, THAT DUE TO ILLNESS OF ONE OF THE PARTICIPANTS, WE CAN'T PROCEED TODAY, AND WE'LL HAVE THEM COME BACK TOMORROW AT 8:30.
AND DO COUNSEL STIPULATE THERE'S NO NEED TO HAVE THE JURY IN COURT TO ADMONISH THEM AND STIPULATE THEY REMAIN PROPERLY ADMONISHED AS TO HOW

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TO CONDUCT THEMSELVES DURING BREAKS AND RECESS?

MR. GESSLER: SO STIPULATED.

MS. ABRAMSON: SO STIPULATED.

MR. CONN: YES, YOUR HONOR.

THE COURT: GO AHEAD. I'M SORRY.

MS. ABRAMSON: I WAS JUST SAYING THERE REALLY ISN'T MUCH HERE THAT I CAN IMAGINE HIM RELYING ON. HE INDICATED IN THE MEETING HE DIDN'T READ DR. BRIERE'S TESTIMONY; HE DIDN'T READ DR. TYLER'S TESTIMONY; HE DIDN'T READ DR. HART'S TESTIMONY; HE DIDN'T READ DR. CONTE'S --

THE COURT: DON'T TELL ME ABOUT THINGS HE HASN'T EVEN SEEN.

MS. ABRAMSON: ALL I'M SAYING IS, THE ONLY THINGS WE HAVE HERE -- IF THAT PACKAGE OF OBJECTIONS TO THE REPORTS -- HE'S NOT GOING TO RELY ON THAT -- THEN THE ONLY THING THAT I CAN SEE THAT HE WAS GIVEN THAT HE CAN RELY ON IS MY CLIENT'S TESTIMONY AND HIS PREVIOUS STATEMENTS AND THE CRIME-SCENE PHOTOGRAPHS AND THE CRIME-SCENE VIDEO.

THE COURT: IS THERE OTHER MATERIAL THAT YOUR WITNESS IS RELYING UPON?

MS. ABRAMSON: WELL, THERE'S -- AS I SAID, THERE'S REPORTS BY DETECTIVE -- ALL OF THE REPORTS THAT WERE GIVEN TO HIM. THEY OBJECTED TO SPECIFIC SENTENCES IN THOSE REPORTS. THERE'S A GREAT DEAL OF INFORMATION CONCERNING THE CRIME, THE CRIME SCENE, AND INFORMATION CONCERNING THE WITNESSES WHICH ARE

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CONTAINED IN THOSE REPORTS. IF COUNSEL -- I'M JUST TRYING TO SAVE TIME.

3MAYBE WE SHOULD GO THROUGH EACH ONE OF THOSE REPORTS AND HAVE A HEARING IN REGARD TO EVERY SINGLE SENTENCE TO WHICH COUNSEL OBJECTS AND WHY THE WITNESS SHOULD NOT BE WILLING TO OR ABLE TO RELY ON EACH SENTENCE IN THOSE REPORTS. I DON'T THINK IT'S REASONABLE FOR COUNSEL TO GO THROUGH THE REPORTS AND SAY: "WE OBJECT TO THIS SENTENCE AND THIS SENTENCE AND THIS SENTENCE. HE CANNOT RELY UPON THAT."

THE COURT: I'M NOT PROPOSING THAT.

MS. ABRAMSON: I DON'T THINK MR. CONN --

THE COURT: WAIT, WAIT. THE REASON WE'VE GOT TO THIS STAGE HERE -- AND AGAIN, THIS IS JUST TO ASSIST ME IN DETERMINING WHAT AMOUNT OF TIME WILL BE

REQUIRED TO RESOLVE ANY DISPUTES. THE REASON WE'RE HERE AT THIS STAGE TALKING ABOUT IT IN THIS FASHION IS THAT, AS I UNDERSTAND IT FROM WHAT THE DEFENSE SAID YESTERDAY AND WHAT WAS PROVIDED TO ME YESTERDAY AFTERNOON, THAT THE WITNESS, IN HIS NOTES, MARKED OUT CERTAIN MATERIALS THAT HE RELIED UPON IN HIS EXAMINATION OF THE DEFENDANT.

MS. ABRAMSON: NO, YOUR HONOR --

THE COURT: AND IDENTIFIED IT BY MARKER. AND THEN THE DEFENSE THEREAFTER FOLLOWED THROUGH BY INDICATING BY THEIR MARKINGS IN RED WHAT THEY OBJECTED TO OF THOSE THINGS THAT HE IS CONSIDERING.

MS. ABRAMSON: CORRECT.

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THE COURT: SO, AS I UNDERSTAND IT, THE WITNESS WAS NOT CONSIDERING THE ENTIRETY OF THESE REPORTS, BUT ONLY THINGS THAT HE IDENTIFIED BY HIS MARKINGS.

MR. CONN: NO. NO.

MS. ABRAMSON: THAT WAS OUR ASSUMPTION. THAT'S WHAT WE WERE OPERATING UNDER YESTERDAY. THAT'S WHAT MR. GESSLER ASKED THE WITNESS WHEN WE INTERVIEWED HIM, THAT THE THINGS THAT HE HAD HIGHLIGHTED IN YELLOW IS WHAT HE WAS RELYING ON. WE DIDN'T ADDRESS, IN ALL THOSE REPORTS, THE STUFF THAT HAD NEVER BEEN HIGHLIGHTED. WE ASSUMED HE WAS NEVER RELYING ON THOSE THINGS. THE COURT IS ABSOLUTELY RIGHT.

THE COURT: THAT'S WHAT WAS STATED TO ME YESTERDAY.

MS. ABRAMSON: THAT'S EXACTLY --

MR. CONN: NO, NO. THAT'S NOT ACCURATE. DR. DIETZ APPARENTLY HIGHLIGHTED CERTAIN INFORMATION THAT CAUGHT HIS EYE, OR SEEMED SIGNIFICANT TO HIM, FOR HIS OWN NOTETAKING PURPOSES. IT'S NOT TO SAY, IF IT SAYS IN REPORTS THE POLICE WENT TO 722 NORTH ELM AND FOUND TWO DEAD BODIES, AND IF THAT PARTICULAR FACT WAS NOT HIGHLIGHTED IN YELLOW, THAT DR. DIETZ IS NOT RELYING ON THAT FACT. THERE IS A GREAT DEAL OF INFORMATION IN THOSE REPORTS -- ADDITIONAL INFORMATION IN THE TRANSCRIPTS PROVIDED TO HIM; MY CONVERSATIONS WITH

HIM, STATEMENTS MADE IN OPENING STATEMENT. HE READ THE OPENING STATEMENTS IN THIS CASE.

3I DON'T THINK IT'S INCUMBENT UPON THE PROSECUTION TO DELINEATE AT THIS POINT EVERY SINGLE ITEM OF INFORMATION DR. DIETZ RELIED UPON IN FORMING HIS OPINION. THEY HAVE OBJECTIONS TO SPECIFIC AREAS; AND FOR THOSE SPECIFIC AREAS, IN THE INTEREST OF TIME, DR. DIETZ IS WILLING TO SAY HE CAN EXPRESS HIS OPINION WITHOUT RELYING ON THOSE SPECIFIC AREAS.

IF WE ARE GOING TO GET INTO A SITUATION WHERE THE PROSECUTION HAS THE BURDEN TO DELINEATE EVERY ITEM OF INFORMATION THAT THE DOCTOR HAS RELIED UPON -- HE SPENT AN ENORMOUS AMOUNT OF TIME, PERHAPS A HUNDRED HOURS, ON THIS CASE -- THAT IS SIMPLY IMPOSSIBLE FOR US TO DO.

THE COURT: OKAY. BUT THE PROBLEM IS THAT YESTERDAY THE DEFENSE REPRESENTED TO ME -- AND YOU DIDN'T CLARIFY IT IN ANY WAY -- THAT THEIR UNDERSTANDING WAS THAT DR. DIETZ WAS RELYING ONLY ON THOSE MATERIALS IN THE REPORTS THAT HE HAD OUTLINED AND HIGHLIGHTED, AND THAT WAS WHAT WAS SAID YESTERDAY IN OPEN COURT. YOU DIDN'T CORRECT IT. AND THEN THEY SAID THEY WOULD THEN GO THROUGH THOSE THINGS HIGHLIGHTED AND OBJECT TO THOSE THINGS THEY FELT WERE OBJECTIONABLE. THAT'S WHERE WE ARE TODAY. YOU DIDN'T REACT TO THAT YESTERDAY. FOR YOU TO COMPLAIN ABOUT

ALL THAT -- YOU SHOULD HAVE DONE IT YESTERDAY, AND WE WOULD HAVE BEEN IN A DIFFERENT POSITION, AND WE WOULD HAVE BEEN ABLE TO TALK MORE YESTERDAY.

MS. ABRAMSON: I JUST THINK IT'S AMAZING THAT DR. DIETZ WOULD PUT 50 HOURS INTO THE CASE AS OF TWO DAYS AGO, AND NOW HE'S PUT A HUNDRED IN.

MR. GESSLER: THE CONVERSATION THAT I RELATED TO THE COURT IS ACCURATE FROM DR. DIETZ, WHEN DAVID CONN WAS PRESENT.

THE COURT HAS THE DOCUMENTS IN FRONT OF IT NOW. I'VE REVIEWED THEM THOROUGHLY AGAIN YESTERDAY WHEN WE MADE OUR OBJECTIONS, AS DID MS. ABRAMSON. IT APPEARS THAT DR. DIETZ WAS VERY THOROUGH IN GOING THROUGH THOSE PARTICULAR

DOCUMENTS. HE HIGHLIGHTED THE THINGS THAT, AS HE SAID, WERE SIGNIFICANT. NOW, THERE'S A LOT OF DUPLICATION THERE. FOR INSTANCE, IF THERE'S THREE AFFIDAVITS BY DETECTIVE ZOELLER FOR THREE SEPARATE SEARCH WARRANTS --

THE COURT: NOW YOU'VE SAID SOMETHING DIFFERENT, MR. GESSLER. YOU SAID HE HIGHLIGHTED THOSE THINGS THAT WERE SIGNIFICANT.

MR. GESSLER: THAT HE RELIED UPON.

THE COURT: IT'S ONE THING TO BE SIGNIFICANT AND ANOTHER IF HE SAID THE THINGS I RELIED UPON WERE THE THINGS I HIGHLIGHTED.

MR. GESSLER: WHAT HAS HAPPENED IS THERE IS MUCH DUPLICATION IN THE DOCUMENTS. DR. DIETZ WOULD

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HIGHLIGHT A STATEMENT ONCE FROM DETECTIVE ZOELLER, FOR INSTANCE, RELYING UPON GREG GUEST, OR SOMEBODY LIKE THAT.

4FOR INSTANCE, AFFIDAVIT NO. 1. IF THE SAME INFORMATION IS RELATED IN AFFIDAVITS NO. 2 AND 3, HE DID NOT REHIGHLIGHT IT. AND SO WE DID NOT PUT BRACKETS AROUND THAT. WE DID IT FOR THE PART THAT HE HIGHLIGHTED.

9IT SEEMS ABSURD TO HAVE TO GO THROUGH AND SAY: WE OBJECT TO THE SAME INFORMATION ON THE SECOND AND THIRD AFFIDAVITS. WHAT WE ARE OBJECTING TO IS CERTAIN INFORMATION THAT DR. DIETZ SAID HE WAS RELYING UPON AND THAT HE HIGHLIGHTED. AND SO I DON'T THINK IT'S FAIR FOR THE DISTRICT ATTORNEY TO SAY: OH, WELL, IF WE SAID IT IN THE SECOND AFFIDAVIT AND IT'S NOT HIGHLIGHTED, BUT DR. DIETZ READ IT, THEN HE CAN RELY ON IT EVEN THOUGH HE KEPT IT OUT FROM THE FIRST AFFIDAVIT.

MS. ABRAMSON: THERE'S PARTS --

MR. GESSLER: THAT'S DISINGENUOUS.

MS. ABRAMSON: IN ADDITION, HE CERTAINLY HAS NO RIGHT TO RELY ON DAVID CONN'S OPENING STATEMENT. THAT IS NOT INFORMATION THAT PSYCHIATRISTS CUSTOMARILY RELY ON IN FORMING OPINIONS IN A CASE. IT SEEMS AS THOUGH THEY DO HAVE A RIGHT, AND I'M SURE WE DO HAVE A RIGHT TO FIND OUT WHAT INFORMATION DR. DIETZ IS RELYING UPON. IF THERE IS OTHER INFORMATION THAT HE'S RELYING UPON THAT WE

HAVE NOT BEEN TOLD BY THE DISTRICT ATTORNEY, WE NEED TO KNOW SO WE CAN FIND OUT IF IT IS GENUINELY SOMETHING THAT CAN BE RELIED UPON, OR IF IT'S SOMETHING LIKE THAT THAT IS HEARSAY OR INACCURATE OR HAS OTHER PROBLEMS WITH IT.

6NOW, YOUR HONOR, THERE'S ALSO UNHIGHLIGHTED PARTS OF THE ACTUAL POLICE REPORTS THAT ARE JUST AS OBJECTIONABLE AS THE HIGHLIGHTED PARTS, BUT WE DIDN'T FOCUS ON THEM BECAUSE HE DIDN'T HAVE REASON TO BELIEVE THE WITNESS WAS RELYING ON THEM.

THE COURT: CAN WE JUST VERIFY IT NOW?
MR. CONN, CAN YOU CONFER WITH YOUR WITNESS, AND IF YOU HAVE ANY DOUBT WHATSOEVER ON THE SUBJECT, WHETHER OR NOT MATERIALS THAT HE DIDN'T HIGHLIGHT ARE MATERIALS THAT HE IS CONSIDERING IN THESE REPORTS, I JUST WANT TO KNOW THAT SO WE CAN THEN HAVE A LITTLE BETTER UNDERSTANDING OF WHERE WE'RE GOING HERE.

MR. CONN: THE ONLY PROBLEM WITH THAT IS, ACCORDING TO WHAT COUNSEL IS SUGGESTING, PERHAPS THE DOCTOR SHOULD NOT CONSIDER THINGS THAT I REPRESENTED TO HIM CONCERNING MY UNDERSTANDING OF THIS CASE AND WHAT WITNESSES HAVE TESTIFIED TO IN THIS CASE.
COUNSEL --

MS. ABRAMSON: NO.

MR. CONN: COUNSEL'S WITNESSES, WHEN THEY TESTIFIED, RELIED UPON ALL THE REPORTS IN THIS

CASE. THEY RELIED UPON STATEMENTS MADE TO THEM BY OTHER EXPERTS WHO RELIED UPON MATERIAL, AND COUNSEL WAS NOT REQUIRED TO DELINEATE TO THE PROSECUTION EVERY SINGLE STATEMENT GIVEN FROM EVERY EXPERT TO ANOTHER EXPERT, OR STATEMENTS MADE BY COUNSEL TO THE EXPERT, IN THE INFORMATION THAT THE WITNESS WAS RELYING UPON.

8SO WHETHER OR NOT WE TURN TO THOSE SPECIFIC REPORTS THAT ARE BEFORE THE COURT AND FIND PARTICULAR STATEMENTS WHICH THE DOCTOR MAY HAVE

RELIED UPON, THERE'S ADDITIONAL INFORMATION THAT HAS BEEN PROVIDED TO HIM, BOTH BY MYSELF -- MS. ABRAMSON HERSELF, AS SHE WAS INTERVIEWING THE DOCTOR THE OTHER DAY, PROVIDED INFORMATION TO HIM. THE PROSECUTION SHOULD NOT BE PUT IN A POSITION OF DELINEATING EVERY SINGLE SCRAP OF INFORMATION EVER PROVIDED TO HIM SOLELY FOR THE PURPOSE OF PROVIDING COUNSEL WITH AN OPPORTUNITY TO COMPLAIN IF HE MAKES REFERENCE TO ANYTHING WHICH IS OUTSIDE THAT PARTICULAR LIST OF INFORMATION.

THE COURT: THAT'S NOT THE PURPOSE. THE PURPOSE IS SO THAT THE TRIER OF FACT WILL HAVE A BASIS FOR UNDERSTANDING WHAT HIS OPINION IS BASED UPON.

MR. CONN: RIGHT.

THE COURT: AND WHEN THE WITNESS SAYS: I TALKED TO MR. CONN AND MR. CONN SUMMARIZED TESTIMONY OF WITNESSES, AND NONE OF THAT IS IN WRITING OR

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DOCUMENTED ANYWHERE, HOW IS IT THAT THE TRIER OF FACT WOULD UNDERSTAND WHAT IT IS YOU SUMMARIZED AND HOW YOU SUMMARIZED IT, OR HOW WOULD THE DEFENSE CROSS-EXAMINE ON THAT? THEY'D HAVE NOTHING TO CROSS-EXAMINE ON.

MR. CONN: THEY CAN CROSS-EXAMINE HIM ON THE SUBSTANCE OF THE MATERIAL, IN THE SAME WAY THAT THE WITNESSES WHO TESTIFIED BEFORE THIS JURY DID NOT PROVIDE A COPY OF ALL OF THEIR REPORTS TO THE JURY SO THAT THE JURY COULD THEN REVIEW ALL OF THE REPORTS, NOR DID THE WITNESS EVEN PRODUCE ALL OF THE REPORTS HERE IN COURT, SO THAT WE CAN HAVE AN OPPORTUNITY TO CROSS-EXAMINE THE WITNESS IN REGARD TO THOSE REPORTS.

HOWEVER, HAD I CHOSEN TO CROSS-EXAMINE THE WITNESS IN REGARD TO THE INFORMATION PROVIDED TO HIM, THERE WAS AN OPPORTUNITY FOR ME TO DO SO; AND IN THE SAME WAY, COUNSEL WILL HAVE AN OPPORTUNITY TO CROSS-EXAMINE THE DOCTOR IN REGARD TO THE INFORMATION THAT HAS BEEN PROVIDED TO HIM CONCERNING THIS MATTER.

MS. ABRAMSON: YOUR HONOR, THIS IS LUDICROUS. DR. WILSON NEVER TESTIFIED THAT HE RELIED ON INFORMATION THAT HE GOT VERBALLY FROM ME. MOREOVER, ANY INFORMATION THAT -- THE ONLY OTHER PERSON HE GOT ANY ORAL INFORMATION FROM WAS DR. HART. AND I TOLD THE PROSECUTION WHAT THAT INFORMATION WAS. IT CAME -- IT WAS INFORMATION -- IN FACT, IT

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WAS IN WRITING. I TOLD HIM HE GOT SOME VERBAL INFORMATION FROM DIANE VANDERMOLLEN, AND I TOLD HIM WHAT IT WAS. I GAVE THEM A DETAILED LIST OF EVERY REPORT THAT DR. WILSON HAD BEEN GIVEN AND THAT HE WAS RELYING ON; AND AS TO THOSE REPORTS THAT HAD NOT PRIOR TO THAT POINT -- JANUARY 22ND WAS IT? -- HAD NOT BEEN TURNED OVER TO THE PROSECUTION, I TURNED IT OVER TO THEM THAT DAY. THEY HAD, IN WRITING, EVERY SINGLE FACT THAT DR. WILSON RELIED UPON SO THEY COULD CROSS-EXAMINE.

OF COURSE, THEY DIDN'T WANT TO CROSS-EXAMINE ON THOSE FACTS BECAUSE THEN THOSE FACTS WOULD HAVE BEEN PUT BEFORE THE JURY, WHICH IS WHAT THEY HAVE SPENT ALL OF THEIR EFFORTS IN THE LAST TWO YEARS PREVENTING; THAT THE SOURCE FACTS DON'T GO TO THIS JURY.

ARE WE SUPPOSED TO SAY: WHAT DID MR. CONN TELL YOU? AND HEAR MR. CONN'S VERSION OF THE CASE COME OUT?

FIRST OF ALL, WE WOULD SAY, UNDER 801, IT IS NOT APPROPRIATE FOR AN EXPERT TO RELY ON THE PROSECUTOR'S SUMMARY OF WITNESS TESTIMONY WHEN THERE IS A COMPLETE AND CORRECT RECORD OF SAME.

THE COURT: I THINK THAT'S UNTRUE. CLEARLY, I HAD, QUITE FRANKLY, THOUGHT IF THERE WAS SOME CONCERN ABOUT THE LENGTH OF THE TRANSCRIPTS, THAT THE PROSECUTION COULD HAVE SUPPLIED THE WITNESS WITH AN OUTLINE OF THE TESTIMONY OF WITNESSES. I ASSUME

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THE PROSECUTION HAS PREPARED SUCH OUTLINES SUMMARIZING --

MS. ABRAMSON: THAT'S FINE.

THE COURT: -- EVERY WITNESS THAT TESTIFIED, FOR THEIR OWN PURPOSES, FOR THEIR TRIAL PREPARATION --

MS. ABRAMSON: SURE.

THE COURT: AND PREPARATION FOR ARGUMENT. SO I HAD ASSUMED THAT'S WHAT THE PROSECUTION WOULD HAVE DONE; THAT SOMETHING IN WRITING WOULD HAVE BEEN SUBMITTED TO THE WITNESS OF WHAT HAD TRANSPIRED

DURING THE TRIAL, RATHER THAN JUST AN ORAL REPRESENTATION OF COUNSEL THAT IS NOT DOCUMENTED IN

13 ANY FASHION, WHICH THEN PUTS COUNSEL'S CREDIBILITY BEFORE THE JURY AS WELL, IF THE WITNESS IS CROSS-EXAMINED ON: WELL, YOU SAY WITNESS SO AND SO HAS SAID THIS IN THE TRIAL. ARE YOU AWARE THAT THE WITNESS SAID JUST THE OPPOSITE? AND WHERE DID YOU GET YOUR INFORMATION? WELL, I GOT IT FROM MR. CONN. AND IT TURNS OUT TO BE INACCURATE INFORMATION. ASSUMING THAT WAS TO OCCUR, THEN MR. CONN'S CREDIBILITY BECOMES AN ISSUE, OR THAT OF THE WITNESS, AS TO THE RELIABILITY OF THE INFORMATION OR HIS RECALL OF THE INFORMATION THAT WAS PROVIDED TO HIM. I DON'T KNOW HOW MUCH YOU'RE TALKING ABOUT HERE, MR. CONN, OF WHICH WITNESSES AND WHAT TRANSPIRED DURING THE TRIAL THAT HAS BEEN PROVIDED ORALLY TO THE WITNESS.

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MR. CONN: THE PROBLEM THAT I'M CONCERNED ABOUT, YOUR HONOR, IS WHAT DO WE DO IN A SITUATION WHERE, IF THE TESTIMONY IS -- IF THE TESTIMONY OF THE WITNESS INCLUDES FACTS WHICH ARE NOT CONTAINED WITHIN THE FOUR CORNERS OF THE DEFENDANT'S TESTIMONY HERE AT TRIAL -- FOR EXAMPLE, THE NUMBER OF THE WOUNDS THAT WERE INFLICTED UPON THE BODIES. I DON'T KNOW THAT ERIK MENENDEZ TESTIFIED TO THE NUMBER OF WOUNDS INFLICTED UPON THE BODIES. DR. DIETZ KNOWS THAT INFORMATION. PRECISELY WHERE DOES HE KNOW THAT INFORMATION FROM? IT MIGHT BE BY A REFERENCE THAT WAS MADE BY THE INVESTIGATING OFFICER IN ONE OF THE REPORTS FROM THE CORONER'S OFFICE --

THE COURT: THERE'S NO PROBLEM WITH THAT SORT OF THING, AS LONG AS IT'S DOCUMENTED SOMEWHERE THAT HE COULD SAY: YEAH. I LOOKED AT THE CORONER'S REPORT AND THIS IS WHAT I SAW. THESE ARE THE VERY SAME REPORTS THAT ARE IN ISSUE.

MS. ABRAMSON: HE WASN'T GIVEN THOSE REPORTS.

MR. CONN: (CONTINUING) WITH A COPY -- WITH A STACK OF REPORTS, AND HE DIDN'T HIGHLIGHT IN YELLOW THE NUMBER OF WOUNDS, PERHAPS, THAT WERE INFLICTED TO THE BODY. BUT THAT MAY BE SOMETHING WHICH HE IS GOING TO REFER TO IN THE TESTIMONY. IF I REPRESENT TO THE COURT HE IS NOT GOING TO REFER TO THAT PARTICULAR STACK OF REPORTS,

AND HE MENTIONED THE NUMBER OF WOUNDS, THERE WILL BE AN OBJECTION THAT THE DOCTOR NEVER INDICATED THAT HE WAS GOING TO REFER TO THE NUMBER OF WOUNDS, AND I DON'T WANT TO BE DRAWN INTO THAT ABSURD SITUATION.

THE COURT: THAT WOULD BE AN ABSURD SITUATION. I DON'T THINK THAT'S WHAT COUNSEL IS CONCERNED ABOUT. THEY'RE CONCERNED ABOUT MORE OF THE THINGS THAT WERE NOT HIGHLIGHTED BY THE WITNESS, TO WHICH THEY WOULD HAVE HAD OBJECTIONS IF THEY HAD KNOWN THE WITNESS WAS GOING TO RELY UPON THEM, THINGS THAT ARE UNRELIABLE, UNSUBSTANTIATED HEARSAY, THAT WERE PART OF THE RAW INVESTIGATION IN THE CASE THAT WAS LATER DETERMINED TO BE UNRELIABLE IN SOME FASHION WHEN IT CAME TO LITIGATION.

MR. GESSLER: YOUR HONOR --

THE COURT: THAT STILL SIDESTEPS THE QUESTION I HAD OF YOU REGARDING REPRESENTATIONS YOU HAVE MADE TO THE WITNESS ABOUT TESTIMONY THAT HAS OCCURRED DURING THE TRIAL. IF YOU HAD DONE THAT, TO A GREAT EXTENT, THEN, NUMBER ONE, HOW DOES ANYONE KNOW WHAT IT IS YOU TOLD THE WITNESS SO THAT IT CAN BE THE SUBJECT OF EXAMINATION? OTHERWISE, THE CROSS-EXAMINER IS IN A POSITION OF JUST WALKING IN QUICKSAND WITHOUT KNOWING WHERE HE'S GOING.

MR. CONN: WELL, I DON'T THINK IT'S UNUSUAL FOR THE PROSECUTOR TO SPEAK TO HIS EXPERT WITNESSES CONCERNING THE FACTS OF THIS CASE. I DON'T THINK IT'S UNUSUAL FOR THE DEFENSE ATTORNEYS TO SPEAK TO

THEIR EXPERTS CONCERNING FACTS OF THE CASE.

THE COURT: NO ONE IS SAYING THAT. BUT AS FAR AS THE TESTIMONY OF A WITNESS WHO'S THEN RELYING UPON THAT CONVERSATION, WITHOUT KNOWING WHAT IT IS THAT YOU TALKED ABOUT, THAT'S THE PROBLEM.

6AND THEN, AS I SAID BEFORE, IT BECOMES THEN POTENTIALLY A PROBLEM OF YOUR CREDIBILITY AS TO THE RELIABILITY OF INFORMATION YOU PROVIDED.

MR. CONN: RIGHT. AND I'M SAYING I AM NOT REPRESENTING TO THE COURT THAT THERE IS A STACK OF INFORMATION WHICH I PROVIDED TO HIM ORALLY WHICH WAS NOT PROVIDED TO HIM IN SOME REPORTS. BUT WE DID DISCUSS MATTERS THAT ARE CONTAINED IN THE REPORTS. WE DID DISCUSS MATTERS THAT ARE CONTAINED IN TRANSCRIPTS, AND IT'S IMPOSSIBLE FOR ME, AT THIS POINT IN TIME, TO MAKE A LIST OF WHAT I DISCUSSED WITH HIM AND WHAT I DID NOT DISCUSS WITH HIM. IT IS NOT UNUSUAL FOR AN ATTORNEY TO DISCUSS THESE MATTERS WITH THE EXPERT WITNESSES.

THE COURT: WELL, DISCUSSIONS DON'T NECESSARILY MEAN THE WITNESS IS RELYING UPON THE INFORMATION. YOU CAN TALK TO YOUR WITNESS ABOUT WHATEVER YOU WANT TO AND GET ADVICE FROM HIM AND FEEDBACK, BUT THAT DOESN'T NECESSARILY FORM THE BASIS OF HIS OPINION. SO WHAT I'M FOCUSING ON IS WILL THE WITNESS RELY UPON THE INFORMATION YOU PROVIDED ORALLY TO HIM AS THE BASIS FOR HIS OPINION?

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MR. CONN: ALL I'M SAYING IS THAT THE COURT IS PUTTING THE PROSECUTION IN AN IMPOSSIBLE SITUATION, WHERE IT IS ASKING THE PROSECUTION TO DELINEATE EVERY SINGLE SCRAP OF INFORMATION THAT HAS EVER BEEN PROVIDED TO THIS WITNESS AND THE BASIS FOR THAT INFORMATION. IF WE ARE GOING TO DO THAT, THEN I'M GOING TO ASK THAT WE GO THROUGH EACH AND EVERY DOCUMENT THAT HAS EVER BEEN PROVIDED TO HIM AND COVER EVERY OBJECTION BY COUNSEL. I THINK HE CAN RELY UPON THAT MATERIAL. IN THE INTEREST OF TIME, I DIDN'T THINK THAT WAS NECESSARY. BUT IF WE ARE GOING TO BE PUT INTO -- IF WE'RE GOING TO BE BOXED INTO A CORNER, WHERE THE WITNESS CANNOT MAKE REFERENCE TO ANY FACT OF INFORMATION IN THIS CASE OUTSIDE A LIST OF MATERIAL TO WHICH WE ARE GOING TO DESIGNATE PRIOR TO THE TIME HE TAKES THE WITNESS STAND, WE ARE GOING TO RUN INTO PROBLEMS. I POINTED OUT ONE SITUATION, WHICH I INDICATED WAS, IN MY OPINION, AN ABSURD SITUATION, AND THE COURT AGREED THAT WOULD BE AN ABSURD SITUATION. WHAT IS ABSURD IS IN THE EYE OF THE BEHOLDER. THEY CAN GO THROUGH MANY OF THE FACTS OF THIS CASE AND SIMILARLY PIN DOWN THE PROSECUTION TO FIND OUT WHAT WAS THE SOURCE OF THAT INFORMATION, AND IF IT'S NOT CONTAINED WITHIN THE FOUR CORNERS OF THE DEFENDANT'S TESTIMONY OR HIS INTERVIEWS WITH

DR. DIETZ, THEN THEY'RE GOING TO SAY: WELL, WE HAVE

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A MISREPRESENTATION FROM THE PROSECUTION THAT HE WAS NOT GOING TO RELY ON THAT INFORMATION.

THE COURT: THE COURT HASN'T REALLY PUT YOU IN ANY BOX OR ANYTHING OF THAT NATURE. IT'S REALLY WHAT YOU'RE DOING BY NOT DOCUMENTING WHAT YOU PROVIDED TO THE WITNESS. IF IT WAS DOCUMENTED, THEN THERE WOULD BE NO CONCERN HERE. WE WOULDN'T BE HAVING THIS DISCUSSION AT ALL, IF YOU HAD MATERIALS -- AS I SAID, IF YOU HAD SUMMARIZED THE TESTIMONY OF WITNESSES AND PROVIDED IT TO YOUR EXPERT, THEN IT'S THERE IN BLACK AND WHITE. NO DISPUTES. THAT'S WHAT HE HAS. IF YOU GAVE HIM THE CORONER'S REPORT, THAT'S WHAT HE HAS. ALL OF THOSE THINGS THAT WE'RE NOW DISCUSSING WOULDN'T HAVE TO BE DISCUSSED. THEY WOULD HAVE ALL BEEN DOCUMENTED. I AGREE, THERE WERE CERTAIN WITNESSES WHO DR. WILSON REFERRED TO THAT PERHAPS WERE NOT REFERRED TO IN WRITTEN REPORTS, SOME PEOPLE THAT HE SPOKE WITH ORALLY, BUT HE IDENTIFIED THEM IN COURT; HAVING SPOKEN WITH MARTA CANO, AND PERHAPS ONE OTHER --

MS. ABRAMSON: DIANE VANDERMOLLEN.

THE COURT: -- RELATIVE. AND ALSO HIS CONVERSATIONS WITH DR. HART. AS FAR AS DR. HART'S INTERVIEWS WITH VARIOUS PEOPLE, I HAVE NO AWARENESS AS TO WHETHER OR NOT DR. HART PUT ALL THAT IN WRITING, AND THAT WAS THEN TURNED OVER TO THE PROSECUTION AS PART OF THE DISCOVERY THAT THE DEFENSE PROVIDED TO YOU. IF IT

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WAS, THEN YOU HAD IT ALL. I DON'T REALLY RECALL --

MS. ABRAMSON: THERE WAS ONLY --

THE COURT: -- IF THAT WAS PART OF THE DISCOVERY. DR. HART DID TESTIFY IN THE FIRST TRIAL. THERE'S REPRESENTATIONS THAT HE CONTINUED HIS INVESTIGATION AFTER THE FIRST TRIAL.

MS. ABRAMSON: YOUR HONOR, THERE WAS ONLY ONE FACT WE WANTED DR. WILSON TO TESTIFY TO THAT HE

OBTAINED FROM DR. HART, AND THAT HAD TO DO WITH FAITH GOLDSMITH, THE JOSE MENENDEZ THREATENING TO KILL PEOPLE REMARKS; AND THOSE WERE IN WRITING AND TURNED OVER TO THE PROSECUTION. FIRST WE GAVE IT TO THEM ORALLY, AND THEN WE GAVE THEM THE WRITTEN REPORT. THAT WAS THE ONLY INFORMATION DR. WILSON WAS GOING TO RELY ON THAT HE GOT FROM DR. HART. AND IT WAS TURNED OVER TO THE PEOPLE IN WRITING.

THE COURT: I DON'T KNOW THAT. DR. WILSON

18 DID TESTIFY THAT HE SPOKE WITH DR. HART AND RELIED UPON A LOT OF INFORMATION PROVIDED BY DR. HART THAT WAS NEVER IDENTIFIED, OTHER THAN IN A GENERIC NATURE.

MS. ABRAMSON: IT HAD TO DO WITH THE PSYCHOLOGICAL MALTREATMENT CHARTS THAT THE TWO OF THEM MADE TOGETHER. THAT'S WHAT HE SAID. SINCE I WASN'T ALLOWED TO GET INTO THAT, I DIDN'T TURN THE CHARTS OVER, THOUGH I HAVE THEM.

MR. GESSLER: AS AN EXAMPLE OF THE MATERIAL WHICH DR. DIETZ HAS TOLD US HE'S RELIED UPON AND HAS

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HIGHLIGHTED, IS THE AFFIDAVIT FOR SEARCH WARRANT -- THIS IS ABOUT THE THIRD DOCUMENT, STARTING WITH P-36, AND THERE HE HAS HIGHLIGHTED: "YOUR AFFIANT'S CHECK OF THE CRIME SCENE REVEALED THAT 16 SHOTGUN WOUNDS WERE FIRED."

6NOW, THAT, ACCORDING TO WHAT DR. DIETZ HANDED OVER TO US, IS WHAT HE'S RELYING UPON, AMONG OTHER FACTS NOT PART OF THE CRIME SCENE. THAT'S IN WRITING, SO WE KNOW HE HAS THAT MISINFORMATION AVAILABLE. AND WE ALSO KNOW THAT'S TOTALLY CARELESS AND IN ERROR, GIVEN THE STATE OF THE EVIDENCE THAT HAS COME BEFORE THE JURY. OUR PROBLEM IS NOW WE HAVE NO IDEA WHAT OTHER MISAPPREHENSIONS HE'S UNDER, FROM ORAL COMMUNICATIONS BY MR. CONN, THAT ARE OVER AND ABOVE THE ONES THAT WE'RE ABLE TO PINPOINT HERE AND HAVE GIVEN TO THE COURT. AND I WOULD ASK -- I DON'T THINK DR. DIETZ SHOULD BE ALLOWED TO TESTIFY AT ALL, BASED UPON THIS MANNER IN WHICH HE'S GAINING EVIDENCE, BECAUSE IT IS NOT RELIABLE EVIDENCE UNDER 801, WHEN IT CAN'T IN ANY WAY BE DOCUMENTED AS TO WHAT HE'S GOING ON.

MS. ABRAMSON: MOREOVER, IN THE LIST OF MATERIALS THAT WE WERE TOLD WERE TURNED OVER TO DR. DIETZ -- NOT EVEN WHAT HE'S RELIED UPON -- THE

CORONER'S REPORTS AREN'T EVEN HERE. THE CORONER'S PHOTOGRAPHS AREN'T HERE. SO I HAVE NO IDEA IF HE WAS GIVEN CORONER'S REPORTS, AS MR. CONN SEEMS TO BE

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INDICATING. IF SO, THEN IT'S CLEAR, THE LIST WE WERE GIVEN ITSELF OF WRITTEN MATERIALS IS INACCURATE.

4SO, I MEAN, I DON'T KNOW HOW TO RESOLVE IT. I'D BE MORE THAN HAPPY TO GIVE SUMMARIES OF ALL THE WITNESSES, SUMMARIES WHICH ARE NOT BIASED IN ANY WAY. THEY'RE FACT SUMMARIES. I'D BE HAPPY TO GIVE THOSE TO DR. DIETZ. HE'S INDICATED ALREADY HE DIDN'T HAVE TIME TO READ ALL OF THE MATERIALS WE'VE GIVEN HIM. I DO HAVE SUMMARIES OF EVERY WITNESS WHO'S TESTIFIED.

MR. CONN: ONCE AGAIN, THE PROBLEM -- WHAT COUNSEL IS DOING HERE IS CREATING A PROCEDURAL STUMBLING BLOCK TO IMPEDING THE TESTIMONY OR BLOCKING THE TESTIMONY OF DR. DIETZ. WE COULD HAVE GONE THROUGH THOSE VERY SAME REPORTS, REPORTS WHICH WERE GIVEN TO THE DEFENSE EXPERTS IN THIS CASE, AND WE COULD HAVE POINTED OUT DISCREPANCIES; AND WE COULD HAVE ASKED FOR A LAUNDRY LIST, THEN, OF EVERYTHING THAT THE WITNESSES WERE RELYING UPON; AND WE COULD HAVE RAISED THE VERY SAME OBJECTIONS WHICH THEY ARE RAISING. I DON'T THINK THAT WOULD HAVE BEEN IN THE INTEREST OF TIME. WE DID NOT TRY TO CREATE SUCH A PROCEDURAL STUMBLING BLOCK AND ASK FOR A HEARING IN REGARD TO EVERY SENTENCE IN EVERY REPORT EVER PROVIDED TO THE WITNESS. WE RESERVED THAT FOR CROSS-EXAMINATION. THERE WERE MATTERS THAT I WANTED TO

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BRING UP IN CROSS-EXAMINATION. I HAD THE RIGHT TO DO SO; AND I MADE A DECISION AS TO WHETHER OR NOT TO DO SO. I DON'T THINK THAT COUNSEL SHOULD NOW BE ABLE TO CREATE THAT SAME PROCEDURAL STUMBLING BLOCK WITH THIS WITNESS. COUNSEL CAN GO THROUGH THE

REPORTS AND HE CAN POINT TO ONE SENTENCE HERE OR THERE WHICH IS INACCURATE AND NOT COMMENT ON THE REST OF THE REPORT. I TAKE IT FROM THAT THAT THE REST OF THE REPORT TO WHICH HE REFERRED IS, IN FACT, ACCURATE.

MR. GESSLER: COUNSEL KNOWS THAT IS NOT TRUE, BECAUSE I UNDERLINED THE OTHER THINGS THAT WERE INACCURATE.

MR. CONN: IF I WENT THROUGH THE REST OF THE REPORT AND POINTED OUT ALL THE THINGS THAT ARE, IN FACT, ACCURATE, THERE'S NO REASON WHY DR. DIETZ SHOULD NOT BE ABLE TO REFER OR RELY UPON THE MATERIAL CONTAINED IN THAT REPORT.

MS. ABRAMSON: RIGHT.

THE COURT: LET'S DO THIS THEN: AGAIN, YOU'RE SLIDING OFF THE ISSUE, MR. CONN. I WANT TO TREAT DR. DIETZ IN THE SAME WAY I TREATED DR. WILSON. AND DR. WILSON IDENTIFIED ALL THE ITEMS -- THE DEFENSE IDENTIFIED FOR THE COURT AND FOR YOU ALL THE THINGS THAT DR. WILSON RELIED UPON FOR HIS TESTIMONY. DR. WILSON, IN HIS TESTIMONY, RECITED ALL THOSE THINGS, AND IT INCLUDED THE TESTIMONY OF WITNESSES, THE ACTUAL TRANSCRIPTS OF

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TESTIMONY OF WITNESSES. SO THAT WAS THERE. IT WAS DOCUMENTED. THERE WAS NO PROBLEM OF INTERPRETATION. THE MATERIAL WAS THERE.

4AND I DON'T RECALL THAT THERE WAS ANY -- YOU'RE CORRECT, THAT THERE WAS NO OBJECTION BY THE PROSECUTION TO ANY MATERIAL CONTAINED THEREIN THAT WAS UNRELIABLE, UNLESS IT WAS SUGGESTED BY A QUESTION THAT PERHAPS THAT WAS MATERIAL THAT THE WITNESS MIGHT RELATE TO THE JURY, AND THEN WE HAD HEARINGS AND THE MATTER WAS LITIGATED. SO WE WERE ABLE TO SEPARATE THOSE ISSUES OUT. BUT TO A GREAT EXTENT, WHAT DR. WILSON RELIED UPON WAS THE TESTIMONY OF WITNESSES AND INTERVIEWS OF THE DEFENDANT AND REPORTS OF INTERVIEWS OF OTHER WITNESSES THAT WERE IDENTIFIED. HE DIDN'T -- IT'S MY RECOLLECTION -- RELY UPON THE INVESTIGATIVE REPORTS OF INTERVIEWS OF WITNESSES WHO HAVE NOT TESTIFIED BECAUSE, FOR WHATEVER REASON, SOME OF IT -- BECAUSE THE WITNESSES TURNED OUT TO BE PROVIDING UNRELIABLE INFORMATION OR UNVERIFIED INFORMATION THAT WAS IN DISPUTE. IF YOU ARE PREPARED TO SIT DOWN WITH YOUR WITNESS OR HAVE THE DEFENSE AND YOU SIT DOWN

WITH THE WITNESS AND GO THROUGH THESE REPORTS AND IDENTIFY, THEN, NOW ALL THOSE THINGS THAT HE IS RELYING UPON, THEN WE'LL BE IN A BETTER POSITION TO PROCEED WITH THIS CASE.
AS I STARTED OUT EARLIER THIS MORNING IN

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MY OBSERVATIONS, YESTERDAY THE DEFENSE STATED ON THE RECORD THAT THEIR UNDERSTANDING WAS THAT ONLY THOSE MATTERS THAT DR. DIETZ HIGHLIGHTED WERE THOSE THINGS HE WAS CONSIDERING; AND YOU DIDN'T STATE OTHERWISE. THAT WAS CLEARLY STATED, AND TWICE.

MR. CONN: ALL RIGHT. PERHAPS IF IT WAS STATED, PERHAPS I DIDN'T SEE IT IN THE SAME WAY THE COURT UNDERSTOOD IT. IF THE COURT UNDERSTOOD THAT TO MEAN THAT, THEREFORE, DR. DIETZ CANNOT RELY UPON ANY OTHER INFORMATION PROVIDED BY THE PROSECUTION --

THE COURT: NOT THAT HE COULDN'T, THAT HE WASN'T. THAT'S WHAT WAS STATED.

MR. CONN: YOUR HONOR, THE WITNESS IS RELYING UPON BASIC INFORMATION. I DON'T EVEN KNOW THAT WE'RE TALKING ABOUT SOMETHING THAT'S IN DISPUTE; THE BASIC INFORMATION ABOUT THE CRIME, ABOUT THIS CASE, WHICH I THINK, IF WE WERE TO BREAK IT DOWN, IS FOUND SOMEWHERE IN THOSE REPORTS, IS FOUND IN CONVERSATIONS THAT I'VE HAD WITH HIM. AND I THINK HE SHOULD BE ENTITLED TO RELY ON THAT INFORMATION, WHETHER OR NOT HE HIGHLIGHTED IT IN YELLOW.

THE COURT: OKAY. WELL, IF THEN IT'S CONTAINED IN THESE REPORTS, THEN PERHAPS HE CAN IDENTIFY WHAT IT IS; AND IF IT'S MATERIAL THAT'S EXTRANEIOUS TO THE REPORTS, THINGS THAT YOU PROVIDED HIM THAT ARE OF SIGNIFICANCE, THEN HE CAN DOCUMENT THAT IN SOME WAY.
WE'RE IN A SITUATION WHERE IF THIS ISN'T

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PURSUED BEFORE THE WITNESS TESTIFIES, THE FIRST QUESTION ASKED OF HIM WILL RESULT IN AN OBJECTION, AND WE'LL HAVE LENGTHY HEARINGS WITH INCONVENIENCE TO THE JURY AND FURTHER DELAYS IN THE TRIAL.

5SO I THINK THERE CLEARLY IS AN OBLIGATION TO IDENTIFY THE MATERIALS HE'S RELYING UPON AND NOT TAKE THE POSITION, WELL, WE PROVIDED HIM WITH ALL THESE REPORTS, AND WE'LL JUST SORT OF WAIT AND SEE WHAT HE SAYS WHEN HE GETS ON THE WITNESS STAND.

MR. CONN: THAT'S REALLY NOT MY POSITION. WHAT I'M SAYING IS: WE PROVIDED COUNSEL WITH A COPY OF THE REPORTS PROVIDED TO THE WITNESS. HE CONSIDERED THAT MATERIAL, AND I THINK HE CAN RELY ON THAT MATERIAL WHEN HE TESTIFIES. AND WE WOULD OBJECT TO THE OPPOSITION OF THE DEFENDANT TO DR. DIETZ RELYING UPON ANY OF THAT MATERIAL. SO I WOULD ASK FOR A HEARING AS TO THE SPECIFIC REASONS WHY THAT MATERIAL SHOULD NOT BE RELIED UPON. I THINK IT IS REASONABLE FOR HIM TO RELY ON THE MATERIAL THAT IS CONTAINED IN THE REPORTS THAT ARE IN DISPUTE.

MS. ABRAMSON: INCLUDING JUDALON SMYTH, I TAKE IT?

MR. CONN: WE'LL GO THROUGH IT ONE BY ONE AND WE'LL DETERMINE --

MS. ABRAMSON: THAT DOESN'T DETERMINE WHETHER OR NOT IT CAN BE RELIED UPON. THAT STILL DOESN'T

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TELL US WHAT THE HEARSAY INFORMATION THAT HE RECEIVED FROM MR. CONN IS THAT HE'S RELIED ON. I STILL HAVE NO WAY OF KNOWING WHAT THAT IS, UNLESS WE CAN ASK HIM PRIOR TO HIS GETTING ON THE WITNESS STAND. I DON'T FEEL LIKE BEING AMBUSHED. WE WERE SPECIFICALLY PRECLUDED FROM CALLING THE WITNESSES DR. WILSON RELIED UPON. WE WERE ONLY ALLOWED TO CALL THEM IF THEY WERE CHALLENGED. HERE THE PROSECUTION IS BRINGING IN INADMISSIBLE, DISPUTED EVIDENCE THROUGH EXPERT OPINION, AND THAT IS IMPROPER.

THE COURT: I'M GOING TO ORDER THAT DR. DIETZ BE AVAILABLE TO BE INTERVIEWED FURTHER BY THE DEFENSE TODAY, AND TO IDENTIFY THOSE MATERIALS IN THESE REPORTS THAT HAVE BEEN PROVIDED TO HIM THAT HE IS CONSIDERING IF IT GOES BEYOND THAT WHICH HE HAS HIGHLIGHTED; AND TO FURTHER IDENTIFY OTHER MATERIAL THAT WAS PROVIDED BY THE PROSECUTION VERBALLY THAT HE IS RELYING UPON SO THAT -- I UNDERSTAND THAT THIS WON'T BE A DEFINITIVE LIST. HE IS NOT BOUND BY THIS TO THE EXTENT THAT IF HE RECALLS SOMETHING LATER ON THAT HE DIDN'T DISCLOSE, THAT HE CANNOT REFER TO IT

IF IT'S OTHERWISE ADMISSIBLE. BUT THERE HAS TO BE MORE THAN WHAT HAS BEEN PROVIDED HERE BEFORE THE WITNESS CAN PROCEED.
AND JUST TO REPEAT. THIS IS ALL OCCURRING BECAUSE THE PROSECUTION HASN'T DOCUMENTED WHAT IT IS THAT THE WITNESS IS RELYING ON.

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MR. CONN: WE DID. WE PROVIDED COUNSEL WITH THE LIST OF THE MATERIAL.

THE COURT: BUT YOU DIDN'T DOCUMENT WHAT YOU TOLD HIM IN ANY WAY.

MR. CONN: I'M SURE COUNSEL, IN THE HUNDREDS OF HOURS THAT SHE HAS DISCUSSED THIS CASE WITH HER EXPERTS, HAS NOT DOCUMENTED EVERY WORD OR EVERY --

THE COURT: SHE DOESN'T HAVE TO, AND YOU DON'T HAVE TO. BUT WHEN YOU SAY: I SUMMARIZED TESTIMONY OF WITNESSES FOR THE EXPERT, AND HE'S RELYING UPON MY SUMMARIES OF THE WITNESS' TESTIMONY, VARIOUS WITNESSES WHO TESTIFIED, I SUMMARIZED THEM VERBALLY AND TOLD HIM WHAT THE WITNESSES SAID; WHEREAS, THIS WITNESS HAD THE TRANSCRIPTS OF THE TESTIMONY OF THE WITNESSES AND RELIED UPON THE TRANSCRIPTS. THEN YOU HAVE AN OBLIGATION TO GO FURTHER THAN JUST SAY: YOU KNOW, I TOLD HIM THINGS, AND HE'S RELYING UPON THEM. YOU HAVE TO BE MORE SPECIFIC AS TO WHAT IT IS.

THERE'S NO COMPARISON BETWEEN THE TWO.

AS I SAID, THERE'S NOTHING WRONG WITH TALKING TO YOUR WITNESS, CONFERRING WITH HIM, AND ASKING HIM QUESTIONS AND RESPONDING TO QUESTIONS HE HAS, BUT WHEN YOU GO BEYOND THAT AND SAY: I'M GOING TO SUMMARIZE THE TESTIMONY OF VARIOUS WITNESSES, AND THIS IS WHAT THESE WITNESSES SAID DURING THE TRIAL, SO YOU DON'T HAVE TO READ THE TRANSCRIPT, YOU DON'T HAVE TO READ SUMMARIES, AND THIS WILL BE MUCH EASIER

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AND MUCH QUICKER FOR YOU; AND I ASSUME THE WITNESS THEN DIDN'T TAKE ANY NOTES OF WHAT IT WAS YOU TOLD HIM, THERE'S NO WAY OF KNOWING WHAT IT IS HE'S

RELYING UPON.

MR. CONN: I UNDERSTAND WHAT THE COURT IS SAYING. I JUST WANT THE COURT TO UNDERSTAND WE DISCUSSED WITNESSES, AND PERHAPS "DISCUSSION" WOULD HAVE BEEN A BETTER CHOICE OF WORDS. I THINK THAT THE DISCUSSIONS WE HAVE HAD CONCERNING WITNESSES IN THIS CASE, BACKGROUND INFORMATION, HAS BEEN ACCURATE DISCUSSION. I DON'T THINK IT INVOLVES MATTERS THAT ARE IN DISPUTE OR DISAGREEMENT. IF THERE IS BASIC BACKGROUND INFORMATION THAT WAS DISCUSSED WITH THE WITNESS, I THINK THE WITNESS CAN RELY UPON THAT INFORMATION, PARTICULARLY IF IT IS NOT IN DISPUTE. AND IT IS NOT NECESSARY FOR THE ATTORNEY IN ANY CASE TO PROVIDE THE OPPOSITE SIDE WITH A FULL RECORDING OF ALL CONVERSATIONS OR DISCUSSIONS WITH WITNESSES. I THINK IT JUST PLACES AN ONEROUS BURDEN ON EITHER SIDE.

THE COURT: I'M SAYING, AGAIN, YOU DON'T HAVE TO PROVIDE A TOTAL LIST. BUT YOU CERTAINLY HAVE TO PROVIDE MORE THAN WHAT HAS BEEN PROVIDED NOW, ESPECIALLY, AS I UNDERSTAND IT -- I HAVEN'T SEEN THE WITNESS' NOTES. BUT APPARENTLY, HE DIDN'T WRITE DOWN ANYTHING THAT YOU TOLD HIM ABOUT THE BACKGROUND OF WITNESSES.

MS. ABRAMSON: NO. THERE ISN'T A WORD HERE ABOUT WITNESSES.

THE COURT: IT ISN'T DOCUMENTED AT ALL. HOW DO THEY KNOW WHICH WITNESSES YOU TALKED ABOUT OR WHAT WAS PROVIDED?

5AGAIN, THE COURT ORDERS DR. DIETZ BE AVAILABLE TODAY FOR FURTHER INTERVIEW AND FURNISHING OF MATERIALS.

MS. ABRAMSON: WE'D LIKE A PROTECTIVE ORDER THAT MR. CONN IS NOT TO INTERRUPT OR INSTRUCT THE WITNESSES NOT TO ANSWER OUR QUESTIONS ALONG THESE LINES, OR CUT THROUGH ANY INTERVIEW.

THE COURT: I'M NOT GOING TO GET INTO --

MS. ABRAMSON: EVERY TIME WE'VE TALKED TO AN EXPERT WITNESS, YOUR HONOR, THE PROSECUTION, EITHER MS. NAJERA OR MR. CONN, HAS INSTRUCTED THE WITNESS NOT TO ANSWER, HAS BLOCKED INQUIRY --

THE COURT: THE COURT HAS INDICATED THE PURPOSE FOR THIS SESSION WITH DR. DIETZ, AND NEITHER SIDE IS TO DO ANYTHING TO DEFEAT THE ACCOMPLISHMENTS OF THAT PURPOSE.

MS. NAJERA: FINE.

THE COURT: OTHER MATTERS HERE THAT I WANT TO DISCUSS WITH COUNSEL, SINCE WE AREN'T PROCEEDING TODAY WITH ISSUES OF SUBSTANCE; AND AGAIN, WE ARE JUST DISCUSSING THE MECHANICS OF GETTING THE TESTIMONY OF DR. DIETZ BEFORE THE JURY. THE EXHIBIT LIST THAT WAS PROVIDED TO ME YESTERDAY -- JUST TO CLARIFY WHAT IT IS THAT YOU

FOLKS WERE TELLING ME HERE -- I HAVE ONE LIST THAT'S

LABELED "PEOPLE'S OBJECTIONS," AND ONE LIST LABELED "DEFENSE OBJECTIONS," AND ALSO SOME ISSUES THAT NEED -- OR SOME EXHIBITS THAT NEEDED REDACTION.

5IT IS MY ASSUMPTION, AND IS IT A CORRECT ASSUMPTION, THAT ALL THOSE EXHIBITS ARE BEING OFFERED, EVEN THOUGH THEY'RE NOT REFERRED TO ON THIS LIST, AND ONLY THOSE THINGS REFERRED TO ON THE LIST ARE SUBJECT TO OBJECTION? EVERYTHING ELSE IS BEING OFFERED?

MR. LEVIN: THAT'S CORRECT.

MS. NAJERA: WHAT ISN'T BEING OFFERED IS ALSO ON THE LIST. I BELIEVE THE DEFENSE HAS TWO ON THEIR LIST THEY STATE ARE NOT OFFERED.

THE COURT: EVERYTHING ELSE IS BEING OFFERED BY ONE SIDE OR THE OTHER?

MR. LEVIN: YES. EXCEPT THE LASER VIDEO.

MS. NAJERA: CORRECT.

MR. LEVIN: WE WANT IT IN AS EVIDENCE, BUT WE DON'T WANT IT TO GO TO THE JURY.

THE COURT: IT'S FOR IDENTIFICATION. SO IT'S THERE. IT'S NOT GOING ANYWHERE.

MS. NAJERA: ALL RIGHT.

THE COURT: I'LL REVIEW THE LIST, AND IF THERE'S A NEED FOR ARGUMENT, WE'LL SCHEDULE IT. AS FAR AS OTHER THINGS HERE, WITH THIS DEAD TIME, AND ALTHOUGH THERE IS WORK BY COUNSEL IN PREPARATION FOR DR. DIETZ, I ALSO EXPECT COUNSEL TO

BE DILIGENTLY WORKING ON JURY INSTRUCTIONS SO THAT THEY CAN BE SUBMITTED TO THE COURT PRIOR TO THE COMPLETION OF TESTIMONY SO THAT WE CAN RESOLVE ISSUES RELATING TO INSTRUCTIONS AS QUICKLY AS POSSIBLE.

6AND ALSO, I EXPECT COUNSEL TO BE DILIGENTLY WORKING ON YOUR CLOSING ARGUMENTS SO THAT YOU WILL BE READY TO PROCEED WITH ARGUMENT AT THE CONCLUSION OF THE TESTIMONY.

MS. ABRAMSON: WELL, YOUR HONOR, I JUST WANT THE COURT TO KNOW THAT AS DILIGENT AS I AM, THERE ARE ONLY 24 HOURS IN THE DAY; AND UNFORTUNATELY, JUDGE REAL IS DEMANDING MY EVENINGS FOR THE NEXT TWO DAYS TILL 9:00 AT NIGHT, STARTING WHENEVER I GET THERE, AT 4:00 OR AFTERWARDS. AND I DO ANTICIPATE THAT I WILL HAVE REVIEWED TESTIMONY IN THE TRIAL THAT I HAVEN'T ALREADY REVIEWED AND BE PREPARED TO ARGUE BY THE 20TH, WHICH I THINK IS REALISTIC. DOES THE COURT NOT AGREE?

21 THE COURT: I HAVEN'T LOOKED AT A CALENDAR YET.

MS. ABRAMSON: WE HAVE -- THE 12TH, I BELIEVE, NEXT MONDAY, WE'RE DARK.

THE COURT: RIGHT.

MS. ABRAMSON: AND THE FOLLOWING MONDAY.

THE COURT: YOU'RE TALKING ABOUT THE 20TH YOU WOULD BE READY TO ARGUE?

MS. ABRAMSON: YES.

THE COURT: OKAY.

MS. ABRAMSON: WELL, IF THE PEOPLE AREN'T READY, I CAN GO FIRST. I DON'T MIND.

THE COURT: YOU HAVE SOME WITNESSES THAT WILL STILL BE TESTIFYING NEXT WEEK, SO IT SEEMS THAT WOULD BE APPROXIMATELY WHEN WE'D BE IN ARGUMENT.

MS. ABRAMSON: I'LL BE READY BY THEN. I HAVE TWO THREE-DAY WEEKENDS.

THE COURT: MR. GESSLER.

MR. GESSLER: THAT IS WHAT I HAD ANTICIPATED, WAS THE 20TH, YOUR HONOR.

MS. ABRAMSON: AT THE RATE WE'RE GOING, DR. DIETZ MAY STILL BE ON THE STAND ON THE 20TH, BUT APART FROM THAT...

THE COURT: ANY OTHER MATTERS YOU WANT TO DISCUSS BEFORE WE TAKE A RECESS FOR YOU TO COMPLETE YOUR PREPARATION FOR DR. DIETZ' TESTIMONY?

MS. TOWERY: JUST WITH RESPECT TO THE EXHIBITS, YOUR HONOR. I HAVE A COPY OF THE TRANSCRIPT OF THE DECEMBER 11 TAPE WITH THE COUNTER NOTATIONS ON IT. I'VE SHOWED IT TO THE PROSECUTION.

SO PERHAPS THE COURT CAN --

THE COURT: I NEED A TAPE PLAYER.

MS. NAJERA: YOUR HONOR, I BELIEVE YOU HAVE OURS BACK THERE. I HOPE YOU DO.

THE COURT: A TAPE PLAYER?

MS. NAJERA: THE TAPE PLAYER WE GAVE YOU AT THE BEGINNING OF TRIAL THAT I DON'T BELIEVE WE EVER GOT BACK.

THE COURT: I'M SURE I GAVE IT BACK.

MS. TOWERY: DO YOU WANT A COPY OF THE TAPE ALSO?

THE COURT: ONE, COUNTERS ARE DIFFERENT ON DIFFERENT RECORDERS. I NEED WHATEVER RECORDER YOU'RE USING, TO GIVE ME THE COUNTER NUMBER, AND THE SAME TAPE THAT YOU'RE USING.

MS. TOWERY: I HAVE THE TAPE THAT I'M USING HERE, AND I'LL HAVE THE SAME RECORDER.

THE COURT: I ASSUME THE ONE WE HAVE IS THE MOST ORIGINAL VERSION THAT'S IN THE COURT'S POSSESSION, SO I MIGHT END UP USING THAT ONE AS WELL.

MS. TOWERY: OKAY.

THE COURT: WE'LL BE IN RECESS THEN UNTIL TOMORROW AT 8:30, WITH THE UNDERSTANDING THAT THE COURT WILL BE HERE IF THERE'S FURTHER ISSUES THAT YOU WANT TO TALK ABOUT.

MS. NAJERA: ONE THING, JUST ON YOUR EXHIBIT LIST. WE HAD ALL FORGOTTEN EXHIBIT 140, WHICH YOU

HAD RULED TENTATIVELY WAS OUT. BUT YOU WANTED TO
WAIT UNTIL AFTER THE DEFENSE. THAT WAS THE 17-PAGE
LETTER.
I WANTED TO BRING IT TO THE COURT'S
ATTENTION. IT'S STILL FLOATING OUT THERE.

THE COURT: THAT'S NOT ON THIS LIST?
MS. NAJERA: RIGHT. WAY BACK WHEN.
THE COURT: OKAY.

4(AT 10:55 A.M. PROCEEDINGS WERE

5ADJOURNED UNTIL 8:30 A.M. THE

6FOLLOWING DAY.)

7

8

9

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2FOR THE COUNTY OF LOS ANGELES
DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4

THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)

)
6PLAINTIFFS,)

)
7)
VS.) NO. BA 068880

8)
ERIK GALEN MENENDEZ, AND)
9 JOSEPH LYLE MENENDEZ,)

)
10DEFENDANTS.)

)
11

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, FEBRUARY 7, 1996
VOLUME 292

APPEARANCES:

21 (SEE APPEARANCE PAGE)

APPEARANCES:

2
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3 DISTRICT ATTORNEY
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4 AND
CAROL NAJERA, DEPUTY
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6 LOS ANGELES, CA 90012

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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
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MARY LU MURPHY
22 CSR NO. 5178
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS
24

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LEGEND:

23
A = MS. ABRAMSON
24 C = MR. CONN
G = MR. GESSLER
25 K = MS. TOWERY
L = MR. LEVIN
26 N = MS. NAJERA

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