

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

THE PEOPLE OF THE STATE OF )  
CALIFORNIA,)

)  
PLAINTIFFS, )

)  
)  
VS. ) NO. BA 068880

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

)  
DEFENDANTS. )

)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

THURSDAY, FEBRUARY 8, 1996

VOLUME 293

APPEARANCES:

FOR THE PEOPLE: GIL GARCETTI  
DISTRICT ATTORNEY  
BY: DAVID CONN, DEPUTY  
AND  
CAROL NAJERA, DEPUTY  
18000 CRIMINAL COURTS BLDG.  
10 WEST TEMPLE STREET  
LOS ANGELES, CA 90012

FOR THE DEFENDANT  
JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,  
PUBLIC DEFENDER  
BY: CHARLES GESSLER, DEPUTY  
AND  
TERRI TOWERY, DEPUTY  
10 WEST TEMPLE  
LOS ANGELES, CA 90012

FOR THE DEFENDANT  
ERIK GALEN MENENDEZ: LESLIE ABRAMSON

ATTORNEY AT LAW  
4929 WILSHIRE BOULEVARD  
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MARY LU MURPHY  
CSR NO. 5178  
MARILYN FADALE,  
CSR NO. 4547  
OFFICIAL REPORTERS

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VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 8, 1996

:25 A.M.

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

(APPEARANCES AS HERETOFORE NOTED)

(MARILYN A. FADALE, OFFICIAL REPORTER)

(MARY LU MURPHY, OFFICIAL REPORTER)

(THE FOLLOWING PROCEEDINGS WERE

HELD IN OPEN COURT OUT OF THE

PRESENCE OF THE JURY:)

THE COURT: IN THE TRIAL, THE DEFENDANTS ARE BOTH  
IN COURT. ALL COUNSEL ARE HERE, EXCEPT FOR MR. LEVIN.

IS HE HERE TODAY?

MS. ABRAMSON: OH, YES, HE'S HERE. HE'S DOING  
SOMETHING. WE CAN PROCEED.

MS. TOWERY: BEFORE WE START WITH THE ISSUES  
ABOUT DR. DIETZ, YOUR HONOR, ACCORDING TO MY NOTES,

THERE WERE TWO ADDITIONAL OBJECTIONS TO EXHIBITS THAT I  
DON'T THINK WERE COMMUNICATED TO THE COURT --

THE COURT: OKAY.

MS. TOWERY: -- AND THE DEFENSE HAD OBJECTED TO  
EXHIBIT --

THE COURT: YOU CAN JUST GIVE IT TO ME IN  
WRITING.

MS. TOWERY: IT'S ONLY TWO. IT'S 36 AND --

THE COURT: I DON'T HAVE MY LIST. PUT IT IN  
WRITING SO IT'S EASIER FOR ME.

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ALL RIGHT.

THEN HOW DO WE STAND WITH THE TESTIMONY OF  
THE PEOPLE'S NEXT WITNESS?

MS. ABRAMSON: WELL, YOUR HONOR, WE DID HAVE A  
MEETING YESTERDAY WITH DR. DIETZ, AND HE SEGREGATED  
OUT -- HERE'S WHERE IT STANDS.

WE WENT THROUGH THE REPORTS, AND HE  
SEGREGATED OUT THOSE REPORTS AS REPORTS THAT HE WAS  
GOING TO BE RELYING ON, AND THAT WAS A FAIR NUMBER, THE  
REPORT MATERIAL THAT WE WERE OBJECTING TO; AND THEN WE  
FOCUSED ON SOME MATTERS THAT HE WAS RELYING ON THAT WE  
HAD NO OBJECTION TO, AND THEN WE CAME DOWN TO -- I THINK  
MS. NAJERA COUNTED SEVEN ISSUES THAT WE WERE IN DISPUTE  
WITH. THAT WAS WHAT WE SPENT MOST OF THE TIME AT THE  
MEETING DOING.

HOWEVER, AT THE END OF THE MEETING -- OR  
TOWARDS THE END OF THE MEETING, DR. DIETZ INDICATED THAT  
ALTHOUGH HE WAS NOT RELYING ON THE REPORTS, HE WAS  
RELYING ON THE DISCUSSIONS THAT HE HAD WITH MY CLIENT  
ABOUT THE OBJECTED-TO MATERIAL IN THE REPORTS, AND THAT  
POSES A REAL PROBLEM OF FOCUSING ON WHAT THOSE THINGS  
ARE.

LET ME JUST GIVE THE COURT SOME NOTION OF  
THE SCOPE OF THIS.

FOR EXAMPLE, WITH RESPECT TO JUDALON SMYTH,  
HE IS NO LONGER FOCUSING ON THE JUDALON SMYTH REPORT,  
BUT HE CONFRONTS MY CLIENT REPEATEDLY OVER THE COURSE OF  
THE TAPE-RECORDED INTERVIEWS WITH THIS UNRELIABLE,

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THIRD-PARTY HEARSAY FROM JUDALON SMYTH.

AND WHAT HE ALSO DOES REPEATEDLY IS SAY --  
DRAWS PARALLELS BETWEEN ONE OF THE MANY CRAIG CIGNARELLI  
VERSIONS, AND WHAT HE SAYS IS DR. OZIEL'S VERSION, BUT  
HE IS NOT GETTING IT -- IT IS CLEAR HE IS NOT GETTING IT  
FROM DR. OZIEL, WHOSE TESTIMONY HE NEVER READ, WHOSE  
NOTES HE NEVER READ. HE'S GETTING IT FROM JUDALON  
SMYTH'S RECOLLECTION OF WHAT DR. OZIEL SUPPOSEDLY TOLD  
HER.

AND THAT RECITATION FROM THE REPORT THAT  
DR. DIETZ HAD, YOUR HONOR, WENT BEYOND ANYTHING DR.  
OZIEL EVER TESTIFIED TO IN ANY COURT OF LAW ON ANY KIND

OF HEARING, AND CERTAINLY WENT FARTHER THAN MISS SMYTH  
EVER TESTIFIED TO IN ANY COURT OF LAW OR ANY KIND OF  
HEARING.

SO THE PROBLEM STILL REMAINS WITH RESPECT  
TO THE JUDALON SMYTH/OZIEL MATERIAL AND CRAIG CIGNARELLI  
MATERIAL, THAT THERE ARE CERTAIN TIMES WITHIN THE  
INTERVIEWS WHEN MY CLIENT IS PRESENTED WITH THIS  
INFORMATION, AND MAKES CERTAIN STATEMENTS ABOUT IT, AND  
WE OBJECT TO ANY OF THAT MATERIAL, INCLUDING MY CLIENT'S  
REACTIONS TO IT, WHICH ARE BASICALLY DENIALS.

SO I MEAN, I CAN'T SEE THE SIGNIFICANCE OF  
RELEVANCE OF IT. BUT NEVERTHELESS, SINCE DR. DIETZ  
INSISTED THAT HE HAS A RIGHT TO RELY ON IT, WE HAVE THAT  
PROBLEM, AND THAT'S ONE PROBLEM.

THE OTHER PROBLEM IS THAT ALTHOUGH HE HAS  
NEVER SEEN IT, NEVER READ IT, DR. DIETZ INDICATES THAT

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HE INTENDS TO MENTION THE SCREENPLAY, OR PLAYS, ASSUMING  
HE KNOWS THERE IS MORE THAN ONE.

AND WHEN ASKED, "WELL, WHAT ARE YOU GOING  
TO SAY ABOUT IT?"

"JUST THAT. THAT HE WROTE A SCREENPLAY  
WITH SOMEONE ELSE IN WHICH SOMEONE KILLS HIS PARENTS FOR  
MONEY."

NOW, THAT IS A SERIOUS PROBLEM, IN MY  
OPINION, BECAUSE INDEPENDENTLY THAT INFORMATION UNDER

352 HAS MORE PREJUDICIAL IMPACT THAN PROBATIVE VALUE;  
MOREOVER, SINCE THE WITNESS HASN'T EVEN READ IT AND IS  
IN FACT RELYING ON A DESCRIPTION OF IT THAT HE WAS GIVEN  
BY MR. CONN, AND HE'S -- IT'S NOT MUCH OF A DESCRIPTION.  
IT'S PRETTY MUCH WHAT I JUST SAID. WE NEED TO LITIGATE  
WHETHER HE SHOULD BE ENTITLED TO RELY UPON THE  
SCREENPLAYS.

HE ALSO INDICATES THAT HE IS -- HAS --

THE COURT: ARE THESE WHAT YOU'RE NOW TALKING  
ABOUT, THE SEVEN AREAS IN DISPUTE?

MS. ABRAMSON: NO. THOSE ARE SEVEN SPECIFIC --  
WELL, I AM NOT SURE.

MS. NAJERA: THERE IS OVERLAP.

MS. ABRAMSON: THERE MAY BE OVERLAP.

MS. NAJERA: THERE IS OVERLAP.

MS. ABRAMSON: THERE IS OVERLAP IN THAT THE ONE  
SPECIFIC REPORT HAD INFORMATION IN DISPUTE. THESE  
THINGS ARE MORE GLOBAL, YOUR HONOR, BECAUSE THEY APPEAR  
FREQUENTLY. ONE OF IN THEM THAT I AM ABOUT TO GET TO IS

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WITHIN THE SEVEN AREAS OF -- SEVEN DEADLY SINS -- THE  
SEVEN AREAS OF DISPUTE.

BUT I AM JUST FOCUSING ON THE BURGLARIES  
RIGHT NOW. THE COURT HAS ADMITTED THE INFORMATION  
CONCERNING THE BURGLARIES IN A VERY LIMITED FASHION, AND

THE REPORTS THAT DR. DIETZ HAS, AND THE INFORMATION HE  
ELICITED FROM MY CLIENT IN DISCUSSING THEM, GOES BEYOND  
THE INFORMATION THAT'S BEEN PRESENTED BEFORE THE JURY,  
AND WE WOULD OBJECT UNDER 352.

THE COURT: NOW, THIS AGAIN IS NOT ONE OF THE  
SEVEN AREAS IN DISPUTE?

MS. ABRAMSON: YES, IT IS. THE BURGLARIES ARE  
ONE OF THE SEVEN AREAS IN DISPUTE.

MS. NAJERA: THE BURGLARIES, YES, IT IS. YES, IT  
IS.

MS. ABRAMSON: SO THAT'S ONE OF THE AREAS IN  
DISPUTE AS WELL.

NOW, ONE OF THE MORE TROUBLING ONES,  
BECAUSE I HAVE YET TO UNDERSTAND EXACTLY WHAT  
SIGNIFICANCE IT HAS, OR HOW THE PEOPLE OR DR. DIETZ  
WOULD INTEND TO USE IT -- I HAVE TO TAKE THE COURT BACK  
HISTORICALLY. LET ME JUST BACK UP.

TOWARDS THE END OF THE HEARING YESTERDAY IT  
TURNED OUT THAT SOME REPORTS THAT HAD BEEN PROVIDED TO  
DR. DIETZ WERE NOT MADE AVAILABLE TO US AT THE PREVIOUS  
MEETING FOR US TO COPY, SO THAT WE WOULD HAVE SOME  
NOTION OF WHAT ALL THE SCOPE OF THE MATERIAL WAS.

THEY WERE IN A NOTEBOOK THAT DR. DIETZ HAD

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OUT IN HIS CAR, A SEPARATE ENTIRE NOTEBOOK DEALING WITH  
MY CLIENT'S SEXUALITY, IF YOU WILL. AND INCLUDED IN

THAT NOTEBOOK, AS THE COURT MAY RECALL FROM TRIAL ONE, WERE THE STATEMENTS OF THIS ALLEGEDLY, ADMITTEDLY GAY PHOTOGRAPHER FROM NEW ORLEANS, AND SOME PHOTOGRAPHS THAT HE TOOK OF MY CLIENT.

NOW, THE COURT MAY RECALL THERE WAS SOME LIMITATION ON THIS ISSUE DURING THE LAST TRIAL, AND THE COURT RULED THAT IT WAS NOT ADMISSIBLE, AND THAT UNDER 352 THE PREJUDICIAL IMPACT OUTWEIGHED ANY POTENTIAL PROBATIVE VALUE.

NOW, WHAT'S INTERESTING TO ME ABOUT THE WAY THE MATERIAL WAS PRESENTED TO DR. DIETZ, AND WHICH I DIDN'T KNOW UNTIL THIS MORNING WHEN I CAME IN, AND MR. GESSLER, WHO HAD WAITED AROUND YESTERDAY TO GET -- TO SEE THE NOTEBOOK AND FIND OUT WHAT THE CONTENTS WAS -- IS THAT THE PHOTOGRAPHS AND THE GAY PHOTOGRAPHER'S REPORTS -- AND THE COURT MAY ALSO RECALL THERE WAS ALSO A SHERIFF'S REPORT WRITTEN, I THINK, THREE YEARS AFTER THE EVENTS OF THE ALLEGED REPORT, THAT ALSO SUPPOSEDLY BORE ON THIS ISSUE THAT THE COURT ALSO RULED AT THE LAST TRIAL WAS INADMISSIBLE.

BUT IN ANY EVENT, ACCOMPANYING THAT WERE SELECTED EXCERPTS FROM MY CLIENT'S TESTIMONY AT THE FIRST TRIAL. I HAVE NOT READ THEM, BECAUSE I JUST SAW THIS PACKAGE THIS MORNING.

MR. GESSLER TELLS ME THAT SOME OF THEM DEAL WITH MY CLIENT'S TESTIMONY FROM THE FIRST TRIAL



CONCERNING THE PUNISHMENT -- WHAT I WOULD CALL THE SADISTIC PUNISHMENT THAT HE HAD TO ENDURE BY SITTING IN FRONT OF A MIRROR IN HIS BEDROOM AND BEING HIT, OR HITTING HIMSELF.

AND YOU MAY REMEMBER, JUDGE, MR. KURIYAMA HAD A THEORY ABOUT THIS AT THE LAST TRIAL. HIS THEORY WAS THAT MR. MENENDEZ WAS MAKING UP THE SADISTIC PUNISHMENT MIRROR STORY BECAUSE HE TOOK THESE PHOTOGRAPHS WITH THIS PHOTOGRAPHER.

I AM NOT SURE WHAT THE SPIN IS ON IT NOW, BUT IT IS NOTABLE THAT THE MIRROR TESTIMONY AND THE PHOTOGRAPHS, A FEW OF WHICH ARE REFLECTIONS OUT OF MIRRORS, WERE PRESENTED TO DR. DIETZ IN SOME SORT OF GROUP METHOD.

NOW, WHEN I ASKED DR. DIETZ, THOUGH, WHAT IS THE RELEVANCE OF THIS MATERIAL THAT HE SAYS HE IS RELYING ON, I GOT AN ANSWER THAT I ADMIT I DON'T UNDERSTAND.

HE SAID IT MAY HAVE BEEN SOME EVIDENCE OF REPETITION COMPULSION, AND HE INDICATED REPETITION COMPULSION IS ONE OF THE TWO -- HE SAYS THERE'S ONLY TWO WAYS IN WHICH PEOPLE WITH P.T.S.D. -- WELL, IT IS DURING REPETITION COMPLUSION, I THINK AS I UNDERSTAND IT, AND DISSOCIATION, THAT PEOPLE WITH P.T.S.D. GO THROUGH PERIODS WHEN THEY ARE NOT COGNITIVELY THINKING. I THINK THAT'S WHAT HE MEANS.

NOW, MIND YOU, HE DOES NOT HAVE THE OPINION THAT MY CLIENT HAS P.T.S.D. SO HE SURELY ISN'T USING

THIS TO SUPPORT SUCH A DIAGNOSIS.

SO I HAVEN'T -- I DON'T UNDERSTAND HOW  
REPETITION COMPULSION IS RELEVANT IF HE DOESN'T THINK MY  
CLIENT HAS P.T.S.D.; OR EVEN IF IT IS, HOW IT'S  
CONNECTED TO THESE PHOTOS. I UNDERSTAND THAT -- THIS IS  
THIRD-HAND -- MR. GESSLER INDICATES TO ME THAT HE  
BELIEVES BASED ON --

THE COURT: LET ME STOP YOU FOR A SECOND AND TELL  
THE PROSECUTION THAT IN THIS RECITATION BY MS. ABRAMSON,  
IF SHE STARTS TALKING ABOUT ANY SUBJECT ABOUT WHICH YOU  
WILL NOT ASK ANY QUESTIONS AND WILL NOT BE PART OF THE  
EXAMINATION OF DR. DIETZ, STOP --

MS. ABRAMSON: SPEAK NOW OR FOREVER --

THE COURT: -- AND LET ME KNOW, SO WE DON'T KEEP  
GOING ON ON A SUBJECT THAT IS NOT GOING TO COME UP.

MS. NAJERA: YOUR HONOR, CAN WE HAVE JUST A FEW  
MINUTES?

MS. ABRAMSON: YOUR HONOR, I DO APOLOGIZE THAT I  
AM NOT AS PREPARED THIS MORNING AS I HOPED TO BE. AS  
THE COURT MAY KNOW, I WAS IN FEDERAL COURT YESTERDAY  
FROM 4:00 TO 9:00.

THE COURT: I KNEW YOU SAID YOU WERE GOING.

MS. ABRAMSON: I DID GO, AND THAT'S WHY I HAVEN'T  
BEEN ABLE TO LOOK OVER THESE MATERIALS THAT MR. GESSLER  
OBTAINED. I DON'T WANT THE COURT TO THINK I'VE SUDDENLY

BECOME LAZY.

THE COURT: WELL, LET THE PROSECUTORS SPEAK.

MS. ABRAMSON: YOUR HONOR, COULD I SUGGEST --

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THERE'S JUST A FEW MORE TOPICS. MAYBE I COULD STATE THEM, AND THEN COUNSEL COULD HAVE A CONFERENCE.

THE COURT: LET THEM SPEAK WITH HIM FIRST.

MR. CONN: YOUR HONOR, I THINK THAT FOR THE PURPOSES OF THE DIRECT EXAMINATION, WE'RE NOT GOING TO HAVE TO ELICIT AN OPINION OF DR. DIETZ WHICH IS GOING TO REQUIRE REFERENCE TO ANY OF THESE ISSUES.

CONCERNING THE MOE ANGEL, THE OBSERVATIONS MADE BY MOE ANGEL --

MS. ABRAMSON: I HAVEN'T TALKED ABOUT THAT YET. THE JUDGE DOESN'T KNOW ABOUT THAT.

MR. CONN: OKAY. ALL RIGHT.

THE COURT: WELL, AS I SAID, SO FAR MS. ABRAMSON HAS TALKED ABOUT THE BURGLARIES AND EVIDENCE THAT HAS GONE BEYOND WHAT HAS BEEN INTRODUCED SO FAR; SCREENPLAYS AND REFERENCE TO THE DEFENDANT'S SEXUALITY.

MS. ABRAMSON: AND THE JUDALON SMYTH/OZIEL INFORMATION.

MS. NAJERA: RIGHT.

MR. CONN: YES.

MS. NAJERA: THE ONLY THING, YOUR HONOR, THAT WE

WILL BE ELICITING ON DIRECT WITH REGARDS TO THE BURGLARIES IS THAT ERIK MENENDEZ DID TWO BURGLARIES, AND THAT HE STOLE -- HE ISN'T EVEN GOING TO SAY THE AMOUNT, JUST THAT THERE WAS A GREAT DEAL OF MONEY INVOLVED.

MS. ABRAMSON: I AM GOING TO OBJECT TO THAT, TOO. THAT'S ALREADY IN FRONT OF THE JURY, SO WE DON'T NEED DR. DIETZ TO SAY IT, UNLESS IT HAS SOME SIGNIFICANCE TO

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HIM.

WE WOULD OBJECT TO THAT, BECAUSE WE WERE NOT PERMITTED TO EXAMINE WITH OUR EXPERT TO GET HIS OPINIONS ABOUT A WHOLE VARIETY OF SO-CALLED NEGATIVE BEHAVIORS ABOUT THE BURGLARIES; THE 12-11 TAPES, THE LYING TO THE POLICE. THE COURT INDICATED IT WOULD NOT ALLOW INTERPRETATION OF EVENTS SUCH AS THOSE.

SO I SEE NO --

THE COURT: I NEVER -- THE SUBJECT OF THE BURGLARIES WAS NEVER PART OF THAT DISCUSSION. YOU WERE TALKING ABOUT POST-TRIAL -- POST-CRIME EVENTS, AND HAVING THE WITNESS DESCRIBE OR REFER TO THINGS AFTERWARDS.

MS. ABRAMSON: WELL, WE WOULD STILL OBJECT, UNLESS IT HAS -- THERE IS A SHOWING OF SOME SPECIFIC RELEVANCE TO SOMETHING THAT THE WITNESS IS PERMITTED TO TESTIFY ABOUT.

THE COURT: WELL, OBVIOUSLY THAT IS THE ONLY

BASIS FOR ANY RELEVANCE. IT HAS TO BE RELEVANT TO ANY  
OPINION HE IS GOING TO EXPRESS.

MS. ABRAMSON: I HAVE YET TO HEAR ANY OPINION HE  
IS GOING TO EXPRESS THAT MAKES THE BURGLARIES RELEVANT,  
SINCE I HAVE BEEN ASSURED SEVERAL TIMES THAT HE ISN'T  
GOING TO TALK ABOUT MOTIVE, AND I CAN'T -- I CAN'T  
FATHOM AND I HAVEN'T BEEN OFFERED A RELEVANCY THEORY FOR  
DISCUSSING THE BURGLARIES.

THE COURT: WELL, I DON'T THINK IT REQUIRES A LOT  
OF DISCUSSION TO BE INVOLVED WITH THE SUBJECT OF THE

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BURGLARIES, SINCE THAT EVIDENCE IS IN, AND THE  
PROSECUTION WOULDN'T GO BEYOND BARE BONES OF WHAT IS  
BEFORE THE JURY AT THIS POINT.

MS. ABRAMSON: LET ME JUST INDICATE, THOUGH, THAT  
IT ISN'T GOOD ENOUGH TO SAY THAT THEY'RE NOT GOING TO  
BRING IT UP ON DIRECT, SOME OF THESE MATTERS, AND THEN  
CLAIM THAT A QUESTION ON CROSS OPENS THE DOOR TO ANY OF  
THESE -- THIS EVIDENCE.

I AM OBVIOUSLY NOT GOING TO REFER TO ANY OF  
THIS EVIDENCE IN MY CROSS-EXAMINATION, BUT I DON'T WANT  
TO SEE THESE LITTLE TRAP DOORS OPENING UP SAYING  
UH-UH-UH, YOU TOUCHED ON SOMETHING WHERE I FOUND OUT  
THAT THIS OTHERWISE OBJECTIONABLE, PREJUDICIAL,  
INADMISSIBLE EVIDENCE IS RELEVANT, SO I AM GOING TO  
STICK IT IN HERE.

AND I WOULD INDICATE, YOUR HONOR, THAT WITH RESPECT TO OUR WITNESS AS WELL, THE COURT INDICATED THERE WERE GOING TO BE LIMITS ON WHAT HE COULD SAY, NO MATTER WHO WAS ASKING THE QUESTION, THAT CERTAIN QUESTIONS BY THE PROSECUTION DIDN'T OPEN THE DOOR TO GETTING IN SOME OF THE SOURCE WITNESS FACTS THAT BOTH THE -- THAT THE EXPERT THOUGHT WERE NOT ONLY RELEVANT, BUT THAT WERE LOGICALLY RELEVANT TO RESPOND TO THE PROSECUTION'S CROSS-EXAMINATION QUESTIONS, OR FOR REDIRECT AFTER THAT.

SO I NEED A RULING FROM THE COURT, NOT JUST THAT HE MAY NOT ADDRESS THESE MATTERS ON DIRECT, BUT THAT HE MAY NOT MENTION THESE THINGS AT ALL. THEY ARE

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UNRELIABLE, THEY ARE PREJUDICIAL, THEY WERE OTHERWISE RULED INADMISSIBLE.

THE COURT: WELL, WE ARE GOING BEYOND NOW WHAT YOU'RE TALKING ABOUT IN GENERALITY, ALL OF THESE MATTERS.

MS. ABRAMSON: THE ONE THAT I MENTIONED PREVIOUSLY IS THE JUDALON SMYTH INFORMATION, THIRD-HAND HEARSAY, AND CRAIG CIGNARELLI INFORMATION THAT IS OUTSIDE THE SCOPE OF HIS TESTIMONY; SUCH THINGS AS PEOPLE SELLING DRUGS, AND HE DID IT -- HE DID IT FOR THE MONEY, AND ALL OF THAT WHICH THE COURT HAD PREVIOUSLY RULED WAS NOT RELEVANT UNDER A 352 ANALYSIS AND COULD

NOT BE BROUGHT IN.

THE COURT: WELL, IT WAS NOT WHAT THE WITNESS SAID. IT WAS NOT SO MUCH A QUESTION.

MS. ABRAMSON: EXACTLY.

THE COURT: IT WOULD CERTAINLY BE RELEVANT IF THE DEFENDANT TOLD THAT TO CIGNARELLI. BUT HE DIDN'T SAY THAT TO CIGNARELLI. IT WAS SOME CONCLUSIONS ON THE PART OF CIGNARELLI.

MS. ABRAMSON: I UNDERSTAND THAT, YOUR HONOR, BUT I DON'T THINK THE WITNESS UNDERSTOOD THAT WHEN HE WAS GIVEN SOME REPORTS WRITTEN LIKE MR. CIGNARELLI WAS SAYING WHAT MR. MENENDEZ REPORTED TO HIM.

THE COURT: LET'S FINISH OFF THE RECITATION OF THESE THINGS, AND THE PROSECUTION CAN INDICATE IF THEY ARE GOING INTO THIS ON DIRECT. SO FAR THEY HAVE INDICATED THE BURGLARIES IS THE ONLY THING.

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MS. NAJERA: RIGHT.

THE COURT: GO AHEAD.

MS. ABRAMSON: OKAY. LET'S SEE WHAT THE OTHERS WERE.

WHAT WAS IT -- WHAT IS THE REST ON YOUR LIST OF SEVEN? I CAN'T FIND THESE THINGS. LET ME TALK TO MR. GESSLER FOR A MOMENT.

ON A LESS LEVEL MAGNITUDE, YOUR HONOR, THERE IS A STATEMENT BY MARZI EISENBERG IN A REPORT THAT

SHE'S NEVER TESTIFIED TO.

MS. NAJERA: YOUR HONOR, WE WON'T BE OFFERING  
THAT IN OUR CASE-IN-CHIEF -- IN OUR DIRECT.

MS. ABRAMSON: LET ME INDICATE TO THE COURT WHAT  
IT IS FOR LATER. IT HAS TO DO WITH HER SAYING THAT THE  
FAMILY MOVED FROM CALABASAS TO BEVERLY HILLS AS A RESULT  
OF THE TROUBLE THAT THE BROTHERS GOT INTO CONCERNING THE  
BURGLARIES.

MS. NAJERA: OKAY.

THE COURT: THAT HAS NOT BEEN BROUGHT OUT DURING  
THE CROSS-EXAMINATION OR DIRECT EXAMINATION OF THE  
DEFENDANT.

MS. ABRAMSON: RIGHT. SO I DON'T SEE ANY REASON  
WHY WE HAVE TO RELY ON MARZI EISENBERG'S HEARSAY.

MS. NAJERA: WE'RE NOT GOING TO GO INTO IT  
ANYWAY.

MS. ABRAMSON: THEN THERE IS A LENGTHY REPORT BY  
OFFICER MOE ANGEL, AND THE COURT MAY REMEMBER --

THE COURT: OKAY. I RECALL THAT.

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MS. ABRAMSON: AND YOU RECALL THE INCONSISTENCY  
BETWEEN HIS 1538.5 TESTIMONY AND WHAT APPEARS IN THAT  
REPORT.

THE COURT: YES.

MS. ABRAMSON: RIGHT. I THOUGHT YOU WOULD.



SO WE OBJECT TO THE USING OF THAT REPORT,  
OR THE SUPPOSED OBSERVATIONS OF OFFICER ANGEL IN THAT  
PARTICULAR REPORT. UNLIKE IN HIS TESTIMONY, HE SEEMS TO  
SUGGEST THAT HE BELIEVED THAT THE DEFENDANTS WERE  
SOMEHOW FEIGNING THE HYSTERIA; THAT HE ALSO --

THE COURT: OKAY. THE REPORT OF OFFICER ANGEL  
WILL NOT BE REFERRED TO IN THE PEOPLE'S DIRECT  
EXAMINATION.

MS. NAJERA: CORRECT, YOUR HONOR.

MS. ABRAMSON: NOW, THERE IS ONE OTHER AREA, YOUR  
HONOR, AND THAT'S MORE GLOBAL. IT HAS TO DO WITH THE  
QUESTIONING OF MY CLIENT BY DR. DIETZ CONCERNING --  
IMPACTING UPON HIS PRIVILEGE WITH RESPECT TO DR. OZIEL.

AFTER OUR SECOND GO-ROUND -- AFTER THE  
INTERVIEWS HAD BEGUN, WE CAME BACK TO COURT TO LITIGATE  
THAT ISSUE AGAIN, AND THE COURT INDICATED THAT IT WAS  
ALREADY ON THE RECORD THAT MY CLIENT -- THE FIRST MENTAL  
HEALTH PROFESSIONAL TO WHOM MY CLIENT DISCLOSED THE  
MOLESTATION WAS DR. VICARY, AND WE HAD NO PROBLEM WITH  
THAT, AND MY CLIENT TOLD THAT TO DR. DIETZ.

DR. DIETZ ASKED A SERIES OF QUESTIONS, YOUR  
HONOR, THAT WENT LIKE THIS --

MS. NAJERA: YOUR HONOR, CAN I INJECT IN HERE

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JUST FOR A MOMENT -- SO THAT WE CAN FOCUS ON THIS -- ALL  
THAT DR. DIETZ WILL BE RELYING UPON IS THE STATEMENT

THAT THE DEFENDANT DID NOT DISCLOSE THE MOLESTATION OR SYMPTOMS OF TRAUMA TO ANYONE BEFORE HE WAS ARRESTED.

MS. ABRAMSON: THAT'S WRONG. SYMPTOMS OF TRAUMA IS DIFFERENT THAN THE MOLESTATION, AND HE DOESN'T HAVE THAT ANSWER FROM MY CLIENT, AND THE REASON HE DOESN'T HAVE THAT ANSWER IS BECAUSE I INSTRUCTED MY CLIENT ON THE TELEPHONE WHEN THAT INTERVIEW -- DURING A BREAK IN THAT INTERVIEW THAT HE COULD NOT ANSWER CERTAIN QUESTIONS ABOUT SYMPTOMS THE WAY THEY WERE BEING ASKED BY DR. DIETZ.

WHAT HE WAS ASKING WAS ABOUT A VARIETY OF DIFFERENT SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER, OR, I SUPPOSE, EVEN GENERAL ANXIETY DISORDER.

HE ASKED MY CLIENT IF HE -- WHO WAS THE FIRST MENTAL HEALTH PROFESSIONAL HE EVER MENTIONED SUCH THINGS AS NIGHTMARES OR SLEEP DISORDER. LET ME SEE. HE HAS IT IN THE NOTES AS A LITANY. I'LL TELL YOU WHICH ONES ON MY ADVICE MY CLIENT COULDN'T ANSWER BECAUSE OF THE WAY THEY WERE BEING ASKED, AND I WILL GO IN CAMERA, IF THE COURT WISHES, TO EXPLAIN, WITHOUT WAIVING THE PRIVILEGE, WHY I HAD TO INSTRUCT MY CLIENT TO ANSWER THE QUESTIONS THE WAY THAT HE DID.

NOW, I MENTIONED THIS TO DR. DIETZ YESTERDAY, AND HE INDICATED THAT HE DID INTEND TO -- HERE'S THE QUESTIONS -- THAT HE DID INTEND TO MENTION THE ASSERTION OF THIS PRIVILEGE.

"WHO WAS THE FIRST PROFESSIONAL YOU TOLD ABOUT BEING SEXUALLY ABUSED?"

MY CLIENT ANSWERED THAT QUESTION.

"WHO WAS THE FIRST PROFESSIONAL YOU TOLD ABOUT NIGHTMARES?"

MY CLIENT DECLINED TO ANSWER THAT.

"WHO WAS THE FIRST PROFESSIONAL YOU TOLD ABOUT INTRUSIVE IMAGES?"

MY CLIENT REFUSED TO ANSWER THAT.

"WHO WAS THE FIRST PROFESSIONAL YOU TOLD ABOUT WHAT YOU NOW UNDERSTAND TO BE HYPERVIGILANCE?"

MY CLIENT DECLINED TO ANSWER.

"WHO WAS THE FIRST HEALTH PROFESSIONAL YOU TOLD ABOUT DIFFICULTY SLEEPING?"

DECLINED TO ANSWER.

"WHO IS THE FIRST HEALTH PROFESSIONAL YOU TOLD ABOUT DEPRESSION, SADNESS OR BEING BLUE?"

DECLINED TO ANSWER.

AND I INSTRUCTED HIM TO DECLINE TO ANSWER THOSE QUESTIONS, AND I WILL EXPLAIN TO THE COURT, AS I SAID, IN CAMERA, WHY.

SO I DON'T THINK IT'S APPROPRIATE FOR DR. DIETZ -- SINCE THERE STILL IS A PRIVILEGE ABOUT WHATEVER HE MAY HAVE TOLD DR. OZIEL PRIOR TO THE HOMICIDES, THERE IS STILL THE ISSUE THAT YOU CANNOT COMMENT ON THE ASSERTION OF A VALID PRIVILEGE.

THE COURT: OKAY. AND WHAT IS IT THAT THE PEOPLE INTEND TO DO WITH THIS?

MR. CONN: WELL, I THINK THAT WE WANT TO SIMPLY ELICIT THE FACT THAT THE DEFENDANT REFUSED TO ANSWER QUESTIONS CONCERNING THESE ISSUES, WHICH ARE VERY RELEVANT TO THE DISORDER THAT HIS EXPERTS ARE CLAIMING. IT GOES TO THE RELIABILITY OF THE OPINION OF DR. WILSON, AND IT BEARS UPON THE ABILITY OF DR. DIETZ TO FORM A DIAGNOSIS CONCERNING EITHER THE GENERALIZED ANXIETY DISORDER OR THE POST-TRAUMATIC STRESS DISORDER.

IT IS CRITICAL INFORMATION. THE DEFENDANT FAILED TO PROVIDE THAT INFORMATION.

THE COURT: WELL, BY FAILURE TO PROVIDE IT, ISN'T THE REAL POSITION OF THE PROSECUTION, THE REALITY OF THE SITUATION, THAT THEN THE PROSECUTION HAS NOT BEEN PROVIDED WITH AND THE DEFENDANT HAS NOT BEEN -- HAS NOT PROVIDED ANY COMPLAINTS BEFORE -- COMPLAINTS TO A PROFESSIONAL, A MENTAL HEALTH PROFESSIONAL BEFORE TALKING TO DR. VICARY, WITHOUT REFERENCE TO THE FACT THAT HE REFUSED TO DISCLOSE IT? HE JUST HASN'T PROVIDED IT.

THERE IS NO EVIDENCE THAT HE EVER COMPLAINED TO ANYONE. THE STATE OF THE RECORD IS THERE IS NO EVIDENCE THAT HE EVER COMPLAINED TO ANYONE BEFORE HE COMPLAINED TO DR. VICARY ABOUT THIS MATTER, AND HOW COULD THE DEFENSE COMPLAIN ABOUT THAT?

MS. ABRAMSON: WELL, I MEAN, WHATEVER THE RECORD

IS, THE RECORD IS. I AM CERTAINLY NOT COMPLAINING ABOUT  
THE STATE OF THE RECORD AS IT EXISTS IN THIS TRIAL.

BUT I WOULD COMPLAIN IF DR. DIETZ GOT UP

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THERE AND SAID: "MY INFORMATION IS THAT HE NEVER TOLD  
ANYBODY ABOUT THIS." THAT'S NOT HIS INFORMATION.

THE COURT: WELL, HE COULD SAY THERE IS NO  
EVIDENCE THAT HE EVER TOLD ANYBODY.

MS. ABRAMSON: WELL, I DON'T THINK THAT IS  
ACCURATE EITHER.

THE COURT: WELL, WHERE IS THE EVIDENCE?  
EVIDENCE MEANS WHATEVER'S IN THIS TRIAL THAT THE JURY  
HAS HEARD.

MS. ABRAMSON: HE DOESN'T HAVE TO SAY THAT. THE  
JURY KNOWS WHAT'S IN THIS TRIAL THAT THEY HEARD.

THE COURT: HE CAN SAY THE EVIDENCE IS THAT THE  
DEFENDANT NEVER COMPLAINED TO ANY OTHER HEALTH EXPERT  
ABOUT THESE INCIDENTS BEFORE HE COMPLAINED TO  
DR. VICARY.

MS. ABRAMSON: AS THE COURT KNOWS, WE HAVE BEEN  
ASSERTING THE PRIVILEGE, AND WE HAVE A RIGHT TO ASSERT  
THE PRIVILEGE, AND THAT PUTS US IN A POSITION WHERE TO  
REBUT THAT WE HAVE TO WAIVE THE PRIVILEGE.

THE COURT: WELL, THAT'S YOUR PROBLEM.

MS. ABRAMSON: YES, THAT IS MY PROBLEM.

THE COURT: YOU PUT THE MENTAL ISSUE IN THE TRIAL, AND THEN HIDE BEHIND THE PRIVILEGE.

MS. ABRAMSON: I AM NOT HIDING BEHIND THE PRIVILEGE. OUR OBJECTION FROM THE VERY BEGINNING HAS BEEN THAT THE POLICE HAD NO RIGHT TO SEIZE ANY OF THE INFORMATION BEARING UPON THE PRE-INCIDENT THERAPY OF MY CLIENT.

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THE COURT: OKAY. WELL, THAT'S ALL BEEN LITIGATED.

MS. ABRAMSON: NO, THAT'S NEVER BEEN LITIGATED ACTUALLY.

THE COURT: IT'S BEEN LITIGATED TO THE EXTENT THAT YOU HAD AN OPPORTUNITY TO CHALLENGE WHATEVER YOU WANTED TO CHALLENGE. IT'S PAST HISTORY.

SO AT THIS POINT IT SEEMS THAT THE WITNESS CERTAINLY COULD SAY THAT HE IS AWARE OF NO EVIDENCE THAT THE DEFENDANT COMPLAINED TO ANY MENTAL HEALTH PROFESSIONAL BEFORE COMPLAINING TO DR. VICARY ABOUT THESE VARIOUS SYMPTOMS.

MS. ABRAMSON: AND HE IS EQUALLY AWARE OF NO EVIDENCE THAT HE DIDN'T.

SO IF I CAN ASK THAT QUESTION, DOES THAT NOW WAIVE THE PRIVILEGE?

THE COURT: IT DEPENDS ON WHAT YOU ASK.

MS. ABRAMSON: THAT QUESTION.

THE COURT: IT POSSIBLY COULD.

MS. ABRAMSON: WELL, I WANT TO HEAR FROM THE COURT IF IT WOULD.

THE COURT: IT COULD VERY WELL.

MS. ABRAMSON: WELL THEN, I THINK IT'S IMPROPER FOR THEM TO SAY WHAT THEY WANT TO SAY. IF THERE IS A VACUUM IN THE RECORD, FINE. BUT THEY WANT TO GIVE THE IMPRESSION THAT HE NEVER SAID THESE THINGS BEFORE, AND THAT MAY NOT BE TRUE.

THE COURT: IT'S CERTAINLY A RELEVANT INQUIRY IN

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DETERMINING THE MENTAL STATE OF THE DEFENDANT BEFORE THE CRIME TO ASCERTAIN WHETHER OR NOT HE DISPLAYED OR COMPLAINED OF THE MANY SYMPTOMS THAT HAVE BEEN DESCRIBED BY YOUR EXPERT AS INDICATIONS OF A MENTAL DISORDER AT THE TIME OF THE CRIME, AND IF HE WAS EXPERIENCING THESE SYMPTOMS BEFORE THE CRIME, RATHER THAN JUST AFTERWARDS, 9 OR 10 MONTHS AFTERWARDS WHEN DR. VICARY SAW HIM.

THEN IT CERTAINLY WOULD BE VERY PROBATIVE AND VERY RELEVANT.

MS. ABRAMSON: WELL, THE ONLY CONTRADICTION TO THAT, YOUR HONOR, IS THAT THIS WITNESS ALSO HAS A DIAGNOSIS OF MY CLIENT SUFFERING FROM AN ANXIETY DISORDER, AND HE DIDN'T SEE HIM BEFORE THE CRIME, AND HE SAYS THERE IS AMPLE EVIDENCE THAT HE HAD THOSE SYMPTOMS, AND SOME OF THEM ARE VERY SIMILAR TO P.T.S.D. SYMPTOMS.

SO HE DIDN'T SEEM TO FEEL THAT THE LACK OF INFORMATION CONCERNING WHAT WAS OR WASN'T SAID TO DR. OZIEL IMPEDED HIM FROM FORMING HIS OWN OPINION THAT MY CLIENT SUFFERED FROM AN ANXIETY DISORDER AT THE TIME OF THE CRIME.

SO I THINK IT'S SPECIOUS. I THINK IT'S A FAKE ARGUMENT TO MAKE IT LOOK AS IF ERIK MENENDEZ MADE UP ALL THE SYMPTOMS, WHEN THEY DON'T KNOW THAT THAT'S TRUE.

THE COURT: WELL, I THINK THE OTHER SIDE OF IT IS CHALLENGING THE VALIDITY OF THE DEFENSE EXPERT TESTIMONY, THAT IF YOU LOOK AT IT OBJECTIVELY FROM WHAT YOU PRESENT, THEY NEVER CONSIDERED -- OR YOUR EXPERT

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NEVER CONSIDERED ANYTHING THAT YOUR CLIENT TOLD OZIEL.

MS. ABRAMSON: YOU DON'T KNOW THAT THAT'S TRUE, JUDGE.

THE COURT: WELL, HE NEVER RELIED UPON IT.

MS. ABRAMSON: HE MAY NOT HAVE RELIED UPON IT. THAT DOESN'T MEAN HE DIDN'T CONSIDER IT.

THE COURT: HE DIDN'T RELY UPON IT, SO IT DOESN'T PLAY ANY ROLE IN HIS EVALUATION OR OPINION OF THE DEFENDANT AT THE TIME OF THE CRIME.

MS. ABRAMSON: AND IT MAY BE THAT OZIEL IS SUCH AN UNRELIABLE SOURCE THAT IT HAS NOTHING TO DO WITH THE INFORMATION THEY MAY OR MAY NOT HAVE LEARNED.



THE COURT: BUT THEN HE IS ALSO SAYING YOUR CLIENT IS AN UNRELIABLE SOURCE BECAUSE HE DOESN'T RELY ON WHAT YOUR CLIENT TELLS HIM HE TOLD OZIEL.

MS. ABRAMSON: NOT NECESSARILY. HE MAY NOT HAVE ASKED.

THE COURT: WELL THEN, HE DIDN'T ASK. BUT DOESN'T THAT GO TO THE QUALITY OF THE EXPERT TESTIMONY THE DEFENSE ISN'T OFFERING?

MS. ABRAMSON: WELL, I THINK THAT'S JUST SAYING THAT NEVER EVEN HAS BEEN BROUGHT OUT CONCERNING THE DEFENSE EXPERTS.

THE COURT: THAT'S TRUE, BECAUSE OF YOUR ASSERTION OF THE PRIVILEGE.

BUT AT THIS POINT, AT THE VERY LEAST, THIS WITNESS SHOULD BE ALLOWED TO STATE THAT HE IS AWARE OF NO EVIDENCE THAT THE DEFENDANT PRESENTED THESE SYMPTOMS

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PRIOR TO BEING SEEN BY DR. VICARY. HE DISPLAYED THEM WHEN HE WAS SEEN BY DR. VICARY.

MS. ABRAMSON: WELL, THERE IS A PROBLEM THERE, YOUR HONOR, BECAUSE IT GIVES THE FALSE ASSUMPTION THAT HE IN FACT HAS SEEN RECORDS OF THE TREATMENT BY DOCTOR -- WELL, I DON'T LIKE TO USE THE WORD TREATMENT WHEN REFERRING TO DR. OZIEL -- BUT HE HAS SEEN RECORDS FROM THAT PERIOD OF TIME WHEN HE WAS PAYING FOR TREATMENT WITH DR. OZIEL, AND HE HASN'T SEEN THE

RECORDS.

THE COURT: WELL, THERE IS CERTAINLY EVIDENCE IN THE RECORD FROM THE DEFENDANT'S OWN TESTIMONY AS TO WHY HE WENT TO OZIEL, AND WHATEVER SYMPTOMS HE WAS COMPLAINING OF AT THAT TIME WHEN HE WENT TO SEE OZIEL AFTER THE SHOOTINGS.

MS. ABRAMSON: AFTERWARDS, YES.

THE COURT: NOW, WHETHER -- I DON'T RECALL IF THIS EVER CAME OUT, WHETHER OR NOT ANYTHING WAS BROUGHT OUT DURING HIS EXAMINATION OF ANY SYMPTOMS THAT HE COMPLAINED OF TO OZIEL PRIOR TO. IT SEEMS LIKE IT WAS NOT BROUGHT OUT.

MS. ABRAMSON: WE WOULD HAVE BEEN HAVING THIS PRIVILEGE DISCUSSION THEN IF THEY HAD.

THE COURT: SO IT'S JUST POST-CRIME SYMPTOMATOLOGY. AND BECAUSE OF THAT, IT CERTAINLY IS FAIR GAME TO SAY THAT "I'M AWARE OF NO COMPLAINTS OF THE DEFENDANT TO ANY MENTAL HEALTH EXPERT REGARDING SYMPTOMS PRIOR TO THE SHOOTINGS."

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IF THE DEFENDANT WENT TO OZIEL BECAUSE HE WAS COMPLAINING ABOUT THESE SYMPTOMS AFTERWARDS, IT WOULD SEEM LOGICAL THAT IF HE WAS EXPERIENCING THESE SYMPTOMS BEFOREHAND AND WAS HAVING THE SAME PROBLEMS, THAT HE WOULD HAVE GONE TO OZIEL BEFOREHAND, AND --

MS. ABRAMSON: WELL, YOUR HONOR, I WOULD LIKE TO GO IN CAMERA TO ADDRESS SOME ISSUES WITH THE COURT ON THIS THAT I DON'T FEEL I CAN ADDRESS WITHOUT WAIVING PRIVILEGED INFORMATION.

THE COURT: WELL --

MS. ABRAMSON: BECAUSE I DON'T THINK THE RECORD IS COMPLETE OR THOROUGH ENOUGH ON THE PROBLEM THAT WE'RE NOW BEING PLACED IN HERE.

THE COURT: WELL, I WILL CONSIDER YOUR REQUEST. BUT LET'S GO ON TO THE NEXT ISSUE THEN HERE.

MS. ABRAMSON: I'M NOT SURE THERE IS A NEXT ISSUE.

THE COURT: THAT'S IT?

MS. ABRAMSON: OH, THERE IS ONE OTHER ISSUE, AND THAT'S WHAT I HAVE TO DO WITH WHAT I ANTICIPATE IS GOING TO BE ANOTHER ATTACK ON WHETHER OR NOT THERE IS SUCH A THING AS BATTERED-PERSON'S SYNDROME.

NOW, I BELIEVE WE HAD AN 801 HEARING IN WHICH THIS COURT DETERMINED THAT THE TERM WAS SUFFICIENTLY UNDERSTOOD IN THE RESEARCH COMMUNITY UNDER 801 TO BE ADMITTED, AND IT SEEMS TO ME THAT FIRST WITH DR. WILSON AND NOW WITH DR. DIETZ, WE ARE DOING ANOTHER 801 HEARING IN FRONT OF THE JURY, AND I THINK THAT'S

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IMPROPER. THAT WAS A FOUNDATIONAL FACT THAT THE COURT HAS RULED ON. I DON'T THINK IT'S OPEN FOR THE JURY TO

DECIDE WHETHER THERE IS OR ISN'T SUCH A THING AS BATTERED-PERSON'S SYNDROME, AND I DON'T THINK IT'S RELEVANT.

THE COURT: LIKE I SAID, IT WAS A VERY CLOSE ISSUE, NUMBER ONE.

NUMBER TWO, I SAID AS TO THAT ISSUE THERE WAS SUFFICIENT EVIDENCE PRESENTED DURING THE HEARING FOR THE EXPERT TO -- CALLED BY THE DEFENSE TO RELY UPON THAT INFORMATION AS BEING ACCEPTED IN THE RELEVANT SCIENTIFIC COMMUNITY FOR THE PURPOSE OF AN EXPERT TO RELY UPON IT, BUT THAT DOESN'T MEAN THAT THE PROSECUTION IS FORECLOSED FROM ATTACKING THE UNDERPINNINGS OF THIS EXPERT TESTIMONY.

MS. ABRAMSON: WELL, JUDGE, YOU PREVENTED ME IN FRONT OF THE JURY FROM SHOWING -- YOU THOUGHT IT WAS IRRELEVANT -- FROM SHOWING THE JURY -- TAKING THEM THROUGH THE HISTORY.

THE COURT: NO. YOU WENT THROUGH IT. YOU JUST DIDN'T GO THROUGH IT IN AS GREAT DETAIL AS YOU WANTED TO, WITH CHARTS GOING BACK TO THE CIVIL WAR AND THE INDUSTRIAL REVOLUTION AND EVERYTHING ELSE.

MS. ABRAMSON: WE'RE NOT TALKING ABOUT THE CIVIL WAR.

THE COURT: BUT I CERTAINLY ALLOWED YOU TO GO INTO IT.

MS. ABRAMSON: YOUR HONOR, WHAT CAME OUT IN THE

801 HEARING, VERY CLEARLY, IT'S A SEMATIC ARGUMENT.

IT'S A SEMANTICAL ARGUMENT. IT HAS TO DO WITH THE USE OF A PARTICULAR LABEL AND NOT WITH A CHALLENGE OF THE CONCEPTS.

THE COURT: YOU WERE ABLE TO DEAL WITH THAT DURING YOUR CROSS-EXAMINATION, SAYING A WOMAN IS A PERSON, A MAN IS A PERSON, EVERYONE IS A PERSON, AND YOU DEAL WITH IT THAT WAY.

THE PEOPLE HAVE THEIR APPROACH WITH IT AS TO WHY THEY WANT TO ATTACK IT. THEY CERTAINLY HAVE A RIGHT TO DO THAT. JUST BECAUSE THE COURT HAS RULED THAT CERTAIN EVIDENCE IS ADMISSIBLE DOESN'T -- THE COURT DOESN'T PUT ANY IMPRIMATURE ON IT, SAYING THAT IT'S TO BE ACCEPTED BY THE JURY. IT'S SUBJECT TO A --

MS. ABRAMSON: BUT IT LEADS TO ANOTHER PROBLEM. IT LEADS TO AN OBVIOUS PROBLEM.

WE ARE GUIDED SOMEWHAT IN THESE PROCEEDINGS BY THE DECISION OF THE CALIFORNIA COURT OF APPEAL IN THE ARIS CASE. THAT CASE HELD -- AND SINCE THEN AN AMENDMENT TO OUR EVIDENCE CODE HAS HELD THAT THIS TYPE OF EVIDENCE, BATTERED FILL-IN-THE-BLANK SYNDROME, IS ADMISSIBLE ON PARTICULAR ISSUES IN HOMICIDE CASES. ALL RIGHT.

THE COURT: YES. WE'VE HAD THIS DISCUSSION BEFORE, AND I SAID JUST BECAUSE THE STATUTE SAYS THAT, AND THE ARIS CASE SAID THAT, DOES NOT MEAN THAT THE PROSECUTION CANNOT ATTACK IT. IT JUST MEANS THAT THE EVIDENCE CAN BE PRESENTED TO THE JURY. IT DOESN'T MEAN

IT HAS TO BE ACCEPTED BY THE JURY, OTHERWISE YOU WOULD HAVE AN ABSOLUTE STATUTORY DEFENSE OF CERTAIN PSYCHIATRIC DIAGNOSES.

MS. ABRAMSON: THEY DON'T HAVE TO BELIEVE THAT A PARTICULAR PERSON SUFFERS FROM IT, OR THEY DON'T HAVE TO BELIEVE THAT IF THEY DO SUFFER FROM IT, IT WAS A CAUSATIVE FACTOR OR ANY KIND OF FACTOR IN A CRIMINAL ACT.

THE COURT: THE PURPOSE OF THE LEGISLATION WAS NOT TO GIVE THIS PARTICULAR DIAGNOSIS OF BATTERED WOMAN'S SYNDROME GREATER WEIGHT AND GREATER STATUS AND SUCH IN A TRIAL, WHETHER IT BE A CIVIL OR A CRIMINAL TRIAL, THAN ANY OTHER DEFENSE. IT WAS JUST TO TELL THE COURTS THAT YOU SHOULD LET THIS EVIDENCE IN AND LET THE JURY EVALUATE WHETHER THEY WANT TO ACCEPT IT OR NOT. BUT DON'T CONDUCT HEARINGS UNDER 801 OR UNDER KELLY-FRYE REGARDING ITS ADMISSIBILITY.

IT CERTAINLY DIDN'T SAY THAT BYPASSING THE STATUTE OR BY DECIDING ARIS THAT THIS EVIDENCE IS TO BE RECEIVED WITHOUT DISPUTE. IT REALLY WOULD THEN PUT THAT PARTICULAR DIAGNOSIS ON A DIFFERENT LEVEL THAN ANY OTHER PSYCHIATRIC DIAGNOSIS THAT HAS BEEN RECOGNIZED FOR HUNDREDS OF YEARS. IT JUST DOESN'T MAKE SENSE.

MS. ABRAMSON: THERE IS ONE -- THERE ARE A COUPLE OF OTHER MATTERS, YOUR HONOR --

THE COURT: YES.

MS. ABRAMSON: -- HAVING TO DO WITH THIS.

ONE OF THEM IS THAT WHEN I CAME IN THIS

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MORNING, AGAIN, DR. DIETZ AND MR. GESSLER WERE ENGAGED IN THE ONGOING DISCOVERY PROCESS HERE, AND DR. DIETZ WAS GIVEN -- I'M NOT SURE WHICH MOTION HE WAS LOOKING AT. I DO KNOW FROM THE LIST OF MATERIALS THAT WERE PREVIOUSLY SUBMITTED TO HIM, HE HAD RECEIVED AT ONE TIME THE PEOPLE'S MOTION TO EXCLUDE EXPERT TESTIMONY, BUT IT LOOKED LIKE HE HAS SINCE -- WHICH WAS PREPARED IN FEBRUARY OF 1995. I THINK HE WAS LOOKING AT SOME OTHER MOTION TO EXCLUDE.

MR. GESSLER: THIS IS THE MOTION ENTITLED "TO EXCLUDE COACHES, RELATIVES, FRIENDS, TEACHERS." PRECLUDE ANYBODY.

MS. ABRAMSON: ANYBODY WHO KNEW ANYBODY.

AND APPARENTLY NOW DR. DIETZ -- WELL, I AM GOING TO HAVE MR. GESSLER INDICATE WHAT HE IS OR IS NOT RELYING UPON IN THOSE MATERIALS SO I CAN TAKE A LOOK AT THEM AGAIN AND SEE IF THEY ARE ANYTHING APPROXIMATING ACCURATE.

MR. GESSLER: DR. DIETZ EXPLAINED TO ME HE LOOKED AT THE MATERIAL. THERE WAS SOME PARTS HIGHLIGHTED ON SOME OF THE WITNESSES. I TOLD DR. DIETZ WHICH WITNESSES

DID TESTIFY IN THIS TRIAL, WHICH DID NOT, WHERE THERE WERE LIMITATIONS.

HE BASICALLY SAID THAT HIS RELIANCE HAD HELPED HIM IN HIS UNDERSTANDING OF JOSE AS BEING DOMINEERING AND CONTROLLING.

IS THAT A FAIR STATEMENT, DR. DIETZ, OF WHAT YOU TOLD ME IN THE -- IN THAT MOTION THAT WE LOOKED

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AT?

DR. DIETZ: THAT MUCH IS TRUE, YES.

MR. GESSLER: IS THERE ANYTHING MORE THAT YOU'RE RELYING ON, OR SOMETHING THAT I HAVE NOT GOTTEN OR OVERLOOKED?

DR. DIETZ: I WOULD ALSO RELY ON IT TO INDICATE THAT THERE WERE OBSERVATIONS OF ERIK MENENDEZ HAVING BEEN SAD AND HAVING BEEN ANXIOUS EARLIER IN HIS LIFE.

MR. GESSLER: THAT'S FROM THE TEACHERS THAT WE MENTIONED IN THERE; TEACHERS COACHES.

DR. DIETZ: TEACHERS AND FAMILY, COACHES.

MR. GESSLER: THAT'S BASICALLY THE ESSENCE OF OUR CONVERSATION.

THE COURT: OKAY, BASICALLY MATERIAL, ALTHOUGH IT WAS SUMMARIZED BY THE PROSECUTION IN THAT MOTION WITH PERHAPS THEIR CHARACTERIZATION OF SOME OF IT, ALTHOUGH THEY DIDN'T BASICALLY RECITE TESTIMONY OF THE WITNESS AND THEN PRESENTED THEIR ARGUMENT, BASICALLY, EVIDENCE



THAT WAS RELIED UPON BY DR. WILSON IN HIS TESTIMONY.

MS. ABRAMSON: HE RELIED ON THE ACTUAL TESTIMONY.  
IT'S A LITTLE DIFFERENT.

THE COURT: THESE ARE SUMMARIES VERSUS THE ACTUAL  
TESTIMONY. BUT IT'S THE SAME INFORMATION BASICALLY.

MS. ABRAMSON: WELL, DR. WILSON ALSO READ -- I  
DON'T KNOW IF DR. DIETZ HAS HAD A CHANCE TO GET THE  
STATEMENTS OF WITNESSES WHICH WERE BROADER IN SCOPE THAN  
THE TESTIMONY AT THE LAST TRIAL, BECAUSE THERE WERE NO  
LIMITATIONS PLACED ON WHAT WITNESSES COULD SAY IN THEIR

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STATEMENTS.

THE COURT: RIGHT. OKAY.

MS. ABRAMSON: SO I DON'T KNOW IF DR. DIETZ READ  
THEM.

WELL, THIS IS WHAT HE SAID HE READ, THE  
MOTION. HE TOLD ME HE WAS GOING TO RACE RIGHT BACK TO  
NEWPORT BEACH AND START READING THE STATEMENTS. I DON'T  
KNOW IF HE DID.

THE COURT: YOU CAN DISCUSS THAT WITH HIM.

WHAT ELSE DO YOU WANT TO TALK ABOUT?

MS. ABRAMSON: WELL, I AM SIMPLY CONCERNED  
ABOUT -- I HAVE READ A FAIR AMOUNT OF DR. DIETZ'S  
PREVIOUS TESTIMONY IN VARIOUS OTHER CASES WHERE THE  
RULES OF SECTIONS 28 AND 29 DON'T SEEM TO HAVE EXISTED  
AT ALL, AND WE HAVE BEEN LIVING PRETTY CLOSELY WITH

THOSE CONCEPTS IN THIS COURTROOM.

I AM JUST CONCERNED ABOUT THE MANNER OF HIS TESTIMONY AS TO BEING -- EXPRESSING ULTIMATE OPINIONS AND CONCLUSIONS ABOUT WHETHER THINGS DID IN FACT OR DID NOT IN FACT HAPPEN, OR WHETHER MY CLIENT WAS IN FACT OR WAS NOT IN FACT THINKING, FEELING, EXPERIENCING, PERCEIVING OR DOING ANY PARTICULAR THINGS; IN OTHER WORDS, THESE ULTIMATE CONCLUSIONS BEARING ON CREDIBILITY.

THE COURT: WELL, I ASSUME HIS TESTIMONY WILL GO NO FARTHER THAN THAT OF DR. WILSON.

MS. ABRAMSON: IT WILL -- CERTAINLY NO FARTHER THAN THAT OF DR. WILSON ON DIRECT, YOUR HONOR.

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THE COURT: OR REDIRECT.

MS. ABRAMSON: WELL, WHETHER IT DOES OR NOT, I WILL OBJECT. WHETHER THE PEOPLE ALWAYS OBJECT OR NOT IS A MATTER OF UTTER MYSTERY TO ME.

THE COURT: OKAY. ALL RIGHT.

MS. ABRAMSON: BUT I WILL, AND I JUST WANT TO MAKE SURE THAT THE COURT IS GOING TO APPLY THE RULE IF AN APPROPRIATE OBJECTION IS MADE, THE COURT WILL APPLY THE RULE.

THE COURT: SURE, SURE. BEARING IN MIND THAT IF YOU HAD ASKED A QUESTION OF DR. WILSON AND HE GAVE AN ANSWER, AND THEN THE PEOPLE ASK THE SAME QUESTION OF

DR. DIETZ THAT YOU OBJECT TO, THAT YOU HAD ASKED OF DR. WILSON, I WILL HAVE TO REVIEW IT TO SEE WHETHER OR NOT I AGREE WITH YOUR POSITION THAT IT WAS A PROPER QUESTION.

MS. ABRAMSON: WELL, IF IT WASN'T OBJECTED TO, IT'S BESIDE THE POINT.

THE COURT: WELL, I ASSUME YOU WOULDN'T HAVE ASKED A QUESTION UNLESS YOU THOUGHT IT WAS PROPERLY WITHIN THE SCOPE OF PENAL CODE SECTION 29.

MS. ABRAMSON: I WILL ASK ANY QUESTION I THINK I CAN GET AWAY WITH TO DEFEND MY CLIENT. YOU KNOW I WILL, AND YOU WOULD EXPECT ME TO. I WON'T DO ANYTHING THAT I THINK IS ILLEGITIMATE IN ANY WAY, BUT CERTAINLY I WILL PUSH THE ENVELOPE. THAT'S WHAT THE COUNTY IS PAYING ME ALL THIS MONEY FOR.

THE COURT: WELL, WE WILL JUST REVIEW AND SEE

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WHETHER OR NOT THE ENVELOPE WAS ON THE RIGHT SIDE OF THE LEDGER, AS FAR AS WHETHER OR NOT IT WAS PROPER OR NOT WHEN YOU ASKED THE QUESTION.

MS. ABRAMSON: YOU DON'T HAVE A SENSE OF HUMOR TODAY, I CAN TELL. OKAY.

THE COURT: WHAT ELSE?

MS. ABRAMSON: I WAS KIDDING. I THOUGHT I WAS FOLLOWING YOUR RULES FAIRLY CLOSELY.

THE COURT: AND IF YOU WERE, THEN IF THE SAME

QUESTION IS ASKED OF THIS WITNESS THAT YOU ASKED OF  
DR. WILSON, THEN I ASSUME YOU WON'T OBJECT, BECAUSE YOU  
THOUGHT IT WAS PROPER.

MS. ABRAMSON: RIGHT. SURE.

THE COURT: SO I ASSUME THAT'S WHAT THE PEOPLE  
INTEND TO DO.

MR. CONN: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

MS. ABRAMSON: I AM SURE THEY HAVE IT ALL  
CROSS-INDEXED, TOO.

THE COURT: WHAT ELSE THEN DO YOU WANT TO TALK  
ABOUT OTHER THAN YOU WANT TO TALK ABOUT SOMETHING IN  
CAMERA?

MS. ABRAMSON: WELL, YEAH. I WANT TO TALK ABOUT  
SOMETHING IN CAMERA, AND I DO WANT THE COURT TO MAKE  
RULINGS BASED ON --

THE COURT: WELL, AS FAR AS ALL THESE MATTERS SO  
FAR DISCUSSED, WITH THE PROVISIO THAT I HAVE INDICATED  
WHERE I THINK AT THIS POINT THE INQUIRY CAN GO IN

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REFERENCE TO REPORTS TO OTHER MENTAL HEALTH  
PROFESSIONALS, SUBJECT TO CHANGE, DEPENDING UPON WHAT  
YOU TELL ME IN CAMERA REGARDING ANY ISSUE OF PRIVILEGE;  
THAT THESE MATTERS, BASED UPON THE REPRESENTATION OF THE  
PROSECUTION, WILL NOT BE MENTIONED DURING THE DIRECT

EXAMINATION OF THE WITNESS, WITH THE EXCEPTION OF THE BURGLARIES, TO THE EXTENT THAT IT'S BEEN DISCUSSED.

AND THAT IF IN CROSS-EXAMINATION THE WITNESS FEELS HE IS COMPELLED OR JUSTIFIED IN BRINGING UP ANY OF THESE MATTERS THAT HAVE BEEN SO FAR DISCUSSED, AND THE WITNESS HAS BEEN IN COURT DURING THESE DISCUSSIONS; THAT THE WITNESS WILL INDICATE THAT THERE IS NEED FOR A DISCUSSION SO THAT THE MATTER CAN BE RESOLVED OUTSIDE THE HEARING OF THE JURY.

AND THE WITNESS IS INSTRUCTED NOT TO MENTION ANY OF THESE MATTERS IN FRONT OF THE JURY ON CROSS-EXAMINATION UNTIL THERE IS AN OPPORTUNITY TO BE HEARD WITHOUT THE JURY PRESENT.

MS. ABRAMSON: YOUR HONOR, THERE IS ONE OTHER MATTER, AND THAT IS I THINK THE ONLY ONE. I JUST MADE SOME NOTES EARLIER THIS MORNING ABOUT AREAS OF CONCERN FROM DR. DIETZ'S NOTES, SOMETHING WE HAVE TALKED ABOUT -- EXCHANGED A FEW WORDS ABOUT IN THE MEETINGS WITH DR. DIETZ -- HAS TO DO WITH THE CONCEPT OF THE HIT RATE, IF YOU WILL, WHICH IS A CRIME SCENE ISSUE. WE WOULD OBJECT TO THIS WITNESS TESTIFYING AS AN EXPERT IN THE CRIME SCENE AS A BALLISTICS EXPERT. WE SPENT A MONTH --

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THE COURT: WELL, IS HE GOING TO?

MS. ABRAMSON: HE SAYS HE MAY MENTION HIT RATE,

AND WE THINK THAT'S INAPPROPRIATE FOR HIM. WE HAVE CERTAINLY HAD ENOUGH TESTIMONY IN THIS CASE.

THE COURT: WELL, IS HE, MR. CONN?

MR. CONN: I THINK I DO ANTICIPATE THAT AS PART OF THE DIRECT EXAMINATION. WE WILL BE EXAMINING HIM CONCERNING THE DEFENDANT AND HIS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME, AND WE DO HAVE A SITUATION IN WHICH A CERTAIN NUMBER OF SHOTS WERE FIRED IN THAT ROOM, AND THEY WERE OBVIOUSLY FIRED ACCURATELY.

NOW, COUNSEL REFERS TO IT AS A RATE, AS IF HE IS GOING TO BE TESTIFYING TO SOME PRECISE --

THE COURT: SCORING.

MR. CONN: -- SCORING AS AN EXPERT WITNESS, AND HE IS NOT GOING TO DO THAT. WE ALL KNOW HOW MANY SHOTS -- WE HAVE AN IDEA HOW MANY SHOTS WERE FIRED, AND WE HAVE SOME IDEA OF HOW MANY OF THOSE SHOTS STRUCK BODIES.

SO I THINK THAT IS SOMETHING HE CAN LEGITIMATELY REFER TO WITHOUT COUNSEL CALLING IT A HIT RATE.

MS. ABRAMSON: WELL, BEYOND THAT I RECALL THE MOTION THE PEOPLE FILED, WHEN THEY THOUGHT DR. BURGESS WAS GOING TO RETURN TO TESTIFY, OBJECTING TO HER MAKING ANY COMMENTS ABOUT THE CRIME SCENE, SUCH AS, BECAUSE THERE WERE WOUNDS IN VARIOUS PLACES ON THE BODY, AND BECAUSE THERE WAS MIXED AMMUNITION, THAT INDICATED A

FIRING WITH HIGH EMOTIONALITY.

SO I ASSUME I AM ABOUT TO HEAR THE OPPOSITE  
FROM THE OTHER CONSULTANT TO THE F.B.I BEHAVIORAL  
SCIENCE UNIT, THAT THIS HIGH RATE OF ACCURACY INDICATES  
A PARTICULAR STATE OF MIND.

NOW, HE CAN'T KNOW THAT. NUMBER ONE, IT'S  
IMMATERIAL FOR HIM TO TESTIFY TO THAT. WE SPENT A MONTH  
LITIGATING IT.

THE COURT: BEFORE ANY REFERENCE TO SUCH ISSUES  
ARE MADE BEFORE THE JURY, WHAT I WILL DO IS HAVE THE  
WITNESS QUESTIONED OUTSIDE THE PRESENCE OF THE JURY ON  
THAT SUBJECT.

MR. CONN: OKAY.

THE COURT: ALL RIGHT.

ANYTHING ELSE? OTHERWISE WE'LL TAKE A  
SHORT BREAK. I WILL HEAR THE DEFENSE POSITION REGARDING  
ANY ARGUMENT OF PRIVILEGE THAT RELATES TO DR. OZIEL.

MS. ABRAMSON: THANK YOU.

THE COURT: OKAY. LET'S TAKE A RECESS, AND WE  
WILL CLEAR THE COURTROOM JUST FOR THIS PURPOSE, AND THEN  
WE WILL RESUME.

MS. ABRAMSON: THANK YOU, YOUR HONOR.

YOUR HONOR, BEFORE WE CLEAR THE  
PROSECUTION, THERE IS SOMETHING I WOULD LIKE TO RAISE IN  
A CLOSED COURTROOM WITH THE PROSECUTION AND DR. DIETZ  
PRESENT, AND THEN I WOULD LIKE TO GO IN CAMERA.

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

THE COURT: ALL RIGHT. IN THE TRIAL, THE  
PARTICIPANTS ARE ALL BACK, AND WE'RE READY TO  
RESUME.

ANYTHING ELSE BEFORE THE JURY COMES IN?

MR. CONN: NO, YOUR HONOR.

THE COURT: OKAY. JUST TO REITERATE, THE  
RULING OF THE COURT STANDS AS FAR AS THE WITNESS  
BEING PERMITTED TO SAY THAT HE IS AWARE OF NO  
EVIDENCE THAT THE DEFENDANT DISCLOSED COMPLAINTS OF  
OR SYMPTOMS OF THE POST-TRAUMATIC STRESS DISORDER,  
AS DESCRIBED LATER ON TO DR. VICARY AND OTHERS; DID  
NOT DISCLOSE THAT TO ANYONE, ANY OTHER MENTAL HEALTH  
PROFESSIONAL, PRIOR TO THOSE DISCLOSURES TO DR. VICARY.

IF THE PEOPLE WANT TO PHRASE THAT IN A  
QUESTION, PERHAPS IT MIGHT BE BEST DEALT WITH THAT  
WAY.

MR. CONN: YES.

THE COURT: OKAY. YOU MAY HAVE THE JURY COME  
OUT, PLEASE.

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

THE COURT: AND THE JURY IS IN COURT.

GOOD MORNING.

SORRY FOR THE INCONVENIENCE YESTERDAY.  
ONE OF THE PARTICIPANTS IN THE TRIAL WAS ILL AND  
NEEDED MEDICAL ATTENTION; AND, THEREFORE, WE  
COULDN'T PROCEED YESTERDAY. BUT WE'RE NOW READY TO  
PROCEED TODAY.

THE PEOPLE MAY CALL THEIR NEXT WITNESS.

MR. CONN: YES. THE PEOPLE CALL DR. PARK  
DIETZ.

PARK DIETZ,  
WAS CALLED AS A WITNESS BY THE PEOPLE WAS DULY  
SWORN, AND TESTIFIED AS FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING

BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

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

THE WITNESS: I'M DR. PARK DIETZ, D-I-E-T-Z.

DIRECT EXAMINATION

BY MR. CONN:

Q DOCTOR, CAN YOU TELL US WHAT YOUR PROFESSION IS.

A I'M A PHYSICIAN, SPECIALIZING IN PSYCHIATRY, AND MY PRACTICE HAS BEEN LIMITED FOR

SOME YEARS TO THE SUB-SPECIALTY OF FORENSIC PSYCHIATRY.

Q CAN YOU TELL US WHERE YOU WENT TO MEDICAL SCHOOL.

A I GRADUATED FROM JOHNS HOPKINS UNIVERSITY, SCHOOL OF MEDICINE, IN 1975.

Q AND YOU GOT YOUR M.D. DEGREE; THAT IS, YOUR DOCTOR'S DEGREE, IN 1975 FROM THAT SCHOOL?

A THAT'S RIGHT.

Q DID YOU ALSO GET ANOTHER DEGREE, AN

M.P.H.?

A YES, I DID. THAT'S A MASTERS IN PUBLIC HEALTH.

Q DID YOU GET THAT THE SAME YEAR FROM JOHN HOPKINS SCHOOL?

A YES, I DID.

Q WHERE DID YOU PURSUE YOUR RESIDENCY?

A AT THE JOHNS HOPKINS HOSPITAL FOR TWO YEARS; AND THEN MY THIRD YEAR AT THE HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA IN PHILADELPHIA.

Q AND TO BECOME A PSYCHIATRIST CAN YOU TELL US WHAT TYPE OF DEGREE YOU MUST GET FOLLOWING YOUR M.D. DEGREE.

A WELL, FIRST YOU HAVE TO BE A PHYSICIAN, AND THEN ONE MUST DO, AT THAT TIME, THREE YEARS OF RESIDENCY TRAINING IN ORDER TO BE QUALIFIED TO SIT FOR THE BOARD EXAMINATION, TO BECOME BOARD-CERTIFIED, IN PSYCHIATRY. TODAY IT'S FOUR YEARS.

Q CAN YOU TELL US WHEN YOU BECAME BOARD-CERTIFIED IN PSYCHIATRY.

A 1979.

Q AND WHAT WERE YOUR EDUCATIONAL ACHIEVEMENTS FOLLOWING 1979?

A WELL, I ALSO RECEIVED A PH.D. IN SOCIOLOGY FROM JOHNS HOPKINS, WHEN I FINISHED A DISSERTATION, YEARS AFTER LEAVING THERE. I THINK IT WAS 1984 THAT I WAS AWARDED THE DEGREE. BUT I HAD DONE THE COURSE WORK SIMULTANEOUS WITH A MASTER'S DEGREE AND THE M.D. DEGREE.

Q OKAY. NOW, HOW MANY YEARS HAVE YOU BEEN PRACTICING AS A FORENSIC PSYCHIATRIST?

A SINCE 1977 THAT HAS BEEN PRIMARILY MY ACTIVITY, THOUGH I DID A SMALL AMOUNT OF PATIENT CARE OF A NON-FORENSIC KIND IN THE FIRST FEW YEARS.

Q CAN YOU TELL US WHAT IS THE DIFFERENCE BETWEEN A PSYCHIATRIST AND A FORENSIC PSYCHIATRIST.

A WELL, SOME PEOPLE FUNCTION IN BOTH ROLES. BUT THE DIFFERENCE BETWEEN CLINICAL PSYCHIATRY AND FORENSIC PSYCHIATRY IS THAT THE CLINICAL PSYCHIATRIST TREATS PATIENTS FOR THE PURPOSE OF HELPING THEM TO RELIEVE THEIR SUFFERING, AND WORKS WITH PATIENTS TO RELIEVE SYMPTOMS, AND IS IN THE ROLE OF HELPER, WHO RELIES ON WHAT PATIENTS PRESENT AS THEIR PROBLEMS. USUALLY --

MS. ABRAMSON: I'M GOING TO MOVE TO STRIKE THE "RELIES ON" AS BEYOND EXPERT OPINION. IT'S TOO

BROAD.

THE COURT: OVERRULED.

THE WITNESS: IN HELPING PATIENTS, PSYCHIATRISTS SHOULD THINK CRITICALLY ABOUT WHAT THEIR PATIENTS PRESENT TO THEM, BUT THEY DO NOT GO BEYOND LABORATORY TESTS AND WHAT THEIR PATIENTS TELL THEM, VERY MUCH, TO SEEK INFORMATION, BECAUSE THE ROLE IS A HELPING ROLE.

IN FORENSIC PSYCHIATRY, ON THE OTHER HAND, THE PRINCIPLE FUNCTION IS TO ASCERTAIN THE TRUTH OF SOME MATTER IN DISPUTE FOR PURPOSES OF BEING ABLE TO GIVE OPINIONS IN OFTEN CONTESTED LEGAL PROCEEDINGS.

SO THE FORENSIC PSYCHIATRIST'S JOB IS MORE LIKE THAT OF OTHER FORENSIC SCIENTISTS, WHO NEED TO BE ABLE TO EVALUATE EVIDENCE, FORM OPINIONS, RESPOND TO THE KINDS OF QUESTIONS THAT ARE POSED BY COURTS AND BY THOSE WHO ARE CONTESTING VARIOUS FACTS.

Q BY MR. CONN: NOW, HAVE YOU ALSO SERVED AS CONSULTANT FOR THE BEHAVIORAL SCIENCE UNIT AND NATIONAL CENTER FOR THE ANALYSIS OF VIOLENCE FOR THE F.B.I.?

A YES, I HAVE FOR MANY YEARS. IT'S NOW CHANGED NAMES, AS THE CRITICAL RESPONSE GROUP AT THE F.B.I. ACADEMY.

Q AND CAN YOU TELL ME WHAT FUNCTION YOU PLAYED IN CONNECTION WITH THAT DIVISION OF THE

F.B.I.

A WELL, STARTING, I THINK, IN AROUND 1979 TO 1981, I BEGAN TO DO SOME TEACHING THERE AND SOME RESEARCH; BEGAN TO CONSULT ON PROFILING OF UNSOLVED HOMICIDE CASES.

AND THEN THERE CAME A TIME IN THE 1980'S THAT I BECAME THEIR PSYCHIATRIC CONSULTANT AND WAS PLACED ON CONTRACT TO TEACH, CONDUCT RESEARCH, TO BE INVOLVED IN THE PROCESS, BY WAY OF WHICH THEY CONSULTED THE LAW ENFORCEMENT AGENCY FOR THE SOLVING OF UNSOLVED CRIME, TO HELP APPREHEND OFFENDERS.

AND ON TWO OCCASIONS I WAS EMPLOYED WITH THE HOSTAGE RESCUE PEOPLE.

Q AND ARE YOU ALSO A PRINCIPLE WITH THE THREAT ASSESSMENT GROUP?

A YES. THAT'S A FIRM THAT I FOUNDED.

Q CAN YOU TELL US WHAT THE THREAT ASSESSMENT GROUP IS.

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DEVELOPED TO

HELP GOVERNMENT AGENCIES, AND EVENTUALLY PRIMARILY  
BUSINESSES, TO PREVENT VIOLENCE. AND MOST OF WHAT  
WE DO TODAY IS TO CONSULT TO COMPANIES WHO HAVE  
THREATENING EMPLOYEES, OR WHO ARE RECEIVING THREATS  
FROM CONSUMERS, AND TO INTERVENE TO PREVENT ANYONE  
FROM BEING PHYSICALLY INJURED.

Q AND WHEN DID YOU FOUND THAT COMPANY?

A 1987.

Q AND HAVE YOU ALSO SERVED AS FORENSIC

PSYCHIATRY CONSULTANT FOR THE FORENSIC SCIENCE UNIT  
OF THE NEW YORK STATE POLICE IN ALBANY?

A YES. I'VE BEEN THEIR PSYCHIATRIST FOR  
SEVERAL YEARS.

Q AND HAVE YOU ALSO SERVED AS A CLINICAL  
PROFESSOR OF PSYCHIATRY AND BIOHAVIORAL SCIENCE FOR  
U.C.L.A.?

A YES.

Q AND CAN YOU TELL US HOW LONG YOU SERVED  
AS A PROFESSOR FOR U.C.L.A.

A I THINK I WAS APPOINTED TO THE U.C.L.A.  
FACULTY IN ABOUT 1988. I'M NOT POSITIVE OF THE  
YEAR, AND I'VE BEEN A CLINICAL PROFESSOR THERE



SINCE.

Q HAVE YOU ALSO HELD A POSITION OF  
PRESIDENT OF THE AMERICAN ACADEMY OF PSYCHIATRY AND  
THE LAW?

A YES. I SERVED AS PRESIDENT IN THE LAST  
YEAR, ENDING IN OCTOBER OF '95.

Q AND CAN YOU TELL US WHAT THE AMERICAN  
ACADEMY OF PSYCHIATRY AND THE LAW IS?

A THAT'S THE PRINCIPLE PROFESSIONAL  
ORGANIZATION FOR PEOPLE INTERESTED IN FORENSIC  
PSYCHIATRY. WE HAVE 1600 MEMBERS, ALL OF WHOM ARE  
PSYCHIATRISTS, FOR WHOM FORENSIC PSYCHIATRY IS A  
PRIMARY PART OF THEIR PRACTICE.

Q ASIDE FROM YOUR POSITION AS A CLINICAL  
PROFESSOR OF PSYCHIATRY IN BEHAVIORAL SCIENCE FOR

U.C.L.A., HAVE YOU HAD OTHER FULL-TIME ACADEMIC  
APPOINTMENTS?

A I WAS A FULL-TIME ACADEMIC FOR 10 YEARS  
AFTER LEAVING TRAINING. I SERVED AT THE HARVARD  
MEDICAL SCHOOL AS AN ASSISTANT PROFESSOR OF  
PSYCHIATRY FROM 1978 TO 1982, DURING WHICH TIME MY  
DUTIES INCLUDED THE RUNNING OF THE FORENSIC SERVICE  
AT THE STATE'S HOSPITAL FOR THE CRIMINALLY INSANE,

WHERE WE, ON MY SERVICE, EVALUATED A THOUSAND MENTALLY DISORDERED OFFENDERS A YEAR FOR THE TRIAL COURTS OF MASSACHUSETTS.

THEN I SPENT MY THIRD YEAR AT HARVARD BY EXAMINING AND STUDYING JOHN HINCKLEY IN CONNECTION WITH CHARGES ARISING FROM HIS ATTEMPTED ASSASSINATION OF PRESIDENT REAGAN.

AND MY FOURTH YEAR AT HARVARD I SPENT STUDYING MENTALLY DISORDERED OFFENDERS.

FOLLOWING THAT I TOOK A POSITION AT THE UNIVERSITY OF VIRGINIA, WHERE I WAS INITIALLY ASSOCIATE PROFESSOR, AND LATER PROFESSOR OF LAW IN THE SCHOOL OF LAW, AND ASSOCIATE PROFESSOR, AND LATER PROFESSOR OF PSYCHIATRY AND BEHAVIORAL SCIENCE IN THE SCHOOL OF MEDICINE.

AND AT VIRGINIA I SERVED AS THE MEDICAL DIRECTOR OF THE INSTITUTE OF LAW AND PSYCHIATRY AND PUBLIC POLICY, WHICH IS FUNDED BY THE UNIVERSITY AND STATE, TO HELP DRAFT LEGISLATION TO TRAIN LAWYERS AND DOCTORS AND TO CONDUCT EVALUATIONS ON BEHALF OF

INDIGENT DEFENDANTS.

AND THERE I RAN THE FORENSIC PSYCHIATRY CLINIC. WE DID ABOUT 75 EVALUATIONS A YEAR AT THAT

TIME. AND I TAUGHT A COURSE LOAD IN THE LAW SCHOOL,  
AS WELL AS TRAINING FELLOWS IN PSYCHIATRY WHO WANTED  
TO SPECIALIZE IN FORENSIC PSYCHIATRY.

Q AND YOU HAVE A FELLOWSHIP WITH SEVERAL  
UNIVERSITIES?

A I DIRECTED THE FELLOWSHIP TRAINING  
PROGRAMS FOR FORENSIC PSYCHIATRY AT HARVARD AND THEN  
AT VIRGINIA; AND I TEACH IT AT U.C.L.A. I HAVE,  
MYSELF, BEEN A FELLOW AS PART OF MY TRAINING AT THE  
UNIVERSITY OF PENNSYLVANIA AT JOHNS HOPKINS.

Q AND DO YOU HAVE LICENSES FOR MEDICINE  
AND SURGERY AND CERTIFICATION IN THE FIELD OF  
PSYCHIATRY IN DIFFERENT STATES IN THE UNITED STATES?

A YES.

Q AND CAN YOU TELL US WHAT THAT CONSISTS  
OF.

A I THINK I STILL HAVE ACTIVE LICENSES IN  
PENNSYLVANIA AND VIRGINIA. AND I'VE GOT INACTIVE  
LICENSES IN MASSACHUSETTS AND MARYLAND, AND I AM  
BOARD-CERTIFIED.

Q AND CAN YOU TELL US IF, DURING THE  
COURSE OF YOUR CAREER, YOU HAVE RECEIVED AWARDS AND  
HONORS FROM THE TIME THAT YOU BEGAN THE PRACTICE OF  
PSYCHIATRY UP UNTIL TODAY?

A YES, I HAVE.

Q AND AT THIS TIME, WHAT I WOULD LIKE TO DO IS MARK A COPY OF YOUR C.V. I BELIEVE THIS IS DATED OCTOBER 1995.

IS THAT THE MOST RECENT DRAFT OF YOUR C.V.?

A YES, IT IS.

Q I WILL MARK THIS AS 432.

IF YOU'LL TAKE A LOOK AT THAT AND TELL US IF YOU RECOGNIZE THAT.

A YES, I DO.

Q AND IS THAT YOUR MOST RECENT COPY THAT YOU PUT TOGETHER OF YOUR CURRICULUM VITAE?

A IT IS.

Q AND CAN YOU GIVE US, IF YOU WILL, JUST A BRIEF OVERVIEW OF SOME OF THE AWARDS AND HONORS YOU HAVE RECEIVED DURING THE COURSE OF YOUR CAREER.

A OH, I RECEIVED RECOGNITION FROM THE AUSTRALIAN ACADEMY OF FORENSIC SCIENCES AND THE MEXICAN LEGAL MEDICINE ASSOCIATION; WAS MADE A FELLOW OF THE AMERICAN PSYCHIATRIC ASSOCIATION, AND THE AMERICAN ACADEMY OF FORENSIC SCIENCES.

WE USE THE WORD "FELLOW" IN A LOT OF DIFFERENT WAYS IN MEDICINE, BOTH FOR TRAINING AND AS A LEVEL OF RECOGNITION IN SOME OF OUR SOCIETIES.

I WAS AWARDED A SABBATICAL KNOWN AS SESQUICENTENNIAL ASSOCIATE AT THE UNIVERSITY OF VIRGINIA FROM THE CENTER FOR ADVANCED STUDIES.

THEN I WAS INVITED TO LECTURE IN CANADA

FOR THEIR ANNUAL LAW IN PSYCHIATRY LECTURE CALLED  
THE KENNETH GRAY MEMORIAL LECTURESHIP.

I'VE BEEN GIVEN AN AWARD BY THE ACADEMY,  
THAT LATER ELECTED ME PRESIDENT, AND I RECEIVED AN  
AWARD FROM THE AMERICAN ACADEMY OF FORENSIC SCIENCES  
FOR WORKS ON SEX OFFENDERS.

Q AND HAVE YOU ALSO PARTICIPATED IN  
SEVERAL NATIONAL PUBLIC POLICY ACTIVITIES?

A YES, I HAVE.

Q CAN YOU TELL US WHAT THAT CONSISTED OF.

A I WAS INVOLVED WITH A TASK FORCE ON THE  
FAMILIES OF CATASTROPHE DURING THE IRANIAN HOSTAGE  
CRISES ASSEMBLED AT PURDUE UNIVERSITY.

I WAS A MEMBER OF THE NATIONAL ACADEMY  
OF SCIENCES COMMITTEE ON TRAUMA RESEARCH, IN WHICH  
MY ROLE WAS TO PUT HOMICIDE AND SUICIDE ON THE  
AGENDA FOR INJURIES AND TO LOOK AT THE ROLE OF  
PSYCHOLOGICAL TRAUMA, AS OPPOSED TO JUST PHYSICAL  
TRAUMA; AND THAT WORK LED TO THE FOUNDING OF THE  
INJURY PREVENTION CENTER AT THE CENTERS FOR DISEASE  
CONTROL IN ATLANTA.

I SERVED ON THE ATTORNEY GENERAL'S

COMMISSION ON PORNOGRAPHY, APPOINTED BY ATTORNEY GENERAL SMITH, AND FOR A YEAR WAS INVOLVED IN PUBLIC HEARINGS FOR THE U.S. DEPARTMENT OF JUSTICE ON THE ROLE OF PORNOGRAPHY IN AMERICAN SOCIETY; AND THEN LATER WAS ASKED BY THE WHITE HOUSE TO SERVE AS A DELEGATE TO A CONFERENCE SPONSORED BY HELMUT KOHL,

SCIENTISTS FROM THE ECONOMIC SUMMIT CONFERENCE COUNTRIES GOING TO GERMANY AS CHANCELLOR KOHL'S GUESTS.

Q ARE YOU ALSO A MEMBER OF EDITORIAL BOARDS FOR THE PUBLICATION OF ARTICLES IN THE FIELDS OF MEDICINE AND PSYCHIATRY?

A YES.

Q AND CAN YOU TELL US WHAT -- WHICH EDITORIAL BOARDS YOU HAVE SERVED ON?

A WELL, THE ONES I WAS MOST ACTIVE ON WERE THE JOHNS HOPKINS HOPKINS MEDICAL JOURNAL, WHERE I WAS ONE OF THE FIRST STUDENT EDITORS. THAT WAS A TIME-CONSUMING STUDENT JOB.

AND THEN THE BULLETIN OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW, THAT SAME ORGANIZATION THAT I'VE BEEN VERY ACTIVE IN. I, FOR MANY YEARS, WAS QUITE ACTIVE IN ITS JOURNAL.

BUT I'VE ALSO SERVED ON THE EDITORIAL  
BOARDS ON THE JOURNAL OF FORENSIC SCIENCES AND THE  
JOURNAL KNOWN AS BEHAVIORAL SCIENCES AND THE LAW,  
AND ONE CALLED THE PSYCHIATRIC JOURNAL OF THE  
UNIVERSITY OF OTTAWA.

Q NOW, YOU'VE TOLD US THAT YOU WERE THE  
PRESIDENT OF THE AMERICAN ACADEMY OF PSYCHIATRY AND  
THE LAW.

HAVE YOU HELD POSITIONS IN OTHER  
PROFESSIONAL SOCIETIES BESIDES THAT ONE?

A YES, I HAVE.

Q AND CAN YOU TELL US WHICH ONES THEY  
ARE.

A I WAS HEAD OF THE BEHAVIORAL SCIENCE --  
WELL, ACTUALLY, THEN IT WAS KNOWN AS THE PSYCHIATRY  
SECTION OF THE AMERICAN ACADEMY OF FORENSIC  
SCIENCES; AND THEN I BECAME A MEMBER OF THE  
GOVERNING BODY, THE EXECUTIVE COUNCIL OF THAT  
ORGANIZATION.

I'VE CHAIRED COMMITTEES FOR THE AMERICAN  
PSYCHIATRIC ASSOCIATION AND SERVED ON A NUMBER OF  
ITS BODIES.

I'VE BEEN A MEMBER OF A NUMBER OF

PROFESSIONAL SOCIETIES IN THE U.S. AND ELSEWHERE.

Q AND HAVE YOU PUBLISHED ARTICLES, BOOKS,  
OR BOOK CHAPTERS IN A NUMBER OF PUBLICATIONS?

A YES. I THINK IF ONE COUNTS THEM ALL UP,  
INCLUDING THE MORE WEIGHTIER AND THE LESS WEIGHTIER  
ONES, IT'S ABOUT A HUNDRED PUBLICATIONS, MOSTLY  
DEALING WITH ABNORMAL BEHAVIOR.

Q WHAT TYPE OF ABNORMAL BEHAVIOR DID YOUR  
PUBLICATIONS DEAL WITH?

A THE PRINCIPLE FOCUS HAS BEEN ON CRIMINAL  
BEHAVIOR.

Q AND HAVE YOU TESTIFIED PREVIOUSLY AS AN  
EXPERT WITNESS IN A NUMBER OF HIGH-PROFILE CRIMINAL  
CASES?

A YES, I HAVE.

Q DID YOU TESTIFY ON BEHALF OF THE UNITED

STATES IN THE CASE AGAINST JOHN HINCKLEY, FOR THE  
ATTEMPTED ASSASSINATION OF PRESIDENT REAGAN?

A YES.

Q AND DID YOU TESTIFY ON BEHALF OF THE  
DISTRICT ATTORNEY'S OFFICE IN NEW YORK IN THE CASE  
INVOLVING ROBERT CHAMBERS, A CASE THAT WAS REFERRED  
TO IN THE MEDIA AS THE "PREPPY MURDERER"?



A NO. I ADVISED THE D.A.'S OFFICE AND  
DIDN'T TESTIFY.

Q YOU SERVED AS CONSULTANT ON THAT CASE?

A THAT'S RIGHT.

Q DID YOU SERVE AS A CONSULTANT TO THE  
CENTRAL INTELLIGENCE AGENCY IN ANOTHER HIGH-PROFILE  
CASE?

A YES.

Q AND WHAT CASE WAS THAT?

A THAT CASE WAS DAVID ORLIKOW,  
O-R-L-I-K-O-W. IT WAS A GROUP OF CANADIAN CITIZENS  
USING THE CENTRAL INTELLIGENCE AGENCY FOR ITS  
ALLEGED FUNDING OF BRAINWASHING EXPERIMENTS DONE BY  
A RENEGADE CANADIAN PSYCHIATRIST MANY YEARS BEFORE.

Q AND DID YOU ALSO TESTIFY ON BEHALF OF  
THE PUBLIC DEFENDER'S OFFICE HERE IN LOS ANGELES IN  
THE CASE OF ROBERT BARDO?

A YES, I DID.

Q DID YOU ALSO SERVE AS A CONSULTANT FOR  
THE DISTRICT ATTORNEY'S OFFICE IN SAN DIEGO COUNTY  
IN THE CASE OF ELIZABETH BRODERICK?

A YES.

Q DID YOU TESTIFY IN THAT CASE?

A YES, I DID.

Q AND DID YOU ALSO SERVE AS A CONSULTANT TO THE DISTRICT ATTORNEY'S OFFICE IN MILWAUKEE, WISCONSIN, IN THE CASE AGAINST JEFFREY DAHMER?

A I DID. AND I TESTIFIED ON BEHALF OF THE GOVERNMENT.

Q AND DID YOU INTERVIEW JEFFREY DAHMER IN CONNECTION WITH WORKING ON THAT CASE?

A YES. FOR THREE DAYS.

Q AND, SIR, CAN YOU TELL US HOW MUCH YOU CHARGE FOR YOUR SERVICES AS AN EXPERT WITNESS.

A WELL, IT'S VARIED FROM TIME TO TIME, AND I HAVE DIFFERENT PRIVATE AND GOVERNMENT FEES. BUT MY FEE ON THIS CASE IS \$400 AN HOUR.

Q AND IN CONNECTION WITH THIS CASE NOW, CAN YOU TELL US WHAT YOU WERE ASKED TO DO AS PART OF YOUR WORK IN THIS CASE?

A WHAT I WAS ASKED TO DO HAS VARIED SOMEWHAT FROM TIME TO TIME.

MS. ABRAMSON: I'M GOING TO OBJECT TO WHAT HE WAS ASKED TO DO AS CALLING FOR HEARSAY.

THE COURT: ALL RIGHT. PERHAPS YOU CAN DEFINE WHAT IT IS HE ACTUALLY DID, RATHER THAN WHAT HE WAS ASKED TO DO.

MS. ABRAMSON: THANK YOU, YOUR HONOR.

Q BY MR. CONN: CAN YOU TELL US WHAT YOU

DID IN CONNECTION WITH YOUR WORK ON THIS CASE.

A YES. WHAT I DID WAS TO SELECT FROM SOME OF THE MATERIALS MADE AVAILABLE TO ME, MATERIALS TO FOCUS MY ATTENTION ON FOR THE PURPOSE OF LOOKING AT WHAT ERIK MENENDEZ' MENTAL STATE WAS AT THE TIME OF THE TWO HOMICIDES WITH WHICH HE'S BEEN CHARGED.

AND FOR THE PURPOSE OF EVALUATING HIS MENTAL STATE AT THE TIME OF THOSE TWO HOMICIDES, I ALSO EXAMINED HIM, IN ADDITION TO READING THE MATERIALS.

Q NOW, CAN YOU TELL US WHAT MATERIALS YOU REVIEWED TO ASSIST YOU IN MAKING THAT DETERMINATION.

A YES, I CAN. I REVIEWED THE TESTIMONY OF ERIK MENENDEZ IN THIS TRIAL THROUGH TRANSCRIPTS OF THAT TESTIMONY.

I LOOKED AT THE CRIME-SCENE VIDEO AND CRIME-SCENE PHOTOGRAPHS.

I READ ALL OF THE POLICE REPORTS MADE AVAILABLE TO ME.

I REVIEWED THE GOVERNMENT'S SUMMARY OF THE TESTIMONY OF DEFENSE WITNESSES IN THE FIRST TRIAL.

I LISTENED TO THE DECEMBER 11TH AUDIOTAPE, DECEMBER 11, 1989, IN WHICH ERIK MENENDEZ

CAN BE HEARD SPEAKING.

I LISTENED TO THE AUDIOTAPED INTERVIEWS  
OF BOTH ERIK AND LYLE MENENDEZ FROM AUGUST 21, 1989,

AND I READ THE TRANSCRIPTS OF THEIR INTERVIEWS FROM  
SEPTEMBER OF 1989. THOSE ARE POLICE INTERVIEWS.

I'M AFRAID I'D HAVE TO LOOK AT MY NOTES  
TO SEE IF THERE'S ANYTHING ELSE.

Q I'LL STOP YOU THERE FOR A MINUTE.

LET ME ASK YOU, FIRST, IN REGARD TO YOUR  
INTERVIEW WITH THE DEFENDANT, CAN YOU TELL US HOW  
MUCH TIME YOU SPENT INTERVIEWING ERIK MENENDEZ.

A WELL, WITH THE CAMERA GOING ON AND OFF,  
I WOULDN'T BE GIVING AN EXACT FIGURE, BUT I SAW HIM  
ON THREE OCCASIONS. I SAW HIM FOR THE BETTER PART  
OF AN EIGHT-HOUR DAY, AND MAYBE THAT'S SIX HOURS OF  
ACTUAL EXAMINATION TIME ON A SATURDAY.

I SAW HIM FOR A SIMILAR DAY ON A SUNDAY,  
WHERE PROBABLY THERE WAS ACTUALLY SIX HOURS OF  
INTERVIEWING TIME, MORE OR LESS; AND THEN THERE WAS  
ANOTHER OCCASION ON WHICH I SAW HIM FOR A PORTION OF  
FOUR HOURS THAT WAS MADE AVAILABLE TO ME. PERHAPS  
WE WERE TALKING FOR THREE HOURS OF THAT TIME.

Q SO IT WOULD BE APPROXIMATELY 15 HOURS OR

SO OF ACTUAL INTERVIEW TIME THAT YOU SPENT WITH ERIK MENENDEZ?

A I THINK IT WOULD BE APPROXIMATELY THAT, YES.

Q AND CAN YOU TELL US WHEN THESE INTERVIEWS TOOK PLACE.

A THE FIRST WAS ON JANUARY 27, 1996. SO THAT'S ONLY ABOUT TWO WEEKS AGO.

THE SECOND WAS THE FOLLOWING DAY, JANUARY 28TH OF 1996; AND THE THIRD WAS FEBRUARY 1ST OF 1996.

Q CAN YOU TELL US WHERE THE INTERVIEWS WERE CONDUCTED.

A THEY WERE CONDUCTED IN AN INTERVIEWING ROOM IN THE JAIL AREA OF THE SANTA MONICA -- I'M SORRY -- THE BEVERLY HILLS POLICE DEPARTMENT.

Q ALL THREE INTERVIEWS?

A YES.

Q AND WERE ANY PERSONS PRESENT DURING YOUR INTERVIEW WITH THE DEFENDANT?

A NO ONE ELSE WAS PRESENT IN THE ROOM DURING THE INTERVIEWS; HOWEVER, THERE WAS A VIDEOGRAPHER FROM THE DISTRICT ATTORNEY'S OFFICE WHO

WOULD COME IN AND START THE CAMERA ON SOME OCCASIONS, AND THEN LEAVE BEFORE WE SPOKE. AND I BELIEVE THAT THERE WERE TIMES WHEN BOTH THE VIDEOGRAPHER AND OTHERS MAY HAVE OBSERVED THROUGH A TWO-WAY MIRROR.

MS. ABRAMSON: YOUR HONOR, MAY WE APPROACH?

THE COURT: ON THIS PARTICULAR SUBJECT?

MS. ABRAMSON: ON THAT EXACT SUBJECT.

THE COURT: PERHAPS WE CAN DEFER THAT.

Q BY MR. CONN: AND WERE ALL OF YOUR INTERVIEWS WITH THE DEFENDANT VIDEO-RECORDED?

A YES.

Q CAN YOU TELL US WHAT YOUR PURPOSE WAS IN CONDUCTING AN INTERVIEW OF THE DEFENDANT.

A THE PURPOSE WAS BOTH TO HAVE AN OPPORTUNITY TO OBSERVE HIS BEHAVIOR IN AN INTERVIEW SETTING; TO BE ABLE TO ASK QUESTIONS OF HIM THAT ELABORATED ON HIS TESTIMONY OR DEALT WITH OTHER EVIDENCE THAT HAD BEEN PRESENTED TO ME; AN OPPORTUNITY TO ASK HIM QUESTIONS OF THE KIND THAT WOULDN'T BE ELICITED DURING HIS TESTIMONY IN COURT, SO THAT I COULD FORM MY INDEPENDENT OPINION ABOUT HIS MENTAL STATE ON AUGUST 20, 1989.

Q AND IS WHAT YOU WERE DOING A PSYCHIATRIC EVALUATION?

A WELL, IT COULD BE CALLED EITHER A PSYCHIATRIC EVALUATION OR SIMPLY IT COULD BE CALLED AN INTERVIEW. THAT'S NOT REALLY OF GREAT CONSEQUENCE. THERE WAS ONE PART THAT WAS REALLY NOTHING OTHER THAN TALKING AND ASKING QUESTIONS AND LISTENING, AND THAT WAS A PART KNOWN AS THE MENTAL STATUS EXAMINATION, WHICH IS A MORE STRUCTURED PART OF SUCH AN INTERVIEW, WHERE ONE ASKS VERY SPECIFIC QUESTIONS TO TEST HOW THE MIND IS WORKING THAT DAY.

Q WHAT TYPE OF QUESTIONS DO YOU USE AS PART OF THE MENTAL STATUS EVALUATION?

A WELL, THERE'S A RANGE OF THEM. THEY'RE THINGS LIKE SPELLING THE WORD "WORLD" BACKWARDS, SUBTRACTING SEVENS FROM A HUNDRED, NAMES OF THE PRESIDENT'S, BEING ASKED TO INTERPRET PROVERBS, EACH OF WHICH IS DESIGNED TO TEST SOME SPECIFIC MENTAL

FUNCTION.

Q IS THAT FOR THE PURPOSE OF DETERMINING WHETHER OR NOT HE IS -- THE PERSON BEING INTERVIEWED IS FUNCTIONING PROPERLY ON THAT DAY?

A IT'S FOR THE PURPOSE OF DETERMINING

WHETHER THERE ARE AREAS OF PATHOLOGY IN HOW THE  
BRAIN OR MIND ARE FUNCTIONING.

I USE IT ALSO TO BEGIN TO ASK QUESTIONS  
ABOUT PSYCHIATRIC HISTORY, WHETHER A PERSON HAS EVER  
EXPERIENCED CERTAIN UNUSUAL SYMPTOMS IN THEIR MENTAL  
LIFE.

Q DO YOU GIVE A MENTAL STATUS EVALUATION  
AT THE BEGINNING OF EACH SEPARATE INTERVIEW THAT YOU  
CONDUCT, OR DO YOU GIVE IT JUST ONCE IN REGARD TO A  
PARTICULAR PERSON THAT YOU ARE INTERVIEWING?

A DOESN'T MATTER. I DO IT IN ACCORDANCE  
WITH WHERE IT SEEMS LIKE THE TIMING WOULD BE  
REASONABLE.

ALSO, IF SOMEONE IS FUNCTIONING FAIRLY  
WELL, I DON'T WORRY ABOUT WHETHER THEY MAY BE  
FATIGUED WHEN I DO THAT. IF SOMEONE IS HAVING A LOT  
OF TROUBLE FUNCTIONING, I'D DO IT WHEN THEY WOULD BE  
MORE ALERT, SO THEY WOULDN'T BE AT A DISADVANTAGE.

Q IN THIS PARTICULAR CASE CAN YOU TELL US  
WHEN YOU, IN FACT, GAVE ERIK MENENDEZ A MENTAL  
STATUS EVALUATION AS PART OF YOUR EXAMINATION OF  
HIM?

A YES, I CAN.



Q DO YOU RECALL WHICH DAY OR DAYS THAT YOU DID THAT?

A I THINK I DID MOST OF IT ON THE AFTERNOON OF THE FIRST DAY, AND THEN I ASKED ADDITIONAL FOLLOW-UP QUESTIONS ON THE SECOND DAY, SOME AREAS I HADN'T COVERED.

Q AND DID YOU, BASED UPON THAT ASPECT OF YOUR EXAMINATION -- DID YOU REACH ANY CONCLUSIONS REGARDING HIS MENTAL FUNCTIONS AT THAT PARTICULAR POINT IN TIME?

A YES.

Q AND WHAT WERE THOSE CONCLUSIONS?

A WELL, HIS MENTAL FUNCTION WAS VERY GOOD. THERE WAS CERTAINLY NO EVIDENCE OF ANY OF THE MAJOR DISRUPTIONS OF MENTAL LIFE THAT A MENTAL DISEASE MAY CAUSE.

AND THEN WHAT I'M LOOKING FOR ARE THINGS SUCH AS CURRENT HALLUCINATIONS IN WHICH PEOPLE HEAR VOICES OR SEE THINGS; DELUSIONS IN WHICH THEY HAVE VERY STRANGE IDEAS THAT COME FROM MENTAL ILLNESS, OR DISRUPTION IN THEIR ABILITY TO USE LOGICAL THOUGHT. HE HAD NONE OF THOSE PROBLEMS AT THE TIME THAT I EXAMINED HIM.

I ALSO SAW THAT THERE WAS SOME EVIDENCE, BOTH IN THE MENTAL STATUS EXAM, AND ALSO IN THE INTERVIEW, OF ANXIETY, WHICH IS A VERY DIFFERENT KIND OF SYMPTOM. HE SHOWED SOME ANXIETY BY A DIFFICULTY CONCENTRATING, NOT VERY SIGNIFICANT. I

THINK HE MADE TWO MISTAKES IN SUBTRACTING SEVENS  
SERIALLY FROM A HUNDRED; WHEREAS, AT HIS EDUCATION  
LEVEL AND WITH HIS INTELLIGENCE, HE SHOULD, OF  
COURSE, BE ABLE TO DO THAT WITHOUT A MISTAKE.

AS MANY PEOPLE WHO ARE IN CUSTODY DO, HE  
LOST TRACK OF WHAT THE DATE WAS AT THE TIME I  
EXAMINED HIM.

AND HE EXHIBITED AND EXPRESSED SOME  
NERVOUSNESS, MOST NOTABLY BY GIVING LONG ANSWERS TO  
QUESTIONS AND SEEMING TO HAVE A NEED TO FILL PAUSES  
BY SPEAKING.

BUT APART FROM ANXIETY, THERE WAS NO  
BEHAVIOR EMITTED DURING THE MENTAL STATUS EXAM OR  
THE INTERVIEWS THAT WOULD REFLECT SIGNIFICANT  
ABNORMALITY IN HIS MENTAL LIFE.

HE DID NOT APPEAR PARTICULARLY  
DEPRESSED, THOUGH THERE WERE THINGS THAT WE TALKED  
ABOUT WHERE HE WOULD APPEAR SAD. HE DID NOT CRY  
DURING THE EXAMINATION; AND HE DID NOT COMPLAIN OF  
PRESENT SYMPTOMS DURING THE EXAM.

AT ONE POINT HE GOT A LITTLE ANGERED AT  
ME BECAUSE OF A CHALLENGE I GAVE HIM, BUT NOTHING  
ABNORMAL.

Q WHAT TYPE OF CHALLENGE DID YOU GIVE HIM?

MS. ABRAMSON: I'M GOING TO OBJECT, YOUR HONOR, AND ASK TO APPROACH.

THE COURT: PERHAPS WE CAN MOVE ON TO SOMETHING ELSE.

MR. CONN: OKAY.

Q NOW, YOU SAID THAT YOUR PURPOSE FOR THIS INTERVIEW IN PART WAS TO DETERMINE THE DEFENDANT'S MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME.

A THAT'S THE PURPOSE OF THE WHOLE PROCESS, YES.

Q NOW, IS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME DIFFERENT FROM A PSYCHIATRIC DIAGNOSIS?

A YES, IT IS.

Q AND TELL US WHAT THE DIFFERENCE IS BETWEEN THOSE TWO THINGS.

A WELL, PSYCHIATRIC DIAGNOSIS REFERS TO A FINDING OF WHAT CONDITION AFFLICTS AN INDIVIDUAL, AND SOME CONDITIONS ARE LIFELONG; SOME CONDITIONS ARE LIMITED IN TIME. BUT A DIAGNOSIS REFERS TO A CONDITION WHICH ALWAYS HAS CERTAIN FEATURES. THOSE FEATURES THAT ANY CONDITION MAY HAVE MAY OR MAY NOT

BE PRESENT ON A PARTICULAR DAY OR A PARTICULAR TIME. SO SOMEONE CAN HAVE A DIAGNOSIS IN WHICH ONE SUSPECTS SYMPTOMS A, B, AND C, BUT ON A PARTICULAR DAY THEY MAY NOT HAVE ANY OF THOSE SYMPTOMS.

IF ONE LOOKS AT MENTAL STATE AT THE TIME OF A CRIME, ONE IS LOOKING FOR THE MENTAL CONDITION AT A PARTICULAR POINT IN THE PERSON'S LIFE; AND AT THAT POINT THE PERSON MAY HAVE SYMPTOMS OR OTHER FEATURES OF THIS BEHAVIOR THAT RELATE TO SOME MENTAL

CONDITION, OR THAT DON'T.

SO, FOR EXAMPLE, IT'S COMMON IN FORENSIC PSYCHIATRY TO DEAL WITH INDIVIDUALS WHO HAVE A SERIOUS MENTAL ILLNESS, BUT WHO AT THE TIME OF THE CRIME MAY NOT HAVE HAD PARTICULAR SYMPTOMS MANIFESTED; OR TO DEAL WITH INDIVIDUALS WHO BECAME VERY CONFUSED AND HAD OTHER FEATURES AT THE TIME OF THE CRIME, BUT WHO DON'T HAVE ANY CONDITION.

SO WE HAVE TO DISTINGUISH BETWEEN THE STATE OF MIND AT THE TIME OF A CRIME AND MENTAL TRAITS THAT THE PERSON USUALLY HAS, BUT MAY NOT HAVE AT THE TIME OF A CRIME.

Q OKAY. NOW, WERE YOU INTERESTED AT ALL IN THE DIAGNOSIS OF THE DEFENDANT IN INTERVIEW?

A TO SOME EXTENT.

Q AND WHY IS THAT YOU HAD SOME INTEREST,  
BUT LIMITED INTEREST, IN THAT PARTICULAR ISSUE?

A WELL, I WASN'T THERE FOR THE PURPOSE OF  
HELPING HIM, AND I EXPLAINED THAT TO HIM. IF I WERE  
HERE TO HELP HIM, OF COURSE, IT WOULD MATTER A GREAT  
DEAL WHAT HIS CONDITION WAS AT THAT TIME. BUT FOR  
MY PURPOSE OF KNOWING WHAT HIS CONDITION WAS NEARLY  
SIX YEARS EARLIER, WHAT MATTERS WAS HIS CONDITION  
THEN.

TO THE SOME EXTENT, HIS CONDITION TODAY  
HELPS INFORM US OF HOW HE WAS SIX YEARS AGO, BUT IT  
DOESN'T REALLY ANSWER THE QUESTION. FOR THAT, ONE  
HAS TO LOOK SIX YEARS AGO AND BEFORE THAT.

Q SO IN EVALUATING THE DEFENDANT, DID YOU  
TAKE INTO CONSIDERATION ANY MEDICATION THAT HE MAY  
HAVE BEEN ON AT THE TIME OF YOUR EXAMINATION OF HIM?

A YES.

Q AND WHAT WAS YOUR UNDERSTANDING  
CONCERNING THE TYPE OF MEDICATION THAT HE MAY HAVE  
BEEN UNDER THE INFLUENCE OF AT THE TIME OF YOUR  
EXAMINATION?

A WELL, I ASKED HIM WHAT MEDICATION HE WAS

TAKING, AND HE TOLD ME HE WAS ON AN ANTI-DEPRESSANT KNOWN AS PAMELOR, AND HE WAS ON A SLEEPING MEDICATION; AND WAS ALSO TAKING AN ANTI-ANXIETY DRUG.

AND SO PRINCIPALLY, I LOOKED FOR WHETHER, DESPITE THOSE MEDICATIONS, HE NONETHELESS HAD SIGNS OF DEPRESSION OR ANXIETY, SINCE THOSE MEDICATIONS MAY RELIEVE SUCH SYMPTOMS; AND ALSO I LOOKED FOR WHETHER HE WAS SEDATED AND WOULD BE SLEEPY, PARTICULARLY BECAUSE I WAS INFORMED ON THE DAY OF ONE OF THE EXAMS THAT HE HAD TAKEN A SLEEPING PILL BEFORE COMING TO THE EXAM. SO I WAS CONCERNED TO KNOW WHETHER HE FELL ASLEEP ON ME. BUT HE DIDN'T.

Q NOW, THE FACT HE WAS ON SOME MEDICATION, DOES THAT IN ANY WAY SERVE AS AN OBSTACLE IN REGARD TO THE PURPOSES FOR WHICH YOU WERE THERE; THAT IS, TO DETERMINE HIS -- BOTH HIS DIAGNOSIS AND HIS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE

CRIME?

A NO. BUT IT WAS IMPORTANT TO KNOW HE WAS ON MEDICATION.

Q OKAY. BUT CAN YOU TELL US WHY, THE FACT

OF THE MEDICATION DOES NOT SERVE IN ANY WAY AS AN  
OBSTACLE TO THE DETERMINATIONS FOR WHICH YOU WERE  
THERE?

MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
FORM OF THE QUESTION. IT MISSTATES THE WITNESS'  
TESTIMONY.

THE COURT: REPHRASE THE QUESTION.

MR. CONN: YES.

Q CAN YOU TELL US TO WHAT EXTENT THE  
MEDICATIONS WERE TAKEN INTO ACCOUNT -- TO WHAT EXTENT  
DID YOU TAKE THE MEDICATIONS INTO ACCOUNT IN  
REACHING WHATEVER CONCLUSIONS YOU DID CONCERNING THE  
DEFENDANT'S DIAGNOSIS AND MENTAL STATE AT THE TIME  
OF THE COMMISSION OF THE CRIME?

A WELL, TO THE EXTENT THAT I REALIZED THAT  
IF HE SHOWED SOME ANXIETY WITH ME, DESPITE THESE  
MEDICATIONS, I FIGURED HE'D PROBABLY BE MORE NERVOUS  
WITHOUT IT.

Q AND WERE YOU ABLE TO MAKE A  
DETERMINATION AS TO A DIAGNOSIS OF ANY MENTAL  
DISORDER THAT ERIK MENENDEZ WAS SUFFERING FROM AT  
THE TIME OF THE COMMISSION OF THE CRIME ON AUGUST  
THE 20TH OF 1989?

A YES.

Q AND WHAT WAS YOUR DIAGNOSIS?

MS. ABRAMSON: YOUR HONOR, I'D LIKE TO  
APPROACH BEFORE COUNSEL GOES ANY FURTHER.

THE COURT: OKAY. LET'S DO THIS. WE'LL HAVE  
THE JURY GO INTO THE JURY ROOM JUST FOR A MOMENT.  
WE'LL TALK TO THE LAWYERS, AND THEN WE'LL HAVE YOU  
COME OUT.

(THE JURY ENTERED THE JURY ROOM  
AND THE FOLLOWING PROCEEDINGS  
WERE HELD:)

MS. ABRAMSON: I'M SORRY, YOUR HONOR.

THE COURT: YES.

MS. ABRAMSON: I REALIZED THERE WAS SOMETHING  
I SHOULD HAVE BROUGHT UP BEFORE THE WITNESS TOOK THE  
STAND. I HAD NO OBJECTION TO HIS ANSWERING THE  
DIAGNOSTIC QUESTION ON THE ASSUMPTION I ALREADY KNOW  
THE ANSWER TO THAT.

HOWEVER, THIS WITNESS IN INTERVIEW, BOTH  
WITH US AND APPARENTLY WITH THE PROSECUTION BEFORE  
WE EVER TALKED TO HIM, INDICATES THAT HE FOUND A  
SYMPTOM HERE OR A FEATURE HERE AND A FEATURE THERE  
FROM A WHOLE -- A CLUSTER OF DIFFERENT TYPE B OR  
CLUSTER B -- SO-CALLED PERSONALITY DISORDERS.

THE COURT IS, I'M SURE, TOTALLY FAMILIAR  
BY NOW HOW THE DSM-IV WORKS, AND IT HAS TO DO WITH  
THE WHOLE NOTION IT WAS A DIFFERENTIAL DIAGNOSIS.



AND UNDER THE PERSONALITY DISORDERS THERE ARE

SPECIFIC FEATURES FOR EACH OF THEM, AND YOU'RE NOT TO DIAGNOSE A PERSON AS HAVING THAT PERSONALITY DISORDER UNLESS HE HAS THE REQUISITE FEATURES AND THE REQUISITE NUMBER OF THEM.

NOW, WHAT I HAVE SEEN DR. DIETZ DO BEFORE IN CASES, AND WHAT HE INDICATED HE MIGHT WANT TO DO HERE, IS COME UP WITH HIS OWN NEW CATEGORIES, CALLED "MIXED PERSONALITY DISORDERS," HAVING -- BASED ON OUR INTERVIEW, I THINK HE HAD ONE FEATURE THAT WAS POSSIBLY -- THERE IS A FEATURE OF HISTRIONIC PERSONALITY DISORDER, ONE OF THOSE; AND THEN HE HAD ONE THAT -- ACTUALLY, THERE'S TWO THAT MIGHT BE HISTRIONIC, OR MAYBE IT'S NARCISSISTIC, OR MAYBE IT'S ANTISOCIAL, CALLED SELF-DRAMATIZATION.

THE SECOND, RAPID SHIFTING AND SHALLOW EXPRESSION OF EMOTIONS, HE FOUND AS ONE FEATURE THAT COULD BE HISTRIONIC PERSONALITY DISORDER. HE FOUND ONE -- STRONG CONCERNS ABOUT ABANDONMENT, WHICH IS A FEATURE OF BORDERLINE PERSONALITY DISORDER.

AND SO HE INDICATED THAT HE MIGHT WANT TO GIVE THIS MIXED PERSONALITY DISORDER DIAGNOSIS, AND WE WOULD OBJECT TO THAT UNDER 801. THAT IS NOT

THE METHOD BY WHICH ONE IS SUPPOSED TO DIAGNOSE. WE THINK THAT'S EXTREMELY PREJUDICIAL AND TOTALLY UNNECESSARY, THEORETICALLY, FOR HIS OTHER OPINIONS, AND WE JUST THINK IT'S IMPROPER TO PULL -- LIKE A CHINESE MENU -- ONE FROM COLUMN A AND ONE FROM COLUMN B, AND DECIDE IT'S GOULASH. SO THAT WAS --

I'M GLAD YOU FIND THAT AMUSING,  
DR. DIETZ.

I WANTED TO OBJECT THEN, BECAUSE I DIDN'T KNOW WHETHER IN THE ANSWER -- WHICH I EXPECT TO BE GENERAL ANXIETY DISORDER TO HIS DIAGNOSIS -- HE WAS GOING TO ADD "WITH POSSIBLE PERSONALITY DISORDER FEATURES" AND THAT WOULD BE THE PART WE WOULD OBJECT TO.

MR. CONN: WHAT COUNSEL IS SAYING SOUNDS A LITTLE BIT LIKE THE MOTION I FILED WITH THIS COURT ABOUT A YEAR AGO, IN WHICH I SOUGHT TO EXCLUDE EVIDENCE DISCOVERED WHICH DID NOT FALL WITHIN THE SCOPE OF THE DSM. AND AFTER A LENGTHY HEARING THE COURT RULED THAT COUNSEL WOULD BE PERMITTED TO CALL WITNESSES TO TESTIFY TO BATTERED-PERSON'S SYNDROME, SOMETHING THAT IS NOT EVEN CONTAINED WITHIN THE DSM.

AS PART OF HIS EVALUATION OF THE  
DEFENDANT, DR. DIETZ OBSERVED CERTAIN PERSONALITY  
TRAITS WHICH STOOD OUT AND WHICH ENTERED INTO HIS  
EVALUATION OF THE DEFENDANT AS PART OF HIS DIAGNOSIS  
OF THE DEFENDANT, AND HIS POSSIBLE MENTAL  
FUNCTIONING AT THE TIME OF THE COMMISSION OF THE  
CRIME. WHETHER OR NOT THESE PARTICULAR TRAITS THAT  
HE OBSERVED FALL WITHIN THE SCOPE OF ONE CLEARLY  
DEFINED GROUP, OR CLUSTERS OF THE PERSONALITY  
DISORDER, SHOULD NOT PRECLUDE DR. DIETZ FROM MAKING  
REFERENCES TO THE PERSONALITY TRAITS THAT HE

OBSERVED EXHIBITED BY THE DEFENDANT.

SO THIS IS PART OF HIS DIAGNOSIS; AND,  
IN FACT, AT LEAST DR. DIETZ IS CONFINING HIMSELF TO  
THE DSM, IN THE RECOGNIZED MEANS OF EVALUATION OF A  
PERSON WITHIN THE SCOPE AND THE FRAMEWORK OF THE  
DSM. IF THE DEFENSE WAS ABLE TO PRESENT IN THIS  
CASE EVIDENCE OF A BATTERED-PERSON'S SYNDROME,  
CLEARLY, DR. DIETZ IS NOT GOING ANYWHERE NEAR THE  
LENGTHS TO WHICH THE DEFENSE WENT IN OFFERING THE  
DIAGNOSIS THEY PRESENTED IN THIS CASE.

I SEE NOTHING THAT SHOULD PRECLUDE DR.  
DIETZ FROM COMMENTING UPON HIS DIAGNOSIS OF THE

DEFENDANT AND WHETHER OR NOT SPECIFIC TRAITS ALL FALL WITHIN THE SCOPE OF ONE PARTICULAR SECTION OF THE DSM.

MS. ABRAMSON: WELL, YOUR HONOR, THAT'S ABSOLUTELY THE WRONG USE OF THE DSM. I'M MORE THAN HAPPY TO HAVE AN 801 HEARING ON WHETHER OR NOT IT'S ACCEPTED IN THE SCIENTIFIC COMMUNITY TO JUST PICK ONE FROM HERE AND ONE FROM THERE AND SLAP SOMEONE WITH A LABELED PERSONALITY DISORDER, WHICH IS A VERY INFLAMMATORY LABEL. I DON'T BELIEVE THE WITNESS SHOULD BE PERMITTED TO --

THE COURT: WHAT IS HE GOING TO SAY?

MR. CONN: HE'S GOING TO SPEAK ABOUT THE VARIOUS PERSONALITY TRAITS WHICH HE OBSERVED WHICH ARE INDICATIVE OF A PERSONALITY DISORDER, EVEN THOUGH HE FELT THAT SOME OF THOSE TRAITS FELL SHORT

OF GIVING THE DEFENDANT A DIAGNOSIS OF A PARTICULAR PERSONALITY DISORDER. IF THERE ARE FEATURES OF A PERSONALITY DISORDER, THAT IS, SPECIFIC TRAITS WHICH REFLECT ABNORMAL FUNCTIONING, THAT IS PART OF HIS DIAGNOSIS; AND THAT IS PART OF HIS OPINION AS TO THE MENTAL FUNCTION OF THE DEFENDANT AT THE TIME OF THE COMMISSION OF THE CRIME.

SO IT ISN'T RELEVANT WHETHER OR NOT IT COMES FROM A DIFFERENT PAGE IN THE DSM. IN FACT, IF WHEN WE GO BACK TO THE TESTIMONY OF DR. WILSON, WHAT COUNSEL IS OBJECTING TO IS PRECISELY WHAT DR. WILSON TESTIFIED TO WHEN I ASKED HIM: WELL, HOW DO YOU GO ABOUT DIAGNOSING SOMEONE SUFFERING FROM THE BATTERED-PERSON'S SYNDROME?

DR. WILSON BASICALLY STATED THAT'S WHAT YOU DO. YOU FLIP THROUGH THE DSM AND FIND A PAGE HERE AND A PAGE THERE; AND IF YOU SEE SOMETHING THAT SOUNDS -- THAT LOOKS SIMILAR TO WHAT A PARTICULAR PERSON IS EXHIBITING, YOU CAN RELY UPON THAT. THAT'S PRECISELY WHAT HE TESTIFIED TO.

AND DR. DIETZ IS NOT GOING TO GO NEARLY AS FAR AS DR. WILSON'S SUGGESTION THAT THAT IS HOW --

MS. ABRAMSON: HE DIDN'T SAY THAT.

THE COURT: WHAT IS HIS DIAGNOSIS? YOU SAY HE'S GOING TO REFER TO VARIOUS FEATURES THAT HE FOUND IN THE DEFENDANT, BUT THEN APPARENTLY REJECTED THEM AS THE BASIS FOR A PARTICULAR DIAGNOSIS.

SO WHAT IS HIS DIAGNOSIS?

MS. ABRAMSON: HE DIDN'T ACTUALLY REJECT THE

FEATURES.

THE COURT: HE REJECTED THEM AS SUFFICIENT TO COME UP WITH A CERTAIN DIAGNOSIS.

MR. CONN: RIGHT. THE DIAGNOSIS THAT HE CAME UP WITH IS THE GENERALIZED ANXIETY DISORDER. ALTHOUGH THAT IS THE PRIMARY DIAGNOSIS, HE ALSO OBSERVED FEATURES OF THE ANTISOCIAL PERSONALITY DISORDER.

AND SO BECAUSE HE OBSERVED THOSE FEATURES, THAT IS PART OF HIS EVALUATION OF THE MENTAL FUNCTION OF THE DEFENDANT AT THE TIME OF THE COMMISSION OF THE CRIME, AND IT IS APPROPRIATE FOR HIM TO DESCRIBE SUCH ABNORMAL FEATURES IN THE DEFENDANT, BECAUSE IT BEARS UPON HIS OPINION IN THIS CASE.

MS. ABRAMSON: WELL, YOUR HONOR, WE HAVE BEEN COMPLETELY DECEIVED AND MISLED IN DISCOVERY, BECAUSE WE WERE ONLY TOLD IT MIGHT BE NARCISSISTIC PERSONALITY DISORDER OR IT MIGHT BE HISTRIONIC PERSONALITY DISORDER OR IT MIGHT BE ANTISOCIAL PERSONALITY DISORDER; AND, IN FACT, DR. DIETZ SAID, WHEN ASKED IN AN INTERVIEW WHETHER HE COULD MAKE THE ANTISOCIAL PERSONALITY DISORDER WITHOUT PREEXISTING CONDUCT DISORDERS, HE SAID NO; AND, OF COURSE, HE CAN'T. AS AN HONORABLE PSYCHIATRIST HE CANNOT LABEL THIS DEFENDANT WITH ANTISOCIAL PERSONALITY

DISORDER.

THE FACT THAT SOMEONE STEALS DOES NOT  
MAKE YOU HAVE AN ANTISOCIAL PERSONALITY DISORDER,  
EVEN IF REPETITIVE STEALING BEFORE THE AGE OF 18 OR  
15, OR WHETHER WE'RE TALKING ABOUT III-R OR IV  
EXISTS.

SO WHAT COUNSEL WANTS TO DO IS --  
PSYCHIATRIC BAD CHARACTER EVIDENCE -- WANTS TO TAKE  
THIS ONE ASPECT OF THE DEFENDANT'S WHOLE LIFE AND  
SLAP THE POISON LABEL "ANTISOCIAL" ON IT, AND THAT  
IS IMPROPER UNDER THE GUIDELINES OF THE DSM-IV.

THE COURT: WHAT ASPECT DID YOU REFER TO?  
YOU SAID "TAKE THIS ONE ASPECT OF HIS LIFE."

MS. ABRAMSON: WELL, THAT HE STOLE. THAT'S  
PART OF WHAT ONE WOULD CONSIDER IN TRYING TO  
FORMULATE AN ANTISOCIAL PERSONALITY DISORDER  
DIAGNOSIS. BUT IT IS UTTERLY INADEQUATE UNDER THE  
DSM, ANY DSM, FOR THAT STANDING ALONE.

MOREOVER, WITH RESPECT TO WHAT DR. DIETZ  
HAS SAID IN OUR INTERVIEWS WITH HIM --

THE COURT: WELL, YOU'RE SAYING THAT DR. DIETZ  
WILL TESTIFY, MR. CONN, THAT HE CONSIDERED THIS  
DIAGNOSIS AND REJECTED IT BECAUSE IT WASN'T A  
SUFFICIENT BASIS TO COME UP WITH THAT DIAGNOSIS?

MR. CONN: NO.

MS. ABRAMSON: I'D LIKE TO --

MR. CONN: THE CRUX OF HIS TESTIMONY IS NOT  
GOING TO BE SO MUCH THAT HE SPECIFICALLY REJECTED

THAT DIAGNOSIS, BUT THAT HE OBSERVED FEATURES. AND  
I'M NOT SURE IF I UNDERSTAND THIS LANGUAGE CORRECTLY  
OF PERSONALITY TRAITS WHICH REFLECT THE MENTAL  
FUNCTION OF THE DEFENDANT AT THE TIME OF THE  
COMMISSION OF THE CRIME. SO I THINK THAT HE CAN  
DESCRIBE THOSE TRAITS.

THE COURT: WELL, WHAT DOES THE DESCRIPTION  
OF THE TRAITS HAVE TO DO WITH A PARTICULAR DIAGNOSIS  
THAT WAS REJECTED?

MR. CONN: WELL, IT'S NOT OFFERED TO SHOW  
THAT THAT'S THE DIAGNOSIS. IT'S OFFERED TO PROVIDE  
AN OPINION CONCERNING THE MENTAL FUNCTION OF THE  
DEFENDANT AT THE TIME OF THE COMMISSION OF THE  
CRIME.

THE COURT: THESE TRAITS THEN PLAY A ROLE IN  
THE DIAGNOSIS OR THE OPINION OF THE WITNESS  
REGARDING THE MENTAL STATE AT THE TIME OF THE CRIME.

MR. CONN: YES.

MS. ABRAMSON: IF THEY DO --

THE COURT: IT ISN'T REQUIRED FOR A WITNESS  
TO SAY THAT THIS IS A PARTICULAR FEATURE OF



ANTISOCIAL PERSONALITY DISORDER, OR THIS IS A PARTICULAR FEATURE OF SOME OTHER DIAGNOSIS THAT HE HAS REJECTED, IS IT? HE CAN JUST SAY THESE ARE FEATURES I OBSERVED, WITHOUT REFERENCE TO WHAT THEY ARE SYMPTOMS OF.

MS. ABRAMSON: EXACTLY.

MR. CONN: I'M NOT SURE IF THAT'S CORRECT.

PERHAPS DR. DIETZ CAN EXPLAIN HIS OPINION A LITTLE BIT BETTER.

THE WITNESS: YOUR HONOR, THERE'S NO NEED TO MENTION THE DIAGNOSTIC LABELS OF THE PERSONALITY DISORDERS IN ORDER TO DESCRIBE HIS PERSONALITY STYLE; SIMPLY TALKING ABOUT THE FEATURES WOULD ACCOMPLISH THAT.

THE COURT: OKAY.

MS. ABRAMSON: WE WOULD OBJECT.

THE COURT: I DON'T SEE ANY REASON TO REFER TO THE DIAGNOSTIC CATEGORIES IF HE HAS REJECTED THEM.

MR. CONN: OKAY.

MS. ABRAMSON: WE WOULD OBJECT TO A PSYCHIATRIST DESCRIBING MY CLIENT'S PERSONALITY STYLE AS BEING COMPLETELY IRRELEVANT.

THE COURT: NO. I THINK THAT'S REALLY WHAT  
OCCURRED DURING THE TESTIMONY DR. WILSON.

MS. ABRAMSON: I DON'T BELIEVE SO. I MEAN,  
LET ME TELL THE COURT WHAT WE HAVE BEEN TOLD HE  
WOULD SAY, AND WE THINK THEY ARE NEGATIVE HITS ON  
CHARACTER AND DEMEANOR AND, THEREFORE, ON  
CREDIBILITY, THAT SHOULD NOT BE PERMITTED FROM A  
PSYCHIATRIST.

HE CALLS HIM SELF-DRAMATIZING AND  
HISTRIONIC. THAT JUST SOUNDS LIKE A BAD JUDGMENT  
CALL ON SOMEONE. IT MIGHT MEAN ONE THING IN THE  
PSYCHIATRIC SENSE, BUT IN THIS CASE, SINCE HE CAN'T

FORM A DIAGNOSIS OF HISTRIONIC PERSONALITY DISORDER  
AROUND IT, IT MEANS NOTHING IN A DIAGNOSTIC SENSE.  
IT JUST SOUNDS LIKE THE DEFENDANT ACTS.

THE COURT: WELL, IT CERTAINLY WOULD BE  
HELPFUL IN ANALYZING A PERSON, HOW THAT PERSON  
PRESENTS HIMSELF AND DESCRIBES EVENTS, TO HAVE IN  
MIND THAT IS A TRAIT OF HIS PERSONALITY.

MS. ABRAMSON: WELL, HOW DOES THAT TRAIT OF  
HIS PERSONALITY, THAT HE'S SELF-DRAMATIZING, BEAR ON  
HIS STATE OF MIND AT THE TIME OF THE CRIME? I'VE  
YET TO HEAR THAT LINKAGE.

THE COURT: IT DEPENDS ON THE TESTIMONY OF THE WITNESS AS TO HOW HE EVALUATES THAT MENTAL STATE AND BASES IT UPON, TO SOME EXTENT, THE PERSONALITY PRESENTED BY THE DEFENDANT, HOW HE DISPLAYED HIMSELF AND DESCRIBED THESE EVENTS AND DESCRIBED HIS LIFE HISTORY AND THINGS OF THAT NATURE. ALL OF THAT IS APPARENTLY WHAT HE IS CONSIDERING.

MS. ABRAMSON: WELL, I DON'T CARE WHAT HE'S CONSIDERING. IF IT'S INAPPROPRIATE FOR THE JURY TO HEAR IT, IT'S IRRELEVANT THAT HE'S CONSIDERING IT.

THERE'S ANOTHER THINGS HE'S CONSIDERING. HE'S GOING TO DESCRIBE HIM AS HAVING RAPID SHIFTING AND SHALLOW EXPRESSIONS OF EMOTIONS.

NOW WE HIT HIM UP ON WHETHER HE REALLY FEELS ANYTHING, AND THAT'S ALL A JURY WILL UNDERSTAND THAT MEANS; AND HOW RAPID SHIFTING AND SHALLOW EXPRESSION OF EMOTIONS -- HOW EXPRESSION OF

EMOTIONS BEARS ON MENTAL STATE AT THE TIME OF THE CRIME, I HAVE YET TO HEAR WHAT THAT LINKAGE IS.

THE THIRD ONE: STRONG CONCERNS ABOUT ABANDONMENT. I DON'T ACTUALLY MIND THAT ONE.

THE COURT: DO ALL OF THESE --

MS. ABRAMSON: I THINK I HAVE WAYS OF --

THE COURT: DO ALL OF THESE FEATURES THAT MS. ABRAMSON REFERRED TO PLAY A ROLE IN HOW YOU EVALUATE THE DEFENDANT AND EVALUATED HIS MENTAL STATE AT THE TIME OF THE CRIME?

THE WITNESS: YOUR HONOR, I THINK THEY CAN ALL BE LINKED. MY OWN VIEW OF IT IS THAT THREE OF THEM PROBABLY ARE MORE HELPFUL TO THE GOVERNMENT'S THEORY OF THE CASE, AND THREE OF THEM ARE MORE HELPFUL TO THE DEFENSE THEORY.

MS. ABRAMSON: I DIDN'T KNOW THERE WERE SIX. I WAS ONLY TOLD ABOUT ONE, TWO, THREE, FOUR. THE FOURTH ONE IS MY FAVORITE, YOUR HONOR. WILLING TO LIE FOR PERSONAL GAIN.

NOW, I DON'T THINK AN EXPERT SHOULD BE PERMITTED TO SAY THOSE WORDS ON THE WITNESS STAND. THAT COMPLETELY TAKES CREDIBILITY OUT OF THE HANDS OF THE JURY.

MOREOVER, THIS EXPERT CAN'T SAY THAT MY CLIENT LIED TO HIM. HE CAN'T PROVE THAT HE LIED TO HIM ABOUT ANYTHING. HE WAS COMPLETELY CONSISTENT IN EVERYTHING HE TOLD HIM WITH EVERYTHING HE'S EVER SAID BEFORE TO ANY MENTAL HEALTH EXPERT OR JURY.

THE COURT: WHAT IS THE BASIS OF THAT OPINION

REGARDING THE PERSONALITY TRAIT?

THE WITNESS: YOUR HONOR, THE COMMISSION OF THE BURGLARIES, COVER-UP OF THE HOMICIDES, AND THE LYING TO THE POLICE, I THOUGHT THAT THOSE ALL SHOWED LYING.

THE COURT: AND THAT IS THE BASIS OF THAT INFORMATION?

THE WITNESS: PARDON ME?

THE COURT: THAT'S THE INFORMATION UPON WHICH YOU BASE THAT OPINION?

THE WITNESS: YES, YOUR HONOR.

MS. ABRAMSON: THAT CLARIFIED, I'D LIKE TO KNOW WHAT THE LAST TWO ARE. I'VE MENTIONED FOUR.

THE COURT: WHAT OTHERS?

THE WITNESS: AS I MENTIONED SIX, I'M TALKING ABOUT LYING, DISRESPECT FOR THE LAW, SELF-DRAMATIZATION, EMOTIONAL SHIFTS.

MS. ABRAMSON: DISRESPECT FOR LAW IS A NEW ONE. I DIDN'T HEAR THAT ONE BEFORE.

I'M SORRY. I INTERRUPTED YOU, DR. DIETZ.

LYING, DISRESPECT FOR THE LAW, SELF-DRAMATIZATION?

THE WITNESS: RAPID SHIFTING EMOTIONS.

MS. ABRAMSON: GOT THAT.

THE WITNESS: ABANDONMENT CONCERNS, AND MAYBE SUGGESTIBILITY.

MS. ABRAMSON: SUGGESTIBILITY.

WE WOULD ALSO OBJECT TO ANY CONCLUSION OF DISRESPECT FOR THE LAW, SINCE THAT'S, BASED ON I ASSUME THE BURGLARIES, THE HOMICIDES, AND SOME OTHER THINGS THAT I CAN ACTUALLY HAVE A LOT OF FUN WITH THE WITNESS ABOUT, BUT NEVERTHELESS I'D RATHER FOREGO THE FUN AND LEAVE IT OUT.

THE DRIVER'S LICENSE INCIDENT. I DON'T THINK THE WITNESS UNDERSTANDS THAT IT WAS HIS MOTHER WHO TOOK HIM TO DO THAT.

THE COURT: FROM WHAT HAS BEEN PRESENTED TO ME, THESE ARE CERTAINLY THINGS THAT THE WITNESS INDICATES THAT HE CONSIDERS IN EVALUATING THE MENTAL STATE OF THE DEFENDANT, AND HE'S PERMITTED TO DESCRIBE HIS OBSERVATIONS, WHICH IS REALLY ALL HE IS DOING, AND WHICH IS BASICALLY WHAT OCCURRED DURING THE TESTIMONY OF DR. WILSON.

MS. ABRAMSON: NO. THAT'S NOT WHAT OCCURRED DURING THE TESTIMONY OF DR. WILSON. I WAS PREVENTED REPEATEDLY FROM BRINGING OUT THE FACTS MY CLIENT RELIED UPON, BECAUSE THIS COURT DECIDED THAT WHETHER THE WITNESS RELIED ON IT OR NOT, IT WASN'T COMING IN. BUT I UNDERSTAND NOW THAT THE PROSECUTION EXPERT -- HE CAN SIT UP THERE AND CALL MY CLIENT DISRESPECTFUL TO THE LAW AND A LIAR AND THAT SOMEHOW

IS OKAY.

THE COURT: NO, THAT'S NOT WHAT OCCURRED IN  
THE TESTIMONY OF DR. WILSON. YOU SAY IT, BUT THAT'S  
NOT WHAT HAPPENED. WHAT HAPPENED --

MS. ABRAMSON: HOW ABOUT THE BICYCLE  
INCIDENT?

THE COURT: I'M TALKING AT THE MOMENT.  
THERE'S NO NEED FOR THIS EMOTIONAL OUTBURST AND THE  
REACTION TO WHAT IS REALLY PRETTY OBVIOUS TESTIMONY.

WHEN A WITNESS TESTIFIES ABOUT  
OBSERVATIONS OF A PERSON BEING DIAGNOSED,  
OBSERVATIONS OF HIS PERSONALITY TRAITS AT THE TIME  
OF THAT ANALYSIS, WHICH IS A PART OF HIS OPINION,  
HE'S PERMITTED TO --

MS. ABRAMSON: HOW IS DISRESPECT FOR THE LAW  
AN OBSERVATION OF HIS ANALYSIS?

THE COURT: THAT'S SOMETHING FOR YOU TO  
CROSS-EXAMINE ON, NOT TO PREVENT THE EVIDENCE FROM  
BEING ADMITTED. THE OBSERVATIONS OF DR. WILSON'S  
OBSERVATIONS OF THE DEFENDANT AT THE TIME OF HIS  
INTERVIEWS WITH HIM WERE BROUGHT OUT IN GREAT  
DETAIL.

MS. ABRAMSON: I HAVE NO OBJECTION TO HIS

OBSERVATIONS.

THE COURT: AND THAT IS WHAT IS BEING BROUGHT OUT DURING THE TESTIMONY OF THIS WITNESS, AS I UNDERSTAND IT.

MS. ABRAMSON: I RECALL THAT THIS COURT CLEARLY STATED THAT DR. WILSON WOULD NOT BE PERMITTED TO FORM AN OPINION AS TO WHETHER OR NOT MY CLIENT WAS CREDIBLE OR BELIEVABLE OR TRUTHFUL. BUT THE PROSECUTION WITNESS CAN GET UP THERE AND CALL

HIM A LIAR. THAT'S PRECISELY WHAT YOU'RE SAYING.

THE COURT: NO. DR. WILSON STATED IN GREAT DETAIL HOW THE DEFENDANT PRESENTED HIMSELF IN A VERY CREDIBLE WAY.

MS. ABRAMSON: HE NEVER SAID THAT.

THE COURT: BELIEVE ME, HE DID. IF YOU WANT TO GO BACK AND LOOK AT THE RECORD, IT'S ALL THERE VERBATIM FROM AINSWORTH.

MS. ABRAMSON: NO. AINSWORTH HAD TO DO WITH THE WAY YOU RELATE A STORY.

THE COURT: IT ALL CAME OUT BASICALLY -- I DON'T CARE IF YOU BELIEVE IT OR NOT. THAT'S HOW IT WAS PRESENTED DURING THE TESTIMONY OF DR. WILSON AND --



MS. ABRAMSON: THIS WITNESS IS TALKING ABOUT HISTORICAL FACTS, NOT THINGS HE WAS PRESENTED WITH.

THE COURT: HE WAS PRESENTED WITH HISTORICAL FACTS THE DEFENDANT RELATED REGARDING HIS LIFE HISTORY. THAT'S WHAT DR. WILSON TESTIFIED ABOUT AND TESTIFIED ABOUT, HOW HE FORMED CERTAIN OPINIONS RELATING TO THAT. THAT'S WHAT OCCURRED.

DR. WILSON TESTIFIED IN THIS COURT, AND NOW THIS WITNESS IS TESTIFYING ABOUT THE SAME BASIC MATERIAL.

MS. ABRAMSON: THIS WITNESS IS USURPING THE FUNCTION OF THE JURY IF HE'S ALLOWED TO SAY THESE THINGS. THE JURY KNOWS ABOUT THE BURGLARIES AND THE HOMICIDE AND LYING TO THE POLICE.

THE COURT: THE WITNESS IS PERMITTED TO CONSIDER THOSE FACTS. THOSE ARE NOT FACTS JUST PRESENTED TO THE JURY AND AN EXPERT CAN'T CONSIDER THEM. THOSE ARE THE FACTS THE WITNESS CAN CONSIDER.

MS. ABRAMSON: WHEN I WANTED TO ASK A QUESTION OF DR. WILSON ABOUT THE IMPACT OF HIS OPINION ABOUT THE LYING TO THE POLICE IN THE TAPED INTERVIEW, ABOUT THE FALSE STATEMENTS BEING MADE TO

DR. OZIEL, THIS COURT STOPPED ME.

THE COURT: NO. YOU WANTED TO BASICALLY HAVE  
DR. WILSON GIVE HIS INTERPRETATION OF WHY THE  
DEFENDANT SAID CERTAIN THINGS TO DR. OZIEL --

MS. ABRAMSON: NO.

THE COURT: -- AFTER YOUR CLIENT HAD ALREADY  
TESTIFIED ABOUT THAT. THE JURY HEARD YOUR OWN  
CLIENT TESTIFY WHAT HE SAID AND WHY HE SAID IT.

MS. ABRAMSON: NO. I WANTED TO LET THE JURY  
KNOW THAT DR. WILSON WASN'T A FOOL, THAT HE HAD  
CONSIDERED THAT, AND WHY IT WAS IT HADN'T CHANGED  
HIS OPINION, AND THE COURT WOULDN'T ALLOW IT.

THE COURT: I SAID I WOULDN'T ALLOW HIM TO GO  
THROUGH THE ENTIRETY OF THAT TAPE AND GIVE HIS  
INTERPRETATION OF WHAT EVERY WORD WAS.

MS. ABRAMSON: I HAD NO INTENTION OF GOING  
THROUGH EVERY WORD.

THE COURT: THAT'S THE WAY YOU PRESENTED IT.

MS. ABRAMSON: NO. THE COURT REFUSED TO

ALLOW HIM TO COMMENT ON IT AT ALL.

THE COURT: OKAY. THE RECORD IS AS IT IS.

MS. ABRAMSON: YES. IT IS AS IT IS, YOUR  
HONOR.

THE COURT: ALL RIGHT. THAT'S WHAT I SAID.

NOW, WE'LL RESUME WITH THE JURY. BEFORE WE DO THAT, THERE WERE TWO OTHER ISSUES THAT WERE RAISED.

ONE WAS THE PEOPLE ASKING THE WITNESS REGARDING A CHALLENGE -- THE CHALLENGE TO THE DEFENDANT AND THE DEFENDANT'S RESPONSE.

WHAT WAS THAT ALL ABOUT? THERE WAS AN OBJECTION BY THE DEFENSE. DO YOU KNOW ANYTHING ABOUT THAT?

MR. CONN: YES, SIR. I CAN PARAPHRASE, BUT PERHAPS DR. DIETZ, WHO WITNESSED THE INCIDENT, CAN DESCRIBE IT.

MS. ABRAMSON: FIRST OF ALL, DR. DIETZ HAS ALREADY MISCHARACTERIZED IT. HE SAID "HE ANGERED."

THE COURT: WHAT ARE YOU -- I'M JUST TRYING TO GET SOME INFORMATION.

MS. ABRAMSON: HERE'S WHAT IT IS.

THE COURT: LET'S HEAR THE WITNESS DESCRIBE IT.

THE WITNESS: YOUR HONOR, WHAT -- I WAS NOT ABOUT TO SPECIFY THE DETAIL OF IT, EXCEPT TO SAY THAT I HAD MADE A REMARK THAT THE DEFENDANT MIGHT APPROPRIATELY REGARD AS SARCASTIC OR BELITTLING,

SINCE THAT'S WHAT HIS FATHER WAS ACCUSED OF DOING TO HIM OFTEN, AND MANY WITNESSES DESCRIBED THE FATHER BEHAVING THAT WAY. SO I MADE A KIND OF SARCASTIC, BELITTling COMMENT TO SEE WHAT REACTION IT WOULD EVOKE. AND HE INDICATED THAT HIS FEELINGS WERE HURT. AND HE THEN TALKED TO ME ABOUT HOW IT MADE HIM FEEL.

WE SPENT A LOT OF TIME DISCUSSING IT. AND THE NEXT DAY HE DESCRIBED THAT HE'D BEEN ANGERED BY IT.

MS. ABRAMSON: THE NEXT DAY, YOUR HONOR, ACCORDING TO THE VIDEO, HE SAID WHEN HE GOT BACK HOME TO HIS CELL HE DID FEEL A LITTLE ANGER AFTER THE WITNESS ASKED HIM REPEATEDLY: DIDN'T YOU FEEL ANGRY?

SO THAT'S HOW -- THAT WAS WHAT HAPPENED. AND THE COMMENT THAT THE WITNESS MADE, WHICH I MAY WANT TO PLAY BEFORE THE JURY ON VIDEOTAPE, IS WHEN MR. MENENDEZ WAS TALKING ABOUT HOW HIS MEMORIES OF THE ROUGH SEX, THE TORTURE SEX, WERE NOT AS CLEAR AND SPECIFIC AS HIS MEMORIES ABOUT OTHER SEX, AND HOW HE AS AN INDIVIDUAL WITH A CONSCIENCE WOULD BE UNCOMFORTABLE TESTIFYING IN A COURT OF LAW AND TRYING TO CONVICT SOMEONE BASED SOLELY ON THOSE MEMORIES.

AND DR. DIETZ SAYING: BUT YOU DON'T MIND SAVING YOUR ASS WITH THEM IN FRONT OF THE JURY.

THAT PART I THINK I WILL PLAY TO THE

JURY FOR THEM TO SEE PROPER SCIENTIFIC TECHNIQUE AND  
HOW HURT MY CLIENT BECAME IN RESPONSE --

THE COURT: ALL RIGHT.

MS. ABRAMSON: BUT WHAT I WAS OBJECTING TO  
WAS CHARACTERIZING THAT AS ANGRY.

THE COURT: ALL RIGHT. IF THE PEOPLE WANT TO  
BRING IT OUT --

MS. ABRAMSON: ESPECIALLY SINCE THE --

THE COURT: IF THE PEOPLE WANT TO BRING IT  
OUT, THEY MAY BRING IT OUT. AT THIS POINT I DON'T  
SEE THIS IS AN ISSUE THAT RELATES TO ITS  
ADMISSIBILITY. IT'S SOMETHING COUNSEL CAN DEAL WITH  
ONE WAY OR THE OTHER.

THE LAST SUBJECT REGARDING THE TWO-WAY  
GLASS?

MS. ABRAMSON: WELL, YOUR HONOR, THIS IS THE  
FIRST WE HEARD THAT ANYBODY OTHER THAN MR. MEJIA,  
WHO WE KNEW ABOUT, WAS OBSERVING THROUGH THE TWO-WAY  
GLASS. THAT WAS NOT PART OF THE DEAL.

THE COURT: WHAT WAS IT YOU HEARD OTHERWISE?

MS. ABRAMSON: WE WERE TOLD NOBODY WAS  
OBSERVING.

THE COURT: AND NOW YOU HEARD SOMETHING

DIFFERENT TODAY?

MS. ABRAMSON: HE SAID FROM TIME TO TIME  
PEOPLE WERE OBSERVING THROUGH THE TWO-WAY GLASS.

THE COURT: HE SAID MAY HAVE BEEN.

MS. ABRAMSON: I DON'T KNOW THAT HE KNOWS.

THE WITNESS: I HEARD IT FROM YOU. YOU SHUT  
DOWN THE INTERVIEW, ACCUSING THE GOVERNMENT OF  
HAVING SOMEONE THERE. SO I ASSUMED YOU KNEW  
SOMETHING.

MS. ABRAMSON: I DID. YOU'RE ONLY REFERRING  
TO WHEN WE STOPPED THE INTERVIEW?

THE COURT: LET'S NOT CONTINUE WITH THIS  
CONVERSATION. LET'S GET THE JURY OUT.

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

THE COURT: OKAY. THE JURY IS BACK.

YOU MAY CONTINUE YOUR EXAMINATION.

MR. CONN: THANK YOU, YOUR HONOR.

Q DR. DIETZ, DID YOU MAKE A DIAGNOSIS THAT  
THE DEFENDANT, ERIK MENENDEZ, WAS SUFFERING FROM A  
MENTAL DISORDER AT THE TIME OF THE COMMISSION OF THE

CRIME?

A YES.

Q AND WHAT WAS THAT DIAGNOSIS?

A I DIAGNOSED HIM AS SUFFERING FROM A  
LIFELONG MENTAL DISORDER, OR AT LEAST SINCE  
CHILDHOOD, KNOWN AS GENERALIZED ANXIETY DISORDER.

Q NOW, IS GENERALIZED ANXIETY DISORDER A  
DISORDER THAT IS LISTED AND DESCRIBED IN THE  
DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL  
DISORDERS?

A YES, IT IS.

Q AND CAN YOU TELL US WHAT THE ESSENTIAL  
DIAGNOSTIC FEATURES ARE FOR GENERALIZED ANXIETY  
DISORDER?

A WELL, IT'S REQUIRED THAT AN INDIVIDUAL  
HAVE EXCESSIVE ANXIETY AND WORRY THAT OCCURS MORE  
DAYS THAN NOT, FOR AT LEAST SIX MONTHS, WITH A  
NUMBER OF EVENTS OR ACTIVITIES SUCH AS WORK OR  
SCHOOL PERFORMANCE. AND THE EVIDENCE THAT ERIK  
MENENDEZ HAS HAD EXCESSIVE ANXIETY AND WORRY THAT  
MUCH IS THE FACT THAT THOSE WHO KNEW HIM HAVE  
TESTIFIED IN THE FIRST TRIAL THAT THEY SAW HIM  
NERVOUS AND ANXIOUS ABOUT HIS PERFORMANCE AT SCHOOL

OR AT TENNIS OR AT SWIMMING, AND HE SAYS THAT AS WELL. HE TESTIFIED TO THAT, AND HE SPOKE TO ME ABOUT SOME OF THAT ANXIETY. AND THAT APPEARS TO BE QUITE RELATED TO THOSE PARTICULAR PERFORMANCES.

HE DESCRIBED ANXIETY IN RELATION TO STANDING BEFORE A CLASS TO SPEAK, GETTING ON STAGE FOR THEATRICAL PRODUCTION, TAKING A QUIZ, TAKING A TEST, GETTING GRADES BACK, TENNIS MATCHES, SWIM MEETS.

ALL OF THOSE WERE ASSOCIATED WITH ANXIETY FOR HIM, AND SO WERE A LOT OF OTHER EVENTS THAT HE TALKED ABOUT.

BUT THOSE ARE EVENTS THAT WOULDN'T NECESSARILY CAUSE SOMEONE TO BE ANXIOUS, THOUGH MANY PEOPLE ARE. HE DESCRIBES IT AS EXCESSIVE, AND HE

SAYS THAT HE WAS NERVOUS OR ANXIOUS IN THAT WAY MOST OF THE TIME, NEARLY EVERY DAY. SO THIS IS NOT A RARE OCCURRENCE FOR HIM TO FEEL THAT KIND OF ANXIETY.

SO I THINK THAT MEETS THE CRITERIA FOR THAT FEATURE OF EXCESSIVE WORRY OR ANXIETY.

HE ALSO DESCRIBED SOME OF IT AS WORRYING ABOUT THINGS.



THE SECOND FEATURE IS THAT THE PERSON  
FINDS IT DIFFICULT TO CONTROL THEIR WORRY. AND HE  
CONFIRMED THAT THAT WAS TRUE FOR HIM AND DESCRIBED  
SOME TECHNIQUES HE'D USED TO TRY TO CONTROL THE  
WORRY, BUT THEY WEREN'T VERY EFFECTIVE TECHNIQUES.

THE THIRD CRITERION IS THE PERSON WHO  
HAS A GENERALIZED ANXIETY DISORDER NEEDS TO SHOW AT  
LEAST THREE SPECIFIC SYMPTOMS ASSOCIATED WITH THEIR  
ANXIETY OR WORRY, AND I ASKED HIM ABOUT THESE. HE  
HAD ALREADY MENTIONED SOME OF THEM. BUT THE  
SPECIFIC SYMPTOMS THAT HE MENTIONED HAVING HAD WHILE  
ANXIOUS OR WORRIED WERE: RESTLESSNESS, WHICH IS THE  
SAME AS THE FEELING OF AGITATION OR THE FEELING OF  
BEING KEYED UP OR ON EDGE, EDGY. THAT'S ALL THE  
SAME FEELING.

THE FEELING OF HIS MIND GOING BLANK OR  
DIFFICULTY CONCENTRATING. THAT'S ONE OF THE CLASSIC  
SYMPTOMS OF SOMEBODY WHO HAS A GENERALIZED ANXIETY  
DISORDER, THAT THEY FEEL THEIR MIND HAS GONE BLANK,  
AND THEY MAY APPEAR TO OTHERS AT SUCH TIMES TO BE

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SPACED OUT.

HE ALSO DESCRIBED HAVING MUSCLE TENSION WHEN ANXIOUS OR WORRIED. THAT'S ONE OF THE FEATURES; AND HE DESCRIBED HAVING A SLEEP DISTURBANCE, DIFFICULTY FALLING OR STAYING ASLEEP, OR RESTLESS OR UNSATISFYING SLEEP, WHICH IS ALSO A SYMPTOM OF A GENERALIZED ANXIETY DISORDER.

HE SAID HE PROBABLY ALSO HAD A FIFTH ONE, WHICH IS IRRITABILITY. BUT ALL ONE NEEDS IS THREE TO FIND THIS FEATURE PRESENT, AND BETWEEN RESTLESSNESS, MIND GOING BLANK, MUSCLE TENSION, AND SLEEP DISTURBANCE, HE'S GOT AT LEAST FOUR.

THEN THE OTHER CRITERIA FOR MAKING THIS DIAGNOSIS ARE EXCLUSION CRITERIA, AND THE IMPORTANT ONE HERE IS THAT ONE WOULDN'T MAKE THIS DIAGNOSIS IF THOSE FEATURES OF ANXIETY AND WORRY OCCURRED ONLY BECAUSE OF POST-TRAUMATIC STRESS DISORDER. IF ONE WERE CERTAIN THAT HE HAD A POST-TRAUMATIC STRESS DISORDER, THEN -- AND THE SYMPTOMS ONLY OCCURRED IN RELATION TO THAT -- THEN ONE WOULDN'T CALL IT GENERALIZED ANXIETY DISORDER.

I DON'T BELIEVE HE HAS POST-TRAUMATIC STRESS DISORDER, OR HAVEN'T MADE THAT DIAGNOSIS. INSTEAD, I'M DIAGNOSING THE GENERAL ANXIETY DISORDER.

Q IS THAT ALL OF THE SYMPTOMS UPON WHICH

YOU BASE, OR ALL OF THE DIAGNOSTIC CRITERIA UPON  
WHICH YOU BASE YOUR DIAGNOSIS OF GENERALIZED ANXIETY

DISORDER?

A IT'S NOT ALL THE CRITERIA. THERE ARE  
SOME MORE TECHNICAL ONES I CAN DESCRIBE IF YOU'D  
LIKE.

Q YES, IF YOU WOULD.

A THE CRITERION D, AS IT IS KNOWN, IN A  
GENERALIZED ANXIETY DISORDER, THE FOCUS OF THE  
ANXIETY AND WORRY IS NOT CONFINED TO FEATURES. IT'S  
WHAT'S KNOWN AS AN AXIS 1 DIAGNOSIS. CERTAIN  
DISORDERS ARE CALLED AXIS 1 BECAUSE OF THE IMPORTANT  
PART THEY PLAY IN THE PERSON'S LIFE. AND SO ONE HAS  
TO EXCLUDE THOSE OTHER DISORDERS. AND THE ONES YOU  
WOULD HAVE TO EXCLUDE ARE PANIC DISORDER,  
OBSESSIVE COMPULSIVE DISORDER, SEPARATION ANXIETY  
DISORDER, ANOREXIA NERVOSA, HAVING LOTS OF PHYSICAL  
COMPLAINTS, A BELIEF THAT ONE HAS A SERIOUS ILLNESS,  
OR POST-TRAUMATIC STRESS DISORDER.

THAT'S WHY I SAID THE ONE THAT'S  
RELEVANT IS WHETHER HE HAS POST-TRAUMATIC STRESS  
DISORDER. THE OTHERS AREN'T REALLY UNDER  
CONSIDERATION; THOUGH, IN FACT, HE DOES HAVE OR

DESCRIBES SOMETHING OF A COMPULSION. IT'S ONE THAT DOESN'T SEEM TO INTERFERE WITH ANYTHING FOR HIM. THE COMPULSION HE MENTIONED IS --

MS. ABRAMSON: I'M GOING TO OBJECT TO THIS, YOUR HONOR. NO FOUNDATION UNDER 350.

THE COURT: OVERRULED.

MR. CONN: YOU MAY ANSWER.

THE WITNESS: HE MENTIONED A COMPULSION TO TOUCH OBJECTS TWICE, WHICH CAME UP DURING THE EXAM WHEN HE WAS TOUCHING HIS GLASSES; AND HAVING TOUCHED THEM ONCE, WOULD TOUCH THEM A SECOND TIME. AND HE SAID THAT HE HAS THAT SAME FEELING ABOUT IF HIS LEG HITS SOMETHING, HE MAY HIT IT AGAIN TO MAKE IT AN EVEN NUMBER, OR CHECKING TWICE, TO LOOK AT THINGS TWICE TO CHECK. THOSE KINDS OF TOUCHING AND CHECKING COMPULSIONS ARE NOT REALLY THINGS THAT INTERFERE WITH PEOPLE'S FUNCTIONING. IT'S NOT A SERIOUS SYMPTOM. BUT IT IS SOMETHING ONE SUSPECTS MAY OCCUR MORE OFTEN IN PEOPLE WHO ARE ANXIOUS THAN IN PEOPLE WHO AREN'T.

SO RATHER THAN GIVING A SEPARATE DIAGNOSIS OF COMPULSION, I SIMPLY VIEW IT AS ANOTHER SIGN OF ANXIETY.

Q BY MR. CONN: ARE THERE ADDITIONAL  
DIAGNOSTIC CRITERIA THAT HAD TO BE SATISFIED FOR  
FINDING OF THE GENERALIZED ANXIETY DISORDER?

A YES. CRITERION "E" IS THAT THE ANXIETY,  
WORRY, OR PHYSICAL SYMPTOMS HAVE TO CAUSE CLINICALLY  
SIGNIFICANT STRESS OR IMPAIRMENT IN SOCIAL,  
OCCUPATIONAL, OR OTHER IMPORTANT AREAS OF  
FUNCTIONING. AND WHILE HE DIDN'T BELIEVE THAT HIS  
SOCIAL LIFE OR HIS TENNIS WERE IMPEDED BY HIS  
NERVOUSNESS, HE THOUGHT THAT IT PROBABLY DID  
INTERFERE WITH HIS SCHOOL PERFORMANCE, AND I BELIEVE  
THAT IT ALSO INTERFERED WITH SOME OF HIS

RELATIONSHIPS WITH GIRLS AND WOMEN.

AND LASTLY, ONE HAS TO FIND THAT THE  
DISTURBANCE IS NOT DUE DIRECTLY TO THE PHYSIOLOGICAL  
EFFECTS OF THE SUBSTANCE. THAT MEANS IT'S NOT FROM  
A DRUG OR MEDICATION; THAT IT'S NOT FROM A GENERAL  
MEDICAL CONDITION LIKE THYROID DISEASE; AND IT'S NOT  
FROM HAVING VARIOUS OTHER MENTAL DISORDERS. AS I  
SAY, THESE ARE THE KINDS OF TECHNICAL EXCLUSION  
CRITERIA TO REMIND DIAGNOSTICIANS NOT TO OVERLOOK  
THESE OTHER POSSIBILITIES.

Q YOU HAVE CONCLUDED ALL THE DIAGNOSTIC

CRITERIA FOR GENERALIZED ANXIETY DISORDER?

A YES.

Q NOW, CAN YOU TELL US WHAT CAUSES  
GENERALIZED ANXIETY DISORDER.

A I CAN'T TELL YOU, NO. I CAN TELL YOU  
THAT IT'S BELIEVED THAT THIS IS PRIMARILY A  
BIOLOGICALLY DETERMINED CONDITION. THERE MAY BE  
FAMILIAL INHERITANCE OF IT. BUT THE REAL CAUSES  
AREN'T KNOWN. IT DOES NOT SEEM TO BE SOMETHING THAT  
IS ENTIRELY LEARNED, AND IT IS GENERALLY RESPONSIVE  
TO VERY STRAIGHTFORWARD MEDICAL TREATMENT. THERE  
ARE ALSO SOME LEARNING APPROACHES PEOPLE HAVE USED  
TO TREAT IT. BUT MEDICATION IS THE SIMPLEST, MOST  
EFFECTIVE WAY MOST PEOPLE TRY TO TREAT THIS.

Q ARE THE MEDICATIONS THAT THE DEFENDANT  
IS CURRENTLY TAKING THE TYPES OF MEDICATIONS THAT  
ONE WOULD PRESCRIBE TO TREAT THE GENERALIZED ANXIETY

DISORDER?

A YES. BUT NOT NECESSARILY IN THE  
PARTICULAR DOSES OR TYPE THAT HE'S RECEIVING IT.  
BUT, YES, IT'S THE RIGHT KIND OF MEDICATION.

Q AND DOES GENERALIZED ANXIETY DISORDER  
AFFECT THE BEHAVIOR OF A PERSON IN SOME PREDICTABLE

WAY?

A YES. THEY'RE NERVOUS. THEY ACT ANXIOUS.

Q AND ARE THERE ANY CONCLUSIONS THAT ONE CAN REACH CONCERNING HOW A PERSON WITH GENERALIZED ANXIETY DISORDER WILL BEHAVE IN A GIVEN SITUATION OR HOW SUCH A PERSON BEHAVED AT SOME TIME IN THE PAST?

A WELL, WHAT ONE CAN PREDICT IS THAT THE PERSON WILL BE MORE ANXIOUS ON THE AVERAGE THAN PEOPLE WHO AREN'T SO AFFLICTED, AND THAT THE PERSON MAY BE MORE REACTIVE IN THEIR ANXIETY THAN OTHER PEOPLE. BUT IT'S ALL ABOUT ANXIETY AND FEELING ANXIOUS.

SO IT'S EASIER FOR A PERSON WHO HAS GENERALIZED ANXIETY DISORDER TO GET AN UPSET STOMACH OR TO FEEL FAINT OR TO FEEL THEIR HEART RACING, OR THESE OTHER PHYSICAL SIGNS OF ANXIETY, THAN FOR PEOPLE WHO DON'T HAVE THAT CONDITION.

Q I SEE. NOW, DID YOU ALSO OBSERVE SOME PERSONALITY TRAITS IN THE DEFENDANT WHICH WERE SIGNIFICANT?

A YES.

Q AND CAN YOU TELL US WHAT THAT WAS.

A WELL, LET ME CLARIFY IT. I WOULDN'T SAY OBSERVE IS CORRECT. I DID FOR EVERY ONE OF THE PERSONALITY TRAITS. I DID OBSERVE A PERSONALITY TRAIT KNOWN AS SELF-DRAMATIZATION, THEATRICALITY. AND THAT IS A STABLE FEATURE THAT SOME PEOPLE HAVE IN WHICH THEIR WAY OF RELATING TO THE WORLD IS RATHER MORE DRAMATIC AND THEATRIC THAN THE WAY OTHER PEOPLE WOULD DISPLAY THE SAME EMOTION. AND I OBSERVED THAT IN MY EXAMINATION.

I SAW SOME OTHER EVIDENCE OF THAT KIND OF THEATRICALITY, AND I ASKED ERIK MENENDEZ ABOUT IT; AND HE ACKNOWLEDGES THAT HE HAD ALWAYS BEEN SOMEWHAT THEATRICAL. AND HIS FATHER HATED THIS ATTRIBUTE. BUT HE KNEW HE HAD BEEN THAT WAY.

I ALSO OBSERVED, TO I THINK A LESSER EXTENT, WHAT'S BEEN DESCRIBED AS A RAPIDLY SHIFTING AND SHALLOW EXPRESSION OF EMOTION. HE IS ABLE TO GO FAIRLY QUICKLY FROM ONE EMOTION TO ANOTHER. BUT I DON'T THINK I COULD AMASS VERY MUCH EVIDENCE IN SUPPORT OF THIS. IT'S AN OBSERVATION THAT I THINK REFLECTS SOMETHING MORE SUBTLE.

THERE WERE SEVERAL TIMES DURING MY EXAM, AND ALSO IN ERIK MENENDEZ' TESTIMONY, THAT HE RAISED A THEME THAT I WOULD CALL ABANDONMENT CONCERNING -- IT'S ANOTHER PERSONALITY FEATURE REFLECTING HIS BELIEF IN THE IDEA THAT HIS BROTHER LYLE WOULD LEAVE HIM, WAS A FRIGHTENING IDEA TO HIM. IF THAT'S SO,



THEN HE WAS CONCERNED ABOUT FEELINGS OF ABANDONMENT. AND HE SEEMED TO HAVE BEEN QUITE CONCERNED ABOUT AMASSING SOCIAL SUPPORT AROUND HIMSELF SINCE THE TIME OF THE ARREST, AS ANYONE WOULD BE, AND WISHING TO ENSURE THAT HE DIDN'T CAUSE PEOPLE TO ABANDON HIM.

HE ACTUALLY STRUCK ME IN THAT RESPECT AS HAVING A NEED TO BE LIKED BY PEOPLE, AND WENT TO A BIT OF EFFORT TO BE LIKEABLE WITH ME, EVEN THOUGH NOT REALLY OF CONSEQUENCE WHETHER I LIKE HIM OR NOT. WE DISCUSSED THAT ISSUE.

HE HAD ANOTHER ASPECT OF HIS PERSONALITY STYLE THAT SEEMED TO BE A TRAIT OF THE WAY IN WHICH HE OPERATES; ONE THAT I WOULD REFER TO AS DISRESPECT FOR THE LAW. AND THAT'S BEEN EVIDENCED IN HIS -- MORE THAN IN ANYTHING I PARTICULARLY OBSERVED, THOUGH HE CONFIRMED THIS HISTORY FOR ME -- THE EXAMPLES INCLUDE HIS USING A FALSE BIRTH CERTIFICATE TO OBTAIN I.D. FROM THE DEPARTMENT OF MOTOR VEHICLES IN THE NAME OF RICHARD STEVENS; HIS USING THE FALSE I.D. OF RICHARD STEVENS, DONOVAN GOODREAU, AND TIMMY ANDERSON; THE TWO BURGLARIES IN WHICH ITEMS WERE STOLEN; HIS DRIVING WITHOUT HAVING HIS LICENSE ON HIM OVER A LONG PERIOD OF TIME WITHOUT CONCERN FOR THAT; HIS PURCHASE OF FIREARMS THAT REQUIRED THAT HE

USE AN ALIAS AND A FALSE I.D., AND A PHONY ADDRESS;  
AND FOURTH, SOMEBODY ELSE'S SIGNATURE.

ALL OF THOSE ARE BEHAVIORS REFLECTING A

DISRESPECT FOR THE LAW.

YET ANOTHER PERSONALITY FEATURE THAT'S  
AN ASPECT OF HIS STYLE IS HIS DISREGARD FOR THE  
TRUTH AS EVIDENCED BY THE COVER-UP OF THE HOMICIDES  
IN WHICH HE PARTICIPATED, AND THE FALSE STATEMENTS  
GIVEN TO THE POLICE, BOTH IN AUGUST OF '89 AND  
SEPTEMBER OF '89.

THE REPORTER: YOUR HONOR, I'M ABOUT TO RUN  
OUT OF PAPER.

(BRIEF PAUSE IN THE PROCEEDINGS.)

MS. ABRAMSON: ARE WE WORKING THROUGH LUNCH  
TODAY?

THE COURT: NO. WE'LL BE BREAKING IN THREE  
OR FOUR MINUTES.

THE WITNESS: AND I THINK THE BURGLARIES TOO  
REQUIRED SOME FALSE STATEMENTS, UP TO THE TIME THAT  
HE WAS CAUGHT BY HIS FATHER; AND SO IN THAT WAY,  
ALSO REFLECT THAT SAME PATTERN.

THE LAST PERSONALITY FEATURE THAT I

THOUGHT MIGHT BE PRESENT -- I'M LESS CERTAIN ABOUT --  
BUT I SAW SOME EVIDENCE TO SUGGEST THAT ERIK  
MENENDEZ MIGHT BE RATHER SUGGESTIBLE, MEANING THAT  
ONE CAN LEAD HIM ALONG A PATH TOWARD ACCEPTING SOME  
CONCLUSION OR OPINION OR POINT OF VIEW THAT MIGHT  
NOT REALLY BE STRONGLY HIS OWN.

Q BY MR. CONN: DOES THAT CONCLUDE THE  
PERSONALITY TRAITS THAT YOU OBSERVED IN THE

DEFENDANT?

A OF THE KIND THAT WE CUSTOMARILY DESCRIBE  
IN PSYCHIATRY, IT DOES. YES, I THINK THAT'S --

MR. CONN: THANK YOU.

PERHAPS THE COURT WISHES TO BREAK NOW?

THE COURT: OKAY. WE'LL TAKE OUR RECESS  
UNTIL 1:30.

DON'T DISCUSS THE MATTER WITH ANYONE AND  
DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE'LL  
RESUME AT 1:30.

(AT 12:15 P.M. PROCEEDINGS WERE

ADJOURNED UNTIL 1:30 P.M. OF

THE SAME DAY.)

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VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 8, 1996

:00 P.M.

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

(APPEARANCES AS HERETOFORE NOTED)

(MARY LU MURPHY, OFFICIAL REPORTER)

(MARILYN A. FADALE, OFFICIAL REPORTER)

THE COURT: OKAY. WE HAVE EVERYBODY BACK, AND  
WE'LL HAVE THE JURY OUT.

(THE JURY ENTERS THE COURTROOM

AND THE FOLLOWING PROCEEDINGS

WERE HELD:)

THE COURT: OKAY. WE'RE ALL BACK HERE. THE JURY  
IS IN THE BOX.

YOU MAY CONTINUE YOUR DIRECT EXAMINATION.

MR. CONN: YES. THANK YOU.

DIRECT EXAMINATION (CONTINUED)

BY MR. CONN:

Q. DR. DIETZ, I BELIEVE YOU WERE TELLING US  
JUST BEFORE WE TOOK THE RECESS IN REGARD TO PERSONALITY  
TRAITS THAT YOU FOUND PRESENT IN ERIK MENENDEZ.

I WOULD LIKE TO TURN NOW TO THE MENTAL  
STATE OF THE DEFENDANT AT THE TIME OF THE COMMISSION OF  
THE CRIME.

YOU INDICATED THAT THAT IS A SEPARATE  
DETERMINATION FROM A DETERMINATION OF A DIAGNOSIS; IS

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THAT CORRECT?

A. YES.

Q. NOW, IS THERE -- CAN YOU AS A FORENSIC  
PSYCHIATRIST MAKE A DETERMINATION AS TO WHAT A PERSON  
WAS THINKING OR FEELING AT THE TIME OF THE COMMISSION OF  
AN EVENT SUCH AS A CRIME, BASED UPON AN ORAL INTERVIEW  
OF THAT PERSON?

MS. ABRAMSON: I'M GOING TO OBJECT, YOUR HONOR.  
THE QUESTION IS VIOLATIVE -- OR ABOUT TO VIOLATE SECTION  
29.

THE COURT: I DON'T BELIEVE IT DOES.

OVERRULED. YOU MAY ANSWER THE QUESTION.

THE WITNESS: SOMETIMES.

Q. BY MR. CONN: AND CAN YOU EXPLAIN YOUR  
ANSWER?

A. IDEALLY, ONE EVALUATES A DEFENDANT'S MENTAL  
STATE AT THE TIME OF A CRIME BY LOOKING AT THE EVIDENCE  
OF BEHAVIOR DURING THE CRIME THROUGH THE EYES OF  
MULTIPLE WITNESSES, THROUGH THE CRIME SCENE AND WHAT IT  
SHOWS, AND ALSO THROUGH WHAT A DEFENDANT HAS TO SAY  
ABOUT HIS MENTAL STATE SUBJECTIVELY AT THE TIME OF THE  
CRIME.

ONE HAS TO TAKE INTO ACCOUNT IN FORENSIC  
PSYCHIATRY, UNLIKE CLINICAL WORK --

MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
TO ANYTHING FURTHER. THAT ANSWERS THE QUESTION, RATHER  
THAN GIVE A LONG NARRATIVE.

THE COURT: ALL RIGHT. I BELIEVE IT DOES ANSWER

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THE QUESTION.

NEXT QUESTION, PLEASE.

MS. ABRAMSON: THANK YOU, YOUR HONOR.

Q. BY MR. CONN: NOW, LET ME ASK YOU THIS:

IS GENERALIZED ANXIETY DISORDER, WHICH YOU  
INDICATED WAS YOUR DIAGNOSIS OF THE DEFENDANT, A  
CONDITION THAT COULD HAVE AFFECTED THE DEFENDANT'S

MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME?

A. IT COULD HAVE AFFECTED HIS MENTAL STATE IN CERTAIN WAYS, AND NOT IN OTHER WAYS.

Q. AND HOW COULD GENERALIZED ANXIETY DISORDER HAVE AFFECTED THE DEFENDANT'S, ERIK MENENDEZ', MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME?

A. HE MAY HAVE BEEN MORE NERVOUS THAN THE AVERAGE PERSON COMMITTING SIMILAR ACTIONS.

Q. AND HOW COULD IT NOT HAVE AFFECTED HIS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME?

MS. ABRAMSON: I AM GOING TO OBJECT TO THIS AS VIOLATING SECTION 29.

THE COURT: PERHAPS YOU CAN PHRASE IT IN A MORE GENERAL SENSE, RATHER THAN AS RELATING TO A PARTICULAR PERSON AT THIS POINT.

Q. BY MR. CONN: CAN YOU TELL US WHAT EFFECTS -- WHAT CONCLUSIONS CAN YOU DRAW FROM KNOWING THAT A PERSON WAS SUFFERING FROM GENERALIZED ANXIETY DISORDER AT THE TIME OF THE COMMISSION OF THE CRIME, AS TO HOW THAT CONDITION MIGHT AND MIGHT NOT HAVE AFFECTED HIS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE

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CRIME.

MS. ABRAMSON: I AM GOING TO OBJECT AGAIN, UNLESS WE'RE TALKING ABOUT A HYPOTHETICAL PERSON, YOUR HONOR.

THE COURT: THAT'S HOW I UNDERSTOOD THE QUESTION.

IS THAT CORRECT, MR. CONN?

MR. CONN: THAT'S CORRECT, YOUR HONOR.

THE WITNESS: A PERSON WHOSE ONLY DEFICIT WAS GENERALIZED ANXIETY DISORDER MAY HAVE NO EFFECTS OF THAT CONDITION AT THE TIME OF A CRIME. THEY MAY BE MORE ANXIOUS THAN THE AVERAGE PERSON AT THE TIME OF THE CRIME, BUT COULD NOT POSSIBLY SUFFER, AS A RESULT OF THAT CONDITION, SUCH A MARKED CHANGE OF MENTAL FUNCTION AS TO BE LESS RATIONAL, INCAPABLE OF REFLECTIVE THOUGHT, IMPAIRED IN THE ABILITY TO CONTROL IMPULSES, OR IMPAIRED IN WHAT ARE REFERRED TO AS HIGHER CORTICAL FUNCTIONS, THE CORTICAL REASONING ASPECTS OF THE BRAIN.

THOSE ARE NOT IMPAIRED BY ANXIETY; IN FACT, CAN EVEN BE ENHANCED BY ANXIETY.

Q. BY MR. CONN: OKAY. I WOULD LIKE TO GO THROUGH THAT SLOWLY WITH YOU.

YOU SAID THAT AS A RESULT OF -- AGAIN, WE'RE SPEAKING ABOUT A HYPOTHETICAL PERSON -- SOMEONE SUFFERING FROM GENERALIZED ANXIETY DISORDER. IT'S POSSIBLE THAT IT MAY NOT HAVE INFLUENCED HIM IN ANY WAY AT THE TIME OF THE COMMISSION OF THE CRIME; IS THAT CORRECT?

A. YES.

Q. IT MIGHT, ON THE OTHER HAND, HAVE MADE HIM



MORE ANXIOUS AT THE TIME OF THE COMMISSION OF THE CRIME;  
IS THAT POSSIBLE?

A. YES. WE'RE TALKING ABOUT A HYPOTHETICAL  
PERSON?

Q. CORRECT.

AND YOU SAID THAT ONE THING THAT YOU CAN  
SAY IS THAT YOU WOULD NOT EXPECT TO FIND, AS A RESULT OF  
GENERALIZED ANXIETY DISORDER, CERTAIN TYPES OF  
CONSEQUENCES. THE FIRST ONE THAT YOU MENTIONED WAS, AS  
AN EXAMPLE --

MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.  
THIS ISN'T A QUESTION, THIS IS A REHASH.

THE COURT: ALL RIGHT.

ARE YOU ASKING A QUESTION NOW?

MR. CONN: YES, I AM.

THE COURT: OKAY.

Q. BY MR. CONN: WHAT DO YOU MEAN BY -- WHEN  
YOU SAY THAT YOU WOULD NOT EXPECT TO FIND IN A PERSON AT  
THE TIME OF THE COMMISSION OF A CRIME THAT THEY WERE  
INCAPABLE OF REFLECTIVE THOUGHT AS A RESULT OF  
GENERALIZED ANXIETY DISORDER?

A. IT IS NOT WITHIN THE POWER OF ANXIETY TO  
MAKE A PERSON INCAPABLE OF REFLECTIVE THOUGHT. IT CAN  
MAKE A PERSON EXERCISE POOR JUDGMENT OR ACT HASTILY, BUT  
IT CAN'T MAKE THEM INCAPABLE OF THINKING.

Q. WHAT DO YOU MEAN WHEN YOU SAY THAT IT WOULD  
NOT -- GENERALIZED ANXIETY DISORDER WOULD NOT IMPAIR  
ONE'S IMPULSE CONTROL?

MS. ABRAMSON: OBJECTION. I DON'T THINK HE SAID THAT.

Q. BY MR. CONN: DID YOU SAY IMPAIR ONE'S IMPULSES IN SOME WAY?

A. I REFERRED TO IMPULSE CONTROL, YES.

Q. AND WHAT DID YOU MEAN BY THAT?

A. WHEN WE SPEAK OF ONE ASPECT OF BEHAVIOR, AN INDIVIDUAL'S ABILITY TO CONTROL WHAT THEY DO; THAT IS, WILLFULLY EXERT CONTROL OVER THEIR OWN ACTIONS, AS IMPULSE CONTROL, AND ANXIETY DOES NOT AFFECT ONE'S ABILITY TO CONTROL ONE'S IMPULSES. IT MAY MOTIVATE ONE TO BEHAVE IN A PARTICULAR WAY, BUT IT DOESN'T AFFECT ONE'S CONTROL OVER ONE'S BEHAVIOR.

Q. AND WHEN YOU SAY THAT GENERALIZED ANXIETY DISORDER WOULD NOT IMPAIR ONE'S HIGHER CORTICAL FUNCTIONING, WHAT DID YOU MEAN BY THAT?

A. THE HIGHER CORTICAL FUNCTIONING REFERS TO THOSE ASPECTS OF BEHAVIOR THAT ARE GOVERNED BY THE BRAIN THAT HAVE TO DO WITH DECISION-MAKING; VIEWING OPTIONS, CONSIDERING OPTIONS, MAKING CHOICES, REASONING.

ANXIETY DOES NOT IMPAIR THE ABILITY TO EXERCISE THOSE FUNCTIONS, THOUGH THERE IS ONE AREA THAT IS FAIRLY RELATED WHERE I SHOULD POINT OUT THAT ANXIETY CAN AFFECT ONE'S PERFORMANCE; FOR EXAMPLE, ON TESTS.

A CERTAIN AMOUNT OF ANXIETY ENHANCES A TEST PERFORMANCE, AND IF YOU GO OVER THE TOP, BEYOND THAT

POINT, PEOPLE MAY GET TOO NERVOUS TO TAKE TESTS WELL;  
AND IN THAT SENSE IT MAY ADVERSELY AFFECT JUST HOW WELL

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ONE PERFORMS, BUT IT DOESN'T MAKE ONE INCAPABLE OF  
MAKING A DECISION OR OF THINKING.

Q. OKAY. NOW, I'D LIKE TO SWITCH JUST BRIEFLY  
TO POST-TRAUMATIC STRESS DISORDER.

YOU INDICATED THAT YOU DID NOT DIAGNOSIS  
THE DEFENDANT AS SUFFERING FROM POST-TRAUMATIC STRESS  
DISORDER; IS THAT CORRECT?

A. YES.

Q. AND CAN YOU TELL US WHY YOU DID NOT GIVE  
HIM THAT DIAGNOSIS?

A. WELL, I DIDN'T GIVE THE DIAGNOSIS BECAUSE  
TO GIVE THE DIAGNOSIS REQUIRES SEVERAL THINGS THAT WERE  
NOT AVAILABLE TO ME.

THE FIRST IS ONE HAS TO --

MS. ABRAMSON: YOUR HONOR, COULD WE ASK THE  
WITNESS -- THE HEATING SYSTEM IS VERY LOUD. COULD WE  
ASK THE WITNESS TO SPEAK DIRECTLY INTO THE MICROPHONE?

THE COURT: YES. JUST MOVE A LITTLE CLOSER AND  
SPEAK RIGHT INTO IT.

MS. ABRAMSON: THANK YOU.

THE WITNESS: TO DIAGNOSE POST-TRAUMATIC STRESS  
DISORDER, IT'S NECESSARY THAT ONE FIRST DETERMINE THAT  
THERE HAS BEEN A STRESSOR OF ADEQUATE SEVERITY TO FIT

THE CRITERIA FOR THAT DISORDER.

IN THIS INSTANCE, IN ORDER TO DETERMINE  
THAT THERE WAS A STRESSOR OF ADEQUATE SEVERITY PRIOR TO  
THE HOMICIDES TO HAVE CAUSED A POST-TRAUMATIC STRESS  
DISORDER PRIOR TO THE HOMICIDES, WOULD REQUIRE MAKING A

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FACTUAL DETERMINATION THAT I THINK IS REALLY A QUESTION  
FOR THE JURY, NOT FOR AN EXPERT. FOR ME TO MAKE A  
DETERMINATION OF WHETHER CERTAIN PRIOR EVENTS HAD  
OCCURRED THAT ARE IN DISPUTE WOULD NOT BE A PROPER ROLE  
FOR ME.

NOW, AFTER THE HOMICIDES IS ANOTHER STORY,  
AND IT'S ENTIRELY POSSIBLE THAT KILLING ONE'S PARENTS  
AND SEEING THE SCENE THEREAFTER WOULD CAUSE A  
POST-TRAUMATIC STRESS DISORDER, AND THAT'S PRECISELY THE  
KIND OF TRAUMA THAT SOMETIMES DOES, BUT TO FIND  
P.T.S.D. PRIOR --

MS. ABRAMSON: I AM GOING TO OBJECT TO THAT,  
"PRIOR." THE WITNESS HAS INDICATED THAT A HISTORICAL  
FACT LIKE THAT IS BEYOND HIS COMPETENCY TO TESTIFY TO,  
SO I WOULD MOVE TO STRIKE THAT TESTIMONY.

THE COURT: OVERRULED.

THE ANSWER WILL STAND.

THE WITNESS: THE SECOND REASON THAT I DIDN'T  
DIAGNOSE A POST-TRAUMATIC STRESS DISORDER IS THAT IN  
THAT DISORDER, KNOWN AS P.T.S.D., ONE NEEDS TO FIND A

SET OF SYMPTOMS THAT HAVE TO GO WITH REEXPERIENCING OF A PRIOR TRAUMATIC EVENT.

NOW, THOSE SYMPTOMS CAN'T BE OBJECTIVELY DETERMINED. IF A PERSON SAYS THAT THEY HAVE NIGHTMARES, THERE MAY BE INDEPENDENT EVIDENCE THAT THE PERSON HAD NIGHTMARES; SUCH AS WITNESSES WHO SAW THEM WAKE UP SWEATING OR IN FEAR.

BUT THE ONLY WAY WE CAN KNOW WHAT THE

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NIGHTMARE WAS ABOUT IS WHEN THE INDIVIDUAL SAYS WHAT THE NIGHTMARE WAS ABOUT, WHICH IS THE SELF-REPORT OF THE INDIVIDUAL.

NOW, IN CLINICAL WORK, LISTENING TO A SELF-REPORT, ONE BELIEVES ONE'S PATIENTS AND ACCEPTS IT AS TRUE AT FACE VALUE.

BUT IN FORENSIC WORK, WHEN PEOPLE ARE MOTIVATED TO TELL A STORY TO AFFECT AN OUTCOME OF A CASE, ONE HAS TO BE MORE SKEPTICAL, AND I HAVE NO WAY TO KNOW WHETHER A DEFENDANT WHO TELLS ME WHAT HIS NIGHTMARES WERE ABOUT IS TELLING THE TRUTH OR NOT.

AND THAT'S TRUE FOR ALL OF THE REEXPERIENCING SYMPTOMS. YOU HAVE TO BELIEVE WHAT A DEFENDANT SAYS IN ORDER TO KNOW WHETHER HE REALLY HAS INTRUSIVE IMAGES OF THE KIND HE SAYS, OR REALLY HAS NIGHTMARES OF THE KIND HE SAYS. THERE IS NO SCIENTIFIC

OR OBJECTIVE WAY TO KNOW WHAT THE PERSON IS THINKING OR DREAMING.

Q. OKAY. NOW, IF WE PUT ASIDE THE EXISTENCE OF THE STRESSORS, WHICH IS ONE ELEMENT OF POST-TRAUMATIC STRESS DISORDER, AS TO THE REMAINING SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER, CAN YOU TELL US TO WHAT EXTENT POST-TRAUMATIC STRESS DISORDER CORRESPONDS OR IS SIMILAR TO GENERALIZED ANXIETY DISORDER?

A. WELL, THERE IS A GREAT DEAL OF OVERLAP BETWEEN THE TWO. THE LESS SPECIFIC SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER CAN OCCUR IN A VARIETY OF CONDITIONS, INCLUDING GENERALIZED ANXIETY DISORDER.

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Q. AND WHAT DO YOU MEAN BY THAT?

A. WELL, FOR EXAMPLE, THE HYPERAROUSAL SYMPTOMS, LIKE HYPERVIGILANCE, CAN OCCUR IN A GENERALIZED ANXIETY DISORDER, CAN OCCUR IN PEOPLE WHO HAVE AN OBSESSIVE-COMPULSIVE DISORDER, CAN OCCUR IN PEOPLE WHO ARE PARANOID, CAN OCCUR IN ANY ANXIETY CONDITION.

AND SO KNOWING THAT SOMEONE HAS, FOR EXAMPLE, HYPER-AROUSAL OR A SLEEP DISTURBANCE, DOES NOT HELP US AT ALL TO SAY WHETHER THEY HAVE P.T.S.D. IT HELPS US TO KNOW THERE IS A SYMPTOM, BUT IT COULD BE FROM A VARIETY OF CAUSES.

MOST OF THE FEATURES OF P.T.S.D. HAVE A LOT

OF OVERLAP WITH DEPRESSION AS WELL, AND SO OFTEN THERE IS DIFFICULTY, IN THE BEST OF CIRCUMSTANCES, DETERMINING WHICH SYMPTOMS ARE DUE TO A DEPRESSION AND WHICH MAY BE DUE TO AN ANXIETY DISORDER, SUCH AS POST-TRAUMATIC STRESS DISORDER.

Q. SO WOULD YOU SAY THAT THE PRESENCE OF THE STRESSORS AND THE REEXPERIENCING OF THE TRAUMATIC EXPERIENCE IS THE PRIMARY CHARACTERISTIC THAT DISTINGUISHES POST-TRAUMATIC STRESS DISORDER FROM OTHER DIAGNOSES, SUCH AS GENERALIZED ANXIETY DISORDER OR DEPRESSION?

A. CERTAINLY, THOSE ARE THE MOST OBVIOUS OF THEM. IT'S ALSO TRUE, I THINK, FOR THE AVOIDANCE FEATURES, THOUGH, BECAUSE THERE WHAT IT IS A PERSON SEEKS TO AVOID MAY HAVE SOME SPECIFIC TIE TO THE ALLEGED

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STRESSORS.

AND SO WHILE THERE ARE PEOPLE WHO ARE WITHDRAWN AND THERE IS NO WAY TO KNOW WHAT IT IS THEY ARE WITHDRAWING FROM, P.T.S.D. REQUIRES THAT THERE BE SPECIFIC AVOIDANCE OF STIMULI THAT IN SOME WAY RESEMBLE THE TRAUMATIC EVENT, AND WHILE THERE MAY BE SOME OBJECTIVE WAY TO KNOW WHAT IT IS A PERSON IS AVOIDING, MOSTLY IN DIAGNOSING P.T.S.D., CLINICIANS RELY ON WHAT THE PERSON SAYS. THEY RELY ON THEIR SELF-REPORT WHEN THEY SAY "I AVOID THINGS THAT REMIND ME OF THE BAD

EVENT." THEY ARE BELIEVED, AND THAT'S HOW THE DIAGNOSIS IS USUALLY MADE.

Q. NOW, ARE YOU AWARE OF ANY EVIDENCE THAT ERIK MENENDEZ DISCLOSED SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER PRIOR TO THE TIME OF HIS ARREST AND HIS INTERVIEW WITH DR. VICARY?

A. I AM NOT AWARE OF SUCH EVIDENCE, NO, FOR THE SPECIFIC P.T.S.D. RELATED SYMPTOMS, THOUGH I AM AWARE OF HIS HAVING DISPLAYED OR DISCLOSED GENERAL ANXIETY SYMPTOMS PRIOR TO THE HOMICIDES AND PRIOR TO TALKING TO DR. VICARY.

Q. NOW, ARE YOU AWARE THAT IN THIS CASE THE DEFENDANT, ERIK MENENDEZ, WAS GIVEN A SERIES OF FOUR PSYCHOLOGICAL TESTS BY DR. JOHN WILSON?

A. YES.

Q. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THOSE TESTS?

A. I DID WHEN I FIRST RECEIVED THEM.

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Q. AND NOW THOSE FOUR TESTS, ARE THEY PART OF A STANDARD BATTERY OF TESTS THAT ARE ORDINARILY GIVEN TO ASCERTAIN MENTAL DISORDER?

A. WELL, AS I RECALL THE SCL-90 WAS AMONG THEM, AND THAT'S A SCALE DEVELOPED AT JOHNS HOPKINS BY LEN DARIGOTIS THAT IS WIDELY USED AS A SCREENING INSTRUMENT TO LOOK AT WHAT SYMPTOMS PEOPLE SAY THEY



HAVE, SO ONE CAN DETERMINE WHETHER TO GO LOOK MORE CLOSELY AT WHETHER THEY'VE GOT A PSYCHOLOGICAL PROBLEM.

THAT'S A COMMONLY USED TOOL, AND THE TWO OTHERS THAT I RECALL FROM THE TESTS WERE P.T.S.D. SYMPTOM INVENTORIES THAT ASK FOR SELF-REPORT OF WHAT SYMPTOMS ONE HAS HAD.

Q. NOW, THOSE TESTS, WERE THEY OF ANY ASSISTANCE TO YOU IN DETERMINING WHETHER OR NOT THE DEFENDANT SUFFERED FROM POST-TRAUMATIC STRESS DISORDER AT THE TIME OF THE COMMISSION OF THE CRIME?

A. NO. THEY, FOR THE SAME REASONS, DON'T HELP DO THAT, BECAUSE THEY REFLECT THE DEFENDANT'S OWN STATEMENTS SOMETIME LATER ABOUT HIS SUBJECTIVE EXPERIENCES, WHICH MAY OR MAY NOT BE TRUE.

Q. NOW, ONE OF THE TESTS WAS CALLED A VALIDITY SCALE; IS THAT CORRECT?

A. YES.

Q. AND IS THAT VALIDITY SCALE OF ANY ASSISTANCE IN DETERMINING WHETHER OR NOT THE DEFENDANT WAS TELLING THE TRUTH AS HE WAS RESPONDING TO THAT TEST?

A. WELL, I MEAN, IT HAS UTILITY FOR

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DETERMINING WHETHER SOMEONE IS ANSWERING CONSISTENTLY, FOR WHETHER THEY'RE READING THE QUESTIONS, FOR WHETHER THEY'RE RANDOMLY ANSWERING. WHAT IT DOES NOT HELP TO DO IS DETERMINE WHETHER SOMEONE IS PURPOSELY FAKING THE

RESULTS.

Q. NOW, YOU HAVE ALREADY TOLD US ABOUT THE TYPE OF BEHAVIOR THAT -- OR THE WAY IN WHICH GENERAL ANXIETY DISORDER MIGHT HAVE AFFECTED A DEFENDANT'S MENTAL STATE AT THE TIME OF THE COMMISSION OF THE CRIME, AND I WOULD LIKE TO ASK YOU THE SAME QUESTION NOW IN REGARD TO POST-TRAUMATIC STRESS DISORDER, EVEN THOUGH THAT IS NOT A DIAGNOSIS THAT YOU REACHED IN THIS CASE.

CAN YOU TELL US, ASSUMING THAT A PERSON WAS SUFFERING FROM POST-TRAUMATIC STRESS DISORDER AT THE TIME OF THE COMMISSION OF A CRIME, HOW WOULD YOU EXPECT -- AND ONCE AGAIN, WE'RE SPEAKING ABOUT THE HYPOTHETICAL PERSON -- HOW WOULD YOU EXPECT THAT THAT MIGHT AFFECT A PERSON'S BEHAVIOR AT THE TIME OF THE COMMISSION OF A CRIME?

A. WELL, THAT'S ACTUALLY AN AREA WHERE THERE IS A GREAT DEAL OF PROFESSIONAL CONTROVERSY. SOME WOULD SAY THAT THE ANSWER OUGHT TO BE EXACTLY AS I ANSWERED FOR GENERALIZED ANXIETY DISORDER; THAT IS, THAT IT WOULD BE NO DIFFERENT.

BUT THERE ARE -- THERE ARE MANY GOOD AND THOUGHTFUL EXPERTS IN THIS AREA WHO THINK THAT IT IS COMMON FOR PEOPLE WHO HAVE POST-TRAUMATIC STRESS DISORDER TO SOMETIMES HAVE WHAT'S KNOWN AS A

DISSOCIATIVE EXPERIENCE, IN WHICH THEY DO HAVE AN  
ALTERED STATE OF CONSCIOUSNESS.

I WAS ABLE TO DETERMINE THAT THAT DID NOT  
OCCUR IN THIS CASE.

MS. ABRAMSON: OBJECTION, YOUR HONOR. SECTION  
29.

THE COURT: WELL, THAT PORTION OF THE ANSWER IS  
STRICKEN, STARTING WITH "I WAS ABLE TO DETERMINE" AS  
NONRESPONSIVE.

THE REST OF THE ANSWER WILL STAND.

MR. CONN: OKAY.

Q. AND WHAT IS THE ALTERED EXPERIENCE THAT HAS  
SOMETIMES BEEN OBSERVED IN P.T.S.D. WHICH YOU DESCRIBED  
AS DISSOCIATIVE EXPERIENCE?

A. WELL, BY DEFINITION, DISSOCIATIVE  
EXPERIENCE IS A TIME-LIMITED -- IN THE CASE OF A  
DISSOCIATIVE EPISODE, A TIME-LIMITED EXPERIENCE OF  
ALTERED PERCEPTION AND MEMORY, IN WHICH MOST OFTEN THE  
INDIVIDUAL FEELS THEIR MIND LEAVE THEIR BODY; MAY HAVE  
THE SUBJECTIVE EXPERIENCE THAT THEY ARE WATCHING  
THEMSELVES AND UNABLE TO CONTROL THEIR OWN BEHAVIOR, AND  
WILL HAVE A LOSS OF MEMORY FOR SOME OR ALL OF THE EVENT.

TYPICALLY, PEOPLE WHO HAVE DISSOCIATED IN  
RELATION TO A VERY SIGNIFICANT LIFE EVENT WILL REPORT  
POOR OR PATCHY MEMORY OF IT, WILL TALK ABOUT THEMSELVES  
FLOATING ABOVE AND WATCHING WHAT HAPPENED, WILL GIVE A  
DESCRIPTION OF VARIOUS ALTERED PERCEPTIONS THAT THEY  
HAVE.

Q. NOW, IS THIS CONDITION THAT YOU ARE DESCRIBING THE SAME AS -- OR DOES IT HAVE ANY CONNECTION WITH SOMETHING THAT HAS SOMETIMES BEEN CALLED THE FIGHT OR FLIGHT RESPONSE?

A. THAT'S AN AREA OF SOME CONFUSION. SOME PEOPLE WOULD SAY THAT IT IS RELATED. I THINK THE CORRECT UNDERSTANDING OF THIS IS THAT THE FIGHT OR FLIGHT RESPONSE REFERS TO WHAT HAPPENS UNDER ACUTELY STRESSFUL CONDITIONS IN WHICH THE ADRENAL GLANDS RELEASE ADRENALINE AND OTHER NEURO-TRANSMITTERS AND HORMONES, AND THE PERSON FEELS LIKE FIGHTING OR FLEEING.

IN SOME CIRCUMSTANCES IN WHICH THAT SYSTEM IS ACTIVATED, IT MAY GO BEYOND THAT TO THE POINT AT WHICH THE INDIVIDUAL HAS THIS MENTAL EXPERIENCE OF DISSOCIATING.

AND, IN FACT, THE EXPERIENCE OF DISSOCIATING, THAT ALTERED PERCEPTION OF FLOATING, AND PERHAPS LACK OF MEMORY FOR WHAT'S OCCURRING, DOES NOT OCCUR ONLY IN BAD EXPERIENCES. IT OCCURS UNDER THE SAME KIND OF STRESSFUL CONDITIONS THAT ACTIVATE THE FIGHT OR FLIGHT RESPONSE, AND IT'S TYPICAL OF PEOPLE WHO HAVE BEEN INVOLVED BOTH IN STRESSFUL, BAD EXPERIENCES; LIKE A CAR CRASH OR BEING AMBUSHED -- THIS HAPPENS IN POLICE INVOLVED SHOOTINGS -- AND TO PEOPLE INVOLVED IN WHAT OTHERWISE MIGHT BE SEEN AS A FAVORABLE EXPERIENCE; LIKE CONDUCTING A SYMPHONY ORCHESTRA OR GIVING A LECTURE, OR

PERFORMING ON STAGE, OR RUNNING A MARATHON, OR  
TESTIFYING IN A TRIAL.

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ALL OF THOSE THINGS CAN CAUSE ONE TO ENTER  
THAT DISSOCIATED STATE, AND IT'S THOUGHTS OF -- AS AN  
ADAPTATION TO STRESS THAT CAN ENHANCE PERFORMANCE AND  
CAN ALLOW ONE TO PASS THROUGH A STRESSFUL EXPERIENCE  
WITH LESS SUFFERING FROM IT.

Q. NOW, FOR PEOPLE WHO SOMETIMES EXPERIENCE  
WHAT YOU REFER TO AS THE FIGHT OR FLIGHT RESPONSE, DO  
SUCH PEOPLE LOSE REFLECTIVE THOUGHT WHILE THEY ARE IN  
THAT STATE?

A. NO.

Q. AND WHY IS THAT?

A. WELL, THE FIGHT OR FLIGHT RESPONSE, SHORT  
OF THE DISSOCIATION, IS NO DIFFERENT THAN ANY TIME ANY  
PERSON HAS EXPERIENCED INTENSE AROUSAL, AND MAY WISH TO  
GET OUT OF A SITUATION, OR CONFRONT A SITUATION. THEIR  
JUDGMENT WILL OFTEN BE IMPAIRED. THAT HAPPENS. THEY  
MAY SHIFT THEIR VIEW OF PRIORITIES AT THAT POINT IN  
TIME.

BUT IT'S NOT BECAUSE THEY'RE INCAPABLE OF  
MAKING A CHOICE. THE CHOICES THEY MAKE WILL MORE OFTEN  
BE BAD ONES, BECAUSE IT'S NOT THE CALMEST OF TIMES.  
INDEED, IT CAN BE A VERY DIFFICULT TIME TO MAKE  
DECISIONS UNDER STRESS. SOME PEOPLE ARE BETTER AT IT

THAN OTHERS.

Q. DO PEOPLE WHO ARE IN THIS FIGHT OR FLIGHT RESPONSE THAT YOU HAVE REFERRED TO LOSE THEIR ABILITY TO UNDERSTAND OR ANALYZE THE SITUATION THAT THEY ARE IN?

A. NO MORE THAN ANYONE ELSE WHO IS UPSET. IN

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OTHER WORDS, NOT IN THE WAY THAT HAPPENS WHEN SOMEBODY HAS MENTAL ILLNESS THAT IMPAIRS THEIR DECISION-MAKING, BUT YES, IN THE WAY THAT ONE WERE UPSET. WE HAVE MORE DIFFICULTY WITH OUR DECISIONS. WE STILL HAVE A CONSCIOUS AWARENESS OF TRYING TO MAKE A DECISION. WE'RE STILL CAPABLE OF GOING THROUGH WITH THE ORDINARY MEANS. WE MAKE DECISIONS WHEN UPSET OR IN SUCH A STATE.

Q. NOW, IS THERE ANY RELATIONSHIP BETWEEN THE FIGHT AND FLIGHT RESPONSE THAT YOU HAVE DESCRIBED AND GENERALIZED ANXIETY DISORDER?

A. THERE ISN'T A KNOWN RELATIONSHIP -- OR AT LEAST I AM NOT AWARE OF ANY RESEARCH ON THIS. BUT CERTAINLY IT MAKES ENORMOUS COMMON SENSE, WHEN ONE THINKS ABOUT THE MECHANISM, TO BELIEVE THAT SOMEBODY WITH A GENERALIZED ANXIETY DISORDER MAY HAVE GREATER READINESS TO RESPOND IN THIS WAY, BECAUSE THEY ARE ALREADY MORE PRONE TO ANXIETY, MAY HAVE A HIGHER BASELINE LEVEL OF ANXIETY, AND SO IT'S EASIER TO KICK THEM INTO THIS HIGHER ANXIETY STATE.

Q. NOW, IN THIS CASE YOU INTERVIEWED THE

DEFENDANT AND YOU READ HIS TESTIMONY; IS THAT CORRECT?

A. YES.

Q. NOW, IN REGARD TO THAT INTERVIEW, DID YOU DISCUSS WITH HIM THE EVENTS OF THAT WEEK AND THE EVENTS AS HE RELATED THEM TO YOU, WHICH LED TO THE SHOOTING IN THIS CASE?

A. YES.

Q. AND BASED ON YOUR INTERVIEW WITH HIM, AS

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WELL AS YOUR REVIEW OF HIS TESTIMONY IN THIS CASE, DID YOU SEE -- AGAIN, ASSUMING THAT WHAT HE WAS TELLING YOU WAS THE TRUTH -- DID YOU SEE ANY EVIDENCE WHICH WAS INCONSISTENT WITH A FINDING THAT THE DEFENDANT WAS, AT THE TIME OF THE COMMISSION OF THE CRIME, IN A FIGHT OR FLIGHT RESPONSE?

A. ASSUMING THAT EVERYTHING THAT HE TOLD ME WAS TRUE, THERE IS NOTHING INCONSISTENT WITH THE IDEA OF HIS BEING IN THAT STATE OF ANXIETY THAT HAS BEEN CALLED FIGHT OR FLIGHT RESPONSE. HIS DESCRIPTION IS CONSISTENT WITH BEING IN SUCH A STATE.

Q. OKAY. AND YOU SAY "THAT STATE."

AGAIN, GETTING BACK TO THE HYPPOTHETICAL PERSON, THAT IS NOT A STATE THAT WOULD PREVENT A PERSON FROM BEING AWARE OF HIS SITUATION OR MAKING CONSCIOUS DECISIONS; IS THAT CORRECT?

A. CORRECT.

Q. NOW, DR. JOHN WILSON TESTIFIED -- WELL, LET ME ASK YOU THIS, BEFORE I ASK YOU.

YOU INDICATED THAT YOU DID NOT DIAGNOSE THE DEFENDANT AS SUFFERING FROM POST-TRAUMATIC STRESS DISORDER.

DID YOU DIAGNOSE THE DEFENDANT AS SUFFERING FROM BATTERED-PERSON'S SYNDROME?

A. NO.

Q. AND CAN YOU TELL US WHY YOU DID NOT?

A. I WOULD NEVER USE THAT LABEL, BECAUSE THAT'S NOT A DIAGNOSIS.

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Q. AND WHAT DO YOU MEAN WHEN YOU SAY THAT IT IS NOT A DIAGNOSIS?

A. WELL, IT'S A CONCEPT THAT MAY HAVE OTHER UTILITY, BUT NOT AS A DIAGNOSIS, IN THAT WHAT'S HAPPENED OVER THE LAST 20 YEARS OR SO IS THAT NON-PHYSICIANS HAVE TRIED TO INVENT DIAGNOSES BY ADOPTING A MISUSE OF THE TERM "SYNDROME" AND APPLYING IT TO CLUSTERS OF EVENTS THAT THEY WISH TO HAVE SOME ATTENTION PAID TO, WHICH MAY BE PERFECTLY LEGITIMATE. SOME GOOD THINGS HAVE HAPPENED FROM THIS.

BUT IN MEDICINE, THE TERM "SYNDROME" REFERS TO A CLUSTER OF SIGNS OR SYMPTOMS THAT HAVE MANY DIFFERENT CAUSES, AT LEAST ONE OF WHICH IS A DISEASE.



IF IT CAN'T BE CAUSED BY DISEASE, THEN IT ISN'T A SYNDROME.

SO IN PSYCHIATRY, FOR EXAMPLE, WE USE THE TERM DEMENTIA AS A SYNDROME. THE DEMENTIA SYNDROME HAS MANY CAUSES, ONE OF WHICH IS ALZHEIMER'S DISEASE. BUT IF YOU COULDN'T CAUSE DEMENTIA IN ANY MANNER THAT WAS A DISEASE, WE WILL USE THE TERM "SYNDROME".

THERE IS A TECHNICAL OBJECTION TO THE TERM "BATTERED-PERSON'S SYNDROME." IT DOESN'T SIT WELL WITH ANYONE WHO KNOWS THE ORIGINS OF THE CONCEPT OF SYNDROME.

BUT THE IDEA OF BEING ABLE TO PICK OUT A PATTERN OF FEATURES THAT PEOPLE MAY SHARE HAS UTILITY, AND IF WHAT YOU WANT IS TO HAVE A FOUNDATION FUNDED OR TO HAVE PEOPLE BE ABLE TO LOOK THINGS UP IN THE LITERATURE, OR TO SHARE A COMMON LANGUAGE WITH OTHERS

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WORKING ON IT, THAT MIGHT BE FINE. AND IT'S PROVED VERY USEFUL POLITICALLY, IN SOME AREAS, THAT THE CONCEPT OF BATTERED-WOMAN'S SYNDROME OR RAPE-TRAUMA SYNDROME, WHILE UNNECESSARY FOR ANY SCIENTIFIC PURPOSE, IT HAS BEEN VERY USEFUL POLITICALLY IN CALLING ATTENTION TO SERIOUS PROBLEMS.

Q. IS THE BATTERED-WOMAN'S SYNDROME OR THE BATTERED-PERSON'S SYNDROME FOUND IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS?

A. NO.

Q. AND WOULD YOU EVER GIVE PERSON A DIAGNOSIS OF THE BATTERED-WOMAN'S SYNDROME OR THE BATTERED-PERSON'S SYNDROME?

A. NO. IF A PERSON WERE SUFFICIENTLY BATTERED, WHETHER MALE OR FEMALE, TO HAVE A POST-TRAUMATIC STRESS DISORDER, THEN THAT WOULD BE THE DIAGNOSIS, POST-TRAUMATIC STRESS DISORDER.

IF THEY HAD AN ACUTE STRESS DISORDER, THAT WOULD BE THE DIAGNOSIS. BUT THERE WOULDN'T BE ANY NEED FOR THESE LABELS THAT SEEM TO ATTRIBUTE IT TO A PARTICULAR CAUSE.

Q. NOW, DR. JOHN WILSON TESTIFIED IN THIS TRIAL, MADE REFERENCE TO A TERM CALLED "SURVIVOR MODE."

CAN YOU TELL US IF YOU ARE FAMILIAR WITH THE TERM "SURVIVOR MODE"?

A. I AM FAMILIAR WITH USE OF SIMILAR TERMS TO DESCRIBE A VARIETY OF THINGS, BUT IT'S NOT A TECHNICAL TERM IN MEDICINE OR PSYCHIATRY.

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Q. AND WHEN YOU SAY IT IS NOT A TECHNICAL TERM, WHAT CONTEXT HAVE YOU HEARD SUCH REFERENCE BEFORE?

A. I'VE HEARD THE TERM "SURVIVOR MODE" USED TO DESCRIBE THE EXPERIENCE PEOPLE HAVE WHEN THEY'RE IN THESE VERY STRESSFUL SITUATIONS THAT CHANGE; THAT CAUSE THEM TO GO FROM ORDINARY FIGHT OR FLIGHT BEHAVIOR TO A DISSOCIATED EPISODE IN WHICH THEY MAY BE STRUGGLING TO

SURVIVE.

I HAVE HEARD THE TERM USED TO MEAN THE SITUATION IN WHICH INDIVIDUALS WILL BEGIN TO ENACT A PREARRANGED SURVIVOR PLAN WITH HIDDEN RATIONS, WEAPONS, CAMOUFLAGE, ET CETERA, TO GO INTO HIDING AND READY THEMSELVES FOR ATTACK. BUT IT'S NOT A TECHNICAL TERM.

Q. IS IT SOMETHING THAT IS LISTED OR DESCRIBED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS?

A. NO.

Q. DR. WILSON ALSO USED A TERM --

MS. ABRAMSON: WELL, I AM GOING TO OBJECT TO THE FORM OF THE QUESTION.

THE COURT: WELL, I HAVEN'T HEARD THE QUESTION YET.

Q. BY MR. CONN: -- CALLED PANIC MODE.

HAVE YOU EVER HEARD OF THE TERM "PANIC MODE"?

A. NO. THERE IS A PHENOMENON KNOWN AS PANIC ATTACK, BUT THERE IS NO TECHNICAL CONCEPT IN PSYCHIATRY OF PANIC MODE.

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Q. OKAY. CAN YOU TELL US WHAT A PANIC ATTACK IS?

A. PANIC ATTACK IS THE SUDDEN ONSET OF SYMPTOMS THAT MAY OCCUR IN INDIVIDUALS WITH ANY OF A

VARIETY OF ANXIETY DISORDERS; INCLUDING GENERALIZED ANXIETY DISORDER OR P.T.S.D.

PEOPLE WHO ARE HAVING A PANIC ATTACK CHARACTERISTICALLY FEEL THAT THEY ARE ABOUT TO DIE, FEEL THAT THEY ARE LOSING CONTROL, MAY HAVE A VARIETY OF PHYSICAL SYMPTOMS THAT ACCOMPANY IT. IT'S A VERY UNCOMFORTABLE STATE.

Q. HAVE YOU COMPLETED YOUR ANSWER?

A. YES.

Q. IS PANIC ATTACK SOMETHING THAT IS DESCRIBED AND LISTED IN THE DSM?

A. IT IS.

Q. AS A DISORDER OR AS A SYMPTOM OF A DISORDER?

A. A PANIC ATTACK IS SET OFF BY ITSELF IN DSM-IV, GIVING CRITERIA FOR HOW TO DETERMINE IT HAS OCCURRED, AND IT'S POINTED OUT IN THE TEXT THAT PANIC ATTACKS MAY OCCUR IN PANIC DISORDER, WHERE THAT'S THE PRIME THING THAT HAPPENS; THEY KEEP HAVING PANIC ATTACKS, OR IN ANY OF THE OTHER ANXIETY DISORDERS, SUCH AS P.T.S.D. OR GENERALIZED ANXIETY DISORDER.

SO, IT'S -- PANIC ATTACK IS NOT A DIAGNOSIS IN ITSELF, IT'S SOMETHING THAT COULD HAPPEN IN THE FACE OF SEVERAL DIFFERENT DIAGNOSES.

Q. NOW, DIRECTING YOUR ATTENTION TO THE DESCRIPTION OF THE EVENTS THAT WERE RELATED TO YOU BY ERIK MENENDEZ IN THIS CASE, AND AS HE TESTIFIED IN HIS TESTIMONY, DID YOU SEE ANY EVIDENCE THAT IS EITHER CONSISTENT OR INCONSISTENT WITH A PANIC ATTACK AS YOU DESCRIBED IT?

A. THERE CERTAINLY WAS EVIDENCE IN HIS DESCRIPTION OF THE EVENTS AT THE TIME OF THE HOMICIDES THAT'S CONSISTENT WITH HIS HAVING THEN EXPERIENCED A PANIC ATTACK.

NAMELY; HE HAS SAID THAT HE FELT HE WAS LOSING CONTROL. THE DSM-IV DESCRIBES -- USES THE PHRASE "FEAR OF LOSING CONTROL."

AND HE HAS SAID -- HE CERTAINLY HAS SAID AT VARIOUS TIMES THAT HE BELIEVED HE WAS ABOUT TO DIE. FEAR OF DYING IS DESCRIBED IN DSM AS ONE OF THE FEATURES THAT OCCURS IN A PANIC ATTACK.

HE DOES NOT DESCRIBE IN HIS INTERVIEW WITH ME ANY OF THE OTHER ELEVEN FEATURES OF A PANIC ATTACK, THOUGH HE DID DESCRIBE A FEELING OF RUBBERY LEGS AND WEAKNESS, WHICH IS NOT TOO DISSIMILAR FROM SOME OF THE KIND OF THINGS THAT HAPPEN IN A PANIC ATTACK.

AND I ACTUALLY DIDN'T THINK OF THIS IN TIME TO ASK HIM ONE BY ONE ABOUT THE OTHERS, BUT I ACCEPT THE LIKELIHOOD THAT HE DID HAVE SOME OF THOSE OTHERS AT THE TIME. I SEEM TO RECALL READING, BUT COULDN'T TELL YOU WHERE, THAT HE FELT HIS HEART POUNDING AT THE TIME OF THE HOMICIDES, WHICH WOULD BE ANOTHER OF THE FEATURES,

PALPITATIONS OR POUNDING HEART OR ACCELERATED HEART RATE, AND I ALSO SEEM TO RECALL HIM SAYING THAT HE FELT HE LOST CONTROL OF HIS BODY AND WAS SHAKING -- I THINK THIS IS FROM HIS TESTIMONY -- WHICH WOULD BE THE TREMBLING OR SHAKING DESCRIBED AS YET ANOTHER FEATURE IN DSM-IV.

AND SO IF MY MEMORY SERVES ON THOSE, HE DOES HAVE AT LEAST FOUR OUT OF THE LIST, AND A PANIC ATTACK REQUIRES FINDING THAT ONE HAVE FOUR OR MORE.

Q. NOW, CAN YOU TELL US -- AND AGAIN, TURNING TO THE HYPOTHETICAL PERSON -- WHAT TYPE OF EFFECTS YOU WOULD EXPECT TO SEE IN THE MENTAL FUNCTIONING OF A PERSON WHO WAS EXPERIENCING WHAT MIGHT BE CALLED A PANIC ATTACK?

A. I'D EXPECT HIM TO WANT TO GET OUT OF THE SITUATION.

Q. THAT IS, TO FLEE THE SITUATION?

A. YES. IT'S THE MOST PROMINENT THING PEOPLE IN A PANIC ATTACK WANT TO DO IS GET OUT OF THE SITUATION THAT'S MAKING THEM FEEL THAT PANIC.

Q. WOULD YOU EXPECT A PERSON IN A PANIC ATTACK TO RUN TOWARD A DANGEROUS SITUATION?

A. NO. THAT WOULD BE EXCEEDINGLY DIFFICULT.

Q. NOW, DR. WILSON IN HIS TESTIMONY ALSO REFERRED TO A CONCEPT BY THE NAME "LEARNED HELPLESSNESS."

CAN YOU TELL US WHAT LEARNED HELPLESSNESS  
IS?

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A. LEARNED HELPLESSNESS IS A CONCEPT  
FORMULATED BY MARTIN E. P. SELIGMAN, A PSYCHOLOGIST WHO  
WAS ONE OF MY TEACHERS AT CORNELL, AND IS NOW A  
PROFESSOR AT THE UNIVERSITY OF PENNSYLVANIA.

HE DEVELOPED THE CONCEPT OF LEARNED  
HELPLESSNESS TO EXPLAIN AN OBSERVATION MADE IN  
LABORATORY ANIMALS, DOGS SPECIFICALLY, IN WHICH, IF YOU  
WERE TO SHOCK DOGS WHILE THEY WERE TETHERED AND COULDN'T  
ESCAPE THE SHOCK, AND THEN GAVE THEM A CHANCE TO ESCAPE  
THE SHOCK BY JUMPING FROM ONE BOX TO ANOTHER WHEN YOU  
SHOCKED THEM, THEY DIDN'T JUMP, EVEN THOUGH THEY COULD  
HAVE GOTTEN OUT.

AND YOU USE THE CONCEPT THAT THEY HAD  
LEARNED TO BE HELPLESS AND NOT ESCAPE, AND WHEREAS  
HEALTHY DOGS JUMPED THE FIRST TIME YOU SHOCKED THEM.

HE THEN WENT ON TO TRY TO AMASS EVIDENCE TO  
SHOW THAT THIS COULD EXPLAIN HOW IT IS THAT AT LEAST  
SOME PEOPLE GET DEPRESSED, AND WHAT HE WAS DOING WAS  
LOOKING FOR AN ANIMAL MODEL OF DEPRESSION, AND HIS WORK  
ON THE SUBJECT SHOWS THAT THE SAME FEATURES THAT OCCUR  
IN ANIMALS IN LEARNED HELPLESSNESS, AND IN PEOPLE  
SUBJECTED TO SIMILAR EVENTS, OCCUR IN PEOPLE WHO ARE  
CONSIDERED DEPRESSED, AND THE SUGGESTION WAS THAT THIS

IS ANOTHER WAY TO LOOK AT WHAT WE CALL DEPRESSION.

Q. NOW --

A. I'M SORRY.

Q. DID YOU FINISH?

A. WELL, THE CAUSES OF WHAT SELIGMAN REFERRED

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TO AS LEARNED HELPLESSNESS HAD TO DO WITH UNCONTROLLABLE  
AND UNPREDICTABLE PUNISHMENTS. I AM USING THE TERM  
"PUNISHMENT" HERE IN A FAIRLY LOOSE WAY, AND NOT A  
STRICT SCIENTIFIC WAY, BUT WHAT PEOPLE NORMALLY MEAN BY  
PUNISHMENT.

Q. AND IS LEARNED HELPLESSNESS A DISORDER IN  
THE -- THAT IS LISTED AND DESCRIBED IN THE DSM?

A. NO. BUT, OF COURSE, DEPRESSION IS.

Q. AND WHAT IS THE RELATIONSHIP, AS YOU SEE  
IT, BETWEEN LEARNED HELPLESSNESS AND DEPRESSION?

A. I -- I SEE LEARNED HELPLESSNESS AS AN  
INTERESTING THEORY FOR HOW SOME PEOPLE GET DEPRESSED,  
AND MAYBE THAT SOMETIMES IS HOW DEPRESSION HAS ITS  
ONSET. IT'S PRINCIPLE IMPORTANCE REALLY HAS TO DO WITH  
WHETHER YOU MIGHT BE ABLE TO TREAT DEPRESSED PEOPLE BY  
ADDRESSING SOME OF THEIR SELF-DEFEATING THOUGHTS.

Q. IS LEARNED HELPLESSNESS A SYMPTOM THAT IS  
DESCRIBED ANYWHERE IN THE DSM?

A. NO.

Q. IS LEARNED HELPLESSNESS SOMETHING THAT CAN



BE MEASURED?

A. NO. IT CAN ONLY BE INFERRED FROM BEHAVIOR.

THERE IS CERTAINLY NO WAY TO MEASURE IT. BUT YOU CAN  
LOOK AT BEHAVIOR AND SEE IF BEHAVIOR THAT SOMEONE  
ENGAGES IN IS CONSISTENT WITH HAVING LEARNED  
HELPLESSNESS OR NOT.

Q. AND HOW WOULD YOU MAKE A FINDING THAT  
SOMEONE IS, IN FACT, OR SHOULD ACCURATELY BE DESCRIBED

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AS EXHIBITING WHAT SOMETIMES HAS BEEN REFERRED TO AS  
LEARNED HELPLESSNESS?

A. I THINK THE STARTING POINT WOULD HAVE TO BE  
THAT THEY DON'T TAKE STEPS TO JUMP OUT OF THE BOX, OR TO  
ESCAPE THE PUNISHMENTS, OR TO FIX THEIR SITUATION.

Q. DOES LEARNED HELPLESSNESS PREVENT A PERSON  
FROM HAVING REFLECTIVE THOUGHT?

A. NO. INDIVIDUALS WHO DESERVE THE TERM  
LEARNED HELPLESSNESS ARE STILL CAPABLE OF REFLECTIVE  
THOUGHT. THEY MAY MAKE JUDGMENTS THAT WE DON'T APPROVE  
OF, BUT THEY'RE STILL CAPABLE OF REFLECTIVE THOUGHT.

Q. AND DOES LEARNED HELPLESSNESS LEAD TO THE  
INABILITY OF A PERSON TO ANALYZE HIS SITUATION AND MAKE  
DECISIONS BASED UPON HIS SITUATION?

A. IT DOES NOT FULLY IMPEDE THE ABILITY TO  
MAKE DECISIONS OR REFLECT. BUT IF LEARNED HELPLESSNESS

REALLY IS THE SAME AS DEPRESSION, THEN WHAT WOULD BE TRUE IS THAT IT CAN NARROW ONE'S VISION SUCH THAT ONE DOES NOT SEE THE FULL RANGE OF OPTIONS.

IN EXTREME DEPRESSION, THAT IS WHAT OCCURS.

NO ONE'S EVER TRIED TO STUDY EXTREME LEARNED HELPLESSNESS IN THAT SAME WAY TO SEE IF THAT'S SO.

Q. NOW, DIRECTING YOUR ATTENTION TO THE EVENTS OF AUGUST THE 20TH, 1989 AS WAS RELATED TO YOU BY THE DEFENDANT, ERIK MENENDEZ, AND THE DAYS PRECEDING AUGUST THE 20TH OF 1989, DID YOU SEE BEHAVIOR ON THE PART OF ERIK MENENDEZ THAT WAS INCONSISTENT WITH A FINDING OF LEARNED HELPLESSNESS?

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A. WHAT PERIOD OF TIME DID YOU SAY?

Q. THAT IS THE DAYS PRECEDING THE SHOOTING.  
LET'S SAY THE WEEK PRECEDING THE SHOOTING.

A. YES.

Q. AND WHAT DID YOU OBSERVE THAT IS INCONSISTENT WITH THE THEORY OF LEARNED HELPLESSNESS?

A. WELL, I THINK EVEN CONTEMPLATING THE IDEA OF ARMED RESISTANCE TO ATTACK IS INDICATIVE OF SOMEONE HAVING -- EITHER NOT HAVING LEARNED HELPLESSNESS, OR BEGINNING TO EMERGE FROM IT -- BECAUSE SOMEONE WHO HAS LEARNED HELPLESSNESS IS GOING TO BE INCAPABLE OF RESISTANCE AT ALL.

AND AS ERIK MENENDEZ CONTEMPLATED ARMING

HIMSELF TO RESIST AN ATTACK FROM HIS FATHER, ACCEPTING HIS VERSION OF EVENTS, THAT WOULD BE A SIGN OF REBELLION AND MOVEMENT TOWARD SELF-ASSERTION OF A PRETTY DRAMATIC KIND.

WHEN HE, BY HIS ACCOUNT, RESISTED HIS FATHER ON THURSDAY NIGHT BY PUSHING HIS FATHER OFF OF HIM AND RUNNING FROM THE ROOM, THAT IS NOT LEARNED HELPLESSNESS. THAT'S A PERSON WHO IS IN FACT RESISTING, A BEHAVIOR THAT HE WAS NOT GOING TO ACCEPT AND FLEEING THE SITUATION.

WHEN HE WENT OUT OF TOWN ON FRIDAY TO PURCHASE THE SHOTGUNS, THAT IS ANOTHER AFFIRMATIVE STEP AWAY FROM HELPLESSNESS AND TOWARD SELF-ASSERTION THAT I THINK CONTRADICTS THE IDEA THAT HE HAD BEEN CRIPPLED BY LEARNED HELPLESSNESS.

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WHEN HE LOADED THE SHOTGUN THE FIRST TIME WITH TWO ROUNDS OF BUCKSHOT ON THURSDAY, THAT'S ANOTHER AFFIRMATIVE STEP AWAY FROM A POSITION OF LEARNED HELPLESSNESS.

WHEN HE WENT TO HIS ROOM WITH THAT LOADED WEAPON THAT NIGHT, PASSING HIS PARENTS' ROOM ON FRIDAY NIGHT, HE'S CERTAINLY NOT ENGAGING IN A PATTERN OF PASSIVITY, AND --

MS. ABRAMSON: YOUR HONOR, I WOULD HAVE TO OBJECT AT THIS POINT THAT THE WITNESS IS MISSTATING THE

TESTIMONY CONCERNING THE PASSING THE PARENTS' ROOM.

PERHAPS THE WITNESS JUST DOESN'T HAVE THAT INFORMATION.

THE COURT: LET'S NOT ARGUE THE MATTER.

YOUR OBJECTION IS WHAT?

MS. ABRAMSON: HE IS MISSTATING THE TESTIMONY.

IF HE IS REFERRING TO MY CLIENT'S TESTIMONY, HE HAS  
MISSTATED IT HERE.

THE COURT: OKAY. WELL, WHY DON'T YOU STOP HERE,  
BECAUSE WE'RE GETTING INTO A NARRATIVE ANYWAY, MR. CONN.  
YOU CAN PERHAPS BREAK IT DOWN.

Q. BY MR. CONN: DIRECTING YOUR ATTENTION TO  
SATURDAY, LET ME START YOU THERE.

ARE YOU FAMILIAR WITH THE TESTIMONY OF ERIK  
MENENDEZ REGARDING WANTING TO GO TO A RIFLE RANGE FOR  
THE PURPOSE OF FIRING THE WEAPON?

A. YES.

Q. AND DO YOU FIND THAT TO BE CONSISTENT OR  
INCONSISTENT WITH A THEORY OF LEARNED HELPLESSNESS?

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A. I THINK IT'S INCONSISTENT WITH HIS BEING  
HELPLESS.

MS. ABRAMSON: YOUR HONOR, AT THIS POINT I AM  
GOING TO LODGE AN OBJECTION THAT THESE CONCLUSIONS ARE  
BEYOND THE SCOPE OF HIS EXPERTISE, AND IS JUST FACT  
FINDING UNDER SECTION 29.

THE COURT: OVERRULED.

Q. BY MR. CONN: INCONSISTENT IN WHAT WAY?

A. HIS TESTIMONY, ERIK MENENDEZ' TESTIMONY, WAS THAT HE WANTED TO GO TO THE RANGE TO MAKE SURE THAT THE WEAPON FUNCTIONED, AND WHETHER THAT -- IT'S THAT PURPOSE OR THE OTHER EVIDENT PURPOSES FOR WHICH ONE WOULD TAKE WEAPON TO THE RANGE, IT SHOWS A DESIRE TO PREPARE FOR THE USE OF A WEAPON.

MS. ABRAMSON: YOUR HONOR, I AM GOING TO LODGE THE SAME OBJECTION.

THE COURT: WELL, I THINK THE ANSWER HAS BEEN GIVEN HERE.

SO MR. CONN, ASK YOUR NEXT QUESTION.

MR. CONN: YES.

MS. ABRAMSON: I WOULD MOVE TO STRIKE EVERYTHING WITH THE WORD "DESIRE" -- FROM THE WORD "DESIRE", YOUR HONOR.

THE COURT: ALL RIGHT.

THAT PORTION OF THE ANSWER WILL BE STRICKEN.

MS. ABRAMSON: THANK YOU, YOUR HONOR.

THE COURT: YOUR NEXT QUESTION, PLEASE.

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Q. BY MR. CONN: THE TESTIMONY OF THE DEFENDANT THAT ON SATURDAY HE AND HIS BROTHER SOUGHT TO PURCHASE ADDITIONAL AMMUNITION; THAT IS BUCKSHOT, TO BE USED IN THE WEAPON RATHER THAN BIRD SHOT, DID YOU FIND

THAT TO BE CONSISTENT OR INCONSISTENT WITH THE THEORY OF  
LEARNED HELPLESSNESS?

A. I THINK THAT THAT SHOWS THAT HE WAS NOT  
THEN HANDICAPPED BY --

MS. ABRAMSON: OBJECTION UNDER SECTION 29.

I WOULD LIKE TO APPROACH.

THE COURT: THE ANSWER IS NONRESPONSIVE, SO THE  
OBJECTION IS SUSTAINED.

THE ANSWER IS STRICKEN.

MS. ABRAMSON: MIGHT WE APPROACH BRIEFLY, JUST SO  
I CAN MAKE A LITTLE RECORD -- A LITTLE RECORD?

THE COURT: WE WILL DO THAT IN JUST A MOMENT  
HERE. WE WILL TAKE A BREAK IN ABOUT THREE OR FOUR  
MINUTES.

MS. ABRAMSON: THEN COULD I ASK FOR THE MOMENT  
THE WITNESS NOT BE PERMITTED TO ELABORATE ON WHETHER  
SOMETHING IS INCONSISTENT.

THE COURT: AT THIS POINT, THE QUESTIONING IS  
JUST BY THE PROSECUTOR, AND UNLESS THERE IS A REQUEST  
FOR AN EXPANSION ON IT, THE ANSWER IS TO BE YES OR NO.

MR. CONN: OKAY.

Q. FOR THIS SERIES OF QUESTIONS I AM JUST  
GOING TO ASK YOU IF YOUR OPINION IN THIS REGARD  
CONCERNING LEARNED HELPLESSNESS, WHETHER THE BEHAVIOR IS

CONSISTENT OR INCONSISTENT.

SO DIRECTING YOUR ATTENTION TO THE  
TESTIMONY OF THE DEFENDANT THAT HE WISHED TO PURCHASE  
SOME BUCKSHOT ON THAT SATURDAY, WOULD YOU FIND THAT TO  
BE CONSISTENT OR INCONSISTENT WITH THE THEORY OF LEARNED  
HELPLESSNESS?

A. INCONSISTENT.

Q. AND THE TESTIMONY OF THE DEFENDANT THAT ON  
SUNDAY WHEN HE -- WHEN HE SHOT HIS PARENTS TO DEATH,  
WOULD YOU FIND THAT BEHAVIOR TO BE CONSISTENT OR  
INCONSISTENT WITH A THEORY OF LEARNED HELPLESSNESS?

A. INCONSISTENT.

MR. CONN: DOES THE COURT WISH TO TAKE A RECESS  
AT THIS TIME?

THE COURT: OKAY. WE WILL TAKE A SHORT BREAK,  
WITH THE UNDERSTANDING WE'RE GOING TO BE BREAKING AT  
4:00 O'CLOCK ANYWAY.

SO WE'LL HAVE THE JURY GO INTO THE JURY  
ROOM. DON'T DISCUSS THE MATTER WITH ANYONE. WE WILL  
HAVE COUNSEL REMAIN, AND WE'LL RESUME IN A SHORT PERIOD  
OF TIME.

(JURY ENTERS THE JURY ROOM

AND THE FOLLOWING PROCEEDINGS

WERE HELD:)

THE COURT: OKAY. THE JURY HAS LEFT.

MS. ABRAMSON, YOU WANT TO BE HEARD? MS.  
ABRAMSON, YOU WANT TO BE HEARD?

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

I HAVE NO OBJECTION BECAUSE OF THE COURT'S  
GROUND RULES IN THIS CASE TO QUESTIONS ABOUT WHETHER  
SOMETHING IS CONSISTENT OR INCONSISTENT, BUT I WAS  
PREVENTED FROM ASKING THE FOLLOW-UP OF WHY WITH MY  
EXPERT, AND I THINK THE PROSECUTION SHOULD BE SIMILARLY  
PREVENTED, BECAUSE THE MINUTE I START ASKING WHY, YOU'RE  
GETTING A VIOLATION OF SECTION 29. YOU'RE GETTING THE  
WITNESS'S OPINION ABOUT WHAT PRECISELY WAS THE STATE OF  
MIND AT ALL THESE MOMENTS, WHAT WAS IN MY CLIENT'S MIND.

THE COURT: YOUR WITNESS DID TESTIFY TO MORE THAN  
JUST A YES OR NO, CONSISTENT OR INCONSISTENT. I HAVE  
NOTES HERE OF HIS TESTIMONY ON JANUARY THE 23RD ABOUT --

MS. ABRAMSON: WHAT PAGE, YOUR HONOR?

THE COURT: I AM JUST LOOKING AT MY NOTES.

"THE DEFENDANT'S PERCEPTION OF 'ABOUT TO  
DIE', IS THAT CONSISTENT WITH P.T.S.D?

"YES, IT'S A TYPICAL REACTION OF THREAT  
RIGHT NOW."

SO IT GOES BEYOND -- DR. WILSON WENT BEYOND  
THAT.

MS. ABRAMSON: HE IS TALKING ABOUT THE TYPICAL  
REACTION. HE IS NOT TALKING ABOUT MY CLIENT HAVING A  
DESIRE -- LET ME SEE, WHAT WAS DR. DIETZ'S --

THE COURT: THAT WAS STRICKEN.

SO CLEARLY WE ARE NOT GETTING INTO THE



ACTUAL THOUGHT PROCESS OF THE DEFENDANT AND WHAT HE  
THOUGHT OR DIDN'T THINK, JUST BASED UPON HIS TESTIMONY

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AND THE WITNESS, AS WAS DONE DURING YOUR EXAMINATION OF  
DR. WILSON, IS JUST ASK TO ASSUME FOR THE PURPOSE OF  
THESE QUESTIONS THAT THESE EVENTS OCCURRED AS DESCRIBED  
BY THE DEFENDANT.

MS. ABRAMSON: RIGHT.

THE COURT: BUT DR. WILSON WENT BEYOND SAYING  
JUST CONSISTENT OR NOT CONSISTENT. HE WAS MORE  
EXPANSIVE THAN THAT.

MS. ABRAMSON: I MEAN, I HAVE THE TRANSCRIPT OF  
THE 23RD HERE,

THE COURT: RIGHT.

MS. ABRAMSON: I AM SORRY, I DON'T HAVE THE PAGE  
CITE. SO I CAN SEE WHERE IT CAME FROM. IT SEEMS MOST  
OF THAT TRANSCRIPT WAS TAKEN UP WITH ARGUING ABOUT WHAT  
HE COULD SAY.

THE COURT: NO. HE ACTUALLY SAID MORE THAN THAT,  
INCLUDING TESTIMONY THAT IN HIS OPINION THE DEFENDANT'S  
THINKING WAS SURVIVAL MODE WITHOUT REFLECTION AND  
WITHOUT DELIBERATION, WHICH WAS ASKED BY YOU.

MS. ABRAMSON: WAS THAT A LEADING QUESTION, YOUR  
HONOR?

THE COURT: IT WAS ASKED IN THAT FASHION, AND HE  
ANSWERED IT.

BUT CERTAINLY THE ISSUE WENT BEYOND JUST  
WAS IT CONSISTENT OR INCONSISTENT. THE QUESTIONING OF  
DR. WILSON WAS WELL BEYOND THAT.

MS. ABRAMSON: WELL, I THINK A GOOD DEAL OF IT  
SIMPLY HAD TO DO WITH PRESENTING HIM WITH WHAT THE --

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WHAT THE DEFENDANT HAD SAID.

THE COURT: CORRECT. THAT'S WHAT THE PROSECUTION  
IS DOING.

MS. ABRAMSON: I WAS DOING ALL THE TALKING,  
LEADING, SO THAT HE WOULDN'T BE DOING ANYTHING BUT  
COMMENTING ON WHAT THE DEFENDANT HAD SAID, WITHOUT  
ELABORATING ON OTHER MOTIVES, OTHER IDEAS, OTHER  
THOUGHTS IN THE DEFENDANT'S HEAD, AS I THOUGHT DR. DIETZ  
WAS ON THE VERY BRINK OF DOING THERE FOR A MOMENT.

THE COURT: NO, I THINK HE WAS PRETTY MUCH  
CONFINING HIMSELF TO WHAT THE DEFENDANT SAID AND  
EVALUATING THAT, ALONG THE LINES OF THIS ONE FEATURE  
THAT THE PROSECUTOR HAS ELECTED TO EXPLORE HERE OF  
LEARNED HELPLESSNESS. I DON'T KNOW IF THERE ARE OTHER  
AREAS THAT WILL BE THE SUBJECT OF SIMILAR INQUIRY OR  
NOT.

MS. ABRAMSON: I THINK WE'RE PROBABLY GOING TO  
HEAR A LITTLE BIT ABOUT HYPERVIGILANCE, I AM GUESSING.  
RIGHT?

THE COURT: ANYWAY, I DON'T THINK THERE HAS BEEN

A VIOLATION OF SECTION 29.

LET'S TAKE A BREAK UNTIL 10 AFTER, BUT  
LET'S MAKE SURE WE ARE ALL BACK HERE BY 10 AFTER, SO WE  
CAN RECESS BY 4:00 O'CLOCK.

MS. ABRAMSON: I WOULD LIKE TO GIVE SOMETHING TO  
THE COURT, IF I COULD. I DON'T HAVE A CLEAN COPY. IT  
HAS SOME OF MY NOTES ON IT, BUT I WOULD ASK YOU TO  
IGNORE IT.

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THIS IS MENTAL STATE, TYPE OF CRIME NOTES  
FROM DR. DIETZ, AND I WOULD HAVE SOME REAL OBJECTIONS IF  
HE ACTUALLY TESTIFIES AS IS WRITTEN HERE, BUT I WANT THE  
COURT TO SEE IT, OKAY?

THE COURT: SURE.

MS. ABRAMSON: IGNORE MY LITTLE REMARKS, ALTHOUGH  
NONE OF THEM ARE RUDE, FOR A CHANGE.

THE COURT: ALL RIGHT. TEN AFTER.

(A RECESS WAS TAKEN FROM  
:00 P.M. TO 3:10 P.M)

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

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

MS. ABRAMSON: I WANTED TO BE HEARD ON THESE  
ISSUES. THAT'S WHY I GAVE IT TO YOU.

THE COURT: I'LL BE AWARE OF IT.

MS. ABRAMSON: YOU KNOW WHAT I COULD DO,  
JUDGE. I'VE PUT IN BRACKETS --

THE COURT: THE JURY IS BACK.

YOU MAY CONTINUE YOUR EXAMINATION.

MR. CONN: YES. THANK YOU.

Q YES, DR. DIETZ. JUST BEFORE THE BREAK I WAS ASKING YOU ABOUT VARIOUS ASPECTS OF THE TESTIMONY OF ERIK MENENDEZ AND HIS STATEMENTS TO YOU THAT YOU INDICATED WERE INCONSISTENT WITH A FINDING OF LEARNED HELPLESSNESS.

LET ME ASK YOU THIS: ARE SIGNS OF HOPEFULNESS OR EXPECTATIONS OF HOPEFULNESS SOMETHING THAT IS INCONSISTENT OR CONSISTENT WITH WHAT HAS BEEN CALLED LEARNED HELPLESSNESS?

A INCONSISTENT.

Q WHY IS THAT?

A I'M USING LEARNED HELPLESSNESS IN THE SELIGMAN SENSE AS THE EQUIVALENT OF DEPRESSION, AND IN DEPRESSION ONE OF THE MOST PROMINENT FEATURES IS THE ABSENCE OF HOPE. WHEN AN INDIVIDUAL IS HOPEFUL,

THEN THEY ARE EITHER NOT DEPRESSED OR EMERGING FROM DEPRESSION. THE PERSON WHO HAS LEARNED TO BE HELPLESS HAS NO BASIS FOR HOPE, EXPECTS LIFE TO CONTINUE AS IT HAS BEEN.

Q NOW, THERE WERE TIMES IN THE DEFENDANT'S TESTIMONY WHEN HE INDICATED THAT ON VARIOUS DAYS BETWEEN WEDNESDAY THROUGH SATURDAY OF THAT WEEK HE BECAME HOPEFUL THAT PERHAPS SOMETHING COULD BE

WORKED OUT, AND A RESOLUTION COULD BE REACHED.

WOULD YOU SAY THAT SUCH INDICATIONS ON  
THE PART OF ERIK MENENDEZ WOULD BE CONSISTENT OR  
INCONSISTENT WITH A FINDING OF LEARNED HELPLESSNESS?

A INCONSISTENT.

Q GETTING BACK JUST A BIT TO WHAT YOU  
DESCRIBE AS A PANIC ATTACK, I BELIEVE THAT YOU  
INDICATED THAT PERSONS WHO SUFFER FROM A PANIC  
ATTACK DO NOT RUN TOWARD THE DANGER, BUT TEND TO  
FLEE; IS THAT CORRECT?

A THAT'S RIGHT.

Q NOW, HAVE YOU HEARD OF SITUATIONS WHERE  
COMBAT SOLDIERS, FOR EXAMPLE, MIGHT HAVE A TENDENCY  
TO RUN TOWARD DANGER?

A YES.

Q AND IN YOUR OPINION, IS SUCH CONDUCT OR  
BEHAVIOR SUGGESTIVE OF A PANIC ATTACK?

A NO. THAT'S NOT A PANIC ATTACK. THAT'S  
ENGAGING IN AN OVER-REHEARSED BEHAVIOR FOR WHICH ONE  
HAS BEEN TRAINED. ONE CAN TRAIN ONESELF AND

REHEARSE ON ONE'S OWN FOR THAT KIND OF PERFORMANCE.

MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
OBJECT. ASK TO STRIKE ALL THAT AS COMPLETELY

IRRELEVANT.

THE COURT: OVERRULED. I BELIEVE THIS IS A SUBJECT THAT HAS BEEN GONE INTO DURING THE EXAMINATION OF DR. WILSON.

Q BY MR. CONN: NOW, DOES OVER-REHEARSED BEHAVIOR SUCH AS THAT REQUIRE CONSCIOUS THOUGHT?

A THAT DEPENDS ON THE DEGREE OF TRAINING. THE LESS REHEARSAL THERE'S BEEN, THE LESS WILL-POWER IT TAKES TO DO IT.

Q AND IN THIS PARTICULAR CASE -- AND I DIRECT YOU SPECIFICALLY TO THE EVENTS OF SUNDAY, AUGUST THE 20TH OF 1989 -- DID YOU SEE ANY EVIDENCE THAT THE DEFENDANT, ERIK MENENDEZ, WAS ENGAGING IN OVER-REHEARSED BEHAVIOR?

MS. ABRAMSON: I'M GOING TO OBJECT TO THIS, YOUR HONOR, UNDER SECTION 29.

THE COURT: SUSTAINED AS TO THE FORM OF THE QUESTION.

Q BY MR. CONN: CONCERNING THE DISSOCIATIVE STATE THAT YOU DESCRIBED, I BELIEVE THAT YOU INDICATE THAT THERE ARE SOME PEOPLE WITH POST-TRAUMATIC STRESS DISORDER WHO SOMETIMES EXPERIENCE A DISSOCIATIVE STATE; IS THAT CORRECT?

A THAT'S OFTEN BELIEVED, YES.

Q NOW, IN THIS CASE DID YOU SEE -- OR

BASED UPON THE TESTIMONY OF ERIK MENENDEZ, AND BASED UPON THE STATEMENTS THAT HE GAVE TO YOU DURING THE COURSE OF HIS INTERVIEW WITH YOU, DID YOU SEE EVIDENCE THAT IS INCONSISTENT WITH A FINDING THAT THE DEFENDANT, ERIK MENENDEZ, WAS IN A DISSOCIATIVE STATE AT THE TIME THAT HE KILLED HIS PARENTS?

A YES.

Q AND WHAT EVIDENCE IS THAT?

A WELL, FIRST, THE EVIDENCE THAT THERE'S NO GAP IN HIS MEMORY REGARDING THE BEHAVIORS THAT WERE ENCOMPASSED IN RETRIEVING, LOADING, AND USING THE WEAPON AGAINST HIS PARENTS.

SECOND, THAT THE DESCRIPTION HE GIVES OF THOSE EVENTS HAS VERY LITTLE BY WAY OF A DESCRIPTION OF CHANGES IN PERCEPTION, THOUGH I ASKED HIM A VARIETY OF QUESTIONS ABOUT THAT. IT WAS NOT OF MUCH SIGNIFICANCE, WHAT HE DESCRIBED.

THERE WAS NO FUNDAMENTAL ALTERATIONS IN PERSPECTIVE ON THE SCENE; THAT IS, ON THAT OCCASION, HE DOESN'T DESCRIBE SEEING HIMSELF AS IF WATCHING FROM ABOVE, OR AS IF LOOKING FROM THE CEILING DOWN. HE DOES NOT, ON THAT OCCASION, DESCRIBE HIMSELF AS HAVING HAD WHAT WE CALL DEREALIZATION, WHICH IS THE FEELING THAT THINGS AREN'T REAL, UNTIL AFTER HIS PARENTS HAVE BEEN KILLED, AND HE'S IN THE ROOM PICKING UP THE EMPTY SHELL CASINGS. THEN AND ONLY



THEN DOES HE HAVE THAT FEELING.

AND SO HIS ACCOUNT OF THE TIME OF THE

HOMICIDES DOES NOT SUPPORT THE IDEA THAT HE HAD  
DISSOCIATED AT THE TIME OR WAS IN THAT HIGH STATE OF  
ANXIETY.

Q DOES HIS ACCOUNT OF THE CRIMES SUPPORT A  
CONCLUSION THAT HE WAS EXPERIENCING ANYTHING OTHER  
THAN SIMPLY ANXIETY AT THE TIME OF THE KILLING?

A WELL, THE ANXIETY MAY HAVE BEEN  
SUFFICIENT TO JUSTIFY THE LABEL "PANIC ATTACK" AT  
THE TIME OF THE KILLING. THAT'S STILL ANXIETY.  
BEYOND THAT, NO.

Q YES. IN ORDER FOR THE DEFENDANT TO  
HAVE -- IN ORDER FOR THE DEFENDANT TO BE ABLE TO  
KILL HIS PARENTS AS HE INDICATED, ON AUGUST THE 20TH  
OF 1989, WOULD IT HAVE BEEN NECESSARY FOR THE  
DEFENDANT TO OVERCOME THE ANXIETY THAT HE WAS  
EXPERIENCING?

MS. ABRAMSON: OBJECTION, YOUR HONOR, UNDER  
SECTION 29.

THE COURT: SUSTAINED AS TO THE FORM OF THE  
QUESTION.

Q BY MR. CONN: IN ORDER FOR A PERSON

WHO'S IN A PANIC ATTACK -- DIRECTING YOU TO A  
HYPOTHETICAL SITUATION -- IN ORDER FOR A PERSON WHO'S  
IN A PANIC ATTACK TO ENGAGE IN CONDUCT SUCH AS THE  
RETURNING TO A DANGEROUS SCENE AND KILLING SOME  
PEOPLE, WOULD IT BE NECESSARY FOR THAT PERSON IN THE  
HYPOTHETICAL SITUATION TO OVERCOME THAT PANIC  
ATTACK?

MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.  
IF IT'S PURELY A HYPOTHETICAL, IT'S IRRELEVANT; AND  
I STILL OBJECT TO THE FORM OF THE QUESTION.

THE COURT: OVERRULED.

YOU CAN ANSWER THE QUESTION.

THE WITNESS: IT WOULD TAKE UNUSUAL WILL  
POWER AND DETERMINATION.

Q BY MR. CONN: BUT A PERSON EXERCISING  
WILL-POWER AND DETERMINATION --

MS. ABRAMSON: I'M GOING TO OBJECT AND I ASK  
TO BE HEARD, BASED ON THE MATERIALS I SUBMITTED TO  
THE COURT.

THE COURT: OKAY. THIS MIGHT TAKE A LITTLE  
BIT OF A DISCUSSION. SO IF THERE'S SOME OTHER AREA  
YOU CAN GO ON TO AND COME BACK TO THIS, MR. CONN.

MR. CONN: OKAY.

THE COURT: I'LL MAKE A NOTE OF IT, AND WE'LL  
COME BACK TO IT.

MS. ABRAMSON: I'M NOT SURE YOUR MICROPHONE  
IS ON.

THE COURT: IT ISN'T.

YOUR NEXT QUESTION, PLEASE.

MR. CONN: YES.

Q NOW, I'D LIKE TO TURN TO THE ISSUE OF  
HYPERVIGILANCE.

CAN YOU EXPLAIN TO THE JURY WHAT  
HYPERVIGILANCE IS.

A HYPERVIGILANCE IS THE TERM THAT'S BEEN

ADOPTED TO DESCRIBE A STATE OF INCREASED ALERTNESS  
AND AWARENESS THAT CAN OCCUR IN A VARIETY OF  
CONDITIONS. PRIMARILY, PEOPLE WHO HAVE ANXIETY  
DISORDERS WILL BE THE ONES TO EVIDENCE THIS, BUT  
IT'S NOT THE ONLY TIME THAT IT OCCURS.

SOMEBODY WHO'S HYPERVIGILANT IS  
UNUSUALLY ALERT TO SIGNS OF DANGER OR THREAT IN THE  
ENVIRONMENT, AS COMPARED TO THE MAJORITY OF PERSONS  
WHO WILL GO ABOUT THEIR DAILY BUSINESS WITHOUT  
WORRYING MUCH ABOUT DANGERS. PEOPLE WHO HAVE BECOME  
ANXIOUS SURROUNDING SOME PARTICULAR TYPE OF DANGER

WILL BE MORE AWARE OF THAT DANGER THAN OTHER PEOPLE. AND IT MEANS THAT -- WHEREAS, MOST PEOPLE WILL ONLY OCCASIONALLY THINK, FOR EXAMPLE, THAT THEY MIGHT BE AT RISK OF SOMEBODY ROBBING THEM ON THE STREET, SOMEONE WHO'S ANXIOUS ABOUT THAT ISSUE, PERHAPS BECAUSE THEY'VE BEEN A MUGGING VICTIM, MAY THINK ABOUT ROBBERS EVERY TIME THEY'RE OUT OR EVERY TIME THEY'RE OUT AFTER DARK. THEY MAY BE CAREFUL ABOUT WHICH SIDE OF STREET THEY WALK ON; STAYING AWAY FROM BUILDINGS; NOT GOING IN DARK ALLEYS; NOT LETTING PEOPLE GET BEHIND THEM; LOOKING FOR REFLECTIONS IN EVERY WINDOW THEY WALK BY; PERHAPS THINK ABOUT ESCAPE ROUTES EACH TIME THEY WALK DOWN A STREET; AND PERHAPS ARMING THEMSELVES TO DEFEND AGAINST A POSSIBLE MUGGER.

ALL OF THOSE THINGS CAN HAPPEN SIMPLY BECAUSE OF SOME ANXIETY, WHETHER REALISTICALLY BASED

OR NOT, ABOUT THAT PARTICULAR DANGER.

SO THE HYPERVIGILANT STATE IS ONE IN WHICH ONE IS FAR MORE AWARE, MORE ATTUNED TO ALERT TO THOSE EVENTS THAN AN AVERAGE PERSON.

NOW, ONE CAN BE TRAINED FOR THIS TOO. POLICE OFFICERS CAN DRIVE DOWN THE STREET AND NOTICE

A LOT OF THINGS THAT OTHER CITIZENS DON'T NOTICE  
WHEN THEY DRIVE DOWN THE STREET. THEY SEE DRUG  
TRANSACTIONS THAT CASUAL OBSERVERS WON'T EVEN  
NOTICE. THEY SEE WHERE PROSTITUTES WORK.

THAT'S A DIFFERENT AWARENESS OF THE

ENVIRONMENT THAN MOST PEOPLE

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AND IT TAKES ENERGY TO BE HYPERVIGILANT,

TO NOTICE ALL THESE THINGS. BUT THAT'S ALL IT IS.

IT'S AN AWARENESS, AN ALERTNESS TO WHAT'S HAPPENING

IN THE ENVIRONMENT.

Q OKAY. DOES HYPERVIGILANCE LEAD TO

DANGEROUS BEHAVIOR?

A WELL, THE ASSOCIATION WITH DANGEROUS

BEHAVIOR IS HYPERVIGILANCE CAN LEAD PEOPLE TO

SURROUND THEMSELVES WITH WEAPONS AND TO HAVE WEAPONS

MORE CLOSELY AT HAND; AND BECAUSE OF THAT, IF THEY

OVERREACT TO SOME SITUATION, THEIR BEHAVIOR CAN BE,

OF COURSE, DESTRUCTIVE.

Q NOW, IS THERE -- DO ALL PEOPLE WHO HAVE

EXPERIENCED WHAT MIGHT BE CALLED "A TRAUMATIC

EXPERIENCE" DEMONSTRATE HYPERVIGILANCE?

A NO.

Q WHY IS THAT?

A WELL, FIRST OF ALL, MOST PEOPLE WHO ARE  
SUBJECTED TO A TRAUMATIC EXPERIENCE DON'T HAVE ANY  
AFTER EFFECTS OF IT. P.T.S.D. IS THE EXCEPTION, NOT  
THE RULE.

AND EVEN WHERE PEOPLE DEVELOP P.T.S.D.,  
IN THAT MINORITY OF TRAUMA VICTIMS WHO GET P.T.S.D.,  
MOST OF THEM RECOVER FAIRLY QUICKLY. THE MAJORITY  
IN UNDER TWO YEARS STOP HAVING ANY SYMPTOMS.

NOW, WHEN SOMEONE DOES HAVE P.T.S.D.  
THEY MAY OR MAY NOT HAVE HYPERVIGILANCE. SO JUST  
BECAUSE ONE WAS TRAUMATIZED, DOESN'T MEAN ONE  
BECOMES HYPERVIGILANT.

Q WOULD YOU SAY THAT EVERYONE SUFFERING  
FROM GENERALIZED ANXIETY DISORDER EXHIBITS  
HYPERVIGILANCE?

A NO.

Q AND IN YOUR EXAMINATION OF THE  
DEFENDANT, DID YOU MAKE ANY CONCLUSIONS AS TO  
WHETHER OR NOT THE DEFENDANT WAS HYPERVIGILANT AT  
THE TIME OF THE COMMISSION OF THE CRIME?

MS. ABRAMSON: I'M GOING TO OBJECT TO THIS,  
YOUR HONOR, UNDER SECTION 29.

THE COURT: PERHAPS YOU CAN REPHRASE THE  
QUESTION.

MR. CONN: OKAY.

Q IS HYPERVIGILANCE SOMETHING THAT CAN BE MEASURED?

A NO.

Q AND HOW DO YOU MAKE A DETERMINATION AS TO WHETHER SOMEONE WAS HYPERVIGILANT AT SOME TIME IN THE PAST?

A THERE ARE TWO WAYS. THE FIRST IS TO FIND RELIABLE INDICATORS OF THEIR BEHAVIOR AT THAT TIME IN THE PAST AND JUDGE WHETHER IT'S CONSISTENT OR INCONSISTENT WITH HYPERVIGILANCE.

THE OTHER IS TO ASK THEM AND JUDGE WHETHER THEY'RE TELLING THE TRUTH.

Q DID YOU -- IN THIS CASE WERE THERE ANY RELIABLE INDICATORS, ASIDE FROM THE REPORTS TO YOU BY THE DEFENDANT, AS TO WHETHER OR NOT HE WAS HYPERVIGILANT AT THE TIME OF THE COMMISSION OF THE CRIME?

A DURING THE COMMISSION OF THE CRIME ITSELF, I DON'T SEE ANY RELIABLE INDICATORS OF WHETHER HE WAS HYPERVIGILANT OR NOT.

Q DO HYPERVIGILANT PEOPLE -- DOES HYPERVIGILANCE -- DOES HYPERVIGILANCE ALTER A

PERSON'S PERCEPTION OF HOW SOON A DANGER MIGHT STRIKE THEM?

A WELL, IT CAUSES THEM TO HAVE MANY FALSE POSITIVES; THAT IS, THEY'LL SEE DANGER WHERE IT DOESN'T EXIST. THEY WILL BE MORE INCLINED TO CONCLUDE THAT SOMETHING IS A DANGER THAN THEY SHOULD IF THEY WERE BEING MORE REASONABLE AND OBJECTIVE.

Q DOES HYPERVIGILANCE IMPAIR A PERSON'S

ABILITY TO THEN ASSESS THAT DANGER IN A THINKING, RATIONAL WAY?

A NOT IF HYPERVIGILANCE IS THE ONLY PROBLEM. IF THAT'S THE ONLY PROBLEM, THEN THEY'RE ABLE TO MAKE THAT ASSESSMENT IN THE ORDINARY WAY.

NOW, IF SOMEONE IS HYPERVIGILANT AND PARANOID, THAT'S ANOTHER STORY.

Q BY PARANOID, YOU'RE SPEAKING ABOUT A SEPARATE MENTAL DISORDER?

A YES.

Q AND PARANOID IS A TERM, A CLINICAL TERM THAT IS USED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS?

A USED FOR A VARIETY OF CONDITIONS, YES.

Q AND WAS THERE ANY EVIDENCE -- YOU MADE



NO FINDING IN THIS CASE THAT THE DEFENDANT, ERIK MENENDEZ, WAS PARANOID; IS THAT CORRECT?

A CORRECT. NOT AT ALL.

Q IS THERE EVIDENCE INDICATING THAT HYPERVIGILANCE IS A LIFELONG CONDITION?

A NO.

Q AND DID YOU SEE EVIDENCE IN THIS CASE, BASED UPON THE REPORTS OF ERIK MENENDEZ TO YOU, AND BASED UPON HIS TESTIMONY DURING THE COURSE OF THE TRIAL, THAT IS INCONSISTENT WITH A FINDING THAT ERIK MENENDEZ WAS HYPERVIGILANT ON THE DAY OF THE KILLING AND ON THE DAYS PRECEDING THE KILLING?

A YES.

Q WHAT DID YOU SEE THAT WAS INCONSISTENT WITH A FINDING OF HYPERVIGILANCE?

A WELL, ITS PRINCIPALLY THE BEHAVIORS THAT REFLECT A WAXING AND WANING OF HIS PERCEPTION OF DANGER. AT THE TIMES WHEN HE SAID HE FELT HOPEFUL THAT THINGS MIGHT WORK OUT, THAT'S NOT A STATE OF MIND CONSISTENT WITH HAVING THEN BEEN HYPERVIGILANT.

LIKEWISE, AT THE TIMES THAT ERIK MENENDEZ' BEHAVIOR SEEMED TO BE OBLIVIOUS TO RISK,

THAT'S BEHAVIOR INCONSISTENT WITH THE EXPECTATION OF DANGER.

Q ARE YOU FAMILIAR WITH THE TESTIMONY OF ERIK MENENDEZ ABOUT THE FACT THAT HE PLAYED TENNIS ON -- OR WENT ON THE TENNIS COURT ON FRIDAY FOR THE PURPOSE OF PLAYING TENNIS?

A YES.

Q AND IS THAT BEHAVIOR IN YOUR MIND CONSISTENT OR INCONSISTENT WITH A FINDING OF HYPERVIGILANCE?

A WELL, PLAYING TENNIS SUGGESTS INCONSISTENCY. IT'S HIS THOUGHTS THAT HE SAID ACCOMPANIED IT THAT ARE DRAMATICALLY INCONSISTENT.

Q AND INCONSISTENT IN WHAT WAY?

A WITH HYPERVIGILANCE.

Q AND WHAT IS IT ABOUT HIS THOUGHTS THAT ARE INCONSISTENT, DRAMATICALLY INCONSISTENT WITH A FINDING OF HYPERVIGILANCE?

A HE SAID HE DIDN'T THINK ABOUT THE DANGER. HE PUT IT OUT OF HIS MIND.

Q AND THE BEHAVIOR OF ERIK MENENDEZ, GOING ON THE BOAT TRIP ON SATURDAY, DID YOU FIND SUCH BEHAVIOR TO BE CONSISTENT OR INCONSISTENT WITH A

FINDING OF HYPERVIGILANCE?

A GOING ON IT WITHOUT TAKING THE GUN THAT WAS WITHIN REACH WAS INCONSISTENT WITH HYPERVIGILANCE, GIVEN THAT HE SAID HE EXPECTED TO BE KILLED ON THAT TRIP.

Q AND THE BEHAVIOR OF THE DEFENDANT, ERIK MENENDEZ, IN NOT RELOADING HIS WEAPON UP UNTIL SUNDAY NIGHT, IN THE MOMENTS PRECEDING THE KILLING, DID YOU FIND SUCH BEHAVIOR TO BE CONSISTENT OR INCONSISTENT TO A FINDING OF HYPERVIGILANCE?

A INCONSISTENT.

Q AND WHY IS THAT?

MS. ABRAMSON: I'M GOING TO OBJECT TO THIS, YOUR HONOR. IT GOES BEYOND HIS EXPERTISE AND VIOLATES SECTION 29.

THE COURT: OVERRULED.

YOU CAN ANSWER THE QUESTION.

THE WITNESS: WERE HE HYPERVIGILANT AND PERCEIVING DANGER, THE BELIEF THAT THE AMMUNITION HE HAD WAS INEFFECTIVE WOULD HAVE LED HIM TO BE VERY EAGER INDEED TO TAKE THE NEWLY PURCHASED BUCKSHOT TO THE ROOM AND MORE EFFECTIVELY LOAD HIS WEAPON, OR TO HAVE LOADED IT IN THE CAR ON THE WAY HOME, OF

COURSE.

Q NOW, IS GENERALIZED ANXIETY DISORDER A DISABILITY THAT WOULD HAVE INTERFERED WITH THE ABILITY OF THE DEFENDANT TO HAVE REFLECTIVE THOUGHT ON AUGUST THE 20TH, OF 1989?

A NO.

Q IS GENERALIZED ANXIETY DISORDER A CONDITION THAT WOULD HAVE INTERFERED WITH THE DEFENDANT'S ABILITY TO UNDERSTAND AND ANALYZE SITUATIONS THAT HE WAS IN ON SUNDAY, AUGUST THE 20TH OF 1989?

A NOT THOSE PARTS OF UNDERSTANDING AND ANALYSIS THAT ARE ABOUT LOGICAL THOUGHT. THE PART OF UNDERSTANDING AND ANALYSIS THAT AFFECTS JUDGMENT CAN BE IMPAIRED BY ANXIETY, THOUGH.

Q WOULD GENERALIZED ANXIETY DISORDER BE SOMETHING THAT WOULD PREVENT THE DEFENDANT FROM RECOGNIZING ALTERNATIVES TO HIS BEHAVIOR ON AUGUST THE 20TH OF 1989?

MS. ABRAMSON: YOUR HONOR, I'M GOING TO OBJECT TO THIS UNDER SECTION 29.

THE COURT: REPHRASE THE QUESTION, PLEASE.

Q BY MR. CONN: GENERAL ANXIETY DISORDER DISABILITY, SUCH THAT IT PREVENTS A PERSON FROM RECOGNIZING ALTERNATIVES TO A PROPOSED COURSE OF BEHAVIOR?

A NO.

Q GENERALIZED ANXIETY DISORDER DISABILITY

THAT WOULD PREVENT A PERSON FROM SELECTING AMONG  
VARIOUS OPTIONS AVAILABLE TO HIM TO MAKE DECISIONS  
IN CONNECTIONS WITH THOSE OPTIONS.

MS. ABRAMSON: I'M GOING TO OBJECT. TOO  
VAGUE AND UNDER 350, 352 IRRELEVANT.

THE COURT: DO YOU UNDERSTAND THE QUESTION?

THE WITNESS: NO.

THE COURT: BETTER REASK IT.

Q BY MR. CONN: GENERALIZED ANXIETY  
DISORDER DISABILITY, THAT WOULD PREVENT A PERSON  
FROM BEING ABLE TO MAKE DECISIONS REGARDING A  
PROPOSED COURSE OF BEHAVIOR?

A NO.

Q NOW, DIRECTING YOUR ATTENTION TO  
STATEMENTS OF THE DEFENDANT, ERIK MENENDEZ, AT THE  
TIME OF THE COMMISSION OF THE CRIME.

MS. ABRAMSON: YOUR HONOR, AT THIS POINT I'D  
LIKE TO BE HEARD.

THE COURT: OKAY. ON THAT SUBJECT THAT WE  
HAD DISCUSSED?

MS. ABRAMSON: YES, YOUR HONOR. ON THAT  
SUBJECT.

THE COURT: OKAY. IS THERE ANYTHING ELSE

THAT YOU CAN GET INTO, OR DO YOU WANT TO STOP RIGHT  
HERE, AND WE CAN TAKE A BREAK AND TAKE SOME TIME?

MR. CONN: I THINK WE SHOULD STOP HERE. THIS  
IS THE LAST LINE OF INQUIRY.

THE COURT: WE'LL EXCUSE THE JURY AND TAKE A

RECESS UNTIL 8:30 TOMORROW MORNING.

DON'T DISCUSS THE MATTER WITH ANYONE,  
AND DON'T FORM ANY FINAL OPINION. DON'T LOOK AT ANY  
OF THE NEWS COVERAGE CONCERNING THIS CASE.

SEE YOU ALL BACK HERE TOMORROW AT 8:30.

(THE JURY ENTERED THE JURY ROOM

AND THE FOLLOWING PROCEEDINGS

WERE HELD:)

THE COURT: ARE THEY ABOUT READY?

THE BAILIFF: HE'S GETTING THE ELEVATOR RIGHT  
NOW.

THE COURT: AS SOON AS THE JURY LEAVES.

(THE JURY EXITED THE COURTROOM AND

THE FOLLOWING PROCEEDINGS WERE HELD:)

THE COURT: OKAY. YES. THE JURY HAS LEFT.

MS. ABRAMSON: YES, YOUR HONOR. I HAVE GIVEN

THE COURT A COPY OF THREE TYPED -- ONE FULL PAGE AND TWO PARTIAL PAGES OF NOTES ON THE VARIOUS TOPICS OF HIS TESTIMONY THAT DR. DIETZ PREPARED AND TURNED OVER TO THE DEFENSE ON MONDAY, DURING OUR MEETING IN THE DISTRICT ATTORNEY'S OFFICE.

AND MUCH OF WHAT WAS IN THE NOTES, FOR EXAMPLE, THE HYPERVIGILANCE ABOUT PLAYING TENNIS ON FRIDAY, HAS BEEN BROUGHT OUT IN HIS DIRECT EXAMINATION. AND I DIDN'T SEE ANY POINT TO OBJECT TO THOSE TOPIC AREAS, JUST BASED ON HOW QUESTIONS

WERE ASKED.

BUT THIS PARTICULAR SET OF NOTES WHICH HAS TO DO WITH WHAT HE HAS NAMED M.S.O., MENTAL STATE AT THE TIME OF THE OFFENSE -- I THINK IF HE WERE TO TESTIFY ALONG THESE LINES IT WOULD BE INVADING THE PROVINCE OF THE JURY AND BEYOND THE SCOPE OF EXPERT TESTIMONY, INVADING SECTION 29.

NOW, ONE OF THESE MATTERS FROM THIS PARTICULAR LIST WAS ELICITED ALREADY, AND I DID OBJECT, AND THAT HAS TO DO WITH HOW TO -- FIRST OF ALL, WE NEVER PRESENTED TESTIMONY IN OUR CASE THAT MY CLIENT WAS SUFFERING FROM A PANIC ATTACK, AS THIS WITNESS HAS DESCRIBED IT. BEING IN A PANIC OR IN A

PANIC STATE IS NOT THE SAME AS THE DIAGNOSIS OF  
PANIC ATTACK.

BUT THERE'S BEEN THIS WHOLE LINE OF  
QUESTIONS HERE ABOUT HOW YOU OVERCOME A PANIC  
ATTACK, AND THAT, I SUSPECT, WAS JUST A CLEVER WAY  
TO TRY TO GET THIS WITNESS TO TALK ABOUT WILLFULNESS  
AND DELIBERATION, BECAUSE -- WHICH WE HAVE NEVER  
CHALLENGED.

AND AS THE COURT WELL KNOWS HOW THIS  
DEFENSE IS FRAMED-- WE'RE NOT OFFERING A DIMINISHED  
ACTUALITY DEFENSE BASED ON NON-DELIBERATION OR  
NON-WILLFUL BEHAVIOR. WE ARE OFFERING A FEAR-BASED  
DEFENSE THAT ATTACKS THE MENTAL STATE OF MALICE, AND  
MALICE ALONE, AND PERHAPS INTENT TO KILL, PERHAPS  
NOT, DEPENDING ON HOW THE COURT VIEWS THE EVIDENCE

IN THE END.

IN ANY EVENT, AS THE COURT CAN SEE IN  
THE THIRD PARAGRAPH OF THIS FIRST PAGE, IS  
DR. DIETZ'S CONCLUSION, WHICH HAS NOTHING TO DO WITH  
PANIC ATTACK IN THE WAY IT'S WRITTEN HERE.  
THEREFORE, HE MUST HAVE BEEN EXTREMELY DETERMINED TO  
COMMIT THESE CRIMES.

AND SO, FIRST OF ALL, I THINK WHAT THE



PEOPLE ARE DOING IS SETTING UP A STRAW MAN SO THEY CAN TEAR HIM DOWN AND GET IN THIS KIND OF INFORMATION, WHEN WE NEVER CLAIMED THAT MR. MENENDEZ WAS EXPERIENCING PANIC ATTACK.

I THINK IT'S IMPROPER FOR THIS WITNESS TO SPECULATE ON HOW DETERMINED OR UNDETERMINED MY CLIENT WAS TO COMMIT THESE ACTS, AND WHETHER OR NOT THEY'RE CRIMES IS SURELY UP TO THE JURY, AND NOT HIM.

SO I AM OBJECTING TO THAT, AND I'M OBJECTING TO EVERYTHING ELSE THAT'S CONTAINED IN THIS LITTLE PARAGRAPH, THIS LITTLE STATEMENT:

"ERIK MENENDEZ OVERCAME BOTH THE ORDINARILY HUMAN INHIBITIONS AGAINST KILLING ONE'S PARENTS AND ALSO HIS NOTES EXCESSIVE ANXIETY, WHICH USUALLY OPERATES AS A POWERFUL INTERNAL DETERRENT TO CRIME."

WE WOULD OBJECT TO THE WITNESS BEING PERMITTED TO TESTIFY TO --

THE COURT: BEFORE YOU GET INTO IT, DO YOU EXPECT YOUR WITNESS TO TESTIFY IN CONFORMITY WITH THIS DOCUMENT?

MR. CONN: NO. THESE ARE JUST HIS OWN NOTES,  
AND AS TO WHAT HIS OPINION IS INDEPENDENTLY OF PENAL  
CODE SECTION 29.

THIS IS NOT A SCRIPT FOR HIS TESTIMONY,  
AND I'M NOT GOING TO BE ASKING QUESTIONS CONCERNING  
EVERYTHING ON THE NOTES.

MS. ABRAMSON: I'M NOT OBJECTING TO  
EVERYTHING ON THE NOTES. BUT I DO THINK THERE ARE  
AREAS HERE THAT ARE EITHER NOT RAISED PROPERLY FOR  
REBUTTAL BY THE DEFENSE EVEN, OR INADMISSIBLE IN ANY  
EVENT; AND I JUST WANT TO MAKE A RECORD AS TO WHAT  
THEY ARE.

WE NEVER RAISED IN OUR DEFENSE THAT MY  
CLIENT WAS NOT CAPABLE OF REFLECTIVE THOUGHT AT A  
TIME PROXIMAL -- AND THAT'S HIS WORD -- MEANING,  
CLOSE IN TIME BEFORE OR AFTER, TO THE HOMICIDES.  
THE ONLY TIME THAT CAME OUT IS THE QUESTION OF  
WHETHER BETWEEN THE RECEPTION OF A CUE THAT, IN HIS  
HYPERVIGILANT STATE, INFORMED HIM THERE WAS DANGER,  
AND FEELING OVERWHELMING FEAR, WHICH IS THE  
HYPER-AROUSAL TO CLOSING THE DOOR, IN THAT TIME HE  
WAS NOT ABLE TO REFLECT ON REALITY. IS THIS  
REALISTIC? IS THAT HOTEL FIRE ALARM GOING OFF  
BECAUSE THERE'S A FIRE OR BECAUSE THERE'S A FIRE  
DRILL?

AND THAT WAS THE ONLY THING TO WHICH  
DR. WILSON MADE REFERENCE TO LACK OF REFLECTIVE  
THOUGHT, AND THE CUE THAT WENT OFF WAS THE CLOSING  
OF THE DEN DOOR.

THE COURT: YOU'RE SAYING THAT THE DEFENSE  
LEFT OPEN THE CONCEPT THAT THE DEFENDANT WAS IN  
REFLECTIVE THOUGHT AT THE TIME HE FIRED --

MS. ABRAMSON: NO.

THE COURT: -- BASED UPON THAT QUESTION?

MS. ABRAMSON: NO. WELL, WHAT HE WAS  
THINKING IS ON THE RECORD, AS TO WHAT HE'S THINKING.

THE COURT: WELL, YOUR EXAMINATION AT 47,949 --

MS. ABRAMSON: WE'RE NOT THERE YET.

THE COURT: THAT'S WHAT YOU'RE TALKING ABOUT.

MS. ABRAMSON: WE'RE TALKING ABOUT THURSDAY.  
THIS SERIES OF PARAGRAPHS THAT FOLLOWS PROXIMAL,  
OKAY, IS TALKING ABOUT BETWEEN THURSDAY AND SUNDAY  
HE CONSIDERED AND REJECTED VARIOUS OPTIONS AS PROOF  
OF REFLECTIVE THOUGHT, WHEN WE HAVEN'T CHALLENGED HE  
WAS CAPABLE OF REFLECTIVE THOUGHT.

AND MOREOVER, DR. DIETZ' STATEMENT THAT  
HE DID NOT CONSIDER USING NON-LETHAL FORCE OR  
DISAPPEARING FOR A TIME AND THEN POINTING OUT TO HIS  
FATHER THAT HE HADN'T TOLD ANYONE AND WOULDN'T, IS  
SIMPLY NOT PART OF HIS PURPOSE HERE AS A  
PSYCHIATRIST. HIS PURPOSE BASICALLY IS TO SAY YES,  
HE DOES HAVE AN ANXIETY DISORDER, BUT THAT ANXIETY

DISORDER EITHER DID OR DIDN'T AFFECT HIS STATE OF

MIND AT THE TIME HE SHOT.

AND SINCE HE'S ALREADY SAID IT DIDN'T,  
THERE'S NO REASON FOR HIM TO BE COMMENTING ON THE  
FACT THAT HE CAN HAVE REFLECTIVE THOUGHT ON THURSDAY  
AND SUNDAY, WHEN WE HAVEN'T CLAIMED THAT HE  
COULDN'T, OR TO OFFER A CRITIQUE OF HIS THOUGHT  
PROCESS OR CHARACTER, OR ANYTHING ELSE, BY TALKING  
ABOUT NON-CONSIDERATION OF NON-LETHAL FORCE. HE  
DIDN'T CONSIDER NON-LETHAL FORCE; THEREFORE, THAT  
DOESN'T HAVE ANYTHING TO DO WITH WHETHER OR NOT HE  
HAD REFLECTIVE THOUGHT OR NOT.

THE SAME IS TRUE OF THE NEXT PARAGRAPH,  
WHERE HE'S TRYING TO USE WHAT HAPPENED ON THURSDAY  
NIGHT, WHEN MY CLIENT DIDN'T CLAIM HE DOESN'T HAVE  
REFLECTIVE THOUGHT ON THURSDAY. HE WAS SCARED. HE  
HAD LIMITED OPTIONS BECAUSE OF LEARNED HELPLESSNESS,  
NOT BECAUSE OF AN INABILITY TO ENGAGE IN REFLECTIVE  
THOUGHT.

THE SAME IS TRUE OF THE REST OF THE  
PARAGRAPHS ON THIS PAGE.

THE THURSDAY NIGHT CONVERSATION IS THE  
NEXT ONE, ABOUT BEING UNSURE IF HE COULD EVER USE A

SHOTGUN AGAINST HIS MOTHER IS THURSDAY.

NEXT ONE IS THE SAME THING. THURSDAY HE  
WAS AFRAID HE'D FREEZE UP.

SO WE'VE NEVER POSITED THE NOTION THAT  
HE WAS SUFFERING FROM ANY KIND OF MENTAL DISEASE OR  
DISORDER THAT MADE HIM INCAPABLE OF REFLECTIVE

THOUGHT AT ANY TIME BUT AFTER THE CUE, AND THE  
HYPER-AROUSAL STAGE. AND THEY CAN ATTACK THAT  
HOWEVER THEY WISH TO, AND THEY WISH TO IN THE LAST  
TWO PARAGRAPHS ON THIS PAGE.

SO WE WOULD OBJECT TO ANY USING OF  
EXAMPLES OF HIS THOUGHT PROCESSES OR CONVERSATIONS  
ON THURSDAY AND FRIDAY, OF WHICH THERE ARE HERE ONE,  
TWO, THREE, FOUR, FIVE, SIX, SEVEN AREAS, IN ORDER  
TO PROVE THAT HE HAD REFLECTIVE THOUGHT, WHEN THAT'S  
NOT AN ISSUE. WE'VE NEVER SAID HE DIDN'T.

THE NEXT TWO PARAGRAPHS INDICATE --  
DR. DIETZ APPARENTLY CONSTRUCTED IT IN TERMS OF  
PREMEDITATE AND DELIBERATE. AND WE'RE NOT RAISING  
THAT DEFENSE.

HE CLAIMS SUNDAY, AT THE TOP OF THE  
STAIRS -- I REALLY HAVE NO OBJECTION TO THAT  
PARAGRAPH. BUT I CERTAINLY HAVE AN OBJECTION TO THE

LAST ONE, THE DECISION TO SHOOT, WITHOUT CONFIRMING THE PRESENCE WAS A DECISION TO COMMIT DOUBLE HOMICIDE. I REALLY DO THINK THAT MAY BE THE JURY'S DECISION AND NOT DR. DIETZ' DECISION.

SO WE WOULD OBJECT TO ANY OPINIONS SUCH AS THAT BEING PROFFERED BY THE WITNESS.

AND THEN THE LAST TWO PARAGRAPHS ON THE LAST PAGE ARE SIMPLY DR. DIETZ' OPINIONS OF WHY THERE'S NO JUSTIFICATION, AND WE DON'T HAVE A DEFENSE OF JUSTIFICATION IN THIS CASE; AND MOREOVER, I DON'T BELIEVE IT'S APPROPRIATE FOR A PSYCHIATRIC

EXPERT UNDER SECTION 29 TO COME UP WITH THESE KINDS OF OPINIONS. THESE ACTUALLY ARE MORE MORAL JUDGMENTS THAN ANYTHING ELSE. THEY'RE NOT EVEN LEGAL JUDGMENTS. THEY SEEM TO BE A LITTLE MORAL, LETTING OFF OF STEAM HERE BY THE WITNESS; AND SO I WOULD OBJECT TO HIM BEING ABLE TO TESTIFY ALONG THESE LINES.

THE COURT: OKAY. LET ME INQUIRE OF THE PROSECUTION WHETHER YOU ANTICIPATE THE WITNESS TESTIFYING ABOUT THESE MATTERS IN THE WAY IT'S PRESENTED HERE?

MR. CONN: WELL, I'D HAVE TO GO THROUGH AND

SEE EXACTLY HOW HE SUMMED IT UP IN HIS NOTES, BUT I THINK THAT, AS I INDICATED, I'M NOT USING THIS AS A SCRIPT, AND I THINK COUNSEL NEEDS TO WEIGH AND HEAR WHAT THE QUESTION IS WHEN I POSE THE QUESTION.

WHAT I'M GOING TO BE ASKING HIM, THOUGH, IS ABOUT THE ACTIONS OF THE DEFENDANT THAT WEEK, AND SPECIFICALLY ON THAT DAY. AND EVEN THOUGH COUNSEL MAY NOT PHRASE OR HAVE POSED A QUESTION TO HER WITNESS CONCERNING REFLECTIVE THOUGHT ON THE DAYS PRECEDING THE SHOOTING, SHE NEVERTHELESS PRESENTED TO THIS JURY CONCEPTS SUGGESTING AN INABILITY OF THE DEFENDANT TO ENGAGE IN APPRECIATION OF THE OPTIONS AVAILABLE TO HIM TO LEAVE THE SITUATION. WHETHER IT'S PHRASED IN TERMS OF REFLECTIVE THOUGHT OR WHETHER IT'S PHRASED IN TERMS OF LEARNED HELPLESSNESS, IT REALLY COMES DOWN TO THE SAME

THING.

I THINK THAT THE WITNESS CAN TESTIFY TO THE FACT THAT THE DEFENDANT APPARENTLY CONSIDERED CHOICES AND REJECTED CHOICES AND OPTIONS DURING THE COURSE OF THAT WEEK.

MS. ABRAMSON: FOR WHAT PURPOSE? THE JURY KNOWS THAT. MY CLIENT TESTIFIED TO THAT. I DON'T

UNDERSTAND WHAT THE PURPOSE IS FOR THIS WITNESS TO REHASH THE TESTIMONY UNLESS IT LEADS TO SOME APPROPRIATE PSYCHIATRIC CONCLUSION, AND I DON'T EVEN SEE ONE HERE. THEY'RE OFFERING THIS UNDER EVIDENCE OF REFLECTIVE THOUGHT. ABILITY TO PREMEDITATE AND DELIBERATE IS WHAT THEY'RE CALLING IT. BUT WE DON'T CHALLENGE REFLECTIVE THOUGHT FOR THIS TIME PERIOD, YOUR HONOR. THE COURT KNOWS WE NEVER CLAIMED HE COULDN'T THINK.

THE COURT: THE PEOPLE ARE ARGUING THAT THIS REBUTS THE DEFENSE EVIDENCE THAT THE DEFENDANT WAS INCAPABLE OF LEAVING OR DOING OTHER THINGS TO AVOID WHAT ULTIMATELY OCCURRED IN HIS VERSION OF THE EVENTS.

MS. ABRAMSON: WELL, HE DIDN'T LEAVE. DID HE THINK OF THESE THING? WE NEVER CLAIMED HE DIDN'T THINK OF THEM. WE CLAIM HE DIDN'T ACT.

THE COURT: THAT'S WHAT THE PEOPLE ARE EXPLORING, WHETHER THE DEFENDANT AND HIS PERSONALITY DISORDER WAS IN SUCH A --

MS. ABRAMSON: PERSONALITY DISORDER?

THE COURT: WHATEVER THE DIAGNOSIS WAS, HOW YOU CHARACTERIZE IT. HE WAS UNABLE, OR I THINK HE



CHARACTERIZED IT AS A PERSONALITY DISORDER.

MS. ABRAMSON: GENERALIZED ANXIETY DISORDER  
IS NOT A PERSONALITY DISORDER. IT'S AN AXIS 1  
ANXIETY DISORDER.

THE COURT: THAT HE WAS INCAPABLE OF DOING  
THESE THINGS; THAT HE WAS INCAPABLE OF LEAVING. THIS  
HAS NOTHING TO DO WITH SECTION 29 OF THE PENAL CODE.

MS. ABRAMSON: THIS HAS TO DO WITH WHETHER OR  
NOT THERE'S LEARNED HELPLESSNESS; NOTHING TO DO WITH  
REFLECTIVE THOUGHT. THESE THINGS DON'T PROVE WHAT  
WE'RE NOT CHALLENGING. WE NEVER SAID HE COULDN'T  
THINK. WE SAID HE COULDN'T MAKE EFFECTIVE DECISIONS  
BECAUSE OF THE LIFETIME OF BEING DOMINATED AND  
CONTROLLED AND HUMILIATED AND BELITTLED AND ABUSED  
AND ALL THE REST OF IT.

THE COURT: THE PEOPLE ARE TRYING TO REFUTE  
THAT.

MS. ABRAMSON: WHAT THEY'RE DOING IS OFFERING  
DR. DIETZ' OPINION OF WHAT HE SHOULD HAVE THOUGHT  
OF, AND THAT --

THE COURT: I HAVEN'T HEARD THAT. I HAVEN'T  
HEARD THEY'RE GOING TO GO INTO THINGS THAT GO BEYOND  
THE RECORD TO OPTIONS THAT DR. DIETZ COMES UP WITH.

IS THAT WHAT YOU'RE PROPOSING TO DO,  
MR. CONN?

MR. CONN: NO.

MS. ABRAMSON: THAT'S WHAT'S IN THIS --

MR. CONN: COUNSEL KEEPS OBJECTING TO THE  
NOTES. SHE HAS TO OBJECT TO QUESTIONS, NOT NOTES.  
UNTIL I POSE THE QUESTION, SHE CAN'T ASSUME I'M  
GOING TO FOLLOW SOME NOTES DR. DIETZ TOOK DOWN.

MS. ABRAMSON: AS THE COURT KNOWS, I'M  
ALREADY IN BIG TROUBLE DOWNTOWN, AND I WOULD LIKE TO  
BE ABLE TO LEAVE AND GO DOWNTOWN BEFORE JUDGE REAL  
PUTS ME IN JAIL, AND THAT REALLY SLOWS THINGS UP  
HERE.

I WILL GIVE COUNSEL A COPY OF THE NOTES  
OF THIS TOPIC. IF THERE ARE THINGS HE HAS NO  
INTEREST IN GOING INTO, FINE. IF THERE ARE THINGS  
HE DOES WANT TO ELICIT FROM THE WITNESS, THEN WE CAN  
LITIGATE IT, IF THE COURT WISHES, TOMORROW MORNING.

THE COURT: NOT SO MUCH THE ISSUE, BUT  
WHETHER OR NOT HE ANTICIPATES ELICITING THE RESPONSE  
AS OUTLINED BY DR. DIETZ.

MS. ABRAMSON: YES.

THE COURT: NOT SO MUCH THE AREA OF  
INQUIRY.

MS. ABRAMSON: THE ISSUE OF WHETHER THERE'S  
JUSTIFICATION FOR FIRING, I THINK, IS AN ISSUE  
BEYOND --

THE COURT: I DON'T ENVISION MR. CONN ASKING

SUCH A QUESTION.

MR. CONN: THAT'S CORRECT.

THE COURT: WE'LL BE IN RECESS UNTIL TOMORROW

AT 8:30.

MR. LEVIN: YOUR HONOR, I HAVE THE ORAL  
ARGUMENT IN THE 9TH CIRCUIT.

THE COURT: OKAY.

MR. LEVIN: I'M EXCUSED?

THE COURT: GOOD LUCK.

(AT 4:00 P.M. PROCEEDINGS WERE  
ADJOURNED UNTIL 8:30 A.M. THE  
FOLLOWING DAY.)

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