

1 VAN NUYS, CALIFORNIA; FRIDAY, FEBRUARY 9, 1996

2 9:40 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7 (MARY LU MURPHY, OFFICIAL REPORTER)

8

9 (THE FOLLOWING PROCEEDINGS WERE

10 HELD IN OPEN COURT, OUT OF THE

11 PRESENCE OF THE JURY:)

12

13 MS. ABRAMSON: YOUR HONOR, WE NEED TO CALL A

14 WITNESS OUT OF ORDER THIS MORNING, BECAUSE SHE'S

15 TRAVELING ALL THE TIME, AND THE ONLY DAY WE COULD

16 HAVE HER AVAILABLE WAS TODAY. HER NAME IS LINDA

17 ELLMAN, AND SHE IS THE FORMER EXECUTIVE PRODUCER OF

18 "HARD COPY," AND SHE IS HERE OUT OF ORDER TO

19 SURREBUT THE TESTIMONY OF CRAIG CIGNARELLI

20 CONCERNING THE NEGOTIATIONS THAT HE WAS INVOLVED IN

21 WITH MS. ELLMAN FOR COMPENSATION, THE REASONS WHY HE

22 WANTED TO MAKE A CHARITABLE CONTRIBUTION, THE AMOUNT

23 OF THAT CONTRIBUTION, AND THE TERMS OF HIS

24 CONTRACT.

25 WE ISSUED A SUBPOENA DUCES TECUM FOR THE

26 CONTRACT, AND A PERSONAL APPEARANCE SUBPOENA FOR

27 MS. ELLMAN LAST WEEK, AND SHE AND SENIOR COUNSEL FOR

28 PARAMOUNT PICTURES, DOMESTIC TELEVISION, ARE HERE IN

1 RESPONSE TO THOSE SUBPOENAS.

2       NOW, AN ISSUE HAS ARISEN OF SOME  
3 CONCERN. THERE IS CONCERN UNDER THE SHIELD LAW, AND  
4 OTHER PERHAPS APPROPRIATE RULES OF LAW, CONCERNING  
5 GOING BEYOND -- SINCE MR. CIGNARELLI TALKED ABOUT  
6 THOSE NEGOTIATIONS, PARAMOUNT RECOGNIZES THAT  
7 ANYTHING DISCUSSED BETWEEN "HARD COPY" AND  
8 MR. CIGNARELLI IS NOT SHIELDED, AND THEY ARE NOT  
9 TAKING THE POSITION THAT ANY PART OF THEIR  
10 NEGOTIATION OR DISCUSSIONS WITH HIM CONCERNING THAT  
11 PROGRAM, IN WHICH HE APPEARED IN JUNE OF '94, ARE  
12 SHIELDED.

13       HOWEVER, THEY HAVE LEGITIMATE CONCERNS,  
14 WE BELIEVE, AS AN ENTERTAINMENT MEDIA ORGANIZATION,  
15 THAT THEY'RE TESTIFYING ABOUT THEIR NEGOTIATIONS  
16 WITH MR. CIGNARELLI, AND THAT THE SPECIFICS NOT BE  
17 USED -- WELL, IN MY OPINION, NOT BE USED BY THE  
18 PROSECUTION AS AN EFFORT TO PREVENT THESE WITNESSES  
19 FROM TESTIFYING, BUT NOT BE USED TO TRY TO PROBE  
20 INTO ALL OF "HARD COPY'S" BUSINESS AFFAIRS, AND HOW  
21 MUCH THEY PAY OTHER PEOPLE FOR OTHER INFORMATION ON  
22 OTHER PROGRAMS, OR ANYTHING WHICH WOULD BE SHIELDED  
23 STILL, WHICH IS OUTSIDE THE SCOPE OF AN INQUIRY  
24 CONCERNING SPECIFICALLY INFORMATION TO REBUT WHAT

25 MR. CIGNARELLI TESTIFIED TO.

26 HE TESTIFIED AT VARIOUS TIMES IN HIS  
27 EXAMINATION, THAT HE WAS OFFERED FIFTY, THIRTY-FIVE  
28 FOR HIM; THEN HE TESTIFIED HE WAS OFFERED

49859

1 THIRTY-FIVE AND TURNED IT DOWN; AND THEN HE  
2 TESTIFIED THEY MENTIONED FIFTY; THEN HE TESTIFIED  
3 THEY SAID MAYBE IT WAS WORTH THIRTY-FIVE. AND SHE  
4 CAN INDICATE THAT EVERY ONE OF THOSE STATEMENTS IS  
5 FALSE.

6 MOREOVER, SHE CAN TESTIFY THAT HE WAS  
7 VERY SPECIFIC, THAT HE WANTED THE CONTRACT TO  
8 CONTAIN A CLAUSE THAT HE WAS GIVING MONEY TO CHARITY  
9 TO FURTHER HIS POLITICAL ASPIRATIONS AND HIS  
10 POLITICAL CAREER; AND, IN FACT, WHEN PARAMOUNT  
11 OFFERED TO MAKE THE DONATION DIRECTLY THEMSELVES, HE  
12 REFUSED, SAYING THAT HE NEEDED THE CREDIT OF MAKING  
13 THE DONATION, BECAUSE IT WOULD MAKE HIM LOOK GOOD  
14 FOR POLITICS.

15 SO I THINK NONE OF THOSE MATTERS REQUIRE  
16 GOING OUTSIDE THE SCOPE OF THE ACTUAL WORDS SPOKEN  
17 OR ACTIONS BY MR. CIGNARELLI.

18 WE ALSO HAVE SUBPOENAED THE CONTRACT,  
19 AND THE CUSTODIAN OF RECORDS OF THAT CONTRACT, THE

20 ATTORNEY ADAM BRAM, HAS BROUGHT IT, AND I THINK IT'S  
21 CRUCIAL THAT THE JURY KNOW THAT THAT CONTRACT --  
22 MR. CIGNARELLI IS STILL UNDER CONTRACT TO "HARD COPY".  
23 THEY HAVE EXCLUSIVE RIGHTS TO ANY FUTURE USE OF HIM,  
24 FOLLOWING A VERDICT IN THIS CASE; AND THAT THE TERMS  
25 OF THAT FUTURE USE ARE TO BE NEGOTIATED.

26 SO IT IS CLEAR THAT HE IS IN A POSITION  
27 RIGHT NOW TO MAKE MORE MONEY FROM THIS CASE.

28 AND THOSE ARE THE -- THEY HAVE ALSO

49860

1 BROUGHT A LETTER -- THEY WERE CONCERNED, SINCE  
2 MR. CIGNARELLI INSISTED ON MAKING THE CONTRIBUTION  
3 HIMSELF -- THAT THEY WERE PRODUCING AND FILMING A  
4 PROGRAM IN WHICH THEY WILL SAY ON THE AIR, AS PER  
5 THE TERMS OF THE CONTRACT, THAT MR. CIGNARELLI HAD  
6 MADE A, QUOTE, SIZEABLE CONTRIBUTION TO CHARITY --  
7 THEY WERE CONCERNED AS TO WHETHER OR NOT HE ACTUALLY  
8 DID.

9 SO THEY DEMANDED FROM HIM REPEATEDLY  
10 THAT HE SEND THEM A COPY OF A LETTER THAT HE TOLD  
11 THEM HE HAD RECEIVED FROM THE CHARITY THAT HE  
12 TESTIFIED TO ON THE WITNESS STAND; AND EVENTUALLY,  
13 HE FAXED THEM A LETTER THAT INDICATED THAT HE HAD  
14 MADE A CHARITABLE CONTRIBUTION. BUT IT WAS \$3,000,  
15 NOT THE \$5,000 HE TESTIFIED TO.

16 NOW, I CAN TELL THE COURT WE ALSO HAVE  
17 UNDER SUBPOENA, AND ARE PLANNING TO CALL, TWO PEOPLE  
18 FROM THE CHARITY. AND DETECTIVE ZOELLER HAS BEEN IN  
19 TOUCH WITH AT LEAST ONE OF THEM, WHO HAVE THE  
20 RECORDS OF THE CHARITY, A COPY OF WHICH WE'VE SEEN,  
21 INDICATING THAT ACCORDING TO THEIR COMPUTER RECORDS,  
22 AS WELL, THE CONTRIBUTION WAS \$3,000, AND THERE WAS  
23 NEVER A REQUEST THAT IT BE ANONYMOUS.

24 SO THAT'S THE STATE OF WHAT WE'RE  
25 OFFERING CONCERNING THE "HARD COPY" ISSUE TO IMPEACH  
26 MR. CIGNARELLI.

27 THE COURT: OKAY. WHAT IS THE PEOPLE'S  
28 POSITION ON THIS?

49861

1 MR. CONN: FIRST OF ALL, WE WOULD OBJECT TO  
2 THIS WITNESS BEING CALLED AT THIS TIME. WE HAVE A  
3 WITNESS ON THE STAND NOW, AND WE SHOULD BE PERMITTED  
4 TO COMPLETE OUR PRESENTATION OF THE TESTIMONY OF  
5 THIS WITNESS. AND WE WOULD STRONGLY OPPOSE COUNSEL  
6 INJECTING A WITNESS IN THE MIDDLE OF THIS WITNESS'  
7 TESTIMONY. IT SIMPLY IS NOT FAIR TO THE PEOPLE.

8 MOREOVER, IT IS CLEAR FROM THE  
9 REPRESENTATIONS THAT COUNSEL HAVE MADE AND FROM  
10 DISCUSSIONS THAT WE HAVE HAD WITH THE WITNESS THIS

11 MORNING, THAT THIS IS GOING TO TAKE CONSIDERABLY  
12 MORE ARGUMENT CONCERNING WHETHER OR NOT THIS WITNESS  
13 CAN EVEN TESTIFY; AND IF THIS WITNESS CAN TESTIFY,  
14 THE SCOPE OF CROSS-EXAMINATION. AND CERTAINLY THE  
15 TESTIMONY OF THIS WITNESS IS NOT GOING TO BE SHORT.  
16 IT'S GOING TO INVOLVE LENGTHY CROSS-EXAMINATION, AND  
17 IT'S UNFAIR TO TAKE THE PROSECUTION WITNESS OFF THE  
18 STAND FOR THE PURPOSE OF CREATING A CONTROVERSY NOW  
19 CONCERNING CRAIG CIGNARELLI AND HIS FINANCIAL  
20 AFFAIRS.

21       WHEN MS. NAJERA SPOKE TO THE WITNESS  
22 THIS MORNING -- IT'S OUR UNDERSTANDING THAT THE  
23 WITNESS DOES NOT RECALL THE DETAILS OF THE  
24 TRANSACTION; THAT SHE WOULD BE TESTIFYING TO WHAT  
25 SHE WOULD HAVE DONE, RATHER THAN WHAT SHE ACTUALLY  
26 DID IN THIS SPECIFIC CASE.

27       BUT, ON THE OTHER HAND, SHE DOESN'T WANT  
28 TO TESTIFY TO WHAT SHE NORMALLY WOULD HAVE DONE, TO

49862

1 THE EXTENT THAT GETS INTO CONSIDERATION OF THE WAY  
2 THEY NORMALLY HANDLE AFFAIRS SUCH AS THIS. WELL,  
3 THEY CAN'T HAVE IT BOTH WAYS.

4       THE COURT: LET ME STOP YOU HERE.

5       WHY IS THIS WITNESS HERE TODAY, RATHER  
6 THAN DURING THE SURREBUTTAL?

7 MS. ABRAMSON: WELL, SHE IS A SURREBUTTAL  
8 WITNESS THAT WE'RE REQUESTING TO CALL OUT OF ORDER.  
9 IT'S OUR UNDERSTANDING SHE'S NOW THE EXECUTIVE  
10 PRODUCER OF ANOTHER TELEVISION SHOW, AND SHE'S  
11 TRAVELING ALL THE TIME. WE WERE TOLD TODAY WAS THE  
12 DAY SHE WAS AVAILABLE. WE RECEIVED THAT INFORMATION  
13 FROM MR. BRAM, AND HE ACCEPTED PROCESS FOR HER. WE  
14 WERE TOLD THIS IS THE DAY --

15 THE COURT: NOW THAT SHE'S HERE, IS THIS THE  
16 ONLY DAY IN THE NEXT WEEK OR 10 DAYS THAT SHE'S  
17 AVAILABLE? WHEN I SAY "AVAILABLE," I MEAN HERE --

18 MS. ABRAMSON: IN LOS ANGELES.

19 THE COURT: -- IN THE COUNTY OF LOS ANGELES.

20 MS. ELLMAN: I'M SUPPOSED TO BE TRAVELING.  
21 I'M SUPPOSED TO BE DOING SALES ON THE TELEVISION  
22 SHOW.

23 THE COURT: I'M GOING TO ORDER HER BACK FOR A  
24 TIME NEXT WEEK.

25 MS. ABRAMSON: PICK A DAY THAT'S BEST. I  
26 KNOW. I'M SORRY.

27 WE DID INDICATE THIS SEVERAL DAYS AGO.

28 THE COURT: YES. BUT AT THAT TIME WE HAD NOT

2 HAVE THIS WITNESS ON THE WITNESS STAND. AND IT WAS  
3 EXPECTED, PERHAPS, THAT WE WOULD HAVE BEEN FINISHED  
4 WITH HIM BY NOW.

5 SO JUST PICK A DAY. WE LOST NOW AN HOUR  
6 OR MORE THIS MORNING BECAUSE OF THIS.

7 MS. ABRAMSON: NO. IT WASN'T JUST THIS.

8 MR. CONN WAS OUTSIDE WITH THE CURRENT WITNESS ALSO  
9 DURING MUCH OF THAT TIME, YOUR HONOR, PREPARING.

10 THE COURT: OKAY. WELL, I WAS TOLD THAT THE  
11 DELAY WAS DUE TO THIS WITNESS.

12 MS. ABRAMSON: CLOSE, BUT --

13 THE COURT: JUST COME ON. LET'S GET A DATE.

14 MS. ELLMAN: NEXT WEDNESDAY OR THURSDAY.

15 THE COURT: YOU'RE ORDERED BACK NEXT  
16 WEDNESDAY, WHICH IS THE 21ST -- I'M SORRY -- THE  
17 14TH.

18 MS. ABRAMSON: YOU SCARED ME.

19 THE COURT: THE 14TH AT 8:30 IN THE MORNING.

20 MR. BRAM: ADAM BRAM, FOR PARAMOUNT.

21 IS THERE GOING TO BE SOME DETERMINATION  
22 BEFOREHAND WITH RESPECT TO THE PROPER SCOPE, SO WE  
23 CAN DECIDE WHETHER WE NEED TO MAKE ANY MORE  
24 MOTIONS?

25 THE COURT: DEPENDING UPON WHAT THE LAWYERS  
26 TELL ME. IF THEY HAVE ALL THE INFORMATION THAT I  
27 NEED TO MAKE A DETERMINATION ON THAT SUBJECT, THEN  
28 IT WILL BE RESOLVED BEFORE THEN. IT MIGHT BE THAT



1 WE'LL NEED MORE INFORMATION AND INPUT FROM YOU OR  
2 YOUR CLIENT BEFORE THAT DETERMINATION CAN BE MADE.

3 MR. BRAM: THANK YOU, YOUR HONOR.

4 THE COURT: WE NEED HER FULL NAME.

5 MS. ABRAMSON: LINDA ELLMAN, E-L-L-M-A-N.

6 THE REPORTER: AND COUNSEL'S NAME?

7 MR. BRAM: ADAM BRAM, B-R-A-M.

8 THE COURT: LET'S GET THE JURY OVER HERE, AND  
9 WE'LL START UP WITH THE WITNESS.

10 (A RECESS WAS TAKEN FROM

11 9:50 A.M. TO 10:00 A.M.)

12

13 THE COURT: OKAY. EVERYBODY IS PRESENT.

14 AND WE'LL HAVE THE JURY OUT.

15 (THE JURY ENTERED THE COURTROOM

16 AND THE FOLLOWING PROCEEDINGS

17 WERE HELD:)

18

19 THE COURT: THE JURY IS IN COURT.

20 GOOD MORNING, LADIES AND GENTLEMEN.

21 WE'RE READY TO RESUME WITH THE TRIAL.

22 THE WITNESS IS ON THE WITNESS STAND.

23

24 PARK DIETZ,

25 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE

26 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

27

28 THE COURT: WOULD YOU STATE YOUR FULL NAME

49865

1 FOR THE RECORD.

2 THE WITNESS: PARK DIETZ, D-I-E-T-Z.

3 THE COURT: I'LL REMIND YOU YOU'RE STILL

4 UNDER OATH.

5 THE COURT: YOU MAY CONTINUE YOUR EXAMINATION.

6 MR. CONN: THANK YOU.

7

8 DIRECT EXAMINATION (CONTINUED)

9 BY MR. CONN:

10 Q DR. DIETZ, YESTERDAY WE WERE DISCUSSING

11 WHAT'S SOMETIMES CALLED "FIGHT OR FLIGHT" RESPONSE,

12 AND I BELIEVE YOU SAID IN RESPONSE TO A QUESTION

13 CONCERNING THE FIGHT OR FLIGHT RESPONSE THAT

14 SOMETIMES PEOPLE WHO ARE BEHAVING IN THAT PARTICULAR

15 MODE EXERCISE POOR JUDGMENT; IS THAT CORRECT?

16 A YES.

17 Q NOW, BY THAT, DID YOU MEAN THAT THE

18 FIGHT OR FLIGHT RESPONSE MAKES PEOPLE DELUSIONAL?

19 A CERTAINLY NOT.

20 Q DID YOU MEAN BY THAT THAT IT CAUSES

21 PEOPLE TO LOSE TOUCH WITH REALITY?

22 A NO, IT DOES NOT DO THAT.

23 Q DID YOU MEAN BY THAT THAT IT RENDERS

24 PEOPLE INCAPABLE OF EXERCISING RATIONAL THOUGHT?

25 A NO, IT DOES NOT DO THAT.

26 Q DID YOU MEAN BY THAT THAT IT MAKES THEM

27 INCAPABLE OF EXERCISING CHOICES?

28 A NO, IT DOES NOT DO THAT.

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1 Q AND DID YOU MEAN BY THAT THAT IT MAKES

2 THEM INCAPABLE OF REFRAINING FROM CRIMINAL VIOLENCE?

3 A CERTAINLY NOT.

4 Q NOW, IN REGARD TO WHAT YOU DESCRIBED

5 AS -- CALLED A PANIC STATE, YOU SAID THAT PEOPLE WHO

6 ARE IN A PANIC STATE HAVE A GENERAL TENDENCY TO FLEE

7 DANGER RATHER THAN RUNNING TOWARD DANGER. AND I

8 BELIEVE YOU MENTIONED A COUPLE OF EXCEPTIONS TO THAT

9 RULE.

10 ONE YOU SAID WAS WHERE THERE IS AN

11 OVER-REHEARSED ACTION THAT MIGHT CAUSE A PERSON TO

12 RUN TOWARD THE DANGER INSTEAD OF AWAY FROM THE

13 DANGER.

14 AND WHAT DID YOU MEAN BY THAT?

15 MS. ABRAMSON: YOUR HONOR, I'M GOING TO

16 OBJECT. THIS WAS ASKED AND ANSWERED YESTERDAY.

17 THE COURT: OVERRULED.

18 YOU MAY ANSWER THE QUESTION.

19 THE WITNESS: A REHEARSED BEHAVIOR IS A  
20 BEHAVIOR THAT ONE ENGAGES IN MANY TIMES IN ORDER TO  
21 BE ABLE TO PREPARE ONESELF.

22 SO, FOR EXAMPLE, AT THE F.B.I. ACADEMY  
23 THERE'S AN AREA KNOWN AS "HOGAN'S ALLEY" IN WHICH  
24 F.B.I. AGENTS, THE SWAT TEAMS, THE HOSTAGE RESCUE  
25 TEAMS TRAIN FOR DANGEROUS SITUATIONS. AND BY  
26 REPEATEDLY REHEARSING REPELLING IN THROUGH WINDOWS  
27 TO RESCUE HOSTAGES FROM TERRORISTS, AND TO TAKE DOWN  
28 THE TERRORISTS, THEY DEVELOP, NOT JUST THE SKILLS,

49867

1 BUT ALSO AN OVER-LEARNED BEHAVIOR, SO THAT IF IT  
2 BECOMES NECESSARY TO DO THAT, THEY CAN, WITHOUT  
3 HAVING TO THINK ABOUT EVERY STEP, BE ABLE TO RUSH  
4 TOWARD DANGER AND CARRY THAT OUT, REGARDLESS OF HOW  
5 ANXIOUS THEY MAY FEEL.

6 FIREFIGHTERS HAVE SIMILAR TRAINING.

7 BEHAVIORS THAT PEOPLE HAVE REPEATED  
8 AGAIN AND AGAIN CAN BE DONE DESPITE BEING IN A PANIC  
9 ATTACK, AND CAN BE DONE WITHOUT HAVING TO THINK  
10 THROUGH EVERY STEP.

11 Q NOW, BASED UPON THE STATEMENTS THAT WERE  
12 GIVEN TO YOU BY ERIK MENENDEZ -- AND ONCE AGAIN,

13 JUST ASSUMING THAT HIS ACCOUNT THAT HE GAVE YOU AND  
14 TO WHICH YOU TESTIFIED HERE IN COURT, IS THE  
15 TRUTHFUL ACCOUNT OF WHAT OCCURRED ON SUNDAY, AUGUST  
16 THE 20TH OF 1989 -- DID YOU FIND EVIDENCE THAT IS  
17 INCONSISTENT WITH -- OR WAS THERE ANY EVIDENCE THAT  
18 THE DEFENDANT, ERIK MENENDEZ, WAS ENGAGED IN AN  
19 OVER-REHEARSED BEHAVIOR AT THE TIME OF THE  
20 COMMISSION OF THIS CRIME?

21 MS. ABRAMSON: OBJECTION UNDER SECTION 29,  
22 YOUR HONOR.

23 THE COURT: REPHRASE THE QUESTION.

24 MR. CONN: YES.

25 Q IS THERE ANY EVIDENCE THAT WAS GIVEN TO  
26 YOU BY THE DEFENDANT, EITHER IN HIS ACCOUNT OR  
27 THROUGH HIS TESTIMONY, THAT SUGGESTS TO YOU THAT HIS  
28 BEHAVIOR -- WELL, LET ME ASK YOU THIS.

49868

1 IN HIS ACCOUNT OF WHAT OCCURRED ON  
2 AUGUST THE 20TH OF 1989, IS THAT ACCOUNT CONSISTENT  
3 OR INCONSISTENT WITH A FINDING THAT THERE WAS  
4 OVER-REHEARSED BEHAVIOR IN THIS CASE?

5 A INCONSISTENT.

6 Q YOU ALSO INDICATED THAT A SECOND  
7 POSSIBLE EXCEPTION TO THE GENERAL RULE THAT PEOPLE

8 WHO ARE IN DANGER FLEE THE DANGER, RATHER THAN RUN  
9 TOWARDS THE DANGER -- I BELIEVE YOU SAID THAT A  
10 PERSON WHO WAS IN A PANIC STATE MAY OVERCOME THE  
11 PANIC STATE AND RUN TOWARD THE DANGER.

12 IN THIS PARTICULAR CASE, BASED UPON THE  
13 EVIDENCE GIVEN TO YOU FROM ERIK MENENDEZ, HIS  
14 TESTIMONY HERE IN COURT, IS THE BEHAVIOR OF THE  
15 DEFENDANT CONSISTENT OR INCONSISTENT WITH A PERSON  
16 WHO WAS OVERCOMING A PANIC STATE?

17 A CONSISTENT.

18 Q NOW, I WOULD LIKE TO ASK YOU SOME  
19 QUESTIONS, SOME ADDITIONAL QUESTIONS CONCERNING THE  
20 BIOLOGICAL EVIDENCE CONCERNING POST-TRAUMATIC STRESS  
21 DISORDER, EVEN THOUGH YOU DID NOT COME UP WITH THAT,  
22 OR YOU DID NOT DIAGNOSE THE DEFENDANT AS SUFFERING  
23 FROM POST-TRAUMATIC STRESS DISORDER.

24 IS THERE BIOLOGICAL EVIDENCE THAT  
25 POST-TRAUMATIC STRESS DISORDER CAN CAUSE AN INCREASE  
26 IN CERTAIN RESPONSES, SUCH AS THE HEART RATE OR  
27 SWEATING?

28 A YES. ANY ANXIETY CAN.

49869

1 Q OKAY. IS THERE ANY BIOLOGICAL EVIDENCE  
2 THAT POST-TRAUMATIC STRESS DISORDER CAN CAUSE A  
3 CHEMICAL CHANGE IN THE BRAIN?

4 A WELL, YES AND NO. IT WOULD BE

5 MISLEADING TO THINK OF THE --

6 MS. ABRAMSON: I'M GOING TO OBJECT TO

7 ANYTHING AFTER "YES AND NO," YOUR HONOR.

8 THE COURT: YOU CAN EXPLAIN YOUR ANSWER.

9 THE WITNESS: THANK YOU.

10 IT WOULD BE MISLEADING TO THINK THE

11 BRAIN CHANGES BECAUSE OF POST-TRAUMATIC STRESS

12 DISORDER. THERE'S BEEN A VERY LONG SEARCH FOR

13 EVIDENCE OF THAT, THAT SOMEHOW THE BRAIN CHANGES IN

14 THIS DISORDER, FOR AT LEAST A CENTURY. THAT'S BEEN

15 A HYPOTHESIS, A THEORY THAT PEOPLE HAVE TESTED, AND

16 THERE IS SOME EVIDENCE THAT'S BEEN ACCUMULATED

17 SUGGESTING THAT THE FUNCTION OF THE NERVOUS SYSTEM,

18 INCLUDING THE BRAIN, MAY HAVE SOME CHANGES WITH

19 POST-TRAUMATIC STRESS DISORDER. BUT IT'S NOT THE

20 BRAIN CHANGING IN ITS STRUCTURE, AS FAR AS WE KNOW.

21 AND THE UNDERSTANDING OF WHAT'S HAPPENING WITH SUCH

22 CHANGES IS VERY LIMITED RIGHT NOW.

23 Q BY MR. CONN: IS THE KNOWLEDGE

24 CONCERNING HOW POST-TRAUMATIC STRESS DISORDER MAY

25 CAUSE A CHANGE IN THE LEVEL OF NEUROTRANSMITTERS

26 SUFFICIENT TO DRAW CONCLUSIONS REGARDING HOW THAT

27 CHEMICAL CHANGE MIGHT AFFECT BEHAVIOR?

28 MS. ABRAMSON: I'M GOING TO OBJECT TO THE

1 FORM OF THE QUESTION, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: NOT AT ALL. THE EVIDENCE IS  
4 FAR TOO WEAK TO BE ABLE TO MAKE THAT KIND OF  
5 FINDING.

6 Q BY MR. CONN: AND IS THERE ANY EVIDENCE  
7 THAT -- IS THERE ANY BIOLOGICAL EVIDENCE THAT  
8 POST-TRAUMATIC STRESS DISORDER IMPAIRS BRAIN  
9 FUNCTIONING?

10 A IMPAIRS? CERTAINLY NOT, NO.

11 Q IS THERE ANY BIOLOGICAL EVIDENCE THAT  
12 POST-TRAUMATIC STRESS DISORDER IMPAIRS THE ABILITY  
13 OF THE PERSON TO CONTROL HIS IMPULSES?

14 A NOT AT ALL.

15 Q AND IS THERE ANY BIOLOGICAL EVIDENCE  
16 THAT POST-TRAUMATIC STRESS DISORDER CAUSES PEOPLE TO  
17 BEHAVE IN A PARTICULAR TYPE OF WAY IN A PARTICULAR  
18 TYPE OF SITUATION?

19 A NO.

20 Q AND HAS THE DEFENDANT, TO YOUR  
21 KNOWLEDGE, ERIK MENENDEZ, EVER BEEN TESTED FOR  
22 NEUROBIOLOGICAL OR NEUROCHEMICAL IMBALANCES IN HIS  
23 BRAIN?

24 MS. ABRAMSON: OBJECTION, YOUR HONOR. BEYOND  
25 THIS WITNESS' KNOWLEDGE.

26 THE COURT: WELL, HE'S BEING ASKED WHETHER HE  
27 IS AWARE OF ANY. SO THAT WOULD BE THE EXTENT OF HIS



49871

1 SO OVERRULED.

2 MS. ABRAMSON: IF HE'S AWARE OF ANY.

3 THE COURT: YES. THAT'S WHAT HE'S BEEN  
4 ASKED.

5 THE WITNESS: NOT ONLY AM I NOT AWARE OF ANY,  
6 BUT IT'S IMPOSSIBLE TO TEST AN INDIVIDUAL FOR  
7 NEUROCHEMICAL IMBALANCES IN THE BRAIN RELATING TO  
8 POST-TRAUMATIC STRESS DISORDER.

9 MS. ABRAMSON: MOVE TO STRIKE EVERYTHING  
10 AFTER "NOT ONLY AM I NOT AWARE OF..."

11 THE COURT: OVERRULED.

12 Q BY MR. CONN: AND TO YOUR KNOWLEDGE, IS  
13 THERE -- IS THERE ANY BIOLOGICAL EVIDENCE WHICH CAN  
14 DRAW A CORRELATION BETWEEN THE SEVERITY OR LEVEL OF  
15 POST-TRAUMATIC STRESS DISORDER AND THE LEVEL OF  
16 IMPAIRMENT FOR FUNCTIONING?

17 A THERE IS NO CORRELATION. THERE HAVE  
18 BEEN EFFORTS TO LOOK, AND THERE'S NOT A CORRELATION  
19 BETWEEN THE SEVERITY OF SYMPTOMS IN A PERSON WHO HAS  
20 P.T.S.D. AND HOW WELL THEY FUNCTION IN OTHER AREAS  
21 OF THEIR LIFE.

22 THERE ARE EXAMPLES OF PEOPLE WHO ARE

23 VERY SYMPTOMATIC, QUITE ANXIOUS, HAVING TERRIBLE  
24 HYPERVIGILANCE AND TERRIBLE INTRUSIVE THOUGHTS, AND  
25 TERRIBLE NIGHTMARES, WHO ARE STILL RUNNING  
26 BUSINESSES AND FUNCTIONING AT A HIGH LEVEL, AND MOST  
27 ARE COMPLETELY MORAL AND UPRIGHT CITIZENS.

28 Q DR. DIETZ, BASED UPON YOUR KNOWLEDGE OF

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1 HYPERVIGILANCE AND THE EFFECT OF HYPERVIGILANCE ON A  
2 PERSON, DO YOU BELIEVE THAT IT'S POSSIBLE TO LOOK AT  
3 A DEFENDANT, SITTING QUIETLY IN THE COURTROOM, AND  
4 DETERMINE JUST FROM LOOKING AT HIM SITTING IN THE  
5 COURTROOM, WHETHER OR NOT HE IS HYPERVIGILANT AT A  
6 PARTICULAR POINT IN TIME?

7 A NO. THAT'S NOT POSSIBLE.

8 Q NOW, DR. DIETZ, IS AN AWARENESS OR A  
9 RECOGNITION THAT IN ORDER TO MAKE A GUN EFFECTIVE  
10 ONE MUST FIRST OBTAIN AMMUNITION AND LOAD THE GUN AN  
11 EXAMPLE OF REFLECTIVE THOUGHT?

12 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. I'M  
13 GOING TO OBJECT TO THE FORM OF THE QUESTION.

14 THE COURT: PHOTOGRAPHS YOU CAN REPHRASE IT.

15 Q BY MR. CONN: ARE YOU AWARE OF TESTIMONY  
16 IN THIS CASE THAT ERIK MENENDEZ INDICATED THAT HE  
17 WANTED TO GET THE GUN ON SUNDAY, AUGUST THE 20TH OF  
18 1989 -- HE WANTED TO GET THE GUN FROM HIS ROOM AND

19 THAT HE THEN WENT OUT TO HIS CAR, UNLOADED HIS GUN,  
20 AND RELOADED THE GUN, PRIOR TO SHOOTING HIS PARENTS?

21 A YES.

22 Q NOW, IN YOUR OPINION, IS THAT  
23 RECOGNITION OR AWARENESS THAT SUCH ACTION IS  
24 NECESSARY, CONSISTENT WITH A PERSON ON AUTOMATIC  
25 PILOT?

26 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
27 OBJECT TO THE FORM OF THE QUESTION, BECAUSE IT  
28 ASSUMES CERTAIN FACTS THAT VIOLATE SECTION 29.

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1 THE COURT: OVERRULED.

2 THE WITNESS: THAT AWARENESS IS NOT  
3 CONSISTENT WITH BEING ON AUTOMATIC PILOT.

4 Q BY MR. CONN: IS THAT, IN YOUR OPINION,  
5 CONSISTENT WITH REFLECTIVE THOUGHT?

6 MS. ABRAMSON: AGAIN, YOUR HONOR, I'M GOING  
7 TO OBJECT.

8 THE COURT: OVERRUELD.

9 THE WITNESS: IT IS CONSISTENT WITH  
10 REFLECTIVE THOUGHT. I SHOULD ADD, MY OPINION  
11 ABOUT --

12 MS. ABRAMSON: I'M GOING TO OBJECT TO ANY  
13 ADDITIONAL --

14 THE COURT: ALL RIGHT. YOU'VE ANSWERED THE  
15 QUESTION.

16 MS. ABRAMSON: THANK YOU.

17 Q BY MR. CONN: IS A CONSIDERATION -- ARE  
18 YOU AWARE OF THE TESTIMONY OF THE DEFENDANT THAT HE  
19 CONSIDERED BARRICADING HIMSELF IN HIS ROOM AND HE  
20 REJECTED THAT ON --

21 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
22 FORM OF THE QUESTION. ASSUMES FACTS NOT IN  
23 EVIDENCE.

24 THE COURT: WHY DON'T YOU REPHRASE THE  
25 QUESTION.

26 Q BY MR. CONN: ARE YOU AWARE OF THE  
27 TESTIMONY OF THE DEFENDANT THAT HE CONSIDERED  
28 BARRICADING HIMSELF IN HIS ROOM, BUT HE DID NOT DO

49874

1 SO?

2 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT  
3 ASSUMES FACTS NOT IN EVIDENCE. THAT WAS NOT THE  
4 TESTIMONY.

5 THE COURT: OVERRULED.

6 THE WITNESS: I'M AWARE OF HIS SAYING THAT HE  
7 CONSIDERED LOCKING THE DOOR, LOCKING HIMSELF IN HIS  
8 ROOM.

9 Q BY MR. CONN: OKAY. AND IN YOUR

10 OPINION, IS THE REJECTION OF THAT OPTION CONSISTENT  
11 OR INCONSISTENT WITH A PERSON WHO'S ON AUTOMATIC  
12 PILOT?

13 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.  
14 THAT MISSTATES THE TESTIMONY CONCERNING REJECTION OF  
15 OPTION.

16 THE COURT: OVERRULED.

17 THE WITNESS: THE TESTIMONY, AS I RECALL IT,  
18 WAS INCONSISTENT WITH THE IDEA OF ERIK MENENDEZ  
19 BEING ON AUTOMATIC PILOT.

20 Q BY MR. CONN: AND WOULD -- IN YOUR  
21 OPINION, WOULD CONSIDERATION AND REJECTION OF THE  
22 OPTION OF LOCKING THE DOOR AND REMAINING IN THE ROOM  
23 BE CONSISTENT OR INCONSISTENT WITH REFLECTIVE  
24 THOUGHT?

25 A CONSISTENT WITH REFLECTIVE THOUGHT.

26 Q AND ARE YOU AWARE OF THE TESTIMONY OF  
27 THE DEFENDANT, ERIK MENENDEZ, THAT HE LOOKED FOR A  
28 BOX OF AMMUNITION IN HIS CAR. HE FOUND THE

49875

1 AMMUNITION. HE OPENED IT UP. HE UNLOADED HIS  
2 SHOTGUN, AND HE RELOADED THE SHOTGUN PRIOR TO GOING  
3 INTO HIS HOME?

4 A YES.

5 Q IN YOUR OPINION, IS THAT ACTION

6 CONSISTENT OR INCONSISTENT WITH A PERSON WHO'S ON

7 AUTOMATIC PILOT?

8 A INCONSISTENT WITH AUTOMATIC PILOT AND A

9 PERSON WHO HASN'T REHEARSED THAT BEHAVIOR.

10 Q AND IS THAT BEHAVIOR THAT I'VE JUST

11 DESCRIBED CONSISTENT OR INCONSISTENT WITH REFLECTIVE

12 THOUGHT?

13 A CONSISTENT WITH REFLECTIVE THOUGHT.

14 Q AND ARE YOU AWARE OF THE TESTIMONY OF

15 THE DEFENDANT THAT HE THOUGHT THAT IF HIS BROTHER

16 DID NOT COME OUT TO THE CAR, THAT HE WOULD THEN HAVE

17 TO GO INTO THE HOUSE ALONE?

18 A HE TOLD ME THAT. I DON'T RECALL IT FROM

19 HIS TESTIMONY.

20 Q AND IS THAT, IN YOUR OPINION, CONSISTENT

21 OR INCONSISTENT WITH REFLECTIVE THOUGHT?

22 A CONSISTENT WITH REFLECTIVE THOUGHT.

23 Q AND ARE YOU AWARE OF THE TESTIMONY OF

24 THE DEFENDANT, THAT FOLLOWING THE SHOOTING OF HIS

25 PARENTS, HE WENT OUTSIDE, RETRIEVED AMMUNITION,

26 HANDED AMMUNITION TO HIS BROTHER, AND THAT HIS

27 BROTHER THEN WENT BACK INSIDE THE HOME AND FIRED AN

28 ADDITIONAL ROUND AT HIS PARENTS?

1       A    YES, I AM.

2       Q    AND IN YOUR OPINION, WOULD THAT BEHAVIOR  
3 BE CONSISTENT OR INCONSISTENT WITH A PERSON ON  
4 AUTOMATIC PILOT?

5       MS. ABRAMSON: OBJECTION, YOUR HONOR.  
6 ENCOMPASSES THE BEHAVIOR OF PEOPLE DR. DIETZ HAS  
7 NEVER MET.

8       THE COURT: OKAY. PERHAPS YOU CAN REPHRASE  
9 THAT QUESTION.

10      MR. CONN: YES.

11      Q    IN REGARD TO THE TESTIMONY OF THE  
12 DEFENDANT, THAT HE WENT OUT TO HIS CAR FOLLOWING THE  
13 SHOOTING AND HE TOOK AN AMMUNITION (SIC) OUT FROM  
14 HIS CAR, AND HE HANDED IT TO ANOTHER PERSON, WOULD  
15 THE -- IS IT YOUR OPINION -- WOULD THE BEHAVIOR OF  
16 ERIK MENENDEZ IN TAKING THAT ACTION BE CONSISTENT OR  
17 INCONSISTENT WITH AUTOMATIC PILOT?

18      A    INCONSISTENT WITH AUTOMATIC PILOT FOR A  
19 PERSON WHO HASN'T REHEARSED THAT BEHAVIOR.

20      Q    AND WOULD THAT -- IS THAT BEHAVIOR  
21 CONSISTENT OR INCONSISTENT WITH REFLECTIVE THOUGHT?

22      A    CONSISTENT WITH REFLECTIVE THOUGHT.

23      Q    OKAY. NOW, I'M GOING TO GIVE YOU THIS  
24 HYPOTHETICAL.

25            ASSUMING THAT A PERSON WENT FIRST TO HIS  
26 ROOM FOR PURPOSES OF GETTING A GUN; AND HAVING  
27 GOTTEN THAT GUN, WENT OUTSIDE TO HIS CAR AND  
28 UNLOADED THAT GUN; AND THEN RELOADED THAT GUN WITH A

1 DIFFERENT TYPE OF AMMUNITION.

2 ASSUME FURTHER THAT THAT PERSON

3 CONSIDERED LOCKING THE DOOR BEFORE LEAVING AND DID

4 NOT DO SO.

5 ASSUME FURTHER THAT THE PERSON WITH THE

6 WEAPON THEN WENT BACK INTO THE HOME AND FIRED

7 APPROXIMATELY FIVE SHOTS IN THE DIRECTION OF TWO

8 PEOPLE; THAT MOST, IF NOT ALL OF THE SHOTS, STRUCK

9 THE PERSONS BEING SHOT AT.

10 AND ASSUME FURTHER THAT THIS PERSON THEN

11 WENT BACK OUTSIDE TO A CAR AND OBTAINED ADDITIONAL

12 INFORMATION -- ADDITIONAL AMMUNITION, AND HANDED

13 THAT AMMUNITION TO ANOTHER PERSON.

14 IN YOUR OPINION, WOULD THIS PERSON ALSO

15 HAVE BEEN ABLE TO CONSIDER THE OPTION OF DRIVING

16 AWAY AND AVOIDING THE ALLEGEDLY DANGEROUS SITUATION

17 ALL TOGETHER?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S

19 AN IMPROPER HYPOTHETICAL. IT ASSUMES FACTS NOT IN

20 EVIDENCE, AND IT CALLS FOR AN ULTIMATE OPINION

21 THAT'S BEYOND THIS WITNESS' ABILITY AS AN EXPERT TO

22 GIVE.

23 THE COURT: PERHAPS.

24 MS. ABRAMSON: AND I'D LIKE TO BE HEARD,



25 SPECIFICALLY, ON THE IMPROPER HYPOTHETICAL ASPECT.

26 THE COURT: OKAY. SURE. WE'LL DISCUSS THAT.

27 IS THIS YOUR LAST AREA OF INQUIRY?

28 MR. CONN: YES, YOUR HONOR, IT IS.

49878

1 THE COURT: OKAY. PERHAPS WE CAN DO THAT,

2 AND I'LL IMPOSE UPON THE JURY TO GO IN THE JURY ROOM

3 JUST FOR A FEW MOMENTS, AND THE LAWYERS AND I WILL

4 TALK, AND THEN WE'LL HAVE YOU COME OUT.

5 (THE JURY ENTERED THE JURY ROOM

6 AND THE FOLLOWING PROCEEDINGS

7 WERE HELD:)

8

9 THE COURT: OKAY.

10 MS. ABRAMSON: FIRST OF ALL, YOUR HONOR,

11 REPEATEDLY, MR. CONN HAS ASKED THE QUESTION OF -- MY

12 CLIENT TESTIFIED THAT AN IMAGE FLASHED THROUGH HIS

13 MIND OF CLOSING THE DOOR, AND IT NEVER OCCURRED TO

14 HIM AGAIN; AND HE NEVER TESTIFIED HE THOUGHT ABOUT

15 IT OR WEIGHED IT OR REJECTED IT OR DISCARDED IT.

16 HE'S NOW ASKED SEVERAL QUESTIONS CONCERNING LOCKING

17 THE DOOR, AND IF HE REJECTED THAT OPTION, AND

18 THERE'S NO SUCH TESTIMONY IN THIS CASE.

19 IN ADDITION, MR. CONN IS NOW TRYING TO

20 INJECT INTO A HYPOTHETICAL AN AREA WHICH I DON'T  
21 BELIEVE THIS WITNESS SHOULD BE PERMITTED TO COMMENT  
22 ON AT ALL, WHICH IS -- AND MISSTATES A MONTH'S WORTH  
23 OF TESTIMONY -- TO THE EFFECT THAT MOST, IF NOT ALL  
24 OF HIS FIVE SHOTS HIT, STRUCK -- WE DON'T KNOW WHOSE  
25 SHOTS HIT WHAT.

26       AND THAT PHRASEOLOGY, I THINK, IS -- THE  
27 FACT THAT SHOTS HIT, MOREOVER, CAN'T POSSIBLY  
28 INDICATE IN A LEGITIMATE WAY -- LEGITIMATE IN THE

49879

1 SENSE OF THE KIND OF EVIDENCE THAT A WITNESS SHOULD  
2 BE ENTITLED TO TALK ABOUT -- WHAT THE PERSON IS  
3 THINKING. WE WENT 'ROUND THIS MOUNTAIN A LITTLE BIT  
4 WITH ROGER MC CARTHY IN THE 801 HEARING CONCERNING  
5 HIS TESTIMONY. NEITHER HE, NOR DR. DIETZ IS  
6 QUALIFIED TO SAY WHETHER OR NOT AT THE TIME THAT THE  
7 SHOTS HIT, WHAT IS IN THE MIND OF A PERSON PULLING A  
8 TRIGGER, UNLESS YOU HAVE A VERY SPECIFIC -- I CAN  
9 THINK OF SOME EXCEPTIONS -- BUT IN THIS CASE, WHEN  
10 YOU'VE GOT GUNS GOING OFF IN THIS ROOM AND THIS MANY  
11 ROUNDS BEING FIRED, I BELIEVE IT'S INAPPROPRIATE TO  
12 ASK THIS WITNESS TO MAKE A COMMENT THAT WOULD  
13 INDICATE -- BECAUSE ALL THESE THINGS HAVE BEEN  
14 LUMPED TOGETHER NOW -- THAT AT THAT PARTICULAR TIME  
15 A PERSON HAS A CERTAIN CONSCIOUSNESS. AND I THINK

16 THIS WITNESS MIGHT BE THE FIRST TO ADMIT, IF ASKED,  
17 THAT YOU CAN'T NECESSARILY TELL CONSCIOUSNESS JUST  
18 BY LOOKING AT BEHAVIOR, AS HE HAS PREVIOUSLY  
19 TESTIFIED. SO I WOULD OBJECT TO THAT.

20 AND MOREOVER, I WOULD OBJECT TO THE  
21 FINAL QUESTION AS IRRELEVANT AS TO WHETHER OR NOT  
22 THAT PERSON COULD OR COULD NOT CONSIDER DRIVING  
23 AWAY; AND BEYOND THE SCOPE OF THIS EXPERT'S OPINION  
24 AS TO A MIND READ (SIC) TO ANSWER THAT QUESTION.

25 MOREOVER, I WOULD POINT OUT THAT THIS  
26 ENTIRE LINE OF QUESTIONING IS IRRELEVANT, BECAUSE  
27 UNDER THE LAW THAT'S IN OPERATION IN THIS CASE WE  
28 ARE NOT PUTTING FORTH A DIMINISHED ACTUALITY

49880

1 DEFENSE. WE ARE NOT PUTTING FORTH AN INSANITY  
2 DEFENSE, AND WE ARE NOT PUTTING FORTH AN  
3 UNCONSCIOUSNESS DEFENSE; AND, THEREFORE, ALL OF  
4 THESE QUESTIONS ARE IRRELEVANT TO THE DEFENSE WE ARE  
5 PUTTING FORTH, WHICH IS AN ACTUAL BUT UNREASONABLE  
6 BELIEF IN THE NEED TO DEFEND.

7 SO BY ITSELF VERY -- AND THERE IS NO  
8 DUTY TO RETREAT THAT I'M AWARE OF IN THE LAW THAT  
9 REQUIRES SOMEONE TO RUN AWAY RATHER THAN DEFEND,  
10 WHETHER THEY'RE BEING REALISTIC OR UNREALISTIC; AND

11 ALL OF THIS QUESTIONING WOULD SEEM TO SUGGEST THAT  
12 THERE IS.

13 THE COURT: WELL, THE AREA OF RETREAT IS AN  
14 AREA THAT APPLIES TO PERFECT SELF-DEFENSE, NOT  
15 IMPERFECT SELF-DEFENSE. THIS IS AN AREA OF INQUIRY  
16 THAT DEALS WITH THE ACTUAL BELIEF, AN ACTUAL BELIEF  
17 OF IMMINENT DANGER. AND THAT'S THE NATURE OF THE  
18 INQUIRY.

19 MS. ABRAMSON: WELL, I DON'T SEE THAT'S THE  
20 NATURE OF THE INQUIRY AT ALL.

21 THE COURT: THAT'S HOW I INTERPRET IT; THAT  
22 IT'S APPROACHING THAT SUBJECT AND IS AS RELEVANT AS  
23 WAS THE EXAMINATION YOU CONDUCTED OF DR. WILSON,  
24 WHICH APPEARS AT PAGE 47,949 AND 47,950 ON THE  
25 SAME --

26 MS. ABRAMSON: EXCUSE ME. WHAT WERE THE PAGE  
27 CITES AGAIN?

28 THE COURT: 47,949 TO 47,950. TALKING ABOUT

49881

1 SURVIVAL MODE THINKING, REFLECTION, DELIBERATION.  
2 THIS IS THE NATURE OF THE INQUIRY THE PEOPLE ARE  
3 CONDUCTING, WHICH MIRRORS THAT WHICH YOU CONDUCTED.

4 MS. ABRAMSON: HOWEVER, I OBJECT TO A FORM OF  
5 THE QUESTION THAT INCLUDES FACTS THAT ARE BEYOND THE  
6 SCOPE OF EXPERTISE, AND --

7 THE COURT: LET ME SAY THIS. I AGREE THAT,  
8 AS FAR AS THE FRAMING OF THE HYPOTHETICAL, IT SHOULD  
9 BE REFINED IN REGARD TO THE NATURE OF THE PRECISE  
10 TESTIMONY ABOUT LOCKING A DOOR, NOT ENTERING HIS  
11 MIND AND WHATEVER -- HOWEVER IT WAS PHRASED -- THAT  
12 COULD BE REFINED TO BE MORE PRECISE AS FAR AS WHAT  
13 THE TESTIMONY IS, UNLESS THE WITNESS IN HIS  
14 INTERVIEW OF THE DEFENDANT HAD OTHER INFORMATION  
15 THAN WHAT WAS PROVIDED IN THE DEFENDANT'S TESTIMONY.

16 MS. ABRAMSON: NOT THAT I KNOW OF.

17 THE COURT: AS FAR AS THE NUMBER OF SHOTS  
18 THAT ACTUALLY STRUCK, THERE IS NO EVIDENCE PRECISELY  
19 WHAT WEAPON HELD BY WHICH INDIVIDUAL CAUSED WHICH  
20 WOUND, AND AT THIS POINT THERE HAS BEEN NO  
21 FOUNDATION THAT THIS WITNESS WOULD HAVE ANY  
22 EXPERTISE IN INTERPRETING THOSE ASPECTS OF IT.

23 SO UNLESS THERE'S A FURTHER FOUNDATION,  
24 I WOULD SUSTAIN THE OBJECTION TO THAT.

25 AS FAR AS THE QUESTION ABOUT OPTIONS OF  
26 LEAVING THE LOCATION, PERHAPS IT COULD BE PHRASED IN  
27 THE NATURE OF WHETHER OR NOT THIS ACTIVITY IS  
28 CONSISTENT OR INCONSISTENT WITH A PERSON IN A

2 PHRASED, OR WHATEVER; AND IF IT IS INCONSISTENT, IS  
3 IT CONSISTENT OR INCONSISTENT, JUST TRACKING THE  
4 QUESTIONING OF THE DEFENSE OF DR. WILSON, WITH  
5 REFLECTION AND DELIBERATION.

6 AND THEN IN THE HYPOTHETICAL SENSE, IS  
7 SOMEBODY IN A SITUATION WITH THIS DELIBERATION AND  
8 REFLECTION -- IF THAT IS THE WITNESS' OPINION --  
9 ABLE TO EXPLORE OPTIONS, WHATEVER THE OPTIONS MIGHT  
10 BE. I DON'T KNOW WHAT THEY MIGHT BE.

11 MS. ABRAMSON: WITH ALL DUE RESPECT TO YOUR  
12 MORE ELOQUENT QUESTION FRAMING, THE POINT -- I WOULD  
13 OBJECT TO DELIBERATION, BECAUSE THAT'S NOT SOMETHING  
14 THAT WE PUT AT ISSUE.

15 THE COURT: EXCEPT YOU DID IN YOUR QUESTION.  
16 THAT'S THE PROBLEM. YOU ASKED THE WITNESS PRECISELY  
17 THOSE QUESTIONS. YOU DESCRIBED THE DEFENDANT'S  
18 PANIC STATE AS HE DESCRIBED IT IN HIS TESTIMONY,  
19 WITH THE THOUGHT OF ONLY, "HURRY, HURRY." AND THEN  
20 YOU ASKED THE QUESTION WITH -- THIS IS YOUR  
21 QUESTION:

22 "WITH NO THOUGHT OTHER THAN  
23 HURRY, HURRY, I'VE GOT TO GET TO THAT  
24 ROOM BEFORE THEY GET ME?

25 "ANSWER: YES.

26 "QUESTION: IS THAT SURVIVAL-MODE  
27 THINKING?

28 "ANSWER: YES, IT IS.

1 "QUESTION: IS THAT REFLECTION?

2 "ANSWER: NO.

3 "QUESTION: IS THAT DELIBERATION?

4 "ANSWER: NO."

5 MS. ABRAMSON: WELL, OKAY. BUT LOOK WHAT I'M  
6 ASKING ABOUT. I'M ASKING, AT THAT POINT, WHEN HE'S  
7 SAYING: HURRY, HURRY, GET TO THE ROOM, WHICH IS  
8 DIFFERENT -- I BROKE IT DOWN BY DIFFERENT TIME  
9 FRAMES. THAT'S VERY DIFFERENT, YOUR HONOR, THAN  
10 THIS HYPOTHETICAL THAT CHOOSES TO SUM UP EVERYTHING  
11 FROM THE TOP OF THE STAIRS THROUGH THE RELOAD.

12 I MEAN, I THINK TO BE ACCURATE -- I  
13 THINK SO FAR, A SERIES OF QUESTIONS WAS ASKED OF THE  
14 WITNESS AS TO EVERY JUNCTURE ON THAT JOURNEY, AND HE  
15 WAS ABLE TO ANSWER.

16 SO I DON'T SEE -- I THINK IT'S  
17 INACCURATE AND MISLEADING TO PILE IT ALL TOGETHER,  
18 SUPPOSEDLY IN RESPONSE TO A QUESTION I POSED ABOUT A  
19 SPECIFIC MOMENT AND A SPECIFIC THOUGHT.

20 THE COURT: WELL, IT MIGHT BE BENEFICIAL TO  
21 ONE SIDE OR THE OTHER TO BREAK DOWN WHAT WOULD BE A  
22 VERY SHORT TIME FRAME, IF THIS TESTIMONY IS  
23 BELIEVED, JUST A FEW SECONDS, AND SEPARATE ONE  
24 SECOND FROM THE OTHER.

25 BUT IT SEEMS TO ME THAT CERTAINLY THE

26 PROSECUTION'S ENTITLED TO INCORPORATE THE ENTIRETY  
27 OF THOSE FEW SECONDS, RATHER THAN JUST THE ONE OR  
28 TWO SECONDS YOU ISOLATED ON. WE'RE NOT TALKING

49884

1 ABOUT MUCH IN TIME OR DISTANCE OR ANYTHING ELSE.

2 MS. ABRAMSON: NO. I UNDERSTAND WHAT YOU'RE  
3 SAYING.

4 HOWEVER, YOU WERE INDICATING TO ME, YOUR  
5 HONOR, THAT THESE QUESTIONS ARE SIMPLY FOLLOWING THE  
6 PATTERN THAT I USED WITH MY WITNESS, AND I'M  
7 POINTING OUT THAT THAT'S NOT NECESSARILY TRUE; THAT  
8 IF I ASKED THAT QUESTION CONCERNING A SPECIFIC TIME,  
9 THAT DIDN'T MEAN I WAS ASKING ABOUT THAT ISSUE  
10 CONCERNING THE ENTIRE COURSE OF EVENTS THERE.

11 THE COURT: OKAY.

12 MS. ABRAMSON: AND I WANT IT TO BE CLEAR THAT  
13 THE DELIBERATION REFERRED TO THERE WAS NOT THE LEGAL  
14 DEFINITION OF DELIBERATION, WHICH WE NEVER GOT INTO  
15 AT ALL.

16 THE COURT: WELL, NOBODY IS ASKING FOR A  
17 LEGAL DEFINITION. ONE ISN'T BEING SUGGESTED BY ANY  
18 QUESTIONS. I DON'T KNOW IF THE PROSECUTION IS GOING  
19 TO USE THAT AT ALL. BUT IT'S CLEAR THESE ARE NOT  
20 LEGAL TERMS HERE, BUT -- THE AREA WAS OPENED UP BY  
21 THE DEFENSE, AND THE PEOPLE HAVE THE RIGHT TO



22 EXPLORE IT, TO THE NATURE OR THE EXTENT THAT THEY

23 HAVE.

24 ALL RIGHT. ANYTHING ELSE NOW BEFORE WE

25 PROCEED?

26 LET'S GET THE JURY OUT.

27 (THE JURY ENTERED THE COURTROOM

28 AND THE FOLLOWING PROCEEDINGS

49885

1 WERE HELD:)

2

3 THE COURT: OKAY. THE JURY IS BACK AND WE'LL

4 CONTINUE WITH THE EXAMINATION.

5 MR. CONN: YES.

6 Q DR. DIETZ, I WOULD LIKE YOU TO ASSUME

7 THE FOLLOWING HYPOTHETICAL: THAT A PERSON WENT

8 UPSTAIRS TO A BEDROOM AND RETRIEVED A SHOTGUN;

9 THAT AFTER RETRIEVING THAT SHOTGUN THAT

10 PERSON THEN WENT DOWNSTAIRS TO THE GROUND FLOOR,

11 WENT OUTSIDE TO A CAR, OPENED UP THE CAR, LOOKED

12 INSIDE THE CAR FOR A BOX OF AMMUNITION, FOUND THE

13 BOX OF AMMUNITION, RETRIEVED THE AMMUNITION FROM

14 THAT BOX, UNLOADED THE SHOTGUN OF EXISTING

15 AMMUNITION, RELOADED THE SHOTGUN WITH THE AMMUNITION

16 RECOVERED FROM THE CAR, WENT BACK INSIDE THE HOME

17 AND FIRED ALL OF THE ROUNDS FROM THE SHOTGUN AT TWO  
18 PERSONS INSIDE THAT HOME;  
19 THEN WENT BACK OUTSIDE TO THE CAR AND  
20 OBTAINED ADDITIONAL AMMUNITION AND HANDED THAT  
21 AMMUNITION TO A SECOND PERSON.  
22 ASSUME FURTHER THAT THIS WAS NOT  
23 REHEARSED BEHAVIOR.  
24 ASSUME FURTHER THAT THIS PERSON HAD  
25 NEVER PREVIOUSLY FIRED A SHOTGUN BEFORE OR OPERATED  
26 A SHOTGUN BEFORE.  
27 IN YOUR OPINION, WOULD YOU SAY THAT THAT  
28 BEHAVIOR IS CONSISTENT OR INCONSISTENT WITH SURVIVOR

49886

1 MODE?

2 A DEPENDS ON WHAT ONE MEANS BY SURVIVOR  
3 MODE, SINCE THERE'S NO SHARED MEANING OF THAT.

4 Q IN YOUR OPINION, WOULD THIS BEHAVIOR BE  
5 CONSISTENT OR INCONSISTENT WITH A PERSON WHO IS IN A  
6 FIGHT OR FLIGHT RESPONSE?

7 A CERTAINLY COULD BE, YES.

8 Q AND IN YOUR OPINION, WOULD A PERSON IN  
9 THAT SITUATION LOSE HIS RATIONAL THOUGHT?

10 A NO.

11 Q IN YOUR OPINION, IS THAT BEHAVIOR  
12 CONSISTENT OR INCONSISTENT WITH A PERSON EXERCISING

13 REFLECTIVE THOUGHT?

14 A CONSISTENT WITH THE EXERCISE OF

15 REFLECTIVE THOUGHT.

16 Q AND IN YOUR OPINION, DID ERIK MENENDEZ,

17 AT THE TIME OF THE COMMISSION OF THE CRIME, SUFFER

18 FROM ANY MENTAL DISORDERS THAT PRECLUDED HIS ABILITY

19 TO EXERCISE REFLECTIVE THOUGHT?

20 A NO, HE DID NOT.

21 MR. CONN: THANK YOU.

22 I HAVE NO FURTHER QUESTIONS, YOUR

23 HONOR.

24 THE COURT: CROSS-EXAMINATION?

25 MS. ABRAMSON: YES. A LITTLE.

26 THE COURT: WE'LL HOLD YOU TO THAT.

27 MS. ABRAMSON: I'M QUITE SERIOUS. I WOULDN'T

28 KID.

49887

1 I JUST NEED TO FIND SOMETHING FOR ONE

2 MOMENT. I HAD IT ALL ARRANGED TOO. OF COURSE, IT'S

3 DISAPPEARED.

4 I'M TRYING TO FIND MY COPY OF YOUR C.V.,

5 DR. DIETZ. I'M SORRY.

6 THE COURT: PERHAPS WE COULD JUST GET THE

7 EXHIBIT.

8 MS. ABRAMSON: THE EXHIBIT DOESN'T HAVE MY  
9 NOTES ON IT, YOUR HONOR. NEVER MIND. WE'LL PLOD  
10 AHEAD.

11

12 CROSS-EXAMINATION

13 BY MS. ABRAMSON:

14 Q IN ADDITION TO TESTIFYING, WHICH YOU'VE  
15 DONE A FAIR AMOUNT OF, I ASSUME, YOU ALSO HAVE DONE  
16 SOME RESEARCH, HAVE YOU NOT?

17 A YES.

18 Q AND THERE ARE SPECIFIC AREAS, ARE THERE  
19 NOT, OVER THE YEARS OF YOUR CAREER, THAT HAVE  
20 ATTRACTED YOUR ATTENTION OR INTEREST?

21 A MANY OF THEM, YES.

22 Q YES. AND SOME OF THESE ARE AREAS, WOULD  
23 IT BE FAIR TO SAY, OF THE MORE UNUSUAL, AND WHAT I  
24 GUESS LAYMAN WOULD CALL, BIZARRE KINDS OF CRIMES?

25 MR. CONN: OBJECTION. ARGUMENTATIVE.

26 THE COURT: WELL, IT CALLS FOR SPECULATION AS  
27 TO WHAT IT MEANT.

28 Q BY MS. ABRAMSON: WOULD YOU CALL IT THE

49888

1 MORE BIZARRE AND UNUSUAL KIND OF CRIMES?

2 A YES.

3 Q AND SOME OF THE THINGS THAT YOU HAVE

4 DONE RESEARCH IN INCLUDE SERIAL SEXUAL MURDERERS?

5 A YES.

6 Q MASS MURDERERS, WHERE THE TERM "MASS"

7 MEANS FIVE OR MORE?

8 A YES.

9 Q YOU DID SOME RESEARCH FROM THE F.B.I.

10 ACADEMY WITH OTHER RESEARCHERS ON SOME VERY BIZARRE

11 KINDS OF ACCIDENTAL DEATHS THAT WERE THOUGHT TO BE

12 SUICIDES, BUT THEY TURNED OUT TO BE SOMEHOW SEXUALLY

13 AUTOEROTIC, SEXUALLY INVOLVED?

14 A YES.

15 Q YOU'VE ALSO BEEN INVOLVED IN RESEARCH ON

16 THE KINDS OF PEOPLE WHO DO PRODUCT TAMPERING, LIKE

17 THE TYLENOL POISONER OR POISONERS?

18 A THAT'S RIGHT.

19 Q AND THEN YOU GOT INTERESTED IN AND

20 INVOLVED IN STUDYING WHAT'S KNOWN AS STALKERS,

21 CORRECT?

22 A I DON'T KNOW IF THAT'S THE TIME

23 SEQUENCE, BUT YES, I GOT INVOLVED IN THAT.

24 Q AT SOME POINT. AND STALKERS ARE PEOPLE --

25 WITH RESPECT TO YOUR RESEARCH -- WHO BECOME FIXATED

26 UPON CELEBRITIES OR POLITICIANS; TRY TO COME IN

27 CONTACT WITH THOSE PEOPLE, AND OCCASIONALLY KILL

28 THEM?

1 A YES.

2 Q AND IN REGARD TO THAT, YOU TESTIFIED IN  
3 SOME CASES FOR THE PROSECUTION; AND IN ONE CASE, AT  
4 LEAST, FOR THE DEFENSE, WHERE THE BEHAVIOR WAS  
5 ALLEGED TO BE STALKING BEHAVIOR, ENDING UP IN  
6 HOMICIDE, CORRECT?

7 A YES.

8 Q WITH RESPECT TO THE RESEARCH ASPECT, YOU  
9 WOULD CONCEDE, WOULD YOU NOT, DR. DIETZ, THAT YOU'RE  
10 NOT A RESEARCHER IN POST-TRAUMATIC STRESS DISORDER?

11 A THAT'S RIGHT.

12 Q YOU'RE NOT A RESEARCHER IN THE EFFECTS  
13 OF CHILD ABUSE?

14 A THAT'S RIGHT.

15 Q YOU'RE NOT A RESEARCHER IN THE AREA OF  
16 BATTERED WOMEN, BATTERED CHILDREN, BATTERED ELDERLY,  
17 BATTERED ANYBODY, CORRECT?

18 A I THINK THAT'S RIGHT.

19 Q YOU'RE NOT A RESEARCHER IN CHILD  
20 DEVELOPMENT?

21 A TRUE.

22 Q AND APART FROM YOUR EARLY TRAINING,  
23 YOU'VE NEVER BEEN WHAT YOU CALL -- WELL, YOU'VE  
24 NEVER BEEN A CLINICIAN?

25 A NOT SINCE 1980 OR THEREABOUTS.

26 Q NOW, YOU, IN YOUR TESTIMONY, REFER TO  
27 CLINICIANS AS HELPERS.

49890

1 A YES.

2 Q IS THAT TO DENIGRATE THEM AS  
3 NON-SCIENTISTS?

4 A NO. HELPING IS ONE OF THE HIGHER  
5 CALLINGS, BUT IT'S A DIFFERENT CALLING FROM  
6 TRUTH-SEEKING.

7 Q WELL, MAYBE. I MEAN --

8 MR. CONN: OBJECTION. ARGUMENTATIVE AS  
9 PHRASED.

10 THE COURT: LET'S JUST ASK THE QUESTION.

11 THE REMARK OF COUNSEL IS STRICKEN.

12 Q BY MS. ABRAMSON: WOULDN'T YOU CONCEDE  
13 THAT MANY CLINICIANS, PARTICULARLY ALSO THOSE  
14 ENGAGED IN RESEARCH, ARE SEEKING TRUTHS?

15 A ABSOLUTELY.

16 Q AND THERE AREN'T VERY MANY CLINICIANS  
17 THAT ENGAGE IN LARGE-SCALE RESEARCH PROJECTS.

18 A YES.

19 Q AND DO YOU KNOW WHETHER OR NOT JOHN  
20 WILSON IS ONE OF THOSE CLINICIAN RESEARCHERS WHO  
21 DOES THAT?

22 A I KNOW THAT HE IS SUCH A RESEARCHER, I

23 DON'T KNOW ABOUT HIM AS A CLINICIAN.

24 Q NOW, IS IT ACCURATE TO SAY THAT ONE OF  
25 THE WAYS IN WHICH PSYCHIATRISTS AND OTHER MENTAL  
26 HEALTH PROFESSIONALS CONTINUE TO LEARN ABOUT HUMAN  
27 BEINGS IS THROUGH THE PUBLISHED RESEARCH IN THE  
28 FIELD?

49891

1 A YES.

2 Q AND ANOTHER WAY AVAILABLE TO LEARN, AND  
3 CONTINUALLY LEARN ABOUT HUMAN BEINGS, IS TO DEAL  
4 WITH HUMAN BEINGS?

5 A YES.

6 Q AND AS A FORENSIC PSYCHIATRIST YOU TEND  
7 TO DEAL WITH HUMAN BEINGS WHO HAVE SOMEHOW COME ON  
8 TO THE PATH, IF YOU WILL, OF THE LEGAL SYSTEM?

9 A THAT'S CORRECT.

10 Q CLINICIANS, ON THE OTHER HAND, CAN COME  
11 IN CONTACT WITH PEOPLE, BOTH WHO NEVER GET INVOLVED  
12 WITH THE LEGAL SYSTEM, AND WHO DO, BOTH GROUPS?

13 A CLINICIANS GET INVOLVED WITH BOTH  
14 GROUPS.

15 AND BY THE WAY, SO DO I, SINCE THIS  
16 ISN'T ALL I DO. BUT THAT'S RIGHT.

17 Q WITH RESPECT TO THE EVALUATION AND STUDY --  
18 WELL, STRIKE THAT.



19           AND CLINICIANS WHO DO RESEARCH, BOTH  
20 HAVE AVAILABLE TO THEM THE RESEARCH OF OTHER PEOPLE,  
21 THEIR OWN PERSONAL EXPERIENCE FROM THEIR CLINICAL  
22 PRACTICE, AND THEIR OWN CLINICAL EXPERIENCE FROM  
23 THEIR RESEARCH, CORRECT?

24       A   YES.

25       Q   NOW, YOU WORK FOR A LIVING, CORRECT,  
26 DR. DIETZ?

27       A   YES, VERY HARD, AS A MATTER OF FACT.

28       Q   RIGHT. AND YOU LIKE TO BE PAID FOR WHAT

49892

1 YOU DO, CORRECT?

2       A   YES.

3       Q   AND YOU GET PAID WHAT -- YOU UNDERSTAND  
4 YOUR RATE IS MUCH HIGHER THAN MOST OTHER PEOPLE IN  
5 THE FIELD?

6       A   IT'S A LITTLE HIGHER THAN PEOPLE IN MY  
7 FIELD, BUT NOT TOO MUCH.

8       Q   YOU UNDERSTAND THE COURT APPOINTED RATE  
9 FOR DEFENSE EXPERTS IS A HUNDRED DOLLARS AN HOUR?

10       MR. CONN: OBJECTION. IRRELEVANT. ASSUMES  
11 FACTS NOT IN EVIDENCE.

12       THE COURT: SUSTAINED.

13       Q   BY MS. ABRAMSON: YOU UNDERSTAND THAT

14 THE DEFENSE EXPERTS WHO WERE APPOINTED IN THIS CASE  
15 WERE APPOINTED AT THAT RATE, A HUNDRED DOLLARS AN  
16 HOUR?

17 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
18 EVIDENCE AND IRRELEVANT.

19 MS. ABRAMSON: DR. WILSON SO TESTIFIED.

20 THE COURT: ALL RIGHT. PERHAPS YOU COULD  
21 REPHRASE IT. YOU'RE ASKING HIM IF HE'S AWARE?

22 Q BY MS. ABRAMSON: ARE YOU AWARE THAT THE  
23 COURT APPOINTED RATE IN LOS ANGELES RIGHT NOW IS A  
24 HUNDRED DOLLARS AN HOUR?

25 A YES.

26 Q WHO APPOINTED YOU?

27 A IN THIS CASE I WASN'T APPOINTED, TO MY  
28 KNOWLEDGE. I BELIEVE I WAS RETAINED BY THE DISTRICT

49893

1 ATTORNEY'S OFFICE.

2 Q AND THEY ARE RESPONSIBLE FOR PAYING YOU;  
3 IS THAT CORRECT?

4 A YES.

5 Q WAS THERE A CAP PUT ON HOW MUCH THEY  
6 COULD PAY YOU?

7 A I DON'T KNOW.

8 Q YOU DON'T KNOW?

9 A NO.

10 Q YOU HOPE NOT?

11 A YEAH. YOU'RE RIGHT. I HOPE NOT.

12 LAST TIME I WORKED FOR THE PUBLIC

13 DEFENDER'S OFFICE, I DIDN'T GET PAID. SO IT COULD

14 HAPPEN AGAIN.

15 Q YES. THAT WAS IN PEOPLE VERSUS BARDO,  
16 THE STALKING CASE IN WHICH YOU TESTIFIED FOR THE  
17 DEFENSE, CORRECT?

18 A YES.

19 Q AND IN THAT CASE THERE WAS A  
20 \$6,000-LIMIT PLACED ON YOUR TESTIMONY, CORRECT?

21 MR. CONN: OBJECTION. IRRELEVANT.

22 THE COURT: OVERRULED.

23 YOU MAY ANSWER THE QUESTION.

24 THE WITNESS: I BELIEVE THAT THE JUDGE'S  
25 INITIAL RULING WAS A \$6,000-LIMIT. THEN I WAS TOLD  
26 THAT THAT HAD BEEN LIFTED.

27 Q BY MS. ABRAMSON: SO DID YOU GET 6,000  
28 OR MORE?

49894

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: OVERRULED.

3 YOU MAY ANSWER THE QUESTION.

4 THE WITNESS: I THINK I WAS PAID 5,000.

5 Q BY MS. ABRAMSON: AND YOU PUT IN MORE  
6 WORK THAN WHAT \$5,000 WOULD COMPENSATE FOR, CORRECT?  
7 A YES.  
8 Q AND YOU WERE NOT HAPPY WITH ONLY GETTING  
9 \$5,000?  
10 A THAT'S TRUE.  
11 Q HOW MANY HOURS HAVE YOU PUT INTO THIS  
12 CASE?  
13 A AS OF YESTERDAY WHEN I CALCULATED IT, IT  
14 HAD JUST GOTTEN ABOVE A HUNDRED HOURS, AND I CAN'T  
15 RECALL NOW IF THAT WAS BEFORE THE DAY STARTED OR AT  
16 THE END. BUT THAT'S THE RANGE THAT WE'RE IN.  
17 Q AND YOU INDICATED THAT YOU WERE BILLING  
18 AT \$400 AN HOUR, CORRECT?  
19 A YES.  
20 Q IS THAT FOR THE ENTIRE TIME THAT YOU  
21 HAVE BEEN BOTH CONSULTING AND WORKING FOR THE  
22 DISTRICT ATTORNEY'S OFFICE IN THIS CASE?  
23 A THAT'S FOR WHAT I'VE DONE, INCLUDING THE  
24 THREE OR FOUR DAYS HERE AND THE TWENTY-FIVE HOURS IT  
25 TOOK TO COMPLETE THE EXAMINATION, AND EVERYTHING I  
26 REVIEWED, CONVERSATIONS, EVERYTHING I'VE DONE.  
27 Q OKAY. I JUST ASKED THAT TO MAKE SURE  
28 THAT THE NUMBER \$40,000 IS WHAT YOU ARE NOW OWED,

1 BASED ON A HUNDRED HOURS.

2 A I DID A DOZEN HOURS IN THE FIRST YEAR

3 AND A HALF THAT I WAS PAID. AND I THINK THEY OWED

4 ME \$3,000 BEFORE THIS YEAR STARTED.

5 Q THE DOZEN HOURS THAT YOU DID PREVIOUSLY,

6 DID YOU BILL THOSE AT 400 AN HOUR OR LESS?

7 A THE SAME.

8 Q AND YOU WERE PAID HOW MUCH?

9 A IT SHOULD BE \$4800. YEAH. I PRESUME IT

10 WAS.

11 Q AM I DOING THAT RIGHT? YEAH. YOU WERE

12 PAID 4800?

13 A THIS WILL TAKE A MOMENT. I'M SORRY.

14 IT'S NOT A SIMPLE BILLING.

15 Q IT'S NOT THAT IMPORTANT.

16 THE FACT IS THAT THE 40,000 YOU'RE NOW

17 OWED EXCLUDES ANY MONEY YOU WERE PAID FOR THE FIRST

18 DOZEN HOURS.

19 A I WOULDN'T BE OWED 40, IS WHAT I'M

20 SAYING. IF I WAS PAID 4800, THEN I COULD BE OWED --

21 Q THAT'S OUT OF THE 40?

22 A WHEN I EVENTUALLY BILL, THEY'LL BE

23 BILLED FOR WHATEVER WASN'T PAID.

24 Q OKAY. SO YOU PREVIOUSLY DID BILL. YOU

25 GOT PARTIAL PAYMENT FOR THE FIRST DOZEN HOURS OF THE

26 40 -- OF THE HUNDRED?

27 A I THINK THAT'S RIGHT, YES.

28 Q SO MAYBE THERE'S 88 HOURS RIGHT NOW THAT

1 YOU'RE OWED, AND BY THE TIME TODAY IS OVER, YOU  
2 EXPECT YOU'LL BE OWED A LITTLE MORE THAN THAT?

3 A THAT'S RIGHT.

4 Q NOW, YOU DON'T BELIEVE, DO YOU,  
5 DR. DIETZ, THAT THE \$40,000 IS GOING TO COME OUT OF  
6 MR. CONN'S AND MS. NAJERA'S POCKET, DO YOU?

7 MR. CONN: OBJECTION. ARGUMENTATIVE AND  
8 IRRELEVANT.

9 THE COURT: SUSTAINED.

10 Q BY MS. ABRAMSON: IT'S TAXPAYER MONEY  
11 THAT YOU'RE GOING TO BE PAID?

12 A THAT'S MY BELIEF.

13 MR. CONN: OBJECTION. ARGUMENTATIVE AND  
14 IRRELEVANT.

15 THE COURT: OVERRULED.

16 Q BY MS. ABRAMSON: CORRECT?

17 A THAT'S MY BELIEF, YES.

18 MS. ABRAMSON: ARE WE GOING TO TAKE A RECESS  
19 THIS MORNING, YOUR HONOR?

20 THE COURT: YES.

21 MS. ABRAMSON: IF WE ARE, I'LL LOOK FOR IT  
22 THEN.

23 Q I THINK IT WAS YESTERDAY OR THE DAY  
24 BEFORE, YOU TURNED OVER AN UPDATED C.V., ONE THAT

25 WAS DATED OCTOBER 1995, CORRECT?

26 A YES.

27 Q AND YOU HAVE A SECTION ON YOUR C.V.

28 THAT'S CALLED "NOTABLE CASES"?

49897

1 A THAT'S RIGHT.

2 Q WHAT MAKES A CASE NOTABLE?

3 A WELL, THE ONES I PUT THERE ARE ONES THAT  
4 PEOPLE ARE LIKELY TO REQUEST MY C.V., WHO ARE  
5 PRIMARILY ATTORNEYS, MAY HAVE HEARD OF. BUT THAT'S  
6 PROBABLY ALL.

7 Q PROBABLY ALL WHAT?

8 A PROBABLY ALL THAT MAKES THEM NOTABLE,  
9 THAT PEOPLE MAY BE FAMILIAR WITH THE CASE, HAVE  
10 HEARD OF IT.

11 Q SO THEY'RE PUBLICITY CASES, CASES THAT  
12 HAVE GOTTEN SOME MEDIA ATTENTION?

13 A OR ELSE HAVE HAD SOME SIGNIFICANT LEGAL  
14 IMPACT. GENERALLY IT'S BECAUSE THEY'VE BECOME WELL  
15 KNOWN THROUGH THE MEDIA.

16 Q AND OF THE CRIMINAL CASES THAT ARE  
17 LISTED ON THAT C.V., AM I CORRECT THAT IN 19 OF  
18 THEM -- I THINK THERE'S 21 CRIMINAL CASES LISTED --  
19 DO YOU RECALL THAT?

20 A NO. I HAVEN'T COUNTED THEM.

21 Q WELL, LET ME ASK YOU A HYPOTHETICAL, AND

22 WHEN I GET THE C.V. BACK WE'LL CHECK.

23 OF THE 21 -- OF THE 21 CRIMINAL CASES

24 LISTED THERE, YOU EITHER CONSULTED WITH OR TESTIFIED

25 FOR, OR BOTH, THE PROSECUTION?

26 A THAT SOUNDS RIGHT.

27 Q AND TWO OF THEM YOU EITHER CONSULTED OR

28 TESTIFIED FOR THE DEFENSE?

49898

1 A ACTUALLY, IF YOU COUNT THEM THE WAY

2 THEY'RE WRITTEN, IT WOULD PROBABLY LOOK THAT WAY;

3 AND THEN THERE'S ONE OTHER WHERE THE GOVERNMENT

4 RETAINED ME, BUT I TESTIFIED FOR THE DEFENSE. THAT

5 WOULDN'T BE APPARENT FROM THAT.

-15637

1 Q. OKAY.

2 NOW, YOU INCLUDE ON THAT C.V., UNDER

3 NOTABLE CASES, THIS CASE?

4 A. YES.

5 Q. AND IS IT YOUR POSITION, DR. DIETZ, THAT

6 YOU DID NOT FORMULATE YOUR OPINIONS IN THIS CASE UNTIL

7 AFTER YOU HAD COMPLETED YOUR INTERVIEWS WITH ERIK

8 MENENDEZ?



9 A. WELL, I DIDN'T FORMULATE THE OPINIONS THAT  
10 I HAVE EXPRESSED HERE IN COURT UNTIL AFTER MY INTERVIEWS  
11 OF ERIK MENENDEZ, BUT OF COURSE, AS I HEARD ABOUT  
12 VARIOUS FACTS, I HAD IMPRESSIONS ABOUT THOSE FACTS, SOME  
13 OF WHICH WERE BASED, OF COURSE, ON THE KIND OF FALSE  
14 INFORMATION THAT ONE SOMETIMES RECEIVES.

15 Q. IN OTHER WORDS, YOU REALIZED AFTER YOU GOT  
16 INTO IT THAT YOU HAD BEEN GIVEN SOME FALSE INFORMATION  
17 OR HAD HEARD SOME FALSE THINGS?

18 A. PARTICULARLY FROM THE PRESS.

19 Q. RIGHT. AND IN FACT YOU MADE A COMMENT IN  
20 THE PRESS BEFORE YOU EVER REALLY GOT INTO THE ACTUAL  
21 FACTUAL MATERIAL OF THIS CASE, WHERE YOU LEARNED LATER  
22 THAT YOU WERE ILL-INFORMED AT THE TIME YOU MADE THE  
23 COMMENT; WOULD THAT BE A FAIR STATEMENT?

24 A. I'M SURE THAT'S A FAIR STATEMENT.

25 Q. OKAY.

26 NOW, YOU DATE YOUR INVOLVEMENT IN THIS CASE  
27 ON YOUR C.V. FROM 1994?

28 A. THAT'S RIGHT.

-15636

1 Q. AND WERE YOU RETAINED BY THE PROSECUTION IN  
2 1994?

3 A. WELL, I WAS CONTACTED BY THE PROSECUTION IN  
4 1994, AND I HAD MY OFFICE CALL BACK IN DECEMBER, AFTER

5 YOU HAD CALLED ME, TO FIND OUT WHETHER I WAS RETAINED OR  
6 NOT.

7 THEY TOLD MY OFFICE THAT THEY WERE SEEKING  
8 A BUDGET TO HIRE ME, AND DEFINITELY WANTED TO.

9 Q. OKAY. NOW, THE JURY DOESN'T KNOW WHAT  
10 YOU'RE TALKING ABOUT ABOUT ME, SO LET'S CLARIFY.

11 IN DECEMBER OF 1994 I SPOKE TO YOU ON THE  
12 TELEPHONE TO ASK IF YOU HAD BEEN RETAINED?

13 A. CORRECT.

14 Q. BY THE PROSECUTION, CORRECT?

15 A. THAT'S RIGHT.

16 Q. AND WITHOUT GOING INTO IT, I HAD SOME  
17 REASON TO THINK YOU MIGHT HAVE BEEN. I INDICATED THAT  
18 TO YOU, DID I NOT?

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 THE COURT: SUSTAINED.

21 THAT WAS THE NATURE OF THE INQUIRY OF THE  
22 WITNESS.

23 Q. BY MS. ABRAMSON: YES, THE NATURE OF THE  
24 INQUIRY WAS TO FIND OUT IF YOU HAD BEEN RETAINED BY THE  
25 PROSECUTION IN THIS CASE?

26 A. YOU DID ASK THAT, YES.

27 Q. IN DECEMBER OF '94, CORRECT?

28 A. YES.

1 Q. I MEAN, THAT'S WHEN YOU MEAN?

2 A. IT WAS DECEMBER 16, '94, YES.

3 Q. OKAY. AND YOU INDICATED AT THAT TIME THAT  
4 YOU WEREN'T SURE, THAT YOU HAD BEEN CONTACTED AND YOU  
5 WERE GOING TO FOLLOW UP AND FIND OUT; IS THAT RIGHT?

6 A. THAT'S RIGHT.

7 Q. AND THAT YOU DID WHAT YOU JUST TESTIFIED,  
8 YOU CHECKED WITH THEM AND THEY SAID YES, THEY ARE GOING  
9 TO UTILIZE YOUR SERVICES, CORRECT?

10 A. CORRECT.

11 Q. HAD THEY SUBMITTED ANY MATERIALS TO YOU  
12 BETWEEN THE FIRST CONTACT AND WHEN YOU HAD YOUR  
13 SECRETARY MAKE THAT FOLLOW-UP PHONE CALL?

14 A. I DON'T BELIEVE THEY HAD SAID ANYTHING AT  
15 THAT POINT.

16 Q. SO WHATEVER YOU KNEW ABOUT THIS CASE AT  
17 THAT TIME, YOU KNEW FROM THE MEDIA?

18 A. AND FROM A PHONE CALL WITH MR. CONN AND  
19 MS. NAJERA ON NOVEMBER 4TH OF '94.

20 Q. WHEN WAS IT, DR. DIETZ, THAT THEY ACTUALLY  
21 SENT YOU SOME MATERIALS?

22 A. THAT I PROBABLY WON'T HAVE A RECORD OF  
23 HERE, BUT IT WAS A SHORT TIME BEFORE I RECEIVED ONE  
24 DOCUMENT TO LOOK AT, AND I THINK IT WAS A VERY LONG TIME  
25 BEFORE LARGE BOXES OF THINGS ARRIVED.

26 I MAY BE ABLE TO GIVE YOU A DATE.

27 I SEE THAT IN FEBRUARY OF '95 I REVIEWED  
28 THE PEOPLE'S MOTION -- WELL, A MOTION FROM THE

1 GOVERNMENT. THAT SEEMS TO BE THE FIRST THING THAT I HAD  
2 REVIEWED.

3 Q. AND THAT WAS IN FEBRUARY '95. THAT WAS A  
4 PEOPLE'S MOTION TO PREVENT THE DEFENSE FROM CALLING  
5 EXPERT WITNESSES, WAS IT NOT?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 OBJECTION, IRRELEVANT.

8 THE COURT: SUSTAINED.

9 MS. ABRAMSON: WELL, I'D LIKE TO BE HEARD, YOUR  
10 HONOR.

11 THE COURT: WELL, CERTAINLY THE NATURE OF THE  
12 MOTION IS IRRELEVANT.

13 SO SUSTAINED.

14 Q. BY MS. ABRAMSON: THAT MOTION, WHEN YOU  
15 RECEIVED IT, CONTAINED, DID IT NOT, A SUMMARY OF THE  
16 TESTIMONY OF DEFENSE EXPERTS, PSYCHOLOGICAL AND  
17 PSYCHIATRIC EXPERTS WHO TESTIFIED IN THE FIRST TRIAL?

18 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND  
19 IRRELEVANT.

20 THE COURT: OVERRULED.

21 YOU MAY ANSWER THE QUESTION.

22 THE WITNESS: YES, IT DID CONTAIN SUCH A SUMMARY.

23 Q. BY MS. ABRAMSON: AND DID YOU READ THE  
24 SUMMARIES OF THE TESTIMONY OF THE DEFENSE EXPERTS AS THE  
25 PROSECUTION SUMMARIZED THEM IN THAT MOTION?

26       A.   I READ THAT MOTION VERY CAREFULLY, YES.  
27       Q.   AND WERE YOU ABLE TO THEN DETERMINE, AS A  
28 RESULT OF READING THAT MOTION, THAT DR. ANN BURGESS WAS

-15633

1 ONE OF THE EXPERTS FOR ERIK MENENDEZ WHO TESTIFIED AT  
2 THE LAST TRIAL?

3       MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR  
4 HEARSAY.

5       THE COURT: WELL, IT'S ALREADY BEEN REFERRED TO,  
6 I BELIEVE, IN THE TESTIMONY.

7       OVERRULED.

8       THE WITNESS: I ALREADY KNEW THAT SHE HAD BEEN AN  
9 EXPERT IN THE FIRST TRIAL.

10      Q.   BY MS. ABRAMSON: AND IN READING THAT  
11 MOTION, WITHOUT REVEALING ANY OF IT, BUT IN READING THAT  
12 MOTION, DID YOU LEARN WHAT HER OPINIONS AND CONCLUSIONS  
13 HAD BEEN CONCERNING ERIK MENENDEZ IN THE FIRST TRIAL?

14      MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR  
15 HEARSAY.

16      MS. ABRAMSON: I CAN MAKE AN OFFER, YOUR HONOR.

17      THE COURT: OKAY. PERHAPS WE'LL TAKE OUR RECESS,  
18 AND WE WILL HAVE THAT AT THIS POINT.

19           WE WILL RESUME AT QUARTER AFTER THE HOUR.

20 DON'T DISCUSS THE MATTER WITH ANYONE. DON'T FORM ANY  
21 FINAL OPINIONS ABOUT IT. WE WILL RESUME AT 11:15.

22 COUNSEL WILL REMAIN.

23 (JURY ENTERS THE JURY ROOM AND

24 THE FOLLOWING PROCEEDINGS

25 WERE HELD:)

26

27 THE COURT: OKAY. THE JURY HAS LEFT.

28 DO YOU WANT TO MAKE AN OFFER OF PROOF?

-15632

1 MS. ABRAMSON: I WOULD LIKE TO MAKE THE OFFER AT

2 SIDE BAR, YOUR HONOR.

3 THE COURT: OKAY. WELL, LET'S JUST CLEAR THE

4 COURTROOM, AND WE'RE GOING TO TAKE THE BREAK ANYWAY.

5 (PROCEEDINGS WERE HELD IN CAMERA,

6 PAGES 49905 THROUGH 49908

7 SEALED BY ORDER OF THE COURT:)

8

9 (A RECESS WAS TAKEN FROM

10 11:05 A.M TO 11:20 A.M.)

11

12

13

14

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16

17

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21  
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28

-15627

1 THE COURT: OKAY. LET'S GET THE JURY OUT,  
2 PLEASE.

3 (THE JURY ENTERS THE COURTROOM AND  
4 THE FOLLOWING PROCEEDINGS WERE  
5 HELD:)

6

7 THE COURT: OKAY.

8 WE'LL RESUME WITH THE CROSS-EXAMINATION.

9 MS. ABRAMSON: THANK YOU.

10 Q. I JUST WANTED TO BACKTRACK FOR ONE SECOND,  
11 DR. DIETZ, CONCERNING AREAS OF RESEARCH THAT YOU HAVE  
12 NOT PARTICIPATED IN.

13 YOU HAVE NOT PARTICIPATED IN RESEARCH ON

14 DOMESTIC VIOLENCE AND ITS EFFECTS ON VARIOUS FAMILY

15 MEMBERS, CORRECT?

16 A. I WOULDN'T CALL IT RESEARCH. MY FIRM IS

17 OFTEN INVOLVED IN TRYING TO PREVENT DOMESTIC VIOLENCE

18 FROM INTRUDING INTO THE WORK PLACE, BUT ASIDE FROM

19 COUNTING OUR OWN CASES, IT'S NOT RESEARCH.

20 Q. OKAY. AND SPECIFICALLY, I'M TALKING NOT

21 ABOUT PREVENTING -- I THINK WHAT YOU'RE TALKING ABOUT IS

22 WHEN JUST AN UNHAPPY SPOUSE OR BOYFRIEND GOES TO THE

23 WORK PLACE TO COMMIT VIOLENCE UPON THE INTIMATE PARTNER

24 AND WINDS UP SHOOTING THE WHOLE PLACE UP, THAT KIND OF

25 SITUATION?

26 A. YES. THAT'S WHAT WE WORK TO PREVENT.

27 Q. I AM TALKING ABOUT THE MORE -- THE BROADER

28 RESEARCH HAVING TO DO WITH THE EFFECTS ON VARIOUS

-15626

1 MEMBERS OF FAMILIES OF DOMESTIC VIOLENCE, FAMILY

2 VIOLENCE?

3 A. I DON'T DO RESEARCH ON THAT.

4 Q. AND I TAKE IT THAT YOU HAVE NEVER SERVED --

5 WELL, I AM NOT SURE.

6 HAVE YOU EVER SERVED IN THE CAPACITY OF AN

7 EVALUATOR OF CHILDREN WHO ARE COMPLAINING OF SEXUAL

8 MOLESTATION FOR THE COURT SYSTEM?

9 A. I'M -- I DON'T DO THE EVALUATIONS FOR THE



10 COURT, BUT I FREQUENTLY EXAMINE PEOPLE WHO ARE  
11 COMPLAINING OF HAVING BEEN VICTIMS OF SEXUAL ABUSE, IF  
12 THEY'RE 14 OR OLDER AT THE TIME OF THE EXAMINE. SO MANY  
13 OF THEM ARE ADULTS, BY THE TIME I SEE THEM, WHO SAY THEY  
14 WERE CHILDREN WHEN THEY WERE ABUSED. SOME OF THEM ARE  
15 TEENAGERS.

16 Q. THAT'S NOT FOR THE PURPOSE, HOWEVER, OF  
17 PURSUING A PROSECUTION FOR SEXUAL MOLESTATION?

18 A. I AM SEEING THE VICTIMS EITHER AS ONE,  
19 INFORMANT IN A PROSECUTION, OR IN CONNECTION WITH THEIR  
20 CIVIL SUITS AGAINST THEIR ABUSERS.

21 Q. AND DO YOU, IN THOSE CASES, MAKE  
22 DETERMINATIONS OF WHETHER OR NOT THOSE PEOPLE WERE  
23 SEXUALLY MOLESTED?

24 A. OCCASIONALLY IT'S POSSIBLE TO DO THAT, EVEN  
25 YEARS LATER.

26 Q. YOU HAVE NOT DONE ANY RESEARCH ON THE LONG  
27 TERM EFFECTS OF CHILD MALTREATMENT IN ADULTS, CORRECT?

28 A. NOT THAT I WOULD CALL RESEARCH.

-15625

1 Q. YOU'RE AWARE OF WHO JOHN BRIERE IS, ARE YOU  
2 NOT?

3 A. FROM THIS CASE, YES.

4 Q. YOU DON'T KNOW HIM FROM BEFORE?

5 A. CORRECT.

6 Q. NOW, YOU INDICATED IN GOING OVER SOME OF  
7 THE COMMISSIONS OR COMMITTEES THAT YOU HAVE WORKED ON  
8 THAT THERE WAS ONE COMMITTEE IN 1984/1985 ON TRAUMA  
9 RESEARCH, AND THAT WAS A COMMITTEE OF THE NATIONAL  
10 RESEARCH COUNCIL, NATIONAL ACADEMY OF SCIENCES?

11 A. THAT'S RIGHT.

12 Q. WHAT WAS, VERY BRIEFLY, THE NATURE OF THAT  
13 RESEARCH? WHAT WAS THAT PROJECT?

14 A. THAT WAS A PROJECT THAT A CONGRESSMAN FROM  
15 FLORIDA HAD INITIATED, TO HAVE A GROUP OF EXPERTS  
16 ASSEMBLED BY THE NATIONAL ACADEMY TO ADVISE CONGRESS ON  
17 WHAT THEY SHOULD DO TO TRY TO CONTROL THE EFFECTS OF  
18 INJURY IN AMERICA.

19 AND HE HAD IN MIND INITIALLY, I THINK, WHEN  
20 HE MET WITH US, THE CONGRESSMAN, IMPROVING EMERGENCY  
21 MEDICAL SERVICE DEPLOYMENT. AND INSTEAD, WHAT WE  
22 ADVISED WAS THAT THAT WAS ACTUALLY IN VERY GOOD SHAPE IN  
23 SOME PARTS OF THE COUNTRY, BUT WHAT WAS NEGLECTED WAS  
24 PREVENTIVE EFFORTS, AND THAT WE NEEDED A NATIONAL  
25 ORGANIZATION THAT WOULD WORK TOWARD RESEARCH ON  
26 PREVENTIVE EFFORTS.

27 Q. SO THAT WAS TRYING TO PREVENT PHYSICAL  
28 TRAUMA FROM OCCURRING IN SOCIETY?

-15624

1 A. AND TO A LESSER EXTENT, PSYCHOLOGICALLY,

2 YES.

3 Q. TO PREVENT PSYCHOLOGICAL TRAUMA FROM  
4 OCCURRING?

5 A. WELL, THAT GOT ON THE AGENDA, BUT ONLY WITH  
6 SOME WORK. THE THRUST CERTAINLY WAS HOW TO PREVENT  
7 PHYSICAL TRAUMA FROM OCCURRING, HOW TO KEEP PEOPLE FROM  
8 BEING INJURED, WHICH IS CALLED PRIMARY PREVENTION, IF  
9 THE INJURY NEVER HAPPENS.

10 Q. RIGHT.

11 A. BUT THERE WAS ALSO ATTENTION TO SECONDARY  
12 PREVENTION; WHICH IS, GIVEN THE INJURIOUS SITUATION, HOW  
13 DO YOU REDUCE HOW BAD IT IS, AND THEN WHAT'S CALLED  
14 TERTIARY PREVENTION, WHICH IS EVEN AFTER IT'S HAPPENED  
15 AND THE VIOLENCE HAS STOPPED, THE INJURIOUS EVENT IS  
16 OVER, HOW DO YOU PREVENT LONG-TERM EFFECTS.

17 Q. AND YOU'RE TALKING THERE NOT ABOUT PHYSICAL  
18 EFFECTS, BUT LONG-TERM PSYCHOLOGICAL EFFECTS OF TRAUMA?

19 A. EITHER SAY. THE KIND OF -- FOR SERIOUS  
20 TRAUMA WHERE PEOPLE HAVE A LOT OF BROKEN BONES OR THEIR  
21 SKULLS ARE CRUSHED, THEY'RE GOING TO NEED MANY KINDS OF  
22 REHABILITATION; NOT JUST PSYCHOLOGICAL, BUT PHYSICAL  
23 THERAPY, LEARNING TO WALK, LEARNING TO TALK.

24 Q. WERE YOU CONSIDERING CONSIDERATIONS OF SUCH  
25 VICTIMS AS RAPE VICTIMS?

26 A. I ARGUED FOR THE INCLUSION OF EVEN TRAUMA  
27 AT THAT LEVEL, BECAUSE IT'S VERY IMPORTANT, BUT THAT  
28 WASN'T REALLY THE FOCUS.

1 Q. BUT YOU DO AGREE, DO YOU NOT, THAT THERE  
2 IS -- CAN BE LONG-TERM, LONG-TIME PSYCHOLOGICAL EFFECTS  
3 OF TRAUMA THAT IN THEMSELVES DON'T CAUSE ACTUAL PHYSICAL  
4 HARM?

5 MR. CONN: OBJECTION. IRRELEVANT.

6 THE COURT: OVERRULED.

7 THE WITNESS: INDIVIDUALS WHO HAVE UNDERGONE A  
8 LIFE-THREATENING INCIDENT, BUT WHO WERE NOT PHYSICALLY  
9 INJURED, WILL IN SOME PROPORTION HAVE EFFECTS FOR  
10 MONTHS, OCCASIONALLY YEARS, AND RARELY FOR A VERY LONG  
11 TIME.

12 Q. BY MS. ABRAMSON: JUST AS AN ASIDE, ARE YOU  
13 AWARE OF THE RESEARCH AND LITERATURE HAVING TO DO WITH  
14 POST-TRAUMATIC STRESS DISORDER IN VETERANS OF THE  
15 VIETNAM WAR?

16 A. YES.

17 Q. AND ARE YOU AWARE THAT THERE ARE VETERANS  
18 OF THE VIETNAM WAR WHO ARE STILL IN TREATMENT NOW FOR  
19 POST-TRAUMATIC STRESS DISORDER?

20 A. YES.

21 Q. AND WE'RE TALKING 20 YEARS LATER?

22 A. CORRECT.

23 Q. THANK YOU.

24 NOW, YOU ALSO PARTICIPATED IN WHAT CAME TO  
25 BE KNOWN AS THE MEESE COMMISSION ON PORNOGRAPHY.

26 A. YES.

27 Q. AND AS A CONSEQUENCE OF YOUR PARTICIPATION  
28 ON THAT COMMISSION, WOULD IT BE FAIR TO SAY THAT YOU

-15622

1 BECAME EVEN PERSONALLY INVOLVED WITH THE IMPACT OF  
2 PORNOGRAPHY ON CHILDREN?

3 A. THAT'S TRUE.

4 Q. AND IS IT YOUR OPINION THAT EVEN EXPOSURE  
5 TO PORNOGRAPHY CAN CAUSE PSYCHOLOGICAL HARM TO CHILDREN?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: SUSTAINED.

8 Q. BY MS. ABRAMSON: YOU WROTE A STATEMENT,  
9 DID YOU NOT, OF YOUR PERSONAL POSITION FOLLOWING YOUR  
10 WORK ON THAT COMMISSION?

11 A. YES.

12 Q. IN WHICH YOU CALLED FOR, DID YOU NOT,  
13 REGULATION OF PORNOGRAPHY, EVEN IN THE ABSENCE OF  
14 EMPIRICAL STUDIES SHOWING WHAT DAMAGE PORNOGRAPHY DID,  
15 PER SE, TO CHILDREN?

16 A. I DON'T KNOW IF I CALLED IT REGULATION, BUT  
17 I CALLED FOR CONCERN, AT LEAST. MAYBE I SAID  
18 REGULATION.

19 Q. THAT WAS IN THE ABSENCE -- AND I THINK YOU  
20 CONCEDED IN YOUR STATEMENT THERE WASN'T ANY REAL  
21 EMPIRICAL PROOF THAT PORNOGRAPHY CAUSED THIS HARM TO  
22 CHILDREN, BUT YOU DIDN'T WANT TO WAIT TO GET THE PROOF

23 AND LETTING THE CHILDREN BE HARMED, CORRECT?

24 A. CORRECT. RIGHT, EXACTLY.

25 Q. IS IT FAIR TO SAY THAT MOST TYPICALLY, IN

26 MOST CASES WHEN YOU HAVE BEEN CALLED UPON TO TESTIFY IN

27 A CRIMINAL HOMICIDE CASE, IT HAS BEEN ON THE ISSUE OF

28 LEGAL INSANITY?

-15621

1 A. WELL, AT ONE TIME IN MY CAREER IT WAS

2 PROBABLY MORE OFTEN COMPETENCE TO STAND TRIAL FOR THE

3 HOMICIDE, BUT CERTAINLY FOR THE LAST 15 YEARS IT'S BEEN

4 ON THE INSANITY ISSUE.

5 Q. OKAY. AND -- WELL, I AM NOT SURE WHAT THE

6 LAW IN ALL THE STATES ARE, BUT IN THIS STATE, AT LEAST

7 IN ORDER FOR INSANITY TO BE AN ISSUE IN A TRIAL, THE

8 DEFENDANT MUST ENTER A PARTICULAR PLEA OF NOT GUILTY BY

9 REASON OF INSANITY, CORRECT?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 YOU MAY ANSWER THE QUESTION.

13 THE WITNESS: YES.

14 Q. BY MS. ABRAMSON: AND YOU ARE AWARE, ARE

15 YOU NOT, THAT NO SUCH PLEA HAS BEEN ENTERED IN THIS

16 CASE?

17 A. YES.

18 Q. DO YOU KNOW, DR. DIETZ, HOW MANY CRIMINAL

19 HOMICIDE CASES YOU HAVE TESTIFIED IN WHERE THE ISSUE WAS

20 NOT LEGAL INSANITY?

21 A. I DON'T KNOW A NUMBER, BUT THERE ARE QUITE

22 A FEW.

23 Q. LESS THAN 20?

24 A. I WOULD DOUBT THAT. I WOULD THINK IT WOULD

25 BE MORE, BUT I HAVE NO GOOD WAY TO MEASURE IT.

26 Q. AT THE TIME THAT YOU TESTIFIED IN THE BARDO

27 CASE, DID YOU INDICATE THAT IT WAS SOMEWHERE BETWEEN 6

28 AND 20?

-15620

1 A. I DON'T KNOW.

2 Q. WHEN WAS THE BARDO CASE TRIED HERE IN LOS

3 ANGELES?

4 A. A FEW YEARS AGO. IF I HAD TO GUESS, I'D

5 GUESS 1986 MAYBE, BUT I DON'T KNOW.

6 Q. IF I WERE TO TELL YOU THAT THE KILLING OF

7 THE VICTIM IN THAT CASE, REBECCA SCHAEFFER, TOOK PLACE

8 IN 1989 --

9 A. I WOULD BE SURE THE TRIAL WAS LATER.

10 Q. YOU'D BE SURE IT WAS, WOULDN'T YOU? OKAY.

11 AND IN THAT PARTICULAR CASE, YOU TESTIFIED

12 ON BEHALF OF MR. BARDO, CORRECT?

13 A. YES.

14 Q. AND THAT WAS A COURT TRIAL, WAS IT NOT?

15 A. IT WAS.

16 Q. AND THE PROSECUTING ATTORNEY WAS MARCIA  
17 CLARK, WAS IT NOT?

18 MR. CONN: OBJECTION. IRRELEVANT.

19 THE COURT: SUSTAINED.

20 Q. BY MS. ABRAMSON: AND BARDO WAS A CASE  
21 INVOLVING A STALKER?

22 A. YES.

23 Q. NOW, YOU HAD MENTIONED BEFORE THE BREAK  
24 THAT THE FIRST DOCUMENT YOU EVER RECEIVED WAS A MOTION  
25 FROM THE PROSECUTION IN WHICH THE TESTIMONY OF DEFENSE  
26 EXPERTS AT THE LAST TRIAL WAS SUMMARIZED, CORRECT?

27 A. I REVIEWED THE DOCUMENT. I KNOW THERE WAS  
28 SOME SUMMARY OF TESTIMONY.

-15619

1 MS. ABRAMSON: MAY I APPROACH, YOUR HONOR?

2 THE COURT: YES.

3 Q. BY MS. ABRAMSON: I WOULD LIKE TO SHOW YOU  
4 A DOCUMENT, "PEOPLE'S MOTION TO EXCLUDE EXPERT TESTIMONY  
5 OF ERIK MENENDEZ," AND ASK YOU IF THAT IS THE DOCUMENT  
6 YOU WERE SENT.

7 MR. CONN: I AM GOING TO OBJECT, AND ASK THAT WE  
8 APPROACH AT THIS POINT, YOUR HONOR.

9 THE COURT: OKAY.

10 (THE FOLLOWING PROCEEDINGS WERE HELD



11 OUT OF THE PRESENCE OF THE JURY:)

12

13 THE COURT: YES.

14 MR. CONN: OKAY.

15 COUNSEL HAS REPEATEDLY MADE REFERENCE TO A  
16 MOTION TO EXCLUDE EVIDENCE ON THE PART OF THE  
17 PROSECUTION, AND I AM GOING TO ASK THAT THE JURY BE  
18 ADMONISHED AT THIS TIME, BECAUSE I THINK THAT THIS IS  
19 MISCONDUCT FOR HER TO CONTINUALLY REFER TO EFFORTS BY  
20 THE PROSECUTION TO EXCLUDE EVIDENCE.

21 THE JURY IS GOING TO GET THE IMPRESSION  
22 THAT WE ARE TRYING TO HIDE EVIDENCE FROM THEM, AND THAT  
23 IS ABSOLUTELY NOT THE CASE.

24 THERE IS NO REASON FOR COUNSEL TO BE  
25 CONTINUALLY GOING OVER THE FACT THAT OTHER EXPERTS  
26 TESTIFIED IN THE FIRST TRIAL WHO HAVE NOT BEEN CALLED IN  
27 THIS TRIAL. IT'S CONSISTENT TO THE THEME SHE IS  
28 PRESENTING TO THE JURY, THAT THERE ARE OTHER WITNESSES

-15618

1 WHO HAVE BEEN CALLED IN THE FIRST TRIAL WHO WERE NOT  
2 CALLED IN THIS TRIAL, AND AS PART OF THAT SHE HAS NOW  
3 REPEATEDLY BROUGHT BEFORE THE JURY THAT THERE HAS BEEN  
4 PROSECUTION MOTIONS TO EXCLUDE EVIDENCE.

5 SO I WOULD ASK THAT THE COURT ADMONISH THE  
6 JURY IN SOME WAY THAT DURING THE COURSE OF THE TRIAL

7 MOTIONS ARE FILED BY BOTH SIDES IN THIS CASE, AND YOU  
8 ARE NOT TO INFER OR DRAW ANY CONCLUSIONS FROM TITLES OF  
9 MOTIONS OR SPECULATE AS TO WHAT MOTIONS HAVE BEEN  
10 BROUGHT, OR WHAT RULINGS HAVE BEEN MADE BY THE COURT.

11 AND I AM GOING TO ASK THAT COUNSEL BE  
12 ADMONISHED NOT TO REFER TO THE TITLE OF THAT MOTION  
13 AGAIN.

14 MS. ABRAMSON: I DIDN'T SEND THIS TO THE WITNESS.  
15 THIS WAS NOT THE FIRST DOCUMENT I CHOSE TO GIVE TO A  
16 WITNESS WHOSE IMPARTIALITY WAS BOUND TO BE AN ISSUE IN  
17 THIS CASE.

18 THIS IS WHAT THE PROSECUTION CHOSE TO SEND  
19 HIM, AND I THINK I AM ENTITLED TO SHOW WHAT THE PAPER  
20 TRAIL TO THIS WITNESS WAS; HOW WOEFULLY INADEQUATE IT  
21 WAS, AND HOW IT WAS DESIGNED TO MAKE HIM BIASED EVEN IF  
22 HE WERE NOT OTHERWISE SO FAR.

23 SO I MEAN, IF THE PEOPLE DIDN'T WANT THIS  
24 MENTIONED, I CAN'T IMAGINE WHY THEY SENT IT TO HIM.

25 FIRST OF ALL, I CAN'T IMAGINE WHY THEY SENT  
26 IT TO HIM TO BEGIN WITH, IF THEY WERE CONCERNED ONLY  
27 WITH SHOWING HIM A SUMMARY OF THE PREVIOUS EXPERT  
28 TESTIMONY. THEY DID NOT HAVE TO INCLUDE THE CAPTION AND

-15617

1 THE ARGUMENTS, THE PERSUASIONS TO SET THIS WITNESS UP.

2 I MEAN, THIS ISN'T MY DOING. AND WITH

3 RESPECT TO THAT, THIS JURY KNOWS VERY WELL THERE WERE  
4 OTHER WITNESSES. THIS COURT RULED THAT DR. WILSON COULD  
5 RELY ON OTHER WITNESSES, AND IN FACT BECAUSE HE WAS, WE  
6 COULDN'T CALL THEM.

7 SO THERE IS NO SECRET THERE. THERE IS  
8 NOTHING MISINFORMING.

9 THE COURT: WELL, THE JURY DOESN'T KNOW OF  
10 RULINGS AND THE NATURE OF RULINGS AS TO WHICH WITNESSES,  
11 AND THEY SHOULDN'T KNOW.

12 IT WOULD BE IMPROPER FOR COUNSEL TO BRING  
13 BEFORE THE JURY -- AND THIS IS FOR EITHER SIDE -- THE  
14 FACT THAT ONE SIDE OR THE OTHER ASKS FOR A RULING OF THE  
15 COURT AND MADE LEGAL ARGUMENTS AS TO THE VALIDITY OF  
16 THEIR POSITION AND THE WAY THE COURT RULED. THAT WOULD  
17 BE HIGHLY IMPROPER FOR EITHER SIDE TO DO THAT.

18 MS. ABRAMSON: WE BROUGHT IT OUT WITH RESPECT TO  
19 AN 801 HEARING.

20 THE COURT: IT WAS NEVER BROUGHT OUT AS FAR AS  
21 THE DETAILS OF THE HEARING, AND IT WAS YOU WHO ARGUED TO  
22 THE JURY IN RESPONDING THAT THE COURT HAD RULED IN SOME  
23 FASHION ON THOSE ISSUES; AND THEREFORE, SOMEHOW THERE  
24 WAS SOME GUARANTEE BY THE COURT OF RELIABILITY.

25 MS. ABRAMSON: YOU DIDN'T LET ME FINISH.

26 THE COURT: LET ME FINISH, BECAUSE THIS REALLY  
27 DOESN'T REQUIRE THIS MUCH CONVERSATION.

28 WHAT I JUST SAID, AS FAR AS THE IMPROPRIETY

1 OF EITHER SIDE REFERRING TO OBJECTIONS THAT WERE MADE  
2 AND RULINGS MADE BY THE COURT AND MOTIONS MADE, IT'S  
3 PLAIN AND OBVIOUS, AND EITHER SIDE GETTING INTO THAT  
4 WOULD BE ENGAGED IN IMPROPER CONDUCT AND SUBJECT TO  
5 SEVERE SANCTIONS.

6 AS FAR AS THE TYPE OF MATERIAL THAT WAS  
7 SENT TO THE WITNESS, IF IT HAS SOME RELEVANCE, THEN IT  
8 CAN BE GONE INTO.

9 BUT THE TITLE OF THE DOCUMENT DOESN'T PROVE  
10 ITS CONTENT.

11 MS. ABRAMSON: NO, IT DOESN'T. I AM JUST TRYING  
12 TO PUT IT INTO THE RECORD.

13 THE COURT: THE WAY YOU DID IT MADE IT CLEAR TO  
14 THE JURY THAT IT WAS A MOTION BY THE PROSECUTION TO  
15 EXCLUDE CERTAIN EVIDENCE. IT DOESN'T HAVE TO BE  
16 IDENTIFIED THAT WAY, AND I WOULD ASK YOU NOT DO THAT IN  
17 THE FUTURE.

18 MS. ABRAMSON: I WILL MARK THE DOCUMENT AND ASK  
19 IF THESE SUMMARIES, AS APPEARED IN THAT DOCUMENT, IS  
20 WHAT HE WAS FIRST SHOWN.

21 THE COURT: AND IN THE FUTURE YOU ARE NOT TO MAKE  
22 REFERENCE TO ANY MOTIONS OR OBJECTIONS THAT HAVE BEEN  
23 LITIGATED IN THIS CASE.

24 MS. ABRAMSON: I DIDN'T INTEND TO.

25 THE COURT: BOTH SIDES HAVE MADE MANY OBJECTIONS,  
26 MANY MOTIONS. BOTH SIDES HAVE PREVAILED ON MANY ISSUES.

27 IF YOU WANT TO OUTLINE WHAT IT IS THAT EACH

-15615

1 JURY, AND IT'S ALREADY BEEN EXCLUDED, WE COULD GO ON FOR  
2 YEARS.

3 MS. ABRAMSON: I HAVE NO INTENTION OF DOING ANY  
4 OF THAT, YOUR HONOR. TRULY, ALL I AM TRYING TO DO IS  
5 LET THE JURY KNOW HOW THIS WITNESS WAS GIVEN  
6 INFORMATION, WHAT KIND OF INFORMATION HE WAS GIVEN, AND  
7 WHAT HE WASN'T GIVEN. THAT'S ALL I AM TRYING TO DO.

8 THE COURT: YOU CAN DO THAT.

9 MS. ABRAMSON: FINE.

10 NOW I AM GOING TO REFER TO -- THERE IS  
11 ANOTHER MOTION THAT HE GAVE HIM A COUPLE OF DAYS AGO,  
12 WHICH WAS TO EXCLUDE THE TESTIMONY OF TEACHERS, COACHES,  
13 BLAH-BLAH-BLAH.

14 WHAT I INTENDED TO DO WITH THAT IS SIMPLY  
15 ASK HIM IF A COUPLE OF DAYS AGO HE WAS GIVEN SUMMARIES  
16 OF DEFENSE WITNESSES THAT WERE CONTAINED INSIDE A  
17 MOTION, AND THAT'S ALL I WAS GOING TO DO TO IDENTIFY  
18 THAT MOTION.

19 THE COURT: OKAY.

20 (THE FOLLOWING PROCEEDINGS WERE  
21 HELD IN OPEN COURT IN THE  
22 PRESENCE OF THE JURY:)

23

24 THE COURT: ALL RIGHT.  
25 THE OBJECTION IS SUSTAINED TO THE PREVIOUS  
26 QUESTION AND THE ANSWER IS STRICKEN. THEY ARE STRICKEN.  
27 YOU MAY ASK YOUR NEXT QUESTION, PLEASE.  
28 MS. ABRAMSON: OKAY.

-15614

1 Q. SHOWING YOU THIS DOCUMENT, WHICH I'D LIKE  
2 TO MARK, YOUR HONOR, JUST AS AN EXHIBIT SO WE HAVE A  
3 RECORD.  
4 THE COURT: 433.  
5 MS. ABRAMSON: 433.  
6 Q. I WOULD JUST ASK YOU TO LOOK INSIDE TO THE  
7 SECTION -- IS THIS THE MOTION THAT YOU RECEIVED IN WHICH  
8 THE TESTIMONY OF EXPERTS -- DEFENSE EXPERTS WAS  
9 SUMMARIZED?  
10 A. I SAW A DRAFT OF THAT.  
11 Q. DID YOU PARTICIPATE IN ANY WAY IN WRITING  
12 THIS MOTION OR MAKING ANY SUGGESTIONS FOR IT?  
13 A. I DIDN'T PARTICIPATE IN WRITING IT, BUT I  
14 MADE SOME SUGGESTIONS AT SOME STAGE.  
15 MS. ABRAMSON: I'D LIKE TO BE HEARD AGAIN, YOUR  
16 HONOR.  
17 THE COURT: OKAY. LET'S GO ON TO SOMETHING ELSE,  
18 AND WE'LL GET BACK TO IT.  
19 Q. BY MS. ABRAMSON: AND BASED ON THE

20 CONVERSATIONS THAT YOU HAD, OR -- STRIKE THAT.

21           BASED ON ANY CONVERSATION THAT YOU HAD WITH  
22 EITHER MR. CONN OR MS. NAJERA OR ANYONE FROM THE  
23 DISTRICT ATTORNEY'S OFFICE BEFORE YOU RECEIVED THE  
24 DRAFT, WAS IT YOUR UNDERSTANDING THAT IT WAS BEING SENT  
25 TO YOU FOR YOUR INPUT IN WRITING THAT MOTION?

26       A.   I THOUGHT I WAS BEING ASKED FOR COMMENTS ON  
27 SOME OF THE THEORETICAL ISSUES THAT WERE RAISED.

28       Q.   SO AT THAT POINT WAS IT YOUR UNDERSTANDING

-15613

1 YOU WERE A CONSULTANT ON PSYCHIATRIC/PSYCHOLOGICAL  
2 ISSUES IN THE CASE?

3       A.   I THINK THAT'S FAIR, YES.

4       Q.   AND AT THAT TIME WAS IT PART OF YOUR  
5 UNDERSTANDING THAT YOU MIGHT HAVE AN OPPORTUNITY TO  
6 EXAMINE MY CLIENT SOMEWHERE DOWN THE ROAD?

7       A.   YES.

8       Q.   NOW, YOU HAVE TESTIFIED IN CASES FOR THE  
9 PROSECUTION -- WELL, STRIKE THAT.

10           YOU HAVE TESTIFIED FOR THE PROSECUTION IN  
11 CASES, DR. DIETZ, WHERE YOU NEVER EXAMINED THE ACCUSED,  
12 CORRECT?

13       A.   YES.

14       Q.   AND YOU HAVE RENDERED OPINIONS IN THOSE  
15 CASES IN THE ABSENCE OF SUCH A SERIES OF INTERVIEWS,

16 CORRECT?

17 A. YES.

18 Q. AND BEFORE YOU INTERVIEWED MY CLIENT IN  
19 THIS CASE, DID YOU READ ALL OF HIS TESTIMONY FROM THIS  
20 TRIAL?

21 A. WHEN I BEGAN TO INTERVIEW YOUR CLIENT, ERIK  
22 MENENDEZ, I HAD REVIEWED MOST, IF NOT ALL -- I THINK IT  
23 WAS MOST, AND NOT QUITE ALL OF HIS DIRECT TESTIMONY.

24 BUT I HADN'T BEGUN TO READ THE  
25 CROSS-EXAMINATION, AND AT THAT TIME THERE WERE TWO  
26 MISSING VOLUMES OF THE TRIAL TRANSCRIPT THAT INCLUDED  
27 THE END OF DIRECT AND THE BEGINNING OF CROSS.

28 LATER IN THE EXAMINATION OF YOUR CLIENT I

-15612

1 HAD BEGUN READING THE CROSS-EXAMINATION TRANSCRIPT.

2 Q. YOU'VE READ THEM ALL BY NOW, I TAKE IT?

3 A. I'M NOT SURE I HAVE READ THE TWO MISSING  
4 VOLUMES YET.

5 Q. AND THOSE TWO MISSING VOLUMES INCLUDED PART  
6 OF THE DIRECT AND PART OF THE -- AND THE BEGINNING OF  
7 CROSS?

8 A. YEAH. I KNOW I READ THE REMAINDER OF  
9 DIRECT, AND I DON'T KNOW WHETHER I GOT THROUGH THE FIRST  
10 VOLUME OF CROSS.

11 Q. DID YOU KNOW -- WELL, STRIKE THAT.



12 DID YOU KNOW WHEN YOU WERE FIRST CONTACTED  
13 BY THE PROSECUTION THAT THERE HAD BEEN A TRIAL IN THIS  
14 CASE?

15 A. YES.

16 Q. DID YOU BELIEVE THAT THERE PROBABLY WERE  
17 TRANSCRIPTS OF THAT TRIAL?

18 A. YES.

19 Q. WERE YOU EVER SENT TRANSCRIPTS OF THE  
20 TESTIMONY OF ERIK MENENDEZ, FOR EXAMPLE, FROM THE FIRST  
21 TRIAL?

22 A. YES.

23 Q. WHEN DID YOU RECEIVE THOSE?

24 A. SOMETIME IN 1995.

25 Q. FROM ME?

26 A. NO.

27 Q. SO YOU ALREADY HAD TRANSCRIPTS OF THE  
28 TESTIMONY OF ERIK MENENDEZ FROM THE FIRST TRIAL BEFORE

-15611

1 YOU INTERVIEWED HIM?

2 A. YES.

3 Q. HAD YOU READ THEM?

4 A. NO.

5 Q. I WANT TO SHOW YOU A LIST.

6 MS. ABRAMSON: YOUR HONOR, AT THIS POINT I WOULD  
7 ASK JUST FOR IDENTIFICATION TO MARK THIS 434 FOR THE

8 RECORD.

9 THE COURT: YES.

10 Q. BY MS. ABRAMSON: DR. DIETZ, DO YOU  
11 RECOGNIZE THIS LIST TO BE WHAT IS PURPORTED TO BE THE  
12 MATERIALS THAT WERE SENT TO YOU BY THE PROSECUTION PRIOR  
13 TO YOUR EXAMINATION OF ERIK MENENDEZ?

14 A. I'VE SEEN THIS LIST BEFORE.

15 Q. AND WAS IT COMPILED BY YOUR OFFICE, OR THE  
16 DISTRICT ATTORNEY'S OFFICE, OR BOTH?

17 A. BOTH.

18 Q. AND DO YOU SEE ANYWHERE ON THAT LIST THAT  
19 THE PROSECUTION PROVIDED YOU WITH THE TESTIMONY OF ERIK  
20 MENENDEZ FROM THE FIRST TRIAL?

21 A. NO.

22 Q. NOW, WERE YOU -- IN ANY EVENT, YOU HAVEN'T  
23 READ IT, CORRECT?

24 A. CORRECT.

25 Q. AND DID YOU NOTE THAT IT WAS 10 VOLUMES --  
26 10 DAYS' WORTH OF TESTIMONY?

27 A. I DON'T KNOW HOW LONG IT WAS.

28 Q. IT HAD A LOT OF VOLUMES?

-15610

1 A. IT WAS A LOT OF PAPER, YES.

2 Q. NOW, I MET YOU FOR THE FIRST TIME, DID I  
3 NOT, ON JANUARY 27, 1996 IN THE PARKING LOT AT THE

4 BEVERLY HILLS POLICE DEPARTMENT?

5 A. FIRST TIME WE MET IN PERSON, YES.

6 Q. YES. AND AT THAT VERY MOMENT I GAVE YOU

7 TWO BOXES OF MATERIALS?

8 A. YES.

9 Q. AND DID -- CONTAINED WITHIN THOSE TWO BOXES

10 WAS ALL OF THE TRIAL TESTIMONY OF ERIK MENENDEZ FROM THE

11 FIRST TRIAL?

12 A. YES.

13 Q. SO NOW YOU HAD TWO SETS?

14 A. YES.

15 Q. OKAY.

16 DID THE PROSECUTION EVER SEND YOU ANY OTHER

17 TESTIMONY OF ANY OTHER WITNESSES FROM THE FIRST TRIAL?

18 A. YES.

19 Q. AND WAS THAT -- LET ME GIVE YOU A LIST.

20 WAS THAT THE TESTIMONY OF DR. JOHN BRIERE?

21 A. YES.

22 Q. THE TESTIMONY OF DR. ANN H. TYLER?

23 A. YES.

24 Q. THE TESTIMONY OF DR. STEWART HART?

25 A. I THINK SO. I'M NOT SURE OF THESE. I'D

26 HAVE TO CALL MY OFFICE TO CONFIRM.

27 Q. IF I TELL YOU THEY'RE ON THE LIST, WOULD

28 THAT GIVE YOU SOME COMFORT?

1 A. YES.

2 Q. OKAY. THEY ARE.

3 THE TESTIMONY OF ANN BURGESS?

4 A. YES.

5 Q. DR. ANN BURGESS.

6 YES?

7 A. YES.

8 Q. THE TESTIMONY OF DR. JOHN CONTE?

9 A. YES.

10 Q. DID YOU EVER READ THOSE TRANSCRIPTS?

11 A. NO.

12 Q. I AM MARKING IN THE MARGIN OF THE EXHIBIT,

13 YOUR HONOR, THE WORDS "NEVER READ."

14 DID YOU RECEIVE THE TESTIMONY OF ANY

15 CIVILIAN WITNESSES, NON-EXPERTS, NON-POLICE OFFICERS

16 PRESENTED BY THE DEFENSE AT THE FIRST TRIAL FROM THE

17 PROSECUTION?

18 A. LYLE MENENDEZ.

19 Q. DID YOU READ THE TESTIMONY OF LYLE MENENDEZ

20 FROM THE FIRST TRIAL?

21 A. NO.

22 Q. IF I WERE TO TELL YOU THAT THE TESTIMONY OF

23 LYLE MENENDEZ FROM THE FIRST TRIAL DOES NOT APPEAR ON

24 THIS LIST, WOULD THAT BE AN OVERSIGHT?

25 MR. CONN: OBJECTION. IRRELEVANT, AND CALLS FOR

26 SPECULATION.

27 THE COURT: SUSTAINED.

28 Q. BY MS. ABRAMSON: LET ME SHOW YOU THE LIST.

1 A. WELL, IT WOULDN'T BE --

2 MR. CONN: I WOULD STILL OBJECT AS THAT LIST  
3 BEING IRRELEVANT. WHETHER OR NOT IT'S ON THAT  
4 PARTICULAR LIST IS IRRELEVANT.

5 THE COURT: WELL, THERE IS NO QUESTION AT THIS  
6 POINT. SO LET'S HEAR THE QUESTION.

7 Q. BY MS. ABRAMSON: THE QUESTION IS: IS THE  
8 TESTIMONY OF LYLE MENENDEZ ON THE LIST?

9 MR. CONN: OBJECTION. IRRELEVANT.

10 THE COURT: OVERRULED.

11 THE WITNESS: NO.

12 Q. BY MS. ABRAMSON: DO YOU REMEMBER, APART  
13 FROM THE LIST -- MAY I HAVE IT BACK -- WHETHER OR NOT  
14 YOU IN FACT RECEIVED THE TESTIMONY OF LYLE MENENDEZ FROM  
15 THE FIRST TRIAL?

16 A. I THINK I DID, BUT I WOULD HAVE TO CALL MY  
17 OFFICE TO BE SURE.

18 Q. PERHAPS WE CAN DO THAT OVER LUNCH.

19 BUT IN ANY EVENT, YOU DIDN'T READ IT?

20 A. THAT'S RIGHT.

21 Q. AND I TAKE IT YOU DON'T KNOW HOW LONG IT  
22 WAS EITHER?

23 A. IT WAS A LOT OF PAPER.

24 Q. ABOUT NINE VOLUMES OF TESTIMONY?

25 A. I WOULDN'T HAZARD A GUESS.

26 Q. OKAY.

27 SO APART FROM LYLE MENENDEZ AND ERIK

28 MENENDEZ, AND THE TESTIMONY OF THE EXPERT WITNESSES I

-15607

1 READ, YOU DID NOT RECEIVE THE TESTIMONY OF ANY OTHER

2 WITNESS FROM THE FIRST TRIAL; IS THAT RIGHT?

3 A. WHAT I BELIEVE TO BE CORRECT IS THAT I

4 DIDN'T RECEIVE ANY OF THE LAY WITNESS TESTIMONY OTHER

5 THAN THE DEFENDANTS THEMSELVES.

6 Q. DID YOU RECEIVE THE TESTIMONY OF ANY POLICE

7 OFFICERS FROM THE FIRST TRIAL?

8 A. NO.

9 Q. DID YOU RECEIVE THE TESTIMONY OF THE

10 CORONER FROM THE FIRST TRIAL?

11 A. NO.

12 Q. NOW, AT SOME POINT YOU RECEIVED THE OPENING

13 STATEMENTS IN THIS TRIAL, CORRECT?

14 A. YES.

15 Q. WHEN DID YOU RECEIVE THOSE?

16 A. I DON'T IN FACT KNOW, BUT MY BELIEF IS --

17 NO, I DON'T KNOW.

18 Q. ARE YOU RELYING UPON THE MATERIALS IN THE

19 OPENING STATEMENTS IN FORMING ANY OF THE OPINIONS YOU

20 HAVE EXPRESSED IN THIS COURT?

21 A. NO. I JUST USED IT TO ORIENT ME TO THE

22 ISSUES.

23 Q. IT'S NOT THE KIND OF MATERIAL THAT A  
24 FORENSIC SCIENTIST WOULD ORDINARILY RELY ON?

25 A. NOT WHAT LAWYERS SAY, NO.

26 Q. EXACTLY.

27 NOW, DID YOU RECEIVE FROM THE PROSECUTION  
28 DR. WILSON'S TESTIMONY IN THIS TRIAL?

-15606

1 A. YES.

2 Q. DID YOU RECEIVE ALL OF IT?

3 A. I DON'T KNOW, BUT I THINK SO.

4 Q. DID YOU READ IT?

5 A. I LEAFED THROUGH SOME OF IT. I READ BITS  
6 OF IT. I DID NOT READ ALL OF IT.

7 Q. JUST TO BACK UP, YOU DIDN'T RECEIVE THE  
8 TESTIMONY OF DR. WILLIAM VICARY FROM THE FIRST TRIAL,  
9 DID YOU, FROM THE PROSECUTION?

10 A. NO. NO, I DIDN'T.

11 Q. AND DO YOU UNDERSTAND THAT DR. WILLIAM  
12 VICARY IS, LIKE YOURSELF, A FORENSIC SCIENTIST?

13 MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR  
14 SPECULATION.

15 THE COURT: OVERRULED.

16 THE WITNESS: I KNOW DR. VICARY, AND HE IS A  
17 FORENSIC PSYCHIATRIST.

18 Q. AND DO YOU KNOW THAT DR. VICARY IS THE  
19 FIRST MENTAL HEALTH PROFESSIONAL WHO HAD CONTACT WITH  
20 ERIK MENENDEZ AFTER ERIK MENENDEZ' ARREST?

21 A. YES.

22 Q. AND DO YOU KNOW DR. VICARY TESTIFIED IN THE  
23 FIRST TRIAL?

24 A. YES.

25 Q. AND DO YOU KNOW DR. VICARY TURNED OVER HIS  
26 NOTES TO THE PROSECUTION AT THE TIME OF THE FIRST TRIAL?

27 A. NO.

28 Q. DID THE PROSECUTION EVER SEND YOU

-15605

1 DR. VICARY'S NOTES?

2 A. NO.

3 Q. DID I?

4 A. YES.

5 Q. DID YOU READ THEM?

6 A. I READ PARTS OF THEM.

7 Q. RECENTLY?

8 A. YES.

9 Q. AS OF TWO DAYS AGO YOU HADN'T READ THEM  
10 YET, CORRECT?

11 A. CORRECT.

12 Q. IN FACT, ON MONDAY, FEBRUARY 5TH, THERE WAS  
13 A MEETING, WAS THERE NOT, IN THE DISTRICT ATTORNEY'S



14 LIBRARY?

15 A. YES.

16 Q. AND YOU WERE THERE, AND THE DISTRICT  
17 ATTORNEYS WERE THERE, AND I WAS THERE, AND MR. GESSLER  
18 WAS THERE, AND DR. VICARY WAS THERE, CORRECT?

19 A. YES.

20 Q. HAVE YOU AT ANY TIME SOUGHT TO TALK TO  
21 DR. VICARY ABOUT HIS OBSERVATIONS OR FINDINGS OF FIVE  
22 YEARS AND EIGHT MONTHS AGO WHEN HE FIRST SAW ERIK  
23 MENENDEZ?

24 A. NO.

25 Q. AND, IN FACT, HE WAS RIGHT THERE AT THE  
26 MEETING, AND YOU DIDN'T MAKE ANY EFFORT TO TALK TO HIM  
27 THAT EVENING EITHER, DID YOU?

28 A. THAT'S RIGHT.

-15604

1 Q. DID YOU ALSO RECEIVE FROM THE PROSECUTION  
2 THE TESTIMONY OF DR. JOHN WILSON IN A PRETRIAL HEARING?

3 A. YES.

4 Q. DID YOU READ IT?

5 A. YES.

6 Q. AND I THINK YOU'VE ALREADY TESTIFIED ON  
7 DIRECT THAT YOU DID RECEIVE, IN EITHER A TAPE OR  
8 TRANSCRIPT FORM, ALL OF THE POLICE INTERVIEWS CONDUCTED  
9 WITH ERIK MENENDEZ?

10 A. THAT'S RIGHT.

11 Q. AND YOU ALSO HAD A POLICE INTERVIEW

12 CONDUCTED WITH LYLE MENENDEZ?

13 A. TWO.

14 Q. YOU HAD AUGUST 21ST AND SEPTEMBER 19TH?

15 THE COURT: SEVENTEEN, I BELIEVE.

16 MS. ABRAMSON: SEVENTEENTH, YOUR HONOR.

17 THE WITNESS: YES.

18 MS. ABRAMSON: ALL RIGHT.

19 Q. I TAKE IT YOU WERE NOT SENT THE TESTIMONY

20 OF DR. OZIEL FROM THE FIRST TRIAL?

21 A. CORRECT.

22 Q. IN ANY FORM?

23 A. THAT'S RIGHT.

24 Q. WERE YOU AWARE THAT THE ENTIRE TRIAL WAS

25 VIDEOTAPED FOR COURTROOM TELEVISION, INC.?

26 A. I WAS AWARE THAT IT WAS ON COURT T.V. I

27 DON'T KNOW IF THEY GOT EVERYTHING.

28 Q. DID YOU EVER WATCH IT?

-15603

1 A. NO.

2 Q. DID YOU EVER ASK FOR ANY OF THE

3 VIDEOTAPES -- WELL, DID YOU KNOW THE PROSECUTION HAS THE

4 VIDEOTAPES?

5 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

6 EVIDENCE.

7 THE COURT: SUSTAINED.

8 Q. BY MS. ABRAMSON: DO YOU KNOW WHETHER OR  
9 NOT THE PROSECUTION HAS THE VIDEOTAPES?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: IT WOULD CALL FOR SPECULATION.

12 Q. BY MS. ABRAMSON: DID YOU EVER ASK FOR ANY  
13 OF THE VIDEOTAPES, AND PARTICULARLY, DID YOU EVER ASK TO  
14 SEE THE VIDEOTAPES OF ERIK MENENDEZ' TESTIMONY AT THAT  
15 TRIAL?

16 A. NO. I THOUGHT THERE WAS A NEW TRIAL.

17 Q. WELL, WHEN YOU DO A PSYCHIATRIC EVALUATION  
18 AS A FORENSIC PSYCHIATRIST, ISN'T ONE OF THE THINGS YOU  
19 WANT, ALL THE STATEMENTS MADE BY THE ACCUSED ON PRIOR  
20 OCCASIONS?

21 A. YES.

22 Q. AND WOULDN'T 10 DAYS OF TESTIMONY COUNT AS  
23 A PRIOR STATEMENT?

24 A. AND IF MY GOAL WERE TO LOOK FOR  
25 DISCREPANCIES IN TESTIMONY, OF COURSE, I WOULD WANT TO  
26 DO THAT.

27 Q. WELL, IF YOUR GOAL WAS TO LEARN INFORMATION  
28 ABOUT STATE OF MIND AT THE TIME OF AN OFFENSE, THAT

1 MIGHT PROVE USEFUL AS WELL, DON'T YOU THINK?

2 A. IT'S POSSIBLE. IT COULD BE A LARGE  
3 DUPLICATION OF EFFORT AND FURTHER EXPENSE TO THE  
4 TAXPAYERS, TOO.

5 Q. BUT IT DOES QUALIFY AS A PRIOR STATEMENT,  
6 DOES IT NOT?

7 A. YES.

8 Q. AND YOU HAVE EVEN WRITTEN, HAVE YOU NOT,  
9 ABOUT THE TOPIC OF EXTRA-CLINICAL INVESTIGATION AS PART  
10 OF THE MANNER IN WHICH FORENSIC PSYCHIATRISTS BECOME  
11 PREPARED?

12 A. YES, I HAVE.

13 Q. AND IN THAT ARTICLE, WITHOUT QUOTING  
14 SPECIFICALLY, YOU INDICATE THAT IT'S ALWAYS BEST, WHEN  
15 RESOURCES ALLOW IT, TO GET AS MUCH INFORMATION AS YOU  
16 POSSIBLY CAN CONCERNING THE OFFENSE AND THE OFFENDER?

17 A. THAT'S TRUE. THERE IS ALWAYS JUDGMENT TO  
18 BE MADE OF HOW MUCH TO DO TO ANSWER THE QUESTION AT  
19 HAND.

20 MS. ABRAMSON: YOUR HONOR, I WOULD MOVE TO STRIKE  
21 THE LAST HALF OF THE ANSWER AS NOT RESPONSIVE.

22 THE COURT: OVERRULED. IT WILL STAND.

23 Q. BY MS. ABRAMSON: NOW, YOU WERE ALSO GIVEN  
24 SOME POLICE REPORTS, CORRECT?

25 A. THAT'S RIGHT.

26 Q. AND DID YOU KNOW AT THE TIME WHETHER OR NOT  
27 IT WAS THE COMPLETE POLICE INVESTIGATION IN THIS CASE?

28 A. NO. I HAD ASKED FOR ALL THE POLICE

1 REPORTS, AND I RECEIVED A NUMBER OF POLICE REPORTS.

2 Q. AND DO YOU NOW KNOW THAT YOU DID NOT GET  
3 ALL THE POLICE REPORTS?

4 A. YOU HAVE INFORMED ME THAT THERE WERE  
5 STATEMENTS OF WITNESSES WHO WERE RE-INTERVIEWED THAT I  
6 HAD NOT RECEIVED.

7 Q. WELL, ARE YOU AWARE, DR. DIETZ, THAT THERE  
8 ARE OVER 1400 PAGES OF POLICE REPORTS IN THIS CASE?

9 A. NO.

10 Q. AND YOU CERTAINLY DIDN'T GET 1400 PAGES,  
11 DID YOU?

12 A. NO.

13 Q. AND DID YOU EVER ASK FOR THE BEVERLY HILLS  
14 POLICE DEPARTMENT'S FILE?

15 A. NO.

16 Q. YOU KNOW DETECTIVE ZOELLER, DON'T YOU?

17 A. YES.

18 Q. NOW, HAVE THERE BEEN SITUATIONS IN THE PAST  
19 WHEN YOU WERE PERMITTED TO INTERVIEW A CRIMINAL  
20 DEFENDANT ON BEHALF OF THE PROSECUTION IN ORDER TO DO A  
21 PSYCHIATRIC EVALUATION, WHEN THAT CRIMINAL DEFENDANT  
22 REFUSED TO PARTICIPATE IN THE INTERVIEW?

23 A. YES.

24 Q. SO YOU ARE AWARE, ARE YOU NOT, THAT EVEN IF  
25 YOU ARE PERMITTED, A DEFENDANT CAN EFFECTIVELY BLOCK YOU  
26 FROM DOING THE INTERVIEW?

27 A. YES.

28 Q. AND IN THIS PARTICULAR CASE, ERIK MENENDEZ

-15600

1 DID PARTICIPATE IN THIS INTERVIEW WITH YOU FOR 16 HOURS  
2 OVER THREE DIFFERENT DAYS, CORRECT?

3 A. YES.

4 Q. AND HE TOLD YOU, DID HE NOT, THAT HE HAD  
5 BEEN ADVISED BY FRIENDS AND RELATIVES NOT TO TALK TO  
6 YOU?

7 A. YES.

8 Q. BUT THAT HE WANTED TO?

9 A. WELL, CHOSE TO, ANYWAY.

10 Q. WELL, CHOSE TO.

11 YOU MENTIONED ON DIRECT EXAMINATION --

12 A. BUT MADE IT PLAIN HE ONLY DID IT BECAUSE  
13 THE COURT ORDERED HIM TO.

14 Q. NO, HE MADE IT PLAIN THAT HE HAD NOTHING TO  
15 HIDE, AND HE SAID THAT TO YOU TWO OR THREE TIMES, DID HE  
16 NOT?

17 A. I THINK HE DID. BUT HE ALSO SAID HE WAS  
18 ONLY THERE BECAUSE HE WAS ORDERED TO BE.

19 Q. WELL, HE HAD ALREADY BEEN TALKED TO BY SIX  
20 MENTAL HEALTH PROFESSIONALS BEFORE YOU CAME ALONG,  
21 HADN'T HE?

22 A. AT LEAST.

23 Q. AT LEAST.

24 AND YOU HAVE HAD THE EXPERIENCE, HAVE YOU  
25 NOT, OR AT LEAST YOU'RE AWARE OF OTHER FRIENDS WHO ARE  
26 PSYCHIATRISTS, WHO HAVE HAD THE EXPERIENCE THAT A  
27 CRIMINAL DEFENDANT WILL SHOW UP FOR THE INTERVIEW AND  
28 THEN SORT OF MAKE IT IMPOSSIBLE TO GET ANY INFORMATION

-15599

1 OUT OF HIM?

2 A. THAT AND WORSE.

3 Q. YOU'VE BEEN ATTACKED?

4 A. SURE.

5 Q. AND I THINK YOU TESTIFIED ON DIRECT THAT  
6 ERIK MENENDEZ GAVE VERY LONG ANSWERS, AND IT WAS ONE OF  
7 THE FEATURES I THINK THAT YOU FELT PROVED THAT HE WAS AN  
8 ANXIOUS PERSON?

9 A. YES.

10 Q. CORRECT?

11 NOW, YOU TESTIFIED ON DIRECT THAT THERE WAS  
12 A POINT IN THE INTERVIEW PROCESS -- LET'S SEE IF I HAVE  
13 IT CORRECTLY -- WHAT YOU SAID -- WHERE I THINK WHAT YOU  
14 SAID WAS HE GOT A LITTLE ANGERED DUE TO A CHALLENGE THAT  
15 YOU MADE TO HIM.

16 IS THAT HOW YOU CHARACTERIZED IT?

17 A. YES.

18 Q. AND THIS OCCURRED, DID IT NOT, AT THE END

19 OF THE FIRST DAY, THE 27TH, RIGHT?

20 A. TOWARD THE END OF THE DAY, YES. CERTAINLY

21 TOWARD THE END OF THE INTERVIEW.

22 Q. WELL, I MEANT THE END OF YOUR DAY WITH ERIK

23 MENENDEZ?

24 A. RIGHT.

25 Q. NO DOUBT IT SEEMED LIKE A LONG DAY, DID IT

26 NOT?

27 A. NO.

28 Q. ALL RIGHT.

-15598

1 IN FACT, AT THAT POINT YOU AND HE WERE  
2 TALKING ABOUT THE FACT THAT HE HAD ONLY PARTIAL MEMORIES  
3 OF WHAT HE HAS CALLED ROUGH SEX WITH HIS FATHER, AND  
4 THAT HE IS NOT AS 100 PERCENT CERTAIN OF THE DETAILS OF  
5 THOSE SEXUAL EPISODES AS HE IS OF OTHER SEXUAL EPISODES  
6 WITH HIS FATHER THAT HE DESCRIBED, CORRECT?

7 A. YES.

8 Q. AND HE GAVE YOU AN EXAMPLE. HE SAID HE WAS  
9 SURE THEY HAD HAPPENED, BUT HE SAID THAT IT WOULD BOTHER  
10 HIM MORALLY TO BE INVOLVED IN A PROSECUTION OF SOMEONE  
11 FOR COMMITTING THOSE ACTS AGAINST HIM, CRIMINAL  
12 PROSECUTION, BASED SOLELY ON HIS MEMORY, CORRECT?

13 A. YES.

14 Q. AND THEN YOU SNAPPED AT HIM: "BUT YOU'LL



15 USE IT TO SAVE YOUR ASS IN FRONT OF THE JURY," DID YOU

16 NOT?

17 MR. CONN: OBJECTION. ARGUMENTATIVE AS PHRASED.

18 THE COURT: OVERRULED.

19 THE WITNESS: YES, THAT'S RIGHT.

20 Q. BY MS. ABRAMSON: AND HIS REACTION TO THAT

21 WAS TO BE HURT, WASN'T IT?

22 A. YES.

23 Q. AND YOU WROTE IN YOUR NOTES: "RESPONDED

24 WITH SENSITIVITY AND ARTICULATE EXPRESSION OF FEELINGS,"

25 CORRECT?

26 A. YES.

27 Q. AND THE NEXT DAY, THE 28TH, WHICH WAS THE

28 SUNDAY, THE TWO OF YOU DISCUSSED WHAT HAD OCCURRED

-15597

1 BETWEEN YOU WHEN YOU -- AND I TAKE IT THAT WAS

2 PURPOSEFUL ON YOUR PART, THAT WAS A TECHNIQUE?

3 A. I WANTED TO RE-ENACT AN EVENT OF THE KIND

4 THAT HE HAD HAD MANY TIMES IN HIS FAMILY LIFE.

5 Q. BEING BELITTLED AND HUMILIATED AND

6 DENIGRATED?

7 A. YES.

8 Q. AND WHEN YOU DISCUSSED IT WITH HIM AGAIN

9 THE NEXT DAY, YOU ASKED HIM WHAT MENTAL PROCESS HE --

10 BASICALLY, WHAT MENTAL PROCESSES HE WENT THROUGH AFTER

11 YOU HAD HURT HIS FEELINGS IN THINKING ABOUT THE  
12 CHALLENGE, AS YOU CALL IT, THAT YOU MADE TO HIM,  
13 CORRECT?

14 A. YES.

15 Q. AND YOU SPECIFICALLY ASKED HIM: "DID IT  
16 MAKE YOU ANGRY?"

17 YES?

18 A. I CONCEDE THAT IF IT'S ON THE TAPE. I  
19 DON'T RECALL IF I ASKED HIM OR NOT.

20 Q. AND HE TOLD YOU THAT WHEN HE GOT BACK HOME,  
21 MEANING BACK TO THE COUNTY JAIL, THE CELL THAT HE LIVES  
22 IN, HE THOUGHT ABOUT IT, AND HE SAID: "IT MADE ME A  
23 LITTLE BIT ANGRY."

24 A. THAT'S RIGHT.

25 Q. AND DID HE ALSO TELL YOU THAT HE HAD SPOKEN  
26 TO ME IN THE INTERIM ABOUT WHAT HAD TRANSPIRED?

27 A. WELL, I KNEW HE HAD SPOKEN TO YOU, AND YES,  
28 I AM SURE HE WOULD HAVE MENTIONED IT.

-15596

1 Q. AND DID HE TELL YOU THAT HE FEELS THAT IT'S  
2 A SIGN OF HIS IMPROVING MENTAL HEALTH THAT HE CAN FEEL  
3 ANGER AND STAND UP FOR HIMSELF AND NOT TAKE BEING  
4 VICTIMIZED?

5 A. YES.

6 Q. AND IT IS, ISN'T IT?

7 A. IT IS.

8 Q. YOU ASKED HIM SOME QUESTIONS DURING THE  
9 INTERVIEW ABOUT THE NATURE OF HIS THERAPY WITH  
10 DR. VICARY, CORRECT?

11 A. YES.

12 Q. AND IS IT YOUR INTERVIEWING TECHNIQUE,  
13 DR. DIETZ, TO NOT DO VERY MUCH TALKING, TO JUST ASK  
14 QUESTIONS AND LET THE SUBJECT TALK?

15 A. THAT'S GENERALLY TRUE.

16 Q. AND THAT'S GENERALLY GOOD PRACTICE TO AVOID  
17 SUGGESTING THINGS, CORRECT?

18 A. IT -- WHEN ONE IS TRYING TO AVOID  
19 SUGGESTING THINGS, THAT'S QUITE HELPFUL, YES.

20 Q. SOMETIMES YOU DO WANT TO SUGGEST THINGS  
21 BECAUSE YOU WANT TO SEE IF PEOPLE ARE SUGGESTIBLE AND  
22 WILL ADOPT WHAT YOU'RE SAYING?

23 A. FOR THAT OR OTHER REASONS.

24 Q. OKAY. AND WHEN HE DESCRIBED TO YOU -- HE  
25 DESCRIBED TO YOU THE THERAPY TECHNIQUE OF DR. VICARY, HE  
26 SAID: "HE'S SORT OF LIKE YOU. HE HARDLY TALKS AT ALL.  
27 I DO ALL THE TALKING," CORRECT?

28 A. YES.

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1 THE COURT: ALL RIGHT.

2 WELL, LET'S TAKE OUR BREAK HERE. AND WE'LL

3 RESUME AT 1:30. DON'T DISCUSS THE MATTER WITH ANYONE.  
4 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME  
5 AT 1:30.

6 (AT 12:05 P.M PROCEEDINGS WERE  
7 ADJOURNED UNTIL 1:35 P.M. OF  
8 THE SAME DAY)

9 -15594

1 VAN NUYS, CALIFORNIA; FRIDAY, FEBRUARY 9, 1996  
2 1:50 P.M.

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE  
4 (APPEARANCES AS HERETOFORE NOTED)  
5 (MARY LU MURPHY, OFFICIAL REPORTER)

6  
7 THE COURT: EVERYONE IS PRESENT. LET'S GET THE  
8 JURY OUT, PLEASE.

9 MS. ABRAMSON: YOUR HONOR, THERE IS ONE MATTER.

10 THE COURT: WHAT IS THAT?

11 MS. ABRAMSON: WELL, YOUR HONOR, PURSUANT TO THE  
12 TESTIMONY OF DR. DIETZ, I BELIEVE HE CONTRIBUTED TO THE  
13 PROSECUTION'S MOTION TO EXCLUDE THE TESTIMONY OF EXPERT  
14 WITNESSES IN THIS CASE. I THINK IT'S NOW RELEVANT WHAT  
15 THE TITLE OF THAT DOCUMENT IS.

16 THE COURT: WHY?

17 MS. ABRAMSON: BECAUSE IT SHOWS HIS BIAS. IT  
18 SHOWS HE IS CONTRIBUTING TO THE PROSECUTION TRYING TO  
19 EXCLUDE THE TESTIMONY OF THE DEFENSE EXPERT WITNESSES.

20 I THINK THAT LEADS TO A BIAS, INTEREST AND  
21 MOTIVE ABOVE AND BEYOND AN EXPERT EVALUATOR OF THE

22 DEFENDANT'S MENTAL STATE AT THE TIME OF THE OFFENSE.

23 THE COURT: WELL, THE BIAS, IF ANY, WOULD BE

24 DISPLAYED BY THE FACT HE ASSISTED THE PROSECUTION IN

25 EVALUATING OR RESPONDING OR PREPARING A MOTION.

26 AS TO THE NATURE OF THE MOTION, I DON'T

27 THINK IT HAS ANY RELEVANCE.

28 MS. ABRAMSON: WELL, WHAT IF IT WAS SIMPLY A

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1 MOTION TO GO TO THE SCENE, OR A MOTION TO -- I DON'T

2 KNOW, ANYTHING. THIS IS CERTAINLY NOT NEUTRAL. THIS IS

3 A MOTION TO PREVENT THE DEFENSE FROM DOING SOMETHING.

4 THE COURT: WELL, CLEARLY THE FACT IS THAT HE WAS

5 ASSISTING THE PROSECUTION. THEN THAT IS THE AREA OF

6 BIAS, NOT THE NATURE OF THE PARTICULAR MOTION THAT WAS

7 BEING LITIGATED OR BEING WRITTEN.

8 MS. ABRAMSON: BUT HE IS ASSISTING THE

9 PROSECUTION RIGHT NOW, AND YET WE ASSUME THAT HE -- A

10 WITNESS CALLED BY THE PROSECUTION, EVEN IF PAID, ISN'T

11 AUTOMATICALLY BIASED, JUST LIKE WE ASSUME WITNESSES

12 CALLED FOR THE DEFENSE AND PAID AREN'T AUTOMATICALLY

13 BIASED.

14 THE COURT: WELL, THE FACT THAT HE ASSISTED THE

15 DEFENSE IN ITS WORK -- STRIKE THAT, THE PROSECUTION IN

16 ITS WORK IN PREPARING A LEGAL DOCUMENT IS FAIR GAME TO

17 SHOW BIAS, BUT THE NATURE OF THE DOCUMENT AND THE NATURE

18 OF THE LITIGATION, I DON'T SEE HOW THAT WOULD HAVE ANY  
19 BEARING ON THE PURPOSE FOR WHICH YOU ARE OFFERING THE  
20 EVIDENCE.

21 ALL RIGHT. LET'S GET THE JURY OUT.

22 (THE JURY ENTERS THE COURTROOM AND  
23 THE FOLLOWING PROCEEDINGS WERE  
24 HELD:)

25

26 THE COURT: OKAY. THE JURY IS IN COURT, AND YOU  
27 MAY CONTINUE YOUR CROSS-EXAMINATION.

28 MS. ABRAMSON: THANK YOU, YOUR HONOR.

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1 CROSS-EXAMINATION (CONTINUED)

2 BY MS. ABRAMSON:

3 Q. DR. DIETZ, I WANT TO GO BACK TO ONE POINT.

4 YOU INDICATED THAT ERIK MENENDEZ TOLD YOU  
5 THAT THE COURT HAD ORDERED HIM TO TALK TO YOU, CORRECT?

6 A. YES.

7 Q. AND YOU UNDERSTOOD, DID YOU NOT, IN  
8 QUESTIONS I ASKED YOU ABOUT PEOPLE WHERE YOU WERE  
9 PERMITTED TO EXAMINE THEM AND THEY RESISTED, YOU ASSUMED  
10 THAT IT WAS A COURT ORDERED EXAMINATION, WAS IT NOT?

11 A. MANY OF THEM WERE, YES.

12 Q. AND YOU HAVE HAD THAT EXPERIENCE WHERE THE  
13 COURT HAS ORDERED SOMEONE, AND THE ACCUSED HAS DISOBEYED

14 THE COURT'S ORDER AND REFUSED TO COOPERATE?

15 MR. CONN: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED.

17 YOU CAN ANSWER THE QUESTION.

18 THE WITNESS: YES.

19 Q. BY MS. ABRAMSON: I JUST WANTED TO CONTINUE

20 TALKING A LITTLE BIT ABOUT MATERIALS THAT WERE PROVIDED

21 TO YOU BY ONE SIDE OR ANOTHER.

22 DID YOU RECEIVE ADDITIONAL MATERIALS FROM

23 THE PROSECUTION AFTER YOU COMPLETED YOUR INTERVIEWS WITH

24 ERIK MENENDEZ?

25 A. YES.

26 Q. AND WAS ONE OF THOSE DOCUMENTS ANOTHER

27 MOTION THAT INCLUDED SUMMARIES -- WELL, STRIKE THAT.

28 WAS ANOTHER DOCUMENT A PROSECUTION MOTION

-15591

1 THAT CONTAINED WHAT YOU UNDERSTOOD TO BE PROSECUTION

2 PREPARED SUMMARIES OF THE TESTIMONY OF CIVILIAN

3 WITNESSES FROM THE FIRST TRIAL?

4 A. YES.

5 Q. AND WHEN DID YOU GET THAT DOCUMENT FOR YOUR

6 REVIEW?

7 A. THAT WAS THIS WEEK. I BELIEVE IT WAS ON

8 WEDNESDAY THAT WE HAD A MEETING HERE, AND THAT THAT WAS

9 THE DAY THAT I RECEIVED IT. I AM NOT POSITIVE IF IT WAS

10 WEDNESDAY OR MONDAY.

11 Q. OKAY. AND DID YOU READ THE SUMMARIES OF  
12 THE DEFENSE WITNESSES WHO HAD BEEN CALLED -- WHO HAD  
13 TESTIFIED AT THE FIRST TRIAL THAT WERE CONTAINED IN THAT  
14 MOTION THAT YOU RECEIVED THIS WEEK?

15 A. YES.

16 Q. AND WAS THAT THE FIRST TIME YOU HAD READ  
17 ANY STATEMENTS OR OBTAINED ANY INFORMATION FROM CIVILIAN  
18 WITNESSES?

19 A. THE FIRST TIME I OBTAINED IT?

20 Q. IN THE SENSE OF READING IT AND -- OBTAINED  
21 IT UP HERE (POINTING)?

22 A. YES.

23 MR. CONN: OBJECTION. VAGUE. VAGUE AS PHRASED.

24 THE COURT: PERHAPS YOU CAN CLARIFY IT.

25 MS. ABRAMSON: OKAY. WELL, LET ME BACK UP TO  
26 SOMETHING ELSE.

27 Q. ON JANUARY 27TH WHEN I MET YOU IN THE  
28 PARKING LOT AT THE BEVERLY HILLS POLICE DEPARTMENT AND

-15590

1 GAVE YOU THE TWO BOXES, DID ONE OF THE TWO BOXES CONTAIN  
2 WITNESS STATEMENTS -- DEFENSE INTERVIEWS OF 49 SEPARATE  
3 WITNESSES?

4 A. I DIDN'T COUNT THEM, BUT THAT SOUNDS RIGHT,  
5 YES.



6 Q. AND DID YOU EVER READ THOSE 49 WITNESS  
7 INTERVIEWS?

8 A. NO.

9 Q. DID YOU, BY THE WAY, EVER READ THE  
10 TESTIMONY FROM THIS TRIAL OF DIANE VANDERMOLLEN?

11 A. NO.

12 Q. DID YOU READ THE TESTIMONY FROM THIS TRIAL  
13 OF ALAN ANDERSEN?

14 A. NO.

15 Q. DID YOU READ THE TESTIMONY FROM THIS TRIAL  
16 OF MARTA CANO?

17 A. NO.

18 Q. DO YOU KNOW WHO THEY ARE?

19 A. YES.

20 Q. RELATIVES OF ERIK MENENDEZ?

21 A. YES.

22 Q. AND DID THE PACKAGE OF 49 WITNESS  
23 STATEMENTS THAT I GAVE YOU INCLUDE THE NAMES OF OTHER  
24 PEOPLE WHO YOU KNOW TO BE RELATIVES OF ERIK MENENDEZ?

25 A. YES.

26 Q. DID YOU READ, BY THE WAY, FROM THIS TRIAL,  
27 THE TESTIMONY OF ANDY CANO -- OR ANDRES CANO?

28 A. NO.

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1 Q. DO YOU KNOW WHO HE IS?

2 A. YES.

3 Q. YOU KNOW THAT HE'S ERIK MENENDEZ' COUSIN?

4 A. YES.

5 Q. DO YOU KNOW THAT HE TESTIFIED THAT ERIK

6 MENENDEZ TOLD HIM WHEN ERIK MENENDEZ WAS 13 THAT HE,

7 ERIK MENENDEZ, HAD BEEN MOLESTED BY JOSE MENENDEZ?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 Q. BY MS. ABRAMSON: AND DID YOU RECEIVE THAT

12 INFORMATION VERBALLY FROM SOMEONE ON THE PROSECUTION

13 TEAM?

14 A. I RECEIVED IT MULTIPLE TIMES FROM MR. CONN

15 BY PHONE, FROM MR. CONN IN PERSON, FROM ERIK MENENDEZ

16 HIMSELF, AS I RECALL, AND FROM THE SUMMARY OF TESTIMONY

17 IN THE FIRST TRIAL.

18 Q. THE SUMMARY OF TESTIMONY IN THE FIRST TRIAL

19 THAT --

20 A. NO, THAT ONE IS NOT IN THERE. THAT'S

21 RIGHT.

22 Q. I DON'T KNOW IF IT IS OR NOT.

23 A. YEAH. I THINK IT DOESN'T --

24 Q. CONTAIN HIM?

25 A. IT CONTAINS HIM, BUT I DON'T KNOW THAT IT

26 CONTAINS THAT.

27 Q. I DON'T THINK IT MATTERS, FRANKLY.

28 THE POINT IS, YOU NEVER READ ANY ACTUAL

1 INTERVIEWS WITH HIM. YOU NEVER READ ANY ACTUAL

2 TESTIMONY OF HIS; IS THAT CORRECT?

3 A. THAT'S CORRECT.

4 Q. NOW, YOU DIDN'T READ THOSE STATEMENTS, BUT

5 YOU DID READ SOME INFORMATION FROM DEFENSE WITNESSES IN

6 THIS RECENT MOTION -- THIS MOTION THAT WAS RECENTLY

7 GIVEN TO YOU, CORRECT?

8 A. YES.

9 Q. DID YOU READ INFORMATION OR STATEMENTS OF

10 EITHER THE 49 WITNESSES OR THE ONES THAT ARE IN THIS

11 MOTION IN ANY OTHER FORM OR FROM ANY OTHER SOURCE, ANY

12 OTHER WRITTEN VERSIONS OF THEIR INFORMATION?

13 A. NO, I THINK NOT.

14 Q. DID YOU -- DO YOU KNOW -- DID YOU DO ANY

15 CORRELATING TO KNOW WHETHER OR NOT THE PEOPLE WHO

16 TESTIFIED, WHO WERE SUMMARIZED IN THE MOTION, ALSO

17 APPEAR ON THE 49 WITNESS -- THE LIST OF 49 WITNESSES

18 THAT I GAVE TO YOU?

19 A. I KNOW THAT THEY OVERLAP, BUT THEY'RE NOT

20 IDENTICAL.

21 Q. THERE ARE SOME PEOPLE ON THE LIST OF 49

22 WITNESSES WHO DID NOT APPARENTLY TESTIFY AT THE FIRST

23 TRIAL?

24 A. THAT'S RIGHT.

25 Q. SO THERE IS MORE ON THE LIST THAN IN THE

26 SUMMARIES AND THE MOTION, CORRECT?

27 A. WELL, BOTH MORE AND LESS. THERE IS SOME  
28 WHO TESTIFIED IN THE FIRST TRIAL THAT AREN'T ON THE

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1 LIST.

2 Q. THAT AREN'T ON THE LIST, OKAY.

3 YOU UNDERSTAND THAT -- LET'S SEE -- THAT ON  
4 THE LIST -- STRIKE THAT.

5 THAT IN THE SUMMARIES AND THE MOTION ARE  
6 WITNESSES WHO WERE CALLED BY LYLE MENENDEZ IN THE FIRST  
7 TRIAL AND NOT BY ERIK MENENDEZ.

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: YES.

12 Q. BY MS. ABRAMSON: AND YOU'RE ONLY HERE --  
13 YOU WERE ONLY HERE TO CONDUCT AN EVALUATION OF ERIK  
14 MENENDEZ, CORRECT?

15 A. I'M HERE TO ANSWER WHATEVER QUESTIONS I AM  
16 ASKED, AND HADN'T INTENDED IN THIS TRIAL AT ALL TO TALK  
17 ABOUT LYLE MENENDEZ.

18 Q. ALL RIGHT. LET ME JUST SHOW YOU AND  
19 MARK -- 435, YOUR HONOR.

20 THE COURT: YES.

21 Q. BY MS. ABRAMSON: I WANT TO SHOW YOU THE  
22 DOCUMENT I HAVE MARKED 435, AND ASK IF THAT APPEARS TO

23 BE THE SAME DOCUMENT THAT YOU WERE GIVEN THIS WEEK WHICH  
24 CONTAINED THE PROSECUTION SUMMARIES OF DEFENSE  
25 WITNESSES.

26 A. IT DOES.

27 Q. AT LEAST IT HAS THE SAME NUMBER OF PAGES?

28 A. YES, AND THE SAME COVER PAGE.

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1 Q. OKAY. THANK YOU.

2 NOW, YOU DON'T KNOW, DO YOU, DR. DIETZ,  
3 WHETHER OR NOT THE SUMMARIES EVEN THAT ARE IN THAT  
4 MOTION CONTAIN ALL OF THE INFORMATION THAT MIGHT HAVE  
5 BEEN USEFUL TO YOU AS AN EVALUATOR OF MY CLIENT'S MENTAL  
6 STATE AT THE TIME OF THE CRIME.

7 A. WELL, I DO KNOW THAT, YES.

8 Q. YOU DO? YOU HAVE COMPARED THE SUMMARY TO  
9 THEIR TESTIMONY?

10 A. NONE OF THEM WERE PRESENT AT THE TIME OF  
11 THE CRIME. THESE ARE ALL REMOTE WITNESSES.

12 Q. AND THOSE ARE THE ONLY KIND OF WITNESSES  
13 WHO ARE RELEVANT FOR MENTAL STATE AT THE TIME OF THE  
14 CRIME?

15 A. DEPENDS ON THE ISSUE. FOR SOME ISSUES  
16 WHERE ONE HAS CHRONIC ILLNESS THAT AFFECTS FUNCTIONING  
17 AT A TIME OF CRIME, WITNESSES AT ANY POINT MAY HAVE  
18 HELPFUL INFORMATION, BUT HERE THAT'S NOT THE CASE.

19 Q. OKAY.

20 A. IT'S GOING TO BE LESS HELPFUL, THE

21 WITNESSES WHO SAW PEOPLE 8 OR 10 OR 15 YEARS EARLIER.

22 Q. GENERAL ANXIETY DISORDER, I BELIEVE YOU

23 INDICATED YOU THOUGHT HE HAD IT ALL HIS LIFE, RIGHT?

24 A. THAT'S RIGHT. I JUST DON'T THINK IT COULD

25 AFFECT HIS FUNCTIONING IN A RELEVANT WAY AT THE TIME OF

26 THE CRIME.

27 Q. THAT'S NOT WHAT I ASKED, AND I MOVE TO

28 STRIKE THAT, YOUR HONOR, AS NONRESPONSIVE.

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1 THE COURT: SUSTAINED.

2 THE ANSWER IS STRICKEN.

3 MS. ABRAMSON: AND I ASK THE JURY BE ADMONISHED

4 TO DISREGARD IT.

5 THE COURT: WELL, ANY TIME SOMETHING IS STRICKEN,

6 THE JURY IS TO DISREGARD IT.

7 YOUR NEXT QUESTION, PLEASE.

8 MS. ABRAMSON: THANK YOU.

9 Q. DR. DIETZ, IS IT YOUR OPINION THAT EVEN

10 WHEN THERE ARE WITNESSES PRESENT AT THE TIME OF THE

11 CRIME, THAT THERE IS NO KIND OF INDEPENDENT

12 CORROBORATION AVAILABLE WITH ANYONE'S CONSCIOUSNESS?

13 A. WOULD YOU READ IT AGAIN, PLEASE.

14 Q. CERTAINLY.

15           THERE IS NO KIND OF INDEPENDENT  
16 CORROBORATION AVAILABLE WITH ANYONE'S CONSCIOUSNESS?  
17     A.   THAT'S CORRECT.  
18     Q.   AND THAT WAS YOUR TESTIMONY IN PEOPLE  
19 VERSUS BARDO, WASN'T IT?  
20     A.   I DON'T KNOW, BUT IT WAS TRUE.  
21     Q.   JUST TO REFRESH YOUR RECOLLECTION, IF I  
22 SHOW YOU THIS VOLUME OF THE TRANSCRIPT OF PEOPLE VERSUS  
23 BARDO, AND ASK YOU TO LOOK AT THE DATE, DOES THAT  
24 REFRESH YOUR RECOLLECTION AS TO WHEN IT WAS THAT YOU  
25 TESTIFIED IN THAT CASE?  
26     A.   OCTOBER OF 1991.  
27     Q.   THANK YOU.  
28           NOW, ALSO IN THAT -- THOSE BOXES THAT I

-15584

1 GAVE YOU ON JANUARY 27TH WERE ERIK MENENDEZ' SCHOOL  
2 RECORDS, CORRECT?  
3     A.   YES.  
4     Q.   DID YOU READ THEM?  
5     A.   NO.  
6     Q.   ERIK MENENDEZ' MEDICAL RECORDS, CORRECT?  
7     A.   YES.  
8     Q.   DID YOU READ THEM?  
9     A.   NO.  
10    Q.   PROGRESS NOTES OF THE THERAPY OF KITTY

11 MENENDEZ BY DR. SUMMERFIELD, CORRECT?

12 A. YES.

13 Q. DID YOU READ THEM?

14 A. NO.

15 Q. PROGRESS NOTES OF KITTY MENENDEZ'S THERAPY

16 BY DR. COX, CORRECT?

17 A. THAT I DON'T RECALL.

18 Q. DO YOU REMEMBER THAT ACCOMPANYING THE

19 MATERIAL WAS AN INVENTORY?

20 A. YES.

21 Q. DO YOU THINK IT WOULD REFRESH YOUR

22 RECOLLECTION IF I SHOW YOU A COPY OF THE INVENTORY?

23 A. I'M SURE IT WOULD.

24 Q. GOOD. JUST LOOK AT NO. 8.

25 A. SEVEN. DR. COX.

26 Q. RIGHT.

27 A. THERE IT IS.

28 Q. THERE IT IS.

-15583

1 SO YOU GOT DR. COX'S THERAPY NOTES WITH

2 RESPECT TO MRS. MENENDEZ, CORRECT?

3 A. YES.

4 Q. AND YOU DIDN'T READ THEM, DID YOU?

5 A. THAT'S RIGHT.

6 Q. DID YOU ATTEMPT -- WELL, STRIKE THAT.



7 DURING YOUR INTERVIEWS WITH ERIK MENENDEZ,  
8 DID YOU TALK TO HIM ABOUT THE MEDICATION HE'S ON?  
9 A. YES.  
10 Q. AND YOU TALKED TO HIM ABOUT HOW LONG BEFORE  
11 HE HAD STARTED MEDICATION?  
12 A. YES.  
13 Q. AND DIFFERENT MEDICATIONS THAT HE HAD BEEN  
14 ON AT DIFFERENT TIMES?  
15 A. THAT'S RIGHT.  
16 Q. AND DID YOU MAKE ANY EFFORT TO GET HIS JAIL  
17 MEDICAL RECORDS?  
18 A. NO.  
19 Q. DR. DIETZ, ARE YOU NERVOUS WHEN YOU  
20 TESTIFY?  
21 A. SOMETIMES I'M VERY NERVOUS. SOMETIMES I'M  
22 NOT.  
23 Q. DO YOU HAVE GENERAL ANXIETY DISORDER?  
24 A. IS THAT RELEVANT?  
25 Q. WELL, BEING NERVOUS IS NOT THE SAME AS  
26 HAVING GENERAL ANXIETY DISORDER, IS IT?  
27 A. NO. IT IS A COMPONENT OF HAVING GENERALIZED  
28 ANXIETY DISORDER.

-15582

1 Q. BUT GENERALIZED ANXIETY DISORDER IS A  
2 PSYCHIATRIC DISORDER, IT'S A MENTAL CONDITION, A

3 TREATABLE AND NEED-TO-BE TREATED CONDITION, WOULD YOU  
4 AGREE?

5 A. WELL, IT'S GOOD TO BE TREATED. BUT OF THE  
6 15 PERCENT OF THE U.S. POPULATION WHO HAVE IT, ONLY A  
7 SMALL PROPORTION RECEIVE TREATMENT.

8 Q. BUT BEING NERVOUS IS NOT THE SAME. WE'RE  
9 TALKING MORE THAN NERVOUS, AREN'T WE?

10 A. ONE CAN BE NERVOUS WITHOUT HAVING THE  
11 CONDITION. IF ONE HAS THE CONDITION, ONE IS OFTEN  
12 NERVOUS. BUT IT DOESN'T MEAN MUCH MORE THAN THAT. IT  
13 MEANS BEING NERVOUS --

14 Q. JUST ORDINARY NERVOUS?

15 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS  
16 ANSWER?

17 THE COURT: YES. FINISH YOUR ANSWER.

18 THE WITNESS: IT MEANS BEING NERVOUS AND WORRIED,  
19 AND SOMETIMES IN ASSOCIATION WITH NERVOUSNESS AND WORRY  
20 IS HAVING THESE OTHER FEATURES, SUCH AS DIFFICULTY  
21 SLEEPING, OR SHAKING, OR SWEATING, OR FEELING A RAPID  
22 HEART BEAT, THINGS THAT EVERYONE EXCEPT THE MOST  
23 COLD-HEARTED HAVE AT TIMES IN THEIR LIFE WHEN THEY'RE  
24 UNDER STRESS, OR WHEN THEY EXPERIENCE FEAR, OR THEY ARE  
25 MADE ANXIOUS ABOUT SOME PERFORMANCE. THESE ARE FAMILIAR  
26 EXPERIENCES IN THE RANGE OF NORMAL HUMAN EXPERIENCE.

27 WITH GENERALIZED ANXIETY DISORDER, THE  
28 FREQUENCY OF THAT IS MUCH HIGHER.

1 Q. SO IT'S NOT JUST FOR A SPECIFIC  
2 ANXIETY-PRODUCING EVENT, BUT OCCURS WITH MUCH HIGHER  
3 FREQUENCY? IT'S LIKE ALL THE TIME FOR SOME PEOPLE,  
4 CORRECT?

5 A. IT'S LIKE EVERY DAY, OR NEARLY EVERY DAY  
6 FOR PEOPLE WHO HAVE THIS DISORDER.

7 Q. NOW, IS IT YOUR TESTIMONY THAT ERIK  
8 MENENDEZ HAD THIS DISORDER ALL OF HIS LIFE?

9 A. IT'S MY BELIEF THAT HE HAS THE DISORDER,  
10 AND THAT HE THEREFORE WOULD HAVE HAD THAT DISORDER FROM  
11 AN EARLY AGE. WE DON'T ACTUALLY KNOW WHETHER IT'S  
12 EXPERIENCED AND DIAGNOSIBLE IN THE YOUNGEST OF CHILDREN,  
13 BUT CERTAINLY BY SCHOOL AGE SOME OF THE SIGNS OF IT CAN  
14 EMERGE, AND THE DIAGNOSIS COULD BE CONSIDERED.

15 Q. ON MONDAY, FEBRUARY 5TH, 1996 DURING THAT  
16 MEETING WE HAD IN THE DISTRICT ATTORNEY'S OFFICE, DID  
17 YOU NOTICE THAT BOTH SIDES TAPE-RECORDED THE INTERVIEW  
18 WITH YOU?

19 A. YES.

20 Q. AND DO YOU REMEMBER YOU WERE ASKED AT THAT  
21 TIME WHAT YOU THOUGHT CAUSED THE GENERALIZED ANXIETY  
22 DISORDER THAT ERIK MENENDEZ SUFFERS FROM.

23 DO YOU REMEMBER BEING ASKED THAT?

24 A. YES.

25 Q. AND DO YOU REMEMBER YOUR ANSWER WAS:  
26 "INADEQUATE MOTHERING AT THREE AND YOUNGER. EARLY  
27 CHILDHOOD PROBLEMS, MOSTLY BIOLOGICAL"?

-15580

1 A. I REMEMBER TALKING ABOUT INADEQUATE  
2 MOTHERING FOR PERSONALITY DISORDERS. I DON'T RECALL  
3 TALKING ABOUT THAT FOR GENERALIZED ANXIETY --

4 Q. ARE YOU --

5 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS  
6 ANSWER?

7 THE COURT: YES. BUT BOTH OF YOU WERE  
8 INTERFERING WITH THAT OPPORTUNITY.

9 SO HAVE YOU FINISHED YOUR ANSWER?

10 MS. ABRAMSON: IS THAT NO?

11 THE COURT: HAVE YOU FINISHED YOUR ANSWER?

12 THE WITNESS: NO, I HAVEN'T, YOUR HONOR.

13 MS. ABRAMSON: WELL, I WOULD OBJECT, YOUR HONOR,  
14 THAT THE ANSWER IS NONRESPONSIVE.

15 THE COURT: OVERRULED.

16 YOU MAY CONTINUE.

17 THE WITNESS: I BELIEVE THAT I WAS ASKED THE  
18 CAUSE OF GENERALIZED ANXIETY DISORDER, AND I SAID THAT  
19 THE CAUSE ISN'T KNOWN, AND THEN I OFFERED SOME OF THE  
20 THINGS THAT HAVE BEEN THOUGHT ABOUT.

21 Q. BY MS. ABRAMSON: IS -- ARE YOU SAYING IT  
22 IS NOT YOUR OPINION THAT GENERALIZED ANXIETY DISORDER IN  
23 ERIK MENENDEZ WAS CAUSED BY INADEQUATE MOTHERING AT

24 THREE AND YOUNGER?

25 IS THAT WHAT YOU ARE SAYING?

26 A. I DON'T BELIEVE THAT ERIK MENENDEZ GOT A

27 GENERALIZED ANXIETY DISORDER BY BEING INADEQUATELY

28 MOTHERED AT AGES THREE AND YOUNGER.

-15579

1 Q. OKAY. IS IT YOUR TESTIMONY THAT YOU THINK

2 HE WAS BORN WITH IT?

3 A. WELL, I WANT TO CLARIFY THAT SCIENTIFICALLY

4 ONE CANNOT FIRMLY SAY THE CAUSE IS KNOWN, BUT WE DO KNOW

5 THAT IT RUNS IN FAMILIES, AND IT'S -- AND WE DO KNOW

6 THAT WHAT IT HAS TO DO WITH IS THE AUTONOMIC NERVOUS

7 SYSTEM, WHICH IS MOSTLY THE PERIPHERAL NERVOUS SYSTEM,

8 RATHER THAN THE BRAIN. BUT THE REST OF THE NERVOUS

9 SYSTEM.

10 Q. THAT PART OF THE NERVOUS SYSTEM --

11 A. AND WE DO NOT --

12 Q. THAT PART OF THE NERVOUS SYSTEM THAT IS

13 THOUGHT TO BE INVOLVED WITH P.T.S.D?

14 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS

15 ANSWER?

16 THE COURT: YES. HE HASN'T FINISHED HIS ANSWER.

17 MS. ABRAMSON: I'M SORRY.

18 THE WITNESS: AND WE KNOW THAT THE SIGNS POINT TO

19 IT BEING SOMETHING THAT RUNS IN FAMILIES, BECAUSE IT'S

20 INHERITED GENETICALLY.

21 Q. BY MS. ABRAMSON: SO THAT'S WHAT YOU'RE

22 SAYING, IT'S GENETIC?

23 A. I THINK THAT'S THE BEST GUESS. BUT I THINK

24 IT WOULD BE OVERSTATING IT TO SAY FOR SURE THAT'S THE

25 CAUSE.

26 Q. NOW, IF I UNDERSTAND YOUR TESTIMONY UP

27 UNTIL NOW, UP UNTIL THIS MOMENT, YOU'VE TESTIFIED THAT

28 THE SYMPTOMS THAT YOU HAVE FOUND OF GENERALIZED ANXIETY

-15578

1 DISORDER IN ERIK MENENDEZ ARE OVERLAPPING SYMPTOMS OF

2 POST-TRAUMATIC STRESS DISORDER.

3 THEY'RE THE SAME, CORRECT?

4 A. SOME OF THE SYMPTOMS ARE THE SAME. SOME

5 ARE NOT.

6 Q. AND YOU UNDERSTAND THE WHOLE THEORY OF

7 POST-TRAUMATIC STRESS DISORDER IS NOT GENETIC OR

8 INHERITED, OR IN THAT SENSE BIOLOGICAL, BUT CAUSED BY

9 TRAUMA AND STRESS, CORRECT?

10 A. YES.

11 Q. AND DO YOU DISPUTE THAT BASIC TENET OF

12 POST-TRAUMATIC STRESS DISORDER THEORY?

13 A. CERTAINLY NOT, THOUGH I THINK THAT ANYONE

14 WORKING IN THIS AREA WOULD NOTE AND ACCEPT THE IDEA THAT

15 INDIVIDUALS MAY DIFFER BIOLOGICALLY IN THEIR

16 VULNERABILITY TO ACQUIRING THAT DISORDER.

17 Q. WHICH DISORDER?

18 A. P.T.S.D. IN OTHER WORDS, THERE MAY BE SOME  
19 PEOPLE WHOSE BIOLOGY IS SUCH THAT A MODEST TRAUMA CAN  
20 PRODUCE IT, WHERE IT WOULD NOT IN MOST PEOPLE. AND  
21 MAYBE THERE ARE OTHER PEOPLE IN WHOM THE BIOLOGY IS SO  
22 STRONG THAT EVEN THE WORST TRAUMA DOES NOT PRODUCE IT.

23 Q. AND WOULD -- DO YOU THINK THAT PEOPLE WHO  
24 ARE SUFFERING FROM A GENERALIZED ANXIETY DISORDER MAY BE  
25 MORE PRONE TO DEVELOP P.T.S.D. IN THE FACE OF TRAUMA?

26 A. YES.

27 Q. ARE YOU AWARE OF ANY EVIDENCE THAT THERE  
28 WAS AN OBSERVABLE AND MARKED CHANGE IN ERIK MENENDEZ'

-15577

1 PERSONALITY BETWEEN THE TIME HE WAS A PRESCHOOLER AND  
2 THE TIME HE WAS IN THE SECOND GRADE?

3 A. THERE IS, YES.

4 Q. WHY DON'T WE START WITH YES OR NO AND THEN  
5 WE CAN GO ON FROM THERE.

6 A. YES.

7 Q. AND WHO, IF YOU CAN RECALL, ARE THE SOURCES  
8 OF THAT INFORMATION THAT YOU HAVE?

9 A. WELL, THE INFORMATION I HAVE COMES FROM THE  
10 MOTION THAT YOU MENTIONED EARLIER, AND SO THEY ARE LAY  
11 WITNESSES.

12 AND I BELIEVE THEY'RE -- THAT THEY ARE  
13 FAMILY MEMBERS WHO TALK ABOUT VARIOUS POINTS WHERE THEY  
14 NOTICED A CHANGE.

15 Q. AND ARE THOSE WITNESSES MARTHA CANO, TERRY  
16 BARALT AND ALAN ANDERSEN?

17 A. CANO AND BARALT, YES. I DON'T REMEMBER  
18 ANDERSEN ON THAT ISSUE.

19 Q. OKAY.

20 WERE YOU TOLD THAT ALAN ANDERSEN TESTIFIED  
21 IN THIS TRIAL THAT HE NOTED A MARKED DIFFERENCE IN ERIK  
22 MENENDEZ' BEHAVIOR BEFORE HE WAS SIX VERSUS AFTER HE WAS  
23 SIX?

24 A. NO.

25 Q. AND DO YOU REMEMBER THAT THE INFORMATION  
26 CONTAINED IN THE SUMMARIES THAT YOU READ INDICATED THAT  
27 THE CHANGE THAT WAS NOTED BY THE AUNTS, MARTA AND --  
28 MARTA CANO AND TERRY BARALT IS THAT ERIK MENENDEZ WENT

-15576

1 FROM A VERY OPEN, HAPPY, SORT OF CALM BABY, SMILEY,  
2 WOULD GO TO EVERYBODY, TO SOMEONE WHO WAS WITHDRAWN AND  
3 APPEARED NERVOUS, AND AVOIDED OTHER PEOPLE AND WAS  
4 JUMPY, EDGY, THAT KIND OF THING?

5 A. A CHANGE TO GREATER JUMPINESS, EDGINESS,  
6 NERVOUSNESS, YES.

7 Q. NOW, YOU DON'T DISPUTE, DO YOU, DR. DIETZ,



8 THAT THE SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER CAN  
9 BE CAUSED BY CHILD ABUSE, CORRECT?

10 A. WELL, THE SYMPTOMS CAN BE CAUSED BY A HOST  
11 OF FACTORS.

12 Q. BUT I AM ASKING ABOUT CHILDHOOD ABUSE.

13 A. THERE ARE KINDS OF CHILD ABUSE THAT CAN  
14 DIRECTLY CAUSE SYMPTOMS OF P.T.S.D., YES.

15 Q. AND ARE THERE KINDS OF CHILD ABUSE THAT CAN  
16 CAUSE THE SYMPTOMS OF GENERALIZED ANXIETY DISORDER?

17 A. YES.

18 Q. NOW, YOU REFERRED WHEN YOU WERE TALKING  
19 ABOUT PERSONALITY TRAITS, I THINK YOU CALLED THEM, OF  
20 ERIK MENENDEZ, YOU SAID HE -- THAT YOU FORMED THE  
21 OPINION THAT HE HAD ABANDONMENT CONCERNS; IS THAT RIGHT?

22 A. YES.

23 Q. BUT IN DESCRIBING THOSE ABANDONMENT  
24 CONCERNS ON DIRECT EXAMINATION, YOU REFERRED ONLY TO HIS  
25 FEAR OF BEING ABANDONED BY LYLE MENENDEZ; IS THAT  
26 CORRECT?

27 A. YES.

28 Q. AND ARE YOU AWARE FROM THE MATERIALS THAT

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1 YOU HAVE NOW REVIEWED THAT THERE WAS AN ENTIRE HISTORY  
2 IN THIS FAMILY OF HIS MOTHER ABANDONING HIM?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: PERHAPS YOU CAN REPHRASE THE  
5 QUESTION. FOCUS ON THE NATURE OF THE WITNESS' RESPONSE  
6 AS TO HOW HE -- THE BASIS OF THAT.

7 Q. BY MS. ABRAMSON: WELL, HAD YOU READ THE  
8 INFORMATION FROM VARIOUS PEOPLE WHO WITNESSED THE MOTHER  
9 ABANDONING ERIK MENENDEZ BEFORE YOU FORMED YOUR OPINION  
10 THAT HE HAD ABANDONMENT CONCERNS?

11 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
12 EVIDENCE, AND IRRELEVANT.

13 THE COURT: PERHAPS YOU CAN REPHRASE THE  
14 QUESTION.

15 MS. ABRAMSON: I AM SORRY.

16 Q. WELL, LET ME ASK ONE THING.

17 IS IT YOUR OPINION NOW THAT YOU THINK HE  
18 ONLY HAD ABANDONMENT CONCERNS WITH RESPECT TO LYLE  
19 MENENDEZ?

20 A. NO.

21 Q. DO YOU BELIEVE HE HAD ABANDONMENT CONCERNS  
22 WITH RESPECT TO HIS MOTHER?

23 A. I BELIEVE HE HAD ABANDONMENT CONCERNS WITH  
24 RESPECT TO ANYONE HE WAS CLOSE TO, INCLUDING HIS MOTHER.

25 Q. AND DO YOU THINK THOSE ABANDONMENT CONCERNS  
26 ARE SOMEHOW ABNORMAL -- I MEAN, NOT REALISTICALLY BASED?  
27 THOSE ARE TWO DIFFERENT QUESTIONS.

28 DO YOU THINK THEY'RE NOT REALISTICALLY

1 BASED?

2 A. I'M NOT SURE WHAT THAT MEANS.

3 Q. OKAY. WELL, LET ME ASK YOU A HYPOTHETICAL

4 THEN, OR LET ME ASK IT THIS WAY.

5 IF A PERSON WHO HAD NEVER BEEN THREATENED

6 WITH ABANDONMENT BY ANYONE CLOSE TO THEM SEEMED TO

7 DEMONSTRATE ABANDONMENT CONCERNS, WOULD THAT HAVE A

8 DIFFERENT LEVEL OF PSYCHOLOGICAL SIGNIFICANCE THAN

9 SOMEONE WHO WAS FREQUENTLY ABANDONED AND HAD EVERY

10 RATIONAL REASON TO BE FEARFUL OF ABANDONMENT?

11 A. I SUPPOSE SO.

12 Q. ALL RIGHT.

13 WITH RESPECT TO THIS ABANDONMENT CONCERN OF

14 ERIK MENENDEZ, DID YOU THINK IT WAS BASED ON FACTS FROM

15 HIS CHILDHOOD WHERE HE HAD IN FACT BEEN ABANDONED OR

16 THREATENED WITH ABANDONMENT?

17 A. I THOUGHT THAT EVEN BEFORE I KNEW WHAT ANY

18 WITNESSES SAID ABOUT HIS CHILDHOOD, BECAUSE THAT'S THE

19 USUAL SOURCE.

20 Q. SO IT USUALLY COMES FROM BEING IN A

21 SITUATION WHERE THE CARETAKERS ARE NOT GIVING THE CHILD

22 A SENSE OF SECURITY, OR ARE IN FACT ENGAGING IN

23 ABANDONING BEHAVIORS?

24 A. IT USUALLY COMES FROM THE PRIMARY CARETAKER

25 NOT BEING VERY AVAILABLE AROUND AGE THREE BECAUSE SHE IS

26 DRINKING OR DEPRESSED, OR HE IS ALWAYS AT WORK, OR

27 WHATEVER TAKES THE PARENTS AWAY FROM THE CHILD.

28 Q. ALL RIGHT. WHAT ABOUT HYPOTHETICALLY A

1 SITUATION WHERE A MOTHER IS LOSING HER CHILDREN IN  
2 SHOPPING MALLS AND DOESN'T GO TO COLLECT THEM FOR HOURS  
3 AFTER THE SECURITY GUARDS HAVE FOUND THEM AND PAGED HER?

4 MR. CONN: OBJECTION. IRRELEVANT. ASSUMES FACTS  
5 NOT IN EVIDENCE.

6 Q. BY MS. ABRAMSON: IS THAT THE KIND OF LIFE  
7 SITUATIONS THAT WOULD CREATE ABANDONMENT, OR COULD  
8 CREATE ABANDONMENT CONCERNS IN A CHILD?

9 MR. CONN: OBJECTION.

10 THE COURT: OVERRULED.

11 YOU MAY ANSWER THE QUESTION.

12 THE WITNESS: DEPENDING ON THE AGE OF THE CHILD.

13 Q. BY MS. ABRAMSON: HOW ABOUT AT FIVE?

14 A. THAT'S WITHIN THE RANGE. AND, OF COURSE,  
15 IT'S BAD AT ANY YOUNG AGE.

16 Q. RIGHT. AND HOW ABOUT HYPOTHETICALLY A  
17 CHILD WHO IS LEFT BY A FATHER AT NIGHT ALONE IN A  
18 CEMETARY AT AROUND AGE SEVEN.

19 IS THAT THE KIND OF EXPERIENCE THAT MIGHT  
20 LEAD TO ABANDONMENT CONCERNS BY THAT CHILD?

21 A. IT'S A LITTLE LATE TO PRODUCE ABANDONMENT  
22 CONCERNS, BUT IT WOULD PRODUCE OTHER CONCERNS AND SCARE  
23 A KID.

24 Q. RIGHT. NOW, LET'S ASSUME WE HAVE A CHILD  
25 IN WHOM ABANDONMENT CONCERNS HAVE BEEN PRODUCED.

26 IF THAT CHILD LATER IS A TEENAGER AND COMES  
27 UPON MOTHER'S SUICIDE LETTERS, COULD THAT AFFECT --  
28 BECAUSE OBVIOUSLY YOU'RE FINDING THAT HE HAS ABANDONMENT

-15572

1 CONCERNS EVEN NOW, CORRECT? I SKIPPED AHEAD.

2 YOU'RE FINDING THAT HE HAD ABANDONMENT

3 CONCERNS WHEN HE WAS 18 YEARS-OLD, CORRECT?

4 A. I THOUGHT SO, YES.

5 Q. ALL RIGHT. THEN I TAKE IT THAT HE WAS

6 QUITE CAPABLE OF HAVING ABANDONMENT CONCERNS WHEN HE WAS

7 16 YEARS-OLD?

8 A. OF COURSE.

9 Q. AND IF A CHILD WHO HAD ALREADY HAD THIS

10 HISTORY OF ABANDONING BEHAVIOR BY A PRIMARY CARETAKER,

11 OR EMOTIONAL UNAVAILIBILIATY BY A PRIMARY CARETAKER,

12 WOULD THEN COME ACROSS SUICIDE LETTERS FROM THE PRIMARY

13 CARETAKER, WOULD THAT AROUSE ABANDONMENT CONCERNS?

14 A. THAT WOULD BE MORE DIFFICULT FOR SUCH A

15 PERSON THAN ONE WHO DIDN'T ALREADY HAVE ABANDONMENT

16 ISSUES.

17 Q. OKAY. NOW I WANT TO TALK TO YOU ABOUT THIS

18 TESTIMONY YOU GAVE CONCERNING ERIK MENENDEZ', QUOTE,

19 DISRESPECT FOR LAW, OKAY?

20 HE CERTAINLY DIDN'T SHOW DISRESPECT TO THE

21 COURT'S ORDER WHEN HE SAT DOWN AND TALKED TO YOU FOR 16

22 HOURS, DID HE?

23 A. NO.

24 Q. YOU SAID THAT ONE OF THE FEATURES OF THIS  
25 WAS THAT HE TOOK A FALSE BIRTH CERTIFICATE TO THE  
26 DEPARTMENT OF MOTOR VEHICLES WHEN HE WAS UNDER 21, AND  
27 GOT A FAKE I.D. THAT SHOWED HIM TO BE 21, SO HE COULD GO  
28 OUT WITH HIS FRIENDS TO PLACES WHERE ALCOHOLIC BEVERAGES

-15571

1 WERE SOLD, CORRECT?

2 THAT'S WHAT HE DID, ISN'T IT?

3 A. THAT IS WHAT HE DID. BUT TO DO IT HE HAD  
4 TO USE SOMEBODY ELSE'S NAME AND CLAIM THAT IT WAS HIS  
5 BIRTH CERTIFICATE.

6 Q. AND DID YOU KNOW THAT HIS MOTHER TOOK HIM  
7 TO THE DMV TO DO IT?

8 MR. CONN: OBJECTION. IRRELEVANT. ASSUMES FACTS  
9 NOT IN EVIDENCE.

10 THE COURT: REPHRASE THE QUESTION.

11 Q. BY MS. ABRAMSON: WOULD IT MATTER IN  
12 REFLECTING ON HIS DISRESPECT FOR THE LAW THAT HIS MOTHER  
13 WAS A CO-CONSPIRATOR IN THIS PLOT TO GET A FAKE I.D.,  
14 TOOK HIM TO THE DMV AND MADE SURE HE GOT IT?

15 MR. CONN: OBJECTION. IRRELEVANT AND ASSUMES  
16 FACTS NOT IN EVIDENCE.

17 THE COURT: ALL RIGHT.

18           WHY DON'T YOU ASK HIM TO ASSUME THOSE

19 FACTS.

20       Q.   BY MS. ABRAMSON: ASSUME THOSE FACTS.

21       A.   THAT WOULD HELP EXPLAIN HOW HE BECAME

22 DISRESPECTFUL OF THE LAW, BUT IT WOULDN'T ALTER THE FACT

23 THAT HE IS.

24       Q.   WHAT ABOUT THE FACT, HYPOTHETICALLY, THAT

25 HIS MOTHER CARRIED A FALSE DRIVER'S LICENSE FOR MANY

26 YEARS IN WHICH SHE HAD MISSTATED HER AGE TO MAKE HER

27 APPEAR YOUNGER?

28       MR. CONN: I WOULD OBJECT TO THIS AS IRRELEVANT.

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1 ASSUMES FACTS NOT IN EVIDENCE, AND IMPROPER.

2       THE COURT: SUSTAINED.

3       Q.   BY MS. ABRAMSON: NOW, DO YOU THINK THIS IS

4 AN UNUSUAL PHENOMENON FOR A TEENAGER IN CALIFORNIA,

5 WHERE THE DRINKING AGE IS 21, TO HAVE A FALSE I.D.

6 INDICATING THAT THEY ARE 21 TO GET INTO PLACES WHERE

7 ALCOHOLIC BEVERAGES ARE SOLD?

8       A.   PROBABLY NOT. HOPEFULLY GOING TO THE DMV

9 WITH A FAKE BIRTH CERTIFICATE TO GET OFFICIAL, PHONY

10 I.D. IS UNUSUAL, BUT I DON'T KNOW THAT FOR A FACT.

11       Q.   DO YOU THINK IT'S BETTER IF YOU JUST USE AN

12 EXACTO KNIFE AND CUT OFF THE DATE AND CHANGE IT

13 YOURSELF?

14 A. I THINK THAT SHOWS A LITTLE LESS PLANNING,  
15 PURPOSE, DELIBERATION AND DESIRE TO CARRY THIS OUT.

16 Q. ARE YOU AWARE OF ANY INFORMATION THAT  
17 MRS. MENENDEZ DID EXACTLY THAT WITH ERIK MENENDEZ'  
18 GIRLFRIEND'S I.D. SO SHE COULD ACCOMPANY HIM TO PLACES  
19 WHERE ALCOHOLIC BEVERAGES WERE SOLD?

20 MR. CONN: AGAIN, I AM GOING TO OBJECT AS  
21 ASSUMING FACTS NOT IN EVIDENCE, AND IRRELEVANT.

22 THE COURT: SUSTAINED.

23 Q. BY MS. ABRAMSON: NOW, YOU CHARACTERIZED  
24 THE BURGLARIES AS REBELLION.

25 IS THAT WHAT YOU CALLED IT?

26 A. REBELLION IS ONE OF THE THINGS THAT I THINK  
27 ARE EXPRESSED BY A BURGLARY LIKE THAT, YES.

28 Q. AND DID YOU TELL ERIK MENENDEZ WHEN YOU

-15569

1 WERE INTERVIEWING HIM THAT YOU CONSIDERED IT ACTING OUT,  
2 AND CAUSED BY THE OPPRESSIVE FAMILY ENVIRONMENT HE WAS  
3 LIVING IN?

4 A. I DON'T KNOW. I MAY HAVE OFFERED HIM SUCH  
5 AN INTERPRETATION.

6 Q. WERE YOU LYING TO HIM?

7 A. NO. I WASN'T LYING TO HIM, BUT I MAY HAVE  
8 MADE STATEMENTS TO SEE WHAT HIS REACTION WAS.

9 Q. AND HIS REACTION TO THAT WAS: "I DON'T



10 KNOW WHY I DID IT TO THIS DAY," WASN'T IT?

11 A. YES.

12 Q. HE DIDN'T MAKE ANY EXCUSE FOR DOING IT, DID  
13 HE?

14 A. NO.

15 Q. NOW, YOU ALSO TALKED ABOUT SHOWING A  
16 DISREGARD FOR TRUTH.

17 A. YES.

18 Q. DOES THAT MEAN THAT HE HAS LIED ON  
19 OCCASION?

20 A. WELL, IT MEANS HE'S LIED ON SOME  
21 SIGNIFICANT OCCASIONS.

22 Q. AND THE MOST SIGNIFICANT OCCASION YOU WOULD  
23 SAY IS THAT HE DID NOT CONFESS TO THE POLICE THAT HE AND  
24 HIS BROTHER WERE RESPONSIBLE FOR THESE SHOOTINGS,  
25 CORRECT?

26 A. IT'S THAT HE GAVE THEM A PHONY STORY ABOUT  
27 WHAT HAD HAPPENED.

28 Q. WELL, HE HAD TO SAY SOMETHING, EITHER THE

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1 TRUTH OR A PHONY STORY, RIGHT?

2 HE WAS THERE, THEY WERE ASKING HIM  
3 QUESTIONS, RIGHT?

4 A. OR SAY: "I WANT TO TALK TO A LAWYER."  
5 THOSE WERE HIS CHOICES.

6 Q. WELL, I WOULD HAVE HELPED. ALL RIGHT.

7 BUT YOU GAVE HIM TWO OPTIONS UNDER THIS

8 ACCUSATION; ONE, COVERING UP THE HOMICIDES, AND TWO,

9 MAKING FALSE STATEMENTS TO THE POLICE ABOUT THEM.

10 NOW, ISN'T THAT THE SAME THING?

11 A. NO. THE ACTIONS OF COVERING UP THE

12 HOMICIDES BY PICKING UP EMPTY SHELL CASINGS, BY GOING

13 ELSEWHERE TO ESTABLISH AN ALIBI.

14 Q. BUT THAT'S NOT LYING.

15 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS

16 ANSWER?

17 THE COURT: YES.

18 THE WITNESS: BY CALLING, UPON RETURNING HOME.

19 AND INDICATING THAT THE BODIES HAD JUST BEEN DISCOVERED;

20 WITH ERIK CALLING HIS TENNIS COACH, MARK, AND LYLE

21 MENENDEZ CALLING 911.

22 THOSE ARE WHAT I WAS REFERRING TO AS THE

23 COVER-UP ACTIONS, AND I DISTINGUISH THEM FROM THE VERBAL

24 FALSEHOODS TOLD TO THE POLICE BY THE FACT THAT THESE

25 ACTIONS WHICH ARE CALCULATED TO COVER UP WRONGDOING AND

26 THEIR RESPONSIBILITY FOR IT ARE ALSO DESIGNED TO

27 MISLEAD, TO HIDE THE TRUTH.

28 SO I THINK IT'S ANOTHER WAY OF NOT HAVING

2 TOLD TO THE POLICE.

3 Q. BY MS. ABRAMSON: AND IS IT AN UNCOMMON  
4 PHENOMENA THAT PEOPLE ARE AFRAID TO GO TO JAIL?

5 MR. CONN: OBJECTION. IRRELEVANT.

6 THE COURT: OVERRULED.

7 YOU MAY ANSWER THE QUESTION.

8 THE WITNESS: NO. PEOPLE ARE COMMONLY AFRAID TO  
9 GO TO JAIL, AND SOME LIE TO AVOID IT.

10 Q. BY MS. ABRAMSON: IS THE WORD -- WHEN YOU  
11 DESCRIBED ERIK MENENDEZ AS SUGGESTABLE, IS THAT THE SAME  
12 AS COMPLIANT, OR ARE THOSE TWO DIFFERENT THINGS?

13 A. THEY'RE RELATED THINGS.

14 Q. DID YOU THINK ERIK MENENDEZ WAS  
15 DEMONSTRATING HIS SUGGESTABILITY WHEN HE WAS ASKED  
16 CERTAIN QUESTIONS BY MR. CONN ON CROSS-EXAMINATION?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED.

19 THE WITNESS: WELL, I DON'T THINK HE WAS  
20 DEMONSTRATING AN ABILITY TO BE LED BY MR. CONN. WHETHER  
21 HE WAS DEMONSTRATING SUGGESTABILITY, IT DEPENDS ON  
22 WHETHER HE WAS COACHED FOR SOME OF HIS ANSWERS AND WHO  
23 COACHED HIM.

24 Q. BY MS. ABRAMSON: OH, WE'RE THE ONES WHO  
25 SUGGESTED IT; IS THAT THE IDEA, DR. DIETZ?

26 THE COURT: HAVE YOU FINISHED YOUR ANSWER?

27 THE WITNESS: YES, I HAVE.

28 Q. BY MS. ABRAMSON: IS THAT THE IDEA? IS

1 THAT WHAT YOU'RE SUGGESTING?

2 A. WHAT'S THE QUESTION?

3 Q. WE TOLD HIM WHAT TO SAY?

4 A. I DON'T KNOW IF YOU DID OR NOT.

5 Q. BUT YOU WERE VERY QUICK TO MAKE THAT

6 ACCUSATION WITHOUT KNOWING IT, WEREN'T YOU, JUST NOW?

7 MR. CONN: ASSUMES FACTS NOT IN EVIDENCE.

8 THE COURT: SUSTAINED. ARGUMENTATIVE AS PHRASED.

9 Q. BY MS. ABRAMSON: YOU KNOW THAT WOULD BE

10 UNETHICAL, DON'T YOU?

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: IT'S ALSO ARGUMENTATIVE THE WAY

13 YOU'RE PHRASING IT.

14 Q. BY MS. ABRAMSON: DO YOU BELIEVE THAT

15 FORENSIC PSYCHIATRISTS ARE TESTIFYING DAILY IN COURTS IN

16 THIS COUNTRY THAT CRIMINAL DEFENDANTS HAVE P.T.S.D.?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED. YOU CAN ANSWER THE

19 QUESTION.

20 THE WITNESS: YES. THERE'S TESTIMONY EVERY DAY

21 ABOUT DEFENDANTS HAVING P.T.S.D.

22 Q. BY MS. ABRAMSON: DO YOU BELIEVE THAT THERE

23 ARE FORENSIC PSYCHIATRISTS TESTIFYING IN COURTS IN THIS

24 COUNTRY THAT CRIMINALLY ACCUSED HAD P.T.S.D. AT THE

25 TIME OF OFFENSES IN THE PAST?

26 A. CERTAINLY.

27 Q. ERIK MENENDEZ NEVER TOLD YOU THAT HE  
28 DISSOCIATED DURING THE EVENTS AROUND THE SHOOTINGS, DID

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1 HE?

2 A. NO.

3 Q. AND DR. WILSON DIDN'T TESTIFY THAT HE  
4 DISSOCIATED EITHER, CORRECT, OR DON'T YOU KNOW?

5 A. WELL, I KNOW HE DIDN'T CALL IT  
6 DISSOCIATION, BUT HIS DESCRIPTION OF WHAT HE WAS SAYING  
7 WAS SYMPTOMATIC OF P.T.S.D. CONTAINED ELEMENTS OF  
8 PSYCHOPATHOLOGY THAT ARE ONLY FOUND IN DISSOCIATION.

9 Q. THAT'S YOUR OPINION; IS THAT CORRECT?

10 A. THAT'S RIGHT.

11 Q. HE SPECIFICALLY SAID HE WASN'T SAYING THAT  
12 HE WAS DISSOCIATING, DIDN'T HE?

13 A. HE SAID THAT. BUT HE ALSO REFERRED TO  
14 AUTOMATIC PILOT.

15 Q. AUTOMATIC PILOT?

16 A. AND SURVIVOR MODE.

17 Q. THAT IS A PSYCHIATRIC TERM, ISN'T IT?

18 A. NO.

19 Q. HAVE YOU EVER TALKED TO DR. WILSON?

20 A. NO.

21 Q. DID YOU ASK HIM WHAT HE MEANT?

22 A. NO.

23 Q. NOW, YOU ARE AWARE, ARE YOU NOT, DR. DIETZ,  
24 THAT ERIK MENENDEZ CAN DESCRIBE A DISSOCIATIVE  
25 CONDITION?  
26 A. YES.  
27 Q. AND IN FACT, THE DESCRIPTIONS HE GAVE ON  
28 THE WITNESS STAND OF WHERE -- OF WHAT HIS CONSCIOUSNESS

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1 WAS, OR HIS MENTAL STATE, IF YOU WILL, DURING THE  
2 SO-CALLED ROUGH SEX FITS YOUR DEFINITION OF DISSOCIATIVE  
3 STATE, DOES IT NOT?

4 A. WELL, WHAT HE TOLD ME DOES. ON THE WITNESS  
5 STAND I DON'T THINK ALL THE SAME DETAIL CAME OUT, BUT  
6 IT'S CONSISTENT WITH THAT.

7 Q. SO HE COULD HAVE MADE IT UP IF HE WANTED  
8 TO, RIGHT?

9 A. YES.

10 Q. HE COULD HAVE CLAIMED EXACTLY THE SAME KIND  
11 OF SYMPTOMS AROUND THE TIME OF THE SHOOTING, CORRECT?

12 A. BY THE TIME HE SAW ME, I KNOW HE COULD  
13 HAVE.

14 Q. WELL, YOU DIDN'T READ DR. VICARY'S NOTES,  
15 SO YOU DON'T KNOW IF HE DESCRIBED TO DR. VICARY A  
16 SIMILAR DISSOCIATIVE STATE CONCERNING THE ROUGH SEX, DO  
17 YOU?

18 A. I KNOW HE DOESN'T DO IT WITHIN A YEAR OF

19 THE HOMICIDES.

20 Q. EXCUSE ME?

21 A. IT WAS A YEAR AFTER THE HOMICIDES HE TOLD  
22 ME THAT HE FIRST TALKED TO DR. VICARY ABOUT ANY SEXUAL  
23 CONDUCT.

24 Q. AND IT WAS FOUR YEARS AFTER THE HOMICIDES  
25 BEFORE HE FIRST TESTIFIED, CORRECT?

26 A. YES.

27 Q. AND HE COULD HAVE TESTIFIED TO A  
28 DISSOCIATIVE STATE AT THE TIME OF THE HOMICIDES,

-15563

1 COULDN'T HE?

2 A. YES.

3 Q. AND HE DIDN'T?

4 A. THAT'S RIGHT.

5 Q. DO YOU KNOW WHAT THE EXPRESSION "FOCUS ON  
6 THE FEAR" MEANS IN THE PSYCHOLOGICAL LITERATURE OF  
7 P.T.S.D.?

8 A. AS A DESCRIPTION FOR A COGNITIVE MANEUVER  
9 THAT AN INDIVIDUAL MAY USE.

10 Q. DO YOU UNDERSTAND THAT LENORE WALKER AND  
11 THE OTHER BATTERED-WOMEN SYNDROME RESEARCHERS' USE OF  
12 THE TERM "LEARNED HELPLESSNESS" IS DIFFERENT THAN  
13 SELIGMAN'S ORIGINAL USE OF THE TERM?

14 A. WELL, I THINK THEY WANT IT TO BE A -- WELL,

15 YES. THEY ARE NOT DESCRIBING THE SAME PHENOMENON.

16 Q. AND WHEN YOU ANSWERED QUESTIONS IN THIS

17 COURTROOM ABOUT LEARNED HELPLESSNESS, YOU WERE

18 DESCRIBING SELIGMAN'S PHENOMENA, CORRECT?

19 A. AS I SAID, YES.

20 Q. BUT DR. WILSON WAS DESCRIBING WHAT THE

21 RESEARCHERS IN BATTERED PEOPLE, BATTERED CHILDREN,

22 BATTERED WOMEN HAVE DESCRIBED AS LEARNED HELPLESSNESS.

23 DID YOU UNDERSTAND THAT?

24 A. I UNDERSTOOD WHAT HE WAS SAYING. I DON'T

25 KNOW THAT "RESEARCH" IS QUITE THE TERM FOR THE WORK THAT

26 YOU'RE REFERRING TO.

27 Q. YOU DENIGRATE THE WORK OF THE

28 PSYCHOLOGISTS, DO YOU?

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1 A. NO. I AM JUST SKEPTICAL ABOUT THE

2 SCIENTIFIC QUALITY OF SOME OF THE WORK THAT YOU HAVE

3 ALLUDED TO.

4 Q. ARE YOU SKEPTICAL ABOUT THE SCIENTIFIC

5 QUALITY OF THE WORK THAT WAS DONE BY ALL OF THE

6 SYNDROMES THAT YOU WERE DESCRIBING IN YOUR DIRECT

7 EXAMINATION?

8 MR. CONN: OBJECTION. VAGUE.

9 THE COURT: SUSTAINED.

10 Q. BY MS. ABRAMSON: YOU MENTIONED



11 BATTERED-PERSON'S SYNDROME, OR BATTERED WOMAN'S SYNDROME  
12 AND RAPE TRAUMA SYNDROME.  
13 ARE YOU SKEPTICAL ABOUT THE SCIENCE BEHIND  
14 ALL OF THOSE?  
15 A. NOT EQUALLY, NO.  
16 Q. YOU'RE NOT EQUALLY SKEPTICAL ABOUT THE RAPE  
17 TRAUMA SYNDROME WORK, ARE YOU?  
18 A. EQUAL TO WHAT?  
19 Q. TO YOUR SKEPTICISM ABOUT THE BATTERED  
20 WOMAN?  
21 A. THERE IS NO QUESTIONS THERE IS A PHENOMENON  
22 IN WHICH BATTERED WOMEN WILL HAVE A PARTICULAR PATTERN  
23 OF BEHAVIOR.  
24 I DON'T LIKE THE USE OF THE TERM  
25 "SYNDROME." BUT THERE IS CERTAINLY A VERY IMPORTANT  
26 PATTERN OF BEHAVIOR THAT'S BEEN VERY WELL ESTABLISHED.  
27 I'M NOT AT ALL SKEPTICAL OF THAT.  
28 WITH RESPECT TO WHAT'S BEEN TERMED "RAPE

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1 TRAUMA SYNDROME," THERE WERE A COUPLE PROBLEMS WITH THE  
2 EARLY STUDIES. ONE WAS THAT THEY LUMPED ATTEMPTED RAPE  
3 VICTIMS TOGETHER WITH RAPE VICTIMS, AND DIDN'T  
4 DISTINGUISH THOSE, SO THAT THE SO-CALLED SYNDROME WAS  
5 REALLY ONE OF THOSE WHO WERE BOTH THE VICTIMS OF  
6 ATTEMPTED RAPES AND THE VICTIMS OF TRUE RAPES.

7           THERE WAS, OF COURSE, NO INDEPENDENT  
8 VERIFICATION THAT ANY OF THE WOMEN IN THE STUDY HAD IN  
9 FACT BEEN RAPED, AND THE ANALYSIS OF SYMPTOMS THERE HAD  
10 WHAT I THINK MOST WOULD AGREE TODAY WAS A RATHER  
11 OVER-EMPHASIS ON SEMANTIC FEATURES THAT MAY REFLECT  
12 THEIR PHYSICAL INJURY AT THE TIME OF THE ATTACK.

13       Q.   DO YOU AGREE WITH THE FOLLOWING STATEMENT:

14           THE DESCRIPTION OF A RAPE TRAUMA SYNDROME  
15 BY BURGESS AND HOLSTROM (PHOENETIC), 1974-A, 1974-B, IS  
16 A FINE EXAMPLE OF OUR CURRENT LEVEL OF KNOWLEDGE  
17 OFFERING CLEAR PROMISE OF INCREASINGLY REFINED  
18 MEASUREMENT.

19           DO YOU AGREE WITH THAT?

20       A.   I WOULDN'T AGREE WITH IT TODAY.

21       Q.   DID YOU AGREE WITH IT WHEN YOU WROTE IT?

22       A.   I'M SURE I DID. THAT WAS A CHAPTER WRITTEN  
23 WHEN I WAS IN MEDICAL SCHOOL IN THE 1970'S, AS I RECALL,  
24 OR EARLY IN MY RESIDENCY, AND IT DID LOOK VERY  
25 PROMISING. AT THAT POINT THERE WEREN'T ANY GOOD STUDIES  
26 OF RAPE VICTIMS.

27       Q.   SO THIS WAS SOMETHING YOU WROTE IN 1981,  
28 CORRECT?

-15560

1       A.   NOT WHAT I'M THINKING IT WAS FROM. WHAT IS  
2 IT?

3 Q. MAYBE YOU'RE RIGHT. WAIT A MINUTE. THIS  
4 IS FROM 197 -- NO. IT'S IN VICTIMOLOGY AND  
5 INTERNATIONAL JOURNAL, VOLUME 7, 1982.

6 A. IS THAT "VICTIM CONSEQUENCES AND CONTROL";  
7 IS THAT THE TITLE?

8 Q. "VICTIM CONSEQUENCES AND THEIR CONTROL," BY  
9 PARK ELLIOT DIETZ.

10 THAT'S YOU, RIGHT?

11 A. I WROTE IT IN MEDICAL SCHOOL AND PUBLISHED  
12 IT A LONG TIME LATER.

13 Q. SO YOU WEREN'T AS SMART IN MEDICAL SCHOOL  
14 AS YOU ARE RIGHT NOW; IS THAT RIGHT?

15 A. YEAH. THE LITERATURE WASN'T WHERE IT IS  
16 NOW.

17 Q. ALL RIGHT. BUT WE'RE NOT TALKING ABOUT  
18 RAPE TRAUMA SYNDROME, WE ARE TALKING ABOUT THE FACT THAT  
19 PERSONS WHO ARE WITHIN DOMESTIC VIOLENCE SITUATIONS  
20 WHERE THEY ARE CONTROLLED AND DOMINATED AND BRUTALIZED  
21 BY SOMEONE ELSE TEND TO DEVELOP SYMPTOMS OF STRESS,  
22 CORRECT?

23 A. COULD YOU READ IT AGAIN, PLEASE.

24 MS. ABRAMSON: CAN THE REPORTER READ BACK THE  
25 QUESTION, YOUR HONOR?

26 THE COURT: SURE.

27 (THE PENDING QUESTION WAS READ AS FOLLOWS:)

28 "QUESTION: ALL RIGHT. BUT WE'RE NOT

1 TALKING ABOUT RAPE TRAUMA SYNDROME, WE ARE  
2 TALKING ABOUT THE FACT THAT PERSONS WHO  
3 ARE WITHIN DOMESTIC VIOLENCE  
4 SITUATIONS --"

5 MS. ABRAMSON: I'LL TAKE IT BACK AND MAKE IT  
6 SIMPLER.

7 WE'RE TALKING ABOUT RESEARCH WHERE BATTERED  
8 VICTIMS, ON THE ONE HAND, WHO ARE SEXUALLY BRUTALIZED  
9 AND DOMINATED, DEVELOP SYMPTOMS THAT ARE SIMILAR TO THE  
10 OTHER SYMPTOMS THAT TRAUMA VICTIMS DEVELOP.

11 THE COURT: IT'S UNCLEAR BY THE QUESTION "WE'RE  
12 TALKING ABOUT WHERE."

13 WHAT DO YOU MEAN?

14 MS. ABRAMSON: WELL, I WILL JUST ASK THAT  
15 QUESTION.

16 THE COURT: WHAT IS THE QUESTION?

17 MS. ABRAMSON: THE QUESTION IS: DO YOU AGREE --

18 THE COURT: ARE WE TALKING ABOUT IT NOW, OR --  
19 YOU HAVE TO BE MORE CLEAR WHAT YOU MEAN.

20 MS. ABRAMSON: WELL, WE'RE TALKING ABOUT THE  
21 RESEARCH.

22 Q. WOULD YOU AGREE THAT THE RESEARCH INDICATES  
23 THAT -- OR RESEARCH WITH WHICH YOU SAY YOU DO NOT  
24 QUARREL -- INDICATES THAT WOMEN IN DOMESTIC VIOLENCE  
25 SITUATIONS AND CHILDREN IN DOMESTIC VIOLENCE SITUATIONS  
26 WHO ARE SEXUALLY, PHYSICALLY, PSYCHOLOGICALLY ABUSED,  
27 OFTEN HAVE MANY SYMPTOMS THAT ARE SIMILAR TO THE

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1 GENERALIZED ANXIETY DISORDER?

2 A. IF THAT WAS -- I COULDN'T HEAR WHERE YOU  
3 SAID CHILDREN WHO ARE PHYSICALLY, SEXUALLY AND  
4 PSYCHOLOGICAL ABUSED.

5 IF THAT'S WHAT YOU SAID, THEN CHILDREN WHO  
6 ARE THAT, AND ADULTS OF ANY AGE WHO ARE BATTERED, BOTH  
7 GENDERS, DO SOMETIMES DEVELOP SYMPTOMS LIKE THOSE OF  
8 BOTH P.T.S.D. AND GENERALIZED ANXIETY DISORDER.

9 Q. AND ONE OF THE SYMPTOMS THAT DR. WALKER AND  
10 OTHERS WHO HAVE RESEARCHED IN THE AREA OF BATTERED WOMAN  
11 IN DOMESTIC RELATIONSHIPS DESCRIBE IS WHAT THEY CALL  
12 LEARNED HELPLESSNESS, CORRECT?

13 THAT'S WHAT THEY DESCRIBE?

14 A. THAT'S WHAT THEY SAY, YES.

15 Q. AND WHEN THEY'RE TALKING ABOUT LEARNED  
16 HELPLESSNESS, THEY'RE NOT TALKING ABOUT SELIGMAN'S DOGS  
17 SPREAD-EAGLED ON THE ELECTRIC GRID, UNABLE TO MOVE, ARE  
18 THEY?

19 A. I THINK THEY'RE TALKING ABOUT WOMEN WHO  
20 DON'T LEAVE THEIR ABUSERS.

21 Q. THEY'RE TALKING ABOUT PEOPLE WHO HAVE  
22 DIFFICULTY IN MAKING DECISIONS AND DIFFICULTY IN DEALING  
23 WITH -- MEANINGFULLY DEALING WITH WAYS OUT OF AN

24 AVERSIVE SITUATION, ARE THEY NOT?

25 A. YES.

26 Q. AVERSIVE MEANS NEGATIVE, BAD; RIGHT?

27 A. YES.

28 Q. NOW, THEY ARE NOT DESCRIBING SOMEONE WHO IS

-15557

1 IN BED 24 HOURS A DAY AND CANNOT FUNCTION AT ALL IN

2 THEIR LIVES, ARE THEY?

3 A. CORRECT.

4 Q. AND ARE YOU AWARE, DR. DIETZ, THAT MUCH OF

5 THE RESEARCH IN TRYING TO MEASURE THE PRESENCE AND

6 DEGREE OF LEARNED HELPLESSNESS IN SO-CALLED BATTERED

7 WOMEN IS CONDUCTED IN BATTERED WOMEN SHELTERS?

8 A. YES.

9 Q. AND THERE ARE STUDIES THAT SHOW THAT THERE

10 ARE WOMEN IN BATTERED WOMEN'S SHELTERS WHO SHOW SIGNS OF

11 LEARNED HELPLESSNESS, CORRECT?

12 A. I ASSUME SO. I'M NOT FAMILIAR WITH THEM.

13 Q. YOU KNOW THERE ARE SUCH STUDIES, BUT YOU

14 YOU HAVEN'T FAMILIARIZED YOURSELF WITH THEM?

15 A. I'M NOT FAMILIAR WITH SUCH STUDIES.

16 Q. YOU'RE SAYING THERE AREN'T SUCH STUDIES?

17 A. NO, I AM NOT. I SAID I ASSUME THERE ARE

18 SUCH STUDIES.

19 Q. OKAY. AND DOESN'T IT MAKE A CERTAIN

20 LOGICAL SENSE THAT IF THESE WOMEN ARE IN BATTERED  
21 WOMEN'S SHELTERS, THEY WENT THERE?  
22 A. YES.  
23 Q. THEY WEREN'T SNATCHED OUT OF THEIR ABUSIVE  
24 HOMES BY THE PSYCHOLOGICAL RESEARCHERS SO THAT THEY  
25 COULD BE STUDIED, CORRECT?  
26 A. CORRECT.  
27 Q. I WOULDN'T ASSUME THAT.  
28 SO THEY TOOK SOME ACTION TO GET AWAY FROM

-15556

1 THE BATTERING SITUATION, CORRECT?  
2 A. YES.  
3 Q. AND IT'S YOUR OPINION THAT ANY TIME SOMEONE  
4 WHO HAS LEARNED HELPLESSNESS TAKES ANY ACTION  
5 WHATSOEVER, THAT PROVES THEY'RE NOT HELPLESS?  
6 A. IT PROVES THEY WERE CAPABLE OF MAKING A  
7 DECISION AND TAKING REFLECTIVE ACTION, AND ENGAGING IN  
8 REFLECTIVE THOUGHT.  
9 Q. WHAT WE ARE TALKING ABOUT?  
10 A. AND THAT THEY WERE NOT PARALYZED BY LEARNED  
11 HELPLESSNESS.  
12 Q. WELL, NO ONE SUGGESTED ANYONE IS PARALYZED  
13 IN THIS CASE, HAVE THEY, DR. DIETZ?  
14 MR. CONN: OBJECTION. ARGUMENTATIVE.  
15 THE COURT: OVERRULED.

16 YOU CAN ANSWER THE QUESTION.

17 Q. MS. ABRAMSON: PARALYZED. HAS ANYONE  
18 SUGGESTED PARALYSIS?

19 A. WELL, THERE ARE TIMES THAT ERIK MENENDEZ  
20 SAID THAT HE FELT PARALYZED BY FEAR, YES, AS A MATTER OF  
21 FACT --

22 Q. WELL, PARALYZED BY FEAR ACTUALLY --

23 A. -- BUT NOT ON THE OCCASION OF THE  
24 HOMICIDES, AND --

25 MS. ABRAMSON: YOUR HONOR, I AM GOING TO MOVE TO  
26 STRIKE ALL THIS AS NONRESPONSIVE.

27 THE COURT: WELL, IT IS RESPONSIVE TO THE  
28 QUESTION THAT YOU ASKED.

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1 YOU MAY ASK YOUR NEXT QUESTION, PLEASE.

2 Q. BY MS. ABRAMSON: PARALYZED BY FEAR  
3 ACTUALLY IS A KNOWN PHENOMENA; IS IT NOT?

4 A. YES.

5 Q. FREEZING UP IN THE FACE OF FEAR?

6 A. YES.

7 Q. CORRECT?

8 NOW, YOU SUGGESTED THAT SOME OF THE THINGS  
9 THAT ERIK MENENDEZ DID, LIKE GETTING A GUN TO DEFEND  
10 HIMSELF, PROVED THAT HE WAS EMERGING FROM LEARNED  
11 HELPLESSNESS; IS THAT WHAT YOU SAID?



12 A. IF HE WAS IN IT.  
13 Q. THEN HE'S EMERGING?  
14 A. CHOOSING TO DEFEND HIMSELF IS A STEP TOWARD  
15 EMERGING, YES.  
16 Q. ALL RIGHT.  
17 A. JUST LIKE LEAVING FOR A SHELTER IS FOR THE  
18 WOMEN YOU MENTIONED.  
19 Q. AND THE WOMEN GET TESTED AND THEY'RE FOUND  
20 TO HAVE LEARNED HELPLESSNESS IN SPITE OF THE FACT THAT  
21 THEY TOOK THE BUS TO THE SHELTER, RIGHT?  
22 YOU DON'T KNOW; IS THAT THE ANSWER?  
23 A. THAT'S RIGHT.  
24 Q. NOW, YOU CITED AS AN EXAMPLE -- WELL, YOU  
25 CITED ONE EXAMPLE OF BEHAVIOR INCONSISTENT WITH  
26 HYPERVIGILANCE, AND THAT WAS THE FACT THAT ON FRIDAY  
27 MORNING ERIK MENENDEZ WENT ONTO THE TENNIS COURT AND  
28 PRACTICED; IS THAT RIGHT?

-15554

1 A. I DON'T KNOW THAT'S THE ONLY ONE I CITED.  
2 Q. THAT'S THE ONE WE'RE GOING TO START WITH,  
3 OKAY?  
4 A. ACTUALLY WHAT I STRESSED WAS HIS ABILITY.  
5 Q. I JUST WANT TO KNOW IF THAT'S THE INCIDENT.  
6 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS  
7 ANSWER?

8 MS. ABRAMSON: I DON'T WANT THE WITNESS TO USE  
9 THIS AS A PULPIT.

10 THE COURT: ALL RIGHT. IT'S REALLY NOT  
11 APPROPRIATE TO ARGUE ABOUT THESE MATTERS.

12 THE QUESTION IS: DID YOU REFER TO THAT ONE  
13 INCIDENT?

14 MS. ABRAMSON: THAT'S THE QUESTION. THANK YOU,  
15 YOUR HONOR.

16 THE COURT: IF YOU REFERRED TO OTHERS, YOU MIGHT  
17 HAVE, BUT RIGHT NOW SHE'S FOCUSING ON THIS ONE.

18 THE WITNESS: I DID REFER TO THAT.

19 Q. BY MS. ABRAMSON: DO YOU KNOW WHETHER OR  
20 NOT HIS TENNIS COACH WAS THERE WHEN HE WENT OUT TO PLAY  
21 TENNIS?

22 A. NO.

23 Q. DO YOU KNOW WHETHER OR NOT HIS FATHER HAD  
24 ALREADY GONE TO WORK WHEN HE WENT OUT TO PLAY TENNIS?

25 A. ONLY FROM YOU.

26 Q. BUT YOU DON'T -- YOU DIDN'T KNOW WHEN YOU  
27 FORMULATED THIS OPINION, CORRECT?

28 A. CORRECT. AND I DIDN'T BELIEVE HE KNEW,

-15553

1 EITHER.

2 Q. WELL, YOU DON'T KNOW IF HE KNEW OR NOT?

3 A. WELL, I KNOW HE SAID THAT HE DIDN'T THINK

4 ABOUT HIS FATHER, DIDN'T WORRY ABOUT HIS FATHER, PUT IT  
5 OUT OF HIS MIND.

6 Q. OKAY. LET'S TALK ABOUT TWO DIFFERENT --  
7 THERE ARE TWO BASICALLY DIFFERENT WAYS -- TWO DIFFERENT  
8 KINDS OF COPING MECHANISMS TO DEAL WITH TRAUMA, ONE OF  
9 WHICH IS IN THE SORT OF DENIAL ALL THE WAY TO THE  
10 DISSOCIATION REALM, AND THE OTHER OF WHICH WOULD BE THE  
11 HYPERVIGILANT, STAY-FOCUSED REALM.

12 ARE THOSE TWO DIFFERENT WAYS OF COPING WITH  
13 THREAT?

14 A. THOSE ARE AMONG THE TWO WAYS, YES. THOSE  
15 ARE AMONG THE WAYS, AND THEY ARE TWO DIFFERENT WAYS.

16 Q. OKAY. AND IS IT YOUR OPINION THAT A PERSON  
17 WHO IS HYPERVIGILANT, WHO HAS BEEN TRAUMATIZED, WHO IS  
18 FEARFUL, NEVER SWITCHES BETWEEN THE TWO, THEY'RE ALWAYS  
19 EITHER TURNED ON, HYPERVIGILANT, OR THEY'RE IN TOTAL  
20 DENIAL?

21 A. NO.

22 Q. THEY CAN GO BETWEEN THE TWO, CAN'T THEY?

23 A. THEY MAY USE MORE THAN ONE STRATEGY IN  
24 SEQUENCE.

25 Q. AND WHAT ERIK MENENDEZ DESCRIBED ABOUT WHAT  
26 HE WAS -- HOW HE DIDN'T WANT TO THINK ABOUT IT THAT  
27 FRIDAY MORNING IS NOT ENTIRELY INCONSISTENT WITH DENIAL,  
28 IS IT?

1       A.  NO.

2       Q.  NOW, APART FROM THE ORIGINAL SELIGMAN MODEL  
3  OF HELPLESSNESS, IS THERE ANY RESEARCH THAT INDICATES  
4  THAT IN TALKING ABOUT THE EFFECTS OF DOMESTIC VIOLENCE  
5  ON WOMEN AND CHILDREN, THAT LEARNED HELPLESSNESS IS THE  
6  SAME AS SEVERE DEPRESSION?

7       A.  I DON'T KNOW.

8       Q.  AND YOU SAID THAT -- WELL, STRIKE THAT.

9           BACK TO THESE EXAMPLES THAT YOU GAVE AS  
10  BEING INCONSISTENT WITH HYPERVIGILANCE.

11          YOU SAID NOT TAKING THE GUNS ON THE  
12  SHARK-FISHING TRIP WAS INCONSISTENT WITH HYPERVIGILANCE?

13       A.  WELL, INCONSISTENT WITH HYPERVIGILANCE AT  
14  THE LEVEL THAT HE, I BELIEVE, WAS PROPOSING. THAT IS,  
15  IF THE IDEA IS THAT ERIK MENENDEZ BELIEVED HE WAS ABOUT  
16  TO BE KILLED ON THAT BOAT, WHETHER HYPERVIGILANT OR NOT,  
17  HAVING AN OPPORTUNITY TO ARM HIMSELF WOULD OBVIOUSLY BE  
18  A FINE CHOICE, OR NOT GOING ON THE BOAT WOULD BE A  
19  BETTER CHOICE.

20       Q.  WAIT, WAIT. OPPORTUNITY TO ARM HIMSELF.

21          YOU UNDERSTAND THEY GOT HOME THAT SATURDAY  
22  AND THE PARENTS ARE IN THE FRONT YARD, AND ERIK MENENDEZ  
23  HAS GOT A SHOTGUN IN THE BACK UNDER HIS CLOTHING.

24          YOU UNDERSTAND THAT?

25       A.  I DO UNDERSTAND THAT. IN A TENNIS BAG.

26       Q.  WELL, IT MAY OR MAY NOT HAVE BEEN IN A  
27  TENNIS BAG AT THAT POINT, IT WASN'T CLEAR ON THAT, OR  
28  DON'T YOU RECALL THAT?

1 MR. CONN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED AS TO THE FORM OF THE  
3 QUESTION.

4 Q. BY MS. ABRAMSON: NOW, IS IT YOUR TESTIMONY  
5 THAT HE AND HIS BROTHER SHOULD HAVE -- HIS BROTHER  
6 SHOULD HAVE GONE TO THE GUEST HOUSE AND GOTTEN HIS  
7 SHOTGUN, AND ERIK SHOULD HAVE TAKEN HIS LITTLE TENNIS  
8 BAG WITH THE SHOTGUN AND GOTTEN INTO HIS FATHER'S CAR  
9 WITH TWO SHOTGUNS?

10 THAT'S YOUR TESTIMONY OF WHAT WOULD HAVE  
11 MADE SENSE AT THAT POINT?

12 A. THEY SHOULDN'T HAVE COME HOME AT ALL IF  
13 THEY THOUGHT THEY WERE ABOUT TO BE KILLED. THEY  
14 SHOULDN'T HAVE GOTTEN OUT OF THE CAR. AND IF THEY WERE  
15 HYPERVIGILANT, GETTING OUT OF THE CAR AT THEIR HOME TO  
16 GET IN THE FATHER'S CAR TO GO ON THE SHARK-FISHING BOAT  
17 TO BE KILLED, AND BEING HYPERVIGILANT, NOT TAKING THE  
18 GUN ALONG SEEMS ANOTHER BAD CHOICE.

19 Q. SEEMS LIKE THE HELPLESSNESS TOOK OVER AT  
20 THAT POINT RATHER THAN THE HYPERVIGILANCE, DOESN'T IT?

21 A. OR MAYBE THEY DIDN'T EXPECT TO BE KILLED.  
22 I THINK THERE ARE A LOT OF POSSIBILITIES.

23 Q. THE FACT IS THAT ERIK MENENDEZ EXPLAINED  
24 THAT HE FELT THERE WOULD BE DIRE CONSEQUENCES IF HE  
25 DIDN'T SHOW UP FOR THE BOAT TRIP, ALTHOUGH THEY WERE AN

26 HOUR LATE HOPING TO BE MISSED.

27 HE HAD DEMONSTRATED IN THAT TESTIMONY,

28 DON'T YOU AGREE, EXTREME INDECISION AND AMBIVALENCE?

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1 A. I SEE THAT AS SOME AMBIVALENCE THAT HE  
2 WANTED TO DELAY COMING HOME, AND YET NOT TOO LONG. BUT  
3 THE FACT IS HE CAME HOME.

4 Q. THE FACT IS YOUR WHOLE ANALYSIS HERE,  
5 DR. DIETZ, ABOUT WHETHER OR NOT ERIK MENENDEZ AT A  
6 PARTICULAR POINT IS HELPLESS, OR AT A PARTICULAR POINT  
7 IS HYPERVIGILANT, IS BASED MAINLY ON SIMPLY VIEWING HIS  
8 BEHAVIORS FROM THE OUTSIDE, CORRECT?

9 A. ANY ANALYSIS OF BEHAVIOR MUST UNFORTUNATELY  
10 BE BASED ON VIEWING IT FROM THE OUTSIDE.

11 Q. AND WHAT YOU'RE LEAVING OUT OF YOUR  
12 ANALYSIS CONSISTENTLY HERE IS WHAT THE EFFECT WAS OF  
13 HAVING ANOTHER PERSON PRODDING HIM OR ADVISING HIM OR  
14 DISCUSSING THESE THINGS WITH HIM, AREN'T YOU?

15 A. I HAVE NOT INTRODUCED ANYTHING ABOUT THE  
16 EFFECT OF THAT IN MY TESTIMONY.

17 Q. SO IF YOU'RE SAYING THAT BECAUSE ERIK  
18 MENENDEZ DECIDED FRIDAY MORNING EVENTUALLY TO GO GET  
19 GUNS, AND THAT'S SOME SIGN THAT HE ISN'T HELPLESS, YOU  
20 ARE IGNORING THAT PART OF HIS TESTIMONY, ARE YOU NOT,  
21 WHERE HE SAID HE DIDN'T WANT TO DO ANYTHING UNTIL HIS

22 BROTHER PRODDER HIM, REMINDER HIM THERE REALLY WAS  
23 DANGER, AND THEN HE BECAME HYPERVIGILANT AGAIN.  
24 YOU'RE IGNORING THAT PART, AREN'T YOU?  
25 A. I AM AWARE OF THAT.  
26 Q. IT COMPLICATES IT TO TRY TO FIGURE OUT IF  
27 SOMEONE'S BEING HELPLESS OR HOPELESS OR HYPERVIGILANT  
28 WHEN THEY'RE NOT ACTING ALONE, WOULDN'T YOU AGREE WITH

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1 THAT?  
2 A. YES.  
3 Q. NOW, YOU ALSO TAKE THE POSITION THAT  
4 BECAUSE HE HAD SOME TOTALLY UNREALISTIC HOPES OVER THE  
5 COURSE OF THOSE FEW DAYS BEFORE SUNDAY, THAT HE COULDN'T  
6 POSSIBLY HAVE BEEN IN A STATE OF LEARNED HELPLESSNESS.  
7 IS THAT YOUR POSITION?  
8 A. WELL, WHETHER HIS HOPES ARE REALISTIC OR  
9 NOT DEPEND ON WHETHER THE WORLD WAS AS HE SAYS, AND  
10 THAT'S WHAT I'M NOT TAKING A POSITION ON.  
11 Q. WELL, LET'S TALK ABOUT BATTERED WOMAN'S  
12 SYNDROME IF WE CAN FOR A MOMENT, OKAY.  
13 ISN'T IT SPECIFICALLY A FEATURE OF BATTERED  
14 WOMAN'S SYNDROME, AS IT IS DESCRIBED IN THE LITERATURE,  
15 THAT ONE OF THE THINGS THAT KEEPS BATTERED WOMEN IN  
16 THESE RELATIONSHIPS IS THE EVER VAIN HOPE THAT THE  
17 BATTERER WILL STOP BEATING THEM UP?

18 A. YES.  
19 Q. AND THAT IS A HOPE, CORRECT?  
20 A. YES.  
21 Q. AND IT IS USUALLY A VAIN HOPE, IT'S NOT  
22 REALISTIC, CORRECT?  
23 A. THAT'S CORRECT.  
24 Q. THAT DOESN'T MEAN THEY ARE NOT ALSO  
25 SUFFERING LEARNED HELPLESSNESS TO THE DEGREE THAT THEY  
26 CANNOT MAKE SENSIBLE DECISIONS ABOUT HOW TO GET OUT OF  
27 THE RELATIONSHIP, CORRECT?  
28 A. I AGREE WITH THE -- THE THRUST OF YOUR

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1 POINT, WHICH IS THAT THEY MAY NOT BE MAKING THE  
2 DECISIONS WE WOULD REGARD AS SENSIBLE.  
3 Q. BECAUSE THEIR DECISION-MAKING ABILITY IS  
4 IMPAIRED BY THE FACT THAT THEY HAVE BEEN IN A  
5 RELATIONSHIP WHERE THEY HAVE HAD AVERSIVE EFFECTS OVER  
6 WHICH THEY HAVE NO CONTROL, RIGHT?  
7 A. I DON'T KNOW THAT IT'S THEIR DECISION  
8 MAKING ABILITY THAT'S IMPAIRED. THEY MAKE BAD CHOICES.  
9 Q. BAD -- THEY'RE BAD PEOPLE, THEY MAKE BAD  
10 CHOICES?  
11 A. NO, NO, NO. THEY'RE MAKING CHOICES THAT DO  
12 NOT SERVE THEIR INTERESTS AS WE SEE THEM, BUT THAT'S OUR  
13 JUDGMENT OF WHAT'S IN THEIR INTERESTS. AND THERE ARE



14 OTHER NEEDS THAT THEY BELIEVE ARE BEING MET.

15 Q. AND THAT'S HOW YOU REFUTE THE NOTION THAT  
16 IT IS LEARNED HELPLESSNESS THAT KEEPS THEM THERE, YOU  
17 HAVE DECIDED THEY CHOOSE TO STAY; IS THAT CORRECT?

18 A. NO. IT'S -- WHAT I AM REJECTING ABOUT THE  
19 NOTION OF LEARNED HELPLESSNESS IS THE ADOPTION OF THE  
20 TERM WITH A SCIENTIFIC FOUNDATION FOR USE TO BOLSTER A  
21 PSYCHOLOGICAL EXPLANATION IN ANOTHER CONTEXT THAT  
22 DESERVES ITS OWN TERMS, AND DESERVES ITS OWN GOOD  
23 RESEARCH.

24 BUT THAT ONLY SEEKS TO MEASURE WHAT GETS  
25 CALLED LEARNED HELPLESSNESS IN THE BATTERED WOMAN  
26 LITERATURE, BY ASKING PEOPLE QUESTIONS ABOUT THEIR  
27 PROSPECTIVE ON LIFE.

28 I THINK THE MEASURES ARE VERY -- VERY

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1 PRIMITIVE, AND THAT THAT RESEARCH DOESN'T TELL US WHAT  
2 WE MIGHT WISH TO KNOW.

3 WHEN BATTERED WOMEN --

4 MS. ABRAMSON: YOUR HONOR, I THINK AT THIS POINT  
5 THE WITNESS IS BEYOND BEING RESPONSIVE.

6 THE COURT: NO, HE IS STILL ANSWERING THE  
7 QUESTION.

8 MS. ABRAMSON: ALL RIGHT. GO AHEAD.

9 THE WITNESS: WHEN BATTERED WOMEN CHOOSE TO STAY

10 OR FAIL TO LEAVE, OR HOWEVER ELSE ONE WISHES TO  
11 CHARACTERIZE IT, THEIR PERCEPTION OF IT INVOLVES THE  
12 VIEW, NOT JUST OF THE FUTILE HOPE THAT HE'LL STOP, BUT  
13 ALSO THEIR FEARS OF SURVIVAL IN THE OUTSIDE WORLD  
14 WITHOUT RESOURCES; THEIR CONCERNS WHETHER THEY CAN MAKE  
15 IT ON THEIR OWN; THEIR BELIEF THAT IT WOULD BE BAD TO BE  
16 DISLOYAL TO A MARRIAGE THAT THEY HAVE VOWED TO TRY TO  
17 FULFILL, AND A HOST OF OTHER THINGS THAT MAY BE VERY  
18 IMPORTANT TO THEM.

19 AND FOR US TO JUDGE AND SAY THEIR DECISION  
20 MAKING IS IMPAIRED BECAUSE THEY DON'T LEAVE WOULD BE  
21 VERY ARROGANT. WE THINK THEY SHOULD LEAVE. THAT'S A  
22 DIFFERENT STORY.

23 MS. ABRAMSON: YOUR HONOR, I THINK AT THIS POINT  
24 WE'VE GONE FAR AFIELD.

25 THE COURT: HE STILL HASN'T FINISHED HIS ANSWER.

26 MS. ABRAMSON: "WE THINK" --

27 THE COURT: LET HIM FINISH HIS ANSWER.

28 MS. ABRAMSON: I AM REMINDING HIM WHERE HE WAS.

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1 THE COURT: LET HIM FINISH HIS ANSWER. THAT'S  
2 WHAT HE'S DOING, IS ANSWERING THE QUESTION, AND NOW I  
3 WILL DIRECT HIM TO FINISH.

4 THE WITNESS: WE THINK THEY SHOULD LEAVE BECAUSE  
5 FROM OUR VALUES IT APPEARS THAT THAT WOULD BE THE

6 OBVIOUS, CORRECT CHOICE. BUT THEY'RE WEIGHING OTHER

7 FACTORS ACCORDING TO THEIR OWN VALUES.

8 Q. BY MS. ABRAMSON: SO YOU ARE HERE TO BE THE

9 CHAMPION OF BATTERED WOMEN WHO ARE BEING PATRONIZED; IS

10 THAT IT?

11 A. THAT'S JUST MY OPINION.

12 Q. YOU HAVE NEVER DONE ANY RESEARCH IN THIS

13 AREA, YOU HAVE NEVER TREATED ANY BATTERED WOMAN; IS THAT

14 CORRECT?

15 A. I HAVE TREATED BATTERED WOMEN, BUT I HAVE

16 NOT DONE EMPIRICAL RESEARCH WHERE I COLLECT DATA ON

17 THAT. OF COURSE I HAVE DONE PLENTY OF LIBRARY RESEARCH,

18 LIKE ANYONE IN MY FIELD HAS.

19 Q. AND THAT LIBRARY RESEARCH INDICATES THIS

20 PHENOMENON THAT WOMEN WHO DO NOT LIKE THE TREATMENT THEY

21 ARE GETTING, WOMEN WHO ARE BEING SEVERELY PHYSICALLY

22 ABUSED, WOMEN WHO ARE BEING TORTURED, EVEN FEEL

23 INCAPABLE OF LEAVING THE SITUATION ON A PSYCHOLOGICAL OR

24 EMOTIONAL LEVEL AS WELL AS WHAT YOU'VE JUST MENTIONED,

25 CORRECT?

26 A. FOR A HOST OF REASONS.

27 Q. WELL, BESIDES THE HOST THAT YOU DID HAVING

28 TO DO WITH ECONOMIC RESOURCES OR MAKING IT ON THEIR OWN

1 OR BEING DISLOYAL, THEY ALSO INDICATE BASICALLY THAT

2 THEY DON'T FEEL COMPETENT ABOUT THEMSELVES, THEY FEEL  
3 IT'S ALL THEIR FAULT, THEY FEEL THEY ARE TO BLAME, THEY  
4 HAVE LOW SELF-ESTEEM, THEY DON'T SEE THEMSELVES AS  
5 CAPABLE OF TAKING CARE OF THEMSELVES PSYCHOLOGICALLY,  
6 CORRECT?

7 A. ALL OF THAT IS OFTEN TRUE, YES.

8 Q. AND ALSO WHAT IS OFTEN TRUE IS THEY ARE  
9 THREATENED WITH DEATH IF THEY TRY, CORRECT?

10 A. SOME ARE, YES.

11 Q. AND, IN FACT, THERE ARE STUDIES THAT SHOW  
12 THAT WHEN BATTERED WOMEN LEAVE, THEY HAVE PUT THEMSELVES  
13 AT EVEN GREATER RISK OF HARM THAN WHEN THEY STAY WITHIN  
14 THE RELATIONSHIP?

15 A. YES.

16 Q. NOW, LET'S TALK ABOUT ABUSED AND MOLESTED  
17 CHILDREN.

18 DO YOU KNOW WHAT THE TERM "RESCUE  
19 FANTASIES" MEAN?

20 A. SURE.

21 Q. AND THOSE ARE THE VAIN HOPES, ARE THEY NOT,  
22 OF MOLESTED AND ABUSED CHILDREN, THAT SOME OUTSIDE FORCE  
23 WILL STOP THE MISERY OF THEIR LIVES, CORRECT?

24 A. YES.

25 Q. BECAUSE THEY -- THEY FEEL HELPLESS  
26 THEMSELVES TO CONTROL OR STOP THE ABUSE, RIGHT?

27 A. YES.

28 Q. AND IS IT YOUR OPINION, DR. DIETZ, THAT

1 ABUSED CHILDREN ARE INTENSELY DEPENDENT UPON -- OR  
2 FREQUENTLY INTENSELY DEPENDENT UPON THEIR ABUSERS?

3 A. YES, THEY ARE.

4 Q. AND DO THEY HAVE A PERVASIVE FEELING OF  
5 HELPLESSNESS WITH RESPECT TO ENDING THE AVERSIVE  
6 SITUATION?

7 A. YES.

8 Q. NEVERTHELESS, THEY HAVE HOPES, CORRECT?

9 MR. CONN: OBJECTION. VAGUE. CALLS FOR  
10 SPECULATION.

11 THE COURT: PERHAPS YOU CAN REPHRASE THE  
12 QUESTION.

13 Q. BY MS. ABRAMSON: NEVERTHELESS THESE RESCUE  
14 FANTASIES ARE AN EXPRESSION OF HOPEFULNESS?

15 A. YES.

16 Q. YOU TALKED ABOUT POLICE OFFICERS WHO GET  
17 TRAINED TO BE HYPERVIGILANT, REMEMBER THAT?

18 A. YES.

19 Q. IS IT YOUR TESTIMONY THAT POLICE OFFICERS  
20 ARE HYPERVIGILANT 24 HOURS A DAY?

21 A. NO.

22 Q. AND WHEN THEY GO HOME AT NIGHT, FOR  
23 EXAMPLE, SOME OF THEM MANAGE TO TURN IT OFF FOR A WHILE?

24 A. THE ONES WHOSE MARRIAGES ARE GOING TO LAST  
25 AND WHOSE CAREERS ARE GOING TO LAST MANAGE TO TURN IT  
26 OFF, YES.

27 Q. ALL RIGHT.

28 AND HOWEVER, THERE ARE EVEN EXAMPLES, ARE

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1 THERE NOT, OF WELL-TRAINED POLICE OFFICERS WHO SHOULD BE  
2 HYPERVIGILANT, WHO STOP BEING HYPERVIGILANT DURING THEIR  
3 WORK AND GET KILLED AS A CONSEQUENCE?

4 A. YES.

5 Q. SO HYPERVIGILANCE ISN'T NECESSARILY A 24  
6 HOUR A DAY, 60 MINUTE OUT OF EVERY HOUR CONDITION,  
7 CORRECT?

8 A. CORRECT.

9 Q. NOW, YOU SAID THAT A HYPERVIGILANT  
10 CONDITION CAN CAUSE WHAT YOU CALLED I BELIEVE FALSE  
11 POSITIVES?

12 A. IT CAUSES THE PERSON TO PERCEIVE FALSE  
13 POSITIVES, YES.

14 Q. IT CAN ALSO CAUSE REAL POSITIVES, LIKE WHAT  
15 POLICEMEN SEE, TRUE POSITIVES?

16 A. WELL, THEY'D HAVE PICKED UP TRUE POSITIVES  
17 IN ANY EVENT, BUT YES, THAT'S RIGHT.

18 Q. SO YOU CAN HAVE BOTH TRUE POSITIVES AND  
19 FALSE POSITIVES?

20 A. YES.

21 Q. I WANT TO GET BACK JUST FOR A MOMENT TO THE  
22 BOAT TRIP WHERE YOU THOUGHT THEY SHOULD HAVE TAKEN THE

23 SHOTGUNS.  
24 WHAT DO YOU KNOW ABOUT WHAT HAPPENED ON THE  
25 BOAT TRIP?  
26 MR. CONN: OBJECTION. MISSTATES THE TESTIMONY.  
27 ARGUMENTATIVE.  
28 THE COURT: PERHAPS YOU CAN REPHRASE THE

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1 QUESTION.  
2 Q. BY MS. ABRAMSON: WHAT IS YOUR  
3 UNDERSTANDING FACTUALLY OF WHAT HAPPENED ON THE BOAT?  
4 A. ONCE THEY WERE ON IT?  
5 Q. YES.  
6 A. THE BROTHERS WENT TO THE FRONT OF THE BOAT  
7 WHERE THEY SAT IN THE BOW, DESPITE IT BEING COLD AND WET  
8 AND SLIPPERY, LEANING AGAINST THE WINDOW THERE WHILE THE  
9 PARENTS SPENT MOST OF THEIR TIME TOWARD THE STERN;  
10 THAT WHILE THEY WERE ON THE BOAT FOR A  
11 PERIOD OF THREE HOURS OR MORE, THERE WAS ALSO PRESENT  
12 THE CAPTAIN AND TWO -- AT LEAST TWO OTHER UNRELATED  
13 PERSONS;  
14 THAT A SHARK WAS CAUGHT, AND WAS SMALLER  
15 THAN JOSE MENENDEZ WANTED. AND SO HE COMPLAINED ABOUT  
16 THE SIZE OF THE SHARK;  
17 THAT THERE WAS A DISCUSSION WITH THE  
18 CAPTAIN ABOUT THE FACT THAT THE BOAT HAD BEEN USED IN

19 THE MAKING OF A FILM, AND THAT SEEMED AMUSING TO ONE OF  
20 THE BROTHERS, WHO CALLED THE OTHER BROTHER BACK CLOSER  
21 TO THE PARENTS TO HEAR THE AMUSING STORY OF THE USE OF  
22 THE BOAT IN A FILM.

23 BUT THAT MOSTLY THE BROTHERS STAYED AT THE  
24 BOW WITH EACH OTHER AND SPOKE.

25 Q. WELL, WHO SAID THEY SPOKE? SO FAR YOU WERE  
26 DOING PRETTY GOOD. IT WAS SIX HOURS, NOT THREE HOURS.

27 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION TO  
28 STRIKE.

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1 THE COURT: SUSTAINED.

2 THE QUESTION IS STRICKEN.

3 Q. BY MS. ABRAMSON: WHO SAID THEY SPOKE IN  
4 THE BOAT?

5 THE COURT: WHAT WAS YOUR QUESTION?

6 Q. BY MS. ABRAMSON: WHO SAID -- I'LL REFRAME  
7 IT.

8 WHAT WAS YOUR SOURCE OF INFORMATION THAT  
9 WHEN THEY WERE AT THE BOW OF THE BOAT THEY WERE  
10 SPEAKING?

11 A. ACTUALLY, I THINK IT IS ONE OF THE  
12 DOCUMENTS THAT I AM NOT SUPPOSED TO RELY ON.

13 Q. NO, IT ISN'T ACTUALLY. JUST TO CLARIFY, SO  
14 THE JURY DOESN'T MISUNDERSTAND, YOU WERE GIVEN A



15 SAMPLING OF POLICE REPORTS, AND ONE OF THEM CONTAINED AN  
16 EARLY STATEMENT OF ROBERT ANDERSEN, THE BOAT CAPTAIN,  
17 CORRECT?

18 A. YES.

19 Q. LET ME ASSURE YOU THE JURY HAS HEARD  
20 MR. ANDERSEN TESTIFY, SO THEY KNOW, ALL RIGHT?

21 A. OKAY.

22 Q. SO DON'T WORRY ABOUT IT.

23 I WANT TO TALK TO YOU A LITTLE BIT ABOUT  
24 THE LAST PART OF YOUR TESTIMONY HAVING TO DO WITH  
25 BIOLOGY.

26 DID YOU READ DR. WILSON'S TESTIMONY  
27 CONCERNING THE RESEARCH THAT'S BEING CONDUCTED TO TRY TO  
28 DETERMINE WHY IT IS WHAT HAS BEEN OBSERVED IN THE

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1 BEHAVIOR OF PEOPLE WITH P.T.S.D. FOR MANY, MANY YEARS,  
2 THIS GOING FROM STIMULUS OR CUE TO HYPERAROUSAL VERY,  
3 VERY QUICKLY HAS -- WHETHER OR NOT IT HAS A BRAIN  
4 CHEMICAL BASIS.

5 DID YOU UNDERSTAND THAT THAT'S WHAT HE WAS  
6 TALKING ABOUT?

7 A. I UNDERSTAND THAT.

8 Q. OKAY. AND DO YOU UNDERSTAND HE WAS  
9 REFERRING TO RESEARCH THAT'S BEEN CONDUCTED IN MAINLY  
10 TWO DIFFERENT CENTERS OF LEARNING, HARVARD AND YALE,

11 RIGHT?

12 A. OKAY.

13 Q. THEY'RE PRETTY GOOD SCHOOLS, HARVARD AND  
14 YALE, WOULD YOU AGREE?

15 MR. CONN: OBJECTION. IRRELEVANT.

16 THE COURT: WELL, IT'S UNCLEAR TO ME WHETHER OR  
17 NOT THE WITNESS IS FAMILIAR WITH THIS RESEARCH, OR HE'S  
18 JUST ACCEPTING WHAT YOU'RE SAYING.

19 SO PERHAPS YOU CAN CLARIFY IT.

20 Q. BY MS. ABRAMSON: WELL, YOU WERE ASKED A  
21 SERIES OF QUESTIONS BY MR. CONN, AND YOU TALKED ABOUT  
22 WHAT YOU THOUGHT WAS THE CURRENT STATE OF THE RESEARCH.

23 DO YOU REMEMBER THAT TESTIMONY WHICH YOU  
24 GAVE TODAY?

25 A. YES.

26 Q. ALL RIGHT. AND DID YOU READ THE TESTIMONY  
27 BY DR. WILSON WHERE HE WAS TALKING ABOUT RESEARCH THAT'S  
28 BEING CONDUCTED INTO THE BRAIN CHEMISTRY OF PEOPLE WITH

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1 POST-TRAUMATIC STRESS DISORDER, TO SEE IF THERE IS A  
2 VERIFIABLE, OBSERVABLE BRAIN CHEMICAL REASON FOR THE  
3 RAPIDITY WITH WHICH PEOPLE WITH P.T.S.D. GO FROM  
4 STIMULUS TO OVER-REACTIVE RESPONSE?

5 A. I DON'T RECALL IF I READ THAT OR NOT, BUT I  
6 KNOW THAT SUCH RESEARCH EXISTS.

7 Q. AND DO YOU KNOW WHO BESSEL VAN DER KOLK IS?

8 A. YES.

9 Q. AND DO YOU KNOW THAT HE CONDUCTS SUCH  
10 RESEARCH?

11 A. YES.

12 Q. AND PROFESSOR VAN DER KOLK IS AT HARVARD,  
13 CORRECT?

14 A. HE IS.

15 Q. AND YOU ARE AWARE OF THE RESEARCH GROUP AT  
16 YALE, WHICH I DON'T HAVE THE BOOK HERE ANYMORE, BUT ONE  
17 OF THE EDITORS OF THE BOOK THAT DR. WILSON TESTIFIED  
18 ABOUT IS NAMED I BELIEVE CARNEY.

19 DO YOU KNOW WHO HE IS, OR WHAT THAT  
20 RESEARCH IS ABOUT?

21 A. NO.

22 Q. DID YOU NOTE IN YOUR REVIEW OF DR. WILSON'S  
23 TESTIMONY THE SOURCES THAT HE WAS RELYING ON FOR HIS  
24 OPINION THAT THE RESEARCH IS SHOWING THAT THERE IS A  
25 BRAIN CHEMICAL -- WELL, THAT THERE IS A MEASURABLE  
26 BIOLOGICAL EXPLANATION FOR THE RAPIDITY WITH WHICH  
27 PEOPLE WITH P.T.S.D. OVERREACT?

28 A. YEAH. OF COURSE THERE IS.

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1 Q. NOW, SO IF I -- I DON'T QUITE UNDERSTAND.

2 ARE YOU CHALLENGING THAT RESEARCH?

3       A.  NO, I AM CHALLENGING WHAT IT MEANS.  THE  
4  RESEARCH IS FINE, BUT THE RESEARCH DOESN'T SHOW THAT THE  
5  HIGHER LEVELS OF BEHAVIOR ARE AFFECTED.

6           IN OTHER WORDS, THERE IS -- THE ABILITY TO  
7  MEASURE NEUROTRANSMITTERS BY DRAWING BLOOD AND DOING A  
8  CHEMICAL ANALYSIS OF WHAT NEUROTRANSMITTERS ARE IN THE  
9  BLOOD, AND THAT WILL SHOW SOME GROUP DIFFERENCE BETWEEN  
10 PEOPLE WITH P.T.S.D. AND PEOPLE WHO DON'T HAVE IT.

11          BUT TO TRY TO FIGURE OUT WHAT THAT HAS TO  
12 DO WITH HIGH LEVEL BRAIN FUNCTION; LIKE MORAL REASONING,  
13 DECISION MAKING, RESPONSIBILITY, FREE WILL, VOLITION --  
14 THAT IS AS ABSURD AS TRYING TO FIGURE OUT THE MEANING OF  
15 A TEXT OF WRITTEN PASSAGE BY DOING A CHEMICAL ANALYSIS  
16 OF THE INK.

17       Q.  OKAY.

18       A.  THAT'S AN EXAMPLE FROM PROFESSOR RICHARD  
19 RESTAK, ACTUALLY.

20       Q.  THAT'S VERY NICE.  BUT WHAT MAKES YOU THINK  
21 THAT WAS WHAT WE WERE TRYING TO PROVE HERE?

22       MR. CONN:  OBJECTION.  ARGUMENTATIVE AND  
23 IRRELEVANT.

24       THE COURT:  SUSTAINED.

25       Q.  BY MS. ABRAMSON:  ARE YOU FAMILIAR WITH THE  
26 RESEARCH THAT DOCTOR -- THAT PROFESSOR VAN DER KOLK IS  
27 DOING WHICH NOW SEEMS TO SUPPORT THE NOTION THAT BECAUSE  
28 THE -- BECAUSE WHAT HAPPENS IS THESE PEOPLE -- PEOPLE

1 WITH P.T.S.D. GO FROM STIMULUS TO OVERREACTION SO  
2 QUICKLY THAT IT IS BYPASSING THE PATHWAYS OF  
3 NEUROTRANSMISSION; THAT IS, BYPASSING THE CEREBRAL  
4 CORTEX.

5 ARE YOU AWARE OF THAT RESEARCH?

6 A. I AM AWARE OF THIS THEORY.

7 Q. ALL RIGHT. AND IF THAT THEORY WERE RIGHT,  
8 THE ACTUAL REASONING GOES ON IN THE CEREBRAL CORTEX,  
9 CORRECT?

10 A. IT DOES.

11 Q. AND IF YOU BYPASS IT, YOU'RE NOT ENGAGING  
12 IN WHAT WE WOULD CALL REASONING, CORRECT?

13 A. WELL, THE BRAIN IS DOING WHAT IT'S DOING AT  
14 THE SAME TIME THAT OTHER THINGS MAY BE HAPPENING, BUT  
15 THE ACT OF NEUROTRANSMITTER BYPASS, ASSUMING SUCH A  
16 THING HAPPENS AT ALL, SINCE IT IS A THEORY, DOESN'T TELL  
17 US ANYTHING ABOUT A PERSON REASONING.

18 Q. WELL, YOU'RE SAYING THAT THE EVIDENCE  
19 ISN'T --

20 A. IT'S A DIFFERENT THING.

21 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS  
22 ANSWER?

23 MS. ABRAMSON: I'M SORRY, I THOUGHT HE HAD  
24 FINISHED.

25 THE COURT: I THINK HE HAD.

26 YOUR NEXT QUESTION.

27 Q. BY MS. ABRAMSON: YOU'RE SAYING YOU'RE NOT

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1 REASONING GOES ON IN THE BRAIN; IS THAT WHAT YOU'RE  
2 SAYING?

3 A. NO. WE KNOW WHERE REASONING GOES ON. WHAT  
4 WE DON'T KNOW IS WHERE THESE NEUROTRANSMITTERS ARE  
5 ACTING. SEE, THERE ARE A GREAT MANY OF THEM THAT ACT IN  
6 MANY DIFFERENT WAYS.

7 MS. ABRAMSON: YOUR HONOR, I THINK THE ANSWER WAS  
8 ANSWERED, AND NOW THE WITNESS IS BEING NOT RESPONSIVE.

9 THE COURT: NO, THIS IS STILL RESPONSIVE TO THE  
10 TENOR OF THE QUESTION.

11 YOU MAY CONTINUE.

12 MS. ABRAMSON: TENOR OF THE QUESTION?

13 THE COURT: YES.

14 MS. ABRAMSON: WE GET RESPONSE TO TENORS NOW?

15 THE COURT: THAT'S WHAT YOU'RE ASKING. YOU HAVE  
16 EXPERT WITNESSES ON THE STAND. THEY ARE ENTITLED TO  
17 RESPOND TO WHAT YOU'RE ASKING.

18 YOUR RESPONSE, IF YOU HAVE ANYTHING ELSE.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 WHILE WE KNOW WHERE REASONING OCCURS, THE  
21 NEUROTRANSMITTERS HAVE MANY DIFFERENT PLACES THAT THEIR  
22 ACTIONS ARE OCCURRING.

23 SO ONE OF THEM, FOR EXAMPLE, SEROTONIN

24 NUMBER, THERE ARE AT LEAST 14 DIFFERENT RECEPTOR TYPES  
25 FOR, AND THEY HAVE DIFFERENT EFFECTS. SOME DO ONE  
26 THING, SOME DO ANOTHER. SOME ARE ACTUALLY IN CONFLICT  
27 WITH EACH OTHER.  
28 TO MEASURE FROM THE BLOOD PERIPHERALLY FROM

-15535

1 THE BODY, TAKING BLOOD OUT OF AN ARM WHERE -- WHAT THE  
2 OVERALL LEVEL OF THAT NEUROTRANSMITTER IS, IT DOESN'T  
3 TELL US A THING ABOUT WHAT'S GOING ON IN THE BRAIN, OR  
4 WHERE IT'S HAPPENING, OR WHAT ITS MEANING IS.

5 Q. P.T.S.D. RESEARCH STARTED OUT WITH PEOPLE  
6 TELLING WHAT THEY FELT THEIR EXPERIENCES WERE LIKE,  
7 CORRECT?

8 A. YES.

9 Q. AND IT ALSO INVOLVED OBSERVATIONS OF  
10 PEOPLE'S BEHAVIORS AND CHANGES IN THEIR BEHAVIORS,  
11 CORRECT?

12 A. YES.

13 Q. AND THE BEHAVIORAL AND THE CLINICAL  
14 EVIDENCE, IF YOU WILL, HAS SUPPORTED THE NOTION FOR SOME  
15 TIME, HAS IT NOT, THAT THERE IS AN IMMEDIACY TO THE  
16 OVERREACTION IN PEOPLE WITH P.T.S.D. THAT IS DIFFERENT  
17 THAN THE REACTION TO FEAR STIMULUS IN PEOPLE WITHOUT  
18 P.T.S.D. OR A SIMILAR ANXIETY DISORDER, CORRECT?

19 A. WHEN A PERSON WITH P.T.S.D. IS PROVOKED TO

20 EXPERIENCE ACUTE SYMPTOMS, THAT HAPPENS VERY QUICKLY.

21 Q. AND WHAT THEY'RE DOING IS TRYING TO SEE IF

22 THERE IS A NEUROBIOLOGICAL EXPLANATION FOR WHAT IS A

23 GIVEN BEHAVIORAL RESPONSE, CORRECT?

24 A. I DON'T UNDERSTAND WHAT YOU MEAN BY A GIVEN

25 BEHAVIORAL RESPONSE.

26 Q. WELL, THIS WELL-STUDIED BEHAVIORAL

27 RESPONSE, LET'S PUT IT THAT WAY.

28 A. WELL, THE IDEA IS TO TRY TO FIND OUT WHAT'S

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1 THE NEUROCHEMISTRY THAT EXPLAINS HOW THAT OCCURS.

2 Q. BUT THAT IT OCCURS IS NOT REALLY IN

3 DISPUTE.

4 A. THE IDEA THAT PEOPLE SUDDENLY BECOME VERY

5 FRIGHTENED, FOR EXAMPLE, IS NOT IN DISPUTE.

6 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

7 HONOR.

8 THE COURT: REDIRECT?

9 MR. CONN: YES.

10 DOES THE COURT WANT TO TAKE A RECESS, THE

11 AFTERNOON RECESS?

12 THE COURT: WELL, WE'RE RECESSING AT 3:30 TODAY.

13 WE HAVE JUROR WHO HAS AN APPOINTMENT, SO WE'RE BREAKING

14 AT 3:30.

15



16 REDIRECT EXAMINATION

17 BY MR. CONN:

18 Q. DR. DIETZ, WHEN MS. ABRAMSON CONTACTED YOU  
19 ON THE TELEPHONE AFTER YOU HAD BEEN RETAINED BY THE  
20 PROSECUTION, DID SHE INDICATE TO YOU THAT SHE WISHED TO  
21 RETAIN YOU?

22 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
23 TO THAT, GIVEN THE COURT'S RULING PRIOR TO THIS WITNESS  
24 TESTIFYING.

25 ACTUALLY, I'LL WITHDRAW IT. I'LL WITHDRAW  
26 IT.

27 THE COURT: THANK YOU.

28 YOUR ANSWER?

-15533

1 THE WITNESS: YES, SHE DID.

2 Q. BY MR. CONN: AND DID YOU TELL HER AT THAT  
3 TIME THAT YOU HAD ALREADY BEEN RETAINED BY THE  
4 PROSECUTION?

5 A. I TOLD HER I THOUGHT I HAD BEEN, OR THAT I  
6 HAD BEEN APPROACHED BY THE PROSECUTION AND WAS WAITING  
7 TO HEAR.

8 Q. YOU INDICATED THAT YOU HAVE DONE RESEARCH.  
9 ON CROSS-EXAMINATION YOU INDICATED THAT  
10 YOU'VE DONE RESEARCH ON CERTAIN TYPES OF CRIMES, AND YOU  
11 INDICATED THAT YOU HAVE NOT DONE RESEARCH IN THE AREA OF

12 CHILD ABUSE AND BATTERED PERSONS; IS THAT CORRECT?

13 A. YES.

14 Q. NOW, DOES THE FACT THAT YOU HAVE NOT DONE  
15 RESEARCH IN THOSE PARTICULAR AREAS MEAN THAT YOU ARE  
16 UNFAMILIAR WITH THOSE AREAS?

17 A. NO, NOT AT ALL.

18 Q. AND DOES THE FACT THAT YOU HAVE NOT DONE  
19 RESEARCH IN THOSE AREAS IMPAIR YOUR ABILITY TO DIAGNOSE  
20 PERSONS WHO HAVE BEEN ABUSED OR BATTERED, AND IN  
21 FORMULATING AN OPINION AS TO WHETHER OR NOT THOSE  
22 PERSONS SUFFER FROM ANY SPECIFIC MENTAL DISORDER?

23 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR.  
24 IT'S BEYOND HIS EXPERTISE.

25 THE COURT: OVERRULED.

26 THE WITNESS: CERTAINLY NOT. DIAGNOSIS IS  
27 SOMETHING THAT WE'RE TRAINED TO DO FOR A HOST OF  
28 CONDITIONS, WHETHER WE'VE EVER BEEN THE ONES TO OBTAIN A

-15532

1 GRANT AND DO THE RESEARCH TO DEVELOP NEW INFORMATION  
2 ABOUT IT. ANY PHYSICIAN IN ANY SPECIALTY IS TRAINED IN  
3 DIAGNOSIS AND EXPECTED TO AVAIL ONE'S SELF OF THE  
4 LITERATURE, AND TO KEEP INFORMED ABOUT IMPORTANT  
5 DEVELOPMENTS.

6 ONLY SOME PHYSICIANS WILL TAKE SOME AREAS  
7 IN WHICH THEY DO ORIGINAL, NEW RESEARCH. WE DON'T USE

8 THE TERM "RESEARCH" TO MEAN GO TO THE LIBRARY OR READ  
9 ABOUT IT. WE USE THAT TERM TO MEAN ACTUALLY DEVELOPING  
10 NEW INFORMATION AND SHARING THAT WITH THE WORLD. WE  
11 CAN'T DO RESEARCH ON EVERYTHING, OF COURSE.

12 Q. NOW, YOU INDICATED THAT THERE WERE CERTAIN  
13 POLICE REPORTS THAT WERE PROVIDED TO YOU, AND OTHER  
14 POLICE REPORTS, IT IS YOUR UNDERSTANDING, WERE NOT  
15 PROVIDED TO YOU; IS THAT CORRECT?

16 A. YES.

17 Q. DO YOU FEEL THAT IT IS NECESSARY FOR YOU TO  
18 HAVE EVERY POLICE REPORT THAT MAY HAVE BEEN GENERATED IN  
19 THIS CASE IN ORDER TO FORM AN OPINION CONCERNING THE  
20 DEFENDANT'S DIAGNOSIS AT THE TIME OF THE COMMISSION OF  
21 THE CRIME, OR TO FORM AN OPINION CONCERNING HIS MENTAL  
22 STATE AT THE TIME OF THE COMMISSION OF THE CRIME?

23 A. NOT FOR THOSE QUESTIONS IT ISN'T, NO.

24 Q. YOU INDICATED THAT YOU DID NOT DISCUSS THIS  
25 CASE WITH DR. VICARY; IS THAT CORRECT?

26 A. THAT'S RIGHT.

27 Q. DID YOU FEEL THAT IT WAS NECESSARY TO SPEAK  
28 TO DR. VICARY IN ORDER TO FORM AN OPINION CONCERNING THE

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1 DEFENDANT'S DIAGNOSIS AT THE TIME OF THE COMMISSION OF  
2 THE CRIME, OR HIS MENTAL STATE AT THE TIME OF THE  
3 COMMISSION OF THE CRIME?

4 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT  
5 TO COUNSEL LEADING HIS OWN WITNESS.

6 THE COURT: OVERRULED.

7 YOU CAN ANSWER THE QUESTION.

8 THE WITNESS: NO, I DIDN'T THINK IT WAS NECESSARY  
9 TO TALK TO HIS THERAPIST.

10 Q. BY MR. CONN: HOW MUCH INFORMATION DO YOU  
11 NORMALLY NEED IN ORDER TO FORM AN OPINION CONCERNING A  
12 PERSON'S DIAGNOSIS AT THE TIME OF THE COMMISSION OF THE  
13 CRIME?

14 MS. ABRAMSON: I AM GOING TO OBJECT THAT IT'S  
15 IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: IT REALLY DEPENDS ON THE NATURE OF  
18 THE QUESTION, AND WHETHER IT'S A DIFFICULT JUDGMENT CALL  
19 OR NOT.

20 THERE ARE TIMES THAT ONE NEEDS AN EXTREMELY  
21 LARGE AMOUNT OF INFORMATION, BECAUSE ONE'S SEEKING FOR A  
22 NEEDLE IN A HAY STACK. THERE ARE OTHER TIMES WHEN ONE  
23 DOESN'T NEED MUCH INFORMATION, BECAUSE THE INFORMATION  
24 AVAILABLE IS CONSISTENT AND STRAIGHTFORWARD.

25 Q. AND IN THIS CASE YOU FEEL THAT YOU HAVE  
26 BEEN PROVIDED WITH SUFFICIENT INFORMATION BY THE  
27 PROSECUTION TO FORM THE OPINIONS THAT YOU DID CONCERNING  
28 THE DEFENDANT'S MENTAL STATE AT THE TIME OF THE

1 COMMISSION OF THE CRIME, AS WELL AS HIS DIAGNOSIS AT THE  
2 TIME OF THE COMMISSION OF THE CRIME?

3 A. I WOULDN'T BE HERE IF I DIDN'T THINK THERE  
4 WAS SUFFICIENT INFORMATION.

5 MR. CONN: THANK YOU.

6 I HAVE NO FURTHER QUESTIONS.

7

8 RECROSS-EXAMINATION

9 BY MS. ABRAMSON:

10 Q. THEN YOU DIDN'T EVEN NEED TO INTERVIEW ERIK  
11 MENENDEZ, DID YOU?

12 A. WELL, IN LIGHT OF HOW CONSISTENT THE  
13 EXAMINATION FINDINGS WERE TO HIS TESTIMONY, IN  
14 RETROSPECT I THINK ONE COULD SAY THAT THE EXAMINATION  
15 DIDN'T ADD TOTALLY NEW INFORMATION, BUT IT DID ADD SOME.

16 Q. IN FACT, CONSISTENT. HE'S ALWAYS BEEN  
17 CONSISTENT, AS FAR AS YOU KNOW, DESCRIBING WHAT HAPPENED  
18 TO HIM IN HIS CHILDHOOD, HASN'T HE?

19 A. IN DESCRIBING HIS CHILDHOOD?

20 Q. YES.

21 A. SINCE BEGINNING TO DESCRIBE THE ABUSE, HE  
22 HAS BEEN CONSISTENT, AS FAR AS I KNOW.

23 Q. AND HE'S BEEN CONSISTENT IN DESCRIBING WHAT  
24 HAPPENED DURING THAT WEEK BEFORE HIS PARENTS WERE  
25 KILLED, HASN'T HE?

26 A. AT LEAST SINCE THE TIME OF HIS ADMITTING  
27 THAT HE HAD BEEN INVOLVED IN THE KILLINGS, YES.

28 Q. DID YOU REALLY THINK I WANTED TO HIRE YOU?

1       A.  WELL, I FIND IT HARD TO KNOW WHEN YOU'RE  
2  TELLING THE TRUTH AND WHEN YOU AREN'T, BUT YEAH, AS A  
3  MATTER OF FACT, I THOUGHT -- I FLATTERED MYSELF AND  
4  THOUGHT MAYBE YOU DID.

5       Q.  WELL, YOU KNOW NOW THAT I ALREADY HAD ABOUT  
6  FOUR MENTAL HEALTH EXPERTS THAT HAD BEEN WORKING ON THE  
7  CASE, DON'T YOU?

8       A.  I DON'T KNOW HOW MANY.

9       Q.  I MEAN -- I CALLED YOU UP BECAUSE THE  
10  PROSECUTION -- WELL, I TOLD YOU THE PROSECUTION --

11       MR. CONN:  OBJECTION TO COUNSEL TESTIFYING.

12       Q.  BY MS. ABRAMSON:  WHEN I CALLED YOU UP, I  
13  TOLD YOU WE HAD BEEN GIVEN NOTICE, THAT YOU WERE GOING  
14  TO BE GIVEN NOTICE, THAT YOU WERE GOING TO BE A WITNESS  
15  FOR THE PROSECUTION, RIGHT?

16       A.  YOU SAID YOU'D HEARD IT.

17       Q.  ALL RIGHT.  SO I ALREADY FIGURED YOU WERE  
18  WORKING FOR THEM, RIGHT?

19       MR. CONN:  OBJECTION.  ASSUMES FACTS NOT IN  
20  EVIDENCE.

21       THE COURT:  CALLS FOR SPECULATION ON THE PART OF  
22  THE WITNESS.

23       Q.  BY MS. ABRAMSON:  I ALREADY TOLD YOU THAT I  
24  HAD BEEN INFORMED THAT YOU WERE GOING TO BE WORKING FOR  
25  THEM; IS THAT RIGHT?

26 A. OR YOU HAD HEARD A RUMOR TO THAT EFFECT,  
27 RIGHT.  
28 Q. AND YOU SAID, "GEE, I HAVEN'T BEEN RETAINED

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1 YET," RIGHT?

2 A. COULD BE.

3 Q. AND THEN I SAID: "WELL, WOULD YOU WORK FOR  
4 ME IN THIS CASE," RIGHT?

5 A. THAT SOUNDS LIKE YOU.

6 Q. AND YOU SAID YOU'D NEVER WORK ON THE SAME  
7 SIDE OF THE CASE AS DR. ANN BURGESS, DIDN'T YOU?

8 MR. CONN: OBJECTION. MOTION TO STRIKE UNDER  
9 352.

10 THE COURT: OVERRULED.

11 YOU CAN ANSWER THE QUESTION.

12 THE WITNESS: NO. I SAID THAT DR. BURGESS AND I  
13 DID NOT HAVE A GREAT HISTORY.

14 Q. BY MS. ABRAMSON: NO, YOU SAID YOU'D NEVER  
15 BE ON THE SAME SIDE OF A CASE AS HER. THAT'S WHAT I  
16 REMEMBER.

17 AM I WRONG, DR. DIETZ?

18 A. I DON'T KNOW. I AM SURE I THOUGHT IT. I  
19 DIDN'T KNOW THAT I HAD SAID IT.

20 Q. DR. BURGESS WAS SOMEONE WHO HAD WORKED FOR  
21 THE F.B.I.'S BEHAVIORAL SCIENCE UNIT AT THE SAME TIME

22 THAT YOU DID, CORRECT?

23 MR. CONN: OBJECTION. IRRELEVANT, AND MOTION TO

24 EXCLUDE UNDER 352.

25 THE COURT: WE'RE GOING BEYOND THE REALM OF

26 RELEVANCY AT THIS POINT.

27 SO SUSTAINED.

28 Q. BY MS. ABRAMSON: YOU HAVE A HISTORY THAT

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1 GOES BACK TO THE BEHAVIORAL SCIENCE UNIT OF THE F.B.I.?

2 MR. CONN: OBJECTION. BEYOND THE SCOPE OF

3 REDIRECT EXAMINATION.

4 THE COURT: OVERRULED.

5 AS FAR AS HIS RELATIONSHIP WITH

6 DR. BURGESS, IS THAT WHAT YOU'RE REFERRING TO?

7 MS. ABRAMSON: THAT'S WHERE THEY HAVE A

8 RELATIONSHIP, IT'S MY UNDERSTANDING.

9 THE COURT: WELL, YOUR QUESTION WAS VAGUE.

10 SO THAT'S WHAT YOU'RE REFERRING TO?

11 MS. ABRAMSON: YES.

12 THE WITNESS: SHE USED TO WORK IN ASSOCIATION

13 WITH THEM, AND WE OVERLAPPED FOR A TIME.

14 Q. BY MS. ABRAMSON: AND DID YOU WORK UNDER

15 JOHN DOUGLAS --

16 MR. CONN: OBJECTION. IRRELEVANT.

17 MS. ABRAMSON: -- AT THE F.B.I.?



18 THE COURT: SUSTAINED.

19 Q. BY MS. ABRAMSON: DID YOU KNOW WHO

20 DR. VICARY WAS BEFORE THIS CASE?

21 A. I HAVE HEARD OF HIM BEFORE, OF COURSE.

22 Q. AND YOU HEARD OF HIM AS A FORENSIC

23 PSYCHIATRIST WHO DOES PRETTY MUCH WHAT YOU DO?

24 A. I KNEW THAT HE DID A LOT OF JAIL

25 PSYCHIATRY, TOO, AND I HAD HEARD OF HIM AS SOMEONE WHO

26 DID JAIL AND FORENSIC PSYCHIATRY.

27 Q. WHAT DOES JAIL PSYCHIATRY MEAN?

28 A. TREATING JAIL INMATES

-15526

1 Q. IS THAT WHAT YOU THINK HE DOES?

2 A. THAT'S WHAT I THINK HE'S DOING WITH ERIK

3 MENENDEZ.

4 Q. WELL, IS THAT A LOT, IF HE'S TREATING ONE

5 PATIENT?

6 A. I DON'T KNOW. IT DEPENDS ON HOW OFTEN HE

7 SEES HIM.

8 Q. DID YOU EVER HEAR OF HIM TREATING PATIENTS

9 IN JAIL BESIDES ERIK MENENDEZ?

10 A. I THOUGHT HE DID, YES.

11 Q. HE HAS A CLINICAL PRACTICE, DO YOU KNOW

12 THAT?

13 MR. CONN: OBJECTION. IRRELEVANT.

14 THE WITNESS: I ASSUME SO.  
15 THE COURT: OVERRULED.  
16 Q. BY MS. ABRAMSON: SO HE BOTH DOES FORENSIC  
17 WORK, AS YOU DO, AND ALSO HAS A CLINICAL PRACTICE?  
18 A. YES.  
19 MS. ABRAMSON: OKAY.  
20 NOTHING FURTHER.  
21 THE COURT: ANYTHING ELSE?  
22 MR. CONN: NO, YOUR HONOR.  
23 THE COURT: OKAY. THANK YOU. YOU MAY STEP DOWN.  
24 YOU'RE EXCUSED.  
25 THE WITNESS: THANK YOU, YOUR HONOR.  
26 THE COURT: LET ME SEE COUNSEL WITH THE REPORTER.  
27  
28

-15525

1 (THE FOLLOWING PAGES, 50012 THROUGH 50015  
2 WERE HELD IN CAMERA AND ORDERED SEALED  
3 BY THE COURT:)  
4  
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1 (THE FOLLOWING PROCEEDINGS WERE HELD

2 IN OPEN COURT IN THE PRESENCE OF

3 THE JURY:)

4

5 THE COURT: OKAY. WE HAVE EVERYBODY BACK, AND I

6 WAS JUST COVERING WITH THE LAWYERS REGARDING SCHEDULING,  
7 AND IT LOOKS LIKE WE'RE STILL ON SCHEDULE. AND THE HOPE  
8 IS THAT BY THE 20TH OF FEBRUARY, THE DAY AFTER  
9 WASHINGTON'S BIRTHDAY, THE CASE WILL BE ARGUED TO THE  
10 JURY. AND THE JURY, AFTER ARGUMENT, WILL BEGIN ITS  
11 DELIBERATIONS AFTER I INSTRUCT YOU ON THE LAW.

12 SO THE TESTIMONY PHASE OF THE CASE SHOULD  
13 BE COMPLETED BY THE END OF THIS COMING WEEK.

14 AND AGAIN, IT'S IMPORTANT NOT TO DISCUSS  
15 THIS MATTER AMONG YOURSELVES OR WITH ANYONE ELSE, NOT TO  
16 FORM ANY FINAL OPINIONS ABOUT THE CASE, NOT TO PERMIT  
17 YOURSELF TO BE EXPOSED TO THIS CASE IN ANY FORM OUTSIDE  
18 THE COURTROOM, WHETHER IT'S ANY NEWS COVERAGE,  
19 DISCUSSIONS WITH OTHERS, ANYTHING OF THAT NATURE. YOU  
20 MUST MAKE YOUR DECISION BASED SOLELY ON THE EVIDENCE  
21 THAT YOU'VE ACTUALLY HEARD IN THE COURTROOM AND MY  
22 INSTRUCTIONS ON THE LAW.

23 SO WE'LL SEE YOU ALL BACK HERE ON TUESDAY,  
24 MONDAY BEING A LEGAL HOLIDAY. TUESDAY AT 8:30.

25 (JURY EXITS THE COURTROOM AND THE)  
26 FOLLOWING PROCEEDINGS WERE HELD:)

27

28 THE COURT: I WILL ASK THAT COUNSEL REMAIN FOR A

2 LET ME ASK COUNSEL, AS FAR AS JURY  
3 INSTRUCTIONS, WHEN ARE YOU GOING TO HAVE THOSE AVAILABLE  
4 FOR THE COURT?

5 MR. LEVIN: WE DON'T NEED ANY IN THIS CASE, YOUR  
6 HONOR.

7 MR. GESSLER: WE ARE WORKING ON THEM, YOUR HONOR.  
8 FROM OUR STANDPOINT, THOSE WHICH I THINK WILL APPLY TO  
9 BOTH DEFENDANTS, AND I AM HOPING THAT WE CAN GET SOME OF  
10 THAT WORK DONE ON MONDAY, SINCE WE WILL NOT BE INVOLVED  
11 IN COURT THAT DAY, AS PART OF WHAT WE ARE HOPING TO DO,  
12 ALTHOUGH WE HAVE TO AGAIN WORK ON IT.

13 THE COURT: OKAY. ALL RIGHT.

14 AND HOW ABOUT THE PROSECUTION?

15 MR. CONN: PERHAPS BY TUESDAY WE SHOULD BE ABLE  
16 TO SUBMIT OUR INSTRUCTIONS.

17 THE COURT: OKAY.

18 MR. CONN: I'M SORRY, I'M THINKING WE HAVE A FULL  
19 WEEK. PERHAPS BY WEDNESDAY.

20 THE COURT: ALL RIGHT. AND LET'S DO THIS. LET'S  
21 HAVE A DEADLINE THEN WEDNESDAY AT 9:00 O'CLOCK FOR ALL  
22 INSTRUCTIONS, WHETHER THEY BE STANDARD OR SPECIAL  
23 INSTRUCTIONS.

24 MR. GESSLER: YOUR HONOR, IN ORDER TO PREVENT  
25 OVERLAP, WE HAD NOT INTENDED PROVIDING THE COURT WITH A  
26 WHOLE OTHER SET OF THE GENERAL INSTRUCTIONS THAT THE  
27 DISTRICT ATTORNEY USUALLY PROVIDES, LIKE 1.00 AND ALL  
28 THAT.

1 THE COURT: NO, YOU DON'T HAVE TO DO THAT. IF  
2 THEY'RE GOING TO BE STANDARD INSTRUCTIONS, THE COURT  
3 WILL PROVIDE THOSE. BUT ANY SPECIAL OR MODIFIED  
4 INSTRUCTIONS.

5 MR. LEVIN: WE WOULD PROVIDE THOSE, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 OKAY, LET ME SEE THE LAWYERS THEN ON THE  
8 SIDE HERE WHILE WE'RE WAITING FOR THE JURY TO LEAVE.

9 MS. ABRAMSON: YOUR HONOR, I HAVE A -- I WANT TO  
10 KNOW FROM THE PEOPLE -- THIS IS THE FLORIDA DRIVER'S  
11 LICENSE.

12 THE COURT: LET'S GO OUTSIDE AND TALK ABOUT IT.

13

14 ( PAGES, 50019 THROUGH 50020

15 WERE HELD IN CAMERA AND SEALED BY

16 ORDER OF THE COURT:)

17

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-15515

1 (THE FOLLOWING PROCEEDINGS WERE  
2 HELD IN OPEN COURT:)

3

4 THE COURT: UNLESS COUNSEL HAVE SOMETHING ELSE,  
5 WE'RE GOING TO BE IN RECESS.

6 MS. ABRAMSON: I WANT TO KNOW IF THE PEOPLE ARE  
7 GOING TO OBJECT AND WE HAVE TO BRING A WITNESS IN FOR A  
8 DRIVER'S LICENSE.

9 THE COURT: ALL RIGHT.

10 MS. NAJERA: WE'D LIKE TO KNOW WHO YOUR WITNESSES  
11 ARE FOR REBUTTAL.

12 MS. ABRAMSON: I'D LIKE TO KNOW, DO YOU OBJECT?

13 MS. NAJERA: YES, WE JUST SAID THAT.

14 MR. CONN: WE WOULD OBJECT TO THE LICENSE GOING  
15 IN WITHOUT PROPER FOUNDATION.

16 MS. NAJERA: IT DOESN'T EVEN HAVE THE APPROPRIATE  
17 NAME, I MIGHT ADD, YOUR HONOR. THE NAME IS WRONG.

18 MS. ABRAMSON: OKAY, FINE. WE WILL BRING MARTA  
19 CANO BACK TO TESTIFY TO A DRIVER'S LICENSE. THAT'S  
20 MATURE, PROFESSIONAL LAWYERING, AND PROPER USE OF THE  
21 TAXPAYER'S RESOURCES OF THIS COUNTY.

22 THE COURT: OKAY. ANYTHING ELSE THAT EITHER SIDE

23 WANTS TO DISCUSS?

24 MS. NAJERA: NO.

25 THE COURT: ALL RIGHT. WE WILL BE IN RECESS

26 UNTIL TUESDAY AT 8:30.

27 THE PEOPLE REST ON REBUTTAL; IS THAT

28 CORRECT?

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1 MR. CONN: YES, YOUR HONOR.

2 MS. NAJERA: YOUR HONOR, MS. ABRAMSON HAS JUST

3 INFORMED ME THAT SHE IS NOT GOING TO GIVE US -- SHE IS

4 NO LONGER GOING TO COOPERATE WITH US, BECAUSE SHE IS

5 HAVING A TANTRUM.

6 I WOULD LIKE THE COURT TO PLEASE HAVE HER

7 INFORM US WHO IS GOING TO BE CALLED ON SURREBUTTAL.

8 THE COURT: WHAT WOULD YOU LIKE ME TO TAKE

9 JUDICIAL NOTICE OF?

10 MS. NAJERA: IT APPEARS THAT SHE'S HAVING A

11 TANTRUM, AND I WOULD LIKE ONE OF THE DEFENSE TO INFORM

12 US WHO IS GOING TO BE CALLED ON SURREBUTTAL, WHO IS

13 BEING CALLED ON TUESDAY, AND I WOULD LIKE TO KNOW.

14 THE COURT: OBVIOUSLY EITHER SIDE HAS AN

15 OBLIGATION TO DISCLOSE THE WITNESSES WHO WILL BE CALLED

16 ON TUESDAY, AND THE ORDER IN WHICH THEY WILL BE CALLED

17 THE BALANCE OF THE WEEK.

18 MS. NAJERA: AND I WOULD LIKE THE SUBJECT MATTER



19 THEY ARE GOING TO BE CALLED ON, AS WELL.

20 DEPUTY WOLF: JURY IS WALKING THROUGH.

21 (BRIEF PAUSE IN PROCEEDINGS)

22

23 MS. NAJERA: I THINK WE NEED TO DETERMINE, YOUR

24 HONOR, THE DEFENSE IS TAKING THE POSITION THAT WE ARE

25 NOT ENTITLED TO DISCOVERY ON SURREBUTTAL, AND I HAVE

26 JUST REREAD THE STATUTE, AND I DON'T BELIEVE THAT IS AN

27 APPROPRIATE POSITION.

28 THE COURT: AT THIS STAGE, ONCE THE PEOPLE HAVE

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1 RESTED ON REBUTTAL, YOU ARE ENTITLED TO DISCOVERY ON THE

2 SURREBUTTAL.

3 SO WHO IS IT THAT YOU'RE CALLING?

4 MS. ABRAMSON: JUDGE, WE JUST TOLD YOU IN THE

5 HALLWAY.

6 MR. GESSLER: I DON'T BELIEVE THAT 115 COVERS

7 SURREBUTTAL. IT SEEMS TO STOP AT REBUTTAL.

8 SO I DON'T BELIEVE THAT DISCOVERY IS

9 REQUIRED UNDER 115, WHICH IS THE STATUTE WHICH IS

10 PROBABLY EXCLUSIVE RIGHT NOW. IT IS EXCLUSIVE AS TO

11 WHAT IS DISCOVERY.

12 THE COURT: LET'S PUT IT THIS WAY:

13 IF YOU WANT TO CALL WITNESSES IN

14 SURREBUTTAL, YOU BETTER TELL THE PEOPLE WHO THEY ARE.

15 MR. GESSLER: IS THAT A JUDGE WEISBERG ADDENDUM  
16 TO PROP 115?  
17 THE COURT: YES.  
18 MS. ABRAMSON: WELL, JUDGE, YOU WERE STANDING  
19 THERE IN THE HALLWAY.  
20 THE COURT: IT'S KNOWN AS REASON AND LOGIC.  
21 MS. ABRAMSON: JUDGE, YOU WERE STANDING THERE IN  
22 THE HALLWAY, AND I COULD HAVE SWORN WE TOLD THEM WHO OUR  
23 WITNESSES ARE. WAS I HALLUCINATING?  
24 MS. NAJERA: YOUR HONOR, FOR THE RECORD, I HAVE  
25 ONLY KATHERINE BULOW-COHEN, TERRY BARALT, DR. VICARY,  
26 LINDA ELLMAN, AND TWO PEOPLE FROM THE CHARITY.  
27 IS THAT WHAT COUNSEL UNDERSTANDS THEY'RE  
28 CALLING IN SURREBUTTAL?

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1 MS. ABRAMSON: SO FAR. OH, AND ED FENNO. THAT'S  
2 RIGHT. I AM CALLING ED FENNO BACK.  
3 MS. NAJERA: ANYONE ELSE?  
4 MR. GESSLER: CAN I LOOK AT IT? I DO BETTER WHEN  
5 I SEE SOMETHING THAN WHEN I HEAR IT.  
6 MS. ABRAMSON: WE ARE GOING TO CALL A  
7 METEOROLOGIST. I SAID THAT BEFORE, RIGHT?  
8 MS. NAJERA: YOUR HONOR, WE HAVEN'T GOTTEN ANY  
9 DISCOVERY ON WHAT THESE PEOPLE ARE GOING TO TESTIFY TO.  
10 MR. GESSLER: WE ARE GIVING THEM NAMES.

11 MS. NAJERA: HE SAID YOU HAVE TO GIVE US  
12 DISCOVERY.  
13 YES, HE DID.  
14 MR. GESSLER: HE SAID NAMES.  
15 MS. NAJERA: YOUR HONOR --  
16 THE COURT: OBVIOUSLY IF YOU ARE CALLING  
17 SOMEBODY, THE OPPOSITION HAS A RIGHT TO KNOW WHAT THE  
18 WITNESS IS GOING TO SAY. IT DOESN'T MAKE SENSE  
19 OTHERWISE.  
20 MS. ABRAMSON: ED FENNO. WHAT HE'S GOING TO SAY  
21 IS CONTAINED IN HIS PREVIOUS TESTIMONY. READ IT.  
22 THE COURT: AND AS TO ALL THESE WITNESSES, AS I  
23 SAID, IF YOU DON'T TELL THE OPPOSITION WHO THEY ARE AND  
24 WHAT THEY'RE GOING TO SAY, SO THEY HAVE AMPLE  
25 OPPORTUNITY TO STATE ANY OBJECTIONS THEY HAVE, THEN  
26 YOU'RE NOT GOING TO BE ABLE TO CALL YOUR WITNESS.  
27 SO IT'S A VERY SIMPLE, EASY RULE TO APPLY.  
28 MS. ABRAMSON: I CAN'T IMAGINE HOW THEY'RE GOING

-15511

1 TO OBJECT TO THE WEATHER, BUT MAYBE THEY WILL.  
2 THE COURT: I DON'T WANT TO HEAR ANYMORE ABOUT  
3 IT. THAT'S THE WAY IT'S GOING TO BE. YOU FOLKS TALK TO  
4 YOU FOLKS, AND IF THERE ISN'T ANY INFORMATION PASSED  
5 FROM ONE SIDE TO THE OTHER, THEN YOU KNOW WHAT'S GOING  
6 TO HAPPEN.

7 ALL RIGHT. WE WILL BE IN RECESS UNTIL  
8 TUESDAY.

9 (AT 3:30 P.M. PROCEEDINGS WERE  
10 ADJOURNED TO TUESDAY, FEBRUARY 13,  
11 1996 AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

3

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

5

6 THE PEOPLE OF THE STATE OF )  
7 CALIFORNIA, )  
PLAINTIFFS, )

8 )  
VS. ) NO. BA 068880

9 )  
ERIK GALEN MENENDEZ, AND )  
10 JOSEPH LYLE MENENDEZ, )  
DEFENDANTS. )

11 \_\_\_\_\_)

12

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS  
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APPEARANCES:  
18 (SEE APPEARANCE PAGE

19

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1 APPEARANCES:

2 FOR THE PEOPLE: GIL GARCETTI  
DISTRICT ATTORNEY  
3 BY: DAVID CONN, DEPUTY  
AND  
4 CAROL NAJERA, DEPUTY  
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7 JOSEPH LYLE MENENDEZ: WILBUR F. LITTLEFIELD  
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8 BY: CHARLES GESSLER, DEPUTY  
AND  
9 TERRI TOWERY, DEPUTY  
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10 LOS ANGELES, CA 90012

11 FOR THE DEFENDANT

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CSR NO. 4547  
MARY LU MURPHY  
CSR NO. 5178  
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17 LEGEND:

18 A = MS. ABRAMSON

C = MR. CONN

19 N = MS. NAJERA

T = MS. TOWERY

20 L = MR. LEVIN

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